

# **137 HIGHLAND STREET DRIVEWAY WAIVER**

WR# 02-23

## **STAFF REPORT**

November 8, 2023

(See September 13, October 25 2023)

**SITE:** 137 Highland Street; Map 167 Lot 051-000

**ZONING:** Residential 2 (R2)

**PURPOSE OF PLAN:** To allow for a driveway grade of greater than 10%.

### **PLANS UNDER REVIEW:**

Driveway Plan, 137 A-B Highland Street, Town of Hudson, Hillsborough County, New Hampshire; originally prepared by: 118 Portsmouth Ave St A202, Stratham, NH 03885; originally prepared for: Ismael Valenzuela, 137 Highland Street, Hudson, NH 03051; consisting of two sheets with notes #1-11; originally dated June 29, 2023; last revised October 10, 2023.

### **ATTACHMENTS**

A. Department Comments

### **APPLICATION TRACKING:**

- August 28, 2023 – Waiver request received (driveway permit had previously been applied for but could not be approved without a waiver).
- September 13, 2023 – Public hearing deferred to October 25, 2023.
- October 25, 2023 – Public hearing continued to November 8.
- October 28, 2023 – Site walk conducted.
- November 8, 2023 – Public hearing scheduled.

### **COMMENTS & RECOMMENDATIONS:**

#### **BACKGROUND**

The lot currently has a duplex (units A & B), and attached patio on the lower level. A driveway provides access from Highland Street, and an unpermitted portion of the driveway extends to a gravel lot on the lower elevation. It is unknown when the secondary drive was done, but there is no recorded permit for it. Upon application for a driveway permit for this portion of the driveway, the Engineering Department notified the Applicant that it could not be approved without a waiver for the portion exceeding the maximum slope of 10%.

The application requests a waiver from Detail R-89, Driveway Cross Section, which is subordinate to Driveway Regulation §193-10.C (Establishment of Grades), to pave a driveway

area with a slope of 27%, however field verification by the Engineering Department revealed that this has already been constructed and paved with a slope in excess of 28%.

Staff also notes that the “proposed” driveway encroaches on the side-yard setback by half a foot, which also requires a waiver from the Planning Board in order to be permitted. The Applicant’s representative has stated that this encroachment will be removed.

Waiver request such as these should be considered on a case-by-case scenario without setting precedent. The application provides narrative and reasoning for the waiver request.

### DEPARTMENT COMMENTS

See **Attachment A**.

#### Engineering:

1. Based on our field verification, the existing driveway grade is as steep as 28%.
2. Portions of the existing paved driveway in question is within both the side and front building setbacks.
3. Engineering Department does not recommend a driveway with such a slope, which is close to three times steeper than our maximum standard.

#### Fire Department:

Hudson Fire does not recommend the proposed driveway. The driveway slope is extremely steep and is a potential hazard especially during wet or slippery conditions.

### RECOMMENDATIONS

Staff recommends that the Planning Board consider the application and testimony of the Applicant and/or its representative. The proposal is 180% steeper than the permitted slope, providing a potentially dangerous condition for residents, visitors and first responders in both ingress and egress

*Draft Motions on the following page*

**DRAFT MOTIONS**

**GRANT the driveway waiver:**

I move to grant the driveway waiver from §193-10.C, Establishment of Grades, to allow for a driveway grade of greater than 10%, at 137 A-B Highland Street, as depicted on the plan titled: Plot Plan for Application for Access Path Ismael Valenzuela - 137 A&B Highland St., prepared by Emanuel Engineering, last revised October 3, 2023, based on the Board’s discussion, the testimony of the Applicant’s representative, and in accordance with the language included in the submitted Driveway Waiver Request Form for said waiver.

Subject to, and revised per, the following stipulation:

1. All stipulations of approval shall be incorporated into the Notice of Decision, which shall be recorded at the Hillsborough County Registry of Deeds.
2. The Applicant agrees to record a notice of limits of municipal responsibility, to be favorably reviewed by Town Counsel, at the Hillsborough County Registry of Deeds.
3. The driveway shall be reconfigured to meet side setback requirements of 15 feet.
4. Notice of Limits of Municipal Responsibility and Liability: The Town of Hudson assumes no responsibility for liability for any claim, loss, or damages, including those arising for failure to provide municipal services, including police, fire, or ambulance services, resulting in any way from the use of the driveway that exceeds 10% grade.

Motion by: \_\_\_\_\_ Second: \_\_\_\_\_ Carried/Failed: \_\_\_\_\_

**DENY the driveway waiver:**

I move to deny the driveway waiver request from §193-10.C, Establishment of Grades, to allow for a driveway grade of greater than 10%, at 137 A-B Highland Street, as depicted on the plan titled: Plot Plan for Application for Access Path Ismael Valenzuela - 137 A&B Highland St., prepared by Emanuel Engineering, last revised October 3, 2023, finding that:

1. Denial is not based on the fact that the driveway was previously installed, albeit illegally. However, the fact that the driveway has already been installed provides no additional ground in support of the waiver. The decision to deny would be the same if the driveway had not already been built.
2. Denial is based on the 28% grade, which is 180% steeper than permitted.
3. The proposal is dangerous for emergency services on ingress and egress
4. That granting this waiver would violate the purpose or general standard of the regulation.

Motion by: \_\_\_\_\_ Second: \_\_\_\_\_ Carried/Failed: \_\_\_\_\_



# TOWN OF HUDSON

FIRE DEPARTMENT

INSPECTIONAL SERVICES DIVISION



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12 SCHOOL STREET, HUDSON, NEW HAMPSHIRE 03051

Emergency 911  
Business 603-886-6005  
Fax 603-594-1142

Scott Tice  
Chief of Department

TO: Brian Groth  
Town Planner

FR: David Hebert  
Fire Marshal

DT: August 29, 2023

RE: 137 Highland Street

Hudson Fire does not recommend the proposed driveway. The driveway slope is extremely steep and is a potential hazard especially during wet or slippery conditions.

David Hebert  
Fire Marshall

**Groth, Brian**

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**From:** Dhima, Elvis  
**Sent:** Tuesday, August 29, 2023 3:51 PM  
**To:** Dubowik, Brooke  
**Cc:** Hebert, David; Kirkland, Donald; Twardosky, Jason; Groth, Brian  
**Subject:** RE: Dept Sign-off WR#02-23 137 A&B HIGHLAND ST DRIVEWAY  
**Attachments:** IMG\_2183.JPG

Brooke

Please see below

1. Based on our field verification, the existing driveway grade is as steep as 28%, see attachment. We are not sure where the 19.6% is coming from.
2. Portion of the existing paved driveway in question is within the building setback
3. Engineering Department does not recommend a driveway with such a slope, which is close to three times steeper than our maximum standard.

E

***Elvis Dhima, P.E.***  
***Town Engineer***

12 School Street  
Hudson, NH 03051  
Phone: (603) 886-6008  
Mobile: (603) 318-8286

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**From:** Kirkland, Donald  
**Sent:** Friday, October 13, 2023 4:14 PM  
**To:** Gradert Benjamin; Dhima, Elvis  
**Cc:** Groth, Brian  
**Subject:** RE: 137 Highland Driveway Waiver

My only comment is on the driveway profile on page 2. The profile shows that the problematic portion of the driveway is 54-foot setback from the "travelled way." Measuring on GIS confirms that the new driveway is 53-54 feet from the edge of pavement. From the front property boundary it is closer to 41-feet (9-feet into the front setback).

*Don Kirkland, P.E.*  
*Civil Engineer*

Town of Hudson, NH  
12 School Street  
Hudson, NH 03051  
Phone: (603) 886-6008  
Mobile: (603) 809-0229



**Dubowik, Brooke**

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**From:** Twardosky, Jason  
**Sent:** Tuesday, August 29, 2023 2:24 PM  
**To:** Dubowik, Brooke  
**Subject:** RE: Dept Sign-off WR#02-23 137 A&B HIGHLAND ST DRIVEWAY

DPW has no comments or concerns to this waiver request since it is for an existing condition that does not impact storm water drainage or traffic entering or leaving the property onto Highland St. itself.

*Jason Twardosky*



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*Director of Public Works  
Town of Hudson  
Department of Public Works  
Phone: 603-886-6018  
Fax: 603-594-1143  
E-mail: [Jtwardosky@hudsonnh.gov](mailto:Jtwardosky@hudsonnh.gov)*

**Dubowik, Brooke**

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**From:** Michaud, Jim  
**Sent:** Tuesday, August 29, 2023 1:51 PM  
**To:** Dubowik, Brooke  
**Subject:** RE: Dept Sign-off WR#02-23 137 A&B HIGHLAND ST DRIVEWAY

Good afternoon Brooke, Assessing has no comments to put forth on Driveway Waiver request for 137 A&B Highland Street.

Thanks

jim

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**Bernstein, Shur,  
Sawyer & Nelson, P.A.**  
Jefferson Mill Building  
670 North Commercial Street  
Suite 108  
PO Box 1120  
Manchester, NH 03105-1120

T (603) 623 - 8700  
F (603) 623 - 7775

Lena Neruk  
paralegal  
603-665-8835  
lneruk@bernsteinshur.com

RECEIVED

AUG 28 2023

TOWN OF HUDSON  
PLANNING DEPARTMENT

August 25, 2023

Planning Board  
Town of Hudson  
12 School Street  
Hudson, NH 03051

**Re.: 137 A&B Highland St., Hudson, NH – Driveway permit Application – Sign Package**

Dear Members of the Board:

On behalf of our client, Ismael Valenzuela, please find the following included for consideration at the Planning Board's next available hearing:

1. Driveway Waiver request form;
2. Driveway Permit Application;
3. Two (2) sets of mailing labels and abutters;
4. One (1) copy of the letter from One Medical;
5. Fifteen (15) copies of the Plot Plan for Access Path;
6. Fifteen (15) copies of the Slope Profile for Application for Access Path;
7. One (1) of the sign package;
8. Payment via check # 10308 in the amount of \$75.15

We thank you in advance for your consideration of this application.

Sincerely,

  
Lena Neruk

**DRIVEWAY WAIVER REQUEST FORM**  
**Town of Hudson, New Hampshire**

Street Address: 137 A&B Highland Street, Hudson, NH

I, A. Eli Leino, Esq. of Bernstein, Shur, Sawyer & Nelson, P.A., on behalf of property owner Ismael Valenzuela, hereby request that the Planning Board waive the requirements of "Detail R-8, Driveway Cross-Section" of the Town of Hudson Engineering Department Engineering Technical Guidelines & Typical Details as revised February 2020, in reference to a plan prepared by Fred S. Emanuel, P.E., of Emanuel Engineering dated August 1, 2023 for property tax map 167, lot 51 in the Town of Hudson, NH.

As agent for the aforementioned applicant, I, herein, acknowledge that this waiver is requested in accordance with the provisions set forth in RSA 674:36, II (n), i.e. (For Subdivisions) and RSA 674:44, III (e) (For Site-Plans). Without the Planning Board granting said waiver, it would pose an unnecessary hardship upon the applicant, and the granting of this waiver would not be contrary to the spirit and intent of the Driveway regulations.

Hardship reason(s) for granting this waiver (if additional space is needed please attach the appropriate documentation hereto):

137 Highland Street consists of two internal apartment units, A & B. Ismael Valenzuela, his sister, and their 89-year-old mother reside in Unit B, which is toward the rear of the property and topographically lower than the front unit. See included plan for reference. The lot is serviced by a paved driveway accessing Highland Street. An access path completed with base-coat paving leads to a gravel parking area abutting Unit B. The Valenzuelas are requesting the necessary waivers to pave the access path and parking area. Mr. Valenzuela suffered workplace injuries during a violent incident at a Boston public school in January 2020. The incident left him partially disabled and a court ordered Workers' Compensation to cover five years of benefits. His condition continues to improve but carrying items to the lower level and shoveling snow jeopardize his recovery. His mother is elderly and has a handicap parking placard. Permitting additional paving at the property would allow snow removal via plow, which is currently not possible because of the gravel parking area. A 37.5' portion of the proposed paving has a 19% slope, while 10% is the maximum allowed slope. The property's lot lines and building location do not provide sufficient area to provide accessways with compliant grades via the use of a curved path. As such, this waiver is requested to solve the Valenzuelas' hardship related to snow removal and safe winter access to Unit B.

Of note, the New Hampshire legislature has shown a preference for allowing such reasonable accommodations as are requested here. For example, RSA 674:33(V) allows zoning boards of adjustment to "grant a variance from the terms of a zoning ordinance without finding a hardship arising from the condition of a premises subject to the ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises."

Reason(s) for granting this waiver, relative to not being contrary to the Spirit and Intent of the Subdivision/Site Plan regulations: (if additional space is needed please attach the appropriate documentation hereto):

Driveway slope regulations are imposed for a variety of reasons. Primarily, the town is concerned that vehicles entering streets can stop safely without encountering cross traffic from the right of way. In this case, the lot slopes away from Highland Street, so this intent of the ordinance is not contravened. Second, slope limits aim to support safe navigation to, from, and within properties, including by emergency personnel. In June 2023, an ambulance responded to a life-threatening emergency at Unit B. The ambulance was able to navigate the slope to Unit B without issue. However, in winter, if the area is unable to be adequately cleared of snow, emergency responders would be required to park at the upper level and travel on foot. This would increase the response time and could lead to irreparable harm, which directly contravenes the spirit and intent of the regulation, whereas allowing this waiver furthers those goals.

Signed:



Applicant or Authorized Agent

Planning Board Action:

Waiver Granted \_\_\_\_\_

Waiver Not Granted \_\_\_\_\_



Town of Hudson
Driveway Permit Application

OFFICE USE
Application Fee \$50.00
Receipt #
Date:
Permit #

Date August 23, 2023 Map 167 Lot 51

Driveway Address 137 A&B Highland Street, Hudson, NH

Applicant Name Ismael Valenzuela Telephone # 781-879-2713

Applicant Address 137 Highland Street, Unit A, Hudson, NH

Email Address ivalezuelajd@yahoo.com Cell Phone # 781-879-2713

Driveway grade percent (%) (10% maximum grade). See Attached "Slope profile"

Driveway surface (check one): [X] Paved [ ] Gravel [ ] Stone

Length of driveway from street to end ft. See Attached "Plot Plan"
Width of driveway at street entrance ft.

At the point of intersection with the street, the driveway, at a 3.5 ft. elevation above the driveway grade, shall provide in both directions of the street an AASHTO Safe Sight Distance, as shown in Table 2.2: Recommended Decision Sight Distance Values.

Sight distance: Left Right Speed Limit:

Distance to nearest intersection: Left Right No change to existing Roadway Entrance

Proposed roadway drainage improvements:

[ ] Swale [ ] Curb & Catch Basins [ ] Other (describe)
N/A

Special conditions requested (e.g., construct a turnaround at end of driveway):
Pave existing gravel area and top coat access path to gravel area. No proposed change to existing driveway near Highland Street.

Is this application for a second driveway on the parcel? [ ] Yes [X] No

- \* Second driveways are not permitted for single family homes or ALU's (per Zoning Ordinance).
\* No Water Shut-offs and/or Sewer Clean-outs will be allowed on new residential driveways.



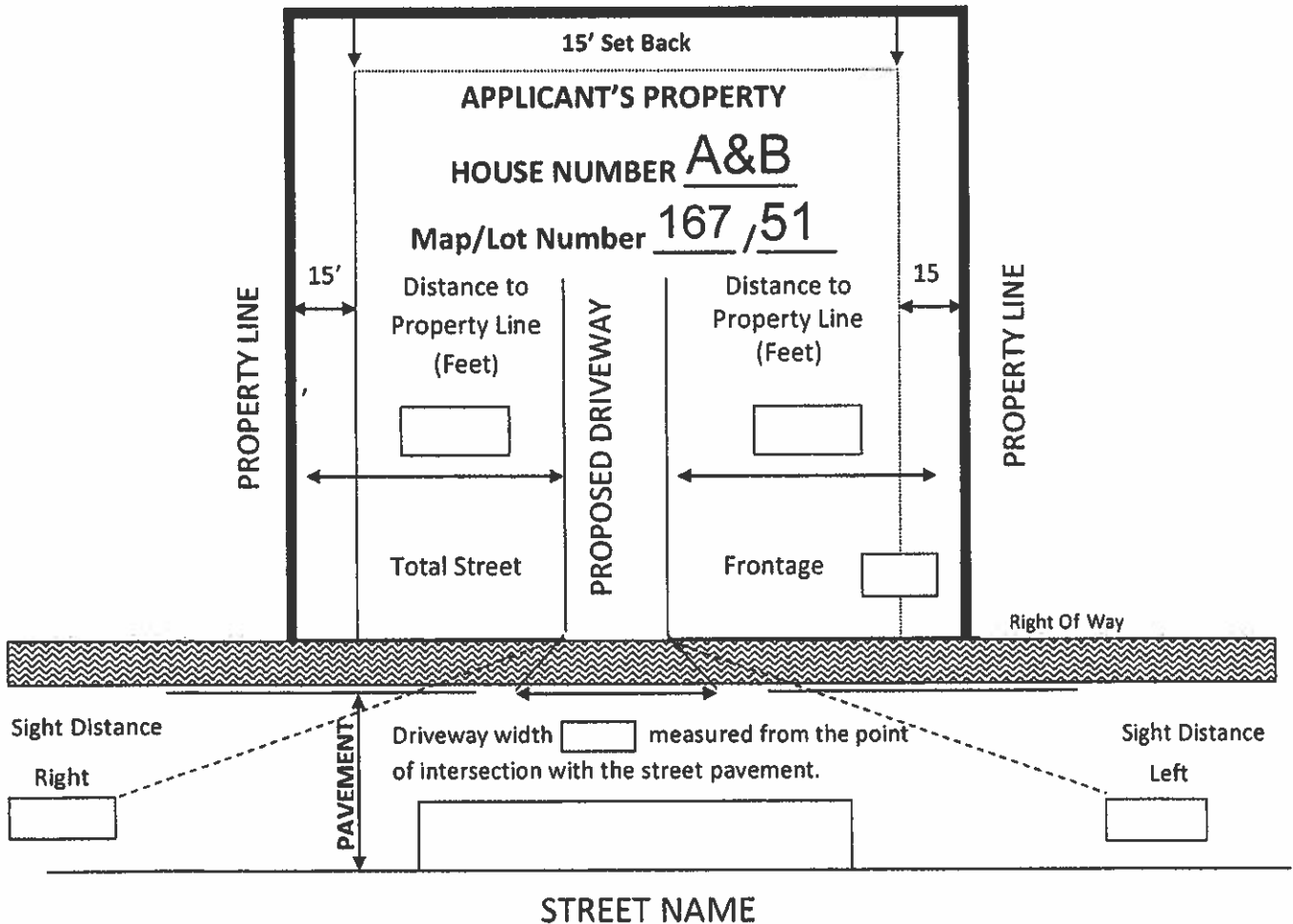
Town of Hudson  
Driveway Permit Application

Page 2

Driveway Layout Plan

In the below Driveway Layout Plan, please fill-in all blank boxes with their respective actual measurements in feet. In accordance with the Planning Board’s Driveway Regulations, Chapter 193, the minimum setback for driveways is 15 feet from side and rear lot lines. Also, driveways shall intersect with the adjoining street at 90° (degrees), and the dimensions indicated below must include the street frontage of the parcel.

\* A Plan and Profile will be required for any driveway accessing public roads.





TOWN OF HUDSON  
DRIVEWAY PERMIT APPLICATION  
AND NH RSA 36-A: 4 (III) DISCLOSURES

Page 3

By filing this application, the owner(s) hereby grants permission to the members of the Hudson Planning Board and Conservation Commission, as well as their assigned agents, to enter upon the associated property at all reasonable times and for the express purpose of conducting examinations, surveys, tests and inspections as may be appropriate to enable the office of the Town Engineer to process this application. I/we also hereby waive and release any claim or right I/we may have now or hereafter against any of the aforementioned parties resulting from said examinations, surveys, tests and inspections conducted on my/our property in connection with this application.

I/we hereby attest to the accuracy of the information submitted herein, including any attachments, and acknowledge that any inaccuracies or omissions can result in revocation of this permit and loss of any rights, vested or otherwise to this permit.

The undersigned hereby acknowledges that before signing this application s/he/they read this application form that contains the follow disclosure as required by NH RSA 36-A:4 (III). The inspection to be conducted by the Hudson Conservation Commission is undertaken to evaluate the impact of the proposed permit on protected wetlands and wetland buffers as defined in Article IX – Wetland Conservation District – Town of Hudson Zoning Ordinance, §§334-33 through 334-39. The specific features to be studied by the Hudson Conservation Commission would be the area of land that is subject to the activity described in the permit application, and associated landforms, wetlands, and water bodies. The data to be collected by the Conservation Commission will be collected through personal observation by the Conservation Commission members and those observations may be recorded through hand written notes and through digital and cell phone photography. In addition to members of the Hudson Conservation Commission, inspection and data collection may also be carried out by the Public Works Director, the Hudson Fire Department and the Hudson Town Engineer or his designee. The Information collected by the Conservation Commission, or other representatives of the Town of Hudson, would then be further distributed through public discussion at Conservation Commission and Planning Board meetings and that information may also be committed to written documents that may be distributed by the Community Development Department to other interested parties, including but not limited to, the New Hampshire Department of Environmental Services, the United States Fish and Wildlife Service, the United States Army Corps of Engineers, the United States Environmental Protection Agency and members of the public. The possible known consequences of this inspection and data collection include, and are not limited to, denial of a special exception to construct the proposed driveway, the requirement to redefine and readjust a wetland boundary and designation and the associated costs to the applicant for the hiring of a wetlands scientist for this purpose, possible code enforcement actions by the Town of Hudson to abate observed violations of the Hudson Zoning Ordinance and Land Use Regulations and possible enforcement actions against the applicant for violations of State or Federal Law.

  
\_\_\_\_\_  
Signature(s) of Applicant Agent

  
\_\_\_\_\_  
date

Town of Hudson  
Driveway Permit Application

Page 4  
Routing Sheet

[FOR OFFICE USE ONLY]

\*\*Reviewed by Road Agent if connecting to existing Town accepted road

Approved \_\_\_\_\_  
Town Engineer Date

Comments/stipulations

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Approved \_\_\_\_\_  
Public Works Director Date

Comments/stipulations

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Approved \_\_\_\_\_  
Fire Dept. Date

Comments/stipulations

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Driveway satisfactorily completed \_\_\_\_\_  
Town Engineer Date

Comments/Final Inspection

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158-002-000  
TATE, STEVEN W., TR.  
140 HIGHLAND STREET  
HUDSON, NH 03051

167-045-000  
BIZARRO, EVARISTO S.  
3 BONNIE LANE  
HUDSON, NH 03051

167-046-000  
PARENT, BRYAN P.  
132 HIGHLAND STREET  
HUDSON, NH 03051

167-047-000  
ROUSSEL, RONALD A., TR.  
134 HIGHLAND STREET  
HUDSON, NH 03051

167-048-000  
DEARBORN, GERALD A., TR  
136 HIGHLAND STREET  
HUDSON, NH 03051

167-049-000  
VERHOFF, PATRICK H. TR.  
141 HIGHLAND STREET  
HUDSON, NH 03051

167-050-000  
MOREAU, KEVIN C., TR.  
139 HIGHLAND STREET  
HUDSON, NH 03051

167-051-000  
VALENZUELA, ISMAEL  
PO BOX 413  
BURLINGTON, MA 01803

167-052-000  
ALI, AUSAMA MOHAMED  
135 HIGHLAND STREET  
HUDSON, NH 03051

167-053-000  
LIVINGSTON, MICHAEL P., TR.  
129 HIGHLAND STREET  
HUDSON, NH 03051

167-079-000  
BRADBURY, SUSAN  
17 WASHINGTON ST.  
HUDSON, NH 03051

167-080-000  
WITT, DENNIS, JR.  
15 WASHINGTON DR.  
HUDSON, NH 03051

167-082-000  
PLANTE, ALAN G.  
6 MONROE STREET  
HUDSON, NH 03051

167-083-000  
FODEN, CHRISTOPHER M.  
10 MONROE ST.  
HUDSON, NH 03051-3812

167-084-000  
HUDSON, TOWN OF  
12 SCHOOL STREET  
HUDSON, NH 03051



<p>158-002-000  TATE, STEVEN W., TR.  140 HIGHLAND STREET  HUDSON, NH 03051</p>
<p>167-045-000  BIZARRO, EVARISTO S.  3 BONNIE LANE  HUDSON, NH 03051</p>
<p>167-046-000  PARENT, BRYAN P.  132 HIGHLAND STREET  HUDSON, NH 03051</p>
<p>167-047-000  ROUSSEL, RONALD A., TR.  134 HIGHLAND STREET  HUDSON, NH 03051</p>
<p>167-048-000  DEARBORN, GERALD A., TR  136 HIGHLAND STREET  HUDSON, NH 03051</p>
<p>167-049-000  VERHOFF, PATRICK H. TR.  141 HIGHLAND STREET  HUDSON, NH 03051</p>
<p>167-050-000  MOREAU, KEVIN C., TR.  139 HIGHLAND STREET  HUDSON, NH 03051</p>
<p>167-051-000  VALENZUELA, ISMAEL  PO BOX 413  BURLINGTON, MA 01803</p>
<p>167-052-000  ALI, AUSAMA MOHAMED  135 HIGHLAND STREET  HUDSON, NH 03051</p>
<p>167-053-000  LIVINGSTON, MICHAEL P., TR.  129 HIGHLAND STREET  HUDSON, NH 03051</p>

<p>167-079-000  BRADBURY, SUSAN  17 WASHINGTON ST.  HUDSON, NH 03051</p>
<p>167-080-000  WITT, DENNIS, JR.  15 WASHINGTON DR.  HUDSON, NH 03051</p>
<p>167-082-000  PLANTE, ALAN G.  6 MONROE STREET  HUDSON, NH 03051</p>
<p>167-083-000  FODEN, CHRISTOPHER M.  10 MONROE ST.  HUDSON, NH 03051-3812</p>
<p>167-084-000  HUDSON, TOWN OF  12 SCHOOL STREET  HUDSON, NH 03051</p>

# ❖ one medical

185 Dartmouth Street · Suite 603 · Boston, MA 02116  
ph: 617-224-5351 · fax: 617-903-5009

August 18, 2023

Ismael Valenzuela, DOB: 03/12/1958

To Whom It May Concern:

Due to injuries suffered at work from a blow to the head and neck, Mr. Valenzuela has found it difficult to carry things up and down steps. He was using a wheelbarrow to move groceries to avoid pain. Fortunately, he was able to have an access path constructed to maximize his ability to transport things into and out of his home without additional pain. I would deem this access path medically necessary, as it allows Mr Valenzuela to accomplish important activities of daily living without incurring debilitating pain.

Sincerely,



William Meikrantz, MD, PhD  
NPI: 1144288549