



City of Portsmouth  
Planning Department  
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Portsmouth, NH  
(603)610-7216

## MEMORANDUM

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

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

### II. New Business

- A. 485 Ocean Road
- B. 133 Pearson Street
- C. 0 Melbourne Street
- D. 231 Corporate Drive
- E. 132 Chapel Street
- F. 371 Islington Street
- G. 170 Gates Street
- H. 34 Marne Avenue
- I. 493 Dennett Street

## II. NEW BUSINESS

- A. The request of **Dawn P. Sirois (Owner)**, for property located at **485 Ocean Road** whereas relief is needed to demolish the existing rear deck and construct a new screened in porch which requires the following: 1) Variance from Section 10.521 to allow 14% building coverage where 10% is allowed; and 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. Said property is located on Assessor Map 283 Lot 32 and lies within the Single Residence A (SRA) District. (LU-24-103)

### Existing & Proposed Conditions

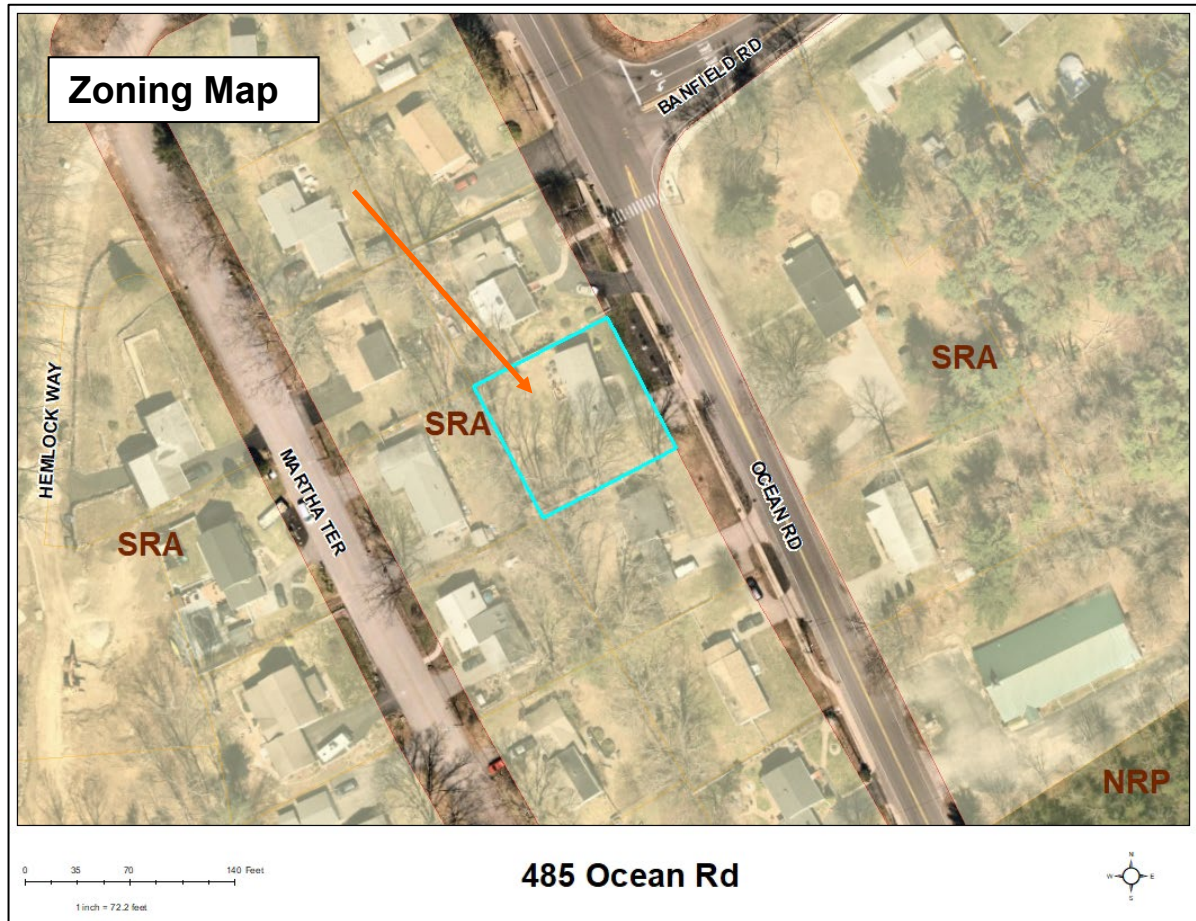
	Existing	Proposed	Permitted / Required
<u>Land Use:</u>	Single-family	*Construct a screened in porch	Primarily residential
<u>Lot area (sq. ft.):</u>	10,019	10,019	43,560 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,019	10,019	43,560 min.
<u>Lot depth (ft.):</u>	100	100	200 min.
<u>Street Frontage (ft.):</u>	100	100	150 min.
<u>Front Yard (ft.):</u>	17	17	30 min.
<u>Right Yard (ft.):</u>	House: 7 Porch: 27	House: 7 Porch: 22	20 min.
<u>Left Yard (ft.):</u>	>20	>20	20
<u>Rear Yard (ft.):</u>	51	51	40 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	17	14	10 max.
<u>Open Space Coverage (%):</u>	>50	>50	50 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1963	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 history found

## Planning Department Comments

The applicant is requesting relief for the demolition of the existing rear 10' by 10' porch and to construct a 10' by 15' covered porch in its place. The dimensions of the structure conform to all setback requirements, however the relief requested is to allow for the increase in building coverage on the 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):

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. The request of **Avi Magidoff (Owner)**, for property located at **133 Pearson Street** whereas relief is needed to construct a car port which requires the following: 1) Variance from Section 10.573.20 to allow a 4 foot side yard where 8.5 feet is required. Said property is located on Assessor Map 232 Lot 103 and lies within the Single Residence B (SRB) District. (LU-24-107)

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	<b>Construct a detached car port</b>	Primarily residential
<u>Lot area (sq. ft.):</u>	22,216	22,216	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	22,216	22,216	15,000 min.
<u>Street Frontage (ft.):</u>	22	22	100 min.
<u>Lot depth (ft.)</u>	93	93	100 min.
<u>Front Yard (ft.):</u>	House: 16	House:16 Carpport: 30	30 min.
<u>Left Yard (ft.):</u>	House: >10	House:>10	10 min.
<u>Right Yard (ft.):</u>	House: >10	House:>10 <b>Carpport: 4</b>	8.5 min.
<u>Rear Yard (ft.):</u>	House: 20	House: 20 Carpport: >30	30 min.
<u>Carpport Height</u>	n/a	8.5	max.
<u>Building Coverage (%):</u>	6.4	7.5	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1938	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

- Building Permit

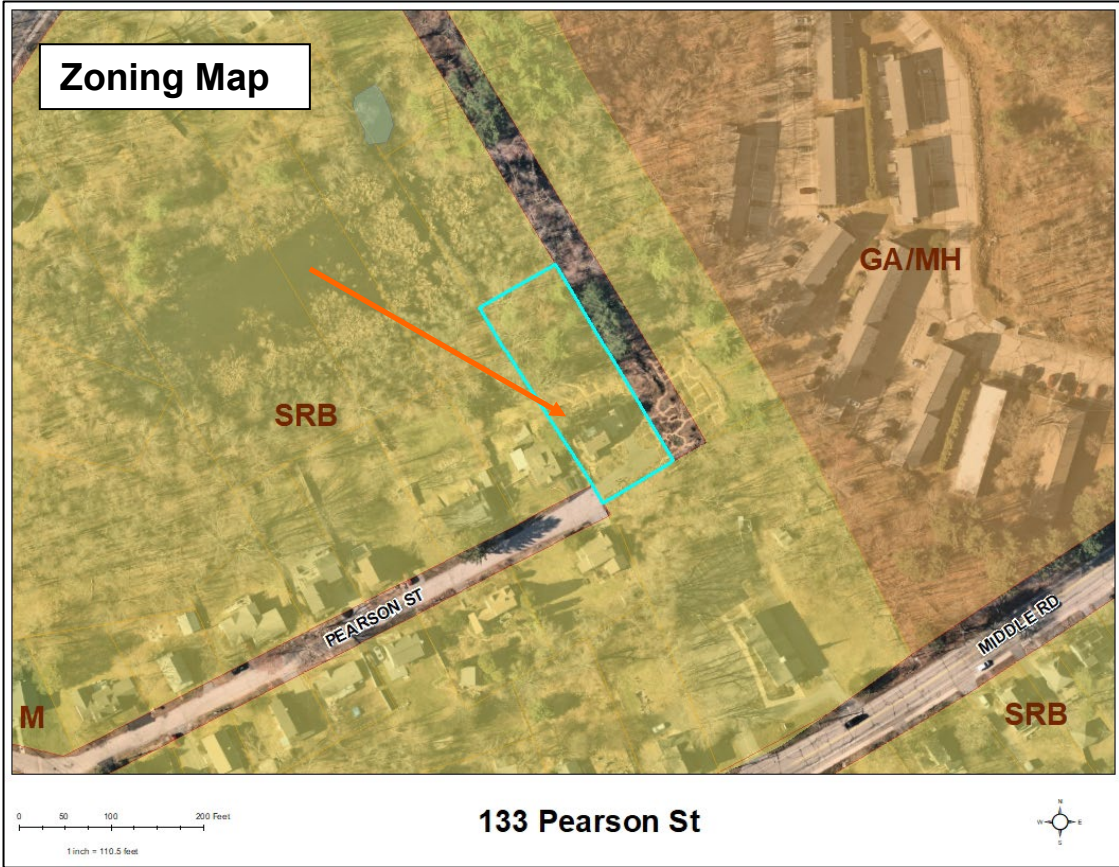


### Neighborhood Context

**Aerial Map**



**Zoning Map**



## Previous Board of Adjustment Actions

**October 21, 2008** – The Board **denied** the petition for a Variance from Article II, Section 10-206(12) to allow an acupuncture office (114 sf) as a Home Occupation II requiring one parking space on the lot where two parking spaces are provided for the residence and no additional parking is provided for the office.

## Planning Department Comments

The applicant is requesting relief to construct a detached car port in the existing driveway. The carport is to be located within the required side yard and on top of the existing paved driveway.

## 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

- C. The request of **Bruce R Carll (Owner) and Patrick and Wendy Quinn (Applicants)**, for property located at **0 Melbourne Street** whereas relief is needed to construct a single residential unit on a vacant and undersized lot which requires the following: 1) Variance from Section 10.521 to allow a) 6,197 sf of lot area where 15,000 sf are required, b) 6,197 sf of lot area per dwelling unit where 15,000 sf are required, and c) 50 ft of frontage where 100 ft are required. Said property is located on Assessor Map 233 Lot 54 and lies within the Single Residence B (SRB) District. (LU-24-109)

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant Lot	Construct single family home	Primarily residential
<u>Lot area (sq. ft.):</u>	6,197	6,197	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,197	6,197	15,000 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.)</u>	112	112	100 min.
<u>Front Yard (ft.):</u>	n/a	30	30 min.
<u>Left Yard (ft.):</u>	n/a	10	10 min.
<u>Right Yard (ft.):</u>	n/a	10	10 min.
<u>Rear Yard (ft.):</u>	n/a	30	30 min.
<u>Height (ft.):</u>	n/a	35	35 max.
<u>Building Coverage (%):</u>	0	18.5	20 max.
<u>Open Space Coverage (%):</u>	100	40	40 min.
<u>Parking</u>	0	2	2
<u>Estimated Age of Structure:</u>	n/a	Variance request(s) shown in red.	

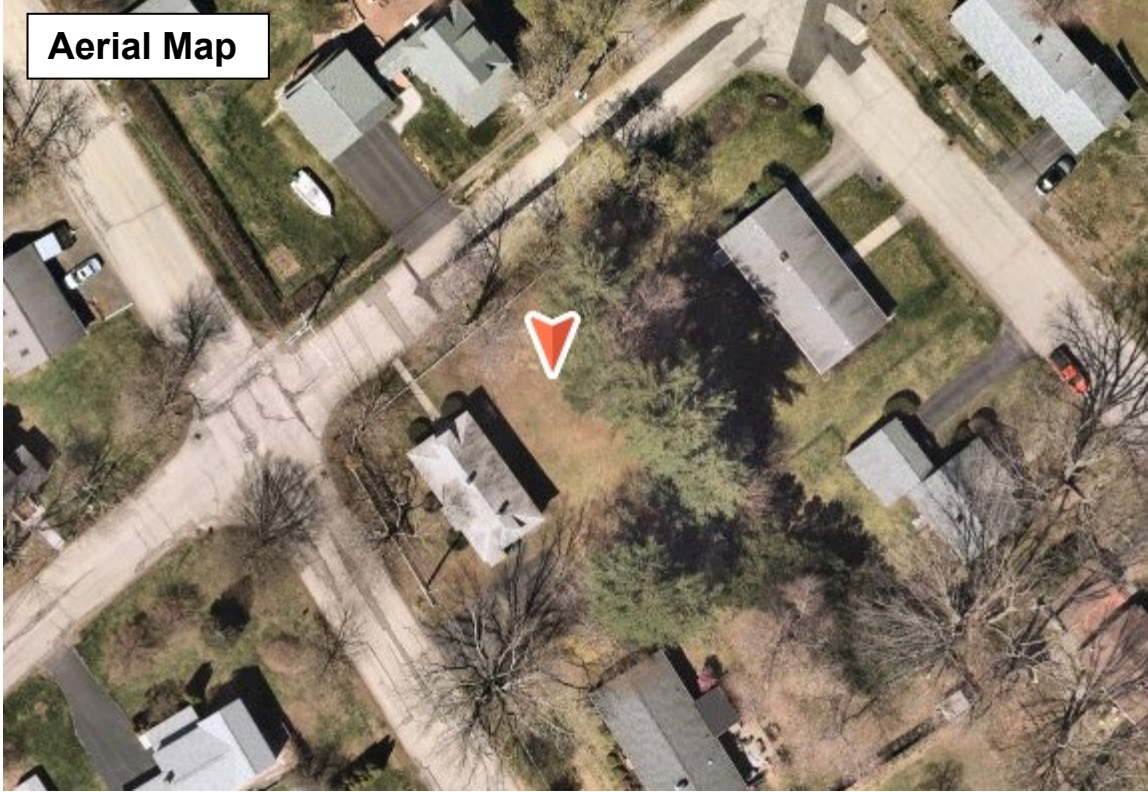
### Other Permits/Approvals Required

- Building Permit

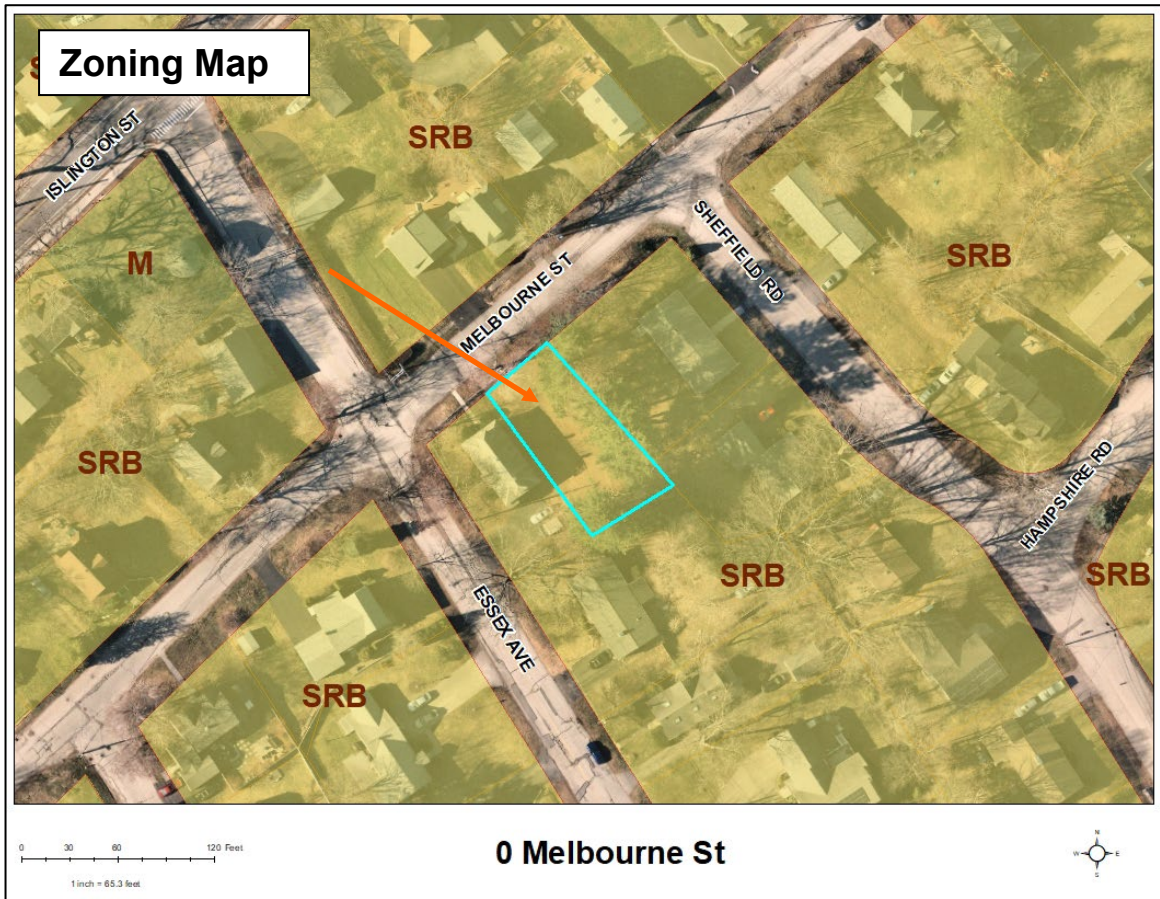


### Neighborhood Context

**Aerial Map**



**Zoning Map**



## Previous Board of Adjustment Actions

No previous history found.

## Planning Department Comments

The applicant is requesting relief to construct a single-family home on an undersized vacant lot. The variances requested are specific to the lot non-conformities. The applicant has submitted preliminary designs that may change as they further develop the project. However, the applicant has committed to creating a structure that conforms to Zoning.

Should the Board approve the requests, Staff suggest the following condition of approval or similar:

1. *The design and orientation of the home and driveway may change as a result of the Building Permit 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**

**D.** The request of **231 Corporate Drive, LLC (Owner)**, for property located at **231 Corporate Drive** whereas relief is needed to add a fenced area between the building and the front lot line, for the use associated with dog walking which requires the following: 1) from Section 305.02(a) of the Pease Development Ordinance for an accessory use located in the front yard and: 2) from Section 304.04(c) of the Pease Development Ordinance for being located within 70 feet of the front lot line. Said property is located on Assessor Map 314 Lot 2 and lies within the Airport Business Commercial (ABC) District. (LU-24-114)

**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Veterinary Office	*Construct fenced in dog walking area	Mixed business and commercial
<u>Front Yard (ft.):</u>	71	67	70 max.
<u>Estimated Age of Structure:</u>	2004	Variance request(s) shown in red.	

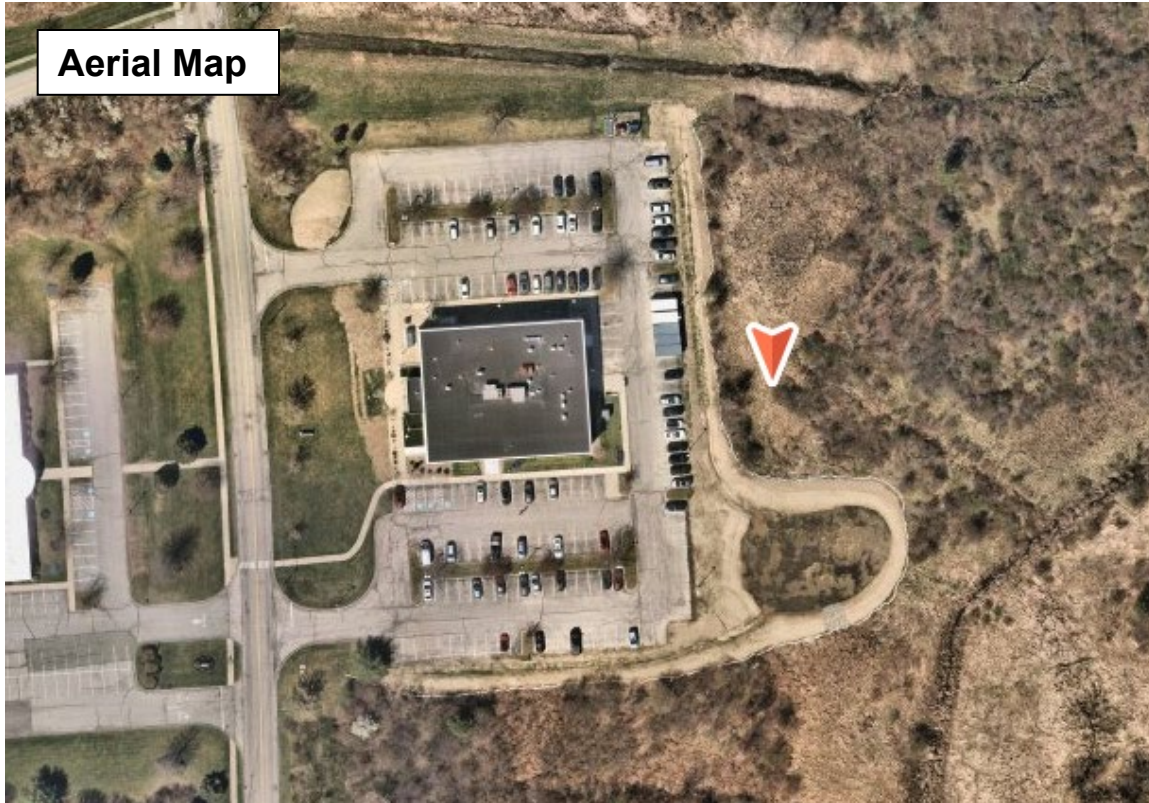
\*Relief needed to create an accessory use in the front yard area

**Other Permits/Approvals Required**

- Site Plan Review (Technical Advisory Committee and Planning Board)
- Building Permit
- Pease Development Authority (PDA)



### Neighborhood Context





**Previous Board of Adjustment Actions**

No previous history found.

**Planning Department Comments**

The applicant is requesting to install a dog walking area in front of the existing veterinary office building.

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).

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.

## Variance 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.

**II. NEW BUSINESS**

- E. The request of **132 Chapel Street, LLC (Owner)**, for property located at **132 Chapel Street** whereas relief is needed to convert an existing commercial building back to a single residential unit which requires the following: 1) Variance from Section 10.440 Use #1.10 to allow a single family dwelling where it is not permitted; 2) Variance from Section 10.5A41.10C to allow a House building type where it is not permitted; and 3) Variance from Section 10.642 to allow a residential use on the ground floor where is it not permitted. Said property is located on Assessor Map 106 Lot 6 and lies within the Character District 4 (CD4) and Historic District and the Downtown Overlay District (DOD). (LU-24-115)

**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial	*Convert to residential	Mixed-Use
<u>Lot area (sq. ft.):</u>	2,178	2,178	NR min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,178	2,178	NR min.
<u>Parking</u>	0	0	0
<u>Estimated Age of Structure:</u>	1882	Variance request(s) shown in red.	

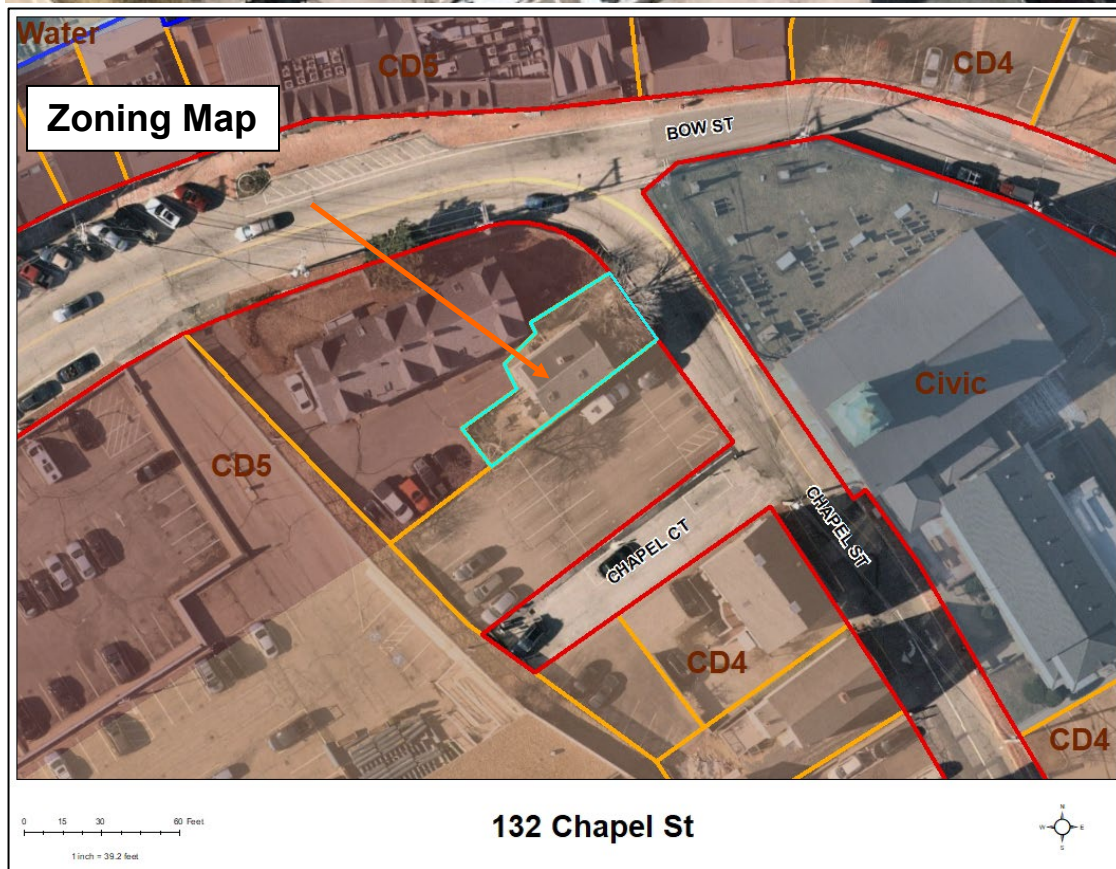
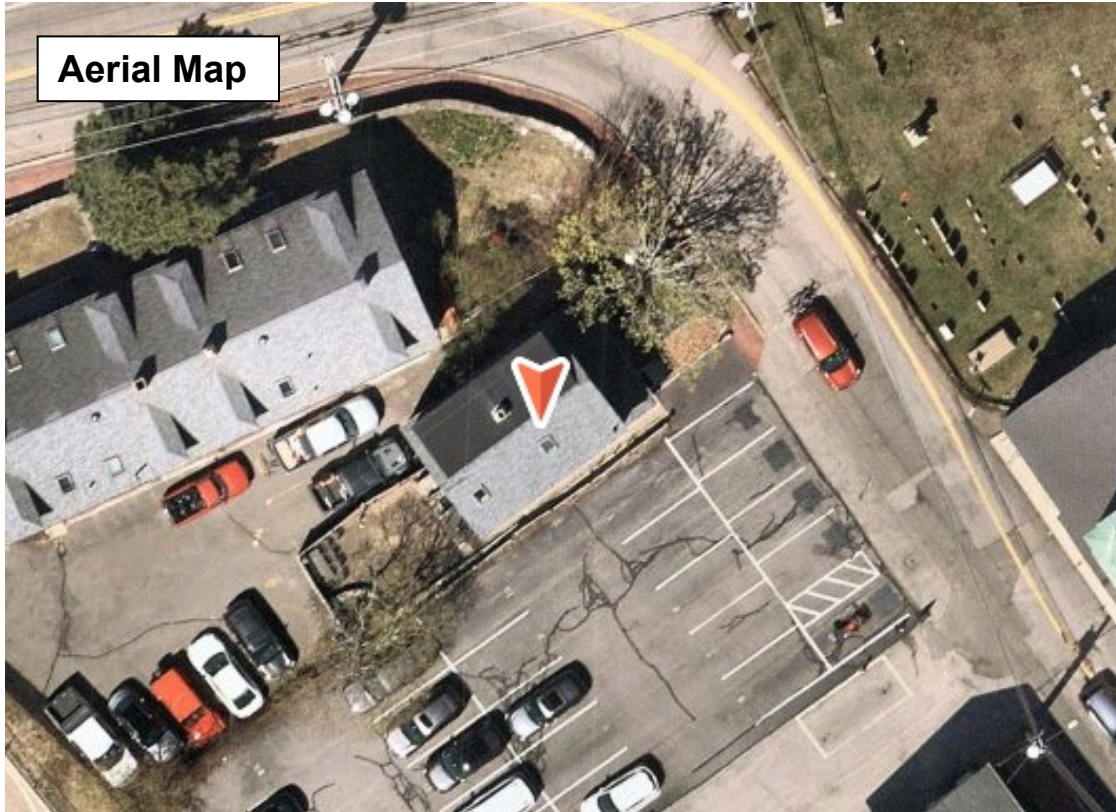
\*Relief needed to establish a residential use on the first floor of a building in the downtown overlay district and to allow a house building type in the CD4

**Other Permits/Approvals Required**

- Building Permit
- Historic District Commission Approval



### Neighborhood Context



## Previous Board of Adjustment Actions

No previous history found.

## Planning Department Comments

The applicant is requesting to convert the existing commercial structure into a single residential unit. The applicant is not proposing any exterior changes and the house structure will remain unchanged from the outside.

The property requires 2 parking spaces however it is located within the Downtown Overlay District (DOD) which provides a 4 space credit, see Section 10.1115.23 of the [Zoning Ordinance](#). An additional requirement of the DOD is a non-residential use on the ground floor. This conversion would create a residential use on the ground floor and therefore, relief is needed.

The requirements of the CD4 district can be found in Section 10.5A41.10C of the [Zoning District](#). You will see that a “house” is not a permitted building type and as such, relief is needed for this conversion.

## 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**

- F. The request of **Islington Properties, LLC (Owner)**, for property located at **371 Islington Street** whereas relief is needed to convert an existing commercial space into a residential unit which requires the following: 1) Variance from Section 10.5A41.10A to allow 918 sf of lot area per dwelling unit where 3,000 sf are required. Said property is located on Assessor Map 144 Lot 22-3 and lies within the Character District 4-L2 (CD4-L2) and Historic District. (LU-24-106)

**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed-Use	Convert a commercial unit to residential	Mixed-Use
<u>Lot area (sq. ft.):</u>	4,591	4,591	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1530	1,148	3,000 min.
<u>Parking</u>	6	6	8
<u>Estimated Age of Structure:</u>	1880	Variance request(s) shown in red.	

**Other Permits/Approvals Required**

- Building Permit
- Historic District Commission Approval

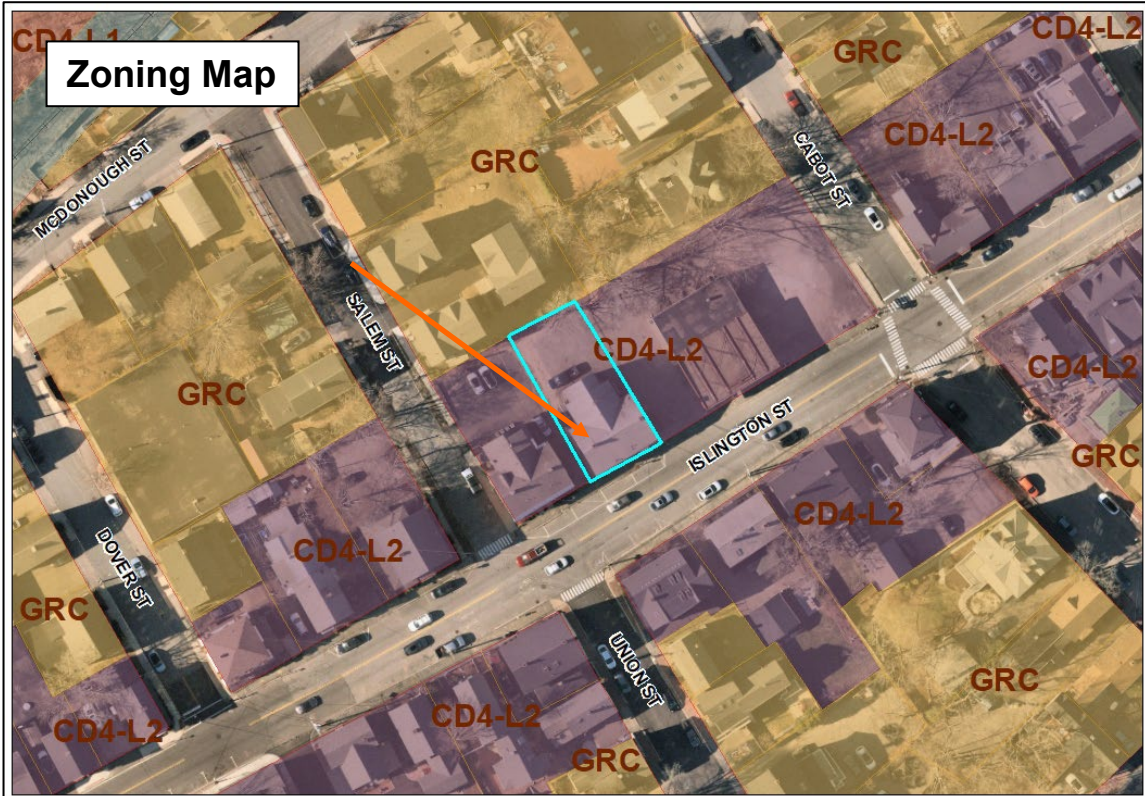


### Neighborhood Context

**Aerial Map**



**Zoning Map**



0 30 60 120 Feet  
1 inch = 63.1 feet

**371 Islington St**





## Previous Board of Adjustment Actions

- July 22, 1976 – The Board **denied** a request to paint advertising signage on both sides of the existing structure where the sign area permitted in the Ordinance is exceeded.
- August 12, 1976 – The Board **granted** a Rehearing on the above request.
- August 24, 1976 – The Board voted to *rescind the vote of August 12, 1976* regarding the motion for rehearing and the motion for rehearing stood as **denied**.
- July 19, 2011 – The Board **granted** a Variance from Section 10.521 to allow a lot area per dwelling unit of 918 s.f.± where 7,500 s.f. per dwelling unit is required; and a Variance from Section 10.1112.30 (1) to allow conversion to residential units without the required parking.
- March 20, 2012 – The Board **denied** a Variance from Section 10.1251 to permit an aggregate signage of 59± s.f. where 40 s.f. is the maximum allowed.

## Planning Department Comments

The applicant is requesting to convert unit # 371 A from commercial space to residential use. The applicant has applied for and been advertised for 918 sf of lot area per dwelling unit, however, upon further review by staff it appears that only 1,148 sf of lot area needs to be requested as there are 4 residential units and 1 commercial unit proposed and not 5 residential units.

Should the Board find that the application should receive approval of the request, Staff recommend the following or a similar condition of approval:

1. The applicant is approved for 1,148 square feet of lot area per dwelling unit, not 918 as advertised.

## 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**

**G.** The request of **Katherine Ann Bradford 2020 Revocable Trust (Owner)**, for property located at **170-172 Gates Street** whereas relief is needed to demolish the existing garage and the small rear addition, and construct a new garage in the same location as the existing garage and construct a side entryway roof which requires the following: 1) Variance from Section 10.521 to allow a) 45% building coverage where 30% is required, and b) 0 foot right side yard where 10 feet is required; 2) Variance from Section 10.573.20 to allow a 0 foot rear yard where 10.5 feet is required; 3) 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. Said property is located on Assessor Map 103 Lot 19 and lies within the General Residence B (GRB) and Historic District. (LU-24-116)

**Existing & Proposed Conditions**

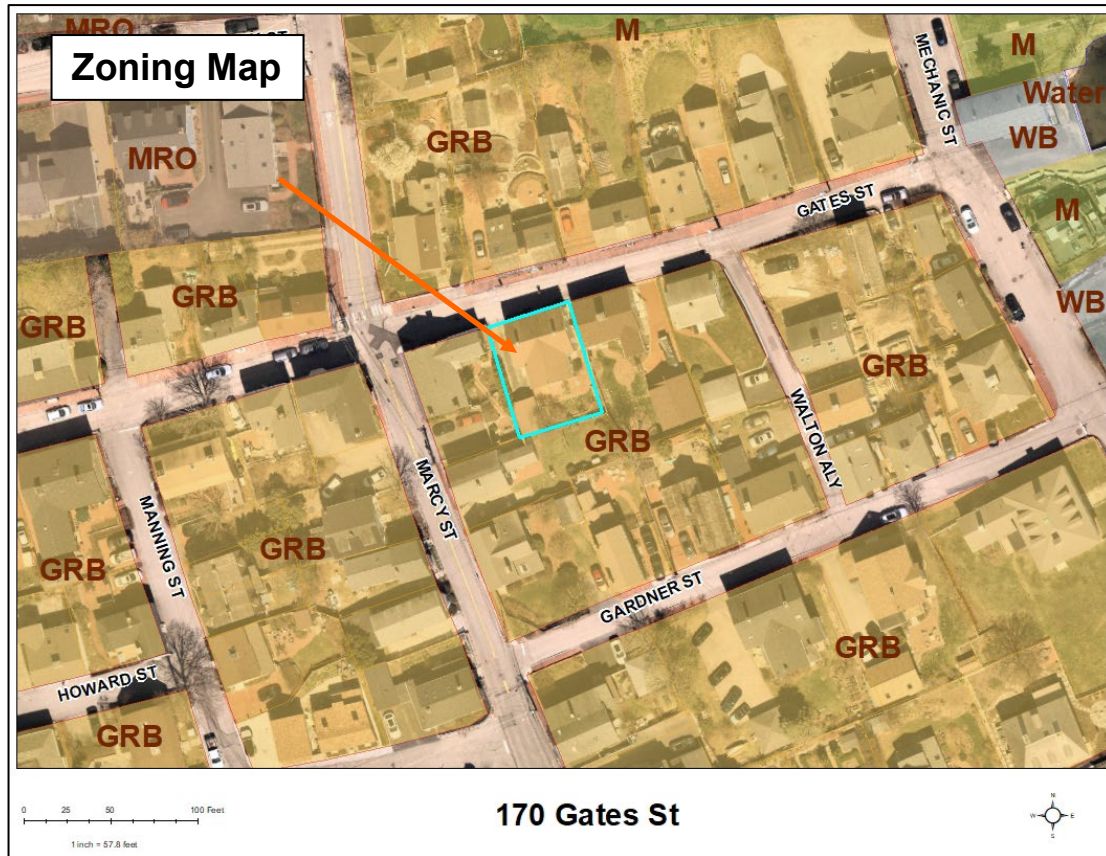
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	*Demolish and reconstruct garage and construct roof over side entryway	Mixed-Use
<u>Lot area (sq. ft.):</u>	3,393	3,393	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,393	3,393	5,000 min.
<u>Front Yard (ft.):</u>	1.5	1.5	5 min.
<u>Left Yard (ft.):</u>	5	5	10 min.
<u>Right Yard (ft.):</u>	0	0	10 min.
<u>Rear Yard (ft.):</u>	0	0	10.5 min.
<u>Garage Height (ft.):</u>	10.5	10.5	35 max.
<u>Building Coverage (%):</u>	46	45	30 max.
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1780	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
- Historic District Commission Approval

### Neighborhood Context



## Previous Board of Adjustment Actions

No previous history found.

## Planning Department Comments

The applicant is requesting to demolish the existing garage and reconstruct it in the same location. As part of this project, the applicant will also be removing a small portion of the existing primary structure and constructing a roof over the side entryway.

## 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**

H. The request of **Kenneth Racicot and Kelly Ann Racicot (Owners)**, for property located at **34 Marne Avenue** whereas relief is needed to construct a shed behind the primary structure which requires the following: 1) Variance from Section 10.573.20 to allow a 5 foot side yard where 10 feet is required. Said property is located on Assessor Map 222 Lot 33 and lies within the General Residence A (GRA) District. (LU-24-66)

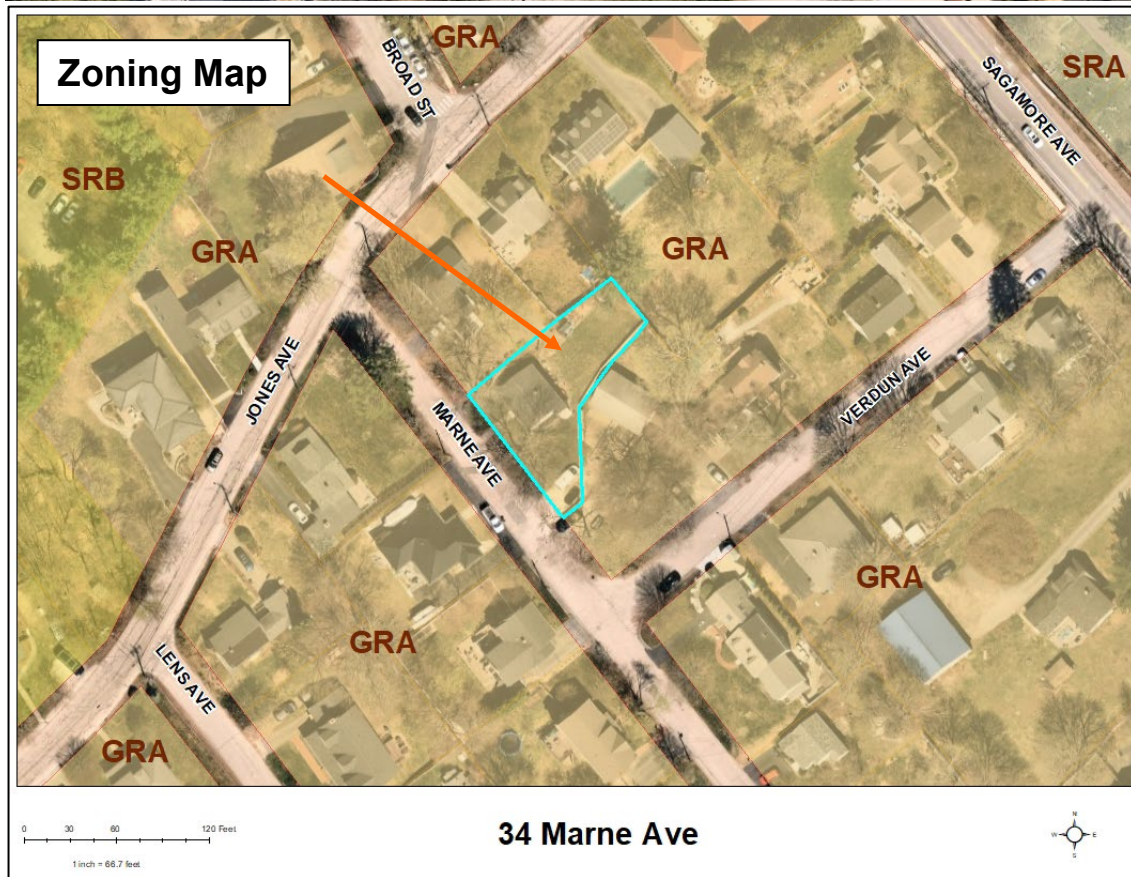
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Construct a shed	Mixed-Use
<u>Lot area (sq. ft.):</u>	7,405	7,405	7,500 min.
<u>Front Yard (ft.):</u>	19	19	15 max.
<u>Left Yard (ft.):</u>	Shed: n/a	Shed: 5	8'9" min.
<u>Right Yard (ft.):</u>	Shed: n/a	Shed: 21	8'9" min.
<u>Rear Yard (ft.):</u>	Shed: n/a	Shed: 28	20 min.
<u>Height (ft.):</u>	Shed: n/a	Shed: 8'9"	max.
<u>Building Coverage (%):</u>	11.9	13.5	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1956	Variance request(s) shown in red.	

**Other Permits/Approvals Required**

- Building Permit

### Neighborhood Context



## Previous Board of Adjustment Actions

September 22, 2015 – The Board **granted** a Variance from Section 10.521 to allow a lot area and a lot area per dwelling unit of 7,461± s.f. where 7,500 s.f. is required for both.

## Planning Department Comments

The applicant is proposing to construct a shed in the back yard of the property.

The application was advertised to require a setback at 10 feet from the side and rear, however after the advertisement it was calculated that the height, as measured by the Portsmouth Zoning Ordinance, measures 8'9" which requires the equivalent for the side and rear setbacks.

## 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**

- I. The request of **Lindsay Floryan and Brian Collier (Owners)**, for property located at **493 Dennett Street** whereas relief is needed to construct an 8 foot fence which requires the following: 1) Variance from Section 10.515.13 to allow an 8 foot fence where 6 feet is the maximum. Said property is located on Assessor Map 161 Lot 45 and lies within the General Residence A (GRA) District. (LU-24-78)

**Existing & Proposed Conditions**

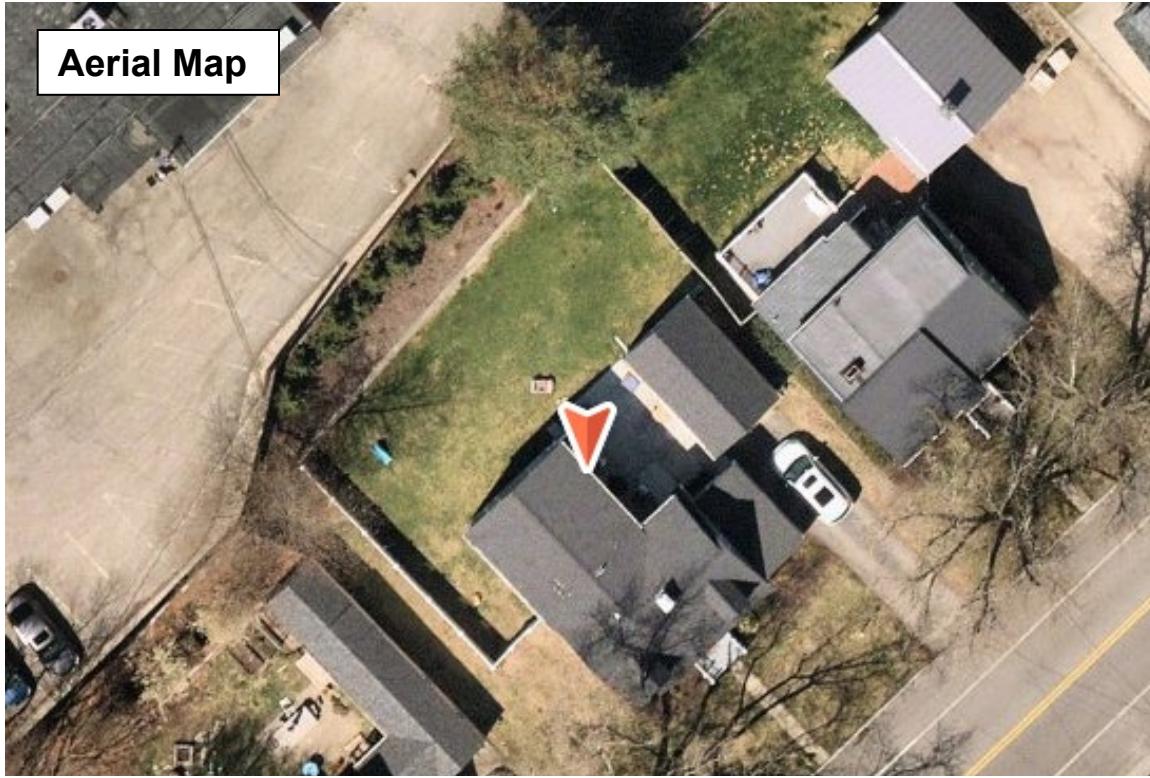
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Construct an 8 foot fence	Mixed-Use
<u>Fence Height</u>	6	8	6 min.
<u>Estimated Age of Structure:</u>	1941	Variance request(s) shown in red.	

**Other Permits/Approvals Required**

- Building Permit



### Neighborhood Context



### Previous Board of Adjustment Actions

No previous history found.

### Planning Department Comments

The applicant is requesting to replace a portion of the rear 6 foot fence with an 8 foot fence.

Please note, fences 6 feet and shorter do not need a building permit. As this is an 8 foot fence, a building permit will be required to construct the 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.