

**Subject to Approval**

**ZONING BOARD OF APPEALS  
REGULAR MEETING MINUTES  
June 7, 2016**

The public hearing and regular meeting of the Madison Zoning Board of Appeals was conducted Tuesday, June 7, 2016, at 7:30 p.m. in Meeting Room A at Madison Town Campus.

**MEMBERS PRESENT**

Chairman Ronald Cozean, Vice Chairman Jeanne W. Stevens, Commissioners Kenneth Kaminsky, Thomas Kelty and Ned Moore.

**MEMBERS ABSENT**

None

**ALTERNATES PRESENT**

William H. Piggott

**OTHERS PRESENT**

Zoning Enforcement Officer John De Laura; members of the public; MCTV taped the meeting.

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The public hearing and regular meeting of the Madison Zoning Board of Appeals was called to order at approximately 7:35 p.m.; Chairman Ronald Cozean introduced the board and reviewed procedures; by state statute, four votes are needed to approve applications, and a simple majority is not sufficient. The legal notice, as published, was read into the record. Agenda items were taken in the order prescribed in the minutes.

**8188. 20 Toffee Lane.** Map 13, Lot 120. R-5 District. Owner/Applicant: Stephen Carrabba. Request to vary Secs. 3.8 and 12.6 of the Madison Zoning Regulations to allow 1,477 sq. ft. coverage where 1,384 sq. ft. is allowed to permit addition to non-conforming dwelling.

**WITHDRAWN.**

**8189 + CSP. 11 Bayview Place.** Map 18, Lot 64. R-4 District. Owner: Vijay K. & Nanda Anand. Applicant: Vijay Anand. Request to vary Secs. 3.6a), 3.6c) and 3.8 of the Madison Zoning Regulations to allow a 34.6' front yard setback to new dwelling where 50' is required and rear setbacks of 20.9' to new dwelling and 32.4' to pool where 35' is required and coverage of 4,484 sq. ft. where 3,439 sq. ft. is allowed and floor area of 7,600 sq. ft. where 5,870 sq. ft. is allowed. Coastal Site Plan review required.

Attorney J. Michael Sulzbach, speaking on behalf of Vijay K. and Nanda Anand, stated that due to double-sided copying showing two variances granted on one side of the copy, a third variance, regarding the swimming pool, which will be removed, was on the opposite side. He submitted **EXHIBIT 1**, the swimming pool variance, and the swimming pool will be removed; **EXHIBIT 2**, finalized site plans, and **EXHIBIT 3**, a Google Earth photo of the current property at 11 Bayview Place. Mr. Sulzbach explained that the Anands have owned the property since 1994, and they would like to remove the current structure, which he described as unusual, as well as the swimming pool. Plans are to build a two-story house, according to Mr. Sulzbach, who then submitted **EXHIBIT 4**, the Coastal Site Plan and stated that these plans make the structure more

conforming. The application is to demolish an existing house and construct a smaller, more conforming home with a swimming pool and pool house; a new subsurface sewage disposal system is being proposed; drainage systems to retain the runoff from a one-inch rainfall event are to be installed adjacent to the new home. The height is 34.7 feet, and the current coverage is 5,318 square feet, which will be made 4,483.25 square feet, where 3,439 square feet is allowed, according to Mr. Sulzbach; the floor area increases 4,464 square feet to 7,600 square feet, where 5,870 square feet is allowed, because it is two floors, but the footprint stays the same. Mr. Sulzbach explained that court cases, such as the Vine case, have ruled that if there is no legal hardship, a variance can be granted if a non-conformity is being reduced to make it conforming; plans for 11 Bayview Place will make it more conforming than it has ever been.

Chairman Cozean stated that the application shrinks the size horizontally but then increases it vertically, and when the zoning regulations were changed to create the R-4 District, it was because the Planning and Zoning Commission wanted to allow people to be able to have what was allowed in the R-2 District, but no one wanted development in the R-4 District to go vertically, which is the 34.8 height being proposed in this application. In addition, the Planning and Zoning Commission wanted to control how much floor area there could be, in terms of bulk, Chairman Cozean stated. Furthermore, 7,600 square feet of floor space makes the structure go from conforming to nonconforming, so in return for that, the setbacks are being reduced, along with the coverage, Chairman Cozean stated.

Mr. Sulzbach stated that the house is better than what is there now; the architect is sensitive as to how this house will recede into the site. Architect Scott Duffield stated that the house will be shingled in the Hamptons beach house style—created will be a modern shingled design that recedes and will be in character with the neighborhood. While aesthetics is not germane, Chairman Cozean stated that he appreciated it.

Chairman Cozean asked the audience if it had any questions about the application, in terms of clarification.

Attorney Thomas Cronan, representing Sean and Denise Garrity of 40 Neptune Avenue, questioned the placement of the pool house; in the elevation drawing, he saw the pool house on the left side of the property, in the file sheets A1 and 2, but the site plan available at the meeting shows the pool house on the right side of the property. Mr. Cronan stated that if the pool house will be on the left side, there is a critical coastal resource setback. Vijay Anand stated that the pool house was originally on the left side, but due to the critical coastal resource, it has been moved to the other side.

Chairman Cozean asked if anyone in the audience would like to speak in favor of the application. No one spoke. Mr. Sulzbach stated that there are three letters in support of the application. Chairman Cozean stated that they have received two letters of support from adjacent property owners on Bayview Place. Mr. Anand stated that there is a third letter of support, which was sent through email.

Chairman Cozean, in reviewing correspondence received, stated that the Zoning Board of Appeals received a letter June 7, 2016, dated May 23, 2016, from the Conservation Commission, written by Chairman Heather Crawford, which he then read into the record. A summary of the letter follows: The Conservation Commission has maintained a general concern about larger

houses being constructed along the shoreline, an environmentally sensitive area, particularly with regards to septic system construction, which contributes nitrates into the fragile ecosystem, making a cumulative damaging effect, nor does the Conservation Commission approve of waterfront structures that exceed the regulated size.

Mr. Sulzbach stated he had the email letter of support, for demolishing the present dwelling and expressing support for the proposed development, from Jeffrey and Judy Mc Elnea of 5 Bayview Place, and he asked for permission to read it, which was granted.

Michael Maney of 48 Neptune Ave., stated that he and the Anands share the same seawall; 20 years ago a storm came through and collapsed the Anands' seawall and moved the Maneys' seawall. Mr. Maney stated that moving the new swimming pool closer to the seawall raises some concerns.

Professional Engineer and Land Surveyor Thomas Stevens stated that the pool is an adequate distance from the seawall; he presented **EXHIBIT 4a**, the coastal site plan with lines colored in for additional detail. Chairman Cozean stated that the pool meets the requirements, but it has a 2½-foot nonconformity.

Mr. Anand stated that his property received the most substantial damage to the seawall, during that particular storm, and it would be the last thing he would think of risking; in addition, it is an act of nature, when a storm comes through, and he stated that he cannot be responsible for his neighbor's seawall.

Cynthia Perry, president of Barberry Farms Association, Inc., of 31 Neptune Ave., stated that the same storm ruined her seawall; it was totally destroyed and cost \$250,000 for 30 feet. Arnold Grant of 43 Neptune Ave., stated that he strenuously objects to the change in the volume of the house, and he wants to take extreme exception to an architect who states that a 7,600 square foot house will recede—this is illogical and preposterous. Mr. Grant reminded the Zoning Board of Appeals that it has within its power the ability to ensure Madison moves toward its stated planning and zoning goals.

Barberry Farms is a tight-knit community, Ms. Perry stated, adding that a 1948 goal of the association could be translated in present day language to mean protection of the character of the neighborhood. She stated that the floor area coverage of the new structure is a 29.5 percent increase over the size of the current structure. Ms. Perry presented **EXHIBIT 5**, a publication entitled, *Madison Shoreline Area Zoning Concepts, Feb. 18, 2010*, which she stated established new standards for zoning, allowing for more reasonable enlargement, reducing nonconformities, to ease zoning regulations in what is now R-4 District. This was done because the town of Madison had the largest number of lawsuits, after variances had been granted, according to Ms. Perry. These standards were established to guide architects and engineers, she stated. The Zoning Board of Appeals has the responsibility and the authority to enforce these regulations by adhering to finding a legal hardship in granting a variance; in this application, there is no legal hardship, and this application is not in keeping with current zoning regulations, according to Ms. Perry. One resident, in speaking against the proposal, stated that the application represents a 30.8 percent decrease of setback footage, a 40.3 percent loss of land or decrease in setback footage, and the 4,483 square feet of coverage, where 3,439 square feet is allowed, represents a 30.4 percent increase in coverage, all of which are not small increases in size and setbacks—it is

a massive square footage structure on a small lot; therefore, disallowing the variances would ensure that residents would continue to enjoy a neighborhood of scale.

Attorney Thomas Cronan, representing Sean and Denise Garrity of 40 Neptune Ave., direct property abutters, stated that he has never appeared before the Zoning Board of Appeals in opposition to an application, and he has always been pro development. However the current state of zoning law in the state of Connecticut has become an ever tightening of the needle for a variance to survive an appeal in court, increasing constraints on what Zoning Boards of Appeal can do. In the 11 Bayview Place application, there is no claim of a legal hardship, but there is a reference to the Vine case, which states that if a legal hardship cannot be provided, non-conformities can be reduced in exchange, according to Mr. Cronan. The Verillo case decided that an existing nonconformity cannot be expanded, according to Mr. Cronan. The question is whether the Vine case provides an absolute immunity from legal hardship—in other words, if a setback is improved by one foot, can the size of the building be increased, Mr. Cronan asked. He then stated that this Zoning Board of Appeals has decided an application has to meet the idea of proportionality. There is no legal hardship; the existing building is being demolished, and an entirely new structure is being constructed; during the presentation, Attorney Sulzbach said they are making the property more conforming, Mr. Cronan stated; this application seeks to expand the floor area, but it is improving setbacks. Mr. Cronan presented **EXHIBIT 6**, Table of Values, which detailed the various increases in size and height that the application proposes—the structure goes from one story to two stories, the number of bedrooms increases from five to six, the structure is encroaching in a vertical manner, and floor area increases from 4,464 square feet to 7,600 square feet; in all, five elements are getting bigger, he stated. Mr. Cronan presented **EXHIBIT 7**, Table of Resulting Nonconformities, stating that some of the existing nonconformities will disappear when the house is demolished, however, the front yard setback is 37.4 feet, where 45 feet is required, the rear yard setback will be 11 feet, where 35 feet is required; the application will still be nonconforming with coverage and newly nonconforming with floor area.

Mr. Cronan presented **EXHIBIT 8**, a summary of the court cases Verillo, Vine, and McGuire. McGuire versus the Zoning Board of Appeals of the Town of Fairfield is the case most recently decided in 2015, wherein the judge ruled that an applicant cannot have his cake and eat it, too, Mr. Cronan stated. The McGuire case ruled that an applicant can no longer claim to be reducing a nonconformity when the nonconformity has been eliminated or demolished; McGuire says when you demolish, you can no longer claim to be reducing a nonconformity, Mr. Cronan stated. If the McGuire case is applied to 11 Bayview Place, there are six variances that are needed for this application to be carried out, Mr. Cronan stated. Chairman Cozean stated that one of the figures in the setback numbers is in error; the rear yard setback proposal is 21 feet and not 11 feet (Exhibit 7). Mr. Cronan stated that he would correct the numbers to change the rear yard setback to 21 feet, rather than 11 feet, which is a 14-foot variance. It was decided in the Verillo case that zoning regulations seek the elimination of nonconforming uses, not their creation or enlargement; the accepted policy of zoning is to prevent the extension of nonconforming uses, and that is the indisputable goal of zoning, to reduce nonconforming to conforming uses, with all the speed justice will tolerate, according to the passage in Mr. Cronan's Exhibit 8.

In looking at the cases, Vine is closer, Mr. Cronan stated. However, if Vine is 100 percent on reducing or eliminating nonconformities in exchange for the lack of a legal hardship, McGuire cancels Vine by stating that once a structure is demolished, there cannot be a trade off. If Vine is

chosen as the case to follow for the current application, then it makes sense for the Zoning Board of Appeals to apply proportionality to the exchanges, Mr. Cronan stated.

In granting a variance, there's really a two-prong test—first, show a legal hardship or reduce nonconformity and second, do not substantially affect the comprehensive zone plan, and when these zoning regulations were passed for the R-4 District, the focus was on floor area, according to Chairman Cozean. Therefore, the increase in floor area in the Bayview Place application substantially affects the comprehensive zone plan.

To expand a nonconformity kind of flies in the face of a comprehensive plan; it is a fairly recent pronouncement by an appellate or superior court; the issue of compatibility with the comprehensive plan will be called into question, according to Mr. Cronan.

Mr. Sulzbach stated that there is not anything in the record that supports the Table of Values. In the Table of Nonconformities, a big jump down is made in lot coverage, and setback nonconformities are reduced, so the application does meet the comprehensive plan, Mr. Sulzbach stated. As to the McGuire case, the Bayview Place application has appeared with a structure in place that will be demolished, and the applicants are not presenting with a vacant lot, according to Mr. Sulzbach. If an applicant tears a structure down before seeking a variance, that applicant will be out of luck; an applicant has to appear before the Zoning Board of Appeals and get the variance, before the structure can be demolished, Mr. Sulzbach stated.

**Commissioner Kaminsky made the motion to close the public hearing; it was seconded by Commissioner Moore and unanimously approved.**

Vote to close the public hearing passed, 5-0-0.

IN FAVOR: Chairman Cozean, Vice Chairman Stevens, and Commissioners Kelty, Moore, and Kaminsky.

OPPOSED: None.

ABSTAINED: None.

Chairman Cozean invited the board to discuss the application.

Commissioner Kaminsky stated that it appears the pure square footage in the floor area is so high that it makes the application a challenge, and he does not think there is proportionality with the reduction of setbacks compared to the increase in floor area. Vice Chairman Stevens stated that she can accept the decrease in nonconformities but she takes issue with the large floor area, because she doesn't think there is proportionality. Commissioner Moore stated that the board could accept, in lieu of a legal hardship, the reduction in nonconformities, however, there is substantial increase in the floor area, which is not proportional to the reduction. Commissioner Kelty stated that he is a believer in proportionality; though there is a significant decrease in coverage, the increase in floor area is sufficiently higher. Chairman Cozean stated that there has to be an improvement in nonconformity, and this does not exist.

**Chairman Cozean made the motion to deny the application on the grounds that one, there is no legal hardship in this case, two, using the reduction of nonconformity as a trade cannot be applied, and three, 7,600 square feet of floor area, where 5,800 to 5,900 square feet is allowed, is a substantial affect on the development; Commissioner Kaminsky**

**seconded the motion. It passed unanimously.**

Vote to deny the application 8189 + CSP, 11 Bayview Place, passed 5-0-0.

IN FAVOR: Chairman Cozean, Vice Chairman Stevens, and Commissioners Kelty, Moore, and Kaminsky.

OPPOSED: None.

ABSTAINED: None.

**Approval of Minutes ~ Apr. 5, 2016**

**Commissioner Cozean made the motion to approve the Apr. 5, 2016 minutes, as submitted; it was seconded by Commissioner Moore and unanimously approved.**

Vote to approve the Apr. 5, 2016 minutes passed, 5-0-0.

IN FAVOR: Chairman Cozean, Vice Chairman Stevens, and Commissioners Kelty, Moore, and Kaminsky.

OPPOSED: None.

ABSTAINED: None.

**Adjournment**

**Commissioner Moore made the motion to adjourn at 9 p.m.; it was seconded by Vice Chairman Stevens and unanimously approved.**

Vote to adjourn passed, 5-0-0.

IN FAVOR: Chairman Cozean, Vice Chairman Stevens, and Commissioners Kelty, Moore, and Kaminsky.

OPPOSED: None.

ABSTAINED: None.

Respectfully submitted,  
Marlene H. Kennedy  
Clerk