



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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**ZBA MINUTES
September 18, 2024**

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

EXCUSED: Sharon Schilling, Vice Chairman and Jennifer Skaife, Alternate

OTHERS PRESENT: Madison TV, Aysia Morency, Kate Young, Land Use Boards Administrator

CALL TO ORDER: Gentile, Chairman, called the meeting to order at 6:00 pm.

PLEDGE OF ALLEGIANCE/ROLL CALL: Rau led the reciting of the Pledge of Allegiance.

ELEVATION OF ALTERNATES: Gentile elevated Martin so there is now a five-member board present tonight.

Gentile asked Young to read **Case #24-05** aloud as well as the Public Meeting Notice.

Young, Land Use Boards Administrator read aloud the Public Meeting Notice and posting as follows:

Case #24-05 - Variance request from Sally Ann Cardarelli, 1 Little Loop Road, Tax Map 109, Lot 132, from Article V, Section 5.9 of the Zoning Ordinance to permit a 10-foot x 16-foot deck on the right front corner of the existing house which would only be 36 feet from the center of the road.

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 August 28, 2024 and notifications were mailed out on August 28, 2024 and posted in the Conway Daily Sun on August 30, 2024.

Conflict of Interest: Gentile polled the board for any Conflict of Interest and the members agreed there was none.

Waiver Request: Gentile stated there was a Certified Plot Plan from 1990 that was submitted with the application which shows the existing dwelling and Gentile stated that they do not have a certified plan with the measurement of the proposed deck. Gentile polled the board and asked if they felt there were any issues and the members agreed there was none.

Regional Impact: Gentile polled the board and the members agreed there was none.

Gentile explained the procedures to the applicants and swore in Sally Cardarelli, applicant and Malcolm Hansen.

Hansen explained to the board, that the property is sloped and that they have no outdoor space to utilize because of the sloped and unlevel terrain and if they have guests over, they need to move the cars out of the driveway and park them on the street. Hansen further explained that they have family members who are handicapped and by doing a deck this will give a level surface. Hansen stated that they cannot do anything on the other side of the house as it is right on the property line.

Gentile asked the applicant if she is proposing to put a 10-foot x 16-foot deck on the right-hand corner of the house if you were looking at it from the street? Hansen stated that was correct. Gentile stated that because of this and the request for the variance on the distance to the center of the road, that the board needs to verify that this is the only dimension that is affected and that everything else is in order.

Dempster referred the board to the application under 1b, Page 7 wherein the applicant stated “the existing house was built either before the ordinance was put into effect or enforced” and he questioned if this is a claim for a pre-existing non-conforming use on the house? Gentile stated the house was built in 1975 and that the house is an existing non-conforming use. Dempster asked if this falls under the expansion of pre-existing non-conforming use? Gentile asked, by adding the deck? Dempster stated yes. Gentile stated it does not effect the substance but it does affect the formality because then the deck becomes part of the footprint. Gentile stated that we changed the definition of footprint to include all external so this is an expansion and we are asking for an expansion of the footprint. Dempster stated he was concerned as the board could be granting a variance in perpetuity and someone in the future may ask this question. Dempster stated this is covered under 1.3 of the Madison Zoning Ordinance and after reviewing it, Dempster stated it looks like it fits the dimension, that is the square footage and it must be 50% less than 116 square feet. Gentile stated that the Planning Board changed the Zoning Ordinance last year and further explained there is no allowable expansion and if the expansion of the footprint is part of this, then formally, that is part of the variance request. Ohlson stated that Gentile was thinking about this incorrectly and that the Planning Board fixed 1.3b last year and that it did not guaranty a right to expand by 50% and this makes anyone that wants to expand within the setback, must come to this board and ask for it versus before, Boyd, Code Enforcement Officer would ok it. Gentile stated that this project is an expansion of the footprint. Ohlson stated that our regulation no longer addresses that permissible expansion of footprint without a variance. Gentile asked that a board member read 1.3b aloud as it is written today in the Madison Zoning Ordinance. McAllister read 1.3b aloud. Martin asked McAllister to read subparagraph 1. Non-conforming as to Setbacks. Gentile stated we are ok to move forward because the house was built in 1975 and the request for the setback variance of 36 feet instead of 65 feet from the center of the road is the appropriate request.

Gentile asked the members if anyone had any questions as well as Cardarelli and Hanson. Cardarelli stated that there is a slope and there is no other level area to put the deck to enjoy the outdoors. Cardarelli further stated that there is currently only one egress and this deck will now give them two egresses and this is a plus for safety. Cardarelli also stated that all homes in the area have decks except for her property.

Gentile stated Dan Brown, who is the applicant’s neighbor as well as an abutter, told Gentile that he is in support of the deck.

Gentile stated he was now going to start with the five criteria. Dempster stated that we need to do the Findings of Fact first.

Gentile stated that the board is obligated to list the facts of the case and they are now going to collect the Findings of Fact as follows:

Findings of Fact:

1. The house was built in 1975, before the zoning ordinance took effect in 1987.
2. The property has a significant slope so that using the land for entertaining or relaxing is not convenient or easy.
3. The closest point of the proposed deck to the center of Little Loop Rd will be 36 feet where 65 feet is required.
4. All other setback requirements are met.
5. This is the only house on Little Loop Road which does not yet have a deck.

6. Encroaching the 65 foot setback from the center of the road is common in the neighborhood due to the hilly nature of the land and small size of the lots.
7. One abutter, Dan Brown who is also the next-door neighbor, mentioned verbally to a board member before the meeting that he supports the request for a variance.
8. The addition of the deck will include a second door which will enhance fire safety by providing a second egress door.

Motion by Martin, seconded by McAllister to close the Public Hearing, and deliberate on the merits of the case. The motion was voted on and passed **unanimously**.

Findings on the five conditions for a variance:

1. The variance will not be contrary to the public interest
2. The spirit of the ordinance will be observed (answers for both 1 and 2 together):
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 deck poses no health or safety risk to the neighborhood but in fact increases the fire safety of the dwelling by providing a second egress door.
 - The owners have a handicapped family member who visits so that a level deck provides a safer environment for enjoying the outdoors than the sloped lot alone.
 - The addition of the deck is consistent with the character of the neighborhood where all the other homes on the street have decks.
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 will allow the owners a level place on their lot to be outside in a manner entirely consistent with the neighborhood without having to use their driveway or the corner of the neighbors' lot to be outside.
4. The values of surrounding properties are not diminished because
 - The addition of the deck will increase the property value thereby supporting neighborhood 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 slope of the land severely restricts its use for outdoor entertaining or relaxation.
 - The house sits on the property line and so there is only one location possible for the deck.

The proposed use is a reasonable one because:

 - Making the addition of a level deck a reasonable alternative for outdoor enjoyment and one that is common in the neighborhood.
 - The deck provides some protection for the septic system.

(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.

Gentile asked the board for a motion.

Motion by Martin, seconded by McAllister to approve the variance request for the construction of a 10-foot x 16-foot deck on the right front corner of the existing house which would only be 36 feet from the centerline of the road because, there is no other possible location and the use is a reasonable one which will enhance the safe use of the property. The motion was voted on and passed **unanimously**.

Gentile read aloud the provisions of the 30-day appeal period. Gentile closed **Case #24-05**.

APPROVAL OF DRAFT MINUTES:

Motion by McAllister, seconded by Rau to approve the July 17, 2024 minutes as amended due to grammatical/spelling errors. The motion was voted on and passed **unanimously**.

ADMINISTRATION: Young asked the board if they wanted her to purchase the New Hampshire Planning and Land Use Regulation Book 2024-2025 Edition for each member. The board decided to purchase one book and Young stated she would order it and bring it to every meeting for the members use.

ADJOURNMENT: Motion by Gentile, seconded by McAllister to adjourn the meeting at 7:00 pm. The motion was voted on and passed **unanimously**.

The next Public Hearing of the Zoning Board of Adjustment will be held on October 16, 2024 at 6:00 pm at the Madison Town Hall, Lower Level.

Respectfully submitted,

Katharine Young
Land Use Boards Administrator