

**Zoning Board of Adjustment  
27 School Street  
HILLSBOROUGH, NH  
September 13, 2021**

**DATE APPROVED:** 10/18/21

**TIME:** 7:00 p.m. – 8:00 p.m.

**CHAIRPERSON:** Robert Hansen

**VICE CHAIRPERSON:** Meg Curtis-Sauer

**MEMBERS:** Russell Galpin, Roger Racette, Lucy Pivonka

**PLANNING DIRECTOR:** Robyn Payson

**ALTERNATES:** Mark Bodanza

**EXCUSED** Lucy Pivonka, Robert Hansen

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**Public Present:** Cheryl Dauphin, Peter Mellen LLS.

**CALL TO ORDER:**

Vice Chairperson Meg Curtis-Sauer called the meeting to order at 7:00 p.m.

Pledge of Allegiance

Meg appointed Mark Bodanza to fill in for Bob Hansen

**Minutes**

**Meeting** 07/12/21 Roger Racette made a motion to approve the minutes. Russ Galpin seconded the motion. The motion carried unanimously.

**Site Walk** 07/12/21 Russ Galpin made a motion to approve the minutes. Roger Racette seconded the motion. The motion carried unanimously.

**Public Hearing**

**Variance**

174 Henniker Street (Map 12 Lot 71)

Peter and Barbara Colbath -Property Owners

Represented by Peter Mellen

Cheryl Dauphin submitted the application for the Variance. Peter and Barbara Colbath are the property owners.

Meg Curtis asked the applicant if she was content to move forward with only four members of the ZBA present. Roger Racette pointed out that if there were a tie vote the application would be denied. Applicant Cheryl Dauphin said she was content to move forward.

The application is for a Variance from two provisions of the Zoning Ordinance in the Commercial Zone.

The Variances are from Table 229 Attachment 2:1 (Lot Area and Frontage Requirements) and Table 229 Attachment 3:1 (Setback, Coverage and Building Height Requirements) to permit the construction of a 30'x50' commercial building on a lot with 28,037 square feet, a front setback of 20' and a rear setback of 17'.

Peter Mellen is presenting the application on behalf of the property owners and the developer, Cheryl Dauphin. Ms. Dauphin is the owner of "Equigroomer LLC." (See attached document "Proposal as submitted by Peter Mellen")

Following the presentation, Mr. Mellen then asked Ms. Dauphin to describe her business.

Ms. Dauphin said she started the business in 2014. She showed the Board the grooming products she manufactures. They are dog, cat, and horse grooming tools. She has the handles made in In Maine, the blades are custom made by a company in Massachusetts. They ship the components to her, and she and her husband assemble them.

She started the company herself to help her horse who has sensitive skin. They are looking to have room for an entry, a two-car garage, an area to receive deliveries and a 25' x 25' space that will include space for a workshop, office, shipping area, a bathroom, and a kitchenette.

Product deliveries come approximately once a month so there is not a lot of truck traffic coming in. The blades come in via UPS approximately once a week. She does not intend to have customers coming to the location. There are no loud machine noises it is just them doing the assembly. She said she sells about 60,000 of them a year through Amazon and through distributors in Europe. The company is growing and doing it in their garage is no longer practical. She is looking for a space to grow the company.

For answers to the variance criteria please see attached document by Peter Mellen:

INFORMATION SUPPORTING THE VARIANCE REQUESTS  
OF PETER D. MELLEN, LLS ON BEHALF OF EQUIGROOMER, LLC, FOR  
PROPERTY AT  
174 HENNIKER STREET, HILLSBOROUGH, NH MAP  
12 LOT 71

Following Mr. Mellen's presentation, the Board was asked if they had any questions.

Roger Racette asked Mr. Mellen to explain why he felt that the limited use is not viable under today's economic climate

Mr. Mellen said: From what he sees it is not being used for any purpose and has been vacant for some time. As far as it being a commercial property, it is fairly limited in the area and there would be a fairly limited number of businesses in the area that would be interested in it. Most businesses want to bring in parking. This is a business that will have only two vehicles plus deliveries. It fits this particular property.

Roger Racette asked how the telephone company easement is impacting the property right now?

Mr. Mellen said he didn't think it was having much of an effect because it is within the 50' building setback.

Roger Racette said it does affect the ability to locate the building in the only other spot that is viable. You would have to get around the easement.

Mr. Mellen agreed.

Russ Galpin asked if there was any particular reason that the building could not be located in an area that that would move it five or ten feet back from the right of way?

Mr. Mellen said one of the reasons the building is located where it is proposed is that they wanted to use the existing curb cut.

Mr. Galpin said he was concerned about the 20ft setback in the front because Henniker Street is a main road into town and traffic could increase over time.

Mark Bodanza said he agreed with Russ; he was concerned about the 20ft setback. He asked how this compared with the locations of the other buildings on the road.

Peter Mellen said they were much closer and used the Sanel building as an example. He asked Robyn to bring down the Sanel site plan as an example.

Mark said his concern was plowing the snow off the roof in the wintertime and it falling into the roadway. What is the distance of the setback compared to the Sanel building?

Robyn left the meeting to pull the Sanel site plan.

Peter Mellen said as far as the snow, the distance from the edge of the pavement to the edge of the right of way is between 19 and 20 feet because the layout is so wide (66ft).

Roger Racette asked what the current plans for snow removal were.

Peter said his guess would be that they will come in and move it to a location on the property.

Roger Racette asked if you have to have 400ft of sight on each side of a curb cut?

Peter said that was a state requirement. He said he was not sure what the Town requirement is, but there is 400ft.

Roger asked if the sightline was why the curb cut would have to stay there.

Peter said he didn't know but the other factor is you can see by the wetlands someone has dug a ditch and it goes down into the roadside ditch and down. There is no culvert there now so there would probably have to be a culvert in place which would then involve a wetland's permit. He said they weren't trying to avoid that by the way we sited the building. We sited the building based on the easiest access. He said the Board could do a site walk. They could stake out the corners of the building and they could look at it if it is a real concern.

Robyn returned to the meeting with the Sanel site plan and Mr. Mellen reviewed it specifically to the location of the buildings which were on the right of way.

Peter Mellen said that they will have to go to the Planning Board for Site Plan review and get some input from the Conservation Commission about how close the building is located to the wetlands. He said it is a tough site that has been on the market for a while. You have an applicant that is going to put up a good-looking building and the use fits the property where there is not much room for parking.

Roger asked if there had been any objections from neighbors. Robyn said she hadn't heard anything from the neighbors who were notified, and no one came to the meeting, so she didn't think there were any.

There being no more questions from the Board, Vice Chairperson Meg Curtis-Sauer closed the Public Hearing.

The Board began their deliberations.

Roger Racette said these were significant variances from what was required but the primary purpose of setbacks is to prevent overcrowding of land. He said he didn't think overcrowding of land was going to be an issue. The wetlands on the property is going to prevent anything from being overcrowded. Meg agreed.

Russ Galpin said it would be nice to have the lot used rather than sit there vacant. He said the closeness of the right of way concerns him but perhaps there is ample reason why there is no better place to put it. Its one of those cases where you have a narrow pre-existing lot and what can you do with it and make it a good service of the lot. A 30x50 ft building is not a particularly large building but the closeness to the right of way is somewhat of a concern.

Roger said it was a mixed-use area. If it were residential the requirement of 50ft would be 30ft.

Meg said she could see the building was designed around the property for the best use.

Russ Galpin made a motion to grant the variance to permit the construction of a 30'x50' commercial building on a lot with 28,037 square feet, a front setback of 20' and a rear setback of 17'. Roger Racette seconded the motion.

Roll Call Vote: Meg Curtis Sauer-Y, Russ Galpin-Y, Roger Racette-Y, Mark Bodanza-Y. The variance was granted.

There being no other business:

Mark Bodanza made a motion to adjourn. Roger Racette seconded the motion.

Meeting Adjourned 8:00 p.m.

Respectfully Submitted,

Robyn Payson  
Planning Director

**Proposal as submitted by Peter Mellen**

Cheryl Dauphin, owner of Equigroomer, LLC proposes to construct a 1500 square foot building for the assembly of equine grooming tools. Materials will be delivered via box trucks to a loading area at the north end of the building, which will also house vehicles for the two employees. The existing building is in relatively poor condition, with a drainage pipe running under the north end, so the plan is to remove the building and construct a new 30'x50' structure.

Henniker Street was laid out August 25, 1840. It is a four-rod road, (66' wide), 6' wider than the town's current standard for new roads in the Commercial District and 16.5' wider than the majority of the existing town roads in Hillsborough, which are three rod roads (49.5' wide). From the present edge of the pavement to the edge of the road right of way is between 19' and 20'.

The property is located in the Commercial District and is served by municipal water and sewer. New lots in the Commercial District must contain 40,000 square feet and have 200 feet of frontage for each commercial building. The subject property, which contains 28,037 square feet (0.6 acres), is considered a pre-existing non-conforming lot as it was created prior to the enactment of the town's zoning ordinance in 1977.

The structure on the property, also built prior to the enactment of the zoning ordinance, does not meet the current street and rear setback requirements for commercial buildings and is therefore considered a pre-existing, non-conforming structure.

Article VII, Section 229-43 of the zoning ordinance states in part that "A legal use, existing at the time of the adoption of this chapter, may continue as a nonconforming use provided that:

A. Such use cannot be resumed after a discontinuance of one year.

B. A building used for a nonconforming use may be maintained or renovated but may not be structurally increased beyond original dimensions... "

The ordinance is silent, however, when it comes to the development or redevelopment of pre-existing non-confirming lots in the Commercial District, other than to state, in Section 229-5, that "No land in the Town of Hillsborough shall hereafter be used for building, development or otherwise and no structure shall be erected, enlarged, materially altered or moved, except in conformance with this chapter."

This was not always the case. The original Town Plan, adopted at the March 2, 1976 Town Meeting, stated that "Existing lots, registered at the Registry of Deeds prior to the date of passage of this ordinance, are exempt from the minimum lot size provisions."

Unfortunately, at some point in time the zoning ordinance was revised, and this provision was removed, meaning that in order for the subject property to be redeveloped as proposed, a variance is required to Section 229 Attachment 2:1 to permit the construction of a commercial building on a lot with 28,037 square feet.

In addition, we are also asking for variances to Section 229 Attachment 3:1, which requires that commercial uses be set back 50' from the street and 25' from the rear of the lot. We are proposing a street setback of 20' and a rear setback of 17', which is the present rear setback of the existing building.

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**1. Granting the proposed Variance(s) will not be contrary to the public interest**  
**because** to be contrary to the public interest, the variance must unduly and in a marked degree conflict with the ordinance such that it violates the basic objectives of the ordinance.

To determine whether the requested variances violate those objectives, we must first look at the ordinance itself. Section 229-4 states that the ordinance is enacted:

"for the purpose of promoting the health, safety and general welfare of the community. The regulations herein give consideration to the character and suitability for particular uses of area in the Town of Hillsborough, the conservation of the value of buildings and the encouragement of the most appropriate use of land throughout the Town of Hillsborough."

The section goes on to state that the ordinance is designed to

- A. Lessen congestion in the streets.
- B. Secure safety from fire, panic, and other dangers.
- C. Promote health and the general welfare.
- D. Promote adequate light and air.
- E. Prevent the overcrowding of land.
- F. Avoid undue concentration of population.
- G. Facilitate adequate provision of transportation, solid waste, water, sewerage, school and recreation facilities.
- H. Assure proper use of natural resources and other public requirements."

The ordinance aims to accomplish these objectives by setting minimum standards for development of property. These standards include minimum lot size, frontage, building setbacks, etc. To determine whether the granting of a variance to the lot size requirement



will violate those objectives, we can look to other similarly sized properties within the Commercial District.

The property closest in proximity and area to the subject parcel is located at 108 Henniker Street (Map 24, Lot 59). It is a 0.6 acre lot with an 1,888 square foot auto repair facility. 335 West Main Street is a 0.5 acre lot with a 3,556 square foot restaurant. The most heavily developed property is 15 Norton Drive, a 0.1 acre lot with a 3,810 square foot building housing a business and two apartments.

What these lots have in common is that all were created prior to the adoption of the zoning ordinance and do not meet the current minimum lot size for a commercial use in the Commercial District. Despite these shared deficiencies, there is no evidence that the present uses located upon these lots, all of which are more intensive than the proposal before the board, have increased congestion in the streets; led to fire, panic and other dangers; threatened the health and general welfare; obstructed adequate light and air; overcrowded the land; created undue concentration of population; interfered with the adequate provision of transportation, solid waste, water, sewerage, school and recreation facilities; or led to improper use of natural resources and other public requirements.

It is therefore reasonable to conclude, based on these presently existing non- conforming lots in the Commercial District, that the redevelopment of an existing 0.6 acre lot similarly zoned will not violate the basic objectives of the zoning ordinance and is therefore not contrary to the public interest.

Regarding the variances requested for street and rear setbacks, we can look to examples found on immediate adjacent properties. Map 12 Lots 72 and 111 feature dwellings constructed within the 30' street setback for dwellings in the Commercial District; both constructed prior to the enactment of the zoning ordinance. Map 12 Lot 112 features a dwelling with an outdoor sales area that is constructed within the 50' street setback for commercial uses.

Despite these deficiencies, there is no evidence that the non-conforming structures on these lots have increased congestion in the streets; led to fire, panic and other dangers; threatened the health and general welfare; obstructed adequate light and air; overcrowded the land; created undue concentration of population; interfered with the adequate provision of transportation, solid waste, water, sewerage, school and recreation facilities; or led to improper use of natural resources and other public requirements.

**2. Granting of the proposed Variance(s) will observe the spirit of the Hillsborough Zoning Ordinance** because the ordinance is intended to regulate the creation of new lots in the Commercial District and the nature of development taking place on those lots, not prevent the redevelopment of pre-existing, non-conforming lots. Article VIII of the ordinance creates the Zoning Board of Adjustment for the exact purpose of providing relief to those who cannot utilize their property in accordance with the ordinance.

Additional evidence that this proposal observes the spirit of the ordinance can be found in the required and proposed percent of maximum building coverage. Under the ordinance, a commercial lot is permitted to have a maximum building coverage of 30% of the total lot area. The requested 30'x50' building, despite being constructed at less than half of the required street setback of 50', covers only 5% of the total lot area.

**3. Granting the Variance(s) will do substantial justice** if their granting will not a) cause harm to the general public that outweighs the benefit to the property owner, and b) if the proposed use is consistent with the present use of the surrounding area.

There is no reason to expect that the granting of the requested variances would result in any harm to the general public as the non-conforming lot has been used in the past as a real estate office, a video store and a coffee shop with no such harm claimed. The proposed use will generate far less traffic than any of the earlier uses of the property.

As far as the proposed use being consistent with the present uses in the surrounding area, the area in question is unique in that much of the development took place prior to the adoption of the town's zoning ordinance. Prior to 1976 the majority of lots in the area were utilized for single family residential purposes, as well as a mobile home park, with the subject parcel being an exception. Over time, the uses have become more diverse, with the addition of commercial buildings at 139 and 191 Henniker Street. The area remains a mix of commercial and residential uses. Approval of these variances would have no real effect on this mix, as the subject parcel has been used for commercial purposes for more than 40 years.

**4. Granting the proposed Variance(s) will not diminish the values of surrounding properties because** the presently existing commercial building, which has been vacant for some time, would appear to diminish surrounding property values far more than would a newly constructed and functioning small business.

**5. 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 and the specific application of that provision to the property; and (ii) the proposed use is a reasonable one.**

As shown on the enclosed plans, the special conditions which distinguish this property from other properties in the area are twofold:

The lot, created prior to the enactment of the zoning ordinance, does not meet current lot size requirements, and 2. the vast majority of the lot's buildable area, the area outside the setback requirements, is wetland.

The general public purpose of the ordinance is to provide for the orderly development of the community but applying the specific provisions of the ordinance to this property would limit any future commercial use to the 36'x18' footprint of the existing building or to a 20'x30' area at the far north end of the lot. Based on the present vacant status of the property it appears such a limited use is not viable under today's economic climate.

The proposed use is a reasonable one because it is a commercial use in the Commercial District.

**(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:**

Strict conformance with the ordinance renders this property un-buildable, with the exception of (1) the existing building footprint, which has proven to be untenable for a commercial use in the present economic climate, and (b) a 20'x30' area at the far north end of the lot, access to which is limited by the adjacent wetland and the existing telephone company easement.

This proposal represents the reasonable use of a pre-existing non-conforming lot with a significant restriction to development due to on-site wetlands. For these reasons we ask that the board grant the variances as requested.