

TO: Zoning Board of Adjustment
FROM: Planning Department
DATE: February 11, 2016
RE: Zoning Board of Adjustment Meeting

OLD BUSINESS

1. 209 Clinton St

NEW BUSINESS

1. 6 Pine St
2. 33 Columbia St
3. Middle Rd at Ward Place (formerly 75 Monroe St)
4. 169 Madison St
5. 209 Gosport Rd
6. 678 Maplewood Ave

OLD BUSINESS

Case #12-3

Petitioner:	Pamela Gould
Property:	209 Clinton Street
Assessor Plan:	Map 159, Lot 27
Zoning District:	General Residence A
Description:	Construct a 10'6" ± x 30'± single story rear addition.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none">1. A Variance from Section 10.321 to allow a lawful nonconforming building to be extended, enlarged or structurally altered except in conformity with the Ordinance.2. A Variance from Section 10.521 to allow a left side yard setback of 9'± where 10' is required.3. A Variance from Section 10.521 to allow 27.5% building coverage where 25% is the maximum allowed.

This application is before the Board for a clarification of a previously approved request.

The Board **granted** the requested relief at the December 15, 2015 meeting. Subsequently, after completing a foundation certification plan as required by the Inspections Department for the building permit, the setbacks of the addition were determined to be different than what was originally listed on the Board of Adjustment application. Although the initial request indicated that the left side yard setback was 9', the actual left side yard setback is 8'4". The applicant initially measured to the existing fence, which the foundation certification plan shows is actually partially located on the neighboring property.

In addition, while the applicant initially thought that the property line fronting on Burkitt St extended to the edge of pavement (17' from the proposed addition), the actual property line is only 9' from the addition. The required setback on this side is 15' (for the secondary front yard).

In reviewing the application materials submitted to the Board on December 15 and after reviewing the video of the meeting, Planning Department staff has concluded that although the lot lines were depicted incorrectly in the application, the project is being developed consistent with the applicant's presentation to the Board in her plans and at the public hearing. Therefore, it does not appear that a new application and hearing would be required. However, as this is a decision of the Board and staff cannot act on the Board's behalf, the applicant has been asked to return to the Board for a clarification.

The Board of Adjustment Rules and Regulations do not require that an applicant do a lot survey or lot line delineation plan for the application. This has been the Board's policy in part because it can be a substantial up front cost burden particularly for small projects. In the absence of a property survey, applicants are allowed to use tax maps or other sources to determine, to their best estimation, where their property lines are located. The Board should be aware that, beginning this month, staff will be strongly encouraging any applicants that have projects coming before the Board

to do a survey or lot line delineation particularly if the proposed setbacks or coverages are within a few feet of the requirement.

Staff has determined that the project as currently constructed, is consistent with the application as originally approved by the Board for the following reasons:

- 1) The Board approved a 9' left side yard setback, which the applicant explained was the measurement of the closest point on the building to the fence which ran along that edge of her property. That measurement is still accurate, however the lot line was subsequently determined to be 8" closer than the fence, which the applicant had no knowledge of when she initially submitted her application.
- 2) The applicant provided two site plans in the initial submission to the Board, one was from the City tax map and the other was a hand drawn sketch. While no setback dimensions were delineated on the tax map, it is apparent, based on the scale shown on the plan, that the existing building is located less than 15' from the lot line on the Burkitt St side. The applicant's hand drawn sketch indicated the lot line as the edge of pavement on Burkitt St and showed a 17' setback from the existing building to the street. While the applicant was mistaken about the location of the lot line on this side, the measurement of 17' from the building to the street was subsequently confirmed by the foundation certification plan. Furthermore, the discrepancy between the two exhibits was noted by the Board of Adjustment members in their discussion of the motion and therefore they were aware that the application as presented was using the edge of pavement as the point of reference for the setback on that side.
- 3) The addition as presented and as currently constructed, follows the existing line of the building and the total size and dimensions of the addition has not changed from the original application.

NEW BUSINESS

Case #2-1

Petitioners:	Benjamin M. & Amanda J. Goss
Property:	6 Pine Street
Assessor Plan:	Map 159, Lot 47
Zoning District:	General Residence A
Description:	Replace garage and add connecting mudroom.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> 1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance. 2. A Variance from Section 10.521 to allow a 3'± right side yard setback where 10' is required.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Residential	Primarily residential uses
<u>Lot area (sq. ft.):</u>	6,621	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,621	7,500 min.
<u>Street Frontage (ft.):</u>	60	100 min.
<u>Lot depth (ft.):</u>	110	70 min.
<u>Primary Front Yard (ft.):</u>	6'-8"	15 min.
<u>Secondary Front Yard (ft.):</u>	4'-5"	15
<u>Right Yard (ft.):</u>	10" (to garage)	10 min.
<u>Rear Yard (ft.):</u>	66	20 min.
<u>Height (ft.):</u>	24	35 max.
<u>Building Coverage (%):</u>	21.11	25 max.
<u>Open Space Coverage (%):</u>	66.12	30 min.
<u>Parking (# of spaces):</u>	2	2 min.
<u>Estimated Age of Structure:</u>		

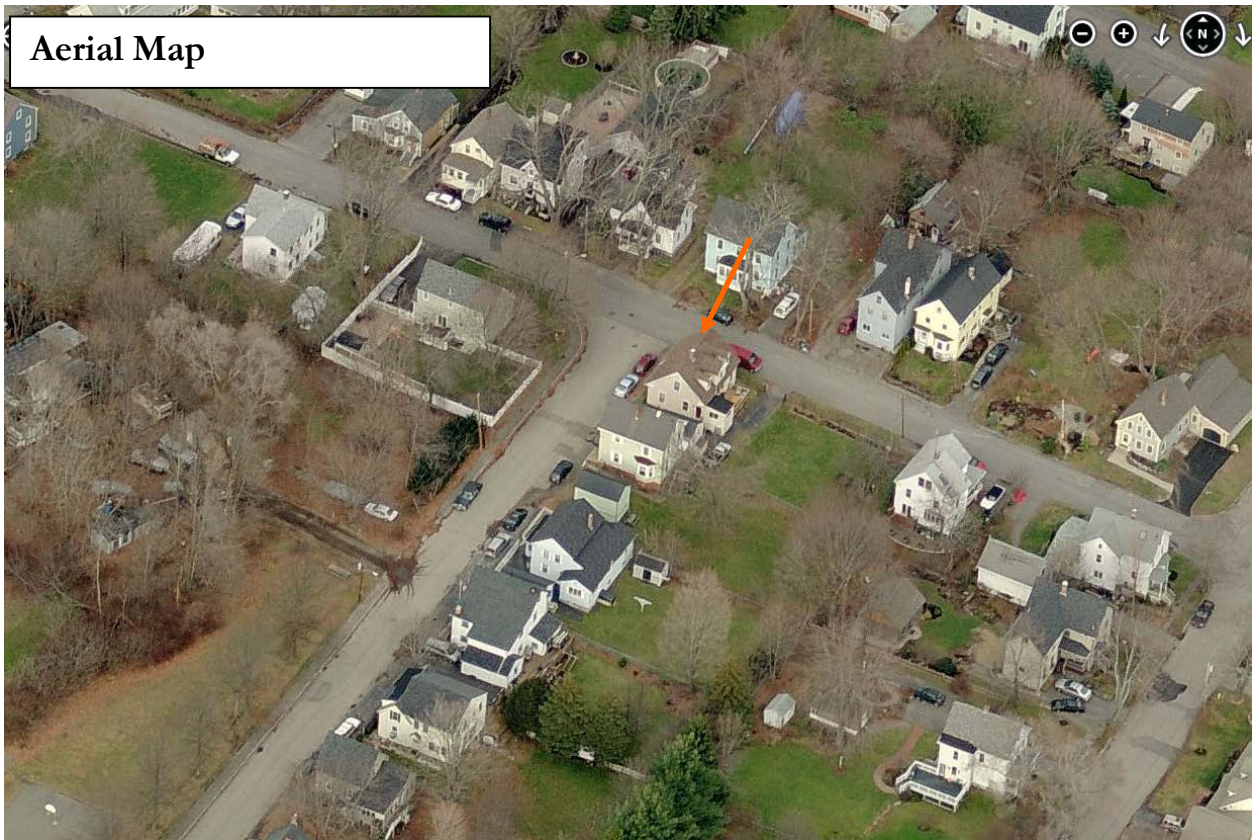
B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>		
<u>Lot area (sq. ft.):</u>	6,621	7,500 min.
<u>Principal Front Yard (ft.):</u>	6'-8"	15 min.
<u>Secondary Front Yard (ft.):</u>	4'-5"	15 min.
<u>Right Yard (ft.):</u>	3	10 min.
<u>Rear Yard (ft.):</u>	63	20 min.
<u>Height (ft.):</u>	24	35 max.
<u>Building Coverage (%):</u>	23.38	25% max.
<u>Open Space Coverage (%):</u>	67.46	30% min.
<u>Parking (# of spaces):</u>	2	2 min.

C. Other Permits Required

None.

D. Neighborhood Context





E. Previous Board of Adjustment Actions

No history found.

F. Planning Department Comments

- ✓ Application meets submission requirements.
- ✓ Applicant has reviewed this project with Planning Department staff.

G. 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.*

Case #2-2

Petitioner:	Alden Properties LLC
Property:	33 Columbia Street
Assessor Plan:	Map 145, Lots 41 & 42
Zoning District:	General Residence C
Description:	Add two dwelling units on a merged lot to the existing three dwelling units.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Variance from Section 10.521 to allow 3,253± s.f. of lot area per dwelling unit where 3,500 s.f. per dwelling unit is required.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	3-Unit Multi-family Dwelling	Primarily residential uses
<u>Lot area (sq. ft.):</u>	16,117.20	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,372.40	3,500 min.
<u>Street Frontage (ft.):</u>	100	70 min.
<u>Lot depth (ft.):</u>	114	50 min.
<u>Front Yard (ft.):</u>	<5	5 min.
<u>Right Yard (ft.):</u>	>10	10 min.
<u>Left Yard (ft.):</u>	<10	10 min.
<u>Rear Yard (ft.):</u>	>20	20 min.
<u>Building Coverage (%):</u>	12.86	35 max.
<u>Open Space Coverage (%):</u>	43	20 min.
<u>Parking (# of spaces):</u>		6 min.
<u>Estimated Age of Structure:</u>	1890	

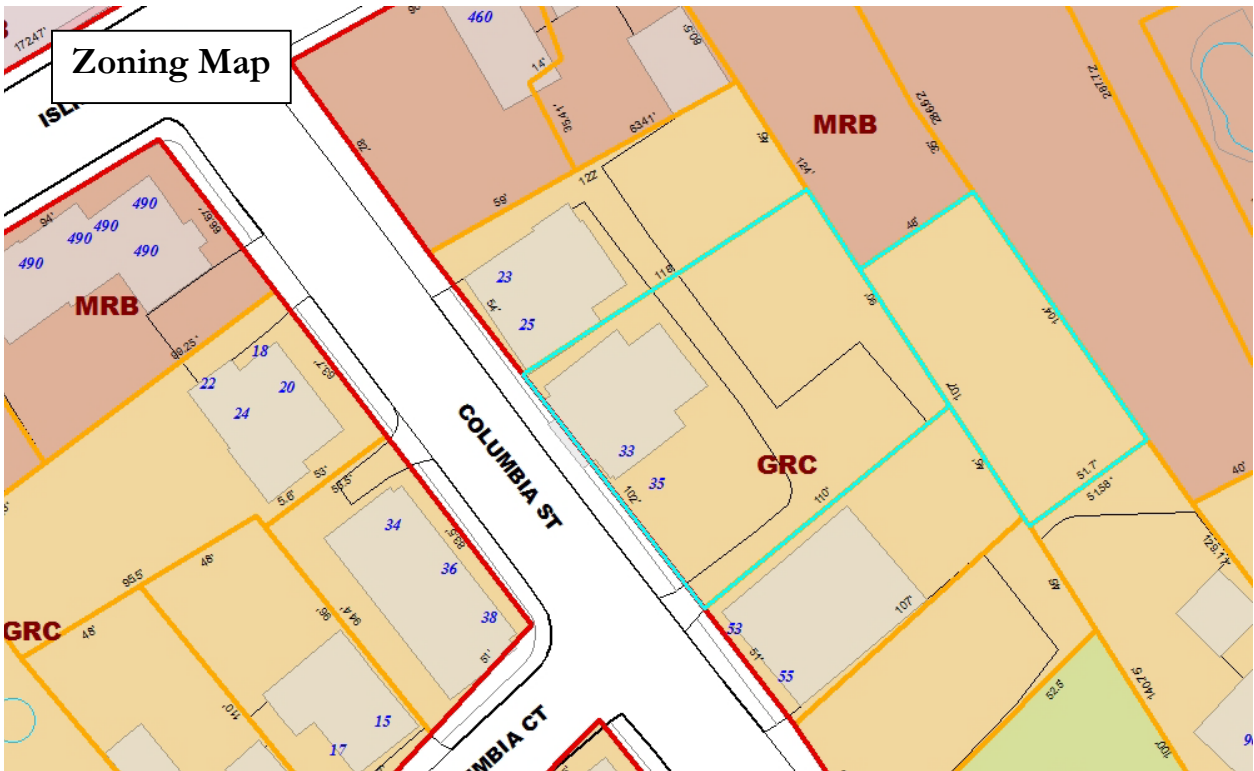
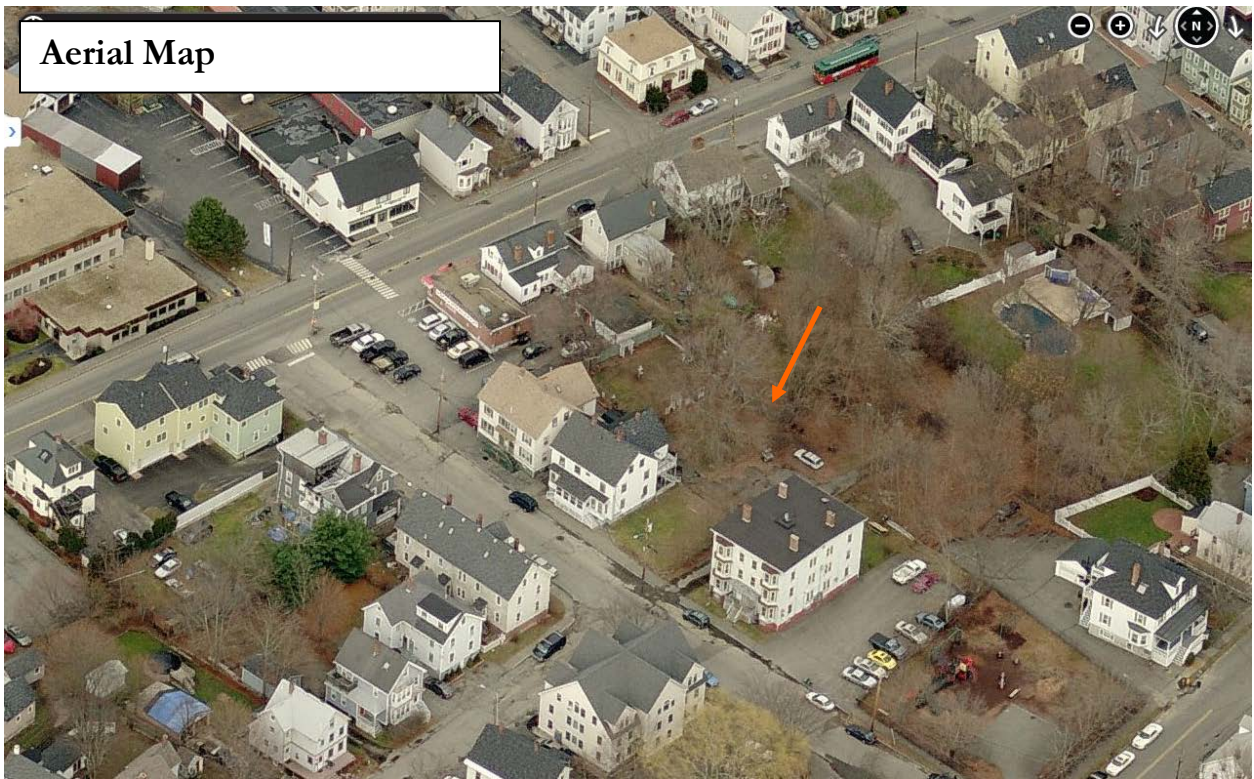
B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two-Family Dwelling	Primarily residential uses
<u>Lot area (sq. ft.):</u>	16,117.20	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,223.44	3,500 min.
<u>Street Frontage (ft.):</u>	100	70 min.
<u>Lot depth (ft.):</u>	114	50 min.
<u>Front Yard (ft.):</u>	<5	5 min.
<u>Right Yard (ft.):</u>	20.3	10 min.
<u>Left Yard (ft.):</u>	10.3	10 min.
<u>Rear Yard (ft.):</u>	20.3	20 min.
<u>Height (ft.):</u>	31.4	35 max.
<u>Building Coverage (%):</u>	31.57	35 max.
<u>Open Space Coverage (%):</u>	60.4	20 min.
<u>Parking (# of spaces):</u>	9	10 min.

C. Other Permits Required

- Planning Board Site Plan Review

D. Neighborhood Context



E. Previous Board of Adjustment Actions

November 27, 1973 -- The Board **granted** a variance to construct two additional apartments at 33-35 Columbia Street with the stipulation that the Building Inspector verify that the proper measurement requirements had been met.

F. Planning Department Comments

- ✓ Application meets submission requirements.
- ✓ Applicant has reviewed this project with Planning Department staff.

The application initially included a request for a Special Exception for a multi-family dwelling with 5 units. The Zoning Ordinance defines a multi-family dwelling as a single building consisting of 3 or more dwelling units. As these are separate buildings, each use is considered independently. As proposed, the applicant is proposing to add a two-family dwelling unit and retain the existing 3-unit multi-family dwelling. Both of these uses are allowed by right and therefore no Special Exception is required.

G. 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.*

Case #2-3

Petitioners:	Natan Aviezri Revocable Trust, Debra Klein and Natan Aviezri, Trustees
Property:	Middle Road at Ward Place (formerly 75 Monroe Street)
Assessor Plan:	Map 168, Lot 27 (merged from Lots 34 & 35)
Zoning District:	General Residence A
Description:	Construct a single-family home and garage on two re-merged lots.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> 1. A Variance from Section 10.521 to allow a lot area of 6,022± s.f. where 7,500 s.f. is required. 2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 6,022± s.f. where 7,500 s.f. per dwelling unit is required. 3. A Variance from Section 10.521 to allow continuous street frontage of 93.6'± where 100' of continuous street frontage is required.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant lot	Primarily residential uses
<u>Lot area (sq. ft.):</u>	6,022	7,500

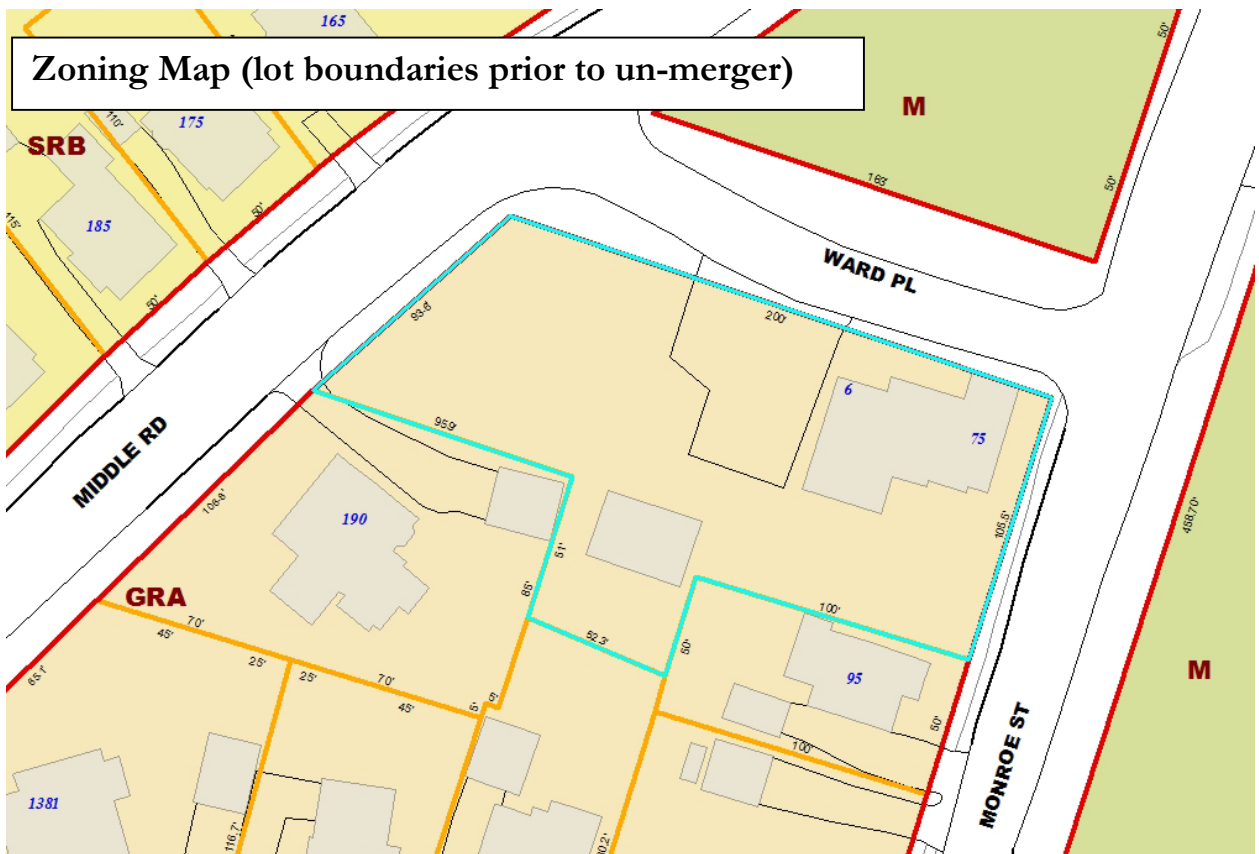
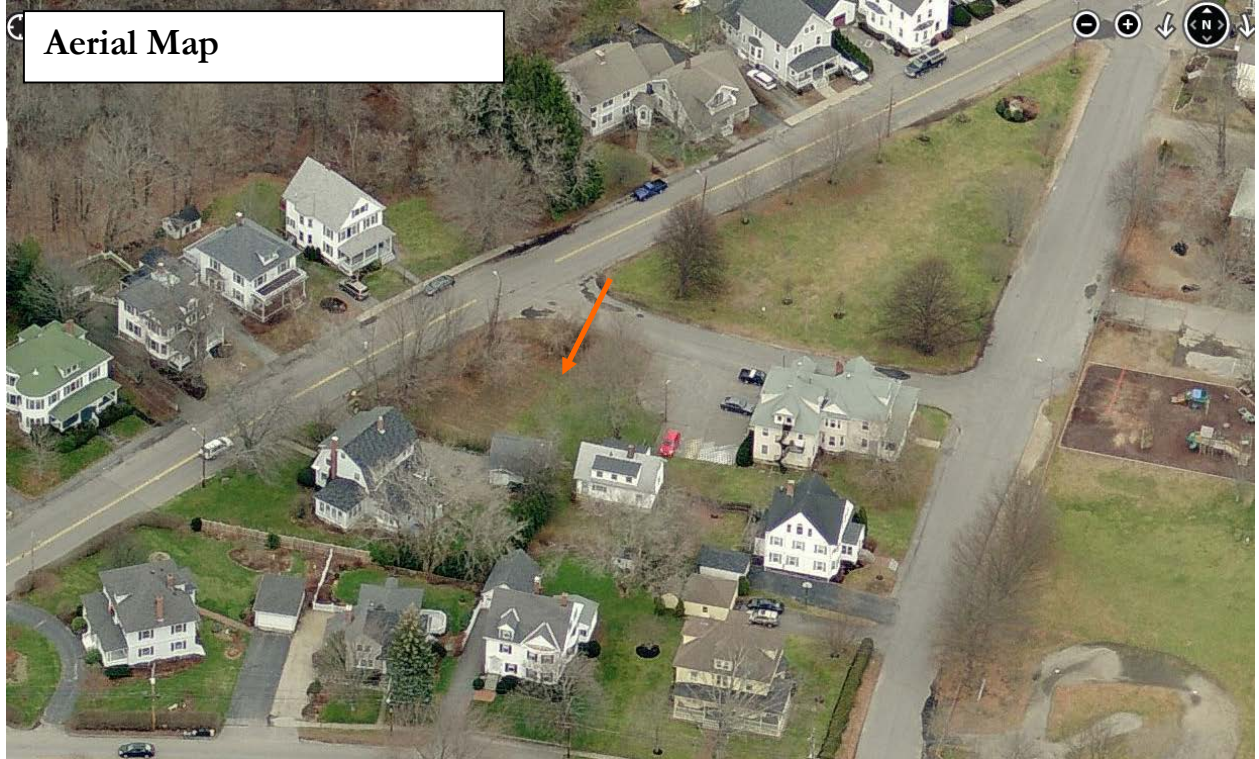
B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Residential	Primarily residential uses
<u>Lot area (sq. ft.):</u>	6,022	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,022	7,500 min.
<u>Street Frontage (ft.):</u>	93.6	100 min.
<u>Lot depth (ft.):</u>	71.25	70 min.
<u>Front Yard (ft.):</u>	>15	15 min.
<u>Left Yard (ft.):</u>	>10	10 min.
<u>Right Yard (ft.):</u>	>10	10 min.
<u>Rear Yard (ft.):</u>	>20	20 min.
<u>Height (ft.):</u>	<35	35 max.
<u>Building Coverage (%):</u>	<25	25 max.
<u>Open Space Coverage (%):</u>	>30	30 min.
<u>Parking (# of spaces):</u>	2	2 min.

C. Other Permits Required

None.

D. Neighborhood Context



E. Previous Board of Adjustment Actions

No history found.

F. Planning Department Comments

- ✓ Application meets submission requirements.
- ✓ Applicant has reviewed this project with Planning Department staff.

This application is for dimensional relief for a lot on which the applicant is intending to construct a single family residence. No relief is being requested for the house itself, which the applicant has indicated will comply with zoning requirements. Per the application requirements, a conceptual lot plan is included showing that the house can be located on the lot in compliance with zoning requirements and the applicant has also provided examples of the housing style he is considering for this lot.

G. 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.*

Case #2-4

Petitioners:	Abbie J. & Lee M. Frank
Property:	169 Madison Street
Assessor Plan:	Map 145, Lot 53
Zoning District:	General Residence C
Description:	Construct rear addition.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> 1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance. 2. A Variance from Section 10.521 to allow a 2'6" ± left side yard setback where 10' is required. 3. A Variance from Section 10.521 to allow 40.12%± building coverage where 37%± exists and 35% is the maximum allowed.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residential	Primarily residential uses
<u>Lot area (sq. ft.):</u>	3,484.80	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,484.80	3,500 min.
<u>Street Frontage (ft.):</u>	32.5	70 min.
<u>Lot depth (ft.):</u>	106	50 min.
<u>Front Yard (ft.):</u>	2	5 min.
<u>Right Yard (ft.):</u>	4.5	10 min.
<u>Left Yard (ft.):</u>	0	10 min.
<u>Rear Yard (ft.):</u>	2	20 min.
<u>Height (ft.):</u>	28+	35 max.
<u>Building Coverage (%):</u>	37.05	35 max.
<u>Open Space Coverage (%):</u>	>20	20 min.
<u>Parking (# of spaces):</u>	3	2 min.
<u>Estimated Age of Structure:</u>	1882	

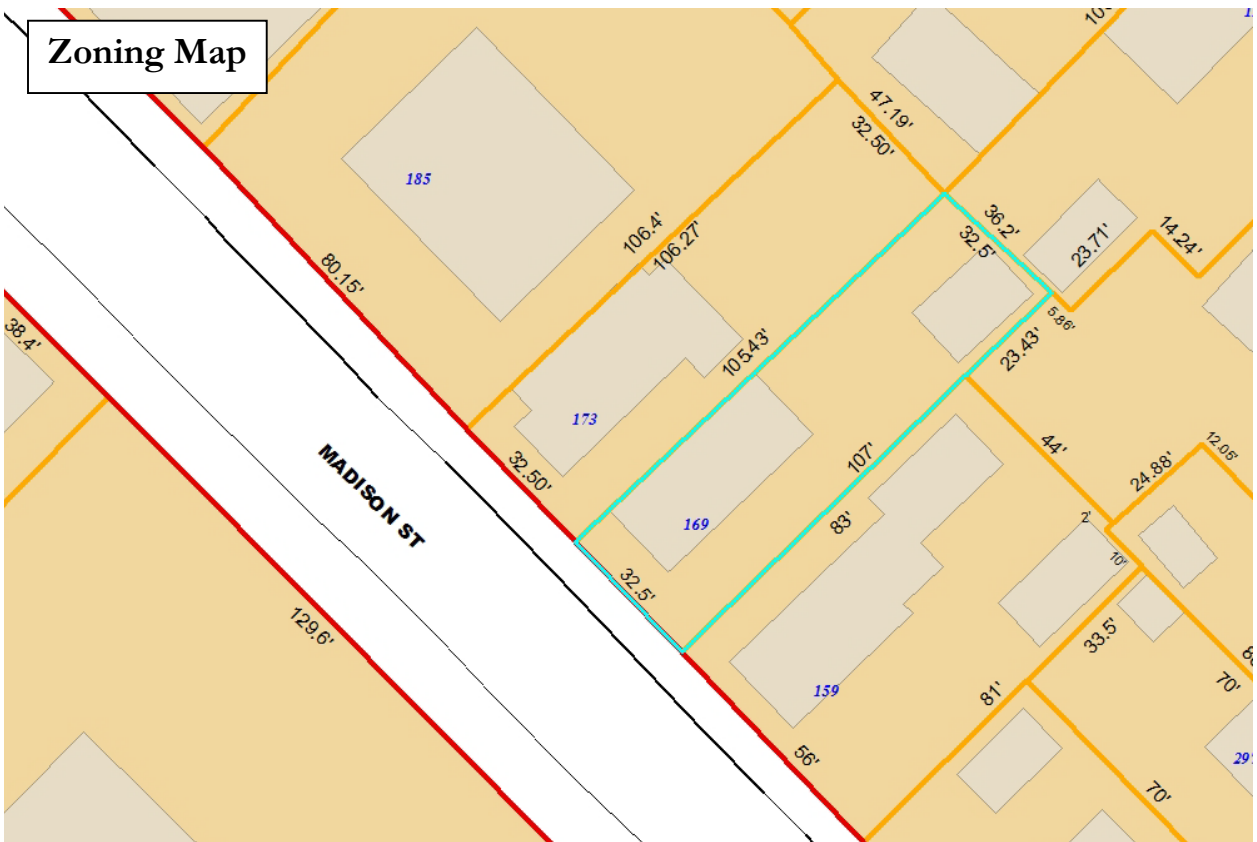
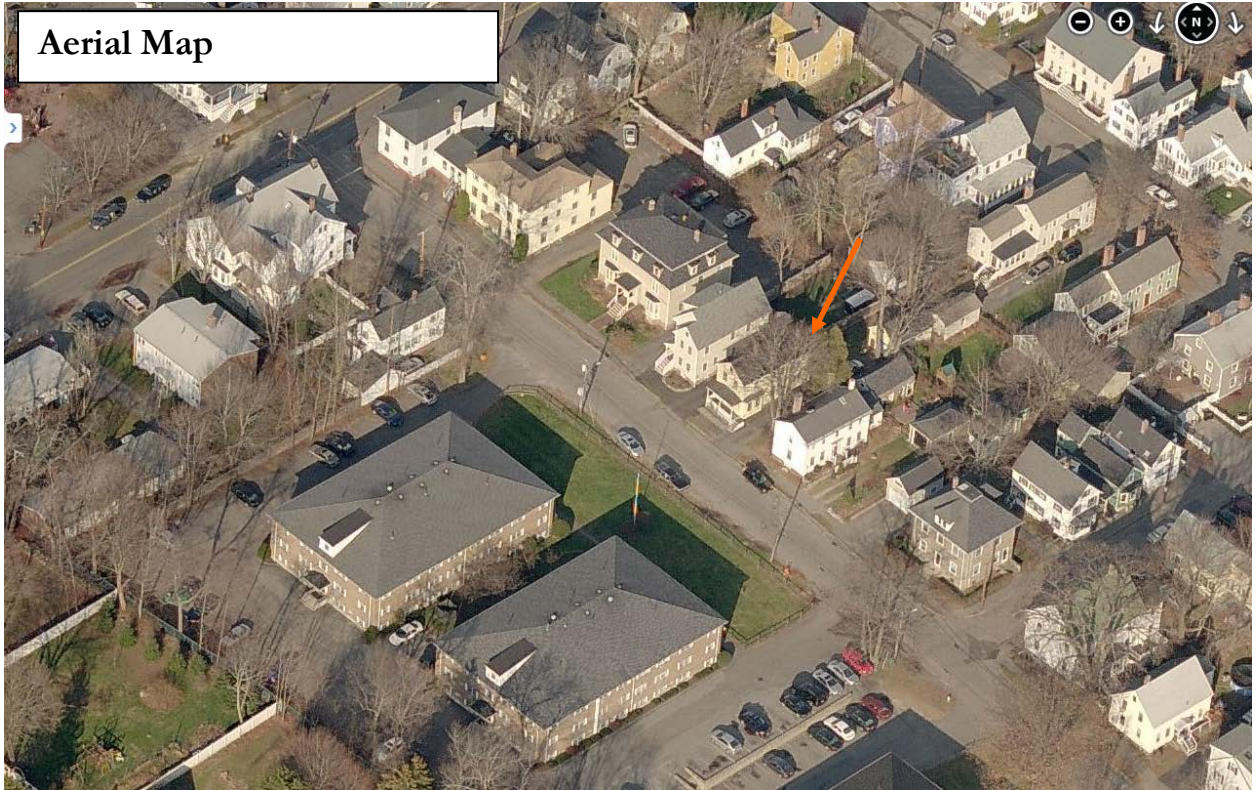
B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Right Yard (ft.):</u>	11.5	10 min.
<u>Left Yard (ft.):</u>	2.5	10 min.
<u>Rear Yard (ft.):</u>	37'-5"	20 min.
<u>Height (ft.):</u>	28+	35 max.
<u>Building Coverage (%):</u>	40.12	35 max.
<u>Open Space Coverage (%):</u>	>20	20 min.
<u>Parking (# of spaces):</u>	3	2 min.

C. Other Permits Required

None.

D. Neighborhood Context



E. Previous Board of Adjustment Actions

December 15, 2015 – The Board failed to pass and thus **denied** a request to replace a rear deck & porch with an 18'± x 24'± two-story addition with a left side yard setback of 0'± where 10' was required and 42.45%± building coverage where 35% was the maximum allowed.

F. Planning Department Comments

- ✓ Application meets submission requirements.
- ✓ Applicant has reviewed this project with Planning Department staff.

The Board may consider whether to invoke Fisher vs. Dover 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)

G. 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.*

Case #2-5

Petitioners:	Robert R. & Elizabeth H. Macdonald
Property:	209 Gosport Road
Assessor Plan:	Map 224, Lot 10-12
Zoning District:	Single Residence A
Description:	Construction of a single-family residence.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, or other required relief, including the following: <ol style="list-style-type: none"> 1. An Equitable Waiver of Dimensional Requirements as defined in RSA 674:33-a to allow the existing foundation of a dwelling structure to remain with an 18.7'± right side yard setback where 20' is required. 2. A Variance from Section 10.521 to allow an 18.7'± right side yard setback where 20' is required.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant Lot	Primarily single family residences
<u>Lot area (sq. ft.):</u>	46,609	43,560 min.
<u>Street Frontage (ft.):</u>	150	150 min.
<u>Lot depth (ft.):</u>	352	200 min.

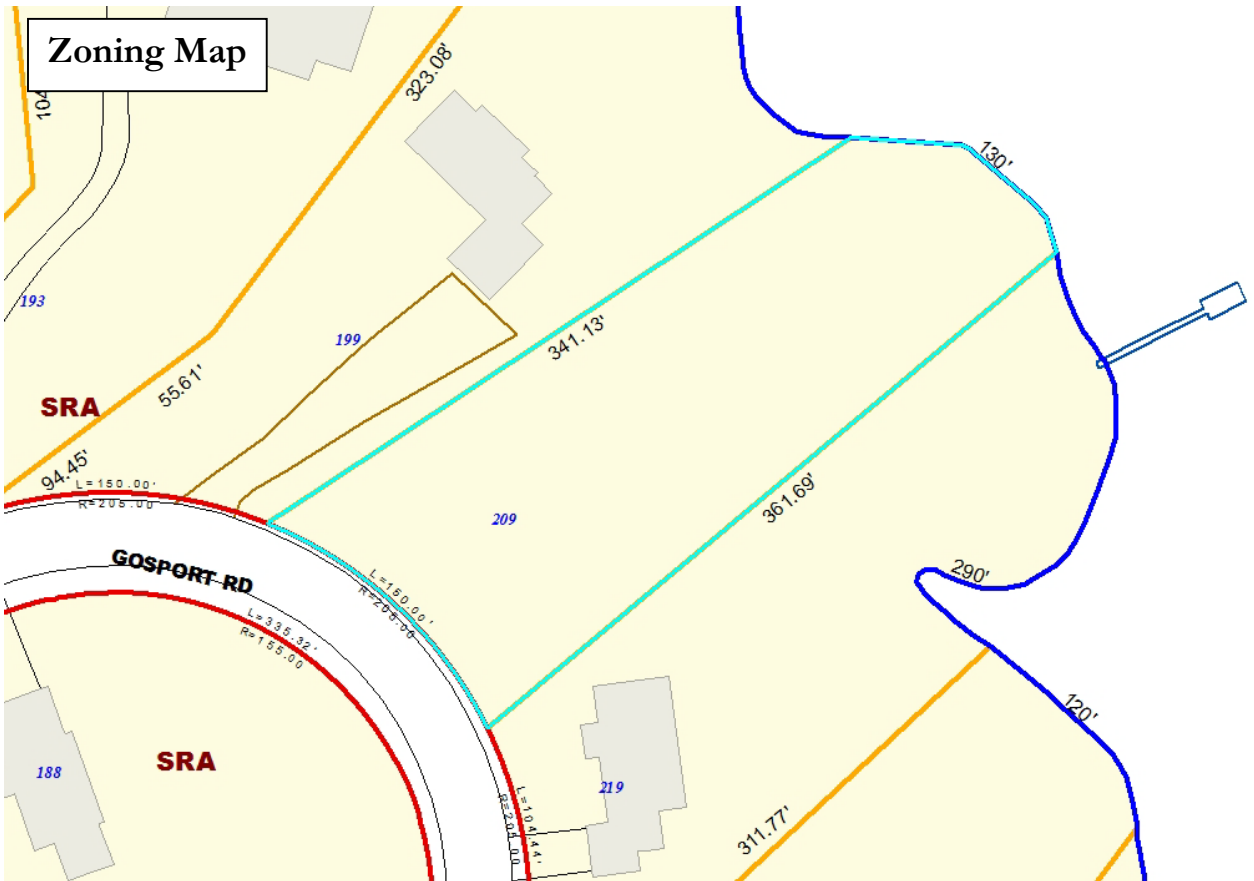
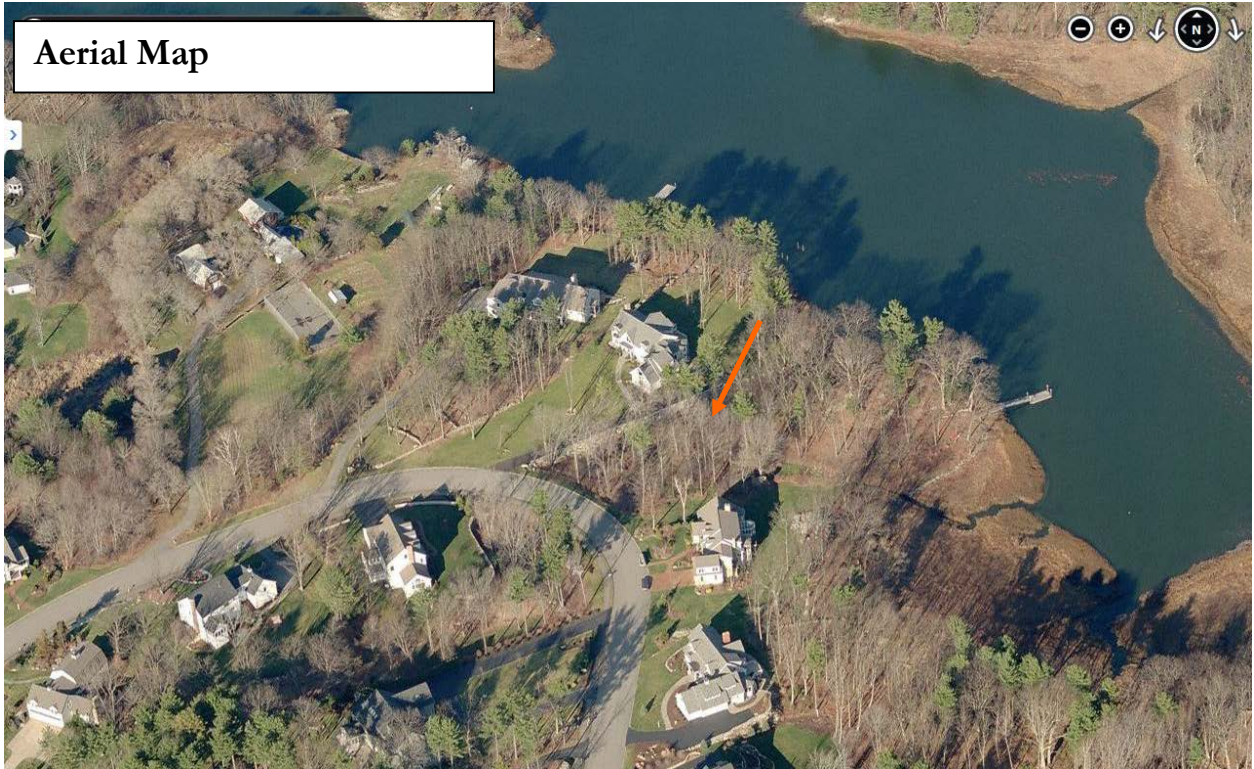
B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Residence	Primarily single family residences
<u>Lot area (sq. ft.):</u>	46,609	43,560 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	46,609	43,560 min.
<u>Street Frontage (ft.):</u>	150	150 min.
<u>Lot depth (ft.):</u>	352	200 min.
<u>Front Yard (ft.):</u>	171	30 min.
<u>Left Yard (ft.):</u>	44.8	20 min.
<u>Right Yard (ft.):</u>	18.7	20 min.
<u>Rear Yard (ft.):</u>	122	40 min.
<u>Height (ft.):</u>	30.3	35 max.
<u>Building Coverage (%):</u>	3.96%	10% max.
<u>Open Space Coverage (%):</u>	85.60%	50% min.
<u>Parking (# of spaces):</u>	2	2 min.

C. Other Permits Required

None.

D. Neighborhood Context



E. Previous Board of Adjustment Actions

August 19, 2014 – The Board **granted** a variance to construct a new single family home 75'± from a saltwater marsh where a minimum of 100' was required.

F. Planning Department Comments

- ✓ Application meets submission requirements.
- ✓ Applicant has reviewed this project with Planning Department staff.

This error was discovered by the project engineer. If the Board grants the equitable waiver, it does not exempt future use, construction, reconstruction, or additions from full compliance with the ordinance. Therefore, in order for construction to continue on this house, a variance will be necessary to continue to construct the house with an 18.7' setback where 20' is required.

G. Review Criteria

Pursuant to RSA 674:33-a, an **equitable waiver** may be granted so long as the following conditions are met:

- The violation was not noticed or discovered by an owner, agent, or municipal representative, until after the violating structure had been substantially complete.
- The violation was not an outcome of ignorance of the law, failure to inquire, obfuscation, misrepresentation or bad faith on the part of the owner or its agents, but was instead caused by either a good faith error in measurement or calculation made by the owner or its agent, or by an error of ordinance interpretation or applicability by a municipal official in the process of issuing a permit over which he or she has authority.
- The physical or dimensional violation does not constitute a public or private nuisance, nor diminish surrounding property values, nor interfere with or adversely affect any present or permissible future use of any such property.
- Due to the degree of construction or investment made in ignorance of the violation, the cost of correction so far outweighs any public benefit to be gained that it would be inequitable to require a correction.

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.*

Case #2-6

Petitioners: Portsmouth City Investment Realty Trust and Airgead Realty Trust, Paul & Christopher D. McInnis, Trustees, owners, Maplewood Ridge, LLC, applicant

Property: 678 Maplewood Avenue

Assessor Plan: Map 220, Lots 89 & 90

Zoning District: Single Residence B

Description: Construct townhouses and an apartment building on two merged lots.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance under Section 10.440 to allow multi-family dwellings containing 30 dwelling units where only a single family dwelling is allowed.
2. A Variance from Section 10.513 to allow two free-standing dwellings on a lot where only one free-standing dwelling is allowed.
3. A Variance from Section 10.521 to allow a lot area per dwelling unit of $2,341 \pm$ s.f. where a minimum of 15,000 s.f. per dwelling unit is required.
4. A Variance from Section 10.521 to allow a structure height of $48' \pm$ where 35' is the maximum allowed.
5. A Variance from Section 10.1114.32 to allow parking where vehicles entering or leaving a parking space must pass over another space or require the moving of another vehicle.
6. *A Variance from Section 10.1113.20 to allow off-street parking spaces to be located between a principal building and the street.*

Note: Variance #6 was not initially included in the application or the legal notice for this project.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant lot	Primarily single family residences
<u>Lot area (sq. ft.):</u>	70,220	15,000 min.
<u>Street Frontage (ft.):</u>	134	100 min.
<u>Lot depth (ft.):</u>	380	100 min.

B. Proposed Changes

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>		
<u>Lot area (sq. ft.):</u>	70,220.00	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,340.67	15,000 min.
<u>Street Frontage (ft.):</u>	134	100 min.
<u>Lot depth (ft.):</u>	380	100 min.
<u>Front Yard (ft.):</u>	30	30 min.
<u>Left Yard (ft.):</u>	>10	10 min.
<u>Right Yard (ft.):</u>	10	10 min.
<u>Rear Yard (ft.):</u>	66	30 min.
<u>Height (ft.):</u>	48	35 max.
<u>Building Coverage (%):</u>	17	20 max.
<u>Open Space Coverage (%):</u>	41	40 min.
<u>Parking (# of spaces):</u>	54	49 min.

C. Other Permits Required

- Planning Board Site Plan Review

E. Previous Board of Adjustment Actions

April 10, 1979 – The Board **granted** a variance to allow the conversion of the second floor of an existing garage into an apartment.

F. Planning Department Comments

- ✓ Application meets submission requirements.
- ✓ Applicant has reviewed this project with Planning Department staff.

If the Board grants the requested relief, the Planning Department would recommend including a stipulation that the affordable housing component that is being proposed as part of this project be legally protected in the form of a deed restriction or other binding agreement. This recommendation has been discussed with the applicant.

G. 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.*