

OSSIPEE ZONING BOARD

Meeting Minutes November 13, 2018

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

Call to Order: Stanley Brothers called the meeting to order at 7:00 p.m. and instructed everyone in attendance to put their cellphones on mute.

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

Chairman Stanley Brothers raised alternate Daniel Fischbein up to voting status in place of Jim Rines.

Meeting Minutes:

The Board reviewed the ZBA meeting minutes of October 9, 2018. Wurster noted a correction on page 1, that should read, “that he is under medical ***advice*** due to a procedure” and page 3, the motion to “withdraw prejudice” should reflect “A **Motion** by Barron to accept the withdrawal without prejudice of **Case #18-12-V: Paul & Lynne Evans** of 80 Deer Cove Rd. Tax Map: 037 Lot: 003 Sub: 002. ***As amended to include, per telephone conversation dated 10/09/2018.*** MacDonald seconded.”

A **Motion** by Barron to approve the minutes of October 9, 2018 as amended. Brothers seconded. No further discussion. All voted to approve. **Motion passed.**

Financial:

- Budget Reports: 10/01/2018 – 10/31/2018 - The Board reviewed the budget.
- Budget Worksheet: The ZBA was informed the Budget Committee’s approved revised proposed budget for the 2019 Budget year.

2019 BUDGET WORKSHEET- ZBA			to 8/31/2018	
Account	Description	2018 Adopted Budget	2018 YTD Transactions	2019 Dept. Request
01.41913.120.00	ZBA - SALARY SECRETARY	\$5,500.00	\$4,609.80	\$7,500.00
01.41913.210.00	ZBA - HEALTH INS	\$2,733.00	\$1,822.00	\$3,135.00
01.41913.210.00	ZBA - STD INS			\$29.00
01.41913.215.00	ZBA - LIFE INS	\$9.00	\$6.00	\$11.00
01.41913.220.00	ZBA - FICA	\$341.00	\$271.92	\$465.00
01.41913.225.00	ZBA - MEDICARE	\$80.00	\$63.61	\$109.00
01.41913.230.00	ZBA - RETIREMENT	\$626.00	\$517.63	\$854.00
01.41913.341.00	ZBA - TELEPHONE	\$550.00	\$0.00	\$550.00
01.41913.553.00	ZBA - ADVERTISING	\$1,700.00	\$1,598.00	\$2,500.00
01.41913.620.00	ZBA - OFFICE SUPPLIES/ PROF FEES	\$400.00	\$119.16	\$400.00
01.41913.625.00	ZBA - POSTAGE	\$1,050.00	\$955.66	\$1,500.00
01.41913.661.00	ZBA - MILEAGE	\$200.00	\$0.00	\$200.00
01.41913.810.00	ZBA - EDUCATION	\$300.00	\$0.00	\$300.00
01.41913.820.00	ZBA - COMPUTER & SOFTWARE	-	-	-
		\$13,489.00	\$11,954.70	\$17,553.00

Unfinished Business: Chairman Stanley Brothers announced this is his last meeting. They’re closing on their house and moving to Texas next week. Barron and the rest of Board congratulated Stanley Brothers and thanked him for his 27 years of service to the Town of Ossipee. Brothers thanked everyone and stated the Town of Ossipee needs people to step forward and participate in their Towns Government, Boards and Committees.

New Business:

PUBLIC HEARING

For the following Applications

- **Case #18-13-V: Timothy & Deborah Regan** – 8 Frost Rd. Tax Map: 066 Lot: 053 is applying for a **Variance** from Article 6.4.2A – Side Setbacks of the Zoning Ordinances to construct 2 concrete pads for installation of an A/C condenser and whole house generator.

Deborah Regan briefly presented their ideas for their home and turned the discussion over to Scott Morrison to present the details. Deborah Regan has letters from her two side abutters, who are not contesting the Reagan's plans. Scott Morrison read through the 5 – criteria's for why the variance should be granted to construct 2 concrete pads for installation of an A/C condenser and whole house generator. In constructing the cinder block bases, they learned this now considered a structure and is required to meet side setback regulations.

The Board reviewed the application and plans. Brothers called on McConarty for input. McConarty noted because they are in the floodplain. They are required by FEMA to elevate all utilities for protection from flood damage. Barron suggested adding a buffer wall to reduce the noise level for the neighbors. Brothers read an abutter's letter from Mike and Kelly Wynn.

Brothers called for public input either for or against the applicant. None was brought forth.

Brothers called for any further Board discussion.

Discussion continued over the height of the unit and the ability to have it serviced, which raises concerns with the homeowner. Deborah Regan and McConarty briefly discussed why there is a need for a variance when there are several other homeowners in the area have a/c unit on the ground *versus* having to elevate their unit. McConarty stated there are two issues; 1. Is the side setback and 2. It's a FEMA requirement that anyone in the flood plain, their units need to be elevated above the 414.0 ft. flood zone and was enacted in the early 1990's. Discussion continued over why FEMA regulations are being enforced now and will all their neighbors have to meet these requirements. Deborah Regan was informed if she wishes to file a written complaint; McConarty would certainly look into the situation. Brothers noted the ZBA can only rule on the side setback requirement and informed the applicant the Board always puts a condition on every ruling that "All Federal, State, and Local Regulations must be followed."

- A **Motion** by Barron to grant a Variance for **Case #18-13-V: Timothy & Deborah Regan** – 8 Frost Rd. Tax Map: 066 Lot: 053 from Article 6.4.2A – Side Setbacks of the Zoning Ordinances to construct 2 concrete pads for installation of an A/C condenser and whole house generator as *stated* on the plan submitted 10/18/2018, with condition that All Federal, State, and Local Regulations must be followed.

Vote by Criteria:

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes 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 MacDonald – Yes Wurster – Yes Brothers – Yes
(a ii) Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

Chairman Brothers announced the **motion passed**. The Variance has been granted. There is a 30-day appeal process of the ZBA decision, which starts tomorrow morning.

- **Case #18-14-V: Robert Goldman** - 70 Nichols Rd. Tax Map: 024 Lot: 017 is applying for a Variance from Article 6.4.1.A, 6.4.2.A & 6.4.2.B - Front/Side & Rear Setbacks to build an 8 ft. X 10 ft. shed.

Robert Goldman was here to present his case to the Board. Goldman stated when the campground surveyed their land, it was determined that his shed was on their property. He removed the old 10 X 12 ft. rusted metal shed. Started building a new 8 X 10 ft. shed a few feet back onto his property. Subsequently he was issued a Cease & Desist for not having a building permit. He received a denial letter for not meeting setbacks and is here requesting a variance.

Board requested to have the measurements from the boundary lines to the shed marked on the plan. Review of the plans were discussed. No abutters objected.

A **Motion** by Barron to approve **Case #18-14-V: Robert Goldman** - 70 Nichols Rd. Tax Map: 024 Lot: 017 was Granted a Variance from Article 6.4.1.A, 6.4.2.A & 6.4.2.B - Front/Side & Rear Setbacks to build an 8 ft. X 10 ft. shed with the conditions that the front and side setbacks are no less than 1 foot from the boundary lines and all Federal, State and Local Regulations and Ordinances shall be followed. Fischbein seconded.

Vote by Criteria:

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes 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 MacDonald – Yes Wurster – Yes Brothers – Yes
(a ii) Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

Chairman Brothers announced the **motion passed**. The Variance has been granted. There is a 30 days appeal process of the ZBA decision, which starts tomorrow morning. The Selectmen or any party to the action or any person directly affected has a right to appeal this decision.

Case #18-15-V: Craig Marquis – 6 Lower Broad Bay Rd. Tax Map: 031 Lot: 004 is applying for a Variance from Article 6.4.1.A, 6.4.2.A & 23.3.2 – Front & Side Setbacks Requirements and Making a Non-Conforming Structure More Non-conforming for expansion of an existing deck.

Mark and Jacob McConkey are the representing agents. Mark McConkey presented the case to the Board. The applicant would like to extend the existing deck over the footprint of the front stairs. The new deck will extend 5 ft. in the northerly direction and tie in with the front face of the home. The stairs will be relocated to the south side of the deck and descend towards the water. The NHDES Shoreland Permit is pending. The property has been surveyed. M. McConkey read the 5 criteria's.

Board Discussion resulted in requesting to have the last step of the new stairs even with the front-face wall of the house. McConkey was asked to submit revised plans illustrating the change for the stairs.

A **Motion** by Brothers to approve **Case #18-15-V: Craig Marquis** – 6 Lower Broad Bay Rd. Tax Map: 031 Lot: 004 for a Variance from Article 6.4.1.A, 6.4.2.A – Front & Side Setbacks Requirements for expansion of an existing deck, with the following conditions:

1. Pending NHDES Shoreland Permit Approval
2. Pending Amended Plans
3. All Federal, State and Local Regulations and Ordinances shall be followed

Barron seconded.

Vote by Criteria:

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes 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 MacDonald – Yes Wurster – Yes Brothers – Yes

(aaii) Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

Chairman Brothers announced the **motion passed**. The Variance has been granted. There is a 30 days appeal process of the ZBA decision, which starts tomorrow morning. The Selectmen or any party to the action or any person directly affected has a right to appeal this decision.

A **Motion** by Brothers to approve **Case #18-15-SE: Craig Marquis** – 6 Lower Broad Bay Rd. Tax Map: 031 Lot: 004 for a Special Exception from Article 23.3.2 – Making a Non-Conforming Structure More Non-conforming for expansion of an existing deck, with the following conditions:

4. Stairs must be even with the house
5. Pending Amended Plans
6. All Federal, State and Local Regulations and Ordinances shall be followed

Barron seconded.

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)**

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – 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.**

Barron – Yes MacDonald – Yes Wurster – Yes Brothers – 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.**

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

Chairman Brothers announced the **motion passed**. The Special Exception has been granted. There is a 30 days appeal process of the ZBA decision, which starts tomorrow morning. The Selectmen or any party to the action or any person directly affected has a right to appeal this decision.

- **Case #18-16-V: Walter S. Jr. & Margo Levitsky** – 6 Old Broad Bay Rd. Tax Map: 034 Lot: 006 is applying for a Variance from Article 6.4.1.A, 6.4.2.A & 23.3.2 – Front & Side Setbacks Requirements and Making a Non-Conforming Structure More Non-conforming for House Expansion & Adding an Attached Garage.

Mark and Jacob McConkey are the representing agents. Mark McConkey presented the case to the Board. The applicant would like to build an addition on two sides of the home, extend the deck on the front face of the house and add an attached garage to the rear of the home. The expansion would result in a second floor, extending the deck to the right, even with the house and adding an attached garage to the rear, road side of the home. M. McConkey read the 5 criteria's noting that the home pre-dates zoning, will be receiving a new septic system, and has received the NHDES Shoreland Permit Approval.

The Board read and discussed a letter received by abutter, Alex Bakman addressing the road configuration, parking and number of vehicles at this location. Barron noted the ZBA has no jurisdiction over these issues.

Public Input:

Alex Bakman addressed the Board and explained the 3 points of his letter.

Robert Cash address the Board to voice his concerns over the proposed garage being 9 ft. from his property line, height of the second story, road width, right of way access, traffic and parking around the Levitsky's property.

Discussion ensued over whether Broad Bay Rd. 1 is a private road, a class 6 road, rights to way access, and

Town grading and plowing of the road. Chairman Brothers abruptly ended the discussion and asked Mr. Cash, if all the residents who live past him have a right of way access to the road and if so, then there is a 50 ft. right of way access. Review of the plans ensued over the road access.

Chairman Brothers recommended continuing this application until the next ZBA meeting. Mark McConkey agreed and requested a continuance until the December 11th meeting. McConkey will stake out where the garage would be positioned, and place a stake showing the height elevation.

A **Motion** by Brothers to continue **Case #18-16-V: Walter S. Jr. & Margo Levitsky** – 6 Old Broad Bay Rd. Tax Map: 034 Lot: 006 is applying for a Variance from Article 6.4.1.A, 6.4.2.A & 23.3.2 – Front & Side Setbacks Requirements and Making a Non-Conforming Structure More Non-conforming until the next ZBA meeting to be held on December 11, 2018. Barron seconded. No further questions. A unanimous vote was taken.

- **Case #18-17-V: William & Patricia Crockan** – 18 Frost Rd. Tax Map: 066 Lot: 048 is applying for a Variance from Article 6.4.1.A– Front Setback Requirements and a Special Exception from Article 23.3.2 for Making an Existing Non-Conforming Structure More Non-Conforming to construct an addition and deck to an existing, non-conforming structure.

Mark and Jacob McConkey are the representing agents. Mark McConkey presented the case to the Board. The applicant would like to add 9.83 ft. of width on the front and right side of the home and add 12 ft. to the rear of the home, and add a narrow entrance deck off the back of the house. This property is experiencing shoreland erosion, due to boat traffic from the Indian Mound Boat Launch. This is causing issues and will need to be rip rapped. NHDES Shoreland Permit has been approved. A new septic system is pending Wetlands Permit. Mark McConkey read the 5 criteria's.

Board discussion ensued over whether this was an addition or the owner is going to demo and rebuild a new construction. If it's a new construction, mortgage companies are requiring the property be surveyed and the corners pinned. If the property is in the flood plain – FEMA requires the owner to follow flood plain requirements and an elevation certificate issued. A question was raised if the garage was going to have any living space and McConkey assured the Board it would not. The Shoreland Permit is noted to be for the expansion of the house. If the owner's go beyond the addition and decide to do a new construction, a NHDES Shoreland Redevelopment Permit would be required.

A **Motion** by Brothers to approve **Case #18-17-V: William & Patricia Crockan** – 18 Frost Rd. Tax Map: 066 Lot: 048 is applying for a Variance from Article 6.4.1.A – Front Setback Requirements to allow to be 26.6 ft. from boundary, with the following conditions:

1. All corners pinned on new construction
2. All Federal, State and Local Regulations and Ordinances shall be followed

Vote by Criteria:

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes 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 MacDonald – Yes Wurster – Yes Brothers – Yes
(aii) Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

Chairman Brothers announced the **motion passed**. The Variance has been granted. There is a 30 days appeal process of the ZBA decision, which starts tomorrow morning. The Selectmen or any party to the action or any person directly affected has a right to appeal this decision.

A **Motion** by Brothers to approve **Case #18-17-V: William & Patricia Crockan** – 18 Frost Rd. Tax Map: 066 Lot: 048 is applying for a Special Exception from Article 23.3.2 for Making an Existing Non-Conforming Structure More Non-Conforming to construct an addition and deck to an existing, non-conforming structure, with the following conditions:

1. All corners pinned on new construction
2. New construction within the flood plain shall meet FEMA Flood Plain Elevation Requirements
3. Pending Wetlands Permit Approval – Septic Design
4. All Federal, State and Local Regulations and Ordinances shall be followed

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)**

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – 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.**

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – 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.**

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

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

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes Brothers – Yes

Chairman Brothers announced the **motion passed**. The Special Exception has been granted. There is a 30 days appeal process of the ZBA decision, which starts tomorrow morning. The Selectmen or any party to the action or any person directly affected has a right to appeal this decision.

Any Other Business Which May Come Before This Meeting:

Chairman, Stanley Brothers said his good-byes to each member of the Board and thanked everyone for serving with him over the years.

Adjournment:

A Motion by Brothers to adjourn the meeting. Barron seconded. No discussion. All voted in favor, **Motion passed.** The meeting adjourned at 8:57 p.m.

Next Meeting: **December 11, 2018 @ 7:00 pm**

Minutes approved by majority vote of the Board on:

Stanley Brothers, Chairman

Date

Or

Ralph Wurster, Vice Chairman
(In the absence of the Chairman)

Date