

20 April 2020

Dear Members of the Zoning Board of Adjustment,

I reside at 339 Bartlett Street and I am writing both in advance of tomorrow night's hearing on lot 54-1, Tax Map 162, which adjoins 346 Bartlett Street, and to oppose the requested variances. Those reasons are outline below.

As you are no doubt aware, a variance application must demonstrate *unnecessary* hardship that is, as legal scholar Adam Lovelady writes,

more than mere inconvenience or a preference for a more lenient standard. Cost of compliance may be a factor, but cost is not determinative. It is not enough for an applicant to say that development will cost more in order to comply. The applicant must show the substantial and undue nature of that additional cost as compared to others subject to the same restriction.

Moreover, the hardship must not be a "self-created one." Not only does this application for 54-1 not meet those criteria, but by its very admission has defined itself as one that is self-created. Therefore, it must be rejected.

First, Mr. Durbin's argument that the variances are necessary for financial reasons is fundamentally unsound. As multiple recently approved plans have demonstrated, there is no difficulty in building a home that will comprise only 25% coverage and not require a setback modification. To the contrary, any number of plans for homes and cottages under 1500 square feet would in fact be cheaper to build than the one proposed, and would be far more in keeping with the vernacular architecture of the existing homes around the lot, many of which are around 1100-1300 square feet. Building a smaller home would not, as Mr. Durbin suggests, "make it financially infeasible to construct a home that would not require zoning relief."

No less specious is Mr. Durbin's argument that a smaller home would be difficult to sell later. To the contrary, the market for homes in this neighborhood (again, most of which are even smaller than even the 1900 sq ft home proposed by the previous owner of the lot) is competitive, and some recent sales have even been for above asking price. The applicants purchased this lot knowing the restrictions for the size of any home they desired to build. Their argument that they need "at least 4 bedrooms, 2+ baths" is a self-created hardship, as is their need for home offices. And as someone who also works from home, I am cognizant of the applicant's need for useable office space. But that does not present a viable hardship in this case, particularly when other, larger homes in Portsmouth are on the market and could have been purchased for a cost similar to what the applicants paid for their lot alone – and there is no evidence they could not work from home in a smaller house.

Secondly, Mr. Durbin argues “there is certainly no evidence to suggest that granting the variance relief would threaten the public health, safety or welfare.” To the contrary, other recent construction in this neighborhood – particularly a home abutting Thornton Street – has dramatically increased flooding and run-off in other homes that adjacent to it. The basements immediately around lot 54-1 regularly flood with even a light rain, making mold and mildew abatement a perennial problem for residents here. Lot 54-1 suffers from a profound ponding problem, regardless of season or precipitation cycle. The plans submitted by the applicants include no provisions for storm water mitigation, and it is a basic truism that, without basic mitigation methods like vegetative swales, porous driveways, or trenching, storm water runoff becomes a more significant problem the greater the area covered by construction. Were a variance to be even considered, the applicants would need to demonstrate that their construction will not worsen flooding problems for their neighbors and provide a site plan demonstrating how they intend to manage the already existing drainage issues associated with this lot.

Finally, the EPA’s Draft Great Bay Total Nitrogen General Permit plan currently mandates a 100 kg/ha/yr nitrogen loading threshold to protect water quality standards. Assuming no major changes are made to this draft after the comment period, which ends May 8th, Portsmouth, like other Great Bay communities, will be required to begin a costly gross reduction in its nitrogen load with impacts to all taxpayers and residents in the city. Allowing for unnecessary variances and accepting plans for new construction that do not at least include storm water best management practices for mitigating drainage issues (and ones that demonstrate they will not increase loading) will only increase the nitrogen contribution of the city. That has an additional obvious negative impact to public welfare, to the local ecosystem, and to the liquidity of property tax payers.

Certainly, we all look forward to welcoming new neighbors on Bartlett Street. But doing so should not come as a cost to those who already reside here, to zoning law and precedent, and to the greater ecosystem of the Great Bay. Therefore, I urge you to reject this request for a variant.

Sincerely yours,
Kathryn Miles, PhD
Professor of Environmental Studies

Peter,

Please forward this email and the attached pdf containing pictures to the Board members for tonight's meeting regarding agenda item #5, property located on Bartlett. I have CC'd Derek on this email as I know he is representing the Applicant. Thank you!

Dear Mr. Chair and Members of the Board:

My name is Colby Gamester. I am a noticed abutter with respect to agenda item #5, the Petition of John Byron, Owner, and Joseph Bezanson, Applicant, for property located on Bartlett Street. I reside at 187 Woodbury Avenue.

I provide these comments to the Board on behalf of myself, as well as on behalf of my client, Bruce Osborn, who is the owner of 377 Thornton Street, which I directly abut and the subject property directly abuts.

First and foremost, we are in support of the subject property being approved for a building lot, which said approval was primarily obtained in July 2019 by this Board.

I am very familiar with the unmerging of involuntarily merged lots, as well as the variance relief required to make these lots of record buildable to today's zoning ordinance. More specifically, a couple of years ago, I on behalf of another client, had extensive communications with Mr. Byron, the current owner, about purchasing the lot. I am very familiar with this lot. Again, we are in support of a house being built on this lot.

Second, with that said, there are certain obvious concerns and challenges that need to be dealt with on and for the subject lot. This lot suffers from a common occurrence in the general area of the surrounding neighbors...easy flooding during storm events. Attached is pdf file containing pictures of 187 Woodbury Avenue, 377 Thornton Street, and the subject lot from the last two rain events. The large puddle in the foreground is the bottom of my driveway/rear section of my property. The next yard is our common abutter and my client, Mr. Osborn at 377 Thornton Street. The next yard farthest in all the pictures is the subject lot. Although it may be tough to tell in the pictures, the area gradually slopes to the subject lot. The subject lot is regularly "under water" to some extent.

The general concern, in respect to the previous approvals and the current request for greater lot coverage, is that with the required fill and likely regrading, and then the construction of the foundation, there will be a fair amount of displacement which, naturally, will cause water to flow elsewhere and back up into 377 Thornton Street, my house and other neighboring properties.

I know that when my former client was interested in purchasing the lot he had prepared for a relatively extensive portion of his budget to be dedicated to drainage issues for the subject lot and the neighboring lots.

A number of weeks ago, I spoke with Peter Rice at DPW to see if he and his team would be willing to look at this general concern to determine if the City could and would do anything to help the overall drainage issues. Mr. Rice and I had a good conversation and he said that he would look into it; however,

since that time, COVID 19 has taken over all our lives and I have not attempted to follow up with Mr. Rice.

I reviewed the Staff Report for this agenda item and was pleased to see the recommendation that the Applicant conduct an engineer drainage evaluation and to work with DPW on drainage. That would have been my exact request of this Board and the Applicant.

I know that I, and Mr. Osborn, would like to be kept informed as to what the Applicant's engineer recommends, as well as DPW's comments on the report. Ultimately, any specific drainage upgrades will be better than none, but to the extent practical and possible, if we are all able to work with the Applicant and the City perhaps we could greatly improve the overall drainage issues of the surrounding area that will be impacted from this project.

We need to avoid the situation of having the house built, the problems worsen and then asking ourselves "now what do we do"? It appears that with the Staff's recommendation and the ability for us to all work together that we can avoid that scenario.

Thank you,
Colby Gamester, and on behalf of Bruce Osborn.

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Juliet T.H. Walker

From: Becky Vardell <dbvardell@gmail.com>
Sent: Tuesday, April 21, 2020 8:55 AM
To: Planning Info
Subject: Bartlett St. hearing - tonight's BOA meeting

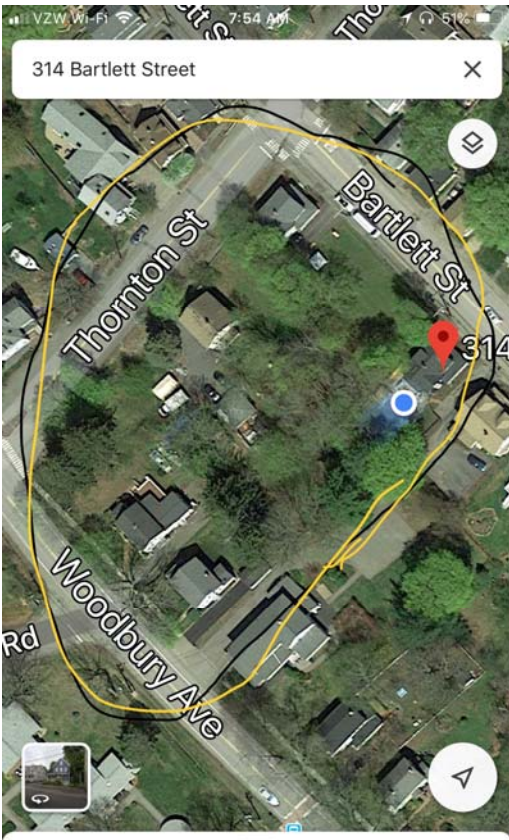
To whom it may concern-

My name is Becky Vardell and my address is 314 Bartlett St. My family and I are the immediate abutters to the left (if you're looking at the lot in question from the street). I am not opposed to the variances that the buyers seek to obtain.

However, my main concern with this or any building project that should occur on this lot, is to ensure that drainage be properly addressed, so as not to negatively impact my lot or those abutting on the other two sides. The proposed building lot is the lowest point within the square block to include Woodbury Ave., Thornton St. and our upper corner of Bartlett St. This is where the water from Woodbury Ave drains to and pools. Ducks have been known to visit the "pond" that forms at certain times of the year.

I've included a few photos which show recent pooling water on the lot, but these are VERY mild compared to what we've seen during times of high rainfall. During these times, the entire lot (combined with the adjacent yard to the immediate right from which this lot was subdivided) becomes a "pond". The lot currently sits at least 2-3 feet lower than my lot, so with any new build the concern is water displacement.

My backyard is currently "dry" with no pooling water during times of heavy rainfall and I would very much like to see it remain as such. I'm requesting that any approvals be contingent upon proper drainage of this lot so as not to impact abutting properties. Thank you for your consideration.



314 Bartlett St
314 Bartlett St, Portsmouth, NH 03801





Respectfully,
Becky Vardell











March 16, 2020

Board of Adjustment
City of Portsmouth NH

Dear Members of the Board:

As a direct abutter at 66 Benson Street to the petition of Mark Broderick and Emily Spencer, Owners for property located at 70 Sims Avenue, I am writing to express my concerns and reasons why the variance requested should be denied.

1. Benson Street is located below Fletcher Street and my property directly abuts the proposed new house lot (combined 2 lots). While the pictures provided in the application make it seem as if the lots are flat, the lots are on a hill.
 - a. For the required 30' setback from Fletcher Street frontage, the new house would be mostly downhill. The pictures provided in the Variance Application make the lot appear to be flat when much of it is hill. They only show south, southwest, west, and north. The view from the northwest (my back property line to Fletcher Street) shows the steepness of the hill.
 - b. Page 6 shows the maximum elevation at Fletcher Street proposed house site at 65.30' street frontage) and page 7 shows the lowest at 44' (back lot line); in that one area, that presents a 21.30-foot difference in elevation from street frontage to back lot line.
 - c. My lot is even lower. To get an approximate difference, I used an Elevation app. The reading at the back foundation of my house was 42' and at the street it was 41'. Therefore, from Fletcher Street highest elevation point, located directly behind my house, to Benson Street is a 24.30' difference in elevation.
 - d. The intersection of Sims Avenue and Benson Street is designed such that Sims Avenue runoff is collected on the left of the street and is routed under the street to a swale on Benson Street. Debris frequently clogs the swale and we have flooding in our yards at 65 and 66 Benson Street.
 - e. Where will the runoff from the proposed new house go?

2. As stated in d) above, Benson Street already has a serious water drainage problem. My yard between my house and garage is consistently saturated. There is a culvert from my yard that goes under Benson Street to the swale that runs along 65 Benson Street. Please see the letter provided to The Board by Angela Lambert, owner 65 Benson St, regarding her concerns and water issues.
 - a. I disagree with the statement on page 3, paragraph one of the proposed application states it would be an "injustice to deny this variance". In fact it would be a hardship to me, and an injustice, to have to invest in water mitigation systems or landscape grading changes to protect my foundation, AC units, propane tanks, and basement from runoff issues that I do not currently have.
 - b. Benson Street is crowned towards my side of the street creating a stream when it rains and directing more water in my yard and pooling in my driveway (from road beyond the pin (page 6, RBR wCap NHLLA #738).
 - c. From the 3/13/20 rain, by 3/16/20 my lawn from the culvert back ~25' was still visibly saturated. At ~18 feet from the culvert, the width of the saturation was ~25' from the landscape mound towards the garage.

- d. In the summer, the lawn mower leaves tracks in that area and in the winter, standing water is consistently visible surrounded by snow.
 - e. Being the last house at the dead end street, the end of my driveway at the house is routinely a pond after it rains and I file a ClickFix to have the Public Works department clear the debris that mounds up at the end of Benson Street so that the water can drain regularly. Otherwise in the summer, I have standing water (aka mosquito breeding pool) and in winter, a slush pond that the snowblower cannot clear (street plow berm).
 - f. My house is an old house and the basement is a mix of cement and dirt. I am fortunate that the dirt part only gets damp patches and does not flood.
3. Footnote 2 (pages 2 & 3) states there is a “conservation area” as part of the Riverbrook Condominium lot (an abutter). I would like it to be known that Painted Turtles find their way from that area to lay their eggs in the spring at the dry area at the back of my lot. I have expressed the water/runoff concerns for my lot. Page 2 of the application, II Criteria, 3rd paragraph, states “...the proposed use would not create any threat to the public health, safety and welfare”. Does that include the Painted Turtles?
4. The ask is not modest (page 2, II Criteria, 3rd paragraph). A 2,167 sq foot, single family, 4-bedroom home with the ability to have a finished walk out basement in the future is not in keeping with this neighborhood:
- a. 5 Benson St: 1,138 sq ft
 - b. 65 Benson St: 1,072 sq ft
 - c. 66 Benson St: 2,402 sq ft (my house – 100 years old! built in 1920; always a 2 family – 1096 sq ft 1st fl; 1,306 sq ft 2nd/3rd floors)
 - d. 2 Fletcher: 1,396 sq ft
 - e. 10 Fletcher: 1,560 sq ft
 - f. 20 Sims: 1,110 sq ft
 - g. 21 Sims: 1,020 sq ft
 - h. 23 Sims: 1,862 sq ft
 - i. 25 Sims: 1,336 sq ft
 - j. 70 Sims: 1,638 sq ft
 - k. 74 Sims: 1,214 sq ft
 - l. 80 Sims: 1,212 sq ft
 - m. 85 Sims: 1,851 sq ft
 - n. 88 Sims: 1,184 sq ft
5. I am very family oriented and happy for the Owners to have started their family; however, it is not a hardship to outgrow a home when the square footage was known at time of purchase.

The Owner is aware that I am opposed due to my concerns about exacerbating the water issue that I already have. I see no plans in the Application to ensure I will not be impacted with runoff down the hill behind my property. The elevation change is substantial and drainage is already an issue. Please see attached pictures of typical water/drainage issues on the following pages.

Respectfully yours,

Judith Pope
Owner, 66 Benson Street

December 14, 2019 – Heavy Rain Event (4 pictures)

- 1. 66 Benson St – yard between house and garage; water went beyond 35' from street**



- 2. 66 Benson St – view from porch to 65 Benson St**



***Note “alligator surface” of street due to continuous water pooling.**

3. View from 66 Benson St to 65 Benson St



4. 2 views of water pooling in Riverbrook Condo conservation area on side 66 Benson St; propane tanks are ~ 73 feet from street



December 18, 2019 – visible water after snow between house and garage (66 Benson St)



January 12 & 17, 2020 – visible water after rain between house and garage (66 Benson)



March 16, 2020 – elevation behind 66 Benson St (northwest towards Fletcher St); lots in requested variance are not flat as depicted in photos provided in the application.

- For perspective, the 2nd picture was taken with iphone on rock next to tree; lot line is on tree with blue ribbon; cannot see roof tops of houses on Fletcher Street.



March 16, 2020 – last photo (next page) is to provide perspective of what a 14' elevation would be in relation to the back of my house; also note the exposed foundation and AC units (propane tanks are to right); with the current land use, there isn't a runoff problem; if the land is replaced by a house, the runoff will be significant towards these areas.

