



City of Portsmouth
Planning Department
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MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Stefanie Casella, Planner
DATE: April 10, 2024
RE: Zoning Board of Adjustment April 16, 2024

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

II. Old Business

- A. 550 Sagamore Avenue – Request for Rehearing
- B. 86 Haven Road – Request to Postpone
- C. 581 Lafayette Road – Request to Postpone

III. New Business

- A. 6 Boyd Road
- B. 216 Woodbury Avenue
- C. 64 Mt. Vernon Street
- D. 3 Moebus Terrace
- E. 865 Islington Street

II. OLD BUSINESS

- A. Request to hear the decision to deny the request of **Frances E. Mouflouze Revocable Trust of 2015 (Owner)**, for property located at **550 Sagamore Avenue** whereas relief is needed to demolish the existing structure and construct a three dwelling unit building which requires the following: 1) Variance from Section 10.440 Use #1.51 to allow a three dwelling unit structure where it is not permitted. Said property is located on Assessor Map 222 Lot 11 and lies within the Single Residence B (SRB) District. (LU-24-9)

Planning Department Comments

On Wednesday, February 21, 2024 the Board of Adjustment considered the request of Frances E. Mouflouze Revocable Trust of 2015 (Owner), for property located at 550 Sagamore Avenue whereas relief is needed to demolish the existing structure and construct a three dwelling unit building which requires the following: 1) Variance from Section 10.440 Use #1.51 to allow a three dwelling unit structure where it is not permitted.

The Board's motion to approve failed 3-3 resulting in a denial of the application. Subsequent motion to deny failed 3-3. Members who voted to deny provided comments that the hardship criteria was not met. The letter of decision and findings of fact have been included in the meeting packet along with the motion for rehearing.

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.

II. OLD BUSINESS

- B. REQUEST TO POSTPONE** 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) **REQUEST TO POSTPONE**

Planning Department Comments

The applicant is requesting a one month continuance to gather the information requested by the Board. See continuance request letter included in meeting packet.

II. OLD BUSINESS

- C. **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. (LU-24-1) **REQUEST TO POSTPONE**

Planning Department Comments

The applicant is requesting a one month continuance to provide information requested by staff.

III. NEW BUSINESS

- A.** The request of **Chinburg Development LLC (Owner)**, for property located at **6 Boyd Road** whereas relief is needed to demolish the existing structure and construct a new primary dwelling which requires the following: 1) Variance from Section 10.521 to allow a) 6,703 square feet of lot area where 7,500 square feet are required; b) 6,703 square feet of lot area per dwelling unit where 7,500 square feet are required; c) 85 feet of frontage where 100 feet are required; and d) 68 feet of lot depth where 70 feet are required. Said property is located on Assessor Map 175 Lot 13 and lies within the General Residence A (GRA) District. (LU-24-23)

Existing & Proposed Conditions

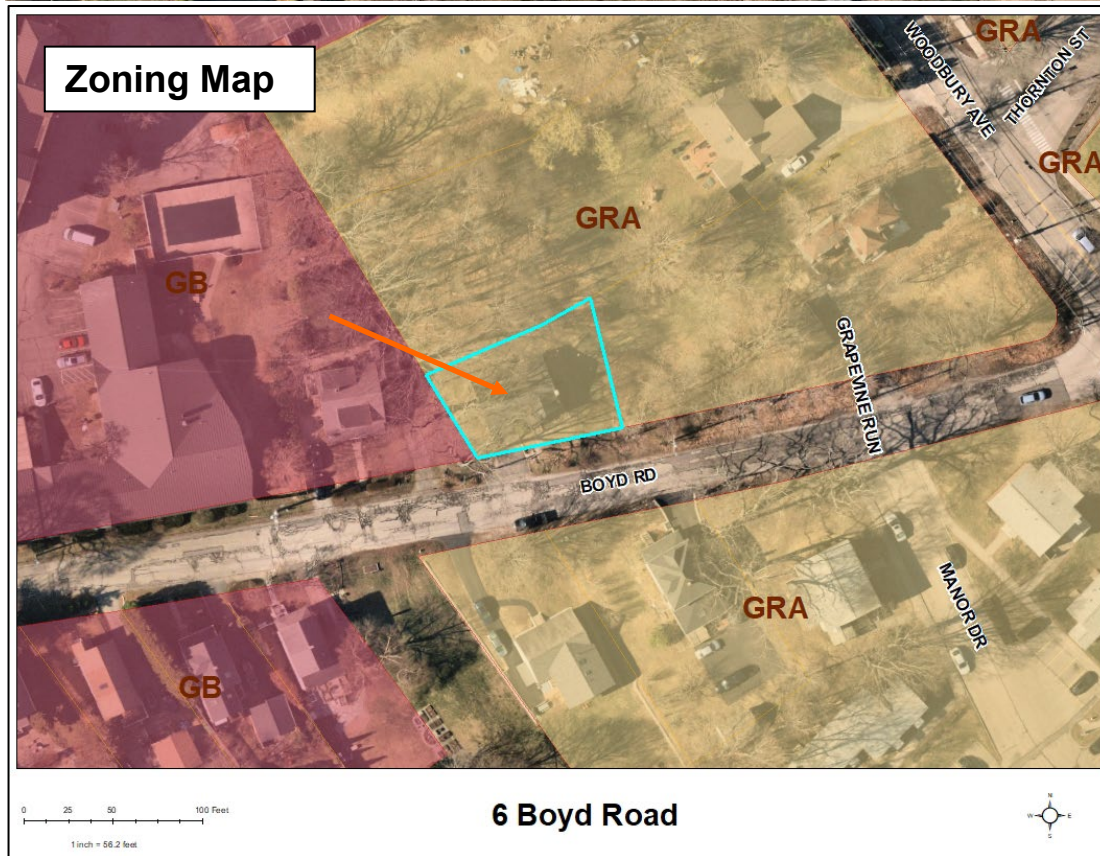
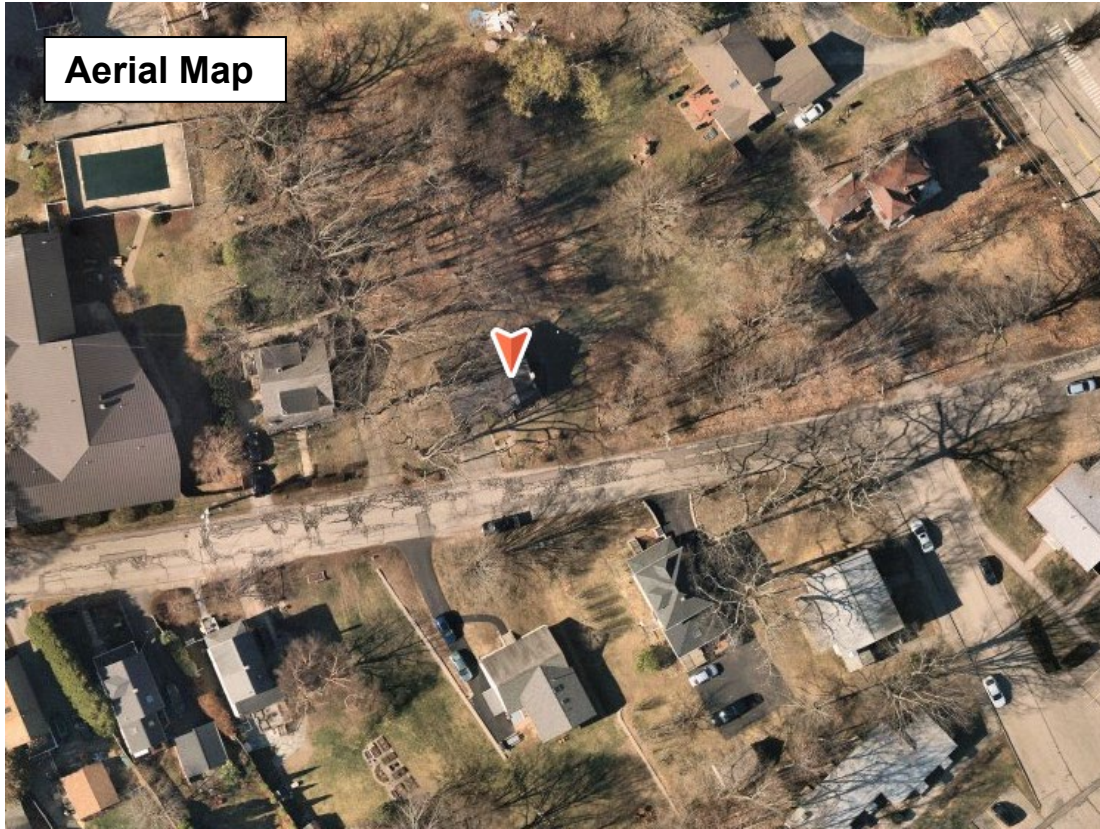
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	*Demolish the existing structure and build new primary structure	Primarily residential
<u>Lot area (sq. ft.):</u>	6,703	6,703	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,703	6,703	7,500 min.
<u>Street Frontage (ft.):</u>	85	85	100 min.
<u>Lot depth (ft.)</u>	68	68	70 min.
<u>Front Yard (ft.):</u>	18		15 min.
<u>Left Yard (ft.):</u>	12	>11	10 min.
<u>Right Yard (ft.):</u>	>12	11	10 min.
<u>Rear Yard (ft.):</u>	14	21	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	20.5	24.1	25 max.
<u>Open Space Coverage (%):</u>	70	63	30 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1951	Variance request(s) shown in red.	

*Demolition of the existing structure will create a vacant lot which requires conformance with section 10.311

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous history found.

Planning Department Comments

The applicant is requesting relief to demolish and rebuild a single family home on an undersized lot. The new structure will be less non-conforming than the existing structure. Relief for the undersized lot is required per section 10.311 of the Zoning Ordinance. Section provided below for your convenience.

10.311 *Any lot that has less than the minimum lot area or street frontage required by this Ordinance shall be considered to be nonconforming, and no use or structure shall be established on such lot unless the Board of Adjustment has granted a variance from the applicable requirements of this Ordinance.*

Applicant has included the request for relief from section 10.311. Staff do not believe this is applicable for a variance as it is the provision that triggers the need for dimensional variances after demolition.

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 **Chinburg Development LLC (Owner)**, for property located at **216 Woodbury Avenue** whereas relief is needed to demolish the existing structure and construct a new primary dwelling which requires the following: 1) Variance from Section 10.521 to allow 66 feet of frontage where 100 feet are required. Said property is located on Assessor Map 175 Lot 3 and lies within the General Residence A (GRA) District. (LU-24-24)

Existing & Proposed Conditions

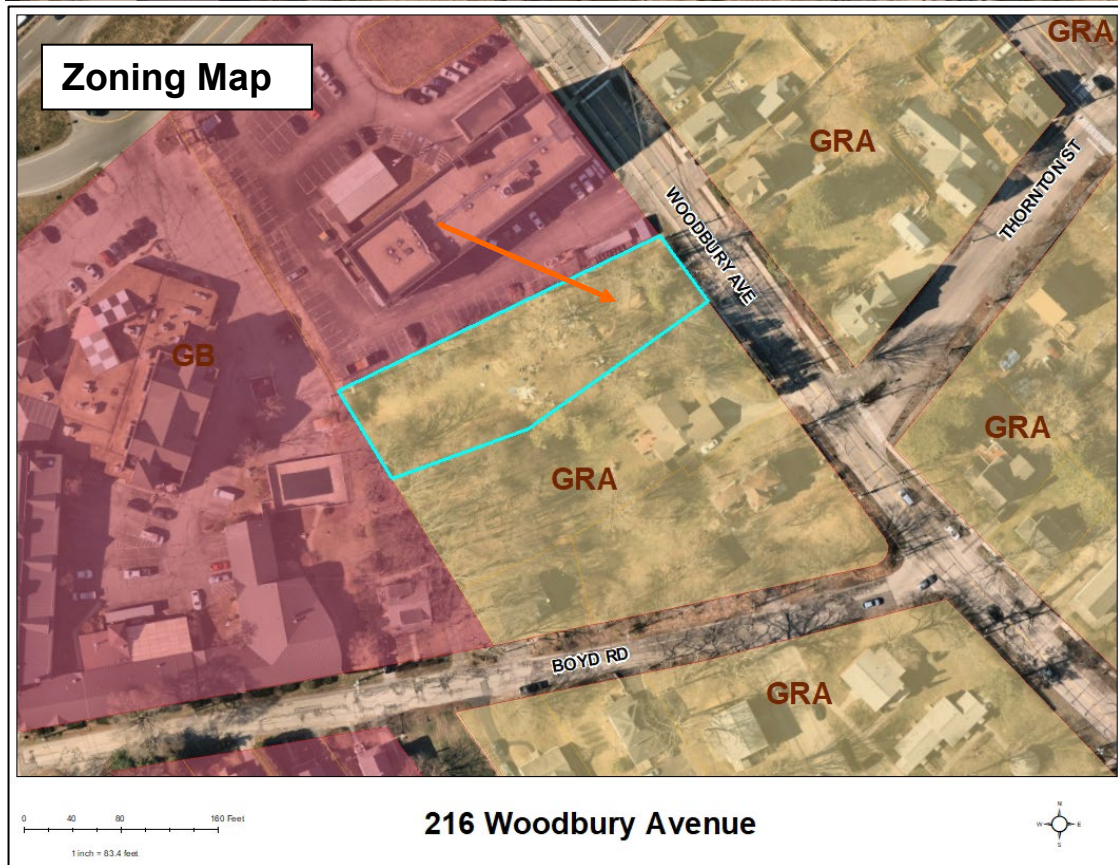
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	*Demolish the existing structure and build new primary structure	Primarily residential
<u>Lot area (sq. ft.):</u>	7,933	7,933	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,933	7,933	7,500 min.
<u>Street Frontage (ft.):</u>	66	66	100 min.
<u>Lot depth (ft.)</u>	93	93	70 min.
<u>Front Yard (ft.):</u>	40	24	15 min.
<u>Left Yard (ft.):</u>	>10	12	10 min.
<u>Right Yard (ft.):</u>	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	20	23	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	17.3	23.8	25 max.
<u>Open Space Coverage (%):</u>	69.6	61.6	30 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1935	Variance request(s) shown in red.	

*Demolition of the existing structure will create a vacant lot which requires conformance with section 10.311

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous history found.

Planning Department Comments

The applicant is requesting relief for demolition and construction of a single-family home on a lot with less than the required street frontage. The proposed structure does not require any dimensional. Relief for the undersized lot is required per section 10.311 of the Zoning Ordinance. Section provided below for your convenience.

10.311 *Any lot that has less than the minimum lot area or street frontage required by this Ordinance shall be considered to be nonconforming, and no use or structure shall be established on such lot unless the Board of Adjustment has granted a variance from the applicable requirements of this Ordinance.*

Applicant has included the request for relief from section 10.311. Staff do not believe this is applicable for a variance as it is the provision that triggers the need for dimensional variances after demolition.

Please note that the boundary defined in the aerial image found under “neighborhood context” does not reflect the most recent lot line adjustment that occurred

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 Erica Gardner Beer (Owners)**, for property located at **64 Mount Vernon Street** to amend the Variances granted on March 19, 2024 for the demolition of the existing detached shed and construction of a new shed to include the following: 1) Variance from section 10.521 to allow a 2 foot side yard where 10 feet is required. Said property is located on Assessor Map 111 Lot 30 and lies within the General Residence B (GRB) and Historic Districts. (LU-24-20)

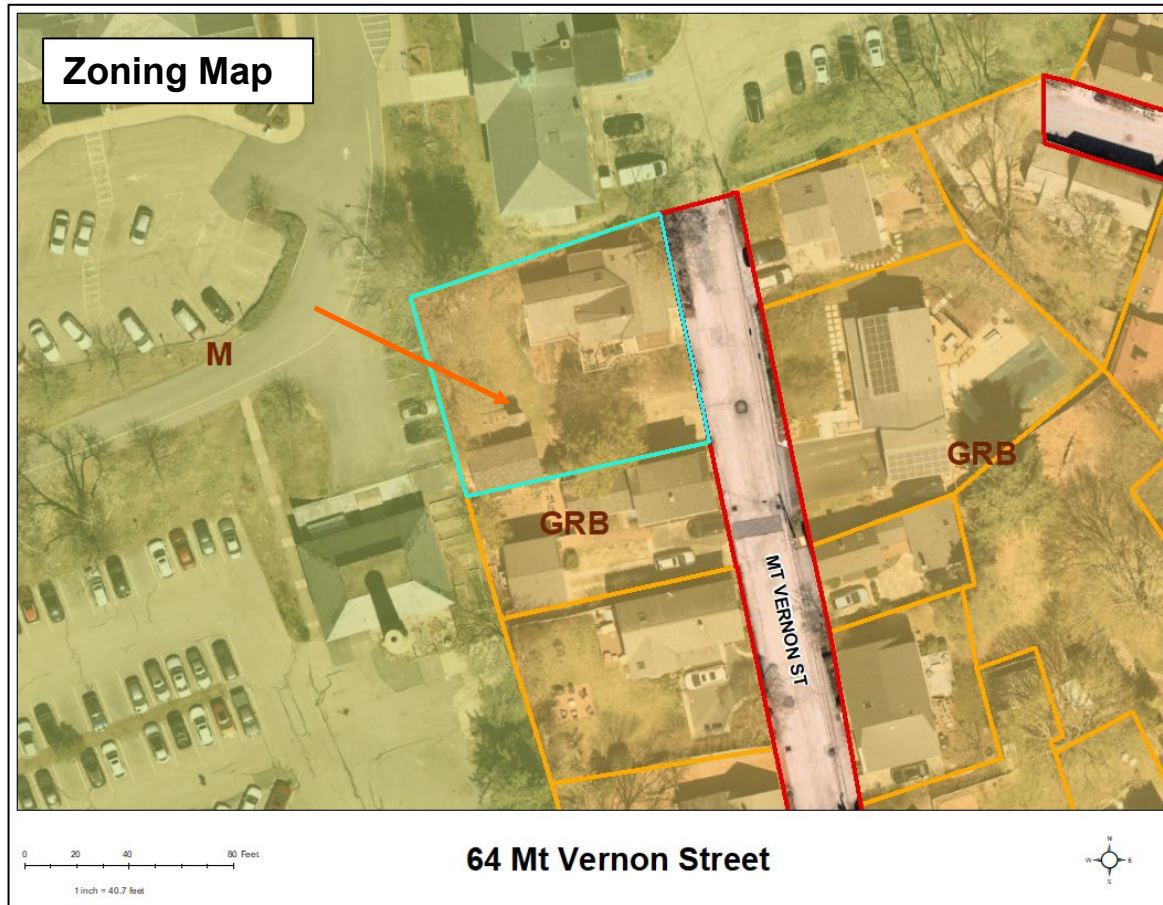
Existing & Proposed Conditions

	<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	Shed granted on 3-19-24: 5 Requested 4-16-24: 2	10 min
<u>Right Yard (ft.):</u>	House: 3	House: 3	10 min
<u>Rear Yard (ft.):</u>	Shed: 3.5	Shed granted on 3-19-24: 5	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	Variance request(s) shown in red.	

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.

March 19, 2024 – The Board granted 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.

Planning Department Comments

The applicant is proposing to demolish the existing shed and reconstruct a new shed that will increase in size from 322.5 square feet to 448 square feet.

On March 19, 2024, the applicant was granted variances to have a 5 foot rear yard and 5 foot left side yard. The applicant worked with staff and was unable to keep the design consistent with the 5 foot approval for the jog of the property line. It was discovered that the original proposal represented a 2 foot side yard at that one corner and is back before the Board to request relief for those two feet. The design and side yards are the same as the original approval. This amendment clarifies and completes the relief required to build the design proposed at the March 19, 2024 meeting.

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 **O’Brien Family Revocable Trust of 2018 (Owner)**, for property located at **3 Moebus Terrace** whereas relief is needed demolish the existing structure and construct a new primary structure which requires the following: 1) Variance from Section 10.521 to allow a) 10,823 square feet of lot area where 15,000 square feet is required; and b) 10,823 square feet of lot area per dwelling unit where 15,000 square feet is required. Said property is located on Assessor Map 207 Lot 21 and lies within the Single Residence B (SRB) District. (LU-24-40)

Existing & Proposed Conditions

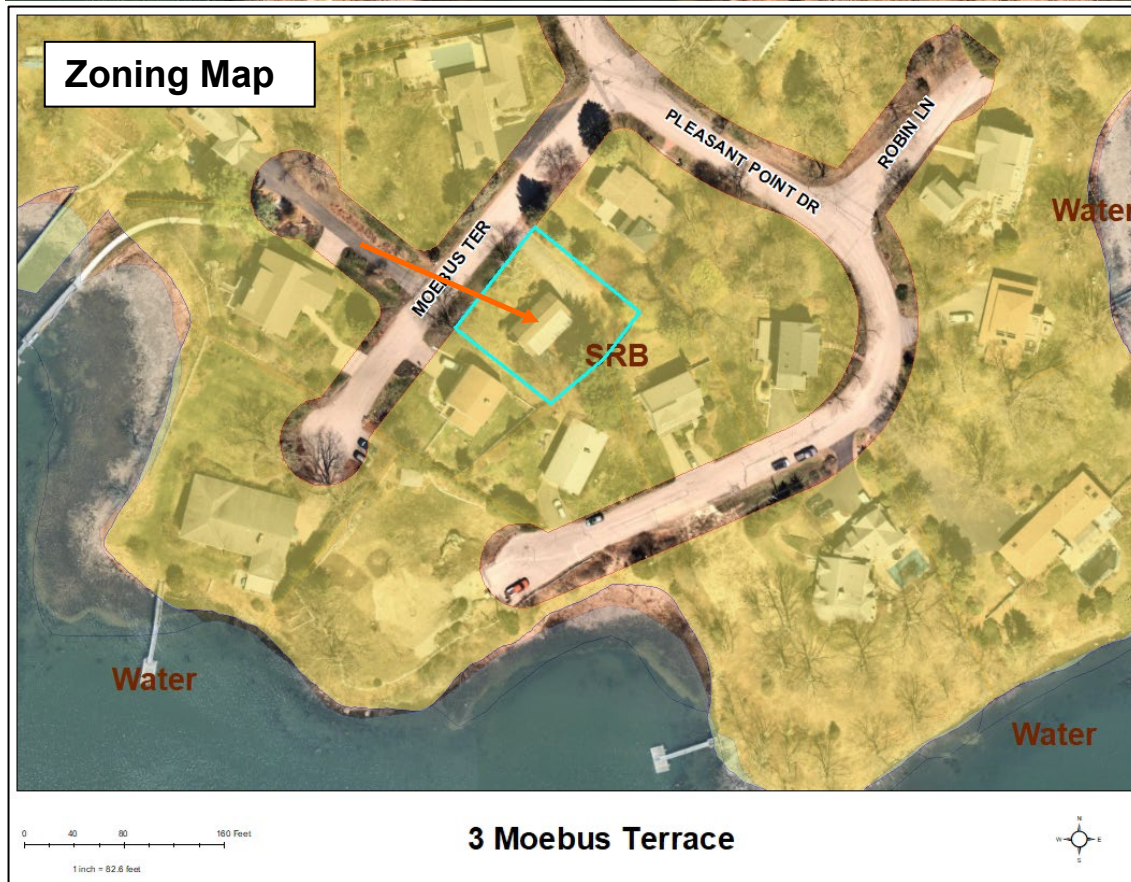
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	*Demolish the existing structure and build new primary structure	Primarily residential
<u>Lot area (sq. ft.):</u>	10,823	10,823	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,823	10,823	15,000 min.
<u>Street Frontage (ft.):</u>	101	101	100 min.
<u>Lot depth (ft.):</u>	103	103	100 min.
<u>Front Yard (ft.):</u>	35.7	28.4	25.7 (Per 10.516.10) min.
<u>Left Yard (ft.):</u>	35.8	14.1	10 min.
<u>Right Yard (ft.):</u>	14.9	18.4	10 min.
<u>Rear Yard (ft.):</u>	20.8	33.5	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	14.3	19.8	20 max.
<u>Open Space Coverage (%):</u>	67.9	62.2	40 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1970	Variance request(s) shown in red.	

*Demolition of the existing structure will create a vacant lot which requires conformance with section 10.311

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous history found.

Planning Department Comments

The applicant is requesting relief to demolish the existing structure and construct a new primary structure on an undersized lot. Relief for the undersized lot is required per section 10.311 of the Zoning Ordinance. Section provided below for your convenience.

10.311 Any lot that has less than the minimum lot area or street frontage required by this Ordinance shall be considered to be nonconforming, and no use or structure shall be established on such lot unless the Board of Adjustment has granted a variance from the applicable requirements of this Ordinance.

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 **Maxico LLC (Owner)**, for property located at **865 Islington Street** whereas relief is needed to establish a yoga studio with more than 2,000 square feet of gross floor area which requires a Special Exception from Section 10.440, Use #4.41 where it is permitted by Special Exception. Said property is located on Assessor Map 172 Lot 11 and lies within the Character District 4-W (CD4-W). (LU-24-41)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant Commercial Space	*Yoga Studio (Allowed by special Exception)	Mixed Uses
<u>Unit Square Footage:</u>	3154	3154	min.
<u>Parking (Spaces)</u>	44	44	35
<u>Estimated Age of Structure:</u>	1880	Special Exception request(s) shown in red.	

* A yoga studio is allowed by special exception when there is more than 2,000 sq.ft. of GFA

Other Permits/Approvals Required

- Building Permit (Tenant Fit Up)

Neighborhood Context



Previous Board of Adjustment Actions

January 25, 1983 – The Board **granted** the following: variance to allow 19,279 sf of lot area where 2 acres is required; variance to allow 49.59 feet of lot frontage where 200' is required; and 0 feet side yard where 50' is required.

September 27, 1983 – The Board granted the following: variance to allow 5.5% open space where 20% is required.

November 17, 2009 – The Board **granted** the following: Special Exception to allow a veterinary clinic in the Business Zone; and variance to allow a veterinary clinic in the Business Zone within 200 feet of a residential zone.

Planning Department Comments

The applicant is requesting a special exception to occupy a unit with more than 2,000 square feet of gross floor area and is located in the CD4-W zone. This use is allowed by special exception under Use# 4.42 of the Zoning Table found in Section 10.440

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.