

From: [Kimberli Kienia](#)
To: [Kimberli Kienia](#)
Subject: FW: Comment by abutter 635 Sagamore Avenue zoning variance meeting 4/19/2022
Date: Tuesday, April 19, 2022 9:36:28 AM

-----Original Message-----

From: Andrew Jaffe [<mailto:amjaffe@comcast.net>]
Sent: Monday, April 18, 2022 2:00 PM
To: Peter M. Stith <pmstith@cityofportsmouth.com>
Subject: Comment by abutter 635 Sagamore Avenue zoning variance meeting 4/19/2022

Peter,

Please forward this email to the Zoning Board members for their 4/19/2022 meeting.

I live at Unit 72 at Tidewatch. I am against the granting of variances to Sections 10.513 and 10.521, which would allow the building 5 dwelling units at the 635 Sagamore Avenue property. I believe the dwellings would negatively alter the character of the Tidewatch property and could reduce property values.

The Luster King building and garage are not readily noticeable from the Tidewatch property unless one looks for them. Having 5 dwellings, 3 of them close to the property line, would be much more apparent. Most of Tidewatch is bounded by woods, sparsely used road, and Sagamore Creek. Having homes this close to Tidewatch would be a change in the character of the property.

Noise from Luster King when it was operating was surprisingly low. I anticipate greater noise impact from 5 dwelling units, particularly as several would be closer to the Tidewatch property.

Much of the 635 Sagamore Avenue lot is a wooded hill. Google Earth gives an elevation change from the Luster King to the Tidewatch roadway of approximately 30 feet. The change in elevation is not apparent from the aerial photo. Prevention of runoff to Tidewatch and to Sagamore Creek is important. Land will have to be cleared and drainage will need to be routed away from dwellings built. Regardless of the final number of units ultimately allowed by the Zoning Board, I would ask that close attention be made to protection of the Tidewatch property and Sagamore Creek.

I thank you for your attention.

Sincerely,

Andrew Jaffe

*Kenneth D. Murphy
579 Sagamore Avenue, Unit 40
Portsmouth, NH 03801*

April 18, 2022

VIA EMAIL ONLY
planning@cityofportsmouth.com

Arthur Parrott
City of Portsmouth
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

RE: Applicant: 635 Sagamore Development, LLC
Subject Property: 635 Sagamore Avenue
Hearing: April 19, 2022

Dear Mr. Parrott:

I am writing in opposition to the variance request for the project at 635 Sagamore Ave. I reside at Unit 40 Tidewatch Condominiums.

We do not believe a variance should be granted to allow five (5) homes where only one (1) is allowed. Allowing five (5) homes to be constructed in this small area will create too much density.

The fact that the proposed density is similar with surrounding projects is not a reason to grant the variance. The Tidewatch project was cluster housing resulting in much more open space. The ordinance allows for reasonable use – one (1) single family residence. I request that you deny the variance.

Very truly yours,



Kenneth D. Murphy

:aar

SHEEHAN PHINNEY

Brian J. Bouchard, Esq.
Direct Dial: 603-627-8118
bbouchard@sheehan.com

Reply to: Portsmouth Office
75 Portsmouth Blvd., Suite 110
Portsmouth, NH 03801

April 18, 2022

By Hand Delivery and Electronic Mail

Beverly M. Zendt
Planning Director
City of Portsmouth
1 Junkins Ave, 3rd Floor
Portsmouth, NH 03810

RE: 635 Sagamore Ave

Dear Ms. Zendt:

This office represents the Tidewatch Condominium Association (“Tidewatch”), a direct abutter to the proposed development at 635 Sagamore Ave. (the “Proposed Development”). Tidewatch opposes the Proposed Development and respectfully requests that the Board deny Applicant’s variance request for the following reasons¹:

- The Proposed Development is an impermissible cluster development that closely resembles a Pocket Neighborhood Development, which is permitted only in the Gateway Mixed Use Neighborhood Districts. See Ordinance, § 10.5642.10. The Proposed Development is inconsistent with the locale and the Ordinance.
- Applicant has not demonstrated an unnecessary hardship. Most obviously, a nonconforming use is not an unnecessary hardship in this case, let alone one that justifies a material deviation from Portsmouth’s restrictions on the intense use of land.
- Applicant has not presented any evidence confirming that the Proposed Development will not harm surrounding property values.
- The proposed distance of 20-feet between dwelling units is insufficient, will crowd the land, and will clash with the neighborhood’s character.

¹ Tidewatch notes at the outset that the variance application mistakenly identifies Applicant’s property as being in the GRA zone. It is not; it is in the SRA zone.

- The Proposed Development contaminates the neighborhood's character by introducing tightly clustered development in an area with open green space and uncrowded land.

APPLICANT HAS NOT SATISFIED THE VARIANCE CRITERIA

As the Board knows, to receive a variance, Applicant must satisfy all five parts of the variance test. *See* RSA 674:33; Bacon v. Town of Enfield, 150 N.H. 468, 471 (2004). The application before the Board fails at least four of the five necessary parts, namely: (i) unnecessary hardship, (ii) spirit of the ordinance, (iii) public interest, and (iv) diminution of property values.

i. Applicant Has Not Demonstrated an Unnecessary Hardship.

A nonconforming use is not the type of special feature that justifies a variance. Nonconforming uses are seen as a benefit, not a burden, to non-conforming landowners, and burden on adjacent landowners and neighbors. Additionally, Applicant can abandon its nonconforming use at any time and alleviate the alleged encumbrance. Something which can so easily be dispensed with hardly qualifies as a hardship. A nonconforming use qualifies as a hardship only when the applicant requests a variance integral to the nonconforming use. A nonconforming landscape depot, for example, may use its nonconformity when seeking relief from residential restrictions. Here, Applicant's nonconformity of being a business in a residential zone is immaterial to the proposed residential development. It does not inhibit Applicant from developing a residential home in conformance with the Ordinance or render the Ordinance's purpose inapposite. RSA 674:33, I(1)(b)(1).

Applicant's reliance on other densely developed parcels in the area fares no better. A condition that affects an entire area is not a "special condition" on the property but rather a common denominator for every property. The case cited by Applicant, Walker v. City of Manchester, 107 N.H. 382 (1966), was overturned when the legislature amended the unnecessary hardship standard in RSA 674:33. The statute unequivocally provides that the subject property's special conditions must "distinguish it from other properties in the area." *See* RSA 674:33, I(E)(b)(1). A feature that affects every property in the area hardly qualifies. Additionally, Applicant, when assessing the density of other properties, is comparing apples and oranges. *See infra* § ii.

Applicant also relies on the size of its Property. However, the Property is not so disproportionately large that it creates an unnecessary hardship. Applicant pins the Property at ± 1.94 acres. Property sizes in the area vary, but many are comparable to the Property. For example, Tax Map 222, Lot 17 is ±.86 acres; Tax Map 222, Lot 14-1 is ±1.51 acres; Tax Map 222, Lot 12 is ±1.7 acres; Tax Map 222, Lot 11 is ±1.48 acres; Tax Map 223, Lot 36 is ±1.310 acres; Tax Map 223, Lot 13 is ±1.030 acres; Tax Map 223, Lot 18 is ±1.170 acres; Tax Map 223, Lot 21 is ±1.490 acres; Tax Map 223, Lot 26 is ±1.200 acres; Tax Map 223, Lot at 27 is ±3.320 acres; Tax Map 2. Some properties are as small as .267 acres (Tax Map 223, Lot 15). While the

Property is one of the larger parcels, it is not so large that application of the density ordinance no longer has a fair or reasonable use. *See* RSA 674:33. Density promotes open space, alleviates municipal resource burdens, limit crowds, and prevents the intensive use of real property. Those objectives still apply to Applicant's only marginally larger parcel. All real property is unique, and all property has special features. *See DeLucca v. DeLucca*, 152 N.H. 100, 104 (2005) (noting that all real property is unique). But the hardship standard asks whether the ordinance uniquely burdens the subject property compared to other properties in the area. This Property is not so burdened. *Garrison v. Town of Henniker*, 154 N.H. 26, 33 (2006) ("There is no evidence in the record that the property at issue is different from other property zoned rural residential. While its size may make it uniquely appropriate for GME's business, that does not make it unique for zoning purposes.")

Finally, the Proposed Development is simply not reasonable. Applicant is attempting to squeeze five three-bedroom homes, each with a two-car garage, on a ± 1.94 -acre parcel. A more reasonable proposal might be two similarly sized homes. A variance cannot issue because the Proposed Development does not meet the unnecessary hardship test under RSA 674:33.

ii. The Proposed Development Offends the Spirit of the Ordinance and Is Not Consonant with the Public Interest.

These factors are generally considered jointly. *See Farrar v. City of Keene*, 158 N.H. 684, 691 (2009). A project violates these tests if it "alters the essential character of the neighborhood" or "would threaten the public health, safety, or welfare." *Id.* The instant petition does both.

The density and layout of the Proposed Development clash with the neighborhood's character. Although Applicant contends otherwise, Tidewatch and the Sagamore Court apartment buildings are not suitable comparators. They are too dissimilar from the Proposed Development. To start, Sagamore Court is in the Garden Apartment/ Mobile Home Park zone, which is significantly more density tolerant than the SRA zone. *See* Ordinance, § 10.410.

Additionally, apartment buildings and condominiums have a rich density per building by design, which results in a site layout materially different from Applicant's *de facto* cluster development. Tidewatch may have 117 units on ± 59.53 acres, but it has only 47 buildings. **This creates an open, uncrowded layout with one freestanding building per ± 1.269 acres,** which is commensurate with the spirit of Sections 10.513 and 10.521 of the Ordinance and the objectives of a single residence zone.

The Proposed Development, on the other hand, seeks to establish one freestanding building per 16,959 square feet or approximately 1/3 acre. While it is true that the Property borders the more lenient SRB zone, proximity to another zoning district does not provide license to flaunt the density requirements of the SRA zone. Indeed, if border properties could regularly partake in the privileges of neighboring zones, boundaries between zones would become meaningless. Slowly, the benefits of the favorable zone would spread and alter the essential character of each neighborhood.

The spacing between each unit is equally problematic. Applicant heralds the distances between buildings as “voluntary setbacks” like those imposed by the Ordinance but, in reality, the setbacks are significantly shorter than what the SRA zone imposes. The SRA zone requires 20 feet of side yard (or setback) on each lot. *See* Ordinance, § 10.521. This results in each freestanding building having at least 40 feet of space between them. Applicant’s proposal is half that distance. All of the freestanding buildings will be closely clustered, negating the benefit and promise of a single-family residence zone, like SRA. No other structures in the area are so closely grouped.

Simply put, shoehorning five single-family homes onto a \pm 1.94-acre lot offends the spirit of the Ordinance, is antithetical to the neighborhood’s character and is generally bad for the quality of life enjoyed in the area.

iii. Applicant Has Not Demonstrated That the Proposed Development Will Not Adversely Affect Property Values.

Applicant claims that the Proposed Development will not affect property values, but there is no proof of Applicant’s claim. Applicant does not provide an expert report, a real estate appraisal, or much of anything to support its statement.

Tidewatch has concerns about the rippling effects of the Proposed Development. First, Tidewatch is concerned that the terrain alterations necessary for the Proposed Development will exacerbate surface water floods at Tidewatch, which sits at a lower elevation than the Property. Second, portions of the Property’s terrain are ledge, not soil. In all likelihood, blasting will be required to construct the unfinished basements shown in Applicant’s plan. While blasting is a nuisance in itself, at least one of the condominium units near the Property is built on fill. Tidewatch is concerned about the structural issues that may result from blasting. Third, three of the single-family homes will be located near Tidewatch’s eastern boundary. Due to the land’s topography, those homes will sit on an elevated purchase looking over Tidewatch. Their presence will be inescapable. Worse, the Proposed Development will not have the large, open space that typically accompanies a cluster development. P. Loughlin, New Hampshire Practice: Land Use Planning and Zoning, Vol. 18, § 18.03 (2021). Applicant’s proposal does not address any of these concerns and provides no support for its conclusion that property values will not be affected.

Enclosed with this letter are signed petitions from approximately 68-unit owners at Tidewatch opposing Applicant’s variance request.

I look forward to addressing these concerns with the Board on April 19, 2022. Tidewatch respectfully suggests that the members of the ZBA conduct a site walk to see the topography of the land and the green, open-spaced property that Applicant’s proposal for cluster development will spoil.

Portsmouth Planning Department
April 18, 2022
Page 5

Sincerely,

/s/ Brian J. Bouchard

Brian J. Bouchard

Encl.

cc. Counsel for Applicant (email only)
Peter Stith (email only)
Tidewatch Condominium Association

PETITION

We, the undersigned Unit Owners of the Tidewatch Condominium, object to the variance requested by 635 Sagamore Development, LLC to be heard by the Portsmouth Zoning Board of Adjustment ("ZBA") on Tuesday April 19, 2022. We ask the ZBA to deny the request.

Signature

Printed Name

Unit #

Gisela Wernple

Gisela Wernple

39

Besides the residential zoning variance
2 other concerns are on my mind.

1. Our area has a lot of rock - will blasting need to be done? How might that affect the TW homes nearest the building site?
2. The area taken up by the footprint of each building, plus areas black-topped for drive ways and entrance / exit Rd. into the area will likely create heavier run off into the ^{areas} ~~homes~~ below - including that end of TW.

PETITION

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Signature

Printed Name

Unit #

Penelope Bartko

Penelope A BARTKO

UNIT 98

PETITION

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Signature

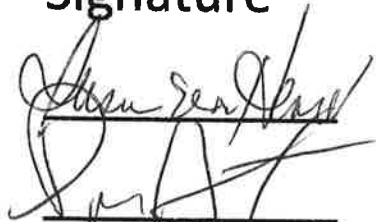

Printed Name

Unit #

<u>John H. Adare</u>	<u>JOHN H ADARE</u>	<u>57</u>
<u>JOHN G ADARE</u>	<u>JOHN G. ADARE</u>	<u>57</u>

PETITION

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Signature	Printed Name	Unit #
	<u>SUSAN VON HEMERT</u>	<u>42</u>
	<u>PHIL VON HEMERT</u>	<u>42</u>



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Signature	Printed Name	Unit #
<u>Katherine Tobin MD</u>	<u>KATHERINE TOBIN MD</u>	<u>60</u>
<u>Richard Tobin</u>	<u>RICHARD TOBIN</u>	<u>60</u>

PETITION

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Signature	Printed Name	Unit #
	<u>Robert J. Lewis</u>	<u>74</u>
	<u>Katherine H. Lewis</u>	<u>74</u>

PETITION

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Signature	Printed Name	Unit #
<u>Sue Mellin</u>	<u>Susan Mellin</u>	<u>34</u>
<u>John Mellin</u>	<u>John Mellin</u>	<u>34</u>
<u> </u>		

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Signature

Printed Name

Unit #



Hilda P. Verduyn

Hilda P. Verduyn

18



PETITION

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Signature	Printed Name	Unit #	
<u></u>	<u>MICHAEL LANNON</u>	<u>30</u>	<u>4/15/22</u>
<u></u>	<u>GEORGY LANNON</u>	<u>30</u>	<u>4/15/22</u>

PETITION

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Signature	Printed Name	Unit #
<u></u>	<u>Jeffrey Certo</u>	<u>105</u>
<u></u>	<u>Tracy Certo</u>	<u>105</u>

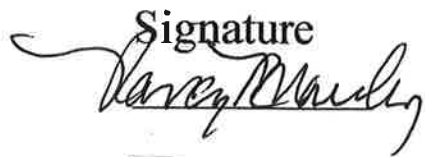

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Signature	Printed Name	Unit #
<u>Joline Small</u>	<u>Joline SMALL</u>	<u>65</u>
<u>Michael Small</u>	<u>Michael Small</u>	<u>65</u>

PETITION

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Signature	Printed Name	Unit #
	NANCY R. MANLEY	101
	Carol Carpenter	"


PETITION

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Signature

Printed Name

Unit #

	<u>Laura Spelke</u>	<u>87</u>
<u> </u>	<u> </u>	<u> </u>

PETITION

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Signature

25

Printed Name

Kevin O'Loach

Unit #

95

PETITION

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Signature	Printed Name	Unit #
<u>RE Bendetto</u>	<u>Rodney E. Bendetto</u>	<u>46</u>
_____	_____	_____

PETITION

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Signature

Michael Sterling

Paula Sonnino

Printed Name

MICHAEL STERLING

PAULA SONNINO

Unit #

77

77

PETITION

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Signature	Printed Name	Unit #
<u>Maren B. Walsh</u>	<u>MAREN B. WALSH</u>	<u>#7</u>
<u>Anne R. Walsh</u> Trustee	<u>Anne R. Walsh</u>	<u>#7</u>

PETITION

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Signature	Printed Name	Unit #
<u>Carla McCabe</u>	<u>Carla McCabe</u>	<u>58</u>
<u>— EJ / Hitchcock</u>	<u>Ed F. Hitchcock</u>	<u>58</u>
<u>—</u>		

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Signature	Printed Name	Unit #
<u></u>	<u>CAROL E. LAMB</u>	<u>#79</u>
<u></u>	<u>RON BILLIN</u>	<u>#79</u>

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Signature	Printed Name	Unit #
<u>Thomas Barron</u>	<u>Thomas Barron</u>	<u>53</u>
<u>Marion Barron</u>	<u>MARION BARRON</u>	<u>53</u>
<u> </u>	<u> </u>	<u> </u>

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Signature	Printed Name	Unit #
<u>George Minich</u>	<u>George Minich</u>	<u>71</u>
<u>Irene Minich</u>	<u>Irene Minich</u>	<u>71</u>
<u> </u>		

PETITION

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Signature

Printed Name

Unit #

C. D'Adamo

Christiana D'Adamo

80

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Signature	Printed Name	Unit #
	<u>Vicci Lamb</u>	<u>59</u>
	<u>CAROL LAMB</u>	<u>59</u>

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Signature

Printed Name

Unit #

Kenneth B. White

Kenneth B. White

64

Theresa A. White

Theresa A. White

64

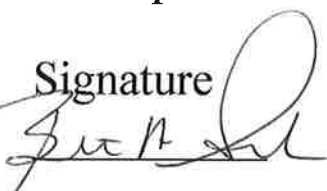
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Signature

Printed Name

Unit #



Beth A Steycek

63

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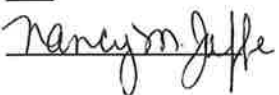
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Signature	Printed Name	Unit #
<u></u>	<u>KIMBERLY MEUSE</u>	<u>97</u>
<u></u>	<u>LINDA CUNNINGHAM</u>	<u>118</u>

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Signature	Printed Name	Unit #
<u></u>	<u>Andrew M. Jaffe</u>	<u>72</u>
<u></u>	<u>Nancy M. Jaffe</u>	<u>72</u>



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Signature

Printed Name

Unit #

	<u>Jean Roalsvig</u>	<u>94</u>
	<u>Knot J. Roalsvig</u>	<u>94</u>

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Signature

Printed Name

Unit #

R. Hurst

RODNEY HURST

121

Linda T. Hurst

Linda Hurst

121

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Signature

Printed Name

Unit #

HL

HILARY NORTON

4

PETITION

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Signature

Printed Name

Unit #

Joyce Weeks

Joyce Weeks

11

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Signature

Printed Name

Unit #

Lynne W. Smith

LYNNE W. SMITH

81

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Signature	Printed Name	Unit #
	<u>Thomas Stueck</u>	<u>56</u>
<u>Erika Stueck</u>	<u>Erika Stueck</u>	<u>56</u>

PETITION

We, the undersigned Unit Owners of the Tidewatch Condominium, object to the variance requested by 635 Sagamore Development, LLC to be heard by the Portsmouth Zoning Board of Adjustment ("ZBA") on Tuesday April 19, 2022. We ask the ZBA to deny the request.

Signature	Printed Name	Unit #
<u>Stephanie Roach</u>	<u>Stephanie Roach</u>	<u>1</u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>		

PETITION

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Signature

Printed Name

Unit #



KRISTEN ALTAMAR

107

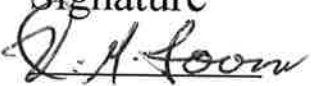
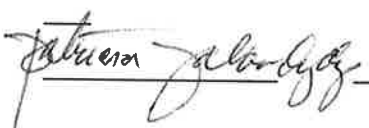


HERNÁN ALTAMAR

107

PETITION

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Signature	Printed Name	Unit #
<u></u>	<u>Kevin Hooser</u>	<u>38</u>
<u></u>	<u>Patricia Jalandy</u>	<u>38</u>

PETITION

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Signature

J. I. Sturrock

Printed Name

J. I. STURROCK

Unit #

6

PETITION

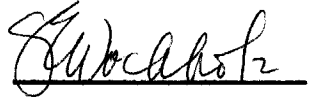

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Signature	Printed Name	Unit #
<u>Sharon N. Oja</u>	<u>SHARON N. OJA</u>	<u>36</u>
<u>[Signature]</u>	<u>JON P. McMILLAN</u>	<u>36</u>

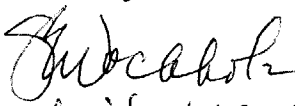
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PETITION

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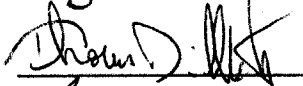

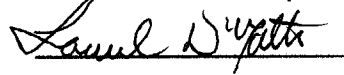
Signature	Printed Name	Unit #
<u></u>	<u>Sandra E. Wochholz</u>	<u>#69</u>
<u></u>	<u>Hertz Wochholz</u>	<u>#69</u>

The idea of construction over and elevated higher than the existing Tide Watch neighborhood suggests erosion & water issues. The mere idea of gravity should caution the City of Portsmouth to deny this request.


Unit #69, Tide Watch

PETITION

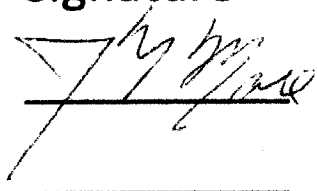
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Signature	Printed Name	Unit #
		48
	Laurel DiMatteo	68
_____	_____	

PETITION

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Signature



Printed Name

James T. More

Unit #

67

From: [Peter M. Wissel](#)
To: [Planning Info](#)
Subject: Board of Adjustment Agenda Item III.F- 635 Sagamore Avenue - April 19,2022
Date: Wednesday, April 13, 2022 1:51:20 PM

Dear members of the Zoning Board of Adjustment,

We have two strong objections to the variance requested at 635 Sagamore Avenue.

We are avid cyclists. The shoulder of Sagamore Avenue in front of 635 Sagamore Avenue narrows from approximately 4 feet to approximately 12 inches. That stretch of Sagamore Ave is also on a grade, so a southbound cyclist would be moving uphill slowly. The crest of the grade is just beyond the subject property and a southbound motorist can not see vehicles approaching in the opposite lane. Consequently, an impatient southbound motorist, and there are many, especially during the tourist season, trying to pass a slow moving cyclist often fails to maintain 3 ft. of distance between their vehicle and a cyclist as required by NH law. One or more additional personal motor vehicles for each of 5 units, delivery vehicles and service vehicles seeking to turn in and out of a driveway at this already dangerous stretch of road will only add to the hazard to cyclists.

We are also owners of a unit at Tidewatch Condominiums. A major appeal of Tidewatch is the park-like setting which is protected by the current zoning along Sagamore Avenue. Allowing 5 units to be built on a lot currently zoned for a single unit would have a significant adverse impact on the aesthetics and the value of Tidewatch Condominium units without adding any benefit to the community at large. The best locations for increasing density are where residents can either walk to amenities or avail themselves of public transportation. 635 Sagamore Avenue is not such a location.

Respectfully yours,

Peter Wissel and Susan Philbrick
579 Sagamore Ave., Unit 75
Portsmouth, NH 03801