

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: September 19, 2017
RE: Zoning Board of Adjustment September 26, 2017 Meeting

NEW BUSINESS

1. 199 Union St.
2. 180 Middle St.
3. 1338/1342 Woodbury Ave.
4. 38 Summit Ave.
5. 135-143 Daniel St.
6. 142 Mill Pond Way

NEW BUSINESS

Case #9-6

Petitioners:	Todd Creamer, owner, Todd & Cari M. Feingold, applicants
Property:	199 Union Street
Assessor Plan:	Map 135, Lot 69
Zoning District:	General Residence C (GRC)
Description:	10' x 14' replacement shed.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> 1. A Variance from Section 10.521 to allow a 2'± right side yard setback where 10' is required. 2. A 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.

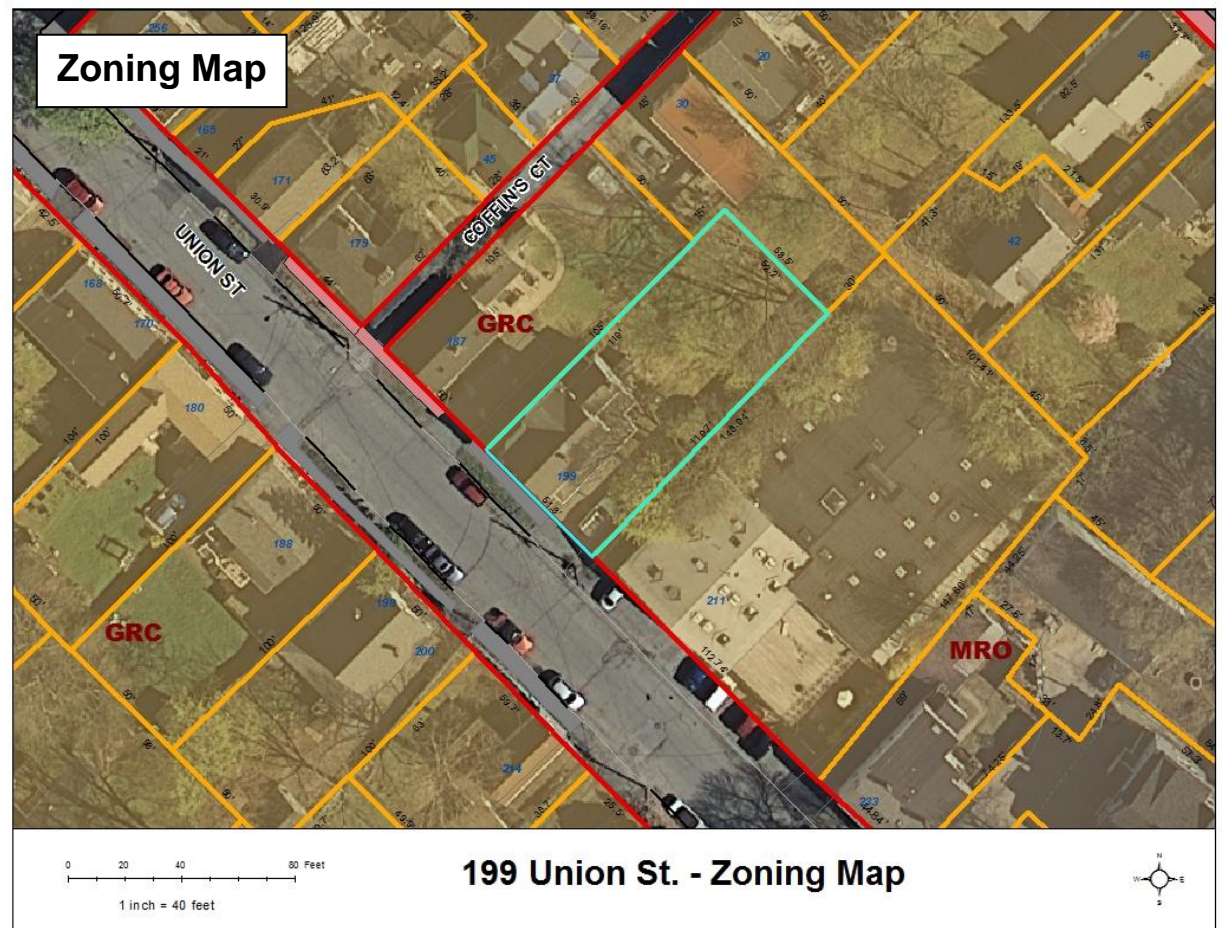
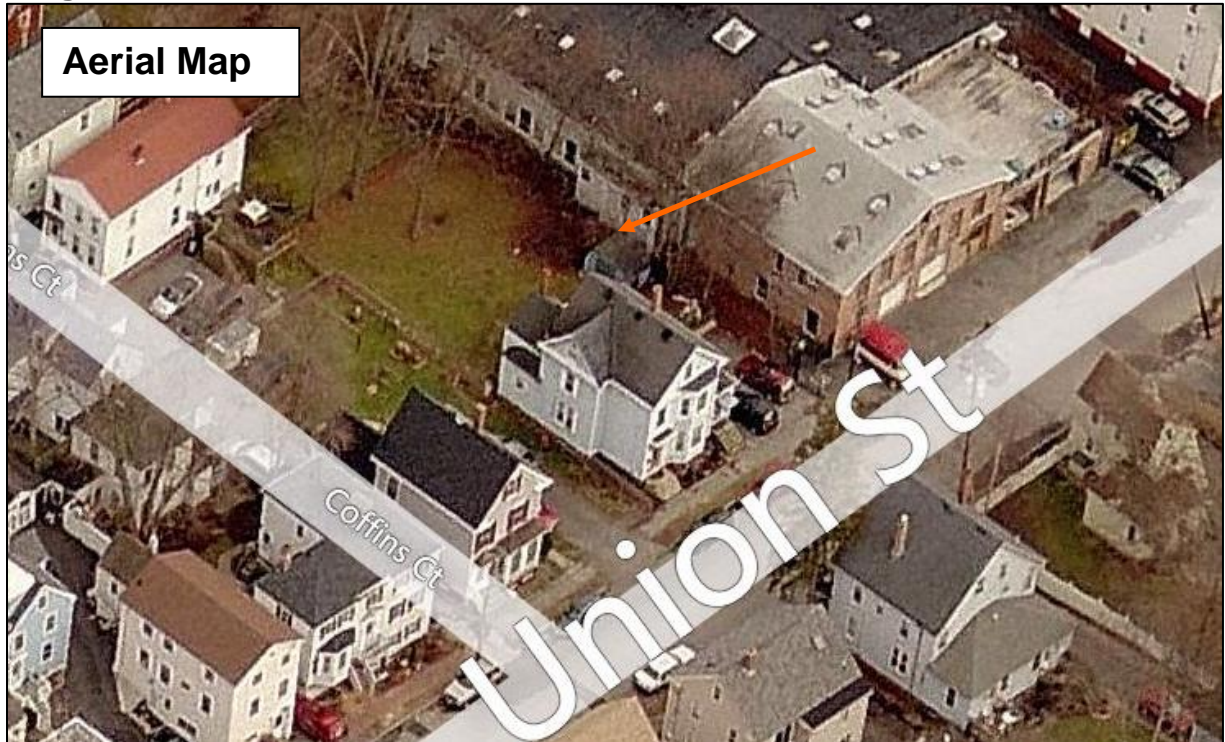
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Replacement shed	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	6,098	6,098	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,098	6,098	3,500 min.
<u>Street Frontage (ft.):</u>	51.8	51.8	70 min.
<u>Lot depth (ft.):</u>	119	119	50 min.
<u>Primary Front Yard (ft.):</u>	>5	>5	5 min.
<u>Right Yard (ft.):</u>	2	2'	10 min.
<u>Left Yard (ft.):</u>	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	>20	>20	20 min.
<u>Height (ft.):</u>	8 (shed)	9 (shed)	35 max.
<u>Building Coverage (%):</u>	21.4	22.1	35 max.
<u>Open Space Coverage (%):</u>	70.4	69.7	20 min.
		Variance request shown in red.	

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

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 #9-7

Petitioners: Pamela Thacher, owner, Charles Seefried, applicant
 Property: 180 Middle Street
 Assessor Plan: Map 127, Lot 8
 Zoning District: Mixed Residential Office (MRO), Historic District (HD)
 Description: Creation of five dwelling units.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. A Variance from Section 10.521 to allow the following: (a) a lot area per dwelling unit of 4,763± s.f. where 7,500 s.f. is required; (b) a 1'± right side yard setback for the carriage house where 10' is required; and (c) a 0.8'± rear yard setback for the carriage house where 15' is required.
 2. A Variance from Section 10.1114.20 to allow a two-way maneuvering aisle in the parallel parking space area of 16'± where 24' is required.

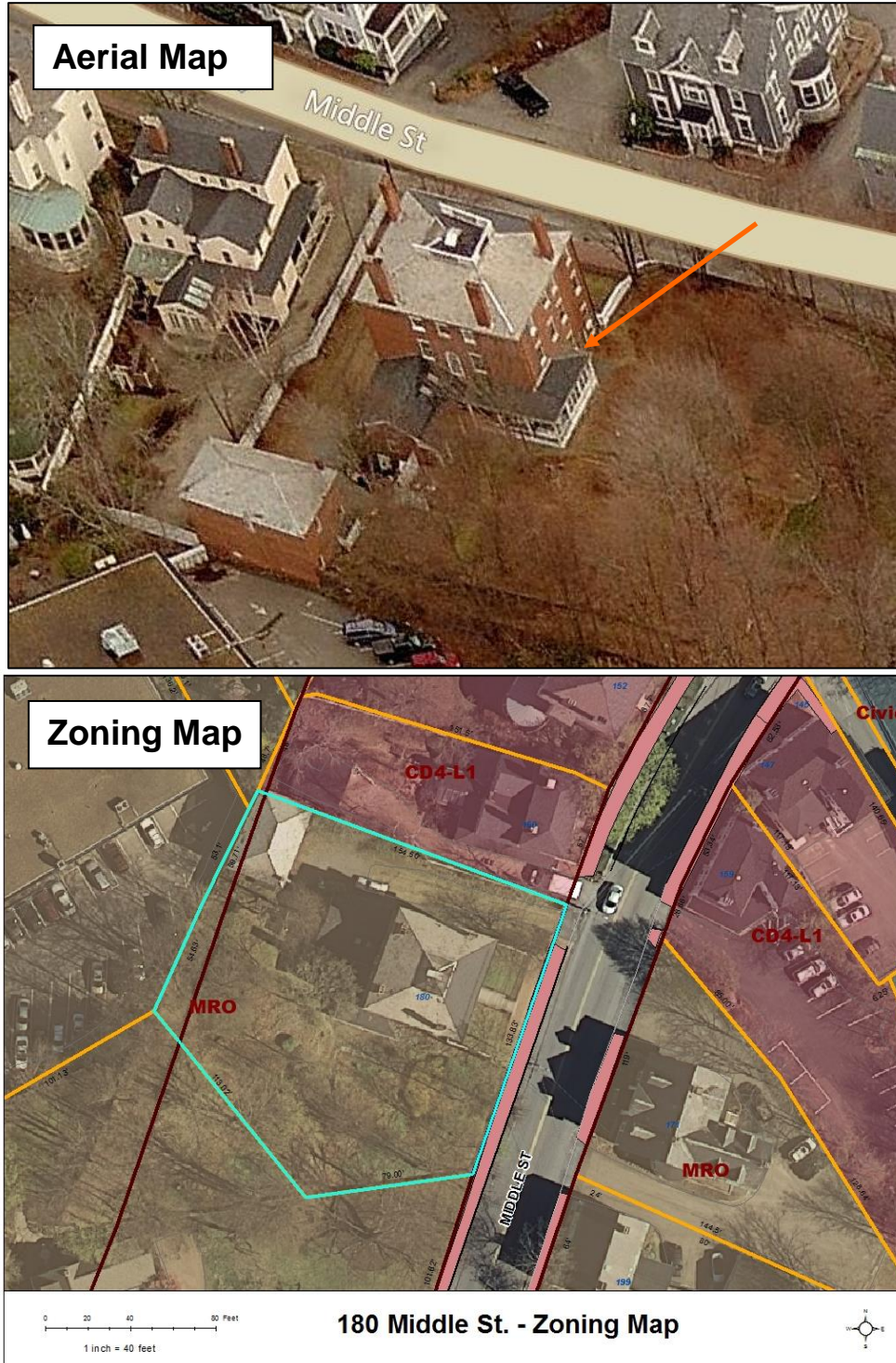
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Multi-Family	Mixed Residential/Office Uses
<u>Lot area (sq. ft.):</u>	23,816	23,816	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	23,816	4,763	7,500 min.
<u>Street Frontage (ft.):</u>	>100	>100	100 min.
<u>Lot depth (ft.):</u>	>80	>80	80 min.
<u>Primary Front Yard (ft.):</u>	>5	>5	5 min.
<u>Right Yard (ft.):</u>	1	1 (carriage house)	10 min.
<u>Left Yard (ft.):</u>	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	0.8	0.8 (carriage)	15 min.
<u>Height (ft.):</u>	<40	<40	40 max.
<u>Building Coverage (%):</u>	18.4	18.4	40 max.
<u>Open Space Coverage (%):</u>	69.6	52.1	25 min.
<u>Estimated Age of Structure:</u>	1815	Variance request shown in red.	

Other Permits Required

Historic District Commission
Planning Board -Site Plan Review

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

This project is currently working with the HDC and scheduled to go to public hearing in October. The setback relief needed for the carriage house is because it is being converted from an accessory structure into a dwelling unit.

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 #9-8

Petitioners: Woodbury Cooperative Inc.
 Property: 1338-1342 Woodbury Avenue
 Assessor Plan: Map 237, Lot 70
 Zoning District: Mixed Residential Business (MRB)
 Description: Addition of four manufactured homes.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,149'± s.f. where 7,500 s.f. is required; and (b) to allow right side yard setbacks for the four manufactured home units respectively of 6.4'±, 7.3'±, 2.5'±, and 1.7'± where 10' is required.
 2. A Variance from Section 10.334 to allow a lawful nonconforming use to be extended, enlarged or changed except in conformity with the Ordinance.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mobile homes	4 new Single mobile homes	Primarily Mixed Uses
<u>Lot area (sq. ft.):</u>	66,121	66,121	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,480	3,419	7,500 min.
<u>Street Frontage (ft.):</u>	>100	>100	100 min.
<u>Lot depth (ft.):</u>	>80	>80	80 min.
<u>Primary Front Yard (ft.):</u>	>5	>5	5 min.
<u>Right Yard (ft.):</u>		6.4, 7.3, 2.5, 1.7	10 min.
<u>Left Yard (ft.):</u>	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	>15	>15	15 min.
<u>Height (ft.):</u>	<35	<35	40 max.
<u>Building Coverage (%):</u>	23	21.2	40 max.
<u>Open Space Coverage (%):</u>	52	52	25 min.
		Variance request shown in red.	

Other Permits Required

Planning Board - Site Plan Review.

Neighborhood Context



Previous Board of Adjustment Actions

May 25, 2004 - The Board **granted** a variance to replace a pre-existing non-conforming trailer that was claimed to be unsafe with a newer trailer of the same size.

May 24, 2005 – The Board **granted** a variance to allow a 14' x 56' mobile home replacing a 10' x 56' mobile home destroyed by fire.

August 19, 2011 – The Board **granted** a variance to construct an 8' x 14' rear sunroom with a 12' rear yard setback, 15' required.

December 17, 2013 – The Board **granted** variances to allow a recreational vehicle to be used as a residence and to allow a lawful nonconforming use to be enlarged or changed without conforming to the requirements of the Ordinance. The variances were granted with the stipulation that they were granted for a one-year period from the date of the December meeting and would lapse if the recreational vehicle was not replaced by a manufactured housing structure by December 17, 2014.

Planning Department Comments

The homeowners have formed the cooperative in order to improve the site conditions. All four of the proposed mobile homes will encroach into the side yard setback at different distances. It appears the new homes could be in a more uniform alignment in relation to the side property line as opposed to the varied distances that are proposed.

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 #9-9

Petitioners: Benjamin A. Solomon
 Property: 38 Summit Avenue
 Assessor Plan: Map 230, Lot 2
 Zoning District: Single Residence B (SRB)
 Description: Addition of two front window dormers.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. A Variance from Section 10.521 to allow an 18'± front yard setback where 30' is required.
 2. A 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.

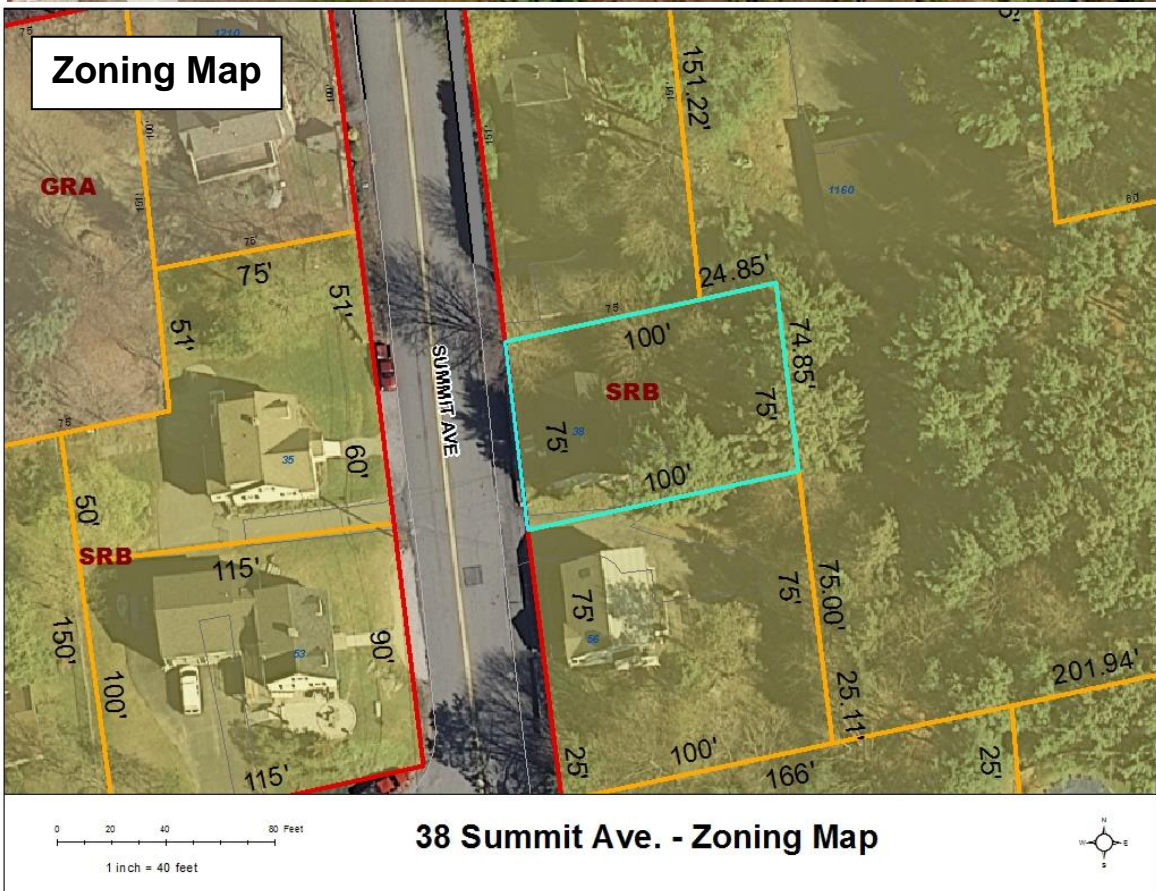
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Single Family addition	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	7,405	7,405	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,405	7,405	15,000 min.
<u>Street Frontage (ft.):</u>	75	75	100 min.
<u>Lot depth (ft.):</u>	100	100	100 min.
<u>Primary Front Yard (ft.):</u>	3'	18'	30 min.
<u>Right Yard (ft.):</u>	>10	>10	10 min.
<u>Left Yard (ft.):</u>	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	>30	>30	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	15	15	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Estimated Age of Structure:</u>	1933	Variance request shown in red.	

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing two front dormers on the existing house which currently sits within the front yard setback. Due to its nonconformity, any extension or enlargement of the structure must conform to the regulations of the ordinance, thus the need for a variance to permit the encroachment into the setback (Section 10.321).

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 #9-10

Petitioners:	143 Daniel Street LLC
Property:	135 – 143 Daniel Street
Assessor Plan:	Map 105, Lot 19
Zoning District:	Character District 4 (CD4), Character District 5 (CD5), Historic District (HD), and Downtown Overlay District (DOD)
Description:	Create additional underground parking space.
Requests:	<p>Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <p>1. A Variance from Section 10.1114.20 to allow an 8'± x 16' ± parking space where an 8½' x 19' space is required; and (b) to allow a 16' ± wide travel aisle where a 24' wide travel aisle is required.</p>

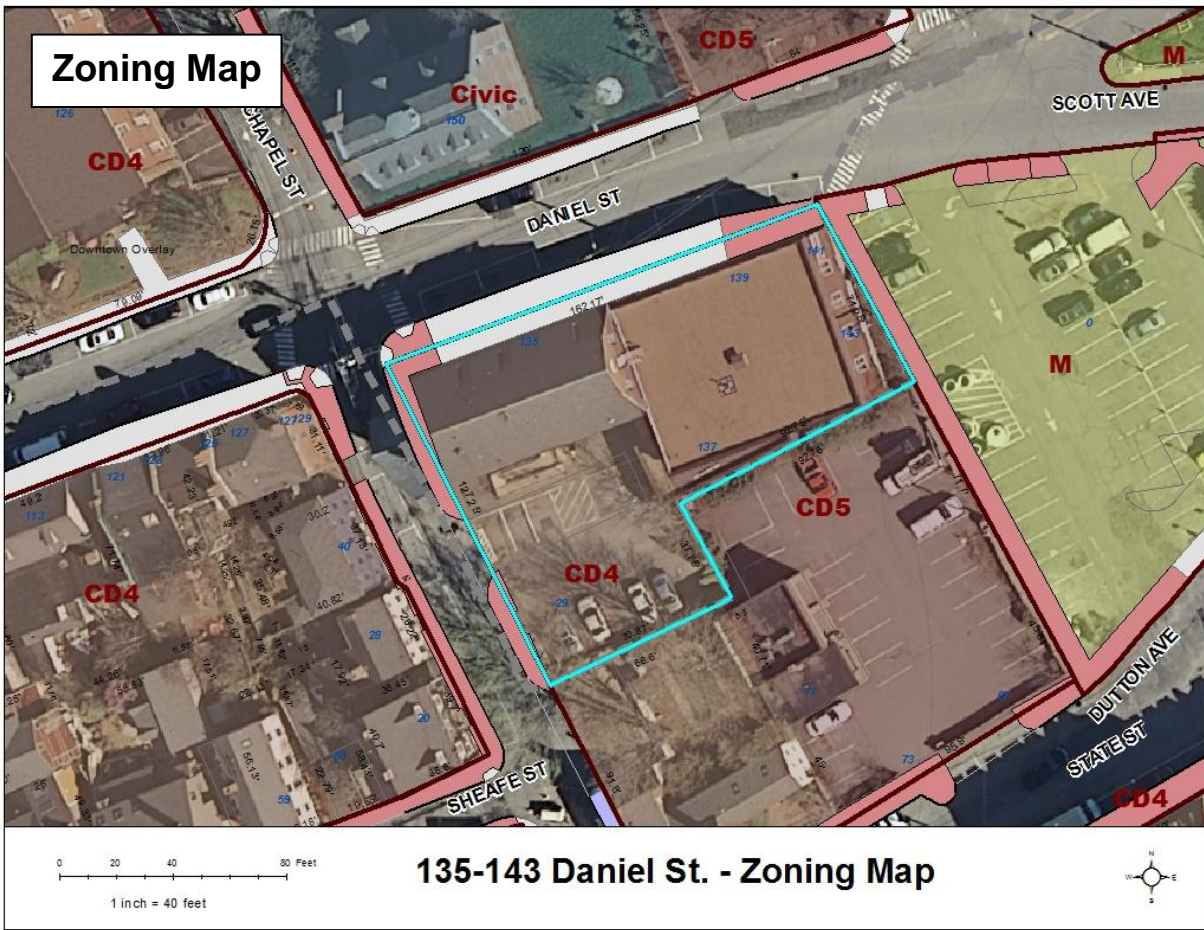
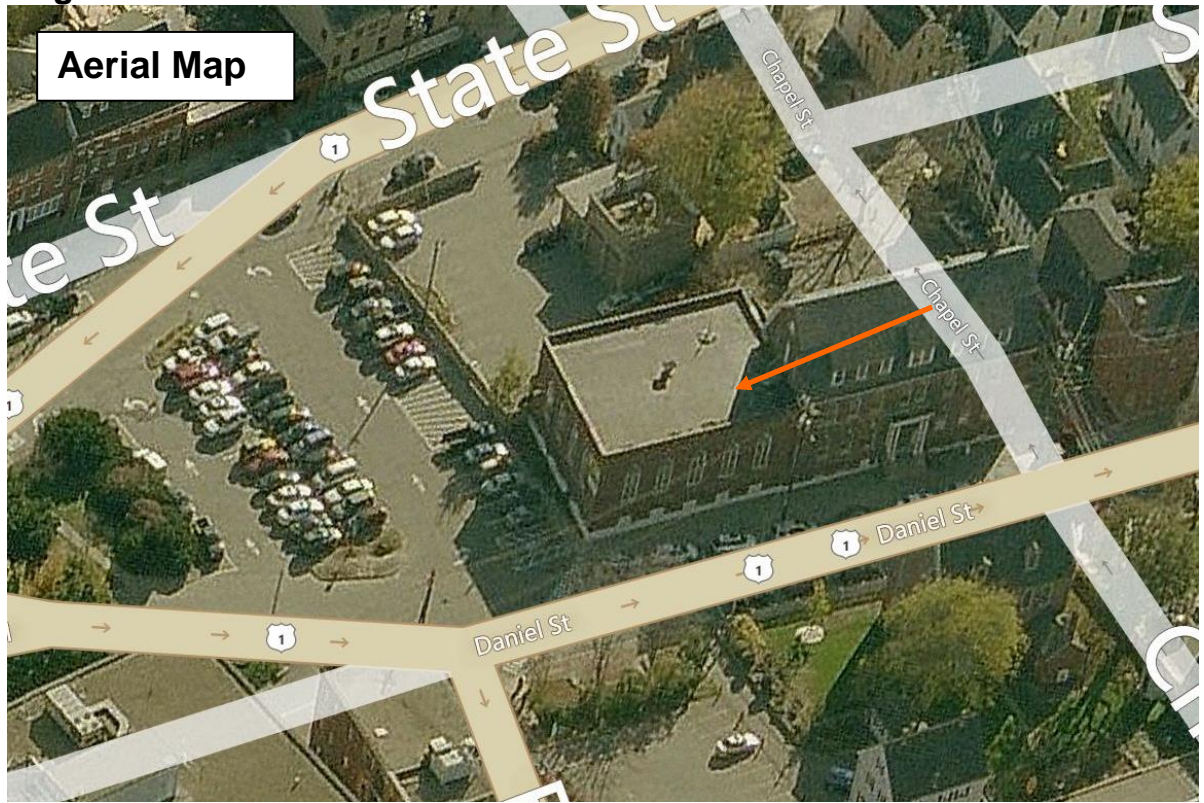
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed Use	Addition of parking space	Mixed Use
<u>Width of Parking Space (ft.):</u>		8.0	8.5
<u>Depth of Parking Space (ft.):</u>		16	19
<u>Width of Travel Aisle (ft.):</u>		16	24
		Variance request shown in red.	

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

April 23, 2013 – The Board **granted** variances to allow a ground floor residential use in the Downtown Overlay District; accessory off-street parking facilities providing spaces for more than 2 vehicles to be located within 30' of Daniel Street; and a parking layout with a 20.8' wide maneuvering aisle and driveways where a 24' width is required. The Variances were granted with the following **stipulations** and Other **notations**:

Stipulations:

- That, as represented by the applicant, the variances (from Article 10.642.1) associated with the residential principal use on the ground floor will be confined to the portion of the building identified as the “1916 portion” and to the building to be newly constructed on Chapel Street.
- That the variance (from Article 10.1114.20) is granted for a 20'± wide maneuvering aisle and not 20.8' as advertised.

Other:

The Board recognized that the specific requirements of the Downtown Overlay District Ordinance include a prohibition on ground floor residential uses, but noted that the general purposes of the Ordinance also include the preservation of historic districts, buildings and structures. In this particular case, the Board determined that adapting the original 1916 portion of the building for a commercial use would require modifications that would damage its historic character, and that such modifications are not required for converting the building to residential use.

With respect to allowing ground floor residential use in the proposed new building, the Board considered the narrowness and residential character of Chapel Street, and determined that a new residential use would have less impact on the neighboring residences than a new nonresidential use.

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 #9-11

Petitioners:	Ethel V. Ross Trust
Property:	142 Mill Pond Way
Assessor Plan:	Map 140, Lot 20
Zoning District:	General Residence A (GRA)
Description:	Construct three townhouses.
Requests:	Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Special Exception from Section 10.440, Use #1.51 to allow three dwelling units on a lot where they are only allowed by special exception.

Existing & Proposed Conditions

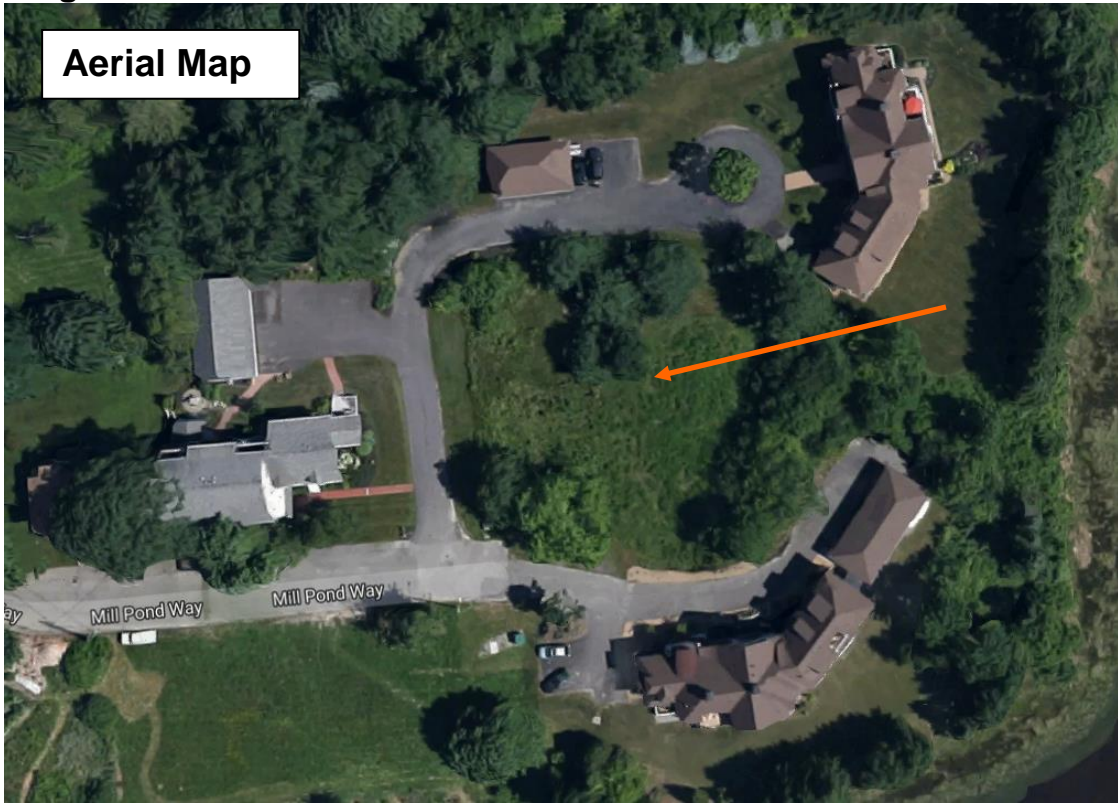
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant	Three Unit Attached Townhouse	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	22,614	22,614	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	22,614	7,538	7,500 min.
<u>Street Frontage (ft.):</u>	50.4	50.4	100 min.
<u>Lot depth (ft.):</u>	>70	>70	70 min.
<u>Primary Front Yard (ft.):</u>		>15	15 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>Height (ft.):</u>		<35	35 max.
<u>Building Coverage (%):</u>		<25	25 max.
<u>Open Space Coverage (%):</u>		59	30 min.

Other Permits Required

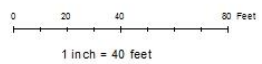
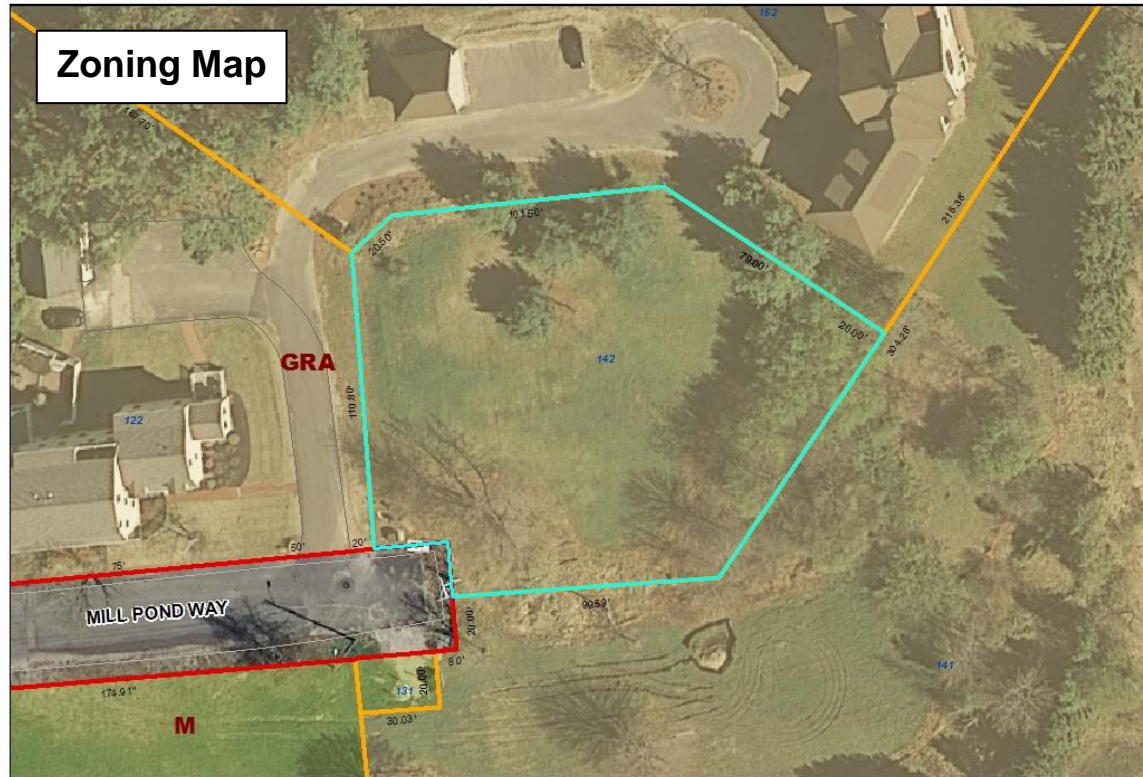
Planning Board – Site Plan Review.

Neighborhood Context

Aerial Map



Zoning Map



142 Mill Pond Way - Zoning Map



Previous Board of Adjustment Actions

No BOA history found.

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.*