



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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**ZBA MINUTES
June 19, 2024**

ATTENDANCE: George Rau, Acting Chairman, Doug McAllister, Bill Dempster, Jake Martin, Alternate and Jennifer Skaife, Alternate

EXCUSED: Drew Gentile, Chairman, Sharon Schilling, and Marc Ohlson, Alternate

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

CALL TO ORDER: Rau, Acting Chairman, called the meeting to order at 6:10 pm.

PLEDGE OF ALLEGIANCE/ROLL CALL: Skaife led the reciting of the Pledge of Allegiance.

ELEVATION OF ALTERNATES: Rau, Acting Chairman elevated Martin and Skaife to full voting members and Rau passed the title of Acting Chairman to Martin for the remainder of tonight's meeting.

Dempster, a board member sat in the audience as he has recused himself previously on all cases regarding short term rentals.

Martin asked Young to read **Case #23-15** aloud as well as the Public Meeting Notice.

Young, Land Use Boards Administrator read aloud the Public Meeting Notice and posting 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 **Wednesday, June 19, 2024 at 6:00 P.M.** to consider the **Request for Rehearing of Case #23-15 - Appeal from an Administrative Decision** from Matthew R. Johnson, Esquire, Agent for Keith and Alison Kellerman, 21 Haven Road, Map 128, Lot 21 to determine whether or not their circumstance allows for short term rentals relating to a denial from Robert Boyd, Code Enforcement Officer dated August 16, 2023 as to Article IV, Section 4.2 of the Town of Madison Zoning Ordinance.

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 June 13, 2024.

Martin stated he was present for this case at the May 15, 2024 meeting as well as Skaife. Martin stated that McAllister and Rau were not present at the May 15, 2024 meeting and Martin asked them both if they were comfortable sitting tonight. McAllister stated he was and Rau stated he was after reviewing the rough draft of the minutes.

Martin stated this is a request for rehearing and some of the criteria for that is new information that could change the outcome, procedural error or if the board feels that the case deserves to start over from the beginning. Martin read aloud, for the record, the Findings of Fact for **Case #23-15** from April 17, 2024 and May 15, 2024 as follows:

Findings of Fact:

1. The primary question is whether there is a valid claim to be grandfathered.
2. The home is in the Silver Shores Homeowners Association.
3. Silver Shores HOA was chartered in 1976 and currently has 13 homes, 11 of which are rented seasonally, as has been the habit since 1976 (Mr. Audette, VP of the Silver Shores HOA).
4. The HOA charter foresees rentals without distinguishing between long or short term.
5. Mr. Audette and Mr. Johnson stated that the charter of 1976 provides the homeowners with the right to an existing non-conforming use.
6. We have testimony from Mr. Knight and Mr. Audette that the Moore's, who were the owners from 2015 until the Kellermans purchased the home in December, 2022, were part time residents who rented the home *out* regularly every year. They estimated that at perhaps 60 days or more per year without documentation.
7. The Moore's declined providing testimony or documentation, preferring not to get involved, per the Kellerman's testimony.
8. Prior to 2015, the home was owned by the Davis family who were full-time residents and therefore, were unlikely to have rented the home out per Mr. Audette.
9. The board understands these characteristics to define a motel based on the definition of "motel" in the Zoning Ordinance and the common understanding of what a motel is:
 - a. It is a building or buildings that offer the service of lodging.
 - b. For compensation with the obligation to pay meals and rooms tax.
 - c. Which provide basic support services such as cleaning and scheduling.
 - d. Independent access.
 - e. Adjoining parking.
 - f. The lack of a rental contract for non-transient occupancy.
10. The short-term rental of 21 Haven Road meets the definition of a motel:
 - a. The property has been rented on a short-term basis since 2015 on the order of 60 days per year and the current owners intend to rent for a similar amount.
 - b. Presumably meals and rooms tax is being paid, though no documentation was submitted to the board.
 - c. Basic services were provided; the owners used Airbnb as a contact and scheduling agent, the home was provided furnished and cleaned.
 - d. There is independent access to the building.
 - e. There is adjacent parking.
 - f. There was no rental contract for non-transient use.
11. Motels are not a permitted use in the rural residential district according to Article 4.2 of the Zoning Ordinance.

Based on the Findings of Fact as noted above, The Madison Zoning Board of Adjustment on May 15, 2024, **DENIED** the Appeal from an Administrative Decision by a roll call vote of **4-0** because:

- There was no legally established, pre-existing, non-conforming use since the Homeowner's Association Charter provision for renting was restricted by the Madison Zoning Ordinance of March, 2015 prior to the purchase and first rental of the house.
- The rental meets the characteristics of a motel as defined by the ordinance and described in the Findings of Fact above, which is not a permitted use in the rural residential district under article 4.2 of the Zoning Ordinance.

Martin asked the board if they had any questions? Young asked Martin if she should read aloud, for the record, Attorney Johnson's Motion for Rehearing of Zoning Board of Adjustment's May 15, 2024 Denial dated June 11, 2024? Martin asked Young to please do so (copy of Attorney Johnson's Motion for Rehearing of Zoning Board of Adjustment's May 15, 2024 Denial dated June 11, 2024 is in the file for **Case #23-15**).

Martin stated that you could take each paragraph contained in Attorney Johnson's Motion for Rehearing and he stated that he did not hear any new information and believes this was the same argument that was brought forward initially, minus references to the board's decision. Martin referred the board to Page 8, second paragraph of the Motion for Rehearing and read aloud **"additionally the ZBA erred by not providing sufficient findings of fact, as required by statute, to explain or justify its flawed decision."** Martin stated he previously read the eleven points of the Findings of Fact as well as the 12 subpoints and he asked the board if they felt the Findings of Fact were not sufficient for this case? McAllister stated the only change he felt should be made is to the Findings of Fact #10, Item b remove the word "presumably" as there is no documentation, so there is no presumption that is being done. Martin stated that they alleged they were not paying Meals and Rooms Tax. McAllister stated then the word should be changed from "presumably" to "allegedly" as there is no presumption. Martin stated we can say "presumably" because if they were running a short term rental, motel, hotel or anything like that and not paying their Meals and Rooms Tax, the state would then get involved. McAllister stated that is only if the state knew about it and most short term rentals do not go to the state and tell them they are doing this. McAllister stated he disagrees with this wording. Martin stated that he does not want to amend Gentile's Findings of Fact without him present and Martin further stated that he believes Gentile can support his reasoning. Martin explained that it is easy to get caught up in interpretation of words and you can get lost by Attorney Johnson's wording.

Martin asked that given the discussion and what has been read aloud tonight, does the board feel confident to entertain a motion?

After much deliberation on the wording of Rau's motion, Young interjected and assisted in the drafting of the language for the motion and then read said motion aloud to the board for approval. Martin asked the board if the motion as written below met with their approval? The members were all in agreement and the motion is as follows:

Motion by Rau, seconded by McAllister to deny Attorney Johnson's Motion Request for Rehearing of the Zoning Board of Adjustment's May 15, 2024 Denial dated June 11, 2024 on behalf of the Kellermans for **Case #23-15**, because no new evidence was presented and there was no procedural error and the Findings of Fact are sufficient as written.

Roll Call Vote: Marin – Aye; McAllister – Aye; Rau – Aye; Skaife – Aye
The motion passed by a roll call vote of 4-0.

Martin asked Young to read **Case #23-18** aloud as well as the Public Meeting Notice.

Young, Land Use Boards Administrator read aloud the Public Meeting Notice and posting 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 **Wednesday, June 19, 2024 at 6:00 P.M.** to consider the **Request for Re-hearing of Case #23-18 - Appeal from an Administrative Decision** from Matthew R. Johnson, Esquire, Agent for Matthew Petti and Jennifer Swift, 70 Skyline Way, Tax Map 205, Lot 48 to determine whether or not their circumstance allows for short term rentals relating to a denial from Robert Boyd, Code Enforcement Officer dated August 16, 2023 as to Article IV, Section 4.2 of the Town of Madison Zoning Ordinance.

Martin read aloud, for the record, the Findings of Fact for **Case #23-18** from April 17, 2024 and May 15, 2024 as follows:

Findings of Fact:

1. Date of purchase was April, 2023.
2. First rental by the current owners was June 9, 2023.
3. There is documentation to prove regular rentals from February, 2021.
4. There was no lapse of rental activity in the time-frame back to February, 2021.
5. Selective level of activity is
 - a. 32 rentals for 157 days in 2021.
 - b. 27 rentals for 103 days in 2023.
 - c. 2022 and 2024 were not estimated in the meeting.
 - d. The current owners anticipate renting on the order of 100 days per year.
6. The home is in the Skyline Estates Owners Association. There is no mention of rentals in the deed restrictions.
7. The home was built in 2018, the first documented rental is in 2021.
8. The board understands these characteristics to define a motel based on the definition of “motel” in the Zoning Ordinance and the common understanding of what a motel is:
 - a. It is a building or buildings that offer the service of lodging.
 - b. For compensation with the obligation to pay meals and rooms tax.
 - c. Which provide basic support services such as cleaning and scheduling.
 - d. Independent access.
 - e. Adjoining parking.
 - f. The lack of a rental contract for non-transient occupancy.
9. The short-term rental of 70 Skyline Way meets the definition of a motel:
 - a. The property has been rented on a short-term basis since 2021 on the order of 100 days per year and the current owners intend to rent for a similar amount on the order of 100 days per year.
 - b. Presumably, meals and rooms tax is being paid, though no documentation was submitted to the board.
 - c. Basic services were provided; the owners used Airbnb and VRBO as a contact and scheduling agent, the home was provided furnished and cleaned.

- d. There is independent access to the building.
 - e. There is adjacent parking.
 - f. There was no rental contract for non-transient use.
10. Motels are not a permitted use in the rural residential district according to Article 4.2 of the zoning ordinance.

Based on the Findings of Fact as noted above, The Madison Zoning Board of Adjustment on May 15, 2024, **DENIED** the Appeal from an Administrative Decision by a roll call vote of **4-0** because:

- The rental usage meets the characteristics of a motel as indicated in the Findings of Fact and as defined in the 2018 Madison Zoning Ordinance, which is not a permitted use.
- Because the owner did not establish any transient rental history prior to February, 2021, therefore, not establishing any pre-existing non-conforming short-term rental use.

Martin asked Young to read aloud, for the record, Attorney Johnson’s Motion for Rehearing of Zoning Board of Adjustment’s May 15, 2024 Denial dated June 11, 2024 (a copy of Attorney Johnson’s Motion for Rehearing of Zoning Board of Adjustment’s May 15, 2024 Denial dated June 11, 2024 is in the file for **Case #23-18**).

Martin stated that McAllister and Rau were not present at the meeting on May 15, 2024 and he asked if they had researched enough that they are up to speed? McAllister and Rau agreed they were.

Martin stated that given what was just read, he did not feel any new information was presented and he polled the board. Martin stated he does not think any allegations of procedural error were made and he believes the Findings of Fact are sufficient and he asked the board for their input and there was none.

Martin asked the board if they were ready to entertain a motion?

Young read the motion aloud for the board.

Motion by McAllister, seconded by Rau to deny Attorney Johnson’s Motion Request for Rehearing of the Zoning Board of Adjustment’s May 15, 2024 Denial dated June 11, 2024 on behalf of Matthew Petti and Jennifer Swift for **Case #23-18**, because no new evidence was presented and there was no procedural error and the Findings of Fact are sufficient as written.

Roll Call Vote: Marin – Aye; McAllister – Aye; Rau – Aye; Skaife – Aye
The motion passed by a roll call vote of 4-0

Martin asked Rau if he wanted Martin to continue as Acting Chair? Rau agreed to have Martin finish the meeting tonight,

Martin asked Dempster to join the board at the table as he has had to recuse himself previously from **Case #23-15** and **Case #23-18**.

Martin asked Young to read **Case #23-23** aloud as well as the Public Meeting Notice.

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

Case #23-23 – Continued (January 17, 2024, February 21, 2024 and Mach 20, 2024) Variance request from Henry P. Moscone, for property located at 23 Mount Washington Drive, Map 111, Lot 7, from Article V Section 5.9(A) of the Zoning Ordinance to permit the metal roof over his trailer for protection (**Scheduled to be heard at the June 19, 2024 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 June 13, 2024.

Young explained that Moscone was unable to attend tonight's meeting due to the sale of his property in Florida which was happening this week and he had to be there to remove personal property and then drive back to New Hampshire.

McAllister asked Young to read aloud, Mr. Moscone's letter dated June 3, 2024 to the board. Young did so.

Martin stated he felt that this was a substantial enough reason to request a continuance and asked the board for a motion.

Motion by McAllister, seconded by Dempster to approve Moscone's request for continuance for **Case #23-23** to the July 17, 2024 meeting at the Madison Town Hall, Lower Level at 6:00 pm. The motion was voted on and passed **unanimously**.

Martin stated there are a host of cases that have been previously continued until on or before November 2024 and he asked Young if we have that in writing from Attorney Johnson? Young stated that she received the Waiver from Attorney Johnson and put a copy in each file. Martin read the eight remaining short term rental cases aloud that were continued to on or before November 20, 2024 at the May 15, 2024 meeting.

APPROVAL OF DRAFT MINUTES: Martin stated that the May 15, 2024 approval of the minutes will be moved to the July 17, 2024 meeting because there are not enough members present to form a quorum to vote on the minutes of the May 15, 2024 meeting.

ADMINISTRATION: Young confirmed that everyone received a copy of the 2024 Zoning Ordinance in their packets. Martin confirmed all members have a binder and to keep any updated procedural information in them.

Rau asked for an updated members list? Young stated she will provide this at the July meeting.

ADJOURNMENT: Motion by McAllister, seconded by Rau to adjourn the meeting at 7:40 pm. The motion passed **unanimously**.

The next Public Hearing of the Zoning Board of Adjustment will be held on July 17, 2024 at 6:00 pm at the Madison Town Hall, Lower Level at 6:00 pm.

Respectfully submitted,

Katharine Young
Land Use Boards Administrator