

# City Planning Department



## Memo

To: Cranston City Plan Commission  
From: Joshua Berry, AICP, Senior Planner  
Date: October 30, 2020  
Re: Variance Application for 880 Park Avenue (AP 9, Lot 169)

**Owner / App:** Albert Baccari and Virginia A. Baccari  
**Location:** 880 Park Avenue - AP 9, Lot 169  
**Zone:** C-3 (General Business)  
**FLU:** Neighborhood Commercial / Services

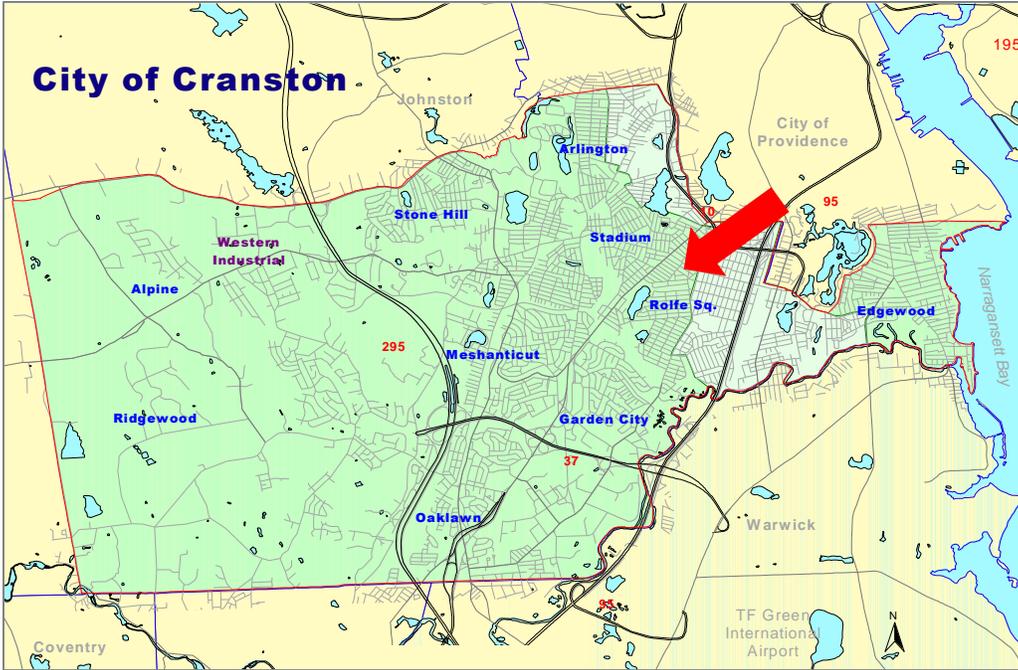
### SPECIAL USE PERMIT REQUEST:

1. To allow an existing motor vehicle repair and service establishment to expand in a C-3 zone. [17.20.030 – Schedule of Uses]

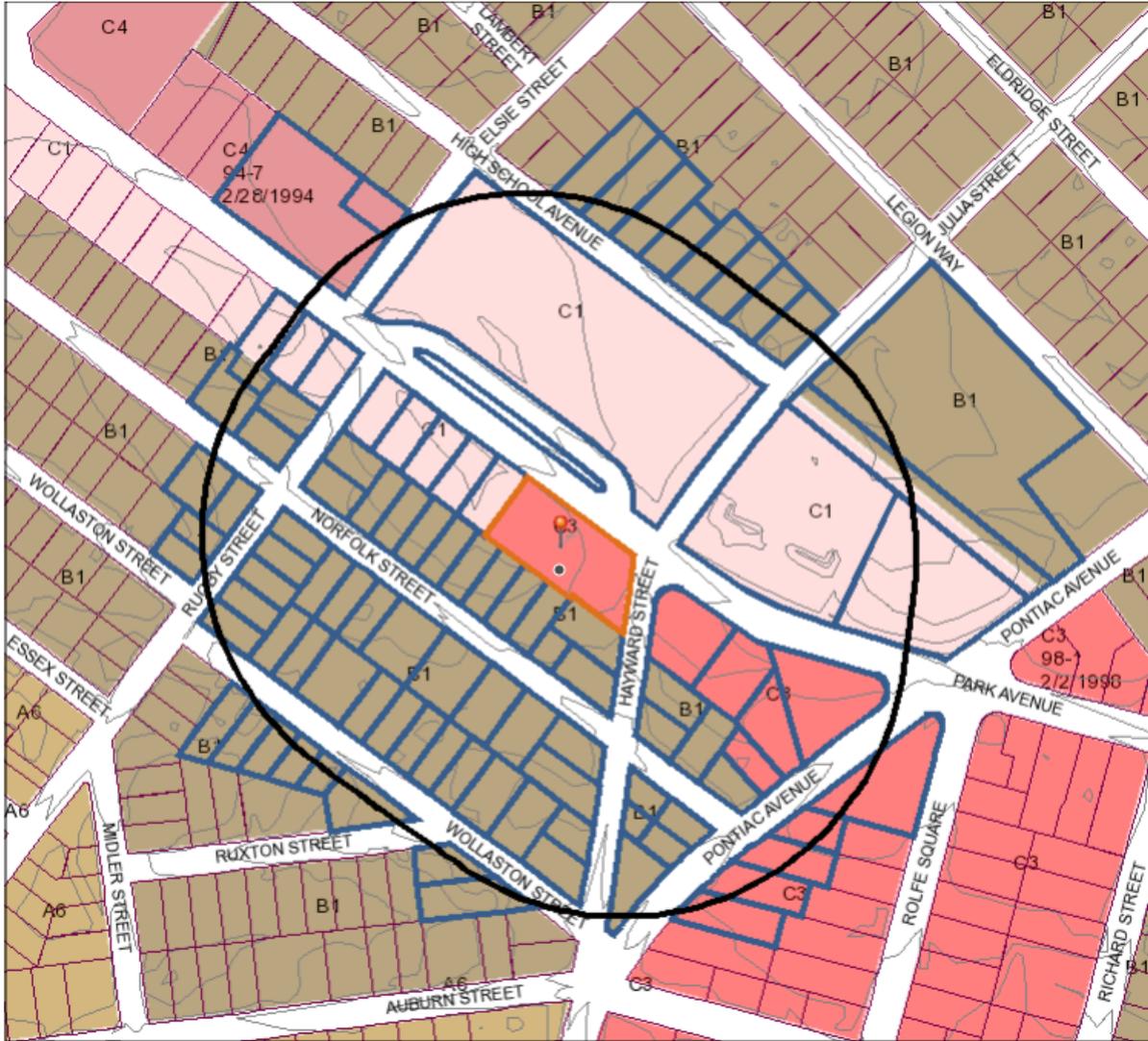
### DIMENSIONAL VARIANCE REQUEST:

1. To allow a building already encroaching 13.5' into the 20' rear setback to be expanded parallel to the property line. [17.20.120 – Schedule of Intensity Regulations]

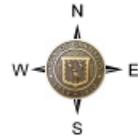
## LOCATION MAP



# ZONING MAP



UserSelectedParcels	<b>Zoning</b>	B2	EI	Emergent Marsh/Wet Meadow
vParcels_Buffer	none	C1	MPD	Estuarine Emergent Wetland
ParcelsInBufferOutput	A80	C2	S1	Shrub Swamp
Parcels	A20	C3	Other	Street Names
Streets Names	A12	C4	<b>Wetlands (RIGIS 1988)</b>	No Data
Contour CMHW 2 ft	A8	C5	Coniferous Wetland	Deciduous Wetland
Zoning Dimensions	A6	M1		
Historic Overlay District	B1	M2		



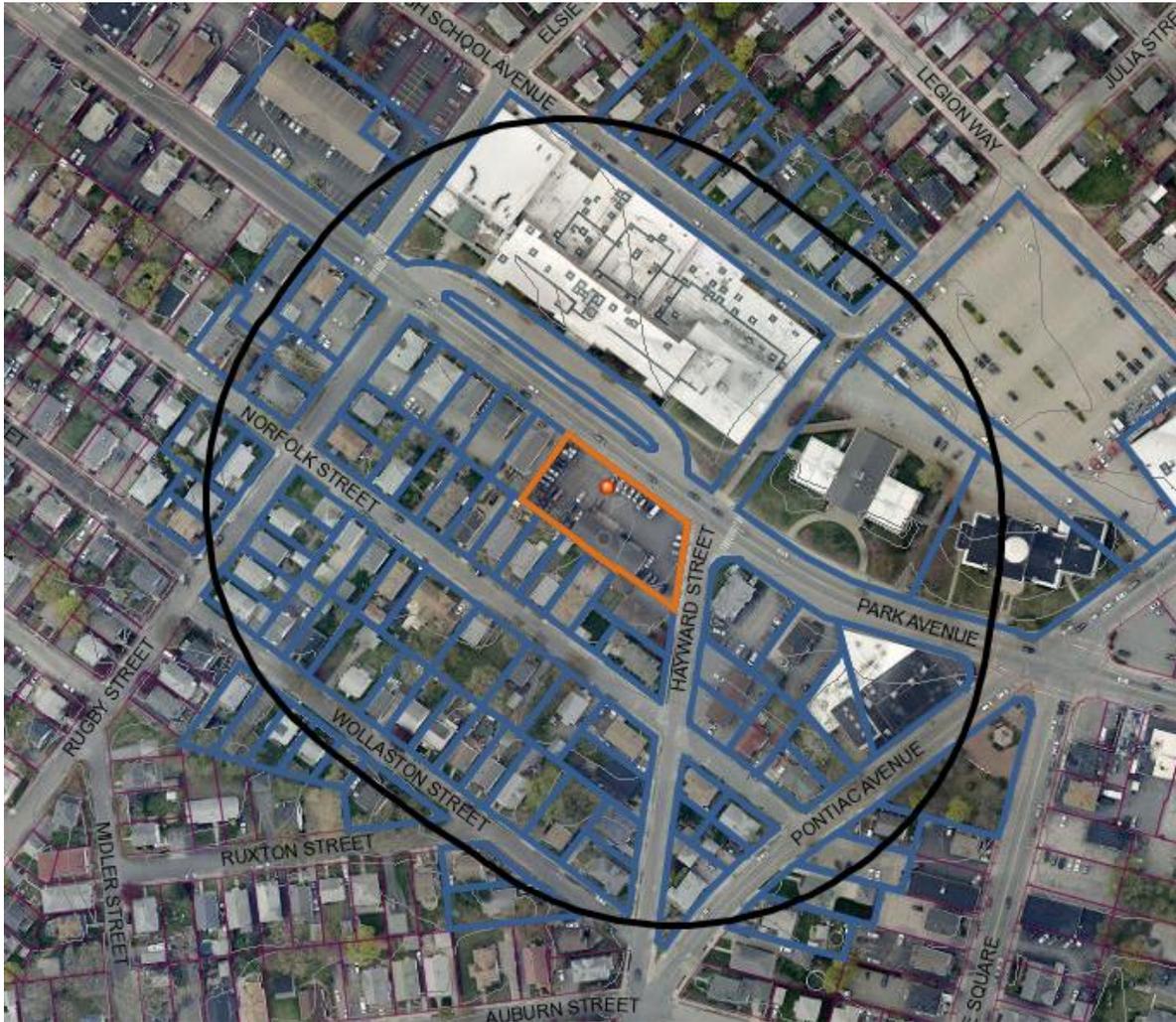
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City of Cranston

# NEIGHBORHOOD AERIAL

(subject parcel marked in orange, 400 - foot radius marked in black)



# STREET VIEW (from Park Ave)



## AERIAL CLOSE UP

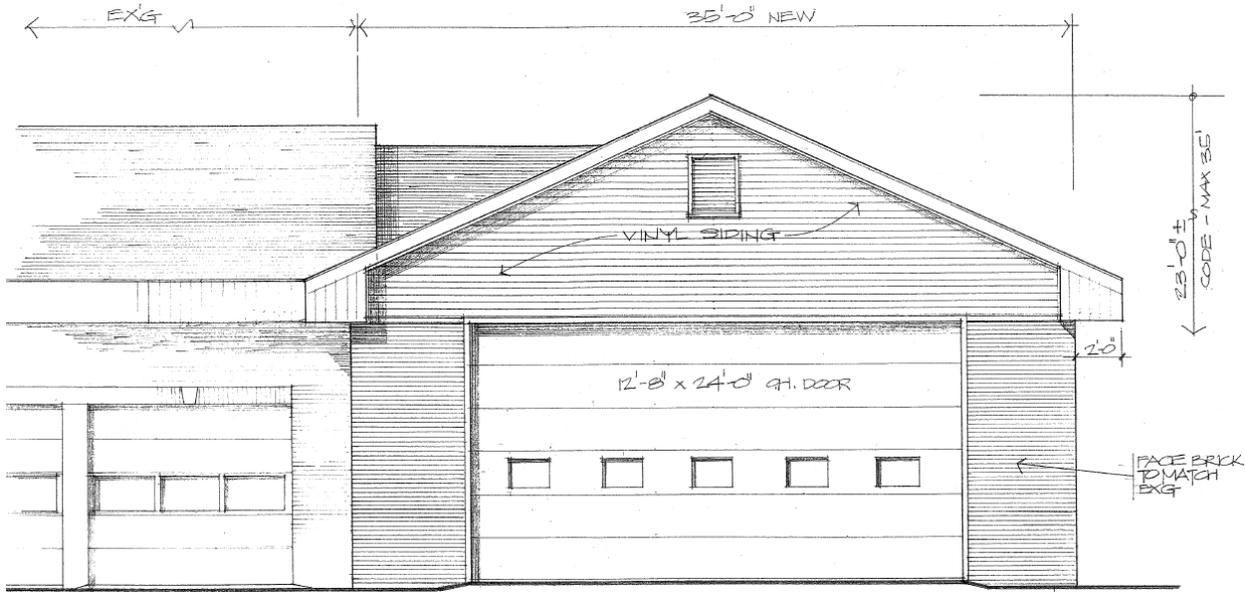


## 3-D AERIAL VIEW (facing South)





# ELEVATIONS



## FINDINGS OF FACT:

1. The 21,014 ft<sup>2</sup> subject lot is located directly across the street from Cranston High School East, fronting on Park Avenue along its northern property line and Hayward Street along its eastern property line. There are B-1 zoned residential uses abutting to the south and an existing nonconforming two-family in a C-1 (Office business) zone to the east.
2. The existing use ("motor and recreational vehicle repair and service establishment light") is allowed in C-3 zoning with a special use permit. The applicant proposes a 40' x 35' (1,400 ft<sup>2</sup>) masonry addition to the existing 2,764 ft<sup>2</sup> building, triggering the requirement for a special use permit.
3. State law § 45-24-42 states that local ordinances *MAY* allow special use permits applications to also request relief from zoning. The City does NOT have such a provision. There was a proposed ordinance (#5-20-04) which would have amended the City Code to have allowed special use permit and variance applications concurrently, but the City Council denied the ordinance on September 28<sup>th</sup>, 2020. The City's Legal Department has advised the City that in the absence of such a provision in the local ordinance, that applicants still may request a special use permit in conjunction with a variance, however, the standard of review elevates to the required findings for a *use variance* in Section 17.92.010(C).
4. In 1986, the Zoning Board of Review approved a request to "construct an addition to a building with restricted rear yard areas, for a motor vehicle sales, service and repair & parts facility." It does not appear that a special use permit or use variance was specifically granted or requested (for reasons unknown to staff – the use table actually prohibited this use in all zones at this time). Despite the minutes reflecting that there

were objectors, the ZBR approved the request, findings that it would not substantially injure the use of the neighboring property, would be in harmony with the character of the neighborhood, and would not be a detriment the neighborhood. Three (3) restrictions were imposed with the approval: “1). Provide new 6’ high stockade fence along property lines; 2) All curb openings subject to Public Works Department approval; and 3). Install pre-cast concrete curbing where required.” The site is currently not in compliance with condition #1. It is unclear whether condition #2 was met or enforced.

5. The existing business, Park Avenue Auto, has been a family owned and operated business since 2001.
6. The building addition would be 6.5’ from the “rear” property line. The addition is an extension of the existing building, and is no closer to the property line than the existing building which is actually 2.5’ away from the property line after the northerly jog in the property line near Hayward Street.
7. There is a wooden privacy fence behind the building in the area of the proposed addition screening the parking area from the residents to the south and west.
8. The building addition/proposal is not anticipated to have negative or injurious impacts to the surrounding area.
9. The applicant initially submitted a site plan that, upon review by the City, required revisions in terms of parking, curb cuts, traffic circulation, directional signage, pavement markings, landscape areas, snow storage, and location of refuse facilities. The applicant has revised the plan to satisfy the City comments, which received sign-off from City of Cranston Bureau of Traffic Safety on 10/23/20. The main change is that the applicant has agreed to is to close off two (2) of their existing five (5) curb cuts and will install sidewalks and curbing.
10. The proposal is consistent with the Comprehensive Plan Future Land Use Map and policy guidance in regards to economic development.

## **PLANNING ANALYSIS:**

### **Discussion of the Standard of Review:**

The City’s current interpretation on side corner lots is that they receive front yard setbacks adjacent to the public right of ways and side setbacks from the other lot lines (assuming the lot isn’t highly irregular). This interpretation applied to the subject site would mean that the proposal would **NOT** require relief for a rear yard setback (20’ in C-3) as the southern property line would be a side yard (0’ setback in C-3).

However, the Zoning Secretary has determined that the applicant **SHALL** require relief for the rear yard setback *in order to be consistent with the 1986 ZBR approval* detailed in Finding of Fact #4. If there were no history of zoning relief for this use from the rear setback, the current interpretation of setbacks would be applied and no relief would be required, only the request for the special use permit. There is no evidence that a use variance or special use permit has been granted at this location for reasons unbeknownst to staff, especially given that the use has not

been permitted by right since the zoning code was adopted in 1966.

Further complicating matters, state law does not allow special use permit applications to be accompanied by variance requests unless local code specifically permits it as described in Finding of Fact #3. The City recently (this past September) had the opportunity to amend its Code to allow such a combination of applications, but it did not get approved by Council (the vote on a motion to approve was 4-3 but 5 votes are required to carry the motion).

Given the outcome of the ordinance, one would think that the current application for a special use permit and dimensional relief could not be submitted, but that's not entirely the case. Citing case law, the City's Legal Department has advised that in the absence of such a provision in the local ordinance, that applicants still may request a special use permit in conjunction with a variance *with the understanding that the standard of review elevates to the required findings for a **use variance*** in Section 17.92.010(C). The use variance standard that "the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the zoning ordinance" is nearly impossible to demonstrate, and is particularly nonsensical when being applied to a proposed expansion of an existing, thriving use. **Staff believes that it would be unreasonable for the Plan Commission to make their recommendation based on the strictest application of this standard in this instance. Staff instead respectfully recommends the Plan Commission evaluate the proposal with a holistic approach, weighing the benefits, concerns, existing conditions and consistency with the Comprehensive Plan, leaving the required findings to the judgement of the ZBR.**

#### **Analysis of the Application:**

The applicant proposes a 40' x 35' (1,400 ft<sup>2</sup>) masonry addition to the existing 2,764 ft<sup>2</sup> building to add space to their car repair business. The 21,014 ft<sup>2</sup> subject lot is located directly across the street from Cranston High School East, and fronts on Park Avenue along its northern property line and Hayward Street along its eastern property line. There are B-1 zoned residential uses abutting to the south and an existing nonconforming two-family in a C-1 (Office business) zone to the east.

Due to nature of the site's size limitations and frontage on both Park Avenue and Hayward Street, there is no alternative location for the building expansion. The site has to accommodate ingress and egress of tow trucks, staff and customers, parking of both customers and vehicles to be serviced, and general traffic circulation. After a few rounds of reviews and revisions, the City of Cranston Bureau of Traffic Safety has approved/signed-off on the plan. Some of the site plan improvements that came out of this process include:

- Closing the northernmost curb cut on Hayward Street and providing granite curbing and cement concrete sidewalk;
- Closing the middle of the three (3) curb cuts on Park Avenue and providing granite curbing and cement concrete sidewalk;
- Striping parking spaces & denoting which spaces are ADA compliant, which are for customers and which are for vehicle storage to ensure customer spaces meet code;
- Installing landscaping areas/berms;
- Adding directional signage and pavement markings;

- Creating & identifying snow storage areas; and
- Moving the dumpster to a compliant location 10' from all property lines.

These add up to a significant improvement of the site. The applicant was amenable to all City comments except to close the curb cut on Park Ave closest to the intersection with Hayward Street, citing that tow trucks need to be able to enter and exit the site onto Park Ave as to avoid using Hayward Street, thereby staying away from the residences. The Bureau of Traffic Safety accepted this reasoning.

Staff does not find the expansion to be injurious to or inconsistent with the existing area. This is not a new use, so it will not alter the character of the area. There is an existing wooden stockade fence along the “rear” property line, where no activity is anticipated. The building is no closer to the “rear” property line than the existing building. The building addition may actually help to buffer the homes to the rear from visual and noise impacts from the parking area. Staff has not received any public comment at this time.

The proposal is consistent with the Comprehensive Plan in several regards. Firstly, the Future Land Use Map designates this site as “Neighborhood Commercial/Services” which is intended for C-1, C-2 and C-3 zones (p. 43). Additionally, the policy guidance has numerous goals, policies and strategies that the proposal appears to be consistent with:

- Small-business friendly environment – Assist small businesses start-up and expansion (p. 74)
- “Increase the tax base with new private investment in commercial and industrial properties” (p. 73)
- EDG-2 Attract capital into the Cranston area and expand the City’s economic base.
- EDP-2.3 Maintain and enhance the growth of a diverse array of small, growth-oriented, value-adding business concerns.
- EDG-4 Revitalize underused areas of the City for uses that are in keeping with the needs and values of the community.
- Underutilized properties and infill development sites could be improved to address current and future land use, transportation, and economic needs in the eastern part of the City. (p. 22)

**RECOMMENDATION:**

Due to consistency with the Comprehensive Plan, the proposed improvements to the site with consideration to existing conditions, and because the proposal will not be injurious to the neighboring area, staff recommends the Plan Commission forward a **positive recommendation** on the application to the Zoning Board of Review.