



City of Portsmouth
Planning Department
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Portsmouth, NH
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MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Stefanie Casella, Planner
Jillian Harris, Principal Planner
DATE: August 14, 2024
RE: Zoning Board of Adjustment August 20, 2024

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

II. New Business

- A. 0 Broad Street
- B. 549 US Route 1 Bypass
- C. 245 Marcy Street
- D. 34 Garfield Road
- E. 2800 Lafayette Road
- F. 84 Thaxter Road
- G. 377 Maplewood Avenue
- H. 271 Sagamore Avenue
- I. 865 Islington Street

II. NEW BUSINESS

- A. The request of **Martha and Brian Ratay (Owners)**, for property located at **0 Broad Street** whereas relief is needed to construct a primary structure and detached garage on a vacant lot which requires the following: 1) Variance from Section 10.521 to allow a) 6,101 square feet of lot area where 7,500 is required, b) 6,101 square feet of lot area per dwelling unit where 7,500 is required, c) 60 feet of street frontage where 100 feet are required, d) 31% building coverage where 25% is allowed, e) 5 foot right side yard where 10 feet are required, and f) 2 foot rear yard where 20 feet are required. Said property is located on Assessor Map 221 Lot 96 and lies within the General Residence A (GRA) District. (LU-24-119)

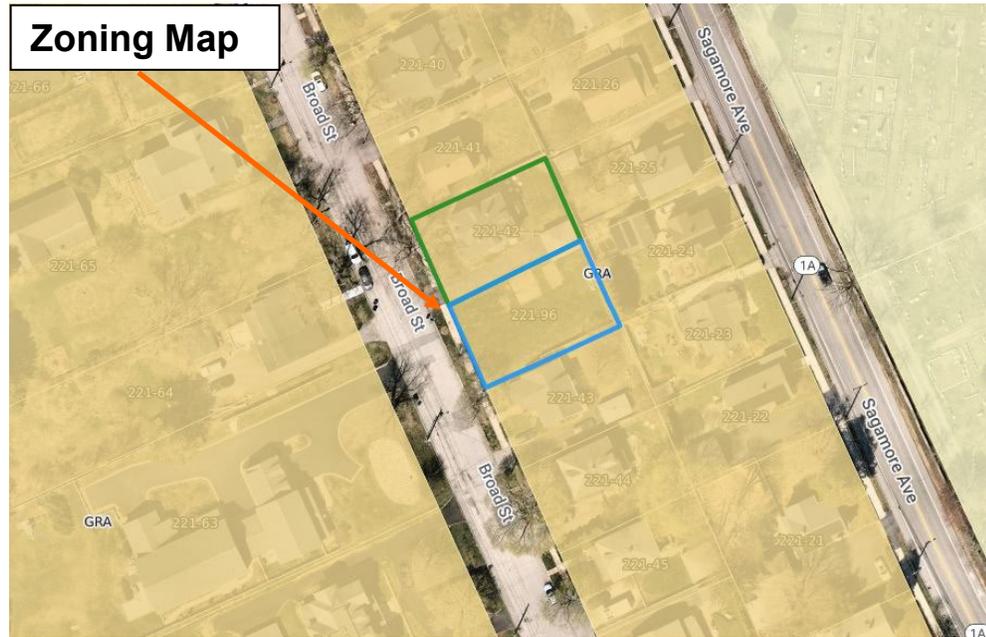
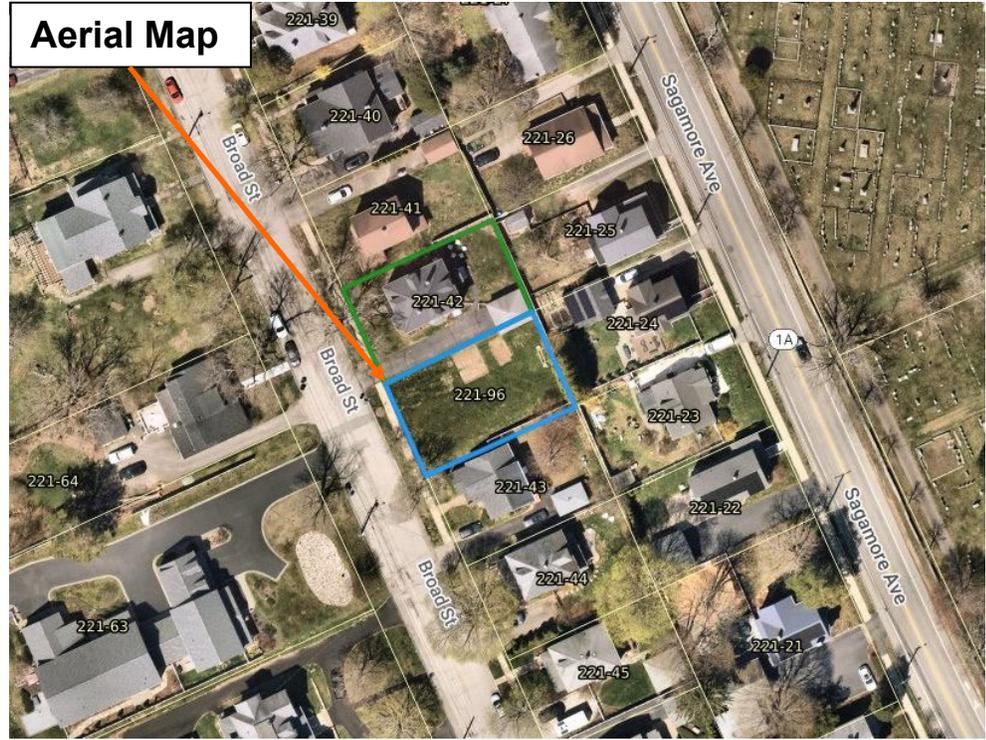
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant Lot	Construct a primary structure and detached garage	Primarily residential
<u>Lot area (sq. ft.):</u>	6,101	6,101	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	n/a	6,101	7,500 min.
<u>Lot depth (ft.):</u>	100	100	70 min.
<u>Street Frontage (ft.):</u>	60	60	100 min.
<u>Front Yard (ft.):</u>	n/a	>15	15 min.
<u>Right Yard (ft.):</u>	n/a	House:>10 Proposed Garage: 5	10 min.
<u>Left Yard (ft.):</u>	Existing Garage: 0	House:10 Proposed Garage:>10 Existing Garage: 0	10
<u>Rear Yard (ft.):</u>	Existing Garage: 3.75	House:>20 Proposed Garage:2 Existing Garage: 3.75	20 min.
<u>Height (ft.):</u>	n/a	32.3	35 max.
<u>Building Coverage (%):</u>	2	31	25 max.
<u>Open Space Coverage (%):</u>	100	>30	30 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	n/a	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous history found

Planning Department Comments

The applicant is requesting relief to construct a primary structure and a detached garage on the existing vacant property. The existing detached garage for the adjacent property (457 Broad St, also owned by the applicants), currently sits 5.5 feet onto the subject property. This is an existing non-conformity, and that portion of the garage (5.5 feet by 20 feet) is included in the existing and proposed building coverage calculations as well as represented in existing and proposed left and rear yards.

Variance Review Criteria

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

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

10.235 Certain Representations Deemed Conditions

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

II. NEW BUSINESS

- B. The request of **Meadowbrook Inn Corporation (Owners)**, for property located at **549 US Route 1 Bypass** whereas relief is needed to construct a 4-story hotel with 116 rooms which requires the following: 1) Special Exception from Section 10.440 use #10.40 to allow a hotel or motel with up to 125 rooms; and 2) Variance from Section 10.5B41.80 to allow 7.85% community space where 10% is required. Said property is located on Assessor Map 234 Lot 51 and lies within the Gateway Corridor (G1) District. (LU-24-113)

Existing & Proposed Conditions

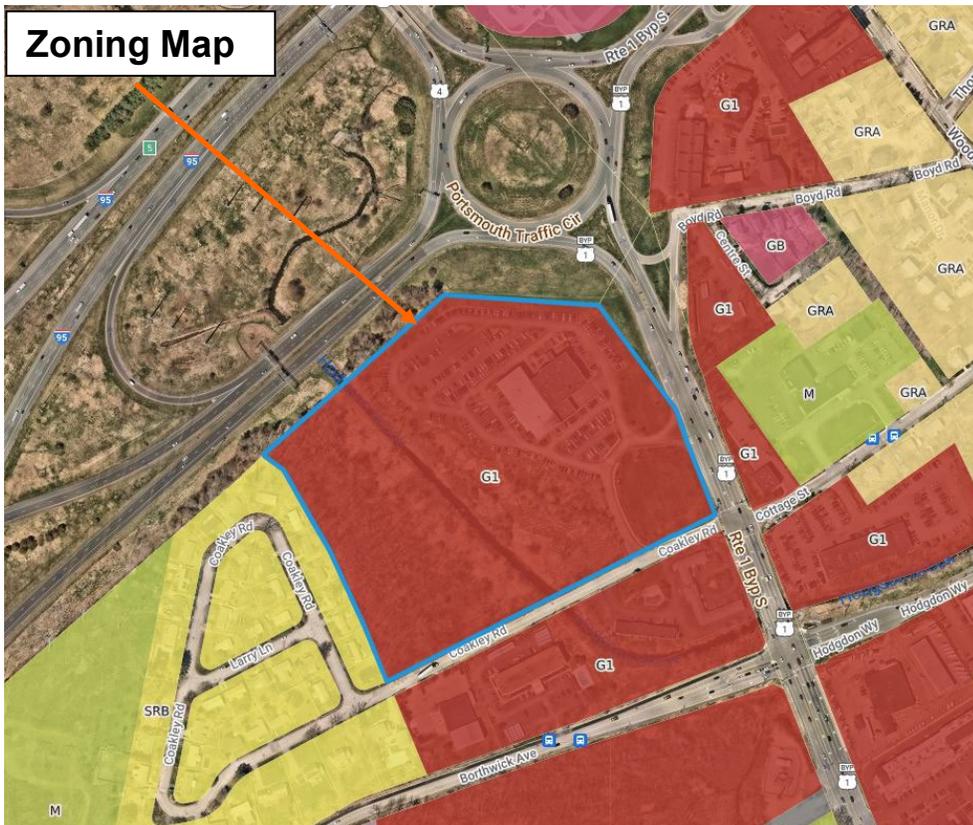
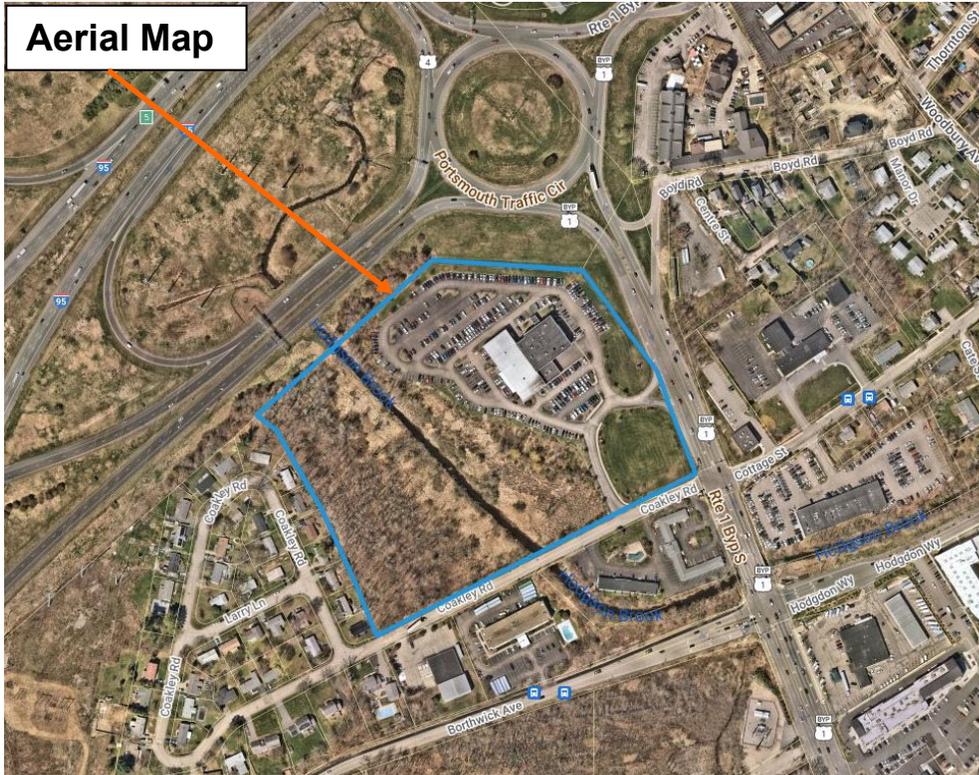
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Car Dealership	*Construct a hotel	Mixed Use District
<u>Community Space Coverage (%):</u>	n/a	7.85	10 min.
<u>Parking</u>	106	269	241
<u>Estimated Age of Structure:</u>	2011	Variance request(s) shown in red.	

*Hotel is use 10.40 in Section 10.440 and requires a special exception

Other Permits/Approvals Required

- Site Plan Review & Conditional Use Permit for Development Site (Technical Advisory Committee and Planning Board)
- Wetland Conditional Use Permit (Conservation Commission and Planning Board)
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

June 22, 2010 – The Board **denied** the request for a variance to allow the sales, rental, leasing, distribution and repair of vehicles, recreational vehicles, marine craft, manufactured housing and related equipment, including areas for parking, display or storage of vehicles, equipment, goods or materials within 85’ of a residential district, where 200’ is required.

May 23, 2000 – The Board **granted** the request for a variance to allow 274 parking spaces and an additional gravel parking area for trucks for the existing uses on the property as well as reopening the restaurant in the Meadowbrook Terrace Building.

June 10, 1986 – The Board reconvened its June 3, 1986 meeting and **granted** the request for a special exception to permit the placement of 9,000 c.f. of earth on the southerly portion of the property.

Planning Department Comments

The applicant is requesting relief to provide less than the required amount of community space as part of the project and a Special Exception to allow a hotel use in the Gateway District.

This project will also require review by the Technical Advisory Committee and the Conservation Commission before Planning Board review.

Variance Review Criteria

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

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

AND

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

OR

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

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.

II. NEW BUSINESS

- C. The request of **Daisy L. and Bert J. Wortel (Owners)**, for property located at **245 Marcy Street** whereas relief is needed to remove the existing 6-foot fence and replace with a new 6 foot fence which requires the following: 1) Variance from Section 10.515.13 to allow a 6 foot fence in the front yard area where 4 feet is allowed. Said property is located on Assessor Map 103 Lot 13 and lies within the General Residence B (GRB) and Historic Districts. (LU-24-131)

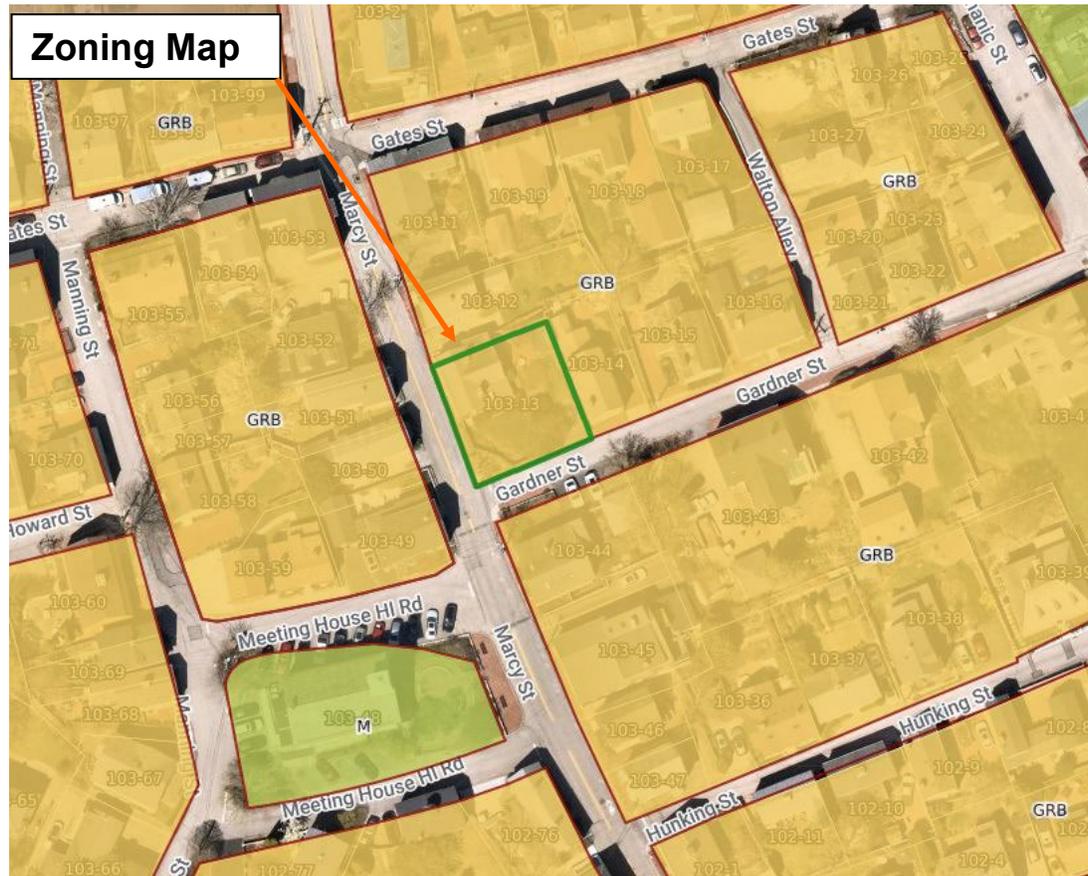
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Residence	Remove existing and broken 6 foot fence and replace with 6 foot fence	Primarily residential
<u>Fence Height (ft):</u>	6	6	4 max.
<u>Estimated Age of Structure:</u>	1750	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Historic District Commission Review

Neighborhood Context



Previous Board of Adjustment Actions

September 11, 1979 – The Board **granted** the request for a variance to construct a 55 s.f. addition making the lot coverage 26.4% where 20% is allowed with the following condition:

1. The height of the addition does not exceed the height of the existing roof line.

Planning Department Comments

The applicant is requesting relief needed to remove the existing 6-foot fence and replace it with a new 6-foot fence. The existing fence is in the primary and secondary front yards of the property and runs along Marcy Street and Gardner Street, respectively.

Variance Review Criteria

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

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

AND

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

OR

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

10.235 Certain Representations Deemed Conditions

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

II. NEW BUSINESS

D. The request of **Thomas Kressler (Owner)**, for property located at **34 Garfield Road** whereas relief is needed to construct a single-story addition to the front of the existing home which requires the following: 1) Variance from Section 10.521 for a) 24% building coverage where 20% is allowed; and b) a 24.5-foot front yard where 30 feet is required; and 2) 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 268 Lot 84 and lies within the Single Residence B (SRB) District. (LU-24-134)

Existing & Proposed Conditions

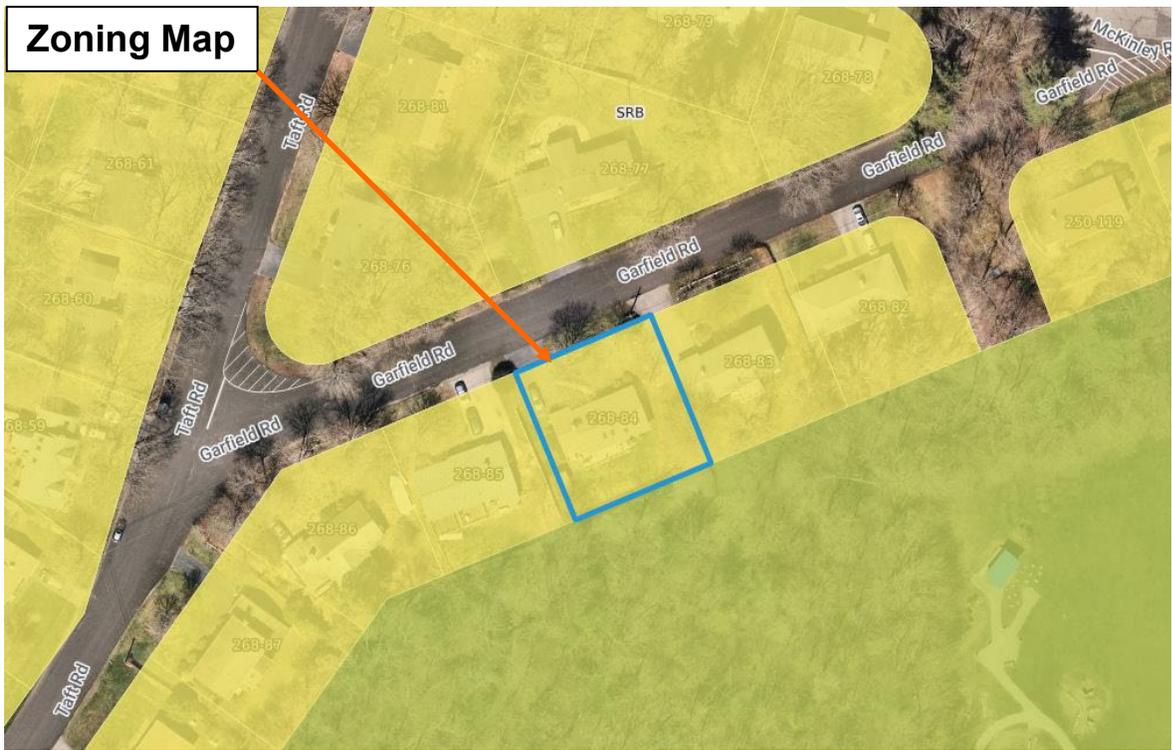
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family Residence	*Construct an addition to the primary structure	Primarily residential
<u>Lot area (sq. ft.):</u>	9,058	9,058	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,058	9,058	15,000 min.
<u>Lot depth (ft.):</u>	100	100	100 min.
<u>Street Frontage (ft.):</u>	90	90	100 min.
<u>Front Yard (ft.):</u>	33	24.5	30 min.
<u>Right Yard (ft.):</u>	16	16	10 min.
<u>Left Yard (ft.):</u>	18.5	18.5	10
<u>Rear Yard (ft.):</u>	25	25	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	22	24	20 max.
<u>Open Space Coverage (%):</u>	>30	68	30 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1961	Variance request(s) shown in red.	

* Relief needed to construct an addition to the already non-conforming primary structure that would further impact the non-conformity.

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

May 18, 1999 – The Board granted the request for a variance to allow a 10' x 20' deck with a 25' rear yard where 30' is required.

Planning Department Comments

The applicant is requesting relief to construct a 13 foot by 14 foot addition to the front of the primary structure. In total this will add 182 square feet of new living space that includes a new closet and bathroom. The proposed addition is within the wetland buffer area and qualifies for the Wetland Conditional Use Permit (CUP) exemption outlined in section 10.1016 (4) of the Zoning Ordinance, therefore a Wetland CUP would not be required.

Variance Review Criteria

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

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

AND

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

OR

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

10.235 Certain Representations Deemed Conditions

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

II. NEW BUSINESS

- E. The request of **Heritage NH LLC (Owner) and SWET Studios LLC (Applicant)**, for property located at **2800 Lafayette Road** whereas relief is needed for a change of use for Unit 17 to a health club including the following special exception from Section 10.440, Use #4.42 to allow a health club greater than 2,000 s.f. of gross floor area. Said property is located on Assessor Map 285 Lot 2 and lies within the Gateway Corridor (G1) District. (LU-24-128)

Existing & Proposed Conditions

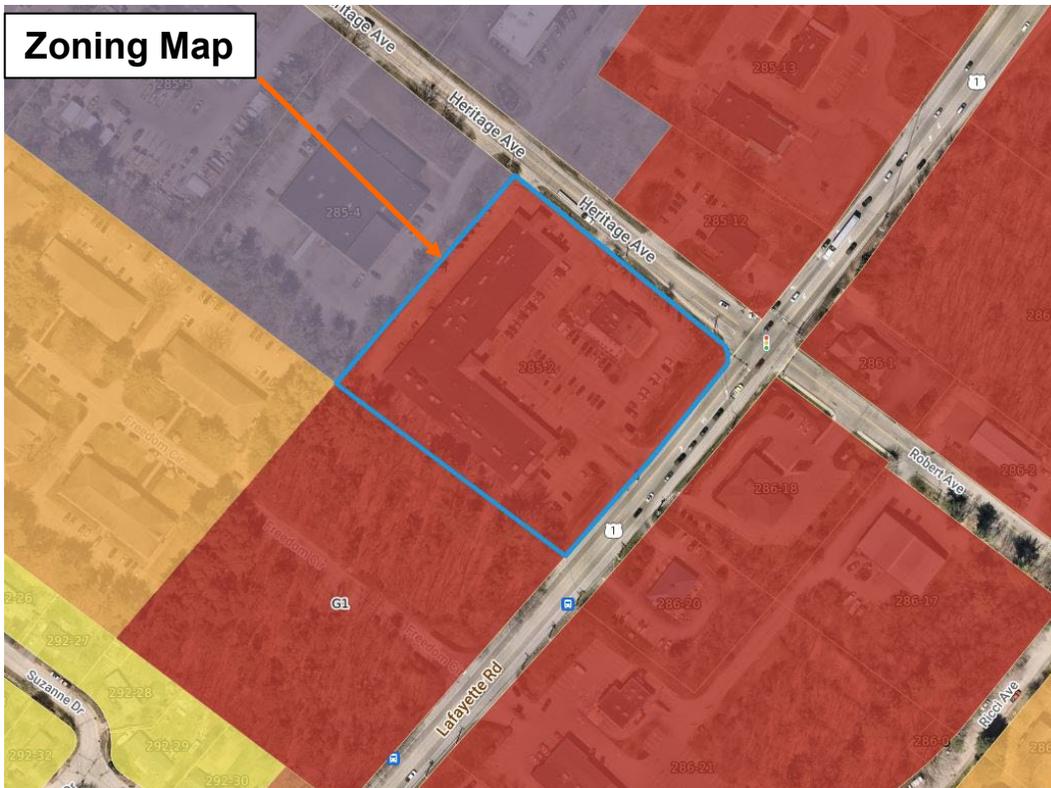
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Health Club / Retail	*Convert Unit 17 to Health Club >2,000 sq.ft. GFA	Primarily Mixed-Use
<u>Parking</u>	34*	>16	16 (1 space per 250 GFA)
	*Combined required parking for original restaurant use in Unit 18 and retail in Unit 17	Variance request(s) shown in red.	

*Special Exception for a health club use greater than 2,000 SF GFA

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

- **April 16, 1985** – The Board granted a special exception to allow a temporary structure (construction trailer) to be located on the site for 90 days, with a \$5,000 bond, and to allow construction of an automobile washing facility. The Board granted variances to permit a 30' side yard; construction of a retail and auto washing structure within 100' of property zoned residentially; and parking spaces and access ways to be located within 50' of an adjoining residential district.
- **October 22, 1985** – The Board denied a request to allow the placement of 3 free-standing signs with a total sign area of 367 s.f. where a maximum of 150 s.f. was allowed.
- **January 7, 1986** – The Board tabled a request for variances to permit: a) maximum aggregate sign area of 966 s.f. where 661 s.f. maximum is allowed, b total attached signage of 726 s.f. where a maximum of 661 s.f. was allowed and c) 240 s.f. of free-standing signage where 150 s.f. was the maximum allowed.
- **January 28, 1986** – The Board granted the variances tabled on January 7, 1986.
- **September 16, 1986** – The Board granted a variance to allow a professional office (chiropractic) in a district where professional offices were not allowed.
- **May 3, 1988** – The Board denied a request to Appeal an Administrative Decision regarding denial of permission to construct a drive-up window to a proposed bank. The Board granted a variance to move 11 existing spaces to within 50' of an adjoining residential district.
- **June 16, 1998** – The Board granted a variance to allow a business to occupy a 3,040 s.f. of space for a drop off/pick-up dry cleaning off-site and laundered items on-site where 2,000 s.f. of space was the maximum allowed.
- **March 20, 2007** – The Board granted an Equitable Waiver to allow an existing 36,328 s.f. building with a) a 104.9' front yard where a 105' front yard was required; and b) a 29.6' left side yard where 30' was required.
- **December 21, 2010** – The Board denied a request to allow a third free-standing sign where only two free-standing signs were allowed in a shopping center.
- **December 16, 2014** – The Board granted a special exception to allow a religious place of assembly in a district where the use was allowed by special exception.
- **October 22, 2019** – The Board granted a Special Exception for a change of use to a health club that requires the following Special Exception from Section 10.440, Use #4.40 to allow a health club greater than 2,000 s.f. of gross floor area.

Planning Department Comments

The applicant is requesting a special exception to convert the existing commercial space into workout studio space. The proposal is to convert two existing units, #17 and #18, at the 2800 Lafayette Road Plaza into one unit. Unit #18 was formerly approved as a studio workout space and does not require an approval, however the conversion of unit #17 does require the approval as it would create a gym space larger than 2,000 Square feet.

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.

II. NEW BUSINESS

F. The request of **Jared Majcher (Owner)**, for property located at **84 Thaxter Road** whereas relief is needed to construct an attached garage and 1.5-story addition and to demolish an existing detached garage which requires the following: 1) Variance from Section 10.521 to a) allow 22% building coverage where 20% is allowed; b) allow a 15.5 foot front setback where 30 feet is required; and 2) 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 166 Lot 34 and lies within the Single Residence B (SRB) District. (LU-24-135)

Existing & Proposed Conditions

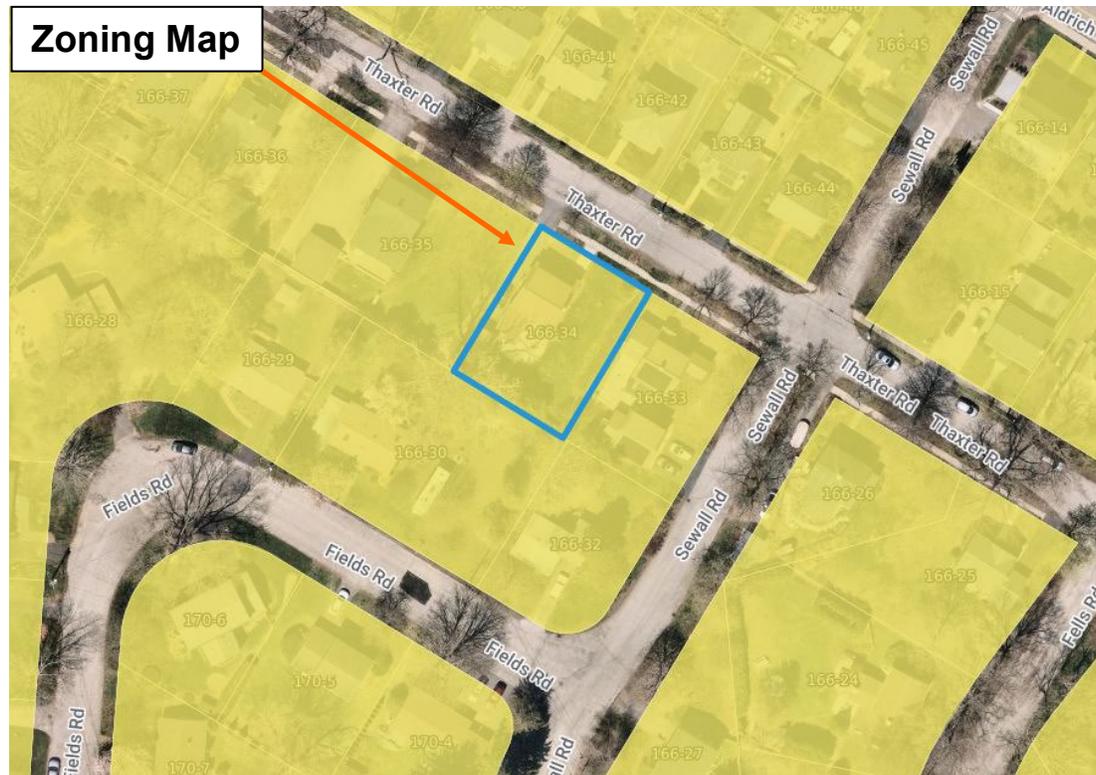
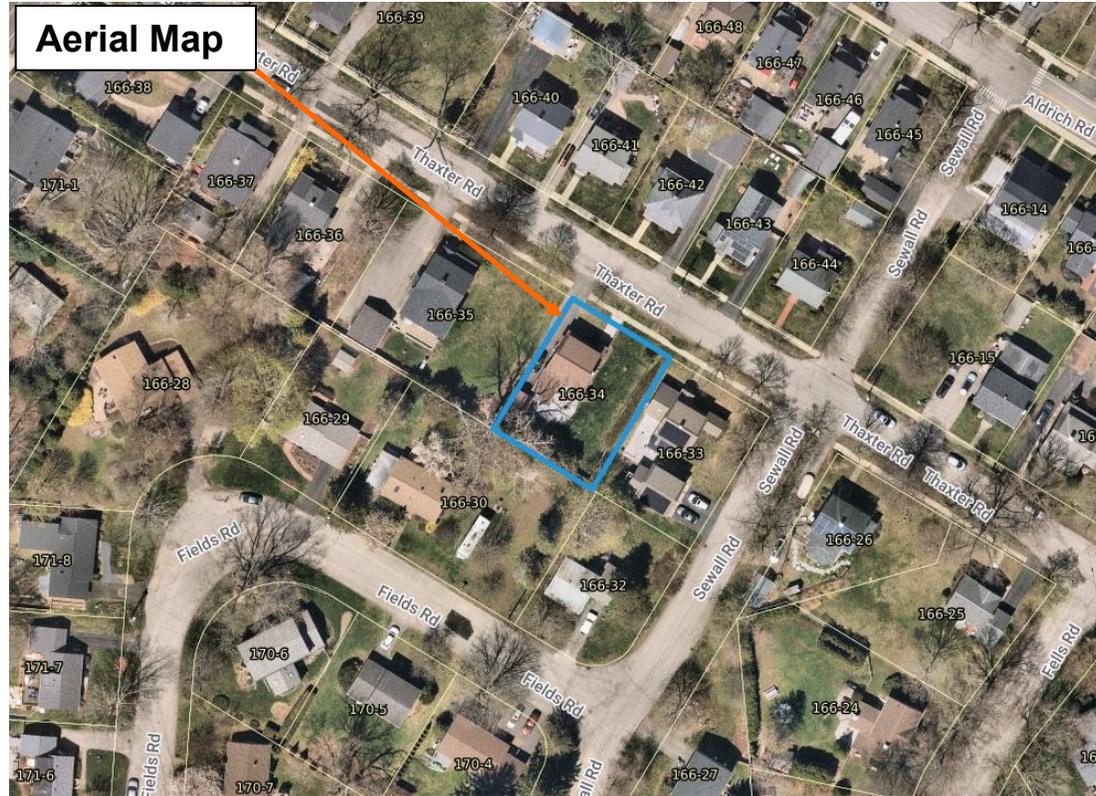
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>	
<u>Land Use:</u>	Single-family Residence	*Construct an addition to the primary structure	Primarily residential	
<u>Lot area (sq. ft.):</u>	7,500	7,500	15,000	min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,500	7,500	15,000	min.
<u>Lot depth (ft.):</u>	100	100	100	min.
<u>Street Frontage (ft.):</u>	75	75	100	min.
<u>Front Yard (ft.):</u>	15.5	15.5*	30	min.
<u>Right Yard (ft.):</u>	35	12	10	min.
<u>Left Yard (ft.):</u>	Primary Structure: 11 Detached Garage: 2.5	11	10	min.
<u>Rear Yard (ft.):</u>	Primary Structure: 30 Detached Garage: 7	30	30	min.
<u>Height (ft.):</u>	<35	<35	35	max.
<u>Building Coverage (%):</u>	17	22	20	max.
<u>Open Space Coverage (%):</u>	73	72	40	min.
<u>Parking:</u>	>2	>2	2	min.
<u>Estimated Age of Structure:</u>	1935	Variance request(s) shown in red.		

* Relief needed to construct an addition to the already non-conforming primary structure that would further impact the non-conformity.

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No Previous BOA History found.

Planning Department Comments

The applicant is proposing to construct a 1.5-story addition to the primary structure that will include an attached garage and additional living space above. A porch will be added to the existing front steps. The applicant is also proposing to demolish the existing detached garage and move the driveway from its existing location to the area in front of the proposed attached garage addition. The existing primary structure is located 15.5 feet from the front property line and the proposed addition has been designed to match the existing roofline and design of the existing home. The addition and porch are proposed to be located within the front setback and will increase the building coverage over the 20% maximum permitted, therefore the applicant is requesting the required relief.

Variance Review Criteria

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

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

AND

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

OR

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

10.235 Certain Representations Deemed Conditions

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

II. NEW BUSINESS

G. The request of **Zeng Kevin Shitan Revocable Trust of 2017 (Owner)**, for property located at **377 Maplewood Avenue** whereas relief is needed to demolish the existing accessory building and construct a new detached accessory dwelling unit which requires the following: 1) Variance from Section 10.521 to a) allow a building coverage of 37.5% where 25% is allowed; b) allow an open space of 24.5% where 30% is required; c) allow a secondary front yard setback of 6 feet where 10 feet is required; d) allow a left yard setback of 4.5 feet where 10 feet is required; e) allow a rear yard setback of 3 feet where 20 feet is required; and 2) 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 141 Lot 22 and lies within the General Residence A (GRA) and Historic Districts. (LU-24-133)

Existing & Proposed Conditions

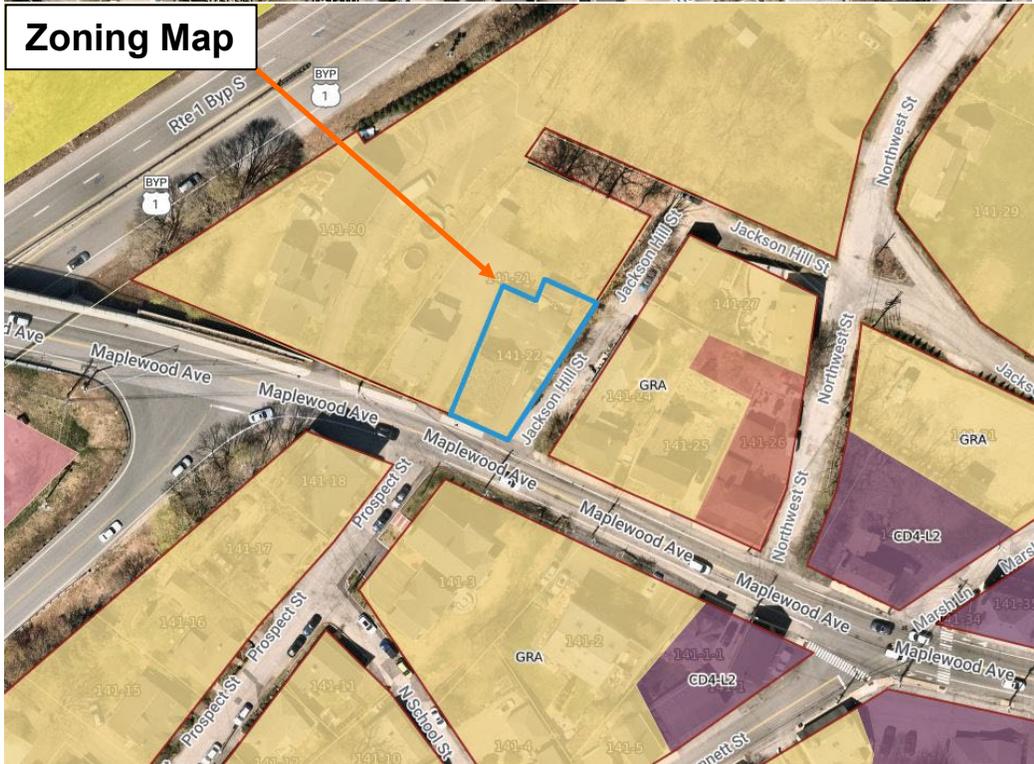
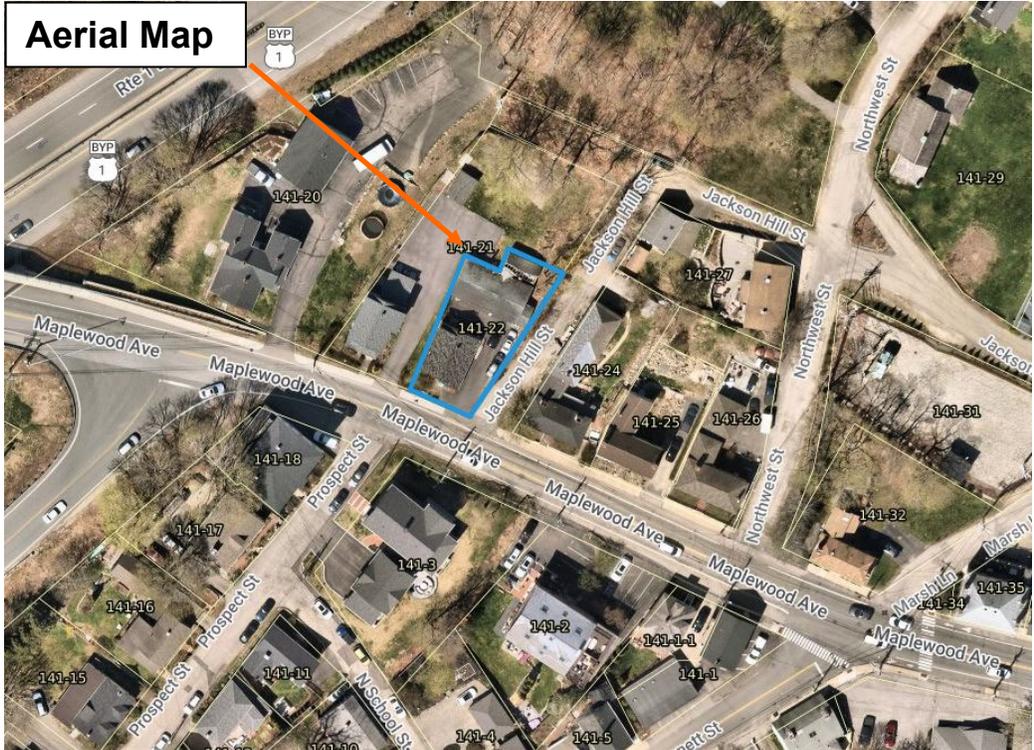
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>	
<u>Land Use:</u>	Single-family	*Demolish existing accessory building and construct new detached accessory dwelling unit	Primarily Residential	
<u>Lot area (sq. ft.):</u>	5,277	5,277	7,500	min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,277	5,277	7,500	min.
<u>Lot depth (ft.):</u>	108	108	100	min.
<u>Street Frontage (ft.):</u>	42	42	70	min.
<u>Front Yard (ft.):</u>	7	7	15	min.
<u>Secondary Front Yard (ft.):</u>	0.2	6	10	
<u>Side Yard (ft.):</u>	House: 2.9 Accessory Building: 4.5	4.5	10	min.
<u>Rear Yard (ft.):</u>	Accessory Building: 2.2	3	20	min.
<u>Building Coverage (%):</u>	45.3	37.5	25	max.
<u>Open Space Coverage (%):</u>	20.5	24.5	30	min.
<u>Parking</u>	3	3	3	
<u>Estimated Age of Structure:</u>	1941	Variance request(s) shown in red.		

*Relief needed to construct an addition to the already non-conforming primary structure that would further impact the non-conformity.

Other Permits/Approvals Required

- Building Permit
- Historic District Commission Approval

Neighborhood Context



Previous Board of Adjustment Actions

- **September 15, 2020** – The Board denied a variance to demolish an accessory building and construct a new free standing dwelling which requires the following: 1) A Variance from Section 10.513 to allow more than one free standing dwelling on a lot. 2) Variances from Section 10.521 to allow: a) a lot area per dwelling unit of 2,638 square feet where 7,500 is the minimum required; b) 43% building coverage where 25% is the maximum allowed; c) a 4.5' secondary front yard where 15' is required; d) a 3' left side yard where 10' is required; and e) a 5.5' rear yard where 20' is required. 3) A Variance from Section 10.321 to allow a building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Planning Department Comments

The applicant is requesting to demolish the existing accessory building and construct a new detached accessory dwelling unit (DADU). The proposed DADU requires dimensional relief for the proposed location and to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Fisher vs. Dover

The Board previously denied variances to construct a new free-standing dwelling on the lot with a greater footprint and different design. Staff feels the change to a DADU and reduced footprint 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).

Variance Review Criteria

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

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

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

OR

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

10.235 Certain Representations Deemed Conditions

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

II. NEW BUSINESS

H. The request of **KR Investments LLC (Owner)**, for property located at **271 Sagamore Avenue** whereas relief is needed to demolish the existing house and construct a new house with an attached garage which requires the following: 1) Variance from Section 10.521 to allow a) 28% building coverage where 25% is allowed; b) lot area of 6,880 s.f. where 7,500 s.f. is required; c) lot area per dwelling unit of 6,880 s.f. where 7,500 s.f. is required; and d) a continuous lot frontage of 60.08 feet where 100 feet is required. Said property is located on Assessor Map 221 Lot 15 and lies within the General Residence A (GRA) District. (LU-24-136)

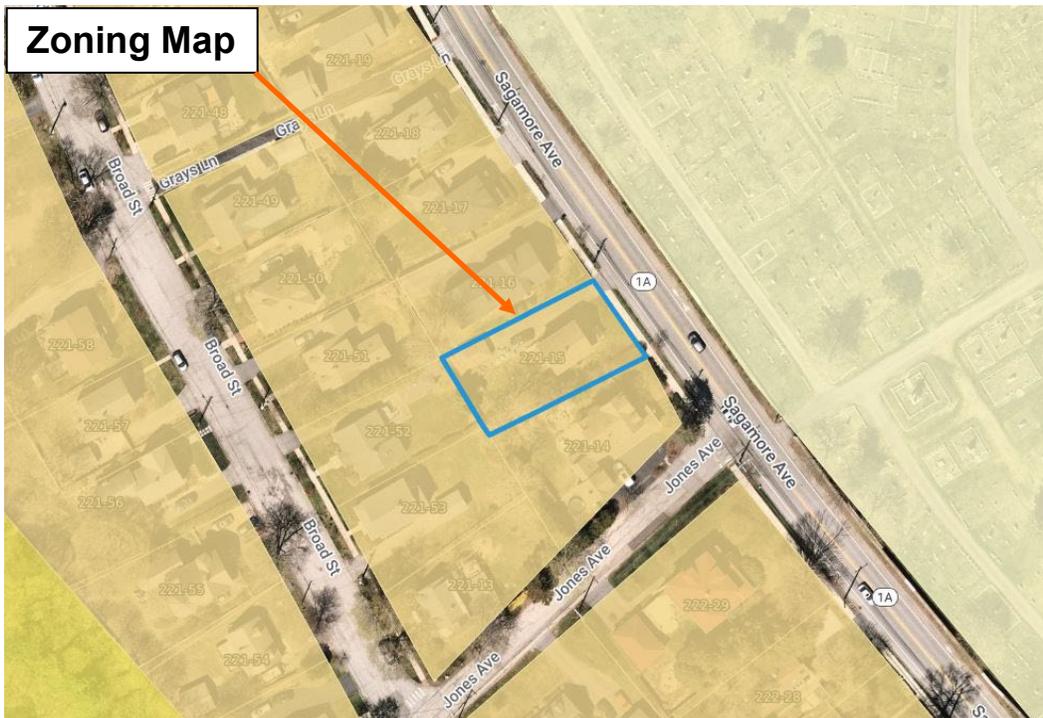
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family Residence	Demolish existing SFR and construct new	Primarily Residential
<u>Lot area (sq. ft.):</u>	6,880	6,880	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,880	6,880	7,500 min.
<u>Lot depth (ft.):</u>	113	113	100 min.
<u>Street Frontage (ft.):</u>	60	60	70 min.
<u>Front Yard (ft.):</u>	16	18.5	15 min.
<u>Left Yard (ft.):</u>	Primary: >10 Garage: 4	>10	10 min.
<u>Right Yard (ft.):</u>	14.5	11	10 min.
<u>Rear Yard (ft.):</u>	Primary: >20 Garage: 7.5	22	20 min.
<u>Building Coverage (%):</u>	13	28	25 max.
<u>Open Space Coverage (%):</u>	62	48	30 min.
<u>Parking</u>	>2	>2	2
<u>Estimated Age of Structure:</u>	1919	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

- **August 15, 2023** – The Board granted relief to demolish the existing detached garage and construct an addition with attached garage which required the following: 1) Variance from section 10.521 to allow a) 0.5 foot (6 inch) right yard where 10 feet is required; and b) 28% building coverage where 25% is maximum.

Planning Department Comments

The applicant is proposing to demolish the existing house and detached garage and replace it with a newly constructed single-family residence with attached garage as part of the new structure. As the existing structures will be demolished, the undersized lot requires relief to build a new structure on the lot with less than the required lot size and frontage per Section 10.311.

Variance Review Criteria

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

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

AND

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

OR

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

10.235 Certain Representations Deemed Conditions

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

II. NEW BUSINESS

- I. The request of **Maxico LLC (Owner) and The Wheel House of New Hampshire LLC (Applicant)**, for property located at **865 Islington Street** whereas relief is needed for a change of use to an instructional studio including the following special exception from Section 10.440, Use #4.42 to allow an instructional studio greater than 2,000 s.f. gross floor area. Said property is located on Assessor Map 172 Lot 11 and lies within the Character District 4-W (CD4-W). (LU-24-139)

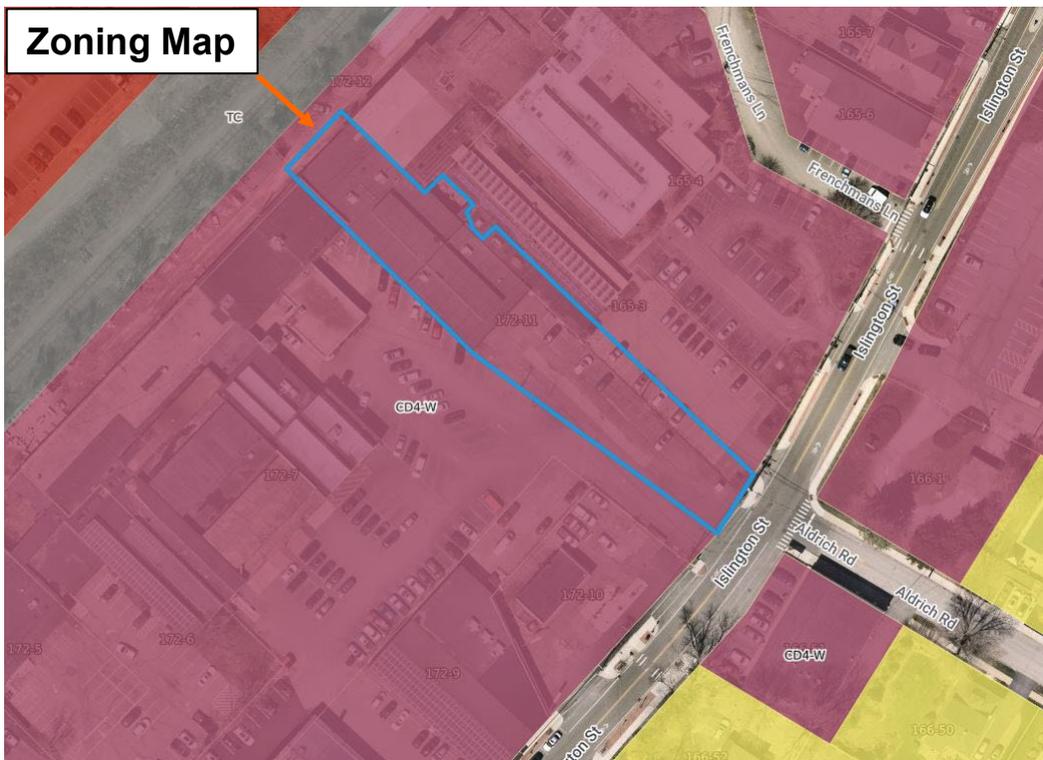
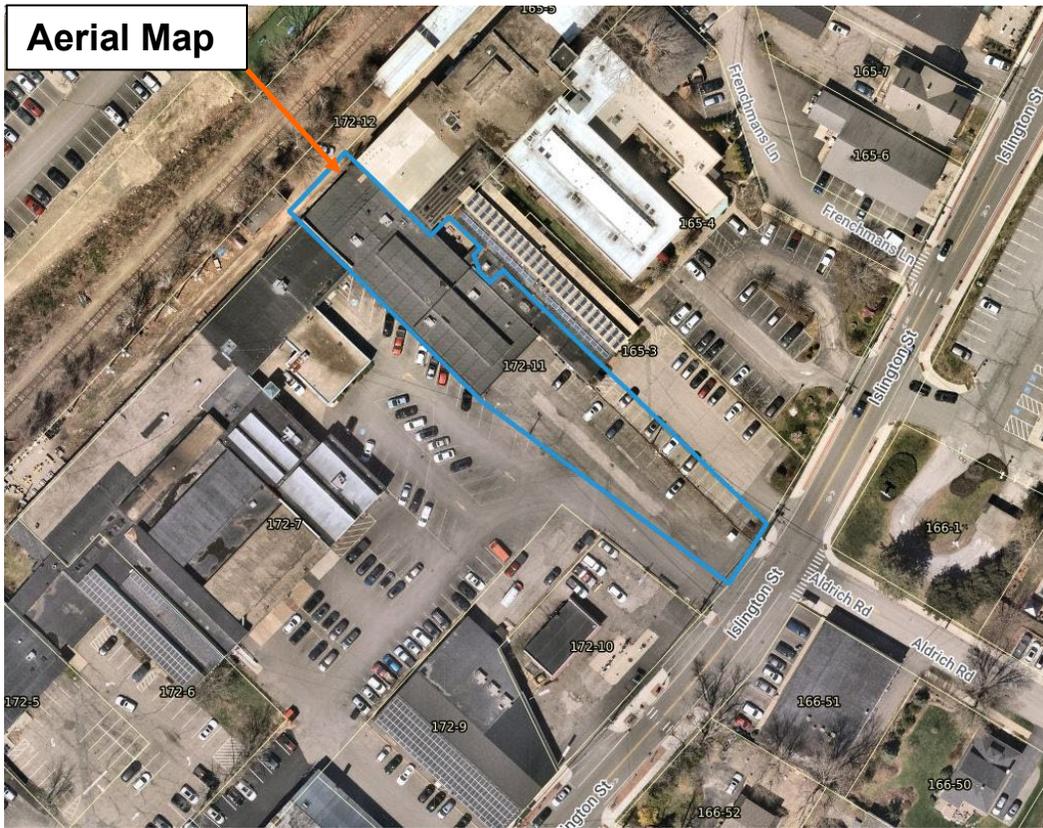
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Retail	*Convert to Instructional Studio >2,000 sq.ft. GFA	Primarily Mixed-Use
<u>Parking</u>	39	>13	13 (1 space per 250 GFA)
		Special Exception request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

- **June 15, 1976** – The Board denied a request to operate a used car sales business in an Industrial district and for a 4'x4' free-standing sign set back 5' where approximately 106' was required.
- **July 20, 1976** – The Board denied a Motion for Rehearing on the above.
- **September 11, 1979** – The Board granted a variance to allow a business for the repair of automobile engines with a stipulation that a copy of the lease be sent to the Board of Adjustment limiting the four parking spaces nearest to the building for this business.
- **September 17, 1983** – The Board granted a variance to allow a 28' x 18' 1 story addition, reducing open space from approximately 7.4% to 5.5% where a minimum of 20% was required.
- **January 25, 1983** – The Board granted variances to allow a lot line change with a decrease in lot area from 19,279 s.f. to 13,590 s.f. where a minimum of 2 acres is required, a decrease in lot frontage from 69.07' to 49.59' where 200' minimum is required, 0' side and rear yards where 50' is required and a decrease in open space from approximately 1.6% to 0.6% where 29% minimum is required.
- **November 19, 2009** – The Board granted a Special Exception to allow a veterinary clinic in the Business Zone; and a Variance to allow a veterinary clinic in the Business Zone within 200' of a Residential District.

Planning Department Comments

The applicant is requesting a special exception to convert the existing commercial space into instructional studio space for ceramic arts. The conversion requires the approval as it would create a studio space larger than 2,000 square feet.

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.