

OSSIPEE ZONING BOARD

Meeting Minutes

June 14, 2016

Minutes were recorded by Laura Nash, Board Secretary.
Revisions of these minutes are noted by ***bold/italic*** type.

Call to Order: Dave Babson – Vice Chairman called the meeting to order at 7:00 p.m.

Members Present by Roll Call: David Babson, Ralph Wurster, Ski Kwiatkowski, and Jim Rines.

Absent: Stanley Brothers, Bill Grover (alternate) and Bob Freeman (alternate).

Meeting Minutes: Jim Rines commented on a couple of corrections to the May 10, 2016 minutes. The minutes are amended as follows:

- **Motion:** by Jim R., seconded by Ski K., to approve May 10, 2016 meeting minutes as distributed. Jim Rines noted some corrections to be noted in this month's meeting minutes.
- ***Please refer to ZBA of May 10, 2016 for complete minutes.***
- 1. Pg. 1 - Under Old Business: **DiPrizio Garage Variance/Special Exception Review:** Tax Map: 39 Lot: 4 -7 Newman Drew Rd. Jim R., questioned during the investigation it was determined by Steve McConarty that the variance was not issued. So, it should say, "When the variance was ***applied for*** in 1999, it was for providing mechanical services only on cars he was selling on his property, ***but the record appears to show the variance was denied.***"
- 2. Pg. 2 - Asked Barry Norcross and/or Steve Creamer if they are taking the construction down to foundation and new construction will extend 72 ft. wide, is there any reason why they cannot move the plans 6 ft. to the ***right*** and not need a side setback variance. Barry noted the septic is located to the ***right*** of current chalet.
- 3. Pg. 9 - **Unnamed Gentleman:** stated he ***had*** not formed an opinion but he knows Ossipee Lake is ***the town's*** biggest asset. So, it should say, ***Ashe Fischbein*** stated he ***had*** not formed an opinion but he knows Ossipee Lake is ***the town's*** biggest asset.
- 4. Pg. 9 - Jim Rines agreed. It should say, ***Jim Rines felt it was not unreasonable for a peer review on longer projects. Danforth Bay had a peer review.***

All others in favor, motion passed. Abstained: Dave Babson

Old Business

- **Case #16-5-V, Elizabeth & Franklin Sawyer c/o Mark McConkey,** Tax Map: 32 Lot: 09, 156 Leavitt Rd., Variance GRANTED on May 10, 2016 Conditional on: 1. All state/federal and local approvals 2. Submittal of an updated plan which shows all improvements along the shoreline and both structures on the property. Here for final approval. **Jim Rines** noted, the Board has received the updated plans as requested to satisfy one part of the conditions. **Mark McConkey** noted state/federal and local approvals have been met by receiving Shoreland Permit previously. **Ski K.**, are there any areas of the updated plan that would create any objections to the public or abutters. Jim R., replied he did not see anything different on the full size plans than what was already on the reduced sized plans. Jim noted the structures to be included on the updated plans as follows: 1. Stairs on the second cottage, 2. Stairs through the retaining wall, 3. Open deck on the backside of the house

Motion: by Jim R., seconded by Ski K., to grant final approval on plans dated May 26, 2016 and received on May 27, 2016 for conditions being met for the variance granted on May 10, 2016.

All in favor, motion passed. (Noting 30 day appeals process.)

Informal Discussion:

- **John Puchacz:** Puchacz Family Trust – 946 Route 16 - Tax Map: 123 Lot: 9 - Wants to add approximately 4 ft. to existing structure where tree used to be. Need to determine if Variance or Special Exception is required.

Dave Babson asked Steve McConarty if it was his decision for John Puchacz to come before the ZBA.

Jim Rines noted from what I saw in the packet provided for this meeting. This individual wanted to come before the Board for an informal discussion. But I have a point of order, if I may. **Dave Babson**, granted.

Jim Rines the point of order is: Zoning Board are Quasi-Judicial and there are no provisions in the statutes to having informal discussions with the ZBA. Because that would be similar to going to a judge and saying “ex: I’m thinking of filing a law suit and how can I work this so you can act on it.” Because then we would have to act on it after giving them advise. In the hand-book it says what the ZBA should not do: The Board should never issue advisory opinions or **render** informal advice regarding any particular development proposal. The Board only acts when there is a formal application for variance, special exception, appeal of administrative decision, or an application for an equitable waiver or their being asked to act on any other statutory responsibility. In contrast to the Planning Board, there is no preliminary review process as outlined in RSA 676:4 – II for the Zoning Board of Adjustment. The Planning Board has the ability because they’re not Quasi-Judicial to offer advice to applicants but ZBA doesn’t.

Ski K., noted this applicant came before the PB and it was suggested he come to the ZBA.

Jim Rines stated he understands that but the PB should not do that. The Zoning Enforcement Officer needs to make a decision on what type of application if any, needs to be made. If it’s determined the applicant needs to come to the ZBA, then we can act on whatever application is filed. Whether it’s a variance or special exception or nothing.

Dave Babson questioned, what the difference is if Steve **advises** the applicant or the applicant comes to the ZBA for a variance or special exception.

Jim Rines commented that Steve’s duty is to grant or deny applications and he can advise.

Ralph Wurster questioned hypothetically – in cases where there seems to be some uncertainty on which direction to go. I think it would be easier for the ZEO to deny the building permit. Decide whether the applicant needs to apply for a variance or special exception and then come before the ZBA. The ZBA can make a determination whether the application is needed or not.

Dave Babson, advised the applicant to meet with Steve McConarty to determine type of application to file.

New Business

- **Case #16-4-V, Douglas & Donna Brown c/o Mark McConkey**, Tax Map: 31 Lot: 20, 77 Broad Bay Rd. Submit application of Appeal based on Article 6.4.2A of the Ossipee Zoning Ordinance. To demolish the existing home & construct new home & garage with clearance of (West) Left side: 10.92’, (East) Right side: 13.66’, and (Shoreline) Front: 22.58’. (Continuation from May 10, 2016 meeting.)

Dave Babson addressed the Applicants and/or representative (under RSA 674:33) – If there is not a full 5 member board, even with alternates serving. The applicant has the option of postponing the hearing until all members are present. If the applicant chooses to proceed with the hearing, he/she should be advised that a 3- or 4- member board will not be grounds for a rehearing in the event the application is denied.

Applicant and/or representative chose to present their case.

- **Mark McConkey**, acting agent for owners: presented **Revised** plans for property to demolish the existing home & construct new home & garage with clearance of West side setback: 20.21ft., Right side setback: 15.61 ft., and Shoreline setback: 23.2 ft. On two boundaries the house will be less non-conforming than the current house. Proposal is to construct a 3- bedroom home with 2 car garage and connecting breezeway. There will be a new septic system, new septic tank, and spoke with CC, about 2 months ago, about replacing the existing retaining wall and building a perch beach on the front of the property. The CC was in favor of the plan. Currently in the permitting process.

Ski K., asked for views of the current home and property.

Dave Babson called for public opinions. Mr. & Mrs. Riley commented they live on the left side and have no objections. **Mark M.**, spoke for Mr. & Mrs. Day. They spoke last time through multiple email communications and they have no problems with the proposal.

Jim Rines asked Mark if he could provide the email from the Day's with their opinion.

Ski K., requested if there could be no water connections to the garage.

Jim Rines noted to Dave Babson per the previous packet Walter Day on May 1, 2016 submitted an email communication requesting a sideline variance from your property (Brown's) that's 15.97 ft. and now proposing 15.61 ft. So, that's a .25 hundredth of a point. So, if they were comfortable with that, they are probably still comfortable with the plans.

Dave Babson closed the discussion to the public. The Board members will discussion amongst themselves.

Ralph Wurster asked Mark McConkey at *your* previous presentation, you were planning on improving storm water run-off, etc...to protect the lake. I'm assuming your new plans are going to incorporate those same ideas. **Mark M.**, replied yes they will and it's all part of the storm water run-off proposal with the shoreland. We need a permit to demolish the home. We need a permit to reconstruct the home and we are building that with drip line trenches around the building.

Vote by Criteria:

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

Jim – Yes Ski – Yes Ralph – Yes David - Yes

Jim Rines reasoning: Because it does not alter the essential character of the neighborhood and it is designed so it will enhance the water quality. Therefore it does not threaten the public health, safety or welfare.

2. The spirit of the ordinance is observed because:

Jim – Yes Ski – Yes Ralph – Yes David – Yes

Jim Rines reasoning: Because it does not alter the essential character of the neighborhood which is one of the ways the Zoning handbook tells you to decide the spirit of the ordinance is observed.

3. Substantial justice is done because:

Jim – Yes Ski – Yes Ralph – Yes David - Yes

Jim Rines reasoning: The guidance the handbook gives us is the only way to tell if substantial justice is done is if there is harm to the applicant but no benefit to the public. By denying this case I feel like I would be harming the applicant and not helping the public.

Dave Babson's reasoning: I think anytime we get a substantial upgrade to a property, I feel substantial justice is served.

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

Jim – Yes Ski – Yes Ralph – Yes David – Yes

Jim Rines reasoning: The strongest example the surrounding properties will not be diminished is the support from the two immediate abutters. Because people tend to protect their own properties fairly most *vociferously*. We've heard no testimony to the contrary and by plans looks to be a very nice home. I believe the surrounding property values will not be diminished.

Ralph Wurster reasoning: Because of the on-going development in the area that we have already seen, I think this will fit right in.

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:

Jim – Yes Ski – Yes Ralph – Yes David – Yes

Jim Rines reasoning: The applicant has demonstrated that the existing structure is non- conforming and they have made two of the non-conformities more conforming. Even though one of them has become less conforming it is further away from the lake, which I think is important and it was developed before zoning.

Jim Rines point of order: Need to address **(Aii)** the proposed use is a reasonable one because:

(Ai) 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:

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

Jim – Yes Ski – Yes Ralph – Yes David – Yes

Jim Rines reasoning: Because this is a residential use and residential zone. There is a structural change but there is no change in use and feel it is a reasonable one.

Motion: by Ski K., and seconded by Jim R., to **GRANT** the Variance with plans and application dated May 24, 2016 and to conform to all state, federal and local regulations and there be no water supply to the garage. **All in favor, motion passed** with standard 30 day appeal process.

Any Other Business Which May Come Before This Meeting

- Chapter 91 – A Request for Information – Memo received on May 26, 2016 from Sam Martin referencing Public Officers & Employees access to governmental records & meetings. (previously emailed to each member on May 26, 2016)

Laura N. explained: The state is starting to enforce 91 – A (The Freedom of Information Act) in the municipal sector. If you as an individual have had email communications with anyone (peers, co-workers, family, etc...) outside of the meetings concerning WWSCG. Those emails need to be turned over to Sam Martin. Secondly, the email I sent to you from Sam Martin. You need to reply back to Sam Martin via email telling her whether or not you have had email communications with anyone (peers, co-workers, family, etc...) outside of the meetings concerning WWSCG.

Dave Babson asked what Sam Martin has to do with this? Why has this case been selected from any other case? **Laura N.**, discussions are getting heated. **Jim Rines** stated someone must have made a 91-A request.

Dave Babson asked if Sam Martin is making the request for the Town. **Jim Rines** was uncertain but the law allows anyone to make a 91-A request. It doesn't matter why or motive. **Laura N.**, commented that at the last PB meeting, Ed Cuomo spoke at the end of the meeting stating it was a serious issue and each Board member needs to respond to Sam Martin stating whether they do or do not have correspondence pertaining to WWSCG.

- **Five Variance Criteria in the 21st Century - Jim Rines** presented the ZBA with a suggested approach to help guide the ZBA members when reviewing variances. It's not exactly from the handbook but it's from publications to help guide municipal personnel. The focus is on finding of facts to substantiate decisions on granting or denying variances for providing legal support in the event of legal action.

- **Email response from Richard Sager** referring to the front setback on the dimensional requirements chart for the rural zone changed from 40 to 25. (previously emailed to each member on May 12, 2016)

Dave Babson brought up to date on the discrepancy the members were urged to notate the **correction** in their books. ***The correct rural front setback is 40 ft. not 25 ft. as published.***

- **Budget Report: May 2016 – Ralph Wurster** addressed one of the complaints the ZBA had when determining their budget was how much we were bringing in in fees. Ellen has included what we have collected and I thank her for that. I know it goes into a general fund but it gives us at least an idea of what we are collecting in fees. Questions and comments concerning advertising, postage and secretary salary were discussed and noted to address when determining the next budget year.

- **PB & ZBA Handbook for Local Officials** – Ski K., requested to order latest edition for himself, Ralph W., and Secretary.

- **ZBA requested** Steve McConarty to do random checks on 3 – 4 closed cases a year. Discussion ensued over a couple on on-going businesses/properties.

Adjournment

Motion: by Jim R., seconded by Ski K., to adjourn. **All in favor, motion passed.**
The meeting adjourned at 8:15 p.m.

Minutes approved by majority vote of the Board on:

Stanley Brothers, Chairman

Date