

**III. NEW BUSINESS**

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

**Existing & Proposed Conditions**

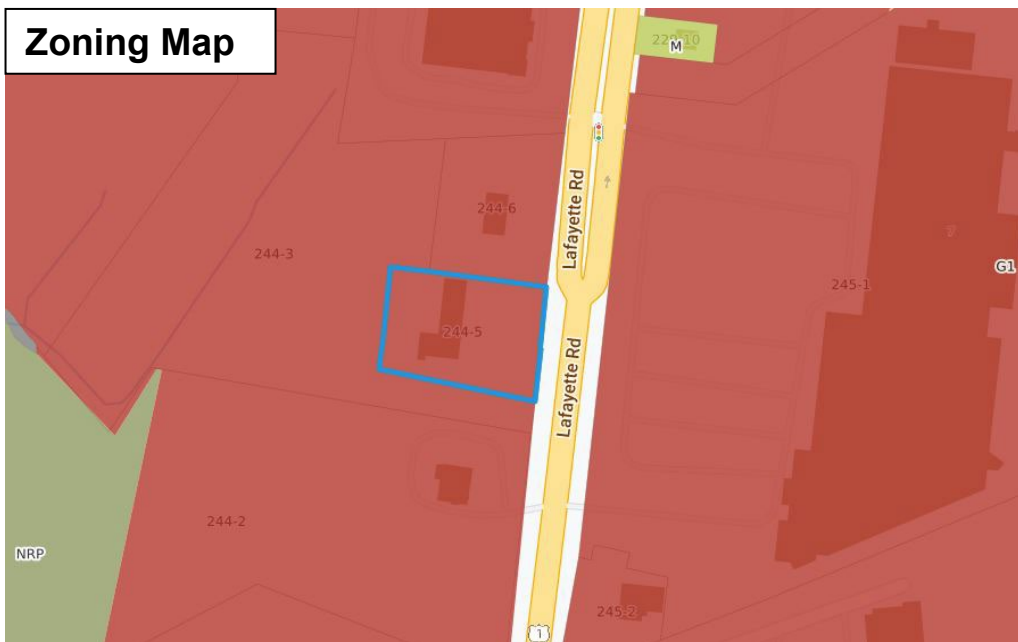
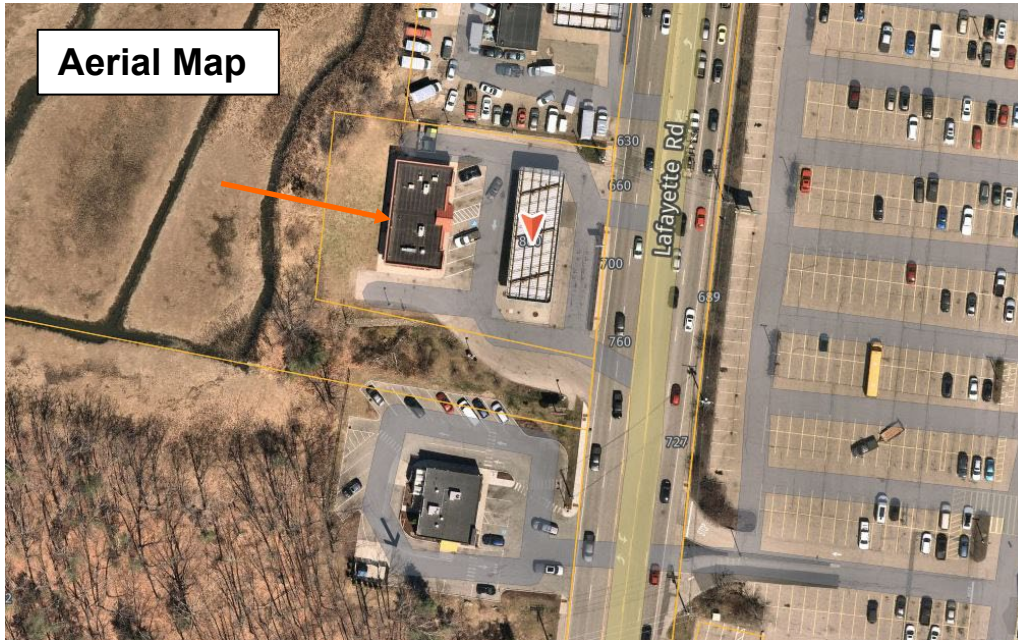
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial	Add 18" height to existing sign*	Mixed Uses
<u>Aggregate Sign Area (sq. ft.):</u>	48	48	100 max.
<u>Freestanding Sign – Maximum Height (ft.):</u>	18.6	20.1	20 max.
<u>Estimated Age of Structure:</u>	2011	Variance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

\*alter a nonconforming sign without bringing it into conformity

**Other Permits/Approvals Required**

- Sign Permit

### Neighborhood Context



### Previous Board of Adjustment Actions

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

April 25, 1972 – A petition for a proposed car wash was **withdrawn**.

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

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

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

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

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

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

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

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

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

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

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

### **Planning Department Comments**

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

## Variance Review Criteria

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

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

**AND**

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

**OR**

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

### 10.235 Certain Representations Deemed Conditions

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





ILLUMINATION VIEW

D/F ILLUMINATED PYLON MID SIGN: SCALE 3/8"=1'-0"

NEW CUSTOM CABINET AND POLE HEIGHT



EXISTING SIGN



PROPOSED SIGN



66 Gold Ledge Avenue,  
Auburn, NH 03032

603.437.1200  
FAX 603.437.1222  
www.nhsigns.com

- DESIGN
- MANUFACTURE
- INSTALL
- SERVICE

CLIENT:  
CN BROWN CITGO  
PORTSMOUTH NH

LOCATION:  
800 LAFAYETTE RD.  
PORTSMOUTH, NH

DATE:  
03/01/23

ACCT. REP:  
NM

DESIGNER:  
KAREN DAVIS

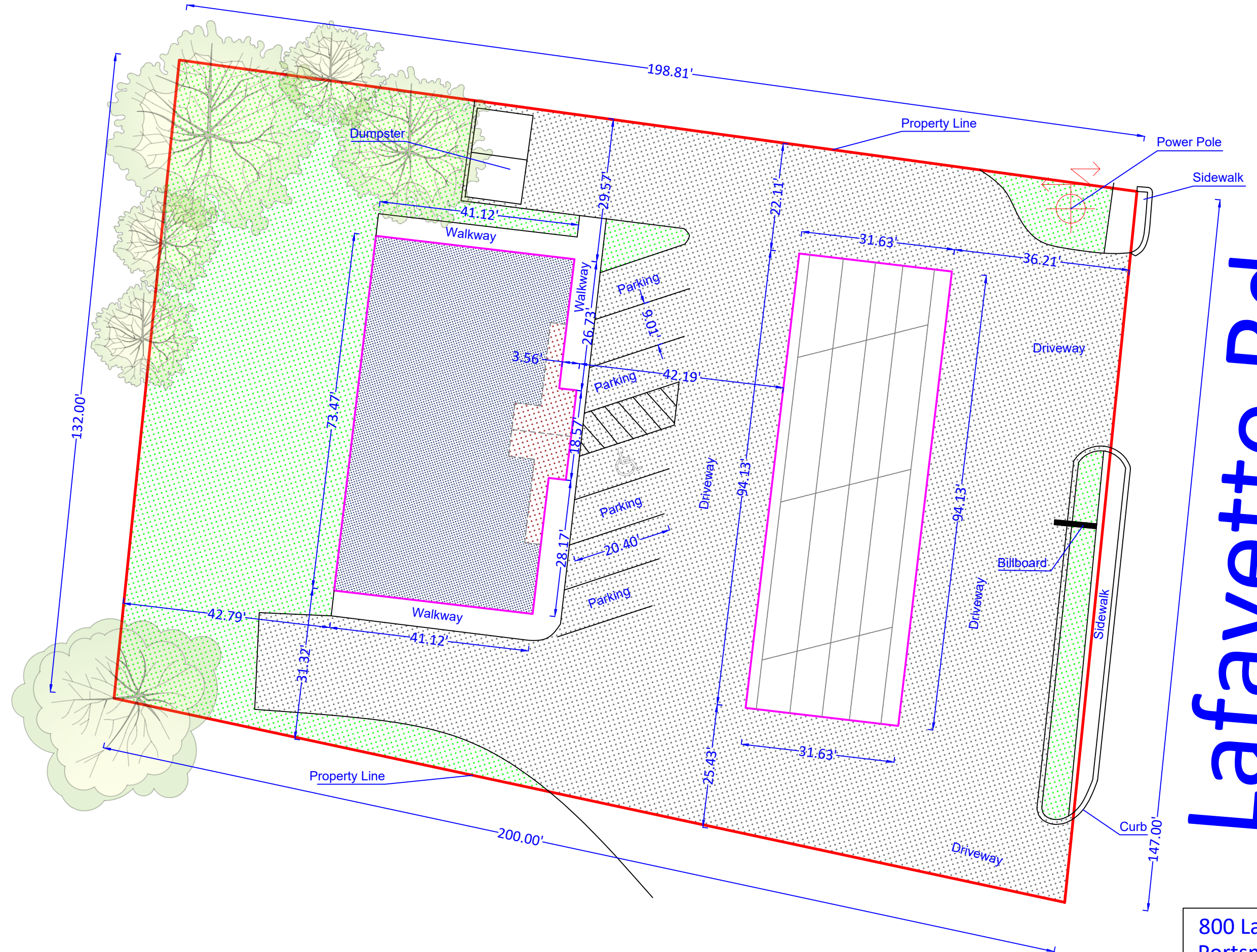
Rev# Date:  
1- Note height  
r2- total height 20'-1" 3/24/23

FILE NAME LOC:  
CN Brown\Portsmouth  
Lafayette Road  
\ 2022 Digit Replacement

Please Note: it is the customers responsibility to provide primary electrical service (including ground wiring) directly from panel box, to within six ft. of sign(s). Installation to comply with N.E.C.600

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# Lafayette Rd

800 Lafayette Rd  
Portsmouth, NH 03801  
Scale: 1"=20'



## **Addendum to Variance, Big Apple, 800 Lafayette Rd, Portsmouth, NH**

We are requesting a variance to raise an existing sign at 800 Lafayette Rd by 18" to a total height of 20' 1" to alleviate the continuing problem of the sign being hit. The site is in Zone G1 and in sign zone 5.

The sign in question is a 48 sq ft sign that was permitted on May 23<sup>rd</sup>, 2011 with a height of 20ft. The sign was installed by others at a lower height and the bottom of the sign is at 12'7". We wish to add an 18" spacer to raise the sign up so that the bottom is 14'1". The top of the sign will thus be 20' 1" high.

The sign is non-conforming in that it does not meet the 20' setback. It is set back by 5 feet and is mounted in an island. The other side of the island is the station forecourt, which traffic uses to enter and exit the station. The sign overhangs this by about 2' 6", and this overhang creates the issue as at this point the sign is below the maximum allowed 13'6 for over the road traffic by about 10".

### **We are requesting variances in terms of:**

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

And

10.1253.10 The maximum and minimum heights and minimum setbacks for signs; we are requesting a setback of 5 feet where 10 is required and a height of 20'1" where 20' is allowed.

### **1. Granting this variance would not be contrary to the Public Interest**

The requested changes are minimal enough that the Public would not necessarily notice the increase in height.

The sign overhangs the station side of the Big Apple property; this is a consequence of the location of the Gas Island, and this is the reason that vehicles hit it. It would be counterproductive to relocate it as this would make it less visible, but also, the setback issues would remain.

It is in the interest of the users of the station and the public that the sign is not a hazard to higher vehicles.

### **2. The proposed use will observe the spirit of the ordinance:**

The purpose of the Sign code, among others, is to protect the public from hazardous displays. Certainly, raising it to prevent vehicles hitting it will reduce the hazards to the general public.

### **3. Substantial Justice would be done to the Property owner by granting the Variance:**

The sign is in an island, and this is really the only logical place for it. Moving the sign away from the road would subject it to the same setback issues, and would attract considerable cost with no benefit. Leaving it where it is and raising it by an insignificant amount would be the just way to resolve this problem.

### **4. The proposed use will not diminish the values of surrounding properties:**

Allowing this change will not result in a change in the essential character of the neighborhood. The change in height will not be noticeable and will have no effect on the values of other properties.

**5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:**

Continuing with the sign as it is will subject motorists to unnecessary danger from the sign at its current height.

It makes sense to simply raise it by 18". This will eliminate the danger of vehicles of legal height hitting the sign.

We request the Boards favorable decision.