



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: December 14, 2023  
RE: Zoning Board of Adjustment December 19, 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. 9 Kent Street – Request for Rehearing
- B. 550 Sagamore Avenue – Request for Rehearing
- C. 1 Garden Street

### III. New Business

- A. 166 Maratha Terrace
- B. 2059 Lafayette Road
- C. 485 Lincoln Avenue
- D. 111 Gates Street – **REQUEST WITHDRAWN**
- E. 168 Lincoln Avenue
- F. 410 Richards Avenue

## II. 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.

*Consideration of this request was postponed from the November 21, 2023 meeting due to only 5 Board members being present to vote at that time.*

## II. OLD BUSINESS

- B.** The request of **Frances E. Mouflouze Revoc Trust of 2015 (Owner)**, for property located at **550 Sagamore Avenue** whereas relief is needed to demolish the existing structure and construct two duplexes (creating a total of 4 living units) which requires the following: 1) Variance from Section 10.513 to allow more than one free-standing dwelling unit on a lot; and 2) Variance from Section 10.440 Use #1.30 to allow the construction of duplexes where they are not permitted. Said property is located on Assessor Map 222 Lot 11 and lies within the Single Residence B (SRB) District. (LU-23-164)

### Planning Department Comments

On Tuesday, October 17, 2023 the Board of Adjustment considered the request of Frances E. Mouflouze Revoc Trust of 2015 (Owner), for property located at 550 Sagamore Avenue whereas relief is needed to demolish the existing structure and construct two duplexes (creating a total of 4 living units) which requires the following: 1) Variance from Section 10.513 to allow more than one free-standing dwelling unit on a lot; and 2) Variance from Section 10.440 Use #1.30 to allow the construction of duplexes where they are not permitted. The Board voted to deny 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.

*Consideration of this request was postponed from the November 21, 2023 meeting due to only 5 Board members being present to vote at that time.*

**II. OLD BUSINESS**

C. 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**

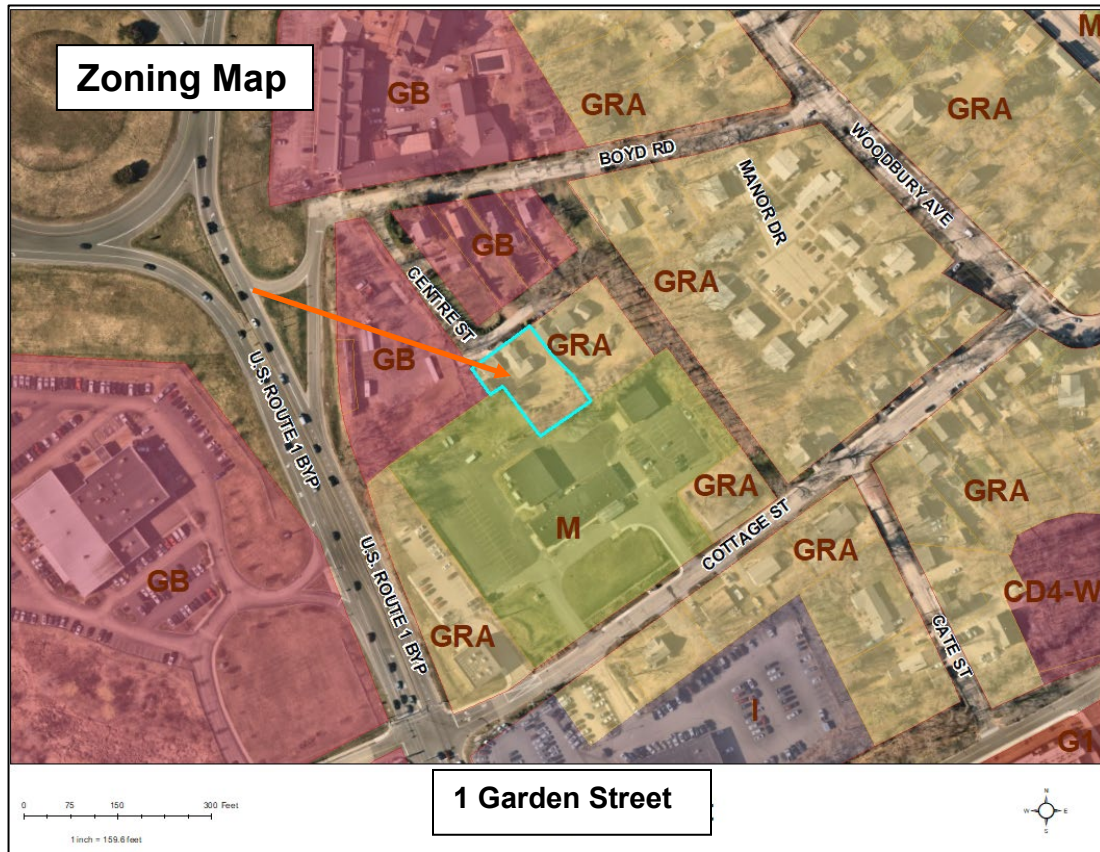
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	<b>*Two freestanding dwellings</b>	Primarily residential
<u>Lot area (sq. ft.):</u>	15,681	15,681	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	15,681	7,840	7,500 min.
<u>Street Frontage (ft.):</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

*Consideration of this request was postponed from the November 21, 2023 meeting due to only 5 Board members being present to vote at that time.*

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**

*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 **Anne Sullivan and Kathleen Sullivan (Owners)**, for property located at **166 Martha Terrace** whereas relief is needed to replace the existing shed with a new shed which requires the following: 1) Variance from Section 10.521 to allow 21% building coverage where 10% is the maximum allowed. Said property is located on Assessor Map 283 Lot 23 and lies within the Single Residence A (SRA) District. (LU-23-186)

#### Existing & Proposed Conditions

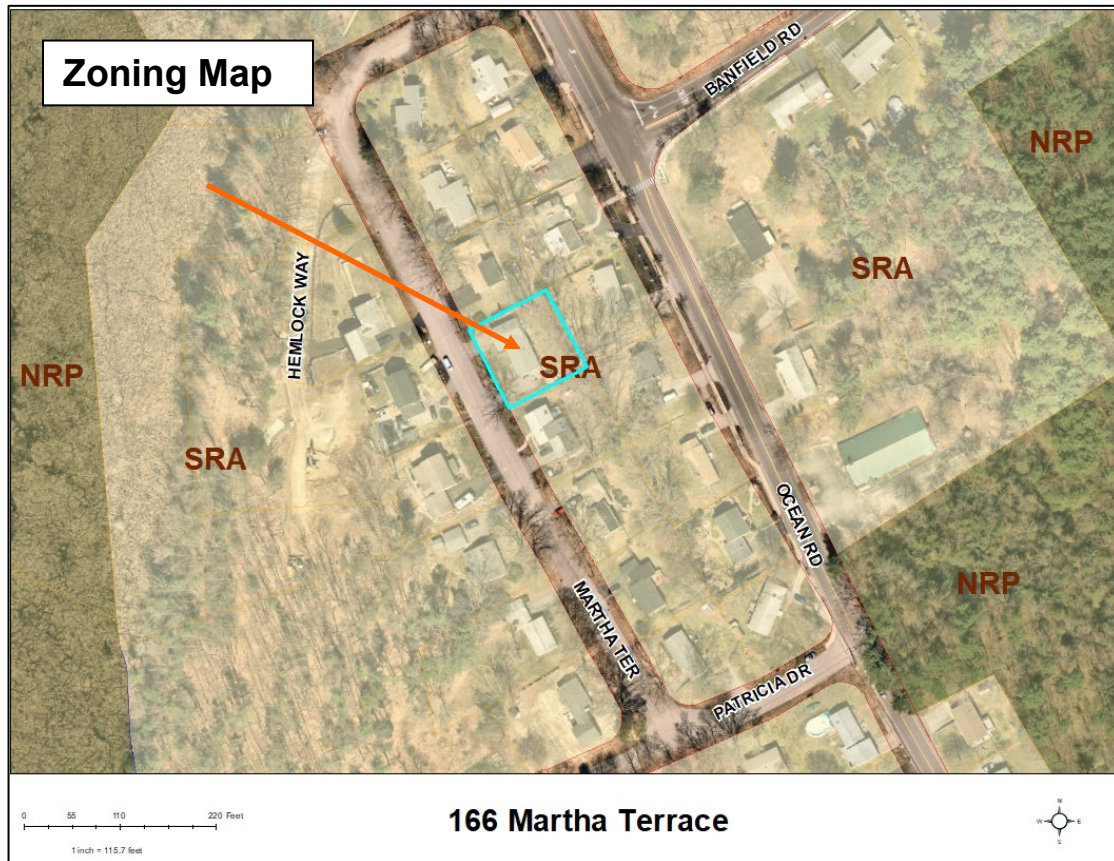
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	Remove and replace shed	Primarily residential
<u>Lot area (sq. ft.):</u>	10,018	10,018	43,560 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,018	10,018	43,560 min.
<u>Street Frontage (ft.):</u>	100	100	150 min.
<u>Lot depth (ft.)</u>	100	100	200 min.
<u>Front Yard (ft.):</u>	23	23	30 min.
<u>Left Yard (ft.):</u>	>5 (Shed)	>5 (Shed)	5 (shed per 10.573.10) min.
<u>Right Yard (ft.):</u>	1 (Shed)	5 (Shed)	5 (shed per 10.573.10) min.
<u>Rear Yard (ft.):</u>	43 (Shed)	34 (Shed)	5 (shed per 10.573.10) min.
<u>Height (ft.):</u>	<10	7	10 (shed per 10.573.10) max.
<u>Building Coverage (%):</u>	20.5	<b>21 (20.6, rounded to 21)</b>	10 max.
<u>Open Space Coverage (%):</u>	51	51	50 min.
<u>Parking</u>	3	3	3
<u>Estimated Age of Structure:</u>	1965	<b>Variance request(s) shown in red.</b>	

#### Other Permits/Approvals Required

- Building Permit



### Neighborhood Context



### Previous Board of Adjustment Actions

May 18, 1999 – the Board **granted** the following Variances: a) a 36' front yard where 40' is the minimum required; b) a 16' side yard where 20' is the minimum required; and c) a building coverage of 17.2% where the maximum allowed is 10% to construct a 24' x 34' one story addition to an existing single family dwelling which will remain a single family dwelling for two bedrooms, a bath and a family room with the following condition:

- 1) Only one (1) kitchen is allowed and the structure is to remain a single family home.

November 16, 1999 – The Board **granted** the following Variances: 1) A Variance from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) including a) a 12' left side yard where 20' is the minimum required, and b) a building coverage of 17.5% where 10% is the maximum allowed to allow a 4' x 4' landing plus stairs for an exterior entrance to the new addition to the single-family dwelling; and 2.) A Variance from Article II, Section 10-206 to allow a wet bar sink in a previously approved addition to a single-family dwelling with the following conditions:

- 1) One (1) kitchen be allowed in the structure; and,
- 2) The structure remains a single-family dwelling

### Planning Department Comments

The applicant is requesting to remove the existing shed and replace it with a new shed. The new shed conforms to side and rear accessory setback requirements where the existing shed encroaches on the right-side yard, and requires relief to exceed the allowable building coverage.

### 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

- B. The request of **Go-Lo Inc. and James A Labrie Revocable Trust of 1991 (Owners)**, for property located at **2059 Lafayette Road** whereas relief is needed to demolish the existing structure and construct an eight (8) living unit building which requires the following: 1) Variance from Section 10.1113.20 to allow parking located closer to the street than the principal building in the secondary front yard; and 2) Variance from Section 10.521 to allow 3,430 square feet of lot area per dwelling unit where 7,500 square feet are required. Said property is located on Assessor Map 268 Lot 13 and lies within the Mixed Residential Business (MRB) District. (LU-23-191)

#### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Lot 12 - Parking Lot 13 – Mixed-Use	Merge lots and construct a 8-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	<b>3,430</b>	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	80.8	80 (Section 10.533) min.
<u>Secondary Front Yard (Hoover Dr) (ft.):</u>	25	>5	5 min.
<u>Left Yard (ft.):</u>	5	24	10 min.
<u>Rear Yard (ft.):</u>	30	29	15 min.
<u>Height (ft.):</u>	<40	<40	40 max.
<u>Building Coverage (%):</u>	Lot 12 - 0 Lot 13 - 18.6	26.2	40 max.
<u>Open Space Coverage (%):</u>	55	66.8	25 min.
<u>Parking</u>	Lot 12 - 9 Lot 13 - 14	<b>*21</b>	12
<u>Estimated Age of Structure:</u>	1980	<b>Variance request(s) shown in red.</b>	

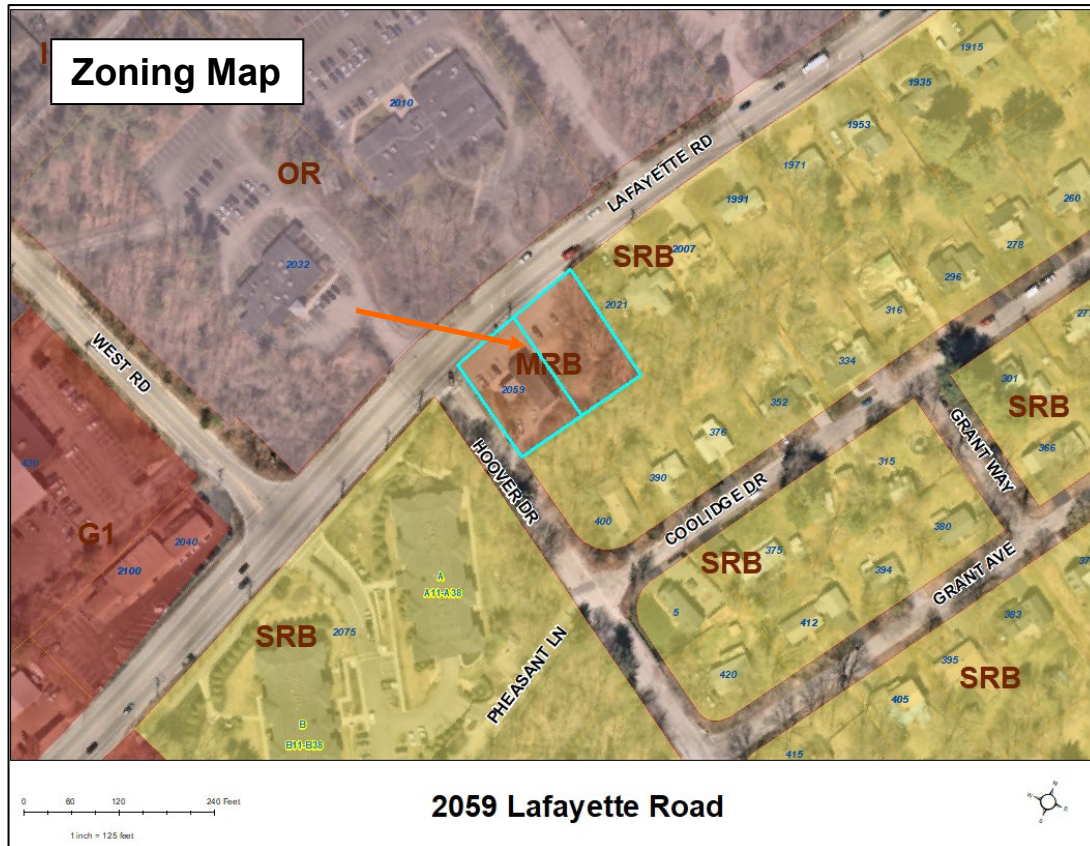
\* 5 parking spaces located between the primary structure and Hoover Drive.

#### Other Permits/Approvals Required

- Site Review (TAC 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 than 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, 1977 – 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.

August 15, 2023 – The Board **denied** the request 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.

## Planning Department Comments

### Fisher vs. Dover

The applicant was before the Board on August 15 of 2023 seeking relief from Section 10.1113.20 to allow parking to be located in front of the principal building; Section 10.533 to allow a structure to be located 58 feet from the centerline of Lafayette Roads where 80 feet is required; Section 10.521 to allow 1,715 square feet of lot area per dwelling unit where 7,500 square feet is required; and Section 10.440 Use #1.53 to allow 16 units where eight (8) are permitted. The Board denied the request for relief at that time citing that it did not observe the spirit of the ordinance and did not present a hardship. The new design is 1,600 square feet less building coverage and proposes half the amount of living units. Staff feels this is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether it is applicable before the 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 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 proposal includes the elimination of property access from Lafayette Road and the creation of access on Hoover Drive 50 feet or more from the intersection.

If technical questions arise during discussions, the Board could refer the application to TAC for a recommendation.

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**

*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 **Jeffrey Suttie and Katherine Clarcq (Owners)**, for property located at **485 Lincoln Ave** whereas relief is needed to extend the livable space of the primary structure into area that is currently a porch which requires the following: 1) Variance from Section 10.521 to allow a four (4) foot side yard where 10 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 134 Lot 49 and lies within the General Residence A (GRA) District. (LU-23-195)

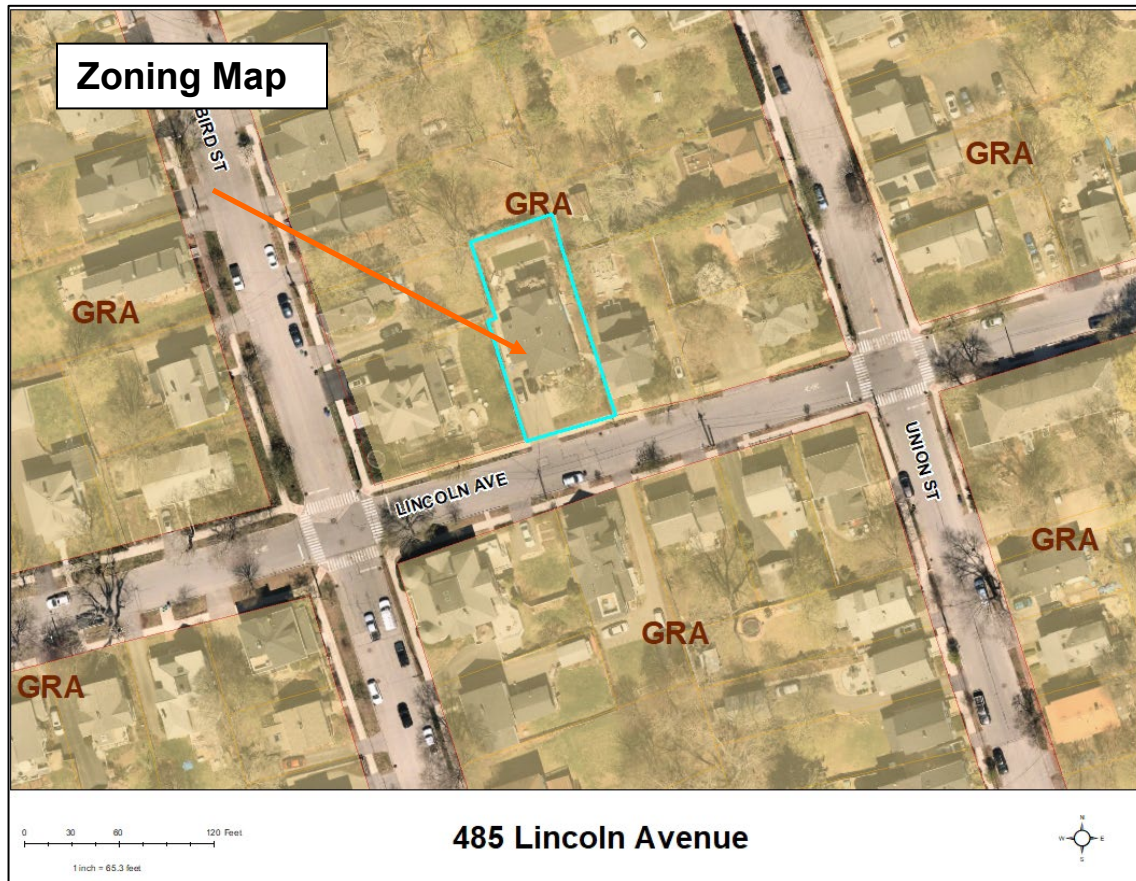
#### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	Enclose portion of the porch	Primarily residential
<u>Lot area (sq. ft.):</u>	1,339	1,339	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,339	1,339	7,500 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.)</u>	110	110	70 min.
<u>Front Yard (ft.):</u>	12	12	15 min.
<u>Left Yard (ft.):</u>	4	<b>4</b>	10 min.
<u>Right Yard (ft.):</u>	13	13	10 min.
<u>Rear Yard (ft.):</u>	110	110	20 min.
<u>Height (ft.):</u>	35	35	35 max.
<u>Building Coverage (%):</u>	24	24	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	3	3	3
<u>Estimated Age of Structure:</u>	1900	<b>Variance request(s) shown in red.</b>	

#### Other Permits/Approvals Required

- Building Permit

### Neighborhood Context





## Previous Board of Adjustment Actions

June 21, 1994 – The Board granted the following relief: A Variance from Article III, Section 10-302 is requested to allow the construction of a 16' x 24' (336 s.f) family/dining room addition including a deck resulting in building/lot coverage of 24.8% in a district where 20% is the maximum allowed.

August 21, 2001 reconvened August 28, 2001 – The Board granted the following relief: A Variance from Article III, Section 10-302(A) to allow a 5' x15' expansion of an existing deck and stairs creating a building coverage of 33.2% where 25% is the maximum allowed with the following conditions:

- 1) The size of deck be amended to not exceed 4' x 18' and
- 2) The lot coverage not exceed 33.2%

## Planning Department Comments

The applicant is requesting to extend the interior livable space by 74 square feet by enclosing a portion of the covered porch. The proposal does not include a change in footprint to the existing structure. The expansion proposed is considered an extension of the nonconforming structure and therefore requires a variance.

## 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 **Zachary Dombrowski and Meghan Black (Owners)**, for property located at **111 Gates Street** whereas relief is needed to demolish and reconstruct portions of the structure located at the rear and on the right side of the building which requires the following: 1) Variance from Section 10.521 to allow a) zero (0) foot front yard where five (5) feet are required, and b) zero (0) foot side yard where 10 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 103 Lot 96 and lies within the General Residence B (GRB) and Historic District. (LU-23-193)

#### **Planning Department Comments**

Applicant has withdrawn the application for zoning relief.



**III. NEW BUSINESS**

E. The request of **Mark N Franklin and Julie S Franklin (Owners)**, for property located at **168 Lincoln Avenue** whereas relief is needed to demolish the detached garage and construct an addition to the primary structure that includes an attached garage which requires the following: 1) Variance from Section 10.521 to allow a) eight and a half (8.5) foot front yard where 15 is required, b) seven (7) foot right yard where ten (10) feet is required, and c) 33% building coverage where 25% is the maximum allowed; 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 113 Lot 6 and lies within the General Residence A (GRA) District. (LU-23-196)

**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	<b>*Demolish detached garage and construct an attached garage and new porch</b>	Primarily residential
<u>Lot area (sq. ft.):</u>	5,925	5,925	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,925	5,925	7,500 min.
<u>Street Frontage (ft.):</u>	163	163	100 min.
<u>Lot depth (ft.)</u>	105	105	70 min.
<u>Front Yard (ft.):</u>	7.5	<b>8.5</b>	15 min.
<u>Secondary Front Yard (Sherburne Ave) (ft.):</u>	16.2	15	15 min.
<u>Right Yard (ft.):</u>	1.5 (Garage) 8.8 (primary structure)	<b>7</b>	10 min.
<u>Rear Yard (ft.):</u>	1.7	>20	20 min.
<u>Height (ft.):</u>	31.6	32.6	35 max.
<u>Building Coverage (%):</u>	33.4	<b>33</b>	25 max.
<u>Open Space Coverage (%):</u>	64.4	66.9	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 10.321 is required to allow an existing non-conforming structure to expand**

**Other Permits/Approvals Required**

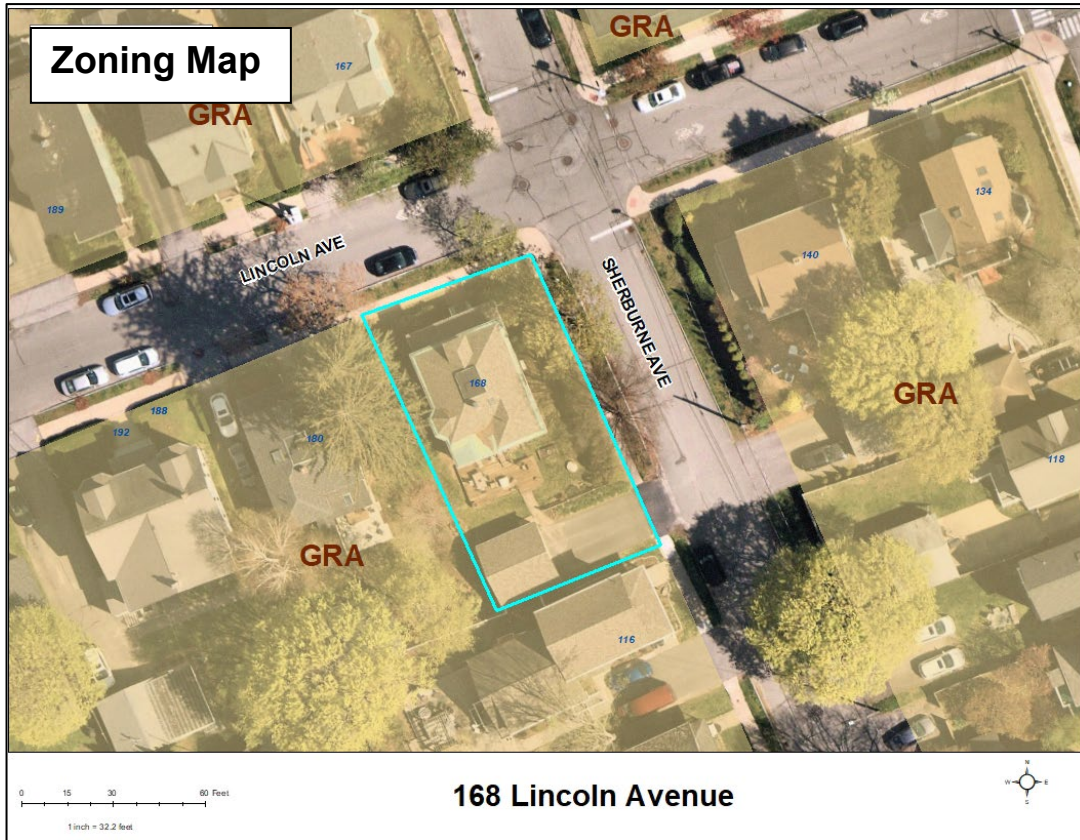
- Building Permit

### Neighborhood Context

**Aerial Map**



**Zoning Map**



## Previous Board of Adjustment Actions

**March 29, 2023** – The Board **denied** the following request: demolition of existing detached garage and porch and construction of a new attached garage with wrap-around porch which requires 1) Variances from Section 10.521 to allow a) a 7.5 foot front yard where 15 feet is required. b) a 9 foot secondary front yard where 15 feet is required, c) 38% building coverage where 25% is the maximum allowed; and 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.

## Planning Department Comments

### Fisher vs. Dover

The applicant was before the Board on March 29 of 2023 seeking relief from Section 10.521 to allow a 7.5 foot front yard, a 9 foot secondary front yard, and 38% building coverage; and from section 10.321 to extend or enlarge a nonconforming structure without conforming to the requirements of the ordinance. The Board denied the request for relief at that time citing that it did not observe the spirit of the ordinance which was to prevent overcrowding and overbulking of the land; and would diminish the value of surrounding properties. The new design is smaller and requires less granted relief to construct. Staff feels this is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether it is applicable before the 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).*

## 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.



**III. NEW BUSINESS**

F. The request of **Paula J. Reid 2003 Revocable Trust (Owner)**, for the property located at **410 Richards Avenue** whereas relief is needed to demolish and remove the existing detached garage and construct a new detached garage and associated drainage improvements, which requires the following: 1) Variance from Section 10.521 to permit a) 3.5 foot right side yard where 10 feet is required, and b) 30% building coverage where 25% is the maximum allowed; 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 the Assessor Map 112 Lot 10 and lies within the General Residence A (GRA) District. (LU-23-198)

**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	<b>*Demolish and reconstruct garage</b>	Primarily residential
<u>Lot area (sq. ft.):</u>	6,149	6,149	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,149	6,149	7,500 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.)</u>	123	123	70 min.
<u>Front Yard (ft.):</u>	15	15	15 min.
<u>Left Yard (ft.):</u>	3.5	<b>3.5</b>	10 min.
<u>Right Yard (ft.):</u>	6.5	6.5	10 min.
<u>Rear Yard (ft.):</u>	31	26	20 min.
<u>Height (ft.):</u>	8.6 (Garage)	11.1 (Garage)	35 max.
<u>Building Coverage (%):</u>	28.3	<b>30</b>	25 max.
<u>Open Space Coverage (%):</u>	59.7	58.3	30 min.
<u>Parking</u>	3	3	3
<u>Estimated Age of Structure:</u>	1917	<b>Variance request(s) shown in red.</b>	

**\*Relief from Section 10.321 is required to allow an existing non-conforming structure to expand**

**Other Permits/Approvals Required**

- Building Permit

### Neighborhood Context





## Previous Board of Adjustment Actions

February 16, 1999 – The Board granted the following request: A Variance from Article III Section 10-302(A) to allow a 22' x 23' two story addition a 4'7" right side yard where 10' is the minimum required and a building coverage of 27.2% where 25% is the maximum allowed.

## Planning Department Comments

The applicant is proposing to demolish the existing garage and construct a new garage roughly in the same location. The new garage will be 87 square feet larger than the original garage.

Relief from Section 10.321 of the Zoning Ordinance was advertised for the project. Upon further review, Staff have determined that relief from Section 10.321 is not needed.

Should the Board make a motion to grant the request, Staff recommends the Board acknowledge that Section 10.321 was advertised however it is not needed and would not be included in the approval of the variance request.

## 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.