

TO: Zoning Board of Adjustment  
FROM: Peter Stith, AICP, Planning Department  
DATE: December 12, 2017  
RE: Zoning Board of Adjustment December 19, 2017 Meeting

**NEW BUSINESS**

1. 75 (63 ) Congress Street - Withdrawn
2. 33 Holmes Court
3. 75 Humphreys Court
4. 87 Union Street
5. 361 Islington Street
6. 1166 Greenland Road
7. 917 Greenland Road
8. 86 Emery Street

**Case #12-1**

Petitioners:	Michael De La Cruz
Property:	75 (63) Congress Street
Assessor Plan:	Map 1, Unit 1
Zoning District:	Character District 5 (CD-5)
Description:	Construct 15 residential units.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.1112.30 to allow no off-street parking spaces to be provided where off-street parking spaces are required.

## Case #12-2

Petitioners: Brenda J. Bouchard Revocable Trust of 1999  
 Property: 33 Holmes Court  
 Assessor Plan: Map 101, Lot 12  
 Zoning District: General Residence B (SRB)  
 Description: Install rear condenser.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
 1. A Variance from Section 10.573.10 to allow a 3'± right side yard setback and a 1'4"± rear yard setback where 5' is required for both.

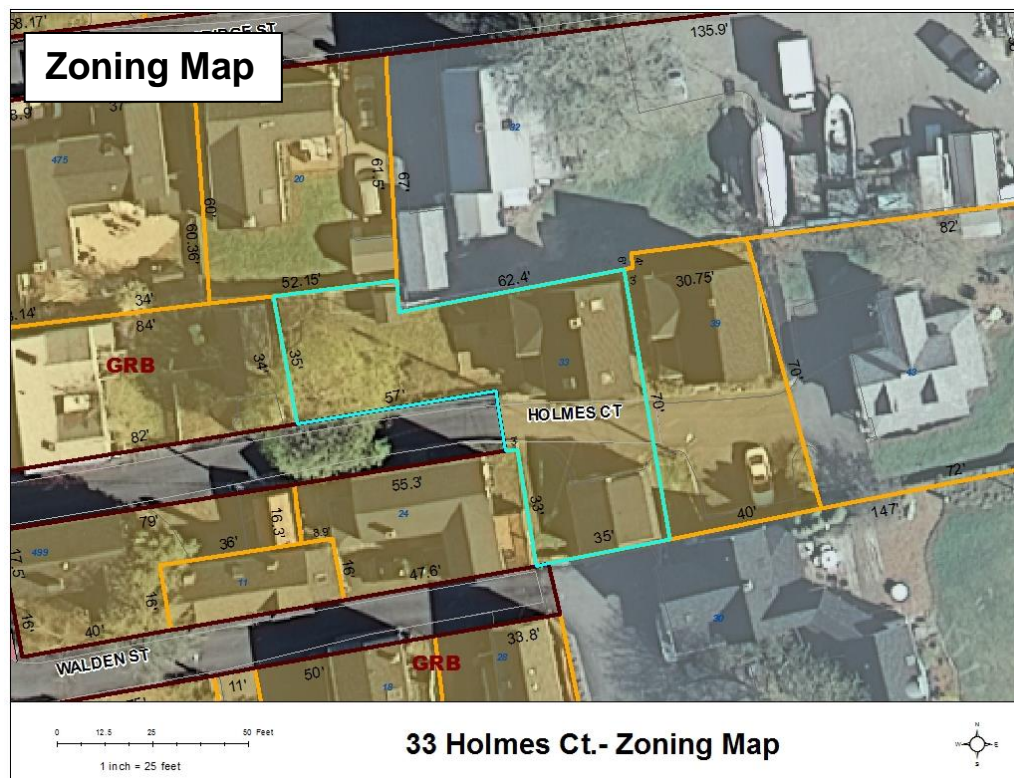
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Add rear condenser	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	4,792	4,792	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,792	4,792	5,000 min.
<u>Street Frontage (ft.):</u>	75	75	80 min.
<u>Lot depth (ft.):</u>	75	75	60 min.
<u>Primary Front Yard (ft.):</u>	10	10	5 min.
<u>Right Yard (ft.):</u>	3	<b>3</b>	10 min.
<u>Left Yard (ft.):</u>	>60	>60	10 min.
<u>Rear Yard (ft.):</u>	3	<b>1.4</b>	25 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	<30	<30	30 max.
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Parking</u>	0	ok	ok
<u>Estimated Age of Structure:</u>	1880	<b>Variance request shown in red.</b>	

### Other Permits Required

Historic District Commission (Approved on 11/1/17 with stipulation that “subject to BOA approval, the condenser shall be located at the rear of the structure.”)

## Neighborhood Context



## Previous Board of Adjustment Actions

May 15, 1994 – A petition to allow an 18' x 20.5' garage in the same footprint, 20' in height and with a full dormer on the left side located within the required front yard and

nearer to the side lot line than 75% of the height was **withdrawn**, noting resubmittal in June.

June 18, 1994 – The Board **denied** the above request, with particular reference to the proposed dormer.

July 19, 1994 – The Board granted a rehearing of the request.

August 16, 1994 – The Board **granted** the variances with the stipulation that the height of the garage would be no higher than 18’ and that there would be no cable, telephone or heat hookups in the garage.

## **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 #12-3

Petitioners: James C. and Amy M. Baker  
 Property: 75 Humphreys Court  
 Assessor Plan: Map 101, Lot 37  
 Zoning District: General Residence B (GRB)  
 Description: Replace and expand a rear addition.  
 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'± rear yard setback where 25' 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.

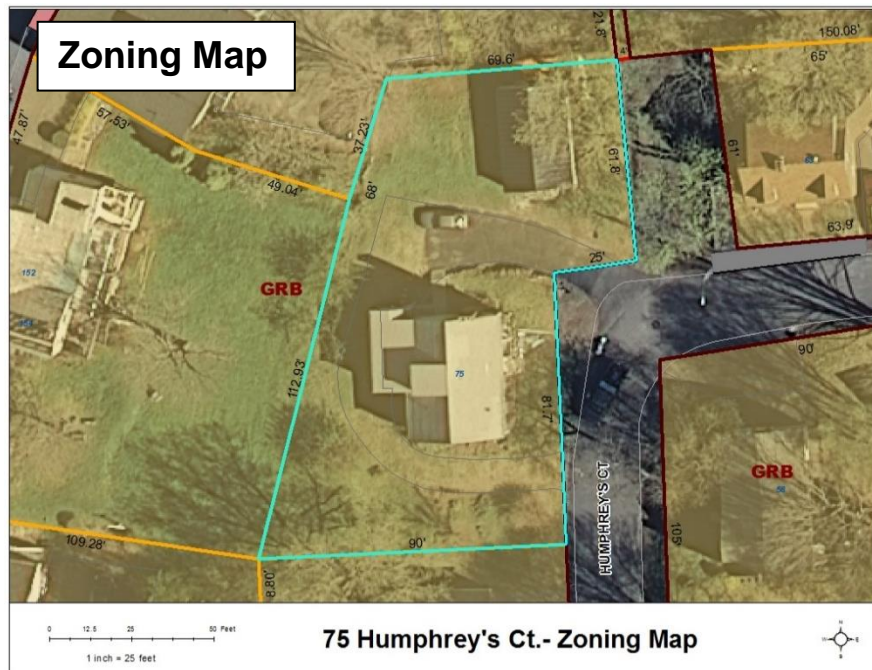
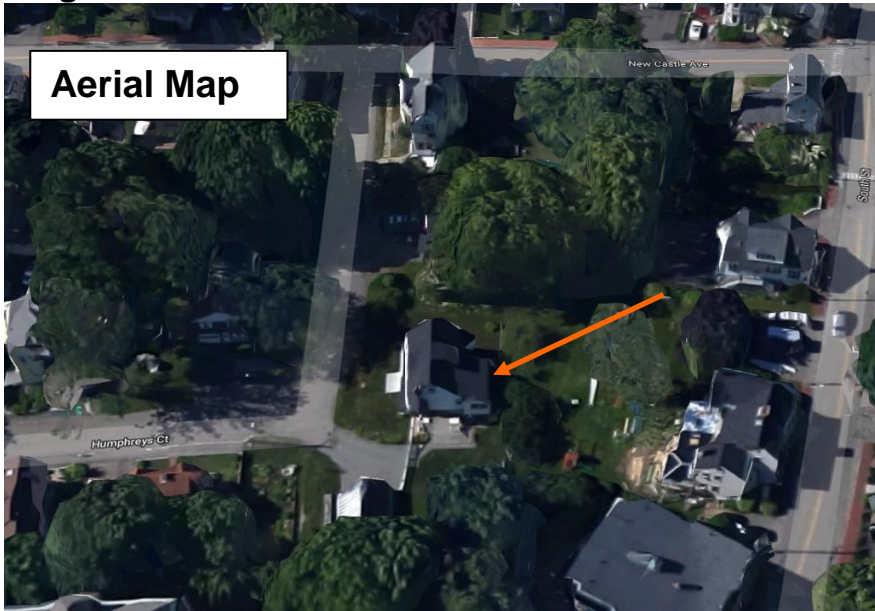
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Rear addition	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	11326	11326	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11326	11326	5,000 min.
<u>Street Frontage (ft.):</u>	106	106	80 min.
<u>Lot depth (ft.):</u>	80	80	60 min.
<u>Primary Front Yard (ft.):</u>	14	14	5 min.
<u>Right Yard (ft.):</u>	>10	>10	10 min.
<u>Left Yard (ft.):</u>	33	33	10 min.
<u>Rear Yard (ft.):</u>	17	<b>18</b>	25 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	<30	<30	30 max.
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Parking</u>	0	ok	ok
<u>Estimated Age of Structure:</u>	1961	<b>Variance request shown in red.</b>	

### Other Permits Required

Historic District Commission.

## 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 #12-4

Petitioners: Joseph D. Bezanson & Chelsea M. Ladd  
 Property: 87 Union Street  
 Assessor Plan: Map 145, Lot 66  
 Zoning District: General Residence C (GRC)  
 Description: Construct 17' x 10' left rear deck.  
 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 8'± left 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

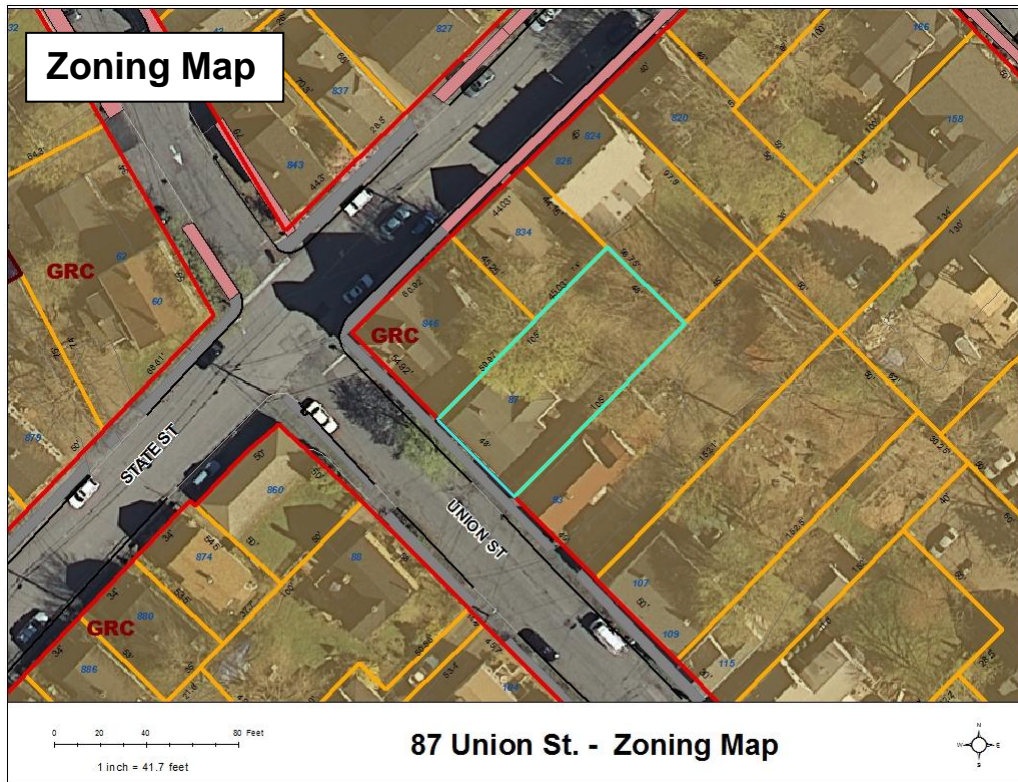
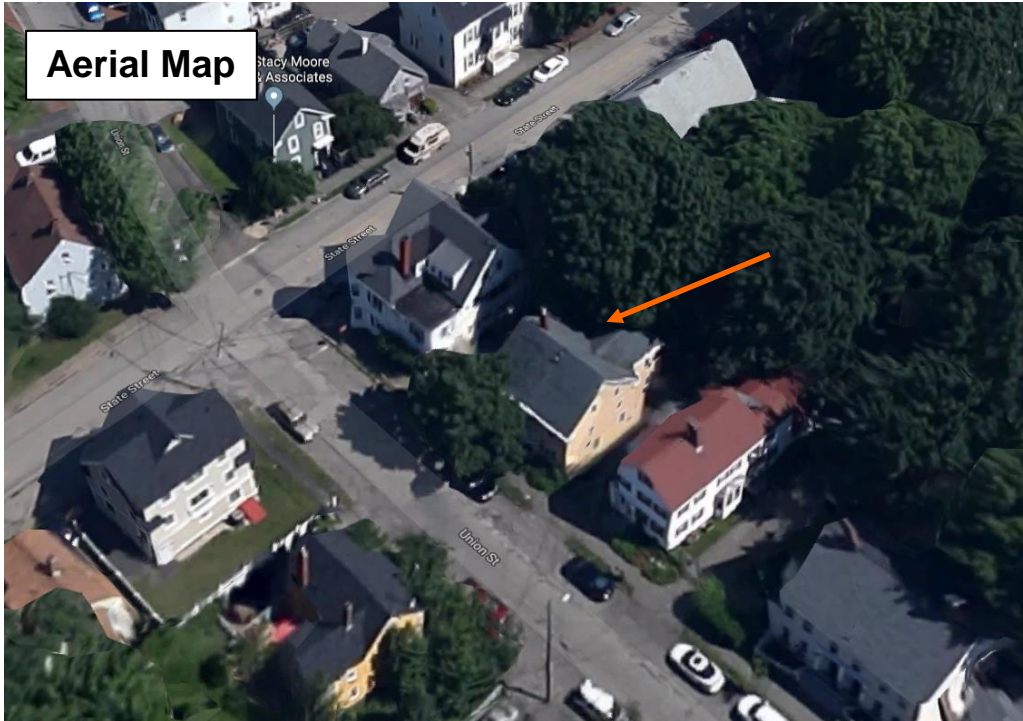
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two-family	Rear addition	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	5,227	5,227	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,227	5,227	3,500 min.
<u>Street Frontage (ft.):</u>	48	48	70 min.
<u>Lot depth (ft.):</u>	105	105	50 min.
<u>Primary Front Yard (ft.):</u>	5	5	5 min.
<u>Right Yard (ft.):</u>	11	11	10 min.
<u>Left Yard (ft.):</u>	6	<b>8</b>	10 min.
<u>Rear Yard (ft.):</u>	>20	>20	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	<30	<30	35 max.
<u>Open Space Coverage (%):</u>	>20	>20	20 min.
<u>Parking</u>	0	ok	ok
<u>Estimated Age of Structure:</u>	1882	<b>Variance request shown in red.</b>	

### Other Permits Required

None.



# Neighborhood Context



## **Previous Board of Adjustment Actions**

November 18, 1980 – The Board **granted** a special exception to allow the conversion of a single family dwelling to two apartments and a variance to allow a lot area per family of 2,570 s.f. where 3,000 s.f. was required.

## **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 #12-5

Petitioners:	Lucky Thirteen Properties LLC, owner, Lexie's Portsmouth, LLC, applicant.
Property:	361 Islington Street
Assessor Plan:	Map 144, Lot 23
Zoning District:	Character District 4- Limited 2 (CD4-L2)
Description:	Convert existing building plus 90 s.f. addition to restaurant use.
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"> <li>1. A Variance from Section 10.5A41.10A to allow the following: a) a secondary front yard of 66'± where 12' is the maximum permitted; b) a 30'± left side yard setback where 20' is the maximum permitted; c) 14.9%± open space where 25% is the minimum required; and d) shopfront façade glazing of 47%± where 17% exists and 70% is the minimum required.</li> <li>2. A Variance from Section 10.1113.20 to allow off-street parking to be located in a required front yard between the principal building and a street.</li> <li>3. A Variance from Section 10.5A44.31 to allow off-street parking spaces to be located less than 20' behind the façade of a principal building.</li> <li>4. 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.</li> </ol>

### Existing & Proposed Conditions

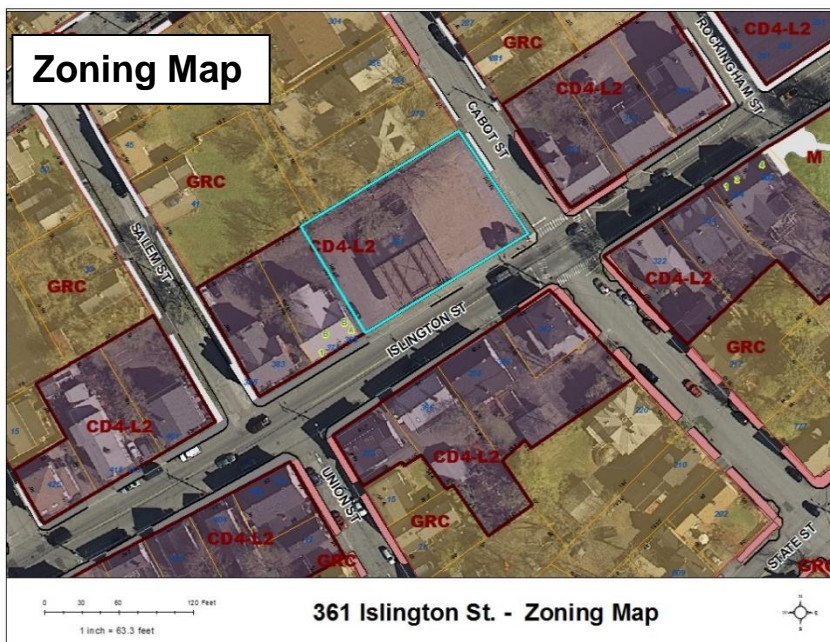
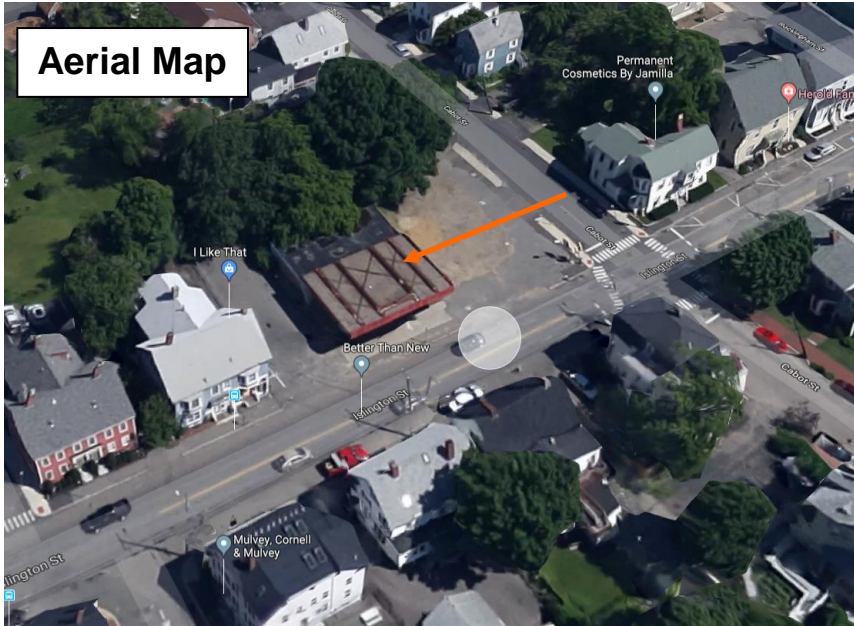
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant gas station	Restaurant	Primarily Mixed Uses
<u>Max. Principal Front Yard:</u>	2.5	2.5	15 ft.
<u>Max. Secondary Front Yard:</u>	66	<b>66</b>	12 ft.
<u>Left Side Yard:</u>	34	<b>30</b>	5 – 20 ft. max.
<u>Min. Rear Yard</u>	32	32	5 ft. or 10 ft. from alley centerline
<u>Min. Front Lot Line Buildout</u>	>50	>50	60%-80%
<u>Min. Lot Area</u>	15,114	15,114	3,000 sf
<u>Min. Open Space</u>		<b>14.9</b>	25%
<u>Façade Glazing</u>	17%	<b>47%</b>	25% to 40% (70% min for shopfront)
<u>Parking (# of spaces)</u>	16	15	15
<u>Estimated Age of Structure:</u>	1850	<b>Variance request shown in red.</b>	

## Other Permits Required

Planning Board – Site Review

Historic District Commission

## Neighborhood Context



## Previous Board of Adjustment Actions

January 30, 1956 – The Board **granted** a request to erect a filling station.

February 19, 2002 – The Board **denied** a request to allow a Ryder Truck renting facility with three trucks on display where the use was not allowed and to allow a nonconforming accessory use in addition to the existing nonconforming use.

May 28, 2013 – A petition to construct a multi-use building with first floor Laundromat and second floor office space within a building footprint of 3,030± s.f. was **withdrawn** by the applicant.

August 19, 2014 - The Board **granted** a variance to allow the detailing of automobiles in a district where the use was not allowed.

### **Planning Department Comments**

This project is currently going through HDC review and will go through site plan review (TAC and PB) prior to receiving any permits. The legal notice stated a 28' side setback for the proposed addition based on staff review of the application. After the notice was sent, the applicant provided a revised plan showing 30' for the side setback (original request in the application was for a 34' side setback). The maximum side setback allowed is 20 feet. Typically, setbacks are minimum distances, but in the Character districts some of the setbacks are maximums.

### **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 #12-6

Petitioners:	National Propane LP c/o Amerigas Eagle Propane, owner and Granite States Gas Transmission Inc dba Unitil, applicant
Property:	1166 Greenland Road
Assessor Plan:	Map 280, Lot 2
Zoning District:	Industrial District (I)
Description:	Install fence and utility structure.
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"> <li>1. A Special Exception under Section 10.440 Use #15.12 to allow a utility related structure providing a community-wide or regional service where the use is only allowed by special exception.</li> <li>2. A Variance from Section 10.521 to allow an 8'± primary front yard setback where 70' is required.</li> </ol>

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Propane company	Construct utility structure	Primarily Industrial Uses
<u>Lot area (sq. ft.):</u>	100,188	100,188	87,120 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	NA	NA
<u>Street Frontage (ft.):</u>	48	48	200 min.
<u>Lot depth (ft.):</u>	105	105	200 min.
<u>Primary Front Yard (ft.):</u>	>70	<b>8</b>	70 min.
<u>Right Yard (ft.):</u>	>50	>50	50 min.
<u>Left Yard (ft.):</u>	>50	>50	50 min.
<u>Rear Yard (ft.):</u>	>50	50	50 min.
<u>Height (ft.):</u>	<70	<70	70 max.
<u>Building Coverage (%):</u>	<50	<50	50 max.
<u>Open Space Coverage (%):</u>	>20	>20	20 min.
		<b>Variance request shown in red.</b>	

### Other Permits Required

Planning Board – Site Review, Conditional Use Permit (Wetlands)  
 Conservation Commission – Conditional Use Permit

## Neighborhood Context



### Previous Board of Adjustment Actions

No BOA history found.

### Planning Department Comments

This project is currently going through the Conditional use permit (wetlands) and site review process.

## 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.*

## 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 #12-7

Petitioners: 409 Franklin Pierce Highway LLC  
 Property: 917 Greenland Road  
 Assessor Plan: Map 259, Lot 7  
 Zoning District: Single Residence B (SRB)  
 Description: Demolish existing structure and build new single-family dwelling.  
 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 and a lot area per dwelling unit of 11,760± s.f. where 15,000 s.f. is required; and b) an 18'± primary front yard setback where 30' is required.

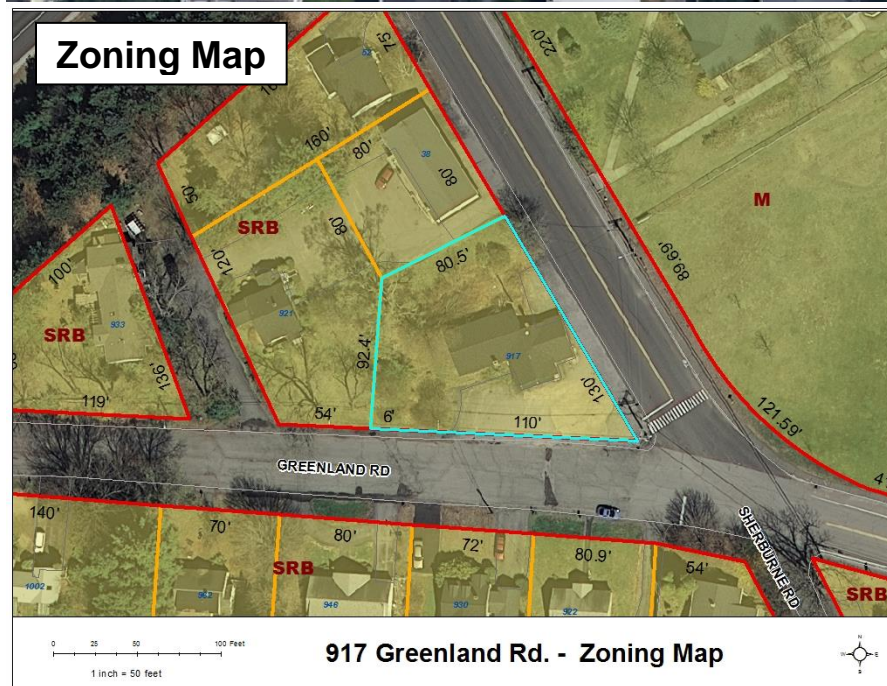
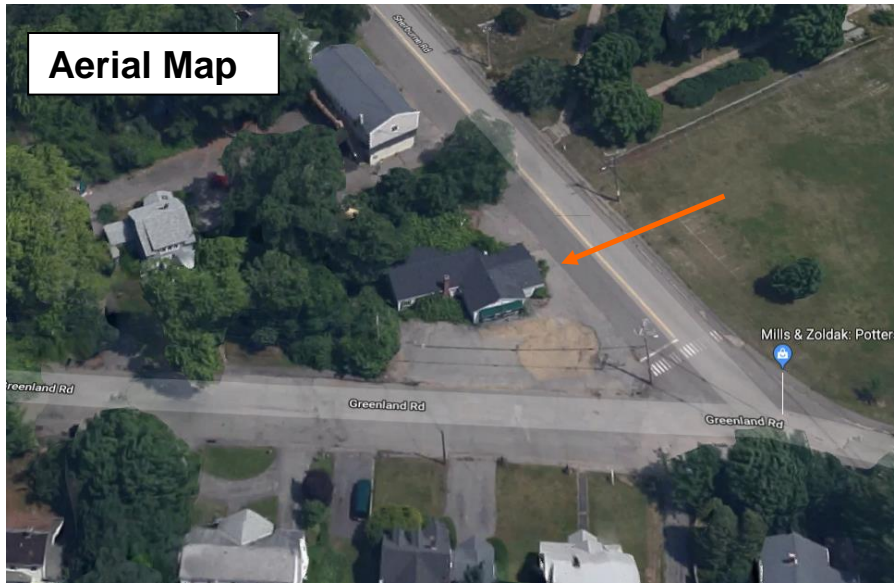
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant store	Construct single-family dwelling	Primarily residential Uses
<u>Lot area (sq. ft.):</u>	100,188	<b>11,760</b>	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	<b>11,760</b>	15,000
<u>Street Frontage (ft.):</u>	118	118	100 min.
<u>Lot depth (ft.):</u>	>100	>100	100 min.
<u>Primary Front Yard (ft.):</u>	21	<b>18</b>	30 min.
<u>Secondary Front Yard (ft.):</u>	6	31	30 min.
<u>Left Yard (ft.):</u>	34	20	10 min.
<u>Rear Yard (ft.):</u>	42	30	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	17	16	20 max.
<u>Open Space Coverage (%):</u>	50	73	40 min.
		<b>Variance request shown in red.</b>	

### Other Permits Required

None.

## Neighborhood Context



### Previous Board of Adjustment Actions

August 18, 1978 – The Board **denied** a request to allow the operation of a lunch counter and to allow fewer than the 13 parking spaces required.

November 13, 2003 – The Board **granted** variances to allow the existing building to be used as a professional/business office in a district where the use was not allowed and to allow a 14' wide one way access way where 18' was required. The variances were granted with the stipulation that the hours of operation not exceed 8:00 a.m. through 7:00 p.m. Monday through Saturday.

## 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 #12-8**

Petitioners:	Kathryn Michele Arbour
Property:	86 Emery Street
Assessor Plan:	Map 220, Lot 87-1
Zoning District:	Single Residence B (SRB)
Description:	Second free-standing dwelling on a lot.
Requests:	Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.513 to allow a second free-standing dwelling a lot.

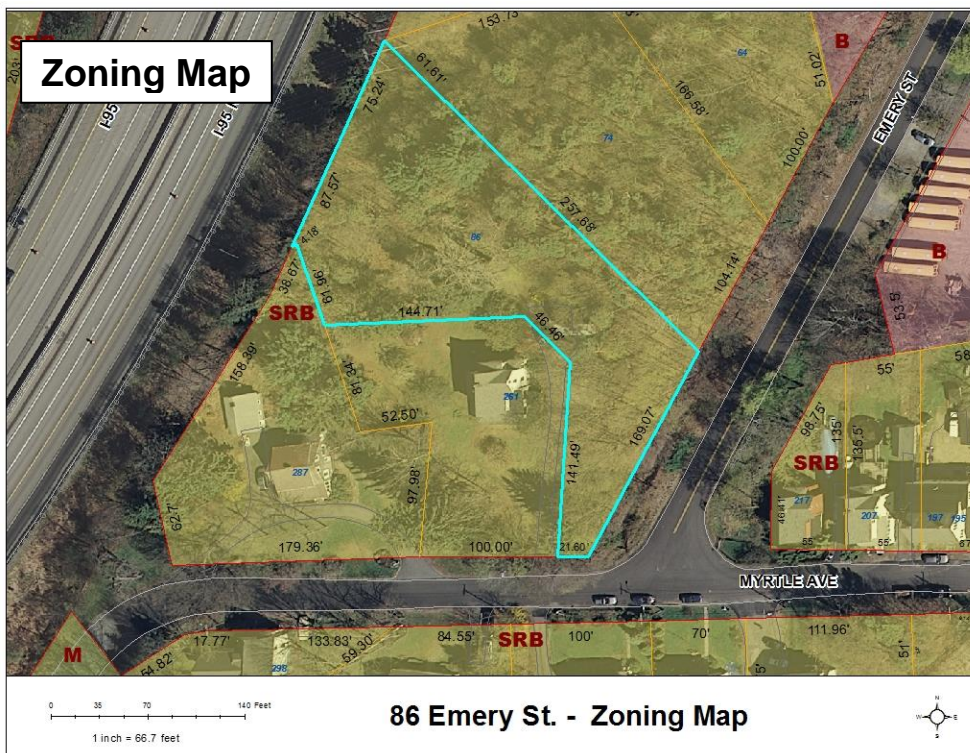
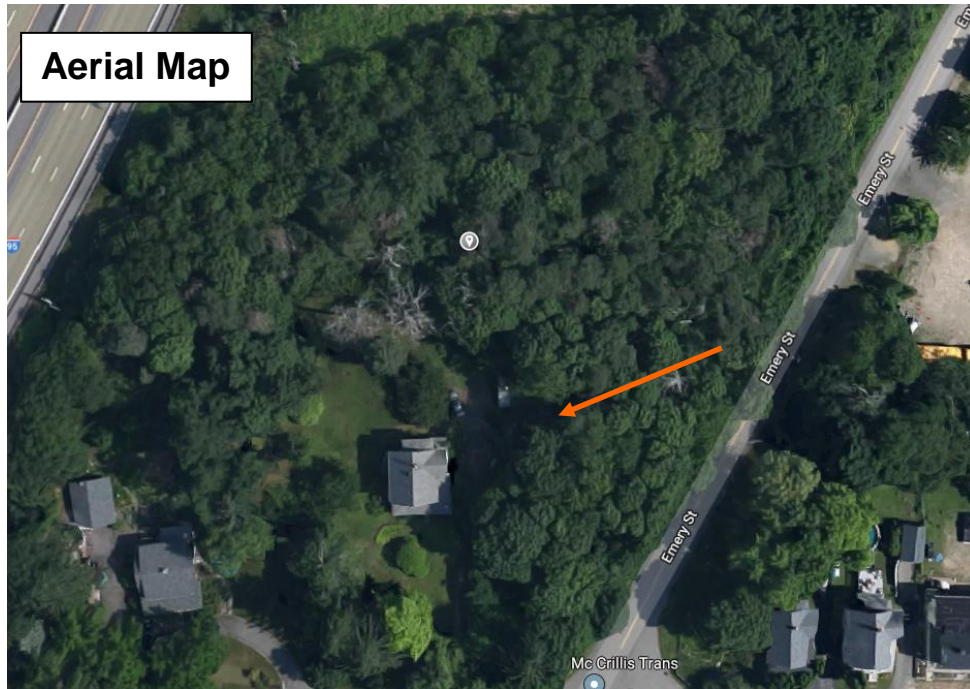
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Construct second dwelling on a lot	Primarily residential Uses
<u>Lot area (sq. ft.):</u>	39,204	39,204	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	39,204	19,602	15,000
<u>Street Frontage (ft.):</u>	190	190	100 min.
<u>Lot depth (ft.):</u>	>100	>100	100 min.
<u>Primary Front Yard (ft.):</u>		31	30 min.
<u>Right Side Yard (ft.):</u>		42	30 min.
<u>Left Yard (ft.):</u>		10	10 min.
<u>Rear Yard (ft.):</u>		>30	30 min.
<u>Height (ft.):</u>		<35	35 max.
<u>Building Coverage (%):</u>	1.83	3.74	20 max.
<u>Open Space Coverage (%):</u>	96.58	94.67	40 min.
		Variance request shown in red.	

**Other Permits Required**

None.

## Neighborhood Context



## Previous Board of Adjustment Actions

No BOA history found.

## Previous Board of Adjustment Actions

The property is located in a district where more than one principal dwelling on a lot is not permitted. All other requirements of the ordinance can be met for the second dwelling due to its size, however the property is irregularly shaped and if the applicant were to subdivide, additional variances would be needed in order to do so.

## 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.*