

OSSIPEE ZONING BOARD
Public Hearing & Meeting Minutes
January 09, 2018

Minutes were recorded by and summarized 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, Jim Rines, Bob Freeman (Selectmen's Rep), Ed MacDonald, Danny Fischbein, and Steve McConarty. **Absent:** Ski Kwiatkowski.

Meeting Minutes:

The Board read and reviewed the ZBA Meeting Minutes of December 14, 2017.

A **Motion** by Rines to accept the meeting minutes of December 14, 2017. MacDonald seconded. No discussion. All voted in favor.

Financial:

- Budget Reports: December 2017 – the Board reviewed.
- Town Reports: The Board noted the reports are due by January 26, 2018

Jim Rines recused himself from the following case because he is an abutter to the property being presented. Brothers raised alternate D. Fischbein to voting status in place of Jim Rines.

New Business:

PUBLIC HEARING

- **Case #17-12-V: 56 Main Street Ossipee, LLC**, of 56 Main Street. Tax Map: 92 Lot: 122 has applied for a Variance from Article XXXIV, Section Table – 1 Chart of Uses to open a Sober Living Facility/Transition Home called Ossipee Granite Recovery/Transition House.

David Lefevre, Esq., Eric Spofford, CEO for Ossipee Granite Recovery, LLC and Curt Maddon, COO of Ossipee Granite Recovery, LLC, were here to present their case. Mr. Lefevre noted he toured the place and noted it's a large building with a lot of room inside. Lefevre referenced and summarized from the material submitted. Lefevre noted this is a Sober Living/Transition Facility. He noted the occupants are graduates of Green Mountain Addiction Center, which is an inpatient facility and will be living at this location for 4- 6 weeks. Lefevre emphasized, "These people are in recovery." They are not violent criminals, arsonists, sex offenders, or drug dealers. They are people struggling with addiction. The facility will operate as follows:

1. Transitional Living for 4 – 6 weeks
2. Off-site treatments, group therapy and 12 – step programs on a daily basis
3. Hours of operation is staffed 24/7
4. Zero tolerance for use of drugs and alcohol
5. Violators are removed and transported to back to another inpatient facility or to their home.
6. Residents are not allowed to have a vehicle.

Lefevre noted since the Town of Ossipee does not have a zoning ordinance specific to this type of facility. You first have to ask, “What is allowed as a matter of right?” Secondly, the Town of Ossipee under Federal Law in accordance with the Fair Housing Amendment Act, 42 U.S.C. §§ 3601-3619 which in part states, “prohibits discrimination in housing on the basis of disability,”

Mr. Lefevre stated a municipality cannot use the zoning ordinance to ultimately discriminate against this population while they’re in recovery by not allowing them to live there. He claims the Town of Ossipee inadvertently through the zoning ordinance discriminates against people in recovery because sober living facilities are not allowed anywhere in town. Because the zoning ordinance prohibits this type of facility, effectively discriminates against these people. Spofford noted under Federal Law, the Town of Ossipee cannot show “Failure to provide reasonable accommodations or modifications for a person with a disability.”

Brothers questioned what the federal law states, or who, or how are these people or a person with addiction is classified as disabled. Lefevre explained they “qualify handicapped under the law,” because they are suffering from a recognized disability. But they have to be in recovery to qualify as disabled.

Mr. Lefevre read through the (5) criteria’s.

Brothers called for Board discussion, which addressed the following:

1. Number of residents? Response: 16 – 20 residents, maximum.
2. Number of Staff and do they reside there? Response: Staffing is 24/7, 1 -2 overnight staff, no staff reside there.
3. Will the resident’s be all male or all female or coed? Response: Will be either all male or all female – NOT coed and all residents will be over the age of 18 years old.
4. Does the Federal Government mandate the Town has to facilitate a recovery center in that location? Lefevre replied the federal law states; A Town cannot use its zoning ordinances to discriminate against people with disabilities.
5. Is a license required? Response: No, because it’s only residential living.
6. Are these people Court Ordered or Voluntary? Response: Not Court Ordered. All candidates are selected, voluntary and must have completed their 30 day inpatient requirements.
7. What is the success rate? Response: Spofford replied, No straight answer because everyone’s success rate is different.
8. Random drug / alcohol testing? Response: Randomly, periodically, or suspiciously.
9. Number *of* bedrooms to accommodate 16 – 20 residents? Response: Residents will be double occupancy with a minimum of 2 to a room.

Wurster addressed his concerns on the population density, licensing and would like more information on their overall business plan.

Brothers *opened hearing to* public input.

Jim Rines asked to speak as an abutter. Rines spoke of being a life-long resident of Ossipee, 22 years on the Governor Wentworth School Board, and addressed the location of the proposed facility as being adjacent to

a K-6 Elementary School and its playground as one of the most unsuitable location for this proposed facility. Noting there are other more suitable locations than next to the school.

Rines presented a packet of information and read a (4) page summation addressing each of the (5) criteria's. But he addressed the argument of former use of this location. *Citing*, "the residents were head-trauma individuals resulting from accidents and not a result of *self-induced* addictions. They were residents who lived in the dwelling for years and were part of the community.

The former use argument should be ignored because it has not existed for far greater than the one year limitation contained in *Article XXIII*, Section 23.2 entitled Non-Conforming Uses. Section 23.2.10 entitled Discontinued Use reads:

23.2.1. DISCONTINUED USE: If a non-conforming use is discontinued for one (1) year or superseded by a conforming use, it shall thereafter conform to the requirements of the zone and the non-conforming use may not be resumed.

Therefore, all references to the prior use are without merit since the former use has long been abandoned and discontinued."

Rines proceeded to address the (5) criteria's that must be met in order to grant a variance.

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

Rines stated in Article I, the Purpose of the Zoning Ordinance is in part "... encourage the most appropriate use of the land, to stabilize the value of land and buildings..." and submitted an opinion from both a realtor and a certified appraiser that both indicate property value will be decreased. Thus destabilizing the land values in violation of the basic zoning objective.

2. The spirit of the ordinance is observed because:

Rines noted, "One test for this criterion as the applicant points out is to determine whether the variance will alter the essential character of the neighborhood and whether it will threaten the public health, safety, or welfare." Rines noted this application will clearly alter the essential character of the neighborhood as it exist today, decrease property values, threaten the welfare of the abutting properties, and prevent families from moving into Ossipee.

3. Substantial justice is done because:

Rines notes, the applicant points out, this test is best answered by determining whether the loss to the individual is greater than the loss to the general public. Through the perception of an incompatible use directly abutting an elementary school playground and the documented loss of property values, is a dramatically greater loss to the general public than the loss the individual in this instance.

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

Rines noted, the evidence from two third party professionals should carry greater weight than the conclusionary statement made by the application with no supporting documentation.

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:

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:

Aii. The proposed use is a reasonable one because:

Rines noted, the applicant chose not to address this portion of the ordinance because there is no “special condition” of this property that distinguishes it from other properties in the area.

Instead, the applicant submits veiled threats regarding the Federal Fair Housing Amendments Act and the lack of opportunity for this because it is not specifically listed. According to the listing sheet from Maxfield Real Estate and Caldwell Banker, the actual sale price of this property was \$250,000; while the listing price was \$499,000 for this property. Rines commented, the deep discount reflects the fact that there was a question of whether this use could be obtained. I believe that this was a poor business decision, but one that can be recovered to some degree by resale of the property.

Rines concluded stating he believes he has clearly demonstrated the applicant has failed to satisfy any of the criteria needed to obtain the requested variance and request the Board to deny this variance.

Lefevre requested the Board to ask Rines to clarify his concerns of being next to the school. What exactly is the perceived safety or threat to be with the people who will reside here?

Rines noted there are concerns of recidivism. As these people struggle with addiction, there are going to be relapses or recidivism. When there is recidivism, they are moved off-site. Regardless of the risk, there is an increased risk by this use being adjacent to a school, than exist today.

Principal Elizabeth Hertzfeld of Central Ossipee Elementary School noted she has very mixed feelings because she knows these treatment centers are needed. She clearly wanted to state that her personal feelings are that 1. Their answers are very evasive to simple question of how many relapses happen. She commented that she wants answers to know that *she* feels safe and when the students go out, they’re going to be safe.

Several resident’s raised concerns with supervision in-doors and out-doors, number of staff on duty, vetting process of staff, resident’s with habitual rule breaking, visitation, cellphone access, and safety issues.

Spofford stated these people are highly motivated to maintain sobriety. They are in treatment (6) days a week with Sunday’s for out-door activities and visitations. These are good people from mostly good families. They are hand selected for this program. They are not criminals, rapists, pedophile’s etc...

Carol Holland questioned the number of resident’s per room to house 20 residents, when the tax card classifies the property as a (6) bedroom home. Spofford claims there could easily be (9) rooms and it will be double occupancy.

Marsha *Ostroff* questioned what criteria is being used for hand selection of the residents and the vetting process for visitors. She shared that today the daughter of a client died of an accidental over-dose while in a treatment facility because a “friend” snuck drugs to her. Marsha commented, she too has worked in facilities and if people want to get out they’ll get out and how do they handle rule-breaking.

Spofford replied habitual rule breakers would be asked to leave. Any drug and/or alcohol use is grounds for immediate removal because they have a zero tolerance policy. Visitation is for immediate family only. They are vetted through the clinical team. In order to visit, they would have had to visit while the client was an in-patient. They go through a program prior to visiting and once on property there is an orientation program, they go through prior to being approved for a visit. All visitation takes place a Green Mountain facility.

Spofford stated a client, who would be appropriate for this program is someone who is highly motivated, works very hard in the programs, *and is* recommended by the clinical staff. Dale McConkey questioned cellphone access and will there be a roadside sign advertising the facility. Spofford stated the clients have no access to phones and there will not be a sign.

Rines final comment is he believes they do not meet the (5) criteria’s.

Brothers called for a five minute recess at 8:24PM.

Brothers reconvened the meeting/hearing at 8:28PM. Brothers closed Public Input.

Brothers called on the Board for a motion.

A **Motion** by Fischbein to accept the request for a variance as presented. Brothers seconded the motion for discussion only.

Board decided to address and vote on each criteria. Brothers instructed if you're in favor of the application – vote YES, if you're not in favor of the application would be a NO vote.

Brothers read each criteria;

Criteria Vote:

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

Fischbein – Yes MacDonald – Yes Freeman – No Wurster – No Brothers – No

Wurster commented not because he feels it's not possible but the evidence presented did not change his *misgivings that he needed* a more detailed business plan of how this is going to work.

Brothers voted no, based on the material submitted and evidence presented.

2. The spirit of the ordinance is observed because:

Fischbein – Yes MacDonald – Yes Freeman – No Wurster – No Brothers – No

Freeman believes it clearly alters the character of the neighborhood.

Wurster believes it could be possible but the evidence presented did not change his misgiving of needing more detailed plan of operation.

Brothers agrees with Wurster's statement as well of there being abutters against the proposal.

3. Substantial justice is done because:

Fischbein – Yes MacDonald – Yes Freeman – No Wurster – No Brothers – No

Fischbein voted yes because of discrimination.

MacDonald agrees with Fischbein.

Freeman because of loss of property values is dramatically greater than the loss to the general - public.

Brothers agrees with *Rines'* statement the loss to the general - public through the *perception of incompatible* use by directly abutting an Elementary School playground and the documented loss of property values.

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

Fischbein – Yes MacDonald – Yes Freeman – No Wurster – No Brothers – No

Fischbein believes it was not the people moving in that brought the property value down, it was the building itself that brought the cost down for the property.

MacDonald because there are going to be improvements made to the property.

Freeman because it definitely decreases the value of the surrounding properties.

Wurster because property values are based upon the perception of the buyer, and sadly, believes the property values will be diminished.

Brothers because he believes the same as Wurster stated. It's probably not the house that will decrease the value but the perception of having this facility located there that will decrease property values around there

and diminish the ability to buy or sell in the future.

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:

Fischbein – Yes MacDonald – Yes Freeman – No Wurster – No Brothers – No

Fischbein because of the Fair Housing Amendment Act.

Freeman because there are no Special Conditions that distinguishes it from other properties.

Wurster because if you look at the history of the property and the many other uses it has had that have been in accordance with the Town of Ossipee Zoning Ordinances.

Brothers because there are no Special Conditions that distinguishes it from other properties in the area.

Brothers asked if they answered (A) or (B).

Lefevre replied (A)

Ai. Owing to the special conditions of the property, set forth above, that distinguishes it from other properties in the area:

Lefevre interjected stating the Board should really address (A) and (B). Because (B) contemplates the situation where the (5) criteria’s are not met but it’s still appropriate to grant the variance.

Point of Order: from Jim Rines, noted the Chairman had closed the Public Hearing and does not believe the Board should be taking any direction from the applicant or abutters and should not address both sections of (A) and (B) if they were not applied for. Chairman Brothers agreed.

The Board reviewed the application to verify whether section (A) or (B) was completed. The Board noted neither section was completed.

Brothers informed the applicant based on the criteria’s voted upon the **Motion for Variance has been denied by a majority vote of 3 - 2.**

Chairman Brothers noted per RSA 677:2, 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.

- **Case #17-3-SE:** Michael & Dana Cousins c/o Dale McConkey, Representing Agent, of 48 Long Sands Rd. Tax Map: 67 Lot: 18 & 6 has applied for a Special Exception from Article 23.3.2 of the Ossipee Zoning Ordinance for the expansion of a non-conforming structure within the 25 foot setback requirements.

Jim Rines rejoined the Board as a voting member. Brothers moved Fischbein back to a non-voting member for the remainder of the meeting.

Dale McConkey presented the case for a special exception on behalf of his client the Cousin’s. Jim requested clarification of setback requirements from water’s edge when classified as front of the house and roadside would be back setback.

D. McConkey read through the five criteria’s.

Steve McConarty noted there was a change on the denial letter issued by the Zoning Enforcement Officer from requesting a variance to a special exception. Once the Board discussed the situation and clarified which application, process is needed. The Board agreed a variance is needed for the side setback on the garage.

A **Motion** by Rines to continue **Case #17-3-SE: Michael & Dana Cousins** until February 13, 2018 thus giving time for submittal of a variance application and notifying the abutters. Brothers seconded the motion. No further discussion. A unanimous vote was taken.

- **Case # 17-13-V:** Timothy & Deborah Regan c/o Mark McConkey, Representing Agent for 8 Frost Rd. Tax Map: 66 Lot: 53 has applied for a Variance from Article 6.4.2 (side setback) of the Ossipee Zoning Ordinance to demo the existing cottage and replace the same size building in a more compliant location.

Mark McConkey presented the case, as agent for the Regan's to demo the existing cottage and replace the same size building in a more compliant location, thus meeting all setback except the left side setback. Per NHDES and Shoreland Protection, the structure had to be moved back to the 50 foot water's edge requirement.

Mark McConkey read through the five criteria's.

Brothers called for Board discussion. Freeman questioned if there is one septic system for both places. McConkey replied yes but they have an existing septic system there. But in 2014, a new design was done under the pretense the existing system had failed. It was determined there was a faulty pump and in-door fixtures. These were replaced and the new septic design was not needed. It will be represented to NHDES for future use.

No public input.

Brothers called for a motion.

A **Motion** by Freeman to approve the variance as submitted for **Case # 17-13-V: Timothy & Deborah Regan** with conditions that all Federal, State and Local Regulations are followed. Rines seconded.

McConarty asked if another condition could apply that, all corners be pinned since this is waterfront property. The Board agreed and Wurster asked to amend the motion to include all the corners are pinned. Brothers seconded.

Freeman amended the **Motion** to approve the variance as submitted for **Case # 17-13-V: Timothy & Deborah Regan** with conditions that all corners are pinned and all Federal, State and Local Regulations are followed. Rines seconded.

Criteria Vote:

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

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

2. The spirit of the ordinance is observed because:

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

3. Substantial justice is done because:

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

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

MacDonald – Yes 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:

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

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:

Aii. The proposed use is a reasonable one because:

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

No further discussion. A unanimous vote was taken. The **Motion for Variance was granted.**

Chairman Brothers noted per RSA 677:2, 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: None

Any Other Business Which May Come Before This Meeting

Adjournment: A Motion by Rines to adjourn the meeting. Brothers seconded. No discussion.

All voted in favor, motion passed. The meeting adjourned at 9:33 p.m.

Next Meeting: February 13, 2018 @ 7:00 pm

Minutes approved by majority vote of the Board on:

_____	_____
Stanley Brothers, Chairman	Date
Or	
_____	_____
Ralph Wurster, Vice Chairman	Date
<i>(In the absence of the Chairman)</i>	