



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

MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Stefanie Casella, Planner
Jillian Harris, Principal Planner
DATE: January 22, 2025
RE: Zoning Board of Adjustment January 28, 2025

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

I. New Business

- A. 86 Emery Street
- B. 909 Islington Street
- C. 294 Lincoln Avenue
- D. 93 Pleasant Street
- E. 48 Langdon Street

I. NEW BUSINESS

- A. The request of **Michele Kathryn Arbour and Jeffrey M. Mattson (Owners)**, for property located at **86 Emery Street** whereas relief is needed to construct a firewood shed which requires the following: 1) Variance from Section 10.571 to allow an accessory structure to be located closer to the street than the primary structure. Said property is located on Assessor Map 220 Lot 87-1 and lies within the Single Residence B District (SRB) (LU-24-215)

Existing & Proposed Conditions

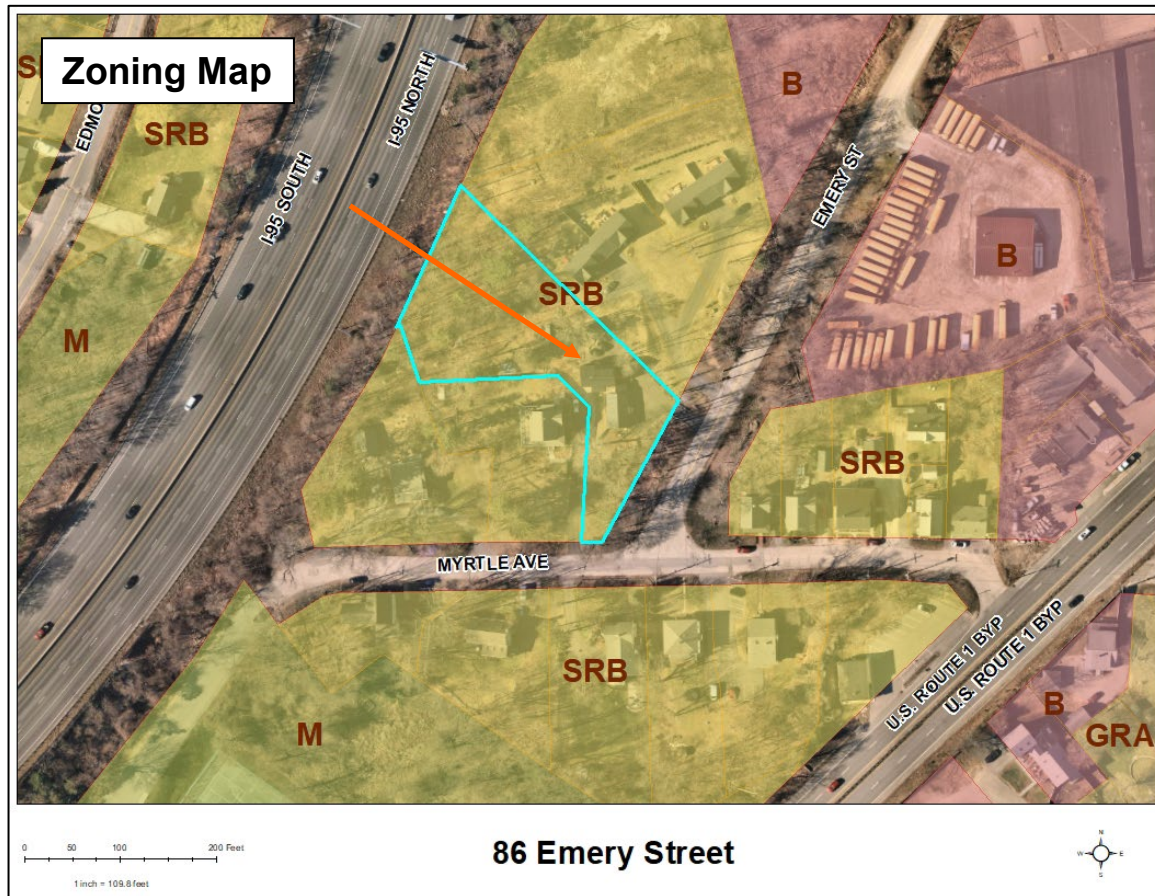
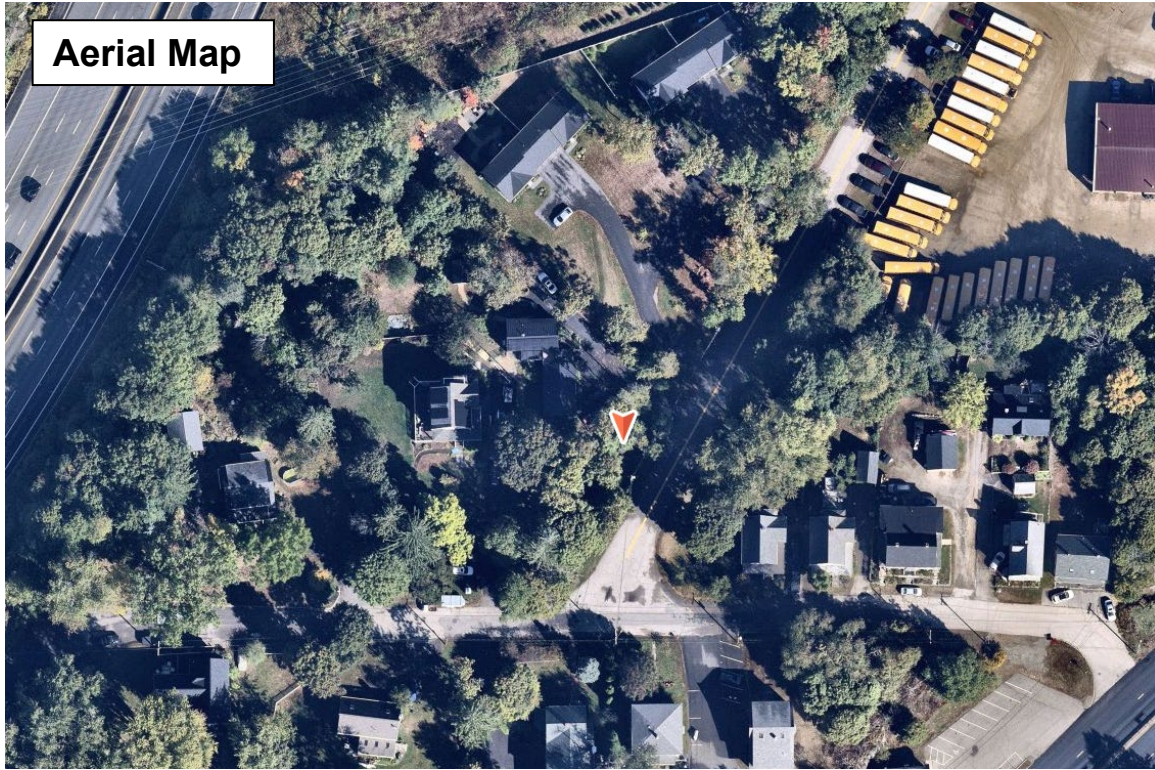
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Residential	*Construct a woodshed	Primarily Residential
<u>Lot area (sq. ft.):</u>	39,204	39,204	15,000 min.
<u>Primary Front Yard (Emery St) (ft.):</u>	Primary Structure: 34	Primary Structure: 34 Shed: 46	30 max.
<u>Secondary Front Yard (Myrtle Ave) (ft.):</u>	Primary Structure: 121	Primary Structure: 121 Shed: 75	30 max
<u>Right Yard (ft.):</u>	Primary Structure: 21	Primary Structure: 21 Shed: >10	10 max
<u>Left Yard (ft.):</u>	Primary Structure: 10.5	Primary Structure: 10.5 Shed: 5	5 (per 10.573.10) max.
<u>Height (ft.):</u>	Primary Structure: <35	Primary Structure: <35 Shed: 8	Shed: 10 (per 10.573.10) max. Primary Structure: 35
<u>Building Coverage (%):</u>	5.1	5.2	20 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking:</u>	4	4	4
<u>Estimated Age of Structure:</u>	1960	Variance request(s) shown in red.	

***Relief needed for the location of the shed, proposed closer to the street than the primary structure on the secondary front yard side.**

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

February 21, 2018 – The Board **granted** the following: 1) Variance from Section 10.440, Use #1.30 to allow a two-family dwelling on a lot where only a single family dwelling is allowed with the following conditions:

- 1) One of the units in the approved two-family dwelling must be owner-occupied.
- 2) Both dwelling units must be under the same ownership.
- 3) The owners will provide a certificate annually to the Planning Department certifying compliance with the first two stipulations.

Planning Department Comments

The applicant is proposing to construct a 60 sq. ft wood shed. The relief requested is for the location of the structure as it is proposed to be closer to the street than the primary structure on the secondary front yard side. The structure meets all dimensional requirements.

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 **909 West End LLC (Owner)**, for property located at **909 Islington Street** whereas relief is needed to allow a restaurant which requires the following: 1) Special Exception from Section 10.440, Use # 9.42 to allow a Restaurant with an occupant load from 50 to 250 people where it is allowed by Special Exception. Said property is located on Assessor Map 172 Lot 7 and lies within the Character District 4-W (CD4-W). (LU-24-221)

Existing & Proposed Conditions

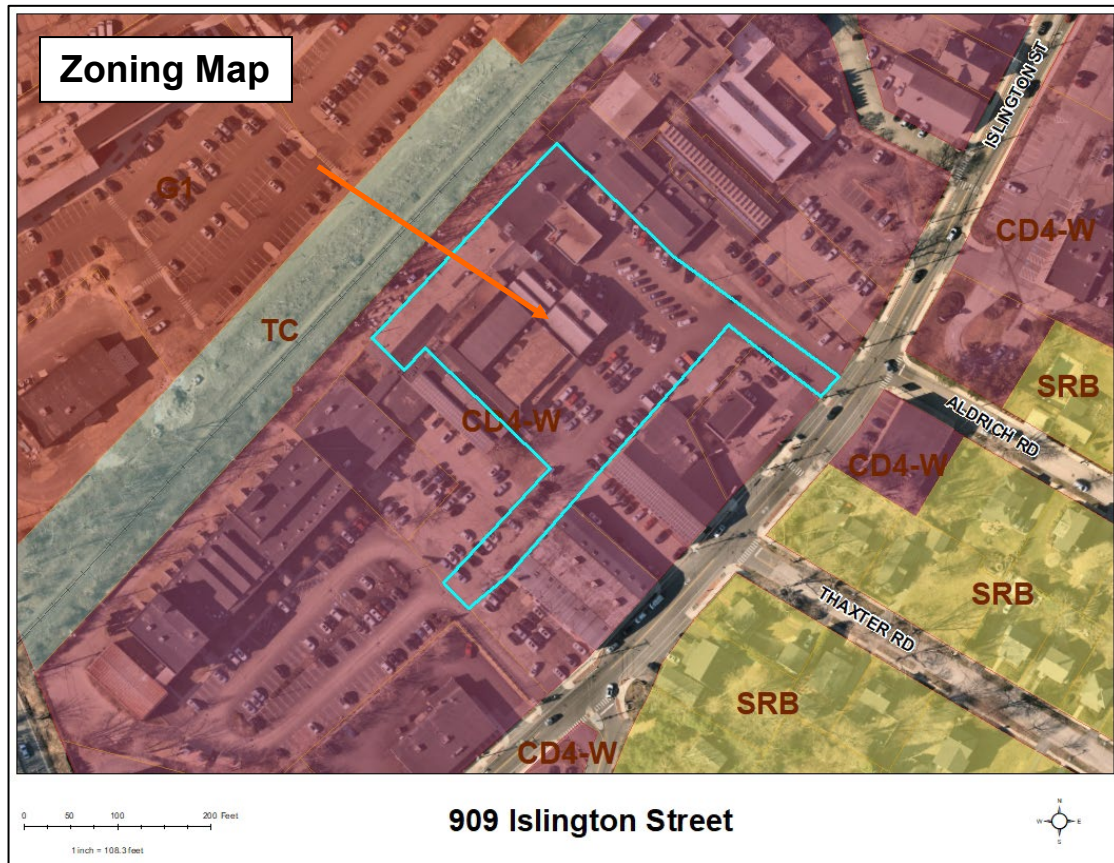
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Multi-Unit Commercial	*Establish Restaurant Use	Mixed use
<u>Unit/Suite 15 Area (sq.ft.)</u>	3,074	3,074	
<u>Parking:</u>	74	74	87
<u>Estimated Age of Structure:</u>	1910	Variance request(s) shown in red.	

*Restaurant Use allowed by special exception per Section 10.440

Other Permits/Approvals Required

- Building Permit (tenant fit up)
- Parking CUP

Neighborhood Context



Previous Board of Adjustment Actions

August 28, 1973 – The Board **granted** the following: 1) Variance to construct 80' x 36' building 3' 4" from the left property line and 2' from the right property line

April 16, 1996 – The Board **granted** the following: 1) Variance from Article II, Section 10-304(A) to allow the building coverage to increase from 43% to 47% where 35% is the maximum allowed as the result of a lot line relocation.

May 20, 2003 – The Board **granted** the following: 1) Special Exception as allowed in Article II, Section 10-208(36) to allow a 2,400 sf, 3 bay automotive service center with related office space and storage in a district where such use is allowed by Special Exception with the following conditions:

- 1) All repairs and service work shall take place within an enclosed building.
- 2) No vehicles in an inoperable condition are to remain on the site for more than a one-week period; unless, enclosed in a building; and
- 3) Repaired or rebuilt vehicles shall not be sold upon the premises.

October 21, 2003 – The Board **granted** the following: 1) Variance from Article II, Section 10-208 and Article XII, Section 10-104 Table 15 to allow a dog day care facility with up to 40 dogs and associated grooming facility with 5 grooming stations in 5,980 sf of an existing building and associated parking in a district where such use is not allowed with the following conditions:

- 1) No noise to emanate over the property line to the residential neighbors.
- 2) Portsmouth Animal Control Officer to inspect and approve the setup of the facility.
- 3) Hours of operation to be 7:00 a.m. – 7:00 p.m. Monday through Friday 10:00 a.m. – 6:00 p.m. Saturdays and Sundays; no dog sitting on weekends or holidays.
- 4) Landscaping will not be degraded from its present condition.

November 18, 2003 – The Board **granted** the following: 1) Variance from Article II, Section 10-208 and Article XII, Section 10-104 Table 15 to allow a dog day care facility with up to 40 dogs and associated grooming facility with 5 grooming stations in 5,980 sf of an existing building and associated parking with the following conditions:

- 1) No noise to emanate over the property line to the residential neighbors.
- 2) Portsmouth Animal Control Officer to inspect and approve the setup of the facility.
- 3) Hours of operation to be 7:00 a.m. – 7:00 p.m. Monday through Friday 10:00 a.m. – 6:00 p.m. Saturdays and Sundays; no dog sitting on weekends or holidays.
- 4) No more than forty dogs at one time.

November 23, 2004 – The Board **granted** the following: 1) Variance from Article II, Section 10-208 was requested to allow 2,300+ sf of the building to be used for the manufacture of counter tops and associated wood, metal and concrete items in a district where manufacturing is not allowed with the following condition:

- 1) That no materials, inventory or waste will be stored outside.

September 20, 2005 – The Board **granted** the following: 1) Variance from Article II, Section 10-208 was requested to allow a bulk tea re-packaging and wholesale distribution business in a district where such use is not allowed.

August 21, 2007 – The Board **granted** the following: 1) Variance from Article II, Section 10-208 was requested to allow 2,200+ sf in an existing building to be used for a wholesale warehouse and distribution business in a district where such use is not allowed.

July 24, 2012 – The Board **granted** the following: 1) Variance from Section 10.1112.30 to allow 83 off-street parking spaces to be provided where 90 off-street parking spaces are required.

November 22, 2016 – The Board **granted** the following: 1) Variance from Section 10.1243 to allow two freestanding signs on a lot where only one freestanding sign is allowed; and 2) Variances from Section 10.1253 to allow a freestanding sign to be set back 10'+ from the front lot line and 1.5'+ from the left side lot line where 20" is required for each.

Planning Department Comments

The applicant is proposing to establish a restaurant use in Suite 15. Restaurant uses are allowed by special exception in this district.

The applicant will need to obtain a parking conditional use permit as the addition of this use will require the site to have 87 total parking spaces and there are 74 spaces available.

Special Exception Review Criteria

The application must meet all the standards for a **special exception** (see Section 10.232 of the Zoning Ordinance).

1. *Standards as provided by this Ordinance for the particular use permitted by special exception;*
2. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*
3. *No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other*

structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;

- 4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*
- 5. No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and*
- 6. No significant increase of stormwater runoff onto adjacent property or streets.*

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

I. NEW BUSINESS

C. The request of **Gary B. Dodds Revocable Trust (Owner)**, for property located at **294 Lincoln Avenue** whereas relief is needed to demolish the two existing detached garages and construct a new attached garage which requires the following: 1) Variance from Section 10.521 to allow 28% building coverage where 25% is the maximum allowed. Said property is located on Assessor Map 130 Lot 24 and lies within the General Residence A (GRA) District. (LU-24-225)

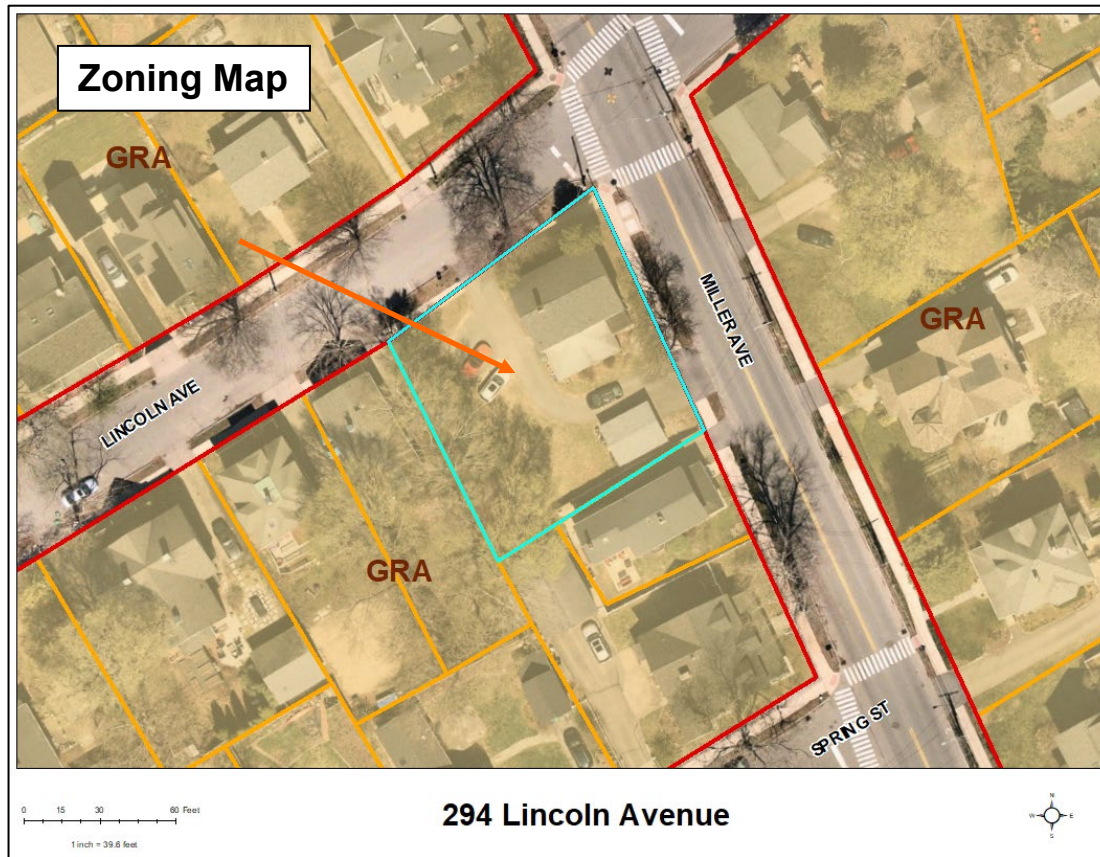
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	3-Unit Residential	Construct attached garage	Primarily residential
<u>Lot area (sq. ft.):</u>	9,685	9,685	7,500 min.
<u>Primary Front Yard (Lincoln Ave)(ft):</u>	11	11	15
<u>Secondary Front Yard (Miller Ave)(ft.):</u>	7.4	7.4	15 min.
<u>Right Yard (ft.):</u>	52.4	12.5	10 min.
<u>Rear Yard (ft.):</u>	5.6	20.3	20 min.
<u>Height (ft.):</u>	<35	33	35 max.
<u>Building Coverage (%):</u>	21.3	28	25 max.
<u>Open Space Coverage (%):</u>	54.6	48.2	30 min.
<u>Parking:</u>	4	4	4 min.
<u>Estimated Age of Structure:</u>	1900	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit
- Site Plan Review

Neighborhood Context



Previous Board of Adjustment Actions

No previous history found.

Planning Department Comments

The applicant is requesting relief to demolish the two existing detached garages on site and construct a new attached garage. The new structure meets all setback requirements, however, the proposal exceeds the 25% building coverage maximum and the applicant is requesting the Board allow 28% building coverage.

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 **Treadwell LLC (Owner)**, for property located at **93 Pleasant Street** whereas relief is needed to permit the provision of required parking spaces to be located on a separate lot in the same ownership within 300 feet of the property line of the lot in question, which requires the following: 1) Special Exception from Section 10.1113.112 to allow five (5) of the required parking spaces to be located at 134 Pleasant Street, Map 116, Lot 30. Said property is located on Assessor Map 107 Lot 74 and lies within the Character District 4 (CD4), Historic and Downtown Overlay Districts. (LU-24-216)

Existing & Proposed Conditions

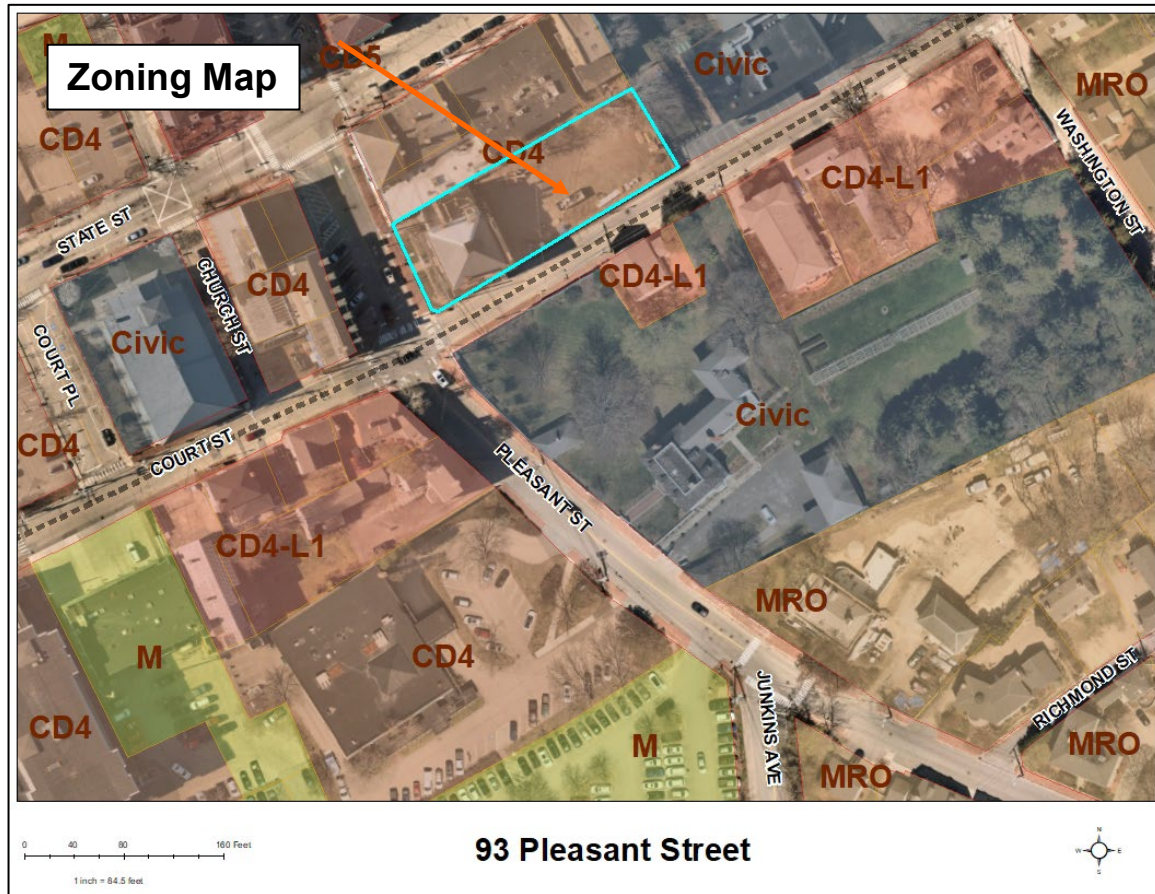
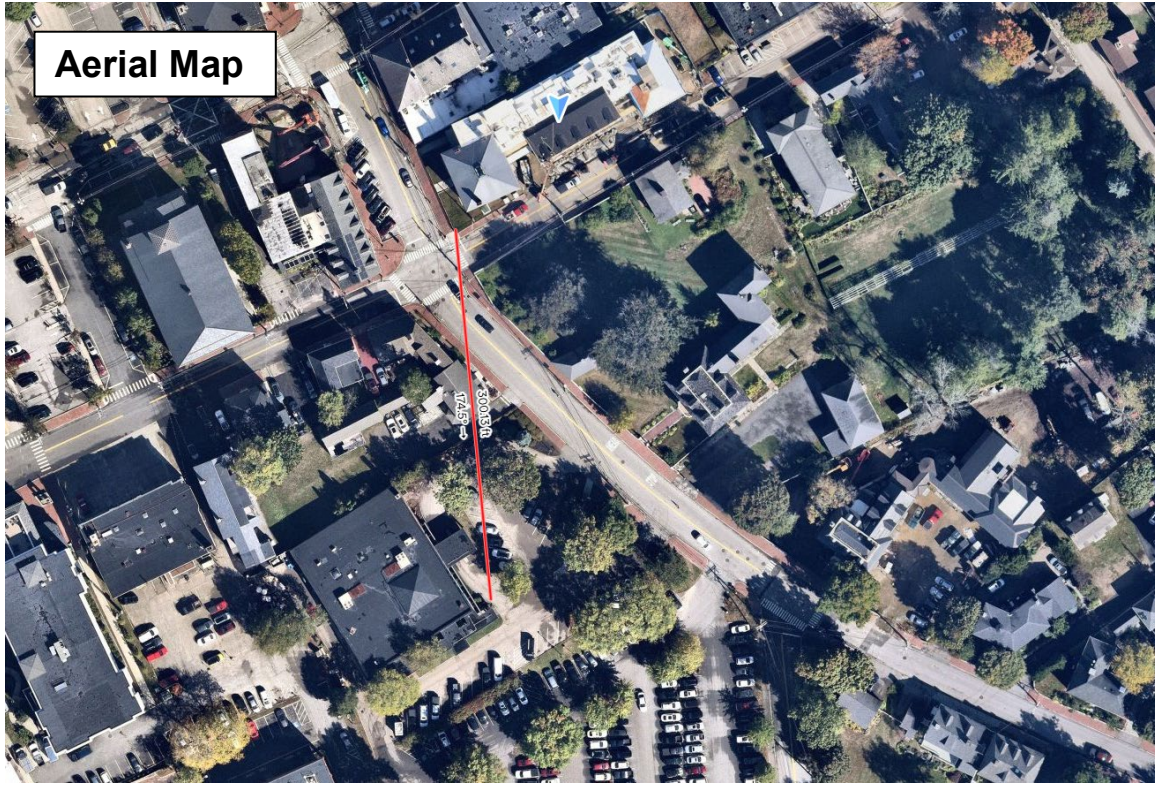
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Hotel Under Construction	*5 parking spaces to be located at 134 Pleasant Street	Mixed Use
<u>Parking:</u>	--	20	25
<u>Bike Parking</u>	--	7	6
<u>Estimated Age of Structure:</u>	1818	Variance request(s) shown in red.	

*Special Exception needed to allow required parking to be located offsite within 300 feet of the property line.

Other Permits/Approvals Required

None required at this time

Neighborhood Context



Previous Board of Adjustment Actions

June 28, 1988 – The Board **denied** the appeal of the Historic District Commission decision pursuant to Article X, Section 10-1008 for the construction of 9,000 sf. Building on a lot of 10,952 s.f. . Parking and lobby area are on first level, residential apartment units will be on the second through the fourth level. The building will be clapboard with historical detailing recalling the nearby Langdon Mansion.

May 17, 1994 – The Board **granted** the following: 1) Special Exception as allowed in Article II, Section 10-206(25) to erect a 40' x 100' tent on August 20, 1994 through August 27, 1994 to be used for an art and furniture auction where temporary structures shall be approved by the BOA and have a bond posted to insure their removal, with the following condition:

- 1) A \$500 bond be posted to insure the removal of the tents.

April 18, 1995 – The Board **granted** the following: 1) Special Exception as allowed in Article II, Section 10-206(25) is requested to erect a 40' x 100' temporary tent on May 25th through May 30th and August 17th through August 22nd to be used for an art and furniture auction, where temporary structures shall be approved by the BOA and have a bond posted to insure their removal, with the following condition:

- 1) A \$500.00 bond be posted to the City for each event in May 1995 and again in August 1995 to ensure removal of the tents.

November 16, 2021 – The Board **granted** the following: 1) Variances from Section 10.5A41.10C to allow a) a finished floor surface of the ground floor to be 60" where 36" is the maximum allowed; b) a ground story height of 10'8" where 12' is the minimum required; and c) to allow entrance spacing greater than 50' where 50' is the maximum. The Board **denied** the following: 2) A variance from Section 10.5A41.10C & 10.642 (1) to allow residential uses on the ground floor where it is prohibited in the Downtown Overlay District. The Board determined the following variance is not required: 3) A Variance from Section 10.5A44.35 to allow an above-ground portion of a parking structure without a liner building.

Planning Department Comments

The applicant is requesting a special exception (allowed in Section 10.1113.112) to allow 5 required parking spaces to located on a lot within 300 feet from the subject parcel lot line. The required number of parking spaces is 25 according to Sections 10.1115.20 and 10.1116.13 of the Zoning Ordinance and the applicant has provided an example of the parking agreement that is to be provided between the parcels for parking. If the Board makes a motion to approve the request, staff recommend the following condition of approval:

- 1) Final parking agreement to be submitted to the Planning and Legal Departments for 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.*

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 **Martin Husslage (Owner)**, for property located at **48 Langdon Street** whereas relief is needed to demolish the existing dwelling and accessory structure, subdivide the property from one lot into two and to construct a single-family structure with attached Accessory Dwelling Unit on one lot and a two-family attached dwelling on the second lot. The project requires the following: 1) Variance from Section 10.521 to allow 2,832 square feet per dwelling unit for the proposed two-family dwelling lot where 3,500 square feet per dwelling unit is required. Said property is located on Assessor Map 138 Lot 47 and lies within the General Residence C (GRC) District. (LU-24-227)

Existing & Proposed Conditions

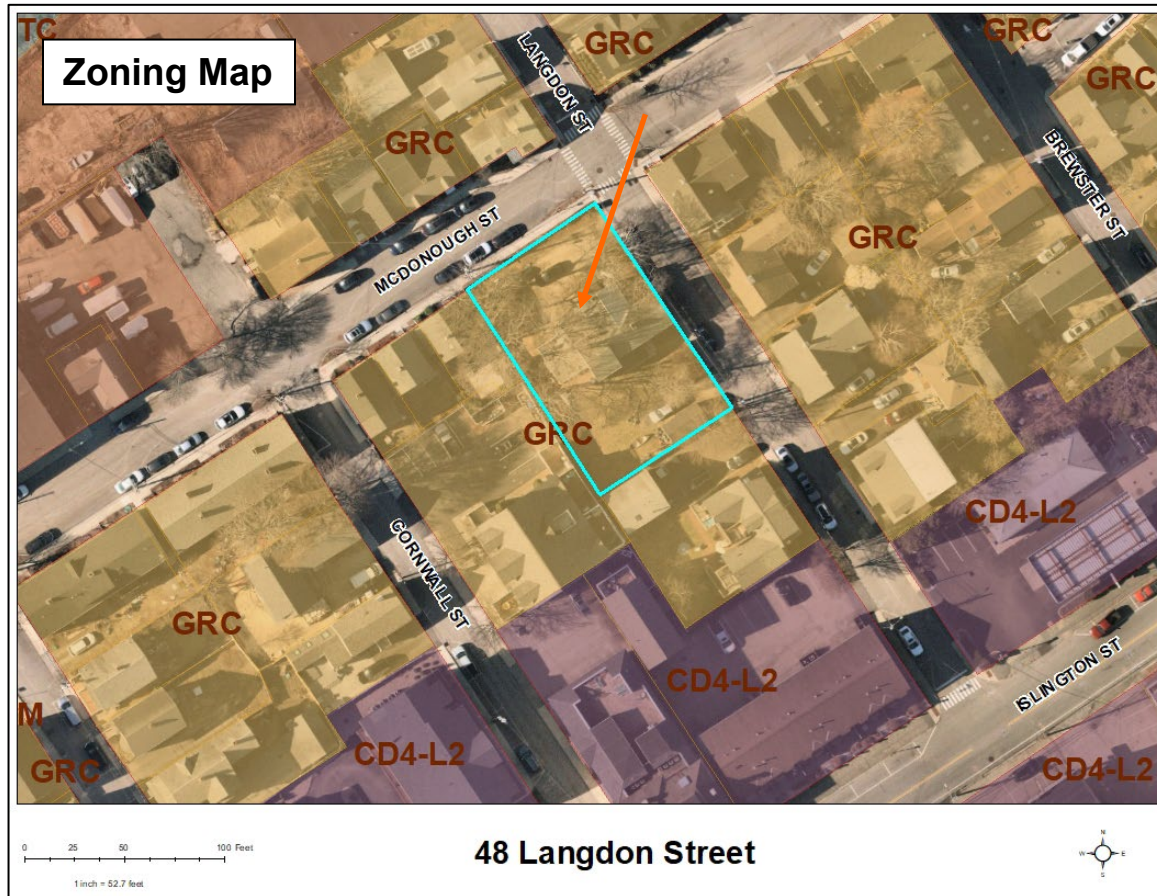
	Existing	Proposed	Permitted / Required
<u>Land Use:</u>	2 Unit Residential	Subdivide and construct one 2-unit residential and one single-unit residential	Primarily residential
<u>Lot area (sq. ft.):</u>	9,927	Lot A: 5,664 Lot B: 4,264	3,500 min.
<u>Lot Area per Dwelling (Sq. Ft)</u>	4,963	Lot A :2,823 Lot B: 4,264	3,500 min
<u>Lot Frontage</u>	124.6	Lot A: 70.6 Lot B: - Langdon: 54 - Mcdonough: 78.5	70 min
<u>Lot Depth</u>	79	Lot A: 79.4 Lot B: 78.5	50 min
<u>Front Yard (ft)</u>	Principal: 0.5 Secondary: 30	Lot A: 15.9 Lot B: - Langdon: 8 - Mcdonough: 10	5 min.
<u>Right Yard (ft.):</u>	NA	Lot A: 18 Lot B: NA	10 min.
<u>Left Yard (ft.):</u>	2.3	Lot A: 17.7 Lot B: 11	10 min.
<u>Rear Yard (ft.):</u>	15	Lot A: 20.7 Lot B: 20.3	20 min.
<u>Height (ft.):</u>	<35	Lot A: 32.7 Lot B: 29.6	35 max.
<u>Building Coverage (%):</u>	22	Lot A:22.2 Lot B: 34.9	35 max.
<u>Open Space Coverage (%):</u>	>20	Lot A: 66.7 Lot B: 53.6	20 min.
<u>Parking:</u>	4	Lot A: 4	Lot A: 3 min.

		Lot B: 2	Lot B: 2
<u>Estimated Age of Structure:</u>	1810	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit
- Subdivision Approval – TAC and Planning Board
- Site Plan Review – TAC and Planning Board

Neighborhood Context



Previous Board of Adjustment Actions

August 17, 1993 – The Board granted the following: 1) Variance from Article II, Section 10-205(29)(a) to allow the accessory use of two commercial vehicles not owned by a resident of the apartments and with one of the vehicles having more than 4 wheels in a district where there shall be no more than one commercial vehicle and said vehicle shall be limited to no more than 4 wheels, with the following condition:

- 1) There will be no other commercial activity of any kind at this address.

Planning Department Comments

The applicant is proposing to subdivide the existing corner lot and create two lots. Lot A proposes to have one two-unit building and requires relief for lot area per dwelling unit. Proposed Lot B meets all zoning requirements

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.*

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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.