



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

## MEMORANDUM

TO: Zoning Board of Adjustment  
FROM: Jillian Harris, Principal Planner  
DATE: June 12, 2024  
RE: Zoning Board of Adjustment June 18, 2024

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

- I. **New Business**
  - A. 63 Humphreys Court
  - B. 42 Sewall Road
  - C. 411 Ocean Road
  - D. 17 Whidden Street
  - E. 101 International Drive

## I. NEW BUSINESS

- A. The request of **Kimberly Rosensteel and Timothy Sullivan (Owners)**, for property located at **63 Humphreys Court** whereas relief is needed to install a mini-split air conditioning system, which requires the following relief: 1) Variance from Section 10.515.14 to install a mechanical unit 2.5 feet from the side property line whereas 10 feet is required. Said property is located on Assessor Map 101 Lot 38 and lies within the General Residence B (GRB) and Historic Districts. (LU-24-71)

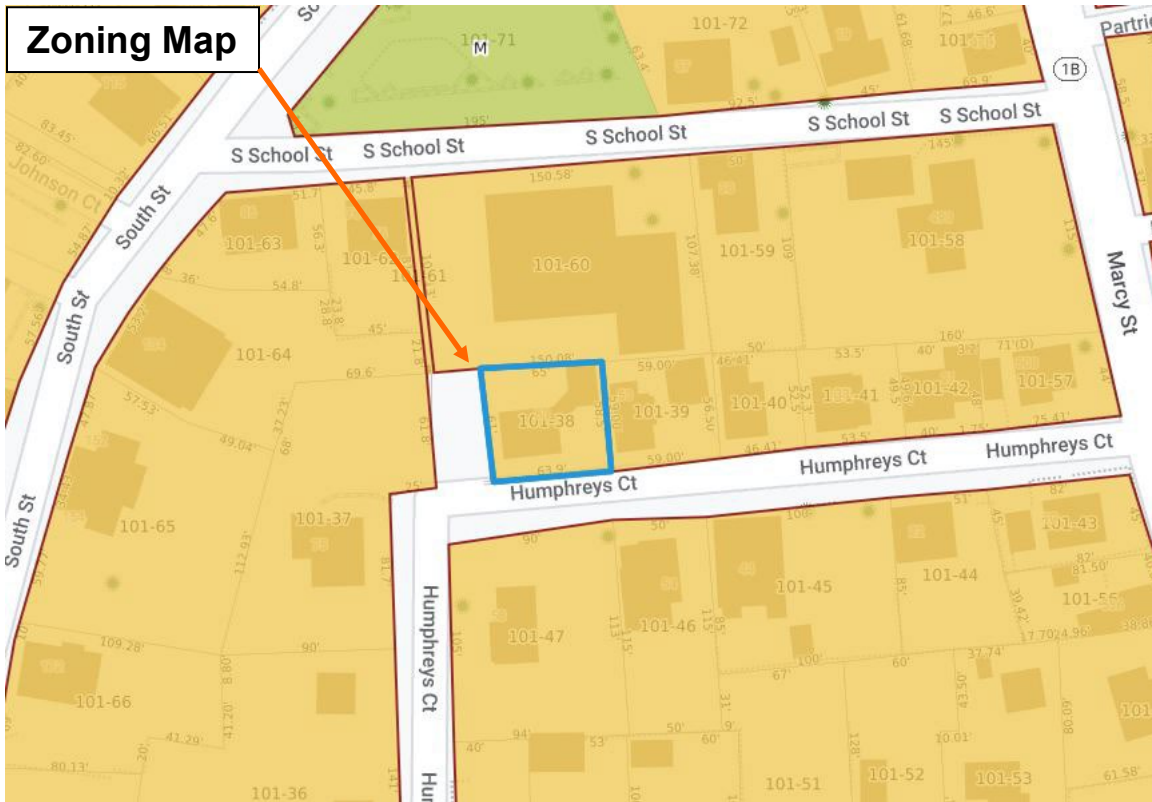
### Existing & Proposed Conditions

	<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>	3,920	3,920	5,000 min.
<u>Front Yard (ft.):</u>	13	13	5 min.
<u>Right Yard (ft.):</u>	3.75 (Structure)	2.5 (Mechanical Unit)	10 min.
<u>Parking:</u>	3	3	2
<u>Estimated Age of Structure:</u>	1958	Variance request(s) shown in red.	

### Other Permits/Approvals Required

- Historic District Commission Review
- Building Permit / Mechanical Permit

### Neighborhood Context



## Previous Board of Adjustment Actions

**November 17, 1992** – The Board **granted** a request to allow the construction of a 6.5' x 9' triangular one story breezeway addition with a) lot coverage of 30.5% where 20% allowed; b) a rear yard of 17.5' where 25' is required; and c) an increase in a nonconforming structure where no increase may be made.

**August 24, 1993** – The Board **granted** a request to allow construction of a 7'4" x 8'2" laundry addition to an existing breezeway with a rear yard of 16'3" where 25' is required, where a Variance for a 17.5' rear yard had previously been granted.

**August 20, 2013**– The Board considered a request for relief from the zoning ordinance to include the following: 1. A Variance from Section 10.521 to allow a right-side yard setback of 2.5'± where 10' is the minimum allowed. 2. A Variance from Section 10.521 to allow building coverage of 36% ± where 49%± exists and 30% is the maximum coverage allowed. The Board voted to **grant** the petition with the following stipulations:

- That the right-side yard setback will be 4.2'± as presented by the applicant at the hearing, rather than 2.5'± as advertised.
- That the existing shed will be removed.
- That the proposed deck will be less than 18" above grade.
- That any construction within the 25' rear yard will not exceed the height and footprint of existing structures ensuring that the proposed second story addition will be no closer than 25' to the rear property line.

## Planning Department Comments

The existing single-family dwelling was built in 1958 on an existing non-conforming lot and was most recently renovated with an addition in 2013. The applicant is proposing the installation of a mini-split mechanical unit in the right side yard of the existing garage. The applicant has provided two options for the location of the unit in the right side yard. **If granted approval, staff recommends the following stipulation for consideration:**

1. **The location of the unit may change as a result of review and approval of the permit, as long as it is consistent with the side setback distance as depicted in the application materials.**

## 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 **Madeline Lockwood and Drew Morgan (Owners)**, for property located at **42 Sewall Road** whereas relief is needed for a second-story addition and construction of a front porch to the existing home, which requires the following relief: 1) Variance from Section 10.521 to a) allow a 20 foot front yard where 30 feet is required; b) to allow a building coverage of 21.5% where 20% is the maximum permitted; 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 170 Lot 13 and lies within the Single Residence B (SRB) District. (LU-24-70)

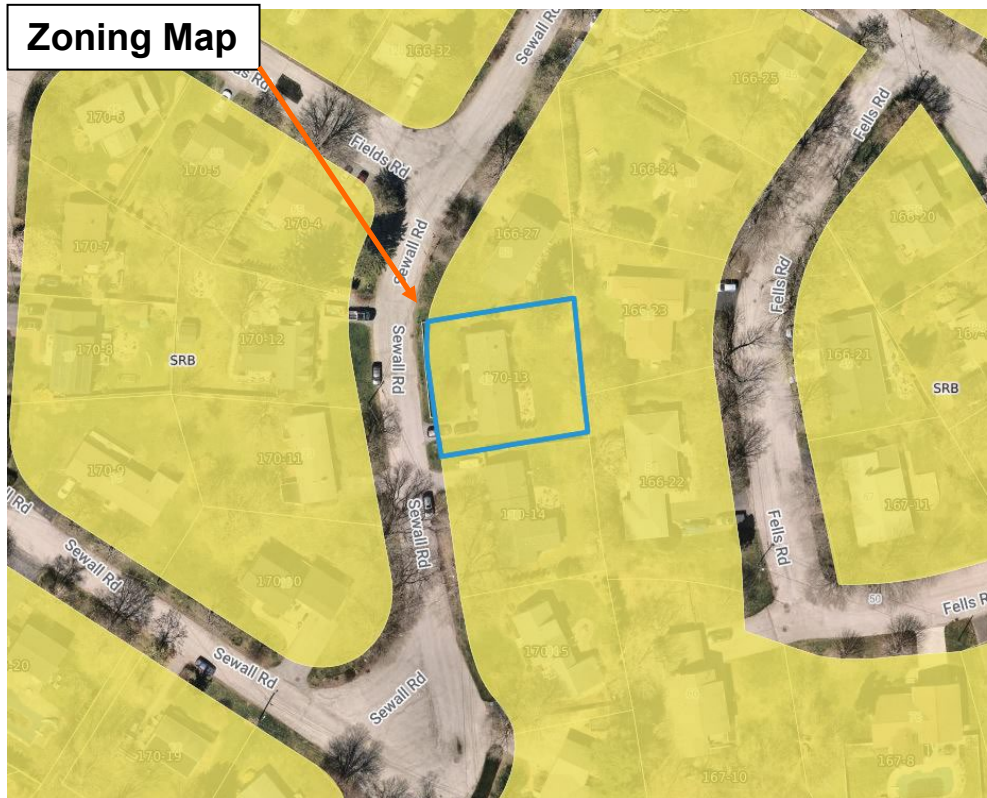
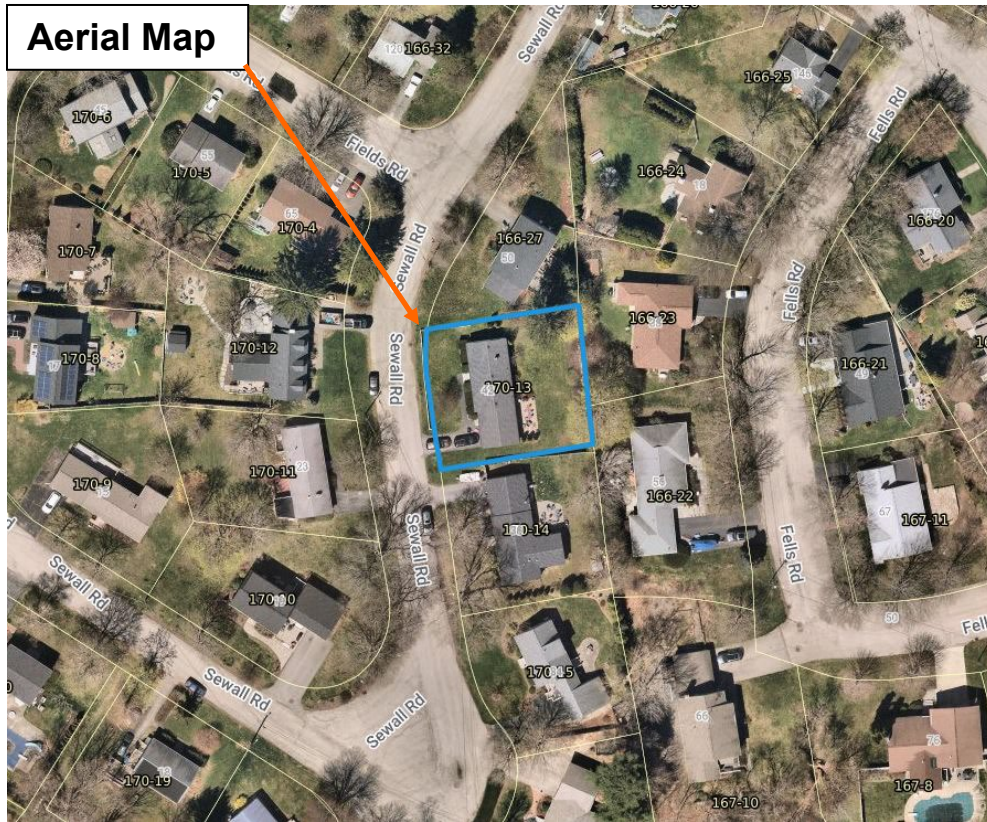
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family Dwelling	addition and front porch	Primarily residential
<u>Lot area (sq. ft.):</u>	9,053	9,053	15,000 min.
<u>Street Frontage (ft.):</u>	72.5	72.5	100 min.
<u>Lot depth (ft.)</u>	100	100	100 min.
<u>Front Yard (ft.):</u>	28	20	30 min.
<u>Left Yard (ft.):</u>	>10	>10	10 min.
<u>Right Yard (ft.):</u>	8	8	10 min.
<u>Rear Yard (ft.):</u>	>30	>30	30 min.
<u>Height (ft.):</u>	15	27	35 max.
<u>Building Coverage (%):</u>	18	21.5	20 max.
<u>Open Space Coverage (%):</u>	72	70	40 min.
<u>Parking</u>	2	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 proposes to construct a second-story addition and front porch on the existing one-story single-family dwelling. The property is an existing non-conforming lot and the primary structure sits within the front and right side yard setbacks. The proposed second story addition and front porch require relief to be constructed within the front yard and to increase the building coverage over the maximum of 20%.

## 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**

C. The request of **Christopher Blaudschun and Katie Gilpatrick (Owners)**, for property located at **411 Ocean Road** whereas relief is needed to renovate the front façade of the existing house, including construction of new dormers, bay window skirting and a new front door portico, which requires the following: 1) Variance from Section 10.521 to allow an 11.5 foot front yard where 30 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 293 Lot 7 and lies within the Single Residence A (SRA) District. (LU-24-91)

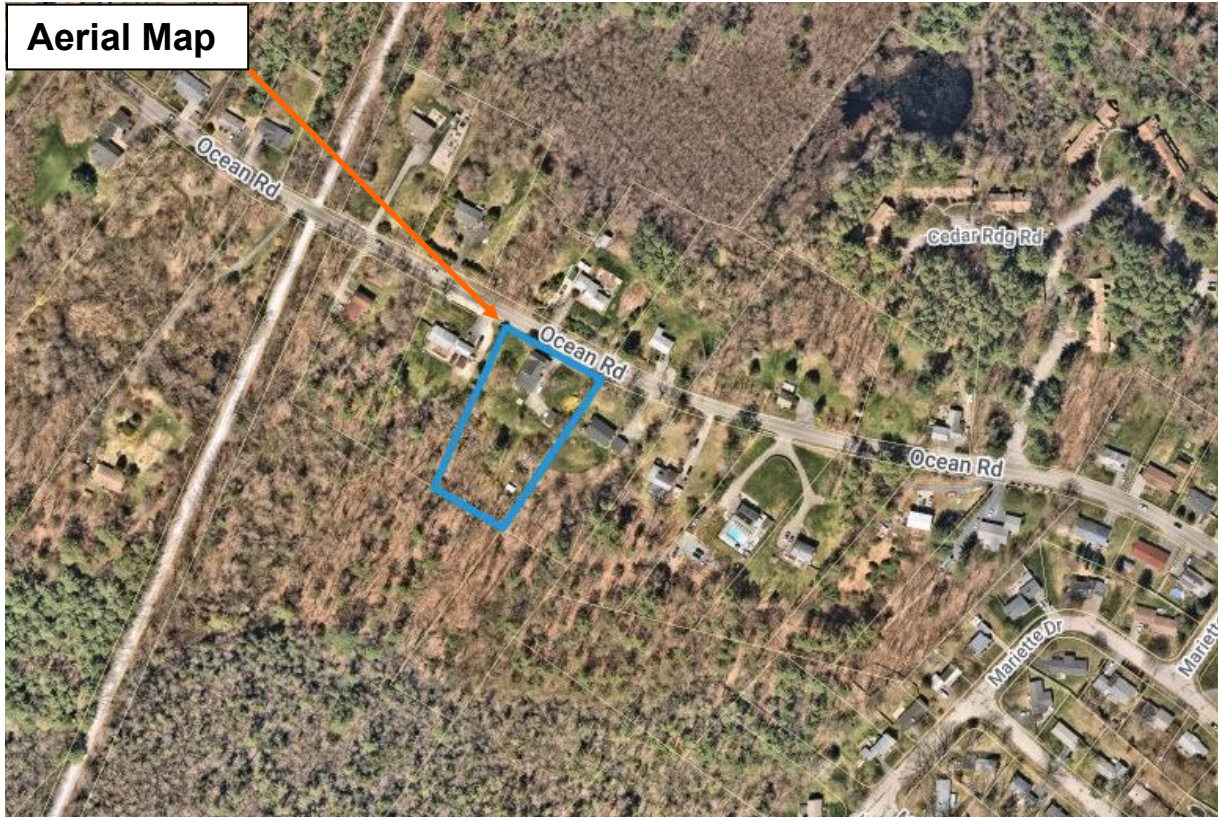
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family Dwelling	Front façade renovation	Primarily residential
<u>Lot area (sq. ft.):</u>	55,321	55,321	43,560 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	55,321	55,321	43,560 min.
<u>Street Frontage (ft.):</u>	200	200	150 min.
<u>Lot depth (ft.)</u>	320	320	200 min.
<u>Front Yard (ft.):</u>	16	11.5	30 min.
<u>Left Yard (ft.):</u>	>20	>20	20 min.
<u>Right Yard (ft.):</u>	>20	>20	20 min.
<u>Rear Yard (ft.):</u>	>40	>40	40 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	4.5	4.6	10 max.
<u>Open Space Coverage (%):</u>	90.9	90.9	50 min.
<u>Parking</u>	>2	>2	2
<u>Estimated Age of Structure:</u>	1857	Variance request(s) shown in red.	

**Other Permits/Approvals Required**

- Building Permit

### Neighborhood Context



## Previous Board of Adjustment Actions

**April 18, 2000** – The Board considered a request for a Special Exception as allowed in Article II, Section 10-206(12) requesting to establish a Home Occupation as a personal trainer from 8am to 5pm in 231.95 s.f. area of an existing single family dwelling. The Board voted that the request be **granted** as advertised and presented.

## Planning Department Comments

The applicant proposes to renovate the front façade of the existing two-story single-family dwelling, including construction of new dormers, bay window skirting and a new front door portico. The additions to the front façade require relief as the existing non-conforming structure is within the required 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.

**I. NEW BUSINESS**

**D.** The request of **Doty Seavey Family Revocable Trust and J W Seavey and Doty Seavy Trustees (Owners)**, for property located at **17 Whidden Street** whereas relief is needed to construct a fence 8 feet in height within the rear and side yards, which requires relief from the following: 1) Variance from Section 10.521 to a) allow a 0.5 foot rear yard where 25 feet is required; and b) to allow a 0.5 foot side yard where 10 feet is required. Said property is located on Assessor Map 109 Lot 5 and lies within the General Residence B (GRB) and Historic Districts (LU-24-85)

**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family Dwelling	Add 8' fence to rear and side yards*	Primarily residential
<u>Lot area (sq. ft.):</u>	1,307	1,307	5,000 min.
<u>Street Frontage (ft.):</u>	32	32	80 min.
<u>Lot depth (ft.)</u>	23	23	60 min.
<u>Front Yard (ft.):</u>	0	0	5 min.
<u>Left Yard (ft.):</u>	≈1-2	≈1-2	10 min.
<u>Right Yard (ft.):</u>	8 (structure)	0.5 (fence)	10 min.
<u>Rear Yard (ft.):</u>	≈5	0.5 (fence)	25 min.
<u>Height (ft.):</u>	<4 (existing fence)	8 (proposed fence)	4 (front yard) max. 6 (rear/side yards)
<u>Estimated Age of Structure:</u>	1840	Variance request(s) shown in red.	

\*Variance required for 8' fence within rear and side yards.

**Other Permits/Approvals Required**

- HDC Review
- Building Permit

### Neighborhood Context



## Previous Board of Adjustment Actions

No Previous BOA history found.

## Planning Department Comments

The applicant is proposing to add a fence 8 feet in height to a portion of the rear and side yards on an existing non-conforming lot. Section 10.515.13 exempts fences not over 4 feet in height in the front yard and not over 6 feet in height in the side and rear yards. As the fence is proposed to be greater than 6 feet in height it therefore requires the requested relief.

## 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.

**I. NEW BUSINESS**

**E.** The request of **Lonza Biologics (Owner)**, for property located at **101 International Drive** to add four (4) above ground storage tanks which requires relief from 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)

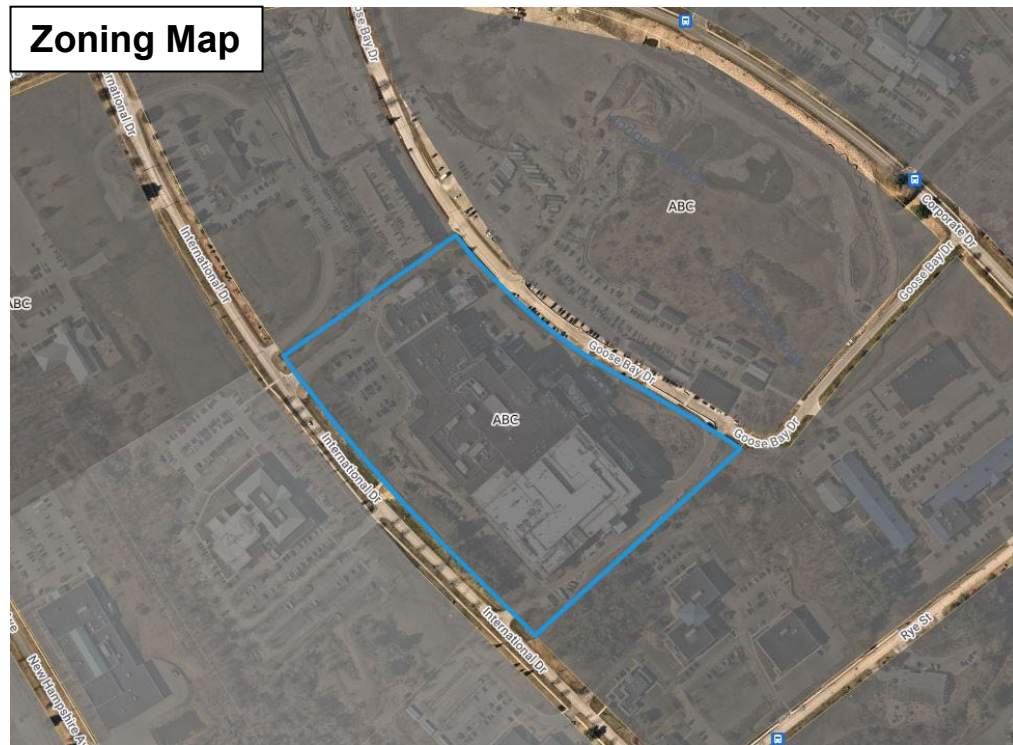
**Existing & Proposed Conditions**

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Above ground storage tank >2,000 gallons	Business, com. & trade related enterprises
<u>Above Ground Storage Facility:</u>	4 @ 4,400 gal	2,000 gal max.
	Variance request(s) shown in red.	

**Other Permits/Approvals Required**

- Pease Development Authority (PDA)

### Neighborhood Context





## **Previous Board of Adjustment Actions**

**December 15, 1998** – The Board **granted a variance** pursuant to the PDA regulations to allow 5 loading docks to be provided where 13 loading docks were required for the 130,000 s.f. expansion of the facility.

**February 20, 2001** – The Board **recommended approval** to the Pease Development Authority that a variance be granted to allow 5 loading docks where 28 loading docks are required.

**June 16, 2015** – The Board **recommended approval** to the Pease Development Authority of a variance to allow above ground storage tanks exceeding 2,000 gallon capacity for two existing and two proposed generators. The recommendation was given with a request to provide information on the life span of the above ground tanks.

**May 28, 2019** - The Board **recommended approval** to the Pease Development Authority of a variance to allow above ground storage tanks exceeding 2,000 gallon capacity.

**July 27, 2021** - The Board **recommended approval** to the Pease Development Authority to allow an above ground storage tank (AST) exceeding 2,000 gallon capacity per facility. Said property is shown on Assessor Map 305 Lot 6 and lies within the Airport Business Commercial (ABC) District.

**August 16, 2022** - The Board **recommended approval** to the Pease Development Authority for the addition of a 372 square foot wall sign which will result in 487.5 square feet of total sign area which requires the following: 1) A Variance from Section 306.01(d) to allow 487.5 square feet of total sign area where 200 square feet is the maximum allowed per lot. No additional BOA history found.

**March 26, 2024** – The Zoning Board of Adjustment, **acknowledged a request** to withdraw the application for adding 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 2,000gallon capacity per facility.

## **Planning Department Comments**

The application was before the Pease Development Authority (PDA) Board meeting on March 14, 2024 and the PDA Board voted to support the applicant's request to move forward to seek a variance.

The PDA has its own land use and zoning regulations and is exempt from the City's regulations ordinance. For certain parcels in Pease, variance requests are sent to the City for a recommendation from the BOA. A motion to approve or deny will be a recommendation

and the recommendation will become an approval by the PDA Board after 14 days unless the applicant or PDA Board member requests a hearing (see Part 317.03(f) below).

The Chapter in the Pease Land Use Controls regarding the process for a variance is below. Part 317.03(c) states the BOA will apply the standards in Part 317.01(c) in its review of the application. These standards are attached hereto under Review Criteria.

317.03      Zoning Variances Referred to Local Municipalities for Administration

- (a) For parcels located within the Industrial Zone, Business and Commercial Zone, Natural Resource Protection Zone or portions of the Airport Industrial Zone not acquired by the Pease Development Authority pursuant to Section 13(g) of the Surplus Property Act, requests for a variance from the provisions of this zoning rule shall be referred to the zoning board of adjustment for the municipality in which the parcel is situated for administration in accordance with the provisions of this section.
- (b) Applications for a variance for parcels referred to in Subsection (a) shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board and referred to the applicable zoning board of adjustment.
- (c) The zoning board of adjustment to which the application for a variance has been referred shall, in its review of the request, apply the substantive provisions of this Chapter.
- (d) Recommendations to the Board regarding requests for a zoning variance shall be made by the applicable zoning board of adjustment within sixty (60) days of referral. Notice of the recommendation shall be provided to the applicant and the Board within 48 hours of the decision.
- (e) The recommendation of the applicable zoning board of adjustment shall be forwarded to the Board along with a written report detailing the reasons for any recommendation for denial or approval with conditions.
- (f) A recommendation of the applicable zoning board of adjustment shall be deemed a final decision of the Board upon the expiration of fourteen (14) days from the date of notice, unless the applicant/developer or a member of the Board requests a hearing by the Board.
- (g) Where a hearing has been requested, the Board shall conduct a hearing and render a final decision on the variance request within thirty (30) days.

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- (h) At the discretion of the Board the time period for rendering a final decision may be extended an additional thirty (30) days, or such additional time as may be consented to by the applicant.
- (i) The Board may approve, conditionally approve or deny the application notwithstanding the recommendation of the applicable zoning board of adjustment. In the case of denial of any application by the Board or where the Board elects not to follow the recommendation of the applicable zoning board of adjustment, the ground(s) for such action shall be stated in writing.

### Review Criteria

This application must meet the criteria for a **variance** of Part 317.01(c) of the Pease Land Use Controls below.

**PART 317. VARIANCES FROM ZONING PROVISIONS**

317.01 General Provisions

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- (a) Requests for a variance from the provisions of this zoning rule shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board.
- (b) Applications for zoning variance approval shall set forth the specific provision of the rule or regulation involved and reasons why a variance should be granted.
- (c) A variance shall not be approved or recommended for approval unless it is in harmony with the general purpose and intent of these regulations and meets the following criteria:
- (1) No adverse effect or diminution in values of surrounding properties would be suffered.
  - (2) Granting the variance would be of benefit to the public interest.
  - (3) Denial of the variance would result in unnecessary hardship to the person seeking it.
  - (4) Granting the variance would be substantial justice.
  - (5) The proposed use would not be contrary to the spirit of this zoning rule.
- (d) Reasonable conditions necessary to meet one or more of the standards in subsection (c) above may be attached to approval of a variance.