



City of Portsmouth
Planning Department
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MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Jillian Harris, Principal Planner
Stefanie Casella, Planner
DATE: February 13, 2025
RE: Zoning Board of Adjustment February 19, 2025

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

II. Old Business

- A. 84 Pleasant Street – Request for Rehearing
- B. 222 Court Street – Extension Request
- C. 361 Hanover Street
- D. 1001 Islington St.

III. New Business

- A. 410 Richards Avenue – Equitable Waiver
- B. 410 Richards Avenue - Variance

II. OLD BUSINESS

- A. The request of **Working Stiff Properties, LLC** for property located at 84 Pleasant Street and 266, 270, 278 State Street to rehear the granted Variances from the November 19, 2024 BOA meeting.

Planning Department Comments

At the November 19, 2024 Board of Adjustment meeting the Board considered the request of **PNF Trust of 2013, (Owner)**, for property located at **84 Pleasant Street** and **266, 270, 278 State Street** whereas relief is needed to merge the lots and construct a four-story mixed-use building which requires the following: 1) Variance from Section 10.5A41.10.C to allow a) 98% building coverage where 90% is maximum, b) 0% open space where 10% is minimum, and c) 53% shopfront façade glazing on Pleasant Street and 52% on State Street where 70% is the minimum required; 2) Variance from Section 10.5A21.B to allow a) 55 feet of building height where 47 feet is permitted with a penthouse, b) a fourth story addition at 50 feet in height to the Church street elevation where 3 full stories and a short fourth are allowed with 45 feet maximum height permitted; 3) Variance from Section 10.642 to allow 43% ground floor residential area where 20% is maximum.

*The Board voted to **grant** the variances as presented and advertised for Variance No. 1 in its entirety, Variance No. 3 in its entirety, and Variance 2(b) only. The Board voted to **deny** the request for variance No. 2(a).*

A request for rehearing was filed within 30 days of the Board's decision and the Board considered the request at the next scheduled meeting on January 22, 2025. The Board voted to postpone the decision to the February 19, 2025 meeting, pending further consideration of attachments that were missing from the electronic file for the submitted request. If the Board votes to grant the request, a hearing will be scheduled for next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

The past application can be referenced in November 19, 2024 meeting packet found at the following link: [https://files.cityofportsmouth.com/agendas/2024/BOA/11-19-2024%20Meeting/11-19-2024 BOA Packet.pdf](https://files.cityofportsmouth.com/agendas/2024/BOA/11-19-2024%20Meeting/11-19-2024%20BOA%20Packet.pdf)

II. OLD BUSINESS

B. Request for 1-Year Extension – **222 Court Street** (LU-23-12)

Planning Department Comments

On February 28, 2023 the Board of Adjustment granted the following variances for the installation of one 24 by 28 foot mural and one 3 by 2 foot sign:

- 1) Variance from Section 10.1251.10 to allow max aggregate sign area of 686 square feet where 36 square feet is allowed;
- 2) Variance from Section 10.1251.20 to allow max area for individual sign of 678 where 16 square feet is allowed;
- 3) Variance from Section 10.1242 to allow more than one sign on a building facing the street; and
- 4) Variance from Section 10.1271 to allow a sign on the side of the building that is not facing a street.

The Board voted to grant the request with the following condition:

1. The sign is an artistic image only featuring Ona Judge and will not be altered for any other purpose

The approvals listed above are scheduled to expire on February 28, 2025. The Ordinance allows for a one-time, one-year extension if the request is acted on prior to the expiration date. The applicant has requested an extension as a permit has not yet been obtained. A letter from the applicant and the 2023 letter of decision is included in the meeting packet. You can view the original application material at the following link:

https://files.portsmouthnh.gov/files/planning/apps/CourtSt_222/CourtSt_222_BOA_02282023.pdf

II. OLD BUSINESS

C. The request of **361 Hanover Steam Factory LLC (Owner)**, and **Hampshire Development Corporation LLC (Applicant)**, for property located at **361 Hanover Street** whereas relief is needed to expand and renovate the existing commercial building and convert it to multi-family residential and to construct three new multi-family residential buildings which requires the following: 1) Variance from Section 10.642 to allow residential principal uses on the ground floor of the buildings; 2) Variance from Section 10.5A41 - Figure 10.5A41.10D to a) allow for "Apartment", "Rowhouse" and "Duplex" building types where they are not permitted; b) allow a ground floor height of 10.5 feet where 12 feet is required. Said property is located on Assessor Map 138 Lot 63 and lies within the Character District 5 (CD5) and the Downtown Overlay District. (LU-24-196)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial	**Residential apartment, rowhouse, and duplex style buildings**	Mixed use
<u>Lot area (sq. ft.):</u>	43,245	Lot 1: 4,717 Lot 2: 38,528	NR min.
<u>Primary Front (Hanover St) Yard (ft.):</u>	Bldg. A: 99	Bldg. A: N/A* Bldg. B: 0 Bldg. C: 5 Bldg. D: 2	5 max.
<u>Secondary Front Yard (Rock St) (ft.):</u>	A: 0	A: 0 B: 2 C: N/A D: N/A	5 max
<u>Right Yard (ft.):</u>	5	5	NR max
<u>Secondary Front Yard (Foundry Pl) (ft.):</u>	0	A: 0 B: N/A C: N/A D: N/A	5 max.
<u>Height (ft.):</u>	18 (approx.)	A: 40 B: 36 C: 36 D: 40	40 max.
<u>Ground Floor Height (ft)</u>	10	10.5	12 min.
<u>Building Coverage (%):</u>	38	72	95 max.
<u>Open Space Coverage (%):</u>	<5	>5	5 min.
<u>Parking:</u>	57	71	

<u>Estimated Age of Structure:</u>	1850	Variance request(s) shown in red.
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*Existing condition – Proposed Bldgs. meet requirement.

**Apartment, Rowhouse, and Duplex style buildings are not allowed building types under section 10.10.5A41 figure 10.5A41.10D

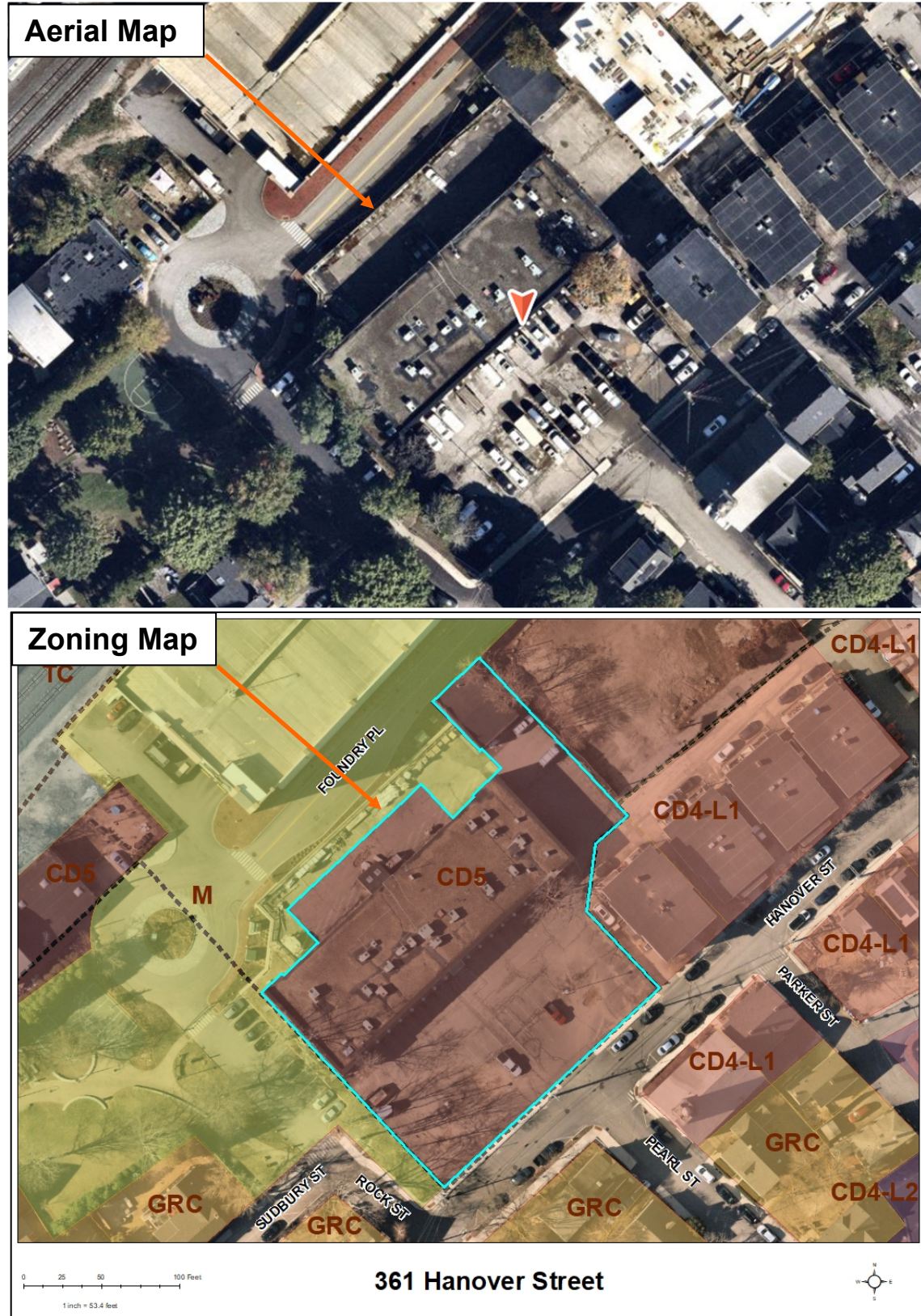
***Residential principal uses are not allowed on the ground floor in the Downtown Overlay District per Section 10.642

Full CD5 Zoning Table can be found on Exhibit A of the application materials.

Other Permits/Approvals Required

- Building Permit
- Site Plan Approval – Technical Advisory Committee and Planning Board
- Subdivision/LLA Approval – Technical Advisory Committee and Planning Board

Neighborhood Context



Previous Board of Adjustment Actions

June 12, 1979 – The Board **denied** the following: 1) Variance from Article II, Section 10-213 and Article XII, Section 10-1210 to allow a dance ballroom in an existing building with 90 parking spaces where 167 are required.

May 28, 1985 – The Board **granted** the following: A Variance from Article II, Section 10-207 to allow the operation of a recreational facility including squash courts, nautilus, exercise rooms, and swimming pool in an industrial district. The Board **denied** the following: A Variance from Article XII, Section 10-1201, Table 7 to allow for 36 parking spaces are required.

September 17, 2013 – The Board **granted** the following: 1) Variance from Section 10.1113.111 to allow required parking spaces to be located on a separate lot from the principal use at a municipally owned uncovered parking facility where a municipally owned covered parking facility is required.

Planning Department Comments

The applicant is proposing to subdivide the property, renovate and further develop the existing commercial structure into multi-family residential, and construct 3 new multi-family residential buildings on the site. Please see the following link for the December 17, 2024 application submittal:

https://files.cityofportsmouth.com/files/planning/apps/HanoverSt_361/HanoverSt_361_BOA_11192024.pdf

At the December 17, 2024 meeting, the Board voted to **postpone** the hearing and requested the applicant provide the following information for the January 22, 2025 meeting:

1. *Plan and elevations of Building A;*
2. *Definitive number of stories in Building D;*
3. *Height elevations for all buildings;*
4. *Streetscape showing project next to 407 Hanover Street;*
5. *More information about the possible burial ground;*
6. *Clarity on the height of each story within each building ; and*
7. *Traffic study if it has been done already.*

Please see the following link for the January 22, 2025 application submittal:

https://files.portsmouthnh.gov/files/planning/apps/HanoverSt_361/Hanover_St_361_BOA_012225.pdf

At the January 22, 2025 meeting, the Board voted to accept the **withdrawal** of Variance 3: from Article 15 - Definition of Penthouse - to allow a penthouse with a setback of 8 feet from all roof edges where 15-20 feet is required and to allow no greater than 80% of the gross living area of the level of the floor below where 50% is the maximum.

The Board also voted to **postpone** the hearing and requested the applicant provide the following information for the February 19, 2025 meeting:

1. *Renderings and streetscapes from Hanover Street, Rock Street, Pearl Street and Hill Street;*
2. *Streetscape showing project next to 407 Hanover Street;*
3. *Define the number of units and parking spaces proposed;*
4. *Concise application package that does not reference previous plans and without inconsistencies in the information provided.*

If the Board decides to grant approval of the requested variances, staff recommends the following condition for consideration:

1. The design and location of the buildings may change as a result of 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

 - (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. OLD BUSINESS

- D. The request of **Millport INC (Owner)**, for property located at **1001 Islington Street** whereas relief is needed for a change of use to extend the existing health club into the adjacent unit wherein relief is required from the Zoning Ordinance including the following special exception from Section 10.440, Use #4.42 to allow a health club greater than 2,000 s.f. of gross floor area. Said property is located on Assessor Map 172 Lot 4 and lies within the Character District 4-W (CD4-W). (LU-24-209)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Health Club /Apartments	*Convert 1,695 SF to yoga room >2,000 sq.ft. GFA	Primarily Mixed-Use
<u>Parking</u>	109	109	10 (1 space per 250 GFA)
		Variance request(s) shown in red.	

*Special Exception for a health club use greater than 2,000 SF GFA

Other Permits/Approvals Required

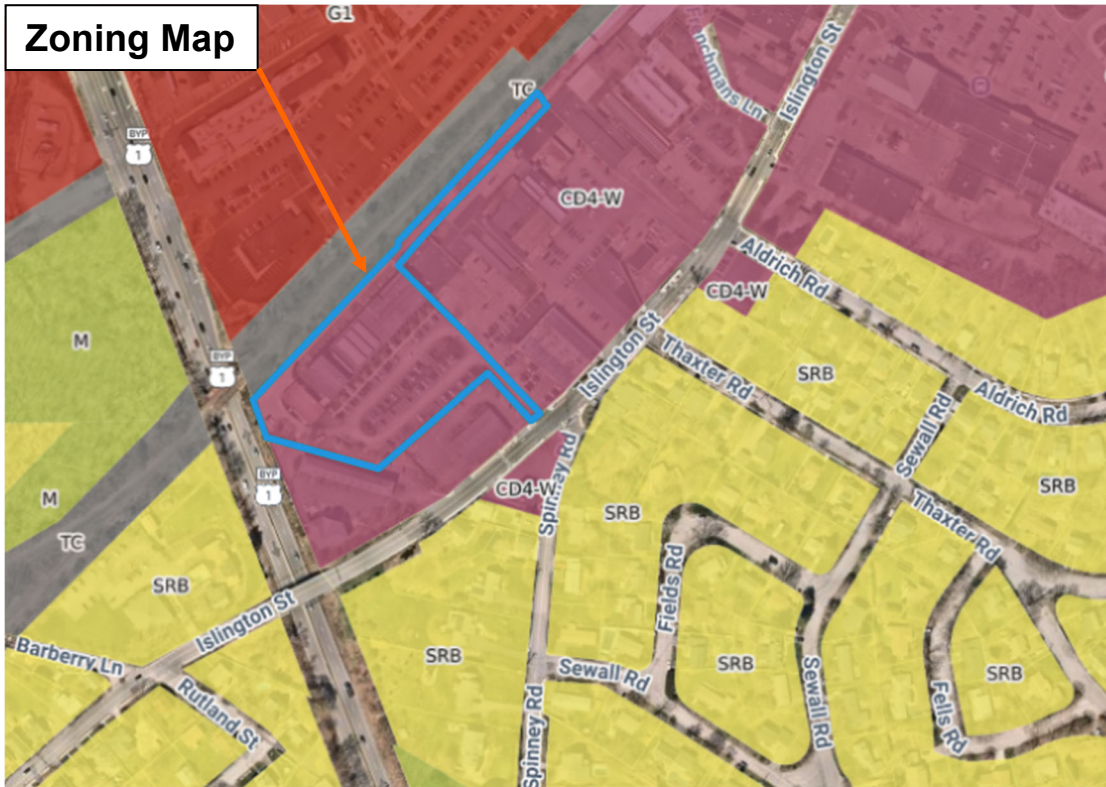
- Building Permit

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

- **November 21, 1978** – A Variance from Article III, Section 10-302 to allow construction of an addition to an existing building, 40' from the left and rear property lines where 50' is required for each. It was voted that your request be **granted**.
- **January 21, 1997** – A Variance from Article IX, Section 10-908 Table 14 to allow a 6' x 9' sign with a 1" side yard where 7' is the minimum required. The Board **denied** the request. They found that the request was excessive to allow a 1" side yard setback.
- **September 16, 1997** – A request is being made to eliminate the stipulation allowing only one and two bedroom apartments as part of the previous Variance request, thus allowing 2 three bedroom apartments. It was voted that your request be **granted** to remove the stipulation that only one and two bedroom apartments be allowed, thus allowing 2 three bedroom apartments.
- **March 21, 2000** – A Special Exception as allowed in Article II, Section 10-208[51] to install an un-manned internet switching station in an existing brick building to the rear of the apartment building. It was voted that your request be **granted** as presented and advertised.
- **April 7, 2020** – A Variance from Section 10.1530 to allow an accessory use as defined in this section to be conducted on a lot adjacent to the lot containing the principal use or building. The Board voted to **postpone** your request until the April 21, 2020, meeting.
- **April 21, 2020** – A Variance from Section 10.1530 to allow an accessory use as defined in this section to be conducted on a lot adjacent to the lot containing the principal use or building. The Board voted to **grant** your petition as presented.

Planning Department Comments

The applicant is requesting a special exception to convert 1,695 SF of existing commercial space into a yoga room for workout studio space. The 3,600 SF building is sited on the property with a 63-unit apartment building and consists of 2 commercial units. The health club and yoga studio was approved for their current 1,440 SF space in 2023. The 1,695 SF expansion into the adjoining space requires a Special Exception as it would create a health club larger than 2,000 Square feet.

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.

III. NEW BUSINESS

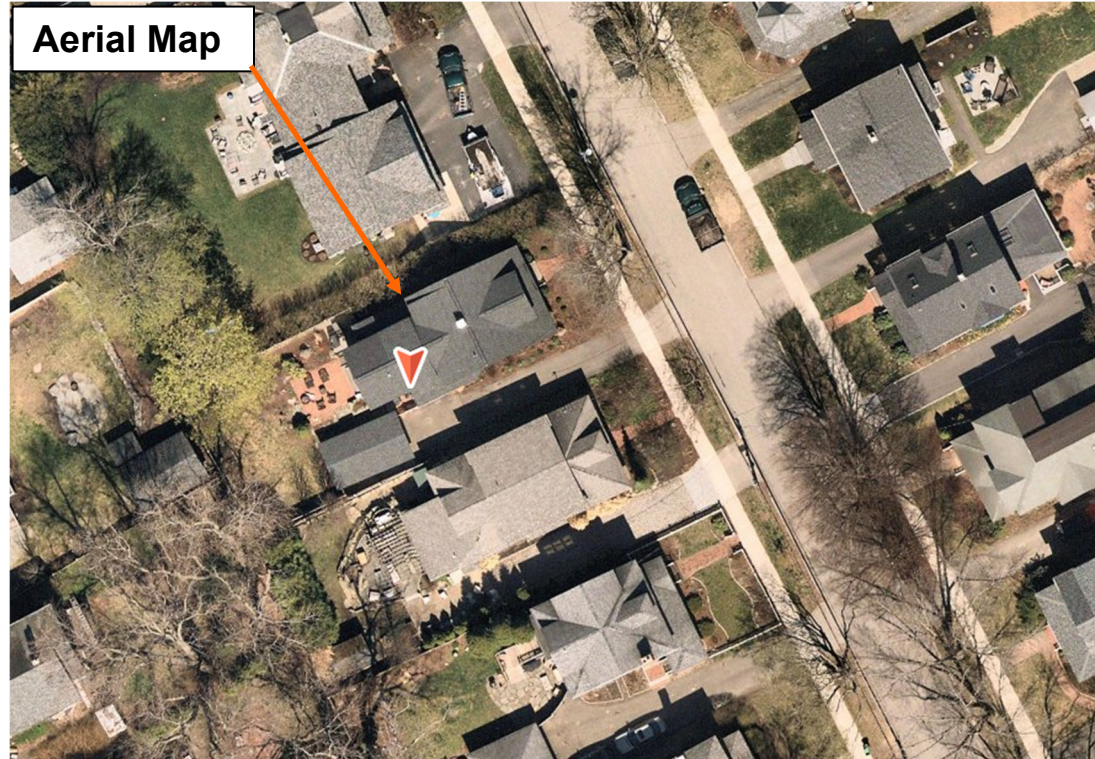
- A. The request of **Paula J. Reed Revocable Trust (Owner)**, for property located at **410 Richards Avenue** whereas an equitable waiver is needed for the construction of a garage which requires the following: 1) Equitable waiver for an accessory structure with a 3-foot left side yard where 3.5 feet was previously granted. Said property is located on Assessor Map 112 Lot 10 and lies within the General Residence A (GRA) District. (LU-25-10)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	Demolish and reconstruct garage	Primarily residential
<u>Lot area (sq. ft.):</u>	6,149	6,149	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,149	6,149	7,500 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.)</u>	123	123	70 min.
<u>Front Yard (ft.):</u>	15	15	15 min.
<u>Left Yard (ft.):</u>	3.5	3	10 min.
<u>Right Yard (ft.):</u>	6.5	6.5	10 min.
<u>Rear Yard (ft.):</u>	31	26	20 min.
<u>Height (ft.):</u>	8.6 (Garage)	11.1 (Garage)	35 max.
<u>Building Coverage (%):</u>	28.3	30*	25 max.
<u>Open Space Coverage (%):</u>	59.7	58.3	30 min.
<u>Parking</u>	3	3	2
<u>Estimated Age of Structure:</u>	1917	Equitable Waiver request(s) shown in red.	

*12-26-2023 Variance granted for 30% building coverage where 25% is the maximum allowed

Neighborhood Context



Previous Board of Adjustment Actions

- **February 16, 1999** – The following relief from Zoning Ordinance was **granted**:
A Variance from Article III Section 10-302(A) to allow a 22' x 23' two story addition with:
 - a) a 4'7" right side yard where 10' is the minimum required and
 - b) a building coverage of 27.2% where 25% is the maximum allowed.

- **December 19, 2023** – The following relief from Zoning Ordinance was **granted**:
 - 1) Variance from Section 10.521 to permit a) 3.5 foot right side yard where 10 feet is required, and b) 30% building coverage where 25% is the maximum allowed; 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. As a result of said consideration, the Board voted to approve the requested variances from Section 10.521 and acknowledge that the request does not require relief from Section 10.321.

Planning Department Comments

The Zoning Board of Adjustment granted a variance on December 19, 2023 to demolish the existing detached garage and construct a new detached garage to be located 3.5' from the *right* side yard. The relief was erroneously noted as 3.5' from the *right* side yard where it should have been the *left* side yard (as you're looking at the property from the street).

The left front corner of the accessory structure was constructed 3.1' from the left side yard, as verified on an as-built survey, encroaching 4 inches into the relief that was granted. The back left corner was constructed 3.4' from the left side yard encroaching 1 inch into the relief that was granted. The applicant seeks an equitable waiver for the garage to be located as it was constructed 3' from the property line.

Should the Board make a motion to grant the request, Staff recommends the Board acknowledge that this approval will correct the relief granted for the left side yard where it was noted as the right side yard in the previous variance request.

Equitable Waiver of Dimensional Requirement ([RSA 674:33-a](#))

I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

- (a) *That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;*
- (b) *That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or*

representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

- (c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and*
- (d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.*

II. In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

III. Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5 through 7. Rehearings and appeals shall be governed by RSA 677:2 through 14.

IV. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

III. NEW BUSINESS

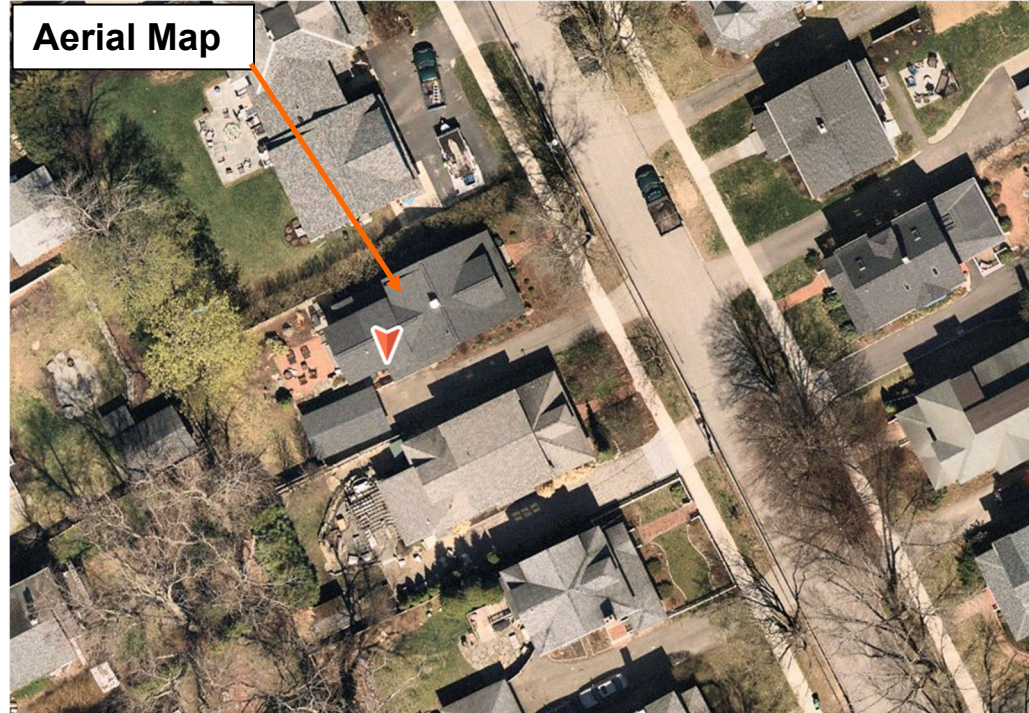
B. The request of **Paula J. Reed Revocable Trust (Owner)**, for property located at **410 Richards Avenue** whereas an after the fact variance is needed for the construction of a garage which requires the following: 1) Variance from Section 10.521 to permit a 3-foot left yard where 3.5 feet were previously granted. Said property is located on Assessor Map 112 Lot 10 and lies within the General Residence A (GRA) District. (LU-25-11)

A. Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
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Planning Department Comments

The applicant is seeking an equitable waiver for the garage to be located as it was constructed 3' from the property line, as outlined in Item III.A. In the alternative, the applicant seeks the necessary variance for the garage to be located as it was constructed 3' from the left side yard.

Should the equitable waiver be granted, the variance application should be withdrawn by the applicant.

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.