

OSSIPEE ZONING BOARD

Meeting Minutes

August 8, 2017

Minutes were recorded by and transcribed by Laura Nash, Board Secretary.

Revisions of these minutes are noted by ***bold/italic*** type.

Call to Order: Stanley Brothers, Chairman called the meeting to order at 7:03 p.m.

Members Present by Roll Call: Chairman - Stanley Brothers, Ralph Wurster, Jim Rines, Bill Grover and Steve McConarty (ZEO). **Absent:** Bob Freeman (Selectmen's Rep) and Ski Kwiatkowski

Membership: Brothers read a letter received 7/19/2017 by the Board of Selectmen approving the appointment of Bill Grover to fill the vacancy seat previously held by David Babson. Brothers also noted he received notification Bill Grover had been sworn into office and the Board welcomed Grover with a round of applause.

Meeting Minutes:

Review and Approve Meeting Minutes of July 11, 2017.

A **Motion** by Rines to approve the July 11, 2017 meeting minutes for the purpose of discussion. Grover seconded.

Board Discussion: Grover noted one typographical edit on page 3.

The **Motion** by Rines was restated to approve the July 11, 2017 meeting minutes as corrected. Grover seconded. No further discussion. A unanimous vote was taken.

Financial:

- Budget Reports: July 2017 was reviewed.

New Business:

Public Hearing on Variance Applications

- **Case # 17-3-Motion for Rehearing:** Alexander Bakman, 12 Old Broad Bay Rd. 1. Tax Map: 35 Lot: 15 – c/o Attorney, Marl Sullivan has filed a Motion for Rehearing to reconsider the ZBA decision of Case # 17 – 4 – V: for a Variance from Article VI Section: 6.4.2 (A) (side setback requirements) of the Ossipee Zoning Ordinance to keep a 20' x 20' metal carport (after the fact) that is less than the required 25 ft. sideline setback.

Brothers inquired if the Board members had reviewed the letter from Mr. Bakman's attorney.

Rines had a couple of questions, 1. The Board did not accept the application because it was a Variance application. But according to the attorney, the intent was to seek an Equitable Waiver of Dimensional Requirements form. Rines noted there is an Equitable Dimensional Waiver form but Mr. Bakman did not use it. The denial letter was for a variance, which Rines believes to be correct. Rines noted the application was for a variance and the case law states if you have applied and been denied a variance, you're precluded from asking for it again. Rines does not believe the ZBA erred in that respect. Rines noted Mr. Bakman has the right to request and apply for an Equitable Waiver of Dimensional Requirements, which is a separate application. But he's asking the ZBA to reconsider their decision of not accepting the variance application.

A **Motion** made by Rines to deny the Motion for Rehearing request. Grover seconded the motion.

Brothers opened for discussion.

Wurster commented on the attorney's circular argument and questioned how Mr. Bakman obtained the Variance application. McConarty stated Mr. Bakman came and saw him. He asked for a Variance. McConarty gave him a denial letter and a Variance application. Mr. Bakman paid the denial fee of \$25.00 and that was the last McConarty saw him.

Wurster believes since Mr. Bakman asked for the Variance application. The burden is on him.

Grover questioned if the Equitable Waiver of Dimensional Requirements form is a new document because he has not come across one before. Rines stated no and the secretary explained the form has existed. It was in the previous **secretary's** file and is provided in their packets tonight for revisions. Grover questioned if this application was the same as a Variance. Rines stated no and proceeded to explain the differences to the Board.

Board discussion ensued addressing the issues raised in the attorney's letter compared to the three criteria's within the Equitable Waiver of Dimensional Requirements form. Grover noted three issues with the attorney's letter, as follows:

1. ***The Attorney stating the intent of the Variance application was to seek an Equitable Waiver of Dimensional Requirements form.*** Grover noted the applicant could have easily asked for that form but didn't. The secretary informed the Board, when Mr. Bakman presented to her office with his Variance ***application***, ***she*** noted in one section "Equitable Waiver of Dimensional Requirements" was ***written; so*** she asked Mr. Bakman if he was applying for a Variance or an Equitable Waiver of Dimensional Requirements form. Mr. Bakman replied a Variance. Grover noted the error is on Mr. Bakman, then.
2. ***The Board considered the application as the same as an application for a variance to construct a garage with a room above it as was submitted in 2012.*** Grover noted based on last month's information the actual structure itself is no further from the property line than what was being presented in the new application.
3. ***Such a decision is factually and legally incorrect...*** Grover noted that can be refuted because the attorney did not put anything in the letter as to why he thinks it's ***factually and legally incorrect***. Grover noted just because the carport does not have a room above ***it that*** does not change the dimensional fact that it is built so close to the property line. Grover referenced the criteria in the Equitable Waiver of Dimensional Requirements form, which states a mistake caused by either a good faith error in measurement or calculation. Grover noted there is a big difference between 3 feet and 25 feet, even visually.
4. ***The Town has only one form for applications which does not discriminate between the two different applications, but allows only a choice between special exception and variances.*** Brothers noted there is no truth there because there is an Equitable Waiver of Dimensional form and we all have a copy of it. The Board members agreed.

Brothers restated the motion. Connie Billings, in the audience, ***made a point of order*** the previous motion was for discussion only and a new motion needs to be made. Rines disagreed. Grover noted he seconded the previous motion so they could move on to discussing the issues.

Brothers noted to move forward and reread the motion.

A **Motion** made by Rines to deny the Motion for Rehearing request. Grover seconded the motion. No further discussion. A unanimous vote was taken.

Chairman Brothers noted 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.

Point of Order by Wurster: Does it make any difference that there is only a four member board and Mr. Bakman did not have an opportunity to request a full five member board. The members agreed he had the right to request but he chose not to be present and neither was his attorney on his behalf.

Old Business:

- Revisions to the Equitable Waiver of Dimensional Requirements form: The Board reviewed the original form, noted several changes to be made in compliance with current RSA regulations and comparable to the NH Energy and Office Planning template.

A **Motion** by Rines to continue until the next meeting after secretary has made the changes to the current form. Wurster seconded. No further discussion. A unanimous vote was taken.

- NHDOT to hold a Public Informational Meeting on August 14, 2017, 6:00 PM at the Bud Avery Gymnasium to provide an update on the intersection of Route 28 & 171.

Any Other Business Which May Come Before This Meeting

No other business came before the Board.

Adjournment:

A **Motion** by Grover, and seconded by Rines to adjourn the meeting.

All voted in favor, motion passed. The meeting adjourned at 7:45 p.m.

Next Meeting: September 12, 2017 @ 7:00 pm

Minutes approved by majority vote of the Board on:

Stanley Brothers, Chairman

Date

Or

Ralph Wurster, Vice Chairman

Date

(In the absence of the Chairman)