

From: [Tim McNamara](#)
To: [Planning - Info - Shr](#)
Cc: [Peter M. Stith](#); [Peter L. Britz](#); [Stefanie L. Casella](#); [Kimberli Kienia](#)
Subject: Luster Cluster Site Walk
Date: Wednesday, February 5, 2025 4:31:20 PM
Attachments: [IMG_3821.HEIC](#)
[IMG_3822.HEIC](#)

Dear Board Members,

As abutters, Portsmouth citizens and taxpayers, we appreciate you investing your personal time to do the site walk at 635. Below are several things you should be aware of as you pay your visit.

First, as the chairman stated to the developer in the December meeting, the driveway is north facing and currently looks like a glacier (see photos attached). Please be careful. We would like you to park on site so you can experience the challenges of pulling in from and out onto Sagamore Ave. If that is not an option, then feel free to park on the private Tidewatch Road and walk around. While on the Tidewatch Road you will be able to clearly see how visible these large houses will be sitting way up high on the granite hill. You will also see stakes marking the new tree cut line. It is substantially different from the proposed tree cut line the ZBA reviewed, and which we opposed almost 2 years ago now. The recently added retention pond is clearly in your face when on the road as well.

With the snow piling up all around us it is going to be hard to see the stakes and other markings the engineers placed on site so you can see the placement of the larger than original plan houses. It is my understanding that because the lot is all granite there are some markings that could not be shown by a stake but rather by paint on the granite rock itself. These markings, currently under snow, will be impossible to find unless -the developers are there to find them for you. It would be very helpful for you to visualize just how high these houses will sit perched high on the granite nub (as the engineer called it in the last meeting). Notice too that the Tidewatch Road is below grade for some distance just inside the Tidewatch entrance, magnifying the visual impact of the new buildings.

Again, thank you for making a site walk a required piece of this decision process. In the event of weather conditions precluding a safe site walk, we will await your next available date for the visit. Thank you in advance for taking the time to discover first hand why this project should not be approved. I am confident your walk of the site will clearly show this is just too much engineering to manage drainage without putting the neighbors below at risk and too many large houses for what will be a very crowded lot.

Kind Regards,

Tim McNamara
579 Sagamore Ave.



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Tim McNamara
617 413 4884

From: [Kate Hatem](#)
To: [Kimberli Kienia](#)
Subject: Fence/shed ordinance
Date: Friday, January 31, 2025 12:53:23 PM

You don't often get email from katemph@gmail.com. [Learn why this is important](#)

Hello Kimberli,

Beth Moreau passed along your info to me as I sent the City Council a message in support of changing the ordinances in regards to fence height and sheds.

I fully support changing the ordinance to give homeowners more autonomy and flexibility to erect fences and sheds as they see fit for their property. Many homes (mine included) do not have garages and if we had the ability to put a shed in our yard it would greatly improve our ability to safely and securely store outdoor equipment. Please let me know if this is sufficient to pass along or if you need me to submit my comments in a more formal manner.

Thank you,
Kate Hatem
1 Ash St., Portsmouth, NH

From: [Peter M. Wissel](#)
To: [Planning - Info - Shr](#)
Subject: 635 Sagamore Avenue Site Visit and Meeting, Feb 20, 2025
Date: Wednesday, February 5, 2025 1:32:57 AM
Attachments: [zba_decision_criteria_final.pdf](#)

To members of the Planning Board

I am gratified that the Planning Board will be visiting 635 Sagamore Avenue on February 20, 2025 and regret that I will be unable to join you due to longstanding travel plans.

As parking along Sagamore Avenue is prohibited to avoid obstructing the bike lanes, you will be able to directly experience entering and exiting the site. To do that, you could enter the site by approaching it from the south. Before making a left hand turn into the driveway, you could engage the turn signal and wait 30 seconds before making the turn as a motorist is likely to experience on a summer's day with a steady stream of traffic headed south to the seacoast. Your rear bumper would likely be 212 feet from the point at which a driver approaching from behind will begin to stop to avoid a collision assuming they're looking ahead and not at their infotainment screen. The required site stopping distance is 244 feet. That's beyond the crest of the hill behind you. Maybe you would be able to see the roof of the oncoming vehicle in your rear view mirror, but the driver won't be able to see you. If the roads are snow covered on Feb 20 and you have to wait even a few seconds to execute the turn, would an approaching vehicle stop in time to avoid a collision or avoid skidding into opposing traffic? That's the real world where real people can get hurt, not abstract lines on a map. I am not suggesting that you actually take that risk upon yourself. I am asking you to please deny the application so that no one is at risk making a left turn into the driveway or crashing into a vehicle stopped to make the turn.

My primary objection to the site plan application has been traffic safety. My comments regarding traffic safety go back to April 2022 when the applicant first applied to the ZBA for a variance to construct multiple units on a site zoned for a single unit and are as recent as those made to the Planning Board for consideration at the meeting in December 2024. Public safety was not discussed by the ZBA at its public hearing despite letters and oral comments addressing the issue and New Hampshire Municipal Association guidance (see attached ZBA Decision Criteria). Now that the inadequate site stopping distance issue has been objectively identified and highlighted, the application should be denied and the variance request should be reconsidered by the ZBA.

The practicality of the development itself is questionable. As parking along Sagamore Avenue is prohibited and parking in the shared driveway is prohibited, where are guests, delivery vehicles, landscape trucks and trailers, tradesmen, etc. supposed to park?

Finally, the storm water management system designed to control the additional storm water directed toward Tidewatch is untenable and imposes the risk of additional

expense to manage stormwater runoff. The applicant does not address how a system that relies on infiltration is supposed to work when the ground is frozen to a depth of four feet. The proposed system relies on a strict maintenance routine that would impose an unrealistic management and financial burden on a 4 unit condominium association.

For all the above reasons, the application should be denied.

Respectfully,

Peter M. Wissel
579 Sagamore Avenue, Unit 75
Portsmouth, NH

[Sent from Yahoo Mail for iPad](#)



ZBA DECISION CRITERIA

VARIANCES

1. THE VARIANCE WILL NOT BE CONTRARY TO THE PUBLIC INTEREST.

The N.H. Supreme Court has held that to be contrary to the public interest or injurious of public rights, the variance “must unduly, and in a marked degree” conflict with the basic zoning objectives of the ordinance. The ZBA should examine whether the variance would (a) alter the essential character of the locality or (b) threaten public health, safety or welfare.

2. THE SPIRIT OF THE ORDINANCE IS OBSERVED.

See, Criteria 1, above.

3. SUBSTANTIAL JUSTICE IS DONE.

It is not possible to set up rules that can measure or determine justice. Each case must be individually determined by board members. Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. The injustice must be capable of relief by the granting of a variance that meets the other qualifications.

4. THE VALUES OF SURROUNDING PROPERTIES ARE NOT DIMINISHED.

This variance criterion has not been the focus of any extensive Supreme Court analysis to date. That said, in considering whether an application will diminish surrounding property values, it is appropriate for ZBAs to consider not only expert testimony from realtors and/or appraisers, but also from residents in the affected neighborhood. Equally as important, Board members may consider their own experience and knowledge of the physical location when analyzing these criteria; but be cautious in relying solely on that experience/knowledge if it contravenes the evidence of professional experts.

5. LITERAL ENFORCEMENT OF THE PROVISIONS OF THE ORDINANCE WOULD RESULT IN AN UNNECESSARY HARDSHIP.

(A) FOR PURPOSES OF THIS SUBPARAGRAPH, “UNNECESSARY HARDSHIP” MEANS THAT, OWING TO SPECIAL CONDITIONS OF THE PROPERTY THAT DISTINGUISH IT FROM OTHER PROPERTIES IN THE AREA:

(i) NO FAIR AND SUBSTANTIAL RELATIONSHIP BETWEEN THE GENERAL PUBLIC PURPOSES OF THE ORDINANCE PROVISION AND THE SPECIFIC APPLICATION OF THAT PROVISION TO THE PROPERTY; AND



(ii) THE PROPOSED USE IS A REASONABLE ONE.

(B) IF THE CRITERIA IN SUBPARAGRAPH (A) ARE NOT ESTABLISHED, AN UNNECESSARY HARDSHIP WILL BE DEEMED TO EXIST IF, AND ONLY IF, OWING TO SPECIAL CONDITIONS OF THE PROPERTY THAT DISTINGUISH IT FROM OTHER PROPERTIES IN THE AREA, 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.

THE DEFINITION OF “UNNECESSARY HARDSHIP” SET FORTH IN SUBPARAGRAPH (5) SHALL APPLY WHETHER THE PROVISION OF THE ORDINANCE FROM WHICH A VARIANCE IS SOUGHT IS A RESTRICTION ON USE, A DIMENSIONAL OR OTHER LIMITATION ON A PERMITTED USE, OR ANY OTHER REQUIREMENT OF THE ORDINANCE.

The dual references of the property being “distinguished from other properties in the area” solidifies the repeated Court statements that the “special conditions” are to be found in the property itself and not in the individual plight of the applicant. Depending upon the variance being sought, those “special conditions” can include the “as built” environment.

SPECIAL EXCEPTIONS

A special exception seeks permission to do something that the zoning ordinance permits only under certain special circumstances, e.g., a retail store over 5000 square feet is permitted in the zone so long as certain parking, drainage and design criteria are met

In the case of a request for special exception, the ZBA may not vary or waive any of the requirements set forth in the ordinance.

The applicant has the burden of presenting sufficient evidence to support a favorable finding on each requirement.

From: [Veda Clark](#)
To: [Planning - Info - Shr](#)
Subject: 635 Sagamore development
Date: Thursday, December 19, 2024 5:04:34 PM
Importance: High

You don't often get email from vfclark@comcast.net. [Learn why this is important](#)

Planning Board-

Many of us at Tidewatch respectfully request that the plans for 635 development be sent back to ZBA for review.

- The plan has changed substantially from the original plan reviewed by ZBA.
- The required stopping distance line of sight has not been met. This puts the general public at risk. Most importantly to Tidewatch, this is already a VERY DANGEROUS intersection and puts all of us at risk as we come and go out of Tidewatch.
- Drainage is a big issue for Tidewatch. 635 sits on a ledge. After substantial changes and dynamiting of the ledge, can you guarantee to us there will not be drainage issues. Will the City of Portsmouth pay for mitigation for Tidewatch, after we are all flooded?
- The removal of the ledge in this environmentally sensitive area abutting the creek could be disastrous to wildlife.

Please, send this project back to ZBA for review.

Respectfully,
[Veda Ferlazzo Clark](mailto:VFClark@comcast.net) | VFClark@comcast.net | 617-429-3808

From: sugarmag91@comcast.net
To: [Planning - Info - Shr](#)
Subject: Planning Board Site Lusterking Cluster , 635 Sagamore Avenue for the PB meeting December 19th
Date: Wednesday, December 18, 2024 1:01:59 PM

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Hello Planning Board:

I am an abutter of the above proposed development, residing at 579 Sagamore Ave unit #91. In preparation for my comments and questions tomorrow at the 7 pm meeting, could you please have the following available on the public viewing screen?

- 1) The **original** C2 development diagram presented to the ZBA
- 2) The most recent and latest C3 diagram

Thank you so much,

Elyse Gallo

cell: 603-978-2802

From: [Suzan Harding](#)
To: [Planning - Info - Shr](#)
Subject: Re: Sagamore Ave
Date: Friday, December 20, 2024 6:12:21 AM

To the planning board,

Very disappointed in your passing the Maflouzi project through without seeming to consider abutters concerns for driveway planned next to abutter with worries about water draining to her basement, I realize you don't care about uprooting the land and mature trees in the name of blasting apart ecosystems but you didn't address abutters concerns about what blasting could do to the structure of 576 Sagamore house built in 1827. You didn't seem to have any concern regarding my traffic safety worries or explain how adding traffic in this dense area will not be an issue. It seemed it was already decided you were approving before we spent our evening waiting until the end to speak.

Not one neighbor surrounding this project is for it. I guess Greene has the money and power.

I was encouraged by your concerns regarding the Luster King and you seemed to have concerns about the degree of blasting there.

I am happy you will do a site review to address traffic safety. Those of us who live here and actually have to get in and out of our driveways already have problems with site lines and stop lines. I have people right on my bumper when turning in my driveway because they fly over the hill.

You took away the bit of off street parking I did have, to make a curb and then a swath of grass that now I am expected to go out to the street to mow? Or will the city do this as it is apparently city property. I had no say in the planting of grass rather than a ground cover that would not require mowing.

Sincerely disappointed
Suzan Harding

On Wed, Dec 18, 2024 at 8:37 AM Suzan Harding <suzanharding@gmail.com> wrote:

I am writing, once again to express my strong opposition to BOTH the Luster King and Maflouzi overdevelopment projects. Both on agenda for Thursday. As an abutted, my concerns are :

Traffic safety - as planned, there will be at least 8 more cars coming out of Luster King and at least 6 from Maflouzi, not including additional delivery vehicles. As anyone who has experienced the challenges of getting in and out of a driveway on this road, can you just imagine being squeezed between these two properties with all of this additional traffic? I don't know how this is safe. It's too much! So, for the record should accidents occur.

Blasting- there are many issues addressed by my neighbors regarding what this level of disruption to the land can do, uprooting trees and soil, flooding, drainage etc, but my issue is with living through this level of unnecessary noise and destruction. I have dealt with the hammering of solid granite in front of my house. It was brutal! But, I understood it was necessary for pipes for water and sewer. These development projects are NOT necessary, it is greed driven. Blasting needs to be avoided. Readjust plans.

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.

As you have witnessed in past meetings, there is a strong group of neighbors who care about our homes and are vehemently opposed to these overdevelopment projects and urge you to please consider our requests to hold off on these projects until adjustments are made.

Sincerely,
Suzan Harding
594 Sagamore Ave.

From: [Ann Hartman](#)
To: [Planning - Info - Shr](#)
Subject: 635 Sagamore Avenue Luster Cluster
Date: Wednesday, December 18, 2024 12:58:42 PM

You don't often get email from ann.hartman132@gmail.com. [Learn why this is important](#)

To the Planning Board:

I direct your attention to the NH Department of Business and Economic Affairs handbook for Planning Boards.

It discusses in detail the duties of Planning Boards when considering denial of an application.

It states that in addition to adhering to regulations, the Board can exercise their independent judgment and knowledge of the area.

The handbook goes on to cite examples of the exercise of independent judgment and knowledge of the area in denial of an application if:

The proposal cannot adequately address the legitimate concerns raised at the public hearing, such as drainage, traffic, or other health or safety issues.

We respectfully ask that you hear the legitimate concerns raised consistently- for several years now- about those exact, very specific issues with special emphasis in this case on all three: drainage achieved only by extensive engineering, exacerbating an already challenging traffic configuration, and the safety and wisdom of extensive blasting.

Thank you for your consideration.

Ann Hartman
579 Sagamore Avenue

From: [Lennie Mullaney](#)
To: [Planning - Info - Shr](#)
Subject: 635 Sagamore Ave Cluster
Date: Tuesday, December 17, 2024 5:01:32 PM

You don't often get email from lennie.mullaney@gmail.com. [Learn why this is important](#)

To the Planning Board

I have serious concerns about the project 635 Sagamore Ave.

1. The density is too great. Yes, TideWatch condos are more in number. However, our roads and parking allow for visitors, contractors and homeowners to navigate safely. There is plenty of off street parking and the roads are safe for pedestrians, bicyclists and dog walkers.

I don't believe the same can be said for the Luster King project. My husband, dog and I walk that hill, in the summer we bike it, and the site line will be greatly reduced by the lack of parking provided in the new development. Will Sagamore Ave be safe for bicyclists and pedestrians with the additional cars right at the crest of the hill pulling in and out? It is already difficult, at certain times of the day, to enter or exit Tidewatch now, as it is.

2. I am concerned about water drainage. TideWatch has many granite outcroppings and a few little brooks. We are downhill from Luster King. Any runoff from the development is going to increase the ground saturation, possibly cause icy roads in the winter, and create more breeding places for disease carrying mosquitoes. The large houses and impervious paved surfaces above will force water to run downhill into Tidewatch.

3. The statement that Tidaewatch residents won't be able to see the new houses is fantasy. They will loom over us, some with walkout basements, trees will be cut down (loss of roots also increases water runoff). The houses have been placed closer to our property line than the original plan. Of course we will see the development!

I am not a "Not in My Backyard" person. Portsmouth needs more affordable housing. This project is not that and it has been engineered for maximum profits for the developer. The impact on Tidewatch will be detrimental. I believe the Planning Board must review the plan and reduce the number of housing units allowed. The developers claim that would be a hardship due to the shape of the land and granite subsurface. That was known when they purchased the property. Therefore, it is not a hardship. It is an excuse.

Lennie Mullaney
579 Sagamore Ave Unit 52
Portsmouth, NH 03801
603-828-4556
www.lenniemullaney.com

From: [Susan von Hemert](#)
To: [Planning - Info - Shr](#)
Subject: Planning Meeting re: Sagamore Luster King Project
Date: Tuesday, December 17, 2024 9:51:23 PM

We strongly believe this project should not go forward for the following reasons:

- The plan has changed so substantially that the project should go back to the ZBA for reconsideration; they have now added walkout basements which would require even more blasting that could harm our development's basements and water supplies from our wells.
- The fact that the required stopping distance line of sight has not been met puts the general public at risk as well as the city from a liability ; Sagamore is a very busy road and having cars entering and exiting without good sight is a danger
- Finally, the risk imposed on the abutters related to a potential failure of the over engineered drainage is not supporting the ZBA's approval criteria
 - 10.233.21 Granting the variance would not be contrary to the public interest.
 - 10.233.23 Granting the variance would do substantial justice.
 - 10.233.24 Granting the variance would not diminish the values of surrounding properties.

There is absolutely no guarantee that the homeowners association will support this expensive drainage solution in the future, putting the city and our development at risk.

Susan and Phil von Hemert, Tidewatch 42
Sent from my iPad

From: [Peter M. Wissel](#)
To: [Planning - Info - Shr](#)
Subject: Public Hearing Scheduled for December 19, 2024, 635 Sagamore Avenue
Date: Monday, December 16, 2024 2:40:07 PM

To: Members of the Planning Board

The application to develop 635 Sagamore Avenue (the “Luster Cluster”) has been conditionally recommended for approval by TAC. The scope of TAC’s review was limited to narrowly defined technical specifications. Those specifications cannot hope to anticipate real-world conditions. In this case the gap between technical requirements and real-world conditions warrants rejection of the proposal by the Planning Board.

The following considerations impact Site Plan Review Regulations Section 2.9 Evaluation Criteria 2, 3, 11, 12, 15 and 18.

Mitigation of all the undesirable outcomes mentioned below can be achieved by limiting the development to a single unit.

Criteria 2, 11, and 12 address traffic controls and safety.

The minimum site stopping distance requirement is not met.

The minimum site stopping distance in the proposal is the distance in the northbound lane between the approach to the crest of Sagamore Avenue and the entrance of the private driveway. The northbound required site stopping distance is 244 feet. Only 228 feet is provided. The application does not address the more significant risk - the inadequate actual site stopping distance between the northbound lane approach to the crest of Sagamore Avenue and the rear bumper of a vehicle stopped in the northbound lane waiting to make a left-hand turn into the Luster Cluster’s private driveway. The site stopping distance in that case is at least one car length less than 228 feet or approximately 212 feet. If one or more vehicles are stopped behind the turning vehicle due to heavy traffic moving in either direction, the site stopping distance would be less than 180 feet. A driver approaching the stopped vehicle or vehicles would have to stand on the brakes to avoid or minimize the impact of a collision. In the event of such a collision an aggressive personal injury lawyer would not hesitate to sue the City of Portsmouth for failing to take any reasonable measures to minimize the known risk of a collision. The cost of a legal defense and potential loss of a suit would be borne by the City and its taxpayers.

Regrettably the topography of the site limits engineering solutions. However, risks to the users of Sagamore Avenue can be mitigated if the amount of traffic entering and exiting the site is minimized. The volume of traffic is not limited to the residents. It includes delivery vehicles from FEDEX, UPS, USPS, Amazon, food delivery and local shops, service vehicles for HVAC maintenance, cable, plumbers, electricians, landscaping vehicles with and without trailers, etc.

Mitigation of this risk can be achieved by limiting the development to a single residential unit which would result in fewer vehicles entering and exiting the private driveway.

The developer of the Luster Cluster has posited that the proposed development improves safety relative to the existing condition. That is based on statistical estimates of traffic volume which are by their nature uncertain. That four units will generate more traffic entering and exiting the property than would a single unit is a certainty. The safety of the users of Sagamore Avenue should take priority over the density of the proposed development.

Criterion 15 addresses usable and functional open space

Inadequate on-site parking is not viable for residents.

The proposal requires “NO PARKING” signs in the private driveway to allow access for large emergency vehicles. Where are visitors supposed to park? Parking in the Sagamore Avenue bike lane is prohibited. (see parking notes below).

The situations where inadequate parking comes into play are numerous. Where will realtors park for an open house when one or more units is listed for sale? If any unit owner wants to host a summer barbeque, open house, family holiday dinner, dinner party, newcomers club meeting, birthday party, bridal or baby shower, wake or invite friends over to watch a sporting event in their media room, etc. where will they park? Where will a landscape vehicle with or without a trailer park or service vehicles for HVAC maintenance, the cable provider, plumbers, electricians, other technicians, etc.? The development plan is simply not viable.

Mitigation can be achieved by limiting the development to a single unit which would allow ample space to provide adequate on-site parking.

Criterion 3 addresses stormwater management practices.

The Stormwater Management System will ultimately fail. The burdensome inspection regimen imposes a prohibitive potential liability on unit owners, the City of Portsmouth and its taxpayers and imposes unnecessary risk on abutters.

The proposed development will direct less storm water toward Sagamore Avenue and more storm water toward abutters – Tidewatch. The developer proposes a stormwater management system to mitigate the additional runoff. The system would rely on infiltration to absorb the additional runoff and slowly release it. Numerous tests were conducted to assure that such a system should be effective in theory. None of those tests addressed winter conditions in Portsmouth where the ground freezes to a depth of 4 feet. The whole property becomes an impervious surface. An infiltration system is not effective in those real-world conditions. When the ground is frozen and it rains the runoff will flow unimpeded directly down the hill - very fast in a freezing rain.

The system requires regular inspection and maintenance. Monthly inspections are required as per the Stormwater Management Operations and Maintenance Manual that is part of the approval package. Who is qualified to perform the inspections and

will have the financial resources to take on the liability for the cost of a system failure that could be attributed to an inadequately performed inspection? If the inspections are performed by a unit owner, would that owner or the Luster Cluster condominium association be liable? Can they obtain insurance to cover those costs? Would the premium be affordable? At one TAC meeting it was proposed that a landscape company perform the inspections. Are landscape companies qualified to perform inspections? Can a landscape company obtain insurance against the failure of an employee to conduct an adequate inspection that results in the failure of the system?

TAC has required that a report of the monthly inspections be submitted to the City of Portsmouth Department of Public Works. That imposes a cost on the City of Portsmouth and its taxpayers. To be effective more is required of the DPW than simply filing a report every month. If the report is not critically reviewed every month, the City could be potentially liable for the cost of a system failure due to negligence. Was the inspection performed by a qualified person? Was an inspection actually performed, or did someone simply check off a series of boxes? The review itself will require time that a DPW employee could have used for the benefit the City's general population and not to serve the narrow interests of a single private property. There will likely be regular requests for copies of the monthly inspection reports by abutters. What happens if a report is not submitted as required? Will the burden of monitoring compliance also fall upon the City? What remedies will be required for non-compliance or a failed inspection? Who will bear the cost of a system failure if the Luster Cluster condominium association does not have sufficient financial resources?

Mitigation of these undesirable outcomes can be achieved by limiting the proposed development to a single unit located near the footprint of the existing structures on the property. That would preserve the existing contours of the site and avoid the necessity for a complex stormwater management system.

Criterion 18 addresses landscaping

The proposed landscaping plan will not provide an adequate buffer between the Luster Cluster and Tidewatch which will adversely affect the market value of Tidewatch units.

It is highly likely that more prospective buyers of a Tidewatch unit would prefer a view of the existing naturally wooded hillside of mature pine trees and rock outcroppings than the looming backsides of condo units on raised foundations. Fewer prospective buyers translates to lower market value.

The plan anticipates screening the proposed units with new plantings of various species of pine trees. That plan will be ineffective. The young pine trees will screen the unsightly raised basements but not the upper stories of the units. The mature pines currently growing naturally on the hillside have no needle bearing branches from the ground up to a height of about 10 feet. Assuming the pines that are meant to screen the view of the units show the same pattern in maturity, they will fail to screen the raised foundations.

Mitigation of this outcome can be achieved by limiting the proposed

development to a single unit located near the footprint of the existing structures on the property.

Respectfully yours,

Peter M. Wissel
579 Sagamore Ave., Unit 75
Portsmouth, NH

Parking Notes:

The NH Drivers Manual Issued by the NH DMV states: *Do not stop, park, or drive on a designated bicycle path or lane unless you are entering or leaving an alley or driveway, performing official duties, directed by a police officer or an emergency situation exists.*

That statement summarizes provisions of 2023 New Hampshire Revised Statutes which establish that a bike lane is portion of a roadway and that no person shall park a vehicle that impedes the use of roadway. Specifically:

*Title XX – Transportation, Chapter 230 - State Highways
Section 230:74 - Definitions. - III. "Bicycle lane" means a portion of a roadway which has been designated for the preferential or exclusive use of bicycles..., and*

Title XXI - Motor Vehicles, Chapter 265 - Rules of the Road, Section 265:37-b - Avoidance of Lane Blockage. - I. No person shall stop or park a vehicle in such manner as to impede or render dangerous the use of the roadway by others except to avoid a collision, at the direction of an authorized official, or in the event of a mechanical breakdown.

From: [Suzan Harding](#)
To: [Planning - Info - Shr](#)
Subject: Sagamore Ave
Date: Wednesday, December 18, 2024 8:37:37 AM

I am writing, once again to express my strong opposition to BOTH the Luster King and Maflouzi overdevelopment projects. Both on agenda for Thursday. As an abutted, my concerns are :

Traffic safety - as planned, there will be at least 8 more cars coming out of Luster King and at least 6 from Maflouzi, not including additional delivery vehicles. As anyone who has experienced the challenges of getting in and out of a driveway on this road, can you just imagine being squeezed between these two properties with all of this additional traffic? I don't know how this is safe. It's too much! So, for the record should accidents occur.

Blasting- there are many issues addressed by my neighbors regarding what this level of disruption to the land can do, uprooting trees and soil, flooding, drainage etc, but my issue is with living through this level of unnecessary noise and destruction. I have dealt with the hammering of solid granite in front of my house. It was brutal! But, I understood it was necessary for pipes for water and sewer. These development projects are NOT necessary, it is greed driven. Blasting needs to be avoided. Readjust plans.

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.

As you have witnessed in past meetings, there is a strong group of neighbors who care about our homes and are vehemently opposed to these overdevelopment projects and urge you to please consider our requests to hold off on these projects until adjustments are made.

Sincerely,
Suzan Harding
594 Sagamore Ave.

635 Sagamore Road – Luster Cluster

The following photos show the view of the current building from the Tidewatch Road.

The current distance from the east property line to the existing building (in photo) is approximately 130' and from the south it is approximately 160'. The new plan has the new houses (which are much higher) approximately 80' and 50' respectively. How can such a material change in the position of houses on the lot not have to go back to the ZBA for reassessment and approval. Especially, because the ZBA stated you would not even see the buildings from the road. That is clearly not true.

See below;





635 Sagamore Road – Luster Cluster

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See below;





Site Plan Review Regulations

Section 2.9 Evaluation Criteria

In order to grant site plan review approval, the TAC and the Planning Board shall

find that the application satisfies evaluation criteria pursuant to NH State Law and

listed herein. In making a finding, the TAC and the Planning Board shall consider

all standards provided in Articles 3 through 11 of these regulations.

1. Compliance with all City Ordinances and Codes and these regulations.
2. Provision for the safe development, change or expansion of use of the site.
3. Adequate erosion control and stormwater management practices and other mitigative measures, if needed, to prevent adverse effects on downstream water quality and flooding of the property or that of another.

While there is an over engineered system in place that has been reviewed by TAC they had significant concerns about it working as planned. Additionally, to potentially manage storm water onsite the developer put a large unsightly retention pond right on the property lines of two abutters which is clearly visible from the neighbors properties. Again, something the ZBA did not see in the plan they reviewed.

4. Adequate protection for the quality of groundwater.
5. Adequate and reliable water supply sources.
6. Adequate and reliable sewage disposal facilities, lines, and connections.
7. Absence of undesirable and preventable elements of pollution such as smoke, soot, particulates, odor, wastewater, stormwater, sedimentation or any other discharge into the environment which might prove harmful to

persons, structures, or adjacent properties.

8. Adequate provision for fire safety, prevention and control.

9. Adequate protection of natural features such as, but not limited to, wetlands.

While the wetlands are just far enough away from this project, any failure of the drainage system could have an adverse effect on the adjacent wetlands.

10. Adequate protection of historical features on the site.

11. Adequate management of the volume and flow of traffic on the site and adequate traffic controls to protect public safety and prevent traffic congestion.

12. Adequate traffic controls and traffic management measures to prevent an unacceptable increase in safety hazards and traffic congestion off-site.

First, the required line of sight distance for safe stopping – is not met. Putting drivers, pedestrians and cyclists at risk. The projects roads are all marked for no parking for emergency equipment maneuverability. That means all contractors and guests will not have a place to park. They will likely try and park on Sagamore Ave. making the line of sight issue even worse and there is no parking in designated bike paths which is right in front of the proposed condo road.

13. Adequate insulation from external noise sources.

14. Existing municipal solid waste disposal, police, emergency medical, and other municipal services and facilities adequate to handle any new demands on infrastructure or services created by the project.

Site Plan Review Regulations 16 November 2020

15. Provision of usable and functional open spaces of adequate proportions, including needed recreational facilities that can reasonably be provided on

the site.

16. Adequate layout and coordination of on-site accessways and sidewalks in relationship to off-site existing or planned streets, accessways, bicycle paths, and sidewalks.

17. Demonstration that the land indicated on plans submitted with the application shall be of such character that it can be used for building purposes without danger to health.

For the same reasons as 12 above this is not met. Any radon released from blasting will funnel downhill to the neighbors properties.

18. Adequate quantities, type or arrangement of landscaping and open space for the provision of visual, noise and air pollution buffers.

The proposed buffers will not adequately block the structures from neighbors view.

19. Compliance with applicable City approved design standards.

3.3.2 Accessway and Driveway Design and Location

1. Accessways and driveways shall, where practical, have an all-season safe sight distance (according to AASHTO standards) in both directions along the public street. Where only a lesser sight distance is obtainable, no more than one accessway per single parcel shall be allowed.

This is condo road is clearly servicing 4 units. The developer used a condo structure to get around the ordinance. The practical reality is that the road will be servicing the equivalent of parcels. That is clearly dangerous and not keeping with this regulation.

2. Accessways and driveways shall be located no closer than fifty (50) feet to the curb line of an intersecting street.

3. Driveways shall be limited to one per lot

This cluster is not in the spirit of the ordinance “1 unit per acre” and by extension not complying with this requirement.

Line of sight distance is still not adequate and compliant with regulations. That is dangerous and potentially irresponsible.

This alone may be why this area was zoned the way it was.

2.2.2 TAC Responsibilities

TAC shall make recommendations to the Planning Board for approval or disapproval of all site plan review applications.

While TAC has reviewed (over a long period of time) and approved the technical aspects of the project, they stated they did not like it. We simply ask Planning Board members to vote to disapprove this proposed plan for all the reasons we have brought to this process and all the concerns that TAC has stated. It is not unreasonable for the abutters and surrounding citizens to have their best interest upheld by all of you. A simple vote to disapprove this plan and suggest the developer come back with a more reasonable and safer plan is all we are asking of you. We represent more than 100 tax payers as opposed to one developer.

Just because something can be done does not mean it should be done.

Thank you

From: [Tim McNamara](#)
To: [Planning - Info - Shr](#)
Subject: TAC Commentary
Date: Wednesday, December 18, 2024 1:10:11 PM

Planning Board Members,

In your preparation for the meeting Thursday evening I am asking you to please review just 2.5 minutes of the youtube recording of the last TAC meeting (<https://www.youtube.com/watch?v=A-I7IQHEtkk>). It will give you some valuable information and context for your consideration of this project.

In an effort to be respectful of your time I suggest you start the video at 42:50.

You will hear Dave Desfosses, Construction Technical Supervisor, and Peter Britz, Director of Planning and Sustainability comment on the project. Having been in all of those TAC meetings I believe it is fair to say other members of TAC felt the same way - but I do not want to speak for them.

Dave Desfosses (DD) stated - "I am certainly not in love with this project. I've been out to the site several times, we've reviewed the storm water design 5 times"... "as it sits and I will tell you that technically the project meets the conditions of the site review ordinance, it doesn't mean it is a good idea, it does mean that the planning board (PB) should necessarily approve it"... we are kind of held to recommending this to the PB so they can inturn review whether it is appropriate or not and that is their role versus our role." "so I will make the recommendation - as much as it pains me to do so"

Peter Britz stated - "so yeah, I would say that these ya know these projects ... you are trying to put a lot on this site..." "along the lines of the variances" (I brought that up in the TAC meeting) "that is something the PB could say you need to go back to the board of adjustment." Dave D. then stated - "certainly, they could and they certainly should look at it" Peter B stated - "if it goes beyond what they think was appropriate they can take it up."

Please view the video - it takes just a few minutes.

Thank you,

Tim

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Tim McNamara
617 413 4884

November 4, 2024

To: planning@cityofportsmouth.com

Dear City Planning Board,

Thank you for welcoming our group of concerned abutters from 579 Sagamore Avenue to your monthly meetings. I regret that I am unable to attend tomorrow's meeting in person, but I would like to share some important information regarding our concerns about the proposed development at 635 Sagamore Avenue.

I have created a Dropbox link containing photos, videos, and a map that illustrate the storm runoff we experience between the structures housing units 48-47-46 and 45-44-43 during normal rainfall conditions. This information highlights the significant volume of water that flows through our area, and I am concerned that the addition of four new structures will exacerbate this issue.

<https://www.dropbox.com/scl/fo/7va67rg2rtrt8yko7e8n8/ABhf8tMEfLfgTPoL5P92uZs?rlkey=qaziz7q3d2k95ztecoc67zxpt&st=0khtlg8h&dl=0>

Additionally, we have noted several changes to the proposed project since its approval by the ZBA, including:

- Visibility and siting of the houses
- Drainage considerations
- Positioning of retaining walls

We also believe that the project overcrowds the site, and the current design of the driveway will lead to safety issues due to the blind approach for vehicles entering from Sagamore Avenue.

I urge you to take these concerns into account during your discussions. If you encounter any issues accessing the Dropbox files, please let me know, and I am happy to provide the information on physical media.

Thank you for your attention to this matter.

Kind regards,

Amanda Ahn
579 Sagamore Avenue, Unit 47







From: [Kate Hatem](#)
To: [Planning - Info - Shr](#)
Subject: Shed/Fence Ordinance Change
Date: Wednesday, February 12, 2025 1:50:56 PM

You don't often get email from katemph@gmail.com. [Learn why this is important](#)

Dear Planning Board,

I recently became aware that you were considering changing the ordinance related to sheds and fence height to give homeowners more autonomy and flexibility to build a shed or fence as they see fit for their property. Many homes (mine included) do not have garages and if we had a less cumbersome way to put a shed in our yard it would greatly improve our ability to safely and securely store outdoor equipment. I support this measure and hope the Planning Board follows through with it.

Thank you,
Kate Hatem
1 Ash St., Portsmouth, NH

From: [Tim McNamara](#)
To: [Planning - Info - Shr](#)
Subject: 635 Sagamore Ave Luster Cluster
Date: Thursday, January 23, 2025 10:18:00 AM

Has the Planning Board (PB) seen in the developers application a permit for a driveway meeting the requirements of state law for a state road. See this link. [https://law.justia.com/codes/new-hampshire/2022/title-xx/title-236/section-236-13/#:~:text=\(b\)%20Unless%20all%20season%20safe,commissioner%20determines%20to%20be%20safest.](https://law.justia.com/codes/new-hampshire/2022/title-xx/title-236/section-236-13/#:~:text=(b)%20Unless%20all%20season%20safe,commissioner%20determines%20to%20be%20safest.)

In the event this responsibility falls on the PB it is our hope that they will deny the construction of four dwellings on this single parcel so as to protect and at a minimum decrease the risk of an accident and harm to the general public. The safe distance in this document states 400 feet. This project has less than half of that distance and it is a downhill stop from the crest of the hill northbound.

FOR this reason the PB should deny the development of 4 dwellings and have the developer come back with a reasonable proposal which is what is part of the variance criteria. Reasonable is a term used throughout the variance requirements.

Thank you.

Tim McNamara

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Tim McNamara
617 413 4884