

TOWN OF OSSIPEE
ZONING BOARD OF ADJUSTMENTS
Meeting Minutes
March 12, 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 7:04 p.m. and the secretary asked for everyone in attendance to kindly put their cellphones on mute.

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

Chairman Wurster raised Alternate - Daniel Fischbein up to voting status in place of the vacant position, previously held by Stanley Brothers.

Attendees: Conduct “Connie” Billings, Michael Durant, Norm Garside, Joseph Longo, Mark & Jacob McConkey, John Kallas, and Connie Daigneault.

Meeting Minutes:

The Board reviewed the ZBA meeting minutes of February 12, 2019.

A **Motion** by Barron to accept the minutes of February 12, 2019 as amended. Fischbein seconded. Ed MacDonald noted on page 3, his last name is spelled **MacDonald** not McDonald. No further discussion. All voted to approve as amended. **Motion passed.**

Financial:

- Sager & Smith invoice for \$245.00 received 03/12/2019 for General Matters on 02/14/2019

A **Motion** by Barron to approve payment of \$245.00 to Sager & Smith, PLLC for services rendered of General Matters for the Dawson case. Fischbein seconded. The Board reviewed the charges and addressed any concerns. No further discussion. Rines abstained himself as the representing agent of record. All others voted in favor. **Motion passed 4-0-1.**

New Business:

PUBLIC HEARING

For the following Applications

Jim Rines recused himself from the Board as the representing agent for Case#19-2-AA: Appeal of Administrative Decision: William J. Dawson Jr.,

1. **Case# 19-2-AA: Appeal of Administrative Decision: William J. Dawson Jr.,** owner – 80 Route 16B. Tax Map: 93 Lot: 015, requesting to re-submit the Appeal of Administrative Decision of the Ossipee Zoning Officer’s interpretation of the Zoning Ordinance as it relates to 80 Route 16B property. The ZBA Counsel resolved that the prior ZBA decision of 01/08/2019 must be vacated and a properly noticed hearing must be held.

Wurster briefly summarized the Town Attorney’s interpretation of **Case# 19-1-AA: Appeal of Administrative Decision: William J. Dawson Jr.,** noting since the abutters and the public were not properly notified the previous public hearing and ZBA decision is null and void. The case must be re-heard and properly noticed. With that being stated, Wurster called for Mr. Rines to present his case.

Jim Rines read and presented his arguments for why the Board should grant the Appeal of Administrative

Decision. Rines noted Article IV – Structures and Uses per Lot, Section 4.4 a; only allows “... one principal structure ... per lot” in the Village District. Since there is only one principal structure, they believe they meet this **requirement** for the ordinance.

Second argument addressed “Commercial Uses.” Rines read the definition for Commercial Use from the Zoning Ordinances. He noted within Table I – Chart of Uses under 34.2(e), Business Offices are allowed and since Dawson Excavation and ABC Lawn Care both operate their businesses out of the offices at this location, they believe they meet this requirement.

Rines finalized his argument by calling attention to Table I – Chart of Uses, Section 34.6 “Accessory Uses” (c) “Outdoor Storage” in the Village District and Article XXXV Section 35.6 (c) definition of “Outdoor Storage.” Which reads, ***“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, maintained in good repair.”*** Associated with both businesses is the outdoor storage of materials and equipment. Again, they believe they meet the criteria of this ordinance as a Matter of Right.

Wurster addressed the letter of December 30, 2018 from the first appeal. Rines explained he adjusted the letter for this application. The secretary supplied a copy of the December 30, 2018 letter to Wurster from the first appeal case file for review.

Wurster opened discussion to the public.

Connie Daigneault, **an abutter**, inquired if **Dawson was** going to be selling any material from this location, fences or big trucks coming and going. Rines replied, they will be installing some type of screening of the property, traffic impact **would be** no more than what is currently happening and there will be no retail sale of stored material.

Joe Longo spoke in favor of Jake Dawson.

Rines noted he submitted a floor plan of the site as requested at the first hearing. The Board reviewed the plans.

Wurster closed public input and opened the discussion to the Board members.

McConarty addressed a letter for where the storage of material is to be stored.

Billings questioned the storage of salt in the Water Resource Protection District. Rines reviewed his notes and the ordinance, which states “rock salt”, is not a permitted use as a “principle use” in the Water Resource Protection District. Rines noted the product, they will be using is mixed with sand and will be stored on a concrete pad and under cover, it is not a principle use it’s an accessory use.

Wurster noted this discussion and decision falls under the Planning Boards **purview**. If the Planning Board has a grievance with the use then it would fall to the ZBA.

A discussion ensued over types of material being stored, use of material, and retail vs. operational sale of material being stored. The Board agreed there is to be no retail sale of the stored material it is for specific job site operations.

A **Motion** by **Wurster to approve** 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. The detailed floor plan provided at the meeting of 03/12/2019, indicating the office facilities in the building for each business is accepted,
2. All Federal, State, and Local Regulation shall be followed.

Barron seconded. No further discussion.

Vote by roll call:

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

Motion passed; 4-0

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

A **Motion** by **Wurster to approve** 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.
3. Screening and care of storage material as accessory uses
4. All Federal, State and Local Regulations shall be followed.

Barron seconded. No further discussion.

Vote by roll call:

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

Motion passed; 4-0

Chairman Wurster announced the **motion passed**. The Appeal of Administrative Decision has been granted. ***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.***

Jim Rines rejoined the Board as a voting member.

Connie Billings provided unofficial results from town election. Wurster read the Elections results as follows:

Selectmen – Sue Simpson,	Planning Board (3 year) – Connie Billings & Sharon Cohen
Town Clerk/Tax Collector – Kellie Skehan	Planning Board (2 year) – Bruce Stuart
Library Trustee – Patricia Pustell	Budget Comm. – Jonathan Smith

Write-in votes not known at this time.

2. **Case#19-3-V: Pierre & Michelle Barton**, owner – 124 Leavitt Rd. Tax Map: 031 Lot: 045 is requesting a Variance from Articles 6.4.2.A (Side Setbacks), to keep the screen porch (existing building), demolish the remainder of the home. Construct a new home (With a second story) on the same footprint with an additional 347.12 sq. ft. of living space on the first floor (to the rear). Representing Agent - McConkey & Associates.

Mark and Jacob (Jake) McConkey were here to present the case as the representing agents. Jake presented the plot plan to the Board. The home owner wants to keep the screen porch (existing building), demolish the remainder of the home. Build a new home with a second story and add a mudroom. They are looking to reduce the south side setback from 9.04 ft. to 7.78 ft. nothing else being moved closure to the boundary line.

Mark McConkey informed the Board based on the prior meeting and questioning if the property is part of the Lakeview Lot Owners Association. Mark noted the homeowner has a couple lots, which is part of an independent association. The next-door neighbor is the secretary for the association and has stated there is no issue with the project planned. Mark presented the floor plans for the new home. It will be ADA compliant to accommodate the owner's handicapped grand-daughter, who is special needs and is in their care.

Mark challenged whether a special exception is necessary in the case. Mark stated the only part of the structure remaining is the porch and whether that is enough of a structure to warrant a special exception. After discussion the Board and the McConkey's agreed, since a variance has stricter requirements than a special exception and the variance was properly noticed, they would address the variance, first. The Board further discussed distance requirements for structure to structure, and the roof overhang for the proposed new home. Mark proceeded to read through the five criteria's.

Wurster opened discussion to public input. None was heard.

Wurster closed public input and opened discussion to the Board.

Board discussion involved bathroom count to number of bedrooms and pending NHDES Shoreland Permit.

A **Motion** by Rines to approve **Case#19-3-V: Pierre & Michelle Barton**, owner – 124 Leavitt Rd. Tax Map: 031 Lot: 045 for a Variance from Articles 6.4.2.A (Side Setbacks with plans submitted, with the following conditions:

1. Secure NHDES Shoreland Permit
2. Demonstrate tying into new sewerage disposal system
- 3. Foundation must be staked by a Licensed Land Surveyor**
4. Structure to Structure safety setback regulations are followed
5. All Federal, State and Local Regulations shall be followed.

Vote by Criteria:

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

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

2. The spirit of the ordinance is observed.

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

3. Substantial justice is done.

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

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

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – 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.

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – 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.

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

Chairman Wurster announced the **motion passed**. The Variance has been granted. ***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.

The Board discussed if a Special Exception is needed for this case. The Board decided a variance has a stricter criterion and did not feel a special exception is warranted for this case.

3. **Case#19-4-V&SE: Patricia and Donald Simpson**, owner – 16 Frost Rd. Tax Map: 066 Lot: 049 is requesting a Variance from Articles 6.4.2.A (Side Setbacks), 6.4.2.B (Rear Setbacks) and a Special Exception from Article 23.3.2 Expansion of a Non-Conforming Structure to add an addition (living space) to the side of the home, infill deck on the front of the home, and add a shed for storage on the property. Representing Agent - McConkey & Associates.

Dan Fischbein **recused** himself from Case#19-4-V&SE: Patricia & Donald Simpson, since he was the previous owner of the property.

Wurster asked the applicant, (under RSA 674:33) noting since there is not a full 5-member board, with no alternates to serve, **if he wished to postpone** 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.

The MacConkey's as the representing agents wished to proceed.

Jake McConkey presented the plot plans for Donald & Patricia Simpson. The owners want to infill the deck in the front in order to walk between the two decks. On the north side of property, they want to add an addition, which will be 37.01ft; from the side setback but one corner will 15.21 ft. from the side setback. The proposed 8 ft. X 14 ft. shed will be used for storage of water craft equipment in the back of the property which will be 7 ft. from the side setback.

Mark McConkey addressed the 2006 Land Tech survey which did not show the existing deck. Looking back at previous **drawings, shows, in** the 2007 designs that the deck is there. There are seven designs within the Town file which also shows the deck. The building permits within the file are a little unclear but McConkey and McConarty believe the deck was a part of the original plans. McConkey spoke with home owner, who provided the MLS sales sheet, which also lists the deck and the bunk house. Questions were raised on when the bunk house was built and whether it's legal. Fischbein provided the history on the property. After discussion it was determined the bunk house is undetermined. Rines questioned if an Equitable Waiver is needed. McConarty recommended having it a condition to review and inspect the bunk house **so** that it meets building codes for habitability. McConkey's agreed.

Mark McConkey proceeded to read through the five criteria's.

Wurster opened public input:

Michael Durant spoke as an abutter, has no issue with the proposed work, but is requesting that no fence be constructed which may block his view. **Mark McConkey agreed.**

Fischbein questioned the location of boundary lines.

A **Motion** by Wurster to approve **Case#19-4-V&SE: Patricia and Donald Simpson**, owner – 16 Frost Rd. Tax Map: 066 Lot: 049 for a Variance from Articles 6.4.2.A (Side Setbacks), 6.4.2.B (Rear Setbacks) to infill deck on the front of the home, and add a shed for storage on the property. With the following conditions:

1. No fence or barrier is to be constructed along the south side of property between the Simpson and Durant property lines.
2. Inspection of the bunk house for Safety Compliance for human habitability.
3. All Federal. State and Local Regulations shall be followed.

Fischbein seconded. No further discussion. Vote was taken by criteria's as follows:

Wurster read the following criteria's.

Vote by Criteria:

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

Barron – Yes Rines – No – too many unknowns MacDonald – Yes Wurster – Yes

2. The spirit of the ordinance is observed.

Barron – Yes Rines – No – too many unknowns MacDonald – Yes Wurster – Yes

3. Substantial justice is done.

Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

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

Barron – Yes Rines – Yes MacDonald – Yes Wurster – 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.

Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

(ai) Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

(aii) Barron – Yes Rines – No MacDonald – Yes Wurster – Yes

Chairman Wurster announced the **motion passed**. The Variance has been granted. ***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.***

The Board proceeded to address the request for a Special Exception.

The Board addressed concerns over if the bunk house is considered an accessory dwelling unit, necessitating the need for additional parking and adequate septic system.

A **Motion** by Barron to approve a Special Exception for **Case#19-4-V&SE: Patricia and Donald Simpson**, owner – 16 Frost Rd. Tax Map: 066 Lot: 049 from Article 23.3.2 Expansion of a **Non-Conforming** Structure to add an addition to the side of the home with the following conditions:

1. Septic System for the number of bedrooms on the property
2. Parking requirements for number of bedrooms.
3. All Federal, State, and Local Regulations shall be followed.

Wurster seconded. No further discussion. Vote was taken by criteria's as follows:

Vote by Criteria:

1. The use is permitted by Special Exception under Table 1 (Article 34 of the Ossipee Zoning Ordinance), or elsewhere in the Ordinance (for example, see Article 6.2)

Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

2. The use is so designed, located and proposed to be operated that the public health, safety, welfare, and convenience will be protected.

Barron – Yes Rines – No MacDonald – Yes Wurster – Yes

3. The specific site is appropriate for the proposed use or structure.

Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

4. No factual evidence is found that the property values in the district will be reduced, due to incompatible land use, by such use.

Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

5. Adequate and appropriate facilities and parking will be provided for the proper operation of the proposed use or structure, as required by the Ordinance.

Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes pending inspection of the bunk house

6. There will be no undue nuisance or serious hazard to pedestrian or vehicular traffic.

Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

7. The proposed use shall not violate the provisions of Article IV and V of the Ordinance.

Barron – Yes Rines – No MacDonald – Yes Wurster – Yes

8. There is no valid objection from the abutters based on demonstrable fact.

Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

Chairman Wurster announced the **motion passed**. The Special Exception has been granted.

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.

Fischbein rejoined the Board at 8:50pm.

4. **Case#19-5-V&SE: William Robertson**, owner – 46 Long Sands Rd. Tax Map: 067 Lot: 019 is requesting a Variance from Articles 6.4.2.A (Side Setbacks), 6.4.2.B (Rear Setbacks), 6.5 (Lot Coverage) and a Special Exception from Article 23.3.3 Expansion of a Non—Conforming Use to add three additions to an existing home, and a new carriage house with an apartment above. Representing Agent - McConkey & Associates.

Wurster questioned why the request is not for a variance or special exception for an accessory dwelling unit. Mark McConkey will address the issue in his presentation.

McConarty noted the Special Exception should be from Article 23.3.2 Expansion of a **Non-Conforming** Structure. Wurster noted the correction.

Wurster addressed concerns with lot coverage, parking, and paper work for the town for an accessory dwelling unit, which includes the carriage house. M. McConkey conveyed the owner may reduce the number of bedrooms to comply with septic subsurface regulations. But the owner really wants the carriage house with storage. M. McConkey stated, he is still in discussions with NHDES over subsurface as part of the house or an apartment and most likely will need to return for lot coverage and sewage load based on the outcome with NHDES. Discussion ensued over the requirements, classification of an (ADU) Accessory Dwelling Unit.

Jake McConkey presented the plot plans requesting a variance on two sides. Jake demonstrated the east side has a 12.65 ft. setback; rear side will be 20.71 ft. and the addition on the east side will be at 15 ft. Jake noted there is a reduction in lot coverage by making the driveway permeable.

Board discussed if the additions were on an existing home or the carriage house, and if lot coverage is being reduced by making it more permeable, does the applicant need a variance for making a non-conforming house, more-conforming.

Chairman Wurster opened public input. None was heard.

A **Motion** by Rines to grant approval for **Case#19-5-V&SE: William Robertson**, owner – 46 Long Sands Rd. Tax Map: 067 Lot: 019 request for a Variance from Articles 6.4.2.A (Side Setbacks), 6.4.2.B (Rear Setbacks), and a Special Exception from Article 23.3.2 Expansion of a Non-Conforming Structure to add three additions to an existing home, and a new carriage house with no apartment. With the following conditions:

1. Carriage House will have no apartment/***dwelling***.
2. All Federal, State and Local Regulations shall be followed.

Fischbein seconded. No further discussion. Vote was taken by criteria's as follows:

Wurster read the following criteria's.

Vote by Criteria:

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

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

2. The spirit of the ordinance is observed.

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

3. Substantial justice is done.

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes, but with no apartment

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

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – 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.

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

(ai) Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

(aii) Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

Chairman Wurster announced the **motion passed**. The Variance has been granted for the additions but the second variance request for lot coverage is not required, since the design is making the driveway permeable ***and actually reducing the coverage***.

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.

Wurster read the following criteria's.

Vote by Criteria:

1. **The use is permitted by Special Exception under Table 1 (Article 34 of the Ossipee Zoning Ordinance), or elsewhere in the Ordinance (for example, see Article 6.2)**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

2. **The use is so designed, located and proposed to be operated that the public health, safety, welfare, and convenience will be protected.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

3. **The specific site is appropriate for the proposed use or structure.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

4. **No factual evidence is found that the property values in the district will be reduced, due to incompatible land use, by such use.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

5. **Adequate and appropriate facilities and parking will be provided for the proper operation of the proposed use or structure, as required by the Ordinance.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

6. **There will be no undue nuisance or serious hazard to pedestrian or vehicular traffic.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

7. **The proposed use shall not violate the provisions of Article IV and V of the Ordinance.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

8. **There is no valid objection from the abutters based on demonstrable fact.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

Chairman Wurster announced the **motion passed**. The Special Exception has been granted.

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.

A **Motion** by Rines that the Zoning Board render a decision that a Variance is not required from Articles – VI Section 6.5 Lot Coverage because the applicant is reducing the impervious coverage from 31.68% to 29.95% and therefore making it more conforming. Barron seconded. No further discussion. All others voted in favor. Wurster abstained. **Motion passed**.

5. **Case#19-6-V&SE: Loch Haven Realty Trust (Mary Ellen Defuria, POA),** owner - 100 Deer Cove Rd. Tax Map: 037 Lot: 023 is requesting a Variance from Articles 6.4.2.A (Side Setbacks), and a Special Exception from Article 23.3.3 Expansion of a Non—Conforming Use for the removal of a 8 ft. x 10 ft. deck and replaced with a 10 ft. x 12 ft. cover porch. Representing Agent - McConkey & Associates.

Mark McConarty read a letter from John Defuria, son in-law to the former owner, who has since passed. McConkey explained how the Defuria's became the POA. Defuria had removed a rotted 8 ft. X 10 ft. deck from 100 Deer Cove Rd. He proceeded to build a 10 ft. X 12 ft. deck with a shed roof projecting off the existing roof. All this was done without a permit. McConarty issued a Cease & Desist and Mr. DeFuria was instructed to apply for a building permit and subsequently a variance for side and rear setbacks and a special

exception for expansion of a non-conforming structure.

Jake McConkey presented the plot plans requesting a variance on two sides. Jake drew attention to the excess number of parking spaces for this property. The north side setback went from 2.25 ft. to 0.40 ft. but Defuria's own the adjacent lot. The variance for the rear setback is not required because the proposed deck will be 51.91 ft. from the river's edge. Mark noted the overhang will project into the adjacent lot. Pictures were provided of the rotted deck.

The Board discussed the roof structure projecting into the adjacent lot, potential sale of property and the board not having the authority to grant the roof extension into an adjacent lot without a boundary line adjustment being done.

Wurster opened public input. None was heard.

Board discussion continued over the roof extension into an adjacent lot.

A **Motion** by Rines to grant **Case#19-6-V&SE: Loch Haven Realty Trust (Mary Ellen Defuria, POA)**, owner - 100 Deer Cove Rd. Tax Map: 037 Lot: 023 is requesting a Variance from Articles 6.4.2.A (Side Setbacks), and a Special Exception from Article 23.3.3 Expansion of a Non—Conforming Use for the removal of a 8 ft. x 10 ft. deck and replaced with a 10 ft. x 12 ft. cover porch. With the following conditions:

1. No part of the structure is to breach the boundary lines.
2. Secure NHDES Shoreland Permit
3. All Federal, State and Local Regulations shall be followed.

Barron seconded. No further discussion. Vote was taken by criteria's as follows:

Jake McConkey read the following criteria.

Vote by Criteria:

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

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – No

2. The spirit of the ordinance is observed.

Fischbein – No Barron – Yes Rines – Yes MacDonald – Yes Wurster – No

3. Substantial justice is done.

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster - No

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

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – No

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.

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – No

(ai) Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – No

(aii) Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – No

Chairman Wurster announced the **motion passed**. The Variance for the setback has been granted.

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.

Wurster ask Rines to repeat his motion for the special exception.

A **Motion** by Rines to grant **Case#19-6-V&SE: Loch Haven Realty Trust (Mary Ellen Defuria, POA)**, owner - 100 Deer Cove Rd. Tax Map: 037 Lot: 023 is requesting a Special Exception from Article 23.3.3 Expansion of a Non—Conforming Use for the removal of a 8 ft. x 10 ft. deck and replaced with a 10 ft. x 12 ft. cover porch. With the following conditions:

1. In no instance is the roof to go beyond the boundary lines.
2. All Federal, State and Local Regulations shall be followed.

Barron seconded. No further discussion. Vote was taken by criteria's as follows:

Wurster read the following criteria.

Vote by Criteria:

1. **The use is permitted by Special Exception under Table 1 (Article 34 of the Ossipee Zoning Ordinance), or elsewhere in the Ordinance (for example, see Article 6.2)**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – No

2. **The use is so designed, located and proposed to be operated that the public health, safety, welfare, and convenience will be protected.**

Fischbein – No Barron – Yes Rines – Yes MacDonald – Yes Wurster – No

3. **The specific site is appropriate for the proposed use or structure.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – No

4. **No factual evidence is found that the property values in the district will be reduced, due to incompatible land use, by such use.**

Fischbein – No Barron – Yes Rines – Yes MacDonald – Yes Wurster – No

5. **Adequate and appropriate facilities and parking will be provided for the proper operation of the proposed use or structure, as required by the Ordinance.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – No

6. **There will be no undue nuisance or serious hazard to pedestrian or vehicular traffic.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – No

7. **The proposed use shall not violate the provisions of Article IV and V of the Ordinance.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – No

8. **There is no valid objection from the abutters based on demonstrable fact.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – No

Chairman Wurster announced the **motion passed**. The Special Exception has been granted.

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.

Mark McConkey extended his gratitude to the Board for the *courtesy* extended to Jake McConkey, who is

learning the process of the job.

6. **Case#19-7-V&SE: Richard Abbott**, owner - 58 Deer Cove Rd. Tax Map: 044 Lot: 006 Sub: 1 is requesting a Variance from Article 6.4.1.A (Front Setback), Articles 6.4.2.A (Side Setbacks), and a Special Exception from Article 23.3.2 Expansion of a Non—Conforming Structure to build a 10 ft. x 21 ft. deck. Representing Agent – Norm Garside.

A brief recess was called at 9:35 9:38 pm.

Norm Garside presented the plan of adding a 10 ft. x 21 ft. deck on the front of the house, off the living room with a sliding door. With the road being very narrow, they would like to be up above traffic line to get a better view of the lake.

Rines confirmed with Garside that the measurements were taken from the pavements edge and not from the boundary lines. The road measurement is believed to be a 1 -1.5 rod road. Garside reviewed the photos with the Chairman. Garside noted there is a letter from the association giving approval for the deck. He has secured a NHDES Shoreland Permit. There will be a drip line with stone underneath to improve permeable surface.

A Motion by Rines to grant **Case#19-7-V&SE: Richard Abbott**, owner - 58 Deer Cove Rd. Tax Map: 044 Lot: 006 Sub: 1 for a Variance from Article 6.4.1.A (Front Setback), Articles 6.4.2.A (Side Setbacks), and a Special Exception from Article 23.3.2 Expansion of a Non—Conforming Structure to build a 10 ft. x 21 ft. deck with submitted plan dated 02/10/2019, with the understanding that the dimensions are drawn from the edge of payment and not the boundary line. Condition:

1. All Federal State and Local Regulations shall be followed.

Barron seconded. No further discussion. Vote was taken by criteria's as follows:

Wurster read the following criteria's.

Vote by Criteria:

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

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

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

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

3. **Substantial justice is done.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

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

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because of the “Special Conditions” of this property that distinguish it from other properties in the area.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

(ai) Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

(aii) Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

Chairman Wurster announced the **motion passed**. The Variance has been granted.

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.

Wurster **continued** to the Special Exception by reading the following **criteria**.

Vote by Criteria:

1. **The use is permitted by Special Exception under Table 1 (Article 34 of the Ossipee Zoning Ordinance), or elsewhere in the Ordinance (for example, see Article 6.2)**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

2. **The use is so designed, located and proposed to be operated that the public health, safety, welfare, and convenience will be protected.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

3. **The specific site is appropriate for the proposed use or structure.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

4. **No factual evidence is found that the property values in the district will be reduced, due to incompatible land use, by such use.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

5. **Adequate and appropriate facilities and parking will be provided for the proper operation of the proposed use or structure, as required by the Ordinance.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

6. **There will be no undue nuisance or serious hazard to pedestrian or vehicular traffic.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

7. **The proposed use shall not violate the provisions of Article IV and V of the Ordinance.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

8. **There is no valid objection from the abutters based on demonstrable fact.**

Fischbein – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster – Yes

Chairman Wurster announced the **motion passed**. The Special Exception has been granted.

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.

7. **Case#19-8-V&SE: John Kallas**, owner - 70 Deer Cove Rd. Tax Map: 044 Lot: 067 is requesting a Variance from Articles 6.4.2.A (Side Setbacks), and a Special Exception from Article 23.3.2 Expansion of a Non-Conforming Structure to build two additions and a new roof. Representing Agent – Joseph Longo of Longo Home Builders.

Joseph Longo presented his plans to the Board. John Kallas spoke with his abutter to the right, who indicates, they have verbally stated, they have no issues with the plan. It was noted by the secretary that the application for the Special Except was not signed. The Board approved the applicant to sign it at the table.

Discussion involved having the property surveyed to show where the actual boundary lines are located. The addition is showing it to be 17 ft. from the boundary. The secretary informed the Chairman that an abutter

did contact her and stated they do not have an issue with the project. Discussion continued over the boundary lines.

A **Motion** by Rines to approve **Case#19-8-V&SE: John Kallas**, owner - 70 Deer Cove Rd. Tax Map: 044 Lot: 067 for a Variance from Articles 6.4.2.A (Side Setbacks), and a Special Exception from Article 23.3.2 Expansion of a Non-Conforming Structure to build two additions and a new roof. With the following conditions:

1. The southerly boundary is surveyed by a Licensed Land Surveyor
2. Structure will be no closer than 17 ft. to the boundary line
3. All Federal, State and Local Regulations shall be followed.

Barron seconded.

Discussion – Wurster noted under the Variance five *criteria*, number 5 reads:

“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.”

Applicant answered the question: **“As far as we know there are no special conditions for this property”**

Wurster questioned if the Board is able to grant a variance for criteria #5, when the applicant states there are no special conditions. Wurster informed the applicants, based on NH Law, there are five criteria's that the Board must judge, and by stating there are no special condition. The applicant is indicating there is no reason, why the variance should be granted. Every criteria must have a special circumstance or reason why a variance or special exception is needed. So, without a reason the Board is unable to grant a variance. After continued discussion. Barron and Rines withdrew their motion.

A **New Motion** by Rines to continue **Case#19-8-V&SE: John Kallas**, owner - 70 Deer Cove Rd. Tax Map: 044 Lot: 067 requesting a Variance from Articles 6.4.2.A (Side Setbacks), and a Special Exception from Article 23.3.2 Expansion of a Non-Conforming Structure to build two additions and a new roof, until the next ZBA meeting to be held on April 9, 2019. With the following conditions:

1. Locate property lines *by a Licensed Land Surveyor*
2. Complete applications

Fischbein seconded. No further discussion. All others voted in favor. Wurster abstained.

Notices:

March 13, 2019 – Annual Town Meeting - 6:30 PM – 8:00 PM at Town Hall

Any Other Business Which May Come Before This Meeting:

None heard.

Adjournment:

A **Motion** by Rines to adjourn the meeting. MacDonald seconded. No discussion. All voted in favor, **Motion passed.** The meeting adjourned at 10:18 p.m.

Next Meeting: April 09, 2019 @ 7:00 pm

Minutes approved by majority vote of the Board:

Ralph Wurster, Chairman

Date

Or

Ed MacDonald, Vice Chairman
(In the absence of the Chairman)

Date