

**Town of Sandown  
Zoning Board of Adjustment  
Minutes 1/31/13**

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6 **Meeting Date:** January 31, 2013  
7 **Type of Meeting:** Public Hearing  
8 **Method of Notification:** Public Posting - Sandown Town Hall, Sandown Post Office,  
9 Sandown Website, *Eagle Tribune*  
10 **Meeting Location:** Sandown Town Hall (upper hall)  
11 **Members present:** Chairman - Steve Meisner, Vice Chair - BJ Richardson,  
12 Lauren Cairns, Donna Green  
13 **Absent:** Curt Sweet, Steve Brown - Selectman’s Liaison  
14

15 **Opening:** Mr. Meisner opened the meeting at 7:05 p.m.

16  
17 Mr. Meisner noted for the applicant that one member of the board was missing and they  
18 had the option to withdraw without prejudice or ask for an extension so the case could be  
19 heard with a full board. Mr. Hatch noted he would like to move forward with the hearing.  
20

21 **Case # 01– M10, L3-1, 11 Wells Village Road - H&M Holdings LLC, c/o Michael**  
22 **McCool** is requesting a special exception from Article 5, Section 5, to allow a one-  
23 bedroom accessory apartment over an existing attached garage.  
24 *Kevin Hatch a licensed land surveyor and owner of Cornerstone Survey Associates was*  
25 *presenting the application.*  
26

27 Mr. Hatch explained the property was owned by H&M Holdings/Michael McCool. He  
28 indicated Mr. McCool purchased the property as a foreclosure and is remodeling the  
29 home with the intent to sell it. The property had an illegal accessory apartment when he  
30 purchased the home and he would like to make the apartment legal.  
31

32 Mr. Meisner explained the process of the hearing for the board and noted that the public  
33 would be invited up to speak and review any paperwork associated with the file.  
34

35 Mr. Hatch reviewed the site plan for the board. He noted there was sufficient parking. He  
36 indicated the septic system that existed was for a three-bedroom home and they would be  
37 getting a new system installed. He reviewed the floor plans of the apartment and noted  
38 what is shown, is what exists today.  
39

40 Mr. Richardson asked what the current setbacks of the garage were. Mr. Hatch measured  
41 and stated the setback was approximately 17’.  
42

43 Mr. Richardson asked if there was ever a building permit pulled for the apartment. Mr.  
44 Hatch noted there was a building permit pulled, but not an occupancy permit. He felt the  
45 previous owners may have avoided having to get a special exception because they didn’t  
46 put a kitchen in the space.

47

48 Mr. Richardson asked if they planned on making any other changes to the apartment  
49 besides adding in the kitchen. Mr. Hatch indicated there were no other structural changes  
50 planned.

51

52 Mr. Richardson asked what the proposed septic plan would be rated for. Mr. Hatch  
53 indicated it would be for a three-bedroom home plus an apartment, so it would work out  
54 to be a 4.5 bedroom septic system.

55

56 Mr. Meisner asked if he had the state approvals for the new septic system. Mr. Hatch  
57 noted they did not receive a hardcopy yet, but they did have the approval number, which  
58 was already on the plans.

59

60 Mr. Meisner reviewed the conditions with Mr. Hatch. The question and Mr. Hatch's  
61 answers are below:

62

- 63 1. ***The appearance of the building remains essentially that of a single family***  
64 ***dwelling.*** – Mr. Hatch stated there are no physical changes to the outside structure  
65 (photos were provided). The entrance to the apartment is the garage door, so it  
66 looks like any other home.
- 67 2. ***It shall be contrary to this ordinance to provide accessory apartment uses in***  
68 ***duplexes or multi-family dwellings.*** – Mr. Hatch stated it is a single family home.
- 69 3. ***The size of the accessory apartment shall not exceed the footprint of the existing***  
70 ***single family dwelling or accessory structure.*** – Mr. Hatch stated it is about 1/3  
71 the size of the existing home.
- 72 4. ***One of the dwelling units must be owner occupied.*** – Mr. Hatch stated they know  
73 it will be a condition and it will be recorded on the plans.
- 74 5. ***Off-street paved or gravel parking shall be provided for at least four (4)***  
75 ***vehicles. Garage parking is encouraged.*** – Mr. Hatch stated they have four  
76 outside parking spots and two inside the garage.
- 77 6. ***The structure and lot shall not be converted to a condominium or any other***  
78 ***form of legal ownership distinct from the ownership of the existing one family***  
79 ***dwelling. The applicant shall record with the Registry of Deeds a notice of the***  
80 ***Special Exceptions, including conditions of approval, in a form acceptable to***  
81 ***the Board*** – Mr. Hatch stated they understand and accept that condition.
- 82 7. ***Prior to granting a Special Exception by the ZBA, the owner shall provide, as***  
83 ***part of the ZBA case file, the following:***
  - 84 a. ***The septic system shall meet the NH Water Supply and Pollution Control***  
85 ***Division requirements for the combined use.*** – Mr. Hatch stated they have  
86 the state approval number. Mr. Hatch will provide the hardcopy for the file  
87 when he receives it. That could be put on as a condition of approval.
  - 88 b. ***A floor plan of one-quarter inch to the foot scale showing the proposed***  
89 ***changes to the building or accessory structure addition.*** - They have  
90 provided that.
  - 91 c. ***A certified plot plan of the lot, with existing and proposed structures,***  
92 ***parking, location of septic system and well.*** – Mr. Hatch indicated that on the

- 93 site plan. Mr. Meisner asked if the lot has been surveyed and pinned. Mr.  
94 Hatch noted it had been and he located the pins.
- 95 8. ***Separate controls for heating, cooling and electrical service shall be accessible***  
96 ***in each unit.*** – Mr. Hatch stated the apartment has it’s own heating and electric  
97 controls.
- 98 9. ***In accordance with Article II, Part A, Section 2, no construction shall begin***  
99 ***without first obtaining a building permit from the Building Inspector. As part of***  
100 ***the application for a building permit to construct an accessory apartment, the***  
101 ***owner shall provide the Building Inspector with a copy of his/her Special***  
102 ***Exception granted under Section V. herein. There shall be no construction of***  
103 ***the accessory apartment until the Building Inspector has issued the proper***  
104 ***building permit.*** – Mr. Hatch indicated they were working with the Building  
105 Inspector to get the proper permits. They want a complete application with a  
106 paper trail.
- 107 10. ***Once any renovations or construction is complete, or the owner is ready to have***  
108 ***a unit occupied, a request must be made to the Building Inspector for an***  
109 ***Occupancy Permit. There will be no occupancy of the accessory apartment until***  
110 ***the Building Inspector has issued a Certificate of Occupancy.*** – Mr. Hatch noted  
111 he understood that statement.
- 112 11. ***A purchaser of a home that had a Special Exception granted for an accessory***  
113 ***apartment who wants to continue renting the accessory apartment must comply***  
114 ***with all conditions of the permit previously granted, as well as comply with any***  
115 ***current building or life safety codes. Any changes to the prior conditions will***  
116 ***require a new permit.*** - Mr. Hatch noted he understood that statement.

117

118 Ms. Green questioned where they stood with obtaining the building permit. Mr. Hatch  
119 noted the building inspector couldn’t issue the permit without the special exception.

120

121 Ms. Green questioned if the builder retained ownership of the property, how they would  
122 know if he rented both the main home and the apartment. Mr. Meisner noted that legally  
123 they couldn’t but it would be up to code enforcement to make sure. Mr. Hatch noted that  
124 the restrictions would be noted on the plans and recorded at the registry of deeds. Mr.  
125 Meisner noted that if they were caught renting both units, they would be subject to fines.  
126 Mr. Hatch noted Mr. McCool had no intention of keeping the property.

127

128 Mr. Meisner noted that there should be a disclosure when the home is sold that one side  
129 needs to be owner occupied. Mr. Hatch noted that a bank would see that as a condition of  
130 the sale when they did a title search and would likely ensure that it would be owner  
131 occupied.

132

133 Mr. Richardson asked if there would be any connection between the apartment and the  
134 existing home. Mr. Hatch noted there wasn’t, but they both had access to the garage  
135 through a hallway. Mr. Richardson felt that made it more like a duplex than an apartment.  
136 He then asked if the work on the apartment was ever inspected. Mr. Hatch did not know.

137

138 Mr. Richardson asked if there was ever a public hearing with neighbors. Mr. Hatch noted  
139 there wasn't.

140

141 Mr. Richardson noted concern that the work was done without being inspected.

142

143 7:32 p.m. – Mr. Meisner opened the meeting to the public.

144

145 *Tom Tombarello, 22 Wells Village Road, Electrical Inspector*

146 Mr. Tombarello noted that a building permit was taken out in 2005 for the great room and  
147 the garage, but there were no permits for electric or plumbing. As the electrical inspector,  
148 he had concerns that the previous owner did the work himself and didn't have it  
149 inspected. He also noted he would like to see two separate meters for the home and the  
150 apartment to ensure that if the electricity was shut off in the main home, the tenant  
151 wouldn't lose electricity.

152

153 Mr. Tombarallo questioned criteria number 8 and asked Mr. Meisner to reread it for him.

154

155 Mr. Meisner read the criteria and felt that it required only a separate electric panel  
156 accessible by the apartment. There was no requirement that mandated separate meters.

156

157 Mr. Richardson asked Mr. Tombarello if a second meter was installed, if he would  
158 consider it in compliance. Mr. Tombarello noted he would be happy with that but still  
159 had concerns that there were no plumbing or electric permits pulled and nothing has been  
160 inspected.

161

162 *Lloyd Thurston, 25 Wells Village Road*

163 Mr. Thurston is a neighbor and noted concern that the neighborhood is not zoned as a  
164 commercial area. He felt that it sounded like there was commercial intent for the property  
165 as opposed to an in-law apartment. He also had concern that the apartment was built but  
166 never previously discussed with abutters.

167

168 Mr. Meisner explained that every home in town has the ability to apply for a special  
169 exception and it wasn't limited to the commercial zone.

170

171 Mr. Meisner asked Mr. Hatch back up to the table.

172

173 Ms. Green questioned if the thermostats were separate between the home and the  
174 apartment. Mr. Hatch noted that he believed there is only one boiler and it is in the  
175 basement of the main home because there is no other location for it, but the apartment  
176 had its own thermostats. Mr. Meisner noted it was very common to have multiple zones  
177 on one boiler.

178

179 Mr. Meisner explained that in fairness to the applicant, if they met the conditions, then  
180 the board needed to grant the special exception.

181

182 Ms. Green questioned if the issue of having separate electric meters has ever come before  
183 the board before. Mr. Meisner felt the zoning regulations were not specific enough. He

184 interpreted the regulations to mean that the apartment needed a separate electric panel,  
185 not a separate meter. Mr. Hatch felt that requiring a separate meter would add significant  
186 expanse to those who just wanted to add an apartment for family members.

187

188 Mr. Richardson was concerned that there would be two individual units with no entrance  
189 from the main home to the other unit. He felt it was more like a duplex and could be  
190 considered industrial vs. residential.

191

192 Mr. Hatch questioned where in the zoning regulations it said they couldn't rent the  
193 apartment vs. having relatives live there. Mr. Richardson noted it didn't but it still  
194 bothered him and he was also concerned that it was built without going through the  
195 proper permitting process. Mr. Hatch stated that it was done before his client purchased  
196 the property and they were simply trying to do everything correctly and get the proper  
197 paperwork.

198

199 7:48 - Mr. Meisner closed the hearing to the public and the applicant.

200

201 Mr. Meisner cautioned the board that if the applicant met the criteria, then they needed to  
202 grant the special exception.

203

204 Ms. Green questioned if all abutters were notified. Mr. Meisner confirmed they were. Ms.  
205 Green had concerns because they were not able to voice their opinion when the apartment  
206 was originally created. Mr. Meisner noted that even if opposition was voiced by the  
207 abutters, they needed to grant the approval if all conditions were met.

208

209 Ms. Green questioned if it would be possible to make a motion to accept with conditions.  
210 Mr. Meisner noted they could do that and reminded the board that they did not have state  
211 septic approval in hand, so he suggested they add that as a condition of approval. He  
212 added that the Building Inspector would want to see that in the file before he inspected  
213 the property. Ms. Green asked if they needed to make it a condition that one unit must be  
214 owner occupied. Mr. Meisner noted that was something they were legally bound by since  
215 it is in the zoning regulations and that stipulation would be registered with the deed.

216

217 Ms. Green asked about other approvals. Mr. Meisner noted that they would not get an  
218 occupancy permit without all their permits in place.

219

220 Ms. Green asked if it was the addition of a kitchen that made it an accessory apartment.  
221 Mr. Meisner noted that there was nothing in the zoning regulations that stated they had to  
222 have a kitchen.

223

224 **MOTION:** Mr. Richardson made a motion to approve Case # 01- M10, L3-1, 11 Wells  
225 Village Road - H&M Holdings LLC, c/o Michael McCool with the condition that the  
226 board receives a hardcopy of the state septic approval. Ms. Lauren Cairns seconded the  
227 motion. Mr. Meisner, Ms. Green, Ms Lauren Cairns voted in favor. Mr. Richardson  
228 opposed. The motion passed.

229

230 Mr. Meisner reminded Mr. Hatch that there is a 30-day appeals process, so if any new  
231 information is brought forward, the case could be reheard.

232

233 He noted that Mr. Hatch would need to give Ms. Andrea Cairns the deed amendment.

234

235 **Case # 02 – M2 L6-4, 174 Hampstead Road** - Albert Lake is requesting a variance from  
236 Article II, Part B, Section 3B of the Sandown Zoning Regulations to permit a new 2-acre  
237 residential building lot with less than 200' of frontage.

238 *Kevin Hatch a licensed land surveyor and owner of Cornerstone Survey Associates was*  
239 *presenting the application.*

240

241 Mr. Meisner noted for the applicant that one member of the board was missing and they  
242 had the option to withdraw without prejudice or ask for an extension so the case could be  
243 heard with a full board. Mr. Hatch noted he would like to move forward with the hearing.

244

245 Mr. Hatch noted the application had been before the board in June of 2009 when a  
246 variance was granted. The variance has since expired so he was there to reapply. He  
247 noted they did recently gain planning board approval on the plans. He noted the  
248 application presented was the version that was approved in 2009. He explained the  
249 application creates a 2.35 acre lot with 130 feet of frontage, with a 75' setback from the  
250 abutters on Little Mill Road.

251

252 Mr. Hatch noted the property had other options for development that created more impact  
253 and burden to the town by creating a road to satisfy the frontage requirements. He noted  
254 they could have taken frontage from Mr. Lake's other property, but with the placement of  
255 the driveway and shed, it made more sense to leave the additional frontage with the  
256 existing home. The proposed lot has the home set back from the road, so it would still  
257 maintain the rural characteristics that the added frontage attempts to create.

258

259 Ms. Green questioned if the driveway would be shared. Mr. Hatch noted they would be  
260 separate and indicated on the plans where the best location for the driveway would be.  
261 Ms. Green noted the driveway would be in the 75' setback. Mr. Hatch noted that it was  
262 permitted. Mr. Hatch also indicated the best location for the house, which is  
263 approximately 140-150' off the road. They did test pits for that location.

264

265 Mr. Richardson questioned where the 75' setback originated. Mr. Hatch indicated the  
266 abutters requested it. Mr. Richardson questioned if they were asking for the same  
267 variance and Mr. Hatch confirmed they were and the setback was on the plans in note  
268 number 16. He put that on the plans so there would be a paper trail explaining why there  
269 was a setback that was different from the 15' required by the town.

270

271 Mr. Meisner opened the hearing up to the public.

272

273 *Judy and Richard LaPorte – 163 Little Mill Road*

274 Ms. LaPorte noted she was the abutter on the other side of the property and is opposed to  
275 the new lot.

276

277 Ms. LaPorte noted that when the variance was granted in 2009, Metacomet Drive was not  
278 an approved town road, so there was no other way to access the lot. She provided a letter  
279 to the board that Steve Keach, the Town Engineer, submitted to the Board of Selectman  
280 on November 23, 2009 recommending the town accept Metacomet Drive as a town  
281 approved and maintained road. If that is the case, then the applicant no longer needs the  
282 variance because it would allow them access to the larger portion of his property.

283

284 Ms. LaPorte added that she did not feel it would fit in with the rural character of  
285 Sandown and that the intersection of Hampstead Road and Little Mill Road is very busy  
286 and the new lot would only add to that.

287

288 Mr. Meisner questioned if the part of Metacomet Drive that the town owns abuts the  
289 Lake's property. Mr. LaPorte noted that the deed established that section of Metacomet  
290 Drive as a town road. Mr. Meisner asked if the town plows the road and Ms. LaPorte  
291 noted they did.

292

293 Ms. LaPorte felt that the frontage they are requesting is only 65% of what the town  
294 requires. The reason for the 200' of frontage is to prevent overcrowding and by allowing  
295 this to go through, it would defeat the purpose of that ordinance.

296

297 Mr. Richardson questioned where the LaPorte's pool was in relation to the new lot. Ms.  
298 LaPorte thought it was 10' from the property line. Mr. Richardson asked if there were  
299 trees between the two properties. The LaPorte's explained that they had a logging  
300 company clear some of the pine trees between the two properties and it thinned them out,  
301 but didn't clear them all.

302

303 Ms. Green questioned how difficult it was to get out of their driveway. Ms. LaPorte noted  
304 it was a busy road and the intersection was odd, so it was difficult.

305

306 Mr. Meisner asked the applicant up to the table.

307

308 *Albert Lake, 174 Hampstead Road*

309 Mr. Hatch noted that the LaPorte's pool is only 3-4' off the property line. He noted that  
310 the trees that remained were on Mr. Lake's property. He felt that because of the setback,  
311 it would still uphold the rural character of Sandown. He also noted they had the option to  
312 put three houses with a cul-de-sac on the property, but chose to only put one home back  
313 there.

314

315 Mr. Lake noted that the end of Metacomet Drive that is approved by the town stops at his  
316 property line. The road is a dirt road, with an easement granting permission to cross for  
317 those that live there. The easement only gives him a 40' right-of-way. Mr. Lake noted  
318 that if it was an accepted town road, it would need to be brought up to town standards.

319

320 Mr. Richardson asked if Mr. Lake had any intention of developing the rest of his  
321 property. Mr. Lake noted they did not have any plans to do that right now.

322

323 Ms. Green asked if the alternate proposal with the cul-de-sac would have a shared  
324 driveway. Mr. Hatch stated there wouldn't be but that there would be a road, likely in the  
325 same place where the proposed driveway would go.

326

327 Mr. Hatch read the criteria questions and answers.

328

329 ***The proposed use would not diminish surrounding property values because:*** The new  
330 home will meet all property line setbacks.

331

332 ***Granting the variance would not be contrary to the public interest because:*** It will still  
333 maintain the rural character of Sandown.

334

335 A. ***The property has a unique setting in its environment which would cause a strict***  
336 ***application of the zoning ordinance to interfere with its reasonable use because:***

337

A new town road would be needed to create frontage for one new lot.

338

339 B. ***A fare and substantial relationship does not exist between the general purposes***  
340 ***of the zoning ordinance and the specific restriction on the property for which***

341

***the variance is being requested because:*** strict interpretation of the regulation

342

would create more development and not promote the rural character that it

343

intended to.

344

345 C. ***The variance requested would not injure the public or private rights of the***

346

***others because:*** This new home will have no effect on the surrounding

347

community.

348

349 ***Granting the variance would do substantial justice because:*** It will allow the landowner  
350 a reasonable use of his land without impacting others.

351

352 ***The use is not contrary to the spirit of the ordinance because:*** It will promote the rural  
353 character of Sandown.

354

355 Mr. Meisner noted two of the criteria questions were missing. He realized that the  
356 application Mr. Hatch submitted was the old application and apologized for the board's  
357 oversight.

358

359 Mr. Hatch filled out a new application and read the new criteria questions and answers.

360

361 1. ***Granting the variance would not be contrary to the public interest:*** It will allow  
362 the landowner to use his land without requiring a new road and additional impact.  
363 Retaining the rural character of Sandown.

364

365 2. ***If the variance were granted, the spirit of the ordinance would be observed***

366

***because:*** The intent of the 200' requirement is to retain the rural character of  
Sandown. This proposal will achieve that with the extra 75' buffer.

367

368



- 367 3. ***Granting the variance would do substantial justice because:*** It will benefit the  
368 town not requiring a new road to maintain and it will allow the landowner a  
369 reasonable use of his land.  
370
- 371 4. ***If the variance were granted, the values of the surrounding properties would***  
372 ***not be diminished:*** This is a 2.35 acre residential lot in an area of 1 acre lots with  
373 similar use.  
374
- 375 5. ***Unnecessary Hardship***  
376
- 377 a. ***Owing to special conditions of the property that distinguish it from other***  
378 ***properties in the area, denial of the variance would result in***  
379 ***unnecessary hardship because:***  
380
- 381 i. ***No fair and substantial relationship exists between the general***  
382 ***public purposes of the ordinance provision and the specific***  
383 ***application of that provision to the property because:*** The 200'  
384 requirement promotes rural development and this proposal will  
385 meet that use. This property has 380' of frontage on Hampstead  
386 Rd.  
387
- 388 And  
389
- 390 ii. ***The proposed use is a reasonable one because:*** The overall  
391 frontage is 20' short of the required 400' for 2 lots. Adding a new  
392 road for this deficit is unnecessary with our proposal.  
393
- 394 b. ***Explain how, if the criteria in subparagraph (A) are not established, an***  
395 ***unnecessary hardship will be deemed to exist if, and only if, owing to***  
396 ***special condition of the property that distinguish it from other properties***  
397 ***in the area, the property cannot be reasonably used in strict***  
398 ***conformance with the ordinance, and a variance is therefore necessary***  
399 ***to enable a reasonable use of it:*** This is a large lot, 17.21 acres which is  
400 short of frontage by only 20'. The proposed subdivision will allow a  
401 reasonable use without the hardship of requiring a new road and additional  
402 development.  
403

404 Ms. Green noted she still had concerns about the site lines of the driveway to the  
405 intersection. She also had concerns approving the application without knowing that a  
406 driveway permit would be issued. Mr. Hatch noted that the Town Engineer walked the  
407 property and didn't have any issues with the placement of the driveway.  
408

409 Ms. Green noted she doesn't want to consider the application by thinking of it as the  
410 lesser of two evils with how they could potentially develop the property. Mr. Meisner  
411 cautioned that they shouldn't consider the potential development because it would be  
412 considered heresy. They needed to only look at what is in front of them.

413

414 **MOTION:** Mr. Richardson made a motion to approve Case # 02 – M2 L6-4, 174  
415 Hampstead Road. Ms. Lauren Cairns seconded the motion.

416

417 *Discussion:* Ms. Green had concerns about the driveway being so close to a troublesome  
418 intersection. She also felt there are other uses of the property and doesn't feel it is a  
419 hardship to not grant the variance.

420

421 Mr. Richardson stated he was on the board the last time they heard the case. He does not  
422 feel there have been any changes that would cause the application not to be approved.

423

424 Mr. Meisner, Mr. Richardson, Ms. Lauren Cairns voted in favor. Ms. Green opposed. The  
425 motion passed.

426

427 Mr. Meisner reminded Mr. Hatch that there is a 30-day appeals process, so if any new  
428 information is brought forward, the case could be reheard.

429

430 **Case # 03 –M20 L3, 218 Fremont Road**

431 Rebecca Janco is requesting a variance from Article II, Part D, Section 3 of the Sandown  
432 Zoning Regulations to permit an open space development on the property with less than  
433 200' of frontage and less than 15 acres in area.

434 *Tim Lavelle from James Lavelle & Associates was representing Rebecca Janco*

435

436 Mr. Lavelle noted they were granted a variance on August 2, 2010 which has expired. He  
437 noted the plans have changed since then, the previous plans had a longer road and the  
438 houses were placed differently. He noted the property has zero frontage and they were  
439 granted an access easement, which has been recorded. He noted they acquired a dredge  
440 and fill permit from the state for the proposed culvert. They are working with the  
441 Conservation Commission to get their approvals as well. They have obtained state  
442 subdivision approval. It would be considered an open space subdivision, three lots  
443 accessed by a private shared driveway. The rest of the property would be open space and  
444 each home would own ¼ share and all would have access to it. The property is 14.68  
445 acres, just shy of the 15 acre requirement.

446

447 Ms. Green questioned how many houses there would be. Mr. Lavelle noted there is an  
448 existing home and they were adding three additional. He noted there is a barn within the  
449 open space area that they no longer use.

450

451 Ms. Green asked if Chief Tapley reviewed the plans and Mr. Lavelle noted he had not  
452 had the fire chief review them yet. He noted they are working with the planning board on  
453 the plans and will make a few changes but they need to obtain the variance before they  
454 can move forward.

455

456 Mr. Meisner noted for the applicant that one member of the board was missing and they  
457 had the option to withdraw without prejudice or ask for an extension so the case could be

458 heard with a full board. Mr. Lavelle noted he would like to move forward with the  
459 hearing

460

461 Mr. Richardson questioned the right-of-way. Mr. Lavelle noted there has always been an  
462 existing driveway there and they have always had the right-of-way. They recently  
463 formalized the easement which states that they could put a private road in. The deed was  
464 recorded in 2012.

465

466 Ms. Green questioned when the parcel was purchased. Mr. Lavelle guessed that it was 25  
467 years ago and has been in Ms. Janco's family for a long time. Ms. Green asked if the  
468 property was always in that configuration without frontage. Mr. Lavelle indicated it was.

469

470 Mr. Meisner opened the hearing to the public. There were no abutters present.

471

472 Ms. Green noted that when the board reviewed the application, the identity of the  
473 applicant was in question and asked if that had been cleared up. Mr. Lavelle explained  
474 that Rebecca Janco and Rebecca Lavelle are the same people. She is widowed, and the  
475 name on the deed is Rebecca Lavelle. She has since remarried and changed her name to  
476 Janco.

477

478 Mr. Meisner closed the meeting to the public and the applicant.

479

480 Mr. Lavelle read the criteria questions and his answers:

481

- 482 1. ***Granting the variance would not be contrary to the public interest:*** The site is  
483 only 7,000 s.f. less than 15 acres and has a legal 50' right-of-way with access on  
484 to Fremont Road that would allow the property to be developed under the intent  
485 of Article II.
- 486
- 487 2. ***If the variance were granted, the spirit of the ordinance would be observed***  
488 ***because:*** The property's size and location allow for the development to meet the  
489 purpose and intent of open space development regulations.
- 490
- 491 3. ***Granting the variance would do substantial justice because:*** It would allow the  
492 property to be developed with minimum impact on the surrounding properties and  
493 the town.
- 494
- 495 4. ***If the variance were granted, the values of the surrounding properties would***  
496 ***not be diminished:*** The proposed use is for single family dwellings in a single  
497 family area.
- 498
- 499 5. ***Unnecessary Hardship***
- 500
- 501 ***a. Owing to special conditions of the property that distinguish it from other***  
502 ***properties in the area, denial of the variance would result in***  
503 ***unnecessary hardship because:***

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524

525 Ms. Green stated that there is a reason the town doesn't allow developments on properties

526 that don't have enough frontage and doesn't feel comfortable waiving that. She noted the

527 town has that rule not just to preserve the rural character of the communities but also to

528 prevent unnecessary density. Ms. Green also noted concern that there will be four houses

529 and only one exit out and isn't confident that fire trucks could get around. She felt the

530 spirit of the ordinance is not being observed because of the frontage problem.

531

532 **MOTION:** Mr. Richardson made a motion to approve Case # 03 –M20 L3, 218 Fremont

533 Road. Ms. Lauren Cairns seconded the motion. Mr. Meisner, Mr. Richardson, Ms. Lauren

534 Cairns voted in favor. Ms. Green opposed. The motion passed.

535

536 Mr. Meisner reminded Mr. Lavelle that there is a 30-day appeals process, so if any new

537 information is brought forward, the case could be reheard.

538

539 **Continued hearing for Case #122012-01 - Map 5 Lot 22-03. Property Location: 1**540 **Rowell Lane** - James and Catherine Ryder are requesting a variance from Article II,

541 Section B of the Sandown Zoning Regulations to permit a relocation of Yogamatters,

542 LLC to a different location within the dwelling, with no other changes to the business.

543 The property currently has a special exception, which was granted in 2004.

544

545 *Billie Ryder, Kingston, NH was present to represent the applicant. He is James and*546 *Catherine Ryder's son.*

547

548 Mr. Meisner noted they have heard the case and the board would deliberate the criteria

549 questions and discuss but there could be no further input from the public.

550

551 Mr. Meisner noted he received an email after the case was heard. The board read the  
552 email.

553

554 Mr. Meisner asked the board if they had a chance to review all the information. The  
555 board all confirmed they did.

556

557 Ms. Lauren Cairns noted she felt that they didn't answer the criteria questions adequately  
558 and all their answers referred back to their special exception. She questioned if they  
559 should consider what is written in their answers or the information they received at the  
560 hearing. Mr. Meisner noted that as long as they consider information contained in the  
561 minutes of the meeting and it was presented as part of the case, then they could take both  
562 into consideration.

563

564 Mr. Meisner noted for the applicant that one member of the board was missing and they  
565 had the option to withdraw without prejudice or ask for an extension so the case could be  
566 heard with a full board. Mr. Ryder noted he would like to postpone the hearing until a full  
567 board could be there. Mr. Meisner noted that because of board member schedules, that  
568 probably wouldn't be until April. Mr. Ryder questioned if there was a split vote, what  
569 would happen. Mr. Meisner noted that it would be a denial if there was a split vote. Mr.  
570 Ryder questioned if they would be able to appeal. Mr. Meisner noted that if he felt the  
571 case was not heard correctly or any new information came forward they could appeal. He  
572 also noted they could apply for a new variance for something else. Mr. Ryder indicated  
573 he would like to move forward with the hearing.

574

575 Mr. Richardson noted that he reviewed all the information and in regards to criteria  
576 question number 5, he didn't feel there would be undue hardship by not granting the  
577 variance because they have been in existence since 2004 and could still operate the studio  
578 if things were left as is.

579

580 Mr. Meisner addressed some of the issues Attorney Campbell brought forward. He feels  
581 some of the information Attorney Campbell listed in his background statement is fairly  
582 vague and doesn't have a direct affect on the variance.

583

584 Mr. Meisner did agree with Attorney Campbell's statement regarding non-conforming  
585 use. He also agreed with what Attorney Campbell stated in opposition to the criteria  
586 questions.

587

588 **MOTION:** Mr. Richardson made a motion to approve Case #122012-01 - Map 5 Lot 22-  
589 03. Property Location: 1 Rowell Lane. Ms. Lauren Cairns seconded the motion. All  
590 members unanimously opposed. The motion failed and the variance was denied.

591

592 Mr. Meisner noted that if the Ryders had hired a professional to assist in answering the  
593 questions, the case could have gone a different way.

594

595 Mr. Meisner reminded Mr. Ryder that there is a 30-day appeals process, so if any new  
596 information is brought forward, the case could be reheard.

597

598 **Review of the 1/24/13 Minutes**

599 L21 remove extra comma

600 L41-42 change “petitions” to “partitions”

601 L149 “memo” to “memorandum”

602 L151 “memo” to “memorandum”

603 L207 “the” to “that”

604 L278 “mediation” and strike “the”

605 L419 delete “the” before Mr. Sherwood

606 L464 “they” should be changed to “the”

607 L469 “close” change to “closed”

608

609 **MOTION:** Mr. Richardson made a motion to accept the 1/24/13 minutes as amended.

610 Ms. Lauren Cairns seconded the motion. All members voted in favor. The motion passed.

611

612 **Adjournment**

613 **MOTION:** Mr. Richardson made a motion to adjourn. Ms. Green seconded the motion. All

614 members voted unanimously in favor. The motion passed. The meeting adjourned at 10:12 p.m.

615

616 Respectfully submitted,



617

618 Andrea Cairns, Recording Secretary