

TOWN OF OSSIPEE
ZONING BOARD OF ADJUSTMENTS
Meeting Minutes
April 9, 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.

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

Welcome New Member: Shawn Marcotte

The Board welcomed Shawn Marcotte, who was a write-in candidate at the Annual Election.

Elections:

Chairman: A **Motion** by Barron to nominate Ralph Wurster as Chairman. MacDonald seconded. Wurster accepted the nomination. All others voted in favor. Wurster abstained. **Motion passed.**

Vice-Chairman: A **Motion** by Barron to nominate Ed MacDonald as Vice-Chairman. Rines seconded. MacDonald accepted the nomination. All others voted in favor. MacDonald abstained. **Motion passed.**

Attendees: Joseph Longo, John Kallas, Carol Gartland and Ted Bateman and Krystal Eldridge.

Meeting Minutes: Review to Approve Meeting Minutes of 03/12/2019, several corrections were noted. The secretary will amend the minutes 03/12/2019 for approval at the May 14, 2019 meeting.

Financial:

- Budget Report: January 1, thru March 31, 2019- The Board reviewed the budget and noted that the postage line item is just under 60% for the first quarter of the year.
- Lakes Region Planning Commission – NH Planning & Land Use Regulation books in the amount of \$83.25. The secretary reported, she has already submitted the invoice for payment, since it was under \$100.00.

New Business:

PUBLIC HEARING
For the following Applications

- **Case # 19-1-MFRH:** Mark McConkey (Representing Agent) has submitted an Appeal of a Motion for Rehearing on **Case#19-4-V&SE: Patricia and Donald Simpson**, owner – 16 Frost Rd. Tax Map: 066 Lot: 049, which was previously granted a conditional 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.

Wurster read the request for a Motion for Rehearing submitted by representing agent Mark McConkey. Wurster identified a couple of issues to identify:

1. Dan Fischbein needed to recuse himself from the case, since he recused himself from the original hearing as the former owner of the property. Fischbein agreed and recused himself to sit in the audience.
2. Wurster informed the attending public of the rules for A Motion for Rehearing as follows:

- (a) This is not a public hearing per agenda listing. It is a public meeting and as such:
- (b) Notifications to abutters is not required
- (c) Applicant/Agent and public testimony is not accepted.
- (d) Board discussion is to determine if the submitted information warrants a rehearing of the original submitted variance application.

The Board discussed the merits of the letter. Rines noted during the original hearing an abutter requested that a fence would not be constructed. Representing agent, Mark McConkey felt this is not unreasonable and agreed on behalf of his client. Subsequently, the owner/applicant does not want to be restricted with this condition. The request for a rehearing was filed within the 30 day post public hearing required time frame.

Wurster read a section of the ZBA handbook page IV-3, which states:

“A person has a right to apply for a rehearing and the board has the authority to grant it. However, the board is not required to grant the rehearing and should use its judgment in deciding whether justice will be served by so doing. In trying to be fair to a person asking for a rehearing, the board may be unfair to others who will be forced to defend their interests for a second time.”

The Board’s reasoning:

1. The abutter (requesting no fence be constructed) has already traveled here twice for both dates of the public hearings, with one being in a snow storm. Per the ZBA handbook section IV-3- this would be “unfair to others who will be forced to defend their interests for a second time” but in this case, it would be a third time.
2. The owner/applicant has never presented and has relied on his representing agent to speak on his behalf.
3. The owner/applicant is claiming the abutters dogs come onto his property and he does not want to be restricted from putting up a fence.
4. The Board noted that dogs have never been addressed at any previous hearing for this case.

A **Motion** by Barron to deny a Request for Rehearing for **Case # 19-1-MFRH: Mark McConkey** (Representing Agent) had submitted for **Case#19-4-V&SE: Patricia and Donald Simpson**, owner – 16 Frost Rd. Tax Map: 066 Lot: 049. MacDonald seconded. Wurster instructed that a Yes vote means to deny the request and a no vote means to grant the request for rehearing. Wurster called for a roll call vote:

Marcotte – Yes Barron – Yes Rines – Yes MacDonald – Yes Wurster - Yes

Motion to deny a Request for Rehearing– passed.

Danny Fischbein rejoined the Board.

Wurster proceeded with the next case.

- **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. **Continued from March 12, 2019.** Pending 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.

Wurster noted there is a new case packet. McConarty wanted to make the Board aware that the plans for this property have changed without the abutters and public being notified. Discussion followed to include the reasons for the continuance, type of changes made, properly notifying the abutters. The Board resolved by agreeing since the case was continued to a date certain, the abutters were properly notified. While in a

continuance, the plans can be changes and part of the reason for the continuance was because the application was incomplete. So it left room for amending the plans. Wurster asked if there were any abutters present, none presented except Joe Longo, the representing agent is an abutter, and he has no issue with what Mr. Kallas is proposing. Barron was uncomfortable with the abutters not being updated on the changes but also realized there is a 30 days appeal process, if any abutters are not satisfied with the proposed plans. Wurster polled the Board to continue with the case presented:

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

All were in favor of proceeding with the case.

Wurster read through the 5 criteria's.

Rines noted an observation with the answer provided on criteria #4 “surrounding property values will not be diminished” - The answer states “the additions are not being built intending on becoming closer to the boundary lines than the pre-existing non-conforming structures that exists now.” Rines disagrees noting based on the survey of the boundaries; the property lines are noted to be approximately 1.5 feet closer than previously thought. Noting the statement is not correct now that the property has been surveyed.

A **Motion** by Rines to approve the Variance for **Case#19-8-V&SE: John Kallas**, owner - 70 Deer Cove Rd. Tax Map: 044 Lot: 067 from Articles 6.4.2.A (Side Setbacks), to build two additions and a new roof. Representing Agent – Joseph Longo of Longo Home Builders. With the following conditions:

1. The addition be staked by a Licensed Land Surveyor per the plans dated 04/08/2019 by Land Tech.
2. Acquire a Shoreland Permit
3. NHDES Septic Approval, if needed
4. Federal, State and Local Regulations

Barron seconded. No further discussion. Wurster moved for a vote by criteria.

Vote by Criteria:

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

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

2. The spirit of the ordinance is observed because:

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

3. Substantial justice is done because:

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

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

Marcotte – 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 are as follows:

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

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

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

Motion for variance is passed.

Wurster proceeded with the Special Exception. Joe Longo reads through the 8 criteria's.

A **Motion** by Rines to approve the Special Exception for **Case#19-8-V&SE: John Kallas**, owner - 70 Deer Cove Rd. Tax Map: 044 Lot: 067 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 addition be staked by a Licensed Land Surveyor per the plans dated 04/08/2019 by Land Tech.
2. Acquire a Shoreland Permit
3. NHDES Septic Approval, as needed
4. Federal, State and Local Regulations

MacDonald seconded. No further discussion. Wurster moved for a vote by 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)**

Marcotte – 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.**

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

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

Marcotte – 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.**

Marcotte – 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.**

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

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

Marcotte – 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.**

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

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

Marcotte – 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.

- **New Forms:** Appeal of Administrative Decision – the Board reviewed the form but would like a section added for the applicant to list their arguments for the appeal. Jim Rines will investigate and revised the form for the next meeting. Rines will also review and revise the application form Motion for Rehearing.
- **Rules of Procedure:** adding request for Appeal of Administrative Decision and Variance to be held at the same meeting to the rules of procedure.

- **Number of Cases:** Allowable number of cases per meeting. Discussion included setting a time limit that no cases will be heard after (ex: 9:30 pm) and to possibly have a special meeting to complete the remaining cases when there is a large number of applications submitted.
- Legislative updates: HB1215 was passed thus changing the wording of RSA 674:33 I, – relative to voting on variances, which reads:

*“In substance, this bill amends RSA 674:33, I and requires zoning boards to use a single, consistent voting method for all variance applications. This method can be changed by the board, but not until 60 days have passed from when the board votes to adopt such change. A change in voting method does not apply to any application(s) pending at the time of the change. In form, this bill re-numbers the sections contained within RSA 674:33, I. 1
Effective Date: August 7, 2018”*

Wurster noted the Board will need to determine one method of voting and update the Rules and Procedures to indicate the method.

Barron questioned if SB 339 would need to be changed in the Rules of Procedure as well.

- SB 339 – relative to voting by zoning boards of adjustment.
Chaptered Law 214
This bill amends RSA 674:33, III to require the concurring vote of any three members of the board to take any action on any matter on which it is required to pass.
Effective Date: August 7, 2018

Rines noted if you only have three members present, all three have to vote in favor. But does not necessarily change this ruling. But will need further review of the new regulations.

Wurster asked for these 4 items to remain on the agenda going forward.

Notices: N/A

Any Other Business Which May Come Before This Meeting:

None heard.

Adjournment:

A Motion by Rines to adjourn the meeting. Barron seconded. No discussion. All voted in favor, **Motion passed.** The meeting adjourned at 8:15 p.m.

Next Meeting: **May 14, 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