

TOWN OF OSSIPEE
ZONING BOARD OF ADJUSTMENTS
Meeting Minutes
November 12, 2019

Minutes were recorded by Ralph Wurster and summarized by Laura Nash, Board Secretary. Revisions to these minutes are noted in ***bold/italic*** type.

Call to Order: Ralph Wurster called the meeting to order at 7:03 p.m.

Members Present by Roll Call: Ralph Wurster, Jim Rines, Roy Barron, and Alternate - Daniel Fischbein and Steve McConarty, ZEO. **Absent:** ***Ed MacDonald***, Shawn Marcotte and Sandra “Sam” Martin

Wurster raised Alternate- Daniel Fischbein to voting status in place of Shawn Marcotte.

Non-Public Session – RSA 91-A:3, II (e) – Legal Matters

Wurster polled the Board to enter a non-public session at 7:05 PM pursuant to RSA 91-A: 3, II (I) for legal matters. Roll call vote was taken: Fischbein – Yes, Barron – Yes, Rines – Yes, and Wurster – Yes.

Rines made a motion to adjourn the non-public session at 7:25 PM. Barron seconded. A unanimous vote was taken.

Wurster stated no motion to seal the minutes of the Non-Public Session due to legal matter was warranted because it did not meet the ***3 criteria’s under the RSA***. Rines seconded. A unanimous vote was taken.

PUBLIC MEETING - resumed

Wurster reconvened the Public meeting at 7:27 PM.

Meeting Minutes: Review to Approve Meeting Minutes of 10/11/2019

A **Motion** by Barron to approve the minutes of October 11, 2019 as submitted. ***Fischbein*** seconded. All voted to approve. **Motion passed.**

Financial:

- Budget Report: 10/01/2019 – 10/31/2019

The Board reviewed and noted the amounts under 75% of the budget year. Postage and advertising are below the 25% remaining mark but are offset by the revenue of the application fees.

New Business:

- **Case #19-12-SE:** owner – Tracy Cronin of 60 Route 16B. Tax Map: 093 Lot: 024 is requesting a Special ***Exception*** from Article 23 - Section 23.3.2 Expansion of a Non-Conforming Structure to remove an existing non-conforming roof to expand living area as per plans.

Tracy Cronin was here to present his case but Wurster noted the Special Exception application was not part of the ***Board’s*** packet for review. After review of the case file, no application was included. Mr. Cronin was asked to review his file. Mr. Cronin located his application. But it was noted by the secretary to be incomplete. The Board initially was going to deny his application, but Mr. Cronin asked if a special meeting could be given because he has open pipes exposed to the weather and he fears they would freeze with the cold weather anticipated over the next week. Mr. Cronin made arrangements with McConarty to submit his completed application the next morning and the secretary would have it on Friday when she returns from conference. The Board discussed with Mr. Cronin the importance of following the law.

A **Motion** by Rines to continue **Case #19-12-SE:** owner – Tracy Cronin of 60 Route 16B. Tax Map: 093 Lot: 024 for a Special **Exception** to Monday, November 18, 2019 at 7:00 PM at the Town Hall Annex – Freight House. Barron seconded. No discussion. A unanimous vote was taken.

- **Case #19-15-V:** owner – John Howell of 95 Leavitt Rd. Tax Map: 031 Lot: 031 is requesting a Variance from Article 4 - Section 4.4.A Structures and Uses per lot to convert the existing garage to an apartment living space above.

Wurster as Chairman addressed the Applicant (under RSA 674:33) – noting since there is not a full 5-member board, with no additional alternates to serve. 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.

John Howell wished to continue.

John Howell was here to present his plans of wanting to add a 16 ft. X 20 ft. second floor apartment to his garage. Howell read through each criteria. The garage was built with his father, who has since passed, and he would like to keep it. Howell noted the Zoning Ordinance 4.4 (a) – Structures and Uses has created a burden for the structure from becoming its own entity. The property needs to be subdivided so a new address can be created for the proposed garage living area. Once the address of 90 Broad Bay Rd, is established with 911, the correct steps can be taken to obtain permits and other services required to create a living quarters. On August 6, 2019, the Ossipee Planning Board granted a conditional subdivision approval for the property, but Zoning Ordinance 4.4 (a) is creating a hardship in completing the subdivision process. According NHDES, the lot can be divided. Howell has obtained state subdivision approval, NHGDES septic approval, fire chief approval, driveway approval and has provided picture of the building.

Wurster called for public input.

Condict “Connie” Billings stated McConarty denied him a building permit but an ADU is less than 800 sq. ft. and the apartment are less than 320 sq. ft., he does not understand why Steve won’t give Howell a building permit. Billings stated if Howell puts the apartment in the garage, then Zoning Ordinance 4.4 (a) would come into place by having two dwellings on a lot and he can then subdivide.

Rines explained the ZBA can only act on what is submitted and presented to the Board, and currently, they have an application for a variance from Zoning Ordinance 4.4 (a). Unless the applicant wishes to withdraw his application the ZBA is obligated to act upon it or continue the case.

Wurster asked for any further input.

Billings stated the only reason the Planning Board gave a conditional approval is because the garage is an accessory building to the house on the same lot and is allowed under Z.O. 4.4 (a). Wurster told Billings he’s going around in circles, and he’s not going to argue with the Planning Board.

Wurster questioned Howell on why he wants to subdivide the lot between the house and the garage. Howell explained he’s a teacher and simply cannot afford the home they built and it’s creating a financial burden on the family. He wants to keep the garage and thought he had enough land that it would not be a problem. He went before the Planning Board for a subdivision and got conditionally approved but by having the condition of obtaining a certificate of occupancy is preventing him from dividing his property and is becoming a hardship. He needs to subdivide the property in order to get the address of 90 Broad Bay Rd. but the condition of obtaining a certificate of occupancy is in his way.

Howell asked if the Planning Board can put a condition of obtaining a certificate of occupancy on an applicant. Is that legal?

Rines explained if an applicant is not satisfied with a decision, they have 30 days to appeal. But that was not

done in this case.

Barron in discussion with the father-in-law suggested the Howell could go before the Planning Board and ask for the certificate of occupancy to be removed. Howell stated he wants to follow the rules of the Town and he's asking for approval here tonight and some sort of resolution to the certificate of occupancy issue.

Billings asked for Zoning Ordinance to be read – Wurster read as follows;

“4.4 STRUCTURES AND USES PER LOT

a) In the Village, Residential and Rural Districts there shall not be more than one principal structure allowed per lot. In the Village District, both commercial and residential uses may be combined in the same structure. An accessory structure may be permitted on the premises consistent with the use of the principal structure; an accessory structure intended for use or occupancy as a dwelling must comply with regulations pertaining thereto. (Amended March 14, 2017)”

Wurster noted the problem is having two principal structures on the same lot.

Wurster closed public input. Discussion ensued.

A **Motion** by Rines to grant **Case #19-15-V:** owner – John Howell of 95 Leavitt Rd. Tax Map: 031 Lot: 031 request a Variance from Article 4 - Section 4.4.A to permit two dwellings per lot with the condition that a BUILDING PERMIT WILL BE ISSUED AS A RESULT OF THE PLANNING BOARD AUGUST 6, 2019 DECISION IN CASE #19-2-SUBD: AND IT IS ISSUED WITH THE UNDERSTANDING THAT JOHN HOWELL WILL COMPLETE THE CONSTRUCTION IN ACCORDANCE WITH ALL CODES AND THAT A CERTIFICATE OF OCCUPANCY WILL BE ISSUED, UPON WHICH EVENT THE SUBDIVISION APPLIED FOR IN CASE #19-2-SUBD WILL BE APPROVED. IN THE EVENT JOHN HOWELL FAILS TO OBTAIN A CERTIFICATE OF OCCUPANCY DUE TO NO FAULT OF THE TOWN OF OSSIEE, HE AGREES TO REMOVE SO MUCH OF THE APARTMENT SUCH THAT THE GARAGE OVER WHICH IT IS BEING BUILT SHALL ONCE AGAIN BE IN FULL COMPLIANCE WITH THE TOWN'S ZONING ORDINANCE. Fischbein seconded.

Discussion: McConarty commented since the garage would be the principal dwelling with the apartment, if the apartment is not finished with a certificate of occupancy, the garage would have to be removed. Howell questioned if he can sell the house because he needs to get 90 Old Broad Bay Rd. in order to subdivide. Rines explained once they approve the variance, he will have permission to build the apartment, get the certificate of occupancy, be able to sell the main house and then get the subdivision.

Billings argued the motion. Discussion continued over what can get issued first the building permit or the subdivision. Rines suggested instead conditioning it on the issuance of a certificate of occupancy; instead condition it on the issuance of a building permit and then he can subdivide. Wurster noted but that's not what the Planning Board conditionally approved. Rines noted the Planning Board would not need the condition of certificate occupancy if he has the right to have two principle dwellings.

Billings disagreed with Rines in that it would not be two principle dwellings because he has not subdivided it. General agreement was it would not be subdivided at the start, until the ZEO issues a building permit. Billings continued to disagree. McConarty commented that Billings and the Planning Board are stepping into his authority by conditioning an application on obtaining a certificate of occupancy.

Wurster asked what the Planning Boards decision was for Howell's request for subdivision and was there a public decision.

The secretary relayed yes Howell was **granted a Conditional Subdivision Approval** pending occupancy of proposed apartment in the existing garage with the following conditions:

1. Issuance of a Certificate of Occupancy from the Zoning Enforcement Officer for the proposed apartment of the existing garage on proposed lot 2.

2. In accordance with Zoning Ordinance: “9.5 - EXPIRATION OF APPROVAL: If the (industrial) use has not commenced within two (2) years, the approval for such use shall be null and void. (Amended March 14, 2017)”
3. Submittal of Final Mylar Plat Plans and Fees for Recording
4. All Federal, State, and Local Regulations shall be followed.

Howell showed Wurster the notice of decision he received. Howell asked if the Planning Board is allowed to get involved in issuing a certificate occupancy. Wurster explained by law, if an applicant is not satisfied with a decision, they have 30 days to appeal a decision. Discussion ensued.

Billings proclaimed “he is not trying to put roadblocks in front of Howell. He’s going by what this town has voted. Which is Article 4.4 (a) and is the basis of the conditions he applied to the conditional approval. He informed Howell if you’re going to build something, build it and then you can subdivide it. But Howell is claiming it’s a hardship. Billings cannot talk to him about his hardship he can only talk to him about Article 4.4 (a) is the law of the Town. The ZBA can override the Planning Board and grant the variance request.”

McConarty stated the ZBA can override the Planning Board but cannot override the condition of obtaining a certificate of occupancy. Billings started to say what guarantee does the Planning Board... but Wurster noted that it was irrelevant to the task before the ZBA because its not what Howell is asking a variance towards.

McConarty stated he is personally appealing the Planning Boards decision. Billings told McConarty not within 30 days you didn’t. Discussion ensued.

Rines suggested if the Planning Board is willing to revisit it’s decision on the issuance of a building permit rather than a certificate of occupancy. Then the ZBA could grant the variance and then it becomes an enforcement issue. Discussion ensued over who has the authority to override a boards decision.

Rines withdrew his first motion and Fischbein withdrew his second to the motion. Wurster suggesting revising his motion.

A **revised Motion** by Rines to grant the variance with the condition that the property be allowed to be subdivided upon the issuance of a building permit, not a certificate of occupancy for a dwelling and Howell will need to go back to the Planning Board to see if they would be willing to change the condition of obtaining a certificate of occupancy.

Discussion: Billings disagreed with the motion again, stating the property is not subdivided so a building permit cannot be issued. Rines and Wurster stated by granting a variance it will allow two dwellings to be on this lot, thus allowing McConarty to issue a building permit, thus allowing the subdivision to take place provided the Planning Board is agreeable to amending the condition of obtaining a certificate of occupancy.

Fischbein believed this was the only way.

Wurster recalled the options as follows:

1. Rines original suggestion - The ZBA could grant the variance with the conditions that as soon as the structure is completed, and a certificate of occupancy has been granted the subdivision is executed.

But it would be a problem for the applicant because it could take a couple of years and there is hardship, and this goes along with what the Planning Board decided.

2. Rines is suggesting the ZBA grant the variance and suggest the granting of the building permit be allowed for the subdivision to be executed, based upon the Planning Board agreeing with a willingness to change the condition of obtaining a certificate of occupancy.

Billings stated the ZBA can only rule on the variance. Wurster noted they can put conditions on an approval just like the Planning Board. Billings continued to argue the ZBA’s motion. Billings was asked why he is fighting this application. Billings replied, “it’s the principle.”

Wurster explained to Howell the confusion with the case and offered suggestions for going forward. Discussion ensued.

Rines withdrew his first motion and Fischbein withdrew his second to the motion.

A **New Motion** by Rines to grant a variance for **Case #19-15-V:** owner – John Howell of 95 Leavitt Rd. Tax Map: 031 Lot: 031 from Article 4 - Section 4.4.A to allow the conversion of an existing garage with an apartment above with the condition that the variance be affective upon the issuance of a building permit for that structure. If the residence is not constructed in 2 years, the garage will have to be removed and subject to all Federal, State and Local Regulations. Barron seconded.

Vote by Criteria:

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

Fischbein – Yes Barron – Yes Rines – Yes Wurster – Yes

Rines agrees because the variance is not going to alter the character of the neighborhood.

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

Fischbein – Yes Barron – Yes Rines – Yes Wurster – Yes

Barron yes, he has been.

Rines agrees because the variance is not going to alter the character of the neighborhood.

3. **Substantial justice is done:**

Fischbein – Yes Barron – Yes Rines – Yes Wurster – Yes

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

Fischbein – Yes Barron – Yes Rines – Yes Wurster – 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:**

Fischbein – Yes Barron – Yes Rines – Yes Wurster – Yes

Rines thinks the special conditions are he has received State Subdivision approval, there was suitable land for that to occur. There has been a State Septic System Approval granted for this structure to distinguish it from other properties in the area.

(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:

Fischbein – Yes Barron – Yes Rines – Yes Wurster – Yes

Rines yes, because the special conditions are the fact the garage is there, and the property is so large.

Chairman Wurster announced the variance has been granted to allow living quarters above the garage and Howell can apply for a building permit and from there it's up to Howell to either wait for a certificate of occupancy or apply to the Planning Board for reconsideration of conditions. Howell expressed his frustration with the whole process he has endure through the Planning Board and the ZBA and his frustration with Mr. Billings.

Wurster noted the following,

Note: The Selectmen, any party to the action or any person directly affected has a right to appeal this decision within 30 days. To avoid lapsing of the approval, there should be substantial construction or

liability within 2 years of the decision. See New Hampshire Revised Statutes Annotated, Chapter 677, available at the Ossipee Town Hall.

Job Opportunities:

- Town Administrator
- Part Time - Zoning Enforcement Officer

Any Other Business Which May Come Before This Meeting: None was presented.

Adjournment:

A Motion by Barron to adjourn the meeting. Rines seconded. No discussion. All voted in favor, **Motion passed.** The meeting adjourned at 9:06 p.m.

Next Meeting:

- Special ZBA Meeting – November 18, 2019 @ 7:00 pm
- December 10, 2019 @ 7:00 pm

Minutes were approved by majority vote of the Board:

_____	_____	Or	_____	_____
Ralph Wurster, Chairman	Date		Ed MacDonald, Vice Chair	Date
			(In the absence of the Chairman)	