

**REGULAR MEETING
BOARD OF ADJUSTMENT
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

*Members of the public also have the option to join the meeting over Zoom
(See below for more details)**

7:00 P.M.

May 20, 2025

AGENDA

<p><u>PLEASE NOTE:</u> DUE TO THE LARGE VOLUME OF REQUESTS FOR APRIL, ITEMS (II.F) and (III. C. THROUGH F.) WILL BE HEARD AT THE MAY 27, 2025 ZONING BOARD OF ADJUSTMENT MEETING.</p>
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I. APPROVAL OF MINUTES

- A. Approval of the April 15, 2025 meeting minutes.
- B. Approval of the April 22, 2025 meeting minutes.

II. OLD BUSINESS

- A. The request of **The Kane Company (Owners)**, for property located at **210 Commerce Way** whereas relief is needed to remove, replace and relocate an existing freestanding sign which requires the following: 1) Variance from Section 10.1253.10 for a freestanding sign to be setback 4 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-4; and lies within the Office Research (OR) District. (LU-25-35)
- B. The request of **The Kane Company (Owners)**, for property located at **170 and 190 Commerce Way** whereas relief is needed to remove, replace and relocate two existing freestanding signs which requires the following: 1) Variance from Section 10.1253.10 for two freestanding signs to be setback a) 2 feet and b) 10.5 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-2 and lies within the Office Research (OR) District. (LU-25-42)

- C. The request of **The Kane Company (Owners)**, for property located at **195 Commerce Way** whereas relief is needed to remove, replace and relocate an existing freestanding sign which requires the following: 1) Variance from Section 10.1253.10 for a freestanding sign to be setback 6 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-8 and lies within the Office Research (OR) District. (LU-25-43)
- D. The request of **The Kane Company (Owners)**, for property located at **215 Commerce Way** and **75 Portsmouth Boulevard** whereas relief is needed to remove, replace and relocate two existing freestanding signs which requires the following: 1) Variance from Section 10.1253.10 for two freestanding signs to be setback a) 1.5 feet and b) 9.5 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-8a and lies within the Office Research (OR) District. (LU-25-44)
- E. The request of **The Kane Company (Owners)**, for property located at **230 Commerce Way** whereas relief is needed to remove, replace and relocate an existing freestanding sign which requires the following: 1) Variance from Section 10.1253.10 for a freestanding sign to be setback 4 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-5 and lies within the Office Research (OR) District. (LU-25-45)
- F. **RE-ADVERTISED FOR MAY 27, 2025** The request of **Mezansky Family Revocable Trust (Owners)**, for property located at **636 Lincoln Avenue** whereas relief is needed to demolish an existing detached garage and to construct an addition to the primary structure which requires the following: 1) Variance from Section 10.521 to a) allow a 2 foot left side yard setback where 10 feet is required; b) allow a 16 foot rear yard setback where 20 feet is required; c) allow 39% building coverage where 25% is the maximum allowed; and 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 148 Lot 17 and lies within the General Residence A (GRA) District. (LU-25-27) **RE-ADVERTISED FOR MAY 27, 2025**
- G. **REQUEST TO POSTPONE** - The request of **Colbea Enterprises LLC (Owners)**, for property located at **1980 Woodbury Avenue** whereas relief is needed to demolish and redevelop an existing gas station and convenience store which requires the following: 1) Special Exception from Section 10.440, Use #8.122 to allow a convenience goods 2 use with 24 hours per day operation (*approved April 22, 2025*); 2) Variance from Section 10.5B33.20 to allow for a front lot line build out of 0% where a minimum of 75% is required for a commercial building; 3) Variance from Section 10.5B34.60 to allow for a front setback from the lot line of 27 feet on Woodbury Avenue and 46 feet on Gosling Road where a maximum of 20 feet is required; 4) Variance from Section 10.5B83.10 to allow for parking spaces to be located between the principal building and the street; 5) Variance from Section 10.835.32 to allow for drive-through lanes, bypass lanes and stacking lanes to be located within 13 feet of the property line where 30 feet is required; 6) Variance from Section 10.835.31 to allow outdoor service facilities to be located within 38 feet of a lot line where 50 feet is required. 7) Variance from Section 10.843.33 to allow for pump islands to be located within 28 feet of the lot lines where

40 feet is required; 8) Variance from Section 10.1251.10 to allow for an aggregate sign area of 454 s.f. where a maximum of 223.5 s.f. is allowed; 9) Variance from Section 10.1251.20 to allow a 134 s.f. freestanding sign where a maximum of 100 s.f. is allowed; and 10) Variance from Section 10.1253.10 to allow for a freestanding sign at a) a height of 26.5 feet where a maximum of 20 feet is allowed and b) two freestanding signs at a setback of 3 feet where 10 feet is required. Said property is located on Assessor Map 239 Lot 11 and lies within the Gateway Corridor (G1) District. (LU-25-39) – **REQUEST TO POSTPONE**

III. NEW BUSINESS

- A. The request of **Deer Street Hospitality LLC (Owners)**, for property located at **165 Deer Street** whereas relief is needed for a marquee sign and a freestanding sign which requires the following: 1) Variance from 10.1251.20 for a 67.5 s.f. marquee sign where 20 s.f. is allowed; 2) Variance from 10.1273.10 to allow a marquee sign to be placed on top and to be 24 inches tall; 3) Variance from 10.1253.10 to allow a freestanding sign to be setback 0 feet where 5 feet is required. Said property is located on Assessor Map 125 Lot 17 and lies within the Character District 5 (CD5), Municipal (M), and Downtown Overlay Districts. (LU-25-60)
- B. The request of **3201 Lafayette Road LLC (Owners)** and **Jessica King (Applicant)**, for property located at **3201 Lafayette Road** whereas relief is needed to allow a group daycare facility which requires the following: 1) Special Exception from Section 10.440, Use #7.12 to allow a group daycare facility where it is allowed by Special Exception. Said property is located on Assessor Map 291 Lot 8 and lies within the Gateway Corridor (G1) District. (LU-25-49)

IV. OTHER BUSINESS

- A. Zoning Board of Adjustment Rules and Regulations

THE FOLLOWING ITEMS WILL BE HEARD ON TUESDAY, MAY 27, 2025

II. OLD BUSINESS

- F. The request of **Mezansky Family Revocable Trust (Owners)**, for property located at **636 Lincoln Avenue** whereas relief is needed to demolish an existing detached garage and to construct an addition to the primary structure which requires the following: 1) Variance from Section 10.521 to a) allow a 2 foot left side yard setback where 10 feet is required; b) allow a 12.5 foot rear yard setback where 20 feet is required; c) allow 39% building coverage where 25% is the maximum allowed; and 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 148 Lot 17 and lies within the General Residence A (GRA) District. (LU-25-27)

III. NEW BUSINESS

- C. The request of **Jeannette MacDonald (Owner)**, for property located at **86 Farm Lane** whereas relief is needed to subdivide the existing property into 3 separate lots. The proposed parent lot requires the following: 1) Variance from Section 10.521 to allow a) 28-foot rear yard setback where 30 feet is required; and b) 23-foot secondary front yard where 30 feet is required. Proposed lot 1 requires the following: 2) Variance from Section 10.521 to allow a) 10,664 s.f. of lot area where 15,000 s.f. is required; b) 10,664 s.f. of lot area per dwelling unit where 15,000 s.f. is required; and c) 75 feet of continuous street frontage where 100 feet is required. Proposed lot 2 requires the following: 3) Variance from Section 10.521 to allow a) 11,250 s.f. of lot area where 15,000 s.f. is required; b) 11,250 s.f. of lot area per dwelling unit where 15,000 s.f. is required; and c) 75 feet of continuous street frontage where 100 feet is required. Said property is located on Assessor Map 236 Lot 74 and lies within the Single Residence B (SRB) District. (LU-25-41)
- D. The request of **Giri Portsmouth 505 Inc (Owner)**, for property located at **505 US Route 1 Bypass** whereas relief is needed to develop additional parking and an Electric Vehicle Charging Station which requires the following: 1) Variance from Section 10.5B83.10 for off-street parking spaces to be located between the principal building and a street or within any required perimeter buffer area; 2) Variance from Section 10.1113.20 for off-street parking spaces located in a front yard, or between a principal building and a street (including on a corner lot). Said property is located on Assessor Map 234 Lot 5 and lies within the Gateway Corridor (G1) District. (LU-25-66)
- E. The request of **Troy Allan & Colleen Elizabeth Blanchard (Owners)**, for property located at **205 Broad Street** whereas relief is needed to demolish an existing screened porch and construct an addition with a first floor deck which requires the following: 1) Variance from Section 10.521 to a) allow a front yard setback of 7 feet where 15 feet is required; b) allow a rear yard setback of 10 feet where 20 feet is required; c) allow building coverage of 46% where 25% is allowed; and 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 130 Lot 16 and lies within the General Residence A (GRA) District. (LU-25-68)
- F. The request of **Wendy M Freedman (Owner)**, for property located at **911 South Street #3** whereas relief is needed to demolish an existing deck and construct a 100 s.f. addition which requires the following: 1) Variance from Section 10.521 to allow a side yard setback of 5 feet where 10 feet is required; and 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 132 Lot 19 C and lies within the General Residence A (GRA) District. (LU-25-59)

V. ADJOURNMENT

**Members of the public also have the option to join this meeting over Zoom, a unique meeting ID and password will be provided once you register. To register, click on the link below or copy and paste this into your web browser:*

https://us06web.zoom.us/webinar/register/WN_y_LUEvvTRByNn0dQNr_AAw

**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

April 15, 2025

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; David Rheaume; Thomas Rossi; Paul Mannle; Jeffrey Mattson; Thomas Nies; Jody Record, Alternate

MEMBERS EXCUSED: None.

ALSO PRESENT: Peter Stith, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m.

I. APPROVAL OF MINUTES

A. Approval of the March 18, 2025 meeting minutes.

Mr. Nies requested amending the second line on p. 7 to say that the ordinance is unnecessary instead of necessary. The sentence now reads: He said there was also the question of whether those special conditions were enough to justify that strict adherence to the ordinance is unnecessary and met some benefit to the public, which was what he was wrestling with.

Mr. Rheaume asked that the words ‘the’ and ‘property’ from the phrase ‘the narrowness of the Church Street property’ be deleted from the second sentence on p. 8 so that the sentence now reads: He said the hardship was the narrowness of Church Street and the distance away from State Street, which made the request a reasonable one within that context and allowed the applicant to take advantage of the extra height.

Vice-Chair Margeson asked that the word ‘quarters’ be changed to ‘buildings’ in the first full paragraph on p. 8. The sentence now reads: She said new buildings were part of that and that, in terms of the Board’s analysis, she would look at it from the Pleasant Street location as well.

*Mr. Mannle moved to **approve** the minutes as amended, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0.*

II. OLD BUSINESS

A. 635 Sagamore Avenue – Extension Request (LU-22-209)

Mr. Rheume abstained from the vote.

*Mr. Mattson moved to **grant** the extension request, seconded by Vice-Chair Margeson.*

Mr. Mattson said the request was sensible, seeing that the applicant also had to deal with other land use boards and environmental regulations.

*The motion **passed** unanimously, with Mr. Rheume abstaining.*

B. 39 Dearborn Street – Extension Request (LU-23-5)

Vice-Chair Margeson noted that the HDC granted the Certificate of Approval in June 2023 and the building application was filed in May 2024. She asked why it took a year. Mr. Stith said he did not know the sequence of the building permit process but knew that it had not been issued.

*Mr. Nies moved to **grant** the extension request, seconded by Mr. Mannle. The motion **passed** unanimously, 7-0.*

Chair Eldridge asked for a motion to suspend the rules to vote on the postponement requests.

*Mr. Mannle moved to **suspend** the rules, seconded by Mr. Rossi seconded. The motion **passed** unanimously, 7-0.*

*Mr. Mannle moved to **postpone** Items F through J to the May 20 meeting, seconded by Mr. Nies. The motion **passed** unanimously, 7-0.*

*Mr. Mannle moved to **postpone** Item B, 636 Lincoln Avenue, to the May 20 meeting, seconded by Mr. Mattson. The motion **passed** unanimously, with Mr. Nies recused.*

III. NEW BUSINESS

- A. The request of **Jason T. and Trisha Brewster (Owners)** for property located at **121 Mechanic Street** whereas after-the-fact relief is required for a roof sign which requires the following: 1) Variance from Section 10.1240 to allow a roof sign where it is not an allowed sign type; and 2) Variance from Section 10.251 for an aggregate sign area of 191 s.f., which is greater than the maximum allowed. Said property is located on Assessor Map 103 Lot 31 and lies within the Waterfront Business (WB) and Historic Districts. (LU-25-5)

SPEAKING TO THE PETITION

[Video timestamp 11:49] Attorney Phil Pettis was present of behalf of the applicant. He said the signage for the bait and tackle property was painted 'Bait & Ice'. He said the owner was not aware

that it constituted a technical definition of a sign at the time, but when he found out that it did he began the application process. Attorney Pettis said the sign is only visible from the water from the Peirce Island bridge. He reviewed the criteria, noting that the hardship was that it was a unique property that looked at the boat launch at Peirce Island and catered to locals and visitors who wanted fishing supplies. He said the sign ordinance protected neighborhoods from hazardous and distracting displays, but his client's sign was professionally done and was discreet. He noted that it was not the first time that a sign had been erected or painted on a rooftop in Portsmouth, and he passed out examples of similar signs to the Board.

[Timestamp 16:31] Mr. Rheume said the sign ordinance allowed the total aggregate sign area to be 16 square feet but the applicant's sign added up to 191 square feet, which was substantially different. Attorney Pettis said if the sign were treated in a smaller way on the large rooftop, it would look distasteful and would be more distracting and harder to read. He said the sign could not be seen from the neighborhood, so there was no detriment to the neighborhood character. He said the sign also enhanced the character of the south end, with its history of fishing and boats. He noted that the sign was not illuminated, did not extend from the roof, and was tastefully done. Mr. Rheume said it was stated in the packet that the customers would not know the availability of bait, tackle and ice before heading out to the water unless they saw the sign. He said the customers could use the more modern way of looking up the information on the internet. Attorney Pettis said a first timer might not be aware that there was a boat shop in that area because the building and the shop itself were hidden on Mechanic Street, so the sign would help. Mr. Nies asked if the customers tied up at the dock and got bait and ice there. Attorney Pettis agreed. Mr. Nies asked if the owner had considered a sign on that side of the building, which would be visible from the Pierce Island boat ramp. Attorney Pettis said he didn't know but thought the owner wanted to get people's attention on their way to the boat ramp and back. Mr. Mattson asked when the sign was first created and whether it was repainted or added for the first time. Attorney Pettis said the sign was originally added in October 2024.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variances for the petition as presented and advertised, seconded by Mr. Mannle.*

[Timestamp 21:50] Mr. Rossi referred to Sections 10.233.21 and 22 and said granting the variances would not be contrary to the public interest. He said the Board often found that people have difficulty utilizing Waterfront Business-owned lots to conduct waterfront business, and he believed that granting the variances would promote the public interest by allowing the sign to remain where it is and enhance the prospects for the business to continue to prosper and operate so that the Waterfront Business District can be properly utilized as intended by the ordinance. Regarding

substantial justice, he said the property owners make a good case that the sign is not visible to a lot of residential properties in the area and is not a nuisance. He said he thought there was some weight to be applied to the fact that despite the sign's large square footage, it was not a standalone sign nor a billboard and it is not something that is obtrusive or intrusive to the rest of the neighborhood, so he did not see a loss to the general public that would outweigh the benefit to the property owner by allowing them to continue to utilize this sign. Due to the discrete location of the sign and the lack of an additional billboard or anything, he said he believed that it would have no impact on the surrounding property values. He said it added a bit of quaintness to the area, noting that Portsmouth had a fishing village tradition that sometimes tended to get buried by the stultifying sameness of new construction. He said the sign was a nice reminder of what the town had at one time been all about. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship. He said the sign ordinance is designed to prevent the area from becoming overly commercialized and garish in its presentation to the public, and he did not think the sign did that in any way, so literally applying the requirements of the ordinance to the rooftop lettering would not achieve the purpose of the sign ordinance. Mr. Mannle concurred and had nothing to add.

[Timestamp 24:56] There was more discussion. Mr. Rheume said he would not support the motion. He said he was supportive of the City's waterfront businesses and thought the Board defended those properties as much as they could, but he thought the sign fell very short on the first two criteria, the spirit of the ordinance and being in keeping with the neighborhood's characteristics. He said there were ways to accomplish what the applicant was trying to do, and he thought that the fact the applicant created the sign and were now asking for forgiveness had lulled the Board into saying that it was okay. He said some level of relief is probably appropriate for the business, but he thought the giant billboard on their roof was not in keeping with what the zoning ordinance wanted in the area. He said it was a stretch beyond what the Board could approve and be able to say that somehow it met the criteria that they were supposed to judge it by. Mr. Nies said he shared some of the same concerns and thought it was a balancing act. He said he was less concerned by the fact that the sign was on the roof than the sign's size. He said it was over ten times the maximum size of a sign for that area. He asked if the Board was interested in splitting the two variances and proposing a smaller size for the sign. Mr. Rossi said he wanted to see if the motion as presented had support first. Mr. Mattson said he agreed with some of Mr. Rheume's comments but the convincing factors for him was that the roof plane needed to be there no matter what, so it was not like a new plane. He said billboards were typically vertically oriented, which could be more imposing, but the roof was already there. He said the sign was not illuminated. He said it was not about the degree of nonconformity but rather was the principle and that it was in noncompliance due to the unique situation. Vice-Chair Margeson said she initially had concerns but would support the motion. She said the intent of the sign ordinance was to promote the interests of commercial districts, but it did not allow it in the Waterfront District, which she said did not make much sense to her, especially since people sometimes approach waterfront businesses from the water. She said it was technically a sign because it was painted on, and it was quite big. She said she thought it was really meant to attract the boaters going to and from. She said she did not want the motion bifurcated. She said the Board was supposed to support the Waterfront District. She said the sign was not illuminated and was on the roof and not really visible to anyone unless they were going over the Peirce Island

bridge. Chair Eldridge said she would support the motion but noted that the sign could be seen from Mechanic Street. She said many of the boaters at Prescott Park were first-time visitors and the sign would be an aid to them. She said the sign was charming and did not stand out from Mechanic Street. Mr. Rheume said ‘charming’ was not one of the Board’s criteria. He said he was judging it against the ordinance and the criteria and thought the sign was way outside of both. He said if the applicant had come to the Board ahead of time, they might have ended up with something different. He said the Board was presented with a fait accompli and were buying into it.

*The motion **passed** by a vote of 5-2, with Mr. Nies and Mr. Rheume voting in opposition.*

- B. REQUEST TO POSTPONE** The request of **Mezansky Family Revocable Trust (Owners)** for property located at **636 Lincoln Avenue** whereas relief is needed to demolish an existing detached garage and to construct an addition which requires the following: 1) Variance from Section 10.521 to a) allow a 2 foot left side yard setback where 10 feet is required; b) allow a 16 foot rear yard setback where **20** feet is required; c) allow 29% building coverage where 25% is the maximum allowed; and 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 148 Lot 17 and lies within the General Residence A (GRA) District.
REQUEST TO POSTPONE (LU-25-27)

DECISION OF THE BOARD

The petition was **postponed** to the May 20 meeting.

- C. The request of Dreyer Family Revocable Trust (Owners)** for property located at **558 Islington Street** whereas relief is needed to allow a salon which requires the following: 1) Special Exception from Section 10.440, Use # 7.20 to allow a personal services use where it is allowed by Special Exception. Said property is located on Assessor Map 156 Lot 23 and lies within the Character District 4-L2 (CD4-L2) and Historic Districts. (LU-25-30)

Vice-Chair Margeson recused herself from the petition, and Alternate Ms. Record took a voting seat.

SPEAKING TO THE PETITION

[Timestamp 33:15] The applicant Erica Perkins was present. She reviewed the petition and said her proposed salon would offer hair services with just one or two guests at a time. She reviewed the special exception criteria. She noted that the parking lot would have two dedicated spaces for the salon and that there were other parking spaces available

[Timestamp 36:54] Mr. Nies said there was a note in the packet that the applicant had permission for driveway use from 566 Islington Street. He asked if the applicant had an email from them. Ms. Perkins said she did not but that her landlord said she received permission, although there was

nothing in writing. Mr. Rheume asked why the applicant went into so much detail about the parking and had said that she was counting on eight of the ten spots, two of which were assigned to her salon. He noted that the slash parking spots were accessible only by traversing across a neighboring property. Ms. Perkins said she was told that parking would be a big factor, so she included a lot of information about it. Mr. Rheume said the Board did not have anything signed or legally notarized. He said the only thing that could truly give relief was an easement, and he asked if Ms. Perkins was aware of an easement on the neighboring property that allowed the landlord to access those parking spots. Ms. Perkins said she was not aware of it.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the special exception with the following **condition**:*

- 1. The approval will not be effectuated until satisfactory written documentation is provided to the Planning Department for permission to access those parking spaces either by an easement or a written letter by the neighboring property owner.*

Mr. Mannle seconded the motion.

[Timestamp 41:39] Mr. Rossi said the type of use was permitted by special exception in that zone, so Item 1 was satisfied. He said granting the special exception would pose no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials. He said it was a salon and would be inherently devoid of such hazards and would not present new hazards. He noted that there was a barbershop in the building with a similar use. He said it would pose no detriment to property values in the vicinity, noting the existing barbershop. He said it was a commercial space and there would be no change to the outside of the structure to accommodate the use. He said it would not change the existing conditions and would present no hurdle for property values in the vicinity. He said granting the special exception would pose no creation of a traffic safety hazard of a substantial increase in the level of traffic in the area. He said it came down to parking and thought the provision of providing satisfactory written documentation to the Planning Department to assure that the property would have access to the slash parking spaces allowed him to feel comfortable that the criterion was satisfied. He said it would not present any new demands on municipal services because it would not generate a lot of wastewater or sewage. He said police and fire protection, schools, and so on would not be impacted by the use. He said granting the special exception would pose no significant increase in stormwater runoff because the building's exterior would not be altered. Mr. Mannle concurred. He noted that the space was a barbershop for 30 years and that he did not recall the abutting neighbor complaining about parking issues.

Mr. Nies said he would support the motion but would hate to impose a requirement that the owner get an easement because there was a legal cost to that. He said he hoped that the Planning Department and/or Permitting Department would not ignore the special language of Mr. Rossi's motion when they reviewed the information. Mr. Rheume said the Board always granted variances and special exceptions that run with the land, and that the decision went beyond that and had implications into the future because the current or future owner could sign off on something but then change their minds and wants to build something else in that space. He suggested a postponement to give the Planning Department time to work with the Legal Department and return with a recommendation to the Board on the most appropriate way to resolve the issue. He said the motion's condition represented the Board's hesitation to approve the special exception and that it also put the Planning Department in a bind.

*The motion **passed** by a vote of 6-1, with Mr. Rheume voting in opposition.*

Mr. Stith told the applicant to follow up with the Planning Department.

- D. The request of Freeze J. L. and Riecks J. D. Revocable Trust (Owners) and Kimberly Boualavong and Matthew Meyers (Applicants) for property located at 205 Bartlett Street** whereas relief is needed to allow a barbershop which requires the following: 1) Variance from Section 10.440, Use #7.20 to allow a personal services use where it is not allowed. Said property is located on Assessor Map 162 Lot 33 and lies within the General Residence A (GRA) District. (LU-25-31)

SPEAKING TO THE PETITION

[Timestamp 50:01] The applicant Kimberly Boualavong was present and said they had the owner's authorization to move forward with the application and use their space commercially for the barbershop. She said the barbershop would be a community-focused and gathering place. She said they proposed a two-chair appointment-driven barbershop with walk-ins if space was available. She noted the barbershop's proposed hours of operation and said it would not be disruptive to the neighborhood and would meet Portsmouth's off-street parking requirements. She said the maximum number of people at one time would be six. She said the property is in the GRA District but had been used primarily as a commercial space since the 1950s. She said the Fire and Inspection Departments did a pre-inspection. She reviewed the criteria and said they would be met.

Mr. Rheume said the packet indicated that the applicants were tenants of the property, and he asked if they would occupy the residential portion of it. Ms. Boualavong said it was a typographical error and that they were just leasing the business portion.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Nies moved to **grant** the variance for the petition as presented and advertised, seconded by Mr. Rheume.*

[Timestamp 59:08] Mr. Nies said granting the variance would not be contrary to the public interest, noting that there was no evidence that it would affect the public's health, safety, or welfare. He said light and air would not be affected because the structure would not be changed, and it would not change the essential characteristics of the neighborhood, which was a residential area with some occasional businesses sprinkled throughout already. He said granting the variance would observe the spirit of the ordinance, noting that it was a non-permitted use but that it would remain consistent with the area's goal to be residential with limited commercial services, and the barbershop would be very small. He said it would do substantial justice and that he did not see any benefit to the public that would outweigh the loss to the applicant by denying the variance request. He said there was no evidence presented that granting the variance would diminish the values of surrounding properties. He said it had been used commercially for a long time and no one had complained that their property was diminished. He said literal enforcement of the ordinance would result in unnecessary hardship. He said the property had several special conditions, including being on a small corner lot and the building itself being less than 1,000 square feet, with the unit probably being 200 square feet. He said there was no effective way to turn that unit into a residential space because there was no kitchen or full bathroom, and it was extremely tiny. He said owing to those special conditions, there was no fair and substantial relationship between the purposes of the ordinance and the application to the specific property. Mr. Rheume concurred and said the shop was sort of a leftover from a time when small grocery and neighborhood stores were common. He named a few examples of the ones still seen throughout the City. He said the small area and the small size of the barbershop would be in keeping with what the GRA District was trying to accomplish. He said the parking requirement was met and that there was plenty of on-street parking in that location.

Mr. Rossi noted that, regarding potential future residence, he said he did not completely buy the argument that the space could not be used for a residential application. He said it was small but there was such a thing as an efficiency apartment that generally occupied a space of that size, and with the push for affordable housing in Portsmouth, he said encouraging the development of efficiency apartments is not contrary to the direction that the City could be going in. He said, however, that it had been traditionally used as commercial, so he would support the motion.

*The motion **passed** unanimously, 7-0.*

- E. The request of Alexander Nancy H. Revocable Trust (Owners) for property located at 620 Peverly Hill Road** whereas relief is needed for a change of use to allow a health club that requires the following special exception from Section 10.440, Use #4.42 to allow a health club greater than 2,000 s.f. gross floor area. Said property is located on Assessor Map 254 Lot 6 and lies within the Industrial (I) District. (LU-25-33)

SPEAKING TO THE PETITION

[Timestamp 1:04:53] The applicant Troy Collins was present and said the property was a great place to house the gym because it was near similar businesses. He said the peak hours were offset with some of the other businesses on the premises, so the parking arrangement would be adequate. He said there were currently 60 parking spaces that were underutilized and that ten of those spots were dedicated to the gym. He reviewed the criteria and said they would be met.

[Timestamp 1:10:37] Vice-Chair Margeson asked how many patrons the gym could accommodate. Mr. Collins said they had a target gym membership of 400 members and that the data showed that they should expect a maximum attendance of about nine members during peak hours. Vice-Chair Margeson asked what kind of health club services would be offered. Mr. Collins said it was an open-style gym so it would not offer classes or personal training other than workout equipment.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Nies moved to **grant** the special exception for the petition as presented and advertised, seconded by Vice-Chair Margeson.*

[Timestamp 1:12:37] Mr. Nies said the standards as provided by the ordinance for this particular use is permitted by special exception but noted that there are no real standards in the ordinance for this particular use, so they were easy to meet. He said granting the special exception would not pose a hazard to the public or adjacent properties because it was a gym, and there would be no debris or anything that would create any hazards. He said the area is primarily a mixed industrial services area, and there was no evidence presented to say that it would have any detriment to any property values in the area and that it would change any essential characteristics of the neighborhood. He said no structures, parking areas, accessways, odors, smoke, dust, and so on would be impacted by the use. He said Peverly Hill Road is a busy area but there was no evidence to suggest that the gym would create additional traffic or a substantial increase in traffic. He said the typical high use of the gym would be nine people at a time, and even if that were doubled it would still not pose an extensive increase in traffic, so there would be no congestion in the area. He said granting the special exception would not create any demands on municipal services because the gym would be a very small operation. He said it would not overburden police or fire protection, water, sewer, and so on and that there would be no significant increase of stormwater runoff onto adjacent properties and streets because no changes would be made to the exterior. He said all the criteria were met. Vice-Chair Margeson concurred and had nothing to add.

*The motion **passed** unanimously, 7-0.*

- F. REQUEST TO POSTPONE** The request of **The Kane Company (Owners)** for property located at **210 Commerce Way** whereas relief is needed to remove, replace and relocate an existing freestanding sign which requires the following: 1) Variance from Section 10.1253.10 for a freestanding sign to be setback 4 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-4; and lies within the Office Research (OR) District. **REQUEST TO POSTPONE (LU-25-35)**

DECISION OF THE BOARD

The petition was **postponed** to the May 20 meeting.

- G. REQUEST TO POSTPONE** The request of **The Kane Company (Owners)** for property located at **170 and 190 Commerce Way** whereas relief is needed to remove, replace and relocate two existing freestanding signs which requires the following: 1) Variance from Section 10.1253.10 for two freestanding signs to be setback a) 2 feet and b) 10.5 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-2 and lies within the Office Research (OR) District. **REQUEST TO POSTPONE (LU-25-42)**

DECISION OF THE BOARD

The petition was **postponed** to the May 20 meeting.

- H. REQUEST TO POSTPONE** The request of **The Kane Company (Owners)** for property located at **195 Commerce Way** whereas relief is needed to remove, replace and relocate an existing freestanding sign which requires the following: 1) Variance from Section 10.1253.10 for a freestanding sign to be setback 6 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-8 and lies within the Office Research (OR) District. **REQUEST TO POSTPONE (LU-25-43)**

DECISION OF THE BOARD

The petition was **postponed** to the May 20 meeting.

- I. REQUEST TO POSTPONE** The request of **The Kane Company (Owners)** for property located at **215 Commerce Way** and **75 Portsmouth Boulevard** whereas relief is needed to remove, replace and relocate two existing freestanding signs which requires the following: 1) Variance from Section 10.1253.10 for two freestanding signs to be setback a) 1.5 feet and b) 9.5 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-8a and lies within the Office Research (OR) District. **REQUEST TO POSTPONE (LU-25-44)**

DECISION OF THE BOARD

The petition was **postponed** to the May 20 meeting.

J. REQUEST TO POSTPONE The request of **The Kane Company (Owners)** for property located at **230 Commerce Way** whereas relief is needed to remove, replace and relocate an existing freestanding sign which requires the following: 1) Variance from Section 10.1253.10 for a freestanding sign to be setback 4 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-5 and lies within the Office Research (OR) District. **REQUEST TO POSTPONE (LU-25-45)**

DECISION OF THE BOARD

The petition was **postponed** to the May 20 meeting.

IV. OTHER BUSINESS

No other business was discussed.

V. ADJOURNMENT

The meeting adjourned at 8:15 p.m.

Submitted,

Joann Breault
BOA Meeting Minutes Taker

**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

April 22, 2025

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; David Rheame; Thomas Rossi; Paul Mannle; Jeffrey Mattson; Thomas Nies; Jody Record, Alternate

MEMBERS EXCUSED: None.

ALSO PRESENT: Jillian Harris, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m.

I. OLD BUSINESS

A. 84 Pleasant Street – Second Rehearing Request

Chair Eldridge read the Working Stiff Properties request into the record.

[Recording timestamp 6:26] Mr. Rheame said the applicant cited some applicable State law that indicated that he felt that if they brought these issues forward, they would need to appeal it to the Board first and if denied, they would then present the issues in an appeal to the court system. He said he felt that some things were probably true but was not sure that they were errors made by the Board. He said it stated that the Board deliberated and opinions were brought up contrary to the final decision of the Board, which was to grant the singular variance that was the subject of that rehearing. He said there was great debate amongst the Board that ended up in being in favor of granting the variance. He said the appellant also brought up the size of the Board and the fact that it had seven members instead of five, which was common for the rest of New Hampshire. He said the 1953 State Statute allowed the Board to have seven members and he did not see that it was a concern for the application. He said the Board gave the opportunity for a rehearing and concluded that if the appellant continued to feel that the Board did not come to the right conclusion, that was their prerogative, but he did not see why the Board needed to consider it again. Vice-Chair Margeson said she did not agree with the Board's original decision but would vote to rehear it. She agreed that the composition of the Board pursuant to State Statute was not something within the Board's purview. Mr. Nies said he thought the discussion was thorough and that he did not see anything that would compel him to revisit those arguments. He noted that the City had been operating this way for 72 years, and he was not convinced that it warranted a rehearing.

*Mr. Nies moved to **deny** the request for a second rehearing, seconded by Mr. Rheume.*

Mr. Nies said he did not find anything that warrants a rehearing of what he felt was a very thorough discussion and did not see anything that would change the Board's decision or warrant coming back for another rehearing. Mr. Rheume concurred and had nothing to add.

*The motion to deny **passed** by a vote of 5-1, with Vice-Chair Margeson voting against and Mr. Rossi abstaining.*

II. NEW BUSINESS

- A. The request of **William J. Armstrong JR Revocable Trust (Owners)** for property located at **70 Stark Street** whereas relief is needed to construct a detached accessory workshop structure which requires the following: 1) Variance from Section 10.573.20 to permit a 10-foot rear yard where 20 feet is required. Said property is located on Assessor Map 159 Lot 50 and lies within the General Residence A (GRA) District. (LU-25-37)

SPEAKING TO THE PETITION

[Recording timestamp 13:13] Attorney Chris Mulligan was present on behalf of the applicant, along with the owners, the Armstrongs, and project designer Chris Redman. Attorney Mulligan said the lot was a large corner one and almost twice the minimum lot size for the zone. He said a significant addition was added 15 years before, so there was a second dwelling on the property. He said they proposed to build an accessory workshop in the rear southwest corner of the property but would still be within the building coverage and open space requirements. He said the setbacks posed a challenge because there were two front setbacks on a corner lot, so the owners wanted to site it in the deepest part of the lot but within the 20-ft rear setback. He said the workshop would have a second floor for storage space and that there was a similarly-sized accessory structure next door.

[Timestamp 16:55] Mr. Nies asked if a variance was really needed. He said the recently-revised ordinance indicated that any lot with one or two dwelling units is permitted to construct and maintain a one-story detached accessory structure used as a tool or storage shed and shall be generally exempt from all provisions of this ordinance. Attorney Mulligan said they proposed a structure with more than a single story and greater than 120 square feet. Vice-Chair Margeson asked which rear yard the relief was for. Attorney Mulligan said it was for the one off Stark Street. Mr. Rheume said the packet indicated an unfinished space that the client would finish and asked what the client's plan was to finish that space. Attorney Mulligan said it was just a reference to the client to install sheet rock and the rest of the finish work himself to save costs. He reviewed the criteria.

Mr. Rheume said the MapGeo illustration showed the client's lot and that it looked like it would be just the primary residence. He asked if the current garage was there. Attorney Mulligan said the Staff Report's aerial map showed the addition. Vice-Chair Margeson asked why it had a garage door. Attorney Mulligan said it was not uncommon for a workshop to have the need for access for

large pieces of machinery, plywood, and so on. The owner William Armstrong said the garage door was more like a barn door. Mr. Rheume said the plan indicated that the second story would be finished, and he asked what the intent for the space listed as storage was. Mr. Armstrong said he and his wife had a lot of items to store.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Vice-Chair Margeson moved to **grant** the variance for the petition as presented and advertised, seconded by Mr. Mannle.*

[Timestamp 28:50] Vice-Chair Margeson referred to Sections 10.233.21 and .22 and said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. She said the reason for the side yard and front yard building envelope setbacks was to ensure the movement of light and air through the structures and would add distance between the structures. She said it would not alter the essential character of the neighborhood and would not threaten the health, safety and welfare of the public. She said the applicant submitted examples of other lots in the area that also had accessory structures. Referring to Section 10.233.23, she said granting the variance would do substantial justice because she did not see that the public, through the substantial justice prong, would incur any kind of loss as a result of the variance being granted, whereas the impact on the applicant would be substantial. Referring to Section 10.233.24, she said granting the variance would not diminish the values of surrounding properties. She said the Board did not have an expert's opinion on whether the values would be diminished, but it was common sense and it was also an accessory barn structure, so it would not impact any surrounding properties negatively. She referred to Section 10.233.35, which indicated that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship and to determine if the property has special conditions that distinguish it from other properties in the area, and owing to those special conditions, a fair and substantial relationship does not exist between the general public purposes of the ordinance and the specific application of that provision to the property, and the proposed use is a reasonable one. She said the property did have special conditions because it was a large lot for the area and was irregularly shaped, had two front yards, and the existing structures on the lot made it difficult to site the accessory structure. She said due to those special conditions, a fair and substantial relationship did not exist between the general public purposes of the ordinance and the specific application to the property. She said the proposed use is a reasonable one because the workshop structure is allowed as an accessory use, and she recommended approval.

[Timestamp 32:37] Mr. Mannle concurred and said he wanted to add a condition that only electric utilities could be connected to the barn and not plumbing or gas. He said he did not want the

structure turned into a living unit without the applicant returning for approval. Vice-Chair Margeson said Mr. Mannle was thinking of an Accessory Dwelling Unit (ADU). Mr. Mannle said if it were approved, the unit could not be a living unit without plumbing or gas. Vice-Chair Margeson said she was reluctant to accept the condition because if the structure were allowed, the Board would be taking away something that was allowed by right. Mr. Mannle said the applicant could return for permission to get plumbing or gas. Vice-Chair Margeson said she would not accept the condition because with a Conditional Use Permit, the structure could become an ADU.

*Mr. Mannle **withdrew** his second.*

[Timestamp 35:10] *Mr. Rheume **seconded***. He said the property already had a lot of structure on it, but he thought it was important that it was still within the allowable building coverage and was 10 feet off the rear property line. He said it mimicked the side yard requirement and tried to create a symmetry with the property line and was also parallel to an outbuilding on the neighboring property, so the structure would not diminish the neighbor's enjoyment of an open space. He said the petition met all the criteria and that the variance should be granted. Mr. Rossi said he would not support the motion. He said the special conditions of the property being oversized and trapezoidal in nature mitigated against the variance, not for it. He said the larger lot really called into question why there would be encroachment on the setbacks at all, particularly on the side of the lot that was the deepest relative to the Stark Street frontage. He said it was a green field design where the applicant decided that it needed to be 28 feet deep and that it should not be any closer to the existing garage. He said those were the applicant's design decisions and that he did not think they were driven by the special nature or special characteristics of the lot itself. Mr. Rheume said it was a good point but explained how the placement of the structure made logical sense for the parcel.

*The motion **passed** by a vote of 5-2, with Mr. Mannle and Mr. Rossi voting against..*

- B.** The request of **Paul and Karolina Roggenbuck (Owners)** for property located at **2 Sylvester Street** whereas relief is needed to construct a second dwelling and associated driveway on the lot which requires the following: 1) Variance from Section 10.513 to allow more than one free-standing dwelling on a lot; 2) Variance from Section 10.1114.31 to allow a second driveway on the lot; and 3) Variance from Section 10.521 to allow a lot area per dwelling unit of 7,899 s.f. where 15,000 s.f. is required. Said property is located on Assessor Map 232 Lot 35 and lies within the Single Residence B (SRB) District. (LU-25-34)

SPEAKING TO THE PETITION

[Timestamp 40:39] The applicant/owner Karolina Roggenbuck was present and reviewed the petition. She said the dwelling would be located on the southeast side of the property with a footprint of about 1,252 square feet and would have two bedrooms and a bathroom above a 3-car garage. She said the dwelling would be used as a rental property for income to offset her husband's medical costs. She reviewed the criteria in detail and said they would be met.

[Timestamp 55:24] Mr. Rheume said there was a request ten years ago to subdivide the lot into two lots and the Board denied it. He asked what the difference was between that and what the applicant proposed. Ms. Roggenbuck said they wanted the second dwelling instead of an ADU and that they were not asking to subdivide the lot. Mr. Rheume said they were asking for a gross living area of 1,002 square feet but they could build the structure without a variance if they kept the ADU to 750 square feet. He said it would require a Conditional Use Permit from the Planning Board but that it was a lesser bar to cross. He asked why the additional 252 square feet was so important to the applicant. Ms. Roggenbuck said they wanted a comfortable living space. Mr. Rheume said the applicant indicated that building the structure would improve the acoustics, and he asked if it was based on anything scientific. Ms. Roggenbuck said she heard echoing in the yard. She said there was no technical basis other than she believed that the structure would lessen the sound.

[Timestamp 59:55] Mr. Rossi confirmed that the existing driveway was 30-1/2 feet wide and the proposed one was 40 feet wide. He asked how much space would be between the two driveways. Ms. Roggenbuck said it would be about 13 feet between the driveways if she narrowed the new one and made it 10 feet less. Vice-Chair Margeson said the criteria for the SRB zone was 15,000 square feet and the applicant's was just over that, and with the two dwellings on it, it reduced it to 7,899 square feet, which brought it into the GRA lot area allowed, but she said the GRA was not allowed to have more than one dwelling unit per lot to regulate density. She asked what it was about the size of the lot that said the provisions of the zoning ordinance did not apply to the lot. Ms. Roggenbuck said that based on the size of structure they wanted to build, the left side of the property was unusable because of the two front yards. She said in the other area, they had a 30-ft setback and a 10-ft setback, so it was a small area to build something in. Vice-Chair Margeson said the applicant wanted two dwelling units on the lot, which would reduce the lot area. She said it was a property that complied with zoning already and that the project would take it out of compliance. Ms. Roggenbuck said she thought the only way to be in compliance was to make a much smaller building. Mr. Rossi asked Ms. Harris if it was accurate that the surrounding lots had only one unit, noting that there seemed to be some outbuildings. Ms. Harris said the property next door and the one across the street had a detached ADU. Vice-Chair Margeson said detached ADUs were allowed but the size and height of the applicant's second dwelling unit was too big. Mr. Rossi asked what the primary structure's square footage was. Ms. Roggenbuck said it was 1,340 square feet.

Chair Eldridge opened the public hearing.

SPEAKING AGAINST THE PETITION

[Timestamp 1:07:05] Taylor Andrews of 1 Sylvester Street said the project would negatively impact her property and potentially other properties due to water flow and displacement. She said doubling the pavement would change the neighborhood's character. She said a garage with a home above it overlooking her home would diminish her property's value.

Chair Eldridge noted that the Board also received a letter in opposition. No one else spoke, and Chair Eldridge closed the public hearing.

DISCUSSION OF THE BOARD

[Timestamp 1:12:04] Mr. Rheaume said the application came down to 252 square feet and met all the requirements, but the biggest issue was that the applicant wanted to build a livable footprint of 1,002 square feet, where the ordinance allowed a max of 750 square feet for a detached ADU. He said the applicant could build an ADU that met the requirements. He said the Conditional Use Permit process had a much lower threshold to meet for approval. He said the applicant did not sufficiently demonstrate that the criteria for a variance were met, particularly for hardship. He said the buildings were two separate ones and were not allowed except for an attached ADU. He said he could not support the request. Mr. Mattson said he could see it going either way because the logic for ending up with two structures on the small lot would be similar to the density of Marjorie Street. Mr. Nies said he struggled with the September 2014 issue raised at the City Council that the lots were voluntarily or involuntarily merged because the record was not clear. He said at one time there were probably three lots that got voluntarily merged and the Board denied the variance. He said the application was essentially the same thing, putting two residences on a lot where they would not meet the zoning requirement. Mr. Rossi said the Board was taking a lot and a structure that conformed dimensionally and making it a non-conforming lot, which they really didn't need to do. He said the Board also saw a lot of pressure to put multiple dwelling structures on a single lot in residential-zoned areas, and they generally turned those variances down. He said he would not support the variance request, especially since there was another option for an ADU.

*Mr. Rossi moved to **deny** the variances for the petition as presented and advertised, seconded by Vice-Chair Margeson.*

[Timestamp 1:28:46] Mr. Rossi said the application only needed to fail one of the variance criteria to fail, and it failed the hardship criterion. He said for the petition to meet that criterion, there would have to be something unique about the nature of the lot that would militate that it was the only way to proceed. He said there was no mitigating characteristic of the lot that said the structure had to be located at this place and size to achieve the goals of reasonable use of the property and that the applicant could have an ADU within the context of the existing ordinance for ADUs. He said there was no special characteristic of the property that said it could not be used in a reasonable and conforming manner. Vice-Chair Margeson said the zoning ordinance was clear about having only one lot per dwelling unit in the SRA and SRB zones, GRA and GRB zones, and rural districts. She said the only way the Board could deviate from it was if the property had special conditions. She said to regulate density, the Board had to have one dwelling unit per lot. She said the lot perfectly conformed to the zoning ordinance and that the applicant did not demonstrate hardship. Mr. Nies said he did not think the request was consistent with the spirit of the ordinance because the ordinance was designed for 1-3 residences per acre, and the applicant's petition was for somewhere around five residences. He said there were other properties around on smaller lots that did not comply either, but the ordinance said those were not supposed to be used to justify the spirit of the ordinance. Mr. Rheaume said Portsmouth needed additional housing and the relief for that was an ADU. Mr. Mattson said he would support the ADU as a feasible option due to the need for affordable housing but thought his fellow Board members had rational points.

*The motion to deny **passed** unanimously, 7-0.*

- C. The request of **Colbea Enterprises LLC (Owners)** for property located at **1980 Woodbury Avenue** whereas relief is needed to demolish and redevelop an existing gas station and convenience store which requires the following: 1) Special Exception from Section 10.440, Use #8.122 to allow a Convenience Goods 2 use with 24 hours per day operation; 2) Variance from Section 10.5B33.20 to allow for a front lot line build out of 0% where a minimum of 75% is required for a commercial building; 3) Variance from Section 10.5B34.60 to allow for a front setback from the lot line of 27 feet on Woodbury Avenue and 46 feet on Gosling Road where a maximum of 20 feet is required; 4) Variance from Section 10.5B83.10 to allow for parking spaces to be located between the principal building and the street; 5) Variance from Section 10.835.32 to allow for drive-through lanes, bypass lanes and stacking lanes to be located within 13 feet of the property line where 30 feet is required; 6) Variance from Section 10.835.31 to allow outdoor service facilities to be located within 38 feet of a lot line where 50 feet is required. 7) Variance from Section 10.843.33 to allow for pump islands to be located within 28 feet of the lot lines where 40 feet is required; 8) Variance from Section 10.1251.10 to allow for an aggregate sign area of 454 s.f. where a maximum of 223.5 s.f. is allowed; 9) Variance from Section 10.1251.20 to allow a 134 s.f. freestanding sign where a maximum of 100 s.f. is allowed; 10) Variance from Section 10.1253.10 to allow for a freestanding sign at a) a height of 26.5 feet where a maximum of 20 feet is allowed and b) two freestanding signs at a setback of 3 feet where 10 feet is required; and 11) Variance from Section 1252.40 to allow illumination of a gas pump canopy area that shall not be included in the sign area where it is distinguished from the background only by color stripes. Said property is located on Assessor Map 239 Lot 11 and lies within the Gateway Corridor (G1) District. (LU-25-39)

SPEAKING TO THE PETITION

[Timestamp 1:36:40] Attorney Christopher Drescher was present on behalf of the applicant. He stated that Variance No. 11 for the illumination of the gas pump canopy was not needed and was removed. He asked for additional time for his presentation.

*Mr. Rheume moved to allow the applicant an additional ten minutes, seconded by Mr. Nies. The motion **passed** unanimously, 7-0.*

Attorney Drescher introduced the project engineers Chris Rice and Jason Cook and the Colbea Enterprises, LLC in-house counsel Attorney Jay Hall. He reviewed the petition, noting that the owner wanted to buy the property and build his own convenience store instead of the one that he leased. He said the current gas station had eight fueling islands and eight pumps, and his client wanted to reduce the number of islands to four and the pumps to four. He reviewed the special criteria exception. He reviewed the variance criteria and said the hardships were the small property on a corner lot and the non-conforming use. He said the project would reduce the fueling operation by 50 percent and that there was adequate screening along the edge of the property.

[Timestamp 2:02:47] Mr. Rheume said the difference between the current use of Convenience Goods 1 vs. Goods 2 was that the food was made on site, so the applicant's argument was that the current use is a Convenience Goods 2 store. He asked what the current use by the client's lessee was in terms of meeting that and how the proposal was different from that. Attorney Hall, Council for Colbea, said there was a limited food offering in the gas station now and that they would be handling more fresh food. In terms of the similarities of use, he said theirs would be geared more toward fresh food. He said currently food was not prepared on site. Mr. Rheume said Attorney Hall was implying that they were probably more like a Convenience Store 1 currently. Attorney Hall said technically the owner's site was a '2' because they had hot dogs and so on, and his proposal would be for fresh sandwiches made on site, which was more in line with a convenience store. Mr. Rheume asked if the drive-thru portion was tied to the ability to provide food made on the premises for people coming through. Attorney Hall agreed and said the gas station portion was 24 hours but that they would have their own brand of café that would not operate 24 hours a day. Mr. Rheume asked if the applicant had a timeframe that they would be amenable to if the Board offered a condition. Attorney Hall agreed and said it could be 5 a.m. to 10 p.m. Mr. Rheume said the applicant's argument was that there was a Dunkin Donuts a few doors down that had a drive-thru, so they also wanted one, and that the area was all commercial with one residential. Mr. Rheume said the residential was important. He asked if a more detailed analysis was done or could be provided regarding the impact that idling cars, people having conversations, and the radio playing would have to the residential, particularly because the building would be moved closer to the property line. Attorney Hall said they studied sound decibels in other locations and had the ability to ensure that the volume from the machine would not resonate off the property line. He said the pumps and the cars coming through to fuel were closest to the property line, but his experience was that the use of the drive-thru or idling through was quieter than the use of the pumps. Mr. Rheume said the applicant was proposing to put a copy of what had been done elsewhere and put it into Portsmouth's ordinance whether it fit or not. He said the Gateway District had been set up deliberately for parking in the back and that the current existing uses did not fully comply with the ordinance, and the applicant's property would be the first thing someone coming down from Woodbury Avenue would see. He said his impression was that the applicant took their cookie cutter design and put it onto the lot. He asked if there was anything the applicant could demonstrate to say that they looked at the zoning and that they modified their standard model to better reflect what the City was trying to accomplish with that important lot. Attorney Hall said they worked with the Planning Department to come up with something that fit on the lot and that they moved the pumps to the front to have traffic circulating the site. He said the plan had a similar look to their other gas stations but that they were all very different. He said the lot was a challenge and that they did not do a cookie cutter design but they needed the variances to make it work. Mr. Rheume said the applicant stated that the proposed sign was their standard sign. Mr. Rheume said he believed that the current station had managed to be in service for many years with compliant signage. He asked why relief was needed for the signage. Attorney Hall said each of their signage packages were designed to consider the size of the building, the setback, and the lot. He said the store was a medium-sized one and the sign was also a medium-sized one. He said they did not oversize signage on their buildings but that customers had to see the sign and the price from a distance.

[Timestamp 2:16:34] Mr. Rossi referred to the objectives for the Gateway neighborhoods, noting that one of them was to encourage walkable mixed use development. He asked what specific design feature enhanced the walkability of the area. Attorney Hall said it was not very walkable. Mr. Rossi asked if the objective of a design feature that addressed the desire to create quality places while allowing for wholesale development with meaningful public and neighborhood centers was incorporated in the applicant's design. Attorney Hall said they added the fresh food service and the ability to gather in a small area within the store and that was accessible through the walkways. He said they would tie into the side of Woodbury Avenue to have a sidewalk.

[Timestamp 2:19:10] Vice-Chair Margeson said it was a significant expansion of the lot and what was currently there was a Mobil station with a little snack shack. She said the most problematic aspect was the drive-thru, and she asked if it could be eliminated. Attorney Drescher said the building was 1,000 square feet less than any of their other stores and that they were reducing the fueling stations. He said there was buffering and a significant distance between the building on the other side of the fence. Vice-Chair Margeson said she did not see the analogy of pumping gas with going through the drive-thru. She said people used those bays less frequently than the other bays, and when they pumped gas, they turned off their cars, so there were no noises and people got through quickly. She said there was a significant residential neighborhood in back and there was a lot going on at the site. Attorney Hall said the drive-through tended to not bring any additional traffic onto the site. He said if someone wanted something from the fresh food offering, they tended to get it through the drive-thru and then left the site. He said most of the people who used the drive-thru were not getting gas. Vice-Chair Margeson asked why people couldn't just go into the store to order food so that the drive-thru could be eliminated.

[Timestamp 2:23:43] Mr. Nies confirmed that the applicant wanted a doubling of the aggregate sign area, according to their memo, but he said the applicant specifically stated in the packet that it was a minor increase in the aggregate sign. He asked how high the existing Mobil signs were. Attorney Drescher said they were 20 feet tall. Mr. Mattson asked why the applicant said the lot was four times bigger than the minimal lot size and was similar to the adjacent lot on Woodbury Avenue. Attorney Drescher said it was small in relation to the requirement of the ordinance. He said what existed now violated several things and the pumps went right up against the neighbor's lot.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD [Timestamp 2:27:39]

*Mr. Rossi moved to **grant the special exception** as presented and advertised, seconded by Mr. Mattson.*

Mr. Rossi said the special exception pertains to the use of the building for Convenience Store 2, so he was evaluating that without regard to the specifics of the drive-thru, which required a variance. He said his comments did not contemplate the presence or absence of the drive-thru component. He said the use was permitted by special exception and that granting the special exception would pose no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials. He said it is a convenience store and the risk of such things was *de minimis*. He said it would pose no detriment to surrounding property values, noting that the applicant made the point that it was a commercial use in a heavily commercialized area. He said nothing about the building and its use as a convenience store would negatively affect the surrounding properties. He said it would pose no traffic or safety hazards because the ingress and egress into and out of the lot were very good and traffic came from two major roadways, so he did not anticipate that the volume of traffic would be significantly different than what was currently being experienced on the site. He said there would be no excessive demand on municipal services because there was nothing about running a convenience store would place such demands upon municipal services. He said there would be no increase in stormwater runoff onto adjacent properties, noting that the property was currently an impermeable surface. Mr. Mattson concurred and had nothing to add.

[Timestamp 2:30:16] Mr. Rheume said he still had concerns because due to the overall use with the drive-thru and the nature of the place, he would still like to see the special exception have a condition associated with it regarding it not being a 24-hour a day function. He said the variance could be separated from the application also. Mr. Rossi said his problem with a condition like that was that it had imbedded into it the tacit assumption that the drive-thru will be part of the operations, and without a variance, there would be no reason to make that assumption. He said he would not support that variance and thought they were separate issues. He said if the building were relocated and provided sufficient lot line clearance, then the Board might be able to consider something like that. He said he was satisfied that the motion did not commit the Board to allow the drive-thru operation. Chair Eldridge agreed.

*The motion for the special exception **passed** by a vote of 6-1, with Mr. Rheume voting against.*

[Timestamp 2:34:12] Mr. Rossi noted the sheer volume of the variance requests and thought the design was in flagrant disregard of Portsmouth's zoning objective and was shoehorned into a spot where it was an overly intense use of the land that did not comport with what the City was trying to accomplish. He said he was concerned about Variance Numbers 4 and 5 that pertained to the drive-thru operations and thought it was not a good assumption that the sign board and its use, the traffic, and the volume of communications in the sign board and so on would be okay. He said the Board had no way of judging that it would not be creating a disturbance to the residents in the adjacent property. He said the proposed design had the one thing that was the most egregious to residents right next to the residential use, so the orientation of it made it impossible for him to support Variances 4 and 5. He said he was also concerned about the signs because they were big and tall and would be the first thing people entering Portsmouth would see. He said that was not the image that the City wanted to project and was not consistent with what was trying to be achieved with the signing aspects of the ordinance. He said he would not support Variances 7, 8 and 9. He said it was

not clear to him how much of the lot line variances was driven by the desire to have the traffic wrapping around the back of the building but that he would go along with them because there were two frontages and it was a logical way to configure a gas station and convenience store, and similar variance requests were approved on Lafayette Road recently.

Chair Eldridge asked if the drive-thru should be considered as a separate variance, as well as Variances 4 and 5 and the sign variances.

[Timestamp 2:37:51] Mr. Rheume said the proposal had a lot of interlocking parts and asked for a lot of relief and that it could be cut down substantially. He said a lot of effort was put into creating the Gateway District. He said the gas station application may need some level of relief, but it may not be practical for all the things needed for a gas station. He said he'd like to see the application flushed out more and suggested that the variances be postponed to give the applicant a chance to make a more persuasive case as to how they would try to incorporate what the Board was looking for and also do something with their signage. Mr. Nies said he had the same concerns as Mr. Rossi but thought the Board should be clear on whether they were asking for a better rationale or a new proposal. Mr. Rheume said his concerns centered around the drive-thru and the impact on the close neighborhood with a large apartment building. He said they didn't need to duplicate the Dunkin Donuts by putting another imposition on that neighborhood. He said he had concerns about the signage and wondered if the applicant really needed that relief. He said the Board had to balance the reasons why the applicant said their configuration made the most sense between what the ordinance was trying to accomplish. He said the applicant was asking for exactly what they wanted and the goals for the Gateway District were getting very little. Vice-Chair Margeson said she would be in favor of continuing because she wanted more information on the relation of the project to the Gateway. She said the spirit and intent of the ordinance were missing and that the most problematic aspect was the drive-thru. Mr. Mannle said he did not think it was possible to build a gas station in the Gateway District without variances. He said he liked the proposal because it improved the property, but there were too many variances requested due to the Gateway District on top of it. It was further discussed. Mr. Rossi suggested that the Board stick to their process to give the applicant a fair chance to return with something that would not get tripped up by Fisher v. Dover. Mr. Rheume explained why he agreed. It was further discussed.

[Timestamp 2:53:20]

*Mr. Rheume moved to **postpone** consideration of the application until the May 16 meeting, with the expectation that the applicant address significant concerns of the Board related to the variances associated with the drive-thru and either eliminate it or provide substantial justification as to why it would not impact the adjacent residential property; what could be done to mitigate the signage variances by either eliminating them or describing why they were critical to the property's operation of the gas stations use; and for the remaining variances, either eliminate them or provide a better explanation of why the objectives of the Gateway District could not be fully met if it remained as a gas station and Convenience Store 2 use.*

*Vice-Chair Margeson seconded. The motion **passed** by a vote of 6-1, with Mr. Rossi voting against.*

- D.** The request of **Lonza Biologics (Owners)** for property located at **101 International Drive** whereas relief is needed to construct a canopy with supporting structure which requires relief from the following: 1) Variance from Section 304.04(c) of the Pease Development Ordinance to allow a canopy and supporting structures for an outdoor patio to be located within 70-feet of the front property line. Said property is located on Assessor Map 305 Lot 6 and lies within the Airport Business Commercial (ABC) District. (LU-25-47)

SPEAKING TO THE PETITION

[Timestamp 2:58:18] Attorney Chris Hillson was present on behalf of Lonza Biologics, along with the Lonza architect Kristopher Tiernan. Attorney Hillson said the PDA has already approved much of what Lonza wanted to do and that he was there to request a recommendation of approval for three poles that would be within the 70-ft setback. He said the lot was a large one of 46 acres and was dominated by Lonza's industrial facility that had no windows, so they wanted to put an outside patio with sun shades on the westerly side for the 1500 employees. He said there was no definition of structure in PDA's land development ordinance and that the three poles were deemed to be a structure. He reviewed the criteria.

[Timestamp 3:07:05] Vice-Chair Margeson asked if the area would only be available to Lonza employees, and Attorney Hillson agreed. Mr. Rheume asked what the triangles depicted between the poles were. Attorney Hillson said they were sun shade canopies and that only the poles were considered as part of the structure by the PDA. Vice-Chair Margeson asked if three of the poles were within the setback. Attorney Hillson said the closest pole was 45'4" from the setback. Mr. Rheume asked how many total poles were part of the structure. Attorney Hillson said there were six poles, and the back three were outside the setback. Mr. Rossi asked what consideration was given to emergency vehicle access or ingress/egress from the area. Attorney Hillson said there were two points of ingress for emergency vehicles on the westerly façade of the building that wrapped around to the north and south. He said the exhibit did not depict Goosebay Drive along the back side of the structure, so the structure was ringed by an accessway for emergency service personnel. Mr. Tiernan said the patio was designed for emergency vehicles to go over it, and the furniture was removable. He said they had the Fire Department's approval and that the Fire Department wanted to maintain a 200-ft road width, which the poles would maintain.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD [Timestamp 3:12:38]

*Mr. Nies moved to **recommend approval** of the variance to the PDA as presented and advertised, seconded by Mr. Mannle.*

Mr. Nies said no adverse effect or diminution of the values of surrounding properties would be suffered, noting that it was difficult to see how three poles would have any impact on the value of any of the properties. He said granting the variance would be a benefit to the public interest by allowing the sun shades to create a more attractive view of Lonza Biologics and that it would also make the use of the patio better for the employees. He said denying the variance would result in an unnecessary hardship and that he did not see the point of people sitting at tables getting baked in the sunshine. He said the sun shades would create a shadow for them, which would definitely be a benefit and that it would be a hardship without them. He said substantial justice would be done, noting that it would be difficult to see how there would be any benefit to the public by disapproving this, and it would be a loss to the applicant by doing so. He said the proposed use would not be contrary to the spirit of the zoning rule and that the setbacks on Pease were for the same reason as for other places, which was to promote light and air and prevent overdensity. He said the three poles would not have any impact on light and air or affect the density in any significant way. He said the Board should recommend approval. Mr. Mannle concurred and had nothing to add.

*The motion **passed** unanimously, 7-0.*

*At this point in the meeting, Mr. Nies moved to **extend** the meeting past 10:00, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0.*

- E. The request of **Adam and Reagan Ruedig (Owners)** for property located at **70 Highland Street** whereas relief is needed to demolish the existing garage and bulkhead and to construct a new detached garage and bulkhead which requires the following: 1) Variance from Section 10.521 to allow a) building coverage at 26% where a maximum of 25% is allowed; b) a 2 foot rear yard where 18 feet is required; c) a 2 foot right side yard setback where 10 feet is required; and 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 134 Lot 27 and lies within the General Residence A (GRA) District. (LU-25-40)

SPEAKING TO THE PETITION

[Timestamp 3:16:48] Attorney Derek Durbin was present on behalf of the applicant and reviewed the petition. He said the proposal was to demolish the existing garage and build a new one in a slightly larger footprint. He said the existing garage was not big enough for two modern vehicles and was also rotted. He said its expansion would go not go any farther into the setbacks and would come toward the property instead. He said they also proposed a bulkhead to the rear of the house for better access and to replace the existing one that was too small and was in poor shape. He noted that the Board had letters of support from two abutters. He said the asphalt driveway would also be replaced with a pervious one that would constitute an overall reduction in impervious surface. He reviewed the criteria and said they would be met.

[Timestamp 3:25:06] Mr. Mattson asked if the request for the bulkhead contributed at all to the variances or whether it was just building coverage. Attorney Durbin said it contributed to the .7

increase and was 19 square feet over with the coverage. He said the bulkhead would be increased in size by 22 square feet. Mr. Rheume asked about the hoist crane beam that ran the length of the second floor and what would take place up there. Mr. Ruedig said that was for when he was no longer able to carry heavy things into the garage's attic. He said the expected capacity of it was 500 pounds and that it would be to store bikes, skis, and other equipment.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variances for the petition as presented and advertised, seconded by Mr. Nies.*

Mr. Rossi said there would be no change in the lot line conformance or lack of conformance because it would still be a 2-ft setback on the back and side yards. He said in terms of the lot area coverage, it was 25.7 percent instead of 25 percent and was *de minimis*. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the project would not encroach on air flow and light or sunshine on surrounding properties because the new garage would replace a similar structure, so there would be no change in conformance. He said substantial justice would be done because there would be no loss to anyone in the neighborhood by replacing the current garage with a new one. He said the changes in dimension were reasonable. He said granting the variances would not diminish the values of surrounding properties because a new garage was good for the neighborhood, and the proposed one was tastefully designed to fit in with the characteristics of the neighborhood. He noted that it would not have an upward extension that would create long shadows. He said literal enforcement of the ordinance would result in unnecessary hardship because, regarding the setback encroachments, the garage could not be moved away from either the right or back property line without bumping into the house, so it was a logical location and was near the driveway. He said that and the existing structure were special conditions of the property. Mr. Nies concurred and had nothing to add.

*The motion **passed** unanimously, 7-0.*

- F. WITHDRAWN** The request of **Jeannette MacDonald (Owner)** for property located at **86 Farm Lane** whereas relief is needed to subdivide the existing property into 3 separate lots. The proposed parent lot requires the following: 1) Variance from Section 10.521 to allow a) 28-foot rear yard setback where 30 feet is required; and b) 23-foot secondary front yard where 30 feet is required. Proposed lots 1 and 2 require the following: 2) Variance from Section 10.521 to allow a) 13,125 s.f. of lot area where 15,000 s.f. is required; b) 13,125 s.f. of lot area per dwelling unit where 15,000 s.f. is required; and c) 75 feet of continuous street

frontage where 100 feet is required. Said property is located on Assessor Map 236 Lot 74 and lies within the Single Residence B (SRB) District. (LU-25-41) **WITHDRAWN**

The petition was **withdrawn** from the applicant.

III. ADJOURNMENT

The meeting adjourned at 10:29 p.m.

Submitted,

Joann Breault
BOA Meeting Minutes Taker



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

MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Jillian Harris, Principal Planner
DATE: May 14, 2025
RE: Zoning Board of Adjustment May 20, 2025

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

II. Old Business

- A. 210 Commerce Way
- B. 170 and 190 Commerce Way
- C. 195 Commerce Way
- D. 215 Commerce Way
- E. 230 Commerce Way
- F. 636 Lincoln Avenue – **RE-ADVERTISED FOR 05/27/2025**
- G. 1980 Woodbury Ave – **REQUEST TO POSTPONE**

III. New Business

- A. 165 Deer Street
- B. 3201 Lafayette Road

II. OLD BUSINESS

- A. The request of **The Kane Company (Owners)**, for property located at **210 Commerce Way** whereas relief is needed to remove, replace and relocate an existing freestanding sign which requires the following: 1) Variance from Section 10.1253.10 for a freestanding sign to be setback 4 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-4; and lies within the Office Research (OR) District. (LU-25-35)

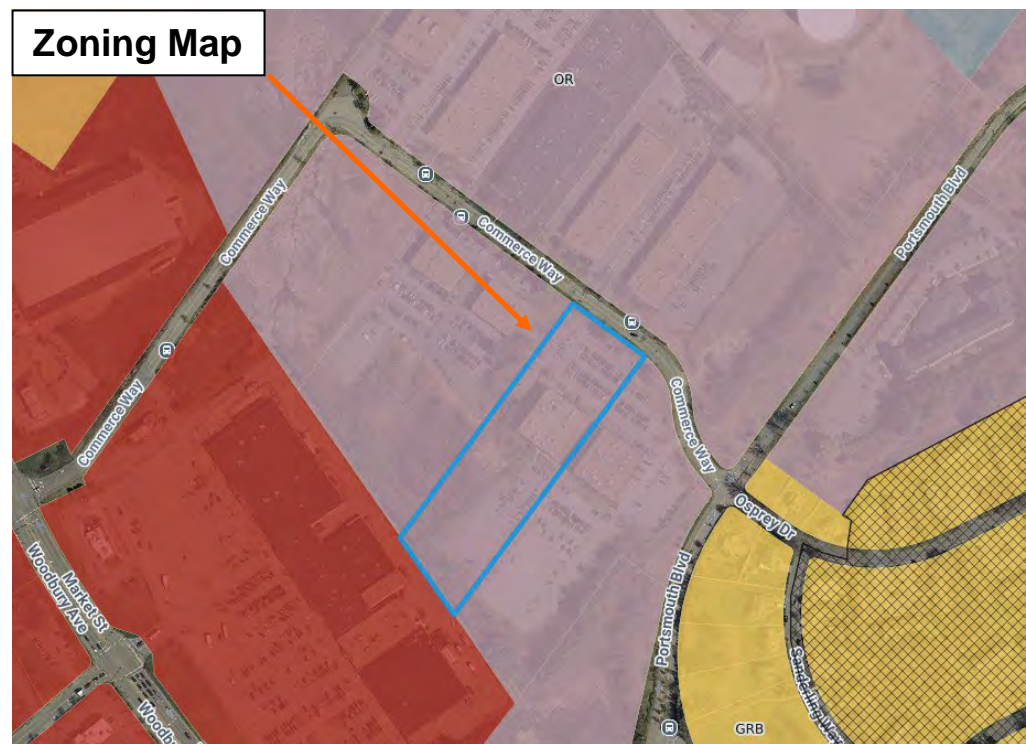
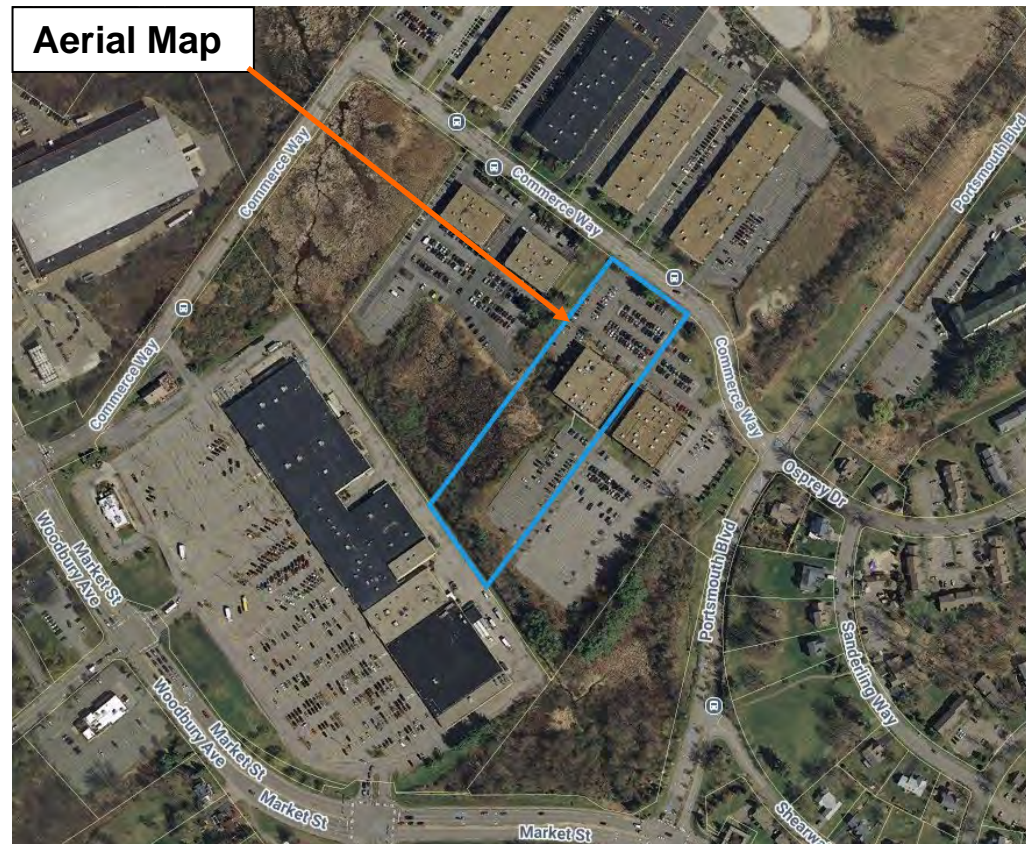
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Office	Freestanding sign	Primarily Commercial
<u>Lot area (acres):</u>	4.24	4.24	3 min.
<u>Building Frontage (ft.):</u>	120	120	NR
<u>Wall Sign (SF)</u>	0	N/A	200 max.
<u>Freestanding Sign (SF)</u>	N/A	20	100 max.
<u>Freestanding Sign Setback (ft.)</u>	N/A	4	20 min.
<u>Freestanding Sign Height (ft.)</u>	N/A	7	20 max.
<u>Aggregate Sign area (SF)</u>	0	20	180 max. (1.5x bldg. frontage)
		Variance request(s) shown in red.	

Other Permits/Approvals Required

- Sign Permit

Neighborhood Context



Previous Board of Adjustment Actions

- No previous BOA history was found.

Planning Department Comments

The applicant owns multiple commercial buildings in the area, including **210 Commerce Way**. The commercial office buildings were primarily built in the 1980's along private roads that are now public. The existing signs included in the application are proposed to be updated and relocated. The applicant is requesting relief for a freestanding sign sited 4 feet from the front property line at the driveway entrance (20 SF and 7 ft. in height) where the minimum setback is 20 ft. in sign district 4.

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.

APPLICATION OF THE KANE COMPANY
COMMERCE WAY & PORTSMOUTH BOULEVARD
TAX MAP 216, Lots 1-2, 1-4, 1-5, 1-8a, 1-8

APPLICANT'S NARRATIVE

I. THE PROPERTY:

The applicant, The Kane Company, owns multiple commercial buildings located along Commerce Way, and Portsmouth Boulevard. Specifically, the buildings are located at 75 Portsmouth Boulevard, 170 Commerce Way, 190 Commerce Way, 195 Commerce Way, 210 Commerce Way, 215 Commerce Way and 230 Commerce Way.

The above-mentioned Commerce Way properties were built in the 1980's, however, 75 Portsmouth Boulevard was built in 2019. Both Commerce Way and Portsmouth Boulevard were originally private roads. The existing signs are old and violate the setbacks in the Portsmouth Zoning Ordinance (the, "Ordinance"). Tighe & Bond has prepared an overall sign location plan that depicts the locations of the existing signs.

The Applicant would like to update the existing signs to modernize them and increase visibility for the businesses located along Commerce Way and Portsmouth Boulevard. The signs will also be effective from a public safety standpoint by assisting fire and police in order to locate the existing buildings more easily. Lastly, effective signage is especially important to the future success of the commercial users along the public right of way.

The property is within the Office Research Zone and Sign District 4. The applicant proposes to replace the existing street signs as shown on the plans located along Commerce Way and Portsmouth Boulevard as depicted on sign exhibit prepared by Portsmouth sign company.

The new signs will be installed in the substantially the same location as the existing signs but due to existing setback violations, relief is needed from Section 10.1253.10 is required.

II. CRITERIA:

The applicant believes the within Application meets the criteria necessary for the Board to grant the requested variances.

Granting the requested variance will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest. The "public interest" and "spirit and intent" requirements are considered together pursuant to Malachy Glen

Associates v. Chichester, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance is whether or not the variance being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public.

In this case, were the variances to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety or welfare be threatened. This property has been home to various businesses since the 1980's and is within the zone where the existing uses are permitted by right.

The health, safety and welfare of the public will not be threatened, nor will the essential characteristics of the neighborhood change in any way by virtue of the replacement of the existing signs.

Substantial justice would be done by granting the variance. Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property. Commercial uses all over the City are under threat since the covid pandemic and the continuation of a business office park such as Commerce Way and Portsmouth Boulevard are vital to the future success of our City. Enhanced visibility of the commercial buildings along the public right of way is both necessary and desirable. The signs are tastefully designed and in no way promote the visual clutter the City's sign ordinance is meant to protect against.

It would be an injustice to the applicant to deny the variances here requested.

The values of surrounding properties will not be diminished by granting the variance. The surrounding properties and those in the vicinity will not be negatively affected in any way by this relief. The proposed signs will enhance the visibility of this site, which will decrease potential negative impacts on neighboring properties. Directing motorists to the appropriate commercial buildings requires more prominent and modern signage.

There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship. The property for which relief is sought is unique. It is a large business park located outside of the downtown proper, so adequate business signage is required to ensure future success of the businesses and also increase visibility from a public safety standpoint. Accordingly, prominent signage is appropriate for this location.

These are special conditions of the property which counsel for more prominent signage in order to secure and maintain effective and reasonable sight lines.

The use is a reasonable use. The uses proposed are permitted within this district and are compatible with the surrounding retail and commercial enterprises.

There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. The purpose of the sign ordinance is to maintain and enhance the character of the city's commercial districts and to protect the public from hazardous and distracting displays. Section 10.1211. Neither of the proposed new signs do anything to distract from the character of this district and there is nothing hazardous or distracting about them. There is no fair and substantial relationship between these purposes and this property.

III. Conclusion.

For the foregoing reasons, the applicant respectfully requests the Board grant the variances as requested and advertised.

Respectfully submitted,

Dated: March 3, 2025

By: John K. Bosen
John K. Bosen, Esquire

Owner / Applicant Letter of Authorization

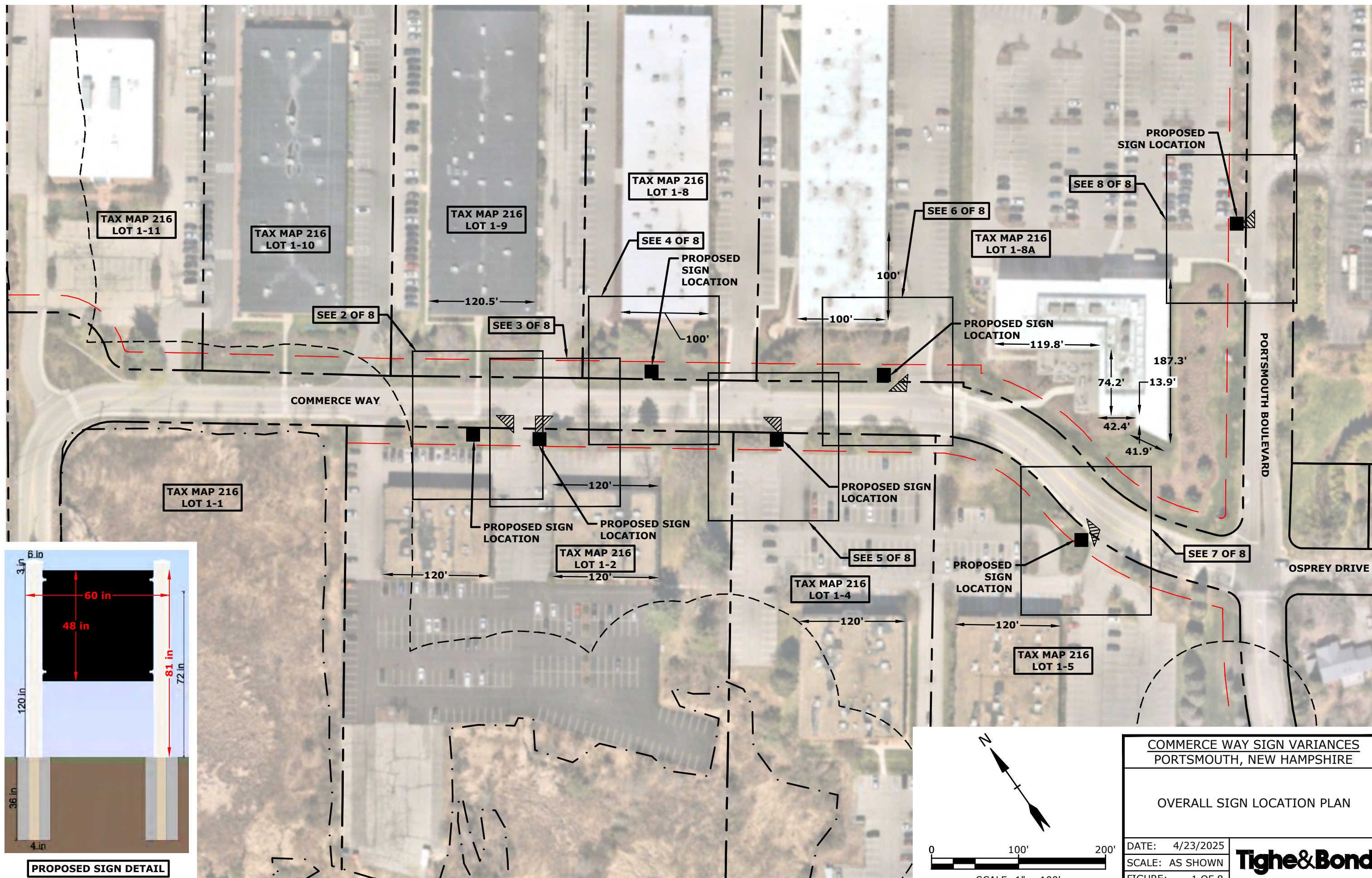
This letter is to authorize Tighe & Bond (Civil Engineer) to represent and submit on behalf of The Kane Company (Owner/Applicant) applications and materials in all site design and permitting matters for the for the proposed signage project located along Commerce Way and Portsmouth Boulevard in Portsmouth, New Hampshire on parcels of land identified as Tax Map 216, Lots 1-1, 1-2, 1-4, 1-5, 1-8a, 1-8, 1-9, 1-10. This authorization shall relate to those activities that are required for local, state and federal permitting for the above project and include any required signatures for those applications.


Signature

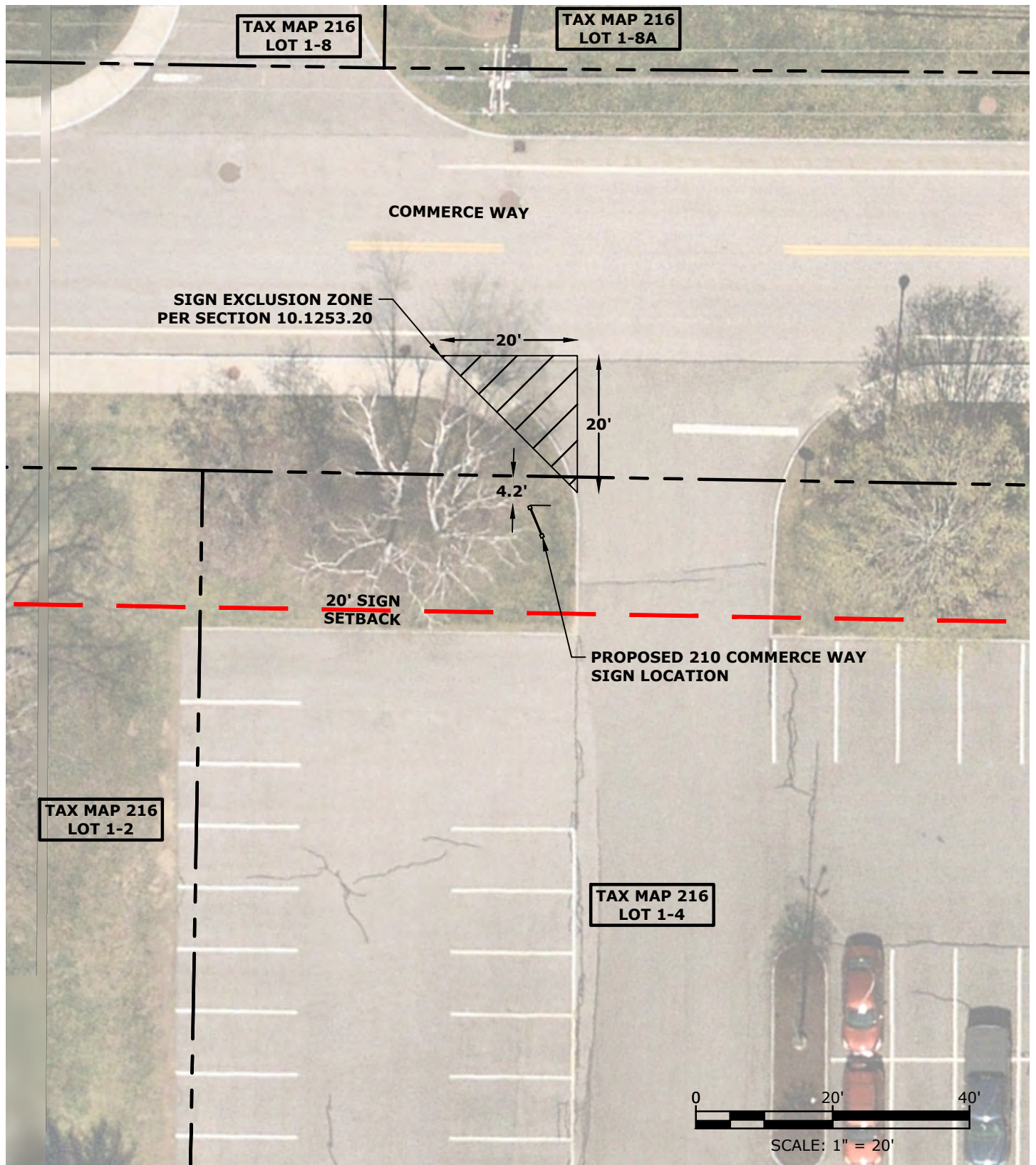
KEISEY KRAUS
Print Name

3/7/25
Date

Apr 23, 2025-11:12am Plotted By: JBowman
Tighe & Bond, Inc. F:\Projects\K\K0076 The Kane Company - General Proposals\0076-0064_Commerce Way Signage Variance\Drawings\AutoCAD\Sheet\Commerce Way Sign Exhibit.dwg



Apr 23, 2025-11:13am Plotted By: J.Bowman
Tighe & Bond, Inc. F:\Projects\K\K0076 The Kane Company - General Proposals\0076-0064_Commerce Way Signage Variance\Drawings\AutoCAD\Sheet\Commerce Way Sign Exhibit.dwg



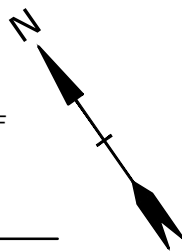
SIGN DIMENSIONAL STANDARDS

MAXIMUM ALLOWABLE SIGN AREA

1.5 SF PER LF OF BUILDING FRONTAGE 120 LF 180 SF

PROPOSED SIGN AREA

FREESTANDING SIGN	5 FT x 4 FT	20 SF
EXISTING WALL SIGN		0 SF
TOTAL SIGN AREA		20 SF



COMMERCE WAY SIGN VARIANCES PORTSMOUTH, NEW HAMPSHIRE

210 COMMERCE WAY SIGN LOCATION PLAN

DATE: 4/23/2025

SCALE: AS SHOWN

FIGURE: 5 OF 8

Tighe&Bond

II. OLD BUSINESS

- B. The request of **The Kane Company** (Owners), for property located at **170 and 190 Commerce Way** whereas relief is needed to remove, replace and relocate two existing freestanding signs which requires the following: 1) Variance from Section 10.1253.10 for two freestanding signs to be setback a) 2 feet and b) 10.5 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-2 and lies within the Office Research (OR) District. (LU-25-42)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Office	Freestanding signs	Primarily Commercial
<u>Lot area (acres):</u>	6.86	6.86	3 min.
<u>Building Frontage (ft.):</u>	Bldg 1: 120 Bldg 2: 120	120 120	NR
<u>Wall Sign (SF)</u>	Bldg 1: 62 Bldg 2: 54 Total: 116	N/A	200 max.
<u>Freestanding Sign (SF)</u>	19	20	100 max.
<u>2nd Freestanding Sign (SF)</u>	19	20	20 (on same street as primary driveway) max.
<u>Freestanding Sign Setback (ft.)</u>	0	2	20 min.
<u>2nd Freestanding Sign Setback (ft.)</u>	10.8	10.5	20 (on same street as primary driveway) min.
<u>Freestanding Sign Height (ft.)</u>	6.5	7	20 max.
<u>2nd Freestanding Sign Height (ft.)</u>	6.5	7	12 (on same street as primary driveway) max.
<u>Aggregate Sign area (SF)</u>	154	156	360 (1.5x bldg. frontage) max.
		Variance request(s) shown in red.	

Other Permits/Approvals Required

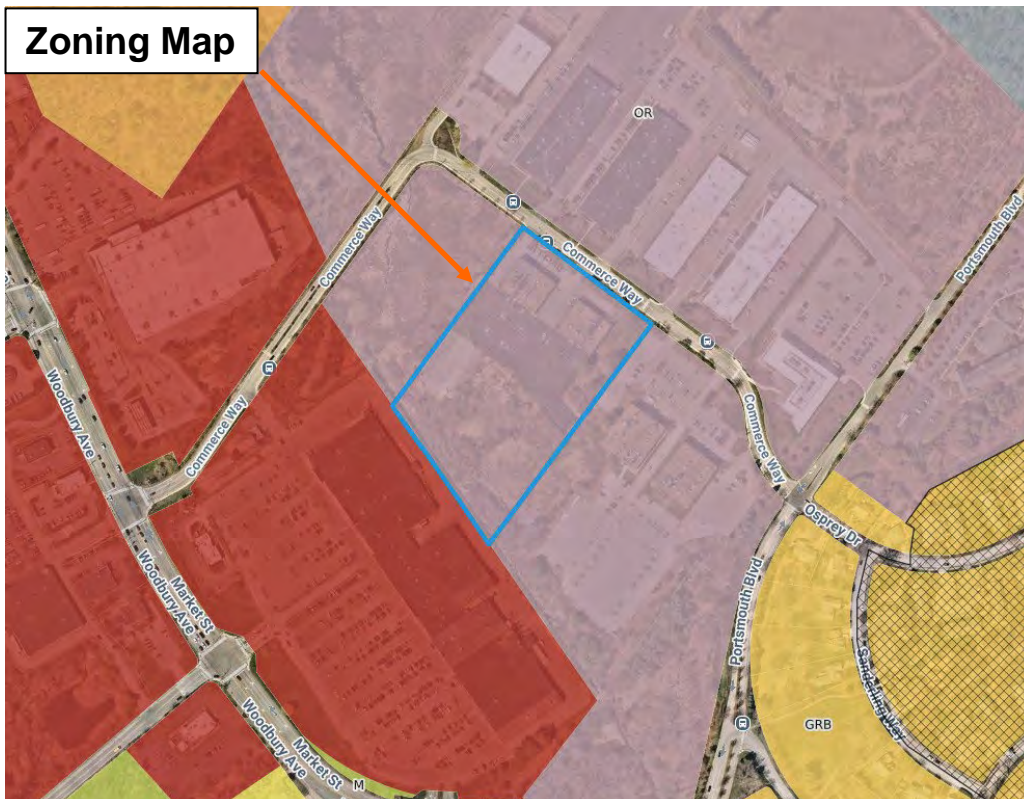
- Sign Permit

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

- **January 7, 1986** – A Variance from Article IX, Section 10-906 is requested to allow the placement of a 2.66' x 8' wooden directory sign with a 4' front yard where a minimum yard of 35' is required. The Board voted to **grant** the request as advertised.

Planning Department Comments

The applicant owns multiple commercial buildings in the area, including **170 and 190 Commerce Way**. The commercial office buildings were primarily built in the 1980's along private roads that are now public. The existing signs included in the application are proposed to be updated and relocated. The applicant is requesting relief for two freestanding signs (20 SF and 7 ft. in height) to be located 2 feet and 10.5 feet from the front property line where the minimum setback is 20 ft. in sign district 4.

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.

APPLICATION OF THE KANE COMPANY
COMMERCE WAY & PORTSMOUTH BOULEVARD
TAX MAP 216, Lots 1-2, 1-4, 1-5, 1-8a, 1-8

APPLICANT'S NARRATIVE

I. THE PROPERTY:

The applicant, The Kane Company, owns multiple commercial buildings located along Commerce Way, and Portsmouth Boulevard. Specifically, the buildings are located at 75 Portsmouth Boulevard, 170 Commerce Way, 190 Commerce Way, 195 Commerce Way, 210 Commerce Way, 215 Commerce Way and 230 Commerce Way.

The above-mentioned Commerce Way properties were built in the 1980's, however, 75 Portsmouth Boulevard was built in 2019. Both Commerce Way and Portsmouth Boulevard were originally private roads. The existing signs are old and violate the setbacks in the Portsmouth Zoning Ordinance (the, "Ordinance"). Tighe & Bond has prepared an overall sign location plan that depicts the locations of the existing signs.

The Applicant would like to update the existing signs to modernize them and increase visibility for the businesses located along Commerce Way and Portsmouth Boulevard. The signs will also be effective from a public safety standpoint by assisting fire and police in order to locate the existing buildings more easily. Lastly, effective signage is especially important to the future success of the commercial users along the public right of way.

The property is within the Office Research Zone and Sign District 4. The applicant proposes to replace the existing street signs as shown on the plans located along Commerce Way and Portsmouth Boulevard as depicted on sign exhibit prepared by Portsmouth sign company.

The new signs will be installed in the substantially the same location as the existing signs but due to existing setback violations, relief is needed from Section 10.1253.10 is required.

II. CRITERIA:

The applicant believes the within Application meets the criteria necessary for the Board to grant the requested variances.

Granting the requested variance will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest. The "public interest" and "spirit and intent" requirements are considered together pursuant to Malachy Glen

Associates v. Chichester, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance is whether or not the variance being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public.

In this case, were the variances to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety or welfare be threatened. This property has been home to various businesses since the 1980's and is within the zone where the existing uses are permitted by right.

The health, safety and welfare of the public will not be threatened, nor will the essential characteristics of the neighborhood change in any way by virtue of the replacement of the existing signs.

Substantial justice would be done by granting the variance. Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property. Commercial uses all over the City are under threat since the covid pandemic and the continuation of a business office park such as Commerce Way and Portsmouth Boulevard are vital to the future success of our City. Enhanced visibility of the commercial buildings along the public right of way is both necessary and desirable. The signs are tastefully designed and in no way promote the visual clutter the City's sign ordinance is meant to protect against.

It would be an injustice to the applicant to deny the variances here requested.

The values of surrounding properties will not be diminished by granting the variance. The surrounding properties and those in the vicinity will not be negatively affected in any way by this relief. The proposed signs will enhance the visibility of this site, which will decrease potential negative impacts on neighboring properties. Directing motorists to the appropriate commercial buildings requires more prominent and modern signage.

There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship. The property for which relief is sought is unique. It is a large business park located outside of the downtown proper, so adequate business signage is required to ensure future success of the businesses and also increase visibility from a public safety standpoint. Accordingly, prominent signage is appropriate for this location.

These are special conditions of the property which counsel for more prominent signage in order to secure and maintain effective and reasonable sight lines.

The use is a reasonable use. The uses proposed are permitted within this district and are compatible with the surrounding retail and commercial enterprises.

There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. The purpose of the sign ordinance is to maintain and enhance the character of the city's commercial districts and to protect the public from hazardous and distracting displays. Section 10.1211. Neither of the proposed new signs do anything to distract from the character of this district and there is nothing hazardous or distracting about them. There is no fair and substantial relationship between these purposes and this property.

III. Conclusion.

For the foregoing reasons, the applicant respectfully requests the Board grant the variances as requested and advertised.

Respectfully submitted,

Dated: March 3, 2025

By: John K. Bosen
John K. Bosen, Esquire

Owner / Applicant Letter of Authorization

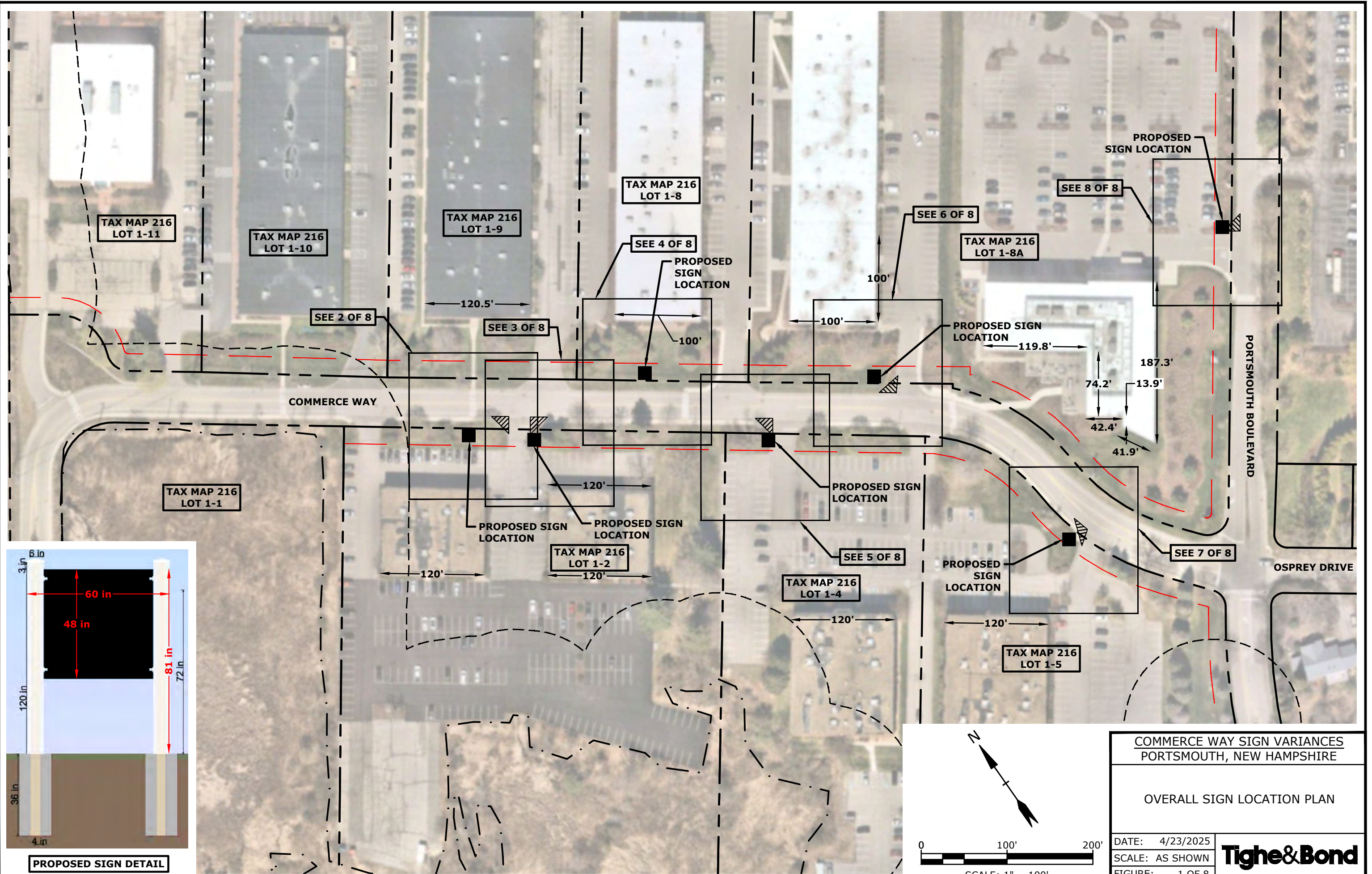
This letter is to authorize Tighe & Bond (Civil Engineer) to represent and submit on behalf of The Kane Company (Owner/Applicant) applications and materials in all site design and permitting matters for the for the proposed signage project located along Commerce Way and Portsmouth Boulevard in Portsmouth, New Hampshire on parcels of land identified as Tax Map 216, Lots 1-1, 1-2, 1-4, 1-5, 1-8a, 1-8, 1-9, 1-10. This authorization shall relate to those activities that are required for local, state and federal permitting for the above project and include any required signatures for those applications.


Signature

KEISEY KRAUS
Print Name

3/7/25
Date

Apr 23, 2025-11:12am Plotted By: JBowman
Tighe & Bond, Inc. F:\Projects\K\K0076 The Kane Company - General Proposals\0076-0064_Commerce Way Signage Variance\Drawings\AutoCAD\Sheet\Commerce Way Sign Exhibit.dwg



PROPOSED SIGN DETAIL

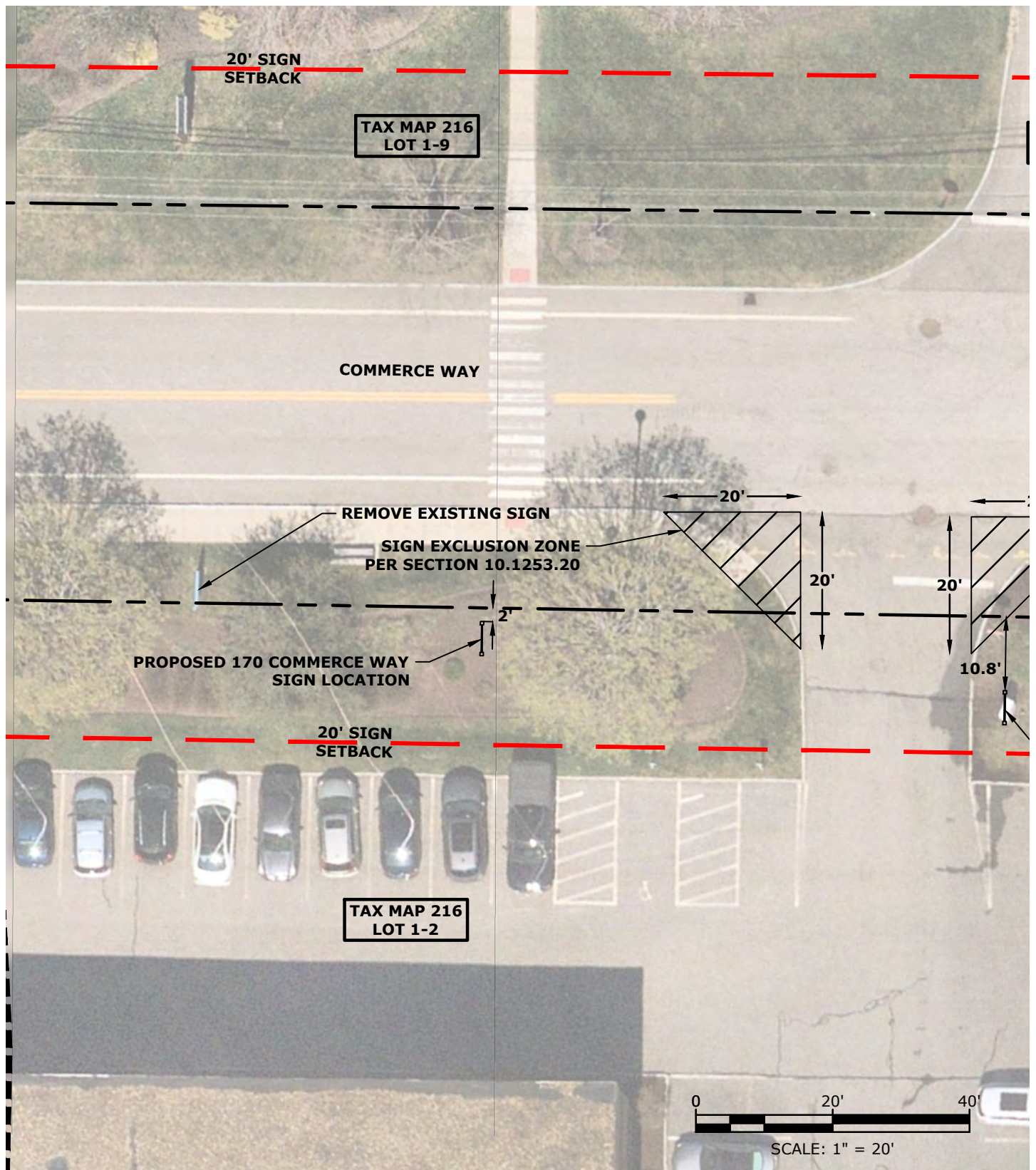
COMMERCE WAY SIGN VARIANCES
PORTSMOUTH, NEW HAMPSHIRE

OVERALL SIGN LOCATION PLAN

DATE: 4/23/2025
SCALE: AS SHOWN
FIGURE: 1 OF 8

Tighe & Bond

Apr 23, 2025-11:12am Plotted By: JBowman
Tighe & Bond, Inc. F:\Projects\K\K0076 The Kane Company - General Proposals\0076-0064_Commerce Way Signage Variance\Drawings\AutoCAD\Sheet\Commerce Way Sign Exhibit.dwg



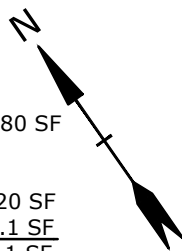
SIGN DIMENSIONAL STANDARDS

MAXIMUM ALLOWABLE SIGN AREA

1.5 SF PER LF OF BUILDING FRONTAGE 120 LF 180 SF

PROPOSED SIGN AREA

FREESTANDING SIGN	5 FT X 4 FT	20 SF
EXISTING WALL SIGN	4.5 FT X 13.8 FT	62.1 SF
TOTAL SIGN AREA		82.1 SF



COMMERCE WAY SIGN VARIANCES PORTSMOUTH, NEW HAMPSHIRE

170 COMMERCE WAY SIGN LOCATION PLAN

DATE: 4/23/2025

SCALE: AS SHOWN

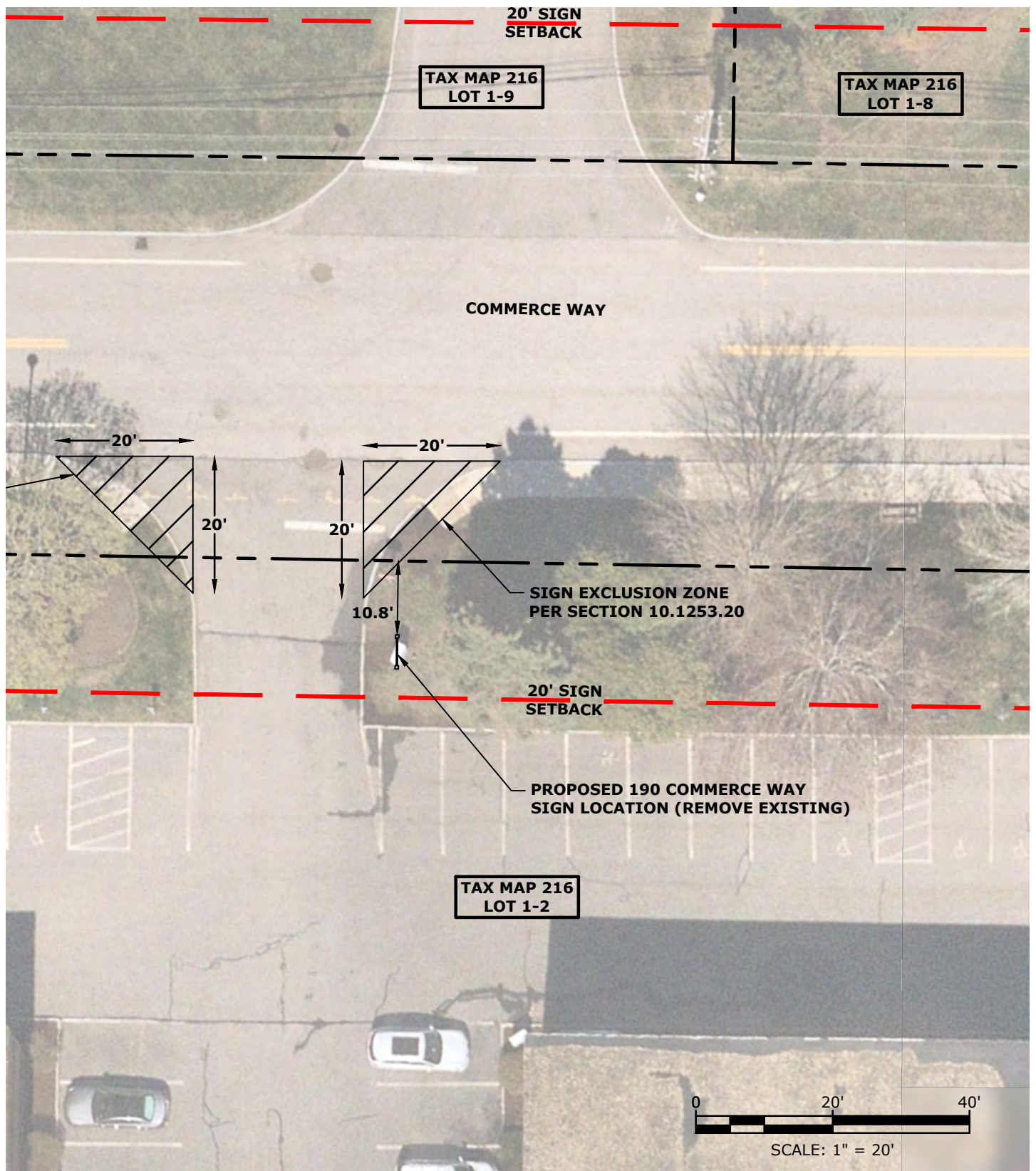
FIGURE: 2 OF 8

Tighe&Bond

170 Commerce Way



Apr 23, 2025-11:12am Plotted By: JBowman
Tighe & Bond, Inc. F:\Projects\K\K0076 The Kane Company - General Proposals\0076-0064 _Commerce Way Signage Variance\Drawings\AutoCAD\Sheet\Commerce Way Sign Exhibit.dwg



SIGN DIMENSIONAL STANDARDS

MAXIMUM ALLOWABLE SIGN AREA

1.5 SF PER LF OF BUILDING FRONTAGE 240 LF

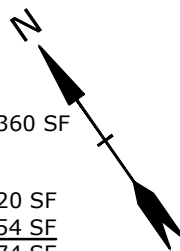
360 SF

PROPOSED SIGN AREA

FREESTANDING SIGN 5 FT x 4 FT 20 SF

EXISTING WALL SIGN (NW) 6 FT x 9 FT 54 SF

TOTAL SIGN AREA 74 SF



COMMERCE WAY SIGN VARIANCES **PORTSMOUTH, NEW HAMPSHIRE**

190 COMMERCE WAY SIGN LOCATION PLAN

DATE: 4/23/2025

SCALE: AS SHOWN

FIGURE: 3 OF 8

Tighe&Bond

190 Commerce Way



190 Commerce Way
(Front)



190 Commerce Way
(Back)



II. OLD BUSINESS

- C. The request of **The Kane Company** (Owners), for property located at **195 Commerce Way** whereas relief is needed to remove, replace and relocate an existing freestanding sign which requires the following: 1) Variance from Section 10.1253.10 for a freestanding sign to be setback 6 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-8 and lies within the Office Research (OR) District. (LU-25-43)

Existing & Proposed Conditions

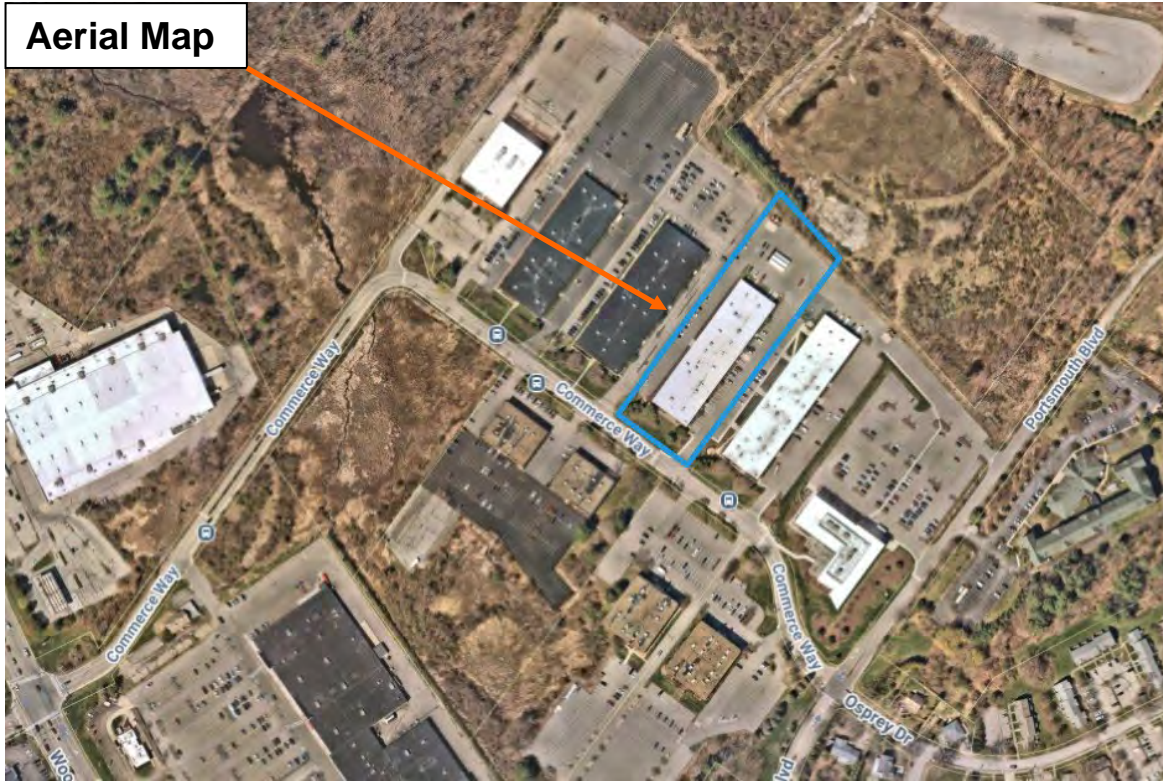
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Office	Freestanding sign	Primarily Commercial
<u>Lot area (acres):</u>	2.82	2.82	3 min.
<u>Building Frontage (ft.):</u>	100	100	NR
<u>Wall Sign (SF)</u>	30	30	200 max.
<u>Freestanding Sign (SF)</u>	19	20	100 max.
<u>Freestanding Sign Setback (ft.)</u>	0	6	20 min.
<u>Freestanding Sign Height (ft.)</u>	6.5	7	20 max.
<u>Aggregate Sign area (SF)</u>	49	50	150 max. (1.5x bldg. frontage)
		Variance request(s) shown in red.	

Other Permits/Approvals Required

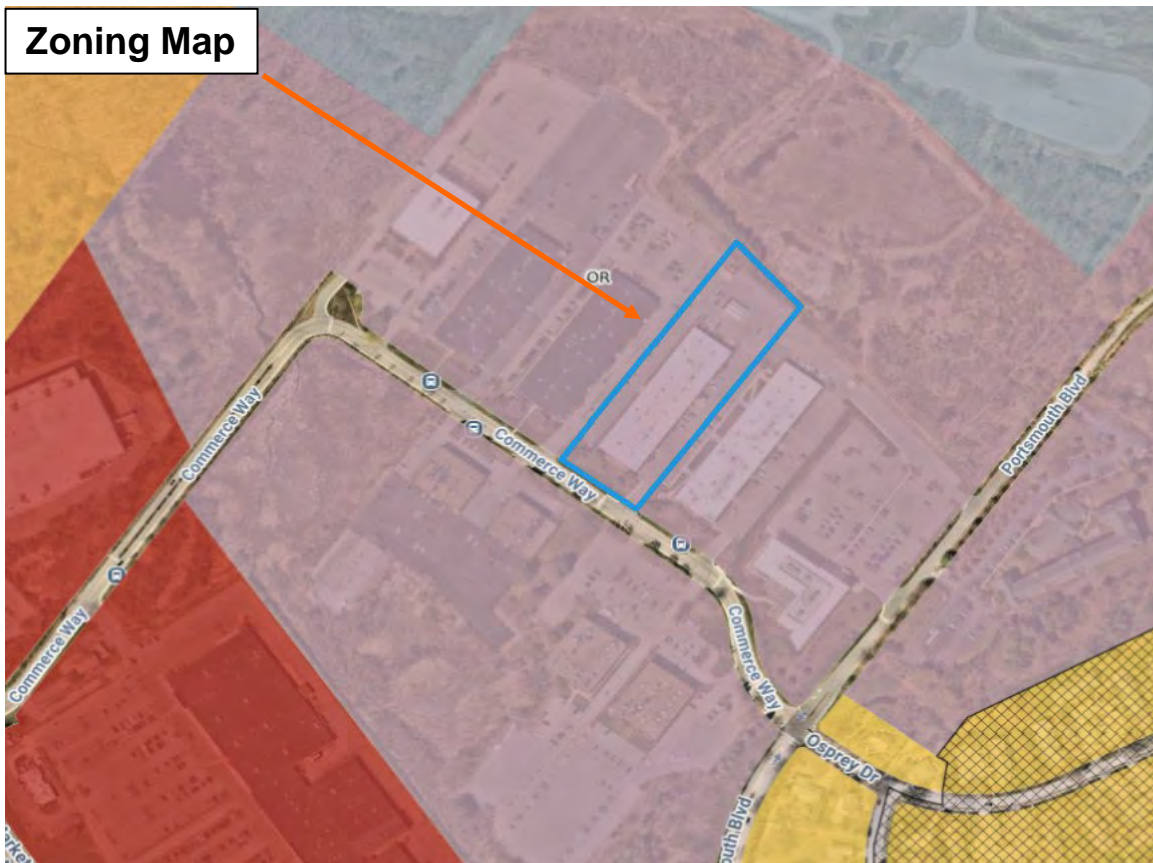
- Sign Permit

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

- **January 5, 1988** – A Variance from Article II, Section 10-207 is requested to allow the establishment of a 7,500 s.f. day care center in an existing building for 100 children in a district where day care centers are not an allowed use. The Board voted to **grant** the petition as presented and advertised with a **stipulation**:
 - That the Variance granted on April 28, 1987 on Assessor Plan R-16 as Lot 009 be voided.
- **October 16, 1996** – 1) A Variance from Article III, Section 10-305(A) to recreate three lots with the following dimensions: a) proposed lot 8 (195 Commerce Way) would have an approximate lot area of 2.82 acres where 3 acres is required, 200.3' of continuous frontage where 300' is the minimum required, a 50' right side yard where 75' is the minimum required; and, 20.75% open space where 30% is the minimum required, b) proposed lot 7 (215 Commerce Way) would have 239.7' of continuous frontage where 300' is the minimum required and a 50' left side yard where 75' is the minimum required; and, c) proposed lot 6 (235 Commerce Way) would have an approximate lot area of 2.64 acres where 3 acres is required, 200' of continuous frontage where 300' is the minimum required. The Board voted to **grant** the petition as presented and advertised with a **stipulation**:
 - That a stamped survey plan be submitted to the Planning Department.

Planning Department Comments

The applicant owns multiple commercial buildings in the area, including **195 Commerce Way**. The commercial office buildings were primarily built in the 1980's along private roads that are now public. The existing signs included in the application are proposed to be updated and relocated. The applicant is requesting relief for a freestanding sign sited 6 feet from the front property line at the driveway entrance (20 SF and 7 ft. in height) where the minimum setback is 20 ft. in sign district 4.

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.

APPLICATION OF THE KANE COMPANY
COMMERCE WAY & PORTSMOUTH BOULEVARD
TAX MAP 216, Lots 1-2, 1-4, 1-5, 1-8a, 1-8

APPLICANT'S NARRATIVE

I. THE PROPERTY:

The applicant, The Kane Company, owns multiple commercial buildings located along Commerce Way, and Portsmouth Boulevard. Specifically, the buildings are located at 75 Portsmouth Boulevard, 170 Commerce Way, 190 Commerce Way, 195 Commerce Way, 210 Commerce Way, 215 Commerce Way and 230 Commerce Way.

The above-mentioned Commerce Way properties were built in the 1980's, however, 75 Portsmouth Boulevard was built in 2019. Both Commerce Way and Portsmouth Boulevard were originally private roads. The existing signs are old and violate the setbacks in the Portsmouth Zoning Ordinance (the, "Ordinance"). Tighe & Bond has prepared an overall sign location plan that depicts the locations of the existing signs.

The Applicant would like to update the existing signs to modernize them and increase visibility for the businesses located along Commerce Way and Portsmouth Boulevard. The signs will also be effective from a public safety standpoint by assisting fire and police in order to locate the existing buildings more easily. Lastly, effective signage is especially important to the future success of the commercial users along the public right of way.

The property is within the Office Research Zone and Sign District 4. The applicant proposes to replace the existing street signs as shown on the plans located along Commerce Way and Portsmouth Boulevard as depicted on sign exhibit prepared by Portsmouth sign company.

The new signs will be installed in the substantially the same location as the existing signs but due to existing setback violations, relief is needed from Section 10.1253.10 is required.

II. CRITERIA:

The applicant believes the within Application meets the criteria necessary for the Board to grant the requested variances.

Granting the requested variance will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest. The "public interest" and "spirit and intent" requirements are considered together pursuant to Malachy Glen

Associates v. Chichester, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance is whether or not the variance being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public.

In this case, were the variances to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety or welfare be threatened. This property has been home to various businesses since the 1980's and is within the zone where the existing uses are permitted by right.

The health, safety and welfare of the public will not be threatened, nor will the essential characteristics of the neighborhood change in any way by virtue of the replacement of the existing signs.

Substantial justice would be done by granting the variance. Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property. Commercial uses all over the City are under threat since the covid pandemic and the continuation of a business office park such as Commerce Way and Portsmouth Boulevard are vital to the future success of our City. Enhanced visibility of the commercial buildings along the public right of way is both necessary and desirable. The signs are tastefully designed and in no way promote the visual clutter the City's sign ordinance is meant to protect against.

It would be an injustice to the applicant to deny the variances here requested.

The values of surrounding properties will not be diminished by granting the variance. The surrounding properties and those in the vicinity will not be negatively affected in any way by this relief. The proposed signs will enhance the visibility of this site, which will decrease potential negative impacts on neighboring properties. Directing motorists to the appropriate commercial buildings requires more prominent and modern signage.

There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship. The property for which relief is sought is unique. It is a large business park located outside of the downtown proper, so adequate business signage is required to ensure future success of the businesses and also increase visibility from a public safety standpoint. Accordingly, prominent signage is appropriate for this location.

These are special conditions of the property which counsel for more prominent signage in order to secure and maintain effective and reasonable sight lines.

The use is a reasonable use. The uses proposed are permitted within this district and are compatible with the surrounding retail and commercial enterprises.

There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. The purpose of the sign ordinance is to maintain and enhance the character of the city's commercial districts and to protect the public from hazardous and distracting displays. Section 10.1211. Neither of the proposed new signs do anything to distract from the character of this district and there is nothing hazardous or distracting about them. There is no fair and substantial relationship between these purposes and this property.

III. Conclusion.

For the foregoing reasons, the applicant respectfully requests the Board grant the variances as requested and advertised.

Respectfully submitted,

Dated: March 3, 2025

By: John K. Bosen
John K. Bosen, Esquire

Owner / Applicant Letter of Authorization

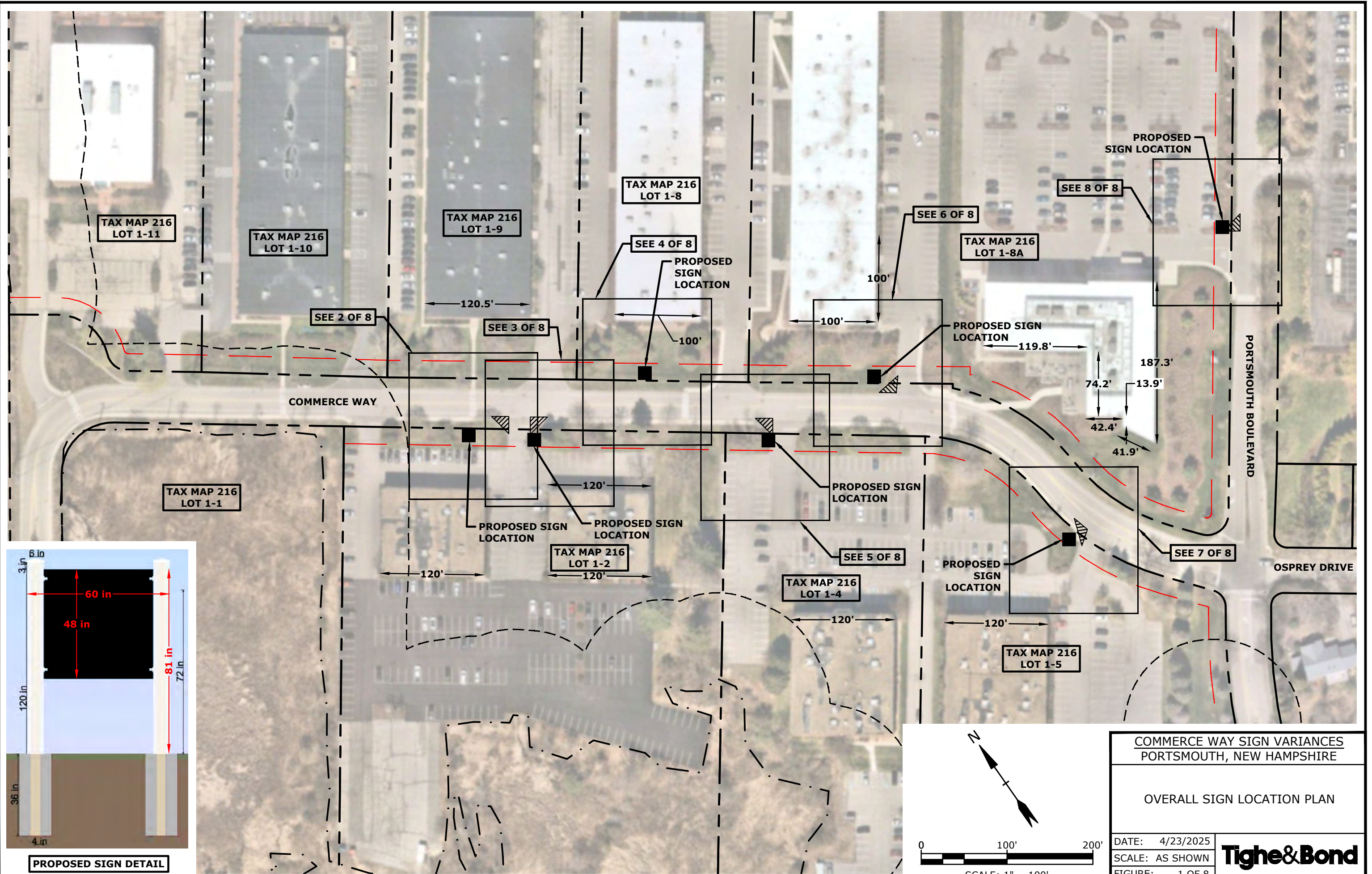
This letter is to authorize Tighe & Bond (Civil Engineer) to represent and submit on behalf of The Kane Company (Owner/Applicant) applications and materials in all site design and permitting matters for the for the proposed signage project located along Commerce Way and Portsmouth Boulevard in Portsmouth, New Hampshire on parcels of land identified as Tax Map 216, Lots 1-1, 1-2, 1-4, 1-5, 1-8a, 1-8, 1-9, 1-10. This authorization shall relate to those activities that are required for local, state and federal permitting for the above project and include any required signatures for those applications.

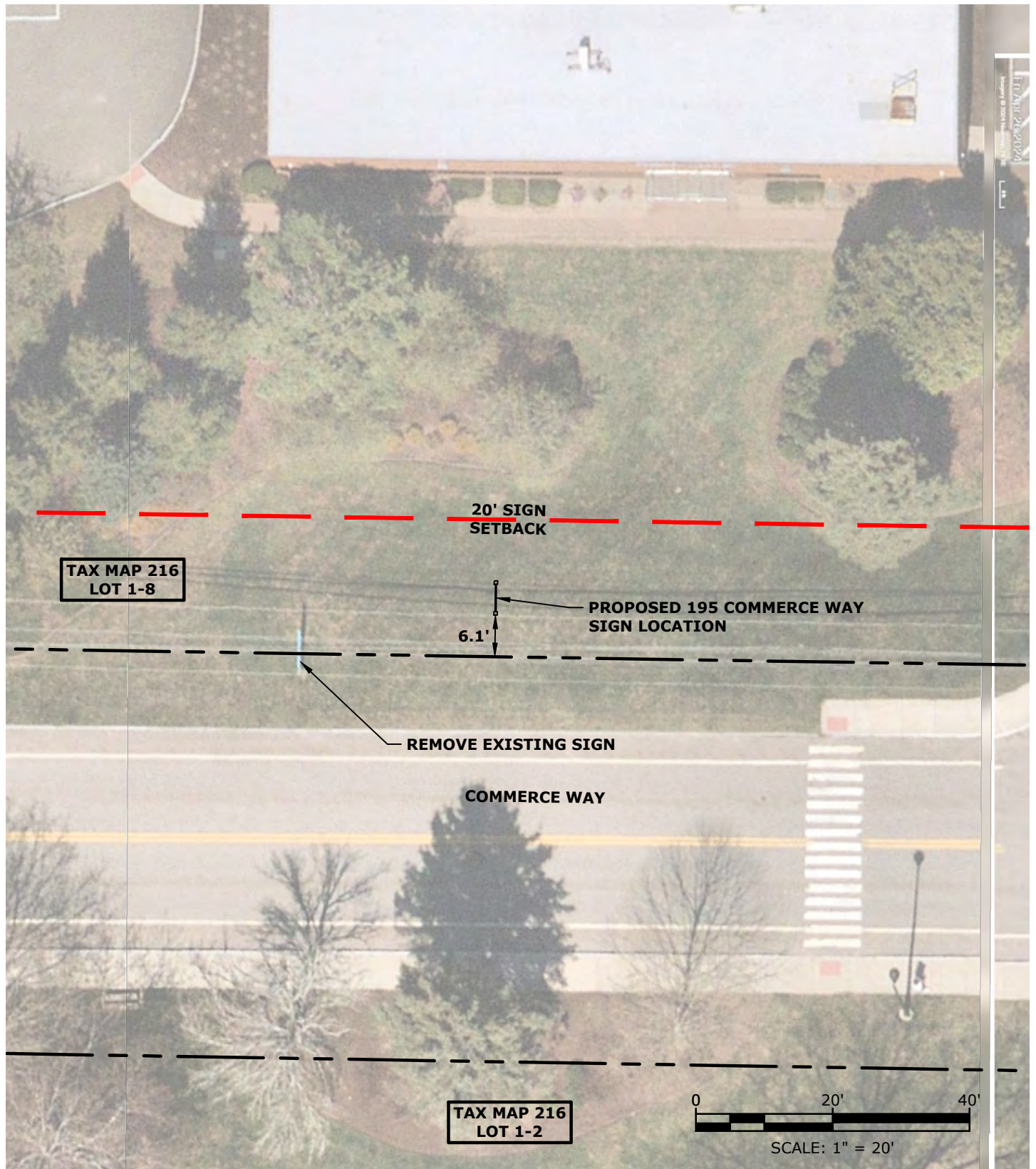

Signature

KEISEY KRAUS
Print Name

3/7/25
Date

Apr 23, 2025-11:12am Plotted By: JBowman
Tighe & Bond, Inc. F:\Projects\K\K0076 The Kane Company - General Proposals\0076-0064_Commerce Way Signage Variance\Drawings\AutoCAD\Sheet\Commerce Way Sign Exhibit.dwg





SIGN DIMENSIONAL STANDARDS

MAXIMUM ALLOWABLE SIGN AREA

1.5 SF PER LF OF BUILDING FRONTAGE	100 LF	150 SF
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PROPOSED SIGN AREA

FREESTANDING SIGN	5 FT x 4 FT	20 SF
EXISTING WALL SIGN (NE)	2.0 FT x 14.8 FT	29.6 SF
TOTAL SIGN AREA		49.6 SF

COMMERCE WAY SIGN VARIANCES PORTSMOUTH, NEW HAMPSHIRE

195 COMMERCE WAY SIGN LOCATION PLAN

DATE: 4/23/2025

SCALE: AS SHOWN

FIGURE: 4 OF 8

Tighe&Bond

195 Commerce Way



195 Commerce Way



II. OLD BUSINESS

- D. The request of **The Kane Company** (Owners), for property located at **215 Commerce Way** and **75 Portsmouth Boulevard** whereas relief is needed to remove, replace and relocate two existing freestanding signs which requires the following: 1) Variance from Section 10.1253.10 for two freestanding signs to be setback a) 1.5 feet and b) 9.5 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-8a and lies within the Office Research (OR) District. (LU-25-44)

Existing & Proposed Conditions

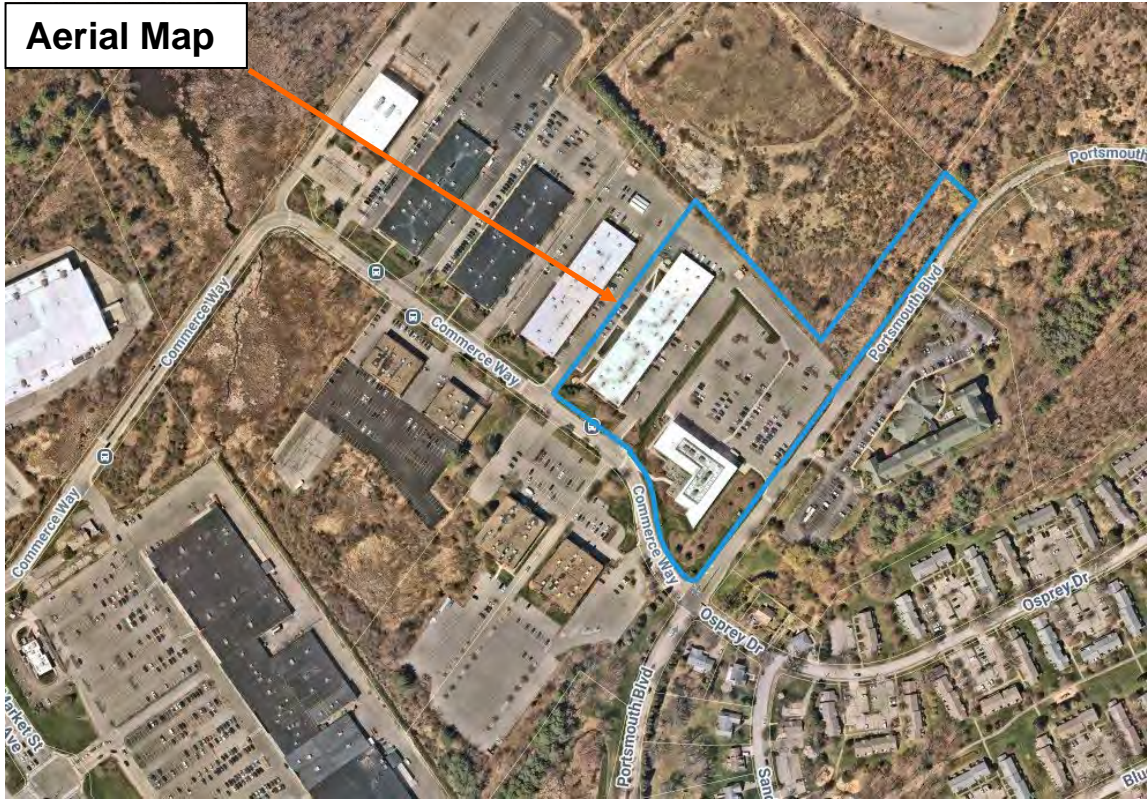
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Office	Freestanding signs	Primarily Commercial
<u>Lot area (acres):</u>	8.82	8.82	3 min.
<u>Building Frontage (ft.):</u>	Bldg 1: 200 Bldg 2: 479.5	Bldg 1: 200 Bldg 2: 479.5	NR
<u>Wall Signs (SF)</u>	Bldg 1: 214.6 <u>Bldg 2: 122.6</u> Total: 337.2	Bldg 1: 214.6 <u>Bldg 2: 122.6</u> Total: 337.2	200 max.
<u>Freestanding Sign (SF)</u>	25	20	100 max.
<u>2nd Freestanding Sign (SF)</u>	15	20	20 (on same street as primary driveway) max.
<u>Freestanding Sign Setback (ft.)</u>	10	9.5	20 min.
<u>2nd Freestanding Sign Setback (ft.)</u>	2	1.5	20 (on same street as primary driveway) min.
<u>Freestanding Sign Height (ft.)</u>	6.5	7	20 max.
<u>2nd Freestanding Sign Height (ft.)</u>	7	7	12 (on same street as primary driveway) max.
<u>Aggregate Sign area (SF)</u>	377.2	377.2	1,019.3 max. (1.5x bldg. frontage)
		Variance request(s) shown in red.	

Other Permits/Approvals Required

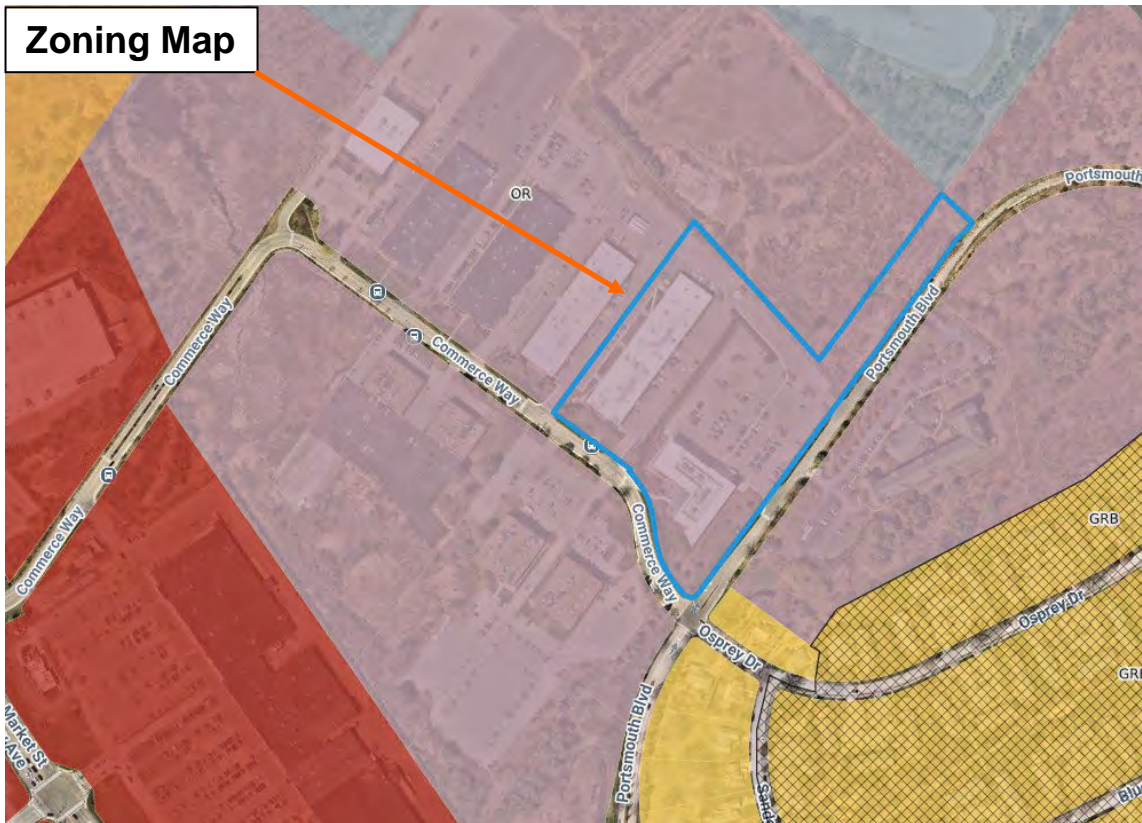
- Sign Permit

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

- **October 16, 1996** – 1) A Variance from Article III, Section 10-305(A) to recreate three lots with the following dimensions: a) proposed lot 8 (195 Commerce Way) would have an approximate lot area of 2.82 acres where 3 acres is required, 200.3' of continuous frontage where 300' is the minimum required, a 50' right side yard where 75' is the minimum required; and, 20.75% open space where 30% is the minimum required, b) proposed lot 7 (215 Commerce Way) would have 239.7' of continuous frontage where 300' is the minimum required and a 50' left side yard where 75' is the minimum required; and, c) proposed lot 6 (235 Commerce Way) would have an approximate lot area of 2.64 acres where 3 acres is required, 200' of continuous frontage where 300' is the minimum required. The Board voted to **grant** the petition as presented and advertised with a **stipulation**:
 - That a stamped survey plan be submitted to the Planning Department.
- **September 18, 2007** – A Variance from Article II, Section 10-209 was requested to allow a veterinary hospital in a district where such use is not allowed. The Board voted to **grant** the petition as presented and advertised with the following **stipulations**:
 - That all efforts be made to mitigate any sound generated.
 - That the services provided be limited to small companion animals, particularly dogs and cats.
- **August 18, 2015** – A Variance from Section 10.1113.20 to allow off-street parking spaces to be located in a front yard between a principal building and the street. The Board voted to **grant** the petition as presented and advertised with a **stipulation**:
 - Appropriate full cut-off light fixtures are to be installed to ensure that light generated from the parking lot running along Portsmouth Boulevard will not spill over onto neighboring properties.

Planning Department Comments

The applicant owns multiple commercial buildings in the area, including **215 Commerce Way and 75 Portsmouth Boulevard**. The commercial office buildings were primarily built in the 1980's along private roads that are now public. The existing signs included in the application are proposed to be updated and relocated. The applicant is requesting relief for two freestanding signs (20 SF and 7 ft. in height) to be located 1.5 feet and 9.5 feet from the front property line where the minimum setback is 20 ft. in sign district 4.

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:*
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- 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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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.

APPLICATION OF THE KANE COMPANY
COMMERCE WAY & PORTSMOUTH BOULEVARD
TAX MAP 216, Lots 1-2, 1-4, 1-5, 1-8a, 1-8

APPLICANT'S NARRATIVE

I. THE PROPERTY:

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In this case, were the variances to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety or welfare be threatened. This property has been home to various businesses since the 1980's and is within the zone where the existing uses are permitted by right.

The health, safety and welfare of the public will not be threatened, nor will the essential characteristics of the neighborhood change in any way by virtue of the replacement of the existing signs.

Substantial justice would be done by granting the variance. Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property. Commercial uses all over the City are under threat since the covid pandemic and the continuation of a business office park such as Commerce Way and Portsmouth Boulevard are vital to the future success of our City. Enhanced visibility of the commercial buildings along the public right of way is both necessary and desirable. The signs are tastefully designed and in no way promote the visual clutter the City's sign ordinance is meant to protect against.

It would be an injustice to the applicant to deny the variances here requested.

The values of surrounding properties will not be diminished by granting the variance. The surrounding properties and those in the vicinity will not be negatively affected in any way by this relief. The proposed signs will enhance the visibility of this site, which will decrease potential negative impacts on neighboring properties. Directing motorists to the appropriate commercial buildings requires more prominent and modern signage.

There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship. The property for which relief is sought is unique. It is a large business park located outside of the downtown proper, so adequate business signage is required to ensure future success of the businesses and also increase visibility from a public safety standpoint. Accordingly, prominent signage is appropriate for this location.

These are special conditions of the property which counsel for more prominent signage in order to secure and maintain effective and reasonable sight lines.

The use is a reasonable use. The uses proposed are permitted within this district and are compatible with the surrounding retail and commercial enterprises.

There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. The purpose of the sign ordinance is to maintain and enhance the character of the city's commercial districts and to protect the public from hazardous and distracting displays. Section 10.1211. Neither of the proposed new signs do anything to distract from the character of this district and there is nothing hazardous or distracting about them. There is no fair and substantial relationship between these purposes and this property.

III. Conclusion.

For the foregoing reasons, the applicant respectfully requests the Board grant the variances as requested and advertised.

Respectfully submitted,

Dated: March 3, 2025

By: John K. Bosen
John K. Bosen, Esquire

Owner / Applicant Letter of Authorization

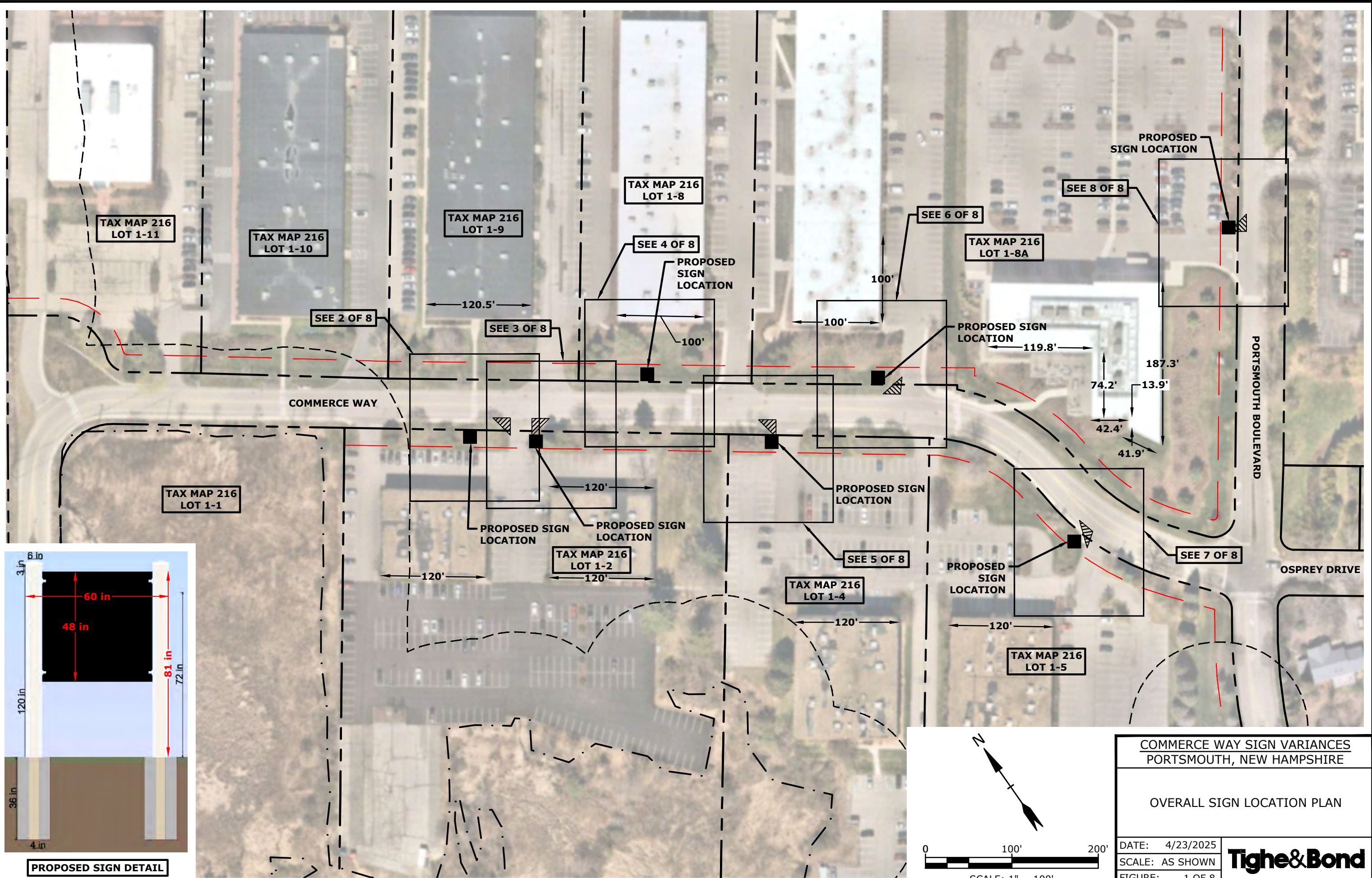
This letter is to authorize Tighe & Bond (Civil Engineer) to represent and submit on behalf of The Kane Company (Owner/Applicant) applications and materials in all site design and permitting matters for the for the proposed signage project located along Commerce Way and Portsmouth Boulevard in Portsmouth, New Hampshire on parcels of land identified as Tax Map 216, Lots 1-1, 1-2, 1-4, 1-5, 1-8a, 1-8, 1-9, 1-10. This authorization shall relate to those activities that are required for local, state and federal permitting for the above project and include any required signatures for those applications.

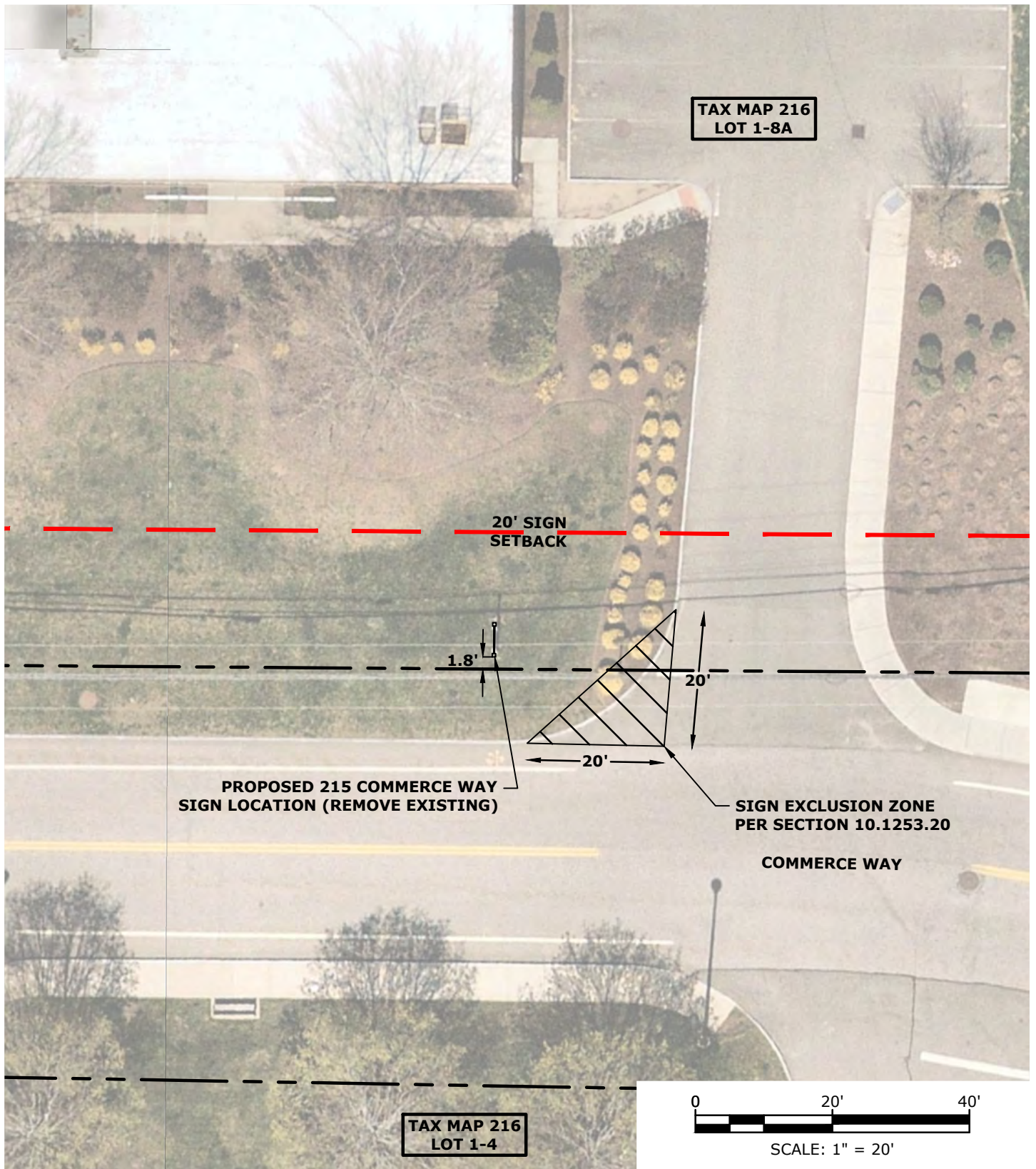

Signature

KEISEY KRAUS
Print Name

3/7/25
Date

Apr 23, 2025-11:12am Plotted By: JBowman
Tighe & Bond, Inc. F:\Projects\K\K0076 The Kane Company - General Proposals\0076-0064_Commerce Way Signage Variance\Drawings\AutoCAD\Sheet\Commerce Way Sign Exhibit.dwg





SIGN DIMENSIONAL STANDARDS

MAXIMUM ALLOWABLE SIGN AREA

1.5 SF PER LF OF BUILDING FRONTAGE	200 LF	300 SF
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PROPOSED SIGN AREA

FREESTANDING SIGN	5 FT x 4 FT	20 SF
EXISTING WALL SIGN (NE)	18.5 FT x 5.8 FT	107.3 SF
EXISTING WALL SIGN (NW)	18.5 FT x 5.8 FT	107.3 SF
TOTAL SIGN AREA		234.6 SF

COMMERCE WAY SIGN VARIANCES PORTSMOUTH, NEW HAMPSHIRE

215 COMMERCE WAY SIGN LOCATION PLAN

DATE: 4/23/2025

SCALE: AS SHOWN

FIGURE: 6 OF 8

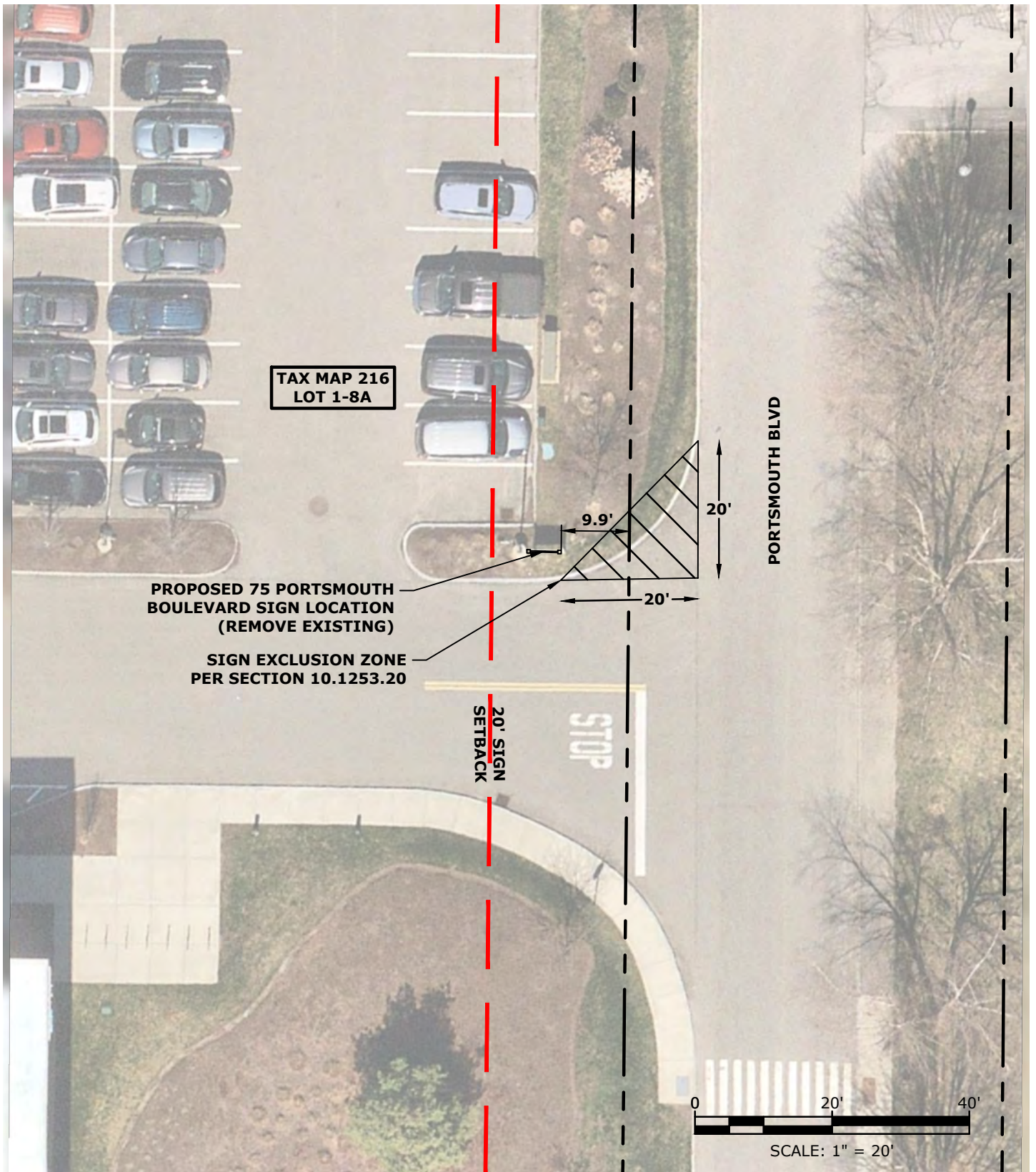
Tighe&Bond

215 Commerce Way



215 Commerce Way





SIGN DIMENSIONAL STANDARDS

MAXIMUM ALLOWABLE SIGN AREA

1.5 SF PER LF OF BUILDING FRONTAGE	479.5 LF	719.3 SF
------------------------------------	----------	----------

PROPOSED SIGN AREA

FREESTANDING SIGN	5 FT x 4 FT	20 SF
EXISTING WALL SIGN (NE)	4.3 FT x 8.3 FT	35.7 SF
EXISTING WALL SIGN (NE)	1.8 FT x 22.1 FT	39.8 SF
EXISTING WALL SIGN (W)	1.7 FT x 27.7 FT	47.1 SF
TOTAL SIGN AREA		142.6 SF

**COMMERCE WAY SIGN VARIANCES
PORTSMOUTH, NEW HAMPSHIRE**

**75 PORTSMOUTH BOULEVARD
SIGN LOCATION PLAN**

DATE: 4/23/2025

SCALE: AS SHOWN

FIGURE: 8 OF 8

Tighe&Bond

75 Portsmouth Boulevard



75 Portsmouth Boulevard



75 Portsmouth Boulevard



II. OLD BUSINESS

- E. The request of **The Kane Company** (Owners), for property located at **230 Commerce Way** whereas relief is needed to remove, replace and relocate an existing freestanding sign which requires the following: 1) Variance from Section 10.1253.10 for a freestanding sign to be setback 4 feet from the front property line where 20 feet is required. Said property is located on Assessor Map 216 Lot 1-5 and lies within the Office Research (OR) District. (LU-25-45)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Office	Freestanding sign	Primarily Commercial
<u>Lot area (acres):</u>	5.62	5.62	3 min.
<u>Building Frontage (ft.):</u>	120	120	NR
<u>Wall Sign (SF)</u>	N/A	N/A	200 max.
<u>Freestanding Sign (SF)</u>	N/A	20	100 max.
<u>Freestanding Sign Setback (ft.)</u>	N/A	4	20 min.
<u>Freestanding Sign Height (ft.)</u>	N/A	7	20 max.
<u>Aggregate Sign area (SF)</u>	0	20	180 max. (1.5x bldg. frontage)
		Variance request(s) shown in red.	

Other Permits/Approvals Required

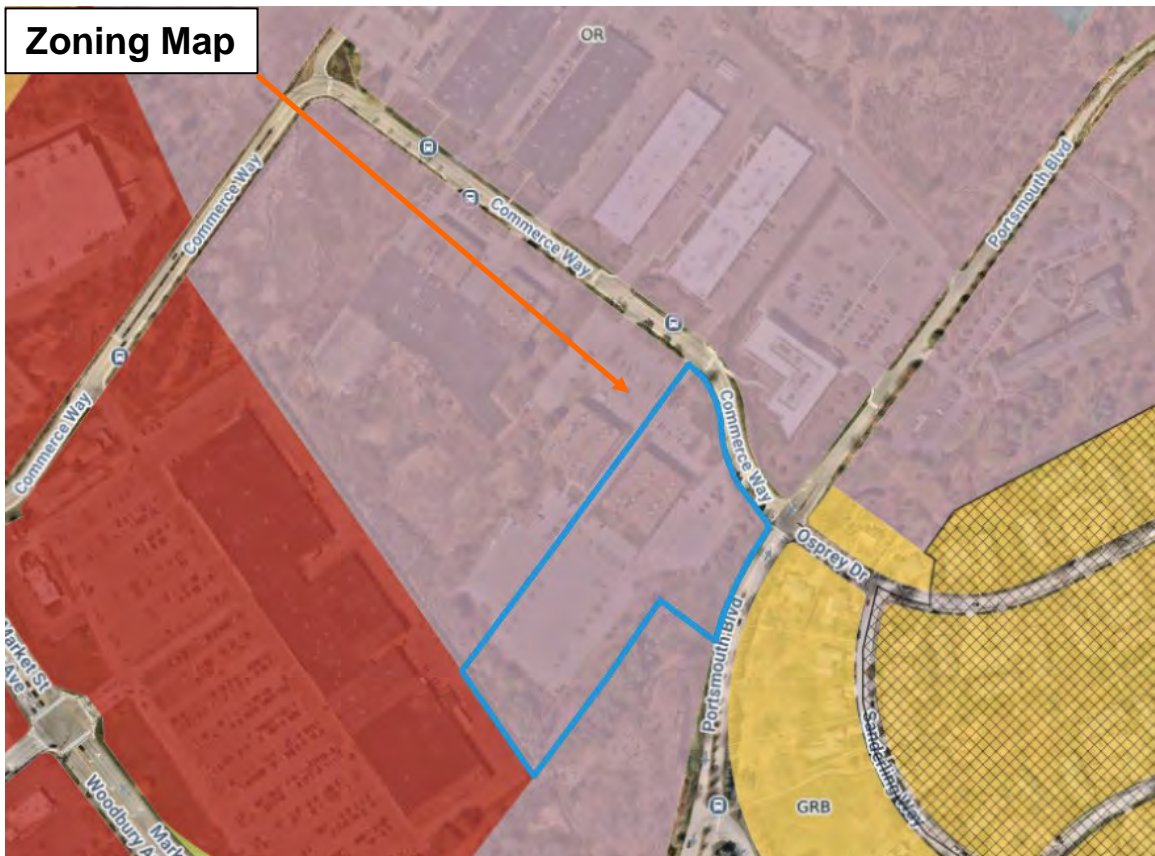
- Sign Permit

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

- **February 23, 2022** – Construct a new Veterinary care building which requires the following:
1) A Special Exception from Section 10.440 Use #7.50 to allow a Veterinary Care use in a district where it is allowed by Special Exception. The Board voted to **grant** the request as presented and advertised. *All land use approvals associated with LU-22-14 expired August 7, 2024.

Planning Department Comments

The applicant owns multiple commercial buildings in the area, including **230 Commerce Way**. The commercial office buildings were primarily built in the 1980's along private roads that are now public. The existing signs included in the application are proposed to be updated and relocated. The applicant is requesting relief for a freestanding sign sited 4 feet from the front property line at the driveway entrance (20 SF and 7 ft. in height) where the minimum setback is 20 ft. in sign district 4.

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.

APPLICATION OF THE KANE COMPANY
COMMERCE WAY & PORTSMOUTH BOULEVARD
TAX MAP 216, Lots 1-2, 1-4, 1-5, 1-8a, 1-8

APPLICANT'S NARRATIVE

I. THE PROPERTY:

The applicant, The Kane Company, owns multiple commercial buildings located along Commerce Way, and Portsmouth Boulevard. Specifically, the buildings are located at 75 Portsmouth Boulevard, 170 Commerce Way, 190 Commerce Way, 195 Commerce Way, 210 Commerce Way, 215 Commerce Way and 230 Commerce Way.

The above-mentioned Commerce Way properties were built in the 1980's, however, 75 Portsmouth Boulevard was built in 2019. Both Commerce Way and Portsmouth Boulevard were originally private roads. The existing signs are old and violate the setbacks in the Portsmouth Zoning Ordinance (the, "Ordinance"). Tighe & Bond has prepared an overall sign location plan that depicts the locations of the existing signs.

The Applicant would like to update the existing signs to modernize them and increase visibility for the businesses located along Commerce Way and Portsmouth Boulevard. The signs will also be effective from a public safety standpoint by assisting fire and police in order to locate the existing buildings more easily. Lastly, effective signage is especially important to the future success of the commercial users along the public right of way.

The property is within the Office Research Zone and Sign District 4. The applicant proposes to replace the existing street signs as shown on the plans located along Commerce Way and Portsmouth Boulevard as depicted on sign exhibit prepared by Portsmouth sign company.

The new signs will be installed in the substantially the same location as the existing signs but due to existing setback violations, relief is needed from Section 10.1253.10 is required.

II. CRITERIA:

The applicant believes the within Application meets the criteria necessary for the Board to grant the requested variances.

Granting the requested variance will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest. The "public interest" and "spirit and intent" requirements are considered together pursuant to Malachy Glen

Associates v. Chichester, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance is whether or not the variance being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public.

In this case, were the variances to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety or welfare be threatened. This property has been home to various businesses since the 1980's and is within the zone where the existing uses are permitted by right.

The health, safety and welfare of the public will not be threatened, nor will the essential characteristics of the neighborhood change in any way by virtue of the replacement of the existing signs.

Substantial justice would be done by granting the variance. Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property. Commercial uses all over the City are under threat since the covid pandemic and the continuation of a business office park such as Commerce Way and Portsmouth Boulevard are vital to the future success of our City. Enhanced visibility of the commercial buildings along the public right of way is both necessary and desirable. The signs are tastefully designed and in no way promote the visual clutter the City's sign ordinance is meant to protect against.

It would be an injustice to the applicant to deny the variances here requested.

The values of surrounding properties will not be diminished by granting the variance. The surrounding properties and those in the vicinity will not be negatively affected in any way by this relief. The proposed signs will enhance the visibility of this site, which will decrease potential negative impacts on neighboring properties. Directing motorists to the appropriate commercial buildings requires more prominent and modern signage.

There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship. The property for which relief is sought is unique. It is a large business park located outside of the downtown proper, so adequate business signage is required to ensure future success of the businesses and also increase visibility from a public safety standpoint. Accordingly, prominent signage is appropriate for this location.

These are special conditions of the property which counsel for more prominent signage in order to secure and maintain effective and reasonable sight lines.

The use is a reasonable use. The uses proposed are permitted within this district and are compatible with the surrounding retail and commercial enterprises.

There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. The purpose of the sign ordinance is to maintain and enhance the character of the city's commercial districts and to protect the public from hazardous and distracting displays. Section 10.1211. Neither of the proposed new signs do anything to distract from the character of this district and there is nothing hazardous or distracting about them. There is no fair and substantial relationship between these purposes and this property.

III. Conclusion.

For the foregoing reasons, the applicant respectfully requests the Board grant the variances as requested and advertised.

Respectfully submitted,

Dated: March 3, 2025

By: John K. Bosen
John K. Bosen, Esquire

Owner / Applicant Letter of Authorization

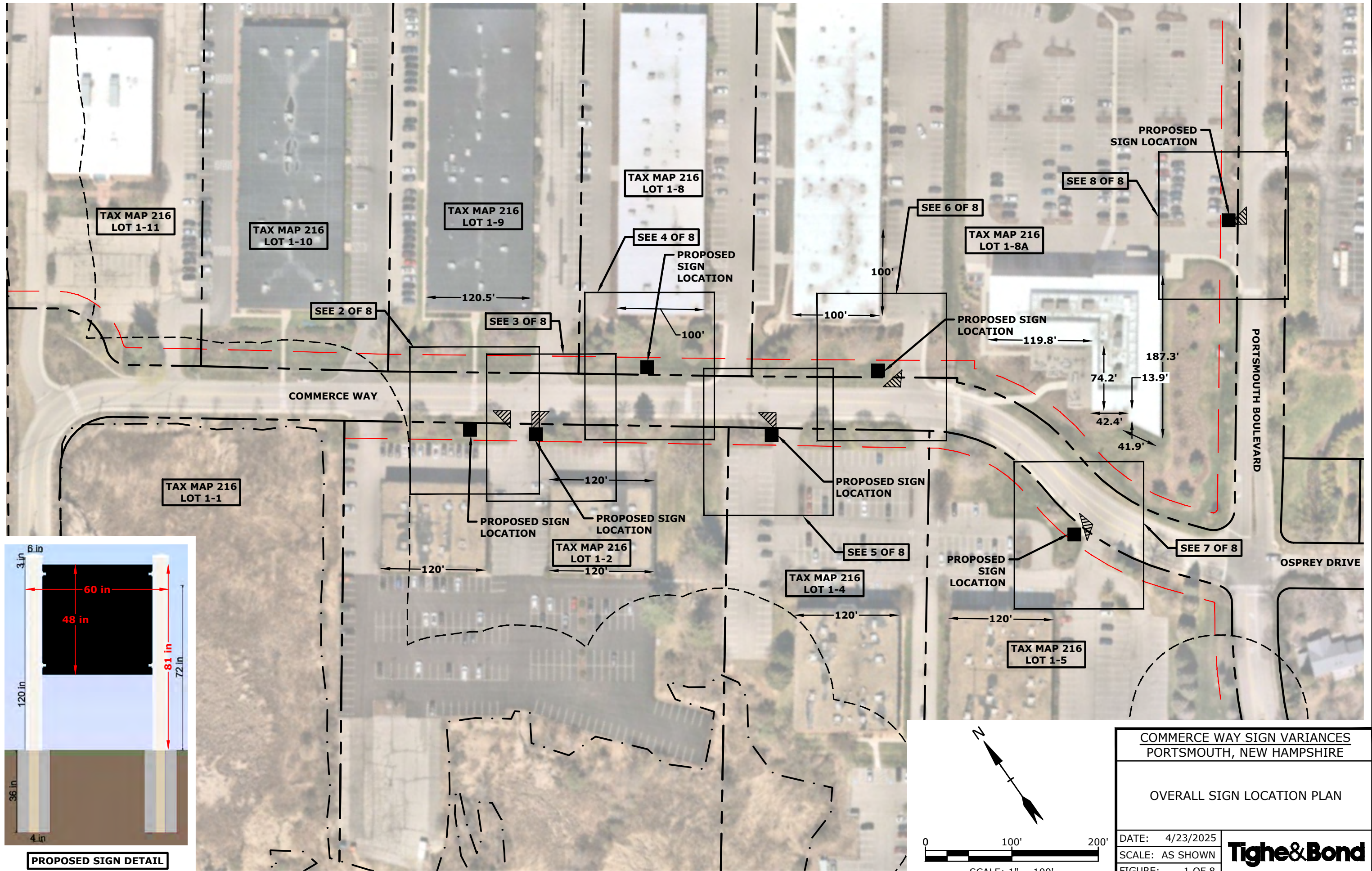
This letter is to authorize Tighe & Bond (Civil Engineer) to represent and submit on behalf of The Kane Company (Owner/Applicant) applications and materials in all site design and permitting matters for the for the proposed signage project located along Commerce Way and Portsmouth Boulevard in Portsmouth, New Hampshire on parcels of land identified as Tax Map 216, Lots 1-1, 1-2, 1-4, 1-5, 1-8a, 1-8, 1-9, 1-10. This authorization shall relate to those activities that are required for local, state and federal permitting for the above project and include any required signatures for those applications.


Signature

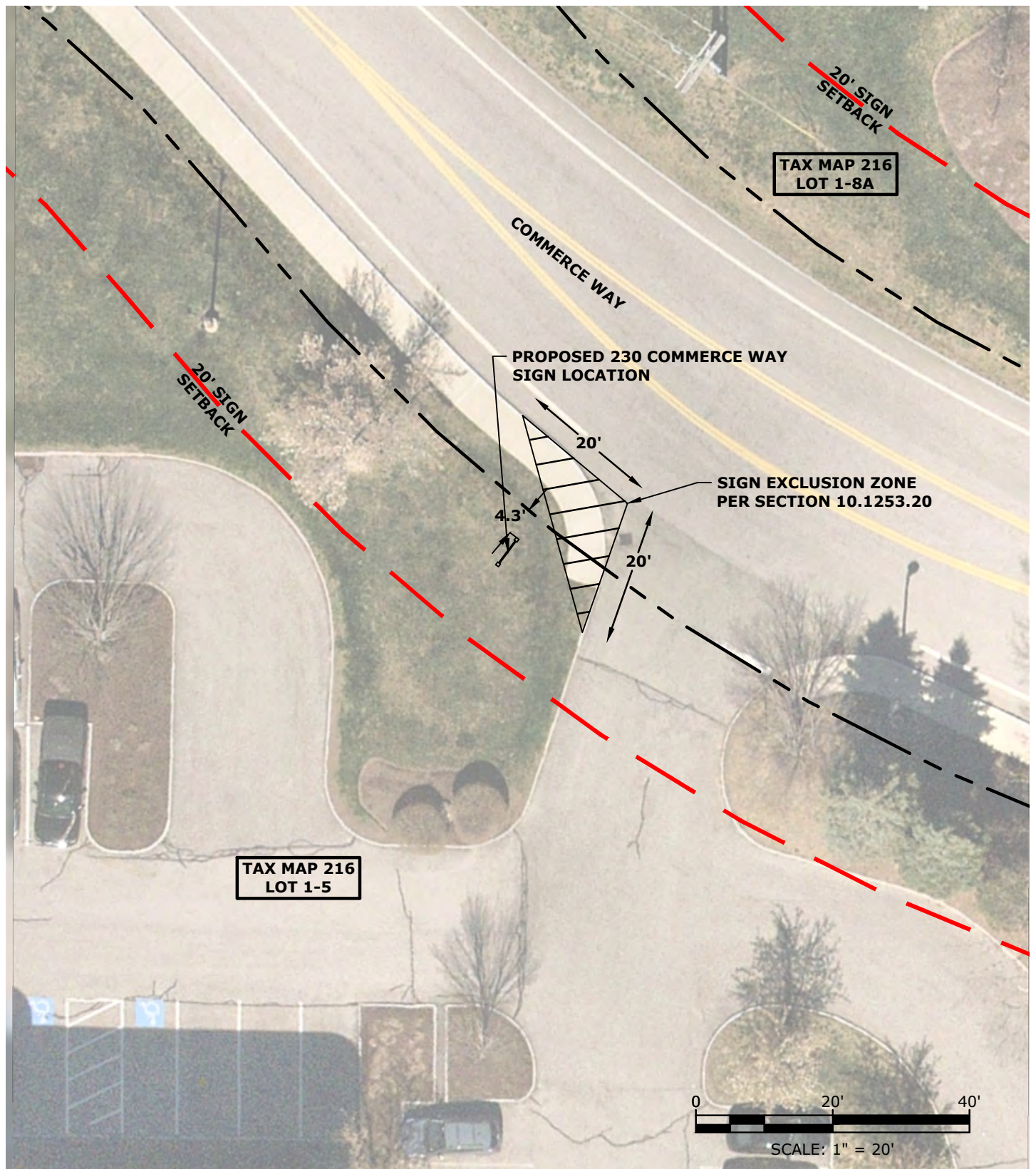
KEISEY KRAUS
Print Name

3/7/25
Date

Apr 23, 2025-11:12am Plotted By: JBowman
Tighe & Bond, Inc. F:\Projects\K\K0076 The Kane Company - General Proposals\0076-0064_Commerce Way Signage Variance\Drawings\AutoCAD\Sheet\Commerce Way Sign Exhibit.dwg



Apr 23, 2025-11:13am Plotted By: J.Bowman
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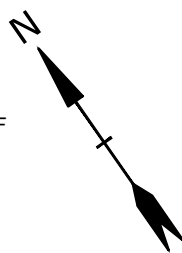
SIGN DIMENSIONAL STANDARDS

MAXIMUM ALLOWABLE SIGN AREA

1.5 SF PER LF OF BUILDING FRONTAGE 120 LF 180 SF

PROPOSED SIGN AREA

FREESTANDING SIGN	5 FT x 4 FT	20 SF
EXISTING WALL SIGN		0 SF
TOTAL SIGN AREA		20 SF



COMMERCE WAY SIGN VARIANCES PORTSMOUTH, NEW HAMPSHIRE

230 COMMERCE WAY SIGN LOCATION PLAN

DATE: 4/23/2025

SCALE: AS SHOWN

FIGURE: 7 OF 8

Tighe&Bond

II. OLD BUSINESS

F. RE-ADVERTISED FOR MAY 27, 2025 The request of **Mezansky Family Revocable Trust (Owners)**, for property located at **636 Lincoln Avenue** whereas relief is needed to demolish an existing detached garage and to construct an addition which requires the following: 1) Variance from Section 10.521 to a) allow a 2 foot left side yard setback where 10 feet is required; b) allow a 16 foot rear yard setback where 20 feet is required; c) allow 39% building coverage where 25% is the maximum allowed; and 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 148 Lot 17 and lies within the General Residence A (GRA) District. (LU-25-27) **RE-ADVERTISED FOR MAY 27, 2025**

Planning Department Comments

At the April 15, 2025 Board of Adjustment Meeting the application was postponed at the request of the applicant to make amendments due to an error in the lot area and building coverage calculation that was noticed improperly. The applicant submitted an updated application package with corrections and the application was re-advertised for the May 20, 2025 BOA Meeting. An amended site plan was submitted by the applicant on May 5, 2025 due to additional dimensional discrepancies that were included in the original and amended submission package. The amended site plan includes an update to the rear yard setback relief required and therefore the application has been re-advertised for the May 27, 2025 BOA Meeting at the expense of the applicant.

II. OLD BUSINESS

G. REQUEST TO POSTPONE - The request of **Colbea Enterprises LLC (Owners)**, for property located at **1980 Woodbury Avenue** whereas relief is needed to demolish and redevelop an existing gas station and convenience store which requires the following: 1) Special Exception from Section 10.440, Use #8.122 to allow a convenience goods 2 use with 24 hours per day operation (*approved April 22, 2025*); 2) Variance from Section 10.5B33.20 to allow for a front lot line build out of 0% where a minimum of 75% is required for a commercial building; 3) Variance from Section 10.5B34.60 to allow for a front setback from the lot line of 27 feet on Woodbury Avenue and 46 feet on Gosling Road where a maximum of 20 feet is required; 4) Variance from Section 10.5B83.10 to allow for parking spaces to be located between the principal building and the street; 5) Variance from Section 10.835.32 to allow for drive-through lanes, bypass lanes and stacking lanes to be located within 13 feet of the property line where 30 feet is required; 6) Variance from Section 10.835.31 to allow outdoor service facilities to be located within 38 feet of a lot line where 50 feet is required. 7) Variance from Section 10.843.33 to allow for pump islands to be located within 28 feet of the lot lines where 40 feet is required; 8) Variance from Section 10.1251.10 to allow for an aggregate sign area of 454 s.f. where a maximum of 223.5 s.f. is allowed; 9) Variance from Section 10.1251.20 to allow a 134 s.f. freestanding sign where a maximum of 100 s.f. is allowed; and 10) Variance from Section 10.1253.10 to allow for a freestanding sign at a) a height of 26.5 feet where a maximum of 20 feet is allowed and b) two freestanding signs at a setback of 3 feet where 10 feet is required. Said property is located on Assessor Map 239 Lot 11 and lies within the Gateway Corridor (G1) District. (LU-25-39) – **REQUEST TO POSTPONE**

Planning Department Comments

The applicant has requested postponement of this item to the June 17, 2025 BOA meeting for more time to provide an updated application package in response to the Board's request for more information at the April 22, 2025 meeting. Please see the letter from the applicant's representative dated April 25, 2025, as provided.



Christopher B. Drescher
Admitted in NH

April 25, 2025

City of Portsmouth
Board of Adjustment
1 Junkins Ave.
3rd Floor
Portsmouth, NH 03801

RE: Colbea Enterprises LLC: property located at 1980 Woodbury Ave. (LU-25-39)

Dear Honorable Zoning Board of Adjustment ("ZBA"),

I write to you on behalf of our client, Colbea Enterprises, LLC, to request a continuance for the above referenced application.

On April 22, 2025, the ZBA continued this matter until its May meeting, which occurs on May 20th.

In order to address the concerns that the ZBA raised relative to this project, we are going to be performing a sound study to provide some data regarding the proposed drive-thru.

Additionally, we intend to modify our site plans to address said concerns and are ascertaining whether we can reduce the amount of relief that we are seeking.

Consequently, the aforementioned adjustments are going to take some time and we are requesting if we can please be continued until the **June 17th ZBA meeting**.

Should you need us to provide anything else please do not hesitate to ask.

Very Truly Yours,

CRONIN BISSON & ZALINSKY, P.C.

By:

Christopher B. Drescher, Esq.

722 Chestnut Street
Manchester, NH 03104
(603)-624-4333
cdrescher@cbzlaw.com

III. NEW BUSINESS

- A.** The request of **Deer Street Hospitality LLC (Owners)**, for property located at **165 Deer Street** whereas relief is needed for a marquee sign and a freestanding sign which requires the following: 1) Variance from 10.1251.20 for a 67.5 s.f. marquee sign where 20 s.f. is allowed; 2) Variance from 10.1273.10 to allow a marquee sign to be placed on top and to be 24 inches tall; 3) Variance from 10.1253.10 to allow a freestanding sign to be setback 0 feet where 5 feet is required. Said property is located on Assessor Map 125 Lot 17 and lies within the Character District 5 (CD5), Municipal (M), and Downtown Overlay Districts. (LU-25-60)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Hotel	Marquee Sign* and Freestanding sign	Mixed-Use
<u>Lot area (acres):</u>	0.61	0.61	NR min.
<u>Building Frontage (ft.):</u>	295	295	NR
<u>Wall Sign (SF)</u>	N/A	19	40 max.
<u>Freestanding Sign (SF)</u>	N/A	7	20 max.
<u>Freestanding Sign Setback (ft.)</u>	N/A	0	5 min.
<u>Freestanding Sign Height (ft.)</u>	N/A	4	12 max.
<u>Marquee Sign (SF)</u>	N/A	67.4	20 max.
<u>Aggregate Sign area (SF)</u>	0	93.4	590 (2x bldg. frontage) max.
		Variance request(s) shown in red.	

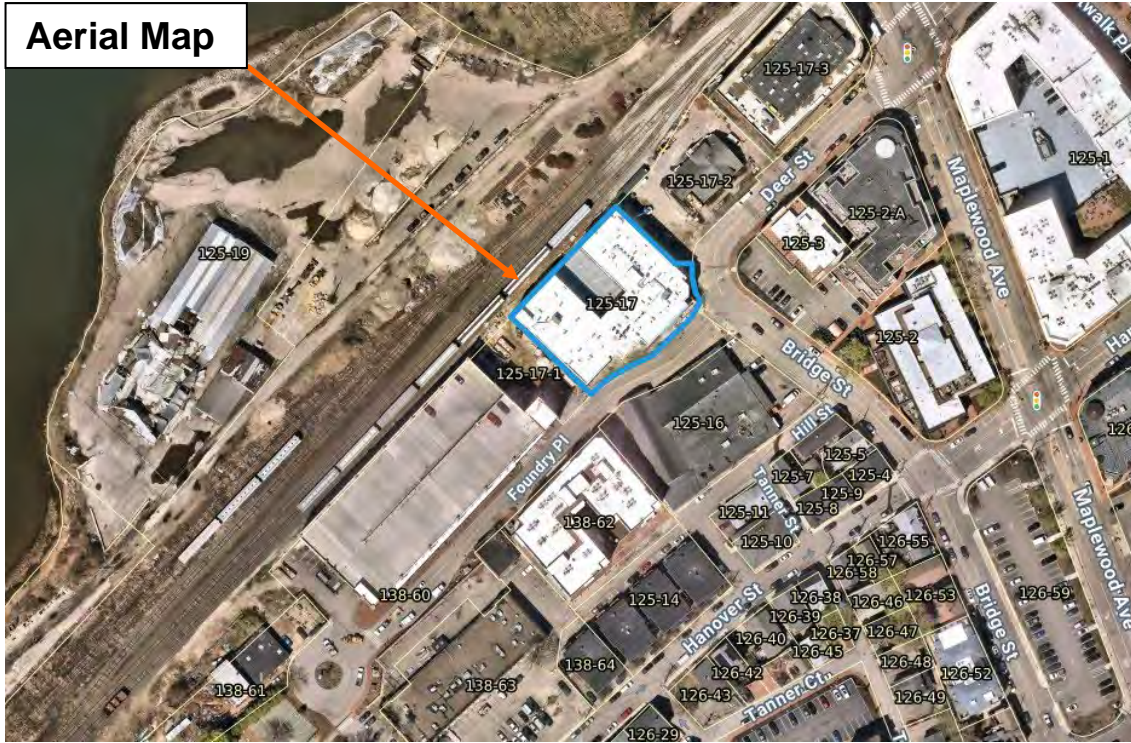
***Marquee Sign proposed to be located on top and to be 24" high**

Other Permits/Approvals Required

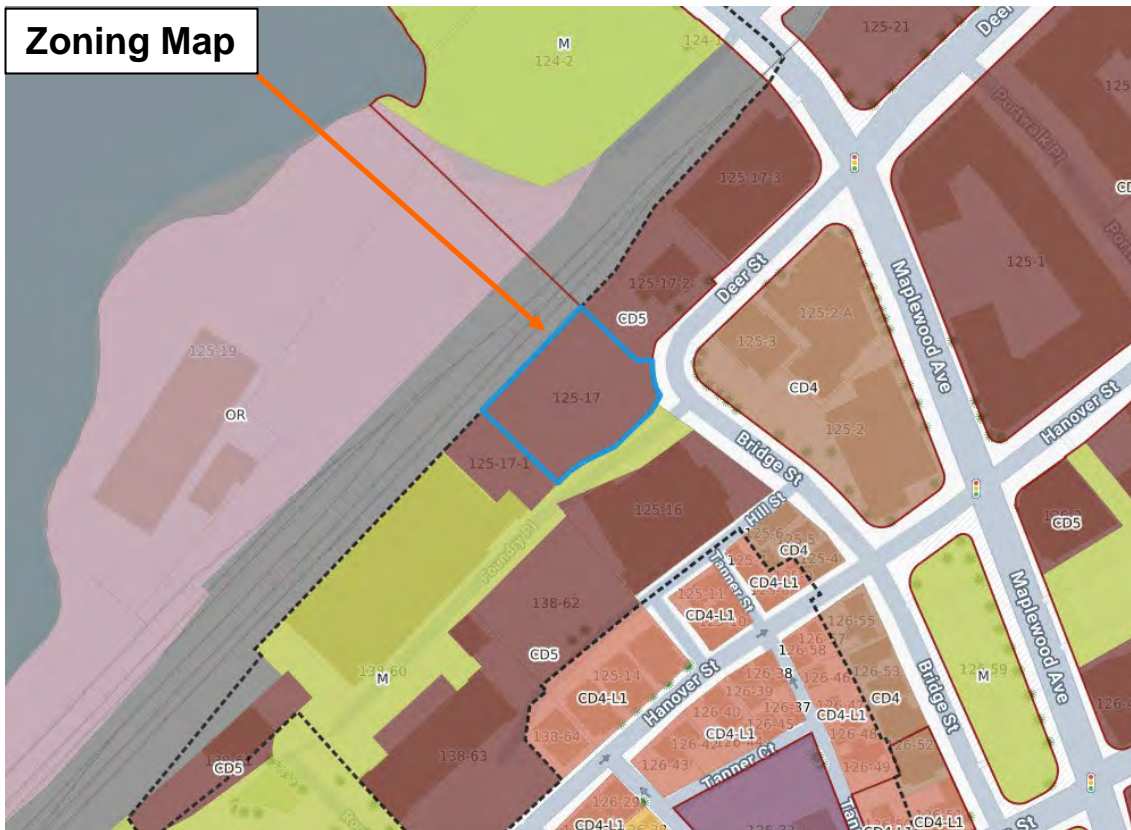
- Sign Permit

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

- **June 27, 1972** – A Variance to construct a one-story building for retail sales and office space on Deer Street; and to allow the construction of a 20' x 20' office building. The Board voted to grant the request as presented and advertised.
- **December 19, 1978** – A Variance to allow construction of a 30' x 30' garage, 45' from the front property line and contiguous with the left and rear property lines where 70', 50' and 50' respectively are required. The Board voted to grant the request with the following conditions:
 - 1) That the peak will not exceed 20' from ground level; and,
 - 2) That the building be placed on the location as shown on the plans.
- **September 10, 1985** – A Variance to allow the erection of a 1,425 s.f. one-story greenhouse adjacent to the garden center structure (the existing structure to be removed) where no building or structure in the Central Business district shall be less than two (2) stories in height. The Board voted to grant the request with the following conditions:
 - 1) That the existing greenhouse be removed; and,
 - 2) A \$5,000 bond be posted to ensure the removal of the existing greenhouse; and,
 - 3) That the petitioner be required to pave and mark the parking area as indicated on the plans.
- **January 13, 1987** – 1) a Special Exception as allowed in Article IX, Section 10-906, to permit the installation of a free-standing sign in the Central Business district where free-standing signs are allowed only by Special Exception; and, 2) a Variance from Article IX, Section 10-906, to permit said free-standing sign to have an area of 20 s.f. where 12 s.f. is the maximum free-standing sign area allowed in the Central Business district. The Board voted to grant the request as presented and advertised.
- **May 3, 1988** – To Appeal an Administrative Decision of the Building Inspector in the interpretation of the following sections of the Zoning Ordinance: Article IX, Section 10-901(d) and Article IV, Section 10-401(1) for the re-surfacing of an existing non-conforming roof top sign. Notwithstanding the above, if the Appeal of an Administrative Decision is denied, then, the following requests are hereby made: Variances from Article IX, Section 10-901(d) and Article IV, Section 10-401(1) to maintain an existing 80 s.f. roof top sign where roof top signs are not allowed. The Board voted to grant the request to Appeal an Administrative Decision of the Building Inspector with the following conditions:
 - 1) The total amount of aggregate signage does not exceed what it is in conformance with the Zoning Ordinance.

As the Appeal was granted, the Board did not consider the request for a Variance.
- **April 18, 1989** – A Variance from Article III, Section 10-302 to permit the construction of a 30' x 30' garage with: a) a 40' front yard where a 70' front yard is required; b) a 30' left yard where a 50' left yard is required; c) a 33' rear yard where a 50' rear yard is required. The Board voted to grant the request as presented and advertised.

- **May 19, 1998** – A Variance to allow a vegetable stand on Wednesdays 4:00 P.M. to 6:00 P.M., June 1998 thru August 1998, by Portsmouth Middle and High School students and supervised by New Heights. The Board voted to grant the request as presented and advertised.
- **February 19, 2002** – A Variance from Article II, Section 10-209 to allow 2,150 sf of existing space to be used as a Yoga studio/school in a district where schools are not allowed. The Board voted to grant the request as presented and advertised.
- **February 21, 2012** – Rental and storage of motorized scooters. 1) A use Variance from Section 10.440, Use #11.10 to permit the rental and storage of motorized scooters in a district where such use is not allowed. The Board voted to grant the request as presented and advertised.
- **December 16, 2014** – Install an illuminated sign. 1) A Variance from Section 10.1261.30 to allow an internally illuminated sign in the Historic District. 2) A Variance from Section 10.1251.20 to allow an attached wall sign of 51.7± s.f. where 40 s.f. is the maximum allowed for an individual wall sign. The Board voted to deny the petition as presented and advertised, acknowledging the withdrawal of the variance request to allow an attached wall sign which exceeded the maximum sign area.
- **May 16, 2017** – Construct a 5-story mixed use building with enclosed off-street parking utilizing a lift system. 1) A Variance from Section 10.516.20 to allow a 5'± rear yard adjoining a railroad right-of-way where 15' is required. 2) A Variance from Section 10.1114.21 to allow 62 parking spaces utilizing a two-car lift system in each bay that does not meet the required dimensions for parking spaces. 3) A Variance from Section 10.1114.32(a) to allow vehicles to enter and leave parking spaces by passing over another parking space or requiring the moving of another vehicle. The Board voted to grant the request as presented and advertised.
- **July 18, 2017** – A surface parking lot as a principal use. 1) A Variance from Section 10.440 to allow a surface parking lot as a principal use where such use is not allowed. 2) A Variance from Section 10.5A44 to allow a parking lot that does not comply with the requirements of the ordinance. The Board voted to grant the request as presented and advertised.
- **November 20, 2018** – Request for extension for the variances granted May 16, 2017. The Board voted to grant a one-year extension through May 16, 2020 of the Variances granted May 16, 2017.

Planning Department Comments

The subject property is the site of a hotel that is currently under construction. The applicant's proposed sign package includes a marquee sign that is larger than the maximum size of 20 s.f. that is permitted under Section 10.1251.20 and proposes the letters to be placed on top and to be greater than 1.5' in height as permitted under Section 10.1273.10. The sign package also includes a freestanding sign that is proposed to be located on the lot line with a zero setback whereas a 5-foot setback is required for freestanding signs in sign district 3.

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

 - (b) *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.



Reference: Homewood Suites by Hilton

Applicant:
Sundance Sign Co.
89 Oak St.
Dover, NH 03820
603-742-1517

Dear chairman and members of the Zoning Board of Adjustment,

Thank you for reviewing our application. Please find a full sign package attached along with supporting documentation for your review.

- Variance submission
- Full sign package
- Planning department letter for a variance submitted by Vaughn Street Hotel LLC (AC Hotel)

We are asking for relief in Sign District 3 Character District 5.

Sign A: Marquee sign from section 10.1251.20 to allow 67.44 SF sign where 20 SF is allowed. Additionally asking for relief of 10.1273.10 allowing the sign to be placed on top and be 24" high.

Sign C: Freestanding from section 10.1253.10 to allow the sign setback from property line at zero set back to be in line with the structural building piers which have a zero setback.

Respectfully submitted,

A handwritten signature in black ink that reads 'Mike Leary'.

Michael Leary
Sundance Sign Co.

Variance submission:

Homewood Suites by Hilton
165 Deer Street
Portsmouth, NH 03801

10.233.21 The variance will not be contrary to the public interest:

Granting of the requested variance would benefit the public interest. The general public would benefit by the granting of the variance allowing identification of the hotel and would not alter the essential character of the neighborhood and the public health, safety or welfare will not be threatened.

10.233.22 The spirit of the Ordinance will be observed:

The proposal before the board this evening is not excessive and is not contrary to the spirit and intent of the ordinance. Sign ordinance is to permit and to regulate signs in a manner that protects the public safety and enhances the economic advantages enjoyed by the property owners, advantages which rest to a great extent on the quality of the towns appearance. The spirit of the ordinance is observed by the style that fits this elevation of the building. The applicant believes that the signage location as proposed, is adequately sized and placed to identify the hotel entrance and parking.

10.233.23 Substantial justice will be done:

Substantial justice will be done as the granted signage will benefit the applicant while maintaining the essential character of the area with no detriment to the general public.

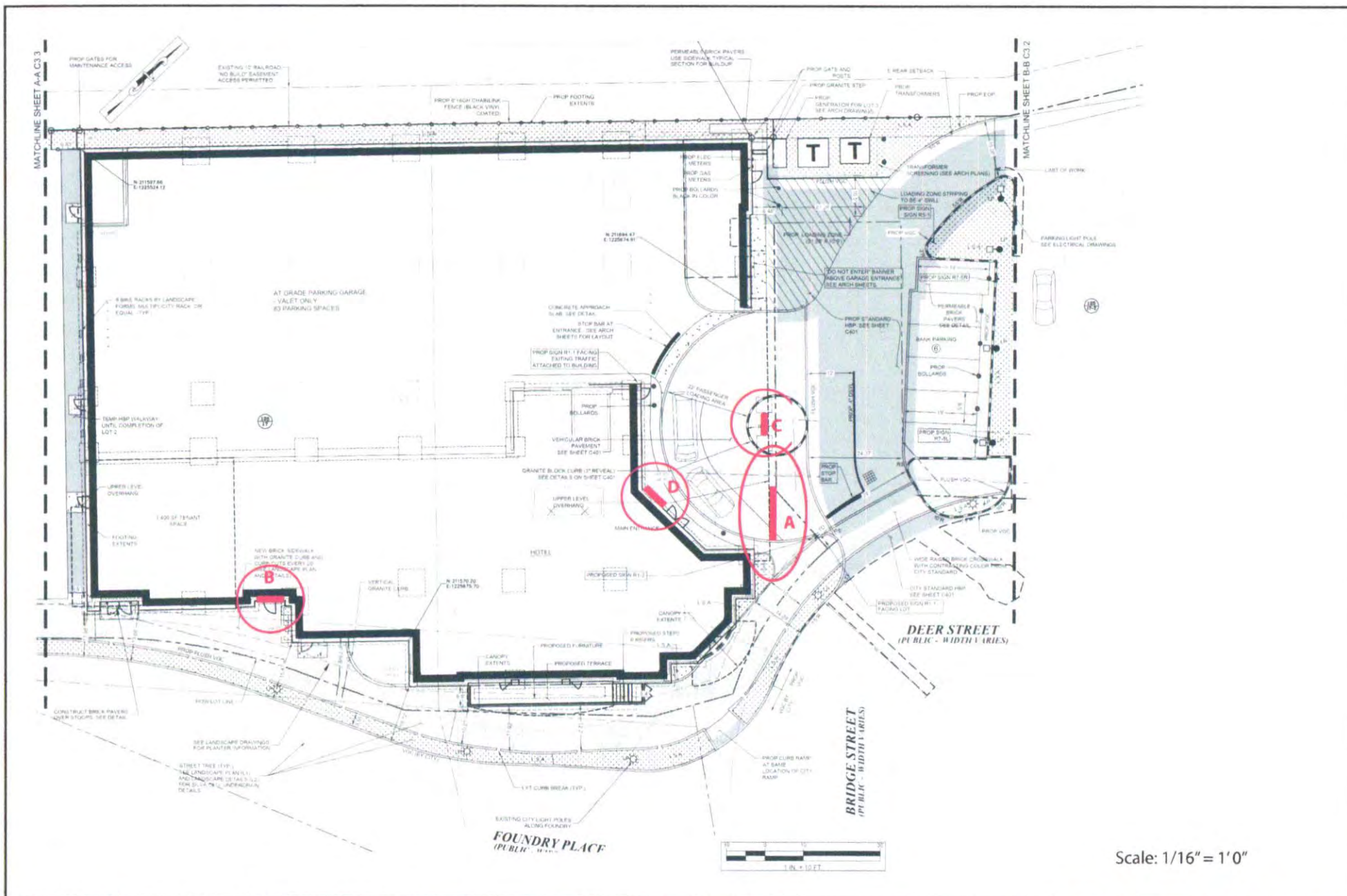
10.233.24 The values of surround properties will not be diminished:

The property in questions lies near the HDC district and the signage proposed matches the similar styles approved for other hotels in the HDC.

The lighting of the sign will be 3000K cool white which is the same lighting as used in residential settings.

10.233.25 - 10.233.32 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship:

Literal enforcement of the ordinance would result in unnecessary hardship. There are special conditions of the property which include the manner in which it is set back on the streets that would be mainly travelled by seekers of this destination. The signage is appropriate to allow people in the proximity to identify the building. Due to the special conditions there is no fair and substantial relationship between the purposes of the ordinance regarding signage and their specific application to the property.

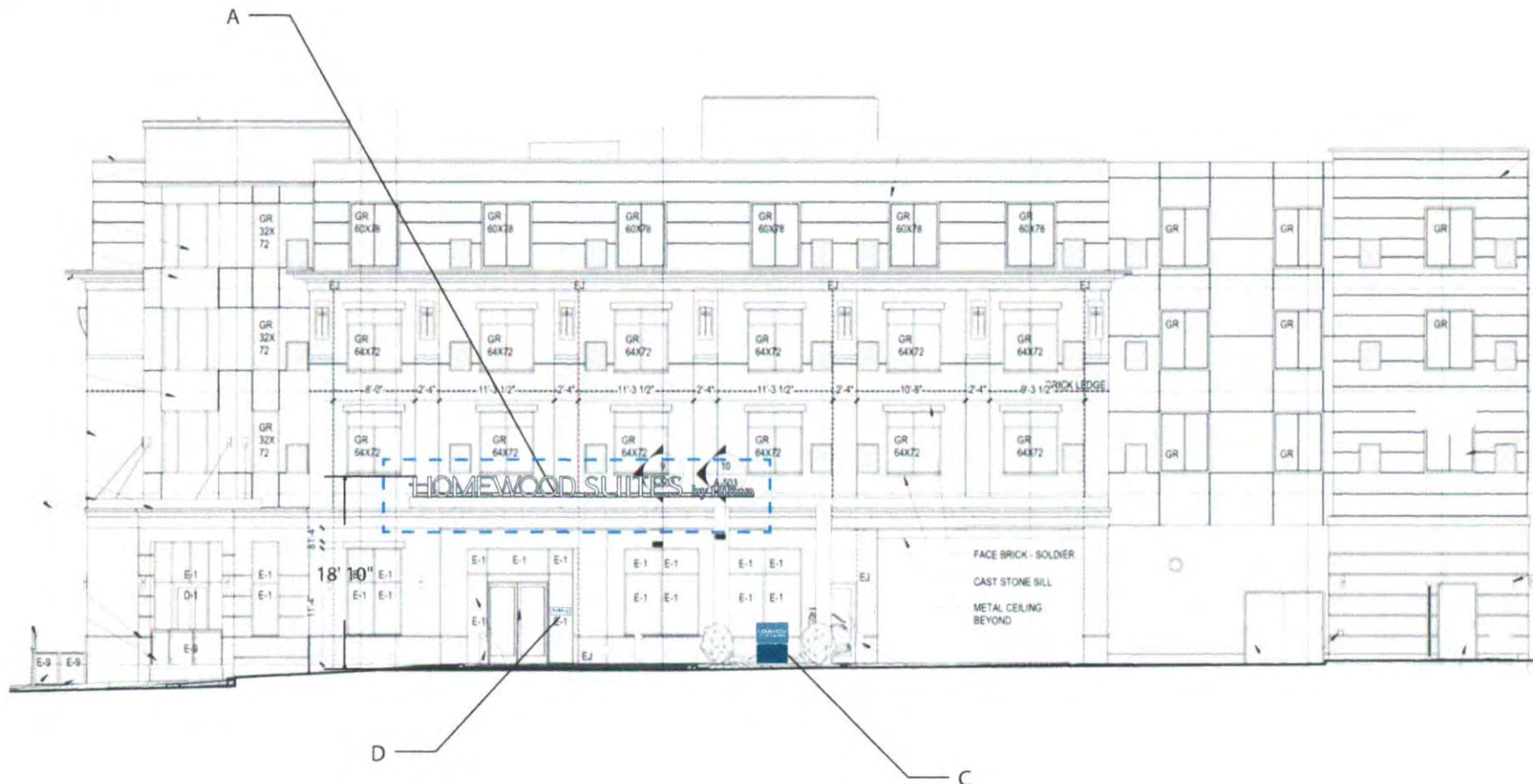


Print 5477JR-6	Date 4/11/25	OQ# 51797	SP JR	SITE PLAN
CLIENT APPROVAL		Title Homewood Suites		NOT TO SCALE
		City/State Portsmouth NH		
		Customer Homewood Suites		
AUTHORIZED SIGNATURE _____		DATE _____	Int. Note _____	
1 of 1 This drawing contains original elements created by Lauretano Sign Group, Inc., is property of Lauretano Sign Group, Inc., and is subject to all applicable copyright laws. This drawing may not be used in any way until full payment is received by Lauretano Sign Group, Inc. It is intended for review and approval purposes only, and is not to be reproduced, copied, transmitted by electronic media, or exhibited in any fashion to anyone outside your organization without the expressed written consent of Lauretano Sign Group, Inc.				

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SIGN GROUP

1 Tremco Drive. Terryville, CT 06786
phone: 860.582.0233 fax: 860.583.0949
signs@lauretano.com www.lauretano.com

EAST ELEVATION
 SCALE: 1/16" = 1' 0"
 FRONTAGE: 141' 0"



Print 6220GG-4 Date 3/10/25

CLIENT APPROVAL

AUTHORIZED SIGNATURE

DATE

OQ#51797 Line A SP JR

Title Homewood Suites

City/State Portsmouth NH

Customer Homewood Suites

Int. Note

Sign Type HS-FL-T-24L-W

Location Front Canopy

Size 2' 4" x 33' 8.66" (78.68 sq ft)

Description White Day / White Night

Channel Letters

LAURETANO
 SIGN GROUP

1 Tremco Drive, Terryville, CT 06786

phone: 860.582.0233 fax: 860.583.0949

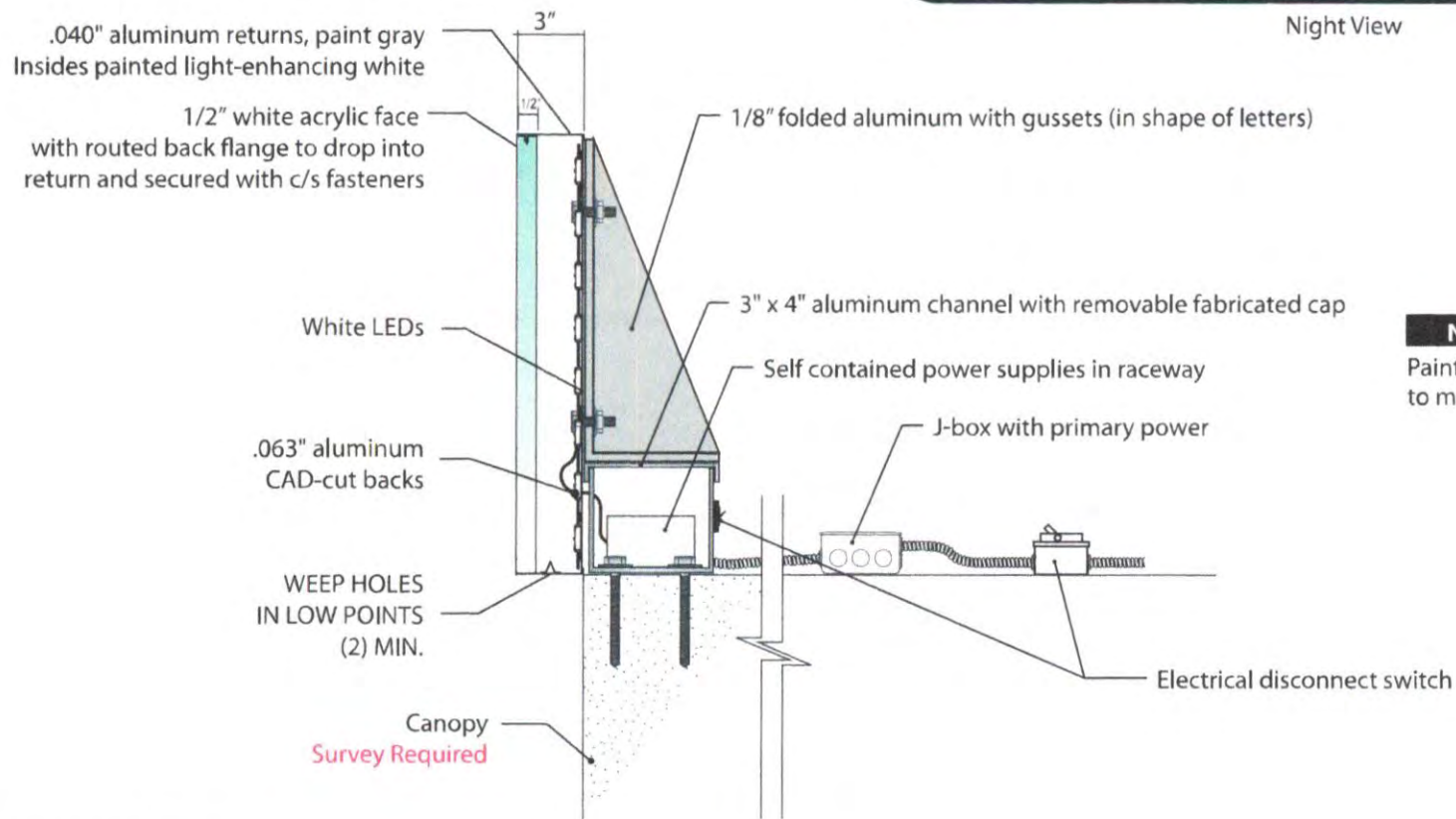
signs@lauretano.com www.lauretano.com



Scale: 3/16" = 1' 0"

HOMEWOOD SUITES by Hilton

Night View



NOTES

Paint all hardware, raceway, and gussets to match canopy

PROCEED TO PRODUCTION

Print 6220GG-4

Date 3/10/25

ES# 51797

Line A

AUTHORIZED SIGNATURE

DATE

6 = Critical Dimension for Internal Quality Control

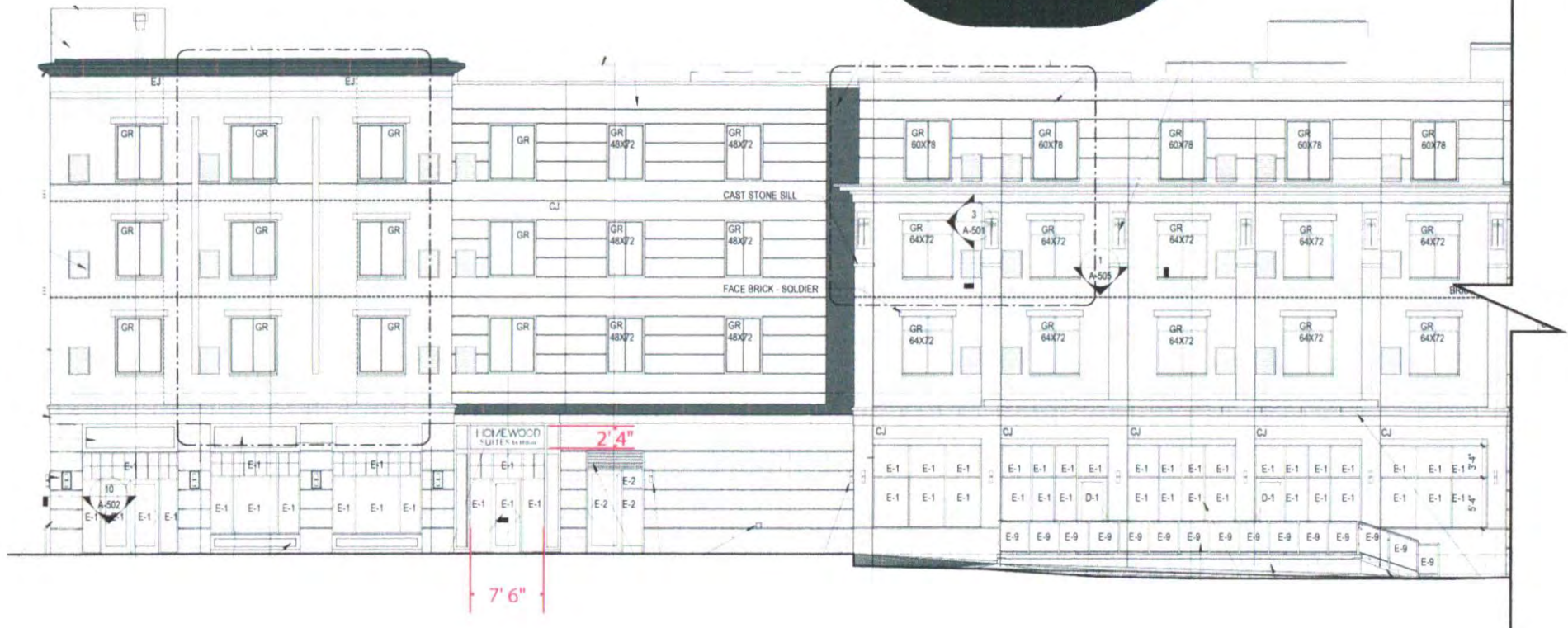
UL FILE NO. E70436

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SIGN GROUP

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signs@lauretano.com www.lauretano.com

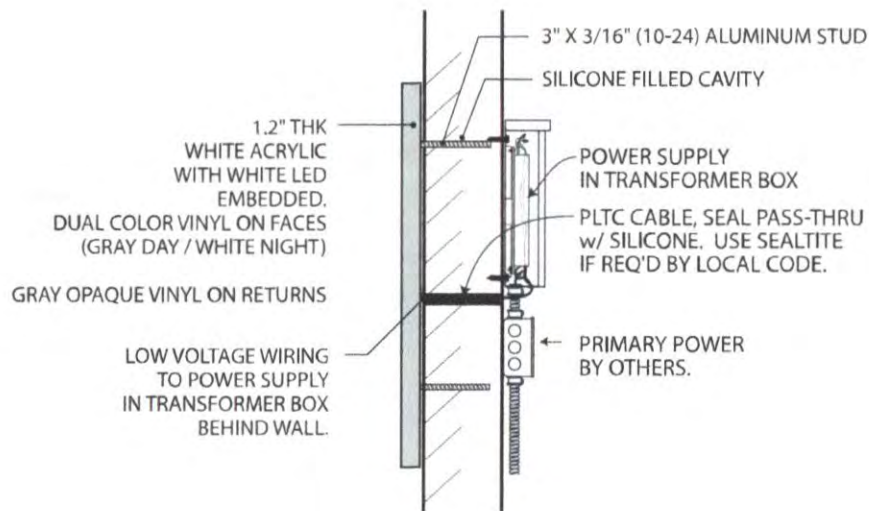
SOUTH ELEVATION
SCALE: 1/16" = 1' 0"
FRONTAGE: 175' 0"

SOUTH ELEVATION
SCALE: 1/8" = 1' 0"
NIGHT VIEW

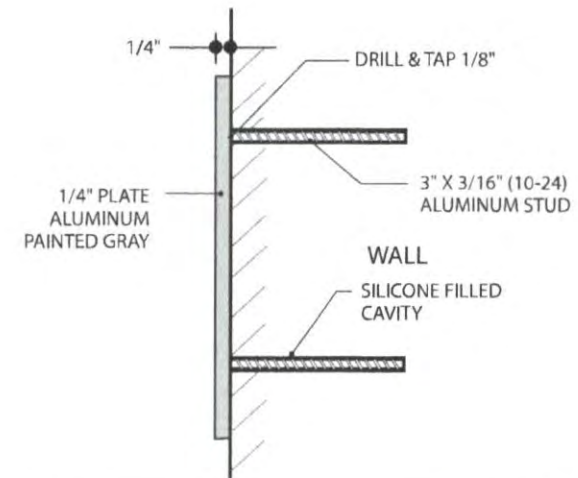


Print 5475GG-2	Date 10/12/24	OQ# 51797	Line B	SP JR	Sign Type HS-FL-10S-G	<div>LAURETANO SIGN GROUP</div> <div>1 Tremco Drive. Terryville, CT 06786 phone: 860.582.0233 fax: 860.583.0949 signs@lauretano.com www.lauretano.com</div>	
CLIENT APPROVAL		Title	Homewood Suites		Location		South Elevation
		City/State	Portsmouth NH		Size		1' 9.3" x 6' 9.5" (12 sq ft)
		Customer	Homewood Suites		Description		Gray Day / White Night Embedded
		Int. Note			LED Letters & plate letter tagline		
AUTHORIZED SIGNATURE		DATE					
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Scale: 3/4" = 1' 0"



HOMEWOOD SUITES (NTS)



by Hilton (NTS)

PROCEED TO PRODUCTION

Print 5475GG-2

Date 10/12/24

ES# 51797

Line B

AUTHORIZED SIGNATURE

DATE

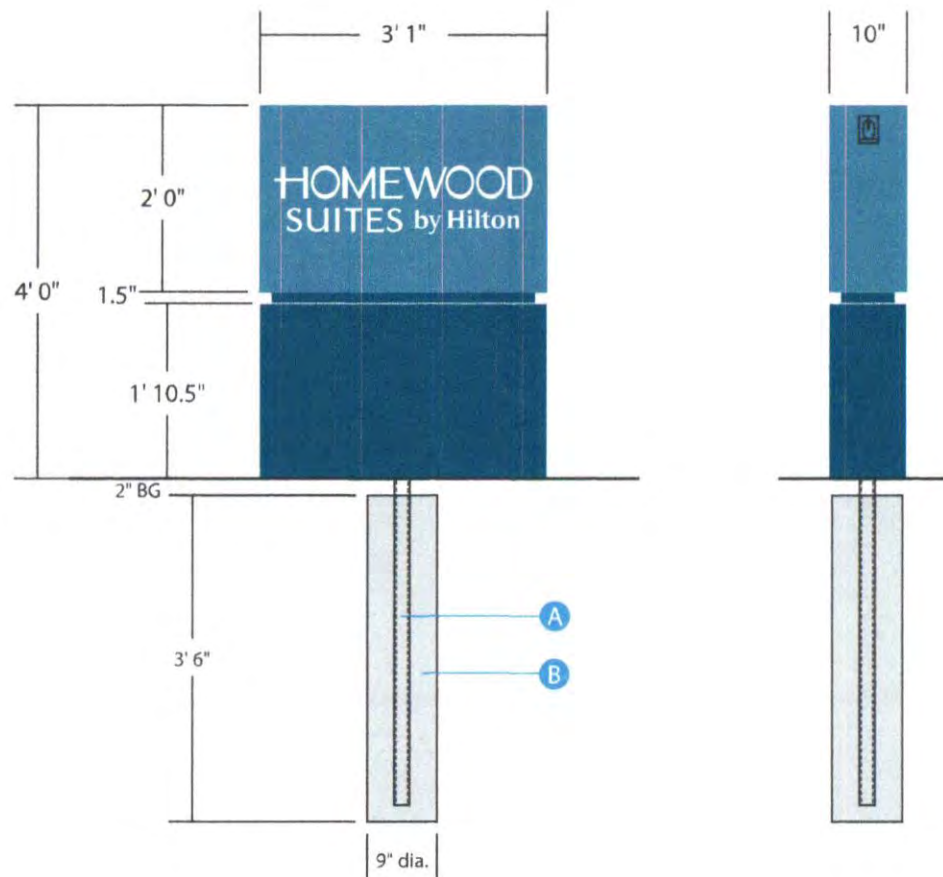
6 = Critical Dimension for Internal Quality Control

UL FILE NO. E70436

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signs@lauretano.com www.lauretano.com

Scale: 1/2" = 1' 0"



MATERIALS / COLORS

1" x 1" aluminum tube frame construction, 10" deep

.063" aluminum skin painted Light Blue

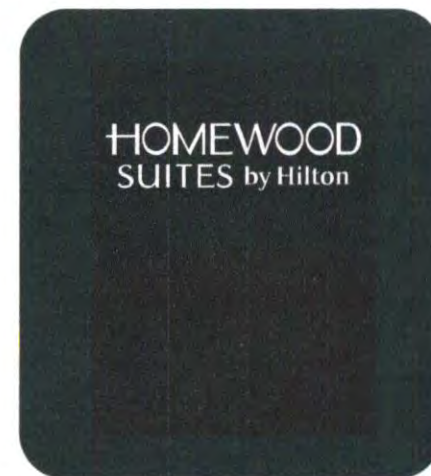
1/8" aluminum faces with details cut out and backed by
1/8" Evonik Cyro WRT30 White acrylic, paint Light Blue

White LED illumination

Power Supplies housed within cabinet

Electrical Disconnect switch on cabinet

Fabricated .063" aluminum reveal and pole cover painted Dark Blue



NIGHT VIEW

POLE / FOOTING

- A 9" diameter x 3' 6" deep #2500 concrete footing, set 2" below grade
- B 2" x 2" steel tube support

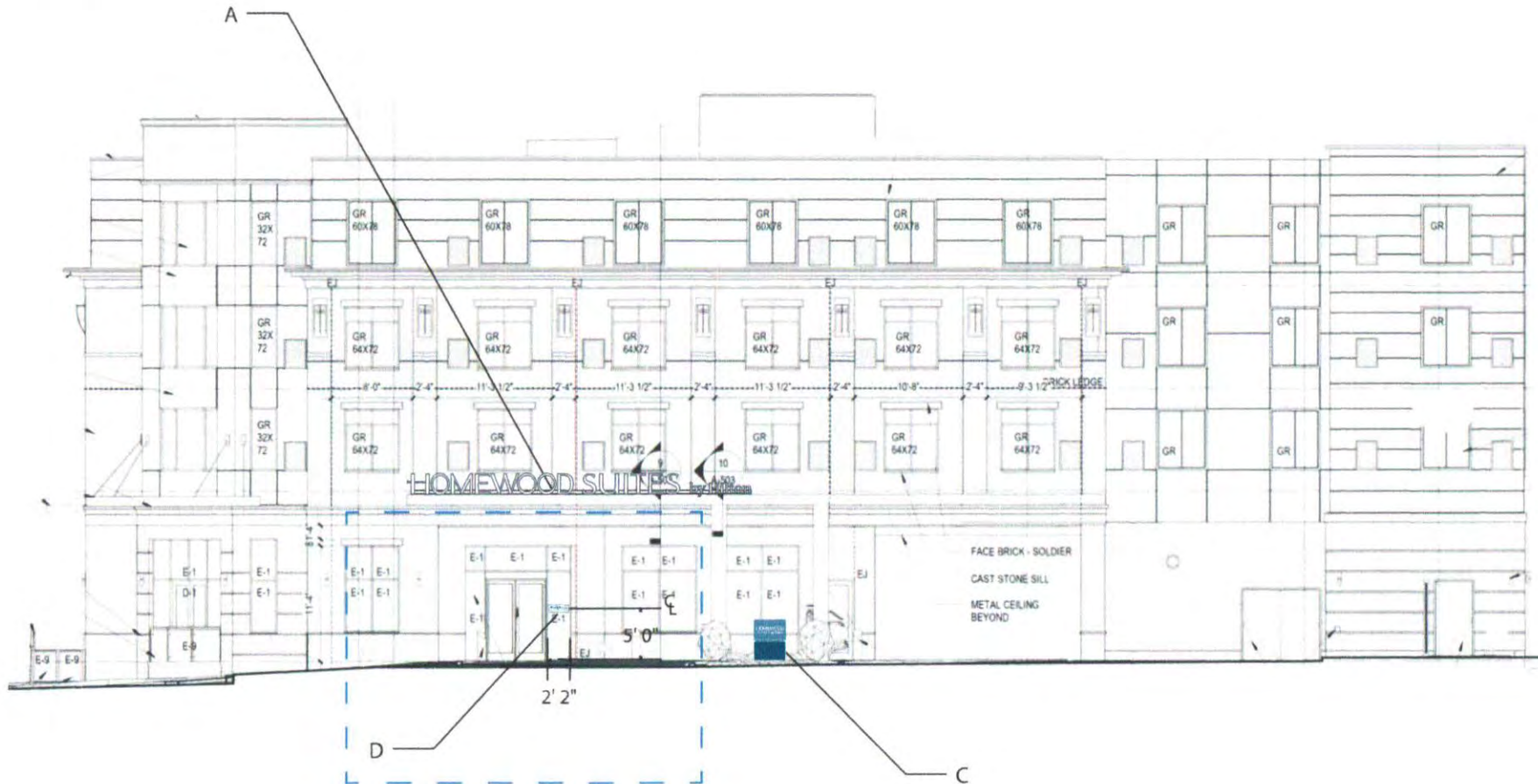
Print 7843GG	Date 3/10/25	OQ# 51797	Line C	SP JR	Sign Type HS-M9-DFI
CLIENT APPROVAL		Title Homewood Suites	Location As illustrated		
		City/State Portsmouth NH	Size 2' 0" x 3' 1" (6.16 sq ft)		
		Customer Homewood Suites	Description Double Sided		
		Int. Note Illuminated Directional			
AUTHORIZED SIGNATURE		DATE			
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signs@lauretano.com www.lauretano.com

EAST ELEVATION
SCALE: 1/16" = 1' 0"
FRONTAGE: 141' 0"



Print 6910GG-3 Date 3/10/25

CLIENT APPROVAL

AUTHORIZED SIGNATURE

DATE

OQ#51797 Line D SP JR

Title Homewood Suites

City/State Portsmouth NH

Customer Homewood Suites

Int. Note

Sign Type HS-E Plaque S

Location East Elevation

Size 9" x 2' 0" (1.5 sq ft)

Description 1/4" aluminum plaque with etched and filled graphics

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phone: 860.582.0233 fax: 860.583.0949
signs@lauretano.com www.lauretano.com

Scale: 3" = 1' 0"



MATERIALS / COLORS

1/4" thick aluminum panel painted Brushed Aluminum
Etched and filled copy Dark Blue

Flush mount to glass with VHB tape
2nd surface black vinyl backer required to hide VHB tape

PROCEED TO PRODUCTION

Print 6910GG-3

Date 3/10/25

ES# 51797

Line D

6 = Critical Dimension for
Internal Quality Control

UL FILE NO. E70436

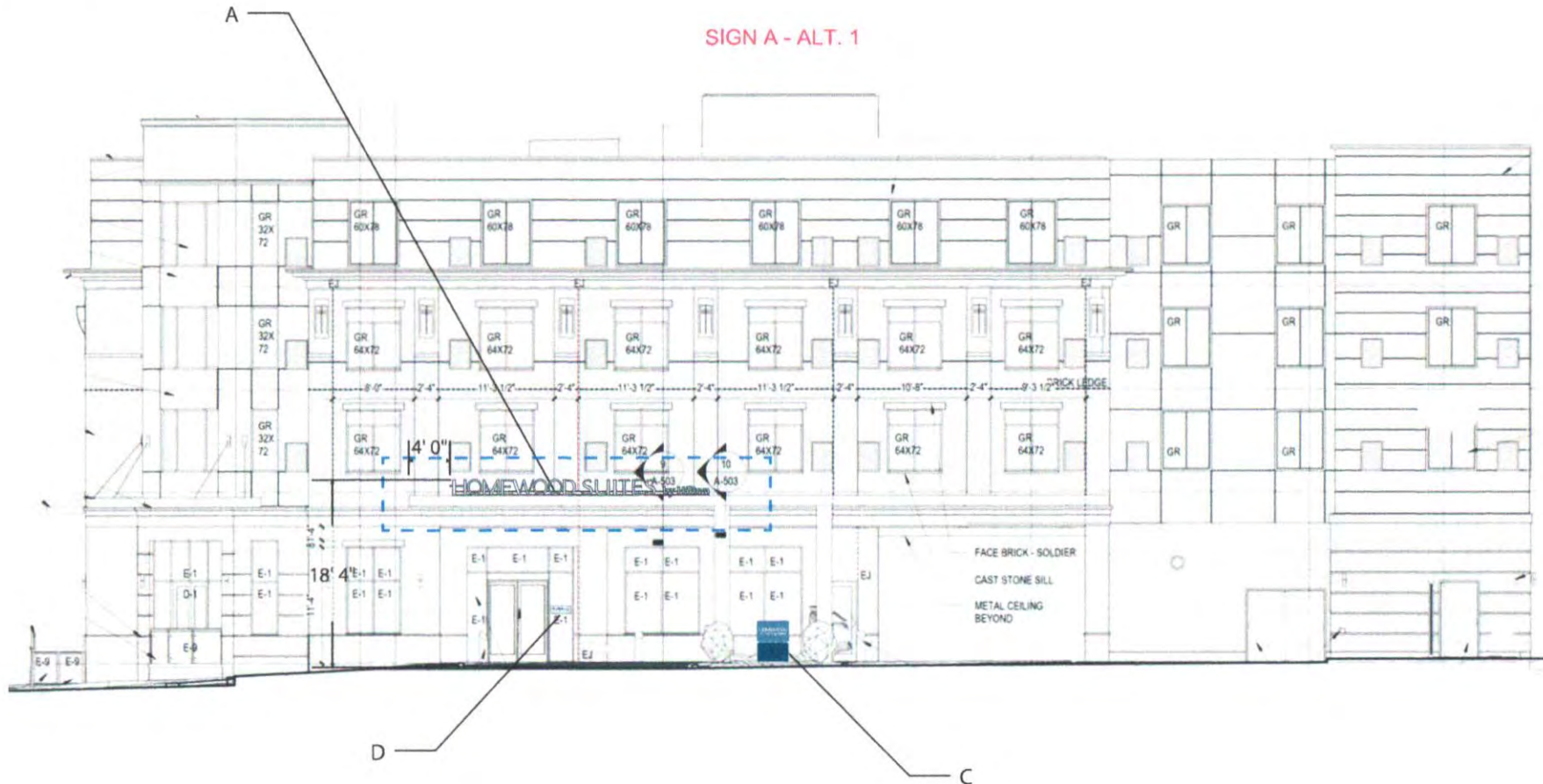
AUTHORIZED SIGNATURE

DATE

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signs@lauretano.com www.lauretano.com

EAST ELEVATION
SCALE: 1/16" = 1' 0"
FRONTAGE: 141' 0"



Print 8142GG	Date 4/7/25	OQ# 51797	Line A	SP JR	Sign Type HS-FL-T-18L-W
CLIENT APPROVAL		Title	Homewood Suites		Location Front Canopy
		City/State	Portsmouth NH		Size 1' 9" x 25' 3.5" (44.26 sq ft)
AUTHORIZED SIGNATURE _____		Customer	Homewood Suites		Description White Day / White Night
		DATE _____	Int. Note		Channel Letters



CITY OF PORTSMOUTH

Community Development Department
(603) 610-7281

Planning Department
(603) 610-7216

PLANNING DEPARTMENT

May 24, 2019

Vaughan Street Hotel LLC
1359 Hooksett Road
Hooksett, New Hampshire 03106

Re: Property at 299 Vaughan Street, Permit LU 19-43
Assessor Plan 124, Lot 10

Dear Applicant:

The Board of Adjustment at its regular meeting on May 21, 2019, considered your application, tabled at the April 16, 2019 meeting and described as follows:

Application:

Case 4-2

Petitioners: Vaughan Street Hotel LLC
Property: 299 Vaughan Street
Assessor Plan: Map 124, Lot 10
District: Character District 5 and the Downtown Overlay District
Description: Signage and lighting for a proposed hotel
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
a) Signs #1 and #2, from Section 10.1251.20 to allow two wall signs (124± s.f. and 70± s.f.) where 40 s.f. is the maximum allowed for a individual wall sign;
b) Sign #5, from Sections 10.1271.10 and 10.1271.20 to allow a sign on an exterior wall that does not face a street and is on the side of the building without a public entrance;
c) Sign #2, from Section 10.1261.30 to allow internal illumination where only external illumination is allowed for signs in the Historic District;
d) Accent Light #1, from Section 10.1144.63 to allow lights above the height of 25' on the building surface; and
e) Light L20, from Section 10.1144.60 to allow a luminaire to be attached at 32'9" ± above grade where the maximum height allowed is 20' above grade.

Action:

The Board voted to remove the petition from the table and **reopen** the public hearing. The Board **clarified** that the 70± s.f. wall sign listed in the agenda as Sign #2 under Item a) should correctly be identified as Sign #5. After further discussion, **the Board voted to grant the following:**

- Item a), Sign #1 - a 124± s.f wall sign.
- Item c), Sign #2 - allowing internal illumination.
- Item e), Light L20 - allowing a luminaire at 32'9" ± above grade.

The Board voted to **deny** the following:

- Item a), Sign #5 (incorrectly designated in the agenda as Sign #2) – a 70± s.f. wall sign.
- Item b), Sign #5 to allow a sign on an exterior wall that does not face a street and is on the side of the building without a public entrance;
- Item d), Accent Light #1 to allow lights above 25' on the building surface.

Review Criteria:

*The above items [Item a), Sign #1, and Items c) and e)] were **granted** for the following reasons:*

- Granting these variances will not be contrary to the public interest and the spirit of the ordinance will be observed. Allowing these signs requiring minimal relief from the ordinance and parking lot lighting that is largely obscured will not alter the essential character of the neighborhood and the public health, safety or welfare will not be threatened.
- Substantial justice will be done as the granted signage will benefit the applicant while maintaining the essential character of the area with no detriment to the general public.
- The value of surrounding properties will not be diminished by the granted signage and parking lot lighting.
- Literal enforcement of the ordinance would result in unnecessary hardship. There are special conditions of the property which include the manner in which it is set back on streets that would be mainly travelled by seekers of this destination. The signage is appropriate to allow people in the proximity to identify the building. There are also special conditions of the structure having an elevated parking deck and an enclosing "C"-shaped structure, distinguishing it+ from other properties in the area. Due to the special conditions there is no fair and substantial relationship between the purposes of the ordinance regarding signage and their specific application to the property.

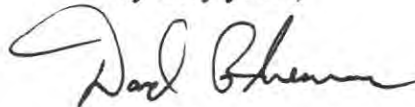
*The above items [Item a), Sign #5, and Items b) and d)] were **denied** for the following reasons:*

- All the criteria necessary to grant the variances were not met.
- Granting the variances would be contrary to the public interest and the spirit of the ordinance would not be observed. A sign not facing a street and on a façade without a public entrance is not found on other similar properties and would alter the essential character of the neighborhood. Concerns raised by abutters about the negative effect of the proposed extensive elevated accent lighting on public health, safety and welfare are valid.
- There were no conditions about the property in regard to the denied requests that would result in an unnecessary hardship so that a fair and substantial relationship does exist between the purposes of the ordinance regarding signage and their application to these specific requests.

As provided for in NH RSA Chapter 677, the Board's decision may be appealed 30 days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process. Construction drawings or sketches must be reviewed and approved by the Building Inspector prior to the issuance of a building permit. Approvals by other land use boards may also be required prior to the issuance of a building permit.

The minutes and tape recording of the meeting may be reviewed in the Planning Department.

Very truly yours,



David Rheaume, Chairman
Board of Adjustment

mek

c: Robert Marsilia, Chief Building Inspector
Roseann Maurice-Lentz, City Assessor
Peter J. Loughlin, Esq.

RECEIVED
MAY 16 2019
BY



III. NEW BUSINESS

- B.** The request of **3201 Lafayette Road LLC (Owners) and Jessica King (Applicant)**, for property located at **3201 Lafayette Road** whereas relief is needed to allow a group daycare facility which requires the following: 1) Special Exception from Section 10.440, Use #7.12 to allow a group daycare facility where it is allowed by Special Exception. Said property is located on Assessor Map 291 Lot 8 and lies within the Gateway Corridor (G1) District. (LU-25-49)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Office Building	*Group Daycare Facility	Mixed-Use
<u>Building Footprint (sq. ft.)</u>	1,597	1,597	10,000 max.
<u>Parking</u>	20	20	20 min.
		SE request(s) shown in red.	

*Special Exception for a Group Daycare Facility use

Other Permits/Approvals Required

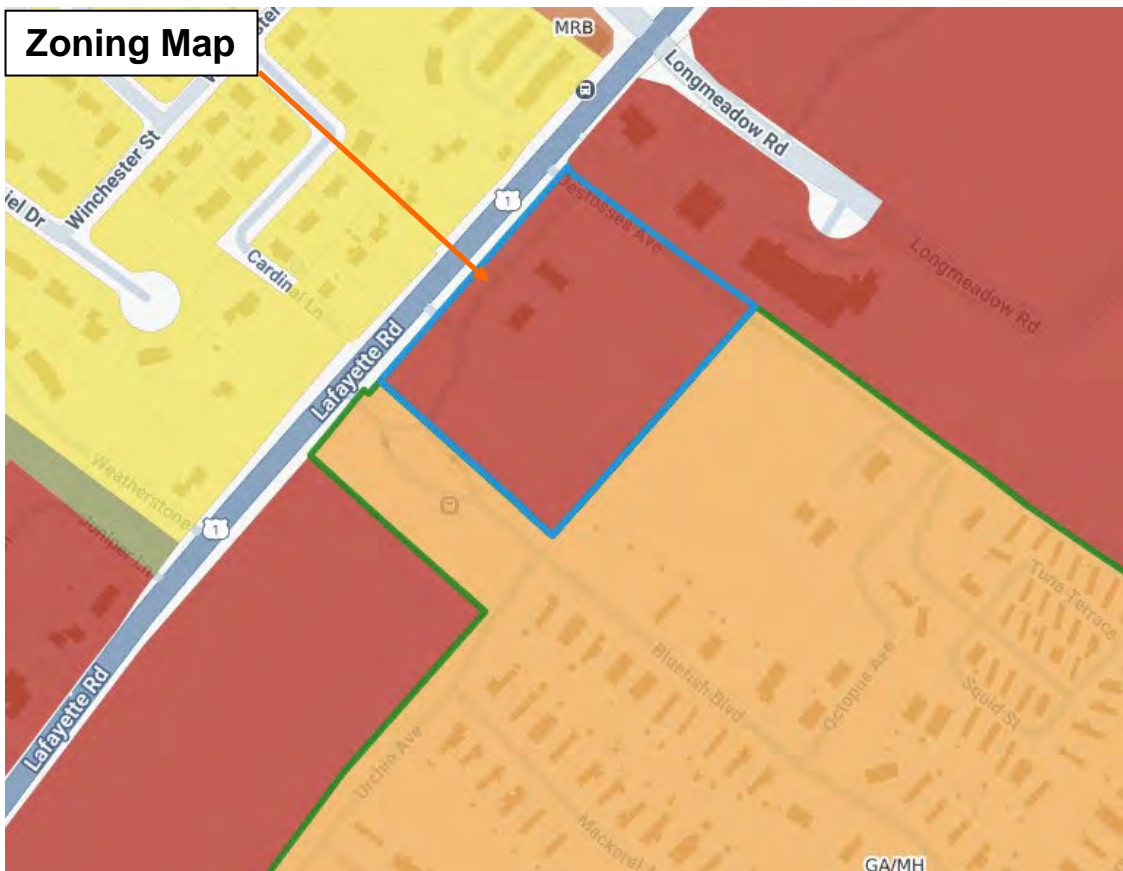
- Tenant Fit-up / Building Permit

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

- **October 1, 1985** – A Variance from Article II, Section 10-206(25) is requested to allow the continuance of the use of a mobile home and two trailers for storage for a period of time in excess of 90 days. The Board voted to **grant** the request with the following **conditions**:
 - 1) That the storage vehicles be moved 200' back from the front property line.
- **November 12, 1985** - A Variance from Article IX, Section 10-906 to erect 2 free-standing signs with 12 ft. and 17 ft. front yards (Lafayette Road) where a minimum yard of 35 ft. is required. The Board voted to **deny** the request.
- **May 19, 2020** – Establishment of a mobile home sales operation on the subject parcel which requires a Special Exception from section 10.440 Use #11.30 where the use is only permitted by special exception. The Board also considered your appeal of an Administrative Decision of a Code Official in the application of Section 10.5B83.10 and 10.1113.20 of the Ordinance. The Board voted to **grant** the Special Exception and Appeal.

Planning Department Comments

The applicant is requesting a special exception to convert the existing office building into a group daycare facility. The 4,500 SF building was previously an office use. There are 20 parking spaces on site and required parking for the group daycare use is 0.5 per client or student based on licensed enrollment capacity, therefore the maximum capacity is 40 clients/students for the site if the Board decides to grant the Special Exception.

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.



Wild Roots Preschool provides high quality childcare to families with children between the ages of 4 months through 6 years at our current location at 223 Lafayette Road in North Hampton, NH. Children at Wild Roots are nurtured and supported in a way that promotes positive self-esteem and provides the opportunity for optimal growth in all areas of development. Every child is unique and we believe that success and growth come from encouragement and praise. Our teachers focus on building every child's self esteem and confidence through positive feedback and rewards. We nurture their natural strengths. A child sees the world around them with wonder and awe, we believe in encouraging their natural curiosity.

Our philosophy at Wild Roots is that all children are given the opportunity to participate in a wide range of experiences that promote growth and learning. It is our belief that such experiences must be provided in a supportive and nurturing environment, be child oriented, be "hands-on" in approach, and allow children the freedom of choice whenever possible.

Portraying a message of safety, competence and excellence is an important aspect to the success of the Wild Roots brand. Community and familial relationships are essential.

Wild Roots markets specifically to individuals with or caring for children ages 4 months to 6 years. We also look to partner with local companies to provide employee childcare benefits.

The childcare industry is rapidly expanding throughout the United States. With the current cost of living, a two adult working household is becoming a necessity. The childcare industry is in the midst of a large expansion currently and it seems as though it will continue in an upward trend. Larger childcare organizations that can be well-branded are most likely to be acquiring smaller



childcare centers in the long term. Wild Roots will be poised to take advantage of the growing childcare industry because we are based on various schools of thought regarding children's learning, including but not limited to Reggio Emilia, Montessori and components taken from research based curriculums such as High-Scope.

Our most important company strengths and core competencies are the ability to be near several Early Childhood Degree programs, providing us the opportunity to hire teachers that are trained in various settings. Wild Roots is unique in that we take the best components of all types of care (in-home, group care, different schools of thought) and combine them into a unique learning experience that can be modified to fit the needs of each individual child.

Jessica Lauren King is a 2008 graduate of the University of New Hampshire with a Bachelor of Science degree in Family Studies with a concentration on the young child. She graduated Summa Cum Laude with a 3.9 GPA and currently holds the highest Early Childhood Center Director certification, Director II, in both New Hampshire and Massachusetts.

Upon graduating from UNH, Jessica became a member of the faculty at the Phillips Exeter Academy, Harris Family Children's Center, in Exeter, NH where she was a part of the Kindergarten teaching team. During her time at the Academy she was able to work on special programming for children in care, including supervising and mentoring Academy students assisting the Center. These programs resulted in art shows, violin lessons, yoga, Spanish, music and dance. While at the Children's Center, Jessica developed relationships with many area businesses serving the needs of children with speech delays, developmental delays, those needing occupational therapy, as well as children on the Autism Spectrum.



In May of 2011, Jessica was hired by the Seacoast YMCA to lead and manage their summer program, Camp Gundalow, that served children ages 2 years 9 months through 16 years. At this time, the Seacoast YMCA had recently re-acquired Camp Gundalow. They were struggling financially and had declining enrollment. When Jessica assumed responsibility, the camp had an average of 41 enrolled children per week. Through a community-wide advertising and marketing campaign that Jessica designed and implemented, she was able to increase enrollment to over 180 children per week with an operational budget of over \$600,000. Camp Gundalow then became, and remains, the largest single revenue generator for the Seacoast YMCA.

In August of 2011, the YMCA of Greater Manchester opened a brand new facility in Rochester, New Hampshire. Jessica was recruited and hired as the Child Development Center Director and oversaw the project from construction forward. Beginning with an enrollment of 6 students and a budget of less than \$100,000, in 4 months Jessica grew the program to over 64 students.

During her time at the YMCA Jessica's responsibilities included budgeting, enrollment projections, cost-analysis, feasibility studies, marketing, curriculum development, hiring, supervising and managing a staff of 12 to 15. Clients included parents from companies such as Liberty Mutual, Eastern Propane and Velcro.

Jessica became a national YMCA trainer, coordinating trainings and professional development for her staff and implemented a research-based curriculum that included components from various teaching styles, all while establishing relationships with private businesses, schools and government agencies to recruit and retain parents and their children.



Jessica assumed the responsibility on behalf of the YMCA for applying for Licensed Plus status through the State of New Hampshire Department of Health and Human Services. This accreditation identifies the facility as an exemplary center based on a number of criteria. The Child Development Center at the YMCA of Strafford County became the only YMCA within New Hampshire to achieve this recognition.

Jessica was recruited by Bright Horizons Family Solutions in Watertown, Massachusetts in 2013 to become a Center Director for their facilities in the Financial District of Boston. Bright Horizons has over 881 centers and employs approximately 5,000 people. Bright Horizons offers a range of childcare and elderly services to corporate clients including State Street Bank, Google, Bank of America, Harvard University and MIT.

In 2023, Jessica opened Wild Roots Learning Center at 223 Lafayette Road in North Hampton, NH, which currently serves over 40 families in the greater North Hampton area and employs a staff of approximately 5. Wild Roots is recognized as a Military Child Care Provider, a Center for Preventative & Protective Care and participates in NH Childcare Scholarship Programming.



3201 Lafayette Road – Special Exception Proposal

The State of New Hampshire Childcare Licensing Unit is prioritizing the opening of new facilities based on a critical shortage of childcare facilities. Our center allows for the community workforce to be increased, as well as providing an opportunity to create lasting relationships.

Care would be provided on the ground level for infants ages 6 weeks through 2 years. The second floor would be for school-age (Pre-K - Grade 2) children for full and partial day programming.





Features and Benefits

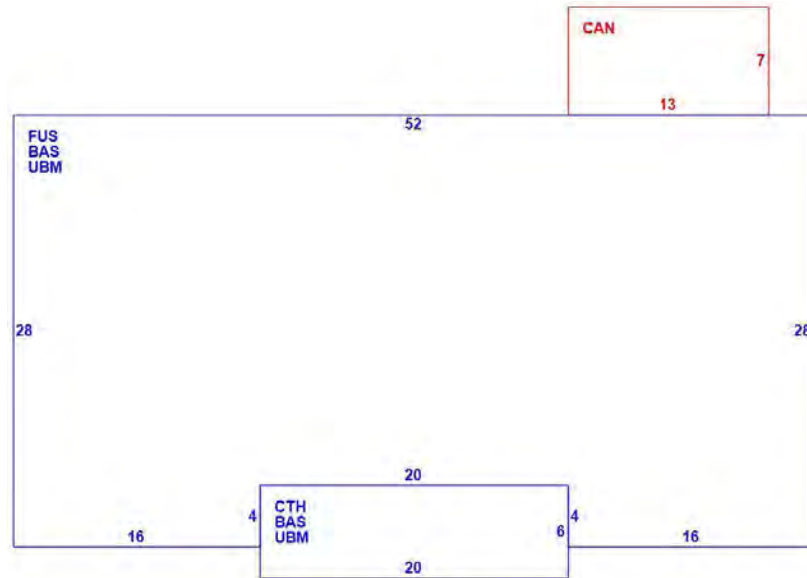
- New facility
- Conveniently located
- High-quality curriculum and learning environment
- Unique learning styles that can be adapted to the needs of each individual child - Children will be better prepared when entering elementary school
- Children will have access to technology and enrichment programs
- Safe, positive environment for children and families
- Affordable, high-quality child care



Field	Description
Style:	Office Bldg
Model	Commercial
Grade	C
Stories:	2
Occupancy	1.00
Exterior Wall 1	Vinyl Siding
Roof Structure	Gable/Hip
Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Drywall/Sheet
Interior Floor 1	Carpet
Interior Floor 2	Ceram Clay Til
Heating Fuel	Oil
Heating Type	Hot Water
AC Type	Central
Bldg Use	PROF BLDG
Heat/AC	HEAT/AC PKGS
Frame Type	WOOD FRAME
Baths/Plumbing	AVERAGE
Ceiling/Wall	CEIL & WALLS
Rooms/Prtns	AVERAGE
Wall Height	8.00



Interior Floorplan

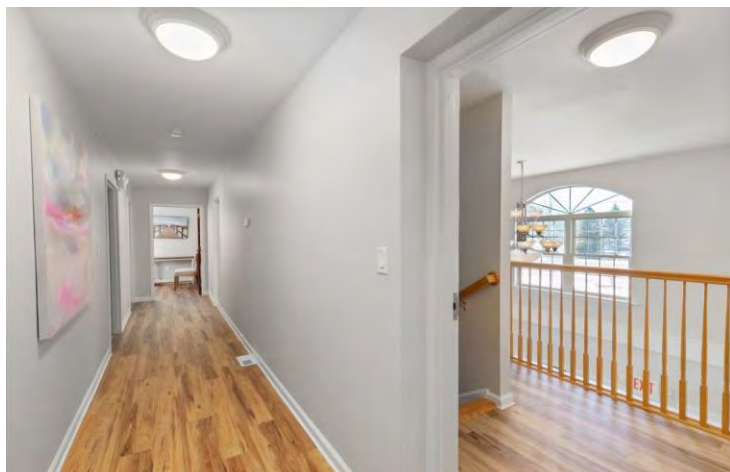


Building Sub-Areas (sq ft)Legend

Code	Description	Gross Area	Living Area
BAS	First Floor	1,496	1,496
FUS	Upper Story, Finished	1,376	1,376
CAN	Canopy	91	0
CTH	Cathedral Ceiling	120	0
UBM	Basement, Unfinished	1,496	0
		4,579	2,872



Interior Photos





The State of New Hampshire Child Care Licensing Unit requires 40 sq ft of indoor space per child and 50 sq ft of outdoor space per child. New Hampshire Child Care Licensing also requires a minimum of 1 toilet and 1 sink per 20 students.

Specs & Safety

- 3201 Lafayette Road provides 3 toilets and 3 sinks for a maximum of 60 children.
- There are four points of egress throughout the building (main door, side door, 2nd floor fire escape, basement).
- Emergency lighting throughout the building.
- Fire Extinguishers throughout the building.
- Emergency shut-off switch.
- New, double locked, childproof windows throughout.
- Fire-rated doors on all rooms
 - downstairs 20 minute fire rating
 - upstairs 1 1/2 hour fire rating



Type of building

- - Commercial/Professional previously used as medical space and office space.
- - A sign may be placed on the building at a later date. The necessary building permits will be submitted prior to installation.

Outdoor Space

- The building provides green space directly in the rear and to the right side of the building.



- Pursuant to Section 10.824.20 of the Ordinance, fencing agreed upon by the Owner and Tenant will be installed to create a safe play area prior to occupancy.





A play space no smaller than 3500 square feet has been designated for exclusive use by the child care center as shown above. There will be direct access to the fenced in area via various exit points throughout the building. The fencing will be equipped with self-latching gates per Childcare Licensing requirements.



Parking

- Pertaining to 10.824.10 of the Ordinance requiring Adequate parking shall be available to allow safe passage from the parking area to the facility. The facility is equipped with sidewalks and multiple entrances, including a wheelchair ramp.

- 20 existing parking spaces located in front and left side of building.

- per the Ordinance, there is required to be 0.5 spaces per student/total licensed enrollment. Based on the existing parking spaces, enrollment would be maximized at 40 children.





Traffic Flow - Dropoff/Pickup Procedures

Wild Roots Learning Center has adopted a drop-off and pickup procedure that we refer to as “Kiss & Go”. The Kiss and Go setup allows for parents to drop-off and pickup with a qualified staff member without ever having to get out of their vehicle. This property has two entrances to Lafayette Road. Parents will be encouraged to enter from Bluefish Boulevard and exit through Defosses Avenue. Alternatively, they can enter directly from Lafayette Road if a queue has not been formed.

The Kiss and Go line will create a “U” shape in front of the building in order to efficiently move cars in and out of the space. Any queuing of vehicles will not impact Route 1 as vehicles will be directed to create a queue as indicated by the red arrow on the map below. Upon enrollment, parents are asked to provide approximate drop off and pickup times so that Wild Roots is able to adequately prepare for the process to make it run as smoothly as possible.





Special Exception Criteria

1. *Standards as provided by this Ordinance for the particular use permitted by special exception;*
 - a. Wild Roots meets all zoning ordinance requirements for a special exception.
Group childcare is required within the G1 zoning district to obtain a special exception.
2. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*
 - a. Wild Roots poses no risks related to fire, explosion, or toxic materials. No hazardous material will be stored or used on-site.
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;*
 - a. Granting the variance will not diminish surrounding property values. The property is located in a prominent commercially-zoned area, along a major traffic route.
The location abuts a mobile home park, a restaurant, a sales office, and other



small businesses. The proposed use may help bring new workforce aged families into the town, therefore potentially increasing property values due to the availability of childcare. In keeping with the character of the locality, there will be no significant changes to the property itself and any fencing or barriers installed will match those that are already established on the property.

4. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*

- a. As exhibited above, Wild Roots implements a “Kiss and Go” method that allows for free-flowing traffic during drop-off and pick-up times. This method, in conjunction with the 20 existing parking spaces, as well as three separate driveway entrances, ensures that there will not be a substantial increase in the level of traffic congestion in the vicinity nor will it create a traffic safety hazard. Compliance is maintained as stated by the requirements for 0.5 spaces per licensed enrollment capacity.

5. *No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and*

- a. The building has previously hosted medical offices and other professional services. The proposed use would not significantly impact demand nor place excessive burden on city services. With a consistent, low number of children, Wild Roots will have minimal impact on water sewer usage, waste disposal, and public safety resources.

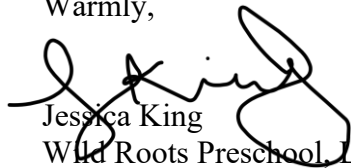


6. *No significant increase of stormwater runoff onto adjacent property or streets*

- a. Wild Roots will not contribute to a significant increase in stormwater runoff as there will be no major exterior modifications or expansions to the building or to the existing paved areas. Currently, the existing drainage infrastructure suffices to manage rainfall amounts and Wild Roots operations will not add any water-intensive uses that impact water runoff levels.

Thank you for taking the time to consider this Special Exception. I look forward to working with the City of Portsmouth to serve the needs of youth and families.

Warmly,



Jessica King
Wild Roots Preschool, LLC

BOARD OF ADJUSTMENT RULES AND REGULATIONS

for the

**City of Portsmouth
New Hampshire**



Adopted:	August 20, 1996
Revised:	April 26, 2005
Revised:	May 18, 2010
Revised:	March 3, 2011
Revised:	September 17, 2013
Revised:	July 22, 2014
Revised:	December 20, 2016
Revised:	October 16, 2018
Revised	November 19, 2019
Revised	XXXXXXXXXXXXX

City of Portsmouth Zoning Board of Adjustment Rules and Regulations

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II. Time and Date

1. The yearly schedule of regular monthly meetings and deadlines for submission is published prior to the first of January each year for the upcoming year.
2. The regular meeting time is 7:00 P.M.
3. A complete application received prior to the published deadline will be scheduled for a Public Hearing at the next regular monthly meeting.
4. The time and date of the regular monthly meeting may be changed by majority vote of those Board members present at a meeting.
5. In the case of an excessively lengthy agenda, the Chair may split the agenda which will be reflected in the published legal notice. The second half of the agenda will be scheduled for the following week. In the case of an unexpected lengthy meeting, the Board may at its discretion, adjourn the meeting to an announced time, date and location to complete the published agenda.

III. Responsibilities of the Code Official¹

1. The Code Official shall inform the Applicant as to the requirements of the Zoning Ordinance and procedures concerning appeals.
2. The Code Official shall provide all information submitted with the application to the Board on or before the scheduled Public Hearing.

¹Code Official - Any employee of the City of Portsmouth authorized to administer or enforce the Zoning Ordinance, including but not limited to the Planning Director and the Chief Building Inspector.

IV. Applicant's Responsibilities

1. All applications for Variances and Special Exceptions must be submitted to the Code Official prior to the published deadline. Submissions which fail to meet this requirement shall not be considered until the next month's regular meeting. In the case of Appeals from an Administrative Decision, the appeal shall be filed no later than 30 days from the date of the action which is being appealed.
2. An Applicant shall be one of the following:
 - a) The owner of record to the property, or
 - b) The holder of a valid purchase and sales agreement for the purchase of the subject property, or
 - c) The holder of a valid option for the purchase of the subject property.
3. All applications shall include a completed form entitled "City of Portsmouth Board of Adjustment Application" which shall be signed by the owner of record to the property.
4. All applications shall include a written statement explaining how the request complies with the requirements of the Zoning Ordinance as provided in Article 2.
5. It is the obligation of the applicant to submit accurate and adequate plans and exhibits in accordance with the terms of the Zoning Ordinance for all applications for Administrative Appeals, Variances and Special Exceptions.

6. Minimum requirements for adequate plans and exhibits shall include the following, unless waived by the Code Official:

<ul style="list-style-type: none">• Name of Owner(s)• Name of Applicant(s)• Title of petition (i.e. Variance / Special Exception)• Drawings and plans need to be to scale, except that upon request, the code official may permit drawings to be not to scale• Labeled photo(s) of existing conditions• Building plans and elevations of any <i>proposed</i> structures	<ul style="list-style-type: none">• Site Plan(s) showing existing and proposed conditions including:<ul style="list-style-type: none">- Front, side, and rear setback / yard dimensions (this is the distance from a structure and the lot line)- Lot dimensions- Abutting street(s) and street names- Driveways / accessways- Dimensions (size and height) of structures- Dimensions and location of parking spaces
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7. The Code Official is authorized by the Board of Adjustment to refuse applications which do not meet these minimum requirements.
8. The Code Official may also require additional information and/or exhibits as needed to illustrate the scope of the project.
9. In the case of conversions or renovations to an existing structure, interior floor plans shall be furnished by the applicant.
10. Public Hearings shall not be scheduled, advertised or held until such time as the "minimum requirements for adequate plans" have been submitted. Any application that includes plans or exhibits deemed inadequate or requiring more detailed information shall not be scheduled until such time as adequate plans or exhibits are received.
12. The Board may postpone any application requiring more information prior to any action being taken.
13. The Applicant shall submit one original copy of any plans, exhibits, or supporting documents to the Planning Department in hard copy and an electronic copy (through the online application portal by the specified meeting deadline
14. The Applicant shall provide electronic files in Portable Document Format (PDF) of all submittals and any plans, exhibits or supporting documents shall be combined into one electronic file. An Applicant may request a waiver from this requirement. The request should be made in writing to the Planning Director and should explain why the Applicant is unable to provide electronic files.

15. The Applicant or a designated representative of the applicant must appear before the Board at the time of the public hearing on the application. Remote attendance will be accepted for supporting members of the project team as long as there is an authorized representative present with authority to make binding decisions for the Property Owner.

V. Fee Schedule

1. All application fees for appeals for a Variance or a Special Exception are set by the City Council.
2. All postage costs for abutter notices and a proportionate share of the advertising of the legal notice shall be paid for by the applicant.

VI. The Board

1. Procedures and conduct of the Board shall be in accordance with the provisions of State Statutes and the Zoning Ordinance of the City of Portsmouth.
2. The membership is comprised of seven regular members and two alternate members. In the absence of a regular member the alternate member shall have all the powers and duties of a regular member as prescribed by the laws of the State of New Hampshire
3. Annual Meeting – The annual meeting shall be held the first regularly scheduled meeting date in January of each year for the purpose of electing officers and reviewing policy and procedures. At the annual meeting the membership shall elect from among its Regular membership a Chair and Vice-Chair (who in the absence of said Chair shall have all the powers and duties of the Chair as prescribed by the laws of the State of New Hampshire). The concurring vote of four members in attendance at a meeting shall be necessary for the election of the Chair and Vice-Chair. The newly elected Chair and Vice Chair shall become effective at the next regularly scheduled meeting of the Board.
4. Four (4) members of the Board in attendance at a meeting are necessary to form a quorum.
5. An affirmative vote by four (4) members present and voting is necessary to:
 - a) Grant a Variance
 - b) Grant a Special Exception

c) Reverse a decision of the Code Official

6. Granting a request for a rehearing of a Variance or Special Exception or the appeal of a code official requires a majority vote of members present and voting or in the case of a tie vote three (3) affirmative votes shall be required.
7. If a motion to grant a Variance, a Special Exception, or an appeal from a decision of a code official results in a tie vote, the resulting decision is denial, unless any subsequent motion is made that receives at least four (4) affirmative votes. In the event that a motion fails to receive (4) affirmative votes, the Chair will solicit comments for the record from those Board members who voted against a motion to approve so as to document how the request failed to meet all of the criteria necessary to grant it. It is the Chair's determination if there is a deadlock and the request is denied.
8. Whenever a Member makes a motion to grant or deny a Variance, a Special Exception, or an appeal from a decision of a code official, the motion maker shall provide findings of fact supporting the motion. In the event a motion to grant fails to receive four affirmative votes, the Chair shall solicit findings of fact from Members who voted against the Motion to grant the Variance, Special exception, or appeal from a decision of a code official.
9. In a case where the Board has less than 6 voting members present, an applicant who is requesting a variance, special exception, or appeal of the Code Official may request a postponement to the next scheduled public hearing. This shall be considered just cause for granting of a postponement by the Board.
10. Each application shall be considered and acted upon immediately following the close of the Public Hearing.
11. Jury standards relative to conflict of interest questions apply to members voting on an application.
12. A Member may be excused for nonattendance of a meeting or hearing for valid reasons if he or she notifies the Chair prior to the meeting or hearing. Confirmation of anticipated attendance and recusals shall be communicated to the Chair with a minimum of [48 hours] notice. No member shall leave a meeting without permission if his/her presence is necessary to make a quorum.

13. Any Board member who recuses him/her self from the board for any reason on any application should not participate in any fashion with regard to said application, unless the Board member is the applicant or an abutter.
14. Alternate Board member(s) shall sit with all other Board members during the meetings and may participate through the close of the public hearing. After the close of the public hearing, an Alternate shall only participate in petitions when they have been designated to do so by the Chair. When an alternate is required for Board action, the Chair shall appoint one of the two alternates to participate in the hearing if a regular member cannot participate on said item. If an alternate has already been appointed to sit in for a regular member, then the second alternate shall be appointed by the Chair to sit on the board as needed. If an alternate is seated for an item on which no action is taken during that meeting, it shall be the role of the alternate to conclude the review of the item, if continued and presented at a later date, and participate fully in the action of that item.

VII. Miscellaneous

1. Any application previously presented to the City Council, Planning Board, or Code Official shall include all exhibits, records and history when the application is filed with the Board.
2. The applicant will be allowed to request a postponement of the application provided the applicant can provide just cause for the request otherwise a denial without prejudice will be in order for the Board. This section shall not apply to any application if the city needs to postpone or cancel any meetings. During the meeting, an application may only be withdrawn by the applicant or the applicant's representative after the case has been read into the record but prior to the Board opening the public hearing on the application.

If the application is withdrawn, the applicant will be allowed to resubmit the application which will then be considered a new application to be heard for the first time.

3. In a case where an application is granted a postponement more than once, the application will be re-advertised at the expense of the applicant.
4. The applicant shall be allowed to have only one active application before the Board at any time, including any application for a variance of Special Exception for a property with an application subject to appeal. Additional applications will be rejected by the staff at the time it is submitted for processing.

5. Correspondence

- a) All correspondence shall be directed to the Chair of the Zoning Board of Adjustment, City Hall, 1 Junkins Avenue, Portsmouth, New Hampshire 03801.
- b) All documents or communications from the Board shall be signed by the Chair.
- c) In the absence of the Chair for any reason, the Vice-Chair shall act in his/her place.

6. An annual report shall be prepared by the Chair and submitted to the City Manager in conjunction with the Planning Department.

7. When a previously denied application comes back before the Board, the Board may move to determine that the Board cannot lawfully consider the merits of the application because a material change of circumstances affecting the merits of the application has not occurred and the application is not for a use that materially differs in nature or degree from the previous application. See Fisher v. City of Dover, 120 N.H. 187 (1980).

The burden of proof lies with the applicant to prove otherwise through their application submittal. The Board may decide whether it has jurisdiction to hear an application under this section without soliciting feedback from the public or the applicant. If the Board decides, in its discretion, to solicit feedback on this jurisdictional matter, the Board shall open the public hearing for the limited purposes described in this section. If the Board determines it does have jurisdiction over the application, it shall proceed according to the procedures described in Section VIII, et seq.

8. The Board may elect to take business items out of order for the purpose of addressing requested postponements. When a motion to postpone is made, the motion maker must include the reason for either granting or denying the request.

9. If an applicant submits a request to postpone consideration of an application with at least 2 business days notice, City staff may postpone consideration of the application. If City staff postpones consideration of a noticed application, at the outset of the noticed meeting, the Board shall announce that the City granted the applicant request for a postponement to a date certain.

VIII. Procedure for Public Hearings

1. Public hearings of the Board shall follow the following procedure:
 - a) Presentation by the applicant or applicant's representative explaining the application and reasons why the Board's approval should be granted based on the applicable criteria.
 - b) Questions by Board members
 - c) Public comment to, for or against the application or proposal
 - d) Chair closes public hearing
 - e) Board discussion on the application if deemed necessary.
 - f) Motion(s) made by a Board member. Motion must be seconded by another Board member before the motion can be considered.
 - g) The motion maker shall address all of the applicable criteria or reasoning relevant to the motion followed by any additional comment by the Board member who seconded the motion
 - h) Discussion on the motion(s) with no further public comment and no additional information from the applicant unless in answer to a question from the Board
 - i) Vote on the motion(s)
2. The Board may impose reasonable time limits on presentations and public comments to the Board. Absent extenuating circumstances, fifteen (15) minutes for the presentation from the applicant and five (5) minutes per person during public comment shall be considered a reasonable time limit. These time limits may be waived upon a vote of the Board.
3. If the public hearing is continued to a subsequent meeting of the Board, the procedure outlined above shall also be followed at the continued hearing.
4. If the public hearing is closed and the application is postponed for more information, the Board may vote to reopen the public hearing and may consider additional information from the public. Additional information requested from the applicant should be outlined in the motion to postpone. If the public hearing is closed and the application is postponed for further discussion by the Board, no additional public comment, written or otherwise, will be considered by the Board.

5. The Board may modify the above procedure for an individual application by a vote of the Board.

IX. Electronic or Multimedia Presentations

1. Applicants and members of the public may use PowerPoint, PDF or multimedia presentations in a public hearing, subject to any time limits as specified above. Any such presentation must be submitted to the Planning Department by the specified meeting deadline.
2. Other presentation formats may be permitted during a public hearing subject to prior approval by the Chair.

Adopted: 20 August 96

Revised: 26 April 05 - fee schedule deleted

Revised: 18 May 2010

Revised: 03 March 2011

Revised: 17 September 2013

Revised: July 22, 2014

Revised: December 20, 2016

Revised October 16, 2018

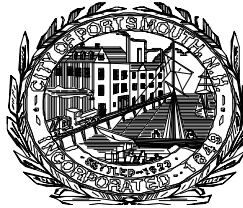
Revised November 19, 2019

Revised XXXXXXXX

BOARD OF ADJUSTMENT RULES AND REGULATIONS

for the

**City of Portsmouth
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Adopted: August 20, 1996
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~~5.~~ ~~4.~~ An affirmative vote by four (4) members present and voting is necessary to:

~~a)~~ ~~a)~~ Grant a Variance

~~b)~~ ~~b)~~ Grant a Special Exception

~~c)~~ ~~c)~~ Reverse a decision of the Code Official

~~6.~~ ~~5.~~ Granting a request for a rehearing of a Variance or Special Exception or the appeal of a code official requires a majority vote of members present and voting or in the case of a tie vote three (3) affirmative votes shall be required.

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~~11.~~ ~~10.~~ Jury standards relative to conflict of interest questions apply to members voting on an application.

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~~12.~~ ~~11.~~ A Member may be excused for nonattendance of a meeting or hearing for valid reasons if he or she notifies the Chair prior to the meeting or hearing. Confirmation of anticipated attendance and recusals shall be communicated to the Chair with a minimum of [48 hours] notice. No member shall leave a meeting without permission if his/her presence is necessary to make a quorum.

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~~13.~~ ~~12.~~ Any Board member who recuses him/her self from the board for any reason on any application should not participate in any fashion with regard to said application, unless the Board member is the applicant or an abutter.

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~~14.~~ ~~13.~~ Alternate Board member(s) shall sit with all other Board members during the meetings and may participate through the close of the public hearing. After the close of the public hearing, an Alternate shall only participate in petitions when they have been designated to do so by the Chair~~man~~. When an alternate is required for Board action, the Chair~~man~~ shall appoint one of the two alternates to participate in the hearing if a regular member cannot participate on said item. If an alternate has already been appointed to sit in for a regular member, then the second alternate shall be appointed by the Chair~~man~~ to sit on the board as needed. If an alternate is seated for an item on which no action is taken during that meeting, it shall be the role of the alternate to conclude the review of the item, if continued and presented at a later date, and participate fully in the action of that item.

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VII. Miscellaneous

1. Any application previously presented to the City Council, Planning Board, or Code Official shall include all exhibits, records and history when the application is filed with the Board.
2. The applicant will be allowed to request a postponement of the application provided the applicant can provide just cause for the request otherwise a denial without prejudice will be in order for the Board. This section shall not apply to any application if the city needs to postpone or cancel any meetings. During the meeting, an application may only be withdrawn by the applicant or the applicant's representative after the case has been read into the record but prior to the Board opening the ~~the~~ public hearing on the application.

If the application is withdrawn, the applicant will be allowed to resubmit the application which will then be considered a new application to be heard for the first time.

3. In a case where an application is granted a postponement more than once, the application will be re-advertised at the expense of the applicant.
4. The applicant shall be allowed to have only one active application before the Board at any time, including any application for a variance of Special Exception for a property with an application subject to appeal that may be under appeal. Additional applications will be rejected by the staff at the time it is submitted for processing.
5. Correspondence
 - a) All correspondence shall be directed to the Chair of the Zoning Board of Adjustment, City Hall, 1 Junkins Avenue, Portsmouth, New Hampshire 03801.
 - b) All documents or communications from the Board shall be signed by the Chair.
 - c) In the absence of the Chair for any reason, the Vice-Chair shall act in his/her place.
 - d) ~~All press and radio releases regarding the applications are to be made as are recorded within the minutes of the Board meeting and shall originate with the Chair.~~
6. An annual report shall be prepared by the Chair and submitted to the City Manager in conjunction with the Planning Department.
7. When a previously denied application comes back before the Board, the Board may move to determine that the Board cannot lawfully consider the merits of the application because a material change of circumstances affecting the merits of the application has not occurred and the application is not for a use that materially differs in nature or degree from the previous application. See Fisher v. City of Dover, 120 N.H. 187 (1980).

The burden of proof lies with the applicant to prove otherwise through their application submittal. ~~No presentation time or public comment session is to be allotted at the scheduled meeting though the Board holds the right to ask the interested parties questions.~~ The Board may decide whether it has jurisdiction to hear an application under this section without soliciting feedback from the public or the applicant. If the Board decides, in its discretion, to solicit feedback on this jurisdictional matter, the Board shall

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open the public hearing for the limited purposes described in this section. If the Board determines it does have jurisdiction over the application, it shall proceed according to the procedures described in Section VIII, et seq.

8. The Board ~~has the ability~~ may elect to take business items out of order for the purpose of addressing requested postponements. When a motion to postpone ~~is~~ made, the motion maker must include the reason for either granting or denying the request.

9. If an applicant submits a request to postpone consideration of an application with ~~more than 48 hours~~ at least 2 business days notice, City staff may ~~shall~~ postpone consideration of the application. If City staff postpones consideration of a noticed application, at the outset of the noticed meeting, the Board shall announce that the City granted the applicant request for a postponement to a date certain.

VIII. Procedure for Public Hearings

1. Public hearings of the Board shall follow the following procedure:
 - a) Presentation by the applicant or applicant's representative explaining the application and reasons why the Board's approval should be granted based on the applicable criteria.
 - b) Questions by Board members
 - c) Public comment to, for or against the application or proposal
 - d) Chair closes public hearing
 - e) Board discussion on the application if deemed necessary.
 - f) Motion(s) made by a Board member. Motion must be seconded by another Board member before the motion can be considered.
 - g) The motion maker shall address all of the applicable criteria or reasoning relevant to the motion followed by any additional comment by the Board member who seconded the motion
 - h) Discussion on the motion(s) with no further public comment and no additional information from the applicant unless in answer to a question from the Board
 - i) Vote on the motion(s)

2. The Board may impose reasonable time limits on presentations and public comments to the Board. Absent extenuating circumstances, fifteen (15) minutes for the presentation from the applicant and five (5) minutes per person during public comment shall be considered a reasonable time limit. These time limits may be waived upon a vote of the Board.
3. If the public hearing is continued to a subsequent meeting of the Board, the procedure outlined above shall also be followed at the continued hearing.
4. If the public hearing is closed and the application is postponed for more information, the Board may vote to reopen the public hearing and may consider additional information from the public. Additional information requested from the applicant should be outlined in the motion to postpone. If the public hearing is closed and the application is postponed for further discussion by the Board, no additional public comment, written or otherwise, will be considered by the Board.
54. The Board may modify the above procedure for an individual application by a vote of the Board.

IX. Electronic or Multimedia Presentations

1. Applicants and members of the public may use PowerPoint, PDF or multimedia presentations in a public hearing, subject to any time limits as specified above. Any such presentation must be submitted to the Planning Department by the close-of-business-on-the-day-preceding-the-public-hearing-specified meeting deadline.
2. Other presentation formats may be permitted during a public hearing subject to prior approval by the Chairman.

Adopted: 20 August 96
Revised: 26 April 05 - fee schedule deleted
Revised: 18 May 2010
Revised: 03 March 2011
Revised: 17 September 2013
Revised: July 22, 2014
Revised: December 20, 2016
Revised: October 16, 2018
Revised November 19, 2019
Revised XXXXXX