



**TOWN OF MADISON  
ZONING BOARD OF ADJUSTMENT  
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**ZBA MINUTES  
October 19, 2022**

**ATTENDANCE:** Chairman Drew Gentile, Vice-Chairman Jake Martin, Doug McAllister

**EXCUSED:** George Rau, Bebe Bartlett, Marc Ohlson, Mark Totman

**OTHERS PRESENT:** Madison TV Asia Morency; Brian and Kim Barbieri; Thomas Byrne, other members of the public

**CALL TO ORDER:** 6:00 PM by Chairman Drew Gentile, who led the pledge of allegiance.

Jake Martin presided over the following hearing.

Martin read aloud **Case 22-09 REHEARING** - Variance 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 foot setback from the center of Skyline Way.

Gentile read the posting information: Posted at Town Hall, Silver Lake and Madison Post Offices on October 5, 2022; Published in the Conway Daily Sun on October 6, 2022 and Certified mailing were sent on October 11, 2022.

Martin polled the board as follows:

**Conflict of Interest:** All three board members stated they has 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 affirmed from the September 21, 2022 meeting.

**Swearing In:** Martin sworn in Brian Barbieri after asking if anyone wished to speak to this case.

Mr. Barbieri repeated his request for relief from the 75-foot setback requirement from the center of Skyline Way, stating that was the only dimension requiring relief.

McAllister asked for the outcome of the review of the subdivision regulations which was raised at the end of the September 21 ZBA meeting. Are cluster lots exempt from dimensional requirements according to section VII.C.4.b and c, which refers to paragraph 4.13 of the Zoning Ordinance?

Gentile stated that the ZBA's jurisdiction and obligation is not determined by the subdivision regulations but by the Zoning Ordinance. Each ordinance may refer to the other for convenience in identifying the connecting points, but in this case paragraph 4.13 of the Zoning Ordinance has been removed and

replaced by paragraph 5.9. The dimensional requirement of 5.9.A requiring a setback of 75 feet from the centerline of Skyline Way does apply so that a variance is needed.

Martin asked if there was any other comment from the public. There was none.

**Motion** by Gentile that the record of the discussion from the hearing on September 21 be brought forward to this meeting and that the decision be amended to simply approve the variance request according to the record of the assessment of the five criteria without any conditions:

Notes on Finding of Fact:

1. The lot is in a cluster development.
2. Subdivision was after 1987, both Madison and New Hampshire approved the subdivision.
3. There are DES well permits and septic permits in hand
4. The septic is a community leach field, each unit has a separate septic tank.
5. All setbacks meet the dimensional requirements except for the 55-foot setback from the road where 75 feet is required.
6. The allowable building envelope is impractical for a house design, being approximately only 14 feet wide.
7. The association requires a minimum 1400 sq ft house.
8. The footprint is presented as and measured according to the March '22 definition of a footprint, which includes all extensions and overhangs.

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 house is part of an association with building specifications so that the construction supports the neighborhood standards and aesthetics
  - The existence of well and septic permits demonstrates there is no fundamental issue with public health and safety. A driveway and adequate parking are part of the plan so that construction will not create a congestion hazard.
  - The lot is a reasonable lot for construction; it presents no particular or unusual safety hazards.
3. Substantial justice is done because
  - The owner purchased the lot which was sold as a building lot for a modest house. The owner has secured a design and necessary permits which meet the association conditions with the intention of building. It is a reasonable, expected, and promised use of the property as evidenced by the subdivision permits.
4. The values of surrounding properties are not diminished because
  - The home is designed to fit into a community development with specific standards.
  - The existence of the home will increase the value of the property.
5. Literal enforcement would result in unnecessary hardship because
  - It would deny the owner the intended use of the property as a home site which has town and state subdivision approval. This would provide the public with no benefit, a loss in taxes, and cause a significant financial hardship on the owner.
  - The building of a modest home on this site is a reasonable use of the property as evidenced by the town and state subdivision approvals as well as the set of community standards for construction and aesthetics.

The motion passed by roll-call vote, **3-0**.

The Variance request for a 55-foot setback from the center of Skyline Way where 75 feet is required by paragraph 5.9.A of the Zoning Ordinance is approved because it meets the 5 criteria for a variance as recorded above.

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Gentile read aloud **Case #22-11** - Variance is requested by Thomas and Jami Byrne, Trustees of The Byrne Family Trust for vacant property on Cranmore Drive Tax Map 116 lot 015 from Article V sections 5.9A and D to construct a new house to be 44 feet from the center line of Cranmore drive where 75 feet is required.

Gentile read the posting information: Posted at Town Hall, Silver Lake and Madison Post Offices on October 5, 2022; Published in the Conway Daily Sun on October 6, 2022 and Certified mailing were sent on October 11, 2022.

**CONFLICT OF INTEREST:** All members stated they has 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:** Gentile swore in Thomas Byrne.

Gentile stated that there was a procedural error in the notification of the variance. There are four dimensions given in the record which require a variance, setback from Cranmore Drive (actually 68.84 feet instead of 75), setback from Twin Mountain Circle 44.24 feet instead of 75, setback of 14.07 feet from the west property line, and 40.18 feet from poorly drained soil.

Gentile apologized for the inconvenience and confusion but stated that it would not be possible to have the public hearing at this meeting since the abutters were improperly notified.

Mr. Byrne objected and asked what he did wrong, since he had Horizons Engineering fill out the application and perform the survey, and then he personally asked the town if everything was in order, and was told it was. He also complained that if this were the case, why couldn't he have been informed so that he could have avoided the long drive from Massachusetts for the meeting?

Gentile apologized for the confusion, stated that at the end of the day, the applicant is responsible for the accuracy of the application. Formally only the board can assess whether the application is complete. Mr Byrne restated his disappointment with the town administration throughout the process.

Mr. Byrne stated he didn't know if he could be back in November due to the need to address a home in Ft Myers, FL which he owned that was destroyed by Hurricane Ian. He asked what he needed to do to get the application correct. Gentile stated that we have all the data, Gentile will assure that the notification of the abutters is correctly posted without any additional work on his part.

**Motion** by McAllister, seconded by Martin to continue the case until the November 16, 2022 ZBA meeting. The motion passed **3-0**.

**MINUTES:** The minutes from the special meeting of September 28, 2022 could not be approved because McAllister stated he would have to abstain, so that three votes were not available. Approval was postponed without a vote.

The minutes of the September 21, 2022 meeting were approved with two minor corrections.

**ADMINISTRATION:** The 2023 budget was reviewed, and numbers submitted as follows:

	<u>2022</u>	<u>2022 Exp</u>		<u>Balance</u>	<u>2023</u> <u>Proposed</u>
DUES & PUBS	\$ 300	\$ 50.00	16.7%	\$ 250.00	\$ 200
LEGAL	\$10,000	\$ 3,799.00	38.0%	\$ 6,201.00	\$ 10,000
NOTICES	\$ 300	\$ 617.50	205.8%	\$ (317.50)	\$ 550
POSTAGE	\$ 700	\$ 691.30	98.8%	\$ 8.70	\$ 840
SUPPLIES	\$ 200	\$ 110.31	55.2%	\$ 89.69	\$ 200
TRAINING	\$ 200	\$ -	0.0%	\$ 200.00	\$ 200
<b>TOTAL</b>	<b>\$11,700</b>	<b>\$ 5,268.11</b>	<b>45.0%</b>	<b>\$ 6,431.89</b>	<b>\$ 11,990</b>

**ADJOURNMENT:** **Motion** by McAllister, seconded by Martin to adjourn the meeting. The motion passed **3-0**. Meeting adjourned at 6:59pm.

Minutes recorded by: Drew Gentile, Chairman

Minutes formatted by: Linda Shackford, Town Administrator