



TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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ZBA MINUTES
October 16, 2024

ATTENDANCE: Drew Gentile, Chairman, Sharon Schilling, Vice Chairman, George Rau, Bill Dempster, Marc Ohlson, Alternate, Jake Martin, Alternate and Jennifer Skaife, Alternate

EXCUSED: Doug McAllister

OTHERS PRESENT: Madison TV, Amanda Hayford, 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: Gentile 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, Land Use Boards Administrator to read the case and Public Meeting Notice.

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

Case #24-06 - Variance request from Bergeron Technical Services, LLC, Agent for James and Elizabeth Sierpen, (a/k/a Sierpien) Owner/Applicant, Plains Road, Tax Map 119, Lot 13, from Article V, Section 5.9 A&C of the Zoning Ordinance to permit the construction of a 930 sq. ft. Two-bedroom home with a deck to be constructed within 75 feet of both the road centerline of Route 41, Plains Road, and within 75 feet of the mean highwater mark of Silver Lake. A stairway to access the waterfront would also be constructed within 75 feet of the mean highwater mark of Silver Lake

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 October 2, 2024 and notifications were mailed out on October 2, 2024 and posted in the Conway Daily Sun on October 4, 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 no Waiver Request presented and a Certified Plot Plan was provided by the applicant. 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 stated that there is a technicality the board needs to address before they open the presentation.

Gentile stated that this property has a long history in which there have been three previous requests for a variance. This would not be a problem except that the first application in 2006 was denied and appealed to the Superior Court. Unfortunately, that court case is not on file in the town records, and we were unable to obtain a copy of it. The board might presume the case was decided in favor of the town because a new variance request was submitted in 2008. This required that the terms of the variance be considered materially different from the denied request. This variance was granted but expired.

In 2022 the board was presented another variance request, but the history of the property was not brought to the attention of the ZBA, likely due to staff transition issues, so there was no documentation in 2022 of the previous denial and required documentation of a material difference in the application.

Gentile stated that he believes that the board needs to consider whether the current application is materially different from the denied application of 2006, and if so, go on record with that affirmation, otherwise we would have to dismiss the case because of the previous denial. Martin asked if we can simply rehear the case from 2022 or whether we need to address the question of material change under the new application. Gentile stated that there is a denial on record which would require that we document a material difference in order to proceed. There are two previous approvals of similar variances, but it appears that the board was uninformed of the previous denial in 2022, so we should consider the question of material difference in the context of the current application.

Martin stated that he would assume that the board, in 2008, acted under the same process establishing a material difference. Gentile outlined what we know about the history: Case 06-04 was heard by the ZBA and denied; a rehearing was requested and denied, the ZBA submitted a certified record to the Superior Court, but we don't have a record of the outcome. A new variance request with different dimensions was submitted in 2008 and granted but it expired. A new variance request was submitted in 2022 with no mention of the history. This variance was granted and expired. Case 24-06 is before us with a variance request, and we can consider whether the dimensions represent a material difference from the denied application of 2006.

Schilling stated that in the file there may be Findings of Fact as to the material difference in the new application versus the old application which warranted them to be able to do this. Gentile stated the question before this board is do they find a material difference. Gentile asked Young if she had the decision letter from the case from 2008. Young stated she found a decision letter dated August 19, 2008 for Case #08-02. Martin read the decision aloud to the board for the record (a copy of said decision is in the Tax File for Tax Map 119, Lot 13).

Gentile asked Young if she had the minutes from that meeting? Young stated she did not have the minutes from the August 18, 2008 meeting with her as she was unaware the board would be requesting this information.

Gentile asked Young for the dimensions for Case #06-04. Martin read the following aloud:

Setback from Centerline of Roadway: 30.8'
Setback from left sideline: 25'
Setback from right sideline: 120'

Setback measured from rear line: 75'

Martin stated that this was originally for a 20' x 40' two-bedroom home. Gentile stated the only issue for the board is that we need to make sure that we consider that the case that was denied and that the current application is a materially difference from Case #06-04 which was denied. Gentile further stated that there is an increase of distance from the centerline of the road from 31' to 38'; there is a distance from the left sideline from 25' to 62'; there is a distance from the right sideline of a decrease from 120' to 78.5', but that meets the dimensional requirements; building/sign from the rear line of 53.6' instead of 75' and this requires a variance and that this is also a material difference. Gentile reiterated that the board wants to make sure that they acknowledge that there is a material difference between the application being Case #06-04 and the one presented tonight which is Case #24-06. Gentile stated he would like a vote from the board to go on record as to what if board feels that there is a material difference.

Motion by Gentile, seconded by Martin that the board agrees that there is a material difference between the denied application variance in 2006 and the current application before the board tonight. The motion was voted on and passed **unanimously**.

Gentile swore in Kate Richardson, from Bergeron Technical Services Agent for the applicant and asked her to present her case.

Richardson stated that this project was before the board two years ago when the applicant was in the process of purchasing the property. Richardson believes Bergeron Technical Services was involved in the variance request in 2008 and she is aware of the variance issues throughout the years. Richardson stated that two years ago the previous owner came before the board when the current owner was in the process of buying the property and the variance request was to build a 20' x 40' home and was a little different than what had been previously approved in 2008. She further stated that once the current applicants bought the property and put building plans together, they found that a 20'x 40' building would not work with the interior layout they were looking for so they bumped that building out 24' wide in lieu of the 20' dimension and they also, in the 2022 application, had an overhang at the entrance that they have removed from their plans and the deck on the water side of Silver Lake has also been widened to match with width of the house so there have been some material differences in the home and that they have recentered the home a little bit. She also stated there is a situation with the setback from the lake and the setback from the road overlap each other and they are trying to reasonably place the house on the lot so it is even between the two and they are cognizant about the State of New Hampshire's 50-foot setback for shoreland requirements and they did try to keep within that 50-foot setback from the lake reference line which Gentile stated is the 53.6'.

Richardson went over the dimensions and stated that the distance they are requesting a variance from is the centerline of the road to the closest point of the structure which is the roof overhang which will have a one-foot overhang and the distance measured from that is 38.1." As to the deck, the closest side of the deck to the reference line of Silver Lake is 53.6." The setbacks comply, although technically, there is no buildable envelope on this lot. Richardson further stated that similar to the last application, they are requesting to be allowed to build a stairway down to the shorefront.

Martin asked that on the 2022 application, what were the differences between this setback to the centerline of the road? Richardson stated that on the 2022 application, the distance to the setback to the road and the closest point was 38.5' which was from the overhang that was going over the entryway. Richardson further stated that with this application, the closest dimension is the corner of

the building itself and on the 2022 application, the closest dimension to the corner of the building itself was 39.3' so they did bump the building over slightly and widened it. Richardson further explained that from the lake side, the deck was again, the closest element on the building that had been 57.7' away from the reference line at its closest point.

Gentile stated that for the record, the board is considering this application.

Gentile stated that the lot itself is allowed to be used for a residential purpose protected by paragraph 1.3A and the application for the variance is in line with what Madison's Zoning Ordinance provides.

Dempster asked if the proposed approval for the septic has been finalized? Richardson stated it was approved in 2022. Dempster asked about the shoreline permit? Richardson stated they have not updated this approval yet and she would expect a condition for that approval and that her client opted to wait to make sure he received ZBA approval before applying for that permit. Gentile stated they can make this a condition and that the applicant does not have to have all the permits in hand in order to apply for a variance and the board can make a condition of the variance, should the board approve the request, that all permits are in place. Dempster asked about the DOT driveway permit? Richardson stated the driveway permit has been updated as it expired this past summer and it should be good for two years. Dempster stated that he did not see any dimensions for the driveway and he believes per zoning, it would have to be 15' and he does not see the setback line on the right side which has a dimension of 10' but that is NHDES septic setback and Dempster asked about the driveway side and does it meet the requirements? Richardson stated she was not aware if it does or does not. Schilling stated we can make that another condition since we do not have that specific dimension if the board chooses to approve the variance. Richardson stated the driveway is for two vehicles which is one for each bedroom.

Rau stated he walked the property and did not see any stakes. Richardson did confirm the property has not been staked.

Dempster asked about the walkway and stated it is in a sensitive area and asked if there was going to be anything different as it is very steep? Richardson stated that the stairs were raised above grade to not impact the root system and that there would be minimum impact with the footings and the stairs would be wood built and the footings would be sonotubes. Gentile stated he did not believe the stairs were part of the zoning issue and that the variance request is for two dimensions and that is what the board is addressing tonight. Gentile stated that the stairs and other constructions issues come under other jurisdictions and the board can address all those issues with a series of conditions like the shoreline permits, buildings permits, etc.

Gentile asked the board to begin collecting the Findings of Fact.

Findings of Fact:

1. Article 1.3A of the Madison Zoning Ordinance allows the development of the pre-existing, nonconforming lot of record for residential use. The date of 1986 is referenced on the boundary plan provided by Bergeron Technical Services with the stamp of Douglas Burnell titled "Lot 1."
2. The details of the dimensional variance requests as well as the general arrangement of the lot are provided on a certified plot plan from Bergeron Technical Services for James Sierpien dated Aug 26, 2024, Pages 1 and 2.

3. The Zoning Board is aware of three previous applications for various dimensional variances, the first of which was denied, Case #06-04. The Board determined that there is a material difference in the dimensions between the current application and the originally denied variance request, allowing the application to proceed. Those differences are an improvement from 30.8' to 38.1' feet from the centerline of Route 41 and an encroachment on the 75' setback requirement to 53.6 feet (per the application) from the high-water mark of Silver Lake.
4. Case #08-02 granted a dimensional variance but expired, and more recently Case #22-06 granted a dimensional variance which expired August 18, 2024, resulting in the need for this application under a new owner.
5. There is no buildable envelope on the property as the current zoning requirements for a 75' setback from the centerline of Route 41 and 75' from the highwater mark of Silver Lake overlap.
6. The proposed plan meets the State of New Hampshire requirement for a 50' setback from the high-water mark of Silver Lake.
7. The topography of the lot is characterized by a hill near the middle of the lot which presents the only possible location for a house.
8. There was no response from any of the abutters, pro or con.
9. The topography of the neighborhood and the location of Route 41 are such that many of the homes along Route 41 either pre-date the Zoning Ordinance and/or cannot meet the 75' setback requirement from the centerline of the road.

Gentile asked the board for a motion to close the public hearing.

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

Gentile stated that the board could use the wording from the application and modify it to what the board agrees with, which they did as follows in bold:

Findings on the five conditions for a variance:

1. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship as follows:
 - a) The special conditions of the property that distinguish it from other properties in the area are:
Due to the depth of the parcel, a building cannot be constructed on the property in a completely conforming location. The proposed stairway provides access to the waterfront without having to create a long meandering path to traverse the steep slope.
 - b) Owing to those special conditions, no fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property, because:
There is no conforming location to build upon. The setbacks from the centerline of Route 41 and the high-water mark of Silver Lake overlap causing there to be no buildable area on the property. The stairway allows for a path to the waterfront as permitted in Madison Zoning Section 5.8 though the structure of a stair is needed to maintain a minimum impact on this area.
 - c) The proposed use is a reasonable one, owing to those identified special conditions, because:

The proposed use is for a two-bedroom single-family home within the town's Rural Residential District. The proposed stairway to the waterfront provides a safe way to access the water while limiting the disruption of ground vegetation, over a very steep slope. Article 1.3A of the Madison Zoning Ordinance allows the development of this pre-existing, non-conforming lot for residential use.

2. The Variance will not be contrary to the public interest because:
The subject parcel is a vacant lot of record, dating back to 1964 and it is of a size and configuration that a structure cannot be constructed on the property without encroaching on required building setbacks from either the road or the shoreline. Denying the Variance would deny the owners reasonable use of their property. Due to the topography of the lot, the stairway has been proposed to access the waterfront safely without significant impact on the ground vegetation which would be required to construct a path on the ground.
3. The spirit of the Zoning Ordinance will be observed because:
The proposed home has been located on the property to balance the encroachment on the setbacks from the road and the shoreline and maintaining the State of New Hampshire 50-foot primary building setbacks from the shoreline, while proposing a reasonable sized building consistent with the character of neighborhood. The Madison Zoning Ordinances permit wharves, piers, docks and bridges within 75' of standing bodies of water, the proposed stairway is for safely accessing the waterfront and minimizing disturbance.
4. Granting the Variance would do substantial justice because:
On the North end, the property depth is 105.38' and on the South side, the property depth is 88.94'. With both the centerline of the road setback and the shoreline setback each being 75'. There is no conforming building area on the property. Granting the variance would allow the owners a reasonable use of their property as a residence in the Rural Residential District within the Town of Madison Zoning Ordinance and allow the development of the parcel in a similar way to surrounding properties.
5. The values of the surrounding properties will not be diminished because:
The surrounding properties have been developed in a comparable way as single homes. Therefore, there is no evidence that property values will be negatively affected.

Gentile asked the board if they were ready to make a motion and that they would also need to include the conditions previously discussed. Martin asked if the board wanted to discuss the conditions before the motion is made? Gentile stated the conditions would be to obtain approved permits from DES septic, shoreline permits, DOT permit for a driveway and related setbacks are met and allows adequate parking provided on the lot for two parking places for a two-bedroom home.

Gentile asked the board for a motion. Young stated that if there is a plan, it should be referenced in the motion because the board is making a decision based on a plan provided. Gentile stated they could refer to it in the Findings of Fact.

Motion to **GRANT** the variance request for 38.1' from the centerline of Route 41 and 53.6' from the shoreline because the topography of the lot does not allow any other reasonable use as specified in the Findings of Fact with the following conditions that:

1. Approved permit from DOT for a driveway.
2. Approved permit from DES for septic.
3. Approved Shoreline permits.

Discussion: Schilling stated the phrase "does not allow any other reasonable use" and that there are lots of reasonable residential uses for a property and if we are more specific that it does not allow for any other reasonable building area or something like that because we are talking about them being able to build a home.

Motion by Schilling, seconded by Martin to **GRANT** the variance request for 38.1' from the centerline of Route 41 and 53.6' from the shoreline because the topography of the lot does not allow any other location for construction as specified in the Findings of Fact with the following conditions that:

1. Approved permit from DOT for a driveway.
2. Approved permit from DES for septic.
3. Approved Shoreline permits.

The motion was voted on and passed **unanimously**.

Gentile read aloud the provisions of the 30-day appeal period. Gentile closed **Case #24-06**.

Schilling asked Young to correct spelling of the applicant's name from Sierpen to Sierpien as it was misspelled in the application by the applicants agent.

ADMINISTRATION:

APPROVAL OF DRAFT MINUTES:

Motion by Martin, seconded by Dempster to approve the September 18, 2024 minutes as written. The motion was voted on and passed with Schilling abstaining as she was not present at the meeting.

Young, Land Use Boards Administrator instructed the board that they need to work on the 2025 budget as she needs to get it to L. Shackford as soon as possible. Young stated they need to discuss the legal fees as they may increase due to the STR filings but that there will be a reimbursement from the \$80,000.00 Warrant Article that was accepted by the town last year. Schilling explained that anything we are billed from our attorney for STR issues will be reimbursed from the Warrant Article. Schilling stated that we only expended \$1,400.00 on non-STR issues and that this figure seems low to her. Young stated that most of the cases were STR's and the Danforth case and a few non-STR cases. Young asked the Board what they want to appropriate for legal fees for 2025? Young stated we should go through the budget line item by line item. It was decided that the board would approve the 2025 budget at the November 20, 2024 meeting as Schilling asked for documentation on the last five years spent for legal fees. Young stated she would get that information and email it to her.

Gentile asked Young to email Attorney Boldt about contacting Attorney Johnson as to whether he is going to ask for a continuance of the eight remaining Short Term Rental cases that were continued at the May, 2024 meeting to November 20, 2024 meeting date.

ADJOURNMENT: Motion by Schilling, seconded by Rau to adjourn the meeting at 7:50 pm. The motion was voted on and passed **unanimously**.

The next Public Hearing of the Zoning Board of Adjustment will be held on November 20, 2024 at 6:00 pm at the Madison Town Hall, Lower Level.

Respectfully submitted,

Katharine Young
Land Use Boards Administrator