The Regular Meeting of the Madison Zoning Board of Appeals was conducted Tuesday, Jan. 11, 2022, 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; Maria Pettola, land use staff.

Chairman Ned Moore called the meeting to order at 7:06 p.m. He first introduced the board; The voting members of the Board are Richard Gilbert, William Piggott, Jason Brown and Dennis Crow. Alternate members: Steve Bischoff and Dylan Stella. Chairman Moore recognized that the board had five members which is a quorum; and four votes are needed to have an approval of an application. He reviewed the procedures, including that by state statute, four votes are needed to approve applications, Chairman Moore stated if anyone would like to withdraw from tonight’s proceedings they can, otherwise anyone who is going to testify to please state their name and address. Agenda items were taken in the order prescribed in the minutes by Maria Pettola.

APPLICATIONS

8255+CSP. 63 Middle Beach Road West. Map 15, Lot 24, R-4 District. Owner/Applicant: Mary Beth Tucker. Request to vary Madison Zoning Regulation Section 3.8 – 1778 square feet coverage where 1648 is allowed, 3230 square feet floor area where 3080 is allowed, Section 3.6(d) 6.5’ west side yard to house and 5.5’ to stairs, also, 7.4’ east yard to house and 11.4’ to Eversource platform all where 12’ feet is required, also Section 2.17, 24.1’ where 50’ is required, 25.9’ to Critical Coastal Resource (steps), 17.4’ where 50’ is required, 32.6’ to Critical Coastal Resource (main structure).

Commissioner Gilbert stated that he would like to be recused as one of the variances within this application deals with Eversource and he is an employee. Chairman Moore then asked Alternate Bischoff to sit in. Chuck Mandel agent for the applicant, Keith Ainsworth attorney representing the Tuckers and Sam Gardner the architect was all present for the application. Mr. Ainsworth began his presentation by stating that most of the members were present in November for a previous application that was similar to this (application) but unsuccessful at that time. He stated
he listened to the comments of the board, and immediately revised the application to make the resulting application more conforming. He further states the result of the revisions is that the footprint of the reconstructed house is the same as the existing footprint, and the coverage on the lot is the same as the existing which exceeds the allowable zone and that's because the house was a preexisting non-conforming use which is an important point since they have a constitutional and legal right to keep their existing non-conforming footprint and raise the house up. There are two bases for the variance; one is the traditional hardship on the east side of the property, the preexisting nonconforming structure is only eight inches from the side yard line – applicant would be unable to repair or paint or maintain their home, which he believes is a legitimate hardship due to existing conditions. The lot itself is not conforming. The structure is nonconforming. He states there are 17 homes on the waterfront for the West; all of 14 of which have been granted some variances. FEMA Regulations and the Coastal Resiliency and the Town of Madison implore people make their home more resilient to storm damages and sea level rises. The second basis for the request is the reduction of nonconformity, a reduction in nonconformity to comply with a health and safety regulation like FEMA which is a legal basis developed through case law. He further alluded to caselaw JML Properties vs. Branford ZBA, July 2020. He states, the Tuckers have kept the same footprint, reduced the coastal setback nonconformity, and moved it further back from the waterfront from the coastal jurisdiction line. They've also upgraded their septic system to modern standards and provided a treatment for the first inches of rainfall, where there's currently no stormwater management existing on the site. There's a reduction of impervious cover of 17% approximate; the major benefit is that the house will meet FEMA regulations which is consistent with the Town of Madison coastal resiliency plan and meets the goals of a CAM act. Also, in the file is an updated DEEP letter from the one filed in November 2021 and letters of support from neighbors - all the adjacent property owners submitted letters of support. On file, are owners of nine properties supporting the application. Attorney Ainsworth briefly read a few of the letters in support. Commissioner Crowe asked if the letters were more recent as the letters that he sees are dated October 19th. Attorney Ainsworth replied that several of the letters are more recent as some were received in the last couple of days. Commissioner Crowe further noted that in the November meeting, there was one person who opposed the application – Pfister. And noticed that she was not included in the letter. Mr. Ainsworth stated that she did not write a letter but spoke in opposition and Mr., Tucker has reached out to her and explained some things of the application. Commissioner Brown noted that Ms. Pfister was in the attendees. Attorney Ainsworth shared his screen and showed the CAM act document which showed the house being more centered so that there's more light, air and physical access around the house, they also moved the house, further back on the lot, away from the coastal jurisdiction line. He further states that even though you're moving the house away from one neighbor and closer to another, the neighbors on both sides are comfortable with the application and both have submitted letters of support. He also showed the letters that were in support of the application. Mr. Ainsworth showed an aerial photograph of the houses he circled that were in support of this application. Commissioner Crowe asked that the aerial photo be entered in the file as record. Seated member Alternate Bischoff asked if Mr. Ainsworth could rehash the case of JML Properties vs. Branford ZBA. Mr. Ainsworth states the JML Properties vs. Branford ZBA appeal that went up, included Pearson's and JML who were two neighbors next to each other, and the Pearson's were building (they actually had two houses on one lot ) and they were expanding their home and elevating so that they could be above the FEMA regulations, they took a house that was very close to the sideline and expanded it both forward back into the other side and they asked for variances to the side setbacks primarily, and as well as to the coverage, somewhat similar to this (similar to this application), and also went up an extra half story on the house, therefore the house increased in square feet. The neighbors took an
appeal and judge Picard rendered a decision, saying that the ZBA was well within its jurisdiction to grant those variances on the basis of an improvement to non-conforming because while they expanded their home, they actually reduced the side setback intrusions by a foot on one side and a foot in the front. They were actually very minor reductions, but the net overall was that they reduced the nonconformity. Mr. Ainsworth stated that in this application they were actually reducing several nonconformities significantly. Alternate Bischoff asked, so basically, they approved it and somebody filed against it and it was overturned. Mr. Ainsworth stated no, it was approved. It was appealed, and the appeal was denied because the court basically said ZBA had the ability to do that. Mr. Ainsworth, further states that there are case laws that supports this application and even though you don't have a standard hardship, you can still gain a variance based on a net reduction in nonconformity. Commissioner Crowe says for the record, he believes that applies when you're changing an existing home, as opposed to tearing one down or rebuilding it. The attorney states that in JML it was an existing home, but they took it down, and then they rebuilt new slab, new walls, ceiling etc. so it's almost an identical case to this one in concept. Commissioner Brown then asked for the case docket number as he was unable to locate the documents. Attorney Ainsworth provided the following: LND CV19 6108011S which was also e-mailed to Maria Pettola for the record. Mr. DeLaura asked if this would be entered as an exhibit, the attorney responded yes. At 7:41 pm Commissioner Moore asked if there was anyone from the public that would like to speak for or against the application. From the public, Maggie Smith – 65 Middle Beach Rd, West is in support of the application and believes that within the next few years, that most shoreline properties will have to address the issue of rising tides and these violent storms which means people will either have to raise up their homes, or rebuild. Josh Carter, 20 Nichols Hill Drive from the public – also in support of the application. Jon Gavin 67,68,69 Middle Beach Rd, West is fully in support of this motion as he also fears that these homes will not last longer as tides are rising and need to be lifted and meet FEMA regulations. Cecilia Pfister – 73 Middle Beach Rd, West had a few questions about what was submitted. First on the zoning table, it states that the existing house has 3,230 square feet and that's the same as the proposed house but the field card for the existing house says it only has 2470, square feet of floor area. So, there's some discrepancy and would like that to be clarified. She also questioned the height of the house being raised because it appears that every house being raised is a full story higher, and would like to know what's the height requirement...how far off are they required to put a new house versus how high up this is going? John DeLaura responded by saying in reference to the field card it gives an idea of what is being looked at, but it's not necessarily going to define the area as we do in the zoning regulations, under coverage and floor area; so many times, there is a discrepancy between the two. He is also not sure of the discrepancy between these two because it has not been analyzed but the broad answer is that there are discrepancies between the field card and calculations that are done and Mr. Gardner plans would be more accurate than the field cards. Commissioner Crowe pointed out that the average building height was listed and the limit is 30 feet, and the proposed is 29.99. He states he is not sure that it will be that precise, but that's it's compliant. And the total building height and the maximum allowed is 37.5 and the proposed is 34.94 so its compliant. Ms. Pfister states that she did not mean height, she asked about the flood level and if it goes from the bottom of the house and not the top and how far it has to be raised up to be FEMA compliant. Chuck Mandel stated that he could answer that question. He states, the area is a VE 14 zone, which is the base flood elevation, and that’s dictated by FEMA. For building code you have a DFE -Design Flood Elevation which is the baseline plus two and lowest horizontal structural member has to be above the design flood elevation to arrive at that elevation. The architect and the applicant did everything possible to shrink the house. Ms. Pfister states she wonders if the house is being raised unnecessarily high. Commissioner Crowe states they are compliant so they can’t be
stopped from doing that. Sam Gardner the architect spoke to confirm what John DeLaura reviewed. He stated the floor area includes other aspects other than living area; it includes porches, covered porches and you compute different factors into the total living area. He states he went through these calculations very carefully with John DeLaura, and compared the existing house to the proposed house. And that's how they were able to confirm that the total floor area is equal. He further states, in terms of the height, they went above the flood level by the two feet as mentioned by Mr. Mandel which is still below the allowable height for a building in this location. Mr. Tucker, the applicant then spoke, he states the reason that they are here tonight is not because they want to change the aesthetics of their neighborhood or build a larger home to maximize their property value. He further states that owning a 110-year-old waterfront home has a lot of drawbacks, on the second day after the closing of the property, a high tide storm put a foot of salt water in the lower level of the house and these conditions are becoming increasingly alarming. FEMA regulations has forced many to raise their homes whether they want to or not. Mr. Tucker emphasized that he has gained the support of dozens of neighbors and respectfully ask the commission to please consider granting permission to build this new or more updated house that is no larger than the existing that will allow them to deal with all of their existing hardships. Commissioner Crowe states one of the variances was to an Eversource box, and also that Mr. DeLaura mentioned that Eversource could install its box below the DFE and wonders if that option has been looked at. Mr. Mandel states Eversource will allow you to put it in below the baseline elevation, but you'll be the last house to get service on the block and you are responsible for replacing the equipment, once it gets destroyed. Being that there we no other questions there was a vote to close the public hearing.

Vote to close the public portion of the hearing passed, 5-0-0.  
IN FAVOR: Chairman Moore and Commissioners Brown, Crowe, William Piggott and Alternate Bischoff  
OPPOSED: None.  
ABSTAINED: None.

During deliberations, Commissioner Crowe stated when the application was discussed back in November it was rejected for purposes that it was really expanding upon the existing house, it wasn't simply a matter of replacing one for one and in this particular case, the rough footage seems to be the same, and the height is meeting and they're balancing the building between the two properties and yes it's technically a situation of providing a variance, where the grandfathered variants no longer exists because the old house is torn down but on the other hand, this is because FEMA is requiring them to raise those, and to their point, the hardship of raising the old house simply would not be feasible to do that and to replace it with a house that's completely compliant, he thinks that the applicant has made an honest effort to do what keeps the neighbors happy and complies with our needs and try to protect their home from the waters. Commissioner Brown states he agrees with Commissioner Crowe but states that there is the matter of the hardship, and he does not believe that not being able to build the size house that you want is a hardship. He further states he really would like to see the case of JML vs. Branford ZBA and to read that decision, to base his decision on the basis of established case law. Mr. DeLaura encouraged the Zoning Board of Appeals to move on to other members as Commissioner Brown reads the case decision. He further states to either hold off for a month and have the town attorney or town council review the case, as the cases are not easy to read and, in his experience, you may find one case to support you, and you can find one case to support somebody else. Commissioner Piggott states he agrees with Commissioner Brown, he notes the applicant is trying to center the new layout better on the property, and are taking advantage of
what they have to work with. However, on the other side, there are still six non-conformities that still exist. Alternate Bischoff believes that the hardship would outweigh those variances and would vote in favor. Chairman Moore states the applicant has done a really terrific job on reentering the property, reducing the nonconformities, but once the building is knocked down, he believes that they will need to start over in a new footprint and that the commission is not supposed to allow them to build outside of the required building constraints because the former house was of a certain size, and that they could shrink the size of the house a little bit to be able to live comfortably. He further states that he has not read the case law that attorney Ainsworth has presented and would like to. He asks if a decision needs to made at the meeting. Commissioner Crowe suggested that the board could defer until next month. Commissioner Brown stated he would rather have a special ZBA meeting with town council to hear their opinion on the case. Mr. DeLaura states that the appropriate thing is to decide this evening based on the application and the input on that application by the experts, or table the hearing until the next regular scheduled meetings and ask for town councils’ interpretation or opinion on it, and then based that opinion on a decision. He further states that the Board has plenty of statutory -65 days, and could put this off until the February 8 meeting. Commissioner Brown states when the Board approves variants or whether they deny a variance there is always a stated reason, and right now he does not have a reason and his reason would be to deny as it violates side yard setbacks. He does notes that what they're doing makes sense, and would just like to ensure that there's a legal basis for the decision. Commissioner Piggott asks if the Board thinks there would be case laws out there that would support the other side to this application and if the Board will be at the same point where they are now. He states his approach would be to make a decision on today’s session, on the facts that are presented. Commissioner Crowe made motion to close session and asked Mr. DeLaura for any last advice. Mr. DeLaura states the Board have the authority to make a decision and one thing that he’s always concerned about is a decision that's going to be subject to appeal, but he has listened to some of the testimonies and it seems like everybody in the neighborhood is not going to appeal this and that has to be weighed.

**Commissioner Brown made the motion to approve the application for the variances to Section 3.8, Section 3.6(d) and Section 2.17, on the basis of reduction on nonconformities. Seconded by Chairman Moore.**
Vote to approve the application passed, 4-1-0.
IN FAVOR: Chairman Moore and Commissioner Brown, Commissioner Crowe, Alternate Bischoff
OPPOSED: Chairman Piggott
ABSTAINED: None.

**Coastal**
Mr. Mandel stated that the application went to DEEP and they spoke favorably and supported this application. It is coastal compliant to FEMA and they have improved the septic system.

**Commissioner Brown made the motion to approve the coastal site plans as it is consistent with the goals and policies of DEEP. Seconded by Commissioner Crow.**
Vote to approve the coastal passed, 5-0-0
IN FAVOR: Chairman Moore, Alternate Bischoff and Commissioners Brown, Crowe and Piggott
OPPOSED: None
ABSTAINED: None.
Commissioner Gilbert was reseated.
8256. 168 Middle Beach Road. Map 17, Lot 73, R-4 District. Owners/Applicants: Gail and Paul Taylor. Request to vary Madison Zoning Regulation Section 2.17 – 25.5’ house to Critical Coast Resource where 50’ is required; Section 25.2.1.2 – 20’ deck to Critical Coast Resource where 25’ is required; Section 3.9 – 33.8’ average height where 30’ is allowed and 39.5’ total height where 37.5 is allowed.

Chris Mckeon, attorney, Chuck Mandel, engineer from Stevens and Associates and John Hagmann, architect was present for the application. Mr. Mckeon began by stating this particular site that the applicants bought, had a legally existing non-conforming home on it and was physically unable to be raised, and had been demolished. He further states, back in March of last year, the town attorney Peter Gelderman addressed the board about the effect of a demolition of a non-conforming structure. And his review of those meeting minutes indicates that there was an amendment to separate the statutes, which says that if somebody demolishes a legally existing non-conforming structure that the demolition of it does not constitutes as abandoned…it's not evidence of an abandonment of the right to continue that use. He further states that the Taylor's have demolish the home, knowing that they have the absolute right under our law to reconstruct that non-conforming home in exactly the same footprint and they have the ability to reconstruct it, and the obligation to comply with FEMA and raise the reconstructed home to an appropriate level. Mr. McKeon believes that the law allows his clients to reconstruct the home that was demolished in the exact spot, and in the exact replica of that home, but also allows them to raise the home and be FEMA compliant under section 2A 1.5. He notes, one front setback nonconformity is going to be eliminated; rear and side yard setback nonconformity will be eliminated and that there are two critical coastal resources setback nonconformity as well. He states the new home will meet FEMA guidelines, have a new septic system, be energy efficient and will have all of the benefits of new construction with better efficiency HVAC systems. So, with the two height variances that are being requested, the home can be raised to two feet higher per FEMA. He notes, while they are requesting height variances for the proposed reconstruction, the variances that are being suggested is the functional equivalent of a reduction in nonconformity as the height. Mr. McKeon states that he recognizes that there are Superior Court cases that recognized this reduction or elimination of nonconformity as a basis for the board to exercise its discretion and enable the board to grant a variance in order to end up with a proposed project that is better, more conforming less offensive in terms of violating the existing regulations than what is already there or could be rebuilt. He further referred to Mayer Wittman Vs. Zoning Board of Appeals of Stamford law case – this case states that a reduction or elimination and nonconformities can be an independent basis for granting a variance. And in that case, in particular, additional new nonconformities were set forth in the mayor Wittman case. Mr. McKeon also quoted page 20 of the Madison Coastal Resiliency Plan - assisting homeowners with elevating their residencies should be the continuing focus of the town. The Town of Madison should enact a suite of regulatory changes to support resiliency efforts, including making height restrictions flexible in the case of home elevations. Commissioner Gilbert asked if Mr. Mandel or Mr. Hagmann could spend a few minutes discussing the site plans or floor plans for the application and to also show the reductions. The plan was shown on the screen and Mr. Mandel stated that the green outline on the plan shows the house that was demolished - the new house will be totally within the side yard setbacks and further away from the coastal setback. Commissioner Piggott asked that document A-6 – North Elevation be shown on the screen as he had a question in regards to the elevation. He states, it looks like the first floor has 10 ft ceilings, the second floor is 9 foot ceilings, and the attic is 11 feet four inches. He asks, in design of the house, could the ceiling heights been reduced and brought the house down
to comply with the average building or maybe redesign the roof line and make that compliant with their required elevations. Architect Hagmann replied that they did their best to shrink the house and every dimension were looked at. Since they are not permitted to run mechanical below the first-floor level, all the mechanicals would have to run above the floor. However, they did reduce the second floor to the attic by one foot, to get heat and air conditioned to the second floor. If they were to reduce the angle on the roof, the attic space could not be used. If the slope were lowered to meet the vertical requirements, they would lose that space and would have to expand the lower two floors of the house to utilize the floor areas permitted, and would end up with a flat roof structure. Chairman Moore asked if there was anyone from the public who would like to speak in favor or against the application to state their name and address. Being that there was no one, Mr. McKeon shared his screen showing an email letter in support for the application which was sent by Bryant Boren – 172 Middle Beach Rd.

Chairman Moore made the motion to close the public portion of the meeting and move into deliberations. Seconded by Commissioner Brown
IN FAVOR: Chairman Moore and Commissioners Brown, Crowe, Gilbert, and Piggott.
OPPOSED: None.
ABSTAINED: None.

During Deliberations, Commissioner Crowe stated that this application was similar to the first and Commissioner Brown agreed, after reviewing the details he states he does not see a reason not to approve the application. Commissioner Gilbert states that even though they're changing – this is a smaller house and it gets rid of all the setback nonconformities, it is further back from the critical resources, it's smaller in coverage and it's smaller in floor area. And in this case the Board is allowed a little discretion to approve this application. Commissioner Piggott states that this application is a little different from the first as they have eliminated six nonconformities and reduce some as well unlike the first property that was approved and has no problem at all with this application and approving it.

Chairman Moore made a motion to close session; seconded by Commissioner Piggott.
IN FAVOR: Chairman Moore and Commissioners Brown, Crowe, Gilbert, and Piggott.
OPPOSED: None.
ABSTAINED: None.

Commissioner Brown made motion to approve the variances to Section 2.17, Section 25.2.1.2; Section 3.9 pursuant to the applicant performing all work as it was presented tonight on basis of reductions on nonconformities.
IN FAVOR: Chairman Moore and Commissioners Brown, Crowe, Gilbert, and Piggott.
OPPOSED: None.
ABSTAINED: None.

Commissioner Brown made motion to approve the CAM on the basis that it is consistent as possible, given the limitations of the site with all applicable policies and standards of the Connecticut Coastal Management Act.
Vote to approve the application passed, 5-0-0.
IN FAVOR: Chairman Moore and Commissioners Brown, Crowe, Gilbert, and Piggott.
OPPOSED: None.
ABSTAINED: None.
8257. 74 Taylor Avenue. Map 24. Lot 164, R-5 District. Owner/Applicant: Albert DeDominics. Request to vary Madison Zoning Regulation Section 11.1 to allow an accessory structure in front yard.

Mr. DeDominics stated he bought the home in August of last year and would like to install a pergola an existing deck. Commissioner Crowe made note that no one objected this structure or submitted any documents to object.

Being that the public had no questions for the applicant. **Commissioner Gilbert made motion to close public portion of hearing. Seconded by Commissioner Brown**

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

OPPOSED: None.

ABSTAINED: None.

Commissioner Brown states it’s a hardship that Mr., DeDominics has two front lawns. Commissioner Crowe also noted that there’s no treatment of that area as a front yard from the perspective of what is going on in the area – it is fenced and completely separated from the other road. The applicant has a garage and a deck back there, which gives all appearances to being a backyard. while the zoning may stipulate that it's a front yard it hasn't been treated that way and he has no alternative place to put it. Commissioners Gilbert, Piggott and Moore agreed with both Commissioners.

**Commissioner Crowe motion to closed deliberations, seconded by Commissioner Brown**

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

OPPOSED: None.

ABSTAINED: None.

Commissioner Crowe made a motion to approve application 8257. 74 Taylor Avenue. to vary Madison Zoning Regulation Section 11.1 to allow a pergola structure in the front yard as stated. On the basis on the hardship that he has two front yards and no backyard.

**Seconded by Commissioner Gilbert**

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

OPPOSED: None.

ABSTAINED: None.

**APPROVAL OF MINUTES**: November 9, 2021 Regular Meeting.

Commissioner Brown made the motion to approve the Nov. 9, 2021 minutes; it was seconded by Chairman Moore and unanimously approved.

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

OPPOSED: None.

ABSTAINED: None.

**ADJOURNMENT**

The Zoning Board of Appeals meeting adjourned at 10pm

Respectfully submitted,
Racquel Stubbs