



**TOWN OF MADISON  
ZONING BOARD OF ADJUSTMENT  
PO BOX 248  
MADISON, NEW HAMPSHIRE 03849  
[planning@madison-nh.org](mailto:planning@madison-nh.org)**

Phone: 603-367-4332 x303 Fax: 603-367-4547

**ZBA MINUTES  
April 17, 2024**

**ATTENDANCE:** Drew Gentile, Chairman, Jake Martin, Vice Chair, Doug McAllister, George Rau, Bill Dempster, Alternate, Sharon Schilling, Alternate, Jennifer Skaife, Alternate

**EXCUSED:** Marc Ohlson, Alternate

**OTHERS PRESENT:** Madison TV, Aysia Morency, Kate Young, Land Use Boards Administrator, Matthew Johnson, Esquire and members of the public.

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

Gentile stated the board has many cases but that tonight, the board will hear **Case #23-15** and **Case #23-18** as agreed to by Attorney Johnson and then the board will address the continuances later. Gentile further stated they have a four-member board tonight and they have a fifth member which is Jennifer Skaife, who is an alternate and this is her first evening on the board. Gentile stated as Chairman, he has authority to raise her to a voting member and when the board votes, they will do a roll call vote and Gentile will ask Skaife to vote in the fourth position so she is not put in the position of casting a deciding vote. Gentile stated that he will vote last so if there is a tie, he would make the deciding vote so Attorney Johnson is not dependent on an inexperienced member.

**ELEVATION OF ALTERNATES:** Gentile raised Skaife from Alternate to a full voting member making the board a five-member board tonight.

Gentile stated that **Case #23-15** was continued and he asked Young to read the public notice.

Young read **Case #23-15** aloud as well as the Public Meeting Notice as follows:

**Case #23-15 – Continued (October 18, 2023, November 15, 2023, January 17, 2024 and February 21, 2024 and March 20, 2024 and April 17, 2024) - 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.

**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 March 27, 2022.

**PUBLIC HEARING:**

Gentile confirmed that **Case #23-15** was continued from the March meeting.

ZBA Minutes  
April 17, 2024  
Page 1 of 18

**Conflict of Interest:** Gentile polled the board and there was none.

**Waiver Request:** Gentile stated there is a Waiver Request and there are no dimensional issues at stake here and he asked for a motion to accept the Waiver Request and stated that we do not have a certified plot plan but since there are no dimensional issues at stake here, the certified plot plan is meaningless for the board's deliberation so the board considers waiving it.

**Motion** by McAllister, seconded by Schilling to accept the Waiver Request. The motion was voted on and passed **5-0**.

**Regional Impact:** Gentile polled the board and there was none.

Gentile asked everyone who intends to speak to **Case #23-15** to please identify themselves and he swore those members of the public in.

Gentile asked Attorney Johnson to restate his case. Attorney Johnson stated that he represents the Kellermans who own property at 21 Haven Road and they bought their property in December of 2022 and he is going to give the board two letters, one of which was from the Silver Shore Homeowners Association (a copy of which is in the file for **Case #23-15**) which provides some background relative to the unit the Kellermans have as well as other unit owners who have owned the unit and how these units have been operated and rented out over time. Attorney Johnson stated Mr. Kellerman and his neighbor will also be testifying, if need be, relative to the prior rental use of the property and he also stated that the prior owner of the property did not want to get involved but there are neighbors that can testify that the property the Kellermans acquired the property in December, 202, was actively rented and that Mr. Kellerman has operated the property in the same manner. It has been agreed between the board and Attorney Johnson at the first presentation (which was November 15, 2023), that Attorney Johnson could make his legal argument and it really would apply to each of the cases so he did not have to say the same thing each time and he wanted to make sure they are operating under the same ground rule that legal presentation relative to his legal arguments is applicable to each of the various applications. He stated that we are now on to the facts and specific aspects of each use of the property and his legal analysis, included in the letter, is in each application which was set for the board. Gentile agreed. (See Attorney Johnson's Factual Background and Legal Analysis as quoted below for **Case #23-15**.)

#### *"Factual Background"*

- 1. On December 1, 2022, Keith and Alison Kellerman (the "Kellermans") became the owners of record for 21 Haven Road, Madison, NH by Warranty Deed from Alan R. Moore and Kimberlee Moore recorded with the Carroll County Registry of Deeds at Book 3701, Page 1068.*
- 2. The Kellermans' began renting their property on a short term basis in the Spring of 2023.*
- 3. On August 16, 2023, Robert Boyd, Code Enforcement Officer issued the Kellermans a Notice of Violation. The Notice stated that the Kellermans' property was: (1) a non-owner occupied, short term rental; (2) in violation of the Ordinance; and (3) continued use of the property in violation of the Ordinance would result in the Town of Madison commencing legal action in court. The Notice of Violation advised the property owner that they could appeal to this body within thirty (30) days. The Kellermans' have availed themselves of this right. A copy of this Notice is attached as Exhibit A.*

#### *Legal Analysis*

*The Board of Selectmen and the Code Enforcement Officer made an error of fact in issuing a Notice of Violation. As will be explained below, the Madison Zoning Ordinance changes cannot be applied to the*

*Kellermans' property because they are unconstitutional.*

*First, the Kellerman property is a pre-existing nonconforming use. It was used for short term rentals historically and after the most recent amendments to the Madison Zoning Ordinance in March of 2022. Because the property always has been used for short term rentals, and that use has not been abandoned, the current owners, the Kellermans, are entitled as a matter of law to continue the pre-existing nonconforming use. The Madison Zoning Ordinance expressly recognizes the ability to continue prior nonconforming use at section 1.3(c).*

*Second, the amended "dwelling unit" definition upon which the Code Enforcement Officer is relying is unconstitutional because of its vagueness, ambiguity, and/or overbreadth. As written, it is unclear what the definition intends to cover. Second home owners as well as seasonal renters could be barred by this new definition from accessing their property in Madison. The revised definition of dwelling unit does not differentiate between owner or rental occupancy. Were this amendment to be valid, an owner of a second home bought after March of 2022 would not be allowed to use his or her property for periods of less than thirty days. This definition is thus void given its complete ambiguity. Officer Boyd's "Notice of Violation" letter claims that the 2022 changes "make it clear that a house that is primarily rented to guests on a short term basis, rather than used as a residence, does not meet the definition of single family house." However, the change to the ordinance does not include the word "rental." Moreover, the Town voted down two proposed amendments directly addressing short-term rentals. Given this set of circumstances, the Town should not base its enforcement actions on ordinance language that is so vague. The Chief Justice of the New Hampshire Supreme Court has cautioned that any ambiguity in a land use regulation should be, in his opinion, construed in favor of protecting private property rights. See Conway v. Kudrick, 2022-0098 (MacDonald, CJ., concurring opinion). Following that guidance should cause this board to reject any enforcement actions until the Madison Zoning Ordinance is modified to be clear what is restricted and what is not.*

*Third, the amended Madison Zoning Ordinance violates the substantive due process rights of the Kellermans and creates a regulatory taking under the New Hampshire and Federal Constitution. Madison lacks the statutory or constitutional authority to restrict a use of their property that the Supreme Court has confirmed is a residential use. Such an action is fundamentally unfair generally and to the Kellerman property in particular. By barring them from using their property for residential short term rentals unless owner-occupied, Madison is depriving them of a recognized fundamental right of property ownership and creating a regulatory taking.*

*Fourth, the amended Madison Zoning Ordinance violates the Kellermans' equal protection rights. The amended Zoning Ordinance affects property so it is subject to intermediate level scrutiny. Madison cannot show that the amended ordinance is substantially related to an important governmental objective. Madison cannot discriminate against owners of property who wish to engage in short term rentals, a recognized residential use, but freely permit long-term rentals. It cannot be a substantial governmental objective to allow long-term rentals at the expense of short-term rentals, especially absent any evidence or proof to support disparate treatment. The Code Enforcement Officer's interpretation deprives the Kellerman' of use of an otherwise proper use of their property and improperly favors hotel, motel and bed-and-breakfast operators by barring their competition. The zoning ordinance should not be used to pick winners and losers in the tourism industry."*

*Fifth, the amended Madison Zoning Ordinance violates the holding in Britton v. Town of Chester,*

*134N.H. 434 (1991). In that case the Supreme Court struck a zoning ordinance that acted to restrict access to affordable housing in Chester. In this case, the Madison Zoning Ordinance definition of "dwelling unit" precludes the creation of affordable housing because the definition is applicable throughout all districts in Madison and the owner-occupied requirement as interpreted by the Code Enforcement Officer undercuts the ability to create meaningful affordable housing.*

Attorney Johnson stated he wanted to make some legal points because at the April 17<sup>th</sup> meeting there was some discussion about the iterations of the Zoning Ordinance and how it applied and Attorney Johnson had a couple of points that apply to **Case #23-15** and **Case #23-18** and all the other cases, that the Notice of Violations that prompted this whole discussion all say that the March, 2022 change to the Zoning Ordinance clarified that the residential use of the property for a transient use, as now defined in the Zoning Ordinance, was not permitted and that is what brought the administrative enforcement actions and he looked through the Zoning Ordinances and has gone back to 1990 and the first time when all these pieces were put together for the town to be able to make the argument they are making, was with the 2022 ordinance changes. Attorney Johnson stated that the definition of 4.6 of the Zoning Ordinance as it relates to Eidelweiss, has not really changed in any substantive way and the issue is that in 2022, the town added a single-family home definition that never existed before going backwards and the town also changed the dwelling unit definition and this is important because only in 2022, did the definition of dwelling unit include the phrase for non-transient use. Attorney Johnson stated that in 2018, the definition of transient and non-transient came in. Attorney Johnson stated that in 2018, the definition of dwelling unit just said for residential uses and there was no concept of a transient aspect to it for a period of time and only in 2018 the town added transient definition but the town still did not change the definition of dwelling unit and then, in 2022, the town changed the definition of dwelling unit to link it to the definition of transient and non-transient use and said the dwelling unit only included use that was for non-transient use and that is the first time there was a temporal or time limit type of definition in the dwelling unit definition. Attorney Johnson stated that he would submit that the standard of the test is whether the property was being used for short term rentals prior to the change in the Zoning Ordinance of March, 2022. Attorney Johnson stated he believes this is the position that the Selectmen have taken because the notice of violations all reference the clarifications of the March, 2022 Zoning Ordinance which now, by the Selectmen's view, states that short-term rentals of a single-family home is not permitted by trying to rely on the new definition of dwelling unit which says it must be for non-transient use. Attorney Johnson handed out the letter from Silver Shores Homeowners Association dated October 12, 2023 with attachments as well as the letter from the Kellermans dated April 17, 2024 (copies of which are in the file for **Case #23-15**).

Attorney Johnson referred the board to the Kellermans letter and that they did their due diligence before deciding to purchase the property and the Kellermans went to the town's website and the information was confusing and misleading and worse, relative to what could and could not be done on the property and Attorney Johnson raised this point because the board has had questions in the past if applicants have done their due diligence.

Attorney Johnson referred the board to the letter from Silver Shores Homeowners Association and this letter provides context for how these units have been used historically, including the Kellermans unit and why some of the points he made in his broader legal argument apply relative to the impact that this interpretation and approach the Selectboard is now taking would impact the Silver Shores Homeowners Association and the author of the letter from Silver Shores Homeowners Association is Scott Audette who is present tonight and he can answer any questions. Attorney Johnson also stated the Kellermans neighbor, John Knight was also present and Attorney Johnson wanted Knight to explain to the board the prior rental history of the property that the Kellermans bought so the board has some context to that.

Gentile called a point of order and stated that Martin, Vice Chairman has just joined the meeting and that Martin is a regular member of the board and Gentile stated since he already elevated Skaife, the board can continue that

way but Gentile asked Attorney Johnson's opinion if he would prefer the board return to the same five-member board that was present at the March 20<sup>th</sup> meeting. Gentile stated he is willing to do this and allow Skaife to be the Alternate and let Martin stay, however, Gentile has already elevated Skaife and he asked Attorney Johnson if he would like to continue with the board the way Gentile has already set it tonight and it was Attorney Johnson's call. Attorney Johnson stated there is probably value in having a consistency of membership from the prior board to the present board as the cases overlap a little bit and he thinks this is cleaner. Gentile stated he will let Martin operate as the fifth member of the board and Skaife is back in her training mode.

Gentile stated that since Martin missed the beginning of Attorney Johnson's argument, that he was giving Attorney Johnson the opportunity to bring Martin up to date which he did.

**John Knight, 10 Haven Road** – Knight explained he has owned his property since 2007 and since 2007, there are at least five houses in Silver Shores that have been rented out over the years. He further stated that Alan Davis previously owned the Kellermans property and that Davis was a full-time summer resident and then Davis sold the property to Alan Moore in 2015 and Moore rented the property a lot and then Moore sold the property in 2022 to Kellerman and he has also been renting the property out. Knight stated that since 2007, the police department answered one call at the Kellermans property which was when Moore owned it and it was due to a renter who had broken into the shed. Knight stated since he has lived in the area, there has never been any noise issue. Knight stated that the Kellermans screen renters and that people renting have been respectful and hopes that the Kellermans can keep renting their property.

**Scott Audette, 48 Saxon Road** – Audette handed a letter to the board dated April 12, 2024 (copy of which is in the file for **Case #23-15**). Audette stated that the prior owner, Alan Davis never rented the property when he owned it but when Alan Moore owned it, he rented it all the time and that there has never been any trouble in the neighborhood and they do not allow it. Audette stated that he is the Vice President of Silver Shores Homeowners Association and that their charter is recorded with the state and under their rules and regulations it allows for rentals in their association and the property owner needs to make sure there are no issues with their renters. Audette further stated he does not see how the Zoning Board can change the charter on their association and Audette stated to the board that if this does not go the Kellermans way, then the board of the association will step in and Audette stated that the Zoning Board is not changing their charter that is recorded with the state and that is the way it is.

**Keith Kellerman, 21 Haven Road** – Kellerman stated he is the owner of the property and he wanted to talk about the due diligence and intent. Kellerman stated that he put in an offer in October, 2022 and closed in December of 2022 with the intention of looking to rent the property as a short-term rental and that it is a benefit for them to use the property and to also rent the property for short-term rental to offset costs in purchasing a second home and this is part of their retirement plan. Kellerman also stated that he discussed the short-term rental issue with the seller's realtor who told them the prior owners rented the property and the realtor did not think it was illegal and she told them there was some political discussions going on with respect to the Edelweiss District. Kellerman referred the board to Page Two of his letter dated April 16, 2024 and stated that he started with the Town of Madison's website and it states that, if you are renting or planning to rent your home on a short-term or long-term basis that you need to submit a rental affidavit, which he did after they bought the property. Kellerman stated he then reviewed the articles that were voted in March, 2022 and focused on the two articles that were discussed where short-term rentals were specifically highlighted and those articles were defeated and he stated he understood the articles were defeated but did not quite understand the change in the definitions because they were subtle and did not think renting a home would be illegal. Kellerman was also concerned if he came up to use his property for less than 30 days would he also be illegal and found this to be very confusing. Kellerman also stated he reviewed what was being reviewed at the Planning Board meeting in June of 2022 as to the draft regulations for short-term rentals and he believed that the town was starting to consider regulations for short-term rentals and

this was his due diligence and he also stated that he is very careful about renting his property.

Gentile stated that this is a review of an administrative decision and the board has an obligation to be a little bit consistent with previous decisions, however, each property is considered on an individual basis so it is possible to have a different outcome for an individual property on the assumption that the board finds that there is a sufficient difference between that and a similar property. Gentile did want clarification as to the board's previous decision, and also for the benefit of the public, the essence of this particular request is, whether this particular property is grandfathered because if it is grandfathered, it does have the right to continue in its use whether or not agreed to whether it is legal or illegal and at this stage of the game and because the board has already made a decision earlier that another similar property was not legal that if the board determines it is grandfathered, that solves the issue. However, the issue of grandfathering was not based on the definition of a dwelling unit but whether it was commercial usage which is a slightly different issue than whether the board was contesting whether they had a clear issue of transient versus non-transient usage less than 30 days or more than 30 days. Gentile stated the question that the board had raised, specifically in Eidelweiss, was that in contrast to the rural residential district, Eidelweiss specifically prohibits the use of commercial use and business use and that the board's definition of understanding what commercial and business use on this is and not on the question of the definition of a dwelling unit and transient. Gentile asked if Attorney Johnson understood his point and asked how he would respond to this. Attorney Johnson stated with all due respect, the Zoning Board got it wrong and that and the Supreme Court has answered the question of how you would interpret this question and if you are using the property residentially, it is a residential use and the fact that it is being rented for long-term or short-term does not convert it to a commercial use and Attorney Johnson also stated that the language of 4.6 in Eidelweiss cannot be read the way the Zoning Board is reading it because it says single family usage but it also allows home occupations and is not as narrow or tight as what some people wanted the Zoning Board to believe relative to the limitations on it and so, when you couple the actual language and the fact it does allow home occupations and were you to call it a short-term rental is like a business which Attorney Johnson does not believe it is under the Conway v. Kudrick decision but even saying, hypothetically, you did, the ordinance already says you can have home occupations and you are using the property. Attorney Johnson also stated that he may have misunderstood the Zoning Board and appreciated the chance to clarify that the discussion at the last meeting talked about going much further back in terms of having to show that it was a pre-existing short-term rental much further back in time and Attorney Johnson understood that the board was basically saying you would have to prove that you were renting the property back in 2010 or even before that because of the board's interpretation of what the Eidelweiss District stood for. Attorney Johnson stated he understood the commercial point but he also understood, at least from the board's opinion, that the cutoff date was much earlier which is why Attorney Johnson made the point that the cutoff date has to be March of 2022 and in fact, all of the enforcement was predicated on the fact the ordinance changed in March of 2022 and there was flurry of these Notice of Violations and none of this ever happened before and the letter does not say that you never have been able to do it, but oh by the way, we are now coming around and it says we clarified it in March of 2022 that it is not permitted and Attorney Johnson stated analytically, the deadline or trigger point for whether it is a pre-existing non-conforming use is any earlier than the changes to the Zoning Ordinance passed by the voters in March of 2022. Gentile clarified what the discussion was about is that there were two models of what grandfathering is and that one model is that there are three periods of time before 1987 when our Zoning Ordinance came into play and any home that has been used as a short-term rental and can document that fact and goes before the board, is clearly grandfathered. Gentile further stated that the argument at the last meeting was whether the period between 1987 and 2022 and was that a separate period that the Zoning Ordinance did not speak to short-term rentals specifically and therefore, they cannot be considered illegal or can you apply the definitions so basically, there were only two periods before 1987 and after 1987 at least for Eidelweiss. Gentile stated the question is did the ordinance suddenly change later so that there is another date besides 1987 and Gentile further stated that what the board had established was that clearly, by 1990, the definitions the board was discussing at the last meeting were already in the ordinance by 1990 so the date is somewhat irrelevant because they are talking about a period much later than that.

Gentile asked the board if they had any questions. There were none. Gentile asked if anyone else from the public wished to speak.

Cancelarich called a point of order and stated that Gentile needs to ask abutters first if they have any questions. Gentile asked if there were any abutters that wished to speak. There were none.

**Bill Dempster, 57 Doe Drive** – Dempster handed out a time line to assist the board members which Dempster went over with the board (a copy of which is in the file for **Case #23-15**). Dempster stated that he started reviewing the Zoning Ordinances from 1987-2022 as well as town meeting reports and what he is presenting tonight is information based on the facts. Dempster stated that Section 4.2 amendments clarifying what permitted uses and special exceptions were as of 1987 just said because we are a permissive Zoning Ordinance and those in 1987 stated what is permitted in that area and in 1994 it was broken up into what was permitted and what was permitted by special exception and that is what is existing now and it was in existence when it was voted on in March, 1994 and has remained unchanged through March, 2022.

Dempster stated that the Davis family owned the property from 1969-2015 and he has located and contacted four members from this family and are waiting to hear back from them.

Dempster stated if you look at Section 4.2, that is exactly what Robert Boyd, Code Enforcement officer did and the current use of this property, as it is as a short-term rental, is not listed as a permitted use and Dempster does not believe there is any other use of this property with regard to a Bed & Breakfast and it appears that it has always been listed as a summer home and rented out and that is exactly what is in the regulations which were approved by the state in 1969. Gentile stated that for clarification, Dempster is attesting that the charter of Silver Shores allowed short-term rentals beginning in 1969. Dempster stated no, it did not specifically state short-term rentals it stated that the owners may rent the property which Audette verified earlier tonight.

Gentile stated the question the board is trying to answer is, whether this property is legitimately grandfathered under the existing ordinance.

Dempster also stated that the comment that was made that people only received communication after March of 2022, is incorrect as people also received letters of violation from the Selectboard in 2021 prior to the March, 2022 vote and those letters were pulled back because of the Conway v. Kudrick case decision and the Selectboard's attorney at the time, was a little gun shy but that there were letters sent out prior to March of 2022 using 4.6A and 4.2. Dempster also stated that as to home occupation, it does specifically list the Home Occupation definition in our Zoning Ordinance which tells you what you can and cannot do.

Martin asked if under the regulation, is it specified that you need to live in that home? Dempster stated yes, it does. Gentile stated it will tell what is required under Home Occupation. McAllister stated that Home Occupation can mean two things and one is, is the property occupied and the second is if you are living there and doing something as a career or occupation. McAllister believes it means that you can live there and work there. Dempster stated you would have to look at the actual definition. Schilling was reviewing the definition of Home Occupation. Attorney Johnson asked to comment on the 4.2 question previously discussed and stated, that under the 2022 ordinance, single-family houses, there was no definition of single-family houses until 2022 and this was added in 2022 and that single-family housing refers to any building containing one dwelling unit. Attorney Johnson stated that in 2022, dwelling unit talks about transient versus non-transient and this was the first time, and before that, dwelling unit only talked about residential use and there was no definition of single-family home. Attorney Johnson stated that in his perspective a single-family house in a rural residential district is a permitted use and if someone is using it to live in it, even on a short-term basis under the ordinance prior to March of 2022,

that is a permitted use. Attorney Johnson also stated that the charter for Silver Shores is dated in 1969 and it allows for renters and he believes that supersedes any subsequent Zoning Ordinance because that is an agreement and a permission to rent the property that predates the introduction of any zoning in Madison and so this, by definition, is a pre-existing non-conforming use and this really is a basis for the Zoning Board at least for this property that is in Silver Shores Association, has that added additional grandfathering basis and that should be considered.

Dempster stated that it is interesting that Attorney Johnson brings up the pre-existing non-conforming use and asked does this now fall under 1.3C of our Zoning Ordinance? Gentile stated that 1.3C guarantees the right of any legally existing use before 1987. Dempster stated that it also talks about discontinuance and abandonment and that it gives a timeframe and Schilling stated one year. Gentile stated that abandonment is a condition that if a use was abandoned during the timeframe of the validity of the Zoning Ordinance and it was intended to be abandoned, then that is correct.

**Paul McKenna, 59 Oak Ridge Road** - McKenna disagrees with Attorney Johnson and stated he has lived here in New Hampshire for 36 years and as far as the Selectboard goes and because it was overwhelming to do all the short-term rentals at once, they broke it into two parts, post March of 2022 and pre-March of 2022 and the Selectboard has not decided on pre-2022 yet. McKenna stated that Attorney Johnson had someone testify that there have been no problems and McKenna stated that the burden of proof is upon the owner to prove there are no problems and also up to the owner to prove they used their property as a short-term rental. McKenna stated that there was discussion about a charter and where is this charter. Audette stated he has it but he is not giving it out. McKenna stated there is more to this and that an insurance binder would state it is a rental as well as the mortgage and there should be more proof.

Schilling stated she had a question about the charter and asked if what was attached to the Silver Shores Homes Owners Association letter dated October 12, 2023 was the full charter? Audette stated no, it is just one page that shows they allow all the houses to be rented if people want to rent them out. Schilling stated that no place in the document does it say that and it just alludes to renters in Silver Shores and it does not specifically state that properties can be or cannot be rented and she asked Audette for a full copy and she believes that Audette submitted only the pieces that he wanted the board to see and not necessarily the full context of the Home Owners Association agreement. Gentile stated for clarification purposes that under General Regulations, Paragraph 9, is the one that refers to renting properties and read aloud **“Those renting property should use discretion as to the number of persons allowed the use of their property and Silver Shores facilities.”** Also, on the “Restrictions” page, Item #3 **“except that the premises may be rented for occupation as a residence.”** Attorney Johnson also referenced Page 2, under Enforcement, second paragraph **“Copies of Silver Shores Rules and Regulations should be available in each cottage for information, guidance and compliance of all. (This is especially important in rented cottages).** Gentile asked if there was a date for any of these documents for Silver Shores. Audette stated the Restrictions is the code enforcement part of the charter and he just printed out all the pages that pertained to the rental part of it.

Gentile stated there is relevance to the question whether the Davis Family who owned the property until 2015 rented the property out, because the question of abandonment is relevant in this case and if Davis owned it and rented it out from 1969-2015, there was no abandonment during that timeframe and then Alan Moore rented it out from 2015-2022 and there was no intended abandonment but on the other hand, if Davis did not intentionally rent it for a period of time and there was a consistency or intentionally did not rent it before the sale, then that constitutes abandonment. Attorney Johnson stated abandonment or discontinuance analysis in this case is slightly different than how Gentile is framing it and Attorney Johnson does not disagree that in the ordinary course the analysis Gentile is talking about and that Madison’s Zoning Ordinance is no different than most and has some abandonment and is non-conforming if you do not continue it, but here it is an association with a charter that



allows rentals so he does not think the analysis can be whether an individual unit rented or not rented it would have to be whether there is some showing that Silver Shores as an entity, abandoned or changed or decided informally or not, they were not going to allow rentals and no more rentals on the property because this is a chartered provision that allows a unit owner and when Kellerman bought the property, he would get a copy of those restrictions and those provisions and they still allow. Attorney Johnson stated there would have to be evidence that the association, would have abandoned their provision to allow renters. He believes this is how the Zoning Board needs to look at this set of circumstances given the nature of the right we are talking about here. Rau asked how long Silver Shores has been an association? Audette stated since 1969.

***John Cancelarich, 108 Eidelweiss Drive*** - Cancelarich stated he owns a second home in Eidelweiss and he has paraphrased back to the Supreme Court Working Stiff case to illustrate the similarities to what we have here in Madison and he used the 2018 Madison Zoning Ordinance and the key point is permissive zoning ordinance which prohibits all uses that are not expressly permitted based on Article 2.3 and 4.6 and when you look at 4.6, some key definitions we have to use are definitions defined and we use the definition because it is defined in our ordinance and not defined in the use common language and things we have defined in the Eidelweiss case is **“Motel - A building, series of buildings in which lodging is offered for compensation with direct independent access to adjoining parking for each rental unit.”** Cancelarich also stated that **“Bed & Breakfast - A privately owned occupied residence with guest rooms”** by Special Exception only. Cancelarich also read the definition of **“Commercial Use - Any use involving in part or in whole the sale of merchandise, materials, or services but not including home occupation as defined in this section.”** Cancelarich stated that if you look at the ordinance as whole, you start looking at rural residence and it defines what is permitted and definition of rural residence is “farms, wooded lots and some multiple dwellings are permitted in addition to single-family homes but the only kind of public lodging that potentially is allowed, is a Bed & Breakfast facility. He further stated that what Madison’s Ordinance is trying to do is, in Section A 4.2 Permitted Use described farms and woodlands and then if you look at special exception, it is trying to define usage and how is that house used and a professional office can look like a house and a nursing home can look like a house, private school, daycare facilities and these are all houses in structure but by special exception, it is defining usage and how it is used. Cancelarich stated when you go from rural residence to Village District, it shows again, how it says permitted use and everything you can do in a rural residence and then it says by Special Exception and gives you more usage, restaurants, retail, office buildings and as a whole, Madison’s Ordinance is defining what the usage is by Special Exception and the last one is commercial and states any commercial use which we have defined as a term, as well as everything in a rural residence and this is how the whole structure of the Zoning Ordinance works. Cancelarich stated in his opinion, a rental property has been defined as a motel and maybe could be a Bed & Breakfast and just because the terms are not exact and if it is any of these, first off, it is a motel and it is not allowed but if it is similar to a Bed & Breakfast, they should have gotten a Special Exception and Special Exceptions are extremely important in our town and we are trying to protect the rural residential area. He further stated that what a Special Exception does is it allows someone to notify abutters so abutters can attend a public hearing and it satisfies the restrictions of what we are trying to do here and this is how our ordinance is set up and that is how our usage is defined in rural residential. Cancelarich further stated that if it is a motel then it is not defined but maybe it could be and Attorney Johnson did not follow the proper procedure, which is to have a Special Exception meeting and allow the town and property owners to do it and Attorney Johnson did not follow the proper procedure so it is not allowed. Cancelarich stated that we know what short-term rentals are and they are motel style and possibly a Bed & Breakfast but that defines a person living there and we are close to that and regardless, it is not defined, they should have gotten a Special Exception and if they do not get a Special Exception, then it has never been legal. Cancelarich stated that on the charter, the board should consult with their attorney and he stated, he is not an attorney but believes a charter is a personal agreement between people and he further stated that our Zoning Ordinance supercedes this and it is a stricter ordinance. Cancelarich also stated that Attorney Johnson, in his Legal Analysis, cannot show whether or not there was a gap on renting and if you look at the 2015 or 2018 ordinance, it was not allowed at that time.

Gentile stated that the board needs to look at what they have for Findings of Fact and what the board needs for facts may give the board the grounds for a continuance. Gentile asked if anyone else wished to speak on this case. No one wished to speak so Gentile stated the board is going to collect their Findings of Fact before the board closes the public hearing so there is a chance to correct anything that may be misrepresented because the Findings of Fact from the public is part of the foundation the board makes their decision on and he asked the board members to assist him in collecting the Findings of Fact.

**Preliminary 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.

Gentile asked for a motion to close the Public Hearing to deliberate on the merits of the case.

**Motion** by Martin, seconded by Schilling to close the Public Hearing and deliberate on the merits of the case.

Roll Call Vote: Gentile – Aye; Martin – Aye; Rau – Aye; McAllister – Aye; Schilling – Aye.  
The motion passed by a roll vote of **5-0**.

Gentile explained to the public that board is now proceeding with the deliberation and that this is a public meeting and they are welcome to listen but there will be no further contribution from the public.

During the board's deliberation, Gentile stated he was going to make a list of what the board needs as follows:

1. Clarification on the relevancy of the charter (Responsibility of the ZBA).
2. Whatever could be provided even if it is minimal, tax record, public record of any kind, second request to previous owner, tax statement and any hard data (Responsibility of the Kellermans).

McAllister stated that in the board's discussions, they talked about the term commercial use. McAllister looked up the definition of commercial use from a university and read aloud **“a commercial use is any reproduction or purpose that is marketed, promoted or sold and incorporates a financial transaction.”** Attorney Johnson stated he objected to this and McAllister stated “no you don't.” Schilling stated that McAllister was just reading a definition aloud and Attorney Johnson stated he still can object. Gentile asked Young to note Attorney Johnson's objection for the record. Schilling stated that several court cases have tackled the discussion of commercial use and the definition when it relates to short-term rentals. Schilling also stated she understands the courts definition that it does not change the homeowner into a commercial entity and she does not believe the board or any one of the cases has stated that and she believes what the board is talking about, is usage as opposed to purpose of the

structure. Martin stated that the charter does not use the word commercial and uses the word business, conducting business. Schilling stated this is different and not necessarily linked to a commercial entity and that you can be a homeowner and still conduct business as opposed to a commercial entity. Gentile stated the primary issue is whether or not this is grandfathered and if it is not grandfathered, then all the other questions will become relevant but the question of business use and commercial use becomes secondary to this particular case so the board needs to clarify the question of whether this is reasonably grandfathered and the only way to do this is to continue the case.

Gentile asked the board for a motion to continue **Case #23-15**.

**Motion** by McAllister, seconded by Rau to continue **Case #23-15** to May 15, 2024 at 6:00 pm to be held at the Madison Town Hall, Lower-Level meeting room.

Roll Call Vote: Gentile – Aye; Martin – Aye; Rau – Aye; McAllister – Aye; Schilling – Aye.  
The motion passed by a roll vote of **5-0**.

Gentile asked that Attorney Johnson and Kellerman to produce any kind of documentation which would be to their benefit.

The Zoning Board of Adjustment took a three-minute break.

-----

Gentile asked Young to read the public notice for **Case #23-18** aloud.

Young read aloud **Case #23-18** as well as the Public Meeting Notice as follows:

**Case #23-18 – Continued (October 18, 2023, November 15, 2023, January 17, 2024 and February 21, 2024, March 20, 2024 and April 17, 2024) - 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.

**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 March 27, 2024.

**Conflict of Interest:** Gentile polled the board and there was none.

**Waiver Request:** Gentile stated there is a Waiver Request and there are no dimensional issues at stake here and he asked for a motion to accept the waiver request and stated that we do not have a certified plot plan but since there are no dimensional issues at stake here, the certified plot plan is meaningless for the board’s deliberation so the board considers waiving it.

**Motion** by Schilling, seconded by Martin to accept the Waiver Request. The motion was voted on and passed **5-0**.

**Regional Impact:** There was none.

Gentile asked everyone who intends to speak to **Case #23-18** to please identify themselves and he swore those members of the public in.

Gentile stated that he believes this is also a case where the primary question is one of grandfathering. Attorney Johnson stated he was correct. Attorney Johnson stated he represents Petti and Swift and as he understands it that this is in the rural residential district and not the Eidelweiss District and it is a question over grandfathering given how the Zoning Board has ruled over the previous hearing. Attorney Johnson handed out packets to the board which is data of rental history back to 2021 before they bought the property and this property was built in 2018 (copies of which are in the file for **Case #23-18.**) It was agreed by the board and Attorney Johnson at the first presentation (which was November 15, 2023 that he could make his legal argument and it really would apply to each of the cases so he did not have to say the same thing each time and he wanted to make sure they are operating under the same ground rule that legal presentation relative to his legal arguments is applicable to each of the various applications and he stated that we are now on to the facts specific aspects of each use of the property and his legal analysis included in the letter, is in each application which was set for the board. Gentile agreed. (See Attorney Johnson's Factual Background and Legal Analysis as quoted below for **Case #23-18.**)

### **"Factual Background"**

- 1. On April 20, 2023, Matthew Petti and Jennifer Swift (the "Owners") became the owners of record for 70 Skyline Way, Madison, NH by Warranty Deed from Sean P. Sullivan and Alexandria L. Sullivan, Trustees of The Sullivan Realty Trust recorded with the Carroll County Registry of Deeds at Book 3719, Page 40.**
- 2. The Owners began renting their property on a short term basis in mid-2023.**
- 3. On August 16, 2023, Robert Boyd, Code Enforcement Officer issued the Owners a Notice of Violation. The Notice stated that the Owner's property was; (1) a non-owner-occupied, short-term rental; (2) in violation of the Ordinance; and (3) continued use of the property in violation of the Ordinance would result in the Town of Madison commencing legal action in court. The Notice of Violation advised the property owner that they could appeal to this body within thirty (30) days. The Owners have availed themselves of this right. A copy of this Notice is attached as Exhibit A.**

### **Legal Analysis**

**The Board of Selectmen and the Code Enforcement Officer made an error of fact in issuing a Notice of Violation. As will be explained below, the Madison Zoning Ordinance changes cannot be applied to the Owners property because they are unconstitutional.**

**First, the Owners property is a pre-existing nonconforming use. It was used for short term rentals historically and after the most recent amendments to the Madison Zoning Ordinance in March of 2022. Because the property always has been used for shot term rentals, and that use has not been abandoned, the current owners, the Owners, are entitled as a matter of law to continue the pre-existing nonconforming use. The Madison Zoning Ordinance expressly recognizes the ability to continue prior nonconforming use at section 1.3(c).**

**Second, the amended "dwelling unit" definition upon with the Code Enforcement Officer is relying is unconstitutional because of its vagueness, ambiguity, and/or overbreadth. As written, it is unclear what the definition intends to cover. Second home owners as well as seasonal renters could be barred by this new definition from accessing their property in Madison. The revised definition of dwelling unit does not differentiate between owner or rental occupancy. Were this amendment to be valid, an owner of a second home bought after March of 2022 would not be allowed to use his or her property for periods of less than thirty days. This definition is thus void given its complete ambiguity. Officer Boyd's "Notice of Violation" letter claims that the 2022 changes "make it clear that a house that is primarily rented to guests on a short-term basis, rather than used as a residence, does not meet the definition of single-family house." However, the change to the ordinance does not include the word "rental." Moreover, the Town voted down two proposed**

*amendments directly addressing short-term rentals, Given this set of circumstances, the Town should not base its enforcement actions on ordinance language that is so vague. The Chief Justice of the New Hampshire Supreme Court has cautioned that any ambiguity in a land use regulation should be, in his opinion, construed in favor of protecting private property rights. See Conway v. Kudrick, 2022-0098 (MacDonald, CJ., concurring opinion). Following that guidance should cause this board to reject any enforcement actions until the Madison Zoning Ordinance is modified to be clear what is restricted and what is not.*

*Third, the amended Madison Zoning Ordinance violates the substantive due process rights of the Owners and creates a regulatory taking under the New Hampshire and Federal Constitution. Madison lacks the statutory or constitutional authority to restrict a use of their property that the Supreme Court had confirmed is a residential use. Such an action is fundamentally unfair generally and to the Owners property in particular. By barring them from using their property for residential short term rentals unless owner-occupied, Madison is depriving them of a recognized fundamental right of property ownership and creating a regulatory taking.*

*Fourth, the amended Madison Zoning Ordinance violates the Owner's equal protection rights. The amended Zoning Ordinance affects property so it is subject to intermediate level scrutiny. Madison cannot show that the amended ordinance is substantially related to an important governmental objective. Madison cannot discriminate against owners of property who wish to engage in short term rentals, a recognized residential use, but freely permit long-term rentals. It cannot be a substantial governmental objective to allow long-term rentals at the expense of short-term rentals, especially absent any evidence of proof to support disparate treatment. The Code Enforcement Officer's interpretation deprives the Owners of use of an otherwise proper use of their property and improperly favors hotel, motel and bed-and-breakfast operators by barring their competition. The zoning ordinance should not be used to pick winners and losers in the tourism industry, Fifth, the amended Madison Zoning Ordinance violates the holding in Britton v. Town of Chester, 134 N.H. 434 (1991). In that case the Supreme Court struck a zoning ordinance that acted to restrict access to affordable housing in Chester. In this case, the Madison Zoning Ordinance definition of "dwelling unit" precludes the creation of affordable housing because the definition is applicable throughout all districts in Madison and the owner-occupied requirement as interpreted by the Code Enforcement Officer undercuts the ability to create meaningful affordable housing."*

Attorney Johnson stated that Petti was going to speak to the board and explain how they operate the property.

Petti stated they purchased the property last year and it was intended to be used as second home and renting it part-time. Petti stated they did their research at the time and were aware of the 2022 ordinance and the grandfathering clause within. Petti stated that his realtor also represented the seller in the sale and that the seller had rented the property as well as the prior owner and Petti made the decision to purchase based on that. Petti explained the rental history that the board had before them and that it goes back to February of 2021 being rented as a short-term rental by two prior owners. Gentile asked if the documentation presented went back one or two owners and Petti stated it technically went back four owners. Petti stated he had reached out to the prior owner that sold the property to his seller and asked if he could provide rental documentation that they had used the property as a rental and Petti provided the rental history and reservations from the prior owners, a copy of the deed, Airbnb listings, cleaning history, prior rental history from 2021 -2022 as well as rental history for Petti and Swift.

Petti stated that they may rent the property 100 days a year but primarily will use it for themselves.

Gentile asked if there were abutters that wished to speak. There were none.

**Bill Dempster, 57 Doe Drive** – Dempster stated that Petti and Swift did a great job in their presentation. Dempster stated there was missing information and that the rentals only went back to 2021 and what happened to 2018, 2019 and 2020 and he does not believe there were any records as to rentals and who owned it and there were two other owners from 2018 to 2019 and 2020. Dempster stated there is a home owners association and did not have the Covenants and Restrictions with him tonight but recalled there was nothing in the document regarding rentals and he downloaded this document from the Carroll County Registry of Deeds. Dempster further stated he does not like the term grandfathering but prefers pre-existing non-conforming use and there does not appear to be anything from 2018 to 2020.

**John Cancelarich, 108 Eidelweiss Drive** – Cancelarich referred the board to the Supreme Court Working Stiff case to illustrate the similarities between their case and this case here in Madison and he used the 2018 Zoning Ordinance which seems to apply to prove non-conforming and stated **“Madison ordinance establishes a “permissive” zoning intended to prohibit all uses that are not expressly permitted. Articles 2.3 and 4.6”** and read from 4.2 **“Permitted Uses - The following uses shall apply to the Rural Residential District. It shall be mainly a district of farms, residences and woodlands” as follows: Farms, including all land, buildings, or structures associated with the farming activity as defined by RSA 21:34-a; Woodlots; Single family houses with accessory buildings and outbuildings; Multiple housing and Home Occupations.”**

Cancelarich stated he does not see how a short-term rental would fit into the above quoted paragraph and everything else for use, is under Special Exception and he does not see short-term rental at all and stated the above list is exactly what is permissive. Cancelarich stated that Attorney Johnson is arguing that a single-family house now classified as a short-term rental is a permissive use and Cancelarich disagrees and this is why you must go back and look at our ordinance and ask what is a permissive use and the only thing that is close to it is a Bed & Breakfast and once again, a Special Exception. Cancelarich stated again, look at our ordinance and when a definition is defined, it must be used and Motel is in our ordinance and not listed as a residence and he stated **“Motel – A building or series of buildings in which lodging is offered for compensation, with direct independent access to and adjoining parking for each rental unit.”** Cancelarich stated that a **“Bed & Breakfast is a privately owner-occupied residence with guest rooms”** by Special Exception only. Cancelarich stated that you need to look at the definition of **“Commercial Use – Any use involving in part or in whole the sale of merchandise, materials or services but not include home occupation.”** Cancelarich stated in Petti’s testimony, he is having his renters pay for cleaning and listing and that is a service and compensation is being transacted and this is a motel Commercial Use. Cancelarich stated the reason it does not say Commercial Use in Residential District and this is important because if you want Commercial Use, it is listed in Commercial District so it is specifically used in a district to define Commercial Use and remember just the definition matters and not the term.

Cancelarich stated that Special Exception is usage and a home has usage and how we use it and just because it is built, does not make it a short-term rental. Cancelarich stated all that is listed in Commercial Use is all that is allowed. Cancelarich stated the ordinance is working based on usage. He further stated if you think it is a Bed & Breakfast, or close to it, you need a Special Exception because it allows someone to notify abutters so abutters can attend a public hearing and it satisfies the restrictions of what we are trying to do here. Cancelarich stated that Attorney Johnson is arguing this property is a dwelling unit, it is a house, but it is more than that, its use fits the mold of Motel, Bed & Breakfast and Commercial Use as defined in the Madison Ordinance. Cancelarich stated this case needs to be denied and the applicant needs to go back for a Special Exception. Cancelarich believes this is Commercial Use based on the Madison Zoning Ordinance’s definition and he asked the board to consider these facts in making its decision. Cancelarich also stated Attorney Johnson is arguing residential use based on the **Conway v. Kudrick** case and Cancelarich stated in that case it was based on living as a household which is not in our ordinance at all and the language in our ordinance is unique to Conway based on the definitions.

**Jennifer Swift, 70 Skyline Way**- Swift stated that in the Cease-and-Desist letter they received there was language that stated if they claimed the property was used as a short-term rental prior to March 8, 2022, they would need to provide proof. Swift stated they provided proof as far back as 2021 from previous owners and she asked the board to review the letter and that they did provide the proof as requested in the letter.

**Michael Brown, 22 Little Shore Drive** – Brown stated this house was built in 2018 and the ordinance goes back to 1987 and you cannot grandfather something if it is already illegal and that grandfathering and allowing something to continue that was done before an ordinance was put into place before this house was built, that does not make it legal.

**Paul McKenna, 59 Oak Ridge Road** – McKenna stated the people bought the house after the ordinances were in place and they should have done their due diligence and in his opinion, the law says you cannot be a short-term rental and we need to follow the law.

**Matthew Petti, 70 Skylineway** –Petti stated with regard to the Special Exception request, that was something that never occurred to them and the word “usage”, to him is people that stay in their home use it the same way they do, they cook, sleep and watch tv and it never occurred to them to apply for a Special Exception any more than the way they use the property and this is exactly what they do, they stay there for a short period of time and live in the home. Petti stated they did do their due diligence and researched the 2022 ordinance and asked how he was expected to find a 1987 ordinance. Martin stated it is on the Town of Madison’s website. Martin stated for clarification that our Zoning Ordinance was adopted in 1987 and there is wording in the 2022 ordinance that references if something was constructed before or used before 1987, he just wanted to make it clear the board is not using the 1987 ordinance and it is just a reference to one of the sections of it.

Attorney Johnson stated that his clients do not need to show rental history for 2018 or 2019 and all they need to show is short-term rental usage of the property by the prior owner before the Zoning Ordinance change in March of 2022 and he stated again, it is the March 2022 ordinance that made the change and prior to that, there was not any difference between long-term rentals and short-term rentals and only in 2022 did the definition of dwelling unit include a restriction that said non-transient use which would have to be more than thirty days so that is the first time there was any separation between long-term rental and short-term rental and there is nothing else in the Zoning Ordinance that predates that, that has any restrictions on renting a single-family home and that is where the issue is and why the non-conforming use test was not being used for short-term rental which they have proved through documentation to the Zoning Board who said they wanted it and they have continued to use the property and Attorney Johnson argued this is a classic case for allowing them to continue to use it as a pre-existing non-conforming use that exists prior to March of 2022 and they continued it after March of 2022.

Gentile asked the board if they had any questions for Attorney Johnson. There were none.

Gentile asked if anyone wished to speak to this case.

Gentile stated the board was now going to collect the Findings of Fact.

**Preliminary 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.

Gentile asked for a motion to close the Public Hearing to deliberate on the merits of the case.

**Motion** by Martin, seconded by McAllister to close the Public Hearing to deliberate on the merits of the case.

Roll Call Vote: Gentile – Aye; Martin – Aye; Rau – Aye; McAllister – Aye; Schilling – Aye.

The motion passed by a roll vote of **5-0**.

Gentile stated there are cases stacked up that are depending on this decision and we have a case that is going to be appealed based on the decision and the board needs to be very clear on the board's position on this and have to be consistent in all cases because if the board is going to change the date from 2022 to 1987, then it has to be consistently applied to every case that falls into that time frame. Gentile's recommendation is to have a legal review and to continue **Case # 23-18** to May 15, 2024.

**Motion** by Gentile, seconded by Schilling to continue **Case #23-18** to May 15, 2024 at 6:00 pm to be held at the Madison Town Hall, Lower-Level meeting room.

Roll Call Vote: Gentile – Aye; Martin – Aye; Rau – Aye; McAllister – Aye; Schilling – Aye.

The motion passed by a roll vote of **5-0**.

Attorney Johnson asked the board to clarify that they are not looking for any more information and stated that May 15, 2024 is a public meeting and not a public hearing.

Attorney Johnson asked the board if they were looking for any further information from him. Gentile stated no.

Gentile asked Attorney Johnson if agreed to continue the remaining cases. Attorney Johnson stated yes.

Gentile read aloud the case numbers and names that are associated with Attorney Johnson's agreement to continue the following cases:

- 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
- Case #23-25 for Rishi Saxena and Abhishek Sahai

**Motion** by Gentile, seconded by Schilling to continue **Case #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 and Case #23-25** as requested by Attorney Johnson to May 15, 2024 at 6:00 pm to be held at the Madison Town Hall, Lower-Level meeting room.

Roll Call Vote: Gentile – Aye; Martin – Aye; Rau – Aye; McAllister – Aye; Schilling – Aye.  
The motion passed by a roll vote of **5-0**.

Dempster rejoined the board.

### **ELECTION OF OFFICERS:**

Gentile asked the board if anyone was interested in sitting as Chairman or Vice Chairman.

**Motion** by Gentile, seconded by McAllister to nominate Schilling as Vice Chairman. Gentile asked the board if there were any other candidates. There were none.

**Roll Call Vote:** Gentile – Aye; Martin – Aye; Rau – Aye; McAllister – Aye; Schilling – Aye; Dempster – Aye; Skaife - Aye

The motion passed by a roll vote of **7-0**.

Gentile stated that Ohlson cannot be an officer of the board as he is presently the Chairman of the Planning Board but he can sit on cases.

**Motion** by Martin, seconded by Schilling to nominate Gentile as Chairman. Gentile asked the board if there were any other candidates. There were none.

**Roll Call Vote:** Gentile – Aye; Martin – Aye; Rau – Aye; McAllister – Aye; Schilling – Aye; Dempster – Aye; Skaife - Aye

The motion passed by a roll vote of **7-0**.

Gentile stated that Martin has dropped down to an Alternate and Dempster is now an appointed member.

Gentile further stated that in the event the board must elevate Skaife in the first couple of meetings before she is comfortable because she is an alternate, an applicant may want a five-member board and when the board comes to a vote on a case, and it is something significant, he will ask Skaife to vote in the fourth position and will vote person by person and the reason for this, is so Skaife is not put in a position that she must cast the deciding vote

Martin informed the board that he will not be present at the May 15, 2024 meeting and will have to call in by phone.

### **APPROVAL OF DRAFT MINUTES:**

**Motion** by Gentile, seconded by McAllister to approve the March 20, 2024 minutes as amended.

The motion passed by a vote of **5-0**.

**ADMINISTRATION:** Young had nothing to report.

**ADJOURNMENT: Motion** by Schilling, seconded by McAllister to adjourn the meeting at 9:30 pm.

The motion passed by a vote of **7-0**.

The next Public Hearing of the Zoning Board of Adjustment will be held on May 15, 2024 at 6:00 pm at the Madison the Madison Town Hall, Lower-Lever meeting room.

Respectfully submitted,

Katharine Young  
Land Use Boards Administrator