

BY: VIEWPOINT & HAND DELIVERY

January 15, 2026

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

RE: RSA 677:2 Motions for Rehearing
Case: LU-25-168
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 two separate RSA 677:2 Motions for Rehearing pertaining to the above referenced property and land use application. The first is an appeal of the ZBA's decision to deny the Applicant's frontage variance. The second relates to the ZBA's decision to approve the Appeal of an Administrative decision filed by the abutters' attorney pertaining to the rear lot line of the subject property.

Copies of both Motions for Rehearing are being delivered to the Planning Department today. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,



Derek R. Durbin, Esq.

**CITY OF PORTSMOUTH
ZONING BOARD OF ADJUSTMENT**

Robert M. Snover, Darcy Davidson
Trustees of the Robert M. Snover Revocable Trust
(Owners/Appellants)

**58 Humphry's Court,
Portsmouth, NH 03801
Tax Map 101, Lot 47**

LU-25-168

RSA 677:2 MOTION FOR REHARING

NOW COME, Robert M. Snover and Darcy Davidson (individually and collectively the “Applicant”) by and through their attorneys, Durbin Law Offices, PLLC, pursuant to RSA 677:2, to request a rehearing of the Portsmouth Zoning Board of Adjustment’s (“ZBA”) December 16, 2026 decision, denying their variance application for property situated at 58 Humphry’s Court, Portsmouth, NH 03801 (Tax Map 101, Lot 47) (the “Property” or the “Applicant’s Property”), and in support thereof state as follows:

BOARD’S DECISION

The Zoning Board of Adjustment (the “Board”) voted to deny the following variance request by the Applicant under Section 10.521 the Portsmouth Zoning Ordinance (the “Ordinance”): “To allow 51.8’ (+/-) of continuous street frontage where 80 is required (Proposed Lot 2).”

The Board based its denial of the variance requests on the “unnecessary hardship” criteria set forth in RSA 674:33, I(a)(2)(E), finding that “[t]here is nothing special or unique about the property that differentiates it from the other properties in the immediate area surrounding it, so therefore one could not get to the other aspects of hardship that mostly revolve around reasonable use.”

GROUND FOR REHEARING

The Applicant avers that the Board erred in its finding that the application did not meet the unnecessary hardship criteria. The Applicant clearly demonstrated that the Property does have special conditions that distinguish it from surrounding properties such that there is no fair and substantial relationship between the purpose of the continuous street frontage requirement set forth in Section 10.521 of the Ordinance and its application to the Property. Accordingly, on the balance of probabilities, the Board’s decision was unreasonable and/or unlawful.

REHEARING LEGAL STANDARD

Within thirty days after any...decision of the Zoning Board of Adjustment...any party to the action or proceedings,...may apply for rehearing in respect to any matter determined in the action...specifying in the motion for rehearing the grounds therefore; and the Board of Adjustment...may grant such rehearing if in its opinion good reason therefore is stated in the motion. RSA 677:2 (emphasis added).

A motion for rehearing...shall set forth fully every ground upon which it is claimed that the decision or order is complained of is unlawful or unreasonable. RSA 677:3.I.

The purpose of the statutory scheme is to allow the ZBA to have the first opportunity to pass upon any alleged errors in its decision so that the Court may have the benefit of the Board's judgment in hearing the appeal. Town of Bartlett Board of Selectmen v. Town of Bartlett Zoning Board of Adjustment, 164 N.H. 757 (2013). Rehearing is designed to afford local zoning boards of adjustment an opportunity to correct their own mistakes before appeals are filed with the courts. Fisher v. Boscawen, 121 NH 438 (1981).

ARGUMENTS IN SUPPORT OF REHEARING

The Board based its decision on the Property not having conditions that differentiate it from other surrounding properties. This finding was flawed for two fundamental reasons:

1. The Board improperly focused on the lot areas of surrounding properties in finding that the Applicant's Property did not have special conditions to differentiate it from surrounding properties and failed to discuss or cite any examples of surrounding properties that have a similar frontage situation.
2. In finding that the Property did not have special conditions to distinguish it from surrounding properties, the Board relied upon a tax map exhibit provided to its by the abutters' attorney that included examples of properties in a different zoning district with more stringent dimensional requirements.

A. Street Frontage

The Applicant submitted a tax map exhibit with its variance application as evidence of how uniquely situated the Property is in comparison with surrounding properties **Exhibit 1**. The assessing map demonstrates that NO surrounding properties are bound by a street on two sides or have as much continuous street frontage as the Applicant's Property regardless of what zoning district they lie within.¹ This when coupled with the fact that the Property has over twice the amount of lot area (10,005 sq. ft) to subdivide by right, distinguish the Property from surrounding properties in the area. From a zoning perspective, whether this is a corner lot or a lot with continuous frontage on two sides, the Property can be subdivided by right.

What makes the Property so unique, and unusually burdened, is that Section VI.2.A ("Lot Arrangement") of the Portsmouth Subdivision Regulations discourages (but does not prohibit) lot configurations that are not square or rectangular, which is the reason the Applicant seeks a variance for one of the proposed lots to allow for less than the required continuous street frontage. Section VI.2.A of the Subdivision Regulations states: "In all quadrangular lots, and *so far as practicable* all other lots, the side lines shall be at right angles to straight street lines or radial to curved street lines. An arrangement placing lots at right angles to one another shall be avoided *where practicable*." (*emphasis added*).

The 52' of continuous street frontage associated with proposed Lot 2 is still consistent with other properties in the neighborhood, as demonstrated by the Applicant's variance application materials. The primary purpose behind the frontage requirement is to encourage a density that is consistent with the goal(s) of GRB Zoning, which is "[t]o provide areas for **single-family, two-family and multifamily dwellings**, with appropriate **accessory uses**, at moderate to high densities (ranging from approximately 5 to 12 **dwelling units** per acre), together with appropriate **accessory uses** and limited services. **P.Z.O. Sec. 10.410**. The Applicant's proposed lot configurations meet the goals of the Ordinance while maintaining the existing character and streetscape of the neighborhood.

The Applicant will have to create two triangular-shaped lots without the frontage variance. The Applicant believes it can create two triangularly shaped lots by right, but the City Technical Advisory Committee ("TAC") and Planning Department have both expressed a desire for the Applicant to have square or rectangular lot configurations. By denying the frontage variance for one of the two lots, the Board has pushed the Applicant back into a two (2) lot subdivision with triangularly shaped lots. These are the special conditions that make it so that there is no fair and substantial relationship between the general purposes of the frontage restriction and its strict application to the Property.

¹ It is the Applicant's position, as set forth further below, that the "area" of comparison for determining whether a property has special conditions is limited to a neighborhood or area within the same zoning district.

In finding that the Property was not distinguishable from surrounding properties the Board relied primarily upon a tax map exhibit submitted to the Board by Attorney John Arnold, Esq., showing a rather expansive area of the South End of Portsmouth and drew comparisons to properties in a different zoning district. **Exhibit 2**. The exhibit did not show any properties with a similar frontage situation. If anything, the exhibit submitted by Attorney Arnold demonstrates how unique the Property is in its environment.

B. Immediate Area – Unnecessary Hardship

In relying on the tax map (**Exhibit 2**) submitted by Attorney Arnold, the Board applied an overly expansive interpretation of the term “immediate area” in the context of the unnecessary hardship criteria. The exhibit included and highlighted properties located in a different zoning district with more stringent zoning requirements. Specifically, the properties south of New Castle Avenue that were highlighted and used as comparable examples by the abutters’ attorney and by the Board alike are situated within the SRB Zoning District, which has vastly different zoning requirements than the GRB Zoning District. **Exhibit 3**. The SRB Zoning District requires 100’ of continuous street frontage and 15,000 square feet of land area to subdivide by right under the Ordinance. These properties are situated in a different zoning district because the character of the area in which they are situated is different. The Board’s interpretation of what constitutes the “immediate area” surrounding the Applicant’s Property in the context of the unnecessary hardship criteria was flawed and constitutes grounds for a rehearing.

CONCLUSION

Between the Applicant’s variance application and two related administrative appeals, the Board spent approximately four (4) hours discussing and deliberating on how to apply the Ordinance requirements to the Property due to how unique it is. For the reasons outlined above, the Board’s decision to deny the Applicant’s variance application constitutes reversible error. The Applicant’s request for rehearing should be approved.

Respectfully submitted,



Derek R. Durbin, Esq.
144 Washington Street
Portsmouth, NH 03801
derek@durbinlawoffices.com

EXHIBITS

- Exhibit 1: Tax Map (Submitted with Applicant's Variance Application)**
- Exhibit 2: Tax Map (Submitted by Abutters' Attorney)**
- Exhibit 3: Tax Map with Zoning Overlay**



Property Information

Property ID 0101-0047-0000
 Location 58 HUMPHREYS CT
 Owner SNOVER ROBERT M REV TR



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 09/26/2024

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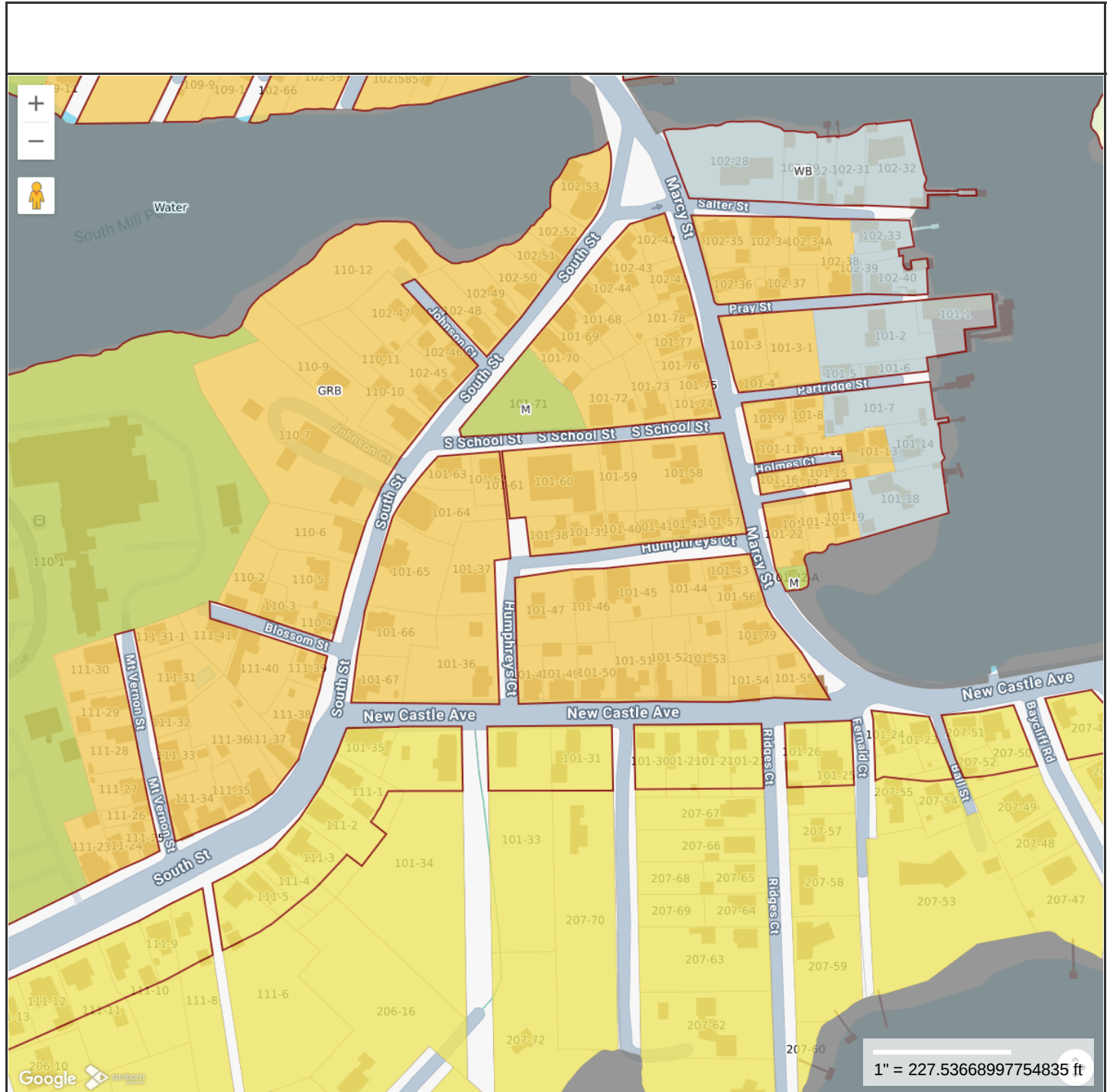


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Map Theme Legends

Zoning

Residential Districts		
	R	Rural
	SRA	Single Residence A
	SRB	Single Residence B
	GRA	General Residence A
	GRB	General Residence B
	GRC	General Residence C
	GA/MH	Garden Apartment/Mobile Home Park
Mixed Residential Districts		
	MRO	Mixed Residential Office
	MRB	Mixed Residential Business
	G1	Gateway Corridor
	G2	Gateway Center
Business Districts		
	GB	General Business
	B	Business
	WB	Waterfront Business
Industrial Districts		
	OR	Office Research
	I	Industrial
	WI	Waterfront Industrial
Airport Districts		
	AIR	Airport
	AI	Airport Industrial
	PI	Pease Industrial
	ABC	Airport Business Commercial
Conservation Districts		
	M	Municipal
	NRP	Natural Resource Protection
Character Districts		
	CD5	Character District 5
	CD4	Character District 4
	CD4W	Character District 4-W
	CD4-L1	Character District 4-L 1
	CD4-L2	Character District 4-L 2
Civic District		
		Civic District
Municipal District		
		Municipal District
Overlay Districts		
	OLOD	Osprey Landing Overlay District
		Downtown Overlay District
		Historic District