

**TOWN OF OSSIPEE**  
**ZONING BOARD OF ADJUSTMENTS**  
Meeting Minutes  
June 9, 2020

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

**Call to Order:** Ed MacDonald called the meeting to order at 7:00 p.m.

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

MacDonald read a letter from Ralph Wurster seeking to be an alternate to the Board.

A **Motion** by Rines to approve Ralph Wurster to the Zoning Board of Adjustment. Barron seconded. No discussion. A unanimous vote was taken. **Motion passed.**

MacDonald read a letter from the Board of Selectmen approving Ralph Wurster as an alternate to the Zoning Board of Adjustment.

MacDonald read a letter dated March 21, 2020 from Shawn Marcotte officially resigning to the Board.

**Bill Grover:** Letter of Consideration

MacDonald read a letter from William “Bill” Grover seeking to be appointed to either a full member or an alternate to the Zoning Board of Adjustment.

Discussion ensued over which term Grover preferred.

A **Motion** by Barron to send a letter to the Board of Selectmen recommending Bill Grover to the ZBA as an alternate. Rines questioned how many vacancies the Board has. The Board was informed there are 2-fulltime vacancies available. Grover was asked and replied he would accept a fulltime position on the Board.

Barron withdrew his previous motion and made the following motion.

A **Motion** by Barron to send a letter to the Board of Selectmen recommending Bill Grover be a permanent member of the ZBA. Rines seconded. Discussion: Wurster clarified the available vacancies of a 3-year term and a 1-year term. After discussion with Grover and Fischbein of their choice of terms. Barron withdrew his motion and the following motion was made.

MacDonald raised Alternate- Daniel Fischbein to voting status in place of a vacancy position.

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

A **Motion** by Barron to send a letter to the Board of Selectmen recommending they appoint William “Bill” Grover as a Fulltime member for a 1 – Year term, thus fulfilling the remaining vacancy previously held by Shawn Marcotte until the next Annual Elections. Rines seconded. No discussion. A unanimous vote was taken. **Motion passed.**

A **Motion** by Barron to send a letter to the Board of Selectmen recommending they appoint Daniel Fischbein as a Fulltime member for a 3 – Year term, thus fulfilling the vacancy previously held by Ralph Wurster. Rines seconded. No discussion. All others voted in favor. Abstained: Fischbein **Motion passed.**

**Elections:**

**Chairperson:** A **Motion** by Rines to nominate Ed MacDonald as Chairperson. Fischbein seconded. MacDonald excepted the nomination provided whoever is elected to vice-chairman would conduct tonight’s meeting on his behalf due to poor eye sight. The Board agreed. No further discussion. All others voted in favor. MacDonald abstained. **Motion passed.**

**Vice-Chairperson:** A **Motion** by Fischbein to nominate Barron as Vice-Chairperson. Rines seconded. No discussion. All others voted in favor. Barron abstained. **Motion passed.**

MacDonald turned the meeting over to Barron. Barron called for a motion to approve the minutes.

**Meeting Minutes:** Review to Approve Meeting Minutes of 01/14/2020, 02/11/2020, 03/10/2020, 04/14/2020 & 05/12/2020

A **Motion** by Wurster to approve the minutes of January 14, 2020 as amended. Rines seconded. No discussion. A unanimous vote was taken. **Motion passed.**

A **Motion** by Rines to approve the minutes of February 11, 2020, March 10, 2020 as written. Fischbein seconded. No discussion. All voted to approve in favor. **Motion passed.**

Rines noted since the resignation of Shawn Marcotte was dated March 21, 2020, his name should be removed from the roster for the April and May minutes. Wurster noted since his term had expired March 31, 2020 and he had not been appointed to alternate, his name should also be removed from the roster for April and May's minutes.

A **Motion** by Rines to approve the minutes of April 14, 2020 and May 12, 2020 as amended. Fischbein seconded. A unanimous vote was taken. **Motion passed.**

A **Motion** by Rines to move addressing the financials until after the cases have been heard. Fischbein seconded. No discussion. A unanimous vote was taken. **Motion passed.**

### **New Business:**

- **Case #20-1-V:** Owner- John & Stacy Vittum c/o James Cowles of Walker & Varney P. C. 22 Blueberry Road. Tax Map: 047 Lot: 033 is requesting a Variance from Article 35.1 Residential Uses to continue the use of the remodeled accessory dwelling building converted in reliance on the February 13, 2013 Building Permit and June 7, 2013 Occupancy Permit.

**Clarification ensued on who was allowed in the building during each case.** James Cowles brought John & Stacy Vittum in for their hearing and Rines asked those waiting to enter if there were any abutters for Vittum's. No abutters were present.

James Cowles presented on behalf of the Vittum's, first by clarifying the dates of the Building Permit is actually February 7, 2013 and June 7, 2013 Occupancy Permit. Cowles noted the accessory dwelling building has been used for a number of years and has a kitchen, bath and two bedrooms. Cowles noted in 2019 during the process of obtaining a home equity loan the bank noticed the discrepancy, contacted the Town of Ossipee Zoning Officer to determine if a variance had been granted for the conversion or not. The current Zoning Officer found no variance had been granted, nor a denial letter recorded by his predecessor. The bank would not approve the loan until the Town granted the use of the accessory dwelling building. Cowles proceeded to read through the five criteria's also noting there have been no abutter's contesting the use and they have obtained Blueberry Estates Association approval. Cowles concluded stating the Vittum's have met all five criteria and the ZBA should grant this application. Holding otherwise would lead to the municipal estoppel issue more fully detailed above in section 1.

Board discussion: Barron was opposed to the "municipal estoppel" statement and felt it was uncalled for.

Rines questioned the septic system is rated for a 3-bedroom dwelling. Vittum's confirmed there are 3 - bedrooms. Rines explained typically a 1- bedroom unit has a flow of 225 gpd., not 150 gpd if all 3 - bedroom units are tied to the same septic. Rines noted legally it seems the septic is undersized for the number of bedrooms.

Wurster questioned of the Zoning Officer, Steve McConarty if a variance would be better than having an (ADU) Accessory Dwelling Unit under state regulations. Steve agreed. Discussion between McConarty and Vittum on the design plans, how this case was handled in the past and the progression that brought it to tonight's meeting.

Grover questioned if there are 2 – lots of record because he is seeing 2 tax cards in the case file. After discussion it was determined there is 1-lot of record but the Vittum's need to check with the tax office as to why there are 2 tax cards. Grover inquired to the minimum lot size, which is 1-acre with 200 ft. of frontage. Grover commended Steve McConarty on assuming the role of and the job he has done as the Town's Zoning Officer.

A **Motion** by Rines to approve **Case #20-1-V:** for Owner- John & Stacy Vittum 22 Blueberry Road. Tax Map: 047 Lot: 033 request for a Variance from Article 35.1 Residential Uses to continue the use of the remodeled accessory dwelling building converted in reliance on the February 7, 2013 Building Permit and June 7, 2013 Occupancy Permit. Fischbein seconded.

Barron called for public input. None was heard.

Discussion: Rines believes they have satisfied the criteria's, in that the character of the neighborhood will not be changed, it's been in existence for a least 6 years, it had a permit, the health, safety and welfare of the public will not change, values of the neighborhood have not diminished but have increased over the years, and denying the variance would create more hardship and financial difficulties.

Barron called for a vote on each criteria, as follows:

**Vote by Criteria:**

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

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

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

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

**3. Substantial justice is done:**

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

Wurster commented he agreed with Rines and noted there was a permit on file with the Town. He does not know the background with the former Zoning Officer but believes that substantial justice would not be done if the Board did not grant the Vittum's request for a variance.

Barron agreed with both Rines and Wurster's comments.

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

Fischbein – Yes      MacDonald – Yes      Wurster – Yes      Rines – Yes      Barron – 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:**

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

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

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

Vice Chairman Barron announced the variance has been granted and proceeded to note:

***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.***

Rines proceeded to get the next applicant.

- **Case #20-2-V & Case #20-1-SE:** Owner - Steven Reis of 939 Route 16. Tax Map: 119 Lot: 030 is requesting a Variance from Article VI, Section 6.4.1 Front setback, 6.4.2A Side setback and a Special Exception from Article XXIII, Section 23.3.2 expansion of a non-conforming structure to add an addition to the existing home for enlarging the living room and adding a bedroom to become a permanent residence.

Katherine and Steven Reis presented their case noting they are looking to move here permanently and want to add the addition to have a little more room.

Rines asked for them to read through their 5 criteria's. Barron questioned their responses on the 5 criteria's and for them to explain their answers further. Discussion ensued on the location of the property which runs along Route 16. Rines had Steven Reis demonstrate on his plans where the house is located and where the addition is to be located. Rines noted the plans used were from a Ralph Kelly septic plan and the current house is roughly estimated to be 16 ft. from the boundary but the boundaries are not determined. Discussion ensued over determining boundary lines.

A **Motion** by Rines to continued **Case #20-2-V & Case #20-1-SE:** until July 14, 2020 at 7:00 PM here at the Freight House for Owner - Steven Reis of 939 Route 16. Tax Map: 119 Lot: 030 request for a Variance from Article VI, Section 6.4.1 Front setback, 6.4.2A Side setback and a Special Exception from Article XXIII, Section 23.3.2 expansion of a non-conforming structure. Fischbein seconded. No discussion. A unanimous vote was taken. **Motion passed.**

Jim Rines requested to recuse himself from the next case as the representing agent for the applicant Roger Evans.

- **Case #20-3-V:** Owner – Roger A. Evans of 965 Route 16. Tax Map: 118 Lot: 013. Representing agent is Jim Rines of White Mtn. Survey & Engineering, Inc. is requesting a Variance from Article 8 – Section 8.3 and Article 34 – Section 34.2.1 to buy and sell used heavy equipment as defined in Article 35 – Section 35.2.1 in the rural zone. The servicing and repair of equipment is in preparation for sale and will occur in an on-site garage. Also requesting a salesroom as defined in Section 35.2.1, for the sale of the used heavy equipment which has outdoor display and storage of the equipment. The owner is also seeking a variance to allow parking display within the road front setbacks.

***Barron as Chairman addressed the Applicant (under RSA 674:33) – noting since there is not a full 5-member board, with no additional 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.***

Rines stated he wished to continue.

Rines presented the plan for requesting a salesroom as defined in Article 35 – Sectional 35.2.(1.) "Salesroom - Business with the primary purpose to sell automobiles, boats, motorcycles, trucks, snowmobiles, farm equipment or other large **objects and** which has outdoor display and storage of the objects, in the rural zone." Rines noted they are also seeking a variance to permit parking display within the road front setback, which is contrary to Article VIII, Section 8.3. The property is located on Route 16, is 3.22 acres and 459.18 ft. of frontage. The owner will buy used equipment and repair or repurpose for resale. Evans has been selling equipment and has subsequently made changes to his plans. Rines presented the changes to include widening the entrances to allow for large equipment turnarounds. The proposed garage has increased from 30 ft. wide to 35 ft. wide and a loading dock has been added.

Rines acknowledge if they were approved, they would proceed to the Planning Board for a Site Plan Review to address drainage, lighting, landscaping, etc... NHDOT is in the process of reviewing the plans and is pending a determination. Rines **addressed** McConarty's concern of being in the Water Resource

Protection District. He does not believe the property is in this district and has provided his argument for the ZBA to determine. Rines read through each of the five criteria's.

Barron addressed the issue of buying the property knowing it was in the rural zone. Wurster addressed parking concerns with being on Route 16, **right of way** and distracting signage will be no **closer** than 10 ft. of the right of way. Wurster questioned permitted uses in the rural zone and use of hazardous material in the Water Resource Protection District of which will be addressed by the Planning Board during the Site Plan Review process.

A **Motion** by Fischbein to Approve **Case #20-3-V**: Owner – Roger A. Evans of 965 Route 16. Tax Map: 118 Lot: 013. Representing agent is Jim Rines of White Mtn. Survey & Engineering, Inc. request for a Variance from Article 8 – Section 8.3 and Article 34 – Section 34.2.1 to buy and sell used heavy equipment as defined in Article 35 – Section 35.2.1 in the rural zone. The servicing and repair of equipment is in preparation for sale and will occur in an on-site garage. Also requesting a salesroom as defined in Section 35.2.1, for the sale of the used heavy equipment which has outdoor display and storage of the equipment. The owner is also seeking a variance to allow parking display within the road front setbacks. MacDonald seconded.

Barron called for public input. None was heard.

#### **Vote by Criteria:**

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

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

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

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

3. **Substantial justice is done:**

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

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

Fischbein – Yes      MacDonald – Yes      Wurster – Yes      Barron – 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:**

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

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

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

Rines addressed the description of the Water Resource Protection District in the zone refers to the Stratified Drift Aquifer report 95-4182 in 1995 but the correct report log is 94-4182 in 1995. Rines presented pictures to demonstrate that the property is not within the Water Resource Protection District. He explained his communication with Lakes Region Planning Commission and how the supposed “legal” Water Resource Protection District map came into effect.

Wurster commented he does not believe it would be appropriate for the ZBA to render a decision on Rines presentation of the Water Resource Protection **District, since** the Planning Board will have to **make** their own decision.

Vice Chairman Barron announced the variance has been granted and proceeded to note:

***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.***

Barron raised Rines back to voting status with the Board.

- **Case #20-04-V:** Owner Louttit Real Estate, LLC c/o Robert & Lisa Louttit of 30 Remle Rd. Tax Map: 033 Lot: 034 is requesting a Variance from Article 6.4.2.A Side Setback to build a 14 ft. by 13 ft. extension onto an existing Den coming within 14 ft. of the property line.

Robert Louttit presented his plans to add a 14 ft. addition onto a 12 ft. X 13 ft. room off the kitchen to bring it to 26 ft. X 13 ft. for added space for an enlarging family. He explained why this location is the best option of placement. Robert Louttit proceeded to read through the five criteria's.

The Board discussed having either NHDES Shoreland Permit and/or Wetlands Permit and depending on the age of the last septic approval, Rines noted these would be required upon approval. The Board briefly discussed the setbacks.

Barron called for Public Input. None was heard.

A **Motion** by Rines to Approve **Case #20-04-V:** Owner Louttit Real Estate, LLC c/o Robert & Lisa Louttit of 30 Remle Rd. Tax Map: 033 Lot: 034 request for a Variance from Article 6.4.2.A Side Setback to build a 14 ft. by 13 ft. extension onto an existing Den coming within 14 ft. of the property line with the following conditions:

1. NH State approved septic
2. NHDES Approved Shoreland Permit
3. Federal, State and Local Requirement shall be met.

Fischbein seconded.

**Vote by Criteria:**

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

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

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

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

3. **Substantial justice is done:**

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

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

Fischbein – Yes      MacDonald – Yes      Wurster – Yes      Rines – Yes      Barron – 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:**

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

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

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

Vice Chairman, Barron announced the variance has been granted and proceeded to note:

***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.***

**Financial:**

- Budget Report: 05/01/2020 – 05/31/2020

Wurster noted the COVID-19 Pandemic has done wonders with the budget by having 75% still available.

- Lakes Region Planning Commission – NH Planning & Land Use Regulation books in the amount of \$58.50

A **Motion** by Rines to approve payment in the amount of \$58.50 for the Lakes Region Planning Commission for 2019-2020 Edition, NH Planning & Land Use Regulation Books. Barron seconded. No Discussion. A unanimous vote was taken by show of hands. **Motion Passed.**

**Any Other Business Which May Come Before This Meeting:**

Rines thanked Bill Grover for coming back to the ZBA and to Ralph Wurster for staying on the Board for a little longer and for Danny Fischbein for becoming a full member of the Board.

**Adjournment:**

A **Motion** by Rines to adjourn the meeting. Fischbein seconded. No discussion. All voted in favor, **Motion passed.** The meeting adjourned at 9:02 p.m.

**Next Meeting:** [July 14, 2020 @ 7:00 pm](#)

**Minutes were approved by majority vote of the Board:**

_____	_____	Or	_____	_____
Ed MacDonald, Chairman	Date		Roy Barron, Vice Chair (In the absence of the Chairman)	Date