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**Town of Sandown  
Zoning Board of Adjustment  
Minutes 3/28/2019**

- Meeting Date:** March 28,2019
- Type of Meeting:** Public Hearing
- Method of Notification:** Public Posting - Sandown Town Hall, Sandown Post Office, Sandown Website, *Eagle Tribune*
- Meeting Location:** Sandown Town Hall
- Members present:** Steve Meisner- Chairman, Chris True- Vice Chairman, Dave Ardolino, Chris Longchamps, John White, Eric Olsen- Selectman Liaison
- Members absent:** Melyssa Tapley

Mr. Meisner opened the meeting at 7:01 pm

**Public Hearing**

**M 28, L 57, 10 Birch Drive-** An application submitted by Richard Moussa requesting a variance from Article II B Section 3 ABC to allow construction of a dwelling on a pre-existing undersized lot of records.

Richard Moussa- 150 B Emerald Drive, Danville present along with Jim Smith land surveyor from Allen & Major Associates.

Mr. Moussa is looking to put a 3-bedroom house on his property located at 10 Birch Drive, Sandown that the Town sold to Mr. Moussa back in January. Mr. Moussa has an approved septic plan. Mr. Smith provided copies to the Board of the plans with the well and septic of the surrounding properties on it. Mr. Meisner asked Mr. Smith if Mr. Moussa’s well is setback 50 feet from the road? Mr. Smith was unaware of the 50-foot setback requirement in the Zoning Ordinance. In Article II A, Section 15B4 goes over the 50 -foot setback from a Public Road for a well.

Mr. Moussa requested a continuance till next month.

**Motion**

Mr. True made a motion to accept the continuance request till next month for M 28, L 57, 10 Birch Drive an application submitted by Richard Moussa requesting a variance from Article II B Section 3 ABC to allow construction of a dwelling on a pre-existing undersized lot of records. Mr. Longchamps second the motion. Mr. Meisner called the vote. All in favor. The motion passed. (5-0-0)

**Continued Public Hearing**

**M 28, L 3, 6 Shady Lane-** An appeals application of a pervious variance application that was submitted by Debra Ann Trust for M 28, L 3 6 Shady Lane that was requesting a variance from Article II B, Section 3 ABC to allow construction of a dwelling on a pre-existing undersized lot of records.

47 Steven Doherty- 100 Hale Street Haverhill, MA, owner/applicant-present along with  
48 Attorney John Cronin from Cronin, Bisson & Zalinsky, present representing Mr.  
49 Doherty. Mr. Doherty is seeking a variance from Article II B, Section 3 ABC to “allow  
50 construction” of a dwelling on a pre-existing undersized lot of records. Mr. Doherty  
51 attended numerous Zoning Board meetings from April 26,2018 to December27,2018 to  
52 conform the proposed building and well and septic radiuses to the State and Town’s  
53 Stadards.

54 Mr. Cronin presented the case to the Board and summarized their response to the  
55 Rehearing Criteria.

56

57 Mr. Meisner opens it up to the public.

58

59 Donna Anderson from 6 Ridge Road came before the Board to express her concerns with  
60 the house going up. Ms. Anderson and her husband maintain the road and it is already  
61 difficult keeping up with the maintenance and is worried the road will become worse with  
62 the construction vehicles come and going and the added traffic a new house would bring.

63 Robert Blair from 6 West Shore Drive came before the Board to express his concerns.

64 Mr. Blair already had to move his well because where is well was previously became  
65 contaminated. He is concerned with the drainage issues they are having over on Ridge  
66 Road that a new house will make more problems for him and his neighbors wells. Brenda  
67 Blair Mr. Blairs wife spoke up and mentioned that the house on 4 West Shore Drive will  
68 have be put in a new well because their existing well became contaminated.

69 David Bachner from 4 Shady Lane came before the Board to express his concerns about  
70 the existing drainage issues and that a new house will cause bigger problems and his  
71 concerned about overcrowding in that area.

72

73 Mr. Meisner closes the discussion to the public.

74

75 Mr. Cronin and Mr. Doherty rejoins the discussion. Mr. Cronin touched on the abutters  
76 concerns regarding the drainage issues. New Hampshire has rules and regulations  
77 protecting abutters from someone coming in and building on the property and changing  
78 the flow of the water onto someone else property. People living on a Private Road have  
79 equal share in maintaining the road. Mr. Doherty plans on putting a single-family house  
80 that will conform to the surrounding houses in the area and will not be adding extra  
81 hardship on the road. Mr. Cronin believes the information they have provided shows that  
82 they do not intend to cause and change in the natural flow of the water and that they meet  
83 all five criteria. Mr. Cronin also asked Mrs. Doherty a license real estate agent in New  
84 Hampshire for over 10 years if the house would diminish the value of the surrounding  
85 properties. Mr. Cronin handing a letter to the Board from Mrs. Doherty stating that in her  
86 professional opinion the values of the surrounding properties will not be diminished if the  
87 variances are granted.

88

89 Mr. True goes over the five criteria and his reasons why he thinks the application doesn’t  
90 meet the criteria.

91

92 **Criteria # 1- The Variance will not be contrary to the public interest.**

93 Shady Lane AKA Ridge Road is not a Town maintained road. It is a class VI road.  
94 Zoning Ordinance Article II A, Section 15, B-4 states “ no well shall be drilled, driven,  
95 dug or constructed closer than 50 feet from any ‘ public right of way’, the reason for the  
96 75 foot radius from wells and septic systems is to protect the wells from contamination...  
97 the reason for a well to be outside a 50 foot radius from a road is to protect the well from  
98 contamination from run off from the road of harmful chemicals such as gasoline, oil,  
99 antifreeze etc. Because a proposed home is on a private road does not mean that we  
100 should not enforce the setback for wells. The plan submitted show the well to be well  
101 inside the 50-foot radius as it is approximately 5 feet from the roadway. Its is not in the  
102 public interest to allow a well to be so placed that it could be it is exposed to chemicals  
103 that could threaten the health, safety and general welfare of those using the well.  
104

105 **Criteria # 2- The spirit of the Ordinance is observed.**

106 The ordinance exists to lessen congestions and to protect people from fires, panic and  
107 other dangers. Shady lane AKA Ridge Road is a narrow dirt road which is 14 feet wide in  
108 places and if a fire trucks and other emergency vehicles responding to a fire were on the  
109 road, no other vehicles could pass. Lemyjoma Trail is the only other way to exit and that  
110 road is even narrower and if one vehicle were on that road, another could not pass.

111 Granting the variance would bring about even more crowding in an already crowded area  
112 on very narrow roads. Lessening congestions would aid in protecting the residents who  
113 live in the area. Allowing more building could jeopardize the health safety and general  
114 welfare of the residents in the event of fire. Granting the variance would make a poor  
115 situation even worse.  
116

117 **Criteria # 3- Substantial justice is done.**

118 Variances can prevent the ordinance from becoming confiscatory or unduly oppressive.  
119 The land in question was bought in December 2017. The buyer knew or should have  
120 known the lot did not meet the Zoning Ordinances for a buildable lot. In denying the  
121 variance, I do not see any loss to the buyer. The land remains as it was bought, that is, too  
122 small to meet Sandown Zoning Ordinances and I do not find that the enforcement of the  
123 town’s zoning ordinances is taking anything away from the applicant since what he  
124 bought is what he now has... no more and no less.  
125

126 **Criteria # 4- The values of surrounding properties are not diminished.**

127 In the last four years, the two largest ponds in Sandown, Angle Pond and Phillips Pond  
128 have had sections closed due to cyanobacteria/fecal warnings issued by the NH DES.  
129 Last August, the Town Beach was closed due to cyanobacteria levels. According to NH  
130 DES and the US EPA, a main cause of cyanobacteria is excessive run off nutrients such  
131 as nitrogen and phosphorous. Common sources of such nutrients are human, and animal  
132 fecal waste and fertilizer run off. An effective measure to prevent excessive nutrients run  
133 off and nutrient leeching into the ponds is to prevent over building and over crowding  
134 around Phillips and Angle ponds. If our ponds are closed more and more frequently due  
135 to cyanobacteria/fecal levels such closures could detrimentally affect and lower the  
136 property values around the ponds since being exposed to such bacteria levels could cause  
137 severe illness and death to humans and animals. If the property values are lowered on the  
138 homes near the ponds that would cause taxes to be raised on all homes in town to make

139 up the lost tax revenue. The Town of Sandown must control the development and over  
140 crowding around the ponds because these ponds are a very important and irreplaceable  
141 natural resource for the town. One of the main purposes of our zoning is to prevent  
142 overcrowding.

143

144 **Criteria #5- Literal enforcement of the provisions of the ordinance would result in**  
145 **unnecessary hardship.**

146 When the applicant purchased this small parcel of land, he knew or should have known  
147 that it did not meet Sandown Zoning ordinances. Because a person buys a parcel of land  
148 that is too small to build on, does not obligate me to ignore the health, safety and general  
149 welfare by granting the variance.

150

151 Mr. Cronin speaks up about Mr. True's statement. Mr. Cronin observed that Mr. True's  
152 comments were written up prior to this meeting and Mr. Cronin believes Mr. True  
153 already made up his mind about the case before tonight's meeting and before hearing any  
154 new evidence for the case and that having a statement written prior to a meeting is a  
155 serious law violation and Mr. Cronin asked MR. Meisner to have Mr. True's statement  
156 thrown out and for Mr. True to recuse himself from any voting on this case. Mr. Meisner  
157 asked Mr. Cronin where it states that any member of a Board who has a written statement  
158 prior to a meeting is a law violation? Mr. Meisner asked what the rest of the Board  
159 thought about having Mr. True's statement thrown out and to recuse himself from voting  
160 on this case. Mr. Meisner, Mr. White, Mr. Ardolino believes without physical proof that a  
161 member can't have a statement about a case written prior to a meeting that Mr. True  
162 should still vote on this case. Mr. Longchamps thinks Mr. True should stepdown from  
163 voting. Mr. True believes that by having a statement written up prior to a meeting is not a  
164 violation and will not recuse himself from voting.

165 Mr. Meisner speaks up on what criteria's he believes the case fails on. Mr. Meisner  
166 mentions that back in 2017 Mr. Doherty purchased 6 Shady Lane under Debra Ann Trust  
167 and 8 Shady Lane was purchased by his company D.C. Development. Both properties  
168 were listed together and on the market 2 months prior to them being purchased. Mr.  
169 Meisner states that he believes the application fails on Criteria's 1,4, and 5.

170 **Criteria #1- The variance will not be contrary to the public interest.** The only issue  
171 Mr. Meisner has is that the well is located 5 feet from the road while the surrounding  
172 wells are located 10 to 15 feet back. Having a well 5 feet from the road is a health and  
173 safety concern.

174 **Criteria #4- The values of surrounding properties are not diminished.** The lot is  
175 lower than the other lots in the area and putting a 11,00 square foot roof on and a raised  
176 septic will create more water in the back of the property and would diminish the values of  
177 28-7, and 28-8 from flooding.

178 **Criteria #5- Literal enforcement of the provisions of the ordinance would result in**  
179 **unnecessary hardship.** Mr. Meisner believes that there is no hardship on the applicant.  
180 The applicant bought a vacant lot and his lot is unchanged because it is still vacant. Mr.  
181 Ardolino speaks up and says he still has concerns with the location of the well and the  
182 over crowding down in that area.

183

184 Mr. Meisner closes the public hearing.

185

186

187 **Motion**

188 Mr. True made a motion to accept an appeals application of a pervious variance  
189 application that was submitted by Debra Ann Trust for M 28, L 3 6 Shady Lane that was  
190 requesting a variance from Article II B, Section 3 ABC to allow construction of a  
191 dwelling on a pre-existing undersized lot of records. Mr. White seconds the motion. Mr.  
192 Meisner calls the vote. All in favor. The motion failed by a vote of (0-0-5).

193

194 **Motion:**

195 Mr. True made a motion to DENY an appeals application of a pervious variance  
196 application that was submitted by Debra Ann Trust for M 28, L3, 6 Shady Lane that was  
197 requesting a variance from Article II B, Section 3 ABC to allow construction of a  
198 dwelling on a pre-existing undersized lot of records. Mr. Longchamps second the motion.  
199 Mr. Meisner calls the vote. All in favor. The motion passed by a vote (5-0-0)

200

201 **Review of 2/28/2019 Minutes**

202 **Motion**

203 Mr. True made a motion to accept the 2/28/2019 minutes as written. Mr. Ardolino second  
204 the motion. Mr. Meisner called the vote. All in favor. The motion passed. (3-2-0) Mr.  
205 Longchamps and Mr. White abstains.

206

207 **Appointment of Chair and Vice Chair**

208

209 **Motion:**

210 Mr. Meisner made a motion to make Mr. True the Chair and Mr. Longchamps as Vice  
211 Chair. Mr. White seconds the motion. All in favor. The motion passed.  
212 Mr. Chris True is the new Chair of the Zoning Board and Mr. Chris Longchamps is the  
213 new Vice Chair of the Zoning Board.

214

215 **Motion:**

216 Mr. Meisner made a motion to nominate Mr. Ardolino as a member of the Zoning Board  
217 for another 3 years. Mr. Longchamps second the motion. All in favor. The motion passed.  
218 (5-0-0)

219

220 **Motion to Adjourn:**

221 Mr. Longchamps made a motion to adjourn. Mr. Ardolino second the motion. Mr.  
222 Meisner called the vote. All in favor. The motion passed. The meeting ADJOURNED at  
223 9:00 p.m.

224

225 Respectfully Submitted,

226

227 Melyssa Tapley