

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: May 9, 2018
RE: Zoning Board of Adjustment May 15, 2018 Meeting

OLD BUSINESS

1. 160-168/170 Union Street – Request for Rehearing
2. 140- 152 Court Street

NEW BUSINESS

1. 100 Colonial Drive
2. 188 Broad Street
3. 5 Central Avenue
4. 87 Mason Avenue
5. 238 Deer Street

THE FOLLOWING PETITIONS WILL BE HEARD ON TUESDAY, MAY 22, 2018

6. 325 Thaxter Street
7. 319 Vaughan Street
8. 49 Pickering Street
9. 75 Congress Street
10. 15 Thornton Street
11. 17/19 Stark Street

OLD BUSINESS

Case #3-3

Petitioners:	LCSG LLC, applicant
Property:	160 & 168-170 Union Street
Assessor Plan:	Map 135, Lots 29 & 30
Zoning District:	General Residence C (GRC)
Description:	Request for rehearing.
Requests:	A request for Rehearing has been made pursuant to RSA 677:2.

The Application for 160-170 Union was denied (3-3 vote) at the March 20, 2018 meeting. The applicant filed a request for a rehearing within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, the rehearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

Case #4-8

Petitioners:	Portsmouth Housing Authority & ED PAC, LLC
Property:	140 & 152 Court Street
Assessor Plan:	Map 114, Lots 37 & 38
Zoning District:	Character District 4 (CD4)
Description:	Construct five story residential building.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <p>1. <u>For 152 Court Street:</u> a) a Variance from Section 10.5A41.10C to allow no entrance on the front building façade where an entrance is required every 50'; <u>For 140 Court Street:</u> variations from Section 10.5A41.10C to allow the following a) a maximum front lot line buildout of 12.5%± where 50% is required; b) no entrance proposed on the front building façade where an entrance is required every 50'; and c) a ground floor ceiling height of 10'± where 12' is required; d) a Variance from Section 10.5A43.30 and 10.5A21B to allow a building height of 58'± and five stories where three a short fourth are permitted and 45' is the maximum allowed; and e) a Variance from Section 10.1114.21 to allow 9'x18' parking spaces where 8.5'x19' is required and a 22' travel aisle where 24' is required.</p>

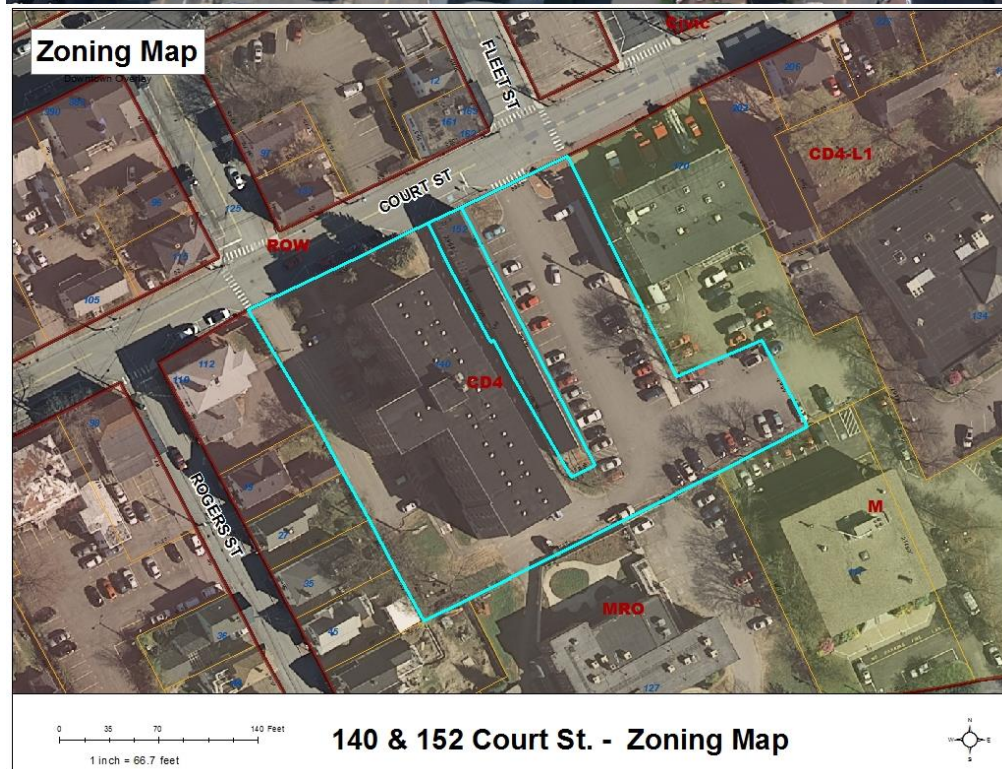
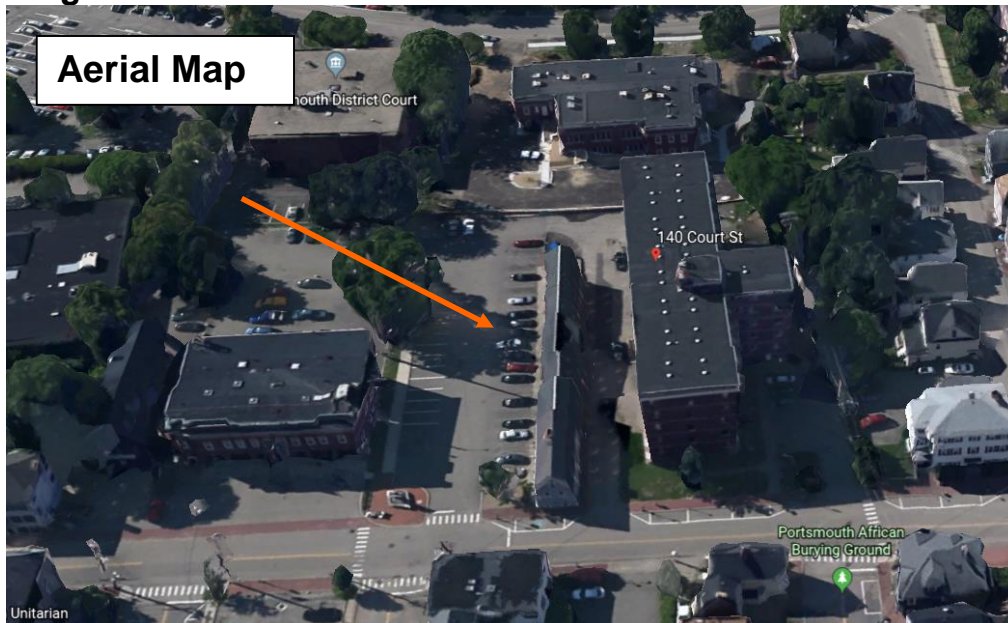
Existing & Proposed Conditions

	<u>Existing</u>		<u>Proposed</u>		<u>Permitted/Required</u>	
	140 Court	152 Court	140 Court	152 Court		
<u>Land Use:</u>	100 unit building		Lot line adj./Construct 5 story building		Primarily Mixed Uses	
<u>Lot area (sq. ft.):</u>	59,976	4,587	62,718	1,845	NR	min.
<u>Front lotline buildout (%):</u>	0	73	12.5	73	50	min.
<u>Primary Front Yard (ft.):</u>	27	0.9	5	0.9	10	max.
<u>Side Yard (ft.):</u>	26	1	17	1	NR	
<u>Rear Yard (ft.):</u>	32	20	46	26	>5	min.
<u>Ground Story Height(ft.):</u>		No change	10	No change	12	min.
<u>Height (ft.):</u>	63	<35	58	<35	35/45	max.
<u>Building Coverage (%):</u>	15.7	80.5	18.1	46	90	max.
<u>Open Space Coverage (%):</u>	12	1.4	29	11	10	min.
<u>Parking Space Dimension:</u>			9x18 feet		8.5x19	feet
			Variance request shown in red.			

Other Permits Required

HDC
Planning Board

Neighborhood Context



Previous Board of Adjustment Actions

140 Court Street

December 30, 1965 – The Board of Adjustment **denied** a variance to construct a high-rise building.

January 18, 1966 – At a special meeting, the Board **denied** a request for rehearing regarding the above.

May 30, 1966, The Board **tabled** action on a Masters Report from the City Council until the report could be reviewed by the Superior Court.

June 28, 1966 – As a result of the court ruling, the Board voted to **consider the previously submitted request** for rehearing at a special meeting in July.

July 7, 1966 – at a special meeting, the Board **granted** the rehearing originally requested in January.

July 26, 1966 – The Board **postponed** the rehearing pending a decision on the disqualification of one member.

August 30, 1966 – The Board **denied** a request to construct a 60-unit block of homes for the elderly.

September 22, 1966 – The Board **denied** a request for rehearing on the above.

July 22, 1975 – The Board **granted** a variance for free-standing sign (1-1/2' x 2-1/3') 4' back from the front property line. The request was granted with the **stipulation** that the Portsmouth Housing Authority or the Officer in Charge join in the variance request for 140 Court Street and provided the PHA Officer in Charge requests that the variance for a sign at 245 Middle Street granted on February 25, 1975 be discontinued.

152 Court Street

March 25, 1980 - The Board **granted** a total of 78.4 s.f. of attached signage where 40 s.f. was allowed. The signage was granted with the stipulations that the Health Advocate sign not be greater than 20" x 129"; the Center for Treatment sign not be larger than 2' x 5'; and the total signage be no greater than 50 s.f. (all four signs). The total signage for the entire building 50 s.f.

140 & 152 Court Street

April 17, 2018 – The Board **postponed** to the May meeting a request for variances, revised subsequent to the meeting, necessary to construct a five story residential building.

Planning Department Comments

The applicant is concurrently working with the HDC for this project and has completed the Preliminary Conceptual Review process with the Planning Board. The project will

still require full site plan review and subdivision approval through the Technical Advisory Committee and the Planning Board. If there will be any increase or decrease in the number of parking spaces, a conditional use permit will be necessary (through the Planning Board).

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.

NEW BUSINESS

Case #5-1

Petitioners:	Charles R Traver, Jr, owner
Property:	100 Colonial Drive
Assessor Plan:	Map 260, Lot 156
Zoning District:	Single Residence B (SRB)
Description:	Add second floor master suite and reconstruct garage and workshop.
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 3'± right side yard setback where 10' is required. 2. A Variance from Section 10.321 to allow a nonconforming building to be reconstructed or enlarged without conforming to the requirements of the ordinance.

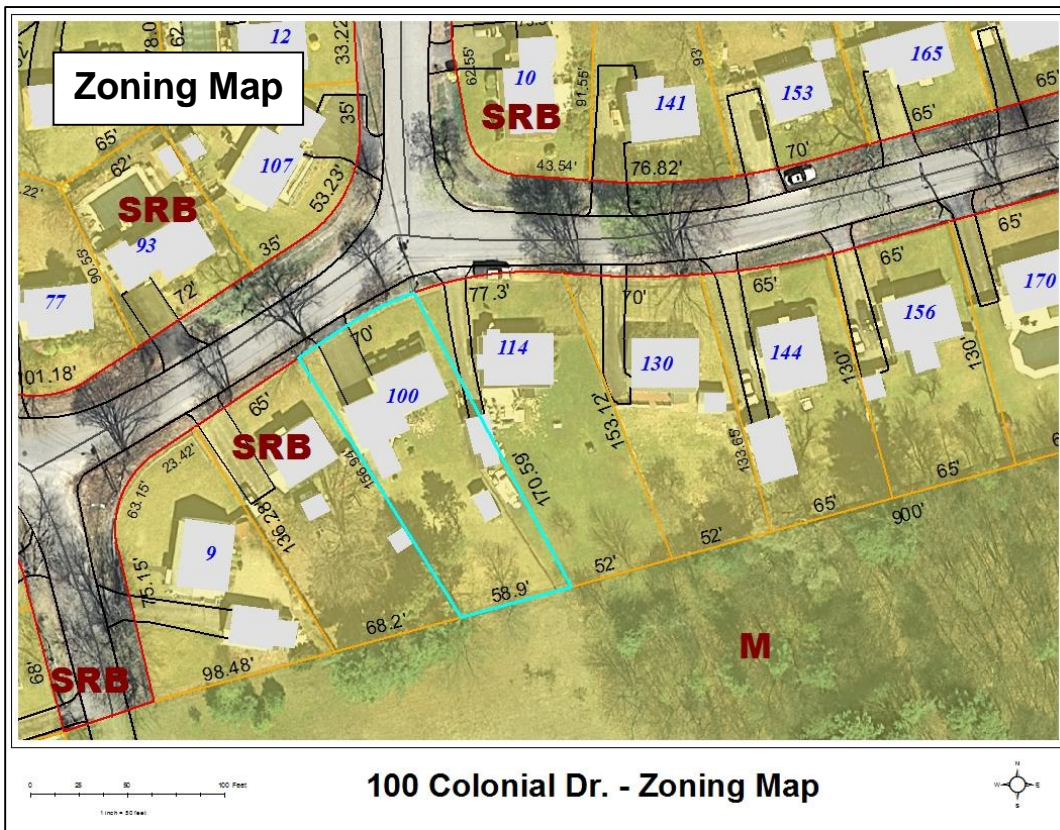
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Single Family	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	10,454.40	10,454.40	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,454.40	10,454.40	15,000 min.
<u>Street Frontage (ft.):</u>	70	No Change(NC)	100 min.
<u>Lot depth (ft.):</u>	>100	NC	100 min.
<u>Primary Front Yard (ft.):</u>	28	28	30 min.
<u>Right Yard (ft.):</u>	3	3	10 min.
<u>Left Yard (ft.):</u>	9	9	10 min.
<u>Rear Yard (ft.):</u>	86	86	30 min.
<u>Height (ft.):</u>		15.5	35 max.
<u>Building Coverage (%):</u>	16.66	16.05	20 max.
<u>Open Space Coverage (%):</u>	71.48	72.09	40 min.
<u>Estimated Age of Structure:</u>	1940	Variance request shown in red.	

Other Permits Required

None

Neighborhood Context



Previous Board of Adjustment Actions

June 20, 2017 – The Board **granted** variances to add a second floor suite and reconstruct a garage and workshop with a 28' primary front yard (30' required), a 3' right side yard and a 9' left side yard (10' required for each).

Planning Department Comments

The applicant was before the Board on June 20, 2017 for this project and received the requested variances (see history above). During the interdepartmental review, staff noted the change on the right side of the addition. Apparently, there were two versions of the plans and the plans that were originally submitted to the BOA were not the correct version. The applicant is back before the Board to amend the variances that were granted in June showing the correct dimensions/encroachment of the addition.

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 #5-2

Petitioners:	Richard M. Burbine Revocable Trust and Laura M. Burbine Revocable Trust
Property:	188 Broad Street
Assessor Plan:	Map 133, Lot 11
Zoning District:	General Residence A (GRA)
Description:	Install generator.
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 10.515.14 to allow an 8'± right side yard where 10. 2. A Variance from Section 10.521 to allow 27% building coverage where 25% is the maximum allowed.

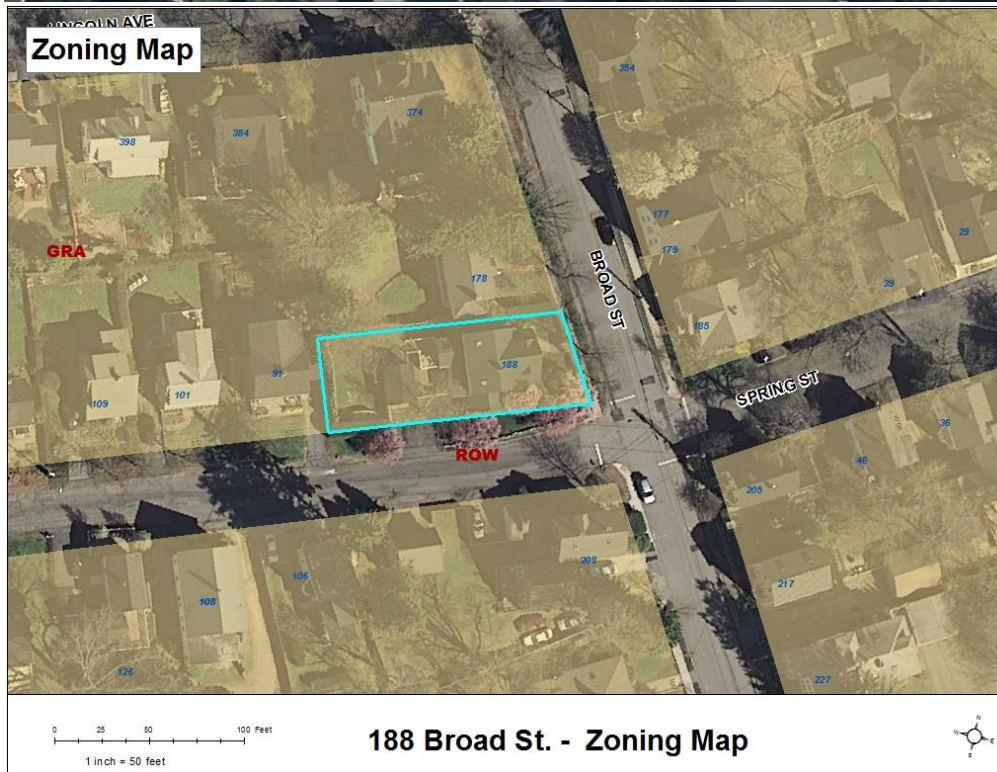
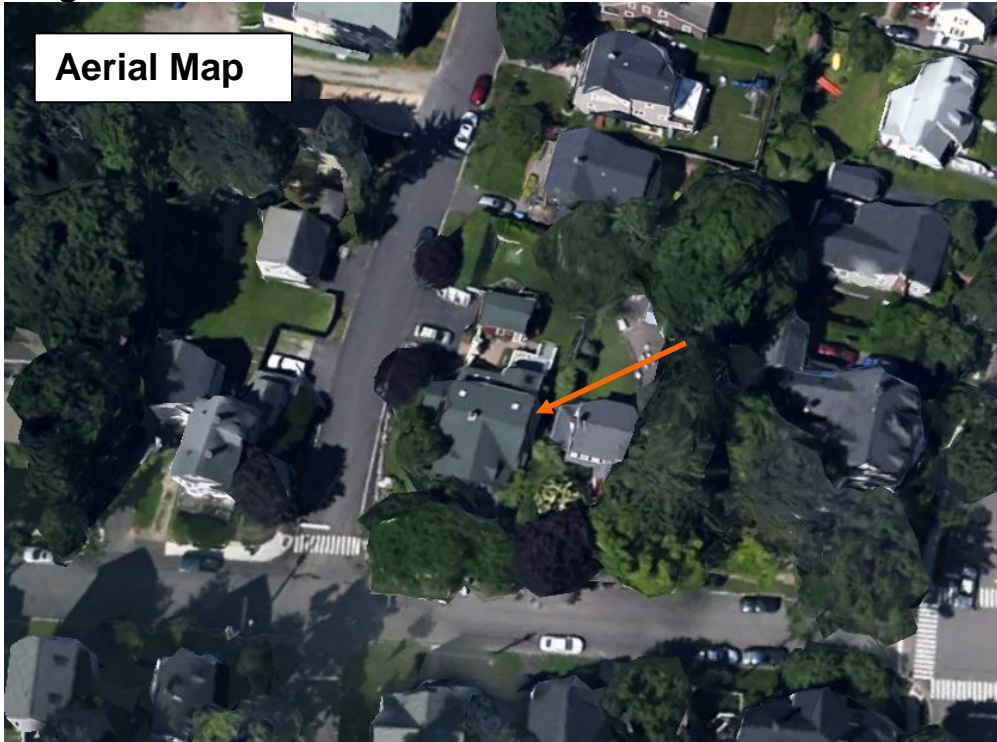
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Generator	Primarily Residential
<u>Lot area (sq. ft.):</u>	6,534	6,534	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,534	6,534	7,500 min.
<u>Street Frontage (ft.):</u>	>100	>100	100 min.
<u>Lot depth (ft.):</u>	131	131	100 min.
<u>Primary Front Yard (ft.):</u>	19	>40(gen)	15 min.
<u>Right Yard (ft.):</u>	7.3 (house)	8 (gen)	10 min.
<u>Secondary Front Yard (ft.):</u>	0 (house)	>40(gen)	15 min.
<u>Rear Yard (ft.):</u>	>20	>20	20 min.
<u>Height (ft.):</u>		>36"	35 max.
<u>Building Coverage (%):</u>	26.8	27	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Estimated Age of Structure:</u>	1940	Variance request shown in red.	

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

October 24, 1995 – The Board **granted** a variance to allow an 8' x 12' one story addition with 21.6% building coverage where 20% was the maximum allowed.

August 19, 1997 – The Board **granted** a variance to allow a 9' x 16' two story addition with a 1' left side yard where 10' was required.

August 21, 2001 – The Board **granted** variances for a 2' x 8' one story bay and an 8.5' x 27' one and one half story front addition with a 7'3" right side yard for the bay where 10' was required and 26.8% building coverage where 25% was the maximum allowed.

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 #5-3

Petitioners:	Edward J. Miller Revocable Trust, Edward J. Miller
Property:	5 Central Avenue
Assessor Plan:	Map 209, Lot 1
Zoning District:	Single Residence B (SRB)
Description:	Short term rental.
Requests:	Variiances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.0440 to allow short term rentals where the use is not allowed.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Short term rental	Primarily single family
<u>Lot area (sq. ft.):</u>	4,791	4,791	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,791	4,791	15,000 min.
<u>Street Frontage (ft.):</u>	>100	>100	100 min.
<u>Lot depth (ft.):</u>	50	50	100 min.
<u>Primary Front Yard (ft.):</u>	9	9	30 min.
<u>Right Yard (ft.):</u>	>10	>10	10 min.
<u>Secondary Front Yard (ft.):</u>	17	17	30 min.
<u>Rear Yard (ft.):</u>	16	16	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	23	23	20 max.
<u>Open Space Coverage (%):</u>	46	46	40 min.
<u>Parking</u>	0	ok	ok
<u>Estimated Age of Structure:</u>	1963		

Other Permits Required

None.

Neighborhood Context



Aerial Map



Zoning Map

5 Central Ave. - Zoning Map

Previous Board of Adjustment Actions

June 19, 2012 - The Board **granted** variances for a rear dormer within the existing roof structure with a rear yard of 15.5' where 30' was the minimum required.

Planning Department Comments

The administrative policy on short term rentals was developed under the previous Planning Director, Rick Taintor, and is consistent with the state's definition of short-term rentals. This policy was developed in response to City Council discussions at that time about short-term rentals, and it was written to summarize and clarify the City's zoning regulations regarding these types of uses. The definition of dwelling unit is referenced in the memo, but the full definition is below for your reference.

Dwelling unit

A building or portion thereof providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. This use shall not be deemed to include such transient occupancies as hotels, motels, rooming or boarding houses.

Other types of short term rentals including bed and breakfasts, boarding houses and hotels and motels are not permitted in this zoning district.

M E M O R A N D U M

TO: Planning Department
Legal Department

FROM: Rick Taintor, Planning Director *RT.*

DATE: August 1, 2016

RE: Administrative Policy Regarding Short-Term Rentals

The Zoning Ordinance definition of "dwelling unit" states, "This use shall not be deemed to include such transient occupancies as hotels, motels, rooming or boarding houses" (emphasis added). The City interprets this limitation to exclude short-term rental arrangements such as those arranged through Airbnb, HomeAway and VRBO. Thus, short-term rentals of dwelling units are not allowed by the City's Zoning Ordinance except when specifically authorized as a bed and breakfast or inn.

The City has not enacted an ordinance defining a short-term rental so as to distinguish it from an allowed dwelling unit use. In the absence of such a definition, the following is hereby established as an administrative policy until replaced or revised by City ordinance or State law:

A short-term rental is the rental of a dwelling unit for occupancy for a period of less than 30 consecutive days, but does not include an authorized lodging use of a dwelling unit (such as a bed and breakfast or inn) that has received all required land use approvals.

The rental of a dwelling unit for 30 or more consecutive days, or a calendar month, will not be considered a short-term rental. A written agreement that defines the parties, describes the premises to be rented, and specifies a rental period of at least 30 consecutive days, or a calendar month, shall be evidence that the rental is not a short-term rental.

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 #5-4

Petitioners:	Goodwin Family Revocable Trust of 2016, Bruce E. & Jennifer J. Goodwin
Property:	87 Mason Avenue
Assessor Plan:	Map 260, Lot 65
Zoning District:	Single Residence B (SRB)
Description:	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 a 24.2'± rear yard where 30' is required.

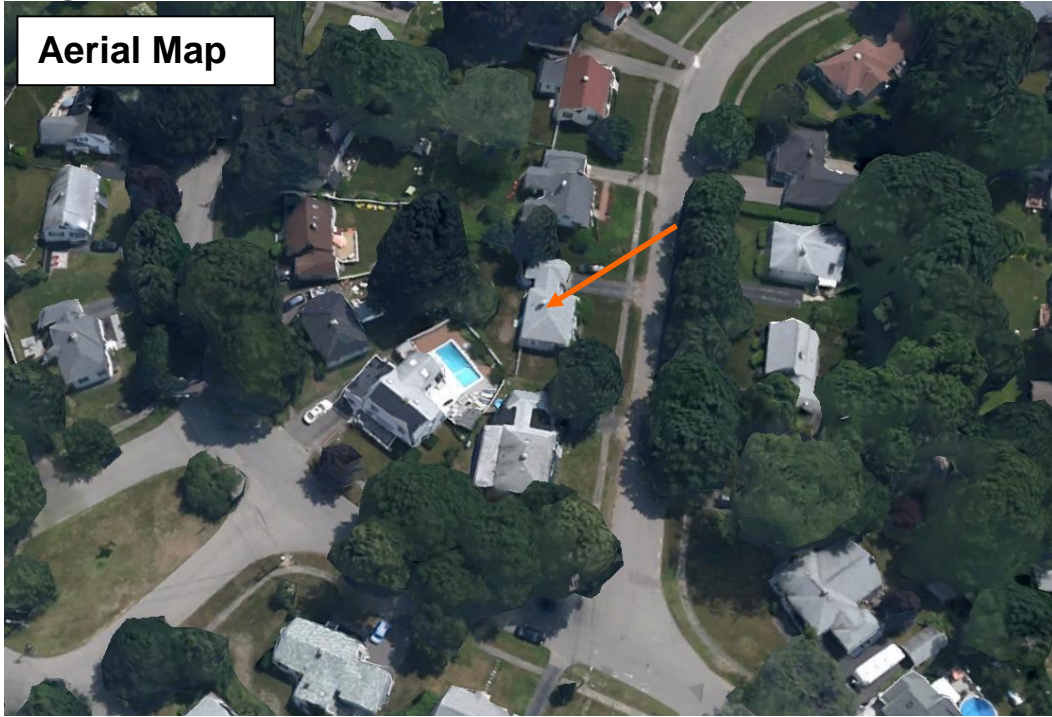
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Replace shed.	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	6,800	6,800	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,800	6,800	15,000 min.
<u>Street Frontage (ft.):</u>	79.64	79.64	100 min.
<u>Lot depth (ft.):</u>	>100	>100	100 min.
<u>Primary Front Yard (ft.):</u>	25	25	30 min.
<u>Left Yard (ft.):</u>	19.9	19.9	10 min.
<u>Right Yard (ft.):</u>	9.2	9.2	10 min.
<u>Rear Yard (ft.):</u>	17.3	21.5	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	16.9	19.8	20 max.
<u>Open Space Coverage (%):</u>	79.8	76.9	40 min.
<u>Parking (# of spaces):</u>			2 min.

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 #5-5

Petitioners: 238 Deer Street LLC
Property: 238 Deer Street
Assessor Plan: Map 125, Lot 3
Zoning District: Character District 4 (CD4)
Description: Locate a dumpster in the right side yard.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.575 to allow a 7'± from a lot line where 10' is required.

Existing & Proposed Conditions

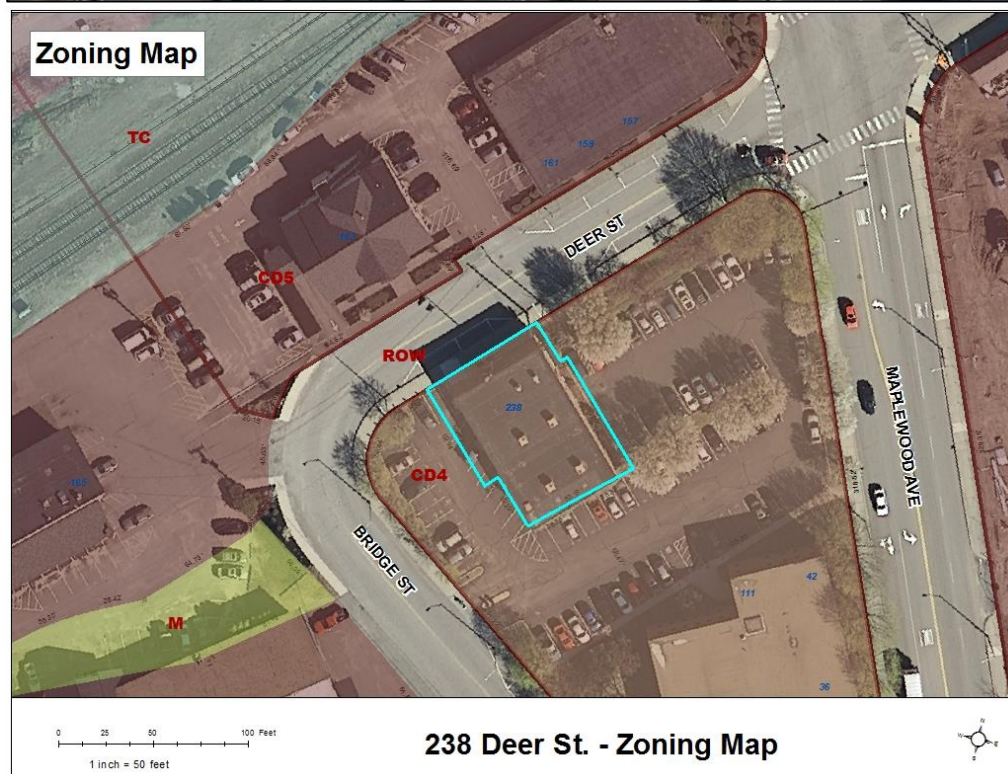
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	VFW	Restaurant/ Bar	Mixed Uses
<u>Lot area (sq. ft.):</u>	6,181	6,181	NR min.
<u>Primary Front Yard (ft.):</u>	<10	NC	10 max.
<u>Left Yard (ft.):</u>	0	NC	NR min.
<u>Right Yard (ft.):</u>	>5	7	10 ft. for dumpster min.
<u>Rear Yard (ft.):</u>	0	NC	5 min.
<u>Building Coverage (%):</u>	65	65	90 max.
<u>Open Space Coverage (%):</u>	>25	>25	10 min.
<u>Estimated Age of Structure:</u>	1951	Variances shown in red.	

Other Permits Required

HDC

Amended Site Plan Approval

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

This will also require approval from the Historic District Commission and amended site plan approval.

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.