

**OSSIPEE PLANNING BOARD  
MEETING MINUTES  
December 17, 2019**

Minutes have been recorded to be summarized by Laura Nash, Planning Board Secretary; any amendments to the minutes are noted in ***bold & italic*** type.

REGULAR PUBLIC MEETING

**Call to Order:** Connie Billings called the meeting to order at 7: 02 PM.

**Pledge of Allegiance:** was recited by all in attendance.

**PB Attendance by Roll Call:** – Connie Billings, Roy Barron, Tim Otterbach, Sharon “Sharie” Cohen, Bruce Stuart, Alternate- Krystal Eldridge and Steve McConarty, ZEO.

**Absent:** Peter Zavas, , and Sue Simpson (Select. Rep)

Chairman Billings raised Alternate - Krystal Eldridge up to voting status in place of Peter Zavas.

**Public Input:** Billings called for public input unrelated to any case being presented. None was heard.

**Meeting Minutes:** Review to approve Meeting Minutes of 12/03/2019.

A **Motion** by Barron to approve the minutes of the December 3, 2019 Planning Board meeting as submitted. Otterbach seconded. No discussion. Stuart abstained because he was not present for the meeting. All others voted in favor by a show of hands. **Motion passed.**

**Financial:**

- Budget Report: 11/01/2019 – 11/30/2019 was reviewed by the Board. No discussion ensued.

**Informal Discussion:** N/A

**New Business:**

PUBLIC HEARING

• **Case #19-8-SPR:** Frank Varney of 44 Route 28. Tax Map: 126 Lot: 018 is requesting a Site Plan Review to formalize a gravel driveway (4,097 sq. ft.) and construct a 4,800 sq. ft. building to store and maintain his own vehicles and trailers. Mr. Varney will not take in outside vehicle or trailer service work and will not be open to the public. (Case Continued until 12/17/2019 PB Mtg.)

1. Waiver Request 6.04.4 (G) (3) – Scale: the scale shall be a minimum scale of 1 inch = 20 ft. Due to size of lot of the initial plan is scaled at 1 inch = 70 ft., to show the entire parcel. The second plot identified as sheet 2 is a 1 inch = 30 ft. scale to show greater detail for the area in question.

Representing agent, Mark McConkey submitted redrafted plans by Jake McConkey reflecting changes based on the outcome of the last meeting. The Fire Chief’s letter requested the driveway be widened to 20 ft. and become a named road. McConkey pointed out they also widened the road to Varney’s property and by doing so it took the project from a Minor Site Plan Review to a Major Site Plan Review. McConkey provided a copy of the NHDOT Driveway Permit. McConkey address to following concerns based on the last meeting:

1. NDOT letter for driveway approval – Received by the Board on 12/17/2019.

2. Survey Driveway and Right of way – Received a copy of the survey plans from the Carroll County Registry of Deeds, Plan Book: 214 Page: 75. White Mountain Survey & Engineering, Inc.

performed the survey dated June 20, 2006, which shows the location of the right of way with wording listed under “Easement Note” and unless otherwise noted elsewhere it appears the right of way has been paved for 20 – 30 years.

3. No Salt to be use on gravel road. There is a note on the plans indicating no salt will be used on the driveway.

4. Varney will be pushing snow on his property. There is another note on the plans stating Mr. Varney will not be pushing snow onto his neighbors property. Varney has a new V plow that will carry the snow forward.

5. White Pines to create a buffer – Based on the survey plans from the Carroll County Registry of Deeds, Plan Book: 214 Page: 75. White Mountain Survey & Engineering, Inc. performed the survey dated June 20, 2006, shows no vegetative edge, it had already been cut and cleared prior to Mr. Varney purchasing the property. Varney is going to have white pines planted to create a buffer and is noted on the plans.

6. Septic System: The neighbor noted per the Zoning Ordinance a septic system is required. McConkey spoke with Robert Tardiff, Subsurface Administrator, who stated, he would follow this discussion up with a formal letter if the Planning Board prefers. McConkey submitted a statement from Mr. Tardiff which states, “If there is no water in, there is no need for a septic system. He cited RSA 485-A:32 Prior Approval Permits.”

7. Does Varney have a State agreement to use road of right of way – McConkey noted on page 3 of the NHDOT Driveway Permit states, “The driveway entrance requested is for access to: Shared access to back DOT lot.”

Billings polled the Board for any questions for Mark McConkey. No questions were asked.

Billings called for Public Input.

Attorney, Randy Walker, Attorney from Walker & Varney, PC, spoke on behalf of the abutter Suzanne Kolias. Billings stopped the discussion since the Planning Board did not have legal representation present. Discussion ensued over allowing Mr. Walker to speak on behalf of the Kolias’.

**Point of Order** by Tim Otterbach requesting to allow Mr. Walker to proceed and if he delves into legal language the Board can address it with a point of order. Nash suggested the case could be continued until legal counsel is sought. Billings polled the Board to allow Mr. Walker present on behalf of the Kolias’.

Eldridge – Yes      Cohen – Yes      Barron – Yes      Otterbach – Yes      Stuart – Yes

Attorney, Randy Walker stated he represents Suzanne Kolias who immediately abuts Varney property and the garage too close to the property line. Walker notes the Kolias are in agreement that if Varney wants to build a home in the residential zone, there okay with it. But they do not want a commercial business in the residentially zoned area. Walker reference Varney’s application noting the property is zoned Commercial and the land use is Commercial/Industrial use. The Kolias’ inquired about buying this lot last year. But according to the Town’s zoning map, the area is zoned Residential, and under permitted use Varney’s intended use is not allowed in the residential zone.

Discussion ensued over the property being commercially zoned for many years because it has been a gravel pit. But Walker argued the gravel pit has not been in active use for many years, and therefore in accordance with Z. O. **23.2.1. DISCONTINUED USE:** “If a non-conforming use is discontinued for one (1) year or superseded by a conforming use, it shall thereafter conform to the requirements of the zone and the non-conforming use may not be resumed.”

Barron noted it has been a gravel pit because it was held up in the reclamation process for many years and was finalized on August 28, 2019, so it was not a discontinued use.

Attorney, Randy Walker again stated it is still in the residential zone and is not a permitted use. Billings noted the property has been a commercial use and the site plan proposed is for commercial use, so there is no change in use. This property's commercial use is pre-zoning and is therefore "grandfathered." Discussion ensued.

Attorney, Randy Walker next addressed the property is believed to be within the Water Resource Protection Area and therefore the district does not allow auto repair in the residential district, so the changing of fluids on Varney's equipment is not permitted. Billings noted pertains to retail – Auto Repair Shops but are allowed within the Commercial district according to Z. O. 34.2 (c).

Attorney, Randy Walker next addressed Z. O. **4.1 SANITARY PROTECTION** "All buildings for human use or occupancy shall have sanitary systems constructed and maintained in accordance with standards set by The New Hampshire Water Supply and Pollution Control Division, by the Town Subdivision Regulations and applicable health and sanitary codes." He acknowledged the state does not require it but thought the Town ordinance did require it when the structure is for human use. Otterbach asked the Chairman for the Zoning Officer to respond to this question. Steve McConarty, ZEO noted as long as it is not habitable the owner can have a port a potty stationed outside but once they have water coming into the building, they must install a septic system.

Jim Rines, Manager of Post Office Partners, Inc. (abutter), is not in favor nor against the proposed plans but does want to ensure the ordinances are being adhered to. Rines agreed with Attorney Walker that the area is zoned residential and that does not change. Rines noted according to Z. O. **23.2 NON-CONFORMING USES** "If a lawful use exists at the effective date of adoption or amendment of this Ordinance, that would not be allowed in the Zone under terms of this Ordinance, said use may be continued, so long as it remains otherwise lawful and subject to the other provisions of this Section." Rines stated the ordinances control the zone not the tax cards, even though the tax card states the property is commercially zoned. But it's a grandfathered non-conforming use. Discussion ensued over the intensity of use. Rines asked if the Board's position is any change in use of a pre-existing non-conforming use, the change in use does not require any additional relief. Billings noted he believes this is being addressed in the revised plans.

Jim Rines proceeded to review the property plans originally surveyed by Steve Boomer, which does not show bearing and distances around the perimeter. The rear boundary line says it's 250 ft. but it scales to 280 ft. White Mtn Survey & Engineering, Inc. had surveyed an abutting property for a subdivision and found a 32 ft. bust in the common boundary line, which is showing the proposed garage right up against the setback. Rines suggested, this is an instance where the Planning Board should consider what type of application and how should the plans be prepared, and should they be prepared by a licensed land surveyor. Billings asked if White Mtn Survey & Engineering, Inc. had placed any pins when they surveyed. Rines noted they did place some but in 2002, the state did not require boundaries be pinned when surveyed. Steve McConarty agreed with Rines of having the rear boundary surveyed and staked to determine the setback for the garage.

Mark McConkey noted the plans submitted for the right of way is stamped 2006. McConkey noted Mr. Varney would like to move forward with this project and would pin the foundation of the garage and suggested having just the rear boundary surveyed, instead of the whole property. Discussion ensued how the boundaries were determined. Mark and Jake McConkey explained their process for determining the boundaries and how the abutter has great interest in slowing and charging everything he can against my client but does agree to have that one line established. Rines and Billings reviewed the plans, while the rest of Board discussed amongst themselves. Discussion ensued over the plans.

Billings asked McConkey to address the concerns with the right of way. McConkey referred to the description of the easement on the White Mountain Survey plans, referenced all the deeds, it's never been defined, it only referenced where it's located. McConkey agreed to have Mr. Varney and Mr. Kolias to come to an agreement on the right of way location.

Barron asked Rines if there is a law on the books, that if a right of way has been used for over 30 years, it remains a right of way. Rines was not familiar with such law but if it's a deeded right of way, a lot of times it's hard to find its location. Rines thought Barron may have been referring to a prescribed right of way.

Billings called for any more public input.

David Kolias asked to speak directly to Jim Rines concerning any bearings or distance of the right of way, when White Mountain Survey surveyed the property. Rines explained his finding. McConkey and Kolias agreed to come to an agreement on the right of way. Discussion ensued over the width of the right of way and the width of the driveway.

Dave Kolias submitted a letter from White Mountain Survey & Engineering addressing the residential zoning issue and a list of zoning ordinances, he believes are being violated on this project. The Board reviewed the list.

Jim Rines suggested the Planning Board bring in legal counsel for the next meeting, as to not delay the case any longer than necessary.

Attorney Randy Walker suggested to speak with the Town's legal counsel prior to the next meeting.

Lee Gridley stated he has spoken with each owner of the gravel pit over the years, who have indicated once they were done digging the pit would be reclaimed, leveled and seeded. This has not been done. He does not believe having a garage and 18-wheel trucks coming in and out as being grandfathered. Concerns were raised over dust, and noise of the trucks. Mr. Gridley also raised concerns over some still water wetlands in the pit area. Barron noted there may be some standing water, but it does not meet the criteria for vernal pools.

Ruth Gridley addressed the still water wetlands next to their driveway. Barron noted those wetlands are of concern, which is why they cannot put calcium on the road to keep the dust down because it would pollute the vernal pools. Discussion ensued over the location of the vernal pools, the gravel pit not being a gravel pit any longer, and the noise and speed of the trucks coming in and out of the road. Billings halted the discussion and noted to Mrs. Gridley that the wetlands are not part of the gravel pit, it's part of her property. Gridley agreed. Billings commented that just because her boundary line is next to the access road, does not give her the right to tell Mr. Varney what he can and cannot do on his property. Mrs. Gridley had concerns of the roadway being widened and impacting the vernal pools on her property. It was explained to her that by law the vernal pools cannot be disturbed, and the Planning Board is following the request of the Fire Chief for the road widening. Discussion ensued.

Billings closed public input.

A **Motion** by Otterbach to continue **Case #19-8-SPR**: Frank Varney of 44 Route 28. Tax Map: 126 Lot: 018 request for a Site Plan Review until a date certain of January 7, 2019 for the next Planning Board meeting. With the following conditions:

1. Continue case to a date certain of January 7, 2019.
2. Survey right hand side - north boundary line of abutting property owned by Suzanne Kolias.
3. Define entrance of the right of way length and angle by a Licensed Land Surveyor.
4. To have the Town Attorney present at the next Planning Board meeting to provide legal advice on this matter.
5. CTA Realty Trustee c/o Suzanne Kolias, Trustee and Frank Varney come to an agreement on the location of the right of way.

**Point of Order** by Jim Rines correcting the direction of boundary line survey, it should be north boundary line not southerly boundary line as previously stated.

Otterbach corrected the motion. Barron seconded. No further discussion, A unanimous vote was taken. **Motion passed.**

- **Case #19-9-SPR:** Requesting a continuance until the January 7, 2020 meeting due to the snowstorm and having to drive up from Massachusetts.

New Circular Wireless (AT&T) c/o SmartLink. Representing Agent is Kevin D'Auteuil for 88 Walker Hill Rd. Tax Map: 252 Lot: 022 are requesting a Site Plan Review for placement of a wireless facility per Section 6409 Eligible Facilities Request to add (9) wireless antennas, (9) remote radio units, (1) walk in cabinet and (1) generator to be installed. Also proposing to add an extension of the existing structure by (15) ft. to raise the tower from 122 ft. to 137 ft. at the wireless Base Station located at 88 Walker Hill Road.

A **Motion** by Billings to grant the continuance of **Case #19-9-SPR:** New Circular Wireless (AT&T) c/o SmartLink. Representing Agent is Kevin D'Auteuil for 88 Walker Hill Rd. Tax Map: 252 Lot: 022 request for a Site Plan Review until a date certain of January 7, 2019 for the next Planning Board meeting. Barron seconded. No further discussion, A unanimous vote was taken. **Motion passed.**

#### **Unfinished Business:**

- **Case #19-3-BLA:** Duane & Pammy Berry and **Case #19-3-SUBD:** Ernest Berry was granted SUBD – the plans were signed.

- **Case #19-2-SUBD:** owner – John Howell of 95 Leavitt Rd. Tax Map: 031 Lot: 031 was **granted a Conditional Subdivision Approval** for a 2 - Lot Subdivision pending the following conditions: [Is requesting final approval for subdivision with conditions met.](#)

1. Issuance of a Certificate of Occupancy from the Zoning Enforcement Officer for the proposed apartment of the existing garage on proposed lot 2. [Removed by Planning Board on 12/03/2019](#)
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)” [Also imposed by the ZBA or the garage must be removed.](#)
3. Submittal of Final Mylar Plat Plans and Fees for Recording – [Received 12/06/2019](#)
4. [Variance approved 11/12/2019](#)
5. All Federal, State, and Local Regulations shall be followed.

A **Motion** by Billings to grant final approval for **Case #19-2-SUBD:** owner – John Howell of 95 Leavitt Rd. Tax Map: 031 Lot: 031 for a **Subdivision Approval** with all conditions met. Barron seconded. No Discussion. A unanimous vote was taken.

In the process of going to sign the final plans there was an error recognized and Billings halted the signing of the plans until corrected plans are submitted. The secretary is contact the owner and request corrected plans.

#### **Unsatisfied Conditions: (continued from previous PB Mtgs):**

- See separate sheet with details. [\(No other updates\)](#)

#### **Gravel Pits:**

- **Case # 18-1-GP:** Requesting a continuance until the January 7, 2020 meeting due to the snowstorm and having to drive up from Manchester.

Brad Leighton c/o Jon Rokeh, Rokeh Consulting for 75 Chickville Rd. Tax map: 239 Lot: 001 has submitted an Earth Excavation & Reclamation Permit to re-open the 75 Chickville Rd. Gravel Pit, which is under new ownership.

1. The owner and applicant for 2012 Foresight Realty Trust Holdings reflect each other on the application.
2. Letter of Authorization from 2012 Foresight Realty Trust Holdings noticing Brad Leighton as trustee.
3. Legal documentation to support which owner put forth the reclamation fees, Coyne or Leighton.
4. Letter of Authorization from 2012 Foresight Realty Trust Holdings noticing Brad Leighton as a trustee and is appointed to represent them.
5. Legal opinion from the Town of Ossipee's, Attorney Sager on the disbursement of Mr. Coyne's money

A **Motion** by Billings to grant the continuance of **Case # 18-1-GP**: Brad Leighton c/o Jon Rokeh, Rokeh Consulting for 75 Chickville Rd. Tax map: 239 Lot: 001 has submitted an Earth Excavation & Reclamation Permit to re-open the 75 Chickville Rd. Gravel Pit request for a Site Plan Review until a date certain of January 7, 2019 for the next Planning Board meeting. Barron seconded. No further discussion, A unanimous vote was taken. **Motion passed.**

**Notices:** Sharie Cohen read the notices

- **Case #19-16-V:** for Peter J. Bradley of 28 Danville Rd. Tax Map: 020 Lot: 011 was Granted 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.
- **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.
- 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 is that a Special Exception was not needed because the non-conforming structure was being totally removed and is excepting Mr. Varney's request to withdraw the application for the Special Exception. Barron seconded. No further discussion. A unanimous vote was taken. **Motion passed.**
- Annual Christmas Potluck – Tuesday, December 24, 2019 at 12:00 PM in the Bud Avery Memorial Gymnasium

**Upcoming Deadlines & Meeting:**

- **Wednesday, December 11, 2020 – Was** the Last day to accept petitions to amend zoning ordinance, historic district ordinance or building code for consideration at the 2020 town meeting

- **Wednesday, January 8, 2020** - Last day to post and publish notice for first hearing on proposed adoption or amendment of zoning ordinance, historic district ordinance or building code if a second hearing is anticipated.
- **Monday, January 20, 2020** - Last day to hold first public hearing on adoption or amendment of zoning ordinance, historic district ordinance or building code if a second public hearing is anticipated.
- **Wednesday, January 22, 2020** - Last day to post and publish notice of final planning board public hearing on proposed adoption or amendment to zoning ordinance, historic district ordinance or building code.
- **Monday, February 3, 2020** - Last day for planning board to hold final public hearing on adoption or amendment of zoning ordinance, historic district ordinance or building code. Planning board must also determine final form.
- **Tuesday, February 4, 2020** - Last day for official copy of final proposal to adopt or amend zoning ordinance, historic district ordinance or building code to be placed on file at the town clerk's office.
- **Tuesday, March 3, 2020** - Last day to submit zoning ordinance protest petition to require 2/3 vote at town meeting.

**Any Other Business Which May Come Before This Meeting:**

Billings asked Steve McConarty, ZEO for the RSA concerning solar power and noting the Town needs to get a zoning ordinance in place. McConarty will investigate the RSA update.

**Next Meeting & Public Hearing:** **January 7, 2020 @ 7:00 pm**

**Adjournment:**

A **Motion** by Billings to adjourn. Barron seconded. No discussion. A unanimous vote was taken. **Motion passed.**

**Meeting adjourned** at 8:47 pm.

Minutes approved by majority vote of the Board on –

\_\_\_\_\_ Date

\_\_\_\_\_  
Condict (Connie) Billings, Chairman