



City of Portsmouth
Planning Department
1 Junkins Ave, 3rd Floor
Portsmouth, NH
(603)610-7216

MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Stefanie Casella, Planner
DATE: February 15, 2024
RE: Zoning Board of Adjustment February 21, 2024

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

II. Old Business

- A. 505 US Route 1 Bypass
- B. 413 Lafayette Road

III. New Business

- A. 1500 Lafayette Road, Unit 6
- B. 414 State Street, Unit 2
- C. 550 Sagamore Avenue
- D. 46 Willow Lane
- E. 2 Monroe Street

II. OLD BUSINESS

- A. REQUEST TO WITHDRAW** The request of **Giri Portsmouth 505 Inc. (Owner)**, for property located at **505 US Route 1 Bypass** whereas relief is needed to demolish the existing structure and construct a new hotel with a drive thru restaurant which requires the following: 1) Special Exception from 10.440 Use #10.40 hotel where it is permitted by Special Exception; 2) Variance from Section 10.1113.20 to allow parking spaces between the principal building and a street; 3) Variance from Section 10.1113.41 for parking located 1 foot from the lot line where 40 feet is required; 4) Variance from Section 10.575 to allow dumpsters to be located 1 foot from the lot line where 10 feet is required; 5) Variance from Section 10.835.32 to allow 1 foot between the lot line and drive-thru and bypass lanes where 30 feet is required for each; and 6) Variance from Section 10.835.31 to allow 37 feet between the menu and speaker board and the front lot line where 50 feet is required. Said property is located on Assessor Map 234 Lot 5 and lies within the General Business (GB) District. (LU-23-199) **REQUEST TO WITHDRAW**

**Please note the Variances for this application were denied at the January 23, 2024 Board of Adjustment meeting and the Special Exception was continued to the February meeting pending additional information to be provided by the applicant.*

Planning Department Comments

On Tuesday, January 23, 2024 the Board of Adjustment denied the following variances to construct a new hotel with a drive-thru restaurant:

1. Variance from Section 10.1113.20 to allow parking spaces between the principal building and a street;
2. Variance from Section 10.1113.41 for parking located 1 foot from the lot line where 40 feet is required;
3. Variance from Section 10.575 to allow dumpsters to be located 1 foot from the lot line where 10 feet is required;
4. Variance from Section 10.835.32 to allow 1 foot between the lot line and drive-thru and bypass lanes where 30 feet is required for each; and
5. Variance from Section 10.835.31 to allow 37 feet between the menu and speaker board and the front lot line where 50 feet is required.

Staff recommends that the Board suspend their rules and allow the applicant to withdraw the request for a special exception.

II. OLD BUSINESS

- A. **REQUEST TO POSTPONE** The request of **Friends of Lafayette House in care of Melanie Merz (Owner)**, for property located at **413 Lafayette Road** whereas relief is needed to construct an attached caretakers unit to the existing residential care facility which requires the following: 1) Variance from Section 10.331 to extend, enlarge, or change the lawful nonconforming use without conforming to the Ordinance; and 2) Variance from Section 10.334 to extend the nonconforming use to a remaining portion of the land. Said property is located on Assessor Map 230 Lot 23A and lies within the Single Residence B (SRB) District. (LU-23-208) **REQUEST TO POSTPONE**

Planning Department Comments

The applicant is requesting to postpone consideration of this application to allow for a site survey to be completed.

III. NEW BUSINESS

- A. The request of **DSM MB II LLC (Owner), and Bruno Fonzo (Applicant)** for property located at **1500 Lafayette Road Unit 6** whereas relief is needed to establish a UPS store which requires the following: 1) Special Exception from use #7.30 consumer service where it is permitted by Special Exception. Said property is located on Assessor Map 252 Lot 2 Unit 6 and lies within the Gateway Center (G2) District. (LU-24-5)

Existing & Proposed Conditions

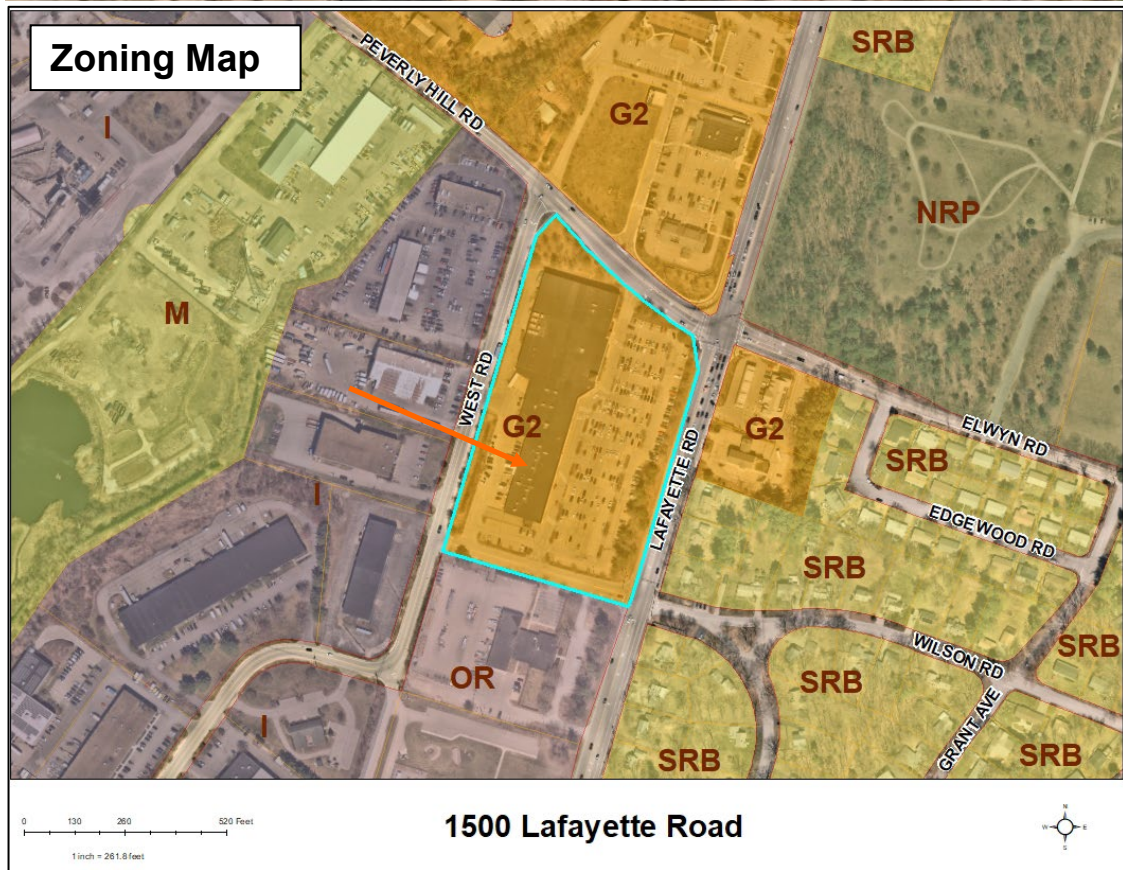
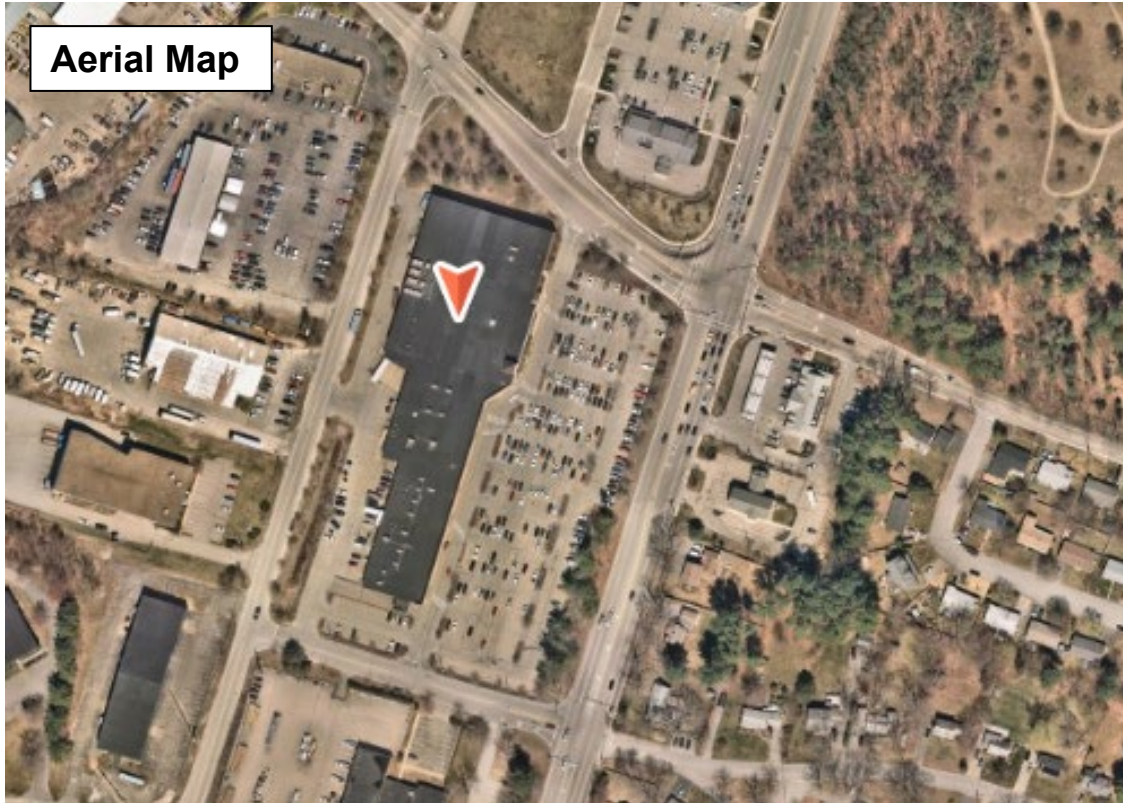
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Personal Service	*Consumer Service (Allowed by Special Exception)	Mixed residential and commercial uses
<u>Unit #6 Area (sq. ft.)</u>	1366	1366	1366
<u>Parking (Spaces)</u>	1 per 400 s.f. GFA	1 per 400 s.f.GFA	
<u>Estimated Age of Structure:</u>	1995	Special Exception request(s) shown in red.	

*A UPS store is considered a "consumer services" use that is allowed by Special Exception in the G2 District

Other Permits/Approvals Required

- Building Permit (Tenant Fit Up)

Neighborhood Context



Previous Board of Adjustment Actions

September 15, 1998 – the Board **granted** a variance to allow a 3,600 s.f. restaurant in an existing shopping center which is in a district that does not allow restaurants and a variance to allow 381 parking spaces where 444 parking spaces are required.

February 18, 2003 – the Board **denied** the request for a variance to Article IX, Section 10-907 to allow 14.4 sf of additional attached signage for an aggregate of 841.8 sf of attached signage where 745.3 sf is the maximum aggregate attached signage is allowed.

Planning Department Comments

The applicant is requesting to establish a UPS store which is considered a consumer service under the [Zoning Ordinance](#). The previous tenant of unit 6 was Super Cuts which was considered a personal service. The change in use requires a special exception from the Board. Personal service uses and consumer service uses require the same amount of parking under Section 10.1112.321 so no additional parking is needed.

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

B. The request of **Timothy S. Wheelock and Susan V. Denenberg (Owners)**, for property located at **414 State Street Unit 2** whereas relief is needed to convert a ground floor commercial unit to a residential unit which requires the following: 1) Variance from Section 10.642 to allow a residential unit on the ground floor where nonresidential is required in the Downtown Overlay District; and 2) Variance from Section 10.5A41.10A to allow 806 square feet per dwelling unit where 3,000 square feet is required. Said property is located on Assessor Map 116 Lot 13 Unit 2 and lies within the Character District 4-L1 (CD4-L1) and Downtown Overlay District (DOD). (LU-24-6)

Existing & Proposed Conditions

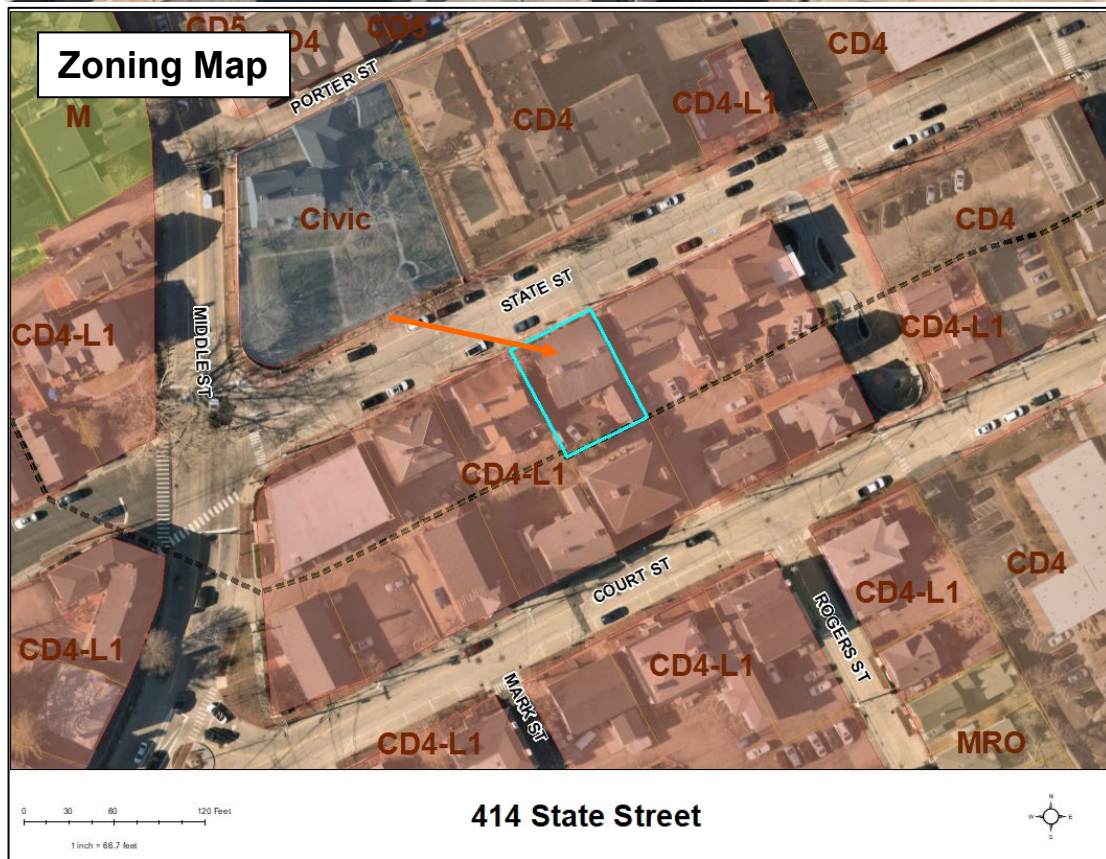
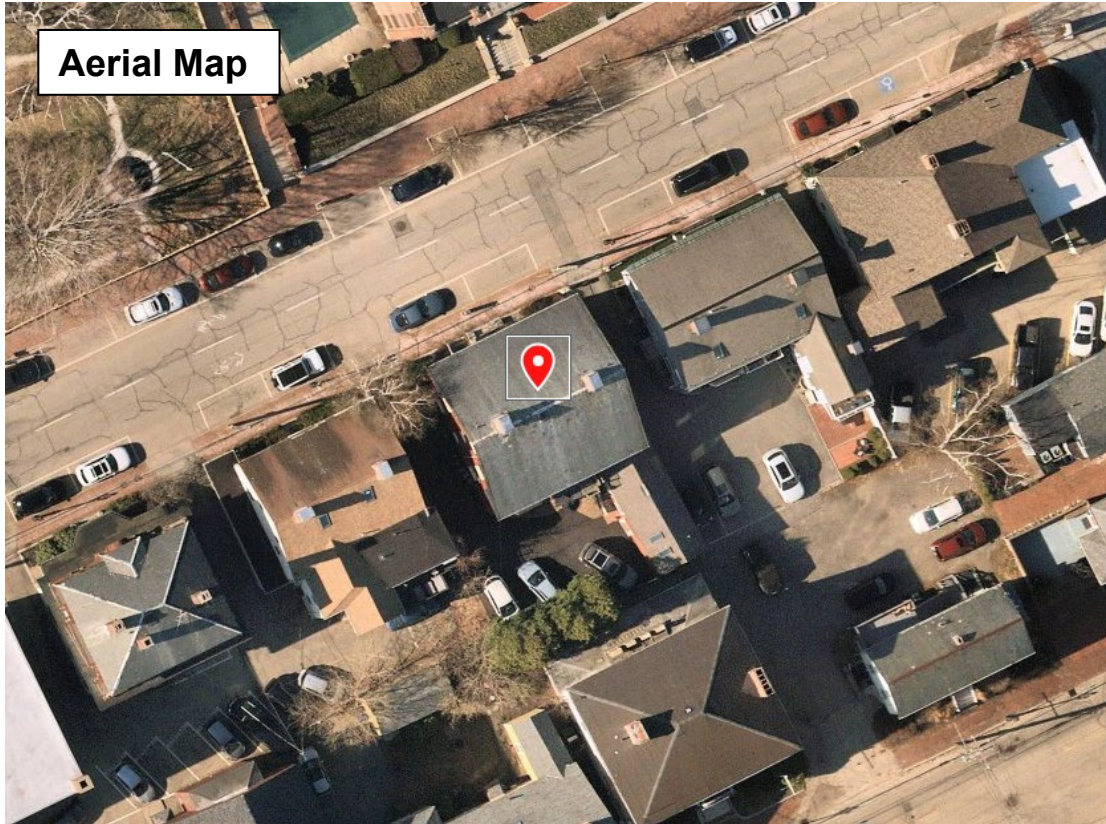
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial Office	*Residential Unit	Mixed Uses
<u>Lot area (sq. ft.):</u>	4,840	4,840	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	968	806	3,000 min.
<u>Front Yard (ft.):</u>	3.75	3.75	15 max.
<u>Right Yard (ft.):</u>	10	10	5 minimum 20 maximum
<u>Left Yard (ft.):</u>	0.5	0.5	5 minimum 20 maximum
<u>Rear Yard (ft.):</u>	1	1	5 min.
<u>Parking</u>	4	4	6
<u>Estimated Age of Structure:</u>	1850	Variance request(s) shown in red.	

*Structures in the Downtown Overlay District (DOD) require nonresidential uses on the ground floor.

Other Permits/Approvals Required

- Building Permit
- Parking Conditional Use Permit (TAC and Planning Board)

Neighborhood Context



Previous Board of Adjustment Actions

No previous history found.

Planning Department Comments

The applicant is requesting variances to convert a ground floor commercial office to a residential unit. The property is in the Downtown Overlay District which requires ground floor uses to be nonresidential. This change will decrease the lot area per dwelling unit from 968 to 806 and will require a parking conditional use permit from the Planning Board. The applicant is not proposing any exterior changes.

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

C. The request of **Frances E. Mouflouze Revocable Trust of 2015 (Owner)**, for property located at **550 Sagamore Avenue** whereas relief is needed to demolish the existing structure and construct a three dwelling unit building which requires the following: 1) Variance from Section 10.440 Use #1.51 to allow a three dwelling unit structure where it is not permitted. Said property is located on Assessor Map 222 Lot 11 and lies within the Single Residence B (SRB) District. (LU-24-9)

Existing & Proposed Conditions

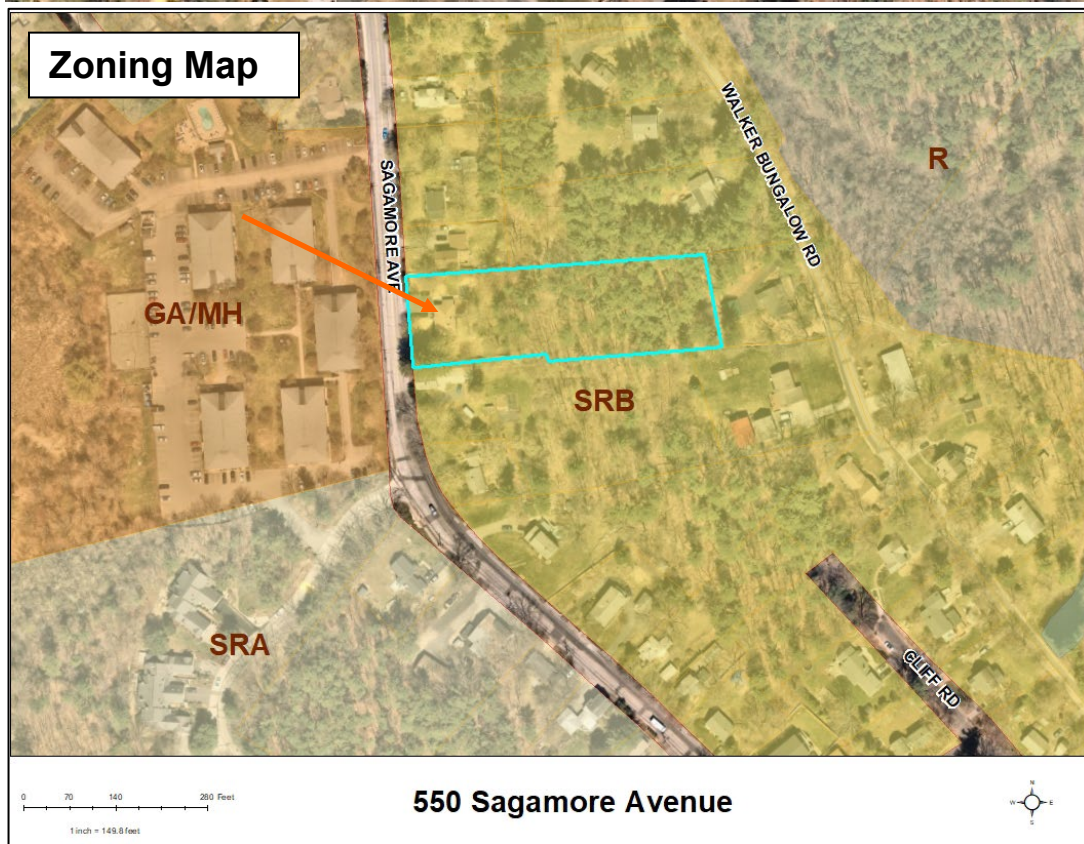
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	*Three-unit dwelling	Primarily residential
<u>Lot area (sq. ft.):</u>	62,754	62,754	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	62,754	20,918	15,000 min.
<u>Street Frontage (ft.):</u>	139.8	139.8	100 min.
<u>Lot depth (ft.)</u>	434	434	100 min.
<u>Front Yard (ft.):</u>	33	31	30 min.
<u>Left Yard (ft.):</u>	45	65	10 min.
<u>Right Yard (ft.):</u>	40	11	10 min.
<u>Rear Yard (ft.):</u>	>300	283	30 min.
<u>Height (ft.):</u>	13.1	<35	35 max.
<u>Building Coverage (%):</u>	5.8	9	20 max.
<u>Open Space Coverage (%):</u>	98.2	94.2	40 min.
<u>Parking</u>	2	12	4
<u>Estimated Age of Structure:</u>	1960	Variance request(s) shown in red.	

*A three-unit dwelling is not permitted in the SRB.

Other Permits/Approvals Required

- Building Permit
- Site Review (TAC and Planning Board)

Neighborhood Context



Previous Board of Adjustment Actions

October 17, 2023 – The Board **denied** the request to demolish the existing structure and construct two duplexes (creating a total of 4 living units) which requires the following: 1) Variance from Section 10.513 to allow more than one free-standing dwelling unit on a lot; and 2) Variance from Section 10.440 Use #1.30 to allow the construction of duplexes where they are not permitted.

December 23, 2023 – The Board **denied** the request for a rehearing of the October 17, 2023 decision to deny the request for demolishing the existing structure and constructing two duplexes (creating a total of 4 living units) which requires the following: 1) Variance from Section 10.513 to allow more than one free-standing dwelling unit on a lot; and 2) Variance from Section 10.440 Use#1.30 to allow the construction of duplexes where they are not permitted.

Planning Department Comments

Fisher vs. Dover

The applicant was before the Board on October 17 of 2023 seeking relief from Section 10.513 to allow more than one free-standing dwelling unit on a lot; Section 10.440 Use #1.30 to allow the construction of duplexes where they are not permitted. The Board denied the request for relief at that time citing that it did not meet the spirit of the ordinance or hardship criteria as the lot is oversized and is presently conforming.. The new design is one building with three proposed dwelling unit. Staff feels this is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether it is applicable before the application is considered.

“When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan.” Fisher v. Dover, 120 N.H. 187, (1980).

The applicant is proposing to demolish the existing structure and construct a 3 unit structure in its place. This application will be require site plan review approval before a building permit can be obtained. If the request is granted, staff recommends the following stipulation for consideration:

1. The design and location of the structure may change as a result of Planning Board review and approval.

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 **Cynthia J. Walker (Owner)**, for property located at **46 Willow Lane** whereas relief is needed to demolish the existing shed, construct an addition to the primary structure and construct a detached garage which requires the following: 1) Variance from Section 10.521 to allow: a) 6.5 foot right yard where 10 feet is required; b) a 2 foot front yard where 15 feet is required; and c) 28% building coverage where 25% is the maximum; 2) Variance from Section 10.571 to allow an accessory structure to be closer to the street than the primary structure; and 3) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 133 Lot 18 and lies within the General Residence A (GRA) District. (LU-24-8)

Existing & Proposed Conditions

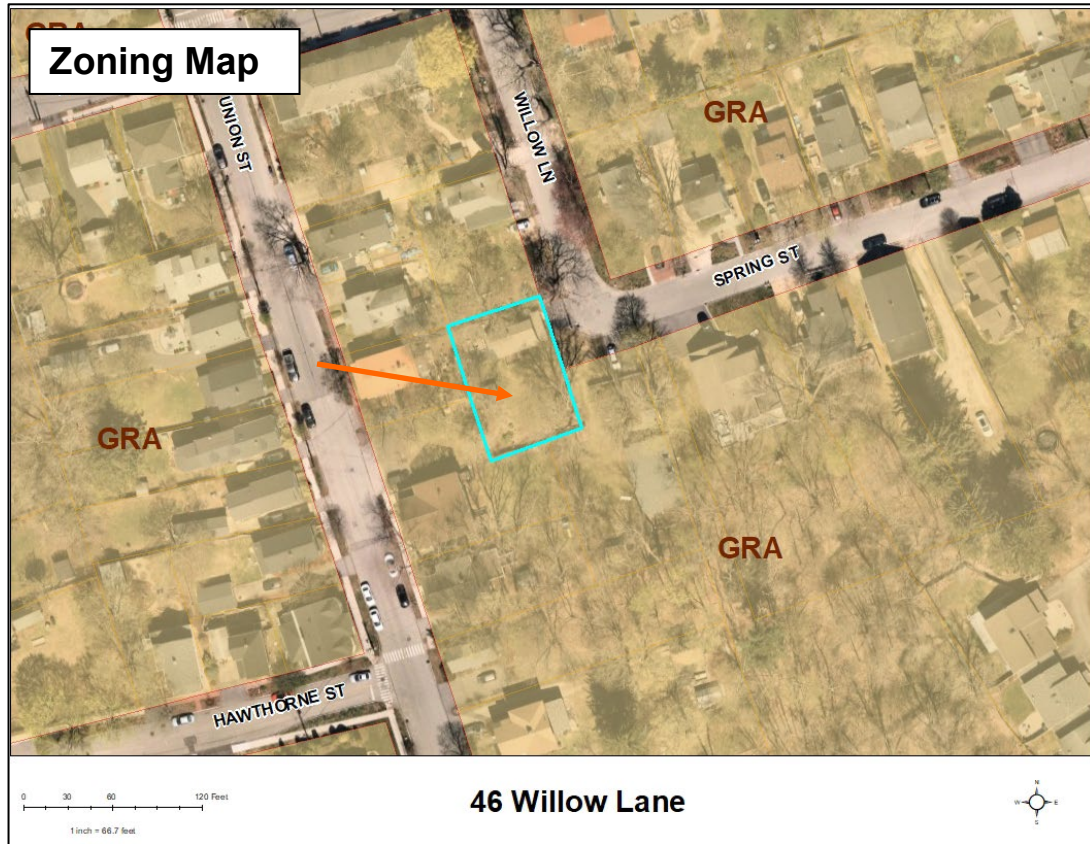
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-living unit	*Construct an addition to the primary structure and a detached garage	Primarily residential
<u>Lot area (sq. ft.):</u>	6098.4	6098.4	7,500 min.
<u>Street Frontage (ft)</u>	49	49	100
<u>Lot depth (ft.)</u>	66	66	70 min.
<u>Front Yard (ft.):</u>	Main House: 6.4	Main House: 12.2 Garage: 2	15 min.
<u>Left Yard (ft.):</u>	>30	Main House: >20 Garage: 17.1	10 min.
<u>Right Yard (ft.):</u>	6.5	6.5	10 min.
<u>Rear Yard (ft.):</u>	>20	20.27	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	15.6	28	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1925	Variance request(s) shown in red.	

***Relief needed to build the garage closer to the street than the primary structure and to construct an addition to the already non-conforming primary structure that would further impact the non-conformity.**

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous history found.

Planning Department Comments

The applicant is proposing to remove the existing shed and front porch of the existing structure and is requesting variances to construct an addition to the primary structure and a detached garage.

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 **Joel and Jessica Harris (Owners)**, for property located at **2 Monroe Street** whereas relief is needed to construct an enclosed breezeway, landing and staircase which requires the following: 1)A Variance from Section 10.521 to allow 27% building coverage where 25% is the maximum allowed; and 2)Variance from Section 10.516.10 to allow a 10-foot front yard where 12 feet is required by the front-yard exception for existing alignments. Said property is located on Assessor Map 152 Lot 8 and lies within the General Residence A (GRA) District. (LU-23-154)

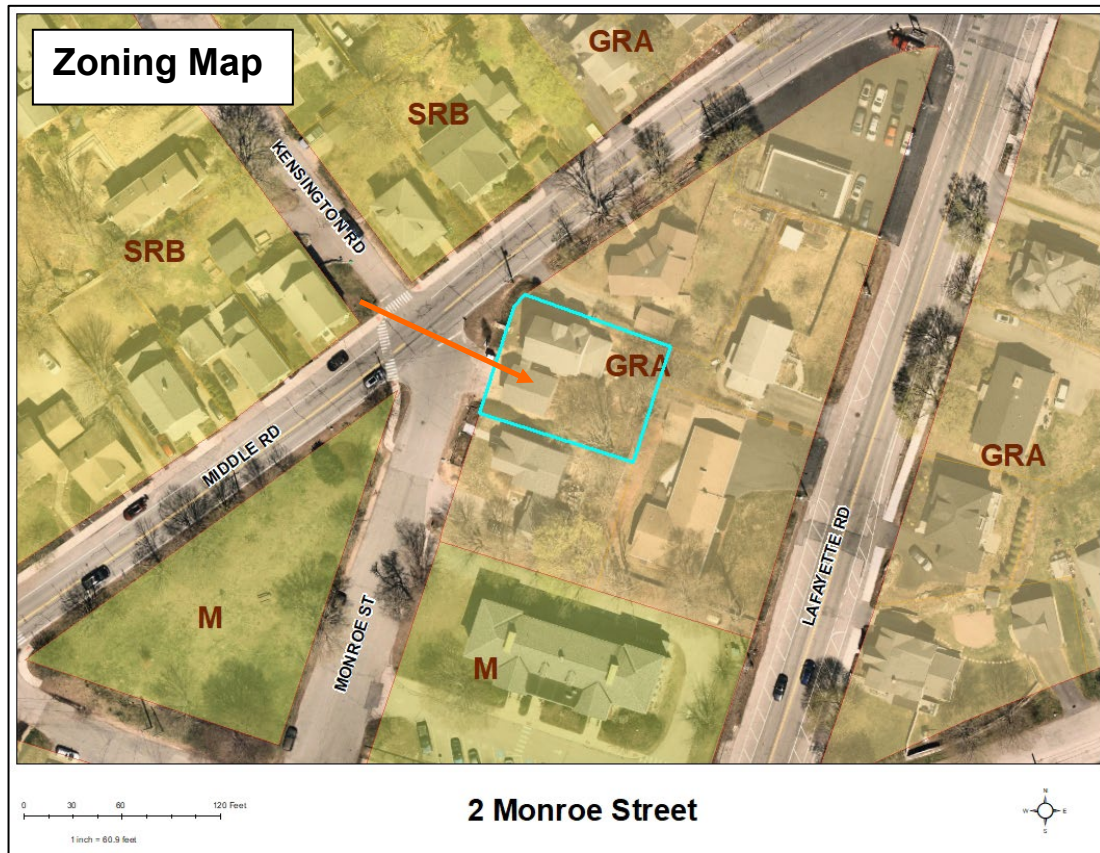
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	Permitted / Required
<u>Land Use:</u>	Single family dwelling	*Construct a breezeway and landing	Primarily Single-family Uses
<u>Lot area (sq. ft.):</u>	7,492	7,492	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,492	7,492	7,500 min.
<u>Street Frontage (ft.):</u>	70	70	100 min.
<u>Lot depth (ft.)</u>	98	98	70 min.
<u>Front Yard (ft.):</u>	19	10	12 min.
<u>Left Yard (ft.):</u>	5 (house)	5 (house)	10 min.
<u>Right Yard (ft.):</u>	10.25	10.25	10 min.
<u>Rear Yard (ft.):</u>	60 (garage)	60 (garage)	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	26.5	27	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1900	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

March 16, 2021 – The Board **granted** the relief needed to demolish the existing garage and construct a new 1 1/2 story garage which requires the following: 1) A Variance from Section 10.521 to allow 26.5% building coverage where 25% is the maximum allowed.

Planning Department Comments

The applicant is requesting additional relief as part of the project previously approved in March of 2021. During construction the project evolved to include a landing area and enclosed breezeway between the garage and house. The relief before the Board, presently, will allow the applicants to complete this change to the project that is currently under construction.

Please note that the project description, on page one of the applicants submission materials, describes the project in its entirety. The previous variances received included the demolition and reconstruction of the garage and therefore were not noticed as part of this request. The only request that is before the Board is the breezeway portion of the project.

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.