



**TOWN OF MADISON  
ZONING BOARD OF ADJUSTMENT  
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**ZBA MINUTES  
January 9, 2024**

**ATTENDANCE:** Sharon Schilling, Acting Chairman, George Rau and Doug McAllister

**EXCUSED:** Drew Gentile, Chairman, Jake Martin, Vice Chairman, Bill Dempster, Alternate, Marc Ohlson, Alternate

**OTHERS PRESENT:** Madison TV, Amanda Hayford, Kate Young, Land Use Boards Administrator, Bill Dempster

**CALL TO ORDER:** Schilling, Acting Chairman, called the meeting to order at 5:00 pm.

**ELEVATION OF ALTERNATES:** There was no elevation of alternates.

**PUBLIC MEETING:**

Schilling stated this is a Petition for Re-hearing for **Case #23-21**, Nicholas Gage.

Young, Land Use Boards Administrator read aloud the Public Meeting Notice as follows:

Notice is hereby given that the Madison Zoning Board of Adjustment will be holding a meeting at the Madison Town Hall Meeting Room **Tuesday, January 9, 2024 at 5:00 P.M.**, to consider the **Request for Re-hearing of Case #23-10 – Appeal from an Administrative Decision** from Nicholas Gage, 10 Barden Place, Map 110, Lot 21 to determine whether or not his circumstance allows for short term rentals relating to a denial from Robert Boyd, Code Enforcement Officer dated June 7, 2023 as to Article 4.2 and 4.4 of the Town of Madison Zoning Ordinance.

**PUBLIC MEETING NOTICE:** Notification of this public meeting was posted on December 14, 2023 in the Town Hall upper and lower levels and Madison and Silver Lake Post Offices and posted in the Conway Daily Sun on December 15, 2023.

Schilling, Acting Chairman introduced herself, as did George Rau and Doug McAllister who all three, sat on the original hearing for this case. Schilling further stated that there are only three members present tonight which while it does constitute a quorum, it does not constitute a full Zoning Board of Adjustment and should Mr. Gage desire to do so with his presence, he may request the Board continue this to another meeting when there is a full board, but seeing how Mr. Gage is not present, the Board will continue with the **Request for Re-hearing.**

**Conflict of Interest:** Schilling polled the Board and there was no conflict of interest.

**Regional Impact:** Schilling stated the Board addressed this previously so they did not need to consider it tonight so there is no Regional Impact.

Schilling asked Young, to read aloud the Appeal from an Administrative Decision dated December 5, 2023 from Mr. Gage as well as the letter dated December 8, 2023 from Christine Perk, Account Manager, Chalmers Insurance Group which was attached to the Appeal.

Schilling also requested that Young read aloud the Notice of Decision dated November 15, 2023 for Case #23-10 which was executed by Drew Gentile, Chairman.

Schilling stated that for the record, this is a public hearing and not a public meeting and no testimony will be heard tonight from the public and that the Board will look at what was presented with the Request for the Appeal and the Rehearing and that the members will debate amongst themselves the merit of the particular request.

Schilling stated the reasons to hear or decide an appeal is if there is an error in any order, requirement, decision or determination and so it is incumbent upon the applicant to indicate in their request for the appeal, those errors or omissions or new evidence that was not considered and not presented previously, that would change the decision that the board previously made.

Rau stated it would be good to take the Selectmen's letter dated March, 2022 and what they said and what the ZBA's job is to enforce it and that the ZBA is not here to be the bad guy and if those people who have sent letters can prove to the ZBA they were renting before March, 2022, then they are fine. Rau stated it is the ZBA's job to evaluate whether they were actually renting prior to that date and looking at Mr. Gage's comments, Rau believes the board should take it section by section as to the validity of his comments. Schilling agreed.

Schilling stated that the original decision in March, 2022 by the town, was that short term rentals were not allowed and any evidence to show the individual was already renting, would be considered by the board and would then be either approved or denied and there has been no decision process with regard to those individuals who predate March, 2022. Schilling further stated that this case is here before the board because it was after March, 2022 that Mr. Gage was going to become a short term rental. Schilling stated she believes the board needs to go through the merits of the facts in Mr. Gage's letter dated December 5, 2023 as opposed to rehashing the previous information.

Schilling referred the board to Mr. Gage's letter dated December 5, 2023 and the first five bullet points as to William A. Dempster, III. Rau stated that Dempster recusing himself was the correct thing to do as he was involved in some of the information gained and later on, when Dempster spoke as a town's person, that was fine. Rau further stated that any information that Dempster gained was information that any town's person can acquire. Schilling stated from what she understands, when someone recuses themselves from any board, they are giving up their right as a member of that board for voting, decision and argument purposes but never gives up their rights as a resident and citizen of this town and so when Dempster recused himself and went and sat in the audience, he became an ordinary citizen with those rights and responsibilities to a voting citizen and he had the right to bring forth and information that was gained by him through public information. Schilling also stated that once an applicant files and an application with the town, it then becomes public record of the town and anyone can request to see the file. Schilling further stated that she believes any information that Dempster gained was through public

information as a citizen. Schilling asked the board if there is any question that Dempster spoke out of turn. The board concurred no. Schilling stated that Mr. Gage is asking that the board disqualify all testimony and evidence from Dempster. McAllister stated that Dempster did not testify to anything when he was a member of the board and only testified as a private citizen. Schilling stated there is no evidence to suggest that the board should disqualify Dempster's testimony. The members were all in agreement.

Schilling referred the board to the sixth bullet point of Mr. Gage's letter dated December 5, 2023 which was Jay Buckley's testimony. McAllister stated that anything in this bullet point is only coming from Mr. Gage's memory. Schilling stated there is no level of corroboration and both Mr. Gage and Mr. Buckley are at conflict with each other and she does not rely on that portion of the evidence they presented. Rau stated that earlier on in the Gage case, the board asked Mr. Gage for some record of renting or any type of receipt and Mr. Gage was unable to produce these documents. Schilling further stated that when Mr. Gage presented his testimony to the board, he indicated that he purchased his property to build a house and move here as a private residence. Schilling further stated that when the project started to exceed the costs that he had determined, that he began to think of renting the property which was after March, 2022. Schilling stated that the board made an effort to find any piece of concrete evidence that could be corroborated and presented to the ZBA that brought forth his intentions to be a short term rental and the board found nothing.

Rau stated in the second bullet (which is actually the seventh), the mortgage document and that the board needed specific intent that prior to the very beginning of building the house, that Mr. Gage had intent to operate it as a short term rental prior to March, 2022.

Schilling stated that as to the seventh and eighth bullet points, she finds no compelling reason for the board to reconsider as there is no evidence in these bullet points that shows there was any intention prior to March, 2022.

Schilling read the ninth bullet to the board as follows **"I find it interesting that William A. Dempster II speaking as a "Resident of the Town" was able to gather so much information ..."** and Mr. Gage asked the question **"Is is a standard for the town to hand over building permits, inspection dates, certificates of compliance records and code enforcement letters to land owners to any "Resident of the Town that walks in and asks?"** Schilling stated yes, that she believes Mr. Dempster politely asked to see the file and like any citizen of this town, was granted the ability to do so. Schilling stated she does not find any additional merit in this bullet point.

McAllister referred to the tenth bullet point wherein Mr. Gage is stating that the burden of proof is on the ZBA which is totally false and that the burden of proof is on Mr. Gage.

McAllister referred to the eleventh bullet point with regard to the letter from Mr. Gage's insurance company. McAllister stated the letter was dated December 8, 2023 and that this has nothing to do with the fact that Mr. Gage was going to do a short term rental prior to March, 2022. Schilling stated if this letter had come from Chalmers back in March, 2022, it would bear more credence than stating something from December 8, 2023. Schilling does not believe this letter holds any additional value in overturning the other discussion and decision the ZBA had previously.

Rau reiterated again that any people who have received letters and can provide concrete evidence they had rented prior to March, 2022 that this is what the ZBA needs.

Schilling reiterated that the letters that went out to short term rental owners was fairly specific to include tax receipts, rental agreements, rental proceeds, tax returns showing additional income, receipts from Airbnb and other rental sites.

Schilling stated there needs to be a motion and the Board vote whether or not to grant or deny Mr. Gage's Appeal of an Administrative Decision.

**Motion** by McAllister, seconded by Rau to deny Mr. Gage's Appeal for Administrative Decision based upon the information Mr. Gage presented because Mr. Gage presented no new evidence to support his claim that he was going rent a short term rental prior to March of 2022. The motion passed **3-0**.

**ADJOURNMENT: Motion** by Rau, seconded by McAllister to adjourn the meeting at 5:30 pm. The motion passed **unanimously**.

The next Public Hearing of the Zoning Board of Adjustment will be held on January 17, 2024 at 6:00 pm at the Madison Elementary School Gymnasium, pending availability.

Respectfully submitted,

Katharine Young  
Land Use Boards Administrator