

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: December 11, 2018
RE: Zoning Board of Adjustment December 18, 2018 Meeting

OLD BUSINESS

1. 137 Wibird Street

NEW BUSINESS

1. Case 12-1 24 Burkitt Street
2. Case 12-2 88 Lincoln Avenue
3. Case 12-3 279 Wibird Street
4. Case 12-4 57 Salter Street
5. Case 12-5 56 Middle Street

OLD BUSINESS

Case #11-1

Petitioners: Ryan and Karen Baker
 Property: 137 Wibird Street
 Assessor Plan: Map 134, Lot 48
 Zoning District: General Residence A (GRA)
 Description: Attached single car 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 the following: a) a 0'± left side yard where 10' is required; and b) 27% building coverage where 25% is the maximum allowed.

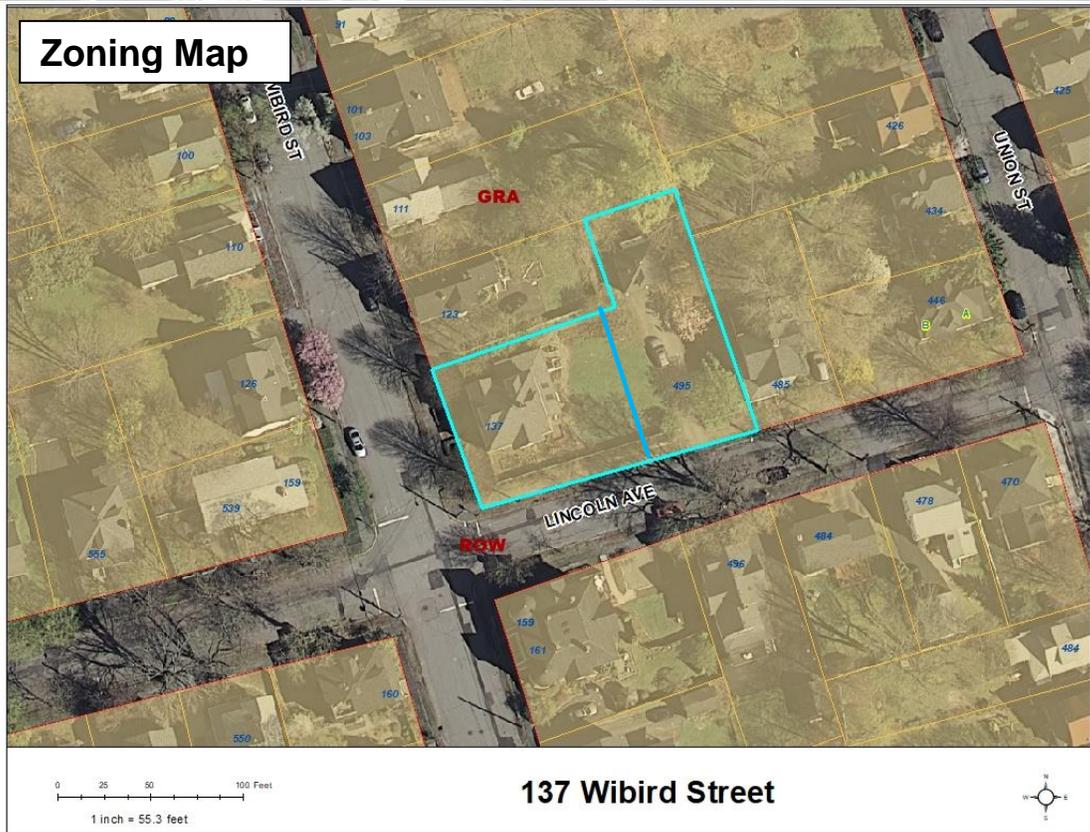
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Single Family	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	9,583.20	9,583.20	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,583.20	9,583.20	7,500 min.
<u>Street Frontage (ft.):</u>	103	103	100 min.
<u>Lot depth (ft.):</u>	>70	>70	70 min.
<u>Primary Front Yard (ft.):</u>	>15	20 (garage)	15 min.
<u>Secondary Front Yard (ft.):</u>	>15	>15	15 min.
<u>Left Yard (ft.):</u>	12.9' ±	2'6"	10 min.
<u>Rear Yard (ft.):</u>	>20	>20	20 min.
<u>Height (ft.):</u>	<35	13	35 max.
<u>Building Coverage (%):</u>	24	27	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Estimated Age of Structure:</u>	1902	Variance request shown in red.	

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

August 16, 2016 – The Board **granted** variances to subdivide one lot into two with Parcel B having 58.85' of continuous street frontage and containing an accessory structure as a principal use.

Planning Department Comments

This property was recently subdivided as noted in the history above and a new single family home was constructed on the new lot. Prior to the subdivision, the driveway was on Lincoln Avenue and it led to a garage that has since been removed and replaced with a new single family home. The new driveway is off of Wibird Street and located along the left property line. The images below are from the subdivision file, the first showing the property prior to being subdivided, with the driveway off Lincoln Ave. The second image shows the existing conditions and the new driveway off Wibird Street.

UPDATE:

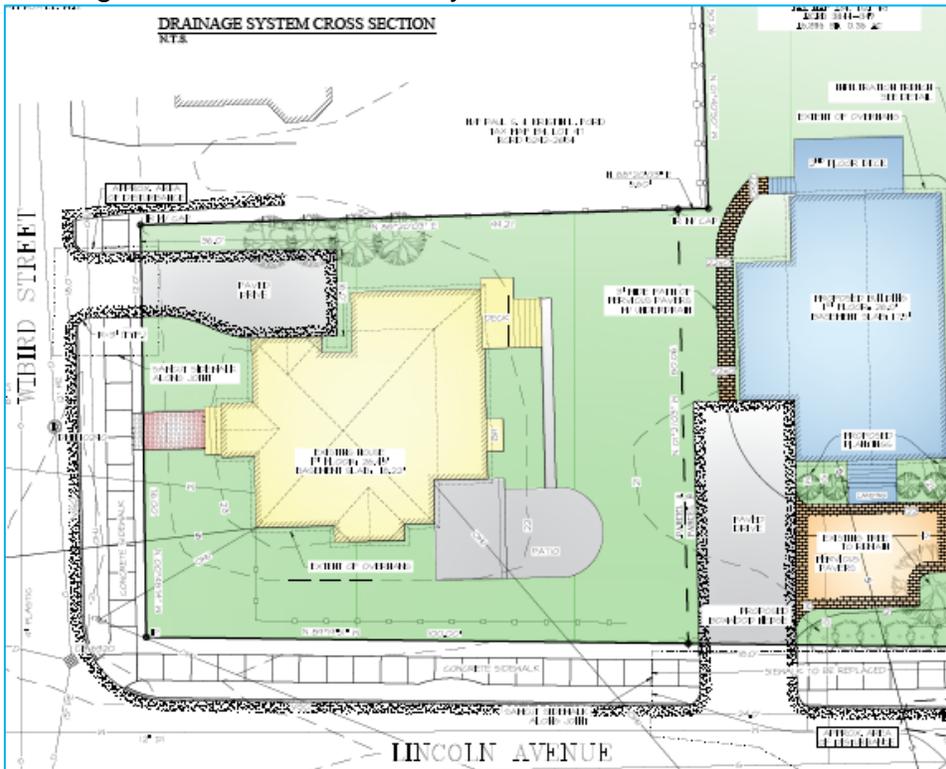
At the November meeting, the Board tabled this petition so the applicant could consider redesigning the garage or seeking a maintenance and construction easement from the abutter. The applicant has provided revised drawings, reducing the width of the garage to 10' and increasing the length to 22', resulting in an approximate 2'6" distance between the adjacent property and the proposed garage and decreasing the overall square footage (originally 240, proposed 220). An as-built survey will be required after the foundation is constructed to verify the location. The Board may want to consider a condition of approval that the side yard is within a certain distance to specify a plus/minus range that would allow for some flexibility. This would prevent the applicant from having to come back to the Board if there is a minor discrepancy between the site plan and a surveyed plan.

If granted approval, staff recommends the Board consider a condition that the side yard is within a certain distance as determined by the Board.

Conditions prior to subdivision:



Existing conditions with driveway off of Wibird Street:



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 #12-1

Petitioners: Jon R. & Karin E. Allard
 Property: 24 Burkitt Street
 Assessor Plan: Map 160, Lot 23
 Zoning District: General Residential A (GRA)
 Description: Replace existing porch with a 10'x 22' enclosed porch.
 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 5'± left side yard 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.

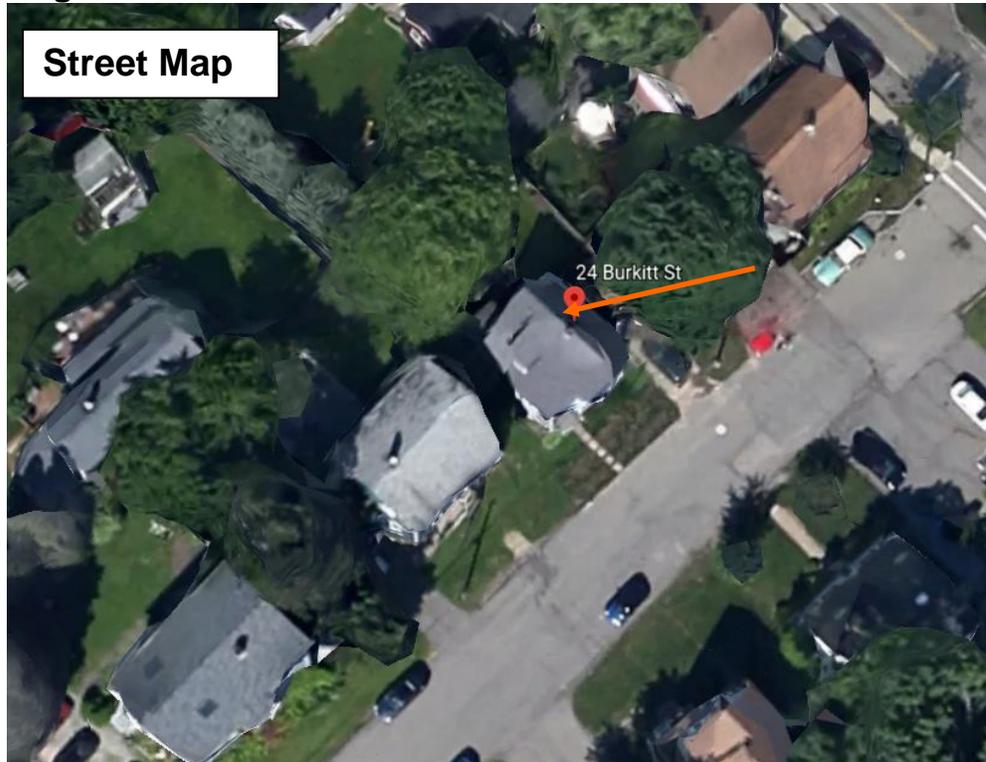
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	New rear enclosed porch	Primarily residential uses
<u>Lot area (sq. ft.):</u>	3,920	3,920	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,920	3,920	7,500 min.
<u>Street Frontage (ft.):</u>	45	45	100 min.
<u>Lot depth (ft.):</u>	72	72	70 min.
<u>Primary Front Yard (ft.):</u>	71	71	15 min.
<u>Left Yard (ft.):</u>	8	5	10 min.
<u>Right Yard (ft.):</u>	19	19	10 min.
<u>Rear Yard (ft.):</u>	40	37	20 min.
<u>Height (ft.):</u>	<35	ok	35 max.
<u>Building Coverage (%):</u>	19	23.5	25 max.
<u>Open Space Coverage (%):</u>	76	72	30 min.
<u>Parking</u>	ok	ok	2
<u>Estimated Age of Structure:</u>	1890	Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing to remove the existing rear porch and construct a larger porch that will run the width of the house and have a landing and stairs on the left side. The landing is proposed to be 5' from the left property line. The site plan submitted was based on the City's tax maps and not a survey. Since the site plan is not an official survey, the Board may want to consider a condition of approval that the side yard is within a certain distance to specify a plus/minus range that would allow for some flexibility. This would prevent the applicant from having to come back to the Board if there is a minor discrepancy between the site plan and a surveyed plan.

If granted approval, staff recommends consideration of a condition that would allow the side yard to be within a certain distance as determined by the Board and that the landing and stairs are the minimum necessary to comply with the Building Code.

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 #12-2

Petitioners: Jason R. & Natasha A. Karlin
 Property: 88 Lincoln Avenue
 Assessor Plan: Map 113, Lot 2
 Zoning District: General Residence A (GRA)
 Description: Replace existing garage with attached garage and two story 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 the following: a) a 3'7"± rear yard where 20' is required; and b) a 35%± building coverage 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.

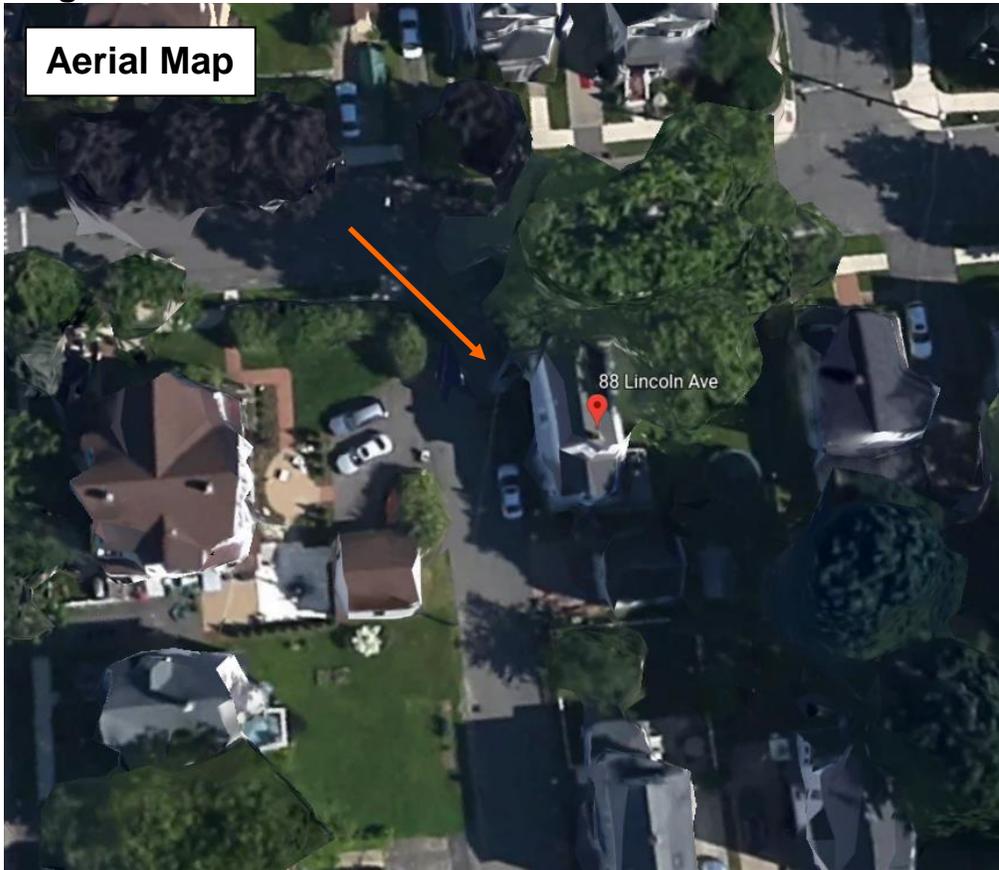
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Two-story addition and new garage	Primarily residential uses
<u>Lot area (sq. ft.):</u>	5,127	5,127	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,127	5,127	7,500 min.
<u>Street Frontage (ft.):</u>	60	60	100 min.
<u>Lot depth (ft.):</u>	85	85	70 min.
<u>Primary Front Yard (ft.):</u>	12'9"	12'9"* (house)	15 min.
<u>Secondary Front Yard (ft.):</u>	0	0* (house)	15 min.
<u>Left Yard (ft.):</u>	33'	24'	10 min.
<u>Rear Yard (ft.):</u>	3'7"	3'7"	20 min.
<u>Height (ft.):</u>	32	32	35 max.
<u>Building Coverage (%):</u>	28	35	25 max.
<u>Open Space Coverage (%):</u>	66	59	30 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1900	Variance request shown in red. *per Section 10.516.10 for Front Yard Alignments.	

Other Permits/Approvals Required

None

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant has indicated the rear yard is approximately 3 feet 7 inches on the site plan that was submitted. Since the site plan is not an official survey, the Board may want to consider a condition of approval that the rear yard is within a certain distance to specify a plus/minus range that would allow for some flexibility. This would prevent the applicant from having to come back to the Board if there is a minor discrepancy between the site plan and a surveyed plan.

If granted approval, Staff recommends consideration of a condition that would allow the rear yard to be within a certain distance as determined by the 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.

Case #12-3

Petitioners: Jennifer & Dylan Thomas
 Property: 279 Wibird Street
 Assessor Plan: Map 133, Lot 35
 Zoning District: General Residence A (GRA)
 Description: Construct mudroom and garage with second floor living space.
 Request: 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 5'3"± right side yard where 10' is required; and b) 26% building coverage 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

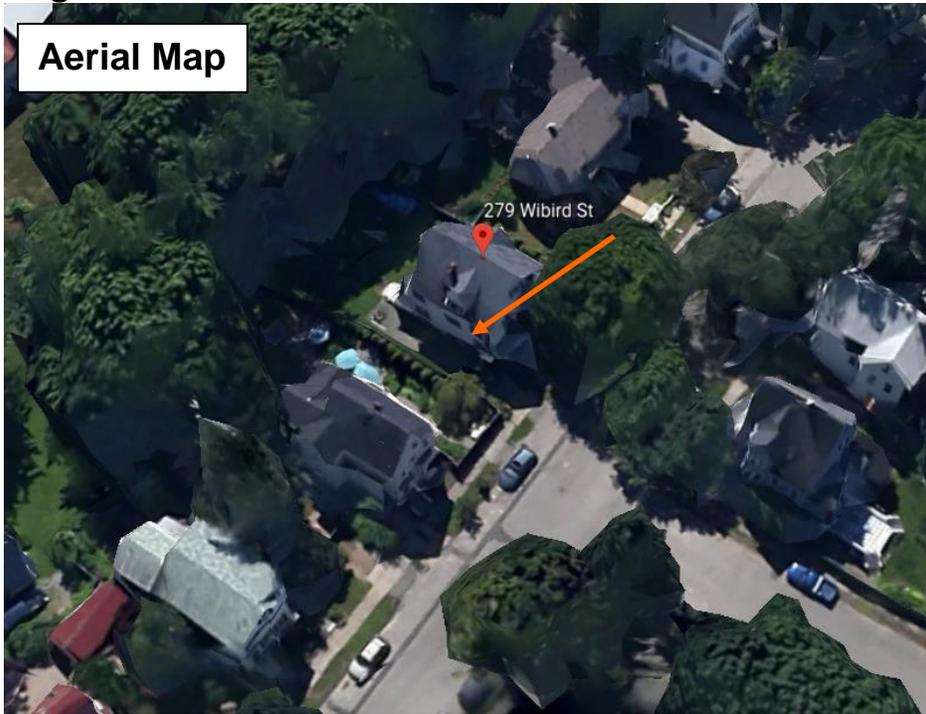
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Two-story addition and new garage	Primarily residential uses
<u>Lot area (sq. ft.):</u>	7,406	7,406	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,406	7,406	7,500 min.
<u>Street Frontage (ft.):</u>	60	60	100 min.
<u>Lot depth (ft.):</u>	148	148	70 min.
<u>Primary Front Yard (ft.):</u>	12'9"	12'9"*	15 min.
<u>Right Yard (ft.):</u>	3'4"	5'3"	10 min.
<u>Left Yard (ft.):</u>	11'6"	11'6"	10 min.
<u>Rear Yard (ft.):</u>	>20	64	20 min.
<u>Height (ft.):</u>	32	32	35 max.
<u>Building Coverage (%):</u>	14	26	25 max.
<u>Open Space Coverage (%):</u>	66	59	30 min.
<u>Parking</u>	Ok	ok	2
<u>Estimated Age of Structure:</u>	1906	Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant has indicated the right yard is approximately 5 feet 3 inches on the site plan that was submitted. Since the site plan is not an official survey, the Board may want to consider a condition of approval that the side yard is within a certain distance to specify a plus/minus range that would allow for some flexibility. This would prevent the applicant from having to come back to the Board if there is a minor discrepancy between the site plan and a surveyed plan.

If granted approval, Staff recommends consideration of a condition that would allow the side yard to be within a certain distance as determined by the 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.

Case #12-4

Petitioners: Margot L. Thompson
 Property: 57 Salter Street
 Assessor Plan: Map 102, Lot 32
 Zoning District: Waterfront Business District (WB)
 Description: Convert existing accessory structure into dwelling unit.
 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 #1.10 to allow a single family dwelling where the use is not allowed in the district.
 2. A Variance from Section 10.311 and Section 10.531 to allow the following: a) a lot area of 11,327± s.f. where 20,000 s.f. is required; b) 67'± of continuous street frontage where 100' is required; c) a 4.1'± front yard where 30' is required; and d) a 0'± side yard where 30' is required.
 2. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Convert acc. structure to dwelling	Primarily water related businesses
<u>Lot area (sq. ft.):</u>	11,327	11,327	20,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,327	5,663	NR min.
<u>Lot depth (ft.):</u>	130	130	100 min.
<u>Street Frontage (ft.):</u>	67	67	100 min.
<u>Primary Front Yard (ft.):</u>	4.1'	4.1'	30 min.
<u>Left Yard (ft.):</u>	>30	>30	30 min.
<u>Right Yard (ft.):</u>	0	0	30 min.
<u>Rear Yard (ft.):</u>	>20	>20	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	26.7	27	30 max.
<u>Open Space Coverage (%):</u>	>20	>20	20 min.
<u>Parking</u>	Ok	ok	3
<u>Estimated Age of Structure:</u>	1720	Variance request shown in red.	

Other Permits/Approvals Required

Historic District Commission

Conservation Commission (State Wetlands Permit)

Neighborhood Context



Previous Board of Adjustment Actions

April 17, 1990 – The Board **granted** variances to allow the following: 1) development of a lot with 96' of frontage and 10,700 s.f. in area where 100' and 20,000 s.f. respectively are required; 2) the construction of a two story infill addition between the existing dwelling on lot 32 and that on lot 32A, creating one dwelling unit on a new lot having 96' frontage and being 10,700 s.f. in area; 3) two non-conforming dwellings to be combined and enlarged creating one non-conforming dwelling in a district where dwellings are not permitted increasing the extent of a non-conforming use of structure or land; 4a) a 19.2' rear yard for the infill addition where 20' was required; and 4b) 8.2', 15.5' and 17' left yards where 20' was required. The Board **denied** request 4c) to allow a proposed enclosed staircase to be constructed with a 0' front yard where 20' was required.

September 18, 1990 – The Board **granted** a request to appeal a decision (denial) of the Historic District Commission to be heard on October 16, 1990.

December 18, 1990 – The Board **granted** the appeal to overturn the decision made by the Historic District Commission at their July 25, 1990 meeting. (**after** a request to postpone a hearing in November and applicant working separately with HDC that ultimately issued a Certificate of Approval.)

December 18, 1990 – As noted in a separate letter of decision, the Board **denied** a variance to allow a 14.5' x 17' addition to a single family dwelling with a 2.3' side yard where 20' was required.

Planning Department Comments

Residential dwellings are not a permitted use in the Waterfront Business district and the existing home predates the City's zoning. The proposal is to convert an existing accessory structure into a single family dwelling. The intent of the WB zone is to protect the working waterfront and businesses that depend on the river and ocean. However, many of the lots in this zone contain dwellings, which are not permitted. Since residential uses are not permitted, there is not requirement for lot area per dwelling.

This property was originally two lots, each with a dwelling unit. As described in the history above the lots were merged, and the houses connected and converted into a single family dwelling. Variances were granted that included lot area and frontage for the single family use.

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

(b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.

OR

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Case #12-5

Petitioners:	56 Middle St LLC
Property:	56 Middle Street
Assessor Plan:	Map 126, Lot 19
Zoning District:	Character District 4-L1 (CD4-L1), Historic District (HD), Downtown Overlay District (DOD)
Description:	Garage addition and residential use on the ground floor.
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 10.642 & 10.5A32 to allow a residential principal use on the ground floor of a building. 2. A Variance from Section 10.5A41.10A to allow a 1.7'± rear yard where 5' is required.

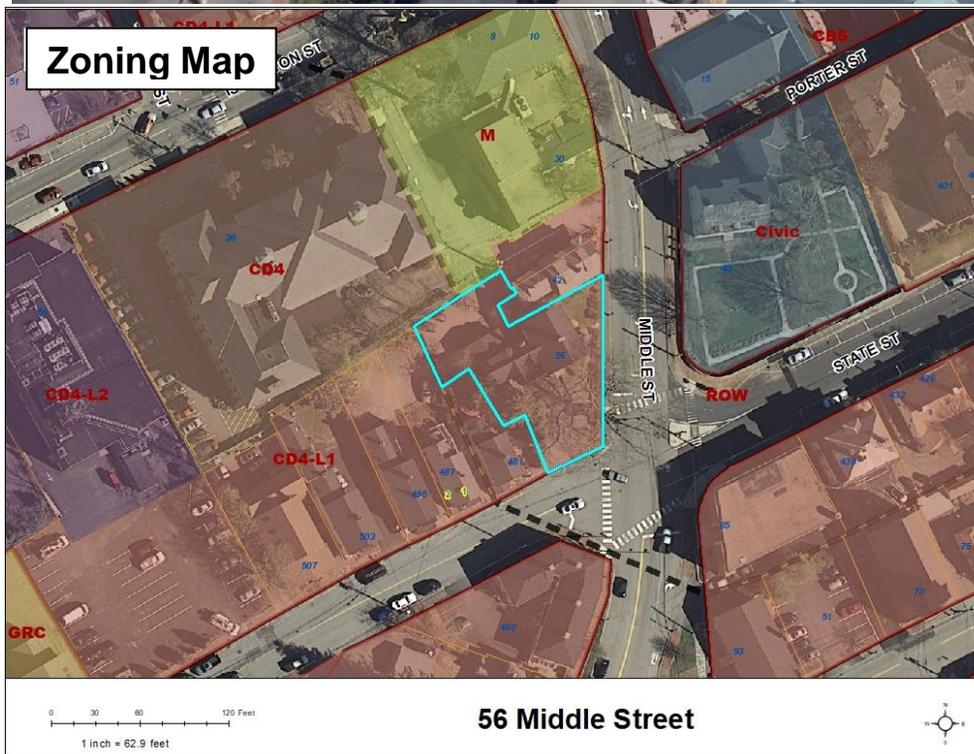
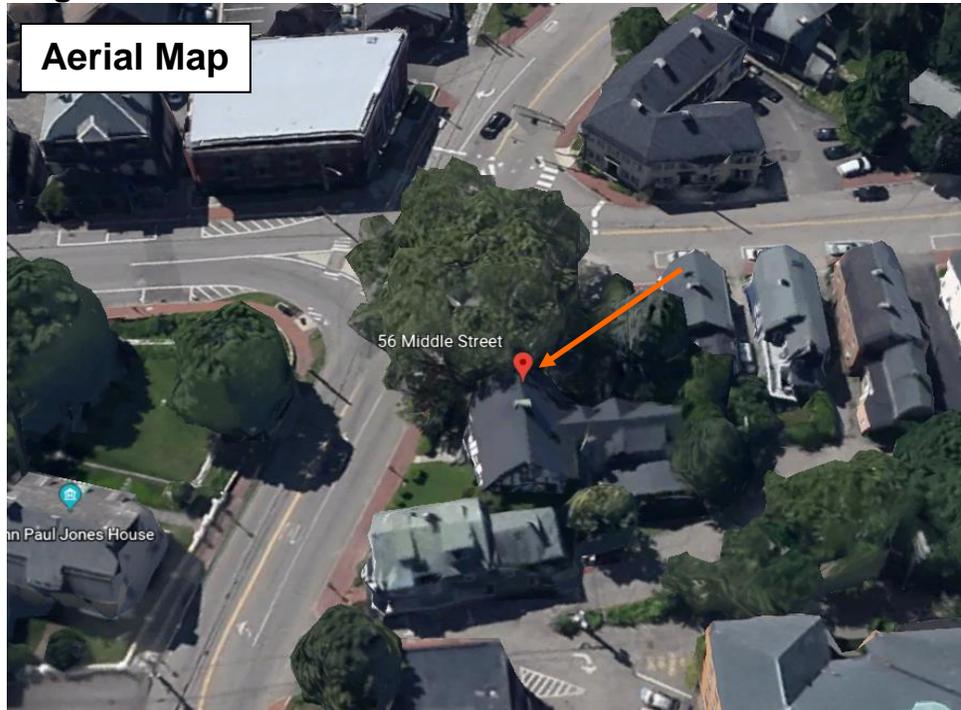
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	office	Single family	Primarily mixed uses
<u>Lot area (sq. ft.):</u>	10,266	10,266	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,266	10,266	3,000 min.
<u>Max Block Length:</u>	52	52	80 max.
<u>Primary Front Yard (ft.):</u>	14	14	15 max.
<u>Left Side Yard (ft.):</u>	34	26	5 ft. – 20 ft. max
<u>Rear Yard (ft.):</u>	1.7'	1.7'	Greater of 5 ft. from rear or 10 ft. from alley
<u>Height (ft.):</u>	<40	<40	40 max.
<u>Building Coverage (%):</u>	22	24	60 max.
<u>Open Space Coverage (%):</u>	36	39	25 min.
<u>Ground story height</u>	10.5	12 -13 (addition)	11
<u>Parking</u>		4	2
<u>Estimated Age of Structure:</u>	1910	Variance request shown in red.	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

August 31, 1965 – The Board granted a variance to use the premises for professional offices with the present dental office to remain unchanged.

Planning Department Comments

The applicant is proposing to convert the structure into their main residence. The underlying zoning district, CD4-L1, permits residential on the ground floor as well as a house as a building type, however the Downtown Overlay District (DOD) does not allow either, thus the need for the relief.

The intent of the DOD is to promote economic vitality in the downtown by providing pedestrian-oriented business along streets. Section 10.642 specifically states the ground floor of any building within the DOD shall consist entirely of nonresidential principal uses that are permitted in the underlying zoning district.

Section 10.640	Downtown Overlay District
10.641	Establishment and Purpose
10.641.10	The Downtown Overlay District (DOD) is an overlay district applied to portions of the Character Districts. All properties located in the DOD must satisfy the requirements of both the DOD and the underlying districts.
10.641.20	The purpose of the DOD is to promote the economic vitality of the downtown by ensuring continuity of pedestrian-oriented business uses along streets .
10.642	Ground Floor Uses
	Within the DOD, the ground floor of any building shall consist entirely of the following uses :
	1. Nonresidential principal uses permitted in the underlying zoning district.
	2. Entries, lobbies, stairs, and elevators providing pedestrian access to permitted upper-floor residential uses , not exceeding 20 percent of the ground floor area.

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