

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: April 11, 2018
RE: Zoning Board of Adjustment April 17, 2018 Meeting

OLD BUSINESS

1. 996 Maplewood Avenue – Request for Rehearing
2. 89 Brewery Lane

NEW BUSINESS

1. 28 Rockingham Street
2. 635 Maplewood Avenue
3. 226 Crescent Way
4. 33 Holmes Court
5. 5 Pamela Street
6. 105 Bartlett Street
7. 21 Brewster Street
8. 140 & 152 Court Street
9. 31 Willow Lane

OLD BUSINESS

Case #12-1

| | |
|------------------|---|
| Petitioners: | James M. Fernald |
| Property: | 996 Maplewood Avenue |
| Assessor Plan: | Map 219, Lot 4 |
| Zoning District: | Single Residence B District (SRB) |
| Description: | Request for Rehearing |
| Requests: | Request for Rehearing on Appeal from an Administrative Decision regarding the issuance of a building permit for Unit C of the above property. |

The appeal of the issuance of a building permit for Unit C was denied on February 21, 2018. The applicant filed a request for a rehearing within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, the rehearing will be scheduled for the 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.

Case #3-5

| | |
|------------------|---|
| Petitioners: | Barbara R. Frankel, owner |
| Property: | 89 Brewery Lane |
| Assessor Plan: | Map 141, Lot 36 |
| Zoning District: | Character District 4-L2 (CD4-L2) |
| Description: | Demo existing structure and construct assisted living home. |
| Requests: | <p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> 1. A Variance from Section 10.5A41.10A to allow the following: a) a principal front yard setback 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) a façade glazing of 13% where 20-40% is required; and f) a building footprint of 3,146 s.f. where 2,500 s.f. is the maximum. 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. |

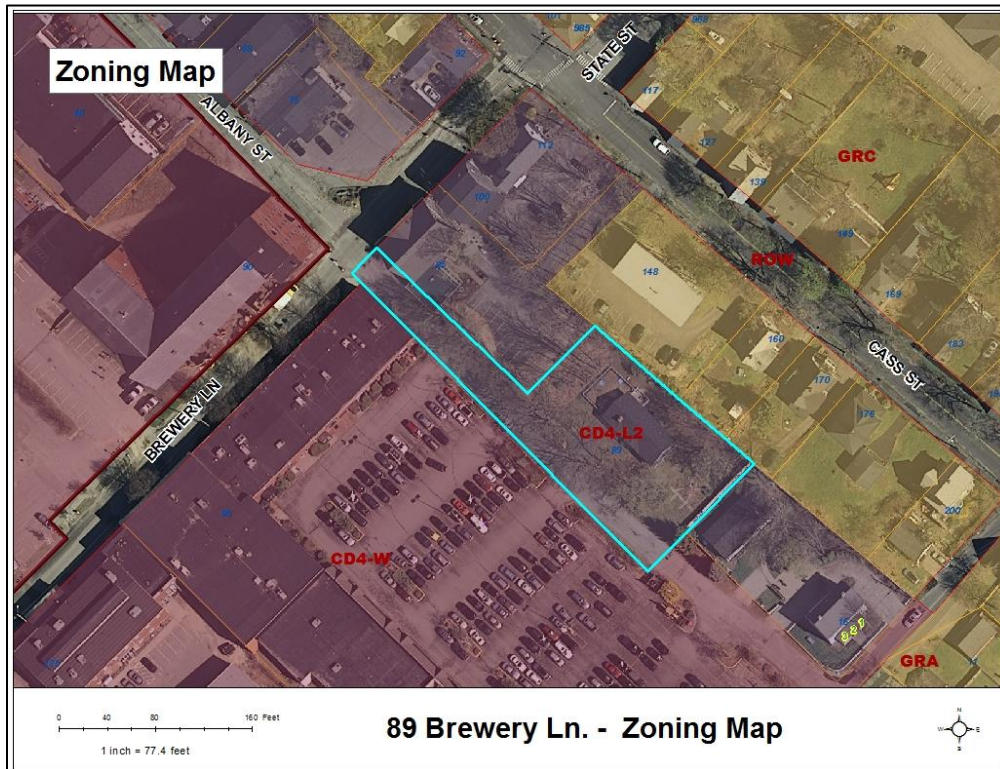
Existing & Proposed Conditions

| | <u>Existing</u> | <u>Proposed</u> | <u>Permitted / Required</u> |
|--|-----------------|---------------------------------------|-----------------------------|
| <u>Land Use:</u> | Single-family | Construct assisted living home | 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 | 5,093 | 3,000 min. |
| <u>Front Lot line buildout:</u> | 39 | 50 | 60 – 80 % |
| <u>Façade Glazing:</u> | 2 | 13 | 20-40% |
| <u>Maximum Front Yard:</u> | 62 | 76 | 15 max. |
| <u>Right Yard (ft.):</u> | 67 | 37 | 5-20 min./max. |
| <u>Left Yard (ft.):</u> | 12 | 13 | 5-20 min./max. |
| <u>Rear Yard (ft.):</u> | >5 | >5 | 5 min. |
| <u>Height (ft.):</u> | <35 | <35 | 35 max. |
| <u>Building Coverage (%):</u> | 6 | 14 | 60 max. |
| <u>Open Space Coverage (%):</u> | >25 | >25 | 25 min. |
| <u>Max. Building Footprint</u> | 1,475 | 3,146 | 2,500 |
| <u>Min. Ground Story Height</u> | 9 | 9.67 | 11 |
| <u>Parking</u> | | 4 | 3 |
| <u>Off-Street parking location</u> | | 0' | 20 ft. behind any facade |
| | | Variance request shown in red. | |

Other Permits Required

Planning Board – Site Plan Review.

Neighborhood Context



Previous Board of Adjustment Actions

July 18, 2015 – The Board **postponed** a request to remove the existing structure and construct a 2-story assisted living home with a 3,450 s.f. footprint which required a special exception to allow an assisted living home and a variance to allow 30' of street frontage where 100' was required.

August 18, 2015 – The Board **granted** the required relief outlined above.

July 18, 2017 – The Board **granted** a one-year extension of the above special exception and variance through August 18, 2018.

Planning Department Comments

This project was before the Board in 2015 and was granted a special exception for an assisted living home and a variance for street frontage. In 2016, the zoning district changed from Mixed Residential Business to CD4-L2 and in order to comply with the new zoning, the applicant is seeking relief from provisions of the CD4-L2 district. The Board granted a one-year extension last July for the original variance and special exception. This project needs site plan 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.*

NEW BUSINESS

Case #4-1

| | |
|------------------|---|
| Petitioners: | Gordon C. & Carol L. Clark |
| Property: | 28 Rockingham Street |
| Assessor Plan: | Map 114, Lot 12 |
| Zoning District: | General Residence C (GRC) |
| Description: | Install a generator. |
| Requests: | Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.573 to allow the following: a) a right side yard of 1.5' where 5' is required. |

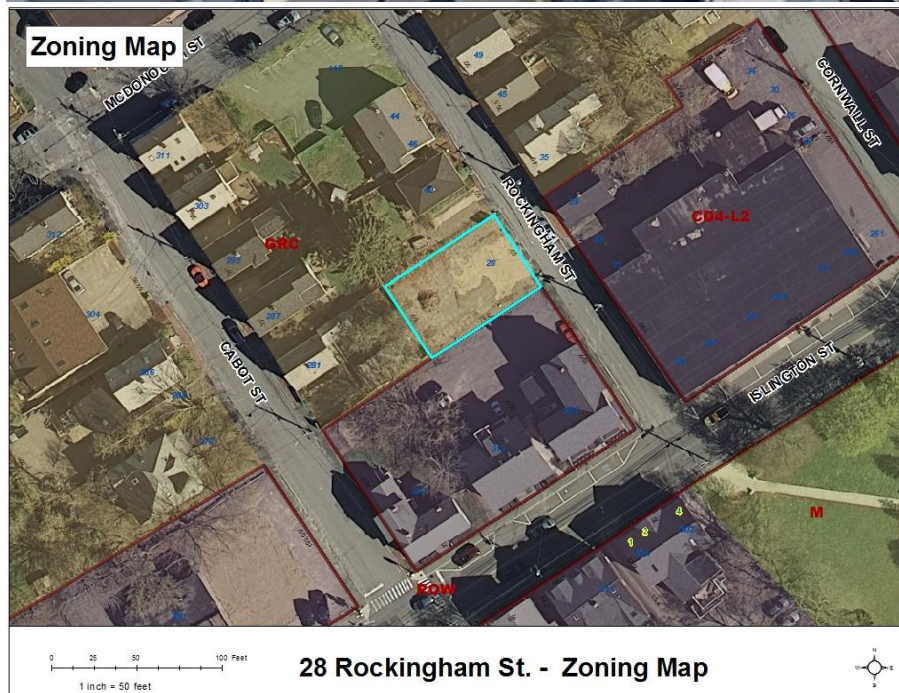
Existing & Proposed Conditions

| | <u>Existing</u> | <u>Proposed</u> | <u>Permitted / Required</u> |
|--|-----------------|---------------------------------------|-----------------------------|
| <u>Land Use:</u> | Single-family | Install generator | Primarily Residential Uses |
| <u>Lot area (sq. ft.):</u> | 3,920 | 3,920 | 3,500 min. |
| <u>Lot Area per Dwelling Unit (sq. ft.):</u> | 3,920 | 3,920 | 3,500 min. |
| <u>Street Frontage (ft.):</u> | 50 | 50 | 70 min. |
| <u>Lot depth (ft.):</u> | 78 | 78 | 50 min. |
| <u>Primary Front Yard (ft.):</u> | >5 | >5 | 5 min. |
| <u>Right Yard (ft.):</u> | 10 | 1'6" | 5 (accessory) min. |
| <u>Left Yard (ft.):</u> | 10 | >10 | 5 (accessory) min. |
| <u>Rear Yard (ft.):</u> | 20 | 18 | 5 (accessory) min. |
| <u>Height (ft.):</u> | <35 | <35 | 35 max. |
| <u>Building Coverage (%):</u> | 35 | 35 | 35 max. |
| <u>Open Space Coverage (%):</u> | >20 | >20 | 20 min. |
| <u>Parking</u> | 0 | ok | ok |
| <u>Estimated Age of Structure:</u> | 2011 | Variance request shown in red. | |

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

August 17, 2010 – The Board **denied** a request to construct a new home with a 7' right side yard where 10' was required and a 15' rear yard where 20' was required.

Planning Department Comments

The applicant only needs relief from the right side yard setback for this proposal. The application indicates relief from the rear yard, but this will be considered accessory, therefore it would only require a 5' rear yard and the 18' proposed from the rear is more than adequate.

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.

Case #4-2

Petitioners: Burns F. Barford IV
 Property: 635 Maplewood Avenue
 Assessor Plan: Map 209, Lot 10
 Zoning District: Single Residence B (SRB)
 Description: Temporary storage.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. A Variance from Section 10.0440, Use #18.23 to allow a temporary structure to remain from 91 to 180 days where 30 days is the maximum period allowed.

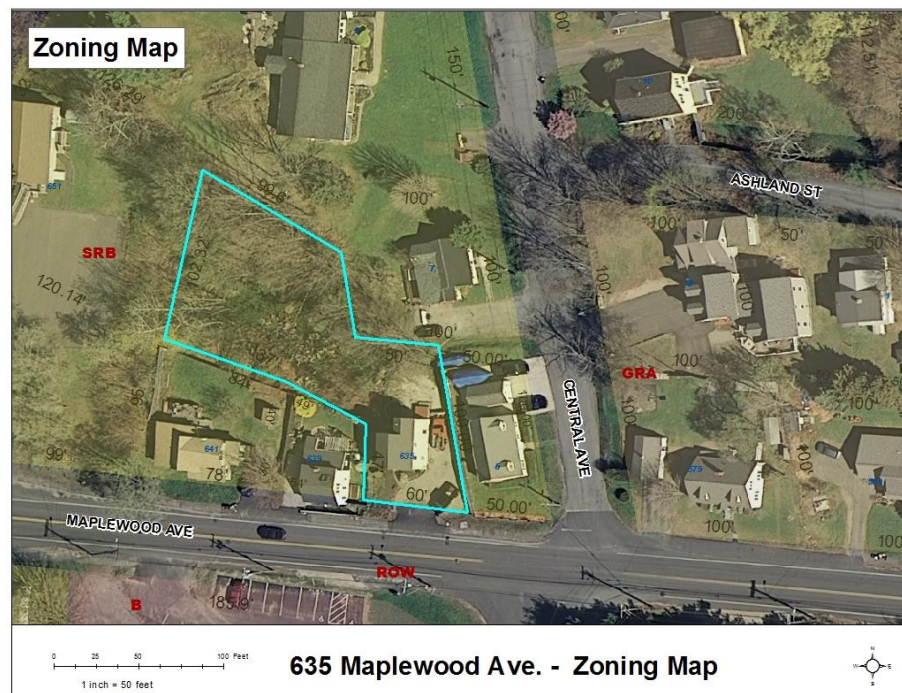
Existing & Proposed Conditions

| | <u>Existing</u> | <u>Proposed</u> | <u>Permitted / Required</u> |
|--|-----------------|-----------------|-----------------------------|
| <u>Land Use:</u> | Single Family | Replace shed. | Primarily Residential Uses |
| <u>Lot area (sq. ft.):</u> | 16,117 | 16,117 | 15,000 min. |
| <u>Lot Area per Dwelling Unit (sq. ft.):</u> | 16,117 | 16,117 | 15,000 min. |
| <u>Street Frontage (ft.):</u> | 60 | 60 | 100 min. |
| <u>Lot depth (ft.):</u> | >100 | >100 | 100 min. |
| <u>Primary Front Yard (ft.):</u> | >30 | >30 | 30 min. |
| <u>Left Yard (ft.):</u> | >10 | >10 | 10 min. |
| <u>Right Yard (ft.):</u> | >10 | >10 | 10 min. |
| <u>Rear Yard (ft.):</u> | >30 | >30 | 30 min. |
| <u>Height (ft.):</u> | <15 | <15 | 35 max. |
| <u>Building Coverage (%):</u> | <20 | <20 | 20 max. |
| <u>Open Space Coverage (%):</u> | >40 | >40 | 40 min. |
| <u>Parking (# of spaces):</u> | | | 2 min. |

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

July 20, 1976 – The Board **granted** a variance to have a beauty shop and a 2'x3' attached sign in a residential zone.

July 11, 1989 – The Board **granted** a variance to increase the number of employees in the salon.

April 18, 2000 – The Board **granted** a variance to allow a one owner/operator beauty salon.

May 24, 2005 – The Board **granted** variances to allow a 7'3" x 19'4" one story addition with a 3' left side yard where 10' was required.

Planning Department Comments

As part of a zoning enforcement action (see attached letter below from December 26, 2017), the applicant was ordered to cease and desist or apply for relief from the zoning ordinance. At the time of the initial enforcement, a special exception was the correct request to allow temporary storage between 31 to 90 days. However, an application was not submitted until March 12, 2018. The time frame for the use now falls into the 91 to 180 day period, which requires a variance. The applicant has indicated the temporary storage unit is scheduled to be removed on April 17, 2018, the day of the BOA meeting and has indicated he will submit a request to withdraw his application.

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.



CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney – 603-610-7204 (Direct Dial)
Suzanne M. Woodland, Deputy City Attorney – 603-610-7240 (Direct Dial)
Kathleen M. Dwyer, Assistant City Attorney – 603-498-2126 (Direct Dial)
Jane M. Ferrini, Assistant City Attorney – 603-610-7256 (Direct Dial)

December 26, 2017

Certified Mail 7015 1520 0003 5474 9485

Mr. Burns F. Barford IV
635 Maplewood Ave.
Portsmouth, NH 03801

RE: Non-Permitted USE, Temporary Structure

Dear Mr. Barford,

The City has become aware your property located at 635 Maplewood Avenue, is in violation of the Zoning Ordinance of the City of Portsmouth. In particular, Article 4, Section 10.440, sub-section 18.20, where a Temporary Structure, (metal storage container), has been located for more than Thirty, (30) days without relief from the Board of Adjustment of the City of Portsmouth.

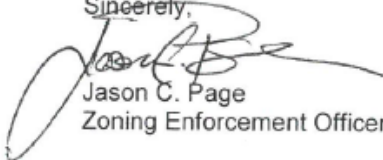
I am attaching a copy of the ordinance that is relevant to this matter.

Accordingly, you are hereby instructed to Cease and Desist any further such use of the property, unless, or until such relief is applied for and granted. Failure to comply with this direction shall result in the institution of legal action by the City to enforce the terms of its zoning ordinance.

VARIANCES AND APPEALS, Any order, requirement, and decision of the Code Official made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.

Should you require any additional information on this matter, please call me at 603-610-7279.

Sincerely,



Jason C. Page
Zoning Enforcement Officer

cc: Robert P. Sullivan, City Attorney
Juliet Walker, Planning Director

1 Attachment

Municipal Complex

1 Junkins Avenue

Portsmouth, NH 03801

P = Permitted S = Special Exception CU = Conditional Use Permit N = Prohibited

| Use | R | SRA | GRA | GRC | GA/ | MRO | CD4- | CD4- | MRB | CD5 | GB | GW | CD4- | WB | OR | I | WT | Supplemental Regulations |
|---|-----|-----|-----|-----|-----|-----|------|------|-----|-----|----|----|------|----|----|---|----|---|
| | SRB | GRB | (A) | MH | LI | L2 | | | | CD4 | | | W | | | | | |
| 16.22 Ground-mounted, complying with all yard requirements for the district | S | S | S | S | S | S | S | S | S | S | S | S | S | S | S | S | S | |
| 16.30 Whip antenna not more than 30 feet in height | S | S | S | S | S | S | S | S | S | P | P | P | P | P | P | P | P | |
| 16.40 Other wireless telecommunications facility not included above | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | 10.460 (Municipal districts) 10.920 (Wireless telecommunications facilities) |
| 17. Agricultural Uses | | | | | | | | | | | | | | | | | | |
| 17.10 Farm, not including the keeping of farm animals | P | P | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | |
| 17.20 Keeping of farm animals | S | S | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | |
| 18. Temporary Uses | | | | | | | | | | | | | | | | | | |
| 18.10 Construction trailer | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | |
| 18.20 Temporary structure | | | | | | | | | | | | | | | | | | |
| 18.21 Up to 30 days | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | |
| 18.22 31 to 90 days | S | S | S | S | S | S | S | S | S | S | S | S | S | S | S | S | S | |
| 18.23 91 to 180 days | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | |
| 18.24 More than 180 days | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | |

As Amended Through January 9, 2017

Case #4-3

| | |
|------------------|---|
| Petitioners: | Bruce C. Teatrowe |
| Property: | 226 Crescent Way |
| Assessor Plan: | Map 212, Lot 128 |
| Zoning District: | General Residence B (GRB) |
| Description: | Replace a shed. |
| Requests: | <p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <p>1. A Variance from Section 10.521 to allow a 0' left side yard setback where 5' is required.</p> |

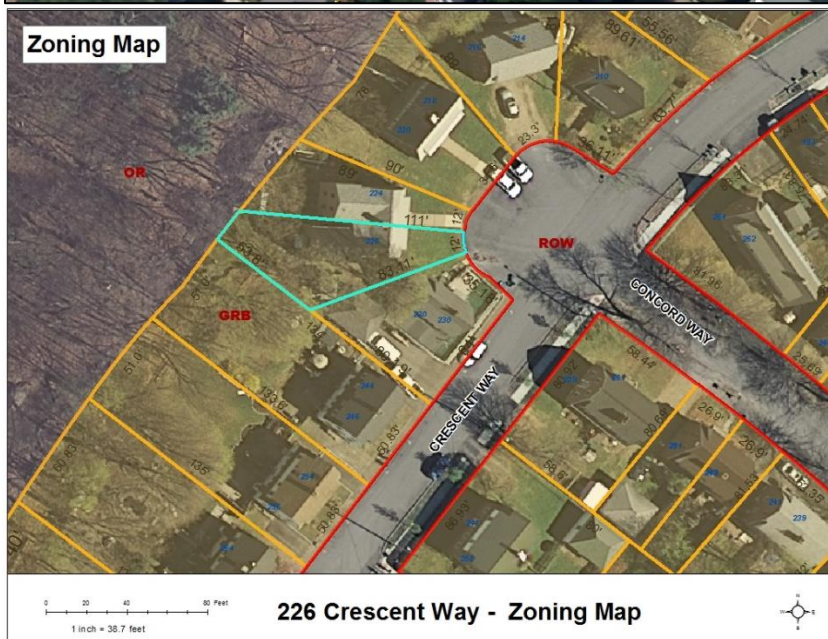
Existing & Proposed Conditions

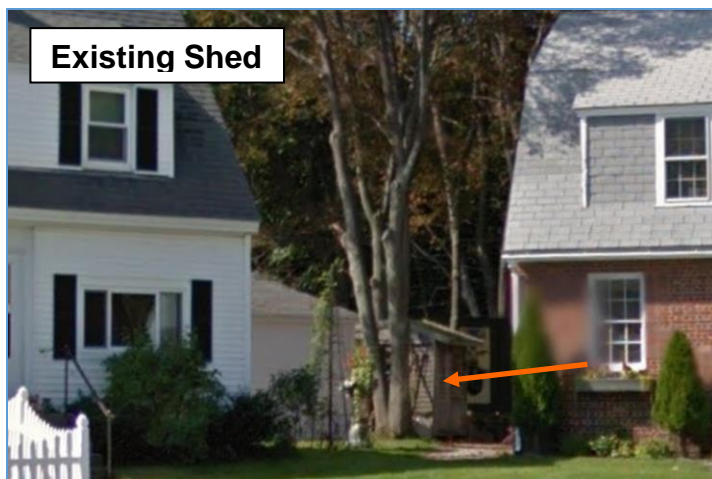
| | <u>Existing</u> | <u>Proposed</u> | <u>Permitted / Required</u> |
|--|-----------------|---------------------------------|-----------------------------|
| <u>Land Use:</u> | Single Family | Replace shed. | Primarily Residential Uses |
| <u>Lot area (sq. ft.):</u> | 3,485 | 3,485 | 5,000 min. |
| <u>Lot Area per Dwelling Unit (sq. ft.):</u> | 3,485 | 3,485 | 5,000 min. |
| <u>Street Frontage (ft.):</u> | 12 | 12 | 80 min. |
| <u>Lot depth (ft.):</u> | 97 | 97 | 60 min. |
| <u>Primary Front Yard (ft.):</u> | >5 | >5 | 5 min. |
| <u>Left Yard (ft.):</u> | Over lot line | 0 | 5 (accessory) min. |
| <u>Right Yard (ft.):</u> | >5 | >5 | 5 (accessory) min. |
| <u>Rear Yard (ft.):</u> | >5 | 5 | 5 (accessory) min. |
| <u>Height (ft.):</u> | <10 | <10 | 10 max. |
| <u>Building Coverage (%):</u> | 31 | 31 | 30 max. |
| <u>Open Space Coverage (%):</u> | >25 | >25 | 25 min. |
| <u>Parking (# of spaces):</u> | | | 2 min. |
| <u>Estimated Age of Structure:</u> | 1919 | Variations shown in red. | |

Other Permits Required

None.

Neighborhood Context





Previous Board of Adjustment Actions

February 15, 2000 – The Board **granted** a variance to allow a 16' x 24' two story addition with a 5' right side yard where 10' was required.

March 21, 2000 – The Board **denied** a request for rehearing by an abutter.

February 19, 2013 – The Board **granted** variances to construct a 10'x16' rear deck with a 5' right side yard where 0' was required; a 23' rear yard where 25' was required; and 31.3% building coverage where 30% was the maximum allowed.

Planning Department Comments

Prior variances were granted in 2013 for construction of a rear deck and to allow a building coverage of 31%. The existing shed is 64 s.f. and the proposed shed is 63 s.f., so there will be no increase in building coverage. A recent survey by the abutters shows the left side yard property line bisecting the existing shed. The applicant has proposed to remove the existing shed and build a new shed with one corner located on the on the property line.

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.

Case #4-4

| | |
|------------------|---|
| Petitioners: | Brenda J. Bouchard Revocable Trust of 1999, Brenda J. Bouchard, Trustee |
| Property: | 33 Holmes Court |
| Assessor Plan: | Map 101, Lot 12 |
| Zoning District: | General Residence B (GRB) |
| Description: | Install a condenser. |
| Requests: | Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. Variances from Section 10.573 to allow a rear yard of 14" where 5' is required. |

Existing & Proposed Conditions

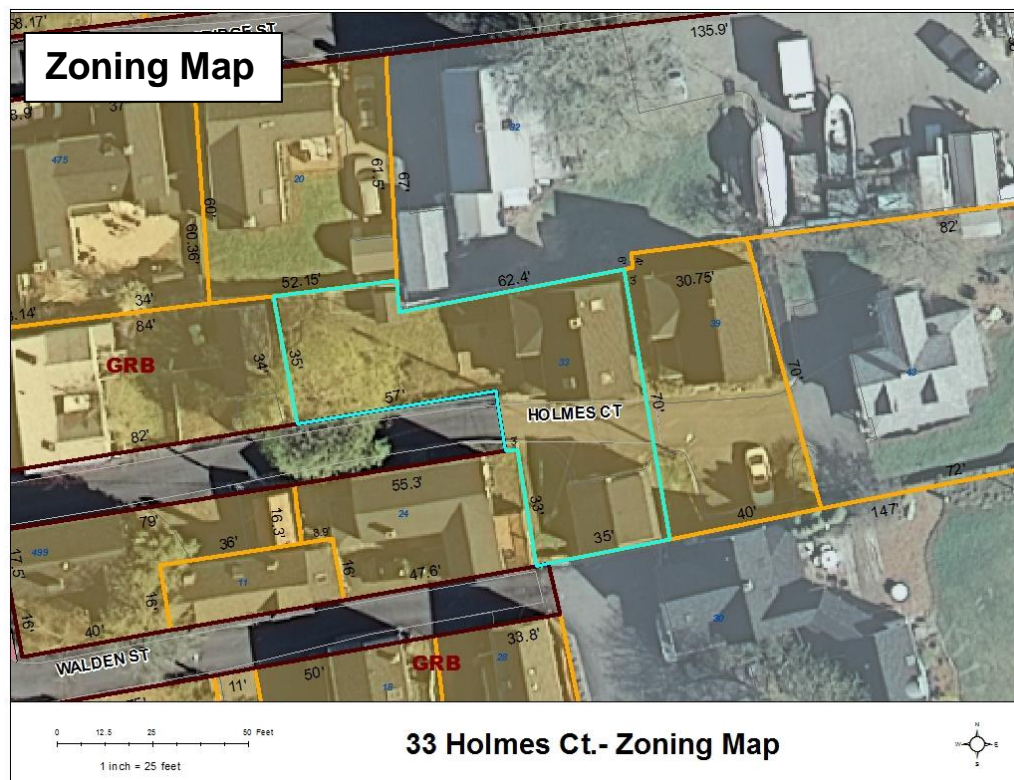
| | <u>Existing</u> | <u>Proposed</u> | <u>Permitted / Required</u> |
|--|-----------------|---------------------------------------|-----------------------------|
| <u>Land Use:</u> | Single-family | Add rear condenser | Primarily Residential Uses |
| <u>Lot area (sq. ft.):</u> | 4,792 | 4,792 | 5,000 min. |
| <u>Lot Area per Dwelling Unit (sq. ft.):</u> | 4,792 | 4,792 | 5,000 min. |
| <u>Street Frontage (ft.):</u> | 75 | 75 | 80 min. |
| <u>Lot depth (ft.):</u> | 75 | 75 | 60 min. |
| <u>Primary Front Yard (ft.):</u> | 10 | 10 | 5 min. |
| <u>Right Yard (ft.):</u> | 3 | >5 | 5 (accessory) min. |
| <u>Left Yard (ft.):</u> | >60 | >60 | 5 (accessory) min. |
| <u>Rear Yard (ft.):</u> | 3 | 14" | 5 (accessory) min. |
| <u>Height (ft.):</u> | <35 | <35 | 35 max. |
| <u>Building Coverage (%):</u> | <30 | <30 | 30 max. |
| <u>Open Space Coverage (%):</u> | >25 | >25 | 25 min. |
| <u>Parking</u> | 0 | ok | ok |
| <u>Estimated Age of Structure:</u> | 1880 | Variance request shown in red. | |

Other Permits Required

The previously approved condenser by the Historic District Commission had the following stipulation: "subject to BOA approval, the condenser shall be located at the rear of the structure."

This additional condenser will require HDC approval as well.

Neighborhood Context



Previous Board of Adjustment Actions

May 15, 1994 – A petition to allow an 18' x 20.5' garage in the same footprint, 20' in height and with a full dormer on the left side located within the required front yard and nearer to the side lot line than 75% of the height was **withdrawn**, noting resubmittal in June.

June 18, 1994 – The Board **denied** the above request, with particular reference to the proposed dormer.

July 19, 1994 – The Board **granted** a rehearing of the request.

August 16, 1994 – The Board **granted** the variances with the **stipulation** that the height of the garage would be no higher than 18' and that there would be no cable, telephone or heat hookups in the garage.

December 19, 2017 – The Board **granted** a petition to install a rear condenser with a 3' right side yard and a 1'4" rear yard where 5' was required for both.

Planning Department Comments

The Board approved side and rear yard variances for a condenser in December 2017. The proposed second condenser will be located next to the previously approved unit and will only need relief from the rear yard.

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.

Case #4-5

Petitioners: Nathan P. Moss & Stacey Martinez Moss
 Property: 5 Pamela Street
 Assessor Plan: Map 292, Lot 119
 Zoning District: Single Residence B (SRB)
 Description: Construct garage.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. Variances from Section 10.521 to allow a right side yard setback of 5'± where 10' is required.

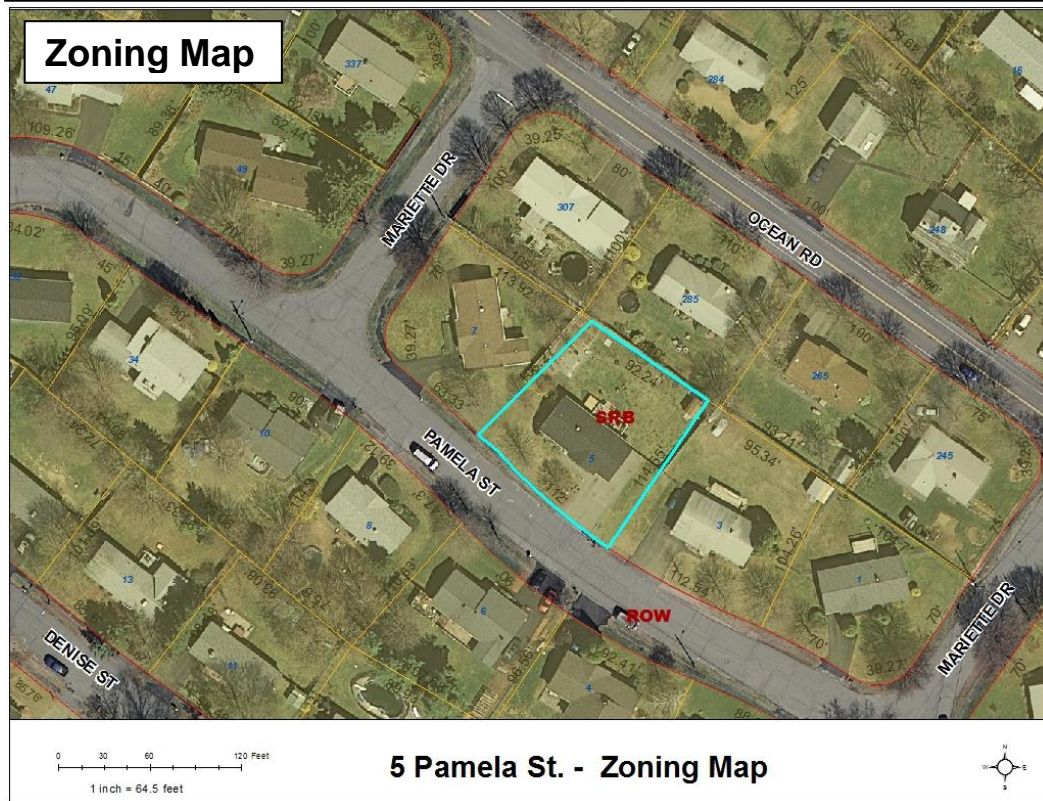
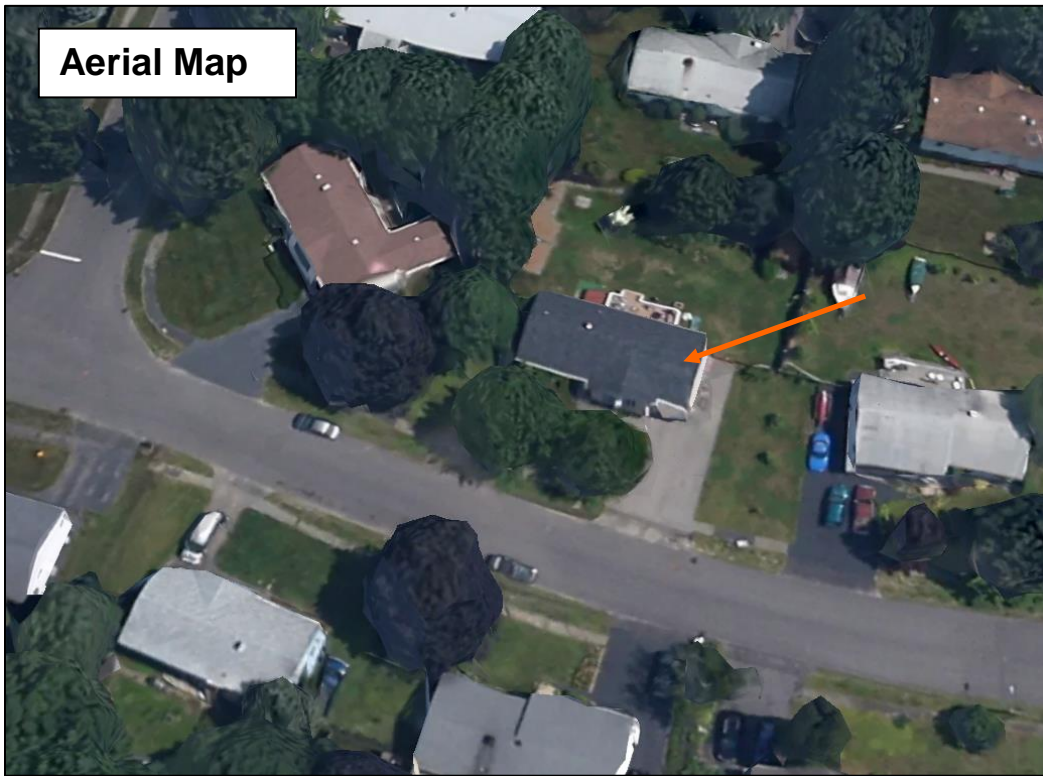
Existing & Proposed Conditions

| | <u>Existing</u> | <u>Proposed</u> | <u>Permitted / Required</u> |
|--|-----------------|--------------------------------|-----------------------------|
| <u>Land Use:</u> | Single-family | Garage addition. | Primarily Residential Uses |
| <u>Lot area (sq. ft.):</u> | 11,326 | 11,326 | 15,000 min. |
| <u>Lot Area per Dwelling Unit (sq. ft.):</u> | 11,326 | 11,326 | 15,000 min. |
| <u>Street Frontage (ft.):</u> | 112 | 112 | 100 min. |
| <u>Lot depth (ft.):</u> | 110 | 110 | 100 min. |
| <u>Primary Front Yard (ft.):</u> | 30 | 30 | 30 min. |
| <u>Right Yard (ft.):</u> | 22 | 5' | 10 min. |
| <u>Left Side Yard (ft.):</u> | 22 | 22 | 10 min. |
| <u>Rear Yard (ft.):</u> | 50 | 50 | 30 min. |
| <u>Height (ft.):</u> | <35 | <35 | 35 max. |
| <u>Building Coverage (%):</u> | 17 | 19.5 | 20 max. |
| <u>Open Space Coverage (%):</u> | >40 | >40 | 40 min. |
| <u>Parking</u> | Ok | ok | ok |
| <u>Estimated Age of Structure:</u> | 1957 | Variance request shown in red. | |

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing to convert the existing garage into living space and add a new garage addition. The proposed increase in square footage will essentially max out the building coverage for this lot and any future additions/structures will exceed the 20% maximum for building coverage and will likely require variances.

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.

Case #4-6

Petitioners: Portsmouth Lumber & Hardware, Clipper Traders, LLC
Property: 105 Bartlett Street
Assessor Plan: Map 157, Lots 1& 2; Map 164 Lots 1-4
Zoning Districts: Office Research (OR), Character District 4-W (CD-4W), Transportation Corridor (TC)
Description: Adjust lot lines in order to construct new road.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: *The required relief under the current zoning* includes the following: Proposed Lot 1: Variances from Section 10.5A41.10B to allow the following: 1a) a front lot line buildout of 13.4%± where 50% is required; and 1b) a front yard of 27.2'± where 10' is the maximum allowed; Proposed Lot 2: Variances from Section 10.5A41.10B to allow the following: 2a) a principal front line buildout of 13.3%± where 50% is required; 2b) a secondary front lot line buildout of 0'± where 50% is required; 2c) a principal front yard of 18.2'± where 10' is the maximum allowed; and 2d) a secondary front yard of 30.2'± where 15' is the maximum allowed; Proposed Lot 3: Variances from Section 10.530 to allow the following: 3a) a front yard of 0'± where 70' is required; 3b) open space coverage of 9.6%± where 20% is required; Proposed Lot 4: Variances from 10.530 to allow the following: 4a) a lot size of 1.4± acres± where 2 acres is required; 4b) a front yard of 1.7'± where 70' is required; 4c) a side yard of 3.9'± where 50' is required; and 4d) a rear yard of 46.9'± where 50' is required; and Proposed Lot 5: A variance from Section 10.530 to allow a rear yard of 33.7'± where 50' is required. *The required relief under the proposed zoning* includes the following: Proposed Lot 3: Variances from Section 10.5A41.10B to allow the following: 1a) a front lot line buildout of 24.7%± where 50% is required; 1b) open space coverage of 9.6%± where 15% is required; Proposed Lot 4: Variances from Section 10.5A41.10B to allow the following: 2a) a front lot line buildout of 29.1%± where 50% is required; 2b) a building footprint of 20,313± s.f. where a maximum of 15,000 s.f. is required; and Proposed Lot 5: Variances from Section 10.5A41.10B to allow the following 3a) a front lot line buildout of 0%± where 50% is required; 3b) a front yard of 75.6'± where a maximum of 10' is required. Said property is currently shown on Assessor Plan 157, Lots 1 and 2, and Assessor Plan 164, Lots 1, 2, 3 and 4 and currently lies within the Office Research District (Proposed Lots 3, 4, and 5), Character District 4W (Proposed Lots 1 and 2) and the Transportation Corridor District. Proposed Lots 3 and 4 are proposed to be re-zoned to CD-4W and Proposed Lot 5 is proposed to be re-zoned to CD4W and CD4-L2.

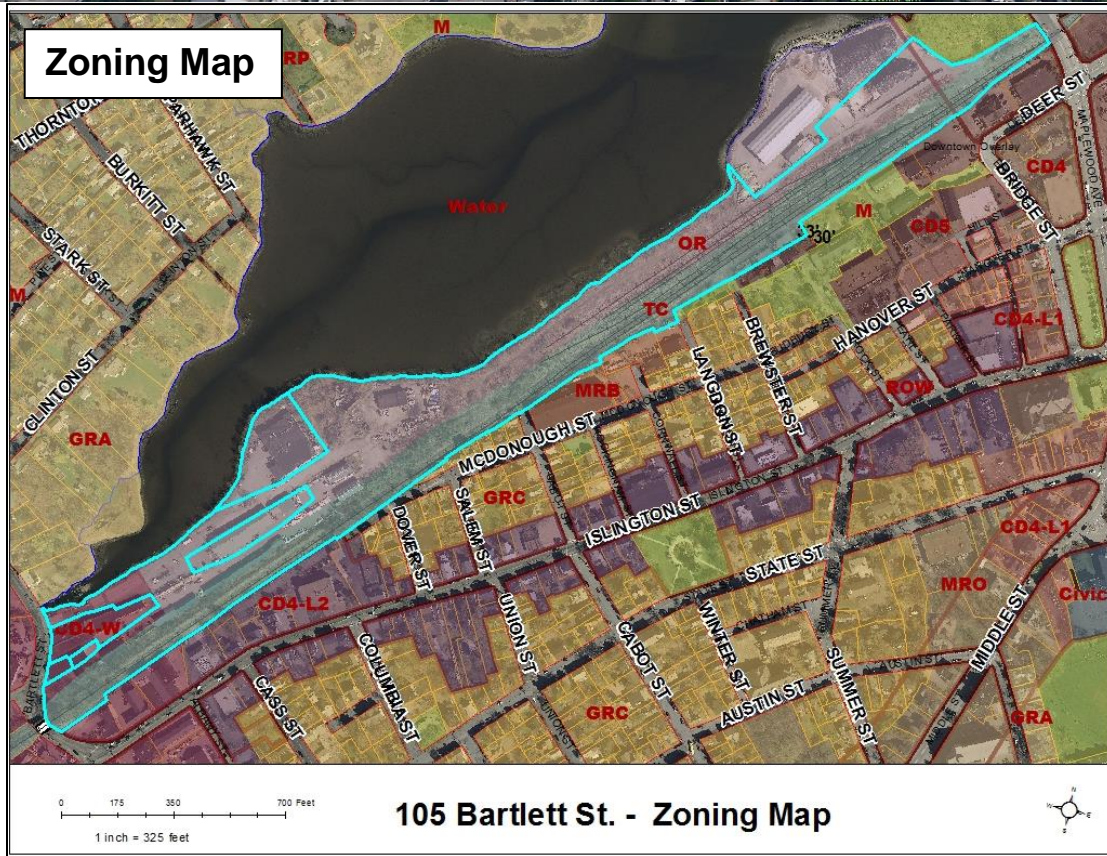
Existing & Proposed Conditions

Please refer to table in the applicant's packet detailing existing and proposed conditions.

Other Permits Required

City Council
Planning Board

Neighborhood Context



Previous Board of Adjustment Actions

May 28, 1991 – The Board **granted** a variance to reconstruct a nonconforming building on the existing footprint which had been destroyed by fire with associated retail sales.

June 23, 1998 – The Board **granted** the following: 1) a variance to expand an existing nonconforming seafood processing and freezing operation by the addition of a nitrogen tank on a pad within 500’ of a residential district and not allowed in the Office Research District; 2) a Special Exception to allow the outdoor storage of equipment; and 3) a variance to allow a nonconforming use to be expanded. These were granted with the following stipulations: 1) that approval is contingent on the removal of any zoning violation; 2) that a ground pump be installed and enclosed; and that a pressure release valve be installed with the muffler.

November 24, 2015 – In two separate petitions, the Board **granted** the following:
1) Variances to allow the operation of a brewery in a district where the use was not allowed; a change of use without providing the necessary off-street parking; and to allow off-street parking spaces that do not meet the dimensional requirements; and
2) Variances to operate a dog daycare/boarding facility where the use was not allowed; a change of use without providing the necessary off-street parking; and to allow off-street parking spaces that do not meet the dimensional requirements.

June 21, 2016 – The Board **granted** a variance to allow a brewery use with an 800 s.f. indoor tasting area and to **deny** the proposed outdoor tasting area.

Planning Department Comments

The applicants are proposing a subdivision that involves reconfiguration of existing lots and a new road that will provide access to the interior lots that do not have frontage on Bartlett Rd. in addition to the future residential development. The applicants are in the process of seeking a rezoning to CD4-W for the portion of the lots that are currently Office Research (OR) and Transportation Corridor (TC). Because of where they are in the process, the applicants are seeking zoning relief under both the current and proposed zoning.

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.

Case #4-7

Petitioners: Mark McNally
 Property: 21 Brewster Street
 Assessor Plan: Map 138, Lot 11
 Zoning District: General Residence C (GRC)
 Description: Add balconies to upper floor units.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. A Variance from Section 10.521 to allow the following: a) a 3.75'± right side yard where 10' is required; b) 54.6% building coverage where 35% is the maximum allowed; and c) a 4.1% open space where 20% is required.

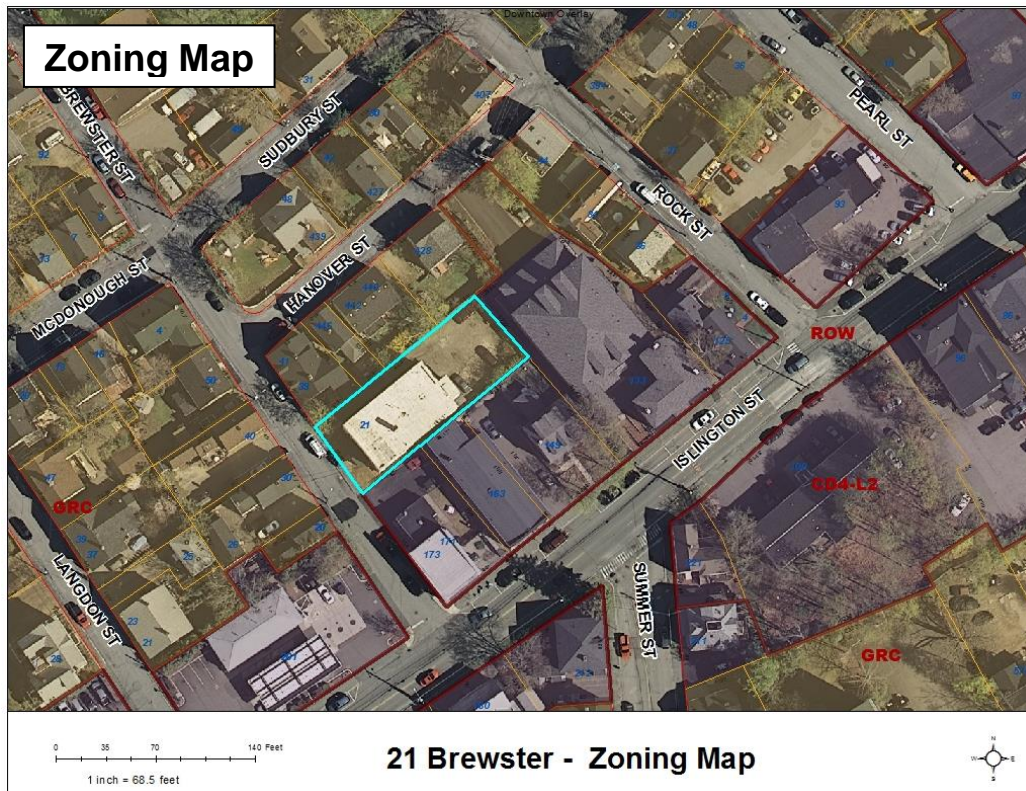
Existing & Proposed Conditions

| | <u>Existing</u> | <u>Proposed</u> | <u>Permitted / Required</u> |
|--|-----------------|--------------------------------|-----------------------------|
| <u>Land Use:</u> | 6 unit building | Add 4 balconies | Primarily Residential Uses |
| <u>Lot area (sq. ft.):</u> | 8,330 | 8,330 | 3,500 min. |
| <u>Lot Area per Dwelling Unit (sq. ft.):</u> | 1,386 | 1,386 | 3,500 |
| <u>Street Frontage (ft.):</u> | 54.64 | 54.64 | 70 min. |
| <u>Lot depth (ft.):</u> | 149 | 149 | 50 min. |
| <u>Primary Front Yard (ft.):</u> | 7 | 7 | 5 min. |
| <u>Right Side Yard (ft.):</u> | 1.5 | 3.75 | 10 min. |
| <u>Left Yard (ft.):</u> | 11 | 11 | 10 min. |
| <u>Rear Yard (ft.):</u> | 0.5 | 0.5 | 20 min. |
| <u>Height (ft.):</u> | <35 | <35 | 35 max. |
| <u>Building Coverage (%):</u> | 54 | 54.6 | 35 max. |
| <u>Open Space Coverage (%):</u> | 4.6 | 4.1 | 20 min. |
| | | Variance request shown in red. | |

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

September 27, 2016 – The Board **granted** a special exception to allow converting a rooming house to a 6-unit condominium structure with a 6-bay garage and variances to allow the following: 1) a lot area per dwelling unit of 1,386.33 s.f. where 3,500 s.f. was required; 2) a 1.5' right side yard and a 0.5' rear yard where 10' and 20' were required; 3) 50.1% building coverage where 35% was the maximum allowed; 4) 10.44% open space where a minimum of 20% was required; 5) a nonconforming building or structure to be reconstructed, enlarged or structurally altered except in conformity with the ordinance; and 6) vehicles entering or leaving parking spaces to pass over another parking space or require the movement of another vehicle.

April 18, 2017 – The Board **granted** variances to expand a previously approved 6-bay, 6-car garage to accommodate 12 cars with a lift system including the following: 1) a) a 1.5'± right side yard where 10' is required; b) a 0.5'± rear yard where 20' is required; c) 54.1±% building coverage where 35% is allowed; and d) 4.6±% open space where 20% is required; 2) to allow vehicles to enter or leave parking spaces by passing over another space or requiring the movement of another vehicle; and 3) to allow upper lift position parking spaces that are less than the required 19' in depth.

Planning Department Comments

As referenced in the history above, this property has been before the Board in 2016 and 2017. The applicant is proposing 4 balconies, two of which encroach into the right side yard setback. Because of the size of the balconies, they are used in the calculation for building coverage and open space, thus the need for additional relief from those provisions. The property is directly adjacent to the Historic District.

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.

Case #4-8

| | |
|------------------|--|
| Petitioners: | Portsmouth Housing Authority & ED PAC, LLC |
| Property: | 140 & 152 Court Street |
| Assessor Plan: | Map 114, Lots 37 & 38 |
| Zoning District: | Character District 4 (CD4) |
| Description: | Construct five story residential building. |
| Requests: | <p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <p>1. <u>For 152 Court Street:</u> a) no entrance proposed on the front building façade where an entrance is required every 50'; <u>For 140 Court Street:</u> variations from Section 10.5A41.10C to allow the following a) a maximum front lot line buildout of 45.7%± where 50% is required; b) no entrance proposed on the front building façade where an entrance is required every 50'; and c) a ground floor ceiling height of 9'± where 12' is required (parking deck on ground floor).</p> |

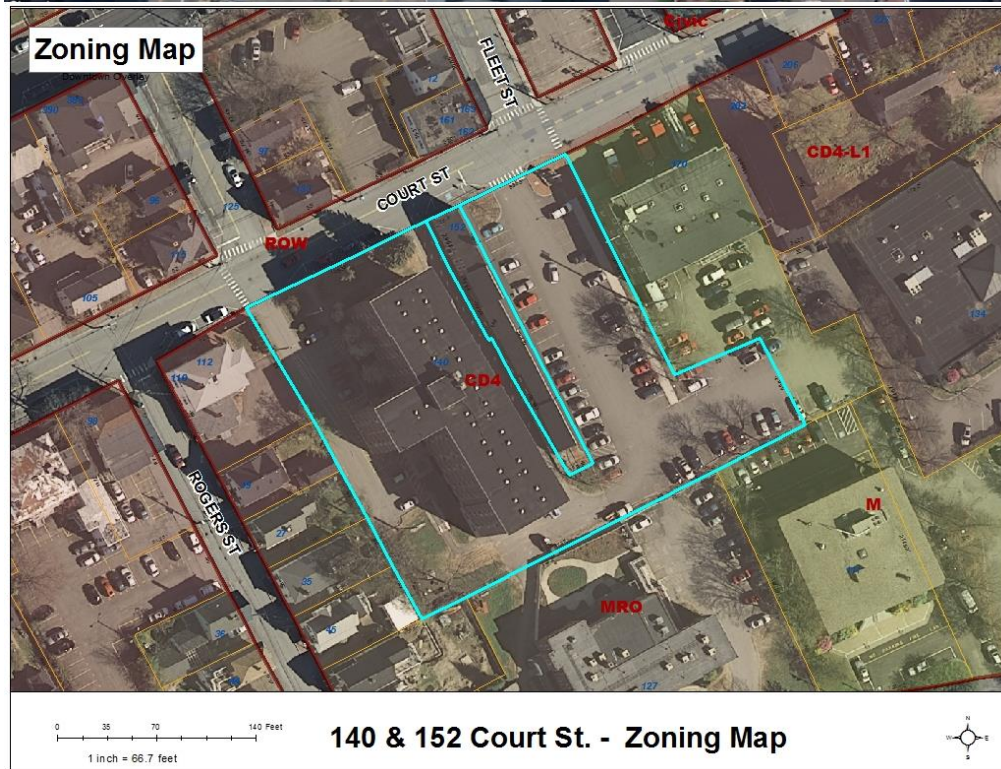
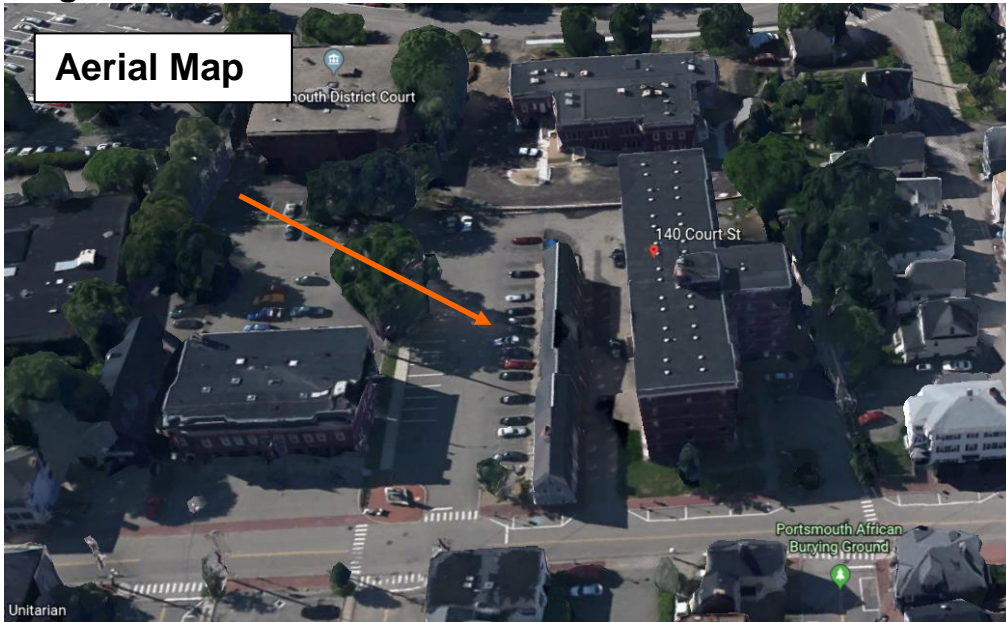
Existing & Proposed Conditions

| | Existing | | Proposed | | Permitted/ Required | |
|------------------------------------|-------------------|-----------|--|-----------|------------------------|------|
| <u>Land Use:</u> | 100 unit building | | Lot line adj./Construct 5 story building | | Primarily Mixed Uses | |
| | 140 Court | 152 Court | 140 Court A/B | 152 Court | | |
| <u>Lot area (sq. ft.):</u> | 59,976 | 4,587 | 62,718 | 1,845 | NR | min. |
| <u>Front lotline buildout (%):</u> | 0 | 73 | 45.7 | 73 | 50 | min. |
| <u>Lot depth (ft.):</u> | | | | | 100 | min. |
| <u>Primary Front Yard (ft.):</u> | 27 | 0.9 | 5/1 | 0.9 | 10 | max. |
| <u>Side Yard (ft.):</u> | 26 | 1 | 17/31 | 1 | NR | |
| <u>Rear Yard (ft.):</u> | 32 | 20 | 46/228 | 26 | >5 | min. |
| <u>Ground Story Height(ft.):</u> | | No change | 9 | No change | 12 | min. |
| <u>Height (ft.):</u> | 63 | <35 | 58 | <35 | 35/45 | max. |
| <u>Building Coverage (%):</u> | 15.7 | 80.5 | 35.4 | 46 | 90 | max. |
| <u>Open Space Coverage (%):</u> | 12 | 1.4 | 29 | 11 | 10 | min. |
| | | | Variance request shown in red. | | | |

Other Permits Required

HDC
Planning Board

Neighborhood Context



Previous Board of Adjustment Actions

140 Court Street

December 30, 1965 – The Board of Adjustment **denied** a variance to construct a high-rise building.

January 18, 1966 – At a special meeting, the Board **denied** a request for rehearing regarding the above.

May 30, 1966, The Board **tabled** action on a Masters Report from the City Council until the report could be reviewed by the Superior Court.

June 28, 1966 – As a result of the court ruling, the Board voted to **consider the previously submitted request** for rehearing at a special meeting in July.

July 7, 1966 – at a special meeting, the Board **granted** the rehearing originally requested in January.

July 26, 1966 – The Board **postponed** the rehearing pending a decision on the disqualification of one member.

August 30, 1966 – The Board **denied** a request to construct a 60-unit block of homes for the elderly.

September 22, 1966 – The Board **denied** a request for rehearing on the above.

July 22, 1975 – The Board **granted** a variance for free-standing sign (1-1/2' x 2-1/3') 4' back from the front property line. The request was granted with the **stipulation** that the Portsmouth Housing Authority or the Officer in Charge join in the variance request for 140 Court Street and provided the PHA Officer in Charge requests that the variance for a sign at 245 Middle Street granted on February 25, 1975 be discontinued.

152 Court Street

March 25, 1980 - The Board **granted** a total of 78.4 s.f. of attached signage where 40 s.f. was allowed. The signage was granted with the stipulations that the Health Advocate sign not be greater than 20" x 129"; the Center for Treatment sign not be larger than 2' x 5'; and the total signage be no greater than 50 s.f. (all four signs). The total signage for the entire building 50 s.f.

Planning Department Comments

The applicant is concurrently working with the HDC for this project and has completed the Preliminary Conceptual Review process with the Planning Board. The project will still require full site plan review and subdivision approval through the Technical Advisory Committee and the Planning Board. The project appears to have several options on the table and if substantial changes are made, other variances may be necessary. Additionally, the request for relief for the front lot line buildout includes the length of building B in the tabulation for the 45.7%. The applicant states this building is part of Phase II and the decision to build it or not hinges on funding resources. If it is not constructed, the applicant will need additional relief for this provision from the BOA.

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.

Case #4-9

| | |
|------------------|---|
| Petitioners: | Chad O. & Megan E. Luce |
| Property: | 31 Willow Lane |
| Assessor Plan: | Map 133, Lot 6 |
| Zoning District: | General Residence A (GRA) |
| Description: | Extend rear dormer. |
| Requests: | <p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> 1. A Variance from Section 10.521 to allow a 10' rear yard where 20' is required. 2. A 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. |

Existing & Proposed Conditions

| | <u>Existing</u> | <u>Proposed</u> | <u>Permitted / Required</u> |
|--|-----------------|--------------------------------|-----------------------------|
| <u>Land Use:</u> | Single-family | Extend rear dormer. | Primarily Residential Uses |
| <u>Lot area (sq. ft.):</u> | 4,791 | 4,791 | 7,500 min. |
| <u>Lot Area per Dwelling Unit (sq. ft.):</u> | 4,791 | 4,791 | 7,500 min. |
| <u>Street Frontage (ft.):</u> | 149 | 149 | 100 min. |
| <u>Lot depth (ft.):</u> | 99.25 | 99.25 | 70 min. |
| <u>Primary Front Yard (ft.):</u> | 14 | 14 | 15 min. |
| <u>Secondary Front Yard (ft.):</u> | 16 | 16 | 15 min. |
| <u>Left Yard (ft.):</u> | 29 | 29 | 10 min. |
| <u>Rear Yard (ft.):</u> | 10 | 10 | 20 min. |
| <u>Height (ft.):</u> | <35 | <35 | 35 max. |
| <u>Building Coverage (%):</u> | 23 | 23 | 25 max. |
| <u>Open Space Coverage (%):</u> | >30 | >30 | 30 min. |
| <u>Parking</u> | 0 | ok | ok |
| <u>Estimated Age of Structure:</u> | 1938 | Variance request shown in red. | |

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

July 21, 1998 - The Board granted a variance to allow a 14' x 18' 1-1/2 story addition with a portion over an existing garage and with partial demolition of the garage with an 11'6" rear yard where 20' was required.

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.