

TOWN OF OSSIPEE
ZONING BOARD OF ADJUSTMENTS
Meeting Minutes
July 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, Roy Barron, Alternate - Daniel Fischbein and Steve McConarty, ZEO.

Absent: Jim Rines, Shawn Marcotte and Sandra “Sam” Martin

Wurster raised Alternate-Fischbein to voting status in place of Jim Rines.

Meeting Minutes: Review to Approve Meeting Minutes of 06/11/2019.

A **Motion** by Barron to approve the minutes of June 11, 2019 as submitted. Fischbein seconded. No discussion. All voted to approve as amended. **Motion passed.**

Financial:

- Budget Report: Budget Report: 06/01/2019 – 06/30/2019

The Board noted that the line item for advertising is at 39.88% and postage is at 44.74% but these deficiencies will be offset by incoming case fees.

Wurster recommended to the Board of discussing SB 339 after hearing the following cases. The Board agreed.

Unfinished Business:

- **SB 339 – Voting by Zoning Board of Adjustments:** (The Bill amends RSA 674:33, III) adoption into the Rules of Procedures. (Added to: Page 4, Section 4. – Decisions – B.)

New Business:

PUBLIC HEARING

- **Case #19-9-V:** owner – George & Michelle Couris of 3 Shorey Lane. Tax Map: 085 Lot: 002 is requesting a Variance from Articles 6.4.2.A (Side Setbacks), 6.4.2.B (Rear Setbacks) to build a 30 ft. X 40 ft. detached garage. Representing Agent: Mark McConkey of McConkey & Associates.
(Continued from 06/11/2019 ZBA Mtg.)

The Chairman addressed the Applicant (under RSA 674:33) – noting since there is not a full 5-member board, with no alternates to serve. 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.

McConkey and Couris replied they wish to continue with the (4) member Board.

McConkey gave a brief overview of the prior presentation and reasons for continuing until tonight’s meeting, which he calls option #1. There is a 3-lot subdivision and the Couris property is the center lot. At the last meeting McConkey stated that, Mr. Rines presented an alternate location for the proposed garage. With Rines’ quick rendering he could place the proposed garage within the required setbacks, thus a variance would not be required, and it would not impact the shoreland.

McConkey explained the obstacles with using option #1

1. There is an existing septic system on the lot with an easement for one of the other lots, which eliminates one location for placing the garage.
2. The fire hydrant will be located approximately 20 ft. from the garage and facing the center of the house.

McConkey drew the Boards attention to pictures he presented where he had staked out the proposed location for option #1. Picture #1 shows when entering the road, the view would be obstructed by a 40-foot garage facing you as you enter. Picture #2 shows the Dollar General store. Two letters were shown to the Board from abutters opposing the placement of the **garage** because it would obstruct their views. Both abutters were shown both options and both chose option #2 placement for the garage. McConkey read both letters to the Board.

Barron understood the abutters opposing the obstruction of their view, but views is an esthetic consideration but not a hardship for consideration of a variance application. The placement of the septic and fire hydrant are considered a hardship due to the cost of replacement.

McConkey proceeded to page 7 of the documents, showing the underground utilities go from the pole, to around the septic area through the middle of the proposed option #1's path to the meter boxes in the middle of the house, providing a Dig Safe situation. Couris believes the main water lines are about 20 ft. off the property line through the middle of his house. But McConkey has not confirmed its location.

McConkey drew attention to case *Sprague v. Acworth*, 120 N.H. 641 (1980), which states:

"A variance is a waiver of any provision of the ordinance authorizing the landowner to use his or her land in a manner that would otherwise violate the ordinance and may be granted by the board of adjustment on appeal."

McConkey noted the property is in the flood plain per FEMA flood maps with a designated district of AE. Flood elevation is 414.0 ft. in this district. This would require about 1.5 ft. higher than the garage first floor of fill brought in to cover the foundation properly. McConkey briefly addressed a recent report on Global Warming effects for NH. It true McConkey noted the effects for NH would be flood levels increasing from 414.0 ft. to 415.0 ft. and could affect placement on the septic system, or underground utilities in the future.

McConkey does not recommend option #1. Option #2 is requesting variance for relief from the rear south setback to relax the setback to 6.12 ft. The homeowner would like to keep it in this location because the tree line overlaps the property marker and is a natural buffer.

Discussion ensued over direction placement of the garage, driveway directions, turnaround radius, age of septic system, cost of moving water main and relief from obstacles previously stated. The Board again commented although they understand a **neighbor's** view and esthetic consideration but it's not a hardship for consideration of a variance application. Wurster discussed an option #3 with McConkey. Barron suggested continuing the case again, so McConkey can determine the exact direction of the water main lines, **and location of the** septic and underground utilities.

Wurster called for anymore Board discussion or public input.

George Couris, homeowner – spoke on the situation with the locations of the septic systems. He stated the location for the shut-off valve to the water main is in the center of where option #1 is staked out and the meter is located center on the outside house.

James Owen, Builder – discussed the view for the neighbors and was reminded that dose not qualify as a hardship. Owen commented he drives all over town and sees terrible things all over town that don't have permits, and nothing gets done about it. Wurster redirected the discussion back to the case at hand.

Wurster stated if you can do something on the property and follow the ordinance, there's no hardship. If there is no hardship, then there's no requirement for a variance.

Wurster informed McConkey he will not accept the letters into the record since the information seems to be backwards.

McConkey presented his closing arguments covering lot shape., septic, underground utilities, and reasonable use.

Wurster closed public discuss.

Board discussion ensued. After discussion, consensus was to continue the case to allow McConkey time to find the exact location of the water main, septic system, underground utilities and take under advisement option #3 proposed by the Board.

McConkey asked for a continuance.

A **Motion** by Barron to continue **Case #19-9-V:** owner – George & Michelle Couris of 3 Shorey Lane. Tax Map: 085 Lot: 002 request a Variance from Articles 6.4.2.A (Side Setbacks), 6.4.2.B (Rear Setbacks) to build a 30 ft. X 40 ft. detached garage to continue the case until August 13, 2019, to allow McConkey time to find the exact location of the water main, septic system, underground utilities and take under advisement option #3 proposed by the Board. MacDonald seconded. No discussion. A unanimous vote was taken.

- **Case #19-1-EWDR:** owner – John Howell of 95 Leavitt Rd. Tax Map: 031 Lot: 031 is requesting a Equitable Waiver of Dimensional Requirements from Article: 6 Section: 4.1.A (Front Setback), to permit a corner of the existing garage to remain within 37.4 ft. of the road setback lines.
Representing Agent: Ronald Briggs of Briggs Land Surveying.

Ron Briggs did the septic design for the homeowner. While the house was being built, the owner wanted the barn/garage built at the same time, as noted on Lot: 013 of the subdivision map. Briggs presented the subdivision map done in 1981. Briggs identified 3 boundary markers on the septic design. A boundary survey was recently performed to incorporate all the deeds for the property. The green line demonstrates the boundaries per the recorded plans. The boundary survey revealed the right of way information on that plan was incorrect. This made a corner of the barn/garage non-conforming and the applicant is asking for the existing corner of the barn/garage to remain within 37.4 ft. of the road setback line.

The Chairman addressed the Applicant (under RSA 674:33) – noting since there is not a full 5-member board, with no alternates to serve. 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.

Briggs and Howell replied they wish to continue with the (4) member Board.

Board discussion ensued over dates of boundaries and markers placements.

Wurster polled the Board. Consensus was they were in agreement.

A **Motion** by Barron to grant an Equitable Waiver of Dimensional Requirements to **Case #19-1-EWDR:** owner – John Howell of 95 Leavitt Rd. Tax Map: 031 Lot: 031 from Article: 6 Section: 4.1.A (Front Setback), to permit a corner of the existing garage to remain within 37.4 ft. of the road setback lines.

Fischbein seconded. No further discussion. A roll call vote taken.

Fischbein – Yes Barron – Yes MacDonald – Yes Wurster – Yes **Motion passed.**

Chairman Wurster announced the **motion passed.** The Equitable Waiver of Dimensional Requirements 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.***

- **Case #19-9-SE:** owner – Adam Doiron of 720 Browns Ridge Rd. Tax Map: 279 Lot: 015 is requesting a Special Exception from Article: 23 Section 3.2 Expansion of a Non-Conforming Structure to add a covered porch and renovate the 2nd floor of the existing house by adding a full dormer to the back half *of* the main structure and raising the roof to accommodate the structure.

Adam Doiron presented his designs to the Board. Fischbein visited the site and showed the Board the situation per plans. Discussion over expansion of a non-conforming structure but the house is grandfathered due to being built pre-zoning.

A **Motion** by Barron to grant a Special Exception for **Case #19-9-SE:** owner – Adam Doiron of 720 Browns Ridge Rd. Tax Map: 279 Lot: 015 from Article: 23 Section 3.2 Expansion of a Non-Conforming Structure to add a covered porch and renovate the 2nd floor of the existing house by adding a full dormer to the back half *of* the main structure and raising the roof to accommodate the structure. ***Fischbein seconded.*** Wurster read each criteria prior to taking a vote:

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 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 MacDonald – Yes Wurster – Yes
3. **The specific site is appropriate for the proposed use or structure.**
Fischbein – Yes Barron – 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 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 MacDonald – Yes Wurster – Yes
6. **There will be no undue nuisance or serious hazard to pedestrian or vehicular traffic.**
Fischbein – Yes Barron – 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 MacDonald – Yes Wurster – Yes
8. **There is no valid objection from the abutters based on demonstrable fact.**
Fischbein – Yes Barron – 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.

Unfinished Business:

- **SB 339 – Voting by Zoning Board of Adjustments:** (The Bill amends RSA 674:33, III) adoption into the Rules of Procedures. (Added to: Page 4, Section 4. – Decisions – B.)

- B. The voting procedure for a variance utilizes the five criteria ~~ADD – (set forth in RSA 674:33, I)~~ and all criteria need to pass in order for the variance to ~~ADD (be granted)~~. ~~STRIKE – (If one does not pass, the variance would get denied.)~~ Each criteria needs at least 3 votes to pass and all 5 criteria ~~STRIKE - (need)~~ ~~ADD – (must)~~ to pass in order for a variance to ~~STRIKE – (pass)~~ ~~ADD – (be granted)~~. As required by SB 339 – Voting by Zoning Board of Adjustments: The Bill amends RSA 674:33, III.

The Board suggested areas to strike noted in red and areas to add noted in blue. For a final version of:

- B. The voting procedure for a variance utilizes the five criteria set forth in RSA 674:33, I, and all criteria need to pass in order for the variance to be granted. Each criteria needs at least 3 votes to pass and all 5 criteria must pass in order for a variance to be granted. As required by SB 339 – Voting by Zoning Board of Adjustments: The Bill amends RSA 674:33, III.

A **Motion** by Wurster to accept the revisions and additions to Page 4, Section 4. – Decisions – B. of the Rules of Procedures and will follow from this day forward. Barron seconded. No discussion. A unanimous vote was taken. **Motion passed.**

Notices:

- NH Municipal Association: Right to Know seminar to be held on August 6, 2019 from 1:30 pm – 4:00 pm at Moultonborough Safety Complex, 1035 Whittier Highway, Moultonborough, NH 03254.

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

Adjournment:

A **Motion** by Barron to adjourn the meeting. MacDonald seconded. No discussion. All voted in favor, **Motion passed.** The meeting adjourned at 8:47 p.m.

Next Meeting: **August 12, 2019 @ 7:00 pm**

Minutes were approved by majority vote of the Board:

Ralph Wurster, Chairman

Date

Or

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

Date