

RE: 238 Deer St

Meeting: Zoning Board of Adjustments 09/28/21

Dear Members of the Zoning Board of Adjustments,

09/24/21

This request for these 3 variances should be denied, they are unable to meet most of the 5 criteria. **This is highly non-conforming lot presented even more non-conforming.** The idea of Character Districts is to create more adaptable zoning regulations to diminish the need for variances. **Be AWARE lots 125-2, 125-2-A, 125-3, are zoned CD4 but surrounded by CD5.** Let's not compare apples and oranges.

Open Space variance request:

The original lot had 9.6% of open space, a minimum of 10% is required. The presented 2.7% seems questionable. **Open space is defined as vertically open to the sky and free from all structures.** Plan C2 "Open Space Exhibit" (pg13) shows sidewalks between 4' and 6' wide which lead around the back of the building between two 40' buildings. It is true said area may have been counted as open space in the past but lot 125-2-A is now all building against this lot (A8, pg 21)

This proposed building will have an overhang between the first and the second floor therefore by definition NONE of the areas under said overhang (C2, pg 13) count as open space. There are numerous bike racks proposed in the "open space" areas making public use even more restricted (C2, pg 13).

Rear Yard Set Back variance request:

CD-4 states "**minimum rear yard- greater of 5' from the rear lot line OR 10' from centerline of alley.**" The new building at 125-2-A changed the configuration around 238 Deer Street's lot and the rear is now flanked by a building seen on plan A8 (pg 21). This configuration seems to create the rear set back as an alley and needs to be 10' from side centerline rear setback. *Public safety in this tight area is concerning.*

This need for a variance request seems to be self induced. The original building was 4188sf on a 6181sf lot. The proposed building is 5286 sf. *This is a 1098sf increase in land use.* This increase seems to be creating the need for a variance for a reduction in the rear set back on a lot which had 74% lot coverage, to one that has 85% lot coverage. *The maximum coverage may be 95% but that doesn't mean it's necessary or fits.*

Penthouse definition variance:

It states "**A habitable space within the uppermost portion of a building...**" "**A**" by definition means ONE space, not 4 units, as plan A2 (pg 15) shows. The definition states: "**and the total floor area of which does not exceed 50% of the area of the story below.**" It does NOT say habitable area. It's hard to say what was included in the 1907sf presented. Looking at the proposed penthouse area it (A4,pg 17) includes "normal" parts of a floor in a building, not a penthouse. The penthouse "set back is at LEAST 15' back from the edges..." most likely so it does NOT create the effect of another story.

This lot could have been designed within all the setbacks of CD4 and still been a profitable investment. A true penthouse could have been added to off-set any perceived losses from the micro-apartments. Other developers have included condos along with micro apartments. **The need for these variances are all self induced, they are not related to the lot itself. A non-conforming lot should use the same footprint or build conforming. Single family homes are held to this standard so should large developments!**

Approval of these variances are contrary to public interest because single family homes have to follow them. Safety concerns are palpable by these tight spaces between buildings. The whole idea of set backs and open space is to create some space between large buildings. Substantial justice would be to make the lot more conforming not less! The spirit of these ordinances are clear to provide reasonable spaces between buildings and a single exception as a penthouse set back from the upper building edges. There is no unnecessary hardship, all hardships are self induced by taking something non-conforming and making it even more non-conforming.

Respectfully,

Elizabeth Bratter

159 McDonough, Property Owner

From: [Beth Jefferson](#)
To: [Planning Info](#)
Cc: bethpjefferson@aol.com; [Duncan Maccallum](#)
Subject: 53 Green Street Development Appeal
Date: Sunday, September 26, 2021 10:16:49 AM

As a concerned 20- year Portsmouth resident who lives on Sparhawk Street, in the Christian Shore neighborhood, I am writing to request your re-consideration regarding the large-scale housing project called 53 Green Street that recently received an exception to a very important rule that has governed the North Mill Pond area for many years.

Many who have lived in this area of the city for many years have served as custodians of the mill pond and worked hard to help improve the health of the pond and the surrounding banks, vegetation and wildlife. Many of us belong to a community non-profit called Advocates for the North Mill Pond, and have invested our time and money in preserving and stewarding our beautiful but fragile pond. We respect the rules that have been established and adhere to the protective standards. We hold our neighbors to these standards if we see non-compliance.

We ask that all who develop here comply with the laws and standards by which we comply. Portsmouth's rapid development and developers are not justification for overlooking the protections that keep our pond healthy and our community intact.

Many developers are investing in Portsmouth, some without regard for the aesthetic, historical and environmental balance that we need to preserve the spirit and commitment of the city during such a growth period. Asking the developer to reduce footprint and comply with our standards should not be overlooked as the city oversees this development.

Please consider our appeal – The development that is proposed will definitely be an improvement for the area, but compliance to the buffer zones on the pond should not be considered an unreasonable challenge. The developers will find a way to comply as long as we adhere to the boundaries that have been established.

Sincerely,

Beth Jefferson
111 Sparhawk Street
Portsmouth, NH

From: [Abigail Gindele](#)
To: [Planning Info](#)
Subject: For the ZBA (Zoning Board of Adjustment) Re: 53 Green St
Date: Monday, August 9, 2021 8:37:38 PM

Dear Board Members,

The Planning Board and Conservation Commission continue to disregard and disrespect NH law of wetlands protections and our City's own stipulations of Conditional Use Permits regarding wetlands setbacks, as well as City directives regarding protection of existing shorelines. These two boards continue to side with the short-term financial gain of a few individuals. They repeatedly ignore their responsibility to act on behalf of the majority of Portsmouth citizens and the long-term well being of Portsmouth's irreplaceable features that not only give this city its soul, but are key for sea level rise and water displacement mitigation.

Of the six elements the CUP must meet, the 53 Green St Proposal does not meet a single one:

1) The land is reasonably suited to the use, activity or alteration.

This project will tower over the area, crushing the shoreline with its architecture and making even more ground impervious thus worsening run-off, water table issues, and pollution. This entrance to the North Mill Pond is inside the 100 ft buffer and is suited for wildlife habitat and the protection of the flora and fauna that call North Mill Pond home. It is not suited to be destroyed by development.

2) There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.

There is plenty of room outside the 100 foot wetland buffer to construct this project. There is absolutely no reason this entire project cannot be constructed upland of the 100 ft wetlands buffer.

3) There will be no adverse impact on the wetland functional values of the site or surrounding properties.

This project will devastate the site and the surrounding areas. It will dwarf most things around it,... except for those recently ruined sections where height restrictions were waved for newly constructed behemoths. There will be a massively adverse impact to wetland functional values ranging from habitat destruction to huge increases in stormwater and toxin runoff.

4) Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.

This project's construction goals can easily be achieved by building the entire project upland of the 100 ft wetlands buffer. There is no need to alter the natural vegetative state at all. If the law is ignored and construction is allowed within the 100 ft buffer, the whole buffer will be destroyed. Have you not noticed the devastating reality of any local commercial construction sites?

5) The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.

The proposal with the least adverse wetlands impacts has not been presented. This project does not need a CUP because it can be constructed entirely outside the 100 ft wetlands buffer.

6) Any area within the vegetation buffer strip will be returned to a natural state to the extent feasible.

Since there is no reason this project needs to be constructed inside the 100 ft buffer, the existing vegetative does not need to be disturbed, and therefore no restoration required. But if the law is flouted and development is allowed in the 100 ft buffer, the history of the parties involved in this development does not bode well for the land to be left in or returned to any kind of natural state.

Please do not let the environmental protections we need for our City's soul and climate-crisis protection be pushed aside for some developers' new design to fill their pockets.

With hope,

Abigail Gindele
229 Clinton St
Portsmouth, NH

Izak Gilbo

From: April Weeks <aprilweeks412@gmail.com>
Sent: Monday, September 20, 2021 9:53 AM
To: Planning Info
Subject: 53 Green Street

To the Zoning Board:

I am appealing yet another decision of the Planning Board regarding their approval of the 53 Green Street project, and am yet again appalled at their decision to:

- 1) Build a footprint that exceeds zoning requirements
- 2) Fail to satisfy Wetlands Conditional Use Permits Criteria, as they did with 105 Bartlett St
- 3) Violate height zoning requirements

Many citizens of Portsmouth were aghast at the frankly questionable behavior of the Planning Board recently. Not only have they displayed a pattern of rapacious and seemingly opportunistic behavior, but they are also going after the fragile ecological health of our wetlands.

So I add a question to the Planning Board: what is your motivation? Because it's clearly not the well-being of Portsmouth's citizens and indigenous wildlife.

April Weeks
804 South Street
Portsmouth, NH

Sent from my iPad

From: [Kimberli Kienia](#)
To: [Kimberli Kienia](#)
Subject: FW: 53 Green st
Date: Tuesday, September 28, 2021 8:40:35 AM

----- Forwarded message -----

From: **Philippe Favet via FormMail.com** <fp1_fm192@formmail.com>
Date: Mon, Sep 20, 2021, 12:24 PM
Subject: 53 Green st
To: Mayor Becksted <MayorBecksted@gmail.com>, CC - Splaine <asstmayorjimsplaine@gmail.com>, cc McEachern <Deaglan.McEachern@gmail.com>, CC-Peter Whelan <pawhelan@comcast.net>, CC - Cliff Lazenby <LazenbyforPortsmouth@gmail.com>, CC - Kennedy <estherkennedyportsmouth@gmail.com>, CC - Huda <pahuda384@gmail.com>, CC-John Tabor <johntaborportsmouth@gmail.com>, CC-Paige Trace <paigetraceportsmouth@gmail.com>, Copy Sent to City Email Folder <ccemail@cityofportsmouth.com>, Karen Conard <kconard@cityofportsmouth.com>, Clerk - Council Emails <ccclerk@cityofportsmouth.com>

Below is the result of your feedback form. It was submitted by
Philippe Favet (philfavet@yahoo.com) on Monday, September 20, 2021 at 11:24:31

address: 152C Dennett st

comments: Hello City Councilors! I'm writing this letter to let you know that I'm in disagreement with the 53 Green st project which include building in the NMP 100' buffer zone . The City established a zoning law for the reason to protect the NMP ecosystem , I don't see no reasons for that law to be broken .The NMP has been my home for 40 years and home to a multitude of birds species and other specimens that formed an ecosystem . I have seen many changes since i settled on its banks ,some good and some bad .The next future developments are not fitting in at all and will kill overtime the ecosystem that many concerned abutters and residents have work hard to preserve. If the developers want some incentives to build ,may i suggest to them to start cleaning and restore the shores and respect the 100' buffer zone .Save the NMP. Philippe Favet

includeInRecords: on

Engage: Submit

REMOTE_ADDR: 70.16.109.105

From: [Joe Famularo](#)
To: [Planning Info](#); [Peter L. Britz](#)
Cc: [Kathy Famularo](#)
Subject: 53 Green Street Approval - Appeal of Planning Board Decision to the ZBA
Date: Monday, September 27, 2021 9:17:28 PM

Dear Portsmouth ZBA,

My name is Joe Famularo. My home at 141 Mill Pond Way is directly on the shore of the North Mill Pond. Although I am not considered an abutter to 53 Green Street, I should have been. All homeowners directly on the North Mill Pond should have been.

If development at 53 Green Street is allowed to encroach into the wetlands buffer, it will have an adverse effect on the North Mill Pond. Thus, an adverse effect on my property.

I would have attended the July 15, 2021 Planning Board Meeting to voice my concerns, but like many others on the pond I did not receive notice.

I do not oppose development. I DO OPPOSE development in the wetlands buffer anywhere on the North Mill Pond when reasonable alternatives are available, as is the case with 53 Green Street.

Thank you for your consideration.

Respectfully,

Joe Famularo
141 Mill Pond Way Unit 3, Portsmouth, NH 03801

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Joe Famularo
Portsmouth, NH

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