

# 539  
Hillsborough  
Planning

FEES:	12.60
SURCHARGE:	2.00
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	<p>Town of Hillsborough Zoning Board of Adjustment 27 School Street P.O. Box 7 Hillsborough, NH 03244 (603) 464-3877</p>
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**NOTICE OF DECISION**  
**April 10, 2023**

Case 2023-03

**Equitable Waiver of Dimensional Requirements**

17 & 19 Myrtle Street (Map 23 Lot 82)

Phillip H. Mathewson for Mathewson Properties LLC.

On April 10, 2023, the Zoning Board of Adjustment of the Town of Hillsborough held a public hearing on an application submitted by Phillip H. Mathewson for Mathewson Properties to obtain an Equitable Waiver of Dimensional Requirements as allowed under RSA 674:33-a.

Based on the application and testimony given at the hearing, the Board hereby makes the following findings of fact:

1. The property is located on Myrtle Street.
2. The applicant is Phillip H. Mathewson, who is the owner of record of the lot.
3. Phillip H. Mathewson presented the application for the Equitable Waiver of Dimensional Requirements for a Duplex built within the side setback in the Village Residential Zone on Myrtle Street.

**A.1 Has the violation existed for ten (10) years or more?**

4. The violation has not been in existence for 10 years or more.

**A.2 Has there been any enforcement action, including written notice of violation, commenced against the violation during that time by the municipality or any person directly affected?**

5. There was no enforcement action commenced against the violation.

**B. That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value.**

6. The violation was not recognized until the building was constructed.

**C. That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.**

7. The violation was an honest mistake. It was not a case of ignorance of the law based on multiple witness accounts after the building was completed. The building was placed within the appropriate setback but after the project was complete it was determined to be inside the setback.

**D. That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.**

8. There are many structures in that area that don't meet setbacks. They are all grandfathered and it is the character of the neighborhood. It increases property values by no longer being an eyesore. It doesn't interfere with public use of the streets.

**E. That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.**

9. There is no public benefit to be gained to bring the building into compliance.

On April 10, 2023 the Zoning Board of Adjustment voted to approve the application for a  
Equitable Waiver of Dimensional Requirements by a vote of 5 to 0.

Roger Racette  
Roger Racette, Chairperson  
Hillsborough Zoning Board of Adjustment

Date: 4/17/2023