



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

MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Jillian Harris, AICP, Planner
DATE: August 16, 2023
RE: Zoning Board of Adjustment August 22, 2023

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

II. New Business

- A. 686 Maplewood Avenue
- B. 281 Cabot Street
- C. 64 Vaughan Street
- D. 9 Kent Street
- E. 303 Bartlett Street

II. NEW BUSINESS

- A.** The request of **Islamic Society of the Seacoast Area ISSA (Owners)**, for property located at **686 Maplewood Avenue** whereas relief is needed to construct 6 single living unit structures which requires the following: 1) Variance from Section 10.520 to permit 10,462 square feet of lot area per dwelling unit where 15,000 if required; and 2) Variance from Section 10.513 to permit six (6) free standing buildings where only one (1) is permitted. Said property is located on Assessor Map 220 Lot 90 and lies within the Single Residence B (SRB) District (LU-23-57)

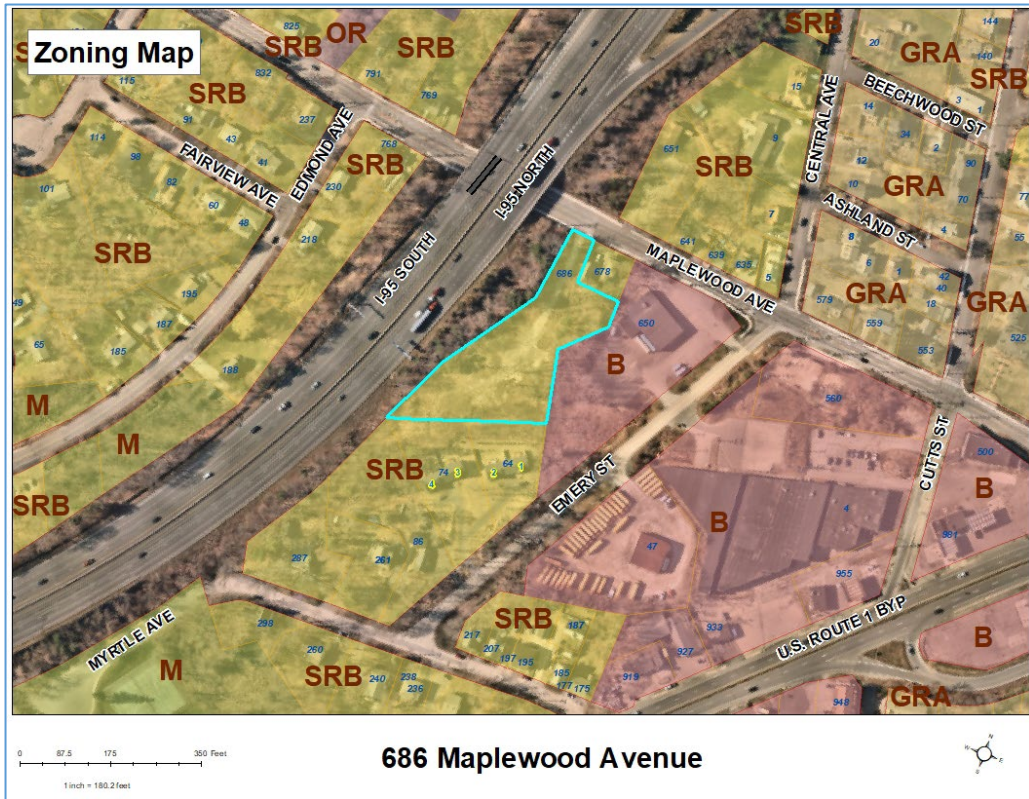
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Vacant	6 Single-family detached dwelling units	Primarily residential
<u>Lot area (sq. ft.):</u>	62,776	62,776	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	N/A	10,462	15,000 min.
<u>Street Frontage (ft.):</u>	47	47	100 min.
<u>Lot depth (ft.):</u>	>200	>200	100 min.
<u>Front Yard (ft.):</u>	N/A	>60	30 min.
<u>Right Yard (ft.):</u>	N/A	>10	10 min.
<u>Left Yard (ft.):</u>	N/A	>10	10 min.
<u>Rear Yard (ft.):</u>	N/A	>30	30 min.
<u>Height (ft.):</u>	N/A	<35	35 max.
<u>Building Coverage (%)</u>	0	10.7	20 max.
<u>Open Space Coverage (%)</u>	100	65.3	40 min.
<u>Parking:</u>	N/A	16	9
<u>Estimated Age of Structure:</u>	N/A	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Site Plan Approval – TAC and Planning Board
- Highway Noise Overlay Conditional Use Permit – Planning Board
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

February 21, 2017 – The Board **granted** a special exception and a variance to allow the following:

- 1) a Special Exception from Section 10.440 to allow a religious place of assembly in a district where the use is only allowed by special exception.
- 2) a Variance from Section 10.521 to allow 47'± of continuous street frontage where 100' is required.

February 25, 2019 – The Board **granted** a 1-year extension of the variance and special exception, to expire on February 21, 2020.

April 7, 2020 – The Board **postponed** the request (*to the April 21, 2020 meeting*) for relief needed from the Zoning Ordinance to construct a 4,000± s.f. building to house a religious place of assembly which includes the following:

- 1) A Special Exception under Section 10.440, Use #3.11 to allow a religious place of assembly in a district where the use is only allowed by Special Exception; and
- 2) A Variance from Section 10.521 to allow 47'± of continuous street frontage where 100' is required.

April 21, 2020 – The Board voted to **grant** the variance and special criteria as presented.

May 16, 2023 – The Board considered the application for constructing four (4) duplexes and one (1) single living unit to create a total of nine (9) living units which requires the following: 1) Variance from Section 10.440, Use # 1.30 to permit four (4) two-family unit structures where they are not permitted, 2) Variance from Section 10.513 to permit five (5) free standing buildings with dwellings where not more than one is permitted, 3) Variance from Section 10.520 to allow a) 6,975 square feet of lot area per dwelling unit where 15,000 square feet is required; and b) 47 feet of frontage where 100 feet is required. The Board voted to **postpone** the petition to the May 23, 2023, meeting.

May 23, 2023 – The Board voted to **postpone** the May 16, 2023, petition to the June 21, 2023, meeting.

June 21, 2023 – The Board voted to 1) to **grant** the request for the 47-ft frontage variance (Item 3.b); and 2) to **deny** the request to construct four duplexes and one single living unit to create a total of nine living units which requires relief from Section 10.440 (use 1.30) to permit four two-family structures where they are not permitted, and Section 10.513 to permit five freestanding dwellings where not more than one is permitted, and Section 10.520 for 6,975 square feet of lot area per dwelling unit where 15,000 square feet is required.

Planning Department Comments

Fisher vs. Dover

The applicant was before the Board in June 2023 seeking relief for the construction of 5 total buildings on the existing vacant parcel, including four (4) two-unit structures and one (1) single-unit structure, for a total of 9 dwelling units. The Board denied the request because the purpose and intent of the SRB district was to have one freestanding dwelling unit on the property and not to have any two-family dwellings on the subject lot. The lot is big and the

relief would bring the lot area per dwelling unit down to 6,975 sf where 15,000 sf per dwelling unit was required. Also, because the applicant did not demonstrate the hardship and need to have a two-family dwelling or more than one freestanding dwelling per lot or for density relief.

The current application is a request for the construction of 6 single-family detached residential units on the existing vacant parcel. Staff feels this is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether Fisher vs. Dover is applicable before this application is considered.

“When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan.” Fisher v. Dover, 120 N.H. 187, (1980).

The parcel is located within the Highway Noise Overlay District (HNOD), making development subject to a Conditional Use Permit and additional site review requirements per section 10.670 of the [Zoning Ordinance](#).

If granted approval, staff recommends the following stipulation for consideration:

- 1. The design and location of the dwellings may change as a result of Planning Board review and approval.**

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*
AND
 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*
OR
Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

10.235 Certain Representations Deemed Conditions

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

II. NEW BUSINESS

- B. The request of **Karyn S. DeNicola Rev Trust, Karen DeNicola Trustee (Owner)**, for property located at **281 Cabot Street** whereas relief is needed for a variance from Section 10.521 to allow a) three (3) foot front yard where five (5) feet is required, b) three and a half (3.5) foot left side yard where ten (10) feet is required, and c) 36% building coverage where 35% is allowed . Said property is located on Assessor Map 144 Lot 20 and lies within the General Residence C (GRC) District. (LU-23-84)

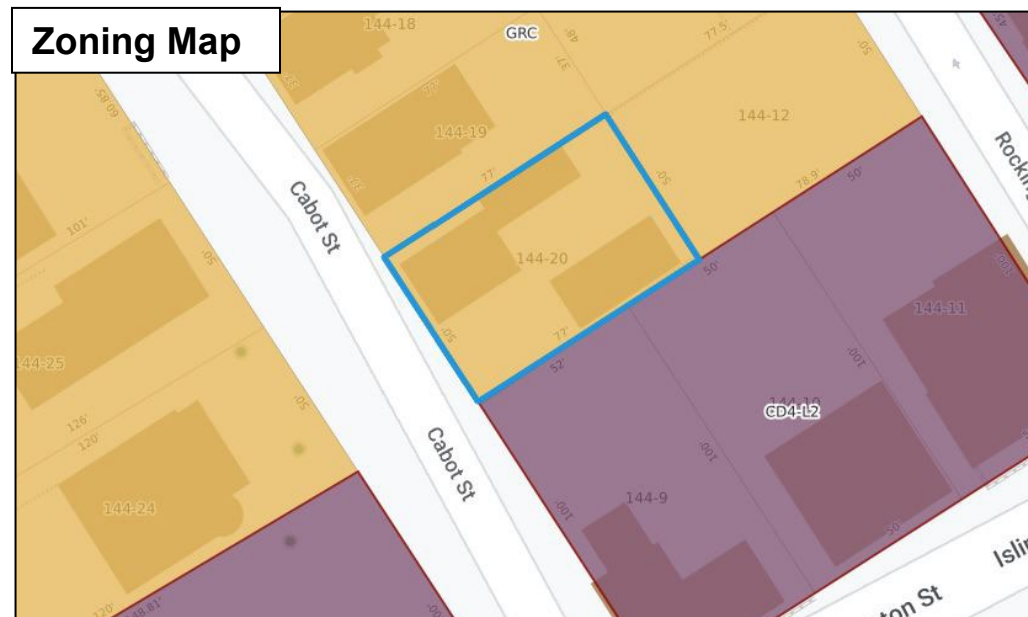
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Dwelling	Raze and Reconstruct	Primarily residential
<u>Lot area (sq. ft.):</u>	3,864	3,864	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,864	3,864	3,500 min.
<u>Street Frontage (ft.):</u>	49.5	49.5	70 min.
<u>Lot depth (ft.)</u>	77.5	77.5	50 min.
<u>Front Yard (ft.):</u>	1.8	3	5 min.
<u>Left Yard (ft.):</u>	0	3.5	10 min.
<u>Right Yard (ft.):</u>	2	10	10 min.
<u>Rear Yard (ft.):</u>	5.3	20.7	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	36	36	35 max.
<u>Open Space Coverage (%)</u>	>20	>20	20 min.
<u>Parking</u>	3	3	2
<u>Estimated Age of Structure:</u>	1870	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

June 27, 2023 – The Board voted to **deny** the request to demolish the existing single-family dwelling and detached one-story garage/shed and construct a new single family dwelling with attached garage which required the following:

- 1) Variance from Section 10.521 to allow a) 3' front yard setback where 5' is required;

- b) a 5' south side yard setback where 10' is required;
- c) a 3.5' north side yard setback where 10' is required; and
- d) a 43% building coverage where 35% is allowed.

Planning Department Comments

Fisher vs. Dover

The applicant was before the Board in June 2023 seeking relief to demolish the existing single-family dwelling and detached garage and to reconstruct a new dwelling with an attached garage in its place. The newly constructed dwelling was proposed within the front, left and right-side setbacks and with an increase in total building coverage from 36% to 43% where 35% is the maximum. The Board denied the request because the spirit and intent of the Ordinance was to prevent overcrowding and the request for 43 percent building coverage where 35 percent is permitted did not meet the criteria. Additionally, the applicant did not establish that there was an unnecessary hardship for the building coverage and all the requested setbacks.

The application before the Board proposes to demolish the existing single-family dwelling and detached garage and to reconstruct a new dwelling with an attached garage in its place. The new design reconfigures the structure on the lot and seeks relief for its location within the front and left side setback and with a total building coverage of 36% where 35% is the maximum. The Board may want to consider whether Fisher vs. Dover is applicable before this application is considered.

“When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan.” Fisher v. Dover, 120 N.H. 187, (1980).

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
 2. *Granting the variance would observe the spirit of the Ordinance.*
 3. *Granting the variance would do substantial justice.*
 4. *Granting the variance would not diminish the values of surrounding properties.*
 5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*
- AND**

(b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

10.235 Certain Representations Deemed Conditions

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

II. NEW BUSINESS

- C. The request of **Novocure Inc. (Owner)**, for property located at **64 Vaughan Street** whereas relief is needed to construct a penthouse which requires Variances from Sections 10.5A43.30 and 10.5A21.B (Map) to allow a maximum height of 47 feet where 42 is allowed. Said property is located on Assessor Map 126 Lot 1 and lies within the Character District 5 (CD5) and North End Incentive Overlay District. (LU-20-214)

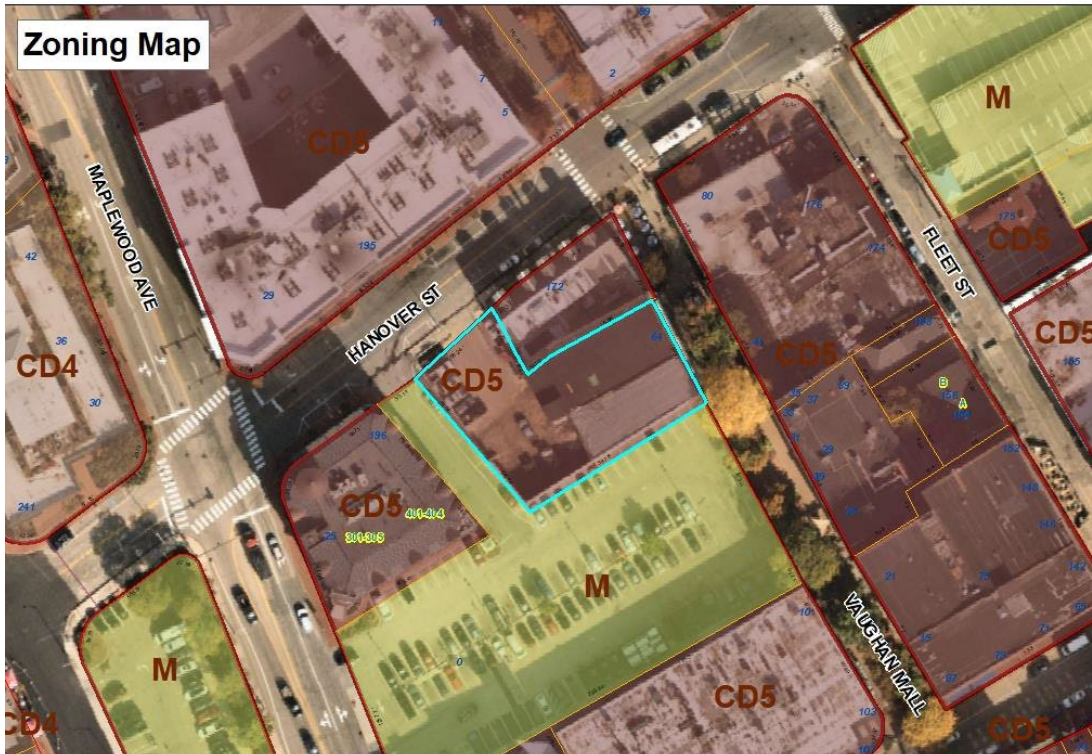
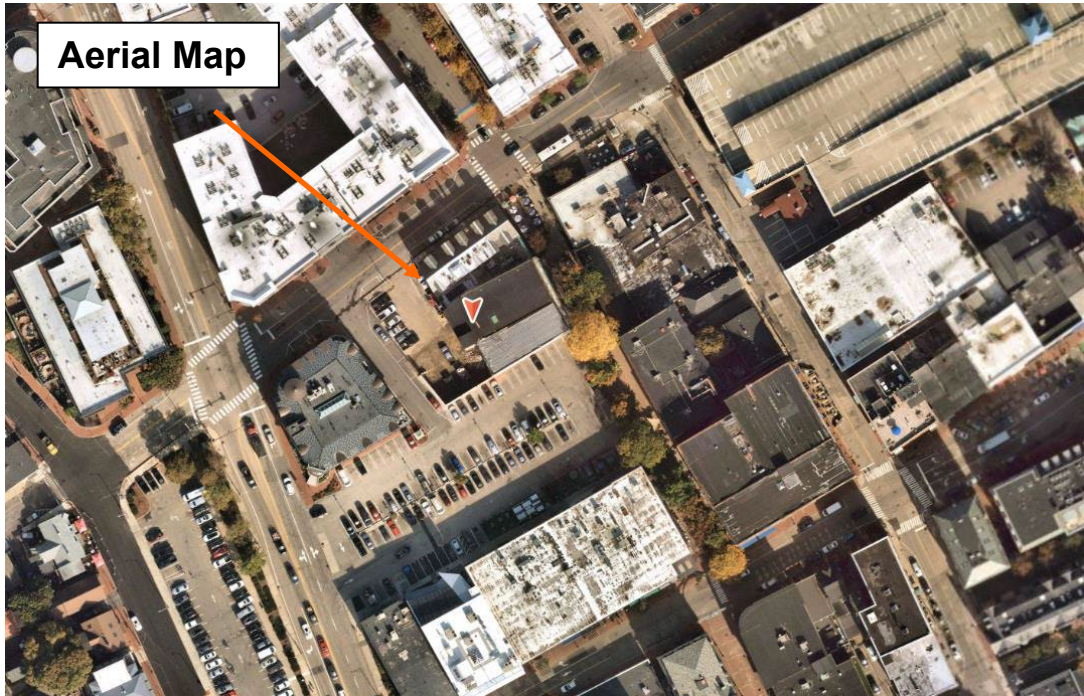
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Professional Office	Penthouse	Primarily Mixed use
<u>Lot area (sq. ft.):</u>	13,964	13,964	NR min.
<u>Penthouse setback. (ft.):</u>	NA	20.6 >15	20' from edge – adj. public place 15' from edge – all others min.
<u>Height (ft.):</u>	40	47	42 max.
<u>Building Coverage (%):</u>	89	89	95 max.
<u>Open Space Coverage (%):</u>	5	5	5 min.
<u>Parking</u>	20	20	No requirement
<u>Estimated Age of Structure:</u>	2022	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Historic District Commission
- Planning Board/TAC – Amended Site Plan
- Building Permit

Neighborhood Context



0 35 70 140 Feet
1 inch = 68.2 feet

64 Vaughan Street



Previous Board of Adjustment Actions

October 4, 1977 – The Board **granted** the following:

To construct a storage and loading addition to the existing building with a single story, where two stories are required for new construction in the Central Business District.

March 23, 2021 – The Board **denied** the following:

Request for an addition of a fourth story as part of redevelopment of the existing structure which requires 1) A Variance from Section 10.5A41.100 to allow a secondary front yard of 50.2 feet where 5 feet is the maximum. 2) A Variance from Section 10.5A41.100 to allow a building height of 52.5 feet and four stories where 40 feet and three stories is the maximum allowed.

April 26, 2022 – The Board considered your application for addition of a rooftop penthouse requiring: 1) A Variance from Section 10.5A43.30 and Map 10.5A21B to allow a building height of 51'6" where 42' is the maximum allowed for a penthouse. 2) A Variance from Section 10.1530 to allow a penthouse with a 9.5' setback from the edge of the roof where 15 feet is required. The Board voted to **postpone** to the May 17, 2022, meeting.

May 17, 2022 – The Board voted to **deny** the April 26, 2022, petition.

Planning Department Comments

Fisher vs. Dover

The applicant was before the Board in May of 2022 seeking relief for a penthouse to be setback 9.5' from the edge of the roof where 15 feet is required and for a height of 51.5' where 42' is the maximum allowed for a penthouse. Since that time the Zoning Ordinance has been amended to include updated definitions of **penthouse** and **building height** (see Section 10.1530). Per the updated definitions, when measuring building height the upper reference point for a penthouse is the elevation midway between the level of the eaves, or floor in the case of a penthouse, and highest point of the roof.

Building height

The greatest vertical measurement between the lower and upper reference points as defined below. This measurement shall be the **building height** for the purposes of the Ordinance.

- (b) The upper reference point shall be any of the following:
 - (1) For a flat or **flat-topped mansard roof**, the highest point of the roof surface;
 - (2) For a gambrel, hip, **hip-topped mansard roof**, or **penthouse**, the elevation midway between the level of the eaves, or floor in the case of a **penthouse**, and highest point of the roof. For this purpose, the "level of the eaves" shall mean the highest level where the plane of the roof intersects the plane of the outside wall on a side containing the eaves, but at no time shall this level be lower than the floor level of the uppermost **story** or **attic**

Penthouse

A habitable space within the uppermost portion of a **building** above the **cornice** which is set back at least 20 feet from all edges of the roof adjoining a **public place** and at least 15 feet from all other edges. The total floor area of the **penthouse** shall not exceed 50% of the area of the **story** below and the height of the **penthouse** shall not exceed 10 feet above the story below the flat roof or 14 feet for a gable, hip or **hip-topped mansard** roof surface. Except for elevator or stairwell access allowed under Section 10.517, no other roof appurtenance shall exceed the maximum allowed height of a **penthouse**. For internal courtyards at least 40 feet from a **street** or vehicular right-of-way or easement, the **penthouse** shall be setback at least 8 feet from the edge of the roof of the **story** below. (See also: **building height**.)

The applicant is seeking to add a penthouse that would result in a height of 47' where 42' is the maximum allowed. They have also redesigned the penthouse to meet the required setbacks. Staff feels the updated design and the relevant Zoning Ordinance changes are significant enough that it would not evoke Fisher v. Dover, but the Board may want to consider whether it is applicable before the application is considered.

“When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan.” Fisher v. Dover, 120 N.H. 187, (1980).

If granted approval, staff recommends the following stipulation for consideration:

- 1. The design of the penthouse may change as a result of Planning Board and Historic District Commission review and approval.**

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*
 - AND**
 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*
 - OR**
 - Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

10.235 Certain Representations Deemed Conditions

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

II. NEW BUSINESS

- D. The request of **Cynthia Austin Smith and Peter Smith (Owners)**, for property located at **9 Kent Street** whereas relief is needed to demolish the existing two (2) living unit structure and construct a one (1) living unit structure which requires a Variance from Section 10.521 to allow a) 5,000 square feet of lot area where 7,500 square feet are required and b) 5,000 square feet of lot area per dwelling unit where 7,500 square feet are required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. (LU-23-119)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two-family	Demo structure and construct new single unit	Primarily residential
<u>Lot area (sq. ft.):</u>	5,000	5,000	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,000	5,000	7,500 min.
<u>Street Frontage (ft.):</u>	50'+	50' +	100 min.
<u>Lot depth (ft.)</u>	100	100	70 min.
<u>Primary Front Yard (ft.):</u>	7	11	10 (using front yard averaging) min.
<u>Secondary Front Yard (ft.):</u>	16	16	13 (using front yard averaging) min.
<u>Right Yard (ft.):</u>	0.5	12	10 min.
<u>Rear Yard (ft.):</u>	6	>20	20 min.
<u>Height (ft.):</u>	<35	34.5	35 max.
<u>Building Coverage (%):</u>	35	25	25 max.
<u>Open Space Coverage (%):</u>	63.5	42	30 min.
<u>Parking</u>	0	2 (2 car garage)	2
<u>Estimated Age of Structure:</u>	1900	Variance request(s) shown in red.	

Other Permits/Approvals Required

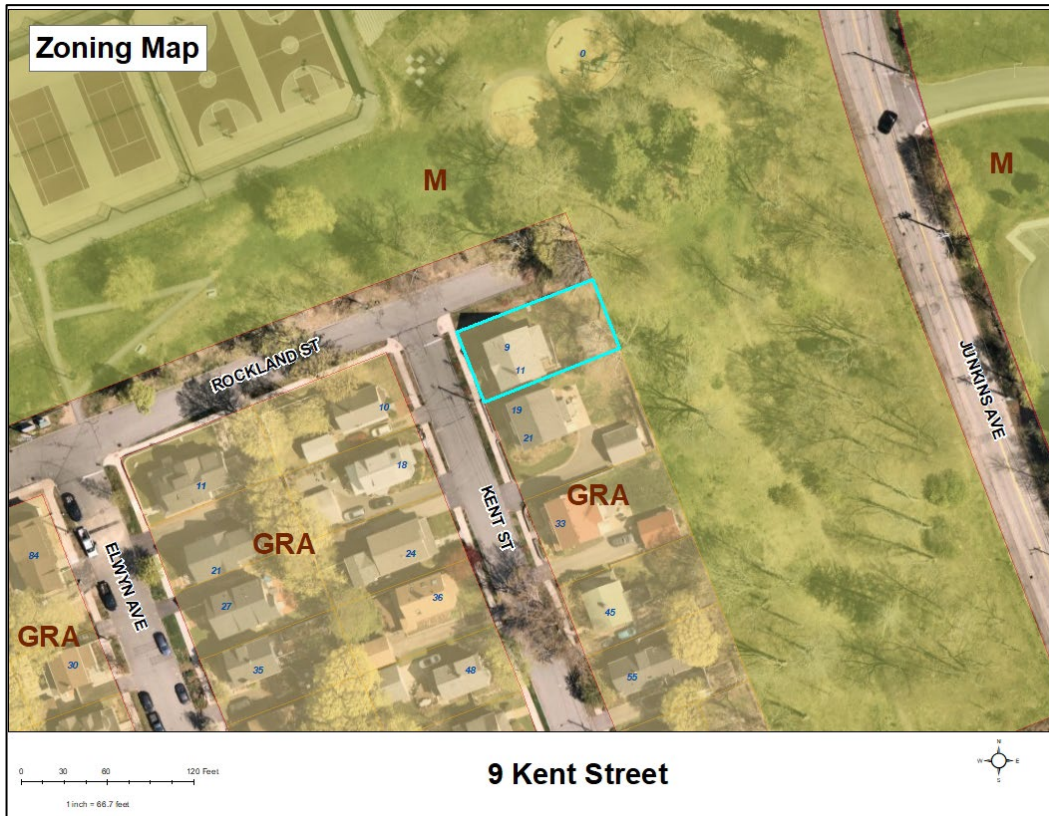
- Building Permit

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

July 19, 1988 – Relief from Zoning Ordinance including: Variance from Article III, Section 10-302 are requested: a) construction of 4' x 20' rear egress stairs from the second floor to rear yard with 33% building lot coverage in a district where the maximum building lot coverage allowed is 20% and b) construction of said stairs with a 2 ½' right yard where a 10' side yard is the minimum in this district. The Board voted to **grant** the request as advertised.

March 29, 2023 – The Board considered the application for demolishing the existing two-family and constructing a single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 5,000 square feet where 7,500 square feet is required for each; b) 53% building coverage where 25% is the maximum allowed; c) a 4.5 foot rear yard where 20' is required; d) a 0.5 foot side yard where 10 feet is required; e) a 0 foot front yard where 11 feet is allowed under Section 10.516.10; and f) a 9.5 foot secondary front yard where 13 feet is allowed under Section 10.516.10. 2) A Variance from Section 10.515.14 to allow a 1.5 foot setback for a mechanical unit where 10 feet is required. The Board voted to **postpone** to the April 18, 2023, meeting.

April 18, 2023 - The Board voted to **postpone** the March 29, 2023, petition to the May 16, 2023, meeting.

May 16, 2023 – The Board voted to **deny** the March 29, 2023, request.

Planning Department Comments

Fisher vs. Dover

The applicant was before the Board in May of 2023 seeking relief from multiple dimensional standards to demolish the existing structure, construct a single living unit, and add new backyard features. The Board denied the request for relief at that time citing that it was brand new construction and the applicant could build a new structure in full compliance or require less relief than requested. The new design reconfigures the structure on the lot, meeting all dimensional requirements except for lot area and lot area per dwelling unit, for which they are seeking relief. Staff feels this is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether it is applicable before the application is considered.

“When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan.” Fisher v. Dover, 120 N.H. 187, (1980).

For this project, the complete demolition of the existing structure creates a vacant lot and will require relief for the non-conforming dimensions of the lot. See Section 10.311 copied below for reference.

10.311 *Any lot that has less than the minimum lot area or street frontage required by this Ordinance shall be considered to be nonconforming, and no use or structure shall be established on such lot unless the Board of Adjustment has granted a variance from the applicable requirements of this Ordinance.*

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

 - (c) *Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

10.235 Certain Representations Deemed Conditions

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

II. NEW BUSINESS

- E. The request of **Caleb E. Ginsberg and Samantha L. Ginsberg (Owners)**, for property located at **303 Bartlett Street** whereas relief is needed to demolish the existing detached garage and construct an addition with attached garage which requires a Variance from Section 10.521 to allow a) seven (7) foot left yard where ten (10) feet is required, and b) two (2) foot right yard where ten (10) feet are required. Said property is located on Assessor Map 162 Lot 13 and lies within the General Residence A (GRA) District. (LU-23-120)

Existing & Proposed Conditions

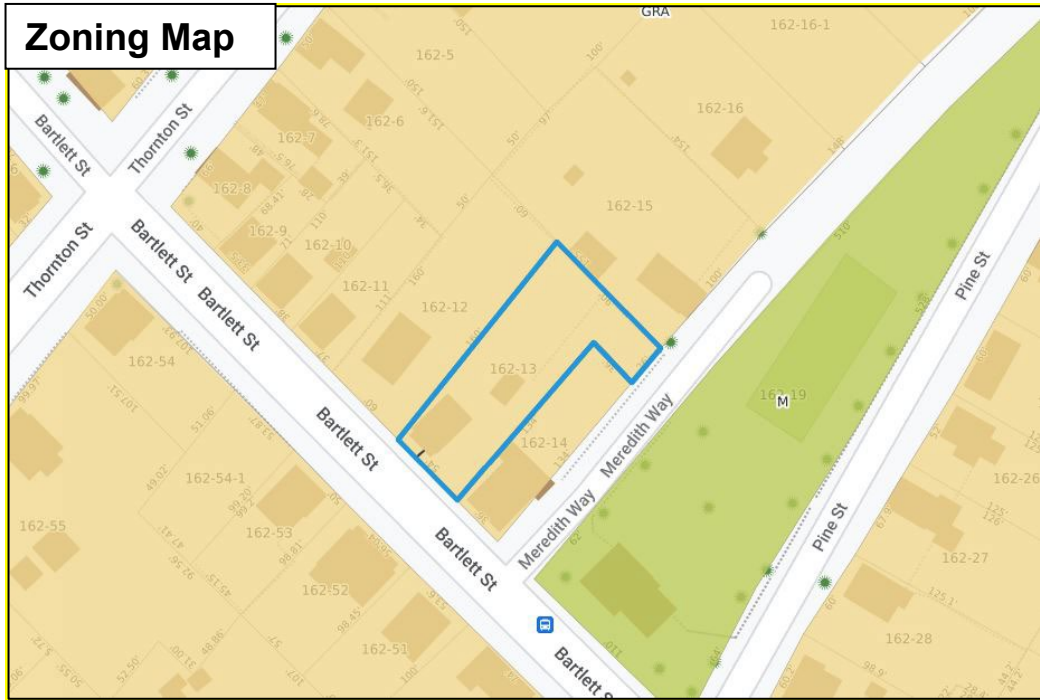
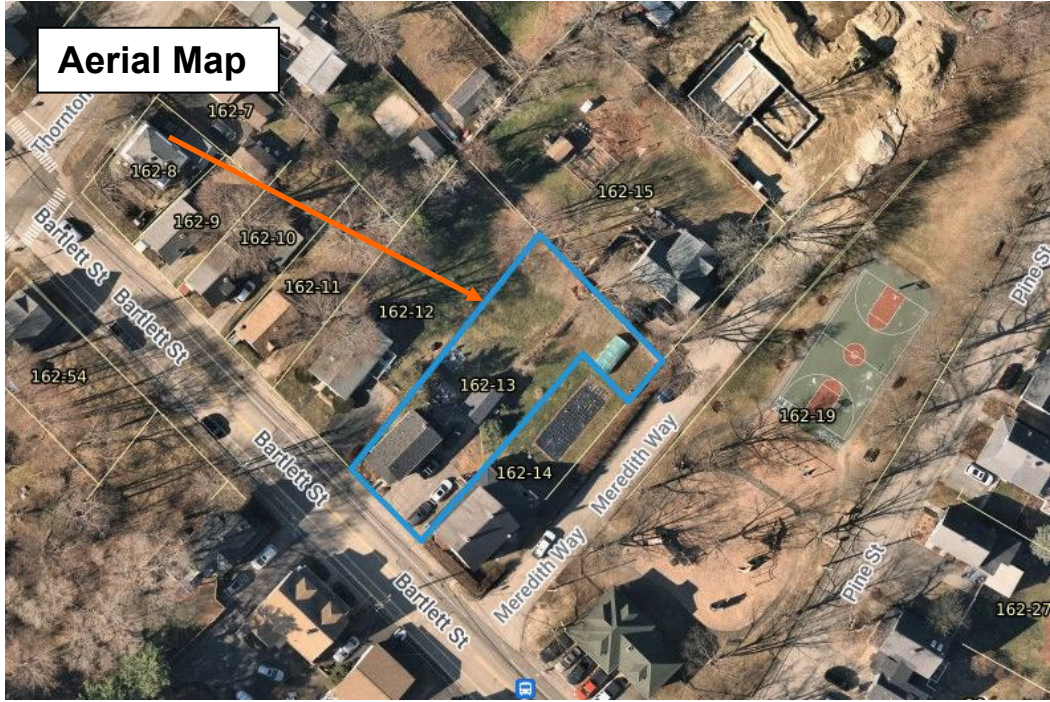
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	Demo detached garage & addition	Primarily residential
<u>Lot area (sq. ft.):</u>	4,906	6,665	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,906	6,665	7,500 min.
<u>Street Frontage (ft.):</u>	36	37	100 min.
<u>Lot depth (ft.)</u>	160	160	70 min.
<u>Front Yard (ft.):</u>	5	5	15 min.
<u>Secondary Front Yard (ft)</u>	NA	NA	NA
<u>Left Yard (ft.):</u>	7	7	10 min.
<u>Right Yard (ft.):</u>	0.6	2	10 min.
<u>Rear Yard (ft.):</u>	>20	>20	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	28.5	27.5*	25 max.
<u>Open Space Coverage (%):</u>	51.8	57.9	30 min.
<u>Parking</u>	>2	2	2
<u>Estimated Age of Structure:</u>	1930	Variance request(s) shown in red.	

***Proposed Building Coverage exceeds the maximum permitted due to proposed addition**

Other Permits/Approvals Required

- Planning Board - LLA
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicants request includes a lot line adjustment that will transfer 1,759 SF from Parcel A to Map 162, Lot 13 for a proposed lot size of 6,665 SF and 3,838 SF from Parcel A to Map 162, Lot 14 for a total lot size of 8,640 SF, as outlined on sheet 2 of the Lot Line Adjustment Plan. This project will require subdivision review and approval from the Planning Board for the proposed lot line adjustment. The proposed building coverage exceeds the 25% maximum permitted in the GRA District due to the proposed addition and therefore would require a variance. The applicant requested relief for a left side setback of 7 feet and a right side setback of 2 feet, but did not include the building coverage variance in their application materials. If the Board feels comfortable including it in a motion and wishes to approve this additional variance request, staff recommends the motion and conditions as listed below or similar language:

Sample Motion: Approve the variance requests with the following conditions:

- 1) ***Subdivision review and approval by the Planning Board is required for the proposed lot line adjustment.***
- 2) ***Maximum building coverage permitted is 27.5%***

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.