

## Minutes

### Remote Joint Public Hearing

### Planning Board and Board of Commissioners

7 p.m. April 15, 2021

Virtual meeting via YouTubeLive

[Town of Hillsborough YouTube channel](#)

#### Present

Town board: Mayor Jenn Weaver and commissioners Mark Bell, Kathleen Ferguson, Matt Hughes and Evelyn Lloyd

Planning Board: Chair Chris Johnston, Vice Chair Jenn Sykes, Christopher Austin, Frank Casadonte, Oliver Child-Lanning, Lisa Frazier, Alyse Polly, Jeff Scott, Scott Taylor and Toby Vandemark

Absent: Board of Commissioners: Robb English

Early exit: Kathleen Ferguson (8:02 p.m.)

Staff: Planning Director Margaret Hauth and Town Attorney Brady Herman

#### 1. Call to order and confirmation of quorum

Mayor Jenn Weaver called the meeting to order at 7:09 p.m. Planning Director Margaret Hauth called the roll and confirmed the presence of a quorum, noting that Commissioner Matt Hughes had not yet arrived. Weaver turned the meeting over to Planning Board Chair Chris Johnston.

#### 2. Agenda changes and approval

There were no changes. The agenda stood as presented.

Hughes arrived at 7:11 p.m.

Motion: Commissioner Kathleen Ferguson moved to approve the agenda as presented. Planning Board Vice Chair Jenn Sykes seconded.

Hauth called the roll for voting.

Vote: 13-0. Ayes: Commissioners Mark Bell, Ferguson, Hughes and Evelyn Lloyd; Planning Board members Christopher Austin, Frank Casadonte, Lisa Frazier, Johnston, Alyse Polly, Hooper Schultz, Jeff Scott, Sykes and Scott Taylor. Nays: None.

#### 3. Open the public hearing

Johnston introduced the public hearing. The hearing was opened without a vote.

#### 4. Text amendments to the Unified Development Ordinance

- A. Section 5.2.9.2 to remove requirement for public road access for accessory dwellings within a principal residential structure and Section 6.3.1 to decrease setbacks from 50 feet to 30 feet in the Agricultural Residential district.

Johnston introduced Item 4A, noting that citizen Samantha Johnson has requested the text amendment. Johnson arrived at 7:13 p.m.

Hauth summarized Johnson's application, saying the request comprises two parts.

Hauth summarized the request's first part: The applicant requests that the ordinance allow accessory dwelling units to be developed on parcels that only have access from a private road. Hauth said Johnson has acquired property with access from a private road and wants to construct an accessory dwelling attached to the existing house. Hauth summarized the current text of the ordinance, which states an accessory dwelling unit may be located within a single-family dwelling if the lot has direct access to a public street. Hauth noted that the same limitation exists for accessory dwellings in separate buildings and that the limitation on access has been in place for more than 30 years. She also noted that for the past few years the town has been loosening restrictions on accessory dwellings based on requests.

Hauth summarized the request's second part: The applicant requests a reduction in setbacks in Agricultural-Residential zoning districts to improve flexibility. Hauth said the minimum setbacks in Agricultural-Residential districts are 50 feet on the side, rear and front, which is wider than in other residential districts. She said about 21% of the town's jurisdiction is zoned Agricultural-Residential, but added that most properties in that district are large landholdings unlikely to change their development patterns without rezoning. She said the most likely area to be impacted is about 150 acres zoned Agricultural-Residential inside the town limits. She said a setback reduction would align the Agricultural-Residential setbacks more closely to setbacks in the Residential-40 district, a district that is very similar. Hauth noted these changes would apply across the Agricultural-Residential district, adding there is no way to grant a reduction to just the applicant's property.

Regarding the request's first part, Johnson explained that she had acquired property on a gravel road and wants to build an accessory unit so that her father can live with her and her family. Regarding the request's second part, Johnson said that although most residential areas require a minimum 30-foot setback, her property happens to be zoned Agricultural-Residential although there is no agricultural on the property or surrounding properties. She said requesting the ordinance changes seemed easier than requesting a rezoning, which also would affect her neighbors.

Regarding the request's first part, Ferguson noted that Hauth had suggested amending the ordinance by removing the requirement that the lot be on a public road. Ferguson asked amending the ordinance to require a lot have access via a public road *or* a private road also would be a viable solution. Hauth said she would prefer removing the requirement altogether, because specifying both road types would imply there is some third alternative for access. Hauth asked Town Attorney Brady Herman if he had an opinion. Herman said either alternative would work.

Sykes asked Hauth if there is a way to address the fact that some private roads in town are in poor condition. She noted a previous Board of Adjustment meeting regarding development along a private road that resulted in traffic and safety issues. Hauth said a few of the town's private roads existed before the town developed private road standards. Hauth noted that most of the town's private roads are new and must meet current development standards. Hauth added that private roads are a private issue, with residents on those roads responsible for maintaining ingress and egress; she said it is difficult for the town to insert itself very much into such a situation.

Weaver noted a similar setback request several months ago regarding a different zoning district. She asked if it is possible or makes sense to have a broader conversation about setbacks. Hauth also recalled the conversation to which Weaver referred and said it had been specific to the setbacks for unattached accessory

dwelling units. Hauth said rezoning would not have solved that person's issue, but staff had provided possible next steps to that person – similar to those steps pursued by Johnson tonight – which that person had not chosen to pursue. Hauth said a broader conversation about setbacks is possible, though perhaps not at a public hearing.

Hughes said he is not in favor of eliminating the requirement for public road access for accessory dwelling units. He noted that postal carriers, school busses and emergency vehicles might not be able to fit down private roads. He said he does not think it is in the town's best interest to remove the requirement that accessory dwelling units have guaranteed access to those three basic services. He said he is not opposed to reducing the setbacks from 50 feet to 30 feet in Agricultural-Residential districts.

Johnson acknowledged that her requests would change the requirements across the town's Agricultural-Residential districts, but she noted houses already have been developed along her specific road.

Hughes said he could understand that this solution could be feasible in Johnson's specific situation, but he noted that the boards are enacting town-wide policies.

Regarding the setback reduction request, Polly said she understood the applicant is requesting setbacks be reduced to 30 feet on all sides for Agricultural-Residential districts. She said she understood the boards are considering bringing Agricultural-Residential setbacks in line with Residential-40 setbacks, and she noted that Residential-40 setbacks are 30 feet in the side and rear but 40 feet in the front. Polly asked for clarity around which numbers are correct. Hauth said the applicant is not necessarily trying to align her setbacks with those in Residential-40, but that Hauth had simply noted the two are very similar. Hauth said the applicant's particular interest is in the side and rear setbacks rather than the front, but she said it seemed cleaner and easier to request 30 feet on all sides because the Agricultural-Residential district currently requires the same distance on all sides. Johnson confirmed Hauth is correct.

Casadonte asked if it is possible to grant the applicant a variance rather than change the requirements for the entire Agricultural-Residential district. Hauth explained that the applicant does not qualify for a variance. Hauth briefly outlined the state law's requirements for variances. Hauth said staff would have proposed an easier solution to the applicant's requests if an easier solution existed. When asked, Hauth confirmed that the requested changes would apply to all Agricultural-Residential districts in town. When asked, Hauth confirmed no other tools exist to grant the applicant's requests. Hauth confirmed the two parts of the applicant's request could be considered separately.

Johnston asked if the applicant could apply for rezoning, noting that also is a substantial request. Hauth agreed and added that such a rezoning request would be inconsistent with the town's Future Land Use Plan.

Scott noted that larger emergency vehicles are not always able to access dwellings on private roads. He asked if anything in the town's code would be at odds with the requested amendment. Hauth said if the text amendment is approved it is possible an accessory dwelling could trigger an issue under the fire code regarding turnaround clearance. Hauth said such a technical violation is conceivable, but she is not sure it would be captured in the permitting process, noting that the fire marshal does not look at residential development. She noted the fire code is not user-friendly and is difficult to integrate into traditional planning and zoning situations.

Casadonte asked whether the fire marshal would already have taken the road into account in the applicant's particular case, as the road is developed already. Hauth said that is not necessarily the case, as the applicant's road is one of the town's older private roads. Hauth noted the applicant's road is in excellent condition and

has been maintained very well, but it has more than the four houses that the town currently allows on new private roads, possibly making the road problematic for the fire code. Hauth added the applicant's house is very close to the entrance to the public road, which may be a mitigating factor. Haugh said she could see how a circumstance could develop on an old or new private road where an additional accessory dwelling unit could exceed the fire code's limit on number or spacing of dwellings. When asked, Hauth confirmed that the applicant's road had been grandfathered in and, were it a new private road today, would not be allowed to have as many houses on it as currently exist there.

Hughes asked why sufficient turnaround space on a private road could be overlooked regarding fire code but not trash pickup. Hauth said trash pickup trucks do not go down private roads. When asked, Hauth said that new private roads are required to have road maintenance agreements, which often are accomplished via homeowners' associations. She added private road residents are welcome to bring their trash bins to the public road for pickup. Hughes said he sees the request as a potentially significant policy change regarding accessory dwelling units and private roads, and he is concerned that such a change be equitable. When asked, Hauth said the town does not have a way to ensure all private roads stay well-maintained, adding that in such situations it is the residents' responsibility to self-police and ensure they are safe and well protected, although the town does due diligence by requiring the road maintenance agreement. She said private road construction standards include minimum travel width and gravel depth but are not nearly as elaborate as the standards for public paved roads. Sykes noted that newer townhouse developments are very different from some older private developments. Hughes noted that private roads might meet standards when first constructed but could fall into disrepair; he expressed concern that the town would still be required to provide emergency services to out-of-repair roads, which might damage town equipment. He wondered if private roads could be held to maintenance standards in perpetuity. He noted that some subdivisions have begun requesting more services, even though when built their developers understood the roads would be maintained privately. Hauth said she believes Hughes to be speaking more about townhome neighborhoods, which will always have a homeowners' association and are required to build their private roads to state Department of Transportation standards. Hauth said she does not think the town has any recourse if a neighborhood is not maintaining its private roads. Hughes noted townhome neighborhoods often have private trash services.

Johnston clarified that the discussion at hand deals not with fixing the town's existing issues regarding services and access for dwellings on private roads, but instead with whether to allow more density on those private roads via accessible dwelling units.

Hughes asked whether Town Attorney Bob Hornik had been consulted about the two requested changes. Hauth noted that Herman is substituting for Hornik at tonight's meeting. Herman said the boards are discussing the relevant issues, particularly as the requested changes would impact all properties in the Agricultural-Residential districts. Herman said he did not have any relevant case law on hand but offered to further research specific questions.

Johnson noted that the residents of the private road are not requesting new services, as they already receive certain services. Johnston said he thinks Hughes' concern is that allowing additional dwellings could create additional pressure on town resources. Hughes clarified he also is concerned about equitable school bus and trash pickup access.

**Motion:** Sykes moved to close the public hearing for Item 4A. Ferguson seconded.

Hauth called the roll for voting.

**Vote:** 13-0. Ayes: Commissioners Bell, Ferguson, Hughes and Lloyd; Planning Board members Austin, Casadonte, Frazier, Johnston, Polly, Schultz, Scott, Sykes and Taylor. Nays: None.

Hauth noted the text amendments would be discussed at the May 2021 Planning Board meeting.

B. Section 7.5 to no longer require the combination of undeveloped contiguous non-conforming lots

Johnston introduced Item 4B and requested that he be recused from this item.

**Motion:** Sykes moved to allow Johnston to recuse himself from public hearing Item 4B. Hughes seconded.

Hauth called the roll for voting.

**Vote:** 12-0. Ayes: Commissioners Bell, Ferguson, Hughes and Lloyd; Planning Board members Austin, Casadonte, Frazier, Polly, Schultz, Scott, Sykes and Taylor. Nays: None.

Hauth summarized Item 4B. She explained Section 7.5 of the Unified Development Ordinance requires adjacent non-conforming lots owned by the same property owner to be recombined into conforming lots before the properties can be developed. She said the town has a policy of reducing non-conformities. She gave a brief history of the requirement and noted the recombination requirement is common in zoning ordinances. Hauth said Hillsborough also has accommodated nonconforming lots in the ordinance for many years but still maintains the recombination requirement. She outlined several of the current accommodations.

Hauth outlined the requested text amendment, noting that it limited the recombination requirement to lots narrower than 40 feet, rather than all nonconforming lots. She said the impact of the change would be limited to roughly two dozen lots throughout town. Hauth said requirements for water and sewer connections would still apply, which would limit the possibility of undevelopable lots being created. She noted that the amendment would consolidate exceptions in the ordinance, streamlining the requirements and exceptions. Hauth added that the reduced setback provisions will be discussed in the next quarterly hearing to address a recent Board of Adjustment interpretation.

Hauth introduced Richard Turlington of Habitat for Humanity of Orange County, which has requested the text amendment. Turlington said Habitat owns five non-conforming lots on Homemont Street that they hope to recombine into four lots of equal size, noting that the resulting four lots would not be large enough to meet that location's zoning requirements.

Hughes asked Hauth what unintended consequences might result from such a change to the ordinance. He expressed concern about enacting town-wide change. He expressed concern that commercial developers could use the amended ordinance as a bypass. Hauth said the areas where there are many lots that the change would apply to all are outside town limits and lack utility connections, thus limiting their developability. Hughes asked whether a legislative change is warranted, as it would affect only two dozen lots. He wondered if there is another mechanism that could solve the applicant's issue. Hauth said she is not aware of another tool that the applicant could use. She added the amendment would further goals she believes the boards support, such as encouraging development in the existing town core on smaller lot sizes and encouraging diversity of lot sizes. Hauth noted many localities do not have a recombination ordinance.

Ferguson left at 8:02 p.m.

## Minutes

### Planning Board

Remote regular meeting

7 p.m. May 20, 2021

Virtual meeting via YouTubeLive

[Town of Hillsborough YouTube channel](#)

Present: Chair Chris Johnston, Vice Chair Jenn Sykes, Christopher Austin, Frank Casadonte, Lisa Frazier, Alyse Polly, and Scott Taylor

Absent: Hooper Schultz and Jeff Scott

Staff: Planning Director Margaret Hauth and Town Attorney Bob Hornik

#### 1. Call to order and confirmation of quorum

Chair Chris Johnston called the meeting to order at 7:03 p.m. Planning Director Margaret Hauth called the roll and confirmed the presence of a quorum.

#### 2. Agenda changes and approval

The agenda was accepted as presented. Later in the meeting, a conversation with prospective board members was added as Item 6C.

#### 3. Minutes review and approval

Minutes from the regular meeting on March 18, 2021, and from the joint public hearing on April 15, 2021.

Motion: Vice Chair Jenn Sykes moved to approve the minutes as presented. Member Scott Taylor seconded.

Hauth called the roll for voting.

Vote: 6-0. Ayes: Members Chris Austin, Lisa Frazier, Johnston, Alyse Polly, Sykes and Taylor. Nays: None.

#### 4. Recommendations to town board of public hearing items

##### A. Unified Development Ordinance: Amendments to Section 5.2.9.2 and Section 6.3.1 – Allow accessory dwelling units on private roads and Agricultural Residential setback reduction

Applicant Samantha Johnson and her husband Matthew Johnson arrived.

Johnston introduced Item 4A. Hauth summarized the proposed text amendment, noting the proposed change comprises two parts: first, to allow accessory dwelling units on private roads, and second, to reduce the width of setbacks in the Agricultural Residential zoning district. Hauth noted that both changes would apply town-wide and said no other options exist to meet the applicant's interests. Regarding allowing accessory dwelling units on private roads, Hauth noted the ordinance has long required accessory dwelling units to be on public

roads, but she noted the board consistently has been loosening regulations on accessory dwelling units to encourage more development. Regarding reducing setbacks in Agricultural Residential zoning districts, Hauth noted the applicant's property is located in a small section of town zoned Agricultural Residential where water and sewer service is available, and so the proposed change could result in more intense development in that location. She noted that Agricultural Residential districts currently require 50-foot setbacks on all sides, which she characterized as significant. She added that this request pertains to land within the city limits, noting the town has very limited zoning authority on any parcel in the extraterritorial jurisdiction in active agricultural use.

Regarding reducing the setbacks, Sykes said that instead of reducing the setbacks from 50 feet on each side to the proposed 30 feet on each side, she prefers matching Agricultural Residential setbacks to those in Residential-40 districts, which would require 30-foot side and rear setbacks and 40-foot front setbacks. She said it would seem strange to allow smaller setbacks in Agricultural Residential districts than in Residential-40 districts, as Agricultural Residential districts are designed for larger lots than the more dense Residential-40 districts.

Regarding allowing accessory dwelling units on private roads, Sykes expressed concern that some of the town's private roads are not in good shape and may not be able to support the higher traffic that could come with allowing accessory dwelling units on such roads. Johnston noted that the change would apply across town, not just to the applicant's property.

Hauth noted there is a difference between roads in disrepair and whether or not services are provided to dwellings on a private road. She said it is in the nature of private roads that school buses and mail delivery generally do not go serve them, especially when they are unpaved. She noted that the board's decision would have no impact on whether those services are provided on private roads.

Johnston said the conflict is between board members' desire to encourage increased density and hesitancy about allowing increased density on roads that do not receive public services.

Sykes noted that inadequate private roads naturally could limit the amount of development along those roads, citing a private road in some disrepair off of Nash Street that has limited what the property owner can develop there.

When asked, Hauth confirmed the applicant's property is located on Burnside Drive. Matthew Johnson said the property is within 300 yards of the corner of South Cameron Avenue, a public road.

Samantha Johnson acknowledged the board must consider the proposed amendment's impact on the entire town. She wondered if it is too late to add language allowing the board to consider applications on a case-by-case basis, based on the condition of the private road in question. Matthew Johnson wondered if language could be added to consider a property's distance from a public road.

Austin recalled Town Commissioner Matt Hughes' points from the April 15 public hearing that having mail and school bus services are parts of the cornerstones of democracy. Austin said he would argue it is important to let people live the way they prefer and have the choices to do that. Austin said he agreed with Hughes' point that it is important to create equitable situations across town. Austin noted that this application would allow a Johnson family member to age in place; he said it is important to promote aging in place as part of equity, especially as demographics shift to include more elderly citizens. Austin said he does not agree with disapproving of where people can provide dwellings based on the board's discomfort with the amount of government services they receive.

Matthew Johnson said that the property's mailbox is on South Cameron Avenue, a public road. Samantha Johnson added that they receive trash pickup and school bus services via South Cameron Avenue.

Austin acknowledged that the amendment would affect properties town-wide.

Member Frank Casadonte arrived at 7:15 p.m.

When asked whether case-by-case language is allowed, Hauth said that the board could require that a private road be constructed to certain standards when someone asks to build an accessory dwelling unit on a private road. She noted the town would not be able to inspect that road in an ongoing manner after it is constructed. Regarding the Johnson's particular case, Hauth noted that Burnside Drive is unusual in that it is a private road predating zoning, it is one of the town's best-constructed private roads and the town does provide trash service there due to tradition.

Town Attorney Bob Hornik confirmed that case-by-case language is not possible in this situation. He agreed with Hauth that a text amendment could require a private road to be constructed. He said the amendment also could require a property to be a certain distance from a public road in order to build an accessory dwelling unit. Hauth said a fixed distance requirement would be easier for staff to enforce than a requirement about the road's quality.

Taylor asked what the downsides might be of allowing accessory dwelling units on private roads.

Hauth said allowing accessory dwelling units on private roads could create future private property disputes, which the town could neither intervene in nor solve. She said that if homeowners at the end of a private road were to build accessory dwelling units and create more traffic and wear on the road than their neighbors, the private road agreement might not address which neighbor has to pay to maintain the road. Hauth added that would be the case in any private road situation where one family has more cars and people than their neighbors. Hauth said resolving such private property issues is not the town's job, though the town does try to write ordinances that encourage neighbors to be happy with one another.

When asked, Hauth clarified that Public Space Manager Stephanie Trueblood has proposed reducing front setbacks for commercial developments. Hauth said the town also has seen a shift in the setbacks that new neighborhoods propose under special use permits, noting that the Forest Ridge, Collins Ridge and Fiori Hill subdivisions all have significantly smaller setbacks than the town's traditional zoning districts. Hauth said the special use permit process offers developers more setback flexibility than building on a large tract of residentially zoned land. Hauth said staff has concerns about the long-term maintenance of private roads in townhome neighborhoods, noting that staff is unable to help resolve private disputes that may arise from such roads not being maintained.

Polly said she agreed with Sykes that the setbacks in Agricultural Residential districts should mirror those in Residential-40 districts, with a minimum width of 30 feet in the sides and rear and 40 feet in the front. Polly also noted that the town boards have been discussing ways to encourage smart development, infill development and more dense neighborhoods; she said allowing accessory dwelling units on private roads could help meet those goals. Sykes agreed but noted that some of the town's private roads are very old and increased traffic on them could put cars at risk. Sykes said she would want to include a requirement addressing road quality, such as requiring the lot in question to be within a certain distance of a public road.



Hornik asked Hawth how much Agricultural Residential land within town limits would be suitable for infill projects, as most Agricultural Residential districts are on the outskirts of town and would not see infill development.

Hawth confirmed about 150 acres are zoned Agricultural Residential within town limits and also have water and sewer access, which is required for accessory dwelling units. She said most of that land is on Burnside Drive, where the applicants live. Hawth said overall the town has about 800 acres zoned Agricultural Residential, but she said much of that would never be developed for various logistical reasons.

Hawth said reducing the setbacks in Agricultural Residential districts does not concern her, as she does not think it would not open the town to any risks or pose any challenges to staff.

When asked, Hornik confirmed the board could make separate recommendations regarding reducing the setbacks and allowing accessory dwelling units on private roads.

Motion: Sykes moved to recommend approval of the text amendment changing the minimum setbacks in Agricultural Residential zoning districts to 30 feet on the sides, 30 feet in the rear and 40 feet in the front. Austin seconded.

Hawth called the roll for voting.

Vote: 7-0. Ayes: Austin, Casadonte, Frazier, Johnston, Polly, Sykes and Taylor. Nays: None.

Polly said she is leaning toward allowing accessory dwelling units on private roads. She said she hears Sykes' point about the existence of older private roads in town. Polly wondered how many private roads in town would be affected, aside from Burnside Drive.

Hawth said the proposed change only would allow accessory dwelling units within a principal dwelling on a private road. She said freestanding accessory dwelling units still would not be allowed on a private road, noting that most people want to build freestanding accessory dwelling units. Hawth said accessory dwelling units also must have water and sewer services, which increases the likelihood that they will be built within town limits rather than on some of the older private roads in the extraterritorial jurisdiction.

Hawth said that if the board wants to include a requirement that the lot be a certain distance from a public road, the distance would need to be 300 feet from the lot's driveway in order to capture what the current applicant is requesting. Hawth said most of the town's private roads are not much longer than 300 feet, excluding townhome neighborhoods. She said including that requirement would include more private roads than it excludes and she is not sure including the distance requirement would be worthwhile. Hawth recommended the board decide either to leave the requirement in or take it out, noting that any problems created would be for residents of the private road to resolve, not the government.

When asked, Hawth confirmed there are no code restrictions for private roads. Hawth said new private roads meet a basic standard, but she said that would not be easy to verify or enforce after a road is in place. Regarding emergency services, Hawth said ambulance drivers have the right to choose whether they can drive down a private road or not. She noted that the town's private roads are in better shape than many county private roads, some of which force ambulance drivers to choose between damaging their vehicles and not providing service.

Johnston noted that allowing more accessory dwellings on private roads would create more density in areas where the town has less regulatory control. He noted the board wants people to be able to do what they want on their property, but he said the town still has responsibilities to citizens.

Sykes said the situation currently before the board is one of aging in place, but she noted that residents of other private roads might want to rent out their accessory dwelling units. She said economic pressures could take care of potential problems, noting that no one would want to rent an accessory dwelling unit if the road to it would damage their car. She said she would prefer a more elegant solution to bring private roads up to code, but she acknowledged that most of the town's private roads are in subdivisions and townhome communities and so already are up to code.

When asked, Hawth said the majority of the town's private roads are new and are no longer than 400 feet. She said of the roughly two dozen private roads outside townhome neighborhoods, less than a third are older. Hawth confirmed there are only a small handful of older private roads in town.

**Motion:** Austin moved to recommend approval of the text amendment removing the requirement for public road access for accessory dwelling units within a principal structure. Sykes seconded.

Hawth called the roll for voting.

**Vote:** 6-1. Ayes: Austin, Casadonte, Frazier, Polly, Sykes and Taylor. Nays: Johnston.

Hawth said the town board would receive the planning board's recommendations at the June 14 Board of Commissioners meeting, noting that would be the final action on the items.

Samantha and Matthew Johnson left at 7:46 p.m.

~~B. Unified Development Ordinance: Amendments to Section 7.5 – Limit requirement to combine undeveloped contiguous non-conforming lots~~

~~Johnston asked to recuse himself from Item 4A because his wife works for the applicant requesting the amendment, Habitat for Humanity of Orange County.~~

~~Motion: Sykes moved to allow Johnston to recuse himself from Item 4B. Taylor seconded.~~

~~Hawth called the roll for voting.~~

~~Vote: 6-0. Ayes: Austin, Casadonte, Frazier, Polly, Sykes and Taylor. Nays: None.~~

~~Sykes introduced Item 4A. Hawth said the proposed change would limit the circumstances in which adjoining, undeveloped, contiguous non-conforming lots need to be combined into less-non-conforming lots. Hawth said the change would remove the requirement that one of the newly combined lots be developed and that all lots be 50 feet wide; the proposed language would require only that the newly combined lots be 40 feet wide. Hawth said the change would provide more flexibility, noting that Habitat for Humanity of Orange County had requested the change in order to serve one more family. Hawth added there are not many vacant lots left in town that were platted out in small increments, and so the change likely will not have a large impact.~~

~~Applicant Richard Turlington arrived at 7:48 p.m.~~

# TOWN OF HILLSBOROUGH

## Minutes

### Board of Commissioners

Remote regular meeting

7 p.m. June 14, 2021

Virtual meeting via YouTube Live

[Town of Hillsborough YouTube channel](#)

Present: Mayor Jenn Weaver and commissioners Mark Bell, Robb English, Kathleen Ferguson, Matt Hughes, and Evelyn Lloyd

Staff: Interim Human Resources Director Haley Bizzell, Budget Director Emily Bradford, Assistant to the Manager/Deputy Budget Director Jen Della Valle, Interim Town Clerk/Human Resources Technician Sarah Kimrey, Stormwater and Environmental Services Manager Terry Hackett, Police Chief Duane Hampton, Assistant Town Manager/Planning Director Margaret Hauth, Interim Public Works Director Dustin Hill, Town Attorney Bob Hornik, Town Manager Eric Peterson, Utilities Director Marie Strandwitz, Public Space Manager Stephanie Trueblood and Public Information Officer Catherine Wright

#### Opening of the meeting

Mayor Jenn Weaver called the meeting to order at 7:03 p.m. Interim Town Clerk and Human Resources Technician Sarah Kimrey called the roll and confirmed the presence of a quorum.

#### 1. Public charge

Weaver did not read the public charge.

#### 2. Audience comments not related to the printed agenda

There was none.

#### 3. Agenda changes and approval

The mayor noted a change sent by the budget director by email prior to the meeting regarding the Community Development Block Grant project ordinance and an associated budget amendment. She also noted a change sent by the deputy budget director earlier regarding amending the miscellaneous budget amendments with two additional amendments regarding an aerator blower.

Motion: Commissioner Kathleen Ferguson moved to approve the amended agenda. Commissioner Mark Bell seconded.

Kimrey called the roll for voting.

Vote: 5-0. Ayes: Commissioners Bell, Robb English, Ferguson, Matt Hughes and Evelyn Lloyd. Nays: 0.

#### 4. Public hearings

##### A. Request to close unopened right of way named Cole Avenue

The mayor opened the public hearing. Assistant Town Manager and Planning Director Margaret Hauth said Cole Avenue is an unopened lane that separates property between two neighbors, serves no purpose, is unimproved and has no utilities. The closure was requested by one of the neighbors. Both neighbors were in

attendance at the meeting. The property owner who made the request, Mark Rhoades, said the closure would allow the two neighbors to have a cleaner property line and would remove questions of maintenance responsibilities along the boundary. Hauth said the other neighbor, Christina Perrella, had noted in an email that she was planning to observe rather than participate in the meeting. The mayor asked for confirmation that both parties are amenable to the request. Hauth said she had not heard otherwise.

Motion: Ferguson moved to close the public hearing. Bell seconded.

Kimrey called the roll for voting.

Vote: 5-0. Ayes: Bell, English, Ferguson, Hughes and Lloyd. Nays: None.

**B. FY2022 budget public hearing**

Mayor Weaver opened the public hearing. A water and sewer customer, William Johnson, provided a brief presentation against increasing utility rates. His presentation included a comparison of rates with surrounding communities and a look at specific aspects of the town's water and sewer fund. There were no other speakers. The mayor said the board received public comments from three other people via email. She summarized them:

- Will Lane, who attended the town's academy on operations, said he was glad to see funding for future sessions, thanked staff for making the budget document easy to understand, and said he wants to see the property tax rate stay the same.
- Lavone Tucker expressed concerns about out-of-town water and sewer rates. The mayor noted that the town manager had responded to the email.
- Michelle Jenkins was curious about the location for the proposed installation of a bench on Nash Street and had some questions about the installation.

The mayor said the board also received a letter from Fairview Community Watch asking for signage to be changed to rename the community center in the neighborhood after Dorothy Johnson.

Motion: Bell moved to close the public hearing. Ferguson seconded.

Kimrey called the roll for voting.

Vote: 5-0. Ayes: Bell, English, Ferguson, Hughes and Lloyd. Nays: None.

**5. Items for decision — consent agenda**

**A. Minutes**

1. Joint Public Hearing April 15, 2021
2. Regular meeting May 10, 2021
3. Work session May 24, 2021

**B. Miscellaneous budget amendments and transfers (revised item)**

**C. Miscellaneous Tourism Board amendments and transfers**

**D. Hillsborough Tourism Board FY2022 Budget Ordinance**

**E. Proclamation Commemorating Juneteenth Independence Day**

**F. Consistency statement and ordinance amending Unified Development Ordinance Sections 7.5 – limiting the requirement to combine nonconforming lots**

**G. Consistency statement and ordinance amending Unified Development Ordinance Sections 5.1.6 and 5.1.7, Table of permissible uses**

**H. Reclassification and pay amendment – utilities analyst position to civil engineer**

**I. Deed restriction for all town parcels surrounding the West Fork Eno Reservoir**

- J. Special event permit – road closure and sponsorship request for police service for Juneteenth March
- K. NC 86 Connector Study (Phase II)
- L. Community Development Block Grant (CDBG-CV) project ordinance and associated budget amendment (added item)

Motion: Ferguson moved to approve all items on the amended consent agenda. Bell seconded.

Kimrey called the roll for voting.

Vote: 5-0. Ayes: Bell, English, Ferguson, Hughes and Lloyd. Nays: None.

**6. Items for decision — regular agenda**

**A. Consistency statement and ordinance amending Unified Development Ordinance Sections 5.2.9.2 and 6.3.1 – citizen request related to accessory dwelling units and setbacks**

Planning Director Margaret Hauth said she placed this request for text amendments on the regular agenda vs. the consent agenda because the Planning Board had a lot of discussion on it at the public hearing. She said the request is from a private property owner who would like to construct an accessory dwelling on the property. The ordinance does not allow accessory dwellings on private roads. The owner also would like to change the setback requirements of the property, which is zoned agricultural residential and has setbacks of 50 feet on all sides. The structures on this property are built closer to the property line already. The owner is asking to conform with setbacks in a nearby neighborhood, with a 40-foot setback in front and 30-foot setbacks on the other sides. Hauth said staff does its best to find options that don't involve changing the ordinance since it is a solution that impacts the entire town. She said the Planning Board's recommendation to allow accessory dwellings on private roads was not unanimous.

She answered questions from the board. She said the property is on Burnside Drive and is one of a few agricultural residential areas serviced by town water and sewer. Most agricultural residential zoning is outside town limits, and the impact of the request would be very limited, especially for the setback issue.

Hughes suggested separating the vote on setbacks and accessory dwelling units.

There was additional discussion. Hauth noted a change in the setback would affect all land zoned agricultural residential. She said that properties with the designation include the mining area and some places in West Hillsborough and that mining is regulated by the state. She said the only other tool that could be used to grant the request is a variance, but there is no hardship in this case to justify a variance. Hauth said reducing the setback gives property owners more ability to use their lot. She said individual houses that would be impacted likely are a dozen or fewer; a lot of the land in areas without water and sewer service are not developed; and the town has almost no way to oversee property used for agricultural purposes in its extraterritorial jurisdiction.

Motion: Hughes moved to approve ordinance change and consistency statement regarding setbacks. Lloyd seconded.

Kimrey called the roll for voting.

Vote: 3-1. Ayes: Bell, Ferguson, and Lloyd. Nays: Hughes. English lost connection and was unable to vote.

The board discussed the request to allow an accessory dwelling unit on a private road. The planning director said the applicant wants to build a garage with an apartment over it for a family member. She said the town greatly expanded the ability to have accessory dwelling units but the requirement to be on a public road has been in place for more than 30 years. Hauth said the Planning Board discussed whether a fixed distance could be set from a private road to allow accessory dwellings. The distance needed to allow the unit at this particular property is 300 feet, which would allow accessory dwellings on any private road in town. One of the Planning Board members was opposed to allowing the unit on a private road.

Hauth answered questions from the board. She confirmed the private road is a gravel road. She said it is one of the oldest private roads in town and probably one of the more well-constructed ones, noting that garbage trucks do travel it. She said most of the new private roads built are to access deeper lots and most private roads in town are very short. Hauth said the Planning Board discussed looking at the standard of a private road and she was very hesitant to accept the option because town staff are not qualified to look at a road and determine whether it's built to a certain standard and because the maintenance and standard for private roads is determined by the private owners. It was determined that a fair standard could not be implemented and the only option before the Planning Board was to allow accessory dwellings on private roads or don't.

In answering what the downside is to allowing accessory dwellings on private roads, Hauth said that not all private roads have been built in the last five years and some may not be well maintained or have a maintenance agreement among all the owners. She said the more people who live on a private road, the more pressure there will be also for the town to accept a road that would be a challenge. Hauth said staff have had conversations that private roads are a problem in the long run and perhaps they should not be allowed in town.

The mayor noted that the town has already taken steps to make accessory dwelling units more accessible to people and that both parts of this request seem to do that. In this case, the dwelling would make it possible for an aging parent to live on site. For another person, renting out the unit could help produce funds to maintain the road.

There was continued discussion about the assumption people have that private roads are public and subject to the same services as public roads and about the treatment of this private road. Hauth said the long tradition of garbage and recycling service on this road and the possibility of the road becoming public should be discussed separately.

**Motion:** Bell moved to adopt the ordinance and consistency statement to allow accessory dwelling units on private roads. Lloyd seconded.

Kimrey called the roll for voting.

**Vote:** 3-2. Ayes: Bell, English and Lloyd. Nays: Ferguson, Hughes.

~~B. Order closing unopened right of way named Cole Avenue~~

~~Motion: Hughes moved to close unopened right of way named Cole Avenue. Ferguson seconded.~~

~~Kimrey called the roll for voting.~~

~~Vote: 5-0. Ayes: Bell, English, Ferguson, Hughes and Lloyd. Nays: None.~~