

TOWN OF OSSIPEE
ZONING BOARD OF ADJUSTMENTS
Meeting Minutes
December 10, 2019

Minutes were recorded 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 7:00 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 Ed MacDonald.

- **Meeting Minutes:** Review to Approve Meeting Minutes of 11/12/2019 & 11/18/2019

The ZBA decided to hold off approving the minutes until January 14, 2020 meeting, once they’re amended.

Financial:

- Budget Report: 11/01/2019 – 11/30/2019

The Board reviewed and noted the postage is over budget and advertising is close to be over.

Unfinished Business: N/A

New Business:

PUBLIC HEARING

For the following Applications

- **Case #19-16-V:** owner – Peter J. Bradley of 28 Danville Rd. Tax Map: 020 Lot: 011 is requesting a Variance from Article 6.4.2 A (side setback), 6.4.1 Front (setback) and 6.5 Lot Coverage to demolish the existing non-conforming structure. Build a new structure, add a garage and a second story to accommodate their full-time residential needs. Convert the existing driveway to a permeable surface driveway.

Representing agent Mark McConkey explained the Bradley home was originally built in the 1960’s on Danville Rd and the homes are all close together and close to the water. The home currently sits 13.44 ft. from the sideline setback on the northeast side, 6.70 ft. sideline setback on the southwest side and 18.04 ft. from the water-front side. The neighborhood is transitioning from seasonal to full-time residence. The homes in the area are adding second floors for more living space. The proposed new home will be 13.57 ft. from the sideline setback on the northeast side, 6.70 ft. sideline setback on the southwest side and 18.06 ft. from the water-front side. They will be removing an addition on the backside of the house to allow room for a garage. McConkey referred to pictures of the similar neighboring homes.

Rines inquired if the topography is compliant with the flood 414.0 ft. elevation requirements. He informed McConkey with new construction, it now has to comply with the flood plain ordinance. Jake McConkey stated the lake is at 407.25 ft. Mark McConkey affirmed they are aware, and the new home will need to be elevated and they are prepared to comply. McConkey’s will supply a Certificate of Elevation form a Licensed Surveyor to the Zoning Enforcement Officer. McConkey confirmed they have State Operational Approval for a full-time 2- bedroom residence. They currently have a Shoreland Permit but have applied for an Expanded Shoreland Permit, since the plans changes to a new constructed home. Septic approval is in place.

Barron questioned if neighboring home have also converted to full-time residence and have added second stories to their homes; have they come before the ZBA for variances.

Wurster called for public input; none was heard.

Board discussion: Rines commented two of the corners are calculated. He questioned if it was done by a licensed land surveyor, because he's been a stickler on other cases. Jake McConkey stated he shot the pins on the opposite corners and divided the total of 100.4 ft. to calculate the distance to the opposite corners at 50.2 ft. Mark McConkey stated he will have the corners marked if the Board prefers. Wurster noted there are markers on the left but none on the right and used the markers on the neighbors property to calculate the difference.

McConkey proceeded to read through the criteria's.

Wurster called for any comments from the Board or the public on the 5 criteria. None was heard.

Wurster closed public input and opened Board discussion.

A **Motion** by Rines to approve **Case #19-16-V:** for Peter J. Bradley of 28 Danville Rd. Tax Map: 020 Lot: 011 for a Variance from Article 6.4.2 A (side setback), 6.4.1 Front (setback) and 6.5 Lot Coverage to demolish the existing non-conforming structure. Build a new structure, add a garage and a second story to accommodate their full-time living needs. Convert the existing driveway to a permeable surface driveway with the following conditions:

1. Foundation be staked by a Licensed Land Surveyor.
2. Comply with Town of Ossipee Zoning Ordinance - Section 4.10 FLOODPLAIN DEVELOPMENT ORDINANCE.
3. All Federal, State and Local Regulations shall be followed.

Barron seconded the motion.

Wurster moved to vote on the five criteria. A vote of Yes - means you're in favor, A vote of No, means you deny the request for variance. Rines brought attention to the Chairman concerning a five-member Board.

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.

McConkey wished to continue.

Vote by Criteria:

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

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

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

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

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

ai) Fischbein – Yes Barron – Yes Rines – Yes Wurster – Yes

(aia) Fischbein – Yes Barron – Yes Rines – Yes Wurster – Yes

Chairman Wurster announced the variance has been granted and proceeded to note:

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.

- **Case #19-17-V & Case #19-14-SE:** owner – Raymond Varney Rev. Trust c/o Frank Varney, Executor of 2 Chickville Rd. Tax Map: 226 Lot: 011 is requesting a Variance from Article 6.4.2 A (side setback), 6.4.2.B (rear setback) and a Special Except from Article 23 - Section 23.3.2A (Expansion of a Non-Conforming Structure) to remove an existing manufactured home; pour a concrete slab; place a 70ft. replacement manufactured home on the concrete slab.

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.

Frank Varney agreed to proceed.

Wurster explained the reasoning for the five-criteria and the hearing process to Varney.

Varney presented his request for a variance and special exception. Varney informed the Board they are looking to remove and replace a 1950's mobile home with a HUD approved 1986 – 70 ft. mobile home which is 12 ft. longer than the current 58 ft. mobile home. Raymond Varney and his girlfriend are both disabled, and the condition of the current home is not suitable for their quality of care and they need a larger mobile home.

Rines noted with all new structures there needs to be a state approved septic system. Varney noted there is septic system on the location. Rines reported the rule states, “The owner has to have an operational approval or be able to produce an operational approval. If the owner cannot produce an operational approval, then they need to get a new septic system approval and install the system. If they can produce an operational approval, then they need to get a new design approved but do not have to install it.” A homeowner can no longer just have the system inspected. Varney confirmed all boundary pins for 50 ft. by 100 ft. lot are present.

McConarty noted in the residential area (**only**) a homeowner can match or meet the setback requirements of an existing neighbor verses the standard 25 ft. setback, per Zoning Ordinance (page 91):

“TABLE 2 – Residential 40 ft. (*2) – Front setback - DIMENSIONAL REQUIREMENTS (*2) May be reduced to the minimum setback from the street line of principal buildings existing on the premises as of the effective date of this provision, or the average of the setbacks from the street line of buildings on adjoining lots, whichever is least restrictive.”

Rines inquire of McConarty that since Varney is replacing the whole structure does that qualify as an expansion and the need for a special exception or does a variance cover the requirements. McConarty agreed that only a variance is required.

Wurster called for public input. None was heard.

Varney read the five criteria's.

Wurster called for public input on the criteria's. None was heard.

Wurster inquired of being near wetlands and had McConarty verified the newer mobile home would not be in the wetlands. McConarty confirmed he went out and measured and it will not be in the wetlands.

Wurster closed public input.

Board discussion: None was heard.

A **Motion** by Rines for **Case #19-17-V** for Raymond Varney Rev. Trust c/o Frank Varney, Executor of 2 Chickville Rd. Tax Map: 226 Lot: 011 for a Variance from Article 6.4.2 A (side setback), 6.4.2.B (rear setback) for the replacement of a manufactured home and to pour a concrete slab; place a 70ft. manufactured home, with the following conditions:

1. Demonstration of a State Approved Operational Septic System or a new septic approval and/or installation, if necessary.
2. Verify and/or all corners are pinned.
3. All Federal, State and Local Regulations shall be followed.

Barron seconded the motion.

Wurster moved to vote on the five criteria. A vote of Yes - means you're in favor, A vote of No, means you deny the request for variance.

Vote by Criteria:

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

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

2. The spirit of the ordinance is observed:

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

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

ai) Fischbein – Yes Barron – Yes Rines – Yes Wurster – Yes

(aui) Fischbein – Yes Barron – Yes Rines – Yes Wurster – Yes

Chairman Wurster announced the variance has been granted and noted:

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.

A **Motion** by Rines to place a note on the file that the Board believes that a Special Exception is required, therefore have Mr. Varney withdraw the application for **Case #19-14-SE**: Barron seconded.

Discussion: Rines asked if the Board can suggest that Mr. Varney withdraw the application.

Barron and Rines withdrew their previous motion.

Frank Varney as Executor to Raymond Varney Rev. Trust of 2 Chickville Rd. Tax Map: 226 Lot: 011, wished to withdraw the Special Exception Application.

A **Motion** by Rines *in light* of the fact, the application for **Case #19-14-SE** for a Special Exception was withdrawn by Mr. Varney, the applicant and the consensus of the Zoning Board that a Special Exception was not needed because the non-conforming structure was being totally removed and is *accepting* Mr. Varney's request to withdraw the application for the Special Exception. Barron seconded. No further discussion. A unanimous vote was taken. **Motion passed.**

Notices:

- John Vittum – Case 19-14- V: Waiver request. **Wurster** noted they have a letter requesting advice where the Zoning Board does not offer advice because they are a quasi-judicial board.

Wurster read the email letter, which was sent to Steve McConarty, Zoning Enforcement Officer. The represent agent for the Vittum's is requesting a waiver and the process for requesting as waiver from certain requirements of the application process. Discussion ensued over the floor plan diagram. **They** requested the letter from the Board of Selectmen, but the secretary was unable to immediately locate it.

Point of Order by Rines recommends not discussing without the applicant having a representing agent in attendance.

Wurster asked Steve McConarty, Zoning Enforcement Officer to convey to the Vittum's attorney that some *sort* of a graphical plan showing the floor plan, boundaries etc... should be submitted with the application.

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 8:22 p.m.

Next Meeting: [January 14, 2020 @ 7:00 pm](#)

Minutes were approved by majority vote of the Board:

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