



**TOWN OF MADISON
PLANNING BOARD
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**PLANNING BOARD MINUTES
June 1, 2022**

MEMBERS PRESENT: Chairman Marc Ohlson, Paul Marks, Dave Cribbie, Paul Littlefield, Charlie Allen, Selectmen's Representative Josh Shackford; Alternate Jay Buckley

OTHERS PRESENT: Attorney Laura Spector-Morgan; Town Administrator Linda Shackford; MadTV Aysia Morency; members of the public

CALL TO ORDER: Chairman Ohlson called the meeting to order at 6:00 PM.

ELEVATION OF ALTERNATES: Alternate Buckley was elevated for this meeting.

APPROVAL OF AGENDA: **Motion** by Buckley, seconded by Marks to approve the agenda as written. The motion passed **unanimously**.

APPROVAL DRAFT MINUTES: **Motion** by Marks, seconded by Buckley to approve the minutes of the May 4, 2022 minutes with the change on Page 1, fourth paragraph, to read "Motion by Cribbie" not "Motion by Buckley". The motion passed **unanimously**.

PUBLIC COMMENT: None

POSTING DATES & LOCATIONS: Notice was posted at the Madison and Silver Lake Post Offices, in the Madison Town Hall - upper and lower levels on May 20, 2022 and in the Conway Daily Sun on May 21, 2022.

OLD BUSINESS:

Interpretation of Footprint Definition as related to Section 1.3B – Chairman Ohlson noted that the ZBA had a case before them recently that dealt with this section of the ordinance which goes back to the Connolly v Town of Madison case. This section needs to be revisited and adjusted. **Motion** by Cribbie, seconded by Buckley to revisit this discussion at the August meeting. The motion passed **unanimously**.

PUBLIC HEARING: **Case #22-02 3-Unit Cluster Subdivision** for John Chagnon of Ambit Engineering, Inc., agent for owner Tayzach Realty Trust, Ken Jerome Sakurai, Trustee, proposes a 3-unit cluster subdivision at 363 Danforth Lane, on Map 120 Lot 005. Proposed new cluster lots are in the Rural Residential Zone.

Ohlson read aloud a letter from Ambit Engineering dated May 31, 2022 which requested a postponement of Case #22-02 citing notification of an abutter missed for lack of a supplied mailing label and for the applicant to prepare for questions raised about the status of Danforth

Lane.

JP and Tom Rogers, abutters, expressed their concern of the drainage issues that current changes on the property are causing and asked if this Board will be addressing the Class VI road. The Rogers were informed that the road is an issue for the Board of Selectmen and Town Meeting to address.

Motion by Cribbie, seconded by Buckley to continue Case #22-02 to the July meeting. The motion passed **unanimously**.

Old business – Buckley asked to circle back to 1.3B discussion and the Board's intent. At the March 2nd meeting Buckley asked for the Board's intent, was it being changed to ban STRs and the Board agreed it was not the intent but it did not make it into the record. Buckley asked to make a motion to codify that it was not the Board intention to ban STRs via Article #6.

Motion by Buckley, seconded by Littlefield to clarify the intent of the March 2nd meeting discussion regarding Article #6 to force a potential STR use to come to the ZBA for a special exception. The motion passed **4-3**.

STR DISCUSSION:

Cribbie informed all that the reason the Board moved forward without putting STR regulations on the warrant is because it was taking too much time to create an ordinance; the Board now has the opportunity to think about ordinances without a petition warrant article submitted.

Littlefield and Marks agree that this evening meeting is not to determine the legality of STR but to talk about regulations.

Attorney Spector-Morgan clarified that the Board is contemplating creating a zoning amendment that would taking STRs from a use that is not permitted to a use permitted by special exception which would require certain criteria to be met. Ohlson added that this change would be brought before the Town for a vote.

Shawn Bergeron, resident, had Ohlson clarify the direction of the Board to which Ohlson agreed that the Board is moving forward with creating a special exception to be voted upon in March 2023.

Paul McKenna, property owner, was of the understanding that the Planning Board, through Attorney Spector-Morgan, was of the opinion that STRs are grandfathered. Attorney Spector-Morgan said that her opinion and that of the Planning Board do not matter, it is the opinion of the Selectmen as they are the ones that enforce zoning and with the changes to the Zoning Ordinance in March they are illegal going forward.

Cancelarich, property owner, suggested that the Planning Board should be focusing on Long Term Rental housing asking what the Board is doing on that issue. Ohlson cited the addition of an ADU section to the Zoning Ordinance and approving cluster subdivisions. Cribbie adding that Madison was one of the first towns to have work force housing required in the Banfield Hollow development; without municipal water/sewer it can be too costly for developers to do work force housing.

Doug Melder, property owner, asked for minutes of the joint board meeting on November 30th to which Attorney Spector-Morgan explained that consultation with legal counsel does not require minutes per RSA 91A.

Renee Herendeen, property owner, asked if STRs in place prior to zoning in 1987 are grandfathered to which Attorney Spector-Morgan responded in her opinion yes as it predates zoning.

Peter Brown, property owner, asked when the Master Plan is going to be updated citing a 2002 version with 2010 updates. Bergeron defended the work of the volunteer Planning Board members noting that trying to keep up with requires full time hours. These members are trying to good for all of us, keep that in mind before pointedly questioning them.

Buckley cited a packet received from several owners in town that he felt deserved a review to which Marks reminded everyone that Bergeron has also given the Board a proposal. Herendeen quickly explained how it was created with Ohlson reading the following aloud:

SHORT-TERM RENTAL REGULATIONS 5.24.2022

Madison Proposal

Definition

For the purpose of these regulations, "Short-Term Rental" is defined as a residential unit offered for overnight occupancy in exchange for a fee and that is available for rent for a term of less than one hundred eighty five (185) consecutive days pursuant to RSA 78-A.

Short-Term Rentals Regulations

Purpose

The purpose of these Short-Term Rentals Regulations is to:

- 1) Confirm residential homeowners' right to rent their homes to others for similar use as a single-family residential unit, in all Districts.*
- 2) Establish reasonable regulations to safeguard the public health, safety, welfare and natural beauty of the environment by regulating the specific use and occupancy of Short-Term Rental properties within the town of Madison.*

Short-Term Rentals

Short-Term Rentals shall be permitted in all zoning districts provided the homeowner meets all the following conditions:

1. The owner shall register the property as a Short-Term Rental with the Town Clerk, by providing the following information in writing:

- The home address, mailing address, telephone number and email address of the owner of the property; and, if the property is owned by a trust, limited liability company, corporation or other entity, then the foregoing information for the person legally in charge of management of the property.*
- The name, address, telephone number, and email address of an individual or local management company ("the local emergency contact") who has 24-hour access to the*

property in an emergency situation and can be contacted in the event the owner cannot be contacted. Said individual(s) or management companies shall be authorized to act on behalf of the property owner.

- *Reasonable proof of a current New Hampshire Rooms and Meals Tax license number.*
- *An Affidavit of Short-Term Rental Compliance, as set forth in Section 2, below.*

2. All Short-Term rental owners shall sign and file with the Town Clerk an Affidavit of Compliance affirming that they have complied with the points below.

- **Health & Safety**

- *Smoke detectors shall be installed and properly functioning on each level of the residential home.*
- *Carbon monoxide detectors shall be installed and properly functioning on each level of the residential home.*
- *All structures which contain bedrooms shall have at least two (2) means of unobstructed egress.*
- *No basement or other below-grade space shall be used as a bedroom unless said basement has at least two (2) means of unobstructed egress.*
- *The residential home shall have a properly sized and fully functional ABC fire extinguisher, the location of which is clearly published to all guests and renters.*
- *Emergency contact information (to include, at a minimum, contact information for the Owner or Manager, local law enforcement, and fire and rescue) must be posted in a visible location within the Short-Term Rental.*
- *The physical address shall be posted on the property in a location that is clearly visible and legible from the street. The property address posting must be kept clear of snow and obstructions at all times. Outdoor firepits, if any, shall be annually inspected by the Town of Madison Fire Warden.*
- *In all Districts except the Commercial District, the owner shall publish to their guests and renters that they are reminded to be respectful of the neighborhood, its occupants and wildlife, that the Town of Madison is a pristine, rural and quiet area, and that sound travels across water, especially at night.*

- **Occupancy & Parking**

- *The maximum occupancy that the Short-Term Rental may accommodate shall be two (2) adults and two (2) children per each legal bedroom, plus two (2) additional adults or children. The number of legal bedrooms shall be determined by the current tax card from the Town of Madison. Any discrepancies in this number shall be rectified by contacting the Code Enforcement Officer prior to application.*
- *Parking for a minimum of 1 vehicle per bedroom shall be provided in a designated parking area on the same property as the Short-Term Rental, and all occupants shall be required to park in the designated area.*
- *Owners shall clearly publish to their guests and renters any local regulations pertaining to use of road salt in parking areas and, where not allowed, shall notify their guests and renters of the same.*

- **Trash**

- *The Short-Term Rental shall have a plan in place for trash storage and disposal. The plan shall clearly identify trash and recycling storage areas with an adequate number of secure containers that are pest and animal resistant. If guests/renters are required to dispose of trash at the Madison Transfer Station, the town recycling and \$5 fee requirements shall be clearly outlined.*

3. The property owner or property manager shall post the following information in a prominent location within the residential home.

- Contact information for the owner and local emergency contact.
- Maximum occupancy permitted.
- Maximum number of parking spaces and location on the property where parking is permitted.
- Identification of the location of the garbage storage area or garbage disposal plan.

***Attorney Spector-Morgan made note that there are laws in NH that govern discrimination with regards to housing based upon family size so keep in mind some of this may need to be adjusted.**

Revocation of Registration: Fines and Penalties

The Code Enforcement Office shall investigate any complaints of violations of these Short-Term regulations and shall, at a minimum, notify the owner and inquire of the owner's knowledge about the alleged violation. After reasonably investigating the complaint(s), the Code Enforcement Officer shall make written findings as to the following:

1. Whether the complaint is warranted.
2. Whether the alleged violation constitutes a substantial violation of the Short-Term Rental Regulations.
3. Whether the substantial violation could reasonably harm the health, safety and/or welfare of the neighborhood, guests or occupants.

Where the Code Enforcement Officer finds all three criteria, the Code Enforcement Officer shall (a) file a notice of violation with the Town Clerk, (b) mail a copy of such notice to the owner at the owner's contact address on file with the Town, and (c) mail a copy of such notice to the property address of the Short-Term Rental. Such notice shall set forth the findings of the Code Enforcement Officer with reference to the specific regulation or regulations which have been violated, and how such violations came to the Code Enforcement Officer's attention.

Violations of the Short-Term Rental Regulations shall result in penalties to the particular homeowner which may include, but shall not exceed, the following:

- 1) The first notice of violation or violations to a particular homeowner may result in a written warning.
- 2) The second notice of violation or violations may result in a penalty of \$275
- 3) The third notice of violation or violations may result in a cease and desist order which prevents the particular homeowner from using the property as a Short-Term Rental.
- 4) If a cease and desist letter is issued, the owner must either appeal the cease and desist letter to the Zoning Board of Adjustment, or apply to said Board for a Special Exception to use the property as a Short-Term Rental.
- 5) The Zoning Board of Adjustment shall reinstate the Short-Term Rental Use for the homeowner if, after a public hearing and due notice to the abutters, the ZBA finds that all of the following conditions have been met:

- (a) The owner shows an understanding of the violations and the purpose of the regulations which have been violated;*
- (b) The owner provides reasonable evidence of assurance that the violations will no longer occur and an explanation of how future violations will be avoided;*
- (c) The owner shows written proof of compliance with all Short-Term Rental Regulations set forth in the Ordinance; and*
- (d) The owner pays any and all outstanding fines for violations and a \$500 reinstatement fee upon the ZBA's approval of the Special Exception.*

Using a residential home for Short-Term Rentals where a valid cease and desist letter has been issued will subject the property owner to fines and penalties outlined in RSA 676:17.

Attorney Spector-Morgan said that this language sets STRs up as a permitted use with enforcement by the Selectmen. This proposal modifies NH statutes that relate to enforcement and that cannot be done as the ZBA has no authority to reinstate anything, it needs tweaking.

Allen feels that a definition of STR needs to be in place that could be a way to control behavior of renters. Attorney Spector-Morgan said behavior cannot be controlled with the Zoning Ordinance but suggested the adoption of a noise ordinance that can be enforced and that would be proposed by the Selectmen and voted on at Town Meeting.

Bergeron would rather see STRs regulated by Special Exception versus permitted with rules. If it is a permitted use then abutters do not get the opportunity to have a say but with a Special Exception abutters and public get noticed and a hearing is held.

McKenna, property owner, can see that regulating would require more personnel for the enforcement, this would include code, police and fire personnel.

Cribbie feels we have a good beginning and both documents need to have some work. We need to have fees that can assist in the enforcement that include code, fire and no fees are addressed here.

Attorney Spector-Morgan noted that a permit fee can only be for what it actually cost to process the paperwork, not the enforcement. An enforcement action by the Town would assess fees but the Town cannot charge for the management of such.

Bergeron asked if the two draft proposals can be put on the website for everyone has access to the documents. L. Shackford will make this happen.

Attorney Spector-Morgan took and answered questions as to how noise ordinances work.

Cancelarich asked if it is a conflict of interest that a member of the Board owns an STR. Attorney Spector-Morgan responded not in regards to working on the legislation. A conflict would come into play in reviewing, for example, the Board member's own application.

Ohlson reviewed tonight's discussion that any existing STR could be an enforcement issue for the Board of Selectmen, if the Selectboard decided that no STR is grand-fathered, and a special exception is added to the Zoning Ordinance then all STRs would have to come before the Zoning Board for special exception including ones that are already operating.

Kevin Flynn, property owner, asked if STRs are illegal in Madison to which Attorney Spector-Morgan stated yes, she reads it that way. J. Shackford clarified that only in the residential districts, not commercial.

Phil Laroche supports and encourages the Selectmen to propose a noise ordinance.

Cribbie asked if there are costs for the Town to bare regarding STRs how do we cover those expenses without being able to charge fees. J. Shackford said that those will be covered by taxes with Attorney Spector-Morgan adding that it will be taxed across the board.

CHAIRMAN'S REPORT – No items

SELECTMEN'S REPORT – No items

CORRESPONDENCE/ ADMINISTRATION – The Board had no comments regarding an agreement for Judith and Daniel Bourque of Timber Trail Map 129 Lot 022 regarding the building of a home on the private road.

ADJOURNMENT/ MOTION: Motion by Cribbie, seconded by Allen to adjourn. All Approved. The meeting adjourned at 7:41 pm.

Respectively Submitted,

Linda Shackford
Town Administrator