



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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MEETING MINUTES – February 24, 2022 – approved

The Hudson Zoning Board of Adjustment met on Thursday, February 24, 2022 at 7:00 PM in the Community Development Paul Buxton Meeting Room in the lower level of Hudson Town Hall, 12 School St., Hudson, NH

I. 6:30 PM CONSULTATION WITH TOWN COUNSEL (non-public) per RSA 91-A:2 I (b) Held

II. 7:00 PM CALL TO ORDER

III. PLEDGE OF ALLEGIANCE

Chairman Gary Daddario called the meeting to order at 7:05 PM, apologized for the delayed start, invited everyone to stand for the Pledge of Allegiance and read the Preamble into the record (Exhibit A in the Bylaws).

Clerk Normand Martin took attendance. Members present were Gary Daddario (Regular/Chair), Gary Dearborn (Regular), Normand Martin (Alternate/Clerk), Marcus Nicolas (Regular), Jim Pacocha (Regular/Vice-Chair), Dean Sakati (Alternate) and Edward Thompson (Alternate). Also present were Bruce Buttrick, Zoning Administrator, and Louise Knee, Recorder (remote). Excused were Brian Etienne (Regular) and Kara Roy, Selectman Liaison. Mr. Daddario appointed Mr. Martin to vote and noted that there would be five (5) Voting Members.

IV. PUBLIC HEARINGS OF SCHEDULED APPLICATIONS BEFORE THE BOARD:

CONTINUED/DEFERRED HEARINGS:

1. **Case 166-031 (02-24-22) (deferred from 01-27-22):** Daniel M. Flores, PE of SFC Engineering Partnership, Inc., 183 Rockingham Rd, Unit 3 East, Windham NH 03087 requests a Variance for **8 Lindsay St., Hudson, NH** for relief from HZO Article VII, Dimensional Requirements; § 334-27.1 D, General Requirements: to allow the creation of a new lot that has insufficient required frontage on a class V or better portion off Grigas St. [Map 166, Lot 031-000, Zoned Town Residence (TR).]

Mr. Buttrick read the Case into the record and referenced his Staff Report signed 2/21/2022.

Dan Flores, PE, SFC Engineering, 183 Rockingham Road Unit 3E, Windham, NH 03087 introduced himself and Atty. Patricia Panciocco of Panciocco Law representing the

Developer, M.R. Lacasse Homes, LLC. Mr. Daddario stated that in full disclosure he is a lawyer and in the course of his practice, he is involved with a case where Atty. Panciocco represents the other side and stated that he does not feel that interferes with his ability to preside in hearing this Case. No one asked for his recusal.

Mr. Flores posted a plan and distributed paper copies of a plan titled Proposed Subdivision Plan, 8 Lindsay Street, Hudson, NH dated 10/4/2021. Mr. Flores stated that since the October meeting, they went before the Board of Selectmen (BoS) on January 11, 2022, and that Town Counsel issued a letter dated 1/12/2022. Mr. Flores stated that the BoS agreed that the undeveloped portion of Grigas Street ROW (Right-of-Way) has lapsed by Operation of Law so that public right to that segment of land is no longer present. The plan posted has been revised to show the property line down the center of what used to be the ROW (also previously referred to as “Grigas Street Extension” or Grigas Street “leg”).

Mr. Flores provided the following information on the revised Proposed Subdivision Plan: there is now 25.72’ of frontage on the bend of St. John Street/Grigas Street; the total lot area of 8 Lindsay Street has increased to 1.381 acres from 1.319 acres; a 12’ wide driveway is proposed from the proposed new lot of 0.46 acres for 20,055 SF (Square Feet) where 10,000 SF is required and the remaining lot area is 40,084 SF where 40,000 SF is required; the new lot meets all required setbacks of the Zoning Ordinance and can resolve the drainage issue at the corner. From an aerial view that was posted with the proposed new lot outlined in white, Mr. Flores noted how well it fits into the neighborhood noting that the proposed new lot is nearly double in size to the neighboring lots and the distance from the proposed garage is 85’ to the existing house to the left (5 St. John Street) and 46’ from the proposed house to the house to the north (6 Grigas Street).

Mr. Daddario asked and received confirmation from Mr. Flores that the new lot line was based on the center of the undeveloped section of Grigas Street Extension.

Mr. Flores next addressed the variance criteria necessary to satisfy and the information included:

(1) *not contrary to public interest*

- Proposed use is a single family residence, like all others in the neighborhood
- Proposed lot is almost double in size to surrounding lots

(2) *will observe the spirit of the Ordinance*

- Proposed lot meets all Zoning Ordinance requirements, except frontage
- Although the lot does not have frontage on a Class V Road, the lot does/did have frontage on Grigas Street ROW/Extension that was never completed

(3) *substantial justice done*

- The lot at 8 Lindsay Street was created as an “L” shape with frontage on both Lindsay Street and Grigas Street Extension
- Grigas Street Extension never built
- Variance will allow owner to fully develop the property as intended

(4) *not diminish surrounding property values*

- Proposed lot will not diminish property values

- Proposed lot size and configuration will be similar to existing properties along Grigas Street, St. John Street, Nellie Court and Ledge Road
- (5) *hardship*
- The lot has a unique “L” shape configuration with frontage both on Lindsay Street to the west and a paper-street (Grigas Street Extension) to the north
 - The Town never constructed Grigas Street Extension resulting in the planned Grigas Street frontage not existing
 - There are three (3) plans recorded at the Hillsborough Registry of Deeds that illustrate the lot and Grigas Street Extension:
 - 1957 Plan #1667 showing Grigas Street extending to the south with a number of lots created along the frontage
 - 1964 Plan #2888 shows changes to the lot along Grigas Street
 - 1980 Plan #13558 shows Grigas Street ROW extending to create the current “L” shape configuration of the lot

Atty. Panciocco stated that the purpose of a variance is to provide a relief-valve to the conditions of a Zoning Ordinance and the hardship criteria focuses on the land and in this case, there is no way to cure the lack of frontage. The frontage requirement and the purpose it serves in Zoning is to prevent overcrowding. The proposed structure on this double-sized lot is even further distanced from the structures on either side and noted that many houses in the neighborhood are much closer to one another. Atty. Panciocco stated that this variance will allow reasonable use of the land, a single -family residence in an area where it is permitted, and does allow productive use of the land.

Mr. Dearborn asked if there was 25’ of access to St. John Street and how Grigas Street Extension was acquired. Mr. Flores stated that it was a ROW, established in 1980, Grigas Street Extension was not improved/approved in the required time frame and by Operation of Law, the ROW lapsed and the land was equally divided to both abutting lots, 25.73’ to each. Atty. Panciocco stated the division does not have to go to court as the presumption is the division occurs at the centerline.

Mr. Thompson questioned if the length of the proposed driveway appears to be about 70’. Mr. Sakati questioned the width, approximately 25’, and asked how that relates to overcrowding. Atty. Panciocco responded that the appearance of overcrowding relates to the positions of the structures and the plan being proposed provides greater distance between the abutting structures than several others in the neighborhood. Mr. Thompson stated that he walked the area, noted that it is heavily wooded and as far as privacy is concerned overcrowding would not be a concern especially if the site is not clear-cut.

Public testimony opened at 7:47 PM.

- (1) Jeff Ferentino, 5 St. John Street, abutter on the other side of the ROW expressed concern with seeing/being seen when he sits on his back porch and asked if he can erect a fence on the property line. Mr. Buttrick responded that he could and noted that a fence greater than 8’ in height needs a Building Permit. Mr. Ferentino expressed concern with the drainage off St. John Street and Grigas Street as the water pools at the bend of the roads before it begins to travel down the “natural swale” along the Cloutier property to the north (6 Grigas Street) before it seeps to the cemetery and with the rains of last week,

the pool in the cemetery was Olympic size. Mr. Ferentino showed pictures and added that a new house could create a bigger issue. Mr. Buttrick explained the process and checks that occur with a Building Permit and confirmed that drainage and driveway are always reviewed. Mr. Ferentino questioned if there is enough space for emergency access and whether the lot would be clear-cut.

- (2) Andrew Cloutier, 6 Grigas Street, stated that he shares the same concerns as Mr. Ferentino, especially the fear that the land will get clear-cut, and questioned where the snow would go because today it gets pushed into the Extension and he would not want that snow piled onto his property.

Mr. Flores responded to the testimony received noting that they are excellent questions that will be addressed with the Planning Board (PB) when they seek Site Plan Review; acknowledged that drainage is an issue that will be addressed with the PB, that it is at a low point and was not developed correctly nor functioning as intended to bring the water from the roads to the cemetery; that it would be acceptable to condition variance approval that the tree buffer be kept intact; that a larger/wider access is possible if the Fire Department wants the driveway could be expanded; and that the Town can carry the snow down St. John Street. Atty. Panciocco noted that the abutter, Mr. Ferentino, is gaining 25' of land, which is wooded, and generally speaking, when a house is constructed there is limited tree removal to avoid stormwater issues and the need to landscape, and a Quitclaim Deed between both parties would bring clear title for the extra 25' of land and that they have reached out to but never connected with Mr. Ferentino to facilitate the execution of the Quitclaim Deeds.

Mr. Buttrick asked if a waiver would be needed for setbacks regarding the driveway access and Mr. Flores stated that the plan is designed so that the driveway crosses the frontage and meets the 15' setback, so a waiver is not needed. Mr. Pacocha asked if the variance being sought is for reduced frontage on the Town ROW/Extension or a Town Road. Mr. Buttrick stated that the variance for reduced frontage is to a Town road, at the bend/corner of Grigas and St. John streets. Mr. Pacocha stated that Town ROW is not yet owned by the abutting property owners.

Mr. Ferentino stated that he has not been contacted by the Applicant or Attorney regarding pursuit of a Quick Claim Deed.

Mr. Cloutier stated that he disagrees with the attorney that this project could be the best thing to fixing the pooling problem and that the reason for the frontage requirement is to avoid overcrowding, well, this neighborhood has already been developed, there are other developments coming to Town and the Town needs green space and this wooded area is a benefit to the neighborhood.

Being no one else to address the Board, public testimony closed at 8:07 PM

Mr. Dearborn made the motion to deny the Variance with the understanding that no determination regarding the legal issues surrounding the Grigas Street Extension and would like the court to fully acknowledge who owns the Extension which is earmarked for the driveway. Mr. Pacocha seconded the motion. Mr. Pacocha agreed with Mr. Dearborn in that the court should decide who owns it in order to validate the request before the Board. Mr. Martin noted that there is already a duplex on this property at

Lindsay Street and that there is no hardship to the Property Owner as there is practical use of that whole piece of property already and the hardship criteria is not met and would vote to deny the request without making any determination on who owns the Extension. Mr. Nicolas agreed that the hardship variance criteria has not been met. Mr. Buttrick stated that the motion does not address any of the five (5) variance criteria. Mr. Daddario offered the Applicant the opportunity to defer the Case to resolve the ownership of who owns Grigas Street Extension. Atty. Panciocco referred to Town Counsel's 12/28/2021 letter to Mr. Buttrick where the last paragraph states that the variance should be reviewed by its criteria regardless of whether the Applicant actually owns to the centerline or has an implied easement and added that the resolution of the property ownership is a private matter between the two (2) abutting property owners. Roll call vote was 2:3 with Mr. Martin, Mr. Nicolas and Mr. Daddario opposed because the motion did not address the variance criteria. Motion failed.

Mr. Martin made the motion to deny the Variance as it failed to satisfy the hardship criteria. Mr. Nicolas seconded the motion. Both stated that there is already clear use of the property. Roll call vote was 3:2 with Mr. Daddario and Mr. Pacocha opposed. Variance denied. Mr. Daddario noted the 30-day Appeal period.

Board took a six-minute recess at 8:24 PM. Mr. Daddario called the meeting back to order at 8:30 PM.

- 2. Case 234-016 (02-24-22) (deferred from 12-09-21):** Peter & Joyce Drown, 7 Bruce St., Hudson, NH requests a Variance to build a 16 ft. x 24 ft. addition, which encroaches a front yard setback 5.2 feet leaving 24.8 feet where 30 feet is required due to a corner lot with 3 (three) front yard setbacks. [Map 234, Lot 016-000; Zoned General-One (G-1); HZO Article VII, Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements.]

Mr. Buttrick read the Case into the record and referenced his Staff Report signed 2/1/2022. Joyce Drown and Peter Drown introduced themselves and Ms. Drown stated that they recently moved into home noting that it has been in the Drown family for over fifty (50) years and they would like to remodel and enlarge the bathroom and the kitchen and they need five feet (5') at one corner to accomplish their goal including bringing up the washer and dryer so that they can live on one level. Mr. Drown stated that the property has three front yard setbacks of thirty feet (30') each and that their well is on the side and septic is in the front and the back slopes down so that the proposed addition is on the only side they can build on. Mr. Drown added that it is just one corner that goes into the setback for about five feet (5') and the roof lines will stay the same. Ms. Drown noted that it will not be an eyesore.

Ms. Drown addressed the criteria for the granting of a variance and the following information shared included:

- (1) *not contrary to public interest*
 - It is a small addition and does not affect anyone's land
- (2) *will observe the spirit of the Ordinance*
 - Will not change the neighborhood in any way

- Addition designed with original appearance of the house in mind – roof lines match
 - Desire is for a one-floor living, bring up the washer and dryer and remodeling/upgrading the kitchen and bathroom
- (3) *substantial justice done*
- House has been in the family for sixty (60) years
 - The addition will allow living on one floor, to have the laundry on the first floor and enter the home from the garage
- (4) *not diminish surrounding property values*
- Proposed addition will be built with the existing appearance of house and will increase value of the house which will then increase the surrounding property values
 - The lot will not diminish property values
- (5) *hardship*
- The house was built on a corner lot with three (3) front thirty feet (30') setbacks
 - The septic system is located in front of the house
 - The well is located on the side of the house
 - The garage is located to the north
 - If the house was not a corner lot, the side setback would be 15' and a variance would not be required
 - Because it is a corner lot with septic in front and well on side and elevation and garage in backyard there is no other location for the addition with washer/dryer and kitchen remodel on first floor

Mr. Dearborn asked about the other addition between the proposed addition and the garage and Mr. Drown responded that it started out as simply a little breezeway to connect the garage to the house and provide them shelter for going to and from and will now be included in the home expansion. Mr. Buttrick noted that that second addition is not part of the Variance being sought. Mr. Pacocha asked and received confirmation that the encroachment into the front setback is just one corner of the proposed 24' x 16' addition. Mr. Nicolas noted the awkward angle the house was positioned (not being parallel to any frontage).

Public testimony opened at 8:42 PM. No one addressed the Board.

Mr. Nicolas made the motion to grant the Variance as requested. Mr. Pacocha seconded the motion noting that it is a minor infraction considering the lot has three (3) front setbacks, that there is no street widening proposed and the Fire Department had no comment/concerns. Mr. Dearborn also noted that there is very little traffic in the neighborhood. Roll call vote was 5:0. Variance granted. The 30-day Appeal period was noted.

Board went into a five-minute recess at 8:45 PM. Board reconvened at 8:50 PM.

NEW HEARINGS:

1. **Case 147-016 (02-24-22):** Derry & Webster LLC, c/o Vatche Manoukian, Manager, 253 Main St., Nashua, NH requests an Appeal From An

Administrative Decision for 181A Webster St., Hudson, NH to extend the Variance granted with stipulations on 01/23/2020. The renewal/extension was not filed timely by providing an application no later than 30 days prior to the variance expiration or by 12/23/2021. [Map 147, Lot 016-000, Zoned Residential-Two (R-2); HZO Article XV, Enforcement and Miscellaneous Provisions; §334-82 F, Time Limit.]

Before the reading of the Appeal into the record, Mr. Nicolas recused himself as he is a direct abutter and left the Board table. Mr. Daddario appointed Alternate Thompson to vote.

Mr. Buttrick read the Appeal into the record and referenced his Staff Report signed 2/1/2022

Atty. Gerald Prunier of Nashua, NH introduced himself as representing the Applicant, Vatche Manoukian of Derry & Webster LLC, and stated that they appreciated receiving the Variance and as part of that conditional approval they did submit their Site Plan Review (SPR) Application to the Planning Board (PB) who decided not to accept their Application without even allowing them to speak at their 8/10/2020 meeting. Atty. Prunier stated that there was also a misunderstanding with the dates as his client received the Notice of Decision in February and assumed that his request for a six month extension, sent on 1/4/2022, was timely filed. Atty. Prunier stated that they hope the Board will grant them the thirty-day delay by overruling Mr. Buttrick's determination and allow them to present their need for an extension.

Board discussion ensued. Mr. Dearborn asked what the recourse would be if the Board upheld the Zoning Administrator's Decision #22-002. Answer: Variance becomes moot/non-existent. Mr. Pacocha asked if the Variance granted was just to 181A Webster or to the whole site. Answer: Just 181A but SPR (Site Plan Review) Application was to the whole site, Map 147, Lot 016 with an address of #185 Webster which also contains buildings/businesses with addresses of 181-189 Webster Street. Mr. Dearborn and Mr. Daddario recalled public and neighborhood support for the Variance and that it seems more efficient to grant the appeal to overturn the Administrative Decision even though they agree with its determination and allow Applicant to seek an extension. Mr. Daddario stated that if the Zoning Determination is upheld, the Variance terminates and would need to be re-applied.

Mr. Martin questioned whether the correct subsection of Article XV Section 334-82 was cited, whether it should have been subsection E instead of F because the Applicant failed to gain PB application acceptance and thereby voids the ability to gain an extension. Mr. Daddario stated that what is before the Board is subsection F. Mr. Buttrick stated that it could have been possible for the Applicant to appeal the PB decision.

Discussion continued and a legal standard was sought but not readily found in the Planning and Land Use Regulation; and the decision worksheet was questioned and the questioned whether there is a legal standard. General consensus was that Zoning Determination #22-002 was correct but there are extenuating circumstances.

Mr. Daddario stated that the approach is to take one step at a time – first to decide on the Appeal of the Administrative Decision then, depending on that decision, it would be up to the Applicant to either submit a new Variance application or present to the Board their request for an extension.

Public testimony opened at 9:19 PM. No one addressed the Board.

Mr. Martin made the motion to overturn Zoning Determination #22-002 with the condition that the Applicant file a request for the Variance extension within two (2) months. Mr. Pacocha seconded the motion. Roll call vote was 4:1 with Mr. Dearborn opposed. Mr. Daddario stated that there was no error in the Zoning Determination but the statutes allow leeway and it is more efficient to allow the Applicant to pursue an extension. Mr. Buttrick asked to consider a condition to require the Applicant to appear before the ZBA with a formal request to consider extension within two (2) months. Both Mr. Martin and Mr. Pacocha agreed to placing the stipulation to the motion. Roll call vote on the motion not to uphold the Zoning Determination with the stipulation was 4:1 with Mr. Dearborn opposed.

Mr. Nicolas returned to the Board table.

2. **Case 168-020 (02-24-22):** Paul & Sandra O’Sullivan, 8 Washington Drive, Hudson, NH requests a Variance to build a 9 ft. x 20 ft. covered porch on the front of an existing non-conforming structure (house), which encroaches the front yard setback an additional 9.3 feet, leaving 14.8 feet where 30 feet is required. [Map 168, Lot 020-000; Zoned Residential-Two (R-2); HZO Article VII, Dimensional Requirements; §334-27, Table of Minimum Dimensional Requirements and HZO Article VIII, Nonconforming Uses, Structures and Lots; §334-31.A, Alteration and expansion of nonconforming structures.]

Mr. Buttrick read the Case into the record and referenced his Staff Report signed 2/14/2022 and noted that the house is not “square” on the property/parallel to the front property line/road, and that the resulting front buffer one side of the proposed porch would be 15.6’ and the other side would be 14.8’.

Mr. Dearborn called for a point of order and stated that he was not on the Board when this Case was reviewed, that he did watch the meeting in its entirety on Cable TV, that he recused himself when the Appeal for a Rehearing was addressed and asked if he should recuse himself again. No one asked for his recusal noting that it is a “fresh” Case with new information.

Paul O’Sullivan introduced himself and thanked the Board for the opportunity to reconsider his request. Mr. O’Sullivan addressed the Variance criteria and the information shared included:

- (1) *not contrary to public interest*
 - The proposed porch will be in the exact footprint of the current walkway and steps to the front door

- The proposed porch will not present a safety hazard to the public as it is protected by a retaining wall along the driveway and a substantial tree between the street and proposed porch
 - Should a vehicle leave the street, due to slippery conditions or medical emergency, the retaining wall and tree would be contacted prior to the proposed porch – see Exhibit 1 for a picture of retaining wall and tree
 - There is no thru traffic in the neighborhood and the streets are short which tends to limit speed
 - The proposed porch will be an open-air single-story structure that will not restrict view, air movement or cast a shadow on any neighboring property
 - The proposed porch will not be a nuisance to any neighbors
 - Contact with both the Town Engineer, Elvis Dhima, and Director of Public Works, Jess Forrence was made and both said it is unlikely that the Town would ever widen Washington Street as it is one of the largest roads in Town and if a sidewalk was ever proposed it would most likely be added to the right side across the street
- (2) *will observe the spirit of the Ordinance*
- Proposed porch is not a new Use of the space but rather an enhancement of the existing Use that preserves the quality of life of the homeowners
 - Proposed porch enhances property value without infringing on the health, safety and general welfare of the neighbors or the Town
 - As a single-story structure, the proposed porch would not be imposing from the street or add any sense of overcrowding
- (3) *substantial justice done*
- The home was built over 50 years ago and appears to be the only one in the neighborhood that was built within the front setback
 - A Variance for the 25' front setback was granted in 1984, some 15 years after the house was built
 - Have lived in the house since 1990 and raised their family but as they age, a safe and clear access to the front door becomes more important while at the same time becoming more difficult to maintain
 - The retaining wall and steps to the walkway make it impossible to clear the snow with a snow blower
 - A covered porch would alleviate this and make maintenance more manageable
- (4) *not diminish surrounding property values*
- Proposed porch is consistent with the character of the neighborhood and many other houses in the neighborhood have similar front porches
 - May experience a very modest property value enhancement and expect that it to translate into a neutral to modest property value enhancement to surrounding properties
 - The proposed porch will not diminish property values
- (5) *hardship*
- Because of the special conditions of the property, the restriction applied to the property by the Ordinance does not serve the purpose of the restriction in a “fair and reasonable” way
 - Literal enforcement of the Ordinance is the ‘unnecessary hardship’ because the house was built with a 25-foot front setback, already encroaching 5’ into the required 30’ front setback

- This creates a special and unique condition that results in an unfair and unreasonable restriction from using the property in a reasonable way
- A variance was granted 'after-the-fact' permitting the front setback encroachment
- Proposed porch will sit in the same footprint as the existing walkway and stairs with a improved ability to maintain clear and safe access to front door
- Proposed porch will not threaten public health, safety or welfare or otherwise injure public rights in any way
- No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that Ordinance to the property
- A covered porch may seem a frivolous reason to request a variance however it is an essential element in making our home functional and safe, especially as we age
- The proposed use is reasonable
- Many houses in neighborhood have front porches
- The 'existing non-conforming setback' makes his home unusual – it is the only one without the required 30' front setback - and unique conditions do exist for a variance would be needed to do any normal/natural improvements or expansion onto the front of the house

Mr. Sakati asked and received confirmation from Mr. O'Sullivan that the colored section by the garage was an overhang, also for safety reasons, and the rendering of the porch in Exhibit 1 is the intended design for the proposed porch.

Mr. Nicolas asked if the retaining wall is all at the same height or if it slopes down to the road. Mr. O'Sullivan stated that it does slope down for the last five feet and is not so high that a vehicle couldn't drive over it but could not reach the porch unless they came perpendicular to it from the street over the lawn then they could possible reach or hit the porch and coming from the other direction a vehicle could hit the tree and possibly the porch, but by the same token, a vehicle could also hit the house.

An aerial view of the house was posted and the walkway that was visible would become the porch and the existing stairs to the front door would be eliminated and approximately three (3) steps would be added to the stairs by the retaining wall to enter onto the proposed porch.

Public testimony opened at 9:47 PM. No one was present to address the Board.

Mr. Dearborn stated that when he looks at an encroachment, he has two (2) options: (1) if it is a side or rear setback an abutter could be directly impacted but (2) when an encroachment is a Town road, that direct impact option usually disappears and an encroachment of nearly 50% raises red flags.

Mr. Pacocha made the motion to grant the variance. Mr. Pacocha stated that it is the only house in the neighborhood in the front setback and assumes it was built in error

and the proposed porch would not be detrimental to any activity or anyone in the neighborhood. Mr. Dearborn stated that he would second the motion only for the purpose of discussion.

Mr. Dearborn stated that the nonconformity of the lot is not just the intrusion into the front setback but is also non-conforming based upon its size, as it is approximately less than one-half of the required size for the Zone, and its shortness of frontage along Madison Drive, and, in his opinion, all these non-conforming issues create a slippery slope and being asked to add yet another non-conformity to the lot. Mr. O'Sullivan stated that the size of his lot is approximately the same size as all the other lots in his neighborhood.

Mr. Martin stated that there are special conditions on the property, it is a corner lot but understands the hardship because the house was built in error in the front setback but the property owner does have reasonable use of his property and, in his opinion, the request does not meet all the criteria, it fails to meet hardship and is contrary to the public interest and is setting a precedent. Discussion arose on the timing of the Variance granted for the house in the front yard setback and Mr. Pacocha recalled that back in 1984 the option for an Equitable Waiver of Dimensional Requirement was not an option and the only recourse to make the house 'legal' was through an 'after-the-fact' Variance.

Mr. Buttrick asked if it would be more acceptable to the Board if the depth of the proposed porch was reduced by three feet (3') and decrease the intrusion into the front setback as it appears that the nine feet (9') was selected to line up with the concrete walkway. Mr. Martin stated his concern is safety, not just for the travelers but also for the occupants. Mr. Dearborn stated that nine feet (9') does seem excessive and asked why that was selected. Mr. O'Sullivan stated that he placed a tape measure to the edge of his walkway because the walkway lined up with the stairs through the retaining wall. Mr. Dearborn noted that Hudson allows nine feet (9') for parking spaces.

Mr. Daddario stated he appreciates what the Applicant is seeking and why, that there are some of the variance criteria met, but not hardship. The hardship requirement is a legal matter and it is based on the property. The property is in full-use, it has a residential home and a garage.

Motion on the table is to grant the Variance. Roll call vote was 2:3. Opposed were Mr. Martin, Mr. Nicolas and Mr. Daddario because the hardship criteria was not satisfied. Motion failed. Variance denied. The 30-day Appeal period was noted.

V. REQUEST FOR REHEARING:

No requests were presented for Board consideration.

VI. REVIEW OF MINUTES:

01/20/22 edited Minutes: Motion made by Mr. Martin and seconded by Mr. Pacocha to accept the 1/20/2022 Minutes as edited. Vote was 3:0:2, Mr. Dearborn and Mr. Nicolas abstained.

01/27/22 edited Minutes: Motion made by Mr. Martin, seconded by Mr. Dearborn and unanimously voted to adopt the 1/27/2022 Minutes as edited.

V. OTHER:

1. Continued discussion of proposed ZBA Bylaws amendments: alternate status, recusals and Clerk position/duties.

Mr. Buttrick asked to defer discussion to another meeting. Board concurred.

Motion made by Mr. Martin, seconded by Mr. Nicolas and unanimously voted to adjourn the meeting. The 2/24/2022 ZBA meeting adjourned at 10:07 PM.

Respectfully submitted,

Gary M. Daddario, Chairman