

BY: VIEWPOINT & HAND DELIVERY

October 24, 2022

City of Portsmouth
Attn: Peter Stith, Planner
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Variance Application of Sara Sommer Kaufman, Trustee, Sara Sommer Kaufman
Revocable Trust
546 Sagamore Avenue, Tax Map 222, Lot 10**

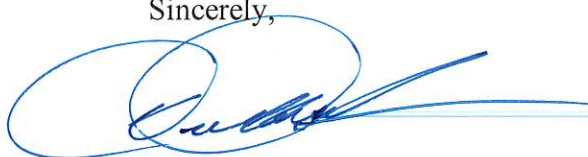
Dear Peter,

Our Office represents Sara Kaufman, of the property located at 546 Sagamore Avenue. Enclosed for submission to the ZBA for its November meeting, please find the following materials relative to this property:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Site Plan;
- 6) Photographs of the Property.

A copy of the application submission is delivered to the City before Wednesday's submission deadline. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.


Sincerely,



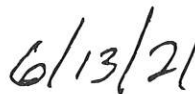
Derek R. Durbin, Esq.

LETTER OF AUTHORIZATION

Sara Sommer Kaufman, Trustee of the Sara Sommer Kaufman Revocable Trust, the owner of the property located at 546 Sagamore Avenue, Portsmouth, NH 03801, shown on Tax Map 222 as Lot 10 (the "Property"), hereby authorizes Durbin Law Offices PLLC to act as his agent and representative in connection with our application to the City of Portsmouth Zoning Board of Adjustment. Said Letter of Authorization shall be valid until expressly revoked in writing.



Printed Name: Sara Sommer Kaufman



Date

**CITY OF PORTSMOUTH
ZONING BOARD OF ADJUSTMENT
APPLICATION NARRATIVE**

**Sara Sommer Kaufman, Trustee of
the Sara Sommer Kaufman Revocable Trust**
(Owner/Applicant)
Tax Map 222, Lot 10
546 Sagamore Avenue
Portsmouth, NH 03801

INTRODUCTORY STATEMENT

The Property

Sara Sommer Kaufman (the “Applicant”) is the owner of property located at 546 Sagamore Avenue, identified on Portsmouth Tax Map 222, as Lot 10 (the “Property”). The Property contains a single-family home with attached garage and is located within Portsmouth’s Single Family Residence B (“SRB”) Zoning District. The Applicant purchased the Property in 2016.

In July 2020, the Applicant hired Brentwood Fence Company to install a fence along a portion of the western boundary of the Property behind an existing stone wall along Sagamore Avenue. The fence was installed by the Applicant to provide some privacy screening and to help prevent trash and other debris from Sagamore Avenue and other properties from accumulating on the Property. It was not known at the time of its installation, that the fence required a variance from the front yard setback requirement set forth in Section 10.521 of the Portsmouth Zoning Ordinance due to its height. Per Section 10.515.13, “[f]ences not over 4 feet in height shall be exempt from **front yard** requirements, and fences not over 6 feet in height shall be exempt from side and **rear yard** requirements.” The fence is believed to be approximately 6’ in height.

The Applicant made an honest error when she had the fence installed. This is evidenced by the fact that the error was not picked up on by the survey team or other professionals assisting the Applicant over the past two years. The City Inspections picked upon this error recently, which the Applicant now seeks to correct.

Summary of Zoning Relief

The Applicant seeks a variance from Section 10.521 to allow a front yard setback of 1.0’ (+/-) where 30’ is the minimum required.

VARIANCE CRITERIA

Granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.

“There are two methods of ascertaining whether granting a variance would violate an ordinance’s basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; (2) examining whether granting the variance would threaten the public health, safety, or welfare.” *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011).

The fence serves an important purpose for the Applicant. It provides privacy screening for the Applicant’s home from Sagamore Avenue and protects her property from accumulating debris. Sagamore Avenue is a heavily traveled thruway that connects the southern section of Portsmouth and the Town of Rye to the City’s downtown. The Applicant’s home is highly visible from Sagamore Avenue, hence the Applicant’s desire to provide for some privacy screening. Because the Property does have 75’ of frontage on Sagamore Avenue, it is also susceptible to trash and other debris blowing into it from the street and other properties. Once scattered throughout the Property, the debris becomes challenging to manage.

By applying the setback provisions of Section 10.521 of the Ordinance to fences, the City is able to better prevent boundary-related disputes which are not uncommon in densely populated areas. The setback provisions also help the City to control “spite fences”, which are prohibited by statute in New Hampshire.

In the present case, it is clear that the Applicant’s only intentions behind the installation of the fence are to have better privacy screening and protection for her property. The same concerns that might be applicable to a person’s side yard in a more densely settled neighborhood in Portsmouth are not present with respect to the front yard of the Applicant’s property. Therefore, the public purposes of the Ordinance are preserved by granting the variance sought by the Applicant. It is also relevant to note that the fence does not negatively impact the site lines of the Property. The fence does not inhibit the ability of vehicles to safely turn into or out of the Property from Sagamore Avenue.

Granting the setback relief sought by the Applicant will not alter the essential character of the neighborhood. The nearest abutter to the front of the Property is Beechstone, which is a large apartment complex. The light, air and space of abutting properties is not negatively impacted by the fence. The building on the Beechstone property are a considerable distance away and are situated downgrade from the Applicant’s home. Fences of a similar nature are not uncommon in Portsmouth.

Substantial justice will be done by granting the variance relief.

There would be no gain realized by the general public if the setback variance were denied. Granting the variance will enable the Applicant to better protect her property for the reasons described above. In the present instance, the loss that the Applicant would suffer by denying the variance outweighs any perceived gain to the public.

The values of surrounding properties will not be diminished by granting the variance relief.

The fence is made of wood and is tastefully designed and is in keeping with the character of other fences in the area. It does not impose upon surrounding properties. Therefore, it is fair and just for the Board to conclude that it would not diminish surrounding property values.

Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

The Property has special conditions that distinguish it from surrounding properties such that there is no fair and substantial relationship between the general purposes of the front yard setback requirement and its application in the present case. The Property slopes uphill from front to back. The home is situated a considerable distance back from Sagamore Avenue. To provide privacy screening, a fence taller than what is allowed by the Ordinance is needed along the front boundary. A shorter fence would provide very little, if any, privacy screening. The fence itself is limited to just the southwesterly portion of the front boundary, thus preserving the site lines of the Property. The front yard setback requirement is intended to prevent against "spite fences" and resulting boundary disputes. As outlined above, those concerns are not present with the location of this fence given the fact that the only impacted abutter, the Beechstone Apartments, is a considerable distance away, across Sagamore Avenue. The use of the Property is also reasonable. The use of the Property will remain the same, which is consistent with zoning.

CONCLUSION

In conclusion, the Applicant has demonstrated that she has met the five (5) criteria for granting the variance and respectfully requests that the Board approve her application.

Respectfully Submitted,

Dated: October 24, 2022

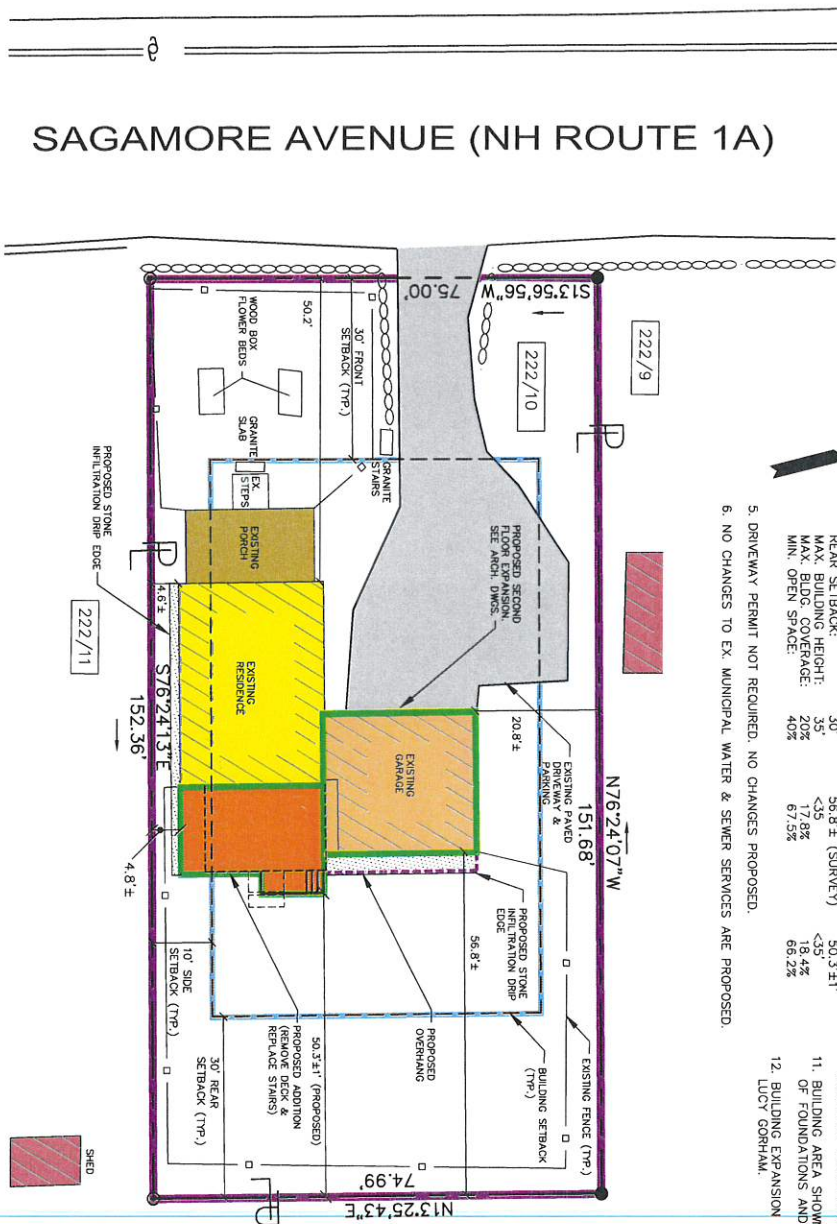
Sara Sommer Kaufman, Trustee
Sara Sommer Kaufman Revocable Trust

A handwritten signature in blue ink, appearing to read 'Derek R. Durbin', is written over a large, loopy blue oval that serves as a signature line or stamp.

By: Derek R. Durbin, Esq.
DURBIN LAW OFFICES PLLC
144 Washington Street
Portsmouth, NH 03801
(603)-287-4764
derek@durbinlawoffices.com

MA-P-10T	OWNER OF RECORD
222-5-1	JESSICA FAY & RICHARD SMELL HAYES II 40 WALKER BINGWOLD RD, PORTSMOUTH, NH 03801
222-9	ELIZABETH ANN CLIMMINGS & JAMES RALPH LEE 520 SAGMORE AVE., PORTSMOUTH, NH 03801
222-11	F. MOURAQUE, T. ALEX. P. CAMERON, TRUSTEES FRANCES E. MOURAQUE REV. TRUST OF 2015 55 SAGMORE AVENUE, PORTSMOUTH, NH 03801
222-21	SAGMORE COURT LTD. PARTNERSHIP c/o FOREST PROPERTIES MANAGEMENT, INC. 625 MOUNT AUBURN ST. SUITE 210, CAMBRIDGE, MA 02138

1. DESIGN INTENT – THIS PLAN IS INTENDED TO DEPICT PROPOSED RESIDENCE IMPROVEMENTS.	7. THE FOLLOWING VARIANCE FROM THE PORTSMOUTH ZONING ORDINANCE IS REQUESTED:
2. APPROXIMATE LOT AREA: 11,401 S.F. ± (0.26 AC.±)	– SECTION 10.521 – TO ALLOW THE PROPOSED STRUCTURE TO BE 4.8- FEET FROM THE SIDE LOT LINE.
3. ZONE: SINGLE RESIDENCE B (SRB)	8. ALL BONDS AND FEES SHALL BE PAID/POSTED PRIOR TO INITIATING CONSTRUCTION.
4. DIMENSIONAL REQUIREMENTS:	9. THE CONTRACTOR SHALL VERIFY ALL BENCHMARKS AND TOPOGRAPHY IN THE FIELD PRIOR TO CONSTRUCTION.
MIN. LOT AREA: 15,000 SF MIN. STREET FRONTAGE: 100' MIN. LOT DEPTH: 100' MIN. SIDE SETBACK: 50' REAR SETBACK: 30' MAX. BUILDING HEIGHT: 35' MAX. BLOC. COVERAGE: 20% MIN. OPEN SPACE: 40%	10. THE CONTRACTOR SHALL VERIFY ALL BUILDING DIMENSIONS WITH THE ARCHITECTURAL AND STRUCTURAL PLANS PRIOR TO CONSTRUCTION. DISCREPANCIES SHALL BE IMMEDIATELY BROUGHT TO THE ATTENTION OF THE ARCHITECT AND ENGINEER FOR RESOLUTION.
	11. BUILDING AREA SHOWN IS BASED ON FOOTPRINT MEASURED TO THE EDGE OF FOUNDATIONS AND/OR SLABS. ACTUAL INTERIOR SPACE WILL DIFFER.
5. DRIVEWAY PERMIT NOT REQUIRED. NO CHANGES PROPOSED.	12. BUILDING EXPANSION LUCKY GORHAM.
6. NO CHANGES TO EX. MUNICIPAL WATER & SEWER SERVICES ARE PROPOSED.	AREA PER PRELIMINARY ARCHITECTURAL DRAWINGS BY



1. "BOUNDARY PLAN", BY ECKMAN ENGINEERING, LLC DATED NOVEMBER 7, 2020. CAD FILE OBTAINED FROM SURVEYOR AND USED WITH PERMISSION.





