

**Town of Sandown
Zoning Board of Adjustment
Minutes 6/27/13**

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6 **Meeting Date:** June 27, 2013
7 **Type of Meeting:** Meeting
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, Lauren Cairns, Dave Ardolino,
12 Christopher True. Donna Green - Alternate, Curt Sweet
13 **Absent:** Tom Tombarello – Selectman’s Liaison
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16 **Opening:** Mr. Meisner opened the meeting at 7:05 p.m.

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18 Members agreed to defer approval of minutes to the next meeting until everyone had a
19 chance to review them thoroughly.
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21 **Application for a Special Exception**

22 Ronald and Sharon Frick, 278 Seabreeze Circle, FL applying for a special exception to
23 Article 5, Section 6 – Conversion of Residential Structures from Seasonal to Full-Time
24 Occupancy for M25, L67, located at 10 Steele Drive, Sandown.
25

26 There was a complete plot plan with a new septic design with the application.
27

28 Ms. Green and Ms. Lauren Cairns verified the abutters’ list.
29

30 Members reviewed the plot plan.
31

32 There were three addressed envelopes, Mr. Meisner noted they needed to include
33 themselves on the list and use the name and address on the tax card for the lot
34

35 Mr. Meisner noted that the minimum lot size must be 20,000 sq. ft. as stated in Article II,
36 Part B, Sections 3.C.1 and 3.C.2 and noted they could not meet that criteria since their lot
37 is approximately 11,000 sq. ft.
38

39 He noted zoning permits a special exception as long as you meet the zoning
40 requirements. They do not qualify, so they cannot get the special exception.
41

42 Members agree they should get their application fee refunded.
43

44 **MOTION:** Mr. True made a motion to deny the application for a special exception
45 submitted by Ronald and Sharon Frick for M25, L67, because they do not meet Article 5,

46 Section 6:B 1 of the Sandown Zoning Regulations. Ms. L. Cairns seconded the motion.
47 The Board voted unanimously in favor. The motion passed.

48

49 **Attorney Diane Gorrow for an Educational Discussion with the Board**

50 Attorney Gorrow noted she had something prepared but asked if the Board would prefer
51 to do a question and answer format if they had specific questions they wanted addressed.
52 Members felt it would be good for her to start with what she had prepared and answer
53 questions as they came up.

54

55 Attorney Gorrow reviewed statute 674:41 which addresses the process of issuing building
56 permits for lots on a class VI road. She noted the selectman have to vote to authorize the
57 issuance of building permits on the class VI and the property owner needed to give the
58 town documentation stating that the town doesn't assume any liability or maintenance of
59 the road. That document is filed with the registry of deeds. Members confirmed that
60 Sandown was doing that.

61

62 Attorney Gorrow noted that she reviewed the Boards applications and bylaws and noted
63 that their process of having an application reviewed before the public hearing was
64 unusual. She said that was more like the Planning Board's design review phase and
65 typically not done by zoning boards. Mr. Meisner noted it was simply to make sure the
66 application was complete. She noted they should make a motion stating that the
67 application is complete and shouldn't be discussing the merits of the case since it isn't a
68 properly noticed public hearing and the applicant and abutters generally aren't present for
69 that review phase.

70

71 Mr. Meisner noted that the Board should review and update their bylaws since there are
72 several items that are incorrect and outdated. Attorney Gorrow noted that it's a good idea
73 to review bylaws on a regular basis.

74

75 Attorney Gorrow noted the statutes allow the ZBA to charge the applicant for any
76 information that the Board may need if they need to hire consultants. The only limitation
77 is if the applicant has been to another board and already paid for the same type of
78 consultant.

79

80 *Making Motions*

81 Attorney Gorrow noted that once the Board has heard the merits of the case, some Boards
82 always make a motion to approve and if it doesn't pass, they then make a motion to deny.
83 She noted there is nothing that says you have to make a motion both ways. She feels as
84 long as what they are voting on is clear, they do not need to go through the mechanisms
85 of approving first, then denying.

86

87 Mr. True asked if someone feels that most of the Board is going to deny the application,
88 can they simply just make a motion to deny? Attorney Gorrow noted they could do that.
89 If it failed, they then needed to make a motion to approve. You just have to have a solid
90 yes vote. She also noted that the Board doesn't need to make a decision on the night they
91 hear the case. They can defer the motion to another night so that the Board can

92 thoroughly review all that they've heard. She said usually the Board will close the
93 hearing for public input and at the next meeting just give the decision. She said if all
94 parties including both applicants and abutters are present at that meeting it would be ok
95 for the Board to ask clarifying questions if needed.

96
97 She noted when the Board makes their motion, if they are denying an application they
98 have to state their reasons. If they are approving an application with conditions, the
99 conditions have to be clearly stated. If they are simply approving with no conditions, they
100 don't need to give a written reason why. She noted it would be helpful on the voting
101 sheets if there were lines after each factor for a board member to write notes.

102
103 She noted it is permissible for the Board to seek legal counsel if a complicated case
104 comes up.

105
106 *Hardship*

107 Attorney Gorrow noted that hardship used to refer to just the land, but after a new
108 Supreme Court case, the building can also be considered.

109
110 Simplex test: What are they seeking a variance from? How does the ordinance relate to
111 what they are trying to do? The proposed use has to be reasonable.

112
113 If someone doesn't meet that, there is a second hardship test:

114
115 Pre-simplex: If and only if, there are special conditions of the property and a variance is
116 necessary for a reasonable use of the property. This is not meant to maximize the use of
117 their property, only to give someone options if they have absolutely no use of their
118 property.

119
120 When considering a variance they need to consider:

121 What are the restrictions they are apply from?

122 What is the purpose of the use?

123 What is special about this property vs. others in the area?

124 What are the restrictions as applied to the property?

125
126 If there was a change in a zoning law, you cannot look at the characteristics of the
127 neighborhood that existed before the zoning was changed as a reason for allowing a
128 variance. Changes in zoning are saying that the town no longer wants those
129 characteristics to exist moving forward. Zoning should reflect the character and nature of
130 the neighborhood as it is today.

131
132 Ms. Green questioned if the Board grants a variance, are they then creating a precedence
133 moving forward. Attorney Gorrow noted that if there are similar lots on the same street
134 then yes, they might be. It depends on the nature of the lots and how similar they are. She
135 noted each case should be determined on an individual basis. Its not necessarily creating
136 precedence, but it might be more difficult to rule differently.

137

138 Ms. Green asked how much does the Board have to hold the applicant by what they write
139 in their answers vs. what they state at the hearing? Ms. Gorrow felt they could go beyond
140 what is on their application, especially if it is an average person submitting the
141 application. She noted the Board can ask questions that might be helpful in answering the
142 questions but they cannot fill out the application for them. They can certainly expand
143 upon their answers at the hearing.

144
145 The Board questioned the “Spirit of the ordinance” application question. They noted,
146 often it’s difficult to know why the ordinance was created in the first place. Attorney
147 Gorrow noted that sometimes it’s easy to figure out the objective but if you can’t you
148 need to question if granting the variance would threaten public health, safety and welfare
149 and would it detrimentally affect the neighborhood. She noted some Planning Boards will
150 put a paragraph in the ordinance stating the intent and that it can be a struggle if they
151 don’t tell you.

152
153 Mr. Meisner questioned the In-home business section of the Zoning Ordinance where it
154 states any business not meeting the criteria *shall not be permitted*. When a zoning
155 ordinance states “shall not be permitted” can we grant a variance for something that
156 specifies that? Attorney Gorrow noted they could because a variance is for something
157 that is not permitted. Sometimes in the section they will specify variances cannot be
158 granted. People still apply for a variance, but it’s harder because the spirit of the
159 ordinance is clearly stated. A variance allows a zoning ordinance not to be so restrictive
160 that it denies people a reasonable use of their property. She noted that the Zoning Board
161 interprets Zoning Ordinances. If there is question around the meaning of wording, ZBA
162 has the authority to interpret it.

163
164 Attorney Gorrow noted that if someone were to come to the Board with an application
165 that they feel is permitted and they don’t need a variance, the Board is allowed to say that
166 they don’t feel the need is there.

167
168 Attorney Gorrow noted they could put conditions on special exceptions as long as they
169 relate to the applications.

170
171 Members thanked Attorney Gorrow for her time and noted they found the discussion
172 extremely helpful.

173
174 **MOTION:** Mr. True made a motion to adjourn. Mr. Sweet seconded the motion.
175 Members voted unanimously in favor. The motion passed. Meeting adjourned at 10:05
176 p.m.

177
178 Respectfully Submitted,



179
180 Andrea Cairns