



TOWN OF HUDSON

Zoning Board of Adjustment



Gary M. Daddario, Chairman

Kara Roy, Selectmen Liaison

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MEETING MINUTES – October 27, 2022 – approved

The Hudson Zoning Board of Adjustment met on Thursday, October 27, 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**
- III. ATTENDANCE**

Chairman Daddario called the meeting to order at 7:01 PM, invited everyone to stand and join in the Pledge of Allegiance, and read the Preamble (Exhibit A in the Board's Bylaws) regarding the procedure and process of the meeting.

Members present were Brian Etienne (Regular), Gary Daddario (Regular/Chair), Tim Lanphear (Alternate), Normand Martin (Regular/Clerk), Marcus Nicolas (Regular), Jim Pacocha (Regular/Vice Chair), Dean Sakati (Alternate) and Edward Thompson (Alternate).

Also present were Bruce Buttrick, Zoning Administrator, Louise Knee, Recorder (remote) and Kara Roy, Selectman Liaison. All Members were present and Regular Members voted.

IV. PUBLIC HEARING OF SCHEDULED APPLICATION BEFORE THE BOARD:

1. **Case 181-001-001 (10-27-22):** George Hurd, Member of Tumpney Hurd Clegg, LLC, **25 Webster St., Hudson, NH** requests a Variance to allow for the subdivision of four (4) lots, with frontage along a proposed private street, instead of frontage along a public (Class V or better) street. [Map 181, Lot 001-001; Zoned Town Residence (TR); HZO Article II, Terminology; §334-6, Definitions – Frontage, and HZO Article VII, Dimensional Requirements; §334-27.1 D, General Requirements]

Mr. Buttrick read the Case into the record, referred to his Staff Report initialed 10/18/2022, noted it has conditional subdivision approval from the Planning Board (PB) as per it's 9/9/2022 Notice of Approval with thirteen (13) stipulations of which Stipulation #12 pertains to the obtainment of a Variance from the Zoning Board for the creation of lots without the required frontage on a Class V or better road but on a

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Private Road. Mr. Buttrick also noted that In-House Review comments were received from the Town Engineer.

Mr. Martin stated that, in the spirit of full disclosure, he knows Robert Clegg, has served with him on the Budget Committee and feels capable and unbiased to sit on the Case but would recuse himself if anyone on the Board thinks it would be prudent. No one asked for his recusal.

Mr. Nicolas asked to have the GIS overview of the lot displayed to ascertain whether he is an indirect abutter. He is not, therefore, no need to recuse himself.

Colin Jean of Colin Jean Attorney at Law, LLC, introduced himself as representing the Property Owner, Tumpney Hurd Clegg, LLC, and Michael Grainger, LLS, of MJ Grainger Engineering, Inc., who sat at the Applicant's table and noted that both Robert Clegg and George Hurd were also in attendance.

Atty. Jean stated that this project is similar to the Lee Way Lane project in that they are seeking to create four (4) lots fronting on a private road that would connect to Webster Street in the TR (Town Residence) Zone. The Planning Board (PB) conditionally approved the four-lot subdivision of the 62,596 SF (Square Foot) lot from a private road contingent upon receiving this Variance to front the new lots on a private road ending in a cul-de-sac. Each lot would be serviced by Municipal water and sewer and have underground utilities. The proposed private road would be paved and be twenty-four feet (24') wide with a thirty-foot (30') ROW (Right of Way) and the lots would meet all current Zoning standards. The lot had already been purchased and significant engineering work performed prior to the discovery of needing this Variance.

Atty. Jean addressed the criteria necessary for the granting of a Variance and the information shared included:

(1) *not contrary to public interest*

- The proposed lots would meet all the necessary Zoning requirements regarding area and setbacks and the proposed roadway would adequately meet the safety and access requirements
- The landowner would remain liable for the maintenance and upkeep of the private way, thereby relieving the Town of future expense or liability regarding the (private) roadway.

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

- Spirit of Ordinance observed as the private roadway will be maintained and remain the responsibility of the lot owners
- Accessibility to fire, police and emergency vehicles would be adequately provided with the 24' wide roadway and 30' ROW
- A document to indemnify the Town from any present or future liability regarding the maintenance and upkeep of the private road and any associated utilities will be filed at the Hillsborough County Registry of Deeds

(3) *substantial justice done*

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- Substantial justice would be done to the Property Owner without posing any harm to the general public or the Town and would have no negative impact to public safety, welfare or have any adverse impact on the public
 - The proposed four (4) lots will have at least 90' of frontage, as is required in the TR Zone and as if fronting on a Class V Road and will satisfy all other zoning requirements and would be consistent with the neighborhood
 - The proposed private way/road would adequately service the new homes with appropriate access to emergency and service vehicles
- (4) *not diminish surrounding property values*
- The allowance of the proposed relief would not diminish the values of the surrounding properties
 - The subject Town Residence zoning of this well established neighborhood would not suffer any negative impact from the addition of four (4) new houses, all of which would meet Zoning requirements as if they fronted on a Class V/public road
 - The proposed use of frontage on a private way is similar to other projects (Lee Way) and there appears to be no evidence of diminished values of surrounding properties
- (5) *hardship*
- Relief requested, in allowing property frontage to be measured along the proposed private way would provide fair and reasonable relief from an unnecessary hardship
 - Subject Ordinance (334-7.1) was likely intended to assure and ensure that proper and safe distance access to residential lots could be carried out by fire, police, rescue and service vehicles
 - The proposed 4 lot residences, each with at least the frontage required in the TR Zone and meeting all area and setback requirements, would be serviced by a 24' wide paved roadway with a 30' ROW
 - The fact that the Applicant/Owner will retain all responsibility for the upkeep and maintenance of the private way via a document filed at the Registry of Deeds that will also include relieving the Town of any present and future liabilities associated with the road, further demonstrates that the restriction applied to the property does not serve the purpose of the restriction in a fair and reasonable way.
 - The application of the Ordinance, considering the proposed betterments and assurances, would impose an unnecessary hardship to the owner
 - The 25 Webster Street parcel being proposed as a 4 lot residential subdivision, with a private road from Webster Street, will accommodate all Town and Zoning requirements if the requested relief from the necessity of frontage being required on a public way is allowed
 - The special conditions associated with the property are singularly related to the spirit and intent of the Ordinance imposing the restriction
 - The proposed use is reasonable because the intended restrictions of the Ordinance have been addressed and remedied to allow relief without diminishing the intent of the Ordinance.
 - To limit the use of the property to the existing frontage on Webster Street would limit the practical and efficient use of the property because of a

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special condition that no longer exists if the requested relief is granted by way of allowing lot frontage to be measured from an adequately constructed private road

- The proposed use of the property in the TR Zone, given the special conditions associated with the frontage requirements, is both reasonable and consistent with the intent of the Ordinance.

In response to Mr. Martin's question, Atty. Jean stated that the private road would be co-owned by the homeowners of the four (4) lots who would assume full responsibility and liability for maintenance (present and future) and indemnify the Town of Hudson from liability and that both will be memorialized in an Association of Lot Owners to be will filed at the Registry of Deeds. Mr. Buttrick stated that requirement is #9 of PB's condition of subdivision approval requires that a Notice of Limits of Municipal Responsibility and Liability be created. Mr. Daddario noted that PB condition #11 requires that Deeds of the four (4) lots be noted as having fractional ownership of the private road and questioned whether these requirements, and the filing of it at the Registry of Deeds, should be a condition of ZBA motion as well. Mr. Buttrick noted that the four (4) comments on the Town Engineer's In-House Review dated 10.07/2022. Mr. Etienne stated that the project underwent Planning Board (PB) review and asked if Bylaws for the Homeowners Association would be prepared. Atty. Jean confirmed that there will be a road easement for the Association.

Mr. Pacocha asked to have the overview of the Lee Way development posted which showed that it too contained a private roadway and asked if it too had received a Variance. Mr. Buttrick stated that when he did his review on the Lee Way project, it was presented to be a public roadway but somewhere in PB's review process the road was changed to a private way without his knowledge and he had no opportunity to review or comment. Mr. Sakati asked if Lee Way had not received a Variance would it then be considered non-compliant? Mr. Etienne stated that to rectify, perhaps it could proceed with obtaining an Equitable Waiver.

Mr. Thompson stated that the sewer is to be private until it hits Webster Street and questioned the water. Atty. Jean responded that the Town preferred it to be Municipal and that is why there is a need for an easement for the water line. Mr. Buttrick noted that the plan identifies a hydrant at the end of the proposed cul-de-sac.

Mr. Thompson questioned the dimensions of the private road and proposed ROW setback and expressed concern that the lot at 18 Baker Street could be impacted during construction of the cul-de-sac. Mr. Buttrick stated that the width of the proposed private roadway is to be twenty-four feet (24') with a thirty-foot ROW where regulations require fifty feet (50') and noted that the back lot line of 18 Baker Street would be in the ROW setback.

Mr. Martin asked if Tax Map 181 Lot 001 would be assigned for all four (4) lots. It was noted that Map 181-001-001 would be the parent lot for the subdivision. Mr. Pacocha questioned the internal overlapping blocks identified on Lot 001-001. Mr. Grainger stated that one of the dashed lines represents the setback for Webster Street and another represents the current edge of pavement and the rectangle represents the

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proposed building envelope. Atty. Jean added that the existing building (Lot 001-000) was once a dental office with a parking lot.

Mr. Pacocha made the motion to grant the Variance with no stipulations as the variance criteria were satisfactorily addressed and satisfied, noting that the request is not contrary to public interest, does observe the spirit of the Ordinance, that justice would be done to the property-owner, that diminishment of surrounding property values should not occur and that the land presented hardship. Mr. Etienne seconded the motion noting that it is not contrary to public interest, that additional housing is needed in Town, that the spirit of the Ordinance has been met as it is in a residential neighborhood, that justice is being done as the additional homes is solving a problem, that the addition of high quality houses to the neighborhood should have a positive impact on surrounding property values, lots in the TR Zone tend to be oddly shaped, the Applicant worked with the PB and there is challenging terrain.

Mr. Nicolas agreed noting that there is no conflict to public interest, no harm to the general public, that hardship criteria is met by the layout of the land and that the private road is to be maintained by the lot owners with no liability to the Town. Mr. Martin agreed noting that the land satisfied the hardship criteria and added that the proposed project is a proper and good use. Mr. Daddario stated that the criteria have been satisfied, that the development is consistent with the neighborhood and poses no harm to the public, that the lots comply with all Zoning requirements except frontage on a public way, that justice is done to the property owner at no cost to the public, that surrounding property values should not be adversely affected, that the land presents the hardship and added that three of the four proposed lots of this large parcel would be land-locked to access to a public way.

Roll call vote was 5:0. Variance granted without stipulations. The 30-day appeal period was noted.

V. REQUEST FOR REHEARING:

No requests were received for Board consideration.

VI. REVIEW OF MINUTES:

08/25/22 edited Draft Minutes

Motion made by Mr. Etienne, seconded by Mr. Nicolas and unanimously voted to approve the 8/25/2022 Minutes as edited.

09/22/22 edited Draft Minutes

Mr. Thompson provided additional edits to Line 156, 346 and 358. Motion made by Mr. Etienne, seconded by Mr. Nicolas and unanimously voted to approve the 9/22/2022 Minutes as edited and amended.

10/13/22 edited Draft Minutes

Motion made by Mr. Etienne, seconded by Mr. Nicolas and unanimously voted to table review of the 10/13/2022 edited Minutes.

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VII. OTHER:Town Engineer Comment RE- ZBA 9/22/22 Decision Stipulation

Concern read into the record. Comment made that there was no intent to bypass the fact that Town Staff has final approval or to give the impression that the developer's engineer has final say. Mr. Daddario stated that should the Board decide that the applicant's engineer review/oversight is needed, that a statement should also be added noting that that the Town's Engineer has final say.

Recap/discussion- ZBA Workshop- ZBA Decision Making Process

Mr. Buttrick thought the workshop was beneficial and noted that he emailed the link so that Members who could not attend could review the recording of it.

Updated Member List

Mr. Buttrick stated that the Norm Martin is now a Regular Member and that the Selectmen has appointed Tristan Dion to be a new Alternate Member.

Zoning Ordinance (ZO)

Mr. Martin asked if an updated Zoning Ordinance would be printed with the results from the March Town Vote. Mr. Buttrick responded that he has not heard of a publication date and noted that the Ordinance on the Town's web site includes the results of the March Town Vote.

Mr. Etienne stated that updates to the Zoning Ordinance were discussed at the Planning Board meeting last night and he instructed them to contact Mr. Buttrick as he keeps a tally of what frequently appears before the ZBA.

Mr. Buttrick confirmed that he keeps a running tally and noted that in the past there was a ZORC Committee – Zoning Ordinance Review Committee – comprised of three (3) Planning Board Members and three (3) Zoning Board Members who met from July to September to prepare and present possible ZO amendments for PB consideration and pursuit. Mr. Buttrick stated that last year, the PB did acknowledge the prudence to reduce the setback for lots in the TR Zone that now allows sheds to be placed five feet (5') from the property line.

Mr. Buttrick suggested that split zone lots should be addressed as there are no provisions for them in the ZO and no direction as to which zone criteria/specifics should apply. Mr. Etienne stated definitions would be important too.

Motion made by Mr. Etienne, seconded by Mr. Nicolas and unanimously voted to adjourn the meeting. The 10/27/2022 ZBA meeting adjourned at 8:11 PM

Respectfully submitted,

Gary M. Daddario, Chairman

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