

Subject to Approval

**ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
Jan. 12, 2021**

The public hearing and regular meeting of the Madison Zoning Board of Appeals was conducted Tuesday, Jan. 12, 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, Vice Chairman Thomas Kelty and Commissioners Jason Brown, Richard Gilbert, and William Piggott.

MEMBERS ABSENT

None.

ALTERNATES PRESENT

Dennis Crowe.

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. The legal notice, as published, was read into the record. Agenda items were taken in the order prescribed in the minutes.

APPLICATIONS

8236. 127 Island Avenue. Map 16, Lot 22. R-5 District. Owners/Applicants: Jeffrey R. & Leslie Thornbury. Request to vary Secs. 3.6 a&b and 3.8 b of the Madison Zoning Regulations to allow a front yard of 21.7 ft. where 25 ft. is required, front yard to open porch of 11.7 ft. where 20 ft. is required, floor area of 4,060 sq. ft. where 2,680 sq. ft. is allowed, and lot coverage of 1,984 sq. ft. where 1,408 sq. ft. is allowed to permit existing dwelling and shed to be demolished and construct new dwelling.

Attorney Christopher McKeon, representing the applicants Jeffrey R. and Leslie Thornbury, presented the application. The property is a nonconforming lot with an older home, and the owners would like to make it compliant with Federal Emergency Management Agency (FEMA) requirements and address some of the nonconformities that exist, Mr. McKeon stated. Plans provide benefits to the site by reducing nonconformities, allowing the house to be demolished and rebuilt to meet FEMA requirements, according to Mr. McKeon. This is a situation where the variance is based on reductions of nonconformities, rather than a legal hardship. Under Connecticut state law, even in the absence of a true legal hardship, the reduction of nonconformities can allow for the variance to be granted, according to Mr. McKeon. The current

structure is 16.6 feet from the street, and the open porch is now 8.7 feet from the street. In reducing the total lot coverage, being proposed is the construction of a new house that will comply with FEMA and include the installation of a new septic system. In addition, the current structure vastly exceeds the northbound setback, and the house is being moved to reduce that, according to Mr. McKeon. Plans are to move the new house further south toward the water and reduce the nonconformities of the front yard, according to Mr. McKeon. The repositioning of the house will move the house to the right and back and further away from the house at 125 Island Avenue and also provides the area behind the house for the septic system. Mr. McKeon cited Connecticut court cases that support the application. The new house results in the elimination or reduction of nonconformities, a FEMA compliant structure, and a new septic system, according to Mr. McKeon, who described the plans as being completed in a much more intelligent and zoning compliant way. The applicants devoted much time to reaching out to their neighbors, and there is a lot of support from the neighbors, according to Mr. McKeon. Letters of support have been received for the application. Mr. McKeon stated that the new house preserves the character of the neighborhood and maintains the vistas of Island Avenue to the north and to the east, and it is those types of issues that were considered in laying out this site. The application meets the goals of Madison's Plan of Conservation and Development, which calls for eliminating losses to vulnerable areas; this house is in a vulnerable area, due to the risk of flooding, Mr. McKeon stated. In noting Connecticut court cases that support this application, Mr. McKeon stated that one case ruled that it is acceptable to grant a variance that allows a house to be brought to a level acceptable to FEMA, so that flood insurance and, perhaps, grants could be achieved, to do so. Another case ruled that reconstructing and raising a house to meet FEMA requirements is far more important than anything, Mr. McKeon stated, concluding that the totality of this application is perfectly, legally justifiable. At the conclusion of Mr. McKeon's presentation, the Zoning Board of Appeals asked questions about the application, all of which were addressed, including that: five letters of support are part of the record; the existing house is elevated at 9.8 feet, and the new house will be at a 13-foot elevation; the new house is 2.5 stories, while the existing house is two stories—the half story is by definition an attic; and, according to Zoning Enforcement Officer John De Laura, regarding the current law of allowing the substitution of the reduction or removal of nonconformities, in the absence of a legal hardship, it is really up to the Zoning Board of Appeals to decide that, and in the absence of a legal hardship, the reduction of nonconformities is acceptable under Connecticut case law. Mr. McKeon stated that in a letter he sent to the Zoning Board of Appeals, he presented court cases that support the trend toward accepting the reduction or removal of nonconformities, it is justified without any showing of legal hardship, and it is the trend in which the law has been going since 1988. Chairman Moore asked whether there are any questions from the public, and there were none, so he asked for public comments in favor of the application. Five spoke in favor of the application, indicating they were in complete support of the project, it fits perfectly with the character of the street, there are no downsides to the plans, because they improve the neighborhood, and the new structure will be a great enhancement to the community. There were no public comments opposed to the application, and Chairman Moore moved the Zoning Board of Appeals into deliberations.

Commissioner Jason Brown made the motion to close the public hearing; it was seconded by Vice Chairman Thomas Kelty and unanimously approved.

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

IN FAVOR: Chairman Moore, Vice Chairman Kelty, and Commissioners Brown, Richard

Gilbert, and William Piggott.

OPPOSED: None.

ABSTAINED: None.

Chairman Moore stated that he likes the application, but the concern is that there is no legal hardship, and the Zoning Board of Appeals is supposed to use that as a basis. However, if that is the trend in case law, that will factor into the deliberations, Chairman Moore stated. Vice Chairman Kelty stated that the way the project has been designed takes away any concerns he had; it is improving the neighborhood, and, furthermore, a hardship can be that an applicant is being prevented from reasonable use of the property. Commissioner Gilbert stated that he thinks it is a nice design, and it is admirable that the house is being moved away from the neighbors, however, the house is being demolished. Commissioner Brown stated that the house is being torn down, but the keeping of the guest house maintains a nonconformance; the new structure is going to make the front and side yard setbacks more consistent, and it is a beautiful design. Commissioner Brown stated that he needs to reconcile knocking down a building and building a nonconforming structure—from the street, it is all going to look conforming, so Commissioner Brown stated that he needs to think about this more. Commissioner Piggott indicated that he has the same concerns as Commissioners Brown and Gilbert, in that the new structure is starting out from scratch, and with a new building, the effort should be to get as close to the zoning statutes as possible. Commissioner Brown stated that he is leaning toward approving, for no reason other than that the new structure results in a decrease in variances, however, when a building is knocked down, there is no decreasing variances; they are asking to build a nonconforming structure. It should be done with as few nonconformities as possible, Chairman Moore stated. Director of Planning and Economic Development David Anderson stated that the attorney has given the commissioners good legal support to approve this application, and the commission does have the alternative to continue the hearing, so it could seek a legal opinion from the town attorney.

Commissioner Brown made the motion to approve the application, based on the reduction of the overall nonconformities as compared to the existing conditions, the application is in accordance with the Madison Plan of Conservation and Development, and it meets the requirements of FEMA; it was seconded by Vice Chairman Kelty and approved.

Vote to approve passed, 4-1-0.

IN FAVOR: Chairman Moore, Vice Chairman Kelty, and Commissioners Brown and Gilbert.

OPPOSED: Commissioner Piggott.

ABSTAINED: None.

ELECTION OF OFFICERS

Commissioner Brown made the motion to continue the chairmanship of the Zoning Board of Appeals with Chairman Ned Moore and the vice chairmanship of the Zoning Board of Appeals with Vice Chairman Thomas Kelty; it was seconded by Commissioner Gilbert and unanimously approved.

Vote to continue the chairmanship and vice chairmanship of the Zoning Board of Appeals, with Chairman Ned Moore and Vice Chairman Thomas Kelty, passed, 5-0-0.

IN FAVOR: Chairman Moore, Vice Chairman Kelty, and Commissioners Brown, Gilbert, and

Piggott.

OPPOSED: None.

ABSTAINED: None.

2021 SCHEDULE OF MEETINGS

Alternate Commissioner Dennis Crowe made the motion to approve the 2021 schedule of meetings; it was seconded by Commissioner Brown and unanimously approved.

Vote to approve the 2021 schedule of meetings passed, 6-0-0.

IN FAVOR: Chairman Moore, Vice Chairman Kelty, Commissioners Brown, Gilbert, Piggott, and Alternate Commissioner Crowe.

OPPOSED: None.

ABSTAINED: None.

APPROVAL OF MINUTES Aug. 11, 2020 Dec. 8, 2020

August 11, 2020:

Commissioner Brown made the motion to approve the Aug. 11, 2020 minutes with the amendment that Alternate Commissioner Dennis Crowe was seated for absent Commissioner Richard Gilbert and *not for* Alternate Commissioner Dennis Crowe, as it was incorrectly written. The motion was seconded by Chairman Moore and unanimously approved.

Vote to approve the Aug. 11, 2020 minutes, as amended, passed, 5-0-0.

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

OPPOSED: None.

ABSTAINED: None.

December 8, 2020:

Commissioner Gilbert made the motion to approve the Dec. 8, 2020 minutes, as submitted; it was seconded by Vice Chairman Kelty and unanimously approved.

Vote to approve the Dec. 8, 2020 minutes, as submitted, passed, 5-0-0.

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

OPPOSED: None.

ABSTAINED: None.

Before the meeting adjourned, Commissioner Gilbert asked permission to ask a question about a court case that ruled that someone who demolishes a structure loses the right to claim a reduction in variances. Both Zoning Enforcement Officer John De Laura and Director of Planning and Economic Development David Anderson addressed the question. Mr. De Laura stated that he would provide website links to educational programs devoted to zoning issues and provide

information on classes that would be available to the Zoning Board of Appeals. Mr. Anderson and Mr. De Laura supported the idea of having the town's attorney attend a Zoning Board of Appeals meeting to address legal questions.

ADJOURNMENT

Commissioner Brown made the motion to adjourn at 8:45 p.m.; it was seconded by Commissioner Piggott and unanimously approved.

Vote to adjourn at 8:45 p.m. passed, 5-0-0.

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

OPPOSED: None.

ABSTAINED: None.

Respectfully submitted,
Marlene H. Kennedy
Clerk