

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: October 12, 2021
RE: Zoning Board of Adjustment October 19, 2021

OLD BUSINESS

1. 125 Elwyn Avenue – Request to Postpone
2. 449 Court Street
3. 53 Green Street

OLD BUSINESS**Request to Postpone**

1.

Request of **Ashley Dickenson** and **Elyse Hambacher, (Owners)**, for the property located at **125 Elwyn Avenue** whereas relief is needed to demolish existing garage and rear addition on main structure and construct a new garage with dwelling unit above and reconstruct the rear addition on the main structure including two shed dormers which requires the following: 1) Variances from Section 10.521 to allow a) lot area per dwelling of 2,559 square feet where 7,500 is required; b) a 1' secondary front yard where 15' is required; c) a 5' left side yard where 10' is required; d) a 2' right side yard where 10' is required; and e) 39% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.513 to allow more than one free-standing dwellings on a lot. 3) 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. Said property is shown on Assessor Map 112 Lot 47 and lies within the General Residence A (GRA) District.

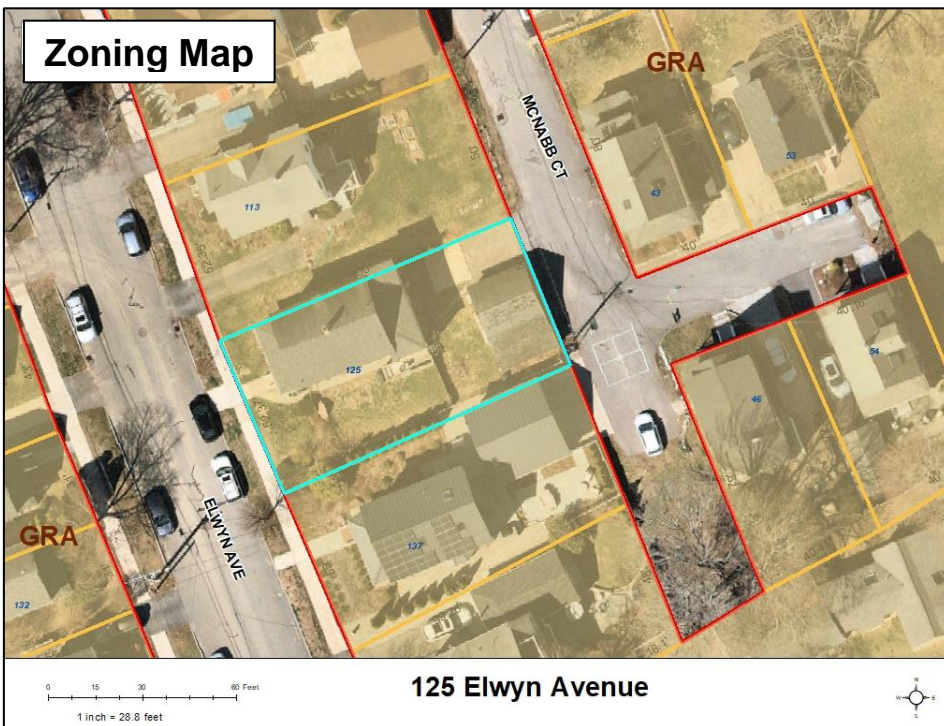
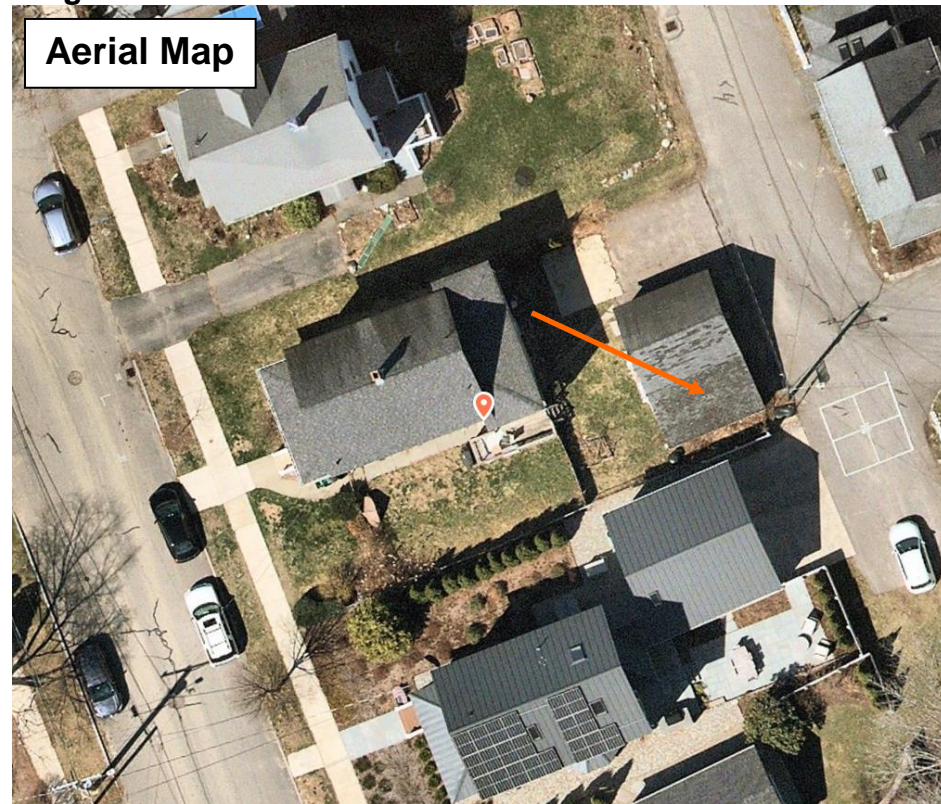
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two family	Demo garage/build free-standing dwelling	Primarily residential uses
<u>Lot area (sq. ft.):</u>	5,118	5,118	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,559	2,559	7,500 min.
<u>Street Frontage (ft.):</u>	52	52	100 min.
<u>Lot depth (ft.):</u>	100	100	70 min.
<u>Primary Front Yard (ft.):</u>	14	14	15 min.
<u>Left Side Yard (ft.):</u>	2'4"	5	10 min.
<u>Right Side Yard (ft.):</u>	>10 (house) 2 (garage)	2 (new structure)	10 min.
<u>Secondary Front Yard (ft.):</u>	1(garage)	1 (new structure)	15 min.
<u>Height (ft.):</u>	<35	21 (new structure)	35 max.
<u>Building Coverage (%):</u>	34	39	25 max.
<u>Open Space (%):</u>	>30	>30	30 min.
<u>Parking</u>	3	4	3
<u>Estimated Age of Structure:</u>	1910	Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



October 19, 2021 Meeting

Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The existing dwelling is a two-family and the applicant is proposing to demolish the existing garage and construct a new garage with a dwelling unit above and converting the main structure into a single-family dwelling. The new structure is considered a free standing dwelling, which requires a variance to allow more than one on a lot in the GRA. The applicant is proposing to remove the rear addition from the main dwelling and construct a new rear addition and reduce the encroachment into the left side yard. The resulting coverage will increase from 34 to 39 percent.

The applicant requested to postpone in September due to some revisions to the plans. The architect has not been able to provide updated plans in time for this meeting, thus a second request to postpone has been submitted.

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.

2.

Request of **Mary H. and Ronald R. Pressman, (Owners)**, for property located at **449 Court Street** whereas relief is need to construct a 4th story dormered addition with a height of 41.5' which requires the following: 1) Variance from Section 10.5A43.31 to allow a fourth story addition with at a height of 41.5 feet where 2 stories (short 3rd) and 35 feet is the maximum allowed. 2) A Variance from Section 10.5A41.10A to allow a 6" left side yard where 5 feet is required. 3) 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. Said property is shown on Assessor Map 105 Lot 6 and lies within the Historic District and Character District 4-L1 (CD4-L1).

Existing & Proposed Conditions

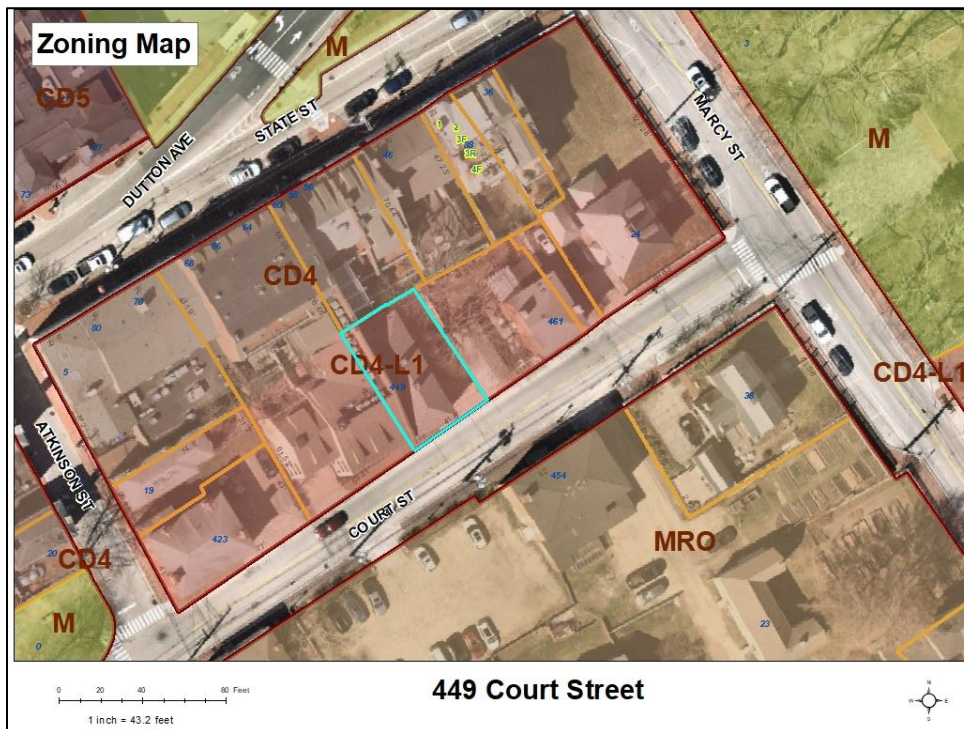
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	4 th story addition	Primarily residential uses
<u>Lot area (sq. ft.):</u>	2,744	2,744	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,744	2,744	3,000 min.
<u>Front Yard (ft.):</u>	~1	~1	15 max.
<u>Left Yard (ft.):</u>	10"	6"	5 ft. min to 20 ft. max.
<u>Right Yard (ft.):</u>	<20	<20	5 ft. min. to 20 ft. max.
<u>Rear Yard (ft.):</u>	5	5	Greater of 5 ft. from lot line or 10 ft. from alley
<u>Height (ft.):</u>	34'11"	41.5' 4 stories	35' 2 stories (short 3 rd) max.
<u>Building Coverage (%)</u> :	43	43	60 max.
<u>Open Space Coverage (%)</u> :	>25	>25	25 min.
<u>Parking</u>	3	3	2
<u>Estimated Age of Structure:</u>	2006	Variance request shown in red.	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context

October 19, 2021 Meeting



Previous Board of Adjustment Actions

October 19, 2021 Meeting

No prior BOA history found.

Planning Department Comments

The applicant is proposing to add a fourth story addition to the existing structure, which will result in a height of 41.5 feet. This area has a maximum height of 35 feet and is limited to 2 stories (short third). The image below shows the height requirements for this side of Court Street.



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.

3.

Appeal of **Duncan MacCallum, (Attorney for the Appellants)**, of the July 15, 2021 decision of the Planning Board for property located at **53 Green Street** which granted the following: a) a wetlands conditional use permit under Section 10.1017 of the Zoning Ordinance; b) preliminary and final subdivision approval; and c) site plan review approval. Said property is shown on Assessor Map 119 Lot 2 and lies within the Character District 5 (CD5) and Character District 4 (CD4).

Please see attached documents related to this matter from the appellant and response to the appeal from the developer's attorney. In addition to the link that was provided to the Board for the project, (<https://www.cityofportsmouth.com/planportsmouth/53-green-street>), the following hard copies are included as attachments: letters of decision from the Conservation Commission and Planning Board, minutes from both meetings, site plan, lot line revision plan and impervious surface exhibit.