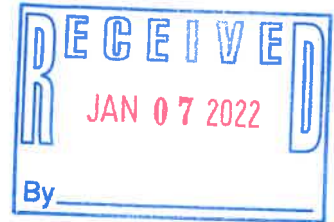


DUNCAN J. MACCALLUM
ATTORNEY AT LAW

536 STATE STREET
PORTSMOUTH, NEW HAMPSHIRE 03801-4327
(603) 431-1230
TELECOPIER: (603) 431-1308

ALSO ADMITTED IN NY, PA, OHIO & MA



January 7, 2022

Peter Britz, Interim Planning Director
City of Portsmouth
One Junkins Avenue
Portsmouth, New Hampshire 03801

Peter McDonell, Vice Chairman
Zoning Board of Adjustment
City of Portsmouth
One Junkins Avenue
Portsmouth, New Hampshire 03801

Re: 53 Green Street

Dear Mr. Britz and Mr. McDonell:

I am in receipt of a letter dated December 21, 2021 from Vice Chairman McDonell, formally notifying me of the Board of Adjustment's decision to grant my motion for rehearing relative to the above-referenced property and scheduling the rehearing for January 18, 2022.

However, I also in receipt of Attorney Michael Ramsdell's motion for reconsideration of that decision, filed on behalf of the developers. Presumably that motion, too, will be entertained at the Board's January 18, 2022 meeting.

To me it makes no sense to schedule the rehearing on the same night that Mr. Ramsdell's motion is being entertained. I, of course, cringe at the mere thought that it might be possible that the ZBA would ever reverse itself and grant Mr. Ramsdell's motion. Looking at things realistically, however, if both the rehearing and the motion for reconsideration are scheduled to be adjudicated on the same night, and if the Board were to grant Mr. Ramsdell's motion, it would result in a tremendous amount of wasted time, effort, and inconvenience for all those involved.

I always have to spend a considerable amount of time preparing for hearings such as this, and I also have to line up witnesses and other speakers to appear. All of that time and effort would be wasted in the unhappy event that the Board were to vote to grant Mr. Ramsdell's motion for reconsideration, if it is scheduled to be entertained on the same evening as the rehearing. In addition, the citizens who similarly have set aside the time on their schedules to come down to City Hall and speak will wind up having wasted their time, also.

I cannot speak for Mr. Ramsdell and his clients, but I must assume that he and they would not want to waste their time appearing for the meeting if no rehearing on the application is going

Peter Britz, Interim Planning Director
Peter McDonell, Vice Chairman
January 7, 2022
Page 2

forward. I must also assume that his clients do not wish to pay for him and their engineering team to appear if it is all to be for naught.

The interests of the citizen speakers who have aside the time on their schedules to come down to City Hall to appear and speak need to be considered, too--in fact, especially so. It is the height of rudeness to have them come down and appear, prepared to speak, and then to pull the rug out from under them by sending them home because of some procedural maneuver by one or the other of the parties.

Finally, it is not unlikely that an expert witness or other member of the Conservation Law Foundation will be traveling all the way from Concord to appear and speak at the rehearing. During the deliberations by the board members on my motion for rehearing at the Board's December 21, 2021 meeting, there was discussion as to whether my clients and I would be presenting anything new to the Board that had not been presented at the original, October 21, 2021 hearing. Since that time, we have received a copy of a letter dated December 23, 2021 from that Foundation, addressed to the chairman of the Planning Board, in which its officers pointedly observed that the Planning Board had completely misinterpreted one of their representative's remarks concerning the 100' wetlands buffer at the April 15, 2021 hearing, and that the Planning Board used that misrepresentation as one of its bases for granting approval of a related project.

I enclose twelve copies of the Conservation Law Foundation's letter. Would you please make sure that copies are distributed to the members of the ZBA by the time of its upcoming, January 18, 2022 meeting.


There is a strong possibility that a representative of the Conservation Law Foundation will be appearing at the rehearing in order to correct the record and to lend additional expertise to the issues at hand. If it would be the height of rudeness to send citizen speakers home prematurely after they had set aside their evenings to come down to City Hall and speak, it would be only one step short of outrageous that an unpaid representative should travel all the way from Concord to impart his or her expertise, only to be sent home without speaking.

The natural order of things is that Mr. Ramsdell's motion for reconsideration should be heard first, before the rehearing itself is scheduled, in order to avoid massive wastes of time on the part of multiple individuals, most of whom are not being paid. For all of these reasons, I ask that the rehearing on our appeal in the above matter be rescheduled for next month, or, if there is

Peter Britz, Interim Planning Director
Peter McDonell, Vice Chairman
January 7, 2022
Page 3

a split schedule this month because of a heavy agenda, that the rehearing be rescheduled for the following week.

Very truly yours



Duncan J. MacCallum

DJM/eap

Enclosures

cc. Michael D. Ramsdell, Esquire
Brian J. Bouchard, Esquire
Robert A. Previti, Esquire

HAND DELIVERED TO ADDRESSEE ONLY

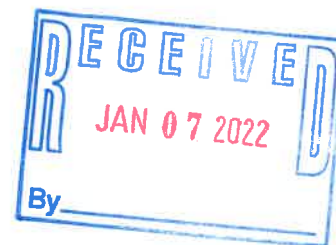


For a thriving New England

CLF New Hampshire 27 North Main Street
Concord, NH 03301
P: 603.225.3060
F: 603.225.3059
www.clf.org

December 23, 2021

Chairman Dexter Legg and Planning Board Members
City of Portsmouth Planning Board
1 Junkins Avenue
Portsmouth NH 03801



Re: 1&31 Raynes Avenue Project, Conditional Use Permit Hearing

Dear Chairman Legg and Planning Board Members,

We write to you with concerns about comments made at the Planning Board meeting on December 16, 2021 in which the Board considered a conditional use permit (CUP) to allow the proposed 1&31 Raynes Avenue project to build within the 100 foot wetlands buffer. At that meeting, Chairman Legg referred to comments made by CLF's Great Bay-Piscataqua Waterkeeper, Melissa Paly, at an April 15, 2021 hearing on a different project as justification to support and approve a CUP.

At the April 15 hearing referenced by Chairman Legg, Ms. Paly provided comments regarding a project at 105 Bartlett Street, which was also seeking a variance from the 100-foot buffer. The first part of those comments commended elements of the project related to stormwater management that would enhance water quality in North Mill Pond. However, the second part of Ms. Paly's comments addressed the importance of buffers and concerns about reducing the 100-foot wetlands buffer.¹ During deliberations, several Planning Board members focused solely on the first part of Ms. Paly's comments related to stormwater management yet overlooked her concerns about encroachment on the wetland buffer.

¹ In her April 15 comments, Ms. Paly brought to the Board's attention a recent report called *Buffer Options on the Bay*, released by a consortium including the NH Department of Environmental Services, The Nature Conservancy, the Great Bay National Estuarine Research Reserve and others, that includes recommendations on buffer width to meet different objectives. Ms Paly stated:

One of the recommendations to really reduce runoff and stabilize banks is a minimum of 164 feet recommended in this report.... I'd like you to consider that a 100-foot buffer is a *minimum* to protect habitat, water quality and other things, so certainly granting a waiver will compromise the benefits that it's intended to produce.... There will be impacts as you chip away at that buffer.



At the December 16 hearing on the 1&31 Raynes Avenue project, Chairman Legg referred to Ms. Paly's April 15 comments, again focusing on her statements about stormwater management while ignoring those related to the importance of wetland buffers.² We want to clarify that (1) we have provided no public comment on the Raynes Avenue project, (2) any comments we provide on one project – which will always be based on site-specific characteristics – cannot fairly be invoked for, and applied to, *other* projects, and (3) the Chairman's comments ignored a critical element of the Waterkeeper's April 15 testimony about the dual importance of both stormwater management *and* buffers to improving water quality.

We respectfully request that any comments provided by CLF and/or its Waterkeeper program in one context not be applied to other projects for which they were not intended. Furthermore, we request that the Waterkeeper's comments be viewed fully rather than parsed to justify encroachments into critically important wetland buffers. Finally, we request that this letter be shared with both current and incoming members of the Planning Board who will, no doubt, continue deliberations on the Raynes Avenue project.

Sincerely,

/s/ Melissa Paly

Melissa Paly
Great Bay-Piscataqua Waterkeeper

/s/ Tom Irwin

Tom Irwin
CLF Vice President for New Hampshire

² <https://www.cityofportsmouth.com/planportsmouth/planning-board>
December 16, 2021 at 4:17