

**Zoning Board of Adjustment  
27 School Street  
HILLSBOROUGH, NH  
November 13, 2023**

**DATE APPROVED: 1/08/24**

**TIME:** 7:00 p.m. – 8:45 p.m.

**CHAIRPERSON:** Lucy Pivonka

**VICE CHAIRPERSON:** Roger Racette

**MEMBERS:** John Segedy, Keith Cobbett, Russ Galpin

**PLANNING DIRECTOR:** Robyn Payson

**ALTERNATES:** Larry Baker

**EXCUSED** Larry Baker

**Public Present:** Meg and Steve Criner, Riche Colcombe

**CALL TO ORDER:**

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

**Pledge of Allegiance**

Lucy Pivonka called the roll and introduced the members of the Board.

**Minutes** 10/16/23 John Segedy made a motion to move the approval of the minutes after the public hearing. Keith Cobbett seconded the motion. The motion carried unanimously.

**Public Hearing**

**Special Exception**

29 Church Street (Map 23 Lot 109)

Samuel Joseph Kopp

Robyn Payson announced that Mr. Kopp had withdrawn his application. He was refunded his application fees; those did not include the fees to notify abutters or to advertise the hearing. Lucy Pivonka closed the public hearing.

**Variance**

Union Street (Map 25 Lot 86-1)

Megan Criner

Robyn Payson read the meeting notice.

Steven Criner presented the application for a variance to locate a mobile home on property in the Village Residential Zone. He submitted letters from two abutters who were in favor of the

project. He said that he would be willing to remove the mobile home once the family member no longer needs it.

Roger Racette asked where on the map would the mobile home be located.

Mr. Criner pointed out the location.

John Segedy asked if his reason for removing the mobile home was because someone else in the neighborhood would prefer it not stay there?

Mr. Criner said it was because they wanted to get the variance. He wanted the neighborhood and the Board to know that the mobile home is never going to be sold or impact property values. He said he respects the ordinance and he wants the street to maintain its historical look. He said this variance will also allow him to repair the leach field that is partially on the property.

John Segedy said he didn't think the application fit the criteria for Section 3 Reasonable Accommodations.

Robyn Payson read the section from the Zoning Board of Adjustment Handbook on Reasonable Accommodations.

There was a brief discussion about the disability of the applicant's family member. There was discussion of how a disability is determined.

The applicant said he would be able to provide proof of disability.

John Segedy said there may be a way to approve the variance without needing the disability criteria.

Keith Cobbett suggested reaching out to Town Counsel to find out what the minimum information would be necessary to determine disability.

Robyn Payson said that it could also be a condition of approval that a demonstration of disability be provided by the applicant.

Lucy Pivonka asked if the Board had any questions.

John Segedy asked Mr. Criner to show him where the leach field was.

Mr. Criner pointed it out.

John Segedy asked where the leach field and the well for the mobile home would be.

Mr. Criner said that would be done with a plan approved by the Building Inspector.

Roger Racette asked about proving the disability provision required in section E3

John Segedy said they should ignore the disability issue until after the other criteria were addressed.

Lucy Pivonka opened the public hearing.

Riche' Colcombe, who is a state representative said that she is a part of the Labor Committee in Concord, and the question of disability was just addressed in a bill at the state house. She said it is a very broad definition of disability and it is not so much a requirement to have social security. She suggested getting input from Town Counsel on how to determine disability.

John Segedy said he had not heard anything about the unnecessary hardship of the property.

Mr. Criner said it was because that property has part of his leach field on it. The hardship is that in order to be able to fix the leach field they need to purchase the property. He said what he was trying to communicate was that he had a duality of problems. He said he has the leach field that has to be repaired but he also needs a place for his father.

John Segedy asked how this is observing the spirit of the zoning ordinance?

Mr. Criner said this was why he said he was in agreement to remove the mobile home before the property got sold. It is intended for his father. They don't intend to keep it there or rent it or sell it. They intend to keep the property clean.

Roger Racette said for a disability variance it refers to the owner, who is Megan. She has a disability, so do we have to prove that the person who is in the mobile home has a disability?

Robyn Payson said yes, then it's the person who is going to live there.

Riche' Colcombe said where she sees a hardship is the need for affordable housing in Hillsborough. She said at the state house they are discussing zoning variances (although that hasn't passed yet) to allow people to build onto their property for family members. She said she feels that is a legitimate hardship.

Mr. Criner said part of the catalyst for this was that they were paying two mortgages to keep his father in his house. He said the water bill skyrocketed and the house needed a roof and a leach field and a septic. They just didn't have the money for that.

Roger Racette asked if the mobile home could be considered an accessory dwelling unit.

Robyn Payson said you couldn't. The Town does not allow detached ADU's right now but they are going to be on the warrant for 2024.

Lucy Pivonka closed the public portion of the hearing.

Roer Racette said he thinks this needs to go forward as a disability variance. The ordinance does not allow mobile homes, and the three mobile homes that exist on Union Street are

grandfathered. He said the Board's goal is to bring properties into compliance. If anything ever happened to those mobile homes we would try to get the owner to come into compliance and put something else there. That was why he thinks going for the disability variance is the best way to go.

John Segedy said either way they have to go through all of the criteria. The disability one is the last one to consider and only if it doesn't meet the criteria under sections E1 and 2.

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

John Segedy said he agreed with criteria A mostly because of the other mobile homes in the area. This one isn't going to be seen and its creating housing and addressing the housing shortage. He said he did not see anything that would be contrary to the public interest.

Russ Galpin asked if we had letters from the abutters saying they had no objections.

Robyn Payson said there were two letters from abutters.

Russ Galpin said he had no objection.

Keith Cobbett said he thinks it is fine.

Roger Racette said he agreed that it met the criteria.

Lucy Pivonka said that if it was right on the road she would be concerned, but she is comfortable with it.

Lucy Pivonka made a motion to approve Criteria A. The motion carried unanimously.

**Findings of Fact**

- i. The application demonstrated that both adjoining landowners support the project.
- ii. This provides much-needed affordable housing.

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

Lucy Pivonka asked Mr. Criner what would happen with the leach field that needs to be repaired if they didn't buy that property?

Mr. Criner said he would have to put in a new septic tank and leach field on his property.

Lucy Pivonka made a motion to re-open the public hearing. Roger Racette seconded the motion. The motion carried unanimously.

Lucy Pivonka said the Hillsborough Master Plan supports creating affordable housing. The

home will support a disabled senior. The landowner agrees to meet Town codes when the time comes to replace the building.

Lucy Pivonka closed the public portion of the hearing.

John Segedy said it is going to meet the criteria by being within the setbacks, and it's going to have to have an approved septic.

Lucy Pivonka said she did some research to find out why mobile homes were not allowed in the Village Residential zone and she couldn't find anything.

Roger said it might have been the affect it might have on the character of the neighborhood.

Lucy Pivonka said it won't be seen so it will not have an impact on the character of the neighborhood.

John Segedy said even if it is not allowed in a more compact residential area, it is allowed in the Rural residential area. This meets the spirit of the ordinance because it's on the border of the Town in a wooded area.

Lucy Pivonka asked if Russ Galpin had any thoughts.

Russ Galpin said he did not.

Lucy Pivonka made a motion to vote on Criteria B. The vote carried unanimously.

#### Findings of Fact

- i. The applicant testified that the mobile home will meet all zoning requirements including property setbacks and well and septic setbacks.
- ii. The applicant testified that the mobile home will not be seen from the road.

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

Lucy Pivonka said it would because it would allow a long-time resident to care for an elderly parent and to allow for the abutting land owner (the applicant) to make improvements to their home.

John Segedy said he would stick with what the criteria says.

Roger Racette said the question is the benefit to the applicant not outweighed by a loss to the public.

Lucy Pivonka called for a vote on Criteria C. The vote carried unanimously.

#### Findings of Fact

- i. It allows the prospective landowner to make improvements on their property.
- ii. The benefit to the applicant is not outweighed by a loss to the general public.

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

Lucy Pivonka said mobile homes are already factored into values on Union Street.

John Segedy said that there was no evidence presented that the mobile home would increase or decrease the surrounding values.

Roger Racette said if you consider the character of the neighborhood there's a lot of property that is not kept up. He said he didn't see how a mobile home is going to affect the value of the homes.

Lucy Pivonka called for a vote on Criteria D. The vote carried unanimously.

**Findings of Fact**

- i. Mobile Homes are already factored into the land values on Union Street.
- ii. There was no evidence presented that demonstrated that land values would decrease as a result of this variance.

**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:

There was discussion about whether to skip hardship questions 1 and 2 and go directly to number 3 which is the disability provision.

John Segedy said they need to see if there is a hardship first.

John Segedy said there is a leach field going on to the applicant's property which is a physical condition of the property that distinguishes it from other properties in the area.

Lucy Pivonka said they haven't looked at other properties in the area. She said she didn't think that was a hardship.

Robyn Payson said that it is a condition of the property that makes it different, so it does come in to play.

Lucy Pivonka said using the mobile home to care for a disabled relative is not a hardship.

Roger Racette said when compared to a disability, it sounds to him that you either do E1 or the disability variance. Who decides that? Does it come to the Zoning Board for a decision or does a town official decide which one is being applied for?

Robyn Payson said the Board would when they are given evidence.

John Segedy said if the Board doesn't find E1 they could look at E2 and if they don't find E2, then they can look at E3. If either of the other two are met the Board doesn't have to move on to E3.

John Segedy said he was not sure if there was a special condition of the property, but he said there are not a lot of choices in the area to put a single story home except where they want to put it. There are wetlands in the back, there's the leach field...

Lucy Pivonka said that they don't want to get into where they want to put the mobile home.

John Segedy said it is a condition of the property.

Keith Cobbett said it is not on the Board to tell them where to put the mobile home. He said that has no bearing on this Board whatsoever.

Lucy Pivonka agreed with Keith Cobbett.

John Segedy said it has been done numerous times when they have a property with a slope the Board identifies the part of the lot is where they can put the building.

Lucy Pivonka said they have done that when it is brought up in the request.

John Segedy said they did bring up the wetland in the back.

Lucy Pivonka asked John Segedy to show her where in the application they ask for that.

John Segedy said they don't have to because the Board is reviewing what it sees.

Lucy Pivonka said the Board is not going to tell the applicant where they can put the mobile home.

John Segedy said the Board is discussing it and addressing the location of a building has been discussed many times.

Keith Cobbett said he hasn't seen any building plans that show where the building is physically going to be. He asked if the Planning Board would be looking at this.

John Segedy said the Planning Board has no jurisdiction.

Robyn Payson said the Building Department would be overseeing the location of the mobile home.

Lucy Pivonka said they were going to move on because it was not their purview.

John Segedy asked if they were going to vote on E1

Roger Racette said they should vote on whether they should pursue the disability variance first.

John Segedy said they can do E1 and if it doesn't pass you go to E2 and if that doesn't pass you go to E3. They get a chance to meet each one of those.

Keith Cobbett said the applicant has told the Board that they need this for a family member with a medical condition. The hardship is because of the disability of a family member. He suggested going to Town Counsel and find out what the least amount of paperwork there is that they need to see and then grant it based on that.

There was further discussion on whether to skip to E3 to address the disability hardship.

John Segedy said the combination of the wetlands, the leach field and the road are the conditions of this property that distinguish it from other properties in the area so that the purpose of the ordinance saying that you can't have a trailer there doesn't make sense. And the proposed use is a reasonable one.

Lucy Pivonka said that if that part were part of the application, we could look at that, but the ZBA should not be in the business of adjusting applications. She said they decide based on the information they have.

John Segedy said that was part of the application. It is pictured, it was discussed, it is part of the application.

Lucy Pivonka called for a vote on E1. The criteria was denied with Roger Racette, Keith Cobbett and Lucy Pivonka and Russ Galpin voting against and John Segedy voting in favor.

#### Findings of Fact

- i. The Board did not agree that the applicant satisfied criteria E 1 (i) with a vote of 1 to 4 against because there are no special conditions of the property that distinguished it from other properties. No hardship was found.
- (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:

Lucy Pivonka re-opened the public hearing to get information from the applicant on this criteria.



Roger Racette asked if the use would be out of character with the neighborhood.

Mr. Criner said it wouldn't be out of character because it won't be able to be seen from the road. He said the hardship is the cost of rentals in the area. He said their whole purpose of this is rent control for their father.

Following discussion, the applicant stated that the hardship was the need for affordable housing.

Lucy Pivonka closed the public hearing and asked for a vote to grant criteria E2 based on the need for affordable housing and the use being a reasonable one. The motion carried with Lucy Pivonka, Russ Galpin, and John Segedy voting yes and Roger Racette and Keith Cobbett voting no.

Finding of fact:

- i. The Board agreed that the applicant satisfied criteria E 1 (ii) with a vote of 3 to 2 in favor because the proposed use is a reasonable one and the request will create affordable housing.

Because criteria E2 passed there was no need to move on to criteria E3 for disability accommodations.

#### **Minutes 10/16/23**

John Segedy pointed out a change that needed to be made on page three. He said the statement,

"John Segedy said it was in case anyone who had interest in the application needed to check in at the last hour." needed to be included.

Roger Racette made a motion to approve the minutes as amended. Lucy Pivonka seconded the motion. The motion was carried with Keith Cobbett abstaining.

#### **Work Meeting**

##### **Resignation of Roger Racette**

This is Roger Racette's last ZBA meeting as he is moving to Chichester. Roger has been on the Board since the early 1990's. He talked about his history in Hillsborough and how special it is to him.

Roger will send a letter to Robyn to officially resign.

Lucy Pivonka thanked Roger for his many years in service.

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There being no other business John Segedy made a motion to adjourn the meeting. Roger Racette seconded the motion.

The meeting was adjourned at 8:45 pm

Respectfully Submitted,  
Robyn Payson, Planning Director