



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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**ZBA MINUTES
January 17, 2024**

ATTENDANCE: Drew Gentile, Chairman, Doug McAllister, George Rau, Bill Dempster, Alternate, Marc Ohlson, Alternate and Sharon Schilling, Alternate

EXCUSED: Jake Martin, Vice Chairman

OTHERS PRESENT: Madison TV, Kasia Scontsas, Kate Young, Land Use Boards Administrator, and members of the public.

CALL TO ORDER: Gentile called the meeting to order at 6:00 pm. Rau led the reciting of the Pledge of Allegiance.

ELEVATION OF ALTERNATES: There was no elevation of alternates.

PUBLIC HEARING:

PUBLIC MEETING NOTICE: Notification of this public meeting was posted in the Town Hall upper and lower levels and Madison and Silver Lake Post Offices on December 27, 2023 and the Conway Daily Sun on December 29, 2023.

Gentile stated because there are only four board members available tonight who can vote, all of the applicants have requested in writing that the board continue the cases to February and this has to be done formally. Gentile stated that Attorney Johnson has requested that the board consider all of his cases as one request for continuation, which the board did last time. Gentile read aloud the case numbers and names that are associated with the request as follows:

- Case #23-12 for Andrei and Erica Mederios
- Case #23-13 for Chad & Brittany Ardizzoni and Aaron & Tiffany Clymer
- Case #23-14 for Ryan Finn & Grace Harrigan
- Case #23-15 for Keith & Alison Kellerman
- Case #23-16 for Monica Maria McMillian & Laura Thompson
- Case #23-17 for Seamus & Kayla Walsh-O'Brien
- Case #23-18 for Matthew Petti & Jennifer Swift
- Case #23-19 for Brian Burns
- Case #23-20 for Corey, Jade & Cynthia Franklin
- Case #23-22 for Kaylin Deschenes & Kalene Kouch
- Case #23-24 for David and Julie Keiselbach

Motion by Gentile, seconded by McAllister to continue **Case #23-12, Case #23-13, #23-14,**

Case #23-15, Case #23-16, Case #23-17, Case #23-18, Case #23-19, Case #23-20 and Case #23-22 and Case #23-24 as requested by Attorney Johnson to February 21, 2024 at 6:00 pm to be held at the Madison Elementary School Gymnasium, pending availability. The motion passed by a vote of **3-0** with Dempster and Ohlson recusing themselves as they both have a conflict of interest.

Young stated she was going to check the availability to use the gymnasium and Gentile stated to the public, that the board intends to meet at the Madison Elementary School but that there is a contingency that the Board does not actually have it approved so if anyone is planning on coming to that meeting, to please pay attention to the notice.

Dempster brought up a procedural question and asked since Ohlson and himself are recused, can they or can they not vote? Gentile stated no, but he was counting the actual three board members and that is all that is required for a continuation and that Schilling voted as well, which is fine and we have not formally elevated her and it is Gentile's position to raise her to a voting member, but three votes is all that is required to continue.

Gentile stated the next case is **Case #23-23**, Henry P. Moscone who is asking for a Variance and due to his absence in town he is asking to continue his case until June, 19, 2024.

Motion by McAllister, seconded by Rau to continue **Case #23-23** until June 19, 2024 at 6:00 pm at the Madison Town Hall, lower-level Meeting Room. The motion passed by a vote of **3-0**.

Gentile stated the next case is a new **Case #23-25** which is an appeal of administrative decision for Rishi Saxena and Abhishek Sahai and they have requested in writing, to continue their case but they did not include a specific date but asked for the next opportunity when there will have five board members present.

Motion by Gentile, seconded by McAllister to continue **Case #23-25** until February 21, 2024 at 6:00 pm to be held at the Madison Elementary School Gymnasium, pending availability. The motion passed by a vote of **3-0**.

Dempster had a question from the last meeting wherein there were a couple of cases that were continued and there was a discussion about status quo and he asked does this still hold true for the cases that have been continued tonight? Gentile asked that by status quo, do you mean whether the town has the right to fine the STR owners or whether they are in suspension and Gentile asked Dempster if this is what he is talking about? Dempster stated that Officer Boyd had brought this up with some of the letters with the cease and desist. Gentile stated since they are technically in process, they should not be conducting any of the business they were asked to cease and desist, however, the time it takes the board is not counted toward the time limitations. Gentile stated there is risk associated with the fact that if the case does fall out against them, that the town has the option to fine the STR owners within the timeframe. Gentile stated that if STR owners continue to do business, they do that at their own risk and that this board is not an enforcement agency so we have nothing to do with that.

Gentile stated that the board has other business to attend to and everyone is welcome to stay should they wish.

Paul McKenna, 59 Oak Ridge Road, stated he is concerned as this is the fourth time these STR cases have been granted continuances and when is enough, enough and asked if there is a mechanism in place to say “hey you are abusing this” and he asked how does the board determine when to proceed. McKenna stated this is an enormous inconvenience for people traveling a long distance to talk at Selectboard meetings on the STR issues and there does not seem to be a mechanism in place to tell the public that there are continuances. McKenna stated he believes there are procedures and laws within the Zoning Board’s procedures and Attorney Johnson asked for continuances in writing and McKenna believes the attorney is supposed to come before the board and ask for continuances in person. McKenna further stated “**that this guy seems to be abusing the system and everybody else’s time**” and McKenna would like answers to his questions. Gentile stated there are procedures and a meeting is a dynamic process and this board is allowed to discuss this topic only at a public hearing and any decisions to be made of any kind is an open question until this meeting takes place. Gentile further stated that the legal basis is, that the applicant is entitled to due process and this board is a quasi-judicial board and again, the applicant is entitled to due process and by statute, the applicant is allowed to request a five-member board and because of vacations, people having to recuse themselves etc., the board sometimes does not know in advance if there will be a five-member board. Gentile stated that in this case, they could not provide a five-member board on the date fixed and all applicants were informed in writing and they all responded in writing that they would all prefer the option of due process to wait for a five-member board. McKenna asked if something could be posted on the town’s website. Gentile stated that the board cannot continue cases until three members of the board meet to make that decision and Gentile was unsure of how much information is required on the website.

Schilling stated she understood McKenna’s concerns. Schilling further stated the board could have a discussion amongst themselves that when the board gets a request for a continuance that maybe the agenda that is posted on the website it can say next to the case number “the date scheduled to be heard on this agenda has requested a continuance and that this continuance request is pending.” Schilling stated that this board cannot make the determination of a continuance to grant it or not until the continuance is heard during the proper meeting. Schilling does not believe this would do any good to put information on the uploaded agenda or even on the website that a continuance has been requested because there are times that the board will not grant a continuance or know in advance until the person attends the meeting.

McKenna asked the Board if the attorney is supposed to attend the meeting and isn’t this part of the procedure? Gentile stated the board is not hearing any items relevant to the case so if the attorney requests a continuation and we have informed him in writing, then that is ok. Gentile further stated that no one is required to be at the public hearing. McAllister stated he does not see that requirement anywhere in the procedures. McKenna quoted “**RSA 673:33.**” (The RSA is not 673:33 but 674:33 which is the Powers of Zoning Board of Adjustment on Page 420 of the New Hampshire Planning and Land Use Regulation 2023-2024 Edition). Gentile asked McKenna to read the RSA. McKenna stated he did not have it with him. Gentile stated the board can review it but it has not been the practice of the board to require in person and the board is not allowed to subpoena people.

Gentile stated this is the third reading of the procedural change and he stated that this must be read three times in public before it can be officially put into the record and Gentile read it aloud as follows:

“Proposed language:

1. Regular meetings shall be held in the lower-level meeting room of the Madison Town Hall, at 6:00 P.M. on the third Wednesday of each month, when an application is to be heard. No new business will be opened after 9:00 P.M. and the meeting will conclude by 10:00 P.M. Other meetings may be held on the call of the Chairman provided public notice and notice to each member is given in accordance with RSA 91-A:2, II.”

Gentile asked for a Motion to approve the November 15, 2023 minutes with attached exhibits. Gentile stated that the exhibits do not need to be approved as they were submitted to the by the public and/or applicants during the November 15, 2023 meeting.

Gentile stated because these minutes are 23 pages long, he asked the board if they felt they had adequate time to review them and Gentile asked if there are any substantial changes to the minutes? Dempster stated he found some grammatical errors and referred the board to Page 12 of Page 23, first paragraph, seventeenth sentence “and given the green light to proceed” was entered twice. Dempster stated on Page 13 of Page 23, sixth paragraph, second sentence the number “15” needs to be removed.

Gentile asked the board again if they needed more time to review the lengthy minutes and since there was no response, he asked for a motion.

Motion by McAllister, seconded by Schilling to approve the November 15, 2023 minutes as amended with two grammatical changes as noted above. The motion passed by a vote of **5-0**.

ADMINISTRATION: Young stated that the Annual Report for 2023 needs to be prepared as soon as possible. Gentile stated he would work on it and get it to Young.

Dempster stated that at the Planning Board meeting it was mentioned that there was going to be some definition change through a petitioned warrant article on some zoning ordinances and he asked if anyone has seen those changes. Young stated she has not received anything yet. Schilling stated that at last night’s Advisory Budget Committee meeting they asked L. Shackford and the Selectmen if they have received a petitioned warrant article and they stated they have not. Schilling stated they are not due until the beginning of February so people still have time to submit them. Ohlson stated that Planning Board items are too late and there would not be sufficient time to have public hearings and the only thing the Planning Board has is 1.3.B, which is no more expansion of non-conforming use and the only expansion would be if someone came to the Zoning Board of Adjustment and asked for it.

Paul McKenna, 59 Oak Ridge Road, stated that at the November 15, 2023 meeting, there was an issue with **Case #23-10, 10 Barden Place** and McKenna stated the applicant appealed and he did not show up for his appeal at the Madison Library and he was wondering if this board has sent a notification to the Selectmen updating them on that case. Schilling stated this is the Gage case. Gentile stated for the record, Mr. Gage was denied his original application at the November 15, 2023 meeting and he had 30 days to appeal and he made that appeal and since the December meeting was cancelled as there was nothing on the agenda, the ZBA had to have a special meeting in order to answer his request for an appeal within 30 days. The board met and decided there was not sufficient grounds for him to appeal to

the ZBA and if he so chooses, he can go the Housing Board of Appeals or the Superior Court. Gentile stated that McKenna wants to know if the Selectmen were informed and Gentile stated he can assume they were as Kate Young and Linda Shackford sit in the same office and talk to each other. Gentile asked Young if there was an official communication to the Selectmen. Young stated that L. Shackford is aware. McKenna requested that an official notice be given to the Selectmen informing them of what is going on with that case. Gentile stated this information is also in the approved minutes. Schilling asked when do the January 9, 2024 minutes get approved? Young stated those would be approved at the next meeting. McKenna requested that once the minutes are approved, to get them to the Selectmen. McAllister asked McKenna why he wants this done? McKenna stated that in general, things have been moving so slowly with the Selectboard and the Selectboard originally said that the 40 they were going to do first, they were going to do it in an expedient way and it has gone over 2 ½ years and they have not even accomplished that. McKenna stated from what the Selectboard said this was their plan and that it is what they wanted to do and now things are getting backed up and he can personally tell you, that as far as he knows, and he is going to give it to the Selectboard next Tuesday, that there are 11 more STR's since they started with the 40 that we know about. McKenna stated the property beside him had two policemen complaints and a letter from the Chief stating he was going to fine that STR owner. The STR owner just sold the property two weeks ago and he went over and talked to the new owners and welcomed them to Madison and he asked them if they are going to be an STR and they responded yes, they are, and I am a realtor and I have a ton of properties in Rhode Island." Gentile stated this is an issue for the police and the Selectmen and not this board.

McKenna stated he would appreciate it if once the minutes are approved that the Selectmen are made aware of what has happened and this needs to be in writing.

Ohlson suggested that the board give the Selectmen a copy of the Notice of Decision. Gentile stated this was not an unreasonable request. Young stated she does this for the Conservation Commission already. Gentile stated we should copy the Selectmen on the decision letters. Young stated she would do so going forward.

ADJOURNMENT: Motion by Dempster, seconded by McAllister to adjourn the meeting at 6:35 pm. The motion was voted on and passed **3-0**.

The next Public Hearing of the Zoning Board of Adjustment will be held on February 21, 2024 at 6:00 pm at the Madison Elementary School Gymnasium, pending availability.

See Exhibit A received via email from Kathy Koziell on January 10, 2024 as to **Case #23-13** which are made a part of these minutes.

Respectfully submitted,

Katharine Young
Land Use Boards Administrator