

Memo

To: Board of Adjustment, Portsmouth NH

From: abutters to 67 Ridges Ct.

Re: request for variance

Date: July 19, 2022

We the undersigned respectfully request that you deny the application of Melissa and Jeff Foy for variances to allow them to build a 718 square foot garage topped by a living space and a deck.

We have no feelings toward our new neighbors other than welcoming. The neighborhood of Ridges Ct. is beautiful and friendly. We welcome the Foy's to work with us in stewarding the community we enjoy.

But the Foy's proposed addition negatively impacts our enjoyment of our individual properties, including views of the water from some of our porches, and from the street for neighbors and for passersby.

Beyond the negative impacts on us, we are aware that setbacks and regulations about lot coverage are in place for reasons related to the public good, including aesthetic and ecological impacts. We are in support of such protections. Our neighborhood is on a sensitive waterway: it is on an estuary, which is nursery to the ocean, and impacted by changes to runoff; it supports eel grass, which is protected across the region. Regulations based on best practices for the environment and the social welfare of a community exist for reasons, and are worth adhering to.

About hardships the lot at 67 Ridges Ct. occasions, we note that our neighbors ask for variances to build a garage, which they already have. Indeed, the former owners built a garage which they never used as such, but rather finished as living space. Is it a greater hardship to return a garage to garage use than to construct a new building? Our new neighbors also ask for a variance to add a porch to the top of a new garage building, yet they have a porch which offers a broad view of the water. Is it a hardship of the land that it doesn't support two porches? Our neighbors request a variance to add living space to the top of the garage, as well. However, their property is not judged able to support two buildings positioned as described, and simultaneously maintain environmentally protective setbacks. Is it a hardship not to be able to add dwelling space into setbacks? Perhaps it is. But were we all to add dwelling space into setbacks, we would further overcrowd, and aesthetically diminish an already densely populated neighborhood and damage protected waterways. Moreover, we wonder if the hardship associated with building a conforming addition is that it would block the Foy's view of the water. Are variances in order when their impact is to protect the view of a property owner at the expense of views enjoyed from conforming properties?

Thank you for your attention to this matter. We, the undersigned, respectfully ask that you deny variances requested by Melissa and Jeff Foy based on the negative impacts the proposed non-conforming building would have on us as abutters, on the larger community of pedestrians and visitors, and on the environment.

Thank you,

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Lisa Wolford 111 Newcastle Ave.
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BY: EMAIL

July 19, 2022

Peter Stith, Planner
Zoning Board of Adjustment
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

Email: pmstith@cityofportsmouth.com

Re: Variance Application – 67 Ridges Court

Members of the Board,

This Office represents Kathleen Thomson, owner of the property at 56 Ridges Court in Portsmouth. Kathleen's property is located directly across the street from the Foy's property at 67 Ridges Court, making her a direct abutter for purposes of the foregoing variance application.

Kathleen and her late husband, William Thomson Jr., who served on the ZBA for ten (10) years as well as the City Council, serving as Assistant Mayor under Eileen Foley, inherited their property at 56 Ridges Court in 1976 from Mr. Thomson's late mother (buying out Mr. Thomson's two sisters who also inherited the property). The property has been in the Thomson family since 1930. Since 1976, the single-family home on the property has served as Kathleen's residence. It is the place where she raised her daughters Heidi and Kerry Thomson, who now come back to spend time with their own children.

In addition to having immense sentimental value to her, Kathleen's property is a rarity in Portsmouth, as it enjoys unimpeded water views of Portsmouth Harbor, as shown in several photographs enclosed herewith. These water views add substantial value to her property and are protected by virtue of restrictions, such as the wetland buffer setback, that apply to the Foy's property.

While it may be true that a property owner never truly has a "right to a view" unless one is protected through an easement or other similar legal instrument, it is entirely within the Board's purview to consider the loss of a view in considering the five (5) variance criteria, particularly whether there will be a ***diminution in surrounding property values***. Detriment to abutters' water views is a factor which zoning boards and New Hampshire courts may consider when determining whether a proposed variance will cause a lessening of surrounding property values. *Devaney v. Windham*, 132 N.H. 302, 306 (1989).

In this instance, the loss in value associated with the diminished view of the water from Kathleen's home cannot be understated. As set forth in the letter of a well-reputed local real estate

agent, Ali Goodwin which is enclosed herewith, the value of Kathleen's property is estimated to diminish by **\$800,000.00 to \$1,000,000.00** as a result of the Foy's proposed addition, which is quite significant in size. While Kathleen may not have a legal right to a view, it is important to remember that the Foy's do not have a legal right to build in the location chosen.

The question ultimately underlying the Board's consideration of the Foy's application is really: ***is the construction of the addition necessary for the Foy's to make reasonable use of the Property?*** The answer is unequivocally, "***no***". The single-family home on the Foy's property is not dissimilar in size from many other homes in the surrounding area and is similarly burdened by wetland and other setbacks. A portion of the Thomson property is also burdened by wetland setbacks.

The Foy's purchased their property for \$2,650,000.00 in 2021. As you will see in the planning staff memo accompanying the application, variance relief was granted on October 15, 2002 allowing for then-owner, Charles McLeod, to demolish and reconstruct a single-family home on the property. If there was a legitimate hardship associated with the property necessitating that a portion of the home be built within the right-front yard setback, such a design would have been presented and considered by the Board in 2002. To the contrary, it was determined that the home could be designed and built in the manner and location in which it is now, creating the least impact upon abutting property owners, while giving the owner of 67 Ridges Court reasonable use of their property. The Foy's seek to construct a significantly sized addition that "builds off of" and incrementally adds to the relief that was granted in 2002. Additionally, the property currently offers significant parking and storage space, as there already exists a garage and stone driveway on the west face of the property, and a larger paved driveway on the south side. Accordingly, there is ***no unnecessary hardship***. In the present case, there is a fair and substantial relationship between the general purpose of the ordinance provision, which is to protect against unreasonable enlargement of a non-conforming structure, and its application to the Foy's property.

Finally, ***substantial justice would not be done*** if the Foy's application were granted. In balancing the equities involved in determining whether the relief should be granted, the Board must consider the impact upon the public (i.e. abutters) versus the loss to the landowner. Here, the Foy's are simply losing the right to build something above and beyond what the Board allowed in 2002 when it granted the relief necessary to construct the current home. If these can even be considered a "loss", it is not one that outweighs the impact that it would have on abutting property owners, such as Kathleen Thomson.

I thank you for your time and consideration of the above, and request that you deny the Foy's variance application.

Sincerely,

Darcy C. Peyser

Darcy Peyser, Esq.
Derek R. Durbin, Esq.

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