

TOWN OF OSSIPEE
ZONING BOARD OF ADJUSTMENTS
Meeting Minutes
September 8, 2020

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

Call to Order: Roy Barron called the meeting to order at 7:01 p.m.

Members Present by Roll Call: Roy Barron, Jim Rines, Daniel Fischbein, and Alternate – Doreen French, Rick Cousins and Steve McConarty, ZEO.

Absent: William “Bill” Grover

Late Arrival: Ed MacDonald

Vice-Chairman Barron raised Doreen French up to voting status in place of Bill Grover.

Vice-Chairman Barron welcomed new alternate member – Doreen French and new Zoning Enforcement Officer, Rick Cousins.

Meeting Minutes: Review to Approve Meeting Minutes of July 14, 2020 and August 11, 2020

A **Motion** by Rines to approve the minutes of July 14, 2020 as submitted. Fischbein seconded. No further discussion. A unanimous vote was taken. **Motion passed.**

Rines noted on page 2 “**Case #20-5-SE:** White Horse Addiction Center c/o Mitchell Yeaton of 45 Old Granite Rd.(legal owner: Kalled Family Trust, James, Jeffrey, and John). Tax Map: 133 Lot: 007 until August 22, 2020, 7:00 PM” and should be “***September 22, 2020.***”

A **Motion** by Rines to approve the minutes of August 11, 2020 as amended. Barron seconded. No further discussion. A unanimous vote was taken. **Motion passed.**

New Business:

Vice-Chairman Barron addressed the Applicants (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.

- **Case # 20-6-V:** Andrew Cantino of 4 Moultonville Rd. Tax Map: 092 Lot: 082 is seeking a Variance from Article 6.4.1. A, for front setback to add a roof overhang over the front door and the existing walkway. And **Case #20-6-SE:** is also seeking a Special Exception from **Article 23.3.2 Expansion of a Non-Conforming Structure** to replace the stairs that were built incorrectly, rotting and dangerous.

Andrew Catino stated he wished to ***continue despite having only a four-member board.***

Andrew Catino presented his plans to place engineered trusses for an overhang of a front porch and replace the stairs on both sides of the building, including an overhang on the porch to protect ***the stairs*** from weather and meet the egress ***code*** for the doors to open outward.

Copies of the applications were provided to Andrew Catino so he could proceed with reading through each of the 5 - criteria's.

Rines inquired if the front porch would protrude beyond the sidewalk. Catino and McConarty both stated it come to the edge of the sidewalk but would not protrude beyond. French inquired if the front porch would affect winter plowing.

Rines explained the process and reasoning for reading and answering the criteria questions.

Andrew Catino read through each of the 5 - criteria's for the variance.

Board discussion over ensuring the front porch and overhang do not protrude beyond the edge of the existing sidewalk or they would **require** a survey of the property be done.

Vice-Chairman Barron addressed the Applicants (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.

Vice-Chairman Barron asked if he wished to proceed.

Andrew Catino stated he wished to continue.

Vice-Chairman Barron called for a roll call vote on each criteria. A vote of Yes is a vote in favor and a No vote is to deny.

Vote by Criteria:

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

Fischbein – Yes Rines – Yes French – Yes Barron – Yes

2. The spirit of the ordinance is observed:

Fischbein – Yes Rines – Yes French – Yes Barron – Yes

3. Substantial justice is done:

Fischbein – Yes Rines – Yes French – Yes Barron – Yes

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

Fischbein – Yes Rines – Yes French – 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 Rines – Yes French – Yes Barron – Yes

(A) Owing to the special conditions of the property, set forth above, that distinguishes it from other properties in the area:

(i) No fair and substantial relationship exists between the purposes of the ordinance applicable to the application and the specific application of that provision to the property because:

ai) Fischbein – Yes Rines – Yes French – Yes Barron – Yes

and

(ii) The proposed use is a reasonable one because:

(aii) Fischbein – Yes Rines – Yes French – Yes Barron – Yes

Vice-Chairman Barron 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.

- **Case #20-6-SE:** is also seeking a Special Exception from **Article 23.3.2 Expansion of a Non-Conforming Structure** to replace the stairs that were built incorrectly, rotting and dangerous

Vice-Chairman Barron moved onto the Special Exception.

Andrew Catino read through each of the 8 - criteria's.

Rines questioned if the stairs on the old PB&J side of the building would allow for vehicles to get out back behind the buildings. Catino stated they would be in the same ***footprint as the old stairs.***

Vice-Chairman Barron called for any comments from the Board and the Public – None was heard.

Vice-Chairman Barron called for a roll call vote on each criteria. A vote of Yes is a vote in favor and a No vote is to deny.

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 Rines – Yes French – Yes Barron – 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 Rines – Yes French – Yes Barron – Yes

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

Fischbein – Yes Rines – Yes French – Yes Barron – 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 Rines – Yes French – Yes Barron – 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 Rines – Yes French – Yes Barron – Yes

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

Fischbein – Yes Rines – Yes French – Yes Barron – Yes

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

Fischbein – Yes Rines – Yes French – Yes Barron – Yes

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

Fischbein – Yes Rines – Yes French – Yes Barron – Yes

Vice-Chairman Barron announced the **motion passed**. The Special Exception have 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 #20-7-V:** Elizabeth & Jeffrey Peloso of 78 Deer Cove Rd. Tax Map: 037/003/001 is seeking a Variance from Article 6 Section 6.4.1 (A) Front Setback and Section 6.4.2 (A) Side Setback to remove an existing deck and build a new larger deck on the front of the house and to create a level outdoor area to enjoy the scenery. And **Case #20-7-SE:** is also seeking a Special Exception from Article 23 Section 23.3.2 for Expansion of a Non-Conforming Structure.

Rines informed the Board his company provided the 2008 plans used in this application, but he has had no involvement with this application. He would leave it up to the Board's discretion if he should participate in hearing this case.

Vice-Chairman Barron called for a roll call vote:

Fischbein – Yes French – Yes Barron – Yes

Elizabeth Peloso read through the 5 – criteria's. Rines requested the applicants to show on the plans where the deck would be laid out. The Board requested confirmation from the association, which was provided to the secretary for the file. But Rines was requesting confirmation this construction does not go against the Associations by-laws. McConarty stated this would be a civil issue between the applicant and the association. The Town has no say in the matters of the by-laws. Rines ***asked whether*** the Peloso's have applied for a Shoreland Permit since they would be less than 250 ft. from the water's edge. Again, McConarty noted this would take place at the building permitting stage.

Vice-Chairman Barron called for public input. None was heard.

A **Motion** by Rines to approve **Case #20-7-V:** Elizabeth & Jeffrey Peloso of 78 Deer Cove Rd. Tax Map: 037/003/001 request for a Variance from Article 6 Section 6.4.1 (A) Front Setback and Section 6.4.2 (A) Side Setback to remove an existing deck and build a new larger deck on the front of the house and to create a level outdoor area to enjoy the scenery with the following conditions:

1. NHDES Shoreland Permit Approval
2. All Federal, State and Local Regulations shall be followed.

French seconded. No discussion.

Vice-Chairman Barron called for any comments from the Board and the Public – None was heard.

Vice-Chairman Barron called for a roll call vote on each criteria. A vote of Yes is a vote in favor and a No vote is to deny.

Vote by Criteria:

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

Fischbein – Yes Rines – Yes French – Yes Barron – Yes

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

Fischbein – Yes Rines – Yes French – Yes Barron – Yes

3. **Substantial justice is done:**

Fischbein – Yes Rines – Yes French – Yes Barron – Yes

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

Fischbein – Yes Rines – Yes French – 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 Rines – Yes French – Yes Barron – Yes

(A) Owing to the special conditions of the property, set forth above, that distinguishes it from other properties in the area:

(i) No fair and substantial relationship exists between the purposes of the ordinance applicable to the application and the specific application of that provision to the property because:

ai) Fischbein – Yes Rines – Yes French – Yes Barron – Yes

AND

(ii) The proposed use is a reasonable one because:

(aii) Fischbein – Yes Rines – Yes French – Yes Barron – Yes

Vice-Chairman Barron 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.

- **Case #20-7-SE:** is also seeking a Special Exception from Article 23 Section 23.3.2 for Expansion of a Non-Conforming Structure. Vice-Chairman Barron moved onto the Special Exception.

Elizabeth Peloso read through each of the 8 - criteria's.

Chairman Ed MacDonald arrived at 7:47 PM.

Vice-Chairman Barron called for any comments from the Board and the Public – None was heard.

A **Motion** by Rines for **Case #20-7-SE:** is also seeking a Special Exception from Article 23 Section 23.3.2 for Expansion of a Non-Conforming Structure for Elizabeth & Jeffrey Peloso of 78 Deer Cove Rd. Tax Map: 037/003/001 with the following conditions:

1. NHDES Shoreland Permit Approval
2. All Federal, State and Local Regulations shall be followed.

Fischbein seconded.

Vice-Chairman Barron called for a roll call vote on each criteria. A vote of Yes is a vote in favor and a No vote is to deny.

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 Rines – Yes French – Yes Barron – 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 Rines – Yes French – Yes Barron – Yes

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

Fischbein – Yes Rines – Yes French – Yes Barron – 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 Rines – Yes French – Yes Barron – 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 Rines – Yes French – Yes Barron – Yes

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

Fischbein – Yes Rines – Yes French – Yes Barron – Yes

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

Fischbein – Yes Rines – Yes French – Yes Barron – Yes

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

Fischbein – Yes Rines – Yes French – Yes Barron – Yes

Vice-Chairman Barron announced the **motion passed**. The Special Exception have 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 #20-8-V:** Dianne Valentine of 29 Bay Point Rd. Tax Map: 022 Lot: 010 is seeking a Variance from Article 6 Section 6.4.1.A Front Setback to remove an existing 20 ft. X 34 ft. home and replace with a larger 34 ft. X 36 ft. home.

Vice-Chairman Barron noted with the addition of Chairman Ed MacDonald the ZBA has a 5 - member Board for this case.

Dianne Valentine presented to the Board that the camp was built in 1925 by Ken Rodgers. There is no insulation and has fallen to ruin. In 2007, they received a variance to add a deck. The camp is 43 ft. from water's edge with a 12 ft. deck, the actual **setback** is 31 ft. from water's edge. The plan is to move the camp back 1 ft. and the new deck will start at the 32 ft. thus leaving 8 ft. of the deck within the 40 ft. setback.

Rines questioned the plans submitted show dimensions of 40 ft. X 36 ft. but the denial letter states 34 ft. X 36 ft. home. She was going to limit the width to 34 ft., but now the screen porch is relocated to the front, north end thus making the kitchen wider, but the rear of the building will be 34 ft. The Board had Diane Valentine point out on the plans the proposed layout of the structure. The Board determined that the plans

submitted do not reflect the application submitted and does not match the denial letter issued by the Zoning Enforcement Officer. Discussion ensued.

After discussion, Dianne Valentine requested a continuous until September 22, 2020.

A **Motion** by Rines to continue **Case #20-8-V**: Dianne Valentine of 29 Bay Point Rd. Tax Map: 022 Lot: 010 request for a Variance until September 22, 2020 at the Town Hall. Barron seconded. No further discussion. A unanimous vote was taken. **Motion passed.**

- **Case #20-9-V**: Paul Desimone Rev Trust of 70 Hodsdon Shore Rd. Tax Map: 072 Lot: 004 is seeking a Variance from Article 6 Section 6.4.2.A to demolish an existing home, out house, and shed and construct a new home that is approximately 322 sq. ft. larger and construct a new septic system and install a new well.

Jim Rines informed the Board of his involvement with this case and requested to recuse himself and since it was the last case of the night, he also requested to be excused from the remainder of the meeting at 8:11 PM. Chairman Mac Donald approved the request.

Mark and Jacob McConkey were here to present on behalf of their client.

Vice-Chairman Barron addressed the Applicants (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.

Vice-Chairman Barron asked if he wished to proceed.

Mark McConkey stated they wished to continue.

McConkey noted there are 2 homes on this property. With the lake to the front; the existing home on the left will be demolished, along with an outhouse and a shed. The new home will be moved inward and enlarged by 322 sq. ft., with a new septic and a new well. There is an easement area and with the new home it will be moved out of the easement area and there is a bungalow adjacent to the home. The boundaries are close, and the owner is open to having the boundaries surveyed and pinned.

Public Input:

Seth Stevens questioned the close proximity to the easement and his property line. McConkey noted the house currently sits 3.44 ft. from the property line and the proposed change would sit at 3.45 ft. from the property line. The storm water management will capture water off the side of the house and if there is enough room, they will drop it into the ground. If not, it will be guttered and brought around and dropped further into the property. So, no water falls on the Stevens property.

McConkey noted the roof edge cannot extend over beyond 2 ft. Jake McConkey informed the Board and Mr. Stevens that the existing old septic is almost entirely in the easement area and they plan on bringing it out more central to the front of the bungalow. Discussion ensued over boundary lines and the fire department distance requirements between buildings. Stevens would like to new house moved closer to the bungalow and give at least 5 ft. buffer between property lines.

McConkey requested to continue the case until September 22, 2020, 7:00 PM at the Town Hall so he can come back with revised plans incorporating the requested 5 ft. buffer and corners pinned. McConkey will generate a letter for Mr. Stevens approval incorporating the changes.

A **Motion** by Barron to continue **Case #20-9-V**: Paul Desimone Rev Trust of 70 Hodsdon Shore Rd. Tax

Map: 072 Lot: 004 request for a Variance from Article 6 Section 6.4.2.A to demolish an existing home, out house, and shed and construct a new home that is approximately 322 sq. ft. larger and construct a new septic system and install a new well, until September 22, 2020, 7:00 PM at the Town Hall so McConkey can come back with revised plans incorporating the requested 5 ft. buffer and corners pinned. McConkey will generate a letter for Mr. Stevens approval incorporating the changes. Fischbein seconded. No further discussion. A unanimous vote was taken. **Motion passed.**

Financial:

- Budget Report: 07/01/2020 – 07/31/2020 and 08/01/2020 – 08/30/2020
- 2020 – 2021 Proposed Budget – The Board discussed making any changes to the budget.

A **Motion** by Barron to Level Fund the 2021 Proposed Budget for the ZBA. Fischbein seconded. No further discussion. A unanimous vote was taken. **Motion passed.**

Any Other Business Which May Come Before This Meeting:

A brief discussion ensued over the arrangements needed for the special hearing on September 22, 2020. Also, a request for the Town Attorney, Rick Sager to be present to assist and provide legal guidance concerning the American Disability Acts. This public hearing is anticipated to be highly contested, so Ossipee Police will be in attendance to maintain order and the ZBA strongly requests from the Board of Selectmen the presence Attorney Sager.

Next Meeting:

- **A ZBA Special Hearing is scheduled for September 22, 2020 – 7:00 PM at the Ossipee Town Hall Bud Avery Memorial Gymnasium** to hear - **Case #20-5-SE:** White Horse Addiction Center c/o Mitchell Yeaton of 45 Old Granite Rd.(owner on record: Kalled Family Trust, James, Jeffrey, and John). Tax Map: 133 Lot: 007 for a Special Exception from **Article 34.3.E – 34.3 INSTITUTIONAL USES (E) Group Home**. A large volume of attendees is anticipated.

- Regularly scheduled meeting will be on **October 13, 2020 @ 7:00 pm**

Adjournment:

A **Motion** by Barron to adjourn the meeting. Fischbein seconded. No discussion. A unanimous vote was taken. **Motion passed.** The meeting adjourned at 8:42 p.m.

Minutes were approved by majority vote of the Board:

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