

TO: Zoning Board of Adjustment  
FROM: Peter Stith, AICP, Planning Department  
DATE: February 14, 2018  
RE: Zoning Board of Adjustment February 21, 2018 Meeting

## **OLD BUSINESS**

1. 996 Maplewood – Appeal

## **NEW BUSINESS**

1. 180 Sherburne Avenue
2. 50 Lovell Street
3. 325 Thaxter Road
4. 86 Emery Street
5. 465 Cutts Avenue
6. 287 Maplewood Avenue

***The following petitions will be heard on Tuesday February 27, 2018:***

7. 75 Congress Street
8. 530 Dennett Street
9. 242 State Street
10. 64 Mount Vernon
11. 201 Kearsarge Way
12. 225- 299 Vaughn
13. 57 Mount Vernon
14. 39 Sagamore Avenue

## OLD BUSINESS

### Case #12-1

Petitioners:	James M. Fernald
Property:	996 Maplewood Avenue
Assessor Plan:	Map 219, Lot 4
Zoning District:	Single Residence B District (SRB)
Description:	Appeal
Requests:	Appeal from an Administrative Decision regarding the issuance of a building permit for Unit C of the above property.

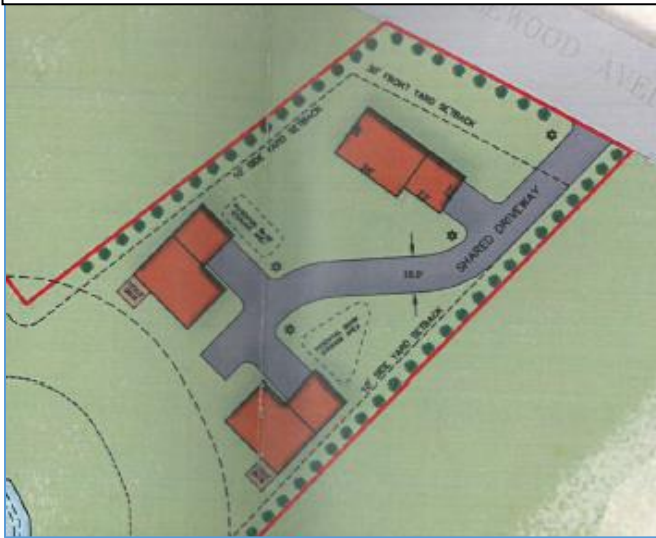
The applicant is appealing the issuance of a building permit for Unit C located at 996 Maplewood that was issued on November 15, 2017. On August 16, 2016, the BOA granted a variance for three dwellings on a single lot in the SRB district. Subsequently, the Planning Board granted Site Plan Review approval on December 15, 2016. In the original application submitted to the BOA, the square footage of each unit was originally estimated as 1,696 s.f. and the site plan approved by the Planning Board identified each unit as approximately 1,938 s.f. In both cases, the application complied with all applicable density and dimensional requirements of the zoning ordinance. The only nonconforming aspect of the proposal was the three free standing single family dwelling units on one lot, which became conforming based on the BOA approval.

The Planning Department does internal consistency reviews throughout the permitting process and, while the final architectural design and footprint changed (addition of a garage underneath, shorter and wider footprints for all units resulting in an actual square footage closer to 1910 s.f.), the overall proposal was found to be consistent with both the BOA's and the Planning Board's approvals. If that had not been the case, the applicant would have been advised to return to the BOA for a new variance and to the Planning Board for an amended site plan review approval.

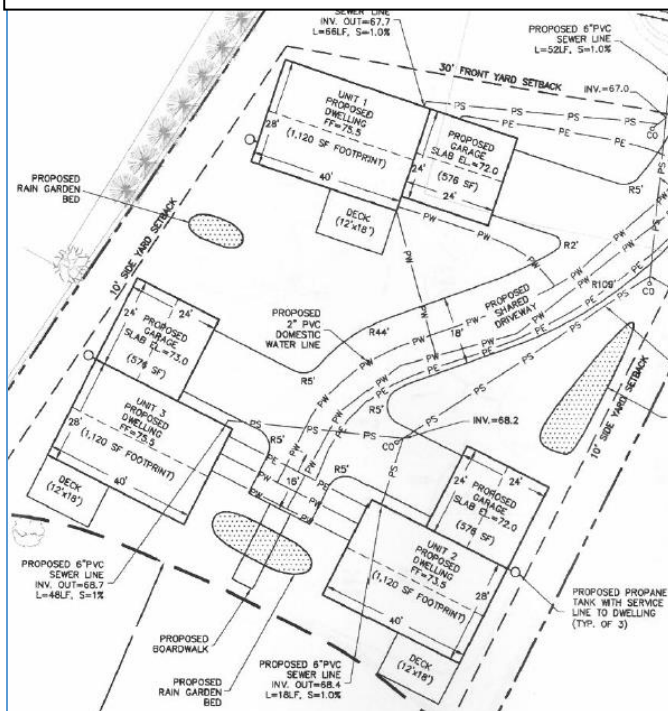
At the time the variance was granted in August 2016, the zoning ordinance did contain language that a variance or special exception shall expire after one year if a building permit is not issued. However, that language was not consistent with state law, which provides for a 2-year period before the approval expires. On January 9, 2017, the zoning ordinance was amended to be consistent with state law.

The first image below is the conceptual layout that was presented to the BOA at their August 16, 2016 meeting. The second and third images are from site plan submittals to the Planning Board for their review. The third image shows the final footprint that was approved.

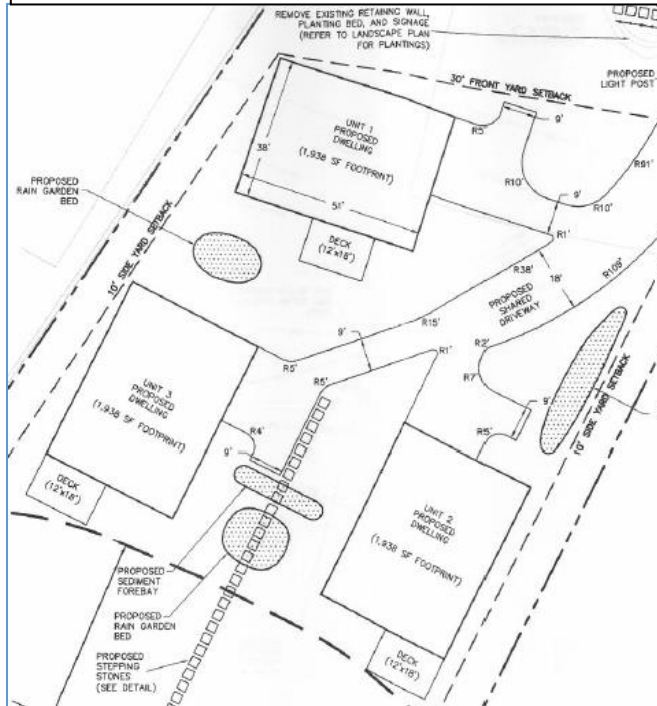
**Image 1: Concept Plan submitted to  
BOA on August 16, 2016**



**Image 2: Site Plan submitted to Planning  
Board on September 19, 2016**



**Image 3: Plan submitted to the Planning Board on November 16, 2016 showing final layout**



## Previous Board of Adjustment Actions

November 12, 1985 - The Board **granted** a Special Exception to allow construction of a greenhouse adjacent to an existing business.

May 27, 1997 – The Board **denied** a request to allow the sale of wedding apparel and formal wear in a grandfathered floral shop and to allow the expansion of a nonconforming retail floral business by selling wedding apparel and formal wear.

June 17, 1997 – The Board **denied** a request for rehearing regarding the above.

February 15, 2005 – The Board **denied** a request to allow a 4,944 s.f. chiropractic office on the first floor and one apartment on the second floor with associated parking where the current use was a retail florist.

June 28, 2005 – The Board **denied** a request to allow six dwelling units (a 4-unit and a 2-unit building) where only one dwelling per lot was allowed.

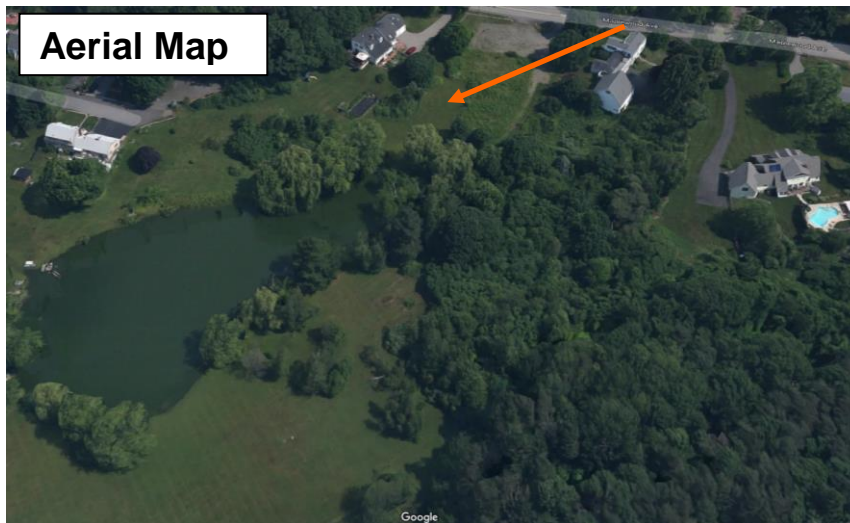
July 19, 2016 – The Board **denied** a request to construct five free-standing dwellings on a lot where one is the maximum allowed.

August 16, 2016 – The Board **granted** a variance to construct three free-standing dwellings allowing more than one free-standing dwelling on a lot. The petition was granted with a stipulation that the proposal be referred to the Planning Board for

placement of a protective conservation easement on a portion of the undeveloped area around the pond.

September 27, 2016 – The Board **denied** a request for rehearing regarding the above decision. Note: A subsequent appeal to the Superior Court was filed by an appellant group containing abutters and non-abutters. After reviewing the record and the Board's application of the criteria, the Court, in a decision rendered April 26, 2017, **affirmed the Board's decision** and dismissed the appeal.

## Neighborhood Context



## NEW BUSINESS

### Case #2-1

Petitioners:	Jennifer S Benjamin, owner
Property:	180 Sherburne Avenue
Assessor Plan:	Map 112, Lot 31
Zoning District:	General Residence A (GRA)
Description:	Construct one-story addition.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. Variances from Section 10.521 that include the following: a) to allow a right side yard setback of 5.5'± where 10' is required and b) to allow a building coverage of 29%± where 25% is the maximum allowed. 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

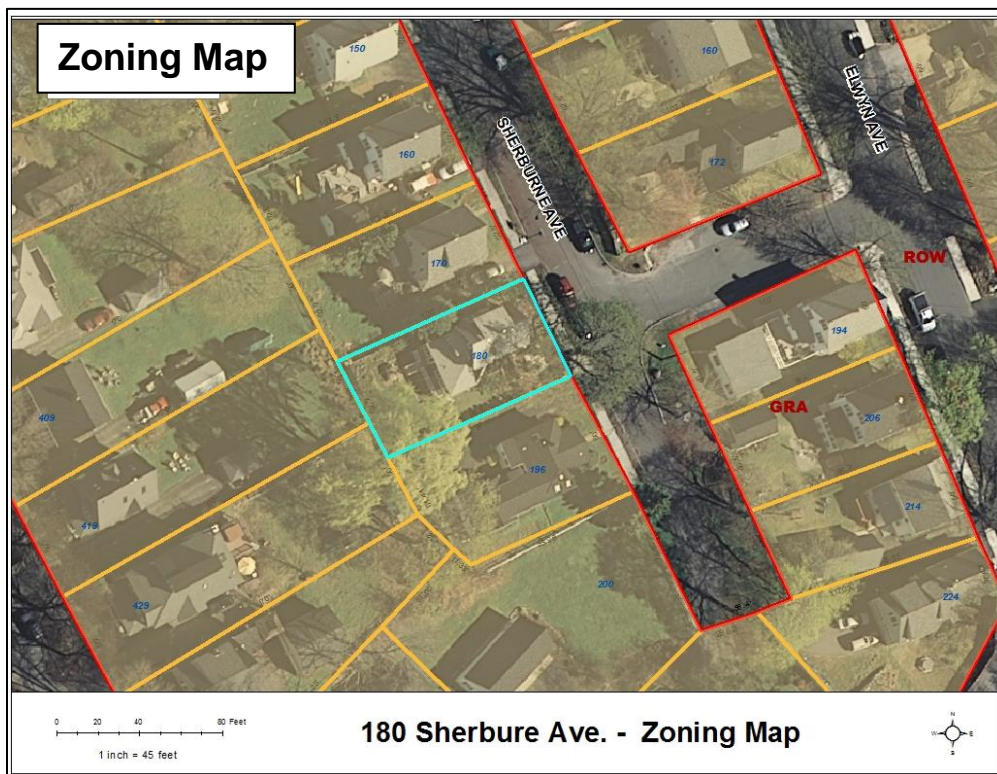
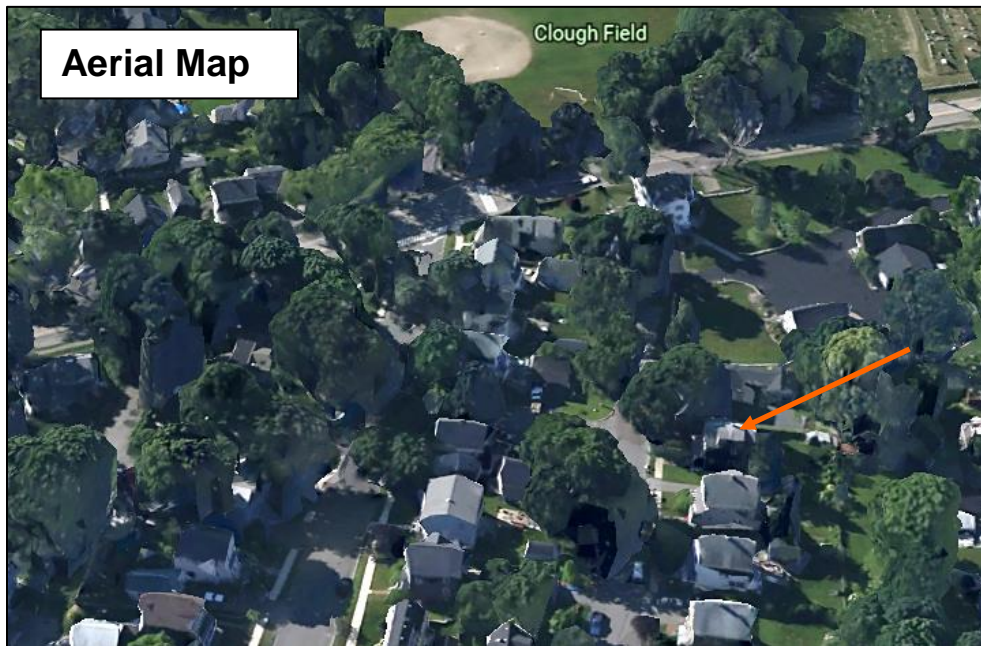
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	One-story addition	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	5,184	5,184	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,184	5,184	7,500 min.
<u>Street Frontage (ft.):</u>	52.5	52.5	100 min.
<u>Lot depth (ft.):</u>	100	100	70 min.
<u>Primary Front Yard (ft.):</u>	13.8	17	15 min.
<u>Right Yard (ft.):</u>	5.5	5.5	10 min.
<u>Left Side Yard (ft.):</u>	>10	11.7	10 min.
<u>Rear Yard (ft.):</u>	26.7	26.7	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	26	29	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	ok	ok	ok
<u>Estimated Age of Structure:</u>	1915	Variance request shown in red.	

### Other Permits Required

None.



## Neighborhood Context



## Previous Board of Adjustment Actions

December 19, 2000 – The Board **granted** variances to allow a 321 s.f. one story addition with a 6' right side yard; a 4' x 24' deck with a 7' right side yard; and 25.6% building coverage.

June 17, 2003 – The Board **granted** a variance to allow 26.3% building coverage where 25% was allowed for a 230 s.f. I-shaped arbor and steps. Granted with the stipulation that the structure be open-framed on all sides to allow the passage of air. Part of request due to large old tree which owner wanted to preserve.

## 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 #2-2

Petitioners:	Dorothy M. Kierstead & Theresa Sessions, owners
Property:	50 Lovell Street
Assessor Plan:	Map 147, Lot 2
Zoning District:	General Residence C (GRC)
Description:	Construct two two-family dwellings on a lot with an existing single-family home.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. Variances from Section 10.521 to allow a lot area per dwelling unit of 3,423 s.f. where 3,500 s.f. is required.

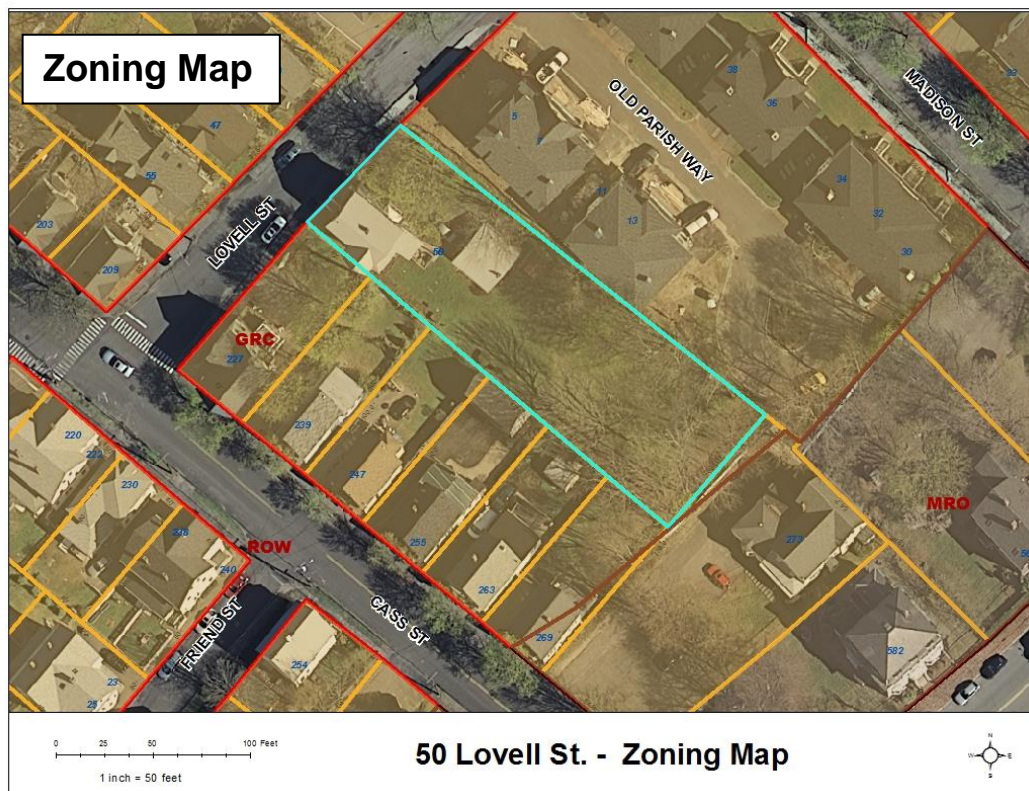
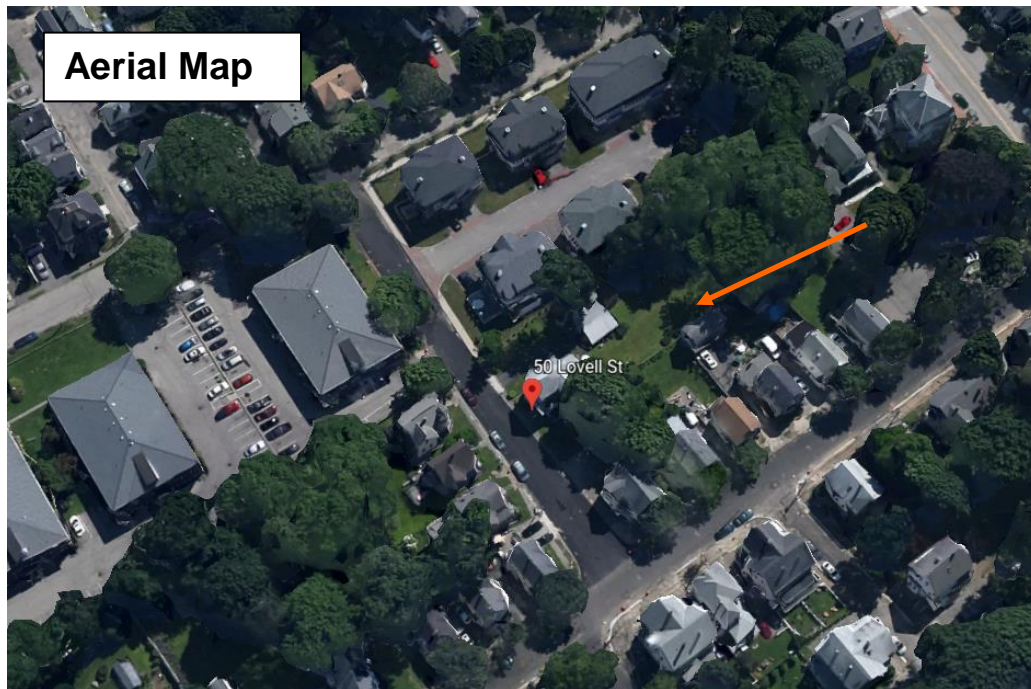
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	One-story addition	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	17,114	17,114	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	17,114	<b>3,422</b>	3,500 min.
<u>Street Frontage (ft.):</u>	69	69	70 min.
<u>Lot depth (ft.):</u>	>200	>200	50 min.
<u>Primary Front Yard (ft.):</u>	3 (house)	>85 (duplexes)	5 min.
<u>Right Yard (ft.):</u>	6 (house)	10 (duplexes)	10 min.
<u>Left Side Yard (ft.):</u>	>10	10	10 min.
<u>Rear Yard (ft.):</u>	>20	20.1	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	<35	<35	35 max.
<u>Open Space Coverage (%):</u>	>20	>20	20 min.
<u>Parking</u>		10	8
<u>Estimated Age of Structure:</u>	1880 (house)	<b>Variance request shown in red.</b>	

### Other Permits Required

TAC/Planning Board – Site Review

## Neighborhood Context



## Previous Board of Adjustment Actions

No BOA history found.

## Planning Department Comments

This project will go through full site plan review with TAC and Planning Board if the variance is granted.

### 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: Jeffery J. Caron, owner  
Property: 325 Thaxter Road  
Assessor Plan: Map 152, Lot 39  
Zoning District: Single Residence B (SRB)  
Description: Construct one-story rear addition.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
1. Variances from Section 10.521 that include the following: a) to allow a right side yard setback of 4'± where 10' is required and b) to allow a building coverage of 28%± where 20% is the maximum allowed.  
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

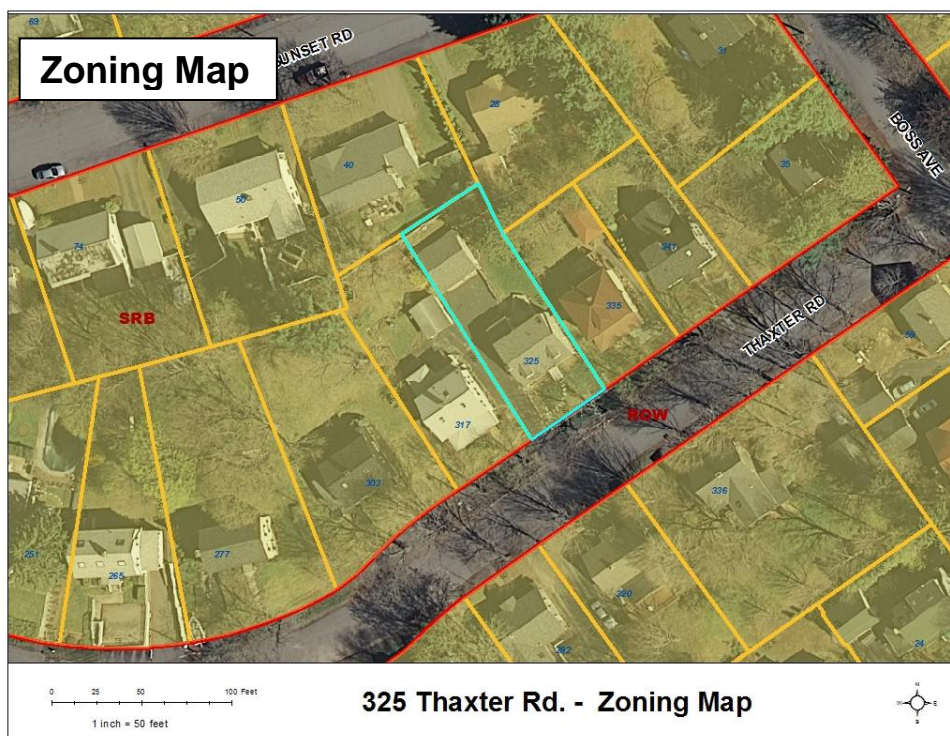
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	One-story addition	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	6,534	6,534	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,534	6,534	15,000 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.):</u>	>100	>100	100 min.
<u>Primary Front Yard (ft.):</u>	25	25	30 min.
<u>Right Yard (ft.):</u>	2 (existing house)	4 (addition)	10 min.
<u>Left Side 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>	27.2	28.1	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking</u>	ok	ok	ok
<u>Estimated Age of Structure:</u>	1940	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 #2-4

Petitioners:	Kathryn Michele Arbour, owner and Jeff Mattson, applicant
Property:	86 Emery Street
Assessor Plan:	Map 220, Lot 87-1
Zoning District:	Single Residence B (SRB)
Description:	Two-family dwelling.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.440, Use #1.30 to allow a two-family dwelling on a lot where only a single family dwelling is allowed.

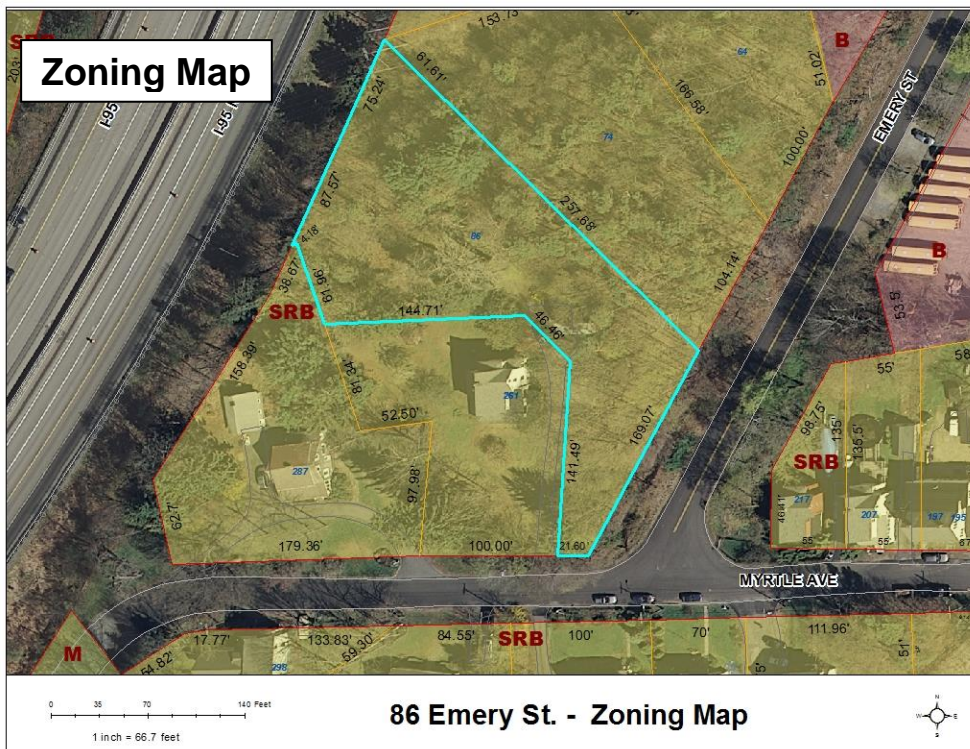
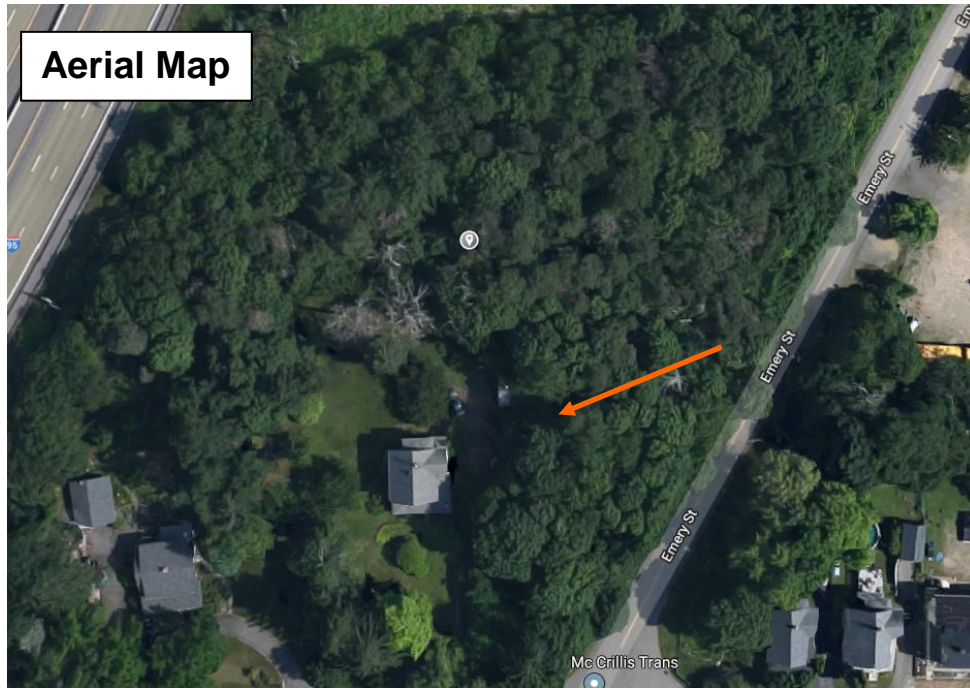
## Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required
<u>Land Use:</u>	Single-family	Construct a two-family dwelling	Primarily single 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>		31.5	30 min.
<u>Right Side Yard (ft.):</u>		>10	10 min.
<u>Left Yard (ft.):</u>		22	10 min.
<u>Rear Yard (ft.):</u>		>30	30 min.
<u>Height (ft.):</u>		<35	35 max.
<u>Building Coverage (%):</u>	1.83	4	20 max.
<u>Open Space Coverage (%):</u>	96	94	40 min.
		Variance request shown in red.	

## Other Permits Required

None.

## Neighborhood Context



## Previous Board of Adjustment Actions

December 19, 2017 – A petition to allow a second free-standing dwelling was **tabled**.

December 27, 2017 – A petition received on this date for an accessory dwelling unit closer to the street than the principal building was **not acted upon**.

January 17, 2018 – The petition tabled at the December 19, 2017 meeting was **withdrawn**.

## Planning Department Comments

The property is located in a district where more than one 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. The applicant came before the BOA in December for a second free standing dwelling unit. The Board tabled the request and advised the applicant to seek a Conditional Use Permit through the Planning Board for an ADU. The Planning Board determined the application for an ADU did not satisfy the requirements of Section 10.814.60 and subsequently voted to deny the request. The original variance application was withdrawn and the applicant is now proposing a two-family dwelling.

## 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: KL Boston Revocable Trust, Kelly L. Boston, trustee  
Property: 465 Cutts Avenue  
Assessor Plan: Map 210, Lot 27  
Zoning District: Single Residence B (SRB)  
Description: Extend existing garage and front porch.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
1. a) A Variance from Section 10.521 to allow a secondary front yard setback of 10.5' ± where 30' is required and b) to allow a 23% ± building coverage where 20% is the maximum allowed.  
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

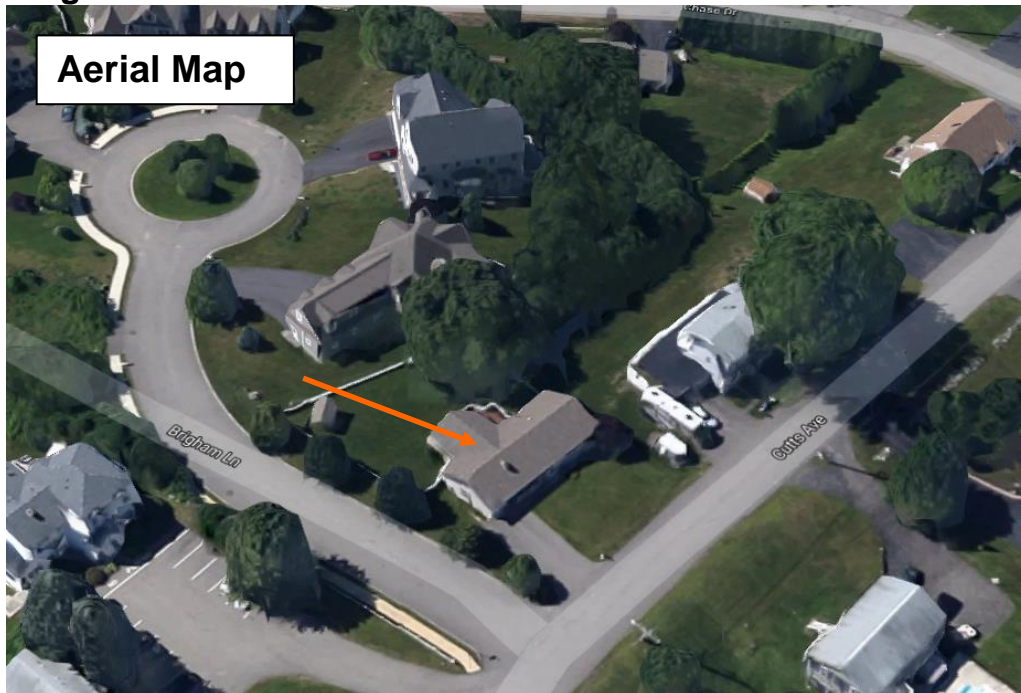
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Extend garage and new open front porch	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	10,454	10,454	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,454	10,454	15,000 min.
<u>Street Frontage (ft.):</u>	75.54	75.54	100 min.
<u>Lot depth (ft.):</u>	110	110	100 min.
<u>Primary Front Yard (ft.):</u>	38	26 (ok per 10.516.10)	30 min.
<u>Right Yard (ft.):</u>	3	3	10 min.
<u>Secondary Front Yard (ft.):</u>	17	10.5	30 min.
<u>Rear Yard (ft.):</u>	40	40	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	16.7	23	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking</u>	0	ok	ok
<u>Estimated Age of Structure:</u>	1964	Variance request shown in red.	

### Other Permits Required

None.



## Neighborhood Context



## Previous Board of Adjustment Actions

November 21, 2017 – The Board **granted** variances to extend an existing garage and front porch with a secondary front yard setback of 11' where 30' was required and 20.13% building coverage where 20% was the maximum allowed. Also to allow an expansion of a nonconforming structure.

## Planning Department Comments

This property was before the Board in November and was granted variances for an 11' secondary front yard setback and building coverage of 20.13%. The as-built foundation survey was completed and it revealed a secondary front yard setback of 10.5' and an actual building coverage of 22.8% (the initial application did not include a deck or shed for building coverage). The property owner was advised to come back to the Board to seek additional relief for these two items because they exceeded the relief granted by the Board in November. The proposed open front porch setback is allowed per Section 10.516.10, Front Yard Exception for Existing Alignments.

## 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 #2-6

Petitioners: Evon Cooper  
Property: 287 Maplewood Avenue  
Assessor Plan: Map 141, Lot 36  
Zoning District: Character District 4-L1 (CD4-L1)  
Description: Construct one-room addition on existing foundation.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
1. A Variance from Section 10.5A41.10A to allow a 2.49' side yard where 5' is the minimum 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

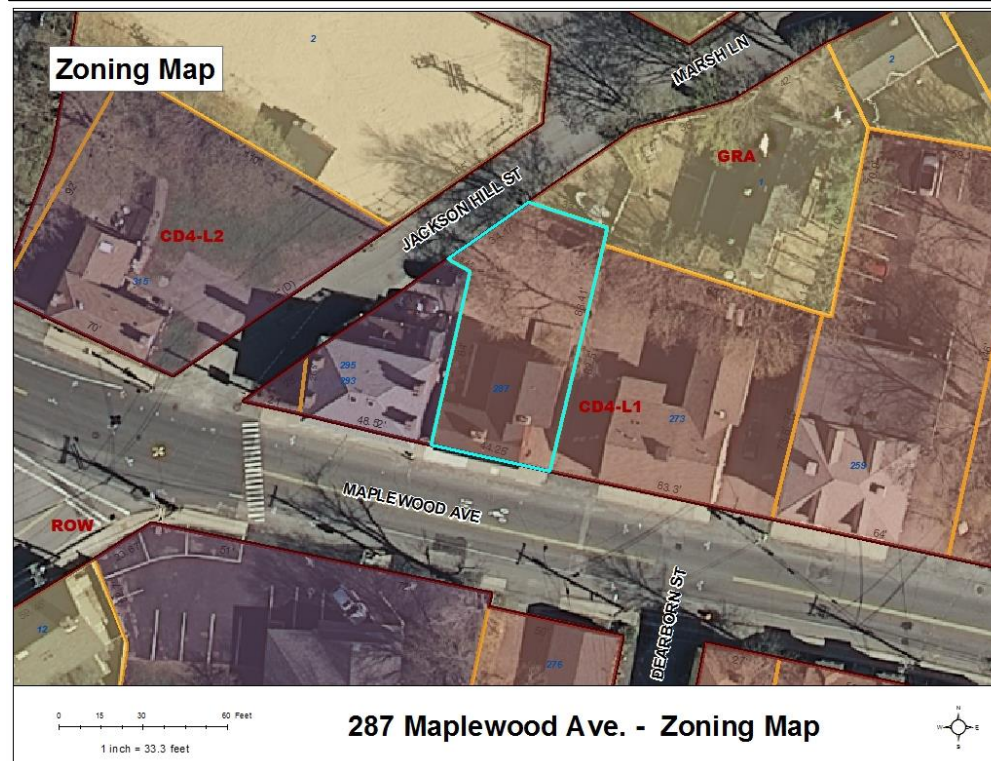
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Construct rear addition on existing foundation	Primarily Mixed Use
<u>Lot area (sq. ft.):</u>	4,129	4,129	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,129	4,129	3,000 min.
<u>Street Frontage (ft.):</u>	75.54	75.54	100 min.
<u>Lot depth (ft.):</u>	110	110	100 min.
<u>Primary Front Yard (ft.):</u>	38	29.5 (ok per 10.516.10)	30 min.
<u>Right Yard (ft.):</u>	2.49 (foundation)	<b>2.49</b>	5-20 min./max.
<u>Left Yard (ft.):</u>	5.01	5.01	5-20 min./max.
<u>Rear Yard (ft.):</u>	>30	>30	5 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	33	33	60 max.
<u>Open Space Coverage (%)</u>	>25	>25	25 min.
<u>Parking</u>	0	ok	ok
<u>Estimated Age of Structure:</u>	1750	Variance request shown in red.	

### Other Permits Required

HDC approval on 12-6-17 (originally granted on 2-14-14).



## Neighborhood Context



## Previous Board of Adjustment Actions

December 18, 2007 – The Board **granted** a variance to allow an 11.9' x 13.8' one story rear addition with a 2.49' right side setback where 10' was required.

November 19, 2013 – The Board **granted** variances to construct a one story rear addition with a 2.49' right side yard setback where 10' was required and to allow expansion of a nonconforming structure.

### **Planning Department Comments**

A variance was granted in 2007 for relief from the side yard setback in order to construct a one room rear addition on an existing foundation. The zoning at the time required a 10' side yard setback. A building permit was never issued for the addition, therefore the variance expired. The zoning for this property has changed since the original request in 2007 and the new side yard setback is 5'. The applicant is asking for the same request that was granted in 2007.

### **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 #2-7

Petitioners:	Michael De La Cruz
Property:	75 (63) Congress Street
Assessor Plan:	Map 117, Lot 5
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.

### Existing & Proposed Conditions

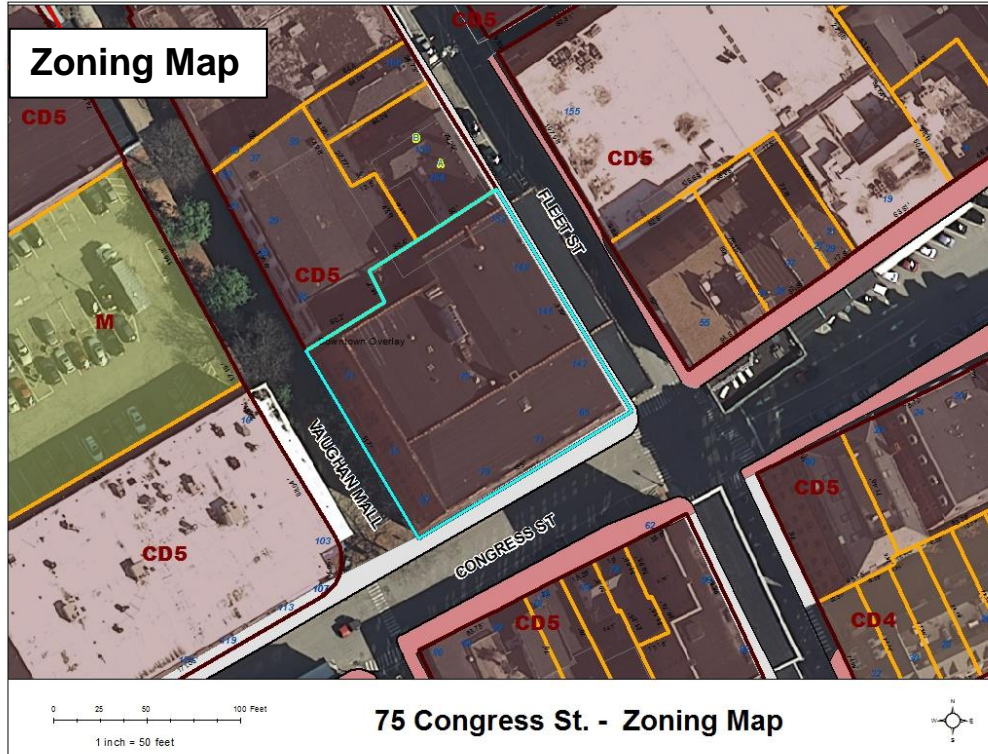
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial/office	Construct 15 DUs and provide no off street parking	Primarily Mixed Uses
<u>Parking</u>	1 (temp)	0	5 (7x 1.3 = 9; credit of 4 spaces in DOD; 9-4 = 5 req.)
<u>Estimated Age of Structure:</u>	1879	Variance request shown in red.	

### Other Permits Required

HDC (approval granted in October 2017; March 2017)

Planning Board (approval granted June 2017)

## Neighborhood Context



## Planning Department Comments

The applicant's proposal is to create 15 residential units on the top floors of the existing structure. Eight of the units have been determined to be vested by the Legal and Planning Department in accordance with a prior 2007 approval and are exempt from the parking requirements which did not exist in 2007. The remaining seven proposed residential units are not governed by a 1984 special exception requiring no parking for the structure, or the 2007 vested approval so the Applicant is required to seek a variance for the remaining spaces.

The applicant originally submitted a variance request in December and was advised the newly adopted zoning required them to seek a Conditional Use Permit through the Planning Board under Section 10.1112.50. The applicant withdrew the variance request and began the CUP process. However, Section 10.1115.24 states that Section 10.1112.50 shall not apply to buildings and uses in the Downtown Overlay District, therefore the applicant must seek a variance rather than a CUP. During the drafting of the new amendments, this provision was discussed to possibly be eliminated, but was not and still remains in the ordinance.

The 7 units require 1.3 spaces per unit or 9 spaces, however provisions of Section 10.1115.23 allow a credit of 4 spaces in the Downtown Overlay District. The minimum off-street parking requirement is 5 spaces and the applicant is proposing to provide zero.

## Previous Board of Adjustment Actions

February 28, 1984 – The Board **granted** a special exception to permit the elimination of required parking.

August 30, 1988 – The Board **determined**, as required by the Zoning Ordinance, that the number of parking spaces required for Antioch College of N. E. was 1 space for every 4 students and 1 space for each professor/teacher.

December 13, 1988 – The Board **granted** a request for a school not to exceed four classrooms.

July 18, 2006 – the Board **tabled** to August an Appeal of an Administrative Decision of the Code Official involving the interpretation of the Ordinance as requiring a variance for an existing 10' wide accessway to a below grade parking garage to continue where a 24' wide accessway was required for a two-way accessway.

August 22, 2006 – The Board failed to pass a motion to grant the Appeal so the Appeal was **denied**.

April 26, 2016 – The Board **postponed** a request to construct five residential use dormers and one office dormer with walkways and decks and to restore pediments and allow the following building heights where the maximum allowed are 40' for a 2-3 stories height requirements area and 45' for a 2-3 stories (short 4th) height requirement area:

62'11" for the proposed pediments, 65'6" for the proposed office dormer, and 58'11" for the proposed residential dormers.

May 17, 2016 – The Board **postponed** the petition to the June meeting so that additional information requested to the Board could be provided. The requested building heights were revised as follows: 62'11" for the proposed pediments (no change), 64'6" for the proposed office dormer, and 60'5" for the proposed residential dormers.

June 21, 2016 – The Board **postponed** the pending petition to the July meeting with a final revision to the requested building heights as follows: 62'11" for the proposed pediments (no change), 64'6" for the proposed flat roofed office dormer onto existing sloped roof, and 60'5" for the proposed residential dormers.

July 19, 2016 – The Board **granted** the petition with these final building heights: a) 62'11" for the proposed pediments (no change); b) 65'11" for the proposed flat roofed office dormer onto existing sloped roof (a change); and c) 58'11" for the proposed residential dormers (a change).

December 19, 2017 – A petition to construct 15 residential units with no off-street parking spaces to be provided where off-street parking spaces are required was **withdrawn**.

## **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 #2-8

Petitioners: James W. and Heather L. Davis, owners  
Property: 530 Dennett Street  
Assessor Plan: Map 161, Lot 10-1  
Zoning District: General Residence A (GRA)  
Description: Construct single family home and garage replacing existing home and garage.  
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 the following: a) a lot area and a lot area per dwelling unit of 7,442 s.f. where 7,500 s.f. is required for each; and b) to allow an 8'± left side yard setback where 10' minimum 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

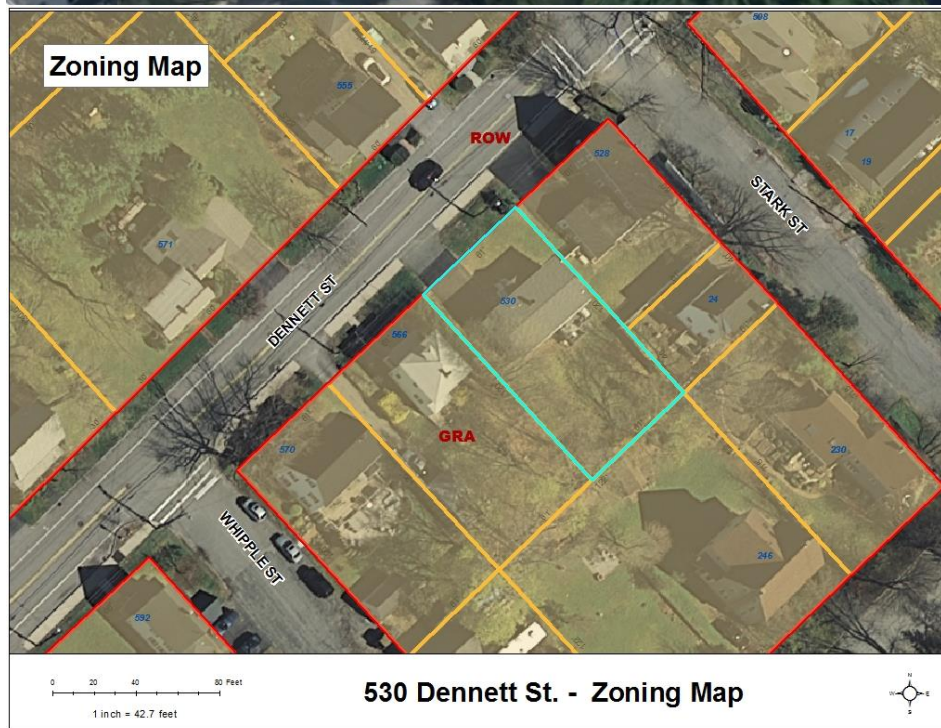
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Demo existing DU and construct new DU	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	7,441	<b>7,441</b>	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,441	<b>7,441</b>	7,500 min.
<u>Street Frontage (ft.):</u>	61.09	<b>61.09</b>	100 min.
<u>Lot depth (ft.):</u>	122	122	70 min.
<u>Primary Front Yard (ft.):</u>	>20	10 (ok per 10.516.10)	15 min.
<u>Right Yard (ft.):</u>	10	10	10 min.
<u>Left Yard (ft.):</u>	8	<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>	18	24	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	2	ok	ok
<u>Estimated Age of Structure:</u>	1964	<b>Variance request shown in red.</b>	

### Other Permits Required

None.



## Neighborhood Context



## Previous Board of Adjustment Actions

No BOA history found.

## Planning Department Comments

The applicant is proposing to demolish the existing dwelling and construct a new dwelling. The lot is nonconforming, thus needs relief for lot area and frontage. In addition, the applicant is proposing to locate the new house 8 feet from the left side yard, which is the current setback for the existing house. The front yard setback is allowed per Section 10.516.10, Front Yard Exception for Existing Alignments.

## 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 #2-9

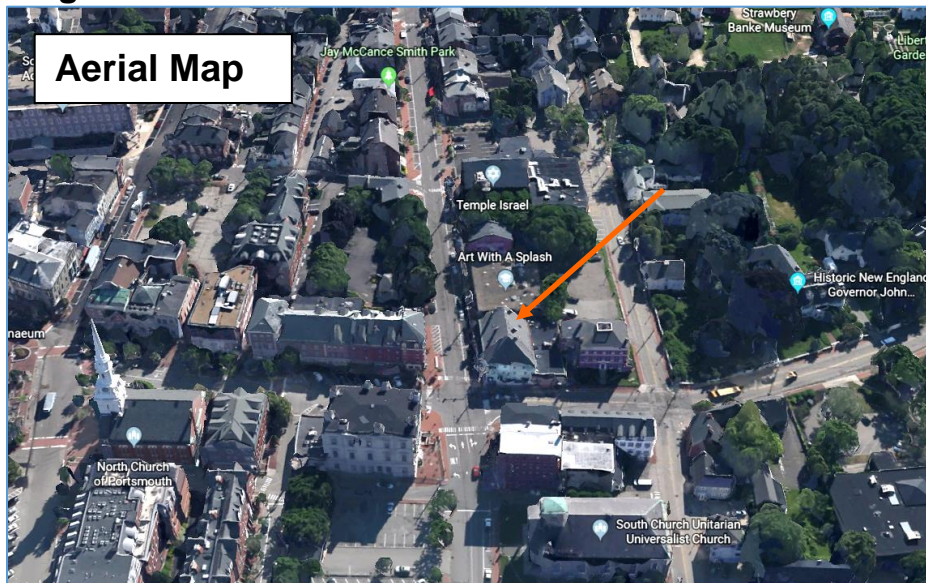
Petitioners:	Michael G. and Annette A. Kane, applicants
Property:	242 State Street
Assessor Plan:	Map 107, Lot 70-6
Zoning District:	Character District 4 (CD-4)
Description:	Lighted projection of a logo onto the sidewalk.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: <ol style="list-style-type: none"><li>1. A Variance from Section 10.1234 to allow a sign that is not specifically permitted in a sign district.</li><li>2. A Variance from Section 10.1263.10 to allow a light source for external illumination of a sign to be visible three feet above grade at the lot line with the lighting not confined to the area of the sign.</li><li>3. A Variance from Section 10.1263.30 to allow a sign or its illuminator to interfere with the pedestrian or vehicular traffic.</li><li>4. A Variance from Section 10.1262 to allow a sign to be illuminated between 11:00 pm and 6:00 am without the operation of a use or activity that is open to customers or the public and more than one hour after the activity ceases.</li></ol>

### Other Permits Required

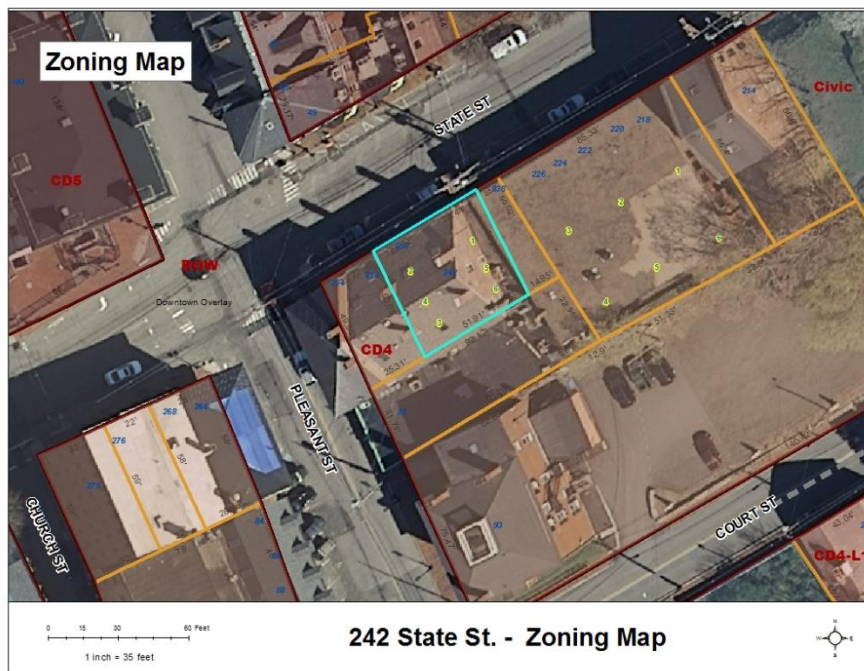
City Council – license for projecting sign in the public right of way.

HDC – Signs that require variances in the Historic District require approval from the HDC per Section 10.1221.30.

### Neighborhood Context







## Previous Board of Adjustment Actions

No BOA history found.

## Planning Department Comments

The proposed sign is not a permitted sign type in the zoning ordinance. The applicant is proposing to use a projector inside of a building to display a sign on the sidewalk, in the public right of way. In addition, the proposed sign will be visible or illuminated throughout the night, after the establishment is closed. Because the property is located in the Historic District and variances are required, it will require approval from the HDC. If approved, a license from the City Council would also be necessary because the sign is in the public right of way.

## 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 #2-10

Petitioners: Richard Fusegni  
Property: 201 Kearsarge Way  
Assessor Plan: Map 218, Lot 5  
Zoning District: Single Residence B (SRB)  
Description: Subdivide lot into two lots.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
1. A Variance from Section 10.521 for the following: a) to allow a lot area and lot area per dwelling unit of 7,834 s.f. where 15,000 s.f. is required; b) to allow 97.52' of continuous street frontage where 100' 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.

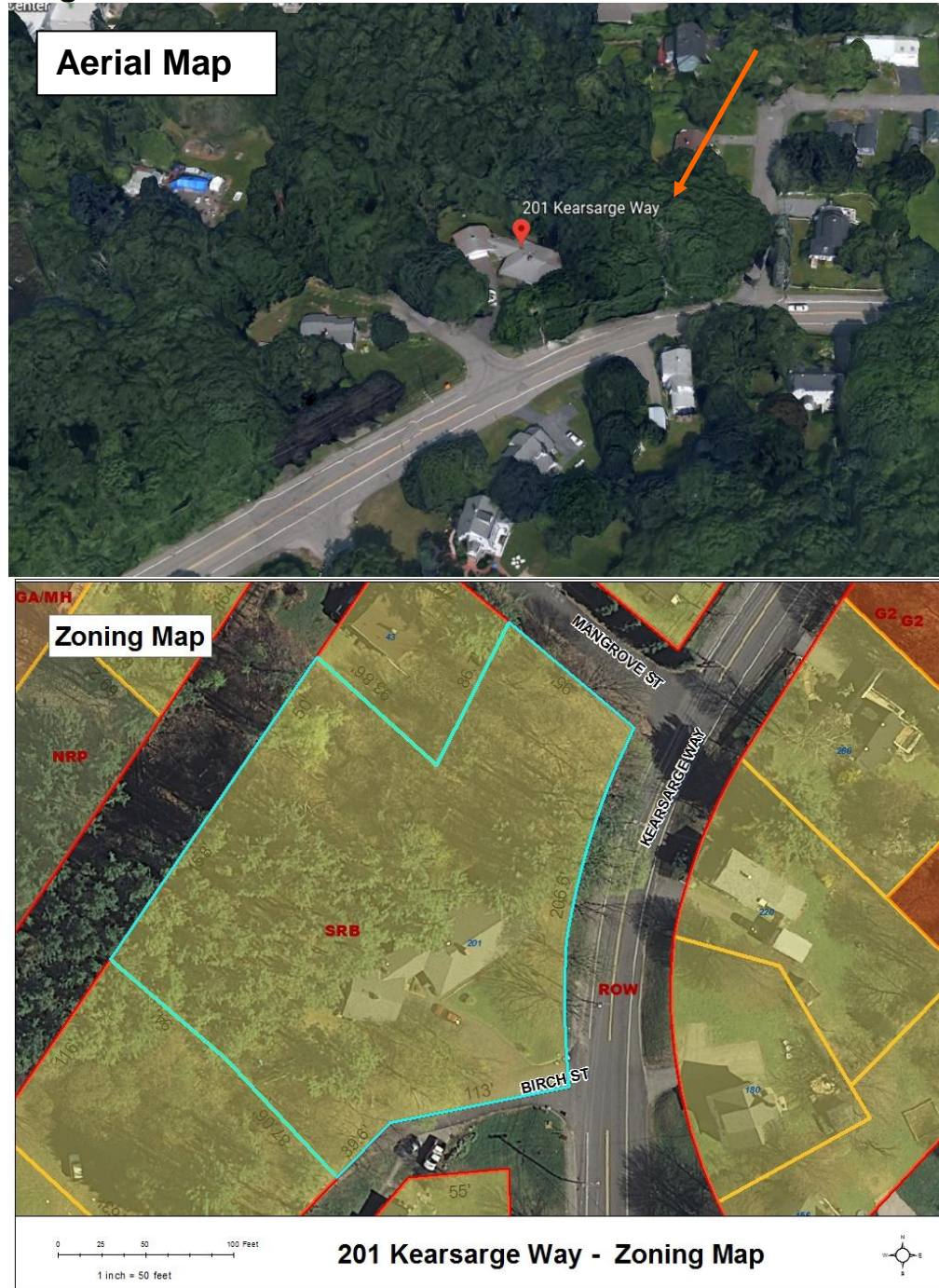
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Subdivide into two lots	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	54,897	<b>Lot 1: 7,834</b> Lot 2: 47,062	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	54,897	<b>Lot 1: 7,834</b> Lot 2: 47,062	15,000 min.
<u>Street Frontage (ft.):</u>	>200	Lot 1: >100 Lot 2: >100	100 min.
<u>Lot depth (ft.):</u>	>100	Lot 1: 100.24 Lot 2: >100	100 min.
<u>Primary Front Yard (ft.):</u>	18	18 (Lot 2)	30 min.
<u>Right Yard (ft.):</u>	>10	>10 (Lot 2)	10 min.
<u>Secondary Front Yard (ft.):</u>	15 (variance)		30 min.
<u>Left Yard (ft.):</u>	>10	>10 (Lot 2)	10 min.
<u>Rear Yard (ft.):</u>	>30	>30 (Lot 2)	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	>20	>20 (Lot 2)	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking</u>	0	ok	ok
<u>Estimated Age of Structure:</u>	1954	<b>Variance request shown in red.</b>	

### Other Permits Required

Planning Board – Subdivision Approval.

## Neighborhood Context



### Previous Board of Adjustment Actions

June 21, 2016 – The Board **granted** a variance to construct a home on one lot of a three-lot subdivision with a front yard setback of 15' where 30' was required. The Board noted that the variance was specific to the presented lot.

## Planning Department Comments

The received approval of three lot subdivision in 2017, but is now proposing to subdivide into two lots, which requires relief for the lot area and lot area per dwelling unit. The applicant has indicated it does not meet the frontage requirement. Frontage on a corner lot may extend around the corner, so lot 1 actually meets the requirements of the ordinance and the relief for street frontage is not necessary.

## 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 #2-11

Petitioners:	Cyrus Lawrence Gardner Beer, owner
Property:	64 Mt. Vernon Street
Assessor Plan:	Map 110, Lot 30
Zoning District:	General Residence B (GRB)
Description:	Construct a chicken coop and keep six chickens.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.440, Use #17.20 to allow the keeping of farm animals where the use is not allowed. 2. A Variance from Section 10.573.10 to allow an accessory structure 3'± from the rear property line where 5' is required.

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Single Family/Chicken Coop	Primarily Single Family
<u>Lot area (sq. ft.):</u>	7,840	7,840	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,840	7,840	5,000 min.
<u>Street Frontage (ft.):</u>	90	90	80 min.
<u>Lot depth (ft.):</u>	98	98	60 min.
<u>Primary Front Yard (ft.):</u>	0 (house)	>80 (coop)	5 min.
<u>Left Yard (ft.):</u>		>5	5 (accessory) min.
<u>Right Yard (ft.):</u>		>5	5 (accessory) min.
<u>Rear Yard (ft.):</u>		3	5 (accessory) min.
<u>Height (ft.):</u>		<10	35 max.
<u>Building Coverage (%):</u>	<30	<30	30 max.
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Parking (# of spaces):</u>			2 min.
<u>Estimated Age of Structure:</u>	1812	Variances shown in red.	

### Other Permits Required

None.



## Neighborhood Context



## Previous Board of Adjustment Actions

No BOA history found.

## Planning Department Comments

The subject property is adjacent to City Hall and is unique in that it backs up to a high wall next to a parking area for city employees. The proposed location of the coop will likely have no impact on the abutting property due to the wall.

## 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 #2-12

Petitioners:	Vaughn Street Hotel LLC and 299 Vaughn Street LLC c/o Cathartes Private Investments
Property:	225 and 299 Vaughn Street
Assessor Plan:	Map 124, Lots 10 and 11
Zoning District:	Character District 5 (CD-5)
Description:	Construction of a hotel with tandem parking.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. a) A Variance from Section 10.1114.32 to allow vehicles to enter and leave a parking space by passing over another parking space or requiring the moving of another vehicle.

## Existing & Proposed Conditions

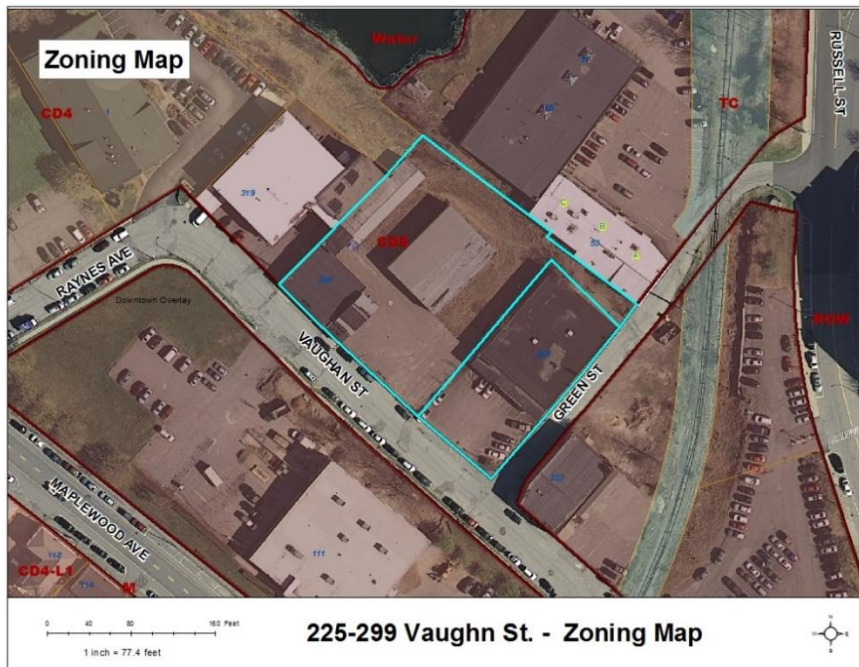
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial	Construct 154 room hotel	Primarily Mixed Uses
<u>Parking</u>		115 (6 spaces will be tandem)	112

## Other Permits Required

HDC approval (December 2017)  
Planning Board (.

## Neighborhood Context





## Previous Board of Adjustment Actions

(As Vaughn Street at Green Street)

December 7, 1976 – The Board **granted** a variance for a 250 s.f. attached sign on the top of the building resulting in a total in excess of what was permitted. A requested 24 s.f. illuminated free-standing sign in the parking area was excluded by stipulation from the approval.

(As 225 Vaughn Street)

November 12, 1985 – The Board **granted** the following variances: 1) to permit construction of a 30' x 80' one story addition to a one story building in the Central Business District where buildings cannot be less than two stories in height; 2) to allow one loading dock where a minimum of two are required; and 3) to allow the loading dock to be located in the front yard where this was not allowed. Variance #1 was granted with the **condition** that Historic District Commission approval be given.

## Planning Department Comments

The only uses that permit vehicles to pass over another space or require moving another vehicle in order to move are one-family and two-family dwellings. As a result, the proposed tandem spaces do not conform to the standards in the zoning ordinance. A valet service will be used to control the parking in 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 #2-13

Petitioners:	Eric A. Spear and Jean C.M. Spear, owners and Brendan Cooney and Megan Tehan, applicants
Property:	57 Mt. Vernon Street
Assessor Plan:	Map 111, Lot 31
Zoning District:	General Residence B (GRB)
Description:	Create a lot by subdivision containing an existing 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 for the following a) to allow a lot area and lot area per dwelling unit of 3,647± s.f. where 5,000 s.f. is required for each; b) to allow 45.41'± of continuous street frontage where 80' is required; c) to allow a 2.2' left side yard setback where 10' is required and d) to allow a 15.8'± rear yard where 25' is required.

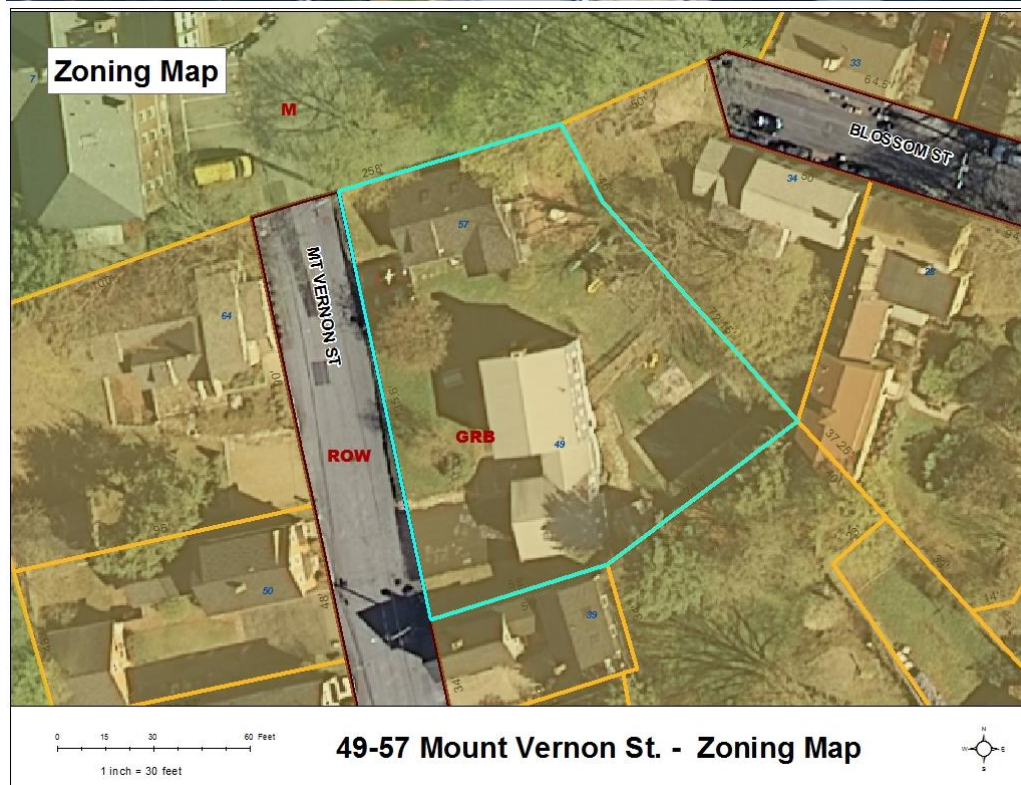
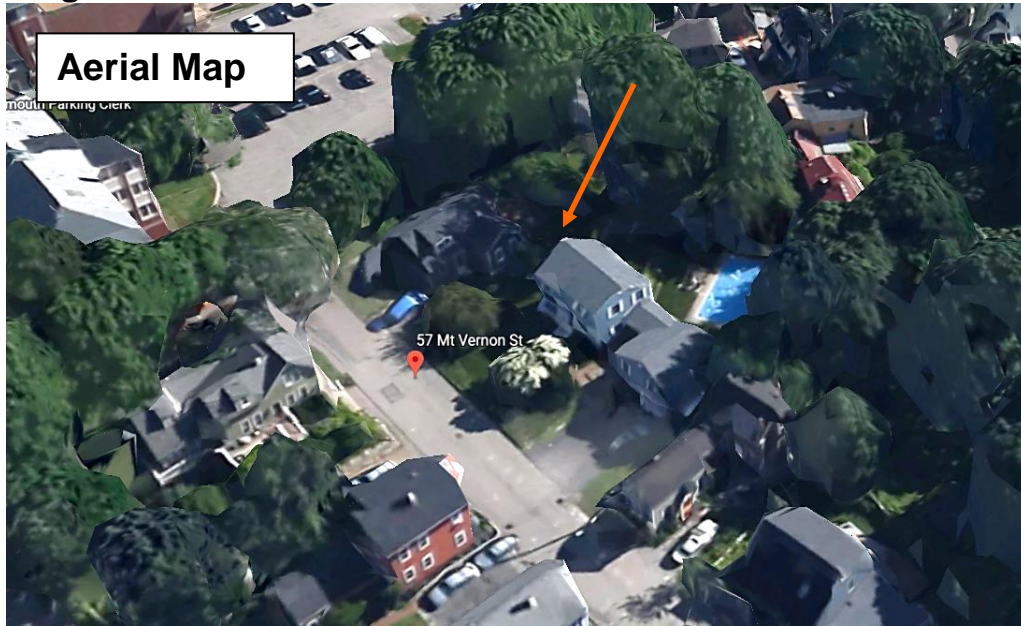
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two Single-family DU	Subdivide lot into 2 lots	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	12,596	<b>Lot A 3,647</b> Lot B 8,949	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,298	<b>Lot A 3,647</b> Lot B 8,949	5,000 min.
<u>Street Frontage (ft.):</u>	138.41	<b>Lot A 45.41</b> Lot B 93	80 min.
<u>Lot depth (ft.):</u>	>60	>60	60 min.
<u>Primary Front Yard (ft.):</u>	>5	>5	5 min.
<u>Right Yard (ft.):</u>	7.3	Lot A 10 Lot B 7.3	10 min.
<u>Left Yard (ft.):</u>	2.2	<b>Lot A 2.2</b> Lot B 15	10 min.
<u>Rear Yard (ft.):</u>	15.8	<b>Lot A 15.8</b> Lot B 29.2	25 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	20	Lot A 27.7 Lot B 16.9	30 max.
<u>Open Space Coverage (%):</u>	>20	Lot A 54.4 Lot B 70	20 min.
<u>Parking</u>	0	Ok	ok
<u>Estimated Age of Structure:</u>	Lot A 2004 Lot B 1963	<b>Variance request shown in red.</b>	

### Other Permits Required

Planning Board – Subdivision Approval.

## Neighborhood Context



## Previous Board of Adjustment Actions

March 23, 2004 – A petition to allow the construction of an 18' x 24' one-story addition on the same footprint of an existing garage (to be removed) with a 1'8" left side yard where 10' was required was **tabled** to the April 20, 2004 meeting.

April 20, 2004 – The Board **granted** a variance for the above petition.

## 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 #2-14

Petitioners: Charles Fleck, Jr., owner and Sarah Fleck and Charles Fleck, Jr., applicants  
Property: 39 Sagamore Avenue  
Assessor Plan: Map 221, Lot 31  
Zoning District: General Residence A (GRA)  
Description: Replace free-standing shed with an attached garage.  
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 6'± 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.

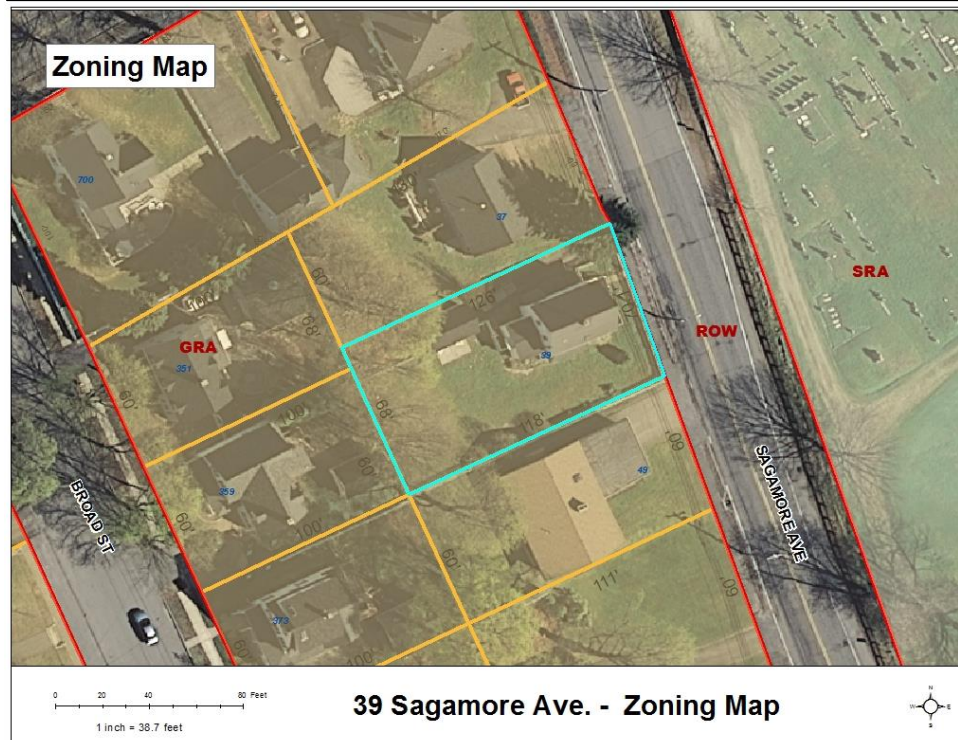
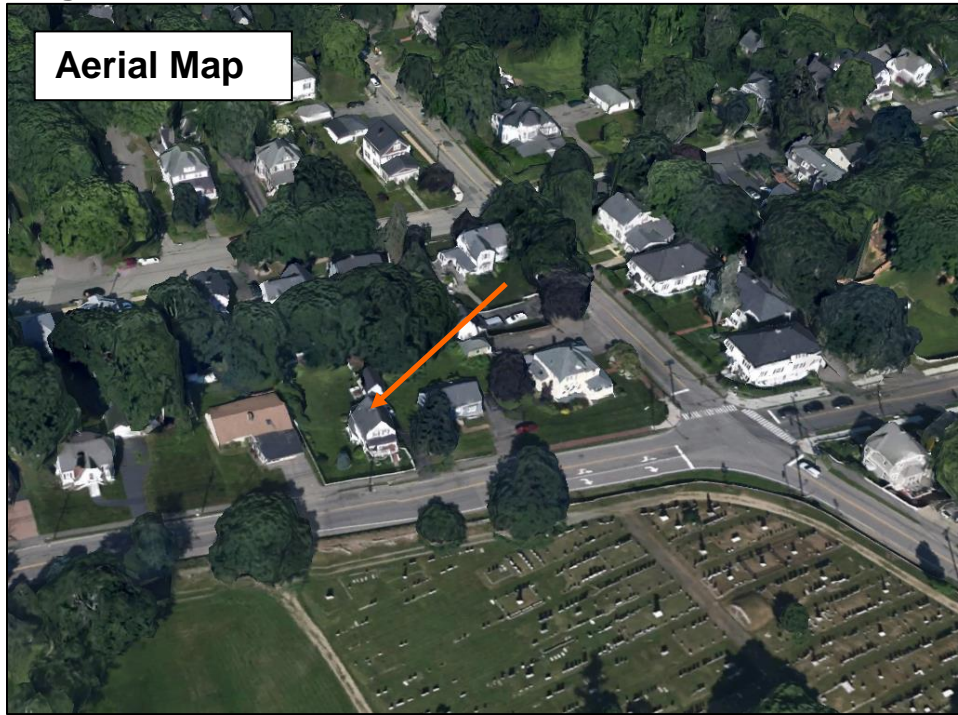
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Replace existing shed w/ attached garage	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	8,220	8,220	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,220	8,220	7,500 min.
<u>Street Frontage (ft.):</u>	70.1	70.1	100 min.
<u>Lot depth (ft.):</u>	122	122	70 min.
<u>Primary Front Yard (ft.):</u>	13	13	15 min.
<u>Right Yard (ft.):</u>	6	6	10 min.
<u>Left Yard (ft.):</u>	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	>20	>20	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	14	18.5	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	ok	ok	ok
<u>Estimated Age of Structure:</u>	1882	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.*