Zoning Board of Adjustment
Town of Sandwich
PO Box 194
Center Sandwich, NH 03227

Minutes April 9, 2026

Regular Members Present: Mary Cove, Jim Gaisser, Kurt Olafsen, Alternates Jim Bullitt, Jon Greenawalt
Absent with notice: Chris Grant, Tim Miner, Alternates Chase Rozelle, Geoff Tyson
Also present: For case 2026-05: Applicant Trevor Greene, Ben Fullerton, Abutter William May
For Case 2026-06: Applicant Andrew Britell, Cory Flynn, Abutter Dick Gamper
Call to Order: Chair Cove called the meeting to order at 6:00 pm

Minutes of February 12, 2026: Mr. Olafsen **Motioned** to consider the minutes as written. Mr. Greenawalt seconded. **Motion** to approve as written, All in favor.

New Business: Motion for Rehearing: Case 2026-05: for denial of Variance for property owned by Trevor Greene located at 488 Ossipee Mountain Road, Sandwich, NH, Tax Map 425 Lot 010 in the Rural/Residential Zoning District concerning Article III Setbacks in the Rural/Residential District referring to Section 150-13 B of the Sandwich Zoning Ordinance for a setback required for a well.

Ms. Cove explained the procedure for determining a rehearing according to the OPD Handbook that a decision whether to grant or deny a rehearing is discussed at a regular meeting, not a public hearing, based on the standard whether the decision was unlawful or unreasonable, and if there is new information or a change in conditions. There were no conflicts of interest. Members to vote: Ms. Cove, Mr. Gaisser, Mr. Olafsen, with Alternates Mr. Bullett and Mr. Greenawalt were appointed. Is there a claim of a technical error on the decision to deny the variance, or new information to be submitted? Mr. Gaisser asked to clarify if any new information was to be presented now or at a new public hearing. Ms. Cove expressed that any information could have been presented previously when requested and nothing had been submitted. It doesn't change the question of the nonconforming well location. Mr. Olafsen stated that there was no technical error and does not see the need for another hearing. Mr. Gaisser stated that he felt the right decision had been made but a rehearing is in order. Mr. Bullitt was still concerned with the well so close to the boundary line. Mr. Greenawalt **Motioned** to grant the rehearing. Mr. Gaisser seconded. In favor: Mr. Bullitt, Mr. Gaisser, Mr. Greenawalt; opposed: Ms. Cove and Mr. Olafsen. A rehearing to be scheduled for Thursday, May 14, 2026 at 6 pm in the Town Hall. Applicant Greene to pay for the notifications.

6:17 pm: **Public Hearing for Case 2026-04** an application for property owned by Andrew Britell located at 96 Diamond Ledge Road, Sandwich, NH, Tax Map 220 Lot 004 in the Rural/Residential District for a Variance concerning Sandwich Zoning Ordinance Article III referring to Section 150-7 A (11) d for minimum lot size and to Section 150-13 C for setbacks in the Rural/Residential District. The application is for a proposed detached garage with an accessory dwelling unit to be built on the nonconforming lot.

Ms. Cove announced that the application is complete, and with no conflicts of interest, voting: Ms. Cove, Mr. Gaisser, Mr. Olafsen, Mr. Bullitt and Mr. Greenawalt. Ms. Cove briefly explained the process with applicant presenting the application, Board questioning, abutters in favor then those opposed asked to speak, any further questions or comments prior to closing the public hearing for deliberation. Mr. Greenawalt **Motioned** to open the Public Hearing. Mr. Olafsen seconded. All in favor.

Applicant Mr. Britell explained that he moved into the 1100 square foot house 3 years ago and needs more storage space and desires to add a two-bedroom Accessory Dwelling Unit (ADU) with a lift over the proposed detached garage for aging parents to live in. The property is a long narrow, pre-existing lot of record being undersized (~ 1 acre) to current zoning requirement and the house does not meet the front setback from the road. In planning this structure, he felt it was better to ask for a variance to be closer to the road (59.7 ft vs 75 ft) which is further back than the existing house than to ask for a variance to be closer to the abutting property at the back of his lot. This structure would be downhill from the house.

Mr. Gaisser noted that if it was only an accessory garage for storage, the front setback required would be 40 feet versus the 75 feet from the center of the road for a principal (and detached ADU) and back would be 25 feet versus 50 feet. Living space must meet principal structure requirements.

Ms. Cove noted that under the ordinance, in Section 150-11, in addition to not meeting setbacks, the lot must conform to the district's minimum size. She asked for the applicant's comments on the five criteria.

Mr. Britell presented the five criteria statements: 1. The variance will not be contrary to public interest. The proposal is simply a garage for storage and living space above as uses allowed in the district and keep look as Sandwich is now with proposed façade to match. No additional traffic would be created. A public interest is in Section 150-7 A (11), "The purpose (of ADUs) is to allow additional housing opportunities and flexibility in household arrangements while maintaining aesthetics and residential use compatible with homes in the neighborhood subject to the following conditions" and two of those conditions are these requests for a variance." 2. The spirit of the ordinance is observed. This is a long, narrow lot, roughly 110 ft by 400 feet which does not allow building without encroachment. Proposed structure will be setback further than principal dwelling and on the sloped lot would look strange to have building placed elsewhere. To go smaller to avoid going closer to the road would compromise the living space in the ADU. A difficult lot to deal with to meet all requirements. 3. Substantial justice is done. New Hampshire RSA 674: 71-73 mandates that accessory Dwelling Units must be allowed with a town building permit, effective in 2025. 4. The values of surrounding properties are not diminished. The building's façade will match those in town with clapboard siding and allow for storage of many things currently stored outside under tarps which is an eyesore. Mr. Gaisser asked if the existing house "matches the town aesthetic". Mr. Britell stated that the previous owner in 1962 had converted a woodshop into a dwelling and used white exterior to try to look similar to houses in the area. Mr. Britell is now working with what exists. 5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. This lot was obviously created prior to the establishment of these setbacks and minimum size as the house couldn't be built where it stands today. If the lot had been subdivided after the creation of these ordinances, then it would have been of sufficient size and depth.

Ms. Cove stated most cases hinge on this standard of unnecessary hardship and questioned whether being a nonconforming lot of record is a hardship. What distinguishes it from other surrounding lots? Is there a way in which the zoning ordinance doesn't apply to this property? Mr. Olafsen noted that special conditions were not specified on the application. Are surrounding lots conforming? Mr. Britell responded that surrounding lots are all larger than the minimum size. A difference is the layout of the lot being narrow with a slope that must be considered. Looking at contours on the plan, it appears to be a 30-foot difference in elevation between the house and proposed garage. While other larger lots have slopes, the houses are built on level areas. Mr. Olafsen asked if that slope constricted location, and Mr. Britell responded it was particularly the narrowness of the lot that dictated the proposed location.

Abutter Mr. Gamper was asked to speak. History was that this property was deeded by his parents with an existing garage and workshop to Mr. Brown who converted it to a dwelling. He had question

on size of ADU: law states limitation of 950 sq. ft. so not sure of actual size with proposed deck as well. Answer, the ordinance states 1,000 sq. feet or not exceed 50% of size of principal dwelling of net living space. This would be addressed with the building permit process. Concern about the setback of the septic system. Mr. Britell responded that the plan shows proposed footprint but a septic design and plan have not yet been done to submit for a building permit. It could be relocated when design is done for proper setbacks from boundaries and any wetlands. Mr. Gamper's next concern about the second driveway. Ordinance requires a shared principal driveway for the Detached ADU. He stated that he wasn't sure it is a driveway (by the proposed building) and his family had done the culvert work nine years ago with former owner's permission for the access way to his property for a forester. Ms. Cove stated it was to be considered and not sure if it was part of the denial. Mr. Gamper brought up issue of wetlands that is part of the topography with springs and runoff downhill. Ms. Cove stated that the plan noted wetlands not delineated, but the ZBA is not dealing with the wetlands requirements at this time on this application. The requested variances can be issued aside from this because it will be addressed at the building permit stage and possibly would come back as a different variance request if wetlands setback was not met for any components of a proposed build. Mr. Gaisser added that the wetlands may impact the actual location of the structure along with the accompanying septic system and they must be delineated for the actual septic design. One other concern expressed was whether there would be a new separate well. Mr. Britell intends to use the existing well behind the house. It would be a long run to proposed ADU, but law states town cannot require a new separate well for the ADU. Lastly, was concern of aesthetics of the new structure being in his line of sight from his house behind this property. Mr. Britell remarked that he had taken out some large trees on the downhill slope that had improved the view and he further said that he would be glad to work with Mr. Gamper on the aesthetics of the building. Ms. Flynn added they attempted to locate to minimize the impact. Mr. Gaisser again pointed out that if the structure was a storage garage only, it could be built there without a variance. So, the living space and accompanying septic system is the reason for the variance request.

Mr. Olafsen stated that he did not see any specific conditions of the property enumerated in the application. In what way is this property different from other properties in this neighborhood?

Mr. Britell said that all his immediate neighbors' lot sizes are conforming or larger than the minimum size required. Mr. Olafsen, anything else distinguishing? Yes, Mr. Britell replied. Not just the size but the layout of being so narrow and a slope impacting reasonable building location. Again, elevation between house and proposed garage site uphill is 30-foot difference. Mr. Olafsen, do other neighbors have that steepness or is that unusual? Neighbors both across the road and downhill have larger lots and built on much more level locations. Mr. Olafsen, so the narrowness and the steepness at the back of the lot restricts you. Mr. Britell stated not the back of the lot, the length of the lot, slope running from left to right. Mr. Olafsen, so that configuration constricts you to build in that area? Mr. Britell, in order to get the square footage needed, to meet the setbacks, the structure would be stepped. Mr. Greenawalt asked Mr. Britell if when determining which setback would need a variance he had spoken with the abutter. Answer, no he felt closer to the road more in keeping with house setback and didn't want to encroach on neighbor, the Gampers surrounding his property on all three sides. Mr. Gamper stated that the property actually has three trusts with one in his brother's name being notified [only one listed on tax card].

Other issue is the proposed second driveway not allowed by the ordinance that requires a shared driveway with the principal structure.

Ms. Cove returned to the hardship standard to determine what distinguishes this property from other properties in the area that cause an unnecessary hardship in such a way that the zoning ordinance shouldn't apply. She referred to the duties of a ZBA and one that seems appropriate in this instance in considering reasons for variances is that the circumstances that are creating the hardship

must be something other than the precise thing that is being regulated that the applicant is seeking a variance from. The example given is a case of a campground thin which the site had to have a minimum of half the land not be wetland in order to build and owner stated that the uniqueness of the property was the fact that the lot was mostly wetland. That's not a fact to base a hardship. Concern here is seeking relief from the requirement in ordinance that the lot conforms to the minimum lot size in the district. She expressed that this is tied up in the hardship on application -- that the lot is undersized and the requirement is the lot can't be undersized. That can't be the hardship. The building permit denial was previous to plan siting the location of the structure and proposed septic system. And further, the common driveway required in the ordinance is not cited on the plan that shows two driveways – one up by the house and the other down near the proposed garage. Mr. Britell responded that if he used the existing garage and moved the proposed ADU uphill by removing the existing dilapidated shed, he could potentially extend the driveway by the house and come around to the ADU. Seems like a hardship to do but is feasible. Ms. Cove responded that for a variance, a proposal must be denied first and this was not cited at the time (12/1/25) so if you get a variance now you may have to return with another request. Mr. Olafsen stated that the septic and other issues at not to be decided tonight, just the request that was submitted for whether this structure can be built with the lesser setback from the centerline of the road. All other things Mr. Britell will have to work out prior to building. Mr. Greenawalt asked if there are wetlands, why didn't the engineer/surveyor delineate them? Mr. Britell stated it is very dry right now, there was snow cover when surveyed and they weren't apparent. [Note: surveyors usually aren't qualified wetland soil scientists and generally retain one when necessary]. A ZBA application does not generally require a complete survey with wetlands and contours. If there's a wetlands issue, it will come up with the septic design submitted to the town and NHDES.

Mr. Gaisser stated that he would have trouble voting on the spirit of the ordinance with multiple issues still to be addressed. Mr. Olafsen added that it can't be determined right now if there are other violations; just looking at request submitted. There's still a lot of work to be done by the applicant.

Mr. Bullitt brought up previous case from 2023 with similar issues but Mr. Olafsen noted they were looking at the unique conditions of this case.

Any other questions or comments? Mr. Bullitt commented on the 200-foot distance from the well to the proposed ADU may present problems for running pipes. Ms. Cove focused on determining distinctive conditions that create a hardship. Mr. Gaisser asked if variance denied for ADU, would applicant still build the garage. Mr. Britell had no thoughts on that at this time. Mr. Greenawalt asked if the abutter was in support of this proposal. Mr. Gamper stated that being self-interested, no. Mr. Gamper then raised the precedence question with case mentioned as an example. The response was that ZBAs do not set precedents as each case is evaluated with its unique set of circumstances of each individual property. It is amazing how many variations there are on lots which seem similar.

Mr. Gaisser **Motioned** to close the Public Hearing. Mr. Olafsen seconded. All in favor.

Review of the criteria: <u>1. The variance will not be contrary to public interest</u>: Standard is the ordinance in general deals with density of the environment and in this particular instance the ordinance says that there should be housing opportunities while maintaining residential use compatible with neighborhood. The proposed use must not conflict with the explicit or implicit intent of the ordinance, alter the essential character of neighborhood, or the public health, safety or welfare or otherwise injure public rights.

<u>2. The spirit of the ordinance is observed</u>: Tied to first criterion, as is in the public interest to uphold the spirit that relates to not being contrary to ordinance. Mr. Gaisser cannot go along with spirit because there are so many shortcomings – the lack of a shared driveway not addressed – doesn't seem right. Ms. Cove concerned about density and thinking about aesthetics. Certainly the building look has been addressed but this notion of the lot being undersized and therefore pushes the

density is contrary. On the other hand, driving up Diamond Ledge Road there's plenty of older homes that have multiple buildings all really close to the road. Mr. Olafsen fine with the spirit but the other issues outstanding; just focusing on the requests at hand, the spirit of the ordinance is observed given that the neighborhood does have similar houses close to the road.

3. Substantial justice is done: The benefit to the applicant should not be outweighing the harm to the general public. Ms. Cove did not see a significant benefit of cost to the general public versus the applicant.

4. The values of surrounding properties are not diminished: The aesthetics of the building proposed would be similar to that in the general neighborhood. Abutter stated it would affect his viewshed. Mr. Bullitt stated that building on this smaller lot, surrounding property values would not be affected.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (A) For purposes of this subparagraph, ""unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area: (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; and (ii) The proposed use is a reasonable one: Ms. Cove seems that the use is reasonable, focus is on the notion of the special conditions of this property that means there's no relationship between the general purposes of these two ordinance requirements – one is the lot size and the other is the setback – and the application of that to this property. Mr. Olafsen referred to special conditions as it is a very narrow lot with some slope but that does not rise to the level of a hardship. Mr. Greenawalt concurred. Mr. Bullitt said that the location as proposed appears to be on the steeper section of the lot. Going towards the house it becomes more level without so much of a slope. Even with a more level area to build on with the entire lot sloping lengthwise it is still a challenge to build. Ms. Cove added that as a narrow lot, she can imagine or see that it may be a hardship to meet the full 75-foot setback for that building. The question is more about it being an undersized lot, what is the special condition– that the lot conform to the requirement of a minimum lot size? How does that become the hardship to be addressed. I suppose the narrowness is – there could be a 5-acre lot that is as narrow, but not looking at that scenario. Mr. Bullitt suggested the possibility of converting the existing garage area to create an in-law living area and by-pass need for variances by attaching to existing footprint. Ms. Cove interjected that a change of plan is up to the applicant.

Mr. Gaisser **Motioned** for case 2026-04 to deny the application for property owned by Andrew Britell located at 96 Diamond Ledge Road, Sandwich, NH, Tax Map 220 Lot 004 in the Rural Residential District requesting a Variance concerning Sandwich Zoning Ordinance Article III referring to Section 150-7 A (11) d for minimum lot size and to Section 150-13 C for setbacks in the Rural/Residential District for a proposed detached garage with an accessory dwelling unit to be built on the nonconforming lot. Mr. Olafsen seconded. Call to vote: All in favor of denial.

Ms. Cove read the 30-day appeal statement.

Written findings of fact: Criterion for unnecessary hardship was not met because the applicant failed to establish the special conditions of the property. Special condition is that it is undersized which does not qualify as a hardship. Other criteria were met as discussed.

Other: Election of Officers**:** Deferred for full Board in attendance.
Adjournment: 7:30 pm
Scheduled Meetings: May 14, 2026

Respectfully submitted,
Susan MacLeod, Land Use Secretary