Izak Gilbo

From: MARYBETH SAVAGE <mbesavage@comcast.net>
Sent: Saturday, September 18, 2021 3:55 PM
To: Planning Info; Peter M. Stith
Subject: Abutters written comments to be shared at 9/21/21 Board of Adjustment meeting re 276 Melbourne St.

Dear Board of Adjustment,

Please consider this my written comments to be shared at 9/21/21 Board of Adjustment meeting, as advised in my Abutter Notice, re proposed new home in lot next to 276 Melbourne St. I am the property owner of 10 Vine St. directly next to 276 Melbourne St.

I have reviewed the plans with Shirley Scarponi and requested the following two considerations:
1. Requesting no mechanicals or utilities be placed on or along new house or property on the same side as my home.

I request this given a difficult experience when a house was recently built on the other side of my home and they placed:
two 54" high propane tanks and a very noisy central AC unit 6 feet from the property line. This property line is also where are patio is making it both noisy and fearful to use our patio or our grill.

2. Requesting a greater than 10 feet side sit back, (current SRB side set back is 10 feet) as the side of the proposed new construction house will be next to our bedrooms and potentially back yard.

I have registered to attend the meeting by zoom but prefer board shares this letter rather than speaking on zoom.

Thank-you for your consideration in this matter,

Sincerely,
Mary Beth Savage
Property owner 10 Vine St. Portsmouth

KEANE & MACDONALD
A PROFESSIONAL CORPORATION • ATTORNEYS AT LAW

September 21, 2021

BY HAND & EMAIL
Peter Stith, Principal Planner
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

RE: Objection to Application for 449 Court Street (Tax Map 105/Lot 6)
Submitted by Mary H. and Ronald R. Pressman (the "Application")

Dear Mr. Stith & Zoning Board Members:

Please be advised that Keane & Macdonald, PC has been engaged by Russell & Sprague, LLC relative to the above referenced Application to be heard by the Zoning Board of Adjustment at its meeting on September 21, 2021. Russell & Sprague, LLC is a direct abutter to the property at 449 Court Street because it owns the property located at 58 State Street (including units #1E, #1W, #2 & #3). Based on the information provided in the Application, the Application fails to satisfy the criteria for a granting variance and should be denied.

The property at 449 Court Street ("the Pressman Property") was purchased by Mary H. and Ronald R. Pressman (the "Applicants") on or about July 8, 2019. To the best of our knowledge the existing conditions of the Pressman Property are as described in the Application.

Russell & Sprague, LLC purchased its property at 58 State Street (the "R&S Property") on or about October 1, 2020. The R&S property consists of 1st floor commercial space, 2nd floor residential space, and a combined 3rd and 4th floor which is also residential space. The residential floors all have windows as well as outdoor porches or patios facing the Pressman Property. The 2nd floor space is rented to a tenant. The owners of the R&S Property, who are husband and wife, reside in the residence occupying the 3rd and 4th floor. The top floor of the R&S Property has a rear porch that overlooks the roof of the Pressman Property where the Applicant proposes to increase the height of the roof to accommodate an addition. Furthermore, the top floor also contains the master bedroom and a second bedroom, both which have windows that overlook the area of the roof where the Applicant proposes the construction of a deck. The third floor accommodates the kitchen and living space, both with windows facing Court Street. All of these rooms are south facing and benefit from the light coming from the Court Street side of R&S Property. Included with this letter are photos labeled RS#1 and RS#2 which provide the current views from the R&S Property of the areas that will be most impacted by the proposed addition. Also attached as RS#3 is a depiction of the impact that the increase in height will have relative to the R&S Property.

In addition to said photos, enclosed herewith is a letter from Ruth Neidhardt, a real estate broker with Sotheby's International Realty, indicating that the proposed addition at the Pressman Property, if constructed will negatively affect the current value of the R&S Property.

It is noteworthy that although the proposed addition set forth in the Application would clearly impact the R&S Property, the Applicants did not contact my clients to discuss the proposed project or its impact on the R&S Property.

As you are aware, there are five criteria that must be satisfied in order for the Zoning Board of Adjustment to grant relief from the zoning ordinance. As outlined below, the Application fails to satisfy any of the said criteria and therefore the Applicants' request for relief should be denied.

Public Interest & Spirit of the Ordinance.

The Application is contrary to the public interest because the relief requested is unnecessary for the Applicants to continue to reasonably use and enjoy the residential property in the same manner as was available in July 2019 when they purchased the Pressman Property. As noted below, there is no actual legal hardship encountered by the Pressman Property because the property can still be used as a residence even without making a zoning exception to allow for expansion.

It is important to note that while the Application suggests the height increase in only 3 feet from the peak, that measurement ignores the significant massing effect that results from the significant increase in height from the gutter to the peak. As shown in the attachments RS#1 and RS #3 the massing would completely block air, light and view from the patio of the R&S Property and it would also impact the other rear-facing residential living spaces at the R&S Property. In addition to the height increase moving the chimney closer to the R&S Property would further increase the massing. Enclosed as RS#3 are plan depictions appearing in a format where the massing impact can be assessed, and as shown the project would result in a significant structure that would block light and air from flowing to the R&S Property.

The Application addresses the brick wall on one side of the Pressman Property and trees on the other but fails to address or consider the impact on the R&S Property. The Application also fails to note that the trees are deciduous and will not provide cover or screening when the leaves are gone, approximately 6 months of the year.

The Application fails to satisfy the first two criteria for approval.

Diminution of Value of Surrounding Property.

As noted above the enclosed letter from a Sotheby's realtor highlights the negative impact on the value of the R&S Property that would occur if the Application is approved. My clients recently purchased the R&S Property and a consideration supporting the purchase was the view from the windows, porches and patios facing Court Street. The attached pictures and plan comparison demonstrate the significant impact that the proposed construction will have on the R&S Property. The heightened roofline will block air and light, as well as impact views. The

deck location will remove a certain element of privacy as those on the deck will have views directly into the R&S Property which do not exist today, especially when the trees are bare (See RS#2). There is no question that the approval of the Application will negatively impact the value of my client's property.

The Application fails to satisfy the value criteria for approval.

Unnecessary Hardship.

The Application fails to articulate how the Pressman Property creates a hardship that is not self-created by the Applicant. As stated in the case Garrison v. Town of Henniker, "The burden must 'arise from the property and not from the individual plight of the landowner'...." (907 A.2d 948, 952, 154 N.H. 26 (2006)). The condition of the Pressman Property remains as it did when the Applicants purchased it in 2019 and therefore a finding of "special conditions" would be unsupported. The zoning ordinance imposes no special or unique burden on the Pressman Property that interferes with the Applicants' reasonable use of the property. Full compliance with the zoning ordinance is possible and allows for the reasonable use of the property.

As noted in the Application, height restrictions "exist to maintain adequate air and light for abutting properties". The proposed addition will significantly reduce the air and light flowing through to the R&S Property. This section of the Application again mentions the tree cover, which again will not exist for at least half of each year.

The Application fails to satisfy the hardship criteria for approval.

Substantial Justice.

Granting the Application would result in allowing the interests of the Applicants to be served to the detriment of my client. Both parties recently purchased their respective properties with the knowledge of their use, size, layouts and configuration. The act of denying the requested relief relative to the proposed addition is not an unreasonable exercise of power by the City, but rather a legitimate exercise of its adherence to the City's Zoning Ordinance. Granting the variance would result in harm to my clients and therefore be unjust to my clients.

The Application fails to satisfy the substantial justice criteria for approval.

In light of the above my clients respectfully request that the Application be denied.

Sincerely,

Douglas W. Macdonald, Esq.

C: Client
R. Timothy Phoenix, Esq., Counsel for the Applicant

RS #1

RS #2

RS #3

EXHIBIT B

449 COURT STREET
SOMMA Studios

SEPTEMBER 2021

1/8" = 1'-0"

Four Seasons | Sotheby's INTERNATIONAL REALTY

3 Main Street, PO Box 1158
Meredith, NH 03253
t 603.677.7012
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Dear Mr. and Mrs. Sabanek,

Having worked with you to acquire your property at 58 State Street, I'm well aware of the uniqueness and desirability of the property. I have reviewed the proposal of the Pressman's located at 449 Court Street. I also reviewed the visuals that you provided showing the current roofline as seen from your deck.

In my opinion the blocked view would not only be an eyesore to those on the deck, it will create a confining atmosphere and will negatively affect the current value of the property. As you are very aware aesthetics are extremely important especially in a property of this value and location.

The Pressman's proposal would certainly not enhance your property and I truly believe it will be a detriment to it. With your substantial investment not only financially but also as a commitment to the area the Pressman's proposal is not positive for you in any way.

Yours truly,

Ruth Neidhardt

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Ruth Neidhardt Associate Broker 2012 Realtor of the Year
2014 President Lakes Region Board of Realtors Four Seasons | Sotheby's International Realty
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