

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: July 13, 2021
RE: Zoning Board of Adjustment July 20, 2021 Meeting

OLD BUSINESS

1. 105 Bartlett Street - Appeal
2. 39 Pickering Street
3. 650 Maplewood Avenue
4. 668 Middle Street
5. 428 US Route 1 Bypass
6. 960 Sagamore Avenue
7. 322 Islington Street

OLD BUSINESS

1.

Appeal of **Duncan MacCallum (Attorney for the Appellants)** of the April 15, 2021 decision of the Planning Board for property located at **105 Bartlett Street** which granted the following: a) a wetlands conditional use permit under Section 10.1017 of the Zoning Ordinance; b) a parking conditional use permit under Section 10.1112 of the Ordinance; c) site plan review approval; and d) approval of lot line revision. Said properties are shown on Assessor Map 157 Lot 1 and Lot 2 and Assessor Map 164 Lot 1 and 4-2 and lie within the Character District 4-W (CD4-W) and Character District 4-L1 (CD4-L1) Districts.

Please see attached documents related to this matter that include the appellant's argument, response from applicant's attorney, procedural memo from the legal department, most recent submittal by the applicant to the Planning Board, and supplemental documents from the appellant's attorney.

2.

Petition of **William H. and Barbara Ann Southworth, Owners**, for property located at **39 Pickering Street** whereas relief is needed from the Zoning Ordinance to replace existing 8' x 8' shed with a 10' x 12' shed which requires the following: 1) Variances from Section 10.521 to allow a) a 2' rear yard where 10' is required; b) a 2' right side yard where 10' is required; and c) 40.5% building coverage where 30% is the maximum allowed. 2) A 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 shown on Assessor Map 102 Lot 5 and lies within the General Residence B (GRB) District.

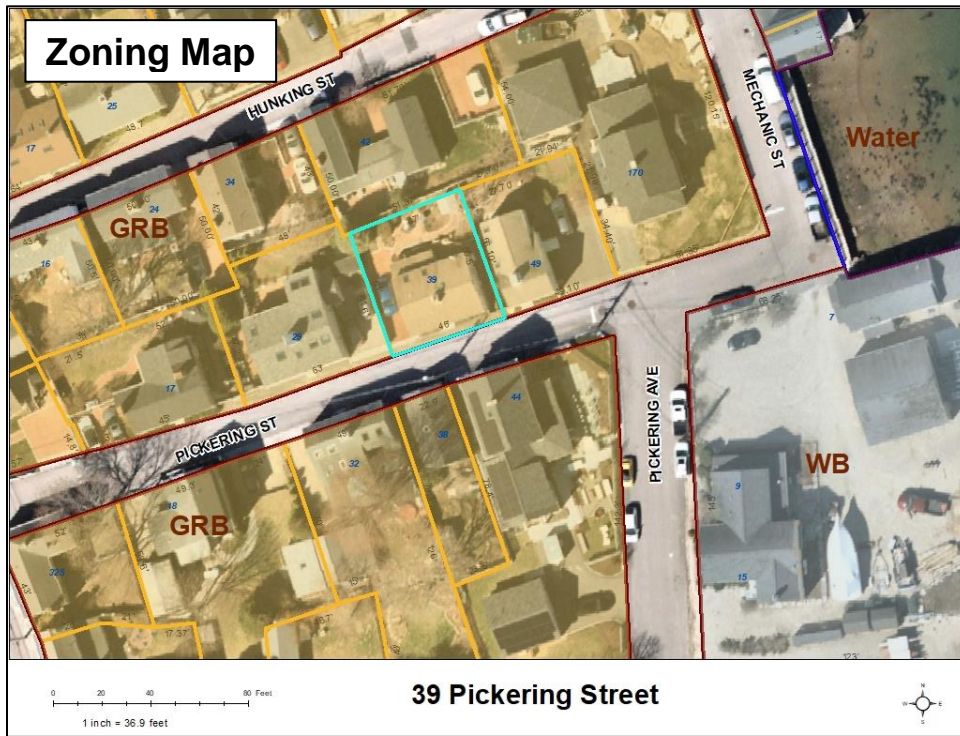
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Replace existing shed	Primarily residential uses
<u>Lot area (sq. ft.):</u>	2,476	2,476	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,476	2,476	5,000 min.
<u>Street Frontage (ft.):</u>	46	46	80 min.
<u>Lot depth (ft.):</u>	55	55	60 min.
<u>Front Yard (ft.):</u>	0	0	5 min.
<u>Right Yard (ft.):</u>	2	2	10 min.
<u>Left Yard (ft.):</u>	40	38	10 min.
<u>Rear Yard (ft.):</u>	2	2	25/ 10 (shed) min.
<u>Height (ft.):</u>	8	10	35 max.
<u>Building Coverage (%):</u>	39	40.5	30 max.
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1999	Variance request(s) shown in red.	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

March 26, 1985 – The Board granted the following variances:

- The construction of a two story addition at the rear of an existing home with a right yard of 18' where 20' is required

- The increase in the extent of a nonconforming use of a residential structure or land where no increase in the extent of a nonconforming use of a residential structure of land is allowed.

September 15, 1992 – The Board granted the following variance:

- The construction of a one story 7' by 16' three story porch at the rear of the house with a) a 3' right yard where 10' is required; and 2) a lot coverage of 35.6% where maximum 20% is allowed.

July 18, 1995 – The Board granted the following variance:

- The construction of a 6' by 7' shed: a) creating 3' right side and 2' rear yard where 10' is minimum required; and b) a building cover of 37.6% where the maximum allowed is 20%.

July 15, 1997 - The Board granted the following variance:

- The construction of a one story 6' by 8' addition to the left rear of an existing building with a 20'5" rear yard where 25' is the minimum required; and , a variance to allow structural changes to a nonconforming structure by the demolition of a 5' by 24' portion of the existing structure resulting in 36.1% coverage where the existing is 37% and the maximum allowed is 30%.

April 20, 1999 – The board granted a request to amend the previously approved application

May 18, 1999 and reconvened on May 25, 1999 – The board granted the following variance:

- Article III, Section 10-302(A) to allow the reconstruction of a single family dwelling in exactly the same size and location.

Planning Department Comments

The applicant is proposing to replace the existing shed with a slightly larger 10 x 12 shed, maintaining the existing side and rear setbacks and the new square footage of the shed will be located towards the interior of the lot. The resulting coverage will be increase to 40.5% from the existing 39%. The applicant postponed in June to reconsider the location of the shed, however they are moving forward with the proposal as originally advertised.

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

July 20, 2021 Meeting

(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 **Bucephalus LLC, Owners**, for the property located at **650 Maplewood Avenue** whereas relief is needed from the Zoning Ordinance for a change of use to allow motorcycle sales which requires the following: 1) A Special Exception from Section 10.440, Use #11.10 to allow the sales, renting or leasing of motorcycles where the use is permitted by Special Exception. 2) A Variance from Section 10.592.20 to allow the proposed use to be located adjacent to a Residential district where 200 feet is required. 3) A Variance from Section 10.843.21 to allow areas for parking, outdoor storage and outdoor display of vehicles or equipment to be setback less than 40 feet from the street right-of-way where 40 feet is required. Said property is shown on Assessor Map 220 Lot 88 and lies within the Business (B) District.

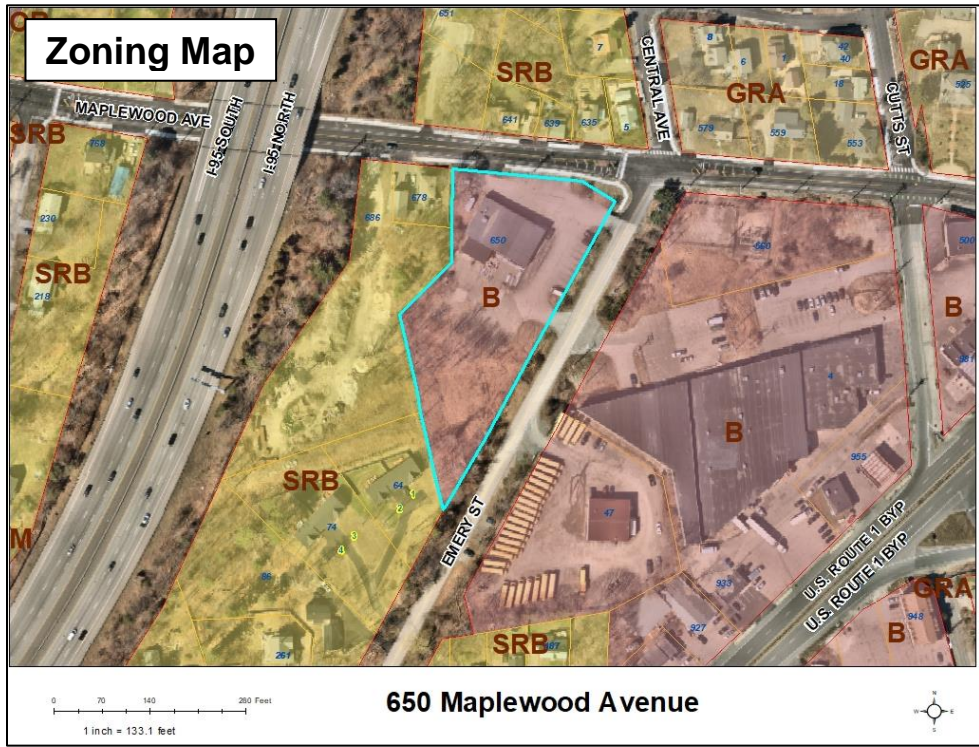
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	business	Motorcycle sales, renting or leasing	Primarily business uses
<u>Lot area (sq. ft.):</u>	74,923	74,923	20,000 min.
<u>Use Setback from Right of Way (ft.):</u>	<40	<40	40 min.
<u>Use setback from Residential District (ft.):</u>	0	0	200 min.
<u>Lot depth (ft.):</u>	>80	>80	80 min.
<u>Front Yard (ft.):</u>	37	37	20 min.
<u>Right Yard (ft.):</u>	15	15	15 min.
<u>Left Yard (ft.):</u>	62	62	15 min.
<u>Rear Yard (ft.):</u>	150	150	15 min.
<u>Height (ft.):</u>	<50	<50	50 max.
<u>Building Coverage (%):</u>	10	10	35 max.
<u>Open Space Coverage (%):</u>	>15	>15	15 min.
<u>Parking</u>	28	28	<20
<u>Estimated Age of Structure:</u>	1970	Variance/Special Exception request(s) shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is proposing to relocate their business from Cate Street to the subject property which is located in the Business district where the use is permitted by Special Exception. No exterior changes or additions are proposed to the existing structure. The property is adjacent to a residential district, which requires relief from Section 10.592.20 to allow the use to be less than 200 feet from a residential district. The use has additional standards in the Ordinance under Section 10.843.21 that requires parking areas to be located forty feet away from a right of way at a minimum.

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.

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.*

4.

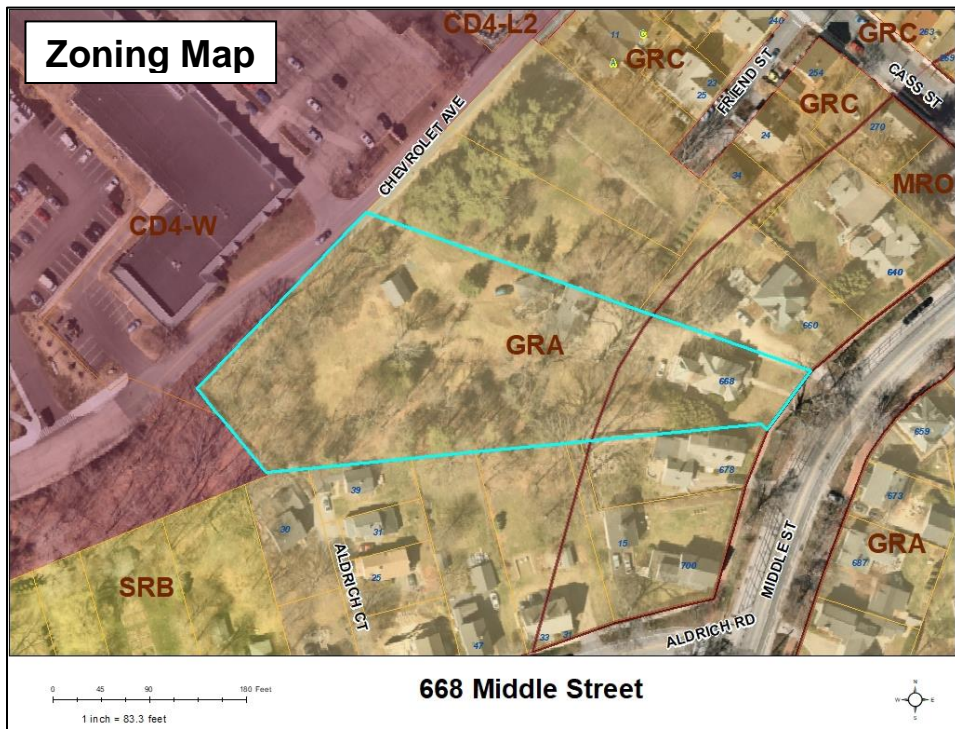
Petition of **The Elizabeth B. Larsen Trust of 2012, Owner**, for the property located at **668 Middle Street** whereas relief is needed from the Zoning Ordinance to subdivide lot into three lots which requires the following: 1) A Variance from Section 10.521 to allow 114' and 100' of frontage on a private way where 100' of frontage on a formally accepted street or other road approved by the Planning Board and constructed to City subdivision standards is required. 2) A Variance from Section 10.521 to allow 69.83' of frontage on Middle Street where 100 feet is required. 3) A Variance from Section 10.512 to allow construction of a structure on a lot with access to a private right of way. Said property is shown on Assessor Map 147 Lot 18 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>	Multi-family	Subdivide into 3 lots Lot 1 Lot 2 Lot 3			Primarily residential uses	
<u>Lot area (sq. ft.):</u>	81,050	18,646	18,756	43,644	7,500	min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	20,262	18,646	18,756	14,548	7,500	min.
<u>Street Frontage (ft.):</u>	69.83	114	100	69	100	min.
<u>Lot depth (ft.):</u>	>70	>70	>70	>70	70	min.
<u>Front Yard (ft.):</u>	>15	>15	>15	>15	15	min.
<u>Right Yard (ft.):</u>	10/2	>10	>10	10/2	10	min.
<u>Left Yard (ft.):</u>	>10	>10	>10	>10	10	min.
<u>Rear Yard (ft.):</u>	>20	>20	>20	>20	20	min.
<u>Height (ft.):</u>	<35	<35	<35	<35	35	max.
<u>Building Coverage (%):</u>	<25	<25	<25	<25	25	max.
<u>Open Space Coverage (%):</u>	>30	>30	>30	>30	30	min.
<u>Parking</u>	7	ok	ok	7	6 (for existing units)	
<u>Estimated Age of Structure:</u>	1892/1900	Variance request(s) shown in red.				

Other Permits/Approvals Required
TAC and Planning Board - Subdivision

Neighborhood Context



Previous Board of Adjustment Actions

April 27, 2004 – The Board granted the following variances:

- Article III, Section 10-301(A)(2) to allow conversion of the existing freestanding carriage house with new additions into a dwelling unit in a district where all dwellings are to be located in the same building; and
- Article III, Section 10-302(A) and Section 10-401(A)(2)(c) to allow a 22' by 22' one story attached garage with a 4' right side yard where 10' is required.
- Article III, Section 10-302(A) to allow a chimney on the right side of the carriage house to be converted to a single family dwelling with a 2' right side yard where 10' is required.

Planning Department Comments

The applicant is proposing to subdivide the existing lot containing four dwelling units within 2 structures into 3 lots, with the existing structures remaining on the lot fronting on Middle Street. The two new lots will front on Chevrolet Avenue, which is not a public street, but a private way. The portion of Chevrolet Avenue that meets Cass Street is public, but the rest of it is private, therefore does not count as frontage per the Ordinance. Section 10.512 states that every structure erected on a lot must have access to a public street or an approved private street. Since the applicant hasn't been able to confirm that Chevrolet Ave is an approved private street and even though the City has easement rights to use it, it is not a public street. Staff agrees with the applicant that a variance is needed from this section in order to make the lot buildable.

The applicant references an approval for a similar subdivision on the adjacent parcel to the north that was approved in 2010, with variances granted in August of 2008. The variances included frontage relief on Middle Street to allow the new lots off of Chevrolet to have access off a right-of-way. The letter of decision is below.



CITY OF PORTSMOUTH

Community Development Department
(603) 610-7232

Planning Department
(603) 610-7216

PLANNING DEPARTMENT

August 29, 2008

Catherine M. Whelan
660 Middle Street
Portsmouth, NH 03801

Re: Property at 660 Middle Street
Assessor Plan 147, Lot 19

Dear Applicant:

The Board of Adjustment at its reconvened meeting of August 26, 2008 completed its consideration of your application wherein a Variance from Article III, Section 10-302(A) was requested to subdivide one lot into three lots with: a) proposed lot 1 to have 70'± of street frontage on Middle Street where 100' is the minimum required, and b) to allow proposed lots 2 & 3 to have access off a right-of-way.

After consideration, the Board voted to grant the petition as presented and advertised with the following stipulations:

- That the Planning Board be requested to specify a 20' buffer along the property line to the north for the protection of existing trees and root systems.
- That, as presented, there will be only one curb cut for lots 2 and 3.

The petition was granted for the following reasons:

- Creating three large lots out of one will not change the character of the neighborhood or affect the public interest.
- The front property line for lot 1 predates zoning and there is no way to reconfigure the lot to achieve the required frontage.

177 08

1 Junkins Avenue
Portsmouth, New Hampshire 03801
Fax (603) 427-1593

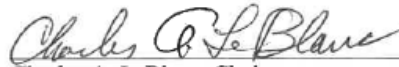
Catherine Whelan – Page Two
August 29, 2008

- The spirit of the ordinance is to control overdevelopment off a dirt path, but the paved right of way to lots 2 and 3 has functioned, and been maintained, as a street and can support two houses with a common driveway.
- There is no benefit to the public in denying the variance that would outweigh the hardship on the property owner.
- Property values will not diminish and the project has the support of the immediate abutters.

Prior to the issuance of a building permit, the Building Inspector will need to review and approve construction drawings/sketches. Contact the Inspector at 603-610-7243 between the hours of 8:00 –10:00 a.m. Applicants should note that approvals may also be required from other Committees and/or Boards 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,



Charles A. LeBlanc, Chairman
Board of Adjustment

mek

c: Richard A. Hopley, Building Inspector
Bernard W. Pelech, Esq.
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.*

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.

July 20, 2021 Meeting

5.

Petition of **Cate Street Development LLC, Owner**, for the property located at **428 US Route 1 Bypass** whereas relief is needed from the Zoning Ordinance to replace two existing free-standing signs with new signs for a mixed-use development which requires the following: 1) A Variance from Section 10.1251.20 to allow a 388.5 square foot sign where 100 square feet is the maximum allowed. 2) A Variance from Section 10.1251.20 to allow a 60 square foot secondary sign where 40 square feet is the maximum allowed. Said property is shown on Assessor Map 172 Lot 1 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

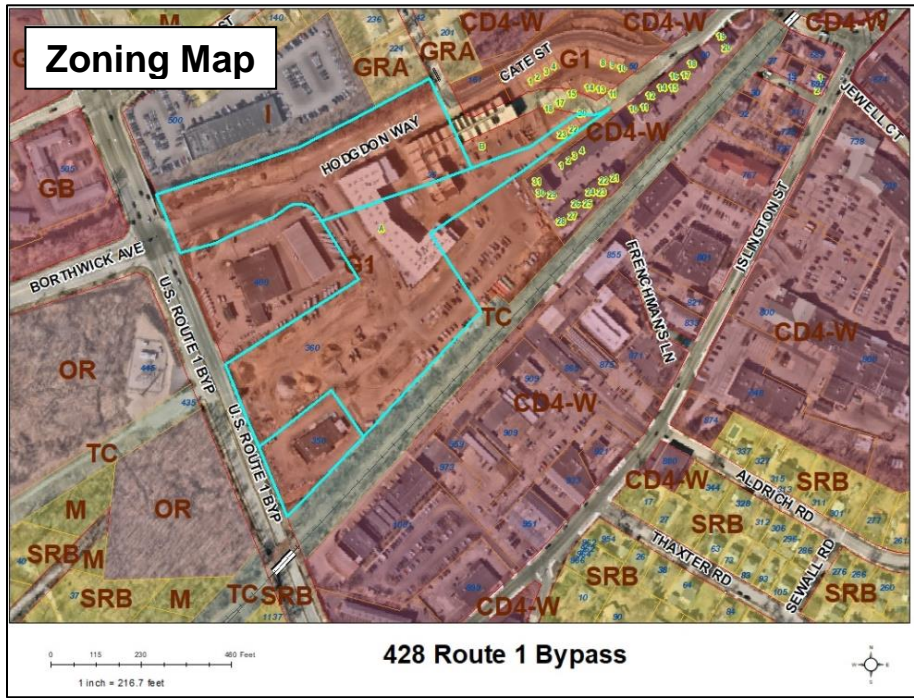
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed use/Sign District 5	New signage	Primarily mixed uses
<u>Freestanding Sign area (sq. ft.):</u>		388.5	100 max.
<u>Secondary freestanding sign (sq ft.):</u>		60	40 max.
<u>Sign Height(ft.):</u>		14'6" main sign/ 12' secondary	20 main sign/ 12 secondary sign max.
<u>Lighting Illumination Type:</u>		external	external, internal, direct illumination
		Variance request(s) shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

September 10, 1985 – The Board granted the following special exception with stipulations:

- Article II, Section 10-207(8) to allow heavy equipment and heavy vehicle distribution and sales in the southerly half of an existing one-story structure.
 - o Stipulations:
 - A \$15,000 bond be posted to ensure that the parking are be paved and lined in accordance with the plan filed with the Planning Department; and
 - No parking be allowed beyond the parking spaces as delineated on the plan in front of the W.T.A. Bingo building and the Route 1 By-Pass.

August 22, 1989 – The Board denied the following variance:

- Article IX Section 10-906 to allow the erection of a 4' by 13' free-standing sign with 0' setback for the front property line in a zone where free-standing signs shall have a minimum of 35' front setback
 - o Rehearing request was considered and denied at September 12, 1989 Board meeting.

October 3, 1989 – The Board granted the following variance:

- Article III, Section 10-302 to allow the construction of a 16' by 22' canopy 30' from the left of the lot line where 50' is required

November 14, 1989 – The Boards granted the following variance:

- Article IX, Section 10-906 to permit the erection of a 52 s.f. free standing sign with an 8' front yard where a 35' front yard is required.

April 19, 1994 - The Board granted the following variances:

- Article II, Section 10-207 to convert 1920 s.f. of space formerly occupied by a catering service to Bingo Hall usage for a total of 8,870 s.f. for the bingo hall; and
- Article IV, Section 10-401(5) to allow the expansion of a nonconforming use of a structure where no increase in the extent of a nonconforming use of a structure may be made without Board approval.

April 18, 1995 – The Board granted the following special exception and stipulation:

- Article II, Section 10-207(11) for the erection of a 40' by 120' tent to the rear of the building for three days, May3, 1995 to May 5, 1995 for the purpose of a fundraising event for hunger relief where temporary structures may be allowed by special exception provided a bond is posted to insure their removal.
 - o Stipulation
 - \$100.00 bond be posted to the City to ensure the removal of the tent.

July 18, 1995 – The Board granted the following variance:

- Article IV, Section 10-401(5) to allow a two story 40'50' addition to an existing Function/Bingo Hall where no expansion on a nonconforming use is allowed.

July 21, 2015 – The Board granted the following variance:

- Section 10.440 to allow a dog daycare and boarding facility in a district where this use is not permitted.

Planning Department Comments

The applicant is proposing to add new signage for the mixed use development that is currently under construction. Two freestanding signs are proposed on the Route 1 By-pass. Because the site has more than one driveway, a second free-standing sign is allowed, but is restricted to an area of 40 square feet and 12 feet in height. The applicant is proposing a 60 square foot sign, 12 feet in height for this sign. The main sign will exceed the 100 square foot requirement, with a proposed sign area of 388.5 square feet and a height of 14.5' where 20 feet is the maximum allowed. All sign illumination types are permitted in sign district 5. The application indicates the signs will be externally lit.

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 **Wentworth Corner LLC, Owners**, for the property located at **960 Sagamore Avenue** whereas relief is needed from the Zoning Ordinance to demolish existing structures and construct an 8 unit residential building which requires the following: 1) A Variance from Section 10.521 to allow a lot area per dwelling unit of 5,360 square feet where 7,500 square feet is required. 2) A Variance from Section 10.1114.31 to allow two driveways on a lot where one driveway is permitted. Said property is shown on Assessor Map 201 Lot 2 and lies within the Mixed Residential Business (MRB) District.

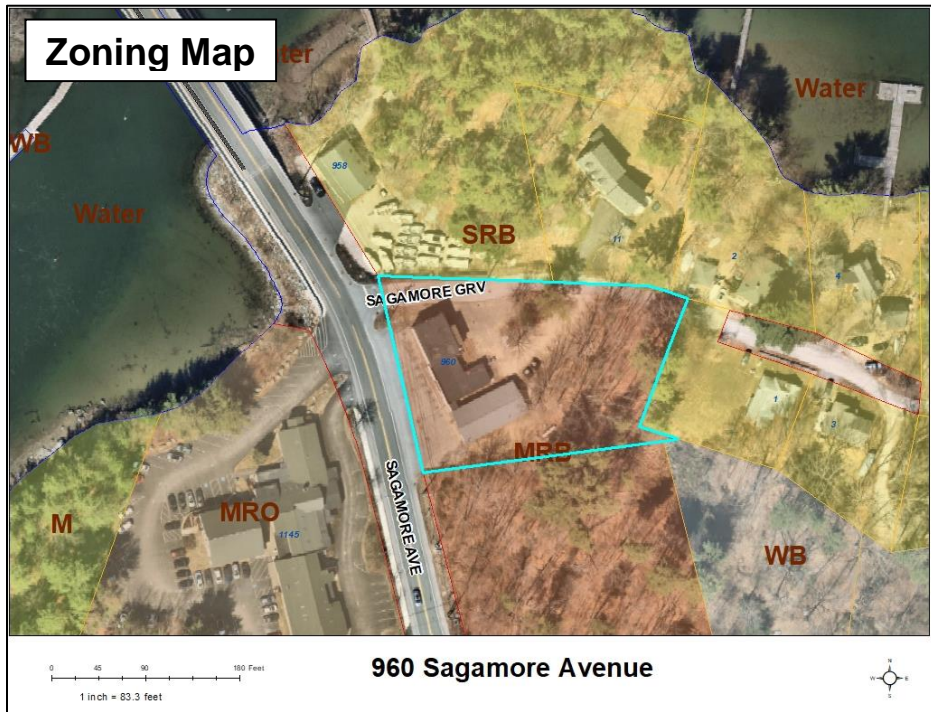
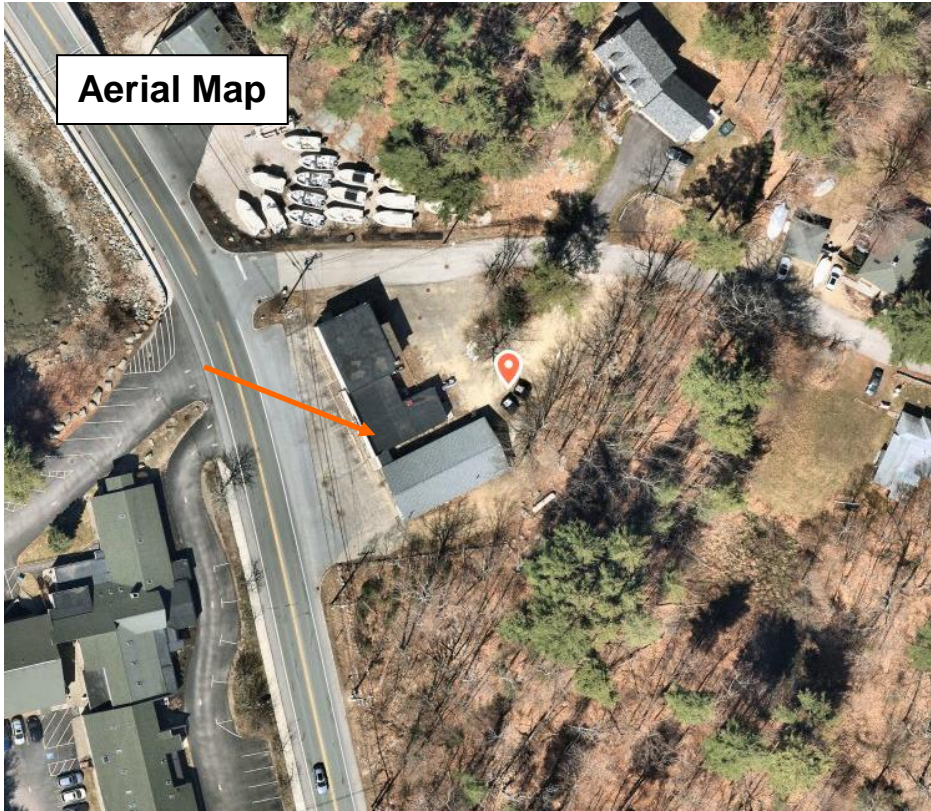
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Restaurant	Construct 8-unit dwelling	Primarily business/residential uses
<u>Lot area (sq. ft.):</u>	42,930	42,930	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	5,360	7,500 min.
<u>Street Frontage (ft.):</u>	194	194	100 min.
<u>Lot depth (ft.):</u>	212	212	80 min.
<u>Front Yard (ft.):</u>	17	18	5 min.
<u>Secondary Front Yard (ft.):</u>	>5	>5	10 min.
<u>Right Yard (ft.):</u>	21	11	10 min.
<u>Rear Yard (ft.):</u>	107	105	15 min.
<u>Height (ft.):</u>	22	<40	40 max.
<u>Building Coverage (%)</u>	11	20	40 max.
<u>Open Space Coverage (%)</u>	45	57.5	25 min.
<u>Parking</u>	15	25	11
<u>Estimated Age of Structure:</u>	1970	Variance request(s) shown in red.	

Other Permits/Approvals Required

TAC, Planning Board and Conservation Commission

Neighborhood Context



Previous Board of Adjustment Actions

August 16, 2011 – The Board granted the following special exception:

- Use #7.20 (personal services) under Section 10.440

Planning Department Comments

The applicant is proposing to demolish the existing structures and construct an 8 unit dwelling which will require a variance for lot area per dwelling unit. Five units are permitted by right per the lot size. The redevelopment of the property will have two driveways, where only one is allowed per lot, thus the need for a request for a variance. The project will need to go through site review with the TAC and the Planning Board and will need to get a wetlands CUP because there is some work and encroachment into the buffer area. On October 2, 1995 the City Council took action to treat Sagamore Grove as a public way and all of the property owners along Sagamore Grove signed off on an Acknowledgement and Release document that was recorded in the Registry of Deeds (see below page from the document).

<u>ACKNOWLEDGMENT AND RELEASE</u>	
ROCKINGHAM COUNTY REGISTRY OF DEEDS	<p>The undersigned, all property owners of Sagamore Grove Road in Portsmouth, County of Rockingham, State of New Hampshire for themselves, their heirs, successors and assigns do hereby acknowledge the action taken by the Portsmouth City Council on October 2, 1995 to treat a traveled way known as Sagamore Grove Road as a public way. The undersigned acknowledges that the action of the City Council will result in the City paving Sagamore Grove Road and maintaining it in the future in the same fashion as any other public way is maintained. The undersigned further acknowledges that deeming Sagamore Grove Road to be a public way may have implications for their properties, including but not limited to zoning matters, and how the property is to be taxed. It is understood that the land located under the right of way will not become public property; but will remain the property of the current owner or owners.</p> <p>In signing this document, the undersigned agrees that the area depicted on the attached Right of Way plan of Sagamore Grove Road, as prepared by Durgin Associates, will be the area that the City claims as the public way. This plan includes both the area to be paved and the remaining non-paved portion. The undersigned agrees that the City will be able to access the entire traveled way including the graveled portion of the traveled way. This access will be used as needed for maintenance purposes. The undersigned further agrees that they waive any claim to damages for such an interest. In doing so, the undersigned understands that they are releasing the City of Portsmouth from any and all claims that may be made for damages as a result of the City Council's decision on October 2, 1995 to treat this traveled way as a public way.</p>

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 **Stephen G. Bucklin LLC, Owners**, for the property located at **322 Islington Street** whereas relief is needed from the Zoning Ordinance to request to amend variances that were granted to move an existing carriage house to a new foundation and add a one-story connector to the existing house by removing the stipulation that required a signed letter of approval from the property's rear neighbor. Said property is shown on Assessor Map 145 Lot 3 and lies within the Character District 4-L2 (CD4-L2) District.

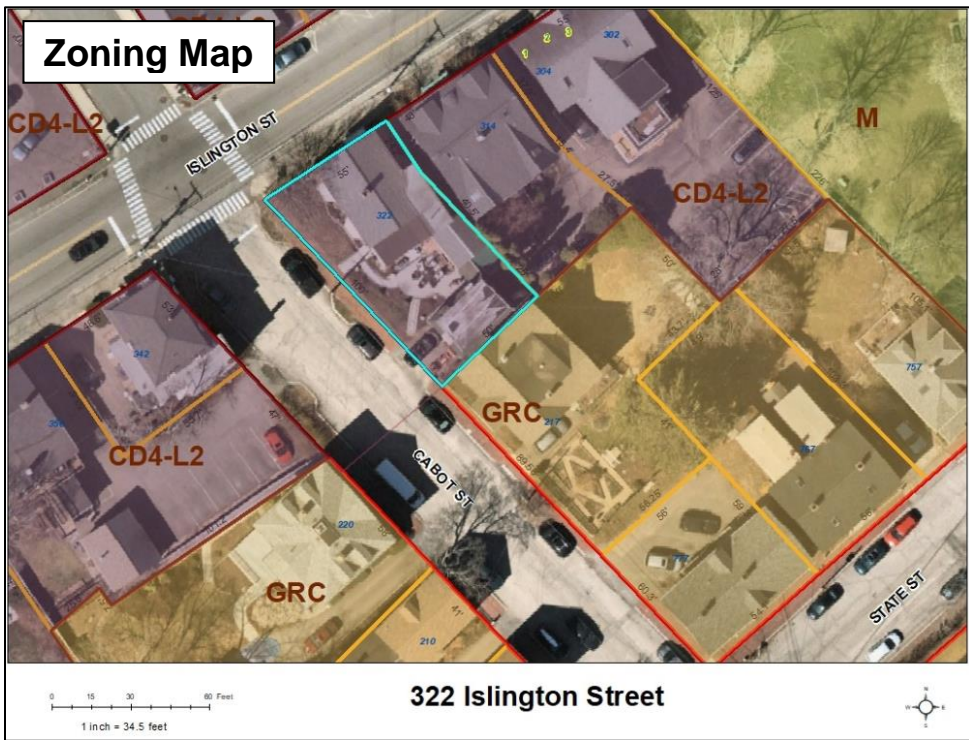
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Replace existing shed	Primarily residential uses
<u>Lot area (sq. ft.):</u>	2,476	2,476	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,476	2,476	5,000 min.
<u>Street Frontage (ft.):</u>	46	46	80 min.
<u>Lot depth (ft.):</u>	55	55	60 min.
<u>Front Yard (ft.):</u>	0	0	5 min.
<u>Right Yard (ft.):</u>	2	2	10 min.
<u>Left Yard (ft.):</u>	40	38	10 min.
<u>Rear Yard (ft.):</u>	2	2	25/ 10 (shed) min.
<u>Height (ft.):</u>	8	10	35 max.
<u>Building Coverage (%):</u>	39	40.5	30 max.
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1999	Variances granted in 2019.	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

February 26, 2019 – The Board approved the following variances:

- From Section 10.5A41.10A to allow a 1' rear yard where 5' is required and to allow a 2' left side yard where 5' is required.
- From Section 10.321 to allow a nonconforming building or structure to be expanded, reconstructed or enlarged without conforming to the requirements of the Ordinance.

With the following stipulations:

- A signed letter of approval from the property's rear neighbor (Virginia Swift, 217 Cabot Street) is to be submitted. The letter should contain Structural Details and Methods, certified by a licensed structural engineer describing how the proposed new foundation of the Carriage House at 322 Islington Street will be constructed in a manner so as not to cause any damage or detriment to the existing stone foundation at 217 Cabot Street.
- Included as part of this document will be a Site Plan of the area between the (2) structures showing grading, drainage and the nature of materials used.

January 19, 2021 - The Board granted a one year extension of the above variances to expire on February 26, 2022.

Planning Department Comments

The applicant is requesting the Board remove the first stipulation that was part of the approval in 2019, shown in the history above, due to the inability to get sign off on the project from the neighbor. The applicant's representative has submitted a request to postpone to the August meeting as they are working with the abutter on the stipulation.