

**TOWN OF OSSIPEE
ZONING BOARD MEETING MINUTES
July 14, 2015**

Minutes were recorded by Xann Horn, Boards and Commission Secretary.
Revisions to these minutes are noted by *bold/italic* type.

Call to Order

The meeting was called to order at 7:00 p.m.

Roll Call

Members present by roll call: David Babson, Jim Rines, Ski Kwiatkowski, Ralph Wurster, Stanley Brothers. Bill Grover and Bob Freeman were present as Alternates.

Meeting Minutes

Motion: by David, seconded by ~~Rines~~ *Jim*, to approve meeting minutes of June 9, 2015 with the following amendments (paragraphs have been restated and amendments are noted by strikethrough font and bold font).

Motion: by David, seconded by Jim, to grant a variance request to Article 6.4, Section 1.c, ~~to~~ **upon the condition that they** follow all state and local regulations and, at the very least, that it does not exceed the wider section of the decks that are currently there.

All five ~~circumstances~~ **criteria** supporting this request were reviewed individually and Board Members were in favor of the applicant (Jim, Ski, Ralph, David); Stanley abstained. Motion passed; variance was granted.

Motion: by David, seconded by Ski, to grant a variance to Article XXIII, Section 23.3.2 ~~and~~ **upon the condition** that the project meet all state and federal regulations, and that the old dwelling be removed within 45 days after the Valleys receive their certificate of occupancy.

All five ~~circumstances~~ **criteria** supporting this request were reviewed individually and all Board Members (Ski, Ralph, David, Stanley) were in favor of the applicant. Motion passed; variance was granted.

Jim Rines, White Mountain Survey & Engineering, was present to represent Four Long Pond Realty Trust and requested that this case be ~~postponed~~ **continued** until a full five member board is available.

All in favor, motion passed.

Old Business

Case #15-4-V – Variance Request, Four Long Pond Realty Trust, property located at 2400 Route 16, Tax Map 7, Lot 11. (Continued from May 12, 2015 and then June 9, 2015 meetings.)

Jim Rines stepped down as a Board member as he was present on behalf of White Mountain Survey & Engineering, Inc., Agent, for the applicant. Bill Grover was raised to voting status.

Jim reviewed the application. In a previous meeting, the Board asked for a layout showing above ground storage tanks. Jim provided each board member with a plan showing the tanks above ground. He has spoken with DES about other safeguards ~~if~~ **such as** placing the tanks in a vault underground (~~i.e. double or triple wall tank~~) **or triple wall tank**. David Silvia, NH DOT, sent an email stating that he feels that the access way would want to be across from Whittier Drive and his June 2nd email said he doesn't think they can work with this and he would move forward with an answer of "yes" to the Planning Board. **Recording.** A letter from abutter, Gerri Eldridge, stating she had no opposition to his project was presented to the Board. Photos of an above ground storage facility were presented ~~and~~ **along with** an unmarked copy of the plan. It is Jim's feeling that underground tanks ~~pose create~~ a better situation are more attractive. The meeting was opened up to the Board and public for questions. Ski stated he thinks it is a good use of the land. He would go with applicant for the underground triple walled **vault tank**. Graveyard access was questioned; Jim stated this would be addressed in SPR and they would be sure to provide this access. Discussion ensued on alarms and visual checks with the vault scenarios. Bob stated he would like to see the tanks underground.

Mark McConkey was present in the audience and stated the question is not whether it is a 2, 3 or 4 walled **tank or a** vault. It's the excavation that has to be done on a site that is already extremely contaminated. It is possible that you could break loose a plume that could float in any direction. He stated that he asked for the above ground tank because it will limit the amount of excavation on the site and in turn limits the risk of plumes breaking loose in the area. He would feel much better if test borings were done. There is an active plume on the pizza place lot. If they would go above ground with bunkers and **a building with** a slab at grade, it would involve a lot less excavation. The aesthetics of whether it looks nice or not shouldn't be what is under consideration. Stanley asked where the original tanks were located that have since been removed. Jim explained that they were not removed from the same area where new **underground** tanks are proposed to go. He stated that the seasonal high water table is dramatically different at this location than at M&V. The **higher lower** water table would make it less likely to produce a plume. Dale McConkey was present in the audience and asked if test pits have been done where tanks have been proposed to be placed. Jim stated no but they will have to be done as part of site plan review.

Motion: by David, seconded by Ski, to grant a Variance for Article 20.2.1, f and 20.2. 2a as noted on the approved sketch and upon condition that it will meet all state and local regulations.

Each of the five criteria for requesting a variance was reviewed individually:

1. Ski, **David**, Bill and Stanley were for the application; Ralph was against the applicant.
2. Ski, **David**, Bill and Stanley were for the application; Ralph was against the applicant.
3. Ski, **David**, Bill and Stanley were for the application; Ralph was against the applicant.
4. Ski, **David**, Bill and Stanley were for the application; Ralph was against the applicant.
5. Ski, **David**, Bill and Stanley were for the application; Ralph was against the applicant.

All five criteria supporting this request were reviewed separately. Ski, David, Bill, and Stanley were in favor of the applicant, Ralph was not in favor of the applicant. **Motion passed; variance was granted.**

New Business

Bill Grover was removed from voting status; Jim Rines re-joined the Board.

Case #15-7-V – Variance Request – Tammy L. White, property located at 69 Ossipee Mountain Road, Tax Map 217, Lot 13 for a Variance from Article XXXIV, Section 2.c., to operate an auto/truck repair and state inspection garage.

Jim stated he went up and took a look at the area *before the meeting*. Based on his site visit, he thinks the aerial photograph is older as it doesn't show all of the activity on the lot. Tammy White was present and reviewed the application. Stanley asked if Huckins Towing is storing vehicles there presently. Tammy stated only until the customer comes and gets them. Discussion ensued regarding repairing and storing vehicles, other repair garages in the area, the steep incline, etc. Jim stated if the Board approves this variance, he feels they would then need to apply for site plan review. After he viewed the site, it was clear to him that there are a lot of eskers and topographic relief and they are attempting to grade it out. This should be addressed if not in the variance perhaps at site plan review due to the potential increase of traffic in the neighborhood, parking, how many employees they will have, stormwater runoff, etc. The Board members were in agreement. Tammy ~~stated the~~ stated that once a variance is *awarded granted*, the state will come do their inspection and that White's Garage did not go through the site plan review process.

Motion: by Jim, seconded by Ski, to grant a variance to Article 34, 2.c. upon condition that they apply for and secure site plan approval from the Planning Board and upon condition that any other state, local, and federal approvals are obtained.

There were no public comments.

Each of the five criteria for requesting a variance was reviewed individually.

1. Jim, Ski, and Ralph, and David were for the applicant; Stanley abstained *ed*.
2. Jim, Ski, and Ralph, and David were for the applicant; Stanley abstained *ed*.
3. Jim, Ski, and Ralph, and David were for the applicant; Stanley abstained *ed*.
4. Jim, Ski, and Ralph, and David were for the applicant; Stanley abstained *ed*.
5. Ski, David, and Stanley were in favor of the application; Jim stated that he is not sure that he can see that this *lot* is any different from any of the other properties and doesn't see any special circumstances so he is not in favor of the applicant, Jim and Ralph were not in favor of the applicant.

All five circumstances supporting this request were reviewed individually and Ski, David and Stanley were in favor of the applicant; Jim and Ralph were not in favor of the applicant. **Motion passed; variance was granted.**

Jim Rines stepped down a Board member; Bob Freeman was brought up to voting status.

Case #15-8-V – Variance Request, Steve Pacsay, property located at 25 Pork Hill Road, Tax Map 139, Lot 14 for a Variance from Article XXXIV, Table 1-34.2.c, and 34.2.p to convert the existing residential and commercial use to house an excavation business.

Stanley stated that a phone call was received suggesting that it might be a conflict of interest to have Xann, Board Secretary, take the minutes whereas she also works for White Mountain Survey & Engineering, Inc., of which Board Member, Jim Rines, is representing the applicant (but has stepped down). Stanley contacted the town attorney and there is no conflict of interest.

Jim Rines, White Mountain Survey & Engineering, Inc., Agent for Steve Pacsay and James Cameron, **Trustee of JFC Trust**, reviewed the request for a variance. Both are present. He outlined the historic use of the property and that it was originally developed prior to the adoption of zoning. Steve Pacsay owns Integrity Earthworks and wants to acquire the property to house and operate his excavation business (one full-time employee, two part-time employees and a bookkeeper) and rent the space above the building. Jim stated he is aware of abutters' concerns and of a packet sent to abutters and residents with misinformation. Employees would show up in passenger vehicles and leave from the site. There will be less traffic than current or historical. There will be no external vehicle storage except a possible trailer. This would be the only hauling to the site. If variance is approved, applicant will have to go through SPR. In the last four years that Mr. Cameron has been attempting to sell this property, it has had one purchase and sale and could not get financing because it is not residential in nature as far as any banks are concerned. The current owner tried to get a reverse mortgage and the bank said it does not fall into the correct financial criteria. The town assess the property at \$344,000 on it is listed on the market for \$160,000 which is an example of the fact that this has an inherent hardship in the configuration of it. The use is quite benign. Jim reviewed and spoke to several of the abutter concerns.

James Cameron, current property owner, stated with regards to traffic, he had up to 70 students and 30 people there when it was a fitness center at one time. Traffic of 100 people would be coming and going. Ralph asked for clarification, when the property housed Pak 2000, they did not need a variance because zoning came in after it had been established but when Mr. Cameron bought the property a variance applied for and granted? Jim Rines stated yes, in 1996 to be a commercial building in a residential use area. There were no further questions by the Board.

The meeting was opened up to public comments.

Stanley asked that the public state their name and if they are a direct abutter or not.

Kurt DeVlyder, Esquire of Kurt D. DeVlyder, PLLC was present to represent Stuart Feldman of 345 Water Village Road, a direct abutter. Feldman is in staunch opposition to this request and submitted a letter to the Board as well as a designated agent form. Twenty-seven signatures were obtained from concerned citizens and property owners who are in opposition to the request. Kurt reviewed and presented Mr. Stuart's concerns.

Point of Order: by David that Attorney DeVlyder address the Board not the members of the audience.

Discussion continued on road postings, time of activity, noise, road conditions, etc.

- Carter Cincotta, Jr. direct abutter is concerned as this would reduce the buffer between the applicant's property and his property.
- Mike Libby, 14 Pork Hill Road stated that Pak 2000 had an occasional truck coming and/or going. This would have more traffic and would be concerned for his grandbaby and family.
- Tom Bryant, direct abutter, owns a couple of lots, one directly across the street. He is concerned about the materials being stored there. Also, there are drainage ditches on both sides of the road that are potentially very fragile for heavy equipment.
- Frank Riley, of Water Village, about 600' from this piece stated that granting this variance violates the spirit of this ordinance. He thinks there has been a strong showing from the Village. He

believes it will diminish the value of the abutter properties. He appreciates the Board's efforts but they should consider the turnout to show there is some opposition. Both DeVlyder and Rines have some good points but the residents should be heard.

- Ken Leavitt, not an abutter but a resident of Water Village since 1994 spoke to the initial Master Plan and that the intent was that most of the acreage of Ossipee would continue to be residential and rural and best suited for forestry sand and gravel.
- Stanley read letters received from Cecily Clark, Nancy & Edward Auletta, and Richard Oedel in opposition to the variance request.
- Katie Doyle Smith spoke in support of denying the variance request.

Jim Rines stated he respects and appreciates the showing of public and agrees with Frank Riley that the Board is in a tough position. There are seven statutory abutters as defined by state statute. Twenty-seven people have petitioned against this request. Twenty signatures have no standing. The fact that two ~~appraisers~~ *sale/mortgage attempts* have been denied it because it is not a residential building and yet the town chose to zone it as residential after the building is erected is a hardship.

Bob Freeman, Alternate Board Member stepped out at 9:30 due to a fire call. Bill Grover was brought up to voting status.

- Jim Cameron, owner, reviewed his efforts to try to sell this property. His realtor, Denise Williams of Maxfield Real Estate, confirmed the difficulties with trying to sell this property.
- Carter Cincotta, Sr. spoke in opposition.

Discussion ensued.

Stanley closed the public session at 9:45 p.m.

Bill Grover stated that based on the denial by Mr. Senecal, the applicant was Steve Pacsay and referring to the Ossipee Zoning Ordinance it must be the property owner, James Cameron, *Trustee of JFC Trust*, who applies for a variance and given that, the ~~Administrative Rules Zoning Ordinance~~ states that the Board should not go forward with this application. Jim Rines stated that he has represented many cases in this way and that there is a signed Purchase and Sales agreement that addresses this. Denise Williams confirmed.

Motion: by Bill, seconded by Ski, to continue this hearing to August 11, 2015 for undertaking the advice of town attorney in the matter of who should be making the application. **By roll call vote (Ski-yes, Ralph-yes, David-yes, Stanley-yes, Bill-yes). All in favor, motion passed.**

The Zoning Board will meet on August 11th at 5:30 to walk the site.
Bill Grover left the meeting. Jim Rines resumed his place on the Board.

Any Other business Which May Come Before This Meeting

1. Approval of Expenses

Motion: by Jim, seconded by Ski, to approve payment to Sager & Haskell, PLLC for \$26.25.
All in favor, motion passed.

2. *Board of Adjustment in New Hampshire A Handbook for Local Officials* (\$10.55 to order, or print it off the internet, or copy available from Boards Secretary).

Motion: by Jim, seconded by Ski, to order two. **All in favor, motion passed.**

Adjournment

Motion: by Jim, seconded by Ski, to adjourn. **All in favor, motion passed.**
The meeting adjourned at 10:10 p.m.

Minutes approved by majority vote of the Board on _____

Stanley Brothers, Chairman