



**TOWN OF MADISON
ZONING BOARD OF ADJUSTMENT
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ZBA MINUTES

June 18, 2025

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

EXCUSED: Marc Ohlson, Alternate

OTHERS PRESENT: Madison TV, Amanda Hayford, Kate Young, Land Use Boards Administrator, Attorney Matthew Johnson, Ethan Lemieux, William and Patricia Burnell and Bill Dempster.

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

PLEDGE OF ALLEGIANCE/ROLL CALL: Vice Chairman Schilling asked Rau to lead in the reciting of the Pledge of Allegiance. Vice Chairman Schilling conducted the roll call and introduced each member and alternate present, and stated she would be chairing the meeting tonight in Gentile's absence.

Vice Chairman Schilling stated that Gentile was appearing via Zoom and that there are questions and protocols that need to be followed for Gentile to appear via Zoom, and she needs to go through these procedures with him. She further stated that the right-to-know law has a section, NH RSA 91:A2,III on electronic participation by members whose attendance at a meeting is not reasonably practical and she continued as follows:

1. Vice Chairman Schilling asked Gentile to state that his reason for not attending in person is not reasonably practical for him to attend the meeting in person? Gentile stated he was in Florida at his sister-in-law's home.
2. Vice Chairman Schilling polled the board to see if they were in favor of Gentile's remote participation. The board voted 4-0 in favor to allow Gentile to appear via Zoom.
3. Vice Chairman Schilling stated that procedures require that a quorum be physically present at the location of the meeting. She further stated that she, McAllister and Rau make a quorum in the room.
4. Vice Chairman Schilling stated that the person not in attendance and the members personally present must all simultaneously be able to hear and speak to each other and she confirmed that Gentile, the board, the public and Attorney Johnson can hear Gentile and Gentile confirmed he could hear the board, public and Attorney Johnson.
5. Vice Chairman Schilling asked Gentile if anyone was present in the room with him at his location. He stated no, that he was alone.
6. Vice Chairman Schilling stated that Gentile can vote but all votes need to be done by roll call vote.

Vice Chairman Schilling stated that according to the Agenda tonight, we have five short-term rental cases and two variances and she is hopeful they get to all cases tonight.

Case #23-16

Vice Chairman Schilling asked Young, Land Use Boards Administrator to read **Case #23-16** aloud as follows:

Case #23-16 – Re-Hearing of the Zoning Board of Adjustment’s March 19, 2025 Decision – is requested by 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 to limit them to 184 short term rental days a year consistent with established use.

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 June 5, 2025 as well as posted in the Conway Daily Sun on June 7, 2025.

Conflict of Interest: Vice Chairman Schilling polled the board and confirmed there was no Conflict of Interest.

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

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

ELEVATION OF ALTERNATES: Vice Chairman Schilling elevated Skaife to a full voting member which now makes the board five voting members and she confirmed with Attorney Johnson and he agreed.

Attorney Johnson stated that this is a rehearing that was limited solely to the issue of whether the Zoning Board has the power to impose a limitation on short-term rentals. Attorney Johnson further stated that the Zoning Board granted Attorney Johnson’s appeal but put a limit of 184 days on this property. He further stated that in his Motion for Rehearing and he has articulated before the board, that because this was a pre-existing use without any limitation as a short term rental, it retained that use, and that use has not changed and there were no restrictions on the number of days in the Zoning Ordinance before it was amended, so therefore, his position is that, while it was proper for the Zoning Board to grant the Administrative Appeal, it was improper to limit the number of days that his client could use their short term rental to 184 days. He further stated that he articulated the other constitutional challenges, which is not completely germane to this case, but there is one case that directly addresses that and he will talk about that later. He further stated that the only issue before the Zoning Board is whether the Zoning Board agrees with him that it was an error to put a limitation, or not, and that is the issue for two of the three re-hearings, including the first one.

Vice Chairman Schilling stated that the Zoning Board has gone through this previously in these hearings regarding the Zoning Boards’ authority to be able to enforce the zoning rules and regulations of the town and the Zoning Board also has the authority to impose caveats on any use as it approves or disapproves something. She further stated that the Zoning Board is well within their authority to be able to impose those types of caveats to an approval, and this was an approval. She also stated that the applicant had provided information on 160 days and the Zoning Board, in order to account for inaccurate documents; not able to provide all of the proof, but had 90% of the proof and the changes in different renting habits, the Zoning Board opted to give each one of the approved applications for these days, a 15% adjustment/flexibility which came out to 184 days for this particular case.

Vice Chairman Schilling stated there are criteria that the Zoning Board has read into record before, contesting the supposition that short-term rentals exist without limitations and that RSA 674:19 specifically states that the Zoning Ordinance shall apply to any alteration of use which she read aloud as follows **“A Zoning Ordinance**

adopted under RSA 674:16 shall not apply to existing structures or the existing use of any building. It shall apply to any alteration of a building for use for a purpose or in a manner which is substantially different from the use to which it was put before the alteration.” Vice Chairman Schilling stated the board had gone through Article 1.3C of the Madison Zoning Ordinance which specifically allows limitation of use in the wording as follows and she read aloud **“Any land use to the extent existing at the time of the passage of This Ordinance, but not conforming thereto, shall have the privilege of continuing in such use indefinitely or re-establishing in such use within one (1) year of any discontinuance.”** Vice Chairman Schilling stated these arguments have been provided before and asked Young, Land Use Boards Administrator to make sure these arguments are carried forward. Attorney Johnson stated that for efficiency purposes, he has no objection to the Zoning Board stating for the reasons previously articulated in the minutes because Gentile and Schilling have stated the above statements a few times. **(See March 20, 2024 minutes, Pages 6-7 on Case #23-12 and May 21, 2025 minutes, Pages 25-26 on Case #23-13)**

Vice Chairman Schilling stated she would leave the public hearing part open and was not sure if the board needs to go through the Findings of Fact again or if the board can carry forward the Findings of Fact that were contained in the minutes previously as it relates to this case. McAllister stated he does not believe the Findings of Fact have changed. Vice Chairman Schilling stated there are no new Findings of Fact, no changes to the number of substantiated days and no changes to the conditions. Attorney Johnson stated, it is merely a legal argument. Vice Chairman Schilling reiterated that all Findings of Fact remain the same and are coming forward as follows:

Findings of Fact (brought forward from the March 19, 2025 minutes)

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.

Gentile stated that he wanted to address to Attorney Johnson’s comments and the argument that the general existence of complaints on other properties is irrelevant to this specific property, unless there is a similar complaint. He disagrees that such arguments can only apply if they relate to a specific property. The board reiterates that it has the authority to set conditions when granting an appeal, that the ordinance specifically allows a limitation with the wording “to the extent existing at the time” and the wording in **New London Land Use Assn v. New London ZBA (1988)** established four conditions under which pre-established, non-conforming use may be expanded, all of which must be met in order for a non-conforming use to expand. Gentile referred to the anticipated impact on the neighborhood, thus reference to negative impacts in the neighborhood by similar uses can reasonably be used to justify the limitation of use to a previously established extent. Gentile stated he wanted to affirm that the board did not overlook the fact that Attorney Johnson had denied the applicability of Police Chief King’s report covering a period of two years (January, 2022 through March of 2024). Violations that were related to short-term rentals provide a general indication of the impact on the neighborhood and that fits within the general authority of our board to provide limitations based on reasonable cause. **(See March 20, 2024 minutes, Pages 6-7 on Case #23-12 and May 21, 2025 minutes, Pages 25-26 on Case #23-13)**

Vice Chairman Schilling asked the board if there were any questions and since there were none, she made the following motion:

Motion by Schilling, seconded by McAllister to close the Public Hearing.

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

The Motion passed 5-0.

Vice Chairman Schilling stated that it is her assertion that Attorney Johnson is looking to completely alleviate any limitation that the board has placed on the applicant to rent their property 365 days a year if they so choose, with no limitation, no restrictions from the Zoning Board or from the town. She further stated as the board discussed previously, it is reasonable to limit usage to previous levels so as to not to affect the surrounding neighborhood adversely. Leaving the rentals at the level at which they had previously existed, limits their potential to continue their non-conforming use and adversely impacts the neighborhood or the town completely.

Vice Chairman Schilling asked the board for a motion.

Motion by McAllister, seconded by Rau to deny the Motion for Re-Hearing based upon the board’s previous votes.

Discussion: Gentile asked the board what they were denying and he thought the board was granting the appeal with a limitation. Attorney Johnson stated that he believed the board just denied the Motion for Re-Hearing. Vice Chairman Schilling stated no, because Attorney Johnson already had the Motion for Re-Hearing approved at the March meeting. Attorney Johnson stated the board granted it and set it down for a new hearing. Young, Land Use Boards Administrator stated that at the May 16, 2025 public meeting, the board granted this as a Re-Hearing, Vice Chairman Schilling stated that is correct and this is the Re-Hearing and what the board is saying, is that Attorney Johnson is requesting for the board to remove the limitation and she stated that the board is denying his request to remove the limitation. Attorney Johnson stated the board can do whatever they want, but may want to add “and stand by the original decision.”

Motion by McAllister, seconded by Rau to deny the request to remove the limitation of 184 days and stand by the original decision dated March 19, 2025.

**Roll Call Vote: Schilling – Aye; Rau – Aye; McAllister – Aye; Gentile –Aye; Skaife - Aye.
The Motion passed 5-0.**

Vice Chairman Gentile closed **Case #23-16.**

Case #23-17

Vice Chairman Schilling asked Young, Land Use Boards Administrator to read **Case #23-17** aloud as follows:

Case #23-17 – Re-Hearing of the Zoning Board of Adjustment’s March 19, 2025 Decision – is requested by 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 to limit them to 115 short term rental days a year consistent with established use.

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 June 5, 2025 as well as posted in the Conway Daily Sun on June 7, 2025.

Conflict of Interest: Vice Chairman Schilling polled the board and confirmed there was no Conflict of Interest.
Regional Impact: Vice Chairman Schilling polled the board and there was no Regional Impact.
Waiver Request: Vice Chairman Schilling polled the board and there was no Waiver Request.

Attorney Johnson stated that this case, for efficiency purposes, is exactly, the same, as the legal argument as **Case #23-16**. He further stated if the Zoning Board wishes to deal with **Case #23-17** in the same way as **Case #23-16** he is all right with this. He further stated that he has made his legal arguments which are the same arguments made previously (See March 20, 2024 minutes, Pages 6-7 on **Case #23-12** and May 21, 2025 minutes, Pages 25-26 on **Case #23-13**) and Vice Chairman Schilling stated the board would make their same legal arguments back to him.

Vice Chairman Schilling swore in Bill Dempster.

Bill Dempster, 57 Doe Drive – He stated there have been some changes since this property first came before the board and he felt the board should know about this because it will have a profound effect on what that is. He referred the Zoning Board to the legal arguments presented by Attorney Johnson and stated *“because the property has always been used as short-term rentals and that use has not been abandoned, the current owners, the O’Briens are entitled as a matter of law to continue the pre-existing non-conforming use.”* He further stated that the property has been rented since June 18, 2024 as a month-to-month rental and it was advertised in various on-line websites in May of 2024. If you follow the history of it, through Zillow, this property was put on the market for rent and then taken off on June 18, 2024. Dempster stated he lives in the area and the same three cars have been at the property for the entire year and he also confirmed the same cars were there this morning. He further stated that because of that, the applicants have abandoned their use because they have rented the property for a year as a dwelling unit as non-transient, therefore, they have lost their ability to continue to rent on a short-term basis as a non-transient use. Dempster gave the hand-out to Vice Chairman Schilling to give to Young for the case file.

Attorney Johnson stated that his only point would be that to the extent his applicants are doing this, he does not know whether some people are doing this because of the enforcement action because there is no final ruling by the Zoning Board to try to avoid being out of compliance with the Zoning Board and unless, until they have final decisions in their favor, that they could act as a short-term rental. He stated he does not think it is fair to punish property owners who are going to use their property in a different way while this process is running its course to stay on the side of making sure they did not run afoul of anything. There are legal arguments as to whether it is enforceable while this process is ongoing. Some people did not want to take the risk and he believes the evidence before the board, was that it had been rented as a short-term rental previously and continuing up until June of 2024. He further stated that his understanding is that to extent that happened, it was due to an abundance of caution to try to wait for this process to run its course before deciding to do short-term rentals again. He further stated that he does not consider this abandonment when there is an ongoing administrative enforcement action with the threat of fines and penalties to the owners. McAllister asked Attorney Johnson if he had talked with the applicants about this issue. Attorney Johnson stated he had not, relative to their long-term using it as short-term versus long-term rental basis. McAllister stated that Attorney Johnson has stated that he was not aware that his clients were renting long-term and he asked Attorney Johnson if he had ever had the conversation with his clients about what is going on. Attorney Johnson stated that is a privileged conversation but that he has explained to his clients, the benefits and the risks and the situation because these all arise out of an administrative appeal which have the potential for fines and further sanctions and that he cannot get into the specifications. Gentile agrees with Attorney Johnson on this point and during the time of the board’s administrative process, the board cannot hold the applicants accountable for abandoning the use if they have chosen an alternative to avoid further risk of other things. He further stated that the board’s action at this point is to put a condition on it and say that, assuming that it is not abandoned in the next 12 months, beginning the date after the date of the decision. He further stated that this makes the applicants aware that if they abandon it in the next 12 months, then they no longer have the option. Attorney Johnson stated this is a fair balance.

Vice Chairman Schilling stated that for the record, the Zoning Board is carrying forward the Findings of Fact for **Case #23-17** as listed below as well carrying forward Attorney Johnson’s arguments and the Zoning Board’s responses to those arguments. **(For those arguments and responses see minutes dated March 20, 2024, Pages 6-7 on Case #23-12 and minutes dated May 21, 2025, Pages 25-26 on Case #23-13).**

Findings of Fact: (brought forward from the March 19, 2025 minutes)

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.

McAllister stated that he wanted to add that the documentation the board just received from Dempster, that ForRent.com is the listing for this property and it says one year lease and excellent credit required. Attorney Johnson stated that he had not seen the document. He further stated that if this continues, then there is a

legitimate issue of abandonment. McAllister stated that if the applicants leased the property in 2024, we are now a year down and based on the current renters, they have one-year lease for the property, as far as he is concerned, the owners have abandoned the property. Vice Chairman Schilling stated that what Gentile was saying that because of the situation and when you are going through the process, the clock stops. McAllister stated that if the applicants had been renting on a month-to-month basis, he would agree, but they are not renting on a month-to-month basis, they are leasing for a year which is different. Attorney Johnson stated then his point would be that he agrees with the condition proposed by Gentile that the 12-month clock starts ticking today and it is the applicants choice if they continue to rent on a long-term basis and the time clock runs out, then that is a different question. Vice Chairman Schilling stated that, the one potentially, already entered into a one-year lease, begs the question, have they already abandoned it and she believes what Gentile was saying, was whether they have or they have not, because of the situation that we are still adjudicating this. She further stated that going through the process and that the process of abandonment ceases for the time being and she asked Gentile to confirm. Gentile stated that if the applicants started with a one-year lease and two months into that, the Zoning Board made a decision, then there is only ten months left on the lease, they still can resume within the 12-month period after the board has made a firm decision. He does not believe the fact that the applicants signed a one-year lease negates the possibility that the Zoning Board can be quite upright in their terms of the interpretation of law, whether the applicants intended to lease the property for two to three years is up to them, and the fact that our decision falls after the beginning of that lease means that the applicants will have completed the lease inside the 12-month period after the Zoning Board's decision. Vice Chairman Schilling said the Zoning Board's original decision fell before the lease. Attorney Johnson stated that the Zoning Board granted the Motion for Re-Hearing. Vice Chairman Schilling stated that the board did not have this information about the applicants renting long term. Attorney Johnson explained that the first decision would have been the final decision, but the Zoning Board granted the Motion for Re-Hearing so it remained open until the decision at this meeting and that is why he believes the 12-month period should start today. Gentile stated that the Zoning Board could not have granted the Re-Hearing unless Attorney Johnson had been active in the process of applying for the re-hearing and the administrative process did not end with our decision, the administrative process ends with the ending of all the appeal periods. McAllister disagrees and would like to see a lease with a date on it to tell him when the clock started and further stated that Attorney Johnson thinks the clock has started and we do not know that. Skaife explained she does not think what the applicants are doing is unreasonable, as the applicants are renting their property beyond thirty days while this whole situation is being argued. She further stated that if the applicants keep renting for 12 months, then they lose the use of the short-term rental, but they are not violating any ordinances at this time but again, if the applicants continue to rent for 12 months, then they lose the use of the short-term rental. Gentile stated that the Zoning Board is in the awkward position of defending the property owner's rights and the town's ordinances and that is the whole reason the Zoning Board exists to make sure the town does not run over the property owners, but that the property owners also do not take advantage of the town and we are not trying to get the property owners in this situation, we are trying to do a reasonable job and enforce the ordinance the way it is written. He further stated that in this case, the justification for granting a grandfathering, whether we have a lease with a date on it or not, we put the date on the decision and that is the defining factor. McAllister stated that he would like to see the applicants here and listen to their own opinion that has not been coached as to what their intentions were and what we are doing now as we are reading intentions into them. We do not have the facts to support it and can only go with the facts that we have in our hands. That is where he is coming from. Chairman Schilling stated that we are not reading intentions, we are reading facts and the fact is that, the applicants had a decision back in March that granted them approval to rent as a short-term rental for 115 days. She further stated that what the applicants have done in the meantime, sought another alternative for them to pursue a longer rental, whether it was month to month or a year-long rental, is irrelevant, at this moment because they have not gotten past the year and are currently not in violation. She does not agree to bring the applicants in here to have them testify and she does not think this is useful for the Zoning Board or will help with the decision regarding the short-term rental and this is what is still our priority at this moment and this is still what is on our docket and it is

whether or not we approve or deny the motion to remove the limitations on the short term rental, regardless of what the applicants have done and at this point, the applicants have not abandoned their rights to rent, that we are aware of and at this moment, what is pertinent, is whether or not the applicants would be able to continue to use the property as a short term rental. She further stated that the one year, no one knows when that starts yet because it is still in process and when you are in the process, she does not believe you can date the year. Attorney Johnson stated that the abandonment principle is in the Zoning Ordinance, and it has a period of time. He does not believe the Zoning Board needs that condition because once there is a final decision, be it now or thirty days or whenever else, the year is going to start to run and he reiterated that the Zoning Board is free to do what they want but this would be an awkward condition to write. Vice Chairman Schilling stated that what the Zoning Board is here to decide is whether to grant Attorney Johnson’s request to remove the limitation and that is what we are here to decide. Skaife asked how do we monitor what the applicants are doing since we received the additional information about leasing for a year? Vice Chairman Schilling stated that the new information is pertinent but the applicants have chosen another method to produce income and it becomes not pertinent if the applicants ceases any other action and starts to short term rental with 115-day limitation. She further stated that it becomes part of the case history and should there be additional action, this information should be pulled back out and gets reviewed, but in her opinion, she does not believe that it bears on the decision the board is making today. Gentile stated to answer the question, how does it get enforced, the simple answer is that we live in a community and Dempster or someone will know if Attorney Johnson and his client decide to take this to court, which would mean that, actually the date we set tomorrow becomes irrelevant because there is still an administrative process and if he decides not to take this to court, then we are still in that situation that in a year, someone can say, the applicants have abandoned it and then the applicants start renting the property again and then it goes to Bob Boyd, Code Enforcement Officer and he can check it out and he further stated that this is not the Zoning Board’s area of responsibility and our responsibility is to focus on the question that is in front of us and make a decision and that we are part of a whole system, and we are not the whole system.

Young, Land Use Boards Administrator stated that she believes the board needs to close the public hearing before making the motion. Vice Chairman Schilling stated that sometimes we don’t close it and we leave it open. Skaife asked that the public hearing be closed.

Vice Chairman Schilling closed the public hearing.

**Roll Call Vote: Schilling – Aye; Rau – Aye; McAllister – Aye; Gentile –Aye; Skaife - Aye.
The Motion passed 5-0.**

Vice Chairman Schilling asked the board if there were any more discussion, and since there was none, she made the following motion:

Motion by Schilling, seconded by Rau to deny the request to remove the limitation of 115 days and stand by the original decision dated March 19, 2025.

**Roll Call Vote: Schilling – Aye; Rau – Aye; McAllister – Aye; Gentile –Aye; Skaife - Aye.
The Motion passed 5-0.**

Vice Chairman Schilling closed **Case #23-17.**

Case #23-25

Vice Chairman Schilling asked Young, Land Use Boards Administrator to read **Case #23-25** aloud as follows:

Case #23-25 – Re-Hearing of Case #23-25 – Appeal of an Administrative Decision – from Matt Johnson, Esquire, Devine, Millimet & Branch, P.A., Agent for 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 May 22, 2025 as well as posted in the Conway Daily Sun on June 7, 2025. Young Land Use Boards Administrator explained that she did receive the abutter notification that was sent Certified Mail, Return Receipt Requested back from the applicant and they changed their address and she reiterated that she received the address change from the applicants on March 19, 2025 and mailed the public hearing notification on March 11, 2025 so they crossed in the mail. Attorney Johnson waived procedural issues with the mailing.

Conflict of Interest: Vice Chairman Schilling polled the board and confirmed there was no Conflict of Interest.

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

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

Attorney Johnson explained that unlike the first two appeals tonight, this is a Motion for Re-hearing based on an appeal of a denial and the first action by the Zoning Board, was to deny this appeal. He further stated that this is a property that does not have a history of short-term rental use before the Zoning Ordinance changed in March of 2022. He further stated that the arguments are set forth in the Motion for Re-Hearing, and the primary argument would be, that it is unconstitutional for the Town of Madison to completely zone out the potential to have a short-term rental. He understands that the Zoning board has considered these issues and arguments and has their own perspective on that and he stands by what he has said previously. **(See minutes of March 20, 2024 on Pages 6-7 on Case #23-12 and minutes of May 21, 2025 Pages 25-26 for Case #23-13)**

Vice Chairman Schilling confirmed with Attorney Johnson that there has not been any additional evidence and that it is all based on the constitutional legal aspects of the Zoning Ordinance itself. Attorney Johnson agreed.

Vice Chairman Schilling asked the board if they had any questions and there were none.

Vice Chairman Schilling stated that for clarity and consistency, the minutes of this case reflect Attorney Johnson's arguments and the Zoning Board's responses **(See minutes of March 20, 2024 on Pages 6-7 on Case #23-12 and minutes of May 21, 2025 Pages 25-26 for Case #23-13)** as well as the Findings of Fact as follows:

Findings of Fact: (brought forward from the March 19, 2025 minutes)

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.

Vice Chairman Schilling closed the Public Hearing. There was no roll call conducted.

Motion by Schilling, seconded by McAllister to uphold the Zoning Board of Adjustment’s decision of March 19, 2025 on **Case #23-25** and that decision denied the applicants the ability to operate a short-term rental.

Roll Call Vote: Schilling – Aye; Rau – Aye; McAllister – Aye; Gentile –Aye; Skaife - Aye.
The Motion passed 5-0.

Vice Chairman Schilling closed **Case #23-25.**

Case #23-14

Vice Chairman Schilling asked Young, Land Use Boards Administrator to read **Case #23-14** aloud 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, November 20, 2024, February 19, 2025, March 19, 2025 and May 21, 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: Young, Land Use Boards Administrator stated she re-noticed abutter because the board did not continue **Case #23-14** at the May 21, 2025 public hearing. Notification of this public meeting was posted in the Town Hall upper and lower levels and Madison and Silver Lake Post Offices on June 5, 2025.

Conflict of Interest: Vice Chairman Schilling polled the board and confirmed there was no Conflict of Interest.

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

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

Attorney Johnson stated this case was requesting relief and appeal from an administrative decision prohibiting the applicant from engaging in short-term rentals and he further stated he would adopt, out of efficiency, his constitutional arguments that he had previously made in all the other cases. He further stated that from his notes, the two issues the Zoning Board had last time were as follows:

1. Who owned what and when. Attorney Johnson stated that Daniel Moynihan IV owned the property until June 8, 2022 and he sold the property to the original applicants, Ryan Finn and Grace Harrigan who then sold it back to Daniel Moynihan, Sr., (the father) on June 9, 2025.
2. Attorney Johnson stated the other question regarded a statement from Dan Moynihan, Sr., (the father) about what Daniel Moynihan IV, (the son) would say relative to rentals and Attorney Johnson handed the board a signed statement from Daniel Moynihan, IV because he was the person who owned the property before the ordinance changed. Skaife stated that this was what the board was asking for at a prior meeting. Attorney Johnson also provided the board again, with copies of some of the Airbnb rentals. For clarification purposes for Gentile, Vice Chairman Schilling stated that the

statement from Daniel Moynihan, IV was entered as a new document and the Airbnb rentals was previously provided at a prior meeting. Attorney Johnson read the statement from Daniel Moynihan, IV dated May 20, 2025 into the record aloud for purposes for Gentile appearing via Zoom.

Gentile stated that in the first set of data, there was a listing of the number of nights that the property had been rented and began in August, 2022 and the record was from Airbnb and continued until June 18, 2023 and Gentile asked if this is still part of the record? Attorney Johnson stated yes, it is, but he did not focus on that because it is after the time period when the ordinance changed and that he was focused on the time period before August, 2022.

Vice Chairman Schilling swore in Bill Dempster.

Bill Dempster, 57 Doe Drive – Dempster stated this is the same situation that we had with **Case #23-17** but this one is a little different. He stated this one was a long-term rental with abandonment and gave a handout to the board. He stated the first page of the handout is the letter that was submitted by the applicant's attorney on September 20, 2023. On Exhibit #1, there is a timeline and the timeline underneath those which are underlined are all the references that Dempster used and referred the board to the one in pink, that Dempster highlighted, are the timelines and stated that the property was rented out by the Finns long term, month to month and he stated he has those advertisements started in August of 2023. He further stated that Finn and Harrigan rented the property month to month from August, 2023 to August, 2024 and then the property went up for sale and after that, there were no short-term rentals from August, 2024 to January 9, 2025 when Daniel Moynihan, Sr., (the father) bought the property. He further stated that the current owner, Daniel Moynihan, Sr., (the father) did not rent at all. Dempster stated his contention is that Finn and Harrigan had already abandoned the use of that property as a transient rental and anything asked for after that, the property can no longer be used as a short-term rental as transient use because it is after March, 2022 and Skaife added, because of change of ownership.

Because Gentile did not have a copy of Dempster's handout, Gentile reiterated from what he understood that the contention is about the sale of the property. He asked when was the date of the sale of the property? Vice Chairman Schilling stated the sale from Daniel Moynihan IV to Harrigan was July of 2022. Gentile asked when the first long term rental was. Dempster replied August, 2023 through August, 2024. Schilling confirmed that is the lease for that year. Dempster agreed. Dempster stated the handout was from PrimeMLS Pinkham Real Estate Apartments.com and ForRent.com. Gentile stated the application was received in November of 2023. Attorney Johnson stated the cease-and-desist letters started going out in August, 2022. He further stated that again, this is the situation where you have a cease-and-desist letter with potential fines and penalties and the applicant decided to do something different in the process while preserving their right to appeal and challenge it and he does not feel they should be punished for not short term renting while they challenged the decision that they could not short-term rent because time matches up, the Zoning Ordinance has changed, enforcement action letter have gone out and that they rented it on a long-term basis. He further stated that he does not believe that can be evidence of abandonment when the Code Enforcement Officer is sending a letter saying "you cannot do this anymore." Vice Chairman Schilling questioned if they were not renting from August, 2022 to June 18, 2023 because the document stated the property was rented on a transient basis, so were they continuing to rent on a short-term rental basis while they were under the cease-and-desist letter, without obvious concern and it was not until August of 2023 that they then decided to go for the longer-term rental. Attorney Johnson stated the document is just words written on a page and there is no evidence that they actually rented on a long-term basis. Dempster stated that he did have the proof and showed it to Attorney Johnson and the board. Vice Chairman Schilling stated the document was from PrimeMLS.com for 43 Oak Ridge for \$2,500.00 a month and it shows it is leased. Dempster stated the dates which they occurred and circled in pink on the next couple of pages. Attorney Johnson stated that this is in the middle of the enforcement action

and we are in the middle of the appeals to challenge this so why should they be punished. Vice Chairman Schilling stated she is just clarifying that they continued to short-term rent, post the cease-and-desist letter for approximately a year and then after that year, is when the house was sold and went to a long-term rental for a year. Skaife stated the people who bought then they sold it back to someone. Vice Chairman Schilling stated it was sold to the father. Skaife asked if that is who is now appealing and applying for a short-term rental? Attorney Johnson stated this case started for Finn and Harrigan but then changed to Daniel Moynihan, Sr., (the father) and because, during the pendency of this appeal process, because it has run so long, the property was sold to Daniel Moynihan, Sr., (the father) and he is the current applicant.

Gentile stated, that for his clarification, there is data that shows the property was rented as a short-term basis from February, 2022 through all of 2022, off and on short-term rentals into 2023. It was sold in July, 2023 and then in August of 2023, it went to a long-term rental and then the Appeal from Administrative Decision was applied for in November, 2023 and this was during the time-frame that they were doing a long-term rental. He further stated that it is not of the Zoning Board's immediate concern that they were renting in the time-frame but they took an action to rent long-term to obviate any problem with short-term rentals while they made an appeal. He further stated that the period of long-term rental overlaps significantly, the period they were in an administrative process of an appeal. Vice Chairman Schilling stated they started the long-term rental in August, 2023 and the letter to the Madison Zoning Board of Adjustment came in October 3, 2023 which was the date of Attorney Johnson's letter and it was stamped by Young, Land Use Boards Administrator on October 4, 2023. Gentile stated that they were doing long-term rentals during the time of the administrative process. McAllister stated the administrative process started after they were doing long-term rentals. Vice Chairman Schilling stated no, because the cease-and-desist letter is from July 11, 2023 and they started the long-term rental in August of 2023 and stopped the short-term rental. Gentile stated that it does not appear to be that there is a strong case for saying they intentionally abandoned short-term rentals.

Gentile stated that he added up all the time they had been renting and in 2023, they rented 29 days of the first 167 which would account for if you were to extrapolate that for a whole year, because it was interrupted by the process, it would have given them 63 days for the year. He further stated that in the previous year, they had 57 days which matches very closely to what the testimony was given in the letter from Daniel Moynihan, IV and if you average that out, it is 60 days a year, very consistent and clearly interrupted in July, 2023 by the letter. He further stated that this is a person, who took seriously, the fact that they received a cease-and-desist letter and we have no idea if they were aware of the ordinance change or not when they did it, or if they thought it applied to them or not, but it is clear, that once they received that letter, they took the action that was appropriate.

Dempster stated that he had Bob Boyd's letter, Notice of Violation dated August 16, 2023 and that is the letter that is referenced by Attorney Johnson to the Zoning Board, with replying back to the notices. Attorney Johnson stated the Zoning Board also has the original letter from July 11, 2023.

Vice Chairman Schilling asked if there was any further discussion and since there were none, she closed the public hearing.

**Roll Call Vote: Schilling – Aye; Rau – Aye; McAllister – Aye; Gentile –Aye; Skaife - Aye.
The Motion passed 5-0.**

Vice Chairman Schilling stated the board was now going to collect the Findings of Fact.

Findings of Fact:

1. The property at 43 Oak Ridge Road was owned by Grace Finn formerly known as Grace Harrigan from June 28, 2022 until January 9, 2025.
2. The property was rented as a short-term rental from February, 2022 to June, 2023 for approximately 60 days per year.
3. The property was sold to Daniel Moynihan (the father) on January 9, 2025.
4. There have been no short-term rentals reported since June, 2023.
5. The letter for cease-and-desist dated July 11, 2023.
6. An appeal letter was filed October 3, 2023.
7. The owner maintained a long-term rental from August, 2023 to August, 2024.

Motion by Gentile, seconded by Schilling to grant the status of a pre-existing non-conforming use short-term rental with the condition it does not exceed 69 days.

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

The Motion passed 4-1.

Vice Chairman Schilling read aloud the provisions of the 30-day appeal period. Vice Chairman Schilling closed **Case #23-14.**

Case #23-20

Vice Chairman Schilling asked Young, Land Use Boards Administrator to read **Case #23-20** aloud 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, November 20, 2024, February 19, 2025 and March 19, 2025 and May 21, 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 096 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 June 5, 2025 as well as posted in the Conway Daily Sun on June 7, 2025.

Conflict of Interest: Vice Chairman Schilling polled the board and confirmed there was no Conflict of Interest.

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

Waiver Request: Vice Chairman Schilling polled the board and a Waiver Request is not applicable.

Attorney Johnson stated that this case was continued over the issue if the applicants had any vested rights and there is no known history of short-term rentals prior to the Zoning Ordinance change in March of 2022. He further stated that clients bought the property in April of 2022 right after the Zoning Ordinance change. Attorney Johnson passed out to the board documentation he had. He further stated the applicants obtained a Meals & Rooms Tax License and started renting short-term rental in June of 2022 and only did a few short-term rentals. He explained that the applicants started looking for property in 2021 and started working with Milestone, the lender and a realtor to find areas where they could do a short-term rental and they did purchase the property in 2022. He further stated that their approval was predicated on the fact that they could use a

certain amount of rental income to meet their qualifications and then they were buying this property and the Zoning Ordinance changed, so they are caught up in the mix. Attorney Johnson further stated that the Zoning Board questioned if there were any vested rights and he stated that that they did begin, before the Zoning Ordinance changed, they purchased and closed right after the Zoning Ordinance changed. He further stated it is clear the Milestone letter that the applicants were always contemplating short-term rentals and using that as the ability to finance and purchase the property. He further stated that if the applicants cannot short-term rental their property, they will have to sell their property. He also stated that they did not use the property solely for short-term rentals and the applicants used the property for themselves 20-30% of the time.

Gentile asked if there was a date when the loan was approved and if it was approved before the March, 2022 Zoning Ordinance change, he believes they were vested at that point. Skaife stated she thought Gentile brought this up before. Attorney Johnson explained that he did not have that information. Gentile stated that could be significant and may be a ground for wanting to continue it one more time. Attorney Johnson agreed to continue the case one more month and he will try to get the loan approval information from the applicants and email it to Young, Land Use Boards Administrator before the July 16, 2025 meeting.

Motion by McAllister, seconded by Rau to continue **Case #23-20** to July 16, 2025 at the Madison Town Hall, Lower Level at 6:00 pm.

Roll Call Vote: Schilling – Aye; Rau – Aye; McAllister – Aye; Gentile –Aye; Skaife - Aye.
The Motion passed 5-0.

Case #25-02

Vice Chairman Schilling asked Young, Land Use Boards Administrator to read **Case #25-02** aloud as follow

Case #25-02 – (Continued from May 21, 2025) - Variance request from Ethan and Laura Lemieux, 269 North Division Road, Tax Map 229, Lot 006, from Article IV, Section 4.5 of the Zoning Ordinance to construct a two-car garage within the 30’ buffer to other wetlands, less than 0.25 acres outlined in the chart from the above article.

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 May 7, 2025 as well as posted in the Conway Daily Sun on May 8, 2025.

Conflict of Interest: Vice Chairman Schilling polled the board and confirmed there was no Conflict of Interest.
Waiver Request: Vice Chairman Schilling polled the board and the board accepted the plan as presented at the May 21, 2025 public hearing.
Regional Impact: Vice Chairman Schilling polled the board and there was no Regional Impact.

Vice Chairman Schilling stated that Lemieux was sworn in at the May 21, 2025 public hearing and this is a continuation of that hearing and does not need to be sworn in again.

Lemieux presented a larger version of the plan and color coded to establish existing zoning rules and he was limited to what he could build. He stated that the property needs to be surveyed at two acres of buildable land and if you have poorly drained soils, you have to have that much more property, so existing, is .22 acres of poorly drained soil and he has 2.22 acres of buildable land. He further stated that once you place the setbacks

on all of that, he is significantly limited down to about an acre of land and there is a narrow corridor and because of the poorly drained soils this is from the road and abutting property drainage. Abutters water collects on the road and that drains across his property. He further stated there is no vernal stream or pools, and this is purely drainage and per the plan, it does not even leave his property and just sinks into the ground. The water table is 18 inches per the perk test and he can attest to that by digging holes. He further stated that the blue line on the plan is the setbacks for the poorly drained soil and the small patch area in turquoise as shown on the photos presented to the board, is not poorly drained soil even in the worst of the weather, it does not pool water. He stated that evidence shows that it does not pool up water. He further stated he would be six feet over if you ignore the turquoise piece, he would be six feet to poorly drained soil and he is really 30' from running water. He further stated that these are the constraints he has and at the last public hearing the board asked him if he could put the garage elsewhere and if he moved the proposed garage forward, he is on his utilities ie propane lines, well and septic and his kitchen is at the southeast corner of the house and the proposed garage would block the sun and his view of the driveway for safety reasons. If he moved the proposed garage, he would have to move all utilities which would be very expensive. He stated the other option of have the proposed garage 100' from the house is not doable.

Lemieux further explained that he is doing a full wall foundation and the footings will be at a grade of six feet concrete poured foundation and the building will be 24' from water and 20' from drainage and this will do little impact and he will do it the right way.

Gentile stated that the descriptions are clear and he understands Lemieux's arguments.

Vice Chairman Schilling closed the Public Hearing which there was no roll call vote and explained that the board is now going to collect the Findings of Fact.

Findings of Fact:

1. The property at 269 North Division Road, Silver Lake is 2.22 acres of which approximately .22 acres is considered poorly drained soil.
2. The applicant seeks to erect a 24' x 32' garage within the surveyed poorly drained soil buffer boundary at a distance of 116' from the northern property line and 228' from the centerline of North Division Road.
3. The other areas were considered but do not present viable alternatives.

Vice Chairman Schilling stated the board now needs to go through the five criteria for a variance. Gentile stated that these can be based off the application if they are acceptable to the board. Vice Chairman Schilling and the board went through the application and instructed Young, Land Use Boards Administrator, that she can copy the five criteria from the application which are as follows:

1. **Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship as follows:**
 - a) **The special conditions of the property that distinguish it from other properties in the area are:**
The property is surveyed to be 2.22 acres where 0.22 acres are considered poorly drained soil. The poorly drained soils run east to west for approx.. 275' of the total 325' dimension. This poorly drained soil areas is created by water draining the east side N Division Rd via culvert and trench running approx. 110' east to west with no other water source existing on the property. After all setbacks are marked on

the property, only a small percentage of the 2 acres of buildable land is actually buildable with the home placed in the widest area of the allowable area.

b) Owing to those special conditions, no fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property, because:

In an effort to place the existing house as central as possible to take advantage of rural building on 2 acres, it was placed in widest part to the allowable area. The house placement also aided in placing the septic system, driveway, well and utilities all within the constraints of the narrow allowable building area in a logical layout.

c) The proposed use is a reasonable one, owing to those identified special conditions, because:

The variance allows a garage to be built in close proximity to the home where the building becomes a useful one. Placing the garage anywhere else on the property that is not bound by the east side of the house, block access to other parts of the property, and force undoing of driveway location and landscaping and not needing to move any utilities entering and exiting the home.

2. The Variance will not be contrary to the public interest because:

The requested variance falls without all other boundary setbacks set by town, and therefore does not affect any surrounding public or private property.

3. The spirit of the Zoning Ordinance will be observed because:

The garage is being placed as far away from the sensitive soils as possible while still being in proximity to the home. It's placement does the least impact to the sensitive soil overall by not restricting access to other parts of the property. The location of the garage does not affect any boundary setbacks, therefore not affect any neighboring properties.

4. Granting the Variance would do substantial justice because:

A garage will be allowed to be built in close proximity to the home where it becomes a usable building, rather than having to walk a long distance from the garage to the home. The placement of the garage allows the home to continue using passive solar lighting and warming from the east and does not block the view of the driveway for safety reasons. Lastly the placement of the garage allows access to the rear of the home. Attaching the garage to the home would restrict accesses to either driving over the septic system or poorly drained soils.

5. The values of the surrounding properties will not be diminished because:

The variance requested does not affect any surrounding property because the variance is unrelated to any property boundary setbacks. The variance does not create any intrusion to surrounding boundaries.

Motion by Schilling, seconded by McAllister to grant the variance request for a 24' x 32' garage at the northeast corner of which is located up to 7' into the poorly drained soil.

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

The Motion passed 5-0.

Vice Chairman Schilling read aloud the provisions of the 30-day appeal period. Vice Chairman Schilling closed **Case #25-02.**

Case #25-03

Vice Chairman Schilling asked Young, Land Use Boards Administrator to read **Case #25-03** aloud as follows:

Case #25-03 – Variance request from William and Patricia Burnell for property located at 8 Eidelweiss Drive, Tax Map 109, Lot 015, from Article 5.9, Section E & F of the Zoning Ordinance to permit a 10' x 12' storage shed which is 63' from the center of Bern Road and the setback requirement is 65'. All other set back requirements are met. Also to permit a 12' x 20' metal carport which is 13' from side boundary. Setback requirement is 20'. All other setback requirements are met. (This is a single carport).

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 May 7, 2025 as well as posted in the Conway Daily Sun on May 8, 2025.

Conflict of Interest: Vice Chairman Schilling polled the board and confirmed there was no Conflict of Interest.

Waiver Request: Vice Chairman Schilling polled the board and the board agreed to accept the applicant's Certified Plot Plan submitted with the application on April 29, 2025.

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

Vice Chairman Schilling swore in William Burnell.

Burnell presented his variance request to the board, seeking permission to install a 10' x 12' storage shed and a 12' x 20' metal carport on his property located at 1 Bern Drive, previously known as 8 Eidelweiss Drive. He provided a detailed rationale for the proposed installations and highlighted specific property constraints that necessitated this request.

Burnell explained that his property's layout and limited size—a lot totaling approximately 0.46 acres—restricted available locations for erecting the proposed structures without infringing on the existing zoning setback requirements. The property is shaped such that accommodating both structures within established criteria would be challenging without encroaching upon boundary lines, necessitating a variance.

Burnell explained the proposed 10' x 12' shed was intended for storing essential tools and equipment, including a snowblower, lawnmower, and other household items. Burnell pointed out that the proposed location was along the edge of his existing driveway, situated thoughtfully to maximize storage efficiency and functional accessibility. However, this placement situated the shed approximately 63 feet from the centerline of Bern Drive, marginally short of the 65-foot setback requirement, due to parts of the property's configuration.

Regarding the proposed 12' x 20' metal carport, Burnell explained that its necessity arose primarily from the absence of a traditional garage space for his wife's car, notably during inclement weather conditions. The proposed carport would be positioned parallel to the side boundary adjacent to Eidelweiss Drive, designed to maintain crucial accessibility without interfering with existing driveways or septic system installations. The placement was carefully selected to avoid significant earth disturbing activities or alterations that might impact septic systems, consistent with creating minimal disruption to the existing landscape structure.

Considerable discussion occurred surrounding setback implications and whether the carport, by nature of its construction, amounted to a permanent structure requiring a building permit. Questions were raised about the necessity for a built concrete foundation versus a less intrusive option. Burnell articulated that the carport's

attachment to the ground was minimal and meant primarily for stability, consistent with other temporary carport installations within the region.

Additionally, potential impacts on neighboring properties were evaluated during the board's deliberation, especially how the proposed installations might affect community aesthetics and utility service pathways. Burnell assured that thorough consideration had been given regarding enhancing mutual community value whilst ensuring his surveys and project plans followed all pertinent municipal codes.

Vice Chairman Schilling closed the Public Hearing which there was no roll call vote for and stated the board is now going to collect the Findings of Facts.

Findings of Fact:

1. The property at 8 Eidelweiss Drive is now know as 1 Bern Drive.
2. The applicant proposes to place a 10' x 12' shed adjacent to his home and only 63' from Bern Drive centerline where 65' is required.
3. The applicant proposes to place a 12' x 20' carport parallel to Eidelweiss Drive and 13' from the boundary line where 20' is required.
4. Due to the topography and existing structures, utilities and landscaping, no other feasible locations are appropriate.

Vice Chairman Schilling stated the board now needs to go through the five criteria for a variance. Vice Chairman Schilling and the board went through the applicant's application and instructed Young, Land Use Boards Administrator that she can copy the five criteria from the applicant's which are as follows:

1. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship as follows:

a) The special conditions of the property that distinguish it from other properties in the area are:

Shed: A retaining wall prevents the ability to move the shed back the needed 2 feet to meet the setback requirement of 65ft to the center of Bern Rd.

Carport: Due to the size and shape of the upper parking area, placing the carport ta the right side of the parking area is the best position. If I move it further away from the boundary line to meet the 20' setback towards the house, I would need to move it further up onto the lawn, where the leach field and vent pipe are. That position would also not allow room for another vehicle to park as it would not allow enough room on either side of the carport.

b) Owing to those special conditions, no fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property, because:

It is our understating the purpose of the setback requirements are to ensure public safety, and maintain the natural beauty of the Town of Madison. We do not feel that the placement of a carport and a shed will place a burden on either of those goals. However, we are not able to place the carport or the shed in their most logical positions without encroaching on the setback requirements in one direction for each item.

c) The proposed use is a reasonable one, owing to those identified special conditions, because: In determining the placement of both the shed and carport, I have done my best to meet the setback

requirements. The shed I have placed as far away from the side boundaries and the house setbacks as possible, but it is short of the 65ft requirement to the center of the road, by 2 feet from one corner of the shed. In regards to the placement of the carport, it is necessary to put it in the upper parking area allowing my wife to have access to the main floor level (front door) without having to climb stairs from the basement entrance. The carport allows her to park her car under protection from the weather (mainly the winter weather). I have again tried to place it where it will meet as much of the setback requirements as possible and still maintain a logical position in the parking area.

2. The Variance will not be contrary to the public interest because:

The position of the shed is as far away from any public interaction as possible. The closest part of the shed is 63ft from the center of Bern Rd. (The setback requirement is 65ft.)

The position of the carport will not pose any danger or interaction from any cars or road crews traveling on Eidelweiss Dr. I observed the snow plowing routines this winter and even when the road crews pushed the snow banks back further than the normal plowing does, the carport would not provide any obstruction. Also, there are trees between the road and where the carport would be located, providing a natural barrier of protection between the carport and any vehicles on Eidelweiss Dr.

3. The spirit of the Zoning Ordinance will be observed because:

The position of the shed and carport will be placed in a location that meets setback requirements on three sides for each. The need for a variance to the ordinance is due to the setback requirements on one side of each of the shed and carport which cannot be met, but will not be of any harm or distraction to the Town of Madison, thereby keeping in spirit of the ordinance.

4. Granting the Variance would do substantial justice because:

In regards to granting the variance for the carport it would allow us to use our property in the manner that we purchased it for, with the intention of single level living conditions for my wife. Parking in the upper lot allows for restricted walking handicaps to be able to use the front door entrance. This is necessary for both my wife and my brother (who visits often, and has had his right leg removed).

The shed will provide a protective housing for our snow blower lawnmower and outdoor tools.

5. The values of the surrounding properties will not be diminished because:

Our intention is to purchase a good quality carport and shed that will blend well with our house and property, thereby increasing the value of our house, which I believe would not have a negative impact on our neighbors property values.

After deliberation, the board made the following motion:

Motion by Schilling, seconded by McAllister to grant the variance request for a 10' x 12' shed to be 63 feet from the center line of Burn Drive where 65' is required, and to grant a variance request for a 12' x 20' foot carport 13 feet from Eidelweiss Drive side boundary where 20 feet is required.

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

The Motion passed 5-0.

Vice Chairman Schilling read aloud the provisions of the 30-day appeal period. Chairman Gentile closed **Case #25-03.**

Case #25-02 (Re-Opened)

Initially, the board made a motion to approve the variance. However, upon further review of the survey maps and wetland boundaries, they reopened the case to address discrepancies in how the wetland buffer was being measured.

Vice Chairman Schilling reopened **Case #25-02** to address the concerns made by Lemieux as to the location of the proposed garage in relation to the existing surveyed wetland buffer. After re-evaluating the exact location in correlation with property boundaries and the surveyed poorly drained soil buffer, the board took these insights into account.

Subsequently, upon reconciling these findings with the existing conditions and to ensure accuracy in their decision-making framework, the board put forth a revised motion:

Revised Motion by Schilling, seconded by McAllister to grant the variance request to erect a 24' x 32' garage within the surveyed poorly drained soil buffer boundary at a distance of 116' from the northern property line and 228' from the centerline of North Division Road.

Roll Call Vote: Schilling – Aye; Rau – Aye; McAllister – Aye; Gentile –Aye; Skaife - Aye.
The Motion passed 5-0.

Vice Chairman Schilling read aloud the provisions of the 30-day appeal period. Vice Chairman Schilling closed **Case #25-02.**

ADMINISTRATION:

ELECTION OF CHAIRMAN AND VICE CHAIRMAN:

Motion by Schilling, seconded by Rau to nominate Gentile to remain as Chairman of the Zoning Board.

Roll Call Vote: Schilling – Aye; Rau – Aye; McAllister – Aye; Skaife - Aye.
The Motion passed 4-0.

Motion by McAllister, seconded by Rau to nominate Schilling to remain as Vice Chairman of the Zoning Board.

Roll Call Vote: Rau – Aye; McAllister – Aye; Gentile –Aye; Skaife - Aye.
The Motion passed 4-0.

THIRD READING OF THE REVISED RULES OF PROCEDURE:

The board conducted the third reading of proposed changes to the Rules of Procedure:

1. Allowing appeals to be filed electronically, with a requirement to later submit a hard copy with wet signature.
2. Reversing the order of items N and O in Section 4 to ensure the chairman's summary and opportunity for corrections occurs before closing the public hearing.

APPROVAL OF DRAFT MINUTES – MARCH 29, 2025, APRIL 16, 2025 AND MAY 21, 2025

Motion by Schilling, seconded by McAllister to approve the March 19, 2025 minutes as amended due to typographical errors.

Roll Call Vote: Schilling – Aye; Rau – Aye; McAllister – Aye; Gentile –Aye; Skaife - Aye.
The Motion passed 5-0.

The board began reviewing the April 16, 2025 minutes but found discrepancies in the copies different members had. They decided to defer approval of the April 16, 2025 minutes until the July 16, 2026 meeting when consistent copies could be provided.

The April 16, 2025 and May 21, 2025 minutes were not available for review at this meeting and will be available at the July 16, 2025 meeting.

ADMINISTRATION: Young had nothing to report.

ADJOURNMENT: **Motion** by Schilling, seconded by Rau to adjourn the meeting at 10:15 pm.

Roll Call Vote: Schilling – Aye; Rau – Aye; McAllister – Aye; Gentile –Aye; Skaife - Aye.
The Motion passed 5-0.

The next Public Hearing of the Zoning Board of Adjustment will be held on July 16, 2025 at the Madison Town Hall, Lower Level at 6:00pm.

Respectfully submitted,

Katharine Young
Land Use Boards Administrator