



City of Portsmouth
Planning Department
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MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Jillian Harris, AICP, Planner
DATE: June 22, 2023
RE: Zoning Board of Adjustment June 27, 2023

The agenda items listed below can be found in the following analysis prepared by City Staff:

III. New Business

- A. 232 South Street
- B. 933 US Route 1 Bypass
- C. 176 Orchard Street
- D. 75 Salter Street #1
- E. 112 Mechanic Street
- F. 281 Cabot Street
- G. 800 Lafayette Road

III. NEW BUSINESS

- A.** The request of **JJCM Realty LLC and Topnotch Properties (Owners)**, for property located at **232 South Street** whereas relief is needed to construct a 12' x 20' garage which requires the following: 1) A Variance from Section 10.521 to a) permit a building coverage of 26% where 20% is permitted, and b) permit a side setback of 1.5 feet where 10 feet is required; and 2) A Variance from Section 10.571 to permit an accessory structure in the front yard. Said property is located on Assessor Map 111 Lot 2 and lies within the Single Residence B (SRB) and Historic District. (LU-23-80)

Existing & Proposed Conditions

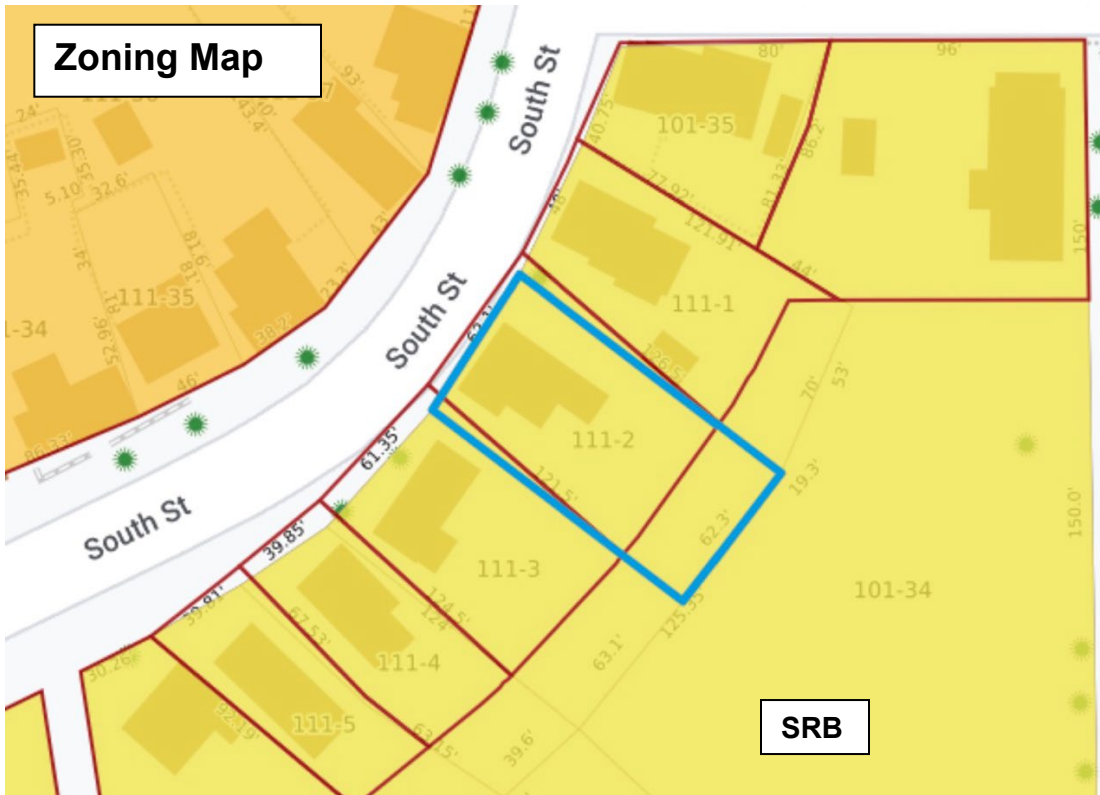
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Two-family	Construct a garage*	Primarily residential
<u>Lot area (sq. ft.):</u>	7,805	7,805	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,805	7,805	15,000 min.
<u>Lot depth (ft.):</u>	126	126	100 min.
<u>Street Frontage (ft.):</u>	64	64	100 min.
<u>Front Yard (Primary)(ft.):</u>	0	27	9 (per averaging calculation) min.
<u>Front Yard (Secondary) (ft.):</u>	N/A	N/A	30 min.
<u>Right Yard (ft.):</u>	14.5	1.5	10 min.
<u>Rear Yard (ft.):</u>	>30	>30	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	23	26	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	3	3	3
<u>Estimated Age of Structure:</u>	1780	Variance request(s) shown in red.	

*Accessory structure located within the front yard

Other Permits/Approvals Required

- Certificate of Approval - Historic District Commission
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

January 26, 2021 – The Board granted a variance of 1) Section 10.521 to allow 23% building coverage where 20% is the maximum allowed; and 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the Ordinance.

Planning Department Comments

The applicants are seeking to construct a 12' x 20' single car garage with a height of 14' to the left side of the two-family dwelling. The house is nonconforming on the front where the existing structure is built to the property line. The new structure is proposed to be constructed 27' from the front property line and 1.5' from the side property line in line with the existing driveway, which will require variances for the location within the front yard and the side setback and an increase in building coverage from 23% to 26% where 20% is required. At the January 26, 2021 Zoning Board of Adjustment meeting, the Board granted a variance from Section 10.521 to allow 23% building coverage where 20% is the maximum allowed for the construction of a two-story rear addition and deck.

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*
AND
 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*
OR
Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

III. NEW BUSINESS

- B. The request of **Sarnia Properties Inc. C/O CP Management Inc. (Owners)**, for property located at **933 US Route 1 BYP** whereas Special Exception is needed to allow a health club greater than 2,000 square feet GFA which requires the following: 1) Special Exception from Section 10.440, Use #4.42 to allow a health club where the use is permitted by Special Exception. Said property is located on Assessor Map 142 Lot 37 and lies within the Business and Highway Noise Overlay District. (LU-23-76)

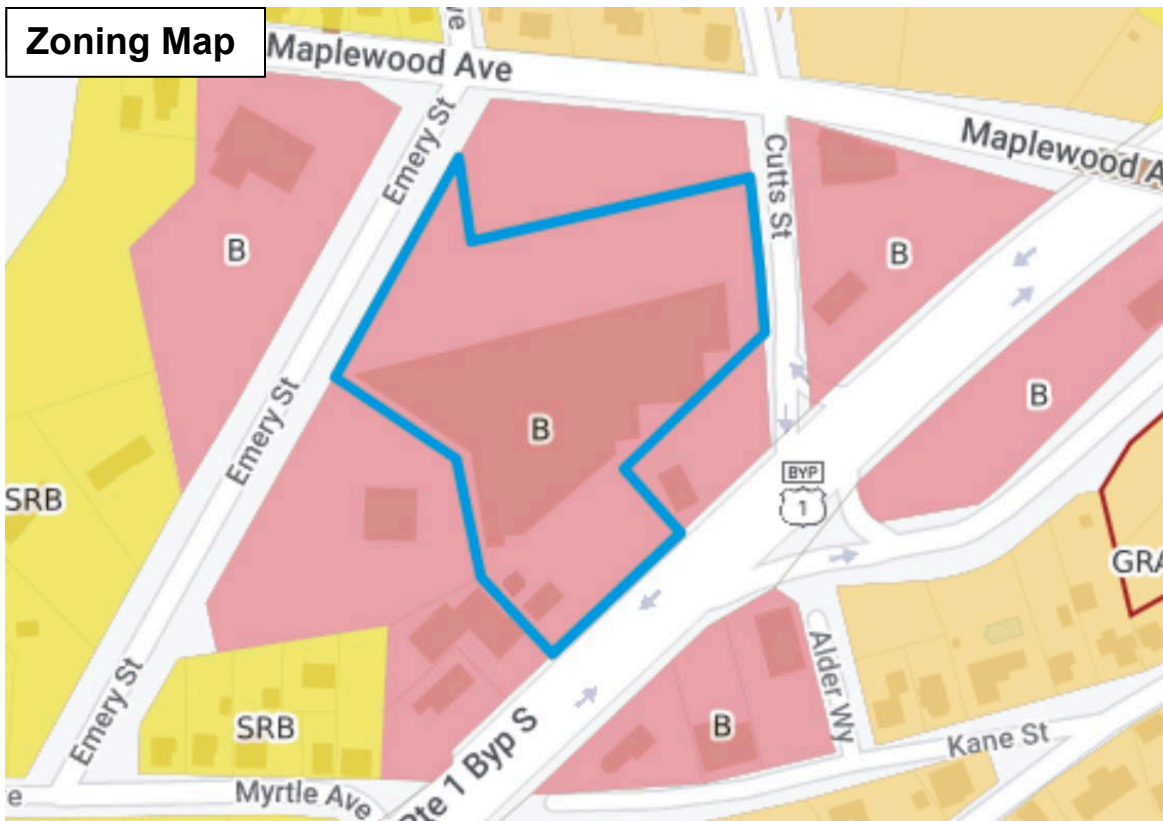
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Commercial	Change of Use – Health Club >2000SF	Primarily commercial
<u>Lot area (sq. ft.):</u>	152,460	152,460	20,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	N/A	N/A	2,500 min.
<u>Lot depth (ft.):</u>	>100	>100	80 min.
<u>Street Frontage (ft.):</u>	>150	>150	100 min.
<u>Front Yard (ft.):</u>	>20	>20	20 min.
<u>Side Yard (ft.):</u>	2	2	15 min.
<u>Rear Yard (ft.):</u>	>15	>15	15 min.
<u>Height (ft.):</u>	<50	<50	50 max.
<u>Building Coverage (%)</u> :	45	45	35 max.
<u>Open Space Coverage (%)</u> :	N/A	N/A	15 min.
<u>Parking:</u>	82	82	114
<u>Estimated Age of Structure:</u>	1962	Special Exception request(s) shown in red.	

Other Permits/Approvals Required

- Parking Conditional Use Permit - TAC & Planning Board
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

October 24, 1978 - The Board **granted** a variance to allow the construction of an addition to an existing building 2.5' from the left, 34' from the rear and 6.5' from the right property lines where 30', 50' and 30' respectively were required and a lot coverage of 47% where 30% was allowed.

January 5, 1988 - The Board **granted** a variance to allow the construction of a 14,570 s.f. addition to an existing structure with a 2' left yard where 30' was required, a 15' rear yard where 50' was required and building coverage of 63% where 30% was allowed. This was granted with the stipulation that (then) Plan R-9, Lot 89 and Plan U-42, Lot 37 be consolidated into one lot which would result in 50% coverage where 30% was allowed. The Board also granted an increase in the extent of a nonconforming use of a structure (Portsmouth Paper Company – wholesale and warehousing)

March 16, 2010 – The Board **granted** a request for a Special Exception to allow an auto dealership in the Business Zone and within 150' of a residential or mixed residential district where 200' was required and a Variance to allow auto dealership parking, outdoor storage or display less than 40' from a street right-of-way with the following stipulations: 1) That no more than six vehicles will be on the lot for sale at any one time; 2) That the approved use will be conducted within the 75' x 87' area shown on the plan submitted with the application; and 3) that there will be no repair or washing of vehicles.

June 24, 2016 – The Board **granted** a request for 1) A Variance under Section 10.440 to allow a light industry use in a district where this use is not allowed; and 2) A Variance from Section 10.1112.30 to allow 84 parking spaces where 103 parking spaces are required.

Planning Department Comments

The applicant is seeking a change of use to convert 12,000 SF of warehouse into a health club. Per Section 10.440.4.42, health clubs exceeding 2,000 SF GFA are permitted in the Business (B) District by special exception. The applicant is also seeking a conditional use permit from the Planning Board to provide less than the required number of parking spaces. The Technical Advisory Committee recommended approval of the conditional use permit at the June 6, 2023 meeting and Planning Board review is scheduled for the July 20, 2023 meeting.

Special Exception Review Criteria

The application must meet all of the standards for a **special exception** (see Section 10.232 of the Zoning Ordinance).

1. *Standards as provided by this Ordinance for the particular use permitted by special exception;*

2. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*
3. *No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;*
4. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*
5. *No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and*
6. *No significant increase of stormwater runoff onto adjacent property or streets.*

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

III. NEW BUSINESS

- C. The request of **Ashley J Brown and Lisa F Brown Living Trust (Owners)**, for property located at **176 Orchard Street** whereas relief is needed to construct an addition and deck to the rear of the existing structure and rebuild the existing rear staircase which requires the following: 1) Variance from Section 10.521 to allow 27% building coverage where 25% is allowed. 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the ordinance. Said property is located on Assessor Map 149 Lot 41 and lies within the General Residence A (GRA) District. (LU-23-82)

Existing & Proposed Conditions

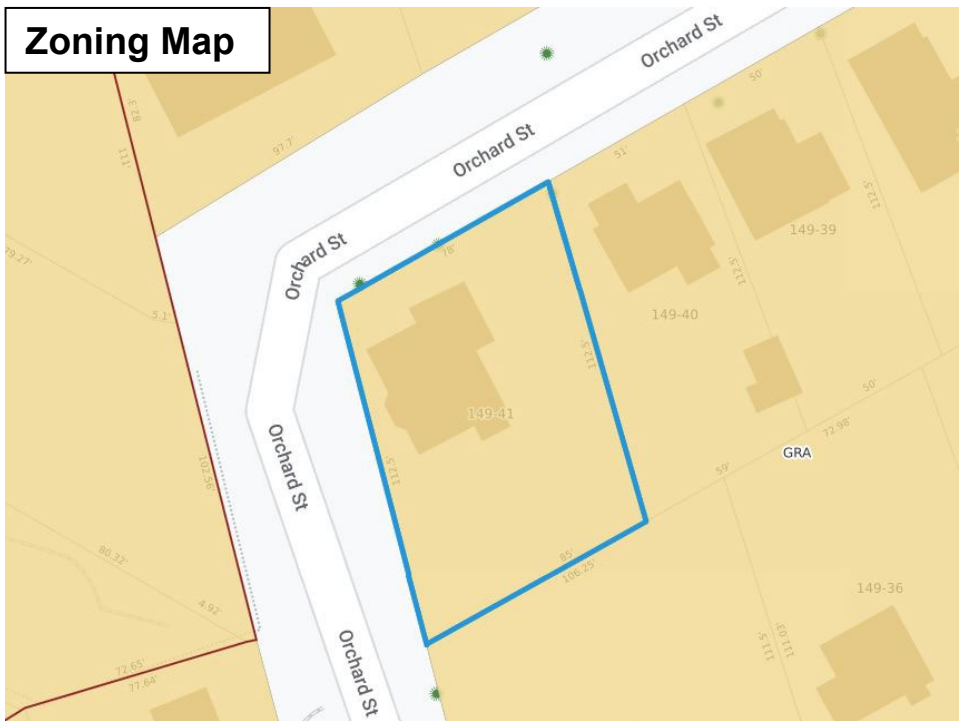
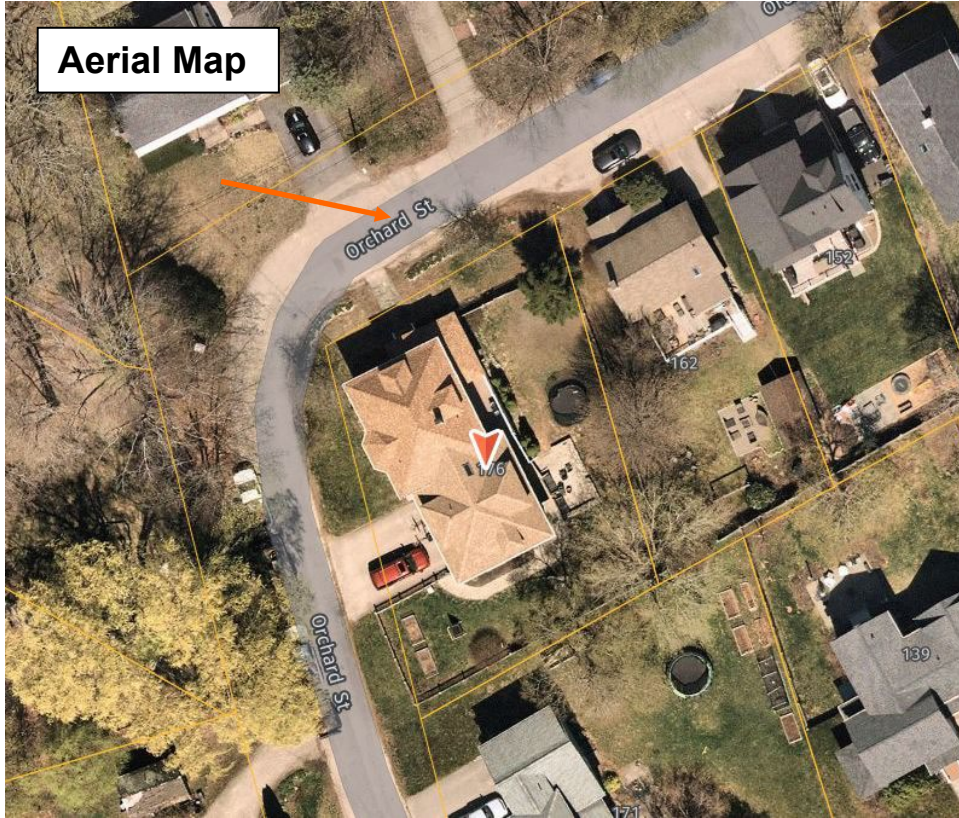
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Dwelling	Addition and Deck*	Primarily residential
<u>Lot area (sq. ft.):</u>	8,974	8,974	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,974	8,974	7,500 min.
<u>Street Frontage (ft.):</u>	190	190	100 min.
<u>Lot depth (ft.)</u>	78	78	70 min.
<u>Front Yard (ft.):</u>	7	7	15 min.
<u>Secondary Front Yard (ft.):</u>	12.5	12.5	15 min.
<u>Right Yard (ft.):</u>	24	24	10 min.
<u>Rear Yard (ft.):</u>	24	24	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u> :	24	27	25 max.
<u>Open Space Coverage (%)</u> :	>30	>30	30 min.
<u>Parking</u>	4	4	2
<u>Estimated Age of Structure:</u>	1903	Variance request(s) shown in red.	

*to allow a nonconforming structure to be extended, reconstructed, or enlarged.

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant is requesting relief to construct a 256 square foot addition and a 234 square foot deck to the eastern side of the existing dwelling, where a portion of the existing covered porch now exists. The addition and deck will increase building coverage from 24% existing to 27% proposed, thus requiring relief from the 25% maximum requirement. The existing house is non-conforming as to front yard setbacks and therefore the enlargement and extension of the non-conforming structure also requires relief from Section 10.321.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*
AND
 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*
OR
Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

III. NEW BUSINESS

- D. The request of **Point of View Condominium (Owner)**, for property located at **75 Salter Street #1** whereas relief is needed to relocate the existing residential structure landward of the highwater mark which requires the following: 1) Variance from Section 10.211 and Section 10.531 to allow the following: a) a 2' front yard where 30' is required, b) a 2' side yard where 30' is required; 2) Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance; 3) Variance from Section 10.516.40 to allow a heating vent to project 1' into the required side yard. Said property is located on Assessor Map 102 Lot 32-1 and lies within the Waterfront Business (WB) and Historic District. (LU-23-83)

Existing & Proposed Conditions

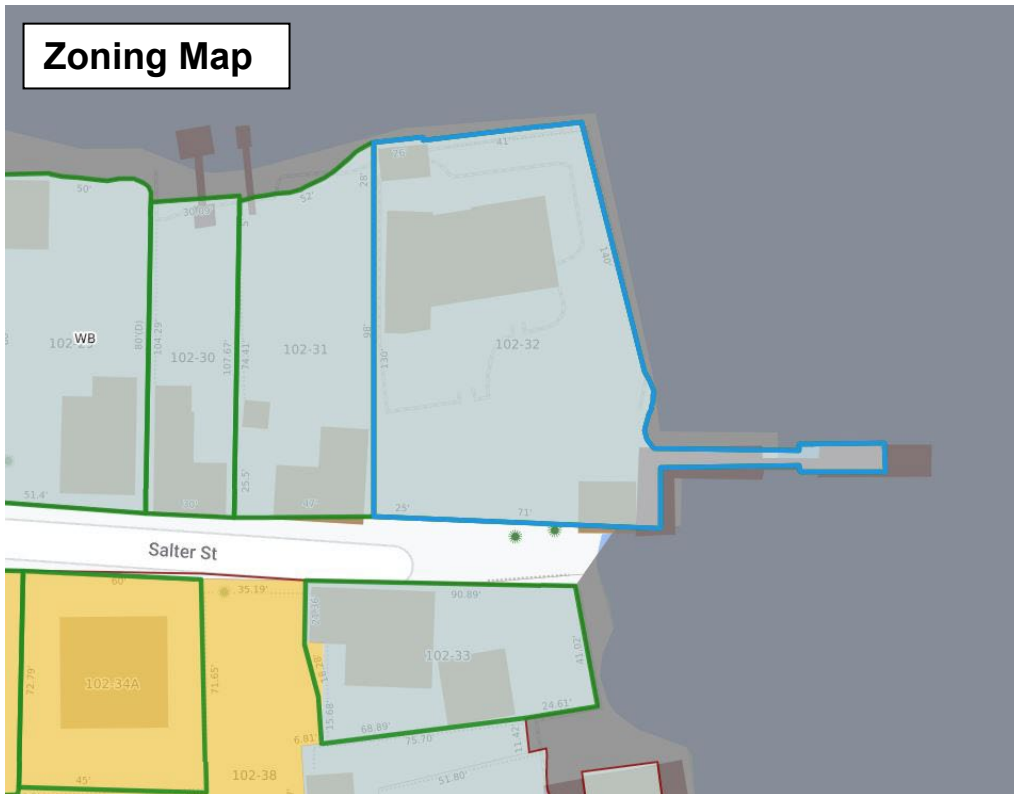
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two Single Family Condominium units	Relocate Unit 1*	Primarily residential
<u>Lot area (sq. ft.):</u>	11,327	11,327	20,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,663.5	5,663.5	NR min.
<u>Street Frontage (ft.):</u>	67	67	100 min.
<u>Lot depth (ft.)</u>	>100	>100	100 min.
<u>Front Yard (ft.):</u>	2	2	30 min.
<u>Left Yard (ft.):</u>	1.8	1.8	30 min.
<u>Right Yard (ft.):</u>	-5.6	2	30 min.
<u>Rear Yard (ft.):</u>	18	18	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	26	27	30 max.
<u>Open Space Coverage (%)</u>	52	53.5	20 min.
<u>Parking</u>	>3	>3	3
<u>Estimated Age of Structure:</u>	1991	Variance request(s) shown in red.	

*to allow a nonconforming structure to be extended, reconstructed, or enlarged.

Other Permits/Approvals Required

- Certificate of Approval - Historic District Commission
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

April 17, 1990 – The Board **granted** variances to allow the following: 1) development of a lot with 96' of frontage and 10,700 s.f. in area where 100' and 20,000 s.f. respectively are required; 2) the construction of a two story infill addition between the existing dwelling on lot 32 and that on lot 32A, creating one dwelling unit on a new lot having 96' frontage and being 10,700 s.f. in area; 3) two non-conforming dwellings to be combined and enlarged creating one non-conforming dwelling in a district where dwellings are not permitted increasing the extent of a non-conforming use of structure or land; 4a) a 19.2' rear yard for the infill addition where 20' was required; and 4b) 8.2', 15.5' and 17' left yards where 20' was required. The Board **denied** request 4c) to allow a proposed enclosed staircase to be constructed with a 0' front yard where 20' was required.

September 18, 1990 – The Board **granted** a request to appeal a decision (denial) of the Historic District Commission to be heard on October 16, 1990.

December 18, 1990 – The Board **granted** the appeal to overturn the decision made by the Historic District Commission at their July 25, 1990 meeting. (**after** a request to postpone a hearing in November and applicant working separately with HDC that ultimately issued a Certificate of Approval.)

December 18, 1990 – As noted in a separate letter of decision, the Board **denied** a variance to allow a 14.5' x 17' addition to a single-family dwelling with a 2.3' side yard where 20' was required.

December 18, 2018 – The Board **granted** the use of an existing structure as a dwelling unit, relocating stairs, and adding a dormer and two 19± s.f. entrance overhangs. Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:

- a) from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance;
- b) from Section 10.440, Use #1.10 to allow a single-family dwelling where the use is not allowed in this district; and variances from Section 10.311 and Section 10.531 to allow the following:
- c) a lot area of 11,327± s.f. where 20,000 s.f. is required;
- d) 67'± of continuous street frontage where 100' is required;
- e) a 4.1 '± front yard where 30' is required; and
- f) a 0'± side yard where 30' is required.

Planning Department Comments

The applicant is requesting relief necessary to relocate the existing two-story dwelling unit, as previously authorized by the Board in 2018. The building is currently located approximately 5.6 feet over the Piscataqua River and must be relocated back over the land in order to comply with a settlement with NHDES to remedy an alleged violation of RSA 482-A:26. The applicant requests that the Board re-affirm the prior grant of variances from December 2018. The applicant received a building permit within the required two year period to vest the prior

approvals and therefore staff does not believe that re-affirmation is required. The applicant requests relief from three additional requirements to move forward with the renovation and restoration of the building for residential use, as follows:

- 1) Variance from Section 10.211 and Section 10.531 to allow the following:
 - a) a 2' front yard where 30' is required,
 - b) a 2' side yard where 30' is required; and
- 2) Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance; and
- 3) Variance from Section 10.516.40 to allow a heating vent to project 1' into the required side yard.

The applicant's request for a variance from Section 10.516.40 to allow a heating vent to project 1' into the required side yard is not applicable in the Waterfront Business (WB) District and staff does not recommend any relief is needed for this request.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

 - (c) *Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

III. NEW BUSINESS

- E. The request of **Eric J. Gregg Revocable Trust (Owner)**, for property located at **112 Mechanic Street** whereas relief is needed to install a mechanical unit to the side of the primary structure which requires the following: 1) Variance from Section 10.515.14 to allow a 2' rear setback where 10 feet is required. Said property is located on Assessor Map 103 Lot 25 and lies within the General Residence B (GRB) and Historic District. (LU-23-73)

Existing & Proposed Conditions

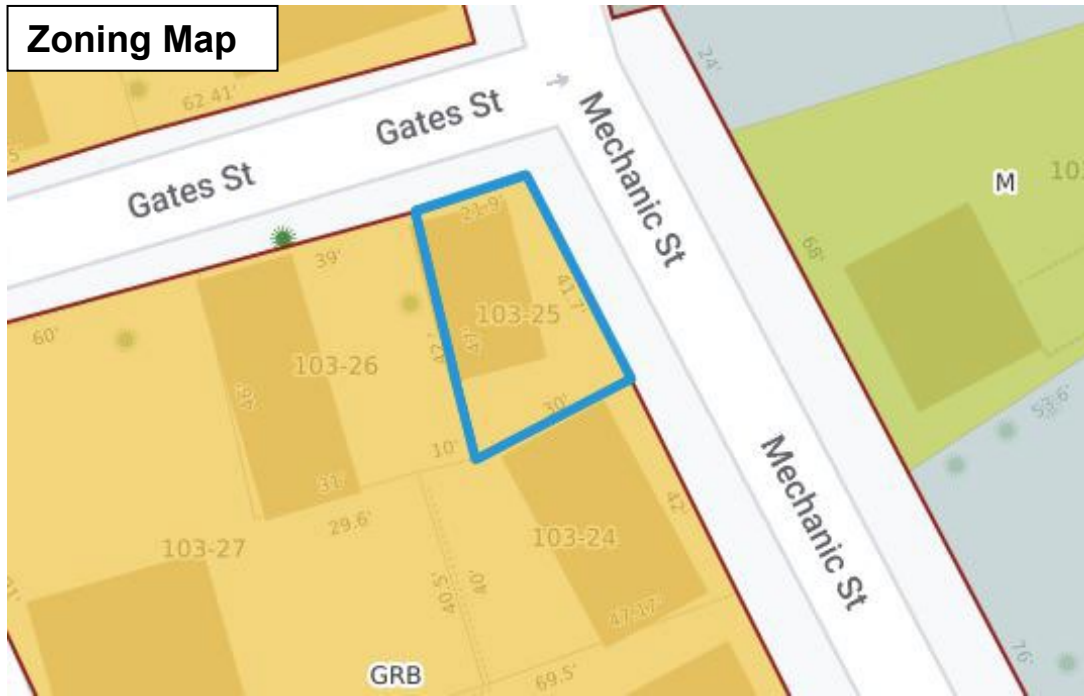
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	Mechanical Unit	Primarily residential
<u>Lot area (sq. ft.):</u>	871	871	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	871	871	5,000 min.
<u>Street Frontage (ft.):</u>	63.5	63.5	80 min.
<u>Lot depth (ft.)</u>	21.5	21.5	60 min.
<u>Front Yard (Mechanic St) (ft.):</u>	5	5	5 min.
<u>Secondary Front Yard (Gates St) (ft)</u>	0	0	5
<u>Left Yard (ft.):</u>	14	13	10 min.
<u>Rear Yard (ft.):</u>	0	6*	25 (primary structure) min. 10 (mechanical unit)
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	51.5	51.5	30 max.
<u>Open Space Coverage (%):</u>	<25	<25	25 min.
<u>Parking</u>	1	1	2
<u>Estimated Age of Structure:</u>	1920	Variance request(s) shown in red.	

*a mechanical system that is set back less than the 10 ft. required minimum distance from the property lines

Other Permits/Approvals Required

- Certificate of Approval - Historic District Commission
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant is proposing to install an HVAC mechanical unit on the south side of the existing house. The unit is proposed to be located to the front side of the window within the driveway and the applicant is proposing to screen it with latticework painted to match the house. Since the original application, the applicant provided updated materials that more clearly outlined the placement of the unit to within 6 feet of the rear property line rather than 2 feet to avoid conflict with the existing window on the side of the house. If the Board wishes to approve the variance request, staff recommends the motion and condition as listed below or similar language:

Sample Motion: Approve the variance request with the following condition:

- 1) ***The mechanical unit is located to the side of the primary structure and 6 feet from the rear property line, as indicated in the applicant's submission materials.***

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*
AND
 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*
OR
Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

III. NEW BUSINESS

- F. The request of **Karyn S. Denicola Revocable Trust (Owner)**, for property located at **281 Cabot Street** whereas relief is needed to demolish the existing single-family dwelling and detached one-story garage/shed and construct a new single family dwelling with attached garage which requires the following: 1) Variance from Section 10.521 to allow a) 3' front yard setback where 5' is required; b) a 5' south side yard setback where 10' is required; c) a 3.5' north side yard setback where 10' is required; and d) a 43% building coverage where 35% is allowed. Said property is located on Assessor Map 144 Lot 20 and lies within the General Residence C (GRC) District. (LU-23-84)

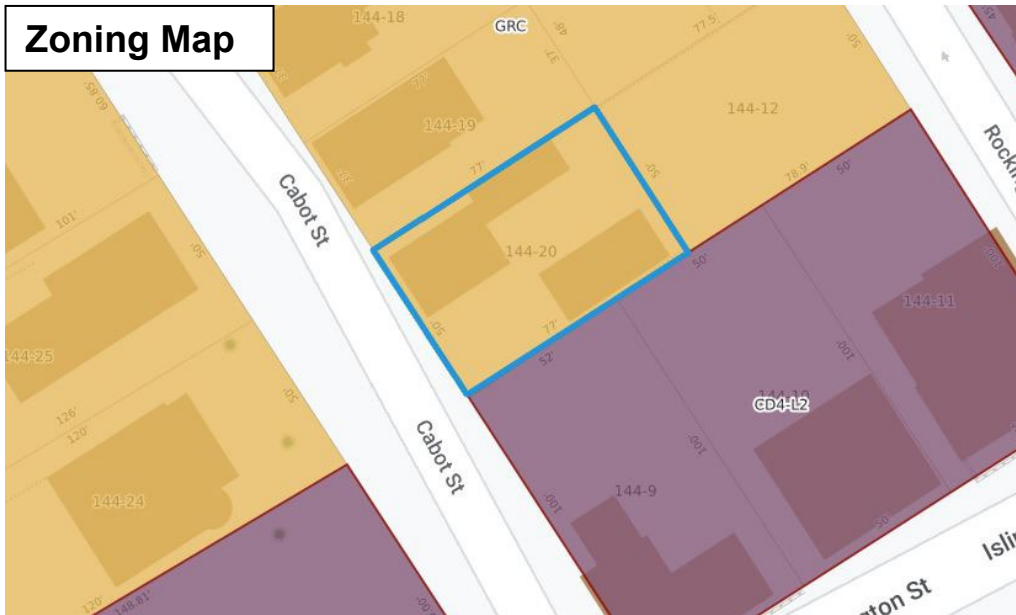
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Dwelling	Raze and Reconstruct	Primarily residential
<u>Lot area (sq. ft.):</u>	3,864	3,864	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,864	3,864	3,500 min.
<u>Street Frontage (ft.):</u>	49.5	49.5	70 min.
<u>Lot depth (ft.)</u>	77.5	77.5	50 min.
<u>Front Yard (ft.):</u>	1.8	3	5 min.
<u>Left Yard (ft.):</u>	0	3.5	10 min.
<u>Right Yard (ft.):</u>	2	5	10 min.
<u>Rear Yard (ft.):</u>	5.3	20	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u> :	36	43	35 max.
<u>Open Space Coverage (%)</u> :	>20	>20	20 min.
<u>Parking</u>	3	3	2
<u>Estimated Age of Structure:</u>	1870	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant is proposing to demolish the existing single-family dwelling and detached garage and to reconstruct a new dwelling with an attached garage in its place. The newly constructed dwelling is proposed within the front and side setbacks and with an increase in total building coverage from 36% to 43% where 35% is the maximum, which requires relief from the

dimensional requirements. The applicant included a request for a Variance from Section 10.321 to permit the reconstruction of a single-family dwelling on the property which is more non-conforming for building coverage than the existing conditions. As the proposal is for a complete demo and replacement of the existing structures, this section is not applicable to the proposal and does not require relief.

The GRC District requires 70 feet minimum street frontage whereas the existing lot has 49.5 feet.

Article 3, Section 10.312 outlines:

- 10.312 Notwithstanding the provision of Section 10.311, a **lot** that has the minimum **lot area** but has less than the minimum **street frontage** required by this Ordinance shall be considered to be in compliance with respect to the **frontage** requirement if one of the following conditions applies:
- 10.312.10 The **lot** was shown on a recorded plan or described in a recorded deed on or before March 21, 1966, and such **lot** was not held in common ownership with any adjoining or **contiguous lot** on or before March 21, 1966; or
 - 10.312.20 The **lot** was shown on a recorded plan or described in a recorded deed on or before March 21, 1966, and the Planning Board has approved a plat demonstrating that such **lot** and all adjoining or **contiguous lots** under common ownership have been combined to create a **lot** or **lots** most nearly consistent with the minimum **street frontage** requirement; or
 - 10.312.30 The **lot** was shown on a plan or described in a deed recorded after March 21, 1966, and such **lot** was created in compliance with the Zoning Ordinance, Subdivision Rules and Regulations and such other ordinances and regulations which properly apply and were in effect at the time of recording in the Rockingham County Registry of Deeds.

The applicant should clarify if one of the conditions is met for compliance with the street frontage requirement or the Board may consider postponing the application for notice that includes the request for relief of the frontage requirement.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

 - (c) *Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

III. NEW BUSINESS

- G. The request of **Sureya M Ennabe Revocable Living Trust (Owner)**, for property located at **800 Lafayette Road** whereas relief is needed to increase the height of the existing sign which requires the following: 1) Variance from Section 10.1281 to alter a nonconforming sign without bringing it into conformity; and 2) Variance from Section 10.1253.10 to increase the height to 20 feet and 1 inch where 20 feet is allowed. Said property is located on Assessor Map 244 lot 5 and lies within the Gateway Corridor (G1) District and Sign District 5. (LU-23-66)

Existing & Proposed Conditions

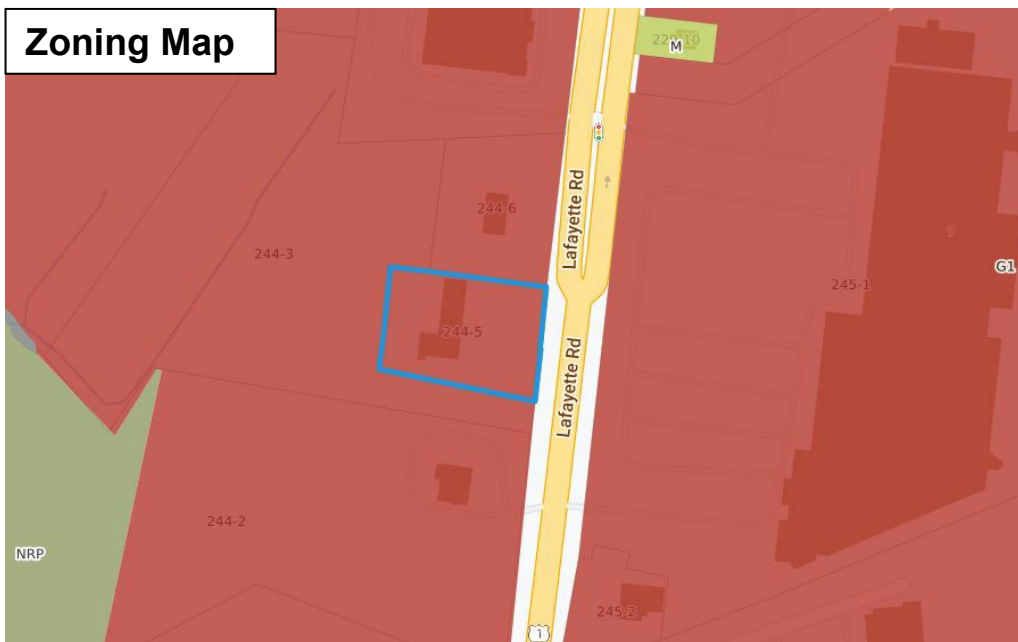
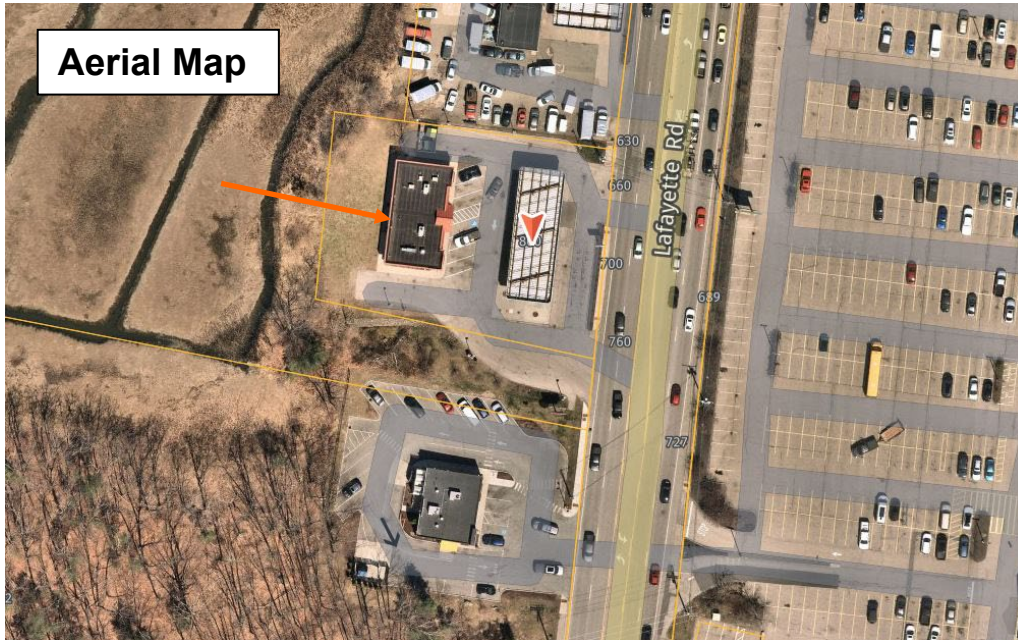
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial	Add 18" height to existing sign*	Mixed Uses
<u>Aggregate Sign Area (sq. ft.):</u>	48	48	100 max.
<u>Freestanding Sign – Maximum Height (ft.):</u>	18.6	20.1	20 max.
<u>Estimated Age of Structure:</u>	2011	Variance request(s) shown in red.	

*alter a nonconforming sign without bringing it into conformity

Other Permits/Approvals Required

- Sign Permit

Neighborhood Context



Previous Board of Adjustment Actions

January 26, 1965 – The Board **declined** to hear a request to construct a service station as the plans were not sufficient in scope to allow full consideration of the request.

April 25, 1972 – A petition for a proposed car wash was **withdrawn**.

June 29, 1976 – the Board **granted** a variance to vary the required front setback by erecting replacement signage with the stipulation that a total maximum signage of 270 s.f. be allowed for the entire lot.

June 29, 1976 – The Board **denied** a request to vary the required front setback for the erection of an expanded canopy over the gasoline pumps.

July 22, 1976 – the Board **granted** a rehearing on the above.

August 12, 1976 – the Board **granted** a variance to allow a canopy structure within the allowed 105' setback and a special exception to add 4 gasoline pumps, with the stipulation that the canopy be built as per plans submitted by the petitioner on that date.

February 18, 1986 – The Board **granted** a variance to construct a 10' x 29' addition to the rear of an existing building with a rear yard of 40' where 50' was required.

June 6, 1989 – The Board **granted** variances to allow a) a 4'6" x 10' section of a previously constructed cooler to maintain a 40' rear yard, 50' required and b) the previously constructed 10' x 29' addition to maintain a 28' left side yard where 30' was required.

November 17, 2009 – The Board **granted** a special exception for the use and variances to allow 1) a 30' front yard setback for a pump island canopy, 105' required along Lafayette Road; 2) the following setbacks in relation to the canopy structure: right, left, and front yard setbacks of 26', 23' and 30', where 30', 30' and 70' respectively were required; and 3) a tidal wetland setback of 50', where 100' was required.

April 20, 2010 – (postponed from March 23, 2010) The Board **granted** a variance to allow off street parking spaces between the principal building and the street right-of-way and, in order to obtain site plan approval, relief from Section 10.1113.20 of the Zoning Ordinance regarding the location of off-street parking spaces to allow parking between the principal building and the street.

June 21 & June 28, 2011 – The Board **denied** the request for a Variance from Section 1251.2 to allow canopy signs of 43.5± s.f. and 23± s.f. where 20 s.f. is the maximum sign area allowed for each individual canopy sign.

August 16, 2011 – An appeal for the June decision and a new petition to place striped on an existing canopy were **withdrawn**.

October 19, 2011 - The Board voted to **deny** the appeal to place colored markings on an existing canopy. The Board determined that the proposed colors and design constituted a sign as described in the Zoning Ordinance.

Planning Department Comments

The applicant is proposing to raise the height of the existing sign to 20' 1" by adding an 18" riser to the existing pole. This is proposed to alleviate a continuing problem of the sign being hit, as it was originally installed at a lower height than was necessary to provide clearance to taller vehicles and trucks entering and exiting the site.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

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