

RE: 1 Congress, High and Haven Ct  
Meeting: ZBA 03-15-22 Re: Appeal

Dear Members of the Zoning Board of Adjustments,

These are merely some supporting factors regarding the decision made to expect the “green” Haven Court Height- 2-3 story max 40’ be used for the Haven Court side of these two merged lots presented by 1 Congress St.

The council for 1 Congress St inferred that Haven Court is not a street because it is not on the “street” lists as well as that it is a private way with easement(s) of sorts. It seems Coffin Court and Prospect St were not found on the first “Accepted Streets” list presented by 1 Congress St. They were found on the second list. The presented lists seem rather outdated. The fine print on C-34500 reference plans, #6 dated 1948, seems to state (very difficult to read) that JJ Newberry’s bought the Newick and Wood land and later said land was sold to Wenberry Associates. It does not seem to mention the Jarvis’ owned any part of Haven Court which seems to be the land owned by One Market Square LLC. The plan A1.1(2/23/22) shows a 15’ easement on said property but does not seem to include with whom. The presented D-43095 survey took place in November 2021 but was very difficult to read. Based on the NH Supreme Court none of these surveys may be relevant to this appeal.

*The NH Municipal Association, Natch Greyes, Municipal Services Counsel provides some insight into this:*

*Legal Q&A: Stop Plowing that Private Road*

*“Municipalities cannot spend public funds for private purposes.”*

*“Helpfully, the New Hampshire Supreme Court listed a number of actions municipalities might take which would imply that the governing body (select board, town council, city council, etc.) meant to accept a private road as a municipal highway. Those include: “opening up or improving a street, repairing it, removing snow from it, or assigning police patrols to it.”*

Looking at the signage at the Fleet St end of Haven Court (by Gilley’s-see picture) as well as MapGeo, some of that end Haven Court is likely privately owned. ***The actions of the city would imply if the area of Haven Court, not blocked off by Jersey Barriers, where this development is proposed, has been maintained by the city in any of the ways listed above. Any of these activities could make it a municipal “street” and it would fall under the Portsmouth boards’ jurisdictions.***

Google Maps recognizes Haven Court and can find it. It has been on the maps of Portsmouth for many years. It appeared to be a large yard in the 1850s per maps possibly owned by Charles Haven Ladd. Please review the photos below for comparison of what was there in the past and what is there now.

There are many lots in Portsmouth which have multiple heights. These often happen when lots are merged. It should be remembered that 10.141 states the more restrictive ordinance shall be used. Please do not grant this appeal and support the lower height on the corner of Haven Ct AND High St to maintain the character of Haven Court.

Sincerely,  
Elizabeth Bratter  
159 McDonough St  
Property Owner

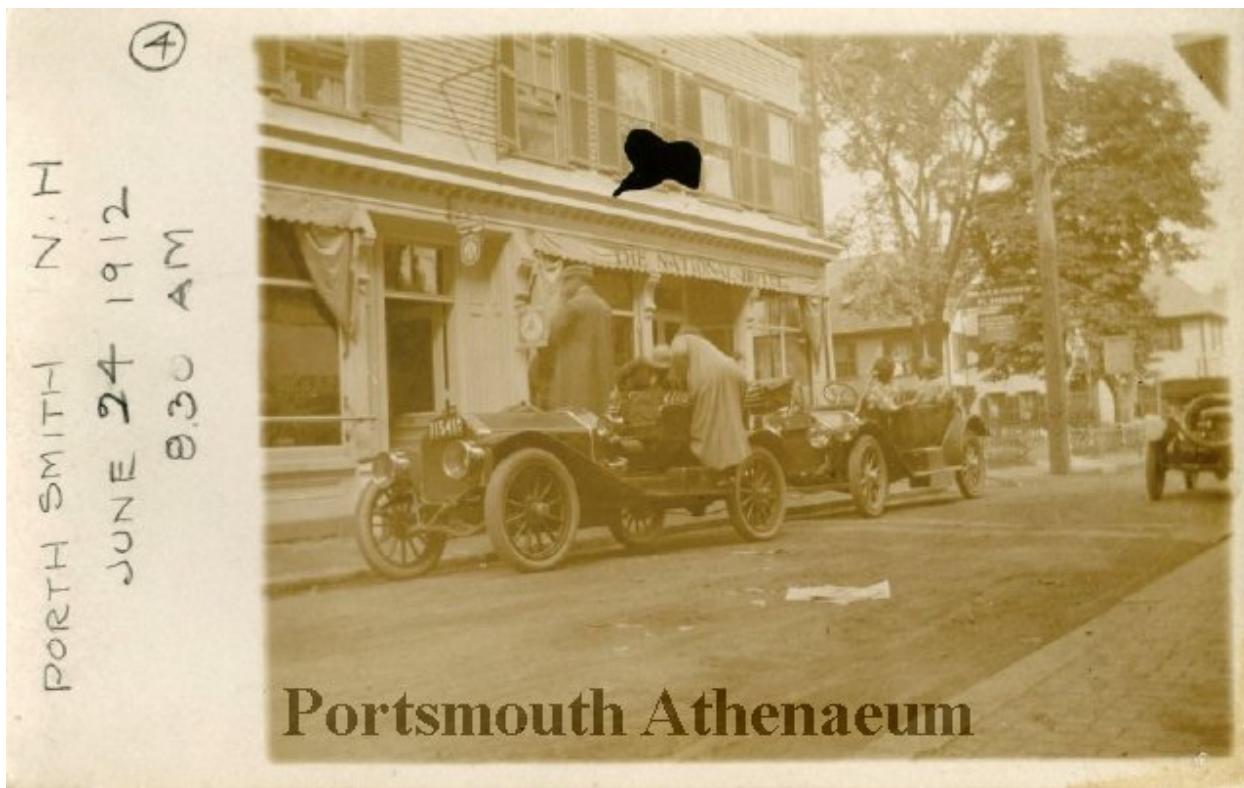


**24 Haven Court Range 1910-1913**  
 Group of men in front of the shop belonging to C.R. Pearson, machinist, and C.L. & C.H. Brewster, heating and plumbing, at 24 Haven Court, Portsmouth.



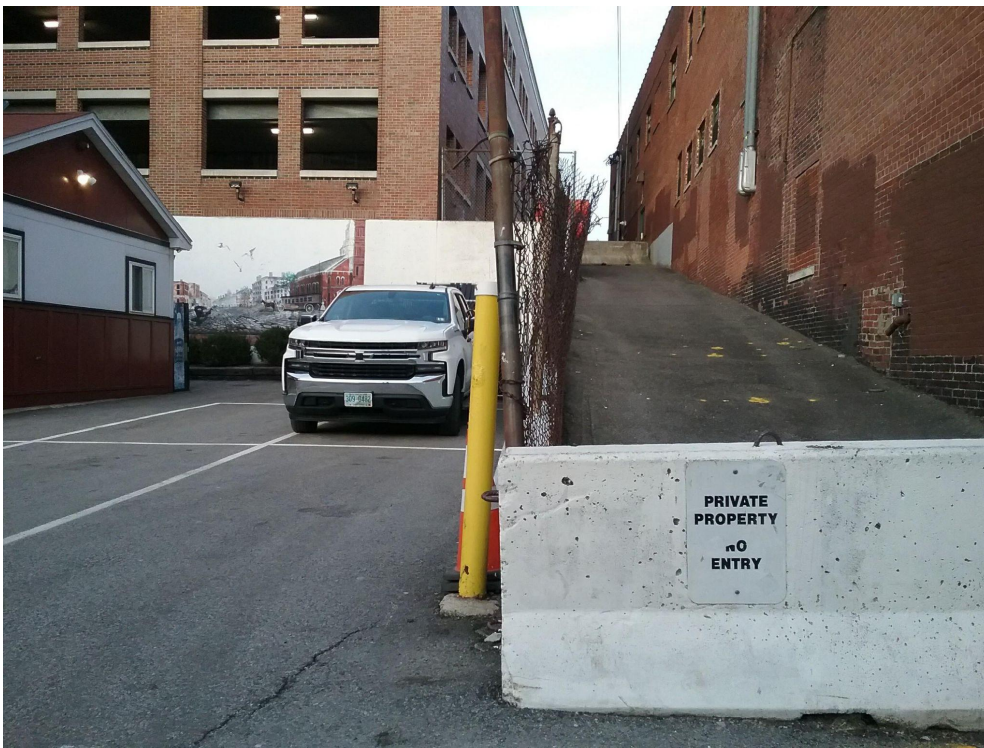
Corner of Haven Court and High Street. Jersey Barriers block off the last 3rd of Haven Court.





National Hotel on High Street-2 Story





End of Haven Court which is shown partially as privately owned by the 175 Fleet St (Gilley's) and the Newberry's property (15 Congress St) on Map Geo.



**From:** [j.o](#)  
**To:** [Planning Info](#)  
**Subject:** Re: Appeal of the Administrative Decision at 1 Congress St.  
**Date:** Monday, March 14, 2022 3:11:34 PM

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To Whom it May Concern at the Board of Adjustment in Portsmouth, N.H.,

I was sent notification of the proposed expansion at 1 Congress St., request of Francis X. Burton, atty for the appellants. I am an owner in the McIntosh Condominium Association at 90 Fleet St. I am in agreement with the decision to NOT allow this expansion to take place.

I feel that Portsmouth is very special, not only because it has a beautiful coastal location, but because of its historic charm that is reflected in all of its historic buildings, and the nature/character and charm of the town. I am not the only one who feels Portsmouth is becoming more gentrified.

I have not liked the direction the town is taking, of expanding with new builds of luxury condominiums and hotels. Of course I understand the appeal of this for business and developers, but a main reason people like and visit Portsmouth, in my estimation, and the estimation of many if not most, is for the quaintness and charm of downtown. I feel this new expansion on 1 Congress St, as well as all new development downtown, would be encroaching on that and the reason why Portsmouth is so special and fun! Once these buildings and expansions happen there is no going back, or undoing them! And if you allow one, there is precedence to allow for more.

While housing is in short supply everywhere, I feel the price is too great to allow this to happen. The skyline and atmosphere of downtown Portsmouth should be kept as it is, to preserve what is left of the charming Portsmouth we all know and love. Please don't be short sighted on this. Portsmouth is special for a reason, and that reason should be preserved to continue its charm and vitality as a destination for charming coastal beauty and history for all to enjoy!

I urge the Board of Adjustment to uphold the decision to disallow the expansion at 1 Congress St that asks to raise the roof as well as expand into an adjacent area. (This is my understanding and memory of the case at that location.) Keep downtown Portsmouth as it is.

Thank you,  
Jennifer (Reinauer) Oswald

**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

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

From: Andrew Jaffe [<mailto:amjaffe@comcast.net>]  
Sent: Monday, April 18, 2022 2:00 PM  
To: Peter M. Stith <[pmstith@cityofportsmouth.com](mailto: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*

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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

**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

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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



## 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 <sup>areas</sup> ~~homes~~ below - including that end of TW.

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Signature

Printed Name

Unit #

Penelope Bartko

Penelope A BARTKO

UNIT 98

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Signature

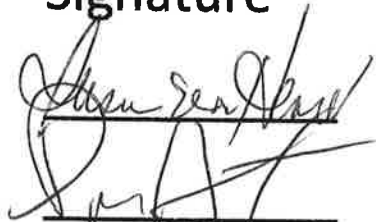

Printed Name

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>

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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>		

## PETITION

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Signature

Printed Name

Unit #

Hilda P. Verduyn

Hilda P. Verduyn

18



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## 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>



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

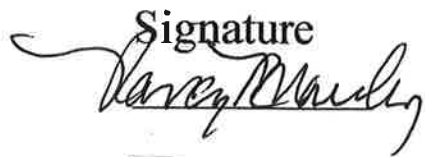

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Signature	Printed Name	Unit #
<u>Joline Small</u>	<u>Joline SMALL</u>	<u>65</u>
<u>Michael Small</u>	<u>Michael Small</u>	<u>65</u>

## PETITION

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


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Signature

Printed Name

Unit #

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

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## Signature

25

Printed Name

Kevin O'Loach

Unit #

95



## 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>RE Bendetto</u>	<u>Rodney E. Bendetto</u>	<u>46</u>
_____	_____	_____

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Signature

Michael Sterling

Paula Sonnino

Printed Name

MICHAEL STERLING

PAULA SONNINO

Unit #

77

77

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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>

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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>		

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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

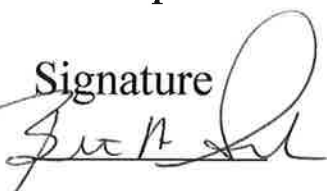
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Signature

Printed Name

Unit #



Beth A Steycek

63

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## PETITION


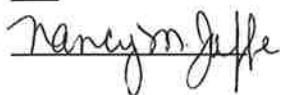
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Signature	Printed Name	Unit #
<u></u>	<u>KIMBERLY MEUSE</u>	<u>97</u>
<u></u>	<u>LINDA CUNNINGHAM</u>	<u>118</u>



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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

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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 #



Thomas Stueck

56

Erika Stueck

Erika Stueck

56

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



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Signature

Printed Name

Unit #



KRISTEN ALTAMAR

107

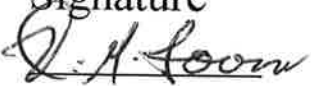
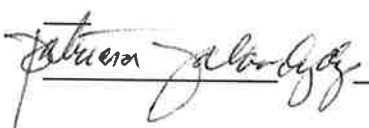


HERNÁN ALTAMAR

107

## 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></u>	<u>Kevin Hooser</u>	<u>38</u>
<u></u>	<u>Patricia Jalandy</u>	<u>38</u>

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Signature

J. I. Sturrock

\_\_\_\_\_

Printed Name

J. I. STURROCK

\_\_\_\_\_

Unit #

6

\_\_\_\_\_

## PETITION

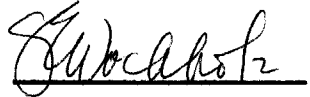

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Signature	Printed Name	Unit #
<u>Sharon N. Oja</u>	<u>SHARON N. OJA</u>	<u>36</u>
<u>[Signature]</u>	<u>JON P. McMILLAN</u>	<u>36</u>

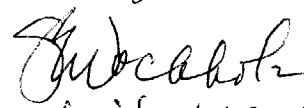
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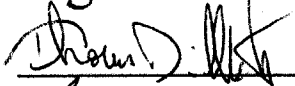

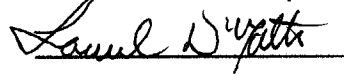
Signature	Printed Name	Unit #
<u></u>	<u>Sandra E. Wochholz</u>	<u>#69</u>
<u></u>	<u>Hertz Wochholz</u>	<u>#69</u>

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

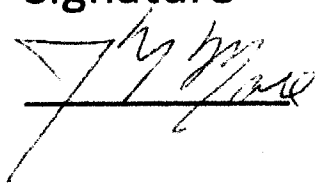
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Signature	Printed Name	Unit #
		48
	Laurel DiMatteo	68
_____	_____	
_____		

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Signature



Printed Name

James T. More

Unit #

67

# 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, 3<sup>rd</sup> 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 reasons<sup>1</sup>:

- 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.

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<sup>1</sup> 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  $\pm$  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  $\pm$  59.53 acres, but it has only 47 buildings. **This creates an open, uncrowded layout with one freestanding building per  $\pm$ 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

**RE: 64 Vaughn St**  
**Meeting: April 26, 2022**

Dear Members of the Zoning Board of Adjustments,

April 17, 2022

**Stated in the March 3, 2021 letter to the HDC by the development team:**

"Our plans illustrate a limited vertical expansion of the building...". The allowed height at this site is 2 to 3 stories, 40' and with a penthouse 42'. What is being shown before the penthouse is added is 3 stories 42' with a parapet, which is allowed. Some of the comparisons presented are buildings in different height zones. Looking at MapGeo this is immediately evident. This entire surrounding area is "green", 2-3 story, 40': Vaughn, Hanover, Fleet, Congress St.

<https://www.cityofportsmouth.com/public-works/engineering-gis/mapgeo>

It is true 25 Maplewood has some items on the rooftop but those are allowed per zoning. Jimmy's Jazz Club appears to be the allowed 3 stories. **Adding a rooftop employee lounge is not included in any ordinances.**

The opening letter states: "*The convening space will provide employees and guests access to outdoor space where there is no other such space available on or near the property.*" **Had the originally proposed conversion of PART the parking area into a park been provided, there would have been over 2480sf of green space for the employees and residents. The development gained over 9000 sf in building by not turning the parking area into a park. A park was knowingly NOT chosen.** Directly across the street is Port Walk with large areas for convening. 2 Russell St is proposing large areas for convening, the Vaughn Mall has large areas for convening and the Bridge St lot renovations are providing more open green space. What was chosen is the required 5% of open space (698sf) in 2 sections.

This area is zoned 2-3 story or 40'. Ordinance **10.5A21.21** states no more than the maximum stories OR the maximum feet are allowed. What is being asked for is **an extra story AND an extra about 12' with a 2500sf GLASS building.** Ordinance 10.1530 clarifies **a penthouse as:** "A habitable space within the uppermost portion of a building above the cornice which is set back at least 15 feet from all edges of the roof and the **total floor area** of which **does not exceed 50% of the area of the story below...**". It is shown that the floor below is 6346sf. Over 300 people could be up there at one time. It is stated in the opening letter that there will be between 200 and 300 employees in the ENTIRE building. It is proposed as a GLASS structure(sheet 2 of 17) for convening. **It does NOT meet the criteria of "habitable space".**

This area is in the Downtown Overlay District which provided a 4 space reduction in on-site residential parking and *no required parking for commercial space.* A fortune was saved in NOT being required parking for the expected 200 to 300 employees. The 2480 sf park could have been added or a few employee lounges with windows or balconies could have been added.

**Please deny this request for 3 variances to add an employee lounge.**

- 1.) The bare minimum of a 15' setback is not being provided. 10.1520 likely exists to keep every building in town from being able to add an extra floor and call it a penthouse. It is contrary to public interest to water down this ordinance by ONE THIRD!! **It is very contrary to public interest to allow a pattern of variances to meet a goal (place to convene) which the developers chose NOT to provide in their design plan.** This building is already going to negatively impact public interest by not providing the amount of parking they will really need. The 200-300 employees could have a positive impact on the local businesses IF they convened at local businesses. This GLASS building will likely open on many sides reflecting sound off the entire area. It will likely be lighted and

is proposed as an employee lounge not a penthouse. It is one thing to live next to a residence, it's another to live next to an employee lounge.

- 2.) 10.5A21.21 height regulations state no more than maximum stories OR height can be used. 10.5A43.30 states the height at this location is maximum 40' with penthouse 42" OR 2 to 3 story. The spirit of both ordinances is not being observed by adding around 12 more feet and not meeting the minimum set back requirement. All buildings have unique structures, this one included. It is NOT a habitable space and *doesn't meet the definition of a penthouse*. The Oxford definition of a penthouse is: an apartment on the top floor of a tall building, typically luxuriously fitted and offering fine views. ***It not only doesn't meet the spirit of the ordinances much less the basic definition of a penthouse.***
- 3.) Substantial justice would have been to have added a park in the original parking area for the employees to enjoy. The design of the building could have included a penthouse apartment for the CEO within the allowed 42' height with the required 15' set back. Downtown employees often convene in the provided open areas and support the local establishments by using their facilities. ***Substantial Justice would be to NOT allow these variances.***
- 4.) The original building was a mixed use with retail on the first floor and residential above. The entire building is now commercial. The condo and hotel rooms which abut this property could have a rude awakening the first time 200++ people gather on the rooftop in a glass building which will likely reflect sound off the entire Vaughn Mall and that would be just hanging out and talking. Having a band or music of any kind would just add to the negative impact on surrounding properties. *The sounds from the Worth Lot can negatively affect 25 Maplewood and Bridge St. They are known to resonate into Islington Creek.* **All residences abutting the proposed employee lounge could be negatively impacted by noise.**
- 5.) *There is NO hardship here.* The design plan could have included a penthouse for employees to rent or live in, within the height minimums and penthouse setbacks. What is being proposed is not a penthouse by city and Oxford definition but an employee lounge for over 200++ people. An over 9000sf building addition was chosen INSTEAD of a park. A simple 200sf or 1000 sf first floor *open area* could have been designed into the building. Each floor could include an employee lounge with small balconies. This area is surrounded with wonderful restaurants, meeting areas and outdoor spaces, including the Vaughn Mall!! **There is NO hardship at all!**

Respectfully,

Elizabeth Bratter  
159 McDonough St  
Property Owner

**From:** [Kimberli Kienia](#)  
**To:** [Kimberli Kienia](#)  
**Subject:** FW: May 17th: 64 Vaughan Street  
**Date:** Monday, May 16, 2022 9:54:47 AM

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**From:** Ted Anastasi <[elanastasi@gmail.com](mailto:elanastasi@gmail.com)>  
**Sent:** Monday, May 16, 2022 6:05:23 AM  
**To:** [slcasella@cityofportsmouth.com](mailto:slcasella@cityofportsmouth.com) <[slcasella@cityofportsmouth.com](mailto:slcasella@cityofportsmouth.com)>  
**Subject:** May 17th: 64 Vaughan Street

Dear Members of the Portsmouth Zoning Board of Adjustment,

We are writing to you to object to the variance request submitted by Novocure Inc. with regard to 64 Vaughan Street.

**1 & 2. The variance is contrary to the public interest and the spirit of the ordinance will not be observed.** Granting the variance will alter the essential character of the neighborhood. Please go look for yourselves. An all glass penthouse would be completely out of character for the rooflines of the surrounding buildings and glaringly seem out of place. The public gets no benefit from this. By the applicant's own argument only the employees and guests of the company will benefit from this variance.

**3. Substantial justice will not be done if this variance is granted.** The applicant's argument for this prong that other buildings nearby are taller has absolutely no legal sway and was wholly rejected by this Board at the last hearing on March 23, 2021. Further, justice was already served by this Board at that hearing only a year ago. You completely rejected (6-1) a similar request. What has changed in a year? Same developer, same lawyers, same arguments. Only the ownership has changed. The applicant purchased the building knowing full well that this Board denied a similar request last year. Is justice served if people are allowed to keep making the same request over and over again just because they can? There has to be some integrity to this Board's rulings.

**4. The value of our property will absolutely be diminished.** Our view will be negatively impacted with the new plan. We will be looking straight into the all glass penthouse. Our steeple view, our most treasured possession at our condo, will be negatively impacted. That is not what we bargained for, or were promised, when we purchased our new home in December of 2020. We realize views over time can change based on topography, but we did not anticipate this Board granting a variance at the time of purchase nor did we think after it had already been denied that we would have this an issue come up again.

**5. In our opinion, there is no way that the applicant can prove unnecessary hardship in this case.** There is no special condition of the property that distinguishes it from any other property in the area. There is nothing about the physical surroundings, shape or topography involved that would create a hardship to the applicant if you adhere to the letter of the zoning regulation. Again, they failed to meet this prong at the last hearing and they fail to meet it again. Their sole argument for this prong in the application is that if you do not grant this variance they will not have "assembly" space and access to outdoor space. Doesn't Vaughan Mall itself provide outdoor space? Yes, it would be nice, for them, to be granted this variance, but that is in no way a hardship.

Our unit will be directly impacted by the proposed variance sought by the applicant and we vigorously object to this variance. We do hope that you understand and agree with our stance.

Could you confirm receipt of the email?

Thank you for your time and consideration.

Sincerely,

Kathryn Bedell and Ted Anastasi

25 Maplewood Ave. #402

Portsmouth, NH 03801



May 14, 2022

Dear Portsmouth Zoning Board,

My name is Alison Griffin and my family and I live at 25 Maplewood Avenue, directly next door, and greatly affected by the 64 Vaughan project. I am asking you to please deny the variances being requested based on a variety of factors:

**Variance 1 and 2: The variance is contrary to the public interest and it does not meet the spirit of the ordinance.** The large glass penthouse will alter the character of the neighborhood and has no benefit to the public. The benefit of having retail space was that it was supposed to provide foot traffic for business along Vaughan Mall. The purpose of this “penthouse” and outdoor space is supposedly a cafeteria/ lounge, which would not be supporting local establishments.

Variance 3: **Significant injustice will be done.** Collision with glass claims the lives of hundreds of millions of birds each year in the United States. Birds that have successfully flown thousands of miles on migration can die in seconds on a pane of glass, having a serious impact on bird populations. I am attaching a video that I captured of a murmuration (a swooping mass of birds in the sky) occurring in the Vaughan Mall area and directly over this property. I hate to think what would have happened if a 2,500 square foot glass building was on the roof during this video.

<https://youtu.be/jN3rC-VCxfA> [https://abcbirds.org/wp-content/uploads/2019/04/Bird-Friendly-Building-Design\\_Updated-April-2019.pdf](https://abcbirds.org/wp-content/uploads/2019/04/Bird-Friendly-Building-Design_Updated-April-2019.pdf)

**Variance 4: The value of my property and other units in the 25 Maplewood building, as well as other abutting properties, will be diminished.** The penthouse being requested was previously denied but is being tried for again, under the guise that it is for a different purpose and by a different owner. It is, however, the same developer and lawyer. This area is zoned 2-3 stories or 40'. When the developer was granted the mansard roof in March 2021, they were pushing the height to the limit. If the glass penthouse plans are approved, the building will add an additional 15 feet of height from the midline of the mansard roof- a significant height increase over the zone limit height! The large “penthouse” will block our views of such things as the Memorial Bridge and the North Church Steeple that made us want to purchase our unit. If we lose those views, our property value and those of our neighbors, are greatly diminished.

**Variance 5: It is NOT a hardship.** They claim hardship and tell the story of how they intend to use the property but the company bought the building knowing all the recent variances that were given and denied within the last year. Their new variance request also states, “The proposed structure is designed to shield the necessary rooftop mechanical units.” The developer had already accomplished hiding the mechanicals. If they don’t add the penthouse then they won’t need to shield additional mechanical units. If they wanted a taller building, they should have not purchased in the Historic District.

After Portwalk was built, the Historic District Commission specifically stated that it would not allow buildings of such a significant height again. If allowed, the precedent will be set for other Vaughan Mall businesses to be built taller, destroying the charm of the Historic District. I urge the board to uphold the decision from last time. Please do not allow this variance to limit the skyline for all those who live around 64 Vaughan. Please do not allow this variance as their intended use will not support local businesses or benefit the city in any way. Please vote no. Thank you.

Sincerely,  
Alison Griffin  
25 Maplewood Ave,  
Portsmouth, NH 03801

**From:** [Sarah Cornell](#)  
**To:** [Planning Info](#)  
**Subject:** Fwd: 77 Meredith Way - January 27th meeting  
**Date:** Tuesday, April 12, 2022 9:04:57 PM

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Dear members of the Board of Adjustment:

I urge you to deny the owners' request regarding building a second principal structure on the lot at 77 Meredith Way.

The additional runoff caused by doubling the impermeable surface on the lot will diminish the value of our property at 275 Thornton Street as well as that of our neighbors at 255 Thornton. Runoff has already increased over previous years in the 2 months since the owners removed all of the trees on the lot. We alone are bearing the cost of removing excess runoff from surrounding properties. A third of our lot (and that of 255 Thornton) is often inaccessible due to water levels.

Please see my earlier letter to the Planning Board for the history of water issues in the Bartlett-Thornton-Stark-Pine block. Drainage on this block is a long-standing issue that we hope to see addressed as part of the FY23-FY28 Capital Improvement Plan (see COM-23-PW-92). Allowing this lot to be developed outside of existing regulations is contrary to the public interest, as it will simply exacerbate an issue that the city will have to address later on.

If the owners are allowed to build an additional structure, expand the existing structure, or in any way increase impermeable surface on the lot, we ask that the city require significant drainage management measures to be included in the plans.

Thank you for consideration.

Sarah Cornell  
Susan Curry  
owners, 275 Thornton Street

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

From: **Sarah Cornell** <[sarahbcornell@gmail.com](mailto:sarahbcornell@gmail.com)>  
Date: Wed, Jan 26, 2022 at 5:50 PM  
Subject: 77 Meredith Way - January 27th meeting  
To: <[planning@cityofportsmouth.com](mailto:planning@cityofportsmouth.com)>

Dear Planning Board members,

While we are not opposed to the unmerging of the lot at 77 Meredith Way, we are opposed to the resulting development of the property. Without consideration of existing drainage issues, any development of the lot at 77 Meredith Way will damage our property at 275 Thornton Street.

In a letter to abutters postmarked January 18th, the owners stated that, once their lot is unmerged, they intend to develop the second lot and replace the existing house. The City should require significant drainage management measures for any construction at 77 Meredith Way due to the removal of dozens of trees and doubling of impermeable surfaces on the lot.

Our property at 275 Thornton Street includes the lowest point in the block bounded by Bartlett, Thornton, Stark, and Pine Streets. It has historically been a wet area, attested to by the long-term owner of 255 Thornton and other long-term residents. We have been told that before the property at 55 Pine Street was built in 2012, both 255 Thornton and 275 Thornton would often have shallow standing water close to the boundary with 55 Pine and 77 Meredith Way during spring thaws. We accept this as typical vernal pool behavior.

Following the building of the house at 55 Pine in 2012 (which included raising the ground level on that property by 2 feet) and the subsequent addition in 2019, the water began to pool at 255 and 275 Thornton more and more often. Where neighbors reported high water reaching our basements perhaps once in decades, we have now had high water up to 2 feet deep and reaching our basements twice in 2 years. (December 14, 2019 and October 31, 2021.) The water now often covers a quarter of the two lots despite mitigation efforts including a sump pump in the rear of our lot which runs about 4 months out of the year.

Today, January 26, the wooded portion of the lot at 77 Meredith Way was cleared. I'm sure I don't need to point out that the significant reduction in tree cover is already a threat to the amount and safety of runoff in the Creek neighborhood:

<https://www.epa.gov/soakuptherain/soak-rain-trees-help-reduce-runoff>.

We ask that the City prioritize water management in the Bartlett-Thornton-Stark-Pine block. No development should further damage our property. Again, the City should require significant drainage management measures for any development at 77 Meredith Way because of the removal of dozens of trees and doubling of impermeable surfaces on the lot.

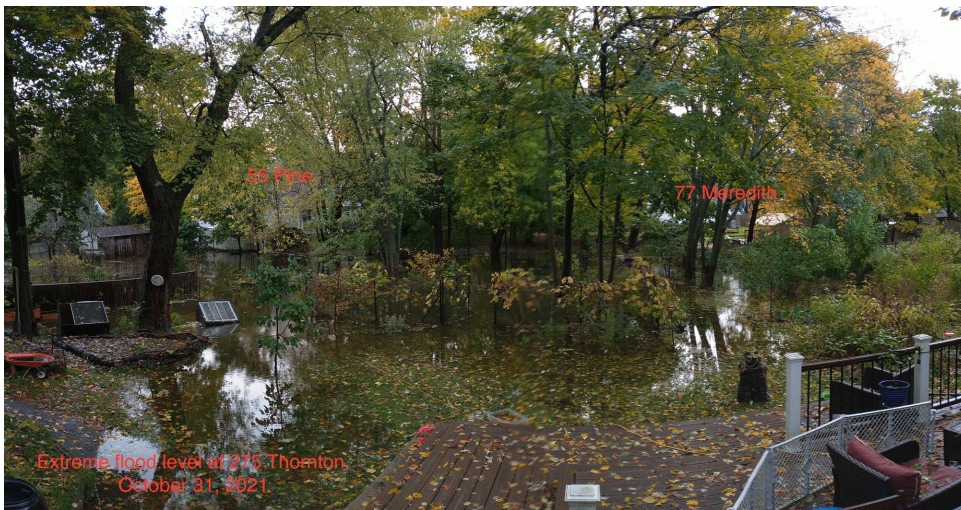
I have attached photos which demonstrate typical and extreme water levels.

Thank you for your consideration.

Sincerely,

Sarah Cornell  
Susan Curry  
owners, 275 Thornton Street









77 Meredith

Extreme flood level (reaching basement) at  
275 Thornton  
December 14, 2019



55 Pine

Extreme flood level at 275 Thornton  
December 14, 2019





55 Pine

Typical flood level at 275 Thornton  
March 4, 2020

**From:** [Linda Briolat](#)  
**To:** [Planning Info](#)  
**Subject:** Abutter notice  
**Date:** Friday, April 15, 2022 5:38:31 PM

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Good afternoon,

I'm writing in response to the request for variance from Randi and Jeff Collins 77 Meredith Way. My concern comes from the continuous water issues from the newer house next door to them. There has been a year round hose running from that property to Thornton St to a water drain across the street from my home at 260 Thornton St. The lot on which the variance impacts is next door to this wet space. Before any variances are granted I'd like to see the water issue fixed.

Personally not clear why they need another home but not my business except the lot is cleared of trees and privacy no longer exists.

As a fourth generation resident of this street it astounds me that every vacant space is being built upon.

I do appreciate your time and willingness to serve the community that I love.

Linda McNeil Briolat  
260 Thornton Street  
Portsmouth

Sent from my iPad



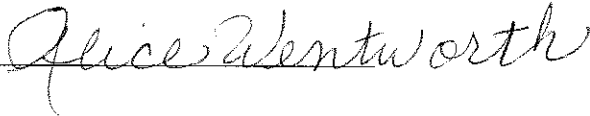
Planning Department  
City of Portsmouth  
1 Junkins Avenue  
Portsmouth, NH 03801

Re:Donald Stickney of 213 Jones Avenue to construct a new single family residence and convert the existing residence into a Detached Accessory Dwelling Unit.

I am writing to express my full support of what Donald is trying to do with his property located at 213 Jones ave. Donald has lived at 213 Jones for 14 years, prior to buying the property he rented it from us. As neighbors go, you could not ask for a better one to live next to. 8 years ago when my late husband could no longer put out seeds and peanuts for the birds every morning Donald took over. Whether it's shoveling for me, hanging up my daily newspaper on a hook, or helping with the computer, Donald is always willing to help.

The project will allow him to stay here as my neighbor with his two young daughters and wife.

Alice Wentworth  
215 Jones Ave Portsmouth NH 03801

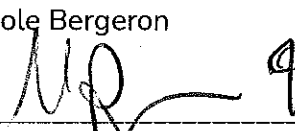
x 

Planning Department  
City of Portsmouth  
1 Junkins Avenue  
Portsmouth, NH 03801

Re: Donald Stickney (Owner), for property located at 213 Jones Avenue to construct a new single family residence and convert the existing residence into a Detached Accessory Dwelling Unit.

I am writing to express my full support of what Donald is trying to do with his property located at 213 Jones ave. Donald is a great neighbor and is always willing to help if you've got a problem, like this winter when our sump pipe broke and he came over to help us fix it. This project will give him, wife Narra, and two young girls the space they need to stay on Jones ave as our neighbors.

Thank you,  
Nicole Bergeron

X  9/9/02

216 Jones Ave Portsmouth NH 03801

Planning Department  
City of Portsmouth  
1 Junkins Avenue  
Portsmouth, NH 03801

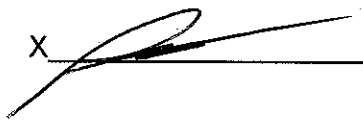
Re: The request of Donald Lowell Stickney III (Owner), for property located at 213 Jones Avenue requesting Conditional Use Permit under section 10.814 of the Zoning Ordinance and modification of the standards set forth in Sections 10.814.40 or 10.814.52 through 10.814.56, to construct a new single family residence and convert the existing residence into a Detached Accessory Dwelling Unit totaling 886 square feet of living area. Said property is shown on Assessor Map 222 Lot 69 and lies within the Single Residence B (SRB) District.

My name is Peter Evans, Owner, for property located at 323 Jones Avenue and I am writing in response to the above referenced application. I am writing to express my full support of what Donald is trying to do with his property located at 213 Jones ave. The project will give his family of 4 the space needed to stay on Jones ave and continue to be a member of the community we have here.

Thank you for your time and consideration

Peter Evans

X



3 APR 2022

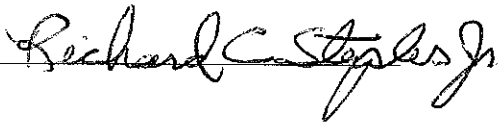
Planning Department  
City of Portsmouth  
1 Junkins Avenue  
Portsmouth, NH 03801

Re: Donald Stickney owner 213 Jones Avenue ADU and new single family residence.

I am writing to express my full support of what Donald is trying to do with his property located at 213 Jones ave. Donald is a great neighbor and often helps clear snow for us in the winter.

The project will allow him to stay here as our neighbor with his wife and two daughters.

Richard Staples  
264 Jones Ave Portsmouth NH 03801

X 

Planning Department  
City of Portsmouth  
1 Junkins Avenue  
Portsmouth, NH 03801

Re: Donald Stickney of 213 Jones Avenue ADU and new single family residence.

I am writing to express my full support of what Donald is trying to do with his property located at 213 Jones ave. Donald has been a great neighbor and we'd hate to see him move. He's the kind of neighbor that you can borrow tools from, ask to snowblow your driveway if you're out of town, or just lend you a hand.

Ryan Marshall

X

296 Jones Ave Portsmouth NH 03801

4/8/22

Planning Department  
City of Portsmouth  
1 Junkins Avenue  
Portsmouth, NH 03801

Re:Donald Stickney owner 213 Jones Avenue detached accessory dwelling unit and new single family residence.

I am writing to express my full support of what Donald is trying to do with his property located at 213 Jones ave. Donald is a great neighbor and maintains a roadside water station for dogs on Jones ave.

The project will allow him to stay here as my neighbor with Narra, Avalina, and Emery.

Thomas Kelly  
176 Jones Ave Portsmouth NH 03801

X 