

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: October 9, 2018
RE: Zoning Board of Adjustment October 16, 2018 Meeting

OLD BUSINESS

1. Case 8-1 674 Islington Street
2. Case 8-6 1462 Islington Street
3. Case 9-1 127 & 137 High Street

NEW BUSINESS

1. Case 10-1 5 Meadow Road
2. Case 10-2 off Marcy Street
3. Case 10-3 179 Woodbury Avenue
4. Case 10-4 2 Stark Street
5. Case 10-5 69 New Castle Avenue

OLD BUSINESS

Case #8-1

Petitioners:	Islington Street LLC
Property:	674 Islington Street
Assessor Plan:	Map 155, Lot 3
Zoning Districts:	Character District 4-W (CD4-W), Historic District (HD)
Description:	Replace existing signage.
Requests:	Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance: 1. A Variance from Section 10.1251.20 to allow four wall signs that each exceed 40 square feet. 2. A Variance from Section 10.1251.10 to exceed the maximum aggregate signage available. 3. A Variance from Section 10.1271 to allow signage where there is no frontage or public entrance.

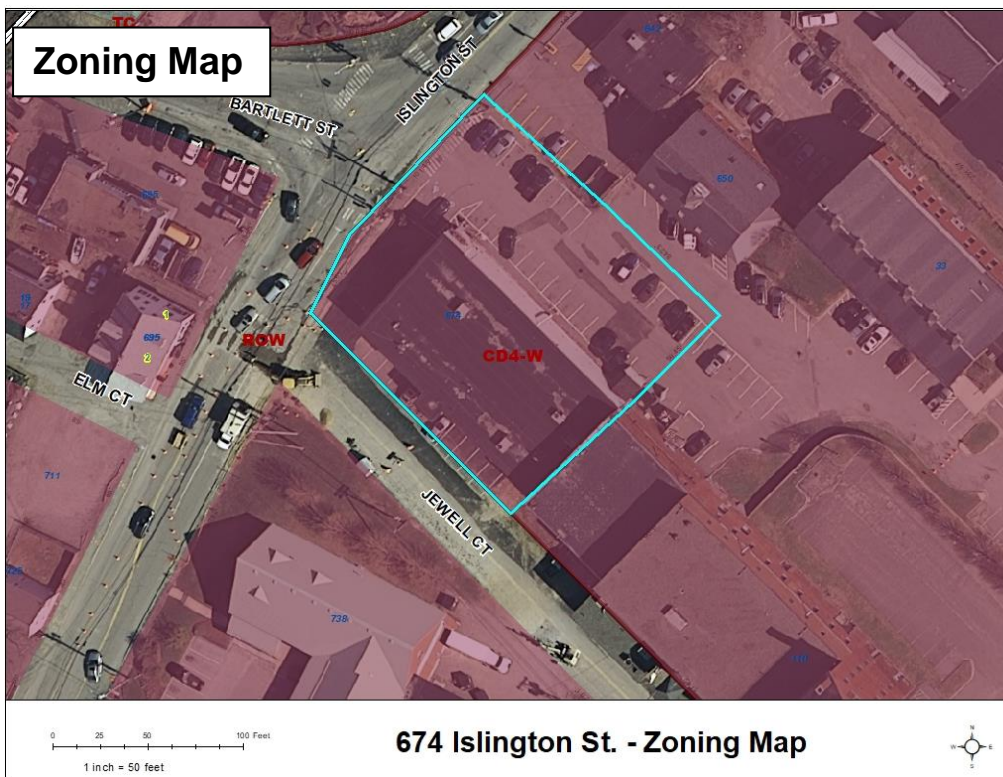
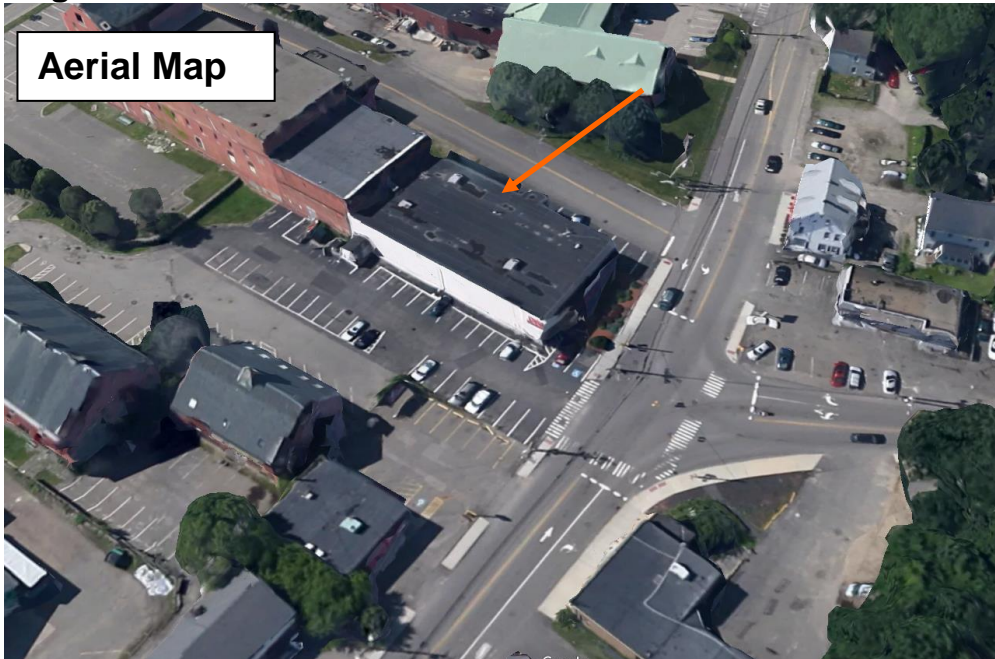
Existing & Proposed Conditions

<u>Sign District 3</u>	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
Wall Sign 1	94 s.f.	70.18 s.f.	40 s.f. max
Wall Sign 2	102.33 s.f.	74.43 s.f.	40 s.f. max
Wall Sign 3	94 s.f.	70.18 s.f.	40 s.f. max
Wall Sign (graphic on front window)	174.90	174.90 s.f.	40 s.f. max
<u>Estimated Age of Structure:</u> 1880		Variance request shown in red.	

Other Permits/Approvals Required

Historic District Commission – approved on October 3, 2018

Neighborhood Context



Previous Board of Adjustment Actions

November 20, 1979 – The Board **granted** a variance to allow a 12' x 12' rear addition to be used as an entryway and be located on the rear and side property lines, 10' and 15' respectively required.

March 19, 1991 - The Board **granted** a variance to allow the first floor to be used for a warehousing and distribution business with the **stipulation** that access be maintained on the south-easterly corner to the Albany Street Extension.

August 21, 2018 – The Board **postponed** the petition to the September meeting to allow the applicant to go before the Historic District Commission.

September 18, 2018 – The Board **postponed** the petition to the October meeting to allow the process at the Historic District Commission to be completed.

Planning Department Comments

The subject property is the last lot located in the Historic District on Islington Street. Three of the proposed wall signs will have internal illumination, which is not permitted in the Historic District. While the proposed signs are smaller than the existing signs, they still exceed the maximum square footage of 40 square feet in this sign district for a wall sign. In addition, the wall signs facing Islington Street exceed the aggregate sign area allowed (150 s.f. allowed and 245 s.f. proposed).

UPDATE: The applicant went before the HDC on October 3, 2018 and revised the lighting so that it complies with the halo lighting in the zoning ordinance. Approval was granted by the HDC for the lighting and additional vinyl in the front windows.

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 #8-6

Petitioners:	Amanda R. Blanchette
Property:	1462 Islington Street
Assessor Plan:	Map 233, Lot 86
Zoning District:	Single Residence B (SRB)
Description:	Attached garage with living space above.
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 the following: a) a 10'± rear yard where 30' is required; b) a 3'± right side yard where 10' is required; c) 26% 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. .

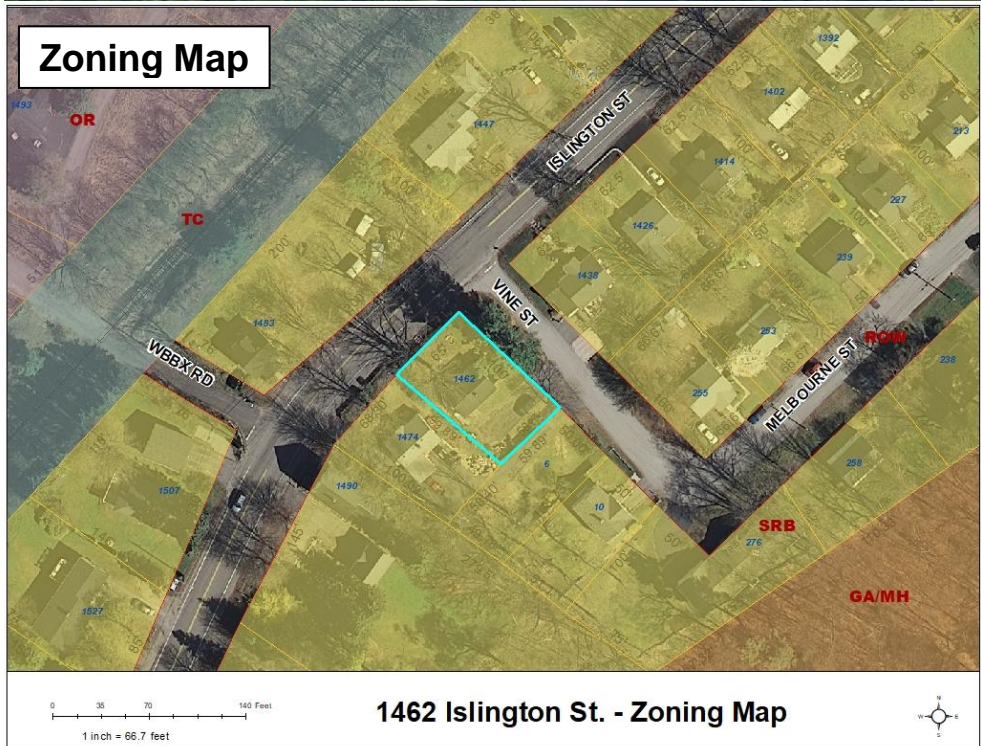
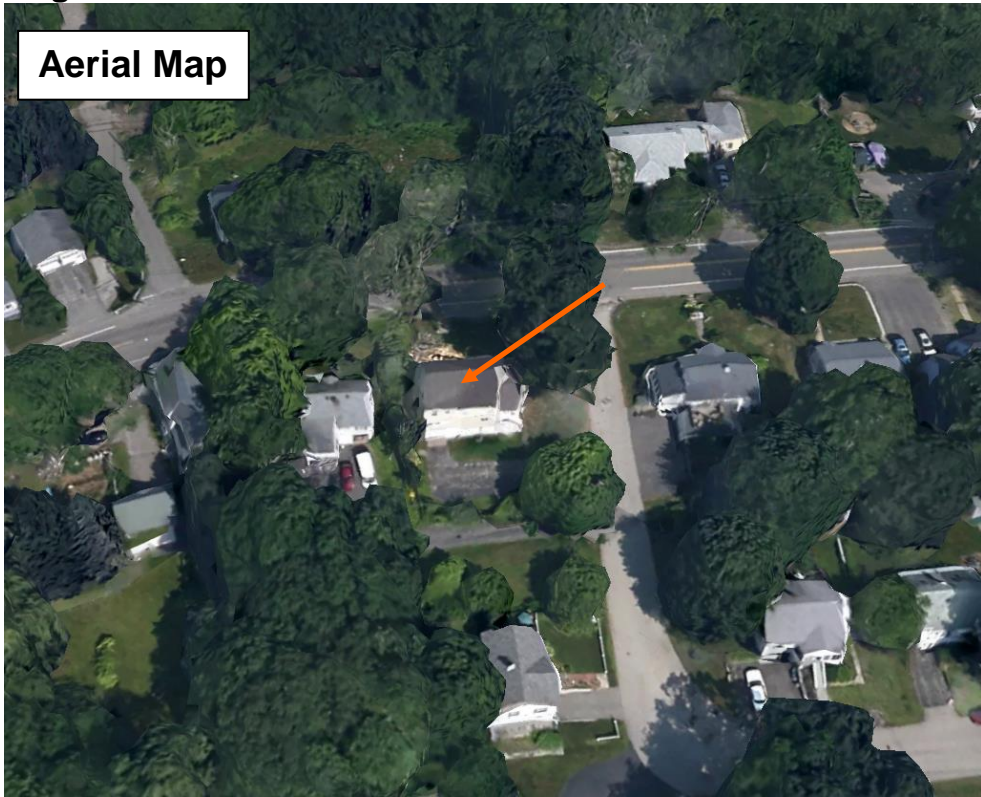
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Garage addition with living space above	Primarily Single Family
<u>Lot area (sq. ft.):</u>	6,245	6,245	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,245	6,245	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>	28	No change	30 min.
<u>Secondary Front Yard (ft.):</u>	12	>30 (garage)	30 min.
<u>Right Yard (ft.):</u>	6	3	10 min.
<u>Rear Yard (ft.):</u>	>30	10	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	17	26	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking</u>	ok	ok	ok
<u>Estimated Age of Structure:</u>	1966 org. 2012 – renovation	Variance request shown in red.	

Other Permits/Approvals Required

None

Neighborhood Context



Previous Board of Adjustment Actions

August 21, 2018 – The applicant requested that the petition be postponed to the September meeting.

September 18, 2018 – The petition was further **postponed** to the October meeting.

Planning Department Comments

The existing home is currently nonconforming, encroaching into the primary and secondary front yards as well as the right side yard. The proposed garage addition will increase the building coverage to 26%. The original house was constructed in 1966 and a total renovation with second story addition was completed in 2012. The property is constrained by having three sides with 30' setbacks, limiting the buildable area on the lot. The proposed space above the garage is additional living space. The site plan only shows the 10' rear yard, but the proposed garage will also encroach into the right side yard approximately 7'.

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 #9-1

Petitioners:	James C. Lucy Revocable Trust, James C. & Kimberly A. Lucy, Trustees
Property:	127 & 137 High Street
Assessor Plan:	Map 118, Lots 20 and 21
Zoning District:	Character District 4-L1 (CD4-L1), Downtown Overlay (DOD)
Description:	Add second floor rear addition and construct new single-family.
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 to allow a residential use in the ground floor in the DOD. 2. A Variance from Section 10.5A41.10A to allow the following: a) a ground story height less than 11 feet; and b) to allow a house in the Downtown Overlay District. 3. A Variance from Section 10.5A41.10A to allow a lot area per dwelling unit of 2,416 s.f. where 3,000 s.f. is the minimum allowed.

Existing & Proposed Conditions

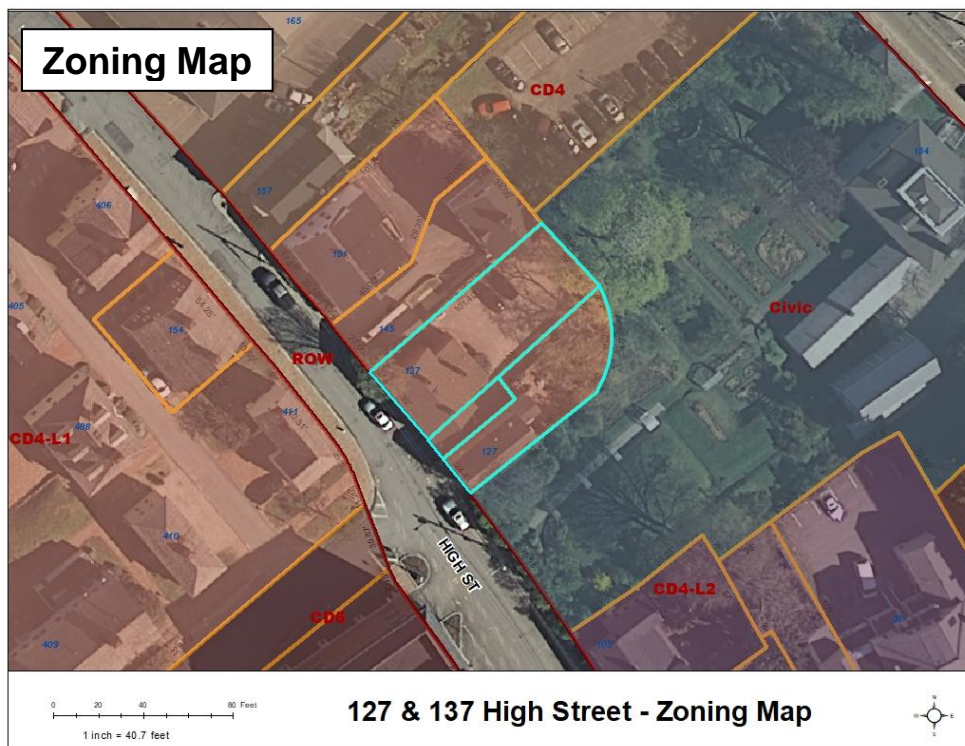
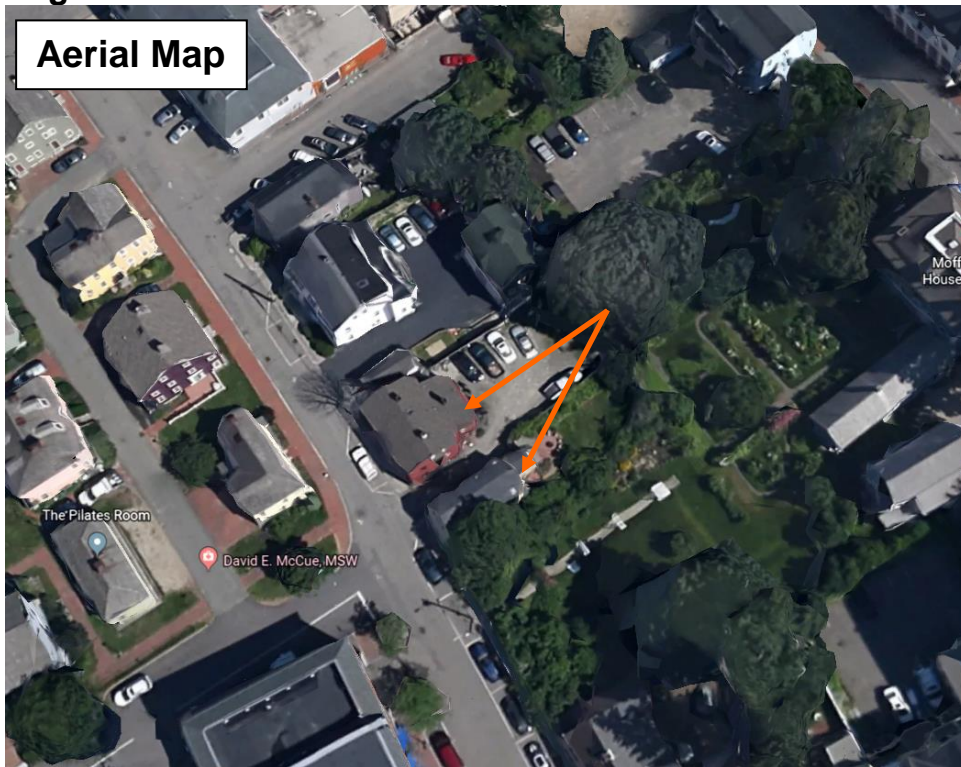
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Residential 137 / 127	Merge lots/3 dwelling units, including house & 1 comm. unit	Primarily mixed Residential
<u>Lot area (sq. ft.):</u>	3,997 / 2,792	7,249 (includes passage way parcel)	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,332 / 2,792	2,416	3,000 min.
<u>Street Frontage (ft.):</u>	39' / 24'	73.12	NR min.
<u>Primary Front Yard (ft.):</u>	0' / 0'	0	15 max.
<u>Left Side Yard (ft.):</u>	4' / 0'	4'	5 ft. – 20 ft. max
<u>Right Side Yard (ft.):</u>	1' / 4'	4'	5 ft. – 20 ft. max
<u>Rear Yard (ft.):</u>	>5' / >5'	5'	Greater of 5 ft. from rear or 10 ft. from alley
<u>Height (ft.):</u>	<35 / <35	<35	35 max.
<u>Building Coverage (%):</u>	35 / 21	45.9	60 max.
<u>Open Space Coverage (%):</u>	24 / >25	25	25 min.
<u>Ground story height</u>		9	11
<u>Parking</u>	ok	5	4
<u>Estimated Age of Structure:</u>	1800	Variance request shown in red.	

Other Permits Required

HDC

Planning Board – Site Plan

Neighborhood Context



Previous Board of Adjustment Actions

(137-139 High Street only)

October 24, 1989 – The Board failed to pass a motion to grant and thus **denied** a request to permit the conversion of an existing office structure to 4 dwelling units on a 4,791 s.f. lot where an 8,000 s.f. lot was required.

November 14, 1989 – The Board **granted** a variance to allow the conversion of an existing structure into 3 dwelling units on a 4,791 s.f. lot where an 8,000 s.f. lot was required.

(127 & 137 High Street)

August 16, 2016 – A petition to construct a two-family dwelling unit with parking underneath was **postponed** to the September 20, 2016 meeting. The petition required variances to allow the following: a) a three-story building where up to a two-story was the maximum permitted; b) a minimum lot area of 1,200 s.f. where 3,000 was required; c) a duplex building type where duplexes were not permitted in the Downtown Overlay District; d) a minimum ground story height to be 8'8" where 11' was required; and e) a 20' wide maneuvering aisle where 24' was required.

September 20, 2016 – The Board **denied** the postponed request.

September 18, 2018 – The Board **postponed** to the October meeting a request to change a section of the property to office use, add a second floor rear addition and construct a single-family home. Requested relief included variances to allow a house in the Downtown Overlay District, a residential use on the ground floor, and a ground story height less than 11'.

Planning Department Comments

The applicant is proposing to merge the lots and construct a carriage house in the rear of the new lot. Between the two lots there are 4 dwelling units total, and the proposal is to have 3 dwelling units and an office space on the ground floor of the current 137 High Street structure. 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 requested variances.

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. The applicant is proposing to convert the ground floor of the 137 High Street to a commercial use, which is more in line with the intent of the DOD. The new carriage house proposed in the rear will contain ground floor residential, thus the need for a variance from this section.

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.

UPDATE:

The applicant has included a request for a variance for lot area per dwelling unit. Overall, the proposal reduces the total number of dwelling units from 4 between the two existing lots to 3 dwelling units on the new lot, having a lot area per dwelling unit of 2,416 square feet.

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 #10-1

Petitioners:	James & Sandra Pantelakos
Property:	5 Meadow Road
Assessor Plan:	Map 236, Lot 79
Zoning District:	Single Residence B (SRB)
Description:	Above ground pool with surrounding deck.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <p>1. A Variance from Section 10.521 to allow for 30%± building coverage where 20% maximum is required.</p>

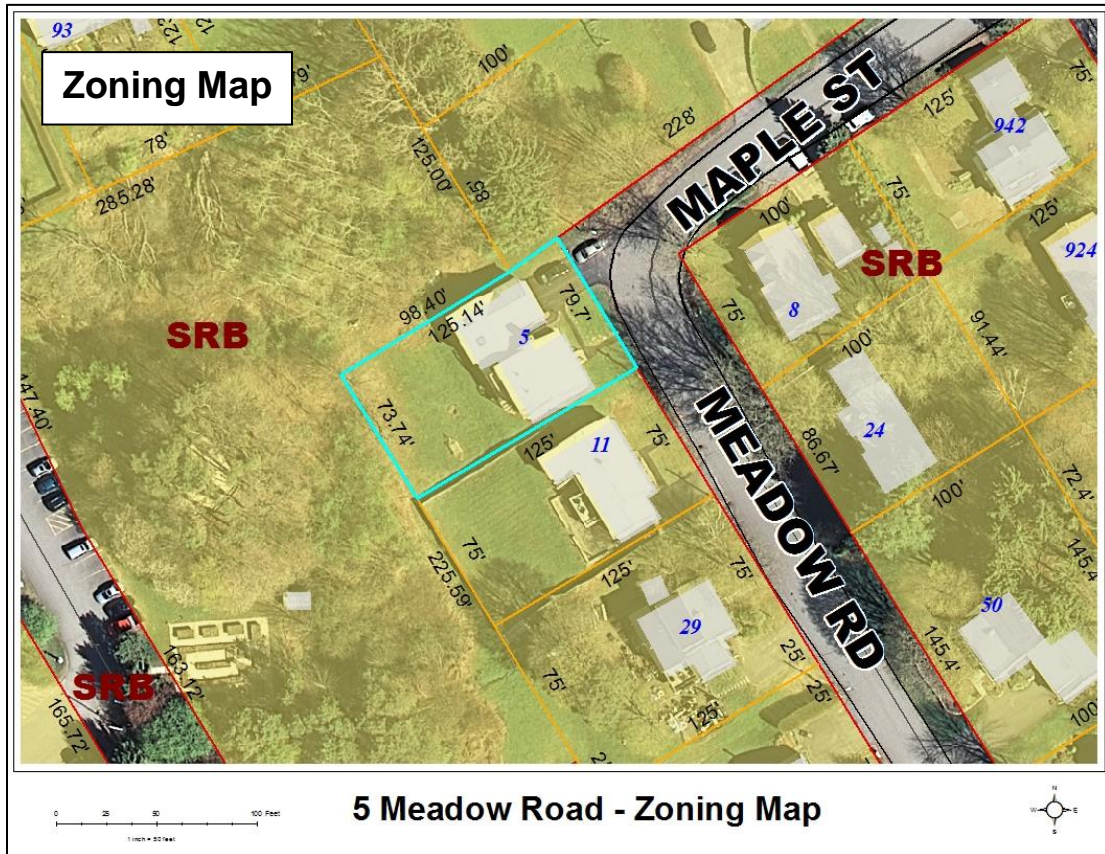
Existing & Proposed Conditions

	<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	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,583.20	9,583.20	15,000 min.
<u>Street Frontage (ft.):</u>	103	103	100 min.
<u>Lot depth (ft.):</u>	113	113	100 min.
<u>Primary Front Yard (ft.):</u>	21 (house)	21	30 min.
<u>Right Yard (ft.):</u>	8 (house)	>10 (pool)	10 min.
<u>Left Yard (ft.):</u>	0 (house)	>10 (pool)	10 min.
<u>Rear Yard (ft.):</u>	>30	>30 (pool)	30 min.
<u>Height (ft.):</u>	>35	4' (pool deck)	35 max.
<u>Building Coverage (%):</u>	24	30	20 max.
<u>Open Space Coverage (%):</u>	62	54	40 min.
<u>Estimated Age of Structure:</u>	1957	Variance request shown in red.	

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

August 22, 1989 – The Board **granted** variances to construct an 8' x 26' addition to an existing porch as a family room with a 5' right yard where 10' was required and 20.3% building coverage where 20% was the maximum allowed.

June 20, 2017 – The Board **granted** a variance to replace existing exterior stairs with two new decks resulting in 23.94% building coverage where 20% was allowed.

Planning Department Comments

The applicant was before the BOA last summer to request relief for building coverage for the rear stairs. The proposed pool and deck will increase the building coverage to 30%, but will comply with all other dimensional requirements.

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 #10-2

Petitioners:	Strawbery Banke, Inc.
Property:	Off Marcy Street
Assessor Plan:	Map 104, Lot 7
Zoning District:	Mixed Residential Office (MRO)
Description:	Second free standing sign.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.1243 to allow more than one freestanding sign on a lot. 2. A Variance from Section 10.1253.10 to allow a) a freestanding sign 8' in height where 7' is the maximum height allowed; and b) to allow a 1'± setback where 5' is the minimum required.

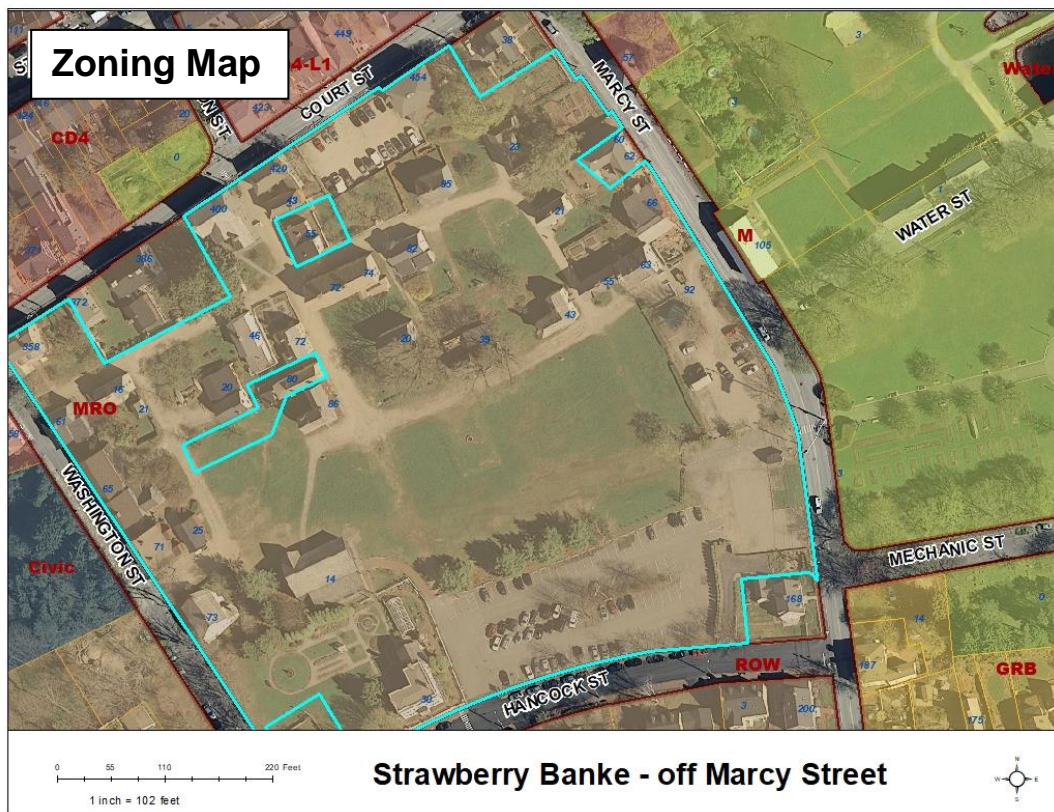
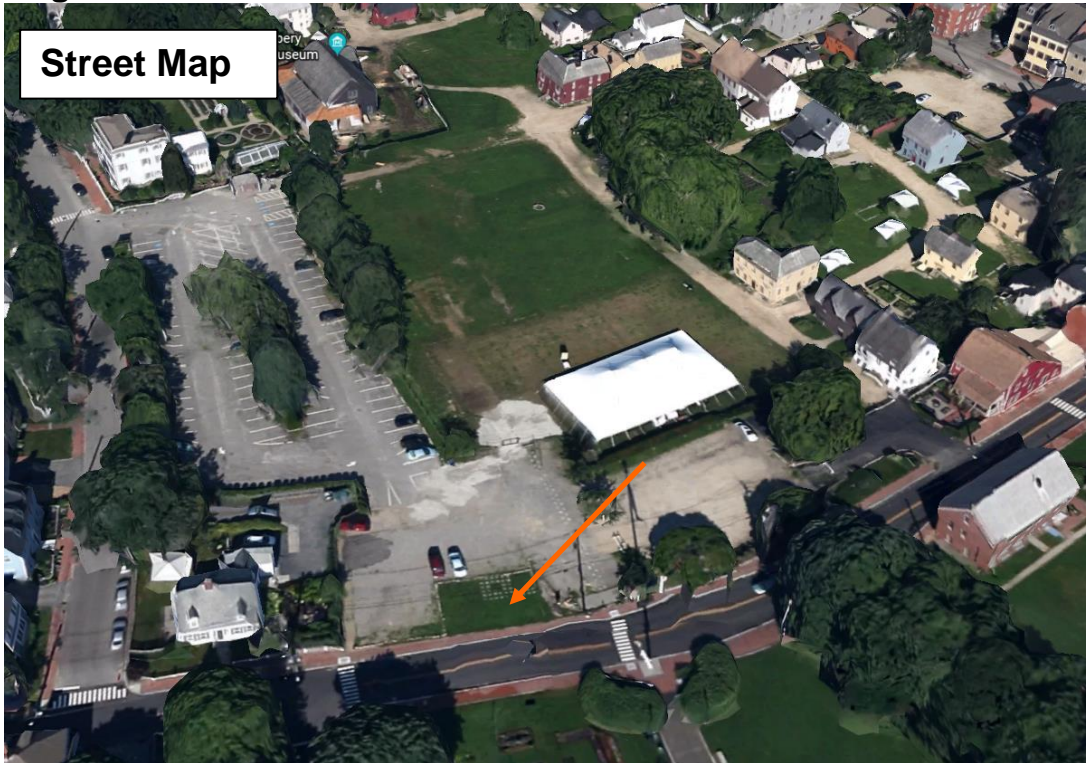
Existing & Proposed Conditions

<u>Sign District 2</u>	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
Freestanding Sign	1	2	1 max
Height		8'	7' max
Setback		1'	5 min
		Variance request shown in red.	

Other Permits/Approvals Required

HDC

Neighborhood Context



Previous Board of Adjustment Actions

The following history is for the property known as Strawberry Banke, with a variety of addresses.

July 11, 1989 – (Marcy Street) the Board **granted** a special exception to allow a 12 s.f. free-standing sign on the property.

October 17, 1995 – (corner Marcy and Hancock Streets) the Board **granted** a variance to allow a 50' x 90' two-story Visitor's Center to accommodate ticketing, visitor orientation and support space including a catering kitchen with a building height of 43' where 35' was the maximum allowed.

May 23, 2006 – (off Marcy Street) the Board **granted** a variance to allow the reconfiguration and expansion of the existing parking lot off Marcy Street with an 18' wide two-way travel aisle/new entrance where a 24' travel aisle was the minimum required.

September 19, 2006 (420 Court Street) – The Board **granted** a Variance to allow an irregular shaped two-story 2,724 s.f. building with the façade flush with the property line abutting Washington Street where 20' is the minimum side yard.

Planning Department Comments

In Sign District 2, a freestanding sign must be setback 5 feet from any property line and must be 7 feet or less in height. In addition, only one free standing sign is permitted on a lot. The propose sign is 8' tall and the approximate location is 1' from the property line on Marcy 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.

Case #10-3

Petitioners: Bruce E. Osborne, applicant, Frank Cavalieri, et al, owner
 Property: 179 Woodbury Avenue
 Assessor Plan: Map 162, Lot 57
 Zoning District: General Residence A District (GRA)
 Description: Lot line adjustment.
 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 lot area of 5,467 s.f.± building coverage where 7,500 s.f. is the minimum.
 2. A Variance from Section 10.521 to allow 59.58' of street frontage where 100' is the minimum required.

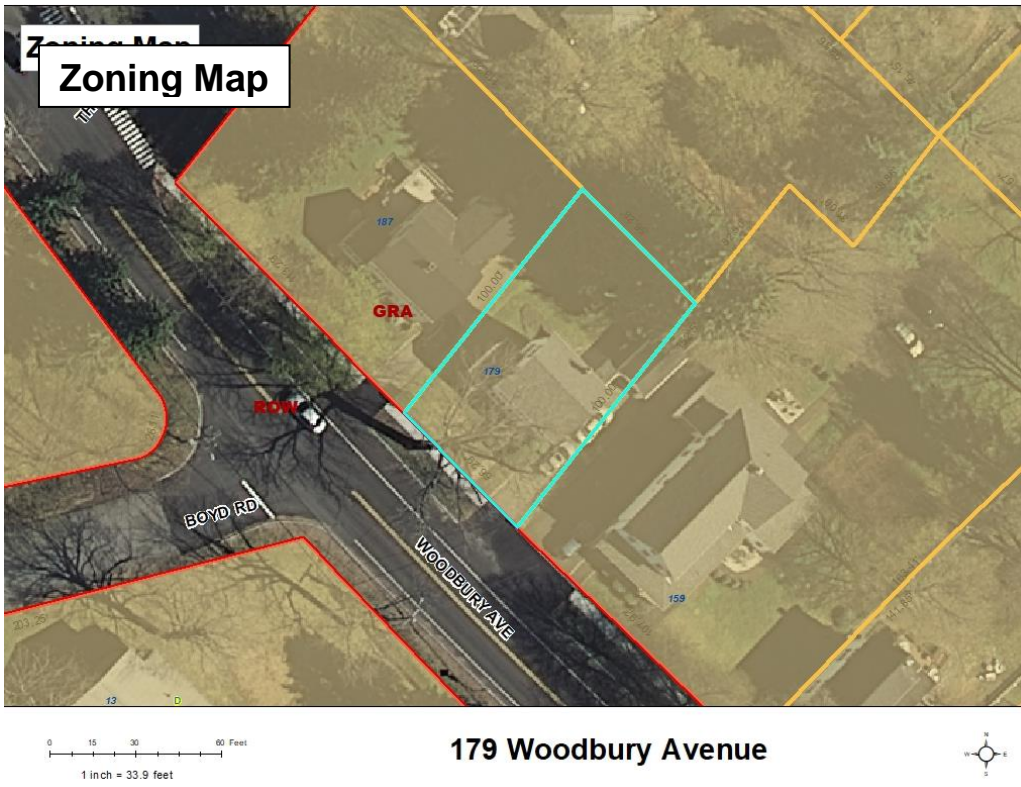
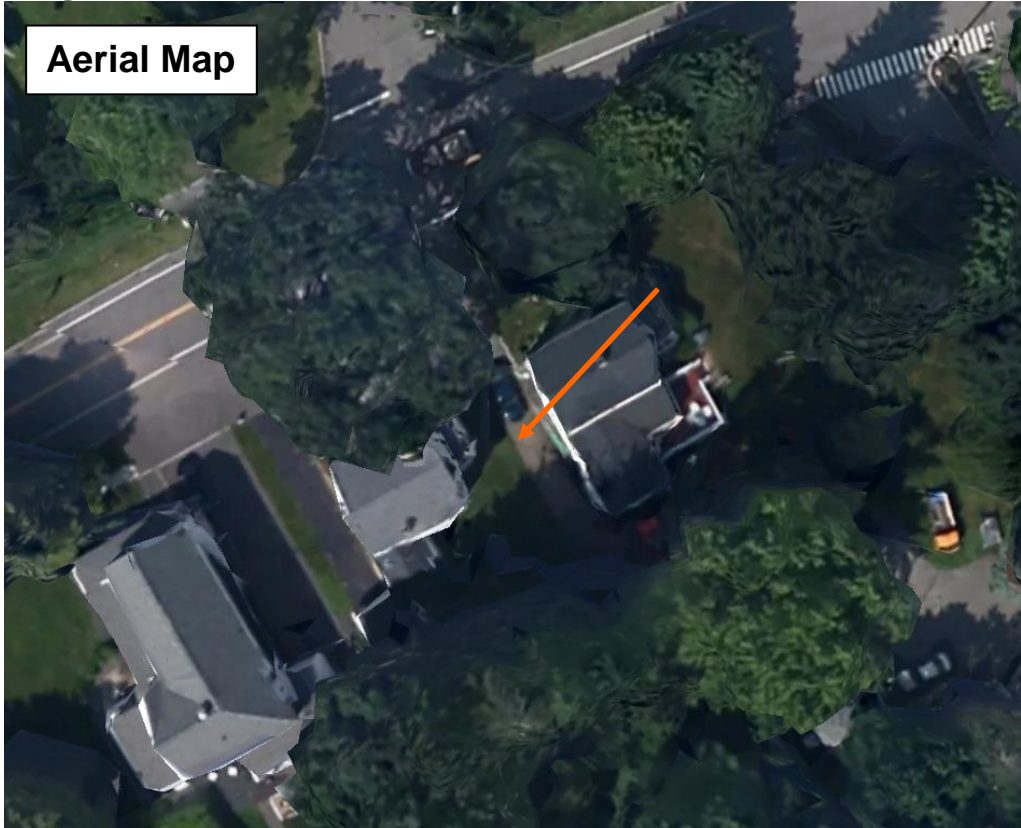
Existing & Proposed Conditions

	<u>Existing</u>		<u>Proposed</u>		<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family		Single-family		Primarily Residential Uses
	Lot 56	Lot 57	Lot 56	Lot 57	
<u>Lot area (sq. ft.):</u>	11,246	5,587	11,366	5,467	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,246	5,587	11,366	5,467	7,500 min.
<u>Street Frontage (ft.):</u>	210	56.29	206.7	59.58	100 min.
<u>Lot depth (ft.):</u>	100	100	99.65	99.65	70 min.
			Variance request shown in red.		

Other Permits/Approvals Required

Planning Board – Subdivision (granted in July 2018 with stipulations)

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history

Planning Department Comments

The lot line revision was approved on July 19, 2018 with the stipulation that the applicant seek the required variances from the BOA for lot 162-57. Lot 57 is currently nonconforming to lot area, lot area per dwelling unit, and although there is a slight increase in frontage with this realignment, relief is sought for this as well to make the lot conforming to all of the dimensional requirements of the district.

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.*

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 #10-4

Petitioners:	Richard J. & Myrinda A. Solito
Property:	2 Stark Street
Assessor Plan:	Map 161, Lot 41
Zoning District:	General Residence A (GRA)
Description:	Install 8' fence and construct front porch
Request:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: <ol style="list-style-type: none">1. A Variance from Section 10.521 to allow a 0'± left side yard where 10' is required.2. A Variance from Section 10.521 to allow a 6'± front yard where 15' is required.

3. 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	Front porch/8'fence	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	12,640	12,640	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	12,640	12,640	7,500 min.
<u>Street Frontage (ft.):</u>	77	77	100 min.
<u>Lot depth (ft.):</u>	>70	>70	70 min.
<u>Primary Front Yard (ft.):</u>	13	6	15 min.
<u>Left Yard (ft.):</u>	10 (house)	0 (fence)	10 min.
<u>Right Yard (ft.):</u>	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	>20	>20	20 min.
<u>Height (ft.):</u>	<35	8' (fence)	35 max.
<u>Building Coverage (%):</u>	17.5	18.3	25 max.
<u>Open Space Coverage (%):</u>	70	69	30 min.
<u>Parking</u>	Ok	Ok	Ok
<u>Estimated Age of Structure:</u>	1955	Variance request shown in red.	

Other Permits/Approvals Required

None

Neighborhood Context





Previous Board of Adjustment Actions

July 22, 1976 – The Board **denied** a request to utilize a portion of a residential lot for a service station/truck stop parking.

July 22, 1983 – The Board **granted** a special exception to allow a home day care center in the residence with the stipulations that the play area be enclosed by a minimum 4’ high fence; that the hours of operation be no earlier than 7:00 a.m. and no later than 5:00 p.m. Monday through Friday; and that state approval be obtained.

Planning Department Comments

The relevant language from the zoning ordinance regarding fences is below for your reference. A fence over 6 feet in height is not exempt from yard requirements.

10.515.13 Fences not over 4 feet in height shall be exempt from **front yard** requirements, and fences not over 6 feet in height shall be exempt from side and **rear yard** requirements.

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 #10-5

Petitioners: Aaron J. & Jill Ann Grueter
 Property: 69 New Castle Avenue
 Assessor Plan: Map 101, Lot 49
 Zoning District: General Residence B (GRB), Historic District (HD)
 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 38%± building coverage where 30% 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>	office	Single-family	Primarily mixed Residential
<u>Lot area (sq. ft.):</u>	4,791	4,791	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,791	4,791	5,000 min.
<u>Lot depth (ft.):</u>	90	90	60 min.
<u>Street Frontage (ft.):</u>	55	55	80 min.
<u>Primary Front Yard (ft.):</u>	11	11	5 min.
<u>Left Yard (ft.):</u>	9'11"	9'11"	10 min.
<u>Right Yard (ft.):</u>	4	4	10 min.
<u>Rear Yard (ft.):</u>	47	47	25 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	36	38	30 max.
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Parking</u>	Ok	ok	ok
<u>Estimated Age of Structure:</u>	1930	Variance request shown in red.	

Other Permits/Approvals Required

HDC

Neighborhood Context



Previous Board of Adjustment Actions

May 15, 2012 – The Board **granted** variances to install two a/c compressors on the right side of the residential structure, with 39% building coverage where 30% was allowed and a 4' right side yard where 10' was required.

Planning Department Comments

A previous variance was granted in 2012 for building coverage to install air conditioning units. The new proposal seeks to increase the footprint of the house to add an addition. The lot size from the tax card is used if a survey is not available. In addition, the tax card is used to determine the footprint of existing structures in order to calculate the building coverage.

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.