

TO: Zoning Board of Adjustment  
FROM: Peter Stith, AICP, Planning Department  
DATE: July 18, 2018  
RE: Zoning Board of Adjustment July 24, 2018 Meeting

## **NEW BUSINESS**

1. Case 7-6 120 Spaulding Turnpike
2. Case 7-7 254 South Street
3. Case 7-8 115 Heritage Avenue - Withdrawn
4. Case 7-9 86 Thornton Street
5. Case 7-10 130 Pine Street
6. Case 7-11 122 Essex Avenue
7. Case 7-12 869 Woodbury Avenue
8. Case 7-13 893 Woodbury Avenue
9. Case 7-14 206 Court Street

## NEW BUSINESS

### Case #7-6

Petitioners:	Two-Way Ralty LLC, owner, Port City Nissan, Inc., applicant
Property:	120 Spaulding Turnpike
Assessor Plan:	Map 236, Lot 33
Zoning Districts:	General Business (GB), Single Residence B (SRB)
Description:	Construct 12,000 s.f. vehicle storage area and 20' x 60' addition.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance: <ol style="list-style-type: none"><li>1. A Variance from Section 10.591 to allow vehicle storage within a residential zone where 100 feet from a residential zone is required.</li><li>2. A Variance from Section 10.592.20 to allow a motor vehicle dealership to be less than 200 feet from a residential district.</li><li>3. A Variance from Section 10.440 Use #20.60 to allow outdoor motor vehicle storage in a residential district.</li></ol>

### Existing & Proposed Conditions

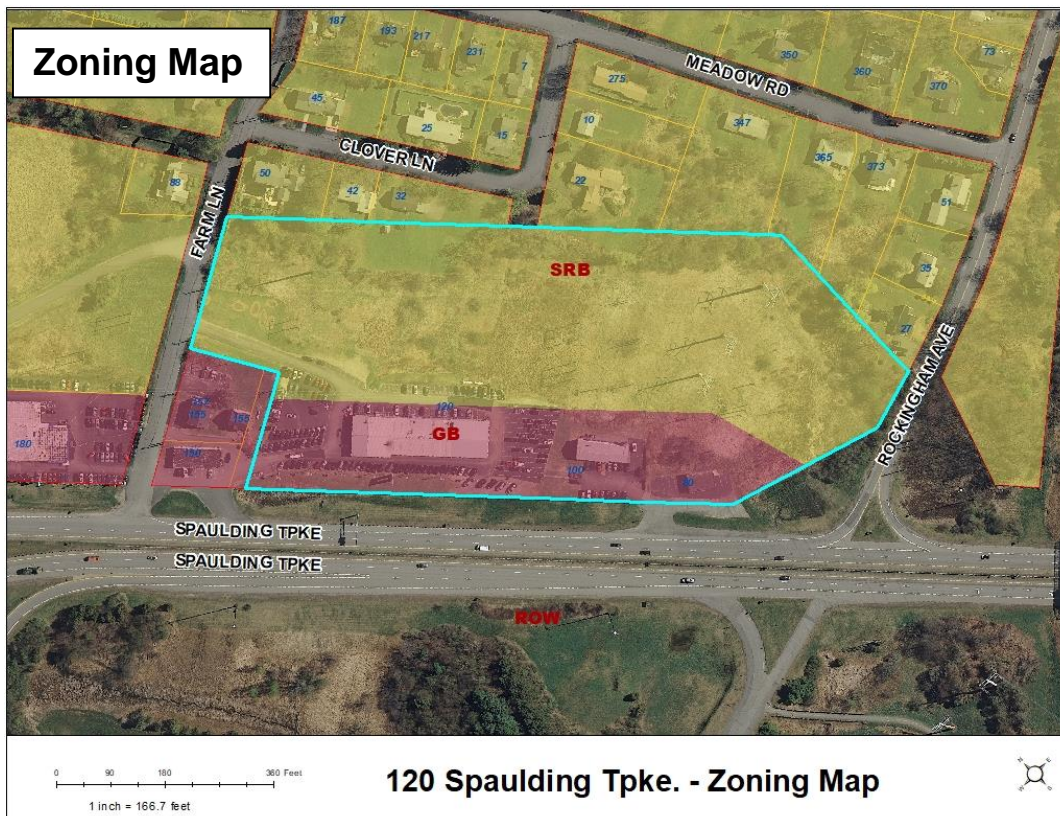
***See Exhibit 1 Sheet C-2 from applicant showing dimensional table for property.***

Approximately 123,600 sq. feet (2.8 acres) of this property is zoned GB, with the remaining 7.4 acres zoned SRB. There is a 300' utility easement that covers most of the area in the SRB zone. Additionally, wetlands and/or the 100' wetland buffer cover most of the site, including the area zoned GB. Sheet C-2 submitted by the applicant shows both of these areas. The proposed service bay addition is within the GB zone, but will border on the SRB district line and is well within the 100' wetlands buffer. The proposed parking location is outside of the wetland buffer, but is completely in the SRB zone, with a minimal portion in the GB zone.

### Other Permits Required

TAC, Planning Board – Site Review  
Conservation Commission

## Neighborhood Context



## Previous Board of Adjustment Actions

### 80 Spaulding Turnpike

May 4, 1993 (reconvened from April 20, 1993) - The Board **denied** an Appeal of an Administrative Decision by the abutter at 100 Spaulding Turnpike concerning the Building Inspector in the granting of a Building Permit and Certificate of Occupancy for a book and video business. The Board found that the Building Permit and Certificate of Occupancy were appropriately issued and there was adequate parking.

June 15, 1993 – The Board **denied** a Request for Rehearing regarding the above. (Note: A copy of a court record is in the file, with no additional information that there was actually court action taken and a ruling made)

February 20, 1996 – The Board failed to pass a motion to grant, and thus **denied** the following requests:

- 1) to allow the redesign and expansion of a parking lot and accessway for a nonconforming use to be extended on the lot to an area currently unused;
- 2) to allow said parking lot and accessway 65' from a residential district where 100' is required; and
- 3) to allow said parking lot and accessway to be located 26' from the front property line and not landscaped where a 40' setback is required with landscaping

The motion contained the following **stipulations**:

- 1) that 10 parking spaces be provided to the left of the building with a revised plan submitted to the Planning Department;
- 2) that the existing parking area on the southerly side of the building be made unusable; and
- 3) that the State of New Hampshire Department of Transportation review the request and, if needed, approve the proposed parking plan.

### **100 Spaulding Turnpike**

October 16, 1996 – The Board **granted** the following Variances in connection with the construction of a 14' x 30' two story addition with associated parking:

- 1) to allow the addition to be located 52' from a residential district where 100' is required;
- 2) to allow parking 81' from a residential district where 100' is the minimum required;
- 3) to allow no screening for a business building 52' from property zoned residentially where screening is required closer than 100'; and
- 4) to allow parking 4' from the front property line with no landscaping where parking is to be set back 40' from the line and the area is to be landscaped.

June 3, 1997, reconvened from May 20, 1997 – The Board **granted** a Variance to allow a 5' x 5' landing and stairs from the second floor, rear, with a 50' setback to property zoned residentially where 100' is the minimum required.

### **120 Spaulding Turnpike**

May 30, 1972 – the Board **granted** the following:

- 1) a special exception for an automobile dealership (Port City Datsun).

- 2) a building within the 100' setback to the residential district.
- 3) allowing the parking, storage and display of vehicles back to 170' from the front yard line on the Spaulding Turnpike.

October 20, 1992 – the Board **granted** a variance to allow unpermitted attached signage and the proposed installation of 45 sf of attached signage on the building (facing the Spaulding Turnpike) for an aggregate sign area of 268 sf in a district where 200 sf is the maximum aggregate sign area allowed.

February 16, 1999 – The Board **denied** a variance to allow 235 display spaces for vehicles “For Sale” in the Single Residence B district for the auto dealership in the General Business district where a commercial use is not allowed in a residential district. The Board **granted** the following Variances:

- to allow parking spaces to be located over the Residential/General Business district boundary line with associated accessways and no screening to be provided where all parking and accessways shall be located at 50' from an adjoining residential district and screened;
- to allow display spaces for vehicles “For Sale” less than 80' from property zoned residentially where 200' is the minimum required; and
- to allow a 60' x 60' one story addition to expand the existing auto dealership 17' from property zoned residentially where 100' is the minimum required.

November 18, 2003 – the Board **denied** the following requests:

- 1) a 155.25 sf free-standing sign 37.5' in height where a 150 sf of free-standing signage is the maximum allowed and the maximum height is 20'.
- 2) an aggregate of 313.29 sf of signage where 200 sf is the maximum aggregate allowed

The request for four 13 sf directional signs totaling 52 sf where 1.5 sf per sign is allowed was **withdrawn**.

January 20, 2004- The Board **granted** a request for rehearing regarding the above denials.

February 18, 2004 – After failing to pass a motion to deny, the Board conditionally granted the following requests as changed below:

- 1) a 155.25 free-standing sign 37.5' in height where 150 s.f. and 20' were the maximums allowed;
- 2) four 13 s.f. directional signs totaling 52 s.f. where 1.5 s.f. per sign was allowed;
- 3) an aggregate of 350.79 s.f. of signage where 200 s.f. was the maximum allowed.

The request was granted with the following changes:

- Section a) be changed to a 100 s.f. sign 30' in height;
- Sections b) and c) be withdrawn;
- The aggregate to remain as previously granted at 263 s.f.

January 18, 2005 – The Board ruled that Fisher v. Dover did not apply to the current application and then **denied** a request to allow the creation of a 23,608 s.f. outdoor vehicle

display parking area on the residentially zoned portion of the property where the use was not allowed.

February 15, 2005 – The Board **denied** a motion for rehearing on the above petition. The decision was appealed to the Court, which ultimately upheld the Board’s decision.

June 21, 2011 – The Board **granted** a special exception to allow a 20’ x 40’ tent to remain on the site for a period of 38 days following the date of installation where the maximum period allowed was 30 days.

### **Planning Department Comments**

Several variances were granted in 2012, including relief from Section 10.592.20 (motor vehicle dealership within 200 feet of a residential district). The proposed service bay will be closer to the SRB zone than what was previously approved, thus the need to seek additional relief from this section. If approved, this will need site plan approval as well as a conditional use permit for work within the wetland buffer for the proposed building addition. The applicant has indicated there will be boulders and a guardrail to keep cars from driving off of the designated parking area (shown on site plan). It is unknown at this point if the proposed parking area will be illuminated with general or security lighting.

### **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 #7-7**

Petitioners:	Denise & Michael Todd, owners
Property:	254 South Street
Assessor Plan:	Map 111, Lot 4
Zoning District:	Single Residence B (SRB), Historic District (HD)
Description:	Add on to existing deck.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.521 to allow the following: a) a building coverage of 27% where 20% is the maximum allowed.

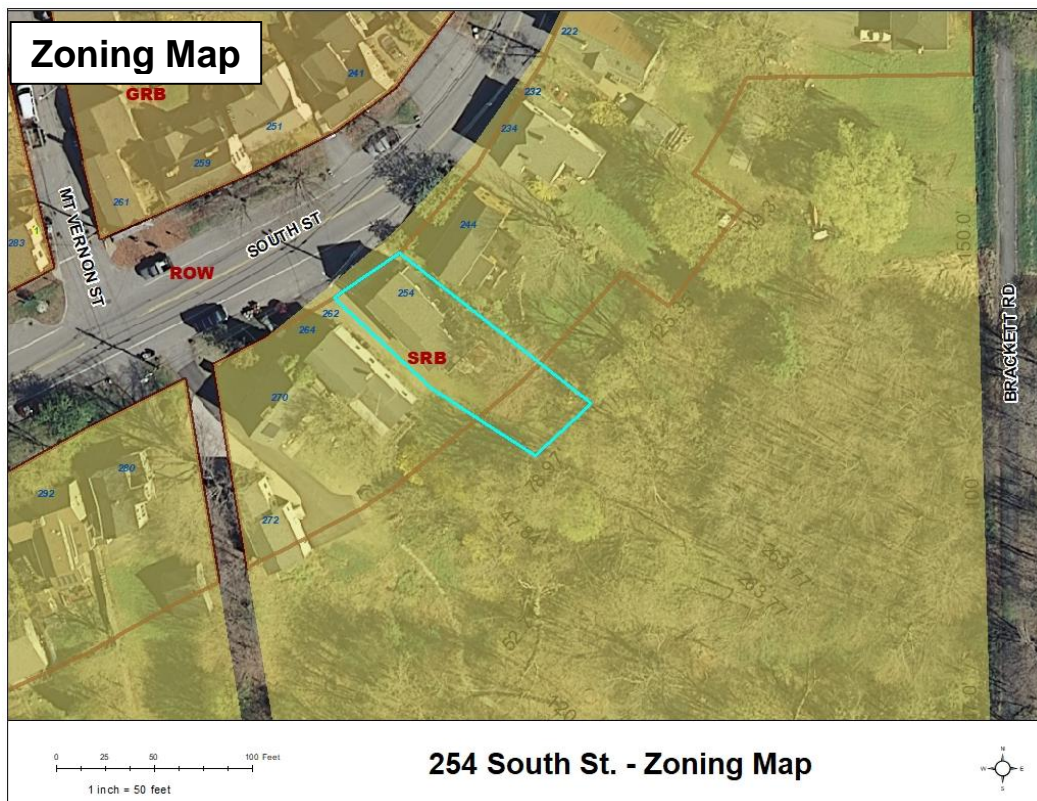
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Extend deck	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	5,160	5,160	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,160	5,160	15,000
<u>Street Frontage (ft.):</u>	39.85	39.85	100 min.
<u>Lot depth (ft.):</u>	>100	>100	100 min.
<u>Primary Front Yard (ft.):</u>	8.5	8.5	30 min.
<u>Right Side Yard (ft.):</u>	12	12	10 min.
<u>Left Yard (ft.):</u>	1.2' (house)	10.5 (deck)	10 min.
<u>Rear Yard (ft.):</u>	>30	>30	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	24	<b>27</b>	20 max.
<u>Open Space Coverage (%):</u>			40 min.
		Variance request shown in red.	

**Other Permits Required**

HDC  
 Conservation Commission - CUP

# Neighborhood Context





## Previous Board of Adjustment Actions

March 28, 1955 - The Board **granted** a petition to alter the premises from a single residence to a double residence.

November 18, 2008 – The Board **granted** variances to allow an I-shaped porch 4'6" x 14' plus 4.5' x 21' (157.5 s.f. total) and a deck 4'6" x 21'9" (94.5 s.f.) with 36.9 s.f. of steps creating 24.1% building coverage where 20% was allowed.

## Planning Department Comments

As noted in the history, a variance was granted for the existing building coverage. This will also require a conditional use permit because the proposed deck addition will be located within the 100 foot wetland buffer.

## 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 #7-9

Petitioners:	Noelle B. Beadling
Property:	86 Thornton Street
Assessor Plan:	Map 160, Lot 2
Zoning District:	General Residence A (GRA)
Description:	Convert basement into second dwelling.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <p>1. Variations from Section 10.521 to allow a lot area per dwelling unit of 1,960± where 7,500 square feet is the minimum required.</p>

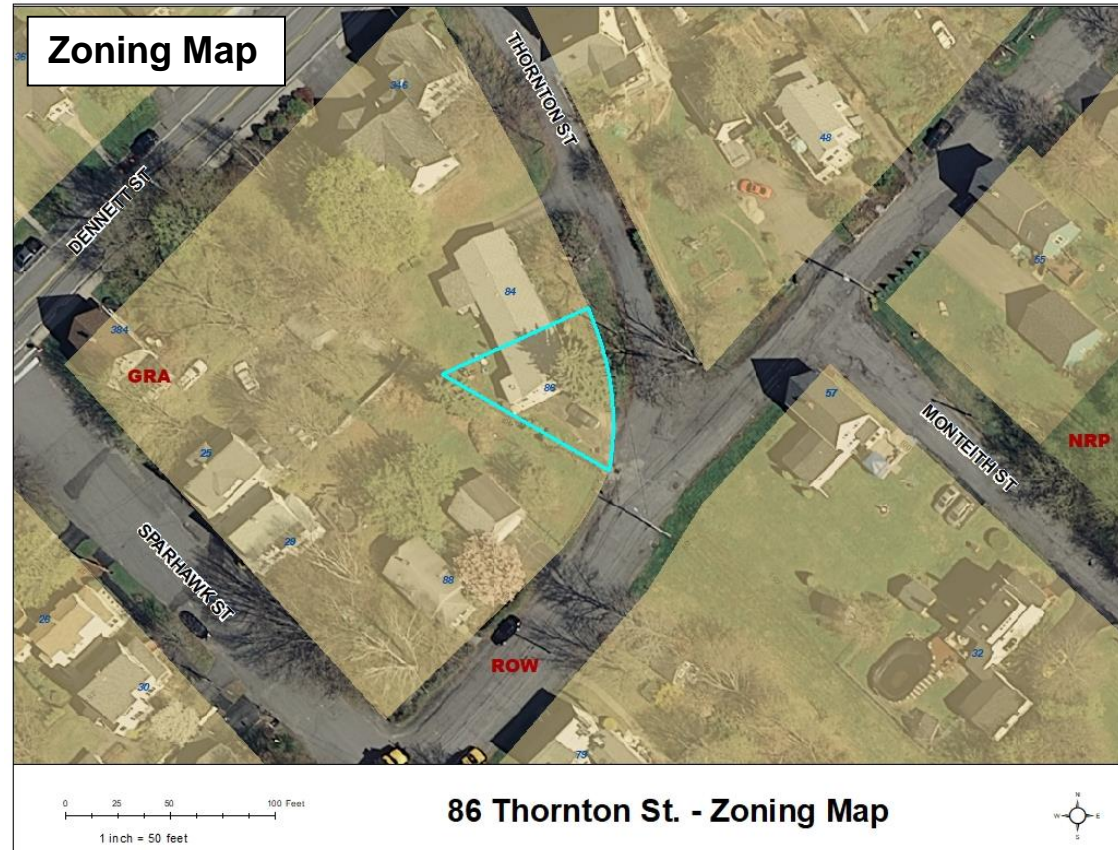
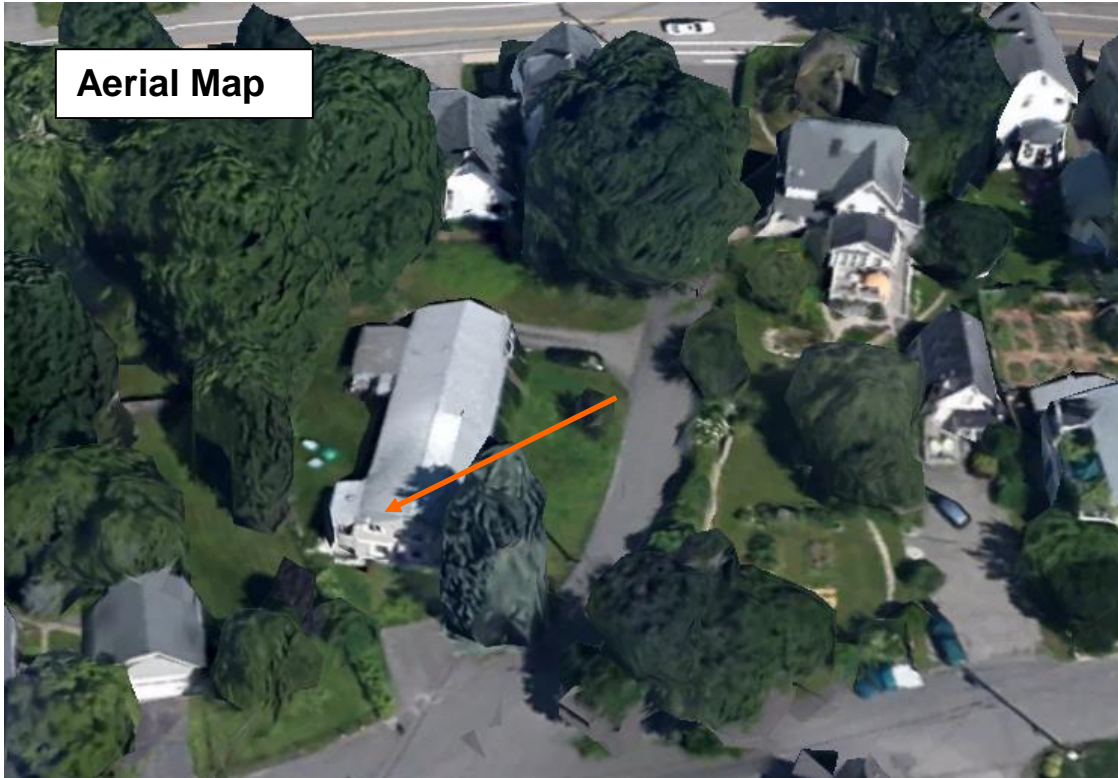
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Two-family	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	<b>1,960</b>	7,500 min.
<u>Street Frontage (ft.):</u>	89	89	100 min.
<u>Lot depth (ft.):</u>	93	93	100 min.
<u>Primary Front Yard (ft.):</u>	10	10	15 min.
<u>Right Yard (ft.):</u>	4	4	10 min.
<u>Left Yard (ft.):</u>	0	0	10 min.
<u>Rear Yard (ft.):</u>	23	23	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	26	26	25 max.
<u>Open Space Coverage (%):</u>	58	58	30 min.
<u>Parking</u>	Ok	ok	
<u>Estimated Age of Structure:</u>	1969	<b>Variance request shown in red.</b>	

### Other Permits Required

None.

# Neighborhood Context



## Previous Board of Adjustment Actions

June 18, 2004 – The Board **granted** variances to allow one room and a bathroom in the basement to be used for a business and to allow no parking to be provided for the business where two parking spaces were required. The variances were granted with the following stipulations: a) that this remain a one-person business with no employees; b) that no signs advertising the business be allowed on the property; and c) that the hours not exceed Monday through Friday 10 a.m. to 7 p.m. and Saturday 10 a.m. to 1 p.m.

## Planning Department Comments

No exterior changes are proposed with the proposed conversion to a two-family. The building coverage currently exceeds the maximum allowed, so any future structures or expansion would need relief for this requirement.

## 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 #7-10

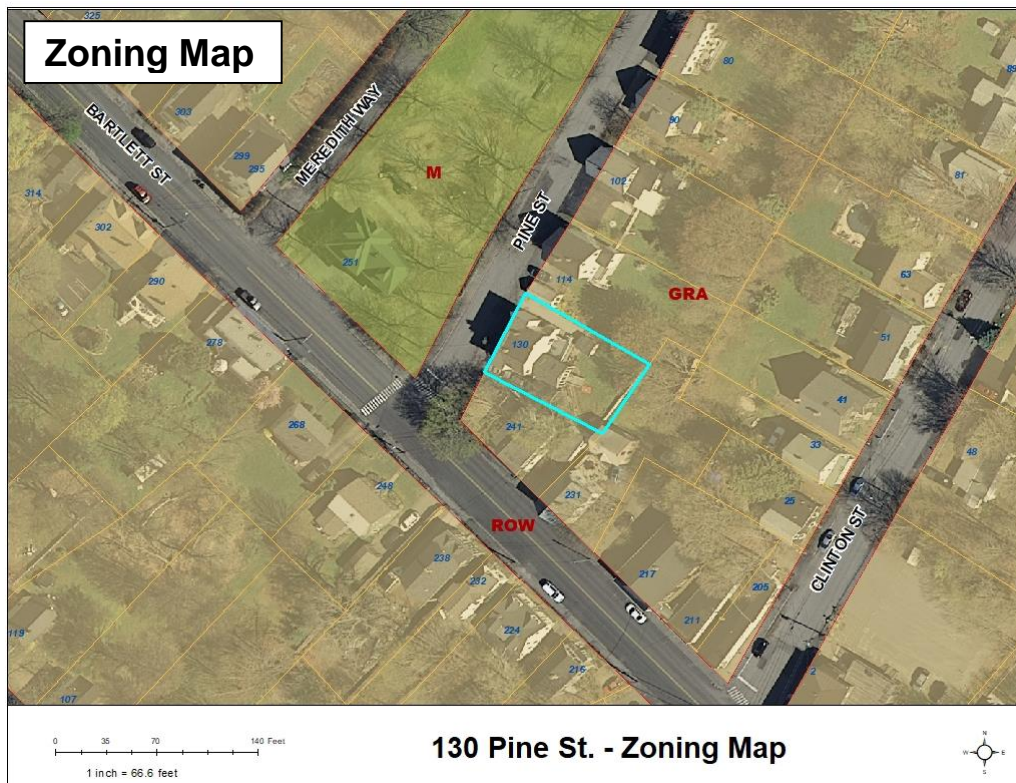
Petitioners: Jeffery P. Bartolini & Rachel Roemer  
Property: 130 Pine Street  
Assessor Plan: Map 162, Lot 29  
Zoning District: General Residence A (GRA)  
Description: Replace shed.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
1. Variances from Section 10.521 to allow the following: a) a 0'± right side yard where 10' is required and b) 28%± 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.

### Other Permits Required

None

### Neighborhood Context





### Previous Board of Adjustment Actions

March 17, 1999 - The Board **granted** a variance to allow a 15' x 20' three season room addition to the rear over a portion of the existing deck and extending out past the deck creating 27.2% 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 #7-11

Petitioners:	Cassandra M. Saltus Declaration of Trust, Cassandra M. Saltus, Trustee, owner, Derek Bickford, applicant
Property:	122 Essex Avenue
Assessor Plan:	Map 233, Lot 66
Zoning District:	Single Residence B (SRB)
Description:	Install 18'x 6' front farmer's porch.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> <li>1. A Variance from Section 10.521 to allow a primary front yard of 13' where 30' is required.</li> <li>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.</li> </ol>

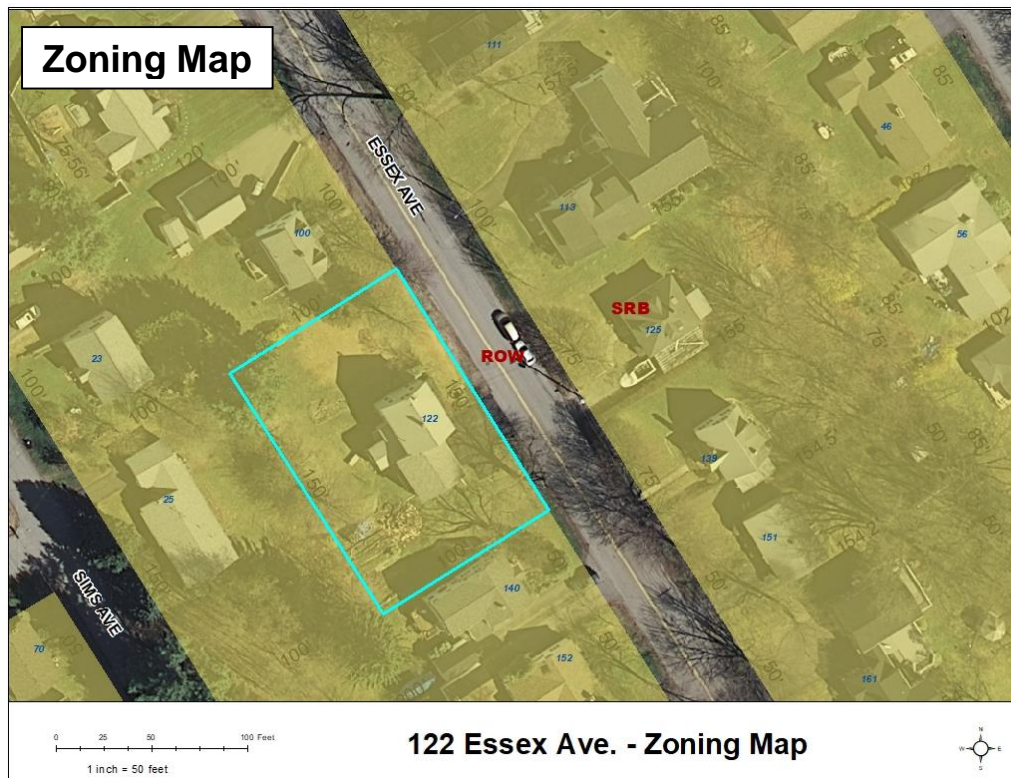
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Rear addition	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	14,810	14,810	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	14,810	14,810	15,000 min.
<u>Street Frontage (ft.):</u>	150	150	100 min.
<u>Lot depth (ft.):</u>	100	100	100 min.
<u>Primary Front Yard (ft.):</u>	19	<b>13</b>	30 min.
<u>Right Yard (ft.):</u>	55	55	10 min.
<u>Left Yard (ft.):</u>	40	40	10 min.
<u>Rear Yard (ft.):</u>	38	38	10 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	10	11	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking</u>	ok	ok	ok
<u>Estimated Age of Structure:</u>	1940	<b>Variance request shown in red.</b>	

### Other Permits Required

None.

## Neighborhood Context



## Previous Board of Adjustment Actions

August 17, 1993 - The Board **granted** variances to permit the following: a) a 576 s.f. garage with a second story bedroom addition to a single family home with a 26.5' front yard where 30' was required; and b) a two story 576 s.f. addition where no increase in the extent of a nonconforming use of a structure may be made without Board approval.



## Planning Department Comments

The existing 1940's home is currently nonconforming with respect the front yard requirement. The applicant has indicated they need relief for a 19 foot front yard. However, it appears the current house sits 19 feet from the front property line and the proposed 6 foot wide porch would result in a 13 foot front yard. The legal notice indicated relief for a 13 foot front yard as opposed to a 19 foot which was indicated in the application.

## 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 #7-12

Petitioners: Shawn A. Dick  
 Property: 869 Woodbury Avenue  
 Assessor Plan: Map 219, Lot 37  
 Zoning District: Single Residence B (SRB)  
 Description: Replace damaged home with new single-family dwelling.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
 1. A Variance from Section 10.521 to allow the following: a) a lot area and lot area per dwelling unit of 10,018± s.f. where 15,000 s.f. is required.

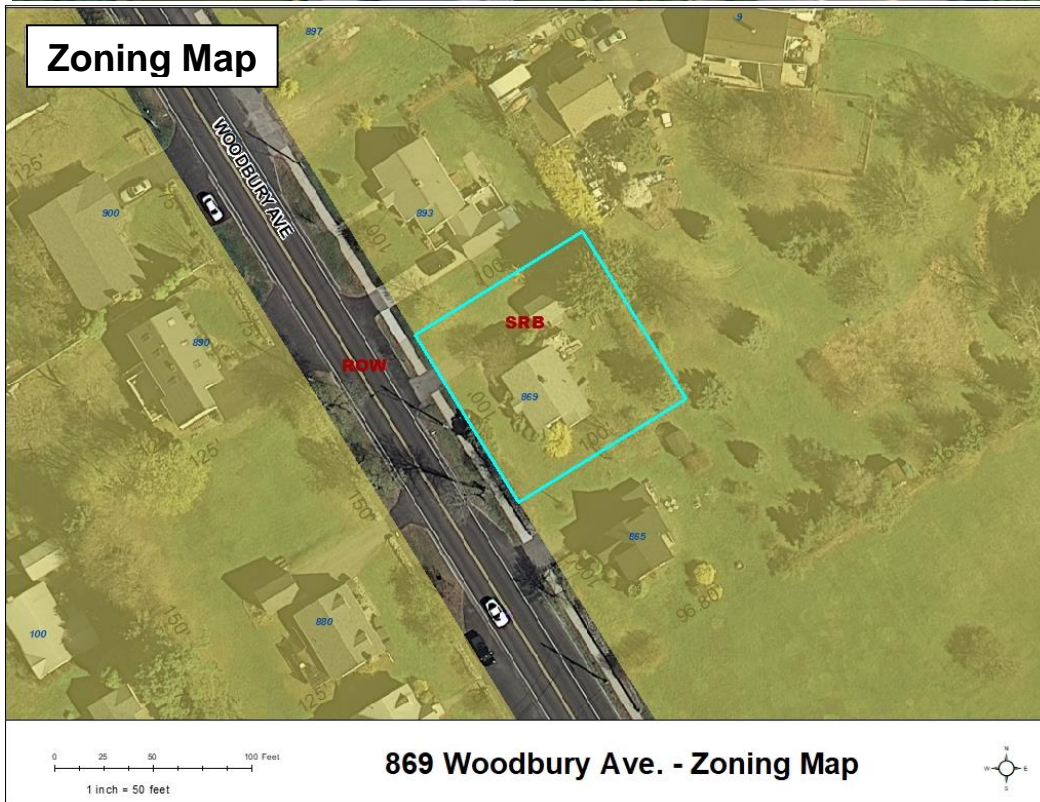
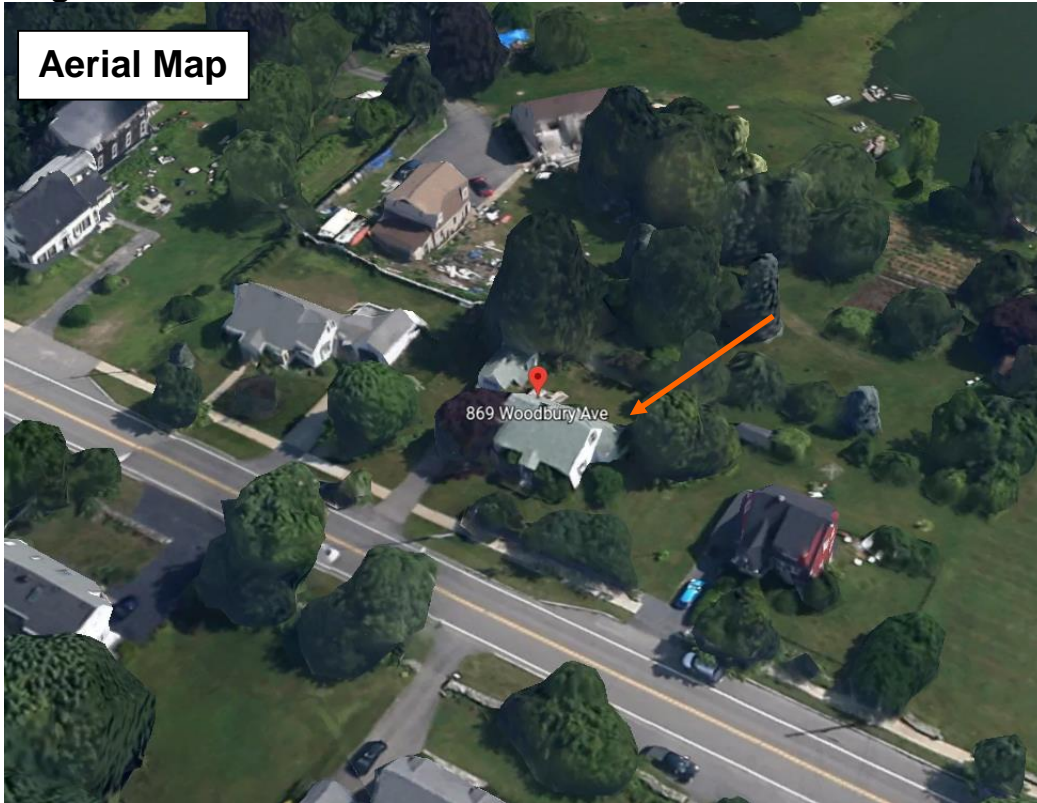
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	New single-family	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	10,018	<b>10,018</b>	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,018	<b>10,018</b>	15,000 min.
<u>Street Frontage (ft.):</u>	100	100	100 min.
<u>Lot depth (ft.):</u>	100	100	100 min.
<u>Primary Front Yard (ft.):</u>	17	24	30 min.
<u>Right Yard (ft.):</u>	>10	29	10 min.
<u>Left Yard (ft.):</u>	>10	18	10 min.
<u>Rear Yard (ft.):</u>	>30	37	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	<20	<20	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking</u>	ok	Ok	ok
<u>Estimated Age of Structure:</u>	1932	<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 existing home was partially damaged by a fire and the proposal is to remove the existing dwelling and construct a new one. The lot is non-conforming to lot area and lot area per dwelling unit. The applicant also included a request for relief for street frontage because the actual frontage is 99.89' where 100' is required. It was determined that a variance is not needed for this requirement. When the calculation or measurement is this close we round to the nearest whole number.

## 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 #7-13

Petitioners: Bruce A. Clark  
 Property: 893 Woodbury Avenue  
 Assessor Plan: Map 219, Lot 33  
 Zoning District: Single Residence B (SRB)  
 Description: Replace existing garage with new two-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) an 8'± right side yard where 10' is required; and b) a 23'± rear 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.

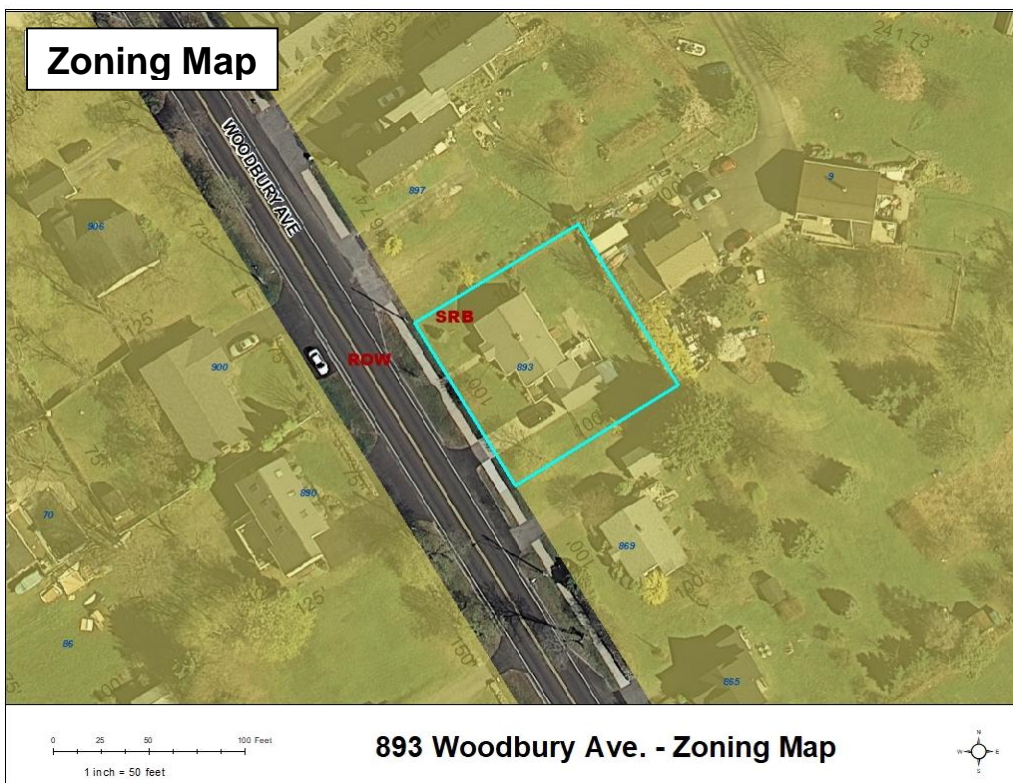
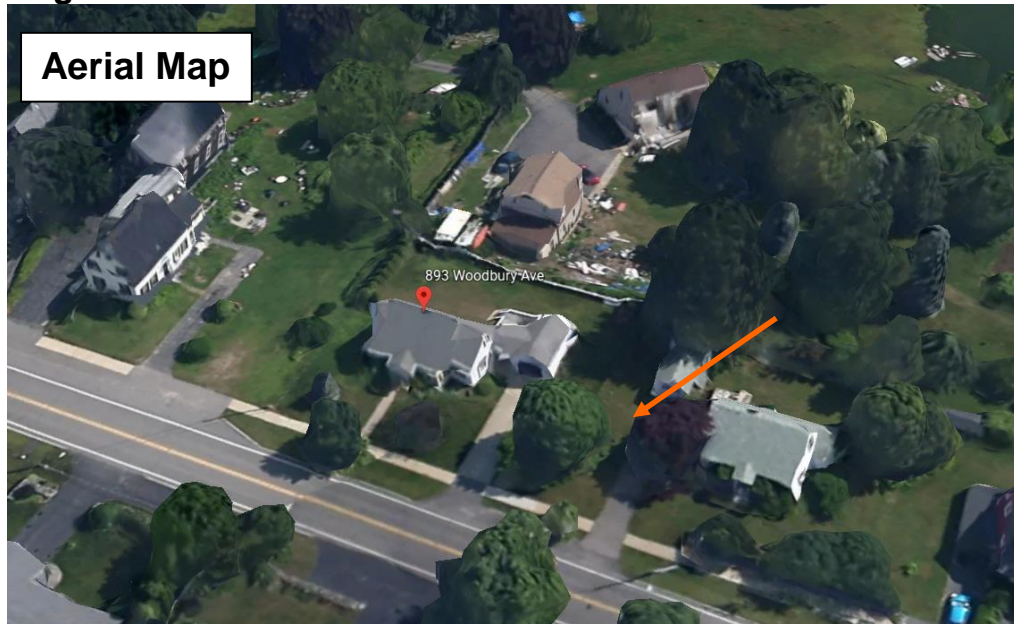
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	New two-car garage	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	10,000	10,000	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,000	10,000	15,000 min.
<u>Street Frontage (ft.):</u>	100	100	100 min.
<u>Lot depth (ft.):</u>	100	100	100 min.
<u>Primary Front Yard (ft.):</u>	22	22	30 min.
<u>Right Yard (ft.):</u>	19	19	10 min.
<u>Left Yard (ft.):</u>	15	<b>8</b>	10 min.
<u>Rear Yard (ft.):</u>	23	<b>23</b>	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	18	20	20 max.
<u>Open Space Coverage (%):</u>	39	30	40 min.
<u>Parking</u>	Ok	ok	ok
<u>Estimated Age of Structure:</u>	1949	<b>Variance request shown in red.</b>	

### Other Permits Required

None

## Neighborhood Context



## Previous Board of Adjustment Actions

December 23, 2005 – The Board **granted** a variance to allow a 216 s.f. irregular shaped deck with a 24'3" rear yard where 30' was required. The variance was granted with the **stipulation** that the deck remain open to the sky and not enclosed.

## Planning Department Comments

The applicant also included a request for building coverage and it was determined this was not needed. When the calculation or measurement is this close we round to the nearest whole number.

## 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 #7-14

Petitioners: 206 Court Street, LLC  
 Property: 206 Court Street  
 Assessor Plan: Map 153, Lot 13  
 Zoning District: Character District 4-L1 (CD4-L1), Historic District (HD)  
 Description: Rear addition and convert to three dwelling units.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. Variances from Section 10.5A41.10A including a) a lot area per dwelling unit of 979 s.f. where 3,000 s.f. per dwelling unit is required; b) façade glazing of 16% where 20% minimum is required; and c) a ground floor story height of 9' where 11' minimum is required.
2. A Variance from Section 10.1114.21 to allow two parking spaces with a width of 8'± where 8.5' is required.
3. A Variance from Section 10.1114.32(b) to allow vehicles to enter and leave the parking area by backing into or from a public street or way.
4. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the Ordinance.

### Existing & Proposed Conditions

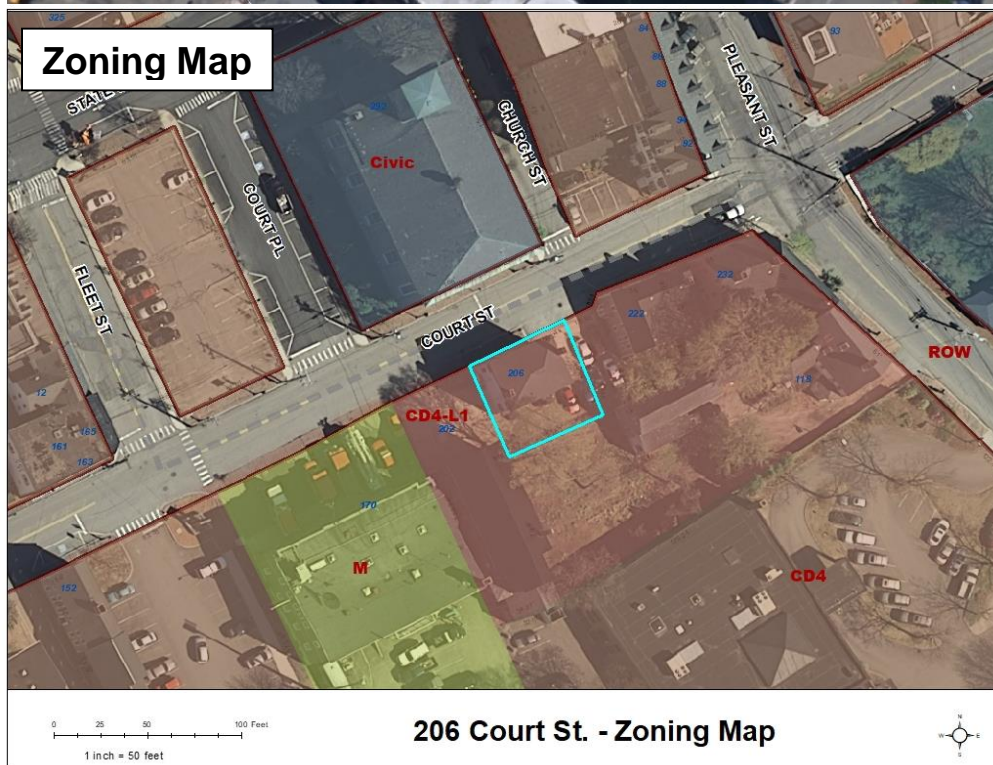
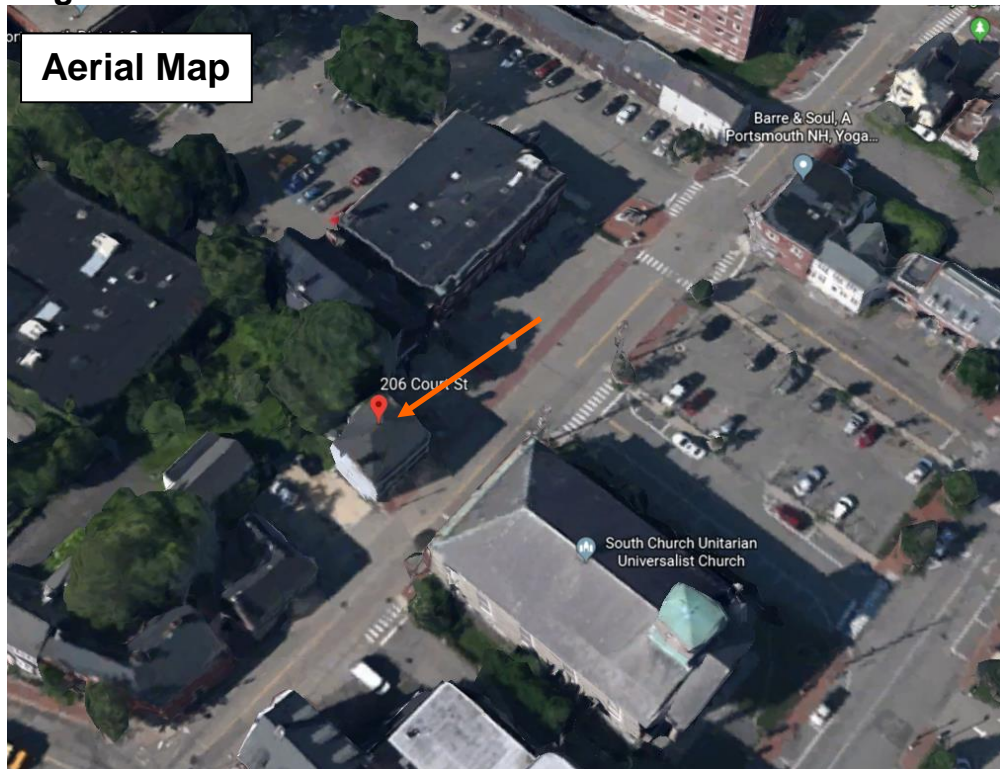
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant	Rear addition/3 dwelling units	Primarily Residential/mixed Uses
<u>Lot area (sq. ft.):</u>	2,937	2,937	3,000 min.
<u>Lot Area per DU (sq. ft.):</u>	2,937	<b>979</b>	3,000 min.
<u>Primary Front Yard (ft.):</u>	0	0	15 max.
<u>Right Yard (ft.):</u>	0	8 (addition)	5 min to 20 max
<u>Left Yard (ft.):</u>	>20	11'2.5"	5 min to 20 max
<u>Rear Yard (ft.):</u>	25	>5	5 ft.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Façade glazing:</u>	16	<b>16</b>	20 min.
<u>Ground floor story hgt:</u>	9	<b>9</b>	11 Min.
<u>Open Space Coverage (%):</u>	24	27	25 min.
<u>Parking spaces:</u>		2	4
<u>Estimated Age of Structure:</u>	1800	<b>Variance request shown in red.</b>	



## Other Permits Required

Planning Board – site review.  
HDC – (approved July 2018)

## Neighborhood Context



## Previous Board of Adjustment Actions

July 28, 2009 – The Board **granted** a variance to allow a shed 5' from the right side lot line where 10' was required. The variance was granted with the **stipulation** that there be no water runoff from the roof onto adjacent properties.

September 22, 2015 – The Board **postponed** at the request of the applicant a request for construction of an addition with related parking where a special exception and variances would be required.

October 20, 2015 – The Board **granted** the following: a) a special exception to allow a religious place of assembly and education uses where the use was allowed only by special exception; b) variances to allow a 3' right side yard and a 3' left side yard where 5' were required; c) building coverage of 68.7% where 60% was allowed; and d) no off-street parking spaces to be provided where 53 parking spaces were required. A request to allow open space of 21.3% where 25% was required was **removed with the condition** that the applicant comply with the 25% open space requirement.

The variances were granted with the following **stipulations**:

- 1) The property owners will work with the Baker-Wright Company to prevent potential encroachment into the direct abutter's parking area(s) resulting from church activities.
- 2) The following agreements resulted from a meeting between the applicants and abutters and were presented by the applicant as part of this application. The Board recognized them as part of the applicant's request for approval:
- 3) The church's waste disposal system will tie in directly to the City sewer system.
- 4) Subject to the review and approval of the Historic District Commission, the addition will be constructed with either brick or brick veneer.
- 5) The addition will conform in general to the architectural submissions provided to the Board.
- 6) The fence between the properties will be no greater than 4' in height. The cost of installation and on-going maintenance will be borne by the church.

## Planning Department Comments

All of the units will be greater than 750 square feet, which equates to 4 parking spaces and the plan is to provide two spaces. A Conditional Use Permit will be required for the other two spaces that are not provided for on the plan. The dimensional deficiencies from the two spaces that are proposed need variances for the width and for backing out into a public street. This will go through site plan review because the project is creating three dwelling units.

## 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.*