

OSSIPEE ZONING BOARD
Regular Meeting & Public Hearing Minutes
June 13, 2017

Minutes were recorded by 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 7:00 p.m.

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

Meeting Minutes:

Review and Approve Meeting Minutes of May 9, 2017.

A **Motion** by Rines to approve the May 9, 2017 meeting minutes for the purpose of discussion. Freeman seconded.

Board Discussion: Rines noted and read through several typographical edits, which were recorded.

The **Motion** by Rines was restated to approve the May 9, 2017 meeting minutes as amended. Freeman seconded. No further discussion. A unanimous vote was taken.

Non-Public Session:

Brothers polled the Board to enter a non-public session at 7:17 PM pursuant to RSA 91-A: 3, II (e) for ***legal*** matters. Roll call vote was taken: Rines – Yes, Freeman – Yes, Wurster – Yes and Brothers – Yes.

Brothers made a motion to adjourn the non-public session at 7:27 PM. Rines seconded. A unanimous vote was taken.

Brothers made a motion to return to the public session at 7:28 PM. Rines seconded. A unanimous vote was taken.

Brothers noted the Non-Public Session was on a legal matter and the minutes are sealed.

Public Hearing #2

Need to re-hold the Public Hearing because Town of Effingham was inadvertently excluded from the public hearing on May 9, 2017 concerning:

Carroll County Superior Court has issued a Court Order for a Motion to remand to the Ossipee Zoning Board of Adjustments to hold a Public Hearing on the case listed below:

- ***Town of Freedom: Board of Selectmen – per RSA 676:5 previously filed an Administrative Appeal against Ossipee ZBA's denial on 10/08/2016, for an Administrative Appeal of the Planning Board's Conditional Site Plan Review Approval of Case #16-3-SPR – Northgate Ossipee, LLC for expansion of Westward Shores Campground and Resort on 9/20/2016.***

Chairman Brothers asked who is present to speak for the Town of Effingham. Board of Selectmen Chairman, Henry Spencer addressed the Board. Chairman Spencer noted members of the Effingham, Board of Selectmen, Planning Board, Historic District and Conservation Commission were present.

Rines noted the Town of Effingham is not filing an appeal. They just were not here to hear the testimony by **Steven Keach** of Keach – Nordstrom Associates, Inc. and The Town of Freedom during the previous public hearing on 5/9/2017. Thus not being able to address any of their concerns with them.

Spencer stated he was given a white paper of the 3 issues of concern and he would like to address only those. Rines noted he was not trying deter Effingham from asking questions, he just felt they were at a disadvantage. The Board is more than willing to hear the concerns of Effingham addressing the three issues of concern.

Spencer was concerned that all protocols and procedures of reviewing a project were followed. He also noted it was not clear if special permits will be needed or if the ZBA granted any exceptions. But many residents of Effingham are very concern for the quality of the Ossipee Lake. Because of its revenue impact for the area. Concerns for the flood zone and making sure, these issues have been addressed was also noted by Spencer.

Rines noted based on the presentations *the ZBA has had* (and then referred *Mr. Spencer* to the 5/09/2017 **ZBA** minutes) the Planning Board has addressed the flood issues. Rines believes the Planning Board did discuss these issues and to ensure compliance they added a condition to the approval, which was # “4. Complies with All Federal, State and Local Regulations/Ordinances.” Rines noted, the flood ordinance is applied when a building permit is pulled. The Site Plan approval Northgate received, granted them the right to redevelop the area. When they place camp sites or seasonal campers is when they will need a building permit and that’s when the flood zoning ordinances will have to be met. It will be the responsibility of the Zoning Officer, who issues the building permits to ensure they are compliant with the flood and zoning ordinances.

Spencer questioned what if something happens and it could be construed as an infraction to the ordinance. *You’re* indicating nothing can be done until it happens. Rines replied saying by the Planning Board issuing condition number 4, if Northgate does not comply with the ordinances it invalidates their Site Plan Approval.

Spencer addressed not hearing discussions concerning park models being anchored on a foundation above the 100 year flood plain.

Rines noted this where Effingham is at a disadvantage by not hearing the presentation a month ago.

Wurster noted *based* on his understanding, “the peninsula area unit will be owned by Northgate Ossipee, LLC and they are going to be above the flood plain. When they go for the building permits, they will have to comply with our ordinances.” Spencer stated, “It strikes me as proper procedure base on my experience from being on Boards.”

Mark Leavitt of Freedom stated as a previous Planning Board Chairman the flood plain was always one of the top considerations when reviewing an application. If the plans don’t show how they’re going to protect the lake...the plans should not be approved. It’s the responsibility of the Planning Board and the ZBA to approve the permits.

Rines explained the realm of responsibility of the ZBA and Planning Board. The ZBA at this point is responsible for determining if the Planning Board interpreted the ordinances correctly when the granted approval for the Site Plan Review or did they somehow *misinterpret* or erroneously *apply* the ordinances when they granted approval.

Spencer addressed the soil criteria and concerns for Podunk soil that he received from the Town of Freedom and the Conservation Commission. Spencer questioned whether the ZBA feels the Planning Board did due diligence when reviewing these plans.

Freeman believes “the Planning Board has done an extraordinary job getting to the point they’re at with this

project and NHDES is the one who will give Northgate Ossipee permission to put the septic in that area.”

Spencer noted on a personal level he would prefer not to have 500 households on the lake but there are rules within the State of NH that dictate how to protect bodies of water from certain kinds of development. As long as the rules are followed, you have a legal right to do what you want.

Spencer stated based on what he is hearing on the concerns coming out of Freedom, those concerns have been dealt with or are currently being dealt with. But until the permits come in from the respectful agencies, the project is not going to start.

Daymond Steers – Conway Daily Sun, spoke with a reader today who wanted to know if this would have any impact on flood insurance. Rines stated based on his personal opinion, as long as they comply with all flood zoning ordinances, he feels it should not affect flood insurance premiums.

Evelyn Albert questioned per Ossipee Zoning Ordinances, septic is not allowed in Podunk and Chocorua soils. Rines replied there are some soils where septic is not permitted but the Planning Board was given the soil type in this area as “Podunk Variant”. Podunk Variant is not listed in the Ossipee table of soils, so it’s not specifically excluded. There is a clause in the Zoning Ordinances on page 87 - *1 which in part states *“or an on-site disposal system using innovative alternative technology acceptable to the New Hampshire Department of Environmental Service for lots of the proposed size.”*

Evelyn Albert expressed her concerns for water quality of Ossipee Lake which has one outlet through Ossipee River to the Saco River. If E.coli or any other contamination happens, it’s not just Ossipee Lake affected.

Mike Cahalane from Effingham agreed with Rines when speaking of the disadvantage of not hearing all the previous testimony. Everyone was informed the minutes will be posted to the website once amended or they can also receive an audio recording of the meeting from the secretary for \$5.00. They can call and arrange with the secretary.

Peter Malia, Attorney for Northgate Ossipee, LLC. And Dan Flores of SFC Engineering gave a brief summarization of the whole review process from the Planning Board since March of 2015. With a Conditional Site Plan Approval in September 2015. Malia noted the same 3 arguments have been heard and denied by the ZBA before. Malia recommended the ZBA reaffirm the May 9th decision, included the May 9th minutes, deny this appeal again and send it back to Superior Court where it has already been submitted to argue the same 3 points again in front of the judge.

Corey Lane of GMCG, referred to May 9th minutes, page 4, Tom Carr testimony referencing the soil type of Podunk vs. Podunk Variant.

Rines commented based on his understanding of Podunk v. Podunk Variant each with different drainage class. Podunk is a poorly draining soil and Podunk Variant is a “somewhat poorly draining soil” which is a dryer drainage class and is allowed.

Ms. Lane felt the soil scientist says it Podunk soil so the Planning Board should follow their own ordinance and due diligence.

Brothers interrupted stating the ZBA after last month’s hearing and testimony the Planning Board did due diligence and that’s why the ZBA denied the appeal.

Malia noted from the May 9th hearing, section 6.3.2 of the Ossipee Zoning Ordinance, which allows septic systems in Podunk or Podunk Variant soils if using innovative alternative technologies which is acceptable to NHDES. NHDES has approved the Presby system and referred to the site plans page 29, note 1, which states “ENVIRO-SEPTIC Wastewater Treatment Systems are approved by NHDES as in accordance with part Env-Ws1024.” Dan Flores of SFC Engineering has proposed to NHDES, the NHDES approved Presby system as the innovative alternative technologies, thus meeting the Ossipee Zoning Ordinance.

Danny Fischbein wanted clarification of the flood elevation and the operating level of the *lake*. Rines noted the flood level 414 ft. and operating level of the *lake* is 407.25 ft. Fischbein suggested these homes be on blocks instead of cribbing because as a prior resident of Westward Shores the campers are always moving.

Theresa Swanick - Effingham Planning Board Chairperson, personally questioned whether these park models would need to be anchored according to Ossipee Zoning Ordinance.

Brothers reiterated that Steve McConarty, Ossipee's Zoning Enforcement Officer is the one responsible for ensuring the ordinances are followed and if not the Site Plan will be invalid.

Theresa Swanick questioned who enforces the ordinances. Rines noted Steve McConarty is the Code Enforcement Officer and he brings the issues to the Selectmen.

Daymond Steers – Conway Daily Sun, stated Freedom told him they were optimistic an agreement could be worked out and if the applicant was willing to comment on the negotiations. Malia feels it's not relevant to tonight's proceeding. Negotiations are ongoing.

Brothers called for any more public input and asked Effingham if they were satisfied with explanations given to them.

Spencer noted on a personal level he still questions the wisdom but from a municipal official speaking to another municipal, he feels due diligence has been exercised.

Brothers apologized for going off earlier when asked if there were any other towns here.

Brothers closed public input.

Wurster referred to Westward Shores, site plans which contains 31 pages of notes upon notes addressing the same concerns expressed at these hearings. So, to say the Planning Board did not address these concerns *is not accurate*. The ZBA has to verify what the Planning Board approved and the ZBA has to confirm yes the issues were addressed. These plan are public information for you to see.

A **Motion** by Rines to deny the request to remand this case back to the Ossipee Planning Board. Freeman seconded. Discussion:

Rines noted the Planning Board through their review process, public hearings, and third party review; did their due diligence to the best of their abilities. I do not think with the conditions they have applied the Planning Board has omitted, not considered or misinterpreted any regulations. That's why this should go before Superior Court.

Freeman stated as an Ossipee Selectmen, you have to trust in other Town Officials when it comes to projects they're going to do the right thing in accordance with their Town Ordinances. Ossipee officials expect the same in return. We are going to make sure everything is done in accordance with Town Ordinances and the Zoning Enforcement Officer is here to ensure the ordinances are followed.

Chairman Brothers noted a **Motion** is on the floor to deny the request to remand this case back to the Ossipee Planning Board.

A Roll Call vote was taken:

Rines – vote to Deny Freeman – vote to Deny Wurster – vote to Deny Brothers – vote to Deny

The Motion to deny the Administrative Appeal and remand the case back to the Planning Board has **passed, unanimously.**

Chairman Brothers closed this case and 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.

Brothers Return to Regular Meeting at 7:58 PM:

New Business:

Public Hearing on Variance Applications

Chairman - Stanley Brothers: addressed the Applicants (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 an appeal hearing in the event the application is denied.

- **Case # 17-4-V:** Alexander Bakman, 12 Old Broad Bay Rd. 1. Tax Map: 35 Lot: 15 – has applied for a Variance from Article VI Section: 6.4.2 (A)(side setback requirements) of the Ossipee Zoning Ordinance to keep a 20' x 20' metal carport (after the fact) that is less than the required 25 ft. sideline setback.
 - Email by Mr. Christian Elliott (abutter) received on 6/12/2017 concerning opposition to project
 - Email by Bruce Baker (abutter) received on 6/13/2017 concerning opposition to project.

Mr. Bakman requested due to lack of a full five member Board, he requested to reschedule his case until the July 11, 2017 meeting.

A **Motion** by Rines to approve the request to reschedule Case # 17-4-V for Alexander Bakman, 12 Old Broad Bay Rd. 1. Tax Map: 35 Lot: 15 until July 11, 2017. Brothers seconded. No Discussion. A unanimous vote was taken.

Chairman - Stanley Brothers again addressed the Applicants (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 an appeal hearing in the event the application is denied.

- **Case # 17-5-V:** Jeanne-Marie Demetriou c/o Demetriou 2011 Rev. Trust– 70 Leavitt Rd. Tax Map: 34 Lot: 30 – has applied for a Variance from Article VI Section: 6.4.2 (side setback requirements) of the Ossipee Zoning Ordinance to build a garage and addition that will be less than the required 25 ft. sideline setback.

The case **was** represented by Mark **McConkey**, who opted to proceed with their case.

Mark McConkey presented the plans to add an additional garage at 72 Leavitt Rd.

Owner currently has a non-conforming house on an existing lot pre-zoning. They also own the adjacent lot 65 to the north. Septic is on lot: 65. Asking to build a 24 X 32 extension to the garage. The extension will not take away any views because the property is on top of a knoll. Owner is looking for this one variance before seeking wetland permit with NHDES. Garage will be two-story and 24 X 56 ft. and no new bedrooms will be added. Existing garage will remain for storage.

Rines suggested merging the lots. But the owner preferably request to keep the lots separate. If later on they choose to sell the lot, they would need to get a septic easement for lot 30 and then comply with new NHDES septic load requirements.

Mark McConkey read the reasoning for the Variance is to reduce the sideline setback to 21.58 ft. McConkey and proceeded to read each of the 5 criteria's for consideration.

Criteria #2 – application correction: should read, “The westerly (roadside) front edge of the addition will actually **be** less non-conforming (23.39' from the sideline) that the starting point”... “The westerly

(roadside) front edge of the addition will actually **be** less non-conforming (25.39' from the sideline) that the starting point..."

Public Input: N/A

A **Motion** by Rines to grant a variance for **Case # 17-5-V**: Jeanne-Marie Demetriou c/o Demetriou 2011 Rev. Trust– 70 Leavitt Rd. Tax Map: 34 Lot: 30 for a Variance from Article VI Section: 6.4.2 (side yard setback requirements) of the Ossipee Zoning Ordinance to build an addition to a garage.

Discussion: Each Board member expressed their concerns and conditions.

Rines restated his **Motion** to grant conditional approve for **Case # 17-5-V**: Jeanne-Marie Demetriou c/o Demetriou 2011 Rev. Trust– 70 Leavitt Rd. Tax Map: 34 Lot: 30 for a Variance from Article VI Section: 6.4.2 (side setback requirements) of the Ossipee Zoning Ordinance to build an addition to a garage.

With the following conditions:

1. The existing out building be removed
2. If the lot to the north is ever sold, the septic system for the southerly lot have a septic easement granted and recorded at the Registry of Deeds or the system must be placed on the lot where the home exist.
3. No living space above the propose garage
4. Comply with all Federal, State and Local Regulations.

Wurster seconded.

Discussion:

Rines stated for the record "granting this variance will not alter this neighborhood; therefore, the variance will not be contrary to the public interest. The spirit of the ordinance is observed. I think substantial justice is done because denying this application would do more harm to the applicant than it would to any of the surrounding people or the Town. The fact that no abutters came to the meeting, speak volumes to me, that people are protective of their property value. If they were against this, they would be here to speak up. I do agree this is an existing lot that is narrow and this is a reasonable request."

Criteria Vote:

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

Rines – Yes Freeman – Yes Wurster – Yes Brothers – Yes

2. The spirit of the ordinance is observed because:

Rines – Yes Freeman – Yes Wurster – Yes Brothers – Yes

3. Substantial justice is done because:

Rines – Yes Freeman – Yes Wurster – Yes Brothers – Yes

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

Rines – Yes Freeman – Yes Wurster – Yes Brothers – Yes

Rines agrees the property values will not be diminished.

Wurster agrees to vote yes with the conditions in place that if the separate lot ever gets sold it fit in with the neighborhood.

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:**

Rines – Yes Freeman – Yes Wurster – Yes Brothers – Yes

Wurster voted yes but one special condition that was not mentioned is that there are two adjoining lots owned by the same owner.

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:

Rines – Yes Freeman – Yes Wurster – Yes Brothers – Yes

Aii. The proposed use is a reasonable one because:

Rines – Yes Freeman – Yes Wurster – Yes Brothers – Yes

Motion GRANTED for Variance, with the conditions listed above.

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.

Any Other Business Which May Come Before This Meeting

Public Input: A gentleman #1 questioned, “How many variances or special exceptions are being granted for setback requirements?” Since his Aunt went through a very convoluted process for a boundary line adjustment to ensure if either lot was ever sold later on, it would meet setback ordinances. If it’s very often, maybe the ZBA should suggest to the Planning Board to change the setback ordinance.

Chairman Brothers explained it’s on a case by case basis and not all variances or special exceptions are granted.

Rines noted it’s the ZBA responsibility to evaluate the request and determine whether or not to grant the relief. The Planning Board writes the Zoning Ordinances and suggested if he feels there is an issue, he may want address this with the Planning Board.

Gentleman #2: who is on the Board of the Home Owner’s Association, expressed it’s a shame there isn’t some way to handle these old lots that are narrow and people to make improvements without going through the process. Because it’s an issue every time trying to meet the 25 ft. setbacks. Because these lots were designed in 1945 and most of the original buildings were built before 1965.

Freeman explained this Board listens to each case and really considers the abutter’s opinion when making a decision.

Next Meeting: July 11, 2017 @ 7:00 pm

Adjournment:

A Motion by Rines, and seconded by Freeman to adjourn the meeting.

All voted in favor, motion passed. The meeting adjourned at 8:52 p.m.

Minutes approved by majority vote of the Board on:

Stanley Brothers, Chairman

Date