

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: September 10, 2019
RE: Zoning Board of Adjustment September 17, 2019 Meeting

OLD BUSINESS

1. 621 Islington Street – Request for Extension
2. Case 7-2 27 Thaxter Road
3. Case 8-1 201 Kearsarge Way
4. Case 8-4 41 Salem Street
5. Case 8-12 0 Hanover (181 Hill Street)

NEW BUSINESS

1. Case 9-1 56 Middle Street
2. Case 9-2 978 South Street

OLD BUSINESS

Case #11-3

Petitioners:	Ned and Bill Properties LLC
Property:	621 Islington Street
Assessor Plan:	Map 164, Lot 6
Zoning District:	Character District 4-W (CD4-W)
Description:	Convert three retail/office units into three residential dwelling units (for a total of 7 units).
Requests:	<p>Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none">1. A Variance from Section 10.5A41.10B to allow the following: (a) a lot area per dwelling unit of 2,074 s.f. where 2,500 s.f. is required; (b) to allow 9.7%± open space where 15% minimum is required; (c) to allow a ground story height of 7'7"± to 8'1"± where 12' minimum is required; (d) to allow a façade modulation length in excess of 80'; (e) to allow façade glazing in excess of 50%; and (f) to allow a ground floor surface above sidewalk grade in excess of 36" where 36" is the maximum allowed.2. A Variance from Section 10.5A44.35 to allow a 34'± wide driveway where 24' is the maximum allowed.

The applicant has submitted request for an extension for the property above. Variances were granted on November 21, 2017 and the applicant has yet to obtain a building permit. The Ordinance allows for a one-time, one-year extension if the request is acted on prior to the expiration date.

Case #7-2

Petition of **Kenneth K. and Deborah A. Jennings**, appellants regarding property located at **27 Thaxter Road** appealing a decision of the Portsmouth City Council to restore two involuntary merged lots at 27 Thaxter Road to their pre-merger status. Said property is shown on current Assessor Plan 166, Lot 39 and lies within the Single Residence B District.

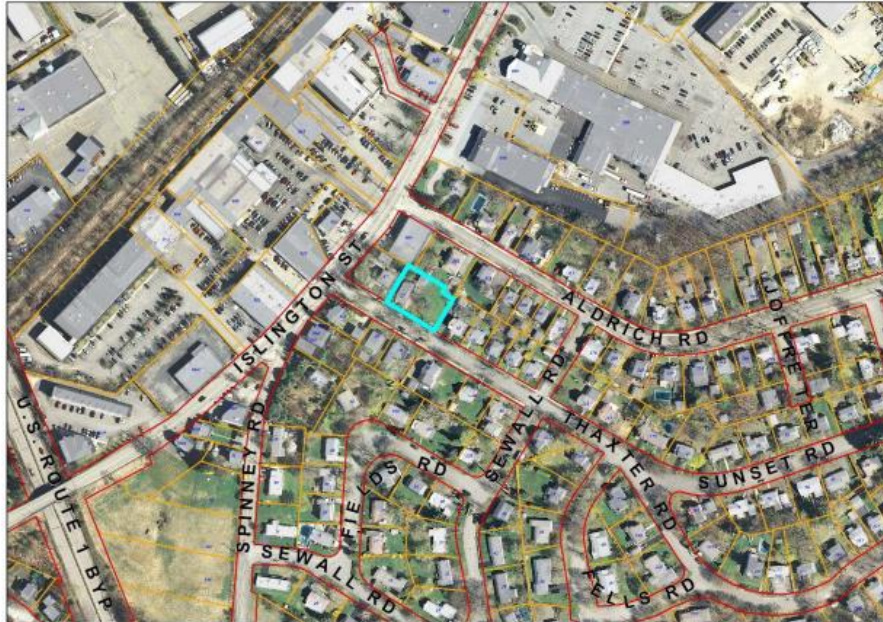
The decision made by City Council to restore an involuntary merged lot at 27 Thaxter Road is being appealed to the Board of Adjustment pursuant to RSA 676:5:

Appeals to the board of adjustment concerning any matter within the board's powers as set forth in RSA 674:33 may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

On May 20, 2019, City Council voted 6-3 to restore the two involuntary merged lots to their pre-merger status at the request of the current owner. Prior to voting on this request, City Council referred it to the Planning Board for a recommendation. The Planning Board recommended the lots be restored to their pre-merger status. Below is the staff memo to the Planning Board for your review.

VI. CITY COUNCIL REFERRAL – PUBLIC HEARING

- A. Request for restoration of involuntarily merged lots at **27 Thaxter Road**, Assessor Map 166, Lot 39.



Description

The parcel at 27 Thaxter Rd (Assessor Map 166, Lot 39) appears to have been created from 3 previous existing lots, which the owner's representative indicates were described in the City's tax records dating back to 1951. The owner is requesting that the lots be restored to their premerger status, former Lot 46 measuring 2,580 sq.ft. and former lots 44 and 45 measuring 5,000 sq.ft. severally. The 2,580 sq.ft. parcel (Lot 46 on the tax cards provided) fronts on Thaxter Rd and does not include any buildings, former lot 44 fronts on Thaxter Rd and includes the existing single family home and part of the detached garage. Former lot 45 includes part of the detached garage. This request is being made pursuant to RSA 674:39-aa, Restoration of Involuntarily Merged Lots.

Statutory Requirements

RSA 674:39-aa requires the City Council to vote to restore "to their premerger status" any lots or parcels that were "involuntarily merged" by municipal action for zoning, assessing, or taxation purposes without the consent of the owner. Unlike all other lot divisions, there is no statutory role for the Planning Board in this process, but the City Council is referring such requests to the Board for its review and report back.

The statute defines "voluntary merger" and "voluntarily merged" to include "any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line" (RSA 674:39-aa, I). It is therefore the City Council's responsibility to determine whether a merger was voluntary (i.e., requested by a lot owner) or involuntary (implemented by the City without the owner's consent). If the merger was involuntary, the Council must vote to restore the lots to their premerger status. Following such a vote, the City GIS and Assessing staff will update zoning and tax maps accordingly. It will then be up to the owner to take any further action to confirm the restoration to premerger status, such as recording a plan at the Registry of Deeds.

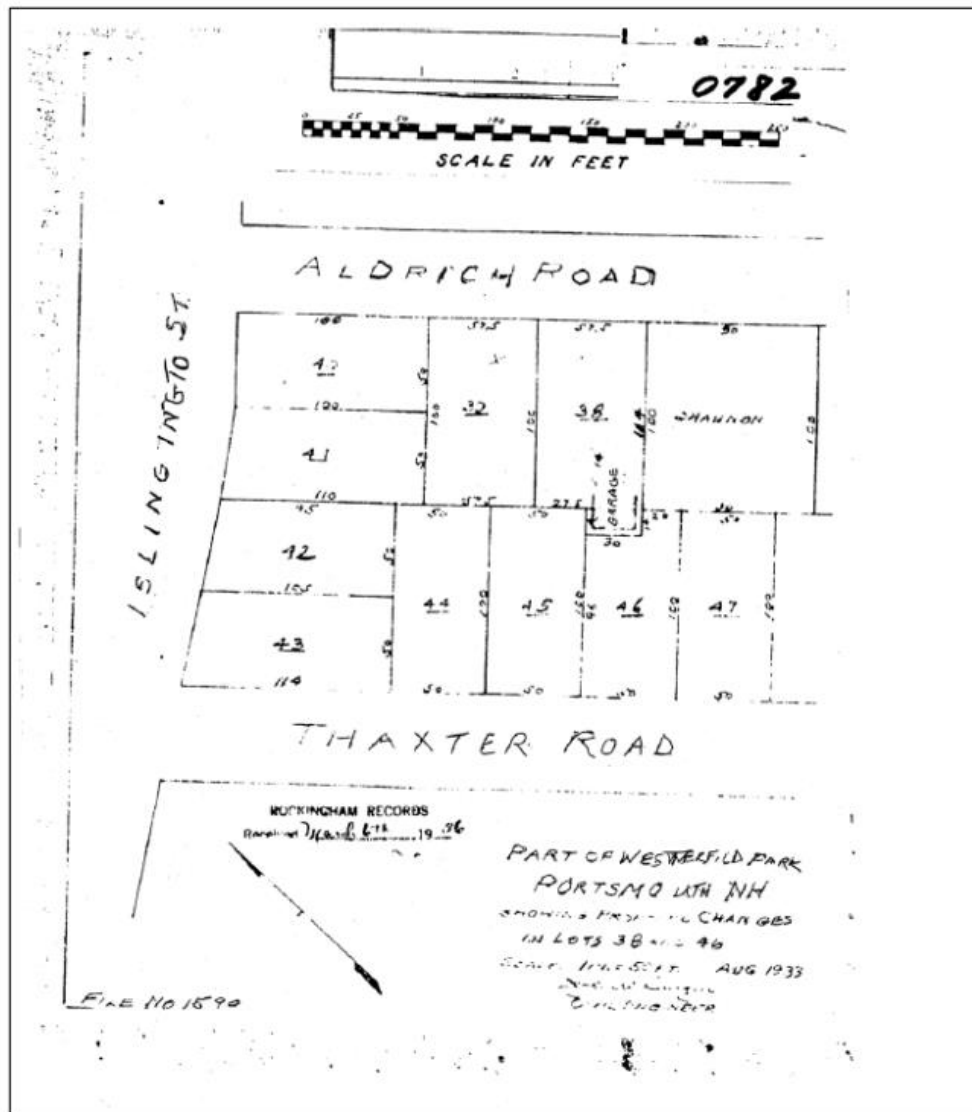
It is important to note that the granting of a request to restore lots to their premerger status does not mean that the resulting lots will be buildable or, if already developed, will conform to zoning. The statute states that "*The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing land use ordinances*" (RSA 674:39-aa, V). For example, the restored lots may not comply with current zoning requirements for lot area, frontage and depth, and the re-establishment of a lot line between any two premerger lots may introduce a new nonconformity with respect to maximum allowed building coverage or a minimum required side yard where a building already exists on one of the premerger lots. In such cases, the owner(s) of the applicable lot(s) would have to apply to the Zoning Board of Adjustment for the necessary variances to restore zoning compliance or to allow future development.

Analysis

While no original subdivision plan has been provided by the owner, a cursory review of the Rockingham County Registry of Deeds records by the Planning Department found a recorded deed (Book 0943, Page 0498) dated August 10, 1938 that described these lots as lots 44, 45 and a part of 46 as shown on a plan entitled "Plan of part of Westfield Park, drawn by John W. Durgin, C.E., dated August 1933 and recorded in Rockingham Records, Plat 25, Page 2". Further search of the County Records located the plan (#0782) dated August, 1933 which appear to show the lots referenced in the deed (See below). The lots described on these two documents from the Registry are also consistent with the dimensions provided in the tax cards provided by the owner in his request to restore the lots to their premerger status.

Planning Department Recommendation

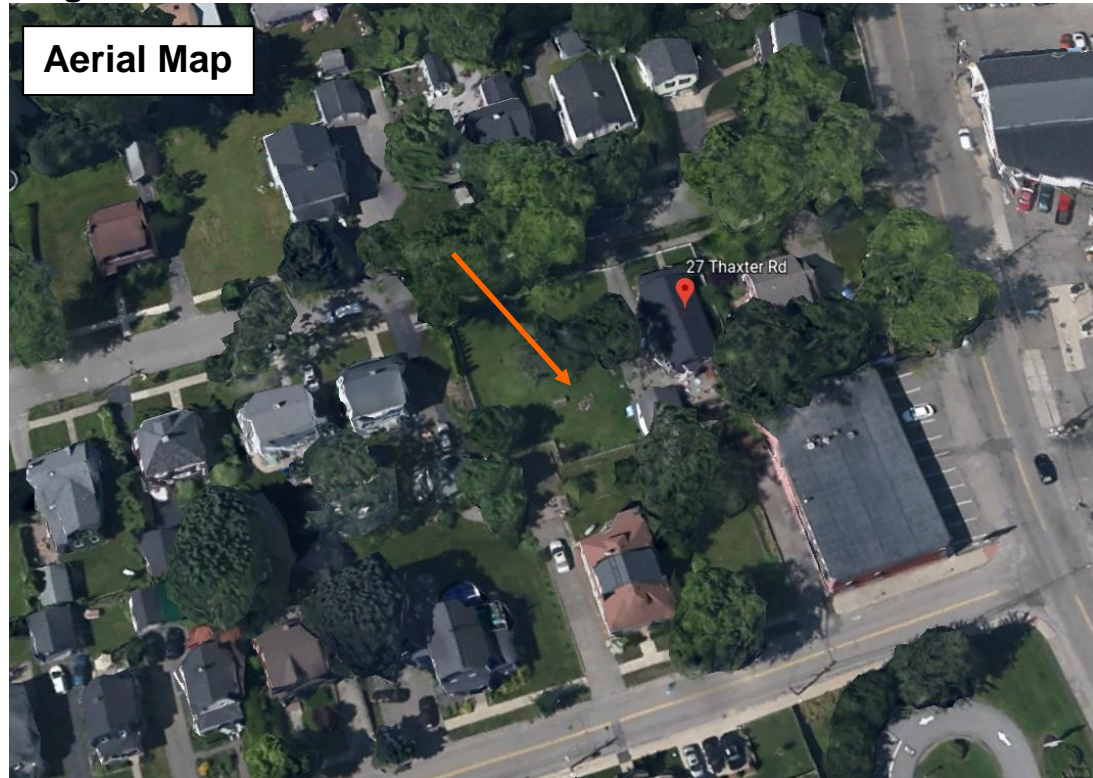
Vote to recommend to the City Council to restore the three involuntarily merged lots at 27 Thaxter St to their premerger status.



Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

May 25, 2004 The Board **granted** variances to allow the separation of two lots in common ownership with lot 52 having 10,475 s.f. and lot 39 having 12,580 s.f. where the minimum lot area was 15,000. The variances were granted with the stipulations that a) the curb cut be located on Thaxter Road; and b) there is no intent to stipulate how the house was oriented.

February 15, 2011. The Board granted variances (for Lot 39) to allow a 9' left side yard where 10' was required and a 26' rear yard here 30' was required and the expansion of a nonconforming structure in order to construction an addition on the rear and right side of the existing structure.

July 16, 2019 – The Board voted to **postpone** to the August 20, 2019 meeting an Appeal of a decision of the Portsmouth City Council to restore two involuntary merger lots. (With 4 sitting members, a request was made to **postpone** hearing the appeal to the August 27, 2019 meeting)

August 27, 2019 – The Board voted to **postpone** to the September 17, 2019 meeting at the request of the applicant (5 sitting members).

674:39-aa Restoration of Involuntarily Merged Lots. –

I. In this section:

- (a) "Involuntary merger" and "involuntarily merged" mean lots merged by municipal action for zoning, assessing, or taxation purposes without the consent of the owner.
- (b) "Owner" means the person or entity that holds legal title to the lots in question, even if such person or entity did not hold legal title at the time of the involuntary merger.
- (c) "Voluntary merger" and "voluntarily merged" mean a merger under RSA 674:39-a, or any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line.

II. Lots or parcels that were involuntarily merged prior to September 18, 2010 by a city, town, county, village district, or any other municipality, shall at the request of the owner, be restored to their premerger status and all zoning and tax maps shall be updated to identify the premerger boundaries of said lots or parcels as recorded at the appropriate registry of deeds, provided:

- (a) The request is submitted to the governing body prior to December 31, 2021.
- (b) No owner in the chain of title voluntarily merged his or her lots. If any owner in the chain of title voluntarily merged his or her lots, then all subsequent owners shall be estopped from requesting restoration. The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots.

III. All decisions of the governing body may be appealed in accordance with the provisions of RSA 676.

IV. Any municipality may adopt local ordinances, including ordinances enacted prior to the effective date of this section, to restore previously merged properties that are less restrictive than the provisions in paragraph I and II.

V. The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing local land use ordinances.

VI. Municipalities shall post a notice informing residents that any involuntarily merged lots may be restored to premerger status upon the owner's request. Such notice shall be posted in a public place no later than January 1, 2012 and shall remain posted through December 31, 2016. Each municipality shall also publish the same or similar notice in its 2011 through 2015 annual reports. **Source.** 2011, 206:4, eff. July 24, 2011. 2016, 327:2, eff. Aug. 23, 2016.

Case #8-1

Petition of **Richard Fusegni** for property located at **201 Kearsarge Way** wherein relief is required from the Zoning Ordinance to subdivide one lot into three lots one of which will be nonconforming including the following variance from Section 10.521: a) to allow 83' of continuous street frontage where 100' is required. Said property is shown on Assessor Plan 218, Lot 5 and lies within the Single Residence B District.

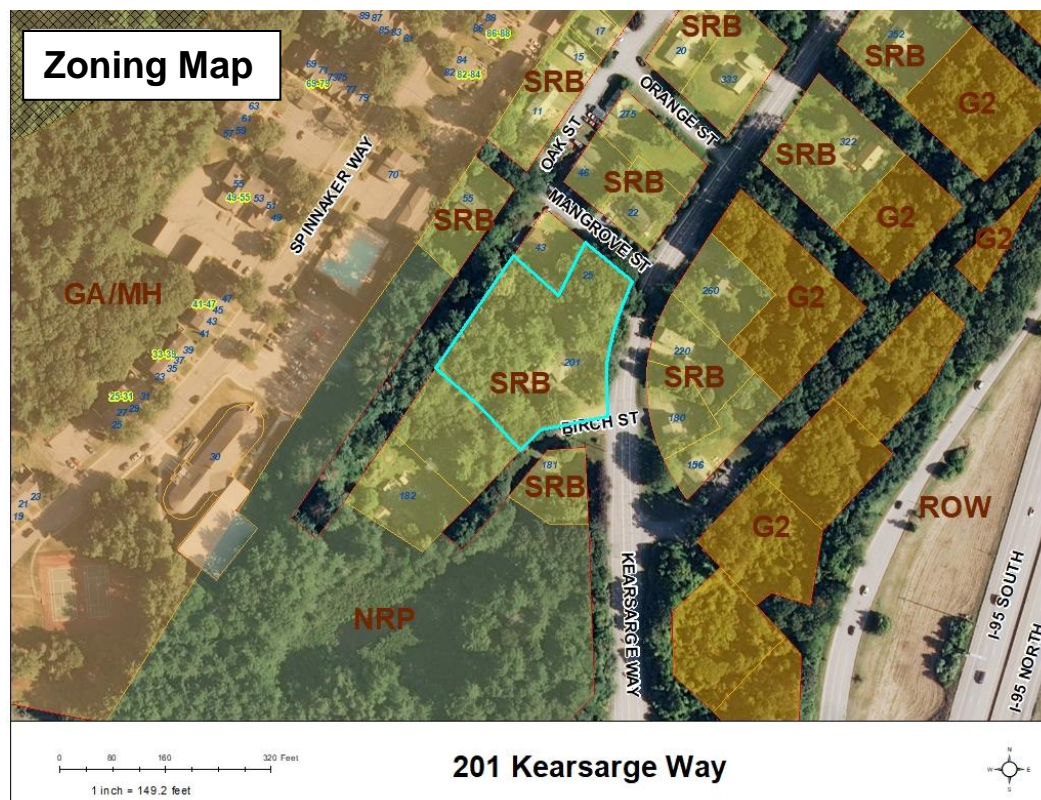
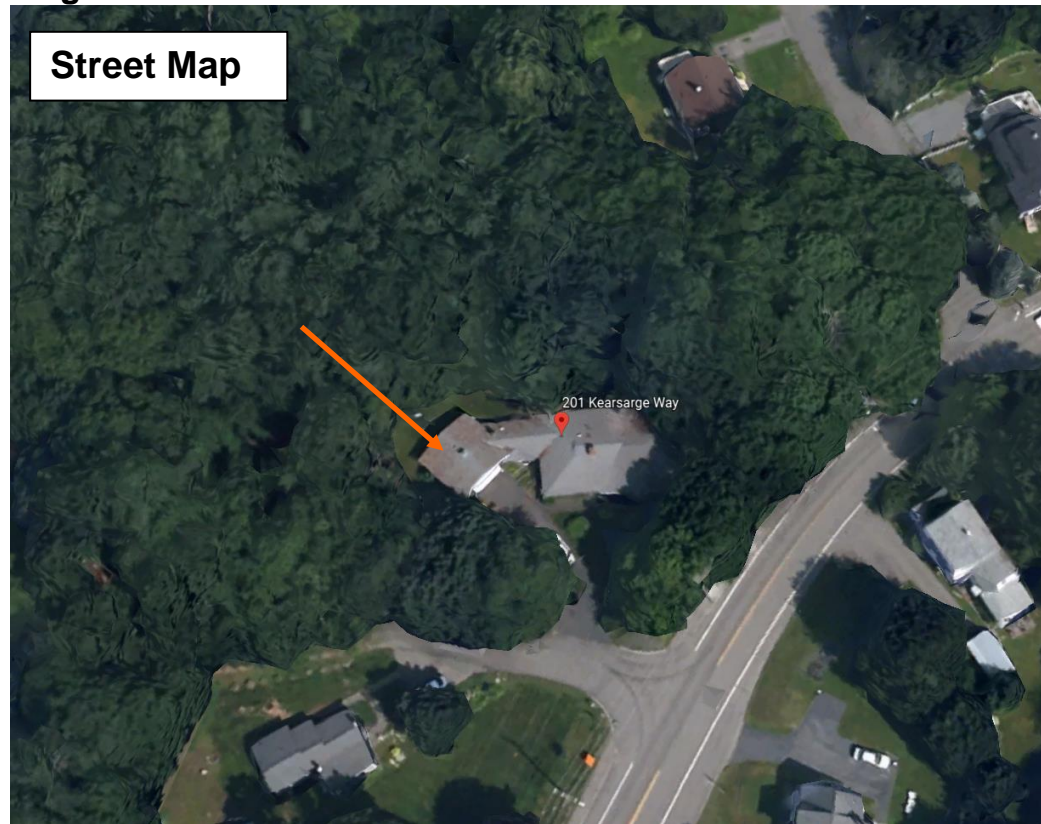
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>			<u>Permitted / Required</u>
<u>Land Use:</u>	1 lot	3 lots 1	2	3	Primarily single family
<u>Lot area (sq. ft.):</u>	47,062	15,755	15,584	15,723	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	47,062	15,755	15,584	15,723	15,000 min.
<u>Street Frontage (ft.):</u>	283	100	100	83	100 min.
<u>Lot depth (ft.):</u>	>100	>100	>100	>100	100 min.
<u>Year Built:</u>	1954	Variance request shown in red.			

Other Permits/Approvals Required

Planning Board/TAC - Subdivision

Neighborhood Context



Previous Board of Adjustment Actions

June 21, 2016 – The Board **granted** a variance to construct a home on one lot of a three-lot subdivision with a front yard setback of 15' where 30' was required. The Board noted that the variance was specific to the presented lot.

March 20, 2018 – The Board **granted** variances to subdivide one lot into two by allowing a lot area and lot area per dwelling unit of 7,834 s.f. where 15,000 s.f. was required.

June 18, 2019 – The Board **denied** a request to subdivide one lot into three.

July 23, 2019 – The Board **granted** a rehearing to be held at the August 20, 2019 meeting.

August 20, 2019 – The Board **postponed** the new hearing to the September 17, 2019 meeting at the request of the applicant (5 sitting members).

Planning Department Comments

The applicant received a variance to subdivide one lot off of this parcel on the corner of Mangrove Street and Kearsarge Way in 2018 and is now proposing to subdivide the remaining parcel into three lots, one of which has less than the required street frontage. Two of the lots are conforming and the third lot conforms to all other requirements, less the frontage.

On June 18, 2019 the Board **denied** a variance to allow 83'± of continuous street frontage where 100' is required for a proposed 3 lot subdivision. The applicant filed a request for a rehearing and on July 23, 2019, the Board **granted** the request and now the petition is before the Board for a new public hearing.

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.

Case #8-4

Petition of **Seacoast Veterans Properties, LLC** for property located at **41 Salem Street** to demolish existing structure and construct four townhouse residential units in two buildings wherein the following variance is required: a) from Section 10.521 to allow a lot area per dwelling unit of 2,726 s.f. where 3,500 s.f. is required. Said property is shown on Assessor Plan 144, Lot 31 and lies within the General Residence C District.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	2 Duplex structures	Primarily residential uses
<u>Lot area (sq. ft.):</u>	10,903	10,903	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,903	2,726	3,500 min.
<u>Street Frontage (ft.):</u>	98.87	98.87	70 min.
<u>Lot depth (ft.):</u>	112	112	50 min.
<u>Primary Front Yard:</u>	1.9'	13	5 min.
<u>Right Yard (ft.):</u>	70	11	10 min.
<u>Left Yard (ft.):</u>	<1	11	10 min.
<u>Rear Yard (ft.):</u>	58	20.8	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Cov. (%):</u>	10	35	35 max.
<u>Open Space (%):</u>	83	49	20 min.
<u>Parking</u>	2	8	6
<u>Estimated Age of Structure:</u>	1870	Variance request shown in red.	

Other Permits/Approvals Required

Planning Board/TAC – Site Review

Neighborhood Context



Previous Board of Adjustment Actions

August 20, 2019 – The Board **postponed** the petition to the September 17, 2019 meeting at the request of the applicant (5 sitting members).

Planning Department Comments

The applicant is proposing to demolish the existing structure and build two duplex structures on the lot. The property is located in the GRC where 4 dwelling units are allowed by right. More than one free-standing dwelling is also allowed in the GRC. The lot area per dwelling unit is 3,500 s.f. and four dwelling units on this property would result in 2,726 s.f. per unit. A surveyed plan was provided with the application, so there should be no discrepancies with the square footage of the lot. If granted approval, this will go through the site review and approval process with TAC and Planning Board.

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.

Case #8-12

Petition of **Hill Hanover Group LLC** for property located at **0 Hanover Street (aka 181 Hill Street)** for construction of a six story 60' hotel with interior parking wherein the following variances are required: a) from Section 10.5A43.31 and Section 10.5A46.10 to allow a six-story 60-foot tall building where a five-story, 60-foot tall building is permitted; b) from Section 10.1114.21 to allow 54 valet-only parking spaces using a two-car lift system where 10 spaces do not meet the parking depth requirements; and c) from Section 10.1114.32(a) to permit a valet-only lift system which requires passing over another parking space or moving another vehicle where both requirements are prohibited. Said property is shown on Assessor Plan 138, Lot 62 and lies within Character District 5.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant	120 Room Hotel	Mixed use
<u>Lot area (sq. ft.):</u>	22,538	22,538	NR min.
<u>Max front yard:</u>	NA	16*	5 max.
<u>Side Yard (ft.):</u>	NA	>5	NR min.
<u>Rear Yard (ft.):</u>	NA	16	10 min.
<u>Height (ft.):</u>	NA	6-story , 60' building	2-4 stories, 50 ft. max. Plus 1 story up to 10' w/ Incentive
<u>Building Coverage (%):</u>	0	65	95 max.
<u>Open Space Coverage (%):</u>	100	6	5 min.
<u>Parking:</u>	NA	86	86
		Variance shown in red. *Providing 16' sidewalk per height incentive.	

Other Permits/Approvals Required

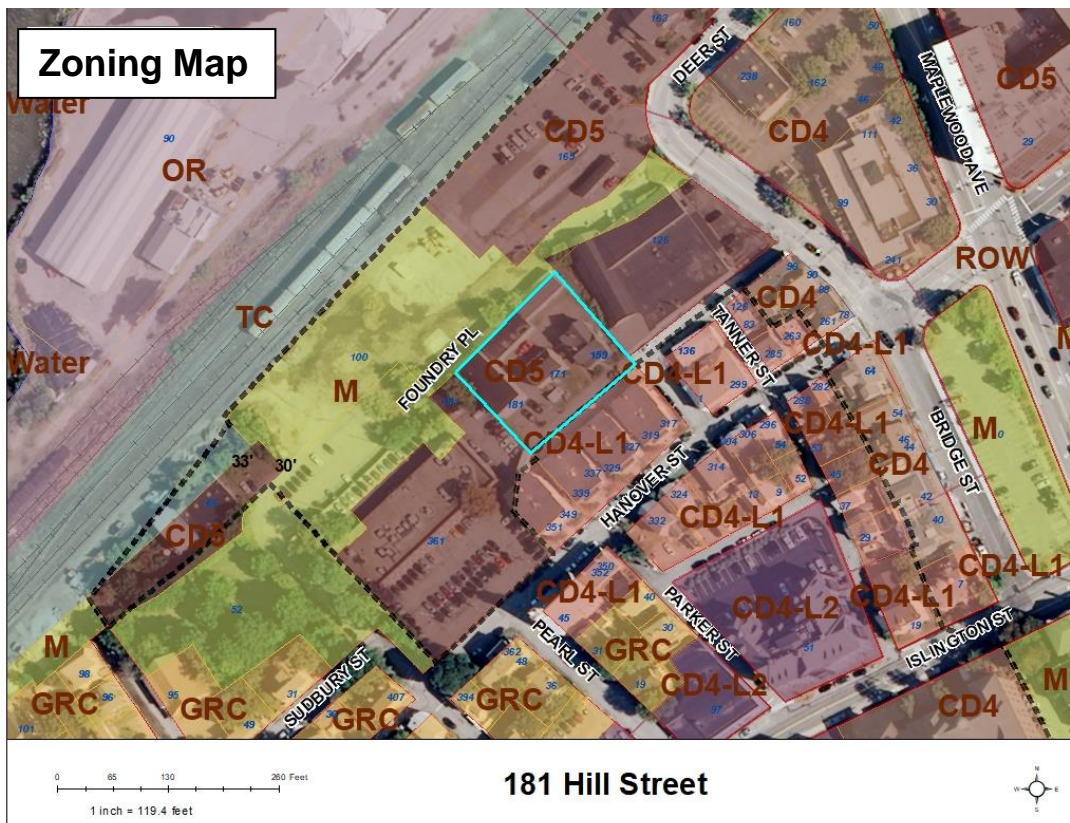
Planning Board/TAC – Site Review

Neighborhood Context

Street Map



Zoning Map



Previous Board of Adjustment Actions

June 15, 1993 (as 181 Hill Street) – The Board **granted** a variance to allow the conversion of 2100 s.f. of office space into a one bedroom apartment with adjacent carpentry workshop.

August 27, 2019 – The Board voted to **table** the application for further discussion.

Planning Department Comments

The subject property is Lot 6 of the Deer Street development and was originally approved in 2017 as a 62 ft. four-story mixed-use building. Although structures are shown in the images above, the property is currently vacant. The applicant is now proposing a hotel instead of the previously approved mixed-use building and is seeking relief to allow a six-story, 60 ft. tall building. The property is located in the North-End Incentive District (NEID) which allows an additional story up to 10 feet. The height area for this property is 2-4 stories up to 50 feet. In order to receive the increased height in the NEID, the applicant must provide a wide sidewalk in front of the facade that must be at least 10 feet in width with an additional 2 feet per story above three feet. Since the proposal is for a six-story building, the sidewalk must be 16 feet wide.

The applicant has stated the need for the additional story is to provide above ground parking due to the inability to provide underground parking because of groundwater levels and existing ledge. All of the interior parking will be valet only and will utilize a lift system for 54 spaces, 10 of which do not meet the depth requirements of the ordinance. The lift system will require vehicles to pass over another parking space or will require vehicles to be moved in order to leave the space, which is not permitted.

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.

NEW BUSINESS

Case #9-1

Petition of **56 Middle Street LLC** for property located at **56 Middle Street** wherein relief is required from the Zoning Ordinance to convert to a duplex including the following variance: a) from Section 10.5A41, Figure 10.541A and Section 10.5A43.60 & Figure 10.5A43.60 to allow a duplex in the Downtown Overlay District where it is not permitted. Said property is shown on Assessor Plan 126, Lot 19 and lies within the Character District 4-Limited and the Downtown Overlay District.

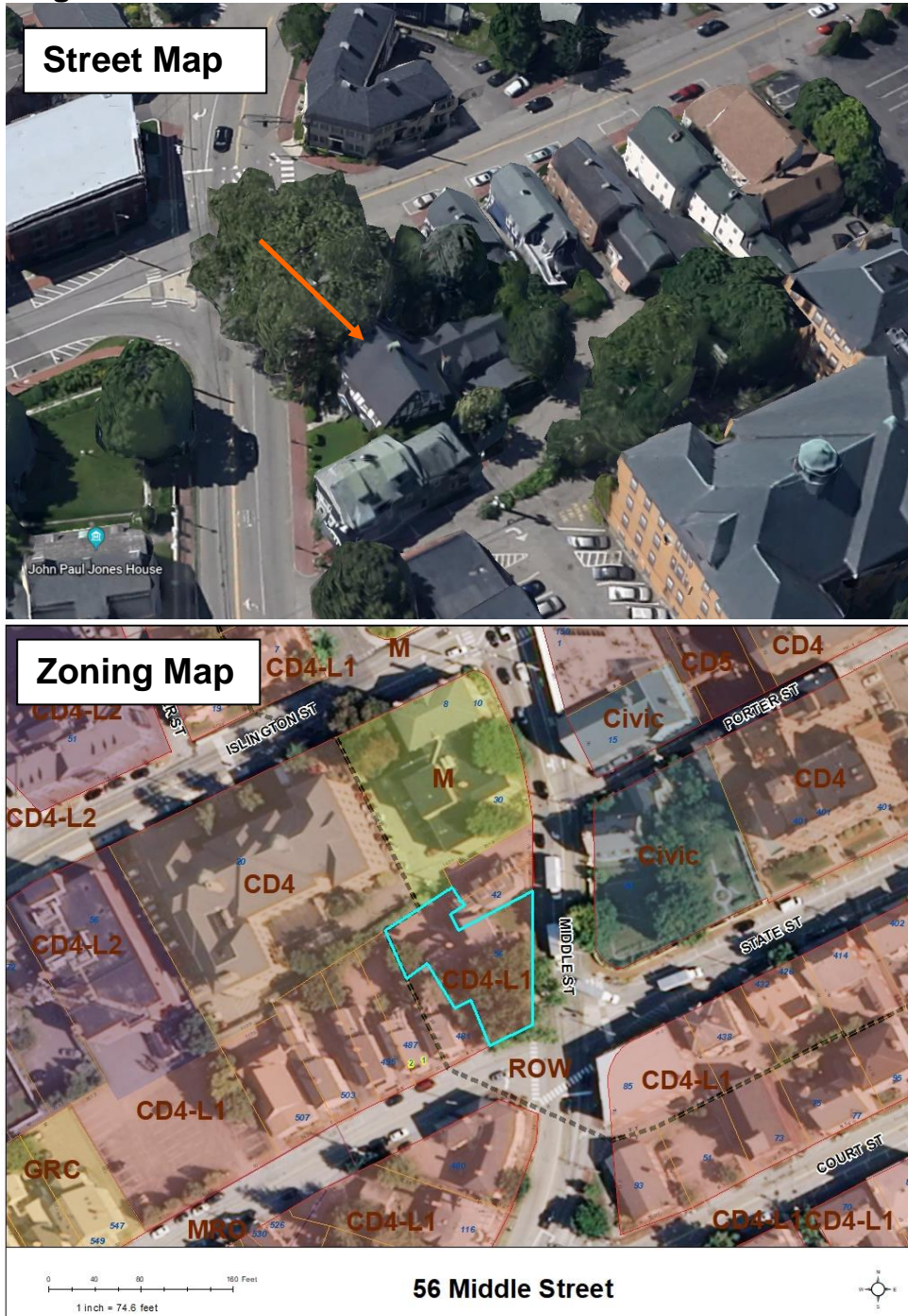
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	office	duplex	Primarily mixed uses
<u>Lot area (sq. ft.):</u>	10,266	10,266	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,266	5,133	3,000 min.
<u>Max Block Length:</u>	52	52	80 max.
<u>Front Yard (ft.):</u>	14	14	15 max.
<u>Right Side Yard (ft.):</u>	34	26.7	5 ft. – 20 ft. max
<u>Rear Yard (ft.):</u>	1.7'	1.7'	Greater of 5 ft. from rear or 10 ft. from alley
<u>Height (ft.):</u>	<40	<40	40 max.
<u>Building Footprint:</u>	2,281	2,483	2,500 max.
<u>Building Cov. (%):</u>	22	26	60 max.
<u>Open Space Coverage (%):</u>	36.5	39	25 min.
<u>Ground story height</u>	10.5	12 -13 (addition)	11
<u>Parking</u>	4	2	0**
<u>Estimated Age of Structure:</u>	1910	Variance request shown in red. **DOD allows credit of 4 parking spaces. 10.1115.23	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

August 31, 1965 – The Board granted a variance to use the premises for professional offices with the present dental office to remain unchanged.

December 18, 2018 – The Board granted variances to allow the following to restore property to a single family home: a) a residential principal use on the found floor of a

building; b) a 1.7' rear yard where 5' was required; and c) the reconstruction of a lawful nonconforming structure.

May 21, 2019 – A request to convert the property to a residential duplex and replace the existing addition with a two-story addition/garage was **postponed** to the June meeting.

June 18, 2019 – The above petition, as amended to request relief solely to allow a duplex was tabled to the July meeting.

July 16, 2019 – The Board **denied** the above petition which had been **amended** by withdrawing the request for a rear addition.

August 27, 2019 - The Board **granted** a rehearing with regard to the above amended petition and decision.

Planning Department Comments

In December of 2018, this applicant was granted variances listed above for a rear yard and to allow residential use on the ground floor. The CD4-L1 allows duplexes, however since this property is in the Downtown Overlay District, a duplex is not permitted.

Since the property is located in the DOD, they can receive a credit of 4 parking spaces per Section 10.1115.23 as outlined below:

*For any **lot**, the number of **off-street parking** spaces that would be required by applying the ratios in Section 10.1115.21 shall be reduced by 4 spaces. (Therefore, any **lot** that would be required to provide 4 or fewer **off-street parking** spaces shall not be required to provide any spaces.)*

From the materials submitted in the request for rehearing, it appears the applicant and the abutters have come to an agreement to resolve the parking issues that were brought before the Board at previous meetings, as documented in the information provided by the applicant.

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.

Case #9-2

Petition of **Lindsay J. Gee and Erin Heffron** for property located at **978 South Street** wherein relief is required from the Zoning Ordinance to reconstruct entryways for both units including the following variances: a) from Section 10.521 to allow a 0.5' secondary front yard where 30' is required; b) from Section 10.521 to allow 34.5% building coverage where 20% is the maximum allowed; and c) from Section 10.321 to allow a lawful nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the ordinance. Said property is shown on Assessor Plan 150, Lot 8 and lies within the Single Residence B District.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Reconstruct entryways	Primarily single family
<u>Lot area (sq. ft.):</u>	6,182	6,182	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,091	3,091	15,000 min.
<u>Street Frontage (ft.):</u>	76	76	100 min.
<u>Lot depth (ft.):</u>	146	146	100 min.
<u>Primary Front Yard (ft.):</u>	5	5	30 min.
<u>Right Yard (ft.):</u>	9.9	10 (new entry)	10 min.
<u>Secondary Front Yard (ft.):</u>	0	.5'	30 min.
<u>Rear Yard (ft.):</u>	75	75	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	34	34.5	20 max.
<u>Open Space Coverage (%):</u>	66	65	40 min.
<u>Parking</u>	2	0	1.3
<u>Estimated Age of Structure:</u>	1910	Variance requests shown in red.	

Other Permits/Approvals Required

No BOA history found.

Neighborhood Context



Previous Board of Adjustment Actions

August 26, 2008 – The Board **postponed** to September a request for a 7'10" ± x 13'9" ± shed with a 4'± left side yard setback where 10' was required and a 65'± setback to salt water marsh or mean high water line where 100' was required.

October 21, 2008 – The above petition was **amended** as follows and **postponed** to the November 18, 2008 meeting: The request for a variance for a 4'± left side yard setback was removed and a request for a 5'± front setback where 15' was required was added.

Planning Department Comments

The applicant is proposing to reconstruct the entryways to both units on this property. One unit will not encroach into the right side yard, but will impact the building coverage. The reconstruction on the left side of the house will decrease the nonconforming situation, where the entry is currently over the property line, the proposal is to reorient the door and entry so it faces more towards the rear and will result in a setback of approximately 0.5 feet. The applicant had indicated a 0.7 feet request and 34.3% building coverage. The legal notice advertised 0.5 feet and 34.5% coverage to allow a margin of error if granted approval.

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.