



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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**ZBA MINUTES
November 20, 2024**

ATTENDANCE: Sharon Schilling, Acting Chairman/Vice Chairman, George Rau, Bill Dempster, Marc Ohlson, Alternate, Jake Martin, Alternate and Jennifer Skaife, Alternate

EXCUSED: Doug McAllister and Drew Gentile, Chairman

OTHERS PRESENT: Madison TV, Kasia Scontsas, Kate Young, Land Use Boards Administrator, Domenic Falzone and Lisa D'Innocenzo

CALL TO ORDER: Schilling, Acting Chairman, called the meeting to order at 6:00 pm.

PLEDGE OF ALLEGIANCE/ROLL CALL: Dempster led the reciting of the Pledge of Allegiance. Schilling introduced the members of the board present.

ELEVATION OF ALTERNATES: Schilling stated that some of the cases the board will be discussing tonight, particularly, the Short Term Rental cases, that there would need to be a five-member board and although, there is a quorum tonight, there is not a five-member board and those entities are entitled to a five-member board if it can be provided. She further stated that it is the individual's choice that if the board is unable to provide a five-member board, that they could defer to the next time when there is a five-member board present. Schilling stated that we have three alternates tonight and with the Short Term Rental cases, Ohlson is recused from hearing those cases as he sits on the Planning Board. Schilling suggested that they elevate Martin and Skaife from alternate members to regular members for voting purposes. Young stated that Dempster also needs to recuse himself from the Short-Term Rental cases. Schilling further stated that this now only gives a four-member board tonight but since there is no one present for Short Term Rentals, including their lawyer, she is presuming that they have no objection that they are going to vote by a four-member board. Dempster and Ohlson left the table and seated themselves in the audience. Schilling asked for a motion to elevate Martin and Skaife to full voting members.

Motion by Schilling, seconded by Rau to elevate Martin and Skaife to full voting members. The motion was voted on and passed **unanimously**.

Schilling stated that since no one was present tonight for the Short-Term Rental cases and normally, if there were people here for the Short-Term Rentals, she would have flipped the Agenda and had the variance case go first. Schilling believes that, because Attorney Johnson had requested a continuance due to those court cases still sitting on the judge's desk awaiting a written decision, that the board had agreed back in May to continue these cases and she recognizes that there is a sense of expediency that the public is entitled to. She stated that she believes that waiting to hear the decision of those original Short Term Rental cases that are before the court, it is important to the outcome of the rest of these cases and it will determine, to a certain extent, what happens with the rest of these court cases

and some of them hinge on those decisions. Further, she stated that there is a second court case that brings into question, the definition of a motel which will also need to be determined by the court and that all cases are affected by that decision. Schilling further stated that Attorney Johnson had requested a continuance from May to November and now we are going to go from November to February of 2025 to make sure we have those decisions from the court.

Schilling stated that she has a letter from Kathy Koziel who did not think she would be able to make the meeting. Schilling swore in Kathy Koziel as she is under the Public Hearing part of the meeting.

Koziel – 7 Lakeview Drive read her letter aloud to the board.

Kathy Koziel read aloud a letter she presented to the board. She stated that on May 15, 2024 there were eight Short Term Rental cases that have been continued for six months and five of the cases were moving forward and two cases of those eight have already been solved and closed and that three cases have been filed in court. Koziel stated that since tonight is the deadline for these cases, she is respectfully requesting that the Zoning Board of Adjustment not continue five of those eight cases because none of their appeals to the Zoning Board of Adjustment argued that there is a prior rental history of March of 2022 on those five cases and currently, there are no cases moving forward with that condition. She further stated that the three cases being heard by the court have been denied by the Zoning Board of Adjustment and their appeal has also been denied by the Zoning Board of Adjustment and they have filed against the Town of Madison, that all three of those cases are claiming some level of prior rental history prior to March of 2022 when the definition changed that the rentals must be 30 days more or longer and those cases arguments are that they were renting before March of 2022. She further stated that there are two very distinct groups of cases, ones that have had some rental history before March of 2022 and some that have had none. Koziel stated that Case #23-19, #23-20, #23-22, #23-24 and #23-25 had no claim of prior rental history to March of 2022. Koziel stated that two of the five cases have been sold which are Case #'s 23-22 and Case #23-24. Koziel asked Young if Attorney Johnson has withdrawn these two cases? Young stated he has not and that she sent him an email on November 4, 2024 asking him this question and then she did not hear back and sent him another email on November 13, 2024 and she has not heard anything back.

Koziel further stated that the remaining cases should be allowed to go forward because it is two different decisions by the court being one, whether our language will be upheld and two, because they had prior renting that they can continue to do so and these five cases fall into the category that there is no prior renting and will our ordinance stand up to scrutiny by the court and until we let one of these cases go forward, we are not going to know that.

Martin stated that these are not requests from variances and that these are Appeals of Administrative Decisions and if we do not give them the chance to present, it is a lack of due process and we are opening ourselves up.

Schilling stated that the review of the definition that is applied for the definition of a motel does apply to all cases, that definition was developed well before the March of 2022 ordinance and has been in the Zoning Ordinance since 1987 when it was created. She further stated that this will apply to those three cases and that waiting on a decision will be the determination for that piece as well.

Motion by Martin, seconded by Rau to grant Attorney Johnson's request to continue the following cases to the February 19, 2025 Zoning Board of Adjustment meeting at 6:00 pm in the lower level of the Madison Town Hall:

Case #23-14 – Ryan Finn & Grace Harrigan
Case #23-15 – Keith & Alison Kellerman
Case #23-16 – Monica Maria McMillan & Laura Thompson
Case #23-17 – Seamus & Kayla Walsh-O'Brien
Case #23-18 – Matthew Petti & Jennifer Swift
Case #23-19 – Brian Burns
Case #23-20 – Corey Jade & Cynthia Franklin
Case #23-22 – Kaylin Deschenes & Kalene Kouch
Case #23-24 – David & Julie Keiselbach
Case #23-25 – Rishi Saxena and Abhishek Sahai

The motion was voted on and passed **unanimously**.

Discussion:

Schilling asked Young what happens if there is a 2025 request for a February continuance? Young stated she believes the abutters would have to be re-noticed due to properties selling and abutters changing. Schilling stated that when Young notifies Attorney Johnson that the continuance had been granted, that he is made aware that new notices would need to be resent. Young stated this language should have been included in the prior motion. Schilling asked that the board make a second motion to include this language in the first motion. Martin stated you could do that or in February, you could move it to March and if cases are moved beyond this time, then the applicant would have to re-notice. Schilling stated these cases have not been touched since May and two of them have already been sold.

Martin asked if the board can compel Attorney Johnson to re-notice all the abutters as properties have sold and abutters can change? Schilling stated that we can and we can also withdraw or amend the previous motion made and add language that this is the last continuance and any further continuances will require re-noticing. Schilling stated it is prudent to have the abutters re-noticed.

Motion by Martin that he is making a second motion in conjunction with the first motion that abutters are re-noticed.

Discussion:

Schilling stated that all abutters should be re-noticed in all pending cases. Ohlson asked who we are compelling to do this? Schilling stated that the applicants bear the brunt of that. Young stated she believes that Attorney Johnson would have to provide the certified mailing fees and labels for each case. Ohlson asked Schilling if we could legally do this and compel the applicant to renotify because we have legally continued these meetings? Schilling stated yes and we have legally continued these meetings based on the request from the attorney and she believes that only once the board lacked a quorum or a five-member board. Young stated that we continued the hearings a couple of times due to not being able to provide a five-member board at Attorney Johnson's request. Schilling stated he proceeded without a five-member board in all but one case. Young stated no he did not as he did want a five-member board and this is why it kept getting continued. Young stated she did not have any of the files with her tonight to confirm if this was correct.

Martin stated that until we know for sure if we can compel the applicant to re-notice, we should continue the cases to February, 2025 and if we get to February, 2025, we can continue them to March, 2025 with the condition that they must be re-noticed and make this a condition of the continuance in February, 2025. Ohlson stated the board could deny it at that point. Martin stated that we can continue without the approval of the applicant for whatever reason we want. Martin agreed with

Schilling that it has been so long that these cases have been continued and abutters have a right to know.

Young stated the board could have continued these cases for a month or two and not to February, 2025 as she believes the board has the option to do that. Schilling stated that it does not make sense since we will not have the judgment until January, 2025. Young stated that in the motion, the board could have said that this was the last continuance to February, 2025 and if another continuance is requested, then the abutters would need to be re-noticed at the applicant's expense. Dempster stated that he looked this subject up and you can, as Ohlson said, deny without prejudice and then the applicant's are automatically allowed to come back and reapply. Marttin asked if that applies to an Appeal of an Administrative Decisions and not just variances? Dempster stated that is what he read from RSA 676 or RSA 674.

Schilling stated that at this point, we need to amend the motion to state that this is the last time that a continuance will be granted and that should there be another continuance for any other reason, that the applicants would have to renotify abutters and this would require the board to withdraw the current motion. Martin asked if we can compel the applicants to do this? Schilling stated that we can. Martin asked how do we withdraw a motion? Schilling stated we need to make a motion, and a second and a vote to withdraw the motion and then create a new motion.

Motion by Schilling, seconded by Rau to withdraw the previous motions made by Martin, seconded by Rau, voted on and approved by the Zoning Board of Adjustment. The motion was voted on and passed **unanimously**.

Motion by Martin, seconded by Rau to continue the following cases as listed below to the February 19, 2025 meeting at 6:00 pm at the Madison Town Hall, lower level with the condition of these continuances to not go beyond February 19, 2025 date unless abutters in all cases are re-noticed at the applicant's expense:

- Case #23-14** – Ryan Finn & Grace Harrigan
- Case #23-15** – Keith & Alison Kellerman
- Case #23-16** – Monica Maria McMillan & Laura Thompson
- Case #23-17** – Seamus & Kayla Walsh-O'Brien
- Case #23-18** – Matthew Petti & Jennifer Swift
- Case #23-19** – Brian Burns
- Case #23-20** – Corey Jade & Cynthia Franklin
- Case #23-22** – Kaylin Deschenes & Kalene Kouch
- Case #23-24** – David & Julie Keiselbach
- Case #23-25** – Rishi Saxena and Abhishek Sahai

The motion was voted on and passed **unanimously**.

Schilling asked Young to read **Case #24-07** aloud as well as the Public Meeting Notice.

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

Case #24-07 - Variance request from Lisa D’Innocenzo, Executive Director/Applicant of Becket Academy, 2142 Village Road, Tax Map 233, Lot 010-001, from Article V, Section 5.9(A) of the Zoning Ordinance to permit and 8 x 10 shed to be placed on the property.

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 October 30, 2024 and notifications were mailed out on October 31, 2024 Certified Mail Return Receipt Requested and posted in the Conway Daily Sun on November 1, 2024.

Schilling swore in Lisa D’Innocenzo, Domenic Falzone and May and Steven Ward.

Motion by Schilling, seconded by Dempster to elevate Martin and Skaife to full voting members for **Case #24-07**. The motion was voted on and passed **unanimously**.

Conflict of Interest: Schilling polled the board for any Conflict of Interest and the members agreed there was none.

Waiver Request: Schilling stated there was no Waiver and she polled the board and asked if they felt there were any issues and the members agreed there was none.

Regional Impact: Schilling polled the board and the members agreed there was none.

Schilling asked the applicant, Lisa D’Innocenzo to present her case.

D’Innocenzo stated that her initial application was to put an 8’ x 10’ shed to the left of the Becket Academy building on Village Road but now, she would like to change the application and put it on the right-hand side of the building, due to the fact, that on the left-hand side of the building, there could be possible erosion. Schilling stated that this is now a change to the original application and that because she is changing the location, the applicant would have to withdraw her application without prejudice and resubmit the application with the changes and start the process over.

Martin stated that the applicant would need to obtain a new building permit from the Code Enforcement Officer and that would have to be denied and then the applicant could apply for another variance changing the location of the shed.

Schilling further stated that the applicant would need to withdraw the application and submit a correct application with all the distances. Martin stated that there should be a denial from the Code Enforcement Officer first.

Domenic Falzone stated that they wanted to withdraw the application at this time.

Motion by Martin, seconded by Skaife to accept the withdrawal of the application for **Case #24-07** without prejudice. The motion was voted on and passed **unanimously**.

Mr. Ward, an abutter to this property, asked what the boundaries are from the property lines? Martin stated the boundaries need to be 25’ from property boundaries and 75’ from the road.

APPROVAL OF OCTOBER 16, 2024 DRAFT MINUTES: Motion by Schilling, seconded by Martin, to approve the October 16, 2024 minutes at the December 18, 2024 meeting. The motion was voted and passed **unanimously**.

ADMINISTRATION: Finish 2025 Budget: Motion by Martin, seconded by Rau to decrease the legal line from \$9,000.00 to \$5,000.00. The motion was voted on and passed **unanimously**.

ZONING BOARD

1	DUES & PUBS	\$ 200	\$ 78.00	39.0%	\$ 122.00	\$ 100	\$ (100)
2	LEGAL	\$ 9,000	\$ 12,654.11	140.6%	\$ (3,654.11)	\$ 5,000	\$ (4,000)
3	NOTICES	\$ 550	\$ 156.00	28.4%	\$ 394.00	\$ 500	\$ (50)
4	POSTAGE	\$ 1,500	\$ 376.62	25.1%	\$ 1,123.38	\$ 800	\$ (700)
5	SUPPLIES	\$ 200	\$ 170.04	85.0%	\$ 29.96	\$ 250	\$ 50
6	TRAINING	\$ 200	\$ 87.10	43.6%	\$ 112.90	\$ 200	\$ -
7	TOTAL	\$ 11,650	\$ 13,521.87	116.1	\$ (1,871.87)	\$ 6,850	\$ (4,800)

ADJOURNMENT: Motion by Rau, seconded by Martin to adjourn the meeting at 7:00 pm. The motion was voted on and passed **unanimously**.

The next Public Hearing of the Zoning Board of Adjustment will be held on December 18, 2024 at 6:00 pm at the Madison Town Hall, Lower Level.

Respectfully submitted,

Katharine Young
Land Use Boards Administrator