

**Zoning Board of Adjustment
27 School Street
HILLSBOROUGH, NH
January 8, 2024**

DATE APPROVED: 02/12/24

TIME: 7:00 p.m. – 9:50 p.m.

CHAIRPERSON: Lucy Pivonka

VICE CHAIRPERSON:

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

PLANNING DIRECTOR: Robyn Payson

ALTERNATES:

EXCUSED

Public Present: Gabriel Bilc, James McDonough, Denice McCarthy and Stephen Bik, Mayank Patel.

CALL TO ORDER:

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

Pledge of Allegiance

Appointment of Larry Baker to fill the vacant position on the ZBA

John Segedy made a motion to appoint Larry Baker to the position. Lucy Pivonka seconded the motion. The motion carried unanimously.

Minutes 11/13/23 John Segedy made a motion to move the approval of the minutes after the public hearings. Russ Galpin seconded the motion. The motion carried unanimously.

John Segedy asked that the minutes be added to the end of the agenda unless they pertain to an application before the Board.

Meeting Procedure

Lucy Pivonka said that the Board should try and wrap up the meeting by 9:00 pm. She said it was not to rush through anything, but if the Board could stick to the zoning issues, eliminate cross talk and repeating the same points it would shorten the meeting without impacting the quality of the meeting.

Robyn Payson said one of the things she notices when she was doing the minutes was people repeating the same points. She asked that the Board keep an eye on that.

Public Hearings

Special Exception

24 Henniker Street (Map 24 Lot 71)

Mayank Patel

Robyn Payson read the hearing notice.

Mr. Patel was asked to review the application to receive a special exception to have a residential dwelling at street level in the Central Business District.

Lucy Pivonka asked if they had already built this apartment?

Mr. Patel said that the apartment was already built when they bought the building, but the space was previously used as a part of the restaurant.

Lucy Pivonka asked if the work had already been done.

Mr. Patel said everything was already there, the space had just been cut up to use as a part of the restaurant.

Lucy Pivonka said she understood it was just opened up for the restaurant and they wanted to close it up for the apartment.

Lucy Pivonka asked if it was at least 600 sq feet?

Mr. Patel said it was.

John Segedy asked if when it was a restaurant the individual rooms had tables, so it was still basically broken into rooms like it was an apartment.

John Segedy asked about the sewer hookups and if they checked with the Water/Sewer Department?

Mr. Patel said he had.

Lucy Pivonka opened the public hearing. There being no questions or comments from the public, she closed the public hearing.

John Segedy said the only comment he had was on “G. The Spirit and Intent of the Ordinance and the Master Plan.” He said the last time they had one of these it was decided that the intent was to not let (there be apartments on the ground level).

Lucy Pivonka said they need to take each case as its own case.

John Segedy said he realized that. He said it is the spirit and intent of a big Master Plan which is above and beyond the usual cases. He said he disagreed with what was decided that we shouldn't allow residential uses at street level.

Lucy Pivonka asked John Segedy if he had any comments on this case.

John Segedy said that the Board should keep that in mind. The Board has gone back and forth.

Lucy Pivonka said she would respond that right next door there are mixed-use buildings on the other side of the street and in that area, there are also some other mixed-use buildings.

Lucy Pivonka asked Russ Galpin if he had any comments. He did not. She asked Keith Cobbett if he had any comments and he said he did not.

The Board moved forward to the criteria.

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

Lucy Pivonka said that is true.

Lucy Pivonka made a motion that allowing a street level residential unit meets Criteria A application met this criteria. Larry Baker seconded the motion. The motion carried unanimously.

Finding of Fact:

1. The use requires a special exception per the Table 4 Chart of Uses, Residential Uses in the Central Business District note #2.

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

Lucy Pivonka said she did not think that this would impact either of those. Not having a restaurant there and having apartments might make that safer.

Larry Baker agreed with that because a restaurant has a lot of in and out traffic and a residential use won't have that.

Russ Galpin said he agreed there would be much less traffic than at a restaurant.

John Segedy made a motion stating that allowing a street level residential unit meets Criteria B Lucy Pivonka seconded the motion. The motion carried unanimously.

Finding of Fact

1. There is no evidence that the use will cause traffic or decrease pedestrian safety.

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. :

Lucy Pivonka said this is an established building that has had businesses and residences in it. She said she does not see how that will change.

Larry Baker said again, a residence is going to use less water and sewer compared to a restaurant.

John Segedy made a motion stating that allowing a street level residential unit meets Criteria C
Larry Baker seconded the motion. The motion carried unanimously.

Finding of Fact:

1. There is no evidence that there will be a change from any usages or runoff from the current use.

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

Lucy Pivonka said the ground floor residential use is not going to change anything from what it was before.

Larry Baker said the use is going to create less impact than a restaurant ever would.

John Segedy said it could have a slight increase in the school system, but not excessive.

Larry Baker made a motion stating that allowing a street level residential unit meets Criteria D.
Lucy Pivonka seconded the motion. The motion carried unanimously.

Finding of Fact:

1. There is no evidence that there will be a substantial change in municipal services needed.

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

Lucy Pivonka made a motion stating that allowing a street level residential unit meets Criteria E.
Keith Cobbett seconded the motion. The motion carried unanimously.

Finding of Fact: There are no standards that apply in this case.

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.

Russ Galpin said the surrounding properties are rentals anyway.

Keith Cobbett made a motion stating that allowing a street level residential unit meets Criteria F. John Segedy seconded the motion. The motion carried unanimously.

Findings of Fact:

1. There is no evidence that this will create hazards to the public.
2. It is in line with the character of the neighborhood.

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

Larry Baker said he would agree with John on this point; it's not consistent with the ordinance because the ordinance is pretty clear, but it is consistent with the Master Plan and that area with all of the other residential buildings right near it.

John Segedy said it is consistent with the ordinance because the ordinance specifically allows it by special exception.

John Segedy made a motion stating that allowing a street level residential unit meets Criteria G. Larry Baker seconded the motion. The motion carried unanimously.

Finding of Fact:

1. We find that the use is consistent with the spirit and intent of the ordinance and the Master Plan

John Segedy made a motion to approve the special exception. Lucy Pivonka seconded the motion. The motion carried unanimously.

Variance/Special Exception

93 West Main Street (Map 25 Lot 004)

Gabriel Bilc

Robyn Payson requested the opportunity to provide the Board with some information on the history of the application.

Robyn Payson said there was a discrepancy between the Town and Mr. Bilc's deed. The Town tax maps showed that his property was .7 acres. That conflicted directly with his deed. The deed trumps the tax map anyway, but she contacted the assessor, and we went through it and they are going to make the correction that the property is 1.1 acres. The variance is based on this property being 1.1 acres being subdivided into two parcels so that would mean that each parcel

would need 100 feet of frontage. It is currently about 18 feet short of having the 200 feet total or the 100 feet for that planned addition lot.

Robyn Payson read the hearing notice.

Lucy Pivonka asked Mr. Bilc to go through His application.

John Segedy asked Lucy Pivonka, before going through the variance things, if they can clarify some things about the map? Because there are some questions, he had about that.

Lucy Pivonka said, you don't want to see if he touches on that during the hearing.

John Segedy said they are kind of separate from the variance criteria.

Larry Baker said he would like that too because he is trying to understand.

John Segedy said his first question has to do with the map that doesn't show where the subdivision is going to be.

Mr. Bilc said it is going to be half and half. Each lot is going to be ½ acre.

John Segedy said it is probably going to need to be a slant because he as that extra, so to get the half acre you probably have to...

John Segedy asked if there was a big copy of the map.

Robyn Payson said no.

Mr. Bilc said the lot is a square with a little bit of an angle. There is an existing house with a driveway right next to it.

John Segedy asked if that was part of the same lot?

Mr. Bilc said it was.

John Segedy pointed to the map and asked if that was the proposed subdivision.

Mr. Bilc said no, it will be ½ acre on each side. He said this plan was the preliminary plan for the ZBA. He said if he passes, then he will move to the Planning Board and he will submit a professional survey and the building, and setbacks, and requirements, and everything else. Before that we need to pass this to make sure his neighbors and the Board will approve it.

John Segedy said, so the way this is drawn on here it looks like it has already been subdivided.

Mr. Bilc said yes there used to be two lots.

John Segedy asked if they were officially joined.

Mr. Bilc said there is one deed with two tracts of land.

John Segedy asked if the Town has it as one lot or two?

Robyn Payson said it is one lot.

Mr. Bilc said he had studied it on the deed, and it says tract 1 and tract 2. There is one tract with 7,725 sq feet and the other tract has 36,533 sq feet. Combined together they are approximately 1.1 acres.

John Segedy said he didn't hear a clear answer about if they were ever officially legally merged. That's a process much like subdivision and you go to the Planning Board.

Robyn Payson said they don't have a merger form that she could find. This was done quite a few years ago, it may have been at the time when lots were being merged automatically. Robyn Payson showed the previous correct tax map which shows what the lot looks like according to the Town. It shows both tracts combined into one and both tracts are under one deed.

Larry Baker said right now the Town has the lot size listed incorrectly.

Robyn Payson said that was correct.

John Segedy said, and you determined that with Dave by measuring and calculating the area?

Robyn Payson said she contacted them (the assessors) with the information she had and they came back and told her that it was going to go back to 1.1 acres this year.

John Segedy said, but it hasn't been surveyed yet.

Robyn Payson said no because he is doing the subdivision plan after this.

John Segedy said to Mr. Bilc; so you don't have a specific place where you are going to build.

Lucy Pivonka said that would be the Planning Board.

Mr. Bilc pointed to an X on the plan and said that would be because it has to be far away from the back, from the neighbor and from the existing house.

Lucy Pivonka said, and you will have an engineer and the Planning Board to help you with all of that. That's not what we need to do tonight.

John Segedy said, the possible location of the right of way, is there or is there not a right of way?

Mr. Bilc said he is not aware of any right of way on the deed. Maybe someone wanted to do a right of way but there is no right of way.

John Segedy said the driveway...

Lucy Pivonka said John, that is not our forte' You need to let the Planning Board..

John Segedy said you haven't even heard my question yet, how do you know? That's just assuming if I'm talking...

Lucy Pivonka asked John Segedy if he needed a break and then said we do not deal with driveways, that is not what this is for. We need to get on with it. Lucy Pivonka asked Mr. Bilc, Would you like to go through the application for us?

Mr. Bilc said if that's ok with everybody.

Lucy Pivonka said yes, absolutely.

Mr. Bilc said he would like to answer his (John Segedy's) questions.

Lucy Pivonka said we will hear you and if we have questions at the end we will go ahead and ask.

Mr. Bilc said his proposal is to take the 1-acre lot and split it in half and where the X is on the plan is the proposed location of the house. He said he has 182 feet of frontage instead of 200 feet. If you look at the house, the driveway is right next to it. That helps him because it really makes the possibility for the second lot to be developed and to have 92feet instead of 100feet and both parcels will be equal $\frac{1}{2}$ and $\frac{1}{2}$ depending on the survey. There is municipal water and sewer right at the street.

Lucy Pivonka asked Mr. Bilc to go in order of the criteria.

Mr. Bilc said in the first variance request is that he is asking to subdivide the property at 93 West Main Street into two lots containing $\frac{1}{2}$ +/- acres each. The property is known as Map 25 Lot 4 and contains 1.1 acres of land.

Variance Criteria

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

The proposed subdivision for 2 lots will enable the present owner to build a 2-family dwelling or a single-family home. He said he read the requirements and for a 2-family he needs 20,000 sq feet and for a single-family home less than that. He said with one acre he is way above the requirement of 20,000 sq feet. There is a shortage of housing, and the Town will make more money in taxes.

John Segedy asked if they could ask questions.

Lucy Pivonka said sure if you don't think they will be addressed later on.

John Segedy said I am being limited so...

Lucy Pivonka said he is not being limited.

John Segedy said if he has a chance to speak, he will speak.

Lucy Pivonka said he is limited to addressing Zoning Board issues only because we are the Zoning Board. That is your limitation.

John Segedy said Can I speak now, can I speak now? You interrupted please.

Lucy Pivonka asked if John Segedy needed a break, and that he was being disrespectful.

John Segedy said he was just asking if he could speak "yes" or "no"

Lucy Pivonka said you can speak...

John Segedy said thank you.

Lucy Pivonka said as long as it's a zoning question.

John Segedy said the public interest question here, your answer speaks about making more money in taxes, but in actuality residential lots cost the Town more because over time you have kids living there that use the schools which use the majority of taxes. So it actually costs more to pay those taxes. Than what they take in.

Lucy Pivonka asked John Segedy if he had a question.

John Segedy said he wanted to clarify his statement that he doesn't agree with that part of it.

Lucy Pivonka said ok.

Mr. Bilc said he thought that building a lot was more than a vacant lot but he guessed he was wrong. He said he understood.

Lucy Pivonka asked John Segedy if that was it.

John Segedy said that was it on that one.

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

Mr. Bilc said there are already multi-family buildings in the area and another one would not matter in his opinion.

Lucy Pivonka asked if there were any questions from the Board. There being none, the Board moved on to criteria C

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

Mr. Bilc said the property is served by municipal water and sewer. The property has 181 feet of frontage, and the minimum requirement is 100 feet per lot. He said with the property being over 1 acre, he falls under the minimum 20,000 sq feet for each lot.

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

Br. Bilc said because he will build a brand-new building, new driveway and landscaping to blend in with the other properties. He said on the existing building he put a new roof and siding. He tried to improve the way it is already.

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. Bilc said, for each lot that requires 100 feet of frontage, the frontage will be 90.5 feet for each lot. He said he didn't know about hardship. It is under 100 feet. so with your permission and your acceptance I am short 9 feet on each lot. He said he didn't know if you could call it hardship.

Lucy Pivonka said if the next one after the one you just read is not established then we look at this next one. You can read it but we might not need to approve this next one if the previous one is approved. If we find there is a hardship, then we don't need to go on to the next one. She said Mr. Bilc can read it through. That is E2.

(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:

Mr. Bilc said it will be a 2-family home.

Lucy Pivonka asked the Board if they had any questions.

John Segedy said this affects a couple of these. Public Interest, and Substantial Justice. Looking at the map it indicates the brook right along the side of the property there.

Mr. Bilc said he sees the brook.

Jon Segedy said the brook is not on his property but it's close.

Larry Baker said he was going to say because he is looking at the aerial map.

Mr. Bilc said the building would be built outside the setbacks from the brook. He said there is municipal water and sewer so there is no well or septic tank on the property that will contaminate.

John Segedy said right, but we have an ordinance about how far you are allowed, 75 foot of impervious surface.

Lucy Pivonka said that was a Planning issue.

John Segedy said insofar that it affects Substantial Justice.

Lucy Pivonka asked John Segedy how it affects Substantial Justice.

John Segedy said because if we don't have the information about how far it is whether there are any wetlands associated with the brook.

Robyn Payson asked to make a comment.

John Segedy said she gets to interrupt but I don't? She's not even on the Board. Excuse me.

Lucy Pivonka said the Board was going to take a five-minute recess. Lucy Pivonka asked for a vote on a five-minute recess. Larry Baker made the motion for the five-minute recess. Keith Cobbett seconded the motion. The motion carried with John Segedy and Russ Galpin voting no.

FIVE MINUTE BREAK

Public Hearing is back in session.

Lucy Pivonka said she wanted to note that John Segedy just got in her face and made threatening gestures with his finger and yelled at her.

John Segedy said in the same voice that Lucy Pivonka spoke in and she got in his face.

Lucy Pivonka said they have time for another break.

Larry Baker asked if they could re-focus and get back to the hearing.

Lucy Pivonka said she would like to re-focus. She asked Mr. Bilc to continue.

Mr. Bilc said for the record that to the Planning Board or Zoning Board it will be a minimum of 75 feet away from the brook. He said if he builds a building it will be at least 75 feet away from the brook. But they will decide more details will come in when the engineer comes in with all of the specs and setbacks. He said right now we are talking about the frontage which he is short 9 feet on each side and to see if its possible to build a 2-family building. And to discuss the impact on neighbors and businesses and so on. He said he was just about to look at the second one (E2).

Lucy Pivonka said the Board was going to talk about this one, and then we are going to let the public speak and we will get the information. Lucy Pivonka asked if the Board had any questions.

Larry Baker asked if the Board was going to go through each of the criteria or were they going to go ahead and vote?

Lucy Pivonka said they have to go through each one individually and then take a vote. She said she would like to see people ask questions now and then we will let the public speak and if we need to we can ask a couple more questions.

John Segedy said he did have a question regarding because of the shortage of the (unintelligible) that there is going to be enough room for a safe driveway entrance. Where is this in relationship to the hill.

Lucy Pivonka asked where in the criteria is that addressed? Can you pick a number?

John Segedy said he could probably pick a bunch of them. These are so vague and anything to do with safety and all that comes under Substantial Justice, it comes under the Conditions of the Property That Distinguish it from other Properties. So where is this in relation to the road. So it effects ...

Lucy Pivonka asked if he could pick one where the driveway effects this application.

John Segedy said yes.

Lucy Pivonka said...the road frontage application? She said they need to know the location of the driveway?

John Segedy said there is going to be less space for him to put a driveway. We don't know where the driveway is going to be.

Lucy Pivonka said that is an engineering and Planning Board issue.

John Segedy said will you let me get a full sentence in please? Because there is less distance where the driveway is going to go, less distance could very much limit if it's a safe place to put a driveway

Lucy Pivonka said 9 ½ feet?

John Segedy said he didn't know because we don't have complete plans, and I understand that they don't want to spend the money for an engineer.

Lucy Pivonka said we don't need complete plans to look at the frontage. She said she encouraged John Segedy to attend the Planning Board hearing on this if it gets to that stage to bring up those things.

John Segedy said you have given me less chance to talk than anyone. But that's another matter. He said, well he made his point.

Lucy Pivonka asked if there were any other questions on any of these.

Lucy Pivonka asked Mr. Bilc if he lived in the current home.

Mr. Bilc said he lives in Bedford.

Lucy Pivonka opened the public hearing.

Steven Bik said he really didn't know what to say, he just feels that the housing, that's there is substantial enough. To subdivide a piece of property to put another house where it's basically a residence dwelling in a residence area. Yes, it's commercial and business zoned but in order to put that there you've got a bunch of things in that area and obviously that brook is there and basically wetlands, so I don't know how to address this. He's asking for 9 feet it's not a big deal. With the sidewalk, I said now "who's 9 feet". He wants 9 feet but I'm going to lose it. He's

getting it, I'm losing it. How is it going to affect me? I don't know. Like you said it comes in with zoning so once his plan is in structure "Here's the building, here's the road, here's my driveway" like John's saying. How is this going to affect me? I really couldn't say.

Lucy Pivonka asked for his address.

Steven Bik said it's 94 West Main Street. Literally diagonal from him. Do I see more just because of Chadwick and cleaning up the area? More stuff going on, more people between the apartments that are already behind there. So do we need another apartment building? I don't think so. Because he doesn't even live here. He's not even in the area he doesn't live at the existing building so it's basically another rental for him to add it to the town. It's not going to affect him in any situation. It's going to affect the people who live in the town versus this gentleman. He said I don't know how this is going to affect us. 9 feet is 9 feet. He gets to subdivide but it comes down to Planning Board and no one knows because he doesn't have a drawing where this house is going to go, what it's going to affect and any of those giant criterias.

Denise McCarthy said she was thinking it was almost because of planning. The congestion on that street. A teenager was just hit right in front of his building. I'm just concerned about the congestion.

Steven Bik said it's kind of hard, they've got us between a rock and a hard place. You say everything's zoning, and this is just a preliminary. You just want to ok him just to say you can subdivide. No offence to you but if I stop you here, I don't have to do with zoning so that's my feeling on this. How is 9 feet going to bother us today. I think 9 feet is not a big deal. I think the whole situation is more than this 9 feet. Did I have a beef with the sidewalk, am I going to argue it? How am I going to argue it? If they are going to put the sidewalk in, the sidewalk is going in. If I argue 9 feet you guys "nay" or "yea". How does it affect me later on, I don't know. More congestion and traffic. There's no sidewalk as it is and everybody uses that side of the road.

John Segedy said Mr. Bik mentioned the sidewalk a couple of times. Where you live is across from him, that is part of where the sidewalk is going to be?

Mr. Bik said the sidewalk was originally going to be on his side which made no sense to us in that sense. It would have made more sense to go on that side of the road (north?) because the sidewalk was originally coming from that down. However, the town thinks that it is a great idea putting the sidewalk on our side and having a crosswalk that goes from side "A" to side "B" and then continue.

John Segedy asked where the crosswalk was in relation to your and his property?

Mr. Bik said right across the street literally.

Keith Cobbett said the big misconception is that's a state road, it's a state sidewalk. The Town can argue but the state's going to do what the state's going to do. It's a state road. They are saying to the Town, this is where we are putting the sidewalk, and we can argue as the Town but we're not going to win.

Mr. Bik said how is it going to affect me? I don't know.

Lucy Pivonka said she just wanted to clarify that nobody is giving him the 9 feet.

Mr. Bik said he's got the 9 feet, he just needs that frontage.

Lucy Pivonka said he's short that 9 feet.

John Segedy said, before you said about the accident with the kid being hit last week in the same area.

Mr. Bik said it is right on his side of the road.

John Segedy said this gets to why he was asking about the driveway entrance.

Mr. Bik said it does have an impact, coming over that hill that sidewalk has been there.

Lucy Pivonka said we can't dictate where the sidewalk or the driveway goes.

John Segedy said we can dictate where we allow the creation of the driveway.

Lucy Pivonka said we can say yes, we allow the application, or we won't but we cannot say where you can put your driveway.

John Segedy said but we can say because of safety we don't think that...

Lucy Pivonka said if you want to vote against that part of the application, it's up to you. That's all I can offer.

John Segedy said I just wanted them to discuss it with us. That's the whole point of having a board.

Lucy Pivonka said we've heard you. I've heard you. She asked if anyone wanted to discuss the driveway further. There being nothing further, she said let's move on.

Mr. Bik said so basically, I don't know. What you guys "yea" or "nay" today I have to go again and present my argument again, so I don't know what to say. I don't have a problem with the 9 feet, it's what comes after that.

Lucy Pivonka asked for any other comments. She recognized James McDonough of the Conservation Commission.

Mr. McDonough said on the deed there's two brook crossings on the property, impervious surfaces, proximity to the river. He said he was not sure about the exact footage is, but the Contoocook is right across the road, drop down the hill and you are in the brook. It seems like a really tight space to try to develop it at a level greater than it is already developed. He said, like I said, impervious surfaces to two roads that crosses the plot plan in two places. There's a drainage ditch or something from the Town to the pumping station. He said it seems like it is a pretty tight space for the Board of Adjustment to say go ahead. 9 feet is nothing except for it's proximity to these other issues. Be it sidewalk, two brook crossings and so the Conservation Commission asks the Zoning Board of Adjustment to take some deep thought on that aspect.

Robyn Payson said the difficulty here is that there's discussion about a subdivision that has not been drawn up, it has not been engineered. The Planning Board in their subdivision regulations has chapters address wetlands and address setbacks and addresses these things. She said basically the Board needs to be considering the frontage question. All of those other very important aspects of this subdivision should it happen, are going to be handled in depth with the Planning Board.

Mr. McDonough said he understood that. He said he just wonders if any of those considerations fall into the criteria in this special exception. (Note: it is a variance application). He said he hasn't studied how this particular board works

Mr. Bik said he doesn't know what else to say, like I said, what is it going to impact later on. He said there are a few aspects to what it might entail. You've got the river you've got the pumping house that's on that property. That property is adjacent to that pumping house so how far do you have to be away from that? This comes down to zoning.

Lucy Pivonka said that's not zoning, it's Planning.

Br. Bik said he doesn't have a plan and your job is to say "yea or nay". You don't know until you have it all and that's kind of where it falls. Until you have black and white in front of you it's like you said, is it going to do this or is it going to do that, I really don't have anything in front of me.

Lucy Pivonka asked Mr. Bilc if he had any comments or questions.

Mr. Bilc said this is one acre of land, the sidewalk will be built across the street, so he is not interfering in any shape or form with the sidewalk. Like was said, the state will come in and put it on their side of the house. If there was any accident in front of the house where a lot of people walk it could happen anywhere. When you come down the hill you have a clear vision of where

to stop. He said he has driven that many times. When he comes off of 149 and I come from the hill I can see who's where, so you have better vision from the top of the hill.

Mr. Bik asked what about that kid that just got hit?

Mr. Bilc said he was not familiar with that.

Mr. Bik said that's what I mean, people on that street are going 40 miles per hour.

Lucy Pivonka said if that is an issue it is a policing issue. Call them and tell them that people are speeding bad on this street.

Mr. Bik said he has called them and told them they can park in his driveway. They said "they can't do that sir".

Mr. Bilc said one thing that he wanted to mention to the Board and to the neighbors is that this particular parcel is one acre. Right now, we have a two-family dwelling. Maybe he or someone down the road will come into the same board for the Planning Board to turn one of the apartments into a business office because it is zoned commercial there. He said what he is trying to do here is something minimal like a single-family home or a two-family dwelling. When you have two dwellings, that is less traffic than a business displaying some cars or whatever it is they want to display because it's a large lot right on the main street with almost 200 feet of frontage. That in comparison to what I am proposing, I think my use will be a little bit less. He said sooner or later someone will develop that. Even right now the current administration and who knows the next administration will want to develop more and more housing. It's a matter of time, it will happen. Now he is here today, and he wants to develop this land.

Denise McCarthy said the property Mr. Bilc rents is for sale. She asked if he would be selling both properties.

Mr. Bilc said it is for sale right now, but the sale depends on whether he can get approval for the frontage right now.

Lucy Pivonka said the Board can't take that into consideration.

Mr. Bilc said it is for sale, the listing says the value is in the land more than it is in a two-family dwelling. Usually, a two-family dwelling is sold for \$300,000.00-\$350,000.00 in the current market. He said he is a real estate broker, and he knows the market. So what he is advertising is 1 acre of land and an existing two-family dwelling.

Lucy Pivonka closed the public hearing. She said what the Board is looking at is 200 feet of frontage. Each of the lots will need 100 feet of frontage. He said he is 9 ½ feet short on each one.

John Segedy said he was asking for 2 variances for each of the lots.

Larry Baker said he knows he is here because he is trying to ascertain whether or not if he should move forward with hiring an engineer, getting the appropriate surveys. He said he feels it is premature that the variance is in front of the Board now. He said he was asking for everyone's opinion and if they would be more comfortable in seeing how the land was going to be and how everything is going to exist in the end. He said he was wondering if anybody else feels that way.

John Segedy said he absolutely agrees, and he said he had a question for Robyn. He asked if Mr. Bilc had gone for a preliminary talk with the Planning Board?

Robyn Payson said no, that they are waiting for the variance on the frontage.

John Segedy said sometimes when you have a thing where there are questions without putting in an application with full plans and talk conceptually with the Planning Board to maybe answer some of those questions.

Lucy Pivonka said the zoning question is the frontage. She said she had to disagree because she doesn't see that if they had a plan of where he wanted to place the house, that isn't going to affect the frontage and the rules that are on the frontage and if they are going to grant a variance on the frontage.

John Segedy asked if there was any interest in doing a site visit to look at this frontage and where it is?

Lucy Pivonka said she has driven by it a lot of times.

John Segedy said he had driven by but he wasn't really clear as to where it was.

Keith Cobbett said he didn't think the frontage question was an issue until they got to the wetlands issue. That is where the frontage then becomes an issue not knowing where those wetlands start.

Lucy Pivonka said that would be a Planning issue and an engineering issue.

Keith Cobbett said it is also a zoning issue when we have had other issues looking for easements being so close to and building too close to a waterfront. We had one in the Emerald Lake Village District a couple months back that wanted to build within the 75 foot setback and couldn't. If this is subdivided it is going to be within that setback. So are we going to hamstring ourselves.

Lucy Pivonka asked what he meant by saying it would be within the setback.

Keith Cobbett said looking at the map, the brook goes 16-18 feet into that parcel so now you aren't talking a 9 ½ foot variance, you are looking at 25 feet because of that. Then how far off of that waterfront do you need to be. Now you aren't talking 91 ½ feet, you are looking at a lot smaller.

Lucy Pivonka said she heard him; she was just wondering...we are doing frontage. She said she was wondering how that would be tied into frontage and not planning and engineering.

Keith Cobbett said again, we are going back to a previous case we had in front of us. They wanted a setback variance because of the water. That wasn't a planning issue that was a zoning issue.

Lucy Pivonka said the Emerald Lake one?

Larry Baker said we aren't talking about a setback.

Keith Cobbett said but we will be if this gets subdivided.

Lucy Pivonka said that was a lot different than what we are looking at now.

Robyn Payson said he would have to come back for another variance if that were the case.

Larry Baker said yes, that would be another...

John Segedy said this seems like a joint Planning Board and Zoning Board hearing.

Lucy Pivonka said in her opinion, they are here to approve or deny the frontage. The shortage of the frontage. Then the Planning Board, his engineer, if there is water issues the departments will deal with those things. She said she doesn't feel they have the authority to approve or deny this based on what might or might not be wetlands. She said the one that Keith is referring to wasn't so much wetlands, it was about a setback from that brook that was a protected brook. It wasn't the same kind of brook, and that lot was tiny and there were a lot of other issues with that. It was a different sort of case.

John Segedy said what Keith is saying is that eats into part of that for the easterly of the two lots, the new one.

Lucy Pivonka asked if that was a protected trout brook?

John Segedy said protected trout has nothing to do with it. What is measured is there is four categories of rivers and streams, and the 75 feet setback has to do with whether or not it's one of those.

Lucy Pivonka said the problem with the other one was the high-water line and he didn't have it set back enough from the high water line which was all laid out in our zoning.

John Segedy said but what Keith was saying is that because the river crosses the frontage, which is what we are deciding, you made it very clear that we are deciding the frontage issue, but that eats up some of that frontage. And if you tack 75 feet more from where it crosses you got almost, what did we say, 91 and maybe 10 or 20 feet you got the river there so that's maybe 10 or 20, 75 feet could be the whole of that, you could have 5 or 6 feet left.

Larry Baker said, if we are talking about frontage regardless of whether there is a brook there the frontage doesn't change it's still measured the same way all the way down the whole front.

John Segedy said but he can't use it.

Lucy Pivonka said so he can't use it?

John Segedy said if it's within 75 feet of the brook when you create a driveway it's an impervious surface. So you can't put any driveway there.

Larry Baker said John was absolutely right.

Lucy Pivonka said he would have to come back for a variance.

John Segedy said we would be creating a situation that shouldn't necessarily be created. If it can't meet that part of the zoning ordinance.

Lucy Pivonka asked which part of the zoning ordinance?

John Segedy said the impervious surface part. He said he didn't have it at the top of his head.

Robyn Payson said Waterfront Development was 229-36, letter C reads:

C. Setbacks from shoreline. As required by § 229-10, no building shall be located within 75 feet of the shoreline, i.e., average mean high water level.

John Segedy said there was a separate one for impervious surface.

Robyn Payson said it is essentially the same thing. You can't have an impervious surface closer than 75 feet. of any water bodies or rivers. It's not a wetlands setback. We don't have wetlands setbacks.

John Segedy said she was right.

Lucy Pivonka said you could always come back for a variance.

Robyn Payson read 229-10, Stream and Shoreline Protection:

“No building or impervious surface shall be located within 75 feet of the average mean high water level of any lake, pond or stream with a normal year-round flow. Boathouses are exempt from this provision. ...”

Lucy Pivonka said she couldn't tell if it was a brook, it looks like maybe it goes under the road, there could be something there.

John Segedy said it says it's a brook.

Lucy Pivonka said yes but it could be flowing into a channel, it could be flowing into a pipe, it looks like it goes under the road.

Robyn Payson said she didn't know but the wetlands would be identified when the subdivision comes in.

Lucy Pivonka said that is what the engineer and the Planning Board would take care of.

Lucy Pivonka re-opened the public hearing.

Mr. Bilc said what he is asking the Board to do is to approve his request based on that frontage that I have a shortage of 9 ½ feet for each lot. The proposed building will be 75 feet from the wetlands. The engineer and the surveyor will find out. He said he will have to hire an engineer for the setbacks and if he doesn't have the setbacks he will not be approved. If tonight we can pass the 9 ½ feet, that is what he is asking.

Mr. Bik said he didn't know if he had that 75 feet.

Lucy Pivonka asked Mr. Bik to address the Board.

Mr. Bik said he doesn't know if he has that 75 feet because he hasn't gotten to that point. Most people when they build a house do a plan and do the engineering part and figure that out before they touch you.

Lucy Pivonka said a lot of times people will come to get their special exceptions or their variances first so they know if they even can proceed.

Mr. Bik said he can't say that he is going to have that 75 feet because he doesn't know.

Lucy Pivonka said he will have to or he won't be able to build.

Mr. Bik said he is stating that he will have that 75 feet, he doesn't know that.

Lucy Pivonka said he won't be allowed to build unless he can follow those rules.

Mr. Bik said that was what he was saying, he can't say that he knows that's the case. He doesn't, he has no idea, he has to go to that part. He's basically stating he will have that 75 feet, he doesn't know.

Lucy Pivonka said a lot of people come in and say "whatever the rules are I will make sure I will make sure I follow them".

Mr. Bilc said that is what an engineer or a surveyor and his work will be very intense, and he will have to spend a lot of time, energy, and money. But if I do all that and come forward with a plan ready and I say I am good then we are not going to argue this. He said he wanted to pass this before he engages himself with more details.

Lucy Pivonka said it's pretty common.

Mr. Bik said he understands. This is probably the second one in the last 15 years.

Lucy Pivonka closed the public hearing.

Lucy Pivonka asked Keith Cobbett what he thought. Keith Cobbett had no response.

Lucy Pivonka asked Russ Galpin what he thought.

Russ Galpin said he was just a wee bit disturbed with this whole thing because he can recall about two years ago when we approved a subdivision with a right of way which went right over the top of a culvert, and it was a part of the right of way to that property. He said now we are talking about an issue here with a stream. He said, how can we be consistent and approve one and talk about denying the other.

Lucy Pivonka said the Board was not approving a subdivision, we're looking at road frontage.

Russ Galpin said it was frontage that they were talking about with a right of way to the property, and we can't approve a piece of property in the Zoning Board of Adjustment that does not have a proper legal entrance to it. A right of way to get into it. You can't approve a subdivision that does not have a right of way to it.

Lucy Pivonka said the subdivision is just splitting the lot into two lots and putting one house out in the back a little bit and leaving the current house where it is.

Russ Galpin said if you look at state law, you will find that you cannot create a lot that does not have a right of way. You cannot do it anymore in the State of New Hampshire.

Lucy Pivonka asked where was the law that wouldn't have a right of way.

Russ Galpin said these would but what he is trying to say is we're inconsistent if we are concerned so much with it because we have approved in the past a subdivision in a property where the right of way went over a culvert as part of the right of way. He said he argued against it but he lost his case because the Board approved it. But how can you approve something like that and make a big issue out of this one. This I don't understand.

Keith Cobbett said he wasn't there.

Russ Galpin said he realizes that a lot of the members weren't there.

Lucy Pivonka said it seems to her that whatever water there is goes into a culvert and under the road. We know it doesn't go over the road because we've all driven that road. She said she thinks it goes under the road and to the river.

Russ Galpin said it did eventually, it didn't go directly, it still had several feet. But it didn't make any difference because the top of that culvert was 6 feet from the bottom of the brook and yet it was approved. How to we fight over one thing and pass another? He said this disturbs him. It should be consistent.

Lucy Pivonka said her main concern is that all of that is not a frontage issue. We're here for a frontage issue.

John Segedy said he is looking at this as 91 minus 75 leaving 16. If the brook crosses somewhere beyond 16 feet...

Lucy Pivonka said if it doesn't work out with the engineering and the Planning Board he is allowed to come back and try for a variance we really can't take that into consideration at this point.

John Segedy said we can say we don't have enough information. That's one of the options we have. We could ask not necessarily for a fully engineered plan but for a surveyor to determine how far the stream crosses there. Is it more than 16 feet?

Lucy Pivonka asked why they would need to know that.

John Segedy said because if it's not 16 feet or more, 16 plus 75 equals 91.

Lucy Pivonka asked why do we need to know.

John Segedy said because then he will have no entrance to the property if he can't put a driveway in and a driveway is an impervious surface.

Lucy Pivonka said a driveway is not what we are approving. We're talking about frontage. The driveway will go to the Planning Board.

John Segedy said the frontage of a lot that will be illegal.

Lucy Pivonka said we are talking about frontage for a possible subdivision.

John Segedy said, of a lot.

Lucy Pivonka said we don't get to decide where driveways go.

John Segedy said no, but we get to take notice of where they're not allowed. We can take notice of the laws and knowledge of the property.

Lucy Pivonka said she was going to say that's Planning and that's not zoning. That's my opinion. The basis is "can you approve me, I'm short". Can you approve me on this frontage. That's what this is.

Lucy Pivonka said he wants frontage where he is a little short, 9 1/2 feet short on each half acre or so lot.

Lucy Pivonka re-opened the public hearing.

Mr. Bilc said he will keep 100 feet on that proposed lot and he is going to try and see if he can be 18 feet short on the existing house which is far away from the wetlands.

Lucy Pivonka said that those are Planning issues.

Br. Bilc said he can keep the 100 feet and go back 75 feet for the driveway and then I have the other variance, because the house is already there. He said as long as he can get two lots it doesn't matter if he can do 100 feet and 88 feet on the existing house that already has a driveway in place.

John Segedy said you might be getting too close to the side setback.

Mr. Bilc said that will be the engineering on the site with the Planning Board.

John Segedy said he didn't think they could change the application.

Mr. McDonough said a brook is a brook is a brook. He said he thinks the Zoning Board of Adjustment has to take the brook into consideration regardless of where it is on the 9 feet. The engineering plan can certainly work around that. He could double up the driveway to the existing home which would be fine and that would take it out of the purview of the Zoning Board of Adjustment.

Lucy Pivonka said she does not see where in the variance request a place to plug in that there's a brook on the side of the property. She said here are the criteria and I don't see a place where it says we "can't grant it because there's a brook"

Mr. McDonough said it's just another piece of data. There's a state setback, there's a Town setback. He said he doesn't know what the ZBA is allowed to do in reference to all of those things. He said it seems to him that they should be taken into consideration.

Mr. Bik said with the pump house he was sure there is an easement. He said there is an easement on his property for the sewer line and not see one across the street. He said that doesn't affect you because it is the Town in the State right of way.

Lucy Pivonka said she wanted to suggest that they dive in and start talking about these one by one and figure something out.

John Segedy asked Robyn Payson if she had plans of the sidewalk project because those were very detailed and would probably show the culvert. He said he would assume she had them.

Robyn Payson said she had a version but not the final version.

John Segedy asked if she had one of the big versions.

Robyn Payson said she didn't have a big version of it.

Lucy Pivonka suggested the Board start discussing the criteria and she closed the public hearing.

Lucy Pivonka said the applicant wants to subdivide the property into two lots with each lot being ½ acre but he can't get the 100 feet of frontage for each one. He is asking for a variance so each one will have 90.5 feet.

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

Lucy Pivonka said the subdivision will allow him to provide housing and the Town can make more money in taxes.

Russ Galpin said money has nothing to do with it.

Lucy Pivonka said yes, and that she was reading from the application. So, “contrary to the public interest”. She asked if anyone had comments about that.

John Segedy said he thinks it’s against the public interest to do this without knowing where the brook actually crosses even if we don’t have a full set of engineering plans, at least the existing...

Lucy Pivonka said and the Planning Board will be looking at that.

John Segedy said he is looking at the public interest and he is saying to approve this without having that information is not in his mind in the public interest.

Lucy Pivonka said we are talking about would him getting this variance be against the public interest.

John Segedy said without having that information he thinks it is.

Russ Galpin said the brook does not deny frontage. The brook can be a part of the frontage. You can’t build a driveway on it bit it still can be part of the frontage. The actual frontage starts at the corner and comes across.

Lucy Pivonka said you don’t lose frontage because of the brook.

Russ Galpin said that’s right.

Larry Baker said Russ’s point is what he was saying earlier too. Just because there is a brook there it doesn’t diminish the length of the frontage.

Lucy Pivonka asked Keith Cobbett if he had anything to say.

Keith Cobbett said he thought they beat it up enough.

Lucy Pivonka called for a vote on the criteria.

Larry Baker made a motion to vote yes on the criteria. Russ Galpin seconded the motion.

Lucy Pivonka said, so you believe it is not contrary to the public interest.

The motion carried with John Segedy voting no. The criteria passed.

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

Lucy Pivonka said there is a need for more housing. She asked the Board if they had any more ideas.

Keith Cobbett said this variance will allow for additional housing which is for the common good.

Lucy Pivonka said there are already multi-family dwellings in the area and another one would blend in. She asked for any discussion about this?

John Segedy said the statement may be true, but it doesn't answer the question. The question is about the spirit of the zoning ordinance, it's not about what exists.

Lucy Pivonka asked what the spirit of the ordinance was.

John Segedy said the spirit of the zoning ordinance is you have 100 feet frontage.

Lucy Pivonka said but the spirit and intent of the zoning ordinance is why are we insisting that you need 100 feet of frontage. She said to her the spirit and intent is that he is building on a lot that is that has 8 feet of frontage and turns off into some weird lot.

John Segedy said so no one is building on a lot with 99 feet.

Lucy Pivonka said that's why you come for a variance. She asked for comments from the Board.

Lucy Pivonka called for a vote to approve the criteria.

Keith Cobbett made a motion to vote yes on this criteria. Larry Baker seconded the motion.

Lucy Pivonka said that anyone who believes it does meet the spirit and intent of the zoning ordinance should signify it by saying "aye".

The motion carried unanimously. The criteria passed.

Lucy Pivonka said there are already other multi-family dwellings.

Keith Cobbett said there are already similar sized lots in that area, and this would not be out of character based on what else is surrounding the lot.

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

Lucy Pivonka said because the property is served by municipal water and sewer, it has 181 feet of frontage. The minimum requirement is 200 feet total. The property is 1 acre +/- of land.

John Segedy said this one is usually whether or not the benefit or any possible detriment to the public is greater than the benefit that he is going to get.

Robyn Payson said she wrote the language down for that. She read:

"The benefit to the applicant is not outweighed by a loss to the public."

Lucy Pivonka asked if there was any discussion.

Keith Cobbett said he wanted to make a motion to vote yes on this criteria. Larry Baker seconded the motion.

John Segedy said he doesn't feel like he has enough information. The loss is where the 75 feet is going to be.

Larry Baker said this is going to have to meet all other existing rules around the development including all of the setbacks.

Lucy Pivonka called for a vote to approve the criteria.

Motion carried with John Segedy voting no.

John Segedy said he was voting no because they should get more information to answer that question. He said he would deny without prejudice so that the Board could get more information.

Lucy Pivonka said it would do substantial justice because the frontage requirement...

John Segedy said the phrase she is looking for is that the requirement is de minimus.

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

Lucy Pivonka said The applicant says it will be a brand-new building with a clean new driveway and landscaping to blend with the other properties around. She said she did know it will be a brand-new building and she hopes it will have a clean new driveway and landscaping. She said she hasn't seen any information to say that it will diminish the values of the surrounding properties.

John Segedy said the applicant did present evidence as a realtor. It is self-serving in a sense but it's the only evidence that's been presented.

Larry Baker said if the Planning Board chooses, they can put stipulations in on a site plan approval where landscaping and driveways are.

Lucy Pivonka called for a vote to approve the criteria.

Larry Baker made a motion to vote yes on the criteria. Keith Cobbett seconded the motion. The motion carried unanimously.

Lucy Pivonka said we have been given no evidence. The applicant is a realty professional, and he vouched that it would not diminish values and it would likely increase them.

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:

Lucy Pivonka read from the application For each lot that requires a minimum of 100 feet of frontage, the frontage of the lots will have 90.5 feet of frontage.

Lucy Pivonka asked for comments and questions from the Board.

Larry Baker said he is chewing on the unnecessary hardship part because it is really difficult to define.

Lucy Pivonka said because we can't make him purchase land from one side or the other.

Larry Baker said he has a fixed amount of space.

Lucy Pivonka said he has a fixed amount of space and as long as the Planning Board and his engineer say that he can put a house in the back and they say that it's ok, to have that amount of land back there and then be told you can't use it because you are 10 feet short. He wouldn't be 90 feet short he would be 10 feet short.

Lucy Pivonka asked for comments.

John Segedy said the shortage of the frontage is a condition of the property.

Lucy asked if he thought it was a hardship.

John Segedy said no, it's defining “unnecessary hardship” it's a minor hardship.

Lucy Pivonka said if you wanted to leave it as one lot it would be good but...

John Segedy said he is getting fair use of the property.

Lucy Pivonka said as the landowner he would like to do more with it.

John Segedy said money is not part of a hardship determination.

Lucy Pivonka said she wasn't mentioning money.

John Segedy said she was implying it.

Lucy Pivonka said no please don't tell me what I was implying. She was not mentioning money, she was just saying he wanted to do something with his land. He is entitled to use it.

Lucy Pivonka asked for thoughts from the Board.

Keith Cobbett made a motion to vote to approve this criteria. Lucy Pivonka seconded the motion. The motion carried with Larry Baker and John Segedy voting no. The criteria was approved.

Lucy Pivonka said because it's a minimal amount of frontage that he cannot provide.

Lucy Pivonka said they needed to vote on the entire variance application.

Larry Baker made a motion to grant the variance application. Lucy Pivonka seconded the motion. The motion carried with John Segedy voting no. The variance was approved.

Special Exception

Lucy Pivonka asked Mr. Bilc to review the application and his responses.

Mr. Bilc said that basically he was asking the Board to approve a two-family dwelling on the proposed subdivided lot containing .5 acres of land +/-

John Segedy asked if this application was to allow according to note #2 a dwelling at ground level?

Lucy Pivonka said Mr. Bilc has to read his application for what he is asking for.

Mr. Bilc began reading his application.

John Segedy said dwellings at street level require a special exception.

Lucy Pivonka asked Mr. Bilc to continue.

John Segedy asked Mr. Bilc if that was what he was asking for to be able to do to use the street level as residential.

Mr. Bilc said it was.

Lucy Pivonka asked Mr. Bilc to continue.

Mr. Bilc said he was not too familiar with this, but he did it to the best of his ability.

Lucy Pivonka said to think of it as the first floor.

Mr. Bilc continued reading his application and his answers to the criteria.

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

Mr. Bilc said the proposed use is a two-family dwelling. The property is zoned Commercial W/S.

Robyn Payson said that zoning designation was from the assessors and the actual zone is Central Business District.

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

Mr. Bilc said there are already several multi-family dwellings in the area. A two-family dwelling will have two residents and minimal traffic in and out. He said across the street there are no other houses, there is only the red one with the sidewalk and the river behind it. There isn't someone who can say they are concerned about someone else pulling in. It's already across the street from the existing property. Their driveway is already subject to there being concerns about traffic.

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. :

Mr. Bilc said that the water and sewer hook ups are in the street. Adding a two-household residential two-family dwelling is low usage compared with a car wash.

Lucy Pivonka asked Mr. Bilc why he mentioned a car wash.

Mr. Bilc said because he was trying to show that a two family or single-family dwelling is the minimum usage you can have compared to a big use like an office with excavators for sale or cars.

Lucy Pivonka said she just wanted to know about the car wash.

Mr. Bilc said he wanted to compare it to any commercial usage.

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

Mr. Bilc said this will not be a public place store or shop. It has minimal usage with two more households that will pay taxes. He said he had been corrected that the schools will cost more but he thought about the need for housing in town.

Larry Baker said he thought the key was “excessive demand”. He said he didn’t think one house would create an “excessive demand”.

Lucy Pivonka said the school enrollment numbers are actually going down.

Mr. Bilc said this is all kindergarten or something that you would need more.

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

Mr. Bilc said for each unit there will be at least 20,000 square feet as required to build two units. ½ acres is 22,000 square feet so he has more than the minimum required.

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.

Mr. Bilc said the proposed use is a two-family dwelling and will not create any hazard for the health and safety of other people. It will be a new building built professionally with all the standards of the community.

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

Mr. Bilc said this use is consistent with the zoning ordinance and master plan. He said he will provide more details with the surveyor, setbacks, and other requirements to the Planning Board. If he has to make one driveway for both lots with a fork so one goes to the right lot and one goes to the left lot. He said he has a garage in place already. In his opinion you need two parking spots for each dwelling unit. He has a garage and plenty of parking spots for the existing unit which is on a very small lot. He has a big parcel where he can put a dwelling where the “X” is on the map. He said his proposal before the Board is depending on having a system in place to have the 75-foot setback from the river, the neighbors or anything else to be in compliance with the laws and regulations of the State and of the Town.

Robyn Payson reminded the Board that the special exception is to allow residential use at street level when it is not secondary to a commercial use.

Lucy Pivonka called for comments and questions from the Board.

John Segedy said you just said it was ok at street level.

Lucy Pivonka said the only comment she had was consistent with the spirit and intent of the ordinance of not allowing residences on the bottom floor in that zoning area but that pertains to the buildings more toward the center of town. She said she believes the Town is trying to create a walking area where people can come and go to the little shops around the main part of the Town and then the residences could be upstairs. She said this property does not seem to congeal with that walking area and there are a lot of other residences in that area that are apartment buildings not really a lot of businesses in that area.

John Segedy said the problem is the ordinance does say central business district it doesn't say the two blocks around the square.

Lucy Pivonka said she believes that the intent of the ordinance is central. There really aren't any buildings nearby. She said she thinks there is the pizza place and Ollies shop.

Mr. Bilc said plus it is surrounded by houses.

Lucy Pivonka said it feels like another part of town.

Lucy Pivonka opened the public hearing.

Mr. Bick said the gentleman is just looking for nine feet and he is looking for another house. As far as a two-family home it doesn't fit in the area. The only two-family home is the one Mr. Bilc owns.

Lucy Pivonka said the question on this one is, is the ordinance says the ground floor has to be a business and you can't put a residence in that. So he is saying if I build a new house is it ok?

Mr. Bik said he would rather see a house versus another business. Do we need another business? There's The Brick House up the street and the other thing on the other side of the street and the more businesses that go in there, what's it going to turn into? I don't need to live in Boston, I left Boston because of that reason. Every time someone says they want to put in a new building and it's going to be a new business. A single-family house, yes.

Larry Baker suggested Mr. Bik attend the Planning Board hearing when it gets to that point. That's where those discussions will be had.

Mr. Bik said as far as it is now, he wants to build a house and he doesn't want to put in a business, I agree with the house part. That makes sense.

Mr. McDonough said he said what he needed to say, we'll see him at the Planning Board.

Lucy Pivonka asked Mr. Bilc if he had anything to add.

Mr. Bilc said he had made his case.

Mr. Bik said the only other statement he had was with the whole 9 feet thing, does that fall under the 4 feet of the state too? Because if he is asking for 9 feet, there's 4 feet of state highway.

Lucy Pivonka asked if he was thinking of from the center of the road out?

Mr. Bik said not really from the center of the road.

Lucy Pivonka said those were two different things.

Mr. Bik said there I a pump house. He said a house is a house and no business which is great. Single family yes, two-family, no. That is just a little too big and overwhelming.

Lucy Pivonka closed the public hearing. She asked the Board if they had any questions. There being none the Board addressed the criteria.

Lucy Pivonka said the meat of this is that this lot is located in the central business district which requires the ground floor to be a business of some sort and the above floors can be residential. He is asking for a special exception to make the entire building residential.

Larry Baker said for clarity, that is in the Table 4, Residential Uses note #2 specifying....

Lucy Pivonka said yes, it's ok to do with a special exception.

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

Lucy Pivonka said this use is authorized providing a special exception is granted.

Larry Baker made a motion to vote yes on the criteria. Lucy Pivonka seconded the motion. The motion carried unanimously.

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

Lucy Pivonka said there are already several multi family dwellings in the area. A 2-family dwelling will have two residents and minimal traffic in and out. We don't have any way to enforce that you will only have two residents in there.

Mr. Bilc said two households.

Lucy Pivonka said they would have to work that out with someone else.

Keith Cobbett made a motion to vote yes on the criteria. Larry Baker seconded the motion. The motion carried unanimously.

Finding of Fact-Undue traffic congestion – There are already many multifamily dwellings in the area and two more households should not impact...

John Segedy said we are discussing the findings of fact and earlier we had a presentation from the public comment that said there were single family along there and he was talking specifically about not wanting to have multifamily because that changes the nature of the...However this exception, we are not talking about single family or double family. What we are talking about is the use of the ground floor which whether it's one family or two-family is irrelevant, and the use of a ground floor residential will not...

Lucy Pivonka said we have no evidence that either of the those (traffic congestion or unduly impair pedestrian safety) will happen.

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. :

Lucy Pivonka reviewed Mr. Bile's response to the criteria. She said not enforcing a business at ground level, is that going to overload public systems, will there be an increase of stormwater runoff.

Larry Baker said, by allowing them street level residential.

John Segedy said there may not be a hook up right there because the hook up is for the existing house. The pipe goes by and he is going to have to pay for a new hook up to be put on.

Lucy Pivonka said if he were putting a business on the ground floor that would have to be done anyway.

John Segedy said he would point out that this is another case where one of those specifics about water and sewer usage is something that they are supposed to consider.

Lucy Pivonka asked John Segedy if he thought it would overload water and sewer?

John Segedy said he was going to guess as a lay person because we don't have any real information that it won't overload it, and we are not voting on the residential part of it but just whether or not the ground level could theoretically if he doesn't get this special exception about ground level we could make it a house having ground level that was empty.

Luy Pivonka said she was going to guess that a business would probably use more resources than an apartment.

John Segedy said actually residential uses more than..

Lucy Pivonka asked if it was going to overload the system?

John Segedy said no.

Larry Baker made a motion to vote yes on the criteria. Keith Cobbett seconded the motion. The motion carried unanimously.

There is no evidence water, drainage, sewer or any municipal systems will be overloaded or there will be a significant increase in runoff.

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

Lucy Pivonka asked Mr. Bilc if he had a dumpster on site.

Mr. Bilc said he didn't. The two tenants go to the dump.

Lucy Pivonka asked if anyone thought there would be excessive demand for services.

John Segedy said based on having them on the first floor, no.

Larry Baker made a motion to vote yes on the criteria. Keith Cobbett seconded the motion. The motion carried unanimously.

Lucy Pivonka said we do not have evidence that it will create excessive demand for municipal police, fire protection, schools , or solid waste disposal services.

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

John Segedy said that he is referencing note #2 which requires a special exception for some reason it includes in that note the minimum floor area has to be 600 square feet.

Lucy Pivonka said each unit will be at least 600 square feet.

Keith Cobbett made a motion to vote yes on the criteria. Lucy Pivonka seconded the motion. The motion carried unanimously.

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.

Lucy Pivonka made a motion to vote yes on the criteria. Keith Cobbett seconded the motion. The motion carried unanimously.

Lucy Pivonka said there is no evidence that there will be any hazards and she does believe it is not out of character with the adjacent homes in the neighborhood to allow residential on street level.

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

Lucy Pivonka asked if anyone thought it was not consistent.

John Segedy said anything can be said to be consistent with the master plan.

Lucy Pivonka said like she said before she thinks it is far enough out from the central square that it doesn't really pertain out here.

Keith Cobbett made a motion to vote yes on the criteria. Larry Baker seconded the motion. The motion carried unanimously.

John Segedy made a motion to grant the special exception. Lucy Pivonka seconded the motion. The motion carried unanimously.

Mr. Bilc thanked the Board and said he would be getting professionals to develop his subdivision plan.

Work Meeting

Meeting Schedule 2024

The meeting schedule for 2024 was reviewed. Lucy Pivonka made a motion to approve the ZBA schedule as presented. Russ Galpin seconded the motion. The motion carried unanimously.

Minutes 11/13/23

John Segedy said this "calling for a vote" or making a motion for a vote. You need to specify in the motion. He said according to this he didn't remember having that. He asked if that started last time.

Robyn Payson said yes, that is the way it was last time.

John Segedy said it just seemed kind of weird and he didn't remember it starting at the last meeting.

Lucy Pivonka said do you want me to say make a motion to...

Robyn Payson said you do it the right way like tonight saying you are making a motion to take a vote.

Lucy Pivonka said we want to keep it as formal...

John Segedy said he is suggesting it be more formal in that the motion shouldn't just say vote it should say yes on such and such criteria or to say no. Saying take a vote on the criteria and then her saying yes means this and no means that when that's not part of the motion.

Larry Baker said that was fair.

Luy Pivonka asked for an example.

John Segedy said on page 5 of 10 "Lucy Pivonka made a motion to vote on criteria B. The vote carried unanimously" It doesn't say whether the vote was positive for the criteria.

Lucy Pivonka said it said it carried.

John Segedy said the vote carried but it doesn't say whether it is a positive or a negative.

Lucy Pivonka said carried generally usually means it was approved.

John Segedy said the minutes should be amended so that someone reading this knows.

Larry Baker said for example, whatever criteria B is, I make the motion to approve criteria B.

Robyn Payson said the minutes say what was said. She said she was not going to go back and change the minutes.

Larry Baker said he was talking about a moving forward basis.

Robyn Payson said yes, absolutely.

Lucy Pivonka said after you have it carried unanimously, there are the findings of facts.

Larry Baker said he thinks John's point is clarity.

Keith Cobbett made a motion to approve the minutes. Russ Galpin seconded the motion. The motion carried with Larry Baker abstaining.

There being no other business Keith Cobbett made a motion to adjourn the meeting. Larry Baker seconded the motion.

The meeting was adjourned at 9:50 pm

Respectfully Submitted,
Robyn Payson, Planning Director