



City of Portsmouth
Planning Department
1 Junkins Ave, 3rd Floor
Portsmouth, NH
(603)610-7216

MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Jillian Harris, Principal Planner
DATE: June 11, 2025
RE: Zoning Board of Adjustment June 17, 2025

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

II. Old Business

- A. 92 Brewster Avenue
- B. 1980 Woodbury Avenue
- C. 636 Lincoln Avenue

III. New Business

- A. 70 Heritage Avenue
- B. 35 Boss Avenue
- C. 361 Miller Avenue
- D. 239 Broad Street
- E. 89 Brewery Lane

II. OLD BUSINESS

- A.** The request of **Harborside Property Management LLC (Owner)**, for property located at **92 Brewster Street** whereas relief is needed to demolish the existing structure and construct a single-family home with Accessory Dwelling Unit which requires the following: 1) Variance from Section 10.521 to allow a) 2,884 s.f. of lot area where 3,500 s.f. are required, b) 2,884 s.f of lot area per dwelling unit where 3,500 s.f. are required, c) 52.33 feet of continuous street frontage where 70 feet are required, d) 9.5 foot right side yard where 10 feet are required, and e) 10 foot rear yard where 20 feet are required. Said property is located on Assessor Map 138 Lot 54 and lies within the General Residence C GRC District. (LU-25-25)

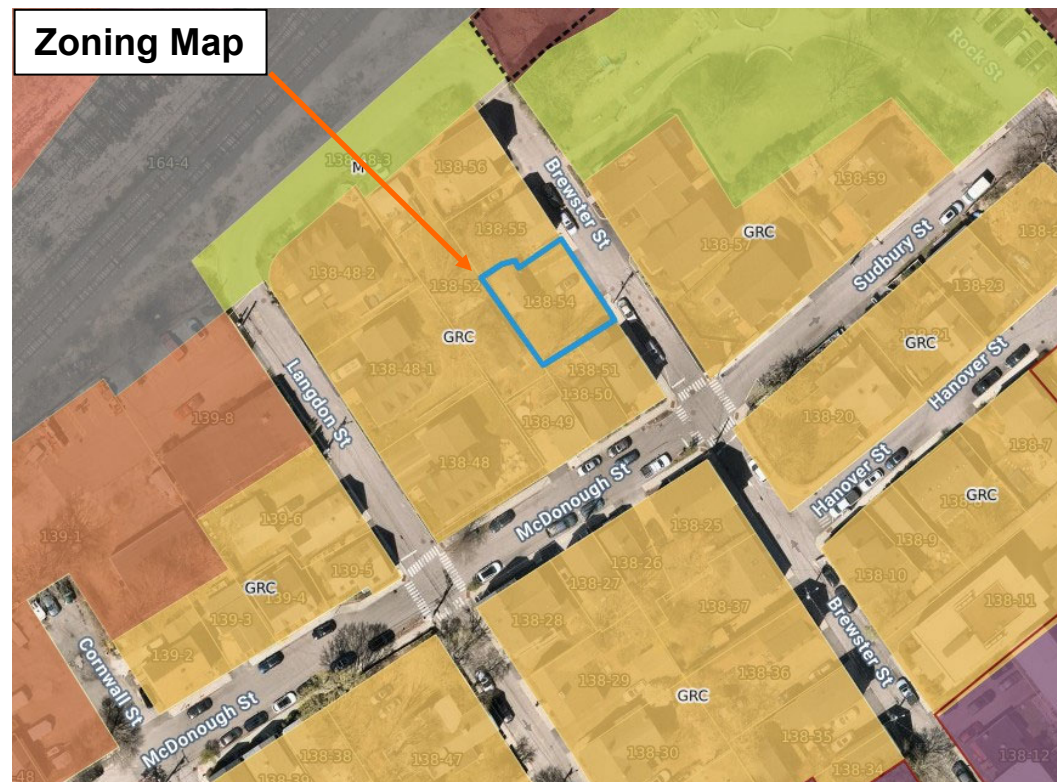
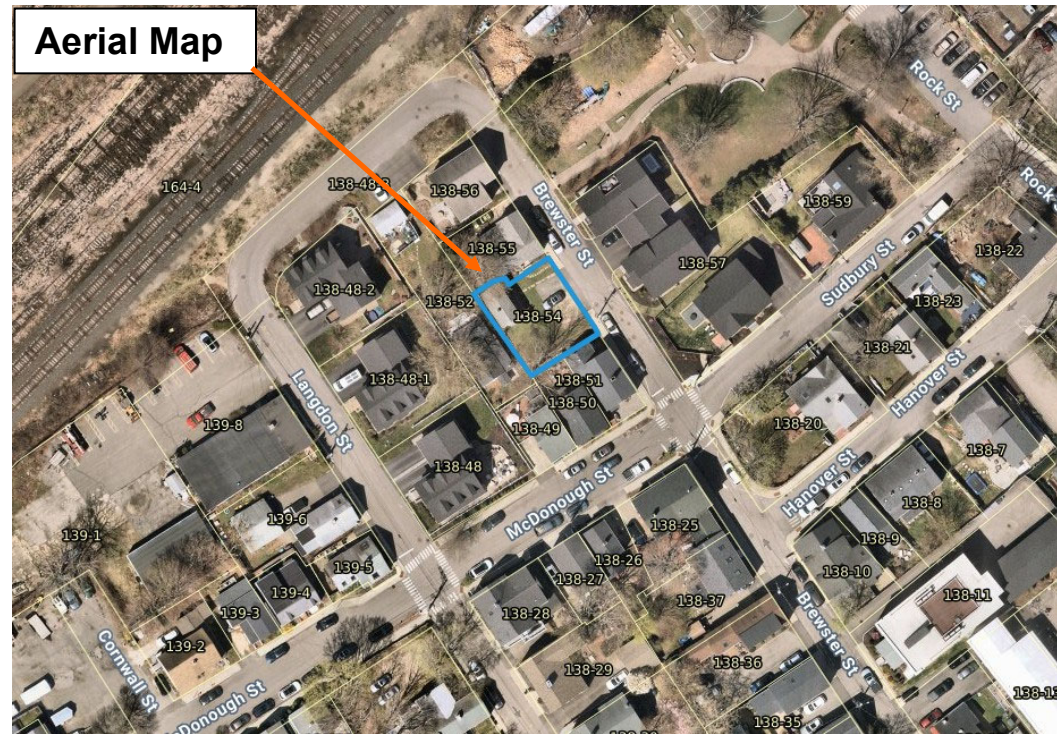
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	Demolish and construct new SF dwelling with ADU	Primarily residential
<u>Lot area (sq. ft.):</u>	2,884	2,884	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,884	2,884	3,500 min.
<u>Street Frontage (ft.):</u>	52	52	70 min.
<u>Lot depth (ft.)</u>	51	51	50 min.
<u>Front Yard (ft.):</u>	31.5	1.4	1 min. (Sec. 10.516.10)
<u>Left Yard (ft.):</u>	32	10	10 min.
<u>Right Yard (ft.):</u>	2.7	9.5	10 min.
<u>Rear Yard (ft.):</u>	3	10	20 min.
<u>Height (ft.):</u>	<35	30	35 max.
<u>Building Coverage (%):</u>	14.7	32.9	35 max.
<u>Open Space Coverage (%):</u>	57	45.9	20 min.
<u>Parking</u>	3	3	3
<u>Estimated Age of Structure:</u>	1790	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit
- ADU – Administrative Approval

Neighborhood Context



Previous Board of Adjustment Actions

- **September 10, 1985** – A variance from Article II, Section 10-205 to convert an existing single family residence into a contractor's office in a residential district where neither business or professional offices are an allowed use; and, 2) a Special Exception as allowed in Article XII, Section 10-1201(1) (a) to permit two of the required three parking spaces to be located on another lot in common ownership and within 300' of the property line of the lot in question. Said property is shown on Assessor Plan U-38 as Lots 53 and 54 and lies within Apartment and Historic B districts. Application was **Withdrawn** by applicant.

Planning Department Comments

The applicant proposes to demolish the existing single-family residential structure and construct a new single-family home with an attached Accessory Dwelling Unit (ADU). Historic deeds indicate the property was once two parcels that have since been merged.

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. OLD BUSINESS

B. The request of **Colbea Enterprises LLC (Owners)**, for property located at **1980 Woodbury Avenue** whereas relief is needed to demolish and redevelop an existing gas station and convenience store which requires the following: 1) Variance from Section 10.5B33.20 to allow for a front lot line build out of 0% where a minimum of 75% is required for a commercial building; 2) Variance from Section 10.5B34.60 to allow for a front setback from the lot line of 27 feet on Woodbury Avenue and 53.5 feet on Gosling Road where a maximum of 20 feet is required; 3) Variance from Section 10.5B83.10 to allow for parking spaces to be located between the principal building and the street; 4) Variance from Section 10.835.31 to allow outdoor service facilities to be located within 34.5 feet and 40.5 of a lot line where 50 feet is required. 5) Variance from Section 10.835.32 to allow for drive-through lanes, bypass lanes and stacking lanes to be located within 13 feet of the property line where 30 feet is required; 6) Variance from Section 10.843.33 to allow for pump islands to be located within 34.5 feet of the lot lines where 40 feet is required; 7) Variance from Section 10.1251.10 to allow for an aggregate sign area of 309 s.f. where a maximum of 223.5 s.f. is allowed; 8) Variance from Section 10.1251.20 to allow a 134 s.f. freestanding sign where a maximum of 100 s.f. is allowed; and 9) Variance from Section 10.1253.10 to allow for a freestanding sign at a height of 26.5 feet where a maximum of 20 feet is allowed. Said property is located on Assessor Map 239 Lot 11 and lies within the Gateway Corridor (G1) District. (LU-25-39)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Gas Station and Convenience Store	Gas Station and Convenience Store* Site Redevelopment	Mixed Uses
<u>Lot area (sq. ft.):</u>	38,399	38,399	10,000 min. (Sec. 10.5B42.40)
<u>Street Frontage (ft.):</u>	375.2	375.2	100 min. (Sec. 10.5B32.30)
<u>Lot depth (ft.):</u>	200	200	NR min.
<u>Front Yard (Woodbury Ave) (ft.):</u>	10.4	27	0-20 max.
<u>Secondary Front Yard (Gosling Rd.) (ft.):</u>	>20	53.5	0-20 max.
<u>Left Yard (ft.):</u>	>10	34.8	10 min.
<u>Rear Yard (ft.):</u>	13	37.5	15 min.
<u>Height (ft.):</u>	18.4	<40	40 max.
<u>Building Coverage (%):</u>	19.3	18.5	70 max.

<u>Building Footprint (SF):</u>	7,402	4,600	10,000	max
<u>Open Space Coverage (%)</u> :	19	19.6	10	min.
<u>Front Lot Line Build Out (%)</u>	9	0	75	min.
<u>Facade Orientation</u>	Perpendicular	Parallel	Parallel	
<u>Drive-through, Bypass, Stacking Lanes setback (ft.)</u>	N/A	13	30	min.
<u>Outdoor Service Facilities setback (ft.)</u>	N/A	34.5 & 40.5	50	min.
<u>Pump Islands setback (ft.)</u>	23	34.5	40	min.
<u>Parking</u>	19	19**	12	min.
<u>Estimated Age of Structure:</u>	1995	Variance request(s) shown in red.		

*Special Exception for Convenience Goods 2 use 24 hours per day in the G1 District granted April 22, 2025.

** Variance from Section 10.5B83.10 to allow for parking spaces to be located between the principal building and the street.

Signs Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Building Frontage (ft.):</u>	210	149	
<u>Wall Sign (SF)</u>	N/A	84	200 max.
<u>Freestanding Sign (SF)</u>	N/A	134	100 max.
<u>Freestanding Sign Setback (ft.)</u>	N/A	11.2	10 min.
<u>Freestanding Sign Height (ft.)</u>	N/A	26.5	20 max.
<u>Canopy Sign (SF)</u>	N/A	16 (x 2)	20 max.
<u>Aggregate Sign area (SF)</u>	N/A	309	223.5 max. (1.5x bldg. frontage)
		Variance request(s) shown in red.	

Other Permits/Approvals Required

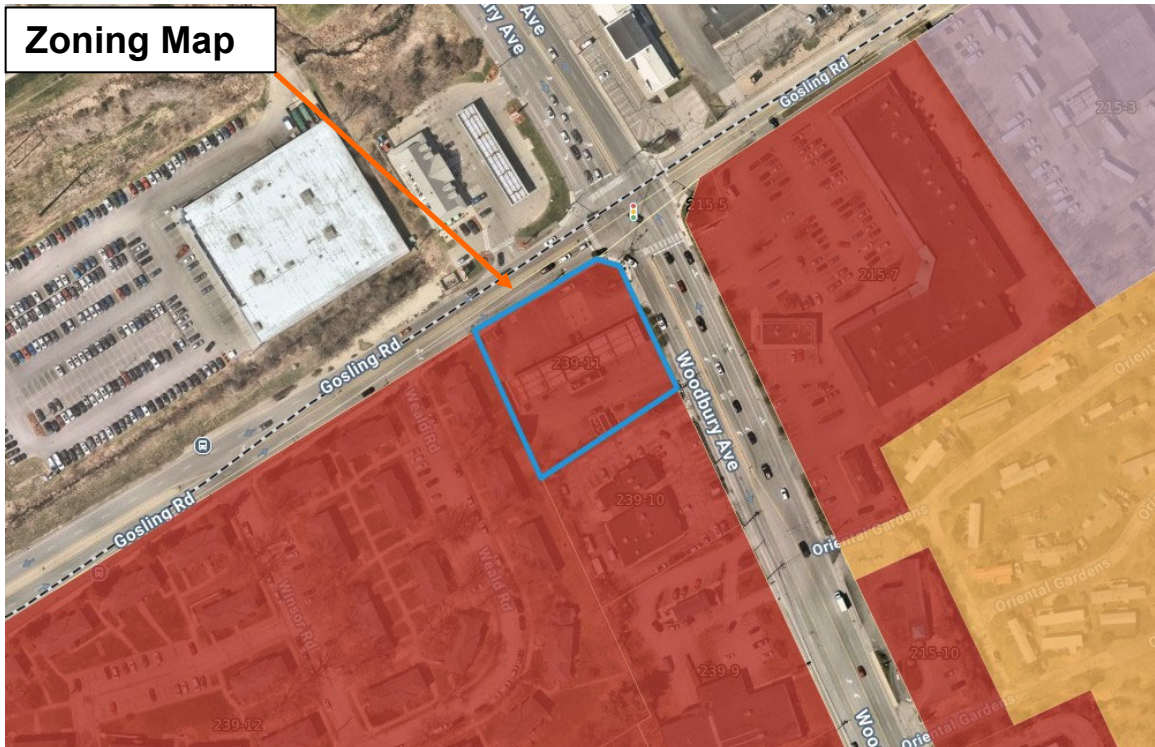
- TAC / Planning Board Site Plan Review
- Planning Board - Conditional Use Permit (Motor Vehicle Service Station and Drive-through Uses)
- Sign Permit

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

- **July 18, 1995** – 1) A Special Exception as allowed in Article II, Section 10-206(17) to construct an entire new gasoline service station facility with a 40' x 45' convenience store, a 36' x 175.85' canopy and a 10' x 24' storage building, and 2) a Variance from Article II, Section 10-302 to allow the canopy: a) a 67.3' front yard where 70' is the minimum required, b) a 14.3' right side yard where the minimum is 30', and; c) a 9.2' left yard where the minimum is 30', 3) a Variance from Article II, Section 10-402(1) to allow the storage building a 6' rear yard where 10' is the minimum required, 4) a Variance from Article II, Section 10-206 to allow the outdoor storage of two 1000 gallon propane tanks where such use is not allowed, and; 5) a Variance from Article IX, Section 10-901 to allow: a) a 72.3 s.f. freestanding sign at the corner of Gosling Road and Woodbury Avenue with a 10' setback where 35' is required, and; b) a 72.3 s.f. freestanding sign abutting Gosling Road on the right side of the property with 0' front and 25'± side yards where 35' is the minimum required. The Board voted to **grant** the request for a Special Exception and Variances #2 and #3 as advertised and presented. The Board voted to **grant** the request for Variance #5 with the **stipulation**:
 - That the 72.3 s.f. freestanding sign abutting Gosling Road on the right of the property be maintained with a 5' front yard rather than a 0' front yard.

The Board voted to **deny** the request for Variance #4 as advertised and presented.

Planning Department Comments

The applicant is requesting to redevelop the existing gas station and convenience store site at the intersection of Woodbury Ave. and Gosling Rd. on the Newington town line. The Board granted a Special Exception for a Convenience Goods 2 use operating 24 hours per day at the April 22, 2025 meeting and postponed consideration of the Variances with the expectation that the applicant address significant concerns of the Board related to the variances associated with the drive-thru and either eliminate it or provide substantial justification as to why it would not impact the adjacent residential property; what could be done to mitigate the signage variances by either eliminating them or describing why they were critical to the property's operation of the gas stations use; and for the remaining variances, either eliminate them or provide a better explanation of why the objectives of the Gateway District could not be fully met if it remained as a gas station and Convenience Store 2 use.

The proposed Motor Vehicle Service Station and Drive-through Facility uses require a Conditional Use Permit from the Planning Board. The proposed project is to construct a single-story, 4,600 s.f. convenience store with drive-thru and four fueling islands and requires relief from several dimensional requirements as proposed. The applicant is also proposing replacement of all signage on the property as part of the redevelopment and is seeking relief from Article 12 for the proposed sign package.

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. OLD BUSINESS

C. REQUEST TO WITHDRAW The request of **Mezansky Family Revocable Trust (Owners)**, for property located at **636 Lincoln Avenue** whereas relief is needed to demolish an existing detached garage and to construct an addition which requires the following: 1) Variance from Section 10.521 to a) allow a 2 foot left side yard setback where 10 feet is required; b) allow a 16 foot rear yard setback where 20 feet is required; c) allow 39% building coverage where 25% is the maximum 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 148 Lot 17 and lies within the General Residence A (GRA) District. (LU-25-27) **REQUEST TO WITHDRAW**

Planning Department Comments

At the May 27, 2025 meeting, the Board postponed the request to the June 17th meeting pending the submission of a surveyed plan. The applicant has indicated they will be submitting a request for the Board to consider suspending the rules to allow the applicant to withdraw the application.

III. NEW BUSINESS

- A.** The request of **Life Storage LP C/O Sovran Self Storage (Owner)**, for property located at **70 Heritage Avenue** whereas relief is needed for after-the-fact installation of mini-storage units which requires the following: 1) Variance from Section 10.531 to allow a 2-foot rear setback where 50 feet is required; and 2) Variance from Section 10.330 to allow the expansion of a nonconforming use where it is not permitted. Said property is located on Assessor Map 285 Lot 11-B and lies within the Industrial (I) District. (LU-25-36)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial, mini-storage, Warehouse	After-the-fact mini-storage units*	Primarily Industrial Uses
<u>Lot area (acres):</u>	7.44	7.44	2 min.
<u>Street Frontage (ft.):</u>	>200	>200	200 min.
<u>Lot Depth (ft.):</u>	>200	>200	200 max.
<u>Primary Front Yard (ft.):</u>	70	70	70 max.
<u>Left Yard (ft.):</u>	49.9	49.9	50 min.
<u>Right Yard (ft.):</u>	50.4	50.4	50 min.
<u>Rear Yard (ft.):</u>	68.5	2	50 min.
<u>Building Coverage (%)</u>	<50	<50	50 max.
<u>Open Space Coverage (%)</u>	~20	~20	20 min.
<u>Estimated Age of Structure</u>		Variance request(s) shown in red.	

*Expansion of a non-conforming use

Other Permits/Approvals Required

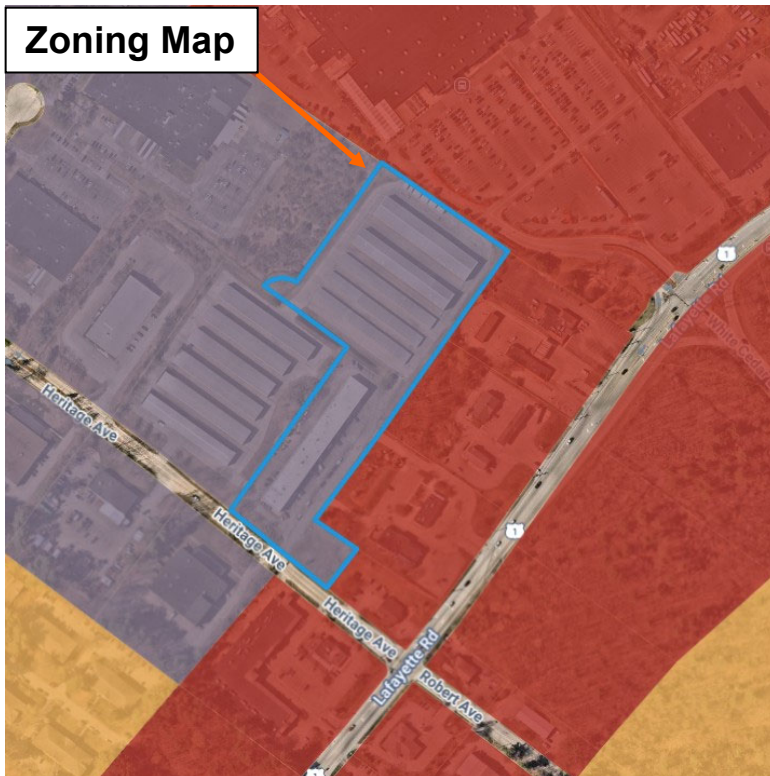
- TAC / Planning Board Amended Site Plan Review

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

- **July 22 1986** – 1) a Variance from Article II, Section 10-206 to permit the construction of a structure (approximately 280' x 30') for use as a mini-storage facility in a business district where warehouses are not an allowed use; and 2) a Variance from Article II, Section 10-206 (23)(d) to permit a residential unit to be constructed for use by the Manager in this structure. The Board voted to **deny** the request as presented and advertised.
- **October 20, 1987** – 1) A Variance from Article III, Section 10-301 (10) and NH RSA 674: 40-41 to allow the subdivision of an existing 7.3 acre lot resulting in Lot B having no access on an accepted public street or an approved private street; and 2) a Variance from Article III, Section 10-302 (Table 5) to allow the creation of said lot with no continuous frontage where minimum continuous frontage of 200' is required. The Board voted to **deny** the request as presented and advertised, because it is a conforming lot that has frontage; it has access; and other buildings can be built on the lot and therefore no hardship.
- **January 5, 1988** – A Variance from Article II, Section 10-207 to allow 7200 s.f. of an industrial structure to be used for warehousing, retail sales and display space in a district where retail sales are not an allowed use. The Board voted to **grant** the request with the following condition:
 - 1) With the understanding that no more than 550 square feet to be used for retail space.
- **March 15, 1988** – A Variance from Article II, Section 10-207 to allow a 6000 s.f. with an additional 400 s.f. mezzanine of an industrial building to be used for retail sales in a district where retail sales are not allowed. The Board voted to **deny** the request as presented and advised. The Board felt that the Variance goes with the land and it is up to the property owner to show a hardship that the space cannot be leased out for industrial use. They feel that a reasonable use can be made of this land in an Industrial Zone and that all criteria for granting the Variance had not been met.
- **May 17, 1988** - A Variance from Article II, Section 10-207 to allow a 6000 s.f. of an existing industrial structure and 400 s.f. of a mezzanine area to be used for retail sales in a district where retail sales are not allowed. The Board voted to **grant** the request with the following **condition**:
 - 1) That the retail sales area be limited to 1920 s.f. (30%) of the total 6400 s.f. gross area to be leased by the applicant.
- **July 17, 1990** - An action is submitted to Appeal an Administrative Decision by the Building Inspector in the interpretation of Article I, Section 10-102 and Article II, Section 10-207 for the occupancy of Dantran, Inc. in a unit at the storage facility for use as a workshop to service and perform light maintenance on it's own trucks. The Board voted to **uphold** the Building Inspectors decision. Notwithstanding the above, if the Appeal of the Administrative Decision is denied, then, the following request is hereby made: a Special Exception as allowed by Article II, Section 10-207 (8) to permit the repair and maintenance of heavy vehicles including large straight trucks and tractor trailers. The Board voted to **grant** the request as presented with the following conditions:
 - 1) That the hours of operation be from 8:00 a.m. to 5:00 p.m;
 - 2) That there be no outside storage;
 - 3) That the property be used for Dantran trucks only (owned or leased); and
 - 4) That the business be located in a 50' x 50' area as indicated on the plan which has been signed and dated by Attorney Mark Beliveau, the Attorney for Magnolia Corporation.

- **August 24, 1993** – An Appeal of an Administrative Decision in the interpretation of Article II, Section 10-207 to allow use of 2,000± s.f. of space within an Industrial district for a coin-operated laundry. The Board voted to **uphold** the Building Inspectors decision. Notwithstanding the above, if the Appeal from Article II, Section 10-207 is denied, then, the following request is hereby made: a Variance from Article II, Section 10-207, is requested to allow a coin-operated Laundromat (retail store) to occupy approximately 2,000 s.f. of structure, in a district where a retail use is not allowed. The Board voted to **grant** the request as presented and advertised.
- **August 24, 1993** – A Variance from Article II, Section 10-207 for 12 months temporary use of 3,600± s.f. of building space (units 4, 5 & 6) within an Industrial district by a non-profit organization for the purpose of teaching gymnastics to students under 13 years of age. The Board voted to **grant** the request as presented with the following **condition**:
 - 1) That the temporary use of the building space be effective September 1, 1993 until September 1, 1994.
- **September 20, 1994** – A request for an Extension of Time for an additional one year period. The Board voted to **grant** the extension of time for one year effective September 20, 1994 until September 21, 1995.
- **August 15, 1995** - A request for an Extension of Time. The Board voted to **grant** the extension of time for an additional one year.
- **November 21, 1995** – An Appeal of an Administrative Decision in the interpretation of Article II, Section 10-207(3) to allow the operation of a design center and showroom for the display and sale of doors, windows and cabinets and for the computer layout of kitchens and baths in Unit 13. The Board voted to **uphold** the Building Inspector's decision. Notwithstanding the above, if the Appeal of an Administrative Decision is denied, then a Variance from Article II, Section 10-207(3) is requested to allow the operation of a design center and showroom for the display and sale of doors, windows and cabinets and for the computer layout of kitchens and baths in Unit 13. The Board voted to **grant** the request as presented and advertised.
- **September 17, 1996** - A request for an Extension of Time for the Seacoast Family YMCA. The Board voted to **grant** the extension of time for an additional one year period effective September 17, 1996 until September 18, 1997.
- **August 19, 1997** - A request for an Extension of Time. The Board voted to **grant** the extension of time for an additional one year to expire September 30, 1997.
- **September 15, 1998** - A request for an Extension of Time for the Seacoast Family YMCA. The Board voted to **grant** the extension of time for an additional one year to expire September 30, 1999.
- **October 19, 1999** - A request for an Extension of Time for the Seacoast Family YMCA. **Withdrawn** by applicant.
- **April 18, 2000** – A Variance from Article II, Section 10-209 to allow the conversion of an existing 50' x 300' building from general industrial warehouse use to a mini storage facility in a district where such use is not allowed. The Board voted to **grant** the request as presented and advertised.

- **March 20, 2001** – A Variance from Article II, Section 10-209 to allow the conversion of a 60' x 300' building from general industrial warehouse use to a mini storage facility in a district where such use is not allowed. The Board voted to **grant** the request as presented and advertised.
- **May 20, 2008** – A Variance from Article II, Section 10-209 was requested to allow the sale of sporting goods (primarily lacrosse equipment) and lacrosse and circuit training in a district where such uses are not allowed. The Board voted to **grant** the request as presented and advertised.
- **October 21, 2008** – A Variance from Article II, Section 10-209 was requested to convert a 7,200 sf portion of an existing building into two levels (14,400 sf total area) of self storage in a district where such use is not allowed. The Board voted to **deny** the request as it does not meet the criteria necessary to grant a variance. There is nothing inherent in the land presenting a hardship and the zoning restriction does not interfere with a reasonable use of the property.
- **April 19, 2011** – To allow Motor Vehicle Repair/automotive glass replacement as a special exception use, which requires the following: Special Exception under Section 10.440, Use #11.20, to permit Motor Vehicle Repair in the Industrial district. The Board voted to **grant** the request as presented and advertised.
- **February 26, 2013** – Outdoor retail use with pool display and outdoor storage area, 4' x 8' sign installed on the fence surrounding the pool display area, and outdoor storage which requires the following: 1) a Variance from Section 10.440 and Section 10.434.40 to allow the outdoor display and outdoor retail sale of pools and related materials. 2) A Variance from Section 10.531 to allow a front yard setback of 36'± where 70' is required. 3) A Variance from Section 10.531 to allow 17%± open space where 20% is required. 4) The Variance(s) necessary to allow a 32 s.f. sign to be erected on a fence. 5) A Special Exception under Section 10.440, Use #20.61 to allow the outdoor storage of pool related materials. The Board voted to **grant** the request as presented, with the following conditions:
 - 1) That the distance from the front property line on Heritage Avenue to the pools in the display area will be no less than 50'.
 - 2) That the area of the proposed sign be erected on the fence will be no greater than 18 s.f.
- **April 23, 2013** – Tanning booth in existing laundromat facility, which requires the following: 1) a Variance from Section 10.440, Use #7.20 to allow a use that is not permitted in this district. 2) A Variance from Section 10.331 to allow a lawful nonconforming use to be extended, enlarged or changed in a manner that is not in conformity with the Zoning Ordinance. The Board voted to **grant** the request as presented and advertised.

Planning Department Comments

The subject property is an industrial property that contains one commercial building, three one-story mini-storage buildings, and two large industrial warehouse buildings. In January 2025 it came to the attention of Planning staff that the property owner had installed several mini-storage units in the rear of the property without the benefit of approvals and permits. The applicant submitted an after-the-fact building permit application in February 2025 and was notified that the storage unit structures would require land use approvals to be placed in the rear yard and for the expansion of a nonconforming use.

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.

III. NEW BUSINESS

B. The request of **Suzanne S. Dargie (Owner)**, for property located at **35 Boss Avenue** whereas relief is needed to construct a two-story addition to the existing single-family home which requires the following: 1) Variance from Section 10.521 to a) allow a 8.5 foot right side yard where 10 feet is required and b) 22.5% building coverage where a maximum of 20% is permitted. Said property is located on Assessor Map 152 Lot 42 and lies within the Single Residence B (SRB) District. (LU-25-72)

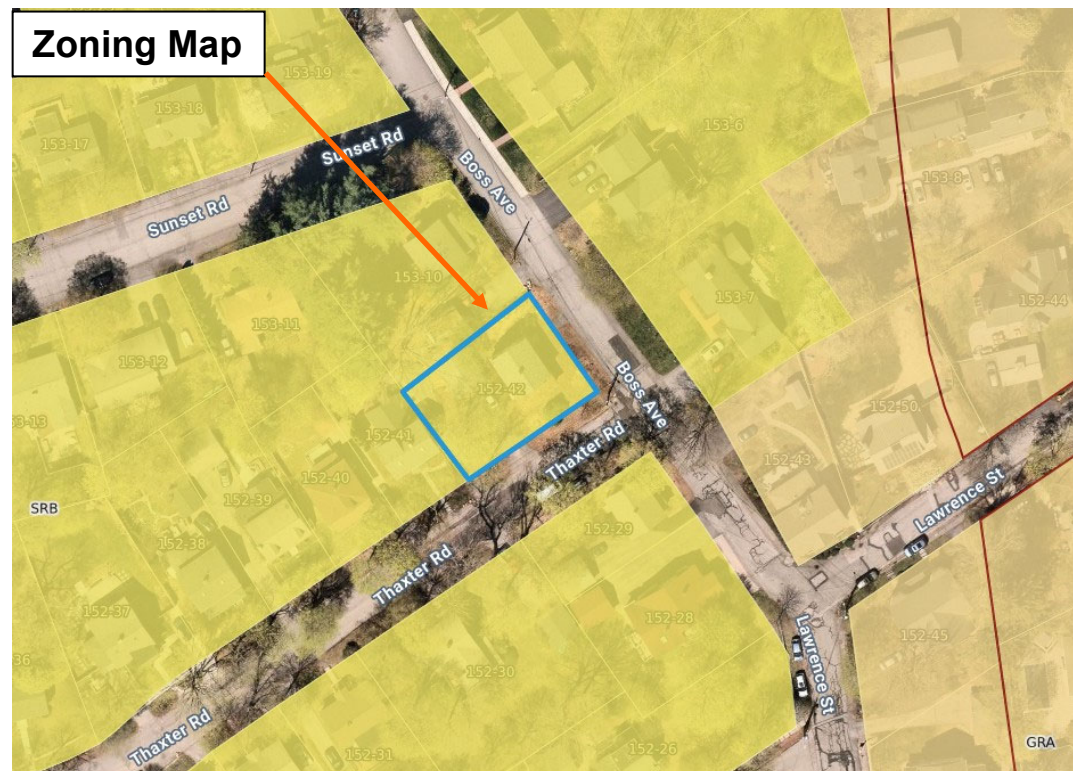
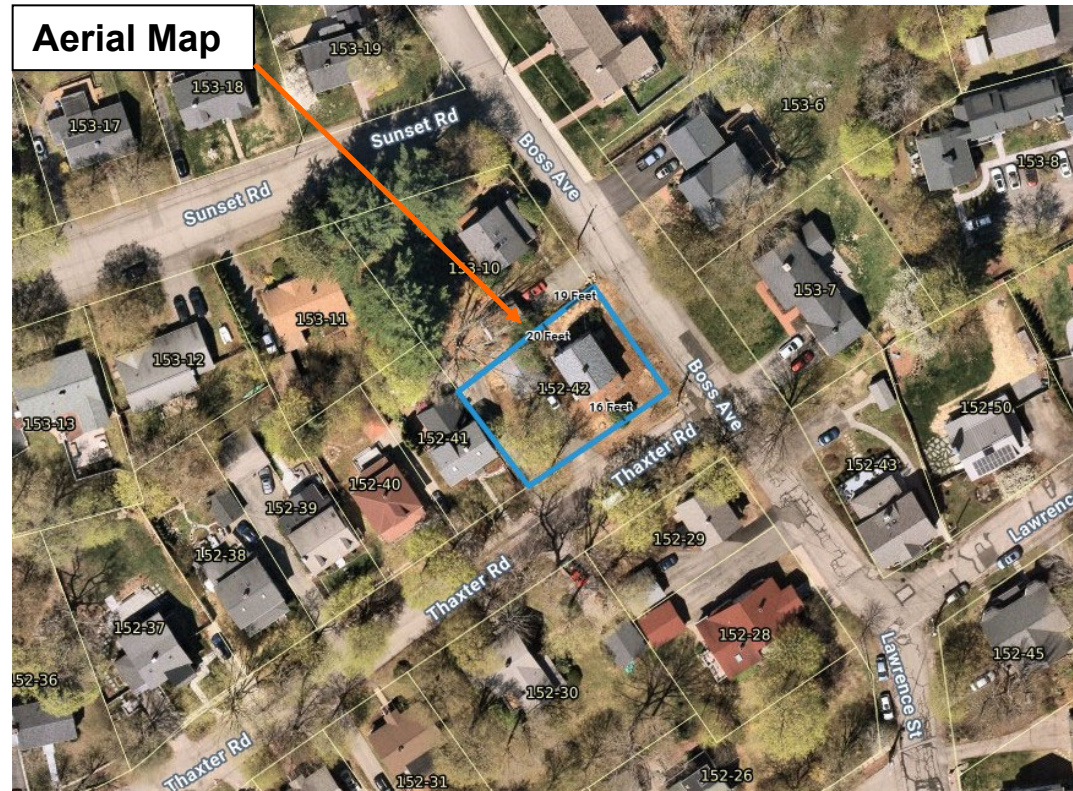
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Addition to Primary Structure	Primarily Residential
<u>Lot area (sq. ft.):</u>	6,969	6,969	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,969	6,969	15,000 min.
<u>Lot depth (ft.):</u>	85.4	85.4	100 min.
<u>Street Frontage (ft.):</u>	174.5	174.5	100 min.
<u>Front Yard (ft.) (Boss Ave):</u>	16	15	9.5 min. (Sec.10.516.10)
<u>Secondary Front Yard (ft.) (Thaxter Rd):</u>	16	16	30 min.
<u>Right Side Yard (ft.):</u>	Primary Structure: 20	Addition: 8.5	10 min.
<u>Rear Yard (ft.):</u>	Primary Structure: >30	Addition: >30	30 min.
<u>Building Coverage (%):</u>	19.6	22.5	20 max.
<u>Open Space Coverage (%):</u>	61.9	60.5	40 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Parking</u>	>2	>2	2
<u>Estimated Age of Structure:</u>	1937	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

- No previous BOA history.

Planning Department Comments

The applicant is proposing to construct a two-story side addition to the primary structure with two bathrooms. The proposed addition requires relief for right side yard setback and building coverage greater than the maximum allowed.

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.

III. NEW BUSINESS

- C. The request of **Port Hunter LLC (Owner)**, for property located at **361 Miller Avenue** whereas relief is needed to demolish the existing detached garage and construct a new detached garage which requires the following: 1) Variance from Section 10.521 to allow a building coverage of 26% where a maximum of 25% is permitted; 2) Variance from Section 10.573.20 to a) allow an accessory building with a 10.5 foot rear setback where 20 feet is required; and b) a 6 foot left side yard setback where 10 feet is required. Said property is located on Assessor Map 131 Lot 33 and lies within the General Residence A (GRA) District. (LU-25-76)

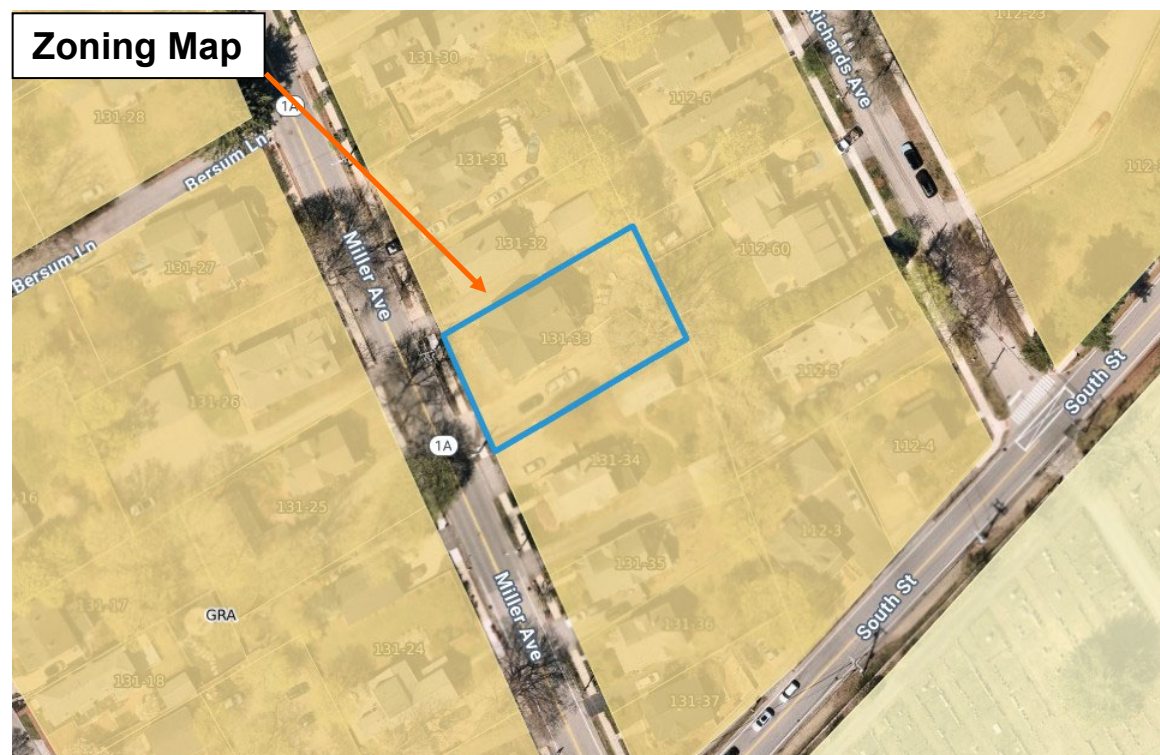
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	6-unit Multi-family	Demo existing detached garage and construct new detached garage in new location	Primarily Residential
<u>Lot area (sq. ft.):</u>	9,921	9,921	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,653.5	1,653.5	7,500 min.
<u>Lot depth (ft.):</u>	131.5	131.5	100 min.
<u>Street Frontage (ft.):</u>	75.8	75.8	70 min.
<u>Front Yard (ft.):</u>	>15	>15	15 min.
<u>Right Side Yard (ft.):</u>	Garage: 4	Garage: >10	10 min.
<u>Left Side Yard (ft.):</u>	Garage: >10	Garage: 6	10 min.
<u>Rear Yard (ft.):</u>	Garage: 21	Garage: 10.5	20 min.
<u>Building Coverage (%):</u>	23.9	26	25 max.
<u>Open Space Coverage (%):</u>	39.5	34.6	30 min.
<u>Height (ft.):</u>	Garage: <35	Garage: 22	35 max.
<u>Parking</u>	8	9	8
<u>Estimated Age of Structure:</u>	1880	Variance request(s) shown in red.	

Other Permits/Approvals Required

- TAC / PB Amended Site Plan Approval
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

- No previous BOA history.

Planning Department Comments

The applicant is proposing to demolish the existing dilapidated one-story detached garage on the property and to construct a new 24' x 24', two-story, two-car garage in the northeasterly corner of the property. The relocation of the new garage is proposed to improve the conditions of a large 210-year-old silver maple tree located directly behind the existing detached garage. The proposed garage requires relief for left side yard setback, rear yard setback and building coverage greater than the maximum allowed.

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.

III. NEW BUSINESS

D. The request of **Maureen A Rousseau and Daniel A Indoe (Owner)**, for property located at **239 Broad Street** whereas relief is needed to remove an existing detached accessory structure and to construct an addition to the primary structure which requires the following: 1) Variance from Section 10.521 to allow a secondary front yard setback of 6 feet where 15 feet is required. Said property is located on Assessor Map 131 Lot 15 and lies within the General Residence A (GRA) District. (LU-25-75)

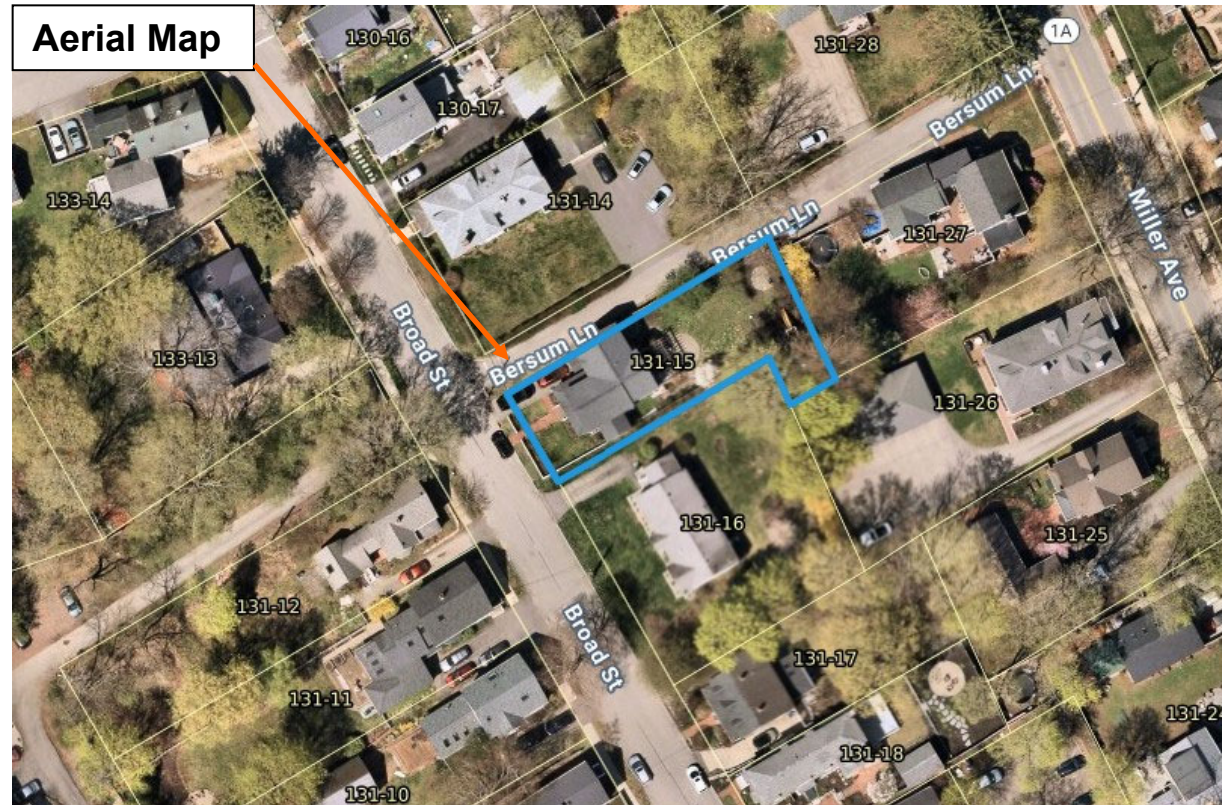
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Demo detached accessory structure and construct addition to Primary Structure	Primarily Residential
<u>Lot area (sq. ft.):</u>	7,454	7,454	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,454	7,454	7,500 min.
<u>Lot depth (ft.):</u>	143	143	100 min.
<u>Street Frontage (ft.):</u>	193	193	70 min.
<u>Front Yard (Broad St) (ft.):</u>	>15	>15	15 min.
<u>Secondary Front Yard (Bersum Ln) (ft.):</u>	2.5	Primary: 2.5 Addition: 6	15 min.
<u>Right Side Yard (ft.):</u>	Primary: 0	Primary: 0	10 min.
<u>Rear Yard (ft.):</u>	Primary: >20	Primary/Addition: >20	20 min.
<u>Building Coverage (%):</u>	23.9	24.6	25 max.
<u>Open Space Coverage (%):</u>	71.9	71.9	30 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1937	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

- **March 19, 2003** – Variances from Article III, Section 10-302 (A) and Article IV, Section 10-401 (A)(2)(c) were requested to allow: a) a 17' x 22'4" two story addition with a basement with a 7" left side yard where 10' is the minimum required, b) a 3'6" x 9'6" rear deck with a 6'± left side yard where 10' is the minimum required, c) a 3'6" x 9' front deck with a 3' x 6' cantilevered second floor addition above the deck with a 6'± left side yard where 10' is the minimum required, and d) an irregular shaped 199.5 sf two story addition with a basement with a 9'3" right side yard where 10' is the minimum required. The Board voted to **deny** the request as presented and advertised. It was felt that the zoning restrictions that apply to your property are reasonable and that the public interest would be better served if the addition was brought in further from the property line. It would be contrary to the public interest to have a building 7" from the property line.
- **June 17, 2003** – A Variance to allow a 15' x 22' two story addition with a 2' 6" left side yard where 10' was the minimum required. The Board voted to **grant** the request as presented and advertised.

Planning Department Comments

The applicant is proposing to remove an existing detached accessory structure and to construct an addition to the front entrance of the primary structure. The proposed addition requires relief for secondary 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.

III. NEW BUSINESS

- E. The request of **Greengard Center for Autism (Owner)**, for property located at **89 Brewery Lane** whereas relief is needed for a change of use from an assisted living home with 5 residents to an assisted living center with 6 residents which requires the following: 1) Variance from Section 10.440, Use #2.11 for an assisted living center where it is not permitted. Said property is located on Assessor Map 146 Lot 26 and lies within the Character District 4-L2 (CD4-L2). (LU-25-77)

Existing & Proposed Conditions

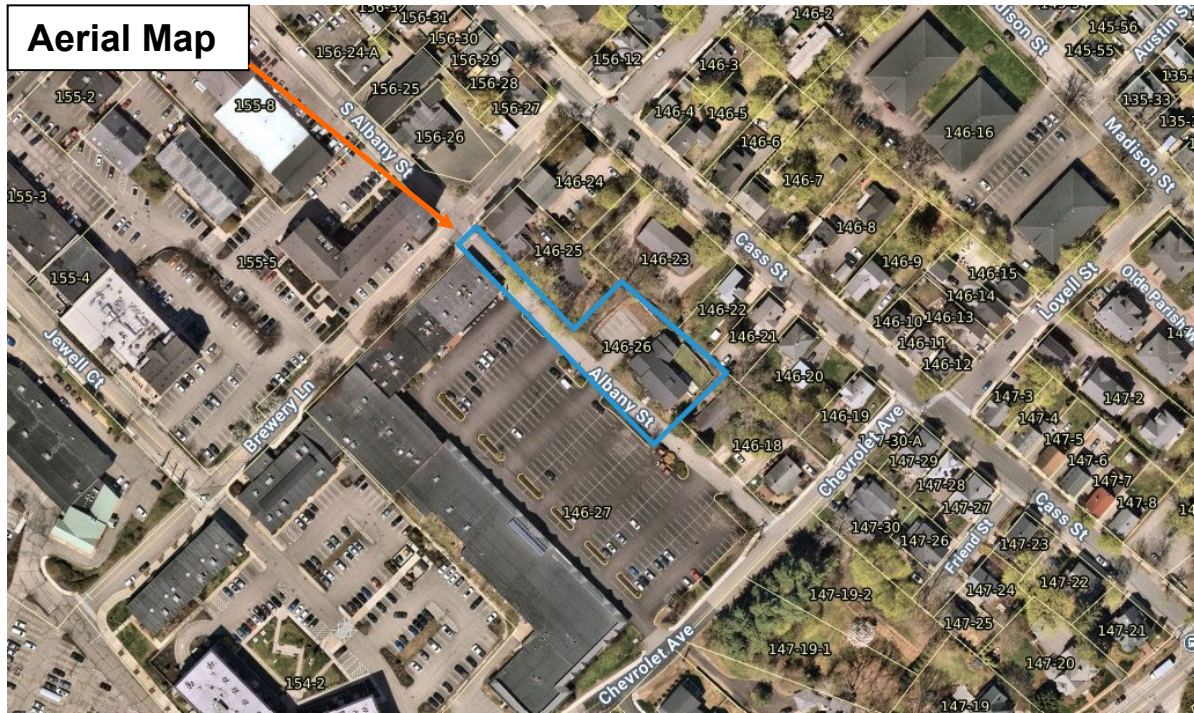
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Assisted Living Home	Assisted Living Center*	Primarily Mixed Use
<u>Lot area (sq. ft.):</u>	25,466	25,466	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	25,466	4,244	3,000 min.
<u>Parking</u>	4	4	4
		Variance request shown in red.	

*Conversion of staff suite to assisted living unit changes the use from an assisted living home (5 or fewer residents) to an assisted living center (6 or more residents)

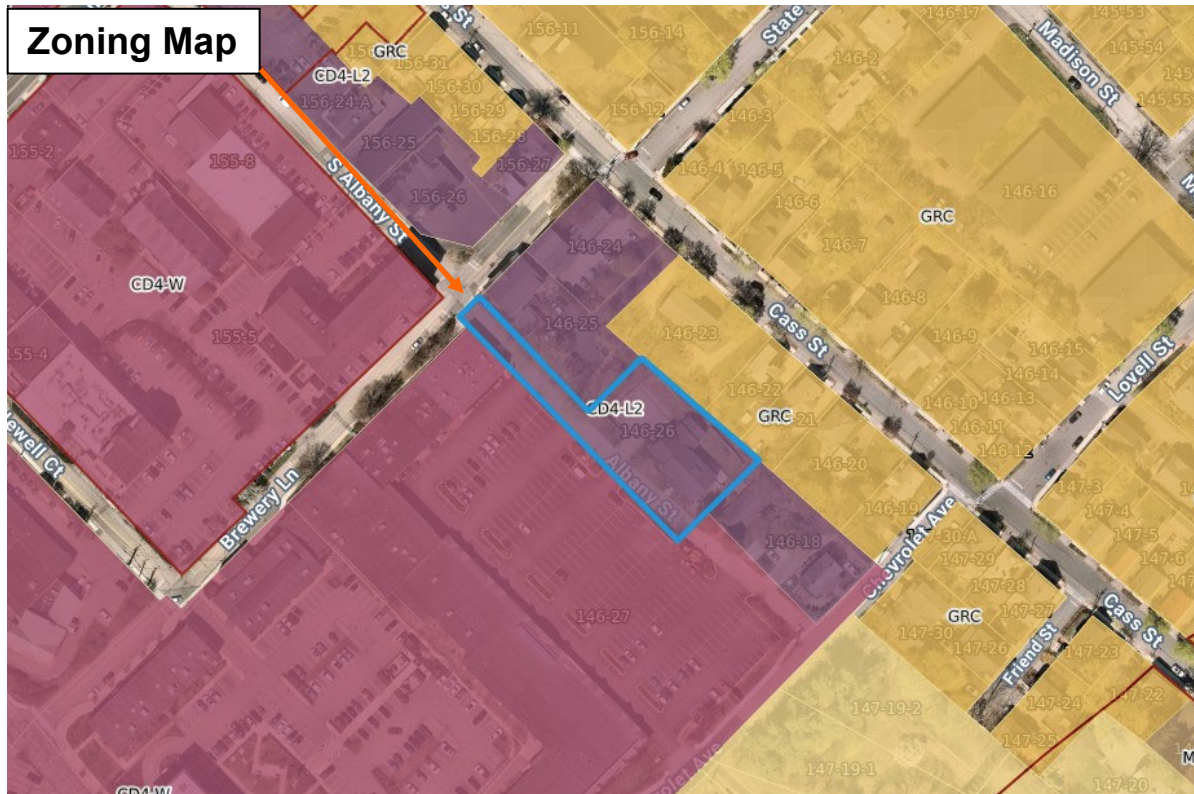
Other Permits/Approvals Required

- Building / Tenant fit-up Permit

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

- **August 18, 2015** – Remove existing structure and construct 2-story assisted living home with a 3,450 sq. Ft. footprint which requires the following: 1) A Special Exception from Section 10.440 to allow an assisted living home. 2) A Variance from Section 10.512 to allow 30' of street frontage where a minimum of 100' is required. The Board voted to **grant** the request as presented and advertised.
- **July 18, 2017** - A one-year extension of the variance and special exception granted at the August 18, 2015 meeting of the Board. The Board voted to **grant** a one-year extension through August 18, 2018.
- **April 17, 2018** – Replace the existing structure with a Colonial style assisted living home which requires the following: 1) Variances from Section 10.5A41.10A to allow the following: a) a principal front yard of 76'± where 15' is the maximum allowed; b) a right side yard of 37'± where a 5' minimum to 20' maximum is required; c) a front lot line buildout of 50%± where 60% minimum to 80% maximum is required; d) a minimum ground story height of 10' where 11' is required; e) 13%± façade glazing where 20% minimum to 40% maximum is required; f) a building footprint of 3,146 s.f. where 2,500 s.f. is required; and 2) a Variance from Section 10.5A44.31 to allow off-street parking spaces to be located less than 20' behind the façade of a principal building. The Board voted to **grant** as presented and advertised.

Planning Department Comments

The property received land use approvals in 2018 to construct an assisted living home with 5 resident units and a live-in caretaker. In addition to the live-in caretaker's unit, a staff suite was provided on the second floor. The applicant is proposing to convert the existing staff suite to a sixth assisted living unit. The change from 5 to 6 units changes the use from an assisted living home (five or fewer residents) to an assisted living center (six or more residents) and requires relief as an assisted living center is not an allowed use in the CD4-L2 District. The applicant is not proposing any exterior changes to the property and existing parking meets the required 4 spaces for the 6 assisted living units and 1 caretaker's unit (0.5 spaces / unit + 1 space for caretaker).

The site plan approval included the following outstanding condition of approval:

1. "The provision of an easement or ROW to the City for the portion of the road and/or future sidewalk on the parcel to connect to the public portion of Albany Street shall be reviewed and approved by the Planning and Legal Department and approved by the City Council."

Should the Board decide to grant the requested variance, staff recommends that it is conditioned upon finalization of the outstanding condition of site plan approval noted above.

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

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