



City of Portsmouth
Planning & Sustainability Department
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MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Jillian Harris, Principal Planner
DATE: April 24, 2024
RE: Zoning Board of Adjustment April 30, 2024

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

I. New Business

- A. 229 Pleasant Street, Unit 4
- B. 505 US Route 1 Bypass
- C. 255 McKinley Road

I. NEW BUSINESS

- A. The request of Elizabeth Coursen (Owner), for property located at 229 Pleasant Street, Unit 4 whereas relief is needed for the following: 1) Variance from Section 10.515.14 to install a mechanical unit 5.5 feet from the side property line whereas 10 feet is required. Said property is located on Assessor Map 108 Lot 6 and lies within the Mixed Residential Office (MRO) and Historic District. (LU-24-42)

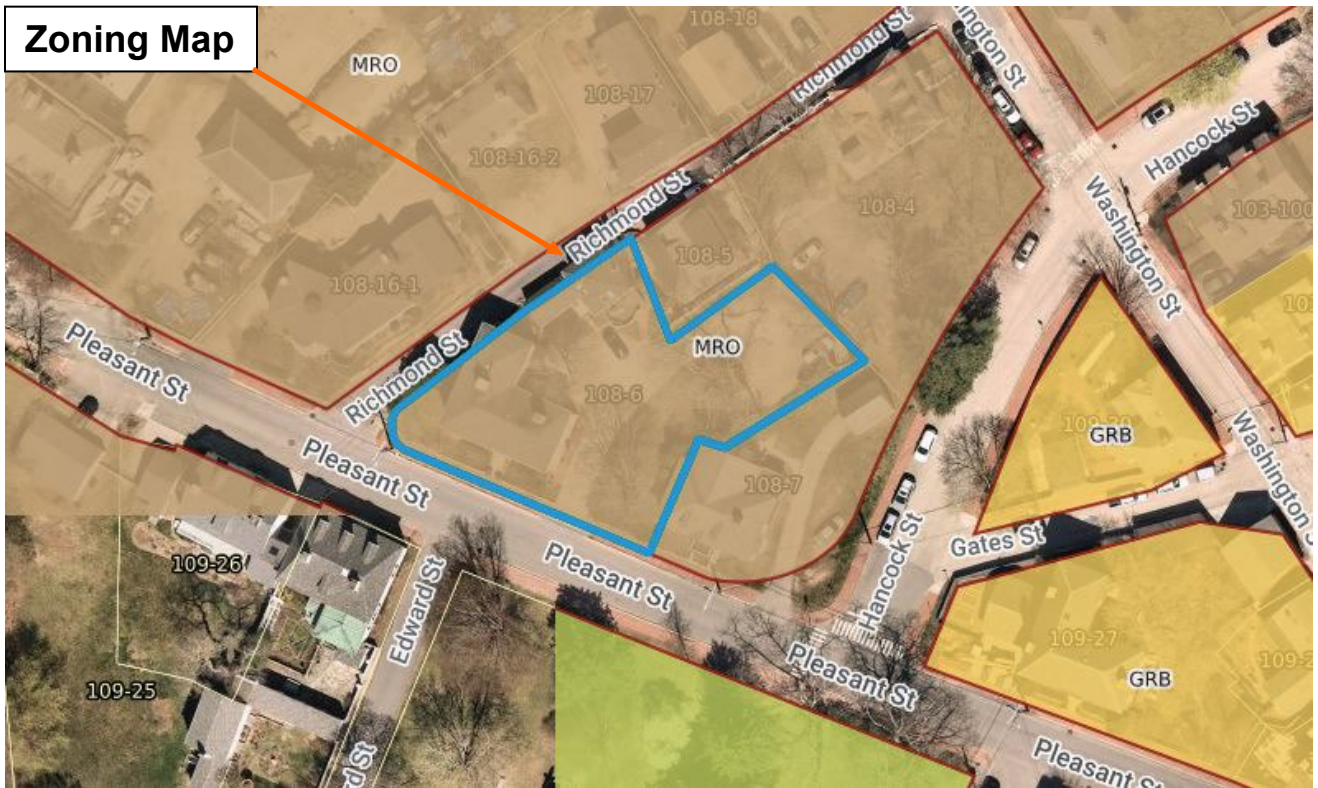
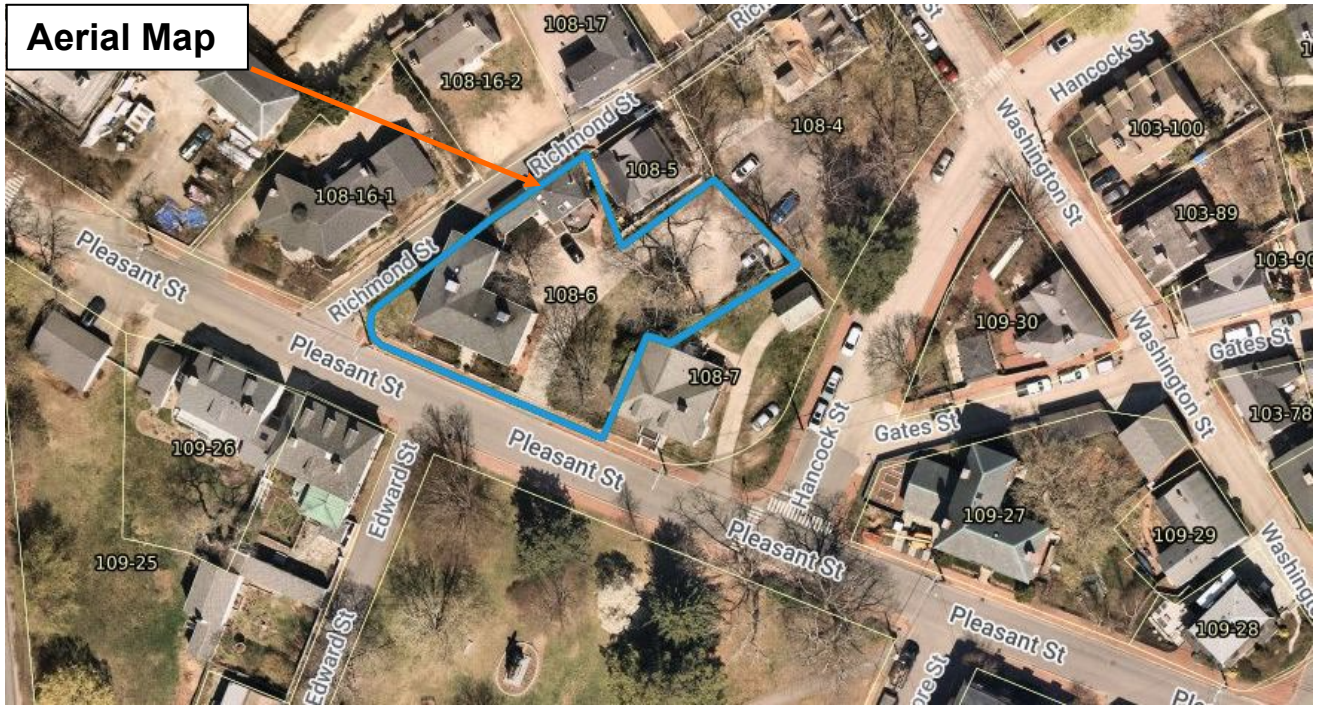
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Multi-family Condos	Mechanical Unit	Mixed Use
<u>Lot area (sq. ft.):</u>	13,794	13,794	7,500 min.
<u>Front Yard (ft.):</u>	0	0	5
<u>Right Yard (ft.):</u>	≈10	5.5	10 min
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1820	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Mechanical/Electric Permit
- Historic District Commission Review

Neighborhood Context



Previous Board of Adjustment Actions

April 16, 1983 – Special Exception Request to allow establishment of three (3) apartments in an existing structure. The Board Granted the Special Exception with the stipulation that the fence that is street level be moved back to a minimum distance to be in line with the house.

July 19, 1983 – Special Exception Request to allow (1) conversion of existing buildings to a fourth (4th) apartment and (2) Request for Variance to allow exterior changes to be the building which are not entirely for egress. The Board voted to Grant the Special Exception and to Deny the Variance request.

October 1, 1985 - Requested to allow changes to a previously converted building: 1) A Variance from Article 11, Section 10-205 (3)(c) (1) to allow exterior changes which are not entirely for the purpose of egress but also being to connect by way of a 3' x 7' addition both the carriage house and adjacent studio; and, 2) A Variance from Article III, Section 10-302 to allow said addition to have a left yard of 6' minimum yard of 10' is required. The Board voted your request be Granted with the condition that all owners of the property in question sign the petition for a Variance.

October 20, 2009 – Relief from Zoning Ordinance to request: 1) A Variance from Article III Section 10-303(A) Table 9 to allow for a 7'2" rear yard setback where 15 feet is required; 2) A Variance from Article IV Section 10-401 (A)(2)(c) to allow the expansion of a nonconforming structure. The Board voted to Grant the petition as presented and advertised.

Planning Department Comments

The property is composed of 2 structures with a total of 4 residential units. The main structure fronting on Pleasant Street contains condominium units #1-3 and the secondary structure fronting on Richmond Street contains the subject condominium unit #4. The applicant is proposing the installation of a mechanical unit on the right side of the Condo Unit behind an existing fence and adjacent to a shared walkway with the abutting property.

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.

I. NEW BUSINESS

B. 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 10.835.32 to allow 5 feet between the lot line and drive-thru and bypass lanes where 30 feet is required for each; 3) Variance from Section 10.835.31 to allow 18 feet between the menu and speaker board and the front lot line where 50 feet is required; 4) Variance from Section 10.5B22.20 to allow up to 60 feet in building height within 50 feet of the street right-of-way line whereas up to 45 feet is permitted; 5) Variance from Section 10.5B34.70 to allow up to 60 feet in building height whereas 50 feet is permitted; 6) Variance from Section 10.5B34.60 to allow a 30 foot setback for a small commercial building whereas a maximum of 20 feet is permitted; 7) Variance from Section 10.5B33.20 to allow less than 75 percent front lot line buildout whereas a minimum of 75 percent is required for commercial buildings. Said property is located on Assessor Map 234 Lot 5 and lies within the Gateway Neighborhood Corridor (G1) District. (LU-24-44)

Existing & Proposed Conditions

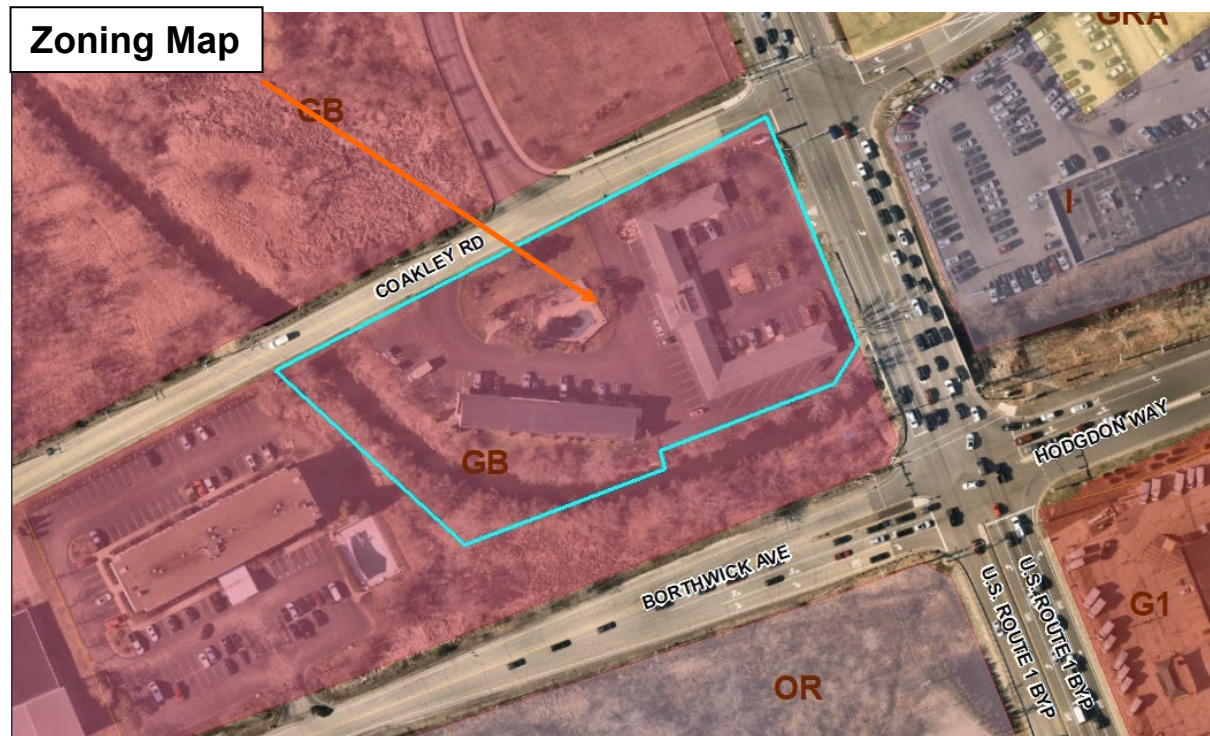
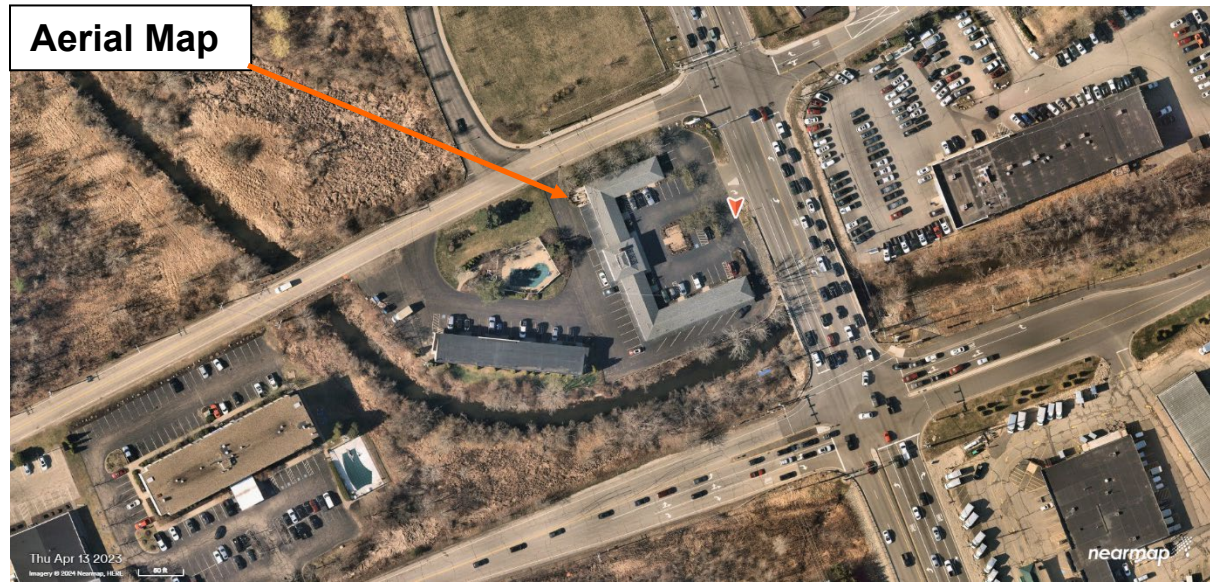
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Hotel	*Hotel with a drive thru restaurant	Primarily Business
<u>Distance between menu speaker and speaker board and the front lot line</u>	N/A	18	50 min.
<u>Distance between drive through/bypass lane and lot line</u>	N/A	5	30 min.
<u>Building Stepback (height) – Distance from street right-of-way line (ft.)</u>	N/A	60 ft. (height)	45 ft.(height) Max. within 25-49 ft. (distance)
<u>Small Commercial Building – setback (ft.)</u>	N/A	30	20 max.
<u>Front Lot Line Buildout (%)</u>	N/A	44 (Coakley Frontage) 36 (US Rt 1 Byp Frontage)	75 min.
<u>Large Commercial Building Height (ft.):</u>	<60	60	50 max.
<u>Small Commercial Building Height (ft.)</u>	<60	19	40 Max.
<u>Building Coverage (%):</u>	10.8	16.86	70 max.
<u>Parking</u>	58	106	179 Min.
<u>Estimated Age of Structure:</u>	1955	Variance request(s) shown in red.	

*Hotels are allowed by Special Exception in the G1 zone.

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

Fisher vs. Dover

The applicant is requesting to demolish the existing structures on site and construct a hotel and a free-standing drive-thru service restaurant. The applicant was before the Board in January 2024 with a different design for the development proposal, where the Board voted to continue consideration of the Special Exception and voted to deny variances requested specific to the previous design. The Special Exception was subsequently withdrawn by the applicant without prejudice.

The current application is a request to demolish the existing structures on site and construct a hotel and a free-standing drive-thru service restaurant with a new design that requires a Special Exception and different variances than the previous application.

Additionally, the Zoning District for this parcel was recently changed from the General Business (GB) District to the Gateway Corridor (G1) District (Zoning map changes approved at the April 15, 2024 City Council Meeting).

Staff feels this is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether Fisher vs. Dover is applicable before this application is considered.

“When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment,

the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan.” Fisher v. Dover, 120 N.H. 187, (1980).

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. Staff recommends this is done as separate motions. If the request is granted, staff recommends the following stipulation for consideration:

1. The design and location of the structures may change as a result of Planning Board review and approval.

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.*

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.

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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.

I. NEW BUSINESS

- C.** The request of **Joshua P. Lanzetta (Owner)**, for property located at **255 McKinley Road** whereas relief is needed to construct additions to an existing single-family residence which requires the following: 1) Variances from Section 10.521 to allow a) a front yard of 18 feet where 30 feet is required; b) a rear yard of 14 feet where 30 feet is required; and c) 23% building coverage where 20% is the maximum allowed. Said property is located on Assessor Map 250 Lot 16 and lies within the Single Residence B (SRB) District. (LU-24-38)

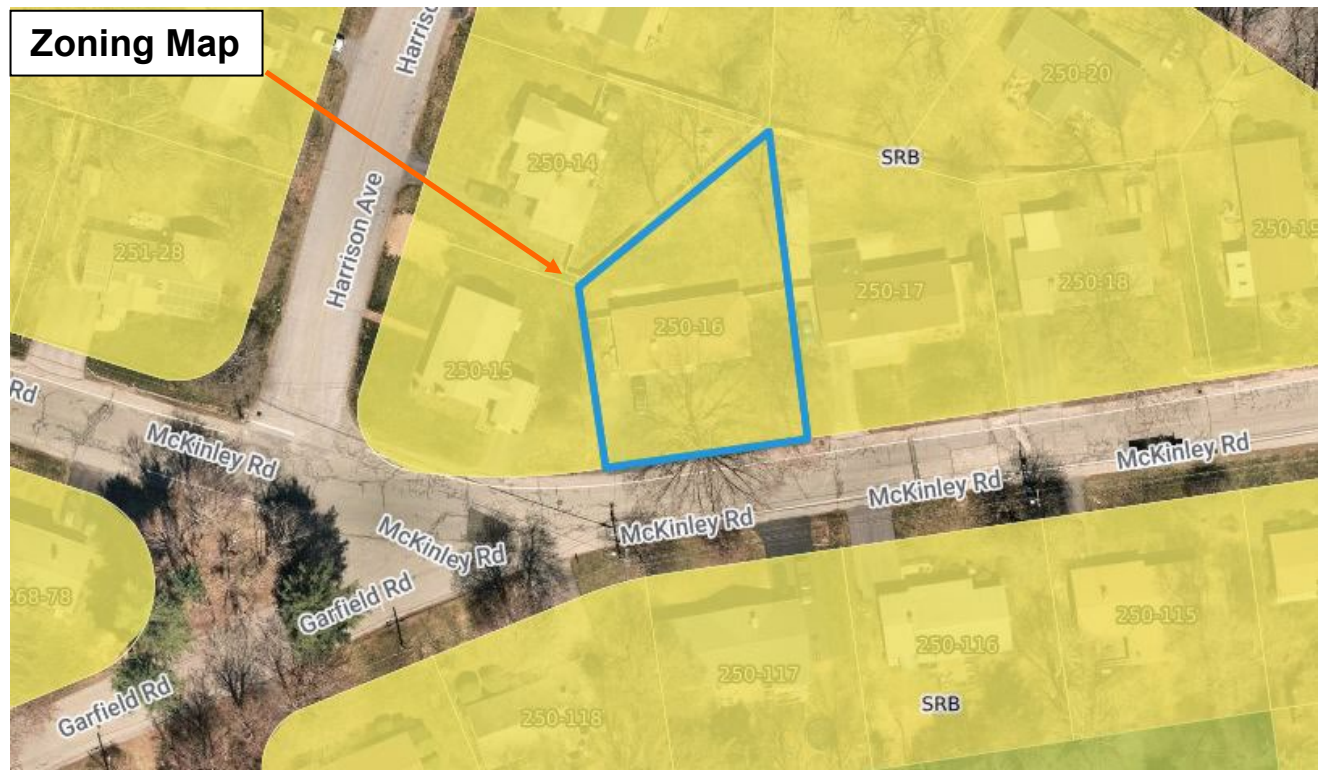
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family Dwelling	addition to front and rear	Primarily residential
<u>Lot area (sq. ft.):</u>	9,860	9,860	15,000 min.
<u>Street Frontage (ft.):</u>	90	90	100 min.
<u>Lot depth (ft.)</u>	81	81	100 min.
<u>Front Yard (ft.):</u>	38	18	30 min.
<u>Left Yard (ft.):</u>	13	13	10 min.
<u>Right Yard (ft.):</u>	23	23	10 min.
<u>Rear Yard (ft.):</u>	23	14	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	13	23	20 max.
<u>Open Space Coverage (%):</u>	73	71	40 min.
<u>Parking</u>	4	2	2
<u>Estimated Age of Structure:</u>	1961	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No Previous BOA history found.

Planning Department Comments

The applicant is requesting relief for an addition to the front and rear of the primary structure. The existing single-family dwelling complies with front and side yard requirements and is non-conforming in regards to the rear yard requirement due to the geometry of the existing non-conforming lot.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

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 - (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.*

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 - (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.*

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