

June 12, 2026

Chair Margeson and Members of the Zoning Board of Adjustment  
City of Portsmouth  
1 Junkins Avenue Portsmouth, NH 03801

**Re: Support for Variance Application — 43 Austin Street**

Dear Chair Margeson and Board Members:

I write in strong support of the Portsmouth Historical Society's application for a Change of Use Variance at 43 Austin Street, and I ask the Board to grant the requested relief at its June 16 hearing.

I have spent many years engaged in civic life and historic preservation in Portsmouth, and I can say with confidence that the situation at 43 Austin Street is exactly the kind of challenge our community must meet thoughtfully. This is a significant historic structure that has been left vulnerable by a combination of circumstances entirely outside the Historical Society's control: its size, its condition at the time it was bequeathed, and a deed restriction that prevents its sale. The Historical Society inherited these conditions. They did not create them.

The variance criteria are satisfied. The proposed professional office use is low-impact, generates no expansion of the existing footprint, and is fully consistent with the surrounding neighborhood, which already includes offices, a church, and multi-family residences on adjacent parcels zoned for mixed use. Granting this variance does not undermine the purposes of the zoning ordinance. It serves them.

Portsmouth has a proud tradition of integrating historically sensitive office use into its residential neighborhoods, and the results have consistently supported preservation and community character. I am confident this application meets the criteria the Board applies, and I hope the Board will find, as I have, that granting this variance is the right outcome for Austin Street and for Portsmouth.

I respectfully urge the Board to approve this application.

Sincerely,



Martha Fuller Clark  
152 Middle Street  
Portsmouth, NH 03801

Dear Members of the Zoning Board of Adjustment,

I am writing to formally oppose the variance request submitted by Port Hunter LLC for 361 Miller Avenue. The application seeks both dimensional relief (reduced setbacks) and a use variance to allow professional office use in a residential (GRA) district where such use is not permitted.

Under New Hampshire law, the applicant must meet all five variance criteria. Based on the existing conditions of this property and the nature of the request, I do not believe these criteria are satisfied.

### **1. The variance will not be contrary to the public interest — NOT MET**

The proposed introduction of commercial office use into a residential neighborhood is contrary to the public interest as reflected in Portsmouth's zoning ordinance. The **General Residence A (GRA) district is intended to preserve residential character, maintain appropriate density, and avoid uses that introduce commercial traffic and activity.**

There are already clear indicators that the property is overburdened. **Vehicles are routinely parked on the front lawn due to insufficient on-site parking, and vehicles have been observed extending across the sidewalk when parked in the driveway.** This not only detracts from the character of the neighborhood but also creates **pedestrian safety hazards**, particularly for children, seniors, and those using strollers or mobility aids.

Blocking or obstructing a public sidewalk is generally not permitted and directly conflicts with public safety objectives. The presence of this condition demonstrates that the property cannot adequately support its current use.

Adding a professional office will increase:

- Vehicle trips (clients, employees, deliveries)
- Parking demand
- The likelihood of continued **sidewalk obstruction and unsafe conditions**

This is directly contrary to the public interest.

### **2. The spirit of the ordinance is observed — NOT MET**

The spirit of the ordinance is to:

- Maintain separation between residential and commercial uses
- Ensure adequate setbacks for light, air, and spacing

- Prevent overdevelopment of residential properties

This proposal undermines that intent by:

- Introducing a **non-permitted commercial use**
- Requesting **significant reductions in setbacks**
- Intensifying use on a property already demonstrating capacity issues

This is not a minor adjustment—it is a fundamental departure from the ordinance’s purpose.

### **3. Substantial justice is done — NOT MET**

The benefit to the applicant is outweighed by the negative impact on the surrounding neighborhood.

The applicant benefits from increased use and value of the property. Meanwhile, neighbors are already experiencing:

- Parking overflow onto the **front lawn**
- **Sidewalk obstruction from vehicles extending out of the driveway**
- Reduced safety and diminished neighborhood character

Granting this variance would exacerbate these issues, placing additional burden on the public for the benefit of a single property owner.

### **4. Property values of surrounding properties are not diminished — NOT MET**

The current conditions already negatively affect the appearance and function of the neighborhood.

The visible pattern of **cars parked on the lawn and blocking the sidewalk** creates:

- A perception of overcrowding and poor site management
- Reduced curb appeal
- Safety concerns that make the area less desirable

Expanding the use and intensity of the property will likely worsen these conditions and further impact surrounding property values.

### **5. Literal enforcement would result in unnecessary hardship — NOT MET**

The property is already in active residential use as a six-unit building and is capable of reasonable use without any variance.

There is no hardship arising from the land itself. Instead:

- The request is driven by a desire to **increase intensity and introduce a commercial use**
- Existing issues (including parking overflow onto the lawn and sidewalk obstruction) reflect **overuse of the property**, not hardship
- Any constraints are inherent to the lot and do not prevent reasonable residential use

Under New Hampshire law, hardship cannot be based on financial gain or convenience, nor can it be self-created.

### **Additional Considerations**

- **Documented Evidence of Overcapacity:** I have photographic evidence showing vehicles parked on the front lawn and extending across the sidewalk. These conditions clearly demonstrate that the property is already unable to support its current level of use.





- **Public Safety Concerns:** Sidewalk obstruction forces pedestrians into the street, creating a safety hazard. Any increase in use intensity will likely worsen this condition.
- **GRA District Intent:** The district is designed to support residential living. The addition of commercial office use, combined with reduced setbacks, directly conflicts with this intent.
- **Cumulative Impact and Precedent:** Granting both use and dimensional variances compounds the impact and sets a precedent for further erosion of residential zoning protections.
- **Self-Created Hardship:** The need for relief stems from the applicant's desire to intensify use on a constrained lot, not from any unique characteristic of the property.

## Conclusion

Because the proposal fails to meet multiple required variance criteria—including public interest, spirit of the ordinance, and unnecessary hardship—and because there is clear evidence that the property is already overburdened, I respectfully request that the Board deny this application.

Thank you for your time and consideration.

Sincerely,  
Tim O'Brien  
396 Miller Ave

**From:** Lisa Arbogast

**Sent:** Monday, June 8, 2026 10:19 AM

**To:** Planning - Info - Shr <Planning@portsmouthnh.gov>

**Subject:** Comment regarding abutter notice for Board of Adjustment meeting June 16

**Subject: Comment regarding abutter notice for Board of Adjustment meeting June 16**

I am writing to express my disapproval (or No vote) of the request for the variances of 1010 US 1 Bypass LLC. There is already too much light pollution shining into my condo from the existing gas stations on Rt 1.

I also oppose the similar request for variances for 500 Maplewood Avenue LLC and for the same reasons. There is no need for larger and more illuminated signage. The sections referenced (10.1251.20 & 10.1241) were likely written in the code for a reason and I see no need to override them. I would have attended the meeting but will be out of town. Thank you for your time and consideration.

Ellisa Arbogast,

73 Prospect St

Portsmouth

Sent from my iPad

# STATEMENT OF OPPOSITION

## Variance Request: 1010 US Route 1 Bypass LLC

Submitted to the Portsmouth Zoning Board of Adjustment

Prepared by Kira Kimick and Scott Kimick, 23-1 Kane Street, Portsmouth, NH

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### The Variance Requests at Issue

1010 US Route 1 Bypass LLC is seeking two variances in connection with the gas station at 1010 Route 1 Bypass (Assessor Map 141, Lot 19), Business (B) District:

- Variance 1, Section 10.1251.20: A canopy sign of 95 sq. ft. where 20 sq. ft. is allowed, which is a whopping **475% over the maximum** permitted by law.
- Variance 2, Section 10.1241: An animated sign, which is expressly prohibited in **ALL** sign districts.

Together, these requests would place an oversized, animated, illuminated commercial sign in direct view of a residential neighborhood, including from the windows of at least six children currently living in view of the proposed sign, and scores more in the future. We urge the Board to deny both variance requests.

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### I. The Science Is Clear: Light Pollution Harms Children

- Blue-enriched LED lighting, standard in animated canopy signs, is the most harmful type for children's sleep. NIH-funded research found that even dim light before bedtime caused melatonin to plummet in young children, with suppression continuing well after the light was turned off.
  - Source: CU Boulder / NIH [colorado.edu/today/2022/01/25](https://colorado.edu/today/2022/01/25)
- Long-term consequences of disrupted sleep in children include depression, impaired immune function, attentional problems, and increased cancer risk, are all linked to circadian disruption.
  - Source: UConn Health / The Conversation [theconversation.com](https://theconversation.com), [UConn Health](https://uconnhealth.org)

*Children's bedroom windows are in direct view of this proposed sign. Every night it operates, our kids will be exposed to the precise conditions these studies identify as harmful.*

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### II. Who Is This Sign For? Do the Financial Benefits Outweigh the Harm?

- Drivers on the Route 1 Bypass have already decided to be on the road. There is no direct on-ramp from I-95, and the station is not visible from the Traffic Circle. The people who will see this sign most are the neighbors and children who live next to it, not new customers. This sign serves no navigation purpose and causes real harm for no clear community benefit.
- Is there a financial benefit to the City to justify not only bending the law, but completely breaking it? If the sign would not attract new customers, and the neighborhood will most likely boycott because of the harm it's causing to our health, how does the City benefit financially?

*Drivers won't see it from the Traffic Circle, there is no ramp from I-95, it causes harm to their neighbor's health, so how does Portsmouth benefit financially and morally?*

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### III. This Sign Works Against Everything Portsmouth Has Built

Portsmouth has worked hard to build its reputation as one of New England's most beautiful and livable cities. The Route 1 Bypass corridor is increasingly part of that vision, and the decisions made here today will either protect that progress or set it back in ways we cannot reverse.

- The City's own plans say so. The Market Square Master Plan, accepted by City Council in August 2025, describes Portsmouth as a vibrant regional destination for the arts, dining, and heritage tourism, and was designed to extend that character outward. Granting a variance of this size and type moves in exactly the wrong direction.

- Source: Portsmouth Market Square Master Plan, Final (2025), p. 1 [MarketSquareMasterPlan\\_FINAL.pdf \(portsmouthnh.gov\)](#)
- Consider what the North End of Portsmouth looked like 20 years ago: across the now beautiful and walkable Maplewood Ave. Bridge was a parking lot, the old Portsmouth Herald building, a few rundown buildings, a laundromat. Downtown basically ended at the Sheraton. Now the luxury hotels, restaurants, and multimillion-dollar residences are moving closer to this corridor. A 95-foot animated LED sign advertising the items a gas station sells approved today will be there for the next 20 years and beyond. Is that what we want in the middle of what Portsmouth is becoming?

*Twenty years ago, Portsmouth was vastly different from what it is now. The same is true for the next twenty. Portsmouth has earned its reputation through careful decisions, and this is one of them. What we allow in this corridor today will define what it looks and feels like for decades to come.*

#### IV. Portsmouth and New Hampshire's Own Codes Support Denial

- **Article 12, Section 10.1251.20:** The applicant's own filing confirms that only 20 sq. ft. is permitted and that they are requesting 95 sq. ft. This is a whopping 4.75 times larger than the maximum.
- **Under NH RSA 674:33,** a variance requires proof of unnecessary hardship. Wanting larger branding is not hardship, it is a preference, and preferences do not justify changing the law.
- **Article 12, Sections 10.1224 and 10.1241:** Animated signs are explicitly prohibited in **all** sign districts with no provision in the permitted sign types table. This is a categorical prohibition, not a dimensional standard. Overriding it requires extraordinary justification. None has been offered.
- **Article 12, Section 10.1232** gives this example: "...A portion of the General Business district may be changed from Sign District 5 to Sign District 2 in order to protect an adjacent neighborhood from excessive light." As photo exhibit A in this document shows, there are ten residences, including multifamily, adjacent to the property in question. All canopy signs in District 2 are expressly prohibited, illuminated or not.
- **Article 12, Section 10.1211** states that sign regulations exist to maintain and enhance the character of the city's commercial districts and residential neighborhoods and to protect the public from hazardous and distracting displays. Both variances directly contradict this purpose.
- **Article 12, Section 10.1140** establishes outdoor lighting as a site development standard and requires that permitted uses not create problems for lighting or other site-related impacts. Light from a 95 sq. ft. animated canopy sign reaching into children's bedrooms is precisely the harm these provisions were written to prevent.
  - Source: Portsmouth Zoning Ordinance, Article 12 [portsmouthnh.gov/planportsmouth](#)
  - Source: 2025 New Hampshire Revised Statutes, Title LXIV - Planning and Zoning, Chapter 674 - Local Land Use Planning and Regulatory Powers, Section 674:33 - Powers of Zoning Board of Adjustment. [law.justia.com/codes/new-hampshire/title-lxiv/chapter-674/section-674-33/](#)

#### Our Request to the Board

We respectfully ask the Board to:

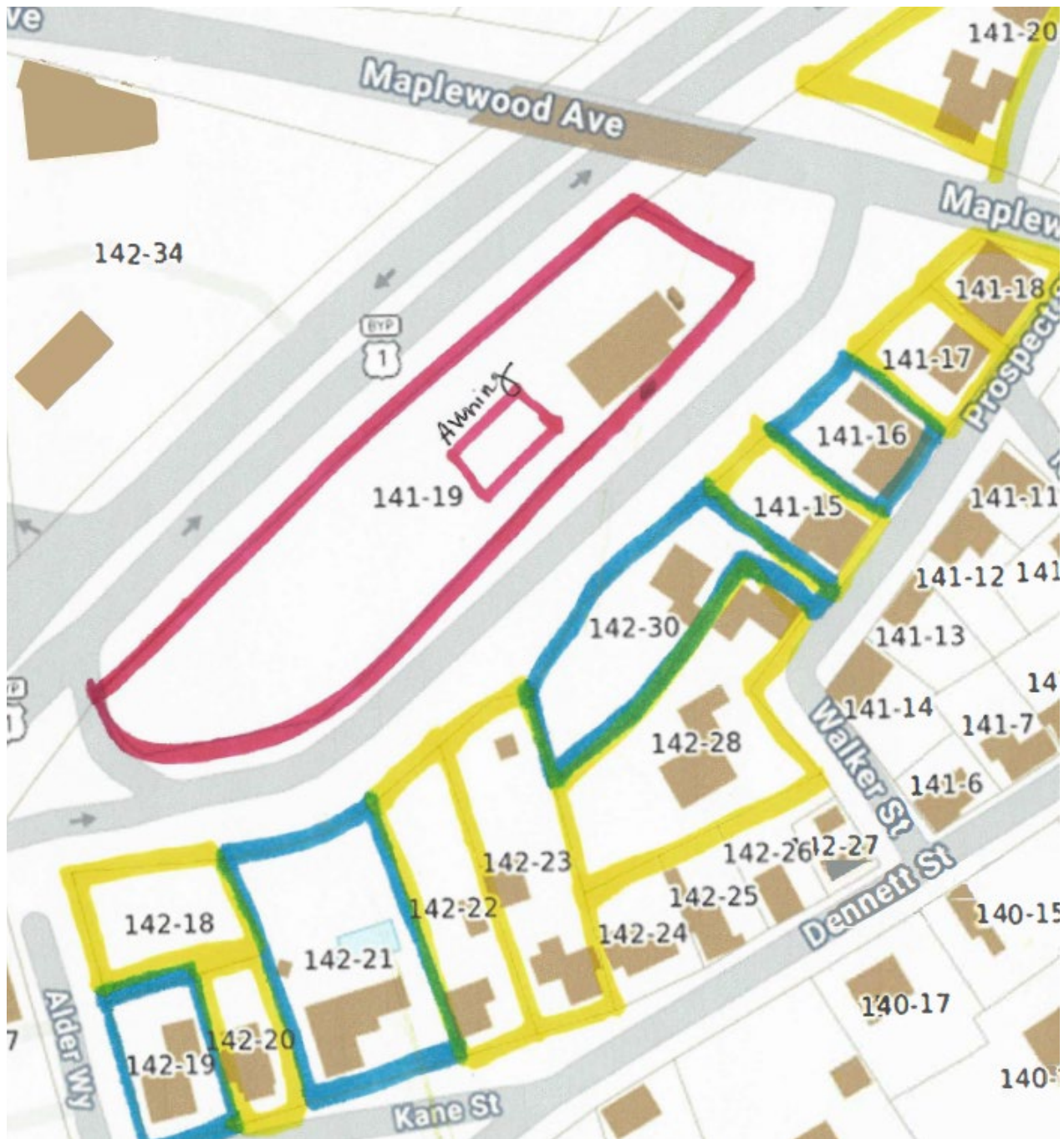
- Deny Variance 1. No unnecessary hardship has been demonstrated for a sign that is 475% over the permitted maximum.
- Deny Variance 2. A citywide prohibition on animated signs should not be overridden by variance without compelling justification. In fact, approving it will inflict documented harm on our children.
- Please consider changing the property from Sign District 5 to Sign District 2 to protect the adjacent neighborhood from excessive light.
- If any signage is ultimately approved, please condition it to be non-animated, fully shielded, downward-directed lighting, at 20 sq. ft. maximum, with a mandatory shutoff between 6:00 a.m. and 11:00 p.m., per Article 12, Section 10.1260.

*The harm to the health of children in the neighborhood, no clear financial gain for anyone, the character of Portsmouth's beautiful and expanding North End, and the integrity of the City's own code are all at stake. The applicant confirmed the rules and asked to break them anyway. We ask the Board to hold the line.*

# PHOTOGRAPHIC EXHIBIT

Statement of Opposition: Variance Request, 1010 US Route 1 Bypass LLC  
Submitted by Kira Kimick and Scott Kimick, 23-1 Kane Street, Portsmouth, NH

## Exhibit A: Proximity of 1010 Route 1 Bypass (141-19) to Residential Lots, including Kimick property (142-21)



Assessor map showing the applicant's property (red, Map 141-19). Highlighted in yellow and blue are residential lots with a view of 1010 Route 1 Bypass. Blue indicates homes where children live (not a full tally).

Portsmouth Zoning Ordinance, Article 12, Section 10.1232, "...A portion of the General Business district may be changed from Sign District 5 to Sign District 2 in order to protect an adjacent neighborhood from excessive light." The above image shows there are ten residences, including multifamily, adjacent to the property in question. **ALL canopy signs in District 2 are expressly prohibited, illuminated or not.**

**Exhibit B:  
Nighttime view of the Route 1 Bypass as currently seen from a 10-year old's bedroom  
at 23 Kane Street**



**Exhibit B: View from a child's bedroom window at night.**

*This photograph was taken at 23-1 Kane Street on June 13, 2026. This shows the current light pollution level emitted by the businesses on the Route 1 Bypass. The canopy in question is on the far-right side of the image. The proposed 95 sq. ft. animated LED canopy sign would cause **an unfathomable increase in the amount of light at night, especially in winter without the leaf cover.***

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*Respectfully submitted by Kira Kimick and Scott Kimick, 23-1 Kane Street, Portsmouth, NH  
[kirakimick@gmail.com](mailto:kirakimick@gmail.com), 707-480-1844 - [skimick@gmail.com](mailto:skimick@gmail.com), 707-479-7095*