

*Zoning Board of Adjustment  
Town of Orange, New Hampshire  
PO Box 37  
Canaan NH 03741*

*Minutes of November 28, 2023*

*Present:* Rob Kuhn, Chair; Anita Garland, Sally Jaeger, Jana Mackay (alternate), Aaron Allen, Select Board ex-officio; Catherine Souza (clerical)

*Absent:* Alex Smith, Laurie Sanborn (alternate), Judith Connelly (alternate)

*Abutters:* Cody & Rebecca Dugan, Kris Schmid

*Applicant:* Doug Longval

*Others:* Dave & Kathy Stacy, Vanessa Stone

The chair opened the meeting at 7pm. Attendance was taken by the acting secretary.

In the absence of member Alex Smith, Jana Mackay stepped into the Board as a voting member.

*Minutes:*

Rob discussed the best practice and legal nature of the approval of minutes. RSA 91 Right to Know, states that the law does not require an approval of meeting minutes. The law does require that draft minutes are to be made available to the public not more than 5 business days after the meeting. The recommended best practice is a motion to approve minutes of a previous meeting at the next meeting of the Board. The time between meetings is not a factor. The ZBA has not been in violation of the law since the meeting minutes have been available in the Select Board office and on the Town website.

Aaron Allen motioned to approve the minutes of the public meeting of June 1, 2023, second by Anita Garland. Motion passed unanimously.

Aaron Allen motioned to approve the minutes of the public meeting of July 16, 2022 second by Rob Kuhn. Motion passed unanimously.

Aaron Allen motioned to approve the minutes of the public meeting of July 9, 2022, second by Rob Kuhn. Motion passed unanimously.

*Unfinished Business (if any):* None

*New Business:*

Rob discussed that for the Town of Orange, the ZBA acts as the Building Code Board of Appeals.

The excerpt from the ZBA handbook pertains the ZBA acting as the Building Code Board of Adjustment (BCBA) when a town does not have a separate BCBA. It is important to note that we

are not meeting to decide upon a land use variance since the subject application is not a Zoning ordinance compliance issue. As stated in the NH ZBA handbook, there is little guidance or standards provided in the statute (RSA 673:3) about how a BCBA application is considered. Since this is not a land use (Zoning Ordinance) matter, the five criteria typically used to determine a Zoning ordinance variance do not appear to apply in BCBA applications. The ZBA acting on BCBA matters has greater latitude in its determination to vary how the building code is applied for a particular case. My interpretation of the NH ZBA handbook is that Items 8a thru 8e on the Orange ZBA application do not have to be satisfied by the applicant as they would for a Zoning variance. The only thing the ZBA cannot do when acting as the BCBA is violate or vary from the NH State Building Codes.

Orange does not have a separate BCBA application, so the ZBA application was used even though there are items in the ZBA application that are not required for BCBA consideration under the statute.

#### Longval ZBA (BCBA) Application:

Doug Longval has submitted an application to the ZBA for a variance to the Town of Orange Building Ordinance minimum size requirement of 750 sq. ft. for a dwelling (Orange Building Ordinance Section XXIID a- Residential occupancy). The appeal is to address the square footage

Catherine reported that all certified abutter notices were sent.

#### Comments from abutters:

- Cody Dugan – No concern with the square footage requested.
- Kris Schimd – Smaller is better! No concerns over the size of the cabin.

#### Public comments:

- Is there a requirement for the applicant to show a degree of hardship? The ZBA is acting as BCBA so hardship is not a factor.
- Question on the Orange Building Codes vs the NH State codes? In 2022 the State adopted the International Residential Building Codes of 2018 Appendix Q which permits smaller residential homes. The application does not violate the current State Requirements.
- Why did the application come to the ZBA from the Select Board? Select Board upheld the current town Building Codes and sent the application to the ZBA for a decision.
- Vanessa Stone stated that in her business as a realtor she is seeing smaller building construction becoming more popular. Towns in the surrounding area are adopting ordinances that favor smaller residential units.

#### Board comments:

- Jana Mackay stated her objection to the application and read to the group as follows: RSA 674:34 An application for appeal shall be based on a claim that the true intent of the code or the rules adopted thereunder have been incorrectly interpreted, the provisions of the code do not fully apply, or an equally good or better form of construction is proposed.

The board shall have no authority to waive requirements of the state building code or the state fire code.

- Rob Kuhn answered that in 2022 the State adopted the International Residential Building Codes of 2018 Appendix Q which permits smaller residential homes. The application does not violate the current State Requirements.

The Board reviewed the application and request. After discussion and with the ZBA acting as the BCBA, Aaron Allen motioned to approve the variance application, Rob Kuhn seconded. Motion passed 4/1/0. Jana Mackay stated her objection to the application is due to her understanding of RSA 674:34 Powers of the Building Code Board of Appeals as noted in her comments.

Doug Longval submitted the abutter and application fees.

Catherine will notify the Planning Board, Building Inspector and Select Board of the ZBA's decision.

*Announcements (if any):*

Rob Kuhn announced his resignation as of December 31, 2023. Alex Smith as Vice Chair will assume the Chair role.

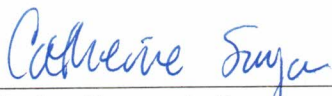
*Public comments:*

- Kathy Stacy stated her concern over tiny homes and safety related to the Building Ordinances.
- Kathy asked if there was an answer on her questions at a previous meeting concerning the ZBA and terms. Catherine will send the answer received from the Legal team at the NH Municipal Association to Kathy and the ZBA.

Rob Kuhn motioned to adjourn the meeting at 7:40pm, Anita Garland seconded. Motion passed unanimously in favor.

Meeting adjourned 7:40pm

Respectfully submitted,



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Catherine Souza, Acting Secretary ZBA