

TO: Zoning Board of Adjustment  
FROM: Peter Stith, AICP, Planning Department  
DATE: January 12, 2020  
RE: Zoning Board of Adjustment January 19, 2020 Meeting

## **OLD BUSINESS**

1. 322 Islington Street – Request for Extension
2. 30 Spring Street – Request for Rehearing
3. 150 Greenleaf Avenue – Request for Rehearing
4. 137 Northwest Street – Request for Rehearing

## **NEW BUSINESS**

1. 500 Market Street
2. 71 Brackett Road
3. 685 State Street
4. 45 Richmond Street
5. 36 Artwill Avenue



## OLD BUSINESS

1.

Petitioners:	Stephen G. Bucklin
Property:	322 Islington Street
Assessor Plan:	Map 145, Lot 3
Zoning District:	Character District 4-L2 (CD4-L2), Historic District (HD)
Description:	Move existing carriage house to new foundation and add one-story connector to existing house.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: <ol style="list-style-type: none"><li>1. A Variance from Section 10.5A41.10A to allow the following: a) a 1'± rear yard where 5' is required; and b) a 2'± left side yard where 5' is required.</li><li>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.</li></ol>

The applicant has submitted request for an extension for the property above. Variances were granted on February 26, 2019 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.



2.

Petition of **Jessica Kaiser and John Andrew McMahon, Owners**, for property located at **30 Spring Street** are requesting a rehearing of pursuant to RSA 677:2. Said property is shown on Assessor Map 130 Lot 13 and lies within the General Residence A (GRA) District.

On Tuesday, November 17, 2020, the Board granted the following variances for construction of a covered front porch and dormers to the existing dwelling: 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 4 foot side yard where 10 feet is required. The original side yard request was 0, however the Board stipulated a 4 foot side yard. The applicant is requesting a rehearing on the side yard variance for the front porch.

A request for rehearing has been filed within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, the rehearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.



3.

Petition of **150 Greenleaf Avenue Realty Trust, Owner**, for property located at **150 Greenleaf Avenue** is requesting a rehearing pursuant to RSA 677:2. Said property is shown on Assessor Map 243 Lot 67 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

On November 24, 2020 the Board denied the 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.

The appellant has filed a request for a rehearing within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, the rehearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.





4.

Petition of **Gregory & Amanda Morneault**, Owners, for property located at 137 Northwest Street, is requesting a rehearing pursuant to RSA 677:2. Said property is shown on Assessor Plan 122, Lot 2 and lies within the General Residence A (GRA) District.

On November 17, 2020 the Board **denied** variances to subdivide a lot and construct a two-family dwelling which required 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.

A request for a rehearing has been filed within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, the rehearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.



# NEW BUSINESS

1.

Petition of **PMC Realty Trust, Owner**, for property located at **500 Market Street, Unit 2B** whereas relief is needed from the Zoning Ordinance for a change of use from Professional Office to Medical Office 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 120 Lot 2-2B and lies within the (CD4-L1) District.

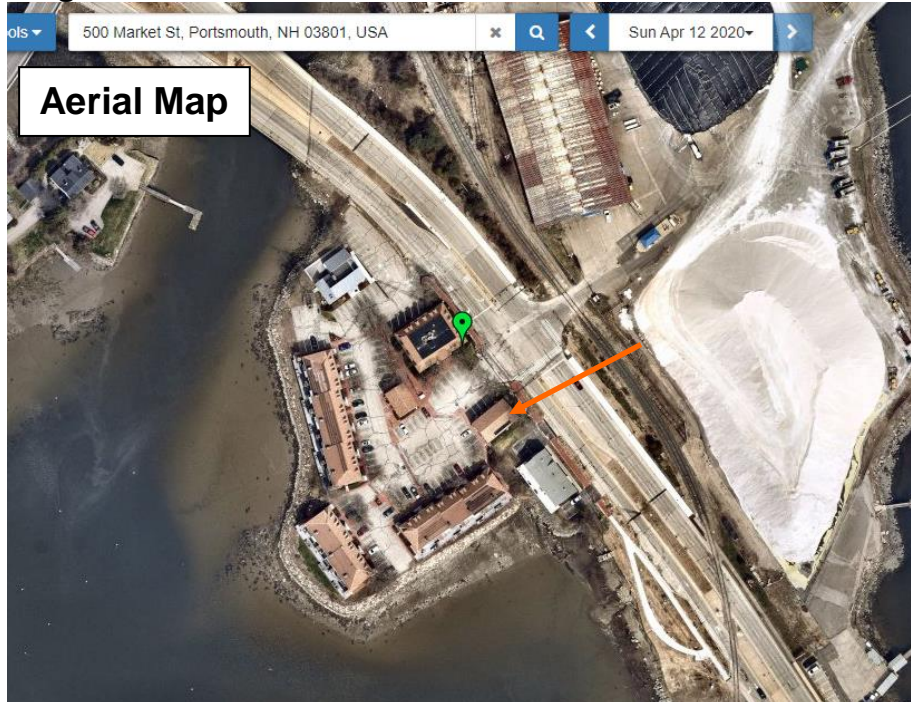
## Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Profesional office	<b>Medical office</b>	Primarily mixed uses
<u>Lot area (sq. ft.):</u>	111,513	111,513	3,000 min.
<u>Parking</u>	115	115	113
<u>Estimated Age of Structure:</u>	1983	<b>Special Exception request shown in red.</b>	

## Other Permits/Approvals Required

HDC

## Neighborhood Context





### Previous Board of Adjustment Actions

August 19, 2008 – **Denied** variance from Article IX, Section 10-908 to allow the following

- 4 freestanding signs totaling 103 square feet where 10 square feet is the maximum square footage allowed.
- 3 attached signs totaling 99 square feet where 60 square feet is the maximum square footage allowed.
- 202 square feet of aggregate signage where 75 square feet is the maximum allowed.

January 20, 2009 – **Approved** variance from Article IX, Section 10-908 to allow:

- 100.19 square feet of attached signage where 60 square feet is the maximum allowed.
- 26.18 square feet of freestanding signage where 10 square feet is the maximum allowed.
- 126.37 square feet of aggregate signage wherein 75 square feet is the maximum allowed.

### Planning Department Comments

The applicant is proposing to change the use of a portion of the building from professional office into medical office. A new access ramp is proposed for better access to the building, which requires HDC approval. No other site improvements or exterior changes are proposed.

## **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.*



2.

Petition of **Brett & Stefanie Berger, Owners**, for property located at **71 Brackett Road** whereas relief is needed from the Zoning Ordinance to remove existing deck and construct a 15' x 15' rear addition with new 15' x 45' deck which requires the following: 1) A Variance from Section 10.521 to allow a 10 foot rear yard where 30 feet is required. 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 206 Lot 14 and lies within the Single Residence B (SRB) District.

**Existing & Proposed Conditions**

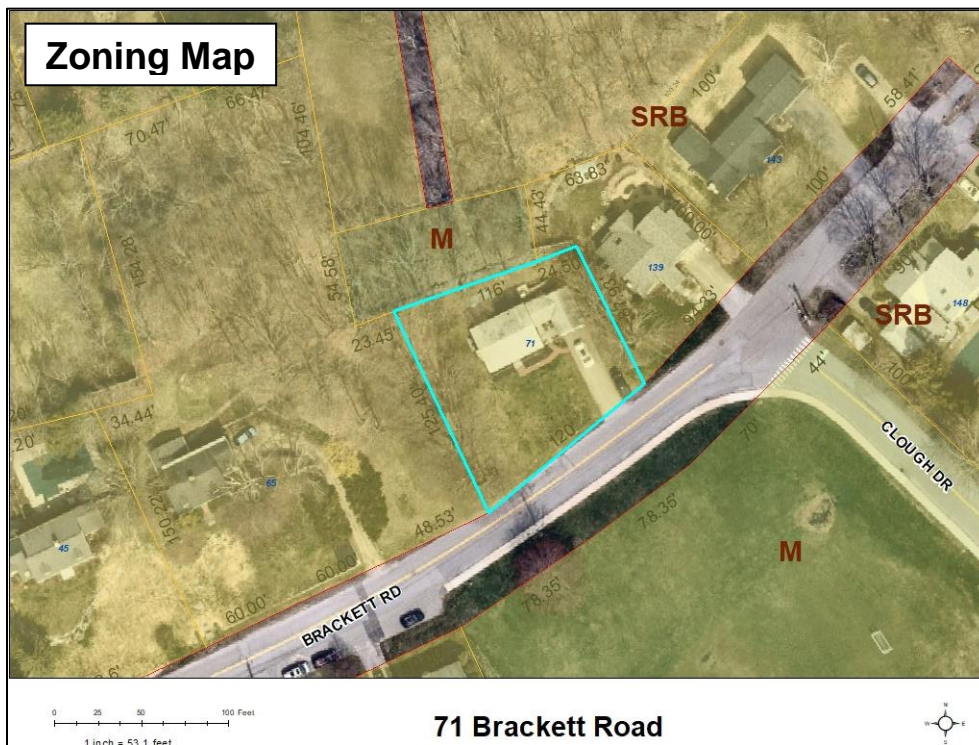
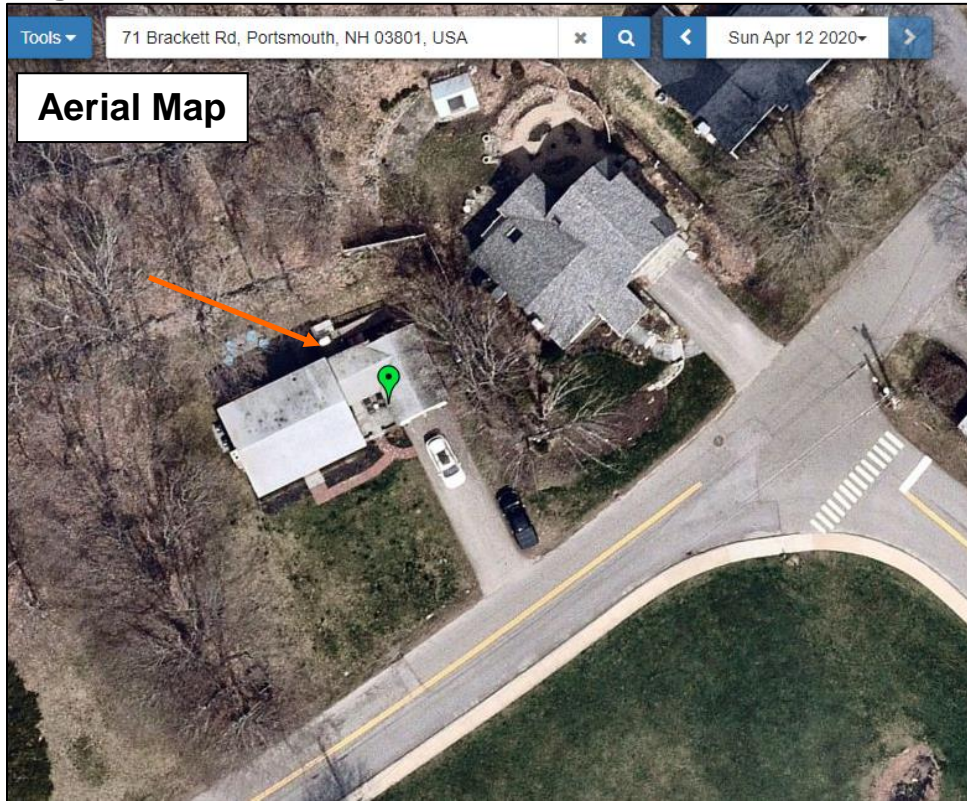
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two family	Construct rear addition and deck	Primarily residential uses
<u>Lot area (sq. ft.):</u>	12,196	12,196	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	12,196	12,196	15,000 min.
<u>Street Frontage (ft.):</u>	120	120	100 min.
<u>Lot depth (ft.):</u>	106.5	106.5	100 min.
<u>Front Yard (ft.):</u>	44	44	30 min.
<u>Right Yard (ft.):</u>	15'6"	15'6"	10 min.
<u>Left Yard (ft.):</u>	36	36	10 min.
<u>Rear Yard (ft.):</u>	16	<b>10</b>	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	12	18	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking</u>	3	3	1.3
<u>Estimated Age of Structure:</u>	1966	Variance request shown in red.	

**Other Permits/Approvals Required**

None.



## Neighborhood Context



### Previous Board of Adjustment Actions

No BOA history found.



## Planning Department Comments

The applicant is proposing to construct an attached one story rear addition and deck across the length of the back of the house which will result in a rear yard of 10 feet at the closest point. The existing house is nonconforming with respect to the rear yard. All other dimensional requirements conform to the Ordinance as proposed.

## 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.*



3.

Petition of **685 State Street, LLC, Owner**, for property located at **685 State Street** whereas relief is needed from the Zoning Ordinance to add a fifth dwelling unit to an existing four unit building which requires the following: 1) A Special Exception from Section 10.440 Use #1.63 to allow a building existing on January 1, 1980 with less than the required lot area per dwelling unit to be converted into five units. Said property is shown on Assessor Map 137 Lot 11 and lies within the General Residence C (GRC) District.

**Existing & Proposed Conditions**

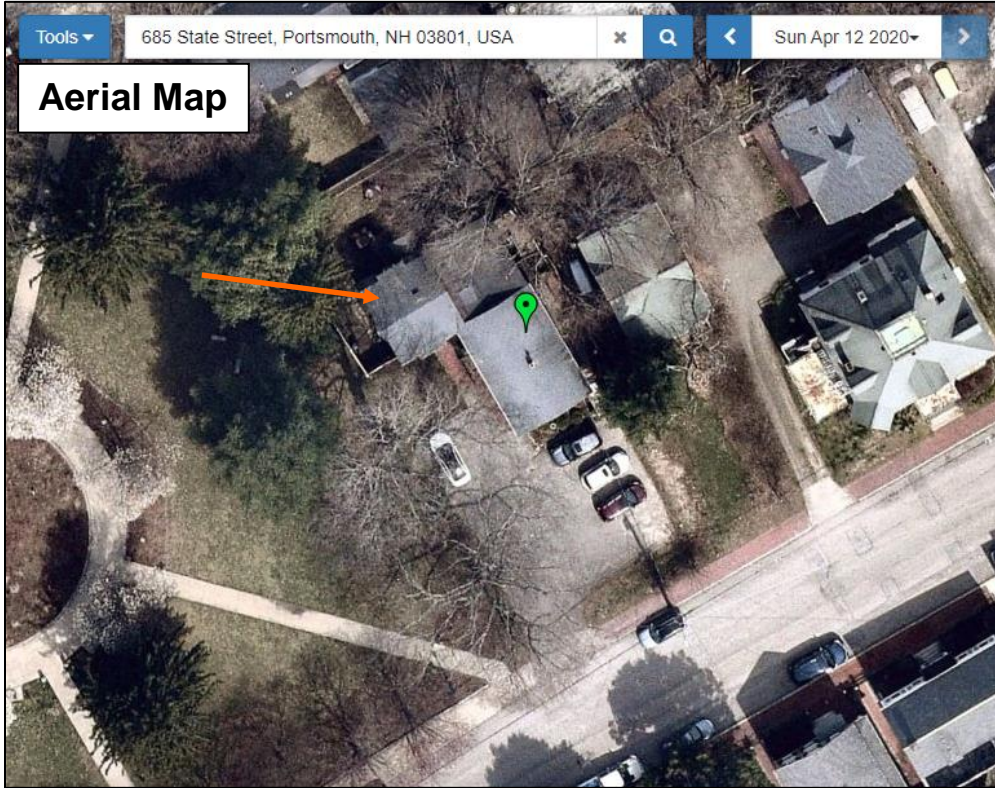
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	4 unit dwelling	<b>Add 5<sup>th</sup> dwelling unit</b>	Primarily residential uses
<u>Lot area (sq. ft.):</u>	8,561	8,561	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,140	1,712	3,500 min. 1,000 per 10.812
<u>Street Frontage (ft.):</u>	60	60	70 min.
<u>Lot depth (ft.):</u>	142	142	50 min.
<u>Front Yard (ft.):</u>	58	58	5 min.
<u>Right Yard (ft.):</u>	8	8	10 min.
<u>Left Yard (ft.):</u>	11	11	10 min.
<u>Rear Yard (ft.):</u>	21.6	21.6	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	20.5	<b>20.5</b>	35 max.
<u>Open Space Coverage (%):</u>	39.5	39.5	20 min.
<u>Parking</u>	6	6	6
<u>Estimated Age of Structure:</u>	1960	<b>Special Exception request shown in red.</b>	

**Other Permits/Approvals Required**

None



# Neighborhood Context



## Previous Board of Adjustment Actions

January 22, 1985 – Approved variance from Article IX, Section 10-906 to allow the following:

- Erection of a 19.5 square foot free-standing sign in the left yard with floodlight illumination where no illuminated free-standing sign is allowed.
- A total maximum aggregate sign area of 19.5 square feet where a total maximum aggregate sign area of 4 square feet is allowed.

This variance was granted with the following stipulations:

- The sign be no larger than 10 square feet.
- The Sign be no closer than 15 feet to the front property line.
- The sign shall not be illuminated.

## Planning Department Comments

The applicant is proposing to convert an existing four unit dwelling into a five unit dwelling under Section 10.812 of the Ordinance which permits a building existing before January 1, 1980 to be converted to a multifamily dwelling if the following requirements are met:

The conversion of a **dwelling** existing on January 1, 1980, to additional **dwelling** units as a permitted **use** or by special exception with less than the minimum required **lot area** per **dwelling unit** (per Section 10.440, use 1.50) shall comply with all the following requirements:

10.812.11 The conversion shall not include any change to the exterior of the **building** except for minimum egress components required for **Building Code** compliance.

10.812.12 The **lot** shall comply with the applicable minimum **open space** and maximum **building coverage** requirements in Article 5 and the **off-street parking** requirements in Article 11.

## 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.*

4.

Petition of **Cherie Holmes & Yvonne Goldsberry, Owners**, for property located at **45 Richmond Street** whereas relief is needed from the Zoning Ordinance to remove existing garage and rear addition and construct new garage and 2-story addition which requires the following: 1) Variances from Section 10.521 to allow: a) a 0.5 foot front yard where 5 feet is required; b) a 4.5 foot rear yard where 15 feet is required; and c) a 4 foot right side yard where 10 feet is required. 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 108 Lot 18 and lies within the Mixed Residential Office (MRO) District.

**Existing & Proposed Conditions**

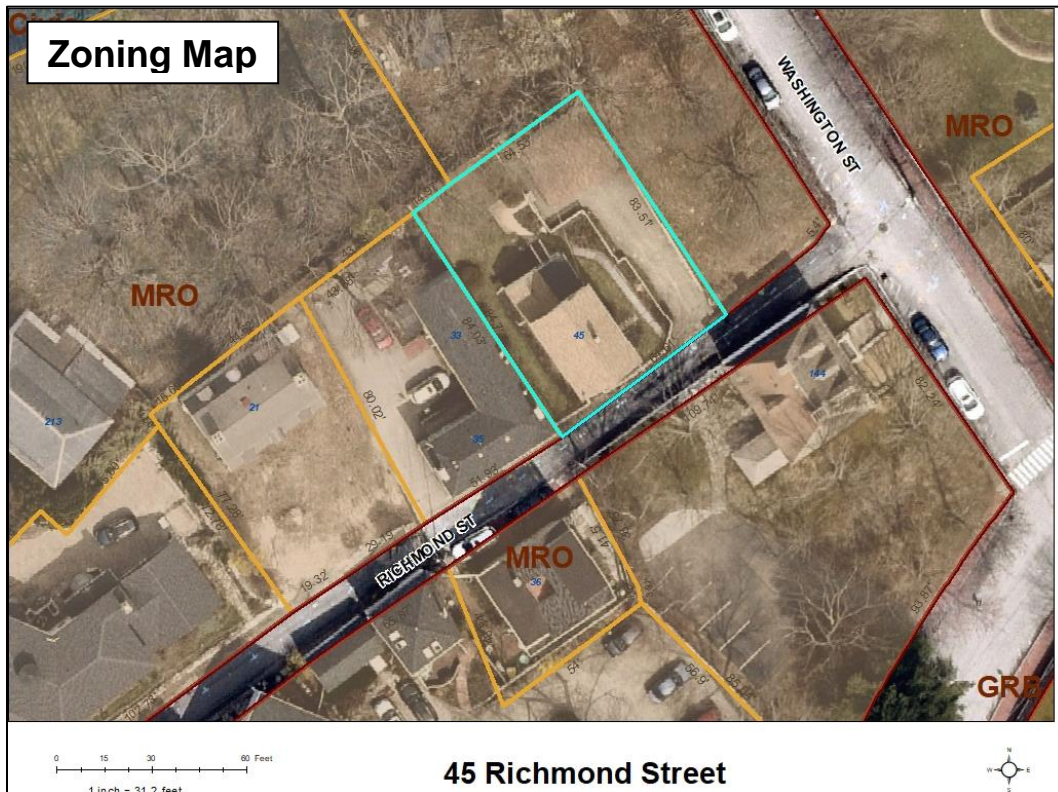
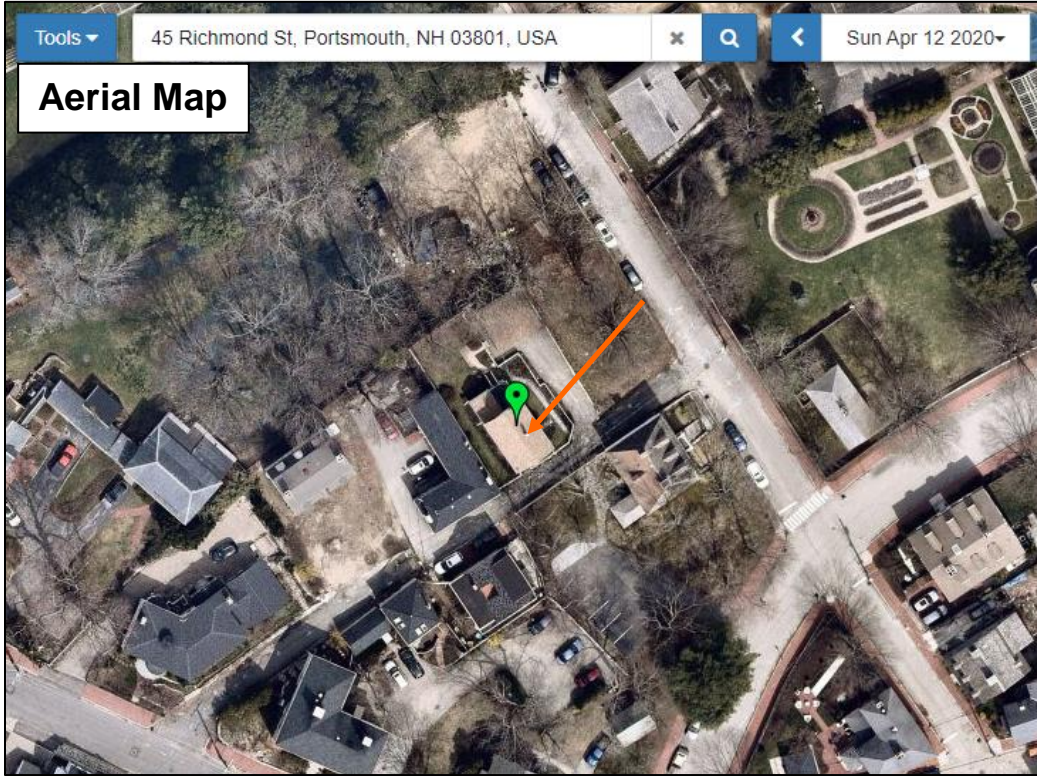
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Construct new garage and additions	Primarily mixed residential/office
<u>Lot area (sq. ft.):</u>	5,417	5,417	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,417	5,417	7,500 min.
<u>Street Frontage (ft.):</u>	64	64	100 min.
<u>Lot depth (ft.):</u>	84	84	80 min.
<u>Front Yard (ft.):</u>	0	<b>0.5'</b>	5 min.
<u>Right Yard (ft.):</u>	2.8'	<b>4'</b>	10 min.
<u>Left Yard (ft.):</u>	10.6	10.6	10 min.
<u>Rear Yard (ft.):</u>	5	<b>4.5'</b>	15 min.
<u>Height (ft.):</u>	<35	<35	40 max.
<u>Building Coverage (%):</u>	25	23	40 max.
<u>Open Space Coverage (%):</u>	48	42	25 min.
<u>Parking</u>	ok	Ok	1.3
<u>Estimated Age of Structure:</u>	1860	<b>Variance request shown in red.</b>	

**Other Permits/Approvals Required**  
Historic District Commission





# Neighborhood Context



## Previous Board of Adjustment Actions

November 24, 1964 – **Approved** petition to erect a garage 24' x 20', five feet back from line, and two feet from sideline.

## Planning Department Comments

The applicant is proposing to demolish the existing garage which received variances in 1964 for the current location, as well as removing a rear addition in order to construct a new garage with an attached greenhouse and a two story rear addition on the main dwelling. The existing front steps extend over the front lot line and the proposed steps will be located 0.5' from the lot line. The application indicated a 4.4' right side yard, but the legal notice stated 4 feet, which if granted, will allow some flexibility to the right side yard.

## 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.*

5.

Petition of **Karona, LLC, Owner**, for property located at **36 Artwill Avenue** whereas relief is needed from the Zoning Ordinance to convert an existing garage into a Detached Accessory Dwelling Unit which requires the following: 1) A Variance from Section 10.521 to allow 0 foot street frontage where 100 feet is required. Said property is shown on Assessor Map 229 Lot 4 and lies within the Single Residence B (SRB) District.

**Existing & Proposed Conditions**

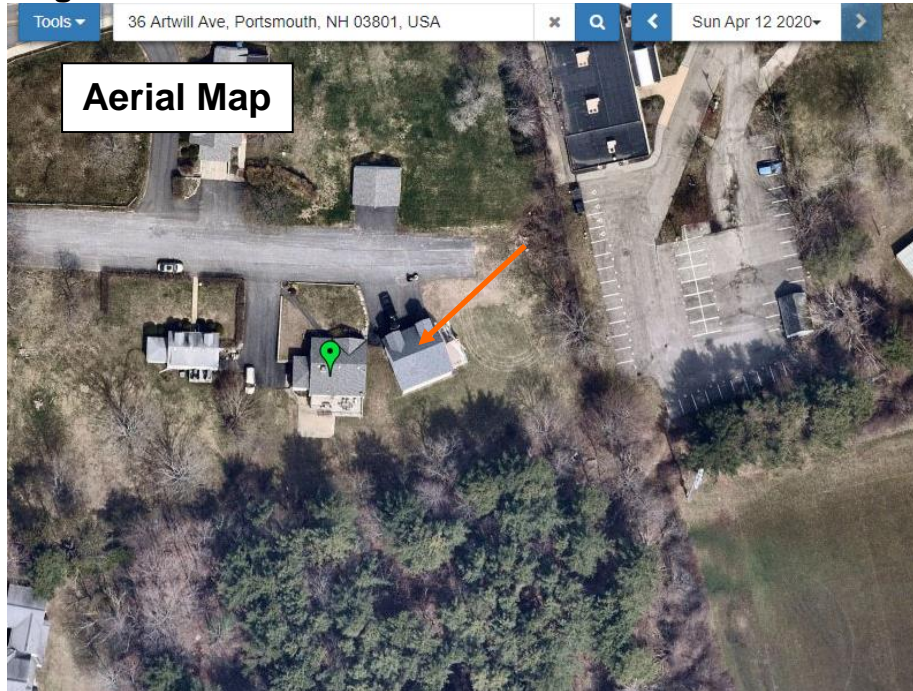
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Single-family w/ Detached ADU	Primarily Single-family Uses
<u>Lot area (sq. ft.):</u>	26,737	26,737	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	26,737	26,737	15,000 min.
<u>Street Frontage (ft.):</u>	0	<b>0</b>	100 min.
<u>Lot depth (ft.):</u>	>100	>100	100 min.
<u>Primary Front Yard (ft.):</u>	23.8	23.8	30 min.
<u>Left Yard (ft.):</u>	75.3	75.3	10 min.
<u>Right Yard (ft.):</u>	>30	>30	10 min.
<u>Rear Yard (ft.):</u>	61.5	61.5	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	9.7	9.7	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Estimated Age of Structure:</u>	1940 (House)	Variance request shown in red.	

**Other Permits/Approvals Required**

Planning Board – Conditional Use Permit for ADU



## Neighborhood Context



36 Artwill Avenue

### Previous Board of Adjustment Actions

June 17, 2014 – **Denied** the following variances:

- Section 10.440, Use #1.20 to allow a second dwelling unit on a lot where only one single family dwelling is permitted.
- Section 10.513 to allow more than one free-standing dwelling unit on a lot.

- Section 10.521 to allow a lot area of 13,068 square feet per dwelling unit where 15,000 square feet per dwelling unit is required.

July 25, 2017 – **Approved** variance from Section 10.521 for street frontage where 100' is required and 0' exists.

### **Planning Department Comments**

The applicant is proposing to convert a portion of the garage into a detached ADU. The lot is nonconforming to street frontage, being located on a private street. As shown in the history above, a variance was granted in 2017 for the same request, however the conditional use permit for the ADU was denied by the Planning Board. The Planning Board decision was appealed to the Superior Court and the Court upheld the Planning Board's decision. The applicant states that the LLC consists of the the owners who will now in the main dwelling. The original variance request expired, which is the reason for returning to the Board for the same relief that was granted in 2017.

### **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.*