

From: [Michael Lannon](#)
To: [Planning - Info - Shr](#)
Subject: 635 Luster King
Date: Sunday, August 25, 2024 11:46:07 AM

Dear Sirs/Madam,

I am a resident of Tidewatch at 579 Sagamore Avenue, unit 30 here in Portsmouth.

I am unable to attend your meeting on 9/03/2024. meeting.

Here are my concerns:

1. Location at the top of that blind hill for exiting traffic.
2. Water drainage onto our property as a result of tree removal
3. Actual tree removal necessary for this project that not only impacts drainage and excess water as mentioned above.but loss of habitat and new construction visibility.
- 4.Walk out basements far more visible than the original plan.

Please would you consider these issues and refer back to ZBA if indicated.

Thank you for your consideration,

Michael Lannon.

From: [Kenneth Murphy](#)
To: [Planning - Info - Shr](#)
Subject: 635 Sagamore Ave Project Luster King
Date: Wednesday, August 28, 2024 10:29:45 AM

Planning Board
I reside at Unit 40 579 Sagamore Ave

I am writing to oppose this project and also to request that the project be sent back to the ZONING BOARD since the plan has substantially changed since initially submitted

There are now walk out basements and the units are much more visible to where I reside
In addition the new plans show retaining ponds which were not on the approved plan

Please take my request into consideration

Kenneth D Murphy
Rainboth Murphy and Lown PA
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Sent from iPad

August 26, 2024

Peter Britz, Principal Planner
City of Portsmouth
1 Junkins Avenue, 3rd Floor
Portsmouth, NH 03801

Dear, Mr. Britz,

I am taking the time to communicate with you and the Planning Board to voice the concerns of the neighbors of 635 Sagamore Ave (Luster King) or as the developer's consultant called the "Luster Cluster" in the last TAC meeting. (Are cluster developments allowed in SRA zone?) In addition, I would like to make you aware of our opinion of the process thus far and ways the ZBA may be able to work more effectively with the planning board and TAC on behalf of all Portsmouth residents.

Here are the concerns related to the current state of the project. Based on the amount of time this project has been in process it is clear it is too complicated in its current configuration for this lot. We believe it is the responsibility of the planning board to give guidance to and in this case corrective action related to this project. Based on the original approval the ZBA granted there are several areas of significant concern. See comments in green below:

Section 10.233 Variance Evaluation

Criteria

Finding

(Meets
Criteria)

Relevant Facts

10.233.21 Granting the variance would not be contrary to the public interest.

YES

- Having more conforming structures on the parcel is much better than the existing condition.

No one would argue this statement.

10.233.22 Granting the variance would observe the spirit of the Ordinance.

YES

- The SRA zone limits one dwelling unit per acre, and the applicant is asking for four units on nearly two acres, which would be directly across the street, the SRB zone.
- Comparing the four dwelling units at 21,200 square feet per unit to Tidewatch's 122 units at 19,300 square feet per unit, the project would be less dense.

This is not accurate as the lot is not fully usable because it is a granite cap and severe perimeter slope. Not more than 2/3 of the 1.94 acres can be developed and therefore the calculation of the lot size of 21,200 sq ft. is inaccurate. It is more like 15,000 sq ft. Practical density is considerably less than their comparison to Tidewatch (TW), which is still an inappropriate comparison.

10.233.23 Granting the variance would do substantial justice.

YES

- The project would have no effect on anything across the street or at Tidewatch because one wouldn't even see the properties.

The justification to approve was inaccurate in the original approval and is now even less justifiable. One simply needs to walk the site to understand that the statement "because one wouldn't even see the properties." is completely inaccurate. This objection is created by the significant modifications the developer made based on traffic line of site requirements. The units are clearly visible from both across the street and the TW road. Further, the developer took additional liberty in adding walk out basements to the two units that backup to TW in this new proposal.

There is no substantial justice especially for the TW residents and taxpayers. These residents will bear the inequitable risk of watershed problems, and the potential of significant water runoff as evidenced by the substantial engineering and drainage designs. From what I read of the independent engineering review; the engineer had concerns about the project.

Based on these facts the whole project should go back to the ZBA for reconsideration and be denied in its current form.

10.233.24 Granting the variance would not diminish the values of surrounding properties.

YES

- The project would have no effect on anything across the street or at Tidewatch because one wouldn't even see the properties.
- The project would not alter the essential characteristics of the

neighborhood because the large lot could not reasonably be subdivided based on its irregular shape and street frontage.

Based on the significant change to the unit layout and roads this criterion can no longer be justified. The units can clearly be seen from Sagamore Ave and the TW road. The second bullet above is not relevant to this criterion. As that second bullet states, the lot cannot reasonably be sub-divided. It is not only because of its shape but also it is a 1.94 acre granite hilltop abutting watershed areas and neighbors below.

Based on this fact the whole project should go back to the ZBA for reconsideration and be denied in its current form.

10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

(a)The property has special Conditions that distinguish it from other properties in the area.

AND

(b)Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.

OR

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

YES

- The property has special conditions of being an oversized lot for the area as well as an angled and elevated one, and only so much of it is usable.
- Limiting the lot to a single-family home would be a hardship and four single-family units on nearly two acres was a more than reasonable use and a huge improvement to the existing property.

The hardship criteria again are not met. An irregular lot is not a reason for hardship. Additionally, the fact that the developer purchased the property knowing the lot is a granite top, irregular in shape and not approved for more than one dwelling per acre should not make a unit count an issue for the ZBA to consider and justify as hardship.

Stipulations

1. *The design and location of the dwellings may change as a result of Planning Board review and approval.*

Regarding this stipulation, the Planning Board did not give the developer direct feedback on how the road and the units were completely reconfigured. In the new plan the developer took liberty (not from a suggestion from TAC or planning board) to add walk out basements which were not in the original plan and will further affect the view from TW.

Based on such a material change to the approved plan it seems fair that the project goes back to the ZBA for reconsideration, or the planning board requires modifications to be more compliant with the usable space available on the lot. An example would be for the developer to come back with 2 or 3 units instead of 4 or a 3-unit condominium that is acceptable to the ZBA and the abutters.

After reviewing the current package of information from the developer the above concerns remain. Importantly, the line of sight and stopping distance requirements are still not met. In Mr. Eby's email dialogue with the engineering firm it further confirms the fact that the distance requirements are not met and some of the calculations may not be accurate including Mr. Eby's reference to the distance calculation being line of sight of a car waiting to enter the driveway as opposed to the current calculation of the intersection of the driveway. I would be very concerned about the city's liability if the city did approve distances that do not meet or exceed the minimum distances required (Mr. Eby's suggestion). One other major issue regarding line of sight; on diagram H1, it shows the calculation is measured from the intersection – not where a typical car would be stopped waiting to enter the driveway. The notes on that page state; "Where only a lesser sight distance is obtainable, no more than one accessway per single parcel shall be allowed." This lot in its original state and SRA zone with one dwelling per parcel could potentially be considered for lesser line of sight distances. In its current configuration – 4 units on a single parcel - it is way outside what would be the normal consideration of obtaining a lesser line of sight approval. Again, something the ZBA could not have considered with their limited time, experience, and knowledge of such matters. It is clear they were expecting TAC and the planning board to consider and suggest modifications accordingly as evidenced in their meeting.

Peter, that brings me to my feedback about the process overall, not just for this project. While I appreciate the ZBA members' time and effort on this front and as well intentioned as they are, the process puts them in an untenable position. They make these considerations without training (new members), as evidenced in this case with two new

members who did not know the process no less what the nuances of the criteria for variance approval or denial are. If you take the time to review the meeting recording, you will see what I am talking about. Multiple members of the ZBA were considering telling the developer to come back with fewer units in the project but either got bullied out of their position or did not think it was in their jurisdiction to make such a request. Further, if you look at the recording you will see how many times, they said that is up to TAC and the planning board (blasting, tree cut line, layout, drainage, traffic, etc.). In my estimation that puts abutters, developer, and the city in a tough place after all this time and money has been exhausted in the project to this point. It is my recommendation that the planning board help the new members of the ZBA better understand the process and requirements of the role and provide better active oversight in the ZBA meetings. One other recommendation is to have the planning board assist in the appeal process. It is my understanding that when we appealed their decision, they were the ones that reviewed the appeal. In my experience, it is rare that any board would self-evaluate and come up with a different conclusion.

In closing, the abutters that have allowed me to speak on their behalf ask that the planning board put this project back to the ZBA for reconsideration and approval or denial of its current configuration. Another option is for the planning board to deny this project in its current configuration for the safety of the community and the equitable consideration of the abutters.

Thank you and your colleagues for all your work in keeping Portsmouth's development positive, productive and reasonable.

Kind regards,

Tim McNamara

Cc: Peter Stith

Stefanie Casella

Greg Mahanna

From: [Peter M. Wissel](#)
To: [Planning - Info - Shr](#)
Cc: [Eric B. Eby](#); [Matthew Glenn](#); [Timothy McNamara](#)
Subject: SRTAC MEETING SCHEDULED FOR 9/3/24 - comments regarding 635 Sagamore Avenue
Date: Thursday, August 29, 2024 4:55:33 PM

To the Site Review Technical Advisory Committee

635 Sagamore Avenue is not a suitable site to build four residential units.

It is time for SRTAC to seriously address the issues raised by those who regularly use Sagamore Avenue as motorists, cyclists and abutters. Scores of pages of computer generated data and graphics alone do not come anywhere close to considering the full impact of the proposed 4 unit development.

The two issues that lead me to that conclusion are the northbound stopping sight distance and the storm water management system.

The stopping sight distance required is not met. It appears that SRTAC is contemplating a waiver of this requirement. That would be a mistake. Consider the private driveway that would service the four proposed units. It is 20 feet wide or 240 inches. A Subaru Outback, a mid-size crossover that is ubiquitous in Portsmouth, measures 80 inches from mirror to mirror. Two Outbacks parked across from each other will leave 80 inches of clearance between the two making it impossible for a Portsmouth fire engine which measures 102 inches in width to pass. Therefore there needs to be no parking signs on one side of the private driveway to allow access for a fire engine or any other emergency vehicle for that matter. Parking can also not be permitted opposite the driveways of units 3 & 4 to allow for large trucks such as the Portsmouth fire engine, to complete a turn around maneuver. The consequence of these parking constraints is that anytime the occupants of one or more of the proposed units hosts a family gathering such as a summer barbecue, child's birthday party, a baby shower, a holiday dinner (Thanksgiving, Christmas, New Year's Eve, Seder, etc.), a yard sale, or open house, vehicles will need to park in the shoulder of Sagamore Avenue. That will obstruct the view of both a northbound motorist and a driver exiting the private driveway resulting in an effective reduction in the stopping site distance. Furthermore, a driver seeking to turn left out of the private driveway will have to move well into Sagamore Avenue to look for northbound vehicles which will also reduce the stopping site distance.

With the shoulder occupied by parked vehicles, southbound cyclists will be forced into the middle of the road to avoid the possibility of doors opening in their path and southbound cars and trucks will be forced near the lane divider - all this

happening within the obscured stopping site distance. There would be no room for a northbound vehicle to avoid a collision with either a vehicle exiting the driveway of a home along the northbound lane or northbound cyclists using the full lane to avoid a parked vehicle in the northbound shoulder or debris in the shoulder.

Cyclists, cars and trucks are not the only vehicles using Sagamore Avenue. Especially during the summer it is not uncommon to see people using class 1, 2 & 3 e-bikes, mopeds, mini bikes, and even electric scooters on Sagamore Avenue. Most of these vehicles cannot stop as quickly and safely as a car and the consequences of a collision for the operator of one of these vehicles is far more severe than a collision between two cars.

The issue of cars parked on Sagamore Avenue at number 635 was not an issue for Luster King, which had a massive paved area for parking vehicles visiting the property. The developers of 635 Sagamore Avenue can avoid the parking problem by building a single residential unit with ample parking for guests visiting the unit. The stopping site distance requirement would still not be met, but an exception might be justified because the stopping site distance would not be impaired by parked cars along Sagamore Avenue.

The calculations for stopping site distance do not seem to anticipate typical weather conditions on the NH seacoast such as morning fog and snow or ice covered roads which lengthen stopping distances in the real physical world.

Finally, a substantial portion of the safety benefits of the project currently being undertaken to widen Sagamore Avenue will be negated if the shoulders of Sagamore Avenue are occupied by parked cars.

The proposed water management system is not passive. The Stormwater Management Operation and Maintenance Manual amply documents an extensive maintenance and inspection regimen required to be performed by a four unit condominium association with no incentive to maintain the system. This is unrealistic and unsustainable. After all, water runs downhill and away from the proposed development. Compelling evidence that such a system is unsustainable is in the Jones & Beach letter to Peter Smith, Altus comment #27. "Altus notes that the Tidewatch closed drainage system does not operate properly. Stormwater bypasses the culverts as the roadway and drainage system is not properly maintained." Tidewatch is a well managed 122 unit condominium association that has every incentive to assure the proper operation of their drainage system. They are at the bottom of the hill.

Respectfully yours,
Peter M Wissel
579 Sagamore Avenue, Unit 75

[Sent from Yahoo Mail for iPad](#)