

OSSIPEE ZONING BOARD

Meeting Minutes

February 13, 2018

Minutes were recorded by and summarized by Laura Nash, Board Secretary.
Revisions of these minutes are noted in ***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, Ed MacDonald, Danny Fischbein, and Steve McConarty. **Absent are:** Bob Freeman and Ski Kwiatkowski.

Brothers raised alternate D. Fischbein to voting status in place of Bob Freeman.

Attendees: Tim Otterbach

Meeting Minutes:

The Board read and reviewed the ZBA Meeting Minutes of January 9, 2018. Wurster submitted several edits on pages 3, 4, and 5 to the minutes of 01/09/2018. Rines submitted edits just prior to the meeting.

A **Motion** by Wurster to accept the meeting minutes as amended of January 9, 2018. Rines seconded. No discussion. All voted in favor.

Financial:

- Budget Reports: 2017 Year-End Report
- Sager & Smith, PLLC: invoice for General Matters in the amount of \$26.25

A **Motion** by Brothers to authorize payment for invoice received from Sager & Smith, PLLC for General Matters in the amount of \$26.25. Wurster seconded. No discussion. All voted in favor.

New Business:

- **Case #18-1-Motion for Rehearing: 56 Main Street Ossipee, LLC**, of 56 Main Street. Tax Map: 92 Lot: 122 a Motion for Rehearing was received 02/06/2018 of a ZBA decision for Variance application by Ossipee Granit Recovery, LLC to open a Sober Living Facility/Transition Home called Ossipee Granite Recovery/Transition House.

Jim Rines requested to recuse himself from this case, because he is an abutter to the property being presented. Chairman Brothers agreed to his recusal.

The remaining Board members reviewed the information submitted by the applicant's attorney.

Chairman Brothers noted there are four remaining members on the Board. They do have a quorum to proceed.

A **Motion** by Wurster to grant the applicant's request for a rehearing and the meeting be scheduled for the March 13, 2018 ZBA Meeting. Brothers seconded the motion for discussion purposes.

Board discussion: Wurster ***explained*** the two reasons for granting a rehearing:

1. Business Plan – ***I*** was searching for, wanted to discuss the letter of intent, and was not finding it. So on several occasions I referred to a business plan and ultimately, it seemed to have confused the applicant because he (Spofford) was not responding ***as*** expected. Resulting in me voting the way I did.

2. Wurster explained based on Attorney Lefevre comments and need for the ZBA to “show cause and to give reasons.” After reading the attorney’s comments, Wurster referenced chapter III, page 16 of the NH Strategic Initiative ZBA Handbook, which states in part,

“In other words, if a motion to grant a variance fails by a 2 in favor, 3 opposed margin that does not mean that the variance is automatically disapproved. In this case, one of the three members who disapproved the motion should now propose their own new motion to disapprove the application stating the reasons for denial. The board should then vote on that motion which would likely pass, 3-2. This is especially important when there are fewer than 5 board members present since motions could result in a tie.”

Wurster agrees, the ZBA should provide clear and concise reasons for disapproving an application and not leave it up to the applicant to figure it out.

Fischbein agreed with Wurster’s reasoning. The Board should have explained the *reasons* better.

Brothers asked Attorney Sager what is FHAA – Fair Housing Amendment Act. Attorney Sager explained the Board does not have *to* agree with each item in the motion for rehearing. But if the Board agrees with one argument, it’s sufficient to grant a rehearing. Attorney Sager also suggested if the Board grants the rehearing, they should try to seat the same Board members as the first hearing. Discussion ensued over the scheduled date of the next meeting being March 13th, which is Election Day and some members may be busy with voting results. Concerns were raised about meeting the 30 day requirement for holding the rehearing. Attorney Sager commented the ZBA handbook states,

“Once the board decides to grant a rehearing, they must set the date for the new hearing. It is recommended that the rehearing be held within 30 days of the decision to grant the rehearing provided notice fees and an updated abutters list have been received from the party requesting the rehearing and that the Rules of Procedure outline the rehearing process. (See the draft Rules of Procedure in Appendix A.)”

Attorney Sager suggested having the meeting on a different night and the motion does not need to specify a rehearing date. The date can be decided after a vote to grant a rehearing.

Brothers asked Wurster if he would amend his motion. Wurster agreed given the schedule difficulties.

A **Motion** by Wurster to grant the applicant’s request for a rehearing. Fischbein seconded. No further discussion.

Chairman Brothers called for roll call vote of – Yes, in favor to grant a motion for rehearing or No, to deny request for rehearing:

Fischbein – Yes MacDonald – Yes Wurster – Yes Brothers - Yes

Motion passes 4 – 0.

Discussion moved towards scheduling a date for the Rehearing.

A **Motion** by Brothers to reschedule the March 13th ZBA meeting to March 15th as the regularly scheduled ZBA meeting. Wurster seconded. No discussion.

Fischbein, MacDonald, Wurster and Brothers vote in favor. No votes in opposition.

- **Case # 18-2-V:** Stephen Ingham Revocable Trust, c/o White Mountain Survey & Engineering, Inc., Representing Agent for 54 Ridge Road. Tax Map: 35 Lot: 10 has applied for a Variance from Article 6.4.2 (side setback) of the Ossipee Zoning Ordinance to construct a new 3 bedroom single family home on existing waterfront lot.

Jim Rines presented the case for Stephen Ingham Revocable Trust to construct a new three bedroom single family home on an existing waterfront lot. The home will be 12.2 feet from the westerly boundary line and 22.7 feet from the easterly boundary line.

Rines read through the five criteria's, they will have to comply with Shoreland Protection Act, and will install a new State approve sewerage disposal system to help ensure the public health, safety, and welfare of the public.

Discussion concerning the location of the proposed well down by the water and location to the neighbors **well, the** silt fence with stone drip edge, need to have **foundation** corners pinned by a licensed land surveyor and change **in** use from the Highway Department for access to the driveway.

Brother closed public input.

Brothers opened Board discussion. No discussion.

A **Motion** by Brothers to grant a Variance from Article 6.4.2 (side setback), which will be 12.2 feet from the westerly boundary line and 22.7 feet from the easterly boundary line to construct a new three bedroom single family home on an existing waterfront lot with the following Conditions:

1. **Foundation** corners be pinned by a licensed land surveyor.
2. Must comply with All Federal, State and Local Regulations.

Fischbein seconded the motion.

Brothers instructed the Board if in favor of the applicant signify with a Yes vote. If not in favor of the applicant, signify with a No vote.

Vote by Criteria:

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

Fischbein – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes MacDonald – 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:**

(ai) Fischbein – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

(aai) Fischbein – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

Chairman Brothers announced the **motion passed**. The Variance has been granted with conditions and there is a 30 day appeal process of the ZBA decision, which starts tomorrow morning.

Old Business: None

Notices:

Letter received from Zoning Enforcement Officer concerning possible code violations with Ossipee Mtn. Grille, 1625 Route 16. Tax Map: 053 Lot: 005 (***attached to the minutes***)

The Board reviewed the property file and minutes from 2013 informal discussion. Questions were raised if permits were issued allowing him to build the addition. Review of prior plans and septic plans of the property ensued. Review of Zoning Ordinance for the definition of a structure to clarify the height requirement of the fence. The Board interpreted the ordinance as written:

“STRUCTURE: Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. Structures include, but are not limited to, buildings, walls, mobile homes, **fences exceeding six (6) feet in height** and bill boards. It shall not include minor installations such as mailbox, flagpole and fences or walls less than six (6) feet high. (Amended March 11, 1997)”

Board discussion ensued over the various zoning violations, and options to bring it into compliance.

A **Motion** by Rines to inform the property owner of Ossipee Mountain Grille, Tax Map: 053 Lot: 005, at 1625 Route 16 that based on the information provided to the ZBA, he needs to apply for an after the fact Variance application for his structures on the property and as part of the application he is to submit any building permits he was given for these structures. Brothers seconded.

Discussion ensued over the septic system, total number of seating, parking and outdoor event ordinance permit. Brothers wished there was a \$1,000.00 fee for “After the Fact Variance or Special Exception” applications because of the amount of work that goes into reviewing these cases. Brothers called for a vote on the motion. No further discussion. A unanimous vote was taken.

McConarty briefly addressed the situation with Bruce Rodrigues’ barn for possibly exceeding the maximum height requirement of 35 feet per zoning ordinance 4.3. The barn roughly measures 50 feet from the walk out basement to the top of the cupola. Three sides are fine but the back side exceeds the height ordinance. Discussion is tabled until the March 15th meeting.

Any Other Business Which May Come Before This Meeting

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

All voted in favor, motion passed. The meeting adjourned at 8:36 p.m.

Next Meeting: **March 15, 2018 @ 7:00 pm**

Minutes approved by majority vote of the Board on:

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