



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: April 26, 2023  
RE: Zoning Board of Adjustment May 2, 2023

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

### II. Old Business

- G. 4 Sylvester Street
- H. 9 Kent Street

### III. New Business

- A. Appeal of Administrative Decision by Nicole Bodoh and Craig Crowell
- B. 170 Mechanic Street
- C. 253 Odiorne Point Road
- D. 45 Richmond Street
- E. 45 Rockingham Street
- F. 650 Maplewood Avenue
- G. 360 US Route 1 Bypass

## II. OLD BUSINESS

- G. The request of **Jared J Saulnier (Owner)**, for property located at **4 Sylvester Street** whereas relief is needed to subdivide one lot into two lots which requires the following: Proposed Lot 1: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 9,645 square feet where 15,000 is required for each; b) 80 feet of lot depth where 100 feet is required; and c) a 9 foot right side yard where 10 feet is required. Proposed Lot 2: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling unit of 6,421 square feet where 15,000 is required for each; b) 40 feet of street frontage where 100 feet is required; and c) 80 feet of lot depth where 100 feet is required. Said property is located on Assessor Map 232 Lot 36 and lies within the Single Residence B (SRB) District. (LU-23-27)

### Planning Department Comments

The applicant has requested to postpone the hearing of this request to the May 16 meeting.

## II. OLD BUSINESS

- H. **REQUEST TO POSTPONE** The request of **Cynthia Austin Smith and Peter (Owners)**, for property located at **9 Kent Street** whereas relief is needed to demolish the existing two-family and construct a single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 5,000 square feet where 7,500 square feet is required for each; b) 53% building coverage where 25% is the maximum allowed; c) a 4.5 foot rear yard where 20' is required; d) a 0.5 foot side yard where 10 feet is required; e) a 0 foot front yard where 11 feet is allowed under Section 10.516.10; and f) a 9.5 foot secondary front yard where 13 feet is allowed under Section 10.516.10. 2) A Variance from Section 10.515.14 to allow a 1.5 foot setback for a mechanical unit where 10 feet is required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. **REQUEST TO POSTPONE** (LU-23-28)

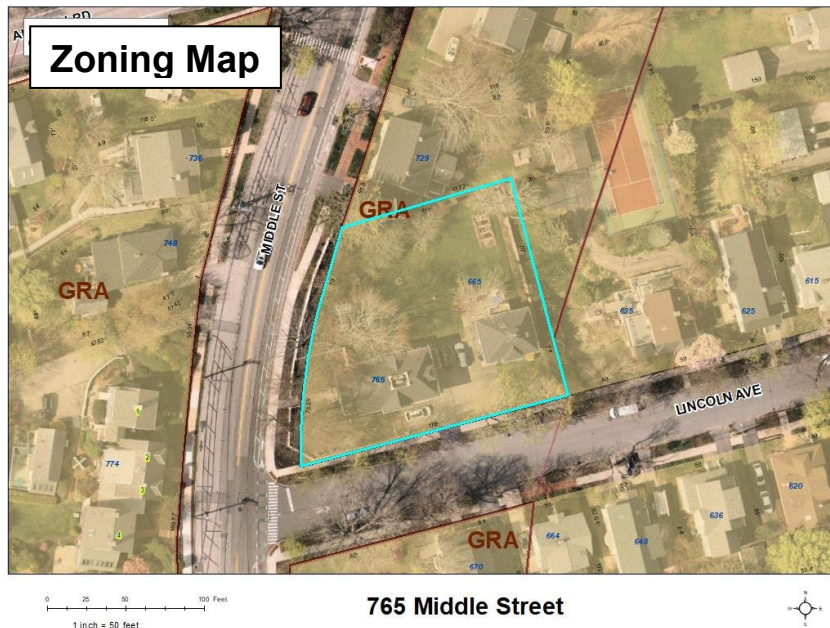
### Planning Department Comments

The applicant has requested to postpone the hearing of this request to the May 16 meeting.

### III. NEW BUSINESS

- A. Petition of **729-733 Middle Street Condominium Association, Nicole M. Bodoh and Craig Crowell**, for Appeal of an Administrative Decision not to present to the Board of Adjustment the Motion for Rehearing of Variance Application of **David Sinclair and Nicole Giusto** for property located at **765 Middle Street** due to an untimely request. Said property is shown on Assessor Map 148 Lot 37 and lies within the General Residence A (GRA) and Historic Districts.

#### Neighborhood Context



**Planning Department Comments**

The appellant is appealing a determination of the Planning Director that the appeal of the case was untimely given the standards set forth in section 10.234.20 of the Zoning Ordinance (provided below).

***10.234.20** Appeals from decisions or orders of the Code Official may be made by any person within 30 days after the date on which the written decision was actually filed.*

Letter of decision is included in the appellants submitted materials as well as a memo from Planning Director Peter Britz

### III. NEW BUSINESS

- B. The request of **Peter G Morin Trust, Peter G Morin Trustee (Owner)**, for property located at **170 Mechanic Street** whereas relief is needed to install a generator which requires the following: 1) Variance from Section 10.515.14 to allow a) 4 foot rear yard where 10' is required and 5.5 foot rear yard where 10 feet is required; 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. Said property is located on Assessor Map 102 Lot 7 and lies within the General Residence B (GRB) and Historic District. (LU-23-35)

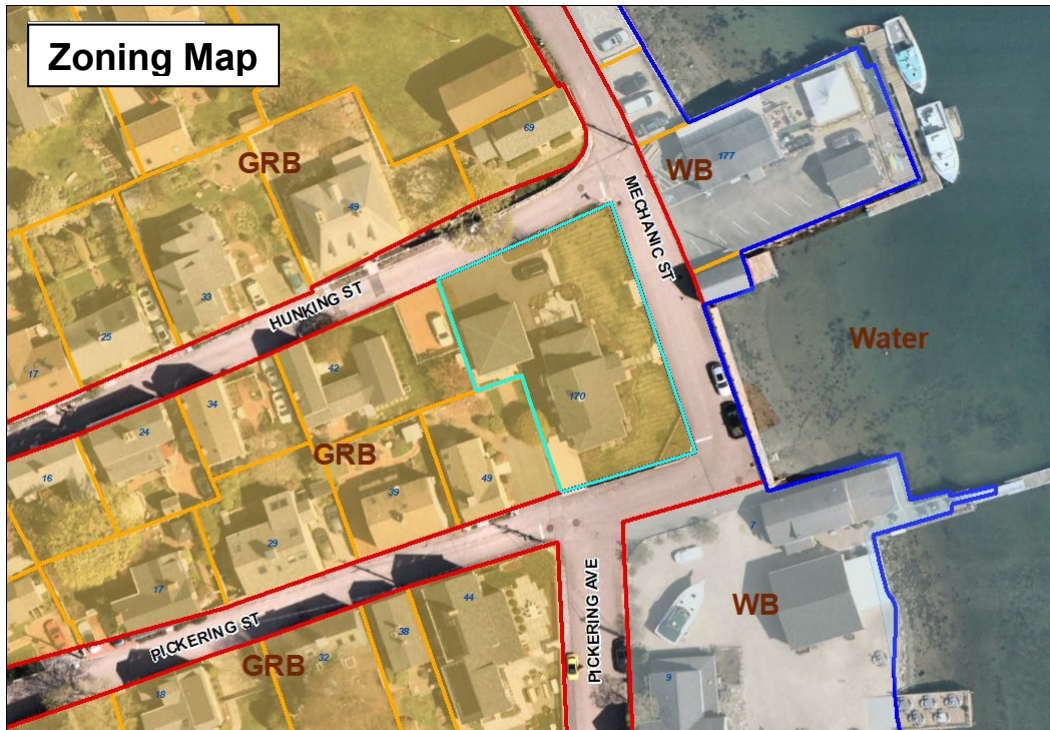
#### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single family	Install New Generator	Primarily residential
<u>Lot area (sq. ft.):</u>	8,680	8,680	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,680	8,680	5,000 min.
<u>Lot depth (ft.):</u>	>80	>80	60 min.
<u>Street Frontage (ft.):</u>	>260	>260	80 min.
<u>Mechanic St Front Yard (Primary)(ft.):</u>	19	19	5 min.
<u>Hunking St Front Yard (ft.):</u>	22 (Garage)	22 (Garage)	5 min.
<u>Pickering St Front Yard (ft)</u>	17 (House)	17 (House)	5
<u>Left Yard (ft.):</u>	8 (Garage)	<b>4 (Generator)</b>	10 min
<u>Rear Yard (ft.):</u>	5 (Garage)	<b>5.5 (Generator)</b>	25 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	22	22	30 max.
<u>Open Space Coverage (%):</u>	>35	>35	25 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	2003	<b>Variance request(s) shown in red.</b>	

#### Other Permits/Approvals Required

- Historic District Approval
- Building Permit

### Neighborhood Context



0 20 40 60 Feet  
1 inch = 43.9 feet

**170 Mechanic Street**



## Previous Board of Adjustment Actions

*(As 170 Mechanic Street)*

January 16, 1996 – The Board **granted** a variance for a 2' x 5' mud room with an 8' rear yard where 25' was required.

March 18, 2003 – The Board **granted** a variance for a 3' x 5' one-story addition with an 8' rear yard where 25' was required.

May 17, 2005 – The Board **denied** a request to allow a room and bath to be used for a Bed and Breakfast in a single-family dwelling where the use was not allowed and to allow a travel aisle less than 24' where 24' was required.

May 21, 2019 – Relief from Zoning Ordinance including:

A Variance from Section 10.573.20 to allow a 5'± rear yard where 14' is required.

A Variance from Section 10.521 to allow a rear yard of 7.9'± for an addition and 9'± for a bulkhead where 25' is required for each.

A Variance from Section 10.571 to allow an accessory structure to be closer to a street than the principal building.

A Variance from Section 10.321 to allow a nonconforming structure or building be expanded, reconstructed, or enlarged without conforming to the requirements of the ordinance.

The Board voted to **grant** the petition as presented and advertised.

*(As 49 Pickering Street)*

August 16, 1994 – The Board **granted** variances for the demolition of a shed and part of a dwelling and construction of a 398 s.f. two story rear addition with a 6' left yard and a 4'6" right yard, 10' required for each; a 19'3" rear yard where 25' was required; and maintaining the existing 30.4% building coverage after the demolition and construction.

April 25, 1995 – The Board **granted** a variance to allow a decayed structure to be rebuilt in the same location and configuration as the existing structure.

*(As 49 Pickering Street and 170 Mechanic Street)*

May 22, 2018 – The Board **granted** a variance in connection with a lot line revision to allow a 7.9' rear yard where 25' is required.

## Planning Department Comments

The applicant is proposing the installation of an emergency generator on the back side of the garage. This is an irregular shaped lot with three sides of street frontage and an additional boundary line that is parallel to Pickering Street and Hunking St. The zoning table has been labeled according to the street each boundary line fronts on, with the left side boundary line referring to the section that runs parallel to Hunking and Pickering Street

## 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 **RTM Trust, Ryan T Mullen and Heidi E K Trustees (Owners)**, for property located at **253 Odiorne Point Road** whereas relief is needed to construct a deck extension which requires a Variance from Section 10.521 to allow a 30 foot rear yard where 40 feet is required. Said property is located on Assessor Map 224 Lot 10-19 and lies within the Single Residence A (SRA) District. (LU-23-36)

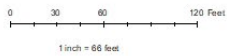
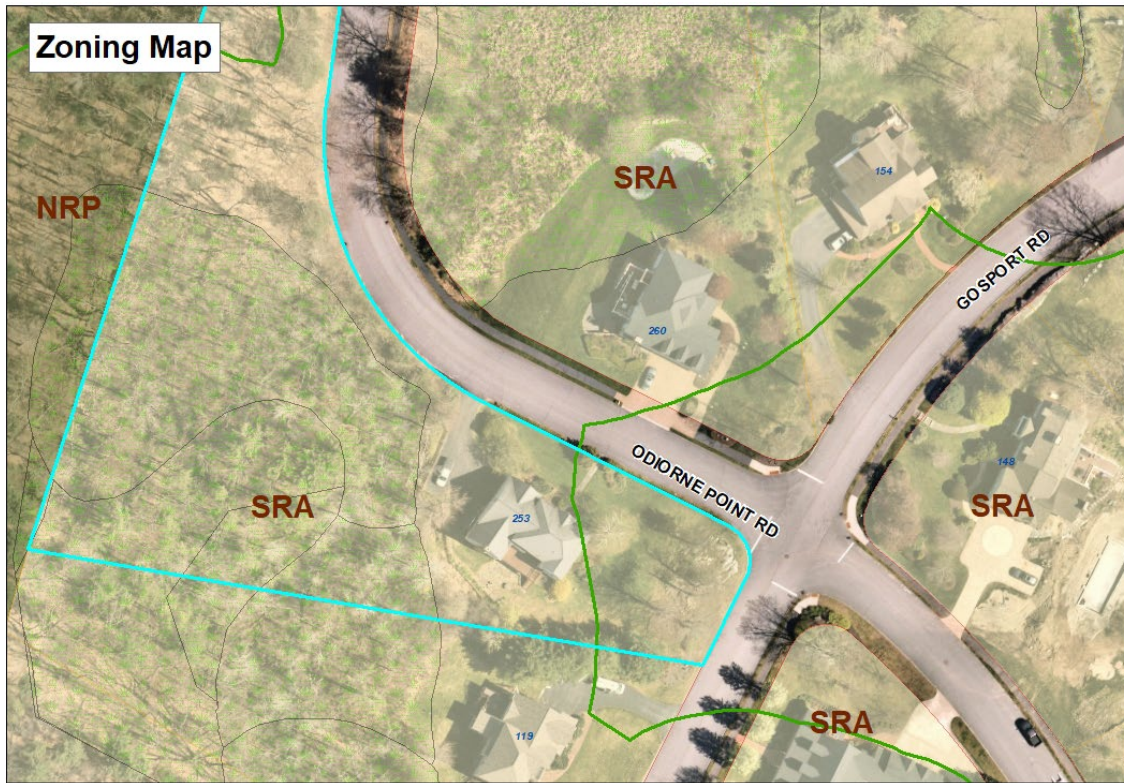
#### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Unit Residential	Deck Expansion	Single Residential Uses
<u>Lot area (sq. ft.):</u>	87,300	87,300	43,650 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	87,300	87,300	43,650 min.
<u>Frontage (ft.):</u>	>400	>400	150 min.
<u>Lot depth (ft.):</u>	100	100	200 min.
<u>Primary Front Yard (ft.):</u>	30	30	30 max.
<u>Secondary Front Yard (ft.):</u>	90	82	30 min.
<u>Right Yard (ft.):</u>	>250	>250	20 min.
<u>Rear Yard (ft.):</u>	30	<b>30</b>	40 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	3	3.3	10 max.
<u>Open Space Coverage (%):</u>	>50	>50	50 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	2000	<b>Variance request(s) shown in red.</b>	

#### Other Permits/Approvals Required

- Building Permit
- Wetland Conditional Use Permit – Conservation Commission and Planning Board

### Neighborhood Context



**253 Odiorne Point Road**



## Previous Board of Adjustment Actions

February 28, 2023 – The Board voted to **grant** the request as presented and advertised for the installation of a mechanical unit which requires the following:

- 1) Variance from Section 10.515.14 to allow the mechanical unit to be located closer to a street than the principal structure.

## Planning Department Comments

Applicant is requesting to remove the existing deck stairs, extend the deck, and construct new stairs. This project requires relief from Section 10.521 as the new portion of the deck and the new stairs, as proposed, will be located within the 40 foot rear yard.

This project does not require relief from Section 10.321 as the portion of the existing deck that is to remain is currently conforming.

## 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 **Cherie A Holmes and Yvonne P Goldsberry (Owners)**, for property located at **45 Richmond Street** whereas relief is needed to construct a greenhouse which requires the following: 1) Variance from Section 10.521 to allow a 5.5 foot rear yard where 15 feet is required; 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. Said property is located on Assessor Map 108 Lot 18 and lies within the Mixed Residential Office (MRO) and Historic District. (LU-20-249

#### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Unit Residential	Build a green house	Mixed Use
<u>Lot area (sq. ft.):</u>	5,417	5,417	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,417	5,417	7,500 min.
<u>Frontage (ft.):</u>	64	64	80 min.
<u>Lot depth (ft.):</u>	84	84	100 min.
<u>Front Yard (ft.):</u>	0	0	5 max.
<u>Left Yard (ft.):</u>	10.6	10.6	10 min.
<u>Right Yard (ft.):</u>	4.4	4.4	10 min.
<u>Rear Yard (ft.):</u>	4.5 (previously approved)	<b>5.4 (Green House Extension)</b>	15 min.
<u>Height (ft.):</u>	<35	<35	40 max.
<u>Building Coverage (%):</u>	25.4%	33.4	40 max.
<u>Open Space Coverage (%):</u>	52.2	59.2	25 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1860	<b>Variance request(s) shown in red.</b>	

#### Other Permits/Approvals Required

- Building Permit

### Neighborhood Context



45 Richmond Street

## Previous Board of Adjustment Actions

November 24, 1964 –The Board **granted** the petition to erect a garage 24' x 20', five (5') feet back from line and two (2') feet from sideline.

January 19, 2021 – Relief is needed from the Zoning Ordinance to remove existing garage and rear addition and construct new garage and 2-story addition which requires the following:

- 1) Variances from Section 10.521 to allow:
  - a) a 0.5 foot front yard where 5 feet is required;
  - b) a 4.5 foot rear yard where 15 feet is required;
  - c) a 4 foot right side yard where 10 feet is required.
- 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended.

The Board voted to **grant** the request with the following stipulation: 1) The rear yard setback shall be 5 feet.

## Planning Department Comments

The applicant was previously before the Board for a larger project that encompassed the greenhouse in January of 2021. Upon refinement of the plan it was discovered that the greenhouse would be longer than what was approved in the original variance granted by the BOA in 2021. The applicant is now before the Board to obtain the needed relief for the change in design.

Staff acknowledges there is a small error in the advertised request. The request advertises a 5.5 foot rear yard where the applicant has requested 5.4 feet. Should the Board approve the variance as presented, staff recommend the following condition:

- 1) The Board approves the variance with a 5 foot +/- rear yard.

## 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 **45 Rockingham St LLC (Owner)**, for property located at **45 Rockingham Street** whereas relief is needed to construct a front porch and rear addition which requires the following: 1) Variance from Section 10.521 to allow a) .5 foot front yard where 5 feet is required, b) 1.5 foot side yard where 10 feet is required, c) 41% building coverage where 35% 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. Said property is located on Assessor Map 144 Lot 6 and lies within the General Residence C (GRC) District. (LU-23-41)

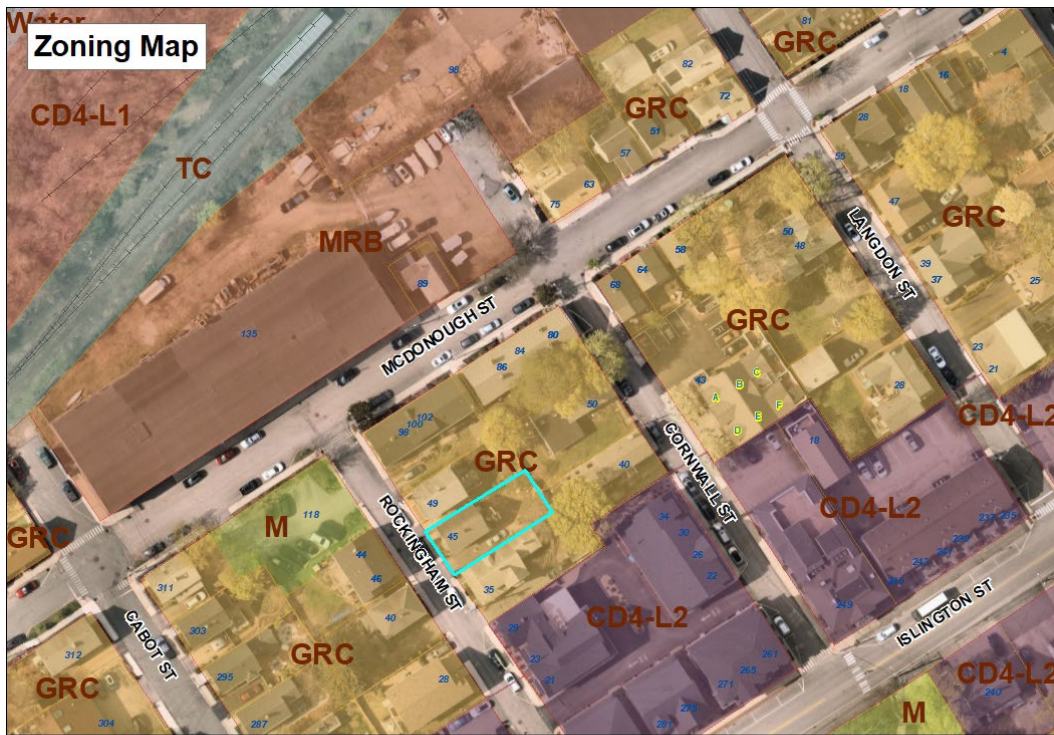
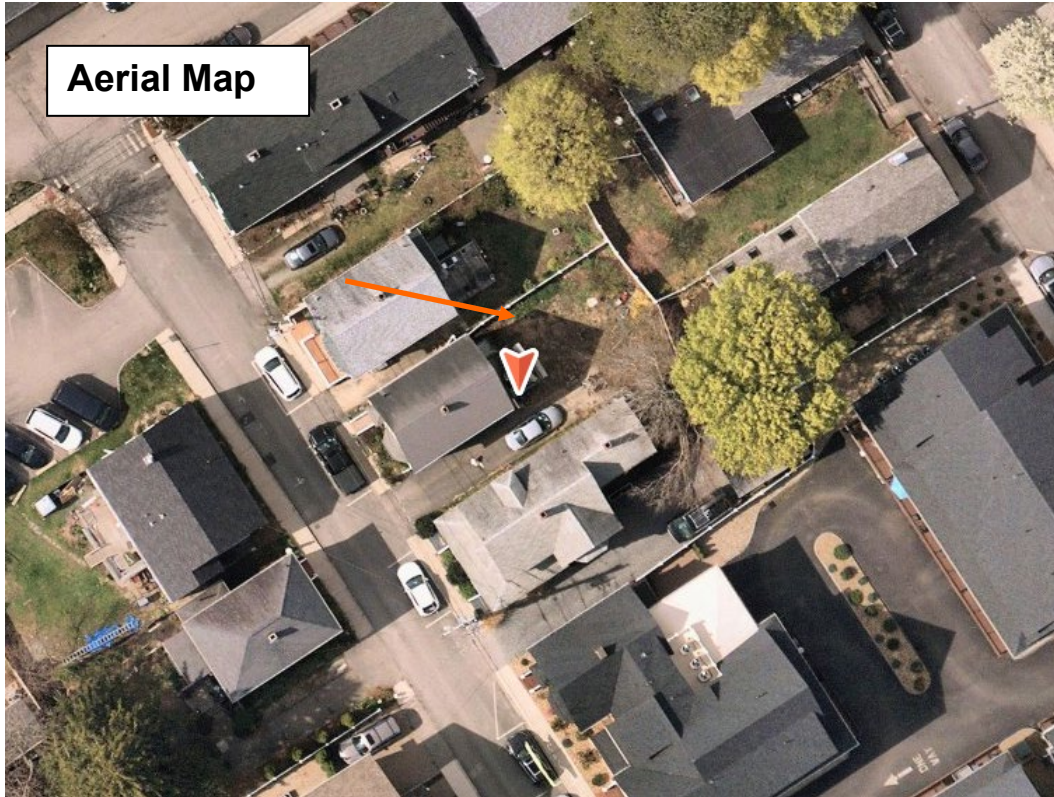
#### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Unit Residential	Construct front porch and rear addition	Single Residential Uses
<u>Lot area (sq. ft.):</u>	2,809	2,809	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,809	2,809	3,500 min.
<u>Frontage (ft.):</u>	35	35	70 min.
<u>Lot depth (ft.):</u>	80.5	80.5	50 min.
<u>Primary Front Yard (ft.):</u>	1	.5	0 (with front yard max. averaging)
<u>Left Yard (ft.):</u>	1.5	<b>1.5</b>	10 min.
<u>Right Yard (ft.):</u>	10.5	10	10 min.
<u>Rear Yard (ft.):</u>	46.5	20	20 min.
<u>Height (ft.):</u>	25.5	29.5	35 max.
<u>Building Coverage (%):</u>	22	<b>41</b>	35 max.
<u>Open Space Coverage (%):</u>	41	30	20 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1890	<b>Variance request(s) shown in red.</b>	

#### Other Permits/Approvals Required

- Building Permit

### Neighborhood Context



0 30 60 120 Feet  
1 inch = 66.7 feet

45 Rockingham Street



## Previous Board of Adjustment Actions

No previous BOA history found.

## Planning Department Comments

The applicant is proposing to construct a front porch and construct an addition in the rear of the property. The front yard averaging calculation as found in Section 10.516.10 of the Zoning Ordinance, and provided below, was used to determine the front yard requirement is 0 feet. Please note that the project as advertised requests relief for the front yard but in fact variance 1. A. is not needed.

### **10.516.10 Front Yard Exception for Existing Alignments**

*If existing principal buildings on the same side of the same street, in the same zoning district, and within 200 feet of a lot are located closer to the street than the minimum required front yard specified in this Article, the required front yard for the principal building on such lot shall be the average of the existing alignments of all such principal buildings, rounded to the nearest foot. For the purpose of this provision, buildings on the subject lot shall not be included in the average of existing alignments.*

Should the Board grant the requests, staff recommends the below condition, or similar, be included in the approval.

1. The Board recognizes the advertised request for front yard relief is not needed. Per Section 10.516.10 of the Zoning Ordinance, the required front yard setback is 0 feet.

## 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 **Bucephalus LLC (Owner)**, for property located at **650 Maplewood Avenue** whereas relief is needed to remove the outdoor fenced storage area and construct a 48 foot by 25.5 foot addition to the rear of the existing structure which requires a Variance from Section 10.592.20 to allow the expansion of space used for motorcycle sales located adjacent to a Residential district where 200 feet is required. Said property is located on Assessor Map 220 Lot 88 and lies within the Business (B) District. (LU-21-111)

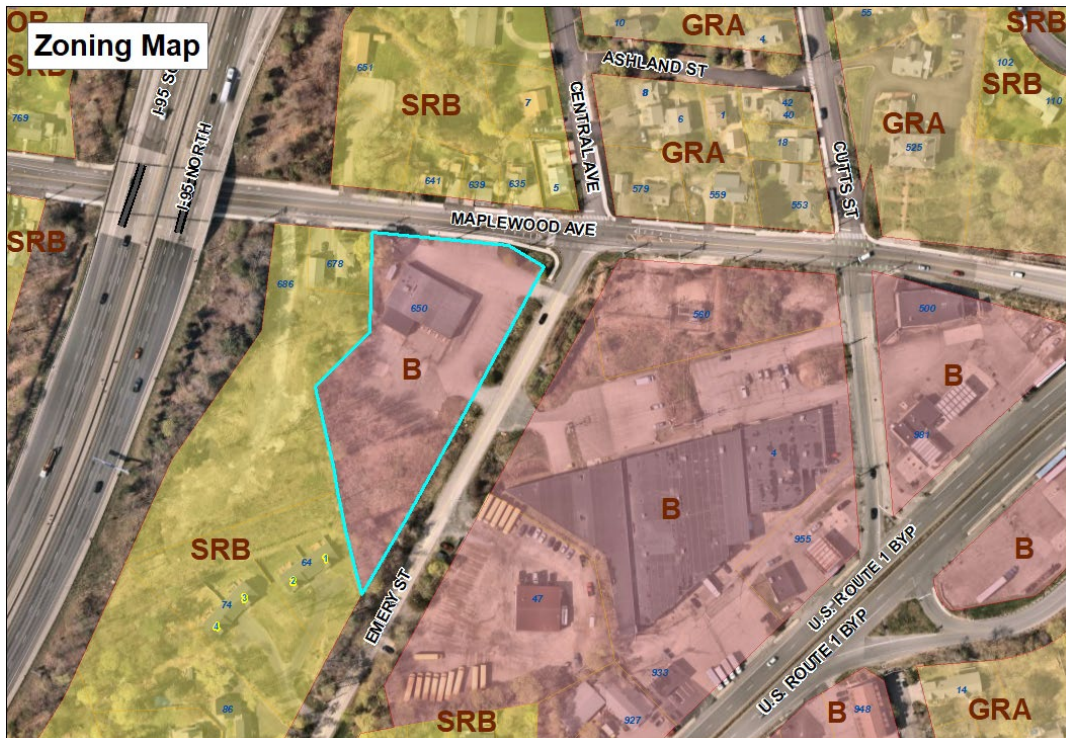
#### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Unit Retail	Construct addition onto rear of building	Mix of commercial, retail, and residential Uses
<u>Lot area (sq. ft.):</u>	75,078	75,078	20,000 min.
<u>Use Setback from Right of Way (ft.):</u>	<40	<40	40 min.
<u>Use Setback from Residential District (ft)</u>	0	<b>0</b>	200 min
<u>Lot depth (ft.):</u>	>80	>80	80 min.
<u>Primary Front Yard (ft.):</u>	>30	>30	20 max.
<u>Secondary Front Yard (ft.):</u>	>50	>50	15 min.
<u>Right Yard (ft.):</u>	15	15	15 min.
<u>Rear Yard (ft.):</u>	>100	>100	15 min.
<u>Height (ft.):</u>	<50	<50	50 max.
<u>Building Coverage (%):</u>	10	11.4%	35 max.
<u>Open Space Coverage (%):</u>	>33	>33	15 min.
<u>Parking</u>	26	26	15 (1 Space/ 600 sf GFA)
<u>Estimated Age of Structure:</u>	1970	<b>Variance request(s) shown in red.</b>	

#### Other Permits/Approvals Required

- Building Permit
- Site Plan Review – TAC and Planning Board

### Neighborhood Context



**650 Maplewood Avenue**

## Previous Board of Adjustment Actions

June 22, 2021 – The Board voted to **postpone** the application for a change of use to allow motorcycle sales which requiring the below to the July 20, 2021, BOA meeting:

- 1) A Special Exception from Section 10.440, Use #11.10 to allow the sales, renting or leasing of motorcycles where the use is permitted by Special Exception.
- 2) A Variance from Section 10.592.20 to allow the proposed use to be located adjacent to a Residential district where 200 feet is required.
- 3) A Variance from Section 10.843.21 to allow areas for parking, outdoor storage and outdoor display of vehicles or equipment to be setback less than 40 feet from the street right-of-way where 40 feet is required.

July 20, 2021 – the Board voted to **grant** the above request with the following stipulation:

- 1) No test drives shall occur outside of the property itself.

## Planning Department Comments

The applicant is requesting relief to construct an addition on to the rear of the property and this increases the retail space. The approvals from July of 2021 are still active but the expansion requires further relief as it is within 200 feet of a residential district and was not included in the original approval. The applicant has included their submission from 2021 in the application materials.

## 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**

**G.** The request of **Cate Street Development LLC (Owner)**, for property located at **360 US Route 1 BYP** whereas relief is needed to install a sign on the northern façade of the building which requires a Variance from Section 10.1271 to allow a sign to be installed on a façade not facing the street or with a public entrance; 2) Variance from Section 10.1242 to allow more than one parapet sign above the ground floor per facade. Said property is located on Assessor Map 172 Lot 1 and lies within the Gateway Corridor (G1) District. (LU-23-44)

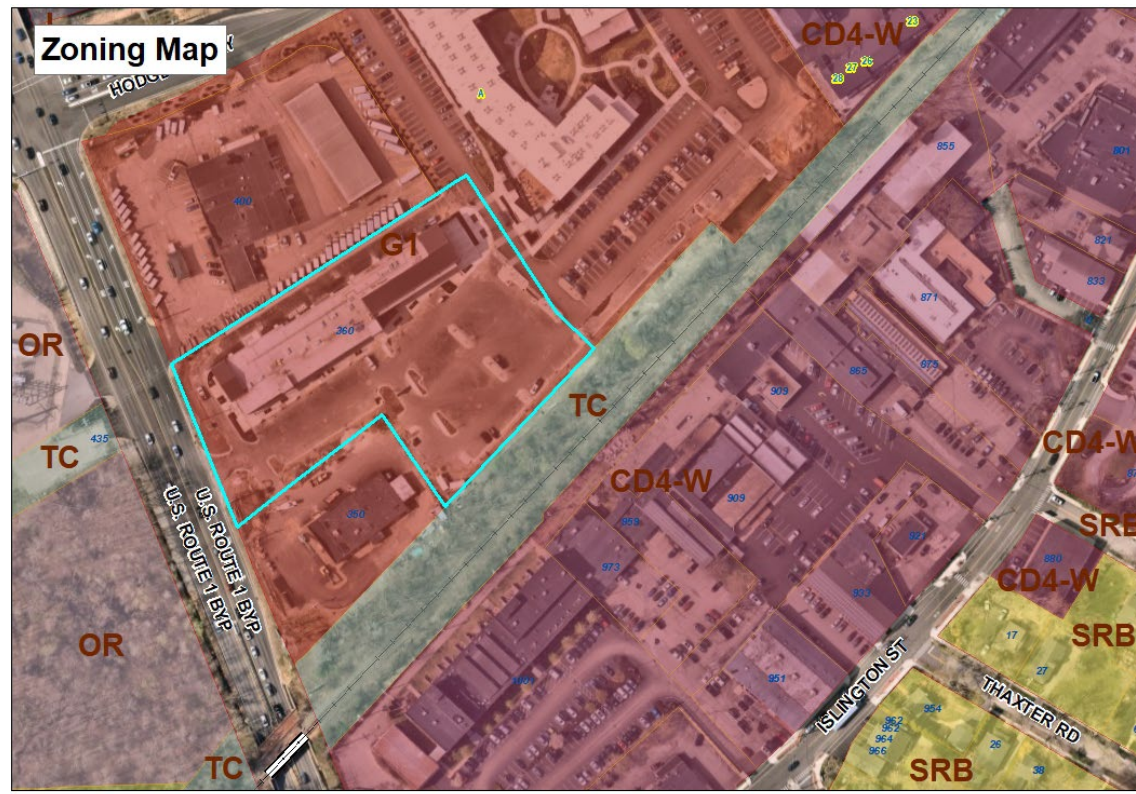
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial	Add "Headquarters" Signage	Mixed Uses
<u>Aggregate Sign Area (sq. ft.):</u>		166.6	201 max.
<u>Parapet Signs Above ground floor (sq. ft.):</u>	0	1	1 max.
<u>Signs on façade not facing a street or w/ a public entrance (ft.):</u>	0	<b>1</b>	0 min.
<u>Estimated Age of Structure:</u>	2021	<b>Variance request(s) shown in red.</b>	

**Other Permits/Approvals Required**

- Building Permit

### Neighborhood Context



**360 US Rt. 1 Bypass**



## Previous Board of Adjustment Actions

September 10, 1985 – The Board **granted** the following special exception with stipulations: Article II, Section 10-207(8) to allow heavy equipment and heavy vehicle distribution and sales in the southerly half of an existing one-story structure.

Stipulations:

- 1) A \$15,000 bond be posted to ensure that the parking are be paved and lined in accordance with the plan filed with the Planning Department; and
- 2) No parking be allowed beyond the parking spaces as delineated on the plan in front of the W.T.A. Bingo building and the Route 1 By-Pass.

August 22, 1989 – The Board **denied** the following variance:

Article IX Section 10-906 to allow the erection of a 4' by 13' free-standing sign with 0' setback for the front property line in a zone where free-standing signs shall have a minimum of 35' front setback

September 12, 1989 – Request to rehear the August 22, 1989 request was considered and **denied**.

October 3, 1989 – The Board **granted** the following variance:

- Article III, Section 10-302 to allow the construction of a 16' by 22' canopy 30' from the left of the lot line where 50' is required

November 14, 1989 – The Boards **granted** the following variance:

- Article IX, Section 10-906 to permit the erection of a 52 s.f. free standing sign with an 8' front yard where a 35' front yard is required.

April 19, 1994 - The Board **granted** the following variances:

- Article II, Section 10-207 to convert 1920 s.f. of space formerly occupied by a catering service to Bingo Hall usage for a total of 8,870 s.f. for the bingo hall; and
- Article IV, Section 10-401(5) to allow the expansion of a nonconforming use of a structure where no increase in the extent of a nonconforming use of a structure may be made without Board approval.

April 18, 1995 – The Board **granted** the following special exception and stipulation:

- Article II, Section 10-207(11) for the erection of a 40' by 120' tent to the rear of the building for three days, May3, 1995 to May 5, 1995 for the purpose of a fundraising event for hunger relief where temporary structures may be allowed by special exception provided a bond is posted to insure their removal.

Stipulation

- 1) \$100.00 bond be posted to the City to ensure the removal of the tent.

## Planning Department Comments

The applicant is proposing to add a sign to the northern facing façade of their building. This sign requires relief as the northern facing façade does not front on a public street or have a public entrance to the proposed use.

## 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.