

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: November 12, 2020
RE: Zoning Board of Adjustment November 17, 2020 Meeting

NEW BUSINESS

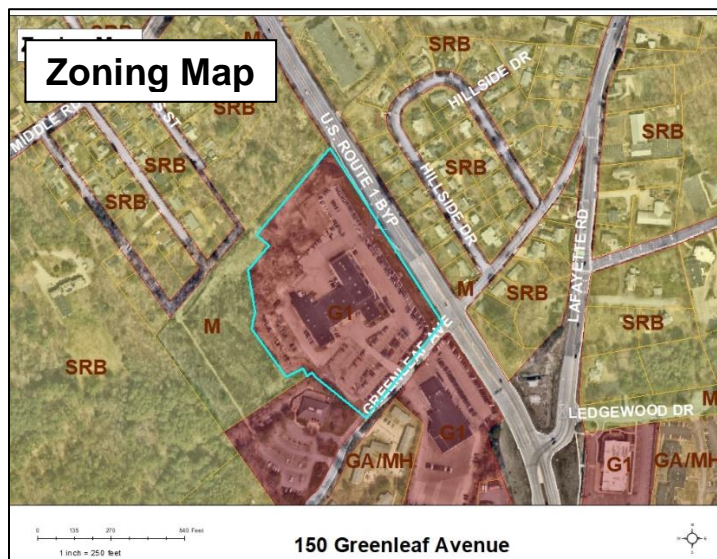
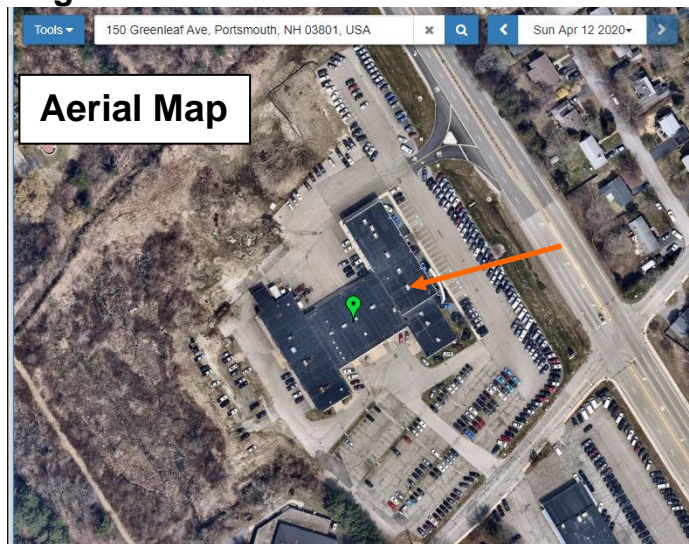
1. 150 Greenleaf Avenue - Appeal REQUEST TO POSTPONE
2. 27 Elwyn Avenue
3. 1465 Woodbury Avenue
4. 239 Northwest Street
5. 30 Spring Street
6. 95 Dodge Street
7. 501 Islington Street
8. 137 Northwest Street
9. 145 Maplewood Avenue

NEW BUSINESS

1.

Petition of **150 Greenleaf Avenue Realty Trust, Owner**, for property located at **150 Greenleaf Avenue** for Appeal of an Administrative Decision that the following are required: 1) A Variance from Section 10-208 Table 4 - Uses in Business Districts (2009 Ordinance, Section 10.592.20 in current Ordinance) that requires a 200 foot setback from any adjoining Residential or Mixed Residential district for motor vehicle sales. 2) A Variance from Section 10-1201, Off-Street Parking (2009 Ordinance, Section 10.1113.30 in current Ordinance) that requires a 100 foot setback for business parking areas from any adjoining Residential or Mixed Residential district. 3) A Wetland Conditional Use Permit for development within the Inland Wetlands Protection District. Said property is shown on Assessor Map 243 Lot 67 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

Neighborhood Context



2.

Petition of **SAI Builders, LLC, Owner**, for property located at **27 Elwyn Avenue** wherein relief is needed from the Zoning Ordinance to install two AC units which requires the following: 1) A Variance from Section 10.521 to allow a 5.5 foot right side yard where 10 feet is required. Said property is shown on Assessor Map 113 Lot 28-1 and lies within the General Residence A (GRA) District.

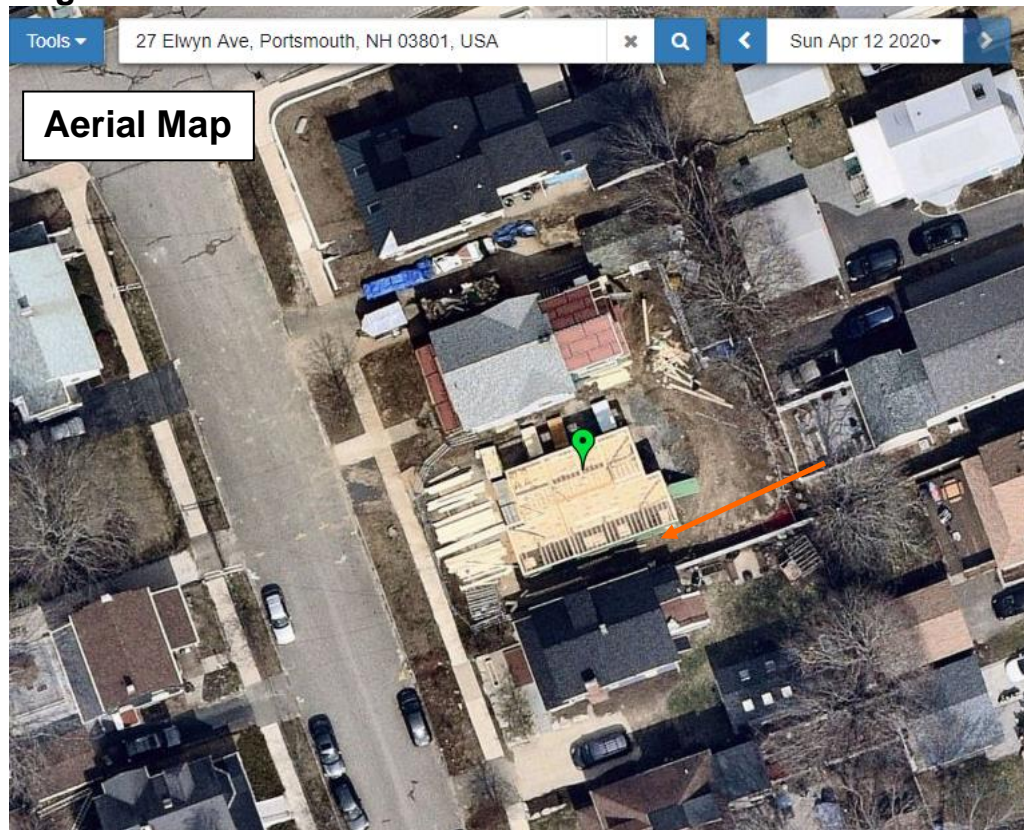
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant lot	Single-family dwelling	Primarily residential uses
<u>Lot area (sq. ft.):</u>	4,996	4,996	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,996	4,996	7,500 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.):</u>	99	99	70 min.
<u>Front Yard (ft.):</u>	15	15	15 min.
<u>Right Yard (ft.):</u>	10.5	5.5	10 min.
<u>Left Yard (ft.):</u>	11.5	11.5	10 min.
<u>Rear Yard (ft.):</u>	>20	>20	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	24	24	25 max.
<u>Open Space Coverage (%):</u>	64	64	30 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	2020	Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

September 24, 2019 – The Board granted the following variances for a new single family home:

- Section 10.521 to allow a lot area and lot area per dwelling unit of 4,996 square feet where 7,500 square feet is required for each.
- Section 10.521 to allow 50' of street frontage where 100' is the minimum required.

Planning Department Comments

The lot contains a recently constructed single family home. As shown in the history, this property was before the Board in 2019 for relief. The applicant is proposing to add two AC units on the right side that do not comply with the required 10 foot side yard requirement.

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.

3.

Petition of **Bromley Portsmouth, LLC, Owner**, for property located at **1465 Woodbury Avenue** wherein relief is need from the Zoning Ordinance to construct a standalone automated teller machine (ATM) which requires the following. 1) A Variance from Section 10.1530 to allow an automated teller machine (ATM) as defined in this section to be a principal freestanding structure and not located on the outside of a building, or in an access-controlled entrance to a building, or within a principal use in a building. Said property is shown on Assessor Map 216 Lot 3 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

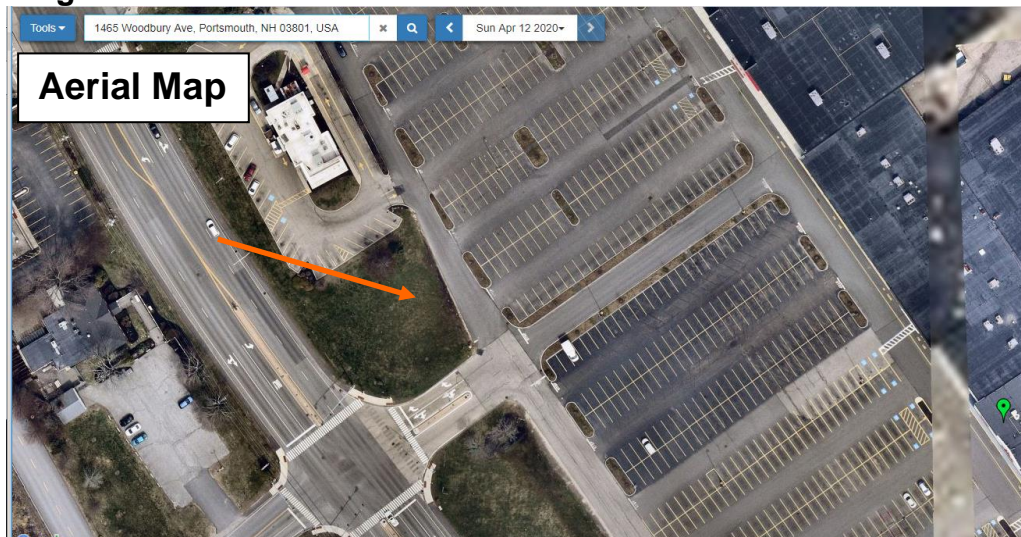
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial retail	Standalone ATM Machine	Primarily mixed uses
		Variance request shown in red.	

Other Permits/Approvals Required

Planning Board/TAC – Site Review

Neighborhood Context





Previous Board of Adjustment Actions

August 21, 2018 – The Board granted a variance from Section 10.1251.20 to allow 252 square feet of wall signage where 200 square feet is the maximum allowed.

Planning Department Comments

The applicant is proposing to construct a free standing walk-up ATM on the subject lot. The definition in the Ordinance is below:

Automated teller machine (ATM)

An unattended electronic device that is activated by customers to conduct financial transactions. An **ATM** may be located on the outside of a **building**, or in an access-controlled entrance to a **building**, or within a principal **use** in a **building**, and may serve pedestrians or patrons in motor vehicles. An **ATM** servicing patrons in motor vehicles must meet the standards for **drive-through establishments** provided in this Ordinance. An **ATM** is permitted only as an **accessory use** to a related **principal use**, and is not permitted as a **principal use** or in a freestanding **structure** not attached to a **principal use**.

As defined, the use is only allowed as an accessory use to a principal use. The proposal is for the freestanding ATM to be a principal use and not “located on the outside of a building, or in an access-controlled entrance to a building or within a principal use in a building” as per the definition above. The applicant has had one work session with TAC and will provide revised drawings that rotate the parking 90 degrees from the originally submitted plans.

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.*
- Planning Department Comments* 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.

4.

Petition of **Michael Petrin, Owner**, for property located at **239 Northwest Street** wherein relief is needed from the Zoning Ordinance to demolish a rear addition and construct a new two-story rear addition which requires the following: 1) Variances from Section 10.521 to allow: a) 1.5 foot rear yard where 20 feet is required; b) 48% building coverage where 25% is the maximum allowed; and c) 28% open space where 30% is the minimum required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 122 Lot 3 and lies within the General Residence A (GRA) District.

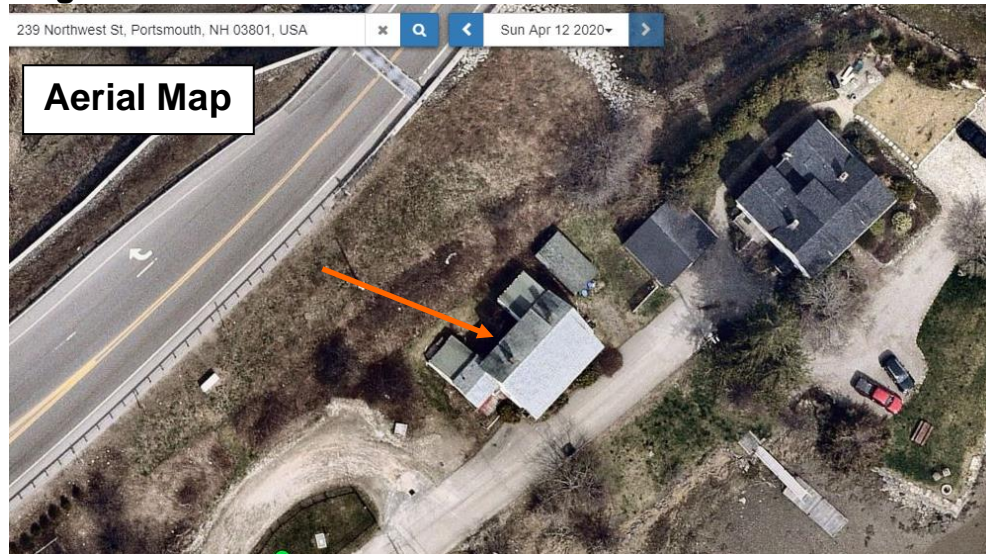
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Construct rear addition	Primarily residential uses
<u>Lot area (sq. ft.):</u>	3,722	3,722	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,722	3,722	7,500 min.
<u>Street Frontage (ft.):</u>	85	85	100 min.
<u>Lot depth (ft.):</u>	63	63	70 min.
<u>Front Yard (ft.):</u>	0	0	15 min.
<u>Right Yard (ft.):</u>	29	29	10 min.
<u>Left Yard (ft.):</u>	8.5'	8.5'	10 min.
<u>Rear Yard (ft.):</u>	0	1.5'	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	44	48	25 max.
<u>Open Space Coverage (%):</u>	~40	28	30 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1830	Variance request shown in red.	

Other Permits/Approvals Required

Conservation Commission/Planning Board – Wetland CUP
Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing to demolish a rear addition and construct a two-story rear addition on the existing dwelling. The existing dwelling occupies most of the lot and appears to extend over the rear lot line. As the applicant's representative indicates in the narrative, a portion of the rear lot was taken in 1939 for the Route 1 Bypass. The

entire lot is within the 100 foot wetland buffer, requiring a Wetland conditional use permit. In addition, the property is located within the Historic District, requiring HDC approval for this project.

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.*
- Planning Department Comments* 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.

5.

Petition of **Jessica Kaiser and John Andrew McMahon, Owners**, for property located at **30 Spring Street** wherein relief is needed from the Zoning Ordinance to construct covered front porch and add dormers to existing dwelling which requires the following: 1) Variances from Section 10.521 to allow a) 28.5% building coverage where 25% is the maximum allowed; b) a 0 foot front yard where 15 feet is required; and c) a 0 foot side yard where 10 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 130 Lot 13 and lies within the General Residence A (GRA) District.

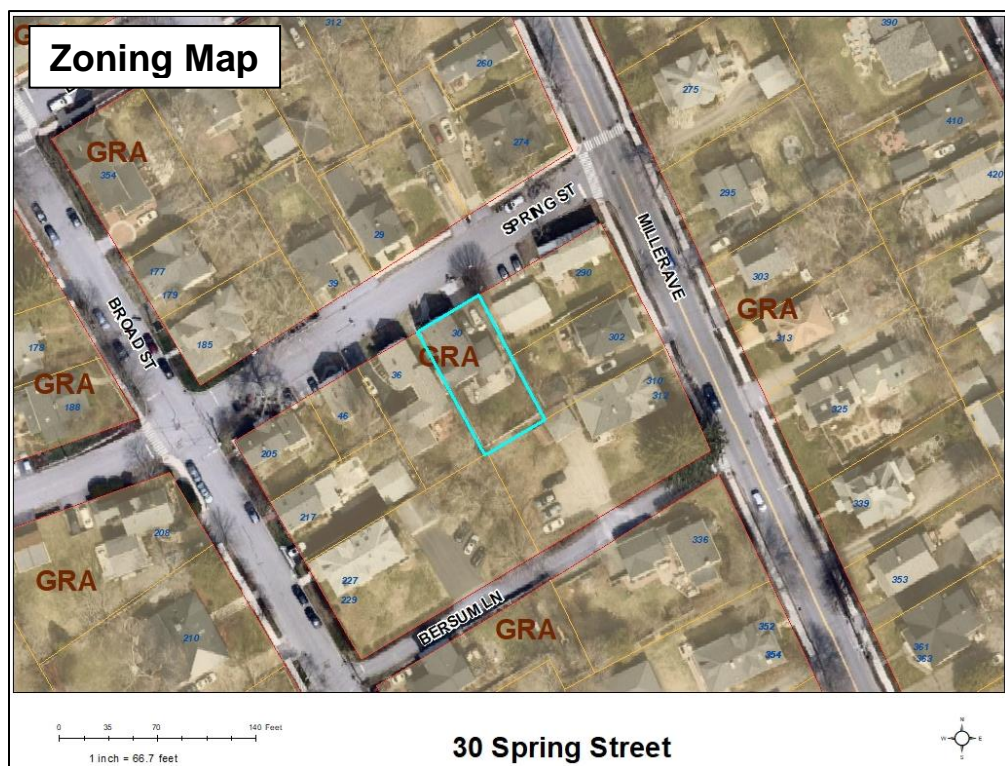
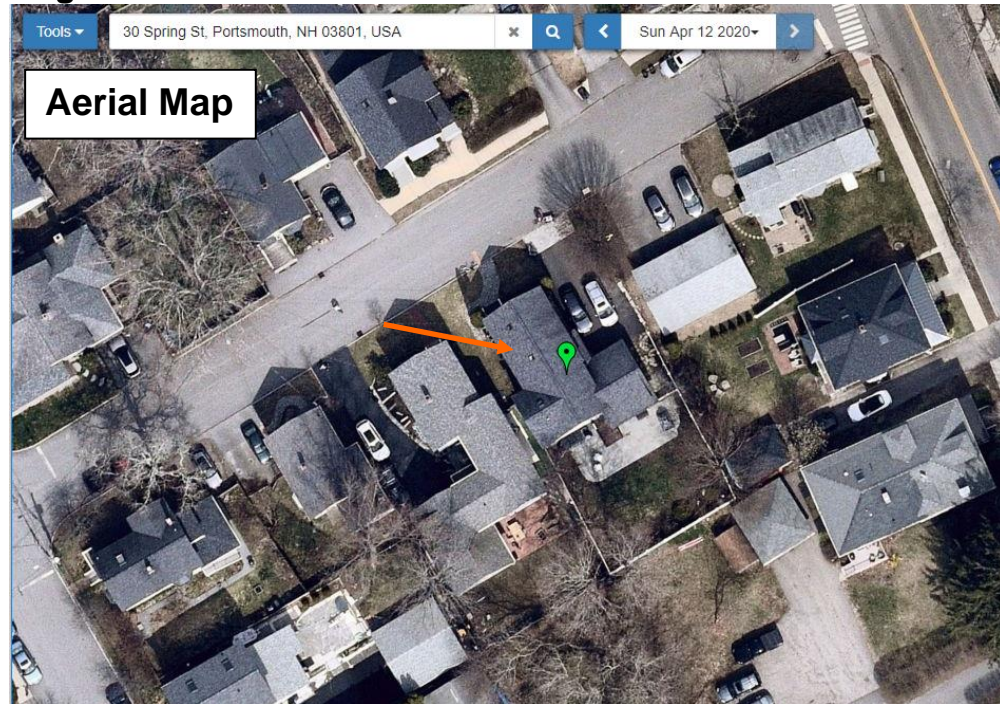
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Add dormers and new covered porch	Primarily residential uses
<u>Lot area (sq. ft.):</u>	4,953	4,953	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,953	4,953	7,500 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.):</u>	100	100	70 min.
<u>Front Yard (ft.):</u>	4.1'*	0 (5" per application)	15 min.
<u>Right Yard (ft.):</u>	0.4'	0 (3" per application)	10 min.
<u>Left Yard (ft.):</u>	7'4"*	7'4"	10 min.
<u>Rear Yard (ft.):</u>	40+	40+	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	27 (30.4*)	28.5 (requested) 29 (actual)	25 max.
<u>Open Space Coverage (%):</u>			30 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1900	Variance request shown in red. * Variances granted in 2003	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

December 16, 2003 – The Board granted variances from Article III, Section 10-302(A) and Article IV, Section 10-40(A)(2)(c) to allow the following:

A 2' x 8' bay window to the front with a 4'1" front yard setback where 15' is the minimum required. An 18' x 22' 1 ½ story garage with second floor living space having a 7'4" left side yard where 10' is the minimum required. A 6' x 12' deck creating 30.4% building coverage where 25% is the maximum allowed.

Planning Department Comments

The applicant is proposing to add dormers on the existing dwelling and a covered front porch. The application requests a 3 inch right yard and a 5" front yard. The legal notice indicated a 0 foot side and front to account for any discrepancies. The deck that was approved in 2003 was not constructed, reducing the current coverage to 27%. The addition of the porch actually increases the coverage to almost 29% and the legal notice indicated 28.5%.

If granted approval, staff would recommend the Board consider a stipulation that allows for 29% building coverage.

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.

6.

Petition of **Thomas Murphy, Owner**, for property located at **95 Dodge Street** wherein relief is needed from the Zoning Ordinance to demolish existing home and construct a new home with an attached accessory dwelling unit which requires the following: 1) A Variance from Section 10.1114.30 to allow two driveways where only one per lot is permitted. Said property is shown on Assessor Map 258 Lot 39 and lies within the Single Residence B (SRB) District.

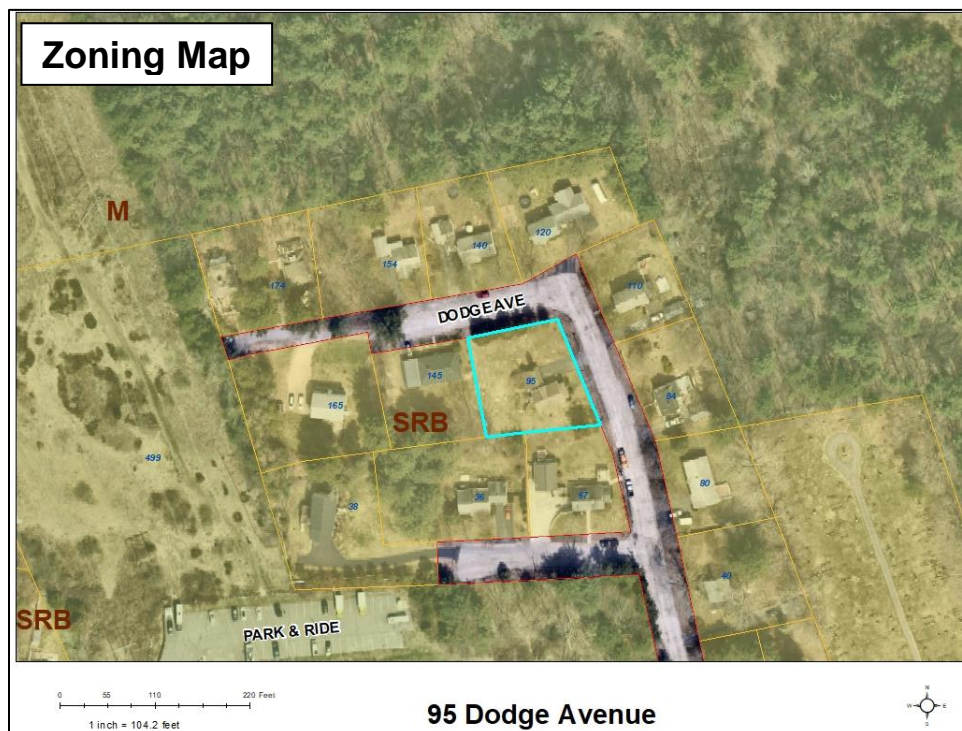
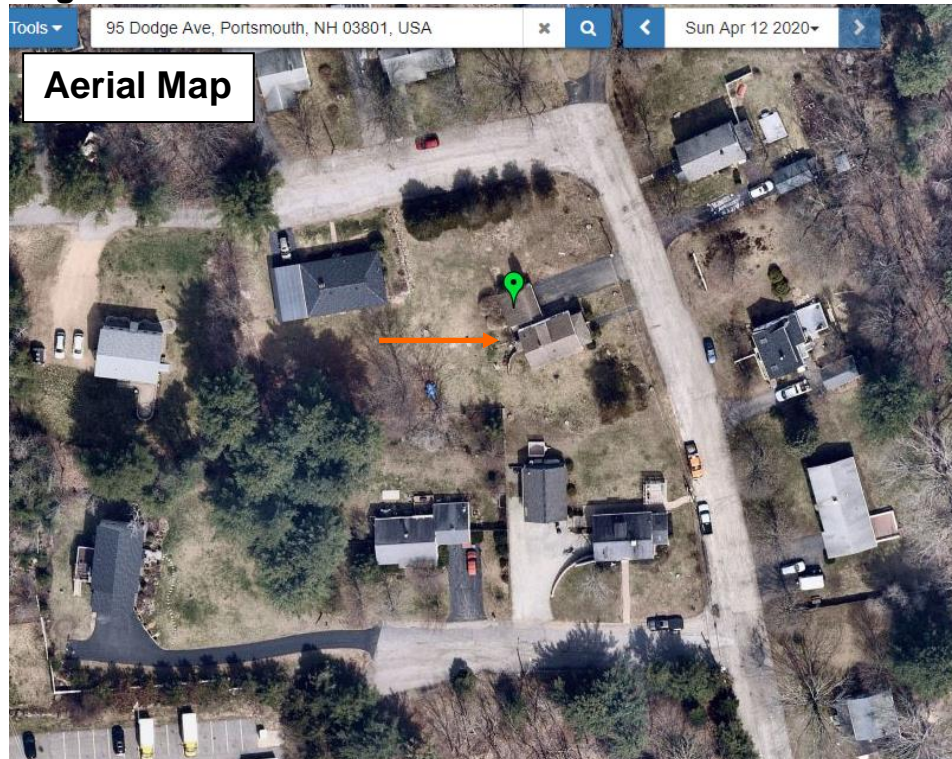
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Demo existing; construct new SFD with AADU	Primarily Single Family
<u>Lot area (sq. ft.):</u>	15,138	15,138	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	15,138	15,138	15,000 min.
<u>Street Frontage (ft.):</u>	241	241	100 min.
<u>Lot depth (ft.):</u>	120	120	100 min.
<u>Primary Front Yard (ft.):</u>	19	19*	30 min.
<u>Left Yard (ft.):</u>	22	11	10 min.
<u>Rear Yard (ft.):</u>	53	31	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	9	19	20 max.
<u>Open Space Coverage (%):</u>	84.5	52	40 min.
<u>Parking</u>	4+	4+ Second driveway	3
<u>Estimated Age of Structure:</u>	1935	Variance request shown in red. * Per 10.516.10 Front Yard Alignment	

Other Permits/Approvals Required

Planning Board – CUP for Attached Accessory Dwelling Unit

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing to demolish the existing structure and construct a new single family dwelling with an attached accessory dwelling unit. The lot is conforming and the new house will comply with the dimensional requirements in the SRB district. However, the applicant is proposing two driveways, where one is permitted per lot, thus the need for a variance. The applicant is seeking a conditional use permit from the Planning Board for the accessory dwelling unit.

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.

7.

Petition of **Summit 501 Islington, LLC, Owner**, for property located at **501 Islington Street** wherein relief is needed from the Zoning Ordinance for a 900 square foot expansion of an existing medical office in an existing building which requires the following: 1) A Special Exception from Section 10.440 Use #6.20 to allow a medical office where the use is allowed by special exception. Said property is shown on Assessor Map 157 Lot 6 and lies within the Character District 4-L2 (CD4-L2) District.

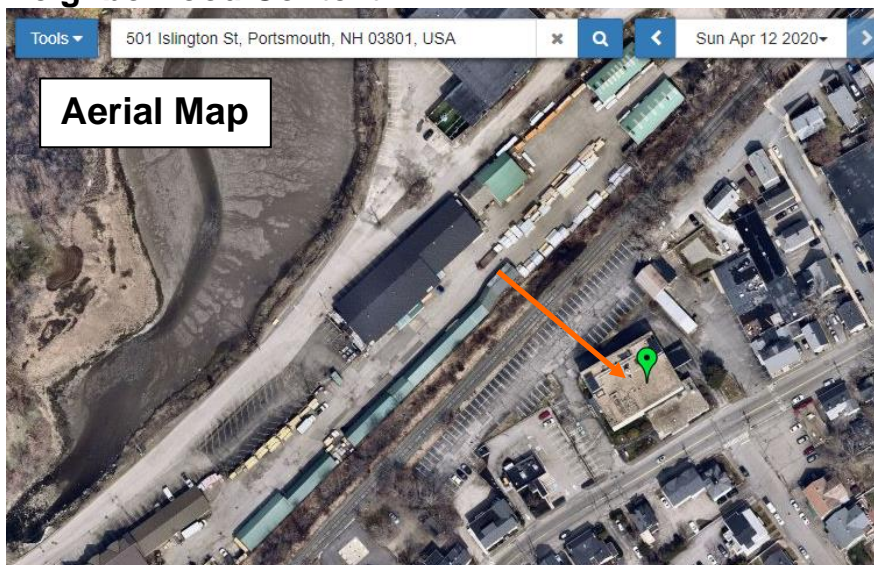
Existing & Proposed Conditions

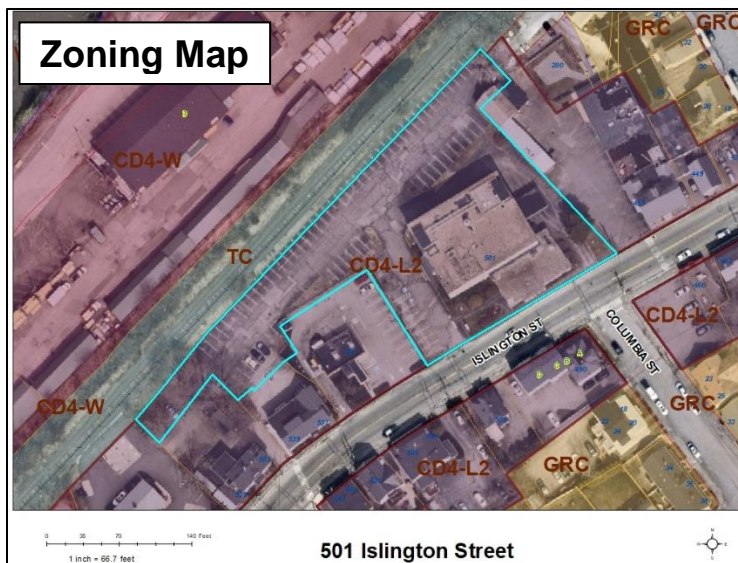
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Medical office	Medical office	Primarily Mixed Uses
<u>Parking</u>	84	84	67 min.
		Special Exception request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context





Previous Board of Adjustment Actions

April 22, 2014 – The Board granted a variance from Section 10.1253.10 to allow a front yard setback of 10' where 20' is the minimum required.

Planning Department Comments

The proposal is to expand the existing medical office use into an adjacent 900 square foot office in the existing building. When the current use was established in 2014, it was permitted by right. Since then, the zoning changed to CD4-L1 and a medical office requires a special exception. A lawful nonconforming use may not be extended unless it will conform to the requirements of the Ordinance, thus the need for a Special Exception to extend the use into the adjacent space. The 900 square foot space formerly was a professional office. The change to a medical office will increase the parking requirement by 1 space. The applicant has indicated there are 84 spaces onsite and the parking requirement with the proposed expansion would be 67 spaces.

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*

8.

Petition of **Gregory & Amanda Morneault, Owners**, for property located at **137 Northwest Street** wherein relief is needed from the Zoning Ordinance to subdivide one lot into two lots and construct a new two family dwelling which requires the following: 1) Variances from Section 10.521 to allow: a) a lot depth of 44.7 feet for Lot 1 and 23.4 feet for Lot 2 where 70 feet is required for each; b) a lot area per dwelling unit of 5,317 square feet for proposed Lot 2 where 7,500 square feet per dwelling is required; c) a 2.5 foot front yard for proposed Lot 2 where 15 feet is required; and d) a 4 foot rear yard for proposed Lot 2 where 20 feet is required. Said property is shown on Assessor Map 122 Lot 2 and lies within the General Residence A (GRA) District.

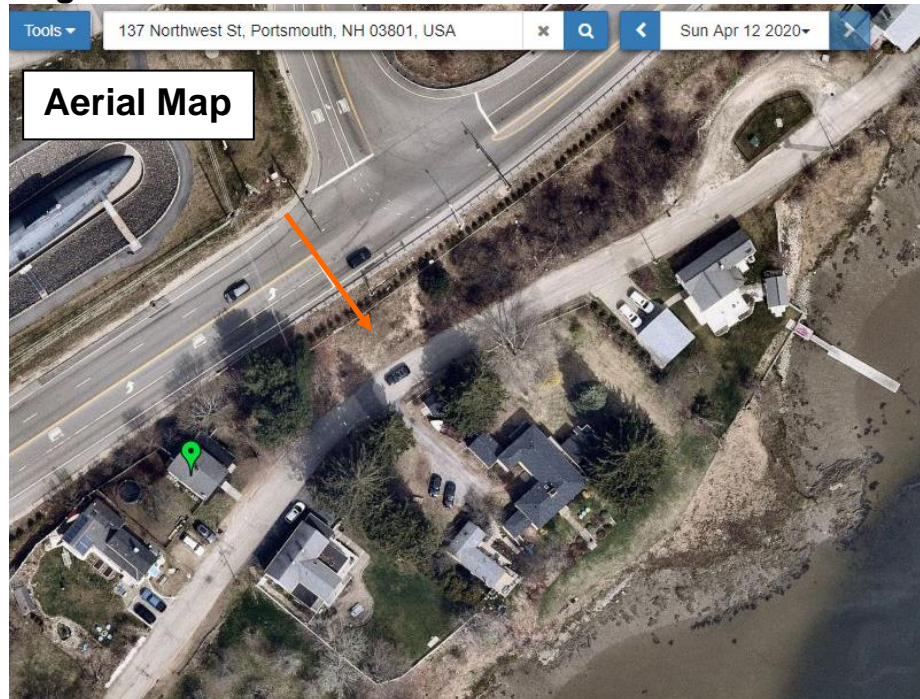
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>		<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Two lots w/ two family on new lot		Primarily residential uses
<u>Lot area (sq. ft.):</u>	18,134	Lot 1 7,500	Lot 2 10,634	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	18,134	7,500	5,317	7,500 min.
<u>Street Frontage (ft.):</u>	536	179	357	100 min.
<u>Lot depth (ft.):</u>	51.1	44.7	23.4	70 min.
<u>Front Yard (ft.):</u>	13.8	13.8	2.5'	15 min.
<u>Right Yard (ft.):</u>	>200	>10	109	10 min.
<u>Left Yard (ft.):</u>	26	26	130	10 min.
<u>Rear Yard (ft.):</u>	1.8	1.8	4	20 min.
<u>Height (ft.):</u>	<35	<35	<35	35 max.
<u>Building Coverage (%):</u>	<25	14	21	25 max.
<u>Open Space Coverage (%):</u>	>30	83	70	30 min.
<u>Parking</u>	2	2	4	1.3 (lot 1)/ 3 (lot 2)
<u>Estimated Age of Structure:</u>	1850	Variance request shown in red.		

Other Permits/Approvals Required

Planning Board/TAC – Subdivision/Site Review
HDC

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing to subdivide the subject lot into two lots, with the existing dwelling remaining on Lot 1 and a proposed two family dwelling on Lot 2. The existing lot depth is nonconforming, thus the need for a variance for each lot for lot depth. In addition, the new two family needs relief from the front and rear yard requirements. This will require HDC approval as well as site plan review through Planning Board and TAC.

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.

9.

Petition of **111 Maplewood Avenue, LLC, Owner**, for property located at **145 Maplewood Avenue** wherein relief is needed from the Zoning Ordinance for signage for new building which requires the following: 1) A Variance from Section 10.1251.20 to allow a 57 square foot freestanding sign where 20 square feet is the maximum allowed. 2) A Variance from Section 10.1242 to allow wall signs above the ground floor on all sides of the building. 3) A Variance from Section 10.1242 to allow wall signs above the ground floor on a side of a building not facing a street. 3) A Variance from Section 10.1144.63 to allow illuminated signs above 25 feet from grade. Said property is shown on Assessor Map 124 Lot 8-1 and lies within the Character District 5 (CD5) District.

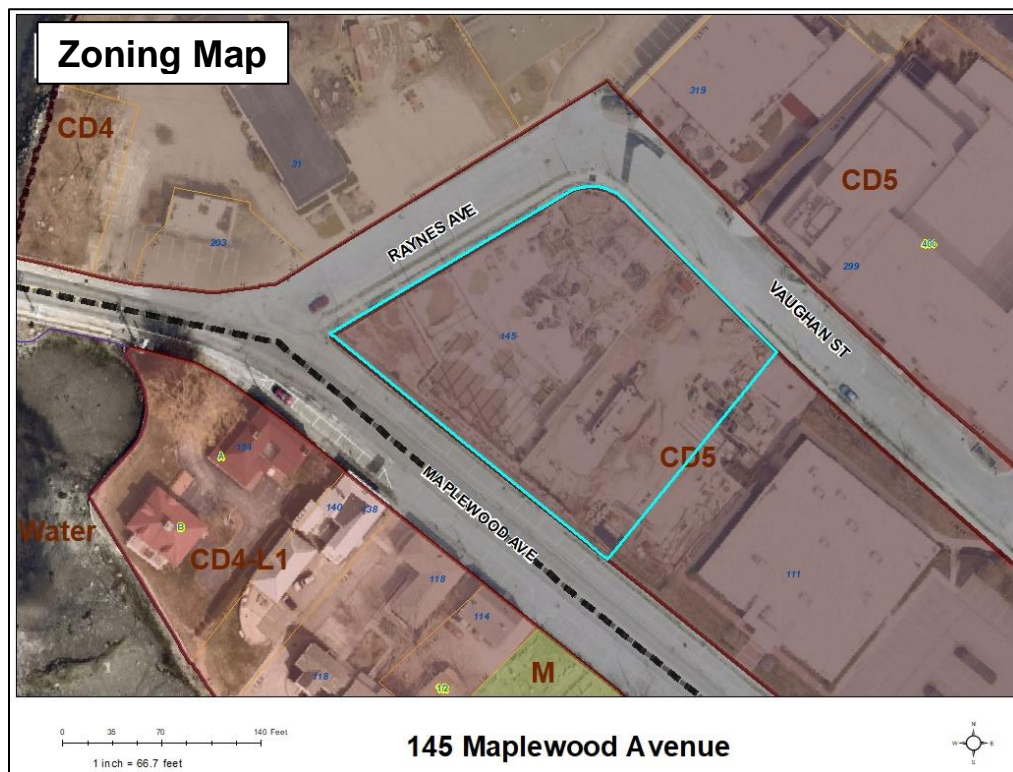
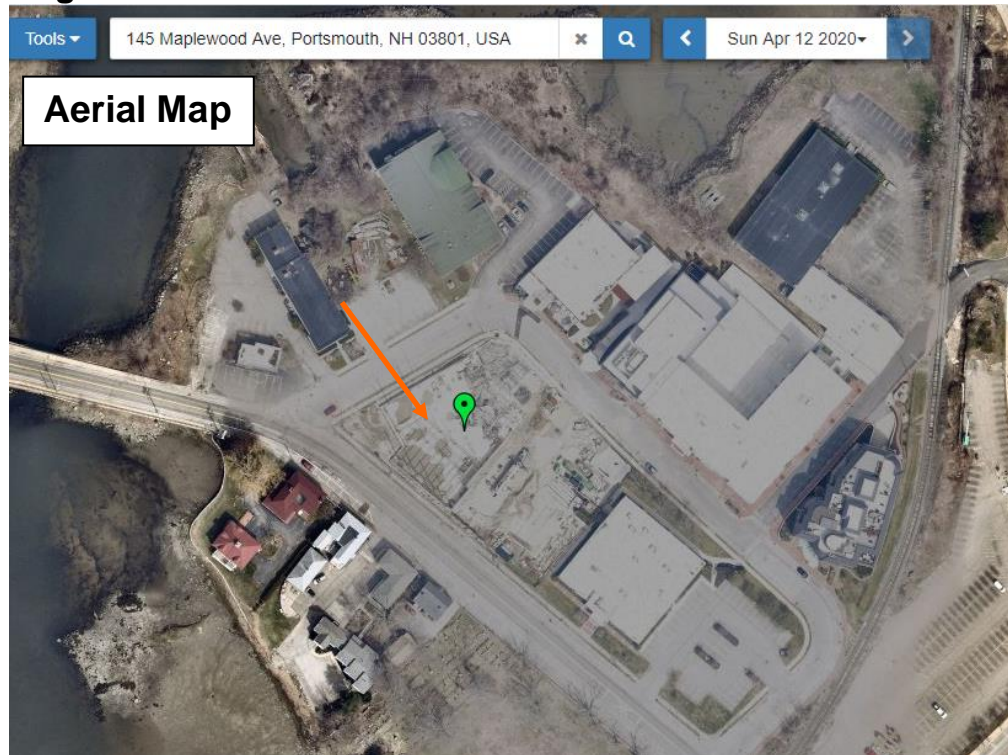
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	New commercial building	Signage for new building	Primarily mixed use
<u>Free standing sign (sq. ft.):</u>	NA	57	20 max.
<u>Wall Sign Location:</u>	NA	5 signs and 31 decorative lights above ground floor	One wall sign permitted above ground floor
<u>Illuminated Sign height (ft.):</u>	NA	>25	20 max.
			Variance requests shown in red.

Other Permits/Approvals Required

HDC

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The new building at this site is currently under construction and the applicant is seeking approval for signage for the building and for future tenants. Per Section 10.1242, a building may have one wall sign above the ground floor that faces a street. The Ordinance considers decorative lighting, including accent lighting, as signage and the applicant is proposing 31 decorative lights in addition to the 5 wall signs above the ground floor and on all sides of the building, including one side that does not face a street. Per Section 10.1144.60, luminaires can be mounted up to 20 feet above grade if they comply with the lumen standards referenced in the section. Section 10.1144.63 states the following:

10.1144.63 **Luminaires** used primarily for **sign illumination** may be mounted at any height to a maximum of 25 feet, regardless of **lumen** rating.

The applicant states the luminaires will comply with the lumen requirements and questions the need for relief from the section above, however the section clearly states that the maximum height for luminaires is 25 feet, regardless of the lumen rating.

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.