

KEANE & MACDONALD

A PROFESSIONAL CORPORATION • ATTORNEYS AT LAW

September 21, 2021

BY HAND & EMAIL

Peter Stith, Principal Planner
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

RE: Objection to Application for 449 Court Street (Tax Map 105/Lot 6)
Submitted by Mary H. and Ronald R. Pressman (the "Application")

Dear Mr. Stith & Zoning Board Members:

Please be advised that Keane & Macdonald, PC has been engaged by Russell & Sprague, LLC relative to the above referenced Application to be heard by the Zoning Board of Adjustment at its meeting on September 21, 2021. Russell & Sprague, LLC is a direct abutter to the property at 449 Court Street because it owns the property located at 58 State Street (including units #1E, #1W, #2 & #3). Based on the information provided in the Application, the Application fails to satisfy the criteria for a granting variance and should be denied.

The property at 449 Court Street ("the Pressman Property") was purchased by Mary H. and Ronald R. Pressman (the "Applicants") on or about July 8, 2019. To the best of our knowledge the existing conditions of the Pressman Property are as described in the Application.

Russell & Sprague, LLC purchased its property at 58 State Street (the "R&S Property") on or about October 1, 2020. The R&S property consists of 1st floor commercial space, 2nd floor residential space, and a combined 3rd and 4th floor which is also residential space. The residential floors all have windows as well as outdoor porches or patios facing the Pressman Property. The 2nd floor space is rented to a tenant. The owners of the R&S Property, who are husband and wife, reside in the residence occupying the 3rd and 4th floor. The top floor of the R&S Property has a rear porch that overlooks the roof of the Pressman Property where the Applicant proposes to increase the height of the roof to accommodate an addition. Furthermore, the top floor also contains the master bedroom and a second bedroom, both which have windows that overlook the area of the roof where the Applicant proposes the construction of a deck. The third floor accommodates the kitchen and living space, both with windows facing Court Street. All of these rooms are south facing and benefit from the light coming from the Court Street side of R&S Property. Included with this letter are photos labeled RS#1 and RS#2 which provide the current views from the R&S Property of the areas that will be most impacted by the proposed addition. Also attached as RS#3 is a depiction of the impact that the increase in height will have relative to the R&S Property.

In addition to said photos, enclosed herewith is a letter from Ruth Neidhardt, a real estate broker with Sotheby's International Realty, indicating that the proposed addition at the Pressman Property, if constructed will negatively affect the current value of the R&S Property.

It is noteworthy that although the proposed addition set forth in the Application would clearly impact the R&S Property, the Applicants did not contact my clients to discuss the proposed project or its impact on the R&S Property.

As you are aware, there are five criteria that must be satisfied in order for the Zoning Board of Adjustment to grant relief from the zoning ordinance. As outlined below, the Application fails to satisfy any of the said criteria and therefore the Applicants' request for relief should be denied.

Public Interest & Spirit of the Ordinance.

The Application is contrary to the public interest because the relief requested is unnecessary for the Applicants to continue to reasonably use and enjoy the residential property in the same manner as was available in July 2019 when they purchased the Pressman Property. As noted below, there is no actual legal hardship encountered by the Pressman Property because the property can still be used as a residence even without making a zoning exception to allow for expansion.

It is important to note that while the Application suggests the height increase in only 3 feet from the peak, that measurement ignores the significant massing effect that results from the significant increase in height from the gutter to the peak. As shown in the attachments RS#1 and RS #3 the massing would completely block air, light and view from the patio of the R&S Property and it would also impact the other rear-facing residential living spaces at the R&S Property. In addition to the height increase moving the chimney closer to the R&S Property would further increase the massing. Enclosed as RS#3 are plan depictions appearing in a format where the massing impact can be assessed, and as shown the project would result in a significant structure that would block light and air from flowing to the R&S Property.

The Application addresses the brick wall on one side of the Pressman Property and trees on the other but fails to address or consider the impact on the R&S Property. The Application also fails to note that the trees are deciduous and will not provide cover or screening when the leaves are gone, approximately 6 months of the year.

The Application fails to satisfy the first two criteria for approval.

Diminution of Value of Surrounding Property.

As noted above the enclosed letter from a Sotheby's realtor highlights the negative impact on the value of the R&S Property that would occur if the Application is approved. My clients recently purchased the R&S Property and a consideration supporting the purchase was the view from the windows, porches and patios facing Court Street. The attached pictures and plan comparison demonstrate the significant impact that the proposed construction will have on the R&S Property. The heightened roofline will block air and light, as well as impact views. The

deck location will remove a certain element of privacy as those on the deck will have views directly into the R&S Property which do not exist today, especially when the trees are bare (See RS#2). There is no question that the approval of the Application will negatively impact the value of my client's property.

The Application fails to satisfy the value criteria for approval.

Unnecessary Hardship.

The Application fails to articulate how the Pressman Property creates a hardship that is not self-created by the Applicant. As stated in the case Garrison v. Town of Henniker, "The burden must 'arise from the property and not from the individual plight of the landowner'...." (907 A.2d 948, 952, 154 N.H. 26 (2006)). The condition of the Pressman Property remains as it did when the Applicants purchased it in 2019 and therefore a finding of "special conditions" would be unsupported. The zoning ordinance imposes no special or unique burden on the Pressman Property that interferes with the Applicants' reasonable use of the property. Full compliance with the zoning ordinance is possible and allows for the reasonable use of the property.

As noted in the Application, height restrictions "exist to maintain adequate air and light for abutting properties". The proposed addition will significantly reduce the air and light flowing through to the R&S Property. This section of the Application again mentions the tree cover, which again will not exist for at least half of each year.

The Application fails to satisfy the hardship criteria for approval.

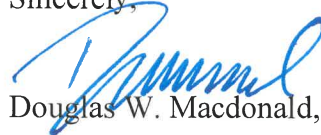
Substantial Justice.

Granting the Application would result in allowing the interests of the Applicants to be served to the detriment of my client. Both parties recently purchased their respective properties with the knowledge of their use, size, layouts and configuration. The act of denying the requested relief relative to the proposed addition is not an unreasonable exercise of power by the City, but rather a legitimate exercise of its adherence to the City's Zoning Ordinance. Granting the variance would result in harm to my clients and therefore be unjust to my clients.

The Application fails to satisfy the substantial justice criteria for approval.

In light of the above my clients respectfully request that the Application be denied.

Sincerely,



Douglas W. Macdonald, Esq.

C: Client
R. Timothy Phoenix, Esq., Counsel for the Applicant







Four
Seasons

Sotheby's
INTERNATIONAL REALTY

3 Main Street, PO Box 1158
Meredith, NH 03253
t 603.677.7012
f 603.677.7036
FourSeasonsSIR.com

Dear Mr. and Mrs. Sabanek,

Having worked with you to acquire your property at 58 State Street, I'm well aware of the uniqueness and desirability of the property. I have reviewed the proposal of the Pressman's located at 449 Court Street. I also reviewed the visuals that you provided showing the current roofline as seen from your deck.

In my opinion the blocked view would not only be an eyesore to those on the deck, it will create a confining atmosphere and will negatively affect the current value of the property. As you are very aware aesthetics are extremely important especially in a property of this value and location.

The Pressman's proposal would certainly not enhance your property and I truly believe it will be a detriment to it. With your substantial investment not only financially but also as a commitment to the area the Pressman's proposal is not positive for you in any way.

Yours truly,

Ruth Neidhardt

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Ruth Neidhardt Associate Broker 2012 Realtor of the Year
2014 President Lakes Region Board of Realtors Four Seasons | Sotheby's International Realty
3 Main St Meredith, NH 03253 c 603.455.0176 | t 603.677.7012

From: [Joe Famularo](#)
To: [Planning Info](#); [Peter L. Britz](#)
Cc: [Kathy Famularo](#)
Subject: 53 Green Street Approval - Appeal of Planning Board Decision to the ZBA
Date: Monday, September 27, 2021 9:17:28 PM

Dear Portsmouth ZBA,

My name is Joe Famularo. My home at 141 Mill Pond Way is directly on the shore of the North Mill Pond. Although I am not considered an abutter to 53 Green Street, I should have been. All homeowners directly on the North Mill Pond should have been.

If development at 53 Green Street is allowed to encroach into the wetlands buffer, it will have an adverse effect on the North Mill Pond. Thus, an adverse effect on my property.

I would have attended the July 15, 2021 Planning Board Meeting to voice my concerns, but like many others on the pond I did not receive notice.

I do not oppose development. I DO OPPOSE development in the wetlands buffer anywhere on the North Mill Pond when reasonable alternatives are available, as is the case with 53 Green Street.

Thank you for your consideration.

Respectfully,

Joe Famularo
141 Mill Pond Way Unit 3, Portsmouth, NH 03801

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Joe Famularo
Portsmouth, NH

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From: [Kimberli Kienia](#)
To: [Kimberli Kienia](#)
Subject: FW: 53 Green st
Date: Tuesday, September 28, 2021 8:40:35 AM

----- Forwarded message -----

From: **Philippe Favet via FormMail.com** <fp1_fm192@formmail.com>
Date: Mon, Sep 20, 2021, 12:24 PM
Subject: 53 Green st
To: Mayor Becksted <MayorBecksted@gmail.com>, CC - Splaine <asstmayorjimsplaine@gmail.com>, cc McEachern <Deaglan.McEachern@gmail.com>, CC-Peter Whelan <pawhelan@comcast.net>, CC - Cliff Lazenby <LazenbyforPortsmouth@gmail.com>, CC - Kennedy <estherkennedyportsmouth@gmail.com>, CC - Huda <pahuda384@gmail.com>, CC-John Tabor <johntaborportsmouth@gmail.com>, CC-Paige Trace <paigetraceportsmouth@gmail.com>, Copy Sent to City Email Folder <ccemail@cityofportsmouth.com>, Karen Conard <kconard@cityofportsmouth.com>, Clerk - Council Emails <ccclerk@cityofportsmouth.com>

Below is the result of your feedback form. It was submitted by
Philippe Favet (philfavet@yahoo.com) on Monday, September 20, 2021 at 11:24:31

address: 152C Dennett st

comments: Hello City Councilors! I'm writing this letter to let you know that I'm in disagreement with the 53 Green st project which include building in the NMP 100' buffer zone . The City established a zoning law for the reason to protect the NMP ecosystem , I don't see no reasons for that law to be broken .The NMP has been my home for 40 years and home to a multitude of birds species and other specimens that formed an ecosystem . I have seen many changes since i settled on its banks ,some good and some bad .The next future developments are not fitting in at all and will kill overtime the ecosystem that many concerned abutters and residents have work hard to preserve. If the developers want some incentives to build ,may i suggest to them to start cleaning and restore the shores and respect the 100' buffer zone .Save the NMP. Philippe Favet

includeInRecords: on

Engage: Submit

REMOTE_ADDR: 70.16.109.105

From: [Abigail Gindele](#)
To: [Planning Info](#)
Subject: For the ZBA (Zoning Board of Adjustment) Re: 53 Green St
Date: Monday, August 9, 2021 8:37:38 PM

Dear Board Members,

The Planning Board and Conservation Commission continue to disregard and disrespect NH law of wetlands protections and our City's own stipulations of Conditional Use Permits regarding wetlands setbacks, as well as City directives regarding protection of existing shorelines. These two boards continue to side with the short-term financial gain of a few individuals. They repeatedly ignore their responsibility to act on behalf of the majority of Portsmouth citizens and the long-term well being of Portsmouth's irreplaceable features that not only give this city its soul, but are key for sea level rise and water displacement mitigation.

Of the six elements the CUP must meet, the 53 Green St Proposal does not meet a single one:

1) The land is reasonably suited to the use, activity or alteration.

This project will tower over the area, crushing the shoreline with its architecture and making even more ground impervious thus worsening run-off, water table issues, and pollution. This entrance to the North Mill Pond is inside the 100 ft buffer and is suited for wildlife habitat and the protection of the flora and fauna that call North Mill Pond home. It is not suited to be destroyed by development.

2) There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.

There is plenty of room outside the 100 foot wetland buffer to construct this project. There is absolutely no reason this entire project cannot be constructed upland of the 100 ft wetlands buffer.

3) There will be no adverse impact on the wetland functional values of the site or surrounding properties.

This project will devastate the site and the surrounding areas. It will dwarf most things around it,... except for those recently ruined sections where height restrictions were waved for newly constructed behemoths. There will be a massively adverse impact to wetland functional values ranging from habitat destruction to huge increases in stormwater and toxin runoff.

4) Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.

This project's construction goals can easily be achieved by building the entire project upland of the 100 ft wetlands buffer. There is no need to alter the natural vegetative state at all. If the law is ignored and construction is allowed within the 100 ft buffer, the whole buffer will be destroyed. Have you not noticed the devastating reality of any local commercial construction sites?

5) The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.

The proposal with the least adverse wetlands impacts has not been presented. This project does not need a CUP because it can be constructed entirely outside the 100 ft wetlands buffer.

6) Any area within the vegetation buffer strip will be returned to a natural state to the extent feasible.

Since there is no reason this project needs to be constructed inside the 100 ft buffer, the existing vegetative does not need to be disturbed, and therefore no restoration required. But if the law is flouted and development is allowed in the 100 ft buffer, the history of the parties involved in this development does not bode well for the land to be left in or returned to any kind of natural state.

Please do not let the environmental protections we need for our City's soul and climate-crisis protection be pushed aside for some developers' new design to fill their pockets.

With hope,

Abigail Gindele
229 Clinton St
Portsmouth, NH

From: [Beth Jefferson](#)
To: [Planning Info](#)
Cc: bethpjefferson@aol.com; [Duncan Maccallum](#)
Subject: 53 Green Street Development Appeal
Date: Sunday, September 26, 2021 10:16:49 AM

As a concerned 20- year Portsmouth resident who lives on Sparhawk Street, in the Christian Shore neighborhood, I am writing to request your re-consideration regarding the large-scale housing project called 53 Green Street that recently received an exception to a very important rule that has governed the North Mill Pond area for many years.

Many who have lived in this area of the city for many years have served as custodians of the mill pond and worked hard to help improve the health of the pond and the surrounding banks, vegetation and wildlife. Many of us belong to a community non-profit called Advocates for the North Mill Pond, and have invested our time and money in preserving and stewarding our beautiful but fragile pond. We respect the rules that have been established and adhere to the protective standards. We hold our neighbors to these standards if we see non-compliance.

We ask that all who develop here comply with the laws and standards by which we comply. Portsmouth's rapid development and developers are not justification for overlooking the protections that keep our pond healthy and our community intact.

Many developers are investing in Portsmouth, some without regard for the aesthetic, historical and environmental balance that we need to preserve the spirit and commitment of the city during such a growth period. Asking the developer to reduce footprint and comply with our standards should not be overlooked as the city oversees this development.

Please consider our appeal – The development that is proposed will definitely be an improvement for the area, but compliance to the buffer zones on the pond should not be considered an unreasonable challenge. The developers will find a way to comply as long as we adhere to the boundaries that have been established.

Sincerely,

Beth Jefferson
111 Sparhawk Street
Portsmouth, NH

Izak Gilbo

From: April Weeks <aprilweeks412@gmail.com>
Sent: Monday, September 20, 2021 9:53 AM
To: Planning Info
Subject: 53 Green Street

To the Zoning Board:

I am appealing yet another decision of the Planning Board regarding their approval of the 53 Green Street project, and am yet again appalled at their decision to:

- 1) Build a footprint that exceeds zoning requirements
- 2) Fail to satisfy Wetlands Conditional Use Permits Criteria, as they did with 105 Bartlett St
- 3) Violate height zoning requirements

Many citizens of Portsmouth were aghast at the frankly questionable behavior of the Planning Board recently. Not only have they displayed a pattern of rapacious and seemingly opportunistic behavior, but they are also going after the fragile ecological health of our wetlands.

So I add a question to the Planning Board: what is your motivation? Because it's clearly not the well-being of Portsmouth's citizens and indigenous wildlife.

April Weeks
804 South Street
Portsmouth, NH

Sent from my iPad