

TOWN OF OSSIPEE
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
January 11, 2022

Minutes have been recorded for the convenience of summarization by Laura Nash, Boards & Commissions Secretary and are deleted once the minutes are board approved; any amendments to the minutes are noted in ***bold & italic*** type.

Call to Order: Bill Grover called the meeting to order at 7:00 p.m.

Members Present by Roll Call: William “Bill” Grover - Chairman, Roy Barron, Daniel Fischbein, Dallas Emery, Doreen French – Alternate and Jonathan Smith, (Zoning Officer)

Absent: Jim Rines

Chairman Grover raised Alternate-Doreen French up to voting status in place of Jim Rines, who is absent tonight.

- **Meeting Minutes:** Review to Approve Meeting Minutes of December

A **Motion** by Barron to approve the minutes of 12/14/2021. Fischbein seconded. Discussion:

French noted a couple of edits on page 2, “could construct a ***lean-tube*** versus adding a larger shed” should be “could construct a ***lean-to*** versus adding a larger shed”

Fischbein noted the following, “Chairman Grover and Fischbein recalled that ***Walmart*** wanted to open a store where Big Moose is currently” should be “Chairman Grover and Fischbein recalled that ***General Electric (GE)*** wanted to open a store where Big Moose is currently”

Jonathan Smith noted under **Members Present by Roll Call:** William “Bill” Grover - Chairman, Roy Barron, Daniel Fischbein, Dallas Emery, Doreen French – Alternate and Jonathan Smith, (Zoning Officer) but he should have been listed **Absent: Jonathan Smith, (Zoning Officer)**

A **Motion** by Barron to approve the minutes of 12/14/2021 as amended. Fischbein seconded. With no further edits or discussion, Chairman Grover called for a vote on the amended minutes. A unanimous vote was taken. **Motion passed.**

New Business:

- **Case #22-01-V:** James & June Mueller of 49 Broad Bay Rd. **Tax Map: 031 Lot: 006** is seeking a Variance from Article 6.4.2 (A) - Side and Rear setbacks and 23.3.2 a Non-Conforming Structure to construct a garage and breezeway/mudroom to existing house with a convenience bathroom.

Jonathan Smith, ZEO informed the Board that the basis for the denial should only be Article 6.4.2 (A) - Side and Rear setbacks not 23.3.2 a Non-Conforming Structure, that’s an error. It should be for a side setback. Jonathan Smith clarified that the structure is a con-forming structure but by wanting to add the addition, it no longer meets the side setback. Jonathan Smith inquired from Mark McConkey if anything has changed that would warrant having zoning article 23.3.2 – Non-Conforming Structure.

Jake McConkey explained the reasoning for zoning article 23.3.2 – Non-Conforming Structure. After discussion Jake McConkey confirmed that nothing had changed.

Chairman Grover looked up the meaning for zoning article 23.3.2 – Non-Conforming Structure. Chairman Grover clarified with Jonathan Smith, who confirmed the existing structure is conforming. So, he does not need a variance for a non-conforming structure. But in the future, he will need a Special Exception if he wants to modify the now non-conforming structure.

Mark McConkey and Jake McConkey presented the plans as the appointed agents for James & June Mueller. Mark McConkey explained the reason why the Mueller's want to construct a garage with a home office and a convenience bathroom. Mark McConkey noted the abutters to the left and right of the property, especially the 3 owners, who own Map: 31 lot: 7 and lot: 8 are in agreement with the application.

Mark McConkey demonstrated on the plans the need for a variance due to being 10.08 ft. from the northerly/right side of the boundary lines. Some of the existing driveway will be removed to make it more conforming. A Shoreland Permit will be needed.

Emery questioned if this is a similar situation to a previous case that was pending a Shoreland Permit and the Board could not hear the case without the permit. Mark McConkey conveyed to the Board that Jim Rines originally obtained a Shoreland Permit for the original home, but McConkey & Associates have not obtained a Shoreland Permit for the garage.

Chairman Grover explained the Board can only make judgements or rulings based on Ossipee Zoning Ordinances. The Board cannot ***hold up an application*** based on pending State permitting. The Board can proceed with the variance application and when the applicant receives it's Shoreland Protection determination, they will forward a copy to the Zoning Board of Adjustment. If the Shoreland Permit is denied, then the variance approval would be null, and void and it would be the Zoning Officer's responsibility to enforce the determination. Discussion ensued.

Mark McConkey read each criteria.

Barron commented that the property is the hardship not the building. Grover agreed.

Fischbein questioned if the building was actually built in 2017. McConkey explained ***that*** the tax card shows a cottage ***that used to be on the property but is no longer there***. Fischbein questioned if the existing camp would be demolished or remodeled. Mark McConkey noted the camp has been removed. Discussion ensued.

Emery wanted clarification that the abutters are in agreement. Mark McConkey confirmed the abutters are in agreement.

The Board reviewed the plans for any other solution for the garage. With no other solutions. Chairman Grover asked Barron to read down through the criteria's.

Chairman Grover called for a roll call vote on each criteria. Barron clarified that a vote of Yes is a vote in favor and a No vote is to deny.

Vote by Criteria: Vice Chairman, Roy Barron read each criteria.

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

French – Yes Emery – Yes Fischbein – Yes Barron – Yes Grover – Yes

2. The spirit of the ordinance is observed:

French – Yes Emery – Yes Fischbein – Yes Barron – Yes Grover – Yes

3. Substantial justice is done:

French – Yes Emery – Yes Fischbein – Yes Barron – Yes Grover – Yes

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

French – Yes Emery – Yes Fischbein – Yes Barron – Yes Grover – 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:

French – Yes Emery – Yes Fischbein – Yes Barron – Yes Grover – 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) French – Yes Emery – Yes Fischbein – Yes Barron – Yes Grover – Yes

AND

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

(aii) French – Yes Emery – Yes Fischbein – Yes Barron – Yes Grover – Yes

Chairman Grover announced the **motion passed**. The Variance has been granted and there is a 30-day appeal period.

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 # 22-01-SE:** Mary Boisse of 80 Weetamoe Road, Unit 1. **Tax Map: 066 Lot: 031 Sub: 001** is seeking a Special Exception from Article 23.3.2 – A Non-Conforming Structure to retain and complete a waterfront deck on the southerly side of her home within the waterfront setback, but further from the lake than the existing house.

James Hayden of White Mountain Survey & Engineering, Inc. presented the case on behalf of Mary Boisse. James Hayden demonstrated on the plans the deck to be completed within the setbacks of the reference lines. The buildable envelope is not very big and is primarily consumed by the house. Included in the packet is the ***“RSA 483-B:11 Nonconforming Structures - V. Notwithstanding paragraphs I and IV, between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that a deck or open porch extending a maximum of 12 feet towards the reference line may be added to nonconforming structures erected prior to July 1, 1994.”*** And it’s noted to not be any closer to the reference line. A Shoreland Permit has been applied for and is pending.

The Board reviewed the plans but is noted to not have any other dimensions other than the reference lines. There are no dimensions on the size of the deck. Smith said he measured it at home with a ruler and it measures at approximately 12 ft. x 22 ft. Jonathan Smith noted it cannot go closer to the reference line more than 12 ft. from the primary structure. Smith inquired as to when the primary structure was built and was it prior to 1994. Fischbein confirmed it was actually built in the 1980’s. The Board reviewed the pictures submitted but the deck was not very visible through the trees. Grover addressed the need to have the dimensions listed on the structure being asked for approval from the ZBA. Chairman Grover read from the Special Exception application section “m” which states “Proposed use of the property or modification of existing use: There is an existing single family nonconforming home with adjacent shed that lies over the limited common boundary. The owner wishes to retain and complete a waterfront deck on the southerly side of her home within the waterfront setback, but further from the lake than the existing home.” Review of the application and plans continued.

Barron suggested a motion could be made to a date certain to allow time for the plans to be revised. Chairman Grover agreed because there needs to be complete dimensions and all structures demonstrated on the plans. Chairman Grover gave James Hayden the options available or if he wanted he could proceed with the eight ***criteria***s. James Hayden opted to request a continuance until the next meeting to be held on February 8, 2022 at 7:00 PM. In the meantime, the plans are to include dimensions on the deck, the location of all structures, elevations and the location of the driveway.

A **Motion** by Barron for **Case # 22-01-SE**: Mary Boisse of 80 Weetamoe Road, Unit 1. Tax Map: 066 Lot: 031 Sub: 001 request for a Special Exception from Article 23.3.2 – A Non-Conforming Structure to retain and complete a waterfront deck is requesting a continuance until February 8, 2022. Seconded by Doreen French. No discussion. A unanimous vote was taken. **Motion passed.**

Notice: Chairman Grover read the notification to the Board.

- The ZBA's Year-End Report is due to the Town Administrator by January 21, 2022. The secretary provided a draft report for the Board's review. The Board reviewed the report provided and appreciated the mention of former ZEO, Rick Cousins and approved the report for submission. Emery suggested mentioning Steve McConarty and Jonathan Smith for stepping in to assume the position.
- The Board requested a card be sent to former ZEO, Rick Cousins thanking him for time and service to the Town of Ossipee and the Zoning Board of Adjustments.

Unfinished Business:

- **Case #21-07-V**: Larry Klingler of 3 Route 16B. Tax Map: 095 Lot: 013 was **Denied** a Variance to allow the fence built by the power company to remain at its current height of 8 feet.

Chairman Grover noted a letter was sent **to** the Selectmen and asked the Jonathan Smith, ZEO the status of Mr. Klingler and his illegal fence which exceeds the 7 ft. height requirement. Mr. Klingler was either to re-apply to the ZBA for a variance or bring the height of the fence down to 7 feet per the zoning ordinance and state law.

Jonathan Smith provided an update based on the conversations provided from Steve McConarty's and himself with Mr. Klingler. Smith noted that Mr. Klingler has 3 options, 1. Cut the fence down to height 2. Grade up the ground level all the way around the fence to meet height requirement, or 3. Apply for a variance. Smith noted the Asplund Tree Service had a fence company put the fence up. Asplund spoke with the fence company, who stated they would come and lower the fence. Mr. Klingler inquired of the fence company if it could wait until spring in order to bring the grade up because of snow on the ground. Chairman Grover inquired if Mr. Klingler has asked the Selectmen for relief until spring. Smith noted no, and no date specific has been provided as a deadline to respond. Discussion ensued over doing due diligence. The secretary informed the Board of a phone message from Mr. Klingler looking for the specific wording to apply for a variance. Smith stated that Mr. Klingler would need to have the property surveyed by a licensed land surveyor to prove where the boundary lines are located. He would need to apply for a variance to have a structure (fence) over 7 feet. Nash commented the phone message was not returned but was given to the Steve McConarty, who will speak with Mr. Klingler.

A general discussion ensued on the zoning violations being seen on multiple properties. The Board's should be following up on the decision granted and ensuring the applicant is upholding that decision. French noted that is partly what the Town assessor should be doing when out inspecting properties.

Any Other Business Which May Come Before This Meeting:

Next Regular Meeting: **February 8, 2022 @ 7:00 pm**

Adjournment:

A **Motion** by Fischbein to adjourn the meeting. Barron seconded. No discussion. A unanimous vote was taken. **Motion passed.** The meeting adjourned at 8:00 p.m.

Minutes were approved by majority vote of the Board:

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