

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: July 13, 2022
RE: Zoning Board of Adjustment July 19, 2022

OLD BUSINESS

1. 470 Lincoln Avenue – Request for Extension
2. 225 Banfield Road - Request for Rehearing
3. 1 Congress Street
4. 1 Congress Street – Appeal of Administrative Decision
5. 108 Burkitt Street
6. 1 Walton Alley

NEW BUSINESS

1. 64 Haven Road
2. 217 Myrtle Avenue
3. 47 Lovell Street
4. 404 Islington Street
5. 1121 South Street
6. 531 Islington Street
7. 67 Ridges Court

OLD BUSINESS

1.

Petition of **Sean Murphy, Owner**, for property located at **470 Lincoln Avenue** wherein relief is needed from the Zoning Ordinance for renovation of existing home which includes the following: A Variance from Section 10.521 to allow a) a 4' right side yard where 10' is required; b) an 11' front yard where 15' is required; and c) 30% building coverage where 25% is the maximum allowed. 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 133 Lot 45 and lies within the General Residence A (GRA) District.

The above referenced variances were granted on July 21, 2020 and a building permit has not been issued for the project. The applicant has submitted a request for an extension which the Ordinance allows for a one-time, one-year extension if the request is acted on prior to the expiration date.

2.

Request of **Pike Industries, Inc., appellant** for the property located at **225 Banfield Road**, is requesting a rehearing pursuant to RSA 677:2. Said properties are shown on Assessor Map 266 Lot 1 and Map 254 Lot 1 and lie within the Character District 4-L2 (CD4-L2).

On Tuesday, May 24, 2022, the Board granted the following variances to allow a 60 unit residential building and to encroach into the front yard setback for an industrial building as detailed below: 1) A Variance from Section 10.521 to allow a 45 foot front yard where 70 feet is required. 2) A Variance from Section 10.440.1 to allow a 60 unit residential building where residential uses are not permitted in the Industrial district.

The direct abutter, Pike Industries, Inc. is requesting a rehearing of the Board's decision to grant a variance to construct a 60-unit apartment building.

A request for rehearing has been filed within 30 days of the Board's decision and the Board must consider the request within 30 days. 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 or the presentation of new information that was not available at the time of the initial decision.

3.

Request of **One Market Square LLC (Owner)**, for the property located at **1 Congress Street** whereas relief is needed to construct a 3 story addition with a short 4th story and building height of 44'-11" which requires the following: 1) A Variance from Section 10.5A.43.31 and Map 10.5A21B to allow a 3-story addition with a short 4th and building height of 44'-11" where 2 stories (short 3rd) and 40' is the maximum allowed. Said property is shown on Assessor Map 117 Lot 14 and lies within Character District 4 (CD-4), Character District 5 (CD-5) and the Historic District.

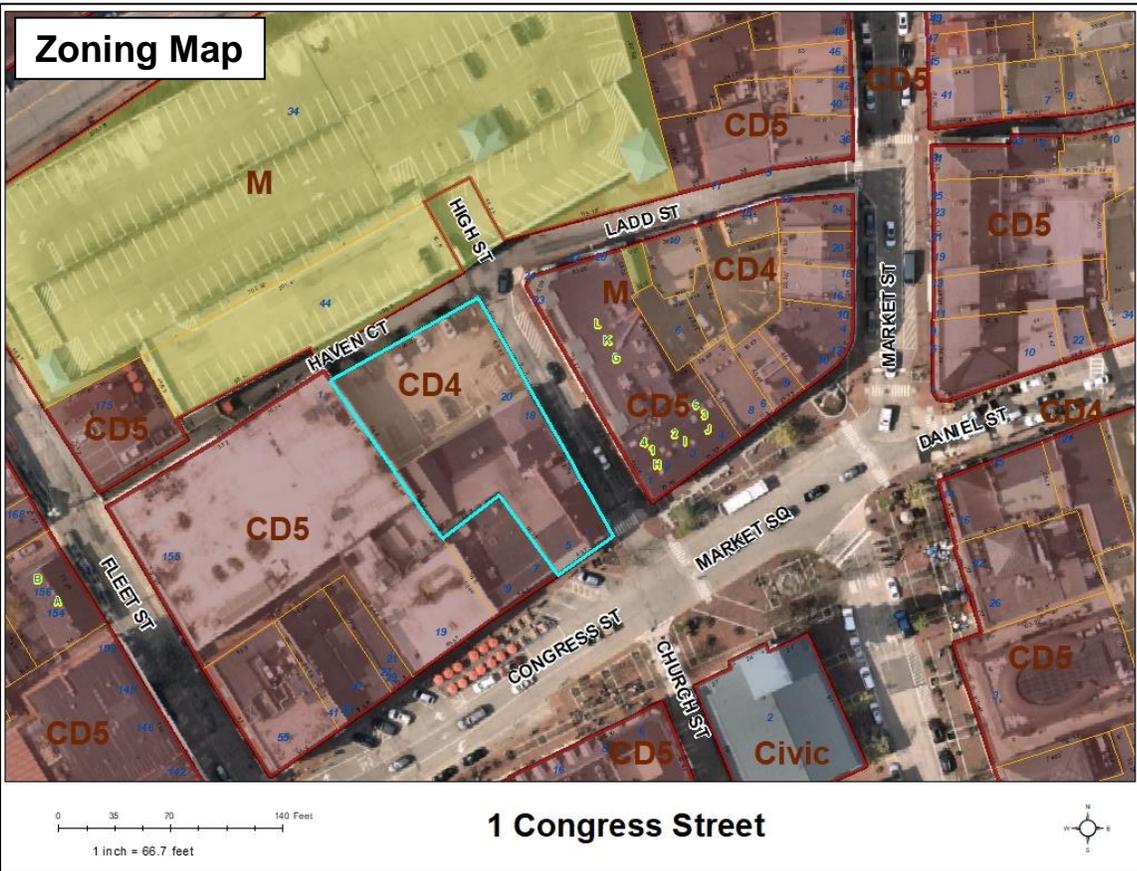
Existing & Proposed Conditions

TABLE IS FOR CD4 ZONING	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed use/parking lot	4 story addition	Primarily mixed uses
<u>Primary Front Yard (ft.):</u>	NA	1'6"	15 max.
<u>Right Yard (ft.):</u>	NA	15	NR
<u>Left Yard (ft.):</u>	NA	0	NR
<u>Rear Yard (ft.):</u>	NA	10	Greater of 5' from rear lot line or 10' from CL of alley min.
<u>Height (ft.):</u>	NA	3 stories, 44'-11" (advertised) 42'9 1/2" (proposed)	2-3 stories, 40' max.
<u>Building Coverage (%):</u>	0	67	90 max.
<u>Open Space Coverage (%):</u>		32	10 min.
<u>Parking:</u>	18	19	0 required for commercial use in Downtown Overlay
<u>Estimated Age of Structure:</u>	1800	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Planning Board/TAC – Site Review
- Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

March 29, 2012 – Relief from Zoning Ordinance including:

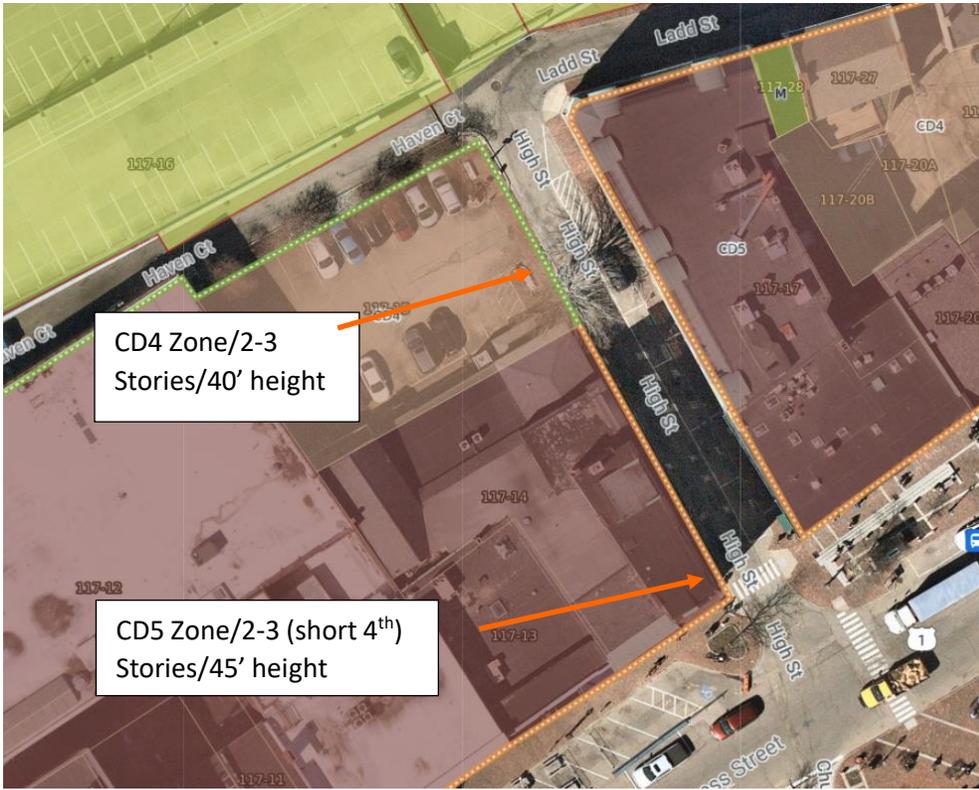
1. Variance from Section 10.1115.20 and the requirements of 10.1115.30 to allow no off-street parking spaces to be provided where 1 space per 100 s.f. Gross Floor Area is required.
2. Special Exception under Section 10.1113.112 to allow 6 off-street parking spaces to be provided on another lot in the same ownership and within 300' of the property line of the lot in question.

The Board voted to **grant** the Variance as presented. With the granting of the Variance the Board determined the Special Exception would not be required.

Planning Department Comments

The applicant merged the two properties in February 2022 and plans to construct a 3-story addition with an attic, which requires a variance for the building height requirements. The newly merged lot has two zoning districts, CD4 and CD5 which both have different height requirements as shown on the map below. The existing zoning reflects prior ownership and land use patterns as two individual lots. The abutting buildings along High Street and Haven Court have building heights ranging from 44 feet to 48 feet. The original advertisement was based on the applicant's request for a short fourth, however it is staff's opinion that it is actually an attic because it is within the roof. The proposed building height will allow access to all floors of the existing historic buildings along Congress and High Streets. The project will need HDC approval as well as site plan approval through TAC and Planning Board. Since the initial filing in February, and working with the HDC, the applicant has submitted revised drawings, showing a reduced height just under 43' (42' 9 1/2"). On Sheet H5.16, the applicant shows the average grade plane based on the whole building and also segregated into 3 separate areas. If vertical fire wall separations are proposed between the areas A, B, and C, staff would agree the building height could be calculated at 42' 2". However, this has not been verified and staff would suggest the Board use the average grade plane of the entire building and the height of 42' 9 1/2". If granted approval, staff recommends the following stipulations:

1. **Final design may change due to review and approval by the HDC.**
2. **The height shall be 42' 9 1/2" as presented.**



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.

10.235 Certain Representations Deemed Conditions

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

4.

Request of **Francis X. Bruton, (Attorney for Appellants)**, for Appeal of Administrative decision that the merged lot at **1 Congress** is not subject to the height allowances (2 stories, 4th short, 45 feet in height) pursuant to Map 10.5A21B and as permitted pursuant to Section 10.5A21.22(a) & (c) of the Zoning Ordinance. Said property is shown on Assessor Map 117 Lot 14 and lies within Character District 4 (CD-4), Character District 5 (CD-5) and the Historic District.

The appellants are appealing an administrative decision made by the Planning Director with regard to the proposed development on the recently merged parcels at 1 Congress Street. Below is the email from the Planning Director to the applicant stating that Section 10.5A21.22(c) does apply to this portion of the property and a variance is needed to allow the additional story and height. Additionally, a sketch showing how the height would be applied to this portion, showing the 50 foot setback from both High Street and Haven Court.

 Reply
  Reply All
  Forward



 Wed 2/23/2022 3:14 PM
Beverly M. Zendt
 RE: 1 Congress Street

To: FX Bruton; Nicholas J. Cradnell
 Cc: Mark McNabb; Peter M. Stith

 Message

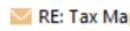
 RE: Tax Map 117, Lot 15 and Tax Map 117, Lot 14 Case: LU-22-12 (282 KB)

 Exhibit 1 - 1 Congress Street.pdf (532 KB)

Good afternoon,

In response to your subsequent request for further consideration of our interpretation of Section 10.5A21.22 – Building Height Standards - and the applicability of the Building Height Standards shown under Map 10.5A21B to your client's merged lot at 1 Congress Street, we continue to conclude that your characterization of the current ownership status of Haven Court – being a private way owned in fee by your client with no public interest in property - as well as your interpretation of how the building height standards are applied on a "corner" or "through lots" to be incorrect.

As shown on the "Verra Plan" (11/22/05) that you provided, portions of Haven Court appear to be owned in fee by the city and it is unclear whether the area labelled as a "private way" on the plan is accurate. Map 10.5A21B shows the building height standards for both High Street and the full length of Haven Court. As such, the application of the building height standards are based on the "front lot line(s)", "street" or "water body" that fronts along the property. The Zoning Ordinance defines a "front lot line" follows:

Lot line, front

A boundary of lot that separates the lot from a street or public place. In the case of a corner lot or waterfront lot, the front lot line shall be the line bordering the street on which the lot has its address. A corner lot or a through lot shall have two front lot lines.

Given we believe that your client's merged lot fronts on three public streets, we agree that Section 10.5A21.22(C) allows for an increase in building height on the merged lot but importantly, it also restricts the increased height allowance to areas more than 50 feet from a front lot line(s). Thus, as shown in the attached Exhibit, a dimensional variance would be required for any increase in the maximum building height within 50 feet of High Street or Haven Court.

In closing, even if Haven Court was deemed not to qualify as a "street" or "public place", thereby potentially nullifying its building height designation on Map 10.5A21B, the presence of the lower height standard along High Street would still prevent a new building from being taller than 3 stories or 40' within 50 feet of High Street due to the corner lot provisions of the definition of front lot line stated above. Thus, regardless of the ownership status of Haven Court, we continue to support the need for a dimensional variance for your proposed project as currently designed.

Please contact me if I can provide any additional information.

Best Regards,

Beverly Mesa-Zendt AICP
 Director | Planning Department
 City of Portsmouth
 1 Junkins Avenue
 Portsmouth, NH 03801

☎ **(603) 610-7216**

✉ Bmz@cityofportsmouth.com

📍 [Planning Department | City of Portsmouth](#)



Exhibit A – 1 Congress Street Project – Maximum Building Height (# Stories / Feet)*

**Assumes Haven Court qualifies as a public street or public place*

5.

Request of **Joel St. Jean and Mariele Chambers (Owners)**, for property located at **108 Burkitt Street** whereas relief is needed to demolish existing garage and construct new 13' x 30' garage which requires the following: 1) A Variance from Section 10.573.20 to allow a 1 foot left 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 located on Assessor Map 159 Lot 30 and lies within the General Residence A (GRA).

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Demo garage/Construct new garage	Primarily single residence
<u>Lot area (sq. ft.):</u>	5,227	5,227	7,500 min.
<u>Lot area per dwelling (sq. ft.):</u>	5,227	5,227	7,500 min.
<u>Lot depth (ft.):</u>	50	50	70 min.
<u>Street Frontage (ft.):</u>	102	102	100 min.
<u>Primary Front Yard (ft.):</u>	6 (house) 30 (garage)	31	15 min.
<u>Right Yard (ft.):</u>	3	35 (garage)	10 min.
<u>Left Yard (ft.):</u>	0	1	10
<u>Rear Yard (ft.):</u>	50	45	20 min.
<u>Height (ft.):</u>	8.5	12	35 max.
<u>Building Coverage (%):</u>	25	28	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1900	Variance 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 seeking to demolish the existing nonconforming garage and construct a new, 13' x 30' garage in approximately the same location, with a proposed 1 foot left side yard setback. The building coverage with the larger garage will increase to 28%, where 25% is the maximum allowed.

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.

10.235 Certain Representations Deemed Conditions

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

6.

Request of **James William Woods** and **Anna Roeline Meinardi (Owners)**, for property located at **1 Walton Alley** whereas relief is needed to construct a 1 story, 12' x 18' detached garage which requires the following: 1) Variances from Section 10.573.20 to allow a) a 1.5' side yard where 10' is required; and b) a 5' rear yard where 13'10" is required. Said property is located on Assessor Map 103 Lot 27 and lies within the General Residence B (GRB) and Historic Districts.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Detached Garage	Primarily residential
<u>Lot area (sq. ft.):</u>	5,672	5,672	5,000 min.
<u>Lot area per dwelling (sq. ft.):</u>	5,672	5,672	5,000 min.
<u>Lot depth (ft.):</u>	73	73	60 min.
<u>Street Frontage (ft.):</u>	149	149	80 min.
<u>Primary Front Yard (ft.):</u>	2	2	5 min.
<u>Secondary Front Yard (ft.):</u>	42	42	5 min.
<u>Right Yard (ft.):</u>	14	1.5'	10
<u>Rear Yard (ft.):</u>	39	9 (5 advertised)	25/10'2" (garage) min.
<u>Height (ft.):</u>	<35	10'2" (garage)	35 max.
<u>Building Coverage (%):</u>	16	22	30 max.
<u>Open Space Coverage (%):</u>	67	57	25 min.
<u>Parking:</u>	2	2	3
<u>Estimated Age of Structure:</u>	1750	Variance request(s) shown in red.	

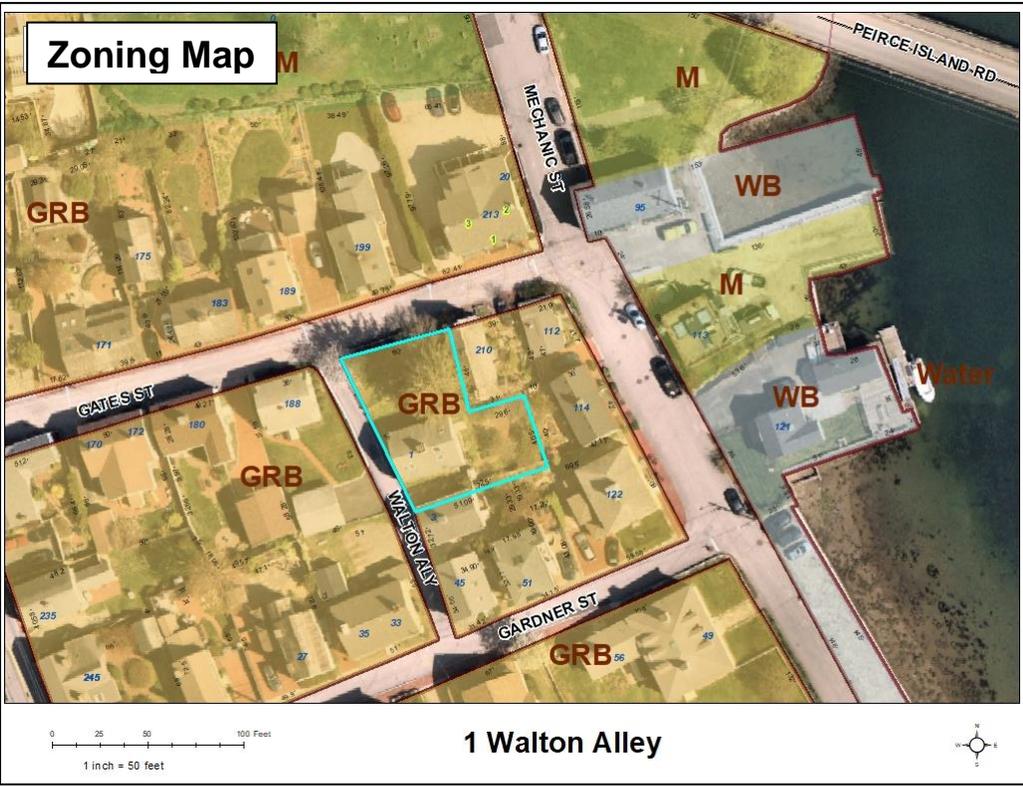
Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Aerial Map



1 Walton Alley

Previous Board of Adjustment Actions

July 15, 2003 – Relief from Zoning Ordinance concerning:

1. Article III, Section 10-301(A)(6) Requested to allow picket fence 4' from intersection of Walton Alley and Gates Street where 20' from intersection was the minimum required from the corner.

The Board voted the request be **granted**.

Planning Department Comments

The applicant is seeking to construct a one car garage and extend the existing driveway. A rear addition is proposed on the main dwelling, but does not need any zoning relief. The initial submission requested a 5 foot rear yard and the applicant has moved it forward so that the proposed rear yard is 9 feet. In addition, the height of the garage has been reduced from what was originally advertised, down from 13'10" to the proposed 10'2" height. The project has not received final approval from the HDC. If granted approval, staff would recommend the following for consideration:

1. **The rear yard shall be 9 feet.**
2. **The final design of the garage may change as a result of the HDC review and 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.

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

NEW BUSINESS

1.

Request of **Jay Anthony Clark (Owner)**, for property located at **64 Haven Road** whereas relief is needed to demolish existing garage and porch and construct new garage and addition which requires the following: 1) Variance from Section 10.521 to allow a 5' left side yard where 10' is required. 2) A Variance from Section 10.515.14 to allow a 7.5' setback for 2 mechanical units where 10' is required for each. 3) 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 located on Assessor Map 206 Lot 30 and is located within the Single Residence B (SRB) District.

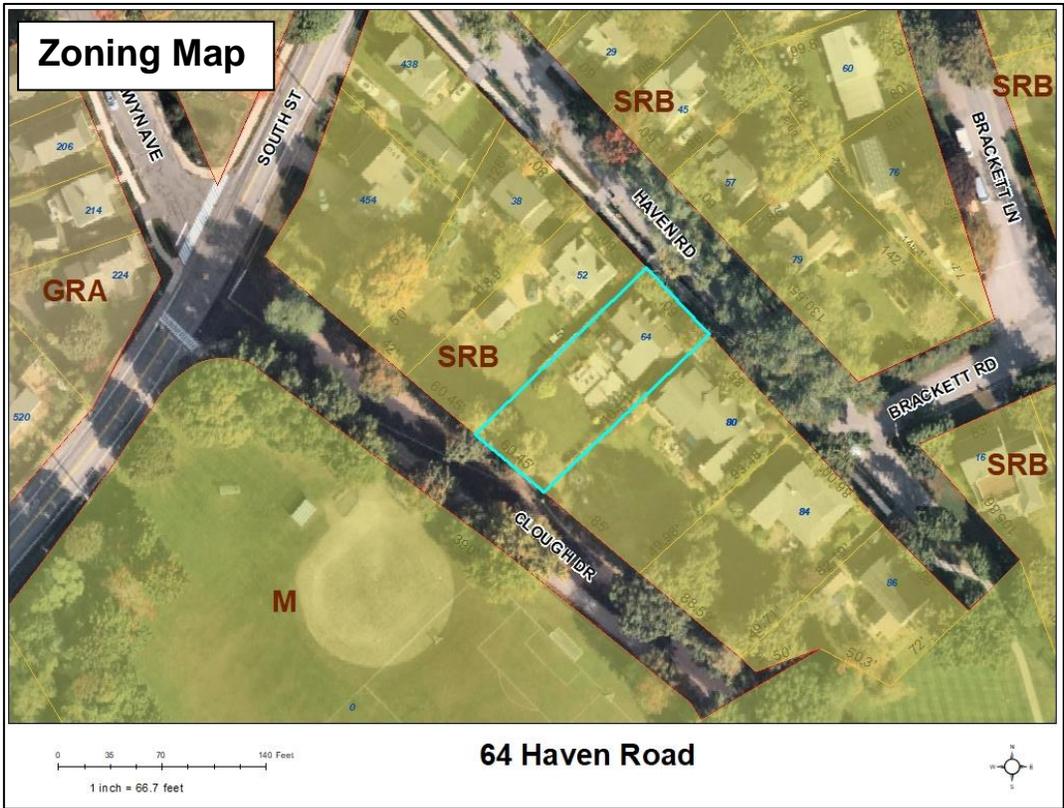
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Add 10' x 12' shed	Primarily residential
<u>Lot area (sq. ft.):</u>	9,583	9,583	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,583	9,583	15,000 min.
<u>Lot depth (ft.):</u>	107	107	100 min.
<u>Street Frontage (ft.):</u>	60	60	100 min.
<u>Primary Front Yard (ft.):</u>	16	16	30 min.
<u>Secondary Front Yard (ft.):</u>	95	95	30 min.
<u>Left Yard (ft.):</u>	3	5 - addition 7.5' – HVAC	10
<u>Right Yard (ft.):</u>	13	10	10 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	17	15	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1940	Variance request(s) shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

December 21, 2021 – The Board of Adjustment considered your application for the property whereas relief is needed from the Zoning Ordinance to construct a 10' x 12' shed which requires the following:

- 1) A Variance from Section 10.573.20 to allow a 5' side yard where 10' is required; and
- 2) A Variance from Section 10.571 to allow an accessory structure to be located closer to the street than the principal building.

As a result of said consideration, the Board voted to **grant** the request.

Planning Department Comments

The applicant is proposing to demolish the existing garage and porch and construct a new garage and addition and add two new HVAC units as part of the project. The HVAC units are proposed to be 7.5 feet from the left lot line where 10 feet is required. The new addition will be 5 feet at the closest point.

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.

10.235 Certain Representations Deemed Conditions

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

2.

Request of **Stephen E. Chaloner (Owner)**, for property located at **217 Myrtle Avenue** whereas relief is needed to construct a 6' x 8' deck with stairs which requires the following: 1) A Variance from Section 10.521 to allow a 12' secondary front yard where 30' 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 located on assessor Map 220 Lot 92 and is located 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	Rear deck	Primarily residential
<u>Lot area (sq. ft.):</u>	6,098	6,098	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,098	6,098	15,000 min.
<u>Lot depth (ft.):</u>	135	135	100 min.
<u>Street Frontage (ft.):</u>	101	101	100 min.
<u>Primary Front Yard (ft.):</u>	10	10	30 min.
<u>Secondary Front Yard (ft.):</u>	12	12	30 min.
<u>Right Yard (ft.):</u>	10	10	10
<u>Rear Yard (ft.):</u>	>60	>60	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	17.5	18.5	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1906	Variance request(s) shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

June 27, 2003 – The Board considered request for the following Variance:

1. Article III, Section 10-302(A) to allow construction of a 6' x 26.8' front porch with a 16.5' front yard where 30' was the minimum required.

As a result of such consideration, it was voted that the request be **granted**.

Planning Department Comments

The applicant is proposing to add a 6' x 8' rear deck to the existing dwelling that will not encroach any further into the secondary front yard than what currently exists. The existing dwelling is nonconforming to both the principal and secondary front yards. All other dimensional requirements are compliant with the proposed deck.

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.

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

3.

The request of **Emily Alati (Owner)**, for property located at **47 Lovell Street** whereas relief is needed to construct a rear addition and detached garage with apartment which requires the following: 1) Variances from Section 10.521 to allow a) a 5' right side yard where 10' is required; b) a 5' rear yard where 20' is required; c) a 6.5' left side yard where 10' is required; d) a lot area per dwelling unit of 2,178 where 3,500 per dwelling is required and e) a 6' right side yard where 10' 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 located on Assessor Map 146 Lot 14 and is located within the General Residence C (GRC) District.

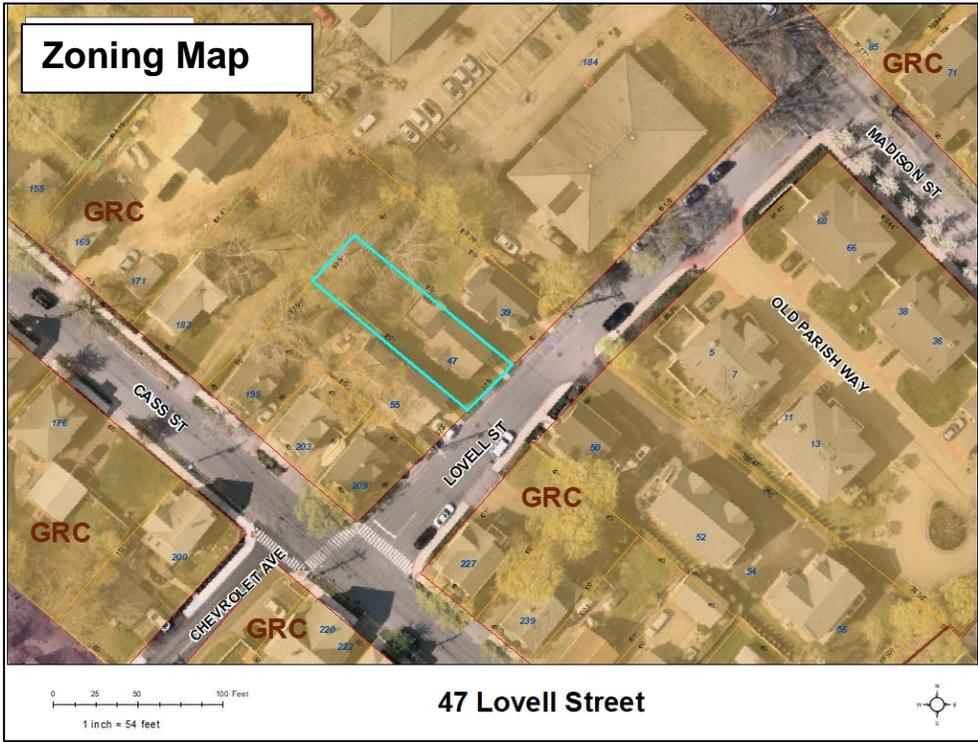
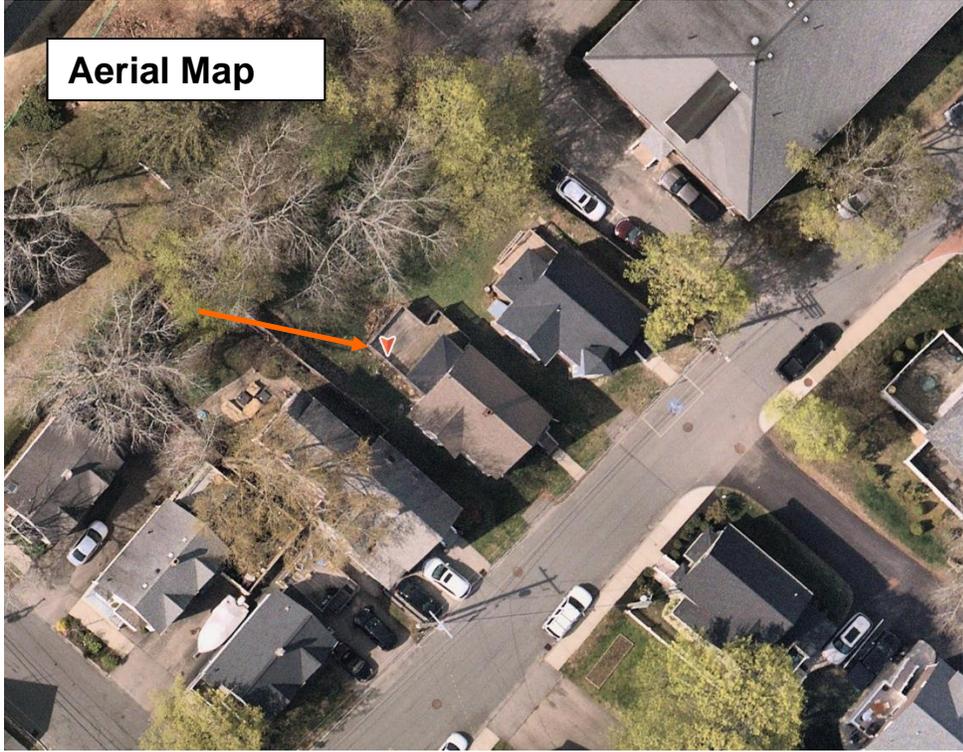
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single family	Rear addition and detached garage with apartment	Primarily residential
<u>Lot area (sq. ft.):</u>	4,356	4,356	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,356	2,178	3,500 min.
<u>Lot depth (ft.):</u>	120	120	50 min.
<u>Street Frontage (ft.):</u>	37.5	37.5	70 min.
<u>Primary Front Yard (ft.):</u>	3	3	5 min.
<u>Left Yard (ft.):</u>	8	6.5 (garage)	10 min.
<u>Right Yard (ft.):</u>	4.5	5 (garage) 6 (addition)	10
<u>Rear Yard (ft.):</u>	60	5	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	24	33.5	35 max.
<u>Open Space Coverage (%):</u>	64	54	20 min.
<u>Parking:</u>	0	4	3
<u>Estimated Age of Structure:</u>	1925	Variance 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 a new detached garage with an apartment located at the rear of the property. The proposed garage is 26 feet wide, and with a lot width of 37.5 feet, variances are needed for both side yards. The GRC district allows for more than one freestanding dwelling on a lot, however the lot size does not meet the density for 2 dwellings, thus the request for lot area per dwelling unit. The applicant and direct abutter recently obtained a driveway permit for a shared driveway to provide off-street parking for both lots. The rear addition will require relief for the upward expansion within the setback.

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.

10.235 Certain Representations Deemed Conditions

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

4.

The request of **404 Islington Street LLC (Owner)**, for property located at **404 Islington Street** whereas relief is needed for the expansion of use to an Inn with 10 rooms which requires the following: 1) A Special Exception for an Inn from Use #10.30 where the use is only allowed by Special Exception. Said property is shown on Assessor Map 145 as Lot 33 and lies within the Character District 4-L2 (CD4-L2) and Historic Districts.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Inn	Inn	Primarily mixed use/residential
<u>Rooms</u>	8	10	15 max.
<u>Parking:</u>		11	13 (CUP granted June 16)
<u>Estimated Age of Structure:</u>	1815	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 seeking to add three additional rooms to the existing inn which includes the conversion of an existing caretaker apartment. An inn does not require a caretaker's apartment nor does it have to be occupied by the owner like a bed and breakfast. The expansion of the use requires a Special Exception, as the inn is an existing nonconforming use. The applicant is improving the parking situation, however could not meet the requirement for 13 off-street spaces. The Planning Board granted a conditional use permit on June 16, 2022 to allow 11 spaces where 13 are required.

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.*

10.235 Certain Representations Deemed Conditions

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

5.

The request of **Safely Family Revocable Trust Agreement (Owner)**, for property located at **1121 South Street** whereas relief is needed to demolish the existing garage and construct a new garage and deck which requires the following: 1) A Variance from Section 10.521 to allow a 3.5' left side yard where 10' 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 located on Assessor Map 150 Lot 20 and is located 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	Demo garage and construct new garage and deck	Primarily residential
<u>Lot area (sq. ft.):</u>	6,970	6,970	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,970	6,970	7,500 min.
<u>Lot depth (ft.):</u>	113.5	113.5	70 min.
<u>Street Frontage (ft.):</u>	64	64	100 min.
<u>Primary Front Yard (ft.):</u>	22	22	15 min.
<u>Right Yard (ft.):</u>	>10	>10	10 min.
<u>Left Yard (ft.):</u>	3.5	3.5 (garage) 8'10" (deck)	10
<u>Rear Yard (ft.):</u>	56.5	56.5	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	19.5	22	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking:</u>	3	3	2
<u>Estimated Age of Structure:</u>	1937	Variance request(s) shown in red.	

Other Permits/Approvals Required

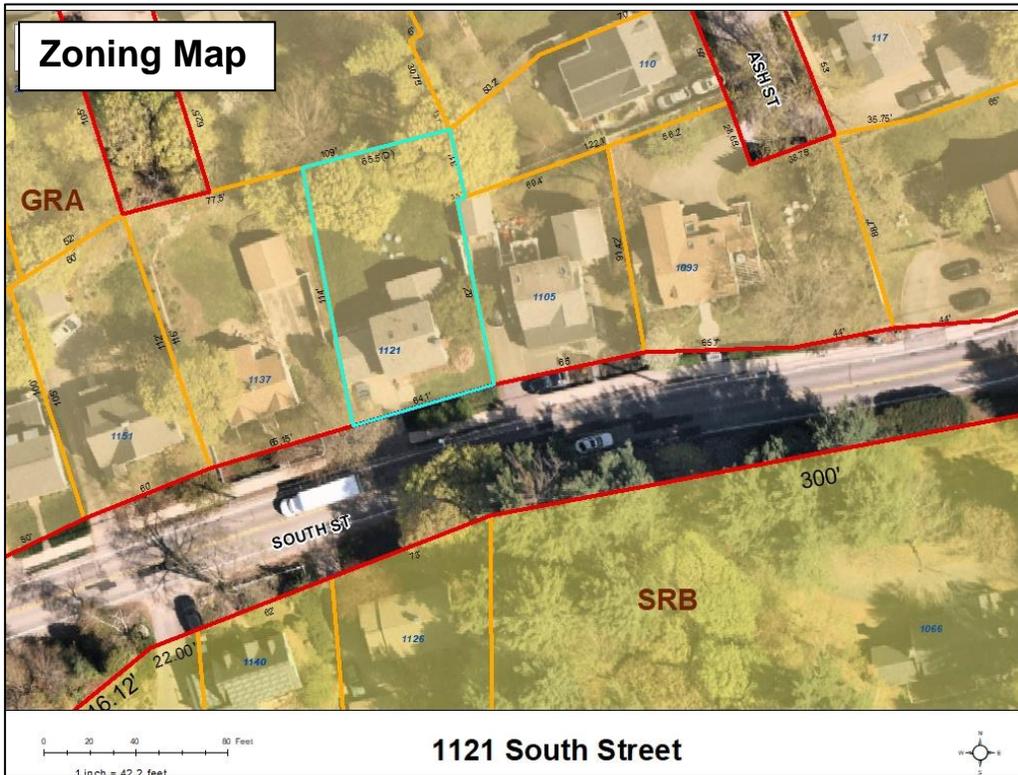
None.

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is proposing to demolish the existing nonconforming garage and construct a new garage and deck with the same left yard setback of 3.5'. The proposed deck will be 8'10" from the left side yard, and it appears the majority of it will be less than 18" in height, which would not need to adhere to the setback. The garage will be taller than the existing in order to accommodate additional living space above. The deck setback was not in the legal notice, however as mentioned, only a portion of it is above the 18" height and if granted approval, staff would recommend the Board add the following stipulation if granted approval:

1. The portion of the deck that is above 18" shall be 8' 10".

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.

10.235 Certain Representations Deemed Conditions

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

6.

The request of **531 Islington Street Portsmouth LLC (Owner)**, for property located at **531 Islington Street** whereas relief is needed to replace the existing menu board which requires the following: 1) A Variance from Section 10.835.31 to allow a menu board to be 26 feet from the rear lot line and 40 feet from the side lot line where 50 feet is required for each. 2) A Variance from Section 10.1261.30 to allow direct lighting in the Historic District where external illumination is the only type of illumination allowed. Said property is located on Assessor Map 157 Lot 5 and is located within the Character District 4-L2 (CD4-L2).

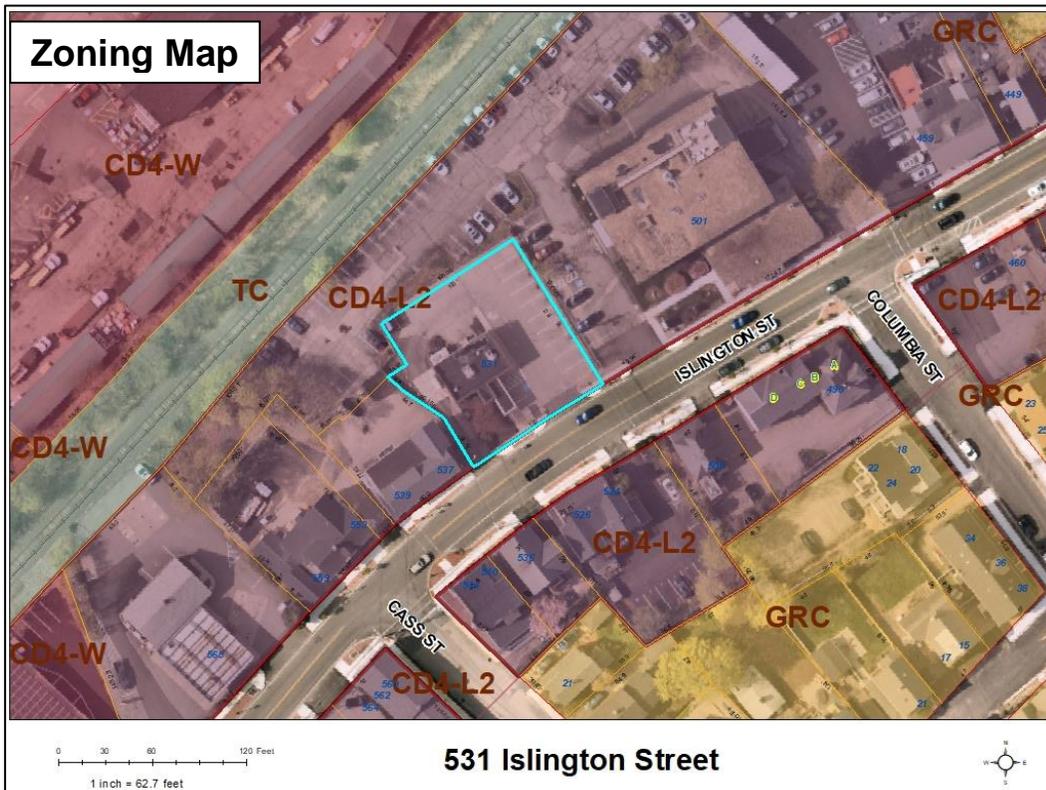
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Dunkin' Donuts	Replace drive-thru menu board	Primarily Mixed Uses
<u>Lot area (sq. ft.):</u>	11,325	11,325	3,000 min.
<u>Right Side Yard (ft.):</u>	74	>50	50 min.
<u>Left Side Yard (ft.):</u>	23	40	50 min.
<u>Rear Yard (ft.):</u>	30	26	50 min.
<u>Illumination Type:</u>	Internal	Internal	External only in HDC
<u>Estimated Age of Structure:</u>	1999	Variance requests shown in red.	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

March 16, 1999 – The Board considered request for the following Variance:

1. Article XII, Section 10-1204 Table 15 to allow 19 parking spaces to be provided where 21 parking spaces are required.

As a result of such consideration, it was voted that the request be **granted** as advertised and presented.

April 20, 1999 – The Board considered a Request for Rehearing by Robert D Ciandella, Esquire representing the Portsmouth Advocates of Portsmouth. It was voted that the request for rehearing be **denied**. We found there was no new evidence being presented nor did the Board err in their decision made at the March 16 1999 meeting.

Planning Department Comments

The applicant is in the process of updating all of the signage on the property and is currently working through the HDC process. The existing menu board is nonconforming with respect to lighting and location per the requirements of the Ordinance. The only type of lighting permitted in the HDC is external illumination and the existing menu board is direct illumination and the proposed will be direct as well. The existing menu board is approximately 23 feet from the left side and 30 feet from the rear where 50 is required for each. The proposed menu board will move to a more central location at the rear of the building and will result in a 40 side yard, but will be slightly closer to the rear yard at 26 feet. The abutting property to the rear is the railroad and beyond that is Ricci Lumber. The abutter to the left is 3 unit condo and where the existing menu board may be visible from this property, the proposed menu board will not be visible.

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.

10.235 Certain Representations Deemed Conditions

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

7.

The request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed to construct a 718 square foot garage addition with living space and deck above which requires the following: 1) A Variance from Section 10.521 to allow a 15.5' front yard where 30' 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 located on Assessor Map 2074 Lot 59 and is located within the single residence B (SRB) District.

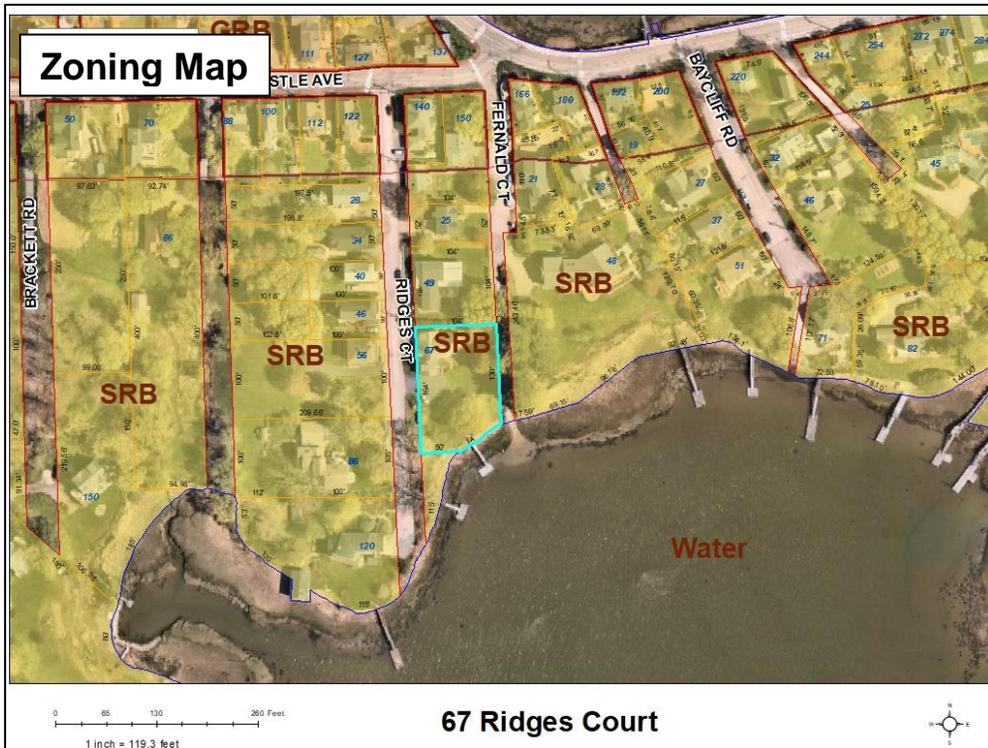
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Garage addition	Primarily single residence
<u>Lot area (sq. ft.):</u>	16,500	16,500	15,000 min.
<u>Lot area per dwelling (sq. ft.):</u>	16,500	16,500	15,000 min.
<u>Lot depth (ft.):</u>	109	109	100 min.
<u>Street Frontage (ft.):</u>	164	164	100 min.
<u>Primary Front Yard (ft.):</u>	8	15.5	30 min.
<u>Left Yard (ft.):</u>	10	10	10 min.
<u>Right Yard (ft.):</u>	95	>67	10
<u>Rear Yard (ft.):</u>	40	40	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	14	18.5	20 max.
<u>Open Space Coverage (%):</u>	73	75	40 min.
<u>Parking:</u>	4	4	2
<u>Estimated Age of Structure:</u>	2002	Variance request(s) shown in red.	

Other Permits/Approvals Required

Conservation Commission/Planning Board – Wetland CUP

Neighborhood Context



Previous Board of Adjustment Actions

July 15, 1986 – the Board **granted** a Variance to permit the construction of a 20' x 20' addition onto an existing single family dwelling with a front yard of 9' where a 30' front yard is required.

August 20, 2002 – The Board considered request for the following Variance: Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) is requested to allow a 5'9" x 10'3" front porch/entry with an 8'1" front yard where 30' is the minimum required. The Board voted the request be **granted** as advertised and presented.

October 15, 2002 – The Board considered request for the following Variance: Article III, Section 10-302(A) is requested to allow the existing single family dwelling to be demolished and rebuilt with a 13'11" front yard where 30' is the minimum required. The Board voted the request be **granted** as advertised and presented.

Planning Department Comments

The applicant is seeking to add a right side garage addition with living space above connected to the main dwelling. As shown in the history above, variances were granted in 2002 to allow the reconstruction of the dwelling at 13'11" from the front lot line and a front porch at 8' from the front lot line. The proposed addition will be setback an addition 2 feet from the front of the existing dwelling at 15.5'. The proposed addition will be located over existing pavement and the open space will actually increase with the removal of additional impervious areas as part of the project. All other dimensional requirements are compliant with the proposal. The applicant will need to go to the Conservation Commission and Planning Board for a Wetland CUP for the encroachment into the buffer.

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.

10.235 Certain Representations Deemed Conditions

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