

**Subject to Approval**

**ZONING BOARD OF APPEALS  
REGULAR MEETING MINUTES  
Oct. 4, 2016**

The public hearing and regular meeting of the Madison Zoning Board of Appeals was conducted Tuesday, Oct. 4, 2016, at 7:30 p.m. in Meeting Room A at Madison Town Campus.

**MEMBERS PRESENT**

Chairman Ronald Cozean, Commissioners Kenneth Kaminsky and Ned Moore

**MEMBERS ABSENT**

Vice Chairman Jeanne W. Stevens, Commissioner Thomas Kelty

**ALTERNATES PRESENT**

William H. Piggott, Charon Squitterio

**OTHERS PRESENT**

Zoning Enforcement Officer John De Laura; 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 7:33 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. Chairman Cozean seated Alternate Commissioner William H. Piggott for absent Commissioner Thomas Kelty and Alternate Commissioner Charon Squitterio for absent Vice Chairman Jeanne Stevens.

**8191+CSP. 11 Salt Meadow Lane.** Map 12, Lot 18. R-1 District. Owners/Applicants: George Karsanow & Sarah Davison. Request to vary Secs. 2.17 and 3.5c) of the Madison Zoning Regulations to allow 28 ft. to 24 ft. x 24 ft. addition, 13.2 ft. to proposed deck, and 10.6 ft. to proposed covered porch, all where 50 ft. is required to the Critical Coastal Resources; and to allow an entry addition, steps and landing to be constructed forward of the required minimum building line. **Commencement of Hearing Postponed to November 1, 2016.**

**8192. 54 Taylor Avenue.** Map 24, Lot 167. R-5 District. Owner/Applicant: Kenneth R. Finkle. Request to vary Sec. 3.6(a) of the Madison Zoning Regulations to allow a front yard of 20 ft. where 25 ft. is required to permit installation of an in-ground pool in the front yard.

Attorney Timothy Shields, representing Owner/Applicant Kenneth R. Finkle, stated that what is being requested is a single variance on this property, to allow the applicant to install a 32' x 12' in-ground swimming pool. The hardship is derived from the fact that the parcel sits between two streets, Taylor Avenue and Chittenden Field Lane; the pool would go in the front yard, as there is no rear yard, according to Mr. Shields. It is a request to vary Sec. 3.6(a) of the Madison Zoning Regulations to allow a front yard of 20 feet, where 25 is required to permit the in-ground pool installation in the front yard. Mr. Shields listed the reasons the pool cannot be located elsewhere on the property, including the fact that off the northerly edge, there are leeching fields for the septic system and the septic tank. The property meets all zoning requirements, Mr. Shields stated, and the property owner does have a right to install the swimming pool.

Chairman Cozean read into the record a Sept. 29, 2016 letter from Mr. and Mrs. Edmond P. Barley, 61 Taylor Ave., who asked that the application for the variance be denied, due to concerns of where the fence for the swimming pool will be installed, the high water table, the septic system, and future snow plow operations. Prior to the letter being read, Mr. Shields referred to the letter and stated that the pool fence does not have to be placed along the property line, the application does not include plans for the fence, and the homeowner could install the fence close to the pool.

Chairman Cozean stated that the Zoning Board of Appeals has consistently not granted variances for swimming pools, and while he appreciates that the hardship noted has been the two front yard setbacks, he asked Mr. Shields whether he had case law to support the granting of a variance in this type of instance. In addition, the Planning and Zoning Commission has gone out of its way to create these zones, and this property is in a R-5 zone, where it is being asked that a setback be reduced from 40 feet, to 25 feet, and now to 20 feet, according to Chairman Cozean. Mr. Shields said he did not have case law to support the application, but the Madison Comprehensive Plan of Development supports the application, because in Section 3.1, it recognizes that there has been a lot of development of smaller lots, yet that same section speaks to allowing reasonable residential use of those lots, without creating smaller lots; the swimming pool is a reasonable residential use to a residential building.

Chairman Cozean asked whether anyone wanted to speak in favor of the application, but no one did; he then asked if anyone wanted to speak in opposition to the application. John Hambor, 52 Chittenden Field Lane, stated commendations for the recent renovations on the property, however he disputed where the actual setback began and stated that it does not begin at the roadside but in the middle of his yard. Chairman Cozean asked Zoning Enforcement Officer John De Laura to determine the property line question on the plans presented by Mr. Shields. Mr. De Laura stated, after examining the plans being presented, that until other evidence contrary to this evidence is submitted, the setback locations stand as presented; the evidence submitted is an A2 survey completed by a licensed surveyor, and it is acceptable as evidence for the application.

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

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

IN FAVOR: Chairman Cozean and Commissioners Kaminsky, Squitterio, Ned Moore, and William Piggott.

OPPOSED: None.

ABSTAINED: None.

During deliberations, Commissioner Kaminsky stated that he did not want to create a precedent in approving a variance for a swimming pool, since the board has not done so in the past. But Chairman Cozean reminded the board that each application has to be heard on its own merits, not on applications that have come before it. Commissioner Kaminsky stated that the attorney representing the property owner did not provide case law for approving a variance for a swimming pool; therefore there is no hardship. Commissioner Squitterio stated that she also did not see a legal hardship. Commissioner Moore stated that he sees the legal hardship in the fact that there are two front yards and no other place to put the swimming pool; if there were not two

front yards, he would not approve the variance. Chairman Cozean asked if not allowing the swimming pool is preventing the homeowner from a reasonable use of his property, and Commissioner Moore stated in the affirmative.

**Commissioner Moore made the motion to approve the application for the variance, with the hardship being the fact that the property has two front yards; it was seconded by Commissioner Piggott, and denied.**

Vote to approve the variance failed, 2-3-0.

IN FAVOR: Commissioners Moore and Piggott.

OPPOSED: Chairman Cozean and Commissioners Kaminsky and Squitterio.

ABSTAINED: None.

**8193+CSP. 16 Gull Rock Road.** Map 16, Lot 65. R-5 District. Owners: John C. & Joanne L. Sumberg; Applicant: Joanne Sumberg. Request to vary Sec.3.9a) of the Madison Zoning Regulations to allow an average height of 32.5 ft. where 30 ft. is required to permit construction of a Distinct Portion.

Professional Engineer and Land Surveyor Thomas A. Stevens introduced Attorney J. Michael Sulzbach, representing property owners John C. and Joanne L. Sumberg. Three exhibits were presented: **EXHIBIT 1**, Federal Emergency Management Agency (FEMA) NFIP Rate Maps; **EXHIBIT 2**, Coastal Site Plan and Septic Repair Plan, Thomas A. Stevens & Associates, Inc.; and **EXHIBIT 3**, photograph of the south elevation of 16 Gull Rock Road. Mr. Sulzbach stated that plans are to add to the height of the building, to meet FEMA requirements; there are two dormers—a smaller one that could be eliminated, and a larger one that would not be feasible to eliminate. The application would not have had to come before the Zoning Board of Appeals for a variance, had it not been for the definition found in Madison's Planning and Zoning Regulations that caused the average height of the building to be more than what the regulations allow; it is the larger dormer, which the property owner does not wish to remove, that creates the increase in average height, in terms of 2.5 feet, according to Mr. Sulzbach. If there were a smaller dormer, width wise, the average height would be smaller, thus no longer necessitating a variance, according to Mr. Sulzbach. A question arose as to the existence of a building permit.

Zoning Enforcement Officer John De Laura stated that the building permit, as submitted, allows the work to be done, as by right. However, when the two dormers are added up into the height, the average height goes beyond the 50 percent allowable rule, according to Mr. De Laura; if the dormer size is reduced, the percent, for instance, could go down to 49 percent, and the structure complies with zoning regulations.

Chairman Cozean stated that, as he understands it, the height of the building is going beyond the amount being required by FEMA. Mr. Sulzbach stated that the real issue is that the structure is going a little higher than 2.5 feet, but the hardship is that the property owner did not want to abide by current FEMA requirements, when it is known that the sea level is rising, and that FEMA has been raising projected increases by increments of two feet, when the agency is creating its maps.

Mr. Stevens stated that when the project first began, the desire was to raise the house four feet, creating a height of 34.8 feet, which would be allowed, since the allowable height is 37.50 feet. But when the average of the main roof was configured, with the two dormers, it was realized that

the average of the main roof became more than the 50 percent allowed by zoning regulations, according to Mr. Stevens. This request for the 2.5-foot variance covers both dormers, according to Mr. Stevens. The applicant is asking to raise the structure four feet, because FEMA flood studies, dated 2010, show the elevation at 10 feet, and in 2013, FEMA increased it to 12 feet; FEMA recommends adding two to three feet in height to a structure, to comply, and while the requirement is 1.3 feet, Mr. Stevens stated that they did not think it was reasonable, given what the sea level is doing. In addition, the height of the crawl space was part of the reason for moving beyond 10.8 feet to 14.8 feet, according to Mr. Stevens. The house was never in compliance with its dormer, and the additional four feet does not raise the aspect of the whole house, Mr. Stevens stated.

Property Owner Joanne L. Sumberg stated that before they bought the house as a second residence from their residence in Florida, they had discussed raising its height to prevent flooding brought on by hurricanes, major storms, and the sea level rise. The house was built in 1900, is 116 years old, and is historic; they do not want to reduce the size of the major dormer, because they are trying to keep the structure close to the way it was originally created, according to Mrs. Sumberg.

Chairman Cozean asked for comments in favor of the application; there were none, and he then asked if anyone wanted to speak opposition to the application.

David Beecher, of 11 Park Ave., stated that he lives behind 16 Gull Rock Road and has 64 feet of space boarding the Gull Rock Road parcel. He stated that he could care less about the dormer, but he is very concerned about the fact that the house, and the entire lot, is going to be raised a lot higher than what is required. Mr. Beecher stated that he also has concerns about water run off and safety. Billy Budd, of 20 Gull Rock Road, stated that the Sumbergs were aware they were going above by 2.5 feet, but the major dormer is not historical, since it is not original to the house. In addition, Mr. Budd stated that he does not know how there is a hardship being created by anything other than the fact that the property owners want the structure to be higher. There is no hardship, Mr. Budd stated. Lillian Dayton, of 14 Gull Rock Road, stated that she is against the application because the building is very high and it will look down into her privacy; in addition, she is worried about water run off.

Chairman Cozean explained that given the building permit the applicants have, they can go to that height; the question is whether there is a hardship. In terms of water runoff, Mr. De Laura stated that planning and zoning regulations do not now address the issue of water runoff or property drainage, however it is hoped property owners would have plans properly engineered to prevent water runoff, for instance, by installing dry wells, in which the water runoff could be contained or properly mitigated; engineering firms are able to handle that correctly. Mr. Sulzbach stated that the engineer has addressed water runoff in the plans being presented. Mr. Stevens stated that the proposed grading of the land on the site is shown as two feet; a portion of the crawl space will be at grade, and no one is proposing changes in any of the grades of the property, nor is there any intention to back up water on anyone; one inch of rain will be stored on site.

Chairman Cozean stated that the property owners can go up to the height they want, and they do not need a variance to do that; it is the average roof size, with the dormer being figured in, that is creating the request for the variance. Mr. Sulzbach stated that the pending increasing projections of FEMA are creating the hardship.

Commissioners Moore and Squitterio stated that they were struggling to find a hardship, since it seemed to be self-imposed. Chairman Cozean stated it would be up to the Planning and Zoning Commission to change the regulations about the 50 percent rule, and he does not believe the Zoning Board of Appeals should be changing that legislation.

**Commissioner Kenneth 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 and Commissioners Kaminsky, Squitterio, Moore, and Piggott.

OPPOSED: None.

ABSTAINED: None.

Chairman Cozean stated he did not hear anyone say they believe there is a hardship.

**Chairman Cozean made the motion to deny the application, on the grounds that there is not a hardship to raise the building beyond what FEMA requires; it was seconded by Commissioner Kaminsky, and denied unanimously.**

Vote to deny the variance passed unanimously, 5-0-0.

IN FAVOR: Chairman Cozean and Commissioners Moore, Squitterio, Kaminsky, and Piggott.

OPPOSED: None.

ABSTAINED: None.

**Approval of minutes:** August 2, 2016

**Commissioner Kaminsky made the motion to approve the Aug. 2, 2016 minutes as submitted; it was seconded by Commissioner Moore and unanimously approved.**

Vote to approve the Aug. 2, 2016 minutes passed unanimously, 5-0-0.

IN FAVOR: Chairman Cozean and Commissioners Moore, Squitterio, Kaminsky, and Piggott.

OPPOSED: None.

ABSTAINED: None.

## **Adjournment**

**Chairman Cozean made the motion to adjourn at 8:41 p.m.; it was seconded by Commissioner Kaminsky and unanimously approved.**

Vote to adjourn at 8:41 p.m. passed unanimously, 5-0-0.

IN FAVOR: Chairman Cozean and Commissioners Moore, Squitterio, Kaminsky, and Piggott.

OPPOSED: None.

ABSTAINED: None.

Respectfully submitted,  
Marlene H. Kennedy  
Clerk