

TOWN OF OSSIPEE
ZONING BOARD OF ADJUSTMENTS
Meeting Minutes
August 13, 2019

Minutes were recorded by 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, Ed MacDonald, Roy Barron, Jim Rines, Shawn Marcotte and Alternate - Daniel Fischbein and Steve McConarty, ZEO.

Absent: Sandra “Sam” Martin

Meeting Minutes: Review to Approve Meeting Minutes of 07/09/2019.

A **Motion** by Barron to approve the minutes of July 09, 2019 as submitted. MacDonald seconded. No discussion. All voted to approve as amended. Rines and Marcotte abstained since they were not at the meeting. **Motion passed.**

Financial:

- Budget Report: Budget Report: 07/01/2019 – 07/31/2019 – Wurster noted everything seems to be on target except for postage and advertising as expected.
- Louise Sutherland - Budget Committee member liaison to the ZBA for the 2020 Budget Process season. She is not an elected member but is appointed by the West Ossipee Fire Precinct. She noted the ZBA is around 48% going into August and the budget seems to be on target. Ellen White has started distributing the budget worksheets and is starting to schedule meetings with the Budget Committee and the Board of Selectmen. She asked McConarty the condition of his truck and they will discuss it with the Selectmen. Any questions or concerns to give her a call. The next budget meeting is September 4th, 2019 at 6:30 pm, and they provide cookies.

Unfinished Business:

- **SB 339 – Voting by Zoning Board of Adjustments:** Changes have been added and voted on to the Rules of Procedures and posted to the Town website.

New Business:

PUBLIC HEARING

- **Case #19-9-V:** owner – George & Michelle Couris of 3 Shorey Lane. Tax Map: 085 Lot: 002 is requesting a Variance from Articles 6.4.2.A (Side Setbacks), 6.4.2.B (Rear Setbacks) to build a 30 ft. X 40 ft. detached garage. Representing Agent: Mark and Jacob McConkey of McConkey & Associates.
(Continued from 06/11/2019 & 07/09/2019 ZBA Mtg.)

Mark McConkey gave a brief overview of the prior presentation and reasons for continuing until tonight’s meeting. There is a 3-lot subdivision and the Couris property is the center lot. Letters from the abutters were presented in favor of option #2 where the garage is located on the side of the property and out of view. They have received NHDES Shoreland Approval.

McConkey stated the Board was in favor of other options for placement of the garage that would not require a variance. The property is in the Nodal Zoning district but with a Residential purpose. The McConkey’s explored other options that would not hinder the underground utilities, the septic systems or the easement.

McConkey presented option #1: Shows the garage in the center of the lot when entering the road, the view would be obstructed by a 40-foot garage upon entering. Obstacles included an existing septic system on the lot with an easement for one of the other lots. The fire hydrant will be located approximately 20 ft. from the garage and facing the center of the house. The main water lines come off from the hydrant and have been located to the curbside cut-offs. The underground electrical could not be fully tracked but they do know it runs alongside the septic system that has the easement on the property and comes off near the waterlines.

McConkey explained option #2: This option is what is being proposed to the Board. Homeowner and abutters are in favor of this plan. They have received Shoreland approval for this option once adjustments were made to the dripline trenches on the side of the garage. Driveway was adjusted to be outside the fire hydrant. Respectful of the curbside cutoffs and all of Ossipee's water system. Requires one sideline variance instead of the two previously requested and permits the excavation of the cross walls without fear of hitting the Town's water system.

McConkey explained option #4: Is called "the Best of all worlds." The homeowner is not in favor of this option. The garage would be rotated 90 degrees and **entered** from the side **which** pulls the garage back further into the property. **This poses** problems with turn radius' into the garage or **covers** over into the water **line**. It rotates the building to meet the setbacks, but the drawbacks are narrower entrances and the fire hydrant would be in the driveway. Will hinder future placement of septic systems and the neighbors' view when entering the development.

Barron noted option #4 needs no variance but option #2 needs a variance. McConkey noted the duty of the Board is quasi-judicial is to hear request, special exceptions and variances, and this is the Board that can do this request.

Discussion ensued of the options submitted. The proximity to the septic systems, waterlines and underground utilities and other proposed options from the Board.

McConkey explained option #5: Pulls the garage to the side and out. Homeowner is not in favor of this option **because it** creates access problems. McConkey commented on the number of options created to try and satisfy the Board.

Wurster called for public input. None heard. The Board discussed the various **options** with McConkey. Fischbein questioned on option #3 driveway **and asked McConkey, if this is the reason why Jill Kennard is selling her house.** McConkey, **replied he did not know and went on to** explained option #3: Has the driveway coming across the septic system in order to meet the distance requirements, Barron commented **on** the risk of the septic system freezing in the winter. Rines asked which option McConkey would like the Board to act upon.

McConkey **requested** action on option #2 for one sideline variance.

A **Motion** by Rines to deny the variance request on submitted option #2 with plan dated August 6, 2019 entitled George P. Couris, PO Box 148 in Center Ossipee because ...

Wurster asked for a hold on the motion because he has not closed the public hearing and McConkey can make his closing arguments.

McConkey stated they have given their reasonings for option #2, the homeowner wants this option, the abutters prefer this option, and unless the Board wants him to read through the criteria's, he's ready for the Board's vote.

Wurster closed the public discussion and opened discussion to the Board.

Barron preferred Option #2 versus option #3 because the driveway is too close to the **septic** with option #3.

Rines stated the driveway could be moved around to other locations to allow for turning.

MacDonald noted there are 2 better options where a variance is not required so... Barron interjected addressing the concerns over the leach fields and potential freezing of the septic systems. Discussion ensued.

A **Motion** by Rines to deny **Case #19-9-V:** owner – George & Michelle Couris of 3 Shorey Lane. Tax Map: 085 Lot: 002 requesting a Variance from Articles 6.4.2.A (Side Setbacks). MacDonald seconded. Discussion: Rines gave the following reasons for denial of the variance because of other alternatives for the driveway to be turned, more suitable distances away from the leach fields, no hardships and does not satisfy the criteria.

Wurster called for a roll call vote based on the criteria's per the ZBA' Rules of Procedures page 4- Section 4 Decisions (B) states; ***“The voting procedure for a variance utilizes the five criteria set forth in RSA 674:33, I, and all criteria need to pass in order for the variance to be granted. Each criteria needs at least 3 votes to pass and all 5 criteria must pass in order for a variance to be granted. As required by SB 339 – Voting by Zoning Board of Adjustments: The Bill amends RSA 674:33, III.”***

Vote by Criteria:

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

Rines – Yes Barron – Yes MacDonald – Yes Wurster – Yes Marcotte – Yes

Rines does not believe it will change the neighborhood but meets this criteria but not the hardship

2. The spirit of the ordinance is observed:

Rines – Yes Barron – Yes MacDonald – Yes Wurster – Yes Marcotte – Yes

3. Substantial justice is done:

Rines – No Barron – Yes MacDonald – No Wurster – No Marcotte – Yes

Rines believes the garage can still be built and remain in compliance with the setbacks so does not believe substantial justice would be done.

Barron voted yes because of the leach fields and the easement and believes there could be problems with other locations causing freezing of the septic system and the aging of the leach fields.

MacDonald's reason is because there are other options to make it more conforming.

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

Rines – Yes Barron – Yes MacDonald – Yes Wurster – Yes Marcotte – Yes

Rines reason is because the surrounding abutter prefer option #2, so they don't feel their property values will be diminished, so for that reason he believes the property values will not diminish either.

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:

Rines – No Barron – Yes MacDonald – No Wurster – No Marcotte – Yes

(ai) Rines – No Barron – Yes MacDonald – No Wurster – No Marcotte – Yes

(aii) Rines – No Barron – Yes MacDonald – No Wurster – No Marcotte – Yes

Rines reason is there is no hardship because there more suitable locations so for that reason it does not meet the criteria.

Chairman Wurster announced the **Motion for variance is denied 2-3.**

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 #19-10-SE:** owner – Marcin Jarmoc, Trustee c/o 5 Furber Road Realty Trust of 5 Furber Rd. Tax Map: 044 Lot: 074 is requesting a Special Except from Article 23 - Section 23.3.2 Expansion of a Non-Conforming Structure to remove an existing non-conforming detached garage and replace it with a non-conforming attached garage with living space. All expansion is outside of the setbacks and within the building envelope.
 - Wayne Williams (abutter) letter of concerns received 08/13/2019

Rines recused himself since his company is involved with the Shoreland permitting.

Attorney Christopher Meier of Cooper Cargill Chant, P.A. is here to represent Marcin Jarmoc in his request for a Special Exception.

Wurster informed the applicant his right to a full 5-member Board. Since the Board could not raise alternate Dan Fischbein up to voting status due to a medical condition. In accordance with the following RSA:

The Chairman addressed the Applicant (under RSA 674:33) – noting since there is not a full 5-member board, with no 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.

Wurster asked if the applicant wished to continue. Christopher Meier, Attorney, and Marcin Jarmoc replied they wish to continue with the **4-member** Board.

Attorney Meier presented plans for a proposed garage & addition reduced in size from the original plans submitted back in 2016-2017. The new proposed plans include staying within the setbacks but adding a connection between the house with a proposed addition, screened porch, and breezeway to the footprint of the existing garage and shed and enlarging the garage and adding a proposed addition to the back side of the garage. There will be a total of 917 sq. ft. of construction, but 593 sq. ft. of additional footprint. The new footprint is entirely within the setbacks.

Meier's noted the reason for the special exception is because all the houses on the lake are non-conforming and extend beyond the setbacks but are pre-existent to the adoption of zoning ordinances. Because they are expanding on a non-conforming structure, **they are** requesting the special exception.

Attorney Meier demonstrated the design layout of the floor plans. All bedrooms will be moving to the first floor in order to help in the care of Mrs. Jarmoc's sister, who will be living with them and needs to be on the first floor. The home will be a single-family home. No additional bedrooms will be constructed. The second floor in part will be Marcin Jarmoc office in order to work from home at times.

Attorney Meier read through the **8-criteria**. Marcin Jarmoc explained his reasons for the expansion, how the reduced size **would** accommodate the **neighbor's** request.

Wurster read a letter submitted by abutter, Wayne Williams and Carol Sargent into record and a copy was given to Attorney Christopher Meier's. The letter questions the actual number of bedrooms and the septic system. Attorney Meier's explained that NHDES has looked at and **approved** twice the same plans which is before the Board. The septic plans and the Shoreland permits have been reviewed and approved by NHDES. Marcin Jarmoc explained the rearranging of the rooms but there are no new bedrooms being added.

Wurster called on Rines to explain the septic design. Rines stated it's a 3-bedroom design and that is what the state has approved. Rines referred to the plans submitted and (EDA) Effluent Disposal Area they require 112 linear feet and it's been designed for 210 linear feet. The size is nearly double so there would be

no question from the state on the size of the leach field. Septic tankage is 1250 gallons which is required for a 2, 3- or 4-bedroom home. Plus, their replacing an old system with a new modern system.

Public Input:

Mark McConkey questioned if the lot loading is adequate for the number of occupants. Rines explained it's a 3-bedroom, the septic is approved for 250 gpd, and is state approved.

Wayne Williams speculated if the home was sold in the future could it be sold with a listing of more bedroom and is the septic approved to handle more bedrooms. Barron explain the Board can only judge what is presented before them; not what may or may not happen in the future.

Wurster inquired if the new driveway and parking area was going to be pervious or impervious material. Rines stated the ground is impervious and the maneuvering area around the side is porous. The state considers gravel driveways as impervious now.

A **Motion** by Barron to grant a Special Exception for **Case #19-10-SE:** owner – Marcin Jarmoc, Trustee c/o 5 Furber Road Realty Trust of 5 Furber Rd. Tax Map: 044 Lot: 074 for a Special Except from Article 23 - Section 23.3.2 Expansion of a Non-Conforming Structure, with the condition that all Federal, State, and Local Regulations shall be followed. Marcotte seconded.

Wurster called for a roll call vote based on the criteria's per the ZBA' Rules of Procedures page 4- Section 4 Decisions (B) states; ***"The voting procedure for a variance utilizes the five criteria set forth in RSA 674:33, I, and all criteria need to pass in order for the variance to be granted. Each criteria needs at least 3 votes to pass and all 5 criteria must pass in order for a variance to be granted. As required by SB 339 – Voting by Zoning Board of Adjustments: The Bill amends RSA 674:33, III."***

Vote by Criteria:

1. **The use is permitted by Special Exception under Table 1 (Article 34 of the Ossipee Zoning Ordinance), or elsewhere in the Ordinance (for example, see Article 6.2)**

Marcotte – Yes Barron – Yes MacDonald – Yes Wurster – Yes

2. **The use is so designed, located and proposed to be operated that the public health, safety, welfare, and convenience will be protected.**

Marcotte – Yes Barron – Yes MacDonald – Yes Wurster – Yes

3. **The specific site is appropriate for the proposed use or structure.**

Marcotte – Yes Barron – Yes MacDonald – Yes Wurster – Yes

4. **No factual evidence is found that the property values in the district will be reduced, due to incompatible land use, by such use.**

Marcotte – Yes Barron – Yes MacDonald – Yes Wurster – Yes

5. **Adequate and appropriate facilities and parking will be provided for the proper operation of the proposed use or structure, as required by the Ordinance.**

Marcotte – Yes Barron – Yes MacDonald – Yes Wurster – Yes

6. **There will be no undue nuisance or serious hazard to pedestrian or vehicular traffic.**

Marcotte – Yes Barron – Yes MacDonald – Yes Wurster – Yes

7. **The proposed use shall not violate the provisions of Article IV and V of the Ordinance.**

Marcotte – Yes Barron – Yes MacDonald – Yes Wurster – Yes

8. **There is no valid objection from the abutters based on demonstrable fact.**

Marcotte – Yes Barron – Yes MacDonald – Yes Wurster – Yes

Chairman Wurster announced the **motion passed**. The Special Exception has been granted.

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.

Rines rejoined the Board as a voting member.

- **Case #19-10-V:** owner – Bryan Keith Brownell of 55 Moultonville Rd. Tax Map: 091 Lot: 003 is requesting a Variance from Article 34.2 (c) to operate an Auto Repair Business in the Residential district as a home business.

Bryan and Sarah Brownell presented their plan for an Auto Repair Business as a home business in a 32 ft. X 32 ft. garage and are looking to utilize half the garage (1 bay). Sarah proceeded to read through the 5 - criteria's. They presented 9 out of 14 approval letters and 1 verbal approval from abutters in support of the home business.

A discussion on why they're only using 1 bay of the garage. McConarty explained anything under 800 sq. ft. can operate **as** a home business without going to the planning board for a site plan review. But a variance is required because Article 34.2 (c) states in order to operate an Auto Repair Business in the Residential district a variance is required.

Sarah Brownell continued reading through the 5 - criteria's noting the garage is set way back off the road and is not visible from the road. There is ample parking. A questioned raised over the distance this property is from the village district. Sarah replied they are 1300 ft. from the village district. Board discussion continued. The repair shop is a 1- person garage small repair service, traffic should not be impacted, and will not have junk cars lying around. The garage is existing, it meets all setbacks and will have insulated walls and doors for noise reduction.

Sarah informed the Board **if** approved; they will have the NH Laws for auto repairs posted, will create a separate structure for storage of the used oil tank. Oil Energy Recovery, who covers NH, ME, and MA, will come once a week for the removal of used fuels, oils, and anti-freeze for recycling.

Wurster called for public input. None was heard.

Board discussion ensued over whether a variance was required but it was explained again that under Article 34.2 (c) states to operate an Auto Repair Business in the Residential district a variance is required; it does not distinguish between primary or accessory use.

A **Motion** by Barron to grant a Variance for **Case #19-10-V:** for Bryan Keith Brownell of 55 Moultonville Rd. Tax Map: 091 Lot: 003 in a request for a Variance from Article 34.2 (c) with the following conditions:

1. Business size is confined to 800 sq. ft. and
2. All Federal, State, and Local Regulations shall be followed.

Wurster called for a roll call vote based on the criteria's per the ZBA' Rules of Procedures page 4- Section 4 Decisions (B) states; ***"The voting procedure for a variance utilizes the five criteria set forth in RSA 674:33, I, and all criteria need to pass in order for the variance to be granted. Each criteria needs at least 3 votes to pass and all 5 criteria must pass in order for a variance to be granted. As required by SB 339 – Voting by Zoning Board of Adjustments: The Bill amends RSA 674:33, III."***

Wurster instructed that those in favor signify by a yes vote, if opposed signify with a vote of No.

Vote by Criteria:

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

Marcotte – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

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

Marcotte – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

3. **Substantial justice is done:**

Marcotte – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

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

Marcotte – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

Rines voted in favor since there are 9 letters of support from the abutters.

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:**

Marcotte – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

(ai) Marcotte – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

(aii) Marcotte – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

Rines reason for voting in favor is 1. Still questions if the variance is needed and 2. The size of this lot compared to surrounding lots is dramatically larger and has the existing building.

Chairman Wurster announced the **Motion for variance is passed.**

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 #19-11-V:** owner – Robert & Mary Ellen McDonald of 56 Long Sands Rd. Tax Map: 067 Lot: 014 is requesting a Variance from Articles 6.4.2.A (Side Setbacks) to finish the installation of a generator within approximately 7 ft. of the side setback.

Robert McDonald presented plans to finish the installation of a generator. The home is a 3,400 sq. ft. single family home with a two-story garage. They are looking to install a 20KW generator on a 200-amp service. This is a secondary home. They have on several occasions *lost* power only to find food has *spoiled* and loss of heat. They initially received the electrical permit *and* laid the slab only to find out they did not meet the setbacks. They were issued a cease and desist and are asking for a variance to be within approximately 7 ft. of the side setback. The generator is buffered by shrubs to reduce noise disturbance. McDonald proceeded *to* read through each of the **5- criteria**.

Board discussed if there are any abutters concerned with the location, layout of the property and location of the generator. No abutters have voiced any concerns.

Robert Deyab (electrician) suggested the zoning ordinance for setbacks be adjusted to allow generators within the 25 ft. setback, because it's impacting businesses and homeowners. Deyab suggested a maximum 5 to 10 ft. setback be allowed for stand-by generators.

The Board explained he would need to submit a petition, signed by a minimum of 25 registered Ossipee voters to the Planning Board, in order to have a zoning ordinance changed and voted on at the Annual Town Meeting.

Mark McConkey questioned the hardship to the homeowner.

Rines questioned McConarty was why it's considered a structure. McConarty had briefly stepped out. McDonald stated his understanding is because it's on a slab, which it's considered a permanent structure,

plus it's hard-wired to the house. McConarty returned and clarified it is a structure because it's mounted on a slab as a permanent structure.

A **Motion** by Barron to grant a Variance for **Case #19-11-V**: for Robert & Mary Ellen McDonald of 56 Long Sands Rd. Tax Map: 067 Lot: 014 request for a Variance from Articles 6.4.2.A (Side Setbacks) and all Federal, State and Local Regulations shall be followed. Marcotte seconded.

Wurster called for a roll call vote based on the criteria's per the ZBA' Rules of Procedures page 4- Section 4 Decisions (B) states; ***"The voting procedure for a variance utilizes the five criteria set forth in RSA 674:33, I, and all criteria need to pass in order for the variance to be granted. Each criteria needs at least 3 votes to pass and all 5 criteria must pass in order for a variance to be granted. As required by SB 339 – Voting by Zoning Board of Adjustments: The Bill amends RSA 674:33, III."***

Wurster instructed that those in favor signify by a Yes vote, if opposed signify with a vote of No.

Vote by Criteria:

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

Marcotte – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

2. The spirit of the ordinance is observed:

Marcotte – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

3. Substantial justice is done:

Marcotte – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

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

Marcotte – Yes Barron – Yes Rines – Yes MacDonald – 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:

Marcotte – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

(ai) Marcotte – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

(aai) Marcotte – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

Rines reason for voting in favor is because it's a developed property and because they could put it in the driveway but that would be a compliance issue with snow plowing and a safety issue if it was on the water side of the property.

Chairman Wurster announced the **Motion for variance is passed.**

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.

Robert McDonald stated he leads customer service at a large computer company and recognized Steve McConarty and Laura Nash for all their help and assistance through this process and if the Board does not take care of Laura, he is going to hire her. (Board laughed 😊)

Notices:

Wurster read a notice for job opportunities for 1- position for the Trustees of Trust Funds. Budget Committee and the ZBA each have 1-position open.

Any Other Business Which May Come Before This Meeting:

Wurster informed the Board that he went to the Right-to-Know Laws seminar, *for* which, he paid the \$55.00 fee out of his pocket and would like to have *a* motion made to get reimbursed.

A **Motion** by Rines to have Ralph Wurster reimbursed the entry fee of \$55.00 for attending the NH Municipal Association seminar on the Right-to-Know Laws. Barron seconded. No discussion. A roll call vote was requested by Wurster.

Marcotte – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – abstained.

Adjournment:

A **Motion** by Barron to adjourn the meeting. Rines seconded. No discussion. All voted in favor, **Motion passed.** The meeting adjourned at 9:25 p.m.

Next Meeting: September 10, 2019 @ 7:00 pm

Minutes were approved by majority vote of the Board:

Ralph Wurster, Chairman

Date

Or

Ed MacDonald, Vice Chairman
(In the absence of the Chairman)

Date