

**Town of Sandown  
Zoning Board of Adjustment  
Minutes 07/29/10**

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**Meeting Date:** July 29, 2010

**Type of Meeting:** Regularly Scheduled

**Method of Notification:** Public Posting ~ Sandown Town Hall & Sandown Post Office; Website and the Carriage Towne News.

**Meeting Location:** Sandown Town Hall

**Members present:** Chairman Steven Meisner, Vice Chairman Doug Martin, Ken Sherwood, Curt Sweet, Alternate B.J. Richardson and Steve Brown, Selectman Liaison

**Also present:** Administrative Aide Bette Patterson

**Chairman Meisner opened the meeting at 7:00 p.m.**

**Case #072910-01**

An application from Rebecca Janco for a variance from Article II, Section D-3 of the Sandown Zoning Ordinance to permit Open space Development on the property. Minimum tract requirements are 200 feet of frontage and 15 acres of contiguous area. This property has zero frontage and consists of 14.84 acres. The property is shown on Map 20, Lot 3 on the Sandown Tax Map and is located at 218 Fremont Road. The property is owned by Rebecca LaValee.

Chairman Meisner read a letter from Daniel S. Jendrick, agent for the property owner, giving permission for Thomas Murphy to represent Rebecca Janco on the matter of her application.

Gary and Rebecca Jenco and Thomas Murphy presented their plan to the board.

- Property is 14.84 acres with no frontage on a town road
- Right of Way easement will remain as shown.
- One single family dwelling unit with a barn and garage is located on lot #3. When this lot was created in 1976, it was allowed without frontage.
- Plan proposes an Open Space Development

Mrs. Jenco explained that the property was originally owned by her grandmother. It was passed down to her father and then to her. She stated her intent is to give the new lots to her two daughters. The existing house would remain as it is.

Mr. Murphy stated that none of the engineering has been done on the plan. The purpose was to present the plan to the ZBA and then, if a variance is granted, a complete submission would be made to the Planning Board as required.

50 Ken Sherwood stated that down the road someone could develop the fifty foot easement  
51 into a road to gain access to the other lot.

52

53 Steve Meisner stated that the application is requesting a variance to allow an Open  
54 space Development. The OSD requires that one third of the property remains natural  
55 and that a fifty foot buffer is in place. The applicant is requesting a waiver from two  
56 conditions of the ODS- frontage and total size of the lot. The lot size required is 15  
57 acres and this property is a total of 14.47 acres. Mr. Meisner explained that a yield plan  
58 will also be required at the planning board level.

59

60 Mr. Murphy stated that this proposal can meet the goals of the OSD.

61

62 Mr. Sherwood asked the applicant if they would it's acceptable to them that there be a  
63 condition of a maximum number of lots if a variance was granted.

64

65 Mr. Murphy replied that would not be a problem but they would request that the  
66 maximum be four lots total.

67

68 Doug Martin asked if they are planning on installing a town approved road.

69

70 Mr. Jenko replied no, the driveway would be shared.

71

72 Abutter comments:

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74 Has Nicolassen – This is a great idea because it gives their kids a piece of land and it  
75 keeps the land in the family.

76

77 Amy Newton - There is the deeded right of way and she has no problem with this.

78

79 Marguerite Timledge – She has been at this residence since 1960. She was concerned  
80 that some things start with family and then turn into other issues. She stated she is also  
81 concerned about wildlife.

82

83 Chairman Meisner explained that the impact on the wildlife should be minimal because  
84 this is an OSD proposal. The OSD requires one third of the land to remain in a natural  
85 state.

86

87 Angelo Barbieri – He stated his concern about the traffic impact on the right of way and  
88 on Old Fremont Road.

89

90 Chairman Meisner closed the public hearing portion of the meeting and announced that  
91 the board would go into deliberative session.

92

93 Ken Sherwood stated that this was an interesting way to look at this property though the  
94 OSD. After hearing from the applicant, the request sounds reasonable. The cluster  
95 approach gives more protection for the land and it also provides the abutters more  
96 protection.

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99 Steven Meisner agreed with Mr. Sherwood adding that the applicant would probably

100 have gone another avenue that would have cost less, but they are willing to do the OSD  
101 to protect the land.

102  
103 MOTION: Ken Sherwood made a motion to grant a variance from Article II, Section D-3  
104 of the Sandown Zoning Ordinance to permit Open space Development on the property  
105 shown on Map 20, Lot 3 on the Sandown Tax Map and is located at 218 Fremont Road.  
106 The property is owned by Rebecca LaValee. Minimum tract requirements are 200 feet  
107 of frontage and 15 acres of contiguous area. This property has zero frontage and  
108 consists of 14.84 acres.

109  
110 The following conditions shall apply:

- 111
- 112 • A maximum of four (4) lots is allowed for single family dwelling units and  
113 accessory uses only.
- 114

115 B.J. Richardson seconded. DISCUSSION ON THE MOTION: Board members  
116 discussed whether to add the condition or not. Chairman Meisner explained that any  
117 condition put on a variance has to be in relation to what the applicant is applying for.  
118 VOTE ON THE MOTION: Steven Meisner – NO Ken Sherwood, Curt Sweet, BJ  
119 Richardson and Doug Martin – YES MOTION PASSED. VARIANCE GRANTED WITH  
120 CONDITION.

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122 *Chairman Meisner announced that the board would take a five minutes break at 8:15*  
123 *p.m.*

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126 Chairman Meisner opened the following public hearing at 8:25 p.m.

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129 **CASE #072910-02**  
130 An application from DHB Homes LLC for a Special Exception as specified in the  
131 Sandown Zoning Ordinance Article V, Part D, Section 5. The applicant is requesting  
132 permission to construct a three bedroom home with a one bedroom accessory  
133 apartment. The property is shown on Map 11, Lot 10-2-7 on the Sandown Tax Map and  
134 is located at 42 Meadow Brook Crossing. The property is owned by DHB Homes LLC.

135  
136 Robert Meissner of DHB Homes presented the application for a three bedroom home  
137 with a one bedroom accessory apartment.

138  
139 Chairman Meisner offered copies of this article and read the following section from the  
140 Zoning Ordinance ARTICLE V SPECIAL EXCEPTIONS. Chairman Meisner also  
141 explained that a special exception is a zoning regulation that is allowed so long as the  
142 applicant meets the criteria of the zoning ordinance. If they do not meet the criteria, the  
143 board would vote no, if it does meet the criteria of the special exception in the zoning  
144 ordinance the board is required to vote in favor of it.

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149 Section 5      Accessory Apartment Ordinance

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A. Authority

This section is enacted in accordance with the provisions of RSA 674:21, using the dwelling unit definition as defined in Article II, Section 15 (a) of this Ordinance.

B. Purpose

The purpose of the accessory apartment provisions is to increase housing alternatives while maintaining public health, safety and neighborhood aesthetics.

C. Objectives

The objectives of this section are to:

1. Provide housing units in single family neighborhoods that are appropriate for different housing demands.
1. Add more affordable rental units to the housing stock to meet the needs of small households, both young and old.
1. Protect stability, property values, and the single family residential character of neighborhoods by ensuring that accessory apartments are installed only in existing owner-occupied houses and under such additional conditions as to protect the health, safety, and welfare of the public.

D. Definitions

Accessory Apartment: One apartment with cooking, living, sleeping, and sanitary facilities provided it is located within a single family dwelling or in an accessory structure, and is clearly subordinate part thereof, and has safe and proper means of entrance and exit, and meets the requirements set forth herein. The apartment can only have one bedroom. (Amended March 12, 2002)

*Chairman Meisner read the following requirements for a Special Exception and the answers submitted by the applicant are provided below in italics.*

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E. Special Exception

A special exception allowing the installation of one (1) accessory apartment within a single family dwelling or its accessory structure shall be issued by the Zoning Board of Adjustment provided that all of the following conditions have been met:

- 1. The appearance of the building remains essentially that of a single family dwelling.

*Yes the appearance will remain as a single family dwelling unit.*

- 1. It shall be contrary to this ordinance to provide accessory apartment uses in duplexes or multi-family dwellings.

*Single family dwelling only.*

- 1. The size of the accessory apartment shall not exceed the footprint of the existing single family dwelling or accessory structure.

*Size does not exceed.*

- 1. One of the dwelling units must be owner occupied.

*Owner occupied.*

- 1. Off-street paved or gravel parking shall be provided for at least four (4) vehicles. Garage parking is encouraged.

*Off street parking for four vehicles is provided. There is also a two car garage.*

- 1. The structure and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the existing one family dwelling. The applicant shall record with the Registry of Deeds a notice of the Special Exceptions, including conditions of approval, in a form acceptable to the Board.

*There will be no conversion to a condominium.*

- 7. Prior to granting a Special Exception by the ZBA, the owner shall provide, as part of the ZBA case file, the following:

- a. The septic system shall meet the NH Water Supply and Pollution Control Division requirements for the combined use.

- b. A floor plan of one-quarter inch (1/4") to the foot scale showing the proposed changes to the building or accessory structure addition.

- c. A certified plot plan of the lot, with existing and proposed structures, parking, location of septic system and well.

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*All of the above items were submitted by the applicant.*

- 7. Separate controls for heating, cooling and electrical service shall be accessible in each unit. (Amended March 14, 2006)

*Separate heating and cooling as well as electrical service will be provided.*

- 7. In accordance with Article II, Part A, Section 2, no construction shall begin without first obtaining a building permit from the Building Inspector. As part of the application for a building permit to construct an accessory apartment, the owner shall provide the Building Inspector with a copy of his/her Special Exception granted under Section V. herein. There shall be no construction of the accessory apartment until the Building Inspector has issued the proper building permit.

- 7. Once any renovations or construction is complete, or the owner is ready to have a unit occupied, a request must be made to the Building Inspector for an Occupancy Permit. There will be no occupancy of the accessory apartment until the Building Inspector has issued a Certificate of Occupancy.

- 7. A purchaser of a home that had a Special Exception granted for an accessory apartment who wants to continue renting the accessory apartment must comply with all conditions of the permit previously granted, as well as comply with any current building or life safety codes. Any change to the prior conditions will require a new permit.

*The applicant agreed to and understood items 9 through 10.*

Abutter comments:

Shawn Freligh – He stated he is against this proposal. Mr. Freligh presented the board with a copy of covenants that each of the residents of this development had to sign when they did the closing on their homes.

Sal Musto – He stated he strongly opposed this proposal. He has only lived here four years and the reason for moving to this development was that it was single family homes. By looking at the plans it appears that it does change the character of the neighborhood because there are multiple doors in the front of the home.

Shawn Freligh – He agreed with Mr. Musto’s comments. He asked if the board has legal authority to override the covenants.

Chairman Meisner stated that the board is here to address the Special Exception request only.

Robert Meissner of DHB Homes (the applicant) stated that there is no legal recording of covenants. Prior to purchasing the property, DHB Homes did due diligence by thoroughly researching the property and no covenants were ever recorded.

289

290 Sal Musto – He stated he thought the covenants went with the Planning Board when you  
291 get a building permit.

292

293 Ken Sherwood stated that covenants are a private matter and civil matter. This proposal  
294 is an accessory use to a single family dwelling.

295

296 Judith Crane – She stated she also agrees that the residents oppose this application.

297

298 Richard Cook – The zoning ordinance defines a single family as one dwelling unit and  
299 clearly there are two families living in one building and it's not one unit. We all  
300 purchased our homes with the understanding we were buying in a particular kind of  
301 neighborhood and now we find out we did not and we need to find out what happened.  
302 We feel as everyone in the neighborhood does, that this could be a detriment to property  
303 values and it could change the neighborhood substantially. We are also concerned that  
304 there are two additional lots which are next to this one and we are worried what will  
305 happen to them.

306

307 Ken Sherwood stated the purpose is to allow accessory apartments which are limited to  
308 one bedroom. It is meant to be a minimal impact to any resident. The board  
309 understands that it's important to protect the street so kids can play and be safe.

310

311 Richard Cook - One of the questions asked is does it look like a single family home and  
312 looking at the plans there is a front door here and a front door there and it looks like one  
313 house with another house so it looks like a duplex. We understand that technically it's  
314 not but visually it does not appear to be a house with one dwelling.

315

316 Shawn Freligh – He stated that this whole development was approved under the Open  
317 Space Development Ordinance. If homes have apartments built into them that's a  
318 completely different neighborhood and that is clearly a zoning issue.

319 Ken Sherwood agreed that it was approved under the Open Space Development  
320 Ordinance, however under the OSD an accessory apartment "shall be allowed" as per  
321 the zoning ordinance. Relative to the covenants, the town does not enforce civil matters.

322

323 Chairman Meisner stated when it was developed the property was under the preview of  
324 the planning board. He explained the ZBA is only addressing what the applicant is  
325 requesting. He agreed with Mr. Sherwood that when it comes to the covenants this is a  
326 civil matter. We have to work with whatever is submitted to us.

327

328 Kim Cook – She stated she agreed with the abutter's comments. She wanted to know  
329 how to get the information so that the covenants can be recorded.

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331 Chairman Meisner asked the Building Inspector if when a building permit is issued if they  
332 have to meet the terms of a protective covenant.

333

334 Mr. Sherwood replied that the covenants would have had to have been recorded and  
335 noted on the plan.

336

337 Doug Martin stated that the covenants have to be recorded and should have been on the  
338 Mylar. An accessory apartment is still a single family use. He added that in looking at

339 the plan, he does not like the two front doors.

340

341 Robert Meissner of DHB Homes stated that he would move one of the doors to the rear  
342 of the building.

343

344 Kim Cook – She asked if a business could be on this property.

345

346 Chairman Meisner stated that this property is not in a business district, it's zoned  
347 residential.

348

349 Ken Sherwood stated that an in-home business would be permitted. He explained that  
350 the ordinance is very restrictive on in-home business.

351

352 Danielle Bedard – She stated that she is against this and her concern is that it will lower  
353 the property values.

354

355 Michelle Fowler- She stated that they purchased property in this development and this  
356 situation would make her reconsider building there.

357

358 Sam Musto – He stated that they would appeal this if they need to.

359

360 Richard Cook – Our primary concern in lieu of the covenants is that this completely  
361 changes the neighborhood and would lower property values which is not allowed.

362

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364

365 B.J. Richardson stated that he understands the concerns of the abutters are home  
366 values, aesthetics, what the apartment is used for and covenants. He stated he is trying  
367 to get what the primary objection is. For the atheist everyone is saying the two doors  
368 make it a duplex but if the door isn't visible from the street it may not be offensive.  
369 Traffic concerns - most of these homes have three or four bedrooms and we could say  
370 that anyone of you hypothetically have one child and you have an empty bedroom.  
371 Trying to figure out what is the difference if something happened and you had to have  
372 one of your parents live with you. An additional person is living with you that is maybe  
373 going to bring another care hence additional traffic. I am trying to find out what is your  
374 primary objection that you all share, not these individual things, what is driving you to  
375 say no to this building permit? The Open Space Development in the zoning ordinance  
376 allows the uses that are being applied for. He did agree that he did not like the two  
377 doors on the front, however, it's not uncommon for a home to have two front doors.

378

379 Shawn Freligh - At the end of the day we all bought into a lifestyle of living in a single  
380 family home. Whatever the legal definition of a single family is, an accessory apartment  
381 makes two. We moved into Sandown, pay our taxes and this is the lifestyle we bought  
382 into and this will change that. At the moment an accessory apartment might be a  
383 mother-in-law or father-in-law but in two years it might be something completely  
384 different. It could be someone else who is living there that not a family member. We  
385 bought into residential homes in a residential community which is Sandown.

386

387 Robert Meisner - The abutters bought into a single family neighborhood, however,  
388 accessory us apartments are allowed town wide. It's not just this neighborhood. If they



389 have a problem with what I am doing they should take it up a zoning issue. It's a zoning  
390 issue not just what is happening in this subdivision because this an allowed use. You  
391 cannot spot zone. I bought these lots and I am not doing anything that is not allowed.

392

393 Chairman Meisner closed the public hearing portion of the meeting and announced that  
394 the board would go into deliberative session.

395

396 B.J. Richardson - I would be upset as well if I had an upscale house and this happened  
397 in the neighborhood. We as a board have to look at the zoning ordinance and what is  
398 allowed and we can only rely on the proof of information that is in front of us. I do not  
399 specifically see anywhere that it says two doors in front of the house is not allowed. I  
400 have seen homes with two doors on the front. I tend to go by the book and the book  
401 says it's allowed.

402

403 Chairman Meisner - In looking at the sketches and plans that they supplied and referring  
404 to section 5 the accessory apartment ordinance just at what is required it's my opinion  
405 that I do not believe the font of the house changes the appearance of the building and it  
406 is aesthetically that of a single family dwelling. There are many houses around town that  
407 look just like this that are single story additions with two doors. In my opinion two doors  
408 on the front like that is the only thing I see on here I would say I would be in  
409 disagreement on. We have run into this before and one of the sticklers is the  
410 appearance of the house. In the neighborhood you are in I would take into consideration  
411 the looks of the neighborhood and quite clearly the appearance is if the door were on the  
412 side for the accessory apartment I would have to say would be fine as for everything  
413 else my opinion is the protective covenants, until they are shown they have been  
414 recorded which may have legally stopped this, is not the case.

415

416 Doug Martin stated that he isn't sure the covenants would make a difference because  
417 this is still a single family use allowed under the OSD ordinance. He agreed that the two  
418 doors on the front do not look good.

419

420 B.J. Richardson - My personal opinion is my personal opinion. I personally do not like  
421 the door but I do not see the verbiage that says that having two doors on the front on  
422 your house makes it wrong.

423

424 Chairman Meisner- You are right but we are a quasi judicial board. We are making a  
425 judgment call on a zoning issue. As a board we need to decide if this looks like a single  
426 family dwelling.

427

428 B.J. Richardson - If the board denies this application there is 30 days to appeal this.  
429 What's to say the contractor does not come back with only one door in the front? The  
430 main concern is that it doesn't look residential with two doors.

431

432 Ken Sherwood- The board does have the ability to place conditions on the decision

433

434 Chairman Meisner - The accessory use is permitted in our zoning. He read Section 5  
435 #11 to clarify that an accessory apartment can be rented out. My only objection at this  
436 point is the door on the front. He asked the board to vote on whether to open the  
437 hearing back up to the applicant. All members responded yes to opening the hearing  
438 back up to the applicant.

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Robert Meissner of DHB Homes (the applicant) submitted a revised drawing of the front of the proposed house showing only one front door. Mr. Meissner stated the other door would be on the back of the house.

Chairman Meisner closed the public hearing and called for a motion.

MOTION: Ken Sherwood made a motion to grant a Special Exception as specified in the Sandown Zoning Ordinance Article V, Part D, Section 5 to DHB Homes LLC to construct a three bedroom home with a one bedroom accessory apartment. The property is shown on Map 11, Lot 10-2-7 on the Sandown Tax Map and is located at 42 Meadow Brook Crossing. Doug Martin seconded. VOTE ON THE MOTION: BJ Richardson – NO Ken Sherwood, Curt Sweet, Steven Meisner and Doug Martin – YES MOTION PASSED. SPECIAL EXCEPTION GRANTED.

**Adjournment**

MOTION: Doug Martin made a motion to adjourn. Ken Sherwood seconded. Voted unanimously in the affirmative. MEETING ADJOURNED AT 9:45 P.M.

Respectfully submitted,

Bette Patterson  
Administrative Aide