



City of Portsmouth
Planning & Sustainability Department
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MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Jillian Harris, Principal Planner
DATE: May 22, 2024
RE: Zoning Board of Adjustment May 28, 2024

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

- I. Old Business**
 - A. 581 Lafayette Road

- II. New Business**
 - A. 235 Marcy Street
 - B. 40 Winter Street
 - C. 43 Holmes Court
 - D. 366 Broad Street
 - E. 692 State Street

I. OLD BUSINESS

- A. 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)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial	Commercial	Mixed-Use Corridor
<u>Awning Sign Area (sq. ft.):</u>	32	32	20 max
<u>Northern facing façade building frontage(ft.):</u>	90	90	
<u>Western facing façade building frontage (ft.):</u>	125	125	
<u>Northern facing façade sign area (sq. ft.)</u>	75	75	135 max.
<u>Western facing façade sign area (sq. ft.):</u>	58.2	58.2	187.5 max.
<u>Estimated Age of Structure:</u>	1972	Variance request(s) shown in red.	

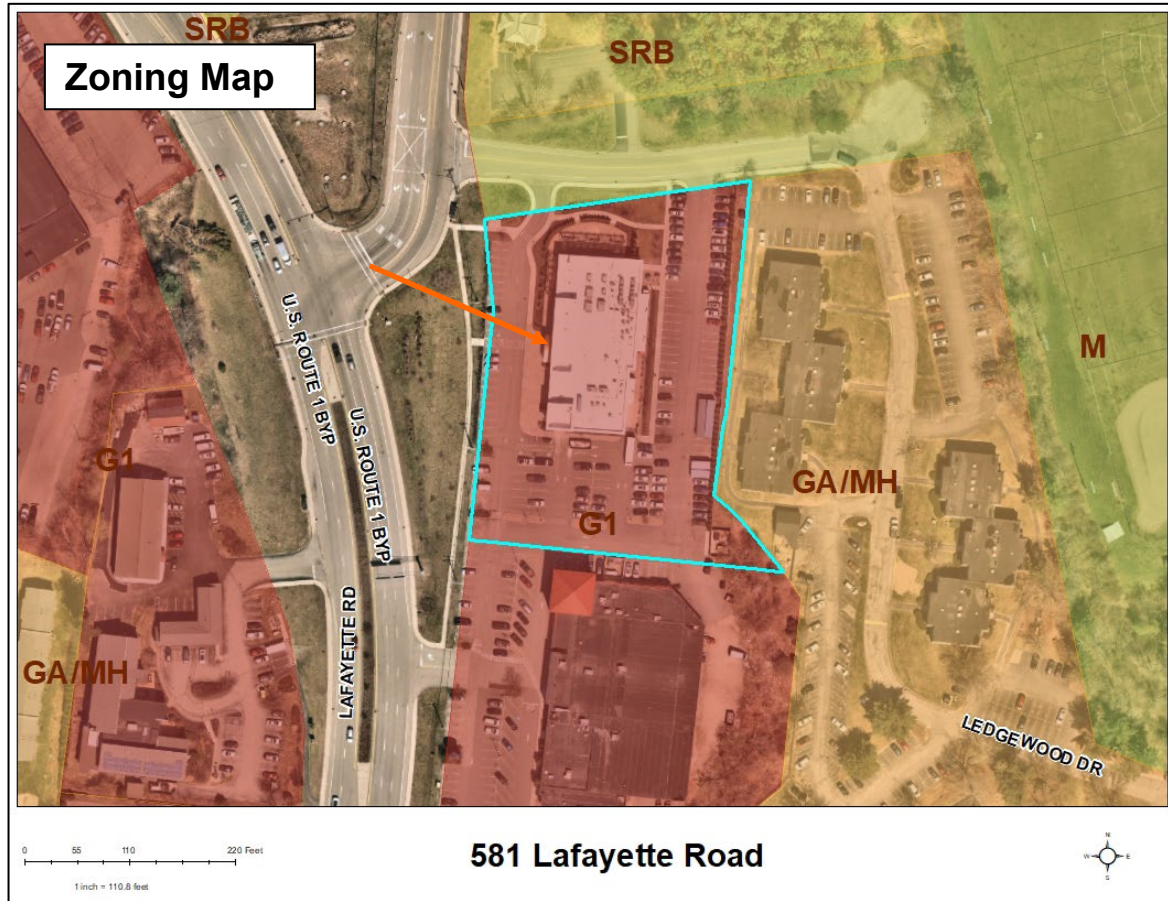
Other Permits/Approvals Required

- Sign Permit

Neighborhood Context



Aerial Map



Zoning Map

581 Lafayette Road

Previous Board of Adjustment Actions

September 22, 2015 - The Board **approved** the following to allow a restaurant with associated parking:

1. A Special Exception under Section 10.440, Use #9.52 to allow a restaurant with 492 seats where 250 to 500 seats are allowed by Special Exception.
2. A Variance from 10.593.10 to allow a restaurant to be located 92.1' from a residential district where 200' is required.
3. A Variance from 10.531 to allow 16.5% open space where 11% exists and 20% is required.
4. A Variance from Section 10.1112.50 to allow 154 off-street parking spaces where 184 exist and 132 are the maximum allowed.
5. A Variance from Section 10.1113.20 to allow parking in the front yard or between a building and a street for 34 spaces where 38 exist and 0 spaces are permitted.
6. A Variance from 10.1113.10 to allow 28 existing and 30 proposed off-street parking spaces to be partially located on a lot separate from that of the principal use.
7. A Variance from Section 10.1114.21 to allow 10 off-street parking spaces to be 17.5' in length where 19' is required.
8. A Variance from 10.1124.20 to allow off-street loading or maneuvering areas to be 87.7' from an adjoining Residential or Mixed Residential District where 100' is required.

May 18, 2021 - The Board granted the request to add an indoor golf simulators in an existing restaurant which required the following: 1) A Special Exception from Section 10.440 Use #4.30 to allow an indoor recreation use where the use is permitted by Special Exception.

Planning Department Comments

This application was postponed at the May 21, 2024 Board of Adjustment meeting as a courtesy to the applicant, as there was no one present to represent the application.

The applicant is requesting relief to appropriately permit an awning sign that has already been installed at the front entrance on the western facing facade.

The property is located in Sign District 5 (Section 10.232) which allows a maximum awning sign area of 20 square feet (Section 10.1251.20). The awning sign in need of relief is 32 square feet.

Maximum aggregate sign area allowed in Sign district 5 is 1.5 square feet per linear foot of building frontage (Section 10.1251). The western façade measures 125 feet, which gives the applicant a maximum of 187.5 square feet of aggregate sign area on that side of the

building. The addition of the awning sign brings the total aggregate sign area on the western facing façade to 58.2 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

 - (b) *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

- A. The request of **Sakuntalala LLC (Owner)**, for property located at **235 Marcy Street** whereas relief is needed to demolish an existing 1-story addition and reconstruct a two-story attached garage addition on the rear of the existing residential structure, which requires the following: 1) Variance from Section 10.521 to allow a 7-foot left side yard for the addition 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 103 Lot 12 and lies within the General Residence B (GRB) and Historic Districts. (LU-24-68)

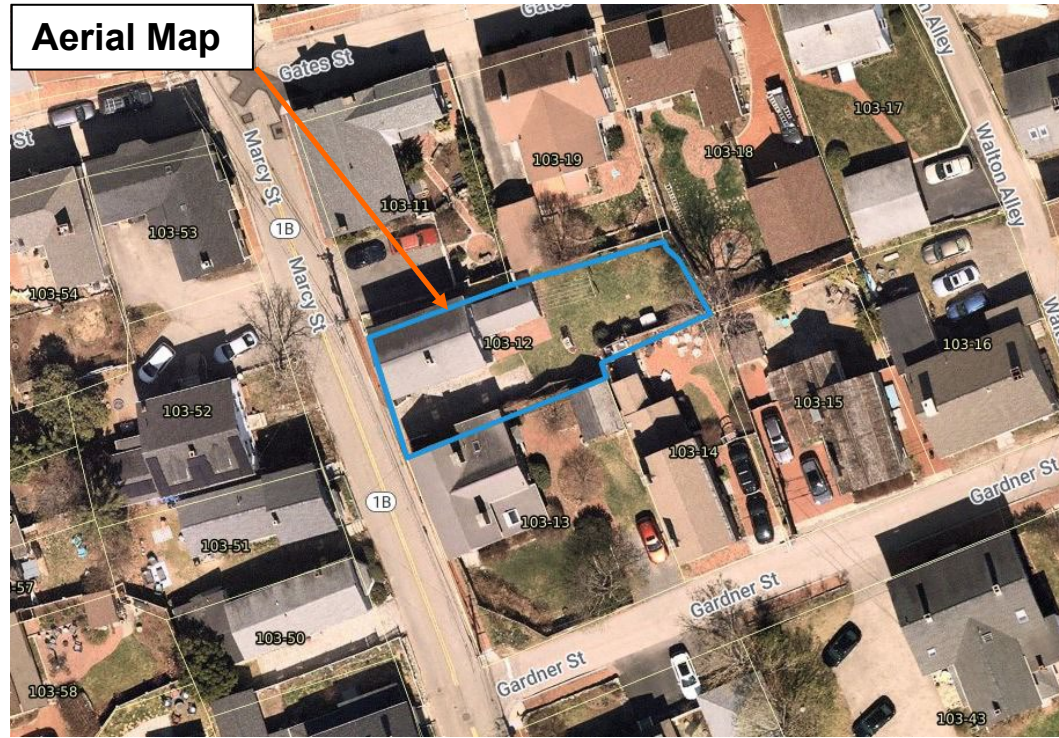
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family Dwelling	addition to rear	Primarily residential
<u>Lot area (sq. ft.):</u>	3,590	3,590	5,000 min.
<u>Street Frontage (ft.):</u>	40.7	40.7	80 min.
<u>Lot depth (ft.)</u>	100	100	60 min.
<u>Front Yard (ft.):</u>	0.2	0.2	5 min.
<u>Left Yard (ft.):</u>	2.8 (Primary Structure) 5.1 (Rear Addition)	2.8 (Primary Structure) 7 (Rear Addition)	10 min.
<u>Right Yard (ft.):</u>	14.7	12.2	10 min.
<u>Rear Yard (ft.):</u>	46	43	25 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	24.2	29.2	30 max.
<u>Open Space Coverage (%):</u>	58.6	30.8	25 min.
<u>Parking</u>	2	>2	2
<u>Estimated Age of Structure:</u>	1896	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Historic District Commission Review

Neighborhood Context



Previous Board of Adjustment Actions

No Previous BOA history found.

Planning Department Comments

The applicant proposes to demolish an existing one-story addition on the rear of the single-family dwelling and construct a two-story attached garage addition. The property is an existing non-conforming lot and the primary structure was constructed 2.8 feet from the left side property line. The existing one-story addition is located 5.1 feet from the left side property line and the addition is proposed to be 7.1 feet where 10 feet is the required side setback. The applicant intends to renovate the existing primary structure and reconfigure the driveway with pervious pavers and retaining walls 18" and under in height.

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

- B. The request of **Colleen M .Cook (Owner)**, for property located at **40 Winter Street** whereas relief is needed for the following: 1) Variance from Section 10.515.14 to install a mechanical unit 3.5 feet from the side property line whereas 10 feet is required. Said property is located on Assessor Map 145 Lot 96 and lies within the General Residence C (GRC) District. (LU-24-74)

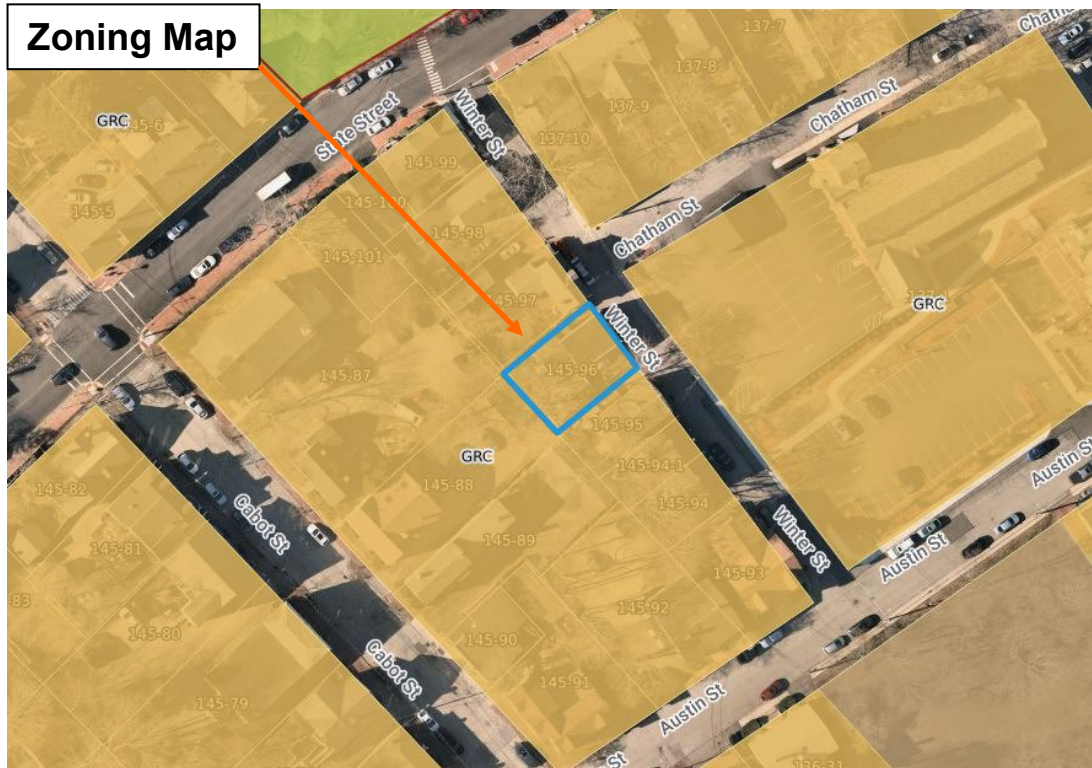
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single-family dwelling	Mechanical Unit	Primarily Residential
<u>Lot area (sq. ft.):</u>	2,614	2,614	3,500 min.
<u>Front Yard (ft.):</u>	0	0	5 min.
<u>Right Yard (ft):</u>	3.9 (Structure)	3.5 (Mechanical Unit)	10 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1880	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Mechanical/Electrical Permit

Neighborhood Context



Previous Board of Adjustment Actions

July 18, 2017 – The Board granted relief from the Zoning Ordinance for an addition including: 1) Variances from Section 10.521 to allow a right side yard setback of 9'5 ½" ± where 10' is required. 2) A Variance from Section 10.321 to allow a lawful nonconforming structure to be reconstructed, extended, or enlarged without conforming to the requirement of the ordinance.

Planning Department Comments

The existing single-family dwelling dates to 1880 on an existing non-conforming lot. The applicant is proposing the installation of a mini-split mechanical unit in the right side yard of the structure behind an existing fence.

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

- C. The request of **Stephen A. Singlar and Kathryn L. Singlar (Owners)**, for property located at **43 Holmes Court** whereas relief is needed to amend a Variance granted on December 20, 2022 to demolish the existing dwelling and construct a new single-family dwelling which requires the following: 1) Variance from Section 10.531 to allow a 16 foot front yard where 30 feet is required. Said property is located on Assessor Map 101 Lot 14 and lies within the Waterfront Business (WB) and Historic Districts. (LU-22-227)

Existing & Proposed Conditions

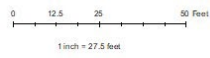
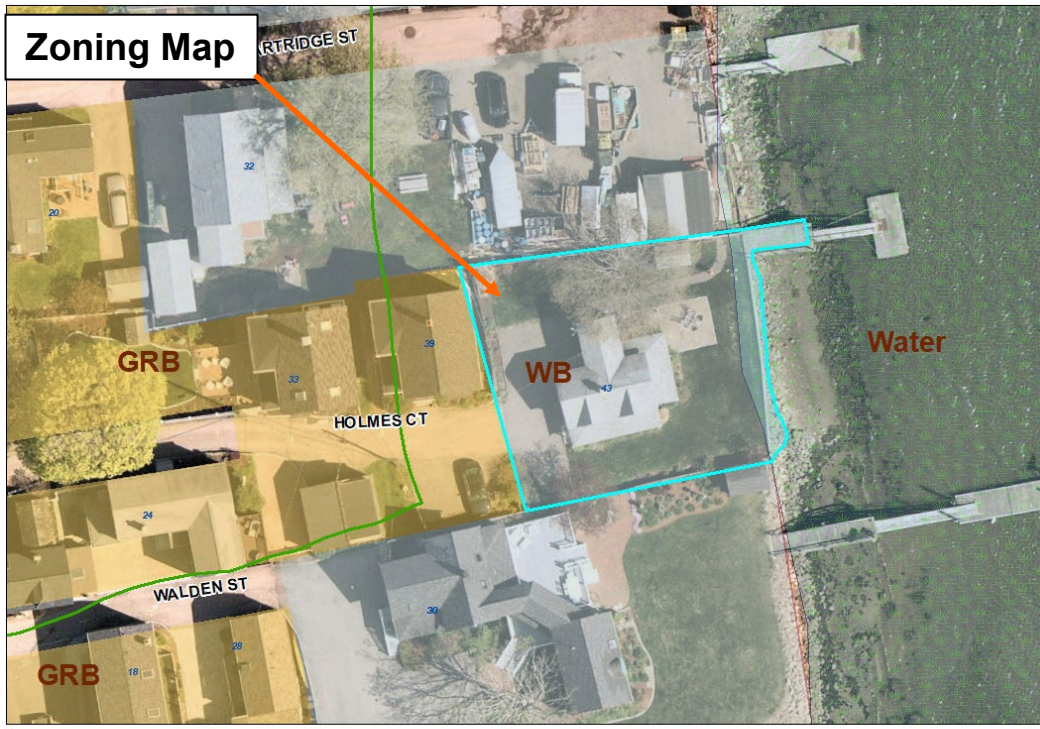
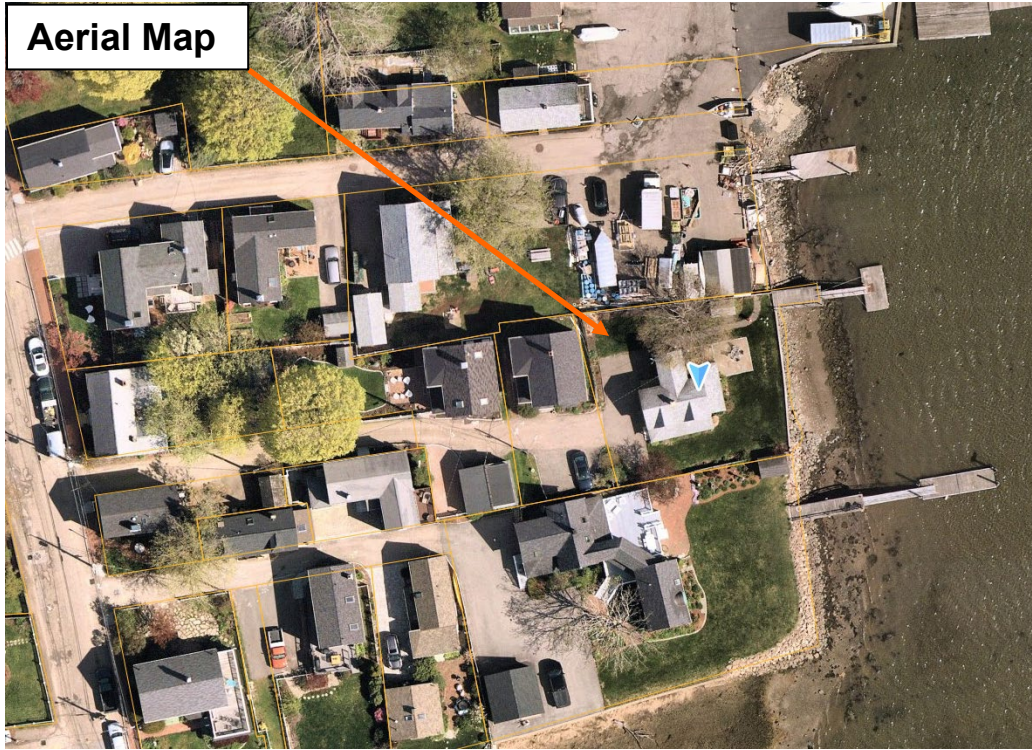
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family Dwelling	Demo existing and construct new SFD*	Primarily waterfront uses
<u>Lot area (sq. ft.):</u>	5,353	5,353*	20,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,353	5,353	NR
<u>Street Frontage (ft.):</u>	0	0*	100 min.
<u>Lot depth (ft.)</u>	75	75*	100 min.
<u>Front Yard (ft.):</u>	19	16	30 min.
<u>Left Yard (ft.):</u>	14	14*	30 min.
<u>Right Yard (ft.):</u>	14	14*	30 min.
<u>Rear Yard (ft.):</u>	26	21	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	17	22	30 max.
<u>Open Space Coverage (%):</u>	59	64	20 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1749	Variance request(s) shown in red.	

*Variances granted on December 20, 2022

Other Permits/Approvals Required

- Historic District Commission
- Building Permit

Neighborhood Context



43 Holmes Court



Previous Board of Adjustment Actions

December 20, 2022 – The Board granted relief from the Zoning Ordinance for demolishing the existing single-family dwelling and constructing a new single-family dwelling including: 1) Variances from Section 10.531 to allow a) a lot area of 5,353 square feet where 20,000 square feet is required; b) 0 feet of street frontage where 100 feet is required; c) 75' of lot depth where 100 feet is required; d) a 17 foot front yard where 30 feet is required; e) a 14 foot left side yard where 30 feet is required; and f) a 14 foot right side yard where 30 feet is required. 2) A Variance from Section 10.440, Use # 1.10 to allow a single-family dwelling where the use is not permitted.

Planning Department Comments

The Board granted several variances on December 20, 2022 to demolish the existing single-family dwelling and to construct a new single-family dwelling on the existing non-conforming lot. The applicant submitted a Wetlands Permit application to NHDES subsequently and recently received correspondence that the permit could not be approved unless the home was moved at least 1' farther away from the shoreline of the river. The applicant is requesting to modify the proposed location of the home to comply with this change and requests amended approval of the relief required for the front yard setback.

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

- D. The request of **366 Broad Street LLC (Owner)**, for property located at **366 Broad Street** whereas relief is needed to demolish the existing multi-family and single-family dwellings and accessory structure and reconstruct four single-family dwelling units, which requires the following: 1) Variance from Section 10.513 to allow more than one dwelling per lot. Said property is located on Assessor Map 221 Lot 68 and lies within the General Residence A (GRA) District. (LU-24-75)

Existing & Proposed Conditions

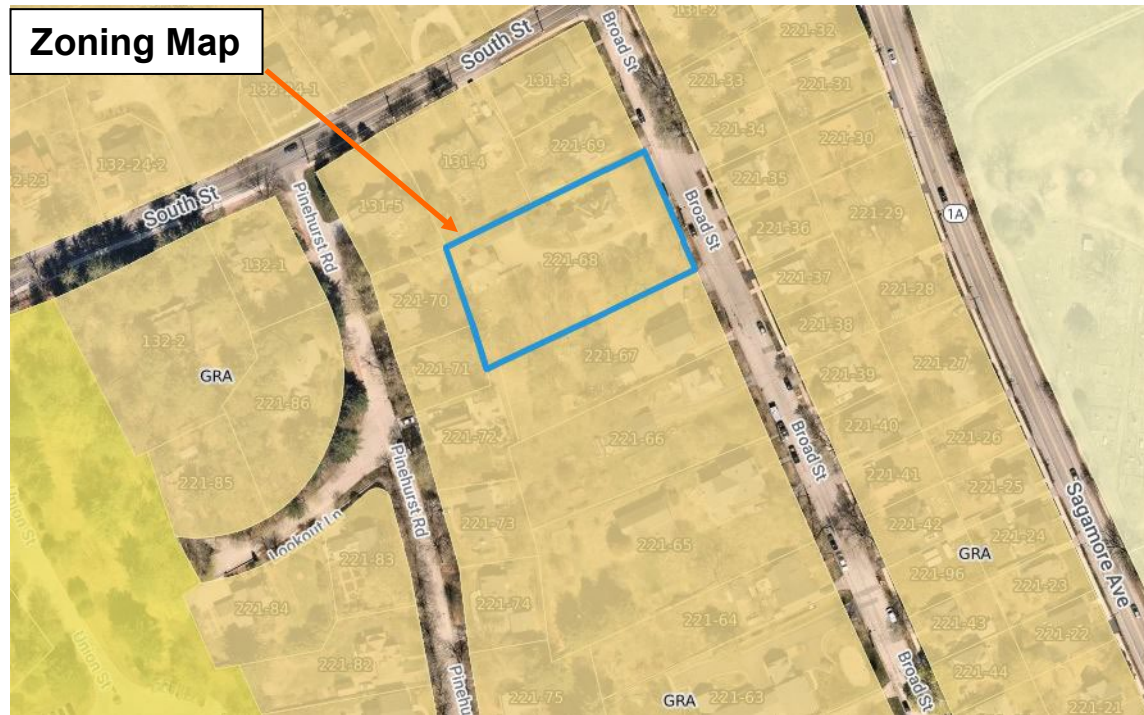
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Multi-family Dwelling	Demo existing and construct 4 SFD*	Primarily residential
<u>Lot area (sq. ft.):</u>	36,590	36,590	7,500 min.
<u>Street Frontage (ft.):</u>	146	146	100 min.
<u>Lot depth (ft.)</u>	246	246	70 min.
<u>Front Yard (ft.):</u>	53.5	25	15 min.
<u>Left Yard (ft.):</u>	77.2	12.4	10 min.
<u>Right Yard (ft.):</u>	2 (Garage)	12.8	10 min.
<u>Rear Yard (ft.):</u>	15.5	33.2	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	11	23.4	25 max.
<u>Open Space Coverage (%):</u>	66	51.3	30 min.
<u>Parking</u>	10+	8	6
<u>Estimated Age of Structure:</u>	1900	Variance request(s) shown in red.	

***Variance required for more than one dwelling per lot**

Other Permits/Approvals Required

- Site Plan Review (TAC and PB)
- 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 multi-family dwellings and accessory structures on the oversized lot and to construct four new single-family dwelling units. The proposal meets zoning requirements for the GRA District with the exception of proposing more than one dwelling unit per lot as required by Section 10.513 of the Zoning Ordinance. This will require site plan review before TAC and Planning Board if the variance is granted. If granted approval, staff recommends the following stipulation for consideration:

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

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

- E. The request of **Victoria Willingham and Robert Bowser (Owners)**, for property located at **692 State Street** whereas relief is needed for the following:
 1) Variance from Section 10.515.14 to install a mechanical unit 3 feet from the side property line whereas 10 feet is required. Said property is located on Assessor Map 137 Lot 6 and lies within the General Residence C (GRC) District. (LU-24-67)

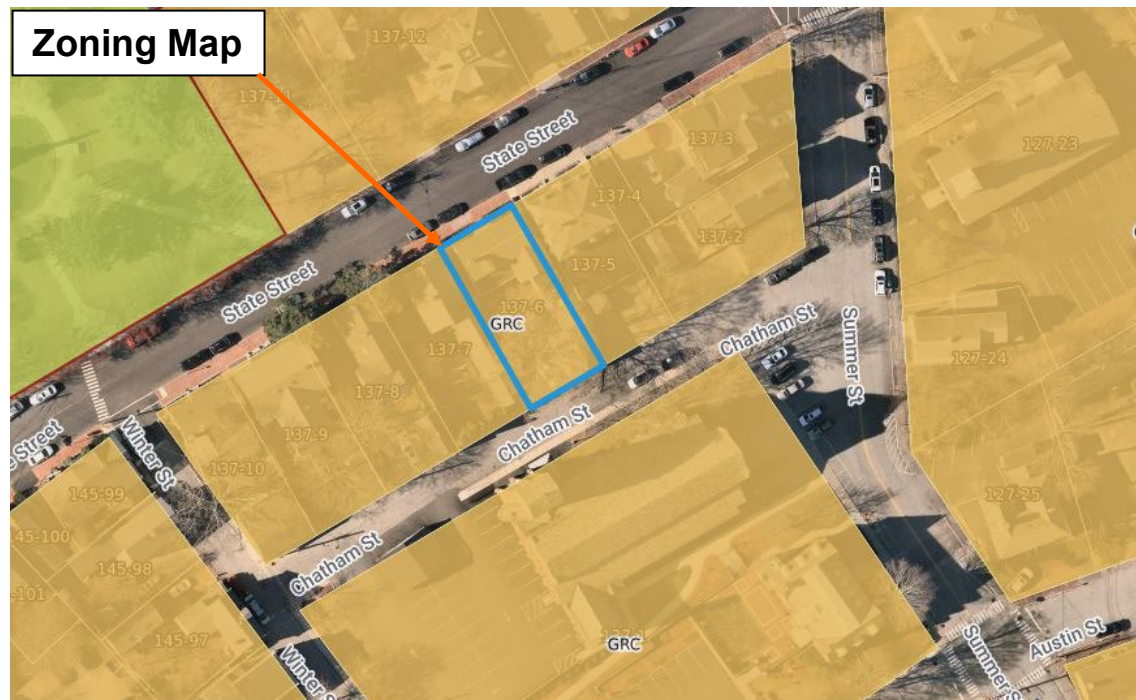
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single-family Dwelling	Mechanical Unit	Primarily Residential
<u>Lot area (sq. ft.):</u>	4,644	4,644	3,500 min.
<u>Front Yard (ft.):</u>	3	3	5 min.
<u>Left Yard (ft.):</u>	1 (SFD)	3 (Mech. Unit)	10 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1830	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Mechanical/Electrical Permit

Neighborhood Context



Previous Board of Adjustment Actions

July 16, 2002 – The Board **denied** the following relief from Zoning Ordinance including: 1) Variances from Article II, Section 10-206 to allow a dwelling unit in an accessory structure (garage) for a total of two dwelling units on the lot, and 2) a Variance from Article III, Section 10-302(A) to allow: a) two dwelling units on a 4,644 sf lot where 7,000 sf of lot area is required, b) a 2' rear yard where 20' is the minimum required, c) a 1' left side yard where 10' is the minimum required, and, d) 43% building coverage where 35% is the maximum allowed.

Planning Department Comments

The existing single-family dwelling dates to 1830 and is currently non-conforming as it was constructed 1 foot from the property line on the left side and approximately 3 feet from the front property line. The applicant is proposing the installation of a standby generator mechanical unit 3 feet from the left property line where 10 feet is required for a mechanical system. The proposed location is to the rear of the existing home behind an existing fence.

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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