



**TOWN OF MADISON  
ZONING BOARD OF ADJUSTMENT  
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**ZBA MINUTES  
September 20, 2023**

**ATTENDANCE:** Drew Gentile, Chairman, Jake Martin, Vice Chairman, Doug McAllister, Marc Ohlson, Alternate, – Bill Dempster, Alternate, – Sharon Schilling, Alternate

**EXCUSED:** Shawn Bergeron and George Rau

**OTHERS PRESENT:** Madison TV, Carol Dandeneau, Kate Young, Land Use Boards Administrator and Henry P. Moscone, Scott McLean, Pamela Smillie, Esquire, Jim Floyd - Hancock White Mt. LLC, Mark McConkey and Jim Rines and other members of the public

**CALL TO ORDER:** Gentile called the meeting to order at 6:04 PM. McAllister led the reciting of the Pledge of Allegiance.

Gentile asked if there was anyone present for **Case #23-10**. There was no one present.

Gentile then stated they will do the cases in order beginning with **Case #23-06** which is a Rehearing for a Request from an Equitable Request Waiver of Dimensional Requirements. Gentile stated there was some miscommunication and the Board thought that Moscone was satisfied with the solution of combining the lots and Gentile stated that it was not clear to the Board that Moscone needed the lots to be two lots so Moscone could have two residences and that was the basis upon which the Board granted the Rehearing. Gentile stated that Moscone stated the reason Moscone wanted to do this was so he can establish a no build easement.

Moscone stated the buyer has accepted the no build easement and both the buyer and Moscone are happy with that and this is the way to go.

Gentile stated there are three regular Board Members present and asked which Alternates sat on this case before. Schilling and Dempster both stated they sat on **Case #23-06** previously.

**ELEVATION OF ALTERNATES:** Gentile asked for a motion to elevate Schilling and Dempster to full voting members.

**Motion** by Martin, seconded by McAllister to elevate Schilling and Dempster to full voting members for **Case #23-06**. The Motion passed **unanimously**.

Gentile asked Young to read the notice for **Case #23-06**.

Young read aloud **Case #23-06 –Re-Hearing - Equitable Waiver of Dimension Requirements** is requested by Henry P. Moscone, for property located at 7 Mount Washington Drive, Map 111, Lot 6, from Article V, Section 5.9 of the Zoning Ordinance to permit the existing barn to remain where it was constructed.

**PUBLIC MEETING NOTICE:** Notification of this public meeting was posted on August 30, 2023 in the Town Hall upper and lower levels and Madison and Silver Lake Post Offices. Certified mailings were mailed on August 31, 2023 and notice published in the Conway Daily Sun on September 2, 2023.

Gentile stated that Schilling and Dempster now make a five-member board.

Gentile stated the first order of business is **Case #23-06**.

**Conflict of Interest:** Gentile stated since this was the same Board as for previous meetings, he polled the Board Members if they had any Conflict of Interest. There was none.

**Waiver Request:** Gentile asked Young if there was a Waiver Request on the original application.

Young stated no.

**Regional Impact:** Gentile polled the Board. There was no Regional Impact.

Gentile asked Moscone to explain to the Board what he is requesting. Moscone stated that it is clear and that he wants to put a 25 foot no build zone along the property line and he cannot move the barn.

Gentile stated that Moscone was previously sworn in at the original hearing.

Gentile stated they will bring forward the Findings of Fact from the previous hearing and the only change is that Moscone prefers to switch to the question of a 25 foot no build zone and Gentile asked the Board if they had any questions. Dempster stated the Board has not heard from the person purchasing the property and asked if that person was willing to add anything to the discussion.

Gentile asked McLean if he had anything to add and that he would need to swear McLean in. McLean stated he should be sworn in.

**Swearing In:** Gentile swore in Scott McLean, the buyer of Lot #6. McLean explained to the Board that surveyors have established proper boundary lines and now with requesting the no build easement, Pam Smillie, Esquire represents Henry Moscone and McLean has an attorney of his own who is in contact with Attorney Smillie. McLean stated he is fine where the barn is and that Moscone is agreeable to give McLean access to it. Moscone agrees that nothing will be put in that space to obstruct the area and once he and Moscone are in an agreement with the decision, then the public nuisance part goes away. McLean stated the cost of the removal or its benefit outweighs the cost of removal and that he and Moscone are prepared to move forward.

Schilling asked McLean if he is purchasing the property that has the barn on it already and the not the lot next door which does not have the barn so when McLean stated he is fine where the barn is that it will be on his property should the purchase go through. McLean stated yes, the barn will be on his property and will not be a nuisance so long as the easement is granted and he will be able to access it and Moscone will as well and the no build clause will keep the property looking nice.

Gentile stated the no build clause is primarily there for the potential of McLean or Moscone selling one of the lots and there are new owners.

Gentile stated to the Board they can bring forth all of their discussion and all of the Findings of Fact and comments from the decision but the Board will have another deliberation tonight because the Board needs to decide on this particular request. Gentile stated the addition to the Findings of Fact is that Moscone and McLean agree to the no build easement. Gentile stated from his perspective as Chairman, as they move later to deliberation that the no build easement will have to have two primary characteristics in it and the ZBA's attorney and Attorney Smillie will need to work together to finalize the wording and on the assumption that the Board approves that tonight, then next month when the easement has been worked on and both attorneys are satisfied, then the Board needs to approve the final easement at the October 18, 2023 meeting. Gentile further stated that the easement will have to contain two things, one being it will have to contain that the 25 foot no build zone is written in on the deed and will also will need to provide for maintenance access. Gentile stated these are the two items the Board is concerned about and our attorney may have other things he is concerned about. Gentile stated the Board will go through the decision-making process, if the Board approves it then it will go to the attorneys next month it gets the final approval and the easement exists.

Gentile asked the Board if they had any questions. Dempster asked Moscone if the 25 foot no build zone extends along the entire boundary between the two properties? Moscone thought so. Gentile stated that is something for the attorneys to work out.

Gentile asked again if there were any other questions. There were none.

Gentile stated that the Findings of Fact will remain as is except for the addition that Moscone and McLean agreed to the no build easement of 25 feet. Gentile read the Findings of Fact aloud to the Board.

**Findings of Fact:**

We brought the findings of fact from the July 19, 2023 ZBA meeting forward and replaced what was point 11 with point 13.

1. 1966 – Date of the original cottage construction on previously subdivided land
2. 1999 – Mr. Moscone purchased lot 6 with the cottage on it.
3. 2005 – Mr. Moscone purchased lot 7 and lots 6 and 7 were merged into 6.
4. 2005 – Mr. Moscone built the barn on its current location on lot 6 (formerly 6 and 7).
5. The setbacks for the barn are:
  - 44.5 feet to the centerline of Mt Washington Dr where 75 feet is required.
  - 15.4 feet to the rear property line with lot 4 where 25 feet are required; and
  - 1.4 feet between the barn and lot 16, where 25 feet are required.
  - The requirements are set in the Madison Zoning Ordinance Section 5.9 A, which was in effect in 2005.
6. 2010 – Mr. Moscone purchased lot 16.
7. 2010 – Mr. Moscone added a second story to the cottage on lot 6.
8. 2011 – A small addition was made to the Barn.
9. There is no record of the Town of Madison communicating any code or zoning infraction to Mr. Moscone and the building permits are still open.

10. The date of the Application being May 30, 2023, and the last activity on the lots being in 2011 means that more than 10 years have elapsed between the application and any zoning infringements without any record of the town citing a violation.
11. Mr. Moscone and Mr. McLean agree to a 25-foot no-build easement on lot 16, which deletes point 11 as shown on the decision dated July 20, 2023.
12. There was no response from any abutter, pro or con.
13. Mr. Moscone and Mr. McLean agree to a 25-foot no-build easement on Lot 16, which deletes point 11.

Gentile stated at the last meeting the Board did decide to grant the Equitable Waiver for the two larger dimensions which matched the character of the neighborhood and that the Board can bring that portion of the decision forward into this meeting and the Board will consider whether or not that the no build easement is the solution.

Attorney Smillie stated that in the Decision of July 20, 2023, Moscone's name was incorrectly spelled as Mascone.

Gentile polled the Board for any further questions and for a motion.

**Motion** by McAllister, seconded by Dempster to close the Public Hearing. The motion passed **unanimously**.

**Deliberation:**

Mr. Moscone appealed in writing for a rehearing on the basis that he could not merge the lots since he needs two lots of record for two residences. This voided the equitable waiver granted on July 19, 2023. The no-build easement was previously discussed as a reasonable solution to the setback issue and the board agreed to Mr. Moscone's request.

We brought the arguments and decision for the equitable waiver for the setbacks to the center of Mount Washington Drive and to the rear property line with Lot 4 forward from the July 19, 2023 ZBA meeting.

**Motion** by McAllister, seconded by Schilling to authorize the creation of a 25-foot no build easement on Lot 16 which includes maintenance access for the barn for the owner of Lot 6 onto Lot 16 to be approved at the October 18, 2023 ZBA meeting; to approve the equitable waiver for the 44.5-foot set back to the center of Mount Washington Drive where 75 feet is required; to approve the equitable waiver for the 14.5-foot setback to Lot 4 where 25 feet is required. The motion passed **unanimously**.

Gentile stated that the applicant is authorized to create the 25 foot no build easement and the Board will approve it once the attorneys have created it.

Pam Smillie, Esquire counsel for Moscone will draft the easement and get it to Young so she can forward to the Board's attorney for review.

Gentile asked for a motion to continue **Case #23-06**.

**Motion** by Schilling, seconded by Dempster to continue **Case #23-06** to the October 18, 2023 Public Hearing in order to approve the final easement document. The motion passed **unanimously**.

Gentile read aloud the provisions of the 30-day appeal period. Gentile closed **Case #23-06**.

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Gentile asked Young to read the notice for **Case #23-08**.

Young read aloud **Case #23-08 – Variance** is requested by Randal Moore, Applicant/Agent for Hancock White Mt. LLC for property located at 71 Marcella Drive, Map 262, Lot 5 from Article 5, Section 5.1 of the Zoning Ordinance to permit a sign to be constructed totaling 50 square feet.

**PUBLIC MEETING NOTICE:** Notification of this public meeting was posted on August 30, 2023 in the Town Hall upper and lower levels and Madison and Silver Lake Post Offices. Young confirmed all Certified mailings were mailed on August 31, 2023 to all abutters including the abutters that were not previously noticed in Madison, Tamworth, Ossipee and Freedom and notice was published in the Conway Daily Sun on September 2, 2023. Young also stated that one abutter was sent notice and it came back as the abutter sold the property and then Young resent the notice to the new abutter at the same address she was provided with from the applicant and that came back as well.

Gentile informally polled the Board and asked them if they had an issue. McAllister stated “we have done due diligence.” The Board were all in agreement.

Gentile stated there are three regular Board Members and they need five.

Gentile asked for a motion to elevate alternates to make a five-member board.

**Motion** by Martin, seconded by McAllister to elevate Schilling and Dempster to full voting members for **Case #23-08**. The motion passed **unanimously**.

Gentile stated they now have a five-member board.

**Conflict of Interest:** Gentile polled the Board and there was no Conflict of Interest.

**Waiver Request:** There is no Waiver Request as this has to do with square footage of a sign.

**Regional Impact:** All other abutters that were not previously noticed in other towns have been noticed.

**Swearing In:** Gentile swore in John Fuller, General Manager for Hancock Lumber in Madison.

Fuller explained to the Board he is looking for a variance of square footage of the sign to replace the existing Madison Lumber Mill sign and put the new Hancock Lumber sign in the same location and they are looking to increase the size of the sign in order for it to be more visible for their business location as well as the incoming trucks that come to the property. Floyd stated that in the past they have seen trucks miss the sign and miss the turn and then the drivers are trying to back up on Route 41 to try to turn around in people’s driveways. Floyd further stated it will be a nice-looking sign made with all natural materials and it will occupy a smaller footprint than the existing sign and the new sign will be oval and not rectangular as what the current sign is and will occupy a smaller footprint but larger square footage. Floyd also stated they have a design that would fit in the current allowed primary plus an appendage sign of 40 square feet and that would be rectangular but prefer to go with the oval single design which

would be 10 square feet more than with the Ordinance allow if they just went with a primary and an appendage.

Gentile stated for clarification that the application states 50 square feet which is twice the allowed amount. Gentile stated 25 feet is allowed for the main sign and 15 feet for appendages.

Gentile stated after doing some research the website states that they will intend to operate the Madison Lumber Mill under the name of the Madison Lumber Mill and was curious if this was a mistake. Floyd stated the intent was eventually to migrate the brand name and the name to Hancock Lumber. Floyd asked Gentile if he saw this under the Hancock Lumber website. Gentile stated it was in their news announcement of approximately a year ago when they announced the purchase of the Madison Lumber Mill stated in the first paragraph, they will continue to operate under the name of the Madison Lumber Mill. Floyd stated that was meant to be short term and they are going to be changing their product branding. Floyd stated there is a gradual transition to change the name.

Gentile stated the Board is discussing tonight only the question of the square footage of the sign and they have a few complaint letters.

Martin read aloud a letter dated August 10, 2023 the Board received from an abutter, Robert Bojarski who is opposing the sign.

Martin read aloud a letter dated September 14, 2023 that the Board received from Bojarski who asked the Board to disapprove the sign request.

Martin stated that Bojarski alludes to the police logs and as Martin stated he is a police officer in the Town of Madison and he did speak with Chief King regarding this and the intersection of Marcella or Cross Road and Route 41, Chief King was unable to locate any accidents, let alone any accidents specifically resulting from the placement of a sign at the mill.

Schilling stated she also asked Chief King to look into as safety was cited in the application and Schilling read an email she received from Chief King aloud stating that he had done a search from 2019 and there have been no accidents reported at the intersection or in the immediate vicinity of Cross Road or Plains Road and he also searched the intersection of Plains Road and Silver Pine Lane in (Tamworth) and no accidents were found at that intersection.

Martin raised the point that the Board is not here to discuss aesthetics and only to be discussing the size of the sign.

**Swearing In:** Gentile swore in Mark McConkey. McConkey stated he is an abutter and wanted to comment about the sign. McConkey stated he owns a building on Cross Road in Tamworth in the commercial zone and he is totally in favor of the new sign and he further stated he has witnessed tractor trailers and logging trucks will miss the entrance to the mill and come down Crossway Street and end up having to turn around in his driveway. McConkey stated the mill is a good neighbor and he is totally in support of the sign.

**Swearing In:** Gentile swore in Kurt Blaisdell. Blaisdell stated he is familiar with the site and asked the Board if this is standard procedure or does this set a precedence for the Town of Madison to increase

sign sizes and is it normal protocol for certain businesses to come in and change the ordinance of the town. Gentile stated no, that the Board has five criteria and the procedure is to assess the request on the five criteria. If the applicant meets all five criteria, then the applicant is considered worthy of relief from the requirement of the Ordinance and this assessment is done property by property and there is no precedence setting in the case and one cannot predict how the Board is going to decide tonight.

Blaisdell stated then the Ordinance is irrelevant and what are the five criteria that would have to be met. Rines gave him the five criteria. Gentile stated that the application is for relief from the Ordinance for cause specified under the statutory requirement of five specific criteria and that the Board is going to discuss those five criteria in relationship to the sign. Blaisdell stated he just wanted to understand the procedure. Dempster stated the five criteria are required by state statutes.

Gentile asked Floyd if he wanted to reply to any of the comments. Floyd stated in relation to the safety component, he did not state that there were traffic accidents on the road but he stated they have seen hazardous conditions at times on how trucks behaved when they miss the turn into the driveway of the mill and primarily coming from Route 16 the driveway is not readily visible due to trees and that the larger sign enhances the driver's ability to see the sign and that someday there will be an accident with one of these trucks.

Schilling asked if there is any sign that indicates Hancock Lumber. Floyd stated there is nothing there now and the trucks being dispatched have instructions that tell them to go to Madison Lumber Mill. Floyd further stated on the aesthetic side, they do want the sign to fit in with the surroundings and the material used is white pine, which they manufacture and he thought that Bojarski was happy with the exact design he saw at the other facility.

Gentile stated that it is beyond the Board's purview to make decisions on aesthetics or branding.

Dempster presented to the Board photos he took coming from the Madison side on Route 41 heading down the hill at one of the abutters driveway and stated you cannot see the current sign and that there is no identification on the back side of the current sign. Dempster asked Floyd if the new sign was going to be two sided. Floyd said the new sign would be set at an angle, same location and within the posts and not two sided.

Dempster stated it is difficult to see the sign from the Madison side to Marcella Drive as trees are in the way. Dempster also stated if you did a Google search or MapQuest there are many names for Madison Lumber Mill and that all maps came to the same location so there is technology out there to direct people. Floyd stated that Photo #6 of Dempster's photos is a good representation of concern and that more visible sign would be better and that trucks still miss the driveway and GPS does not eliminate a potential hazard.

Floyd directed the Board to Photo #6 which all Board Members had a copy of and Floyd stated this photo is a good representation of concern and that a more visible sign would be better and that even though there is technology, truckers still miss the driveway and GPS does not eliminate a potential hazard.

Dempster brought up discussion about the speed limit in this area, braking distance from 45 mph to turning speed and how much feet a trucker would need from the road to see the sign which the consensus was 125 feet.

**Swearing In:** Gentile swore in Danielle (aka Nella) Thompson. Thompson stated she believes trucks are not sure where to go and take the left onto Cross Road because of the trees being in the way.

McAllister stated while he agreed with everything said if you have a truck coming down, how many first timers are delivering to the mill? Dempster believes that truck drivers have been there many times before.

Schilling brought up the checklist contained in the application which requires a Certified Plot Plan of the property with all pertinent dimensions shown be submitted and she does not see any dimensions on the plan provided where the current sign is and how far from the centerline the sign is and she recognizes the current sign is in the envelope but wants to see the dimensions of how far back from the center line of Route 41 is the current sign, the center of the sign and the edge of the sign and she also asked how far back does the new sign at 25 feet and 50 square feet proposed to be. Floyd stated he did not have that information and that the new sign would be the same location and the setback would be within a couple of feet since it is a slightly smaller footprint and he stated he did not see any setback requirements. Gentile stated the setback requirement is set by the state and you have to be no closer than 26 feet to the centerline of the road. Gentile stated there is not a setback requirement for the town but do have a setback for property lines. Schilling stated the reason she was questioning the dimensions was to find out if there is any way to move the sign closer to the road from a visibility standpoint and maybe the sign could be smaller. Floyd stated the sign could be moved five feet and would it really make a visibility issue. Gentile stated he previously stated you have to be no closer than 26 feet to the centerline of the road but he does not know what the right of way is on Route 41. Gentile stated they cannot ask a redesign of the project and the Board's decision would be whether there is reason to give relief for the square footage of 25 feet. McAllister asked Floyd if they have considered adding an addendum to the sign that says "Hancock Lumber"? Floyd stated if the current sign is going to be replaced as the Madison Lumber Mill will be going away. Gentile stated the Board's decision tonight is whether there is a reason to give relief for the square footage of 25 feet.

Gentile asked the Board if there were any more public comment and there was none and he asked the Board if they had any questions and they did not.

Gentile stated the Board will now collect the Findings of Fact.

**Findings of Fact:**

1. The existing sign is approximately 25 sq. ft.
2. The request is to have an 8' diameter sign of approximately 50 sq ft where 25 sq. ft. is the maximum permitted square footage.
3. The sign primarily faces west for eastbound traffic on Route 41 coming from Route 16.
4. The sign is visible only about 125 feet from the plant entrance due to the configuration of the road.
5. Mr. McConkey, an abutter, has regularly observed trucks using his business parking area to turn around after they missed the plant entrance.
6. Mr. McConkey supports the request, Mr. Bojarski, also an abutter, opposes the request.



7. According to Police Chief King and Jake Martin (police officer and ZBA board member), there are no traffic incidents or accidents reported near the plant entrance from the beginning of 2019 through the current date.

Gentile asked if there were any further questions or public comment and if not, asked for a motion to close the Public Hearing.

**Motion** by McAllister, seconded by Martin to close the Public Hearing. The motion passed **unanimously**.

Gentile stated the Public Hearing is closed and the Board will now deliberate on the five criteria.

**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):  
**For the variance to be contrary to the public interest, and for it to violate the spirit of the ordinance, it must unduly and to a marked degree violate the basic objectives of the zoning ordinance. To determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?**
  - The question is not the existence of the sign, but doubling its square footage at the town line immediately adjacent to the road markedly violates the standard of the ordinance when there is no evidence that the 25 square foot standard is inadequate to accomplish the purpose of the sign. A sign of excessive size would change the expectation of what is generally permitted and thus have an impact on the essential character of the neighborhood.
  - Since there have been no accidents, there is no threat to public safety, health and welfare that would be alleviated by increasing the sign size. Though some argument has been made that the new sign would be more visible and match the branding of the company, there is no evidence that a sign twice the allowed dimensions is needed to accomplish the desired purpose.
3. Substantial justice is done because:  
**Any loss to the individual which is not outweighed by a gain to the public is an injustice.**
  - Denying the request for a 50 square foot sign is not an injustice when the applicant has the right to place a 25 square foot sign with appendages that can total up to 40 square feet.
4. The values of surrounding properties are not diminished because
  - The sign will have no appreciable effect on property values one way or the other. The Hancock Lumber property is large, it is in a commercial district and frontage of the property is characterized as rural by Lily Pond, its surrounding trees and a significant setback from the road to the mill.
5. Literal enforcement would result in unnecessary hardship because owing to the special conditions of the property (1):  
**There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**
  - The discussion is not about whether there can be a visible sign, but whether the situation warrants relief from the size restriction due to the unique character of the property. The visibility of the sign is restricted due to the foliage and curve in Route 41 allowing the

existing sign to first be visible only about 125 feet away. It has also been argued that the current sign blends into the background and does not match the company's name, decreasing its effectiveness. Increasing the size of the sign is not essential to increasing its effectiveness. The sign is placed along route 41 where the allowed size is adequate for easy reading by oncoming traffic. Should it have been the case, for example, that due to natural features of the property that the sign could only have been placed 200 feet from the road instead of along the road, then a hardship argument might have been made that the sign needed to be much bigger to have the same legibility at 200 feet away as a 25 sq ft sign along the road. The general public purpose of the ordinance is to regulate sign size to what serves the purpose of the business and the public. There is no argument that applying the standard of the ordinance to the sign creates a hardship for the applicant.

**The proposed use is a reasonable one because:**

- Increasing the size of the sign to twice the allowed standard is not reasonable when a sign of the allowed size will serve the owner's and public purpose well.

**(2) If the criteria in subparagraph (1) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.**

**Motion** by McAllister, seconded by Dempster to deny the variance request for a 50 square foot sign because

- It is contrary to the public interest when a sign of the permitted size will serve the purposes of the owner and public well and a sign twice the permitted size on the town line without adequate grounds for increasing the size will change the expectation of what is normal and change the essential character of the neighborhood.
- Restricting the sign to the permitted size does not create a hardship for the applicant since there are no unique characteristics of the property that require a sign of excessive size.

The motion passed **unanimously**.

Gentile stated the applicant was denied a 50-foot sign but they are allowed to do a 25-foot sign.

Gentile read aloud the provisions of the 30-day appeal period. Gentile closed **Case #23-08**.

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Gentile asked Young to read the notice for **Case #23-09**.

Young read aloud **Case #23-09 – Variance** is requested by Mark McConkey and/or Jacob McConkey, Agents for Mark Scarfo for property located at Skyline Way, Tax Map 205, Lot 48-3 from Article V, Section 5.9A of the Zoning Ordinance to permit the house to be 60 feet from center line of the road way where 75 feet is required.

**PUBLIC MEETING NOTICE:** Notification of this public meeting was posted on August 30, 2023 in the Town Hall upper and lower levels and Madison and Silver Lake Post Offices. Certified mailings were mailed on August 31, 2023 and notice published in the Conway Daily Sun on September 2, 2023.

Gentile stated there are three regular Board Members and they need five.

Gentile asked for a motion to elevate Schilling and Dempster to full voting members.

**Motion** by McAllister, seconded by Martin to elevate Dempster and Schilling to full member voting. The motion passed **unanimously**.

Gentile stated they now have a five-member board.

**Conflict of Interest:** There was none.

**Swearing In:** Gentile swore in Mark McConkey, Agent for Mark Scarfo.

**Waiver Request:** Discussion: McConkey stated the plan provided with the application is not a Certified Plot Plan and they are not surveyors but it is a plan from 2005 revised in 2006 which Thorne Surveys did and it is recorded at the Carroll County Registry of Deeds in Plan Book 220, Page 74.

Gentile asked the Board if they would accept the recorded plan as a Waiver Request and approve it? Gentile polled the Board Members and they approved the Waiver Request.

McConkey stated that if the Board approves the Variance, a condition of what they would be asking is that a surveyor certify the plot and foundation plan for the house.

McConkey stated that the subdivision is Skyline Estates and Skyline Way is the main paved road that comes to a cul de sac but before you get to the cul de sac, up slope is this lot and from the roadway to the back of the lot there is a 16-foot elevation jump. McConkey stated that the owner has discovered that to put a traditionally sized home over 24 feet wide over with more than a six-inch overhang is not going to fit on this lot. McConkey stated a variance would be needed if someone wanted to build a traditional home there. The applicant is proposing a log home, 38 feet by 26 feet with a 10-foot deck off the front of the home with a wonderful view. McConkey stated the applicant can meet all setbacks if they were to snug the home to the back boundary and they were to keep it within the side boundaries so they were not infringing on their neighbors, but they cannot meet setbacks towards the centerline of the road. McConkey stated that in many towns he appears in most of the time setbacks are drawn from the property line and in this case, being 16 feet up a hill and to the centerline 50 feet you will not notice the offset. McConkey stated the only variance they are looking for is the front setback and the proposed lot coverage is 19.8% in compliance and just this one point they are looking for a variance.

Dempster stated the application shows frontage of 150.36 feet and the plan shows 138.05 feet. McConkey stated it was a typographical error on the application and should be 138.05 feet.

Gentile stated that the green diagram on the plan is the building envelope and does not provide for a reasonable structure. Martin asked how did this lot become 0.37 acres. Ohlson stated it was a cluster and these were very popular.

McConkey referred the Board Members to the five criteria contained in the application and he read the Facts to Support This Request aloud.

**Swearing In:** Gentile swore in Danielle (Nella) Thompson. Thompson explained to the Board that she is a local realtor at Pinkham Real Estate and she has dealt with this cluster. Thompson stated there are three existing homes in there right now and one with a foundation. The association itself has minimum requirements of she believes 1,600 square feet for a home. Schilling stated you could still go up and create a second floor.

Dempster stated Skyline has 26 pages of covenants and there is a covenant with regard to tree removal and it was stated there is a nice view. Thompson stated that that at one point under Roberts they went in there with an excavator and pillaged the land and the association has been taken over from the developer. Dempster asked Thompson what the ZBA is doing here will have no effect on the covenants. Thompson stated correct. Thompson further stated that in the purchase and sales agreement, the buyer of the property would have to go in front of the association to get permission to build a smaller home than what the covenants require.

Gentile referred the Board to the Findings of Fact.

**Findings of Fact:**

1. Lot 48.3 on Skyline Way small, .37 acres as part of a cluster development and is only 100 feet deep, resulting in a building envelope which is only 25 feet deep.
2. The request is therefore to allow a setback of only 60 feet to the center of Skyline Way where 75 feet is required.
3. The proposed home will be 1680 square feet, a three-bedroom home in keeping with the covenants of the development.
4. The abutting Lot 48.2 has an existing variance for a setback of 55 feet from the centerline of Skyline Way so that this request is consistent with the character of the neighborhood.
5. The proposed garage is entirely within the building envelope and the driveway provides adequate on-site parking for the proposed three-bedroom home.
6. The variance request applies only to the house.

Gentile asked for a motion to close the Public Hearing.

**Motion** by Dempster, seconded by McAllister to close the Public Hearing. The motion passed **unanimously**.

The Board accepted the five criteria as presented on the application and decided to bring the wording of the Findings on the five conditions for a variance forward into the record as an appropriate and correct assessment of the five criteria.

**Findings on the five conditions for a variance:**

**FACTS TO SUPPORT THIS REQUEST:**

**1. The variance will not be contrary to the public interest because:**

The proposed location of this home meets all the town zoning setbacks with the exception of one. The request is to permit this home/porch to be constructed, on a narrow lot, 15' closer to the roadway centerline than the ordinance permits.

**2. The spirit of the ordinance would be observed because:**

The Madison Zoning Ordinance permits variances to be granted and the zoning preamble states that the purpose of the ordinance is to promote the health, safety, and general welfare of the inhabitants of the Town of Madison.

The proposed home construction is modest in nature. The variance requested today will not alter the essential character of the neighborhood and will not threaten the health, safety, or general welfare of the public. This proposal is in keeping with the spirit of the ordinance.

**3. Granting the variance would do substantial justice because:**

The test for a variance is that: any loss to the individual, which is not outweighed by a gain to the general public, is an injustice.

The owner proposes to: Construct a new home with a porch, garage, add a driveway, and tie into the existing community septic system.

The proposed home/porch location nearly fits inside the zoning envelope and where it is located, only requiring a variance to be 15' closer than 75' required offset to the center line of the road. The home will be upslope from the roadway. Residents driving by will see a similarly developed property as others in this neighborhood and no abutting owner property will be infringed by granting this one zoning setback. Substantial justice is done in this instance.

**4. The values of the surrounding properties will not be diminished because:**

The proposed development is tasteful and will be nearly conforming to the town zoning setbacks. This construction will not diminish the values of the surrounding properties as other homes in the neighborhood have undergone similar home builds and that construction has not lowered the neighboring home values to date.

**5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship as follows:**

- (a) **There is no fair and substantial relationship between the general public purposes of this ordinance provision as the specific application of that provision to the property because:**

With the exception of three other lots in this subdivision the remaining 13 lots have sidelines greater than 100' having an average sideline distance of 172.38'. This lot is irregularly shaped. Long, along the roadway 138.05', shallow on the north side line 100.79', the southern sideline is only 100' and the rear lot line is 175.49'. The elongated, narrow zoning envelope permits space for the proposed garage but not enough depth for this traditionally dimensioned home/porch without zoning relief.

The proposed home/porch accounting for the roof overhang will be 60', from the centerline of the road.

**(b) The proposed use is a reasonable use because:**

Article 1, Section 1.3; (from the Madison Zoning Ordinance) that: Undeveloped nonconforming lots may be developed with any use permissible in the zoning district without compliance with minimum lot size frontage or dimensional requirements, so long as sufficient off-street parking for any such proposed use is provided within the property boundaries. This lot is a nonconforming lot, the use is residential and has space for the required parking. A residential use is a reasonable request.

**Motion** by Martin, seconded by Dempster to grant the variance of 60 feet from the center of Skyline Way because not doing so would create an undue hardship for the applicant by making the lot effectively unbuildable. The motion passed **unanimously**.

Gentile read aloud the provisions of the 30-day appeal period. Gentile closed **Case #23-09**.

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Gentile asked Young to read the notice for **Case #23-11**.

Young read aloud **Case #23-11 - Variance** request by James F. Rines, Horizons Engineering, Inc., WMS&E Division, Agent for Stephen S. Hill Rev. Trust & the Amended and Restated Trust Agreement of Eva Selstam Heilman for property located at 87 Shieling Road, Tax Map 120, Lot 028, from Article V, Section 5.9, A of the Zoning Ordinance for the replacement of an existing nonconforming cabin that is 9.4 feet from the shoreline with a more nearly conforming cabin that was approved to be 24.9 feet from the shoreline in Case #23-05. As was depicted on the plan approved in Case #23-05, it will be 60 feet from the centerline of the driveway to David Werner's home, Tax Map 120, Lot 27, called Shieling Road, but 790 feet from Winter Road.

**PUBLIC MEETING NOTICE:** Notification of this public meeting was posted on August 30, 2023 in the Town Hall upper and lower levels and Madison and Silver Lake Post Offices. Certified mailings were mailed on August 31, 2023 and notice published in the Conway Daily Sun on September 2, 2023.

Gentile stated there are three regular Board Members and they need five.

Gentile asked for a motion to elevate Schilling and Dempster to full voting members.

**Motion** by Martin, seconded by McAllister to elevate Dempster and Schilling to full member voting. The motion passed **unanimously**.

Gentile stated they now have a five-member board.

**Conflict of Interest:** Gentile polled the Board and there was none.

**Waiver Request:** There is a certified plot plan.

**Swearing In:** Gentile swore in James Rines, Agent, Horizons Engineering, Inc., WMS&E Division, Agent for Stephen S. Hill Rev. Trust & the Amended and Restated Trust Agreement of Eva Selstam Heilman.

Rines explained to the Board they have been in two times, once for the home on November 20, 2022 and then on April 23, 2023 to request a building permit to move the Bluebird cottage from 9.4 feet to 24.9 feet from the edge of the lake. In both cases the building permit was denied and there was never any mention to be 60 feet from the road. Rines further explained that from the road the applicant owns the way to get to Shielings Landing and that people have the right to travel and it has never been identified as a road. Rines stated this is private property and not a private road and that Mike Mallett lives there year-round and plows. Rines stated that the Werners wrote all of their own deeds.

McAllister asked if other homeowners have an easement to use the roadway. Rines stated yes they do and that the applicant can move it but homeowners can still go over it. Gentile stated he thinks the simplest thing for the Board to do is go on record granting the variance because if somebody at some future point comes up with an argument that it is a roadway and contradict that fact that it does need a variance the Board is already on record granting the variance in **Case #23-05** without specifying the distance. Gentile stated the Board could bring the minutes forward from April 19, 2023 for **Case #23-05** into this case and grant the request for variance for 60 feet and then the Board does not have to argue the whole case. Schilling was comfortable with this as it was documented in the April 19, 2023 minutes that the Board did discuss this setback.

Gentile stated the Board needs to collect the Findings of Fact, close the Public Hearing and move to do that.

Jim Rines stated in the materials he submitted, one of the Findings of Fact should be that the resource of Silver Lake is more important than the setback to this roadway/driveway/space/access and is an important Finding of Fact and this is one that the Board hit on before when the previous variance was granted moving it further away from the lake. Rines stated he has also received the shoreland permit.

Gentile read aloud the following Findings of Fact to the Board:

### **Case #23-11 September 20, 2023**

#### **Findings of Fact:**

1. The setback from the lakeshore is more critical than the setback from the roadway.
2. This case was decided on April 19, 2023, but the board failed to specify the exact amount of the setback to the roadway.
3. By RSA 259:92 Shieling Rd at least up to the boundary of lot 117-41 and Shieling Landing meets the definition of a “roadway” and the Madison Zoning Ordinance Article 5.9 A uses the term “roadways.”
4. The distance to the center of Shieling Rd from the cabin at its closest point is 60 feet, the distance from the cabin to the center of Shieling Rd at the above-mentioned boundary is 70 feet, where 75 feet is required.
5. The abutters John and Patricia Thompson submitted a letter of opposition on September 18, 2023 to the construction of the cabin.

The board brought forward the findings of fact from case 23-05, April 19, 2023 which Gentile read to aloud as follows:

**[Beginning of the record of April 19 being brought forward to Sept. 20]**

1. The legal basis for allowing a reconstruction:

Article 1 Section 1.3 B. of the Zoning Ordinance (in part)

Any structure existing at the time of the original passage of this Ordinance, March 1987, which does not conform to the maximum height limitations and /or minimum setbacks, shall have the right to continue indefinitely or may be demolished and reconstructed within one (1) year.

2. This application is for a reconstruction of an existing cabin which predates the ordinance.
3. The footprint is being reduced by approximately 16 square feet.
4. NHDES disapproved the reconstruction at the current location because it was not at least 20 feet from the shoreline, and worked with the engineer to approve a location which meets their standard and which is less non-conforming than the current cabin.
5. The existing cabin is in poor condition and needs to be demolished and rebuilt if it were to be used.

Deliberation on the five criteria:

The board recognized that the deliberation on April 19, 2023 for **Case 23-05**, in the motion for granting the variance and the decision letter for a 24.9-foot setback from the lakeshore in accordance with negotiations with NHDES, acknowledged that the 75-foot setback to Shieling Rd could not be met, but failed to specify precise amount of the setback that could be met.

The board decided to bring the deliberation on the five criteria from **Case #23-05** on April 19, 2023 along with the existing decision to approve that variance forward.

1. **The variance will not be contrary to the public interest because:** By this test, the requested variance will not alter the essential character of the neighborhood. The requested variance will not alter the essential character of the neighborhood because the proposed cabin will be more nearly conforming to the shoreline setback. The existing nonconforming cabin is 9.4 feet from the shoreline, while the proposed cabin will be 24.9 feet from the reference line.
2. **The spirit of the zoning ordinance will be observed because:** It is our opinion that, based on these two tests that the courts have used in rendering a decision upon whether the spirit of the ordinance is observed, the essential character of the neighborhood will not be altered as expressed in the paragraph 1, above, nor will the granting of the variance threaten the public health, safety or welfare of the public. In fact, by moving the structure further from the shoreline, there is an argument to be made that it will enhance the public health, safety or welfare of the public. In fact, by moving the structure further from the shoreline, there is an argument to be made that it will enhance the public health, safety and welfare by making improvements to water quality, which everyone benefits from.



3. **Granting the variance would do substantial justice because:** Granting the requested variance will allow the applicant to replace the existing nonconforming cabin with a more nearly conforming cabin, further from the shoreline. The structure is considered an accessory structure and is required to be setback at least 20' from the reference line per NHDES rules. Losing the ability to construct the more nearly conforming cabin as depicted on this plan in while increasing the waterfront setback, would be a greater loss to the property owners than any gain to the general public. In fact, there is an argument that denial of the variance would harm both the applicant and the public by preventing greater setback from the shoreline with the proposed structure.
4. **The values of the surrounding properties will not be diminished because:** New construction which is consistent with development patterns in the neighborhood has been found to have a neutral or positive impact in property values and that would be the case in this instance. It certainly would not have a negative impact on surrounding property values.
5. Literal enforcement of the provisions of the ordinance would result in the unnecessary hardship as follows:
  - a. **There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property because:** There are special circumstances of this lot that distinguish it from other properties similarly zoned which include the unique configuration of the lot and the location of the existing non-conforming structure that was built prior to the adoption of the Zoning Ordinance. Also, a traveled way runs through the middle of the property which serves as access to abutting properties. It is these unique circumstances which distinguish it from other parcels similarly zoned parcels. When the setback regulations containing in the Zoning Ordinance, which were designed for vacant, newly created lots which comply with geometric lot sizing and shape of the Zoning Ordinance, are applied to this uniquely configured parcel with an existing nonconforming structure, it creates the unnecessary hardship in the land that distinguishes it from other similarly zoned. Based on our reading of the Zoning Ordinance General Purpose, it is our position that granting the requested variance from the shoreline setback would not alter the character of the neighborhood or jeopardize the health, safety, or general welfare of the inhabitants of the Town of Madison. Nor would it advance the purpose of the Zoning Ordinance in a fair and substantial way due to the special circumstances of the property articulated above. This is because of the "special circumstances" of this property identified above. This is because we are not altering the use since we are exchanging one nonconforming cabin with a more nearly conforming cabin. We are increasing the setback to the lake by more than (ZBA Minutes April 19, 2023 Page 19 of 20) 100% of the existing condition, and complying with the NHDES Shoreland Water Quality Protection Act by providing stormwater mitigation where none presently exists, thereby enhancing the health, safety, and general welfare of the public by improving water quality. Therefore, it is our position that we satisfy these criteria required for the granting of the requested relief. AND
  - b. **The Proposed use is a reasonable one because:** Because a residential use is allowed in the zone.

**Motion** [of April 19, 2023] by McAllister, seconded by Martin to grant the variance because the request does not unduly and to a marked degree, violate the purpose of the ordinance since a DES permit for a 24.9 setback assures that the requirement to provide for public health, safety, and welfare is met. The improved cabin enhances the neighborhood, is less non-conforming, and public right of way through the property makes it impossible to meet the town's 75-foot setback requirement.

Roll Call Vote (of April 19, 2023): Martin - Aye; Gentile - Aye; McAllister - Aye; Rau - Aye; Dempster - Aye The motion passed **5-0** by roll call vote.

**[End of the deliberation and decision from April 19, 2023 being brought forward]**

Gentile read motion made by McAllister and seconded by Martin of granting **Case #23-05** aloud as follows:

**Motion** by McAllister, seconded by Martin to grant the variance because the request does not unduly and to a marked degree, violate the purpose of the ordinance since a DES permit for a 24.9 setback assures that the requirement to provide for public health, safety, and welfare is met, the improved cabin enhances the neighborhood, is less non-conforming, and public right of way through the property makes it impossible to meet the town's 75-foot setback requirement.

Roll Call Vote: Martin - Aye; Gentile - Aye; McAllister - Aye; Rau - Aye; Dempster - Aye  
The motion passed **5-0** by roll call vote.

The decision as brought forth from April 19, 2023 recognizes the 75-foot setback from the roadway cannot be met and is included in the decision:

Gentile stated the Board has adopted the Findings on the five conditions for a variance as written in the application. Gentile asked the Board for a motion to grant the variance based on the arguments presented for these five criteria.

Gentile asked for a motion to close the Public Hearing.

**Motion** by Martin, seconded by Dempster to close the Public Hearing. The motion passed **unanimously**.

**Motion (September 20, 2023)** by Schilling, seconded by McAllister to bring the deliberation and decision from April 19, 2023 forward and to grant the variance for a 60-foot setback from Shieling Rd.

- because doing so provides substantial justice to the applicant because it is impossible to meet the setback requirements of both the lake front and the roadway and not granting the variance would create a hardship by preventing the reconstruction of the cabin when the decision to allow this was already on the record, though it failed to specify the precise amount of the variance to the roadway.

The motion passed **unanimously**.

Gentile read aloud the provisions of the 30-day appeal period. Gentile closed **Case #23-11**.

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Gentile asked Young to read the notice.

Young read aloud **Case #23-10 – (continued) Appeal from an Administrative Decision** from Nicholas Gage, 10 Barden Place, Map 110, Lot 21 to determine whether or not his circumstance allows for short term rentals relating to a denial from Robert Boyd, Code Enforcement Officer dated June 7, 2023 as to Article 4.2 and 4.4 of the Town of Madison Zoning Ordinance.

Gentile stated they now have a five-member board and asked for a motion to close the public hearing.

**PUBLIC MEETING NOTICE:** Notification of this public meeting was posted on August 30, 2023 in the Town Hall upper and lower levels and Madison and Silver Lake Post Offices. Certified mailings were mailed on August 31, 2023 and notice published in the Conway Daily Sun on September 2, 2023.

Gentile stated a written request was received from the applicant to continue **Case #23-10** to the October 18, 2023 meeting based on a family responsibility.

**Motion** by McAllister, seconded by Martin to continue **Case #23-10** to October 18, 2023. The motion passed **unanimously**.

Gentile polled the Board for any conflicts on this case.

Ohlson stated he had to recuse himself.

Schilling stated she does not have a conflict and has a clear stand on procedure.

Dempster stated he does have a conflict and will have to recuse himself from all STR cases.

Martin stated he has no conflict but that he would not be attending the October 18, 2023 meeting.

McAllister stated he has no conflict and he will be here for the October 18, 2023 meeting.

Gentile stated he has no conflict and he will be here for the October 18, 2023 meeting.

Gentile stated there will need to be a five-member board for the upcoming new STR cases. Gentile asked Young to check into the procedure of how to have the Selectmen appoint past members if that is possible.

Dempster stated that Bergeron is very active about STR's.

Gentile asked Young to reach out to Bergeron to see if he is planning to attend the October 18, 2023 Public Hearing.

**ADMINISTRATION:**

The Board went over the 2023 Expended/2024 Proposed Budget with Young. The Board decided to increase the legal line for 2024 to \$11,000.00 and increase the postage line for 2024 to \$1,500.00 as shown below.

Zoning Board CATEGORY	2023	2023	%	\$ Amount		Proposed Compared	
	Approved	Expended	Percent	Remaining	2024	To Prior Yr. Approved	
			Expended	To Spend	Proposed	\$ Change	% Change
DUES & PUBS	200.00	0.00	0.00%	200.00	200.00	(200.00)	-100.00%
LEGAL	7,500.00	1,422.00	18.96%	6,078.00	<b>11,000.00</b>	(7,500.00)	-100.00%
NOTICES	550.00	317.60	57.75%	232.40	550.00	(550.00)	-100.00%
POSTAGE	840.00	588.80	70.10%	251.20	<b>1,500.00</b>	(840.00)	-100.00%
SUPPLIES	200.00	243.15	121.58%	(43.15)	200.00	(200.00)	-100.00%
TRAINING	200.00	0.00	0.00%	200.00	200.00	(200.00)	-100.00%
<b>TOTALS</b>	<b>9,490.00</b>	<b>2,571.55</b>	<b>27.10%</b>	<b>6,918.45</b>	<b>13,650.00</b>	<b>(9,490.00)</b>	<b>-100.00%</b>

**Approval of Minutes:** Young reminded Gentile about the issue with **Case #23-07** and from last month's Findings of Fact contained in the August 16, 2023 minutes Gentile stated #4 was mentioned during the meeting but the notes from Gentile did not contain fact #4, "the house is more than 65 feet on the north side from the center of Interlaken Circle." Per Gentile #4 was removed from the Findings of Fact.

**Motion** by McAllister, seconded by Schilling to approve the August 16, 2023 minutes as amended due to typographical errors. The motion passed **unanimously**.

**ADJOURNMENT: Motion** by Dempster, seconded by Martin to adjourn the meeting at 10:05 pm. The motion passed **unanimously**.

The next meeting of the Zoning Board of Adjustment will be held on October 18, 2023 at 6:00 pm.

Respectfully submitted,

Katharine Young  
Land Use Boards Administrator