

TOWN OF OSSIPEE
ZONING BOARD OF ADJUSTMENTS
Meeting Minutes
January 08, 2019

Minutes were recorded by and summarized by Laura Nash, Board Secretary. Revisions to these minutes are noted in ***bold/italic*** type.

Call to Order: Ralph Wurster called the meeting to order at 7:00 p.m. and instructed everyone in attendance to put their cellphones on mute.

Members Present by Roll Call: Ralph Wurster, Ed MacDonald, Jim Rines, Roy Barron, Daniel Fischbein, Sandra “Sam” Martin and Steve McConarty, ZEO. **Absent:** Stanley Brothers

Vice Chair, Ralph Wurster read a letter from the Board of Selectmen. The Board of Selectmen received an official letter of resignation from Stanley Brothers. The Board accepted the official notification of Stanley Brothers resignation. Wurster recommended the selecting of a new chairman and vice-chairman be moved to the end of the meeting. The Board agreed.

Meeting Minutes:

The Board reviewed the ZBA meeting minutes of December 11, 2018.

Wurster subsequently raised alternate, Daniel Fischbein up to voting status in place of the now open position previously held by Stanley Brothers.

A **Motion** by Barron to accept the minutes of December 11, 2018 as submitted. MacDonald seconded. No further discussion. Rines abstained. All others voted to approve as submitted. **Motion passed.**

New Business:

PUBLIC HEARING
For the following Applications

Case# 19-1-AA: William Dawson, owner – 80 Route 16B. Tax Map: 93 Lot: 015 is requesting to Appeal an Administrative Decision by the Ossipee Zoning Officer’s interpretation of the Ossipee Zoning Ordinance as it relates to the J. William Dawson, Jr. property.

Jim Rines recused himself as the representing agent for the applicant.

Wurster raised alternate, Sandra “Sam” Martin up to voting status in place of Jim Rines.

Wurster opened the public hearing with a couple of comments, as follows:

1. An Appeal of an Administrative Decision is similar to hearing a case of a variance or special exception. The agent will present the case for the applicant. Public comment will follow. Board discussion, question and answers of the applicant/agent will ensue.
2. The Board has right to grant or deny the appeal. We have the right to amend the appeal, and the right to make their own decision of what it should have been, if we don’t agree with the Zoning Officer, we can make our own order.
3. In this type of case, the Board is setting presentence of how the ordinance is to be interpreted. The members of the Board will need to be specific, clear, and concise when it comes to making a motion of decision.

Danny Fischbein raised concerns with possibly having to recuse himself, as in past hearings of this case because his son is the former representing agent for the applicant. Wurster asked Fischbein, if he could make a clear and fair decision, and not be affected by individual interpretation of the case. Fischbein agreed.

Wurster called for a roll call vote: Martin = Yes, MacDonald = Yes, Barron = Yes and Wurster = Yes. Fischbein remained on the Board as a voting member.

Jim Rines, representing agent for William Dawson, Jr. began his presentation for Appeal of Administrative Decision of the Zoning Officer's interpretation of the zoning ordinance and denial of a building permit dated November 30, 2018, for the following Articles:

1. Article: 34.2 – No reference to a Landscape and/or Property Maintenance in the Village District.
2. Article: 35.6.c - Accessory Uses – Storage of Material

Rines quoted from ARTICLE XXXIII – DEFINITIONS,

“COMMERCIAL: A use primarily concerned with the making of profit from the sale of goods or services.”

Rines noted the landscape business is obvious providing a service for profit.

Rines referenced Article 34.2 COMMERCIAL USES (See also Article XXXV, Section 35.2)

e. Business Offices

And proceeded to read from ARTICLE XXXV – DESCRIPTION OF PERMITTED USES

“35.2 COMMERCIAL USES

e) Business Offices - Professional and commercial. Office facilities intended for the rendering of a professional or commercial service and not in conjunction with a manufacturer or industrial facility.”

Rines commented the landscape business is commercial by providing a service and is for profit, so it clearly meets the definition of business office, since this is where their desks are located.

Rines referenced associated with businesses in the village district is Article:

ARTICLE XXXV – DESCRIPTION OF PERMITTED USES

35.6 ACCESSORY USES

“c) Outdoor Storage - Outdoor storage of material and/or equipment not for sale, that is clearly necessary to the operation and conduct of a permitted principal use provided that it shall be completely hidden by dense growth, fence or wall, and maintained in good repair.”

Rines commented the outdoor storage of the material and equipment used in both businesses meets the criteria for “outdoor storage” and will need to be screened as required in the Zoning Ordinance. Rines referenced other types of businesses not specifically listed in the ordinances but it does not mean we cannot have them without having to apply for a variance.

Rines explained his interpretation of Article 35.6 ACCESSORY USES - c) Outdoor Storage – meaning the Outdoor storage of material and/or equipment is not for sale as in a retail capacity. He believes the founding fathers intended the ordinance meaning as that for the operation of the business, and not for sale to anyone off the street.

McConarty was asked for his interpretation and thought process for the denial. McConarty explained the material is obviously “for sale,” and truck repair services would require a Special Exception, under Article 34.2 COMMERCIAL USES (See also Article XXXV, Section 35.2) c. Automobile and Truck Repair. Under 35.6 Accessory Uses is for home businesses. Rines disagreed.

Discussion ensued on clarifying the layout of the ARTICLE XXXV – DESCRIPTION OF PERMITTED USES. Specifically, article 35.6 - ACCESSORY USES, and which sub-listing correlates to the appropriate descriptor.

Wurster referenced and read under Article 35.6 ACCESSORY USES:

“B: 10) In addition to the customarily traditional home occupation, the following are permitted uses, providing they qualify under the other criteria: Physician and dentist offices, professional offices of attorneys, accountants and architects, studios, barber shops and beauty parlors, dressmaking, and child care.”

Wurster questioned ***“qualify under the other criteria:”*** and what the other criteria’s are...

Wurster questioned if a floor plan was submitted with the building permit application. McConarty noted he had one from months ago, but not with this application.

Discussion ensued if the argument for the appeal is that these are business offices, and then there should be a floor plan demonstrating such. The plans for screening the property was discussed and will be addressed at the Planning Board level through a Site Plan Review (SPR) Amendment to the existing Conditional SPR.

Board discussion ensued over the interpretation of Article 35.6 ACCESSORY USES

“c) Outdoor Storage - Outdoor storage of material and/or equipment not for sale, that is clearly necessary to the operation and conduct of a permitted principal use provided that it shall be completely hidden by dense growth, fence or wall, and maintained in good repair.”

Barron’s opinions is the outdoor storage of material is for a job site and were previously told by the Planning Board they could not sell to the public. Fischbein agreed. Discussion over types of material to be stored, and if these businesses classify as business office under commercial accessory uses.

Wurster opened public discussion:

Ash Fischbein questioned the Board, what the negative impact to the Town of being able to sell material to the public would cause the Town. Wurster explained the Board is obligated to start with the literal basis of the ordinance, and cannot just disregard what is written.

Martin questioned where the catch basins go and is this area a water protected area. Rines explained he has not found the outlets for the catch basins and the property is located in the Water Resource Protection area. McConarty noted this would fall under the Planning Board’s realm of responsibility.

Discussion continued over having a floor plan for the building to justify what is a business office, commercial use within the village district, interpretation of “for sale” in article 35.6.c – storage of material and interpretation of the ordinances.

Ash Fischbein provided an example “for sale” of material.

McConarty expressed his personal opinion on the different versions this business is to operate. He expressed his frustrations of how long it has taken to get an accurate response for this case. Rines explained his interpretation of the ordinances. He noted McConarty has an interpretation and obviously, they differ, so apparently the ordinance needs clarifying.

Public Input closed.

Board discussion ensued over the interpretation of storage material which is either “project use only or retail.”

Martin suggested tabling the discussion until Attorney Sager could be consulted. Wurster called for a roll call vote: Martin = Yes, Fischbein = No, MacDonald = No, Barron = Yes and Wurster = No.

Motion failed 2-3.

Wurster addressed each article separately:

1. Article: 34.2 – No reference to a Landscape and/or Property Maintenance in the Village District.

Issues of concern are truck repair services. Classifying the landscape and excavation businesses as services to the business offices, and if there is an ordinance addressing the number of businesses able to operate out of one building.

Wurster read in part *ARTICLE XXXV – DESCRIPTION OF PERMITTED USES*

“The descriptions listed below are not to be interpreted as detailed definitions but rather as extensions, restrictions or examples of the permitted uses listed in Table 1...” meaning the definitions have some flexibility in their meaning.

Wurster polled the Board to see if they are leaning towards granting the two businesses as having offices according to Mr. Rines submitted argument or leaning towards denial.

Fischbein is in favor.

MacDonald, Barron and Wurster are in favor providing they do have to show in the request for building permit, it is going to have office facilities and office space for both landscape and excavation businesses.

McConarty questioned this will be listed as offices and not the businesses they are. Wurster commented under the definition of business offices it encompasses the business services. McConarty commented so there will be a lawn care and excavation businesses operating from this site. Is the ordinance going to be changed? Wurster indicate no.

A **Motion** by Wurster moved to accept the Appeal of Administrative Decision classifying the definition of Dawson Excavation & Utilities Service, LLC and ABC Lawn Care as business offices per Article: 34.2 (e) provided:

1. A detailed floor plan indicating the office facilities in the building for each business is provided,
2. Be attached to the building permit request of November 30, 2018, and
3. The December 30, 2018 letter submitted by White Mountain Survey & Engineering be a part of the permanent record, and
4. All Federal, State, and Local Regulation shall be followed.

Barron seconded. No further discussion.

Point of Order: by Jim Rines asking the Board if they’re going to act on the motion. Wurster called for a roll call vote.

Vote by roll call:

Martin – Abstain Fischbein – Yes MacDonald – Yes Barron – Yes Wurster – Yes

Motion passed; 4-1

2. Article: 35.6.c - Accessory Uses – Storage of Material

A **Motion** by Wurster moved to accept the right of Dawson Excavation & Utilities Service, LLC and ABC Lawn Care to use the property for outdoor storage with the following conditions:

1. The material and equipment stored on the property will be for Business Project Use Only.
2. Applicant will apply to the Planning Board for an Amendment to the existing Conditional Site Plan Review.

MacDonald seconded. No further discussion.

Vote by roll call:

Martin – Yes Fischbein – Yes MacDonald – Yes Barron – Yes Wurster – Yes

Motion passed; 5-0

Jim Rines rejoined the Board as a voting member. Sandra “Sam” Martin was returned to non-voting status.

Sandra “Sam” Martin requested to be ***excused*** from the remaining meeting. Wurster approved.

Unfinished Business:

Rules of Procedure: The final revision was read for its second public hearing. The Board will move to approve for a vote in February.

Election of Chairman and Vice-Chairman:

A **Motion** by Barron to nominate Ralph Wurster as Chairman to the Zoning Board of Adjustment. Rines seconded. No other nominations made. Wurster accepted the nomination. No further discussion. A unanimous vote was taken. **Motion passed.**

A **Motion** by Rines to nominate Ed MacDonald as Vice-Chairman to the Zoning Board of Adjustment. Wurster seconded. MacDonald accepted the nomination. No further discussion. A unanimous vote was taken. **Motion passed.**

Notice:

Wurster noted the Town of Ossipee Year End Reports are due by January 25, 2019.

Any Other Business Which May Come Before This Meeting:

No other business was presented.

Adjournment:

A **Motion** by Rines to adjourn the meeting. Barron seconded. No discussion. All voted in favor, **Motion passed.** The meeting adjourned at 9:05 p.m.

Next Meeting: February 12, 2019 @ 7:00 pm

Minutes approved by majority vote of the Board:

_____	_____
Ralph Wurster, Chairman	Date
Or	
_____	_____
Ed MacDonald, Vice Chairman	Date
(In the absence of the Chairman)	