

OSSIPEE ZONING BOARD
Meeting Minutes
November 8, 2016

Minutes were recorded 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 7:04 p.m.

Members Present by Roll Call: Stanley Brothers, Dave Babson, Ralph Wurster, Jim Rines, and Ski Kwiatkowski, Bob Freeman (Selectmen's Rep) and Steve McConarty (ZEO). **Late:** Bill Grover (alternate).
Absent: none

Meeting Minutes:

Meeting Minutes of October 11, 2016 were reviewed **Motion:** by Jim R., and seconded by Ski K., to approve October 11, 2016 minutes.

Discussion: Jim Rines noted correction of "Chairmen to Chairman" were made. **All others in favor, motion passed.**

Non – Public Session minutes of October 11, 2016 minutes. Ski addressed on page two, motion to seal section. The Board should check a reason from the three selections. Stanley B., and Laura N., clarified the record is not to be sealed, so it's irrelevant to make a selection from this section. Ski K., agreed. **Motion:** by Ski K., and seconded by Dave B., to approve Non-Public Session Minutes as written on paper. **Abstained:** Jim Rines because he had previously recused himself from the discussion.

All others voted in favor by show of hands, motion passed.

Stanley Brothers, Chairman: addressed the Applicants (under RSA 674:33) – If there is not a full 5 member board, even with alternates serving. 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.

Stanley: will ask each applicant prior to hearing their case.

New Business

Jim Rines addressed the Chairman, these motions for reconsideration per the NH EOP handbook; these cases take place in a public meeting but are not a public hearing. The Board only meets to consider the motion and act to grant or deny it. No public discussion is heard during this process.

- **Daniel Kurzawa** – Request for Administrative Appeal for ZBA decision of Case #16-2-SE - Irving Energy.

ZBA discussion: Jim Rines commented per RSA 677:2, states the applicant needs to outline the reason(s) for the appeal and the ZBA be provided evidence on where the ZBA *erred* in its decision. Per Mr. Kurzawa's application, feels his property would be devalued. But no evidence has been provided to the ZBA for review refuting the ZBA's previous decision. **Motion:** by Ski K., to deny the request for Administrative Appeal. **Discussion:** Board discussed the wording of the motion.

Amended Motion: by Ski K., and seconded by Dave B., to **DENY** the request for Administrative Appeal on the basis no new or additional evidence was provided. **All those in favor of the motion to deny the request for administrative appeal by roll call vote:** Jim R. – Yes, Ski K. – Yes, Ralph W. – Yes, David B. – Yes, Stanley B. – Yes. **Motion passed, unanimously.** The petitioner is informed that the rehearing was denied and the petitioner then has 30 days to challenge that decision by appealing to superior court.
[RSA 677:4]

Chairman Stanley Brothers informed the attending public, per NH EOP handbook, "It is recommended that the meeting to consider a Motion for Rehearing not be a public hearing and that no testimony is taken. It is a public meeting and anyone has the right to attend but all the board is acting on is the motion in front of them (what has been submitted) and should not involve comments by the applicant, petitioner or abutters."

- **Town of Freedom: Board of Selectmen & Effingham Conservation Commission** –Request for Administrative Appeal for Planning Board's decision of Case #16-3-SPR – WWSCR, Site Plan Review approval on September 20, 2016.

Ski K., recused himself from this case because he is on the Planning Board.

Jim Rines provided a statement of not recusing himself from this case. Stating he had done work for the previous owners *and met with the current owners on two occasions, but has done no work for the current owners*, and has no financial interest and no contractual arrangement or agreements with current owners. Jim left the decision up to the remaining Board members to determine if he should recuse himself.

The Board agreed for Jim R., to remain as a voting member of the Board.

Chairman Stanley Brothers raised alternate, Bob Freeman to voting status in place of Ski K., and reiterated his previous statement; *"It is recommended that the meeting to consider a Motion for Rehearing not be a public hearing and that no testimony is taken. It is a public meeting and anyone has the right to attend but all the board is acting on is the motion in front of them (what has been submitted) and should not involve comments by the applicant, petitioner or abutters."*

Jim Rines noted copies of correspondence from Attorney for Northgate Ossipee, LLC – Motion to Dismiss, and DTC Lawyers for Town of Freedom – Objection to Motion to Dismiss. Jim R., found it interesting that Northgate Ossipee's attorney stated the "Motion to dismiss Town of Freedom request because it was not an interpretation but that the PB did not appropriately apply the ordinance and it should be submitted to Superior Court. It's also noted Town of Freedom has already filed an Appeal with Superior Court. Jim inquired, if Ossipee should seek counsel. Chairman, Stanley B., provided an email letter from Town of Ossipee, attorney Richard Sager. Copies were supplied to each Board member for review. **Board discussion** ensued over whether the PB appropriately applied the ordinances but since the ZBA Board members were not at the meetings, how were they to know definitively. ZBA noted the PB also hired outside engineering firm to review the plans. Septic system determination is regulated by the State of NH DES, as well as soil types in the flood plains. General consensus was based on argument from both sides and the ZBA felt this argument does not belong at the ZBA level and should go to Superior Court for determination, if so choose.

Motion: by Jim Rines and seconded by Bob Freeman to **DENY** the Request for Administrative Appeal of the Planning Boards decision, on the basis that there no evidence of the PB misinterpreted the Zoning. But that maybe the PB did not apply all aspects of the Zoning Ordinance.

All those in favor of the motion to deny the request for administrative appeal by roll call vote: Jim R. – Yes, Ralph W. – Yes, David B. – Yes, Bob F. – Yes, Stanley B. – Yes. **Motion passed, unanimously.** The petitioner is informed that the rehearing was denied and the petitioner then has 30 days to challenge that decision by appealing to superior court. [RSA 677:4]

Ski K., rejoined the meeting and Bill Grover (alternate) arrived at 7:35pm.

- **Case #16-4-SE: Bethe McBride** – 6 Cold Spring Circle; Tax Map: 66 Lot: 37 – has applied for a Special Exception from Article 23.3.2 (A) of the Ossipee Zoning Ordinance to add a second floor for a ½ bath and a bedroom / office. The crest of the roof will be higher by about 6 feet and two shed dormers will be put in. One on the east side and one on west side. Also, there may be a small deck added on the south side sometime in the future.

Steve McConarty: was called on to provide a summary of what is going on with this case. The applicant has been before the ZBA for the third time. Steve commented after Ms. McBride was approved for her farmers porch and subsequently expanding a garage from one car to a two car. Steve went to inspect the property and found that half the roof was off the house and is in the process of rebuilding the roof. Gordon Hill, contractor for Ms. McBride, stated he was told by Ms. McBride everything was approved and was told to go ahead with the work. Steve issued a Ceased and Desist order. Gordon Hill is here to apply and presented plans for a Special Exception to raise the roof and add two dormers *and was appointed by Beth McBride to represent her.*

Discussion: Several questions and comments were raised concerning review of Building Permits by the Contractor before starting the work. Expanding on non-conforming structures and review of plans and drawings ensued.

Stanley B., questioned on page 7, section (m), page 8 *paragraph 2 and on project description of the Building Permit Application #7* which states; "Also, there may be a small deck added on the south side sometime in the future." Gordon Hill stated, that will not be happening and to strike it from the applications.

Motion: by Jim R., and seconded by Ski K., to accept the application complete as modified.

All those in favor by roll call vote:

Jim R. – Yes, Ski K. – Yes, Ralph W. – Yes, David B. – Yes, Stanley B. – Yes.

Open for Public discussion: Connie Billings noted the Board cannot modify the application without Ms. McBride's consent. Gordon Hill has a letter of representation from Ms. McBride and gives consent to strike "Also, there may be a small deck added on the south side sometime in the future" from the applications. Public discussion closed.

Board Discussion: Some members state this sets a "Bad Precedence" for the town and going ahead and building without permits has got to stop. **Jim R., and Bill Grover** although do not agree with how Ms. McBride has gone about obtaining her permits, it is not the ZBA's responsibility to police building permits. That is the Zoning Enforcement officer and Selectmen's responsibility. If the application is within the zoning ordinances and regulations, there's no reason to deny. **Bob Freeman** commented, he believes it is the Selectmen's responsibility to fine for building without a permit. But it is also the Builder's responsibility to know what is on the building permit and to post it in a visible location.

- **Motion:** by Jim Rines and seconded by Ralph Wurster to approve **Case #16-4-SE: Bethe McBride - 6 Cold Spring Circle; Tax Map: 66 Lot: 37** – for a Special Exception from Article 23.3.2 (A) of the Zoning Ordinance to raise the crest of the roof *about no more than* 6 feet and add two shed dormers, 1 – 12 ft. on the east side of roof and 1 – 16 ft. on the west side of roof to add a loft space for a ½ bath and storage area. There will be NO small deck added because it was remove by the agent for the applicant, Mr. Gordon Hill.

Discussion: Ski K., noted while reviewing each of the 8 criteria's he sees no reason to deny based on wording. Dave B., would like "*about*" stricken from the motion – stating "roof will be raised no more than 6 ft." Jim R., agreed and about was stricken from the applications.

Board decided to include all 8 criteria's within one vote. **All those in favor by roll call vote:**

Jim R. – Yes Ski K. – No Ralph W. – Yes David B. – Yes Stanley B. – Yes.

Motion passed by a vote of 4 to 1, Special Exception GRANTED.

Stanley B., noted there is a 30 days appeal process of the ZBA decision which starts tomorrow morning.

Motion: by Ski K., and seconded by Jim R., to send a letter to the Selectmen asking them to review/ investigate and help develop criteria's for preventing situations like this in the future.

All in favor, motion passed.

Old Business:

- **Case #16-10-V: Mark McConkey c/o Robert & Kimberly Rosa** – 4 Tomahawk Rd.; Tax Map 73 Lot: 76 – has applied for a Variance from Article 6.4.2.A & 6.4.1.A of the Ossipee Zoning Ordinance for Front & Side setback requirements to add a 14' X 20' garage. (Continued from 10/11/2016 ZBA meeting)
(Request for Continuance by Mark McConkey until December 13, 2016 meeting)
- **Case #16-11-V: Mark McConkey c/o Dummer Boys** – 1605 Route 16; Tax Map: 53 Lot: 30 – has applied for a Variance from Article 35.2.p of the Ossipee Zoning Ordinance to permit alterations to existing building to make 1 bedroom apartment. (Continued from 10/11/2016 ZBA meeting)
(Request for Continuance by Mark McConkey until December 13, 2016 meeting)

Motion: by Jim Rines and seconded by Ralph Wurster to grant the continuance of Case #16-10-V: Mark McConkey c/o Robert & Kimberly Rosa and Case #16-11-V: Mark McConkey c/o Dummer Boys until December 13th, ZBA meeting. **All in favor, motion passed.**

Motion: by Stanley B., and seconded by Dave B., to change the time of the December 13, 2016 meeting to 7:30pm., instead of 7:00 pm. **All in favor, motion passed.**

Any Other Business Which May Come Before This Meeting

- Budget & Revenue Report – 11/01/2016 – 11/04/2016
- MWV Housing Coalition: Accessory Dwelling Units workshop on November 14, 2016 at North Conway Water Precinct Community Room from 6 – 8 pm.

Motion: by Jim R., and seconded by Stanley B., move to accept Variance application, last updated 10/06/2016 pages 1 – 9 as distributed.

Open for discussion. Several edits and correction noted.

- Approval of Variance instructions & application – pending corrections
- Approval of SE instructions & application – pending corrections
- Approval of Motion & Decision of Rehearing – pending corrections

The applications were reviewed, critiqued for edits and corrections and will be submitted at next meeting for final approval.

- Approval of Application for Rehearing - **Motion:** by Jim R., and seconded by Stanley B., move to approve Application for Rehearing, date 11/02/2016. No discussion. **All voted in favor, motion passed.**

Any Other Business Which May Come Before This Meeting

Jim Rines stated the 2016 edition of “NH Office of Energy and Planning” handbook for Local Officials is available on line now.

Next Meeting: December 13, 2016 @ 7:30 pm

Adjournment

Motion: by Jim Rines, seconded by Stanley Brothers, to adjourn the meeting.
All in favor, motion passed.

The meeting adjourned at 8:46 p.m.

Minutes approved by majority vote of the Board on:



Stanley Brothers, Chairman

12-13-16

Date