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STAFF COMMENTS

ZONING BOARD OF APPEALS MEETING

October 20, 2016

Case # 4250: VARIANCE
208 Tarkiln Hill Road
Map: 118, Lot: 202 & 223

**Owner/
Applicant:** Mario B. Amaral &
Kristinal C. Amaral
208 Tarkiln Hill Road
New Bedford, MA 02745

Overview of Request: The petitioner has submitted an application for a **Variance** relative to the subject property located within a Residential B [RB] zoning district. The petitioner proposes to subdivide the existing lot into two lots, one fronting on Tarkiln Hill Road with existing single family dwelling on it and a second "new" lot fronting on Holden Street. Under the city's zoning ordinance:

"no existing conforming or nonconforming lot shall be changed in size or shape...so as to violate the provisions of this Ordinance with respect to the size of lots or yards or to create a nonconformity or increase the degree of nonconformity that presently exists."

As proposed, the resulting lots will be nonconforming as they will not meet the dimensional requirements for minimum lot size, lot frontage, front yard, or side yard; as such they require a variance under the city's zoning ordinance in order to be subdivided. The following chart details each dimensional relief required for each resulting parcel:



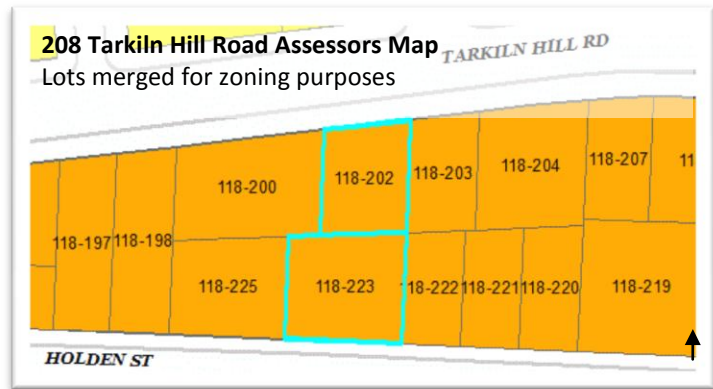
208 Tarkiln Hill Road (Map 118 Lot 202)	Existing	Required	Proposed
Minimum lot size (sq. ft)	10,280	8,000	4,784
Lot Frontage	60.76' / 80'	75'	60.76'
Front Yard	11'	20'	11'
Side Yard	4.27'	10'	4.27'

NS Holden Street (Map 118 Lot 223)	Existing	Required	Proposed
Minimum lot size (sq. ft)	10,280	8,000	5,495

As with all variances, the board must find:

- There are circumstances relating to the soil conditions, shape or topography which especially affect the land in question, but which do not affect generally the zoning district in which the land or structure in question is located.
- If the city were to literally enforce the zoning ordinance, due to these circumstances unique to this land or structure, it would mean substantial hardship to the petitioner.
- The granting of the variance would not take away from the purpose of the zoning ordinance nor would it cause substantial detriment to the public good.

Existing Conditions: The existing 10,280 sq. ft. lot has 60.76' frontage on Tarkiln Hill Road, 80' frontage on Holden Street and is 115'± in depth. The property is comprised of assessor's parcels which are considered merged for zoning purposes (see image). Adjacent lots held in common ownership are considered merged for zoning purposes unless maintained as separate and distinct from one another.¹ In this case, the zoning enforcement officer determined the property is maintained and/or used as one therefore it is merged for zoning purposes.



The property is located in the north end less than one block east of Normandin Middle School. The property has a 32.38' x 26' single family house positioned within the northern section of the property along Tarkiln Hill Road. Fencing surrounds the rear yard from the back of the house to the rear lot line along Holden Street. The rear yard has a patio area, a mulched area with a swing set, shed, grape vine arbor, round above ground pool, and four trees. There is also a driveway located in the rear accessible from Holden Street.

¹ "Merger of lots. Adjacent lots held in common ownership on or after the effective date of this Section shall be treated as a single lot for zoning purposes so as to minimize nonconformities with the dimensional requirements of this Ordinance. Notwithstanding the previous sentence, adjacent lots in common ownership may be treated as separate lots for zoning purposes upon a finding by the zoning enforcement officer that the owner of said lots has expressly exhibited the intent to maintain the lots as separate. In making said finding the zoning enforcement officer shall rely on the following factors: 2712.a. The existence and maintenance of walls or fences along the original lot lines; 2712.b. The fact that the lots are separately assessed for tax purposes; 2712.c. The placement of structures on the various lots. The manner in which said lots were acquired or the fact that said lots were separately described on a deed shall not be considered by the zoning enforcement officer in making said finding." Source: *New Bedford Code of Ordinances Ch. 9 Section 2712.*

There is frontage along Tarkiln Hill Road, classified as an urban minor arterial roadway with heavy local and regional traffic connecting New Bedford to Acushnet and Route 140. There is also frontage along Holden Street which, by contrast, is a local neighborhood through-street with low traffic volumes. The surrounding neighborhood is predominantly single family residential houses with the exception of a three family house directly abutting this property on the northeast and a two family nearby on Holden Street.

Proposal: The petitioner seeks a variance to split the existing 208 Tarkiln Hill Road property into two buildable lots. The existing house will remain and be on the newly created northern lot fronting on Tarkiln Hill Road. The petitioner plans to install a new driveway on the northern lot as well. The northern lot requires a variance for minimum lot size, lot frontage, front and side yard setbacks.

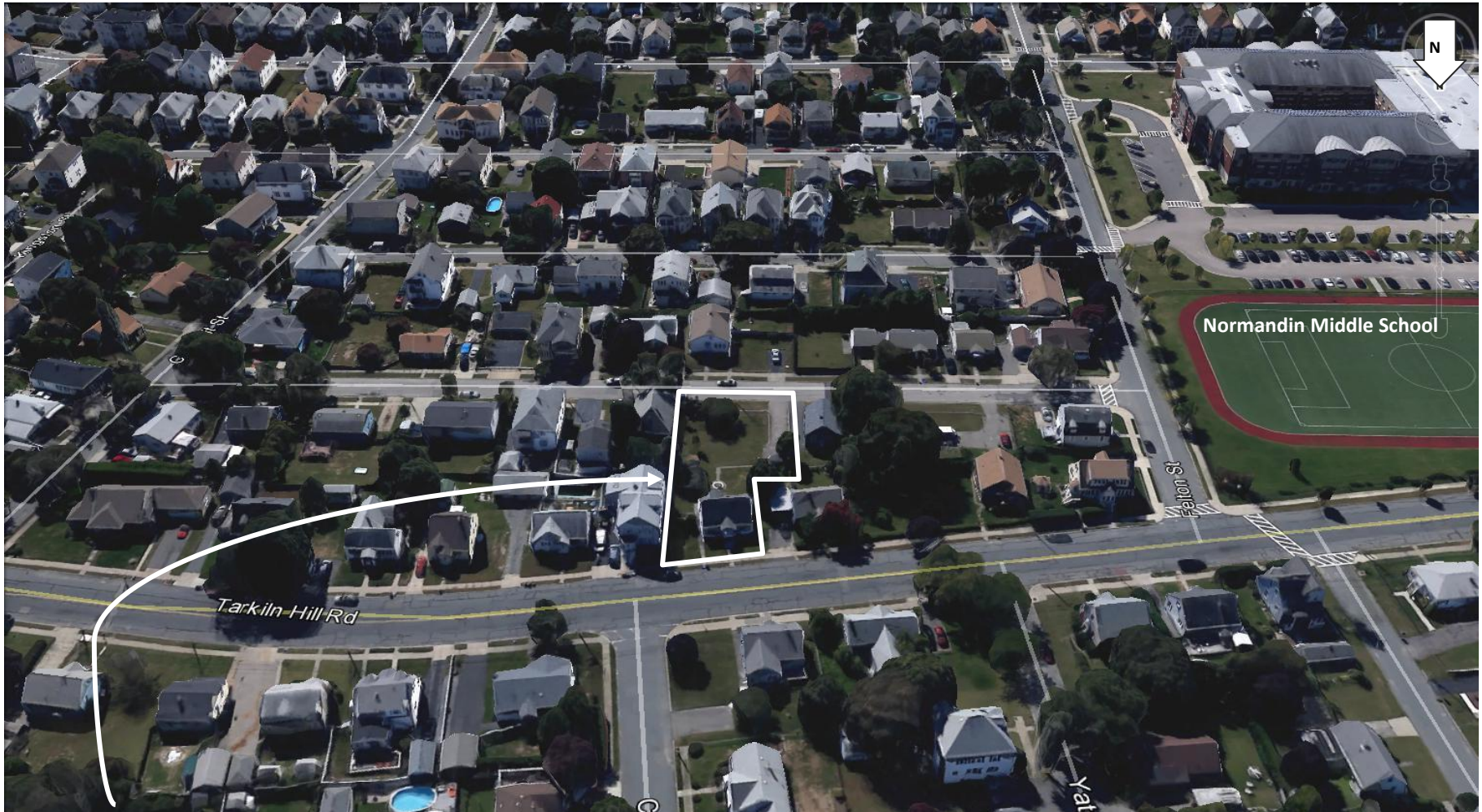
Where the shed and existing driveway are located will be the newly created southern lot. The southern lot requires a variance for minimum lot size. (see image)

The petitioner’s intention is to build a single family dwelling on the southern lot as per a separate permit filing. The new single family dwelling proposal requires a separate variance also to be heard by the Board (Case #4251).

In regards to the criteria necessary to grant the appeal, the petitioner’s agent articulates in the application that the parcel has been taxed as two separate parcels and given this history the vacant parcel is under utilized for its intended purposes. Further, that the lot is a unique shape with frontages on two streets. If divided the agent indicates the resulting lot sizes are comparable to many other lots in the area. The lot division he contends “would not derogate from the intent of the ordinance which is intended to create reasonably sized lots with adequate building separation” and that “the construction of a new single family dwelling...would be an aesthetic improvement a well as to create increased tax base and property values.”

For Board Member Consideration: The surrounding neighborhood consists of similar undersized lots with structures in closer proximity than is allowed under the current zoning ordinance. Planning Staff express concern for the location of the accessory structures (swing set and pool) currently in the rear yard in relation to the new proposed lot division line. If this variance request is granted the petitioner may move forward with a subsequently filed variance appeal (Case #4251) for a single family residential property on the new lot. If this variance is denied the subsequent filing cannot be considered.





208 Tarkiln Hill Road & NS Holden Street Map: 118, Lot: 202, 223

NOTE: Property line is approximate; for discussion purposes, only.

Google Earth

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41°40'55.84" N 70°55'34.98" W elev 46 ft eye alt 624 ft