

TOWN OF OSSIPEE
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
April 12, 2022

Minutes have been recorded for the convenience of summarization by Laura Nash, Boards & Commissions Secretary and are deleted once the minutes are board approved; any amendments to the minutes are noted in ***bold & italic*** type.

Call to Order: Bill Grover called the meeting to order at 7:00 p.m.

Members Present by Roll Call: William “Bill” Grover - Chairman, Roy Barron, Dallas Emery, and Jonathan Smith, (Zoning Officer)

Late Arrival: Jim Rines,

Absent: Doreen French – Alternate

Chairman Grover called for nominations for Chairman and Vice-Chairman but announced that any nomination for himself, he will decline because he will be moving out of state probably by the end of May.

Election of Chairman:

A **Motion** by Emery to nominate Roy Barron as Chairman. Fischbein seconded. No discussion or further nominations. A unanimous vote was taken by a show of hands. **Motion passed.**

Jim Rines arrive at 7:03 PM.

Election of Vice-Chairman:

A **Motion** by Emery to nominate Jim Rines as Vice-Chairman. Jim Rines declined since he has to recuse himself when presenting a case.

A **New Motion** by Emery to nominate Fischbein as Vice-Chairman. Barron seconded. No discussion or further nominations. A unanimous vote was taken by a show of hands. **Motion passed.**

Bill Grover addressed an issue the Board needed to correct base on the appointment process submitted by Selectmen Jonathan Smith. Grover stated that Fischbein was appointed to a 3-year term, but the Board was not allowed to do so because he was replacing Shawn Marcotte’s term until the next election.

At this point Emery withdrew his motion until the Board re-appoints Danny Fischbein to a one-year term thus fulfilling the term of Shawn Marcotte.

A **Motion** by Barron to appoint Danny Fischbein as a fulltime member for a 1-year term thus filling the vacancy of Shawn Marcotte. Emery seconded. No discussion. A unanimous vote was taken by a show of hands. **Motion passed.**

A **New Motion** by Emery to nominate Fischbein as Vice-Chairman. Grover seconded. No discussion or further nominations. A unanimous vote was taken by a show of hands. **Motion passed.**

Re-appointment of Doreen French: Since Doreen French is absent the Board moved her re-appoint to the next meeting.

Meeting Minutes: Review to Approve Meeting Minutes of January 11, 2022 (Amended) and February 8, 2022.

A **Motion** by Grover to approve the minutes of January 11, 2022 as amended. Fischbein seconded. All other voted in favor. Jim Rines abstained. **Motion passed.**

A **Motion** by Grover to approve the minutes of February 8, 2022 as submitted. Emery seconded. No discussion. A unanimous vote was taken by a show of hands. **Motion passed.**

New Business:

- **Case #22-02-V:** Larry Klingler of 3 Route 16B. Tax Map: 095 Lot: 013 is requesting a Variance from Article 6.4.1 (a) for a wood fence structure at the height of 8 ft. 6 in., for a short distance along the property line on Route 16B to be allowed with in the zoning setback from the highway.

Brian Newbury of 4 Route 16B presented on be-half of Mr. Klingler. The Board reviewed the application for completeness.

Grover addressed the letter received by Mr. Klingler from Asplund Tree Experts that is unsigned and undated and therefore cannot constitute a valid response. The was reviewed but it only addresses the tree removal and not the fence.

Rines questioned if the boundary markers were found and if they were checked before setting the fence to ensure it not encroaching on the highways right-of-way. Brian Newbury stated there are markers and stakes in the woods and the fence was laid approximately 2 - 3 feet inward from the markers. Review of the highway plans ensued.

Barron informed Brian Newbury that the Board would prefer confirmation of the boundary markers in relation to the fence and that the fence is not within the highways right-of-way, because the Board has no authority to grant a variance if the fence is within the right-of-way. The Board suggested a continuance.

Brian Newbury requested a continuance until the May 10, 2022, ZBA meeting. Smith stated that he informed Mr. Klingler as well that if the boundaries are not clearly marked, then he would require a survey to be done.

A **Motion** by Barron to grant the request for a continuance until a May 10, 2022, ZBA meeting. Emery seconded.

Grover informed Brian Newbury of a number of other issues for him to address with Mr. Klingler, as follows:

- On the checklist it asks if the land is in current use? and it's checked. Grover explained that current use does not mean that you currently live at the property. It means the land itself is registered with the Town and the State for current use specifications. (i.e.. tax breaks, current use statuses, etc...) Rines noted it can't be because it's less than 10 acres.
- Variance question #1 – “the fence was built in the public’s interest...” Grover does not understand how it’s in the public’s interest. When Mr. Klingler explains that it’s for his purpose, his privacy, his barrier to the noise.
- Variance question #2 – “The fence is merely over 7 feet...” “slightly higher than the allowed 7 feet ...” Grover stated the Board is looking at a significant higher percentage from 7 feet to now requesting 8.6 feet. And it’s not “merely over 7 feet...” or “slightly higher than the allowed 7 feet ...”, the Board is looking at over 1 ½ feet higher than the allowed 7 feet.
- Variance question #3 – “This is only a slight variance that does not negatively affect the intent of the ordinance.” Grover disagrees with the statement because if the Board allows this variance it will set a precedence that everyone on Route 16B can have a 8.6-foot fence.
- Variance question #4 – “Overall property values will be increased by this variance as this fence is part

of a complete building and landscape restoration project beautifying the entire property.” Grover again stated he does not understand that comment because it’s a fence and does not see it as that aesthetically pleasing to the value of the neighborhood.

- Variance question #5 – Grover commented there is nothing stated here that make this a “special condition” of the property, being such a property that a variance is necessary for a fence. A 7-foot fence is sufficient enough to cut back on noises, to do everything intended by the ordinance to begin with. And by allowing a variance on this would be setting a precedence for the community and the town that anybody and everybody can get a variance on it.
- Variance question #1 – Grover notes that Mr. Klingler is “allowing the Electric Company to utilize the right-of-way over his property to supply electricity to the rest of the town.”
- Variance question #1 – “Who determined the fence was needed...” in reading between the lines Mr. Klingler insist it was the power company who insisted the fence needed to be there, but Grover believes it was Mr. Klingler requiring the power company in taking down the trees to put up the fence.

Fischbein noted in the first application it was stated the power company took down the trees and in return they would provide a fence for privacy. Discussion ensued about the overgrown rhododendron brushes and overgrown lilac’s and brush cover screening. Smith noted the ordinance was changed to match the state building code stating anything over 7-feet is structure and as such has to follow the zoning ordinances and building codes.

- Variance question #1 – Grover read “...the tree were protecting my property and the inhabitant’s safety and privacy. These power lines are the main feed to the town of Center Ossipee and if the trees were to break a power line in a storm, then the entire city of Center Ossipee would be without power.” Grover acknowledged that but the power company has a right-of-way through the property for decades. Grover continued “the fence does not border and cannot be seen by any abutment properties.” Grover stated the property abuts the state highway, so you can’t deny their abutter. Grover continued reading “It is only in view of the traffic along Route 16 and 16B and the height difference is very minor.”, “It does not alter the character of the neighborhood”. Grover commented it does not change the character, but it does change the aesthetic of the neighborhood. Grover stated there are things written on the application that he would have some contention with in the way it is written and the way it’s being presented to the Board.

Rines inquired if the Board voted on the continuance. The secretary reviewed notes and stated no.

Chairman Barron called for a vote.

With no further discussion. A unanimous vote was taken to continue the case until a date certain of May 10, 2022. **Motion passed.**

- **Case #22-03-V:** Coleman P. McDonough Construction Corp. c/o Representing Agent – Wayne Morrill of Jones & Beach Engineers, Inc. for 1650 Route 16. Tax Map: 053 Lot: 012 is seeking a Variance for a storage unit development with 55% lot coverage where 40% is the maximum allowed.

Rines offered to recuse himself from this case since Horizon Engineering had provided the survey work for the applicant. White Mountain Survey & Engineering was not involved in the survey work, but Rines stated he would recuse himself if the Board felt he should. Chairman Barron called for a roll call vote.

Emery – No issue Fischbein – No issue Barron – No issue Grover – No issue

Rines asked for the applicant’s opinion.

Wayne Morrill of Jones & Beach Engineers, Inc. acknowledged the work done by Horizon Engineering, but they had no issues with Rines remaining on the Board thus providing a full 5-member Board. Mr. Morrill noted that the work done has nothing to do with the application before the Board presently.

Wayne Morrill of Jones & Beach Engineers, Inc. along with the property owner, Coleman McDonough presented the plans. The property located on Route 16 with a gas station on the other side of Deer Cove Rd. Back in 1988, there was plan which received NHDOT driveway permit and NHDES septic permit for the development of two buildings with access to Route 16. Per the plans building #2's foundation is complete and building #1's foundation is also in. Driveway culverts are in along Route 16, and septic plan was installed at that time, and all have been re-inspected. They had Geo-Tech inspections of both foundations and are deemed constructable. They met with the Zoning Officer and the variance granted at that time for the two buildings are grandfathered, because it was granted prior to the rule change of 2-years, per Zoning ordinance 27.4 Expiration of Approval, and per RSA 674:33, I (a).

The proposal is use the north foundation for building #2, which will be the contractor's storage units. These will have electricity, sewer and water. Buildings #1, 3 and 4 will be standard contained storage units with no electricity or water. The property will be completely fenced, all access will be off Deer Cove Rd. The original plan was for 70% impervious surface, but Mr. McDonough is requesting 55% of impervious surface where 40% is allowed per code along with a by-law that allows an additional 25% if a slow water pond is developed by a licensed engineer. The plans include a storm water system with drainage swales and infiltration ponds. The existing well and septic system have already been installed. There will be an AoT drainage system but it has not been submitted at this time.

Board discussion ensued over verifying the public notice was for the correct reason for the variance, which the secretary confirmed, so the application will need to be corrected. Rines had concerns for the bold note in the right lower corner of the plans. Wayne Morrill explained the note is only for the conceptual plans and is not on the final plans.

Rines requested clarification on the prior variance approved for this property. Smith explained there is an approved variance in the file and per ***RSA 674:33 Powers of Zoning Board of Adjustment. – I.***

“(c) The board shall use one voting method consistently for all applications until it formally votes to change the method. Any change in the board's voting method shall not take effect until 60 days after the board has voted to adopt such change and shall apply only prospectively, and not to any application that has been filed and remains pending at the time of the change.

I-a. (a) Variances authorized under paragraph I shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.

(b) The zoning ordinance may be amended to provide for the termination of all variances that were authorized under paragraph I before August 19, 2013 and that have not been exercised. After adoption of such an amendment to the zoning ordinance, the planning board shall post notice of the termination in the city or town hall. The notice shall be posted for one year and shall prominently state the expiration date of the notice. The notice shall state that variances authorized before August 19, 2013 are scheduled to terminate but shall be valid if exercised within 2 years of the expiration date of the notice or as further extended by the zoning board of adjustment for good cause.”

Rines was satisfied with the explanation. Discussion ensued.

Joseph Culligan of 5 Jewell Hill Rd. inquired of the setback regulation within the roadside commercial district. The Board informed him it is 25 feet.

Fischbein questioned if the ground is stable enough because of the history of it being a stump dump from the houses built on Pleasure Lands Glade Rd. Discussion ensued on the water and sewer systems, and any possible

hazardous waste spillage. Mr. McDonough stated there will not be any floor drains in the storage units. Wayne Morrill explain the two-level catch basin design before it slopes into the infiltration system.

Rines brought attention to zoning ordinance “**8.3 LANDSCAPING: All setback areas not covered by the screened area shall be landscaped (retained natural woodland shall be the preferred landscaping) or covered with grass, shrubs or ground cover, and shall not be paved or used for parking.**” And that the applicant may need to adjust the landscape design accordingly.

General discussion ensued about the building height of 12 – 22 ft, floating slab foundations on building #3 & #4, fire truck access requirements, and obtaining a copy of the geo-tech report on the foundations. Mr. McDonough offered the any member of the Board to come down to their Wakefield location to see what the unit are going to look like.

Grover went back to the height of the units and storing boats. Mr. Morrill explained the units will be single story for boat storage with closed doors, so it won’t be seen from the road.

Joseph Culligan inquired of any ordinance for light pollution. Grover informed him to follow up with the Planning Board should the ZBA approve the variance request.

Emery required clarification on how the previously approved variance is still valid. Several members explained it to him.

Chairman Barron asked Mr. Morrill to read the five criteria’s.

Wayne Morrill was asked to read through each criteria.

Mark McConkey had a preliminary conversation with the Road Agent and the Fire Chief, who is comfortable with the plan at this point.

Chairman Barron called for a roll call vote on each criteria.

Grover explained the voting criteria as set forth in RSA 674.33 – I and all criteria need to pass in order for the variance to pass. Each criteria need at least 3-votes to pass, and all 5-criteria must pass in order for a variance to be granted.

Barron clarified that a vote of Yes is a vote in favor and a No vote is to deny.

Smith confirmed the previous variance was approved in February 2013, so it was prior to August of 2013. It was not posted for a year so it’s still valid.

Vote by Criteria: Grover read each criteria.

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

Emery – Yes Fischbein – No Rines – Yes Barron – Yes Grover – Yes

2. The spirit of the ordinance is observed:

Emery – Yes Fischbein – Yes Rines – Yes Barron – Yes Grover – Yes

3. Substantial justice is done:

Emery – Yes Fischbein – Yes Rines – Yes Barron – Yes Grover – Yes

5. The values of surrounding properties will not be diminished:

Emery – Yes Fischbein – Yes Rines – Yes Barron – Yes Grover – Yes

6. **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:**

Emery – Yes Fischbein – Yes Rines – Yes Barron – Yes Grover – Yes

Rines commented the special conditions that makes this different is it had development started, prior foundations (structure) installed and is the only thing that distinguishes it from other properties.

Barron commented he agrees, and it puts it to bed finally. Grover agreed with Rines’ comments and statement.

(A) 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:

ai) Emery – Yes Fischbein – Yes Rines – Yes Barron – Yes Grover – Yes

Barron agrees because it has decreased the lot coverage from the original plan.

AND

(ii) The proposed use is a reasonable one because:

(aii) Emery – Yes Fischbein – Yes Rines – Yes Barron – Yes Grover – Yes

Chairman Barron called for a motion.

A Motion by Rines for **Case #22-03-V:** Coleman P. McDonough Construction Corp. c/o Representing Agent – Wayne Morrill of Jones & Beach Engineers, Inc. for 1650 Route 16. Tax Map: 053 Lot: 012 is **Granted** a Variance for a storage unit development with 55% lot coverage where 40% is the maximum allowed, with the following conditions:

1. Removal of the Concept Plan note from the Site plan that is going to be used
2. A plan showing a minimum of 40 feet between structures
3. The layout will not include any encroachment of the pavement for parking inside the structures setbacks.
4. All Federal, State and Local Regulations and Approvals shall be followed.

Chairman Barron announced the **motion passed**.

Grover *Noted: 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.*

Jim Rines recused himself from hearing and voting on the following case since he is the representing agent.

- **Case #22-04-V:** Owner: Maurice Bishop Rev. Trust. Representing Agent: Jim Rines of White Mountain Survey & Engineering, Inc. a division of Horizons Engineering, Inc. for 340 Route 16B. Tax Map: 074 Lot: 010 is seeking a Variance to construct a 60 ft. x 120 ft. commercial building within 15 ft. of the front setback and to make site improvements within 100 ft. of the right-of-way boundary.

Representing Agent: Jim Rines of White Mountain Survey & Engineering, Inc. a division of Horizons Engineering, Inc. presented the Maurice Bishop Revocable Trust in their request for a variance from Article 6, section 6.4.1 front set back and Article 9 section 9.4.6, which is the set back in the floating performance

zone to allow for the construction of a new 60 by 120-foot building within the required front setback. The property lot is 4.64 acres in size with 625.23 feet of frontage on Route 16 B. The lot has a right of way that serves 7 lots down along Ossipee Lake. The son's business is Miti-Bite and need some additional space for inventory storage and storage of raw materials for their manufacturing. The new building will have two floors of office space in the front, and they'd have two floors of 8- or 9-foot ceilings. The rest of the addition would be a shop and storage with 16-foot ceilings where is 14-feet is the minimum. The existing office space in the current building would be moved over to the new addition once the building is complete. The inventory will be stored in the shop and is currently storing compressed chips until they're hauled away along with storage of raw materials. So, this will serve to relieve the space in the shop and provide for some future shop expansion. Right now, we are requesting for 15 feet from the right of way line. This would be about 51.6 feet from the edge of the pavement. The existing structure is 55 feet from the pavement, and the travel delivery and turning motions already exist. There are some wetlands to the northwest and some steep slopes which prevents expanding towards to back property. Discussion ensued over the driveway access.

Rines read each criteria response.

Chairman Grover addressed the Applicants (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.

Rines confirmed he wished to continue.

Chairman Barron called for a roll call vote on each criteria.

Chairman Grover called for a roll call vote on each criteria. Barron clarified that a vote of Yes is a vote in favor and a No vote is to deny.

Vote by Criteria: Vice Chairman, Roy Barron read each criteria.

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

Emery – Yes Fischbein – Yes Barron – Yes Grover – Yes

2. The spirit of the ordinance is observed:

Emery – Yes Fischbein – Yes Barron – Yes Grover – Yes

3. Substantial justice is done:

Emery – Yes Fischbein – Yes Barron – Yes Grover – Yes

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

Emery – Yes Fischbein – Yes Barron – Yes Grover – 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:

Emery – Yes Fischbein – Yes Barron – Yes Grover – Yes

(A) 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:

a) Emery – Yes Fischbein – Yes Barron – Yes Grover – Yes

AND

(ii) The proposed use is a reasonable one because:

(a) Emery – Yes Fischbein – Yes Barron – Yes Grover – Yes

Chairman Grover coached incoming Chairman Barron announced the **motion passed**. The Variance has been granted and there is a 30-day appeal period.

Note: The Selectmen, any party to the action or any person directly affected has a right to appeal this decision within 30 days and the time period starts tomorrow. 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, and this approval does not give approval for any other permits, approval or regulations that maybe required by any Federal, State and Local agencies.

Rines was raise back to voting status.


Any Other Business Which May Come Before This Meeting:

Next Regular Meeting: **May 10, 2022 @ 7:00 pm**

Adjournment:

A Motion by Grover to adjourn the meeting. Emery seconded. No discussion. A unanimous vote was taken. **Motion passed.** The meeting adjourned at 8:37 p.m.

Minutes were approved by majority vote of the Board:

	<u>6/10/22</u>	Or	_____	_____
Roy Barron, Chairman	Date		Daniel Fischbein, Vice Chair	Date
			(In the absence of the Chairman)	