

TOWN OF OSSIPEE
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
June 13, 2023

Minutes have been recorded and summarized by Laura Nash, Boards & Commissions Secretary. Recordings are deleted once the written minutes are board approved; any amendments to the minutes are noted in ***bold & italic*** type.

Call to Order: Dan Fischbein called the meeting to order at 7:00 p.m. and requested all cellphones to be silenced.

Pledge of Allegiance: was recited by all in attendance.

Roll Call: Daniel Fischbein, Roy Barron, Jim Rines, Dallas Emery, Daniel Karl and Jonathan Smith, (Zoning Officer)

Meeting Minutes:

- Review to Approve Meeting Minutes of May 9, 2023

Rines noted on page 4 that “**Vote by Criteria:** Rines read each criteria.” should be “**Vote by Criteria:** ***Fischbein*** read each criteria.”

Barron noted on page 1, “he is sworn in before the next meeting.” Should state, “he is sworn in before ***the*** next meeting.” But did not realize this was noting a correction to the minutes of April 11, 2023.

Emery noted on page 6 that “why was the Code Enforcement Officer just down looking at it.” should be “why was the Code Enforcement Officer just down looking at it ***now***.”

Emery also noted on page 6 that “So, it does not differentiate if it’s a business or residential.” should be “So, it does not ***differ between*** business or residential.”

Fischbein noted on page 3 that “I don’t they think they were trying to break the ordinance.” should be “***I don’t think that they’re trying to break the ordinance*** right now”

Fischbein also noted on page 3 that “Mr. Greene if has the driveway permit.” should be “Mr. Greene if ***he*** has the driveway permit.”

Emery noted on page 3 that “stating they would be happy to the driveway approval as a condition” should be “stating they would be happy to ***accept*** the driveway approval as a condition.”

A **Motion** by Fischbein to approve the minutes of May 9, 2023, as amended. Barron seconded. No discussion. All others voted in favor. Jim Rines abstained since he was absent from that meeting. **Motion passed.**

Financial: 2nd Quarter Expense Report

The budget report was reviewed and the Board had no questions or concerns.

Old Business: Chairman Fischbein read the description for each case prior to presentation.

- **Case # 23-03-V:** Dwight & Rosa Rumery c/o Rumery Family Trust - Agent: Mark & Jake McConkey of 16 Danville Rd. Tax Map: 020 Lot: 016 is requesting a Variance from Articles: 6.4.1 (a) for Front setback, Article 6.4.2 (a) for side setback, Article: 6.4.2 (b) rear setback and Table 2 lot coverage maximum of 25% where 27.94 % is proposed to construct a new septic system, demolish the existing home and construct a more conforming home. (Case Continued from April 11, 2023 & May 9, 2023) Revised plan and survey plot plan received May 23, 2023

Jacob McConkey is the representing agent for the Rumery Family Trust presented the revised plan and the property survey prepared by Bryan Berlind of Land Tech. Jacob McConkey restated for members who were not present at the prior meeting. Jacob McConkey explained there is a very small lot on Danville Rd. The plan is to tear down the existing home, remove a shed, constructing a new home, installing a new septic system with pretreatment, and installing a permeable driveway in essence reducing the lot coverage. With the size of the lot there is no zoning envelope so anything wanting to be done with this property would require approval from the ZBA.

Jacob McConkey presented the revised plan and property survey showing the location of the proposed house prepared by Bryan Berlind of Land Tech. The survey resulted in a reduction of lot size from 0.12 acres down to .098 acres. The square footage did not increase but there was a slight increase in lot coverage. The new pretreatment system will retain all the storm water on the property, along with planting a few new trees around the house, and installing a new well. Shoreland Permit has been accepted by the NHDES along with the new septic system plan.

Chairman Fischbein inquired if the neighbor's shed is going to be moved off the property line. Jacob McConkey they could ask him but it's primarily the overhang that crosses the boundary line.

Rines inquired if a copy of the revised plan has been submitted to NHDES. Jacob McConkey stated they're waiting on approval from the Board. Barron asked Rines if it's required before the Board decides. Rines noted that it's not required but NHDES typically prefers to have most recent plans for review.

Chairman Fischbein inquired about the trees to be planted. Jacob McConkey commented there will be (5) new trees consisting of White Pines, along with a couple of Maple trees and a crop of small Birch trees.

Rines commented according to Bryan Berlind's plan; their getting closer to the westerly boundary lines because according to the plans they were 7.9 ft. on the right setback but now they're going to be 7.7 ft. from the right-side setback, thus going closer towards the road. Jacob McConkey confirmed and acknowledged noted he missed that change thus making it less non-conforming on the sides and water front but more non-conforming towards the road.

Fischbein inquired and Jacob McConkey confirmed the driveway was going to be pervious. Barron asked if the old house has been torn down. Jacob McConkey stated no but will be torn down with approval of this plan. Fischbein inquired and Jacob McConkey confirmed that Bryan Berlind will set the pins on the corners and the Board can make that a condition with approval of the plan.

Chairman Fischbein opened discussion to the public. None was heard.

Jacob McConkey proceeded to read through each of the criteria's from the application.

A **Motion** by Rines for **Case # 23-03-V**: Dwight & Rosa Rumery c/o Rumery Family Trust - Agent: Mark & Jake McConkey of 16 Danville Rd. Tax Map: 020 Lot: 016 to **Approve** the request for a Variance from Articles: 6.4.1 (a) for Front setback, Article 6.4.2 (a) for side setback, Article: 6.4.2 (b) rear setback and Table 2 lot coverage with the following conditions:

1. Per Plans dated May 12, 2023 and the amended plan be submitted to NHDES for the new boundaries
2. A Licensed Land Surveyor stake out the footprint of the house

Barron seconded the motion.

Chairman Fischbein moved to voting on the five criteria's.

Vote by Criteria: Rines read each criteria.

1. The variance will not be contrary to the public interest:

Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes

2. The spirit of the ordinance is observed:

Karl – Yes Emery – Yes Rines – Yes (a) Barron – Yes (a) Fischbein – Yes (a)

- a) Rines noted yes, because their **reducing** the impervious coverage, installing a new septic system with advance treatment and infiltrating stormwater runoff where none is infiltrating presently and planting additional vegetation.

3. Substantial justice is done:

Karl – Yes Emery – Yes Rines – Yes (a) Barron – Yes (b) Fischbein – Yes

- a) Rines noted as previously stated
b) Barron voted yes because he believes it will increase the value of surrounding properties.

4. The values of surrounding properties will not be diminished:

Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the “Special Conditions” of this property that distinguish it from other properties in the area are as follows:

Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes

(A) Owing to the special conditions of the property, set forth above, that distinguishes it from other properties in the area:

(i) No fair and substantial relationship exists between the purposes of the ordinance applicable to the application and the specific application of that provision to the property because:

ai) Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes

AND

(ii) The proposed use is a reasonable one because:

(a) Karl – Yes Emery – Yes Rines – Yes Barron – Yes (c) Fischbein – Yes

- c) Barron voted yes because it’s an existing lot and their improving it.

Chairman Fischbein called for vote. A unanimous vote was taken. Chairman Fischbein announced the **motion passed**.

Chairman Fischbein ***Noted: The Selectmen, any party to the action or any person directly affected has a right to appeal this decision within 30 days. To avoid lapsing of the approval, there should be substantial construction or liability within 2 years of the decision. See New Hampshire Revised Statutes Annotated, Chapter 677, available at the Ossipee Town Hall.***

• **Case # 23- 04-V:** Laurianne & Brian Bennett of 47 Effingham Rd. Tax Map: 248 Lot: 010 Sub: 001 is requesting a Variance from Article: 6.4.2 (a) – Side Setback per Table 2 for an After the Fact High Tunnel approximately 10 ft. from the side setback that was previously installed by the USDA. This property will require a Site Plan Review if the Variance is granted. **(Case Continued from May 9, 2023)**

- o Email received on May 30, 2023 requesting to withdraw their variance application.

A **Motion** by Rines to approve the **Withdrawal** of the application for **Case # 23- 04-V**: Laurianne & Brian Bennett of 47 Effingham Rd. Tax Map: 248 Lot: 010 Sub: 001 request for a Variance from Article: 6.4.2 (a) – Side Setback per Table 2 for an After the Fact High Tunnel approximately 10 ft. from the side setback. Emery seconded. No discussion. A unanimous vote was taken. **Motion passed.**

New Business: Chairman Fischbein moved onto the next case.

- **Case # 23-05-V & 23-01-SE:** Edrie Sarah Ames Association, LLC c/o Sandra Walker of 73 Circuit Rd. Tax Map: 248 Lot: 033 is requesting a Variance from Article XV Section 15.1.1 A recreational camping park shall have an area of not less than five (5) acres and requesting a Special Exception from Article XXXIV Section 34.4 (f) Recreational Camping Parks in the Rural district and no approved septic design by NHDES. Representing agent is Attorney, James Callahan of Shaheen & Gordon, Attorneys at Law.

Attorney James Callahan of Shaheen & Gordon present asked if Jacob McConkey could answer any questions about the proposed septic system the Board may have while he was still present. James Callahan noted they do have NHDES design that has been submitted and is pending approval. Jonathan Smith commented that it's not required for the variance application.

Attorney James Callahan presents representing various members of the Walker family, and Penny Brown, who requested Attorney James Callahan's assistance in obtaining a variance and special exception approvals along with an administrative order. After meeting with the Zoning Officer, Jonathan Smith and Town Administrator, Matt Sawyer and coming to an understanding. Attorney James Callahan advised the family to move forward with obtaining the approvals and upgrade septic system.

Attorney James Callahan noted the Walker family has owned the property well before World War II and has utilized the property as a family campground for many years. Attorney James Callahan referred to Article: 15.1.1 "A recreational camping park shall have an area of not less than five (5) acres." Which was recently changed in March from a minimum of 10 acres to 5 acres.

Barron inquired if the family has used the property as a campground since World War II. Attorney James Callahan commented that the family has owned it since WWII but is not sure if camping was before zoning. Rines noted that zoning was adopted in 1987. Attorney James Callahan confirmed that camping was started before zoning but did acknowledge it's a non-conforming use. Barron commented that important in his mind because if the family has been camping there all along that would play more in favor than somebody else who has been camping there 4-5 years without saying nothing.

Point of Order from Jonathan Smith, who noted for the record that in 2001 the family subdivided the lot and since then has received a building permit for a pump house. So, the campground may have been used by the family for decades but around 2001 is when it morphed into the campground it is now.

Attorney James Callahan continued the presentation noting they are seeking a variance from Article 15.1.1 for not having the minimum of 5 acres for the campground and this property is 4.26 acres.

Rines noted there is no topography on the plan and questioned the slope of the property. Chairman Fischbein and Smith noted the slope is shallow.

Chairman Fischbein inquired if lot #2 is part of the same ownership. Attorney James Callahan noted that was the lot that subdivided out and campground which is on lot#1 is 4.26 acres. The property is located entirely within the rural district. The property contains a shed, a well, an outhouse and the property has been use on a seasonal basis by various family members. The family members bring their campers which have self-contained toilet facilities. There is a maximum of 8 campsites but usually there is only 4-5 campers there during the summer. Fees are not charge per se` as you would at a regular campground but they do pass the hat to collect money to

pay taxes and any other bills that may arise.

Attorney James Callahan proceeded to read through each of the criteria's noting 1) there will be an approved NHDES septic system installed on the property. 2) Enhancing the utilities and facilities. 5) The property will not be utilized as a commercial campground. The unnecessary hardship would be not allowing the of the property by the family as it has been for the past 30 years.

Barron inquired of Rines if the ZBA can apply conditions to an application. Rines first asked to clarify with Jonathan Smith since the family has retained this property for nearly 80+ years; could the ZBA grant a variance based on Article 4.9 instead of making this a campground use. So, if in the future someone else purchases the property it cannot be sold as a campground. Attorney James Callahan has seen in his career conditions attached to an approval.

Smith asked Chairman Fischbein which application a variance or special exception should be heard first. Because the use is what requires a special exception and variance is for the lot size. So, if the special exception is not **approved** for the use then the variance is not required. Rines stated he knows that certain conditions can be granted on a variance for certain things that has been legally tested condition that when the particular person no longer owns it the variance approval would expire. Chairman Fischbein asked if the property was 5 acres would they even need the variance. Smith stated if the Board is looking to apply conditions wouldn't the condition be on the special exception for the use of the campground not the size of the lot. The Board agreed.

Barron stated he does not want to prevent the family from using the property for camping but he also does not want to see it become a commercial campground.

Smith asked if the Board could put a condition that upon the sale of the property the use of the special exception would expire. Rines noted the Board can put the condition on the approval but would it stand up in court. Barron commented that if the ZBA applies the condition the Planning Board can also apply the condition because they would need to apply for a site plan review. Rines suggested opening discussion to the public, not vote on the variance, hear the special exception presentation then move to vote on the special exception and lastly the variance.

Chairman Fischbein opened public input.

William Abdu (abutter) of 65 & 67 Circuit Road commented he has lived here for the past 25-30 years. He does not know the family personally but their great neighbors. He has two concerns of which the septic was one concern but since their installing a septic system, this is no longer a concern. The second concern is it's a quiet neighborhood and he has a working farm sometimes with animals but definitely hay equipment etc.... and it would not be a suitable area for a commercial recreational campground. He has no issue with adding the condition to the special exception and to the Planning Board. He has no issue with the family camping use but he does not want it to become a commercial campground.

Emery asked for clarification if it was in 2001 when the family started camping on the property. Barron stated yes, but they have owed it long before zoning. Chairman Fischbein and others stated the land was subdivided in 2001. Smith confirmed noting that's when they added the well house and water for the camp sites. Emery asked if that was before zoning. Smith stated it was after zoning. Barron commented that his point is they were already using the property before zoning. Discussion ensued over the subdivision in 2001. Chairman Fischbein inquired if there is going to be individual campsites. Smith brought up pictures on his laptop of the property with the campers laid out for Chairman Fischbein, Rines, Emery and Karl to observe. Smith noted that will all be provided at the Planning Board for the Site Plan Review, not required for the ZBA.

Attorney James Callahan proceeded with the presentation of the Special Exception noting again the property has been used by the family for many years. They wish to comply with all appropriate zoning regulations. Their upgrading the septic system to current NHDES regulations. Attorney James Callahan proceeded to read each of the (8) Special Exception criteria's.

Barron interrupted Attorney James Callahan stating criteria #8 is a problem because there is actually a letter of

opposition and referred to a letter submitted from Constance West and David Hunter. The secretary made a copy of the letter for Attorney James Callahan. Barron suggested that #8 which states “**There is no valid objection from the abutters based on demonstrable fact.**” With the response of “**The applicant is not aware of any abutter objections.**” Barron suggested rewording the response but not exactly sure how but would suggest that the concerns be addressed per the conditions. Rines commented that he does not believe they need to change the response because it states they were not **aware** at the time. Barron suggested adding to the response “and any objections will be addressed.”

Attorney James Callahan addressed the concerns of Constance West and David Hunter which include 1) concerns for it not becoming a commercial campground that the Board will address with the conditions, and 2) concerns for the slopes, which according to Zoning Officer, Jonathan Smith and Chairman Fischbein, who have visited the property and have previously stated there is minimal to no slope.

Chairman Fischbein opened to public input and asked William Abdu (abutter) of 65 & 67 Circuit Road if he has any further concerns.

Chairman Fischbein closed public input and moved onto Board discussion and proposed conditions.

A **Motion** by Rines for **Case # 23-01-SE**: Edrie Sarah Ames Association, LLC c/o Sandra Walker of 73 Circuit Rd. Tax Map: 248 Lot: 033 to Grant a Special Exception from Article XXXIV Section 34.4 (f) to permit a Recreational Camping Parks in the Rural district with the following conditions:

1. The Special Exception will expire when the property is no longer owned by the Walker Family or their heirs
2. NHDES septic approval,
3. Planning Board – Site Plan Review approval,
4. Property will not be for commercial use,
5. All Federal, State and Local Regulations shall be followed.

Chairman Fischbein inquired about well approval. Rines explained it will be part of the septic approval to demonstrate that if it serves more than 25 individuals or 15 service connections it’s a small public water system. It probably doesn’t meet that threshold it will be just a well they will need to show on their septic plan.

Emery inquired that “When the property is no longer owned by the Walker Family or their heirs the Special Exception will expire.” How does that change it from being used for commercial use. Rines and Barron both stated because they would no longer have the special exception.

Smith read a section from the OSI handbook page II-5 which states, “RSA 674:33 Powers of Zoning Board of Adjustment IV. (a) A local zoning ordinance may provide that the zoning board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance.”

Meaning the Board is allowed **to add** conditions to the approvals. Barron requested to add #4 to the motion “that it will not be **used** for commercial use.”

Barron asked Mr. Abdu if these conditions addressed his concerns. William Abdu confirmed they do especially condition #4.

Chairman Fischbein called for a roll call vote and read each Special Exception criteria noting a vote of Yes is a vote in favor and a No vote is to deny.

Vote by Criteria:

1. **The use is permitted by Special Exception under Table 1 (Article 34 of the Ossipee Zoning Ordinance), or elsewhere in the Ordinance (for example, see Article 6.2)**

Karl – Yes (a) Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes (a)

a) D. Karl voted yes subject to the conditions imposed.

2. **The use is so designed, located and proposed to be operated that the public health, safety, welfare, and convenience will be protected.**

Karl – Yes (a) Emery – Yes Rines – Yes Barron – Yes (b) Fischbein – Yes

b) Barron voted yes due to the fact it existed before zoning.

3. **The specific site is appropriate for the proposed use or structure.**

Karl – Yes Emery – Yes Rines – Yes (b) Barron – Yes (b) Fischbein – Yes

4. **No factual evidence is found that the property values in the district will be reduced, due to incompatible land use, by such use.**

Karl – Yes (a) Emery – Yes Rines – Yes (a) Barron – Yes (b) Fischbein – Yes

5. **Adequate and appropriate facilities and parking will be provided for the proper operation of the proposed use or structure, as required by the Ordinance.**

Karl – Yes Emery – Yes Rines – Yes (c) Barron – Yes Fischbein – Yes

c) Rines voted yes because it will be shown during the Planning Board's Site Plan Review

6. **There will be no undue nuisance or serious hazard to pedestrian or vehicular traffic.**

Karl – Yes (a) Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes

7. **The proposed use shall not violate the provisions of Article IV and V of the Ordinance.**

Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes

8. **There is no valid objection from the abutters based on demonstrable fact.**

Karl – Yes Emery – Yes (d) Rines – Yes (d) Barron – Yes (e) Fischbein – Yes

4. Rines voted yes because the Board address the objections raised by the abutters.

5. Barron voted yes because the applicant was not aware of any objections until tonight when the Board told them and they were addressed.

Chairman Fischbein announced the **motion for the Special Exception has passed.**

Zoning Officer, Jonathan Smith asked Chairman Fischbein to state for the record that he understands the comment regarding that this existed long before zoning ordinances, he does not dispute that existence. But the campground we currently see came about after zoning ordinances were adopted and has changed the whole concept of the campground. Emery and Karl agreed. Chairman Fischbein thought the campground was before zoning. Zoning Officer, Jonathan Smith stated the campground we see today is post zoning but the property has been in the family for decades but the campground is post zoning. Barron stated for the

record, they were already there and probably didn't realize they needed to come in.

A **Motion** by Rines for **Case # 23-05-V**: Edrie Sarah Ames Association, LLC c/o Sandra Walker of 73 Circuit Rd. Tax Map: 248 Lot: 033 to Grant a Variance from Article XV Section 15.1.1 A recreational camping park shall have an area of not less than five (5) acres with the following conditions:

1. The Variance will expire when the property is no longer owned by the Walker Family or their heirs.
2. Obtain NHDES septic approval
3. Obtain Planning Board – Site Plan Review approval
4. Property will not be for commercial use,
5. All Federal, State and Local Regulations shall be followed.

Fischbein seconded.

Chairman Fischbein moved to voting on the five criteria's for a Variance.

Vote by Criteria: Fischbein read each variance criteria.

1. The variance will not be contrary to the public interest:

Karl – Yes (a) Emery – Yes Rines – Yes (a) Barron – Yes(a) Fischbein – Yes (a)

a) D. Karl voted yes subject to the (4) conditions imposed

2. The spirit of the ordinance is observed:

Karl – Yes (a) Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes

3. Substantial justice is done:

Karl – Yes Emery – Yes Rines – Yes (a) Barron – Yes (b) Fischbein – Yes

b) Barron voted yes because they were camping there before zoning was adopted.

4. The values of surrounding properties will not be diminished:

Karl – Yes (a) Emery – Yes Rines – Yes (a) Barron – Yes Fischbein – Yes

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the “Special Conditions” of this property that distinguish it from other properties in the area are as follows:

Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes

(A) Owing to the special conditions of the property, set forth above, that distinguishes it from other properties in the area:

(i) No fair and substantial relationship exists between the purposes of the ordinance applicable to the application and the specific application of that provision to the property because:

ai) Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes

AND

(ii) The proposed use is a reasonable one because:

(aii) Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes

Chairman Fischbein announced the **motion for the Variance has passed.**

Vice-Chairman Barron ***Noted: The Selectmen, any party to the action or any person directly affected has a right to appeal this decision within 30 days. To avoid lapsing of the approval, there should be substantial construction or liability within 2 years of the decision. See New Hampshire Revised Statutes Annotated, Chapter 677, available at the Ossipee Town Hall.***

Attorney James Callahan noted they will probably have Mark and Jacob McConkey come in for the Site Plan Review. Attorney James Callahan inquire of the dates and deadlines. The secretary informed him that June 27, 2023 is the deadline for the July 18, 2023 Planning Board meeting.

Attorney James Callahan inquire if it's possible to have a couple other family members could use the property under Article 4.9 while this is going through the process this summer. Zoning Officer, Jonathan Smith, is going to provide a copy of the ordinance for the family members to have.

Any Other Business Which May Come Before This Meeting: None heard.

Next Meeting: **July 11, 2023 @ 7:00 pm at the Freight House**

Adjournment:

A Motion by Emery to adjourn the meeting. D. Karl seconded. No discussion. A unanimous vote was taken. **Motion passed.** The meeting adjourned at 8:20 p.m.

Minutes were approved by majority vote of the Board:

_____	Or	_____	_____
Daniel Fischbein, Chairman	Date	Roy Barron, Vice-Chair <i>(In the absence of the Chairman)</i>	Date