

TOWN OF OSSIPEE
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
December 12, 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, and Daniel Karl

Absent: Jonathan Smith, (Zoning Officer)

Meeting Minutes:

- Review to Approve Meeting Minutes of October 10, 2023

Rines noted edits on page 1: White Mountain Survey & Engineering, Inc. should be ***Horizon Engineering, Inc.***

Rines noted edits on page 2: White Mountain Survey & Engineering, Inc. should be ***Horizon Engineering, Inc.*** in three different locations.

Emery noted edits on page 4: Mark McConkey “state” should be “***stated*** in order” and

Fischbein noted edits on page 4: “since the in the flood plain” should be “since ***they’re*** in the flood plain”

A **Motion** by Barron to approve the minutes of October 10, 2023, as amended. Emery seconded. No discussion. Karl abstained. All others voted in favor. **Motion passed.**

Financial:

- Budget Report – September & October 2023 – The Board reviewed and had no concerns.

New Business:

- Kate Alexander letter of intent to be an Alternate: The Board acknowledged the need to have an alternate but would have preferred to have Ms. Alexander in attendance to ask questions. The Board requested the secretary to send a letter to Ms. Alexander’s requesting her presence at the next ZBA meeting.

Jim Rines recused himself from the Board for the case since he is the representing agent for Todd Clifton Ellis.

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 Jim Rines if he wished to proceed. Jim Rines as representing agent confirmed he wished to proceed.

Chairman Fischbein read the description for the next case prior to presentation.

- **Case #23-10-V:** Todd Clifton Ellis & Colleen Mary Ellis for 79 Broad Bay Road. Tax Map: 031 Lot: 021 is seeking a Variance from Article: 6.4.2 (a) Side and Rear Setback Area and Article: 8.2 Green Space to waive the side yard setback to permit the construction of a 24 ft. x 30 ft. garage that will 14.6 ft. from the side boundary and relocating the existing nonconforming bunkhouse that is 14.5 ft. from the side boundary line to a location that is fully conforming. This will result in the setback area where the garage is placed to not be greenspace as specified in Section 8.2.

- Doug Brown of 77 Broad bay Rd. Tax Map: 031 Lot: 020 submitted an email expressing their opposition to the plan.

Jim Rines from Horizon Engineering presenting the proposed plan for Todd Clifton Ellis and Colleen Mary Ellis request for a Variance from Article: 6.4.2 (a) Side setback and Article: 8.2 Green Space to have the garage partially in the side yard normally reserved for green space. The property is 0.38 acres in size with 75.44 ft. of frontage on Broad Bay Road and 106 ft. of water frontage on Ossipee Lake. There is an existing non-conforming bunkhouse that has no sewer or water and is 14.5 ft. from the side boundary lines. The plan is to relocate the existing non-conforming bunkhouse to a conforming area and will still not have sewer and water, and to allow space for a 24 ft. by 30 ft. garage with living space above and will be 14.6 ft. from the side boundary line. Rines noted the location of the septic system and well on the plan. The reasoning for keeping the garage in this location is to utilize the existing driveway and have room to maneuver into the garage.

Board discussion started with Fischbein inquiring about the number of garage doors proposed. Rines reported 2 garage doors. Barron inquired how much green space will be lost. Rines noted the area on the plan but Barron felt the only area of green space affected is where the addition will be located. Barron inquired if there were other areas where the greenspace could be made up. Multiple discussions ensued over green space meaning, whether or not there was a way to situate the garage to maintain access to the doors but still maintain green space and if the side setback requirement was 20 ft. or 25 ft.

A lengthy discussion ensued over possibly rotating the garage to preserve green space, driveway access to the doors and maintain access to the circular driveway of the adjoining lot without taking away more green space, which is also owned by the Ellis'. If they turn the garage it will then interfere with the bunkhouse.

Emery noted that there is no parking in the green space area and Rines confirmed. Barron noted unless it's pre-existing there is no parking in the greenspace area. Emery commented that if their changing it now they won't be able to park in it. Barron corrected Emery stating that's on new driveways. Emery noted this a new driveway and that's what this is about. Barron agreed noting he was on the board who changed the ordinance for new driveways. Emery stated, he's here because the zoning ordinance was changed. Barron stated you can't change the rules on pre-existing, only on what goes in after the rule is changed. Emery conveyed to Barron referring to the property in question, not the circular driveway he drives around but this particular property that he wants to put these proposed buildings in; he will have to bring them up to current zoning ordinance requirements. Barron commented that these ordinances haven't been passed yet. Emery and the secretary both confirmed that ordinance was passed last year. Barron accepted and stated, then theirs no parking in any green space.

Emery sought clarification on the height of the garage and was there going to be habitants of the bunkhouse. Rines clarified that the plan does show contours and the bunkhouse will be **uninhabitable** because it will only have electricity with no water or sewer. Rines demonstrated on the plan the location of the septic and the proposed well. Discussion ensued over if the proposed plan and structures is making the property more non-conforming. Rines pointed out on the plan for Emery and Karl the location of the garage, the remaining green space and Karl acknowledged that there will be a storm water mitigation system. Rines confirmed the markers will be placed by a licensed land surveyor.

Discussion ensued over the five abutting properties who received prior variances for relief from setback requirements. Barron asked where the property of Mr. Brown is located since he wrote in opposition to the proposed plan. Rines pointed the property out on the plan in relation to Mr. Ellis' property.

Chairman Fischbein called on Douglas Brown to address his concerns in opposition to the proposed plan. Chairman Fischbein noted that Douglas Brown had received a prior variance of which Douglas Brown confirmed. Douglas Brown presented photo's to the Board showing the proximity of his property in relation to Todd Ellis' property. Douglas Brown is mostly concerned with proximity of the proposed garage in relation to his own driveway. Douglas Brown suggested moving the proposed garage more central by approximately 10ft. towards the opposite lot since the Ellis's own it as well. The Board tried to explain to Mr. Brown the reasons why the Ellis's could not move the garage more towards the center of the property. But Douglas Brown continued stating the proposed garage would be imposing on his driveway. Douglas Brown noted in 2016, they tore down a cabin and built a larger home. Karl inquired about how close Mr. Brown's new house built to the boundary. Mr. Brown stated that it was built 16.5 ft from the boundary. Discussion ensued over relocating or reconfiguring the driveways or the structure to preserve green space with minimal damage. A suggestion was made that a fence of less than 7 feet could be placed along the property line between Mr. Brown's and Todd Clifton Ellis' properties. Mr. Brown closed stating he doesn't know why they have to endure having a garage so close to his property.

Jim Rines proceeded to read the 5 criteria.

Chairman Fischbein allowed Mr. Brown to express the last of his concerns.

Douglas Brown stated he's not sure if this project would affect the value of his house but by also moving the garage to the center of the property it will increase the green space. He feels that this project would be right on top of them and believes they could move the location inward by 10 feet.

Chairman Fischbein closed public input.

Karl questioned if the structure was turned would this increase the green space. Jim Rines explained by turning the structure; part of the existing green space and trees would need to be removed in order to maneuver around the driveway and some of the trees would need to be removed on the opposite corner. This would result in more green space being removed or impacted by shifting the structure. Rine explained where and how much green space would be impacted on the Ellis property while there is virtually no green space on the Brown property with the driveway being paved. Mr. Brown started repeating himself.

The secretary reminded the Chairman Fischbein to closed public input since Mr. Brown is now repeating his argument in opposition to this project.

The Board started questioning Mr. Brown on when and how he got his driveway paved when it was supposed to be a pervious surface. Mr. Brown made suggestions on where the Ellis structure could be placed to increase the green space. Chairman Fischbein asked Mr. Brown why does Mr. Ellis have to make the changes to increase green space when you (Mr. Brown) don't have any. Mr. Brown stated he has 4 feet because that's just the way the lot is. Fischbein and Emery disagreed noting he eliminated green space when he paved his driveway but Mr. Brown denied changing the driveway but was not acknowledging *the* fact that by paving the driveway he therefore eliminated his own required green space and Mr. Brown is not taking Mr. Ellis into consideration when his own driveway is less than 5 ft. from the boundary line. Emery stated these lots are tight and there is not much that can be done with them. Emery noted that he is okay with Jim Rines presentation and he personally looked up the case laws reference and those are accurate as presented.

Chairman Fischbein closed public input, again. The Board discussed the project amongst themselves.

Chairman Fischbein called for a roll call vote and read each Variance criteria noting a vote of Yes is a vote in favor and a No vote is to deny.

Vote by Criteria:

Vote by Criteria: Fischbein read each criteria.

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

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

- a) Emery voted yes because he agrees with Mr. Rines presentation.
- b) Barron voted yes because the presentation addressed each criteria and if the case was appealed it would be won in court.

2. The spirit of the ordinance is observed:

Karl – Yes (c) Emery – Yes (d) Barron – Yes (b) Fischbein – Yes

- c) Karl voted yes because it was the same spirit of the ordinance that gave the other 5 properties their variances.
- d) Emery voted yes because it does not threaten the public health, safety or welfare of it's resident's.

3. Substantial justice is done:

Karl – Yes Emery – Yes (e) Barron – Yes (e) Fischbein – Yes (b)

- e) Emery voted yes because the plans include a storm water mitigation system.

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

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

- f) Emery voted yes because he does not believe it will diminish the value of anyone property but will more than likely increase the value of the properties.

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 (g) Emery – Yes (h) Barron – Yes (i) Fischbein – Yes (j)

- g) Karl voted yes because the lot sizes
- h) Emery voted yes because of the area and the lots are the same
- i) Barron voted yes because these are non-conforming lots before zoning ordinances were enacted and it would be a hardship.
- j) Fischbein voted yes because of all the proposed improvements of septic, storm water mitigation system.

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

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

- k) Emery voted yes because it does not distinguish it from other properties in the area their all the same. All the properties have the same issues.

(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:

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

AND

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

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

l) Emery voted yes because the proposed use is zoned residential.

Fischbein stated based on the fact that the 5 criteria received 4 affirmative votes and moved that the Board grant the variance.

A **Motion** by Fischbein to accept the application as complete for **Case #23-10-V**: Todd Clifton Ellis & Colleen Mary Ellis for 79 Broad Bay Road. Tax Map: 031 Lot: 021 request for a Variance from Article: 6.4.2 (a) Side and Rear Setback Area and Article: 8.2 Green Space to waive the side yard setback to permit the construction of a 24 ft. x 30 ft. garage that will 14.6 ft. from the side boundary and relocating the existing nonconforming bunkhouse that is 14.5 ft. from the side boundary line to a location that is fully conforming. This will result in the setback area where the garage is placed to not be greenspace as specified in Section 8.2. With the subsequent condition that the corners are to be pinned and will be no less than 14.6 ft from the boundary and provided All Federal, State and Local Regulations and Permitting shall be followed. Barron seconded. No discussion. A unanimous vote was taken by a show of hands. **Motion passed.**

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.***

Douglas Brown asked if there is a way to require Mr. Ellis to install a 7 ft. fence. The Board stated that they have already voted and they cannot force someone to install a fence. Jim Rines stated he will let his client know of Mr. Brown’s request.

Jim Rines rejoined the Board to voting status.

- **LRPC**: Annual Report

Any Other Business Which May Come Before This Meeting:

Jim Rines announced this was his last meeting. He is retiring and will be spending the winter months in Florida. The Board tried to convince him to stay on, but Rines is undecided.

Next Meeting: January 9, 2024 @ 7:00 pm at the Freight House

Adjournment:

A **Motion** by Rines to adjourn the meeting. Barron seconded. No discussion. A unanimous vote was taken. **Motion passed.** The meeting adjourned at 8:09 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