

RE: 1 Congress St
Meeting: Zoning Board of Adjustments 07/19/22

Dear Members of the Zoning Board,

07/15/22

The Purposes and Intent and relationship to other requirements are clearly defined in Article 1 Section 10.140 which states the more restrictive use or dimension shall govern. 10.5A21.22, the more restrictive would be “street” and the **2 to 3 story, 40’ (green) whichever is the lesser** for 50’ from High St and Haven Court would follow Article 1.

The presented discussion states “The intent of the Zoning Ordinance is to allow the same building height, no less or no more but the same” does NOT agree with Article 1. The word “or” in English implies options. Article 1 clearly defines when there are options the more restrictive ordinance is applied. 10.142 even goes so far to clarify any possible issues with easements, covenant, deeds or private agreement.

Section 10.140 Relationship to Other Requirements

- 10.141 The provisions of this Ordinance shall be held to be minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity and general welfare. Whenever a provision of this Ordinance is more restrictive or imposes a higher standard or requirement upon the **use** or dimensions of a **lot, building or structure** than is imposed or required by another ordinance, regulation, rule or permit, the provision of this Ordinance shall govern.
- 10.142 This Ordinance is not intended to abrogate, annul or interfere with any easement, covenant, deed restriction or other private agreement. However, whenever a provision of this Ordinance is more restrictive or imposes a higher standard or requirement than such easement, covenant, deed restriction or other **private** agreement, the provision of this Ordinance shall govern.

When reviewing the Building Heights Standards (10.5A21.21), EITHER 40’ or 2 to 3 story is the maximum allowed. This development team is proposing, on the former Lot 15, a **43’ high structure where a maximum of 40’ is allowed and a 3 story with short 4th where the maximum of 2 to 3 story is allowed.** The math to determine the height is questionable, since the average roof height is higher on Lot 15 for the ZBA, then when presented to the HDC, yet it is shown with a lower value (Plan H5-23, 7/6 HDC 43’ 10 ¾”, ZBA 7/19 42’ 2”). No matter what, both parts of the Building Heights Standards, height AND story, are over the maximum allowed. This was originally proposed at these heights because the development team desired to connect to the parking garage; that idea changed but the heights were not adjusted.

No matter what is decided everything in the city has a place where it transitions, whether it be zoning, height, speed limits, sidewalks, etc. The majority height in downtown is green, with some orange and a few other heights, stopping and starting in various places. When this property was purchased the two zones and the two heights existed.

Respectfully,

Elizabeth Bratter
159 McDonough St
Property Owner

RE: 1 Congress St

Meeting: Zoning Board of Adjustment 07/19/22

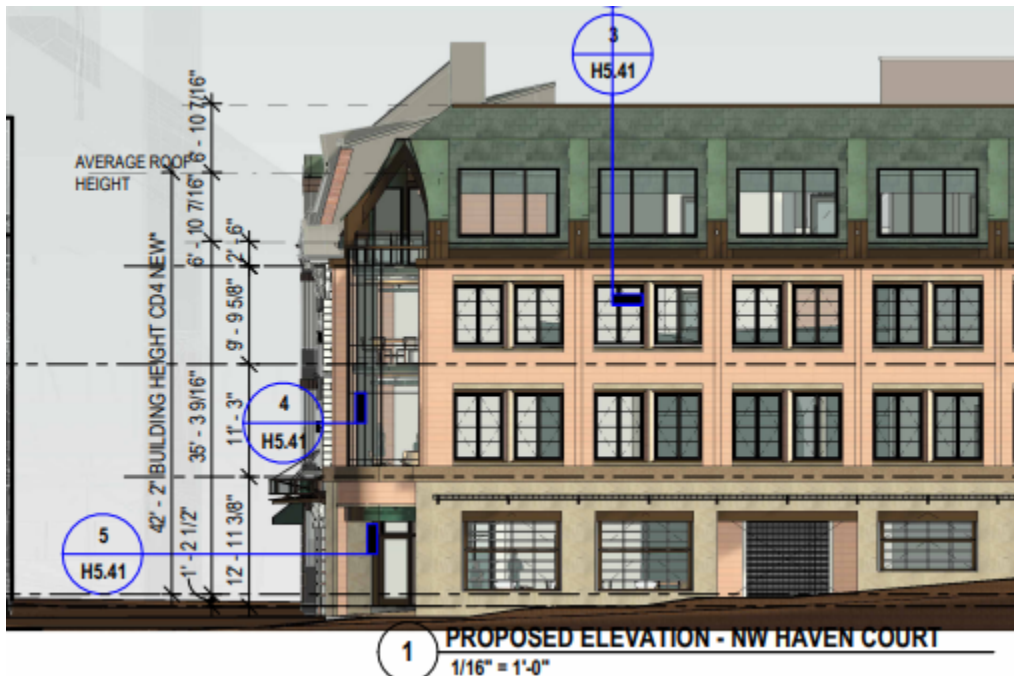
Math questions to for review:

Provided to the **Historic District Commission** 07/06/22 Haven Court (H5-23). Notice no measurement shown (x blank x) where the cornice is. Average Roof Height 5' 8 3/16"

Total height shown 43' 10 3/4"



Provided to the **Zoning Board of Adjustments** 07/19/22. Haven Court (H5-23). Notice 2' 6" now shown at cornice but shown as smaller area (went up to the bottom of the window on HDC). Also listed is 1' 2 1/2" not previously shown. Average Roof Height is greater at 6' 10 7/16" *Yet the total height is shown lower at 42' 2"*



Should the numbers presented be checked by an independent engineer?

Respectfully,
Elizabeth Bratter
159 McDonough St
Portsmouth Property Owner

Top: Lot 117-5



Bottom: Haven Court



RE: 1 Congress St- Lot 117-15 (Haven Court)

Meeting: ZBA February 23, 2022

Page numbers are taken from the "attachments" lists, not from the "packet".

Please review the tax map pictures at the beginning.

Dear Members of the Zoning Board of Adjustments,

February 19, 2022

Green heights vs the orange heights:

Mapgeo shows a lot of "green" in the downtown area. MOST of Lot 117-15 fronts on Haven Court which is all green heights. The variance is for this lot. The request is to take an open parking lot with trees, a public seating area abutted by a relatively new looking 2 story building and replace it with a 4 story building. Haven Court's height is "green", 2-3 story-40', including Newbury's. The existing seating area makes one wonder if it was added as part of a zoning or HDC requirement. This corner of Haven Ct and High St provides a breath of fresh air in this area with 3 story buildings.

The current abutting building appears to be about 2 stories 20' (yellow house next to parking lot). The new structure being presented would increase the height to 4 story 47'. This is technically a 47' increase from the parking lot. It is about a 15' to 25' increase from the yellow building and the others on Haven Court.

The massing plans presented do NOT seem to show Haven Court. The buildings along Haven Court appear to be 2- 3 story, maybe 25' -30' tall. The Hanover Garage drops down to 3 story parallel to them.

The other thing which is NOT shown, for the proposed height of the building, is how much grade will be needed to move the building to the edge of Haven Court and put in underground parking. There seems to be quite an incline on Lot 117-15.

Currently both lots (117-14 and 117-15) **are about 6969.6 sf** (0.16 acres). The restoration (3280sf) is only for half of the existing building on Lot 117-14 and remaining 3/4ths of the proposed combined lot is presented as new (8720 sf).

Definition of a short 4th:

The zoning height for Lot 117-14 is 2-3 story with a SHORT 4th. *This is being asked for Lot 117-15.* Plan A0.4 (pg 26) does NOT list the height for the proposed 4th floor. **A "short story" by definition is 20% shorter than the story below.** Plan A0.3 (pg 25) does NOT show the height of the story below (3rd story). IF all the stories are the same (11') to meet zoning for a "short" 4th, it should be no higher than 8' 8". This proposed floor is shown as residential.

There is a separate roof plan A0.5 (pg 27). The flat roof (no slope) height is listed as 46' 10". Plan C3, shows the ground floor at 13' and the second floor at 11'. Looking at the roof plan, there appear to be some structures which are as high as 55', which are allowed with specific criteria. **10.5A43.32** states: "All roof appurtenances and other features that exceed the allowed building height for the zoning district shall not exceed 33 percent of the total roof area of the structure and, except for elevators and stair towers, shall be set back at least 10 feet from any edge of the roof." Page one of this application states they plan to construct an elevator. It is hard to tell from the roof plans what the various high roof structures are or whether they meet the requested height regulation changes.

Observations regarding orange heights in the same block as Lot 117-14, Congress St:

Looking at the Plan A0.2 (pg 9) and comparing it to Plan A2.2 North side of Congress St (pg 16) and then looking at Plan A0.4 (pg 26), it is evident that the Zoning height of 2-3 Story with a short 4th, maximum 45' *was likely put there in error*. The only building in that entire block which seems to meet that criteria is 55 Congress Street. *All the other existing structures seem to be in 2-3 story 40' range, in this presented "orange" height area along this block.* It may be listed as orange but its existing heights are really green.

What is before this board is to allow Lot 117-15 be changed from the “green” height of 2 -3 story-40’ to the “orange” height of 2-3 story with a short 4th-45’, NOT found on Haven Court where the largest frontage(106’) of this lot requesting the variance is. All of Haven Court is “green”, 2-3 story-40’.

Some answers may be needed to move forward with this request: **actual massing along Haven Court, grade, the park/seating area’s origin, how tall will the 3rd story be, how short will the 4th story be, how tall will the building at the top of the 4th story be, identity of the structure on the roof.**

It seems a little ironic that in this application building height and building expansion are being sought, which usually come with a requirement to add community, green or open space; in this case it comes with the removal of such.

Respectfully,

Elizabeth Bratter
159 McDonough St
Property Owner

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.

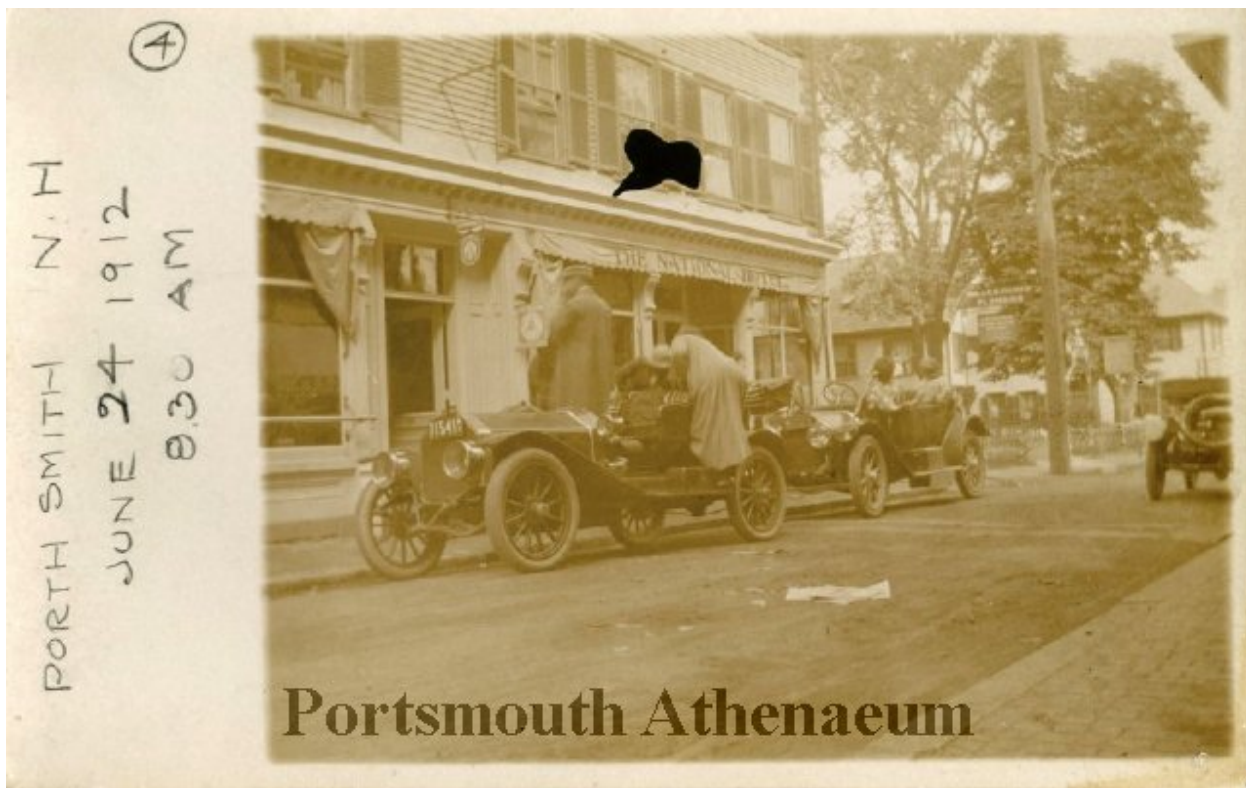
Sincerely,
Elizabeth Bratter
159 McDonough St
Property Owner



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.

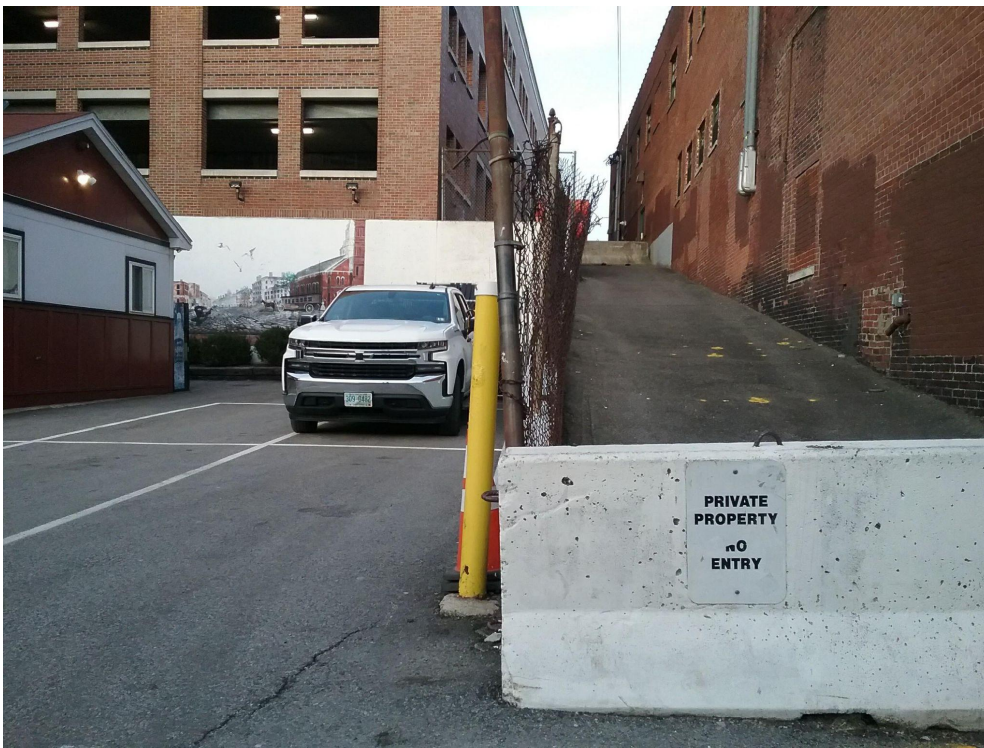


Corner of Haven Court and High Street. Jersey Barriers block off the last 3rd of Haven Court.



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: [Kimberli Kienia](#)
To: [Kimberli Kienia](#)
Subject: FW: 1 Congress Street variance request
Date: Wednesday, February 9, 2022 10:38:14 AM

From: Peter Egelston [<mailto:peter@portsmouthbrewery.com>]
Sent: Wednesday, February 9, 2022 10:27 AM
To: Planning Info <Planning@cityofportsmouth.com>; Peter M. Stith
<pmstith@cityofportsmouth.com>
Cc: Joanne Francis <joanne@portsmouthbrewery.com>; Karen Conard
<kconard@cityofportsmouth.com>
Subject: 1 Congress Street variance request

Good morning,

I am in receipt of an abutters' notice pertaining to the February 15, 2022, Board of Adjustment meeting. The project of which I have been notified is the request by One Market Square LLC for zoning relief to enable the construction at 1 Congress Street of a three story addition with a short 4th story and building height of 44'-11".

I would like to put on record my strong opposition to this request. I can't imagine any hardship that would justify the granting of the requested zoning variances. The building's tax card indicates that it is over two hundred years old. No doubt it has been modified numerous times over its lifetime. However, zoning ordinances exist today to guide such modifications, to protect neighbors, and to help maintain a city's character. The fact that the proposed modification requires zoning relief puts up a huge red flag with respect to its likely impact on the property's neighborhood - Market Square, the very heart of downtown Portsmouth. The proposed modification is elective - it does not have to be done to maintain the viability of the property. There is no reason for the Board of Adjustment to grant the requested variances.

Granting this relief would also set a terrible precedent for the City's historic downtown, as it would encourage developers to propose nonconforming modifications to historic buildings wherever they see a potential for profit.

Lastly, a major construction project in the center of town, one that is likely to take place at precisely the same time the City garage is undergoing renovation, coming hard on the heels of several other major downtown construction projects (not to mention a worldwide pandemic), is certainly going to adversely impact the economy of the immediate neighborhood. I understand that this does not pertain to the matter of zoning relief, but it should be mentioned nonetheless.

Thank you for your attention in this matter.

Regards,

Peter Egelston
Owner of 48-56 Market Street

Peter Egelston, President

[Portsmouth Brewery](#)

56 Market Street, Portsmouth NH 03801

(603) 431-1115 x241

"Everyone is entitled to his own opinion, but not his own facts."

Daniel Patrick Moynihan

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

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: mmm0553@comcast.net
To: [Planning Info](#)
Cc: ["Mary Beth Brady"; Richard H Brady Jr.](#)
Subject: Abutter Notice, Board of Adjustment
Date: Monday, May 16, 2022 5:02:48 PM
Attachments: [1 Scan.pdf](#)
[2 Scan.pdf](#)
[3 Scan.pdf](#)
[4 Scan.pdf](#)
[Survey 5-6-22 Scan.pdf](#)
[Ltr to st jean regarding brady.doc](#)

Good afternoon,

We are Rich and Mary Brady on 122/124 Burkitt St. We are immediate neighbors of Joel St Jean on 108 Burkitt St.

We have reviewed his proposal and have reservations with his plan. We do not oppose legally demolishing/replacing the existing garage in the same space of approximately the same size. We do have questions regarding the proposed variance to almost triple the current size to be built 1' from our property line where 10' is required by current City laws. We're curious how it would be built almost exactly ON the property line where there is now a hedge. With only twelve inches of access to maintain his building, approving this request is tantamount to granting the owners of that property free permanent access to this property.

Since becoming our neighbor, Joel has many times expressed his intent to remove our shared hedge. According to a survey prepared for us by Stockton Services and registered with the City in January 2012, we own most of the hedge. I also recently discussed this with Portsmouth City Arborist Charles Baxter, who reviewed our records and echoed this belief. We have no intention of removing it. I work from home and that hedge is the last bit of protection I have from complete exposure of the sound traveling into our neighborhood from the traffic circle. It has been proposed that a garage and several arborvitaes are adequate replacement. I disagree.

After a text discussion with Joel on April 25,th we hired Jonathan M. Flagg, Esq. Flagg Law, PLLC to draft a letter stating our intention to keep the hedge in place. I have attached that letter.

In addition to the 9' variance, our other concern is that his contractor will need to actually stand in our yard to rebuild his proposed structure. That area is 100% hedge. We question whether this demolition/construction can/will be accomplished while providing the necessary care required to protect our property and prevent terminal damage to our bushes.

We plan to attend your May 24, 2022, hearing to listen and contribute. In the meantime, please advise if there are any additional steps we should take.

Thank you very much.

The Bradys
124 Burkitt St
Portsmouth, NH 03801
603-566-2749

FLAGG LAW, PLLC

Jonathan M. Flagg

ATTORNEY AT LAW

E-MAIL: JFLAGG@FLAGGLAWFIRM.COM

TELEPHONE (603) 766-6300

FACSIMILE (603) 766-6301

August 27, 2022

via regular mail and hand delivered

Joel St Jean
108 Burkitt St
Portsmouth, NH 03801

RE: DO NOT REMOVE HEDGE

Dear Mr. St. Jean:

I represent Mr. and Mrs. Richard Brady who live at and own 124 Burkitt Street in Portsmouth. The Brady's property abuts your property. As I understand it, you want to remove the hedge between my clients' property and your property. My clients own the hedge. Please do not remove it.

We are hoping that you will respond favorably to this letter so that we can get this matter resolved. Our hope is that we can get this matter resolved between neighbors without further proceedings. Let me know if you can work with me on this. If you have any conflicting surveys, please provide them to me. You may have a survey of your own property that you obtained for one reason or another. If so, I would very much like to see it so that we can get this matter behind us.

Thank you very much for your time.

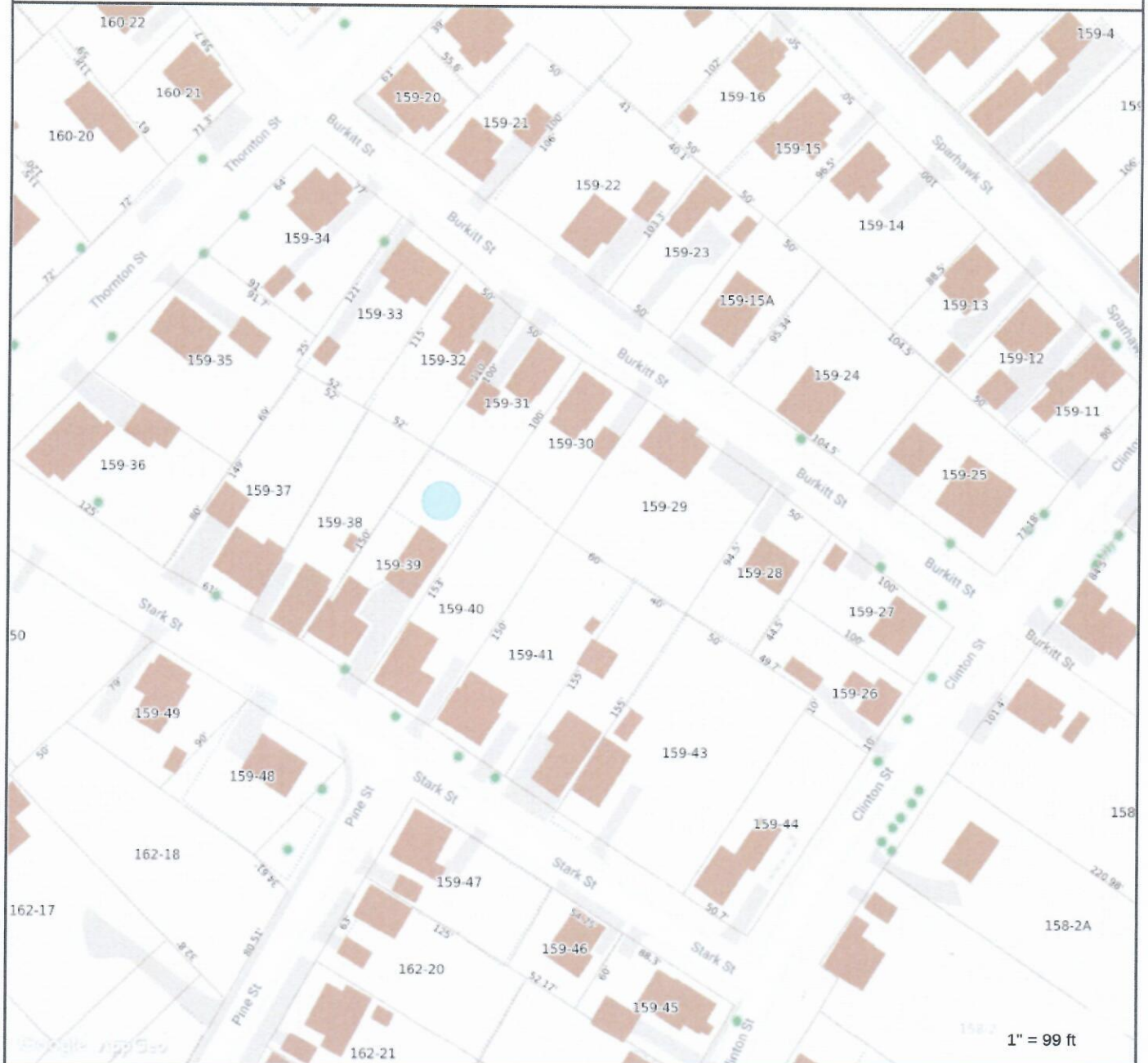
Very truly yours,

Jonathan M. Flagg, Esq.

JMF/jlr

CC: RICHARD BRADY

124 Burkitt Street



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 4/1/2019
Data updated 7/17/2019

C/H
L-CHIP
ROA142101

2012 JAN 12 AM 11:35

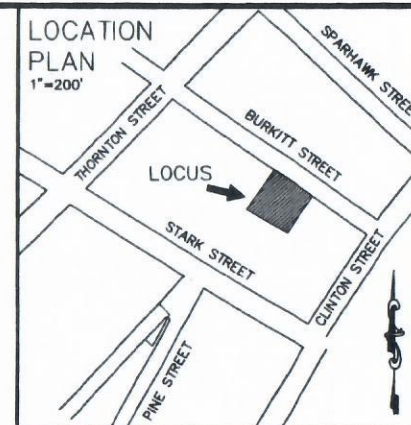
001862

PLAN REFERENCES

- SEE "STREET PLAT OF SPARHAWK, BURKITT, STRAK, CLINTON, AND PINE STREETS IN PORTSMOUTH, NH, SCALE: 1"=60', JULY 1980, JOHN W. DURGIN ASSOCIATES", FILE NO 108CD, PLAN 5874-SP
- SEE "PLOT PLAN, NO 18 BURKITT ST., PORTSMOUTH, NH, SCALE: 1"=10', APRIL 1976, JOHN W. DURGIN. CIVIL ENGINEERS", FILE NO 108 PLAN NO 3301.
(PLANS NOTE 1 AND 2 COURTESY OF JAMES VERRA AND ASSOC.)
- RCRD PLAN 206-131
RCRD PLAN 008, RCRD PLAN 374-028
RCRD PLAN C12736
RCRD PLAN D28451
RCRD PLAN C6323
RCRD PLAN D25006
RCRD PLAN D22643

DEED REFERENCES

RCRD 3560-0180	RCRD 0449-0157	RCRD 0387-0092
RCRD 2700-0760	RCRD 0449-0168	RCRD 0406-0312
RCRD 1740-0291	RCRD 0448-0161	RCRD 0410-0307
RCRD 1867-0016	RCRD 0517-0232	RCRD 0383-0421
RCRD 1686-0011	RCRD 0521-0232	RCRD 0397-0086
RCRD 0804-0147	RCRD 0523-0457	RCRD 0394-0474
RCRD 0819-0491	RCRD 0527-0122	RCRD 0410-0236
RCRD 0532-0087	RCRD 0532-0035	RCRD 0410-0312
RCRD 0450-0251	RCRD 0532-0087	RCRD 0406-0372
RCRD 0211-0106	RCRD 0532-0044	RCRD 0383-0421
RCRD 0194-0372		RCRD 0401-0455
RCRD 0187-0306		
RCRD 0165-0164		

LOCATION
PLAN
1"=200'

I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.

Anne W. Bialobrzewski 12/14/2011
ANNE W. BIALOBRZESKI LLS #752 DATE

PLAT OF LAND
FOR

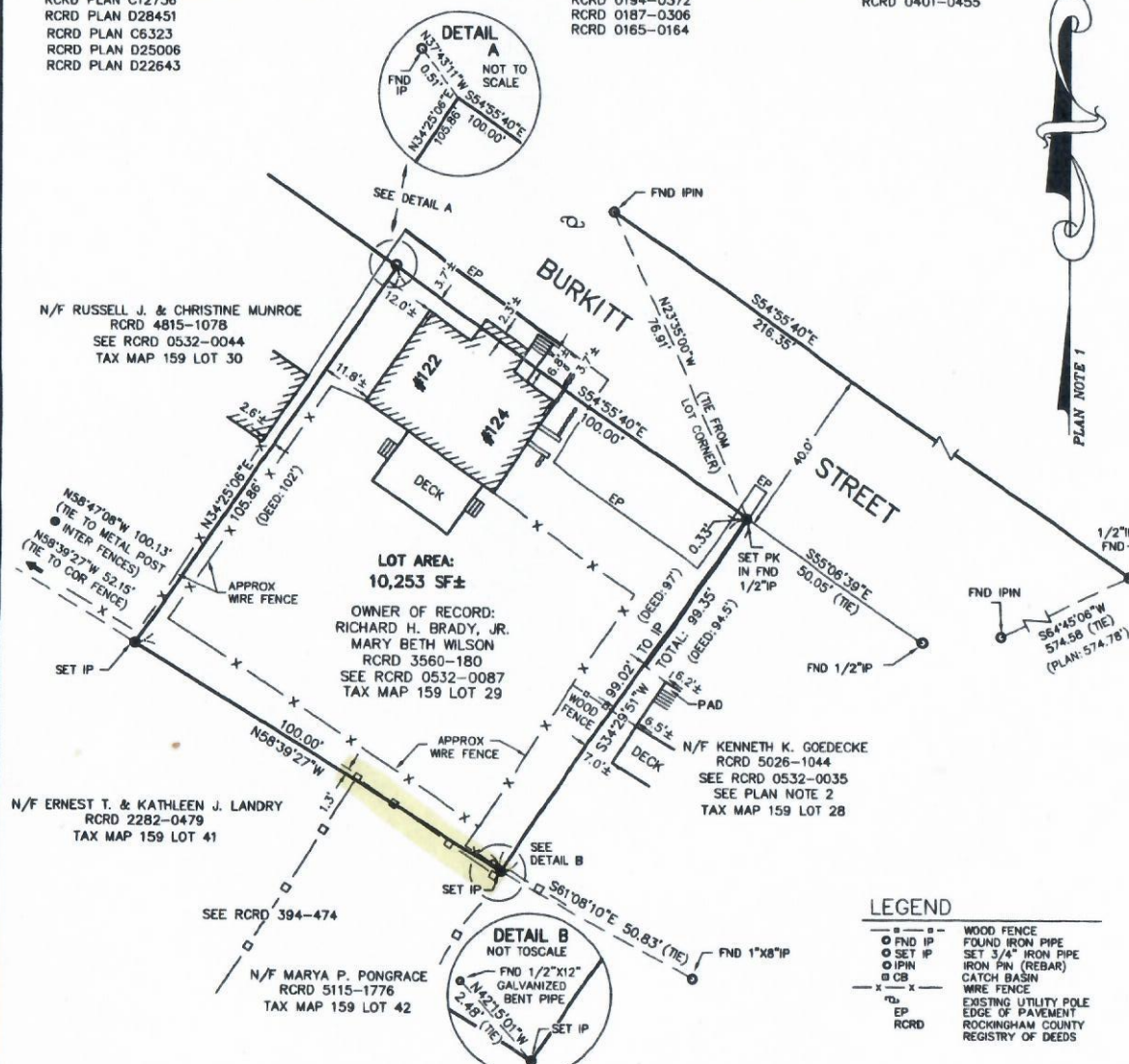
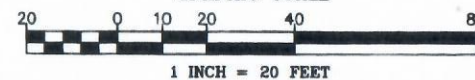
RICHARD H. BRADY, JR. &
MARY BETH WILSON
#122-124 BURKITT STREET
PORTSMOUTH, NH

SCALE: 1"=20' DECEMBER 14, 2011

STANDARD URBAN PROPERTY SURVEY
TAX MAP 159 LOT 29

PREPARED BY STOCKTON SERVICES
PO BOX 1306 HAMPTON, NH 03843-1306
(603) 929-7404

GRAPHIC SCALE



LEGEND

---	WOOD FENCE
○ FND IP	FOUND IRON PIPE
○ SET IP	SET 3/4" IRON PIPE
○ IPIN	IRON PIN (REBAR)
○ CB	CATCH BASIN
-x-x-	WIRE FENCE
EP	EXISTING UTILITY POLE
RCRD	EDGE OF PAVEMENT
	ROCKINGHAM COUNTY
	REGISTRY OF DEEDS

C-37087

Donald Koleman
Joanna Brode
122 Mechanic St
Portsmouth, NH 03801


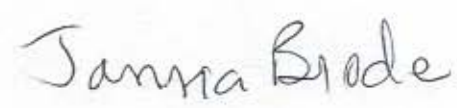
July 18, 2022

To Members of the Portsmouth Planning Board of Adjustment

RE: Application of James Woods and Anna Meinardi, 1Walton Alley, Portsmouth, NH. Hearing July 19, 2022.

The undersigned abutter at 122 Mechanic Street, Donald Koleman, and Joanna Brode regarding the application to the Board of Adjustment by James Woods and Anna Meinardi, as shown on a plan by Ambit Engineering, Inc., dated 7/8/2022, "Site improvements for tax map 103 Lot 27, 1 Walton Alley, Portsmouth," wish to be recorded as having no objection to the said application with regard to the purposed addition and the erection of a garage as said forth on said plan and 2 "Garage Elevation Plans" and one "Addition Plans" all dated 7/8/2022 by McHenry Architecture as submitted to this board.

Regards,

Donald Koleman & Joanna Brode

July 18, 2022

Dear Members of the Zoning Board of Adjustment,

My name is Katie Miller and my husband, John Magane, and I are abutters to the 1 Walton Aly property and are opposed to the building of the garage.

We purchased our home at 51 Gardner Street in 2007. It is directly on Gardner Street, with one side of our property adjacent to a brick courtyard and the other side is our small driveway. But the backside of our house, where our kitchen and office looks out, is our green space. We see a quadrant of our neighbors' back yards including 1 Walton Aly. There are trees and shrubs and birds and squirrels. Between the houses we have a view of the Point of Graves Cemetery and the flowers at Prescott Park . We enjoy it every season because in a very dense neighborhood it IS the green space. We do not wish to lose our treasured view.

The new owners of 1 Walton Aly are proposing a garage in the middle of this green space. They would be adding to the denseness of the buildings, reducing the open space that is already so limited in the South End and negatively impacting our view which could negatively impact a future sale of our home. We feel it is important to maintain the current open green space rather than fill the area with an unnecessary structure, specifically the garage.

The plan proposed shows the garage set back in the yard which puts it directly in line with the view from the back of our house. This means 32 feet from our kitchen windows we would see an 18 foot long garage - directly in our view. It would look like someone had dropped a large building in the middle of the back yard . The garage as shown on the plans (A3) would have a ridge height of 11 feet, which is 5 feet taller than the 6 foot fence the owners have stated they would replace. This would not be a 'peeking' view for us. Additionally in the A5 rendering we would see even more than 5 feet of the garage as the fence follows the slope of the yard.

The proposed plans show direct abutters and the placement and affect the garage would have on their properties but it does not include us as we are not direct abutters. In fact we are incorrectly labelled as the Tobias Lear House in the Geo Map Exhibit C. The Tobias Lear House is another block away and what is shown on the map is actually our house and clearly you can see how close we would be to the garage.

The majority of the houses in this part of the South End, including ours, do not have garages and we do not find it a hardship. In the South End we are happy to have a driveway that provides off street parking.

While we support the Woods and Meinardi's effort to improve the property we do not want the garage built. The hardship would not be for the Woods and Meinardis but rather for us and others who may not want another structure in our already congested neighborhood. While they state on page 5 that there would be no threat to the public health, safety or welfare by granting the variances, we believe that adding one more wooden structure in such close proximity may prove to be a fire hazard. A few years ago there was a fire in an abutter's home. Has the fire department been consulted about the building of this garage and what affect it might have on their ability to contain fires in the neighborhood?

In requesting the variances to the setbacks, the attorney states that homes already do not meet front, rear or side setbacks. But these homes existed before the creation of the GRB (General Residence B) Historic District and the current regulations exist to keep excessive building in check.

The Woods and Meinardis are here before the Zoning Board of Adjustment seeking variances to setback requirements but if the board allows construction of this building with the substantial encroachments on setback requirements they are requesting then what is the point of zoning regulations especially in the Historic District?

Thank you for listening to our objections to the building of the garage.

Katherine Miller
John Magane
51 Gardner Street
Portsmouth, NH 03801

City of Portsmouth

Planning Board

Reference to: 1 Walton Alley

Owners: James William Woods and Anna Roeline Meinardi

1 Walton Alley

Portsmouth, NH 03801

We live at 189 Gates Street and have reviewed the plans for 1 Walton
Alley

We approve the plans.

G. Patrick Nerbonne and M. Judy Nerbonne

From: [Sean Morin](#)
To: [Planning Info](#)
Subject: Abutter notice for Emily Alati, 47 Lovell St
Date: Monday, July 11, 2022 10:55:28 AM

Sean and Stacie Morin
67 Madison St
Portsmouth, NH 03801

Dear Board of Adjustment:

We wanted to express our support for approving, Ms. Alati's request to construct a rear addition and attached garage at 47 Lovell Street. It is our opinion when homeowners want to improve existing properties, that it is good for the city!

Thank you!

Sean and Stacie Morin

RE: 404 Islington St (Martin Hill Inn)
Meeting: ZBA 07/19/22

Dear Members of the Zoning Board of Adjustments

07/13/22

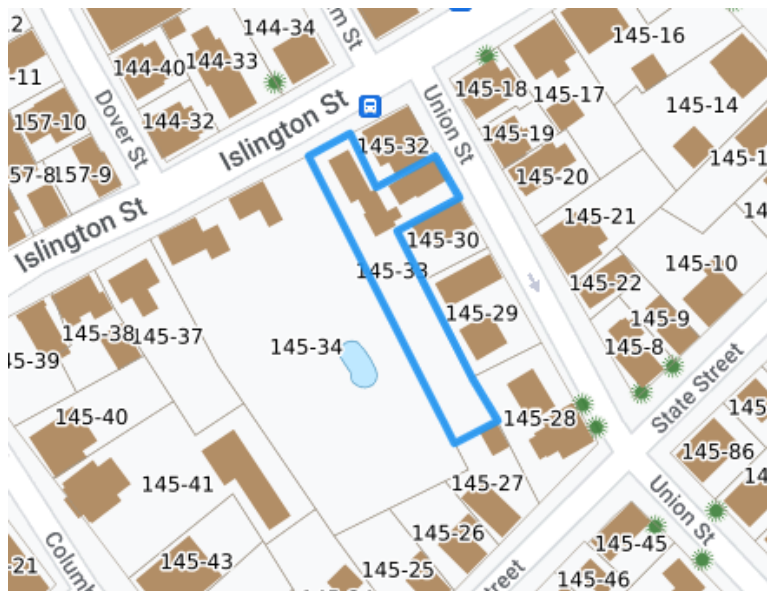
Please consider adding a stipulation to the request to change this from an owner occupied Bed and Breakfast to an online check-in Inn. The Inn will likely be self regulating. If one pays \$200 a night or more for a room it is very likely if there are problems a person would complain to management.

However, if the Inn were to be booked by the same party, for example: for a wedding, funeral, engagement party, reunion, etc, it would no longer be self regulating. In such cases it would be helpful to have a staff member check on the Inn at least twice a day. Perhaps this could be a stipulation, since it is surrounded by residential homes. The other thing that could be added is that the Code Enforcement Officer or the Police be asked to provide a report to the Planning Department once a year regarding any problems for which they were contacted which may arise due to it being unmanned, with a stipulation that the Inn have to be changed to a manned facility if problems occur regularly.

Sincerely,

Elizabeth Bratter
159 McDonough St
Property Owner

145-34 is the new multi-family home complex



RE: 531 Islington St (Dunkins)
Meeting: ZBA 07/19/22

Dear Members of the Zoning Board of Adjustments

July 15, 2022

Please consider adding stipulations to the variance requests made by 531 Islington St.

It is true that the drive-thru window has been there for years. It doesn't mean it isn't an annoying squawk box. Adding the proposed roof to the drive-thru order area will be nice for the people in the cars giving their order. It will provide **a surface for the sounds** being made by those placing the orders and those taking the order to **reflect off** of, thereby increasing the already annoying sounds drive-thrus bring. Most drive-thrus are required to provide a screen and have a set back. It could be helpful to **add** a row of as many 5' tall or taller **year round trees** which can fit in front of the stockade fence, shown in the picture provided **to help absorb some of that sound.**



When walking down Islington St from the Sunoco, heading toward Dunkins, it is difficult to see the cars in the drive-thru due to a bush and fence between this lot and 537 Islington St. ***It could be helpful if this sight line be improved as part of the changes to the drive-thru.***

Sincerely
Elizabeth Bratter
159 McDonough St
Property Owner

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,

Robin Hackett 46 Ridges Ct.
Patti Palen 46 Ridges Ct.
Ruby Palen-Hackett 46 Ridges Ct.

Kathy Thomson 56 Ridges Ct.

Marta Rubinic 40 Ridges Ct.
Warren Wilson 40 Ridges Ct.

Joanne Stella 25 Ridges Ct.

Sharon Ippolito 140 Newcastle Ave.
Anthony Ippolito 140 Newcastle Ave.

Barbara Bolko 100 Newcastle Ave.
Tom Bolko 100 Newcastle Ave.

Pam Boley 88 Newcastle Ave.
Bruce Boley 88 Newcastle Ave.

Ellen Hepp 28 Ridges Ct.
Mark Hepp 28 Ridges Ct.

Annie Rainboth 122 Newcastle Ave.

Sharyn Potter 21 Fernald Ct.
Mike Schwartz 21 Fernald Ct.
Lilia Potter-Schwartz 21 Fernald Ct.

Angela Borges 34 Ridges Ct.
Jeff Perrin 34 Ridges Ct.

Jim Coughenor 150 Newcastle Ave.
Diane Coughenor 150 Newcastle Ave.

Dave White 127 Newcastle Ave.
Kristen White 127 Newcastle Ave.

Lisa Wolford 111 Newcastle Ave.
Marta Hurgin 111 Newcastle Ave.

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 Foys 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 Foys to make reasonable use of the Property?*** The answer is unequivocally, "***no***". The single-family home on the Foys' 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 Foys 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 Foys 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 Foys' property.

Finally, ***substantial justice would not be done*** if the Foys' 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 Foys 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 Foys' variance application.

Sincerely,

Darcy C. Peyser

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



July 13, 2022

City of Portsmouth Zoning Board of Adjustment
1 Junkins Ave.
Portsmouth, NH 03801

Dear Zoning Board of Adjustment Members,

I am writing on behalf of Kathleen Thomson, owner of 56 Ridges Court, Portsmouth, NH. 56 Ridges Court is located directly across the street from 67 Ridges Court.

Mrs. Thomson and four generations of the Thomson family have enjoyed nearly 100 years of scenic water views of Little Harbor from their home at 56 Ridges Court. In recent years, the property and home across the street at 67 Ridges Court has evolved significantly, with each new owner expanding the overall square footage and footprint of the home as well as different garage configurations. The addition proposed by the Foy's in the current variance request is the most ambitious renovation proposed to date. If this proposed addition is erected it will, for the first time, directly block the water views from Mrs. Thomson's property, as well as views from several neighbors. The proposed expansion will diminish sight lines / water views between Mrs. Thomson's front porch, living room, dining room, and bedrooms and Little Harbor. The proposed expansion also reduces the overall ambience and openness to the water, which been a unique neighborhood feature for this cluster of homes that dead-end into Little Harbor.

Water views are highly coveted in the Seacoast area. Therefore, the substantial change in water views also has a significant impact in the market value of these neighboring properties and has the most direct impact on the market value of Mrs. Thomson's home. The average price difference between a home with a water view and a similar home in the same neighborhood with no water view is between \$800,000 and \$1 million dollars. Based on comparable sales in the South End from the past 18 months, Mrs. Thomson's fair market value for her home on 6 parcels is \$2.3 million. Should the Foy's variance be granted, Mrs. Thomson's market value would decrease to \$1.4 million. That is a significant amount of lost value.

In sum, the Foy's proposed expansion at 67 Ridges Court will be highly detrimental to the neighborhood, result in loss of property value for 56 Ridges Court, and diminish the enjoyment that Mrs. Thomson and her family have treasured from Little Harbor views for nearly a century.

Sincerely,

Ali Goodwin, Realtor® • Luxury Division
Haven Homes + Lifestyle at Keller Williams Coastal and Lakes & Mountains Realty
Cell: 603-957-8466 • Email: ali@aligoodwin.com









