



City of Portsmouth  
Planning Department  
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Portsmouth, NH  
(603)610-7216

## MEMORANDUM

TO: Zoning Board of Adjustment  
FROM: Stefanie Casella, Planner  
DATE: June 15, 2023  
RE: Zoning Board of Adjustment June 21, 2023

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

### II. Old Business

- A. 420 Pleasant Street – Variance Extension Request
- B. 1 Raynes Avenue – Request for Rehearing
- C. 170 Aldrich Road – Request for Rehearing
- D. 635 Sagamore Avenue – Request for Rehearing
- E. 686 Maplewood Avenue

### III. New Business

- A. 434 Marcy Street
- B. 239 Cass Street
- C. 2 Sewall Road

## II. OLD BUSINESS

- A. 420 Pleasant Street – Request for 1-year extension (LU-21-126)

### Planning Department Comments

The applicant has requested a 1-year extension to the variance approval granted on Tuesday, September 28, 2021. Enclosed is the meeting packet please find the request as submitted and the September 28, 2021 letter of decision.

For your convenience, Section 10.236 of the Zoning Ordinance is provided below.

#### ***10.236 Expiration of Approvals***

*Variances and special exceptions shall expire unless a building permit is obtained within a period of two year from the date granted. The Board may, for good cause shown, extend such period by as much as one years if such extension is requested and acted upon prior to the expiration date. No other extensions may be requested.*

## II. OLD BUSINESS

- B. Request for **rehearing on the appeal of 1 Raynes Avenue** - As ordered by the Superior Court on February 2, 2023, the Board will “determine, in the first instance, whether it has jurisdiction over the issues presented” by Duncan MacCallum (Attorney for the Appellants) in the January 14, 2022 appeal of the December 16, 2021 decision of the Planning Board for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** which granted the following: a) site plan approval b) wetlands conditional use permit; and c) certain other, miscellaneous approvals, including an approval related to valet parking. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District. (LU-21-54)

### Planning Department Comments

The Planning Board decision of December 16, 2021 was appealed to the Zoning Board and a separate request for a rehearing to the Planning Board was filed by the appellants. The Planning Board granted the request for rehearing. In February 2022, both matters were taken to Superior Court where a stay was issued on February 15, 2022 and just recently issued an Order, which is included in the packet. The Order states the Court will not determine what matters are properly before the Board of Adjustment but has sent the January 14<sup>th</sup> appeal back to the Board to determine if it has any jurisdiction over any of the counts raised in the appeal. At this time, that is the only decision the Board should make with respect to this appeal. The counts raised in the appeal include the following:

- 1) Granting site plan approval.
- 2) Granting a Wetlands Conditional Use Permit; and
- 3) Granting certain other, miscellaneous approvals including an approval related to valet parking.

The Board should vote on the three counts above, further outlined in the appeal, and decide if the Board has jurisdiction over any or all of the counts. A memo from the Legal Department has been provided outlining the Board’s jurisdiction.

On March 21, 2023 the Board of adjustment voted to find that the Board had no jurisdiction over the counts raised in the appeal. The appellants are requesting reconsideration of the March 21, 2023 determination.

## II. OLD BUSINESS

### C. Request for Rehearing - **170 Aldrich Road** (LU-23-47)

#### **Planning Department Comments**

On Tuesday, May 23, 2023 the Board of Adjustment considered the request of Peter Gamble (Owner), for demolishing the existing garage and constructing a new garage which requires the following: 1) Variance from Section 10.521 to allow a) 7 foot right side yard where 10 feet is required; and b) 23% building coverage where 20% is allowed. A motion was made to deny the application because the proposal failed to observe the spirit of the ordinance and would be contrary to the public interest because the home is in an area of single-family dwellings and the design isn't consistent with continuing to use the property as a single-family dwelling one. The motion passed and the request was denied.

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, a hearing 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.

## II. OLD BUSINESS

### D. Request for Rehearing - **635 Sagamore Avenue (LU-22-209)**

#### **Project Background**

On Tuesday, May 16, 2023 the Board of Adjustment considered the request of 635 Sagamore Development, LLC (Owners), for property located at 635 Sagamore Avenue whereas relief is needed for the removal of existing structures and constructing 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. A motion to deny the application failed. The Board then voted to approve the application and the request was granted.

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, a hearing 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.

## II. OLD BUSINESS

- E. The request of **The Islamic Society of the Seacoast Area ISSA (Owner)**, and **Chinburg Development, LLC (Applicant)**, for property located at **686 Maplewood Avenue** whereas relief is needed to construct four (4) duplexes and one (1) single living unit to create a total of nine (9) living units which requires the following: 1) Variance from Section 10.440, Use # 1.30 to permit four (4) two-family unit structures where they are not permitted, 2) Variance from Section 10.513 to permit five (5) free standing buildings with dwellings where not more than one is permitted, 3) Variance from Section 10.520 to allow a) 6,975 square feet of lot area per dwelling unit where 15,000 square feet is required; and b) 47 feet of frontage where 100 feet is required. Said property is located on Assessor Map 220 Lot 90 and lies within the Single Residence B (SRB) District and the Highway Noise Overlay District. (LU-23-57)

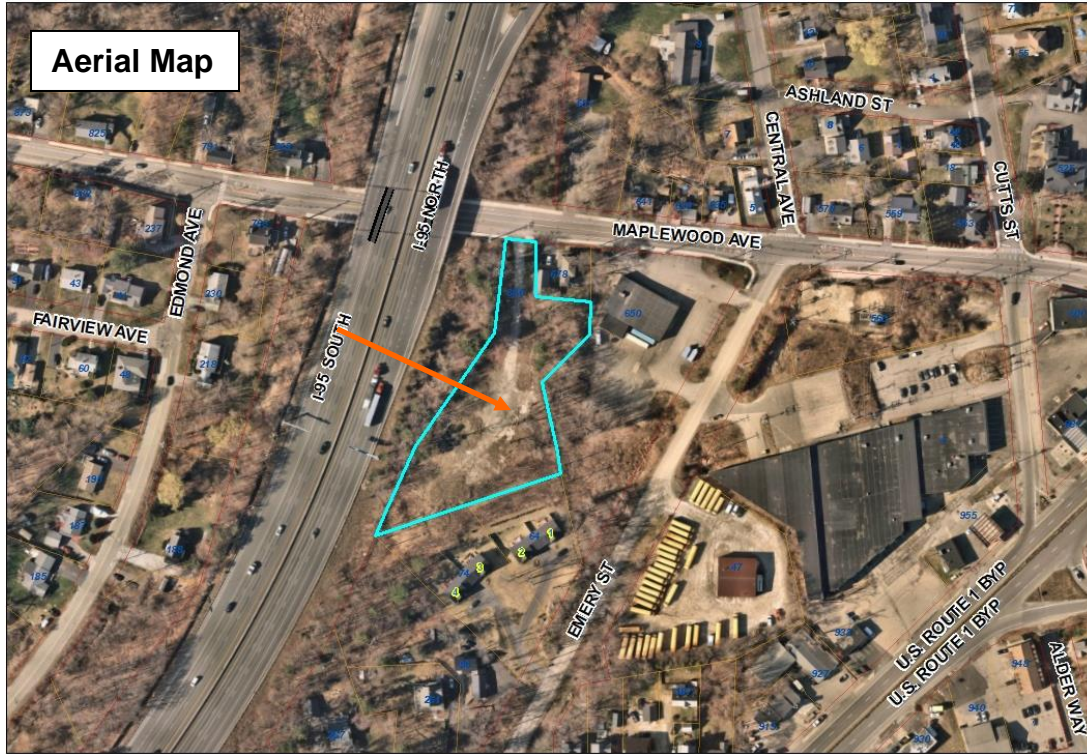
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Vacant	<b>4 Duplexes and 1 Single Unit (9 total units)</b>	Primarily residential
<u>Lot area (sq. ft.):</u>	62,776	62,776	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	N/A	<b>6,975</b>	15,000 min.
<u>Street Frontage (ft.):</u>	47	<b>47</b>	100 min.
<u>Lot depth (ft.):</u>	>200	>200	100 min.
<u>Front Yard (ft.):</u>	N/A	>60	30 min.
<u>Right Yard (ft.):</u>	N/A	12.5	10 min.
<u>Left Yard (ft.):</u>	N/A	12	10 min.
<u>Rear Yard (ft.):</u>	N/A	49	30 min.
<u>Height (ft.):</u>	N/A	<35	35 max.
<u>Building Coverage (%)</u> :	0	12.3	20 max.
<u>Open Space Coverage (%)</u> :	100	60.5	40 min.
<u>Parking:</u>	N/A	20	14
<u>Estimated Age of Structure:</u>	N/A	<b>Variance request(s) shown in red.</b>	

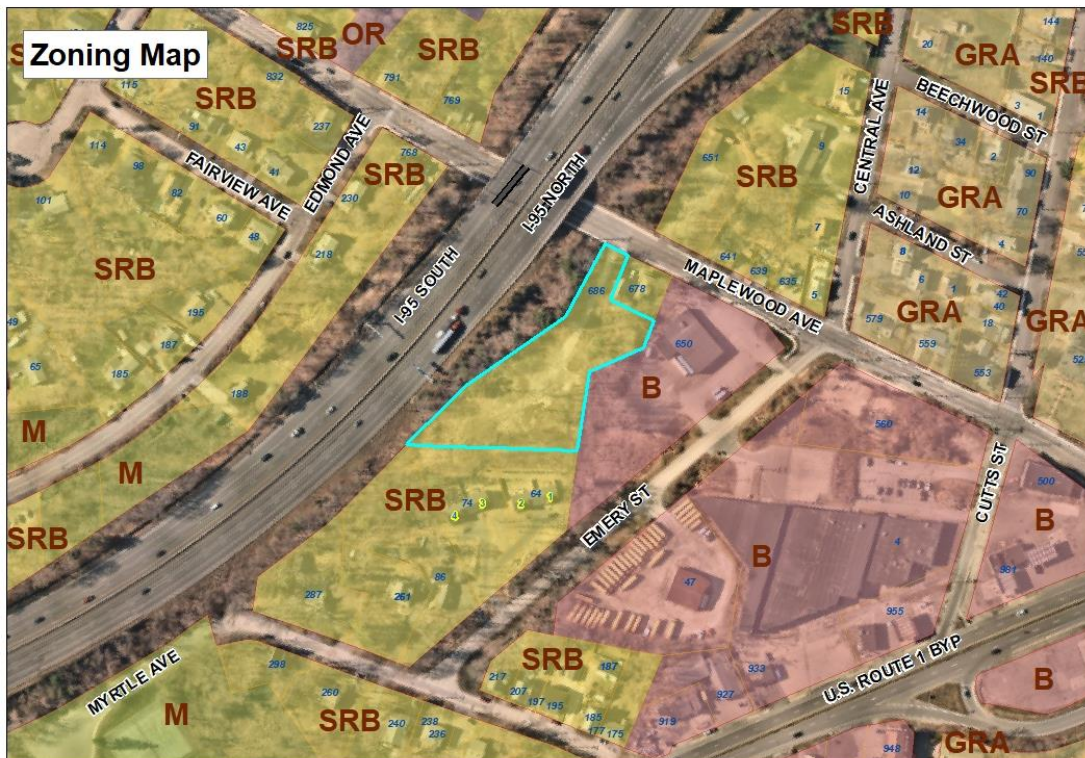
### Other Permits/Approvals Required

- Site Plan Approval – TAC and Planning Board
- Highway Noise Overlay Conditional Use Permit – Planning Board
- Building Permit

### Neighborhood Context



686 Maplewood Avenue



686 Maplewood Avenue



## Previous Board of Adjustment Actions

February 21, 2017 – The Board **granted** a special exception and a variance to allow the following:

- 1) a Special Exception from Section 10.440 to allow a religious place of assembly in a district where the use is only allowed by special exception.
- 2) a Variance from Section 10.521 to allow 47'± of continuous street frontage where 100' is required.

February 25, 2019 – The Board **granted** a 1-year extension of the variance and special exception, to expire on February 21, 2020.

April 7, 2020 – The Board **postponed** the request (*to the April 21, 2020 meeting*) for relief needed from the Zoning Ordinance to construct a 4,000± s.f. building to house a religious place of assembly which includes the following:

- 1) A Special Exception under Section 10.440, Use #3.11 to allow a religious place of assembly in a district where the use is only allowed by Special Exception; and
- 2) A Variance from Section 10.521 to allow 47'± of continuous street frontage where 100' is required.

April 21, 2020 – The Board voted to **grant** the variance and special criteria as presented.

## Planning Department Comments

The applicant is requesting relief for the construction of 5 total buildings on the existing vacant parcel. The buildings will include four (4) two-unit structures and one (1) single-unit structure.

The parcel is located within the Highway Noise Overlay District (HNOD), making development subject to a Conditional Use Permit and additional site review requirements per section 10.670 of the [Zoning Ordinance](#).

The applicants have proposed “1 unit to be affordable according to the City’s Zoning Ordinance”. The Board could consider adding this as stipulation of approval.

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.**
- 2. As proposed in the application materials, one living unit will be affordable according to the standards defined in the 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.

### **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.

### III. NEW BUSINESS

- A. The request of **Charles Silva Jr and Margaret Moran (Owners)**, for property located at **434 Marcy Street** whereas relief is needed to construct an addition to the rear of the existing structure, remove the existing shed, and construct a new shed which requires the following: 1) Variance from Section 10.521 to allow: a) 8 foot left yard setback where 10 feet is required; and b) 43% building coverage where 30% is allowed. 2) 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. 3) Variance from Section 10.573.20 to allow a) 1 foot rear yard where 11 feet is required; and b) 1 foot right side yard where 11 feet is required. Said property is located on Assessor Map 102 Lot 41 and lies within the General Residence B (GRB) and Historic District. (LU-23-53)

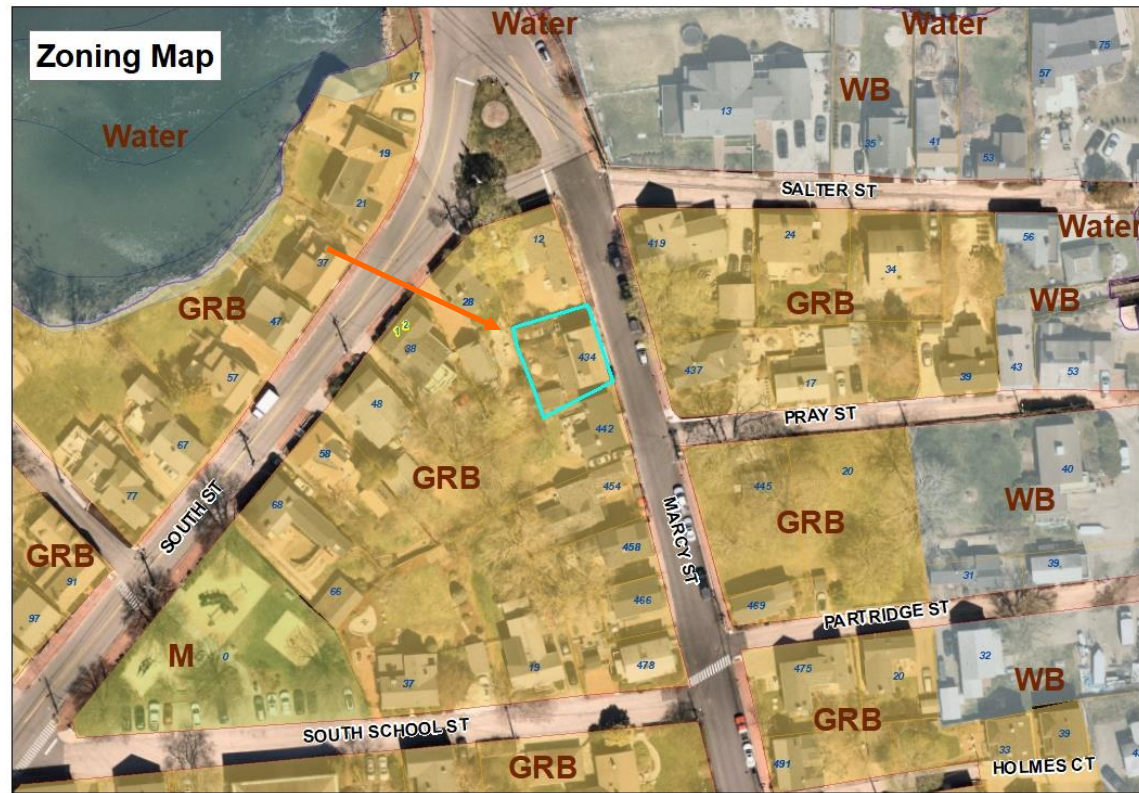
#### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single Dwelling Unit	Single Dwelling Unit	Primarily residential
<u>Lot area (sq. ft.):</u>	2,619	2,619	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,619	2,619	5,000 min.
<u>Street Frontage (ft.):</u>	54	54	80 min.
<u>Lot depth (ft.):</u>	50	50	60 min.
<u>Front Yard (ft.):</u>	1	1	5 min.
<u>Right Yard (ft.):</u>	11.5	<b>1 (Shed)</b>	11 (Accessory structure setback) min.
<u>Left Yard (ft.):</u>	4	<b>8</b>	10 min.
<u>Rear Yard (ft.):</u>	21	<b>1 (Shed)</b>	11 (Accessory structure setback) min.
<u>Height (ft.):</u>	24	24	35 max.
<u>Building Coverage (%)</u>	42	<b>43</b>	30 max.
<u>Open Space Coverage (%)</u>	>25	>25	25 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1798	<b>Variance request(s) shown in red.</b>	

#### Other Permits/Approvals Required

- Building Permit
- Historic District Commission Approval

### Neighborhood Context



434 Marcy Street

## Previous Board of Adjustment Actions

No previous BOA history found.

## Planning Department Comments

Applicant is proposing to construct an addition to the existing primary structure and to remove the existing shed and construct a new shed on the opposite side of the property.

## 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.

### III. NEW BUSINESS

- B. The request of **David Hugh Mason and Lisa Ann Mason (Owners)**, for property located at **239 Cass Street** whereas relief is needed to Demolish single story addition on the rear of the primary structure, construct a two (2) story rear addition to the primary structure, and demolish and enlarge existing garage which requires the following: Variance from Section 10.521 to allow: a) 1 foot right yard where 10 is required for the primary structure; b) 3 foot left yard where 10 is required for the accessory structure; c) 4 foot rear yard where 20 is required for the accessory structure; d) 37% building coverage where 30% is allowed on the lot. Said property is located on Assessor Map 147 Lot 4 and lies within the General Residence C (GRC) District. (LU-23-69)

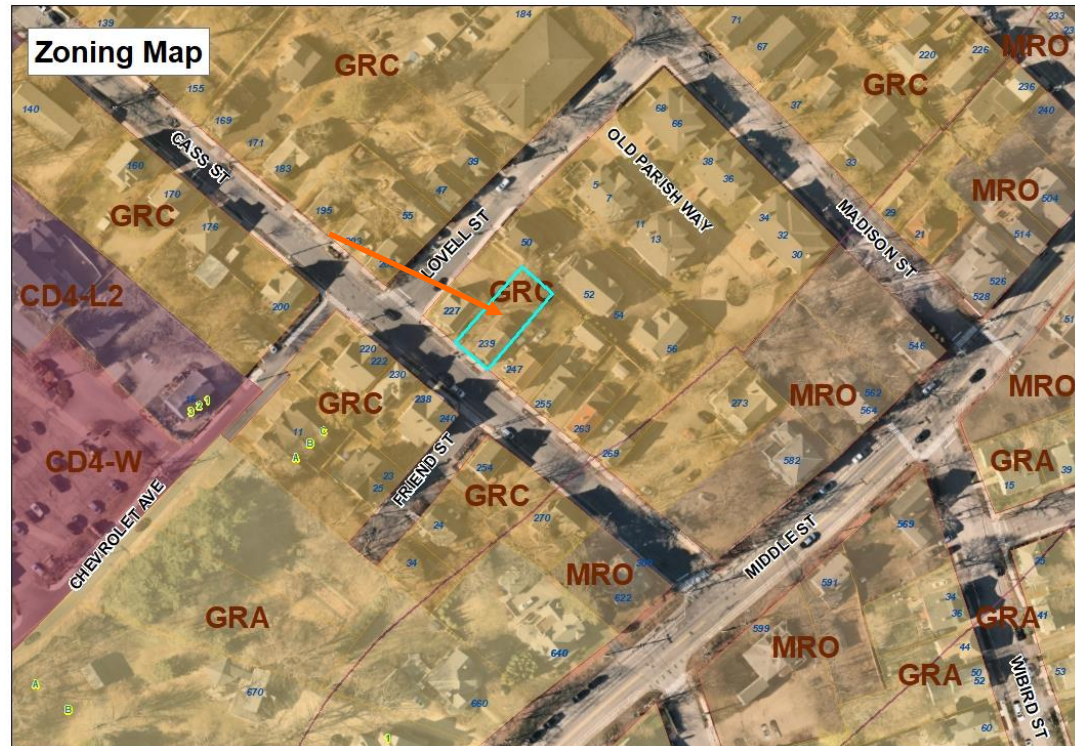
#### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single Dwelling Unit	Single Dwelling Unit	Primarily residential
<u>Lot area (sq. ft.):</u>	3,920	3,920	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,920	3,920	3,500 min.
<u>Street Frontage (ft.):</u>	40	40	70 min.
<u>Lot depth (ft.):</u>	100	100	50 min.
<u>Front Yard (ft.):</u>	5	5	5 min.
<u>Right Yard (ft.):</u>	0 – Primary Structure 25 – Garage	<b>1 – Primary Structure</b> <b>14 – Garage</b>	10 min.
<u>Left Yard (ft.):</u>	14 – Primary Structure 2 – Garage	<b>14 – Primary Structure</b> <b>3 – Garage</b>	10 min.
<u>Rear Yard (ft.):</u>	48 – Primary Structure 3 – Garage	<b>48 – Primary Structure</b> <b>4 – Garage</b>	20 min.
<u>Height (ft.):</u>	24	29	35 max.
<u>Building Coverage (%):</u>	30	<b>37</b>	35 max.
<u>Open Space Coverage (%):</u>	>20	>20	20 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1880	<b>Variance request(s) shown in red.</b>	

#### Other Permits/Approvals Required

- Building Permit

### Neighborhood Context



0 45 90 180 Feet  
1 inch = 98.3 feet

239 Cass Street



## Previous Board of Adjustment Actions

No previous BOA history found.

## Planning Department Comments

The applicant is requesting relief for the construction an addition to the rear of the existing primary structure and to demolish existing garage and replace it with a slightly larger garage.

Please note that staff has identified an error in the notice. The notice indicated that 30% building coverage is the maximum for the GRC district. The correct building coverage is a 35% maximum which brings the requested relief further towards the conforming limit than advertised.

## Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
  - (a) *The property has special conditions that distinguish it from other properties in the area.*

**AND**

  - (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.

### III. NEW BUSINESS

- C. The request of **Danielle Okula, Dennis Okula, and Irinia Okula (Owners)**, for property located at **2 Sewall Road** whereas relief is needed to Install a 6 foot fence where along the front of the property which requires a Variance from Section 10.515.13 to allow a 6 foot fence where 4 feet is allowed. Said property is located on Assessor Map 170 Lot 22 and lies within the Single Residence B (SRB) District. (LU-23-71)

#### Existing & Proposed Conditions

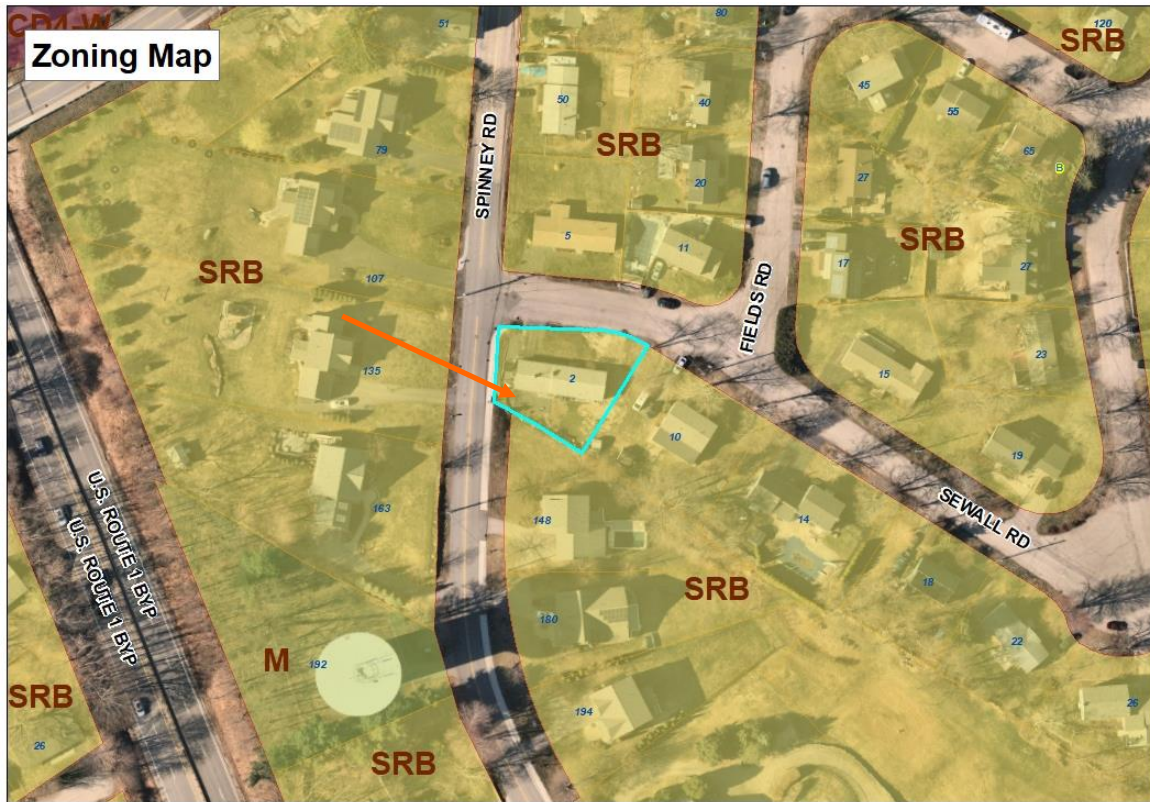
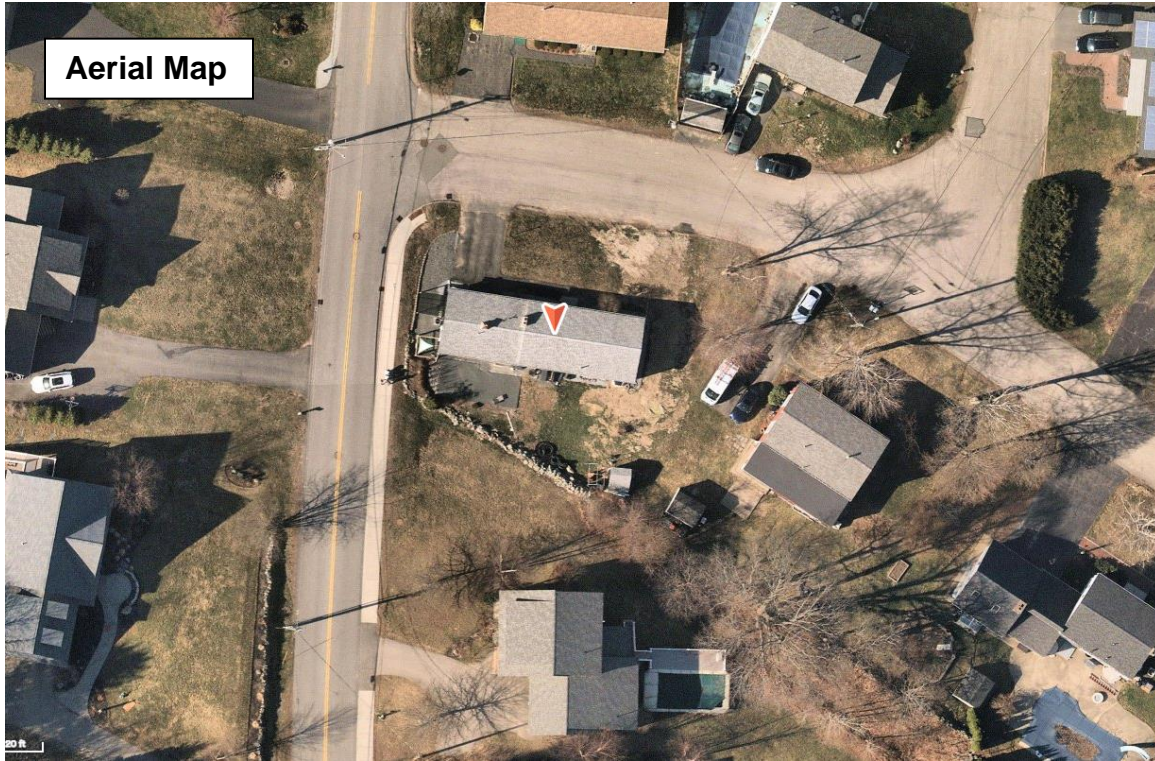
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single Living Unit	<b>6 Foot Fence</b>	Primarily residential
<u>Lot area (sq. ft.):</u>	9,603	9,603	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,603	9,603	15,000 min.
<u>Street Frontage (ft.):</u>	>100	>100	100 min.
<u>Lot depth (ft.):</u>	60	60	100 min.
<u>Primary Front Yard Sewall Rd (ft.):</u>	20	20	30 min.
<u>Secondary Front Yard (Spinney Rd) (ft.):</u>	15	0 - Fence	30 min.
<u>Left Yard (ft.):</u>	10	10/0 - Fence	10 min.
<u>Rear Yard (ft.):</u>	15	15/0 - Fence	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	21.6	21.6	20 max.
<u>Open Space Coverage (%):</u>	40	40	40 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1960	<b>Variance request(s) shown in red.</b>	

#### Other Permits/Approvals Required

- Building Permit



### Neighborhood Context



**2 Sewall Road**

## Previous Board of Adjustment Actions

September 27, 1966 – **Granted** the variance to allow construction of an addition to an existing dwelling that affects the maximum percentage of building coverage for the lot as allowed within the SR II District relative to the proposed structure.

## Planning Department Comments

Applicant is requesting a variance to install a 6 foot fence within the secondary front yard setback area where a maximum height of 4 feet is 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**

  - (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.