



City of Portsmouth
Planning Department
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Portsmouth, NH
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MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Stefanie Casella, Planner
DATE: April 12, 2023
RE: Zoning Board of Adjustment April 18, 2023

The agenda items listed below can be found in the following analysis prepared by City Staff:

II. Old Business

- A. 635 Sagamore Avenue
- B. 67 Ridges Court
- C. 55 Mangrove Street
- D. 74 Sunset Road
- E. 196 Aldrich Road
- F. 15 Lafayette Road

II. OLD BUSINESS

- B.** The request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District.

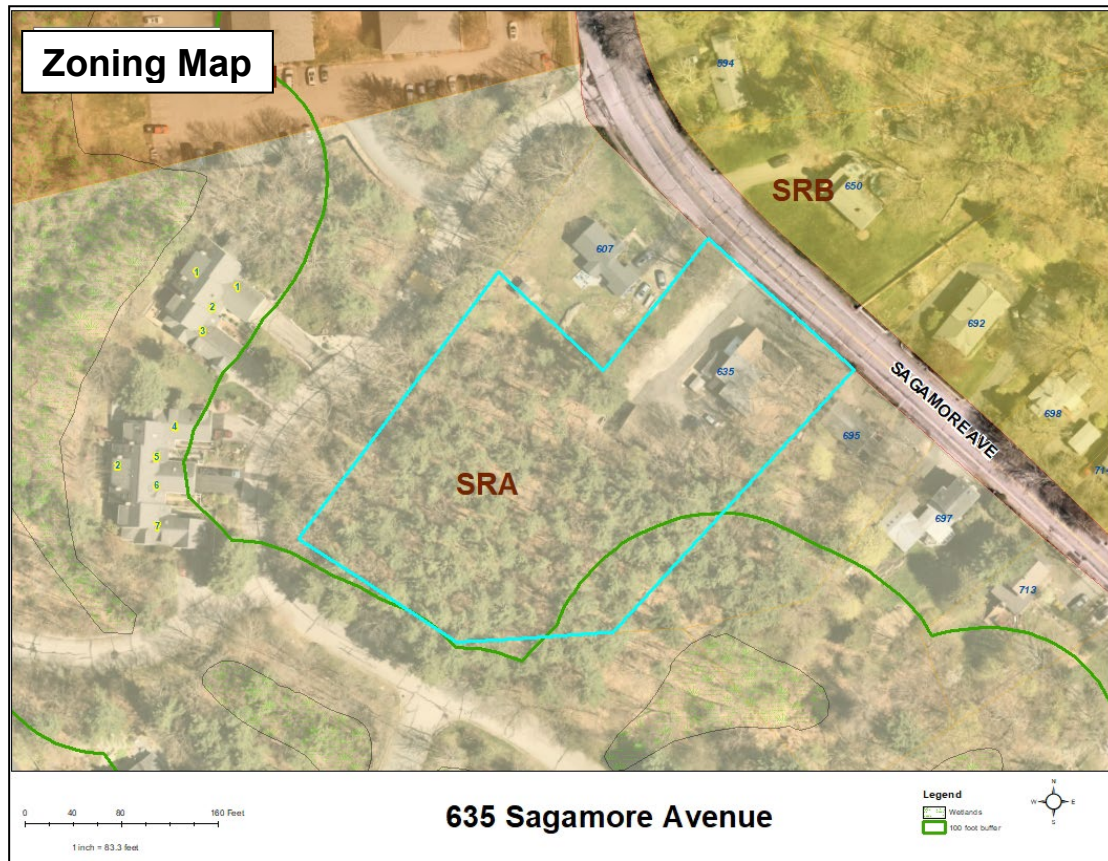
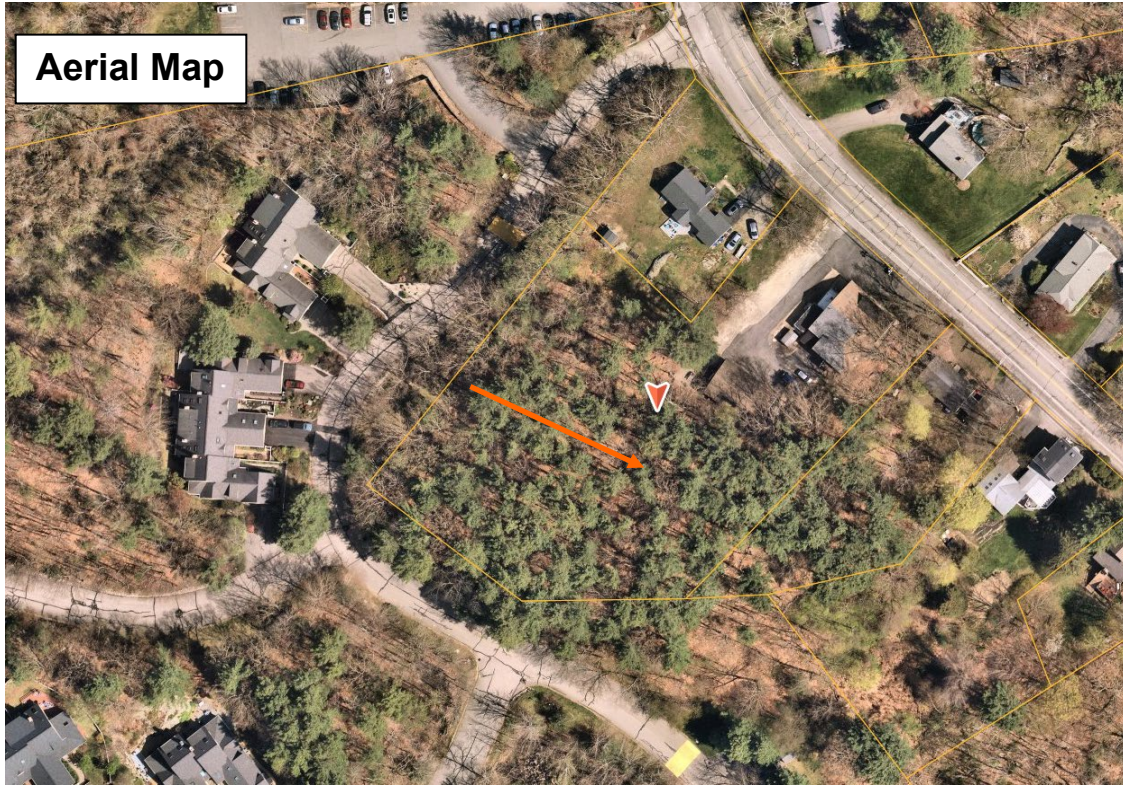
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial w/ 1 apartment	4 single family dwellings	Primarily residential
<u>Lot area (sq. ft.):</u>	84,795	84,795	43,560 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	84,795	21,198	43,560 min.
<u>Lot depth (ft.):</u>	358	358	200 min.
<u>Street Frontage (ft.):</u>	160	160	150 min.
<u>Primary Front Yard (ft.):</u>	28	>30	30 min.
<u>Right Yard (ft.):</u>	60	>20	20 min.
<u>Left Yard (ft.):</u>	30	21	20
<u>Rear Yard (ft.):</u>	219	>40	40 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	4	9.2	10 max.
<u>Open Space Coverage (%):</u>	>50	81	50 min.
<u>Parking:</u>	4+	16	6
<u>Estimated Age of Structure:</u>	1950	Variance request(s) shown in red.	

Other Permits/Approvals Required

TAC/Planning Board – Site Plan Review

Neighborhood Context



Previous Board of Adjustment Actions

April 19, 2022 – The BOA considered your application for remove existing commercial structure and construct 5 new single-family dwellings which requires the following: 1) A Variance from Section 10.513 to allow 5 principal structures on a lot where only 1 is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 22,389 square feet where 1 acre per dwelling is required. The Board granted your request to **postpone** to the May meeting.

May 17, 2022 – The Board **granted** a request to postpone to the June meeting.

June 22, 2022 – The Board voted to acknowledge the **withdrawal** of the application.

November 15, 2022 - The Board **granted** a request to postpone to the June meeting.

December 20, 2022 - The Board **granted** a request to postpone to the June meeting.

January 17, 2023 - The Board **granted** a request to postpone to the March meeting.

Planning Department Comments

As shown in the history above, the applicant was before the Board this past spring with a proposal to construct 5 single family dwellings on one lot. Due to concerns from the abutters, the application was withdrawn so they could work on addressing concerns from the abutters. The new application proposes to demolish the existing structures and construct 4 free-standing single-family dwellings. The SRA zone requires 1 acre per dwelling unit and only allows 1 principal structure on a single lot. With 4 dwellings, the proposed lot area per dwelling will be 21,198, where 43,560 is required. With the exception of the density, all other dimensional requirements are in compliance with the proposed layout. This will require site plan review before TAC and Planning Board if the variances are granted. If granted approval, staff recommends the following stipulation for consideration:

1. **The design and location of the dwellings may change as a result of Planning Board 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

 - (c) *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.

II. OLD BUSINESS

- B. The rehearing of the request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed for construction of a 518 square foot garage addition and expansion of front dormer which requires the following: 1) A variance from Section 10.521 to allow a 14 foot front yard where 19 feet is required per Section 10.516.10. 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 207 Lot 59 and lies within the Single Residence B (SRB) District. (LU-22-199)

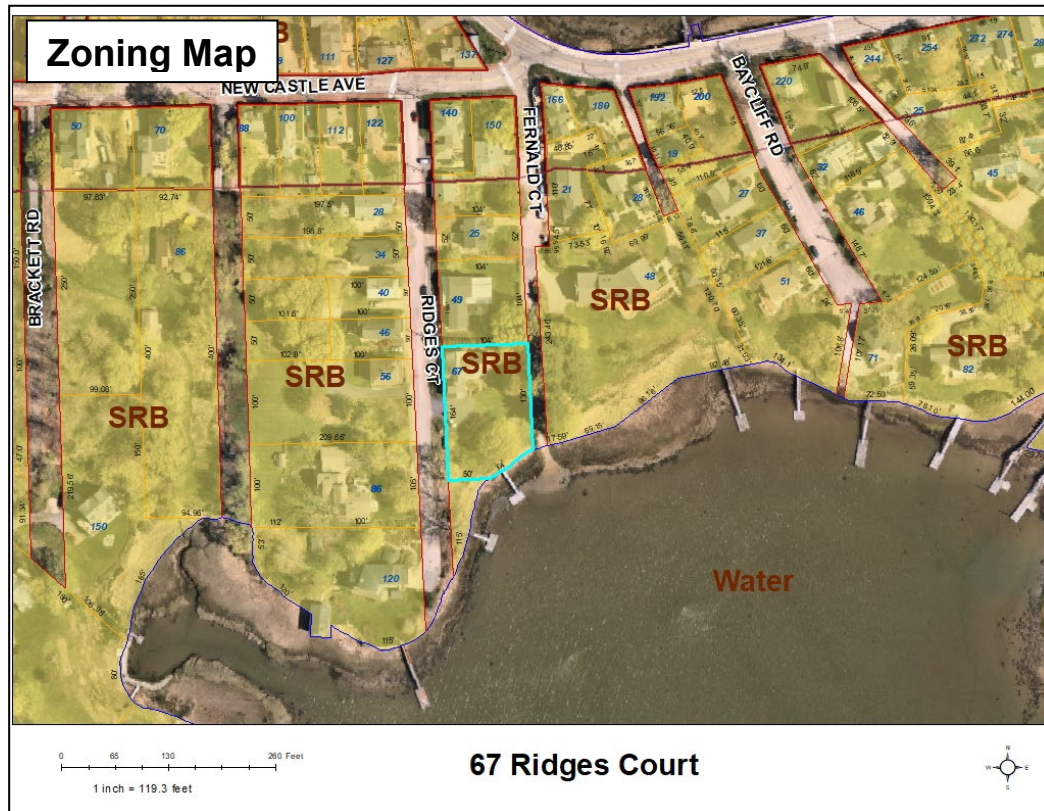
Existing & Proposed Conditions

	<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	14	30 *(19 feet per front yard averaging) min.
<u>Left Yard (ft.):</u>	10	9.5	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	17.5	20 max.
<u>Open Space Coverage (%):</u>	73	77	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

- Wetland CUP – Conservation Commission & Planning Board
- Building Permit

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.

July 19, 2022 - 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.

The Board voted to **grant** the request to **postpone** to the August meeting.

August 16, 2022 The Board voted to **deny** the request of July 19, 2022 because there was no hardship.

September 27, 2022 – The Board voted to **grant** the following with the exception of item “b” which was determined to not be required:

Section 10.521 to allow a) an 8' front yard where 30' is required to expand the existing front porch; b) a 13.5 foot front yard where 30 is required to expand the main roof of the house; c) a 13.5 foot front yard where 30 feet is required for a new roof over an existing doorway; and d) a 9.5 foot left side yard where 10 feet is required for a new rood over an existing doorway. Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance

October 18, 2022 – The Board voted to postpone to the November meeting.

November 15, 2022 - The Board voted to determine if Fisher v. Dover applied to this application. A motion to determine that the petition does not fall under Fisher v. Dover failed, therefore the request was not heard.

January 17, 2023 – The Board voted to deny the request for rehearing.

February 22, 2023 – The Board voted to reconsider the request for rehearing based on the arguments raised in Attorney Phoenix’s memo and to grant the rehearing.

Planning Department Comments

The application currently before the Board is the same as was submitted for the November 15, 2022 public hearing.

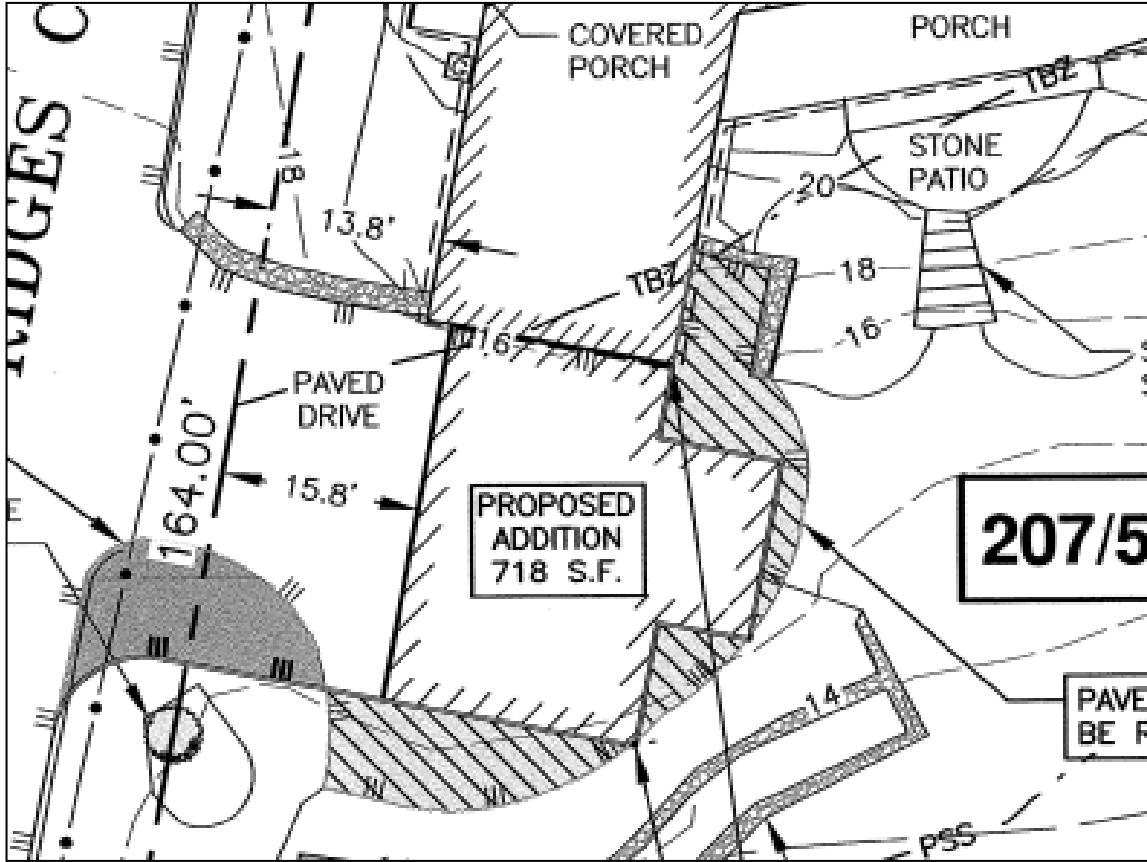
Staff feels this is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether Fisher vs. Dover is applicable before this application is considered.

“When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan.” Fisher v. Dover, 120 N.H. 187, (1980).

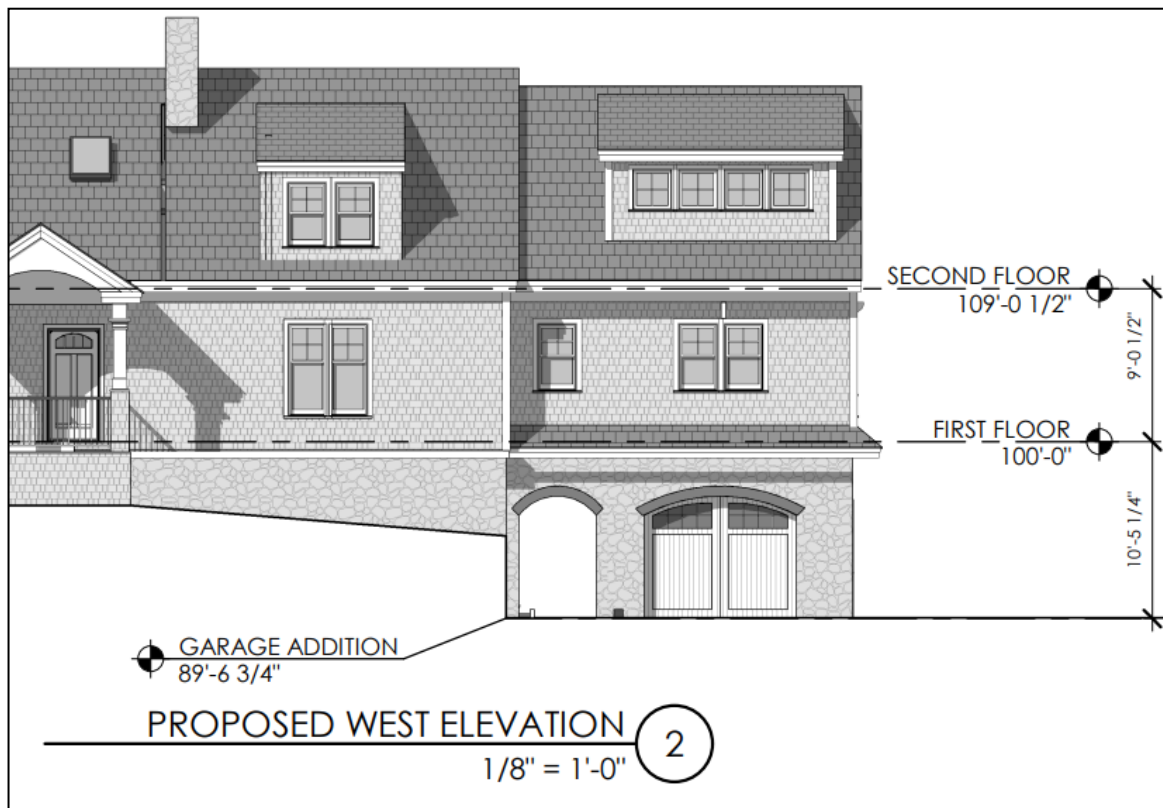
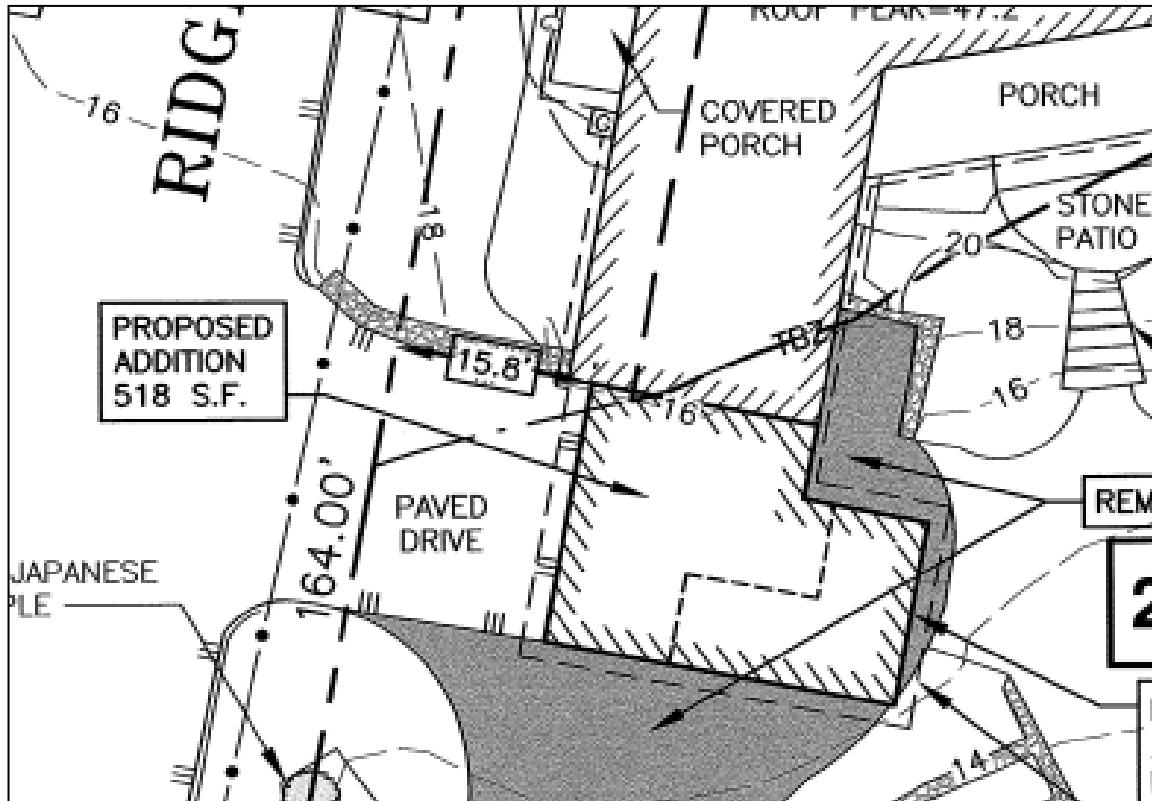
The applicant was before the Board in August for a garage addition that was subsequently denied by the Board. The applicant has revised the scope of work from a 718 square foot two car garage to a 518 square foot one car garage addition. On the original plan there was a deck

After the current application was submitted, a survey of the front yards of adjacent properties was completed to determine the average front yard under Section 10.516.10. The results show an average front yard of 19 feet. The applicant is proposing to enlarge the existing front yard, which requires a variance. This was not part of the original application in October.

August 2022 Application:



Current Application:



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.

II. OLD BUSINESS

- C. The request of **Michael Knight (Owner)**, for property located at **55 Mangrove Street** whereas relief is needed to replace existing 6 foot chain link fence with 8 foot cedar fence which requires the following: 1) A Variance from Section 10.515.13 to allow an 8 foot fence on the rear and side lot lines where a 6 foot maximum is allowed. Said property is located on Assessor Map 219 Lot 7 and lies within the Single Residence B (SRB) District. (LU-23-15)

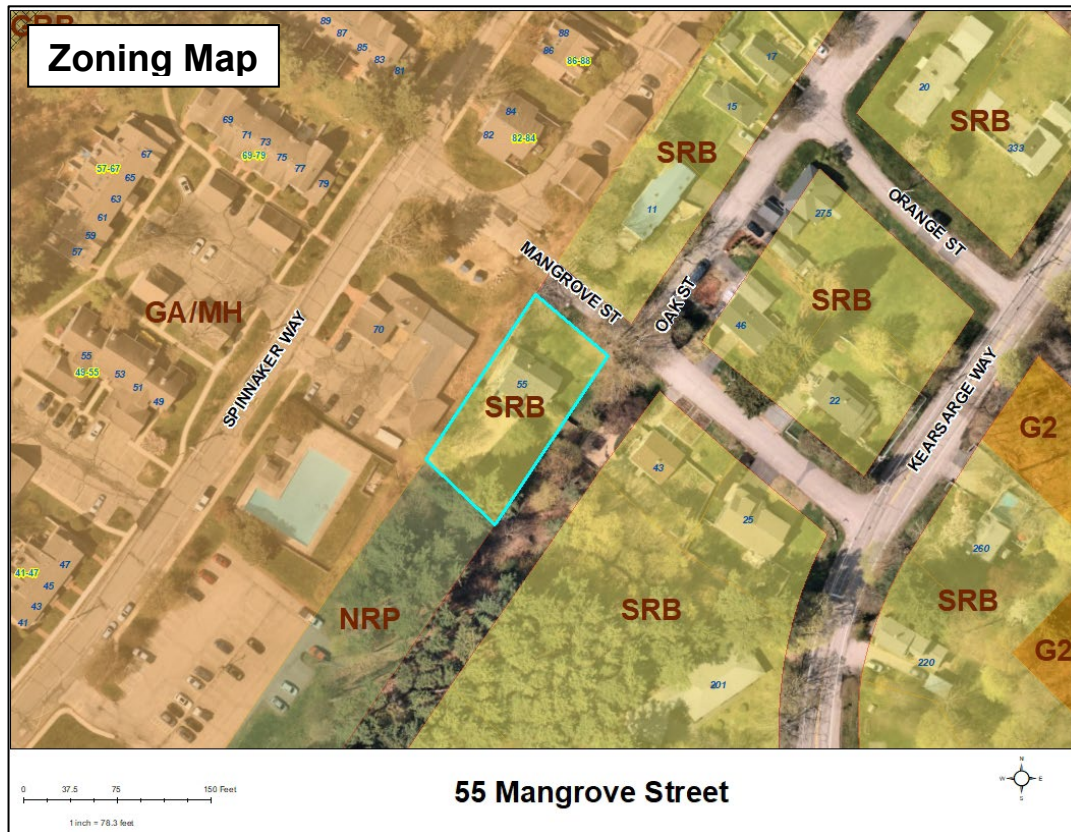
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	8-foot fence	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>	162	162	100 min.
<u>Street Frontage (ft.):</u>	60	60	100 min.
<u>Primary Front Yard (ft.):</u>	37	37	30 min.
<u>Right Yard (ft.):</u>	8	8/0 (fence)	10 min.
<u>Left Yard (ft.):</u>	20	20/0 (fence)	10
<u>Rear Yard (ft.):</u>	82	82/0 (fence)	30 min.
<u>Height (ft.):</u>	<35	<35 8' (fence)	35 6' (fence) max.
<u>Building Coverage (%)</u>	14.5	14.5	20 max.
<u>Open Space Coverage (%)</u>	>40	>40	40 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1958	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

April 26, 1988 – Relief from Zoning Ordinance including:

Variance from Article III, Section 10-302 requested to permit construction of a 10'x 21' deck and 7'x 8' landing with stairs with a 6' right yard in a district where a 10' yard is required.

Applicant **withdrew the request** in writing the night of the meeting.

Planning Department Comments

The applicant is requesting a variance to allow an 8 foot fence along the side and rear lot lines as shown in the highlighted plan in the application. Per Section 10.515.13, a 6-foot fence is the maximum allowed along the rear and side yard of any property.

10.515.13 Fences not over 4 feet in height shall be exempt from **front yard** requirements, and fences not over 6 feet in height shall be exempt from side and **rear yard** requirements.

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

 - (c) *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.

II. OLD BUSINESS

- D. The request of **John T McDonald III** and **Mary R McDonald (Owners)**, for property located at **74 Sunset Road** whereas relief is needed for an addition of a chimney bump out which requires the following: 1) Variances from Section 10.521 to allow a) a 6.5 foot left yard where 10 feet is required; and b) 26.6% building coverage where 20% is required. 2) A Variance 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. Said property is located on Assessor Map 153 Lot 14 and lies within the Single Residence B (SRB) District. (LU-22-182)

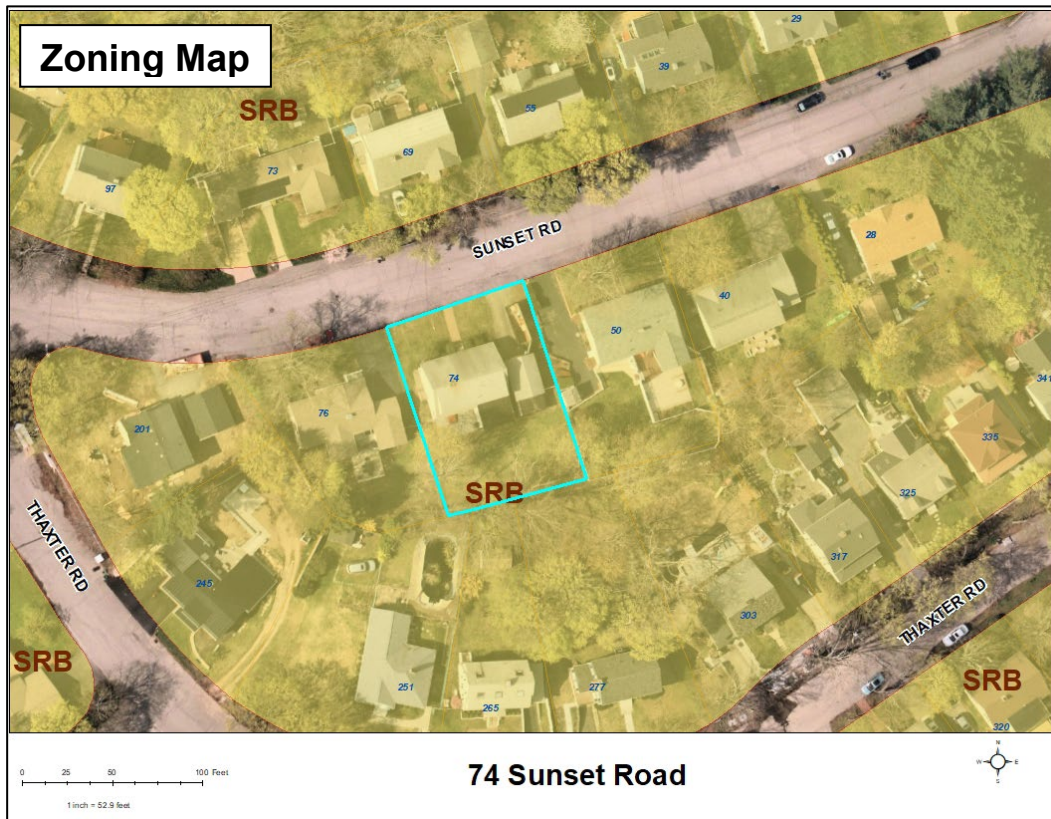
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single family	New front porch And connector to garage	Primarily residential
<u>Lot area (sq. ft.):</u>	8,936	8,936	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,936	8,936	15,000 min.
<u>Lot depth (ft.):</u>	110	110	100 min.
<u>Street Frontage (ft.):</u>	80	80	100 min.
<u>Primary Front Yard (ft.):</u>	24	16* prior variance granted	30 min.
<u>Right Yard (ft.):</u>	9	6.5	10 min.
<u>Left Yard (ft.):</u>	8	8	10
<u>Rear Yard (ft.):</u>	41	41	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	23	26.6 (26.5 previously approved)	20 max.
<u>Open Space Coverage (%):</u>	66	64	40 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1959	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

September 27, 2022 – Relief from Zoning Ordinance including:

- 1) Variances from Section 10.521 to allow a) a 16 foot front yard where 30' is required; and b) 26.5% building coverage where 20% is required.
- 2) A Variance 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.

Board voted to **grant** the request as presented.

Planning Department Comments

As shown in the history above, the applicant was before the Board this past summer with a proposal to improve the and expand the existing structure. During the construction and inspection process it was discovered that a portion of the addition was not in compliance with plans approved by the BOA at the September 27, 2022 meeting. The applicants latest request will rectify this error.

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

 - (c) *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.

II. OLD BUSINESS

- E. The request of **Joshua Wyatt and Erin Hichman (Owners)**, for property located at **196 Aldrich Road** whereas relief is needed to demolish existing garage and construct new garage and construct new addition over existing side porch which requires the following: 1) Variances from Section 10.521 to allow a) a secondary front yard of 3 feet where 30 feet is required; b) a 6 foot rear setback where 10 feet 7 inches is required; c) 23% building coverage where 20% is the maximum allowed. 2) A Variance from Section 10.571 to allow an accessory structure to be 10 feet from the front lot line and located in the front yard. 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 153 Lot 25 and lies within the Single Residence B (SRB) District. (LU-23-24)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Unit Residential	Addition to primary structure and reconstruction of garage	Single Residential Uses
<u>Lot area (sq. ft.):</u>	5,850	5,850	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,850	5,850	15,000 min.
<u>Frontage (ft.):</u>	167	167	100 min.
<u>Lot depth (ft.):</u>	117	117	100 min.
<u>Primary Front Yard (ft.):</u>	23.5	23.5	30 max.
<u>Secondary Front Yard (ft.):</u>	3.8	3 (primary structure) 9.75 (garage)	30 min.
<u>Right Yard (ft.):</u>	4.6 (garage)	11.8	10 min.
<u>Rear Yard (ft.):</u>	29	6	10' 7" (accessory structure setback) min.
<u>Height (ft.):</u>	25.2	32.5	35 max.
<u>Building Coverage (%):</u>	21	23	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1920	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

February 19, 2008 – The Board **granted** a Variance from Section 10-208(54)(b) to allow a 12' x 20' exterior produce cooler to be temporarily located during internal renovations of the

Planning Department Comments

The applicant is proposing to demolish the existing detached garage and construct a new detached garage in a different location. The new proposed location is within the rear yard and secondary front yard which requires relief from sections 10.571 and 10.573.20, found below.

10.571 *No accessory building, structure or use shall be located in any required front yard, or closer to a street than the principal building.*

10.573 *In a Residential or Mixed Residential district, an accessory building or structure may be located in a required side yard or rear yard subject to the following:*

...

10.573.20 *An accessory building or structure more than 10 feet in height or more than 100 square feet in area shall be set back from any lot line at least the height of the building or the applicable yard requirement, whichever is less.*

Applicant is also proposing to renovate and add to the primary structure which will require dimensional relief from Section 10.521 (Table of Dimensional Standards, [Zoning Ordinance](#)).

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.

II. OLD BUSINESS

- F. The request of **Murdock Living Trust (Owner)**, for property located at **15 Lafayette Road** whereas relief is needed to subdivide one lot into two lots which requires the following: 1) A Variance from Section 10.521 to allow 73.8 feet of continuous street frontage where 100 feet is required for the remainder lot. Said property is located on Assessor Map 152 Lot 2 and lies within the General Residence A (GRA) and Historic District. (LU-23-26)

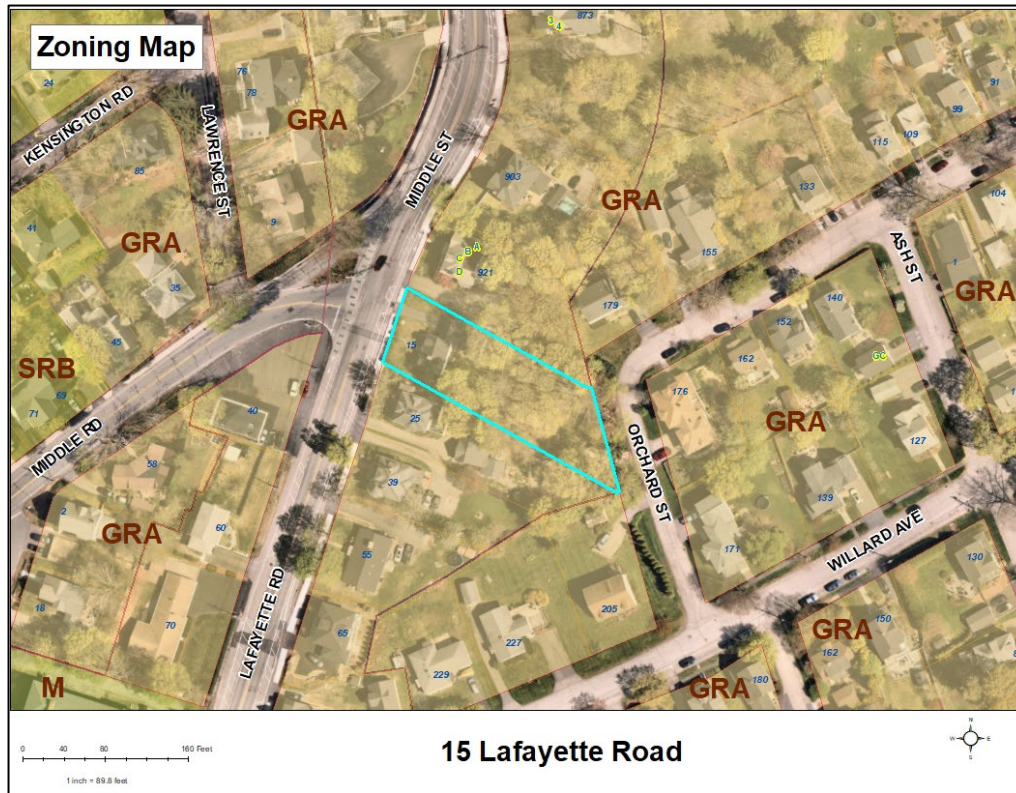
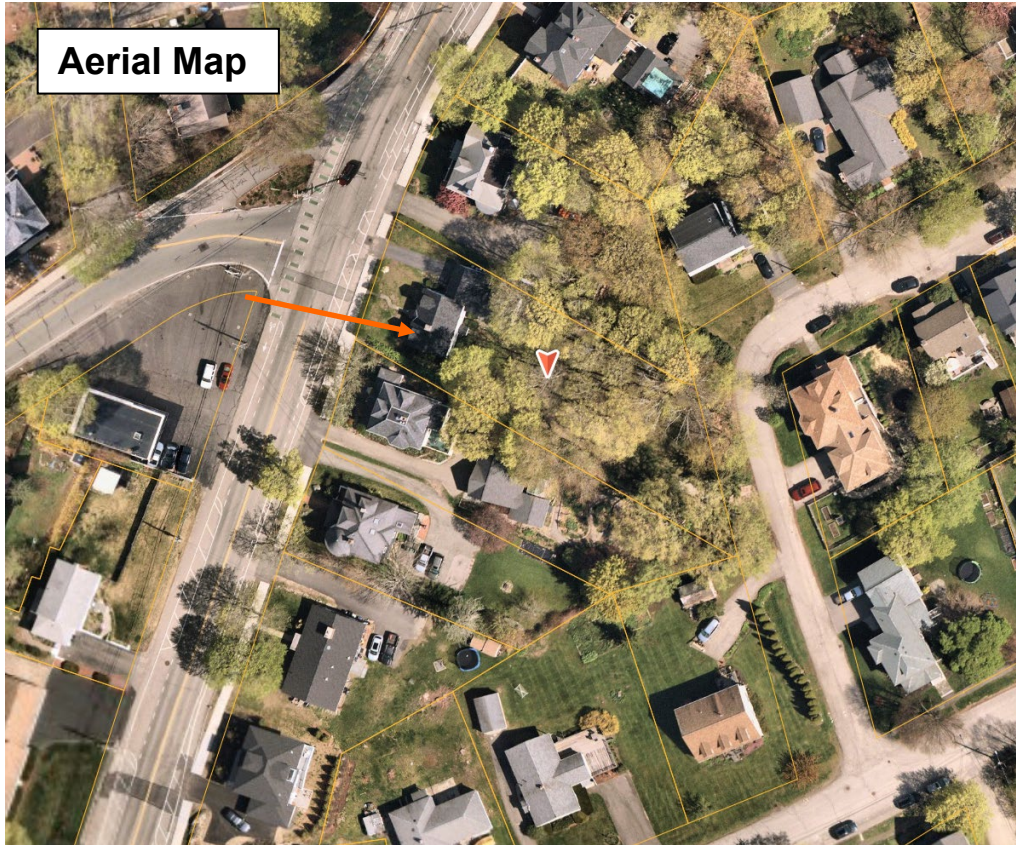
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>		<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Subdivide into 2 lots		Primarily residential
		Lot 1 (152-4)	Lot 2 (152-4-1)	
<u>Lot area (sq. ft.):</u>	17,301	9,126	8,172	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	17,301	9,126	8,172	7,500 min.
<u>Street Frontage (ft.):</u>	73.8	73.8	102.3	100 min.
<u>Lot depth (ft.)</u>	257	124.7	108.06	70 min.
<u>Front Yard (ft.):</u>	>15	>15	15	15 min.
<u>Left Yard (ft.):</u>	3.7	3.7	10	10 min.
<u>Right Yard (ft.):</u>	9	9	10	10 min.
<u>Rear Yard (ft.):</u>	>20	20	20	20 min.
<u>Height (ft.):</u>	<35	<35	N/A	35 max.
<u>Building Coverage (%)</u> :	9.6	18.5	0	25 max.
<u>Open Space Coverage (%)</u> :	>30	>30.7	100	30 min.
<u>Parking</u>	2	2	N/A	2
<u>Estimated Age of Structure:</u>	1942	Variance request(s) shown in red.		

Other Permits/Approvals Required

- Subdivision Approval – TAC/Planning Board

Neighborhood Context



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant is requesting relief to subdivide the existing lot into two lots. The applicant has not yet proposed any construction on proposed lot 152-4-1 so the open space calculation is 100%, building coverage is 0%, and the building height and parking are not applicable. The proposed vacant lot shows a building envelope where a new dwelling could be built and conform to the zoning requirements without the need for relief.

Variance 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.