



# TOWN OF HUDSON

## Zoning Board of Adjustment



Charlie Brackett, Chairman      Marilyn E. McGrath, Selectmen Liaison

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### MEETING MINUTES – May 23, 2019 – approved

The Hudson Zoning Board of Adjustment met on May 23, 2019, in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall.

#### **I. CALL TO ORDER**

#### **II. PLEDGE OF ALLEGIANCE**

Chairman Brackett called the meeting to order at 7:00 PM and invited everyone to stand for the Pledge of Allegiance.

Mr. Brackett stated that the ZBA hears requests for relief from the State Law and Local Ordinances and noted that there is only one (1) Case before the Board. Mr. Brackett outlined the meeting procedure where the applicant will present their request to the Board followed by receipt of public testimony and if negative testimony received, the applicant can address and a second round of public testimony would be opened and invited everyone addressing the Board to come either to the table or the lectern and provide their name and address, with spelling; noted that copies of the Agenda and copies of the Process for Appeal are on the shelf by the door; and announced housekeeping matters that included silencing cells phones, no talking in the audience and no smoking.

Members present were Charlie Brackett (Regular/Chair), Gary Daddario (Regular), Maryellen Davis (Regular/Clerk), Gary Dearborn (Regular/Vice Chair), Brian Etienne (Alternate) and Jim Pacocha (Regular). Also present were Bruce Buttrick, Zoning Administrator, and Louise Knee, Recorder. Excused was Marilyn McGrath, Selectmen Liaison. For the record, all Regular Members voted.

#### **III. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:**

1. Case 209-001 (5-23-19): Mark Pilotte of Dakota Partners, Inc. 1264 Main St., Waltham, MA 02451, requests a Wetland Special Exception on behalf of 5 Way Realty Trust for 161 Lowell Rd., Hudson, NH to allow Wetland Conservation District buffer work relating to roadway improvements to the existing Friars Drive. The wetland buffer area

Not Official until reviewed, approved and signed.  
Approved 6/27/2019 as edited and amended.

impacted is 19,200 sq ft. [Map 209, Lot 001-000, Split Districts: Zones General (G), Business (B), and Industrial (I); HZO Article IX, §334-35.B, Uses within Wetland Conservation District and §334-38, Special Provisions].

Clerk Davis read the Case into the record. Mr. Buttrick referenced his Staff Report dated 5/23/2019, noted that the lot has 88.8 undeveloped acres with 758' of frontage along Lowell Road, that after conferring with Town personnel, the Applicant is now proposing to subdivide the land into two (2) lots with the new rear lot to be accessed via Friars Drive which needs to be extended to provide sufficient frontage and added that the Wetlands Special Exception is for the work that is needed in the wetland buffer to extend Friars Drive. Mr. Buttrick stated that both the Conservation Commission and the Planning Board reviewed and recommended approval and that Brian Groth, Town Planner, also submitted comments and proceeded to read each of his nine (9) points into the record:

1. The special exception is required for the extension of a Town road, Friars Drive. It is not needed for the multi-family site plan application.
2. The extension of Friars Drive requires development within the 50-foot buffer but not within the wetland itself.
3. The extension was previously planned for by the Planning Board in 1997 as part of a subdivision application made by Presstek, Inc.
4. The extension involves improving an existing, paved driveway to Town standards.
5. The extension is a benefit to Access Management & Traffic Mitigation on Lowell Road as it essentially takes the Friary property off of Lowell Road and puts it on Friars Drive.
6. The extension is consistent with planning principles of connectivity for purposes of traffic management, efficient public utility layout, emergency response and general wayfinding.
7. The alternative is a series of dead-end streets and multiple curb cuts along Lowell Road that would have a more detrimental impact to traffic and safety.
8. The extension facilitates the ability to limit left-turning traffic onto Lowell Road, which was a safety concern raised by the Engineering Dept.
9. The extension came about during the Design Review Phase in response to feedback from the Planning Board, Engineering and Fire Departments as well as investigation into past strategic Planning efforts.

Mr. Brackett noted that the ZBA approved two (2) previous wetland special exceptions for this property, in 2001 & 2002, and added that neither were implemented

Atty. Thomas J. Leonard of Welts, White & Fontaine, P.C. in Nashua, NH, introduced himself as representing Mark Pilotte and Dakota Partners, noted

that Mr. Pilotte was present along with Karl Dubay, PE, of The Dubay Group, and Luke Hurley, CWS, of Gove Environmental Services. Atty. Leonard stated that he appreciates Mr. Buttrick's introduction to the Case and noted that the points raised by the Town Planner are important.

Atty. Leonard stated that the project is a rental multi-family proposal on/at 161 Lowell Road and that this particular improvement is the result of the Town's Planning Staff and the Town's Engineering Staff making a request to the Developer that is not really required for the development. It is not a benefit to the Developer but does facilitate better Master Planning for the Town with regard to the back parcel, should that ever come about. Atty. Leonard stated that they are not involving the jurisdictional wetlands, that there is no filling of wetlands, no crossing of wetlands, no crossing of poorly drained soils and no crossing of water, that all they are asking to do is work in the wetland buffer to extend Friars Drive to provide sufficient frontage to the site.

Atty. Leonard noted Luke Hurley, CWS (Certified Wetland Scientist), has taken a look at the functions and values of the wetland and determined that there is no impact to the wetland and referenced his report signed/sealed/dated 4/29/2019 in the packet. Atty. Leonard stated that they are before the Board for the work that is needed in the wetland buffer to extend Friars Drive.

Atty. Leonard referenced the pictures, noted that Friars Drive, even though still drive-able, is in disrepair with vegetation growing in the cracks, has been overgrown and needs paving. Currently, the paved areas ranges from 18' to 22' and their intent is to upgrade Friars Drive to Town standards and add approximately one foot (1') to either side to meet the standard Town road-width of twenty-four feet (24'). The grades of the road will be re-established and the swale to the northwest will also be re-established. The sediment basin is new to further protect the wetland.

Atty. Leonard referenced the plan that shows the work detail for the extension of Friars Drive and the 19,200 SF wetland buffer impact. It was noted that Friars Drive is paved to the Matrix building at 22 Friars Drive where the pavement abruptly ends. Atty. Leonard stated that the actual wetland is between Friars Drive and Lowell Road and noted that portions of the existing paved Friars Drive is in the wetland buffer. Atty. Leonard stated that there is no seeding plan as their intent is to let it reseed itself naturally.

With regard to the wetlands on site, Atty. Leonard stated that even though they are not near Friars Drive but closer to Lowell Road, they engaged the services of a Wetland Scientist, Luke Hurley, to review the functions and values and noted that there are no rare species and that the proposed buffer impact to Friars Road would not change or impact the wetland function.

Atty. Leonard stated that both the Planning Board and the Conservation Commission have reviewed, walked the site and made recommendations to the ZBA to grant this Special Exception. Atty. Leonard stated that the Conservation Commission expressed concern regarding seeding and he assured the Board that they will follow BMP (Best Management Practice) and NH DES (Department of Environmental Services) requirements for AOT (Alteration of Terrain).

Atty. Leonard next addressed the Zoning Ordinance Section 334-35 Uses within Wetland Conservation District (WCD) subsections B (1) & B (2). The information shared regarding B (1) included:

(1) Conditions:

*(a) Proposed use is essential to the reasonable use outside the WCD*

- The proposed rental multi-family residential development is a reasonable and permitted use
- Town would like to avoid additional curb cut and traffic on Lowell Road

*(b) No reasonable alternative*

- Use of Friars Drive is the reasonable alternative to Lowell Road
- Friars Drive already exists, the proposed change is to elongate it to provide the needed frontage
- Portions of Friars Drive is in the wetland buffer

*(c) PE prepared plans, including restoration*

- Plans have been prepared by Karl Dubay, PE, of The Dubay Group, Inc., titled Roadway Construction Plan dated 4/29/2019
- Wetland has also been reviewed and evaluated by Luke Hurley, CWS, of Gove Environmental Services, Inc., and his assessment and seal dated 4/29/2019 is in the packet.

*(d) Use not based primarily on economic considerations*

- Quite the contrary, it is costing the Developer more money to utilize Friars Drive

*(e) Provisions made for wildlife access corridors*

- Not applicable, there are no corridors involved

With regard to Section 334-35 subsection B (2), drainage ways, swales, culverts, settling basins and detention basins to manage storm water runoff are all permitted. For the record and even though not part of this Wetland Special Exception application, the provisions of Section 334-38, Special Provisions, allows rebuilding/repairing of the existing paved portion of Friars Drive.

Public testimony opened at 7:25 PM.

- (1) Denise Hulse, 16 Hickory Street, stated that she has lived there for twenty four (24) years, that she and her husband hike this land in all seasons, supports the widening of Friars Drive but questions the stream on the right, by the old Presstek building, and noted that in the spring the water flows pretty fast, feeds a pond and eventually ends up in the river and asked what protections there will be from road salt and runoff from traffic and wonders about the future development of the back parcel of this lot as it is zoned Commercial and Industrial.

Mr. Brackett stated that the back parcel is not yet being developed but when it does, studies will be performed that will address these concerns and added that what is before the Board tonight is the extension of Friars Drive to provide frontage and the impact of the road extension into the wetland buffer. Mr. Etienne added that if the wetland itself was being affected, a full environmental assessment and mediation plan would be required.

Being no one else to address the Board, Public Testimony closed at 7:31 PM.

Atty. Leonard stated that, as a practical matter, they are not adding any runoff and what additional runoff might occur with the addition of approximately one foot (1') to each side of the road will be handled and the water will be treated by the mechanism already in place that will be reestablished. Atty. Leonard stated that the pond referenced by the abutter is substantially away from where they will be extending Friars Drive.

Luke Hurley, CWS, Gove Environmental Services, pointed to the wetland on the site, identified its course, noted the stream that goes through the culvert and travels its way to the pond and outlined the path it takes to the Merrimack River. Mr. Hurley noted that there are no changes proposed to this existing culvert even with the widening of Friars Drive and proceeded to identify the swale and retention basin on the other side of Friars Drive that will be reestablished to treat water runoff from the road.

Mr. Dearborn stated that the material in the packet noted that the wetlands are seasonal yet it has been presented at this meeting that there is running water flowing throughout the year on this property. Atty. Leonard responded that the wetland on the bottom side of the road is seasonal in the sense that there is no standing-water and the brook is to the north.

Mr. Dearborn asked and received confirmation from Atty. Leonard that today Friars Drive connects to Executive Drive and that both Mr. Dhima, Town Engineer, and Mr. Groth, Town Planner, have asked that traffic use the connection to Executive Drive for certain movements.

Mr. Dearborn noted that the Conservation Commission approved and asked if they also did a Site Walk. Atty. Leonard stated that they did hold a Site Walk with the Planning Board but he did not attend the Site Walk and thinks that their concern regarding Best Management Practices (BMPs) arose because his team was not clear that following BMPs was their intent. Mr. Brackett stated that he did attend the Site Walk as part of the Planning Board and noted that it was well attended by the Conservation Commission, the Planning Board, the Town Engineer and three (3) Selectmen.

Mr. Pacocha asked if the improvements to Friars Road will extend to Executive Drive. Atty. Leonard confirmed that they will reestablish all areas needing improvement on Friars Drive, beyond their property line to Executive Drive even though the connection is outside their project and added that they will dedicate the new road to the Town when the Town wants it and is why it is being built to Town standard with a twenty four foot (24') width and a ROW (Right-of-Way) of fifty feet (50'). Atty. Leonard noted that the Dakota property is the front lot along Lowell Road in the B (Business) Zone. In response to Mr. Dearborn's question, Atty. Leonard responded that the distance between the Dakota property and Friars Drive is approximately twelve hundred feet (1,200').

Ms. Davis made the motion to approve the Wetland Special Exception with one (1) stipulation: that the applicant shall use industry recognized and acceptable design mitigation and restoration Best Management Practices during all Phases of the Project. Mr. Dearborn seconded the motion. Ms. Davis spoke to her motion noting that it meets the criteria, that there is no other reasonable alternative to use/access the property, the applicant has testified they will utilize BMPs and that it seems like the buffer has naturally extended itself over time. Mr. Dearborn agreed that it meets the criteria, that the work will be done in accordance with the State of NH and the Town of Hudson and that both the Conservation Commission and the Planning Board recommended. Vote was 5:0 to grant with one stipulation. Special Exception granted.

Discussion arose on the Site Walk. Mr. Brackett stated that it was held two (2) Mondays ago. Concerns expressed why the ZBA was not invited/included.

#### **IV. REVIEW OF MINUTES:**

##### 1. 04/25/19 Minutes

Board reviewed the edited version distributed with the meeting packet. Mr. Buttrick noted that a supplemental edited version was issued after the meeting packet was mailed because additional edits were received and a third set of edits was received but a third edition was not created.

Mr. Dearborn stated that his last two (2) edits were not included – Page 1 Line 28 and Page 4 Line 148. It was noted that the Minutes reflect what was

spoken in the meeting. It was also noted that the meeting recording can also be found on the Town's website for everyone to access. Agreement reached that "Appeal for Rehearing" would be added in parenthesis after "Appeal" on Line 28 and the word "gate" would be added in parenthesis before "lock" on Line 148.

After some discussion, it was agreed that any additional edits needed to the Edited Minutes distributed in the meeting packet would need to be made at the meeting as only one Edited version will be produced.

Motion made by Mr. Dearborn and seconded by Ms. Davis to approve the 4/25/2019 as edited and amended. Vote was 5:0.

#### **V. REQUEST FOR REHEARING:**

No requests were presented for Board consideration.

#### **VI. OTHER:**

##### 1. Recap of the recent Right to Know Seminar.

Mr. Buttrick stated that ZBA was well represented and that the seminar was well attended and noted that the ZBA adheres to many of the protocols. Mr. Brackett added that there was a handout and Mr. Buttrick stated that he could provide a copy.

Mr. Brackett stated that the suggestion was made that every Member have a Town email address to satisfy the Right-to-Know (RTK) and it was discussed and agreed to at the last Planning Board meeting and offered the same to the ZBA Members. Mr. Buttrick to investigate the possibility. Ms. Davis asked if an individual's Town email address could automatically be forwarded to the individual's personal email address to avoid having to track a separate email account or send a notification email to check your government email account.

Mr. Brackett stated that he also heard that all Town employees, staff and volunteers will have badges. Mr. Buttrick stated that the Board of Selectmen on 5/14/2019 voted to issue identification badges all employees, volunteers and elected officials and others deemed by the Town Administrator and is to become effective July 1, 2019. Mr. Brackett commented that it would have been beneficial at the Site Walk held for the Case heard at this meeting.

##### 2. Discussion of possible ZBA Bylaws revisions.

Mr. Buttrick referenced the draft work copy and identified the changes proposed based on the Board's last discussion that included:

Section 143.5 Officers

- Clerk duties redefined
- Recorder – position added – change needed to clarify that draft Minutes are distributed to the Board Members and Notices of Decision are distributed to the Chair and Zoning Administrator

#### Section 143.6 Members and Alternates

- Sentence added for three consecutive unexcused absences

#### Section 143.7 Meetings

- Added Pledge of Allegiance to #4 Order of Business

#### Section 143.9 Decision Process

- Added the 30-day appeal period after the Chairman announces the vote. Discussed. It was noted that the RSA is specific in that the days are counted in calendar days. It was also noted that the date of decision is the actual meeting date the decision was made and not the date the Notice of Decision was signed or received by the Applicant. Consensus that the 30-day appeal period should be in the meeting introduction as it applies to all decisions

Mr. Buttrick to update the draft with the changes discussed for review at the next meeting and if okay will then schedule the first of the two required Public Hearings.

### 2.A Correspondence

Email dated 5/23/2019 received from Town Counsel David Lefevre advising that the Court has dismissed the Appeal filed by Moozit, LLC, against the Town on the same grounds that the ZBA denied a Rehearing – untimely filing. Mr. Buttrick noted that he will need to start code enforcement action for the apartment within the business.

### 3. Discussion of possible Zoning Ordinance Amendments.

Board reviewed and discussed the Prioritized List dated 5/10/2019 and changed the following: Trailers and Ocean Containers from Priority 2 to Priority 1; Tiny Homes from Priority 3 to Priority 2; and noted that a distinction is needed between Backyard Farming and Backyard Animals and Backyard Gardening. A workshop meeting was set for July 11, 2019.

### 4. New Hampshire Municipal Association- References Articles.

Two Articles were distributed – crafting Rules of Procedure and Conduct of Public Hearings. Mr. Buttrick also distributed a revision to the Right-to-Know Law for inclusion into the Land Use Regulation aka RSA Book.

Motion made by Ms. Davis, seconded by Mr. Pacocha and unanimously voted to adjourn the meeting. The 5/23/2019 ZBA meeting adjourned at 8:41 PM.



Respectfully submitted,

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Charles J. Brackett, Chairman