

TOWN OF OSSIPEE
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
July 11, 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, Daniel Karl and Jonathan Smith, (Zoning Officer)

Meeting Minutes:

- Review to Approve Meeting Minutes of June 13, 2023

Rines noted the following edits:

Page 1 - Fischbein noted on page 3 that “they're trying to break the ***ordinance*** right now” should be “they're trying to break the ***ordinance*** right now” should have stated, Fischbein noted on page 3 that “I don't they think they were trying to break the ordinance.” should be “***I don't think that they're trying to break the ordinance*** right now.”

Page 3 – “Rines noted yes, because their producing the impervious coverage,” should be “because their ***reducing*** the impervious coverage”

Page 5 – “So, if the special exception is not approve for” should be “So, if the special exception is not ***approved*** for”

Page 6 – “states they were not award at the time” should be “states they were not ***aware*** at the time.”

Page 6 – “Board is allowed toad conditions” should be “Board is allowed ***to add*** conditions” and “that it will not be used for commercial use.” should be ““that it will not be ***used*** for commercial use.”

A **Motion** by Barron to approve the minutes of June 13, 2023, as amended. Rines seconded. No discussion. All others voted in favor. **Motion passed.**

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

- **Case #23-06-V:** Dorrs Corner Solar, LLC - Owner: John J. Tarsa, Jr. c/o Jeffrey Christensen, Esq. of Cleveland, Waters & Bass, P.A. for 141 Dorrs Corner Rd. & Chickville Rd. Tax Map: 227 Lot: 008 and Tax Map: 226 Lot: 012 is seeking a Variance from the following Articles:

- 1) **Article: 6.1 - Permitted Uses and Article XXXIV - Table 1 Chart of Permitted Uses:** for the construction of a Solar Farm on the property - a variance is needed as per a permissive zoning ordinance.
- 2) **Article 4.4 – Structures and Uses Per Lot –** To allow a second principal “use” should be “***structure***” on the property to the extent the Solar Farm extends onto Tax Map: 227 Lot: 008, and

- 3) **Article 23.1 - Non-Conforming Lots and/or Table 2 Dimensional Requirements** – To permit the use of Tax Map: 226 Lot: 012 for the Solar Farm despite its non-conforming status of having no frontage on a public highway.

Damon Frecker, Project Manager with NOBIS Group which is a civil and environmental permitting firm presents to discuss constructing the installation of solar array farm on the approximate 147 acres between the two proposed parcels owned by John J. Tarsa, Jr. The solar arrays will occupy about 35 acres of the 147 acres. The area is heavily wooded, the 1 mile access road comes in off Dorrs Corner Road and Eldridge Road, which will require a little bit of survey and engineering work for vehicles to access for the construction work of the arrays.

They are anticipating a 6-9 month permitting process, a 6+ months of clearing and construction process with hopes of being operational by the end of next year 2024. The Solar Farm will generate about 5 MW (megawatts) of power with the anticipation of selling the power into Community Power Programs within the state, thus providing rate reduction to those participating communities energy bills.

Permitting requirements include Ossipee ZBA for a variances, a storm water construction permit from EPA on how the storm water will be managed during construction phase; Alteration of Terrain permit from NHDES which shows they will design the site properly to manage storm water runoff and erosion control during construction phase, they are consulting with state agencies in Department of Historical Review, Department of Habitat for any concerns. They are conducting a Phase I – environmental site assessment to ensure there are no existing environmental issues with the property and there will be a complete well and assessment survey of the parcel to identify any and all wetlands in order to maintain all buffers and distancing from the wetlands. They will need to obtain Planning Board Site Plan Review and Conditional Use Permit along with Building, Electrical and Driveway permits. They believe this is a great location, not audible, not visible and creates a lot of benefits.

Barron inquired how this would benefit Ossipee residents with their electric bills. Mr. Frecker stated he is not aware if Ossipee Town is pursuing interest in the Community Power Program. Barron asked Jonathan Smith if the town is looking into participating. Smith stated he was not aware if Ossipee is interested in participating, it would have to be put on the Board of Selectmen’s agenda for discussion.

Jeffrey Christensen, Esq. addressed the legal aspect of the project starting with the request for (3) variances.

- 1) **Article: 6.1 - Permitted Uses and Article XXXIV - Table 1 Chart of Permitted Uses:** is for the use in the residential district. Ossipee currently does not allow a Solar Farm in any district.

Barron disagreed recalling a previous case before the Planning Board but Smith clarified that the Zoning Officer at the time should have denied the permit because solar farms are currently not allowed in any district. Barron commented, he was not aware of that.

Jeffrey Christensen, Esq. continued stating that

- 2) **Article 4.4 – Structures and Uses Per Lot** – To allow a second principal “use” should be “*structure*” on the property for the Solar Farm which extends onto Tax Map: 227 Lot: 008, which already has a single family structure on the property.
- 3) **Article 23.1 - Non-Conforming Lots and/or Table 2 Dimensional Requirements** – To permit the use of Tax Map: 226 Lot: 012 for the Solar Farm despite its non-conforming status of having no frontage on a public highway and is essentially land locked.

Jeffrey Christensen, Esq. highlighted the five criteria’s of the application. Noting it would not alter the essential character of the neighborhood. The Solar Farm would be developed on the back portion of the Property, in a heavily wooded area, that will create a visual screen. The Solar Farm would be unlikely to be seen by any neighbors and therefore unlikely to have any impact on the essential character of the

neighborhood. The Property is not well suited to conventional residential development or other permitted uses because of significant wetlands. The wetlands impair both access and any development, that would limit potential siting and require protective measures in any development. But the Solar Farm will not be impacted because the configuration can be laid out in away to not impact them and will not impact drainage or erosion control.

The Property is particularly well-suited for the proposed Solar Farm. The proximity to the Eversource utility lines, rather than impeding development, facilitate the Solar Farm. The access issues and wetlands pose little, if any, impediment to solar development, which can be configured flexibly and requires rare in-person site access.

Prior logging is a benefit as it does not require clearing of as many trees as would be required on another lot. The Solar Farm will essentially sit quietly on the property, hidden in the woods, creating no noise, traffic, light pollution, odors, or any other external negative impact on schools, roads, public services, etc.... There is no reason to believe that the Solar Farm will reduce the value of surrounding properties.

Barron questioned if the solar panels have any hazardous material in them. Jeffrey Christensen, Esq. stated no. Barron inquired if the company goes out of business, who is responsible for cleaning the property up.

Jeffrey Christensen, Esq. stated any solar farm of this nature is "Bonded," meaning a financial amount is held in an account until such time the land is reclaimed. The Bond amount is evaluated every (5) years to ensure sufficient funds are available for reclamation. Similar to the Planning Board's procedure for gravel pits. Jeffrey Christensen, Esq. stated it's a special system managed by the state and will be addressed at the Planning Board stage.

Smith inquired if the owner is going to pay direct taxes on the parcel or seek a pilot program. Damon Frecker is not aware of the intent to seek a pilot program. Smith stated that about 4-5 years ago the Board of Selectmen placed a decommissioning bond requirement on all solar farms. Jeffrey Christensen, Esq. noted either way there would be a decommissioning bond put in place.

D. Karl want to address the statement of the solar panels having no hazardous material. He knows that all solar panels contain heavy metals of cadmium, lead, etc., because if they had to be decommissioned tomorrow they would have to be handled as a hazardous material. So, he believes the statement is a bit erroneous. Jeffrey Christensen, Esq. clarified stating there's no dangerous chemicals being created or being emitted, it's all contained inside the panels.

Jeffrey Christensen, Esq. noted a solar array would normally be allow under the ordinance if it was an accessory use to a development (i.e.. Solar panel on a roof, etc.). By having a solar farm, it is less likely to have a fire because there's no structure underneath.

Discussion ensued over batteries, noise levels of transformers and inverters to put out the supply lines and has there been a study to determine the decibel level generated. Damon Frecker stated the transformers used these days are low noise transformers that emit less than 60 decibels in five feet. Jeffrey Christensen, Esq. noted some of these details still need to get worked out before going to the Planning Board stage. Smith noted that these specific types of questions are for the Planning Board. The ZBA is only tasked with determining a commercial use in the residential district and having a structure crossing boundary lines.

Jeffrey Christensen, Esq. closed stating how it connects to the line needs to get worked out with Eversource. There's work to be done with NHDES. For this property, it is a reasonable use. It provides clean energy, reduces energy costs either directly or just indirectly by lowering the demand for energy from other supplies. The property itself is uniquely suitable for this array. State law recognizes that solar arrays are important use that should be encouraged and allowed, and actually prohibits unreasonably limiting them through the zoning

ordinance and believe that's RSA 672:1, III-a. So zoning ordinance as is, that does not allow it creates A hardship for the applicant. There's no real harm in granting this variance and allowing this to development. There's no reason to prohibit this. Therefore, we are asking the board to grant the variance.

Fischbein inquired of Mr. Tarsa, who responded that the property was acquired in 1989. Discussion ensued over the perceived percentage discrepancies of solar farms depreciating property values and a commercial operation in the residential district.

Rines addressed how the plans for the solar arrays are crossing boundary lines and whether or not that is addressed in the variance request from Article 23.1 and suggested the owner apply for a Boundary Line Adjustment. Smith stated he had suggested applying for a Lot Merger to eliminate any issues with boundary lines and setbacks. Rines stated he would not be in favor of granting a variance from setbacks when there are option available to eliminate the need for a variance. Barron stated the ZBA could impose a condition that either a Boundary Line Adjustment or Lot Merger be approved by the Planning Board. Discussion ensued.

Emery questioned if this is considered an industrial use or commercial use so he knows which setback requirements are required.

Jeffrey Christensen, Esq. part of the reasoning with the Boundary Line Adjustment is the applicant – Dorrs Corner Solar, LLC is not the land owner. Dorrs Corner, LLC is leasing the land to put the solar farm there. Merging the properties would impact the land owner longer than the life expectancy of the solar array farm. This would require a permanent change of the landowners property, for what is not a permanent development. Discussion ensued to include the land owners opinion, and discussed the positives and negatives of moving forward with a boundary line adjustment and whether or not it would resolve the non-conforming lot issue of no frontage and being land locked. After discussion with the Board and Zoning Officer; Jeffrey Christensen, Esq. wanted clarified if the non-conforming lot is altered but it does not increase the nonconformity, it is still nonconforming and it would not require a variance to allow the nonconformity to exist. Rines noted for his own opinion that would be correct.

Fischbein called on William May, who had a question.

Barron asked Fischbein if he was opening up the discussion to the public. Fischbein stated that public input was not open at this time, since Jeffrey Christensen, Esq was still presenting. Jeffrey Christensen, Esq requested if a lot merger or boundary line adjustment would be required could the Board make it a condition to the Planning Board as part of the Site Plan Review.

Fischbein opened public input.

William May inquired if there would be more than one electric company involved. Jeffrey Christensen, Esq stated they would only be connecting to the Eversource lines. But it's going to impact who supply's your power. Multiple conversations ensued.

The secretary commented that multiple conversations began and she was unable to distinct who or what was being said.

Jeffrey Christensen, Esq, stated that Eversource manages the grid and you will not be purchasing power directly from DC Solar, LLC. DC Solar will be supplying energy directly to the Eversource grid and if the Town wants to participate in the Community Solar Program for discounted rates, the Selectmen would have to discuss the options and it would go to the town voters as a warrant article at the Annual Town Meeting.

Barron inquired if DC Solar is going to sell the power to other electric company's aside from Eversource. Jeffrey Christensen, Esq state no. Discussion ensued over individual abutter benefits but D. Karl stated that

at this time there is no benefit to the Town until the Selectmen discuss the options and it goes before the town voters as a warrant article at the Annual Town Meeting. Smith agreed and noted these questions have nothing to do with the variance application before this Board tonight, and asked the Chairman if the discussion could get back on track.

John Tarsa stated he cannot see the justification of getting a surveyor in to create a line around the solar farm, he stated to merge the lots and eliminate the boundary line that separates to the two lots.

Rines noted by doing the lot merger it would eliminate the variance needed for Article 23.1. and asked Jeffrey Christensen, Esq if he wanted to remove the request for that variance. Jeffrey Christensen, Esq. questioned if they move forward with the lot merger this would eliminate the request for the third variance but if they move forward with the boundary line adjustment, they could eliminate the request for the second variance. Rines commented that the owner stated he would prefer the lot merger. Jeffrey Christensen, Esq stated by keeping both options available it allows the Planning Board to decide which option they would prefer. Rines commented and Emery agreed as a voting member he would vote against the request for a variance from article 23.1 because there is another option.

Barron stated as a member of the Planning Board it is quite flexible and a lot merger would be more favorable. Jeffrey Christensen, Esq, stated that they would request a condition that the lots be merged and they would remove their request for the variance for article 23.1. or Table II as part of that package.

Fischbein called for any further public input. None was heard.

Barron called for Board discussion.

Emery questioned of why this location when there are other wide open places that could be more suitable. Jeffrey Christensen, Esq noted the first reason is the proximity to the Eversource power lines and transformers are located there. Damon Rucker's commented when their out scouting for locations, their looking first for the best capacity of wires because there are perspective developers out gobbling up capacity wires for their projects. Questions were raised about overloading the lines. Damon Rucker's stated this would not alter the reliability of capacity and the ISO will not allow the capacity to be overloaded. Emery is concerned with this being in a residential area in the Village district verses being in a commercial area. Multiple discussions ensued.

D. Karl expressed concerns with being in the residential district, reducing property values, steep slopes, adequate roads for fire trucks. Fischbein and Barron both noted the property is well off the beaten path and they doubt it will affect property values.

Willaim May inquired of the life expectancy of the panels and the toxicity of connecting to the tension lines. Jeffrey Christensen, Esq, normally noted 20-25 years unless for some reason it gets damaged and generally non-toxic. D. Karl noted the cadmium levels are low enough individually.

John Tarsa, Jr. commented that the site is 0.5 miles from his house and there's 100 acres surrounding the location.

Smith clarified that the applicant does not require a variance from Article: 4.4 because he is allowed to have two structures in the residential district and provided he applies for a lot merger, he will not need a variance from Article: 23.1. But he still needs a variance from Article: 6.1 – Permitted Uses.

A Motion by Rines to approve **Case #23-06-V: Dorrs Corner Solar, LLC - Owner: John J. Tarsa, Jr. for 141 Dorrs Corner Rd. & Chickville Rd. Tax Map: 227 Lot: 008 and Tax Map: 226 Lot: 012 request for a Variance from the following Articles: Article: 6.1 - Permitted Uses and Article XXXIV - Table 1 Chart of Permitted Uses:** for the construction of a Solar Farm on the property with the Subsequent Conditions

of an approved Voluntary Lot Merger and All Federal, State and Local Regulations and Permitting shall be followed. Barron seconded.

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:

Karl – No Emery – No (a) Rines – Yes (b) Barron – Yes (c) Fischbein – Yes (d)

- (a) Not in the public interest
- (b) Believes it is in the public's interest, will increase the tax base, solar will provide electricity back to the grid and is a fairly benign use.
- (c) Agrees with Rines and eventually will help lower electric bills
- (d) Agrees with Rines and Barron and the location is very remote out in the woods.

2. The spirit of the ordinance is observed:

Karl – No Emery – No Rines – Yes (e) Barron – Yes (f) Fischbein – Yes

- (e) Does not believe it will alter the character of the neighborhood, based on the topography, and the remote location compared with other uses that could be permitted.
- (f) Agrees with Rines and the owner is taking a lot that is land locked and making it a usable lot.

3. Substantial justice is done:

Karl – No Emery – No (g) Rines – Yes (h) Barron – Yes (i) Fischbein – Yes

- (g) Does not see the substantial justice, or why place it in a residential area when there's plenty of land where it could have gone.
- (h) Yes, because the tests the courts use is anything that does more harm to the applicant without doing any damage to the public is an injustice and therefore substantial justice is done.
- (i) Same as Rines, plus the location of the power grid and connection lines to be used.

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

Karl – No (j) Emery – No (k) Rines – Yes (l) Barron – Yes (m) Fischbein – Yes

- (j) Believes whether it's in the residential district or not it changes the character of the neighborhood and there are significant studies available to support the findings.
- (k) Changes the character of the neighborhood and depreciates property values
- (l) Does not believe it will have a material difference in the values of the surrounding properties given the remote location
- (m) Same as Rines and because it's so far out in the woods

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:

ai) Karl – No Emery – No (n) Rines – Yes (o) Barron – Yes (o) Fischbein – Yes

- (n) Does not believe it would cause an unnecessary hardship
- (o) The special conditions are the fact that topographically has significant issues for other uses

AND

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

- (iii) Karl – No Emery – No Rines – Yes (p) Barron – Yes (q) Fischbein – Yes (r)
- (p) Believes it's a reasonable use
- (q) Same as Rines plus the location of the power grid and connection lines to be used.
- (r) Believes it's a reasonable use for Ossipee.

Rines stated based on the fact that the 5 criteria received 3 affirmative votes, Rines moved that the Board grant the variance as stated:

A **Motion** by Rines to approve **Case #23-06-V**: Dorrs Corner Solar, LLC - Owner: John J. Tarsa, Jr. for 141 Dorrs Corner Rd. & Chickville Rd. Tax Map: 227 Lot: 008 and Tax Map: 226 Lot: 012 request for a Variance from the following Articles: **Article: 6.1 - Permitted Uses and Article XXXIV - Table 1 Chart of Permitted Uses**: for the construction of a Solar Farm on the property with the Subsequent Conditions of an approved Voluntary Lot Merger and All Federal, State and Local Regulations and Permitting shall be followed. Barron seconded.

Chairman Fischbein called for vote. Rines, Barron and Fischbein voted in favor. Karl and Emery opposed. Chairman Fischbein announced the **Motion passed 3-2**.

Rines noted 30 day appeal period will start tomorrow.

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.***

- **Case #23-08-V**: KOGO, LLC (Kilowatts-on-the-Go) – owner, Victoria Perez of EVR Realty, LLC and Representing Agent: Scott Lawler of Norway Plains Associates, Inc. for 930 Route 16. Tax Map: 123 Lot: 021 is seeking a Variance from **Article: XXXIV - Table 1 Chart of Permitted Uses**: Section 34.2 Commercial Uses (See also Article XXXV, Section 35.2) for the construction of an Electric Vehicle Charging Station on the property – by default a variance is needed as per a permissive zoning ordinance, and **Article: 6.4.2 (b) Rear Setback Area**: requirement is 25 ft. as per **Table 2- Dimensional Requirements**: to install EV Charging Stations within the rear setback area. The existing structure will be used as KOGO's main office.

Victoria Perez presents requesting a variance to reuse the former Citizens Bank on Route 16 for the construction of an Electric Vehicle Charging Stations on the property. Victoria Perez and her business partner have one charging station in Rochester and are looking to support the main corridors that is an initiative at the state level. They are looking to bring 3-5 charging stations to this location that is able to charge all types of electric vehicles not just Tesla's. They have worked with the state, Federal and Department of Energy to help support this initiative.

Fischbein inquired if the building will be strictly used for office use. Victoria Perez clarified that the primary use will be for their offices. They will have demo's and the charging stations will be (DCFC) Direct Current Fast Charge of 75 kw fast charging stations. There will be no overnight parking. They received insurance approval through the National Safe Drivers contract to provide emergency charging services to stranded vehicles via a portable generator with different charging adapters and the energy level is regulated through a

phone app. Most vehicles will receive approximately an 80% charge in about 20-30 minutes.

Some trees will be removed around the charging stations to reduce the amount of pitch/tree sap from falling on the charging stations and electric vehicle waiting to be charged. The inside of the building will have displays on the history of the vehicles and there will be picnic tables available for while they wait on the charging. .

Chairman Fischbein opened public input.

Andy Chalmers inquired if there would be and structures or covers over the charging stations. Victoria Perez stated not at this time but they have been in discussions with a couple of general contractors for designs.

The Board proceeded to reviewed the plans with Victoria Perez, who explained the design and software that would be used. Emery inquired about traffic lines forming onto Route 16 waiting for these vehicles to get to a charging station. Victoria Perez does not foresee an issue because if they have 5 charging stations, that will service 10 vehicles with a charge connection on each side of the station, similar to gas pumps. Parking spaces available was noted to be 19 spaces of which there will be 2 for employees, 1 handicapped space, 10 spaces for charging and 5 spaces available for waiting to charge. Multiple conversations ensued.

Victoria Perez noted they have apps on their phones and built into the electric vehicles telling them where EV Stations are located. Their wanting to work with NHDOT to have signs placed on highways of locations. Their also looking at properties to expand north to reduce the distance between charging stations.

Victoria Perez stated their applying for a variance from Article 6.4.1 Front setback and 6.4.2 Side/Rear setback. Smith clarified that they only need a variance for Article 6.4.2 Rear setback and Article 34.2 for the use. Victoria Perez proceeded to read through each of the criteria's for Article 6.4.2.

Rines requested and Victoria Perez read the criteria's for Article 34.2 for the Use in the Chart of Table of Uses.

Chairman Fischbein opened discussion to the public. None was heard. Chairman Fischbein closed public input.

Emery requested clarification on the number of charging stations proposed for installation. Victoria Perez's business partner noted they have 5 on their plan but have 4 on the application because one of the stations meets the setback requirement. Discussion ensued.

A **Motion** by Rines for **Case #23-08-V: KOGO, LLC (Kilowatts-on-the-Go) – owner, Victoria Perez of EVR Realty, LLC and Representing Agent: Scott Lawler of Norway Plains Associates, Inc. for 930 Route 16. Tax Map: 123 Lot: 021 is Granted a Variance from Article: XXXIV - Table 1 Chart of Permitted Uses: Section 34.2 Commercial Uses (See also Article XXXV, Section 35.2) for the construction of an Electric Vehicle Charging Station on the property, pending subsequent conditions of obtaining Site Plan Review approval from the Planning Board and All Federal, State and Local Regulations and Permitting shall be followed. Barron seconded.**

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:

Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes

2. The spirit of the ordinance is observed:

Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes

3. Substantial justice is done:

Karl – Yes Emery – Yes Rines – Yes Barron – Yes (a) Fischbein – Yes

a) Barron noted it's a needed use.

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

Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – 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:

Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – 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) Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes

AND

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

(a) Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes

Rines stated in light of the fact that there have been at least 3 affirmative votes on all the criteria, he moves that the variance from **Article: XXXIV - Table 1 Chart of Permitted Uses: Section 34.2 Commercial Uses** with the conditions as previously stated. Barron seconded. No discussion. Chairman Fischbein called for vote. A unanimous vote was taken. 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.*

A **Motion** by Rines for **Case #23-08-V: KOGO, LLC (Kilowatts-on-the-Go)** – owner, Victoria Perez of EVR Realty, LLC and Representing Agent: Scott Lawler of Norway Plains Associates, Inc. for 930 Route 16. Tax Map: 123 Lot: 021 is Granted a Variance from **Article: 6.4.2 (b) Rear Setback Area:** requirement is 25 ft. as per **Table 2- Dimensional Requirements:** to install EV Charging Stations within the rear setback area, pending subsequent conditions of obtaining Site Plan Review approval from the Planning Board and All Federal, State and Local Regulations and Permitting shall be followed. Barron seconded.

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:

Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes

2. The spirit of the ordinance is observed:

Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes

3. Substantial justice is done:

Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes

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

Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – 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:

Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – 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) Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes

AND

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

(a) Karl – Yes Emery – Yes Rines – Yes Barron – Yes Fischbein – Yes

Rines stated in light of the fact that there have been at least 3 affirmative votes on all the criteria, he moves that the variance from **Article: 6.4.2 (b) Rear Setback Area:** requirement is 25 ft. as per **Table 2-Dimensional Requirements:** to install EV Charging Stations within the rear setback area, pending subsequent conditions of obtaining Site Plan Review approval from the Planning Board and All Federal, State and Local Regulations and Permitting shall be followed. Barron seconded. No discussion. Chairman Fischbein called for vote. A unanimous vote was taken. 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.*

Rines requested to recuse himself from voting status for the next case since he is presenting on behalf of the applicant as the representing agent for Calderwood Real Estate Trust, President: Arif Shaikh of Calderwood Real Estate Corp.

Chairman Fischbein informed “*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.*” The applicant and/or agent is requested to state if they wish to proceed or they can request a continuance to a date certain. Rines stated he wished to proceed.

- **Case #23-07-V:** Calderwood Real Estate Trust, President: Arif Shaikh of Calderwood Real Estate Corp. c/o Jim Rines of White Mountain Survey & Engineering, a Division of Horizons Engineering of Route 16B & Route 16. Tax Map: 080 Lot: 001 is seeking a Variance from **Article: XXXIV - Table 1 - Chart of Permitted Uses:** to expand a seasonal boat storage on the subject parcel and to supplement the use of abutting parcel, Tax Map: 087 Lot: 039.

Jim Rines of White Mountain Survey & Engineering, a Division of Horizons Engineering presents requesting a variance to expand a seasonal boat storage in the rural zone. There parcel is 22 1/2 acres, with 2,150 feet of frontage on Route 16. There's access through the abutting property on Route 16B and a very small triangle portion of this parcel is in the village district. The rest of the property is in the rural district. Boat storage is not a specified use in the Ossipee Zoning Ordinance, so a Variance is required for the permitted use.

There is a Public Service easement that runs through the property, the frontage is on Route 16, and a portion is limited access to highway and has no access to the Route 16 area. The new owners bought Ward's Boat Shop along with the abutting lot which contains a two story storage building and a 1 story office and garage building and a gravel area for ground storage of boats. But due to the topography, wetlands and the right of way, the owner is not sure if they want to store the boats in the structure or if it will be more ground storage.

If the use is granted, they will move forward to the Planning Board for a Site Plan Review and more time will be spent on delineation and design on where to store the boats. Current storage area is approximately 1.0 +/- acre or 200 sq. ft x 250 sq. ft. The Board noted several areas of wetlands.

Rines noted you can typically get a NHDES Wetland Permits to cross a wetland area but you can not 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.**

Rines thinks this property will be between tier 1 or tier 2.

Emery requested clarification on what the variance is being requested for the use. Rines confirmed it's for the use.

Chairman Fischbein opened discussion to the public.

Richard Graham inquired and Rines confirmed the access would be next to the old hardware store. Multiple discussions ensued.

Emery requested of the Chairman to call the meeting back into order because the discussions ensuing will have more merit when the case goes to the Planning Board. The questions being asked is not under the Zoning Board of Adjustments authority.

Tina Ames inquired if these boats would be leaking fluids while being stored and will run across Route 16B. Rines noted he is not a boater but he believes all fluids and gas are drained before the boats are stored. While Smith spoke with Ms. Ames.

Rines proceeded to read the five criteria's.

Allan St. Amand of 149 Route 16B asked for clarification to be shown on the plan where the proposed expansion would be located. Rines pointed out to Mr. St. Amand property and the proposed expansion would be going north away from Mr. St. Amand's property.

Mario Locontro of 147 Route 16B referred to his abutter's notice and realized he miss read it but questioned

if the access would remain where it current is located. Rines confirmed it will.

A **Motion** by Barron for **Case #23-07-V: Calderwood Real Estate Trust, President: Arif Shaikh of Calderwood Real Estate Corp. of 151 Route 16B & Route 16. Tax Map: 080 Lot: 001 is Granted a Variance from Article: XXXIV - Table 1 - Chart of Permitted Uses:** to expand a seasonal boat storage on the subject parcel and to supplement the use of abutting parcel; pending subsequent conditions of obtaining Site Plan Review approval from the Planning Board and All Federal, State and Local Regulations and Permitting shall be followed. Fischbein seconded.

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:

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

2. The spirit of the ordinance is observed:

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

3. Substantial justice is done:

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

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

Karl – Yes Emery – Yes Barron – Yes Fischbein – 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:

Karl – Yes Emery – Yes Barron – Yes Fischbein – 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) Karl – Yes Emery – Yes Barron – Yes Fischbein – Yes

AND

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

(a) Karl – Yes Emery – Yes Barron – Yes Fischbein – Yes

Chairman Fischbein called for vote. A unanimous vote was taken. 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.*

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

Next Meeting: August 8, 2023 @ 7:00 pm at the Freight House

Rines informed the Chairman he will not be at next month's meeting due to a personal reason.

Adjournment:

A Motion by Barron to adjourn the meeting. D. Karl seconded. No discussion. A unanimous vote was taken.

Motion passed. The meeting adjourned at 9:24 p.m.

Minutes were approved by majority vote of the Board:

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