

TOWN OF OSSIPEE
ZONING BOARD OF ADJUSTMENTS
Meeting Minutes
May 14, 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, and Alternate - Daniel Fischbein. **Absent:** Shawn Marcotte Sandra "Sam" Martin and Steve McConarty, ZEO

Meeting Minutes: Review to Approve Meeting Minutes of 03/12/2019 and 04/09/2019.

Wurster and Rines reviewed each of the amendments to the minutes 03/12/2019.

Wurster raised Alternate-Fischbein to voting status in place of Shawn Marcotte.

A **Motion** by Rines to accept the minutes of March 12, 2019 as amended. MacDonald seconded. Barron questioned what was amended. Wurster and Rines explained the corrections. No further discussion. All voted to approve as amended. **Motion passed.**

Meeting Minutes: Review to Approve Meeting Minutes of 04/09/2019. Wurster called for any corrections or changes. Wurster noted on page 5, 2nd bullet, 2nd line the word "having" should be "have."

A **Motion** by Barron to accept the minutes of April 9, 2019 as amended. Rines seconded. No further discussion. All voted to approve as amended. **Motion passed.**

Financial:

- Budget Report: Budget Report: 04/01/2019 – 04/30/2019

Barron questioned the amount 67% of the secretary's salary has been expended. Wurster explained after the 1st quarter it should be at 75% and we are 1 ½ months into the 2nd quarter, so it seems to be right on target. Rines noted advertising is at 45.86% expended but that get refunded with each case. Wurster requested to receive a revenue report each month along with the budget report.

New Business:

PUBLIC HEARING

- **New Form:** create Appeal of Administrative Decision – Rines collected example forms from Meredith, Moultonborough, Effingham, Madison and NHMA ZBA handbook sample. He preferred to use Meredith's forms because it embodied the RSA's. Rines did change on page 1- Describe your legal "standing," Rines added the last sentence which states, ***"Simply being a resident in town does not necessarily make you an 'aggrieved person' and create legal 'standing,'*** because it's included in the RSA and the handbook.

Discussion: Barron needed clarification on who is allowed to submit an appeal of administrative decision. Rines explained it could be abutters, Planning Board, Board of Selectmen or somebody that could demonstrate that the decision made would harm them in some way. The Board discussed the difference between an appeal an administrative decision and appealing a decision from the Zoning Board of Adjustment. Wurster explained an appeal of administrative decision is not an appeal of a ZBA's decision; it's an appeal of someone else's decision, i.e. the Zoning Enforcement Officer, etc... Ex: if the ZEO issues a denial letter for a project and the owner disagrees with the decision. The owner can submit an appeal of administrative decision to the ZBA explaining why they believe it's in error and for the ZBA to determine if

the ZEO interpreted the zoning ordinance incorrectly.

The second example of submitting an appeal to the ZBA; is if the Planning Board denies an applicant base on their interpretation of a zoning ordinance and the applicant disagrees. The applicant can submit an administrative appeal of a decision requesting the ZBA to clarify the interpretation of a zoning ordinance. But if the applicant is denied for any other reason, except a zoning ordinance, the applicant can only appeal to Superior Court.

Wurster would prefer to add a section informing the applicant of the instructions and fees associated with submitting the appeal of administrative decision. Rines informed the Board that some towns have a separate packet with instructions and associated fees for all ZBA applications. The towns handout or have attached to each application. Rines provided a sample and suggested the Board could do the same.

Discussion involved having one set of instructions or separate instruction for each application. The secretary will review each of the current application instructions to determine if combining the instructions to encompass all forms or to keep the instruction separate to each application.

A **Motion** by Rines to approve the application with the addition of any formatting pending instructions to be determined. Barron seconded. No further discussion. A unanimous vote was taken. **Motion passed.**

- **Motion for Rehearing: Rev.II** – Wurster explained how the motion for rehearing would be for appeals to the ZBA for either an administrative decision, variance, special exception or an equitable waiver. So he requested to have remainder of the check boxes removed from the second line. Wurster also suggested removing “**APPEAL OF ADMINISTRATIVE DECISION APPLICATION**” and replacing it with “A Motion for Rehearing Application.” Discussion to include or exclude the section of instructions and fees is to be determine. Rines commented on the sentence “Complete the **Motion for Rehearing** application or you may write a letter to the Board.” If the Board wants the applicant to complete this form, why would we offer them to write a letter instead? The secretary explained under the RSA the applicant is allowed to submit a letter instead of completing this form. Rines suggested adding the Case Number next to the Date of Original Hearing. The Board members agreed.

A **Motion** by Rines to approve the content of the Motion for Rehearing application as amended this date be approved with the understanding its pending the instructions to be embedded in the application or as a separate document. Barron seconded. No further discussion. A unanimous vote was taken. **Motion passed.**

- **Rules of Procedure:** Changes made by adding a statement for an Appeal of Administrative Decision and a Request for a Variance to apply for both to be heard and a decision rendered on both cases on same night entered into the Rules of Procedure. Adding limit to the number of cases allowed per meeting or setting a specific time cases will be heard till.

The Board proceeded to review each change beginning with page 1, section Meetings, number 2, and Wurster read:

*2. “To ensure that each applicant receives the attention and focus their application deserves, no previously continued hearings or new application hearings will commence after 9:00 PM unless voted otherwise **STRIKE** (by a majority of the) **ADD (3) members present at the meeting.** However, hearings commenced prior to 9:00 PM will continue to be heard until a decision is rendered or the application is continued. Previously continued applications and new applications not heard, will be continued to the following meeting, the date, time and location to be determined at the meeting where the continuance occurs.”*

The Board discussed and agreed that 9:00 pm is acceptable. Wurster questioned if the new law of “**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**” would change the wording. After discussion, the Board

agreed to **STRIKE** (by a majority of the) **and ADD (3) members.**

3. A quorum for all meetings shall be three members, including alternates sitting in place of members.
 - a) **RSA 674:33 provides that "... the concurring vote of 3 members of the Board shall be necessary to reverse any action of an administrative official or to decide in favor of any appeal...." For this reason, the Board will make every effort to ensure that a full five-member Board is present for the consideration of any appeal.**
 - b) **If any elected Board member is absent from any meeting or hearing, or disqualifies him/herself from sitting on a particular case, the Chairperson shall raise an alternate member to voting status and such alternate shall be in all respects a full member of the Board while so sitting.**

The Board members were all in agreement with number 3 (a) and (b). The Board proceeded to page 3, under applications:

Applications/Decisions

1. Applications

A. Appeals from an administrative decision taken under RSA 676:5 shall be filed within 30 days of the decision. **RSA 676:5, I - (An appeal of an administrative decision of interpretation of the ordinance and a variance request that is based on the outcome of the interpretation of the ordinance can both be decided as part of a single appeal application).**

Wurster explained his rational of adding this statement into the rules of procedures. Board discussion ensued over allowing both cases to be heard, the order of cases being heard, and the potential number of cases being heard per night. The Board reviewed the wording and agreed to remove **STRIKE - RSA 676:5, I - 0.**

Rines noted some confusion on page 2 under Disqualification.

4. Disqualification.

- I. If any member finds it necessary to disqualify him/herself from sitting in a particular case, as provided in RSA 673:14, said member shall notify the **Chairperson** as soon as possible so that an alternate can be raised to voting status in his/her place.
- II. When uncertainty arises as to the application of paragraph I to a board member in particular circumstances, the board shall, upon the request of that member or another member of the board, vote on the question of whether that member should be disqualified. Any such request and vote shall be made prior to or at the commencement of any required public hearing. Such a vote shall be advisory and non-binding, and may not be requested by persons other than board members, except as provided by local ordinance or by a procedural rule adopted under RSA 676:1.
- III. The disqualification shall be announced by either the **Chairperson** or the member disqualifying him/herself before the beginning of the public hearing on the particular case. The disqualified member shall step down from the Board table during the public hearing and during the deliberation on the case.

After review and a brief discussion the Board agreed to **STRIKE the number – 4,** and make Disqualification its own heading with bold and underlined and **change I., II, III to 1.2.3.**

Wurster noted the Board cannot approve these changes tonight but they have been discussed. Wurster read from page 5 - **Amendments**

“Rules of procedure shall be adopted or amended by a majority vote at a regular meeting of the board provided, that such new rules or amendments are proposed and discussed prior to the meeting at which the vote is to be taken...” and noted the changes can be voted on at the next meeting.

Rines noted on page 5, under Amendments [RSA 676:1](#) is in blue and questioned the reason.

Notices: N/A

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

Adjournment:

A Motion by Barron to adjourn the meeting. Rines seconded. No discussion. All voted in favor, **Motion passed.** The meeting adjourned at 8:13 p.m.

Next Meeting: **June 11, 2019 @ 7:00 pm**

Minutes were approved by majority vote of the Board:

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