



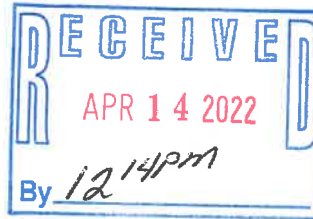
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April 14, 2022

VIA HAND DELIVERY

Zoning Board of Adjustment
City of Portsmouth
1 Junkins Avenue
Portsmouth, New Hampshire 03801



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**Re: Request for Rehearing
Application for Variance
Nerbonne Family Revocable Trust – 189 Gates Street (Tax Map 103, Lot 6)**

Dear Members of the Zoning Board of Adjustment:

I represent Devan Quinn and James Butler, who reside at and own the property located at 199 Gates Street (Tax Map 103, Lot 7) (also referred to as the “Butler/Quinn Property”), which is the property to the immediate east of 189 Gates Street (Tax Map 103, Lot 6) (also referred to as the “Nerbonne Property”), which is owned by the petitioners, Judy and Patrick Nerbonne (“the Nerbonnes”). Pursuant to RSA chapter 677, I hereby submit this Request for Rehearing on behalf of Mr. Butler and Ms. Quinn regarding the ZBA’s March 15, 2022 grant of a variance related to the Nerbonne Property.

I. INTRODUCTION AND EXECUTIVE SUMMARY

The Nerbonnes applied for variance relief from the dimensional restrictions set forth in Section 10.520 and Table 10.521 of the Zoning Ordinance, establishing a 10’ side setback and a 30% building coverage limitation, and Section 10.320 of the Zoning Ordinance, prohibiting the expansion of a pre-existing, non-conforming structure. The Nerbonnes represent that the variances are necessary to expand their existing garage as part of the garage’s conversion to a “garden cottage” in accordance with Section 10.815 of the Zoning Ordinance.

The Zoning Board of Adjustment (“ZBA”) held a hearing on the Nerbonnes application on March 15, 2022, at which the Nerbonnes submitted and presented a modified plan prepared by Architect Anne Whitney. The ZBA granted the requests for a variance.

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In doing so, the ZBA did not accurately apply the criteria for the grant of a variance pursuant to RSA 674:33. Specifically, the ZBA overlooked or misapprehended that: (1) the grant of the variance would be contrary to the public interest, (b) the spirit of the ordinance is not being observed by the grant of the variance, (c) substantial justice would not be done, (d) the value of Butler/Quinn Property would be diminished, and (e) literal enforcement of the Zoning Ordinance would not result in unnecessary hardship to the Nerbonnes. In light of these errors, the ZBA should grant this Request for Rehearing.

The remainder of this Request for Rehearing is organized into two sections. The first section provides a brief factual background regarding the property and the proposal. The second section provides a detailed discussion on why the record does not support the satisfaction of the above-referenced criteria, nor the grant of a variance.

II. THE PROPERTY AND FACTUAL BACKGROUND

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

There are few detached accessory dwelling units or garden cottages located in the neighborhood. However, for each of the limited properties with detached accessory dwelling units or garden cottages, those structures are all located to the rear of the lot and are not in close proximity to residences on neighboring parcels.

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

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

The detached garage that the Nerbonnes propose to convert to a garden cottage is located on the property line between the Butler/Quinn Property and the Nerbonne Property. The 2008 survey of 199 Gates Street submitted by the Nerbonnes with their application shows just how close the garage is to the Butler/Quinn Property and shows that the existing garage to be converted is on the property line. Due to the small lot sizes, the garage is located within 10' of the Ms. Quinn and Mr. Butler's residence.

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

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

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

The addition's roof would be approximately 15.5' high and would be similarly pitched toward the Quinn/Butler Property. The easterly façade of the addition would align with the existing easterly façade of the garage, making the addition set slight further back from the property line than the existing garage by approximately 4.5' feet.¹ The Nerbonnes no longer seek to install the deck previously proposed on the rear of the addition.

The ZBA granted the Nerbonnes' application of a variance. In doing so, the ZBA did not discuss the specific requirements for the grant of a variance pursuant to RSA 674:33 and made no specific findings that those criteria were satisfied, although individual members made reference to the "property values" criteria. Instead, the ZBA voted to grant the three variances as modified, excluding the deck, as a block.

¹ The Nerbonne Property is burdened with a fence easement for the benefit of the Butler/Quinn Property, which extends between 1' and 1.82' onto the Nerbonne Property in the area immediately to the rear of the existing garage. Therefore, while the proposed addition will only be 4.5' from the boundary line, it will be 3.5' from the area of the fence easement associated with the Butler/Quinn Property. That fence easement is found at Rockingham County Registry of Deeds at Book 5040, Page 1907, a copy of which is enclosed with this Request for Rehearing.

III. LEGAL ARGUMENT

RSA 674:33, I(a)(2) establishes the necessary criteria each of which must be satisfied for the grant of a variance. Those criteria are:

- (A) The variance will not be contrary to the public interest;
- (B) The spirit of the ordinance is observed;
- (C) Substantial justice is done;
- (D) The values of surrounding properties are not diminished; and
- (E) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

RSA 674:33 defines “unnecessary hardship” as follows: “owing to special conditions of the property that distinguish it from other properties in the area (A) no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property and (B) the proposed use is a reasonable one.” If the above-referenced standard for “unnecessary hardship” cannot be established, RSA 674:33 allows for the “unnecessary hardship” criteria to be satisfied “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.”

- a. The variance will be contrary to the public interest and the spirit of the ordinance is not observed.

The ZBA’s grant of a variance was in error because the ZBA failed to properly consider the spirit and intent of the ordinance, the unique circumstances of the subject and surrounding properties, and the adverse impacts that will likely arise out of the grant of the variance.

The Supreme Court has previously stated that the public interest and spirit of the ordinance criteria should be considered together. See Chester Rod & Gun Club, Inc. v. Town of Chester, 152 N.H. 577, 581 (2005). The Supreme Court has further explained:

The requirement that the variance not be contrary to the public interest is related to the requirement that it be consistent with the spirit of the ordinance. The first step in analyzing whether granting the variance would not be contrary to the public interest and would be consistent with the spirit of the ordinance is to examine the applicable ordinance. As the provisions of the ordinance represent a declaration of public interest, any variance would in some measure be contrary thereto. Accordingly, to adjudge whether granting a variance is not contrary to the public interest and is consistent with the spirit of an ordinance, we must determine whether

to grant the variance would unduly and in a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives. Thus for a variance to be contrary to the public interest and inconsistent with the spirit of the ordinance, its grant must violate the ordinance's basic zoning objectives.

Harborside Assocs. v. Parade Residence Hotel, 162 N.H. 508, 514 (2011) (emphasis added).

First, the Nerbonnes' proposal fails to satisfy the "public interest" and "spirit of the ordinance" criteria because the Nerbonnes proposal is effectively a detached accessory dwelling unit ("ADU") masquerading as a "garden cottage." Under Section 10.815 of the Zoning Ordinance, a garden cottage is the conversion of an existing building to a dwelling use. By the terms of Section 10.830, a "garden cottage" is not intended to involve the expansion of an existing structure, except a garden cottage may involve the construction of a front entryway of not more than 50 square feet or a rear deck not to exceed 300 square feet. Under Section 10.830, the Planning Board can "modify a specific dimensional or parking standard," which means that the Planning Board can allow for a front entry way larger than 50 square feet or a rear deck larger than 300 square feet in limited circumstances. (Emphasis added.)

The ordinance was not intended to permit, however, an expansion of an outbuilding as part of a garden cottage to simply expand the enclosed living space – such as the case here where the proposed addition is intended to house a living room. As such, the applicant's requests for a variance to allow for an expansion of the enclosed space associated with the existing garage for a living room is contrary to the spirit of Section 10.830. The construction or expansion of existing structures is supposed to be considered in the context of detached ADUs, which involves stricter dimensional requirements than "garden cottages." This variance application, which seeks to circumvent the criteria associated with detached ADUs, therefore, is contrary to the spirit of the ordinance and contrary to the public interest.

The ZBA also erred because the Nerbonnes' application fails to satisfy the "public interest" and "spirit of the ordinance" criteria because the ZBA failed to give adequate consideration to the underlying purpose behind the Zoning Ordinance's dimensional requirements. As the Supreme Court held in Nine A, LLC v. Town of Chesterfield, 157 N.H. 361 (2008), zoning boards must consider the underlying purpose of dimensional restrictions in the zoning ordinance. In that case, the Supreme Court considered a variance application related to lot sizes, frontage, and building coverage near a lake. Nine-A, LLC, 157 N.H. at 362-63. The Supreme Court determined that the purposes of such requirements was to reduce density, overcrowding, traffic, and the ecological impacts associated with increased density, and that the ZBA properly considered these goals in determining that the "public interest" and "spirit of the ordinance" criteria were not met. Id. at 368-69; see also Biggs v. Sandwich, 124 N.H. 421, 425 (1984) (holding that denial of variance related to septic system was appropriate where setback existed to protect water quality).

Here, the City's Zoning Ordinance restrictions related to side setbacks and the expansion of pre-existing non-conforming structures exist to protect, preserve, and maintain existing access to adequate light and air amongst dwelling units. Those setbacks also exist to ensure that there is adequate privacy between dwelling structures and distance to mitigate the risk of fire. While the structures and residences in the South End are in close proximity to one another that is not a valid or adequate basis to determine that what space does exist may be intruded upon. Indeed, the residential structures in the South End predate the City's Zoning Ordinance by decades (if not centuries) and yet the Zoning Ordinance *still* designated this area as part of the General Residence B Zone and *still* imposed a 10-foot side setback limitation – clearly reflecting the intent that there should be a preservation of available space, air, and light in the South End. The conversion of the existing garage to a separate dwelling unit, the extension of that dwelling unit along the property line by 10' (resulting in a 30% increase in the square footage within the setback), is contrary to these basic zoning objectives.

This conclusion is further bolstered by the fact that the purpose of the GRB Zone is to provide for residential uses "at moderate to high densities (ranging from approximately 5 to 12 dwelling units per acre)." See Section 10.410 of the Zoning Ordinance. Presently, there are 13 individual dwelling units within the 1-acre area on Gates Street near the Nerbonne Property. The addition of an additional dwelling unit, which would be located in a detached structure immediately on the property line will exceed the intended density of the GRB Zone. The ZBA did not consider the underlying purpose and intent of the GRB Zone and this density parameter when granting the variance. However, considering that the grant of the variance would result in the establishment of a new dwelling unit on the property line is contrary to these underlying purposes for which the subject provisions of the zoning ordinance was intended to protect.

Lastly, the grant of the various related to setbacks and impervious cover is also contrary to the spirit of the zoning ordinance and the public interest because the proposed use will cause drainage issues on the Butler/Quinn Property. As discussed during the ZBA hearing, the Butler/Quinn Property already experiences drainage-related issues, which required Mr. Butler and Ms. Quinn to construct a French drain to mitigate those issues. The extension of the garage, which will include additional impervious cover within the setback, where the property slopes downward toward the Butler/Quinn Property, will exacerbate those drainage issues. During the hearing, members of the ZBA opined that the variance from the impervious cover requirement was only to allow a 1% exceedance, but that comment ignores the interrelation of the side setback variance and the impervious cover variance. A 1% impervious cover exceedance may be de minimis if the impervious cover is located in the center of a lot. However, when, as is the case here, that

additional impervious cover is located within the side setback, even a 1% exceedance can result in adverse impacts, and that is likely to happen here.²

For these reasons, the ZBA should grant this Request for Rehearing because the Nerbonnes is not capable of satisfying the “spirit of the ordinance” or the “public interest” criteria for the grant of a variance.

b. Substantial justice is not done by the grant of the variance.

The ZBA should grant this Request for Rehearing because the ZBA overlooked or misapprehended the fact that the substantial justice criteria cannot be met under these circumstances.

The Supreme Court has said that “the only guiding rule on this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” Harborside, 162 N.H. at 515. To apply the standard, it is necessary for the ZBA to determine whether the general public would realize an appreciable gain from the denial of the variance that outweighs the benefits that would be gained by the applicant by the issuance of the variance. Id. The Supreme Court has found the substantial justice criteria has been satisfied when a project is “appropriate for the area and does not harm its abutters, or the nearby wetlands,” because, under those circumstances, “the general public will realize no appreciable gain from denying the variance.” See Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 104 (2007).

Here, the denial of the Nerbonnes variance request would not result in a significant loss because the Nerbonnes have other viable alternatives for the construction of an additional dwelling unit on their property.³ The most obvious is that the Nerbonnes can make use of the existing footprint of their garage without the addition. The existing garage is identified as having a height of 22.5’ at its peak, which provides sufficient room for a loft area, which would open up room on the first floor of the garage for a living room, eat-in kitchen, and bathroom. The Nerbonnes can also consider making use of the existing primary dwelling on their property to house an attached ADU. The Nerbonne Property has 3,756 of gross living space, of which only 1,842 is designated

² While the Applicant agreed to install gutters with a dry-well or a rain garden on their property, the issue then becomes how the Applicant will be able to maintain that gutter system given the close proximity of the addition to the property line and the limited space to perform maintenance.

³ During the March 15, 2022 hearing, the Nerbonnes’ representative stated to the effect that this proposal is the “most feasible” plan. However, this is not accurate. Certainly, the most feasible plan – one that would not require any variance or modification relief from the Planning Board – would be to construct an attached ADU within the existing primary dwelling or to place the dwelling unit within the confines of the existing garage without expansion. A proposal that involves constructing a 60% expansion on a non-conforming structure, within an established setback, to accommodate a living room, is not what could be reasonably understood as “the most feasible plan.”

as living area; the Nerbonnes can seek to convert existing gross living space within their home to allow for caregivers. The Nerbonnes could also consider reconfiguring the sizeable deck to the property's rear to allow for additional space for an ADU. Ms. Quinn and Mr. Butler provide this non-exhaustive list to demonstrate that the Nerbonnes will not experience a significant loss in the denial of the variance.

To the contrary, however, Ms. Quinn and Mr. Butler will experience a significant loss as a result of the expansion of the pre-existing non-conforming structure within the side setback. As reflected above, Ms. Quinn and Mr. Butler will experience a considerable loss of access to air and light. During the hearing, members of the ZBA referenced that the 10' foot addition to the rear of the existing garage would not adversely impact Ms. Quinn and Mr. Butler's available air and light on their property. However, this statement ignores that, at present, there is approximately 44' in length of back yard on Ms. Quinn and Mr. Butler's property. The construction of a 10' long addition will create an impediment to access to air and light along approximately 25% of that backyard. Indeed, the photographs that Ms. Quinn and Mr. Butler submitted at the ZBA's hearing reflect the shadow caused by the existing garage; the expansion of that garage by an additional ten feet along the property line will all but ensure that the patio installed on the Butler/Quinn Property and a significant portion of Ms. Quinn and Mr. Butler's back yard will be denied access to light.

Lastly, the grant of the variance allows for the existing garage to be converted to a dwelling unit that will be in close proximity to the Ms. Quinn and Mr. Butler's residence. One of the benefits and adds to the value of Ms. Quinn and Mr. Butler's property is its distance from other dwelling units – a considerable benefit for a residence in the South End. The construction of another dwelling unit located approximately 10' of the Butler/Quinn Property will result in a loss of privacy and a reduction in the value of their property.

In short, substantial justice will not be done by the grant of the variance, and the ZBA should grant this Request for Rehearing. The Nerbonnes have other viable alternatives and will not experience a significant loss in the denial of this variance, whereas Ms. Quinn and Mr. Butler will retain the value of their property and the full use of their property by the denial of the variance. Additionally, the public will benefit from the denial of this variance as well. As the ZBA learned during the hearing on this application, residents in the South End are closely watching the ZBA's adjudication of this variance application, as other residents have similar proposals to the Nerbonnes. The grant of this variance will establish a precedent that allows for the considerable expansion and conversion of non-conforming structures in close proximity to other residences in a manner that may limit available open space and light, to the detriment of the character of the neighborhood.

- c. The value of Ms. Quinn and Mr. Butler's property will be diminished by this variance.

The ZBA should also grant this Request for Rehearing because the grant of the variance will diminish the value of Ms. Quinn and Mr. Butler's property. As reflected above, Ms. Quinn and Mr. Butler purchased this property in 2020 due to the unique and specific attributes of 199 Gates Street, namely its larger-than-average backyard and its open access to air and light. The grant of the variance, however, will adversely impact that access to light and air, will create a visual obstruction along a significant portion of the backyard, and will cause drainage issues on the property. Indeed, as Ms. Quinn stated during the ZBA hearing, had the garage addition existed at the time they were in the market for a home, they would not have purchased 199 Gates Street. This opinion is one that is shared by other real estate professionals in the community, as Ms. Quinn and Mr. Butler contacted professionals who opined that the Nerbonnes proposal was so unique for the neighborhood that it would be difficult just to ascertain comparables within the area.

The only evidence of property value submitted by the Nerbonnes was the lone statement by Ms. Whitney that the property values will not be impacted because the real estate market is "hot" right now. However, the test is not whether someone would pay an attractive price for the property. Rather, the test is whether someone would offer a lower price if the variance were granted. Based on the foregoing, the answer to that test is certainly yes. A willing buyer, duly motivated, would not pay the same price for 199 Gates Street after the construction of the Nerbonnes' addition that they would pay prior to the addition. The loss of access to air and light, the reduction in privacy, and the exacerbation of drainage related issues assures a diminution in property value for Ms. Quinn and Mr. Butler.

During the hearing, one member of the ZBA, looking at the pictures of the property taken from Point of Graves Burial Ground to opine that he "could not fathom" how the Nerbonnes' proposal would adversely impact property values. However, pictures from the vantage point of Point of Graves Burial Ground do not impart the close proximity of the existing garage, the property's access to air and light, and the change in topography between the Nerbonnes and the Butler/Quinn property that will cause the so-called garden cottage to loom over Ms. Quinn and Mr. Butler's property.

For the reasons set forth above, the ZBA should grant this request for rehearing because the grant of the variance will diminish the value of Mr. Butler and Ms. Quinn's property.

- d. No unnecessary hardship exists under these circumstances.

The ZBA should grant this Request for Rehearing because the Nerbonnes cannot satisfy the unnecessary hardship criteria set forth in RSA 674:33. the analysis of unnecessary hardship arises from the property itself, not from individual circumstances, as understandable as those

individual circumstances may be. Rather, an “unnecessary hardship” exists when “owing to special conditions of the property that distinguish it from other properties in the area (A) no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property and (B) the proposed use is a reasonable one.” If this standard cannot be met, the “unnecessary hardship” criteria can still be satisfied “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.” See RSA 674:33.

Stated simply, to satisfy the “unnecessary hardship” test, the ZBA must find that (1) there are special conditions on the property that distinguish from other properties in the area, (2) that, because of those special circumstances there is no fair and substantial relationship between the general public purposes of the ordinance provision and its application to the property, and (3) the proposed use is reasonable. None of these criteria can be satisfied here.

Here, there are no special conditions on the Nerbonne Property that distinguish it from other properties in the area. Lot sizes in the neighborhood range between .07 and .15 acres in size. The Nerbonnes’ Property is .12 acres in size. The parcels in the neighborhood are, like the Nerbonne Property, improved with residential dwelling structures that comprise of much of the available lot area. Most parcels within the neighborhood are regularly shaped, and so is the Nerbonne Property. The Nerbonne Property is not impacted by significant steep slopes or wetlands. In short, there are no “special conditions” on the Property. For this reason alone, this application is incapable of satisfying the “unnecessary hardship” criteria.

Ms. Whitney, speaking for the Nerbonnes implied that the “special condition” of the property was the existing garage located in close proximity to the property line. However, this does not distinguish the Nerbonne Property from other properties in the neighborhood. A review of the Tax Map for the South End immediately reflects that the garage’s proximity to the property line is not a distinguishing characteristic: numerous properties in the South End have garages and other outbuildings located in close proximity to the property line. The ZBA can review the Tax Map enclosed with this Request for Rehearing to confirm that the Nerbonne Property is not unique.

The Nerbonnes’ proposal also cannot satisfy the “fair and substantial relationship” prong of the “unnecessary hardship” criteria because there is a fair and substantial relationship between the purposes of the Zoning Ordinance for which a variance is sought and its application to the Nerbonne Property. As reflected above, side setback requirements are intended to control density, ensure adequate access to air and light, ensure safe distances between dwellings, and preserve privacy. The extension of the garage within the side setback as part of the conversion of the garage to a so-called “garden cottage” implicates each of these purposes. The variance will adversely impact privacy, reduce access to air and light, will place another dwelling unit within close proximity to an existing dwelling unit, and increase the neighborhood’s density in excess of what the Ordinance expressly intended for the GRB Zone.

Similarly, impervious cover provisions exist to ensure that is adequate open and pervious space on a property to allow for adequate management of runoff and stormwater. The placement of additional impervious cover within the side setback is contrary to these purposes, as it will cause

additional stormwater to flow onto the Bulter/Quinn Property, which is already experiencing drainage-related difficulties, without adequate pervious space to allow for the infiltration of runoff.

Lastly, the proposed use, while for a laudable and understandable purpose is not reasonable considering the fact that numerous alternatives exist that the Nerbonnes could pursue that would not require variance relief.

For these reasons, the Nerbonnes cannot satisfy the primary “unnecessary hardship” definition. For similar reasons, the Nerbonnes cannot satisfy the alternative “unnecessary hardship” definition, particularly where the Nerbonne Property is presently capable of being used in conformity with the Zoning Ordinance. The ZBA should grant this Request for Rehearing and determine that the unnecessary hardship criteria has not been satisfied.

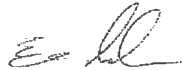
IV. CONCLUSION

The ZBA should grant this Request for Rehearing because the Nerbonnes application is incapable of satisfying the necessary criteria for a grant of a variance under RSA 674:33.

Ms.Quinn and Mr. Butler appreciate the ZBA’s time and consideration in advance.

Very truly yours,

DONAHUE, TUCKER & CIANDELLA, PLLC



Eric A. Maher, Esq.
emaher@dtclawyers.com

EAM/lmh
Enclosures
cc: Devan Quinn
James Butler

South End - Density Around 189 Gates Street



Property Information
Property ID 0103-0018-0000
Location 180 GATES ST
Owner ORLANDO FRED



**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

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

Geometry updated 3/9/2022
Data updated 3/9/2022

Print map scale is approximate.
Critical layout or measurement activities should not be done using this resource.

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DEPARTMENT
OF
REVENUE
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* of 199 Gates Street, Portsmouth, NH 03801

EASEMENT DEED

NOW COMES, M. Judy Nerbonne, Trustee and G. Patrick Nerbonne, Trustee of the M. Judy Nerbonne Revocable Trust, hereafter the "Grantors" of 189 Gates Street, Portsmouth, Rockingham County, New Hampshire, do hereby grant unto Joseph A. Capobianco, Jr., as Trustee of the Joseph A. Capobianco, Jr. Revocable Trust, and Judith A. Capobianco, as Trustee of the Judith A. Capobianco Revocable Trust, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge, the right and privilege to exclusive use of the limited portion of a parcel of land located at 189 Gates Street, Portsmouth, New Hampshire, Tax Map 103, Lot 6, the total lot being further described by deed recorded in the Rockingham County Registry of Deeds at Book 3107, Page 1856, executed on June 29, 1995. The easement area being further defined herein as follows:

A certain tract of land located northerly but not adjacent to Gates Street, Portsmouth, Rockingham County, New Hampshire, depicted as "Proposed Fence Easement in Favor of Tax Map 103 Lot 7" on a plan entitled "Standard Property Survey & Proposed Easement Plan for property at 199 Gates Street, Portsmouth, Rockingham County, New Hampshire owned by Joseph A. Capobianco, Jr. Revocable Trust & Judith A. Capobianco Revocable Trust", prepared by North Easterly Surveying, Inc., dated June 10, 2004, last revised June 18, 2009, which will be recorded in the Rockingham County Registry of Deeds contemporaneously with this easement, as Plan No. D-36016 and being more particularly described as follows:

Beginning at an iron rod at the northwesterly corner of land of said Capobianco Trust (Grantee), also being the northeasterly corner of land of the M. Judy Nerbonne Revocable Trust (Grantor); thence running S 08° 54' 46" W along land of said Grantee a distance of 45.37 feet to a point; thence running N 82° 07' 14" W through land of said Grantor a distance of 1.00 foot to a point; thence running N 07° 52' 46" E through land of said Grantor a distance of 45.53 feet to a point at land of the City of Portsmouth, Graves Burying Ground; thence running S 76° 59' 05" E along land of said City of Portsmouth a distance of 1.82 feet to the point of beginning, containing 64 square feet of land (hereinafter the "Proposed Fence Easement").

The purpose of the Proposed Fence Easement is to allow the Grantee exclusive use of the limited portion of the Grantors' lot for lawn, driveway or garden and to allow the Grantors and Grantees to jointly maintain, upgrade and replace the current wooden fence in its current location on that portion of the Proposed Fence Easement abutting the remainder of the Grantors Premises, with the understanding that the Grantee is contemporaneously granting an exclusive right to

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ROCKINGHAM COUNTY
REGISTRY OF DEEDS

Grantor by separate easement deed for the Grantor to have exclusive use of the area shown on the Plan and titled "Proposed Driveway Easement."

Meaning and intending to describe an easement over the within the described land of Grantor for the purposes described above for the benefit of the property of Grantee identified as Portsmouth Tax Map 103, Lot 7 as shown on the above referenced plan. Said Grantee property further described by deed recorded in the Rockingham County Registry of Deeds at Book 3107, Page 1856.

The easements, rights, and privileges granted by this instrument are perpetual and shall run with the land and are for the benefit of the within described Grantee.

The use of this easement shall be limited to the benefited property and may not be expanded.

IN WITNESS WHEREOF, M. Judy Nerbonne, Trustee and G. Patrick Nerbonne, Trustee of the M. Judy Nerbonne Revocable Trust, have caused this Easement Deed to be executed this 28th day of July, 2009.

M. Judy Nerbonne Revocable Trust

By: M. Judy Nerbonne
M. Judy Nerbonne

M. Judy Nerbonne Revocable Trust,

By: G. Patrick Nerbonne
G. Patrick Nerbonne

STATE OF NEW HAMPSHIRE
COUNTY OF Rockingham

On this the 28th day of July, 2009 before me, the undersigned officer, personally appeared M. Judy Nerbonne, who acknowledged himself to be the Trustee of the M. Judy Nerbonne Revocable Trust, and acknowledged that she, as such officer, being authorized so to do, executed the same on behalf of said Trust for the purposes therein contained.

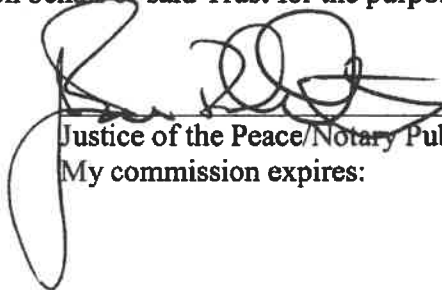
[Signature]
Justice of the Peace/Notary Public
My commission expires:



STATE OF NEW HAMPSHIRE

COUNTY OF Rockingham

On this the 28th day of July, 2009 before me, the undersigned officer, personally appeared G. Patrick Nerbonne, who acknowledged himself to be the Trustee of M. Judy Nerbonne Revocable Trust, and acknowledged that he, as such officer, being authorized so to do, executed the same on behalf of said Trust for the purposes therein contained.


Justice of the Peace/Notary Public
My commission expires:

