

TOWN OF OSSIPEE
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
September 13, 2022

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

Call to Order: Roy Barron called the meeting to order at 7:03 p.m. and requested all cellphones to be silenced.

Barron asked if anyone opposes if the Board adds reciting the Pledge of Allegiance. No opposition was heard.

A **Motion** by Barron to add reciting the Pledge of Allegiance to the ZBA's agenda. Emery seconded. No discussion. A unanimous vote was taken. **Motion passed.**

Pledge of Allegiance: was recited by all in attendance.

Roll Call: Roy Barron, Daniel Fischbein, Jim Rines, and Dallas Emery,

Absent: Jonathan Smith, (Zoning Officer) because it's Primary Election Day and he is at the Town Hall overseeing the polls.

Members: Letter from Tracy Cronin requesting to become a full member of the ZBA

The Board reviewed Mr. Cronin's letter of request but since Mr. Cronin is not a residence of Ossipee, he not eligible to be on any of the Boards and Commissions. But the Board members wished to thank him for his interest in the ZBA and if his residency should change to Ossipee fulltime, he is encouraged to apply again.

Anyone interested in becoming a board member or an alternate should submit a letter of intent to the ZBA for consideration.

Meeting Minutes:

- Review to Approve Meeting Minutes of August 9, 2022.

Rines noted two corrections on pages 4, second paragraph from the bottom as follows, "Rines ***explained*** the two things the ZBA is allowed to ***do, is*** hear...

A **Motion** by Fischbein to approve the minutes of August 9, 2022, as amended. Rines seconded. A unanimous vote was taken. **Motion passed.**

Old Business:

- **Case #22-07-V:** Jeff Kelly of 110 Moultonville Rd. Tax Map: 091 Lot: 037 is requesting a Variance from 34.5 INDUSTRIAL USES (See also Article XXXV, Section 35.5) Section (d): Sawmill to operate his home sawmill business in the village district. He will also need a Site Plan Review from the Planning Board if the Variance is granted.

- Letter of response from Jonathan Smith, ZEO received - August 25, 2022
- Letter of response from Steve McConarty, former ZEO received – September 6, 2022

Barron noted that each board member had spoken with Jonathan Smith, ZEO individually prior to the meeting and the board has Smith's letter. Barron called for any comments to Smith's letter.

Several members expressed trouble with Steve McConarty's letter. Per Barron, Steve McConarty issue the building permit and told Jeff Kelly where to put the sawmill. Barron was originally told there was no building permit, but Barron produced a copy of the permit and stated that McConarty came in several times to the Planning Board to brief the board on how the project was coming.

Fischbein asked Jeff Kelly if he received the letters. Mr. Kelly state no and he tried contacting Steve McConarty but was unable to reach him. The secretary made copies of both letters for Mr. Kelly.

Complaints:

Barron stated per Jonathan Smith, ZEO the PB cannot say if someone needs a variance or not. Only the ZEO can make that decision.

Fischbein while referring to Jonathan Smith's letter says only if the structure is attached to the home 100%. The logs would have to be inside because you cannot have any of the work outside the home. Fischbein stated that according to Mr. Kelly, per McConarty's letter, Jeff Kelly was going to attach the barn to the house.

Jeff Kelly stated he never said he was going to attach it to the house.

Barron repeated he never said he (Jeff Kelly) was going to attach it to the house and McConarty made him move it to out back.

Jeff Kelly stated that McConarty made him draw a site plan showing where everything was going to be located and that plan was supposed to have been in his file. Jeff Kelly stated McConarty wanted him to go through UNH Forest & Lands, and they came out a few time to check on the operation, they gave him some ideas and McConarty was involved in that process.

Barron commented that McConarty was zoning officer at the time, and he came to the Planning Board and got our opinion. Barron spoke to a former Board member, who's in NY, said if the Board wants, Barron will call him so the board could get his opinion. The secretary stated that this former board member already spoke with Jonathan Smith. Barron stated the former board member said that Barron could call him. Barron stated per the former board member, Jonathan told him the same thing that the PB cannot say if someone needs a variance or not. Only the Zoning Officer can make that decision. Barron commented on the conversations between McConarty and Billings over who had what authority and that it's been a long nightmare and a headache.

Fischbein noted per Jonathan Smith that anybody who approved the minutes of that night... Barron interjected stating there is something missing with those minutes. Fischbein stated it does not matter, you approved the minutes... Barron interjected again noting he not sure the minutes are totally accurate, and the secretary does a good job but there's something missing. Barron stated they've had several conversations with McConarty after those minutes and McConarty noted that he move it and the first five sentences of those minutes are accurate but the rest the rest of the Board disagreed with him, like the board talked about last time.

Rines has issues with Jeff Kelly not having records of this project, the ZBA doesn't have any records, and the records the Board has is a letter from the current zoning officer and a letter from the past zoning officer. Rines concerns are as follows:

- a) Jeff Kelly should not be punished but if there are,
- b) Complaints being filed – Barron interjected stating that Jeff Kelly has a right to know who filed complaints. Rines requested to finish his comments.

Rines noted if there are complaints, and someone wants to take the town to court over this. The two letters are the record, and the town is going to lose and it's going to waste taxpayers money. Rines stated based on the two letters as the record, a variance is needed if he is going to continue to operate there.

Barron commented he was going in that direction and Jonathan Smith says he should have an unrestricted variance and move on.

Rines noted because there have been complaints, he prefers to hear the sawmill and planer run. So that we as zoning board members know what it sounds like when the timbers are being cut. Rines noted that Barron cannot participate because he does not hear good.

Barron noted the problem is Jeff Kelly was told he could operate his sawmill and...

Rines interjected noting that isn't the point, and unfortunately the two letters are the record...

Barron interjected stating the ZBA should just give the variance and let the Planning Board take care of the noise issue.

Rines commented that if the noise is so obnoxious that he's not comfortable voting to approve variance, the variance would not be granted because he would have a negative vote.

Barron commented the Planning Board could ask him to put a fence barrier up, like they've done with the cell towers.

Discussion ensued over offering each members opinions, but Barron does not want to keep dragging this case out. Barron said he did go visit the site because the Planning Board said it all had to be portable. The sawmill is on wheels, and the planner comes apart and goes in the back of a pick-up truck.

Rines noted he was not aware there was also a planer and does not know how loud that is. Fischbein noted that one of the abutters said it sounds like chainsaw, but Jeff Kelly corrected him that it sounds like a riding lawn mower. Barron noted per enforcing the noise ordinance as long as he's operating during the proper times of the day.

Rines noted per Smith's letter, Jeff Kelly is milling lumber there as well. Barron said there is no lumber. Paul Eldridge said that it fictitious.

Fischbein asked if he has right to know who is complaining. The secretary commented some complaints come in anonymous. Jeff Kelly commented he knows it's none of his abutters.

Barron stated his point is Jeff Kelly has had to notify the abutters and if they're not here and don't have grapes enough to voice their concerns, he doesn't give a damn. Barron feels if they can't come here and say they have a problem with the noise...

Fischbein inquire and was confirmed that Paul Eldridge is an abutter.

Barron acknowledge a letter received from another abutter, who has no issues with the noise or the operation.

Rine again stated that he is one vote, but he would like to hear the saw when cutting and planer both run and then the board should take a vote. Jeff Kelly stated that he has the decibel information on both machines.

Barron suggested 3 options to move this case forward:

1. Try and solve the case tonight which he would like to do because it's been dragged out, but we (the board) don't have to...
2. Like the Planning Board, the ZBA can call a special meeting if a date can be determined.

Discussion ensued on picking a date certain. Rines stated he would like to hear the machines run, so if he ends up testifying in court and is asked if he even listened to the machines. He can say yes he did.

Discussion turn to who would be present to take notes for the site visit. Rines noted in other towns the board appoints a member present to takes notes for the secretary to transcribe into the minutes later.

Emery inquired of the ultimate purpose of listening to the machines run. Rines responded because the board is being asked to act on a variance.

Emery referred to McConarty's letter which states, "Once the business exits outside the interior of the home it is longer eligible to be an in-home business under the accessory uses within the ordinances." Rines noted that's why he needs a variance. Barron noted because in Jeff Kelly's particular zone an exterior sawmill is not allowed without a obtaining a variance approval from the ZBA. Rines noted Mr. Kelly may not be selling it to the public but he is selling it to his customers.

Emery wanted to revisit "primary use" in the ordinance and inquired if it's no longer a primary use if it moves outside the house. Barron commented that's according to Jonathan Smith, ZEO. The secretary referred the Board to page 89, Article 35.6 (b) 8 & 9. Which states;

35.6 ACCESSORY USES

- 5) Not more than eight hundred (800) square feet of the floor area of the dwelling house or accessory buildings shall be devoted to such home occupation.
- 8) The home occupation shall not display or create outside the building any external evidence of the operation of the home occupation except for the permitted sign.

Home occupations shall consist of those customarily traditional home occupations which are generally acceptable to be carried on in dwellings in a residential area.

Barron commented "if the board gives him a variance he can do whatever he wants to there. Which is why I think it's the best way to go." Barron asked the secretary if Mr. Kelly could draw his plan. The secretary said he could as long as shows the boundary lines, the location of the well, septic, and any structures on the property.

Emery commented he lives nearby but he doesn't hear it. Rines commented he goes by twice a day and has never heard the machines running, so he would like to hear it before rendering a decision.

Barron commented he knows where it is and it sits so far back, he doesn't know how anybody could hear the damn thing.

Emery questioned that even with the variance, Mr. Kelly will still need a Site Plan Review. Rines confirmed and the secretary noted before he can go to the Planning Board, Mr. Kelly will the variance approval first.

Fischbein noted his son lives nearby and he cannot hear the machines running.

A **Motion** by Emery to give him the variance.

The secretary stated a variance cannot be approved carte blanche. The five criterias need to be voted on individually. Barron agreed the board would have to go through the criterias, which Mr. Kelly has already done.

Discussion ensued on selecting a date certain to continue this case. Jeff Kelly reported his saw is a 38 hp Kohler engine.

Emery noted under **35.6 ACCESSORY USES**

- 5) Not more than eight hundred (800) *square feet of the floor area of the dwelling house or accessory buildings shall be* devoted to such home occupation.

the ordinance doesn't say it has to be attached, it says "or". Fischbein noted it was McConarty, who said it had to be attached.

Jeff Kelly expressed his frustration because he says McConarty help set up his operation and told him where to put his machines. Fischbein inquired if his operation is under the 800 sq. ft. Jeff Kelly noted it is and most everything is under roof he put up. But he does have logs which is actually fire wood.

Barron commented he doesn't think the logs are the problem because they don't make noise. Fischbein agreed and said Jonathan said it was part of the home business. Barron joking laughed saying that someone must have dumped a bunch of logs there. Jeff Kelly stated he does have wood there but it's mostly firewood, and some of the logs are to go towards finishing his house and building a barn. Jeff Kelly is after a building permit to finishing his house and building a barn. Barron asked Jeff Kelly if he knew Rick Cousins. Jeff Kelly responded no, he did not. Barron reported that Rick Cousins had been up there several time. Jeff Kelly said, yeah Rick Cousins was well aware of this situation being legit. Or he thought it was legit.

A **Motion** by Rines to Continue **Case #22-07-V**: Jeff Kelly of 110 Moultonville Rd. Tax Map: 091 Lot: 037 request for a Variance until Tuesday, September, 27, 2022 with a Site Visit at 6:00 PM followed by a Special Public Hearing at 7:00 PM to be held at the Freight House. Barron seconded. No discussion. A unanimous vote was taken. **Motion Passed.**

Jeff Kelly reported that his sawmill building is 16 ft. x 32 ft. Rines commented that is under 640 ft.

Paul Eldridge commented he would not call it a building, it's a roof.

Emery commented that McConarty's letter does not match with the ordinance. Barron stated Jeff Kelly can have the building. Barron said he has that fight with the Chairman of Board more than once with the Planning Board and he'd get mad at me. Or doesn't mean you can't have it; it means you can have it either place. Fischbein commented the last meeting must have been quiet. Barron commented we enjoyed it.

Jeff Kelly stated the saw mill is designed to sound like a riding lawn mower. Barron confirmed the date and time for the site visit and special hearing. Rines requested to have something being cut with the saw and a timber being planned so the Board can hear both machines. Jeff Kelly commented the planner is a 13 hp motor. General discussion ensued. Jeff Kelly reported eventually the saw and planner will be in the barn once he gets it built and puts a fence across there. Barron noted he would need Planning Board approval but first he needs the variance, then he can do what he wants.

Multiple conversation ensued. Jeff Kelly commented it's the mill is the problem. The table saw, the planner, you have a right to have all those because he looked up on the state web page and you're allowed to drill, sand, route, etc... that has nothing to do with a saw mill.

Rines commented that the zoning ordinance by nature there permissive so if there specifically written, you know about them. But if there not stated, then it's not permitted. The ordinance defines sawmill. The board agreed that if he gets the variance and the site plan review he be legal and he can continue is operation.

Jeff Kelly inquired if he would have to refile to the Planning Board again. Rines informed Jeff Kelly that if he gets a variance, one of the condition of a variance is when it's not a residential use, that he would need a site plan review approval. Because everything is not a residential use except for a single family and duplex do not need a site plan approval but everything else does.

Jeff Kelly asked if the map he brought in for this case would work for the site plan review. The Board said it would because it's to scale.

The Board again confirmed the site visit at 6:00 pm and the special public hearing at 7:00 pm. Multiple conversations ensued at the same time. Rines assure Jeff Kelly that as long as the board continues the case to a date certain the abutters do not need to be renoticed. Barron informed Jeff Kelly that when he applies to the Planning Board, his abutters will be notified at that time. The secretary will help you through the application process.

Jeff Kelly thank Roy Barron for remembering all that took place and helping him through this. Barron noted he was not the only, Rick St. Jean also remembered.

Rines explained to Emery it's not as quick a process but if the board follows the process, it's all defensible. Multiple conversations ensued.

Jeff Kelly is baffled by who the complaints are from because he knows it's not from his abutters. He wants to know what is the complaint because he feels as though he is being singled out. Barron explained it's because he's in the village district, where it's not allowed without a variance.

Barron called for an end to the discussion. Barron informed Jeff Kelly that the board will continue when they meet on the September 27th, at 6:00 pm to listen to the mill, to satisfy Rines, who has made some good points. The ZBA has a good board at this point and there is a good Planning Board now compared to the first time Jeff Kelly came in the last time personally. That my opinion, he informed Jeff Kelly to sit back and relax until the 22nd and forget about it. Fischbein corrected him that their meeting on the 27th. Jeff Kelly commented he's just looking for honesty and the ZBA and Planning Board looks like the honesty is there.

Barron proceeded to close discussion. Rines noted there is someone in the public who would like to speak.

Public Input: Barron asked if it had to do with the sawmill and opened discussion back up.

Paul Eldridge is an abutter, who believes it's unfair for Jeff Kelly to be going through this again and because someone didn't file the paperwork correctly, we're here again. It's not Jeff Kelly's fault but it's being orchestrated as though it is, and Mr. Eldridge has an issue with that. If there's going to be an issue a Kohler engine, then every landscaping company is going to be here for noise ordinance issues. Because it's the same engine on a riding lawn mower and we're going back to push mowers.

Paul Eldridge stated they call it a building but it's not a building it's splitting hair over the definition of a building.

Rines read from the zoning ordinance definitions: **STRUCTURE**: Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground...

Rines noted if it's fixed in the ground... Eldridge stated it's not. Eldridge also stated that COVID was an attack on small business and handing out checks for people to sit on the a** and not work. Rines stated the Board is not dealing with that.

Eldridge feels this is another attack on a guy trying to make a living, employing people to make a living, and now the government has all this over reach with being 6 feet apart, stomping on your Constitutional Rights. Now it's the Town government. You got to fight the town, you got to fight the state, ...

The Board asked what this has to do with the sawmill. Rines again explained his reasoning for wanting to hear what the machines sound like in the event a judge asks him in court. Rines noted that Jeff Kelly has responsibility as well and why doesn't he have any copies of the paper.

Paul Eldridge stated the government should have copies of the paperwork. Rines stated that Paul Eldridge just got done saying that everyone should be responsible for themselves and the government. Discussion ensued.

Barron asked Paul Eldridge if he has any problems with the mill. Paul Eldridge has zero problems with the sawmill. Barron stated "the Board has been caught in the middle of something that should not have been here. But the Board is doing the best they can to straighten it out. The Board is trying to cross our "i's" and crossed our "t's" and I trust Jim Rines very much because he's been in court a lot more than I have." Barron continued saying "I would rather not be in court very much if I can help it. I've been in too many courts where I think the judge violates their Constitutional duties. But he's been on jury duty." Barron thanked Paul

Eldridge for input and interest and invited him to the site visit.

Barron closed discussion on this case until the September 27th, 2022.

New Business:

- **Case #22-06-V:** Clifford R. Baird III Trustee & Brenda K. Baird Trustee of 69 Broad Bay Road. Tax Map 031, Lot 016 is requesting a Variance of Article VIII, 8.1 of the Zoning Ordinance to add a 10' x 12' shed within 5 feet of the side setback. Per Article 6.4.2(a)-the side setback is 25'. (Case continued until October 11, 2022 from June 14, 2022)

Notices:

- Employee of the Year Luncheon on September 22, 2022 at 12:00 PM in the Bud Avery Memorial Gymnasium. All Employees, and Boards & Commissions are invited to attend.

Any Other Business Which May Come Before This Meeting: None heard

Next Meeting: A **Special Public Hearing** will be held on **September 27, 2022 for a Site Visit - 6:00 PM at the Kelly residence and the Public Hearing to follow - 7:00 pm at the Freight House**

Next Regular Meeting: October 11, 2022 @ 7:00 pm

Adjournment:

A Motion by Jim Rines to adjourn the meeting. Emery seconded. No discussion. A unanimous vote was taken. **Motion passed.** The meeting adjourned at 7:54 p.m.

Minutes were approved by majority vote of the Board:

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