



**TOWN OF MADISON  
ZONING BOARD OF ADJUSTMENT  
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**ZBA MINUTES  
March 19, 2025**

**ATTENDANCE:** Drew Gentile, Chairman, Sharon Schilling, Vice Chairman, George Rau, Bill Dempster, Doug McAllister, Marc Ohlson, Alternate and Jennifer Skaife, Alternate

**EXCUSED:** None

**OTHERS PRESENT:** Madison TV, Aysia Wellinghurst, Kate Young, Land Use Boards Administrator, Attorney Jonathan Springer, Attorney Timothy Sullivan, Attorney Matthew Johnson, as well as members of the public.

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

**PLEDGE OF ALLEGIANCE/ROLL CALL:** Chairman Gentile led the reciting of the Pledge of Allegiance. Chairman Gentile stated the board members present were identified, with all regular members in attendance. Dempster, who was not available at the previous meeting due to a medical issue, was present tonight. Chairman Gentile clarified that Dempster had reviewed the application, read the available minutes, and viewed the TV broadcast to be brought up to speed. Chairman Gentile asked Attorney Springer if he wanted to continue with the same board members as the February 19, 2025 meeting or did he want only the regular members present? Attorney Springer stated he preferred regular members. Chairman Gentile stated that tonight, the members on this case are himself, Bill Dempster, Sharon Schilling, George Rau, and Doug McAllister who are all regular members and that Jennifer Skaife was returned to alternate status for this meeting.

A roll call was conducted, confirming the presence of a five-member board.

**ELEVATION OF ALTERNATES:** None - Chairman Gentile stated that Skaife, who had been serving as a regular member in the previous meeting, (February 19, 2025) was returned to alternate status for this meeting. Ohlson was recused as he cannot sit in on this case.

**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 12, 2025.

Chairman Gentile outlined the evening's agenda, emphasizing that the focus until 8:00 PM would be on the cell phone tower **Case #24-08**, after which short-term rental cases would be addressed.

Chairman Gentile stated that **Case #24-08** is still in the hearing section and that Attorney Springer will continue presenting his case. Chairman Gentile explained that the focus of the meeting would be on reviewing the results of various reports that had been requested. Attorney Springer was invited to start the presentation. Chairman Gentile instructed the public that questions should not interrupt the presentation, and that he would entertain questions after each report was presented.

Attorney Springer, representing GMR Holdings of NH, LLC, (GMR) began by introducing himself and his colleague, Victor Drouin. They presented the findings from a balloon test conducted on February 25, 2025. Attorney Springer apologized for delays in the balloon testing due to car difficulties faced by the crew, but asserted that the visual study supported their claim of limited tower visibility. The balloon test involved floating three balloons at heights of 170 feet, 150 feet, and 130 feet, and photographs were taken from various locations to assess visibility.

Attorney Springer walked through each photograph, noting limited visibility in most locations and no visibility in others. Attorney Springer emphasized that visibility would be even more restricted during times of the year when trees are in full leaf. Attorney Springer also explained that GMR was seeking a height variance explaining that it was necessary to allow for co-location of multiple carriers on the tower. He stated that the ordinance requirement of 10 feet above the average tree canopy would not allow for sufficient separation between antenna arrays for multiple carriers. Attorney Springer stated that Ivan Pagacik's report on Page 5 compared to Attorney Springer's report are very similar where coverage and gap coverage is. It was stated that the Eaton tower coverage at 700 MHz does not extend to the southeast part of Madison and the Freedom tower at 700 MHz has no tower height to extend coverage into Madison. Attorney Springer continued through the report and went over the tower criteria which was Section 6.6 and he does not believe there is visual blight. Chairman Gentile stated he would ask Ivan Pagacik to clarify potential overlap and he further stated that the tower in Freedom is not an alternate solution.

**Peter Dow, Eaton Resident/Abutter (previously sworn in)** – He stated that the balloon was seen from Eaton Road, Sunset Beach, Littlefield Farm, public road and recreation area and tubing park and 255 King Pine Road, their view, the Grossman's residence and the southern view of the lake. He further stated that the Freedom tower will cover all of King Pine but will not cover to the top of East Madison Road. He also stated that the Freedom tower has no opposers and will give more coverage to Eaton and Freedom and will give everything you need.

Chairman Gentile questioned if the array was 20 feet.

Chairman Gentile swore in Victor Drouin, applicant. Drouin stated that the platform is 12 feet not 20 feet which is half of what was represented. He further stated that they used a computer model and flew 150 feet so they flew the balloon higher.

**Marylou Dow, Eaton Resident/Abutter (previously sworn in)** – she asked how many monopoles are done a year that are 400 feet away from someone's house? Attorney Springer stated a lot of towers, Portsmouth Hospital and a college campus which are in residential neighborhoods are within 400 feet of residences.

**Lou Goscinski - 74 King Pine Road (previously sworn in)** – He stated the need to consider voters and the height violation and it exceeds Section 6.5A and the tower can go to 170 feet.

Chairman Gentile stated the board has five criteria to satisfy and if they are all met, the board can make conditions which is due process.

Chairman Gentile swore in Ellen MacDonald.

**Ellen MacDonald – 8 Crooked Pine Road** – She asked how do they plan to get the monopole up King Pine Road. Drouin stated they would use a trailer to haul it and that the pole comes in sections and she further asked what

happens if applicant abandons the tower. Attorney Springer stated there would be a removal bond which can be submitted with an approved estimate which would remove the tower if abandoned.

**John Sexton – 87 King Pine Road (previously sworn in)** – He stated the Master Plan prioritizes scenic preservation and the cell tower contradicts all of this and asked if the tower is really needed.

**John MacDonald - 8 Crooked Pine Road (previously sworn in)** - He stated the Freedom tower is not near a neighborhood and he further stated that the notice for this case was Map 249, Lot 1 and is incorrect and should be Map 248, Lot 1. This would show where the tower would be.

Chairman Gentile brought up the fall zone and stated that the tower could be 170 feet and asked is there a structure within 200 feet of the tower. Drouin stated the tower would not fall towards any structure. Drouin further stated they could engineer a “crinkle point” in the tower, ensuring a controlled bend at a specific height rather than a full collapse or falling from the base, which addressed concerns about the fall zone potentially impacting local ski trails and recreational areas.

Schilling asked about line of sight and that other carriers may want to add to the tower and why have 150 feet and not 130 feet. Attorney Springer stated that 150 feet is what they are applying for.

Attorney Springer stated they are asking for the variances because the Zoning Board has a strict ordinance. He further stated that regarding the fall zone, that tower failure is rare and when the tower is built and if it comes down from heavy winds, then the tower bends and the bend point would be at a specific height.

**Leslie Pritchard, 933 Conway Road (previously sworn in)** - She expressed concern about the proximity of the tower to ski trails and recreational areas. She is worried about the potential impact on the wooded experience that attracts visitors to King Pine.

**Peter Dow, Eaton Resident/Abutter** - He presented arguments against the variance request, citing specific sections of the town ordinance and questioning GMR's methods for determining the average tree canopy height. He argued that the balloon test demonstrated the tower would be readily observable throughout the community. He further stated that the balloon was visible at 150 feet but very visible at 170 feet. Dow gave Young, Land Use Boards Administrator the petition signed by local residents as well as non-residents.

**Kathy Hunt – 94 Pokey Pine Road** – She stated that she is an abutter and is opposed and that she had visual sight of the balloon. Dempster asked her if she paid a view tax to the town. She stated no.

**Dale Grossman – 255 King Pine Road (previously sworn in)** – He stated that there has been no surveying where the tower is going to go and that the trees were in the way for the balloon test and the balloon test was not where the tower is going to go. Drouin stated that the balloon would not go through branching and that the survey plans on the cell phone were where the coordinates were to weave the balloon through and if the wind was blowing, they would take the tilt into consideration and he further stated the more balloons you fly corrects any deviations.

**Dale Grossman – 255 King Pine Road (previously sworn in)** – He stated that people need a better visual.

**Ellen MacDonald – 8 Pokey Pine Road (previously sworn in)** – She stated that if the tower falls, it could hurt a skier and that the tower will not help the Town of Madison.

**Marylou Dow, Eaton Resident/Abutter (previously sworn in)** – She stated there is no hardship here and this is inconsistent with the spirit of the ordinance and that the voters voted for the ridgeline visibility limitation and that there are other options.

**Debra Berdell – 92 Fox Road** – She gave the board a handout she received from some local realtors and that this tower would negatively impact property values and that we need to preserve the natural beauty of our town and that the tower would rape the land.

Chairman Gentile swore in Christine Garbacz.

**Christine Garbacz – 207 King Pine Road** – She stated that she chose to live in Madison because of the zoning ordinances and that the board needs to stand by the rules and regulations.

McAllister asked about building a stealth tower. Drouin stated that they do them and they are usually figured out in zoning or planning. He further stated that this could be done. McAllister stated that you would not even know that a stealth tower is present.

There was discussion about airports. Drouin stated they do a full FAA investigation and there is no navigation hazard and they did a preliminary and then a final.

Dempster asked what is done for back-up power and is it eight hours or 24 hours. Drouin stated that FCC carriers have to provide generator backup which is the same size as a home generator which is a 200 amp and that each carrier does their own generator. Schilling asked how are they powered. Drouin stated either by propane or diesel.

Dempster asked how did the applicant choose this location. Drouin stated they had a lease back in 2015 with the Hoyts, before Bob Hoyt passed away and two years ago, they talked to the Hoyt family and they continued the lease that was previously in affect and that the family has been paying for the coverage for the carriers.

Dempster stated it is possible the Planning Board may suggest different sites. Attorney Springer stated he knows they need to go to the Planning Board but they are coming to the Zoning Board first and that the site is dictated by topography and the number of sites in that area is rather small and is dictated by the ridgelines. Gentile stated if the Zoning Board does grant the variances, the Planning Board needs to look at it and if the Zoning Board does not approve the tower then the Planning Board will look for another location and that this board is not considering the location.

Chairman Gentile swore in Jesse Dodier.

**Jesse Dodier – 1461 East Madison Road** – Dodier asked if the applicant will work with the community to move the site.

Chairman Gentile stated that our application contains one location.

Chairman Gentile stated it is 8:00 pm.

The board discussed the process for considering the variance requests and the role of the Planning Board in assessing alternative locations. They clarified that their decision would be based on the five criteria for granting a variance.

**Motion** by Gentile, seconded by McAllister to continue **Case #24-08** to April 16, 2025 at 6:00 pm at the Madison Elementary School Gymnasium. The motion was voted on and passed **5-0**.

Chairman Gentile asked Attorney Springer to sign a Waiver as today was the 90-day cutoff. Attorney Springer stated he would and would email it to Young, Land Use Boards Administrator in the morning.

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McAllister exited the meeting at 8:00 pm for the remainder of the evening.

Attorney Johnson stated he has five appeals left and his constitutional arguments apply to all cases.

Ohlson and Dempster recused themselves from the board and Dempster left for the evening.

**Case #23-14 – Daniel Moynihan, Sr., (previously owned by Ryan Finn and Grace Harrigan - Appeal from Administrative Decision**

Chairmen Gentile elevated Skaife to a full voting member and there is now a four-member board and he confirmed with Attorney Johnson he is agreeable to a four-member board.

Chairman Gentile asked Young, Land Use Boards Administrator to read aloud **Case #23-14** as well as the posting notification.

Young, Land Use Boards Administrator read **Case #23-14** aloud as well as the posting notification:

**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, November 20, 2024, February 19, 2025 and March 19, 2025) - Appeal from an Administrative Decision** from Matt Johnson, Esquire, Devine, Millimet & Branch, P.A., Agent for Daniel Moynihan, Sr., (previously 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.

**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 12, 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 opened the hearing for **Case #23-14**, an appeal from an administrative decision regarding short-term rentals at 43 Oak Ridge Road.

Attorney Johnson stated he represented the property owner, Daniel Moynihan Sr., and previously he represented Ryan Finn and Grace Harrigan. Attorney Johnson presented a letter from a prior owner, Daniel Moynihan IV, who is the son of David Moynihan, Sr., explaining that the property had been rented for approximately 40-50 days per year prior to the ordinance change in March, 2022. Attorney Johnson noted the

lack of direct evidence, like rental platform receipts or tax documents for this rental history, but stressed that the provided letter reflected the best available information on past rentals.

Attorney Johnson stated that the Zoning Board should not limit the rental days but could use 50 days plus 15% which would be 58 days. Attorney Johnson requested that the board grant the appeal with a condition to allow 58 rental days per year. This number represented the established historical rental average, plus a 15% buffer to accommodate for any variability. The board recognized the challenge of producing detailed rental evidence post hoc, noting that the owner's letter served as a non-formalized affidavit of historical use. Concerns were raised about vague documentation, with board members discussing the need for more substantial proof, like an affidavit or corroborations such as tax filings related to rental income.

Considering the potential gap in evidence, the board deliberated on the appropriate path forward. They ultimately decided to continue the case, allowing the applicants further time to provide more substantive documentation of rentals prior to March of 2022. Attorney Johnson stated he would agree to conditional approval and can get an affidavit from Mr. Finn (prior owner) stating the property was rented prior to March of 2022. Schilling stated the burden of proof is on the applicant. Schilling stated the level of proof has been provided in every other case and does not understand why this case is different.

Chairman Gentile read aloud the following:

“The ZBA has the right to attach conditions to the continued use of a pre-existing, non-conforming use. **Peabody vs The Town of Windham, 1997**. The general condition for the continued use of a pre-existing, non-conforming use are recognized as being established in the case **New London Land Use Assn. v. New London ZBA (1988)**. It established four criteria, all of which must be met in order for a non-conforming use to expand. Of particular relevance to this is the requirement that enlargement or expansion may not be substantial and may not have a substantially different impact upon the neighborhood...”

Police Chief King submitted to this board, a 70-page report detailing complaints against short term rentals that is sufficient evidence to establish that short term renters often do not comply with the owners’ requirement to abide by parking regulations and to limit loud noises. It is therefore reasonable that the ZBA conclude that expanding non-conforming use beyond its historically established levels will have a negative impact on the neighborhood.

Additionally, in the Town of **Salem v. Wickson, 2001**, it was established that an accessory use cannot become the primary use, which further justifies the limitation of usage to the established practice for the property.”

Chairman Gentile also referred to Bernie Waugh’s Limitations and Expansions of non-conforming use and handbook.

**Motion** by Schilling, seconded by Skaife to continue **Case #23-14** to May 21, 2025 at 6:00 pm, place to be determined (either the Madison Elementary School Gymnasium or the lower level of the Madison Town Hall) to allow the applicant time to gather and provide documentation of rentals prior to March, 2022.

**Roll Call Vote: Gentile – Aye; Schilling – Aye; Skaife – Aye; Rau - Aye**  
**The motion passed by a roll call vote of 4-0.**

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**Case #23-16 – Monica Maria McMillian and Laura Thompson - Appeal from Administrative Decision**

Chairman Gentile asked Young, Land Use Boards Administrator to read aloud **Case #23-16** as well as the posting notification.

Young, Land Use Boards Administrator read **Case #23-16** aloud as well as the posting notification:

**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, November 20, 2024, February 19, 2025 and March 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

**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 12, 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 opened the hearing for **Case #23-16**, an appeal from an administrative decision regarding short-term rentals at 17 Burgdorf Drive.

The board heard Case #23-16, an appeal for Monica Maria McMillan and Laura Thompson regarding 17 Burgdorf Drive. Attorney Johnson presented financial statements and rental history showing the property had been rented for 94 days in 2020 and 139 days in 2021.

Attorney Johnson submitted financial statements and detailed evidence of the rental history to the board. He provided affidavits and spreadsheets from the property management company Stay the Whites. The spreadsheets outlined the number of rental days for the years 2020 and 2021. Specifically, the property was rented for 94 days in 2020 and 139 days in 2021. This history established a pattern of usage that predates the ordinance change.

Additionally, Johnson provided a signed affidavit from the property owners, which further documented the history of rentals. The affidavit outlined their continuous rental activities since purchasing the property, showing continuity from previous owners through the applicants' management, despite the introduction of the ordinance that restricted short-term rentals. Attorney Johnson argued that the rental activities are a pre-existing non-conforming use, warranting grandfathering of the short-term rental practice.

The board discussed the significance of this documentation, noting the affidavits and records sufficiently demonstrated that the property's short-term rental use predates the March, 2022 ordinance. After reviewing the evidence, the board concluded that the appellants had met the burden of proof required to establish their property as a pre-existing non-conforming use, qualifying it for grandfathering. Schilling noted the importance of the house rules provided by the owners, which were thorough and designed to ensure that renters adhered to community standards during their stays.

Board members discussed the appropriate number of days for permissible rental under the grandfathering clause. They considered the highest historical rental figure from the data presented, which in 2021 amounted to 139 days, and agreed to add a 15% increase for flexibility, setting a total of 160 days per year as a reasonable limit. This allowance aims to accommodate irregular rental periods while aligning with historical usage patterns.

Chairman Gentile stated the board was going to start collecting the Findings of Fact as follows:

**Findings of Fact:**

1. The property was purchased by the applicants March 4, 2022, just before the vote to amend to the Madison Zoning Ordinance, but after the posting of the Warrant Article to amend the ordinance in February of 2022.
2. Laura Thompson, an owner, provided a two-page, notarized statement with a spreadsheet showing that the previous owner had rented the property as a short-term rental.
3. These documents established a history with a short-term rental usage of 139 days in a year, establishing a claim as a pre-existing, non-conforming use which had not lapsed.
4. The ZBA has the authority to attach conditions to the continued use of a pre-existing, non-conforming use. **Peabody vs The Town of Windham, 1997.**
5. The general condition for the expansion of a pre-existing, non-conforming use are recognized as being established in the case **New London Land Use Assn. v. New London ZBA (1988).** It established four criteria, all of which must be met in order for a non-conforming use to expand.

Of relevance to this case is the requirement that expansion may not be substantial and may not have a substantially different impact upon the neighborhood...”

Police Chief King, while he was still Police Chief, submitted to this board a report covering the period of January 2022 through March of 2024 detailing all complaints involving parking violations and noise, a number of which involved short term rentals. During the ZBA meetings of November 15, 2023, and June 19, 2024, testimony was given of complaints of noise and parking violations at short term rentals. That is evidence that short term renters at times do not comply with the owners’ requirement to abide by parking regulations and to limit loud noise at night. It is therefore reasonable that the ZBA conclude that expanding non-conforming use beyond its historically established levels can have a substantially different and negative impact on the neighborhood. We are therefore within our authority to restrict the non-conforming use to its established level to prevent an increase in the demonstrated negative impact on the neighborhood.

6. Additionally, in the **Town of Salem v. Wickson, 2001,** it was established that an accessory use cannot become the primary use, which further justifies the limitation of usage to the previously established practice for the property, so that homes which have been occasionally rented by owners on a short-term basis and which have the status of a pre-existing, nonconforming use may not be turned into a full time short term rental property. Thus, they are not simply exempt from the zoning requirements, rather they have the right to continue the pre-existing, non-conforming use which can only be expanded within certain well-defined parameters.
7. These findings (points 4,5, and 6) are based on “The Zoning Board of Adjustment in New Hampshire” 2024 version Pages II-19-20 discussing the criteria for the expansion of

non-conforming uses and on Section 4 of “2015 NHMA Law Lecture #1 - Grandfathering: The law of Non-Conforming Uses & Vested Rights” by Bernie Waugh, Esq., and Adele Fulton, Esq.

After discussion, the board agreed to grant the appeal with conditions as follows:

**Motion** by Gentile, seconded by Rau to grant the Appeal from Administrative Decision for status of pre-existing non-conforming STR with the condition that it be limited to 160 days per year consistent with established use.

**Roll Call Vote: Gentile – Aye; Schilling – Aye; Skaife – Aye; Rau - Aye**  
**The motion passed by a roll call vote of 4-0.**

Chairman Gentile read aloud the provisions of the 30-day appeal period. Chairman Gentile closed **Case #23-16**.

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Chairman Gentile stated the board’s rules of procedure is they conclude business at 9:00 pm but they will continue with the remaining four cases being **Case #23-17, Case #23-19, #23-20 and Case #23-25**.

**Case #23-17 – Seamus O’Brien and Kayla Walsh-O’Brien - Appeal from Administrative Decision**

Chairman Gentile asked Young, Land Use Boards Administrator to read aloud **Case #23-17** as well as the posting notification.

Young, Land Use Boards Administrator read **Case #23-17** aloud as well as the posting notification

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

**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 12, 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 laid out the timeline and background for the property, stating it had been purchased in July, 2022. He provided evidence of a substantial rental history from the prior owner’s usage. According to the data presented, the prior owners rented the property both short term and long term. Notably, the Newells, long-term tenants, provided a letter indicating that the property had been rented at different times over the last 30-plus years, and that these rentals included both full-property rentals and partial-property rentals. Furthermore, Attorney Johnson reiterated that limiting the property’s rental use would not align with its established use pattern. He argued based upon the New Hampshire precedents cited, the board had the mandate to not impose unreasonable restrictions on the continuation of a long-standing rental practice.

This property held a unique distinction as a two-family residence, which meant at times it had been rented as distinct units within the same property. This historical usage and division enabled a case for pre-existing non-conforming use as the clients attempted to continue operations in a similar fashion post-purchase.

The data included spreadsheets detailing specific rental days, which showed that in 2020 the property had been rented for a total of 94 days. In 2021, the spreadsheets indicated that it had reached as high as 139 days of rental, a number later confirmed through a detailed review of the documented rental records. This established a comprehensive record of its usage history, supporting the client's claims for continued operation under grandfathered conditions.

In discussions following the presentation of evidence, the board focused on how these records-maintained continuity through the transition of ownership, indicating no lapse in the property's rental use amid ownership changes. Given these findings, the board considered the applicant's request for recognizing the property as a pre-existing non-conforming short-term rental, which allowed them to maintain historical rental levels.

Chairman Gentile stated the board was going to start collecting the Findings of Fact as follows:

**Findings of Fact:**

1. Seamus O'Brien and Kayla Walsh-O'Brien purchased the property on July 6, 2022.
2. Affidavit from prior owner, Richard Viscay stating he owned the property from December 11, 2019 to July 7, 2022.
3. A separate email dated March 19, 2025 from prior owner, Richard Viscay to the O'Briens stated the property was always a short term rental and he rented the property on an average of 100 days per year.
4. The current owners began renting in August of 2022.
5. William and Shirley Newell have rented the property short term and long term 30 plus years.
6. Thus, there is an established use of 100 days per year that had not lapsed in the year prior to the posting of the ordinance, nor in the year after the purchase, establishing a claim as a pre-existing, non-conforming use.
7. The ZBA has the authority to attach conditions to the continued use of a pre-existing, non-conforming use. ***Peabody vs The Town of Windham, 1997.***
8. The general condition for the expansion of a pre-existing, non-conforming use are recognized as being established in the case ***New London Land Use Assn. v. New London ZBA (1988).*** It established four criteria, all of which must be met in order for a non-conforming use to expand.

Of relevance to this case is the requirement that expansion may not be substantial and may not have a substantially different impact upon the neighborhood..."

Police Chief King, while he was still Police Chief, submitted to this board a report covering the period of January 2022 through March of 2024 detailing all complaints involving parking violations and noise, a number of which involved short term rentals. During the ZBA meetings of November 15, 2023, and June 19, 2024, testimony was given of complaints of noise and parking violations at short term rentals. That is evidence that short term renters at times do not comply with the owners' requirement to abide by parking regulations and to limit loud noise at night. It is therefore reasonable that the ZBA conclude that expanding non-conforming use beyond its historically established levels can have a substantially different and negative impact on the neighborhood. We are therefore within our authority to restrict the non-conforming use to its

established level to prevent an increase in the demonstrated negative impact on the neighborhood.

9. Additionally, in the ***Town of Salem v. Wickson, 2001***, it was established that an accessory use cannot become the primary use, which further justifies the limitation of usage to the previously established practice for the property, so that homes which have been occasionally rented by owners on a short term basis and which have the status of a pre-existing, nonconforming use may not be turned into a full time short term rental property. Thus, they are not simply exempt from the zoning requirements, rather they have the right to continue the pre-existing, non-conforming use which can only be expanded within certain well-defined parameters.
10. These findings (points 7, 8, and 9) are based on “The Zoning Board of Adjustment in New Hampshire” 2024 version Pages II-19-20 discussing the criteria for the expansion of non-conforming uses and on Section 4 of “2015 NHMA Law Lecture #1 - Grandfathering: The law of Non-Conforming Uses & Vested Rights” by Bernie Waugh, Esq., and Adele Fulton, Esq.

A crucial factor in the board's deliberation was how many days the property might be rented going forward. The board emphasized the importance of maintaining consistency with the established historical use to prevent undue negative impacts on the neighborhood. Ultimately, after weighing the evidence and supporting records, the board decided in favor of the appeal with conditions.

After a thorough deliberation and review of the provided evidence, the board moved to grant the appeal for a pre-existing non-conforming use of the property. They set conditions to ensure compliance with established practice patterns as follows:

**Motion** by Gentile, seconded by Schilling to grant the Appeal from Administrative Decision recognizing the status of the property as a pre-existing non-conforming use with the condition that it may be rented up to only 115 days per year in total for the entire year, not each unit, consistent with established usage.

**Roll Call Vote: Gentile – Aye; Schilling – Aye; Skaife – Aye; Rau - Aye**  
**The motion passed by a roll call vote of 4-0.**

Chairman Gentile read aloud the provisions of the 30-day appeal period. Chairman Gentile closed **Case #23-17**.

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**Case #23-20 – Cory, Jade and Cynthia Franklin - Appeal from Administrative Decision**

Chairman Gentile asked Young, Land Use Boards Administrator to read aloud **Case #23-20** as well as the posting notification.

Young, Land Use Boards Administrator read **Case #23-20** aloud as well as the posting notification.

**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, November 20, 2024, February 19, 2025 and March 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 16, 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 March 12, 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.

The board heard Case #23-20 for Jade Corey and Cynthia Franklin concerning the property at 26 Little Shore Drive. The property was purchased in April, 2022, after the ordinance change in March, 2022, and the owners commenced renting it in June, 2022. There was no available evidence of prior rental history for this property before the ordinance change. The applicants had begun discussions with their lender about financing the property as a second home in July, 2021, which was before the ordinance change. The lender indicated that rental income could be a factor in funding the purchase, leading the applicants to factor short-term rentals into their planning. Unfortunately, by the time the purchase was finalized in April, 2022, the ordinance had changed, placing restrictions on short-term rentals.

Attorney Johnson presented to the board, emphasizing the equitable factor that the applicants had acted in good faith based on the information available at the time of their initial decision-making process. He noted the applicants' reliance on short-term rentals as a significant factor in their financial planning was based on consultations with their mortgage provider, which was consistent with the regulations and practices at the time of their loan discussions in mid-2021. Despite this reliance, the change in the ordinance, which occurred close to their purchase date, immediately impacted their plans, as it prohibited the anticipated short-term rentals soon after they had acquired the property.

The board decided to continue the case to allow time for the applicants to provide documentation of their vested interest in the property prior to the ordinance change as follows:

**Motion** by Gentile, seconded by Schilling to continue **Case #23-20** to May 21, 2025 at 6:00 PM, place to be determined (either the Madison Elementary School Gymnasium or the lower level of the Madison Town Hall) to allow the applicant time to gather and provide documentation of rentals prior to March, 2022.

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

**The motion passed by a roll call vote of 4-0.**

#### **Case #23-25 - Rishi Saxena and Abhishek Sahai - Appeal from Administrative Decision**

Chairman Gentile asked Young, Land Use Boards Administrator to read aloud **Case #23-25** as well as the posting notification.

Young, Land Use Boards Administrator read **Case #23-25** aloud as well as the posting notification

**Case #23-25 – Continued (January 17, 2024, February 21, 2024 and March 20, 2024) 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.

**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 12, 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 opened the hearing for **Case #23-25**, an appeal from an administrative decision regarding short-term rentals at 80 Oak Ridge Road.

Attorney Johnson, representing the applicants, argued that they based their decision to rent the property on information available from the town's website and discussions with agents before purchasing the property. He highlighted the ambiguity of the website regarding short-term rentals and emphasized that the applicants consulted it before beginning their short-term rental activities. Johnson stressed that this reliance was a critical factor in their decision, pointing out that the website had not been updated to reflect the ordinance change limiting short-term rentals.

During the hearing, the board engaged in a detailed discussion about the applicants' basis for their decision to rent. They explored whether the applicants had conducted due diligence by consulting the town hall, as recommended by the website. Given that the applicants purchased the property well after the ordinance change, the board agreed that the onus was on them to fully understand the current zoning regulations and that there appeared to be an incomplete understanding of the town's requirements.

Chairman Gentile stated the board was going to collect the Findings of Fact at follows:

**Findings of Fact:**

1. The property was purchased by the applicants in September, 2022.
2. The applicants started renting the property in October, 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.
4. The applicants based their decision to rent on incomplete knowledge of the Town of Madison's Zoning Ordinance.
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 Rau to deny the Appeal for Administrative Decision based on the lack of prior rental history more specifically, in the year prior to the posting of the new ordinance so the property does not qualify as a pre-existing, non-conforming use and the Madison Zoning Ordinance prohibits the transient rental of property for periods of 30 days or less as of March, 2022.

**Roll Call Vote: Gentile – Aye; Schilling – Aye; Skaife – Aye; Rau - Aye**  
**The motion passed by a roll call vote of 4-0.**

Chairman Gentile swore in Holly Maudsley who is an abutter to this case.

**Holly Maudsley – 66 Oak Ridge Road** – Maudsley spoke and shared her perspective as an abutter to the property. She expressed that, despite the turnover and changes brought by short-term rentals in the area for over 40 years, the new owners of 80 Oak Ridge Road have managed their short-term tenancy responsibly. Maudsley stressed that while different renters come and go, they have resulted in fewer disturbances than a potential long-term tenant with multiple children might. Her comments highlighted broader community acceptance of short-term rentals when managed properly.

Chairman Gentile read aloud the provisions of the 30-day appeal period. Chairman Gentile closed **Case #23-25**.

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**Approval of Draft Minutes:** Young stated she did not have the February 19, 2025 minutes completed due to her wrist in a cast and per her doctor’s instructions, no prolonged typing.

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

**ADJOURNMENT: Motion** by Schilling, seconded by Rau to adjourn the meeting at 10:15 pm. The motion was voted on and passed **4-0**.

The next Public Hearing of the Zoning Board of Adjustment will be held on April 16 , 2025 at the Madison Elementary School Gymnasium at 6:00 pm.

Respectfully submitted,

Katharine Young  
Land Use Boards Administrator