

# OSSIPEE ZONING BOARD

## Meeting Minutes

September 12, 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 7:04 p.m.

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

### **Meeting Minutes:**

Review and Approve ZBA Meeting Minutes from August 8, 2017.

Board Discussion: Rines noted one typographical edit on page 2, #3.

A **Motion** by Rines to approve the August 8, 2017 meeting minutes as amended. Wurster seconded. No further discussion. A unanimous vote was taken.

### **Financial:**

- Budget & Revenue Reports: August 2017 was reviewed by the Board.
- 2018 Budget Review Schedule: was noted and Brothers asked for budget review to be added to October's agenda.

### **New Business:**

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

- **Case # 17-6-Variance:** Dennis Belliveau, 18 Stoneview Rd. Tax Map: 272 Lot: 040 has applied for a Variance from Article 34.1 (c) Residential Uses for a Multi-family dwelling and Article 4.1 General Provisions – Sanitary Protection of the Ossipee Zoning Ordinance to increase the number of dwelling units to more than 2 family home (multi-family) by adding a 3<sup>rd</sup> apartment.
  - **Waiver request for drawings to be on 8 ½ x 11 inch size paper.**

Mr. Belliveau was present to present his case. Brothers asked how many units are in the building now. Mr. Belliveau replied there are currently three (3) apartments including a basement apartment. Mr. Belliveau commented he went have the property appraised and was informed the property is an undocumented three-family home. So he's here to make it right.

Rines noted the house originally was a mobile home and asked Mr. Belliveau if he had obtained a building permit for what the house is now. Mr. Belliveau replied he did get a building permit; he cut the trees down and used the lumber to build the house that's there now. The building permit was for a single family home but received permission from former Zoning Officer, Dave Senecal to convert the basement into an apartment.

Rines noted that Mr. Belliveau did receive approval for a new septic system but according to Mr. Belliveau, he was not required to install the new system unless the old one fails. Rines noted the original system is working off a two-bedroom system. The property currently has 8 bedrooms.

Rines informed Mr. Belliveau that because of the soil type he has, it falls into the Water Resource Protection District, so any sewage disposal **greater** than 600 gallons per day requires a Special Use Permit.

***At this, time 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.***

***Mr. Belliveau agreed to continue with the case.***

Rines informed Mr. Belliveau, if the ZBA approves his request for a variance. He will also need to apply for a Site Plan Review with the Planning Board for having a multi-family home and will need a Special Use Permit for sewage disposal **greater** than 600 gallons per day.

Brothers asked if this is a change of use. Rines commented the rural district can only accept a duplex. If you want to have a multi-family home of 3 or more and meet zoning requirements for water and sewage, you have to apply for a Site Plan Review because anything more than a duplex is considered Commercial property. Freeman questioned if fire codes would apply and if a sprinkler system would be required. McConarty stated anything over 4 family or 12,000 square feet a sprinkler system is required.

Rines noted this application is submitted after the fact, and again the Board is to review these applications as though the structures don't exist. He notes according to the Zoning Ordinances, multi-family is not allowed in this zoning district. One criteria in part states, "**would result in an unnecessary hardship.**" Rines drove the entire development and **observe that** the homes are mostly modest, single-family homes. So, he cannot see where the hardship in the land would extend from.

Brothers asked if there is any covenant or restrictions with being in the Brown's Ridge Association. Mr. Belliveau replied, not that he knows of.

After discussion, the Board stated if they were to approve the application there would be conditions applied to include. A letter from the Fire Chief, a letter from the Association, a Site Plan Review, a Special Use Permit, and possibly a new septic system to accommodate the 8 bedrooms.

Wurster inquired if there are egress doors. Mr. Belliveau replied there are **two**, 36 inch egress doors in each apartment unit.

Brothers opened for Public Input: With no public comments, Brothers read through Mr. Belliveau's response to the five criteria's.

A **Motion** by Rines to deny the variance because he believes the five criteria's have not been met. Brothers seconded.

Discussion: Rines addressed each criteria he felt was not met:

Rines noted **criteria #5** is the hardest to answer because the hardship lies within the land, not the hardship to the tenants or a hardship to Mr. Belliveau financially. It has to be something that distinguishes your land different from the other lands in the neighborhood. Rines continued that after his site visit and driving around the neighborhood, he does not see anything different from Mr. Belliveau's property from the rest of the neighborhood except how Mr. Belliveau's property is the most different from the rest of the neighborhood.

Rines stated because Mr. Belliveau's property is so different from the rest of the neighborhood, it does change the character of the neighborhood, thus failing **criteria #1**.

**Criteria #2 – the spirit of the ordinance is observed**, the purpose in Article I of the Zoning Ordinance in part says, "To prevent overcrowding of land and undue concentrations of population..." the Town voted to

only allow duplexes to prevent overcrowding, so I don't feel the spirit of the ordinance is observed.

**Criteria #3 - Substantial justice is done because,** is if we deny the application it would be more harmful to the applicant than the public. But feels it would be more beneficial to the applicant because if approved it would make the property more valuable by having a 3 unit building verses the single family homes in the neighborhood.

Belliveau requested to interject. Rines requested to finish his rationale for motioning to deny the application. Rines continued stating he does not believe any of the criteria's have been met. By coming in after the fact and based on the information submitted there's not enough information to know how complicit the Town was in this process and how much Mr. Belliveau did without permits and it just evolved where he should have been coming in for permits all along. Mr. Belliveau stated there was a permit for the basement. Mr. Belliveau and Rines discussed the potential loss of value to the property and the possibility of having to evict the tenants in the basement apartment, which Mr. Belliveau does not want to do.

Freeman agreed with Rines **and did not** condone Mr. Belliveau putting apartments in without permits or talking with anyone from the Town of his intent and now he wants to put another apartment in.

Brothers stated he does not see the hardship that distinguishes this property from the rest of the neighborhood based on his site visit and review of the neighborhood. Brothers also agrees with Rines rationale on criteria #1 & #2 and does not agree with Mr. Belliveau's analysis of depreciated property value.

Wurster is **understands** for Mr. Belliveau's concern with his basement tenant, **but** while hating having to set a precedent, feels setting a precedent of taking a rural zoned area and making it commercial property with a 3 family unit apartment sets the wrong idea for the future in this association.

Brothers informed the Board members a vote of Yes - means to Deny the application, and a vote of No – means to approve the application.

Criteria Vote:

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

Rines – Yes to deny Freeman – Yes to deny Wurster – Yes to deny Brothers – Yes to deny  
Rines believes it will be contrary to the public's interest.

**2. The spirit of the ordinance is observed because:**

Rines – Yes to deny Freeman – Yes to deny Wurster – Yes to deny Brothers – Yes to deny  
Rines commented the spirit of the ordinance is not observed because the zoning is to prevent overcrowding, and is contrary to the use and the spirit of the ordinance.

**3. Substantial justice is done because:**

Rines – Yes to deny Freeman – Yes to deny Wurster – Yes to deny Brothers – Yes to deny  
Rines stated he does not see where substantial justice is done.

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

Rines – Yes to deny Freeman – Yes to deny Wurster – Yes to deny Brothers – Yes to deny  
Rines thinks if the Board is supposed to review this application as though it does not exist, increasing the number of families **may** diminish surrounding property values.

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 to deny    Freeman – Yes to deny    Wurster – Yes to deny    Brothers – Yes to deny

Rines states, he does not think there are any distinguishing characteristics of this property that distinguishes it from other similarly zoning properties.

- B. Owing to the special conditions, set forth above, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it because:**

Rines – Yes to deny    Freeman – Yes to deny    Wurster – Yes to deny    Brothers – Yes to deny

Rines commented he thinks there are other uses such as a two-family for it, and a variance would not be needed.

The **Motion for Variance has been denied.**

Chairman Brothers noted per RSA 676:5, 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.

Mr. Belliveau was given his options for *appealing* the ZBA’s decision and instructed to call the Board secretary the following morning.

- **Case # 17-7-Variance:** CC properties, LLC c/o Harold Rogers, 403 Route 25 East. Tax Map: 068 Lot: 003, property owner is Wood Booger Trust C/o Lois-Anne & Kenneth Button (Trustees) is seeking a variance to build a storage building for personal use with no septic.

*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.*

Harold Rogers was present to present his plan to potentially buy a parcel of property at 403 Route 25 - East, to build a storage building for personal use with no septic.

The Board members review the application and plans. Rines noted the area is zoned Rural. But according to Rogers and Carol Gartland (who represents Mr. Button); the McKinnon property received a variance for a commercial use. The lot at 403 Route 25 shares the same driveway as Mr. Button, who has consented to the use for Mr. Rogers.

Rines noted according to zoning you cannot have an accessory dwelling without a primary dwelling on the property. Rogers stated he does not want to put a small apartment and have to deal with getting a septic system. He just wants a garage type building to store his toys (i.e. Boat, 4-wheeler, etc.)

But the Board acknowledges the location of this property is not conducive to residential housing because there’s a wood chipping plant, loud trucks, store and restaurant and all the traffic up and down Route 25. Rogers indicated he could submit drawings for the **Morton** style building he’s wanting to build.

Rines noted the applicant did not complete the application by not answering criteria #5.

Mr. Rogers requested if he could submit a response to #5 at this time.

A **Motion** by Brothers to table the discussion until after the next *application* is presented. Rines seconded. No discussion. A unanimous vote was taken.

Brothers read the next case:

- **Case # 17-8-Variance:** Elia & Maria Vanechanos, 40 Long Sands Road. Tax Map: 67 Lot: 22 has applied for a variance from Article 6.4.2 Side & Rear Setbacks from the Ossipee Zoning Ordinance to raze the existing home & garage and rebuild in a different location.

Jim Rines requested to step down from the Board in order to present the next case for his client. Brothers granted the request.

***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.***

Rines requested to call his client to confirm his decision to continue, knowing there is only a three member Board. Per Rines, his client wishes to continue. Rines presented a letter from an abutter in favor of the project and revised plans.

Jim Rines from White Mtn. Survey & Engineering presented plans to raze the existing non-conforming home & garage and rebuild a more conforming the house and deck to conform to Shoreland Protection, Flood plain Ordinance, setback regulations and installation of a new sewage system. Rines read through and explained the 5 - criteria's to the Board.

Discussion opened to Public Input. No public input.

A **Motion** by Brothers to approve the variance from Article 6.4.2 Side & Rear Setbacks from the Ossipee Zoning Ordinance to raze the existing home & garage and rebuild in a different location. With the south side of the garage, propose setback to be 14.77 ft. and the southeasterly setback to be 13.21 ft. Freeman seconded.

Open for Discussion: Steve McConarty asked if the foundation corners would be pinned. After discussion, the Board and Rines agreed to have that as a condition.

A **Motion** by Brothers to add the condition to have the building foundation corners pinned to his motion. Freeman seconded. No further discussion. A unanimous vote was taken.

Brothers informed the Board members a vote of Yes – is a vote in favor and a vote of No – is a vote to deny the application.

Criteria Vote:

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

Freeman – Yes Wurster – Yes Brothers – Yes

Wurster stated to add that the abutter agreed to the proposal.

**2. The spirit of the ordinance is observed because:**

Freeman – Yes Wurster – Yes Brothers – Yes

Wurster and Brothers agreed with the improvements to the septic and the stone wall.

**3. Substantial justice is done because:**

Freeman – Yes Wurster – Yes Brothers – Yes

Wurster commented that he approves with the following of the Shoreline Water quality.

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

Freeman – Yes Wurster – Yes Brothers – 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:**

Freeman – Yes Wurster – Yes Brothers – Yes

Brothers stated pre-zoning has created hardship on a lot of these properties.

**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:**

Freeman – Yes Wurster – Yes Brothers – Yes

**Aii. The proposed use is a reasonable one because:**

Freeman – Yes Wurster – Yes Brothers – Yes

The **Motion** was **GRANTED** for Variance with conditions to have the building corners pinned and to meet all Federal, State, and Local Regulations. Chairman Brothers noted per RSA 676:5, 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.

Rines requested to be recognized as a member of the Board.

Brothers noted Mr. Rines be recognized has come back upon the Board as a voting member.

- **Case # 17-7-Variance:** [Continued](#): CC properties, LLC c/o Harold Rogers, 403 Route 25 East. Tax Map: 068 Lot: 003, property owner is Wood Booger Trust C/o Lois-Anne & Kenneth Button (Trustees) is seeking a variance to build a storage building for personal use with no septic.

Harold Rogers and Carol Gartland submitted their response to criteria #5, which Brothers read aloud to the Board.

A **Motion** by Rines to approve the variance for **Case # 17-7-Variance:** CC properties, LLC c/o Harold Rogers, 403 Route 25 East. Tax Map: 068 Lot: 003, property owner is Wood Booger Trust C/o Lois-Anne & Kenneth Button (Trustees) to build a storage building for personal use with no septic. Freeman seconded.

Discussion:

**Criteria #1** - Rines explained his rationale by using the NHEOP handbook in order for a variance to be granted, it must unduly and to a market degree, it must violate the basic zoning and objective of the ordinance and determine if it alters the basic character of the neighborhood or threaten the basic health, safety or general welfare of the public. If that's what the court use for a criteria, Rines does not believe putting a storage building on this lot will not alter the neighborhood. The abutter has granted use of the driveway. The area is already commercially oriented with high traffic.

Freeman and Brothers both agreed with Rines.

**Criteria #2:** Rines does not believe this would violate the spirit of the ordinance.

**Criteria #3:** Rines there is no substantial justice and will benefit the property owner, property purchaser and seller.

**Criteria #4:** Rines noted the value of the surrounding would not be diminished. Brothers agreed.

Criteria #5: Brothers read the unnecessary hardship based on Special conditions listed in “B”.

Criteria #B: Rines noted the Special conditions of being 15 ft. **below** the highway **elevation**, noise levels of trucks on Route 25, commercial properties surrounding the area. Wurster commented it’s a strange situation where the ordinance says you can’t do it but the area suggest you can. Wurster concluded by quoting what Charles Dickens said in Oliver Twist, “Sometimes the **Law’s** an Ass and you need to ignore it and do the right thing.”

Brothers informed the Board members a vote of Yes – is a vote in favor and a vote of No – is a vote to deny the application.

Criteria Vote:

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

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

Rines answered yes for the reasons stated earlier.

**2. The spirit of the ordinance is observed because:**

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

Rines answered yes for the reasons stated earlier.

**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

**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

Rines noted they supplemented their application and noted 6 items of reasoning, as stated earlier.

**B. Owing to the special conditions, set forth above, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it because:**

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

Rines stated based on the 6 Special Conditions, he would agree.

The **Motion** is **GRANTED** for a Variance and the applicant must meet all Federal, State, and Local Regulations. Chairman Brothers noted (per RSA 676:5), 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. Mr. Rogers is to meet with McConarty in about two weeks.

**Old Business:**

- Revisions to the Equitable Waiver of Dimensional Requirements form were reviewed by the Board as submitted by Rines noted changes to be in compliance with current RSA regulations and comparable to the NH Energy and Office Planning template. Discussion took place over adding

Licensed Land Surveyor to item #4 on the checklist.

A **Motion** by Brothers to add “Licensed Land Surveyor” to item #4 on the checklist to state, ***“An As - Built Survey of the structure and property will be required by a Licensed Land Surveyor.”*** Freeman seconded. Brothers, Wurster and Freeman voted in favor. Rines abstained, as he is a licensed land surveyor. **Motion passed.**

A **Motion** by Brothers to add RSA 674:33 (a) to paragraph 2 stating, ***“The Board strongly recommends that you become familiar with the Zoning Ordinances and RSA 674:33 (a). For relief to be legally granted, you must show that your proposed use meets the following conditions:”*** Wurster seconded. No further discussion. A unanimous vote was taken.

A **Motion** by Rines to approve the Equitable Waiver of Dimensional Requirements form as amended. Brothers seconded. No further discussion. A unanimous vote was taken.

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

No other business came before the Board.

**Adjournment:**

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

**All voted in favor, motion passed.** The meeting adjourned at 9:25 p.m.

**Next Meeting: October 10, 2017 @ 7:00 pm**

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

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**Stanley Brothers, Chairman**

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**Date**

Or

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**Ralph Wurster, Vice Chairman**  
*(In the absence of the Chairman)*

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**Date**