



City of Portsmouth
Planning Department
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MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Jillian Harris, Principal Planner
Stefanie Casella, Planner
DATE: January 15, 2025
RE: Zoning Board of Adjustment January 22, 2025

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

II. Old Business

- A. 84 Pleasant Street – Request for Rehearing
- B. 361 Hanover Street

III. New Business

- A. 65 Griffin Road
- B. 200 Spaulding Turnpike
- C. 1001 Islington Street
- D. 40 Pleasant Street

II. OLD BUSINESS

- A. The request of **Working Stiff Properties, LLC** for property located at 84 Pleasant Street and 266, 270, 278 State Street to rehear the granted Variances from the November 19, 2024 BOA meeting.

Planning Department Comments

At the November 19, 2024 Board of Adjustment meeting the Board considered the request of **PNF Trust of 2013, (Owner)**, for property located at **84 Pleasant Street** and **266, 270, 278 State Street** whereas relief is needed to merge the lots and construct a four-story mixed-use building which requires the following: 1) Variance from Section 10.5A41.10.C to allow a) 98% building coverage where 90% is maximum, b) 0% open space where 10% is minimum, and c) 53% shopfront façade glazing on Pleasant Street and 52% on State Street where 70% is the minimum required; 2) Variance from Section 10.5A21.B to allow a) 55 feet of building height where 47 feet is permitted with a penthouse, b) a fourth story addition at 50 feet in height to the Church street elevation where 3 full stories and a short fourth are allowed with 45 feet maximum height permitted; 3) Variance from Section 10.642 to allow 43% ground floor residential area where 20% is maximum.

*The Board voted to **grant** the variances as presented and advertised for Variance No. 1 in its entirety, Variance No. 3 in its entirety, and Variance 2(b) only. The Board voted to **deny** the request for variance No. 2(a).*

A request for rehearing has been filed within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, a hearing will be scheduled for next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

The past application can be referenced in November 19, 2024 meeting packet found at the following link: https://files.cityofportsmouth.com/agendas/2024/BOA/11-19-2024%20Meeting/11-19-2024_BOA_Packet.pdf

II. OLD BUSINESS

B. The request of **361 Hanover Steam Factory LLC (Owner)**, and **Hampshire Development Corporation LLC (Applicant)**, for property located at **361 Hanover Street** whereas relief is needed to expand and renovate the existing commercial building and convert it to multi-family residential and to construct three new multi-family residential buildings which requires the following: 1) Variance from Section 10.642 to allow residential principal uses on the ground floor of the buildings; 2) Variance from Section 10.5A41 - Figure 10.5A41.10D to a) allow for "Apartment", "Rowhouse" and "Duplex" building types where they are not permitted; b) allow a ground floor height of 10.5 feet where 12 feet is required; and 3) Variance from Article 15 - Definition of Penthouse - to allow a penthouse with a setback of 8 feet from all roof edges where 15-20 feet is required and to allow no greater than 80% of the gross living area of the level of the floor below where 50% is the maximum. Said property is located on Assessor Map 138 Lot 63 and lies within the Character District 5 (CD5) and the Downtown Overlay District. (LU-24-196)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial	**Residential apartment, rowhouse, and duplex style buildings	Mixed use
<u>Lot area (sq. ft.):</u>	43,245	Lot 1: 4,717 Lot 2: 38,528	NR min.
<u>Primary Front (Hanover St) Yard (ft.):</u>	>15	1	15 max.
<u>Secondary Front Yard (Rock St) (ft.):</u>	0	0	12 max
<u>Right Yard (ft.):</u>	5	5	5-20 max
<u>Secondary Front Yard (Foundry Pl) (ft.):</u>	0	0	12 max.
<u>Height (ft.):</u>	25 (approx.)	Building A: 52 Building B: 36 Building C: 36 Building D: 40	40 Or 52' with incentives (10.5A46.10) and penthouse (zoning map) max.
<u>Penthouse Gross Living Area % of the Floor Below (%)</u>	n/a	80*	50 max

<u>Penthouse Setback (ft)</u>	n/a	8*	15-20	min.
<u>Ground Floor Height (ft)</u>	10	10.5	12	min.
<u>Building Coverage (%)</u> :	38	72	95	max.
<u>Open Space Coverage (%)</u> :	<5	>5	5	min.
<u>Parking:</u>	57	72		
<u>Estimated Age of Structure:</u>	1850	Variance request(s) shown in red.		

*Request to Withdraw the Variance for the Penthouse

**Apartment, Rowhouse, and Duplex style buildings are not allowed building types under section 10.10.5A41 figure 10.5A41.10D

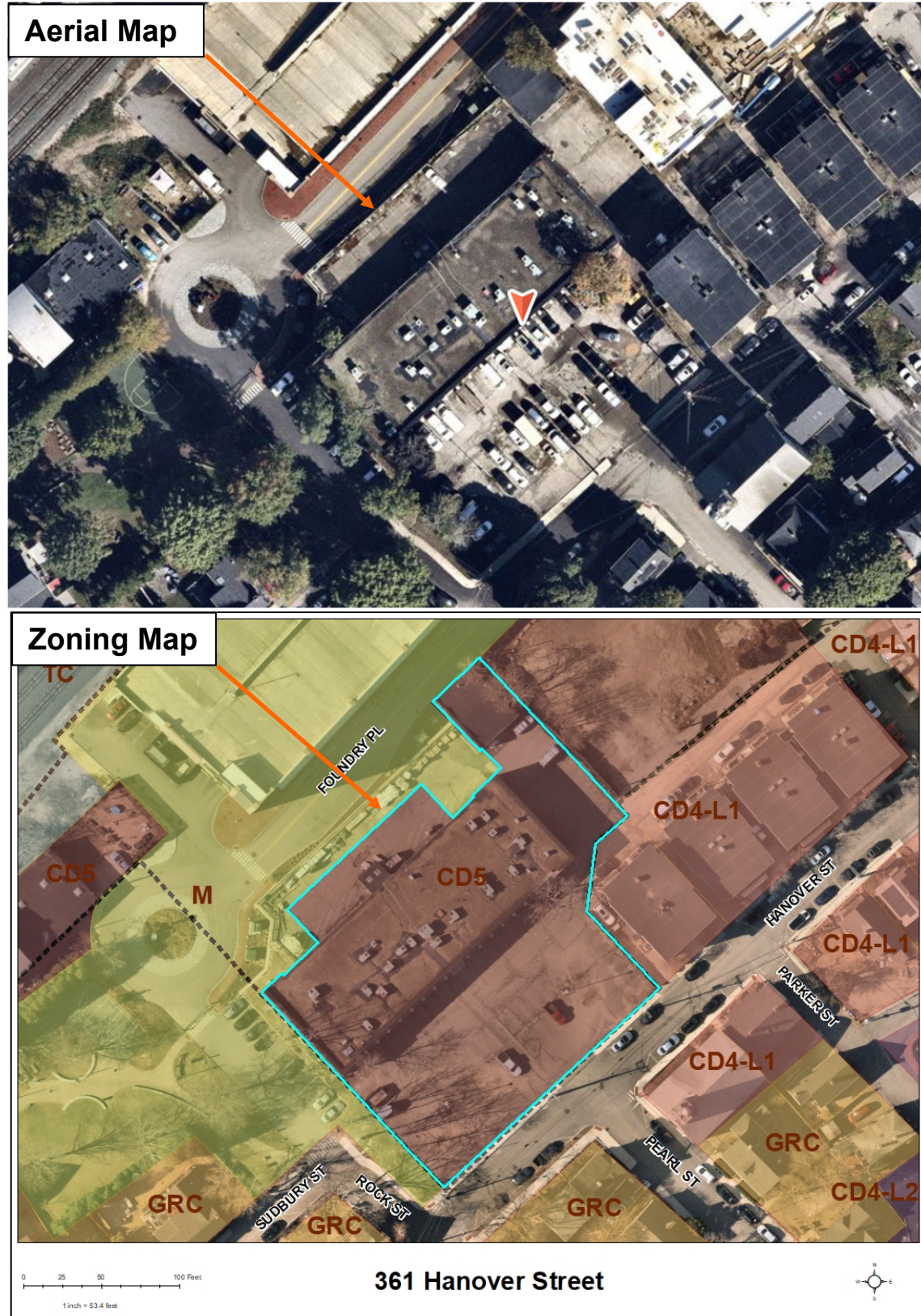
***Residential principal uses are not allowed on the ground floor in the Downtown Overlay District per Section 10.642

Full CD5 Zoning Table can be found on Exhibit A of the application materials.

Other Permits/Approvals Required

- Building Permit
- Site Plan Approval – Technical Advisory Committee and Planning Board
- Subdivision/LLA Approval – Technical Advisory Committee and Planning Board

Neighborhood Context



Previous Board of Adjustment Actions

June 12, 1979 – The Board **denied** the following: 1) Variance from Article II, Section 10-213 and Article XII, Section 10-1210 to allow a dance ballroom in an existing building with 90 parking spaces where 167 are required.

May 28, 1985 – The Board **granted** the following: A Variance from Article II, Section 10-207 to allow the operation of a recreational facility including squash courts, nautilus, exercise rooms, and swimming pool in an industrial district. The Board **denied** the following: A Variance from Article XII, Section 10-1201, Table 7 to allow for 36 parking spaces are required.

September 17, 2013 – The Board **granted** the following: 1) Variance from Section 10.1113.111 to allow required parking spaces to be located on a separate lot from the principal use at a municipally owned uncovered parking facility where a municipally owned covered parking facility is required.

Planning Department Comments

The applicant is proposing to subdivide the property, renovate and further develop the existing commercial structure into multi-family residential, and construct 3 new multi-family residential buildings on the site. Please see the following link for the December 17, 2024 application submittal:

https://files.cityofportsmouth.com/files/planning/apps/HanoverSt_361/HanoverSt_361_BOA_11192024.pdf

At the December 17, 2024 meeting, the Board voted to **postpone** the hearing and requested the applicant provide the following information for the January 22, 2025 meeting:

1. *Plan and elevations of Building A;*
2. *Definitive number of stories in Building D;*
3. *Height elevations for all buildings;*
4. *Streetscape showing project next to 407 Hanover Street;*
5. *More information about the possible burial ground;*
6. *Clarity on the height of each story within each building ; and*
7. *Traffic study if it has been done already.*

The applicant is requesting to withdraw Variance 3 - from Article 15 - Definition of Penthouse - to allow a penthouse with a setback of 8 feet from all roof edges where 15-20 feet is required and to allow no greater than 80% of the gross living area of the level of the floor below where 50% is the maximum. Should the Board decide to consider the request, a

motion to suspend the rules to consider the withdrawal request should take place before the public hearing is closed on the remaining variances.

If the Board decides to grant approval of the requested variances, staff recommends the following stipulation for consideration:

1. The design and location of the buildings 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

 - (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

A. The request of **111 Front Street LLC (Owner)**, for property located at **65 Griffin Road** whereas relief is needed for after-the-fact construction of a front porch and rear deck which requires the following: 1) Variance from Section 10.521 to a) allow a 21.5 foot front yard setback where 30 feet is required; b) allow a 6.5 foot left side yard setback where 10 feet is required; c) allow a 29 foot rear yard setback where 30 feet is required; and 2) Variance from Section 10.321 to allow a building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 258 Lot 31 and lies within the Single Residence B (SRB) District. (LU-24-210)

Existing & Proposed Conditions

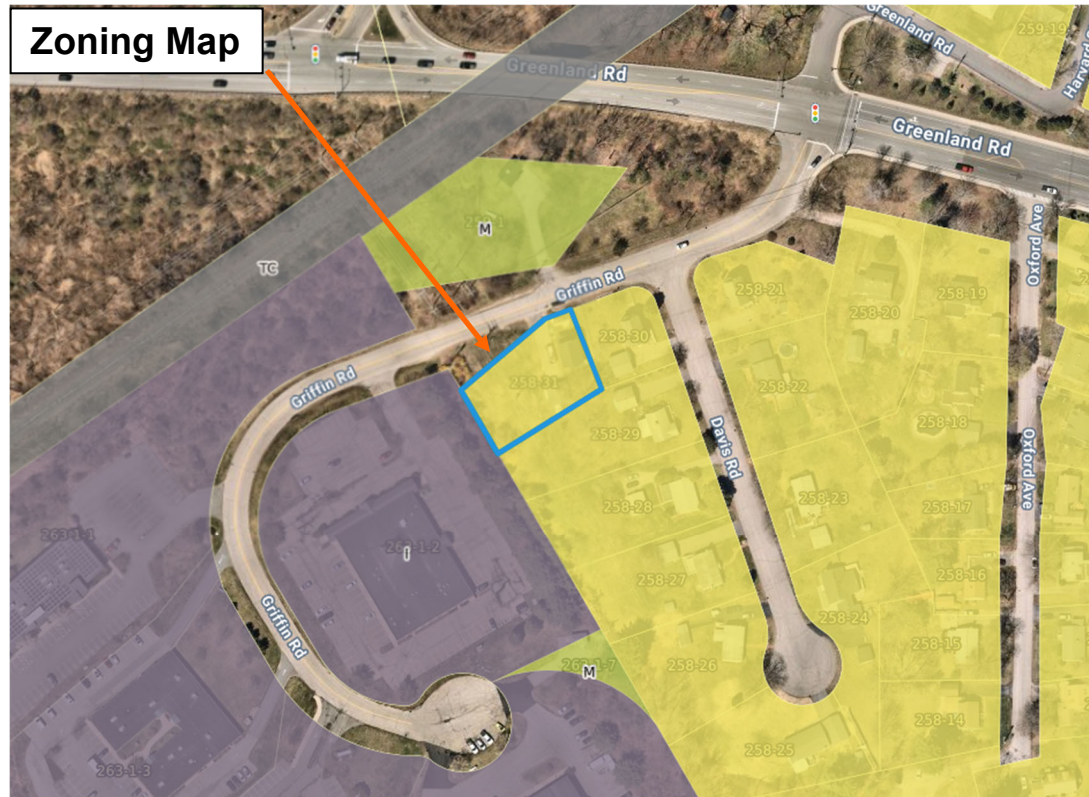
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family residence	*Front Porch and Rear Deck	Primarily residential
<u>Lot area (sq. ft.):</u>	16,121	16,121	15,000 min.
<u>Primary Front Yard (ft)</u>	29	21.5	30 min.
<u>Rear Yard (ft.):</u>	41	29	30 min.
<u>Right Yard (ft.):</u>	7	6.5	10 min.
<u>Left Yard (ft.):</u>	>10	>10	10 min.
<u>Height (ft.):</u>	35	35	35 max.
<u>Building Coverage (%):</u>	8	11	20 max.
<u>Open Space Coverage (%):</u>	75	72	40 min.
<u>Parking:</u>	>2	>2	2 min.
<u>Estimated Age of Structure:</u>	1875	Variance request(s) shown in red.	

*Relief needed to construct additions to the already non-conforming primary structure that would further impact the non-conformity.

Other Permits/Approvals Required

- Building Permits already issued

Neighborhood Context



Previous Board of Adjustment Actions

- **September 10, 1985** – A Special Exception as allowed in Article II, Section 10-205 (11) to permit a home occupation, appraisal office, to be established in a single family dwelling. It was voted that your request be **denied**.

Planning Department Comments

The applicant is requesting relief for after-the-fact construction of a front porch and rear deck which will impact the front, rear and right side yard of the property. The construction was properly permitted in May and July 2024 and the zoning review that was conducted for the building permits relied upon a site plan that was provided for a Lot Line Adjustment plan between 49 and 65 Griffin Road recorded in 1977. Since that time, it has been discovered that no deed was ever recorded conveying the subject land to the owners of 65 Griffin Road and therefore the right lot line is actually closer to the existing structure than it appeared from the plan that was provided for permits. A survey plan of the property completed in October 2024 demonstrates that portions of the newly constructed farmer's porch and rear deck encroach into the setbacks and that the house was non-conforming prior to the construction. The applicant is requesting the necessary relief based on the updated plan and zoning review.

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

B. The request of **N. E. Marine and Industrial Inc (Owner)**, for property located at **200 Spaulding Turnpike** whereas relief is needed to install a freestanding sign 2 feet from the front property line which requires the following: 1) Variance from Section 10.1241 for a 30 square foot freestanding sign where freestanding signs are not allowed. Said property is located on Assessor Map 237 Lot 56 and lies within the Gateway Corridor (G1) and Single Residence B (SRB) Districts. (LU-24-208)

Existing & Proposed Conditions

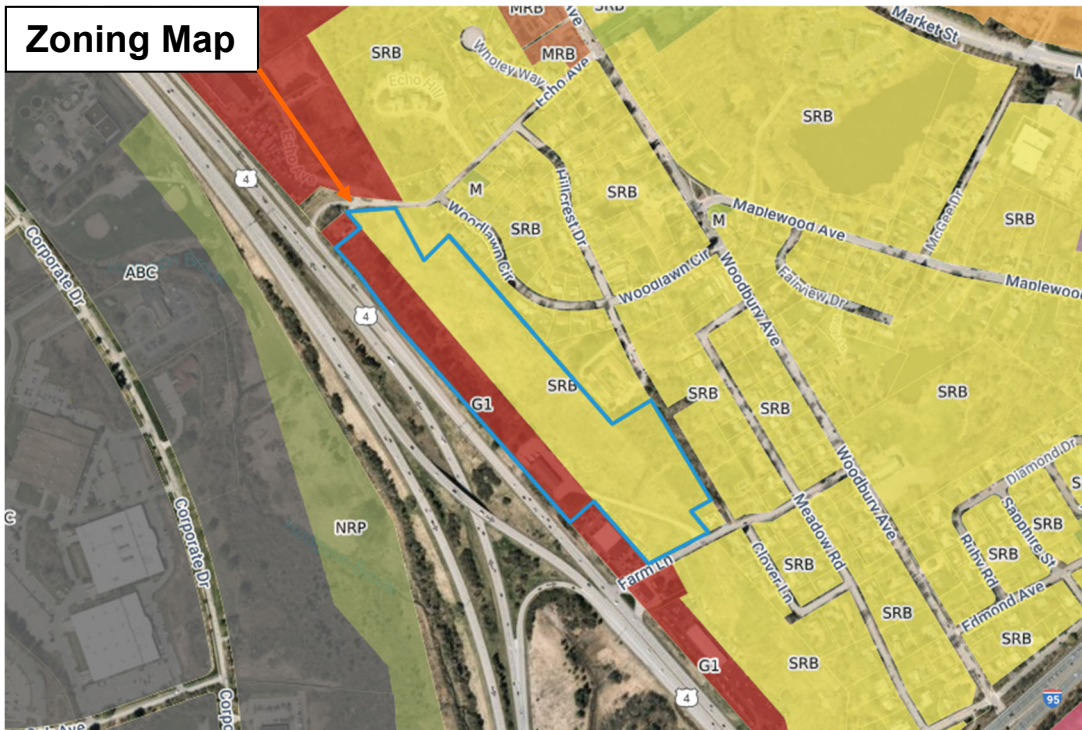
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial Store and Warehouse	Add freestanding sign*	Commercial and Residential Uses
<u>Lot area (acres):</u>	22.23	22.23	G1: NR SRB: 15,000SF min.
<u>Street Frontage (ft.):</u>	1,661.9	1,661.9	G1: 100 SRB: 100 min.
<u>Wall Sign (SF)</u>	G1: 144 SRB: 0	G1: 144 SRB: 0	G1: 200 SRB: 4 max.
<u>Freestanding Sign (SF)</u>	G1: 0 SRB: 0	G1: 0 SRB: 30	G1: 100 max. SRB: Not Permitted
<u>Aggregate Sign area (SF)</u>	G1: 144 SRB: 0	G1: 144 SRB: 30	G1: 300 max. SRB: 0
		Variance request(s) shown in red.	

*A freestanding sign is not a permitted sign type in Sign District 1 per Section 10.1241

Other Permits/Approvals Required

- Sign Permit

Neighborhood Context



Previous Board of Adjustment Actions

- **May 20, 2014** - A Variance from Section 10.591 to allow a structure in a nonresidential district to be located within 100 feet of a property zoned residentially. 2. A Variance from Section 10.592.20 to permit an automotive use within 200 feet of a residential district. 3. A Variance from Section 10.1113.31 to permit off-street parking areas, accessways, maneuvering areas and traffic aisles serving uses in a Business District to be set back less than 100 feet from a residential district. 4. A Variance from Section 10.1124.20 to permit off-street loading or maneuvering areas to be located less than 100 feet from a residential district. The Board voted to **deny** the petition as presented and advertised.

Planning Department Comments

The 22 acre property is the site of New England Marine and Industrial, Inc., a commercial store and warehouse and is split-zoned Gateway Corridor (G1) and Single-Residence B (SRB). The building is sited along Spaulding Turnpike entirely within the G1 zone on the property and the driveway extends out to Farm Lane within the SRB District. The applicant is requesting relief for a freestanding sign sited 2 feet from the front property line at the driveway entrance (30 SF including a 10 SF changeable track panel) where it is not an allowed sign type in sign district 1.

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 **Millport INC (Owner)**, for property located at **1001 Islington Street** whereas relief is needed for a change of use to extend the existing health club into the adjacent unit wherein relief is required from the Zoning Ordinance including the following special exception from Section 10.440, Use #4.42 to allow a health club greater than 2,000 s.f. of gross floor area. Said property is located on Assessor Map 172 Lot 4 and lies within the Character District 4-W (CD4-W). (LU-24-209)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Health Club /Apartments	*Convert 960 SF to yoga room >2,000 sq.ft. GFA	Primarily Mixed-Use
<u>Parking</u>	109	109	10 (1 space per 250 GFA)
		Variance request(s) shown in red.	

*Special Exception for a health club use greater than 2,000 SF GFA

Other Permits/Approvals Required

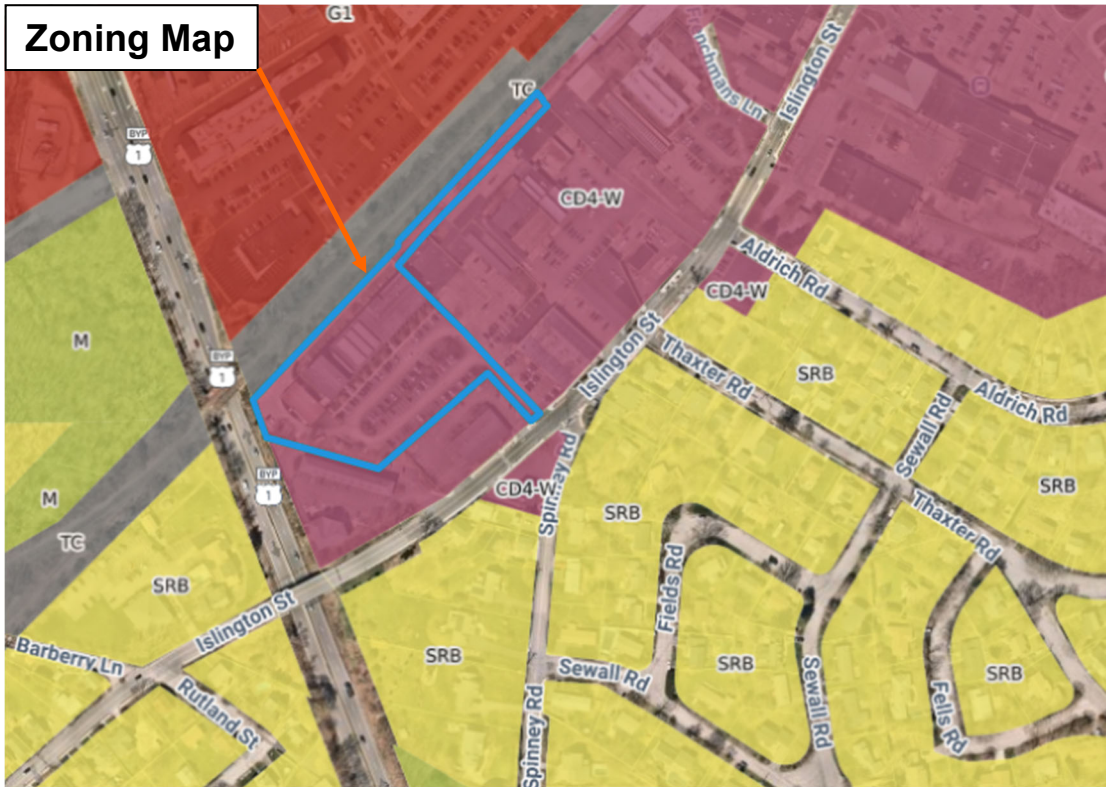
- Building Permit

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

- **November 21, 1978** – A Variance from Article III, Section 10-302 to allow construction of an addition to an existing building, 40' from the left and rear property lines where 50' is required for each. It was voted that your request be **granted**.
- **January 21, 1997** – A Variance from Article IX, Section 10-908 Table 14 to allow a 6' x 9' sign with a 1" side yard where 7' is the minimum required. The Board **denied** the request. They found that the request was excessive to allow a 1" side yard setback.
- **September 16, 1997** – A request is being made to eliminate the stipulation allowing only one and two bedroom apartments as part of the previous Variance request, thus allowing 2 three bedroom apartments. It was voted that your request be **granted** to remove the stipulation that only one and two bedroom apartments be allowed, thus allowing 2 three bedroom apartments.
- **March 21, 2000** – A Special Exception as allowed in Article II, Section 10-208[51] to install an un-manned internet switching station in an existing brick building to the rear of the apartment building. It was voted that your request be **granted** as presented and advertised.
- **April 7, 2020** – A Variance from Section 10.1530 to allow an accessory use as defined in this section to be conducted on a lot adjacent to the lot containing the principal use or building. The Board voted to **postpone** your request until the April 21, 2020, meeting.
- **April 21, 2020** – A Variance from Section 10.1530 to allow an accessory use as defined in this section to be conducted on a lot adjacent to the lot containing the principal use or building. The Board voted to **grant** your petition as presented.

Planning Department Comments

The applicant is requesting a special exception to convert 960 SF of existing commercial space into a yoga room for workout studio space. The 3,600 SF building is sited on the property with a 63-unit apartment building and consists of 2 commercial units. The health club and yoga studio was approved for their current 1,440 SF space in 2023. The 960 SF expansion into the adjoining space requires a Special Exception as it would create a health club larger than 2,000 Square feet.

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

D. The request of **Custom House LLC, (Owner)**, for property located at **40 Pleasant Street** whereas relief is needed to install a projecting sign which requires the following:
 1) Variance from Section 10.1251.20 for a 20 square foot projecting sign where 12 square feet is the maximum allowed. Said property is located on Assessor Map 107 Lot 81 and lies within the Character District 5 (CD5), Historic and Downtown Overlay Districts. (LU-24-206)

Existing & Proposed Conditions

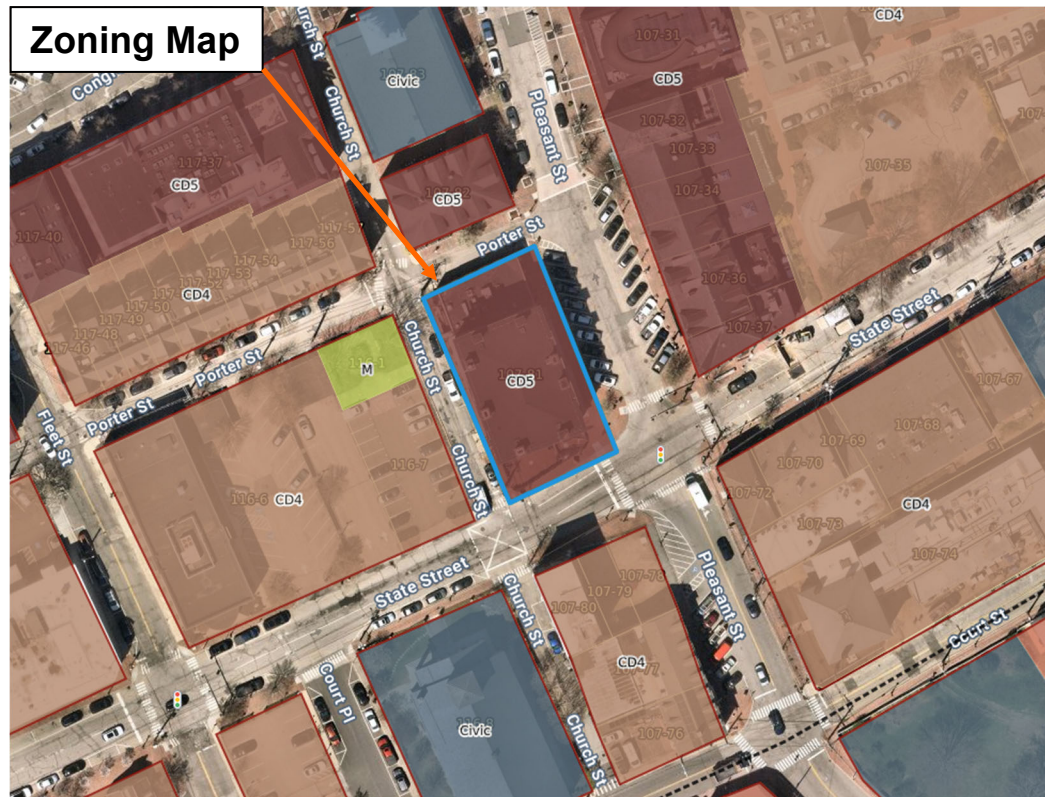
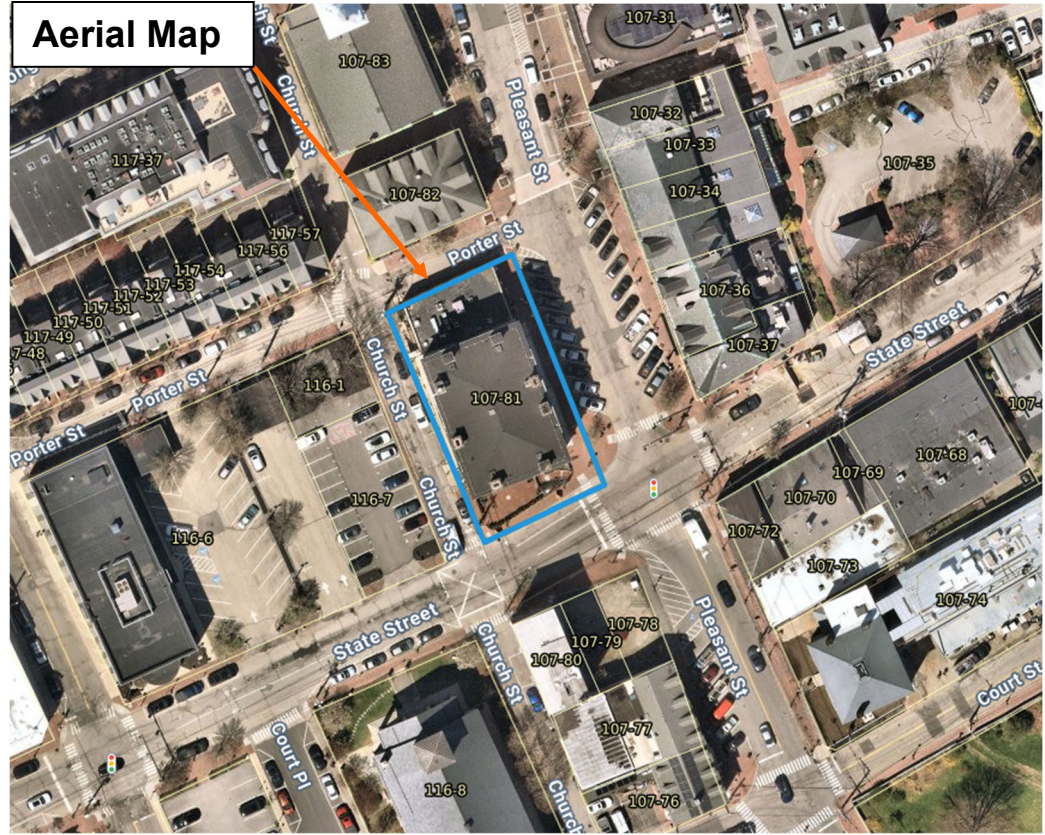
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed-Use	Replace projecting sign*	Mixed-Use
<u>Lot area (SF):</u>	9,148	9,148	NR
<u>Min. Front Lot Line Buildout (%.):</u>	>80	>80	80 min.
<u>Wall Sign (SF)</u>	26	26	40 Max.
<u>Projecting Sign (SF)</u>	20	20	12 Max.
<u>Aggregate Sign area (SF)</u>	46	46	310 Max.
		Variance request(s) shown in red.	

*A nonconforming sign shall be brought into conformity with the Ordinance if it is altered, reconstructed, replaced or relocated per Section 10.1281.

Other Permits/Approvals Required

- Sign Permit

Neighborhood Context



Previous Board of Adjustment Actions

- **July 16, 1991** – a Special Exception as allowed in Article II, Section 10-206(25) to permit the placing of 10 pushcarts for retail sales (temporary structures) to the front and side of the existing commercial building. It was voted that your request be **granted** as advertised and presented with the stipulation that a \$500.00 bond be issued to the City to ensure of the removal of the temporary structures within the allowed 90 days.
- **April 18, 1995** – a Special Exception as allowed in Article II, Section 10-206(25) to allow two portable hand carts for the sale of hot & cold drinks, various ice creams, hot dogs, popcorn, etc. for 90 days. It was voted that your request be **granted** as advertised and presented with the following stipulations:
 - That the two portable hand carts not extend more than 12' from the front of the building; and,
 - That this operation be granted for 90 days commencing on May 13, 1995.
- **May 22, 2012** – Variance from Section 10.1115.21 and the requirements of 10.1115.30 to allow no off-street parking spaces to be provided where 1 space per 100 s.f. Gross Floor Area is required. The Board voted to **grant** the petition as presented and advertised.

Planning Department Comments

The applicant is requesting relief for a projecting sign (20 SF) that is greater than the maximum 12 sq.ft. allowed in sign district 3. The existing nonconforming projecting sign for the previous tenant is being replaced and therefore requires relief to be greater than the maximum size permitted per Section 10.1281 for nonconforming signs.

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.