

**Zoning Board of Adjustment
27 School Street
HILLSBOROUGH, NH
July 18, 2022**

DATE APPROVED: 08/08/22

TIME: 6:00 p.m. – 6:05 p.m.

CHAIRPERSON: Roger Racette

VICE CHAIRPERSON: Russell Galpin

MEMBERS: Lucy Pivonka, John Segedy, Meg Curtis-Sauer

PLANNING DIRECTOR: Robyn Payson

ALTERNATES: Mark Bodanza,

EXCUSED

Public Present: Kim Opperman

CALL TO ORDER:

Roger Racette called the meeting to order at 7:00pm

Roger Racette asked everyone to stand for the Pledge of Allegiance

Roger Racette called the roll. All members were present. Alternate Mark Bodanza will not be voting but will have the right to ask questions throughout the hearing.

Meeting Minutes

05/09/2022 Russ Galpin made a motion to approve the minutes. Roger Racette seconded the motion. The motion carried unanimously.

06/13/2022

John Segedy said there was an error in the second to last paragraph on page 4 of the minutes. He said that the statement:

“He said he came up with proposed changes on his own. He said that Roger said the Board would discuss them, he said Roger did not say that he and Robyn would go right to the attorney. He said that was basically a subcommittee which has rules and regulations about noticing and minutes.”

should be attributed to him and not Roger Racette. Robyn Payson said she would make the correction

Roger Racette made a motion to approve the minutes as amended. Lucy Pivonka seconded the motion. The motion carried unanimously.

06/16/2022 Lucy Pivonka made a motion to approve the minutes. Russ Galpin seconded the motion. The motion carried unanimously.

Public Hearing

Variance/Special Exception

15 Bridge Street (Map 23 Lot 160)

Kim Opperman

Robyn Payson read the hearing notice. (See attached)

Variance

Roger Racette said that the Variance will be addressed first. He recognized Kim Opperman and asked him to present the application.

Mr. Opperman said he was seeking a Variance is to convert the existing ground floor apartment into two apartments, one of which will be 471sq ft and handicap accessible. He said that he came to town two years ago and found there is a need for handicap accessible housing.

He explained what “handicap accessible” means. He said that there is an entire ANSI code (American National Standards Institute) that addresses what “accessible” units are. He said that there are specific requirements that must be met, and if he was going to build an apartment, he wanted to do it that way because there is a need in town. Mr. Opperman referenced the code.

Roger Racette and Lucy Pivonka asked about handicapped access to the building. Mr. Opperman said it is a clear path that will be maintained in the winter.

Variance Criteria

A. Granting the proposed Variance will not be contrary to the public interest because:

Mr. Opperman said the proposed use is a reasonable use that is filling a need for the community. He said there were no handicapped units that he was aware of in town.

John Segedy said he understood the purpose of creating a handicapped unit, he said he didn't understand why the unit had to be smaller than 600 sq ft.

Mr. Opperman said the space didn't work very well and he would lose a bedroom in the other apartment if it were 600sq ft. He said he thought 600 sq ft was an arbitrary number.

John Segedy said there were other ways the space could be organized to make room for a 600sq ft apartment.

Mr. Opperman said that the space doesn't work that way.

There was discussion about the sizes of the rooms and the organization of the space.

B. Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance because:

Mr. Opperman said he is renovating the building and adding to the housing stock in Hillsborough.

C. Granting the proposed Variance will do substantial justice because:

Mr. Opperman said he is adding a handicap accessible unit to the town's housing stock.

John Segedy asked why one has to split this into two apartments to make it accessible?

Mr. Opperman said only one of the bathrooms would work, the other bathroom could not be made accessible.

John Segedy said it was not that it couldn't be made accessible, it would just be that it would take work.

Mr. Opperman said yes, anything is possible.

D. Granting the proposed Variance will not diminish the values of the surrounding properties because:

Mr. Opperman said he is removing an eyesore. He is re-siding the building and putting in new windows among other things.

E. Literal enforcement of the provisions of the ordinance will result in an "unnecessary hardship" because:

(1). 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 because:

Mr. Opperman said that the building is on the river and is a potential safety hazard for families with young children.

(2). If the criteria in subparagraph E(1), immediately above, are not established, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a Variance is therefore necessary to enable a reasonable use of it because:

Mr. Opperman said he thought it was the only apartment in the area at ground level.

John Segedy said Mr. Opperman's answer to number 1 doesn't address the relationship between the purpose of the ordinance and the application. He said Mr. Opperman is just saying it is a hazard because the building is on the river. He said he understood it was a nice idea to make it safer but there are other ways to do that. And his answer to number 2, he wondered why he needed a Variance for a reasonable use because there is already one apartment there.

Mr. Opperman said the existing unit does not meet the criteria for handicapped housing.

John Segedy said it doesn't have to in order for the space to be used in conformance with the zoning ordinance. He said making it handicap accessible is a laudable goal but that's not necessarily the criteria they are supposed to be looking at. They are supposed to be looking at the ordinance as it is whether or not it may be foolish. He said there are a lot of the ordinances that are foolish. The real answer is trying to remove some of those foolish ordinances.

Meg Curtis-Sauer said it was her understanding that Mr. Opperman was there for a Variance to be able to enhance that property with handicapped accessible housing for people who do not have access to it in town.

Roger Racette said it was to also provide additional housing.

Meg Curtis-Sauer said it was splitting hairs between 600 sq ft and 471 sq ft. Mr. Opperman has an architect who has worked it all out. She said handicap accessible bathrooms are difficult to put in. She said she could see the relationship between the general public and what the laws are and they are not accommodating all buildings.

Roger Racette asked Robyn Payson if they were outside of the Central Business District would there be any restrictions on square footage?

Robyn Payson said that restriction was on all dwelling units in town.

Lucy Pivonka asked if there was room in Mr. Opperman's parking lot for a handicapped van.

Mr. Opperman said there was.

Roger Racette said it has never been determined that anything under 600sq ft is unhealthy or is a hazard. Robyn Payson said that was correct.

Roger Racette said he knew of places where people lived in less space than that. He said he didn't think that the 471sq ft poses any health or safety concern. He said he didn't know where the restriction came from, but it is there.

John Segedy said no one knows where the 600sq ft came from, but that doesn't mean that there wasn't a reason.

Russ Galpin said it would have been proposed by the Planning Board and voted on by the people of the town. He said he didn't recall when and the only reason he could think of was to prevent a lot of tiny apartments. Other than that, he saw no particular purpose for it.

Roger Racette said it might have been related to density requirements.

John Segedy said he suspected it was about not wanting to have rooming houses and some dislike about the type of people who might have resided in them. He said maybe our Planning Board didn't think of it that way but people that were creating model ordinances might have.

John Segedy asked Mr. Opperman if he said an architect designed the diagram.

Mr. Opperman said yes.

John Segedy asked about the bathroom in the other unit not being handicap accessible. He said it appeared from the drawing that it was bigger than the one in the proposed unit.

Mr. Opperman said it is narrower. To get to the tub you would have to squeeze by.

John Segedy said that maybe the drawing isn't accurate because it looks bigger.

Roger Racette asked Mark Bodanza if he had any questions.

Mark Bodanza said he did not.

Roger Racette asked Mr. Opperman if he had anything else to say.

Mr. Opperman said he did not.

Roger Racette closed the public hearing, and the Board began deliberations.

There being no further discussion, the Board proceeded to vote on each of the five criteria.

A. Granting the proposed Variance will not be contrary to the public interest.

Lucy Pivonka voted yes.

Roger Racette voted yes.

Russ Galpin voted yes.

Meg Curtis-Sauer voted yes.

John Segedy voted yes.

The criteria passed unanimously.

B. Granting of the proposed Variance will observe the spirit of the Hillsborough Zoning Ordinance.

John Segedy voted yes.

Meg Curtis-Sauer voted yes.

Russ Galpin voted yes.

Roger Racette voted yes.

Lucy Pivonka voted yes.

The criteria passed unanimously.

C. Granting the proposed Variance will do substantial justice.

Meg Curtis-Sauer voted yes.

Russ Galpin voted yes.

John Segedy voted yes.

Lucy Pivonka voted yes.

Roger Racette voted yes.

The criteria passed unanimously.

D. Granting the proposed Variance will not diminish the values of the surrounding properties.

Russ Galpin voted yes.

Meg Curtis-Sauer voted yes.

Lucy Pivonka voted yes.

John Segedy voted yes

Roger Racette voted yes.

The criteria passed unanimously.

E. Literal enforcement of the provisions of the ordinance will result in an “unnecessary hardship”.

(1). 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 because:

Lucy Pivonka voted yes, but she was not sure the answer given was the right answer. She said she didn't think the hardship presented was correct.

Roger Racette asked Lucy what she thought the hardship was.

Lucy Pivonka said the greater hardship is that the owner of the building wants to remodel and is unable to remodel because of the declared size of 600sq ft. It is just that number that prevents them from doing their project.

Russ Galpin voted yes.

Meg Curtis-Sauer voted yes.

John Segedy voted yes, but like Lucy he disagreed with the reason presented. He said he sees the hardship as the narrowness of the existing bathroom. He said that is the physical difference with this property.

Roger Racette voted yes. He said he did not necessarily agree with the reasoning but when you look at “No fair and substantial relationship exists between the general public purposes of the ordinance”. The fact is that you're adding to the housing stock and the fact that you are adding handicapped housing

The criteria passed unanimously.

John Segedy made a motion to grant the Variance. Meg Curtis-Sauer seconded the motion. The motion carried unanimously.

Special Exception

Roger Racette said they would now move forward to the Special Exception because there will be more than four dwelling units in the building.

John Segedy asked Mr. Opperman if all the apartments were single person apartments or are they family units. Mr. Opperman said right now there are three apartments above with one person in one of the apartments and two people in the other.

John Segedy asked if the apartments were two bedrooms.

Mr. Opperman said they were all one-bedroom apartments.

A. The ZBA shall hear and decide requests for Special Exceptions that are specifically authorized in Table 4 Chart of Uses:

Mr. Opperman said that dwellings with more than four units are specifically allowed in the Central Business District in Table 4, Chart of Uses.

B. The requested use will not create undue traffic congestion or unduly impair pedestrian safety:

Mr. Opperman said he is adding one unit to a four-family building, and he has adequate parking for the new unit.

Roger Racette asked Robyn Payson if parking in the Central Business District was a Planning Board issue.

Robyn Payson said that there is no parking requirements in town.

C. The requested use will not overload any public or private water, drainage, or sewer system or any other municipal system, nor will there be any significant increase in storm water runoff onto adjacent property or streets.:

Mr. Opperman said the addition of one apartment will not increase the water and sewer demand because it is probably going to be the same amount of people.

John Segedy asked if Mr. Opperman has spoken to the Water and Sewer department.

Mr. Opperman said he had.

D. The requested use will not create excessive demand for municipal police, fire protection, schools, or solid waste disposal services.

Mr. Opperman said he didn't believe one extra apartment would be an impact.

Lucy Pivonka asked if there was a dumpster.

Mr. Opperman said he would be putting in a dumpster.

E. Any requirements and standards for the specific use as set forth in the Zoning Ordinance are fulfilled.

Mr. Opperman said they meet all local codes and rules.

John Segedy asked if there were any requirements that are specific to this use.

Robyn Payson said there were building codes but nothing in zoning.

John Segedy said then there was nothing that applied to the Special Exception.

F. The requested use will not create hazards to the health, safety, or general welfare of the public, nor be detrimental to or out of character with the adjacent neighborhood.

Mr. Opperman said it would not affect the neighborhood, and it is inside the envelope so when you go by you would not see anything.

Roger Racette said, you won't know anything except the building will look better.

Mark Bodanza asked if there are any life and safety codes specific to adding an apartment of this size.

Robyn Payson said that would be in the building code.

Mr. Opperman said it would need a hard-wired smoke detector.

G. The requested use is consistent with the spirit and intent of this Ordinance and the Master Plan

Mr. Opperman said providing an ADA (Americans with Disabilities Act) type B apartment specifically for a handicapped person which will be affordable as encouraged by the Master Plan.

John Segedy asked what he would consider affordable.

Mr. Opperman said it would be under the HUD (Housing for Urban Development) requirements. He said HUD sets what is affordable for all areas. It is based on income and what market rates for apartments are.

Roger Racette asked if there were any further questions from the Board and if Mr. Opperman had anything to say.

There being no further comment the public hearing was closed.

A. The ZBA shall hear and decide requests for Special Exceptions that are specifically authorized in Table 4 Chart of Uses:

Lucy Pivonka voted yes.

Roger Racette voted yes.

Russ Galpin voted yes.

Meg Curtis-Sauer voted yes.

John Segedy voted yes.

The criteria passed unanimously.

B. The requested use will not create undue traffic congestion or unduly impair pedestrian safety:

John Segedy voted yes.

Meg Curtis-Sauer voted yes.

Russ Galpin voted yes.

Lucy Pivonka voted yes.

Roger Racette voted yes.

The criteria passed unanimously.

C. The requested use will not overload any public or private water, drainage, or sewer system or any other municipal system, nor will there be any significant increase in storm water runoff onto adjacent property or streets.:

Russ Galpin voted yes.

Meg Curtis-Sauer voted yes.

John Segedy voted yes.

Lucy Pivonka voted yes.

Roger Racette voted yes.

The criteria passed unanimously.

D. The requested use will not create excessive demand for municipal police, fire protection, schools, or solid waste disposal services.

Meg Curtis-Sauer voted yes.

Russ Galpin voted yes.

John Segedy voted yes.

Lucy Pivonka voted yes.

Roger Racette voted yes

The criteria passed unanimously.

E. Any requirements and standards for the specific use as set forth in the Zoning Ordinance are fulfilled.

Lucy Pivonka voted yes.

Russ Galpin voted yes.

Meg Curtis-Sauer voted yes.

John Segedy voted yes.

Roger Racette voted yes.

The criteria passed unanimously.

F. The requested use will not create hazards to the health, safety, or general welfare of the public, nor be detrimental to or out of character with the adjacent neighborhood.

John Segedy voted yes.

Meg Curtis-Sauer voted yes.

Russ Galpin voted yes.

Lucy Pivonka voted-yes

Roger Racette voted yes.

The criteria passed unanimously.

G. The requested use is consistent with the spirit and intent of this Ordinance and the Master Plan

Lucy Pivonka voted yes.

John Segedy voted yes.

Meg Curtis-Sauer voted yes.

Russ Galpin voted yes.

Roger Racette voted yes.

The criteria passed unanimously.

Russ Galpin made a motion to grant the Special Exception. Meg Curtis-Sauer seconded the motion. The motion carried unanimously.

Work Meeting

Method of Voting/Rules of Procedure

Roger Racette opened the discussion on the addition to the Rules of Procedure of the new method of voting on applications. This was originally discussed at the June 13th meeting. He said that voting on the Rules of Procedure before specifically voting on changing the method would be unethical. He said that voting on the method of voting should be a separate vote. Accepting the change to the method of voting would start the 60-day clock that is necessary for the method to take effect.

John Segedy said that before they do that they need to address HB 1661 which creates a new law (676:3 I) that states the Board has to develop “findings of fact” when making decisions. Those reasons apply to the criteria. He suggested that the Board wait until they decide how to do that before changing the method of voting.

Roger Racette said he was not sure how much impact that would have on decisions unless it was a denial.

Robyn Payson said that all decisions of the ZBA have to include “findings of fact” that the Board is going to have to develop. This is going to result in longer decisions that take more time to write. She said language addressing the new law has already been added to the Planning Board’s amended Rules of Procedure. She lifted that language to add to the amended ZBA Rules of Procedure.

Roger Racette asked if the House Bill 1661 has been signed into law.

Robyn Payson said yes it had been and the land use sections go into effect August 23, 2022.

John Segedy said that voting on the Variance all together and then vote on the “findings of facts” didn’t make sense.

Lucy Pivonka said that they way she pictured it was as the Board goes through each of the criteria, and they note why they are voting for each one and then create the “finding of facts” from that list.

Robyn Payson said as you go through the criteria, you are developing the “findings of fact”. You can still vote on the one question at the end, because you are developing the “findings of fact” as you go through the criteria.

She said this is all very new to everyone which is why attending the webinar being offered by the New Hampshire Municipal Association is so important. There will also be information coming from the BEA (New Hampshire Department of Business and Economic Affairs) and the New Hampshire Municipal Association about how to manage this change.

Roger read the current 673:3.

John Segedy said that was where the new section comes in. The current RSA states the Board has to render a decision. Now you have to give the “findings of fact”. He said he suspected that it came about through the courts that Boards have to come up with real reasons for making decisions rather than it only being discussed in the minutes.

Roger said that his understanding is that this gives the Superior Court actions that they did not have before. If you don’t provide a reason for the disapproval, then it means the Superior Court can just remand it. The fact that you need a reason for disapproval has always been there.

There was further discussion about the procedure for the “findings of fact”.

John Segedy said it might make sense to wait and get it right when they have more information.

Roger asked if something generic could be added to the Rules of Procedure.

Robyn Payson said that is what the new addition she added to the Rules of Procedure does. It basically cites the statute.

Russ Galpin said there will be instances when a decision will not be able to be made on the night of the hearing because the findings will have to be written.

John Segedy asked who wrote the decision and if Robyn wrote it.

[Correction to minutes voted on 8-8-22] Robyn Payson said wrote decisions when Bob Hansen was Chairman because he asked her to, but she doesn’t write the decisions now; the Chairman does.

John Segedy asked how this would work moving forward.

Roger said if he writes the decision, if it is denied the Board is going to have to come up with reasons for the denial.

John asked if that meant they would write it as a Board.

Lucy Pivonka said, as the Board goes through the criteria, they can note why they did not agree with the criteria and at the end work together as a Board to decide the “findings of fact”.

Robyn Payson said it would work the same way that conditions are finalized on the night of the hearing.

John Segedy said that the Board might need to hold a hearing and then a separate meeting for the decision.

There was discussion about needing to develop “findings of fact” if the application was approved.

Mark Bodanza said that referring to the statute in the Rules of Procedure was appropriate because the statutes change. He said “findings of fact” are historic in our court system. He said it could be simplistic and bullet points or a short paragraph. For example, “the Board has found as a finding of that the applicant has met a criterion as indicated on the application”.

Roger Racette asked Mark Bodanza if simply saying the applicant has “met all the criteria” would be sufficient.

Mark Bodanza said traditionally the court would want you to outline each of those criteria, and if there is any additional discussion that supported or deviated from the application should be articulated in the “findings of fact”.

Roger Racette said there is a lot to learn and there is going to be training on how to move forward with this.

Roger Racette asked if the Board could approve the new method of voting this night, and start the clock ticking.

John Segedy said the current rules say you can’t make a change until the meeting after the change is discussed. Because of what Robyn inserted into the rules, the Board needs to wait until the next meeting to approve the change.

Roger Racette said to the change to the Rules of Procedure.

Robyn Payson said the vote to change the method of voting is a separate vote.

Roger Racette said they can vote on the method of voting. That is a separate vote from the vote to approve the Rules of Procedure.

John Segedy asked if Roger was saying that the Board was going to make a motion about how the ZBA votes regardless of whether or not it is in the Rules of Procedure?

Roger Racette said yes, why can’t we.

John Segedy said because you are basically making a side bar of a rule of procedure and calling it something separate. Its still a rule of procedure.

Roger Racette said what we are voting on is to change our method.

John Segedy said that is a rule of procedure.

Roger Racette said it is going to be in the Rules of Procedure.

John Segedy said it is going to be in the Rules of Procedure, but it is a rule of procedure.

Robyn Payson said the voting method is separate from the Rules of Procedure. Before this change to the method of voting, there was no method specified in the Rules of Procedure. So, it is not a change to the Rules of Procedure. It is two votes. One vote to change the method, and the second part on what is included in the Rules of Procedure.

Roger Racette said that would go along with the vote on the Rules of Procedure in August.

Lucy Pivonka made a motion to close the discussion and vote on 6.6. Meg Curtis-Sauer seconded the motion.

John Segedy said that was absurd and the Board hasn't decided what they are voting for.

Lucy Pivonka moved the question saying there is no discussion on a motion to end discussion.

Russ Galpin said according to the rules of procedure there is no discussion allowed under a motion to cease debate.

John Segedy said the Board did not adopt Robert's Rules of order.

Lucy Pivonka called a point of order for conduct.

Roger Racette called for a vote. The motion carried with John Segedy voting no.

Roger Racette restated the motion which was to approve the voting as presented in the Rules of Procedure paragraph 6.6. He then called for a vote

Lucy Pivonka made a motion to vote on the method of voting.

Roger said that was seconded.

John Segedy said, regardless of what you call this, that is a procedural rule. Changing what you call it does not change the reality of what it is. In order to change a rule of procedure, you have to follow the Rules of Procedure that currently exist, which means the vote tonight is invalid because it needs to be 30 days from when they discuss it to when they take a vote on that rule of procedure.

Robyn Payson said the method of voting was discussed at the previous meeting, so it has been 30 days. By that, it would be appropriate to vote on it.

Mark Bodanza said the last meeting's discussion was on reverting back to the previous statutory voting.

Roger Racette said yes.

Mark Bodanza said then we are agreed we are going to vote on that at this meeting to make it official.

Roger said yes, that we want to get the wording correct.

Mark Bodanza said that if he understood it correctly, the vote would not be on 6.6, it would be on the statutory method.

John Segedy said the method of voting is not in the statute.

Roger Racette said statute says if you are going to change the method of voting, it has to be approved and then there is a 60-day waiting period before it takes effect. Roger called for the vote.

Motion carried with John Segedy voting no based on failure to follow the current Rules of Procedure.

Roger Racette said the Rules of Procedure will be approved at the next meeting.

There being no further business, John Segedy made a motion to adjourn. Lucy Pivonka seconded the motion.

Meeting Adjourned 9:50 pm

Respectfully Submitted,
Robyn Payson, Planning Director



Town of Hillsborough
Zoning Board of Adjustment
27 School Street
P.O. Box 7
Hillsborough, NH 03244

June 23, 2022

LEGAL/PUBLIC NOTICE

**Zoning Board of Adjustment
Case No. 2022-03**

Notice is hereby given in accordance with RSA 676:7 that the Hillsborough Zoning Board of Adjustment will hold a Public Hearing two applications. The applications are submitted by Kim Opperman for his property located at 15 Bridge Street (Map 23 Lot 160) which is located in the Central Business District.

1. An application for a Variance from the Table 4 Chart of Uses Note #2 which requires the minimum floor area for any dwelling unit be 600 square feet. The Variance will allow the construction of a 471 square foot apartment in the existing ground level residential space.
2. An application for a Special Exception from the Table 4 Chart of Uses, Residential Uses, Dwelling More than 4 Family in the Central Business District to allow a fifth Dwelling Unit to be created within in the existing building.

The Public Hearing for this application will be presented to the Hillsborough Zoning Board of Adjustment Monday, July 18, 2022, at 7:00 p.m. at the Hillsborough Town Office Meeting Room at 27 School Street, Hillsborough, New Hampshire

Please contact Planning Director Robyn Payson at 603-464-7971 or e-mail robyn@hillsboroughnh.net with any questions regarding this application.