

Subject to Approval

**ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
Nov. 9, 2021**

The Regular Meeting of the Madison Zoning Board of Appeals was conducted Tuesday, Nov. 9, 2021, 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 William Piggott, Richard Gilbert, Jason Brown, and Dennis Crowe.

MEMBERS ABSENT

None.

ALTERNATES PRESENT

Steve Bischoff and Dylan Stella.

OTHERS PRESENT

Zoning Enforcement Officer John De Laura; Town Planner Erin Mannix; Maria Pettola, land use staff.

Chairman Ned Moore called the meeting to order at 7:02 p.m. He reviewed the procedures, including that 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.

APPLICATIONS

8252. 62 New Road. Map 50, Lot 16. R-2 District. Owner/Applicant: Michael Basler; Appeal of ZEO notice for failure to abide to ZBA condition of approval application 8169 granted July 7, 2015. APPROVAL GRANTED TO RESCHEDULE TO NOVEMBER 9, 2021.

Zoning Enforcement Officer John De Laura encouraged the Zoning Board of Appeals to look at this as brand new, assimilate all the facts presented at this hearing, and make a decision based on these facts. Owner and Applicant Michael Basler stated that in 2015 he applied for a variance to build a garage, and part of the decision was to remove a shed, so he stated that they lifted the shed and moved it to another area on the property. He stated that a shed cannot go in a front yard, and because he has two front yards, putting it in a front yard makes it a nonconforming structure; the shed has probably been on this property for 60 years. Half of the shed was on his neighbor's property, so it was moved to the new location, according to Mr. Basler.

Commissioner Richard Gilbert asked Mr. Basler what does he think is inappropriate about the zoning enforcement officer's cease and desist order? Mr. Basler stated that Connecticut General Statute 8-13a states that when a nonconforming structure has been in a location for more than three years, it is exempt from zoning enforcement. He stated that they removed the shed from its location and placed it on the other side of the house, in 2015, when the garage was built, adding

that he was granted a certificate of occupancy, but unfortunately the architect did not draw in the shed. Chairman Moore stated that a part of the condition of the variance was to remove that shed. Mr. Basler stated that he took remove to mean remove the shed from where it was and replace it elsewhere on the property. Commissioner William Piggott stated that the shed was moved to the front yard, which is the violation. Commissioner Dennis Crowe stated that the original application indicates that it was clear that the shed was on the side, and it was to be removed from its current location. Mr. Basler said the variance said *shed to be removed*—lift up and move it from its current location, not to demolish it. Commissioner Piggott asked whether Mr. Basler perceived this as being in compliance, by moving it, and Mr. Basler answered in the affirmative. Mr. Basler moved the shed and did not consider the zoning rules, when he moved it to the other side of the property, so instead of removing it, he moved it, without considering zoning regulations, according to Commissioner Jason Brown. Mr. Basler stated that the definition of remove is to change the location, position, or station. Chairman Moore stated that remove means take it away. Commissioner Brown, in disagreeing with Mr. Basler’s interpretation of the word remove, read the definition of remove from Webster’s Dictionary, which is the act of moving or taking something away from a place; the act of making something go away, so that it no longer exists. Chairman Moore asked Zoning Enforcement Officer John De Laura to present. Mr. De Laura asked Zoning Assistant Maria Pettola to share the eight exhibits, which included: **EXHIBIT 1**, the May 19, 2015 variance asking for relief on that side yard; **EXHIBIT 2**, the site plans, wherein Mr. De Laura marked in yellow where it says, *shed to be removed*; **EXHIBIT 3**, minutes of the July 7, 2015 Zoning Board of Appeals regular meeting; **EXHIBIT 4**, the Town of Madison Certificate of Decision on the Variance for Application 8169, July 7, 2015, wherein it states that the variance was granted to build the garage and that a nonconforming shed will be removed; **EXHIBIT 5**, a permit to build the garage, which states that it must comply with the variance granted in Application 8169; **EXHIBIT 6**, showing the improvement location survey by a licensed land surveyor—this document was to show the improvements on the site, and therefore, did not show the shed, according to Mr. De Laura, who added that drawing the shed on the plans was not forgotten by the licensed land surveyor; **EXHIBIT 7**, a Town of Madison Certificate of Occupancy, dated Jan. 27, 2018, which Mr. De Laura stated is way beyond the 2015 date when the alleged shed was on the property, adding that the building department can give a certificate of completion when work complies with the variance; and **EXHIBIT 8**, a 2016 Geographic Information System (GIS) aerial photograph with no shed on the property. The intent of the July 7, 2015 Zoning Board of Appeals decision was to trade a nonconforming shed on the property, so he could get the variance to build the garage, according to Mr. De Laura. Commissioner Brown asked Mr. De Laura if, when the Certificate of Occupancy was signed, there was no shed on the property. Mr. De Laura stated that there was no shed on the property in 2016 or in 2018, when he signed off on the approval and the Certificate of Occupancy. The condition to the variance was that the shed will be removed; if the property owner wanted it somewhere else on the site, it would require a permit, which would have to be signed off on, to allow the owner to place the shed in an alternate location, according to Mr. De Laura. Mr. Baskin did not abide by the condition of the approval; it was not compliant with the approval, according to Mr. De Laura, who added that he could return to the town and make a request to put the shed in a compliant location. The commissioners have seen the facts, and Mr. De Laura stated that he is asking them to make a decision based on the facts presented. When Commissioner Crowe asked that the GIS photograph be shown again, Chairman Moore stated that he thinks this is splitting hairs at this point; the zoning variance required that the shed be removed from the property, in order to build the garage. Chairman Moore also stated that he was a member of the Zoning Board of Appeals when this variance was granted, and it required

the removal of the shed. Chairman Moore asked if any member of the public wanted to comment in favor of or opposed to the application, and there were no comments.

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

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

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

OPPOSED: None.

ABSTAINED: None.

During deliberations, Commissioner Crowe stated that he can understand the property owner's interpretation that it must be removed from its nonconforming place to another part of the property, because he cannot be asked to destroy the shed, so if he removed it to a front yard, when he is complying with the variance, is he compliant with the zoning now? The shed happens to be in a nonconforming location, and that is a separate issue, Commissioner Crowe stated. Chairman Moore stated that he does recall that there was a trade-off, so that he could build the garage, adding that he believes some of the materials the property owner was storing in the shed could be stored in the garage. Remove it, not to another location on the lot—it should have just been taken out, Chairman Moore stated. To get the garage, the Zoning Board of Appeals asked the property owner to take that shed off the property, according to Chairman Moore. Commissioner Brown stated that in his vocabulary, he does not exchange the word remove as a synonym for relocate. Mr. De Laura's interpretation of remove is to get it off the property and having the shed on the property is a violation; there is an accessory building in a nonconforming location on the property, Commissioner Brown stated, adding that he would vote to uphold the decision and deny the appeal, based on his interpretation of the word remove. The applicant did not comply with the variance as it was issued, Commissioner Brown stated, and, in addition, the board has the historical perspective of Chairman Moore that the shed was not to remain on the property. Commissioner Gilbert stated that the shed was not there; the certificate of occupancy would not have been issued if the shed were on the property. It is the responsibility of the Zoning Board of Appeals to uphold the enforcement order or deny it, according to Chairman Moore, adding that he recalls that remove means to remove—take it away, if the property owner did not do that, he would not have gotten the garage. Chairman Moore and Commissioner Piggott stated that they would vote to uphold the cease-and-desist order.

Commissioner Gilbert made the motion to go into public session; it was seconded by Commissioner Crowe and unanimously approved.

Vote to go into public session passed, 5-0-0.

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

OPPOSED: None.

ABSTAINED: None.

Commissioner Brown made the motion to deny Application 8252, 62 New Road; it was seconded by Commissioner Crowe and unanimously approved.

Vote to deny the application passed, 5-0-0.

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

OPPOSED: None.

ABSTAINED: None.

Mr. De Laura stated that he will notify the property owner and let him know what his options are.

8253. 51 Hotchkiss Road. Map 18, Lot 40. R-4 District. Owner/Applicant: Peter and Joan Hoffman; Request to vary Section 11.1 of the Madison Zoning Regulations to permit an accessory building in a front yard.

Architect Russell Campaigne, whose clients are Peter and Joan Hoffman, stated that they are seeking relief from Section 11.1, which restricts an accessory building from a front yard; Mr. Campaigne shared the site plan that shows the property and the shape of the land, which bridges between Hotchkiss Road and Webster Point. The front yard on the western side of the property, highlighted in pink, shows that all of that area is considered a front yard, and the front yard on Hotchkiss Road is a normal sized front yard, according to Mr. Campaigne. Despite the size of the Webster Point front yard, an accessory structure is not allowed, and the property owners want to expand the pool area to entertain guests and allow extended stays on the site, according to Mr. Campaigne. Plans are to construct a two-bedroom guest house, with the hardship being the argument of the property being in a unique condition; the guest house would be screened by an already established hedgerow of pines, according to Mr. Campaigne. There are quite a few letters of support that have been received, and there are no negative comments, Mr. Campaigne stated. There is a unique condition, it is an unusual site, the pool activity will be screened, and the application is compliant with all aspects of the zoning regulations and the Federal Emergency Management Agency (FEMA) requirements, according to Mr. Campaigne. Plans showed the pool house, a small outbuilding to store pool equipment, the pool, a patio, and an existing driveway off of Webster Point. The first floor living space contains a bar area; there are two bedrooms and a stair; and the elevations are in keeping with a small home, Mr. Campaigne stated. In general, the plans are in keeping with the neighborhood and similar in scale to the structures nearby, according to Mr. Campaigne. Commissioner Piggott stated that there is a letter from the town of Madison dated July 22, 2021 that states that it is a one-bedroom pool house, and he asked how it got to be two bedrooms; Commissioner Piggott asked if the one bedroom is a mistake in the letter. Mr. Campaigne stated that Professional Engineer Michael Harkin completed the Coastal Area Management (CAM) review, and the application has health department approval for a septic system to accommodate two bedrooms, so they would have to look into why the letter said one bedroom. It appears that the hardship is the property has two front yards and that there is no place to build a similar structure on the site, according to Commissioner Brown. Mr. Campaigne affirmed that statement. But there is a current structure, Commissioner Brown stated. The current structure just houses the pool equipment; the interest is to have the entertainment closer to the pool and to have extended visitors' stays, according to Mr. Campaigne. The accessory building houses the equipment for the pool, Zoning Enforcement Officer John De Laura stated. It is a pre-existing nonconforming structure—take that away, and it does not exist, anymore, Mr. De Laura stated, adding that the applicants are basically saying it

is going to go away, and the variance is just to place an accessory building in a front yard on a site that has two parallel front yards; it is not an intensification of use. The hardship is it is a uniquely shaped lot, and it is not a common situation within the neighborhood; it is the size of the lot and how it is configured that is causing this problem, Mr. Campaigne stated. The proposed structure complies with the front setback and the zoning regulations dealing with height, according to Mr. De Laura. The building is less than 37.5 feet high, and it is fully conforming to the setbacks and floor area regulations, according to Mr. Campaigne.

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

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

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

OPPOSED: None.

ABSTAINED: None.

During board deliberations, Commissioner Crowe stated that this has to be done. Commissioner Brown stated that there is a dual front yard, and they have a very unusual lot; granting a variance is appropriate. Chairman Moore agreed. Commissioner Gilbert agreed, stating that it is a huge accessory, but it does meet all of the setbacks. Commissioner Piggott stated that he is in favor of the variance. Chairman Moore that that it is a massive piece of property; it is surrounded by front yards; the design looks great, and it is in conformance. Commissioner Brown stated that seven letters of support for the project also weigh in, and he does believe it is a hardship. Commissioner Crowe stated that the letters came both from Hotchkiss Road and Webster Point residents.

Chairman Moore made the motion to move out of deliberations; it was seconded by Commissioner Brown and unanimously approved.

Vote to move out of deliberations passed, 5-0-0.

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

OPPOSED: None.

ABSTAINED: None.

Chairman Brown made the motion to grant the variance for 51 Hotchkiss Road, based on the legal hardship that there are two front yards that restrict the building without the variance; it was seconded by Commissioner Piggott and unanimously approved.

Vote to grant the variance for 51 Hotchkiss Road passed, 5-0-0.

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

OPPOSED: None.

ABSTAINED: None.

8254+CSP. 63 Middle Beach Road West. Map 15, Lot 24. R-4 District. Owner/Applicant: Mary Beth Tucker; Request to vary Madison Zoning Regulations Section 3.8 b) to permit Coverage of 1983 sf where 1648 sf is allowed and Floor Area of 3230 sf where 3080 sf is allowed, Section 3.6 d) to permit 6.5' west side yard where 12' is required and 4.6' east side yard

where 12' is required. Also, Section 2.17 to allow 24.1' to steps and 17.4' to new dwelling where 50' is required to a Critical Coastal Resource. All to demolish an existing dwelling and construct new.

Land Use and Environmental Attorney Keith Ainsworth stated that Chuck Mandell and Architect Samuel Gardner were also present, on behalf of the Owner and Applicant Mary Beth Tucker. Approving this variance is not based on the traditional hardship; it is based on a reduction of the nonconformities to meet Federal Emergency Management Agency (FEMA) requirements, which has evolved as acceptable in granting a variance, according to Mr. Ainsworth. All of the lots on Middle Beach Road are pre-existing nonconforming; the lots are so small, that they constrain what can be done to meet FEMA's elevation above base flood elevation, and this house has to be raised up, according to Mr. Ainsworth, who stated that this existing home is an existing legally nonconforming structure. To meet FEMA requirements, rebuilding has to take place in a certain fashion, and Mr. Ainsworth cited case law to support his presentation. The court has ruled that the reduction of the nonconformity is the building, itself, to allow the waterfront structure to replace an existing one, to meet FEMA regulations, according to Mr. Ainsworth, who shared the site plans. The proposed house will greatly reduce the crowding on the east side, by removing the house a little bit from the neighbor, which is now at a distance of one foot, and increasing that to a distance of nine feet away from the neighbor, according to Mr. Ainsworth. In addition, the house is being pulled back from the coastal jurisdiction line, away from the neighbors, and a reduction in the rear setback is beneficial, according to Mr. Ainsworth. The Coastal Area Management (CAM) application was referred to the state Department of Energy and Environmental Protection (DEEP), and a letter was received from DEEP, which Mr. Ainsworth read into the record and included the facts that the application will be compliant with FEMA regulations, a storm water system will be installed, an impervious driveway will become pervious, and greater distance from the mean high-water level will be provided. Mr. Ainsworth stated that the nonconformities are being reduced; all of the abutting property owners have submitted letters of support, one of which he read into the record, adding that there are five letters that say the same thing. Chuck Mandell stated that the existing septic system is being removed and replaced with a new, code compliant system, and the plans abide by the recommendations of the Coastal Resiliency Plan. Architect Samuel Gardner shared images of what is proposed for the house—a two car garage, first level open, a rear covered porch on the first level, with an open upper deck on the second level above the porch, a new set of stairs, and four bedrooms on the second level. The style is a contemporary take on a traditional house, he stated, and he showed the elevations of the house, drawings of the house with two staircases, break away construction, the covered porch to the rear, and ground level break away construction with lattice work, as well. All of this is related to FEMA compliance, Mr. Ainsworth stated; once a structure is raised up, a stairway has to be included; if a house is being raised for FEMA, a variance is not needed, provided the nonconformities on the lot are being reduced. Two reductions are on the east side, Commissioner Piggott stated, so two nonconformities have been reduced. Madison's Planning and Zoning Regulations have a recent addition to Section 2a, wherein if the existing house is raised up to two feet above the minimum current FEMA elevation, there would be a pass on having to obtain all variances, according to Zoning Enforcement Officer John De Laura. This application is consistent with Madison's Plan of Conservation and Development, according to Town Planner Erin Mannix, but she stated that she could not speak as to whether it is consistent with the Coastal Resiliency Plan, which was originally written in 2016. Chairman Moore asked whether there were any questions from the public. Two hands were raised, but only one person spoke: Cecilia Pfister of 73 Middle Beach

Road West, who expressed a concern, in general, about the recent building, replacing small houses with new and larger buildings, adding that the structure does not have to be bigger than what is already there, and this proposed structure is 12 percent larger than the original house. She asked why the houses on either side of 63 Middle Beach Road West should not also be allowed to increase their sizes 12 percent: isn't this why there are zoning regulations, so it doesn't get expanded like this? Zoning Enforcement Officer John De Laura stated that the Coastal Site Plan from DEEP stated that the application is consistent with the goals and policies of the Coastal Area Management Act, and DEEP did not have any objection to its proximity to the coastal resources.

Commissioner Brown made the motion to close the public hearing for deliberations; it was seconded by Commissioner Crowe and unanimously approved.

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

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

OPPOSED: None.

ABSTAINED: None.

During deliberations, Commissioner Piggott stated that he appreciates the effort they made in reducing the nonconformities on the east side and reducing the nonconformity in the Critical Coastal Resource offset; the resident stated that the percentage increase was an increase of 12 percent, but when compared to what is allowed, it is a 20 percent increase to what is allowed. Even though they made a good effort to reduce the two nonconformities, Commissioner Piggott stated that his main concern would be the coverage. Commissioner Crowe stated that he is troubled by that, too, but it is explained in large part by the steps and the landing; on the positive side, making the permeable driveway and the storm water runoff protection are positives, yet that could be done without increasing the size. Commissioner Brown stated that he would agree with that. The current structure is being knocked down, and knocking the current structure down eliminates the ability of taking advantage of the nonconformities; in addition, the nonconformities on the west side are being increased, and Commissioner Brown stated that he is having a really difficult time with the intensifying of the nonconformities; some nonconformities are being reduced, but others are intensifying. There are definitely reductions, and a lot of the square foot increases are due to the stairs and the landing, according to Commissioner Gilbert. The argument is that there are no hardships, and the nonconformities are being reduced; once a house is razed, the claim to nonconformities is being given up, because the structure does not exist anymore, Commissioner Brown stated. A very reasonable structure can be built on this lot, without requiring variances, Commissioner Brown stated. Commissioner Crowe stated that he cannot see the rationale for the variance; they are tearing down an existing house, so all of those nonconformities do not exist. The biggest concern is the lot coverage, because it is a 20 percent increase over what is allowed, according to Commissioner Piggott. Commissioners are looking at varying six different things; that is a lot—six variances to knock down a structure and build anew, according to Commissioner Brown.

Commissioner Brown made the motion to open the meeting; it was seconded by Commissioner Piggott and unanimously approved.

Vote to open the meeting passed, 5-0-0.

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

OPPOSED: None.
ABSTAINED: None.

Commissioner Brown made the motion to deny the variance request for 63 Middle Beach Road West, on the basis that it does not reduce the nonconformities; it was seconded by Commissioner Crowe and unanimously approved.

Vote to deny the variance request for 63 Middle Beach Road West passed, 5-0-0.
IN FAVOR: Chairman Moore and Commissioners Brown, Crowe, Gilbert, and Piggott.
OPPOSED: None.
ABSTAINED: None.

Mr. De Laura stated that an application for 63 Middle Beach Road West could be heard in a month, in two months, or at the next meeting of the board that is available to them.

APPROVAL OF MINUTES: October 12, 2021, Regular Meeting.

Commissioner Crowe made the motion to approve the Oct. 12, 2021 minutes; it was seconded by Commissioner Brown and unanimously approved.

Vote to approve the Oct. 12, 2021 minutes passed, 4-0-1.
IN FAVOR: Commissioners Brown, Crowe, Gilbert, and Piggott.
OPPOSED: None.
ABSTAINED: Chairman Moore.

OTHER MATTERS:

Town Planner Erin Mannix introduced herself to the board, summarized her background and experience as the zoning enforcement officer and inland wetlands officer for the town of Guilford, and stated that there are no applications for the December meeting of the Zoning Board of Appeals, so that meeting is canceled. In addition, statute allows the town to continue Zoom meetings, hybrid meetings, or in person meetings until April 2022, and after discussion, the Zoning Board of Appeals agreed to continue with the Zoom meetings until April 2022.

ADJOURNMENT

The Zoning Board of Appeals meeting adjourned at 9:36 p.m.

Respectfully submitted,
Marlene H. Kennedy
Clerk