

TO: Zoning Board of Adjustment  
FROM: Peter Stith, Planning Manager  
Stefanie Casella, Planning Department  
DATE: March 15, 2023  
RE: Zoning Board of Adjustment March 21, 2023

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

## **II. OLD BUSINESS**

- A. 1 Raynes Avenue
- B. 635 Sagamore Avenue
- C. 915 Sagamore Avenue
- D. 738 Islington Street Unit 1B
- E. 80 Rochester Avenue (100 New Hampshire Ave.)

## **III. NEW BUSINESS**

- A. 67 Ridges Court
- B. 809 State Street

## II. OLD BUSINESS

- A. **1 Raynes Avenue - Appeal** - As ordered by the Superior Court on February 2, 2023, the Board will “determine, in the first instance, whether it has jurisdiction over the issues presented” by Duncan MacCallum (Attorney for the Appellants) in the January 14, 2022 appeal of the December 16, 2021 decision of the Planning Board for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** which granted the following: a) site plan approval b) wetlands conditional use permit; and c) certain other, miscellaneous approvals, including an approval related to valet parking. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District. (LU-21-54)

### Staff Comments

The Planning Board decision of December 16, 2021 was appealed to the Zoning Board and a separate request for a rehearing to the Planning Board was filed by the appellants. The Planning Board granted the request for rehearing. In February 2022, both matters were taken to Superior Court where a stay was issued on February 15, 2022. just recently issued an Order, which is included in the packet. The Order states the Court will not determine what matters are properly before the Board of Adjustment but has sent the January 14<sup>th</sup> appeal back to the Board to determine if it has any jurisdiction over any of the counts raised in the appeal. At this time, that is the only decision the Board should make with respect to this appeal. The counts raised in the appeal include the following:

- 1) Granting site plan approval.
- 2) Granting a Wetlands Conditional Use Permit; and
- 3) Granting certain other, miscellaneous approvals including an approval related to valet parking.

The Board should vote on the three counts above, further outlined in the appeal, and decide if the Board has jurisdiction over any or all of the counts. A memo from the Legal Department has been provided outlining the Board’s jurisdiction.

## II. OLD BUSINESS

- B.** The request of **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.

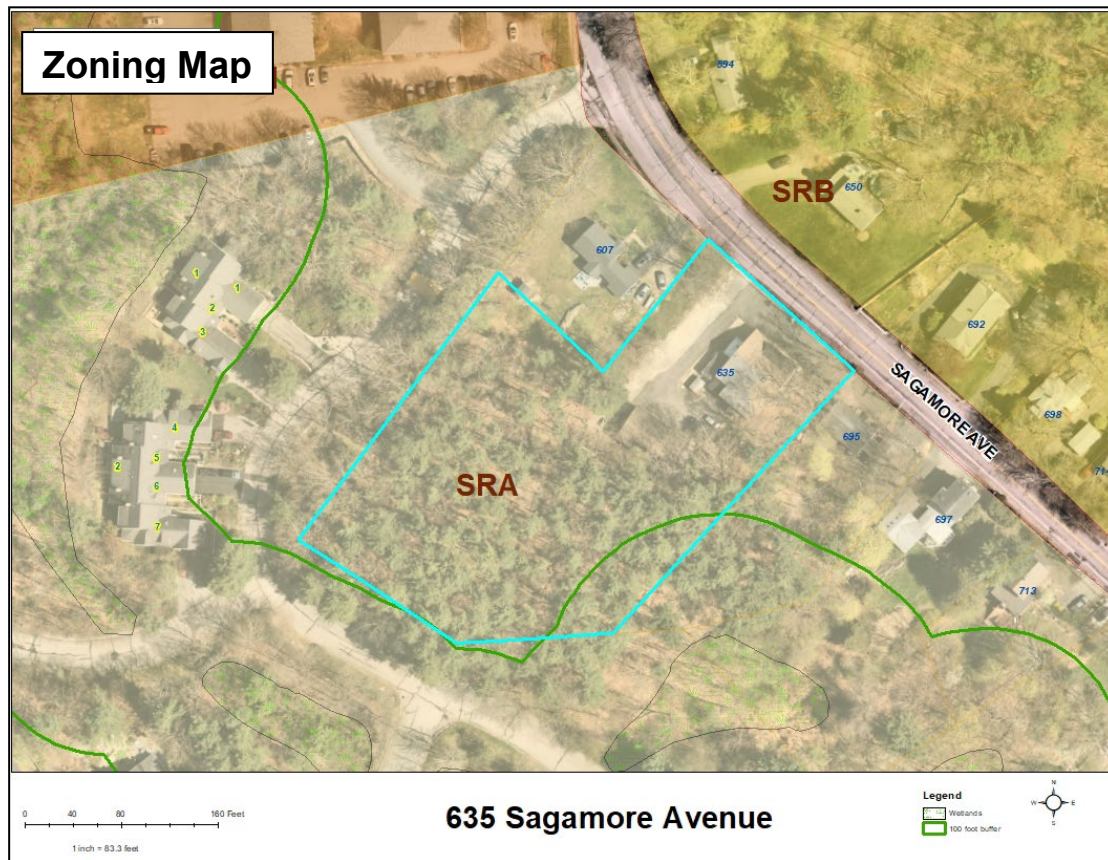
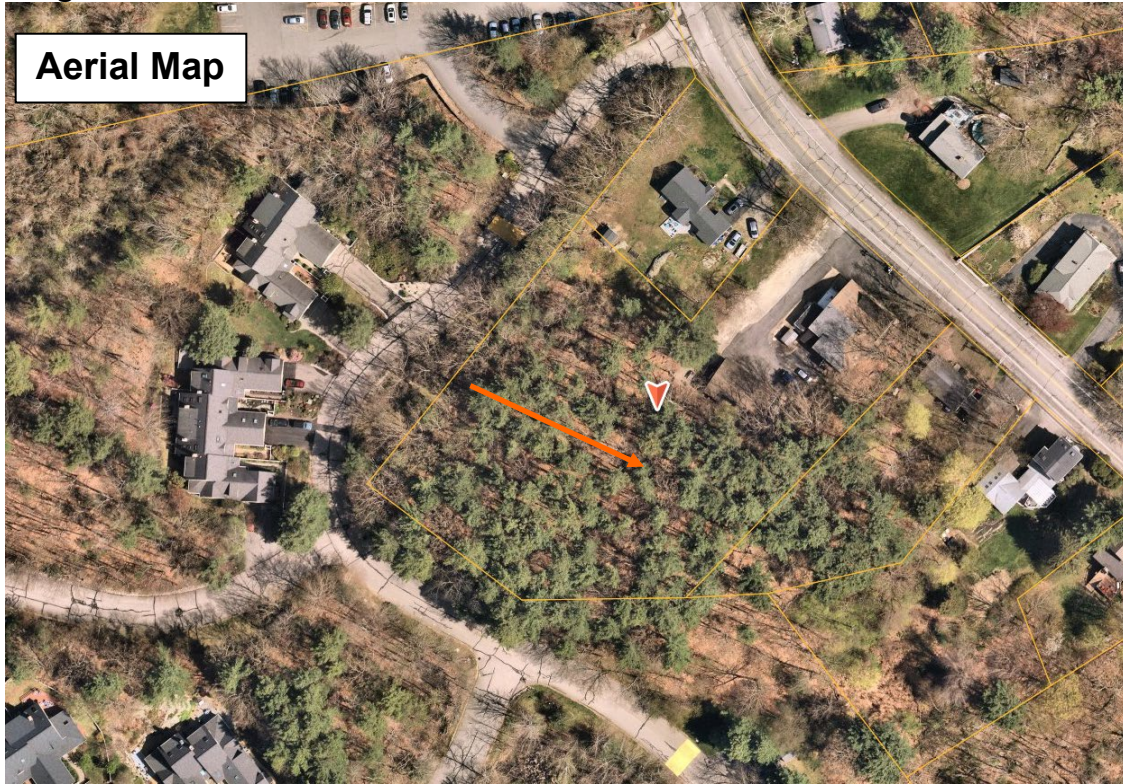
### Existing & Proposed Conditions

	<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	<b>21,198</b>	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	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

TAC/Planning Board – Site Plan Review

### Neighborhood Context





## Previous Board of Adjustment Actions

**April 19, 2022** – The BOA 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** a request to postpone to the June meeting.

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

**November 15, 2022** - The Board **granted** a request to postpone to the June meeting.

**December 20, 2022** - The Board **granted** a request to postpone to the June meeting.

**January 17, 2023** - The Board **granted** a request to postpone to the March meeting.

## 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**

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

**10.235 Certain Representations Deemed Conditions**

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

**II. OLD BUSINESS**

**C.** The request of **Nissley LLC (Owner)**, for property located at **915 Sagamore Avenue** whereas relief is needed to demolish the existing building and construct new mixed-use building which requires the following: 1) A Variance from Section 10.440 to allow a mixed-use building where residential and office uses are not permitted. 2) A Variance from Section 10.1113.20 to allow parking to be located in the front yard and in front of the principal building. 3) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only one is allowed. Said property is located on Assessor Map 223 Lot 31 and lies within the Waterfront Business (WB) District. (LU-22-229)

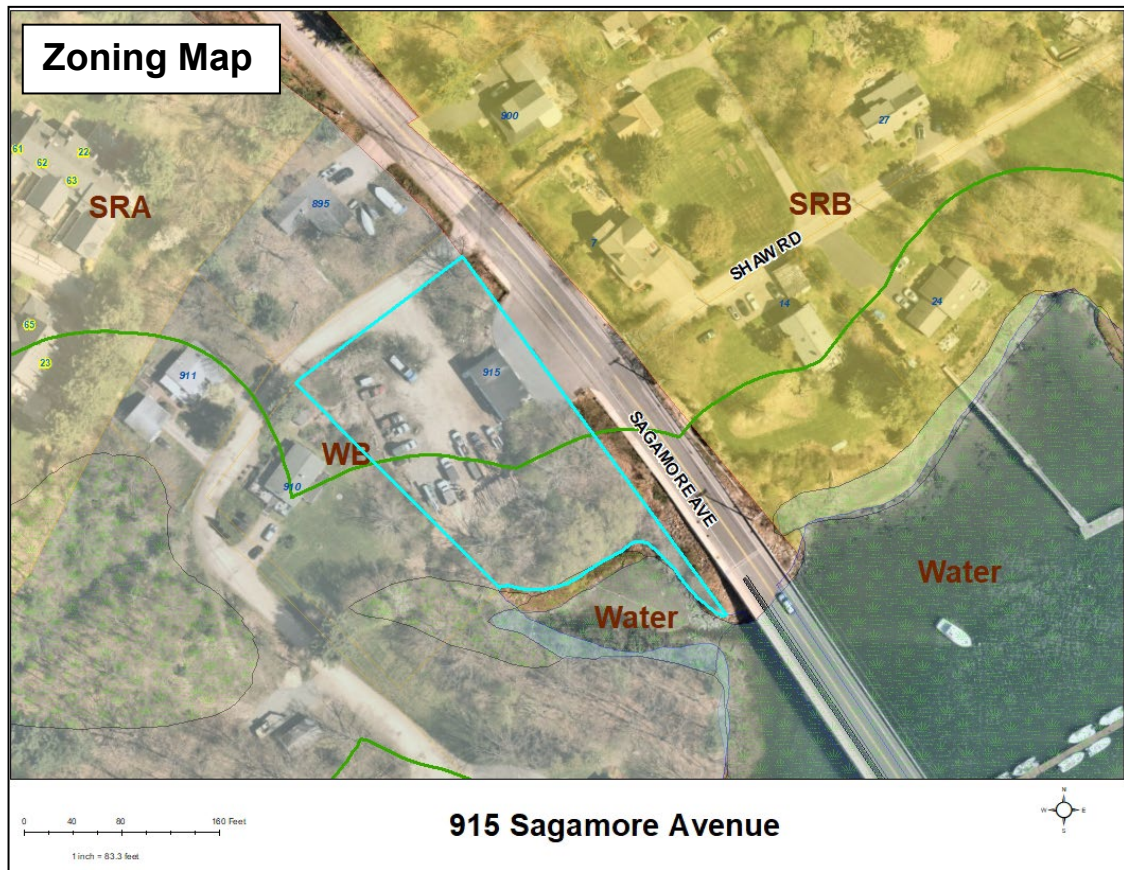
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Demo existing building	Construct <b>mixed use building</b>	Primarily water dependent uses
<u>Lot area (sq. ft.):</u>	44,431	44,431	20,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	3,702	NR min.
<u>Street Frontage (ft.):</u>	440	440	100 min.
<u>Lot depth (ft.):</u>	145	145	100 min.
<u>Front Yard (ft.):</u>	20	30	30 min.
<u>Left Yard (ft.):</u>	145	>100	30 min.
<u>Secondary Front Yard (ft.):</u>	74	30	30 min.
<u>Rear Yard (ft.):</u>	99	70	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	3.5	18	30 max.
<u>Open Space Coverage (%):</u>	>20	>20	20 min.
<u>Parking</u>		34	34 (shared parking)
<u>Estimated Age of Structure:</u>	1970	<b>Variance request(s) shown in red.</b>	

**Other Permits/Approvals Required**

Conservation Commission/Planning Board – Wetland CUP  
 TAC/Planning Board – Site Review

### Neighborhood Context





## Previous Board of Adjustment Actions

**September 19, 1995** – The Board voted to grant the request as presented and advertised.

1. Variance from Article II, Section 10-206(20) is requested to allow use of cellar space for fish processing (frozen west coast cod and haddock, fresh cod, haddock and flounder) and sale to local wholesale of fish and lobsters to local markets and distributed to NY and PA.

**December 20, 2022** – The Board granted a request to postpone to the January meeting.

**January 17, 2023** - The Board voted to postpone to the February meeting.

**February 22, 2023** - The Board voted to 1) make a decision on the information presented at the January 17 meeting (Option 2) and that the board should vote to approve with stipulations or deny the application; and 2) to **postpone** voting on the application to the March 21 meeting so that all the members could re-read the applicant's materials, rewatch the deliberations, and make an informed decision based on the presentation and discussions.

## Planning Department Comments

The applicant is proposing to demolish the existing scuba shop and construct a three-story mixed use building consisting of office space and 12 residential units. The property is located in the Waterfront Business (WB) district where uses other than water dependent uses, are not permitted. The proposal includes parking in the front of the building and a second driveway, both of which need relief variances. Five out of the eight parcels zoned WB in this area contain residential uses.

At the February meeting, the Board voted to consider the initial application proposal submitted for the January meeting.

If the variances are granted, the project will need review by the Conservation Commission and the Technical Advisory Committee prior to going before the Planning Board for a Wetland CUP and Site Plan approval. If granted approval, staff recommends the Board consider the following stipulation:

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

## Review Criteria

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

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*

4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
  - (a) *The property has special conditions that distinguish it from other properties in the area.*

**AND**

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

**OR**

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

#### **10.235 Certain Representations Deemed Conditions**

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

## II. OLD BUSINESS

- D. The request of **The Griffin Family Corporation (Owners), and LoveWell Veterinary Services, LLC (Applicant)**, for property located at **738 Islington Street Unit 1B** whereas relief is needed to allow a veterinary clinic which requires the following: 1) Special Exception from Section 10.440, Use #7.50 to allow a veterinary clinic where the use is permitted by Special Exception. Said property is located on Assessor Map 154 Lot 1 and lies within the Character District 4-W (CD4W) District. (LU-23-8)

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial	<b>Veterinary Clinic</b>	Mixed Uses
<u>Lot area (sq. ft.):</u>	114,363	114,363	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	NA	2,500 min.
<u>Lot depth (ft.):</u>	>100	>100	100 min.
<u>Front Yard (ft.):</u>	40	40	10 max.
<u>Left Yard (ft.):</u>	OK	OK	NR min.
<u>Right Yard (ft.):</u>	OK	OK	NR min.
<u>Rear Yard (ft.):</u>	>5	>5	5 min.
<u>Height (ft.):</u>	<35	<35	2-3 Stories (45') max.
<u>Building Coverage (%):</u>	21.9	21.9	60 max.
<u>Open Space Coverage (%):</u>	12.2	12.2	15 min.
<u>Parking</u>	350	350	374
<u>Estimated Age of Structure:</u>	1996	<b>Special Exception request(s) shown in red.</b>	

### Other Permits/Approvals Required

- Building Permit (Tennent Fit-Up)
- Sign Permit

### Neighborhood Context





## Previous Board of Adjustment Actions

February 19, 2008 – The Board **granted** a Variance from Section 10-208(54)(b) to allow a 12' x 20' exterior produce cooler to be temporarily located during internal renovations of the grocery store.

April 18, 1995 – the Board **granted** a Special Exception to allow the erection of a 50' x 150' tent for a Home Show for 5 days with the stipulation that a \$100.00 bond be posted to ensure removal of the tent.

November 9, 1982 – the Board **granted** a Special Exception to place a temporary 8' x 40' one story storage trailer behind the building with a stipulation that the placement not exceed 90 days from the date of the meeting.

April 20, 2021 – the Board **granted** a Variance from Section 10.1251.20 to allow an 86.21 square foot wall sign where 40 square feet is the maximum allowed in Sign District 3 to replace existing wall sign with new sign. The Board voted to grant variance as presented and advertised.

## Planning Department Comments

The applicant is proposing the use of a veterinary clinic in the CD4-W district. The use is allowed by special exception under Section 10.440 Use #7.50 of the [Zoning Ordinance](#).

## Special Exception 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.*

**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.

- E. The request of **Aviation Avenue Group, LLC (Applicant), and Pease Development Authority (Owners)**, for property located at **80 Rochester Avenue** whereas relief is needed for the construction of an advanced manufacturing facility which requires the following: 1) Variance from Article 304.03 (e) to allow a 28 foot rear yard where 50 feet is required. Said property is located on Assessor Map 308 Lot 1 and lies within the Pease Industrial District (PI). (LU-22-210)

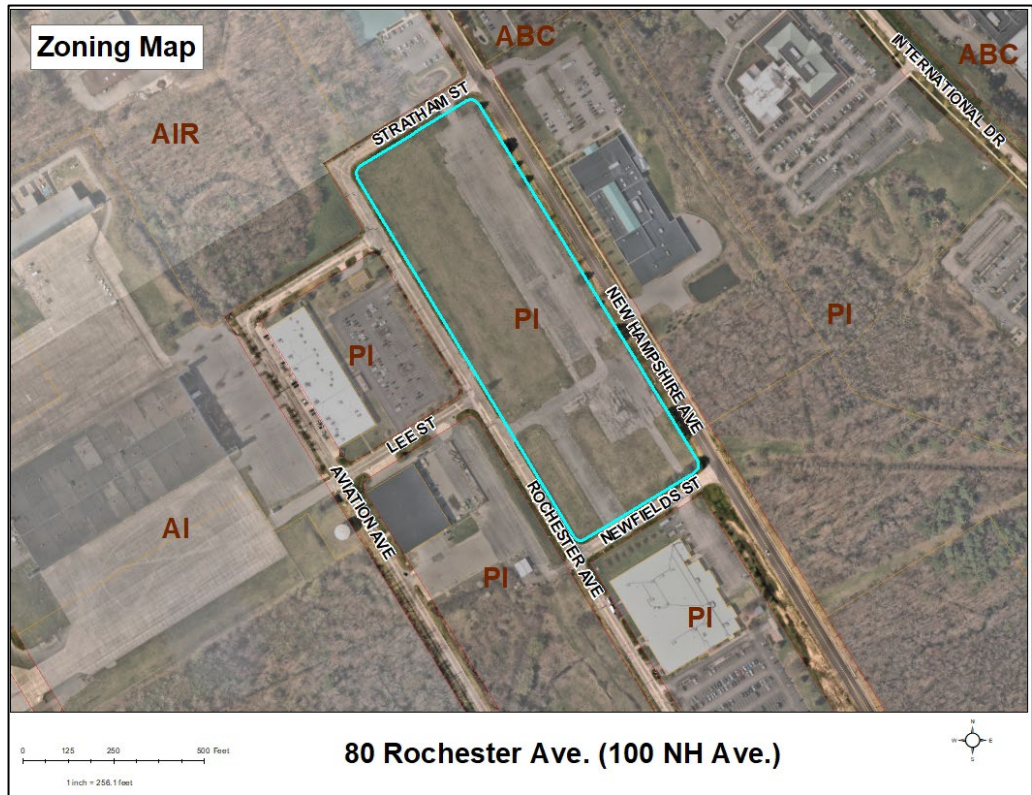
### Existing & Proposed Conditions

	<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 (previously recommended for approval)	70 min.
<u>Left Yard (ft.):</u>	NA	202 (previously recommended for approval)	50 min.
<u>Right Yard (ft.):</u>	NA	330	50 min.
<u>Rear Yard (ft.):</u>	NA	<b>28</b>	50 min.
<u>Height (ft.):</u>	NA	36 (previously recommended for approval)	Not to exceed FAA criteria
<u>Open Space Coverage (%):</u>	>25	35 (previously recommended for approval)	25 min.
<u>Parking:</u>	NA	147	147
<u>Estimated Age of Structure:</u>	NA	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

- Pease Development Authority
- Site Review – TAC/Planning Board
- Building Permit

### Neighborhood Context





## **Previous Board of Adjustment Actions**

**November 15, 2022** – the Board **recommended approval to the PDA Board** for the application for construction of an advanced manufacturing facility which requiring:

- 1) A Variance from Part 304.03(c) to allow a 51' front yard where 70' is required.

**February 28, 2023** – The Board voted to postpone to the March meeting.

## **Planning Department Comments**

The applicant is seeking to construct a new building to house an advanced manufacturing facility. The applicant was before the BOA and received a positive recommendation in November and through the Technical Advisory Committee review the project evolved and now requires additional relief for the rear yard. 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.

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.

### III. NEW BUSINESS

- A. The rehearing of 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 and expansion of front dormer which requires the following: 1) A variance from Section 10.521 to allow a 14 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. (LU-22-199)

#### Existing & Proposed Conditions

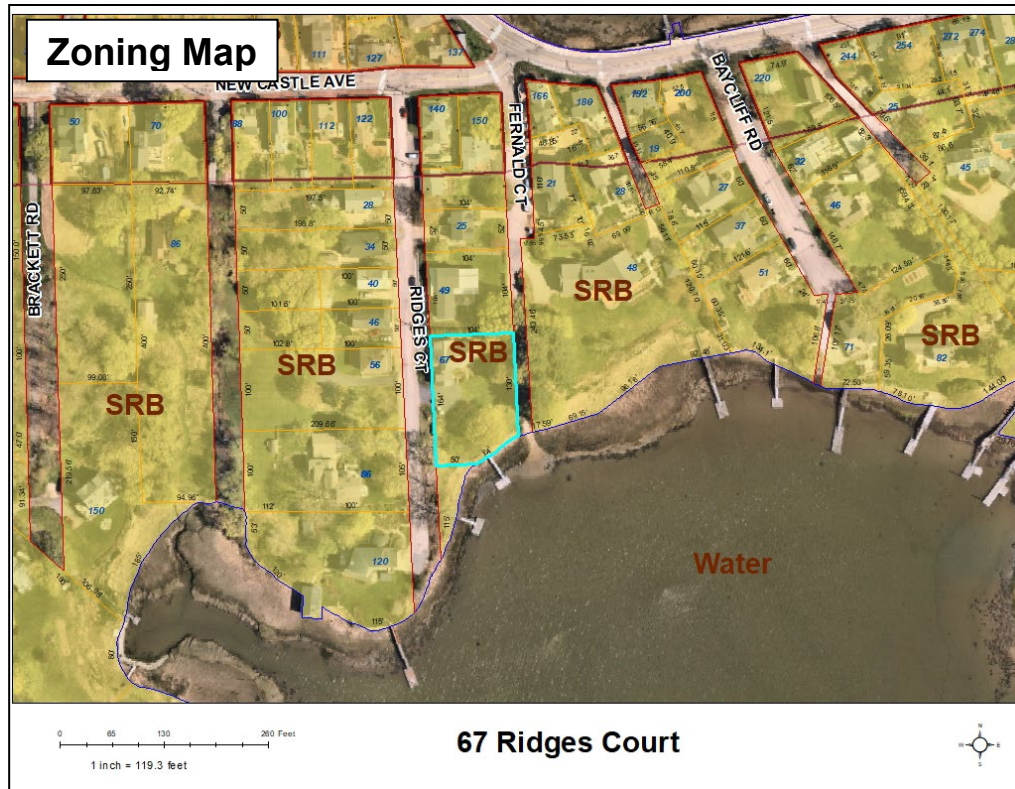
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Garage addition	Primarily single residence
<u>Lot area (sq. ft.):</u>	16,500	16,500	15,000 min.
<u>Lot area per dwelling (sq. ft.):</u>	16,500	16,500	15,000 min.
<u>Lot depth (ft.):</u>	109	109	100 min.
<u>Street Frontage (ft.):</u>	164	164	100 min.
<u>Primary Front Yard (ft.):</u>	8	<b>14</b>	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	<b>Variance request(s) shown in red.</b>	

#### Other Permits/Approvals Required

Conservation Commission & Planning Board – Wetland CUP



### Neighborhood Context



## **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

**October 18, 2022** – The Board voted to postpone to the November meeting.

**November 15, 2022** - The Board voted to determine if Fisher v. Dover applied to this application. A motion to determine that the petition does not fall under Fisher v. Dover failed, therefore the request was not heard.

### **Planning Department Comments**

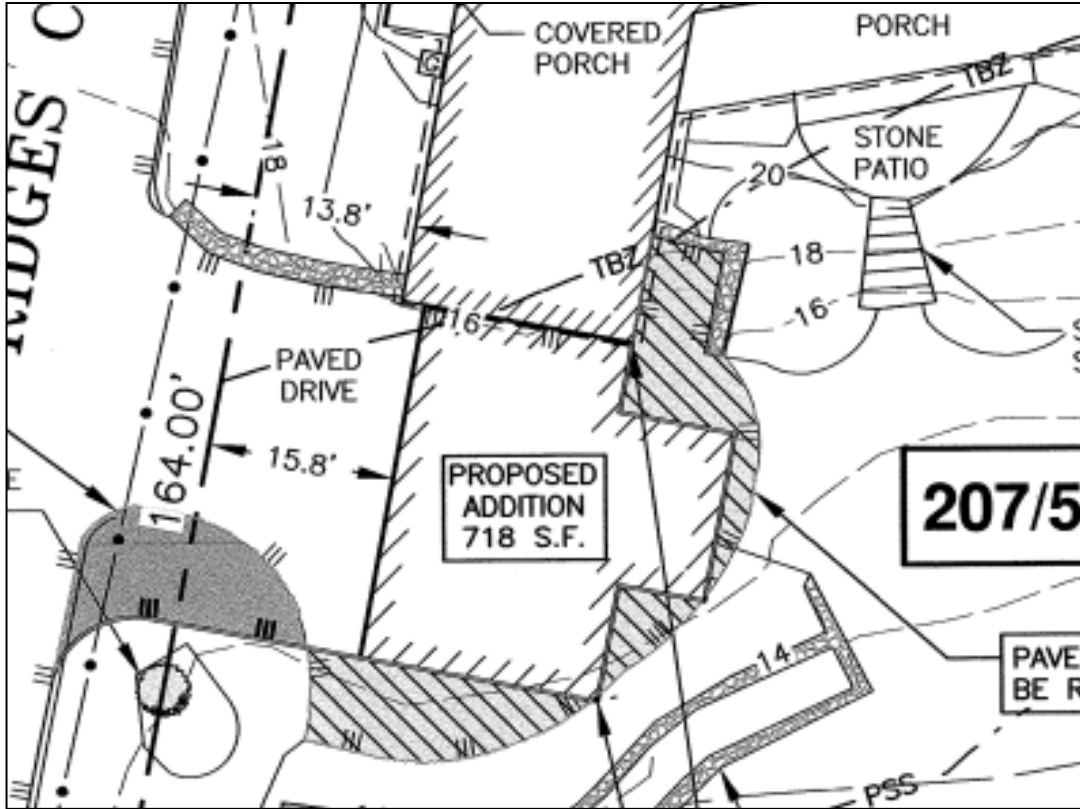
Staff feels this is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether Fisher vs. Dover is applicable before this application is considered.

*“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 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

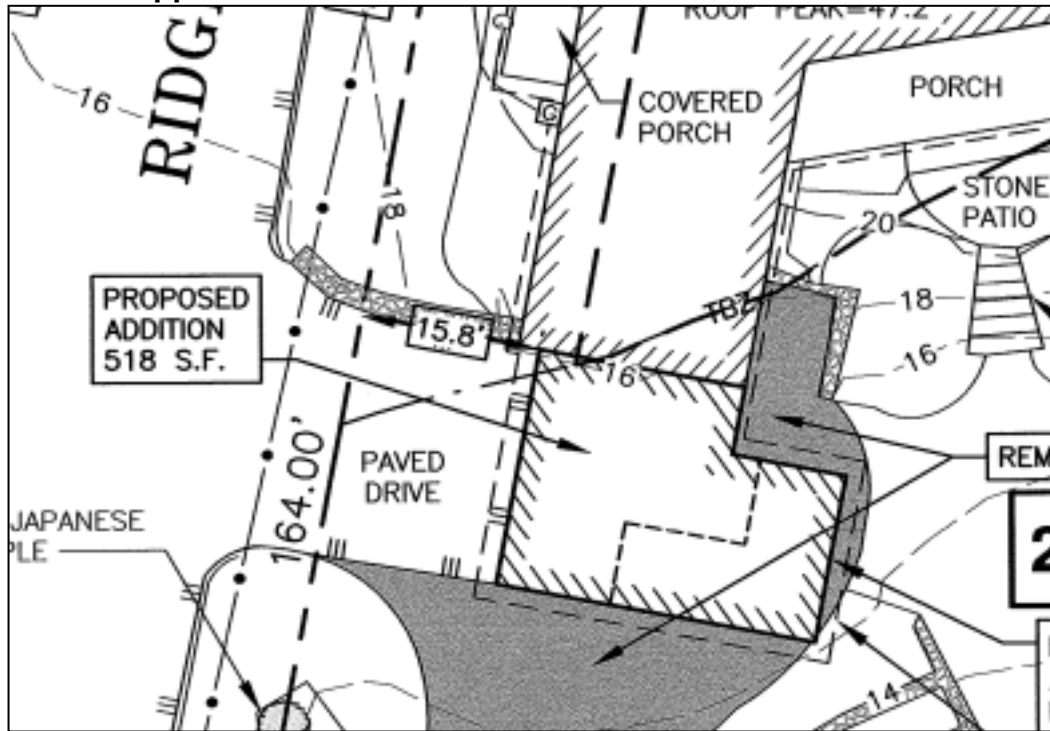
After the current application was submitted, a survey of the front yards of adjacent properties was completed to determine the average front yard under Section 10.516.10. The results show an average front yard of 19 feet. The applicant is proposing to enlarge the existing from dormer, which requires a variance. This was not part of the original application in October.

August 2022 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.

### III. NEW BUSINESS

- B. The request of **William Camarda (Owner)**, for property located at **809 State Street** whereas relief is needed to Extend the existing deck which requires the following: 1) Variances from Section 10.521 to allow a) a 10 foot rear yard where 20 feet is required; and b) 46% building coverage where 35% is the maximum allowed. 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 145 Lot 11 and lies within the General Residence C (GRC) District. (LU-23-6)

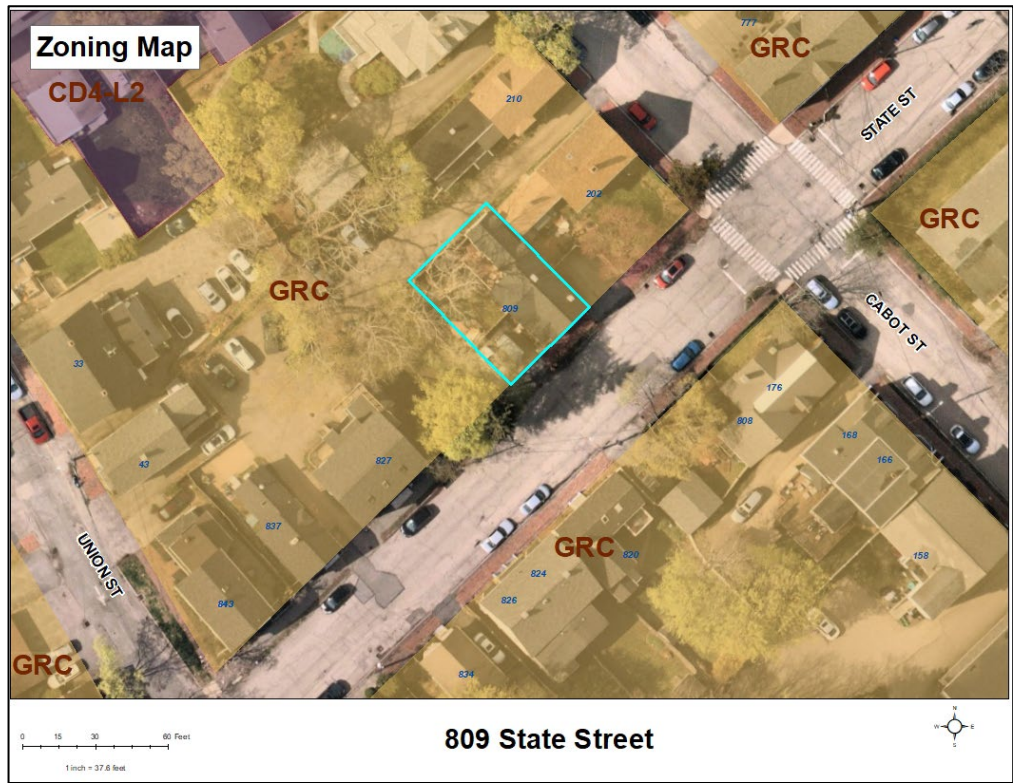
#### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Living Unit	<b>Deck extension</b>	Primarily residential
<u>Lot area (sq. ft.):</u>	2,614	2,614	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,614	2,614	3,500 min.
<u>Street Frontage (ft.):</u>	45	45	70 min.
<u>Lot depth (ft.)</u>	60	60	50 min.
<u>Front Yard (ft.):</u>	0	0	5 min.
<u>Left Yard (ft.):</u>	20	20	10 min.
<u>Right Yard (ft.):</u>	0	0	10 min.
<u>Rear Yard (ft.):</u>	2	<b>10</b>	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u> :	42	<b>46</b>	35 max.
<u>Open Space Coverage (%)</u> :	>20	>20	20 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1882	<b>Variance request(s) shown in red.</b>	

#### Other Permits/Approvals Required

- Building Permit

### Neighborhood Context



## Previous Board of Adjustment Actions

No previous BOA history found.

## Planning Department Comments

The applicant is requesting relief to extend the existing deck 4 feet. The house and deck are within the front, right side and rear yards, making any expansion nearly impossible without some sort of relief. The applicant's building coverage calculation did not include the shed, thus the reason why the request is for 46% coverage versus what was requested in the application.

## Variance Review Criteria

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

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

## 10.235 Certain Representations Deemed Conditions

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