

**Zoning Board of Adjustment
27 School Street
HILLSBOROUGH, NH
February 12, 2024**

DATE APPROVED:

TIME: 7:00 p.m. – 8:25 p.m.

CHAIRPERSON: Lucy Pivonka

VICE CHAIRPERSON:

MEMBERS: John Segedy, Keith Cobbett, Russ Galpin, Larry Baker

PLANNING DIRECTOR: Robyn Payson

ALTERNATES:

EXCUSED

Public Present: Charles Hoegen, Claudia Larkin, Jim Larkin, Laurie Jutzi, Riche' Colcombe

CALL TO ORDER:

Lucy Pivonka called the meeting to order at 7:00 pm.

Pledge of Allegiance

Appoint Vice Chairperson

Lucy Pivonka made a motion to move this item to the end of the meeting. Keith Cobbett seconded the motion. The motion carried unanimously.

Lucy Pivonka brought up the length of the minutes and said they needed to be more general and not include everything that was said. She also said the Board needed to not bring up things that are not in the application.

John Segedy said there was disagreement on that and that the Board members can bring up what they think in their judgement applies.

Following the discussion Lucy Pivonka said John Segedy was out of order.

John Segedy made a motion to overrule the Chair so he could speak. The motion died for lack of a second.

Lucy Pivonka called the roll and introduced the Board.

Public Hearings

Special Exception

595 Center Road (Map 8 Lot 53)

James Larken

Lucy Pivonka asked Robyn Payson to read the meeting notice.

John Segedy made a motion to waive the reading of the notice because they wanted to speed things up. The motion died for lack of a second.

Robyn Payson read the meeting notice.

Mr. Larken presented his application for a retail use in the Historic District. Mr. Larkin is seeking permission to use an attached addition of his home as a farm store with warehousing, filling orders, and retail sales. The proposed area for the store was previously an antique store. He said there is room for five parking spaces for the business.

Lucy Pivonka opened the public hearing.

Laurie Jutzi said that all of the neighbors were in favor of this application.

There being no other public comment, Lucy Pivonka closed the public hearing.

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

This use is specifically allowed by special exception in the Table 4 Chart of Uses.

John Segedy made a motion that 2A was met. Larry Baker seconded the motion. The motion carried unanimously.

Finding: This use is specifically allowed by special exception in the Table 4 Chart of Uses.

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

From the application: Parking will be on site off of North Road, there are no sidewalks.

Keith Cobbett made a motion to vote on criteria 2B for approval. Larry Baker seconded the motion. The motion carried unanimously.

Finding: Parking is not on the road and there are no sidewalks.

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. :

From the application: No additional requirements over the existing use are needed, there are no exterior changes to the structure or landscaping.

John Segedy made a motion that criteria 2C has been met. Russ Galpin seconded the motion.

Keith Cobbett made a motion to vote that we approve section C as it meets the criteria.

John Segedy said there was a motion on the table and in order for the new motion to take place the first motion would need to be withdrawn. John Segedy said he would withdraw his motion.

Keith Cobbett withdrew his first motion and made a motion that we approve and vote on section C based on all of the criteria being met. John Segedy seconded the motion. The motion carried unanimously.

Finding: No additional requirements are needed since the current use is already there.

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

John Segedy made a motion to vote that criteria D has been met. Keith Cobbett seconded the motion. The motion carried unanimously.

Finding: No additional requirements are needed.

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

From the application: The sign permit has been submitted.

Lucy Pivonka made a motion to approve criteria E. Keith Cobbett seconded the motion. The motion carried unanimously.

Finding: The sign permit has been submitted and the requirements are fulfilled.

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.

From the application: There are no changes to existing structures planned and therefore the special exception will not affect the historical nature of the neighborhood or present any hazards to the health, safety, or general welfare of the public.

Keith Cobbett made a motion that section F be approved as they met all of the criteria. Lucy Pivonka seconded the motion. The motion carried unanimously.

Finding: There are no changes to the structure and no evidence that there are hazards.

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

From the application: The request is entirely consistent with existing special exceptions granted in the Historic District.

Lucy Pivonka said that each special exception is taken on its own merits and previously approved special exceptions are not taken into consideration.

Keith Cobbett made a motion to approve section G as they have met all of the criteria. Lucy Pivonka seconded the motion. The motion carried unanimously.

Finding: The request is entirely consistent with other special exceptions granted in the Historic District and is not out of character with the neighborhood.

John Segedy made a motion to grant the application for a special exception for James Larkin to allow a retail business in an existing part of the home at 595 Center Road per the Table 4 Chart of Uses. Lucy Pivonka seconded the motion. The motion carried unanimously.

Special Exception

118 West Main Street (Map 11P Lot 346)

John Cilley

Charles Hoegen is present to represent John Cilley in this application to change the retail space into a street level residential use. Mr. Cilley is seeking this special exception because the plans for the Town's sidewalk project will affect access and parking of the current business.

Robyn Payson walked the Board through the three versions of the sidewalk plans. They included a version allowing a 24-foot access to the building, and a 50-foot access to the building, neither of which was acceptable to Mr. Cilly. Today she received a new version of the plan showing a 74-foot and 10-foot access. Previously, NH DOT was standing firm on the 50-foot maximum width and only today was there a version with wider access and information that the sidewalk being constructed at grade.

Lucy Pivonka asked if the property owner would like to reconsider his decision in light of the new plan.

Mr. Hoegen said the financial investment that has been made to alleviate the concerns is in the six-figure nature. Mr. Cilley has already lost a tenant. Mr. Hoegen said that he owns 8 School Street and the owner of the business previously in Mr. Cilley's building will be moving into Mr. Hoegen's building. He said the Town won't be losing a business and they will be providing housing.

Robyn Payson read the hearing notice.

Mr. Hoegen presented the application.

John Segedy asked if parking would be in the front or around the back.

Mr. Hoegen said the back of the building is more of a loading/unloading area. The parking will be in the front of the building.

Lucy Pivonka opened the public hearing.

Riche Colcombe said she was sorry the response from DOT arrived today. She said she was disappointed that the Town is losing commercial space because of the sidewalk project and she wished she had heard about it sooner so maybe there could have been a different outcome. She asked if there was going to be more than one unit.

Mr. Hoegen said there would be one four-bedroom apartment.

Ms. Colcombe said she would help any way she could in the future so there aren't any final day changes.

Leigh Bosse asked what was on the second floor of the building now.

Mr. Hoegen said there were apartments on the second floor.

There being no further comment, Lucy Pivonka closed the public hearing.

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

From the application: This use is authorized in the Table 4 Chart of uses and exceeds the 600 square foot requirement.

Lucy Pivonka made a motion that criteria 2A has been met. Keith Cobbett seconded the motion. The motion carried unanimously.

Finding: This use is authorized in the Table 4 Chart of uses and exceeds the 600 square foot requirement.

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

From the application: There will be less traffic and it will improve pedestrian safety with the new sidewalk that will be constructed decreasing the pulling in and out of the cars in front of the shop currently.

Keith Cobbett made a motion that section 2B be approved because the applicant has provided enough evidence for this criteria to be met. John Segedy seconded the motion. The motion carried unanimously.

Finding: It appears that pedestrian safety will be increased.

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.:

From the application: There will be less people in the building daily, reducing potential impacts to fire, police, and EMS. They are not increasing water and sewer needs, and there is no outside construction to affect stormwater.

Keith Cobbett made a motion to approve section C as the criteria has been met. Larry Baker seconded the motion. The motion carried unanimously.

Finding: As there are no external changes to the structure there should be no additional runoff.

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

From the application: With less people in the building daily reduces the need for police, fire, and EMS. The school system is well below the number of students it can provide for.

John Segedy made a motion that criteria D has been met. Lucy Pivonka seconded the motion. The motion carried unanimously.

Finding: There will be less people in the building daily and there will be no excessive demand on the school system.

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

From the application: The only requirement is minimum square feet, and it is exceeded.

Larry Baker made a motion that we vote on criteria E and that all have been met. Keith Cobbett seconded the motion. The motion carried unanimously.

Finding: The minimum square footage of 600 square feet is exceeded.

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.

From the application: No hazards will be created. There are no parking hazards created by the curbs being installed. This area of the road is in character with a first-floor dwelling. On the same side of the road there are seven continuous first-floor dwelling units. The opposite side has eight continuous street level dwelling units.

John Segedy made a motion that criteria F has been met. Russ Galpin seconded the motion. The motion carried unanimously.

Finding: The use will not be out of character or detrimental to the character of the neighborhood that consists of many first-floor dwellings.

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

From the application: The change requested will help provide a safe sidewalk that the Town wants and needs and allows the building to be used for much needed housing.

John Segedy made a motion that criteria G has been met. Larry Baker seconded the motion. The motion carried unanimously.

Finding: The spirit and intent of the ordinance is met because there are a lot of ground floor residences.

John Segedy made a motion to approve the application for a special exception for John Cilley to convert the street level retail space at 118 West Main Street for residential use. Keith Cobbett seconded the motion. The motion carried unanimously.

Minutes: 01/18/24

Keith Cobbett made a motion to approve the minutes as written. Larry Baker seconded the motion. The motion carried unanimously.

Lucy Pivonka wanted to make a comment that had to do with the minutes. She said Mr. James McDonough came to the 1/8/24 meeting to discuss the Birk property. He said he was there on behalf of the Conservation Commission. He was not. He misrepresented himself. She said she had been in contact with Richard Head, Chairman of the Conservation Commission and he told her he would take care of it. She said it is alarming to her and she tried to make clear that if the Board had denied the application, and if one of the findings of fact had something to do with something Mr. McDonough had said and it was included, it could have opened the town up to a lawsuit.

Larry Baker said if those events occurred and it was then proven that he was not speaking on behalf of the Conservation Commission, would it mean that the Board would re-hear the application?

Robyn Payson agreed that the application could be re-heard.

Larry Baker said the Board would have to waive the fees, but the application could be re-heard.

Lucy Pivonka said it would depend on when the applicant found out. What if we denied him and it was six months later. She said it was just dishonest.

Larry Baker asked how do we vet that going forward?

Keith Cobbett said it would only come into play if the Board cited him as a source for that reason. He said if the Board said they were making their decision based on the testimony that was given in the public session portion of the meeting.... He said that is where he thought they would run into a problem.

Lucy Pivonka said when Richard Head has come to ZBA meetings in the past and he has said that he is here representing the Conservation Commission, that makes him an expert on something.

Keith Cobbett said if somebody were to appeal the decision, unless we state that the reason why they made a decision a certain way based on his testimony, he said that gets very dicey.

There was further discussion on this matter.

John Segedy said this has been clarified with the Conservation Commission and it was an error on Mr. McDonough's part. When he first spoke, he said he was a Commission member and then later on he did speak on behalf of the Commission. It was his belief that it was a mistake, and, in the future, he would be much more careful when speaking. He would have the Conservation Commission authorize him to speak on their behalf.

Lucy Pivonka said that as long as she is the Chairman, as long as we have someone comes from another committee to speak, she is going to directly ask if they were directly sent by the committee. She said she looked back at the Conservation Commission minutes and if anybody was sent it should be in the minutes because it should be an official act. She said she didn't see that anywhere. She thought the timeline was weird because she knew they had cancelled a meeting, and she didn't think they had time to meet and discuss the issue then send somebody. She said she doesn't want to see anything like that happen again.

John Segedy started to speak more on the subject and Lucy Pivonka said John Segedy needed to raise his hand. There was discussion on protocol when speaking.

John Segedy made a motion to overrule the Chair for not letting him speak. The motion died for lack of a second.

Work Meeting

Method of voting.

There was discussion about the method of voting on special exceptions and variances. Currently, the Board votes on each criteria individually and then makes a final vote to approve or disapprove the application. The change in the voting method would entail the criteria being discussed and recorded in the minutes and then one final vote would be taken at the end instead of voting on each criteria separately, and then voting on the entire application.

Larry Baker recommended that the one vote at the end method of voting should be adopted.

Robyn Payson said that this is what Counsel recommended. It is better to take one vote after you have discussed all of the criteria.

Larry Baker asked when the findings of fact would be developed? As the Board goes through the criteria or at the end.

Lucy Pivonka said she thought they could do that during the criteria discussions.

John Segedy said the benefit of voting on the individual criteria is that it makes it very clear. If somebody doesn't think that one of the criteria has not been met, they should be voting no on the entire application, and that does not always happen.

There was discussion about the different ways of voting.

Following discussion Keith Cobbett recommended that one vote be taken on the application.

Larry Baker made a motion to take one vote on the application as a whole rather than voting on the criteria separately and then making a final vote. Keith Cobbett seconded the motion.

John Segedy said if they were going to do this, he thought they should take a little bit more time and do it with the benefit of a full board for the next year.

Lucy Pivonka called for a vote on the motion. The motion carried with John Segedy voting no and Russ Galpin abstaining.

A change in voting must wait 60 days before it takes effect.

Vote for Vice Chairman

Lucy Pivonka made a motion to nominate Keith Cobbett to be Vice Chairman. Larry Baker seconded the motion.

John Segedy clarified that the vote to elect officers was at the meeting following Town Meeting.

The motion carried unanimously. Keith Cobbett was appointed Vice Chairperson.

ZBA Minutes February 12, 2024

Keith Cobbett made a motion to adjourn. Lucy Pivonka seconded the motion.

The meeting was adjourned at 8:25 pm

Respectfully Submitted,
Robyn Payson, Planning Director