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# STAFF COMMENTS

## ZONING BOARD OF APPEALS MEETING

June 15, 2016

**Case # 4232:**                   **VARIANCE**  
118 Portland Street  
Map: 4, Lot: 58

**Owner/Applicant:**       Oswaldo DeSousa  
118 Portland Street  
New Bedford, MA 02744



118 Portland Street  
Looking northeast at the rear deck & BBQ fireplace

**Overview of Request:** The petitioner has submitted an application for a **Variance** relative to the subject property located within a Residential A [RA] zoning district. The petitioner proposes to erect a pergola over an existing rear deck and make legal a BBQ fireplace built without the required permits. The location of the pergola and BBQ fireplace requires relief from the zoning code for rear yards. The petitioner proposes the pergola 28' 6" from the rear property line, and the BBQ fireplace 25' 8", where 30' is required for each.

As with all variances, the board must find that 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. The ZBA must find that 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. Additionally, the ZBA must find that 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 10,000 sq. ft. subject lot located in the far south end near Victory Park and the new Hannigan Elementary School/SeaLab, has 100' frontage on Portland Street and 100' depth. An existing single family house with an attached one car garage sit on the site. The property also has a 16'x21' deck, 10'x7.5' shed, 14'x5' firewood storage shed, and a grapevine arbor in the rear yard. The existing deck is setback 28.5' from the rear yard property line. The lot has a level yard with a six foot fence around the rear perimeter.



118 Portland Street  
Looking southeast into rear yard

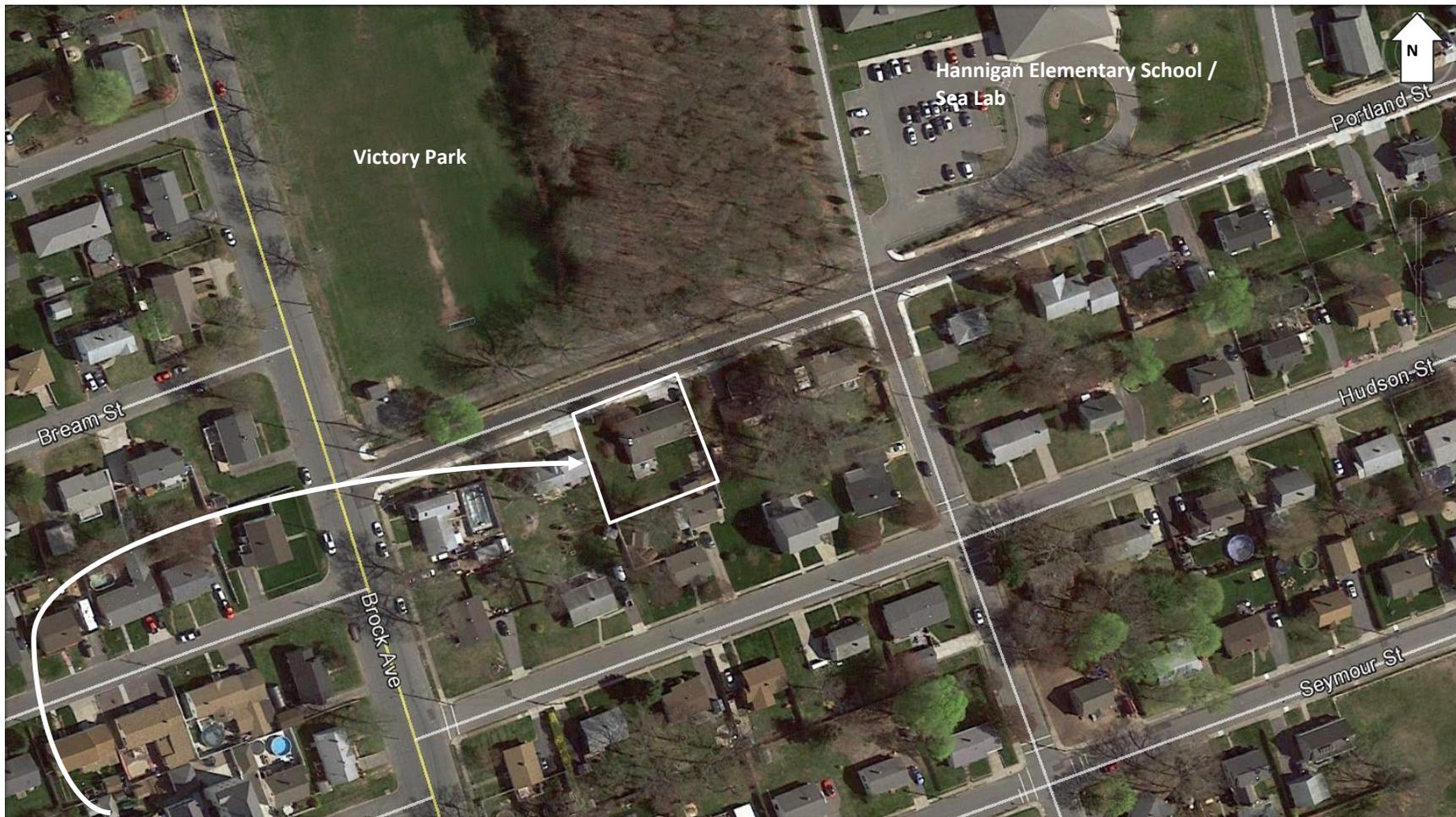
The surrounding neighborhood is primarily residential. The rear yard abutters are single family houses. In front of the house, across the street, is the soccer field and wooded section of Victory Park.

**Proposal:** The petitioner proposes to erect a pergola (16'w x 21'd x 8'8"h) over the existing deck with an 8.75'w x 2.8'd, 10'h BBQ fireplace at the end of the deck. The petitioner states in the application that the location of the existing deck does not meet the the set back, and therefore the pergola and fireplace BBQ due to their location in relation to the deck do not meet the requirement, as well. The petitioner states in the application that the requested relief would increase the property value and thereby increase taxes. The petitioner asserts the proposed pergola and bbq fireplace are built to standard codes [noting the fireplace has glass doors to enclose the flames, ash, and a steel pipe with cap to control smoke] and has been constructed with the safety of the family and surrounding neighbors in mind.

**For Board Member Consideration:** The existing deck meets the required setback (6') for a ground story deck or porch without a permanent roof (Ch. 9 sec.2753). The addition of the pergola structure over the deck as a permanent roof type structure requires the dimensional rear yard (30') variance relief.

The board may wish to take into account that given the flatness of the site, one could argue that conditions of topography do not, in and of themselves, limit the location of the intended/existing structures on the lot. The petitioner could erect the pergola 1.5' shorter to meet the 30' requirement.

Likewise it may be relevant to consider the size and location of the ground story deck size that is permitted juxtaposed with the desire to have the pergola over the existing structure. The petitioner could move the location of the BBQ fireplace to another location on the lot to achieve the additional 4'2" to meet the 30' setback requirement.



# 118 Portland Street Map: 4, Lot: 58

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

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Imagery Date: 5/6/2015 41°35'54.53" N 70°54'23.98" W elev 25 ft eye alt 1206 ft