

TOWN OF OSSIPEE ZONING BOARD OF ADJUSTMENT

Meeting Minutes
October 10, 2023

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

Call to Order: Dan Fischbein called the meeting to order at 7:00 p.m. and requested all cellphones to be silenced.

Pledge of Allegiance: was recited by all in attendance.

Roll Call: Daniel Fischbein, Roy Barron, Jim Rines, Dallas Emery,

Absent: Daniel Karl and Jonathan Smith, (Zoning Officer)

Meeting Minutes:

- Review to Approve Meeting Minutes of July 11, 2023

Rines clarified the following on page 11:

Rines noted you can typically get a NHDES Wetland Permits to cross a wetland area but you cannot get a wetlands permit to fill it for lot development. Rines noted the owner will be focusing on areas that are more level. Chairman Fischbein requested clarification on what's allowable according to NHDES for crossing wetlands. Rines again stated the Wetlands Bureau will grant permits for crossings based on its function of how much drainage area is going through the crossing. There are three tiers ***related to the drainage area:***

Tier:

1. ***Drainage Area*** ~~Culverts~~ is for 200 acres or less ***allow Closed Culvert in tier 1.***
2. ***Drainage Area*** ~~Open Bottom Structure~~ is between 200 to 640 acres and ***require Open Bottom Structure/crossing in tier 2.***
3. ***Drainage Area*** ~~Bridge to span~~ is for anything over 640 acres ***requires a Clear Span in tier 3.***

A **Motion** by Barron to approve the minutes of July 11, 2023, as amended. Emery seconded. No discussion. All others voted in favor. **Motion passed.**

New Business: Chairman Fischbein read the description for each case prior to presentation.

- **Case #23-02-SE:** Mark Hannigan & Roland Park Association Survey Engineer: Jim Rines of ***Horizon Engineering, Inc.*** of 209 Valley Rd. Tax Map: 103 Lot: 012 is seeking a Special Exception per Article 23.3.2 to reconstruct an existing non-conforming tennis court structure (120 ft. X 60 ft.) with a reduced footprint (110 ft. X 60 ft.) in order to relocate the front of the court an additional 10 ft. away from the ROW which will make the court less non-conforming.

Jim Rines recused himself from the Board for this case since he provided the survey services.

Chairman Fischbein ***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.***

Chairman Fischbein asked Mark Hannigan if he wished to proceed. Mark Hannigan confirmed he did.

Mark Hannigan presented the plans of reducing the footprint in order to relocate the front of the court an additional 10 ft. away from the ROW which will make the court less non-conforming. **Horizon Engineering, Inc.** provided the survey to depict the actual location of the right of way.

Chairman Fischbein questioned if the road is in the right location. Mark Hannigan reported that Jim Rines of **Horizon Engineering, Inc.** through his research found that the road is and remains to be three rods.

The Board members had no specific questions aside from clarifying that the tennis court will be asphalt, resurfaced and a new fence.

Chairman Fischbein acknowledged the receipt of four letter from abutters in support and also read a letter of support from Chris Mably, President of Roland Park Land Trust.

Mark Hannigan read the 8 criteria.

Chairman Fischbein called for public input.

Alex Dahl of Valley Rd. spoke in support of the project.

A **Motion** by Fischbein for **Case #23-02-SE**: Mark Hannigan & Roland Park Association Survey Engineer: Jim Rines of **Horizon Engineering, Inc.** of 209 Valley Rd. Tax Map: 103 Lot: 012 was Granted a Special Exception per Article 23.3.2 to reconstruct an existing non-conforming tennis court structure (120 ft. X 60 ft.) with a reduced footprint (110 ft. X 60 ft.) in order to relocate the front of the court an additional 10 ft. away from the ROW, which will make the court less non-conforming provided All Federal, State and Local Regulations shall be followed. Barron seconded.

Chairman Fischbein called for a roll call vote and read each Special Exception 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 Fischbein – 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 Fischbein – Yes

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

Emery – Yes Barron – Yes Fischbein – 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 Fischbein – 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 Fischbein – Yes

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

Emery – Yes Barron – Yes Fischbein – Yes

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

Emery – Yes Barron – Yes Fischbein – Yes

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

Emery – Yes Barron – Yes Fischbein – Yes

Chairman Fischbein announced the **Motion passed.**

Chairman Fischbein and Barron ***Noted: 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.***

Jim Rines rejoined the Board to voting status.

- **Case #23-09-V:** Belcher Family Realty Trust c/o Paul & Donald Belcher Trustee's; Representing Agent: Mark & Jacob McConkey for 82 Deer Cove Rd. Tax Map: 037 Lot: 010 is seeking a Variance from Articles 6.4.1 (a)- Front Setback Area, 6.4.2 (a)- Side and Rear Setback Area, 6.5 - Lot coverage, and 8.2 – Greenspace to demo an existing house and construct a new house with a proposed deck and septic system and well.

Chairman Fischbein ***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.***

Chairman Fischbein asked Mark McConkey if he wished to proceed. Mark McConkey confirmed he did.

Jim Rines inquired of Mark McConkey who had done the survey. Mark McConkey stated that Andy Bramhall did the survey. Rines asked if this was the job he provided the flood elevation for. Rines explained that Andy Bramhall had contacted him to provide a flood elevation benchmark for a property on Deer Cove Rd. Rines stated he would recuse himself if the Board wanted him too.

Chairman Fischbein polled the Board to see if Jim Rines should recuse himself from voting on this case.

Emery – No Barron – No Fischbein – No; all members opposed Jim Rines having to recuse himself.

Mark McConkey moved forward with presenting his case for the Belcher Family Trust along with Don Belcher. Mark McConkey submitted an engineer stamped survey plan for the record. During the survey process it was determine that the house was 1.7 ft from the right corner property line and it will be moving to 3.2 ft. on the right side of the property. Rines inquired if this takes in account the overhang of the roof. Mark McConkey noted with this design it will take into account the drip line trenches without any use of drainage. Do to the fact that the lot size is 0.13 acres it creates the need for to apply for 4 variances and leaves virtually no building envelope.

Mark McConkey noted the Town list this property as a 3 bedroom home but it's actually a 2 bedroom home. Mark McConkey noted they have received NHDES Septic Approval for a 2 bedroom home. There is a new well, septic, and the driveway will become a permeable surface, so when they add an additional 1.5 ft. to the

roof line it will result in less of a permeable footprint. Mark McConkey provided a copy of the Town's GIF mapping of the neighborhood showing the lot sizes of the surrounding abutters as 0.13 ac., 0.12 ac., 0.04 ac., etc. but all these existing lots are very small. Paul King, Surveyor & Licensed Engineer has certified that the storm water recharge proposed for this property complies with the Town's Zoning Ordinance and with their application that is before NHDES Shoreland pending approval. Aside from the rear setback they are seeking a variance approval from Articles 6.4.1 (a)- Front Setback Area, 6.4.2 (a)- Side Setback Area, 6.5 - Lot coverage, and 8.2 – Greenspace.

Chairman Fischbein commented that they're not taking any trees down. Mark McConkey conveyed that they will live with what they have.

Rines inquired if there would be a full foundation or a crawl space. Mark McConkey stated it would be more towards a crawl space. Mark McConkey **stated** in order to meet the height elevation; they originally wanted an 8 ft. foundation but they've ended up with a 4.5 ft foundation and will probably require a sump pump, since **they're** in the flood plain. Per the Zoning Officer, the structure needs to be a minimum of 1 ft. above flood elevation of 414.0 ft. the proposed first floor will be at 415.5 ft. making it 1.5 ft. above flood elevation. The peak height of the building will be 448.5 ft. with an average grade of 413.5 ft. surrounding the structure, giving the height of the building 35 ft. There will be no change in the view or restrictions to the beach access.

Mark McConkey read through the five criteria.

Chairman Fischbein acknowledged the receipt and shared with the Board letters from the following abutters; Paula Deleidi, Elaine and Brian Marks, Joel Cushing and Lauren and Dan Novotny/Hernandez writing in support of the proposed project and asking the Board to grant the variances.

A **Motion** by Rines for **Case #23-09-V**: Belcher Family Realty Trust c/o Paul & Donald Belcher Trustee's; for 82 Deer Cove Rd. Tax Map: 037 Lot: 010 request for a Variance from Articles 6.4.1 (a)- Front Setback Area, 6.4.2 (a)- Side and Rear Setback Area, 6.5 - Lot coverage, and 8.2 – Greenspace to demolish an existing house and construct a new house with a deck, septic system and well with the following conditions:

1. NHDES Shoreland and Septic Approval
2. Foundation is to be staked by a licensed land surveyor
3. All Federal, State and Local Regulations and Permitting shall be followed.

Discussion: Barron inquired if there was rule change of having to do each variance separately. Rines and Fischbein stated no. Barron seconded. Mark McConkey was asked and confirmed he was in favor of voting on the four variances together.

Chairman Fischbein moved to voting on the five criteria's.

Vote by Criteria: Rines read each criteria.

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

Emery – Yes Rines – Yes (a) Barron – Yes (a) Fischbein – Yes (a) & (b)

- a) Rines believes it will not be contrary to the public's interest because they're installing a new septic system, improving the non-conforming setback and reducing the percentage of lot coverage.
- b) Fischbein - Also, for the drip line.

2. The spirit of the ordinance is observed:

Emery – Yes (c) Rines – Yes (d) Barron – Yes (e) Fischbein – Yes (f)

- c) Emery believes that's why we're here is observe the spirit of the ordinance

- d) Rines because he does not believe the character of the neighborhood is changing and if it is, it's changing for the better.
- e) Barron – Yes because it's actually an improvement.
- f) Fischbein agrees with all the above.

3. Substantial justice is done:

Emery – Yes (g) Rines – Yes (h) Barron – Yes (i) Fischbein – Yes (f)

- g) Emery believes he has the right to build a new house on his lot.
- h) Rines thinks the denial would be a loss to the owner and to the public because the existing house encroaches and the new house will not so substantial justice is done.
- i) Barron because it was an existing lot before zoning, so it would be wrong to deny him the right to rebuild because he is doing a lot of improvements on the property.
- f) Fischbein agrees with all the above.

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

Emery – Yes (j) Rines – Yes (k) Barron – Yes (l) Fischbein – Yes (f)

- j) Emery because he's only going to improve the surrounding properties.
- k) Rines because the Board receive the four letters of support, which is a good indication that nobody thinks their property is going to be devalued.
- l) Barron agrees with the argument provided for #4.
- f) Fischbein agrees with all the above.

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:

(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:

Emery – Yes (m) Rines – Yes (n) Barron – Yes (n) & (o) Fischbein – Yes (n) & (o)

- m) Emery because if the Board enforced this, he would not be able to build anything.
- n) Rines because the hardship in the land is the size and the fact that it was developed prior to the enactment of zoning and applying the standards of zoning would not be applicable in this case.
- o) Barron agrees with Rines and would also be a travesty if the Board did not grant the variance.

AND

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

Emery – Yes Rines – Yes (p) Barron – Yes Fischbein – Yes (p)

- p) Rines because a single family home is allowed in this zone so it's a reasonable use.

Rines stated based on the fact that the 5 criteria received 4 affirmative votes, Rines moved that the Board grant the variance with conditions as stated provided All Federal, State and Local Regulations and Permitting

shall be followed:

Chairman Fischbein announced the **Motion passed.**

Chairman Fischbein ***Noted: 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:

- Expenditure report thru August 2023 – the Board had no questions or concerns.
- LRPC – RSA Book Order form 2023-2024 in the amount of \$98.00.

A **Motion** by Rines to expend the amount of \$98.00 for the LRPC – Planning & Land Use RSA Books. Barron seconded. No discussion. A unanimous vote was taken. **Motion passed.**

- 2024 Proposed Budget Worksheet

Emery asked if this budget is going to reallocate the secretary's wages to the Selectmen's Office Budget. The secretary confirmed it will and the actual proposed budget will be \$3,400.00, which is level funded from last year.

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

Next Meeting: November 14, 2023 @ 7:00 pm at the Freight House

Adjournment:

A **Motion** by Rines to adjourn the meeting. D. Fischbein seconded. No discussion. A unanimous vote was taken. **Motion passed.** The meeting adjourned at 7:57 p.m.

Minutes were approved by majority vote of the Board:

_____	_____	Or	_____	_____
Daniel Fischbein, Chairman	Date		Roy Barron, Vice-Chair (In the absence of the Chairman)	Date