

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: November 9, 2022
RE: Zoning Board of Adjustment November 15, 2022

OLD BUSINESS

1. 67 Ridges Court

NEW BUSINESS

1. 118 Maplewood Avenue
2. 111 New Hampshire Avenue
3. 635 Sagamore Avenue
4. 55 Gates Street
5. 546 Sagamore Avenue
6. 100 New Hampshire Avenue

OLD BUSINESS

1.

The request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed for construction of a 518 square foot garage addition which requires the following: 1) A Variance from Section 10.521 to allow a 15.5 foot front yard where 19 feet is required per Section 10.516.10. 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. Said property is located on Assessor Map 207 Lot 59 and lies within the Single Residence B (SRB) District.

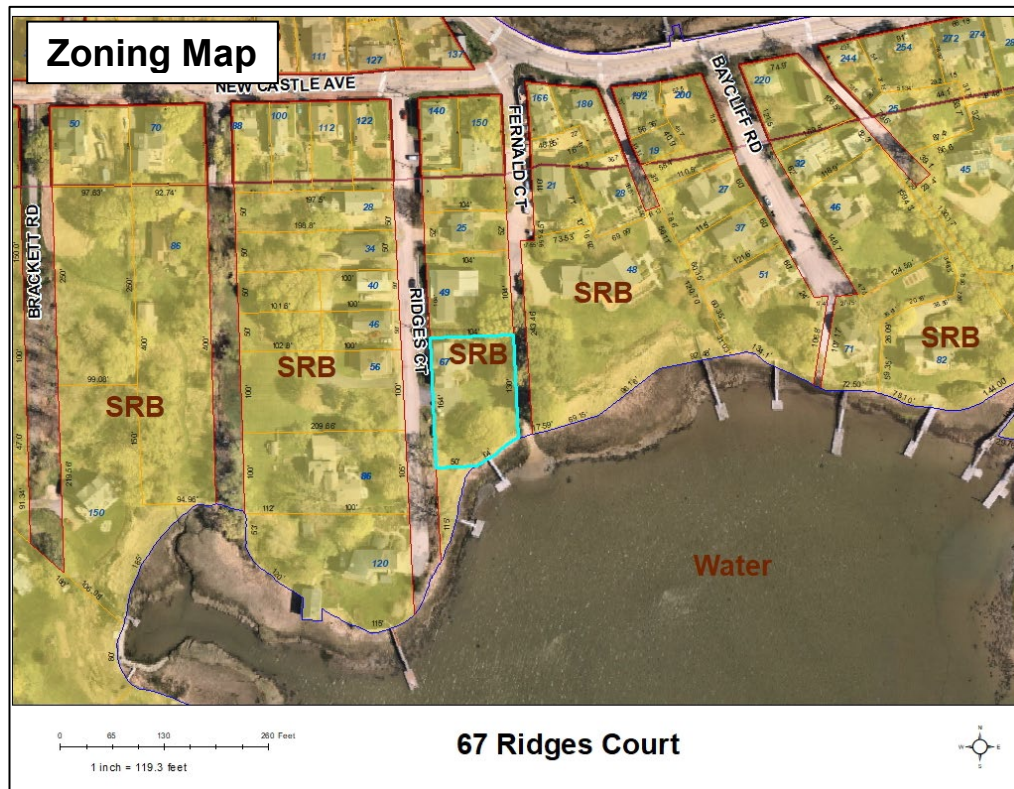
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Garage addition	Primarily single residence
<u>Lot area (sq. ft.):</u>	16,500	16,500	15,000 min.
<u>Lot area per dwelling (sq. ft.):</u>	16,500	16,500	15,000 min.
<u>Lot depth (ft.):</u>	109	109	100 min.
<u>Street Frontage (ft.):</u>	164	164	100 min.
<u>Primary Front Yard (ft.):</u>	8	15.5	30 *(19 feet per front yard averaging) min.
<u>Left Yard (ft.):</u>	10	9.5	10 min.
<u>Right Yard (ft.):</u>	95	>67	10
<u>Rear Yard (ft.):</u>	40	40	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	14	17.5	20 max.
<u>Open Space Coverage (%):</u>	73	77	40 min.
<u>Parking:</u>	4	4	2
<u>Estimated Age of Structure:</u>	2002	Variance request(s) shown in red.	

Other Permits/Approvals Required

Conservation Commission & Planning Board – Wetland CUP

Neighborhood Context



November 15, 2022 Meeting

Previous Board of Adjustment Actions

July 15, 1986 – the Board **granted** a Variance to permit the construction of a 20' x 20' addition onto an existing single family dwelling with a front yard of 9' where a 30' front yard is required.

August 20, 2002 – The Board considered request for the following Variance: Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) is requested to allow a 5'9" x 10'3" front porch/entry with an 8'1" front yard where 30' is the minimum required The Board voted the request be **granted** as advertised and presented.

October 15, 2002 – The Board considered request for the following Variance: Article III, Section 10-302(A) is requested to allow the existing single family dwelling to be demolished and rebuilt with a 13'11" front yard where 30' is the minimum required The Board voted the request be **granted** as advertised and presented.

July 19, 2022 - Relief is needed to construct a 718 square foot garage addition with living space and deck above which requires the following:

- 1) A Variance from Section 10.521 to allow a 15.5' front yard where 30' 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. Said property is located on Assessor Map 2074 Lot 59 and is located within the single residence B (SRB) District.

The Board voted to **grant** the request to **postpone** to the August meeting.

August 16, 2022 The Board voted to **deny** the request of July 19, 2022 because there was no hardship.

September 27, 2022 – The Board voted to **grant** the following with the exception of item “b” which was determined to not be required:

- 1) Section 10.521 to allow a) an 8' front yard where 30' is required to expand the existing front porch; b) a 13.5 foot front yard where 30 is required to expand the main roof of the house; c) a 13.5 foot front yard where 30 feet is required for a new roof over an existing doorway; and d) a 9.5 foot left side yard where 10 feet is required for a new rood over an existing doorway.
- 2) Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance

Planning Department Comments

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

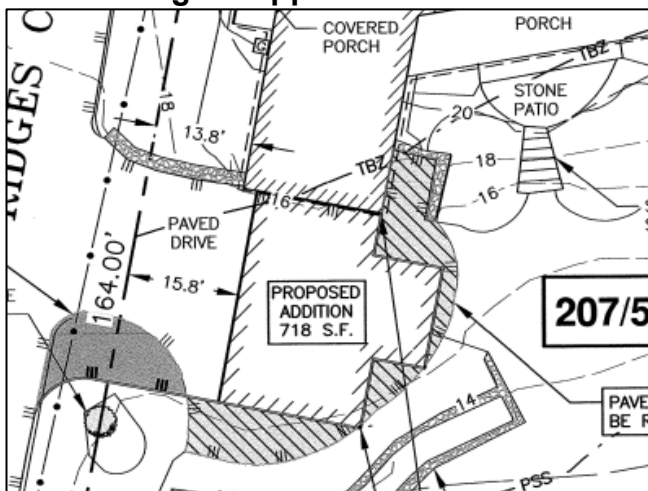
November 15, 2022 Meeting

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).

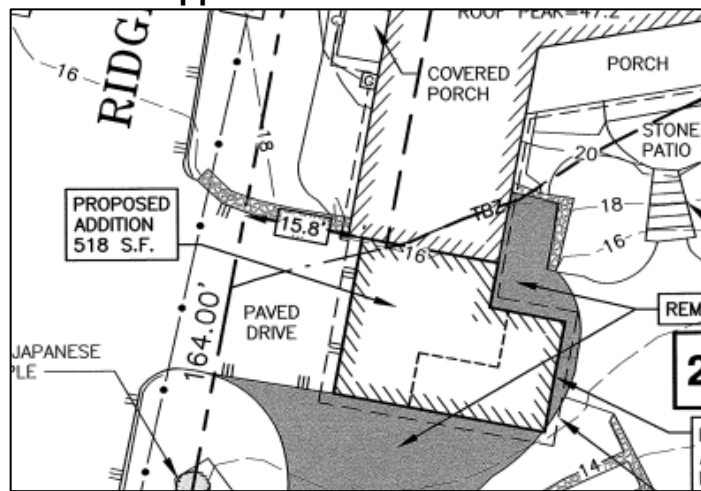
The applicant was before the Board in August for a garage addition that was subsequently denied by the Board. The applicant has revised the scope of work from a 718 square foot two car garage to a 518 square foot one car garage addition. On the original plan there was a deck

After the current application was submitted, a survey of the front yards of adjacent properties was completed to determine the average front yard under Section 10.516.10. The results show an average front yard of 19 feet. In addition, the scope of the main roof expansion has changed and item “b” will not require a variance.

August Application:



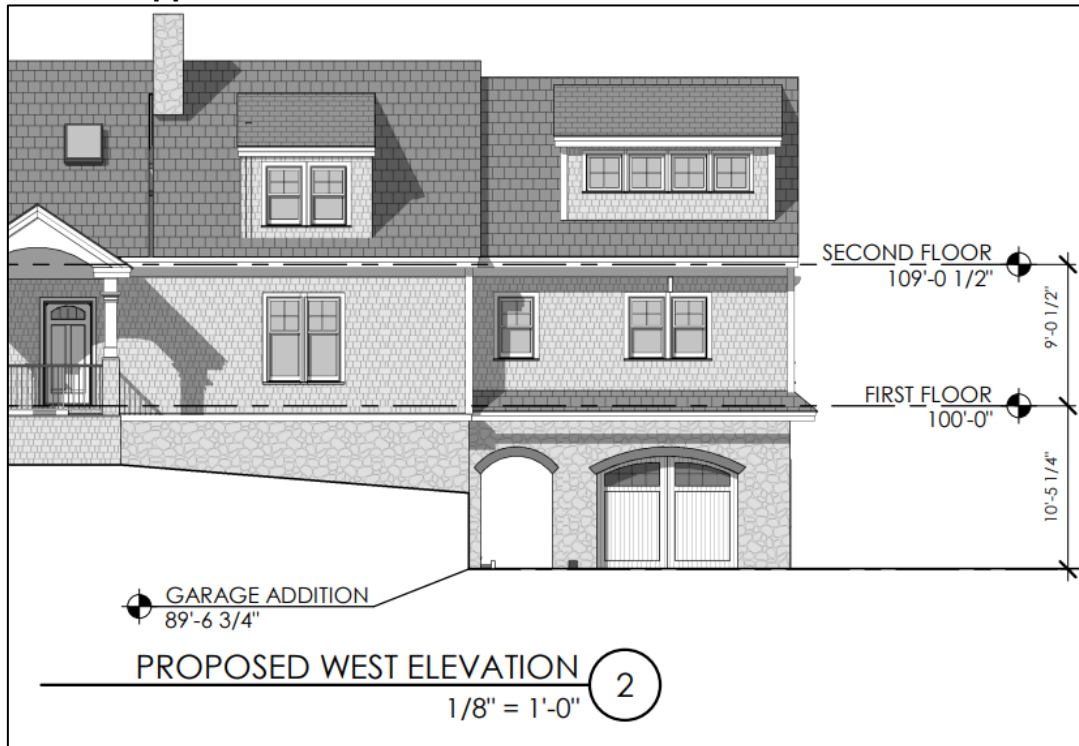
Current Application:



August Application:



Current 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.

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.

NEW BUSINESS

1.

The request of **Emily-Anne Boon (Applicant)** and **Jeanne L. Wescott Revocable Trust (Owner)**, for property located at **118 Maplewood Avenue, Unit C4** whereas relief is needed to allow a medical office which requires the following: 1) A Special Exception from Section 10.440, Use #6.20 to allow a medical office where the use is permitted by Special Exception. Said property is located on Assessor Map 124 Lot 5-C4 and lies within the Character District 4-L1 (CD4-L1) and the Historic District.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	office	Medical office	Primarily mixed uses
<u>Lot area (sq. ft.):</u>	19,067	19,067	3,000 min.
<u>Primary Front Yard (ft.):</u>	4	4	15 max.
<u>Right Yard (ft.):</u>	50	50	5 - 20 max.
<u>Left Yard (ft.):</u>	10	10	5 - 20 max.
<u>Rear Yard (ft.):</u>	74	74	Greater of 5 ft. from the rear lot line or 10 ft. from center line of alley
<u>Height (ft.):</u>	ok	ok	2 stories/ 35' max.
<u>Building Coverage (%):</u>	<60	<60	60 max.
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Parking:</u>	26	26	26
<u>Estimated Age of Structure:</u>	1996	Special Exception request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



0 30 60 120 Feet
1 inch = 66.7 feet

118 Maplewood Avenue



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The application is seeking to locate a medical office use at this location where similar uses exist. The applicant is proposing an appointment only practice, seeing up to 8 patients per day, 1-2 days per week. The use is permitted in the Ordinance by special exception in the CD4-L1 and the proposal is consistent with other uses on the property.

Review Criteria

The application must meet all of the standards for a **special exception** (see Section 10.232 of the Zoning Ordinance).

1. *Standards as provided by this Ordinance for the particular use permitted by special exception;*
2. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*
3. *No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;*
4. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*
5. *No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and*
6. *No significant increase of stormwater runoff onto adjacent property or streets.*

2.

The request **Optima Dermatology (Applicant)**, and **Seacoast Newspapers, Inc. (Owner)**, for property located at **111 New Hampshire Avenue** whereas relief is needed to allow a testing laboratory which requires the following: 1) A Special Exception from Part 303-A.03 (f) of the Pease Development Authority Zoning Ordinance. Said property is located on Assessor Map 306 Lot 4 and lies within the Pease Industrial (PI) and Airport Business Commercial (ABC) Districts.

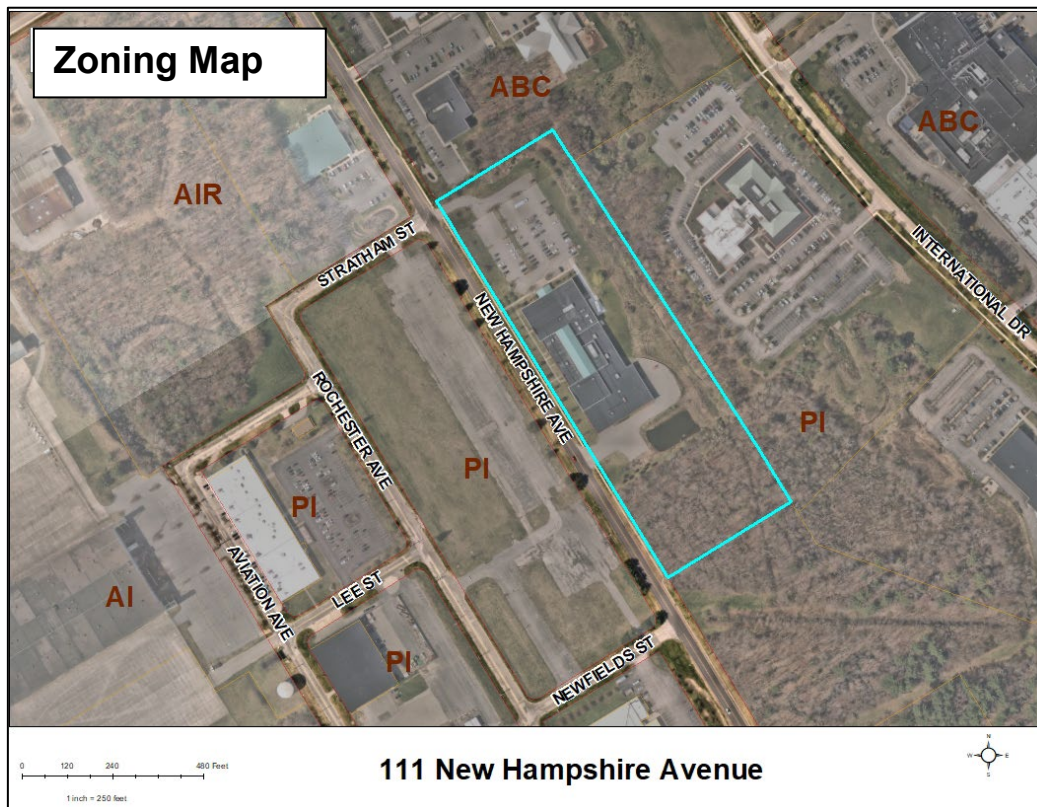
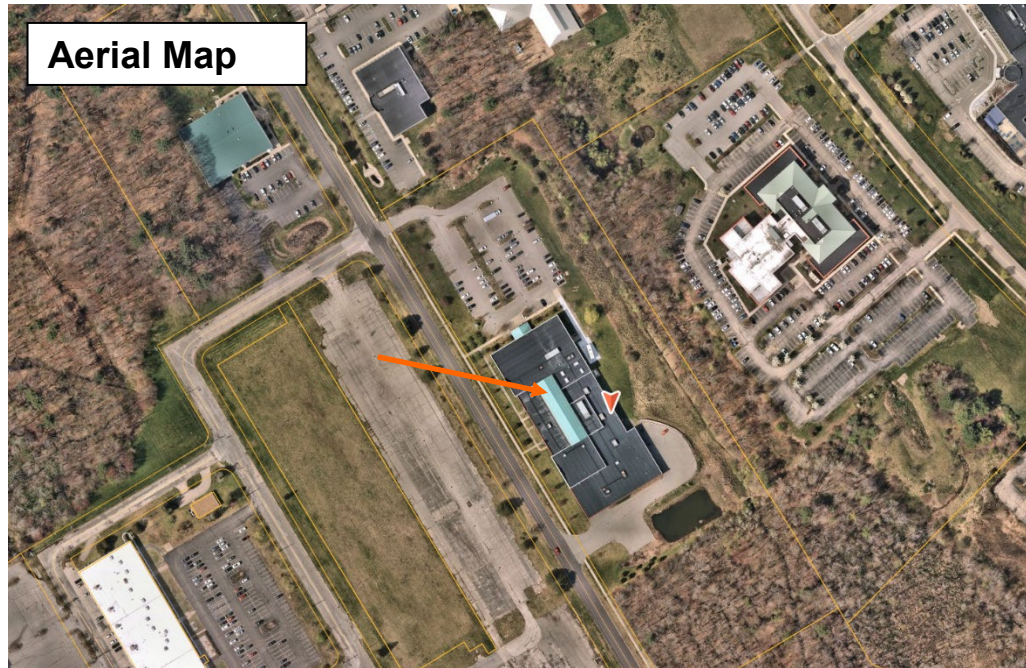
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Testing laboratory	Primarily commercial uses
<u>Lot area (acres):</u>	10	10	10 min.
<u>Street Frontage (ft.):</u>	1,066	1,066	200 min.
<u>Primary Front Yard (ft.):</u>	40	40	70 min.
<u>Right Yard (ft.):</u>	410	410	50 min.
<u>Left Yard (ft.):</u>	340	340	50 min.
<u>Rear Yard (ft.):</u>	150	150	50 min.
<u>Height (ft.):</u>	ok	Ok	Not to exceed FAA criteria
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Estimated Age of Structure:</u>	2006	Special Exception request(s) shown in red.	

Other Permits/Approvals Required

Pease Development Authority

Neighborhood Context



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant proposing to add a testing laboratory use in the existing building, which is located at Pease and requires a special exception per their regulations.

The PDA has its own land use and zoning regulations and is exempt from the City's regulations ordinance. For certain parcels in Pease, variance and special exception requests are sent to the City for a recommendation from the BOA. A motion to approve or deny will be a recommendation and the recommendation will become an approval by the PDA Board after 14 days unless the applicant or PDA Board member requests a hearing (see Part 314.04 below).

The Chapter in the Pease Land Use Controls regarding the process for a special exception is below. Part 314.04(a) states the BOA will use apply the standards in Part 314.03(c) in its review of the application. These standards are attached hereto under Review Criteria.

314.04 Special Exceptions Referred to Local Municipalities for Review and Recommendation

- (a) For parcels located within the Industrial Zone, Business and Commercial Zone, Natural Resource Protection Zone and those portions of the Airport Industrial Zone not acquired by Pease Development Authority pursuant to Section 13(g) of the Surplus Property Act, completed applications for a Special Exception shall be referred by the Authority to the Zoning Board of Adjustment of the municipality in which the parcel is located for review and recommendation in accordance with the provisions of this Section.
- (b) The applicable Zoning Board of Adjustment shall, in its review and recommendation, apply the substantive provisions of this zoning regulation.
- (c) At least one public hearing shall be held on the application during the municipal review process.
- (d) Notice to abutters and the public shall be required for any public hearing on an application for Special Exception in accordance with the requirements of Section 314.03(c).

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- (e) Recommendation to the Board regarding requests for a Special Exception shall be made by the applicable zoning board of adjustment within sixty (60) days of referral. Notice of the recommendation shall be provided to the applicant and the Board within 48 hours of the decision.
- (f) The recommendation of the applicable zoning board of adjustment shall be deemed a final decision of the Board upon the expiration of fourteen (14) days from the date of notice, unless the applicant or a member of the Board requests a hearing by the Board.
- (g) Where a hearing has been requested, the Board shall conduct a public hearing and render a final decision on the request for a Special Exception within thirty (30) days.
- (h) At the discretion of the Board the time period for rendering a final decision may be extended an additional thirty (30) days, or such additional time as may be consented to by the applicant.
- (i) The Board may approve, conditionally approve or deny the application notwithstanding the recommendation of the applicable zoning board of adjustment. In the case of denial of any application by the Board or where the Board elects not to follow the recommendation of the applicable zoning board of adjustment, the ground(s) for such action shall be stated on the record and provided to the applicant and to the applicable zoning board of adjustment in writing.

Review Criteria

This application must meet the criteria for a Special Exception under Part 314.01(c) 1-4 from the Pease Development Authority Ordinance below:

(c) A use permissible only through the granting of a Special Exception shall be not approved or recommended for approval unless it meets the following criteria:

- (1) No adverse effect or diminution in values of surrounding properties would be suffered.
- (2) The use does not create a traffic or other health or safety hazard.

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- (3) The proposed site is an appropriate location for the use and provides safe and proper access and egress for the use.
- (4) The use meets any additional standards provided in this Zoning Regulation for the zone in which it is situated.

(d) Reasonable conditions necessary to meet one or more of the standards in subsection (c) above may be attached to the approval of a Special Exception.

3.

The request **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District.

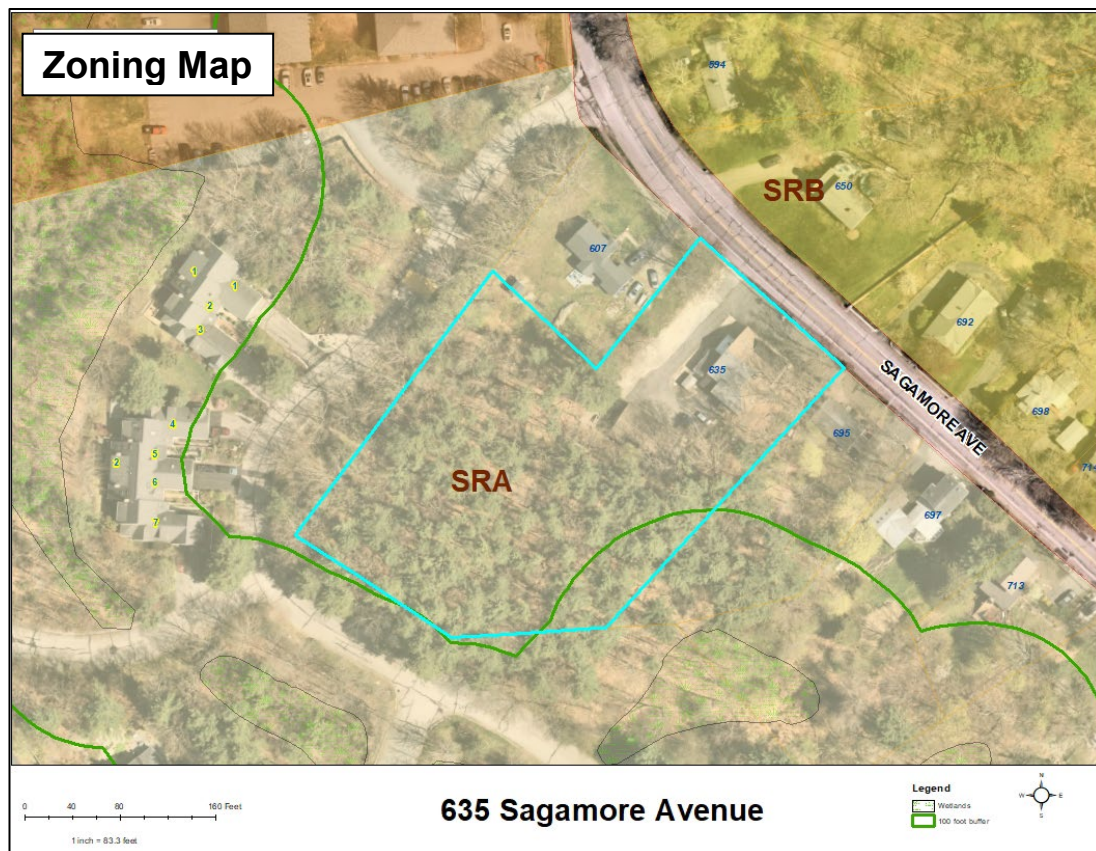
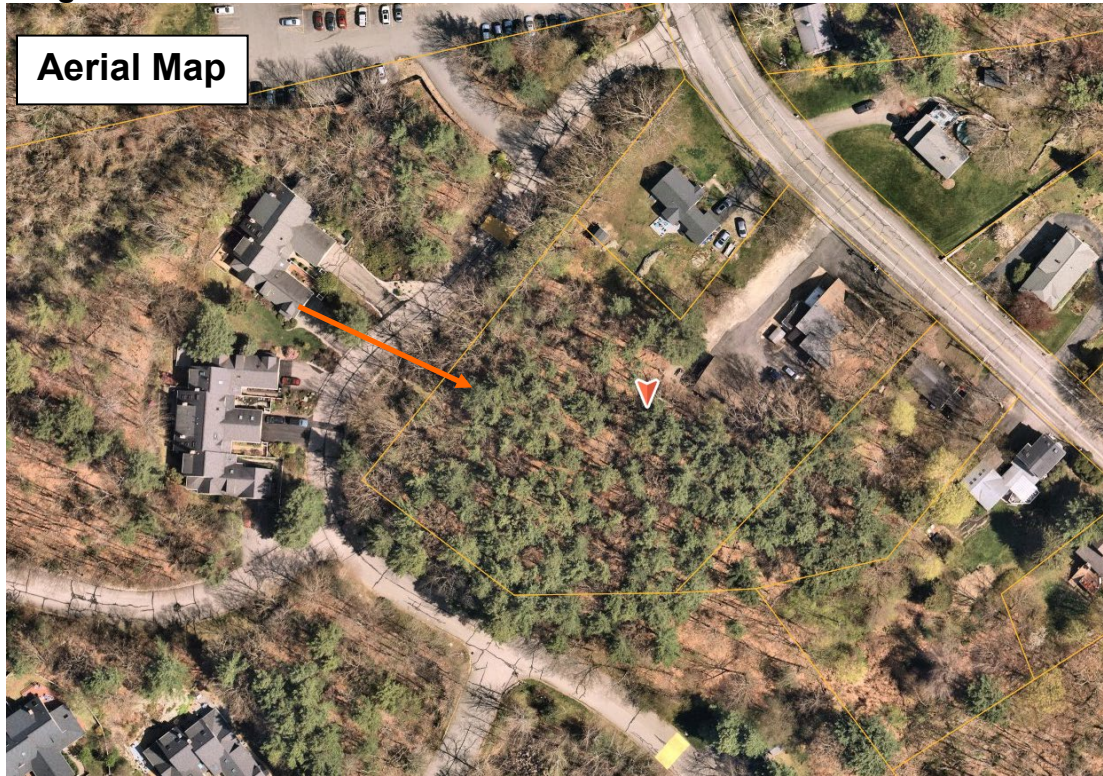
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial w/ 1 apartment	4 single family dwellings	Primarily residential
<u>Lot area (sq. ft.):</u>	84,795	84,795	43,560 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	84,795	21,198	43,560 min.
<u>Lot depth (ft.):</u>	358	358	200 min.
<u>Street Frontage (ft.):</u>	160	160	150 min.
<u>Primary Front Yard (ft.):</u>	28	>30	30 min.
<u>Right Yard (ft.):</u>	60	>20	20 min.
<u>Left Yard (ft.):</u>	30	21	20
<u>Rear Yard (ft.):</u>	219	>40	40 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	4	9.2	10 max.
<u>Open Space Coverage (%):</u>	>50	81	50 min.
<u>Parking:</u>	4+	16	6
<u>Estimated Age of Structure:</u>	1950	Variance request(s) shown in red.	

Other Permits/Approvals Required

TAC/Planning Board – Site Plan Review

Neighborhood Context



November 15, 2022 Meeting

Previous Board of Adjustment Actions

April 19, 2022 – The ZBOA considered your application for remove existing commercial structure and construct 5 new single-family dwellings which requires the following: 1) A Variance from Section 10.513 to allow 5 principal structures on a lot where only 1 is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 22,389 square feet where 1 acre per dwelling is required. The Board granted your request to **postpone** to the May meeting.

May 17, 2022 – The Board **granted** your request to postpone to the June meeting

June 22, 2022 – The Board voted to acknowledge the **withdrawal** of the application.

Planning Department Comments

As shown in the history above, the applicant was before the Board this past spring with a proposal to construct 5 single family dwellings on one lot. Due to concerns from the abutters, the application was withdrawn so they could work on addressing concerns from the abutters. The new application proposes to demolish the existing structures and construct 4 free standing single family dwellings. The SRA zone requires 1 acre per dwelling unit and only allows 1 principal structure on a single lot. With 4 dwellings, the proposed lot area per dwelling will be 21,198, where 43,560 is required. With the exception of the density, all other dimensional requirements are in compliance with the proposed layout. This will require site plan review before TAC and Planning Board if the variances are granted. 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.

4.

The request **Donald and Rasa Stone Revocable Trust (Owner)**, for property located at **55 Gates Street** whereas relief is needed for the addition of 2 heat pumps which requires the following: 1) A Variance from Section 10.515.14 to allow a 3.5 foot setback where 10 feet is required. Map 103 as Lot 90 and lies within the General Residence B (GRB) and Historic Districts.

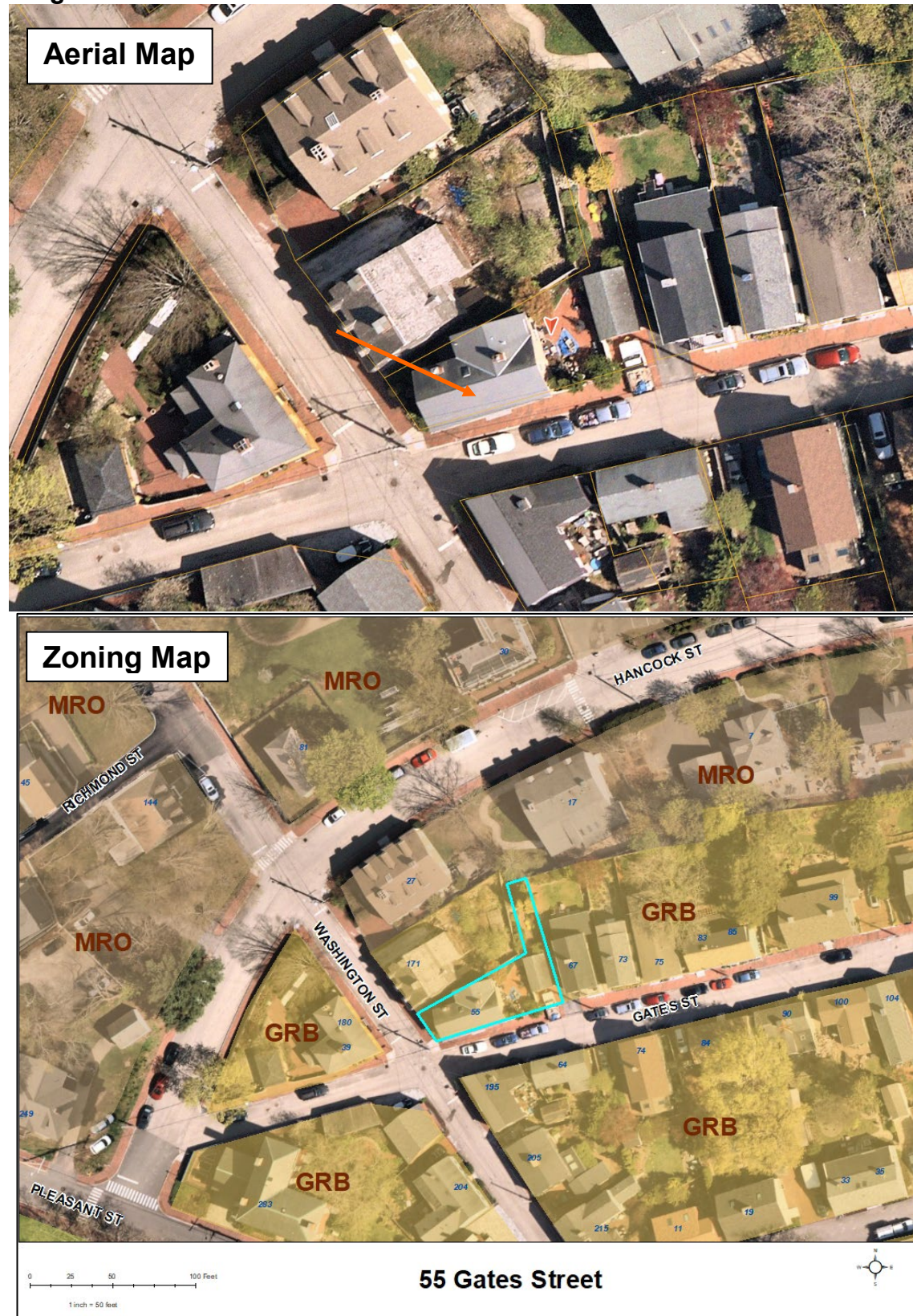
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	single-family	HVAC	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	3,049	3,049	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,049	3,049	5,000 min.
<u>Street Frontage (ft.):</u>	100	100	80 min.
<u>Lot depth (ft.):</u>	60	60	60 min.
<u>Primary Front Yard (ft.):</u>	0	0	5 min.
<u>Secondary Front Yard (ft.):</u>	4	4	5 min.
<u>Right Yard (ft.):</u>	1	1	10 min.
<u>Rear Yard (ft.):</u>	0	3.5	10 (for units) 25 (house) min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	37	37	30 max.
<u>Open Space Coverage (%):</u>	37	37	25 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1780	Variance request shown in red.	

Other Permits/Approvals Required

HDC

Neighborhood Context



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant is proposing 2 HVAC units to be located on the rear of the existing dwelling. The house and lot are both nonconforming with the house located over the front lot line and on or over the rear lot line. The units are proposed to be located on the back side of the house and will be fenced from view.

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.

5.

The request of **Sara Sommer Kaufman Revocable Trust (Owner)**, for property located at **546 Sagamore Avenue** whereas relief is needed to allow a 6 foot fence in the front yard which requires the following: 1) A Variance from Section 10.515.13 to allow a 6 foot fence with a 1 foot front yard setback where 30 feet is required. Said property is located on Assessor Map 222 Lot 10 and lies within the Single Residence B (SRB) District.

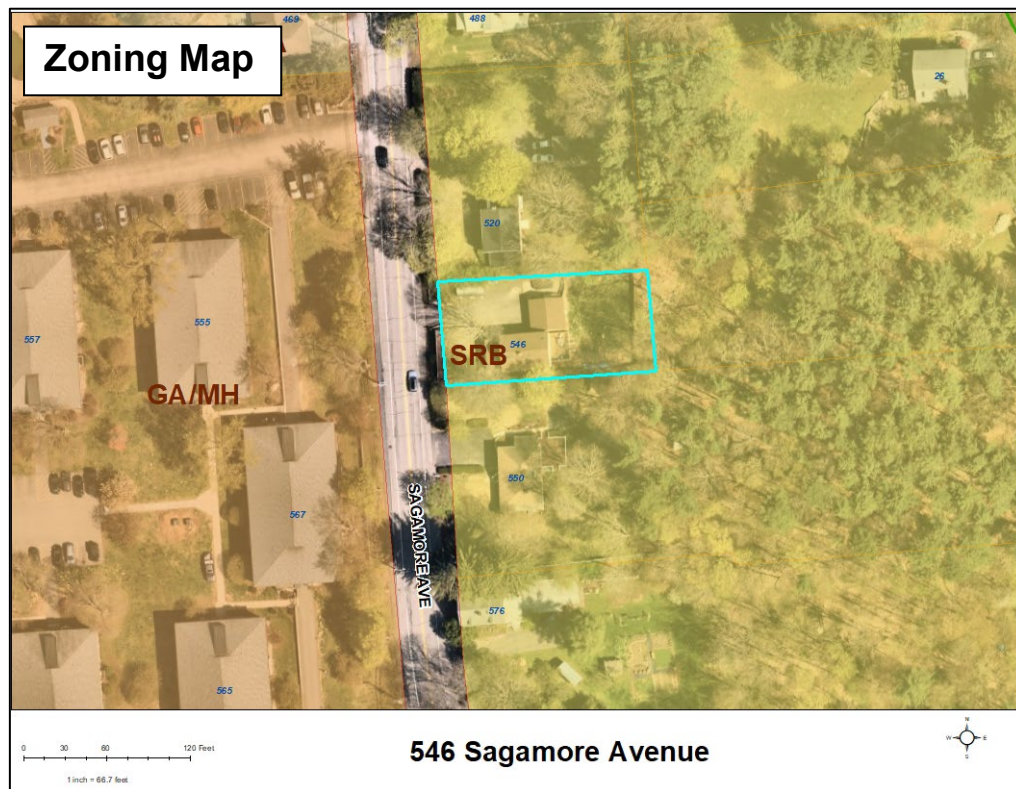
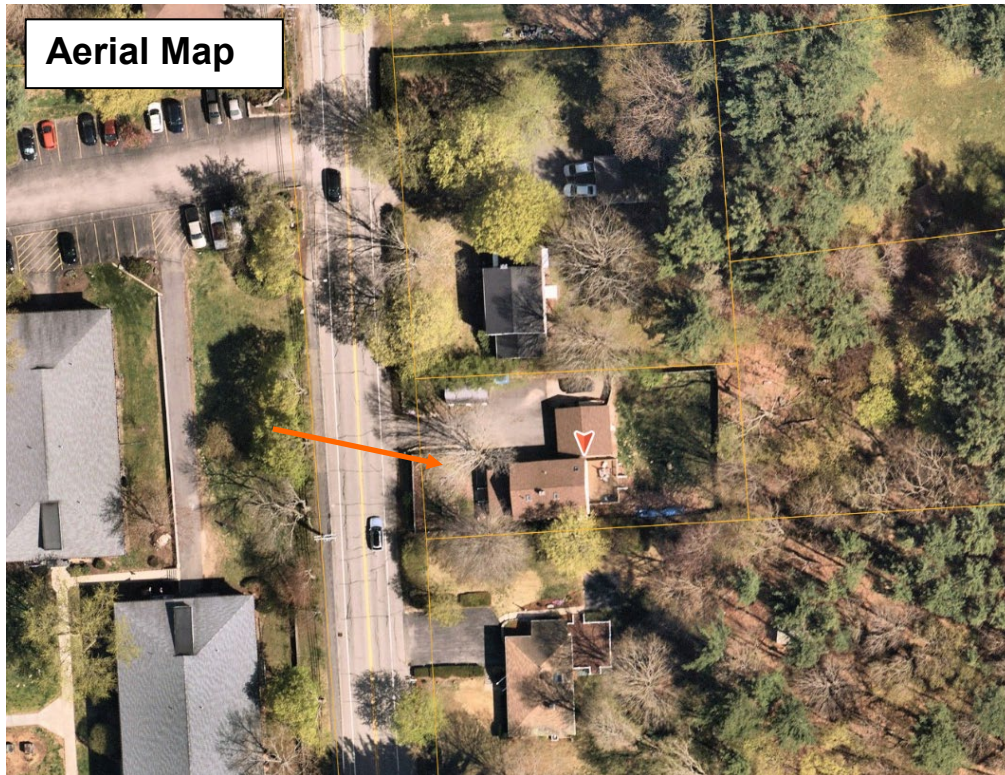
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	6' fence in front yard	Primarily single family uses
<u>Lot area (sq. ft.):</u>	11,401	11,401	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,401	11,401	15,000 min.
<u>Street Frontage (ft.):</u>	75	75	100 min.
<u>Lot depth (ft.):</u>	152	152	100 min.
<u>Front Yard (ft.):</u>	>30	1 (fence)	30 min.
<u>Left Yard (ft.):</u>	20	20	10 min.
<u>Right Yard (ft.):</u>	4.5	4.5'	10 min.
<u>Rear Yard (ft.):</u>	56	50	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	17.8	18.4	20 max.
<u>Open Space Coverage (%)</u>	67.5	66	40 min.
<u>Parking</u>	2+	2+	2
<u>Estimated Age of Structure:</u>	1890	Variance request(s) shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



November 15, 2022 Meeting

Previous Board of Adjustment Actions

July 27, 2021 – The ZBOA considered your application to add a rear addition and vertical expansion of the garage which requires the following: 1) A Variance from Section 10.521 to allow a 4.5' right side yard where 10' is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. The Board granted your request to **postpone** to the August meeting.

August 17, 2021 – The Board voted to **grant** of the application as presented and advertised.

Planning Department Comments

The applicant is requesting an after the fact variance for a 6 foot tall fence located in the front yard where only a 4 foot fence is permitted. Per Section 10.515.13 below, a fence taller than 4 feet must meet the front yard requirements, which in this district is 30 feet.

10.515.13 Fences not over 4 feet in height shall be exempt from **front yard** requirements, and fences not over 6 feet in height shall be exempt from side and **rear yard** requirements.

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.*
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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.

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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.

6.

The request of **Aviation Avenue Group, LLC (Applicant)** and **Pease Development Authority (Owner)**, for property located at **100 New Hampshire Avenue (80 Rochester Avenue)** whereas relief is needed for the construction of an advanced manufacturing facility which requires the following: 1) A Variance from Part 304.03(c) to allow a 51 foot front yard where 70 feet is required. Said property is located on Assessor Map 308 Lot 1 and lies within the Pease Industrial (PI) District.

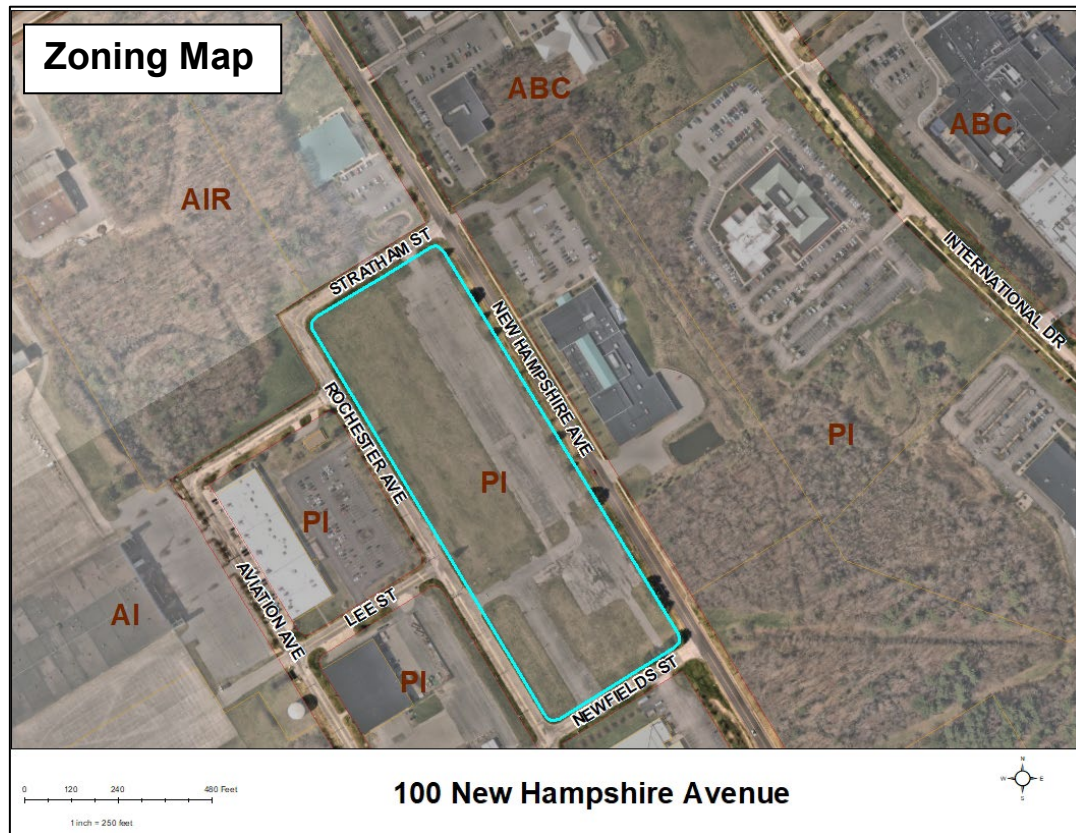
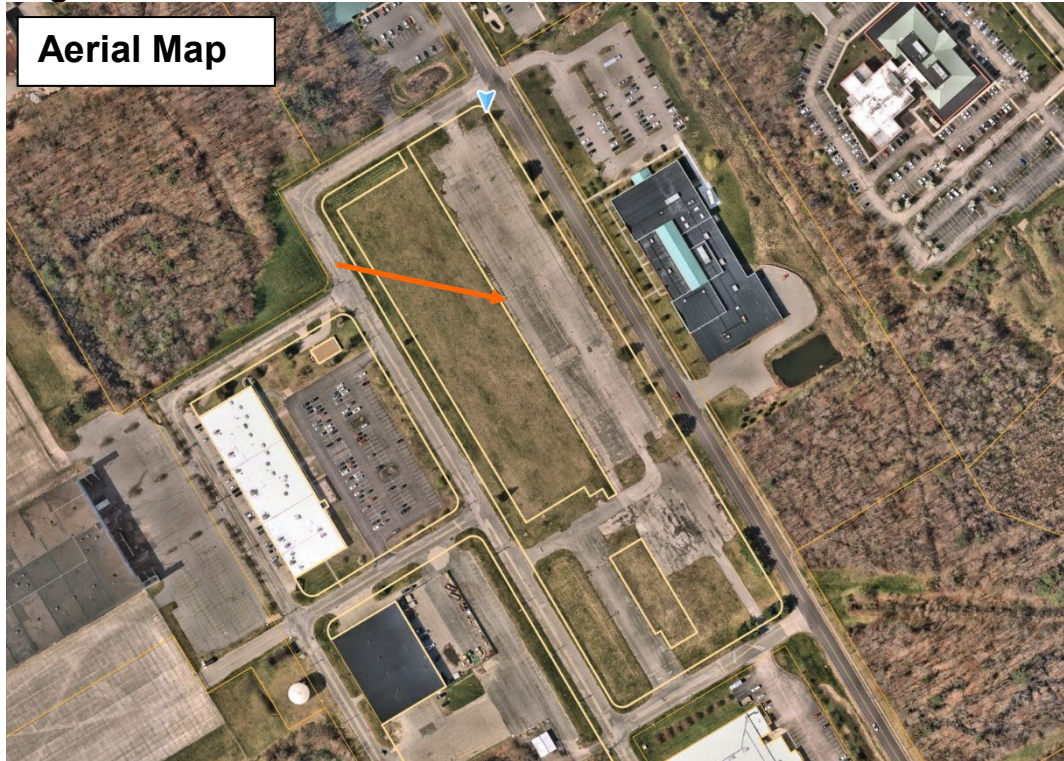
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant	New construction	Primarily Industrial
<u>Lot area (acres):</u>	11.4	11.4	10 acres min.
<u>Street Frontage (ft.):</u>	1,200	1,200	200 min.
<u>Primary Front Yard (ft.):</u>	NA	51	70 min.
<u>Left Yard (ft.):</u>	NA	202	50 min.
<u>Right Yard (ft.):</u>	NA	330+	50 min.
<u>Rear Yard (ft.):</u>	NA	50	50 min.
<u>Height (ft.):</u>	NA	36	Not to exceed FAA criteria
<u>Open Space Coverage (%):</u>	>25	35	25 min.
<u>Parking:</u>	NA	147	147
<u>Estimated Age of Structure:</u>	NA	Variance request(s) shown in red.	

Other Permits/Approvals Required

Pease Development Authority
TAC/Planning Board – Site Review

Neighborhood Context



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant is seeking to construct a new building to house an advance manufacturing facility. This parcel is identified as 80 Rochester in the City's tax records, but the applicant is in the process of changing the address to 100 New Hampshire Avenue, where the principal frontage will be located and is where relief is being sought for the front yard.

The PDA has its own land use and zoning regulations and is exempt from the City's regulations. For certain parcels in Pease, variance requests are sent to the City for a recommendation from the BOA. A motion to approve or deny will be a recommendation and the recommendation will become an approval by the PDA Board after 14 days unless the applicant or PDA Board member requests a hearing (see Part 317.03(f) below).

The Chapter in the Pease Land Use Controls regarding the process for a variance is below. Part 317.03(c) states the BOA will use apply the standards in Part 317.01(c) in its review of the application. These standards are attached hereto under Review Criteria.

317.03

Zoning Variances Referred to Local Municipalities for Administration

(a) For parcels located within the Industrial Zone, Business and Commercial Zone, Natural Resource Protection Zone or portions of the Airport Industrial Zone not acquired by the Pease Development Authority pursuant to Section 13(g) of the Surplus Property Act, requests for a variance from the provisions of this zoning rule shall be referred to the zoning board of adjustment for the municipality in which the parcel is situated for administration in accordance with the provisions of this section.

55

(b) Applications for a variance for parcels referred to in Subsection (a) shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board and referred to the applicable zoning board of adjustment.

(c) The zoning board of adjustment to which the application for a variance has been referred shall, in its review of the request, apply the substantive provisions of this Chapter.

(d) Recommendations to the Board regarding requests for a zoning variance shall be made by the applicable zoning board of adjustment within sixty (60) days of referral. Notice of the recommendation shall be provided to the applicant and the Board within 48 hours of the decision.

(e) The recommendation of the applicable zoning board of adjustment shall be forwarded to the Board along with a written report detailing the reasons for any recommendation for denial or approval with conditions.

(f) A recommendation of the applicable zoning board of adjustment shall be deemed a final decision of the Board upon the expiration of fourteen (14) days from the date of notice, unless the applicant/developer or a member of the Board requests a hearing by the Board.

(g) Where a hearing has been requested, the Board shall conduct a hearing and render a final decision on the variance request within thirty (30) days.

(h) At the discretion of the Board the time period for rendering a final decision may be extended an additional thirty (30) days, or such additional time as may be consented to by the applicant.

(i) The Board may approve, conditionally approve or deny the application notwithstanding the recommendation of the applicable zoning board of adjustment. In the case of denial of any application by the Board or where the Board elects not to follow the recommendation of the applicable zoning board of adjustment, the ground(s) for such action shall be stated in writing.

Review Criteria

This application must meet the criteria for a **variance** of Part 317.01(c) of the Pease Land Use Controls below.

PART 317. VARIANCES FROM ZONING PROVISIONS

317.01 General Provisions

- (a) Requests for a variance from the provisions of this zoning rule shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board.
- (b) Applications for zoning variance approval shall set forth the specific provision of the rule or regulation involved and reasons why a variance should be granted.
- (c) A variance shall not be approved or recommended for approval unless it is in harmony with the general purpose and intent of these regulations and meets the following criteria:
 - (1) No adverse effect or diminution in values of surrounding properties would be suffered.
 - (2) Granting the variance would be of benefit to the public interest.
 - (3) Denial of the variance would result in unnecessary hardship to the person seeking it.
 - (4) Granting the variance would be substantial justice.
 - (5) The proposed use would not be contrary to the spirit of this zoning rule.
- (d) Reasonable conditions necessary to meet one or more of the standards in subsection (c) above may be attached to approval of a variance.