

**Zoning Board of Adjustment  
27 School Street  
HILLSBOROUGH, NH  
April 10, 2023**

**DATE APPROVED: 07/10/23**

**TIME:** 7:00 p.m. – 8:17 p.m.

**CHAIRPERSON:** Roger Racette

**VICE CHAIRPERSON:** Russell Galpin

**MEMBERS:** Lucy Pivonka, John Segedy, Keith Cobbett

**PLANNING DIRECTOR:** Robyn Payson

**ALTERNATES:**

**EXCUSED**

**Public Present:** Kathy Mihalko, Colin Murdough, Phillip Mathewson, Ryan Comoletti

**CALL TO ORDER:**

**Pledge of Allegiance**

Roger Racette welcomed Keith Cobbett as the newly elected member of the ZBA.

Roger Racette called the roll.

Roger Racette made a motion to delay the election of officers and the approval of the minutes to the end of the meeting. Keith Cobbett seconded the motion. The motion carried unanimously.

**Public Hearing**

Equitable Waiver of Dimensional Requirements  
17 and 19 Myrtle Street (Map 23 Lot 82)  
Phillip A. Mathewson of Mathewson Properties LLC.

Planning Director Robyn Payson read the Public Notice

Roger Racette asked Phillip Mathewson to present the application.

Mr. Mathewson said they bought the property on Myrtle Street and built a duplex on it. They found after it was completed that it was inadvertently built within the setback.

The Board began to review the criteria.

**A.**

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

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

**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?**

Mr. Mathewson said there has not been.

**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.**

Mr. Mathewson said that the violation was not discovered until after the project was completely built. When they were getting ready to close there was a change because had two different buyers. They needed to execute condominium documents which triggered a requirement for a survey. It was at that time they found they had built the building inside the side setback on Central Street.

There was discussion about the measuring of the property boundary and how it differed from the survey.

Mr. Mathewson said they based their measurements on the information and plans that the Town had. Based on those plans, they placed the building 22 ft from the side setback instead of the required 15 ft. to be outside the side setback.

**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.**

Mr. Mathewson said based on their initial measurements all the minimum setbacks were met. They didn't find out about the violation until the survey was done as required for the condex documents. They used Town Tax maps and Subdivision plans and information from the previous owner to locate the property pins. They tried to verify the pins which matched what was described by the former property owner. After the survey was required, they found that one of the property pins was several feet within the driveway. They are not claiming ignorance of the law. Before they began building, they met with Robyn and verified the setbacks. Had they known they could have moved the building outside the setbacks.

John Segedy pointed to the place on the building that is inside the setback. He asked the

applicant about specifics on the setbacks and the location of the building.

**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.**

Mr. Mathewson talked about many of the current structures that do not meet current standards. The location of the structure is not out of line with the location of structures in the area. The applicant's structure will not diminish property value. Mr. Mathewson pointed out some buildings were 6 or 8 feet from the property line. The applicant's building is 10 ft off the property line.

Roger Racette asked to be shown where the parking area was.

Mr. Mathewson showed him.

**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.**

Mr. Mathewson said the structure was 100% complete before they knew about the violation. He said correcting the issue would outweigh any public benefit. It would not be equitable that the violation be corrected.

Lucy Pivonka said it was unfortunate and that these things happen sometimes.

Roger Racette opened the Public Hearing.

Robyn Payson said she received a letter from someone who was objecting to the condo association being asked to pay for the applicant installing a water hookup. This issue has nothing to do with the application before the Board but since she received the letter, she felt she should bring it to the Board.

Mr. Mathewson said when they started the project, they had to locate utilities. The Town helped them do that. The water line that the Water/Sewer department told them they were to tie into, which was for their lot they found when they dug down to tie into it, they found the condo association already had. They contacted their attorney and said they would grant a right of way but would like the condo association to pay for the cost of attaching another water line. He said that was the first correspondence he had heard on that.

Ryan Comoletti who lives across the street on Central Street said he was a little upset about the time when they did the water, the water was off for pretty much the whole day.

Roger Racette closed the Public Hearing.

The Board entered into deliberations.

Roger Racette asked John Segedy for his comments.

John Segedy said it was pretty straightforward. The one question he had was why they waited until after construction to have the survey done. He said the applicant came up with a reasonable explanation.

Roger asked Russ Galpin for his comments.

Russ Galpin said his thoughts were, how can a responsible construction company put up a building that does not conform to setbacks. He said there were very few if any towns that do not have specified setbacks. He said he thinks the construction company has learned to not rely on somebody to tell them where the points are unless they are in some official capacity. That's where the problem started, with accepting someone's word as to where the corner of the property was. He said he can see and understand how that could happen. He said, as it has been pointed out most of the other (grandfathered) properties are much closer to the road than what this property is. It doesn't increase any hazard. The purpose of a setback is to keep it back from the road so it can be plowed properly, but with this building that is not going to be a problem anyway.

Keith Cobbett said he had been watching this property as it was being built. He said thank God it's been built because it was an eyesore before. He said to him this is just cleaning up the paperwork. He is so far off the paved road that the three plus feet isn't an issue. It was just a mistake. He said if he were in their position, he wouldn't have surveyed the land. He would have thought it was a plot of land where it should have been. He said he didn't see an issue.

Lucy Pivonka said she was satisfied with the explanation, and she was pretty sure it was not done on purpose because it has caused a lot of hassle for the property owner. She said she doesn't think the alternative to have to tear out that couple of feet is reasonable, so she supports the waiver.

Roger Racette said he doesn't see how this is going to have any impact on the area. . It's not going to be out of character, and he believes it was an honest mistake and he is ok with it.

The Board reviewed the criteria again and developed the following findings.

Criteria A

1. The violation has not been in existence for 10 years or more.
2. There has been no enforcement action commenced against the violation.

Russ Galpin asked how a Certificate of Occupancy can be issued by the Building Inspector without realizing the setback was violated? He said he didn't understand.

Robyn Payson said she thought it was because they were going by the best information that they had at the time, and it wasn't discovered.

John Segedy said there is no ordinance that requires a survey for a building permit.

Russ Galpin said no, there isn't but on the other hand that is one of the jobs of the Building Inspector.

**Criteria B**

The violation was not recognized until the building was constructed.

**Criteria C**

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.

**Criteria D**

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.

**Criteria E**

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

The consensus of the Board was that they agreed with the findings.

John Segedy made a motion to grant the application. Keith Cobbett seconded the motion.

Roll Call Vote: Lucy Pivonka-Yes, Roger Racette-Yes, Keith Cobbett-Yes, Russ Galpin-Yes, John Segedy-Yes.

The application was granted.

**Meeting Minutes**

03/13/23

Lucy Pivonka said she found some typos but nothing that would change the meaning of anything.

John Segedy said the "Meeting Minutes" section should be moved to the end of the document for chronological purposes.

Following discussion John Segedy made a motion to move the "Meeting Minutes" section to the end of the document. Roger Racette seconded the motion. The motion carried with Lucy Pivonka and Keith Cobbett voting No.

John Segedy objected to the attachments being included in the minutes.

Following discussion, John Segedy made a motion to remove all of the attachments and only include them in the file and make the appropriate notation in the minutes. The motion died for lack of a second.

John Segedy said at the bottom of page 3, the second to the last paragraph where it states “lot will not be further subdivided” He said he believed he said “cannot be further subdivided beyond the two lots proposed”

John Segedy said at the top of page 15, the spelling of his name is incorrect.

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

#### 03/18/23-Site Walk

John Segedy said “the meeting was adjourned” was duplicated and in the wrong place.

John Segedy said in the first paragraph under the variance. “...the group toured the property **‘viewed from the road’**” needed to be added.

John Segedy the next sentence that said “they moved to the location of the proposed house” He said they did not enter the lot. That line was stricken from the minutes.

Russ Galpin said the third line from the bottom of the page has a transposition that stated, “in currently placed” and should have said “currently in place”

John Segedy said there was a line that said “pointed out the marked locations” he said they pointed where they should be but they couldn’t see any markings. Lucy Pivonka said he pointed to them. John Segedy said that they weren’t there. Lucy Pivonka said he pointed to where the markings were.

John Segedy said in the sentence where he asked about the drainage, the minutes say “Mr. Glaude did and described his plans” He said he would like to see in parentheses after the word “plans”(not written or approved) because the implication of that sentence is that he had real plans. He had plans in his mind but not real plans.

There was discussion about the proposed language.

John Segedy said on page 2 to use instead of the word “out”, use the word “to” .

John Segedy pointed out a spelling error of the word “about” in the second paragraph.

John Segedy pointed out a sentence should have read “shutting down” Mr. Glaude’s crew.

John Segedy said “the remaining members continued” **“viewing** the property” and not “walking the property. Lucy Pivonka suggested that the line be stricken from the minutes.

John Segedy referred to the line that said Richard Head “found water on the property” he said he wanted to add because it was the only time someone entered the property he wanted added to the sentence “when he entered to view the marked location”

Roger Racette made a motion to approve the minutes of March 18, as amended. Keith Cobbett seconded the motion. The motion carried unanimously.

03/27/23

John Segedy made the same suggestion on attachments, that they only be included in the file.

John Segedy said at the bottom of page 2, there should be a space between 250 and ft.

Lucy Pivonka said it’s a space. She said she considers corrections to be done if something was incorrectly stated and it needs to be changed to convey what properly happened. Not a space or a mild typo. She said those are not an efficient use of their time.

Roger Racette said various Boards handle that differently.

John Segedy said on page 3 it talks about controlling the runoff and it says “they don’t have plans” which is a grammatical error. He said it should say “but doesn’t have plans”.

Keith Cobbett said the entire purpose of minutes from any Board he has ever served on including taking minutes for the Sons of the American Legion, you type out the minutes based on what was said not what should have been said. So to start adjusting things based on grammar or what they think works better in their vocabulary is all irrelevant.

Robyn Payson said she can’t guarantee it is exactly how it is said. She said she tries the best she can to summarize.

John Segedy said he couldn’t imagine himself using grammar the way it was said.

Roger Racette said that minutes are not as much how things are said, it is a record of what was done. It’s not a transcript.

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

## **Election of Officers**

### **Chairman**

Roger announced they are buying a new house in Chichester and will be moving in December. He said he will not be fulfilling his three-year term and his last meeting will be in November. He said in light of that, he did not know if it would be wise for him to continue as Chairman. He Nominated Lucy Pivonka to be Chairperson. Russ Galpin seconded the motion.

John Segedy said he would like Roger to stay on until the Board finds a replacement and make a decision at that time. He said Roger's choice of nomination is going to cause disruption on the Board.

Roger Racette said he had no objection staying chairman until November, but he didn't see why they wouldn't make the change now.

John Segedy made a motion for Roger Racette to stay on as Chairman.

Roger Racette declined the nomination.

John Segedy made a motion to nominate Russ Galpin to be Chairman.

Russ Galpin declined the nomination.

John Segedy nominated himself to be Chairman.

Roger Racette asked Keith Cobbett if he was interested.

Keith Cobbett said he had no interest in being Chairman at this time.

Roger Racette considered how to proceed with two nominations.

Lucy Pivonka said she had a few sentences she wanted to share. She said she has been on the Board about 4 years. She said she feels confident that she can sit in the Chairman's chair and keep meetings efficient and fair and follow the law, which is the most important thing. She said she has always told people that she doesn't want to be on the only Board that gets the Town sued. She said it is really important that everything be done by the book.

John Segedy said he would make his case. He said he has been on the Board on and off for 10 years-not continual, but 4 or 5 years over that time. He said he has served as Vice Chair before, he has the experience of running the meeting and to do so in a way that's fair to the people that appear before the Board, and he would be glad to have the chance to serve that way.

Roger Racette said the Board would do a ballot vote.

Robyn Payson handed out scraps of paper for the Board members to write on.

The vote was taken, and Lucy Pivonka won the chairmanship in a vote of 4 to 1.

### **Vice-chairman**

Russ Galpin nominated himself to be Vice chairman.

Lucy Pivonka thought Roger Racette would be a good choice.



Roger Racette said he wouldn't mind.

Russ Galpin withdrew his name.

Roger Racette said he didn't mind working with Lucy for the months he would be remaining on the Board.

Roger Racette made a motion to nominate himself for Vice chair. Lucy Pivonka seconded the motion. The motion carried unanimously.

Lucy Pivonka made a motion to adjourn. Roger Racette seconded the motion.

The meeting was adjourned at 8:17 pm

Respectfully Submitted,  
Robyn Payson, Planning Director