

APPLICATION FOR A REQUEST FOR A REHEARING

TOWN OF HUDSON
New Hampshire
03051
JUL 23 2024
LAND USE DIVISION
ZONING DEPT.

Zoning Board of Adjustment
Town of Hudson

Case No. 165-049

Date of Hearing 6-27-24

Location of Property 36 26 Campbello Street Map: 165 Lot: 49

Applicant Sousa Realty & Development Corp. c/o Manuel D. Sousa

Telephone Number (Home) _____ (Work) (603) 880-7799

Mailing Address 40 Lowell Road, Hudson, NH 03051

Manuel D Sousa

7/22/24

Signature of Applicant

Date

If you believe that the Board's decision is wrong, unlawful, or unreasonable, you have the right to appeal for a rehearing. In addition, any third party/parties affected by the decision also has/have the right to appeal the decision of this case. To appeal, you must first ask the Board for a rehearing; this motion for rehearing may be in the form of a letter to the Board. The rehearing request must be made in writing within thirty (30) days following the Board's decision, and must set forth the grounds on which it is claimed the decision is unlawful or unreasonable.

The Board may grant such a rehearing if, in the Board's opinion, good reason is stated in the motion. In general, the Board will not allow a rehearing unless a majority of its sitting members conclude either that the protested decision was illegal or unreasonable or that the request for rehearing demonstrates the availability of new evidence that was not available at the original hearing. The Board will not re-hear a case based on the same set of facts unless it is convinced that an injustice would be created by not doing so. Whether or not a rehearing is held, you must have requested one before you can appeal the decision to the Court(s). When a rehearing is held, the same procedure is followed as for the first hearing, including public notice and notice to abutters.

Please refer to NH RSA Chapter 677 for more detail on rehearing and appeal procedures.

Items in this box are to be filled out by Land Use Division personnel

Received by: TSG

Date: 7/23/24

REQUEST FOR A REHEARING

Please indicate your reasons to support your request for a rehearing below or you may submit a letter to the Zoning Board of Adjustments setting forth the grounds on which it is claimed the decision is unlawful or unreasonable. Your reasons should show new evidence not available at the first hearing or show that the Zoning Board of Adjustment made an error in law in making their previous decision regarding this case. (Use additional copies of this page if necessary)

1. See attached.

2.

3.

4.

5.

Reasons to support request for rehearing.

1. Public Interest.

- A. We believe that the majority of the board erred in determining that granting the variance would alter the essential character of the area. The character of the neighborhood is single family homes on TR sized Lots. The applicant's project proposes single family homes on TR sized lots areas with in the homeowners' association. What is NOT in character with the neighborhood is the subject lot: 1 house on a 4.7 acre lot. Construction of new single family homes within an area surrounded by existing single family detached dwellings does not alter the character of the area. The number of proposed homes was cited as a basis for that determination even though the density proposed is less than allowed in the district.
- B. We believe that the majority of the board erred in stating that public safety would be threatened without the benefit of testimony from anyone charged with reviewing public safety stating such. Mr. Sullivan's Staff Report indicates that the Town Engineer, Inspectional Services/Fire Department, and the Associate Town Planner had no comments. It is fair to consider that if the very people and departments in charge of Town safety had a concern about this project, we would have heard about it. David Jordan, a NH Professional Engineer, stated that adequate access for public safety would be provided for any development on the property. This would be properly vetted during the Planning Board review process. Further, there are dozens of private roads throughout Hudson, all maintained by homeowner's or condominium associations.

2. Spirit of the Ordinance.

We believe that the majority of the board erred in determining that the spirit of the ordinance would not be observed if the variance were granted.

"As another example, consider the question of frontage requirements. Most zoning ordinances specify a minimum frontage for building lots to prevent overcrowding of the land. If a lot had ample width at the building line but narrowed to below minimum requirements where it

fronted the public street, a variance might be considered without violating the spirit and intent of the ordinance, because to do so would not result in overcrowding.”

The Zoning Board of Adjustment Handbook, 2023, p. 11-12. That is exactly what we have with this project. The 4.7 acres allows plenty of room for the proposed homes but we only have 30.37' of frontage. The development proposed on the property fully complies with all area, density, and dimensional requirements within the zoning district and therefore embraces the spirit of the ordinance.

The Notice of Decision states that the Applicant failed to meet only the Public Interest and Spirit of the Ordinance Variance criteria. We provide the following based due to Board Member discussion at the June 27, 2024 Meeting:

3. Substantial Justice.

We believe that substantial justice is done by the granting of the variance. The proposed development is consistent with the present use of the area. There is no gain to the general public through the denial of the variance and there is substantial injustice to the applicant through the denial of the ability to use and develop the property in a manner consistent with others in the area. The 1980 Atkinson Subdivision Plan shows that future development of the 4.7 acres was contemplated 44 years ago *using the same 30.37' for access.* To now deny that access is a serious injustice to the Owner and Applicant, and could amount to an unconstitutional taking of property without just compensation.

4. Hardship.

- A. We believe that denial of the variance would result in an unnecessary hardship to the applicant. As stated by board members, this property does enjoy several “special conditions.” At over 4.7 acres, this is the largest property in the area and the last of this size to have not been previously developed. Unlike other properties in the area, this lot has always existed with its current frontage

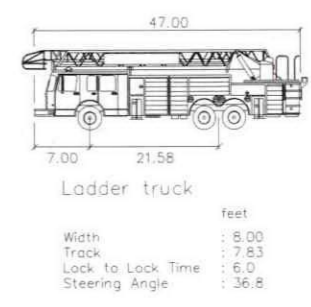
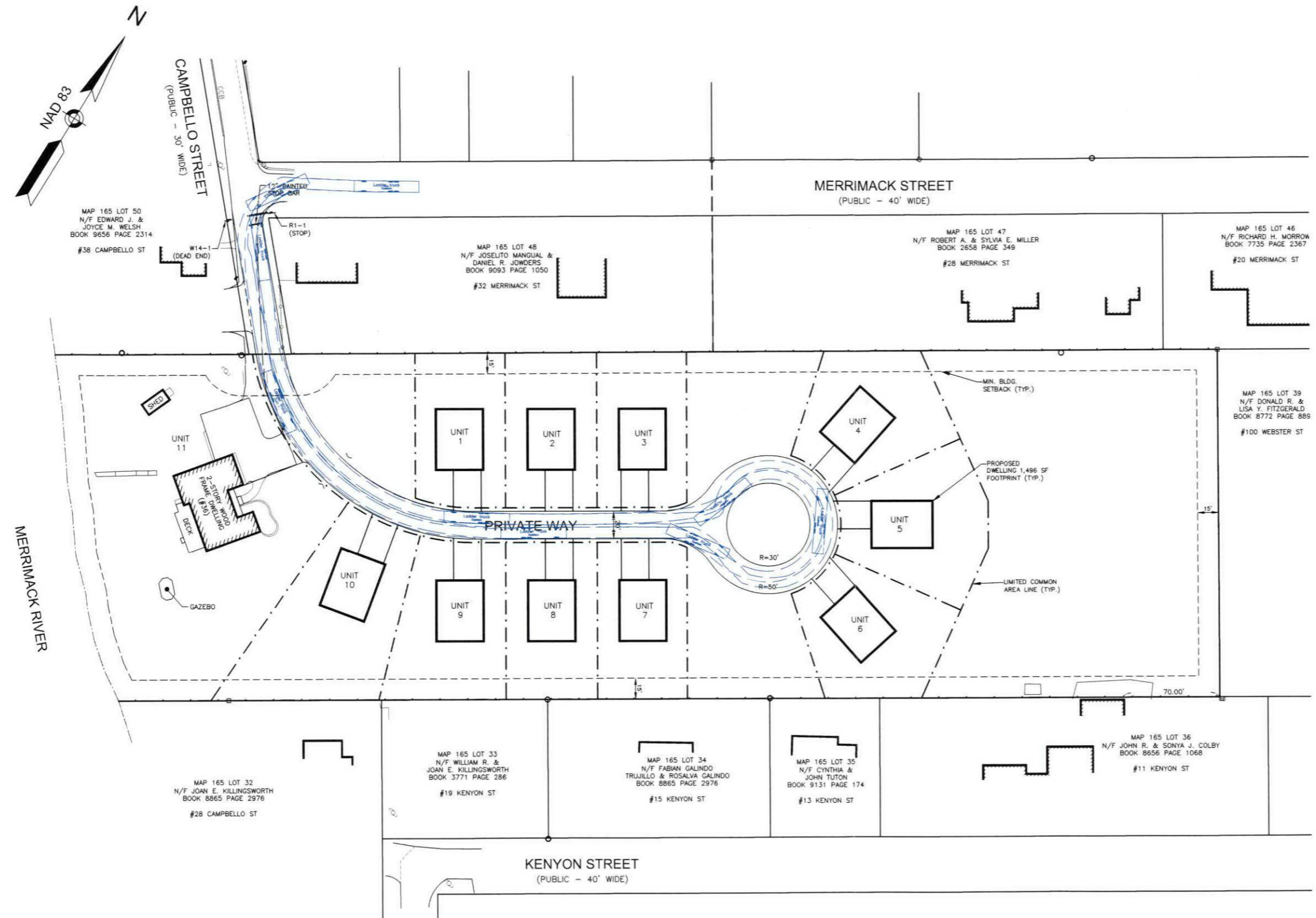
since it was created by a subdivision plan in 1980. Unlike the other properties in the area, Campbello Street comes to a dead end at this property's frontage. With the proposed density being less than what is allowed (11 homes where 15 is allowed), there is no fair and substantial reason to reject the hardship criteria.

- B. The current use as a 4.7 acre single family house lot is not reasonable for this site or the neighborhood. Every property enjoys a "use" whether it be single family, multiple units, or even as a vacant parcel. Literal enforcement of the frontage ordinance for this site does result in an unnecessary hardship to the applicant that can only be remedied through the granting of a variance. "When an area variance is sought, the proposed project is presumed to be reasonable if it is a permitted use under the Town's applicable zoning ordinance." *Vigeant v. Town of Hudson*, 151 NH 747, 752 (2005)(emphasis added). Development of this property in full compliance with all provisions of the zoning ordinance other than frontage, including the proposed use, cannot be seen as anything other than reasonable.

PREPARED FOR
 SOUSA REALTY &
 DEVELOPMENT CORP.
 46 LOWELL ROAD
 HUDSON, NH 03051

ASSESSOR MAP 165 LOT 49

**36 CAMPBELLO STREET
 HUDSON, NEW HAMPSHIRE**



TOWN OF HUDSON
 New Hampshire
 03051

JUL 23 2024

**LAND USE DIVISION
 ZONING DEPT.**

0 40 100 160
 SCALE: 1" = 40'

REVISIONS		
NO.	REVISION	DATE

**LADDER
 TRUCK TURN
 PLAN**

SCALE: 1" = 40'
 PROJECT NO: NEX-2300191
 1 OF 1

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