



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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**ZBA MINUTES
October 18, 2023**

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

EXCUSED: Shawn Bergeron and Jake Martin

OTHERS PRESENT: Madison TV, Kasia Scontos, Kate Young, Land Use Boards Administrator and Henry P. Moscone, Scott McLean, Nicholas Gage, Robert Nelson and other members of the public

CALL TO ORDER: Gentile called the meeting to order at 6:10 pm. Ohlson led the reciting of the Pledge of Allegiance.

ELEVATION OF ALTERNATES: Gentile elevated Schilling and Dempster to full voting members.

Gentile stated the first case is a continued case for an Equitable Waiver and a no build easement for property in Madison Shores.

Gentile stated procedurally, it is the Chairman's prerogative to elevate members. Gentile explained that there are three regular members and by procedure, he can elevate Schilling and Dempster so there is now a five-member board.

Gentile asked Young to read the notice for **Case #23-06**.

Young read aloud **Case #23-06 – Continued - Equitable Waiver of Dimension Requirements** is requested by Henry P. Moscone, for property located at 7 Mount Washington Drive, Map 111, Lot 6, from Article V, Section 5.9 of the Zoning Ordinance to permit the existing barn to remain where it was constructed.

PUBLIC MEETING NOTICE: Notification of this public meeting was posted on August 30, 2023 in the Town Hall upper and lower levels and Madison and Silver Lake Post Offices. Certified mailings were mailed on August 31, 2023 and notice published in the Conway Daily Sun on September 2, 2023.

Conflict of Interest: Gentile stated there is a slightly different Board from last month and he polled the Board Members and asked if they had any Conflict of Interest. By roll call vote there was none.

Waiver Request: There was no Waiver Request for this case.

Regional Impact: Gentile stated the Board has addressed this case as continued and have previously addressed the Regional Impact issue.

Gentile stated that the no build easement has been prepared by Mclean’s attorney and our attorney has reviewed it and approved it with two minor changes and added under “Recitals, Paragraph C, third line adding “McLean Property” and fourth line adding “Moscone Property” for clarification purposes.

Gentile stated that this no build easement was designed to provide a 25-foot setback in what Moscone is retaining so nothing can be built and it also provides room for McLean to maintain the barn.

Dempster asked about the 25-foot no build zone and where would it extend and how far would it come done on that property? Gentile asked Young, Land Use Boards Administrator to read the Encroachment Easement paragraph aloud as follows:

Agreement

*1. **Encroachment Easement.** Moscone hereby grants to McLean and for the benefit of the McLean Property the express right and easement for the Barn to be situated within the setback on the McLean Property. The parties acknowledge that the Barn although located on the McLean Property was constructed within approximately 1.4 feet of the Moscone Property and within the 25’ setback as required by the Town of Madison Zoning Ordinance. In connection with the foregoing encroachment easement and for the benefit of the McLean Property, Moscone hereby acknowledges and agrees to the imposition of a twenty-five (25) foot no build area over a portion of the Moscone Property running along the same course as the 100’ boundary between the McLean Property and the Moscone Property, and terminating twenty-five (25) feet from the intersection of the same course as the rear lot line of the McLean Property and the above described 100’ boundary on the Moscone Property (the “**No-Build Area**”). The No-Build Area shall not be modified without the consent of the owners of the McLean Property and the Moscone Property, and the Town of Madison Planning Board.*

Gentile asked for a motion from the Board to accept the easement and close the case.

Motion by Schilling, seconded by McAllister to approve the Encroachment and Access Easement Agreement no build zone for 25 feet from the property line. The motion passed **unanimously**.

Gentile read aloud the provisions of the 30-day appeal period. Gentile closed **Case #23-06**.

Gentile asked Young to read the notice for **Case #23-10**.

Young read aloud **Case #23-10 – Continued – 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 August 30, 2023 in the Town Hall upper and lower levels and Madison and Silver Lake Post Offices. Young confirmed all Certified mailings were mailed on August 31, 2023 to all abutters and notice was published in the Conway Daily Sun on September 2, 2023.

Gentile explained to Gage that there is a three-member board tonight and that Gage has the right to request a five-member board.

Conflict of Interest: Gentile polled the Board and Dempster stated pursuant to RSA 673:14 he is voluntary recusing himself from **Case #23-10**. Gentile polled the Board and Schilling, McAllister, Rau and Gentile had no Conflict of Interest. Gentile asked Ohlson if he had a conflict of interest? Gentile explained to Gage that Ohlson is the Chairman on the Planning Board and that he may have a formal reason to not participate in the case. Ohlson stated he does have a Conflict of Interest and recused himself. Gentile explained to Gage he has the right to a five-member Board and it takes three votes to approve and if Gage chooses to wait for a five-member Board, that means that the Board can continue the case without prejudice. Gentile stated that next month, Jake Martin, Vice Chairman of the Zoning Board of Adjustment will be back and if Gage feels strongly that he wants a five-member Board, the case could be continued to November 15, 2023 or if it did not matter to Gage, he could proceed with the case tonight and proceed with a four-member board. Gage asked the Board if it is possible to discuss the case now and continue it? Gentile stated they can open the case and begin the Public Hearing and Gage can ask for a continuance but that it is the Board's decision. Gage stated he was here to talk face to face and he said what he needed to in the letter he provided to the Board and he asked the Board if they requested any information from him to bring to the Board. Gentile stated that is a possibility as these cases are fact-based and it is to Gage's advantage to provide the Board with facts that he can document and then the Board can continue the case until November. Gentile stated the Board does not have to close the Public Hearing and begin deliberation tonight but they can open the case. Gage stated he agreed to open the case tonight.

Waiver Request: There is no Waiver Request as this is not a Variance and is irrelevant.

Regional Impact: There is none.

Swearing In: Gentile swore in Nicholas Gage and Bill Dempster

Gentile requested Gage to state his case. Gage explained that he bought the land in 2018 which is in Eidelweiss and started building the house in 2020 and finished June of 2022. Gage stated he has put a lot of time, effort, finances, and he budgeted and finished it and this was right in the middle of Covid which made it difficult. Gage stated he always had a plan when he was budgeting to rent the property when he bought it in 2018 and this was always his plan and he was blindsided by receiving a letter stating he was not allowed to offer the house for rent. He called the town office and was told he needed to file an Administrative Appeal. Gage stated the rule that was made by the town was made long after he had made a lot of big financial decisions. Gage stated he cannot prove that he has any financial records stating he rented the house prior to the date the law was made, but he does have a substantial amount of evidence that shows he had a plan to rent years before March, 2022. Gentile stated that information would be helpful for the Board. Gentile stated that the question is whether Gage has a claim to be grandfathered because as of March 2022, which said date is given in the violation letter, whether or not Gage had established intent. Gentile asked Gage when he finished the house? Gage stated it was pretty much done in March of 2022 but Gage had a final inspection around the same time and his outside grading was not completed when he got the final inspection. Gage stated he waited until June until he received fill from Eidelweiss and then he called Bob Boyd, Code Enforcement Officer and let him know the fill was in and he believed June was the actual date the permit was signed on. Gentile asked Gage if the house was only intended to be a rental? Gage stated his intention was for him to live in the house when he started building it but a lot of things during that time changed and they had to postpone the move to Madison for now.

Swearing In: Gentile swore in Bob Boyd, Code Enforcement Officer.

Schilling asked Boyd about the final inspection of May 24, 2022 and the inspection found height from the ground to the first tread on deck and porch was higher than 7 ¾" so Certificates of Compliance are not signed. Schilling asked Boyd what date the Certificate of Compliance was it signed on? Boyd stated is has not been signed as the grading has not been done yet. Gage stated that he has an email from Boyd stating "it is all set." Boyd stated he was there recently and took pictures and it was not graded properly. Gage stated it was the exact same way that it was when Boyd inspected it. Boyd stated he would need to look at it. Gage stated that they also discussed how Gage would get the Certificate of Occupancy. Boyd stated he did not recall and Gage stated it is in Boyd's email. Boyd stated the grading needs to be completed for the steps. Gage stated it is completed. Boyd asked Gage how high is the bottom step and Gage stated the same as the other ones, two inches or so without loam and this was done in May, 2022 and due to snow, rain and plowing, it could be different. Gage stated he was not here when Boyd inspected inside and out and Gage stated Boyd told him to email him when the fill came and Gage graded it and Gage stated he has Boyd on camera inspecting and then Gage stated Boyd sent him an email stating it is all set and Gage has heard nothing since. Gentile stated what is critical is the evidence that Gage has showing he was intending to rent the house prior to March, 2022 because a house under construction cannot have a history of being rented. Boyd stated the house itself is structurally ok and it was just the safety factor of the height of the steps.

Gage stated as to evidence he gave a little history to the Board. He sold his house in Boston and had a certain amount of money to build the house and his plan was to make it nice and he went above his budget and had to take out a bank loan for \$180,000.00 and the construction loan began on February 26, 2021 and then it ended once he got the confirmation from Boyd in the email that that the permit was signed off. At that time, Gage let the lender know and it was signed out which was a year later. Gentile asked if the construction loan contained any language like Single Family? Gage stated it did say Single Family. Gentile asked Gage if he has an insurance policy on the house and when did that go into effect? Gage stated he did and that was in May of 2020. Gentile asked if there was a clause or waiver about renting? Gage stated no because this was a construction loan at that point and when it changed after the final inspection was done, they made a final policy for whatever the bank required. Gage stated he could easily get this for the Board. Gentile stated again, what the Board is looking for is factual evidence on the ground for granting Gage the grandfathering in. Gentile further stated that the Board's job is to protect property owners from an unnecessary imposition of our ordinances.

Gage stated there is a part of the letter from Boyd that states the property does not meet the definition of a Single-Family Home. Gage asked if he provides the board with documents from the lender or insurance company and if it does not provide language about rent but it mentions that it is a Single-Family Home would that suffice as meeting the definition of a Single-Family Home? Gentile stated he would need to see the document and that they are not debating tonight whether or not it is a Single-Family Home, but the question is, whether Gage can document the intent to rent before the March, 2022 deadline. Gentile stated that Gage previously stated he purchased the house in 2018 and the research of the town's records is that it is approximately May, 2021 where the short-term rental discussion opened and if Gage can document that he was actively discussing planning a short-term rental, the date that is important to the Board is May of 2021 when that discussion opened in Madison. Gage stated he closed on the loan in February of 2021. Gage stated he does not believe there is anything

documented in the bank documents of his intentions to rent and this is why he is here today to tell the Board what his intentions were.

Gentile summarized the Findings of Fact the Board has at this point as follows:

Gentile asked Gage when he purchased the property. Gage stated January 19, 2018. Gentile stated the previously Gage stated he planned on living in the home and asked when Gage decided to rent it out. Gage stated at the same time he decided they could not move and decided to get a loan to finish the house and believes that was November of 2020. Schilling asked Gage if he has documentation for the date he applied for his loan? Gage stated he can provide the Board with that information. Gentile stated that Gage decided in November of 2020 that he was not going to move and Gentile asked Gage how does the not moving relate to renting the house? Gage stated because if he is going to move in, he cannot rent it. Gentile asked Gage when he thought he would have moved into the house? Gage said right away as he thought it would take one year to build the house but it took two due to costs. McAllister asked Gage when he decided to rent the house, was he hoping for a long-term rental? Gage stated no. McAllister asked Gage if he was looking for Short Term Rentals and Gage stated yes, that was his plan as he wanted to be able to use it also.

Gentile asked Gage when did the construction of the house begin? Gage stated February of 2020 and concrete for the foundation was poured in March of 2020. Gentile asked when was the house ready? Gage stated April-May of 2022. Gentile asked Gage when the house was finished and ready for final inspections? Gage stated April-May, 2022. Schilling stated there is a piece of paper from Boyd that says final inspection dated May 24, 2022 and that is when Boyd noted the height of the steps. Schilling stated the final inspection was dated May 24, 2022 which Gentile stated was two months after the town vote and Schilling stated the house was substantially completed and ready for inspection on May 24, 2022 when the town voted on March 8, 2022.

Gentile asked Gage what the total amount he had invested in the house in the spring of 2022? Gage stated approximately \$400,000.00. Gentile asked Gage what percent of the budget he considered this? Gage replied 100 percent. Schilling asked Gage if he could provide to the Board, copies of all construction progress inspections and release of fund? Gage stated he can provide those to the Board.

Gentile explained they now have a time line of events up to spring of 2022. Gentile stated the question the Board is trying to answer is. not whether or not the short-term rental is prohibited, but the Board is trying to answer the question whether Gage is grandfathered in based on the violation letter.

Boyd asked that the Board review the definitions of Single-Family House, dwelling unit, transient and non-transient occupancy because a Single-Family House is defined in our ordinance is for non-transient occupancy which is 31 days or more. Gentile stated as of March, 2022. Schilling stated the letter does not say it is a Single-Family House and what the letter does say, is the voters amended the Zoning Ordinance to make it clear that houses primarily rented to guests on a short-term basis rather than used as a residence, does not meet the definition of a Single-Family House. Gage stated it is a Single-Family House. Schilling stated from a construction standpoint but from a use standpoint they are the same words used in two different ways and that is why the Zoning Ordinance specifies between transient and non-transient use. Schilling stated that Gage received the violation letter because he was reportedly engaging in short-term rentals and asked at what point, did he start renting the house? Gage stated he was not engaging in rentals but that he had it being offered for rent. Gage stated the only people that

have used the house are family and friends who paid money towards the bills. Schilling asked if he had any receipts or cashed checks or bank statements? Gage stated maybe from Venmo but there was nothing before March, 2022 as it was not even allowed to be rented.

Gentile asked when Gage offered the property on Airbnb? Gage stated in the spring of 2023 and it was not long thereafter that he received the violation letter. Gage suggested he could give the Board Mortgage Inspection Reports, closing disclosure and insurance. Gage stated he did not give his lender any pay stubs or tax returns because he had already had \$200,000.00 into the house so there was already equity.

Gentile stated the Board should allow Gage the opportunity to produce documents and continue the case. Gage requested a continuance to November 15, 2023 pending the review of documents Gage provides. Gentile stated Gage does not have to provide any documents in advance and can bring them to the November meeting.

Swearing In: Gentile swore in Paul McKenna.

McKenna asked about the criteria the Board is using in this case and that the Board keeps going back to grandfathering and he personally is involved with a group that has been following this for three years. As far as McKenna knows, grandfathering has never been decided and the pro group is trying to get it decided for grandfathering and the anti-group is saying no it is not. McKenna stated the first ordinance was made in 1987, especially in Eidelweiss, about non-transient use. Gentile stated between 1987 and March, 2022 there is not, in Madison, a clear statement in the Zoning Ordinance that short-term rentals are prohibited and that it is maintained by the Selectmen. Gentile stated that this Board is not saying whether short-term rentals are good or bad but March, 2022 changes the legal basis one more time. Gentile stated that in this particular case, Gage has appealed a decision solely on the grounds that he intended to use the property for a short-term rental before March 2022 and made an investment etc. Gentile stated that things between March, 2022 and 1987 are in a bit of a gray zone in the sense and that is why the Board is asking for facts based on the individual situation and Gentile further stated as a Zoning Board, they are allowed to look at each individual case on its own individual merits and this appeal is based upon grandfathering. Gentile stated the question tonight is did this case warrant relief from the violation letter because the intent was clearly established before the date of March, 2022. McKenna stated for the record, there is no grandfathering or law in place that says there is grandfathering.

Schilling stated she perceives this to be is a request from relief from the March, 2022 ordinance and Gage did use the term grandfathering. Schilling further stated that Gage may be granted relief from the March, 2022 ordinance because his intention and his actions indicate prior to that March, 2022 date that the intention was after he started construction in order to rent it as a short-term rental. Schilling stated the question of whether or he could rent it as a short-term rental between 1987-2022 will be one that has yet to be decided. Schilling stated the Board is only concerned with whether the Code Enforcement Officer was correct in his interpretation of what the March 2022 Zoning Ordinance indicates and was it accurately applied in this specific case. Gentile stated the term grandfathering is quite commonly used to describe a situation in which an ordinance or law is not yet applicable. McKenna does not want this to set a precedent or use it as a reference and the Zoning Board said it was grandfathered. Gentile stated when it comes to the application of the date of the law, each case is settled on its own merits.

Bill Dempster stated he was speaking as a resident of the town and wanted to present some facts to the Board as the Board deals with facts and he stated Schilling had a good point which is addressed in RSA 674:33 and he states “did the Code Enforcement Officer incorrectly interpret the administrative provisions of the Madison Zoning Ordinance.” See Dempster’s facts as follows:

1. It has already been established that the property was purchased on January 19, 2018 as an undeveloped lot.
2. It has been established that the property is located in the Village District of Eidelweiss.
3. There is no prior use of this property as a dwelling unit as there was no structure.
4. The property structure was constructed between 2019-2022.
5. There were two final inspections on April 5, 2022 and May 24, 2022 and no Certificate of Compliance has been issued as of today.
6. Dempster stated there was question regarding the building permits and whether they mentioned intent and the permit of April 11, 2022 did not contain any description of a rental and he does not have the prior building permit stated may Boyd knows about that.
7. Dempster stated the first listing for this property for a rental was on AirDNA in December of 2022 and Dempster found three paying customer reviews, one in January, 2023, and two in February of 2023, all within less than thirty days.
8. Dempster stated that in accordance with our zoning, Sections 2.1a and Section 2.1e, the Code Enforcement Officer issued two letters of voluntary compliance and notification of the zoning violation of 4.6a and to date, there has been no evidence presented by the applicant proving that Code Enforcement Officer was incorrect.
9. Dempster also stated there was a comment made by the applicant that his property was the only one that received a potential violation letter that had built beforehand that had extended beyond the March, 2022 date and there were three that were under construction and they all received violation letters from the Code Enforcement Officer.

Dempster stated based on the facts of the case, the Board should deny the Administrative Appeal for **Case #23-10**.

Gage stated when he filled out the initial building permit, he did not realize it was only good for one year and he thought it was good for two years so that is why he needed to get a second building permit to get the final inspection. Schilling asked if Boyd if he has the original permit? Boyd stated he was not prepared for this tonight. Boyd stated the building permit does not state anything about the intent of renting the property. Gentile stated the building permit is not relevant to the Board.

Gage asked if he should scan and email documentation before the November meeting and Gentile stated no, he can bring it to the November 15, 2023 meeting and bring a few copies for Board Members or he can email it to Young, Land Use Boards Administrator and she can do it.

Motion by McAllister, seconded by Schilling to continue **Case #23-10** to the November 15, 2023 meeting being held at the Madison Elementary School at 6:00 pm. The motion passed **unanimously**.

Gentile asked if there was anyone present for **Case #23-12 – Case #23-20**. There was no one present so Gentile stated since no one was present, he was going to do **Case #23-21** first and then move to **Cases #23-12 – Case #23-20**.

Young read aloud **Case #23-21 – Variance** is requested by Robert F. Nelson, Owner/Applicant, for 65 Madison Mountain Drive, Tax Map 116, Lot 45 from Article 5.9, Section A & D of the Zoning Ordinance to permit a 4' setback from edge of right-of-way and 60' setback from center of road.

PUBLIC MEETING NOTICE: Notification of this public meeting was posted on September 28, 2023 in the Town Hall upper and lower levels and Madison and Silver Lake Post Offices. Certified mailings were mailed on September 28, 2023, and notice published in the Conway Daily Sun on October 6, 2023.

Young stated all abutters were properly notified except for one, Cheri Shipulski and the address label provided by the applicant is the correct mailing address according to the town's address of record in Massachusetts which Young did verify. Nelson, the applicant stated that Cheri Shipulski needs to change her address as she does not live in Saugus, Massachusetts which is what is reflected on the Madison tax card but Shipulski still owns the property in Madison. Gentile stated for the record, we will accept this as a mistake.

Gentile stated that per the Rules of Procedure, he can elevate Schilling and Dempster to full voting members and stated there is now a five-member board for this case.

Conflict of Interest: Gentile polled the Board and by roll call vote there was no Conflict of Interest. **Waiver Request:** Yes. Nelson stated it would take a lot of time and money and the lot is defined by existing stakes. Schilling stated the applicant may know where the stakes are but the Board does not. Nelson stated he came before the Board a few months ago and they accepted the Waiver on another case.

Swearing In: Gentile sworn in Robert Nelson, the applicant.

Gentile explained that the Board needs to decide if the information presented is accurate enough for the Board to make a decision.

Gentile stated the proposed garage is 50 feet from the center line of the road and asked Nelson how did he determine this? Nelson explained there are three pins in existence and he measured them using a compass heading in line with the deeds and tape measure which he stated is an application. Nelson stated he does bridge construction and surveying. Nelson stated the Board accepted his Waiver Request at the last variance meeting he had when he did an addition on his kitchen. Schilling stated that given Nelson's experience and background and the pins he indicated match what is on the deed and the precedent that the Board has set and should the Board decide to approve this, the Board could put in a statement that verification that the pins match and any deviation from these pins whatsoever the variance would not be granted. Ohlson asked about the fourth pin. Nelson stated there are only three pins and there are no pins at the top of the drawing he gave the Board. Nelson stated he does have compass headings for all of them. Nelson stated he is asking for a variance within two feet of the right-of-way which is basically his driveway that runs through his property. Nelson stated this used to be a water line that served twelve houses back in 1960 and it is not an easement as it is not part of a lot and his deeds go to either side of it. McAllister asked who owns the right-of-way? Nelson stated that was a good

question but according to the town, the right-of-way is owned by Madison Associate Tenants Enterprise and he is the President and does not know how they ending up owning it. Nelson stated he owns three lots combined with this right-of-way going through them.

Dempster stated the Board is getting into the whole case and the Board needs to decide whether they will accept the Waiver Request.

Gentile stated if finding out the right-of-way is 4 ½ feet instead of 4 feet, that is not going to be that relevant to the decision.

Schilling was concerned about the Waiver Request and what if it is 3 ½ feet as opposed to 4 feet, what would happen. Gentile stated that if nobody says anything for ten years and someone comes back for an Equitable Waiver then the Board can say it was a good faith error.

Motion by McAllister, seconded by Schilling to accept the Waiver Request. The motion passed **unanimously**.

Regional Impact: There was none.

Gentile asked Nelson to state his case. Nelson explained to the Board he wants to build a garage and there is an easement going through his property and he uses it as his driveway and people walk on it to get to the beach. Nelson states he parks on the easement. McAllister questioned who granted the easement and stated you need to get an easement from someone. Nelson stated it is an existing space and in the original layout, it was not deeded property. Nelson further stated that Boyd interpreted it as a right-of-way and told Nelson he needed 25 feet. Nelson figured because he owns both sides of the right-of-way and it is a walking path, he would be okay getting a building permit. Dempster asked who pays the property taxes on the right-of-way? Nelson stated it is not taxed and it is part of the roads. Nelson stated the right-of-way is 11' 4". Nelson stated the property looks as if it is between two roads that being Davis Lake Avenue and Madison Mountain Drive.

Schilling questioned the dimension of 50' 4" and asked if that is to the property line on Madison Mountain Drive and then another 10' to the center and she also asked how wide the road is? Gentile stated we would not know the width of the road. Nelson stated the 10 feet represents the distance from his property line to the center of the road, presumably. Nelson stated when you look at the property, it looks like it is between two roads, Davis Lake Avenue and Madison Mountain Drive and his lot is on a corner. Schilling stated his lot is not on a corner but is situate between two roads and those roads come together at some point further on from his lot and his lot is not on a corner. Schilling stated none of his lots are on a corner. Nelson stated he originally had three lots and he combined them. Schilling does not believe they are all one lot. Nelson stated according to the tax map, the lots were merged and he has a Voluntary Merger that has been recorded.

Boyd asked the Board if he could make a comment.

Swearing In: Gentile swore in Robert Boyd, Code Enforcement Officer.

Boyd stated that on the tax maps in town hall, it was determined that what the Board is being referring to as a driveway is coded as a right-of-way or public road and they count as far as setbacks. Gentile stated

that what Boyd is saying is there is a setback requirement. Boyd referred the Board to read 5.9 of the Zoning Ordinance.

Schilling read aloud from the Zoning Ordinance 5.9. Minimum Setbacks as follows:

“Except as otherwise provided, setbacks will be measured from the center line of any road or right-of-way, property line and the mean high-water mark.”

McAllister stated if we consider this a right-of-way, do we know how wide is it. Nelson stated he did not know but believes it is 11’4”. Gentile stated that the 4 feet goes to the edge of right-of-way.

Gentile asked Boyd if it is a right-of-way does that establish a corner lot? Schilling stated there is frontage on both sides of the lot. Schilling stated Nelson’s property is all one lot now and there is frontage on both sides of the lot. Nelson stated he has frontage on two roads that come together to form a corner. Schilling stated but this is not at the corner lot. Ohlson stated if this is a right-of-way Nelson would need a 25’ setback. Gentile stated that Nelson is requesting 9.8 feet wherein is 25 feet is required and this would be a variance request.

Schilling read aloud 5.9, Paragraph D as follows:

“D. In the case of a corner lot, i.e., two sides fronting on different roadways, the minimum setback of 5.9A and 5.9B will be imposed as if the lot abuts only one roadway, with the roadway side being that which the front of the building faces.”

The Board continued with their discussion and deliberation as to what the variance should be.

Gentile stated the Board has to now establish the Findings of Fact.

Notes on Finding of Fact:

1. Lots 45, 52, and 53 were combined into Lot 45.
2. Lot 45 stretches between Davis Lake Ave and Madison Mountain Drive in a roughly east-west orientation.
3. Lot 45 has a straight right of way through it that goes approximately east and west between Davis Lake Avenue on the east and Madison Mountain Drive on the west between Lots 45 and 44 on the Davis Lake Avenue side and between what were previously Lots 52 and 53 on the west side.
4. The proposed garage has a setback of 4 feet from the south edge of the right of way, or 9’ 8” from the center of the right of way where 25 feet is required.
5. Increasing the setback to the right of way is restricted by the downward slope of the land so that increasing the setback would incur significantly increased cost.
6. Mr. Nelson owns the property on both sides of the right of way on the west side of the lot where the barn will be placed, so that the setback to the property line to the north generously exceeds the 25-foot minimum.
7. The right of way functions as Mr. Nelson’s driveway and at least one abutter on Madison Mountain Drive uses it for access to Davis Pond to the east.

8. There are three pins with a roughly north-south orientation marking points in the east-west center of Lot 45 so that an accurate measurement of the 25-foot setback to the barn west from the property line of Lots 44 and 45 can be accurately measured.
9. The setback to property line with Lot 54 to the south is 45 feet which exceeds the 25-foot minimum.
10. The barn will have a setback of 50' 4" from the property line along Madison Mountain Drive to the west where 75 feet to the centerline of Madison Mountain Drive is required. The center line of Madison Mountain Drive is not precisely discernable but would be approximately 12 feet further west from the property line, making the actual setback approximately 62' 4". Since a reliable measurement can be made to the property line, the setback of approximately 62' 4" will be measured as 50' 4" to the property line.
11. Mr. Nelson stated that he works in bridge construction and though not a licensed surveyor, does construction measurement as part of his work so that the setback measurements for his barn construction will be reliable.

Motion by Gentile, seconded by McAllister to close the Public Hearing. The motion passed **unanimously**.

Findings on the five conditions for a variance:

1. The variance will not be contrary to the public interest
2. The spirit of the ordinance will be observed (answers for both 1 and 2 together):
For the variance to be contrary to the public interest, and for it to violate the spirit of the ordinance, it must unduly and to a marked degree violate the basic objectives of the zoning ordinance. To determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?
 - The barn will be in keeping with the character of the neighborhood which has many small lots with modest homes pre-dating the zoning ordinance where variances are common for the current setback requirements.
 - The barn will pose no threat to public health or safety in its proposed location.
3. Substantial justice is done because:
Any loss to the individual which is not outweighed by a gain to the public is an injustice.
 - The homeowner can build a garage in a location that is a reasonable use of the land.
4. The values of surrounding properties are not diminished because
 - Adding a barn or garage to the property will increase property value for the lot and the neighborhood.
5. Literal enforcement would result in unnecessary hardship because owing to the special conditions of the property (1):
There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property because:
 - The lot was subdivided before the current zoning ordinance so the size of the lot and the slope of the land make it impossible to place the barn in a location where all the current setback requirements can all be met. This applies particularly to the setback to the right of way where increasing it is not feasible due to the slope of the land. Since the land on both

sides of the right of way are in the same lot, imposing the 25-foot setback in the middle of the lot does not represent a fair and substantial application of the ordinance when there is more than 25 feet to the north property line and the barn cannot be moved further south without significant cost increase.

The proposed use is a reasonable one because:

- Construction of a small barn or garage is a reasonable use of residential land in a four-season climate.

(2) If the criteria in subparagraph (1) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Gentile asked the Board for a motion.

Motion by McAllister, seconded by Schilling to approve the variance and grant the setbacks of approximately 62'4" to the center of Madison Mountain Drive and approximately 9'8" to the center of the right of way. The motion passed **unanimously**.

Gentile explained to Nelson that Nelson may not receive the written decision within the five-day period.

Gentile read aloud the provisions of the 30-day appeal period. Gentile closed **Case #23-21**.

Gentile stated the Board received a letter from Matthew Johnson, Esquire, who is the attorney representing the Appeal for Administrative Decisions for **Case #23-12** through **Case #23-21** and the attorney asking for these cases to be continued.

Young read aloud **Case #23-12 – Appeal from an Administrative Decision** from Matt Johnson, Esquire, Devine, Millimet & Branch, P.A., Agent for Andrei and Erica Medeiros, 81 Knight Road, Tax Map 256, Lot 089 to determine whether or not their circumstance allows for short term rentals relating to a denial from Robert Boyd, Code Enforcement Officer dated August 10, 2023 as to Article 4.2 of the Town of Madison Zoning Ordinance.

Gentile asked the Board for a motion.

Motion by McAllister, seconded by Rau to continue **Case #23-12** to November 15, 2023 which will be held at the Madison Elementary School at 6:00 pm. The motion passed **4-0** with Dempster abstaining as he is recusing himself as he has a conflict of interest.

Young stated that four abutters were not noticed correctly due to incorrect mailing labels provided from their attorney. Young stated she will reach out to the attorney to obtain new labels and certified mailing fees.

Young read aloud **Case #23-13 – Appeal from an Administrative Decision** from Matt Johnson, Esquire, Devine, Millimet & Branch, P.A., Agent for Chad and Brittany Ardizzoni and Aaron and Tiffany Clymer, 13 Lucerne Drive, Tax Map 103, Lot 060 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 4.6A of the Town of Madison Zoning Ordinance.

Gentile asked the Board for a motion.

Motion by Schilling, seconded by McAllister to continue **Case #23-13** to November 15, 2023 which will be held at the Madison Elementary School at 6:00 pm. The motion passed **4-0** with Dempster abstaining as he is recusing himself as he has a conflict of interest.

Young read aloud **Case #23-14 – Appeal from an Administrative Decision** from Matt Johnson, Esquire, Devine, Millimet & Branch, P.A., Agent for Ryan Finn and Grace Harrigan, 43 Oak Ridge Road, Tax Map 104, Lot 085 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 4.6A of the Town of Madison Zoning Ordinance.

Gentile asked the Board for a motion.

Motion by Schilling, seconded by Rau to continue **Case #23-14** to November 15, 2023 which will be held at the Madison Elementary School at 6:00 pm. The motion passed **4-0** with Dempster abstaining as he is recusing himself as he has a conflict of interest.

Young read aloud **Case #23-15 – Appeal from an Administrative Decision** from Matt Johnson, Esquire, Devine, Millimet & Branch, P.A., Agent for Keith and Alison Kellerman, 21 Haven Road, Tax 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.

Gentile asked the Board for a motion.

Motion by McAllister, seconded by Schilling to continue **Case #23-15** to November 15, 2023 which will be held at the Madison Elementary School at 6:00 pm. The motion passed **4-0** with Dempster abstaining as he is recusing himself as he has a conflict of interest.

Young read aloud **Case #23-16 – Appeal from an Administrative Decision** from Matt Johnson, Esquire, Devine, Millimet & Branch, P.A., Agent for Monica Maria McMillian and Laura Thompson, 17 Bergdorf Drive, Tax Map 113, Lot 033 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 4.6A of the Town of Madison Zoning Ordinance.

Gentile asked the Board for a Motion.

Motion by Rau, seconded by Schilling to continue **Case #23-16** to November 15, 2023 which will be held at the Madison Elementary School at 6:00 pm. The motion passed **4-0** with Dempster abstaining as he is recusing himself as he has a conflict of interest.

Young read aloud **Case #23-17 – Appeal from an Administrative Decision** from Matt Johnson, Esquire, Devine, Millimet & Branch, P.A., Agent for Seamus O’Brien and Kayla Walsh-O’Brien, 37 Eidelweiss Drive, Tax Map 109, Lot 166 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 4.6A of the Town of Madison Zoning Ordinance.

Gentile asked the Board for a Motion.

Motion by Schilling, seconded by McAllister to continue **Case #23-17** to November 15, 2023 which will be held at the Madison Elementary School at 6:00 pm. The motion passed **4-0** with Dempster abstaining as he is recusing himself as he has a conflict of interest.

Young read aloud **Case #23-18 – Appeal from an Administrative Decision** from Matt Johnson, Esquire, Devine, Millimet & Branch, P.A., 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.

Gentile asked the Board for a motion.

Motion by McAllister, seconded by Rau to continue **Case #23-18** to November 15, 2023 which will be held at the Madison Elementary School at 6:00 pm. The motion passed **4-0** with Dempster abstaining as he is recusing himself as he has a conflict of interest.

Young read aloud **Case #23-19 – Appeal from an Administrative Decision** from Matt Johnson, Esquire, Devine, Millimet & Branch, P.A., Agent for Brian Burns, 1 Oak Ridge Road, Tax Map 109, Lot 87 to determine whether or not his circumstance allows for short term rentals relating to a denial from Robert Boyd, Code Enforcement Officer dated August 30, 2023 as to Article IV, Section 4.6A of the Town of Madison Zoning Ordinance.

Gentile asked the Board for a motion.

Motion by Rau, seconded by Schilling to continue **Case #23-19** to November 15, 2023 which will be held at the Madison Elementary School at 6:00 pm. The motion passed **4-0** with Dempster abstaining as he is recusing himself as he has a conflict of interest.

Young read aloud **Case #23-20 – Appeal from an Administrative Decision** from Matt Johnson, Esquire, Devine, Millimet & Branch, P.A., Agent for Cory, Jade and Cynthia Franklin, 26 Little Shore Drive, Tax Map 104 Lot 96 to determine whether or not their circumstance allows for short term rentals relating to a denial from Robert Boyd, Code Enforcement Officer dated August 30, 2023 as to Article IV, Section 4.6A of the Town of Madison Zoning Ordinance.

Gentile asked the Board for a motion.

Motion by Schilling, seconded by McAllister to continue **Case #23-20** to November 15, 2023 which will be held at the Madison Elementary School at 6:00 pm. The motion passed **4-0** with Dempster abstaining as he is recusing himself as he has a conflict of interest.

Approval of Minutes: **Motion** by McAllister, seconded by Schilling to approve the minutes of the September 20, 2023 meeting as amended. The motion passed **unanimously**.

ADMINISTRATION:

Gentile told the Board that Shawn Bergeron submitted a letter and would like serve as an alternate instead of a member as he has obligations that will not allow him to serve on the Board at every meeting.

Gentile stated they currently have four regular board members. Schilling stated she believes she is the only one who could be elevated to a full member at this time. Gentile asked Schilling and Dempster if they would like to serve on the Board as members. Dempster asked if he could have time to think about it and Gentile stated it could wait until the November meeting. Gentile stated the Board needs more alternates.

Gentile stated that there is an error in the Rules of Procedure which is posted on line on the website and the Rules of Procedure is missing a line from the May 2022 updated version. Young stated she will correct it on the Website.

Gentile suggested an Amendment to the Rules of Procedure in the Meeting section which currently reads as follows:

Current 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. 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.**

to which Gentile suggests changing the order of 1. to read 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 open after 9:00 P.M. and will commence 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 noted that as per these same Rules of Procedure, this is the first reading of the change into the record. It will be read into the record again at the November meeting with a vote to approve or disapprove at the December meeting.

Gentile asked the Board if all members will be attending the Public Hearing on December 20, 2023 as he will not be in attendance? He asked if other members will not be attending due to the Public Hearing being so close to the holidays? The Board discussed changing the December 20, 2023 Public Hearing date to December 13, 2023 at 6:00 pm in the lower-level meeting room of the Town Hall so all Board Members could attend.

Gentile asked for a motion.

Motion by Schilling, seconded by Rau to change the Public Hearing originally scheduled for December 20, 2023 to December 13, 2023 to be held in the lower-level meeting room of the Madison Town Hall at 6:00 pm. The motion passed **unanimously**.

Motion by McAllister, seconded by Schilling to approve the September 20, 2023 minutes as amended due to typographical errors. The motion passed **unanimously**.

ADJOURNMENT: Motion by McAllister, seconded by Rau to adjourn the meeting at 9:55 pm. The motion passed **unanimously**.

The next Public Hearing of the Zoning Board of Adjustment will be held on November 15, 2023 at 6:00 pm at the Madison Elementary School.

Respectfully submitted,

Katharine Young
Land Use Boards Administrator