



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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ZBA MINUTES

February 19, 2025

ATTENDANCE: Drew Gentile, Chairman, Sharon Schilling, Vice Chairman, George Rau, Doug McAllister and Jennifer Skaife, Alternate

EXCUSED: Bill Dempster, Marc Ohlson, Alternate and Jake Martin, Alternate

OTHERS PRESENT: Madison TV, Aysia Wellinghurst and Kasia Scentsas, Kate Young, Land Use Boards Administrator, Attorney Jonathan Springer, Attorney Matthew Johnson, Attorney Jonathan Springer and Attorney Christopher Boldt as well as members of the public

CALL TO ORDER: Gentile called the meeting to order at 6:00 pm.

PLEDGE OF ALLEGIANCE/ROLL CALL: Gentile led the reciting of the Pledge of Allegiance. A roll call was conducted, confirming the presence of a five-member board.

ELEVATION OF ALTERNATES: Gentile elevated Skaife to a full voting member.

Chairman Gentile provided a brief explanation of the evening's proceedings. He stated that the board would begin with the cell phone tower case #24-08, but noted that it was scheduled before a series of short-term rental (STR) cases. He explained that at 8:00 PM, they would end the discussion on the cell phone tower case and move on to the STR cases. Chairman Gentile emphasized that no final decision would be made on the cell phone tower case that night, as it was expected to require at least two more meetings.

Chairman Gentile opened the public hearing for Case #24-08. The case involved a variance request for a cell tower installation on behalf of GMR Holdings of NH, LLC, represented by Attorney Jonathan Springer from Springer Law Office. This variance request sought authorization for a personal wireless service facility off of King Pine Road, aimed at closing a noted service gap in the area.

Public Hearing: Case #24-08 GMR Holdings of NH, LLC

Chairman Gentile asked Young, Land Use Boards Administrator to read aloud **Case #24-08** as well as the posting notification.

Young, Land Use Boards Administrator read **Case #24-08** aloud as well as the posting notification:

Case #24-08 - Variance request from Jonathan Springer, Esquire of Springer Law Office, authorized agent for GMR Holdings of NH, LLC, to install, operate and maintain a personal wireless service facility Off King Pine Road, Tax Map 249, Lot 1, from the Madison Zoning Ordinance for the following Articles/Sections:

1. A variance from Article VI, Section 6.5.A of the Ordinance, which provides that towers shall not exceed ten feet (10') over the average tree canopy height.
2. A variance from Article VI, Section 6.5.E of the Ordinance, which provides that

there be a fall zone equal to tower height from all property lines.

3. A variance from Article VI, Section 6.6.M of the Ordinance, which provides that “all ground mounts shall be of a mast type mount.”
4. To the extent necessary, a variance from Article VI, Section 6.6.K (2) of the Ordinance, which provides that a telecommunication facility “shall not be visible above the ridge line from public roads.”
5. To the extent necessary, a variance from Article VI, Section 6.6.M (1) of the Ordinance, which provides that “any antenna array placed upon...a proposed ground mount...shall have a diameter of no more than four (4) feet exclusive of the diameter of the mount... .”

PUBLIC MEETING NOTICE: Notification of the January 15, 2025 meeting was posted on January 6, 2025 at the Madison Post Office, Silver Lake Post Office and upper and lower levels of the Madison Town Hall and abutter notifications as well as notifications to surrounding towns for regional impact were sent Certified Mail Return Receipt Requested on January 7, 2025 and posted in the Conway Daily Sun on January 7, 2025. Notification of **THIS** public meeting was posted in the Town Hall upper and lower levels and Madison and Silver Lake Post Offices on January 30, 2025 at the Madison Post Office, Silver Lake Post Office, upper and lower levels of the Madison Town Hall and notifications were sent Certified Mail Return Receipt Requested to four Eaton residents on January 30, 2025.

ELEVATION OF ALTERNATES: Chairman Gentile elevated Skaife to a full voting member.

Conflict of Interest: Chairman Gentile polled the board and there was no Conflict of Interest.

Waiver Request: Chairman Gentile polled the board and there was no Waiver Request.

Regional Impact: Chairman Gentile polled the board and there was no Regional Impact. Young stated that she had noticed all surrounding towns previously

Attorney Springer presented the proposal for a 150-foot monopole tower located approximately 150 feet away from the end of King Pine Road Loop, noting the closest property line was 265 feet away. He described the proposed 150-foot monopole tower, its location, and the surrounding area. He explained the technical aspects of the tower, including its coverage objectives and the challenges posed by the local topography. Attorney Springer also addressed the town's zoning ordinance requirements and how the proposal aimed to meet or seek five variance requests from these requirements.

The board and Attorney Springer discussed scheduling a balloon test for February 25th and 27th, with multiple balloons to be flown at different heights to forecast the tower's visual impact, covering various predefined vantage points for assessment and documentation. They also identified specific locations from which photographs should be taken during the test which are corner of Route 153/East Madison Road, Route 153 towards Littlefield Farm, across the street from snowtubing in Hoyt Wildlife Refuge area, King Pine Road, Milts Place, highest point off East Madison Road away from King Pine, circle in the association area. Marylou Dow also suggested Sunset Beach.

Attorney Springer stated that he is awaiting the frequency report from Ivan Pagacik, the town's engineer.

Attorney Springer explained how the tower would be in a fenced in compound with a 12-foot gravel access into the compound area and that telephone power lines would be underground. He further explained that there would be vehicular traffic one to two times per month per carrier to check equipment and there would be four carriers with a total of 8-10 trips per month. He further explained that the tower would not be lit, there would be no noise, smoke, soot etc. He explained, by using maps, that this tower would be a monopole and they are

proposing 150 feet with four rectangles, one for each carrier. The antennas need ten feet of separation between each of the antennas.

Attorney Springer stated that this site is to bring cell coverage to the ski area and Route 153. He further explained the radio frequency report which was Exhibit 2 of the original application and that this explains how the technology works, what the coverage objective is and how they close the gap of coverage and this is federal law and every telecommunication can do this and the Zoning Board of Adjustment (ZBA) cannot make a decision based on health effects and that this is the law per the Telecommunications Act of 1996. Inquiry into the potential automatic extension state laws could impose concerning future tower height led Attorney Springer to clarify potential increases would still require additional compliance checks.

Attorney Springer explained from Attachment E, the Area Topography Map and that there are two ridge lines which are a challenge and he explained what all the items were on the map and what areas have good coverage and what areas have poor coverage and that 700-megahertz range which was green on the map is good. He stated that 700-megahertz has better propagation. Attorney Springer stated this report will be sent to Ivan Pagacik, the town's engineer and he will then produce his report.

Chairman Gentile swore in all the public attendees as a group and instructed them that they would be given three minutes to state their case and that they need to address him and not Attorney Springer.

Chairman Gentile asked if GMR can extend from 150 feet to an additional 20 feet? Inquiry into the potential automatic extension state laws could impose concerning future tower height led Attorney Springer to clarify potential increases would still require additional compliance checks. Attorney Springer stated that this will not happen for a while and that it is a state law not federal law.

John Sexton, 87 King Pine Road – Sexton argued that the tower would primarily benefit people just passing through and not the local residents. He felt the coverage gains did not justify the visual impact.

Lou Goscinski, 74 King Pine Road – Goscinski urged the board to listen to residents rather than outside corporate interests. He expressed skepticism about health impact claims.

Dale Grossman, 255 King Pine Road – Grossman was concerned about the tower's proximity to homes and recreation areas. He argued it violated town ordinances prohibiting telecommunication facilities visible from public roads and recreation areas.

Andrew Berdell, 92 Fox Road – Berdell expressed frustration that residents were not consulted about the need for improved coverage. He viewed it as solely a money-making venture for the companies involved.

Leslie Pritchard, 2009 East Madison Road – Pritchard stated she is worried about negative impacts to the scenic and recreational value of the area. She felt approving this tower could set a precedent for more to follow.

David Case, 1789 East Madison Road – Case stated that he is not in favor of the tower.

Colton Dow, Eaton Resident/Abutter – Dow expressed concerns about property devaluation, citing research showing 7-10% decreases for homes near cell towers. He questioned the accuracy of the ground elevation data provided by Attorney Springer.

George Epstein, 1159 East Shore Drive – Epstein disagreed with Attorney Springer's comments about no noise or fumes would come from the generator, and Epstein also stated that the tower would be 150 feet plus 20 feet so it would really be 170 feet. He further stated that Attorney Springer's presentation was inaccurate and

misleading. He asked the ZBA to explain when they must grant a variance. Chairman Gentile stated that when a variance is granted that it must meet the five criteria and he explained what the five criteria are. Epstein asked if a case needs to meet all five criteria. Chairman Gentile stated yes, the board is justified to deny a case but can grant a variance with conditions.

Peter Dow, Eaton Resident/Abutter – Dow stated he is against the cell tower and that even though they are being told it will only be 150 feet it will be 170 feet at some point. He further stated he wants the ZBA to stick to the rules of the Town of Madison.

John Sexton, 87 King Pine Road – Sexton stated that the cell tower cannot be rejected because of health issues but that radiation may cause cancer and since the mid 1990's no research has been done.

Damon Steer, Reporter, Conway Daily Sun – Steer asked if he could have the locations of the photos for the balloon testing. Young, Land Use Boards Administrator stated she would email that list to him.

Mark Faunce, 264 Goe Hill Road - Faunce spoke in favor of the tower, citing public safety benefits from improved cell coverage during winter driving conditions.

Marylou Dow, Eaton Resident/Abutter – Dow expressed strong concerns about potential health impacts from cell tower radiation, especially on children.

Lou Goscinski, 74 King Pine Road – Goscinski stated that GMR Holdings has not been truthful and that Mark Faunce has a nice view and his property is not facing the proposed cell tower.

Colton Dow, Eaton Resident/Abutter – Dow asked if GMR Holdings is putting in a bridge and can that bridge handle heavy equipment and he questioned how heavy is the crane to build the cell tower. Attorney Springer stated he could not address that question tonight.

Chairman Gentile swore in Donna Goscinski.

Donna Goscinski, 74 King Pine Road – Goscinski questioned if the ZBA denies the variances, what is the next step. Chairman Gentile stated that if the board denies the variances that the applicant could redesign the project and go to the Planning Board for another location for the cell tower and that the ZBA is not the final decision in this process and at the next hearing, they will have the balloon test results and the ZBA should have their report from their engineer and the case may be continued into April, 2025.

Chairman Gentile stated that the "shot clock" is ticking and the state says the ZBA has a 90-day requirement for a ZBA decision and the "shot clock" is 150 days which is a federal requirement and that the agent can sign an agreement and the 150 days started on December 19, 2024.

Marylou Dow, Eaton Resident/Abutter – Dow stated that Steven Hoyt from King Pine Ski Area was here tonight and he never came forward to talk tonight and this is an isolated situation for King Pine. She further stated there are other options like Starlink and Wifi.

The board decided to continue the hearing to March 19, 2025, at 6:00 PM at the Madison Elementary School Gymnasium to allow time for the balloon test and further information gathering.

Chairman Gentile asked the board for a motion.

Motion by McAllister, seconded by Schilling to continue Case #24-08 to March 19, 2025, at 6:00 PM at the Madison Elementary School Gymnasium. The motion was voted on and passed by a vote of **5-0**.

Chairman Gentile stated that one short term rental case was heard by the court and then remanded back to the ZBA and that two other short term rental cases were at a stay with the court and these two cases were also remanded by the court back to the ZBA..

Case #23-13 – Chad & Brittany Ardizzoni and Aaron and Tiffany Clymer

Chairman Gentile asked Young, Land Use Boards Administrator to read aloud **Case #23-13** as well as the posting notification.

Young, Land Use Boards Administrator read **Case #23-13** aloud as well as the posting notification:

Case #23-13 – The purpose of this hearing is for the Madison Zoning Board of Adjustment to consider a remand from the Hillsborough Superior Court North District by Court Order dated December 18, 2024. Said Court Order **GRANTED** the Applicants, Chad and Brittany Ardizzoni and Aaron and Tiffany Clymer’s appeal and **REVERSED** the Madison Zoning Board of Adjustment’s decision dated May 15, 2024 concerning the Property owned by the Applicants, located at 13 Lucerne Drive, Madison, NH Tax Map 103, Lot 060. This hearing is for the Zoning Board of Adjustment to determine whether or not circumstances exist to allow short term rental of 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 February 11, 2025 and re-noticing abutters by Certified Mailings with Return Receipt were mailed on February 11, 2025 and posting was published in the Conway Daily Sun on February 11, 2025.

Conflict of Interest: Chairman Gentile polled the board and there was no Conflict of Interest.

Waiver Request: Chairman Gentile stated the Waiver Request was irrelevant to this case.

Regional Impact: Chairman Gentile polled the board and there was no Regional Impact.

Chairman Gentile asked if anyone present from the public wanted to speak to **Case #23-13**. No one asked to speak.

Chairman Gentile stated this case was continued from a previous meeting.

Attorney Johnson, representing the applicants, Chad and Brittany Ardizzoni and Aaron and Tiffany Clymer, summarized the court’s decision which established that short-term rentals were a permitted use prior to the March, 2022 Zoning Ordinance change and his clients are allowed to use the property as a short term rental per the court’s order dated December 18, 2024.

Attorney Johnson explained that the court ruling clarified that the baseline analysis must be based on the Zoning Ordinance effective as of March, 2022. The court determined that short-term rentals were allowed prior to the ordinance change, rendering the plaintiffs are entitled to continue the practice under the status of a pre-existing, non-conforming use. Attorney Johnson asserted that based on previous evidence, a consistent short-term rental activity should authorize the continued use of the property as a short-term rental, without setting a specific number of rental days and that the ZBA should not restrict the number of days.

Attorney Johnson further stated that the ZBA should not restrict the number of days and that there is no case law to support this and the ZBA does not have the authority to limit the number of rental days.

The board assessed the evidence of prior short-term rental use, focusing on rental activity documented back to 2017. Findings provided solid evidence of consistent use as a short-term rental, with an average maximum of 53 rental days per year. Attorney Johnson contested the idea of setting limits on rental days, asserting no statutory basis for the board to impose day restrictions once a pre-existing use has been established.

Chairman Gentile swore in John Cancelarich and Paul McKenna.

John Cancelarich, 108 Edelweiss Drive: Cancelarich asked if he could make testimony against the decision decided by the court? Chairman Gentile explained that per the court's order, the Zoning Board of Adjustment needs to act on the court's decision. Cancelarich spoke against allowing short-term rentals, emphasizing neighborhood integrity and concerns of commercializing residential areas, despite the court's ruling and he further stated that the property is a commercial use because there are fees paid, sales of service and this is prohibited in the Madison Zoning Ordinance. Chairman Gentile stated they cannot debate this issue.

Paul McKenna, 59 Oak Ridge Road: McKenna stated that that the Selectboard took the vote away from the Zoning Board of Adjustment and he emphasized the community's general disapproval of short-term rentals, citing the town's financial measures to oppose STRs.

Motion by Schilling, seconded by McAllister to close the public hearing. The motion was voted on and passed by a vote of **5-0**.

Chairman Gentile stated that there would be no further public comment and the board would now deliberate.

Chairman Gentile stated that the court reversed the Zoning Board of Adjustment's decision and allows the status of pre-existing non-conforming use stand and our zoning ordinance says we cannot expand it. Rau suggested giving the applicants the number of days that they have been renting. Attorney Boldt stated the limitation is based on the non-expansion of the use. Attorney Boldt further stated that you can have a pre-existing non-conforming use of a certain type to remain in a certain type and nature and he disagrees with Attorney Johnson.

Chairman Gentile stated the applicants rented for 54 days in 2017. McAllister suggested giving the applicants 10% or 15% over what they were previously renting. Schilling suggested that if there is an increase, we can apply it to other cases as well. Chairman Gentile suggested they should give the applicants 53 days plus 15% and it only applies to the short term rental and not to rentals over 30 days which would be 61 days they can rent.

The board discussed how to address the pre-existing non-conforming use status and whether to limit the number of rental days allowed. The board reviewed the Findings of Fact from their previous decision as well as discussed the Court's Order dated December 18, 2024. They discussed the concept of pre-existing non-conforming use and how to address the number of rental days allowed. After debate, the board's consensus was to balance grandfathering rights with the prevention of use expansion and to recognize the property as a pre-existing, non-conforming use for short-term rentals and allow rentals up to 61 days per year, following the average high use of 53 days in past records plus a 15% allowance. This decision acknowledged the court's ruling and did not authorize expansion beyond the established historical use.

Chairman Gentile stated that the Findings of Fact need to be brought forward. Attorney Boldt explained the board can bring forward the reasons stated in the decision of May 15, 2024 coupled with the court's decision and the evidence of number of days presented previously.

After deliberation, the board made the following motion:

Motion by Gentile, seconded by Schilling based on the evidence brought forward from the May 15, 2024 Zoning Board of Adjustment’s hearing for **Case #23-13**, the Zoning Board of Adjustment acknowledges the Superior Court’s decision in reversing the Zoning Board of Adjustment’s denial of the pending appeal and now **GRANTS** the appeal of Chad and Brittney Ardizzoni and Aaron and Tiffany Clymer (concerning property owned by them, located at 13 Lucerne Drive, Madison, NH Tax Map 103, Lot 060) recognizing the status of the property as a pre-existing non-conforming use as a short term rental limited to 61 short term rental days a year.

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

Chairman Gentile read aloud the provisions of the 30-day appeal period. Chairman Gentile closed **Case #23-13**.

Chairman Gentile stated that the board addressed several continued short-term rental cases. They decided to handle similar cases together for efficiency.

CASE #23-15 – Keith and Alison Kellerman

Chairman Gentile stated **Case #23-15** was an appeal from an administrative decision and this case has been continued from May 15, 2024 to November 20, 2024 and then again from November 20, 2024 to February 19, 2025 and had been remanded by the court back to the ZBA and he reopened the case.

Chairman Gentile asked Young, Land Use Boards Administrator to read aloud **Case #23-15** as well as the posting notification.

Young, Land Use Boards Administrator read **Case #23-15** aloud as well as the posting notification:

Case #23-15 – This purpose of this hearing is for the Madison Zoning Board of Adjustment to consider a remand from the Hillsborough Superior Court Northern District by Clerk’s Notice of Decision dated February 6, 2025. Said Notice of Decision GRANTED IN PART, the Applicants, Keith and Alison Kellerman’s Petitioner’s Assented -To Motion to Remand to Zoning Board of Adjustment and remanded **Case #23-15** back to the Madison Zoning Board of Adjustment for consideration in light of the Hillsborough County Northern District’s Court Order in **Ardizzoni v. Town of Madison, Case No. 212-2024-CV-105**, concerning the property owned by the Applicants, located at 21 Haven Road, Madison, NH Tax Map 128, Lot 021. This hearing is for the Zoning Board of Adjustment to determine whether or not circumstances exist to allow short term rental of 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 February 11, 2025.

Conflict of Interest: Chairman Gentile polled the board and there was no Conflict of Interest.

Waiver Request: Chairman Gentile stated the Waiver Request was irrelevant to this case.

Regional Impact: Chairman Gentile polled the board and there was no Regional Impact.

Attorney Johnson, representing the applicants, Keith and Alison Kellerman summarized the court’s decision in **Case #23-13, Ardizzoni v. Town of Madison** which established that short-term rentals were a permitted use prior to March, 2022 Zoning Ordinance change.

Attorney Johnson further stated that the ZBA should not restrict the number of days and that there is no case law to support this and the Zoning Board of Adjustment does not have the authority to limit the number of rental days.

Chairman Gentile stated that the Findings of Fact as contained in the May 15, 2024 minutes stated that the property had been rented approximately 60 days per year.

The board discussed the evidence of prior short-term rental use and the appropriate number of rental days to allow. After debate, the board's consensus was to balance grandfathering rights with the prevention of use expansion and to recognize the property as a pre-existing, non-conforming use for short-term rentals and allow rentals up to 60 days per year.

Chairman Gentile opened the public hearing. Cancelarich had been previously sworn in.

John Cancelarich, 108 Eidelweiss Drive – Cancelarich requested that the Findings of Fact from this case and as contained in the minutes of May 15, 2024 be read aloud.

Chairman Gentile read the Findings of Fact aloud as follows:

Findings of Fact:

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

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

John Cancelarich, 108 Eidelweiss Drive – Cancelarich stated this is a special exception and is bed and breakfast and this ruling is upending our ordinance.

Chairman Gentile also read aloud from the Court’s order that it did not agree with the definition of a motel.

Motion by Schilling, seconded by Rau to close the public hearing for **Case #23-15**. The motion was voted on and passed with a vote of **5-0**.

After the board’s deliberation, the board’s consensus was to balance grandfathering rights with the prevention of use expansion and to recognize the property as a pre-existing, non-conforming use for short-term rentals and allow rentals up to 69 days per year, following the average high use of 60 days in past records plus a 15% allowance which would allow 69 days per year. This decision acknowledged the court's ruling and did not authorize expansion beyond the established historical use and made the following motion:

Motion by Gentile, seconded by Schilling based on the evidence brought forward from the May 15, 2024 Zoning Board of Adjustment’s hearing for **Case #23-15**, the Zoning Board of Adjustment acknowledges the Superior Court’s decision in reversing the Zoning Board of Adjustment’s denial of the pending appeal and now **GRANTS** the appeal of Keith and Alison Kellerman, (concerning property owned by them, located at 21 Haven Road, Tax Map 128, Lot 21) recognizing the status of the property as a pre-existing non-conforming use as a short term rental limited to 69 short term rental days a year.

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

Chairman Gentile read aloud the provisions of the 30-day appeal period. Chairman Gentile closed **Case #23-15**.

Case #23-18 – Matthew Petti & Jennifer Swift

The board addressed Case #23-13, which had been remanded from the Superior Court. The case involved a variance request for short-term rentals at 13 Lucerne Drive. Chairman Gentile noted that the court had reversed the ZBA's prior decision and emphasized the importance of this case in setting a precedent for how similar cases should be handled. The court ruling highlighted that short-term rentals were a permitted use prior to the March, 2022 zoning ordinance change. Chairman Gentile further stated that this case is similar to the previous cases where an appeal from an administrative decision was grandfathered.

Chairman Gentile asked Young, Land Use Boards Administrator to read aloud **Case #23-18** as well as the posting notification.

Young, Land Use Boards Administrator read **Case #23-18** aloud as well as the posting notification:

Case #23-18 – The purpose of this hearing is for the Madison Zoning Board of Adjustment to consider a remand from the Hillsborough Superior Court Northern District by Clerk’s Notice of Decision dated February 6,

2025. Said Notice of Decision GRANTED IN PART, the Applicants, Matthew Petti and Jennifer Swift Petitioner’s Assented -To Motion to Remand to Zoning Board of Adjustment and remanded **Case #23-18** back to the Madison Zoning Board of Adjustment for consideration in light of the Hillsborough County Northern District’s Court Order in **Ardizzoni v. Town of Madison, Case No. 212-2024-CV-105**, concerning the property owned by the Applicants, located at 70 Skyline Way, Madison, NH Tax Map 205, Lot 048. This hearing is for the Zoning Board of Adjustment to determine whether or not circumstances exist to allow short term rental of 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 February 11, 2025.

Conflict of Interest: Chairman Gentile polled the board and there was no Conflict of Interest.

Waiver Request: Chairman Gentile stated the Waiver Request was irrelevant to this case.

Regional Impact: Chairman Gentile polled the board and there was no Regional Impact.

Attorney Johnson, representing the applicants, Matthew Petti and Jennifer Swift, summarized the court's decision in **Case #23-13, Ardizzoni v. Town of Madison** which established that short-term rentals were a permitted use prior to March, 2022 Zoning Ordinance change. He argued that the court had clearly established that the property in question was a pre-existing non-conforming use as a short-term rental prior to the zoning change. He also contended that the ZBA should not impose arbitrary limits on the number of days the property could be rented, as it would constitute an unfair restriction on a lawful pre-existing use.

The board deliberated on whether the pre-existing non-conforming use could be expanded, discussing the principle that such use should not be expanded beyond the historical usage. Chairman Gentile indicated that the board could consider the property's rental history as a basis for determining a reasonable limit on rental days. According to evidence presented and reviewed by the board, the property had been rented for approximately 157 days annually before the zoning change. In respect of this, the board discussed applying a limit slightly above this number in which the board agreed to give the applicants 157 days plus 15% which equaled to 181 days per year.

Motion by McAllister, seconded by Schilling to close the public hearing for **Case #23-18**. The motion was voted on and passed with a vote of **5-0**.

After the boards deliberation, they limited the short-term rental use to 181 days per year and made the following motion:

Motion by Gentile, seconded by Schilling based on the evidence brought forward from the May 15, 2024 Zoning Board of Adjustment’s hearing for **Case #23-13**, the Zoning Board of Adjustment acknowledges the Superior Court’s decision in reversing the Zoning Board of Adjustment’s denial of the pending appeal and now **GRANTS** the appeal of Matthew Petti and Jennifer Swift (concerning property owned by them, located at 70 Skyline Way, Madison, NH Tax Map 205, Lot 048) recognizing the status of the property as a pre-existing non-conforming use as a short term rental limited to 181 short term rental days a year.

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

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

Chairman Gentile read aloud the provisions of the 30-day appeal period. Chairman Gentile closed **Case #23-18**.

Attorney Johnson requested to withdraw the following cases:

Case #23-22 – Continued (October 18, 2023, November 15, 2023, January 17, 2024, February 21, 2024, March 20, 2024, April 17, 2024, May 15, 2024 to November 15, 2024 and November 15, 2024 to February 19, 2025) - Appeal from an Administrative Decision from Matt Johnson, Esquire, Devine, Millimet & Branch, P.A., Agent for Kaylin Deschenes and Kalene Kouch, **now owned by Anthony Grassa and Susan Clancy**, 14 Jungfrau Road, Tax Map 113 Lot 072 to determine whether or not their circumstance allows for short term rentals relating to a denial from Robert Boyd, Code Enforcement Officer dated September 26, 2023 as to Article IV, Section 4.6A of the Town of Madison Zoning Ordinance.

Case #23-24 – Continued (January 17, 2024, February 21, 2024 and March 20, 2024, April 17, 2024, May 15, 2024 to November 15, 2024 and November 15, 2024 to February 19, 2025) - Appeal from an Administrative Decision from Matt Johnson, Esquire, Devine, Millimet & Branch, P.A., Agent for David and Julie Keiselbach on behalf of Keiselodge, LLC, **now owned by Sean and Shannon Peterson**, 3 Grimsel Road, Tax Map 206, Lot 005 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.

Chairman Gentile acknowledged the request and no motion was made and the files will be closed.

The board discussed continuing **Cases #23-14, #23-16, and #23-17** to March 19, 2025 at 6:00 PM at the Madison Elementary School, Gymnasium which are as follows:

Case #23-14 –Continued (October 18, 2023, November 15, 2023, January 17, 2024, February 21, 2024, March 20, 2024, April 17, 2024, May, 15, 2024 to November 20, 2024 and November 20, 2024 to February 19, 2025) - Appeal from an Administrative Decision from Matt Johnson, Esquire, Devine, Millimet & Branch, P.A., Agent for Daniel Moynihan (formerly owned by 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.

Case #23-16 – Continued (October 18, 2023, November 15, 2023, January 17, 2024 and February 21, 2024, March 20, 2024, April 17, 2024, May 15, 2024 to November 20, 2024 and November 20, 2024 to February 19, 2025) - Appeal from an Administrative Decision from Matt Johnson, Esquire, Devine, Millimet & Branch, P.A., Agent for Monica Maria McMillian and Laura Thompson, 17 Burgdorf 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.

Case #23-17 – Continued (October 18, 2023, November 15, 2023, January 17, 2024 and February 21, 2024, and March 20, 2024, April 17, 2024, May 15, 2024 to November 20, 2024 and November 20, 2024 to February 19, 2024) - 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.

Motion by Gentile, seconded by Schilling to continue **Case #23-14, Case #23-16 and Case #23-17** to March 19, 2025, at 6:00 PM, at the Madison Elementary School Gymnasium.

Discussion: The board decided to amend the above-noted motion to include the requirement that all three cases require new notice to abutters and to be paid for by the applicants.

Motion by Schilling, seconded by McAllister to continue **Case #23-14, Case #23-16 and Case #23-17** to March 19, 2025, at 6:00 PM, at the Madison Elementary School Gymnasium with the requirement that re-notification to abutters be paid for by the applicants.

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

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

Case #23-19 – Brian Burns

Chairman Gentile asked Young, Land Use Boards Administrator to read aloud **Case #23-19** as well as the posting notification.

Young, Land Use Boards Administrator read **Case #23-19** aloud as well as the posting notification:

Case #23-19 – 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 Brian Burns, 1 Oak Ridge Road, Tax Map 109, Lot 87 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.

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 February 11, 2025.

Conflict of Interest: Chairman Gentile polled the board and there was no Conflict of Interest.

Waiver Request: Chairman Gentile stated the Waiver Request was irrelevant to this case.

Regional Impact: Chairman Gentile polled the board and there was no Regional Impact.

Chairman Gentile swore in Brian Burns, the applicant.

The board heard testimony from the applicant, Burns, who owns property at One Oak Ridge Road in Madison, NH. Burns testified about the history of the property, explaining his understanding that short-term rentals have been a longstanding practice in the Eidelweiss District where his property is located. He mentioned that upon purchasing the property in October 2022, the home's previous owner disclosed that it had not been used as a short-term rental during their ownership, which began in 2013. Burns noted that there were house rules for short-term renters written inside the cabinets left by an earlier owner, indicating past usage before 2013. He sought to establish that the area had a well-known history of short-term rentals, relying on information from family and locals when purchasing his home.

Attorney Johnson argued that the ordinance, as applied, might be unconstitutional, suggesting issues of selective enforcement and a violation of equal protection rights. He pointed out that the town's website was materially misleading about the permissibility of short-term rentals, which could have affected Burns' due diligence before purchasing the property. Furthermore, Attorney Johnson raised the issue of prior historical use, highlighting the common practice of renting out properties in the Eidelweiss District for short-term stays and suggesting that the area historically functioned with short-term rentals as a norm.

After discussing these points, the board deliberated on the evidence presented. They considered several factors, including the lack of documented short-term rental activity for the property from 2013 until the Zoning Ordinance change posting in February 2022, which marked any possible pre-existing short-term rental status as abandoned. The board also reflected on the impact of the ordinance amendments governing short-term rentals, emphasizing that the ordinance now prohibits rentals for periods less than 30 days to preserve the residential nature of town neighborhoods.

Chairman Gentile opened the public hearing.

John Cancelarich, 108 Eidelweiss Drive – Cancelarich stated that the 2022 Zoning Ordinance is on the website and is accessible and the definition of dwelling unit has been updated and non-transient useage is defined and at commercial and agricultural use is prohibited. He reiterated that paying of fees are services and the commercial definition defines service of sales not allowed based on defintions and are prohibited in Eidelweiss.

Motion by Schilling, seconded by McAllister to close the public hearing. The motion passed by a vote of **5-0**.

Schilling stated that Burns relied on information from family members and the previous owner did not rent and there was a lapse of ten years.

Chairman Gentile stated the board needed to establish the Findings of Fact which they did as follows:

Findings of Fact:

1. The property was purchased by the applicant in October, 2022.
2. The applicant did not appear to be aware of the ordinance change of March, 2022.
3. There is no evidence that the property had been rented in the year before the posting of the ordinance in February of 2022. The last documented rental was 2013.
4. The applicant based his decision to rent on the comments by family and friends regarding the alleged common practice of short-term rental in Eidelweiss.
5. The definition of a dwelling unit in the Madison Zoning Ordinance prohibits the transient rental of property for periods of 30 days or less.
6. An owner is never transient in his own property.

Motion by Gentile, seconded by McAllister to deny the appeal because there is no evidence of rental after 2013 and before the posting of the new ordinance in February, 2022, and the ordinance now excludes rentals for periods of less than 30 days.

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

Chairman Gentile read aloud the provisions of the 30-day appeal period. Chairman Gentile closed **Case #23-19**.

Chairman Gentile asked for a motion to continue the following cases as follows:

Case #23-20 – Continued (October 18, 2023, November 15, 2023, January 17, 2024, February 21, 2024, March 20, 2024, April 17, 2024, May 15, 2024 to November 20, 2024 and November 20, 2024 to February 19, 2025) - 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.

Case #23-25 – Continued (January 17, 2024, February 21, 2024, March 20, 2024, April 17, 2024, May 15, 2024 to November 20, 2024 and November 20, 2024 to February 19, 2025) Appeal from an Administrative Decision from Rishi Saxena and Abhishek Sahai, 80 Oak Ridge Road, Tax Map 101, Lot 006 to determine whether or not their circumstance allows for short term rentals relating to a denial from Robert Boyd, Code Enforcement Officer dated November 7, 2023 as to Article IV, Section 4.6A of the Town of Madison Zoning Ordinance.

Motion by Schilling, seconded by Gentile to continue **Case #23-20** and **Case #23-25** with re-notification to abutters to March 19, 2025 at the Madison Elementary School Gymnasium at 6:00 pm.

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

Approval of Draft Minutes – January 15, 2025

The board reviewed and approved the minutes from the January 15, 2025 meeting with minor amendments.

Motion by Schilling, seconded by Gentile to approve the January 15, 2025 minutes as amended due to minor typographical errors. The motion was voted on and passed **unanimously**.

ADMINISTRATION: Young had nothing to report.

ADJOURNMENT: **Motion** by McAllister, seconded by Gentile to adjourn the meeting at 10:25 pm. The motion was voted on and passed **unanimously**.

The next Public Hearing of the Zoning Board of Adjustment will be held on March 19, 2025 at the Madison Elementary School Gymnasium at 6:00 pm.

Respectfully submitted,

Katharine Young
Land Use Boards Administrator