



City of Portsmouth
Planning & Sustainability Department
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MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Jillian Harris, Principal Planner
DATE: March 22, 2024
RE: Zoning Board of Adjustment March 26, 2024

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

I. Old Business

- A. Request for 1-Year Extension - 411 South Street

II. New Business

- A. 45 Richmond Street
- B. 581 Lafayette Road – **REQUEST TO POSTPONE**
- C. 101 International Drive - **WITHDRAWN**
- D. 85 Pinehurst Road
- E. 45 Kent Street

I. OLD BUSINESS

A. Request for 1-Year Extension - **411 South Street** (LU-22-67)

Planning Department Comments

On May 17, 2022 the Board of Adjustment granted the following variances to demolish the existing garage and construct a new attached garage as presented:

- 1) Variance from Section 10.521 to allow a 6' rear yard where 20' 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 Ordinance.

The approvals listed above are scheduled to expire on May 17, 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 2022 letter of decision is included in the meeting packet.

II. NEW BUSINESS

- A. The request of **Cherie A Holmes and Yvonne P Goldsberry (Owners)**, for property located at **45 Richmond Street** whereas relief is needed for the following: 1) Variance from Section 10.515.14 to install a mechanical unit 8.5 feet from the side property line whereas 10 feet is required. Said property is located on Assessor Map 108 Lot 18 and lies within the Mixed Residential Office (MRO) and Historic District. (LU-24-19)

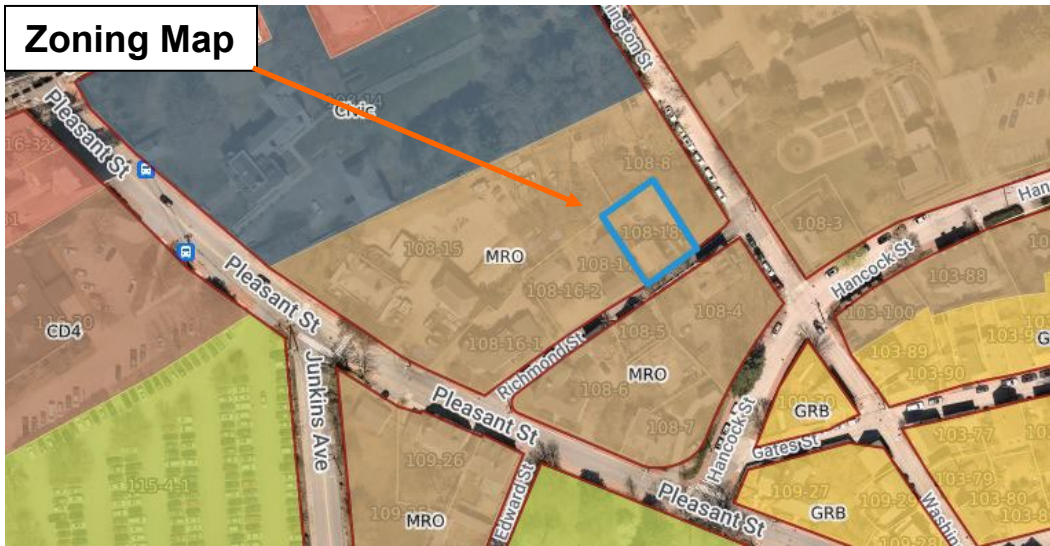
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single-family dwelling	Mechanical Unit	Mixed Use
<u>Lot area (sq. ft.):</u>	5,417	5,417	7,500 min.
<u>Left Yard (ft):</u>	10.6	8.5	10 min
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1860	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Mechanical/Electric Permit
- Historic District Commission Review

Neighborhood Context



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 granted to remove existing garage and rear addition and construct new garage and 2-story addition for 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.

April 18, 2023 – Relief requested to construct a greenhouse which required:

- 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.

As the property lies within the Mixed Residential Office and Historic District the Board voted to **postpone** to the May 2, 2023 meeting.

May 2, 2023 – The Board voted to **Grant** the variances presented in the April 18, 2023 meeting with the following **condition**:

- 1) The Variance will be 5 feet plus or minus as opposed to the advertised value of 5.5 feet as requested in the staff memo.

Planning Department Comments

The applicant is proposing the installation of a generator on the left side of the house behind the previously approved heat pump enclosure. The applicant notes that the generator needs to be 18" off the residence and no closer than 5 feet from a window.

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.

II. NEW BUSINESS

- B. REQUEST TO POSTPONE** The request of **Atlas Commons LLC (Owner)**, for property located at **581 Lafayette Road** whereas relief is needed for after-the-fact installation of an awning sign which requires the following: 1) Variance from Section 10.1251.20 to allow a 32 square foot awning sign whereas 20 square feet is allowed. Said property is located on Assessor Map 229 Lot 8B and lies within the Gateway Corridor (G1) District. **REQUEST TO POSTPONE (LU-24-1)**

Planning Department Comments

The applicant has requested the postponement of this item to correct and complete application materials. Please see the letter from the applicant's representative as provided in the meeting packet.

II. NEW BUSINESS

- C. **REQUEST TO WITHDRAW** The request of **Lonza Biologics (Owner)**, for property located at **101 International Drive** to add four (4) above ground storage tanks which requires the following: 1) from Section 308.02(c) of the Pease Development Ordinance to allow an above ground storage tank (AST) exceeding a 2,000 gallon capacity per facility. Said property is located on Assessor Map 305 Lot 6 and lies within the Airport Business Commercial (ABC) District. (LU-23-108) **REQUEST TO WITHDRAW**

Planning Department Comments

The applicant submitted a request to withdraw the application on March 21, 2024.

II. NEW BUSINESS

D. The request of **Henrik Edin and Kathleen Edin (Owners)**, for property located at **85 Pinehurst Road** whereas relief is needed to construct a second floor addition to the existing attached garage which requires the following: 1) Variance from Section 10.521 to allow a) a 4.5 foot side yard where 10 feet is required; b) a building coverage of 29% where 25% is allowed; 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; and 3) Variance from Section 10.515.14 to install a mechanical unit 2.5 feet from the left side property line whereas 10 feet is required. Said property is located on Assessor Map 221 Lot 73 and lies within the General Residence A (GRA) District. (LU-24-22)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family Dwelling	*Addition and **mechanical unit	Primarily residential
<u>Lot area (sq. ft.):</u>	8,100	8,100	7,500 min.
<u>Street Frontage (ft.):</u>	90	90	100 min.
<u>Lot depth (ft.)</u>	90	90	70 min.
<u>Front Yard (ft.):</u>	>15	>15	15 min.
<u>Left Yard (ft.):</u>	4.5	4.5	10 min.
<u>Right Yard (ft.):</u>	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	20.5	20.5	20 min.
<u>Height (ft.):</u>	26	21	35 max.
<u>Building Coverage (%):</u>	29	29	25 max.
<u>Open Space Coverage (%):</u>	69	69	30 min.
<u>Parking</u>	4	4	2
<u>Estimated Age of Structure:</u>	1940	Variance request(s) shown in red.	

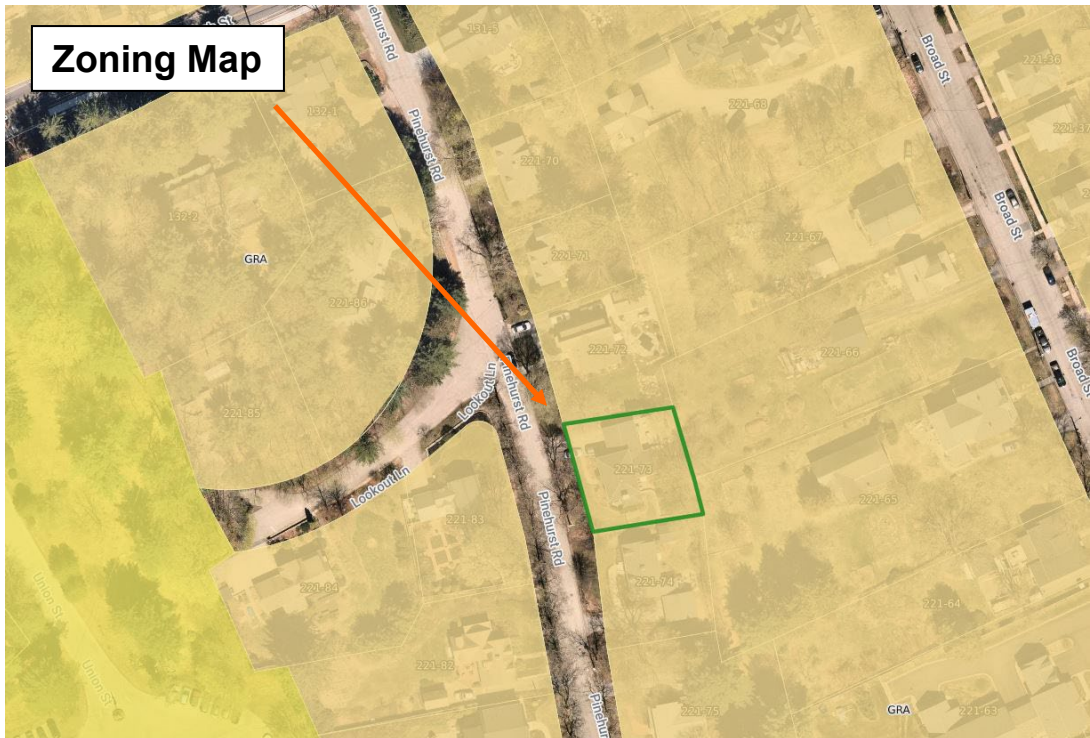
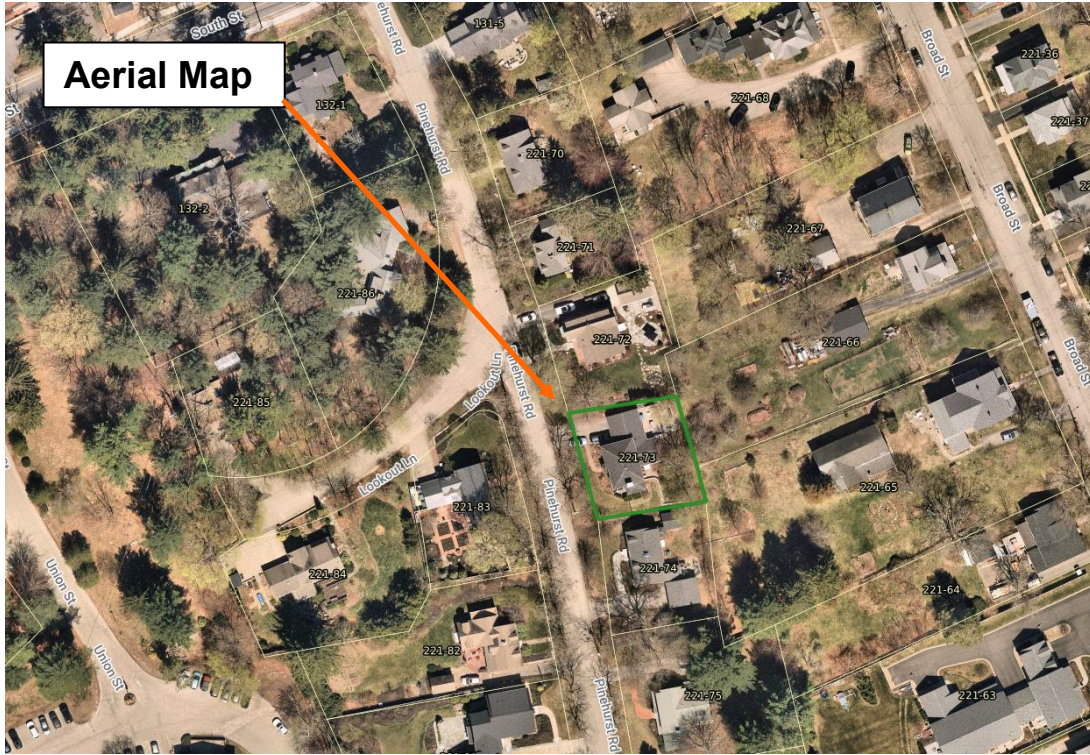
* Relief needed to construct an addition to the already non-conforming primary structure that would further impact the non-conformity.

** Relief needed to install a mechanical unit less than 10' from the property line.

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

Sept 15, 2009 - The Board considered the application for the following Variances: Article III, Section 10-302(A) Table 8 to allow a 4'5' left-side side yard setback where 10' is required; and 25.8% building coverage where 25% is required. The Board voted to **Grant** this request as presented and advertised.

Planning Department Comments

The applicant is requesting relief for an addition to add a second story to the existing one-story garage. The property was granted relief from the BOA for the location of the attached garage located 4.5' from the side property line in 2009. As the addition will encroach into the side yard area it will also require relief to be 4.5' from the side property line and for the increase in an existing non-conforming structure.

The property also received relief for building coverage of 25.8% in 2009 with the previous addition. A raised stone patio has been installed to the rear of the garage since that time and as it is greater than 18" in height it is now included in the total building coverage for the lot bringing it to 29%. The applicant is requesting relief for this increase in building coverage with the current application, although the building coverage will not change with the proposed addition. The stone patio meets required setbacks for an accessory structure. The applicant is also requesting relief to locate an HVAC mechanical unit in the left side yard less than 10 feet from the property line.

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.

II. NEW BUSINESS

E. The request of **Susan Javurek and Michael Roche (Owners)**, for property located at **45 Kent Street** whereas relief is needed to demolish an existing 1-story addition, reconstruct a two-story addition and add a deck on the rear of the existing residential structure and relocate a bulkhead which requires the following: 1) Variance from Section 10.521 to a) allow a 5.5 foot left side yard where 10 feet is required; and b) to allow a building coverage of 35% where 25% is 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 145 and lies within the General Residence A (GRA) District. (LU-24-25)

Existing & Proposed Conditions

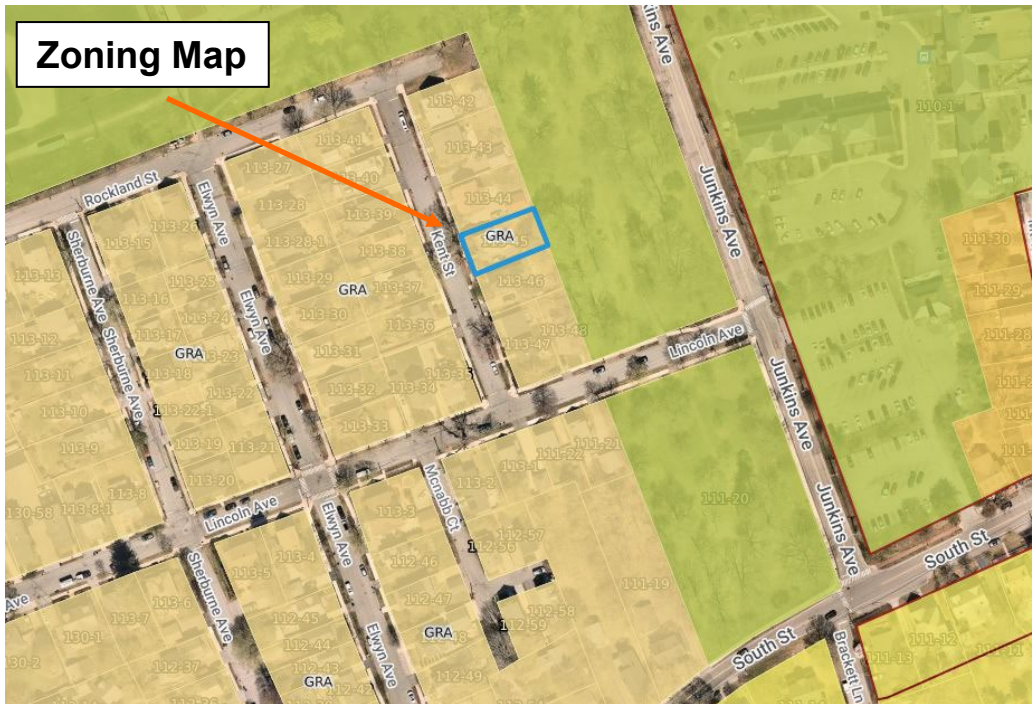
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family Dwelling	2-story addition and deck, relocate bulkhead	Primarily residential
<u>Lot area (sq. ft.):</u>	5,218	5,218	7,500 min.
<u>Street Frontage (ft.):</u>	52	52	100 min.
<u>Lot depth (ft.)</u>	100	100	70 min.
<u>Front Yard (ft.):</u>	13	13	15 min.
<u>Left Yard (ft.):</u>	4.2	5.5	10 min.
<u>Right Yard (ft.):</u>	12	12	10 min.
<u>Rear Yard (ft.):</u>	>20	31	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	28	35*	25 max.
<u>Open Space Coverage (%):</u>	53	48	30 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1927	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

No previous BOA history found.

Planning Department Comments

The applicant is proposing to demolish the existing 1-story addition on the rear of the single-family residence and to construct a new 2-story addition and a rear deck. The construction will require relocation of an existing bulkhead from the right side of the structure to the left side of the structure within the side yard. Relief is needed to construct the addition as it will increase the already non-conforming building coverage on the lot from 28% to 35% and this would further impact the non-conformity necessitating additional relief from Section 10.321.

Variance Review Criteria

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1. *Granting the variance would not be contrary to the public interest.*
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