

Subject to Approval

**ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
Sept. 8, 2020**

The public hearing and regular meeting of the Madison Zoning Board of Appeals was conducted Tuesday, Sept. 8, 2020, at 7 p.m. by way of an online Zoom Webinar, with public participation available through a Zoom Webinar link and password, as well as through a telephone call in number, with a Zoom Webinar identification number, all publicly posted.

MEMBERS PRESENT

Chairman Ned Moore and Commissioners Jason Brown, Richard Gilbert, and William Piggott.

MEMBERS ABSENT

Vice Chairman Thomas Kelty.

ALTERNATES PRESENT

Dennis Crowe and Catherine Ferrante.

OTHERS PRESENT

Zoning Enforcement Officer John De Laura; Director of Planning and Economic Development David Anderson. The meeting was recorded by Zoom.

Chairman Ned Moore called the public hearing and regular meeting of the Madison Zoning Board of Appeals to order at approximately 7 p.m., and he reviewed the procedures, including that by state statute, four votes are needed to approve applications, and a simple majority is not sufficient. Chairman Moore seated Alternate Commissioner Catherine Ferrante for absent Vice Chairman Thomas Kelty. The legal notice, as published, was read into the record. Agenda items were taken in the order prescribed in the minutes.

8233+CSP. 67 and 69 Middle Beach Road West. Map 15, Lots 26 & 27. R-4 District. Owner/Applicant: 67 Middle Beach Road West LLC. Request to vary Secs. 2.17 and 3.8(b) of the Madison Zoning Regulations to permit 3,320.10 lot coverage where 2,680 sq. ft. is allowed to permit construction of single-family home within the 50 ft. critical coastal resources.

Attorney Christopher McKeon, representing applicants Jon and Laurie Gavin, stated that also present is Michael Harkin, site engineer, and Russell Campaigne, project architect. Mr. McKeon described the application as a solid project that eliminates a number of non conformities and includes variances which reduce the nonconformities even further. Architect Russell Campaigne stated that when the adjacent site of 67 Middle Beach Road West became available, it was thought that if 67 Middle Beach Road West could be combined with 69 Middle Beach Road West, the merged properties could assist in bringing 69 Middle Beach Road West into conformance, by placing the new house in the center. All of the existing structures on the merged properties will be demolished, and plans are to construct a new house, moving it back, closer to the road, and farther from the sea wall, while centering it on the property site. Mr. Campaigne showed an illustration of all the non conformities. Total lot coverage is being reduced by 2,000 square feet, the house is in a V-E flood zone, so it has to be raised to meet Federal Emergency Management Agency (FEMA) requirements, and it will meet height

restrictions, according to Mr. Campaigne. There is no ability to use a basement or attic for living space, and plans conform to zoning regulations for the living area of the house, according to Mr. Campaigne. The existing septic system does not need to be replaced, and Mr. Campaigne stated that quite a bit has been done to reduce the non conformities. Six positive letters about the project were received from direct abutters to the property, which speaks to what the neighborhood supports, and the project is in line with Madison's Plan of Conservation and Development, Mr. Campaigne stated. Mr. McKeon stated that there is case law that supports granting variances in situations where there is no legal hardship, but non conformities are reduced. Combining the two lots results in the loss of one non conforming lot, according to Mr. McKeon. A 2018 case involving the Old Lyme Zoning Board of Appeals resulted in a clear recognition that the reduction of non conformities is enough to grant variances, without having to show a legal hardship, according to Mr. McKeon. This application eliminates non conformities and requests variances of two areas that are worse in non conformities than what is being sought, according to Mr. McKeon. The new house is going to be FEMA compliant, which is not the case on the existing structure, according to Mr. McKeon. There are multiple layers of rationale and justification for granting approval, and there is more than sufficient justification to do so, without having to show a legal hardship, according to Mr. McKeon. There are two avenues, as shown in case law: establish a legal hardship or reduce the non conformities without having to show a legal hardship, Mr. McKeon stated. Commissioner William Piggott stated that the application states a financial hardship, which is not a legal hardship. Mr. McKeon stated that the avenue that is being pursued is not the legal hardship—Section 6 of the application addresses all of the reductions of the non conformities, and Section 8 of the application also addresses the reduction of all the non conformities. Statistics for the non conformities are being taken from the existing buildings on the merged lot, according to Mr. Campaigne. Commissioner Piggott stated that there is an increase of 680 square feet, and that, to him, seems a bit excessive; that is a 24 percent increase over what is allotted. Further discussion centered on mathematically determining existing square footage of lots and buildings, compared to proposed square footage of lots and buildings, with the result being that the percent size of the reduction of non conformities could be looked at in two different ways. In looking at a chart included in the application, Mr. Campaigne stated that the chart is not linear: For 67 Middle Beach Road West, 1,648 square feet of lot coverage is allowed, and for 69 Middle Beach Road West, 1,432 square feet of lot coverage is allowed, and that totals 3,080 square feet, but the applicants are restricted to 2,680 square feet, resulting in 400 square feet being given up by the applicants. The total of the two lots is 5,800 square feet, but only 4,800 square feet is allowed, resulting in 1,000 square feet less than what is allowed, according to Mr. Campaigne. Commissioner Jason Brown asked Director of Planning and Economic Development David Anderson if he could speak to whether the application supports the Madison Plan of Conservation and Development and town zoning regulations. Mr. Anderson stated that both the Madison Plan of Conservation and Development and coastal resiliency are trying to bring structures in line with FEMA regulations, and the reduction of non conformities is a reflection of that. Mr. Campaigne showed **EXHIBIT 1**, a color photo of the house at 67 Middle Beach Road West, which sits close to the sea wall, and he stated that the new house will sit 37 feet back from where the current structure exists. Commissioner Brown questioned the pool, and Zoning Enforcement Officer John De Laura stated that the pool and uncovered decks are not buildings; therefore they are not a part of the application. Mr. Anderson stated that there are seven attendees present, and he invited them to raise their hands to ask questions or to speak in favor of or in opposition to the application. Cecilia Pfister, of 73 Middle Beach Road West, stated that she was not consulted on this project,

but she thinks that this building is too oversized for the neighborhood and she asked that it not be allowed to be overbuilt, as in the current plans, unless the plan of the town is to replace all older smaller homes with ones that are twice the size.

Commissioner Brown made the motion to close the public portion of the public hearing; it was seconded by Commissioner Piggott and unanimously approved.

Vote to close the public portion of the public hearing passed 5-0-0.

IN FAVOR: Chairman Moore and Commissioners Brown, Piggott, Gilbert, and Ferrante.

OPPOSED: None.

ABSTAINED: None.

The Zoning Board of Appeals entered deliberations. Chairman Moore stated that he is very impressed with the project, because the application is trying to comply with FEMA and make a livable house, while reducing the non conformities on both lots. There are very large houses directly across and on the corners of the street, he stated, adding that there are a number of houses on the street that are comparable in size. Therefore, Chairman Moore stated that he would support the application as presented, with the reduction of the non conformities and the fact that the new house will be differently situated on the merged lot. Commissioner Brown stated that the argument being used that the non conformities are being reduced is semantics. There are a number of instances where there have been tear downs and new constructions that are FEMA compliant, but Commissioner Brown stated that he feels this is a reach; the applicants are trying to maximize their square footage, and 4,800 square feet is the maximum allowed. The Zoning Board of Appeals could be looking at a house with plans for 3,900 square feet, and in that, there would be no need for a variance, according to Commissioner Brown. Deliberations continued with additional mathematical configurations being presented on the square footage of existing and proposed lot sizes and the square footage of existing and proposed structures. Chairman Moore stated that he believes the Gavins have acquired two lots, and they are going to make significant improvements on the lot, meet FEMA requirements, reduce the number of non conformities, and the property will be consistent with the other properties on the shoreline. Mr. Anderson showed the commissioners the section in the Madison Plan of Conservation and Development which seeks to prevent or minimize losses in vulnerable areas, and he mentioned a hypothetical situation in which the houses on both lots remain non conforming and do not meet FEMA requirements. Minimizing the losses and vulnerabilities is better served by one house with one septic system than two houses with two septic systems, according to Mr. Anderson. Commissioner Brown sought clarification on direct abutters who may disagree with the application, and Mr. Anderson asked Mr. Campaigne to show, without comment, **EXHIBIT 2**, a map of the application properties, on which a dotted red circle was drawn around adjacent property owners. Commissioner Brown stated that he thinks he has justified himself that he can vote in favor of this—combining the lots decreases non conformities by one percent, and even though the plans result in being several percentages over on 69 Middle Beach Road West, the application is in conformance with Madison’s Plan of Conservation and Development. There is a total of 20 percent non conformity in terms of lot coverage, but when the lots are merged, that increases to 24 percent, according to Commissioner Brown. Being in compliance with FEMA is good, in the absence of a legal hardship, according to Commissioner Richard Gilbert. Commissioner Brown stated that he is going to assume that if the commissioners do not grant the variance, the project is not going to move forward, and two lots will remain. In that case, FEMA becomes more compelling, according to Commissioner Brown.

Chairman Moore made the motion to approve the application as submitted, based on the reduction of the non conformities on the properties, as well as bringing the property in compliance with FEMA requirements for new construction. It was seconded by Commissioner Piggott and approved.

Vote to approve the application as submitted passed 4-1-0.

IN FAVOR: Chairman Moore and Commissioners Brown, Gilbert, and Piggott.

OPPOSED: Commissioner Ferrante.

ABSTAINED: None.

Professional Engineer Michael Harkin presented the Coastal Site Plan and the application for the Coastal Site Plan Review for 67 and 69 Middle Beach Road West. He stated that plans are to combine two parcels, knock down structures on 67 and 69 Middle Beach Road West, build one house, and install a salt water pool; the sea wall is not included in this application. Pervious materials will be used on the driveway, two on-site drainage areas will be centrally located, and in the front, two underground detention basins will collect roof water runoff, according to Mr. Harkin. This is a fairly easy site plan, wherein one structure will be built and be FEMA compliant; in addition, the house is being moved away from the coastal resource and away from the sea wall, according to Mr. Harkin. Utilities are underground, he stated. Commissioner Brown asked about the fact that the state Department of Energy and Environmental Protection (DEEP) has not submitted a letter regarding this application. Zoning Enforcement Officer John De Laura stated that DEEP is understaffed, and DEEP may not take this application too seriously as an impact to coastal resources. This particular site plan review is consistent with the goals and policies of the Coastal Management Act, Mr. De Laura stated.

Commissioner Brown made the motion to approve the Coastal Site Plan, finding it consistent with the goals and policies of the Coastal Management Act; it was seconded by Commissioner Piggott and unanimously approved.

Vote to approve the 67 and 69 Middle Beach Road West Coastal Site Plan passed, 5-0-0.

IN FAVOR: Chairman Moore and Commissioners Brown, Piggott, Gilbert, and Ferrante.

OPPOSED: None.

ABSTAINED: None.

Approval of Minutes: Aug. 11, 2020

Commissioner Brown made the motion to approve the Aug. 11, 2020 minutes as amended, changing the sentence in the very first paragraph of page 1 to read, *Chairman Moore seated Alternate Commissioner Dennis Crowe for absent Commissioner Richard Gilbert*; it was seconded by Chairman Moore and approved.

Vote to approve the Aug. 11, 2020 minutes passed 4-0-1.

IN FAVOR: Chairman Moore and Commissioners Brown, Gilbert, and Piggott.

OPPOSED: None.

ABSTAINED: Commissioner Ferrante.

Adjournment

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

Vote to adjourn at 9 p.m. passed 5-0-0.

IN FAVOR: Chairman Moore and Commissioners Brown, Piggott, Gilbert, and Ferrante.

OPPOSED: None.

ABSTAINED: None.

Respectfully submitted,
Marlene H. Kennedy
Clerk