

OSSIPEE ZONING BOARD

Meeting Minutes

May 8, 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 called the meeting to order at 7:00 p.m.

Members Present by Roll Call: Stanley Brothers, Ralph Wurster, Jim Rines, Roy Barron, Danny Fischbein and Steve McConarty.

Absent Members: Ed MacDonald, and Sandra “Sam” Martin.

Jim Rines recused himself from tonight’s public hearings due to either being an abutter or the representing agent ***for*** to the ***applicants***.

Brothers raised alternate D. Fischbein to voting status in place of Ed MacDonald.

Meeting Minutes:

The Board read and reviewed the ZBA Meeting Minutes of April 10, 2018.

A **Motion** by Barron to accept the meeting minutes of April 10, 2018. Fischbein seconded. No further discussion. ***Wurster abstained***. All others voted in favor. **Motion passed**.

Financial:

- Budget Reports: 04/01/2018 – 04/30/2018 The Board reviewed the budget, no questions.

New Business:

- **Case #18-4-V: Ossipee Mountain Grille, LLC. (Continued from April 10, 2018 ZBA Mtg.)** Owner – Tony Ouellette at 1625 Route 16. Tax Map: 053 Lot: 005 is applying for a Variance to come into compliance with setback ordinances 6.4.1 and 6.4.2, which was previously approved by the Planning Board in 2013 without a Site Plan Review.

Jim Rines as the representing agent for Ossipee Mountain Grille, LLC requested an extension until September 11, 2018 ZBA meeting due to scheduling the land ***survey*** of 1625 Route 16.

A **Motion** by Brothers to grant the continuance until September 11, 2018 ZBA meeting of **Case #18-4-V: Ossipee Mountain Grille, LLC**. Owner – Tony Ouellette at 1625 Route 16. Tax Map: 053 Lot: 005, who is applying for a Variance ***from*** setbacks ***in Article VI, Section 6.4.1 and 6.4.2***. Barron seconded. No discussion. A unanimous vote was taken. **Motion passed**.

- **Case#18-3-V-Rehearing, Ossipee Granit Recovery, LLC (Continued from April 10, 2018 ZBA Mtg.)** Owner - 56 Main Street Ossipee, LLC, of 56 Main Street. Tax Map: 92 Lot: 122 is applying for a Variance Rehearing for Ossipee Granit Recovery, LLC to open a Sober Living Facility/Transition Home called Ossipee Granite Recovery/Transition House.

Attorney David Lefevre representing **Ossipee Granit Recovery, LLC** requested a continuance until such time the ZBA could exercise his client’s right to a full 5 member Board.

Discussion: After a brief discussion, the Board determine they would probably have a full Board for the June 12th meeting. Attorney Lefevre agreed to continue the case until June 12th, and if anything should change, he should be notified.

A **Motion** by Brothers to grant a continuance until June 12th for **Case#18-3-V-Rehearing, Ossipee Granit Recovery, LLC**. Barron seconded. No discussion. A unanimous vote was taken. **Motion passed.**

- **Case #17-10-V: Stephen McKenna** (Continued from March 15, 2018 ZBA Mtg.) Representing Agent, Jim Rines of White Mtn. Survey & Engineering for 16 Bearcamp River Rd. Tax Map: 27 Lot: 18 has applied for a Variance from Article 6.4.2 (*a*) side setback/Shoreland permit to keep a 16 X 28 foot Storage Building. (ZBA continued case from 12/12/2018 pending a FEMA Flood analysis.)

Jim Rines of White Mtn Survey & Engineering presented the case and flood analysis for Steve McKenna. Original variance was for setback violations. Rines demonstrated on the plans the 40 ft. water front setback and the 25 ft. side and rear setbacks. *The* storage shed is 27 ft. from the high water mark of the river and 6.4 ft. at the closest point from the side yard boundary. The flood analysis showed the shed's first floor elevation of the shed, deck is at 421.9 ft., and the floodway elevation per two different cross analysis conservatively is 419.85 ft. Thus, making the first floor elevation approximately 2 ft. above the flood elevation. The floodway obstruction calculated to 35.01 sq. ft. There were 22 trees removed flush except for 4 stumps remaining. With the removal of the 4 stumps flush to the ground, *the 22 removed trees provides a decrease of 36.71 sq. ft. of floodway obstruction that has been removed.* Rines has certified, "Since 35.07 sq. ft. is less than 36.71 sq. ft. there is no increase in floodway due to the shed and ramp construction based on cross-sectional area." This lot is similar to every other lot in the area, is also a pre-existing non-conforming lot. Rines addressed the five criteria's noting they do require a NHDES Shoreland Permit due to being on the Bearcamp River.

Board discussion concerning the tree removal violating any forestry laws and the type of material used for the ramp. Rines explained the area was altered prior to 2008, when the Shoreland Protection Act became enacted.

Public Input: Mike Kenny, Tim Otterbach and Jim Kelly all spoke in favor.

Brothers closed public input.

A **Motion** by Brothers to grant the variance to **Case #17-10-V: Stephen McKenna**, 16 Bearcamp River Rd. Tax Map: 27 Lot: 18 for a Variance from Article 6.4.2 (*a*) side setback *and 6.4.1 front setback* and Shoreland permit to keep a 16 X 28 foot Storage Building. Barron seconded.

Point of Order by Jim Rines noted it also needs relief from the 40 ft. front (river side) setback.

Brothers amended his motion to include the relief from the 40 ft. front (river side) setback with conditions the (4) 4-5 ft. tree stumps be cut flush to the ground.

A **Motion** by Brothers to grant the variance to **Case #17-10-V: Stephen McKenna**, 16 Bearcamp River Rd. Tax Map: 27 Lot: 18 for a Variance from Article 6.4.2 (A) side setback, relief from the 40 ft. front (river side) setback with conditions the (4) 4-5 ft. tree stumps be cut flush to the ground, obtain a NHDES Shoreland permit to keep a 16 X 28 foot Storage Building and all Federal, State and Local Regulations must be followed. Barron seconded.

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

Barron - Yes

Wurster – No

Brothers – Yes

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

Fischbein – Yes Barron - Yes Wurster – No Brothers – Yes

Wurster commented *on* his concerns for granting a variance “post construction” and having *residents* thinking it’s acceptable. He wants all *residents* to know that if *they* want to do something, follow the law, come see the Zoning Officer and do it the right way and not “after the fact”.

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

Fischbein – Yes Barron - Yes Wurster – No Brothers – Yes

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

Fischbein – Yes Barron - Yes Wurster – No 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 Barron - Yes Wurster – No Brothers – Yes

(aui) Fischbein – Yes Barron - Yes Wurster – No Brothers – Yes

Chairman Brothers announced the **motion passed**. The Variance has been granted with conditions the (4) 4-5 ft. tree stumps be cut flush to the ground, obtain a NHDES Shoreland permit and ***all Federal, State and Local Regulations are followed***. There is a 30 day appeal process of the ZBA decision, which starts tomorrow morning.

• **Case #17-11-V: Michael Kenny (Continued from March 15, 2018 ZBA Mtg.)** Representing Agent, Jim Rines of White Mtn. Survey & Engineering for 22 Bearcamp River Rd. Tax Map: 27 Lot: 015 has applied for a Variance from Article 6.4.2 (a) side setback/Shoreland permit to install a 10 X 16 foot raised shed with attached 5 X 16 foot deck and stairs. **Variance Request** to have shed within the 25 foot side setback requirement at 16 feet. (ZBA continued case from 12/12/2018 pending a FEMA Flood analysis.)

Jim Rines of White Mtn Survey & Engineering presented the case and flood analysis for Michael Kenny. Original variance was for side yard setback violations and requesting a waiver for a 16 ft. side boundary. Rines demonstrated on the plans the shed is actually 8.6 ft. **from the** side boundary. The cross section flood elevation is 420.0 ft. and the shed’s first floor elevation is at 419.86 ft. The shed needs to be raised a minimum of 0.14 ft. **The** support beams obstruct the floodway by 9.50 sq. ft. and the support piers obstruct by 4.19 sq. ft. of the flood way. Resolution is to remove several maple trees equivalent to 13.7 sq. ft. of floodway obstruction that have been suggested by White Mtn. Survey & Engineering, Inc. flood analysis.

Board discussion: Barron made note of properly having the trees removed.

Public Input: Steve McKenna, Tim Otterbach and Jim Kelly all spoke in favor.

Brothers closed public input, called for a motion and Board discussion.

A **Motion** by Fischbein to grant a variance for **Case #17-11-V: Michael Kenny, with** Representing Agent, Jim Rines of White Mtn. Survey & Engineering of 22 Bearcamp River Rd. Tax Map: 27 Lot: 015 for a Variance from Article 6.4.2 (a) side setback to **retain** a 10 X 16 foot raised shed with attached 5 X 16 foot deck and stairs. With the following conditions:

1. Removal of trees by a licensed tree removal company and permits **an** equivalent of 13.7 sq. ft. prior to shed completion.
2. NHDES Shoreland Permit
3. Federal, State and Local Regulation must be followed.

Point of Order: Wurster requested a condition that the shed elevation be raised 0.14 ft. to comply with Flood Regulations.

Fischbein restated his motion to address conditions raised by the Board.

A **Motion** by Fischbein to grant a variance for **Case #17-11-V: Michael Kenny**, Representing Agent, Jim Rines of White Mtn. Survey & Engineering of 22 Bearcamp River Rd. Tax Map: 27 Lot: 015 for a Variance from Article 6.4.2 (a) side setback/ to **retain** a 10 X 16 foot raised shed with attached 5 X 16 foot deck and stairs. With the following conditions:

1. Raise shed elevation 0.14 ft. to comply with Flood Regulations
2. Removal of trees by a licensed tree removal company and permits **an** equivalent of 13.7 sq. ft. prior to shed completion.
3. NHDES Shoreland Permit
4. Federal, State and Local Regulation must be followed.

Barron 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 Barron - Yes Wurster – No Brothers – Yes

Wurster commented his concerns for granting a variance “post construction” and having resident’s thinking it’s acceptable. He wants all resident’s to know that if you want to do something, follow the law, come see the Zoning Officer and do it the right way and not “after the fact”.

2. The spirit of the ordinance is observed because:

Fischbein – Yes Barron - Yes Wurster – No Brothers – Yes

3. Substantial justice is done because:

Fischbein – Yes Barron - Yes Wurster – No Brothers – Yes

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

Fischbein – Yes Barron - Yes Wurster – No 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 Barron - Yes Wurster – No Brothers – Yes

(aii) Fischbein – Yes Barron - Yes Wurster – No Brothers – Yes

Chairman Brothers announced the **motion passed**. The Variance has been granted with conditions:

1. Raise shed elevation 0.14 ft. to comply with Flood Regulations
2. Removal of trees by a licensed tree removal company and permits equivalent of 13.7 sq. ft. prior to shed completion.
3. NHDES Shoreland Permit
4. Federal, State and Local Regulation must be followed

Brothers noted there is a 30 day appeal process of the ZBA decision, which starts tomorrow morning.

Jim Rines rejoined the Board for the remainder of the meeting.

- Sager & Smith, PLLC – Statement to ZBA for Ossipee Transition House - \$148.75 balance due.

A **Motion** by Barron to approve payment in the amount of \$148.75 to Sager & Smith, PLLC for services rendered. Fischbein seconded. No discussion. All others voted in favor. Rines abstained. **Motion passed.**

- Sager & Smith, PLLC – Statement to ZBA for General Matters - \$0.00 balance due was initialed by Chairman Brothers.

Public Input:

1. Ash Fischbein informed the Board he will be representing Jake Dawson in re-opening the laundry mat, excavation shop, and lawn care services by ABC Lawn Care. ***Ash indicated that he was looking for information.*** Ash noted at first, there was no site plan review ***but*** he found one in the attic of the Town Hall. In ***1993***, a Site Plan Review was approved by the Planning Board for the laundry mat and storage.

Rines stated since the Zoning Board is a board acting in a quasi-judicial capacity; therefore, they adjudicate questions you're asking. That question should be addressed to the Zoning Officer or Planning Board. The ZBA is not to ***advise*** on zoning, and proper protocol is bring your question to the Zoning Officer, who will direct you to either the Planning Board or the ZBA. The ZBA is the ***appellate*** Board ***to*** which you would provide proof of what you're appealing.

2. Ash questioned if approved variance and special exceptions carry over with the property from landowner to landowner. ***Discussion followed regarding OZO and State changes on that subject to include a variance if not acted on has a two (2) year expiration limit.***

Rines noted the caveat is if there is a condition pending ***on the variance*** approval, you are given an additional six (6) months ***beyond the date of condition satisfaction*** before the variance or special exception would expire.

Brothers questioned how long the building was abandoned. Billings noted a little over a year, but McConarty corrected him stating he believes it's been almost 2 and half years but he will double check.

3. Ash informed the Board that the Economic Development Council has completed their presentation and going around presenting it to the various Boards.

Membership: Brothers read the notices.

BOS confirmed Dan Fischbein to the Board.

Letters to Former Members: Bill Grover was returned

Notices: Brothers informed the Board of the announcements.

- Steve & Debra Meserve – McConarty informed the Board the situation is being handled.
- The Town of Ossipee is accepting recommendations for Employee of Year selections until May 14, 2018.

Any Other Business Which May Come Before This Meeting:

None at this time.

Adjournment:

A Motion by Rines to adjourn the meeting. Barron seconded. No discussion.

All voted in favor, motion passed. The meeting adjourned at 8:10 p.m.

Next Meeting: June 12, 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