

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

**Notice of Decision  
Case No. 2022-02**

An application for a Variance for property owned by Ryan Milbury located on Diamond Ledge Road, Center Sandwich, NH, Tax Map/Lot R18 02 in the Rural/Residential Zoning District concerning Section 150-13B (setbacks for Private water wells) of the Zoning Ordinance was submitted to the Sandwich Board of Adjustment. The Applicant proposes to install an artesian well along the boundary line with the White Mountain National Forest to provide water for livestock.

At its duly notified meeting on Thursday, November 10, 2022, the Sandwich Zoning Board of Adjustment voted 5-0 to Grant the Variance Section 150-13B (setbacks for Private water wells) of the Zoning Ordinance with the condition that it is confirmed the easement on the property is held by the Town of Sandwich. The decision is based upon the following findings of fact:

The National Forest as an abutter is a unique situation and it has no objection to the project;

The status of the property with a conservation easement;

The other abutters did not object;

The agricultural usage of the property is in keeping with the Sandwich Master Plan.

1. The variance will not be contrary to public interest:

The purpose of Section 150-13 B requiring a 75-foot setback, the section from which the variance is being sought, addresses typical residential lot development and setbacks are intended to address individual wells and septic systems being far enough apart to avoid contamination. In this case, the area is rural agricultural with an easement that prohibits development, and the abutting property involves forestland that will not be developed. Setbacks are to protect drinking water of individual dwelling units. The property cannot be developed for residences. Its abutter, Forest Service property, does not anticipate future development near the proposed well. As a result of these factors, the public interest expressed by the setback requirement does not apply here. This proposal is not contrary to the public interest. The abutter directly involved, the Forest Service has no issue with this.

2. The spirit of the ordinance is observed:

The spirit of the ordinance is based on the Master Plan that supports agriculture and maintaining open spaces. This is generally only possible if made viable and the intent here is to allow an agricultural endeavor to go forward. In addition, locating the well behind the cow barn keeps more open space rather than locating it in the middle of a field.

3. Substantial justice is done:

The applicant is seeking to site the well on a high spot on the property, to reduce the potential impact of surface water or nutrients on the well site. This location is closer to a boundary than permitted by Section 150-13 B. In this case there is no gain to the public by locating the well in a different site.

4. The values of the surrounding properties are not diminished:

The visual impact is minimal and would be more if located elsewhere. It does not change the look of the neighborhood in any way. Abutting property owners supported the application.

5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship:“ A. Owing to the special conditions of the property that distinguish it from other properties in the area, no fair or substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; B. and the proposed use is a reasonable one.”

The purpose of the ordinance does not strictly apply here since it's not a residential well, and the difference is that this property is in conservation easement and thus not subject to current or future residential

development. This characteristic distinguishes it from other properties. As previously noted, the proposed well is to be sited at the high spot on the property as the applicant needs to be concerned about surface runoff. Other sites consistent with the setback requirement are lower, which negatively impact the owner's ability to use the property and may negatively affect the agricultural and open space element of the property. These factors are distinguishing conditions the of the property for best location of the well.

On November 14, 2022 the Conservation Commission Chair, PJ Blankenhorn confirmed that the Town of Sandwich held the easement to this property.

Mary Cove  
Chair, Zoning Board of Adjustment

November 10, 2022

Note: Any person affected has a right to appeal this decision. If you wish to appeal, you must act within thirty days of the date of the decision, the day following the decision being day one. The necessary first step, before any appeal may be taken to the courts, is to apply to the Board of Adjustment for a rehearing. The motion for rehearing must set forth all the grounds on which you will base your appeal. See New Hampshire Revised Statutes Annotated, Chapter 677 for details.

Pursuant to RSA 674:33 I-a and 674:33 IV, Variances and Special Exceptions approved by the Board shall be valid if exercised within two (2) years of the date of final approval.