



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: August 9, 2023
RE: Zoning Board of Adjustment August 15, 2023

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

II. Old Business

- A. 125 Elwyn Avenue – Extension Request

III. New Business

- A. 271 Sagamore Avenue
- B. 380 Greenleaf Avenue
- C. 40 Wilson Road
- D. 2059 Lafayette Road
- E. 337 Richards Avenue
- F. 30 Parker Street

II. OLD BUSINESS

- A. **Ashley Dickenson & Elyse Hambacher – 125 Elwyn Avenue** request a 1-year extension to the variances granted on November 16, 2021. (LU-21-172)

Planning Department Comments

On Tuesday, November 16, 2023 the Board of Adjustment granted the following variances to construct an addition with an attached garage and living unit above as presented:

- 1) Variances from Section 10.521 to allow
 - a) lot area per dwelling of 2,559 square feet where 7,500 is required;
 - b) a 1' secondary front yard where 15' is required;
 - c) a 5' left side yard where 10' is required;
 - d) a 2' right side yard where 10' is required; and
 - e) 39% building coverage where 25% is the maximum allowed.
- 2) A Variance from Section 10.513 to allow more than one free-standing dwellings on a lot.
- 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.

The approvals listed above are scheduled to expire on November 16, 2023. The Ordinance allows for a one-time, one-year extension if the request is acted on prior to the expiration date. The applicant has requested an extension as the building permit has not yet been obtained. A letter from the applicant and the 2023 letter of decision is included in the meeting packet.

III. NEW BUSINESS

- A. The request of **Alexandra Scott and Scott Scott (Owners)**, for property located at **271 Sagamore Avenue** whereas relief is needed to demolish the existing detached garage and construct an addition with attached garage which requires the following: 1) Variance from section 10.521 to allow a) 0.5 foot (6 inch) right yard where 10 feet is required; and b) 28% building coverage where 25% is maximum. Said property is located on Assessor Map 221 Lot 15 and lies within the General Residence A (GRA) District. (LU-23-103)

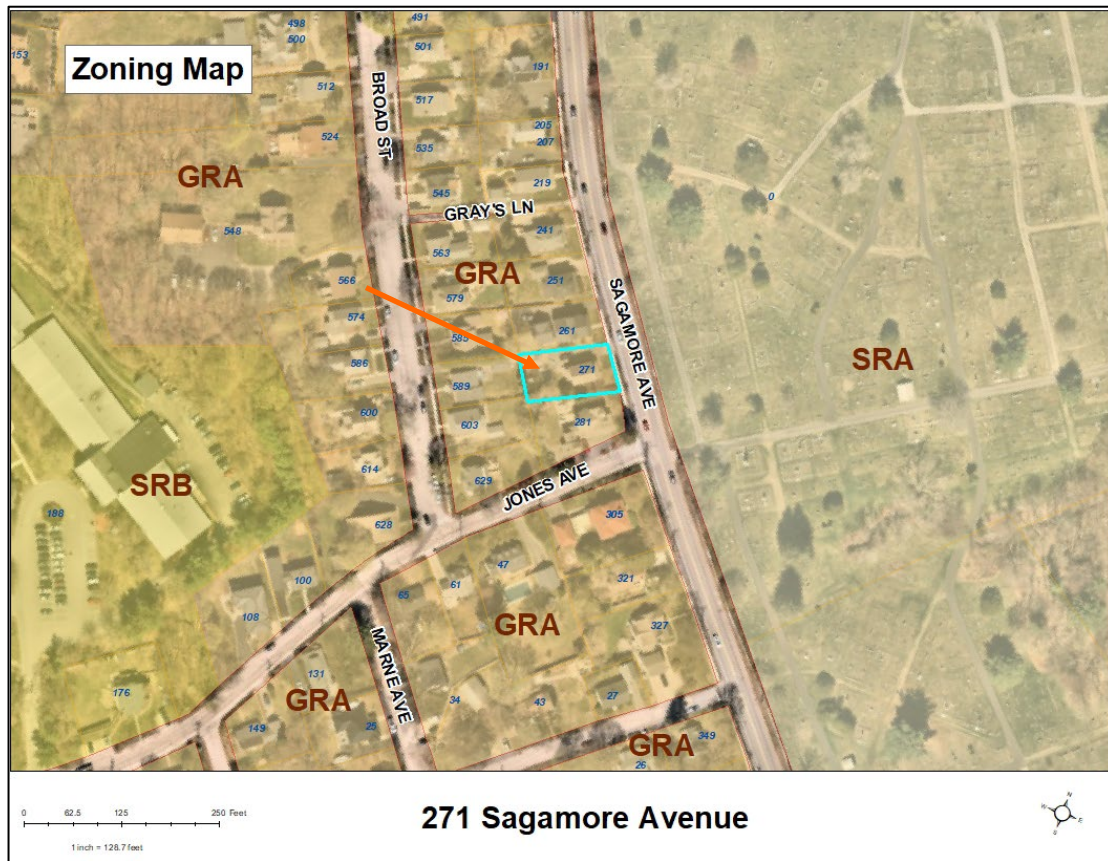
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single Living Unit	Construct addition with attached garage	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>Street Frontage (ft.):</u>	60.5	60.5	100 min.
<u>Lot depth (ft.):</u>	112	112	70 min.
<u>Front Yard (ft.):</u>	27	27	15 min.
<u>Right Yard (ft.):</u>	0.75	0.5	10 min.
<u>Left Yard (ft.):</u>	13	13	10 min.
<u>Rear Yard (ft.):</u>	55	25	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	16	28	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1919	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

Applicant is requesting a variance to remove the existing detached garage and construct an addition to the right side of the existing structure that includes an attached garage.

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

- B. The request of **Tanner Family Revocable Trust (Owners)**, for property located at **380 Greenleaf Avenue** whereas relief is needed to construct a detached garage which requires a Variance from Section 10.571 to allow an accessory structure to be located closer to a street than the principal building. Said property is located on Assessor Map 243 Lot 63 and lies within the Single Residence B (SRB) District. (LU-23-62)

Existing & Proposed Conditions

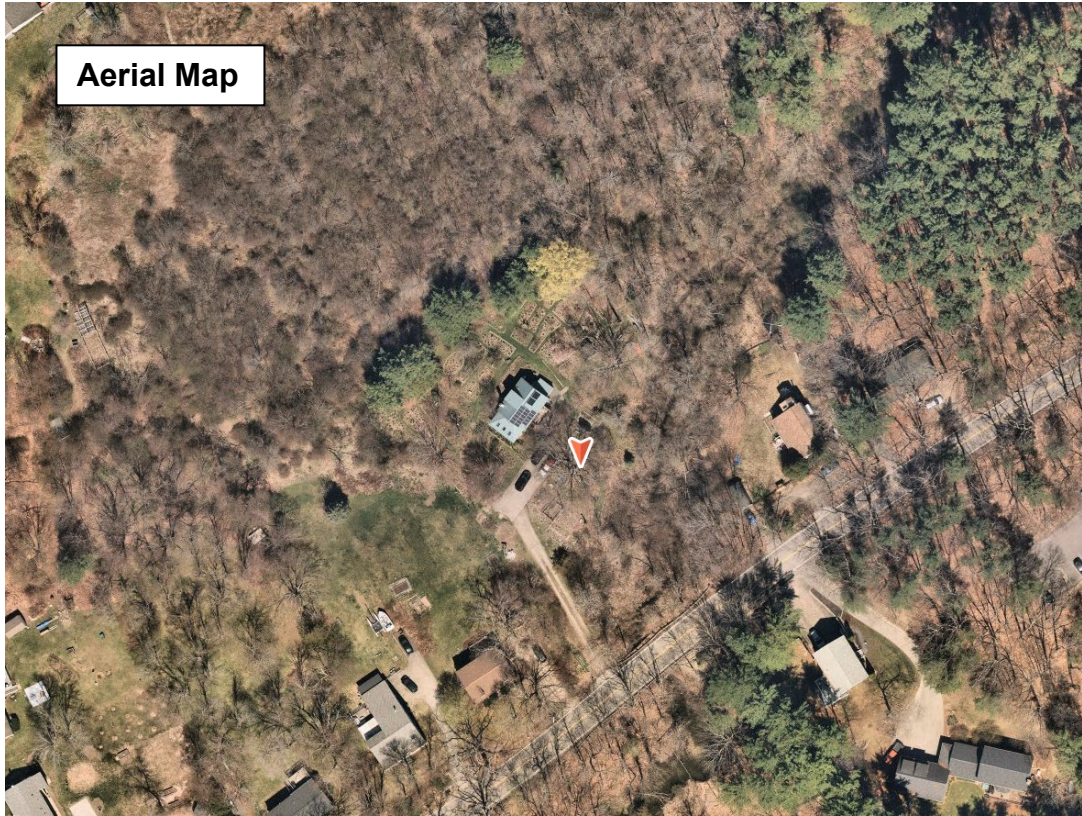
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single Living Unit	<i>*Construction of detached garage</i>	Primarily residential
<u>Lot area (sq. ft.):</u>	49,658	49,658	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	49,658	49,658	15,000 min.
<u>Street Frontage (ft.):</u>	101	101	100 min.
<u>Lot depth (ft.):</u>	282	282	100 min.
<u>Front Yard (ft.):</u>	>170 – Primary Structure	150 – Garage >170 – Primary Structure	30 min.
<u>Right Side Yard (ft.):</u>	>60 – Primary Structure	100 – Garage 100 – Primary Structure	10 min.
<u>Left Yard (ft.):</u>	>40 – Primary Structure	40 – Garage >40 – Primary Structure	10 min.
<u>Rear Yard (ft.):</u>	>50 – Primary Structure	100 – Garage >50 – Primary Structure	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	2	3	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1979	<i>Variance request(s) shown in red.</i>	

**Section 10.571 of the Zoning Ordinance states, “No accessory building, structure or use shall be located in any required front yard, or closer to a street than the principal building.”*

Other Permits/Approvals Required

- Building Permit
- Wetland Conditional Use Permit - Conservation Commission and Planning Board
 - Conservation Commission recommended approval to the Planning Board on June 14, 2023.

Neighborhood Context



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant is requesting a variance to build a detached 20 foot by 20 foot garage. This project will also require the approval of a Wetland Conditional Use Permit. On Wednesday, June 14, 2023, the Conservation Commission voted to recommend approval of the Wetland Conditional Use Permit with the following conditions:

1. The applicant shall provide detailed specifications for the proposed pervious pavers including a cross section plan and information about how they will be installed within the driveway area.
2. The applicant shall provide a maintenance plan for the proposed pervious pavers.

The proposed structure meets all dimensional requirements outlined in the [Zoning Ordinance](#) but is not in conformance with Section 10.571 as the proposed location is closer to a public way than the primary structure. The language from Section 10.571 has been provided below for the Board's convenience.

Section 10.570 Accessory Buildings, Structures and Uses

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.*

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 **Carl Douglas Overn and Tatiana Overn (Owners)**, for property located at **40 Wilson Road** whereas relief is needed to construct a sunroom and deck expansion at the rear of the property which requires the following: 1) Variance from Section 10.521 to allow an eight (8) foot rear yard where 30 feet are required; and 2) 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 251 Lot 57 and lies within the Single Residence B (SRB) District. (LU-23-114)

Existing & Proposed Conditions

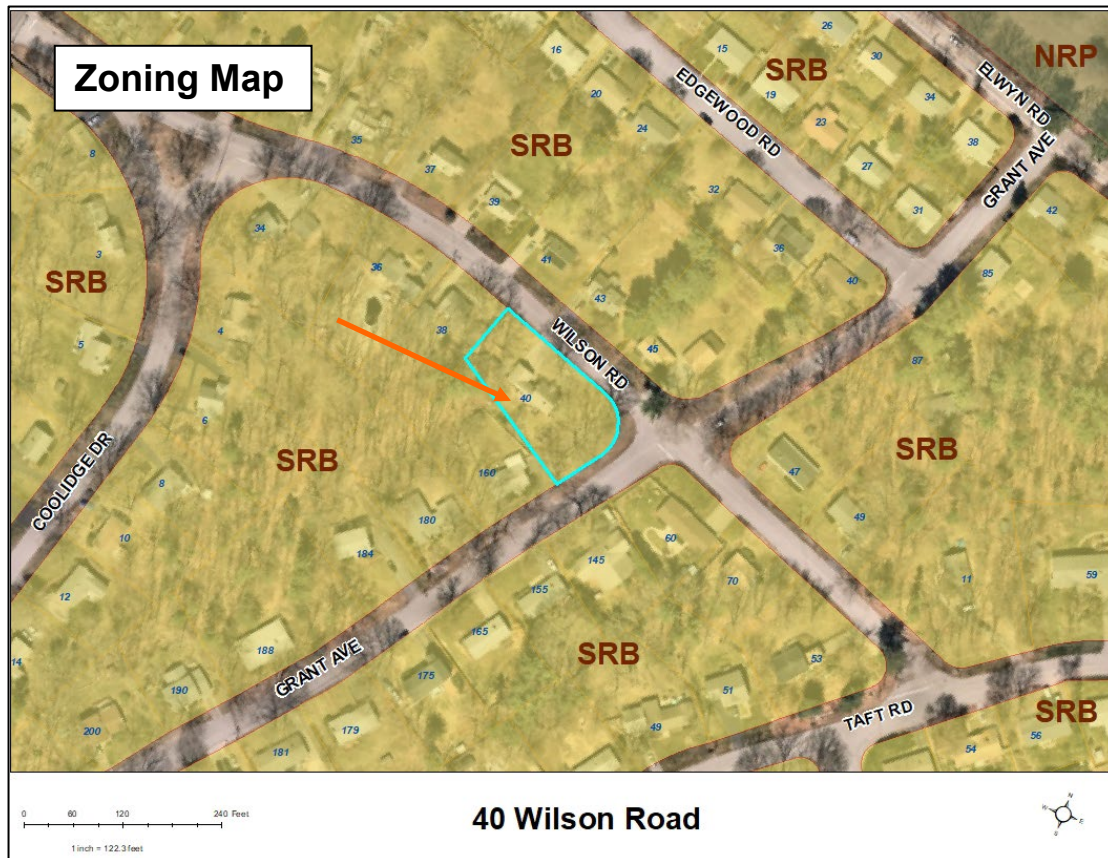
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single – Living Unit	*Construct a sunroom and deck expansion	Primarily residential
<u>Lot area (sq. ft.):</u>	18,769.5	18,769.5	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	18,769.5	18,769.5	15,000 min.
<u>Lot depth (ft.):</u>	77	77	100 min.
<u>Street Frontage (ft.)</u>	307	307	100 min.
<u>Primary Front Yard (Wilson Rd) (ft.):</u>	34	34	30 min.
<u>Secondary Front Yard (Grant Ave) (ft.):</u>	77	77 – Existing Structure 82 – Deck Expansion	30 min.
<u>Right Yard (ft.):</u>	54	54 – Existing Structure 70 – Addition	10 min.
<u>Rear Yard (ft.):</u>	24	8	30 min.
<u>Height (ft.):</u>	<35	35	35 max.
<u>Building Coverage (%)</u>	10	12.5	20 max.
<u>Open Space Coverage (%)</u>	>40	>40	40 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1952	Variance request(s) shown in red.	

* Relief from Section 10.321 is required to further increase the rear yard non-conformity.

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant is requesting relief to construct a 16-foot by 14-foot sunroom addition on to the rear of the primary structure and to construct a 20-foot by 10-foot deck expansion to the existing deck. The existing structure is non-conforming as it sits within the rear yard area. Therefore, relief from Section 10.321 of the [Zoning Ordinance](#) is needed to further enlarge the structure and increase the rear yard non-conformity. Zoning language provided below.

10.321 A lawful nonconforming building or structure may continue and be maintained or repaired, but may not be extended, reconstructed or enlarged unless such extension, reconstruction or enlargement conforms to all the regulations of the district in which it is located.

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

 - (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

- D. The request of **Go-Lo Inc. c/o Labrie (Owner)**, for property located at **2059 Lafayette Road** whereas relief is needed to demolish the existing structure and construct a two-story residential building containing 16 living units which requires the following: 1) Variance from Section 10.1113.20 to allow parking to be located in front of the principal building; 2) Variance from Section 10.533 to allow a structure to be located 58 feet from the centerline of Lafayette Roads where 80 feet is required; 3) Variance from Section 10.521 to allow 1,715 square feet of lot area per dwelling unit where 7,500 square feet is required; and 4) Variance from Section 10.440 Use #1.53 to allow 16 units where eight (8) are permitted. Said property is located on Assessor Map 268 Lot 13 and lies within the Mixed Residential (MRB) District. (LU-23-116)

Existing & Proposed Conditions

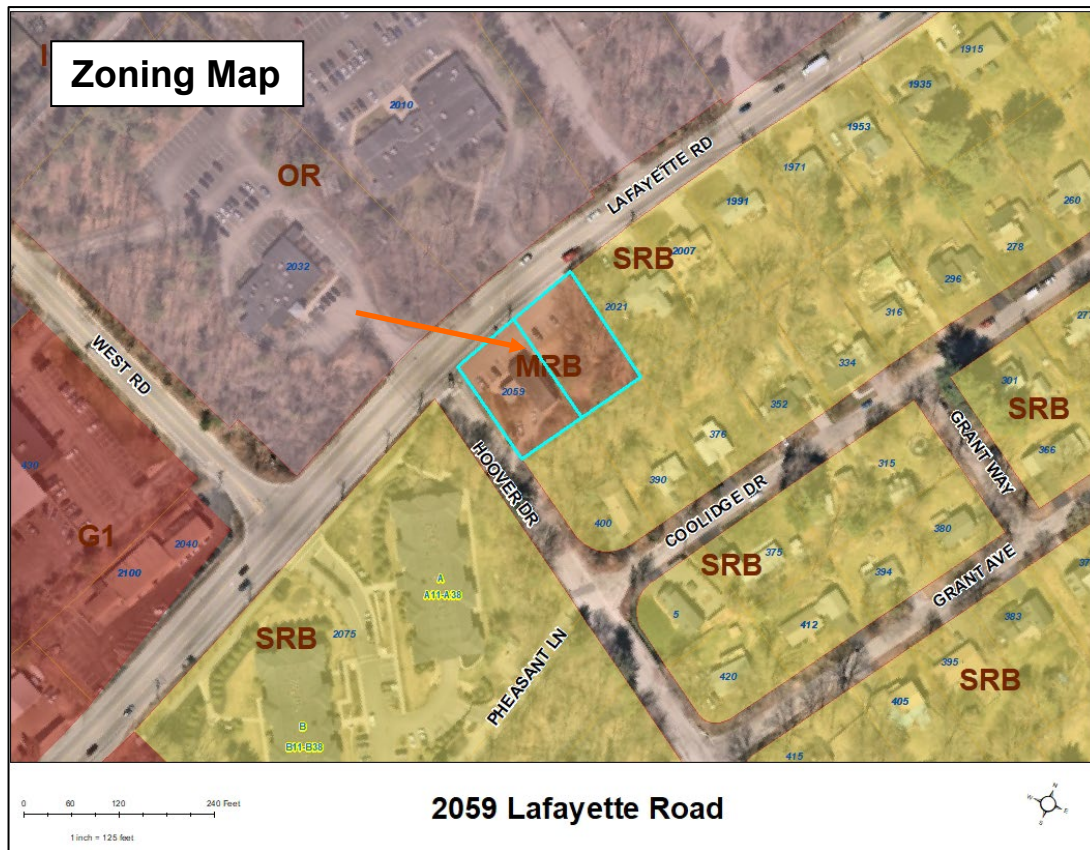
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Lot 12 - Vacant Lot 13 – Mixed-Use	**Merge lots and construct a 16-unit residential building	Mixed residential and commercial uses
<u>Lot area (sq. ft.):</u>	Lot 12 - 14,192 Lot 13 - 13,252	27,444	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	Lot 12 - n/a Lot 13 - 4,417	1,715	7,500 min.
<u>Street Frontage (ft.)</u>	Lot 12 - 90 Lot 13 - 229	319	100 min.
<u>Lot depth (ft.):</u>	139	139	80 min.
<u>Primary Front Yard (Lafayette Rd) (ft.):</u>	Lot 12 - n/a Lot 13 - 42	58	80 (Section 10.533) min.
<u>Secondary Front Yard (Hoover Dr) (ft.):</u>	25	>5	5 min.
<u>Left Yard (ft.):</u>	5	12	10 min.
<u>Rear Yard (ft.):</u>	30	54	15 min.
<u>Height (ft.):</u>	<40	39.5	40 max.
<u>Building Coverage (%):</u>	Lot 12 - 0 Lot 13 - 18.6	32.1	40 max.
<u>Open Space Coverage (%):</u>	>25	62.4	25 min.
<u>Parking</u>	Lot 12 - 9 Lot 13 - 14	25	20
<u>Estimated Age of Structure:</u>	1980	Variance request(s) shown in red.	

** Variance to allow parking in front of the principal building (Hoover Street side), and a variance to allow 16 residential units where 8 are allowed

Other Permits/Approvals Required

- Site Plan Review – Technical Advisory Committee and Planning Board
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

April 8, 1976 – The following relief from the Zoning Ordinance was **granted**: 1) A variance to erect a free-standing sign 4' from the front property line of store at 2059 Lafayette Road where such signs are prohibited in Neighborhood Business Districts, note that total signage area is also currently in violation; with the following stipulation.

1)The post shall be not less that 7' from the front property line.

December 7, 1976 – The following relief from the Zoning Ordinance was **denied**: 1) variance for 26' x 26' building addition to existing mixed-use structure to house real estate offices space, and 2) setback variance where said addition does not conform to 105' front setback requirement on Lafayette Rd.

January 4, 1977 – The **request for a rehearing was granted** by the Portsmouth Board of Adjustment for the application that was **denied on December 7, 1975** where request for Use Variance and Set Back Variance was requested.

January 18, 2977 – The following relief from Zoning Ordinance was **granted**: 1) variance for 26' x 26' building addition to existing mixed-use structure to house real estate offices space, and 2) setback variance where said addition does not conform to 105' front setback requirement on Lafayette Rd; with the following stipulations:

1) Provided a privacy fence is erect by June 1, 1977, along the Steedman and Rollo property lines in the rear; and

2)The five parking spaces in the rear be used for tenant parking only.

March 16, 1993 – The following relief from Zoning Ordinance was **granted**: A Variance from Article II Section 10-206(3) to allow a professional office to occupy a 1250 S.F. business office in a district where professional offices are not allowed; with the amendment the use be limited to one professional person.

April 19, 1994 – The following relief from the Zoning Ordinance was **granted**: A Variance from Article II Section 10-206 (15) to allow an Animal Hospital and Veterinary practice with no crematorium, no outdoor kennels or exercising yards and no boarding of animals except for short stay hospitalization in 3,360± s.f. of an existing building where such used are not allowed; with the following stipulations:

1) The hours of operation will be from 8:00 a.m. to 8:00 p.m Monday through Friday, 9:00 a.m. to 1:00 p.m. on Saturdays, and closed on Sundays and holidays;

2) There are to be no exercising yards;

3) No boarding or animals except for short stay hospitalization;

4) No crematorium;

5) No outdoor kennels.

Planning Department Comments

The applicant's request includes merging lots 268-12 and 268-13. The existing conditions of the two project lots include one vacant lot and one developed with a mixed use building containing two commercial units and three residential units. The project as proposed in the presented materials reflected the lots in their post-merger layout. The existing and proposed conditions table, as found in this staff memo, identifies lot 268-12 as "lot 12" and lot 268-13 as "lot-13."

The proposed conditions create a corner lot that is subject to the Special Yard Requirements on Lafayette Road as found in Section 10.533 of the [Zoning Ordinance](#) and provided below.

10.533 Special Yard Requirements on Lafayette Road

Notwithstanding the minimum front yard requirements specified in Section 10.521 or Section 10.531, for any lot adjoining Lafayette Road between the Route 1 Bypass and the Rye town line, no building, structure, parking area, or display or storage area shall be located less than 80 feet from the centerline of Lafayette Road or 30 feet from the sideline of Lafayette Road, whichever represents the greater setback, except as otherwise permitted by this Ordinance.

This project will require site plan review and approval to be constructed. If the variances are granted, staff recommends the following stipulation for consideration:

1. The design of the structure may change as a result of Site Plan review and approval by TAC and Planning Board.

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

 - (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

- E. The request of **Creeley Family Trust, Sean Creeley and Andrea Creeley Trustees (Owners)**, for property located at **337 Richards Avenue** whereas relief is needed to demolish the existing detached garage and construct an addition and attached garage to the primary structure which requires a Variance from Section 10.521 to allow a one and a half (1.5) foot rear yard where 20 feet is required. Said property is located on Assessor Map 130 Lot 2 and lies within the General Residence A (GRA) District. (LU-23-113)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Construct an addition with attached garage	Primarily residential
<u>Lot area (sq. ft.):</u>	10,881	10,881	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,881	10,881	7,500 min.
<u>Street Frontage (ft.)</u>	215.5	215.5	100 min.
<u>Lot depth (ft.):</u>	104.5	104.5	70 min.
<u>Primary Front Yard (Richards Ave) (ft.):</u>	17.3	17.3	15 min.
<u>Secondary Front Yard (Lincoln Ave) (ft.):</u>	15.8	15.8	15 min.
<u>Right Yard (ft.):</u>	52.8	41.2	10 min.
<u>Rear Yard (ft.):</u>	1.4	1.5	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	15.1	14.9	25 max.
<u>Open Space Coverage (%):</u>	68.6	62.3	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

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant is proposing the removal of the existing garage and the construction of an addition to the primary structure that includes an attached garage. The lot is located at the corner of Richards Avenue and Lincoln Avenue. The existing and proposed driveway is located on the Lincoln side of the lot.

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

 - (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

F. The request of **Kathryn Waldwick and Bryn Waldwick (Owners)**, for property located at **30 Parker Street** whereas relief is needed to demolish and remove the existing shed and covered porch and construct a new attached shed with a covered porch which requires the following: 1) Variance from section 10.521 to permit a) 45% building coverage where 35% is allowed, b) one and a half (1.5) foot right side yard where 10 feet is required, and c) two (2) foot rear yard where 20 feet is required; and 2) 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 126 Lot 27 and lies within the General Residence C (GRC) District. (LU-23-117)

Existing & Proposed Conditions

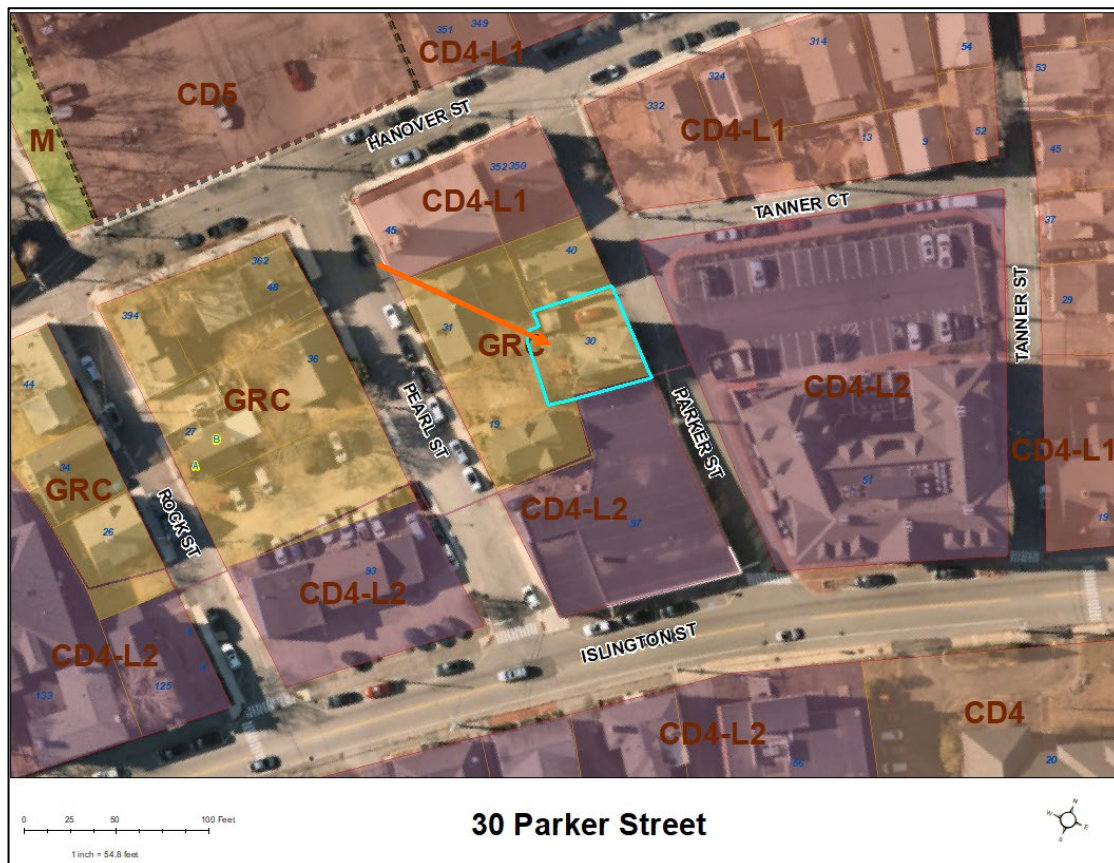
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	*Construct a shed and covered porch	Primarily residential
<u>Lot area (sq. ft.):</u>	2,619	2,619	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,619	2,619	3,500 min.
<u>Street Frontage (ft.)</u>	49.7	49.7	70 min.
<u>Lot depth (ft.):</u>	46	46	50 min.
<u>Front Yard (ft.):</u>	0.5	0.5	5 min.
<u>Left Yard (ft.):</u>	6	6	10 min.
<u>Right Yard (ft.):</u>	0	1.5	10 min.
<u>Rear Yard (ft.):</u>	3	2	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	44	45	35 max.
<u>Open Space Coverage (%):</u>	>20	>20	20 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1900	Variance request(s) shown in red.	

* Relief required to allow an existing non-conforming structure to expand

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

July 9, 1985 – The following Special Exception and Variance requests were **denied**: A Special Exception from Article II Section 10-205 (3) (c) to permit the conversion of a residence into a duplex; and 2) a Variance from Article II Section 10-205 (3) (c) to allow the conversion with 1,346 s.f. of lot area per family where a minimum lot area of 2,000 s.f. per family is required.

Planning Department Comments

The applicant is proposing to remove the existing 8 foot by 10 foot shed and replace it with a 9 foot by 11 foot shed that will be attached to the primary structure by a porch passageway.

Staff determined that Section 10.573.20 of the Zoning Ordinance did not apply to this project as the proposed shed will be connected to the primary structure and will give the appearance of being attached.

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.