

**Town of Sandown
Zoning Board of Adjustment
Minutes 5/9/13**

1
2
3
4
5
6 **Meeting Date:** May 9, 2013
7 **Type of Meeting:** Public Hearing
8 **Method of Notification:** Public Posting - Sandown Town Hall, Sandown Post Office,
9 Sandown Website
10 **Meeting Location:** Sandown Town Hall
11 **Members present:** Chairman - Steve Meisner, Vice Chair - BJ Richardson,
12 Lauren Cairns, Donna Green, Dave Ardolino, Christopher True,
13 Donna Green
14 **Absent:** Curt Sweet, Tom Tombarello - Selectman’s Liaison
15
16

17 **Opening:** Mr. Meisner opened the meeting at 7:15 p.m.
18

19 **Review of the 4/25/13 Minutes**

20 L149 change “exiting” to “existing”
21 L290 – space between 2013 and “and”
22

23 **MOTION:** Ms. Green made a motion to approve the 4/25/13 minutes as amended. Mr.
24 Richardson seconded the motion. All members voted unanimously in favor. The motion
25 passed.
26

27 **Case # 01 – M5 L22-03, 1 Rowell Lane – continued from hearing on 4/25/13**

28 James and Catherine Ryder are requesting a variance from Article II, Section B of the
29 Town of Sandown Zoning Ordinance to permit relocation of Yogamatters LLC to a
30 different location within dwelling with no other changes to the business. The property
31 currently has a special exception which was granted in 2004. The variance application is
32 being reheard as a result of the ZBA’s March 7, 2013 vote.
33

34 Mr. Meisner, Mr. Richardson, Mr. Ardolino, Ms. L. Cairns, and Ms. Green were
35 appointed as the voting members.
36

37 Ms. Green stated she gave the case a great deal of thought, noting she is new to the board
38 and reviewed the material at length. She feels that a small yoga studio in town is in the
39 public interest, but also feels that the spirit of the ordinance is intended to control
40 businesses of that size and intensity in residential zones. She does not feel the spirit of the
41 ordinance is being upheld. She also has concerns about traffic. For those reasons, she
42 answered no to question one and two.
43

44 She answered no to question three because she feels the intensity if the building will be
45 exactly the same, so she feels the loss to the applicant won’t be that much as compared to
46 the abutters.

47

48 She answered no to question four because increasing the square footage of the non-
49 conforming use will more likely than not, detrimentally affect the surrounding property
50 values.

51

52 She answered no to question five because she thinks the proposed use of the square
53 footage is too large for a reasonable hobby business. She also feels there is nothing
54 unique about the property to constitute a hardship if the variance were denied.

55

56 Mr. Meisner noted this has been without a doubt one of the hardest cases he's debated.
57 He has spent hours reading and working the questions back and forth. He feels it comes
58 down to addressing the case as either a brand new variance or as an existing special
59 exception. If there was no existing special exception, then he would agree with Ms.
60 Green 100%, but because the business already exists in the space he answered yes on
61 numbers 1-4. Question number five is the one he had the biggest issue with and spent the
62 most time addressing. He doesn't imagine the business will change much by simply
63 moving it to another room, but had concerns regarding policing which is not the
64 responsibility of the Board.

65

66 Ms. Green noted that she feels they need to take the applicant at their word and policing
67 shouldn't be taken into consideration. Mr. Meisner clarified that policing seemed like a
68 large issue for the abutters.

69

70 Mr. Meisner noted that looking at the business at face value, nothing should change. He
71 went through the letter submitted by Attorney Ratigan and compared it to the court
72 decree because he didn't want to make a mistake and allow more than what the court
73 allows.

74

75 Ms. Green had concerns with allowing an expansion of a non-conforming use. It is not a
76 natural expansion. She feels there has to be some really compelling reasons to allow that.

77

78 Mr. Meisner noted that Attorney Campbell noted that the state is trying to get rid of all
79 non-conforming uses, but the RSAs do not suggest or require the removal of a natural
80 expansion of non-conforming use. Ms. Green feels that it doesn't include moving into a
81 newly built section of the building.

82

83 Mr. Meisner noted that he voted yes on questions 1-4 and no for question five. He feels
84 that because the business is already there, running at capacity, he doesn't see the hardship
85 if they can't change rooms.

86

87 Ms. L. Cairns noted that she too has been struggling with this and is also new to the ZBA.
88 She noted the sticking point for her was something she read in the *State of NH Board of*
89 *Adjustment Handbook*. In there it stated "when the ordinance contains a restriction
90 against a particular use of the land, the Board of Adjustment would violate the spirit and
91 intent of the ordinance by allowing that use. If an ordinance prohibits industrial and

92 commercial uses in a residential neighborhood, granting permission for such activities
93 would be of doubtful legality. The Board cannot change the ordinance.”

94

95 Ms. Cairns answered no for questions one and two.

96

97 She answered no for question three because they will still be able to operate the business
98 if the variance was not granted. She answered no for question four. She noted it is
99 difficult to quantify home values, but based on the abutter’s statements, they feel their
100 property values have gone down. She feels anyone who may be following along with this
101 case would likely not want to buy a home in that neighborhood; it doesn’t seem like a
102 friendly place to live. She also answered no to question number five, but wanted to hear
103 what the rest of the board thought. She would like to see the business continue and
104 prosper, but she has to follow the rules Sandown has made and she doesn’t see how they
105 could grant the variance.

106

107 Mr. Ardolino noted that he too has had some difficulty since he doesn’t have a lot of
108 experience on the Board. He’s not sure how he should answer the questions and had not
109 yet come to a conclusion. Mr. Meisner understood completely, as a new member it can be
110 confusing. He suggested listening to the debate to help him determine his answers.

111

112 Mr. Richardson noted that he tries to look at both sides of every argument and he tries to
113 put himself in every situation. He’s a homeowner and a small business owner, but as a
114 board member he has to look at the case in a black & white perimeter which is difficult.

115

116 If he was the homeowner and had a legal allowance for the business but was told he
117 couldn’t do something, he wouldn’t be happy. On the other hand, there is an agreement to
118 allow a certain business, the home was expanded, and there are now questions as to how
119 the business is being run. He has to look at the best interest of the town and the overall
120 population of the people. The business serves a purpose; there is a need for it. On the
121 other hand there are neighbors that have endured confrontations, money has been spent
122 on lawyers, and there are bad feelings.

123

124 Mr. Richardson voted no for questions 1-3. Question four, he voted yes because he does
125 not feel the burden of proof was provided by either party to prove that home values have
126 been diminished. He answered no to question five because they can still run the business
127 there.

128

129 Mr. Meisner reviewed the memo submitted by Attorney Bernard Campbell noting there
130 were some items he wanted to clarify. In the memo, Attorney Campbell stated there was
131 confusion over which part of the building is the main home and which is the apartment.
132 Mr. Meisner noted that if he had looked in the property file, it is quite clear which is
133 which. He also noted in the memo, Mr. Campbell stated that the Ryders have approval for
134 an in-home business. He wanted to clarify that yes, it is a business in the home, but they
135 received their approval under “commercial use.” Mr. Meisner agrees with everything Mr.
136 Campbell stated on page three regarding the request for the rehearing and his information
137 on the prior non-conforming use.

138

139 Ms. Green noted that she did have some confusion over what is the main house and what
140 is the apartment. There was question surrounding the dimensions of the apartment
141 compared to the dimensions of the home and which was bigger and the actual dimensions
142 were never determined. Mr. Meisner noted that it is very clear if he had looked in the file.
143 Mr. Meisner reminded board members that they needed to take into account only facts
144 and not hearsay.

145

146 Mr. Meisner also noted that Attorney Campbell's memo stated that some of the terms of
147 the court decree are inconsistent with the statements made at the 2004 hearing for the
148 special exception and that the court decree allows more than the 2004 special exception
149 allowed. Members discussed what this might mean; Mr. Richardson felt that Attorney
150 Campbell was simply stating that the scope was increased from the original 2004 special
151 exception to the court decree.

152

153 Mr. Meisner continued to review attorney Campbell's memo.

154

155 Mr. Meisner discussed changes in zoning ordinances and noted that most changes align
156 with the town's Master Plan and the overall vision for the town.

157

158 Mr. Meisner reviewed Attorney Ratigan's answers to the variance questions.

159

160 Ms. Green noted that she took issue with Attorney Ratigan's statement that the property
161 is unique because of the special exception. Mr. Meisner feels it is a judgment call. Ms.
162 Green noted that Attorney Campbell did address it in his memo stating there is nothing
163 unique about their property and the existing of a prior special exception does not make
164 them unique. Members discussed the attorney's opposing opinion on what makes the
165 property unique.

166

167 Mr. Meisner asked the Board for final thoughts before opening for a motion.

168

169 Mr. Richardson noted that evidence provided by real estate professionals would have
170 been valuable to the board and he could have made a more informed decision with that
171 information.

172

173 Mr. True asked if he could give his opinion on the case even though he's not a voting
174 member. Mr. Meisner asked that he not answer yes or no for specific questions, but could
175 certainly give his opinion.

176

177 Mr. True doesn't feel there is any issue and they should have the right to move to the
178 other space in their home. He noted there can only be so many vehicles and classes and
179 doesn't feel moving from one location in the home to the other would affect anyone.
180 Someone walking or driving by the home would see no difference. As far as hardship, the
181 town doesn't gain anything by not allowing someone to use their property as they wish
182 and feels moving from one section of the home to another section is a reasonable use. It is

183 a hardship to deny someone the use of their property if there is no gain to the town. He's
184 not voting, but was happy to have the opportunity to speak.

185

186 Ms. Green feels the vote comes to whether the spirit of the ordinance is met, and their
187 vote is determined by their interpretation of the ordinance.

188

189 Mr. Meisner noted that if it weren't for the allowance of commercial business outside the
190 business zone, there wouldn't be repair shops and other business in town and feels
191 because of the zoning changes, it is going to be really difficult for any commercial
192 business to come into town.

193

194 Ms. Green noted that she wants to see the town grow and have commercial development
195 and it seems unfair that our regulations don't have leeway, but they have to go by what
196 the regulations allow.

197

198 Ms. L. Cairns noted that by eliminating that ordinance from the zoning regulations, they
199 are saying they want to eliminate commercial use in a residential area and the board
200 shouldn't be granting variances. She doesn't feel it's good for the town to not allow
201 commercial use and feels small business are an important part in making the town what it
202 is, but she has to work with what they have and perhaps it needs to be brought up to the
203 Planning Board in the future to allow existing business to expand.

204

205 Mr. Meisner noted that if a case came in three months from now and all the information
206 was the same, there is nothing to say they couldn't vote differently.

207

208 Ms. L. Cairns questioned how she could say no to commercial expansion in this case, but
209 allow one next year. Mr. Meisner noted that the state requests that the Board treat every
210 case as different, no two cases are the same. Mr. Richardson feels they can't put
211 everything into one hole, there are individual minds with individual reasoning. He
212 interprets things different than others might. Each case needs to be judged on it's own
213 principles, values and how it's going to affect the town. We do have to maintain some
214 integrity within certain areas, the town is going to expand, but it needs to expand in the
215 way that serves the majority of the town.

216

217 Members discussed how to interpret the zoning ordinances and whether they could treat
218 each case differently or if they always have to deny commercial business in a residential
219 area.

220

221 **MOTION:** Ms. Green made a motion to deny case # 01 – M5 L22-03, 1 Rowell Lane.

222

223 Mr. Meisner clarified how the board needed to draft the motion. He noted if each board
224 member has a "no" answer, then a motion should be brought forward to deny and the
225 reason for each board member's denial would be explained on the voting sheets and
226 available for review by the public.

227

228 Members questioned if there needed to be one question that all members answered no on
229 as the primary reason for denial. Members agreed it would make the motion more clear.
230
231 Mr. Meisner felt that one “no” vote to any question would mean a denial. Mr. Richardson
232 felt that there needed to be a majority vote.
233
234 Mr. Hatch noted that it was common practice for other boards to first make the motion to
235 approve or deny and then poll each member why they denied the motion.
236
237 Members continued to debate how to vote.
238
239 Ms. Green made a motion to disapprove Case # 01 – M5 L22-03, 1 Rowell Lane. Mr.
240 Richardson seconded the motion.
241
242 Ms. Green voted in favor of the denial. She answered no for questions 1-5.
243
244 Mr. Meisner voted in favor of the denial. He answered yes for questions 1-4, but no for
245 question 5.
246
247 Ms. L. Cairns voted in favor of the denial. She answered no for questions 1-5.
248
249 Mr. Ardolino abstained.
250
251 Mr. Richardson voted in favor of the denial. He answered no for questions 1-3, yes to
252 question 4 and no for question 5.
253
254 Four members voted to deny the variance, one abstention. The motion passed. The
255 variance has been denied.
256
257 Mr. Meisner noted the Ryder’s have been denied their application for a variance. He
258 noted the voting sheets would be in the file for their review. He made them aware that to
259 move forward they needed to go to court since this was their rehearing.
260
261 Mr. Meisner stepped down and appointed Chris True as a voting member and BJ
262 Richardson as Chairman.
263
264 **Case # 02 – M7 L17-6, 218 Main Street – continued from hearing on 4/25/13**
265 Christopher Loader is requesting a variance from Article II, Part B, Section 2 of the
266 zoning ordinance to allow two additional bays to the existing auto repair facility, for a
267 total of four bays and display of up to six vehicles for sale on the site.
268
269 Mr. Loader submitted an additional statement with suggested conditions of approval.
270 They included: granting of a site plan approval and lot line adjustment by the Sandown
271 Planning Board; the granting of all necessary driveway permits by the State of NH
272 Department of Transportation; Hours of operation shall be limited to 8 a.m. to 5 p.m.
273 Monday through Saturday; The facility shall be maintained in a neat and orderly

274 appearance; Noise from this facility shall have no negative effect on the abutting
275 properties. He hoped by adding some of those conditions, the Board may feel more
276 comfortable granting the variance.

277

278 The Board had no issues with accepting those conditions.

279

280 Ms. Green noted that she sees it as an expansion of a non-conforming use and questioned
281 how it was different from the previous case.

282

283 Mr. Richardson did not feel that the location was the same kind of residential area. The
284 road is already established as commercial use by multiple businesses. He also noted that
285 not many of the neighbors in the area had an issue with the business.

286

287 Ms. Green questioned at what point the Board could prevent him from expanding even
288 further and coming back year after year.

289

290 Mr. Richardson noted they have the discretion to add conditions on anything they
291 approve. There are other restrictions in the regulations that they can use as a guide for
292 limitations on expansion.

293

294 Ms. Green asked if someone could list the commercial properties along 121A. Mr.
295 Richardson listed the businesses along the road, noting where the business district started
296 and ended.

297

298 Mr. True had concerns that by allowing the business to expand, it could potentially cause
299 the repair shop to look like a used car lot. He doesn't feel repair shops and used car lots
300 along 121A is what the town is looking for in residential areas. He feels an expansion of
301 the property would diminish the value of the surrounding properties. He feels that way
302 because anyone wishing to move to Sandown is not going to want to live next door to a
303 repair facility and used car lot.

304

305 Mr. Richardson feels the property values wouldn't change because the business is already
306 in place. He feels because of the location of the property it would be a natural expansion
307 of the business district. He feels it serves both the applicant and the town.

308

309 Ms. L. Cairns doesn't feel that increasing the number of bays would make much of a
310 difference to home values. The improvement to the adjacent lot could increase the value
311 of the surrounding homes. She agrees it does seem to be an area that lends itself to
312 commercial business. She feels more comfortable approving this case.

313

314 Mr. Richardson feels it is the Board's responsibility to look at the greater good of the
315 community. He agrees with Ms. L. Cairns that the property next door would benefit from
316 the clean-up and the expansion wouldn't affect property values. Mr. Richardson
317 expressed concern over having six vehicles on display and would be more comfortable
318 with four. He feels there is hardship because of the way they need to rotate cars when
319 waiting for parts. He appreciates how they maintain the business. He noted if the

320 applicant would be agreeable to four vehicles, then he would be more comfortable
321 approving.

322

323 Members discussed the number of bays. Mr. Meisner reminded the Board that they were
324 applying for an area variance, so the number of bays didn't matter, they would be giving
325 him a variance to add square footage to expand the business. They were not going for a
326 use variance which would specify the number of bays.

327

328 Members discussed the proposed changes in hours. Mr. Richardson noted that within the
329 business zone they have specific hours they need to abide by. Members reviewed the
330 zoning ordinance for the regulations on hours. Mr. Richardson noted that lights must be
331 off by 9:30 which is from the dark skies ordinance.

332

333 Members discussed the number of vehicles on display. Mr. Richardson noted he would
334 feel better with only four cars on display. Ms. L. Cairns agreed.

335

336 Mr. Loader noted he only puts green tags on the cars when they are for sale. He grew up
337 in town, loves the town, and doesn't want it to look like a used car lot and would
338 welcome any input they have to make it look clean. He is comfortable with them putting
339 no flags or signage as a condition. He doesn't feel his property currently looks like a used
340 car lot.

341

342 Members discussed the wording and agreed that the condition should include that it must
343 maintain a rural tone, no banners or signs.

344

345 Mr. Loader added that his current sign meets zoning regulations.

346

347 Mr. Richardson noted that small business used to be mom & pop type operations, but
348 today's economy has expanded beyond that.

349

350 Members discussed how this business is different from the previous case noting the
351 neighborhood as a big difference.

352

353 Mr. Richardson explained that when Chestnut Hill Drive was approved, the lot on the
354 corner was approved with the driveway to be moved to Chestnut Hill Drive from 121A.
355 Mr. Meisner noted that the site line issue that was brought up by an abutter is the reason
356 the driveway was moved because they didn't have the site distance required by the state.

357

358 Mr. Hatch noted that they would like to change their application to say four cars on
359 display instead of six cars on display. Members noted they couldn't change their
360 application unless they wanted to resubmit a completely new one.

361

362 Ms. Green asked if they should include site plan approval as part of their condition. Mr.
363 Meisner noted they could, but that's a given. They wouldn't get a building permit without
364 site plan approval.

365

366 **MOTION:** Ms. Green made a motion to approve Case # 02 – M7 L17-6, 218 Main Street
367 subject to the following conditions:

- 368 • The variance is contingent upon the applicant obtaining lot line adjustment from the
369 Sandown Planning Board and that the proposed building addition meets all set back
370 requirements set by the Sandown Zoning Ordinance
- 371 • The applicant is restricted to the span of the building, of up to 1,200 additional square
372 footage, allowing two additional bays
- 373 • The hours of operation are limited to 8 a.m.- 5 p.m. (Monday-Friday), 8 a.m. – 2 p.m.
374 (Saturday), closed on Sunday
- 375 • The property shall be maintained in a neat and orderly fashion
- 376 • Noise from the facility shall have no negative effects on abutting properties
- 377 • The business is restricted to four cars for sale displayed at the front of the property with
378 no banners, flags or signs all keeping with a rural design. The exception is the current
379 signage for the business.

380

381 Ms. L. Cairns seconded the motion.

382

383 Ms. Green noted she answered yes to all five criteria questions.

384 Mr. True answered no to all five criteria questions.

385 Ms. L. Cairns answered yes to all five criteria questions.

386 Mr. Richardson answered yes to all five criteria questions.

387 Mr. Ardolino answered yes to questions 1 and 3 and no to questions 2, 4, 5.

388

389 Mr. Richardson noted there were three votes in favor, two votes opposed. The motion
390 passed.

391

392 Mr. Richardson reminded the applicant of the 30 day appeals process.

393

394 Mr. Meisner stepped back in as Chair.

395

396 Mr. Richardson noted he has enjoyed his time on the board and is grateful for all the
397 people he has met. He is moving south and officially resigned from the Board as Vice
398 Chairman effective at the end of that meeting.

399

400 Members discussed who would come on board as a full time member. Ms. Green noted
401 she was not interested.

402

403 **MOTION:** Mr. Meisner made a motion to bring Chris True on as a full-time member.

404 Mr. Richardson seconded the motion. All members voted in favor. The motion passed.

405

406 Members discussed who would take on the Vice Chair position. Mr. Meisner noted that
407 Mr. Sweet indicated he was not interested in the position. Ms. L. Cairns noted she would
408 be interested.

409

410 **MOTION:** Mr. Meisner made a motion to elect Ms. Lauren Cairns as Vice Chair. Mr.

411 Richardson seconded the motion. All members voted in favor. The motion passed.

412

413 **MOTION:** Mr. Richardson made a motion to adjourn, Ms. Green seconded that motion.
414 Meeting adjourned at 10:40 p.m.

415

416 Respectfully submitted,

A handwritten signature in cursive script that reads "Andrea Cairns".

417

418 Andrea Cairns, Recording Secretary