

ZBA Narrative for Town Annual Report

On behalf of the members and alternates of the Town of Stoddard Zoning Board of Adjustment, I am pleased to submit this report on the activities of this Board for this past 2021 calendar year.

First, a brief background on the role and authority that the Zoning Board of Adjustment (ZBA) provides to the property owners of the Town. The Stoddard ZBA parallels the role of all NH municipal ZBAs – to act as a quasi-judicial body to balance the rights of the individual property owner with the interests of all the citizenry as embodied in the regulations of the Town Community Planning Ordinance (CPO). In short, the role of the ZBA is to interpret the CPO for the protection of the citizens of the Town.

The ZBA derives its powers from state law, specifically RSA 674:33 and 674:33-a, which together provide that a town ZBA has the authority to hear and decide appeals of individual property owners to specific regulations in the CPO. These appeals fall into four separate and distinct categories: (1) Appeal from Administrative Decision; (2) Approval of Special Exception; (3) Grant of Variance; and (4) Grant of Equitable Waivers of Dimensional Requirement.

A brief description of each of these appeals is below at the end of this report*. Forms for each of these appeals for submittal to the Stoddard ZBA are available on the Town website: [Boards and Committees >> Zoning Board of Adjustment >> Documents](#).

Per State Statute, a ZBA is comprised of five full members, plus alternate members; the latter have the right to vote when sitting for member absences. At least three voting members (full members plus seated alternates) comprise a quorum to conduct the business of the ZBA. Currently, the Stoddard ZBA has five full members, and one alternate member.

- The full members are:
 - o Herb Healy, Chairperson (current term expires 2024);
 - o Franz Haase, Vice-Chairperson (2023);
 - o Jason Kovarik (2023);
 - o Doug Summerton (2023); and
 - o Bud Record (2022).
- Milosh Bukovcan is our alternate member (2022).

Kathleen Ellis serves as the ZBA Secretary, and all the members appreciate and thank her for her diligent and timely work.

There are additional openings for alternates, as it is preferable to have a full complement of five voting members to decide a hearing and conduct other business. Please contact one of the members if interested in becoming an alternate.

The Stoddard ZBA meets regularly on the 3rd Thursday of each month at 7:30 PM at the Town Hall. Special meetings may be called for site visits or other pending business with time constraints. All meetings of the ZBA are public meetings wherein the business of the ZBA is conducted. All appeals that are heard by the ZBA are publicly noticed in advance per State and Town protocols, and include a public hearing seeking input from the applicant, abutters, and other interested parties. A minimum of three members must concur for any decision of the Board. Unless specifically excluded by State Statute, all business of the ZBA is subject to open access via the State Freedom of Information provisions.

During this past calendar year (2021), the ZBA held regular monthly meetings except for the month of December due to lack of business to be addressed, and in addition we held two site visit meetings. The Board heard three appeals consisting of two variance requests, and one appeal of an administrative decision. The variances were for area (setback) regulations, which are the most common type of requested variances. By comparison, the 2020 calendar year included four submitted variance appeals and a special exception appeal (subsequently determined by the Board to be outside the jurisdiction of the ZBA).

The procedures by which the ZBA conducts its business is formally documented in the ZBA Procedures, which are posted on the Town website. During 2021, the ZBA reviewed and revised its Procedures (this was the 6th set of revisions since the Procedures were established). The changes substantively addressed the protocols for deliberations by members following the public hearings of variance appeals, specifically regarding the variance criteria established by State Statute to formally ensure that each of the criteria is verbally discussed by the members and part of the public record prior to voting. In addition, the Procedures were updated to reflect gender-neutral membership of the Board, and to reflect other non-substantive edits.

During the past two calendar years, the ZBA was challenged similarly to other Boards and Committees of the Town by the COVID virus, requiring the Board to meet via online rather than face-to-face for some portion of both years. As of the June 2021 meeting, the ZBA again began in-person meetings. Going forward it is anticipated that we will continue to meet in-person, but the ZBA will offer online access if requested by interested parties for specific meetings and agenda items such as hearings.

The members of the ZBA acknowledge, appreciate, and continue to avail ourselves of the training opportunities offered, especially the training provided by the NH Municipal Association. This training provides the members and alternates of the ZBA with valuable experience and expertise on a range of

State Statutes and municipal case law from which we glean insight that is helpful to our roles and responsibilities.

Lastly, although we operate as an independent board we acknowledge and appreciate the support of the Town Administration, the Town Compliance Officer, the Board of Selectmen, the Planning Board, and other Town bodies that together seek to execute the intent of the provisions of the CPO for the benefit and protection of the landowners and citizens of Stoddard.

Respectfully,

Herb Healy, Chairperson, Town of Stoddard Zoning Board of Adjustment

* The following is a brief description of the four types of appeals, excerpted and revised from previous Town of Stoddard Annual Reports. Thank you to those previous authors. (Note: These descriptions have been parsed from several sources and rephrased. THE ACTUAL TOWN CPO IS

WHAT WILL BE USED IN ANY APPEAL.)

APPEAL FROM AN ADMINISTRATIVE DECISION- If an applicant has been denied a building permit or is affected by some other decision regarding the administration of the CPO, and believes the decision was made in error under the provisions of the ordinance, the applicant may appeal the decision to the ZBA. The appeal will be granted if it is shown that the decision was made in error.

SPECIAL EXCEPTION- Certain sections of the CPO provide that a particular use of property in a particular zone, will be permitted by special exception if specified conditions are met. The necessary conditions for each special exception are given in the ordinance. The appeal for a special exception will be granted if the applicant can show that the conditions stated in the ordinance are met.

VARIANCES- Under special circumstances, an applicant may apply to be granted relief from application of the strict terms of the Community Planning Ordinance (CPO). To grant this relief, it must be established that all five of the following conditions are met:

1. Granting the variance would not be contrary to the public interest;
 2. The proposed use is not contrary to the spirit of the ordinance;
 3. Granting the variance would do substantial justice;
 4. The proposed use would not diminish surrounding property values; and
3. Denial of the variance would result in unnecessary hardship to the owner.

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS-If an applicant discovers an existing dimensional nonconformity after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser AND the nonconformity was caused by a good faith error in measurement or calculation, the applicant may appeal to the ZBA. If it is determined the nonconformity does not constitute a public or private nuisance nor diminish the value or interfere with future uses of other property in the area AND the cost of correction would far outweigh any public benefit to be gained, the ZBA may grant the waiver.