

RE: 1 Congress St
Meeting: PB March 17, 2022
(1 pg Letter with 5 pictures)

Dear Members of the Planning Board,

March 15, 2022

Please ask this development at Congress, High Street and Haven Court to come back when their ducks are really in a row. There seem to be many things to consider before moving forward.

For the Zoning Board of Adjustments application 12,000sf is shown as the footprint of the two buildings (8720+3280) A1.1 combined. For Planning Board they are showing 11914 sf (5957+5957).

On plan C3 (pg 133) of the packet, 32.61 % of open space is shown which amounts to 4548.57 sf. Where is that number coming from? They MAY meet the 10% (696.96sf) required for the CD4 on Lot 117.15 and the 5% (343.48sf) for Lot 117-14 with the small park (687sf or 1114sf) they are proposing in the 10' area between to JJ Newberry's and this proposed building. It is questionable if a 10' wide dead end alley would be considered open space much less with a dumpster at its entrance (trash chute exits there).

If Haven Court (city or otherwise owned) were to be changed into something other than a dead end street, this would likely go before the City Council for review and then public hearings would likely be held to address this. The idea of a cat walk from the Hanover Garage would likely fall under the same requirements.

There is also the issue of parking. There is currently a 2012 parking variance for 19 spaces received for the 600sf addition to the restaurant which was held by a lease. This variance allows for 6 parking spaces for 5 Congress St based on this lease. Where will they park?

All the structures on Haven Ct have NOT been higher than 1 to 2 story in the past including those with High Street addresses which run parallel to Haven Court. This lot is supposed to follow the zoning height of 2 to 3 story within 50 of High Street and/or Haven Ct. They have not received a variance for the extra 4th story they are showing on Haven Ct and High Street. This part of the building could easily be stepped down to 2 to 3 story.

It has been stated due to ADA regulations the extra story for the elevator is needed. ADA requirements are only for public areas, therefore a single story elevator is all that is required for this building; anything else is optional.

All of downtown has various heights to keep the flow between historic structures. JJ Newberry's is a historic structure which abuts this property as it curves down Fleet St, all of which is only 2 to 3 story. Even the parking garage bows down to 3 stories as one looks down High Street to the corners of Ladd and Haven Ct.

HDC comments had concerns about three fourths of this proposed structure, including "the large prism" and the loss of views of the opera house as well as many unconventional features. The proposed prism likely falls under lighting zoning since it will be reflecting light directly into all residential abutter's windows.

Please do not accept these two lots for Preliminary Design Plan or Design Review at this time. Many of the items presented are questionable if they are even allowed without going through other boards (IE: changes to Haven Ct, Prism, cat walk), much less the needed step downs on High St and Haven Court.

Sincerely,
Elizabeth Bratter
159 McDonough St
,Property Owner

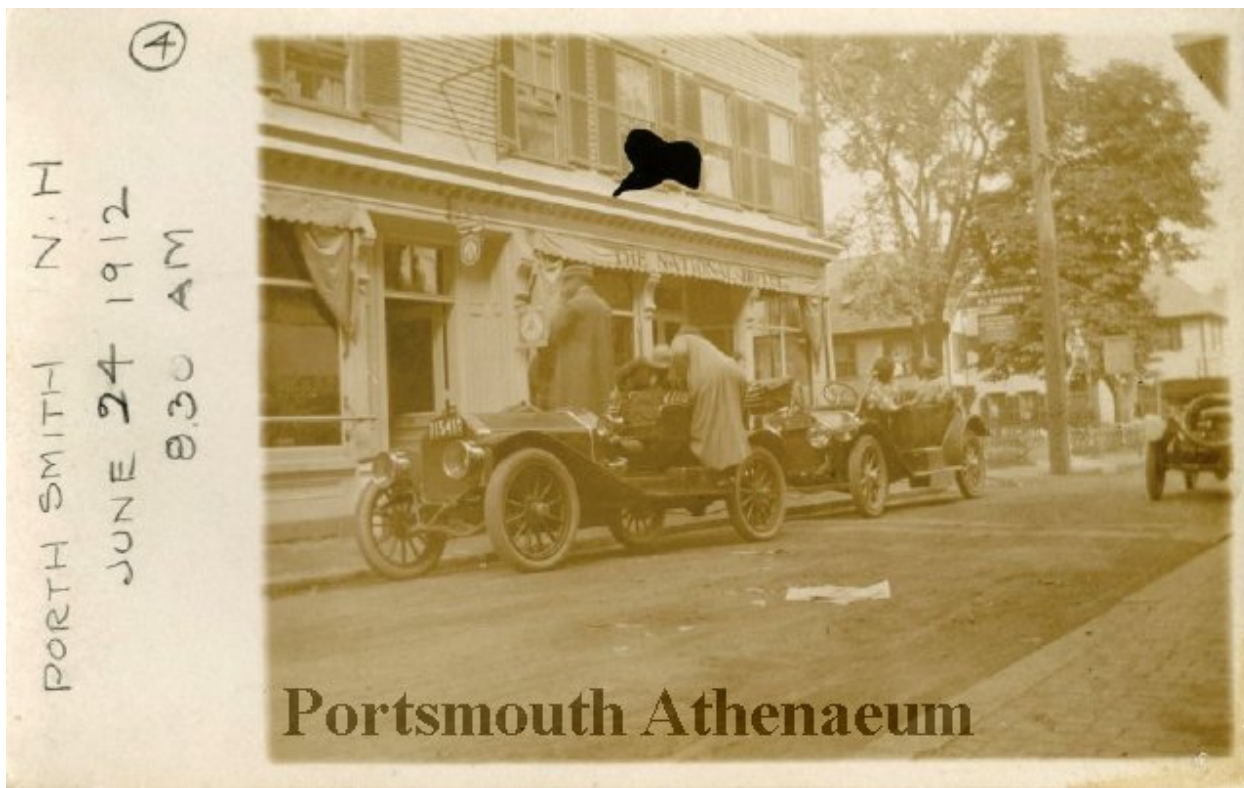


24 Haven Court Range 1910-1913

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 (02/22). Jersey Barriers at the top block off the last 3rd of Haven Court which appears to be privately owned per Mapgeo. It could look nice with a 2 to 3 story building set back 10 from the curbing on Haven Court, with a sidewalk and landscaping.



National Hotel on High Street-2 Story



18/20 High Street Rudis Restaurant, 3 story stepping down to 2 story on Haven Court side.



Lot 117-15 where the proposed building will be expanded to.
Notice all the buildings facing Haven Ct are only 1 to 2 story and the trees make a nice buffer to the garage.

Re: 1 Congress St (starts pg 188 of Meeting Packet)

Meeting: Planning Board 4/21/22

Dear Members of the Planning Board,

April 15, 2022

The task at hand per the Staff notes is a Site Plan Review:

“it refers to site planning and design issues such as the size and location of buildings, parking areas and open spaces on the lot; the interrelationships and functionality of these components, and the impact of the development on adjoining streets and surrounding properties”

Page numbers are from the Meeting Packet.

Items to consider

Traffic Impact Assessment Conclusion (pg 196)

Weekday:

The proposed redevelopment will generate increases of 41 vehicle trips (33 entering and 8 exiting) during the weekday AM peak hour and of 28 vehicles trips (3 fewer entering and 31 additional exiting) during the weekday PM peak hour. These increases in traffic volumes represent one additional vehicle every 1.5 to two minutes on downtown roadways.

Weekend:

The proposed redevelopment will result in a minimal increase in vehicle trips of 6 additional trips during the Saturday midday peak hour. This increase represents one additional vehicle every ten minutes in the downtown area and will have negligible impacts on traffic operations on downtown roadways.

Building Height:

These were two lots were combined into one.

10.5A21.21 states: Assignments for specific building heights require a building to have no more than the designated maximum number of stories **OR** the maximum height in feet (**whichever is lower**) and no less than the designated minimum number of stories.

When 2 heights are found on one lot, *as is true for this lot*, ordinance 10.5A21.22 states that the required height for each street for 50 feet is used. In this case the *lower height* has to be used for the part of the building which fronts on High St and Haven Court. Haven Court is shown as a 20' wide alley of which 15' belong to this property. The lower heights on High and Haven *work to preserve the connection of Haven Court to the heights on Fleet St.* **Looking at MapGeo the heights in downtown seem to be in clusters to match adjoining historic structures.** IE: North Church side of Congress St, Merchants Bank side of Congress St, Newbury's Building to Fleet St, Haven Ct and High St.

<https://portsmouthnh.mapgeo.io/datasets/properties?abuttersDistance=300&latlng=43.05663%2C-70.775502> (choose “themes”, toggle heights)

Please take a moment to look at **page 216, H2.04**, *the lower left corner*, pictures numbered 1-6. Notice how there are no distractions to the view of the North Church at night other than the street light. The Parking Garage steps down to provide an architectural view from Congress St. The Historic Newbury's building sits quite low even though it is at the top of the hill. All the buildings on the corner of High St and Haven Ct are only 2 story which gives a welcoming feel as one exits the parking garage and views of Newbury's and the North Church.

Looking at the proposed views on **Plan A4- 3D Views(pg 220)** the upper right shows how *much shorter the other buildings on Congress St are*. The upper left view, looking down High St to the Hanover Garage-the top of rear of the building is higher than the garage. The lower right

shows why this section of Haven Ct and High St are lower heights. The proposed 4th story covers the Historic Newbury building. The lower right shows how out of place the rear of this building is compared to the North Church, the left side of High Street and the restored Merchant Bank toward Congress St. The architecture and heights in the rear would be appropriate somewhere else but not in the CORE of the historic parts of downtown.

Grade:

According to **Plan C5(pg 215)** it states “Haven Court grade to remain”. Not sure how the cars will exit onto Haven Court from the underground garage when looking at the grade plane on A3(pg 219) and the 3D Views(pg 220) without addressing Haven Ct in some way.

What’s missing:

The Massing is not presented in this application, making interrelationships difficult to assess. The comparison of the elevation of what is proposed to the buildings next to them (A3-pg 219). Existing heights compared to proposed heights are not shown.

The information at the end.

It should be mentioned that the Master Plan specifically points to many goals to preserve a connected, vibrant and authentic city.

The proposed idea of Haven Court becoming a connection is a nice one but one has to consider during peak hours 1 car will be pulling in or out of the on-site garage every 1.5 to 2 minutes(pg 196). Some kind of warning system would need to be added to protect pedestrians from cars. Connected per the Master Plan is for pedestrians, **meeting ADA standards** and/or bicycles. Steps could be limiting for many older visitors and families with small children.

The rear of the building presented is by no means authentic in the core of the historic downtown. The rear could match the restored front as the restoration of the Elks Club building did. The original 3 story National Hotel was U shaped with an open garden in the middle by no means a 4 story structure engulfing the entire area. The proposed height and windows all distract from the restoration of the Congress and High St of the building. The street level windows will open like garage doors allowing all the sound to bounce around in the parking garage and off High St, impacting residential units in the area.

The light park proposed for the 10’ area between Newbury’s and this building, will enter and exit in the same place. The Landscape Plan(pg 221) pictures show large open areas for these lights. Something in the 10’ area might be nice but it should be dark sky compliant as well as have a gate at the end so it can be secured after certain hours. It could also be movable in case either building needs maintenance.

The proposed art/light device on the corner of Haven Ct, High St and Ladd St. is exactly where, when standing at that same corner the North Church Steeple lines up perfectly. Many photos of the North Church are taken there (**lower left pg 216**). This art would be better suited in a large park where it could be *enjoyed as the beacon* it is designed to be. **Not allowing this art in this location would protect, enhance and preserve a treasured view of the North Church per the Master Plan.** It doesn’t seem like it will be dark sky compliant either.

Thank you for your consideration and review of this information.

Sincerely,
Elizabeth Bratter
159 McDonough St, Property Owner

69 Hunking Street
Portsmouth NH 03801

April 12, 2022

Ms. Stefanie Casella, Planner
City of Portsmouth Planning Department
1 Junkins Ave.,
Portsmouth, NH 03801

Re: Application for Conditional Use Permit, 189 Gates St – Patrick & Judy Nerbonne

Dear Ms. Casella:

We write in support of the application of Pat and Judy Nerbonne of 189 Gates Street for a Conditional Use Permit to build a Garden Cottage on their property by converting and expanding their garage, per the (original or revised) plans submitted to the Planning Department. **We are the owners of 183 Gates Street**, the property immediately adjacent to the Nerbonnes to the west.

The Nerbonnes' plans should be non-controversial. Their rationale for converting and expanding the garage – to provide a living space for an on-site caregiver in their senior years – is what the community should encourage, especially when the plans have been so carefully and considerately developed to be harmonious with this historic neighborhood and the surrounding architecture and property owners.

The modest dimensions of the Nerbonnes' garage expansion are eminently reasonable, and the placement of the expanded portion of the garage is logical and aesthetically suitable, providing for ample clearance between the addition and adjacent properties.

The Nerbonnes' proposed garage conversion (i) is consistent with the existing single family dwelling on the lot; (ii) provides adequate and appropriate open space, landscaping and off-street parking (indeed the Nerbonnes' painstakingly-maintained existing landscaping is a civic asset in this iconic location); (iii) maintains a compatible relationship with adjacent properties; (iv) does not reduce the privacy of either adjacent property; and (v) does not result in any excessive noise, traffic or parking congestion.

As a community social policy, every effort should be made, within reason and consistent with planning requirements and aesthetic harmony, to accommodate a family's effort to modify their home in central Portsmouth to permit them to remain at home as long as their health permits. Neighbors and others who appreciate the existing layout and viewshed might prefer no change, or a modified plan, but the Nerbonnes' proposal is harmoniously designed and consistent with the required Board findings, so their plans should be approved as submitted.

Sincerely,



Walter & Patricia Bardenwerper

CHARLES G. BICKFORD

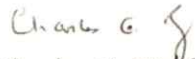
April 12, 2022

Dear Commissioners:

I live at 183 Gates St and have the pleasure of being the next door neighbor of the Nerbonnes at 189 Gates St. I have reviewed their renovation plan and am fully in favor of the project. I would come to speak at the hearing but unfortunately have some health problems. If you have any questions, please feel free to call me at 603 433 1261.

Thank you for your thoughtful attention.

Sincerely,



Charles G. Bickford

From: judy@gatesstreet.com,

To: archwhit@aol.com,

Subject: Fwd: letter of support

Date: Tue, Mar 15, 2022 1:53 pm

Attachments: Nerbonne Letter of Support.docx (14K)

Begin forwarded message:

From: Nancy Euchner <nancy@seacoastvillageproject.org>

Subject: Fwd: letter of support

Date: March 14, 2022 at 10:08:57 AM EDT

To: Judy Nerbonne <judy@gatesstreet.com>

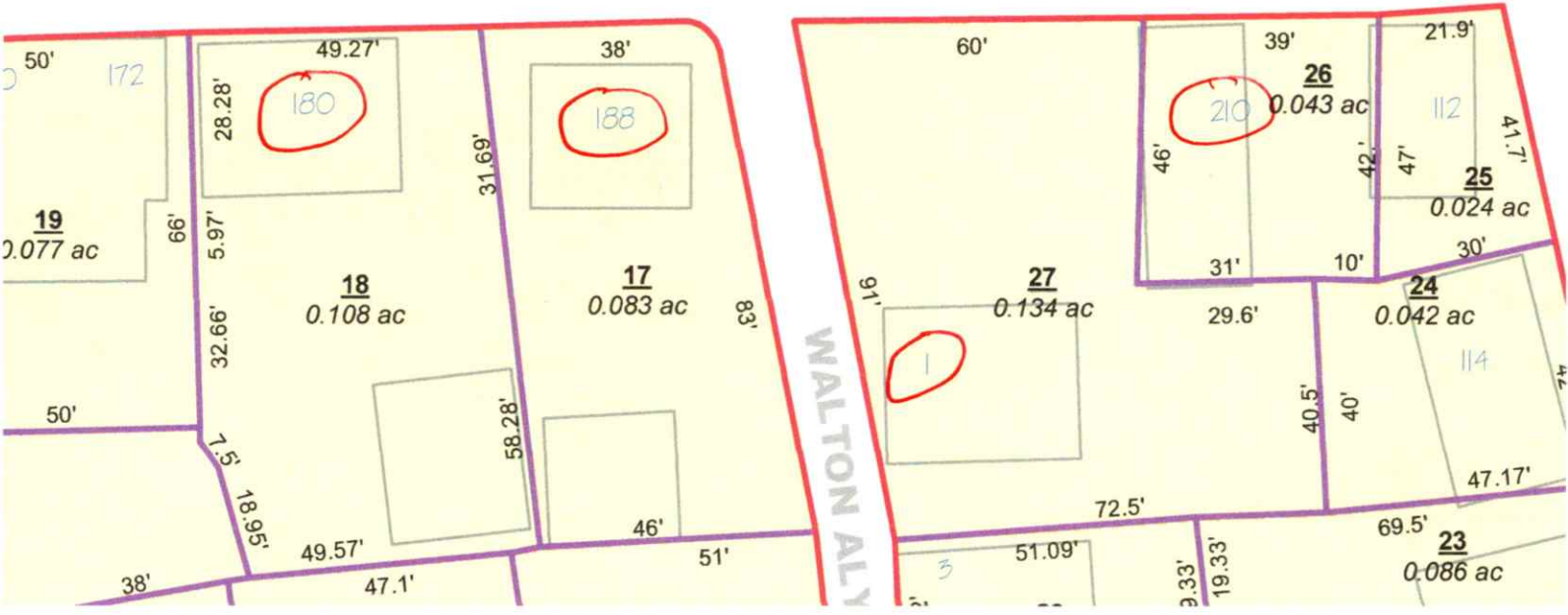
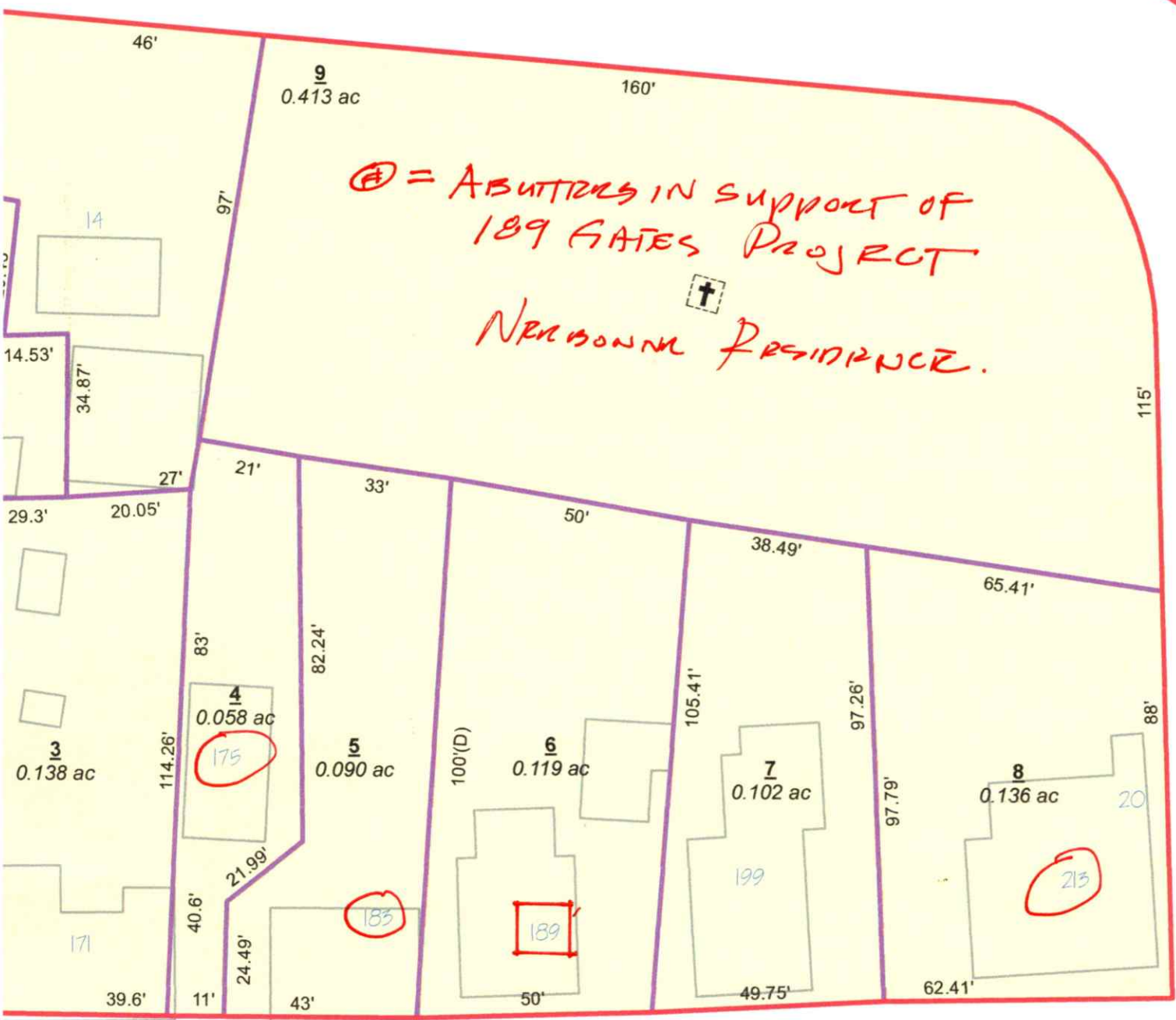
If you look around Portsmouth today, you will no doubt see benefits that were built through the hard work of its citizens – people who invested time, talent and treasure to develop and sustain our neighborhoods, parks, cultural venues and good governance. As some of these citizens, like Judy and Pat Nerbonne, got older, they invested even more deeply in providing very local support to neighbors and friends who needed a little help – through family crisis, temporary illness or challenges of aging. They took a proactive stance – exploring aging in place options with others in the South End. They prepared.

Today, the Nerbonnes' situation the importance of this planning. Pat was diagnosed with Alzheimer's disease. Not the best news in the world, but also not the worst. Pat has a loving family and friends, and his positive spirit and humor continue to be gifts to those who know him. But an additional part of this picture is the reality of his changing needs. The current need for supervision, and the eventual need for personal care and support beyond what Judy can provide on her own.

If we learned anything from the pandemic that hit the world and our community in the past year, it's that our health care support systems are strained to the breaking point. Smart citizens are doubling down on ways to get connected (to each other and community and family resources), get smart (about normal aging and some of its challenges) and helping each other out. In my work as an eldercare professional for the past 40 years and the leader of the Seacoast Village Projecy, a local non-profit organization promoting aging-in-place, I applaud the efforts of those who take active steps to plan and strengthen their support systems before crises occur.

The proposal that the Nerbonnes are presenting to you tonight is an example of such a proactive plan. It provides close and affordable living space for a family member that doesn't tax the systems of an historic old house, leaving space within the home to be adapted to fit changing needs. It allows Judy and Pat to remain together in familiar surroundings with people who know and care about them. And it allows Judy to continue to contribute to her community and age successfully herself.

Co-housing and inter-generational housing options (like the one proposed) are progressive, flexible strategies that strengthen our communities. I urge you to support this application.



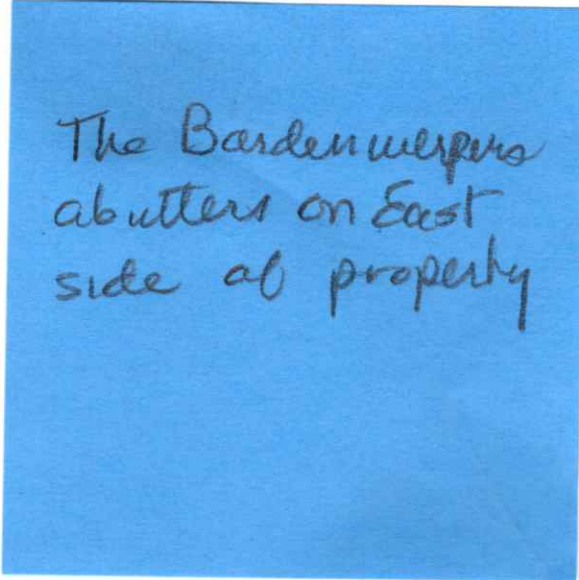
City of Portsmouth
Planning Board
Reference to: Garden Cottage
Owners: Patrick and Judy Nerbonne
189 Gates Street
Portsmouth, NH

We/I live at own 183 Gates St and have reviewed the plans for a
Garden Cottage at 189 Gates Street.

We/I approve the plans.

A handwritten signature in black ink, appearing to be 'M', with a long horizontal line extending to the right.

Terrific Plans. Very supportive.
WB.

A blue rectangular sticky note with handwritten text in black ink.

The Bardenwipers
abutters on East
side of property

City of Portsmouth
Planning Board
Reference to Garden Cottage
Owners: Patrick and Judy Nerbonne
189 Gates Street
Portsmouth, NH

Renter

We/I live at 183 Gates St, Portsmouth and have reviewed the plans for
a Garden Cottage at 189 Gates Street, Portsmouth, NH.

We/ I approve the plans.

Charles G. J.

City of Portsmouth
Planning Board
Reference to: Garden Cottage
Owners: Patrick and Judy Nerbonne
189 Gates Street
Portsmouth, NH

We/I live at 188 Gates Street and have reviewed the plans for a
Garden Cottage at 189 Gates Street.

We/I approve the plans.

SMJ SCOTT DERWIN

lines across
street.
House looks
+ yard
on to front
of garage

From: Judy Nerbonne judy@gatesstreet.com
Subject: Fwd: Renovation/Addition Proposal
Date: February 26, 2022 at 12:24 PM
To: Pat Nerbonne pat@gatesstreet.com



Sent from my iPhone

Begin forwarded message:

From: Fred Orlando <forlando1@gmail.com>
Date: February 26, 2022 at 12:07:35 PM EST
To: Judy Nerbonne <judy@gatesstreet.com>
Subject: Renovation/Addition Proposal

We have reviewed the architectural plans for conversion of the existing garage at 189 Gates into a garden cottage and have no objections to the proposed construction.

Jaclyn and Fred Orlando

180 Gates St
Portsmouth, NH

Fred + Jackie
Orlando
lives across
Gates St

Judy,

This looks totally fine to us!
Herewith our signatures,

best,

Anneke & James Meinardi

City of Portsmouth
Planning Board
Reference to Garden Cottage
Owners: Patrick and Judy Nerbonne
189 Gates Street
Portsmouth, NH

We/I live at 1 WALTON ALLEY and have reviewed the plans for
a Garden Cottage at 189 Gates Street, Portsmouth, NH.

We/I approve the plans.

James Wuh A. Meinardi

3-8-2022

Directly across
Gates
Their house
looks directly
on front of
garage

City of Portsmouth
Planning Board
Reference to: Garden Cottage
Owners: Patrick and Judy Nerbonne
189 Gates Street
Portsmouth, NH

We/I live at 213 Gates Apt 1 and have reviewed the plans for a
Garden Cottage at 189 Gates Street.

We/I approve the plans.

Joanne W. Wolfe

I love it !!!

Condo
Same side of
street
2 Doors down

City of Portsmouth
Planning Board
Reference to: Garden Cottage
Owners: Patrick and Judy Nerbonne
189 Gates Street
Portsmouth, NH

We/I live at 213 Gates St. #2 and have reviewed the plans for a
Garden Cottage at 189 Gates Street.

We/I approve the plans.

Ed & Nancy + Mike Conaboy
Beautiful Plans!

Upstairs unit
in Condo on
Gates 2 doors
down
Deck look on to
our back yard.

The following Abutters have reviewed the BOA & CUP Garden Cottage Submissions at 189 Gates Street for the following, and have no objections.

- Variations: 1. Building Coverage of 35.5% where 30% is allowed.
2. Right Side Setback of +/- 1.4' where 10' is required.
3. Expansion of a non-conforming structure

Conditional Use Permit for conversion of Garage to Garden Cottage with an Addition

Allen J. Miller 180 Gates St.

James A. ... 175 GATES ST.

John ... 175 Gates St.

Dan ... 210 GATES

Deborah Adams 210 Gates.

E. Hegner + Mike Conroy 213 Gates #2

From: judy@gatesstreet.com,
To: archwhit@aol.com,
Subject: Fwd: Letter in case you can't open the attachment
Date: Sun, Mar 13, 2022 8:42 pm

Sent from my iPhone

Begin forwarded message:

From: Kathleen Logan <kathleenblogan@gmail.com>
Date: March 13, 2022 at 5:50:34 PM EDT
To: Judy Nerbonne <judy@gatesstreet.com>
Subject: Letter in case you can't open the attachment

Kent Logan, MD
21 Blossom Street
Portsmouth, NH 03801

March 13, 2022

My name is Dr. Kent Logan. I am Mr. Pat Nerbonne's treating neurologist and a resident of the South End. I understand that Judy and Pat Nerbonne wish to make medically appropriate and adaptive home changes in the setting of Mr. Nerbonne's health condition.

Of note, the Nerbonne's have requested that I discuss openly and freely Mr. Nerbonne's health.

Mr. Nerbonne has mild cortical dementia of the Alzheimer's disease type. This is a progressive neurodegenerative disorder. Mr. Nerbonne fares well at present with only mild memory and cognitive concerns, yet with time there is heightened potential of progression of his memory and cognitive loss. He may have impaired activity of daily living function, such as the inability to bathe and dress himself. He may also experience neuropsychiatric symptoms of hallucinations, agitation, and fear.

It is well known in the medical community that a secure familiar home environment with family and friends nearby remarkably reduces the likelihood of these distressing symptoms. In such a safe environment, patients with dementia fare better with less stress, confusion, the above mentioned neuropsychiatric symptoms, as well as injurious falls. Most importantly, the patient is more apt to live in comfort and peace as he faces this life challenge.

It is my medical opinion that appropriate home living conditions in accordance with the Garden Cottage plan be granted to the Nerbonne's. The Garden Cottage plan will give the Nerbonnes the ability to have a family member or caregiver living in close proximity to provide the care necessary for Pat to stay in his home. I applaud the city for beginning to look at ways to help families as the population grows older and faces these problems.

Kent Logan, M.D

March 11, 2022

To BOA Commissioners,

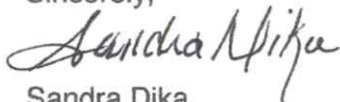
I have reviewed the request for relief which would allow for the conversion of an existing garage at 189 Gates St. into a Garden Cottage accessory dwelling.

I believe that the project is well thought-out, very attractive and compatible with the existing properties along Gates Street. It will enhance the appearance of the property, especially the view from Prescott Park, and as such it will support property values in the area.

In addition a historical feature of early neighborhoods and notable in the South End was the inclusion of out buildings on the same lots with dwelling houses. They were stables and barns, and tradesman shops, and even sometimes small houses for adult children. Some of these still exist as can be seen at 11 Meetinghouse Hill, 114 Mechanic St., 421 Pleasant St., 180 Gates St, 333 Marcy St, and many others. As seen by these examples often these secondary buildings were built right on a lot line with no apparent damage to the public interest. It seems only just to allow this similar plan to be approved.

Please, grant relief for this worthy project.

Sincerely,



Sandra Dika
333 Marcy St, Portsmouth, NH

ROESELAND HOLDINGS

55 Elm Street Effingham NH 03882 | (603)231-2322 | roeselandholdings@gmail.com

To: City of Portsmouth NH Planning Board

**From: James Copeland/John Roese
Owners of 14 Mechanic Street Portsmouth NH**

Re: Support of Proposed changes at 189 Gates Street/Garden Cottage

To whom it may concern,

This letter is provided to the Planning Board of Portsmouth NH to convey our support of the proposed project at 189 Gates Street by Patrick and Judy Nerbonne. We have reviewed the plans for the proposed garden cottage and are happy to encourage the approval of the project. As a nearby property owner, we do not see any issues with this project and believe it will be both visually compatible with the area and not impose any hardship on us or other neighbors.

We approve the plans as proposed and are glad to provide further support if needed in the approval process.

Best Regards,

Jim Copeland/John Roese
14 Mechanic Street
Portsmouth NH 03801



CELEBRATING OVER 35 YEARS OF SERVICE TO OUR CLIENTS

PLEASE RESPOND TO THE PORTSMOUTH OFFICE

VIA U.S. MAIL AND EMAIL

Portsmouth Planning Board
City of Portsmouth
1 Junkins Avenue
Portsmouth, New Hampshire 03801

April 18, 2022

**Re: Application for Conditional Use Permit
Nerbonne Family Revocable Trust – 189 Gates Street (Tax Map 103, Lot 6)**

Dear Members of the Planning Board:

I represent Devan Quinn and James Butler, who reside at and own the property located at 199 Gates Street (Tax Map 103, Lot 7) (also referred to as the “Butler/Quinn Property”), which is the property to the immediate east of 189 Gates Street (Tax Map 103, Lot 6) (also referred to as the “Nerbonne Property”), which is owned by the petitioners, Judy and Patrick Nerbonne (“the Nerbonnes”). The Nerbonnes have submitted an application for a conditional use permit (“the Application”) to convert their existing garage to a “garden cottage.” The purpose of this letter is to communicate Ms. Quinn and Mr. Butler’s concerns related to the Nerbonnes’ Application.

I. INTRODUCTION AND EXECUTIVE SUMMARY

The Nerbonnes submitted an application for a variance with the Zoning Board of Adjustment (“ZBA”), which the ZBA granted during a public hearing held on March 15, 2022. The ZBA’s decision is not yet final, as Ms. Quinn and Mr. Butler have filed a Motion for Rehearing regarding the ZBA’s grant of a variance. If denied, Ms. Quinn and Mr. Butler will appeal that denial to the Rockingham County Superior Court. I write to inform the Planning Board of this development as the relief necessary from the provisions of the Zoning Ordinance is not yet final and may be subject to reversal, which may render a decision from this Planning Board moot.

While Ms. Quinn and Mr. Butler are sensitive to the Nerbonnes’ desire for a garden cottage they respectfully request that the Planning Board deny the Application because the proposal is not, as presently submitted, capable of satisfying the criteria set forth in Section 10.815.30 of the Zoning Ordinance. For one, the Application’s proposal to expand the existing garage by 152.25 square feet in a manner contrary to Section 10.815.30, and the Nerbonnes request for a modification from that limitation is not permitted under the Zoning Ordinance. Further, the

DONAHUE, TUCKER & CIANDELLA, PLLC

16 Acadia Lane, P.O. Box 630, Exeter, NH 03833

111 Maplewood Avenue, Suite D, Portsmouth, NH 03801

Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253

Nerbonnes' Application should be denied because (1) the site plan does not provide adequate and appropriate open space for both the garden cottage and the primary dwelling and (2) the proposed garden cottage will not maintain a compatible relationship with the Butler/Quinn Property in terms of location and design and will significantly reduce the privacy of the Butler/Quinn Property.

The remainder of this letter is organized into three sections. The first section provides an overview of the Nerbonnes Property and the Quinn/Butler Property, with a description of the Nerbonnes proposal and its relationship to the Quinn/Butler Property. The second section provides a discussion of why the Nerbonnes' proposal does not satisfy Section 10.815.30.

II. THE PROPERTY AND FACTUAL BACKGROUND

The Nerbonne Property and the Butler/Quinn Property are located in the South End on Gates Street, which is located in the General Residence B Zone. Like other neighborhoods in the South End, Gates Street is a tightly built residential area, consisting largely of wooden houses, with many structures from the 18th and 19th centuries. The lots on Gates Street are small, with few lots exceeding .15 acres in size and with none (to our knowledge) exceeding .20 acres. The Nerbonne Property is a .12-acre lot and has a single-family residence which was constructed circa 1860s.

There are few detached accessory dwelling units or garden cottages located in the neighborhood. However, for each of the limited properties with detached accessory dwelling units or garden cottages, those structures are all located to the rear of the lot and are located further away from residences on neighboring parcels.

The Quinn/Butler Property is .10 acres. Ms. Quinn and Mr. Butler are newlyweds that purchased their property in May of 2020 with the intent to have children and to start and raise their family in Portsmouth. They specifically purchased their property because the property has a large, deep backyard, with access to open space and light that would be ideal for small children to play in and to raise a family. If it was not for this backyard and the light and air that it offers, Ms. Quinn and Mr. Butler would not have made the considerable investment that they did in purchasing it and moving to Portsmouth.

When Ms. Quinn and Mr. Butler purchased their property they immediately made improvements to their home to make it more suitable for a young family. They put a patio in the backyard with pervious pavers, installed a French drain to address previous drainage issues, and sodded the lawn. The cost associated with these improvements was approximately \$35,000.00. While the sod and drain improved the drainage issues on the Butler/Quinn Property, the property still experiences issues with drainage.

The detached garage that the Nerbonnes propose to convert to a garden cottage is located on the property line between the Butler/Quinn Property and the Nerbonne Property. The 2008 survey of 199 Gates Street submitted by the Nerbonnes with their Application shows just how close the garage is to the Butler/Quinn Property and shows that the existing garage to be converted

is on the property line. Due to the small lot sizes, the garage is located within 10' of the Ms. Quinn and Mr. Butler's residence.

The existing garage is 19' 8" long by 18' wide and is 354 square feet in size. The existing garage is approximately 22.5' feet high at its peak. The roof is pitched toward the Butler/Quinn Property, such that the drip edge of the existing garage is on or over the property line.

The topography of the Nerbonne Property gradually slopes downhill from the front to the property's rear, such that the floor of the entry of the Nerbonnes garage is at grade, but the floor toward the garage's rear is approximately 4' above grade. The topography further slopes downhill moving from the Nerbonne Property to the Quinn/Butler Property such that floor to the garage's rear is approximately 2' higher when measured from grade on the Quinn/Butler Property.

The Nerbonnes seek to add an addition (the plans for which were revised in or around March 14, 2022) onto the existing garage that is 10.5' long and 14.5' wide, which would expand the existing garage by approximately 60 %. The addition would add approximately 152.25 square feet to the the existing garage, which per the plans submitted would be associated with the addition of a living room to the "garden cottage" capable of sitting a sectional couch and two chairs.

The addition's roof would be approximately 15.5' high and would be similarly pitched toward the Quinn/Butler Property. The easterly façade of the addition would align with the existing easterly façade of the garage, making the addition set slight further back from the property line than the existing garage by approximately 4.5' feet. The Nerbonnes no longer seek to install the deck previously proposed on the rear of the addition.

III. DISCUSSION

There are three primary concerns that Ms. Quinn and Mr. Butler wish to raise to the Planning Board's attention. First, the Nerbonnes' proposed "conversion," is a detached accessory dwelling unit masquerading as a garden cottage, seeking authorization to horizontally expand the existing garage and to have the Planning Board to grant a modification in a manner contrary to Section 10.815.50 of the Town's Zoning Ordinance. Second, the Nerbonnes' Application cannot satisfy Section 10.815.42 because the site plan does not provide for adequate and appropriate open space for the proposed garden cottage and the primary dwelling. Third, the Nerbonnes' Application cannot satisfy Section 10.815.43 because the garden cottage will not maintain a compatible relationship to adjacent properties in terms of location and design, and will significantly reduce the privacy of the Butler/Quinn Property.

a. The Proposed Detached ADU is Actually a Detached Accessory Dwelling Unit

Section 10.815.30 of the Zoning Ordinance requires that "[g]arden cottages shall comply with the following standards: . . . [t]he existing accessory building shall not be expanded either

vertically or horizontally, other than through the addition of a front entry not to exceed 50 sq. ft., or a side or rear deck not to exceed 300 sq. ft.” Section 10.830 provides that the Planning Board can “modify a specific dimensional or parking standard,” which means that the Planning Board can allow for a front entry way larger than 50 square feet or a rear deck larger than 300 square feet in limited circumstances. (Emphasis added.)

As part of their Application, the Nerbonnes seek to have the Planning Board modify the provisions of Section 10.815.30 to allow for a horizontal expansion of the existing garage. However, that modification is contrary to the Planning Board’s limited authority under Section 10.815.50. Section 10.815.50 only allows for the Planning Board to modify a “specific dimensional standard.” The “specific dimensional standards” set forth in Section 10.815.30 pertain to (a) the size of the permitted front entry-way, (b) the size of the permitted rear deck, (c) the gross floor area for the garden cottage, and (d) the height of windows facing adjacent property. It is those limited dimensional standards that the Planning Board may waive under Section 10.815.50. Section 10.815.30’s prohibition on horizontal and vertical expansions is not a “specific dimensional” standard that is subject to modification, it is a general prohibition. Therefore, the Nerbonnes’ Application should be denied as presented because the Nerbonnes’ proposed garden cottage is not permitted under the Zoning Ordinance.

The Nerbonnes’ proposal is, in actuality, a detached accessory dwelling unit. However, the Nerbonnes cannot present this proposal as an accessory dwelling unit because the proposal does not satisfy the criteria necessary for a detached accessory dwelling unit under Section 10.814 of the Zoning Ordinance. Because this proposal violates the Zoning Ordinance and because the Nerbonnes have not sought all of the required relief necessary to comply with the Zoning Ordinance, the Planning Board should deny the Nerbonnes’ application.

b. The Proposed Detached ADU Does Not Provide for Adequate and Appropriate Open Space

The Planning Board should also deny the Nerbonnes’ Application because the proposed site plan does not provide for adequate and appropriate open space. As reflected above, the Nerbonnes proposal would result in the conversion of an outbuilding that is located on the property line with the Butler/Quinn Property to a residential use and expanding that structure by 60%.

The Nerbonnes’ proposal will significantly diminish the available open air and open space on the Butler/Quinn Property. The properties in question are located in the City’s South End. The Butler/Quinn Property is unique and valuable – particularly to Ms. Quinn and Mr. Butler – because the Butler/Quinn Property has an above-average backyard when compared to other properties in the area. That backyard provides light, air, and privacy that enhances the value of the Butler/Quinn Property.

The Nerbonnes' proposal, however, will diminish that air, light, and privacy. At present, there is approximately 44' in length of back yard on the Butler/Quinn Property. Constructing a 10' long addition will create an impediment to air and light along approximately 25% of that backyard. Indeed, the photographs appended to this memorandum reflect the shadow caused by the existing garage; the expansion of that garage by an additional ten feet along the property line will all but ensure that the patio installed on the Butler/Quinn Property and a significant portion of Ms. Quinn and Mr. Butler's back yard will be denied access to light and air. Indeed, in 2005, the ZBA denied a request for a proposal to construct an addition within 10 feet of the property line.

Further the height of the proposed addition, when coupled with the downward sloping grade as one approaches the rear of the Nerbonn Property and the further decrease and grade going from the Nerbonne Property to the Butler/Quinn Property create further open-space related issues. While the proposed addition on the Nerbonnes' garage is expected to be approximately 15.5' high from the grade on the Nerbonne Property, the height from the grade of the Butler/Quinn Property, located a mere 4 feet from the proposed addition, will be domineering given its placement in such close proximity to the Butler/Quinn Property. The establishment of an additional dwelling unit in such close proximity to Ms. Quinn and Mr. Butler's residence also poses a significant risk to the Mr. Butler and Ms. Quinn's privacy.

The Nerbonnes' proposal should also be denied considering that many (but not all) of these impacts can be avoided by the Nerbonnes making use of the existing garage on the Nerbonne Property without expansion. The most obvious is that the Nerbonnes can make use of the existing footprint of their garage without the addition. The existing garage is identified as having a height of 22.5' at its peak, which provides sufficient room for a loft area, which would open up room on the first floor of the garage for a living room, eat-in kitchen, and bathroom. The Nerbonnes can also consider making use of the existing primary dwelling on their property to house an attached ADU. The Nerbonne Property has 3,756 of gross living space, of which only 1,842 is designated as living area; the Nerbonnes can seek to convert existing gross living space within their home to allow for caregivers. The Nerbonnes could also consider reconfiguring the sizeable deck to the property's rear to allow for additional space for an ADU. Ms. Quinn and Mr. Butler provide this non-exhaustive list to demonstrate that the Nerbonnes will not experience a significant loss in the denial of a conditional use permit.¹

¹ During the March 15, 2022 hearing at the ZBA regarding the Nerbonnes' variance application, the Nerbonnes' representative stated that this proposal is the "most feasible" plan. Of course, this does not mean the only feasible plan, nor is that statement accurate. Certainly, the most feasible plan – one that would not require any variance or modification relief from the Planning Board – would be to construct an attached ADU within the existing primary dwelling or to place the dwelling unit within the confines of the existing garage without expansion. A proposal that involves constructing a 60% expansion on a non-conforming structure, within an established setback, to accommodate a living room, is not "the most feasible plan."

For these reasons, the Planning Board should determine that Section 10.815.40 of the Zoning Ordinance has not been satisfied and deny the Nerbonnes' Application.

c. The Proposed Detached ADU will not be Compatible with the Butler/Quinn Properties

For similar reasons to those set forth above, the Nerbonnes' proposal will not maintain a compatible relationship to adjacent properties in terms of location and design, and will significantly reduce the privacy of adjacent properties. See Section 10.815.43 of the Zoning Ordinance.

The Nerbonnes' proposal is, simply put, results in an expansion that is too close to the Butler/Quinn Property. It bears repeating that the existing garage that would be converted to a residential use is already on the property line shared with the Butler/Quinn Property and is located within 10' of Ms. Quinn and Mr. Butler's residence. Whereas, at present, there is distance between the dwelling units on both sides of Ms. Quinn and Mr. Butler's residence, that buffer will be eliminated if the garage is converted to a dwelling unit, and so too will the privacy that is presently enjoyed by Ms. Quinn and Mr. Butler.

Further the proposed expansion of the existing garage will not be comparable in terms of location and design with the Butler/Quinn Property. The location of the proposed expansion within a mere 4' of the Butler/Quinn Property, which will be 15.5' high (from the Nerbonnes' grade) and likely closer to 20' high when measured from the Butler/Quinn's Property. The proposed expansion of the existing garage will also obstruct access to air and light along 25% of the backyard for the Butler/Quinn Property, which will undermine Ms. Quinn and Mr. Butler's efforts to improve the backyard and diminish the value of the Butler/Quinn Property (which derives considerable value from its unobstructed and private backyard.

Lastly, the Nerbonnes' proposal will cause drainage issues on the Butler/Quinn Property. The Butler/Quinn Property already experiences drainage-related issues, which required Mr. Butler and Ms. Quinn to construct a French drain to mitigate those issues. The extension of the garage, which will include additional impervious cover within the setback, where the property slopes downward toward the Butler/Quinn Property, will exacerbate those drainage issues and also renders the Nerbonnes proposal incompatible in terms of design and location with the Butler/Quinn Property.

IV. CONCLUSION

For the reasons set forth above, Ms. Quinn and Mr. Butler respectfully request that the Planning Board deny the Nerbonnes' Application for a Conditional Use Permit. While Ms. Quinn and Mr. Butler are certainly sensitive to the reasons that the Nerbonnes seek this Conditional Use Permit, Ms. Quinn and Mr. Butler believe that viable alternatives exist for them that will have a

far lesser impact on their lives. Ms. Quinn and Mr. Butler remain committed working with the Nerbonnes on a mutually agreeable alternative should the Nerbonnes wish to work with them.

Thank you in advance for the Planning Board's consideration of Ms. Quinn and Mr. Butler's letter and concerns.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "E. Maher", written in a cursive style.

Eric A. Maher, Esq.

Enclosures







