

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
439 Middle Street
Portsmouth N.H. 03801
603-431-1993
Kmurphy@nhtrialattorneys.com

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](#)

From: [JOHN ADAMS](#)
To: [Planning - Info - Shr](#)
Cc: tmcnamara58@gmail.com
Subject: Proposed Luster King Development
Date: Tuesday, September 3, 2024 8:45:35 AM

Dear Mr. Chairman,

I would hope that the city's Conservation Commission has been consulted concerning the proposed Luster King development on Sagamore Avenue. Aside from the two Luster King buildings, the property in question is green wooded space which, according to the city's Open Space Plan, would seem to support the concept of environmental preservation.

I am abutter to this property having lived at 579 Sagamore Avenue for almost 30 years I can attest to the fact that the property serves as a wildlife corridor for numerous deer, turkey, racoons, and other wildlife. In addition, the state's wild flower, the Lady Slipper, a species of special concern, which reportedly blooms there from late May through much of June.

Clearly, the proposed construction of four large homes on this site would have a negative environmental impact on one of the few remaining green spaces on Sagamore Avenue.

Thank you for your consideration of this important concern.

Sincerely,

John H. Adams

579 Sagamore Avenue Unit 57

Portsmouth, N.H..

From: [Melissa Alden](#)
To: [Planning - Info - Shr](#)
Subject: Luster King project
Date: Monday, September 2, 2024 4:03:26 PM

Dear Mr. Britz,

In regard to the Luster King project on Sagamore Ave. I don't know how the city measures traffic flow, but I live on Sagamore Ave, and the traffic is already quite heavy. Spring through fall it is a heavily travelled route to the beach and tourists exploring the seacoast. All year long in the mornings and evenings it is the commuter route for those living in Rye, North Hampton, etc. It is presently a constant stream of cars on what is actually a small road. Add in Amazon, Fed Ex and UPS delivery vans, and there is never a pause in traffic. Right where Luster King is situated, there is a rise in the street. Turning in and out into traffic doesn't seem to me to very safe with the potential of even higher volume.

I think safety is a huge priority to all. Developers don't live on the sight. They build, sell and leave. I think the city has to use long range foresight for everyone's sake and safety.

Thank you for your time.

Melissa Alden

From: [Suzan Harding](#)
To: [Planning - Info - Shr](#)
Subject: Luster King
Date: Sunday, September 1, 2024 1:55:28 PM

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 subdivided. 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

I have thoroughly read and agree 100%. I could compose my own objections but Tim has covered it.

I will add that I am vehemently against blasting for basements and deeply concerned regarding traffic safety.

Suzan Harding
594 Sagamore

Cc: Peter Stith
Stefanie Casella
Greg Mahanna

From: [Nancy Jaffe](#)
To: [Planning - Info - Shr](#)
Subject: 635 Sagamore Ave
Date: Tuesday, September 3, 2024 9:47:57 AM

Dear Mr. Britz and the Planning Board,

As a neighbor of 635 Sagamore Ave, I have concerns regarding the new construction project.

The Grading and Drainage notes #16 states that erosion control measures will be maintained after each rain event of .25" or greater in a 24 hour period and at least once a week. How will this get accomplished?

As a Tidewatch resident, I am very concerned about the drainage onto our private road. Would a retaining wall help? This road is the only entrance/exit for our 117 condominiums.

My other big concern is the driveway for the new houses. Drivers often drive above the speed limit. Sight lines are very important for the safety of drivers, walkers and cyclists.

Thank you,

Nancy Jaffe

From: [Suzan Harding](#)
To: [Planning - Info - Shr](#)
Subject: Luster King
Date: Sunday, September 1, 2024 1:55:28 PM

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 subdivided. 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

I have thoroughly read and agree 100%. I could compose my own objections but Tim has covered it.

I will add that I am vehemently against blasting for basements and deeply concerned regarding traffic safety.

Suzan Harding
594 Sagamore

Cc: Peter Stith
Stefanie Casella
Greg Mahanna

From: [ROBERT LEWIS](#)
To: [Planning - Info - Shr](#)
Subject: 635 Sagamore Avenue Luster King Project
Date: Tuesday, September 3, 2024 9:15:45 AM

As residents of Tidewatch, we are abutters to the above captioned project which is on the agenda for the Technical Advisory Committee meeting scheduled for September 3, 2024. We are concerned about the new plan (the addition of walk out basements) and how much the houses have moved towards Tidewatch and the visibility of drainage holding ponds and retaining walls that were not in any plans the Zoning Board of Adjustment saw when they approved the original plan. Another issue to focus on is the actual stopping distance required for the project.

For these reasons, we are requesting that the project go back in front of the Zoning Board of Adjustment to review and reevaluate these plans which are significantly different from the original proposal.

Thank you for your consideration of our request.

Bob and Kathe Lewis
579 Sagamore Avenue, Unit 74
Portsmouth, NH

From: [Katherine O'Brien](#)
To: [Planning - Info - Shr](#)
Subject: 635 Sagamore Ave Development
Date: Sunday, September 1, 2024 1:47:09 PM

I am writing to point out a major flaw in the reasoning that the ZBA used to approve this project. The board used the comparison of the units at Tidewatch to argue that there is precedent for this development. However, there are NO single family homes in Tidewatch--all units are duplexes, triplexes or quadraplexes. If the developer was to propose a quadraplex on this site it would have much less negative impact on the surrounding areas in terms of drainage, number of trees removed, and the extent of blasting required.

Thank you,
Katherine O'Brien
579 Sagamore Ave, Unit 70
Portsmouth, NH 03801

From: [Jane Reynolds](#)
To: [Planning - Info - Shr](#)
Subject: 635 Sagamore Avenue Proposal
Date: Monday, September 2, 2024 7:59:08 PM

To Whom It May Concern:

I am a Portsmouth taxpayer, an abutter to 635 Sagamore and I strongly feel this project has evolved into something very different from what was originally presented to the ZBA! They have changed the entire footprint, the depth of basements, the location of the driveway on Sagamore Avenue and probably more.

Due to all the changes, it is my opinion that the developer should be directed back to the ZBA and start over again! I hope you consider this strongly. Thank you for your hard work and your protection of our town!

Sincerely,

Jane Pratt Reynolds
579 Sagamore Ave, Portsmouth, NH 03801

From: [nhseastones](#)
To: [Planning - Info - Shr](#)
Cc: [Jerry Stow](#)
Subject: Development of 635 Sagamore Ave, Portsmouth, NH.
Date: Monday, September 2, 2024 7:53:58 PM

Dear Mr. Britz and Planning Board Members,

As a resident of Tidewatch, a direct abutter of the subject, I have been an active participant in the development process as it moves through the ZBA and the TAC boards.

I have coordinated with Mr. Tim McNamara,

A resident of Tidewatch and totally agree with all his observations and comments on this project in a recent letter to you and the Planning Board. Therefore, I will not bore you with similar concerns with the exception of three areas:

1) The ZBA used incorrect information when they based the 117 Units in Tidewatch on 59+ acres as a comparison to the 4 Houses proposed on 1.94 acres of the present Luster King while comparing density per acre. I explained to the ZBA at the public meeting, twice, that while there are 117 Units in Tidewatch, they are housed in 46 Buildings which is more than one acre per building vs the less the 1/4 acre per building as proposed by the developer.

2) During the Public Meeting it appeared that Robert's Rules were not followed as required. This may be a minor point but in my experience the following would be considered irregular. There was a Motion to approve followed by a Second. A discussion followed and then the Chair Person called for a vote. At least one vote was a "No" and then a second vote was rendered. At that point the Chair began another discussion and the first "No" reverted to a "Yes" with no clarification. Perhaps this is normal procedure, but I was later told by an official in the Planning Department that Robert's Rules were the norm for all meetings.

3) The line of sight is a major problem that has been exemplified by the current construction on Sagamore Ave. Vehicles turning left into the proposed entrance to "Luster Cluster" stop short of the center of the driveway, not the center.

If one or two cars, or more are stopped behind the turning vehicle they are in extreme danger of being rear ended by a vehicle coming over the hill behind them.

This seems to be one of the most dangerous, if not the most dangerous, hill in Portsmouth involving a complex mix of vehicles, bicycles, joggers, and walkers. It

Seems to present a major liability issue for the City.

In closing I would like to thank you, your staff, and all the resident Board volunteers for your time, and efforts in the service of Portsmouth. It is not an easy task, but much appreciated.

Respectfully,
Jerry Stow

Sent from my iPhone

From: [Phil von Hemert](#)
To: [Planning - Info - Shr](#)
Cc: [Susan von Hemert](#)
Subject: 635 Sagamore Ave (Luster King) Development
Date: Monday, September 2, 2024 8:06:18 PM

To The City of Portsmouth Planning Board

I and my wife, Susan, own and reside in Unit 42, Tidewatch and I am writing to voice continued objection to approval of the subject development as currently configured. Clearly, it is not the same design as was approved by the Zoning board. Clearly, it does not conform for a variety of reasons which have been enumerated in detail by other Tidewatch owners.

As configured, it will negatively affect the value of our unit. That will occur during construction. That will occur after construction when the units are clearly visible from Tidewatch. That will get worse when the water runoff abatement scheme fails because it relies on four homeowners performing certain protocols regularly and for as long as those dwellings exist. Nothing guarantees the four owners will continue to fund a reserve account to maintain and repair the system.

In the end, I am urging you to represent concerned abutters who collectively, have at least as much investment and who deserve as much right to protection as the investor/developer.

Respectfully,

Phil von Hemert
579 Sagamore Ave., Unit 42
Portsmouth, NH 03801

From: [Peter M. Wissel](#)
To: [Planning - Info - Shr](#)
Subject: 635 Sagamore Avenue
Date: Monday, September 2, 2024 3:40:28 PM

To SRTAC,

Unfortunately, I will be out of the country and unable to zoom in to the meeting on Tuesday, September 3. I have submitted comments to the committee regarding the most recent iteration of the proposed development similar to comments made prior to every other meeting that has considered the application for the development of 635 Sagamore Ave. My focus has been on stopping sight distance and the unsustainability of the storm water management system. To date, I have seen no indication that the committee has required the developer to respond to any of my comments or those of any other abutter. Why not? Have you dismissed them as frivolous? Are they beyond the scope of your committee's responsibilities? Are you so focused on the precise regulatory requirements for the development that you have lost sight of the real world impacts of the development on public safety and abutting properties? Should I be communicating my concerns to some other authority? As a concerned citizen I am finding the seeming unresponsiveness of the committee to be very frustrating and bordering on disrespectful.

Respectfully yours,
Peter Wissel
635 Sagamore Avenue, Unit 75

[Sent from Yahoo Mail for iPad](#)

From: [Phil von Hemert](#)
To: [Planning - Info - Shr](#)
Cc: [Susan von Hemert](#)
Subject: 635 Sagamore Ave (Luster King) Development
Date: Monday, September 2, 2024 8:06:18 PM

To The City of Portsmouth Planning Board

I and my wife, Susan, own and reside in Unit 42, Tidewatch and I am writing to voice continued objection to approval of the subject development as currently configured. Clearly, it is not the same design as was approved by the Zoning board. Clearly, it does not conform for a variety of reasons which have been enumerated in detail by other Tidewatch owners.

As configured, it will negatively affect the value of our unit. That will occur during construction. That will occur after construction when the units are clearly visible from Tidewatch. That will get worse when the water runoff abatement scheme fails because it relies on four homeowners performing certain protocols regularly and for as long as those dwellings exist. Nothing guarantees the four owners will continue to fund a reserve account to maintain and repair the system.

In the end, I am urging you to represent concerned abutters who collectively, have at least as much investment and who deserve as much right to protection as the investor/developer.

Respectfully,

Phil von Hemert
579 Sagamore Ave., Unit 42
Portsmouth, NH 03801

From: [Peter M. Wissel](#)
To: [Planning - Info - Shr](#)
Subject: Re: 635 Sagamore Avenue
Date: Monday, September 2, 2024 11:53:04 PM

Correction

My address is 579 Sagamore Ave., Unit 75.

[Sent from Yahoo Mail for iPad](#)

On Monday, September 2, 2024, 21:40, Peter M. Wissel <pmwissel@yahoo.com> wrote:

To SRTAC,

Unfortunately, I will be out of the country and unable to zoom in to the meeting on Tuesday, September 3. I have submitted comments to the committee regarding the most recent iteration of the proposed development similar to comments made prior to every other meeting that has considered the application for the development of 635 Sagamore Ave. My focus has been on stopping sight distance and the unsustainability of the storm water management system. To date, I have seen no indication that the committee has required the developer to respond to any of my comments or those of any other abutter. Why not? Have you dismissed them as frivolous? Are they beyond the scope of your committee's responsibilities? Are you so focused on the precise regulatory requirements for the development that you have lost sight of the real world impacts of the development on public safety and abutting properties? Should I be communicating my concerns to some other authority? As a concerned citizen I am finding the seeming unresponsiveness of the committee to be very frustrating and bordering on disrespectful.

Respectfully yours,
Peter Wissel
635 Sagamore Avenue, Unit 75

[Sent from Yahoo Mail for iPad](#)