



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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**ZBA MINUTES
September 21, 2022**

ATTENDANCE: Chairman Drew Gentile; Vice-Chairman Jake Martin; Doug McAllister; Bebe Bartlett; George Rau; Alternates Marc Ohlson and Mark Totman

OTHERS PRESENT: Town Administrator Linda Shackford; MadTV Aysia Morency

CALL TO ORDER: Gentile called the meeting to order at 6:00 pm and Martin led those in attendance in reciting the Pledge of Allegiance.

ELEVATION OF ALTERNATE: A full board is in attendance; elevations are not necessary.

Martin asked Shackford to read aloud **Case #22-09** - Variance is requested by Brian and Kimberly Barbieri for vacant property located on Skyline Way, Tax Map 205 Lot 048-002 from Article V Section 5.9A to construct a single-family home within the 75' setback of the center line of Skyline Way. Notice was published in the Conway Daily Sun on September 8, 2022, posted at the Town Hall, Madison Post Office and Silver Lake Post office on September 6, 2022 and certified mail was sent on September 9, 2022. L. Shackford told of an abutter notification error. Three abutter notices went to incorrect addresses supplied by the applicant.

Conflict of Interest: All members stated they had no conflict of interest in this case via roll call.

Waiver Request: There were none.

Regional Impact: All members stated they see no regional impact in this case via roll call.

Swearing In: Martin swore in all present that were to speak to this case.

The issue of improper abutter notification was discussed. McAllister wanted to hear the case, Bartlett hoped to possibly discuss but continue to October, Ohlson thought this may need research as to why the Planning Board created substandard lots after Zoning was enacted and Totman cited the risk that if an abutter objects it will have to be reheard. The Board agreed to proceed.

Martin asked the applicant to give an overview of the case.

Brian Barbieri explained that because of the lot configuration relief of 20' is needed from the street setback because the lot cannot handle the requirement of the covenant that a house must be a minimum of 1,400 square feet. The home will be 55' from the center line of Skyline Way. Barbieri has septic approval and the well location.

Notes on Findings of Fact:

1. Septic and well approvals are in hand;

2. Other setbacks are met, only asking for front setback relief;
3. Covenants require a minimum house size of 1,400 square feet;
4. The cluster development was approved after 1987;
5. The buildable envelope for the house is impractical geometrically; and
6. The footprint includes the overhangs.

Motion by Rau, seconded by Gentile to close the public hearing for Case #22-09. The motion passed **unanimously**.

Findings on the five conditions for a variance:

1. The variance will not be contrary to the public interest
2. The spirit of the ordinance will be observed (answers for both 1 and 2 together):
 - The setback from the road follows the characteristic of the neighborhood.
 - The septic and well approval satisfy health and safety.
 - The home is in keeping with the size of the lot.
3. Substantial justice is done because
 - The owner is permitted to build on the lot that was designed for a modern house in a cluster community.
4. The values of surrounding properties are not diminished because
 - The new construction is consistent with the neighborhood.
5. Literal enforcement would result in unnecessary hardship because
 - The buildable envelope is inadequate for the home as required by the covenants.
 - It is a reasonable use of the land for residential use in a residential community.

Motion by Gentile, seconded by McAllister to approve the request for a variance to allow construction of a home within construct a single-family home within the 75' setback of the center line of Skyline Way with the condition that that immediate notification by certified mail will be made to the three abutters erroneously not noticed of this meeting and if a negative response is received this hearing will be re-heard at the October 19, 2022 meeting at 6:00pm. Substantial justice is served in the granting of this variance because the buildable envelope for the home is inadequate for a reasonable use of the land for a residential home. The motion passed **5-0**.

Martin read the provisions of the 30-day appeal period. Martin closed Case #22-09.

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Rau asked L. Shackford to read aloud **Case #22-10** - Variance is requested by Bretton and Cynthia Russell for property located at 8 Grandval Way, Tax Map 112 Lot 023 from Article V Section 5.9E for a constructed ADA accessible wheelchair ramp within the 65' setback of the center line of Grandval Way. Notice was published in the Conway Daily Sun on September 8, 2022, posted at the Town Hall, Madison Post Office and Silver Lake Post office on September 6, 2022 and certified mail was sent on September 9, 2022.

Conflict of Interest: All members stated they had no conflict of interest in this case via roll call.

Waiver Request: There were none.

Regional Impact: All members stated they see no regional impact in this case via roll call.

Swearing In: Rau swore in all present that were to speak to this case.

Rau asked the applicant to give an overview of the case.

Cynthia Russell explained that her husband had emergency spinal surgery and is temporarily confined to a wheelchair and access to the home is via a ramp. This is their only means of entry to the home and it was an immediate need. The ramp is inside of the front yard setback by 15’.

Gentile noted that his case is being heard without prejudice because it has already been constructed.

Rau visited the property and the ramp looks natural to the home. Rau also cited a letter of support from an abutter. McAllister concurred with Rau’s comments.

Gentile stated that it is possible to grant a variance for handicap reasons based upon an individual need and the Board has the authority to require its removal as a condition of approval once no longer necessary.

There were no public in attendance to offer opposition.

Notes on Findings of Fact:

1. The location of the ramp is the only practical place.
2. The ramp is constructed to ADA standards at a 12:1 ratio.
3. The location of the ramp avoids the need for cumbersome snow removal.
4. The ramp is well constructed and aesthetically pleasing.

Motion by Rau, seconded by Gentile to close the public hearing for Case #22-09. The motion passed **unanimously**.

Findings on the five conditions for a variance:

- 1 The variance will not be contrary to the public interest
- 2 The spirit of the ordinance will be observed (answers for both 1 and 2 together):
 - No neighbors are aggrieved by the location.
 - The ramp is aesthetically pleasing.
 - The ramp fits in the neighborhood.
- 3 Substantial justice is done because
 - The ramp allows the owner to access his home in a safe manner.
- 4 The values of surrounding properties are not diminished because
 - The new construction is consistent with the neighborhood and enhances the value.
- 5 Literal enforcement would result in unnecessary hardship because
 - The owner would not be able to access his home without the ramp.

Motion by Rau, seconded by McAllister to grant the variance to allow the construction of an ADA accessible wheelchair ramp within 65’ of the setback of the center line of Grandval Way. The motion passed **5-0**.

Rau read the provisions of the 30-day appeal period. Rau closed Case #22-10.

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Motion by Gentile to enter **Non-Public Session per RSA 91-A:3II (I)** Consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present at 7:16pm.

Roll call vote: Gentile – Aye; Martin – Aye; Rau – Aye; Bartlett – Aye; McAllister – Aye

7:45 PM – Martin made a **motion** to return to public session and make public the minutes under RSA 91-A:3II (I) seconded by McAllister and so voted **5-0**.

The action from the non-public session resulted in agreement in sending a letter to Code Officer Boyd offering clarification provided by the Board’s attorney Christopher Boldt. The clarification is in regards to Section 1.3B of the Zoning Ordinance that governs the 50% expansion of a non-conforming structure and the use of the definition of footprint.

MINUTES: Motion by McAllister, seconded by Rau to approve the minutes of the August 17, 2022 minutes with the changes. The motion passed **unanimously**.

ADMINISTRATION: Ohlson discussed Case #22-09 as related to the Subdivision regulations that may not require the Skyline Way lot to conform to the zoning ordinance setbacks.

Gentile will consult with the Board’s counsel and made a **motion**, seconded by Martin, that if counsel agrees that no variance was needed the applicant will be informed that he can approach Code Officer Boyd for the issuance of a building permit. The motion passed **5-0**.

Motion by McAllister, seconded by Rau to refund the applicant their application fees in the amount of \$260.00, if appropriate. The motion passed **5-0**.

ADJOURNMENT: Motion by Rau seconded by Martin to adjourn the meeting. The motion passed **unanimously**. The meeting adjourned at 8:05 pm.

Respectfully Submitted,

Linda Shackford
Town Administrator