

BY: EMAIL ONLY

January 27, 2026

City of Portsmouth
Attn: Stefanie Casella, Planner
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Objection to Motion for Rehearing filed by John Arnold, Esq.
Property: 58 Humphry's Court, Tax Map 101, Lot 47
Owners: Robert M. Snover, Darcy Davidson, Trustees of the Robert M. Snover
Revocable Trust**

Dear Stefanie,

Enclosed, please find an Objection to the Motion for Rehearing filed by John Arnold, Esq. on behalf of several abutters to the above-referenced property on or around January 14, 2026. If you could please provide this to the Board as part of its record on the Appeal of Administrative Decision concerning the "lot area" of the property, that would be most appreciated.

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Sincerely,

Derek R. Durbin, Esq.

**CITY OF PORTSMOUTH
ZONING BOARD OF ADJUSTMENT**

**OBJECTION TO MOTION FOR REHARING
(ADMINISTRATIVE DECISION RE: “LOT AREA”)**

NOW COME, Robert M. Snover and Darcy Davidson (individually “Appellant” and collectively “Appellants”) by and through their attorneys, Durbin Law Offices, PLLC, to file the foregoing Objection to an RSA 677:2 Motion for Rehearing filed by John Arnold, Esq., and in support thereof state as follows:

Many of the arguments for rehearing filed by John Arnold, Esq., on behalf of the abutters are the same arguments that were presented to the Zoning Board of Adjustment (the “Board”) during the public hearing on the Appellants’ Appeal of Administrative Decision (the “Appeal”). The Appellants’ Appeal, which was successful, relates to the City’s application of the lot area requirement as applied to their property at 58 Humphry’s Court (the “Property”). The Appellants have addressed their objection to each argument contained in the Motion for Rehearing in turn below.

ARGUMENTS

Argument #1: *The ZBA incorrectly relied on the metes and bounds description in the Snovers’ Deed to determine the front lot line for zoning purposes.*

The Board not only considered the Appellants’ deed description (and recent survey) of the property in rendering its decision, but also how the Ordinance defines the term “street” for purposes of determining whether paved corner at issue is part of both the Appellants’ *lot* and *lot area*. The Board ultimately found that the paved corner is not part of the “street”, as that term is defined by the Ordinance. The *street* is what is shown on the recorded plan for Humphry’s Court, as copy of which was provided to the Board as part of the Appellants’ submission.

Argument #2: *The Board incorrectly concluded that the rounded corner of Humphry’s Court is Excludable from Lot Area only if it constitutes a “Street”.*

The Abutters argue that the Appellants’ front lot line does not include the paved corner of the Property. Without that paved area, the Property does not meet the 10,000 square foot lot area requirement that allows the Appellants to construct up to two dwelling units on the Property or potentially subdivide the land.

The Abutters argue that the paved corner is part of the “street”, which is a “public place” and therefore outside of the Appellants front property line (and boundaries). The Abutters have asked the Board to effectively ignore how the terms “lot area”, “lot”, “lot line” and “street” are defined by the Ordinance and redefine the Appellants’ property boundaries.

The Abutters' argument that the paved corner is part of the "streetway" blatantly ignores how the term "street" is defined by the Ordinance. The "streetway" in this instance is the "street" that was dedicated to and accepted by the City as part of the recorded plan for Humphry's Court. The terms "street" and "streetway" are terms that are used interchangeably within the Ordinance and are not two separate things, as the Abutters now attempt to argue.

Argument #3: *The ZBA incorrectly concluded that the rounded corner of Humphry's Court is not a "Street".*

The Appellants argue that the paved corner of the Property has been "accepted" and is therefore part of the "street". The Appellants cite to case law and a legal treatise in support of their argument that the paved corner is part of the "public street". However, the Board specifically considered whether the Ordinance's definition of "street" is the same as the common law definition. The Board found that the two did not align because the Ordinance uses the term "**formally accepted**" (**emphasis added**) in its definition. The Ordinance definition of "street" does not include streets obtained by prescription, as argued by the Abutters. The Board agreed with the Appellants' argument that the paved corner of the Property had never been **formally** accepted and therefore, was not part of the "street".

In reaching its decision, the Board considered the sketch plan provided by the Abutters from 1937 when the land was owned by Ada Tucker.. Even had Ada Tucker intended to convey the northwest corner of the Property to the City, there is no evidence that the City ever **formally** accepted it. The City subsequently took the Property from Ada Tucker by Tax Collector Deed. When the City later conveyed the Property to Harold Whitehouse, it did not exempt the northwest corner from the deed description, which further belies the argument that the City formally accepted the paved corner of the Property.

Argument #4: *The ZBA's decision directly conflicts with New Hampshire Supreme Court precedent and carries broad, untenable consequences.*

The Board's decision does not conflict with New Hampshire Supreme Court precedent. While the common law definition of "street" is broader than the City's definition of that term, the City properly concluded that the definition contained in the Ordinance is narrower and does not encompass a situation such as that involved with the Appellants' Property.

The Abutters aptly point out that there are streets throughout the City that were created by prescription, but in most if not all these situations, the deeds to the abutting properties do not include the land associated with the street in the property descriptions. The situation involving the Appellants' Property is distinguishable.

RELIEF

For all of the reasons set forth above, the Appellants respectfully request that the Board uphold its decision to grant their appeal.

Respectfully submitted,



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