

**Town of Sandown
Zoning Board of Adjustment
Minutes 1/24/13**

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6 **Meeting Date:** January 24, 2013
7 **Type of Meeting:** Public Hearing
8 **Method of Notification:** Public Posting - Sandown Town Hall, Sandown Post Office,
9 Sandown Website, *Tri Town Times*
10 **Meeting Location:** Sandown Town Hall (upper hall)
11 **Members present:** Chairman - Steve Meisner, Vice Chair - BJ Richardson,
12 Curt Sweet, Lauren Cairns, Donna Green
13 **Absent:** Steve Brown - Selectman's Liaison
14
15

16 **Opening:** Mr. Meisner opened the meeting at 7:19 p.m.
17

18 **Case #1 - Map 5 Lot 22-03. Property Location: 1 Rowell Lane**

19 James and Catherine Ryder are requesting a variance from Article II, Section B of the Sandown
20 Zoning Regulations to permit a relocation of Yogamatters, LLC to a different location within the
21 dwelling with no other changes to the business. The property currently has a special exception
22 which was granted in 2004.
23

24 Mr. Meisner invited James and Catherine Ryder to the table.
25

26 All board members confirmed they had a chance to review the application.
27

28 Ms. Ryder noted for the Board that she was asking to move the business to a new location within
29 the dwelling, but would keep all other aspects of the business exactly the same. Ms. Ryder
30 indicated on the plans she supplied, which room she was hoping to move the business to.
31

32 Mr. Meisner noted for the public they could come up to the table and review anything within the
33 case folder.
34

35 Ms. Green asked Ms. Ryder if the business would occupy the entire area of the new room and
36 Ms. Ryder confirmed it would.
37

38 Mr. Richardson noted he sat on the Board when the special exception was granted for the
39 accessory apartment so he was familiar with the space. He asked Ms. Ryder if they would be
40 using upstairs of the apartment and she noted they would not. He asked if there were any walls or
41 partitions within the room other than the separate utility room. Ms. Ryder confirmed there were
42 no other partitions. Mr. Richardson asked if the bathroom was still in the same place and if there
43 were any plans to move it. He also asked what they planned on doing with the space where the
44 studio is currently. The Ryders noted the bathrooms were still in the same place and they had no
45 concrete plans for the current studio space.
46

47 Mr. Richardson questioned if there was an exit in the back of the new room and if the windows
48 on the lower level were all fire code windows. Mr. Ryder confirmed there was a door at the back

49 of the room and all windows in the basement were fire code windows. Mr. Richardson also
50 questioned if there were sprinklers to which Mr. Ryder noted there weren't any.
51
52 Mr. Sweet questioned if there was another entrance to the building for customers to use other than
53 the one they were using. The Ryders indicated there was not.
54
55 Mr. Meisner asked what the square footage of the existing studio and new area is. The Ryders did
56 not know that answer off-hand, but indicated the new room was bigger.
57
58 Mr. Meisner explained for the benefit of the public attending why the Ryders were applying for a
59 variance instead of a special exception noting the changes in the zoning regulations that no longer
60 allow their type of in-home business.
61
62 Mr. Meisner asked how many cars fit in the existing driveway. Mr. Ryder noted that at least 12
63 would fit, noting they also have a second driveway with room for personal vehicles. He noted
64 they were only approved for 12 vehicles.
65
66 Mr. Meisner questioned what would become of the existing area if the variance were granted. Ms.
67 Ryder noted they would potentially turn it into a playroom for the grandchildren. Mr. Meisner
68 also confirmed that in the Ryder's application they indicated they would be willing to give up
69 their special exception if the variance was granted. They agreed they would be willing to do that
70 since they only had plans to run one business in the home and they simply wanted to use the new
71 space.
72
73 Ms. Green questioned why the in-home occupation permit wouldn't apply. Mr. Meisner
74 explained that any business not meeting the criteria of in-home occupation as listed in the zoning
75 regulations *shall not* be permitted. An applicant could previously apply for a special exception,
76 but because of the changes in the zoning regulations, which removed the in-home occupation
77 section under special exceptions, they need to apply for a variance. He further explained that
78 within the criteria of an acceptable in-home business, you cannot have clients coming to your
79 home and you cannot park vehicles at your home so the Ryders did not meet the criteria of an in-
80 home occupation.
81
82 Mr. Meisner asked the Ryders if they would be using the same entrance and exit and keep the
83 same number of vehicles parked in the driveway. The Ryders confirmed they would.
84
85 Ms. Ryder questioned if they were granted the variance to go into the new room, were they still
86 allowed to have the business under the new regulations. Mr. Meisner confirmed they would be
87 because they have an existing business and simply wanted to move to a new location. He agreed
88 it was a unique situation.
89
90 Ms. Green noted a discussion from the 12/27/12 meeting where the Board questioned how the
91 applicant would go about giving up their special exception and suggested that Mr. Meisner speak
92 to town counsel about how they would go about that. She also asked if they gave up the special
93 exception, would the board still be able to grant the variance.
94
95 Mr. Meisner noted that when granting the variance, they would stipulate that the special
96 exception be surrendered. He also noted that if the Board had concerns, they could hold off on
97 final decision until next week so they had time to seek legal counsel on how to proceed. Mr.
98 Richardson wanted more clarification on the process and felt since there were questions
99 surrounding the process, they weren't being fair to the town or applicants if they weren't properly

100 answered. He didn't want the Ryders to surrender their special exception in error and no longer
101 be able to run the business in their home.

102
103 Ms. Ryder asked if they could keep the special exception, but have the board grant the variance
104 with the condition that they could only use one room.

105
106 Mr. Meisner noted they did not have the ability to change the special exception that was granted
107 since the court decree listed a specific area to be used. He also noted that his concern was if she
108 didn't give up the special exception for the existing area, and the board granted the variance
109 without restrictions, then the Ryders would still be able to use the original space for the business.

110
111 Ms. Ryder questioned why it would matter if they were using both spaces, they still could only
112 have 12 people in the home, why did it matter if 6 were on each side? She didn't mind giving up
113 the special exception, but didn't want to give up her business.

114
115 Mr. Meisner noted that if the variance was granted and during an appeal someone came back and
116 proved that the Board did something wrong or the case went to court and the case became null
117 and void, then the Ryders would lose the variance, as well as the request to give up their special
118 exception. The entire case would be null and void, so the original special exception would be
119 given back.

120
121 Mr. Richardson noted he was playing devil's advocate and asked if they did grant them the
122 variance, what could the Ryder's do to prove they would only use the new area for the business?
123 He added that they would be less likely to use the space if they added a hallway to prevent access
124 to the other room.

125
126 Mr. Ryder noted the code enforcer visits the home frequently and could ensure that isn't
127 happening. Ms. Ryder also noted that they are limited in number of people because they can only
128 have 12 cars in the driveway.

129
130 Mr. Richardson questioned if they would object to having a hallway put in. Mr. Ryder questioned
131 if the building inspector would have issues with it because of fire safety.

132
133 Mr. Richardson noted he was simply trying to be fair to both the applicant and other residents,
134 which is why he asked questions from both sides of the issue.

135

136 **Mr. Meisner read the criteria questions from the application.**

Zoning Board of Adjustment Application

Application for a Variance

Name of Applicant James + Catherine Ryder
 Address 1 Powell Lane
 Owner (if same as applicant, write "same") Same
 Location of property (street, number, sub-division & lot number) Map 5, Lot 022-03
1 Powell Lane

Note: This application is not acceptable unless all required statements have been made. Additional information may be supplied on separate pages if the space provided is inadequate.

A variance is requested from article III section B of the zoning ordinance to permit a Relocation of Yogomatter (Special Exception zone) in the Same Dwelling. NO changes to the operation of Yogomatter. See Attached Consent Decree. We are willing to give up our 2004 Special Exception, as we see not planning to run tab businesses
 Facts in support of granting the variance:

1. Granting the variance would not be contrary to the public interest:
We have been in Business since 2004. We are not contrary to Public Interest because we are not making any changes to the operation of Yogomatter. We simply request to Relocate within the Same Dwelling.

2. If the variance were granted, the spirit of the ordinance would be observed because:
No changes to the spirit of the ordinance would be observed because we are not changing any of the operating procedure of Yogomatter. Just a request to Relocate within the Same dwelling.

3. Granting the variance would do substantial justice because:
The property has a unique setting within its environment which would cause the application of the zoning ordinance to interfere with its reasonable use. It would also save time + money for police and the Town as the Town would no longer need to police ~~at~~ the location of Yogomatter.

4. If the variance were granted, the values of the surrounding properties would not be diminished:
There are no changes to the current operation of Yogomatter. Just a request to Relocate within the Same Dwelling. We again state, we are willing to give up the Special Exception of 2004.

5. Unnecessary Hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

Zoning Board of Adjustment Application

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

Because we are not changing any operating procedures of Yonematters, we have been operating since 2004 and would like to relocate within the same dwelling.

And

ii. The proposed use is a reasonable one because:

The property has a unique setting in its environment which would cause the application of the ordinance to interfere with its reasonable use. Again, no changes to operating procedures, just a request to relocate within the same dwelling.

B. Explain how, if the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special condition of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The property has a unique setting in its environment which would cause the application of the ordinance to interfere with its reasonable use. No changes to any part of the operation of Yonematters. A request to relocate within the same dwelling.

Applicant Signature *Catherine Ryder* Date *12/01/12*

Case No. _____

Date filed _____

(signed - ZBA)

141 Ms. Green clarified that it was in fact a yoga studio. Ms. Ryder confirmed it was.

142

143 *At 8:16 p.m. Mr. Meisner opened the meeting to the public and asked that one person at a time*
144 *come up, state their name, address and comments.*

145

146 **Mr. Bernard Campbell, attorney with Beaumont & Campbell Prof. Ass'n, Salem, NH**

147 Mr. Campbell was representing Brian and Cynthia St. Amand.

148

149 Mr. Campbell distributed a memorandum to the Board.

150

151 Mr. Campbell noted that the case has a long legal history. He noted in his memorandum, under
152 Exhibit A there was a copy of the special exception that was granted in 2004. He noted when they
153 applied for the special exception, they made references to parking for 6 vehicles, one class per
154 day, 6 days per week and times that certain classes were to be held. He noted they also submitted
155 a drawing of the area to be used. Because those statements were made at the time of applying,
156 they were deemed to be conditions of approval. Since those conditions were being violated, the
157 neighbors brought legal action against the Ryders. He noted that there was no court ruling and in
158 mediation all parties agreed to the terms of the consent decree.

159

160 Mr. Campbell also noted that in 2010, the Ryders appeared before the board to create an
161 accessory apartment. He believes the Ryders created the new space with the intent to be the new
162 yoga studio even though the Ryders claimed they had no intent on moving the studio. He also
163 noted that because the stairs in the in-law apartment granted that apartment access to the entire
164 basement, the in-law apartment had the potential to become larger than the main house because of
165 the additional square footage that added.

166

167 Mr. Campbell noted that because the special exception no longer exists within the zoning
168 regulations, the business is now a prior non-conforming use. NH law is trying to eliminate non-
169 conforming uses and not allow them to expand. He noted expanding into the new space would be
170 considering expansion under non-conforming use.

171

172 Mr. Campbell noted that in minutes from the 2004 hearing, it was noted that there were no
173 ground floor bathroom facilities, which exist today. By providing those facilities, there is
174 expansion under non-conforming use. He also noted that the current studio would be utilized as a
175 pass through space.

176

177 Mr. Campbell questioned the issue of enforcement noting that they are setting up a more difficult
178 issue for the town to enforce. He noted there could be more opportunity for more people to attend
179 the studio, which is a major concern to his clients, and the impact that would have on their
180 property. He noted it is a residential neighborhood on a cul-de-sac and it would not look
181 residential when that kind of traffic is passing through.

182

183 Mr. Campbell noted that the Ryders are applying for a variance and must meet all five of the
184 criteria. He feels there are significant flaws in the application and that none of the criteria have
185 been addressed in the way the law requires they provide. He reviewed the five criteria.

186

187 Mr. Meisner asked Mr. Campbell if the criteria was their main objection. Mr. Campbell stated it
188 was and didn't feel that the applicant's answers to the criteria met the objectives.

189

190 Mr. Meisner noted that there were some items in Mr. Campbell's memorandum that could be
191 considered heresy. He also noted that the issue of expansion of non-conforming use was restricted

192 to the special exception granted in 2004. Mr. Meisner consulted the town attorney regarding
193 expansion of a non-conforming use and she confirmed they would not be able to do that. He did
194 want to make the board aware that they were allowed to grant the variance.

195
196 Ms. Green asked for clarification on Mr. Campbell's objection relative to the square footage of
197 the apartment increasing so that it became the main home. Mr. Meisner clarified that the square
198 footage of an accessory apartment could not exceed the size of the main home. He said there was
199 nothing to say that they couldn't take the existing home and turn it into a one-bedroom and make
200 the main home the "apartment." He did note that in order for the basement square footage to be
201 added to the living space, they needed to have heat and meet other criteria. That would all need to
202 be investigated.

203
204 Mr. Richardson confirmed that the consent decree was signed and agreed to by both parties. Mr.
205 Campbell confirmed it was. Mr. Richardson noted that the consent decree addressed the
206 inconsistencies from the original application to what exists now and set a new standard of
207 conditions. He also noted that the last statement in the decree stated that nothing in the decree
208 prevented the Ryders from going to town authorities to make changes. Mr. Richardson noted in
209 his opinion, the conditions of the 2004 special exception had no bearing on the case. He noted he
210 would like to see evidence to show that the old area is going to be used for anything other than
211 what the applicant states.

212
213 Mr. Richardson questioned if Mr. Campbell felt they were not conforming to the existing decree
214 because there was a bathroom facility on the basement level. Mr. Campbell noted that the 2004
215 application stated there was no bathroom. He noted that it was added later, and there was no way
216 to prevent the studio from using it, so they are adding more space to the studio than what was
217 agreed to in the terms of the decree.

218
219 Mr. Richardson noted that if the bathroom had been used exclusively for the business, then he
220 might agree that it was an expansion of the space, but the household used it at times when the
221 business wasn't running.

222
223 Mr. Richardson asked if there was any evidence that they could provide to the Board that the
224 existing area is not conforming to the current decree. Mr. Campbell noted he was limited to
225 comment but indicated that they have video evidence. He felt it was more relevant to code
226 enforcement.

227
228 Mr. Meisner asked Mr. Campbell if he wanted to go through his memo page by page. Mr.
229 Campbell stated that they believed the applicant failed to meet the five criteria for the variance.

230
231 Mr. Sweet questioned Mr. Campbell's point on the fourth criteria regarding diminished home
232 value and asked if they had any evidence. Mr. Campbell noted they didn't have an appraisal done,
233 but noted the homeowners could come up and speak to that point

234
235 Mr. Meisner noted that each board member has the *State of NH Board of Adjustment Handbook*
236 and they have read the criteria. He noted they would take the memo he submitted under
237 advisement.

238
239 Mr. Campbell thanked the board for their time and attention.

240
241 *Cynthia and Brian St. Amand, 2 Rowell Lane*

242 The St. Amands clarified the question regarding the square footage of the two rooms. Mr. Amand
243 noted the current studio was 396 sq. ft. He noted that they also utilize a waiting room area,
244 bathroom and a utility closet, which brings the square footage to 1,072 sq. ft. He noted the new
245 room they want to move to is 896 sq. ft. He also noted that Ms. Ryder stated in the deposition
246 that they utilize an office space upstairs.

247
248 Mr. Meisner noted that in regards to things that are not in compliance with the court decree, the
249 board had no authority, it is the responsibility of the code enforcement officer to make sure they
250 were in compliance.

251
252 Mr. St. Amand handed out pictures he printed off the Yogamatters website showing the waiting
253 area which had benches and an area to sell products. He noted they were never approved to utilize
254 that space.

255
256 Ms. St. Amand noted they didn't want the Ryders to lose their business. They went through the
257 process of mediation and came to an agreement and they just wanted to hold the Ryders to the
258 terms agreed upon.

259
260 Mr. St. Amand noted they are also having classes on the weekends which they were not supposed
261 to do under the terms of the special exception.

262
263 They had concerns that if the special exception was forfeited, they would no longer be able to
264 enforce the criteria agreed upon in the court decree and all the work they did in mediation would
265 be gone. Mr. Meisner noted the board could list the same criteria from the decree in their decision
266 if they granted the variance, so they could be held to the same standards.

267
268 Mr. Meisner clarified that Ms. Ryder stated in her application that they would not make any
269 changes to the operation of Yogamatters. He noted the Board could add on conditions, but they
270 could not give them less than what they are requesting. Since she is stating they would make no
271 changes to the business, the Board would have to include that in the decision.

272
273 Ms. St. Amand noted that the court decree imposed fewer restrictions than the 2004 special
274 exception did.

275
276 Ms. Green noted that the statement made by the Ryders indicating they would make no changes
277 to the current business, didn't clearly state that they wouldn't make changes to the restrictions put
278 on them in previous mediation. She noted the court decree was prescriptive, but the Board didn't
279 know what the actual practice was and that statement was ambiguous.

280
281 Mr. St. Amand noted in terms of the value of the home, they have gotten several opinions. They
282 all suggested that trying to sell a home on a cul-de-sac with a business operating next door would
283 cut potential buyers in half.

284
285 Mr. Meisner noted that in regards to the statement provided by the Ryders that they would make
286 no changes to the operations of Yogamatters, the Board could request anything they wanted in
287 terms of operation of the business. He noted that if they wanted stipulations granted, the St.
288 Amands should voice their opinions on reasonable conditions and the Board would take their
289 requests under advisement.

290
291 Ms. St. Amand noted there was a huge difference in the operation of the business between the
292 2004 special exception and the conditions stated in the court decree.

293

294 Mr. Meisner noted there was a 30-day appeals process. He didn't want anyone to be misled by a
295 decision and wanted all input and opinions.

296

297 Mr. Richardson felt in his opinion the decision made by the board in 2004 and the court decree
298 were two separate issues. He felt the court decree would still be enforceable if they granted the
299 variance.

300

301 Mr. St. Amand asked that they don't take any conditions away. They want the decree to be
302 enforced and to change anything on the decree would be unacceptable to them.

303

304 Mr. Meisner noted that he didn't agree with Mr. Richardson on the court decree. He felt the court
305 decree went along with the original special exception. If the variance was to be granted, the
306 stipulations in the court decree could be added to the variance, but were bound by the special
307 exception and would not automatically carry over to the variance.

308

309 Mr. Campbell agreed that if the Board granted the variance, they would relieve the Ryders of any
310 stipulated conditions in the decree.

311

312 Mr. Meisner noted that they could put conditions on the variance. He also noted that board
313 members speak for themselves. They each have their own opinions.

314

315 Ms. St. Amand asked if the code enforcement officer found the Ryders were breaking rules, could
316 they take the variance away.

317

318 Mr. Meisner thought that only the Selectman had the power to remove the variance but wasn't
319 completely sure. He noted there was a \$275/day fine for violations, but the code enforcement
320 officer needed to get the approval of the Selectman to impose those fines. He noted the St.
321 Amands needed to notify the town and code enforcement officer if there were any issues.

322

323 *Pam Santa Fe, 2 Woodland Drive*

324 Ms. Santa Fe noted she abuts the property on the garage side and has no issues with the business
325 or the accessory apartment. She asked since the Ryders business is no longer allowed under
326 zoning regulations, are they no longer able to currently run their business. Mr. Meisner clarified
327 that they are grandfathered and are able to operate their business.

328

329 Ms. Santa Fe questioned if they gave up the special exception and a lawsuit happened and they
330 lost, would they lose the right to have the business. Mr. Meisner noted that their request to give
331 up the special exception was tied to the variance. If the variance was granted, then taken away,
332 they would go back to running the business under the special exception. The variance, the terms
333 of the variance and the request to surrender the special exception would all be null and void if the
334 variance was taken away.

335

336 Ms. Santa Fe had concerns if they would have issues with the septic system if they were to add
337 another bathroom into the new studio. Mr. Meisner clarified that there was no law to prevent
338 them from adding a bathroom to the space, but the building inspector and health officer would
339 need to approve it. He noted the size of the septic system was based on the number of bedrooms,
340 not the number of bathrooms.

341

342 Ms. Santa Fe suggested that it might make harmony between the neighbors if the new studio was
343 held to the same stipulations noted in the decree and she asked that those stipulations be added to
344 the variance.

345

346 Ms. Santa Fe had some concerns over the current driveway and the rise of the driveway relative
347 to the road. She had concerns that there were site-line issues and had concerns over safety. Ms.
348 Ryder noted they had always used both driveways.

349

350 ***Paula Hamlet, 31 Rowell Lane***

351 She noted she felt the same way that Ms. Santa Fe did.

352

353 ***Richard Funai – 4 Rowell Lane***

354 Mr. Funai is a direct abutter to 1 Rowell Lane.

355

356 Mr. Funai noted that they had a special exception granted in 2004, there has been a history of
357 problems with the business and the use of the facility; they have a legal agreement that everyone
358 agreed on in terms of expanded usages of the building. During the application process for the
359 accessory apartment, it was asked of the Ryders if the new section was to be used for the business
360 and they stated it wouldn't. Now they are coming forward looking to expand into that apartment.
361 How do they know that down the line, the Ryders wouldn't come before the board to expand the
362 usage of the variance they are asking for? You have three direct abutters in opposition to this and
363 the town attorney and code enforcement officer has found violations. There is a pattern of
364 violation after violation. By allowing the variance to go through, you are growing the need for
365 enforcement. When is it going to end?

366

367 He noted the existing space would be a common area. In a sworn deposition, Ms. Ryder noted
368 they had computers for signing in and teaching equipment, which are stored in the existing area.
369 Where would all that equipment be moved?

370

371 ***Fred Murray – 3 Rowell Lane***

372 He objects and feels the same way as the rest of the objections. He noted that they know their
373 property values are going to be decreased because the neighborhood has changed. He no longer
374 enjoys living there anymore. It used to be a joyful cul-de-sac to live in.

375

376 *9:44 – The board took a five-minute recess*

377

378 *9:51 – The meet resumed.*

379

380 Mr. Meisner closed the hearing to public input and invited James and Catherine Ryder back up to
381 the table.

382

383 Ms. Ryder reiterated that they would be willing to go by the terms of the consent decree.

384

385 Mr. Richardson questioned when the bathroom was installed. Mr. Ryder noted that it was
386 installed in 2005; he didn't pull a permit on it until after it was built.

387

388 Ms. Ryder noted that the waiting room the St. Amands spoke of has been there since the business
389 started.

390

391 Mr. Richardson asked if they are selling merchandise there and Ms. Ryder noted they are not. She
392 noted that area has computers for customers to check in.

393

394 Mr. Richardson asked if they would have an issue with moving the computer area and waiting
395 room to the new room so the entire business would be confined to that space.

396

397 Ms. Ryder noted they would still need to walk through that area. Mr. Richardson indicated that
398 they could still walk down the hall, but in order to be in compliance with the consent decree, all
399 aspects of the business needed to be confined to the 18x22 area. He noted if they granted the
400 variance to move the business to the 28x32 area, the entire operations of the business, storage of
401 the equipment, waiting room, computers would all need to be in that 28x32 area.

402

403 Ms. Ryder noted that as long as they could walk through that area, she had no issues with moving
404 the furniture and computers out of that space.

405

406 Mr. Richardson asked if they would have any issues with code enforcement making regular visits
407 to the space. The Ryders indicated that he already does.

408

409 Ms. Green questioned why they had a change of heart to use the new addition for the studio when
410 they originally had no intention of doing that. Mr. Ryder noted that the current space isn't heated
411 where the new space is and it would be less expensive for them to operate there and it's a nicer
412 room.

413

414 Mr. Ryder noted they would still be monitored in the new room by code enforcement. He has
415 installed 24/7 video surveillance in the room and has documented proof that they are operating
416 the business in compliance with the consent decree. He noted the Board could come by any time
417 they wanted, they are not doing anything wrong in the space.

418

419 He noted as far as Mr. Sherwood making notes that they weren't in compliance, they never knew
420 about any violations.

421

422 *10:07 – Mr. Meisner closed the hearing to the applicants.*

423

424 Discussion among the Board continued.

425

426 Ms. Green questioned if all five criteria are met, then do they have to grant the variance. Mr.
427 Meisner noted that was only true for a special exception. He noted a variance was much more of a
428 judgment call. He suggested they use the *State of NH Zoning Board Handbook* as a guideline. He
429 noted the criteria questions are what they should legally base their decision on. They should also
430 review input from the abutters and the applicants. He noted the answers to the criteria questions
431 are very important and are legally challengeable. He noted they did not need to render a decision
432 that night. They received a lot of information and each member needed to make their way through
433 the information and form their own opinion. They could continue the hearing to next week.

434

435 Ms. Green asked if it was a majority vote, Mr. Meisner confirmed it was.

436

437 Mr. Meisner asked if each member wanted a copy of the criteria questions. They all confirmed
438 they would.

439

440 Ms. Green asked if the Board was bound by how the applicant answered the questions. They
441 heard a lot of information, what if they felt the question could have been answered better, but
442 wasn't represented in their application. Can they base their decision on what is there or on the
443 information they accumulated during the hearing?

444

445 Mr. Meisner felt in his opinion they should base it on what is written there.

446

447 Mr. Richardson noted that the information they received from both parties gives clarification to
448 the questions and the interpretation is up to the individual. He felt they need to consider the
449 application, but also needed to take into account what they've heard at the meeting.

450

451 Ms. Lauren Cairns noted she was not ready to make a decision that night and wanted time to
452 review the information they received.

453

454 **MOTION:** Mr. Richardson made a motion to continue Case #1, Map 5, Lot 22-03 to the next
455 scheduled meeting. Ms. Lauren Cairns seconded the motion.

456

457 *Discussion:* Mr. Meisner noted they had three other cases that evening so this case would be
458 continued to the end of that meeting.

459

460 Ms. Ryder asked if they needed to be there. Mr. Meisner noted they did not.

461

462 Mr. Sweet asked if they should consult legal counsel on any specific issues. Mr. Meisner noted
463 that if anyone had anything they wanted to run by counsel, to notify Ms. Andrea Cairns and Mr.
464 Meisner so they could determine if the question should be sent to counsel.

465

466 All members voted in favor of continuing the hearing to the following week. The motion passed.

467

468 Mr. Meisner clarified that the case would likely be held around 9 or 9:30 and reminded them it
469 would be closed to public input and they would simply be there to hear the decision.

470

471 **Review of 6/21/12 Minutes**472 **MOTION:** Mr. Richardson made a motion to accept the 6/21/12 minutes as written. Ms. Green
473 seconded the motion. Members voted in favor. Mr. Sweet abstained. The motion passed.

474

475 **Review of 12/27/12 Minutes**

476 L86 change "B" to "D"

477 **MOTION:** Ms. Green made a motion to accept the 12/27/12 minutes as amended. Mr.

478 Richardson seconded the motion. Members voted in favor. Mr. Sweet and Mr. Richardson

479 abstained. The motion passed.

480

481 **Adjournment**482 **MOTION:** Ms. Green made a motion to adjourn. Ms. Lauren Cairns seconded the motion. All
483 members voted unanimously in favor. The motion passed. The meeting adjourned at 10:29 p.m.

484

485 Respectfully submitted,

486 

487 Andrea Cairns, Recording Secretary