



# TOWN OF HUDSON

## Planning Board

Vincent Russo, Chairman

Rick Maddox, Selectmen Liaison



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### HUDSON PLANNING BOARD MEETING MINUTES February 27 2013

#### I. CALL TO ORDER

Chairman Russo called this Planning Board meeting to order at 7:03 p.m. on Wednesday, February 27, 2013, in the Community Development's Paul Buxton meeting room in the Hudson Town Hall basement.

#### II. PLEDGE OF ALLEGIANCE

Chairman Russo asked Mr. Della-Monica to lead the assembly in pledging allegiance to the Flag of the United States of America.

#### III. ROLL CALL

Chairman Russo asked Secretary van der Veen to call the roll. Those persons present, along with various applicants, representatives, and interested citizens, were as follows:

**Members**

**Present:** James Barnes, Glenn Della-Monica, George Hall, Tim Malley, Vincent Russo, Ed van der Veen, and Richard Maddox (Selectmen's Representative).

**Members**

**Absent:** None. (All present.)

**Alternates**

**Present:** Marilyn McGrath and Jordan Ulery.

**Alternates**

**Absent:** Irene Merrill (excused) and Nancy Bruckerman (Selectmen's Representative Alternate)(excused).

**Staff**

**Present:** Town Planner John Cashell.

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**Recorder:** None. (The Recorder transcribed these minutes from the online HCTV rebroadcast, as he was out of the state on vacation.)

**IV. SEATING OF ALTERNATES AND ANNOUNCEMENTS**

Chairman Russo noted that no alternates would be seated at this time, as all regular members were present.

**V. MINUTES OF PREVIOUS MEETING(S)**

Chairman Russo addressed the minutes for the meeting of January 22, 2013, asking if there were any changes or corrections.

Mr. Barnes noted that Selectman Brucker's name was misspelled in several instances throughout the minute.

No further changes or corrections being brought forward, Mr. Barnes moved to accept the 01-22-13 minutes as amended; Mr. Della-Monica seconded the motion.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members present voted in favor, and Chairman Russo declared the motion to have carried (7-0).

**VI. CASES REQUESTED FOR DEFERRAL**

No cases had requested deferral from this scheduled date.

**VII. CORRESPONDENCE**

Chairman Russo noted that items of correspondence received in tonight's handouts would be taken up in conjunction with the associated cases, with any remaining items being taken up under **Other Business** at the end of the meeting.

**VIII. PERFORMANCE SURETIES**

No **Performance Sureties** items were addressed this evening.

**VIX. ZBA INPUT ONLY**

No **ZBA Input Only** items were addressed this evening.

**X. DESIGN REVIEW PHASE**

No **Design Review Phase** items were addressed this evening.

**XI. OLD BUSINESS**

Chairman Russo noted that **Old Business Item A** would be put off until later in the evening because of a time conflict with respect to one of the applicant's representatives.

**B. 75 River Road Site Plan  
SP# 06-12**

**Map 251/Lot 010  
75 River Road**

**Purpose of plan: Raze existing structure and construct four new light industrial buildings with associated parking, drainage, and utilities. Hearing. Deferred Date Specific from the 02-13-13 Planning Board Meeting.**

Chairman Russo read aloud the published notice, as repeated above.

Ms. McGrath stepped down from her nonvoting alternate position from this hearing as she was a resident of the neighborhood and related to abutters of the property, taking a seat in the audience section of the meeting room.

Town Planner Cashell said he had nothing to add to his staff report.

Mr. Tony Basso, of the firm of Keach-Nordstrom Associates, Inc., Bedford, New Hampshire, serving as the engineering representative of the applicant, said he had made a few note changes, which had been asked about. He noted that some waiver requests were still outstanding.

Chairman Russo opened the meeting for public input and comment, in favor of the application. No one coming forward, Chairman Russo asked if anyone wished to speak in opposition or to provide comments or questions concerning the application.

Ms. McGrath, 81 River Road, noted that neither of her brothers was present tonight. She noted that on Page 2 of the staff report there was reference to Note 27 on the plan, concerning hours of operation and pickup/delivery; she said she would like the Board to change the hours, saying she did not think the hours of operation were going to be a problem but that she felt delivery should not occur on weekends, expressing doubt that UPS worked on weekends, especially after 5:00 p.m. She clarified that she was speaking for her brother, Gary McGrath, as she thought the impact to herself would be minimal, but she felt her brother should have some solitude on weekends, especially in the evenings. She said she saw no need for deliveries after 5:00 p.m., adding that there should not be any on Sunday.

No one coming forward, despite a repeated invitation, Chairman Russo asked Mr. Basso if he wished to comment on Ms. McGrath's comment. Mr. Basso said they would be happy to eliminate Sunday deliveries. Ms. McGrath expressed continuing concern about deliveries on Saturday. Mr. Della-Monica suggested the note should differentiate between deliveries by delivery companies, as opposed to someone who might be bringing supplies/equipment in to get set up for work that would be done on Monday. Chairman Russo expressed doubt that deliveries of that sort would be on vehicles with backup alarms, saying that was more of normal business hours of operation, adding that delivery by occupants of the workspaces should not be a concern.

Mr. Hall moved to grant the requested waiver from the provisions of HTC 275-8.B.(30), *Loading Docks*, citing the reason for granting this waiver as being because the proposed use of the site did not call for loading docks—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan regulations. Mr. Della-Monica seconded the motion.

Chairman Russo said he would vote in opposition, as he did not like the way the motion was written, noting that there was a loading area that was designated for loading purposes and questioning if there was confusion of “loading docks” and “loading area.” Mr. Basso said it could work either way, saying the loading area met the requirements of HTC 275-8.B.(30). He noted that the waiver request had been written months ago, before the turnaround area had been added to the plan, and he suggested that waiver request could be removed, as the space was being put in, anyway. Chairman Russo said that was his position, saying a loading space was needed so that vehicles could load and unload, but he thought this waiver could be eliminated. Selectman Maddox expressed agreement, saying they should just label the space on the plan as a loading area. Mr. Basso said he would do that. Mr. Hall withdrew his motion.

Mr. Hall moved to grant the requested waiver from the requirements of HTC 275- D, *Fiscal Impact Study*, citing the reason for granting this waiver as being because said study, in addition to the submitted plans, traffic study, and other submitted application materials, was not necessary to evaluate the fiscal impact of this development—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan Regulations. Mr. Della-Monica seconded the motion.

**VOTE:** No discussion being brought forward, Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Mr. Hall moved to grant the requested waiver from the requirements of HTC 275-9 C, *Noise Study*, citing the reason for granting this waiver as being because such a study was unnecessary, taking into consideration that along the southeast border of this site, which was the only area of the site that abutted a residential use, landscape screening and noise buffering measures were proposed (i.e., an elevated landscaped berm)—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan regulations. Mr. Della-Monica seconded the motion.

**VOTE:** No discussion being brought forward, Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Town Planner Cashell noted that he had drafted a quick change of the delivery hours, in response to the previous discussion.

Ms. McGrath said she had just noticed the draft motion concerning the hours for refuse removal; she suggested that it should be from 7:00 am. Until 5:00 p.m., Monday through Friday. Chairman Russo said he thought that was consistent with what most

companies did, anyway. Ms. McGrath commented that some of the pickup companies came around at three o'clock in the morning. Mr. Basso indicated that he had no problem with what Ms. McGrath had suggested.

Selectman Maddox referenced Page 4 of the plans, noting a comment that the existing master box was to be modified; he said he had discussed this with the Fire Department, which had told him it would still be a master box, for all four buildings. Mr. Basso said it would be changed to whatever the Fire Department wanted it to say.

Mr. Barnes moved to approve the Site Plan entitled ***Non-Residential Site Plan, 75 River Road, Map 251/Lot 10, Hudson, New Hampshire***, prepared by Keach-Nordstrom Associates, Inc.; dated: August 15, 2012, revised through January 25, 2013; consisting of a Cover Sheet, Sheets 1 through 15 and Notes 1 through 29, in accordance with the following terms and conditions:

1. All stipulations of approval shall be incorporated into the Development Agreement, which shall be recorded at the Hillsborough County Registry of Deeds, together with the Site Plan-of-Record (hereinafter referred to as the Plan).
2. Prior to the Planning Board endorsement of the Plan, the Development Agreement shall be favorably reviewed and recommended on by Town Counsel.
3. All improvements shown on the Plan, including Notes 1 through 28, shall be completed in their entirety and at the expense of the Applicant or his assigns.
4. After the issuance of each foundation permit and prior to the issuance of each framing permit, the applicant shall submit to the Hudson Community Development Department a foundation "As-Built" plan on a transparency and to the same scale as the approved site plan. The foundation "As-Built" plan shall include all structural dimensions and lot-line setback measurements to the foundation and be stamped by a licensed land surveyor. Any discrepancy between the approved site plan and foundation "As-Built" plans shall be documented by the applicant and be part of the foundation "As-Built" submission.
5. Prior to the issuance of a final certificate of occupancy, an LLS-certified "As Built" site plan shall be provided to the Town of Hudson Community Development Department, confirming that the site conforms with the Planning Board approved Plan.
6. Onsite landscaping shall be provided for in accordance with the plant and tree species specified on Sheet 7 of 15 of the Plan.
7. Construction activities on the site shall be limited to between 7:00 a.m. and 7:00 p.m. Monday through Saturday. No construction activities shall occur on Sundays.
8. This approval shall be subject to final engineering review, including approval of the Stormwater Pollution Prevention Plan (SWPPP).
9. The Applicant shall be responsible for implementing and maintaining the SWPPP.

10. The applicant or his assigns, at his/her expense, shall be responsible for repairing all construction cuts on River Road, and this work shall be properly bonded with the Town of Hudson and the State of New Hampshire.
11. This Plan application is approved conditional upon the applicant receiving NH-DOT approval for the proposed driveway opening on River Road, which is a State of New Hampshire-owned highway.
12. Prior to Planning Board endorsement of the Plan, Note 27 on Sheet 1 of 15 shall be amended to read: "Hours of operation will be Monday through Saturday 7:00 a.m. to 7:00 p.m. and Sunday 9:00 a.m. to 5:00 p.m. Pick-up and delivery of materials/products shall be limited to Monday through Saturday 7:00 a.m. to 7:00 p.m. only. Said activities are prohibited on Sunday."
13. Hours for refuse removal shall be limited to Monday through Friday, 7:00 a.m. to 5:00 p.m. only.
14. Note 29 shall be added to the Plan prior to Planning Board endorsement, and it shall read: "Outside storage of materials and outside work activities are prohibited."
15. The loading area shall be identified on the plan.

Mr. Della-Monica seconded the motion.

Selectman Maddox noted that the revision date, as read by Mr. Barnes, was January 25, 2013, but the plans before the Board were designated as revised through February 18, 2013. He also noted that Stipulation 3 had referenced the plan notes as being "through Note 28," but that should be changed to "through Note 29" because one had been added. Mr. Barnes and Mr. Della-Monica expressed agreement, making these friendly amendments.

Selectman Maddox noted that the previously approved waiver of the 100-foot setback from residential use had been a problem through this entire project, adding that it had been shown that it would take seven years for the plantings to grow to the height shown on the plan. He asked when the plantings would be done. Mr. Basso suggested that the plantings should be a pre-requisite for the first Certification of Occupancy. Mr. Barnes suggested adding that to Stipulation 6, so that the stipulation would read as follows:

6. Onsite landscaping shall be provided for in accordance with the planting and tree species and berm specified on Sheet 7 of 15 of the Plan to be completed prior to the Certification of Occupancy for the first building.

Mr. Della-Monica concurred, making it another friendly amendment.

**VOTE:** No further discussion being brought forward, Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

Ms. McGrath noted that Stipulation 12 said Saturday deliveries would be allowed to 7:00 p.m. She restated her previous position that allowing Saturday deliveries only until 5:00 p.m., with no deliveries on Sunday, would be reasonable.

Chairman Russo asked if anyone on the Board wished to amend the motion, and he also asked if the applicant had an issue with changing what had been specified. Mr. Basso said he would leave it up to the Board.

Mr. Barnes moved to amend Stipulation 12 to read as follows:

12. Prior to Planning Board endorsement of the Plan, Note 27 on Sheet 1 of 15 shall be amended to read: "Hours of operation will be Monday through Friday 7:00 a.m. to 7:00 p.m. and Saturday 9:00 a.m. to 5:00 p.m. Pick-up and delivery of materials/products shall be limited to Monday through Friday 7:00 a.m. to 7:00 p.m. and Saturday 7:00 a.m. to 5:00 p.m. Said activities are prohibited on Sunday."

Mr. Della-Monica seconded the motion.

**VOTE:** No further discussion being brought forward, Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

Ms. McGrath expressed thanks to the Board for the change.

## **XII. DESIGN REVIEW PHASE**

No **Design Review Phase** items were addressed this evening.

## **XIII. CONCEPTUAL REVIEW ONLY**

No **Old Business** items were addressed this evening.

## **XIV. NEW BUSINESS/PUBLIC HEARINGS**

### **A. Unicorn Industrial Park SP# 09-12**

**Map 170/Lot 038  
25 Constitutional Drive**

**Purpose of Plan: To show a proposed 10,000 ft<sup>2</sup> industrial building on 4.4± acres with the associated site and drainage improvements. Application Acceptance & Hearing.**

Chairman Russo read aloud the published notice, as repeated above.

Chairman Russo asked if this application were ready for Application Acceptance. Town Planner Cashell stated that, as he had reported, the Board had left off review of the plan back in 2009 because of ongoing litigation, and the plan was now back before the Board. He suggested that, rather than accept the application, the Board should first go back to the access issue, because there was no driveway coming off a Hudson public way, as the applicant was requesting access off an incomplete way that had been designated at one point in time in time as a future roadway but had never been completed. He said the applicant would like to use that right-of-way as the only means

of access to the developable portion of the property—adding that there were a lot of issues with this, as he had discussed in his staff report. He said the applicant's engineer was aware of his comments in the staff report and had agreed for this night's meeting to start the review so as to try to untangle this issue and possibly come to some resolution. He concluded by stating that he felt it would be best to resolve this access issue prior to accepting the application.

Mr. Tony Basso, of the firm of Keach-Nordstrom Associates, Inc., Bedford, New Hampshire, serving as the engineering representative of the applicant and owner, John Jamer, said he had hoped to give the Board his take on the access issue, and then the Board could decide on whether it was ready for acceptance. He said the situation was that they had a corner lot on Constitution Drive and Wall Street, with the overall park having been developed in the 1980s but then taken in taxes by the Town, which subsequently resold the development to Eric Nickerson, who completed Constitution Drive and sold all the lots, getting his bond reduced, but never completed Wall Street. He declared that that crap did not fly, saying this was why bonds existed. He said it was not his client's fault, saying Wall Street was there and was a paved road, dedicated to public servitude but not accepted. He stated that his client had legal frontage on that road, saying it was 30-feet wide paved, although not up to Town standards. He said he was not asking the Town to plow the road, saying his client was willing to plow it himself, and adding that the road did not benefit anyone else. He said Road Agent Kevin Burns had issued a two-part memo, with one part saying he would need some improvements if he took it but with the other part saying he would be happy with an agreement saying the applicant would take care of it himself. He said his client had rights to use that access and they were not asking the Town to take it, to maintain it, or to improve it. He said he believed the Town bore some responsibility, saying this never should have been not improved when the original plan was brought back in 1997 or 1998, as rules existed at that time to place bonds on these roads—adding that he had no idea how Mr. Nickerson had gotten away with that and did not have to build it. He said the rocks sitting on the roadway only served his client, as the other lot on Wall Street had good access on Constitution Drive. He said it was just a long driveway for his client, who was willing to take care of it and do what he had to do.

Referring to Town Planner Cashell's staff report, he noted that Mr. Cashell had said the Board could make this applicant make improvements to the road, saying that was true if they were asking for this to be public road, but they were not doing that and were not asking for public maintenance. He said they were willing to take care of the road themselves, unless the Town deemed it wanted the road for some reason, He said there would be no issue if the Town's maps did not say it was a public road, as it would just be a long driveway for his client, and that was all he was asking for. He pointed out that the Town's requirement was 24 feet of paved width for a driveway, saying the existing 30 feet were more than enough. He said he did not see this as an issue.

Chairman Russo opened the meeting for public input and comment, in favor of the application. No one coming forward, Chairman Russo asked if anyone wished to speak in opposition or to provide comments or questions concerning the application.

Mr. John Wolters, 1 Wall Street (Century Park), said he had been dealing with this party for some while on the proposed plan and had several concerns with it. He said the applicant ran a crane business, taking equipment off roads, adding that he had



pictures he could show to give the Board members an idea of how the business operated. He noted that there was a paper road connecting Hudson Park Drive over to Wall Street, noting that it showed on the plan, saying that he did not know if the setback was appropriate. He said he had issues with the use of Wall Street, which he controlled from the property line, saying it was certainly something that should be looked at as far as how the Town would want to address this matter—and whether this would mean opening it up to allow other people to do something similar on roadways that did not meet the Town's criteria. Noting that it had been said there was an agreement with him, he said that was not the case—saying that what had happened was that he had thought there was an agreement with this particular applicant, and he had therefore allowed the legal case that was pending at that time to expire, adding that he was very concerned with what was being proposed. He said he had office uses in his building, and this was a big industrial application being proposed, with outside operations, which was not conducive to this area, and it certainly would impact on the persons who would locate in his buildings. He stated that this was a big concern with the Life Is Good business, which had its headquarters building on the adjoining property—adding that he had worked extensively with this applicant to try to address their concerns and felt they had come to an agreement but that was not the case, so the Board was now again addressing a roadway that certainly did not meet the Town standards.

Mr. Wolters concluded by stating that he wanted to reserve the right to have Hudson Park Drive extending as shown on this plan, reiterating that he did not know if the setbacks were consistent with that, and he then repeated that he had pictures of an operation that he believed was connected with the applicant's business and which he believed would give the Board an idea of what was being proposed.

Chairman Russo asked if it were Mr. Walter's opinion that the Life Is Good headquarters and the old UPS building were in the Industrial zoning district. Mr. Wolters responded that it was all in the Industrial zoning district, adding that the concern he had was that part of the building was sitting on the lawn and would be visible when one came into the parking lot. Looking at the pictures he had provided, he continued, the Life Is Good people were concerned about what visitors from companies and stores associated with their products would see, saying he had tried to work with this applicant to create a buffer. He said he had the same issue with his other building (the old Centronics plant), saying he was currently working with a company that he was trying to get to relocate here, saying this was one of a short list of Massachusetts firms looking for a place for a large data center that would employ a large number of people as a corporate office, and this was an image issue. He said he also would love to rely on the tenants he had, but it was coming to an end. He said this issue would impact Hudson Park Drive, which he had talked about extending in the past, and he did not know how this development would dovetail into the process. Noting that the applicant was talking about using Town property as his driveway, Mr. Wolters expressed a hope that the Board members would take into consideration the implications of that.

Chairman Russo asked Mr. Basso to approach the projected aerial view of the area and to show the Board where Hudson Park Drive was and where the proposed building would be located. Mr. Basso did so, noting that some of Mr. Walter's pavement was in the Hudson Park drive right-of-way. Chairman Russo noted that some of the treed area would be removed; Mr. Basso expressed agreement. Mr. Basso then stated that he

had not wanted to get into that discussion but he had to, to some extent. He stated that Wall Street in its entirety was a public road all the way out, saying he had done all the research. He said it had not been accepted for maintenance but had been dedicated for public servitude, and that the only way to get rid of it, because it was dedicated on a certain plat during a certain time period, would be by action of the legislative body, meaning the Town had to vote to get rid of it, which had not happened. He then stated that Mr. Wolters was currently doing what he wanted to do—using a public road as a private driveway.

Addressing the issue of industrial uses, Mr. Basso then asked rhetorically where the best place was for industrial uses—and then asked if it should be in an industrial park. He noted that he did not propose to put this in a residential zoning district. Pointing at the nearby Concrete System property with its displayed outdoor equipment, he said this was a paving operation, adding that Brox Industries also was located in an Industrial zoning district with outside equipment, as was Continental Paving. He said they had tried to work with Mr. Wolters, saying they had gone through round after round of meetings in attempt to settle the court case of Mr. Wolters' appeal of the Town's decision, and they had even gotten to the point where they had said to the judge that a settlement was imminent, but they could never get the final "Yes" even after offering all kinds of stuff. He said the matter had not been dismissed, saying the judge had decided on the case, adding that there was supposed to be a settlement agreement but they could never get to it.

Chairman Russo asked if Mr. Basso were saying there had been a court decision. Mr. Basso responded that basically the zoning case was over, explaining that the zoning decisions (a Variance and a Wetland Special Exception to allow work in the wetlands buffer) had been appealed. Chairman Russo asked if the judge had agreed with that; Mr. Basso responded that they had thought they had a settlement, but that had ended up not to be the case—adding that they had met a thousand times, had offered building treatments, and had gone into the Life Is Good building and looked out the windows, putting up tall stakes to establish what would be seen, but they could never get there, and saying what it came down to was that Mr. Wolters wanted the property without buying it. He stated that this was an Industrial zone, declaring "Let's do what is allowed in an Industrial zone."

As far as Wall Street was concerned, Mr. Basso continued, it was the same on the other side, where Mr. Wolters was using it as a private driveway. He said Wall Street had been dedicated for public certitude on a plan that had been signed and recorded at the Hillsborough Country Registry of Deeds, and the only way to get rid of it was through an action of the legislative body. He said he was not looking to block anybody's rights, saying it was a public road but it was not maintained by the Town. He said the only distinction here was acceptance, saying acceptance did not mean that the Town accepted the road but accepted the maintenance of it. He said he was looking to use it, not to block it. Chairman Russo clarified that the applicant would maintain that portion he was using as a driveway; Mr. Basso expressed agreement, saying they were not proposing to remove Mr. Wolters' stones. Chairman Russo asked if there were stones; Mr. Basso responded in the affirmative, pointing to the location of the stones on the aerial view. Chairman Russo asked about the issue of emergency access; Mr. Basso said the Fire Department had looked at the plan and had no comment.

Chairman Russo offered Mr. Wolters an opportunity to add further comment. Mr. Wolters said he thought it would be helpful if Mr. Basso would be more accurate in the things he said, saying Mr. Basso should provide to the Planning Board and to Mr. Wolters all of his research on Wall street. He said he had hired legal counsel that had investigated the Wall Street history and what Mr. Basso had represented tonight was not what he had been told by his legal counsel. He stated that Mr. Basso's comment that they had met at least a thousand times was a ridiculous comment; he said they had met a few times, but what Mr. Basso was representing was not what had taken place, adding that his attorney had met with Mr. Basso's applicant, and that his understanding of what had taken place was very different from what Mr. Basso had represented. He said Mr. Basso had not been a party to the litigation and the Board should not rely on any comments he made about it. He said the Board should look at all of the facts, first, and not rely on comments made by anyone, including himself.

Chairman Russo asked if Mr. Wolters had facts in writing, from some sort of legal counsel, that refuted what Mr. Basso had been saying. Mr. Wolters said that what he could tell the Board was that the Wall Street issue was involved with his attorneys, noting that there had been various matters involving insurance companies and predecessor in title, saying he would be delighted to see Mr. Basso's work and have his own experts take a look at what Mr. Basso was representing to this Board, but that was a separate issue. He protested about Mr. Basso making comments about what went on on his property, saying this was a separate application.

Chairman Russo said his position was that if Mr. Basso had some information regarding the existence of this roadway, who it belonged to, and who was responsible for it for whatever purposes and uses, he was going to ask that Mr. Basso submit that so that the Board could have it reviewed by Town Counsel. If Mr. Wolters believed that what Mr. Basso was going to submit was not proper, he continued, he would ask Mr. Wolters to provide that same information, adding that he would submit that information to Town Counsel as well, so that they could review it and the Board could move forward regarding this roadway.

Mr. Wolters said he assumed that whatever was submitted to the Town would be public information, so he would have access to that information. Chairman Russo said he was not 100% certain about that at this point. Town Planner Cashell noted that Town Counsel would render back a legal opinion, that might or might not be public information. Chairman Russo said he did not want to submit a bunch of information to Town Counsel and then say there appeared to be an abutter who disagreed with this but who was not giving the Board any information. If Mr. Basso submitted information and Town Counsel said it made sense to him, he continued, than Mr. Wolters would have a responsibility to submit information that could be submitted to Town Counsel, so that the Board could move forward. He said he would like people to open up their cards on both sides of the table, adding that he was not expecting Mr. Wolters and Mr. Basso to open their cards to each other, and saying that was as fair as the Board could make this.

Mr. Wolters said he had not known they were here to talk about Wall Street, saying he thought they were here to talk about an application. He noted that hiring his counsel to get back involved in this matter was a cost to him—adding that he was not opposed to what Chairman Russo was asking for, but he was asking for the cooperation of the

applicant and the Town to share with him any information, saying his preference would be to look at that information. He then said he would talk to his attorneys.

Chairman Russo suggested getting a few comments from other member of the Board.

Mr. Della-Monica asked Mr. Wolters if he had withdrawn the court case or was it discharged by the judge. Mr. Wolters responded that his understanding was the parties had informed the judge that they were of the opinion that there was going to be a settlement and, when that did not happen by a certain date—adding that this was not as a result of his actions—it had gone beyond that time, and his attorney as well as himself felt that they had a strong enough good faith that things would work out, adding that he was very disappointed that that did not happen. Mr. Della-Monica said he was asking if that case was over. Mr. Wolters replied that his understanding was that that aspect of it was, adding that he did not know to what degree it could be reopened—adding that that was not the direction he preferred to go. He said he would like to work with this fellow, adding that he put a lot of time and effort working with his tenants in order to protect their businesses and operations—adding that there were 215 people at Life Is Good and the other applicant for the UPS space had 175 employees. He said this building would be about 10,000 ft<sup>2</sup> and he was concerned about the type of use, referring to his pictures, and he was concerned about the image it would create for these companies, as that was the first thing that they were concerned about. Mr. Della-Monica said he did not want to get into that, saying his question was what had happened to the court case and Mr. Wolters had said it was withdrawn. Mr. Wolters responded that his understanding was that it was not necessarily withdrawn but that it went beyond the timeframe, and he had not been advised that it would make sense to go back to the judge and say this was not going to get done.

Mr. Della-Monica said his understanding was that the Town had a record of the road and what the status of the road was, and that really should not be open to interpretation. He said the road was at some point in the process to acceptance for maintenance, and the Town Engineer or somebody should be able to tell the Board what its status was. Chairman Russo said his opinion was that the Board needed to put this forward to Town Counsel and have them give an explanation.

Mr. Hall said this thing had had a long history and plenty of lawyers had looked at it. He then asked if Mr. Wolters could give the “Reader’s Digest” version of what he thought the status was on Mr. Wolters’ side of the rocks versus what he thought the status on the other side of the rocks. Mr. Wolters responded that his understanding was that from Route 111 to where the stones were placed, which was where his property was, Wall Street had been improved, but the balance had not been improved. Mr. Hall asked if Mr. Wolters were saying that his side was a private road or a public road. Mr. Wolters’ response was unintelligible. Mr. Hall then stated that Mr. Wolters was saying that his side was a private road and had never been approved as a public road; Mr. Wolters said “Not to his knowledge.” Mr. Hall asked about the other side Mr. Wolters stated that he did not know about the other side. Mr. Hall asked what Mr. Wolters thought about the other side; Mr. Wolters replied that his understanding was that up to the stones was what he owned, stating that it was private—adding that he had a strong different opinion and it had not been taken lightly, that he had to go back ... Mr. Hall interrupted to state that Mr. Wolters was saying he owned it and that the

public had no interest in it. Mr. Wolters stated that was correct. Mr. Hall then asked if Mr. Wolters were saying he did not know about the other side; Mr. Wolters responded that he was not sure, saying that was not part of the property that he owned, but that he was representing to the Board his understanding of what he did own and what he had been told. Mr. Hall asked if Mr. Wolters knew of any reason why the applicant could not use it; Mr. Wolters responded that he guessed this was a decision that the Board had. Mr. Hall then said that, as far as Mr. Wolters was concerned, there was no reason that Mr. Wolters knew of that the applicant could not legally use that as a driveway or a road. Mr. Wolters replied that he had just learned of this matter and he did not know—adding that he would take all this back to his attorney and ask him, but he did not know.

Mr. Hall said there was a plan somewhere in the Registry of Deeds that showed this as a proposed road, adding that this also included Hudson Park Drive. He then stated that he thought he had heard Mr. Wolters say that he would like to see Hudson Park Drive completed, and he asked as what—as a private road or a public road? Mr. Wolters responded that over the years he had talked with the Town and the Town had actually talked to him to see what he could do to address what was going on in here and what was going on in the park—adding that they had had some discussions about extending Hudson Park Drive, and that that was something he would like to reserve for the future, adding that this was a work in process and he understood that it did not make economic sense to do it with the present economy being what it was, but he certainly would want to look at it in the future. Mr. Hall responded that he had been on the Planning Board for a long time, and he knew the Selectmen had tried for years to get that road connected, adding that there was no way to finish the piece that the applicant was thinking of using unless there was someplace that it went or that it had room for a turnaround—adding that the same thing was true for Hudson Park Drive, that it never would get completed unless it went some place. Mr. Wolters expressed agreement. For those to be connected, Mr. Hall continued, that would have to be a big scheme between all the property owners to create a public road, saying he did not think the Town would want to see development continue on private roads.

Mr. Hall then stated that this applicant had frontage on a public road and was only asking to use what was called Hudson Park Drive as a driveway—adding that he heard Mr. Wolters's objection because of the type of use but he was trying to figure out what objection Mr. Wolters had of the applicant using it as a driveway. Mr. Wolters stated that the applicant was not proposing to use Hudson Park Drive but was proposing to use Wall Street. Mr. Hall apologized for his misstatement, saying he had meant to say Wall Street. Mr. Wolters said his big issue was allowing that particular use—stating that this was the first he had heard about it, and he was processing it, himself, saying he had had literally 24 hours to digest it and it was new to him, and he would like to give it some thought and come back to the Board. He protested that there was now discussion about access to Wall Street and who owned it, which was a separate issue.

Chairman Russo noted that Mr. Wolters had just said he did not know about this. Mr. Wolters responded that he had not known about the applicant using Wall Street as a driveway. Chairman Russo pointed out that the Board had plans in front of it that Mr. Wolters had had access to. Mr. Wolters said he had not understood that this was not Town approved or maintained, saying this was the first he had learned about it.

Selectman Maddox said he knew, having also sat on the Planning Board for a long time, that this had been up and down a number of times, adding that the Selectmen had met a number of times, as the intent had been to have all this industrial park use not go over to Clement Road but rather to have it go out Hudson Park Road, adding that there had been talk about signaling that intersection, but it had gone absolutely nowhere. Selectman Maddox then asked what class of road Mr. Basso believed Wall Street to be from Constitution Drive to the rocks. Mr. Basso said he thought it was Class VI, saying it was dedicated but not accepted. Selectman Maddox then stated that Mr. Basso did not have frontage on a Class V road; Mr. Basso demurred, saying he had frontage on a Class V road. Selectman Maddox said the Board had already done the illusionary frontage deal a number of times. Mr. Basso said he had a memo from Atty. Westgate, who could not be present this evening; he said these lots were created prior to the change in the ordinance where the frontage had to provide access, so this was a grandfathered lot, created in the 1980s. He then read aloud from Atty. Westgate's memo, saying Lot 18-9 had frontage on Constitution Drive as a Class V road or better, irrespective of the status of the southerly portion of Wall Street, as the provision that frontage must provide access had not been added to the Zoning Ordinance until February 13, 2001, and this plan predated that. He said they were not trying to create a new lot but had a lot of record. He acknowledged that he wanted to provide access off an unmaintained road but noted that he was not asking the Town to maintain it. He agreed that he would not be allowed to do that if he were creating a new lot today, without a variance, but this was a grandfathered lot of record that existed before that zoning amendment, and he was providing access the only way he could, as he did not want to cross the big wetland from the Class V road. He pointed out that Hudson Park Drive and Wall Street had been dedicated on a series of plans (HCRD 8685, 6932, 5409, 4680, 4479, 4231, 4261, and 4056, as well as 3952, 3616, 22383, and 3072). He said that the bottom line was that roads that were dedicated to public servitude by being plotted on a subdivision plan after July 16, 1969, are not automatically released from discharge of public servitude, but rather would only be released from discharge by the vote of the governing body. He said Wall Street had been laid out a million times in different ways, but the bottom line was that it was dedicated after 1969, so it could not be disposed of, and there was no record, going through the Town warrants, that the Town ever got rid of it. As far as the use of the driveway went, he continued, it had nothing to do with their access from Class V frontage and they were not creating a lot.

Selectman Maddox asked if Mr. Hall could help, saying he knew that, when this came through and the Town sold the property once again, there had been a number of changes made to the configuration, saying he thought several of the lots had changed. Mr. Hall said the lot lines on Constitution Drive changed, but this portion of Wall Street had been there—adding that he did not recollect anything about this particular lot but he did not think it mattered, as it was on an approved plat and he thought Mr. Basso was right. Mr. Hall then stated that he thought the whole problem stemmed from the Town not wanting to spend money, saying the Town could have built the road and fixed it up to Wall Street and been done with it, but the Town had never taken a position to spend money on it, as the Town wanted somebody else to do it. He then stated that the problem was that at the time the building permit was allowed, no one had made sure that the road was built before he got a building permit. He said it would end up with the same argument: who was going to spend the money to build the road to Town

standards? He then asked if it would be right to hold this applicant up for that decision, adding that there been a lot of rationale to use Wall Street for access to the industrial park instead of Clement Road, but no one had seen fit to spend the money to do it.

Selectman Maddox said he thought the applicant was before the wrong board, saying he felt they had to come to the Board of Selectmen if it already was a Town road. He then questioned how the Board could allow this to be a Town road but not a Town road, adding that he could not see the Town wanting to spend X amount of dollars so that this applicant could have a driveway. Mr. Basso said they were not asking the Town to do that, saying they were going to maintain it and had a right to use it, as it was a dedicated road and they had the right to use it—adding that whether the Town decided to maintain it or not was the only issue at hand. He said they were going to maintain it themselves and would not restrict the public's right and would themselves plow the 35-foot-wide road for their driveway, saying they were the public in this case and had the right to use that road. He said maintenance was the acceptance issue, saying the Town would be welcome to maintain it if it wanted but they did not need it, as they were willing to take care of the road in the meantime until the Town decided whether it wanted to. As far as the rights to the public, he contended, they already had that, as it was dedicated for this use, and there was no decision to be made as to whether they had a right to use it, as it was a public road. He said the question was whether the Selectmen wanted to take it over or not—and he then questioned why they would want to, to serve one lot, but added that the Town might want to in order to connect it through to Route 111. He reiterated that they were not asking for anything they did not have the right to, as they had the right to use the public road like anyone had the right to—adding that Atty. Westgate had had to look at this extensively.

Mr. Ulery noted that there were two conflicting arguments—one saying it was a private road (adding that the map said it was a private road, but also indicating that some of the proper lines had title unclear) and there was someone who claimed he owned it. He said the Town through no action could prevent the owner of property from utilizing his or her property. He stated that this was an industrial park zone, so anyone that was allowed in an industrial park was allowed, but it came down to the road, and he would suggest that talking about it did not do a darned bit of good until the Board had an analysis of what that road was, as the chairman had said earlier—adding that it would behoove both parties to submit to Town Counsel as quickly as possible their arguments, and it might then be necessary for the Board to meet in executive session to discuss the analysis by Town Counsel.

Mr. Basso said he would disagree only in that he had done research on Wall Street, looking at several plats, and that piece definitely was a public road. He said he had no interest in going through and that he was not proposing that the rocks be removed, so whether he was right or wrong did not really matter. He said he did not think that Mr. Wolters was refuting that the southerly piece was public. Chairman Russo demurred, saying that Mr. Wolters had clearly stated that he did not know what it was. Mr. Basso said those were recent plans and there was no doubt from anybody's perspective that it was public. Chairman Russo said the only issue he had was that Mr. Basso was going to use the public road as his own personal driveway, but typically there were expectations as to public services that the Town provides that could be inhibited through inaction by the owner of the property if the road was not maintained. Mr. Basso questioned how. Chairman Russo mentioned "fire," and Mr. Basso said this was

the burden of any driveway. Chairman Russo responded that the argument was that it was not their driveway. Mr. Basso said they were willing to put in an agreement stating that they would take care of it, saying the understood that there was a maintenance responsibility, and adding that Road Agent Burns had asked for and they were in agreement that they would put on record that they would maintain this driveway. Chairman Russo said that was one of the issues, and the Board would like that agreement to be presented to Town Counsel and get it out of the way so that the Board could move forward. Mr. Basso said he agreed but he did not think that had an impact on application acceptance, but they were willing to provide it prior to approval, for sure.

Mr. Della-Monica asked for Mr. Wolters' opinion as to whether, if it were clear that this property would never be for sale and that they were going to put on the property a two-story office building designed by I. M. Pei, that would be visually stunning, would he have any objection as to anything other than what the intended use of the property was. Mr. Wolters responded that he thought an office use obviously would be more appealing—adding that he had tried to work with this particular applicant and he had thought they had an understanding, but obviously that was not the case. Chairman Russo asked Mr. Wolters to answer Mr. Della-Monica's question directly, saying the answer was "Yes" or "No." Mr. Wolters responded that it would not be as much of an issue to him, with respect to that particular use—adding that he would still reserve his comments with respect to the application. He then acknowledged that the use would be more attractive. Mr. Della-Monica stated that Mr. Wolters's objection was to the use rather than to any other periphery that the Board had been talking about. Mr. Wolters responded that that was the primary concern that he had.

Mr. Barnes said he could not pretend to understand what was going on between the two abutters, but he guessed he did have the answer to a question he had been going to ask, which would be why did they not move the boulders a bit south beyond the proposed driveway, so the applicant's site would have access from Wall Street. He then expressed agreement that the Board needed to find out from Town Counsel if whether what the applicant was proposing, to have access across this unaccepted road and using it as a driveway, was acceptable from a legal perspective. Chairman Russo said he would agree, saying this was why he would like to stop this discussion and get a motion for that and then move forward.

Selectman Maddox said he would like to do some research, as well, because this park, as it was originally approved for the first round did not have granite curbs, but they had done granite curbs on Constitution Drive as part of the last approved plan—adding that he was trying to figure out why Wall Street did not, and that he vaguely remembered that there had been some discussion about that at the Planning Board level. Mr. Hall said it had been because without a circle it would be useless to do that on that piece of road, and the hope had been that Wall Street would be opened all the way to Route 111 and not use Clement Road, but it never happened. He said he recalled that Selectman Ann Seabury had talked endlessly about that, but he could only guess that it had been a matter of money and how much it was going to cost to bring that road up to Town standards. Without knowing the road was going to go all the way to Route 111, he added, there was no point in doing anything with the road. Mr. Hall then expressed a belief that, if the Town told the applicant he could not use Wall Street, he would have the right to build a road across the wetlands, as otherwise it would be a



taking. He then expressed a belief that the most sensible thing would be to let the applicant use it as a driveway.

Selectman Maddox said he did not terribly disagree, adding that this was probably the time to have a cul-de-sac or some turnaround put in there, remove the rocks, and put in a locked gate. Mr. Hall expressed doubt that anybody would want to do that, because the right way to do this was that that road should be connected to Route 111, adding that it did not make sense to have to live just with Clement Road forever, and he then questioned who was going to spend the money to make a cul-de-sac circle there. Mr. Hall said the question was whether there was a legal reason why the applicant could not use that roadway as a driveway, saying this was the question the Board should be asking the Town Attorney, and adding that the Board of Selectmen also could weigh in.

Mr. Basso referenced the Ed Herbert plans that had been put together when Nickerson purchased the property, saying it showed the area as the building site, where they were proposing to do it, and the only way to access it was this driveway.

Ms. McGrath said she agreed that the Board should get a legal opinion before the application was accepted. She then stated that she recalled that, as Mr. Hall had said, when Ann Seabury was on the Board of Selectmen there had been discussion about using this as the access to Constitution Drive, adding that she would suspect there would be something in the Board of Selectmen minutes from that time period.

Town Planner Cashell said this property had been conveyed from the NEXT Development to Mr. Jamer in 2004. Referring to a copy of the deed in the handouts, he noted the reference to a "right to pass and repass over 50-foot roadway depicted on said plan as Constitution Drive"—noting that the conveyance deed did not make any mention about Wall Street. He said there was a lot of history that was now "totally discombobulated," saying that Constitution Drive was supposed to have sidewalks and curbing, but it moved forward and was accepted as a public way. During the completion period in 2004/2005, he continued, Wall Street had been deliberately left off the agenda of acceptance and further construction, but he did not know the particulars of that. He then referenced the Development Agreement for the subdivision, noting that it made lots of reference to Wall Street and its bonding, stating that it was to be completed as part of this subdivision, but that had not happened. He displayed a 2004 photograph, noting that the pavement was almost brand new when that photograph was taken, and was substantially completed at that time, but since then had deteriorated. He said there were some legal problems, but Wall Street had been pretty much abandoned, so there probably would have to be a lot of testimony if Town Counsel was going to try to get his arms around this and figure out what happened in that timeframe. He then concluded by stating that what was being depicted to the Board tonight was not the entire story, but only a part.

Mr. Hall said he had no intention of asking the Town Attorney to do a million dollars' worth of research; he said the question was simple: "Can we allow the applicant to use this road as a driveway?" What the Board did with that information would be another thing, he added, but the question was whether there was any legal reason why the Board could not allow him to use it as a driveway.

Mr. Della-Monica said Town Counsel needed to tell the Board first whether it was public or private—and second, if it was public, was there anything to prevent the public from using an unaccepted road, adding that this would apply to *all* unaccepted roads. Third, he continued, Town Counsel should say whether there was any legal means for entering into an agreement between the Town and a private abutter to maintain the road.

Mr. Ulery said a question to add to that, as Mr. Cashell had brought up, was that, if the road was at one time used in the approved plans but has been essentially abandoned ... saying this brought in an entirely different picture as to whether this was just paved-over land or a road. If it had been abandoned, he argued, it was a driveway; if it had not been abandoned ....

Mr. Della-Monica moved that the Planning Board ask Town Counsel the following questions:

- (1) Is the section of Wall Street south of Hudson Park Drive public or private?
- (2) If it is public, is there anything that would prohibit anyone from the public from using an unaccepted road such as Wall Street south of Hudson Park Drive (between Hudson Park Drive and Constitution Drive)?
- (3) Is there a legal means of entering into an agreement between the Town and a private abutter for the abutter to maintain the road?

Mr. Barnes seconded the motion.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Chairman Russo said he was now looking for deferral. Town Planner Cashell suggested a deferral date of March 27<sup>th</sup>.

Mr. Della-Monica so moved; Mr. Barnes seconded the motion.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Chairman Russo declared a break, calling the meeting back to order at 9:04 p.m.

**B. New England Solid Surfaces  
SP# 10-12**

**Map 161/Lot 044  
Industrial Drive**

**Purpose of plan: To propose a 3,000-ft<sup>2</sup> light industrial building with 1,000 ft<sup>2</sup> of ancillary office space and 2,000 ft<sup>2</sup> of storage space with a second story.  
Application Acceptance & Hearing.**

Chairman Russo read aloud the published notice, as repeated above.

Town Planner Cashell said this application was ready for Application Acceptance.

Mr. Hall moved to grant Application Acceptance; Mr. Barnes seconded the motion.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

Chairman Russo asked if Town Planner Cashell had anything to add to his staff report. Mr. Cashell responded in the negative.

Mr. Tony Basso, of the firm of Keach-Nordstrom Associates, Inc., Bedford, New Hampshire, serving as the engineering representative of the applicant, appeared before the Board.

Mr. Hall called for a point of order, saying it would be helpful if the Board had a copy of the plan it had approved before. Mr. Basso provided a reduced-size copy. Mr. Hall asked Town Planner Cashell to get a large-size copy of the plan from the office, so that the Board could see them side-by-side.

Mr. Basso noted that he was accompanied by Mr. Daniel Preston, from New England Solid Surfaces. He reviewed details on the displayed plan affixed to the meeting-room wall, noting it was last before this Board on October 2, 2012. He explained that Mr. Preston had encountered quite a bit of ledge in doing the site work and had decided to reconsider the size of the building, reducing the approved 5,000 ft<sup>2</sup> footprint to 3,000 ft<sup>2</sup> and adding a full second level. He said it was a major change but really was an amendment to the approval. He said he would leave it up to the Board as to whether all the same waivers needed to be approved again.

Chairman Russo opened the meeting for public input and comment, in favor of the application. No one coming forward, Chairman Russo asked if anyone wished to speak in opposition or to provide comments or questions concerning the application. No one coming forward, again, Chairman Russo asked if any members of the Board had any questions.

Ms. McGrath expressed a belief that there ought to be a standard template to be used for the notes, such as refuse removal (Note 13) and construction activity (Note 14), so that the notes would be consistent with respect to hours and days. She then noted that the misspelled word "ancillary" needed to be corrected.

Selectman Maddox noted that this plan had been discussed at length when the site was previously before the Board, noting that this was an industrial site surrounded by industrial sites, so the hours might be different. Chairman Russo expressed agreement. Ms. McGrath said she could see their point but, as someone who had been awakened at 3:00 a.m. for trash pickup for the industrial property in her neighborhood, she could tell them that the noise of trash bins being banged on the top of trucks and on the ground carried for a very long distance. She said she felt the hour should be reasonable. Mr. van der Veen said he would have to agree, noting that he heard trash pickups half a mile away from his house.

Mr. Della-Monica stated that restaurants opening at 6:00 a.m. would want to get deliveries before 6:00 a.m. He contended that what happened would be site specific. He then pointed out that he could hear Hudson Speedway, which was 6.2 miles away from his home, if the conditions were right

Town Planner Cashell returned to the meeting room with the large-size approved plan, which was displayed on the wall, and Mr. Basso then discussed details of the changes between the old and new plans, noting the reductions from what the Board had seen before.

Selectman Maddox asked about the loading dock; Mr. Basso noted the different location. Selectman Maddox asked about the previously expressed intent to store the received materials in the building. Mr. Daniel Preston, the owner, said not all of the material would be going into the reduced space. Selectman Maddox asked if the trailers were now expected to stay; Mr. Preston responded in the affirmative.

Mr. Della-Monica asked for a description of the changes to the landscaping plan, noting there was now more space, and he asked if things had been added or just shifted. Mr. Basso said he doubted that anything had been added, but things had been shifted around because of the different configuration.

Selectman Maddox asked if the storage units (trailers) would be staying at the only two loading docks for the building. Mr. Preston said nothing moved, saying they were just storage containers. Mr. Basso noted there were two other loading spaces at the front.

Mr. Barnes noted that the retaining wall had been moved away from the underground utility lines, meaning there was less possibility of problems.

Town Planner Cashell noted that the original plan had not been recorded, adding that no development agreement had been executed.

Chairman Russo said the waivers would be reapproved.

Mr. Barnes moved to grant the requested waiver from the requirements of HTC 275-8.B.31.(a), *Interior Landscaping*, citing the reasons for granting this waiver as being because the Site Plan depicted a substantial green area associated with the perimeter of the site, and the waiver involved only  $90\pm ft^2$  less green space than required, together with the fact that the proposed onsite landscaping was in scale and in character with that of the abutting properties--and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan regulations.

Mr. Della-Monica seconded the motion.

Mr. Della-Monica questioned whether, instead of re-voting on the waivers, the notes on the plan could be amended to say "amended site plan." Selectman Maddox noted that the original plan had not been recorded.

Chairman Russo asked about the difference in square footage. Town Planner Cashell said it had been 98 ft<sup>2</sup> on the original plan.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

Mr. Barnes moved to grant the requested waiver from the requirements of HTC 275-9B, *Traffic Study*, citing the reason for granting this waiver as being because this

project was expected to create minimal traffic increase within the affected roadway system—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan regulations.

Mr. Della-Monica seconded the motion.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Mr. Barnes moved to grant the requested waiver from the requirements of HTC 275-9C, *Noise Study*, citing the reason for granting this waiver as being because such a study was unnecessary, taking into consideration that the proposed use was not expected to create noise levels that would violate Town noise ordinances—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan regulations.

Mr. Della-Monica seconded the motion.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Mr. Barnes moved to grant the requested waiver from the requirements of HTC 275-9 D, *Fiscal Impact Study*, citing the reason for granting this waiver as being because the said study, in addition to the subject CAP fee and other submitted application materials, was not necessary to evaluate the fiscal impact of this development—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan regulations.

Mr. Della-Monica seconded the motion.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Mr. Malley moved to approve the Site Plan entitled ***N.E. Solid Surfaces Map 161; Lot 044, 7 Industrial Drive, Hudson, NH***, prepared by Keach-Nordstrom Associates, Inc., dated: March 26, 2012, with a last revised date of February 15, 2013, consisting of Sheets 1 through 13 and Notes 1 through 29, in accordance with the following terms and conditions:

1. All stipulations of approval shall be incorporated into the Development Agreement, which shall be recorded at the Hillsborough Country Registry of Deeds, together with the Site Plan-of-Record (hereafter referred to as the Plan).
2. The utility and cross-access easement deeds, which are currently pending, shall be favorably recommended on by Town Counsel prior to the Planning Board endorsing the Plan, after which said deeds shall be recorded at the

Hillsborough Country Registry of Deeds, together with the Plan and Development Agreement.

3. After the issuance of a foundation permit for the new 3,000-ft<sup>2</sup> building, and prior to the issuance of a framing permit, the applicant shall submit to the Hudson Community Development Department a foundation "As-Built" plan on a transparency and to the same scale as the approved site plan. The foundation "As-Built" plan shall include all structural dimensions and lot-line setback measurements to the foundation and be stamped by a licensed land surveyor. Any discrepancy between the approved site plan and foundation "As-Built" plan shall be documented by the applicant and be part of the foundation "As-Built" submission.
4. Prior to the issuance of a final Certification of Occupancy, an LLS-certified "As Built" Site Plan shall be provided to the Town of Hudson Community Development Department, confirming that the site conforms with the Planning Board approved Plan.
5. Onsite landscaping shall be provided for in accordance with the plant and tree species specified on Sheet 3 of 13 of the Plan.
6. Construction activities involving the subject lot shall be limited to the hours between 7:00 a.m. and 7:00 p.m., Monday through Saturday. No construction activities shall occur on Sunday.
7. Refuse removal shall be limited to Monday through Friday. 8:00 a.m. to 6:00 p.m. & Saturday. 8:00 a.m. to 5:00 p.m.
8. Prior to Planning Board endorsement of the plan, it shall be subject to final engineering review.
9. The calculated CAP fee of \$2,880.00, prepared in accordance with the 2012 CAP Matrix, shall be submitted to the Town prior to the issuance of the Certificate of Occupancy.

Mr. Barnes seconded the motion.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7-0).

**C. Boyer IV Subdivision Plan  
SB# 01-13**

**Map 199/Lots 9, 11-13  
Granite Hill Road**

**Purpose of plan: To relocate lot lines between lots 9, 11, 12, & 13 and to subdivide the new lot 11 into two lots. Application Acceptance & Hearing.**

Chairman Russo read aloud the published notice, as repeated above.

Town Planner Cashell stated that the application was ready for Application Acceptance.

Mr. Richard Maynard, Professional Engineer, of Maynard & Paquette Engineering Associates, LLC, appeared before the Board as the representative of the applicants, Boyer Trust and Robert Dumont. He noted that he had posted a copy of the plan on the meeting-room wall, identifying it as **Subdivision Plan, Tax Map 199/Lots 9, 11, 12,**

**&13, Boyer Subdivision IV, Granite Hill Road;** dated January 15, 2012, with no revisions. He said the plan was to create a building lot by combining the triangular strip of land with the land behind it, on Pelham Road, to create a legal building lot, with two lot-line readjustments to create the appropriate frontage. He noted that there were wetlands to the rear but the Hall Chart on the plan showed that every lot was legal.

Chairman Russo opened the meeting for public input and comment, in favor of the application. No one coming forward, Chairman Russo asked if anyone wished to speak in opposition or to provide comments or questions concerning the application. No one coming forward, again, Chairman Russo asked if any members of the Board had any questions.

Mr. Barnes noted that the subdivision plan did not have any topo information on it, and he questioned if the new lot had sufficient space for a driveway without it being overly steep. Mr. Maynard said the land only rose two or three feet in the middle and then dropped off, adding that the whole subdivision was reasonably gentle.

Chairman Russo noted that the existing houses in this subdivision were duplexes, and he asked if that would be consistent with this lot. Mr. Maynard said it was likely.

Selectman Maddox commented that Notes 14 and 15 were a little “fuzzy.” Chairman Russo agreed, saying the CAP fees should be designated “per residence” instead of “per resident.” Mr. Maynard suggested it say “per unit” instead. Mr. Della-Monica noted that the staff report said “per residential unit.” Mr. Maynard said he always changed the notes to correspond with what was stated from the staff report.

Mr. Maynard noted he was requesting two small waivers, for traffic study and fiscal impact.

Mr. Della-Monica noted that the application had not yet been accepted. Mr. Malley moved to grant Application Acceptance; Mr. Hall seconded the motion.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Mr. Della-Monica moved to grant the requested waiver from the requirements of HTC 289-6 (D), *Traffic Study*, citing the reason for granting the waiver as being because the traffic volume associated with this project was not expected to impact the associated roadway network—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan regulations.

Mr. Barnes seconded the motion.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Mr. Della-Monica moved to grant the requested waiver from the requirements of HTC 289-6 (D), *Fiscal Impact Study*, citing the reason for granting this waiver as being because the said study, in addition to the submitted plans, CAP fee provisions and

other submitted application materials, was not necessary in order to evaluate the fiscal impact of this development—and, as such, the granting of this waiver was not contrary to the spirit and intent of the Site Plan regulations.

Mr. Barnes seconded the motion.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).

Mr. Barnes, noting that he was slightly changing the title of the plan from the draft motion in order to match the plan, moved to approve the subdivision plan entitled **Boyer Subdivision IV, Granite Hill Road, Hudson, NH**, prepared by Maynard & Paquette, Engineering Associates, LLC, dated Jan. 15, 2013 (no revision date), consisting of Sheet 1 of 1 and Notes 1 through 16, in accordance with the following terms and conditions:

1. All stipulations of approval shall be incorporated into the Decision of Approval, which shall be recorded at the Hillsborough County Registry of Deeds together with the Plan.
2. A cost allocation procedure (CAP) amount of \$1,054.69 per residential unit shall be paid prior to the issuance of a Certificate of Occupancy.
3. A public school impact fee in the amount of \$3,578.00 per residential unit shall be paid prior to the issuance of a Certificate of Occupancy.
4. A recreation contribution in the amount of \$400.00 per residential unit shall be paid prior to the issuance of a Certificate of Occupancy.
5. All monumentation shall be set or bonded for prior to the Planning Board endorsing the Plan-of-Record.
6. Approval of this plan shall be subject to final engineering review.
7. Prior to the Planning Board endorsement of the Plan, each old lot line shall include the following citation: “Old Lot Line (Typical).”
8. Prior to Planning Board endorsement of the Plan, New Lot: Map 199/Lot 11 shall be depicted on the Plan as Map 199/Lot 011/Sub-Lot 001, and all of the other lots shown on the Plan shall also be depicted in the required plan designation format.

Mr. Della-Monica seconded the motion.

Selectman Maddox questioned the text pertaining to the purpose. Mr. Maynard said it was to relocate lot lines. Selectman Maddox said the plan said Lot 11; Mr. Maynard concurred, saying stating Lot 9 would be better.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members voted in favor, and Chairman Russo declared the motion to have carried unanimously (7–0).



**XI. OLD BUSINESS/PUBLIC HEARINGS**

**A. RPNT Properties Subdivision  
SB# 06-12**

**Map 182/Lot 056  
36 Central Street**

**Purpose of plan: To subdivide one residential parcel into three residential parcels. Hearing. Deferred Date Specific from the 01-09-13 Planning Board Meeting.**

Chairman Russo read aloud the published notice, as repeated above.

Town Planner Cashell said he had nothing to add to his staff report. Chairman Russo referenced a memo received from Town Engineer Colburn. Town Planner Cashell explained that Town Engineer Colburn had confirmed that the drainage information submitted by the applicant was sufficient.

Mr. Scott R. Frankiewicz, LLS, from Brown Engineering and Surveying and Engineering,, representing the applicant, noted that this matter had been continued to this meeting because there had been a zoning variance request going on simultaneously—adding that the variance request had been denied, so they were now back with the original application, as submitted in October 2012.

Chairman Russo at this point recalled that he had stepped down from this matter at the 01-09-13 hearing to avoid a possible perception of conflict of interest and he announced that he would step down, turning the gavel over to Vice-Chairman Gorge Hall.

Acting Chairman Hall seated Ms. McGrath in place of Mr. Russo.

Town Planner Cashell confirmed that the application had been accepted at the 01-09-13 meeting.

Mr. Frankiewicz said the plan had gone through staff review and the Town Engineer's review, saying all issues pending with them had been cleaned up. He said there would be 550 ft<sup>2</sup> additional impervious surface as a result of the construction of the housing and driveways, adding that the Town Engineer had signed off on the drainage calculations.

Acting Chairman Hall opened the meeting for public input and comment, in favor of the application. No one coming forward, he then opened the meeting for public input in opposition to the application or with comment or questions.

Mr. Richard Maynard, Professional Engineer, of Maynard & Paquette Engineering Associates, LLC., appeared before the Board as the representative of an abutter, who had concerns about the proposed project.

Acting Chairman Hall recalled that Mr. Maynard had previously expressed concern about the pavement; he then noted that Mr. Maynard's client's pavement was actually over the property line. Mr. Maynard said he did not believe so. Acting Chairman Hall said it was on the line, then, if nothing else. Mr. Maynard contended that this had been waived by the Board. Acting Chairman Hall asked Mr. Maynard to acknowledge that

his client's pavement was either on the property line or over it; Mr. Maynard indicted agreement.

Mr. Barnes expressed concern about proposed Lot 2, stating that the proposed building envelope was very shallow, with no room for extension, such that someone who put a house on this lot then would have to get a zoning variance in order to put in a deck. He said the overall parcel was big enough to create three rectangular lots except that there was a house already there. He then asked Town Planner Cashell to display the tax map and pointed out that most of the lots in the area were fairly rectangular and did provide a good building envelope, but dividing this lot into three particular pieces as proposed did not allow Lot 2 to have a reasonable building envelope, so it did not fit with the character of the neighborhood. He noted that the rendering for a house that could fit on that lot had been something that was three stories tall, commenting that it would be similar to taking one of the Shepherd's Hill units and plunking it into the TR zoning district. He said it just did not fit the neighborhood. He then referenced the Google aerial view, saying most of the other houses in the neighborhood were in accordance with a regular grid pattern, but Lot 2 did not work. He pointed out that Lot 3, in contrast, did have a rectangular shape and provided space for extension. He then concluded by stating that he would have to oppose this proposal.

Ms. McGrath stated that she was in complete agreement with Mr. Barnes.

Mr. Della-Monica said it would make for a rather strange looking group of three buildings, with two that fit the neighborhood but one "sourish" in the middle.

Atty. J. Bradford Westgate, of the firm of Winer & Bennett, 111 Concord Street, Nashua, NH, legal representative for the applicant, expressed appreciation for the Board's having deferred this item to the end of the agenda in order to give him time to get here. He stated that the issues that Mr. Barnes had noted were similar to what Mr. Maynard had noted in his 02-20-13 letter, saying he felt they deserved a little more scrutiny in the context of the regulations. He said the three lots, as subdivided, obviously met the dimensional criteria of the TR district, so the question came down to saying the lots did not meet the criteria of the TR district because Lot 2, specifically, was going to lend itself to a house that did not necessarily meet the character of the district. He said the subdivision regulations did not speak to that concept. He said it was worth looking at the Zoning Ordinance provisions to decide whether this issue was really to be analyzed at the subdivision level, as opposed to a different level. He noted that Mr. Maynard's letter cited HTC 334-16 C and 334-18. He then observed that HTC 334-16 regulated the issuance of building permits, giving directions to the Building Inspector, and 334-16 C talked about conditions of issuance. He read that section aloud, stating that no permit would be issued unless the structure represented a reasonable appearance, in keeping with the neighborhood—adding that this concept was in the Zoning Ordinance but was not in the building regulations and was not a component of analysis of a subdivision, especially of a three-lot subdivision plan that met the dimensional criteria. He said there was a safeguard, at the Building Permit stage, adding that it would be logical for the plan to be analyzed at that stage, as well, because it would be at that stage that the full-blown plan would be presented to a Town official, and he could make that judgment, based on this provision. But to theorize about it at the subdivision stage was not the best place to do it, he argued, because it would be working from a vacuum of information.

HTC 334-18, he continued, was the one that described what the Town-Residential District was. He then read that passage aloud, saying its focus was to tell what the TR district was, defining the district in the context of the lots, not in the context of the houses that were going to be built there. He suggested that the concern about this lot's configuration in the context of the character of the neighborhood idea was not the appropriate inquiry, reiterating that that inquiry would be at the building permit level for the very house that was designed. The inquiry before the Board, he said, was whether the layout of the lots in the proposed subdivision met the dimensional requirements and whether the rest of the plan was commensurate with what the Zoning Ordinance required.

Atty. Westgate then pointed out that the aerial view showed that there were other lots in the neighborhood that were under 10,000 ft<sup>2</sup>, so this plan was not creating an undersized lot. He said the percentage of impervious surface pertaining to the two unbuilt lots was relatively modest, given the lot sizes. He then distributed photographs of other houses in the immediate area, noting that the Dionne property owned by Mr. Maynard's client was a six-unit commercial structure, so the notion that the residential homes of this proposed subdivision were out of character with the neighborhood density was not a likely conclusion. He said his clients and Mr. Maynard had discussed the pavement, saying there was an understanding about cutting back some of that, which had been mutually acceptable. He then concluded by saying that the notes on the plan with respect to CAP fees and Certification of Occupancy applied to the two new lots, noting that the existing two-family building would be converted to a one-family building when the other two lots were developed, so the net increase in units was only one, so the only impact fees to be imposed should be on the last of the three, which he said was the logical time for the impact fees to be assessed, and he suggested that the conditions of approval in the draft motion should be reworded in accordance with those notes.

Ms. McGrath asked if the existing building on the property would be modified in any way. Atty. Westgate said the interior would have to be changed to make it a single-family home but the exterior would not change, and the size would stay the same. Ms. McGrath asked what its size was. Mr. Frankiewicz said he did not have the figures on that, but it was about 2800 ft<sup>2</sup> on the first floor, adding an unintelligible comment about the second floor.

Ms. McGrath asked Town Planner Cashell if the Town Engineer had looked at the driveway location shown for Lot 2, to determine if that was a safe location, noting that this was a very busy intersection. Mr. Cashell said one of the driveways was existing. Ms. McGrath agreed but noted that a new residential lot was being created, adding that this had been an issue at the Zoning Board of Adjustment meeting. She said there were safety issues with that driveway location. Mr. Cashell said he was just looking in his staff report at the plan in a technical format—that the minimum lot sizes were met, and that the proposed uses were allowed in the TR zoning district. He said no one except a developer would want to do anything like this, saying it was aesthetically unappealing and that squeezing in a third lot on the corner was overdoing it, in anybody's reasonable opinion—but technically, they met the minimum requirements. He said it would be better to leave the duplex as it was and just have the second lot, suggesting this could have been done by the Zoning Board of Adjustment.

Acting Chairman Hall said this did not answer Ms. McGrath's question about the driveway. Town Planner Cashell said the driveway existed. Ms. McGrath said her question was whether the Town Engineer had looked at this. Mr. Cashell responded in the affirmative, saying it was a busy driveway but there was no question about the sight distance. Ms. McGrath said she felt there was a safety issue. Mr. Cashell said any driveway in that area was not safe if the driver were not paying attention. Ms. McGrath expressed agreement; she then noted that the Zoning Board of Adjustment was not in a position to horse-trade with anyone, but had to make decisions based on set criteria. Mr. Cashell said one way to interpret the Zoning Ordinance was that this particular site should maintain as much integrity as possible, because this little house on this ridiculous lot was going to look like a sore thumb, in his opinion. Ms. McGrath said anyone with integrity would look at this plan and say it did not make sense, saying anyone using that property would be hurting themselves and hurting others. She said the adjoining house was one of the nicest looking buildings on Central Street, but what was being proposed would not be adding good character.

Mr. Della-Monica said the Planning Board also kind of worked with set criteria, which the plan met. He said it had been pointed out that there was another safeguard, in that the Planning Board might approve a lot but there might be objections at the time of requesting a building permit so that they could not get one if they could not do anything that was in character with the neighborhood, so that they might wind up with nothing more than a workman's cottage there, but they were taking that risk. He said he agreed it would not be in character with the neighborhood to put a three-story building there.

Atty. Westgate, saying the devil always needed an advocate, said two attempts were made for the zoning approach to this property—the denied variance to allow the chiropractic business, which would have meant two lots, and a previous request to be allowed to keep the duplex on a conforming lot, so the result was to propose three single-family lots, because that was what the regulations permitted. He said he thought it was premature to come to a judgment without seeing the details of what a house might look like, how it could be configured, how it could be situated, what its blend into the other properties could be. To decide on whether a subdivision plan could be disapproved because of a speculative approach on a house that had not been designed in the face of the very zoning provision that guarded this concept, he said, did not support denying this plan. He said a lot of things were in the eyes of a beholder, but the beholder could not see until what was put in front of him existed.

Acting Chairman Hall asked about the request to the Zoning Board of Adjustment. Atty. Westgate said the recent Zoning Board of Adjustment case pertained to allowing a chiropractic clinic with a residence in the existing dwelling, resulting in a two-lot configuration. He said he had not presented that case, but he gathered it was denied because of concerns about the business use in a TR district.

Ms. McGrath noted that she had not attended that Zoning Board of Adjustment meeting but had watched it on television, and she agreed that the business use had been the major issue.

Acting Chairman Hall asked about the earlier request, asking if the issue had been that the two lots did not meet the area requirements for a duplex. Atty. Westgate said

two-family dwellings were not a permitted use in the TR district, saying they could not have a two-family use without a variance. Acting Chairman Hall noted that the two-family use already existed, suggesting the issue had been that they could not change the lot. Atty. Westgate expressed agreement, saying the decision in effect had been that the two-family use could not be grandfathered unless the lot supporting it met the other district standards for lot size.

Acting Chairman Hall asked if there were any other questions for Atty. Westgate.

Mr. Della-Monica noted that the proposed driveway for Lot 2 was just a proposal, saying it could be moved a little further to the north, which would increase the sight distance.

Acting Chairman Hall asked Mr. Maynard if he wished to speak, since Atty. Westgate had had a second shot. Mr. Maynard declined, saying he was all set.

Mr. van der Veen asked Atty. Westgate where the expected placement of the house on Lot 2 would be. Atty. Westgate deferred to Mr. Frankiewicz, who said it would be where shown on the drawing.

Mr. Ulery said it was shown as a three-story house, but there was a big commercial box across the street with a three- or four-car garage, adding that Town Hall was located a block away, with a six-unit apartment house just up the street, along with another church. He said this was a very eclectic neighborhood, with a lot of different things. He suggested the new home could be a one-story house, or a long, thin ranch. He then said he thought the argument made earlier, that the purpose of this hearing was to determine whether or not the subdivision could take place, and the discussion of what type of house would go on each one of these properties, was immaterial to what the applicant had requested, which was the division of the property. He said the function of this hearing was to determine whether or not the Planning Board would approve the division of the property into lots, and the building on the lots was an entirely different question.

Mr. Barnes responded by asking, if the Planning Board approved this subdivision, and the owner of the lot then came in for a building permit that got denied because it was not in keeping with the character of the neighborhood, what would the Board have done—approve an unbuildable lot?

Mr. Ulery declared it was buildable.

Selectman Maddox said he thought the applicant had shot himself in the kneecaps with the drawing he had provided, saying this rendering was his own undoing—noting that the garage was shown as bigger than the house, with a 764-ft<sup>2</sup> house being shown when the other one next door measured 1400 ft<sup>2</sup>. He suggested swapping the garage and the house meant there would be space for a deck and other things. He then stated that, if the plan met the criteria, and the Planning Board approved it, staff would approve something on that lot. He said the challenge would be to fit within the boundaries, noting that the applicant's own drawing went into the 15-foot setback. He said they could have a nice long ranch, as Mr. Ulery had said, adding that there were a number of things they could do here to make this work on that lot.

Mr. van der Veen said he thought the discussion was missing the big picture, which was that the property had a big house that could very easily disappear. He suggested the Board had to have some trust in the architect to kind of make all those buildings meld together, but there were a lot of differences in the neighborhood. He said it was not perfect but was a way to retain some history in Hudson and a way for somebody to make that happen.

Acting Chairman Hall said he would have to echo Selectman Maddox's comments, saying there would be nothing wrong with showing a small ranch there without this huge garage and eliminating most of the driveway in front of the house with a driveway going straight back. He said he thought the applicant had not done very good service to himself by raising all these questions and comments, but the Board did not have any control over what would get built there.

Mr. Della-Monica said the answer to Mr. Barnes's comment was that, if they did not get a building permit for Lot 2, they would be back next year to get a lot-line change to combine the two new lots. He said he was in total agreement with Selectman Maddox that a drawing showing a salt box would have been better.

Town Planner Cashell pointed out that, if the applicants proposed a single-family house on that lot, the only criteria they had to meet was that it have a minimum building size of 850 ft<sup>2</sup>. Mr. Maynard interjected that they would have to meet the 35-foot height limit. Mr. Cashell concurred, saying they could have a narrow steep house and fill that 850 ft<sup>2</sup>. He said they were proposing a house that far exceeded the minimum.

No one else bringing forth any questions or comments, Acting Chairman Hall asked the Board's pleasure.

Town Planner Cashell said this site was very similar, historically speaking, to a property on Windham Road, where the Town had not liked the density, but it had been provided for in the regulations and the court case was won. He said it was not a good proposal, but it met the criteria, which was why it was before the Board.

Mr. Della-Monica moved to approve the subdivision plan entitled **3-Lot Residential Subdivision RPNT Properties, LLC Tax Map 182, Lot 56 Central & Chase Street, Hudson, NH**, prepared by Brown Engineering/Surveying, 683C First New Hampshire Turnpike, Northwood, NH, 03261, dated October 23, 2012, last revised February 18, 2013, consisting of Sheets 1 through 9 and Notes 1 through 12, in accordance with the following terms and conditions:

1. All stipulations of approval shall be incorporated into the Decision of Approval, which shall be recorded at the Hillsborough County Registry of Deeds, together with the Plan.
2. A cost allocation procedure (CAP) amount of \$1,027.73 per residential unit shall be paid prior to the issuance of a Certificate of Occupancy.
3. A public school impact fee in the amount of \$3,578.00 per residential unit shall be paid prior to the issuance of a Certificate of Occupancy.
4. A recreation contribution in the amount of \$400.00 per residential unit shall be paid prior to the issuance of a Certificate of Occupancy.
5. All monumentation shall be set or bonded for prior to the Planning Board endorsing the Plan-of-Record.

6. Approval of this plan shall be subject to final engineering review, including new driveways and alteration of existing ones.

Acting Chairman Hall noted that Atty. Westgate had raised an opinion that these three lots would only constitute one additional CAP fee or impact fee for school and recreation. He then expressed an opinion that Atty. Westgate was probably right.

Mr. Della-Monica said he would change Stipulations 3 and 4 to read as follows:

3. A public school impact fee in the amount of \$3,578.00 per residential unit shall be paid prior to the issuance of a second Certificate of Occupancy.
4. A recreation contribution in the amount of \$400.00 per residential unit shall be paid prior to the issuance of a second Certificate of Occupancy.

Mr. Malley seconded the motion.

Ms. McGrath asked about changing Note 2 on the plan to make it clear that the existing structure would be used as a single-family residence.

Mr. Della-Monica then moved to add a seventh stipulation, as follows:

7. Note #2 on the Plan shall be amended to read: "The existing structure is currently used as a 2-family home. The requirement of this subdivision plan is to change the use to a single-family home."

Selectman Maddox questioned if this should be changed to read the second Certification of Occupancy. Acting Chairman Hall asked for input from the applicant with respect to the build-out.

Atty. Westgate said that logically, given the zoning decision that they did not appeal, that said the duplex could not remain if they created two other single-family homes on the other lots, it would have to be converted to a single-family on the first of two or three, not on the second. Acting Chairman Hall expressed agreement.

Mr. Della-Monica then proposed to change the text of his proposed amendment. Acting Chairman Hall asked him to write it out.

While Mr. Della-Monica was writing, Ms. McGrath noted that the existing structure had not paid any CAP fees, but they would now be creating two additional lots. She expressed an opinion that they should pay CAP fees for those two additional lots. Acting Chairman Hall said that was not the motion that was made, but that was why the Board had discussion. Mr. Della-Monica pointed out that the other impact fees had to be associated with the nexus between the new building and the increase in services; if they were taking away a unit, he said, there was no increase, so there was no nexus. Ms. McGrath pointed out that the duplex was not allowed in the TR district. Mr. Della-Monica acknowledged that fact but said it was there now and there would not be any more units or families on that piece of property, so there was only one new unit constituting the nexus between what was happening now and an increased need for service, or traffic. Ms. McGrath said she was saying an impact fee for two lots, not three. Mr. Della-Monica asked if she could say that this would be creating an increased need for service over what currently existed. Ms. McGrath said she did not know. Acting Chairman Hall at this point objected that the discussion was getting into an

argument, and he then asked Mr. Della-Monica to read aloud what he had written for the new stipulation.

Mr. Della-Monica read the proposed text as follows:

7. Note #2 on the Plan shall be amended to read: "The existing structure is currently used as a 2-family home. The requirement is to change the use to a single-family home prior to issuance of the first Certificate of Occupancy."

Mr. Malley indicted agreement, making it a friendly amendment.

Selectman Maddox asked if the Board were going to do anything about the pavement in the setback. Mr. Barnes pointed out that the abutting property also had pavement in the setback, that the Board had allowed a year ago for a different plan. He said he did not see putting in a requirement to remove it, since the Board had not put a similar requirement on the abutting property.

**VOTE:** Acting Chairman Hall called for a voice vote on the motion. Being in doubt of the results, he then asked for a hand vote. All members present voted in favor except for Mr. Barnes and Ms. McGrath, who both voted in opposition, and Acting Chairman Hall declared the motion to have carried (5–2–0).

Ms. McGrath stated for the record that one of the reasons she was opposed to this, in addition to its not being in character with the neighborhood, was the safety issue with the driveway location.

Mr. Russo returned to the table and resumed the chairmanship, with Ms. McGrath resuming her normal position as a nonvoting alternate.

## **XV. OTHER BUSINESS**

Mr. Barnes stated that he had noticed that there was a request for 99 River Road for an upcoming Zoning Board of Adjustment meeting, to get a dual use variance in order to have an apartment above the proposed store—noting that this was not in the plan that had been approved by the Planning Board. He then asked Town Planner Cashell if this meant the applicant would be back before the Planning Board with an amended site plan if the Zoning Board of Adjustment approved that request. Town Planner Cashell said he had sent them to the Zoning Board of Adjustment first because they needed a variance first. He confirmed that the intent was that the applicants would be back here if the Zoning Board of Adjustment granted that variance.

Chairman Russo expressed a belief that the Zoning Board of Adjustment would be looking for input from this Planning Board prior to their making that decision. Ms. McGrath said that this was on the Zoning Board of Adjustment agenda for the following evening, noting that she also served as an alternate on that board; she said she would not comment on what the applicants were requesting, as she did not know if she would be seated, but she would certainly advocate for their receiving input from the Planning Board, as it was altering a plan. Chairman Russo noted that the applicants were going to the Zoning Board of Adjustment already and had not asked for input from the Planning Board at this point. Ms. McGrath said she knew that several members of



the Zoning Board of Adjustment were not going to be present at the following evening's meeting. Chairman Russo expressed a belief that this would be one of the rare cases in which the Planning Board would have some input to offer, and he suggested that she make that clear to the Zoning Board of Adjustment. Ms. McGrath responded that she could convey comment if the Board wished to provide it tonight—or she could recommend at the Zoning Board of Adjustment meeting that that board seek input from the Planning Board prior to their making that decision. Chairman Russo said that would probably be a good idea..

Ms. McGrath noted that all members of the Board had received an E-mail note from Recorder Seabury about minutes that he had been trying to complete. She said she had responded to him by suggesting that he put quotation marks around the questioned comments that were made, but Recorder Seabury had said he had done that in similar cases in the past and he was concerned that the speaker would take exception to that, thinking he was implying the speaker was doing something nefarious. Chairman Russo said he had listened to the broadcast and found two corrections, of two words, from what he heard, but that except for those two words what the minutes said was exactly what the speaker had said—adding that he had sent Recorder Seabury an E-mail suggesting that he change those two words.

Mr. Ulery commented that the written minutes were not a word-for-word transcript but were an analysis of what took place. Chairman Russo said that was true of the Minutes and Decisions document, but the actual minutes that Mr. Seabury did could be more detailed. Mr. Ulery said it was on the tape, at any rate. Ms. McGrath pointed out that the Board went through the minutes in review, saying she had had this discussion over a hundred times in the past 20-something years, saying the Board had told him to check it again, and he had done so, and he was just trying to be clear. Mr. Ulery said he was just trying to make the point that everything did not need to be quoted verbatim. Selectman Maddox said he thought that the minutes that the Planning Board had had for many a year had done the Town well—adding that the Board would not want them verbatim as there would be even more pages to them, but the Board did get a good synopsis of what was being done—adding that the Town spent a lot less time in court because of good minutes.

Chairman Russo said he would send a message to Mr. Seabury telling him to move the referenced minutes forward as corrected.

Mr. Della-Monica asked what notice was given to abutters on building permits, with respect to structure. Town Planner Cashell said the notice was when the trees were cut down. Mr. Della-Monica referenced the case previously heard this evening, suggesting that if there were concerns on Board-members' parts, a stipulation could be put in that when plans for the building were submitted the abutters would be notified. Selectman Maddox questioned to whom the abutters could provide input or appeal. Mr. Della-Monica said they could take it to court if they wanted. Chairman Russo said he thought that what had to be preserved was that new structures had to be residential in character—but he could not imagine the Building Inspector saying he did not like the

shingles or the façade of the proposed home. Mr. Della-Monica acknowledged agreement. Town Planner Cashell said there were cases in which abutters sued.

**XVI. ADJOURNMENT**

All scheduled items having been addressed, Selectman Maddox moved to adjourn; Mr. Della-Monica seconded the motion.

**VOTE:** Chairman Russo called for a verbal vote on the motion. All members voted in favor.

Chairman Russo then declared the meeting to be adjourned at 10:51 p.m.

**-- FILE COPY --**

**HUDSON PLANNING BOARD Meeting Minutes  
February 27, 2013**

**Page 35**

Date: June 19, 2013

\_\_\_\_\_  
Vincent Russo, Chairman

J. Bradford Seabury, Recorder

\_\_\_\_\_  
Edward van der Veen, Secretary

These minutes were accepted as amended following review at the 07-10-13 Planning Board meeting.

**-- FILE COPY --**

The following changes were made to the draft copy in accordance with review comments at the Planning Board meeting of 07-10-13:

Changed misspelling of Mr. Wolters' name throughout (64 instances).

Page 3, 6<sup>th</sup> paragraph, 6<sup>th</sup> line — Added letter “U” at beginning of firm acronym so that the phrase now reads “expressing doubt that UPS worked on weekends ... .”

Page 3, 7<sup>th</sup> paragraph, last line — Added letter “y” at end of “deliver” so that the phrase now reads “delivery by occupants of the workspaces should not be a concern.”

Page 6, 3<sup>rd</sup> paragraph, 2<sup>nd</sup> sentence — Changed sentence from “He also noted that Stipulation 3 had referenced notes through Note 28, but that should be changed to through Note 29 because one had been added.” to read as follows for clarity: “He also noted that Stipulation 3 had referenced the plan notes as being “through Note 28,” but that should be changed to “through Note 29” because one had been added.”

Page 12, 3<sup>rd</sup> paragraph, 2<sup>nd</sup> line — Added quotation marks ahead of “Readers.”

Page 14, 1<sup>st</sup> paragraph, 11<sup>th</sup> line — removed plural ending “s” from “plans” so that the phrase now reads “by being plotted on a subdivision plan ... .”

Page 19, 5<sup>th</sup> paragraph, 1<sup>st</sup> line — corrected typographical error to show opening time as “6:00 a. m.”

Page 25. last paragraph, 7<sup>th</sup> line, — Removed extraneous letter “d” from end of word “enveloped” so that the phrase now reads “a good building envelope.”