

From: [Paul Messier](#)
To: [Planning Info](#)
Subject: 27 Shaw
Date: Sunday, January 9, 2022 10:09:55 AM

Fully support the proposal as described.

From: [Sarah Cornell](#)
To: [Planning Info](#)
Subject: 77 Meredith Way - January 27th meeting
Date: Wednesday, January 26, 2022 5:51:38 PM

Dear Planning Board members,

While we are not opposed to the unmerging of the lot at 77 Meredith Way, we are opposed to the resulting development of the property. Without consideration of existing drainage issues, any development of the lot at 77 Meredith Way will damage our property at 275 Thornton Street.

In a letter to abutters postmarked January 18th, the owners stated that, once their lot is unmerged, they intend to develop the second lot and replace the existing house. The City should require significant drainage management measures for any construction at 77 Meredith Way due to the removal of dozens of trees and doubling of impermeable surfaces on the lot.

Our property at 275 Thornton Street includes the lowest point in the block bounded by Bartlett, Thornton, Stark, and Pine Streets. It has historically been a wet area, attested to by the long-term owner of 255 Thornton and other long-term residents. We have been told that before the property at 55 Pine Street was built in 2012, both 255 Thornton and 275 Thornton would often have shallow standing water close to the boundary with 55 Pine and 77 Meredith Way during spring thaws. We accept this as typical vernal pool behavior.

Following the building of the house at 55 Pine in 2012 (which included raising the ground level on that property by 2 feet) and the subsequent addition in 2019, the water began to pool at 255 and 275 Thornton more and more often. Where neighbors reported high water reaching our basements perhaps once in decades, we have now had high water up to 2 feet deep and reaching our basements twice in 2 years. (December 14, 2019 and October 31, 2021.) The water now often covers a quarter of the two lots despite mitigation efforts including a sump pump in the rear of our lot which runs about 4 months out of the year.

Today, January 26, the wooded portion of the lot at 77 Meredith Way was cleared. I'm sure I don't need to point out that the significant reduction in tree cover is already a threat to the amount and safety of runoff in the Creek neighborhood:
<https://www.epa.gov/soakuptherain/soak-rain-trees-help-reduce-runoff>.

We ask that the City prioritize water management in the Bartlett-Thornton-Stark-Pine block. No development should further damage our property. Again, the City should require significant drainage management measures for any development at 77 Meredith Way because of the removal of dozens of trees and doubling of impermeable surfaces on the lot.

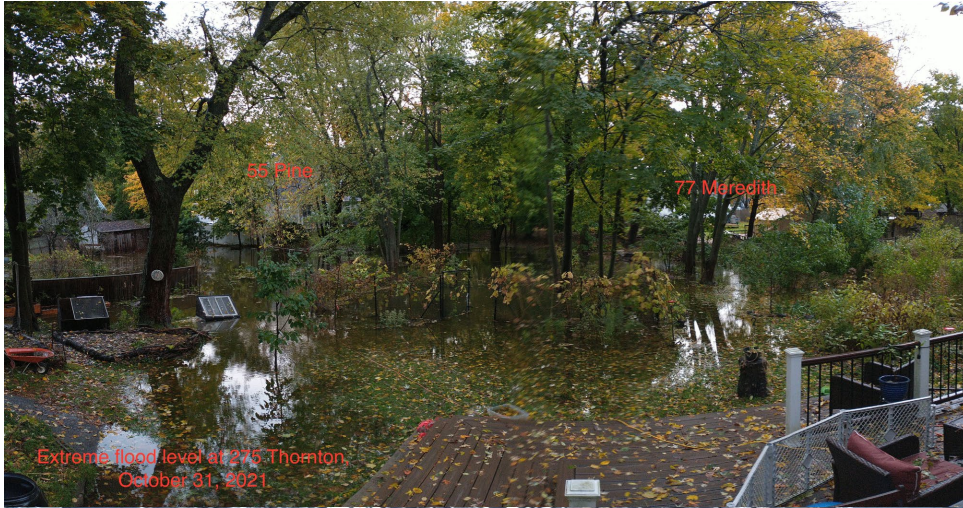
I have attached photos which demonstrate typical and extreme water levels.

Thank you for your consideration.

Sincerely,

Sarah Cornell
Susan Curry

owners, 275 Thornton Street





77 Meredith

Extreme flood level (reaching basement) at
275 Thornton
December 14, 2019



55 Pine

Extreme flood level at 275 Thornton
December 14, 2019



January 23, 2022

Peter Britz, Interim Planning Director
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

Re: Application of Randi Collins (Owner), for the restoration of involuntarily merged lots at 77 Meredith Way to their pre-merger status

Dear Director Britz and Members of the Planning Board,

My name is Karen Dufour and I am writing in response to the above referenced application. I understand the public hearing will be held on 1/27/22 and I would respectfully ask that these written comments and attachments become part of the record.

I am the former owner of 77 Meredith Way, the property in question. I bought it in 1992 and lived there for 29 years until selling it to my neighbors Jeff and Randi Collins in May 2021. Please consider the following comments, facts and questions when deliberating on the Collins's application to 'unmerge' this property.

- 1) Please see my 3/28/21 memo written to the City (Attachment A). After writing it, I had a phone call with a City Hall employee as I was asking if I could have this memo entered into the property file for 77 Meredith Way. The document outlines my reasons for making this request. The staff person repeatedly stated that I could not file anything in the property file. She explained that the file belonged to the City of Portsmouth and only City staff could file anything in it. I felt strongly that my explanation/appeal needed to become part of the file and I persisted in trying to get that done. I asked 6-7 different times and she responded as many different times that No, I could not enter my document into the property file. It remains saved on my computer which is how I was able to attach it to these comments.
- 2) While my memo did not reference a statute I knew nothing about and while I did not employ the terms 'merge' or 'un-merge,' it is clear that my intent was to appeal to any future owners to not subdivide the property and to keep the .52-acre parcel whole. Therefore, it is also clear that I regarded the property as a merged, entire parcel of land.

3) Per RSA 674:39-aa, if any previous owner voluntarily merged their lot, or exhibited any action or conduct to indicate that they regarded said lot to be merged, an application for un-merger cannot be granted.

I offer the following as proof that I most definitely considered the lot to be merged:

- I was the owner in 1994 when the City allegedly (per the Collins application) merged the historic 2 (or 3?) lots. I was never notified of said merger and never informed of a right to request that it remain merged or become un-merged. As a matter of fact, I never learned of any of this until I was informed about the Collins's application and I read the attorney-prepared 53-page application on the Planning Board website.
- The memo I requested be added to the property file asking that the lot be kept whole is documented proof of my belief that it was one lot – i.e., “merged” - and my desire to see it remain as such.
- The giant Linden tree I planted in the middle of the lot 28 years ago is an overt action proving that I viewed the .52-acre parcel to be one merged lot. If I had viewed the lot as 2 or 3 distinct parcels, I certainly would not have planted a tree in the middle of land that was not mine.
- After I learned from and reflected on the experience of the first purchase and sale offer and chose to not go forward with it (per the 3/28/21 memo), I stipulated to my realtor that I would not sell to any future buyers who were interested in subdividing the property. Such overt conduct or action is further proof that I regarded this lot as a merged lot of land and wanted to keep it as such.
- For 29 years, I voluntarily paid taxes on an appraised, assessed, deeded .52-acre of land.

Given that the property underwent at least four and possibly 5 title searches during my tenure and given that every single deed indicated it was a .52-acre parcel of land, can someone explain to me how a tax map could possibly trump a legal deed? And if it can, then why wouldn't a title search incorporate historical tax maps if they can indeed define and/or change the legal definition and boundaries of a property?

The Collins's application raises many questions. Given the changing tax records over the years, we do not know if this was intended to be one parcel, two parcels or three. We do know that the 'genealogy' of the property done by my mother and gifted to me shows that going back to 1857, every deed noted the half-acre or .52-acre parcel of land. With this book of history, my mother also included a copy of the historic map of "Elm Place," a proposed development which did indeed show the possibility of three parcels which became one. I not only accepted the merged property, I was pleased that it had remained undeveloped as a half-acre of green, natural space.

I can attest to the fact that for my 29 years at 77 Meredith Way, the property was owned, regarded, tended, title searched and taxed as one .52-acre parcel of land. Therefore, this owner has demonstrated by numerous overt actions and conduct that it was indeed voluntarily merged.

If the Collins had respected my stated commitment to only sell my property to someone who would keep it whole, the Planning Board would not even need to decide on this matter. I was very clear that I would only sell to someone who would not only see but preserve the positive aspects of this unique parcel of land. Both my realtor and I clearly stated this to Jeff and Randi Collins after they expressed interest in purchasing the property. Jeff stated to me, "We have no plans to subdivide the property." In a 2/11/21 email to my realtor Jeff Collins stated, "We have no plan to sub divide the lot and we plan to live in the house" (Attachment B). It was only because the Collins made both verbal and written declarations to uphold my request on no subdivision that I agreed to sell them my property.

It is my sincere hope that the Planning Board will estop this application and allow this very unique half-acre lot to remain merged and whole for generations to come.

Thank you for your time and consideration,

Karen L. Dufour

Karen Dufour

To: City of Portsmouth

From: Karen Dufour, current owner RD

Date: March 28, 2021

Re: 77 Meredith Way (Tax Map U-62/ Lot 16)

I have lived at this address for the past 29 years. I am in the process of selling the property as I hope to move to a more pastoral setting. I have witnessed many changes in this town and at this point, Portsmouth has gotten too big for me.

This property includes an antique house (built in 1857, per a genealogy done by my Mom even though City records show it to have been built in 1875) sitting on a square, half-acre (.52) lot with a wooded perimeter around three sides. When the foliage leafs out, it is secluded and green. A welcome bit of nature in the middle of a fast-growing city which seems to be currently in the process of developing every square inch of land. This unusually large lot sits in the middle of the first planned workforce housing neighborhood in the city, fondly known as The Creek. This lot is a haven for the cottontail bunnies, hawks, owls, foxes, deer, possums, woodchucks and (perhaps way too many) squirrels who share this bit of land.

In this file, one will find a 2020 petition to the Zoning Board to request permission to subdivide the property. This petition is under my name as I was the owner at the time. The petition was actually submitted by a potential buyer who wanted to put his in-laws in my antique house and then build his own family home on the other side of the lot. I agreed to the petition, in principle. However, once I read the plan and realized the devastation that would occur in subdividing the land, I terminated the deal at the first legal opportunity to do so. Subdivision would totally destroy everything that is positive about this unique piece of property.

I fully realize that once I sell, I will have no say over what a future owner might do the land or the house. I realize that this note in the file may or may not be read, let alone carry any influence or impact. But being a person who prefers to err on the side of commission rather than omission, I feel compelled to put this personal note in the property file in case any future owner considering subdivision might be persuaded to think twice.

It is my hope that this half-acre of greenery will remain intact for many future generations of people and animals. Please, preserve it.

Karen L. Dufour

From: [Luanne Burt](#)
To: [Dufour Karen](#)
Subject: Jeff
Date: Monday, February 15, 2021 6:10:07 PM

email from Jeff;

"Hi Luanne

So we are considering an offer for 77 Meredith. We have no plan to sub divide the lot and we plan to live in the house. Not sure how to proceed here. If we make an offer, there will undoubtedly a counter.

Or you could simply give us the bottom line then we could decide if that's acceptable or return with our best offer.

What do you think ?"

I will give you a call just finishing something up
Luanne

--



Luanne Burt
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Exeter, NH 03833
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[NH Brokerage Relationship Form](#)

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January 27, 2022

Planning Board
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

Re: Application of Randi Collins (Owner), for the restoration of involuntarily merged lots at 77 Meredith Way to their pre-merger status

Dear Portsmouth Planning Board,

My name is David Chapnick, I am the immediately adjacent neighbor abutting Jeff and Randi Collin, at 97 Meredith Way. I have lived here with my family and three children since 2011. My letter is not to about the impact to the neighborhood if this were to go through, which I believe would be significant. That said, I do believe there are significant issues with the application itself and the legal precedents upon which it depends, as this particular property does not meet the requirements for unmerger under RSA 674:39-aa as:

1. There is a lack of evidence that any owner previously viewed the property as multiple lots.
2. Jeff and Randi are estopped from claiming anything other than a single tract.

Lack of Evidence that Any Owner Viewed Property as Multiple Lots

Unlike in *Roberts v. Windham*, in this case the deeds to 77 Meredith Way going back to the 1800s have stated consistently that this is one lot .52 acres in size. In order to unmerge, somewhere in history there would be a deed showing this to be multiple lots, that the city subsequently merged. There is no such deed to 77 Meredith which describes the property as more than one lot. 77 Meredith was always one lot, taxed as one lot, assessed as one lot, and if it was always one lot, it cannot be unmerged as 674:39-aa Restoration of Involuntarily Merged Lots does not then apply.

What my neighbors are relying upon in their application appear to be on tax maps and a “Plan for Elm Place” This is flawed for two reasons:

- a. These maps and plans were not generated or endorsed by any of their predecessors-in-title, but instead appear to have been created by a municipal agency; and,
- b. The Plan for Elm Place describes each adjacent and rear-abutting lot as being 50ft by 150ft. This may be arbitrary anecdotal evidence of how it was surveyed, but does not indicate anything more. It certainly doesn't show that it was legally 3 lots at one time.

Maps and plans are generated and endorsed by others and today we have no idea why those particular maps from the 1800s show it as three separate lots. It was seemingly done by a municipality, not by survey, and there is no reference in any deed to lots 1,2, or 3. In *Roberts v. Windham* there was reference to all of the lots in the deeds that that the selectboard in that case unmerged to the property in question. This key fact should weigh heavily in the consideration by the planning board. There is no evidence that any owner of 77 Meredith in history viewed it in any way other than one tract of land. The existence of these old maps serve as nothing more than anecdotal evidence of how this block was surveyed at some point long ago.

Petitioners Are Estopped from Claiming Anything Other Than Single Tract

RSA 674:39-aa provides a right for an owner of an involuntarily merged lot to petition to the local body to unmerge the lots. This statute specifically identified 9/18/2010 as the date the right to petition for such relief became effective. Karen Dufour, who owned the property for the past 29 years before selling to Jeff and Randi, was the owner who had this right starting on 9/18/10, and is therefore defined as **the person or entity** who holds title, regardless of whether **such person or entity** held title at time of an involuntary merger. At the time, and until she sold the property, Karen did not take advantage of this statutorily created right to seek unmerger. Her failure to do that, due to her belief that 77 Meredith Way was one lot, should constitute adequate grounds to consider the property voluntarily merged.

Karen's treatment of the lot as one on a daily basis, combined with her inaction, and failure to petition prior to selling the property constitutes overt action and conduct of an owner believing the lot to be merged. That constitutes voluntary merger.

Therefore the fact that Jeff and Randi took title in May of 2021, knowing that their predecessor could have sought this relief, and did not, meant they too accepted this lot as merged as a consequence. Jeff and Randi had the opportunity to insist on the condition of sale that Karen file the petition and that they would prosecute it on her behalf. They could have insisted that the deed describe the lot in a different manner, composed of three lots, which they did not do, but viewed and accepted the deed as one. They also indicated themselves that they had no intention to subdivide the lot, itself an indication that they also viewed and accepted the lot as one. Both of these facts further prevent Jeff and Randi as the new owners of 77 Meredith Way from seeking unmerger.

The facts are that they are seeking an unmerger based on a superfluous argument due to the significant challenge they will face in subdividing the lot through a more traditional means. Their lot is non conforming, and lacks any road frontage. This application to unmerge is a "Hail Mary" pass, based on questionable maps from nearly 200 years ago.

The conveyance of deeds is not like opening a box of Lucky Charms. This isn't like a kid reaching to the bottom to see what toy they got. The law is very clear with respect to unmerging a lot. If the deed indicated the lot was at one time merged or separate lots it may qualify for unmerger, if the deeds do not show it to be multiple lots it would not qualify. In this case going back to the mid-1800s the deeds all show it to be one lot. Furthermore, every owner who has owned the property going back to then viewed, used, and accepted the property as one lot, including Karen Dufour, the previous owner who had accepted the lot as one. Given these factors, in this case, 77 Meredith does not qualify for unmerger. The subdivision maps they are relying upon have never been utilized in the decision of such cases, Roberts v. Windham included. Given these factors, 77 Meredith does not meet the requirements or standards for unmerger.

Respectfully,

David Chapnick
97 Meredith Way
Portsmouth NH 03801
(617)953-6677

From: [Kendra Ford](#)
To: [Planning Info](#)
Subject: regarding the petition to subdivide 77 Meredith Way
Date: Thursday, January 27, 2022 12:54:57 PM

27 January 2022

Dear Planning Board of Portsmouth,

Thank you for all the work you do tending our town and trying up hold the common good.

I am writing to object to the request for the lot on 77 Meredith Way to be split up and made available for development. The Pine Street park that sits between Pine Street and Meredith Way is a resource for the entire neighborhood and visitors to the hotels by the traffic circle. Adding housing on Meredith Way would increase traffic around the park and that would be detrimental to the many children and families who frequent the park.

The flooding situation behind and next to the lot is impressive. The neighboring lot floods regularly and by floods I mean deep enough to float a canoe. Taking out trees (which they are doing today which seems ill advised in a number of ways) and adding foundations will not go well for the existing areas of flooding, for existing basements or for any additional homes.

And then there is the matter of the deed for the property being for a single lot and this claim being made based on a map from well over a hundred years ago.

I appreciate your time and attention and I hope that the well being of the neighborhood will be put first.

Sincerely yours, Kendra Ford 30 Pine St. Portsmouth NH 03801

From: [Eva Marino](#)
To: [Planning Info](#)
Subject: Meredith Way unmerging of lot
Date: Wednesday, January 26, 2022 1:26:41 PM

Hi there,

My name is Eva Marino, and I reside at 114 Pine St, Portsmouth, NH 03801, with my husband Daniel and my two children, Noah and Zoe. I have become aware of a petition to unmerge the lot at the end of Meredith way when I got the abutters notice- and initially I was not concerned, but now that I have been made aware that the current owners are wanting to put in three lots, I have many concerns. We live in visible distance from the current home that is there, and this is a safe, child-filled area where many people bring their kids to the park daily- on any average day you see many families congregating there. The addition of 2 more homes on this road seems excessive and unnecessary, and not really in line with the look of the neighborhood as a whole, not to mention the extra traffic this will cause on this quiet lane. I was very upset and concerned to see the removal of what seemed like countless trees at this property today, many of which preserve the beauty and privacy of this little neighborhood. The rapid growth of Portsmouth is something that I am personally not averse to, and the West End in particular has seen a massive growth lately. That being said, I do not see how this addition of two more homes in this particular space will benefit the community as a whole. I beg of you to let this lane stay as it is. I do not know the current owners, and have nothing against them personally, but I do know that this neighborhood does not need the extra strain of more traffic and on the resources we currently have with the existing infrastructure.

Best,

Eva Marino

RATH YOUNG PIGNATELLI

Sherilyn Burnett Young
Attorney-At-Law
sby@rathlaw.com
Please reply to: Concord Office

January 26, 2022

VIA ELECTRONIC & FIRST-CLASS MAIL - (bmzendt@cityofportsmouth.com)

BOARD MEMBERS AND PUBLIC COMMENT

Beverly Mesa-Zendt, Incoming Planning Director
City of Portsmouth Planning Board
1 Junkins Avenue
Portsmouth, NH 03801

RE: OBJECTION TO THE MOTION FOR REHEARING
City of Portsmouth Planning Board - Site Plan Approval, December 30, 2021
99 Bow Street, Portsmouth, Tax Map #106, Lot #54

Dear Ms. Mesa-Zendt and Planning Board Members:

Our firm represents Martingale, LLC, (“Martingale”), record owner of 99 Bow Street, Portsmouth, New Hampshire which was granted Site Plan Approval by an 8-1 affirmative vote at a City of Portsmouth Planning Board (“Planning Board”) public hearing on December 30, 2021 for its proposed project to expand its existing wharf. On Friday, January 21, 2022, staff from the Planning Board forwarded a copy of a “Motion for Rehearing” filed by Attorney John Sherman with the Planning Board on Thursday, January 20, 2022, on behalf of BowPorts EV, LLC, an abutter (“Abutter”).

The deadline for submitting materials for the originally scheduled Planning Board Meeting on January 20, 2022, was December 29, 2021. Despite being submitted to the Planning Board on Thursday, January 20, 2022, after the deadline for submittal had passed, the motion was placed on the agenda for the rescheduled January 27th meeting as “Other Business.” Martingale requests that this late submission be removed from the agenda for the January 27, 2022 meeting and be rescheduled for the meeting of February 17, 2022.

In addition, Martingale objects to the Abutter’s motion for rehearing and asks that the Planning Board deny the motion, as consistent with the memorandum and recommendations of the Planning Board Director dated January 21, 2022 and included in the public record for this matter. We agree that there is no statutory authority granting the Planning Board specific rights to allow a motion for rehearing and the Planning Board’s rules and procedures do not include specific criteria or rules for submission or consideration of such motions. We also assert that the December 30, 2021 approval of the site plan application was a final decision

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RATH YOUNG PIGNATELLI

Portsmouth Planning Board, Planning Board Chairperson

January 26, 2022

Page 2

by the Planning Board. The appropriate venue for appealing this 8-1 decision is to file an appeal to the Rockingham County Superior Court.

Martingale also asks that the Planning Board reject the Abutter's motion for rehearing because the reasons set forth in its motion to do not establish good cause that the final decision by the Board was unlawful or unreasonable. In support of this objection, Martingale states the following:

I. New Plan Submitted Only Days before the Originally Planned Meeting

The Application for Site Plan Approval for 99 Bow Street was timely submitted to the Planning Board on November 23, 2021, for consideration for the December 16, 2021 public meeting. Due to a change in support for the project communicated by one of the abutters at 111 Bow Street to Martingale on December 13, 2021, the plans were revised, *reducing* the project square footage and impacts. Revised sketch plans showing the reduced project were submitted to the Board on December 16, 2021.

Martingale provided copies of the revised sketch plans to the abutters at 111 Bow Street on December 15, 2021, in advance of the December 16, 2021 meeting. The Planning Board and abutters had time to consider these revised plans, as evidenced by the objections to public comments submitted on the record by Attorney Sherman on December 16, 2021. Attorney Sherman included the email evidencing the pre-meeting notice by Martingale of the project change to address the abutters' objections to the extended wharf project. Martingale also submitted a response to those objections on the record to the Planning Board before the public hearing on December 16, 2021.

The Planning Board continued the December 16, 2021 meeting because it could not hear all old, new and other business. A legally noticed Planning Board meeting was scheduled for December 30, 2021, to continue the public hearing for remaining old, new and other business. On December 23, 2021, Martingale and its representatives submitted a supplemental update with formal, revised plans to the Planning Board, in conjunction with a NHDES filing, which reduced the East Deck by moving it back twenty feet from the Abutter's property line that reduced the square footage and impacts of the project. The December 23, 2021 supplemental update also addressed other objections raised by the Abutter.

The Planning Board and abutters had seven (7) days to consider these revised plans, as evidenced by the second set of objections submitted on the record by Attorney Sherman on December 30, 2021. Martingale and representatives addressed these objections at the public hearing on December 30, 2021, as well as answered other questions from the Planning Board and other objections from the public at the hearing.

RATH YOUNG PIGNATELLI

Portsmouth Planning Board, Planning Board Chairperson

January 26, 2022

Page 3

The Abutters (and the Planning Board) had ample time to review and object to the plans prior to the December 30th meeting. The Planning Board's approval of the site plan was not unlawful or unreasonable.

II. Board Rushed this Application and was "Potentially" Out of Compliance

As stated above, the Board had ample time to consider the Applicant's timely submission of its plans and application for site plan approval, as well as the revised plans at the publicly noticed meeting on December 30, 2021. The fact that it was the day before New Year's Eve is irrelevant, the meeting was legally noticed which is clearly demonstrated by the fact that Attorney Sherman, the Abutter and other members of the public attended and submitted public comments at the meeting.

Contrary to the Abutter's motion for rehearing, the Chairperson of the Planning Board addressed concerns regarding the makeup of the Planning Board during the meeting, referencing legal advice from the City Attorney. Since this issue was considered and discussed in the public session on December 30, 2021, it was transparent and in compliance with the "open form of government" asserted by the Abutter. A legal quorum of the Planning Board was present and voted 8-1 in favor of approval of Application for Site Plan.

The Abutter's motion fails to assert good reason to grant a rehearing as the Planning Board's vote was not unlawful or unreasonable.

III. Board Relied Upon A Direct Factual Error

The issue of trash and compliance with the health codes was addressed at length by the Planning Board in response to written and public comments during the first, second and third calling for public comments on December 30, 2021. The Board allowed Attorney Sherman and the Abutter to repeatedly assert concerns regarding trash complaints. Martingale and its representatives answered these concerns regarding the complaints.

Correctly, the Planning Board referred the Abutter to the code enforcement officer and Board of Health for any trash compliance issues. In addition, the Planning Board included Stipulation No. 6 which requires the property owner to "work with city staff to resolve trash issues through the Construction Management and Mitigation Plan (CMMP) process." See attached Planning Board Approval dated January 18, 2022. This issue was directly addressed by the Planning Board; therefore, the Abutter's motion fails to assert any good reason why the Planning Board's approval was unlawful or unreasonable.

IV. Applicant Unable to Answer Numerous Questions from the Board.

The Abutter's motion asserts that Martingale and representatives were unable to address questions related to the technical structural details of piling support construction and

RATH YOUNG PIGNATELLI

Portsmouth Planning Board, Planning Board Chairperson

January 26, 2022

Page 4

installation, as well as signage and access for the disabled. Martingale objects to the Abutter's motion and characterizations on all three points.

First, with respect to the pilings, the construction plans and details for the project have not been determined because the Application for Site Plan was not yet approved. As was explained during the public session, developers typically do not spend time or money to develop detailed construction plans until the site plans are approved. In addition, detailed construction plans, including the method and details for piling installation, would be subsequently submitted to the Building Department for review of the building permit application.

Martingale agreed to perform pre-construction vibration monitoring to ensure no impacts to the Abutter or other abutting properties during the public meeting. This was included in the Planning Board's Stipulation No. 5.

With respect to signage, the Planning Board addressed the signage issue in Stipulation No. 3.

Finally, Martingale and its representatives clearly addressed the issue of access to the public deck via the elevator in the building or the access from Ceres Street. In Stipulation 1a) the Planning Board required Martingale to provide for access, including ADA access, to be recorded in an easement to run with the land.

The Abutter's motion on these three grounds fails to demonstrate that the approval is unlawful or unreasonable or to assert a basis for the Planning Board to grant a rehearing.

V. Direct Residential Abutters Object

As stated above, the abutters to this project were given ample opportunity to submit their written objections and assert them at the public hearing through three calls for comments. The Planning Board considered these objections, both written and oral, and addressed a number of objections with stipulations in the approval. All the objections asserted in the Abutter's motion are simply repeating and re-asserting the same objections that were considered and addressed by the Planning Board during the December 30, 2021 hearing. The Abutter therefore fails to assert a good reason why the Planning Board should grant a rehearing or any reason why the approval was unlawful or unreasonable.

VI. NHDES Application is Still Pending

The issue of whether or not the NHDES application for approval of the wetlands project is pending is irrelevant to the Planning Board's decision to approve the Application for Site Plan for this project.

RATH YOUNG PIGNATELLI

Portsmouth Planning Board, Planning Board Chairperson

January 26, 2022

Page 5

Since this project is located solely over state waters, the HDC and City of Portsmouth land use regulations apply in accordance with Env-Wt 513.07 (a-c) and the granted Urban Exemption in 2007; however, ultimately the State of NH through the Department of Environmental Services (NHDES) will have final approval of the project. NHDES may grant a waiver of local approval if denied or not granted pursuant to Env-Wt 513.07(d). Again, the Abutter's motion for rehearing fails to assert a good reason why the Planning Board should allow a rehearing.

VII. Recusal

Martingale respectfully requests that newly appointed Alternate Board Member, Mr. Andrew Samonas, recuse himself from consideration of the Abutter's motion for rehearing. Upon information and belief, Mr. Samonas is the son of Mr. John Samonas, an abutter who owns five units at 111 Bow Street and has a direct personal and pecuniary interest in the outcome of this motion. Anyone with a direct personal or pecuniary interest in the outcome of an application that differs from the public or could be disqualified as a juror pursuant to RSA 500-A:12, must be disqualified from hearing the matter. See RSA 673:14, I. Pursuant to RSA 500-A:12, I(b) relation to any party is grounds for disqualification of juror; therefore, where the Planning Board's decision on rehearing is at the request of the abutters at 111 Bow Street, including Mr. John Samonas, we ask that Andrew Samonas be disqualified.

Conclusion

For the reasons stated above, Martingale, LLC respectfully requests that the Planning Board deny the Abutter's motion for rehearing.

Very truly yours,



Sherilyn Burnett Young

SBY/smw

Enc.

Cc: Mark McNabb, Martingale, LLC
Planning Board Members – via electronic mail (planning@cityofportsmouth.com)
John P. Sherman, Esq., for BowPorts EV, LLC – via electronic mail
Steven D. Riker, CWS, Ambit Engineering, Inc. – via electronic mail
John Chagnon, P.E., LLS, Ambit Engineering, Inc. – via electronic mail
Marjan Frank and George Glidden
John Samonas

RATH YOUNG PIGNATELLI

Portsmouth Planning Board, Planning Board Chairperson

January 26, 2022

Page 6

David Price, NHDES -via electronic mail

Stefanie Giallongo, NHDES -via electronic mail

Municipal Clerk – City of Portsmouth

Robert P. Sullivan, City Attorney, City of Portsmouth



CITY OF PORTSMOUTH

Planning Department
1 Junkins Avenue
Portsmouth, New
Hampshire 03801
(603) 610-7216

PLANNING BOARD

January 18, 2022

Martingale LLC
30 Penhallow Street, Suite 300 East
Portsmouth, NH 03801

RE: Site Plan Review Approval for property located at 99 Bow Street (LU-21-181)

Dear Owner:

The Planning Board, at its regularly scheduled meeting of **Tuesday, December 30, 2021**, considered your application for Site Plan Review Approval to allow the expansion of the existing deck to include expanded seating for the business as well as public access to the Piscataqua River. Said property is shown on Assessor Map 106, Lot 54 and lies within the Character District 5 (CD5), Downtown Overlay, and Historic Districts. As a result of said consideration, the Board voted to **grant** Site Plan Approval with the following stipulations:

1. The site plan and any easement plans and deeds shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
 1. a) Easements on the plan and instrument recorded at the registry shall depict the easement to run from Bow street to and through the stairwell to be inclusive of the area depicted as the public deck in the MchHenry plan A9 to include ADA access to run with the land
2. Any easement plans and deeds for which the City is a grantor or grantee shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by the City Council.
3. Proper signage shall be posted for public space to be consistent with the Board's request from the Street to the public space.
4. Deck to be built in its entirety including public space for this project to be considered complete.
5. Applicant is to do pre-site inspection and vibratory monitoring throughout the project to identify any impacts to for abutting properties.
6. Property owner is to work with city staff to resolve trash issues through the Construction Management and Mitigation Plan (CMMP) process.
7. Property owner is to be responsible for maintenance of the deck forever.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

This site plan approval shall not be effective until a site plan agreement has been signed satisfying the requirements of Section 2.12 of the City's Site Review Approval Regulations.

Unless otherwise indicated above, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

The Planning Director must certify that all stipulations of approval have been completed prior to issuance of a building permit unless otherwise indicated above.

This site plan approval shall expire unless a building permit is issued within a period of one (1) year from the date granted by the Planning Board unless an extension is granted by the Planning Board in accordance with Section 2.14 of the Site Review Regulations.

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Dexter R. Legg". The signature is stylized and cursive.

Dexter R. Legg, Chairman of the Planning Board

cc: Paul Garand, Interim Chief Building Inspector
Rosann Maurice-Lentz, City Assessor

Peter H. Rice, Director of Public Works

Richard Desjardins, AIA, McHenry Architecture