

OSSIPEE ZONING BOARD

Meeting Minutes

February 14, 2017

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

Call to Order: Stanley Brothers, Chairman called the meeting to order at 7:11 p.m.

Members Present by Roll Call: Stanley Brothers, Chairman Dave Babson, Vice-Chairman, Ralph Wurster, Jim Rines, Bill Grover (alternate) and Steve McConarty (ZEO). **Absent:** Ski Kwiatkowski, and Laura Nash, Board Secretary **Late:** Bob Freeman (Selectmen's Rep)

Meeting Minutes:

- Meeting Minutes of January 10, 2017 were reviewed. Jim Rines noted some corrections and amended as follows: ***Bill Grover was present and not the Chairman. Bob Freeman was absent*** and the following section amended "I fail to see where the Planning Board *miss* interpret ***the Regulations***. The PB did not interpret the regulations incorrectly. They may not have applied some of ***the Regulations but I do not think they miss*** interpret ***them***."

Motion: By Babson to approve, the January 10, 2017 meeting minutes as read and amended. Seconded by Brothers. No further Discussion. A Unanimous vote was taken.

PUBLIC HEARING

- **Case #16-11-V: Mark McConkey c/o Dummer Boys** – 1605 Route 16; Tax Map: 53 Lot: 30 – has applied for a Variance from Article 35.2.p of the Ossipee Zoning Ordinance to permit alterations to existing building to make 1 bedroom apartment. ([Continued from 10/11/2016 ZBA meeting](#))

Mark McConkey requested a continuance due scheduling conflict. Is requesting to be first case on March 14th and would like to be notified ahead of time, if possible, there will not be a full Board, again.

Chairman Brothers noted Bob Freeman's arrival (7:14pm) and raised Bob Freeman to voting status in place of Ski K.

Motion by Rines to grant the continuance **Case #16-11-V: Mark McConkey c/o Dummer Boys** – 1605 Route 16 until March 14th meeting. Seconded by Brothers. No Discussion. A Unanimous vote was taken.

New Business

Jim Rines stepped down from the Board for this case, as he is the presenter from White Mountain Survey & Engineering, Inc.

Chairman Brothers raised Bill Grover to voting status in place of Rines in order to form a full (5) member Board.

Case # 16-12-V: Angus McFarlane Limited Partnership c/o White Mtn. Survey & Engineering, Inc. – 25 Gile Rd.; Tax Map: 123 Lot: 52 – has applied for a Variance from Article 6.4 & 23.3.2 of the Ossipee Zoning Ordinance to "Retain existing structure started under building permit B-14-62 dated 09/30/2014. Present structure replaced an existing non-conforming structure, plus an 11.5 sq. ft. non-conforming

expansion. Construction began spring of 2015 but has voluntarily ceased due to expiration of building permit & request of town.” Jim Rines of White Mtn. Survey & Engineering, Inc. presented the case. Rines submitted and read a timeline of building and permits granted for this property. Rines also presented the Shoreland Permit Application dated July 1, 2014, which went to NH DES Wetland Bureau – Shoreland Program and to the Ossipee Town Clerk.

The Board took a few moments to review the new material. The Board asked a question of a letter received from NH DES dated December 20, 2016 addressing an administrative review of pending file. Rines commented he spoke with Mr. McFarlane, who explain the delay in submitting the required records. Rines noted according to NHDES the request for administrative review was initiated by the Town of Ossipee.

Grover requested to see Building Permit B-14-62 dated 09/30/2014. Rines presented a faded copy to Grover, who read the contents. Grover questioned various other forms within the packet including if there is a stamped Shoreland Impact Permit. Rines stated there is. Questions and concerns over the size of the structure from a wood shed to a 620 square foot structure verses a 1200 square foot structure being two stories with a walk-out basement. Raising the concern of making a non-conforming structure more non-conforming. Brothers asked Rines if NHDES classifies the square footage by stories. Rines stated not according to Shoreland Impact, it is measured by foot print not stories.

Freeman asked McConarty if there has been any update from NHDES. McConarty indicated it’s still under review. McConarty stated it came under review because of how close it is to the water. McConarty stated the Town of Ossipee brought it to their attention, who agreed something was not appropriate. Discussion over who’s at fault and lapses in record maintenance ensued.

Wurster questioned why the building was not completed within the year of the permit being issued. Rines explained the trees were not taken down until the fall and winter of 2014-2015. Construction was started late summer into fall of 2015 and noted building permits that had expired was not enforced until Mr. McConarty was hired. Babson asked McConarty if the permit reflects what was built and Brothers noted the shed was torn down and replaced with a one bedroom, two-story building. Rines proclaimed nothing nefarious is taking place and there is plenty of blame to go around but the home owner thought he was doing what he was permitted to do. Rines proceeded to read the entire application for the record.

No further Board discussion.

Brothers opened discussion to the Public Input.

Dennis Legendre asked if anything else was done to the shoreline outside of cutting trees. Rines replied no.

Connie Billings noted the sewage system was approved on 07/30/2014. Shoreland Impact permit was approved on 7/25/2014 prior to applying for the Building permit on 9/30/2014. Zoning Ordinance 4.4, states there shall not be more than one principal dwelling per lot. This would now be three items he would need to apply for a variance for and if the owner obtained his permits before applying for the building permit. He should have the building done before the permit expired. Rines replied at this time you cannot have more than one dwelling per lot but that will change June 1, 2017. But ***it could be converted*** to a bunk house if the new detached accessory dwelling unit’s law does not pass. McConarty challenged the State has already told him that will not happen. Rines disagreed.

Jeff McFarlane stated obviously, there is tension between old Town officials and new Town officials but there was never any intention to miss lead the Town with rebuilding and expanding the old wood shed. Jeff noted the foundation is poured and inspected, electrical box is in and inspected, heat, air, insulated and sheetrock is done... McConarty noted none of this was ever inspected.

Marie McConarty asked how far along is the construction inside. Is it finished? Is it inspected? McFarlane stated this past summer the electrical box was installed on the back side of the building, the electrical is wired and there is some rough plumbing but everything is still wide open inside.

Brothers called for any other comments. Grover asked if this is being built for year round occupancy. Rines stated McFarlane answered no.

Motion by Babson to accept the Variance application. Seconded by Bill Grover for discussion purposes.

Babson stated he has not heard anything to indicate the McFarlane's were intentionally trying to pull the wool over the Town's eyes.

Bob Freeman expressed his frustration over all the cases the prior Zoning Officer handled and let slide. But wants the ZBA to handle every case similar to this one the same because it's not going to be the last one.

Bill Grover noted none of the zoning ordinances lists a cottage. Bill referenced multiple definition sources, which defines a cottage as a single story structure and was quite surprised when it came to light this is a two-story structure. Zoning Ordinance 25.2.5 which states only one primary structure per lot and in this case, there are now two primary structures on a lot. Which is definitely a violation of the Zoning Ordinance. There is also ZO 23.2.3 expansion of a non-conforming structure and by adding 11.5 square feet; it is now even more non-conforming. The shed which by classification is an ancillary building by definition and making it a living structure or primary structure. There were definitely red flags overlooked by the previous Zoning Officer. Mistakes were made and whether the owner corrects them or the ZBA corrects them or the ZBA sets a precedence a correction needs to be made to rectify the situation.

Ralph Wurster commented that Dave Senecal was an employee of the Town and when he gave the permit, he was representing the Town. The Town needs to own up to that. Ralph noted when he walked the property he was surprised and stated this should of have a variance from the beginning.

Dennis Legendre asked for the McConarty's opinion as to what should be done. Aside from inheriting the situation. Stanley noted discussion had not opened back up to public discussion but will take his question under advisement.

The Board reviewed the original application, subsequent septic designs, and living space above the garage. McConarty noted all construction is at a standstill.

Brothers opened discussion back up to the public and asked Rines where the septic is located *for* the additional dwelling. Rines noted the State approved septic system and existing Shoreland permit was for the existing primary house is 4 - bedrooms, the expanded cottage is a 1-bedroom, which is 225 gallons a day and the garage was a 1-bedroom sleeping loft above at 150 gallons a day. For 5 bedrooms at 150 gallons a day each and 225 gallons a day for the cottage for a total of 975 gallons per day going to the proposed new septic system.

Dennis Legendre questioned how someone could submit and receive permits without having plans drawn up.

Discussion was refocused back to just the current cottage.

Motion by Babson to *approve* the Variance for Angus McFarlane Limited Partnership – 25 Gile Rd. Tax Map: 123 Lot: 52 with Conditions of NHDES approvals and must meet all Federal, State and Local Regulations. Seconded by Bill Grover.

Brothers noted a Yes vote you're for the applicant and a No vote you're against the applicant.

Criteria Vote:

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

Ralph – No David – Yes Bob – No Bill – Yes Stanley – Yes

2. The spirit of the ordinance is observed because:

Ralph – No David – Yes Bob – No Bill – Yes Stanley – Yes

3. Substantial justice is done because:

Ralph – Yes David – Yes Bob – Yes Bill – Yes Stanley – Yes

David: yes because they were given permission by the Town and by the State.

Bill: yes, but wants to make it very clear that based on the building permit it was in clear violation of the zoning ordinance to be issued and approved that building permit.

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

Ralph – Yes David – Yes Bob – Yes Bill – Yes Stanley – 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:

Ralph – Yes David – Yes Bob – Yes Bill – Yes Stanley – Yes

David: Because the Building Inspector was the agent for the Town and he granted permission.

Bob: For same reason as David stated.

Bill: For same reason as David stated. Hardship is not necessarily on the property but as it was given approval by an employee for the Town.

Ai. 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:

Ralph – Yes David – Yes Bob – Yes Bill – Yes Stanley – Yes

Aii. The proposed use is a reasonable one because:

Ralph – No David – Yes Bob – Yes Bill – Yes Stanley – Yes

Motion GRANTED for Variance with Conditions of meeting all NHDES approvals and all Federal, State and Local Regulations. Chairman Brothers noted there is a 30 days appeal process of the ZBA decision which starts tomorrow morning. The Selectmen or any party to the action or any person directly affected has a right to appeal this decision.

Chairman called for a short recess at approximately 8:47 PM.

Meeting resumed at 8:50PM.

Jim Rines stepped down from the Board for this case, as he is the presenter from White Mountain Survey & Engineering, Inc.

Chairman Brothers raised Bill Grover and Bob Freeman to voting status in place of Rines and Kwiatkowski in order to form a full (5) member Board.

- **Case # 17-2-V: Stephen Ingham c/o White Mtn. Survey & Engineering, Inc.** - 58 Ridge Rd. Tax Map: 35 Lot: 8 – Has applied for a Variance per Article VI, section 6.4.2. (a) Of the Ossipee Zoning Ordinance. “To construct a 26 ft. x 44 ft. home with a 2 ft. x 20 ft. bump-out centered on the home, on the lake side, with a 4 ft. x 20 ft. on the bump-out. The home will be 13.0 ft. from the westerly boundary & 13.5 ft. from the easterly boundary. Jim Rines of White Mtn. Survey & Engineering, Inc. presented the case to the Board illustrating the intent on proposed plans. Rines proceeded to read the (5) criteria’s.

Open to Board discussion: Wurster moving location back towards the road to reduce the amount of impact on the side setback. Rines stated they are already back 63 feet from the water. If they move the location

back, any further, there is an elevation in the landscape and they are then contending with trees. Grover asked for a comparison of the existing home to the proposed new construction pertaining to bedrooms, baths, stories, and increasing square footage of livable space. Rines stated there are (3) bedrooms in each. State does not count baths. The new home will be 1.5 stories on the road side and 2.5 on the water side with a walkout. Rines noted yes but are still below the lot coverage because the existing footprint is 560 square feet and the new house will be twice as much at 1,144 square feet.

Open to public discussion. Carol Stansell is the sister of, Mary Anne Crutchley, the abutter to the western side. Ms. Stansell noted and read an email her sister sent to Ms. Nash conveying her concerns of the side setbacks and the height of the proposed new home. Rines addressed in detail how the landscaping will be designed to prevent any erosion and the roof height of the new home will be (1) foot lower than the home to the west side.

Motion by David B. to grant the Variance for Case#17-2-V for Stephen Ingham 58 Ridge Rd. Tax Map: 35 Lot: 8 from Article VI, Section 6.4.2. (a), of the Ossipee Zoning Ordinance to build a 26 X 44 square foot home with a 2 x 20 foot bump-out, 13 feet from the west boundary 13.5 feet from the easterly boundary and comply with all Federal, State, and Local Regulations. Seconded by Bob Freeman.

David Babson questioned how the Zoning Enforcement Officer verifies construction is within the boundaries and setbacks.

Steve McConarty noted he uses GPS. Rines noted the Board can make it a condition to have the **Building Corners** staked out and pinned at the owner's expense if they choose too.

Chairman Brothers noted Condition of approval is to stake out corners to meet front and side setbacks and pin ends to have Zoning Officer do a follow up check.

Criteria Vote:

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

Ralph – Yes David – Yes Bob – Yes Bill – Yes Stanley – Abstained
Ralph because it's the neighborhood and its lake front property it's what happens.
David sees no difference in the layout than other properties.
Stanley will abstain unless there is a tie.

2. The spirit of the ordinance is observed because:

Ralph – Yes David – Yes Bob – Yes Bill – Yes Stanley – Abstained

3. Substantial justice is done because:

Ralph – Yes David – Yes Bob – Yes Bill – Yes Stanley – Abstained
Ralph thinks the owner need this for use of the property.

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

Ralph – Yes David – Yes Bob – Yes Bill – Yes Stanley – Abstained

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:

Ralph – Yes David – Yes Bob – Yes Bill – Yes Stanley – Abstained

Ai. 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:**

Ralph – Yes David – Yes Bob – Yes Bill – Yes Stanley – Abstained

Motion GRANTED. Chairman Brothers noted there is a 30 days appeal process of the ZBA decision which starts tomorrow morning.

Point of Order: By Jim Rines to the Chairman, noting (Aii) was not voted on.

Aii. The proposed use is a reasonable one because:

Ralph – Yes David – Yes Bob – Yes Bill – Yes Stanley – Abstained

Motion for Variance has been **GRANTED** for Case#17-2-V for Stephen Ingham 58 Ridge Rd. Tax Map: 35 Lot: 8 from Article VI, Section 6.4.2. (a), of the Ossipee Zoning Ordinance to build a 26 X 44 square foot home with a 2 x 20 foot bump-out, 13 feet from the west boundary and 13.5 feet from the easterly boundary. **Condition of Approval** is to stake out all (4) corners to meet setbacks and pin ends to have Zoning Enforcement Officer do a follow up check and owner must comply with all Federal, State, and Local Regulations.

Chairman Brothers noted there is a 30 days appeal process of the ZBA decision which starts tomorrow morning. The Selectmen or any party to the action or any person directly affected has a right to appeal this decision.

Budget & Revenue Report

• LRPC 2016 – 2017 Land Use Books – **Motion** by Babson to approve the Invoice of \$63.00 for the ZBA portion of the bill. Seconded by Wurster. No further discussion. A unanimous vote was taken.

Any Other Business Which May Come Before This Meeting

- Approval of Variance instructions & application – pending next meeting when Secretary is present.
- Approval of SE instructions & application– pending next meeting when Secretary is present.
- Approval of Motion & Decision of Rehearing– pending next meeting when Secretary is present.

Next Meeting: March 14, 2017 @ 7:00 pm

Adjournment:

Motion by Babson, and seconded by Wurster to adjourn the meeting.

All in favor, motion passed. The meeting adjourned at 9:36 p.m.

Minutes approved by majority vote of the Board on:

Stanley Brothers, Chairman

Date