

**TOWN OF OSSIPEE**  
**ZONING BOARD OF ADJUSTMENT**  
Meeting Minutes  
September 27, 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:** Chairman, Roy Barron called the meeting to order at 7:00 p.m. and requested all cellphones to be silenced.

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

**Roll Call:** Roy Barron, Daniel Fischbein, and Dallas Emery,

**Absent:** Jim Rines, and Jonathan Smith, (Zoning Officer)

**Attendees:** Jeff Kelly, Krystal Eldridge, and Angela Eldridge

**Site Visit Prior to Public Hearing**

**Site Visit:** for **Case #22-07-V:** Jeff Kelley of 110 Moultonville Rd. Tax Map: 091 Lot: 037 to review the site and noise levels of sawmill and planer.

**Attendees:** Roy Barron, Danny Fischbein, and Jim Rines

Chairman Barron noted that Fischbein and himself spent roughly 16 minutes listening to Jeff Kelly make a couple of cuts on the sawmill. Rines was down the road and did not hear the cutting of the sawmill when traffic was coming, up in the back was quiet, also on the edge of woods on the sawmill side and basically the same with planer they were not very loud at all. Chairman Barron stated that concludes that area.

Dallas Emery said he was outside at home and could not hear the sawmill or planer.

**Special Public Hearing**

**Old Business:**

- **Case #22-07-V:** Jeff Kelley 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. (Case Continued from September 13, 2022)

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

***Chairman Barron informed the Applicant (under RSA 674:33) – noting since there is not a full 5-member board, with no additional 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 and if there is a no vote the whole application will be denied.***

Chairman Barron asked Jeff Kelly if he wished to proceed with the variance application. Jeff Kelly wished to proceed.

Chairman Barron asked Jeff Kelly if he had a copy of his application to read through the criterias. Jeff Kelly did not so the secretary made him a copy.

The secretary asked the Board members since she was not here for the first meeting if they had accepted the application as complete. They all agreed they had not accepted the application as complete. The secretary noted the checklist not being checked off, the tax map and lot number section incomplete and the article number of denial not written in on the application. The Board reviewed the application for completeness.

The secretary explained to Jeff Kelly what he needed to complete and return the application to the secretary.

Discussion ensued over which zoning district Mr. Kelly is located. It was determined that Mr. Kelly lives in the residential district. Fischbein noted in residential a sawmill is not allowed without a variance. But he had originally gone for in home business, which I'm assuming you're saying it's not now and he's better off to go for the variance. Chairman Barron stated per Jonathan Smith, ZEO because it's not attached the house, he can't claim that it's a home business. But Dallas found in the ordinance it states and/or within Article 35.6 (b) 8 & 9. The secretary inquired does he have a barn or garage that he's working in? He has a barn at the sawmill. Fischbein stated he has a lean-to structure. Nash noted but it's not fixed. Fischbein stated it can be moved. Nash noted then it's not a structure, it must be fixed to the ground to be considered a structure. The Board yielded and agreed the best option is to go for the variance and then to the Planning Board for a Site Plan Review.

Chairman Barron called for brief recess at 7:13 pm to allow Mr. Kelly to complete his application.

Private conversations ensued.

Chairman Barron called the public hearing back to order at 7:18 pm.

A **Motion** by Chairman Barron that the application is complete for **Case #22-07-V**: Jeff Kelley of 110 Moultonville Rd. Tax Map: 091 Lot: 037 request for 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. Fischbein seconded. No discussion. A unanimous vote was taken. **Motion passed.**

Chairman Barron directed Jeff Kelly to read through each criteria, pause a second or two for any Board member discussion. Jeff Kelly proceeded to read each criteria and his response.

Chairman Barron called for Board questions or concerns. Fischbein referred to the plan submitted about the fence being about 100 feet from the road. Jeff Kelly stated he can put the fence either in the front or in the back and no one will know the sawmill exists. Chairman Barron noted they will know because of the signage out front. Discussion over the fence ensued about reducing noise and keeping the fence height less than 7 feet. Fischbein inquired about the pavilion noted on the plan. Jeff Kelly said that is for personal use for shade, a picnic table, etc... for the back yard.

Emery referred to Steve McConarty's letter and confusion over in home business. Nash stated for in-home business one criteria is that all operation must be contained inside whether it's in the home, barn, or garage. Once the operations move outside the home, it is no longer considered an in-home business.

Chairman Barron called for any further comments from the Board. None Heard.

Chairman Barron called for any comments from the Public. None Heard.

Nash questioned Jeff Kelly's response to question #3 as being irrelevant to this case. The Board informed Jeff Kelly that he needs to change his answer to number #3. Nash explained that Substantial justice is what efforts are you making to make this come into compliance. What steps are you taking.

Jeff Kelly was given an opportunity to correct in writing his response to criteria #3.

Jeff Kelly re-read his response to criteria #3.

Discussion ensued about the number of abutter's and no complaints have come in opposition, but there have been two letters of support.

Chairman Barron moved to voting on the criteria's and informed Jeff Kelly again that if there is a no vote on any criteria the application fails and is denied.

Chairman Barron called for a roll call vote on each criteria. A vote of Yes is a vote in favor and a No vote is to deny.

**Vote by Criteria:**

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

Emery – Yes          Fischbein – Yes          Chairman Barron – Yes

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

Emery – Yes          Fischbein – Yes          Chairman Barron – Yes

**3. Substantial justice is done:**

Emery – Yes          Fischbein – Yes          Chairman Barron – Yes

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

Emery – Yes          Fischbein – Yes          Chairman Barron – 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:**

Emery – Yes          Fischbein – Yes          Chairman Barron – Yes

**(B) Owing to the special conditions, set forth above, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it because:**

Emery – Yes          Fischbein – Yes          Chairman Barron – Yes

Chairman Barron announced the **Motion Passed**. The Variance has been granted, there is a 30-day appeal period and Mr. Kelly is to apply to the Planning Board for a Site Plan Review for his sawmill company.

***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.***

Discussion ensued on the voting process.

**Membership:** Daniel Karl of 31 Water Village Rd. has submitted a letter requesting to be appointed to the ZBA.

Daniel Karl is a recommendation of Dan Fischbein as a full member to the ZBA. The Board discussed Mr.

Karl would filling the vacancy of Bill Grover. Nash stated this will be until March elections at which time Mr. Karl will have to submit his candidacy to be elected if he wishes to remain on the Board.

Discussion ensued over who is up for re-election.

A **Motion** by Chairman Barron to appointed Daniel Karl as full member to the ZBA in place of William Grover until March Electrion 2023. Fischbein seconded. No discussion. A unanimous vote was taken. **Motion passed.**

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

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

**Adjournment:**

A **Motion** by Chairman Barron to adjourn the meeting. Fischbein seconded. No discussion. A unanimous vote was taken. **Motion passed.** The meeting adjourned at 7:44 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