

ATWOOD AVE 3-LOT SUBD. PLAN SP#09-23

SIDEWALK STIPULATION NO. 7

RECONSIDERATION

STAFF REPORT

March 13, 2024

PURPOSE: To reconsider the Board’s action regarding the sidewalk stipulation No. 7 on the Subdivision Approval for SB# 09-23.

ATTACHMENTS:

- A. SB# 09-23 Notice of Approval dated February 13, 2024 – Attachment “A”
- B. Email from Town Attorney, Dave Lefevre, dated February 14, 2024 – Attachment “B”

COMMENTS:

On January 24, 2024, the Planning Board approved subdivision application SB# 09-23 for a 3-Lot subdivision at 26 Atwood Avenue. On February 14, 2024, the board made a motion to reconsider the sidewalk stipulation No. 7 on the approval, by a 6/0/1 (Oates abstained) vote.

DRAFT MOTIONS

APPROVE REMOVAL OF STIPULATION:

I move to remove stipulation No.7 from the Notice of Approval dated February 13, 2024 for Atwood Avenue 3-Lot Subdivision SB# 09-23, 26 Atwood Avenue, Hudson, NH, Map 203/Lot 001.

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

APPROVE INSTALLATION OF SIDEWALK:

I move to add a new stipulation to the Notice of Approval dated February 13, 2024 for Atwood Avenue 3-Lot Subdivision Plan SB# 09-23, 26 Atwood Avenue, Hudson, NH, Map 203/Lot 001, to require the applicant to install a sidewalk along the frontage of the three (3) newly created lots.

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



TOWN OF HUDSON

Planning Board

Timothy Malley, Chairman

Robert Guessferd, Selectmen Liaison



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

NOTICE OF APPROVAL

February 13, 2024

Owner or Applicant: KLN CONSTRUCTION CO., INC.
70 BRIDGE STREET, UNIT 1
PELHAM, NH 03076

On Wednesday, January 24, 2024, the Hudson Planning Board heard subject case **SB# 09-23** “**Atwood Avenue 3-Lot Subdivision Plan**”.

SUBJECT: TO SUBDIVIDE MAP 203/LOT 001 INTO THREE (3) SINGLE-FAMILY RESIDENTIAL LOTS.

LOCATION: 26 ATWOOD AVENUE, MAP 203/LOT 001

The Planning Board accepted the subdivision application for the Atwood Avenue Subdivision SB# 09-23, Map 203/Lot 001.

WAIVERS GRANTED:

The Planning Board granted the requested waiver **HTC 289-20.C** - Stormwater Management Plan, to not require a stormwater management plan where one would typically be required, 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.

APPROVAL:

The Planning Board approved the subdivision plan entitled: Sojka Woods Atwood Subdivision, SB# 09-23, Tax Map 203/Lot 001, 26 Atwood Avenue, Hudson, NH; prepared by: Meisner Bred Corporation, 202 Main Street, Salem, NH 03079; prepared for: KLN Construction Company, Inc., 70 Bridge Street, Unit 1 Pelham, NH consisting of six sheets, and general notes 1-17 on sheet 2; dated December 14, 2023, last revised January 9, 2024; and:

That the Planning Board finds that this application complies with the Zoning Ordinances, and with the Land Use Regulations; and for the reasons set forth in the written submissions, together with the testimony and factual representations made by the applicant during the public hearing;

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 \$6,136.00 per single-family residential unit shall be paid prior to the issuance of a Certificate of Occupancy for the new house lots.
3. All monumentation shall be set or bonded for prior to Planning Board endorsement of the Plan-of-Record.
4. Prior to the Planning Board endorsement of the Plan, it shall be subject to final administrative review by Town Planner and Town Engineer.
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. All driveway grades in ROW shall conform to Engineering Tech Guidelines and details R-8 requirements.
7. Subject to contribution of a payment in lieu of construction of a sidewalk in front of the three lots, in an amount approved by the Town Engineer.

Signed: _____ Date: _____
Timothy Malley
Chairman

cc: Meisner Brem Corporation
Elvis Dhima, Town Engineer
Sojka Revocable Trust

Dubowik, Brooke

From: David LeFevre <dlefevre@tarbellbrodich.com>
Sent: Wednesday, February 14, 2024 2:33 PM
To: Malley, Tim
Cc: Jay Minkarah; Minkarah, Jay; Dubowik, Brooke; Dhima, Elvis
Subject: RE: Question

EXTERNAL: Do not open attachments or click links unless you recognize and trust the sender.

Tim:

I assume you are referring to HTC 289-28, G, which requires sidewalks on "proposed roadways," which suggests that the Planning Board can require sidewalks on new roads, which suggests by implication (or absence of regulation) that the Planning Board cannot require sidewalks on existing roads?

First, as a general proposition, I would say that the Planning Board has the inherent authority to require sidewalks. Even if the regulations were wholly silent, I would say that sidewalks could be required as a condition of approval.

Second, I would not interpret HTC 289-28, G, that narrowly. I would say the "proposed" road is the road which is proposed to provide access to the newly subdivided lots. I would say the "proposed" road could be either an existing road or a new road.

Accordingly, I have no issue with the sidewalk requirement.

However, there is an issue with the "contribution" in lieu of completion of the improvement. There are two (2) issues actually.

First, is the amount, and I would agree with you that the Planning Board should be putting a dollar figure on the amount, as opposed to, delegating that determination to the Town Engineer.

Second, and I would suggest far more concerning, is what exactly is the contribution for? As you say, its not the CAP fee. So what exactly is this money to be used for? How will the funds be accounted for? Who has authority to expend? Do the funds have to be refunded if unexpended?

The Planning Board does not have the authority to collect random funds for no particular purpose. There is a provision in the impact fee ordinance which allows for contributions in lieu of paying the impact fee. However, there is no provision of which I am aware which allows the Planning Board to collect fees like this in lieu of making the improvements.

As an aside, I know there was some concern with the variety of fees imposed on the HLC, and some question regarding whether or not the fees were proper as either impact fees or off-site exactions. However, the amounts were set by the Planning Board, the purposes were defined, and the applicant agreed that the exactions were properly assessed as off-site exactions.

Even assuming the applicant were to pay the funds without objection, I cannot conceptualize how the funds can be accounted for or expended. That being the case, I think you are correct that there is a real issue here that needs to be addressed. The Planning Board does have the authority to reconsider its decision on its own authority. My recommendation would be for the Planning Board to do precisely that. I would limit the reconsideration to this condition #7. You will need to alert the applicant. Procedurally, I think the Planning Board would need to decide first whether or not to reconsider, and second, conduct a public hearing if the Board decides to reconsider. Upon

reconsideration, the Planning Board could either require sidewalks per HTC 289-28, G, or if that is not appropriate, simply waive the requirement.

From: Malley, Tim <tmalley@hudsonnh.gov>
Sent: Wednesday, February 14, 2024 12:58 PM
To: David LeFevre <dlefevre@tarbellbrodich.com>
Cc: Jay Minkarah <JayM@nashuarpc.org>; Minkarah, Jay <jminkarah@hudsonnh.gov>; Dubowik, Brooke <bdubowik@hudsonnh.gov>
Subject: Question

Hi Dave,

At our last Planning Board meeting on January 24, 2024, the PB approved a 3-lot subdivision and a site plan.

The question I have has to do with a new stipulation added by the planning board during its approval motion.

For the record, both approvals received unanimous approval by the board.

The stipulation added to the 3-lot subdivision is as follows:

7.) "Subject to contribution of a payment in lieu of construction of a sidewalk in front of the three lots, in an amount approved by the town engineer."

So, two questions:

First one is I cannot find anything in our Town regulations that allows the PB to require sidewalks on subdivision of land on an existing roadway. Do you know of any regulation or law that allows this?

Second question, the stipulation is very open ended. Does not actually set the cost for those sidewalks, and I am not sure the applicants when they agreed to the stipulation, or the Planning Board understood the cost associated with that stipulation.

For the 3-lot subdivision, they have their CAP fee of \$6,136.00 per lot.

There is 290-feet of frontage on those 3-lots, the estimated cost of the sidewalk is \$200.00 per linear feet or a total cost of \$58,000.00 or approximately \$19,333.33 per lot.

So, I guess I am asking, can the PB do that?

Should the PB reconsider those motions to have the fee structure added?

I was very surprised that the sidewalk cost was so high.

Thanks Tim