



City of Portsmouth  
Planning Department  
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Portsmouth, NH  
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## MEMORANDUM

TO: Zoning Board of Adjustment  
FROM: Stefanie Casella, Planner  
DATE: January 17, 2024  
RE: Zoning Board of Adjustment January 23, 2024

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

### III. Old Business

- A. 2255 Lafayette Rd – Request for Extension
- B. 168 Lincoln Avenue – Request for Rehearing

### IV. New Business

- A. 505 US Route 1 Bypass
- B. 375 Coolidge Drive
- C. 33 Jewel Court
- D. 413 Lafayette Road
- E. 159 Madison Street
- F. 822 Route 1 Bypass

### III. OLD BUSINESS

- A. Mastoran Restaurants Inc. - 2255 Lafayette Road** request a 1 Year Extension to the Variances granted on February 15, 2022. (LU-22-13)

#### **Planning Department Comments**

On Tuesday, February 15, 2022 the Board of Adjustment granted the following variances demolish the existing structure and construct a 5,555 square foot convenience store with drive-thru and fueling island as presented:

- 1) A Variance from Section 10.5B33.20 to allow 0% front lot line buildout where 75% is required.
- 2) A Variance from Section 10.5B22.40 to allow a building to be constructed outside of the 70-90 foot setback from the centerline of Lafayette Road.
- 3) A Variance from Section 10.1113.20 to allow parking to be located between a principal building and a street.
- 4) A Variance from Section 10.1115.31 to allow more than one driveway.
- 5) A Variance from Section 10.835.32 to allow a bypass lane for a drive thru to be setback 24 feet from a lot line where 30 feet is required.
- 6) A Variance from Section 10.1251.20 to allow a 160 square foot freestanding sign where 100 square feet is the maximum allowed.

The approvals listed above are scheduled to expire on February 15, 2024. 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. OLD BUSINESS

- A. Request for rehearing by **Maxene Feintuch** of 180 Lincoln Avenue 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. Application by Mark N Franklin and Julie S Franklin (Owners) was approved on December 19, 2023 under application number LU-23-196. (LU-24-3)

#### Planning Department Comments

On Tuesday, December 19, 2023 the Board of Adjustment considered 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. 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. Should the owners of the property submit an objection to the motion for rehearing, it will be distributed to the Board and posted online.

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 **Giri Portsmouth 505 Inc. (Owner)**, for property located at **505 US Route 1 Bypass** whereas relief is needed to demolish the existing structure and construct a new hotel with a drive thru restaurant which requires the following: 1) Special Exception from 10.440 Use #10.40 hotel where it is permitted by Special Exception; 2) Variance from Section 10.1113.20 to allow parking spaces between the principal building and a street; 3) Variance from Section 10.1113.41 for parking located 1 foot from the lot line where 40 feet is required; 4) Variance from Section 10.575 to allow dumpsters to be located 1 foot from the lot line where 10 feet is required; 5) Variance from Section 10.835.32 to allow 1 foot between the lot line and drive-thru and bypass lanes where 30 feet is required for each; and 6) Variance from Section 10.835.31 to allow 37 feet between the menu and speaker board and the front lot line where 50 feet is required. Said property is located on Assessor Map 234 Lot 5 and lies within the General Business (GB) District. (LU-23-199)

**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Hotel	*Hotel with a drive thru restaurant	Primarily Business
<u>Distance between parking and front lot line</u>		**1	40 min.
<u>Distance between dumpster and lot line</u>		1	10 min.
<u>Distance between menu speaker and speaker board and the front lot line</u>	N/A	37	50 min.
<u>Distance between drive through/bypass lane and lot line</u>		1	30 min.
<u>Height (ft.):</u>	<60	<60	60 max.
<u>Building Coverage (%):</u>	10.8	16.86	30 max.
<u>Parking</u>	58	112	179
<u>Estimated Age of Structure:</u>	1955	Variance request(s) shown in red.	

\*Hotels are allowed by Special Exception in the GB zone.

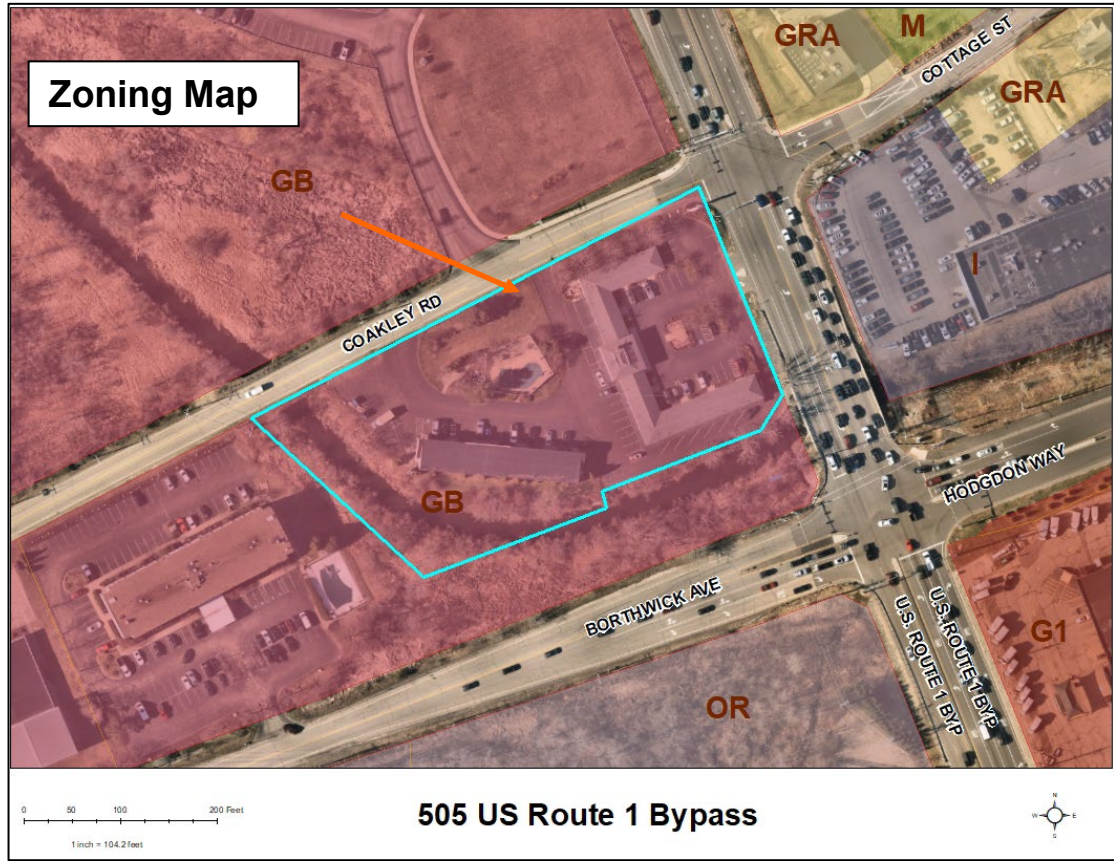
\*\* Relief needed for parking between primary structure and Coakley Road

**Other Permits/Approvals Required**

- Site Review (TAC and Planning Board)
- Conditional Use Permit for Drive-Thru facilities
- Wetland Conditional Use Permit (Conservation Commission and Planning Board)
- Parking Conditional Use Permit (TAC and Planning Board)
- Building Permit



### Neighborhood Context



## Previous Board of Adjustment Actions

January 25, 1983 – The Board **granted** a Variance to allow a free-standing sign 7' x 12', 30' in height to be erected 30' from the front property line where 35' is required, and 4' from the right-side property line where 35' is required with the following conditions:

- 1) That the large lighted sign over the main part of the motel be removed
- 2) That no other sign be put in that place; and
- 3) That no signs be allowed on the pole but the 7' x 12' sign

July 17, 2001 – The Board granted the following: A Variance from Article IX, Section 10-908 Table 14 to allow a 146 s.f. freestanding sign with a 6.6'± front yard set back where 20' is required; 8.2' right side yard setback where 20' are required; and a height of 30' where 20' is the maximum with the following conditions:

- 1) That the message not be flashing or fast scrolling; and
- 2) That the existing roof sign be removed; and
- 3) That the application meets the approval of the Building Inspector

## Planning Department Comments

The applicant is requesting to demolish the existing structures on site and construct a hotel and a free-standing drive-thru service restaurant.

The project, as proposed, will require multiple approvals (see “Other Permits/Approvals Required” section). In preparation for these reviews and approvals the project was presented at the following meetings:

- May 18, 2023 Planning Board meeting for a preliminary conceptual consultation
- June 13, 2023 Technical Advisory Committee work session
- June 14, 2023 Conservation Commission work session

This project will require both variances and a special exception. Should the Board move to approval the project as proposed, findings of fact will need to be addressed for both sets of criteria. This can be done as one motion or separate motions.

## 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.*

### **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.

#### IV. NEW BUSINESS

- B. The request of **William C. Giles Revocable Trust (Owner)**, for property located at **375 Coolidge Drive** for after-the-fact construction and demolition of existing decks, which requires the following: 1) Variance from Section 10.521 to allow: a) a 17 foot rear yard where 30 feet is required, and b) building coverage of 22.5% where 20% 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 268 Lot 41 and lies within the Single Residence B (SRB) District. (LU-23-200)

#### Existing & Proposed Conditions

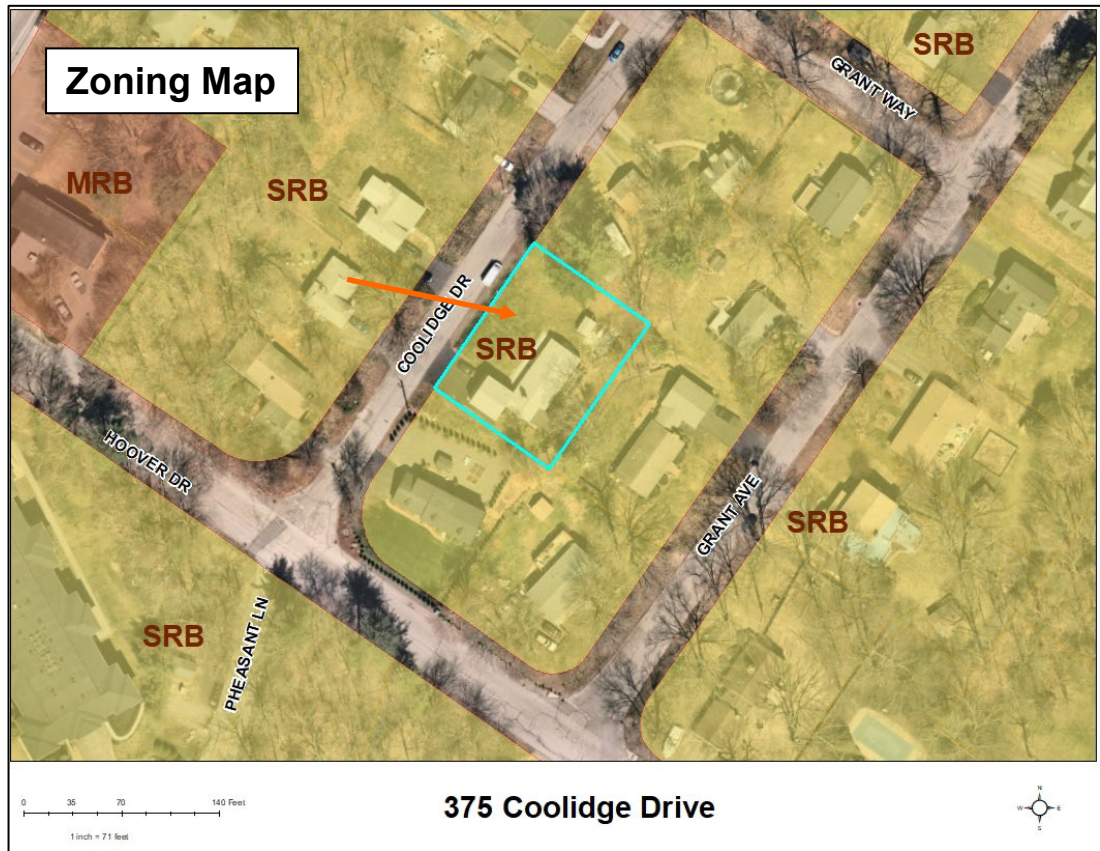
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Residential	After the Fact Variance for rear deck construction	Primarily Residential
<u>Lot area (sq. ft.):</u>	12,511	12,511	1,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	12,511	12,511	1,500 min.
<u>Street Frontage (ft.)</u>	125	125	100 min.
<u>Lot depth (ft.):</u>	100	100	100 min.
<u>Front Yard (ft.):</u>	24	24	30 min.
<u>Right Yard (ft.):</u>	10.8	10.8	10 min.
<u>Left Yard (ft.):</u>	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	17	<b>17</b>	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	Pre Construction: 20.2 Post Construction: 26.7	<b>22.5</b>	20 max.
<u>Open Space Coverage (%):</u>	65.7	69.8	40 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1953	<b>Variance request(s) shown in red.</b>	

#### Other Permits/Approvals Required

- Building Permit



### Neighborhood Context



## Previous Board of Adjustment Actions

No previous history found.

## Planning Department Comments

The applicant is before the Board for an after the fact variance due to the construction of an unpermitted rear deck and a partially constructed unpermitted side deck. After a violation notice was issued, the applicant obtained a property survey and made plans to remove the existing front porch and the partially constructed side porch. The property has an active violation until such time when a variance is granted, or the property is restored to its original condition without the side and rear deck.

## 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**

- C. The request of **Jewell Court Properties LLC (Owner)**, for property located at **33 Jewell Court Unit S1** whereas relief is needed to establish an event venue serving up to 250 people which requires a Special Exception from Section 10.440, Use # 9.42 where it is permitted by Special Exception. Said property is located on Assessor Map 155 Lot 5-S1 and lies within the Character District 4-W (CD4-W) and the Historic District. (LU-23-205)

**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Office	<b>*Event Space</b>	Mixed Use
<u>Unit Square Footage:</u>	6,041	6,041	
<u>Parking</u>	205	205	Determined by a parking demand analysis
<u>Estimated Age of Structure:</u>	1884	<b>Variance request(s) shown in red.</b>	

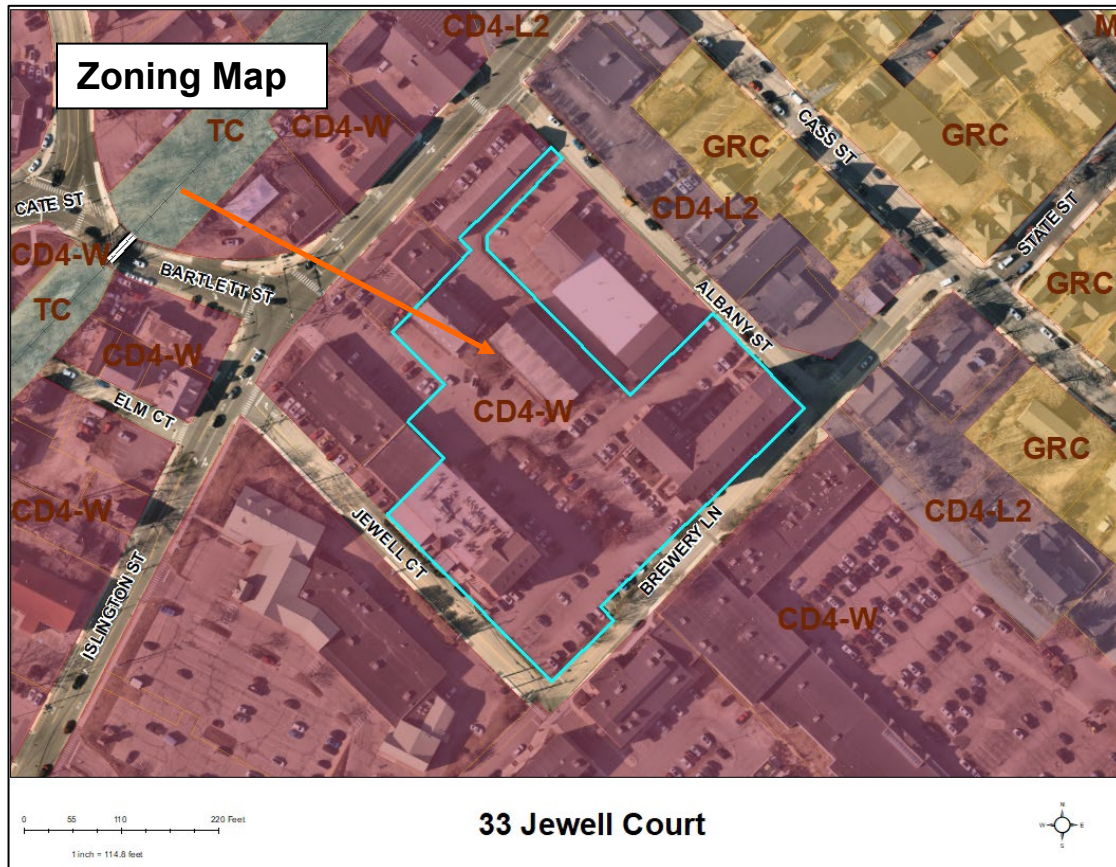
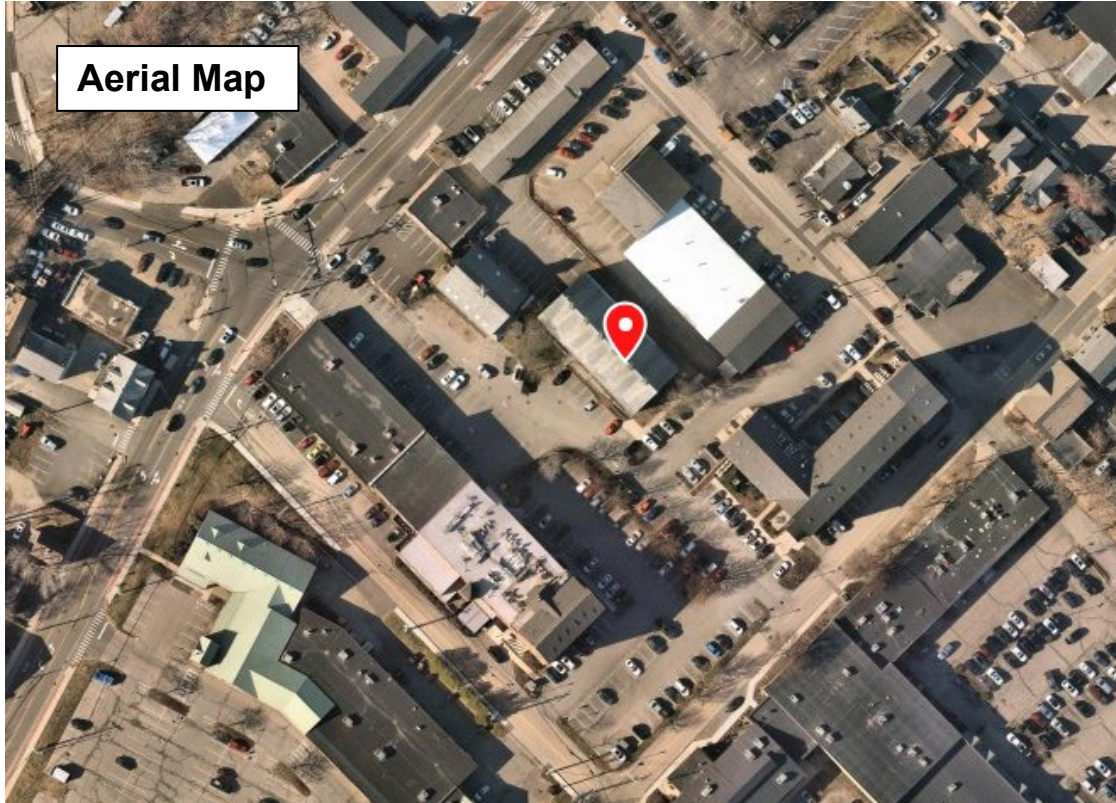
**\*Event space allowed by Special Exception**

**Other Permits/Approvals Required**

- Building Permit (Tennent Fit Up)
- Parking Conditional Use Permit (TAC and Planning Board)



### Neighborhood Context



## Previous Board of Adjustment Actions

August 20 1996 – The Board voted to grant the following: 1) Special Exception allowed under Article XII, Section 1201 (A)(5) to reduce the required parking by 10% from 271.6 spaces required to 244.8 required; and 2) Variance from Article XI, Section 10-204 Table 15 to allow 205 spaces to be provided where 244.8n are required.

## Planning Department Comments

The applicant is proposing to convert the existing office space to an event space. This change will require an update to the existing parking demand analysis and a parking conditional use permit (CUP). The parking demand analysis will be reviewed by the Technical Advisory Committee and the parking CUP requires approval from the Planning Board.

## 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.

#### IV. NEW BUSINESS

- D. The request of **Friends of Lafayette House in care of Melanie Merz (Owner)**, for property located at **413 Lafayette Road** whereas relief is needed to construct an attached caretakers unit to the existing residential care facility which requires the following: 1) Variance from Section 10.331 to extend, enlarge, or change the lawful nonconforming use without conforming to the Ordinance; and 2) Variance from Section 10.334 to extend the nonconforming use to a remaining portion of the land. Said property is located on Assessor Map 230 Lot 23A and lies within the Single Residence B (SRB) District. (LU-23-208)

#### Existing & Proposed Conditions

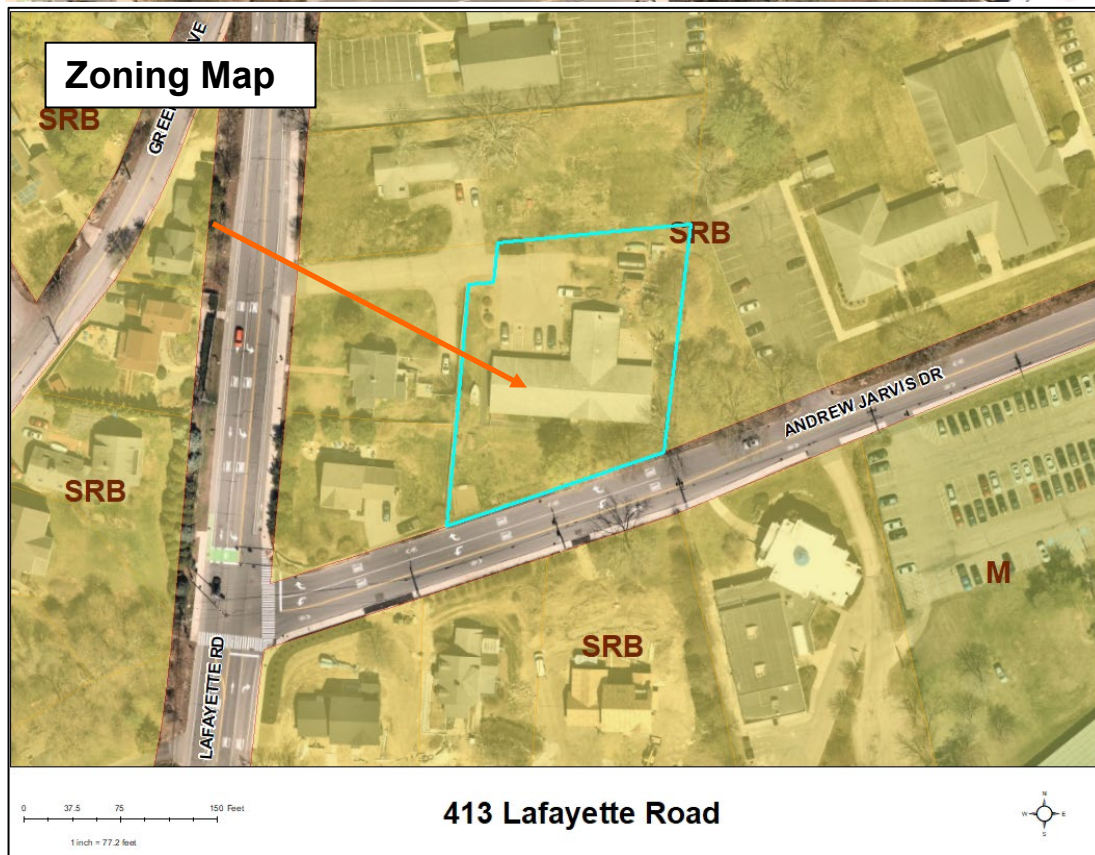
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Group Home	Construct a care taking unit to existing structure	Primarily residential
<u>Lot area (sq. ft.):</u>	33,119	33,119	15,000 min.
<u>Street Frontage (Andrew Jarvis Dr)(ft.):</u>	183	183	100 min.
<u>Lot depth (ft.)</u>	187	187	100 min.
<u>Front Yard (ft.):</u>	>40	>40	30 min.
<u>Left Yard (ft.):</u>	20	20	10 min.
<u>Right Yard (ft.):</u>	25	25	10 min.
<u>Rear Yard (ft.):</u>	25	25	30 min.
<u>Height (ft.):</u>	18	18	35 max.
<u>Building Coverage (%):</u>	18	20	20 max.
<u>Open Space Coverage (%):</u>	<i>More info needed</i>	<i>More info needed</i>	40 min.
<u>Parking</u>	8	8	7
<u>Estimated Age of Structure:</u>	1983	<b>Variance request(s) shown in red.</b>	

#### Other Permits/Approvals Required

- Site Review (TAC and Planning Board)
- Building Permit



### Neighborhood Context



## Previous Board of Adjustment Actions

No previous history found.

## Planning Department Comments

The applicant is requesting to construct a 600 square foot addition to the existing structure that will serve as an on-property care taking unit. It should be noted that the existing property is a group living facility and the number of bedrooms does not reflect the number of independent living units.

During review, staff calculated the proposed building coverage to equal exactly 20% and the application did not provide sufficient information to calculate open space coverage.

Should the Board find that the requested variances meet the review criteria, staff suggests the following or similar conditions be added to an approval:

- 1) The proposed caretaker unit addition shall not be more than 600 square feet so as not to exceed 20% building coverage on site; or the applicant will be required to obtain a variance if the addition is larger than 600 square feet.
- 2) The applicant is required to make appropriate site changes so as to meet the 40% minimum open space requirement; or return to the Board to obtain a variance if the open space is less than 40%.

## 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**

E. The request of **Tamrah Rouleau and Jermy Rouleau (Owners)**, for property located at **159 Madison Street** whereas relief is needed to construct a third floor addition to the existing structure which requires the following: 1) Variance from Section 10.521 to allow an 8 foot left side yard where 10 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 145 Lot 54 and lies within the General Residence C (GRC) District. (LU-23-201)

**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	<b>*Construct a 3<sup>rd</sup> floor addition</b>	Primarily residential
<u>Lot area (sq. ft.):</u>	4,356	4,356	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,356	4,356	3,500 min.
<u>Street Frontage (ft.):</u>	56	56	70 min.
<u>Lot depth (ft.)</u>	81	81	50 min.
<u>Front Yard (ft.):</u>	5.5	5.5	5 min.
<u>Left Yard (ft.):</u>	8	<b>**8</b>	10 min.
<u>Right Yard (ft.):</u>	26 (House) ≈2 (Garage)	26 (House) ≈2 (Garage)	10 min.
<u>Rear Yard (ft.):</u>	≈4	≈4	20 min.
<u>Height (ft.):</u>	25.5	31.5	35 max.
<u>Building Coverage (%):</u>	34	34	35 max.
<u>Open Space Coverage (%):</u>	≈20	≈20	20 min.
<u>Parking</u>	3	3	3
<u>Estimated Age of Structure:</u>	1792	<b>Variance request(s) shown in red.</b>	

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

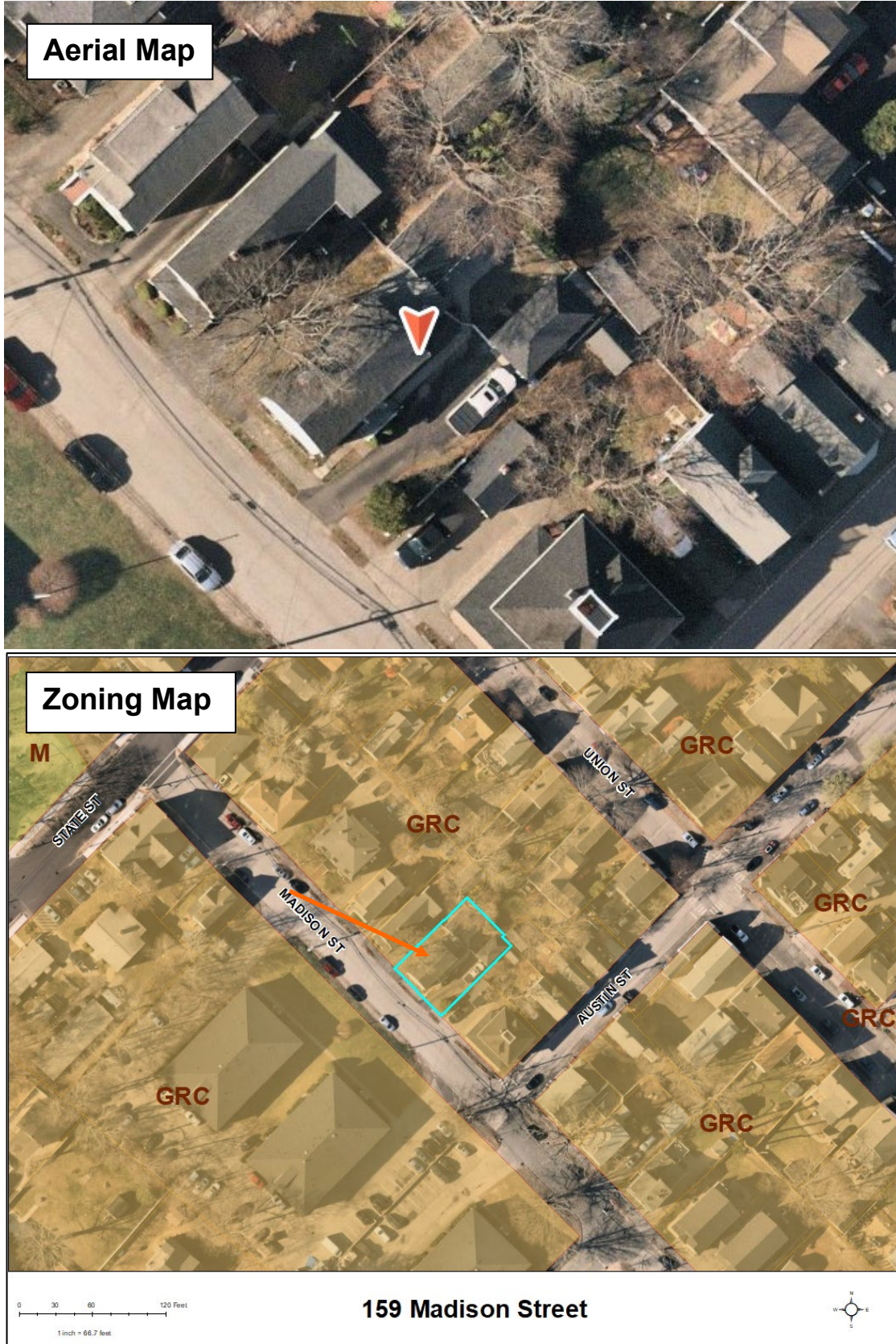
**\*\*The existing home is located 8 feet from the left side boundary line. A vertical expansion would increase the non-conformity and requires relief.**

**Other Permits/Approvals Required**

- Building Permit



### Neighborhood Context



## Previous Board of Adjustment Actions

No previous history found.

## Planning Department Comments

The applicant is proposing to construct a third story on top of the existing 2 story structure. The project does not include any increase in building coverage or reduction of open space, only the vertical expansion within the existing building footprint. The proposal requires a variance as the existing structure sits 8 feet from the left side lot line and the addition of a third story increases the existing non-conformity.

## 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**

F. The request of **RIGZ Enterprises LLC (Owner)**, for property located at **822 Rt 1 Bypass** whereas relief is needed to demolish the existing structure and construct a new commercial building which requires the following: 1) Variance from Section 10.1113.20 to allow parking spaces between the principal building and a street; 2) Variance from Section 10.1113.41 for parking located 0 feet from the lot line where 20 feet is required; Said property is located on Assessor Map 160 Lot 29 and lies within the Business (B) District. (LU-23-209)

**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant gas station	Demolish existing structure and build a new commercial building	Primarily commercial
<u>Lot area (sq. ft.):</u>	29,603	29,603	20,000 min.
<u>Distance between parking and front lot line</u>	n/a	<b>*0</b>	20 min.
<u>Front Yard (ft.):</u>	>20	>20	20 min.
<u>Left Yard (ft.):</u>	>15	>15	15 min.
<u>Right Yard (ft.):</u>	>15	>15	15 min.
<u>Rear Yard (ft.):</u>	>15	>15	15 min.
<u>Height (ft.):</u>	<50	49.82	50 max.
<u>Building Coverage (%):</u>	6.7	20.3	35 max.
<u>Open Space Coverage (%):</u>	14.3	15.6	15 min.
<u>Parking</u>	n/a	18	18
<u>Estimated Age of Structure:</u>	1969	<b>Variance request(s) shown in red.</b>	

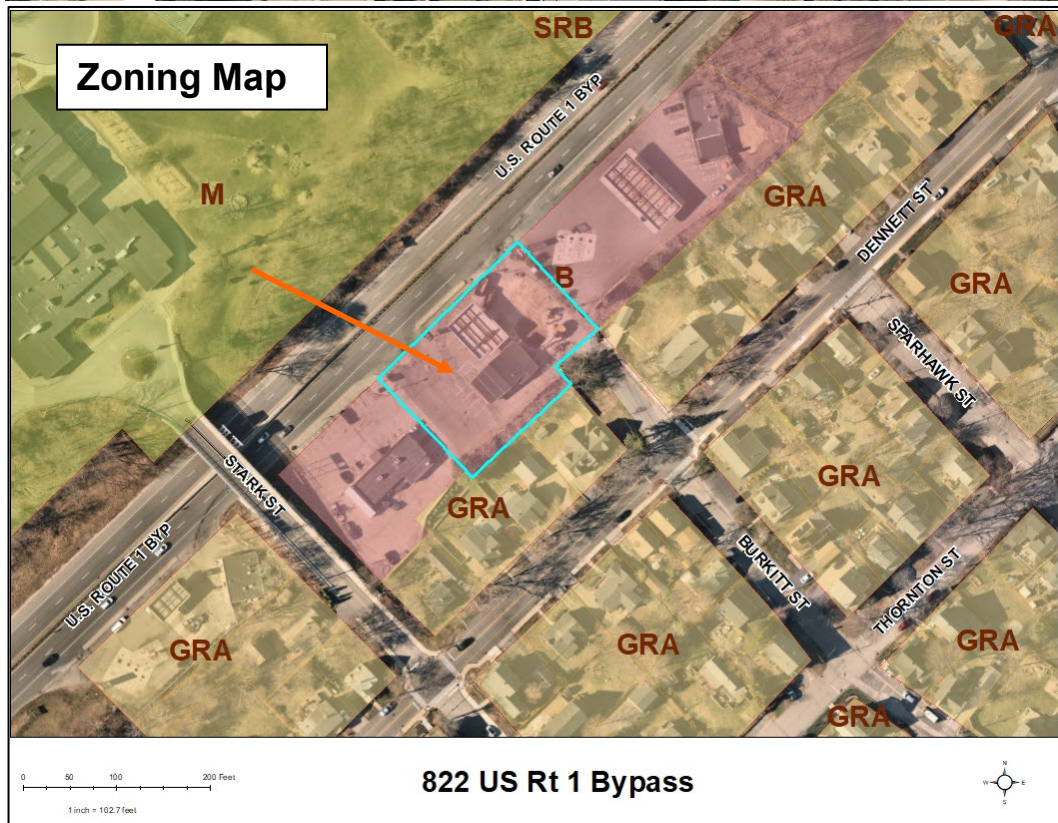
**\* Relief needed for parking between primary structure and Route 1 US Bypass**

**Other Permits/Approvals Required**

- Site Review (TAC and Planning Board)
- Building Permit



### Neighborhood Context



### Previous Board of Adjustment Actions

April 30, 1968 – The Board granted the request to allow construction of a motor vehicle service station on vacant land as shown on Assessor Plan #90, Lot #12 and lies within a General Business District.

September 27, 1994 – The Board granted a Variance from Article II, Section 10-206(17) to allow the construction of a 36' x 48' gas island canopy with a 10' front yard in a district where a 50' front yard is required with the following condition:

- 1) The hours of operation be from 6:00a.m. to 11:00p.m. seven days a week and on holiday weekends from 6:00a.m. to 12:00a.m. (midnight)

### Planning Department Comments

The applicant is proposing to demolish the existing vacant structure and construct a new commercial store front. The proposed structure conforms to all zoning however, the parking location need relief as it is proposed between the primary structure and the street and is 0 feet from the front lot line.

The project was reviewed by the Technical Advisory Committee at the October 10, 2023 work session.

### 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.