



City of Portsmouth  
Planning Department  
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## MEMORANDUM

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

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

### III. Old Business

- A. 9 Kent – Request for Rehearing

### IV. New Business

- A. 1 Garden Street
- B. 51 Islington Street, Unit #103

### III. OLD BUSINESS

- A. Request for rehearing by **David and Sandra Mikolaities** of 19 Kent Street, **William and Catherine Arakelian** of 18 Kent Street and **Barbara K. Adams** of 75 Kent Street, for the property at 9 Kent Street whereas relief is needed to demolish the existing two (2) living unit structure and construct a one (1) living unit structure which requires a Variance from Section 10.521 to allow a) 5,000 square feet of lot area where 7,500 square feet are required and b) 5,000 square feet of lot area per dwelling unit where 7,500 square feet are required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. Application by Cynthia Austin Smith and Peter Smith (Owners) was approved on September 19, 2023. (LU-23-119)

#### Planning Department Comments

On Tuesday, September 19, 2023 the Board of Adjustment considered the request of Cynthia Austin Smith and Peter Smith (Owners), for property located at 9 Kent Street whereas relief is needed to demolish the existing two (2) living unit structure and construct a one (1) living unit structure which requires a Variance from Section 10.521 to allow a) 5,000 square feet of lot area where 7,500 square feet are required and b) 5,000 square feet of lot area per dwelling unit where 7,500 square feet are required. The Board voted to approve the application. The letter of decision and findings of fact have been included in the meeting packet along with the motion for rehearing and an objection by the owners.

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 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.

**IV. NEW BUSINESS**

**A.** The request of **Jeff and Rhonda Caron (Owners)**, for property located at **1 Garden Street** whereas relief is needed to construct an addition to the existing detached garage and create a second living unit on the property which requires the following: 1) Variance from Section 10.516.10 to allow a two (2) foot front yard where five and a half (5.5) feet is required; 2) Variance from Section 10.513 to allow two (2) free standing dwelling units where one (1) is allowed; and 3) 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 174 Lot 11 and lies within the General Residence A (GRA) District. (LU-23-139)

**Existing & Proposed Conditions**

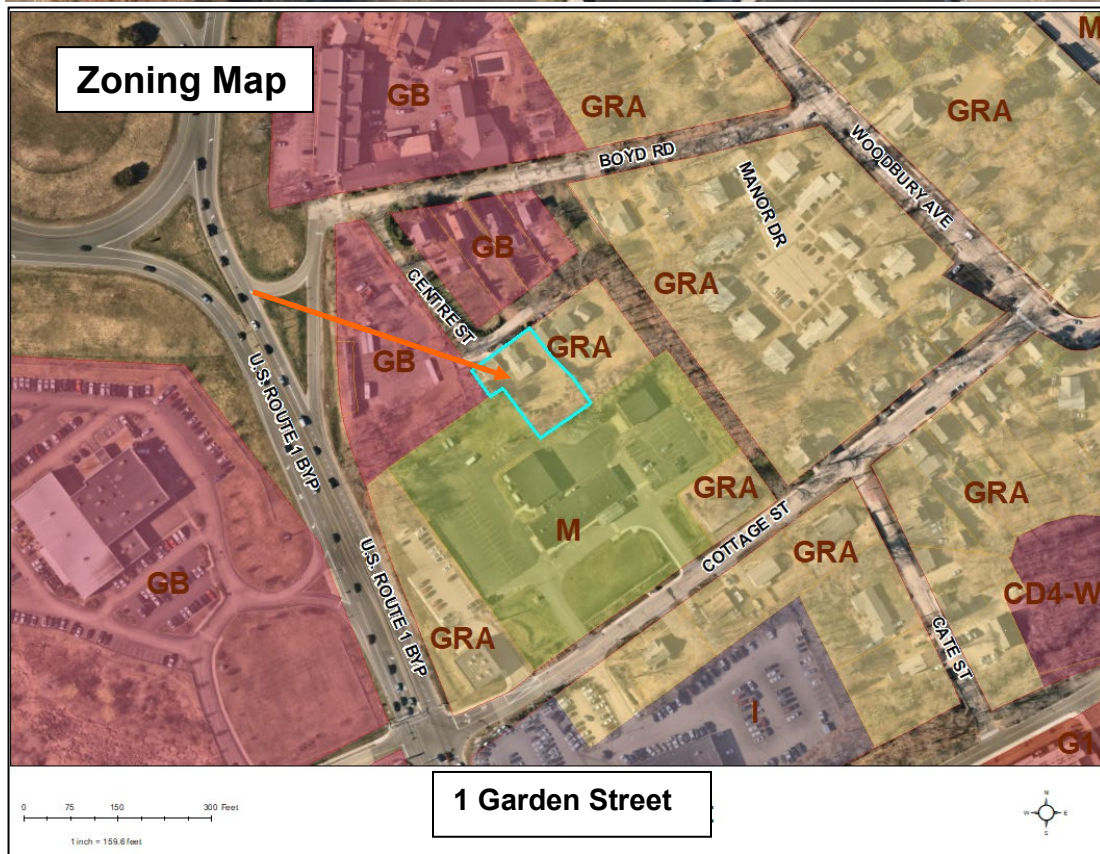
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	<b>*Two freestanding dwellings</b>	Primarily residential
<u>Lot area (sq. ft.):</u>	15,681	15,681	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	15,681	7,840	7,500 min.
<u>Street Frontage (ft.):</u>	117	117	100 min.
<u>Lot depth (ft.)</u>	>100	>100	70 min.
<u>Front Yard (ft.):</u>	2	<b>2</b>	5.5 (w/ averaging calculation, Section 10.516.10) min.
<u>Left Yard (ft.):</u>	27	27	10 min.
<u>Right Yard (ft.):</u>	14 (Garage)	14 (Garage)	10 min.
<u>Rear Yard (ft.):</u>	27	23	20 min.
<u>Height (ft.):</u>	19	19	35 max.
<u>Building Coverage (%):</u>	12.7	13	25 max.
<u>Open Space Coverage (%):</u>	84	83	30 min.
<u>Parking</u>	3	3	3
<u>Estimated Age of Structure:</u>	1900	<b>Variance request(s) shown in red.</b>	

**\*Relief from Section 10.513 is required to convert the garage into a primary structure, creating 2 free-standing structures on one lot; and from Section 10.321 to add dormers in a required yard area.**

**Other Permits/Approvals Required**

- Building Permit

### Neighborhood Context



## Previous Board of Adjustment Actions

May 16, 1995 – The Board **Granted** a Special Exception to Article II, Section 10-205(11) to allow a home occupation which includes a separate domestic kitchen as required by the Health Officer for preparation of jams and mustards to be sold off site with the following conditions:

- 1) There be no signage.
- 2) That the separate kitchen area for the home occupation cannot be incorporated into a second dwelling unit.

February 16, 1999 – The Board **Granted** a Variance from Article III, Section 10-302(A) to allow construction of a 24' x 26' one and a half story 2 car garage as an accessory use to a single-family dwelling with a 2' front yard with 15' is the minimum required.

## Planning Department Comments

The applicant is requesting variances to convert the existing accessory garage structure as a single living unit. This conversion includes the construction of dormers on the front of the existing garage structure. The construction of the dormers and the conversion of the accessory structure to a primary triggered the need for a front yard variance.

Upon review of the application, Staff recognized an existing shed that is not contained within the lot boundaries. If a motion for approval is made, staff recommends the following or similar condition be included:

- 1) The existing shed located over the western boundary line is relocated to sit entirely on the property and conform to Zoning requirements; OR be removed entirely.

## 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.

**IV. NEW BUSINESS**

**B.** The request of **Ashley Stearns / Blush LLC (applicant)**, and **Joan T. Jones Revocable Trust (Owner)**, for property located at **51 Islington Street, Unit 103** whereas relief is needed to allow an esthetician business which requires a special exception from Section 10.440, Use # 7.20 where it is permitted by Special Exception. Said property is located on Assessor Map 126 Lot 33-103 and lies within the Character District 4-L2 (CD4-L2) and Historic District. (LU-23-184)

**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	6 Commercial Units, 26 Residential Units	<b>*Esthetician Business (Allowed by Special Exception)</b>	Mixed residential and commercial uses
<u>Unit #103 Area (sq. ft.)</u>	898	898	898
<u>Parking (Spaces)</u>	1 per 350 s.f. GFA	1 per 400 s.f. GFA	
<u>Estimated Age of Structure:</u>	2011	<b>Special Exception request(s) shown in red.</b>	

**\*Esthetician Business is considered a "personal services" use that is allowed by Special Exception in the CD4-L2**

**Other Permits/Approvals Required**

- Building Permit (Tenant Fit-Up)
- Sign Permit

### Neighborhood Context





## Previous Board of Adjustment Actions

September 28, 1971 – The Board **Granted** the Variance to allow construction of a warehouse to the rear of an existing building.

## Planning Department Comments

The applicant is requesting to establish her esthetician business in Unit #103 at 51 Islington Street. Esthetician businesses are considered a “personal service” under the [Zoning Ordinance](#) and are allowed by Special Exception in the CD4-L2 district. There are currently 32 total onsite parking spaces. The proposed use requires 1 space per 400 square feet of gross floor area (GFA) where the prior use required 1 space per 350 square feet of GFA. Upon review of the building permit, the parking will be assessed for the building. As this change in use results in a less intensive parking requirement, staff do not anticipate the need for any additional parking requirements

## Special Exception 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.