

SPECIAL BOARD OF ALDERMEN

JUNE 28, 2023

7:00 PM

Aldermanic Chamber

PRESIDENT LORI WILSHIRE CALLS ASSEMBLY TO ORDER

PRAYER OFFERED BY CITY CLERK DAN HEALEY

PLEDGE TO THE FLAG LED BY ALDERMAN TYLER GOUVEIA

ROLL CALL

PUBLIC HEARING

Petition – L Deerwood Drive, Lot H-103

Testimony in Favor

Testimony in Opposition

Testimony in Favor

Testimony in Opposition

ADJOURNMENT

Steven A. Bolton
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BoltonS@nashuanh.gov

Celia K. Leonard
Deputy Corporation Counsel
LeonardC@nashuanh.gov

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P.O. Box 2019
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MEMORANDUM

TO: Board of Aldermen
Donna Graham

FROM: Celia K. Leonard, Deputy Corporation Counsel
Matt Sullivan, Community Development Director

DATE: May 3, 2023

RE: *Deerwood Drive Petition*

Enclosed please find the “Deerwood Drive Petition” which the petitioner has requested be placed on the Board’s agenda for consideration.

City staff has been in communication with the petitioner regarding the details of the petition, including the amendment to the “Proposed Notice of Limits of Municipal Liability and Responsibility for Class VI Highway pursuant to RSA 674:41.”

City staff will provide comments to the Petition, including an updated and amended “Proposed Notice of Limits of Municipal Liability and Responsibility for Class VI Highway pursuant to RSA 674:41” during the committee process for consideration.



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February 22, 2022

City of Nashua Board of Mayor and Alderman
P.O. Box 2019
Nashua, New Hampshire 03061

Re: L Deerwood Drive, Nashua, New Hampshire, Lot H-103
Request to Allow Issuance of Building Permits under RSA 674:41

Dear Mayor Donchess and Honorable Board Members:

Our office represents Vivian Jean Adams, the owner of the above-referenced property (the "Property"), which is shown in the City's assessing records as Lot H-103. The Property is currently undeveloped. A copy of the plan of the Property is attached hereto as Exhibit "A." However, Ms. Adams seeks to allow for the construction of a single-family home on the Property. To that end, Ms. Adams applied for and obtained a frontage variance from the City of Nashua Zoning Board of Adjustment. Ms. Adams now seeks permission from the Board of Mayor and Aldermen, as the governing body of the City, to allow for the issuance of building permits for the Property under RSA 674:41.

The proposed development would be accessed via an access driveway extending from the end of Massasoit Road and over a portion of L Deerwood Drive. A plan of the proposed access, which was designed by a professional engineer, is attached hereto as "Exhibit B." Massasoit Road is shown as a public highway on the City of Nashua GIS map and was originally dedicated to public servitude through the recording of Plan No. 2103 in the Hillsborough County Registry of Deeds in 1961. Said plan shows the Massasoit Road right of way intersecting with what is currently L Deerwood Drive. However, the western end of the Massasoit Road right of way has not been improved or maintained and, therefore, is a Class VI highway. L Deerwood Drive was formerly known as Bloods Crossing Road and was described in historical deeds to the Property as the "highway leading from Blood's Crossing to the Pine Hill road." The road has been depicted on various recorded plans. While a portion of the L Deerwood Drive north of its intersection with the North Fork of Blood Crossing Road (i.e. north of the Property) has been discontinued, the portion of L Deerwood Drive upon which the Property front is identified as a public highway on the City's GIS system as well as several plans recorded in the Hillsborough County Registry of Deeds. While a portion of L Deerwood Drive upon which the Property front is current unimproved, another portion of the same appears to have been improved to some extent. It is unclear whether the City has maintained any portion of L Deerwood Drive even after inquiries to the City and, therefore, Ms. Adams is presuming that the same is a Class VI highway for purposes of RSA 674:41.

Mr. James Donchess, Mayor
City of Nashua Board of Mayor and Aldermen
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The City of Nashua Fire Department reviewed Ms. Adams' proposed development, including access driveway, in connection with the filing of the frontage variance. The City of Nashua Fire Department, through its Fire Marshall, offered the following comments:


- The driveway would need to meet the minimum width of a fire lane which is 20 feet.
- The minimum of 20 feet needs to be maintained at all times. No parking signs would be needed along the roadway.
- A fire department access road shall extend to within 50 feet of at least one exterior door.
- Dead end fire department access roads in excess of 150 feet in length shall be provided with approved provisions for the fire apparatus to turn around.
- Vertical clearance shall be 13' 6 "
- The road shall be designed and maintained to support the imposed loads of fire apparatus and shall be provided with an all-weather driving surface.
- How would we address this home? The property is on Deerwood but the access is off of Massasoit.

Ms. Adams recognizes that the concerns of the City of Nashua Fire Department will have to be addressed relative to the access if the Board allows for a building permit to be issued for the Property and that Exhibit B may have to be modified to reflect any agreement between the parties as to the design. Some of the comments, such as the twenty-foot width, reflect legal requirements under the State Fire Code.

By statute, an owner of a property obtaining relief under RSA 674:41 must record a notice in the applicable county registry of deed relative to the limits of municipal responsibility and liability. Attached as Exhibit "C" please find the proposed Notice of Limits of Municipal Liability and Responsibility for Class VI Highway Pursuant to RSA 674:41, which would be recorded in the Hillsborough County Registry of Deeds prior to the issuance of any building permit for the Property.

We thank you in advance for your consideration of this request. If you have any questions or require additional information, please feel free to contact me.

Sincerely yours,
CRONIN BISSON & ZALINSKY, P.C.

By: 
Daniel D. Muller, Jr.

DDM:bms

cc: Ms. Vivian Jean Adams
Mr. Matthew Sullivan, Director, City of Nashua Planning Department

EXHIBIT A

EXHIBIT B

EXHIBIT C

**NOTICE OF LIMITS OF MUNICIPAL LIABILITY AND RESPONSIBILITY
FOR CLASS VI HIGHWAY PURSUANT TO RSA 674:41**

Agreement and Release

NOW COMES **Vivian Jean Adams** (hereinafter, the "Owner"), of 74 Marshall Street, Nashua, New Hampshire 03060, (the "Owner") and the **City of Nashua** (hereinafter, the "City"), a municipal corporation existing under the laws of the State of New Hampshire with a principal address of 229 Main Street, Nashua, New Hampshire 03061-2019, and agree as follows with respect to certain property situated in the City of Nashua, County of Hillsborough, State of New Hampshire:

WHEREAS the Owner is the record owner of certain real property located at L Deerwood Drive, City of Nashua, County of Hillsborough, State of New Hampshire and identified as Tax Map, Lot in the City of Nashua assessing records pursuant to a deed dated October 10, 2002 and recorded in the Hillsborough County Registry of Deeds at Book 6738, Page 320 (the "Property");

WHEREAS the Property is located on Deerwood Drive (hereinafter, the "Road") in the City of Nashua, County of Hillsborough, State of New Hampshire;

WHEREAS the portion of Deerwood Drive upon which the Property fronts is a Class VI highway as classified by New Hampshire Revised Statutes Annotated 229:5;

WHEREAS, the access way to the Property would pass over not only a portion of the Road, but a currently unimproved portion of the Massasoit Road right of way (hereinafter, the "Right of Way"), which would be a Class VI highway as classified by New Hampshire Revised Statutes Annotated 229:5;

WHEREAS the City, pursuant to R-___ - ___, passed on _____, 202_, has agreed that a building permit may be issued for the construction of a single-family home on the Property, subject to any conditions of approval, any regulations or any ordinances which may otherwise govern such construction, upon the filing of the within notice pursuant to New Hampshire Revised Statutes Annotated 674:41;

NOW THEREFORE, the Owner and the City, on behalf of themselves, their heirs, legal representatives, successors and assigns, covenant and agree as follows:

1. The City shall allow for the issuance of building permits for the Property for the construction of a structure subject to any existing conditions of approval as well as any regulations or ordinances which may govern the construction of any structure thereon.
2. The City neither assumes responsibility for maintenance, including snow plowing, nor liability for any damages resulting from the use of the Road and Right of Way.

3. The owner of the Property shall be responsible for maintaining access to the Property and do hereby forever release and discharge the City, its officers, agents and employees from the obligation of maintaining the Road and Right of Way, to the extent the same remain a Class VI highways, and from any claim of any nature, whether in tort or otherwise, which the owner of the Property might have against the City for any loss or damage, including those incurred through failure to provide municipal services, including police, fire and ambulance services, arising out of the condition of the Road and Right of Way.
4. That the owner of the Property assumes responsibility for transporting any children from the Property to the nearest regular school bus stop.
5. That the owner of the Property assumes responsibility for the maintenance and repair of the Road and Right of Way and agrees that at her expense or at the expense of herself and other owners of properties similarly located on the Road or Right of Way, to repair and maintain the traveled portions of the Road and Right of Way in a good and passable condition;
6. This agreement is for the benefit of the City for the purposes set forth and shall not provide any affirmative rights to any other party or owner along Deerwood Drive or Massasoit Road to require any level of maintenance or access to any other parcel.
7. This Agreement shall run with the land and be binding on any grantees, successors, or assignees of the Owner. Without limiting the foregoing, this Agreement shall be binding on any future owners of L Deerwood Drive.

IN WITNESS WHEREOF, the parties have set their hands and seals this ____ of _____, 202_.

OWNER

Witness

Vivian Jean Adams

STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS.

This instrument was acknowledged before me on _____ 202_ by Vivian Jean Adams.

Justice of the Peace/Notary Public
My Commission expires:

CITY OF NASHUA
By Its Mayor, Duly Authorized

Witness

James Donchess, Mayor,
Its duly authorized agent

STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS.

This instrument was acknowledged before me on _____ 202_ by James Donchess, as Mayor on behalf of the City of Nashua.

Justice of the Peace/Notary Public
My Commission expires: