

TOWN OF OSSIPEE
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
August 9, 2022

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

Call to Order: Roy Barron called the meeting to order at 7:03 p.m. and requested all cellphones to be silenced.

Meeting Minutes: Review to Approve Meeting Minutes of May 10, 2022

A **Motion** by Rines to approve the minutes of June 14, 2022, as written. Emery seconded. A unanimous vote was taken. **Motion passed.**

Old Business:

- **Case #22-02-V:** Larry Klingler of 3 Route 16B. Tax Map: 095 Lot: 013 the Variance from Article 6.4.1 (a) for a wood fence structure at the height of 8 ft. 6 in., was previously denied by the ZBA. **Received an email on 07/07/2022 from Jonathan Smith, ZEO that Mr. Klingler has brought fence into compliance.**

Angela Eldridge reminded the Chairman that roll call was not done.

Members Present by Roll Call: - Chairman - Roy Barron, Vice-Chairman, Daniel Fischbein, Dallas Emery, Jim Rines

Old Business:

- **Case# 21-08-V** Michael A'Hearn of 81 Holt Street Watertown Ma. with property located at 130 Nichols Road Ossipee NH. requested a variance in 2021 and the case was continued to the July 12th, 2022, meeting. Mr. A'Hearn reached out to the Secretary and decided to withdraw this application. Motion needed to accept the withdrawal.

A **Motion** by Barron to accept the withdrawal of the application without prejudice for **Case# 21-08-V** Michael A'Hearn for the property located at 130 Nichols Road, Ossipee, NH request for a variance. Rines seconded. No discussion. A unanimous vote was taken. **Motion passed.**

Financials:

- Expenditures: 01/2022 thru 07/2022

New Business:

- **Case #22-06-V:** Clifford R. Baird, III Trustee & Brenda K. Baird Trustee of 69 Broad Bay Road. Tax Map 031, Lot 016 is requesting a Variance to add a 10 ft. x 12 ft. shed within 5 - foot of the side property line. Per Article 6.4.2(a)- Side Setback minimum 25 ft.

Baird presented and read a prepared statement, "On June 14, 2022, **Case #22-06-V** was opened as new business with the Ossipee ZBA. The request as you stated was for a variance looking for to install a 10 ft. by 12 ft. shed within 5 feet of the set back on the property. As we talked about that case on June 14th. There was

a lot of information presented during a lot of questions asked, the meeting got a little confusing. The Board was asking for additional information. As I left the meeting, I thought I had a pretty good understanding what you're looking for, but. I really wasn't 100% sure about what I needed coming back for tonight. I was going to rely on your meeting minutes from that meeting to try and clarify what you were asking of me outside of the variance paperwork, but because the July meeting was canceled, and the meeting minutes were not approved until tonight. I'm trying to use those minutes as a guide to answer the questions that you ask and be able to provide you the information that you need. I'm asking for a postponement until the October 13th, meeting. Rines noted the October meeting is on October 11th the day after Columbus Day.

A **Motion** by Barron to continue **Case #22-06-V: Clifford R. Baird III Trustee & Brenda K. Baird Trustee** of 69 Broad Bay Road. Tax Map 031, Lot 016 is requesting a Variance to add a 10' x 12' shed within 5 feet of the side setback. Per Article 6.4.2(a)-the side setback is 25 ft., until the October 11, 2022, ZBA meeting - 7PM at the Freight House. Rines seconded. A unanimous vote was taken. **Motion passed.**

Barron instructed Mr. Baird to contact the secretary for assistance. Rines noted the Board is looking for a survey to show the boundary lines and the files for the other shed demonstrating that it's compliant with the setbacks.

- **Case #22-07-V:** Jeff Kelley of 110 Moultonville Rd. Tax Map: 091 Lot: 037 is requesting a Variance from 34.5 INDUSTRIAL USES (See also Article XXXV, Section 35.5) Section (d): Sawmill to operate his home sawmill business in the village district. He will also need a Site Plan Review from the Planning Board if the Variance is granted.

Rines informed the Board that Mr. Kelley was in his office inquiring what the Board would need to see for this application. Rines informed him that he would need plans. Rines noted that he had the base plans of the property from Gene O'Brien, a previous owner. He gave him an idea of what would be needed to provide the Board, but he did not counsel him. But if the Board feels he should recuse himself from hearing this case he would request to recuse himself. The members agreed that Jim Rines did not need to recuse himself.

Barron discussed the problem he has with Mr. Kelley needing a variance, because he does not remember the Planning Board requesting him to get a variance from the ZBA. Barron disagrees with the Planning Board minutes provided by Zoning Officer, Jonathan Smith as reference for the need for a variance and why did it take 4 years for this to become an issue.

Barron continued stating that his memory must be junk because, he remembers Connie Billings bringing up the discussion of it being in the Village zone at the Planning Board, and he's on a Planning Board. Barron thought the Planning Board overruled Connie Billings stating, that Mr. Kelley did not need a variance. Because it's a home business with a portable mill not a stationary mill. Just because he wants to put a shed over it does not make it stationary, it still has wheels on it. So, I have a problem with the whole thing being brought before the ZBA to begin with. It's been four years down the road and now he's being put through the meat grinder. Barron stated he doesn't remember.

Fischbein inquired if he read Jonathan Smith's email.

Barron commented he did and got a copy of the minutes in case the Board wanted to see it. But Barron disagrees with the minutes. Rines inquired if he agreed to approve the minutes. Barron confirmed he did. Barron commented, he has an issue with the whole issue and even if we had told him he needed a variance it's been four years. This is my line of thinking, why would Steve McConarty help Mr. Kelley set up the business and telling him where to put the equipment, if the Planning Board told him he needed to come for a variance.

Rines read the Planning Board minutes of February 19, 2019, which stated in part “After review of the ordinances, Jeff Kelley was advised to follow up with the Zoning Officer, who is responsible for issuing building permits.” Rines noted there’s nothing in Steve McConarty’s file about this case.

Barron stated, Mr. Kelley has done everything right. And I still have a problem with what's going down here. I frankly don't think he should have to have a variance or a site plan review and jump through hoops and hurdles at this point, four years later and Steve McConarty should not have set him up if a variance was needed.

Rines noted the problem is now that apparently there have been complaints filed according to Jonathan Smith, ZEO email. The Zoning Officer has rendered a decision. The only two options are to appeal the ZEO’s decision to the ZBA or apply for a variance. Discussion ensued over the noise level, are the complaints founded, preserving the applicant’s rights, and do sawmills fall under industrial use or agricultural.

Jeff Kelley reported, he called some of the industrial sawmills and they report cutting approximately 60-100,000 board feet per day and last year he milled 40,000 board feet for the year.

Rines read under Industrial Uses - zoning ordinance 34.5 – **(See also Article XXXV, Section 35.5)** (d) Sawmills: Defines Sawmill: “A facility whose primary purpose is the processing (sawing) of forest products into timber for the building industry.” Rines questioned if this is a primary use or an accessory use. Rines continued in reading, “**35.6 ACCESSORY USES** (b) Home Occupations - Any home occupation shall be permitted as an accessory use in the zone where allowed...”:

Barron inquired of Mr. Kelley if he has any employees. Mr. Kelley stated he has sub-contractors that work with him onsite using mallets and chisels. But he is the only person who uses the mill. General discussion ensued over the quality of his timbers and milling and the number of other sawmills in Ossipee.

Rines stated that Mr. Kelley needs an action to resolve this issue. Fischbein stated, he does not believe that Mr. Kelley needs a variance. Discussion ensued over if this is his primary use. Fischbein stated, it’s not the primary use, building is his primary use and under the definition he does not need a variance. Emery agreed. Mr. Kelley confirmed he is not selling lumber.

Rines inquired as to when he got the notice from the town that he needed a variance. Mr. Kelley explained it was in June and confirmed for Rines that he does have a sign permit. Mr. Kelley continued informing the Board that Steve McConarty, former ZEO, gave him a list of tasks he would have to complete before he would give him the okay to operate his sawmill. One agreement he had with Steve McConarty was he would not do any more than 4 frames in a season. Mr. Kelley said, Steve McConarty told him, if he does anymore than that he will have to move the operation to a commercial zone. Barron inquired as to the hours of operation, Mr. Kelley stated, he usually runs the mill between 8:00 AM until 3:00 PM during the week but rarely cuts on the weekends. Rines commented the noise produced from the motor is no louder than a lawn mower but questioned if the noise level increases when the blades are going through the wood. Mr. Kelley stated no because it’s cut with a wet blade. Emery stated he lives down the street and he never hears it.

Public Input:

Next door neighbor commented the noise is no louder than a chainsaw.

Rines recommends the Board continue this application for a month and write a letter to the zoning officer telling him that the Board does not believe Mr. Kelley needs a variance because it’s not the primary use, it’s an accessory use. Barron again stated, he believes this is what the Planning Board decided but does not know why the minutes do not reflect that decision.

Mr. Kelley commented that his operation is going to be less than what it is currently because he has an investor now and they’re going to be doing spec houses and all he will be doing is the great rooms and will be on-site for 6 months. So, his cutting will be way less and most of the noise comes from the planers he has

outside. But once he builds the garage illustrated on the plans, it will be insulated so the noise level will be reduced.

Barron reported apparently there are 3 complaints but does not know why there not in file because there supposed to be public information.

Rines noted the reason why he wanted to know when Jonathan Smith, ZEO issued the letter was because Mr. Kelley would have had 30 days from June 14, 2022 to file an Administrative Appeal of the ZEO decision. But it's not an option because it's now past the 30 days.

Barron commented the Board can still decide that Jonathan Smith, ZEO is wrong because it's not the primary use it's the accessory use. Fischbein agreed. Mr. Kelley commented as long as the operation is not industrial, he feels it shouldn't be a problem. Rines commented the difference is you're living there, and the operation is part-time but if you were not living there and everybody comes to saw, then it's industrial and you would need a variance. Discussion ensued over the difference between cutting 40,000 feet of timbers verse cutting 40,000 board feet would take some time.

Rines rational for continuing the application for another month is to send a letter to Jonathan Smith, ZEO stating the Board believes this is not a primary but a secondary use and have Jonathan Smith review his decision and maybe withdraw the decision, then Mr. Kelley can withdraw his application. Barron thinks the Board should rule that the use is an accessory use, and should Mr. Kelley change the operation to anything else, he will have to come before the Board. The burden of proof would be on the Zoning Officer. Rines referred to the RSA book for the powers of Zoning Officer.

Discussion between Barron and Fischbein over how people may perceive the sawmill to be industrial. Fischbein questioned why their having to deal with this issue when there's trailers piling up on Newman Drew Rd. The Zoning Officer should be dealing with that.

Rines noted if the Board granted a variance then Mr. Kelley would be required to apply for a Site Plan Review with the Planning Board. Barron again stated this is why he is puzzled by the Planning Board minutes because he believes that the Planning Board told him he did not need a Site Plan Review. Barron informed the Board that the former chairman of the Planning Board used to go in a dictate to the secretary what he wanted something to state, and it caused a lot of trouble. But now he's gone permanently because he was fired. Actually, he resigned but Barron commented he knows the whole story. Barron announced that Jake Dawson, III is the Selectmen's Ex-Officio.

Rines read into record the powers of the Zoning Board of Adjustments per RSA - **674:33 Powers of Zoning Board of Adjustment. –**

"I. (a) The zoning board of adjustment shall have the power to:

(1) Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and

(2) Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if...

Rines **explained** the two things the ZBA is allowed to **do, is** hear Appeal of an Administrative Decision like Jonathan Smith made or act on Variances and Special Exceptions. Rines again suggested continuing the application and write a letter to Jonathan Smith, ZEO and tell him the ZBA believes he as erred and the reasons why. Rines noted if Jonathan Smith, ZEO agrees, then Mr. Kelley can withdraw his variance application. Barron agreed because he thinks this case is legal.

A Motion by Rines for **Case #22-07-V:** Jeff Kelley of 110 Moultonville Rd. Tax Map: 091 Lot: 037 request for a Variance from 34.5 INDUSTRIAL USES (See also Article XXXV, Section 35.5) Section (d): Sawmill to operate his home sawmill business in the village district be continued to September 13, 2022 and write a letter

to the Zoning Enforcement Officer informing him the ZBA believes this is an accessory use and not a primary use. Therefore, a Variance is not required and all fines and action to be held pending the ZBA's final decision. Barron seconded. Discussion ensued over Mr. Kelley not being told he could have appealed Jonathan Smith, ZEO decision. Missing file from Steve McConarty and being informed of who filed complaints against him.

Barron noted a letter received from Gary Wallace, who has no issues with Mr. Kelley's home operation.

Financials:

- Expenditures: 01/2022 thru 07/2022 - Emery noted there is 81% still available.

Any Other Business Which May Come Before This Meeting:

Review the ZBA Rules of Procedure and make corrections as needed.

Rines noted the meeting location should state the Freight House not the Town Hall. Until it was discovered he had an outdated version. Once the Board had the latest version of February 12, 2019. No revision were suggested.

Public Input: Josh Kaake wanted to ask a question of the Board. Rines stated as long as Mr. Kaake is not seeking advice because the ZBA is not allowed to advise an applicant.

Emery referred to **Order of Business:**

- Public Hearing: – all non-board members will be allowed 3 minutes to speak

Rines addressed the State definition of Abutter per “ RSA 672:3 Abutter. – "Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board,” but Ossipee defines an Abutter as anyone within a 200 ft. radius of the property lines.

Barron believes Ossipee's definition should match the State's definition. Rines noted the ZBA cannot change the definition of abutter until after the Zoning Ordinance Committee has been changed the Zoning Ordinance and is voted on at the Annual Town Meeting.

Next Regular Meeting: September 13, 2022 @ 7:00 pm

Adjournment:

A Motion by Jim Rines to adjourn the meeting. Emery seconded. No discussion. A unanimous vote was taken. **Motion passed.** The meeting adjourned at 7:52 p.m.

Minutes were approved by majority vote of the Board:

_____	_____	Or	_____	_____
Roy Barron, Chairman	Date		Daniel Fischbein, Vice Chair	Date
			(In the absence of the Chairman)	