

**Zoning Board of Adjustment  
27 School Street  
HILLSBOROUGH, NH  
July 15, 2024**

**DATE APPROVED: 9/9/24**

**TIME:** 7:00 p.m. – p.m. 8:45 pm

**CHAIRPERSON:** Larry Baker

**VICE CHAIRPERSON:** Keith Cobbett

**MEMBERS:** Lucy Pivonka, John Segedy, David N. Fullerton

**PLANNING DIRECTOR:** Robyn Payson

**ALTERNATES:**

**EXCUSED:** Lucy Pivonka

**Public Present:** Victor Thibault, Richard Head, John Noonan, Bill Hutwelker, Holden Presti, Andrew Higgins, Riche' Colcombe

**CALL TO ORDER:**

Chairman Larry Baker called the meeting to order at 7:00pm

**Pledge of Allegiance**

Chairman Larry Baker announced that the Board only had four members tonight and offered both applicants the opportunity to continue their hearings to the next meetings. Both applicants opted to move forward with their applications.

**Public Hearing**

**Variance**

49 Shedd Road (Map 8 Lot 94)  
Holden Presti

Mr. Presti reviewed his application to Subdivide his property to leave the parent lot with 1.4 acres and the new lot 2 acres. He will be creating one non-conforming lot.

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

Mr. Presti said there is a need for housing in today's market and a new home will help combat this without overloading local resources.

John Segedy asked Mr. Presti for the source that indicated the value of the surrounding properties would increase.

Mr. Presti said he spoke to a realtor who said when a house is for sale they assess the houses in the area. A new house tends to bring the values up.

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

Mr. Presti said the new lot will meet all other zoning requirements including minimum road frontage and lot size in the Rural District.

John Segedy asked how this would be beneficial to abutters.

Mr. Presti said it would be a recent sale thing. That when a house went on the market a newer house would raise the value of the existing house.

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

Mr. Presti said it will allow him to utilize his personal property in a way that is both beneficial to him, the Town of Hillsborough, abutters and house hunters.

There were no comments from the Board members.

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

Mr. Presti said It will not decrease property values; it will increase them due to the sale of a new construction home in the area. In shrinking his own lot will make abutters bigger in comparison.

John Segedy said by his logic he will be decreasing the value of one of his lots which is an abutter to the new lot.

David N. Fullerton said if he is increasing the value of one lot he still owns the other one.

**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. Presti said it is reasonable because my request is only asking for a slight change in the zoning ordinances and will not destroy the rural setting.

There was discussion about that criteria.

Larry Baker said they had to address the special conditions of the property that separate Mr. Presti from their neighbors.

John Segedy said the question is if a more than a 25% decrease in lot size was a slight change. He said he felt section 1 would be established.

Following brief discussion, three members of the Board agreed that the applicant had met the requirements of section 1.

Larry Baker opened the public hearing.

Victor Thibeault said is a concern about draining.

Larry Baker said concerns about drainage would be addressed at the subdivision hearing with the Planning Board.

There being no other comment, Larry Baker closed the public hearing.

Larry Baker asked the Board if they had any further discussion on this application.

There being no further discussion John Segedy made a motion to approve the application. David N. Fullerton seconded the motion. The motion passed unanimously 4-0.

#### Findings of Fact

- There is a need for additional housing.
- The new lot will meet the minimum frontage and lot size.
- The benefit to the applicant is not outweighed by a loss to the public.
- There is no evidence provided that there would be a diminishment to surrounding properties.
- It is a reasonable use.

#### **Variance**

219 West Main Street (Map 11O Lot 171-B)

John Noonan/Jack Franks

Mr. Noonan on behalf of Fieldstone Land Consultants presented the application for a variance to locate an “Aroma Joes” coffee shop 25 feet within the 50-foot front setback. He explained that there will be a subdivision to divide the “Aroma Joes” lot from the current Map 11O Lot 171-B.

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

Mr. Noonan said the proposed commercial use is allowed by right in the zone. There are several properties in the neighborhood that already encroach into the 50 foot setback.

John Segedy asked based on the Public Interest criteria about increased traffic at the intersection as a safety issue.

Mr. Noonan said a coffee shop is not a destination business. It tends to be a drive by while they

are on that road. The idea is people from the community would stop by for a coffee on the way by on their way to the other spaces in the development. It is not really generating new vehicle trips.

There is an improved sidewalk along the entire road to the end of the property planned.

As far as the location of the driveway, it is located higher up it gets all of the traffic up and away from the main intersection.

With this being a town road coming on to a state road DOT has jurisdiction over this. The plan will have to go back to DOT because of the change to the plan.

John Segedy said based on the Public Interest criteria, they are encroaching on wetlands.

Mr. Noonan said they have minimized it as much as possible. They will be going to DES for approval.

Mr. Noonan described the other permits required by DES.

John Segedy said they have a perfectly good lot that they could place the business on without having to ask for a variance or wetlands impacts at all. It is their choice to subdivide to get another lot out of this.

David N. Fullerton asked about the traffic on the lot. Mr. Noonan explained the on site traffic flow.

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

Mr. Noonan said while relief is needed for the building setbacks the use is consistent with the surrounding uses. The proposed location is also consistent with surrounding uses. The location of the coffee shop is consistent with surrounding properties. The proposed setback will not alter the character of the neighborhood or threaten health, safety, welfare or otherwise injure public rights.

Keith Cobbett said he thought it followed the zoning ordinance now.

John Segedy said it follows the spirit of the ordinance in that you can ask for a variance.

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

Mr. Noonan said substantial justice is done by granting the proposed variance for setback encroachment. It would allow the property owner to fully develop their property with a much-needed use to the community. The parcel has access to public water and sewer infrastructure while providing responsible growth in the community. The public will realize no appreciable gain by denying this variance.

John Segedy asked why this was a much-needed use in the community.

Mr. Noonan said the charrette said there needed to be more housing and commercial development. It's to expand and maximize commercial development.

Keith Cobbett spoke about commercial property being developed.

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

Mr. Noonan said the surrounding properties are a mix of residential, commercial and municipal facilities. There is no evidence that the proposed setback encroachment would diminish surrounding property values.

John Segedy asked if he was an assessor

Mr. Noonan said he was not but doing projects all over the area it is typical that property values go up with development.

**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. Noonan said The property has a wetland area that limits both the development potential of the property and the location any development on the property.

John Segedy said because this is a proposed lot the small building area is self-created.

The Board could not establish E-1 so they are moving on to considering E-2.

Mr. Noonan wanted to address E-1 ii The proposed use is a reasonable one because it will balance the public need for choice and competition among commercial establishments with the property owner's desire to minimize wetlands impacts to the greatest extent possible while developing this commercial property. The intent of this ordinance is to develop this area, the Commercial District, with commercial uses. Between the wetland area on this property and the setback areas, no development can reasonably be established without zoning relief.

John Segedy discussed the variance being based on the applicant creating his own hardship by talking about the new lot which does not exist yet.

There was further discussion about development in the Commercial District.

Larry Baker opened up the public hearing.

Richard Head, on behalf of the Conservation Commission spoke about the subdivision does not currently exist. He said the Board should approve the variance, he asked that it be conditional upon a very specific note that the vote does not apply if the subdivision is not granted. He said that the Conservation Commission had some concerns about wetlands impacts.

Riche' Colcombe asked if other businesses were within the 25foot setback and what they were.

Mr. Noonan said they include "The Other Ark" which is 17 feet , "Red Coat Realty" which is 25 feet to the right of way, the carwash is in the 50 foot setback. He names others as well.

Andrew Higginson said he lives at 212 West Main Street and his property is in the Right of Way beyond the setback.

Bill Hutwelker of Avanru Development said moving Aroma Joes to the top of the existing lot makes it non-viable.

Larry Baker closed the public hearing.

John Segedy said he couldn't recall any cases where a self-created hardship was used for a variance

There was discussion about John's point.

Keith Cobbett made motion to approve the variance as presented by the applicant contingent upon all Planning Board approvals. David N. Fullerton seconded the motion. The motion carried with 3 votes in favor and 1 abstention

John Segedy made a motion that the condition of this approval is that it only applies to the proposed subdivision if it's approved by the Planning Board substantially as presented.

The motion died for lack of a second.

#### Findings of Fact

- The commercial use on the subject property is allowed by right.
- The proposal does encroach on wetlands.
- The use is consistent with surrounding uses.
- The proposed commercial development will productively develop this parcel.
- No evidence was presented that other property values will be diminished.
- The benefit to the applicant is not outweighed by a loss to the public.
- The proposed use is reasonable because it will balance the public need for choice and competition among commercial establishments.

**Meeting Minutes**

**June 18, 2024-Site Walk** John Segedy made a motion to approve the minutes. Keith Cobbett seconded the motion. The motion carried unanimously.

**June 18, 2024 -Meeting** Larry Baker made a motion to approve the minutes as amended John Segedy seconded the motion. The motion carried unanimously.

There being no other business, Larry Baker made a motion to adjourn. John Segedy seconded the motion. Motion carried unanimously.

Meeting adjourned at 8:45 pm

Respectfully Submitted,  
Robyn Payson, Planning Director