



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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ZBA MINUTES

February 21, 2024

ATTENDANCE: Drew Gentile, Chairman, Jake Martin, Vice Chair, Doug McAllister, George Rau, Bill Dempster, Alternate, Marc Ohlson, Alternate

EXCUSED: Sharon Schilling, Alternate

OTHERS PRESENT: Madison TV, Kasia Scontsas, Kate Young, Land Use Boards Administrator, Kevin Hardt, Project Cormack Construction, James Hayden, Horizons Engineering and Ramesh Indrakanti.

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

ELEVATION OF ALTERNATES: There were no elevation of alternates.

PUBLIC MEETING NOTICE: Notification of this public meeting was posted in the Town Hall upper and lower levels and Madison and Silver Lake Post Offices on February 9, 2024.

Gentile stated there are two sets of cases tonight and the board cannot seat a five-member board due to recusals and there are only four board members available tonight who can vote. Gentile stated the board has permission in writing by the agent, Attorney Johnson to address his cases as a group and to continue them to the March meeting. Gentile read aloud the case numbers and names that are associated with Attorney Johnson's request as follows:

- Case #23-12 for Andrei and Erica Mederios
- Case #23-13 for Chad & Brittany Ardizzoni and Aaron & Tiffany Clymer
- Case #23-14 for Ryan Finn & Grace Harrigan
- Case #23-15 for Keith & Alison Kellerman
- Case #23-16 for Monica Maria McMillian & Laura Thompson
- Case #23-17 for Seamus & Kayla Walsh-O'Brien
- Case #23-18 for Matthew Petti & Jennifer Swift
- Case #23-19 for Brian Burns
- Case #23-20 for Corey, Jade & Cynthia Franklin
- Case #23-22 for Kaylin Deschenes & Kalene Kouch
- Case #23-24 for David and Julie Keiselbach

Gentile asked the board for a motion.

Motion by McAllister, seconded by Rau to continue **Case #23-12, Case #23-13, #23-14,**

Case #23-15, Case #23-16, Case #23-17, Case #23-18, Case #23-19, Case #23-20 and Case #23-22 and Case #23-24 as requested by Attorney Johnson to March 20, 2024 at 6:00 pm to be held at the Madison Elementary School Gymnasium, pending availability. The motion passed by a vote of **4-0**.

Gentile stated that **Case #23-25** is not represented by counsel but one of the applicants, Rishi Saxena has requested in writing, via email, to continue **Case #23-25** to the March 20, 2024 Public Hearing because there are only four board members available tonight who can vote.

Motion by Martin, seconded by Rau to continue **Case #23-25** at the applicant's request, to March 20, 2024 at 6:00 pm to be held at the Madison Elementary School Gymnasium, pending availability. The motion passed by a roll call vote of **4-0**.

Gentile elevated Ohlson to a full voting member and there is now a five-member board.

Gentile asked Young to read aloud **Case #24-01** as well as the posting.

Young read aloud **Case #24-01 – Variance** request from Kevin Hardt, Project Manager, Cormack Construction, Agent for William Zehring and Kristine Lahners, 1532 Village Road, Tax Map 117, Lot 59, from Article IV Section 4.5(C) of the Zoning Ordinance to permit the construction of a boardwalk/pedestrian bridge to access client's seasonal dock on Forest Brook within 50 feet of a wetland that's greater than .25 acres in size, and within 75 feet of a stream, i.e. Forest Brook; Article V Section 5.9(A) of the Zoning Ordinance to permit the construction of a boardwalk/pedestrian bridge to access the client's seasonal dock on Forest Brook within 75 feet from the center of Village Road and within 25 feet from the west boundary line and Article V 5.9(C) of the Zoning Ordinance to permit the construction of a boardwalk/pedestrian bridge to access the client's seasonal dock on Forest Brook within 75 feet from the mean high-water mark of Forest Brook.

PUBLIC MEETING NOTICE: Notification of this public meeting was posted in the Town Hall upper and lower levels and Madison and Silver Lake Post Offices on February 9, 2024 and the Conway Daily Sun on February 9, 2024.

Young stated that for the record, all abutters have been notified of this Public Hearing.

Conflict of Interest: Gentile polled the Board by roll call vote and there was no conflict of interest.

Waiver Request: There is no Waiver Request.

Regional Impact: The Board concluded there is no Regional Impact.

Gentile swore in Kevin Hardt, Project Manager, Cormack Construction, Agent for William Zehring and Kristine Lahners.

Hardt presented his case to the Board and stated that James Hayden of Horizons Engineering completed the wetlands survey was approved by NHDES and Department of Transportation. Hardt stated that in

doing this boardwalk/pedestrian bridge was the least impact option and it allows vegetation to grow underneath the structure.

Rau questioned the current wood structure that is currently there and asked if that is where the dock will be. Hardt stated yes and that the dock will sit on the bottom of the water on an aluminum frame and it will be removed for the winter as it is only seasonal. Hardt further stated the boardwalk will be permanent.

Notes on Finding of Fact:

1. The project is reduced to only a boardwalk of about 50 feet in length roughly parallel to Forrest Brook from the original 228 feet which included a long stretch parallel to Route 113.
2. The required wetlands permit from DES (number 2022 -00513) and an encroachment agreement with DOT are in hand.
3. This proposal provides the least impact on wetlands of any of the boardwalk options considered.
4. The proposal also provides less impact on the wetlands than not having any boardwalk or dock.
5. The dock is intended for seasonal use for kayaks or similar small boats.

Gentile asked for a motion to close the Public Hearing to deliberate on the merits of the case.

Motion by Martin, seconded by McAllister to close the Public Hearing to deliberate on the merits of the case. The motion passed by a roll vote of **4-0**.

Findings on the five criteria 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 boardwalk and dock are for private use on private land not affecting public access to Silver Lake or Forrest Brook in any way.
 - Docks are a common feature for homes with waterfront property so this does not affect the character of the neighborhood.
 - During construction, substantial site protection measures will prevent debris from contaminating the wetlands, Forrest Brook, and Silver Lake.
 - The project poses no risk to public health or safety.
 - The boardwalk will be raised two feet allowing the normal growth of vegetation underneath it, reducing the impact to the wetlands compared to dragging kayaks and walking directly on the ground.
3. Substantial justice is done because:
Any loss to the individual which is not outweighed by a gain to the public is an injustice.
 - It allows the owners access to the waterfront both more safely as well as with less impact on the wetland environment.
4. The values of surrounding properties are not diminished because

- Many homes with waterfront properties have docks for small boat access and providing such safe access increases the property value for both the home in question as well as having a positive influence on neighborhood property values.
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 unique characteristic of this property is that a wetland separates the house from the waterfront so that access to the waterfront is only across some piece of the wetland.
- This is the only location that NHDES would approve for an impact reducing boardwalk even though it encroaches on property line setbacks, the state right of way along route 113, and the wetlands.

The proposed use is a reasonable one because:

- It provides waterfront access to the owners with minimal impact on the wetlands.

(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 Gentile, seconded by Rau to grant the variance request to permit the construction of a boardwalk/pedestrian bridge to access client’s seasonal dock on Forest Brook within 50 feet of a wetland that’s greater than .25 acres in size, and within 75 feet of a stream, i.e. Forest Brook, within 75 feet from the center of Village Road and within 25 feet from the west boundary line because it provides less impact on the wetlands than foot traffic would without the boardwalk and provides substantial justice to the property owner by allowing safe and sane access to the waterfront and on the condition that no motorized watercraft or vehicles access the dock. The motion passed by a roll call vote of **5-0**.

Gentile read aloud the provisions of the 30-day appeal period. Gentile closed **Case #24-01**.

Gentile elevated Ohlson to a full voting member and there is now a five-member board.

Gentile asked Young to read **Case #24-02** and posting.

Young read aloud **Case #24-02 - Variance** request from Kevin Hardt, Project Manager, Cormack Construction, Agent for Ramesh Indrakanti and Meena Indrakanti, 391 Conway Road, Tax Map 228, Lot 57, from Article XI Section 11.4(C) of the Zoning Ordinance to permit the interior renovation of an existing space above a detached garage, which creates an Accessory Dwelling Unit that is greater than the 800 sq. foot minimum.

PUBLIC MEETING NOTICE: Notification of this public meeting was posted in the Town Hall upper and lower levels and Madison and Silver Lake Post Offices on February 9, 2024 and the Conway Daily Sun on February 9, 2024.

Young stated that for the record, all abutters have been notified of this Public Hearing.

Gentile stated there is a five-member Board.

Conflict of Interest: Gentile polled the Board by roll call vote and there was no conflict of interest.

Waiver Request: Gentile stated there is a waiver request and Hardt stated that there is no change to the footprint. Gentile stated this was a reasonable request and asked for a motion.

Motion by McAllister, seconded by Martin to approve the applicants Waiver Request. The motion passed by a roll call vote of **5-0**.

Regional Impact: The Board concluded there is no Regional Impact.

Gentile swore in Kevin Hardt, Project Manager, Cormack Construction, Agent for Ramesh Indrakanti and Meena Indrakanti.

Hardt presented his case to the Board that the applicants want to do an interior renovation of an existing space above a detached garage and create an Accessory Dwelling Unit which is greater than the 800 sq. foot minimum which would be 1,417 sq. feet.

Martin asked if this property has been rented as an STR? Indrakanti stated no and he has no plans to rent and this is only for family and guests.

Martin stated that this is essentially a second home.

Notes on Finding of Fact:

1. The total square footage of the proposed ADU will be 1417 sq ft which is 617 sq ft in excess of the 800 sq ft limit in the Madison Zoning Ordinance section 11.4(c).
2. This structure existed prior to any plans to create an ADU, and it existed at the time of purchase with all the rooms in the proposed ADU already finished.
3. That is, there is no new construction, expansion of the footprint, or increase in square footage being proposed.
4. There are no other variance requests or variances on file for the property.
5. The septic system has been upgraded to accommodate use of the two addition bedrooms.
6. The property has adequate off-street parking to accommodate the ADU.
7. The owners acknowledge the Madison STR ordinance and intend to use the ADU exclusively for friends and family.
8. The property is over 2 acres, allowing the ADU not to be in the main structure.

Gentile asked for a motion to close the Public Hearing to deliberate on the merits of the case.

Motion by McAllister, seconded by Rau to close the Public Hearing to deliberate on the merits of the case. The motion passed by a vote of **4-0**.

Findings on the five criteria 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 ADU will not affect the character of the neighborhood as there is plenty of parking and there will be no exterior changes to the structure.
 - The ADU meets all the conditions of section 11.4(c) except for the square footage.
 - The owners acknowledge the restriction on short term rentals in Madison.
 - The project imposes no threat to public health or safety.
3. Substantial justice is done because:
Any loss to the individual which is not outweighed by a gain to the public is an injustice.
- The garage structure already has finished rooms in it with no reasonable means of restricting the ADU to 800 square feet or less.
 - Allowing the use of the rooms as an ADU will have no impact on the public or the character of the neighborhood while allowing the owner to provide space for family and friends to visit.
4. The values of surrounding properties are not diminished because
- The ADU will enhance the property value of the home and thus have a positive impact on property values.
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 unique condition of the property is that the footprint and layout of the space being proposed for the ADU existed as finished space prior to any plans to make it an ADU and there is no reasonable means of splitting the space to restrict the ADU to only 800 sq ft.
 - There will be no expansion of the existing structure or effective external changes to the appearance of the home.

The proposed use is a reasonable one because:

- Because the space exists in a finished state and alternatives such as restricting the ADU to 800 sq ft or building another structure for an ADU are less reasonable.

(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 Gentile, seconded by Martin to grant the Variance request to permit an ADU of 1417 square because substantial justice is done allowing the owner efficient use of existing structure and the special characteristic of the property is that this space already exists in finished form and the conversion to an ADU is the most efficient use of the existing space. The motion passed by a roll call vote of **5-0**.

Gentile read aloud the provisions of the 30-day appeal period. Gentile closed **Case #24-02**.

APPROVAL OF DRAFT MINUTES: Gentile stated that the minutes of January 9, 2024 for the Motion for Rehearing Amended for Case #23-10 will need to be approved by the three members that attended that hearing which were Schilling, Rau and McAllister and that they will need to approve those minutes as they were the only members present. Gentile stated these minutes will be voted on a date when Schilling, McAllister and Rau are all present. Martin stated that in the January 9, 2024 minutes it

stated that “Martin led the reciting of the Pledge of Allegiance” when in fact, it was noted he was excused. Young stated she would strike that sentence from the January 9, 2024 minutes.

Gentile stated that the Board did receive a written Motion for Rehearing Amended from Gage for Case #23-10. Gentile stated that he and Young reviewed the Motion for Rehearing Amended and that the Board made a decision at the November 15, 2024 meeting and Gage had until December 15th or 16th depending on how the days fell to submit a request for rehearing and Gage submitted that request and because the way the dates fell, the Board had to have a special meeting in order to answer Gage’s request for a rehearing before the January meeting took place which was on January 9, 2024 and the rehearing was denied. Gentile stated that at this point, Gage had thirty days to take his appeal to the Housing Appeals Board or Superior Court and instead, Gage amended his request for rehearing and sent it to the Zoning Board, however Gage had to reply to the Board for any request within thirty days of the original decision and Gage’s only appeal after the January 9, 2024 decision was timed on thirty days after January 9, 2024 or actually January 12, 2024 when Schilling actually signed the decision. Gentile stated that under circumstances, had he appealed or filed on January 9, 2024 or before at the Housing Appeals Board or Superior Court, he would have had a case but he did not file in either. Gentile stated the Board has no further jurisdiction on whether or not to rehear this case so all appeal periods have passed at this point. Gentile asked Young who would answer Gage. Young stated she would ask Attorney Boldt what we need to do and if we need to notify him of anything.

January 17, 2024 Draft Meeting Minutes Discussion:

Gentile asked if anyone had anything that needed to be discussed. Ohlson stated there are three changes needed on Page 4 of 5 of the January 17, 2024 draft minutes as follows:

Seventh paragraph under the **Motion**, the vote should be **5-0** not **6-0** as Ohlson stated he was not present at the November 15, 2023 meeting.

Nineth paragraph, first sentence it reads” is” and should be “**it.**” Same paragraph, eighth line should now read “**Planning Board has is 1.3.B, which is no more expansion of non-conforming use and the only.**” The word “**regulatory**” was removed.

Ohlson also stated that things should not be attached to the minutes that were just put on the table and he is really uncomfortable with the letters attached to the back of the November 15, 2023 minutes. Young stated she was unsure of what to do with letters submitted when there are read into the record and she cannot type all the letters into the minutes. Ohlson stated that when you read the minutes and you get to the attached letters, it is not what happened in the meeting and is what someone put on the table. Gentile stated that the alternative is that these letters were brought and they could just be entered into the record. Ohlson stated that they should be as it is valuable opinions and what these people believe and these letters should be part of the record and not part of the minutes. Gentile stated as an alternative, at the end of the minutes Young could state that additional documents were submitted during the meeting which are now part of the record. Young stated she could do that. Gentile stated the documents submitted are not part of the minutes because the minutes are to reflect what took place in the meeting unless the Board actually took one of the documents and discussed it then that would be part of the minutes anyway. Young questioned how the Board wants her to handle this when the Board reads the letters or documents aloud as some of the letters were read aloud by Martin. Ohlson stated you could just say “a letter was submitted by someone who had lots of opinions.” Young stated that Attorney

Boldt told her to attach them when she asked him at the November 15, 2024 meeting what to do with all the letters/documents that were submitted. McAllister stated Young could say in the minutes “that a letter was read aloud see attached letter.” Young stated she would talk with Attorney Boldt. Young stated this is what she did with the November 15, 2024 minutes. Gentile stated that we have two different situations here and the first one is that Ohlson is saying that something was brought in and dropped on the table is not part of the minutes because the Board did not discuss it but on the other hand, if something was brought in and the Board read it aloud in the meeting, then it is part of the minutes and therefore, rather than type the whole document, simple state “see Exhibit A which was read aloud.” Ohlson stated you would not speak to it verbatim. Gentile stated if you read it aloud, Rau stated it is part of the minutes. Martin asked if these letters people submit and wish to speak at these meetings, they have to be sworn in under penalty of perjury that there is nothing to stop anyone from writing a letter in which they are completely fabricating stuff and claiming it is new evidence and if there is no sworn affidavit attached to it, do we accept it? Martin stated because in a court of law, anything you enter must be sworn to. Ohlson stated that these peoples’ opinions are important but should not be part of the minutes because it really was not part of the meeting. Young stated she will do whatever the Board directs her to do. Young explained she thought by making the attachments Exhibits it was easier to understand what happened and who submitted them as there were a lot of documents submitted and read aloud at the November 15, 2023 meeting. Gentile stated that Ohlson’s point is well taken as there is a difference between something for example, six lines of an email and someone quotes that in a meeting then it is very appropriate to say Exhibit A was read aloud because that was part of the meeting. Gentile stated that he does agree that if someone walks in and lists a lot of stuff that it is appropriate to say and Young interjected and stated “but she said she wanted this read at the meeting” so that is why Young attached them. Gentile stated if the Board read documents at the meeting, then that is another issue. Gentile stated that he thinks it is appropriate that if in the minutes it says for example “Exhibit G was summarized, was read aloud verbatim” and then it is attached as part of the record as Exhibit G. Young asked “as part of the record” do you mean put the document in the file because people file one document for all of STR case files and asked the Board how does she handle this. Gentile stated that because each case is decided technically on its own merits, that is not necessarily an inappropriate thing but we have in the past, received written testimony from people and he stated it was a case when he first came on the Board and there was a lot of public opinion about the case and created a table of summaries for what people were concerned about. Gentile stated he believes it is ok if someone wants something attached to each file as each case is decided on its own merits individually. Gentile stated peoples’ opinions are important and part of the public right to speak and from the perspective of the quality of testimony, the Board is allowed to accept testimony both in writing and verbally.

Gentile asked Young to clarify with Attorney Boldt that the Board’s suggestion is rather than attaching things to the minutes, it is simply stated that Exhibit A in the record and if it was read aloud then maybe it could be part of the minutes. Ohlson stated the minutes will be long and he feels the last bit is legal opinion.

Dempster asked the Board if people want to submit documents can a timeframe be set that documents are submitted before the meeting to alleviate Young from getting so much documentation the night of the meeting.

Gentile stated we have two alternatives and we can approve these minutes as they are or we can approve the minutes up through Page 5 as amended and wish to clarify which attachments need to be made or we can just say wait to approve the minutes until Young clarifies or approve them as they are.

McAllister stated that on Page 1, Attendance has three members attending and three alternates and then under Elevation of Alternates it states there was no elevation of alternates and on Page 2, first paragraph, there was a motion made of **4-0**. Young stated that Schilling voted. McAllister stated that Schilling was not elevated. Young stated she thought that Gentile does not have to make a motion to elevate alternates. Gentile stated that Schilling was elevated and the minutes need to be amended to reflect this. McAllister stated that the vote is incorrect on Page 4, **6-0** and should be **5-0** as Ohlson did not attend the November 15, 2023 meeting. McAllister stated that on Page 5 the motion shows **6-0**. Young stated that Dempster and Ohlson can vote to adjourn. McAllister stated they were not elevated. Gentile stated that Dempster and Ohlson do not need to be elevated to vote on minutes they were a part of. Martin stated on matters of cases alternates need to be elevated he believes. Gentile asked Young to clarify this with Attorney Boldt and not approve these minutes tonight. Gentile stated that as to the Rules of Procedure the Chairman can elevate alternates without a motion and do not need a vote and he stated they did elevate Sharon, so the question is when it comes to administrative items, do we default to those who only regular board members for approval of minutes or do we default to just who was there and this is a good question. McAllister stated you do not default from anything, you let the board members and elevated members vote. Martin asked even if they were not part of that meeting they are voting on. McAllister stated then they abstain. Martin stated then the alternate who was sitting on the board does not get a voice. McAllister stated yes because they were not elevated. Young stated she was confused. Gentile stated he would send her the question to ask Attorney Boldt. Gentile stated alternates are elevated case by case by him but the question is who votes on the administrative items, just the elevated alternates or all alternates.

ADMINISTRATION: Young had nothing to report.

ADJOURNMENT: Motion by McAllister, seconded by Ohlson to adjourn the meeting at 8:15 pm. The motion was voted on and passed **5-0**.

The next Public Hearing of the Zoning Board of Adjustment will be held on March 20, 2024 at 6:00 pm at the Madison Elementary School Gymnasium, pending availability.

Respectfully submitted,

Katharine Young
Land Use Boards Administrator

