

TOWN OF OSSIPEE
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
February 8, 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, Jim Rines, Dallas Emery, and Jonathan Smith, (Zoning Officer)

Absent: Daniel Fischbein, and Doreen French – Alternate

Meeting Minutes: Review to Approve Meeting Minutes of January 11, 2022

A **Motion** by Emery to approve the minutes of January 11, 2022. Barron seconded.

Discussion: Grover noted on page 2: “The Board cannot hold up and application based on pending State permitting.” Should read, “The Board cannot ***hold up an application*** based...”

“Mark McConkey explained the tax card shows a cottage the use to be on the property.” Should read, “Mark McConkey explained ***that*** the tax card shows a cottage ***that used to be on the property but is no longer there.***”

Grover noted on page 3: ...”proceed with the eight criteria’s.” should read, ...”proceed with the eight ***criteria’s.***”

Grover noted on page 4: “Chairman Grover noted a letter was sent ***to*** the Selectmen and...”

The decision was made to not approve the minutes until corrections could be made. Barron and Emery withdrew their previous motion.

A **New Motion** by Barron to table the minutes of 01/11/2022 at the next scheduled ZBA meeting. Emery seconded. With no further edits or discussion. All other voted in favor. Jim Rines abstained. **Motion passed.**

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 asked Jonathan Smith, ZEO the status of Mr. Klingler and his illegal fence which exceeds the 7 ft. height requirement, and it was noted in the previous minutes that there has been no discussion from the Board of Selectmen on having Mr. Klingler coming into compliance or re-apply for a variance.

Jonathan Smith informed the Board that Mr. Klingler is moving forward with his Variance request to keep the fence. A new denial letter has been issued today. 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.

Chairman Grover stated there needs to be written documentation for dates specifics on situations like this case, that informs the applicant of specific tasks or documents need to be supplied by a date specific, or the following steps will be taken.

A general discussion ensued on lingering 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.

Discussion ensued over various properties in violation and specifically 925 Route 16. Chairman Grover explained since he was chairman of the planning board at the time; Grover explained because of the way the Planning Board approved the application back then and if the town went to the owner at this time with a cease and desist, the owner would have a case in court and the town would lose. Because it had nothing to do with the state buying property, but with the state widening the road at that time as part of the 20-year plan. The widening of the road would go into the building so, the building would be removed. At that time in the zoning ordinance, you could not have 2 primary building on one lot. So, the Planning Board allowed the owner to build that second building on the backside under the contingency the first building would be taken down once the state widen the road. But because the road was not widened the owner now has every right at this time to keep two primary structures on that property and run them as commercial properties. Going forward the Planning Board must be specific with its conditions, and to make sure that we have our “i” dotted and “t’s” crossed.

Jim Rines recused himself from hearing and voting on the following case since he is the representing agent.

New Business:

- **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. (Case continued from January 11, 2022)

Jim Rines of White Mountain Survey & Engineering, Inc. presented the case on behalf of Mary Boisse. Jim Rines noted the case was presented at last month’s meeting and was continued pending receiving required measurements noted on the plans. Rines demonstrated on revised plans for the deck noting there was an error in measurement of 10.4 ft. for the deck when it should have been 10.7 ft in width. The plans were modified as requested with the existing driveway and gravel documented. Specific measurements of the deck have been documented. NHDES Shoreland Permit was received on February 1st, 2022.

Rines informed the Board, per conversation with the home owner, who informed Rine that there had been a 6 ft. deck there all along. When the homeowner went to re-deck it and new from the Shoreland Permit that you’re allowed to have up to a 12 ft. deck on a non-conforming structure. So, the homeowner did not think she needed s permit. Rines showed some pictures dated September 20, 2019 from the listing sheet, pictures dated May 21, 2021 shows the existing old deck and what has been added to it. No vegetation was cleared for the expansion.

Rines clarified the Shoreland Permit noting if you have a house that is 50 ft. from the lake, you’re allowed to add up to a 12 ft. deck with a Shoreland Permit. But if you have a house that’s 51 ft. from the water, you’re only allowed a 1ft. deck. So, if you have a non-conforming home, you’re allowed a 12 ft. deck but if you have a conforming home you can not pierce the 50 ft. mark. The homeowner is allowed a 12 ft. deck but she’s asking for a 10.7 ft. deck.

Rines presented the statute again, that’s associated with this ruling - ***“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.”***

Review of the application and plans continued. Barron inquired if the structure was built prior to 1994. Rines stated that Fischbein confirmed it was actually built in the 1980’s according to the minutes from the last meeting.

Chairman Grover 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.

Rines confirmed he wished to continue.

Barron read each criteria and Rines read the responses.

Chairman Grover called for a roll call vote on each criteria.

Barron read each criteria noting 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)**

Emery – Yes Barron – Yes Grover – Yes

- 2. The use is so designed, located and proposed to be operated that the public health, safety, welfare, and convenience will be protected.**

Emery – Yes Barron – Yes Grover – Yes

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

Emery – Yes Barron – Yes Grover – 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.**

Emery – Yes Barron – Yes Grover – 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.**

Emery – Yes Barron – Yes Grover – Yes

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

Emery – Yes Barron – Yes Grover – Yes

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

Emery – Yes Barron – Yes Grover – Yes

Emery stated, he was glad to see that the Shoreland Permit was already applied for and received.

Chairman Grover inquired and Rines confirmed that the property is on the peninsula.

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

Emery – Yes Barron – Yes Grover – Yes

Barron commented he was glad that revised material was submitted.

Grover called if any letters were received from abutters; none were received.

Chairman Grover announced the **motion passed**. The Special Exception has been granted and there is a 30-

day appeal period that does not excluded any Federal, State and Local Permitting.

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 was raise back to voting status.

Any Other Business Which May Come Before This Meeting:

- Secretary - Authorization to expense - Chairman Grover notified the Board that the hand sanitizer that is supplied to town employees cause sinus issues for the secretary and other issues for members.

A **Motion** by Barron to expense funds to purchase non-perfumed hand sanitizer. Emery seconded. No discussion. A unanimous vote was taken. **Motion passed.**

- Election Candidates – Smith read the list of candidates, who have signed up for either re-election or election from the town's website.

- Requirement of hearing an application before a NHDES Shoreland Permit is granted –

Jonanthan Smith received the following legal opinion and Chairman Grover read the following:

“From: Stephen C. Buckley, Legal Services Counsel for NH Municipal Association, who replied, There are circumstances where a person seeking a shoreland permit from DES must also get approval from the town. For instance, as stated in RSA 483-B:6, a person seeking to engage in earth excavation under RSA chapter 155-E in the protected shoreland must also get a local permit, perhaps from the ZBA if the ZBA is your local excavation operator. In that instance DES would not issue the shoreland permit to the property owner until the local excavation permit is issued. However, if the ZBA declined to consider the local excavation permit until the owner obtained the DES shoreland permit, this would create a classic double bind. I would not recommend that the ZBA decline to issue local permits, or perhaps other zoning relief, where a person must also obtain a shoreland permit from DES. Rather, any permit issued by the ZBA should be conditioned upon the applicant obtaining the DES shoreland permit. I think that would be the better practice.”

Chairman Grover responded stating our permitting approvals are based simply on the town. If the County has anything different, or the state has anything different, then it is up to them to approve or deny based on their own rules regulations. So, you don't want to waste their time until they know it's been approved by the municipality boards. The Board did agree it is a double bind because you end up putting the applicant stuck in the middle. So, if the Board's approval is contingent upon other departments, other agencies, or the constitution. We know that our decision is based solely on whether or not they meet the criteria, and the Board can approve pending receipt of other permitting from other agencies. If the outside permitting is not obtained, the applicant would be in violation of it's conditions and the Board can take steps to null and void their variance or special exception application.

Next Regular Meeting: [March 8, 2022 @ 7:00 pm](#)

Adjournment:

A **Motion** by Barron to adjourn the meeting. Rines seconded. No discussion. A unanimous vote was taken. **Motion passed.** The meeting adjourned at 7:46 p.m.

Minutes were approved by majority vote of the Board:

_____	Or	_____	_____
William Grover, Chairman	Date	Roy Barron, Vice Chair	Date
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ZBA Approved: 04/12/2022			

Minutes Approved
April 12, 2022

(In the absence of the Chairman)