



TOWN OF HUDSON

Planning Board

Timothy Malley, Chairman

Roger Coutu, Selectmen Liaison



12 School Street • Hudson, New Hampshire 03051 • Tel: 603-886-6008 • Fax: 603-594-1142

PUBLIC MEETING TOWN OF HUDSON, NH MARCH 11, 2020

The Town of Hudson Planning Board will hold a regularly scheduled meeting on Wednesday, March 11, 2020 at 7:00 p.m. in the “Buxton Community Development Conference Room” at Town Hall. The following items will be on the agenda:

- I. CALL TO ORDER BY CHAIRPERSON AT 7:00 P.M.
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL
- IV. SEATING OF ALTERNATES
- V. MINUTES OF PREVIOUS MEETING(S)

- 12 February 2020 Meeting Minutes – Decisions (Deferred from February 26, 2020)
- 26 February 2020 Meeting Minutes – Decisions

VI. OLD BUSINESS

- A. Adelaide Street 4-Lot Subdivision 12 Adelaide Street
SB# 05-19 Map 182/Lot 196

Purpose of Plan: to depict the subdivision of Map 186, Lot 196, into four (4) residential lots. Application Acceptance & Hearing. (Deferred from February 12, 2020)

- B. Eagles Nest Estates Lot Line Relocation Standish Lane/59 Speare Rd
SB# 01-20 Map 194/Lot 009-002 & 010-009
Map 186/Lot 024

Purpose of Plan: to propose a lot line adjustment between Map 194/Lots 009-002 & 010-009, and Map 186/Lot 024. (Continued from February 26, 2020)

- C. Eagles Nest Estates Amended Subdivision Plan Standish Lane/59 Speare Rd
SB# 02-20 Map 194/Lot 009-002 & 010-009
Map 186/Lot 024

Purpose of Plan: to amend the Residential Open Space (OSD) in the existing Eagles Nest Estates Subdivision (Approved 08/12/15) by adding eight (8) new residential lots on Map 194/Lot 009-002. (Continued from February 26, 2020)

VII. OTHER BUSINESS

A. Stormwater Regulation Update

VIII. ADJOURNMENT

All plans and applications are available for review in the Planning Office. Comments may be submitted in writing until 10:00 a.m. on the Tuesday prior to the day of the meeting. The public is invited to attend.

POSTED: Town Hall, Library & Web – 03-02-20

Brian Groth, Town Planner



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MINUTES/DECISIONS OF THE PLANNING BOARD

MEETING DATE: FEBRUARY 26, 2020

In attendance = X Alternate Seated = S Partial Attendance = P Excused Absence = E

Tim Malley
Chair X

Jordan Ulery (7:54pm)
Vice-Chair X

William Collins
Secretary X

Charlie Bracket
Member X

Dillon Dumont
Member X

Ed Van der Veen
Member X

Elliott Veloso
Alternate E

Roger Coutu
Select. Rep X

Marilyn McGrath
Alt. Select. Rep. X

Brian Groth
Town Rep. X

- I. CALL TO ORDER BY CHAIRPERSON AT 7:01 P.M.
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL
- IV. MINUTES OF PREVIOUS MEETING(S)

- 8 January 20 Meeting Minutes – Decisions

Mr. Ulery moved to accept the 8 January 20 Meeting Minutes (as written/amended).

Motion seconded by Mr. Van der Veen. All in favor – motion carried.

V. CORRESPONDENCE

- A. Request for Lee Way Bond Reduction by Elvis Dhima, Town Engineer.

Mr. Ulery moved to reduce the bond for Lee Way to \$28,018.35 in accordance with the recommendation of Elvis Dhima, Town Engineer.

Motion seconded by Mr. Coutu. All in favor – motion carried.

- B. Request to Release Corridor Impact Funds by Elvis Dhima, Town Engineer.

Mr. Ulery moved to recommend to the Board of Selectman the release of \$9,767.21 from Impact Fee Account 2070-000-915, Corridor – Lowell Rd/Pelham Yards Improvements for the Lowell and Birch Intersection Project in accordance with the

Motion seconded by Mr. Dumont. All in favor – motion carried.

Chairman Malley opened the Public Hearing at 7:07 p.m.

Mr. Thomas Smith, 3 Gibson Road – inquired about widening the easement granted to him in the approved site plan from 25 feet to 40 feet.

Mrs. Paula Hubert, 9 Kara’s Crossing Drive – asked if the proposed house lots were 1 acre, how close they would be to wetlands, and whether or not the houses to be built on lots 10-14, 10-15, and 10-16 were located in the flood zone.

Mr. Roger Hubert, 9 Kara’s Crossing Drive – asked if there would be additional blasting during construction of the new homes for the proposed additional lots.

Mr. Raymond Lafortune, 18 Hawkview Road – inquired about road improvements to Hawkview Road to handle the additional traffic, and installation of sidewalks.

Mr. Dominic Jarry, 5 Jarry Way – asked about having an easement granted from Map 194, Lot 9-2, to his land parcel ID 194-008-000.

Chairman Malley closed the Public Hearing at 7:57 p.m.

Mr. Coutu moved to continue the public hearing for the lot line adjustment application & subdivision application for Map 194/Lots 009-002, 010-009, and Map 186/Lot 024.

Motion seconded by Mr. Bracket. All in favor – motion carried.

VII. OTHER BUSINESS

A. Mansfield Drive Subdivision Plan – Storm Water Retention Basin (Adjustment to approved Subdivision Plan).

Mr. Collins moved to approve the change to the approved stormwater retention basin without requiring an additional Planning Board hearing on the matter.

Motion seconded by Mr. Van der Veen. All in favor – motion carried.

B. Discussion on interference with Master Plan update.

Mr. Dumont moved to have the Planning Board Chairman, or his designee, compose a letter stating the Planning Board is concerned with interference in the public outreach process for the Master Plan update by two members of the Conservation Commission Members. The letter is meant to request that these members refrain from further interference. This letter will be sent to the Board of Selectman, with copies to the Conservation Commission, NRPC and Town Counsel.

Motion seconded by Mr. Ulery. Motion carried 5/0/2 (Collins & Coutu abstained, as they are members of boards/committees that are named recipients of the letter).

VIII. ADJOURNMENT

Motion to adjourn by Mr. Collins. Seconded by Mr. Dumont. All in favor – motion carried.

Meeting adjourned at 8:58 p.m.

William Collins, Secretary

These minutes are in draft form and have not yet been approved by the Planning Board.

-SECOND STAFF REPORT-

EAGLE'S NEST AMENDMENT OSD
LOT LINE RELOCATION SB #01-20
&
SUBDIVISION AMENDMENT SB#02-20

March 11, 2020

SITE: Eagles Nest Estates, Map 194 Lot 9-2

ZONING: General-1 (G-1)

PURPOSE OF PLANS: to amend the Eagles Nest Open Space Development in order to add 8 open space lots on Map 194 Lot 9-2.

PLANS UNDER REVIEW: Amended Eagles Nest Estates; prepared by: Keach Nordstrom Associates, Inc. 19 Commerce Park North, Suite 3B, Bedford, NH 03110; prepared for: Eagles Nest Estates, LLC, 2 Aspen Drive, Pelham, NH 03076; consisting of 21 sheets and notes 1-39 on Sheet 3; dated November 14, 2019 and last revised March 2, 2020.

COMMENTS & RECOMMENDATIONS:

The following comments are based on a preliminary revised plan set and PDF seen by staff.

Yield Plan: Discrepancies with the yield plan are related to the original approval of 2015. These are already approved and may have been interpreted differently by previous staff.

Septic Locations: The applicant's engineer has shared a layout plan with the Town Engineer who found it to be acceptable.

Driveway Easement: At the previous meeting, the Board discussed the size and location of the driveway easement to the benefit of Map 195 Lot 2 (Smith parcel). The revised draft seen by staff shows this easement being relocated off of Warren Road, to a location on Standish Lane. Additionally, this easement has been enlarged to be 40-feet.

The new location is preferable as it doesn't cross a home lot, and is a shorter distance to the Smith parcel.

In reviewing the ability for this easement to lead to the development of neighboring lots, staff learned of some inconsistencies with the conservation easements the declaration of covenants and

the driveway easements. Staff will have further vetted his questions with the town attorney in advance of the meeting.

Linework

There are some errant lines on the overview plan that will need to be cleaned up.

DRAFT MOTIONS

At the time of this report, the applicant has not delivered the necessary revised plan copies for the packets, therefore draft motions have not been prepared. Staff will prepare additional draft motions in advance of the meeting in the event it is not deferred.



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Roger Coutu, Selectmen Liaison

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MINUTES/DECISIONS OF THE PLANNING BOARD

MEETING DATE: FEBRUARY 12, 2020

In attendance = X Alternate Seated = S Partial Attendance = P Excused Absence = E

Tim Malley Chair <u> X </u>	Jordan Ulery (7:54pm) Vice-Chair <u> X </u>	William Collins Secretary <u> X </u>	Charlie Bracket Member <u> X </u>
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Dillon Dumont Member <u> X </u>	Ed Van der Veen Member <u> X </u>	Elliott Veloso Alternate <u> E </u>	Roger Coutu Select. Rep <u> X </u>
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Marilyn McGrath Alt. Select. Rep. <u> X </u>	Brian Groth Town Rep. <u> X </u>
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- I. CALL TO ORDER BY CHAIRPERSON AT 7:00 P.M.
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL

- IV. ELECTION OF OFFICERS

Mr. Coutu moved to nominate Mr. Malley as Chairman. Motion seconded by Mr. Bracket. All in favor – motion carried.

Mr. Coutu moved to nominate Mr. Van der Veen as vice-Chairman. Motion seconded by Mr. Bracket. All in favor – motion carried.

Mr. Bracket moved to nominate Mr. Collins as Secretary. Motion seconded by Mr. Coutu. All in favor – motion carried.

- V. MINUTES OF PREVIOUS MEETING(S)

- 22 January 20 Meeting Minutes – Decisions

Mr. Coutu moved to accept the 22 January 20 Meeting Minutes (as written/amended).

Motion seconded by Mr. Collins. All in favor – motion carried.

VI. NEW BUSINESS

- A. Verizon Wireless Small Cell Wireless Antenna 2 North Ridge Road
CU# 01-20 Map 139/Lot 012

Purpose of Plan: to propose the installation of a small cell wireless antenna to be mounted atop an existing utility pole. Application Acceptance & Hearing.

Mr. Van der Veen moved to accept the conditional use permit application for Verizon Wireless Small Cell Antenna adjacent to 2 North Ridge Road.

Motion seconded by Mr. Brackett. All in favor – motion carried.

Mr. Collins moved to approve the conditional use permit for Hudson NW SC06 NH; prepared by: Hudson Design Group, LLC, 45 Beechwood Drive, N. Andover, MA 01845; prepared for: Verizon Wireless c/o Structure Consulting Group, 49 Brattle Street. Arlington, MA 02474; consisting of 3 sheets and Notes 1-2 on Sheet 2; last revised December 20, 2019; subject to the following stipulations:

1. All stipulations of approval shall be incorporated into the Notice of Decision, which shall be recorded at the HCRD, together with the Plan.
2. The applicant shall provide a structural assessment and certification that the existing utility pole is capable of supporting the additional weight, satisfactory to the Engineering Department.
3. This plan is subject to final engineering review.
4. Construction activities involving this plan shall be limited to the hours between 7:00 A.M. and 7:00 P.M., Monday through Saturday. No exterior construction activities shall occur on Sunday.

Motion seconded by Mr. Van der Veen. All in favor – motion carried.

- B. Adelaide Street 4-Lot Subdivision 12 Adelaide Street
SB# 05-19 Map 182/Lot 196

Purpose of Plan: to depict the subdivision of Map 186, Lot 196, into four (4) residential lots. Application Acceptance & Hearing.

Mr. Collins moved to defer the subdivision plan for 12 Adelaide Street, Map 182/Lot 196, date specific, to the March 11, 2020 Planning Board Meeting. This will allow time to negotiate an agreement on a newly created property line between existing Map 182/Lot 179, and proposed new Map 182/Lot 196-003, which was deemed to be necessary information to take jurisdiction over the application.

1. All stipulations of approval shall be incorporated into the Notice of Decision, which shall be recorded at the HCRD, together with the Plan.
2. A cost allocation procedure (CAP) amount of \$5,850.00 per single-family residential unit, or \$5,335.00 per residential unit within a duplex (or two-family structure) shall be paid prior to the issuance of a Certificate of Occupancy for the new house lot.
3. All monumentation shall be set or bonded for prior to the Planning Board endorsing the Plan-of-Record.
4. Approval of this plan shall be subject to final engineering review.
5. Construction activities involving the proposed undeveloped lots shall be limited to the hours between 7:00 A.M. and 7:00 P.M., Monday through Saturday. No exterior construction activities shall occur on Sunday.
6. A 25-foot No Cut Buffer will be provided along the lot line abutting Map 135/Lot 032.

Motion seconded by Mr. Brackett. All in favor – motion carried.

G. Granite Heights Subdivision Plan
SB# 05-20

334 Central Street
Map 161/Lot 029

Purpose of Plan: to depict an amended subdivision plan that proposes 19 residential lots in an Open Space Development (OSD). The previous project was approved under the name “Vista Knoll Estates”. Application Acceptance & Hearing.

Mr. Collins moved to accept the open space subdivision application for 334 Central Street, Map 161/Lot 029.

Motion seconded by Mr. Dumont. All in favor – motion carried.

WAIVERS APPROVED

1. §289-18.B(2) – Roadway Length

Mr. Van der Veen moved to grant the requested waiver of §289-18.B(2) – Roadway Length, based on the Board’s discussion, the testimony of the Applicant’s representative, and in accordance with the language included in the submitted Waiver Request Form for said waiver.

Motion seconded by Mr. Ulery. All in favor – motion carried.

2. §289-37(A) – Plan schedule and form

Mr. Van der Veen moved to grant the requested waiver of §289-37(a) – Plan schedule and form, based on the Board’s discussion, the testimony of the Applicant’s representative, and in accordance with the language included in the submitted Waiver Request Form for said waiver.

Motion seconded by Mr. Dumont. All in favor – motion carried.

Mr. Van der Veen moved to approve the open space subdivision application for Granite Heights Subdivision Plan; prepared by: Keach-Nordstrom Associates, Inc., 19 Commerce Park North, Suite 3B, Bedford, NH 03110; prepare for: K&M Developers, LLC, 46 Lowell Road, Hudson, NH 03051; dated December 6, 2019 and last revised January 6, 2020; subject to, and revised per, the following stipulations:

1. All stipulations of approval shall be incorporated into the Development Agreement, which shall be recorded at the HCRD, together with the Plan.
2. A cost allocation procedure (CAP) amount of \$5,850.00 per single-family residential unit, or \$5,335.00 per residential unit within a duplex (or two-family structure) shall be paid prior to the issuance of a Certificate of Occupancy for the new unit.
3. All monumentation shall be set or bonded for prior to the Planning Board endorsing the Plan-of-Record.
4. Approval of this plan shall be subject to final engineering review.
5. Construction activities involving the proposed undeveloped lots shall be limited to the hours between 7:00 A.M. and 7:00 P.M., Monday through Saturday. No exterior construction activities shall occur on Sunday.
6. The applicant will erect a chain link fence along the rear lot lines of the proposed lots, or along the portion of the open space lot that abuts Central Street to prevent debris from entering Central Street.
7. Wetland Conservation markers will be placed along the Wetland Conservation District Boundaries.
8. A note shall be added to the Plan-of-Record stating that the development will be either all Single-Family Residential Units, or all Duplex Residential Units.
9. Blasting and ramming activities for the proposed undeveloped lots shall be limited to the hours between 7:00 A.M. and 5:00 P.M., Monday through Friday.

Motion seconded by Mr. Ulery. All in favor – motion carried.

VII. OTHER BUSINESS

- A. Regulation Amendment: §276-5 Hearing on Amendment; to revise this regulation in accordance with state law for notification of public hearings and clarification of direct and indirect abutters.

Mr. Dumont moved to adopt the amendment, as presented, to §276-5 – Hearing on Application, of Administrative Requirements and Definitions of The Town of Hudson’s Land Use Regulations.

Motion seconded by Mr. Ulery. All in favor – motion carried.

VIII. ADJOURNMENT

Motion to adjourn by Mr. Coutu. Seconded by Mr. Van der Veen. All in favor – motion carried.

Meeting adjourned at 9:43 p.m.

William Collins, Secretary

These minutes are in draft form and have not yet been approved by the Planning Board.

ADELAIDE ST. SUBDIVISION
SUBDIVISION APPLICATION SB #05-19
SECOND STAFF REPORT

March 11, 2020

For additional information, see the February 12, 2020 Staff Report

SITE: 12 Adelaide Street, Map 182 Lot 196

ZONING: Town Residential (TR)

PURPOSE OF PLANS: to depict the subdivision of Map 186, Lot 196, into four (4) residential lots.

PLANS UNDER REVIEW: Subdivision Plan, Land of Pathway Homes; prepared by: Keach Nordstrom Associates, Inc. 19 Commerce Park North, Suite 3B, Bedford, NH 03110; prepared for: Pathway Homes, Inc., 79 Cortland Drive, Bedford, NH 03110; consisting of 2 sheets and notes 1-14 on Sheet 1; dated November 4, 2019 and last revised December 6, 2019.

ATTACHMENTS:

- A. Boundary Agreement Letter from Attorney Westgate.
- B. Setback Letter from Attorney Westgate.

APPLICATION TRACKING:

- December 4, 2019 – Application received.
- January 2, 2020 – Revised plans received.
- February 12, 2020 – Public hearing scheduled, deferred.
- March 11, 2020 – Public hearing scheduled.

COMMENTS & RECOMMENDATIONS:

Boundary Agreement

A letter from Attorney Westgate describing the boundary agreement between the applicant and the abutter has been received, Attachment A. The application is ready for acceptance.

Paper Street Setbacks

In Attachment B, Attorney Westgate has laid out the reasons why he believes the building setback should be measured from the center line of the Harwood paper street. The town's attorney holds a different opinion but notes that the Planning Board can agree with either one, this is a matter of personal opinion.

The main difference between the two opinions is in consideration of the probability of the paper street ever being built, in 10, 20, 50, or 100 years from today. However remote the possibility, the paper street may potentially get built in the future to serve town land. Although at this moment building the paper street doesn't seem likely, the town attorney would assume that it does get built out, and therefore measure the setback accordingly.

In this event, and since this paper street would be available to the Town, Attorney LeFevre believes it meets the definition of “Highway.” As such, the domino effect results in the setback being measured from the edge of the paper street.

Stormwater Management

As noted by the Town Engineer, as well as the abutter living at the corner of Adelaide and Raymond Streets, there is a stormwater management issue at this location that will likely be exacerbated by this development without taking the measures recommended by the Town Engineer.

These measures include culverts underneath each of the new driveways, a swale to collect this runoff, and then directing it to a catch basin. (See Figure 1)

Environmental Issues

As noted by the Town Engineer, Town records indicate the presence of asbestos in the area. Accordingly, the Town Engineer has requested that as a condition of approval the applicant employs a contractor who is licensed by NH DES to do asbestos disposal site work, if necessary. Other contaminants may be present as well.

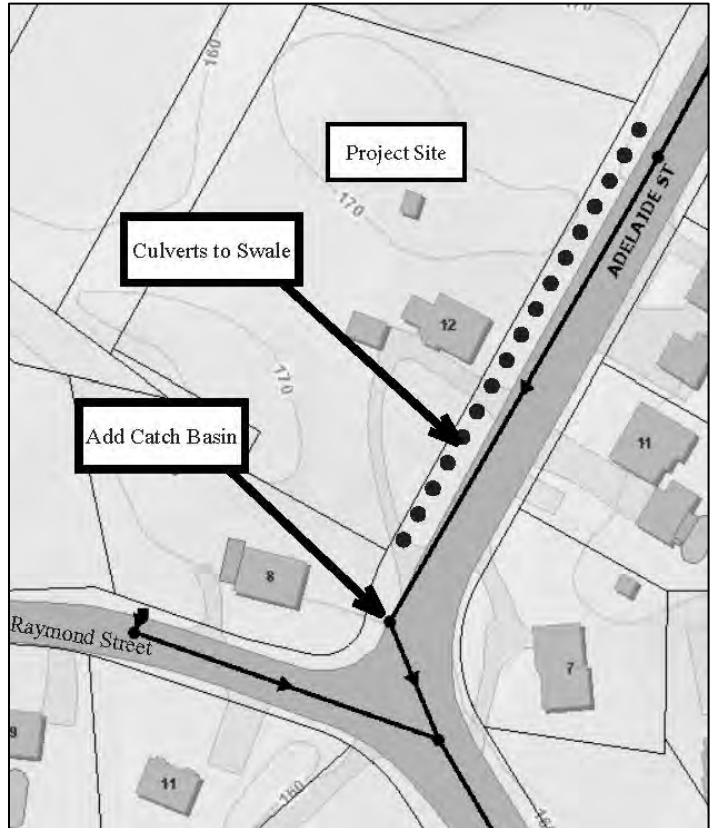


Figure 1- Stormwater Management

DRAFT MOTIONS

ACCEPT/DEFER the subdivision application:

I move to accept the subdivision plan for 12 Adelaide Street, Map 182 Lot 196.

Motion by: _____ Second: _____ Carried/Failed: _____

[If the Board accepts jurisdiction, but needs more time to deliberate, move to **continue** the hearing]

CONTINUE the public hearing to a date certain:

I move to continue the public hearing for the lot line adjustment application and subdivision application for 12 Adelaide Street, Map 182 Lot 196, to date certain, _____.

Motion by: _____ Second: _____ Carried/Failed: _____

APPROVE the subdivision plan application:

I move to approve the subdivision application for Subdivision Plan, Land of Pathway Homes; prepared by: Keach Nordstrom Associates, Inc. 19 Commerce Park North, Suite 3B, Bedford, NH 03110; prepared for: Pathway Homes, Inc., 79 Cortland Drive, Bedford, NH 03110; consisting of 2 sheets and notes 1-14 on Sheet 1; dated November 4, 2019 and last revised December 6, 2019; subject to, and revised per, the following stipulations:

1. All stipulations of approval shall be incorporated into the Notice of Decision, which shall be recorded at the HCRD, together with the Plan.
2. A cost allocation procedure (CAP) amount of \$5,813 per single-family residential unit shall be paid prior to the issuance of a Certificate of Occupancy for the new house lot.
3. All monumentation shall be set or bonded for prior to the Planning Board endorsing the Plan-of-Record.
4. Applicant shall employ contractor licensed by NH DES to perform work in asbestos disposal sites, as necessary, if necessary.
5. Applicant shall provide drainage improvements to the satisfaction of the Engineering Department and Department of Public Works along the proposed lots and 8 Raymond Street.
6. Applicant shall be responsible for street restoration to the satisfaction of the Engineering Department and Department of Public Works along the proposed lots. Milling and overlay from curb to curb could be required, depending on all curb cuts including water, sewer and gas.
7. Approval of this plan shall be subject to final engineering review.
8. Construction activities involving the proposed undeveloped lots shall be limited to the hours between 7:00 A.M. and 7:00 P.M., Monday through Saturday. No exterior construction activities shall occur on Sunday.

Motion by: _____ Second: _____ Carried/Failed: _____.

March 5, 2020

Planning Board
Town of Hudson
12 School Street
Hudson, New Hampshire 03051

**Re: Pathway Homes Inc.
12 Adelaide Street (Map 182, Lot 196)
Application for Subdivision**

Gentlemen and Ladies:

I am the owner of property at 20 Adelaide Street in Hudson (Map 182, Lot 197). My property lies north of the property of Pathway Homes Inc. at 12 Adelaide Street (Map 182, Lot 196).

My property is comprised of five (5) lots (Lots 295 through 299 (inclusive)) as shown on the plan entitled "House Lots in Hudson, N.H. For Sale by J.E. Dearborn", recorded with the Hillsborough County Registry of Deeds as Plan No. 202 or Plan No. 202-1A ("Plan No 202"). My property also includes the underlying fee interest in a portion of a paper street known as Harwood Street depicted on Plan No. 202.

Pathway Homes Inc.'s property at 12 Adelaide Street is comprised of Lots 326 through 336 (inclusive) as shown on the Plan No. 202. Pathway Homes Inc.'s property also includes the underlying fee interest in a portion of Harwood Street.

Pathway Homes Inc. and I have entered into an agreement which provides, among other things, that if Pathway Homes Inc. is successful in subdividing its property into four residential lots then simultaneously or promptly after the recordation of such a subdivision plan, Pathway Homes Inc. and I will execute and record a boundary line agreement which will depict our respective ownership of portions of Harwood Street (the paper street) as depicted by the Former Centerline of Harwood Street on the proposed subdivision plan submitted by Pathway Homes Inc. to the Planning Board. Our agreement also contemplates that we will execute and record quitclaim deeds of our interests in each other's "half" of Harwood Street. These quitclaim deeds will include releases of any rights to develop the other person's "half" of Harwood Street for access and other purposes and to develop any portions of Oriole Street adjacent to our respective properties for access and other purposes. Finally, Pathway Homes, Inc. will record a declaration of covenants establishing a so-called no cut buffer over a portion of Harwood Street being integrated into one of the lots being subdivided by Pathway Homes Inc. The no cut buffer area is shown on the proposed subdivision plan submitted by Pathway Homes Inc. to the Planning Board.

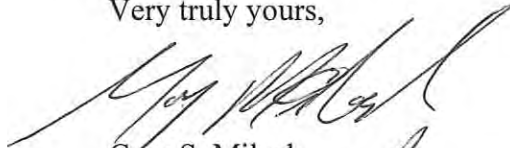
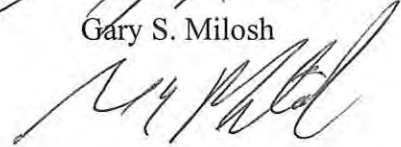
This letter confirms to you that Pathway Homes Inc. and I have entered into this agreement which contemplates the recording of the aforementioned boundary line agreement (among other documentation) and confirms that Pathway Homes Inc. and I have agreed on the boundary line

March 5, 2020
Page 2

between our respective properties in the context of a mutually understood division of the fee ownership of Harwood Street as depicted on the subdivision plan submitted by Pathway Homes Inc to the Planning Board.

In addition, please be advised that I have no objection to Pathway Homes, Inc.'s subdivision of its property, including, without limitation, a subdivision of its property as depicted on the subdivision plan as presented by Pathway Homes Inc. to the Planning Board.

Very truly yours,


Gary S. Milosh


STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

Subscribed, sworn to and acknowledged before me this 5th day of March, 2020 by Gary S. Milosh.


Notary Public
My Commission Expires:

MORGAN A. HOLLIS
★ NOTARY PUBLIC - NEW HAMPSHIRE ★
My Commission Expires April 22, 2020

MEMORANDUM

TO: Hudson Planning Board

FROM: J. Bradford Westgate, Esquire, counsel of Pathway Homes Inc.

DATE: February 20, 2020

RE: Subdivision of 12 Adelaide Street (Map 182, Lot 196) (“Lot 196”) – Discussion of “Paper Streets”

Introduction

At its meeting of February 12, 2020, at which the proposed four lot subdivision of 12 Adelaide Street was initially introduced, the Hudson Planning Board requested that I (J. Bradford Westgate, Esquire, counsel for Pathway Homes Inc. – owner of Lot 196 and applicant), prepare a Memorandum addressing the determination of the setback line from the northerly side of Lot 196, in the context of the paper street (known as Harwood Street) and four relevant definitions set forth in the Hudson Zoning Ordinance. At the meeting of February 12, 2020, I noted my conclusion regarding the setback from the northerly line of Lot 196 – it would be a side yard setback measured from the centerline of Harwood Street. This would constitute a side yard setback for proposed Lot 196-3 as shown on the subdivision plans submitted by Pathway Homes Inc. (through Keach-Nordstrom Associates, Inc.) to subdivide Lot 196 into four conforming lots.

The conclusion rests on the fact that Harwood Street (a paper street for which the dedication to public servitude has expired) is the functional equivalent of an easement for the benefit of certain property owners whose titles are derived from lots shown on Hillsborough County Registry of Deeds Plan No. 202. Plan No. 202 first depicts Harwood Street (dedicating it to public servitude). The public servitude expired given the passage of 20 years after the dedication without Harwood Street being built or accepted by the Town. I mentioned at the meeting that as the Board is well aware, setback lines are measured from a lot’s boundary lines (ownership lines) not the edge of easement lines.

Paper Streets Generally

Although the focus of this Memorandum relates to the determination of the setback line at the north side of Lot 196 (the side yard setback for proposed Lot 196-3), Brian Groth's Staff Report addresses paper streets generally noting three issues for Planning Board consideration. All three of these issues were discussed at the meeting of February 12, 2020. During the meeting, I noted that the Staff Report gave a good outline of the three issues – (i) ownership of a paper street (the fundamental principle being ownership to the centerline for lot owners on each side), (ii) the existence of private rights of others for access (owners of lots shown on the original subdivision plan) and (iii) determination of the setback (noted above).

I. Ownership to the Centerline

With respect to the first issue (ownership to the centerline), it is a long settled legal presumption, which the Board has heard before and which the Staff Report notes, that ownership of the land underlying the paper street is vested in the abutting property owners to the centerline of the paper street. As the Staff Report notes, an unbuilt paper street of this vintage is automatically released from public servitude. This means that the Town no longer has the ability to accept Harwood Street.

Pathway Homes Inc. and Gary S. Milosh (the owner of property at 20 Adelaide Street (Map 182, Lot 179)) are negotiating an agreement that would fix the centerline of Harwood Street as depicted on the subdivision plan set submitted to the Board. The agreement (as drafted by me but not accepted by Mr. Milosh) also contemplates issuance of a letter by Mr. Milosh to the Board confirming that such an agreement is in place and that if the subdivision plan is approved, then upon recording of the subdivision plan the boundary line agreement between Pathway Homes Inc. and Mr. Milosh would be recorded. As I mentioned on February 12, 2020, this Agreement has not been finalized and no agreement exists until such time as the Agreement is finalized and signed by the parties.

II. Access Rights

The second issue mentioned in the Staff Report pertains to the private rights of other owners of lots on Plan No. 202 to utilize paper streets for access to their properties.

This is also a longstanding, generally held legal principle; however, there is also a concept held by some lawyers (and perhaps not yet fully decided by our courts) that the owners of other lots from the original subdivision plan who have a need for access via the paper street are the only ones who have that access right and that those whose access otherwise exists on existing public roads no longer have or need that right. In this case, in light of practical considerations, we need not decide whether only those lot owners who need the access have that private right of access.

As mentioned on February 12, 2020, as a practical matter, if a lot owner off the original subdivision plan already has frontage and access on an existing, constructed public road, he or she is not going to take the time and effort to try to build access through a paper street given the ready access already provided by existing public streets. In this case, there are two basic sets of properties located westerly of Lot 196 (Pathway's property) – Map 182, Lot 181 owned by Eversource (upon which there are power lines) and Map 182, Lots 182, 183 and 184 owned by the Town.

Eversource's property has frontage on Lions Avenue. Lot 184 (owned by the Town) also has frontage on Lions Avenue. Logically speaking, if the Town's property was ever to be developed, it would likely be done so in a "package" with far easier access off Lions Avenue versus construction of Harwood Street (which would not be a public road in the traditional sense) and which would have to cross the Eversource property, likely require a joint use agreement with Eversource, and likely requiring wetlands permitting as well.

III. Setback Determination – Four Definitions in Zoning Ordinance

The last "paper street" issue raised in the Staff Report is the identification of the side yard setback for Lot 196-3. Should the side yard setback be measured from the edge of the Harwood Street right-of-way or from the centerline? As I noted on February 12, 2020, the short answer is that since Harwood Street is not subject to public servitude, it is now only a private easement. As is the case with all easements, setback lines are not measured for easement lines but rather from property lines.

This "short answer" is consistent with an analysis of particular definitions in the Hudson Zoning Ordinance, the focus of the Planning Board's request for this Memorandum.

We respectfully submit that a reasonable interpretation of those definitions supports a conclusion that the side yard setback is determined from the centerline of Harwood Street.

The four definitions from the Zoning Ordinance analyzed are “Building Setback”, Lot Line, Front”, “Highway” and “Right-of-Way”. Copies of those definitions in the Zoning Ordinance are attached and highlighted in yellow.

“Setback” (as a word) is not defined in the Zoning Ordinance; therefore we look to the definition of “Building Setback” to start.

Building Setback is defined as the “minimum distance from the Right-of-Way to a Front, Side or Rear Lot Line . . .”. Next we must review the definitions of Right-of-Way, Front, Side and Rear Lot Line. Side Lot Line is not defined. Rear Lot Line is not relevant to this discussion. The definition of “Lot Line, Front” is also defined in the Zoning Ordinance and is relevant to this discussion. Lot Line, Front is defined as the “property line dividing a lot from any street (Highway) or public Right-of-Way . . .” (emphasis added).

We now need to look at defined terms in the definition of Lot Line, Front to determine if the setback from Harwood Street is from the edge of the right-of-way or the centerline. Street is not defined in the Zoning Ordinance but Highway is defined as is Right-of-Way. These defined terms will establish whether the lot line with Harwood Street is a Lot Line, Front for setback determination. If it is not a Lot Line, Front, then by default it is a side lot line and the side yard setback would apply. In the Town Residence (TR) District, the side yard setback is 15 feet.

Highway is defined as any “travelway, dedicated to or accepted by the Town, whether improved or unimproved, within the Town of Hudson that is available for public use for travel . . .”. In this case, Harwood Street is not a Highway. It had been previously dedicated to the Town but the dedication expired by the passage of 20 years without being built or accepted. Therefore, the term “Highway” cannot support a finding that the line along the centerline of Harwood Street is a front lot line and thus cannot support a building setback from that front lot line.

We have to go back to the definition of Lot Line, Front because it not only tied into the definition of Highway but also tied into the definition of Right-of-Way. However, we need to remember that in the definition of Lot Line, Front it ties into “public” Right-of-Way. Therefore, is Harwood Street a “public” right-of-way? Right-of-Way is defined in the Zoning Ordinance as the “area of land owned, used

by or available to the Town for street (Highway) purposes including any ancillary purposes thereto.”

As noted, the Town does own land shown on the original subdivision plan (Plan No. 202) that created Harwood Street. And Harwood Street is available to the Town if the Town wants to develop Harwood Street for access to Map 182, Lots 182, 183 and 184 (the lots owned by the Town). However, Harwood Street is not a “public” Right-of-Way because Harwood Street is no longer dedicated to public servitude. The rights the Town has to develop it are not different than those rights held by any other lot owner from the original subdivision plan (Plan No. 202). A lot owner from the original subdivision plan may develop the paper street for access to its property and for the use of others, but developing the paper street as such is not re-establishing the public servitude which has been extinguished by the passage of 20 years. It is akin to a private property right (an easement) that the Town has just like other lot owners have, rather than the right to establish a public Right-of-Way by dedication.

Conclusion

Therefore, the lot line along Harwood Street is not a Lot Line, Front and Harwood Street’s right-of-way edge is not the defining location for setback determination because Harwood Street is not a Highway or a public Right-of-Way. It is only a paper street for which the public servitude vanished decades ago. A side yard setback from the centerline of Harwood Street would apply.

This conclusion is consistent with the definition of Frontage in the Zoning Ordinance as well. As the Board is well aware, “Frontage” is “measured along the joining boundary of the Front Lot Line and the Class V or better public Right-of-Way. In addition, Frontage “shall be capable of providing Access.” This text comes from the definition of Frontage in the Zoning Ordinance. Harwood Street is not a Class V or better public Right-of-Way and is not capable of providing Access. Therefore, it does not constitute frontage and as such Harwood Street would not form the basis for a front yard setback.

As noted, side yard setbacks are not measured from the edge of an access easement but instead measured from the property line itself. In this case, the property line will be the centerline of Harwood Street upon conclusion of the boundary line agreement with Mr. Milosh. Consequently, the setback is determined from the centerline of Harwood Street and is a side yard setback as a result.

BUILDING, DETACHED — A building not sharing any walls or portions of any walls or roof with adjoining buildings.

BUILDING, PRINCIPAL — A building in which is conducted the principal use of the lot on which it is located.

BUILDING SETBACK — The minimum distance from the RIGHT-OF-WAY to a FRONT, SIDE or REAR LOT LINE at which a building, driveway or other regulated structure or feature may be set or constructed.

BUILDING SIGN — Any sign affixed, mounted, attached to or painted onto the exterior of a building, including awnings, canopies, roof-mounted and projecting signs.

C

CANOPY — A temporary or permanent covered structure, the primary purpose of which is to shield the area beneath it from the elements, and which is supported by posts, poles, columns or other elements directly on or into the ground.

CAR CANOPY — A freestanding, lightweight structure used to house vehicles and constructed of tube framing and is partially covered by a canvas, polyethylene or other woven or nonwoven fabric or sheeting cover. This type of structure typically has no side walls and can be easily disassembled and moved. See also "CANOPY."

CARE FACILITIES — See NH RSAs.

- A. DAY-CARE NURSERY.
- B. CHILD DAY CARE.
- C. CHILD DAY-CARE AGENCY.
- D. FAMILY DAY-CARE HOME.
- E. FAMILY GROUP DAY-CARE HOME.
- F. GROUP CHILD DAY-CARE CENTER.
- G. NIGHT-CARE AGENCY.
- H. PRESCHOOL PROGRAM.
- I. RESIDENCE.

CHILD DAY CARE — The care and supervision of a child away from the child's home and apart from the child's parents.

CHILD DAY-CARE AGENCY — Any person, corporation, partnership, voluntary association or other organization, either established for profit or otherwise, which regularly receives for child day care one or more children, unrelated to the operator or staff of the agency. The total number of hours in which a child may remain in child day care shall not exceed 13 hours per day, except in emergencies. The types of child day-care agencies are defined as follows:

- A. PRESCHOOL PROGRAM — A child day-care agency providing care and a structured

demolition debris, salvage materials, rubber, textiles, rubbish or trash or junked, dismantled or wrecked motor vehicles or motor vehicle parts.

JUNKYARD — A commercial establishment or place of business which is used for storing, keeping, buying or selling junk but not including approved solid waste disposal facilities or registered motor vehicle dealers.

JUNKYARD, MOTOR VEHICLE — Any place of storage or deposit, whether in connection with another business or not, which has two or more unregistered motor vehicles which are no longer fit for legal use on public highways or any combination of motor vehicle parts or materials, the sum of which in build is equal to or greater than two or more motor vehicles.

L

LAND USE REGULATIONS — The Town of Hudson, NH, Land Use Regulations, consisting of Chapters 193, 200, 275, 276 and 290 of the Hudson Town Code.

LED SIGN — A sign that uses light-emitting diodes to form numbers, as in digital clocks, transmit information to the sign from remote controls, form text images and/or illuminate from tiny bulbs that fit into an electrical circuit.

LOT — A single contiguous parcel of land. (See also **CONFORMING** and **NONCONFORMING**)

LOT, CORNER — A lot with two adjacent sides abutting intersecting public streets (**HIGHWAYS**).

LOT LINE, FRONT — The property line dividing a lot from any street (**HIGHWAY**) or public **RIGHT-OF-WAY** without regard to the arrangement or orientation of buildings or structures on the lot.

LOT LINE, REAR — The property line opposite the front lot line, except in the case of corner lots where the owner has the option of choosing which of the property lines not contiguous with streets (**HIGHWAYS**) or public **RIGHTS-OF-WAY** is to be considered the "rear lot line."

LOT, NONCONFORMING — A lot lawfully existing at the effective date of this chapter, or any subsequent amendment thereto, which is not in conformity with all provisions of this chapter. Notwithstanding the minimum lot area requirements set forth in § 334-27, in any **DISTRICT** in which structures are permitted, a structure may be erected on a lot which was a **LEGAL LOT OF RECORD**, even though such lot fails to meet the present requirements for frontage or area, or both, that are applicable for that use in the **DISTRICT** allowed; provided, however, that such lot is not contiguous with another lot or lots in the same ownership, provided that the property is either on Town sewer or the property owner obtains a state and/or municipal septic permit, and further provided that the zone's minimum front, side and back yard **SETBACKS** are satisfied.

LOT OF RECORD — Land designated as a separate and distinct parcel prior to the date of posting (November 3, 2000) of this article either in a legally recorded deed filed with the Hillsborough County Registry of Deeds or lots or units described as part of a subdivision or site plan recorded at the Hillsborough County Registry of Deeds prior to the date of posting. For the purpose of this article, a lot of record shall also be defined to include separately defined

care center, center for the developmentally disabled, progressive school, Montessori school, or by any other name.

GUY WIRE — A cable-type appurtenant device which is used to secure and steady a tower or mast; and includes all hardware which attaches the cable to the tower or mast and to the ground.

H

HEIGHT (GENERAL USE) — The distance measured from the ground adjacent to the structure, or some other alternatively specified point, up to the highest point of a BUILDING, ANTENNA, STRUCTURE or a supporting structure.

HEIGHT, SMALL WIND ENERGY SYSTEM — The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.

HEIGHT, SMALL WIND ENERGY SYSTEM TOWER — The height above grade of the fixed portion of the tower, excluding the wind generator.

HIGHWAY — Any travelway, dedicated to or accepted by the Town, whether improved or unimproved, within the TOWN OF HUDSON that is available as public use for travel, regardless of whether or not its popular or legal name contains the term "street," "highway," "road," "roadway," "route," "avenue," "boulevard" or other such nomenclature, which shall include any Class VI roads within HUDSON. In this code, the terms street, road, route, roadway or avenue may be used interchangeably with HIGHWAY.

HOME OCCUPATION — The accessory use of a residence for business purposes which is clearly incidental to the principal residential use, provided that the use does not significantly change the residential character or function of the property.

HOUSING FOR OLDER PERSONS — Housing that qualifies as "Housing for Older Persons" as defined in § 334-70 and developed according to the provisions of § 334-71 of the Town of Hudson Zoning Ordinance.

HUDSON — The TOWN of HUDSON, New Hampshire.

I

INFLATABLE OR BALLOON SIGN — A sign that inflates with air or helium to display advertisements or promotional activities typically known as, but not limited to, tubes, tubes in motion, inflatables, rotatable inflatables or rooftop balloons.

INTEGRATED ANTENNA ARRAY — An ANTENNA, MAST or MONOPOLE containing multiple coordinated radiating elements.

INTERIOR ILLUMINATED SIGN — A sign that has an internal light source (such as LED, neon or bulb) that may be turned on/off either manually or by remote control and used to display text that is manually affixed to and/or manually changeable in an external message area.

J

JUNK — Any material, such as, but not limited to, discarded metal, glass, paper, building debris,

POORLY DRAINED SOILS — Soils where the water is removed so slowly that the soil is saturated periodically during the growing season or remains wet for long periods of time as defined in the United States Soil Conservation Service Soils Survey of Hillsborough County, Eastern Half (latest edition). (See also "VERY POORLY DRAINED SOILS.")

PORTABLE CARPORT — See "CAR CANOPY."

PORTABLE GARAGE — A freestanding, lightweight structure used to house vehicles and constructed of tube framing and fully enclosed by a canvas, polyethylene cover or other woven or nonwoven fabric or sheeting. This structure type typically has no permanent footing or floor and can be easily disassembled and moved.

PORTABLE SIGN — A sign that is movable, typically set up on a daily basis outside the business establishment, such as, but not limited to, sandwich boards, swinger sidewalk signs, portable billboards, Portasigns, Portasigns in motion or roadside readerboards.

POWER GRID — The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

PREEXISTING TOWERS, MASTS AND ANTENNAS — Any TOWER, MAST, MONOPOLE or ANTENNA lawfully constructed or permitted prior to the adoption of this article. Also, any TOWER, MAST, MONOPOLE or ANTENNA lawfully constructed in accordance with this article which predates an application currently before the Town.

PUBLIC NUISANCE — Any use that may endanger the health, safety, peace or enjoyment of the community or a neighborhood due to the emission of smoke, fumes, particulates, noise, vibration, radiation, visual blight or any other like condition.

R

RADIO SERVICE FACILITY — Any structure, ANTENNA, MAST, MONOPOLE or other radio installation device used to achieve desired communication(s) by a user with a narrow base of related or unrelated users; generally including, but not limited to, amateur radio service, general mobile radio service, citizens band radio service, low-power radio service, aeronautical and marine communications and any other similar radio communications or service which is not specifically named within this definition.

RECEIVE-ONLY FACILITY — Any ANTENNA, MAST, MONOPOLE or other device designed and constructed with the intent to receive broadcast signals typically for household use; including, but not limited to, personal satellite and off-the-air television signals and AM, FM, shortwave and other similar radio signals.

RECREATIONAL VEHICLE — A vehicle, motorized or not, which is designed and used primarily for the purpose of recreation, including but not limited to the following: vehicles defined in RSA Chapter 215, boats, motorhomes and recreational trailers.

RESERVE STRIP — Includes areas for which future public use is intended for street (HIGHWAY) connections, for street (HIGHWAY) improvements and for street or pedestrian ways giving ACCESS to land dedicated for public use.

RIGHT-OF-WAY — The area of land owned, used by or available to the Town for street

(HIGHWAY) purposes, including any ancillary purposes thereto.

RSA — The NH Revised Statutes, Annotated.

S

SECONDARY USE — A use of land or of a building or of a portion thereof which is unrelated to the principal use of the land or building.

SEDIMENT — Solid material, either mineral or organic, that is in suspension, is transported, or has been moved from its site of origin by erosion.

SEXUAL ENCOUNTER CENTER — A business or commercial enterprise that as one of its primary business purposes offers for any form of consideration:

- A. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- B. Activities between male and female persons and/or persons of the same sex when one or more persons is in the state of nudity; and
- C. When the activities in Subsection A or B above are characterized by an emphasis on activities which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in NH RSA 571-B:1.

SEXUALLY ORIENTED BUSINESSES — Businesses generally falling into categories regulated or defined in NH RSA 571 et seq. See:

- A. ADULT BOOKSTORE/ADULT VIDEO STORE.
- B. ADULT CABARET.
- C. ADULT DRIVE-IN THEATER.
- D. ADULT USE ESTABLISHMENT.
- E. ADULT MOTION-PICTURE ARCADE.
- F. ADULT MOTION-PICTURE THEATER.
- G. "THE TOTAL PRESENTATION TIME."
- H. "SUBSTANTIAL PORTION OF THE TOTAL PRESENTATION TIME."
- I. SEXUAL ENCOUNTER CENTER.
- J. SEXUALLY ORIENTED BUSINESS.
- K. NUDE MODEL STUDIO.

SHADOW FLICKER — The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures, causing a repeating pattern of light and shadow.

SHED — See "ACCESSORY BUILDING."