# **137 HIGHLAND STREET DRIVEWAY WAIVER**

#### WR# 02-23

#### STAFF REPORT

December 13, 2023

(See September 13, October 25, November 8 2023)

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

**ZONING:** Residential 2 (R-2)

**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 #1-13 originally dated June 29, 2023; last revised November 28, 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.
- October 25, 2023 Public hearing continued to November 8.
- October 28, 2023 Site walk conducted.
- November 8, 2023 Public hearing continued to December 13.
- December 13, 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

WR# 02-23 Staff Report Page 1 of 3 area with a slope of 13%, however field verification by the Engineering Department revealed that this has already been constructed and paved with a slope in excess of 28%.

#### STAFF COMMENTS

Staff 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 as part of remediation. Due to being a duplex a second driveway is allowed without waiver from §193-10(G).

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:

If the planning Board entertains the approval for this driveway they should consider the following stipulations

1. Applicant shall add guardrail, as shown on the attachment

2. The approval from Planning Board shall be subject to the recording of a notice of limits of municipal responsibility and liability in a format to be approved by town.

#### *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 130% 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**

#### **<u>GRANT</u>** the driveway waiver:

I move to grant the driveway waiver WR#02-23 from §193-10.C, Establishment of Grades, to allow for a driveway grade of greater than 10%, at 137 A-B Highland Street Map 167 Lot 51, 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: \_\_\_\_\_

#### **<u>DENY</u>** the driveway waiver:

I move to deny the driveway waiver WR# 02-23 from §193-10.C, Establishment of Grades, to allow for a driveway grade of greater than 10%, at 137 A-B Highland Street Map 167 Lot 51, 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 13% grade, which is 130% steeper than the permitted slope.
- 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:

Meeting Date: 12/13/23

WR# 02-23 137 Highland Street Driveway Waiver - Attachment A

## **TOWN OF HUDSON**

FIRE DEPARTMENT

INSPECTIONAL SERVICES DIVISION



12 SCHOOL STREET, HUDSON, NEW HAMPSHIRE 03051

Emergency Business Fax 911 603-886-6005 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

#### Dubowik, Brooke

From: Sent: To: Cc: Subject: Dhima, Elvis Wednesday, November 29, 2023 10:57 AM Dubowik, Brooke; Kirkland, Donald Groth, Brian RE: 137 Highland Driveway Waiver

Brooke

Below are my comments

If the planning Board entertains the approval for this driveway they should consider the following stipulations

- 1. Applicant shall add guardrail, as shown on the attachment
- 2. The approval from Planning Board shall be subject to the recording of a notice of limits of municipal responsibility and liability in a format to be approved by town.

Е

Elvis Dhima, P.E. Town Engineer

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





From: Sent: To: Cc: Subject: Kirkland, Donald Friday, October 13, 2023 4:14 PM Gradert Benjamin; Dhima, Elvis Groth, Brian 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-feet 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

From:	Michaud, Jim
Sent:	Tuesday, August 29, 2023 1:51 PM
То:	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



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

Ineruk@bernsteinshur.com

т (603) 623 - 8700 F (603) 623 - 7775

Lena Neruk paralegal

603-665-8835

# RECEIVED

August 25, 2023

AUG 28 2023

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

TOWN OF HUDSON PLANNING DEPARTMENT

#### 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;
- Payment via check # 10308 in the amount of \$75.15 8.

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

Sincerely,

eng Neru

#### 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. Emanual, 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

AND RORATED THE	Town of Hudso Driveway Permit App		OFFICE USE Application Fee \$50.00 Receipt # Date: Permit #			
Date August 23, 2023	Map 167 Lot 5	1				
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 ivalenzuelajd@yahoo.com Cell Phone # 781-879-2713						
Driveway grade percent (%) (10% maximum grade). See Attached "Slope profile"						
Driveway surface (check one): 🔲 Paved 🗌 Gravel 🗌 Stone						
Length of driveway from street to endft. See Attached "Plot Plan"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 Lim	it:			
Distance to nearest intersection	on: Left	INSIL	o change to existing Roadway ntrance			
Proposed roadway drainage improvements:						
Swale Curb & Catch Basins Other (describe)						
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	d driveway on the parcel?	Yes	No 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.



STREET NAME



#### 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

8/24

date

### • 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,

den from or

William Meikrantz, MD, PhD NPI: 1144288549



# Proposed Plot Plan for Application for Access Path Ismael Valenzuela. - 137 A&B Highland St., Hudson, NH

# REFERENCE PLANS:

- H.C.R.D. PLAN NO 24851
- DELANEY GROUP PROJECT NO. 15236, DATED 09/19/16

# NOTES:

4.

- OWNER OF RECORD: TAX MAP 167, LOT 51 ISMAEL VALENZUELA 137 HIGHLAND ST HUDSON, NH 03051 HCRD VOL 7047 PG 1896
- THE INTENT OF THIS PLAN IS TO SHOW THE ACCESS PATH FROM FRONT TO BACK.
- PARCEL IS ZONED R2: MINIMUM BUILDING SETBACKS: FRONT: 50' SIDE: 15' **REAR: 15'**
- 5. STANDARDS AND REGULATIONS.
- 6. THIS PLAN DOES NOT REPRESENT A BOUNDARY SURVEY.
- FINISHED GRADE.
- 9. NO EXISTING GUARD RAIL OR PERMANENT FALL PROTECTION WAS OBSERVED ON SITE.
- SITE.
- CALL DIG SAFE @ 811 OR 1-888-DIG-SAFE.
- PLAN APPROVED BY THE PLANNING BOARD.
- REDUCE THE EXISTING SLOPE.





# Slope Profile for Application for Access Path Ismael Valenzuela. - 137 A&B Highland St., Hudson, NH



# PLAN REFERENCES:

H.C.R.D. PLAN NO. 24851

2.) DELANEY GROUP PROJECT NO. 15236, DATED 09/19/16

SEE PLOT PLAN ON SHEET CI.I FOR ADD'L INFO