



City of Portsmouth  
Planning Department  
1 Junkins Ave, 3<sup>rd</sup> Floor  
Portsmouth, NH  
(603)610-7216

## MEMORANDUM

TO: Zoning Board of Adjustment  
FROM: Stefanie Casella, Planner  
DATE: March 13, 2024  
RE: Zoning Board of Adjustment March 19, 2024

---

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

### II. Old Business

- A. 413 Lafayette Road

### III. New Business

- A. 86 Haven Road
- B. 750 Lafayette Road
- C. 64 Mt. Vernon Street
- D. 199 McDonough Street

## II. OLD BUSINESS

- A. 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)

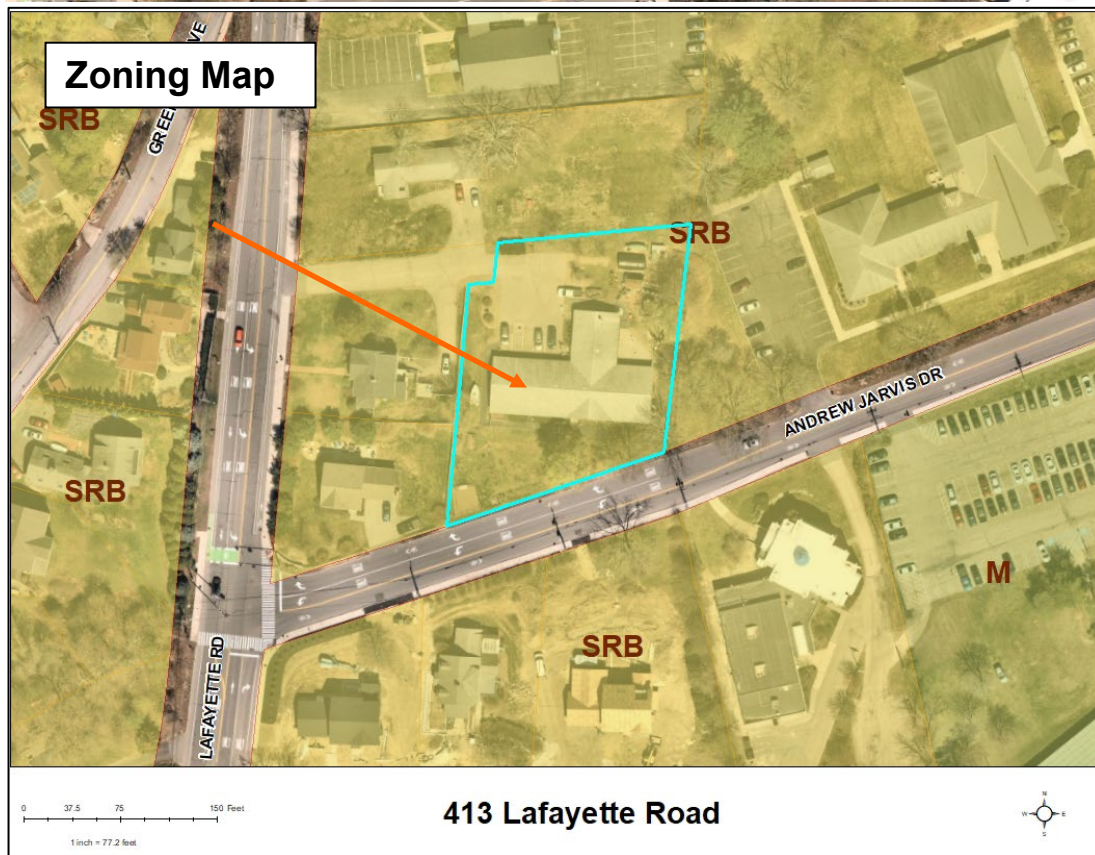
### Existing & Proposed Conditions

	<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>	33,096	33,096	15,000 min.
<u>Street Frontage (Andrew Jarvis Dr)(ft.):</u>	183	183	100 min.
<u>Lot depth (ft.)</u>	173	173	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>	19	20	20 max.
<u>Open Space Coverage (%):</u>	61	60	40 min.
<u>Parking</u>	8	8	7
<u>Estimated Age of Structure:</u>	1983	Variance request(s) shown in red.	

### 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 635 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.

In reviewing the application, staff found that the following errors need to be corrected on the Site Plan provided:

1. Boundary line along Andrew Jarvis should have a front yard setback as it is the secondary front yard.
2. The Zoning summary table does not match any of the setbacks shown on the plan. All dimensions in the "provided" column should reflect the distance from the boundary line to the closest point of the existing or proposed structure and have a corresponding callout on the plan.

The initial request from the applicant was to construct a 600 square foot addition. The applicant has not provided an explanation for this change and updated floor plans and elevations were not submitted. Without this information and along with the corrections to the site plan, staff believe there is not enough information for the Board to make an informed decision.

Staff have determined that this application is incomplete and recommend postponing until a time when these documents can be provided.

## 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

- A. The request of **Kerrin J. Parker Revocable Trust of 2012 (Owner)**, for property located at **86 Haven Road** whereas relief is needed to construct an addition to the existing structure which requires the following: 1) Variance from Section 10.521 to a) allow a 9 foot front yard where 10 feet is required by front yard averaging; b) to allow a building coverage of 29% where 20% is allowed; and 2) Variance from Section 10.321 to allow of 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 206 Lot 27 and lies within the Single Residence B (SRB) District. (LU-23-192)

#### Existing & Proposed Conditions

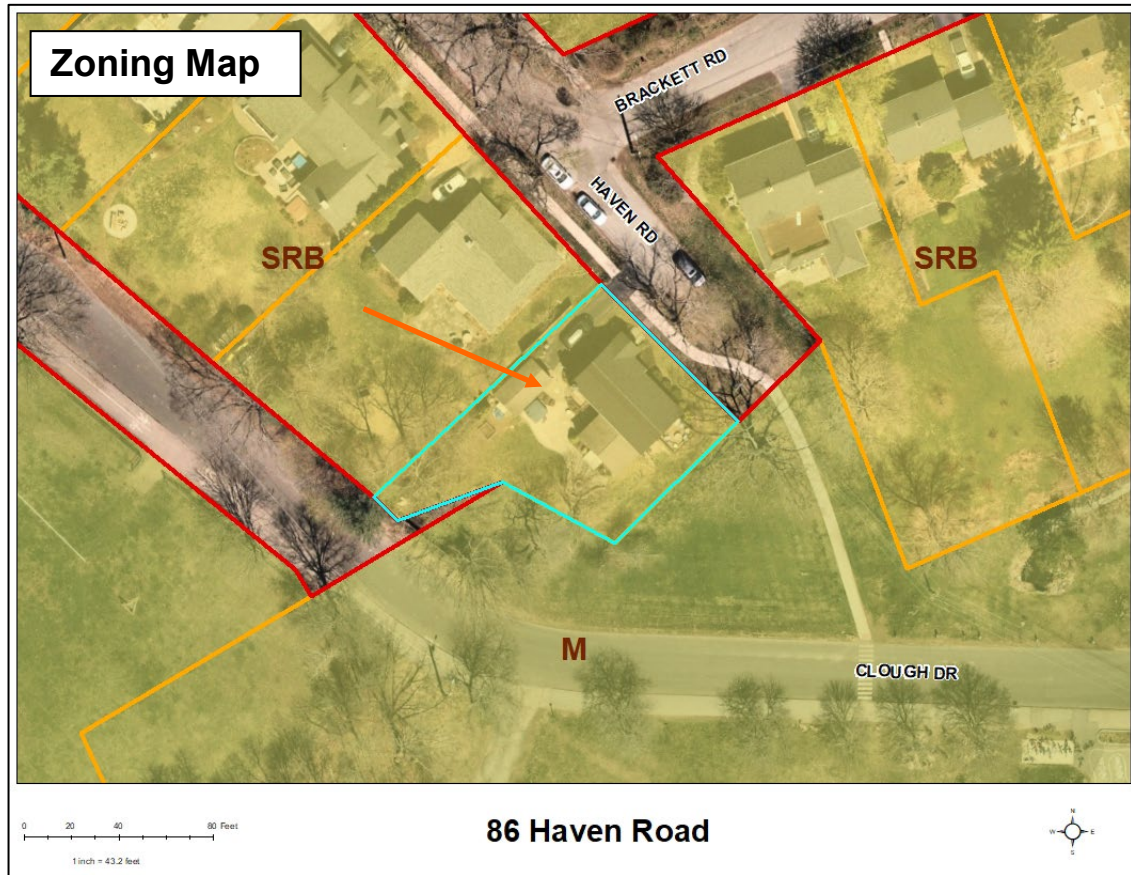
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	*Second floor expansion and front deck addition	Primarily residential
<u>Lot area (sq. ft.):</u>	7,241	7,241	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,241	7,241	15,000 min.
<u>Street Frontage (ft.):</u>	86	86	100 min.
<u>Lot depth (ft.)</u>	72	72	100 min.
<u>Front Yard (ft.):</u>	12	9	10 (per 10.516.10) min.
<u>Left Yard (ft.):</u>	13	13	10 min.
<u>Right Yard (ft.):</u>	Garage: 1 House: 15	Garage: 1 House: 15	10 min.
<u>Rear Yard (ft.):</u>	20	20	30 min.
<u>Height (ft.):</u>	<35	25.5	35 max.
<u>Building Coverage (%):</u>	25	29	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1941	Variance request(s) shown in red.	

\* Relief needed to construct an addition to the already non-conforming primary structure that would further impact the non-conformity.

#### Other Permits/Approvals Required

- Building Permit

### Neighborhood Context



## Previous Board of Adjustment Actions

**October 27, 1981** – the Board **granted** a variance to allow a 12' x 22' garage with a 1' Right Side yard where 10' is the minimum required.

**April 26, 1983** – the Board **granted** a variance to allow a variance from Article III, Section 10-302 to construct a 12' x 24' addition with a Front Yard of 19' where 30' is required and a Rear Yard of 29' where 30' is required.

**March 22, 2005** – the Board **granted** a variance to allow a variance from Article III Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) to allow a 14' x 24' one story addition with a) a 20'8" rear setback for the addition and a 19'8" rear setback for the steps from the addition where 30' is the minimum required; and b) 25% building coverage where 20% is the maximum allowed.

## Planning Department Comments

The applicant is requesting relief for the addition to the front of the primary structure. The proposed second floor conforms to minimum yard requirements and does not require relief; however the addition of the front porch will encroach into the front yard area and will increase the existing non-conforming 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 **DFG I LLC (Owner)**, for property located at **750 Lafayette Road** whereas relief is needed to construct a freestanding Automated Teller Machine (ATM) which requires the following: 1) Variance from Section 10.1530 to allow an ATM in a freestanding structure. Said property is located on Assessor Map 244 Lot 8 and lies within the Gateway Corridor 1 (G1) District. (LU-23-194)

**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial property with one retail building and one office building	*Construction of freestanding ATM	Primarily commercial
<u>Lot area (sq. ft.):</u>	177,725	177,725	10,000 min.
		Variance request(s) shown in red.	

\*ATM's are not permitted in freestanding structures (see definition of automated teller machine).

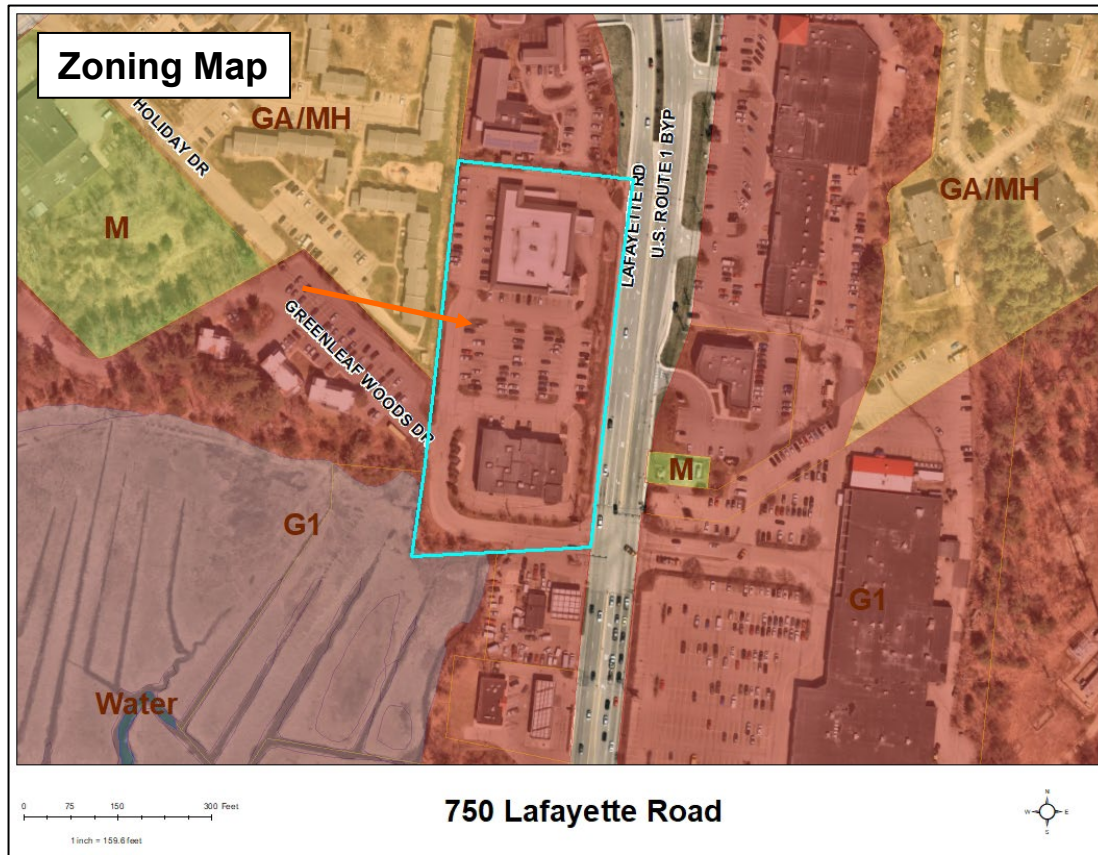
**Other Permits/Approvals Required**

- Building Permit
- Amended Site Plan (Planning Board)

### Neighborhood Context



**Aerial Map**



**750 Lafayette Road**

## Previous Board of Adjustment Actions

**December 13, 2011** – (As 750/720 Lafayette Road) The Board **granted** a variance to allow a second freestanding sign on the lot.

**April 17, 2012** – The Board **granted** a Special Exception as requested under Section 10.440, Use 19.40 to allow a one-lane drive through facility as an accessory use to a permitted principal use.

## Planning Department Comments

The applicant is requesting variances to construct a free standing structure to house an automated teller machine (ATM) as an accessory use to the existing financial institution on the property. As found in the definition of ATM (provided below), ATM's are not permitted to be located in a free standing structure.

### ***Automated teller machine (ATM)***

*An unattended electronic device that is activated by customers to conduct financial transactions. An ATM may be located on the outside of a building, or in an access-controlled entrance to a building, or within a principal use in a building, and may serve pedestrians or patrons in motor vehicles. An ATM servicing patrons in motor vehicles must meet the standards for drive-through establishments provided in this Ordinance. An ATM is permitted only as an accessory use to a related principal use, and is not permitted as a principal use or in a freestanding structure not attached to a principal use.*

## 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**

**C.** The request of **Cyrus Beer and Erika Beer (Owners)**, for property located at **64 Mt Vernon Street** whereas relief is needed to demolish an existing detached shed and construct a new two-story accessory detached shed which requires the following: 1) Variance from Section 10.573.20 to allow an accessory structure more than 10 feet in height and more than 100 square feet in area a) to be setback 5 feet from the side property line where 10 feet is required and b) to be setback 5 feet from the rear property lines where 19 feet is required. Said property is located on Assessor Map 111 Lot 30 and lies within the General Residence B (GRB) and Historic District. (LU-24-20))

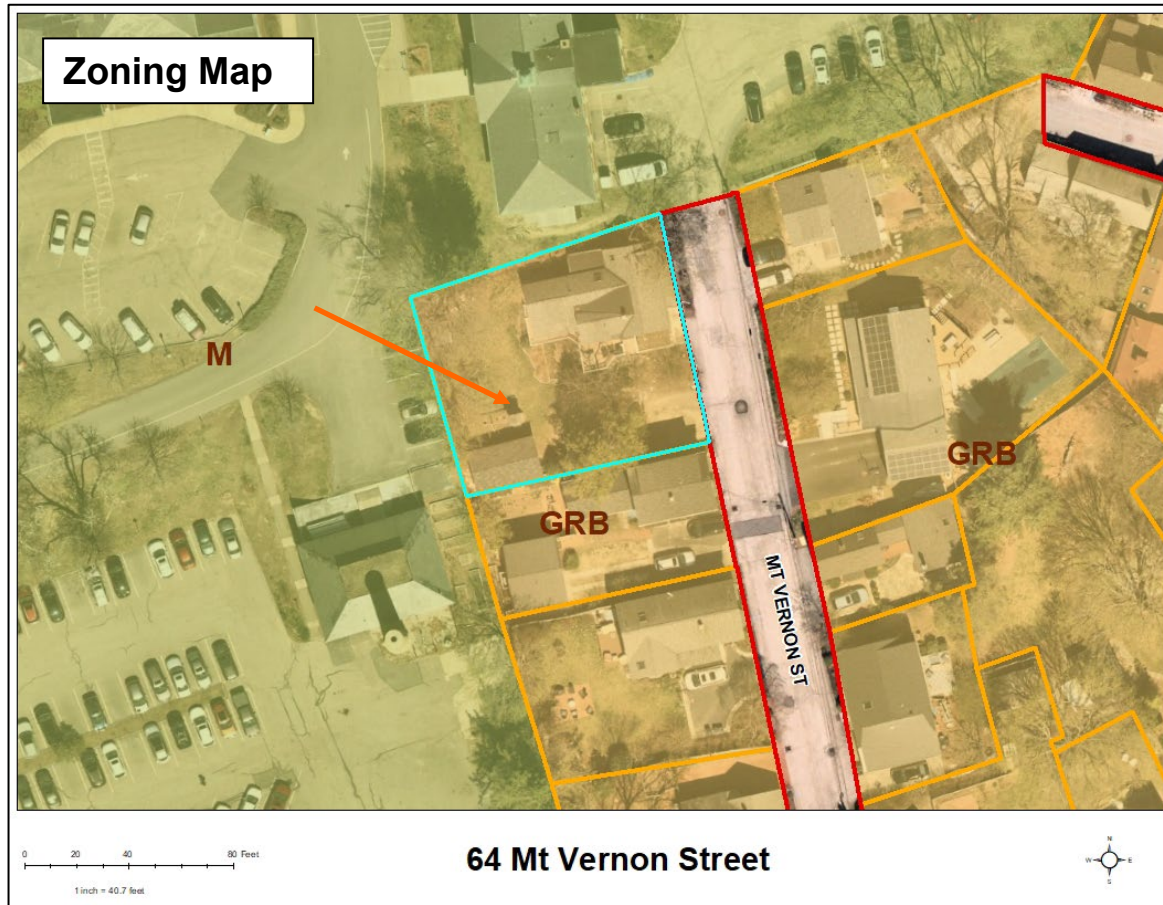
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	Demolish and construct new shed	Primarily residential
<u>Lot area (sq. ft.):</u>	7,841	7,841	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,841	7,841	5,000 min.
<u>Street Frontage (ft.):</u>	90	90	80 min.
<u>Lot depth (ft.)</u>	96	96	60 min.
<u>Front Yard (ft.):</u>	House: 5 Shed: >50	House: 5 Shed: >50	5 min.
<u>Left Yard (ft.):</u>	Shed: 1	<b>Shed: 5</b>	10 min.
<u>Right Yard (ft.):</u>	House: 3	House: 3	10 min.
<u>Rear Yard (ft.):</u>	Shed: 3.5	<b>Shed: 5</b>	25 min.
<u>Height (ft.):</u>	Shed: 12	Shed: 23	35 max.
<u>Building Coverage (%):</u>	24	25	30 max.
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1812	<b>Variance request(s) shown in red.</b>	

**Other Permits/Approvals Required**

- Building Permit
- Historic District Approval

### Neighborhood Context



## Previous Board of Adjustment Actions

**March 20, 2018** –The Board **granted** the following: 1) Variance from Section 10.440, Use #17.20 to allow the keeping of farm animals where the use is not allowed; and 2) Variance from Section 10.573.10 to allow an accessory Structure 3' ± from the rear property line where 5' is required; with the following condition:

- 1) There will be no more than six chickens and no roosters.

**February 15, 2022**– The Board **granted** a Variance from Section 10.515.14 to allow a 4 foot setback where 10 feet is required for a mechanical unit.

## Planning Department Comments

The applicant is proposing to demolish the existing shed and reconstruct a new shed that will be 5 feet from the side and rear lot line (greater than the existing setbacks). The replacement shed will increase in size from 322.5 square feet to 448 square feet.

## 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 **Ryan Family Trust (Owner)**, for property located at **199 McDonough Street** whereas relief is needed to construct an addition to the existing primary residential structure which requires the following: 1) Variance from Section 10.521 to allow a 9.5 foot rear yard where 20 feet is required; 2) Variance from Section 10.516.20 to allow a 9.5 foot rear yard where 15 feet is required for a rear yard adjoining a railroad right-of-way; 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 144 Lot 42 and lies within the General Residence C (GRC) District. (LU-24-18)

**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-living unit	*Construct an addition to the primary structure	Primarily residential
<u>Lot area (sq. ft.):</u>	2,491	2,491	3,500 min.
<u>Street Frontage (ft)</u>	59	59	70 min
<u>Lot depth (ft.)</u>	35	35	50 min.
<u>Front Yard (ft.):</u>	0	0	5 min.
<u>Left Yard (ft.):</u>	14	14	10 min.
<u>Right Yard (ft.):</u>	7	7	10 min.
<u>Rear Yard (ft.):</u>	8	**9.5	20 Per 10.521 min. 15 Per 10.516.20
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	32	35	35 max.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1850	Variance request(s) shown in red.	

\*Relief needed to build the addition to the already non-conforming primary structure that would further impact the non-conformity.

\*\*Relief needed from both sections 10.521 and 10.516.20.

**Other Permits/Approvals Required**

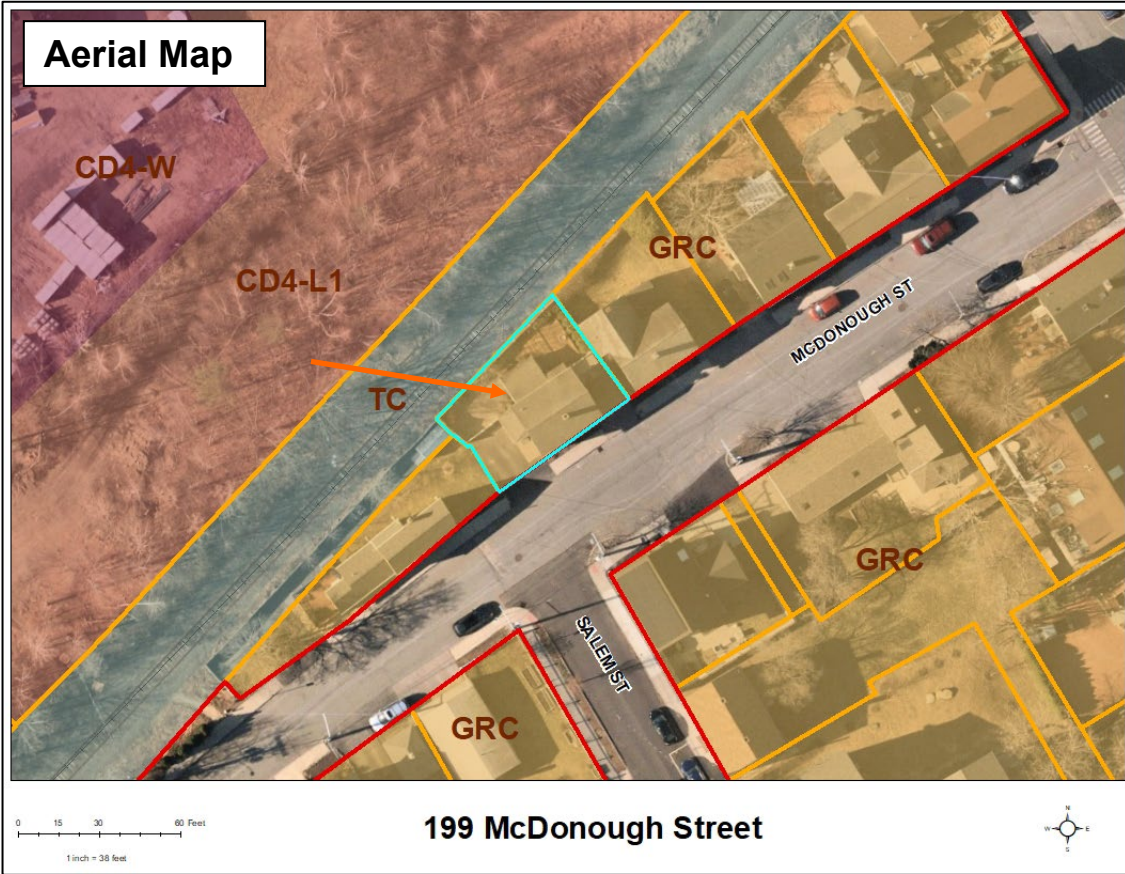
- Building Permit

### Neighborhood Context

Zoning Map



Aerial Map





## Previous Board of Adjustment Actions

No previous history found.

## Planning Department Comments

The applicant is proposing to construct a 9' by 9' addition in the existing yard area that is occupied by a porch. The existing porch is below 18" and therefore is exempt from required yards and building coverage per Section 10.515.12 (c).

## 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.