

# TOWN OF HUDSON

## Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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### MEETING MINUTES – May 26, 2022 – approved

The Hudson Zoning Board of Adjustment met Thursday, May 26, 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. CALL TO ORDER

#### II. PLEDGE OF ALLEGIANCE

Chairman Daddario called the meeting to order at 7:02 PM, invited everyone to stand for the Pledge of Allegiance and read the Preamble (Exhibit A in the Bylaws) on the proceedings for the meeting.

Clerk Normand Martin took attendance. Members present were Gary Daddario (Regular/Chair), Gary Dearborn (Regular), Normand Martin (Alternate/Clerk), Marcus Nicolas (Regular), Dean Sakati (Alternate) and Edward Thompson (Alternate). Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder (remote) and Kara Roy, Selectman Liaison. Excused were Brian Etienne (Regular) and Jim Pacocha (Regular/Vice Chair). Mr. Daddario appointed Alternates Sakati and Thompson as Voting Members for this meeting.

#### III. PUBLIC HEARING OF SCHEDULED APPLICATION BEFORE THE BOARD:

**Case 166-031 (05-26-22):** Daniel M. Flores, PE of SFC Engineering Partnership, Inc., 183 Rockingham Rd, Unit 3 East, Windham NH requests a Variance for **8 Lindsay St., Hudson, NH** for relief from HZO Article VII, Dimensional Requirements; § 334-27.2, Lot requirements for subdivision of land: to allow the creation of one (1) new lot (off Grigas St.) with 25.73 feet of frontage on a Class V road where 90 feet is required. This matter is before the Board as a Rehearing granted on 4/28/22. [Map 166, Lot 031-000, Zoned Town Residence (TR).]

Mr. Buttrick read the Case into the record, referred to his Staff Report initialed 5-17-22, noted the history of the request, referenced Town Counsel's 1/12/2022 letter to Atty. Panciocco confirming that the Grigas Street "Extension" dedicated to public use has lapsed by Operation of Law and stated that a revised Subdivision Plan for 8 Lindsay Street dated 5/9/2022 was submitted that depicts a new lot line along the centerline of what was previously designated as Grigas Street Extension with a driveway that leads to a four-bedroom house with garage.

Not Official until reviewed, approved and signed.

Approved 6/23/2022 as edited.

Dan Flores, PE, SFC Engineering, 183 Rockingham Road Unit 3E, Windham, NH 03087 introduced himself as representing the Property Owner and Atty. Patricia Panciocco of Panciocco Law representing the Developer, M.R. Lacasse Homes, LLC and noted that both were in attendance.

Mr. Flores stated that Grigas Street Extension has lapsed by operation of law and that the new frontage along Grigas Street is 25.73' where a twelve foot (12') wide driveway is proposed for the subdivided new lot from 8 Lindsay Street which currently has a two-family home permitted by Variance on 10/24/1981 that is connected to Municipal water and sewer and the remainder of the lot is wooded. Mr. Flores stated that the two-family home requires 40,084 SF (Square Feet) to satisfy Zoning and that the proposed new subdivided lot will have 20,050 SF which is approximately twice the size required in the TR Zone and of those in the neighborhood of Grigas Street/St John Street. Mr. Flores noted that the proposed four-bedroom home with garage and driveway from Grigas Street will be served by Municipal water from Grigas Street and that a sewer pump is proposed to be installed at the rear of the site to pump to Lindsay Street via a sewer easement along the southern property line. Mr. Flores stated that the proposed driveway, swale and pump will resolve the current water issues in that segment of the property.

In reference to the aerial view of the immediate neighborhood, Mr. Flores pointed out that the proposed subdivided lot is larger, almost double, to that of the surrounding properties and noted that the distance between the proposed garage to the house at 5 St John Street to the southwest (Lot 21) will be eighty five feet (85') and the distance from the proposed house will be forty six feet (46') to the northeast neighbor at 6 Grigas Street (Lot 20). Mr. Flores concluded his presentation with the statement that the proposed creation of the new lot works well with the neighborhood and satisfies the criteria per the Zoning Ordinance, with the exception of frontage, and will resolve the current water issue at the corner of Grigas Street and St John Street.

Atty. Panciocco stated that she is representing both the Trust (Property Owner) and the Developer, M.R. Lacasse, and referenced Plan 13358 that proposed four (4) lots to be re-subdivided from 8 Lindsay Street and noted the L-shape lot of 8 Lindsay Street, is a unique shape in the area, and stated that this property has been unique since 1980.

Other factors presented included:

- Zoning Determination of 7/7/2021, later updated 10/5/2021, noted that the existing duplex on Lindsay had to be on a 40K SF lot
- BoS confirmed on 1/11/2022 that the undeveloped portion of Grigas Street lapsed by Operation of Law which resulted in an increase in lot size to 8 Lindsay Street to 60,139 SF
- Proposed Subdivision Plan revised 5/9/2022 allocates 40,084 SF to 8 Lindsay Street and 20,055 SF for the proposed new lot
- Proposed new lot is approximately twice the size of existing neighborhood lots and twice what is required for lots in the TR Zone
- Proposed driveway is approximately the same distance from the driveways providing access to the abutting lots and equal to or greater than many of the driveways used to access existing homes in the neighborhood
- Proposed driveway, when constructed, will provide drainage improvements that was noted by the abutters at the intersection of St John/Grigas Streets

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- The frontage requirement in the Zoning Ordinance (ZO) is a mechanism to prevent overcrowding
- ZO Section 334-18.C established/defines TR areas of 'village style' development with smaller one quarter (1/4) acre requirement
- TR Zone allows for other uses, like an assisted living facilities, seasonal farm stands, agricultural, Municipal services and facilities, water towers and schools
- The best Use for this new lot is a single family residence, which is what is being proposed
- The extra size of the lot is a compensating factor for the reduced frontage and they are able to construct a house further away from the others in the neighborhood and satisfies the Spirit and Intent of the ZO
- The existing lot is the largest in the neighborhood, and it is the only L-shape lot in the neighborhood and was originally intended to be subdivided into four (4) lots and that makes it a unique lot

Atty. Panciocco next addressed the criteria necessary to be satisfied in the granting of a Variance. The Information shared included:

(1) *not contrary to public interest*

- Purpose of frontage is to ensure safe access into individual properties for both personal and emergency service vehicles – and – to provide proper spacing between structures
- Proposed lot is almost double in size to surrounding lots and allows the proposed home to be set back further from St John/Grigas Streets to provide even greater spacing to the neighboring homes and will be consistent, not contrary, to the public purpose of frontage
- Proposed twelve foot (12') driveway fits easily in the 25.73' frontage and can accommodate emergency vehicles
- Proposed driveway when constructed will address current drainage issues
- Proposed use is a single family residence, like all others in the neighborhood

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

- Zoning segregates Uses and controls property development for the protection of the public
- Proposed lot meets all Zoning requirements, except frontage
- Proposed Use is a single family home, the same Use as the neighborhood and due to its size can locate the house further back into the lot providing more than adequate spacing between existing homes
- Proposed driveway fits neatly in the reduced frontage and provides an equivalent distance to other driveways in the neighborhood
- No safety concerns presented, the reduction of frontage is reasonable and not contrary to the spirit of the Ordinance

(3) *substantial justice done*

- To be substantially just, public gain must exceed the Property Owner's loss of reasonable use of its 20K SF area of land
- A single family home is presumed to be a reasonable use, as Permitted in ZO
- Size of new lot allows compensation in other ways to ensure proper separation and safe access
- Variance will allow owner to fully develop the property as intended and will be substantially just

(4) *not diminish surrounding property values*

- Proposed lot size and configuration and size of house proposed will be similar to existing properties along Grigas Street, St. John Street, Nellie Court and Ledge Road
- There is no evidence to support an argument that one new home will diminish surrounding property values

(5) *hardship*

- Existing lot has a unique “L” shape configuration with frontage along Lindsay Street and on St John/Grigas Streets, unlike other lots in surrounding area
- Lindsay Street has a duplex and fully complies with ZO, and, per Zoning, requires a minimum of 40K SF leaving in excess of 20K SF for new lot with 25.73-foot frontage on Grigas/St John Streets
- Applicant is entitled to reasonable use of this remaining land, but it is limited frontage is a special condition
- Size of proposed lot mitigates lack of frontage and serves the purpose of spacing homes within the neighborhood
- Size of proposed 12’ driveway fits well into reduced frontage and construction of it will address current drainage issues
- The excess land in proposed new lot accommodates for its reduced frontage but allows it to meet the intended purpose of the ZO and there is no fair and substantial reason to strictly require 90’ of frontage
- A single-family home is a Permitted Use in the TR Zone, and as a Permitted Use, it is presumed to be reasonable

Atty. Panciocco confirmed that once the Variance is granted, their next step is to go before the Planning Board (PB) for the subdivision to create the lot and noted that the PB would also address the drainage issues.

Mr. Dearborn asked the length of the proposed driveway, whether there would be a turnaround and if it was possible to consider a fence to address a potential privacy issue for the neighbor/abutter at 5 St John Street. Mr. Flores stated that the length of the driveway is approximately eighty feet (80’) and that there is parking in front of the garage that could be used to turn around. Atty. Panciocco noted that the area is currently heavily wooded now and Mr. Flores added that most of the trees are on the abutter’s land. Mr. Sakati asked if that meant that a fence would not be considered and Atty. Panciocco stated that it would depend on what is visible through the trees, whether or not it was “see-through”.

Mr. Dearborn noted that there is a twenty foot (20’) Town ROW (Right-of-Way) and asked if it was reasonable to assume that the proposed twelve foot driveway would be centered within the 25.73’ of frontage. Mr. Daddario noted that, if centered, there would be approximately six feet (~6’) on both sides of the driveway to accumulate snow. Mr. Thompson stated that there is no snow problem as the neighboring buildings are far away. Mr. Sakati agreed that there is distance but added that every Property Owner must keep their snow on their land. Mr. Flores noted that it is usually the Property Owner who maintains the area between the road and property line, and that includes snow removal. Mr. Sakati asked if it is reasonable with only 25.75’ of frontage and a 12’ wide by ~80’ long driveway to expect fire trucks, emergency vehicles, oil trucks, etc.

especially when there is only 6' to contain the snow. Mr. Flores stated that driveways are usually 8' wide and that there should not be any issue with removing snow.

Mr. Martin questioned the hardship and would it exist if the property was not subdivided as there is reasonable use of the property already. Atty. Panciocco offered the analogy of a large farm that already has a house, a reasonable Use, and that the new property owner would be allowed to subdivide the land.

Public testimony opened at 8:14 PM. Andrew Cloutier, 6 Grigas Street, addressed the Board, stated that there was to be an easement to help with drainage, that there was no T-section design for the St John/Grigas Streets and noted the existing telephone pole and, in his opinion, the hardship criteria is not met.

Atty. Panciocco stated that she fully researched and found no easement on record, noted that PB will do an evaluation for the drainage at the corner and that what is before the ZBA is just a Variance request to allow the creation a lot with reduced frontage and asked the Board to please make findings of fact in their motion. Public testimony closed at 8:26 PM.

Board discussion ensued. Concerns expressed regarding need for a turnaround to avoid backing out into the intersection of St John/Grigas Streets, whether a fire truck could back out the eighty-foot driveway and into an intersection; the ability of property owner to keep snow and debris on property with such a reduced frontage; and whether to include, as a condition of approval, that the PB evaluate the current drainage issues at the corner of St John/Grigas Streets to the abutting cemetery – St. Casimir Cemetery, Lot 17 – and determine if proposed plan with new driveway construction will resolve the current issue.

Mr. Dearborn made the motion to grant the Variance with three (3) stipulations:

- (1) that there is assurance from the Fire Chief of adequate access (ingress/egress) for the Fire Department;
- (2) that the property owner(s) do not place snow or debris from the driveway onto the property of others; and
- (3) that the drainage issue (at the northern property line to the abutting cemetery) be reviewed by the Planning Board.

Mr. Thompson seconded the motion. Each Member spoke and agreed that Variance criteria 2-5 were met. Mr. Sakati stated that criteria 1 has not been satisfied as low frontage will alter the character of the neighborhood yet public safety is satisfied. Roll call vote was 4:1. Mr. Sakati opposed. Variance granted with three (3) stipulations. The 30-day Appeal period was noted.

**IV. REQUEST FOR REHEARING:**

**Case 183-006 (04-28-22):** Elvis Dhima, Hudson Town Engineer, requests a Rehearing/Reconsideration of a request for a Variance granted on 04-28-22 for **102 Central St., Hudson, NH** to replace and expand an existing non-conforming 12 ft. x 10 ft. deck as a breezeway and build an attached 2-stall, 24 ft. x 20 ft. garage addition. Both encroach the front yard setback 12.5 feet and 21.8 feet leaving 17.5 feet and 8.2 feet respectively where 30 feet is required. [Map 183, Lot 006-000, Zoned Town Residence (TR); 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 request into the record and referenced the letter dated 5/13/2022 from Town Engineer Elvis Dhima with his concerns regarding the lack of addressing the second driveway and the resulting shortened driveway with two (2) possible alternative options. Ms. Roy asked if the Town Engineer had made a comment to the original application. Mr. Buttrick responded that his original comment was the notation of the second driveway and when he questioned Mr. Dhima, Mr. Dhima responded that he didn't think the Board would actually grant the variance. Mr. Nicolas stated that Town's Engineer's concern regarding the shortened driveway was late but he agreed that either option presented were much safer.

Mr. Daddario noted that there was no public in attendance.

Mr. Dearborn read his letter to the Chairman stating his disappointment with the 4:1 vote, the lack of discussion with regard to the second driveway, concern with the downslope in the road, the fact that a two-story garage was being sought, and the Applicant's response of it being "not convenient" to move the proposed garage and asked how the hardship criteria was satisfied.

Board checked the NOD (Notice of Decision) that was issued along with the Minutes. It was noted that two (2) Voting Members at the Hearing were not present and it was questioned whether any action should be taken on the Rehearing Request in their absence. Ms. Roy stated that if there was a substantive issue she would agree, but what is before the Board is just a decision whether to grant the Request for a Rehearing.

Board questioned if the Town, particularly the Town Engineer, has standing for the Request. Board reviewed the applicable RSA's for Rehearing – RSA 677:2 Motion for Rehearing of Board of Adjustment, Board of Appeals, and Local Legislative Body Decisions and RSA 677:3 Rehearing by Board of Adjustment, Board of Appeals or Legislative Body. Board discussion ensued and included recognition that the ZBA has 'inherent authority' and can appeal its own decisions and can make a decision to rehear without causation being the Town Engineer but their own desire to do so.

Mr. Dearborn made the motion to grant the Request for Rehearing. Mr. Nicolas seconded the motion. Roll call vote was 5:0. Rehearing granted. Both Mr. Dearborn and Mr. Sakati requested that the Town Engineer be present at the Rehearing. Mr. Buttrick noted that the Town will have to waive the fee to file the application and cost to notify and advertise.

## **V. REVIEW OF MINUTES:**

04/14/22 edited Draft Minutes: Board reviewed the Minutes as edited and made no further changes. Motion made by Mr. Dearborn, seconded by Mr. Nicolas and unanimously voted to adopt the 4/14/2022 Minutes as edited.

04/28/22 edited Draft Minutes: Board reviewed the Minutes as edited and made no further changes. Motion made by Mr. Dearborn, seconded by Mr. Nicolas and unanimously voted to adopt the 4/28/2022 Minutes as edited.

**VI. OTHER:**

1. Court Cases

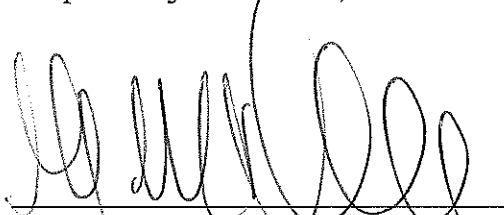
- 4 & 14 Tolles Street – Mr. Buttrick reported that the Superior Court ruled in the Town’s favor – see Turbo Realty v. Hudson #2020-CV-00549
- Washington Street – Mr. Dearborn asked if the Case was going to Court and Mr. Buttrick responded that he has received a request for Town Records, so it is possible.

2. Proposed ZBA Bylaws amendments: alternate status, recusals and Clerk position/duties.

Mr. Buttrick walked through the changes made to date. Discussion arose on Indirect Abutters’ notification – their definition and receipt of meeting notice by direct US mail, not certified mail, and whether consideration should be given to placing a sign on the property appearing before the Board to the exploring scenarios to the efficiency when a property is at the dead-end of a road or around a cul-de-sac. Discussion also arose on the ability to abstain.

Motion made by Mr. Nicolas, seconded by Mr. Dearborn and unanimously voted to adjourn the meeting. The 5/26/2022 ZBA meeting adjourned at 9:38 PM.

Respectfully submitted,



Gary M. Daddario, ZBA Chairman