

## OSSIPEE ZONING BOARD

### Regular Meeting & Public Hearing Minutes

July 11, 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 6:50 p.m.

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

#### **Non-Public Session:**

Brothers polled the Board to enter a non-public session at 6:51 PM pursuant to RSA 91-A: 3, II (e) for legal matters. Roll call vote was taken: Rines – Yes, Wurster – Yes and Brothers – Yes.

Grover arrived at 6:59 PM and joined the Non-Public Session.

Rines made a motion to adjourn the non-public session at 7:12 PM. Wurster seconded. A unanimous vote was taken.

Brothers made a motion to return to the public session at 7:13 PM. Rines seconded. A unanimous vote was taken.

Brothers made a motion to seal the minutes of the Non-Public Session due to a legal matter. Rines seconded. A unanimous vote was taken.

#### **Brothers reconvened the Public meeting at 7:15 PM.**

Brothers made a motion to move Bill Grover from an Alternate to a Full Voting Member until the next regular municipal election to fill the open vacancy formerly held by David Babson. Rines seconded. No discussion. A unanimous vote was taken.

Freeman arrived at 7:19 PM

Brothers raised Freeman to voting status in place of Ski Kwiatkowski absence.

#### **Meeting Minutes:**

Review and Approve Meeting Minutes of June 13, 2017.

A **Motion** by Rines to approve the June 13, 2017 meeting minutes for the purpose of discussion. Wurster seconded.

Board Discussion: Rines noted and read through several typographical edits. Wurster added a couple more edits which were recorded.

The **Motion** by Rines was restated to approve the June 13, 2017 meeting minutes as amended. Wurster seconded. No further discussion. A unanimous vote was taken.

### **Financial:**

- Budget Reports: June 2017 was reviewed.
- Sager & Smith, PLLC: Freedom v. Ossipee – ZBA Appeal invoice in the amount of \$656.25.

A **Motion** Rines to approve payment in the amount of \$656.25 to Sager & Smith, PLLC for service rendered. Grover seconded. No discussion. A unanimous vote was taken.

### **New Business:**

#### **Public Hearing on Variance Applications**

- **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 Alex Bakman (owner) received on 6/14/2017 additional arguments to justify case.
  - 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.
  - Email by Scott Torrey (abutter) received on 7/04/2017 concerning opposition to project.
  - Email by Mr. Christian Elliott (abutter) received on 7/06/2017 letter in opposition to project
  - Email by Mr. Andrew Millar (abutter) received on 7/07/2017 concerning opposition to project
  - Email by Mr. Bruce Baker (abutter) received on 7/09/2017 letter in rebuttal to Bakman application submittal

Chairman - Stanley Brothers started to read from the NH Office of Energy and Planning, November 2016 manual page III-4 on **PREVIOUS APPLICATIONS**, which states:

***“When an application is submitted, the files should be reviewed to determine if a previous application was denied for the same situation.”***

Brothers referenced two previous files where the applicant, Mr. Bakman was requesting to build an addition with a garage in March 2012 and in 2013 returned requesting to build a 20 x 25 ft. addition on the house with an 8 ft. opening going into a garage. Brothers noted both case were denied by the ZBA.

Chairman - Stanley Brothers continued to read from the NH Office of Energy and Planning, November 2016 manual page III-4 on **PREVIOUS APPLICATIONS**, which states:

*“If so, the board should determine if circumstances have changed sufficiently to warrant acceptance of a reapplication. If there has not been a significant change in circumstances, then the board should reject the application and end further consideration. This determination must, of course, be made at a meeting of the board following submission of the application and notice to the applicant, abutters and the public of a public hearing on the application. The board should review the previous applications and compare them to the current application to determine any differences and make the decision to proceed or not as soon as possible.”*

Brothers referred to case law:

*“When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan.” (Fisher v. Dover, 120 N.H. 187 [1980])*

Brothers opened the meeting to Board discussion.

Rines commented, “Based on the review of the application submitted to the ZBA and review of the previous files, I personally do not see a **material** difference from what was requested and denied before. **For** that reason, I don’t think we (the ZBA) should accept this application. I think we should reject it and end any further consideration.” Freeman seconded. Discussion.

Wurster stated, *“What* needs to be said is both of the previous applications were for a garage. *The carport structure and a garage are the same.”* The setback violations are the same and agrees with **Rines’s** assessment. The ZBA has already previously denied the request and does not see a substantial change in the application to warrant the ZBA to rethink the decision.

Brothers noted there is a motion **on** the floor and has been seconded. Brothers moved for a roll call vote.

A **Motion** by Rines to reject the Variance application for **Case # 17-4-V: Alexander Bakman, 12 Old Broad Bay Rd. 1. Tax Map: 35 Lot: 15.** Based on NH Office of Energy and Planning, November 2016 manual page III-4 on **PREVIOUS APPLICATIONS**. Freeman seconded. No further discussion.

A Roll Call vote was taken:

Grover – Yes, Rines – Yes, Freeman – Yes, Wurster – Yes, Brothers - Yes

**The Motion passed; the application has been rejected.**

Mr. Bakman inquired if there is a 30 day appeal process.

**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.

**Old Business:**

Filling Vacancies in Membership:

*Brothers acknowledged Board member, Ski Kwiatkowski illness setback. The Board discussed options to obtain new members to the ZBA. Freeman noted this topic was addressed at the Board of Selectmen meeting. Brothers noted per RSA 673:6, he will have to raise an alternate to voting status at each Board meeting until a letter of intent is received by Ski Kwiatkowski. Freeman will ask Town Administrator to place another ad in the local newspapers.*

**Any Other Business Which May Come Before This Meeting**

Rines asked if there is nothing else to come before the Board, he would make a motion to adjourn. Wurster asked if there was reason why the Board would get information on an Intent to Cut. Nash acknowledged she had put it on the wrong agenda. She noticed it today and removed it.

**Adjournment:**

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

**All voted in favor, motion passed.** The meeting adjourned at 7:46 p.m.

**Next Meeting: August 8, 2017 @ 7:00 pm**

**Minutes approved by majority vote of the Board on:**

\_\_\_\_\_  
**Stanley Brothers, Chairman**

\_\_\_\_\_  
**Date**