

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: September 12, 2018
RE: Zoning Board of Adjustment September 18, 2018 Meeting

OLD BUSINESS

1. Case 8-1 674 Islington Street – Request to Postpone
2. Case 8-11 361 Islington Street
3. Case 8-10 11 Elwyn Avenue
4. Case 8-3 121 Corporate Drive
5. Case 8-6 1462 Islington Street

NEW BUSINESS

1. Case 9-1 127 & 137 High Street
2. Case 9-2 119 Union Street
3. Case 9-3 5 Simonds Road
4. Case 9-4 45 Miller Avenue
5. Case 9-5 403 Deer Street
6. Case 9-6 335 Maplewood 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: Variances 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 10.1261.30 to allow internal illumination in the Historic District.
3. A Variance from Section 10.1251.10 to exceed the maximum aggregate signage available.
4. A Variance from Section 10.1271 to allow signage where there is no frontage or public entrance.

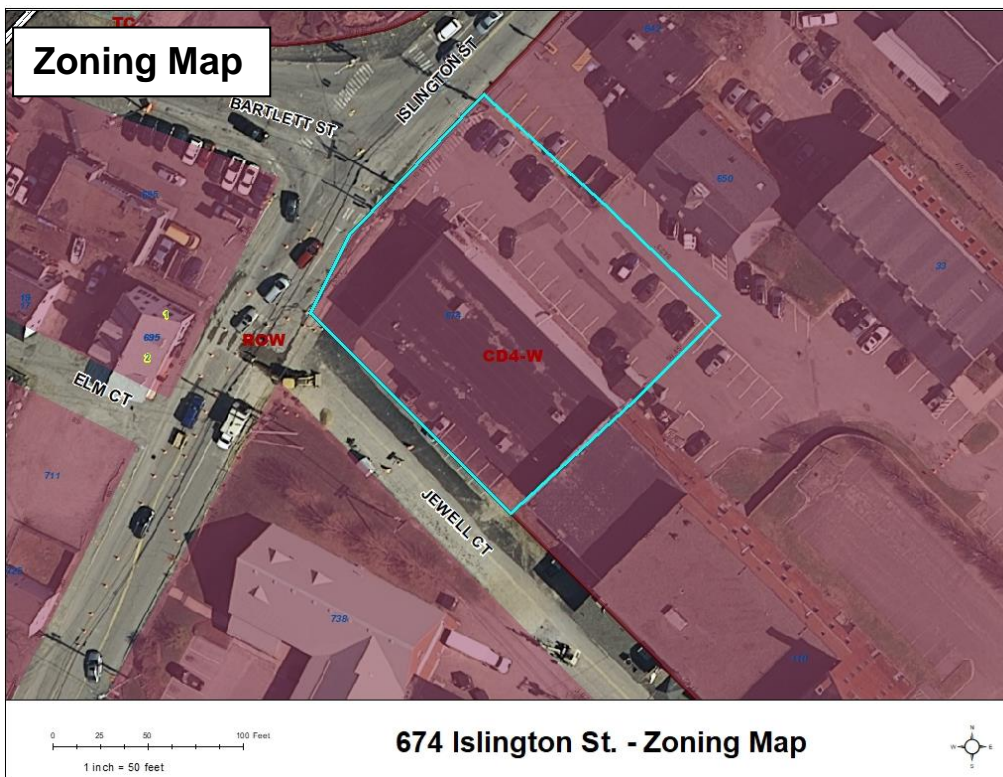
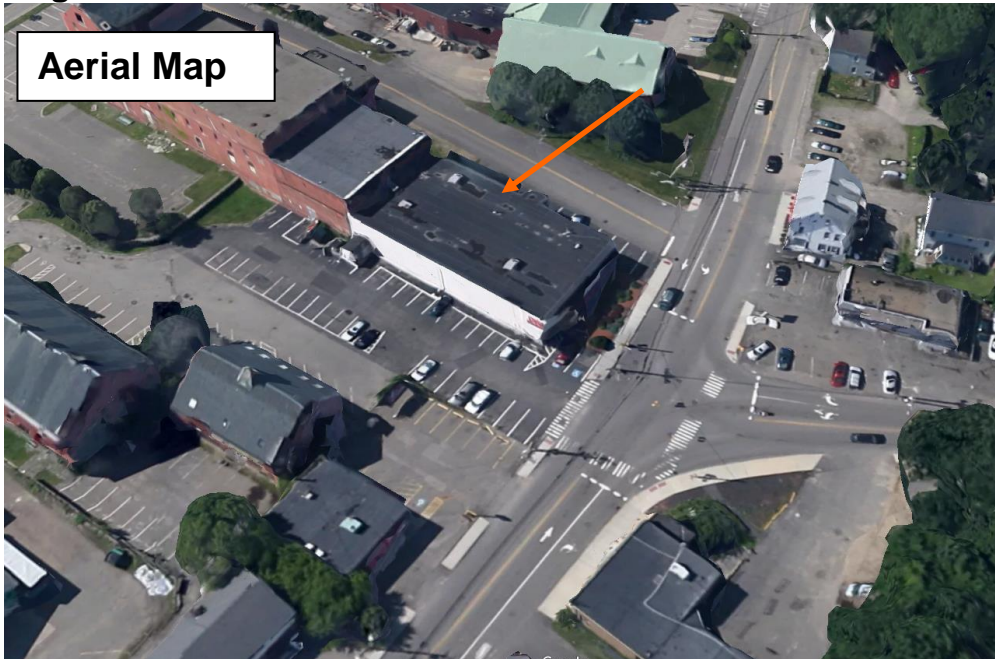
Existing Proposed Conditions

<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 in front of window)	172.90 s.f.	144.18 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

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.

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).

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 #8-10

Petitioners: William Brinton Shone & Tatjana Tizzi Shone
 Property: 11 Elwyn Avenue
 Assessor Plan: Map 113, Lot 27
 Zoning District: General Residence A District (GRA)
 Description: Infill addition and dormer.
 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 5'± right side yard where 10' is required; b) a 40% building coverage where 25% is the maximum allowed; and c) a 14'10" rear yard where 20' 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.

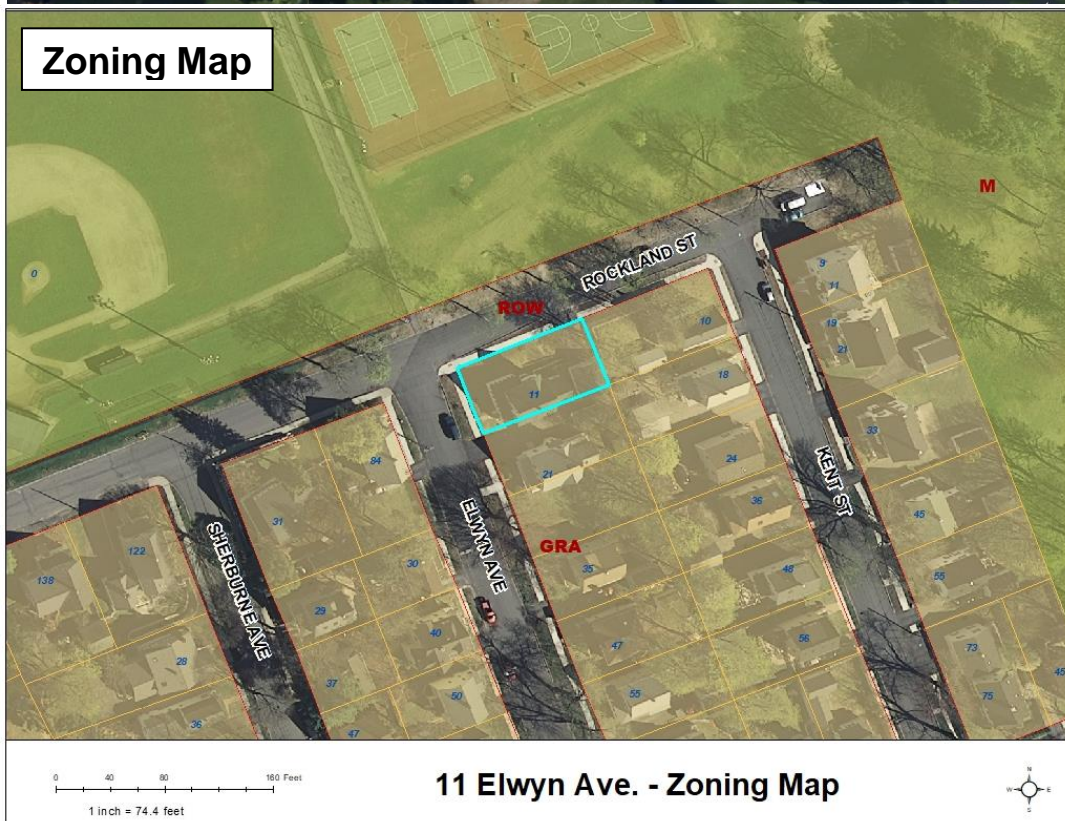
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Addition	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	5,000	5,000	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,000	5,000	7,500 min.
<u>Street Frontage (ft.):</u>	100	100	100 min.
<u>Lot depth (ft.):</u>	100	100	70 min.
<u>Primary Front Yard (ft.):</u>	22	22	15 min.
<u>Secondary Front Yard (ft.):</u>	14'9"	14'9"	15 min.
<u>Right Yard (ft.):</u>	5	5	10 min.
<u>Rear Yard (ft.):</u>	2	14'10"/ 15'2"*	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	34	40	25 max.
<u>Open Space Coverage (%):</u>	34	40	30 min.
<u>Parking</u>	Ok	Ok	ok
<u>Estimated Age of Structure:</u>	1900	Variance request shown in red. *14'10" was advertised/ 15'2" shown on plan.	

Other Permits Required

None

Neighborhood Context



Previous Board of Adjustment Actions

August 21, 2018 – This petition was **tabled** to the September meeting.

Planning Department Comments

The applicant is proposing a renovation of the 1900's home which involves connecting the existing house and garage with a new addition and addition of a dormer to the back of the house that is within the right side yard. The improvements will increase the building coverage to 40% where 34% exists and 25% is the maximum allowed. The connection to the garage includes a roof that will partially be located within the rear setback.

UPDATE: The applicant has submitted revised drawings showing a scaled back design and the distance to the rear yard. This additional variance was advertised for the roof connection to the garage. The mudroom has been reduced from a two story to one story structure.

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 #8-11

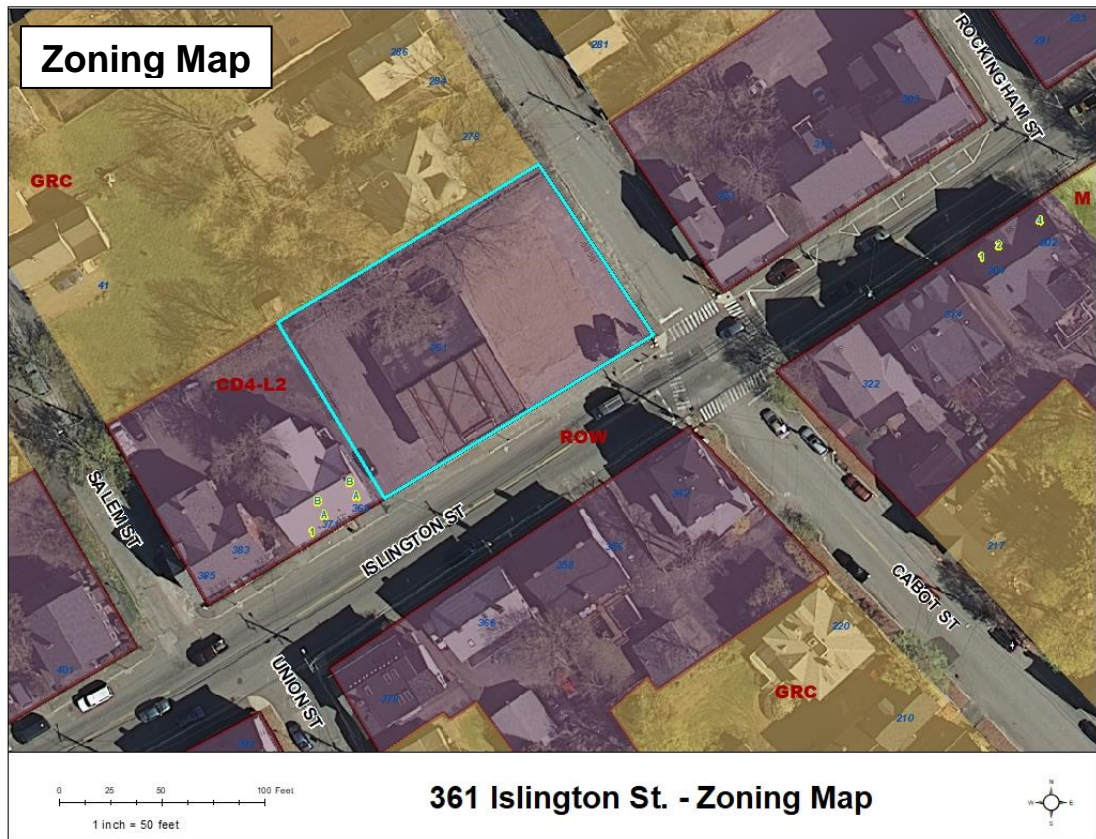
Petitioners:	Lucky Thirteen Properties LLC, owner, Opendell journey LLC, applicant
Property:	361 Islington Street
Assessor Plan:	Map 144, Lot 23
Zoning District:	Character District 4-L2 (CD4-L2), Historic District (HD)
Description:	Operate a food truck style restaurant.
Requests:	Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.440 to operate a food truck style establishment.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant gas station	Food-truck style establishment	Primarily Mixed Uses
<u>Estimated Age of Structure:</u>	1850	Variance request shown in red.	

Other Permits/Approvals Required

Amended Site Plan
 Historic District
 CUP – Outdoor Dining



Previous Board of Adjustment Actions

January 30, 1956 – The Board granted a request to erect a filling station.

February 19, 2002 – The Board denied a request to allow a Ryder Truck renting facility with three trucks on display where the use was not allowed and to allow a nonconforming accessory use in addition to the existing nonconforming use.

May 28, 2013 – A petition to construct a multi-use building with first floor Laundromat and second floor office space within a building footprint of 3,030± s.f. was **withdrawn** by the applicant.

August 19, 2014 - The Board **granted** a variance to allow the detailing of automobiles in a district where the use was not allowed.

December 19, 2017 – The Board **granted** the following variances to convert an existing building plus small addition to restaurant use: a) a secondary front yard of 66', 12' maximum permitted; b) a 30' left side yard, 20' maximum permitted; c) 14.9% open space, 25% required; d) shopfront façade glazing of 47% where 70% is minimum required; e) off-street parking to be located in a required front yard between principal building and street and to be located less than 20' behind the façade of a principal building; and f) to allow a nonconforming building to be extended, reconstructed or enlarged without conforming to requirements of Ordinance.

August 21, 2108 - This petition was **tabled** to the September meeting.

Planning Department Comments

The zoning ordinance does not have a specific use for food trucks. The closest use is a fast food restaurant or a take-out restaurant, both of which are not permitted in this district. Amended site plan approval would be required if the variance is granted. The applicant has indicated they will operate seasonally (April 1 – December 1) and hours of operation (11 am - 8 pm on weekdays and 11 am – 10 pm on weekends), which could be stipulations of approval if the variance is granted. No changes to the existing structure on the lot are planned at this time. The proposed truck will be parked onsite in front of the garage bays and hook up to existing electric and water. The existing bathroom will be available for customers.

UPDATE: The applicant has provided a site plan addressing concerns from the last BOA meeting. This site plan will still go through Administrative Site plan approval, which may include additional review/input from DPW staff.

Recent zoning amendments were passed on August 20, 2018 and a new use was added for an outdoor dining or drinking area, as accessory to a permitted principal use. In the CD4-L2 district, a Conditional Use permit is required, so the applicants would need to seek additional approval to provide outdoor dining.

P = Permitted S = Special Exception CU = Conditional Use Permit N = Prohibited																
Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO	CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR
						N	N	N	N	N	N	N	N	CU	CU	N
19.40 Drive-through facility, as accessory use to a permitted principal use	N	N	N	N	N	N	N	N	N	N	CU	CU	N	CU	N	CU
19.50 Outdoor dining or drinking area, as accessory use to a permitted principal use	N	N	N	N	N	N	CU	N	N	P	P	P	P	CU	N	N

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 #8-3

Petitioners:	Pease Development Authority, owner, Wentworth-Douglass Hospital, applicant
Property:	121 Corporate Drive
Assessor Plan:	Map 303, Lot 8
Zoning District:	Pease Airport Business Commercial District
Description:	Install illuminated wall and monument signs.
Requests:	Variations and/or Special Exceptions necessary to grant the required relief from the Pease Zoning Ordinance including: 1. Variations from Section 306.01(d) to allow 391.7 square feet of sign area where 200 square feet per lot is the maximum.

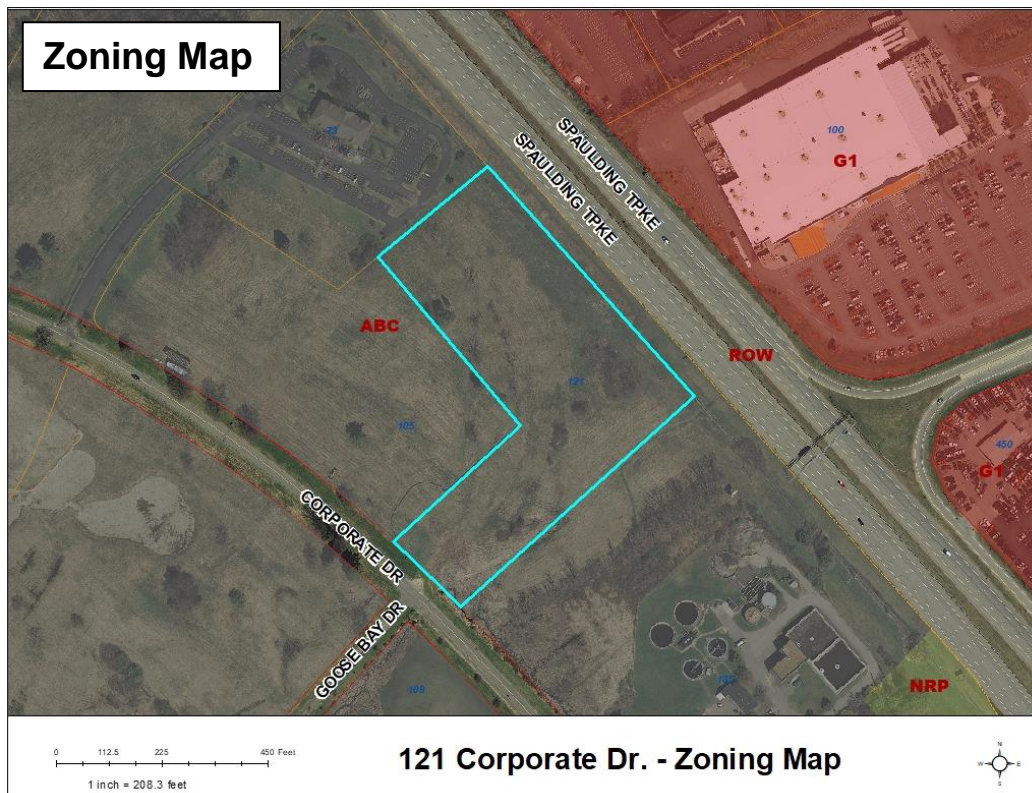
Existing & Proposed Conditions

<u>Sign District 6</u>	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Wall Sign:</u>		319.20 s.f.	200 s.f. max per lot
<u>Monument sign:</u>		72.5 s.f	200 s.f. max per lot
<u>Total sign area:</u>		391.7	200 s.f. max per lot
		Variance request shown in red.	

Other Permits/Approvals Required

Pease Development Authority Board (See comments below)

Neighborhood Context



Previous Board of Adjustment Actions

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

Planning Department Comments

The minutes of the Pease Development Authority (PDA) Board meeting on June 21, 2018 are provided in the applicant's packet. The PDA Board discussed the proposed signage and although there was concern about the size, the Board voted 5-2 to support the applicant's request to move forward to seek a variance.

The PDA has its own land use and zoning regulations and is exempt from the City's regulations ordinance. For certain parcels in Pease, variance requests are sent to the City for a recommendation from the BOA. A motion to approve or deny will be a recommendation and the recommendation will become an approval by the PDA Board after 14 days unless the applicant or PDA Board member requests a hearing (see Part 317.03(f) below).

The Chapter in the Pease Land Use Controls regarding the process for a variance is below. Part 317.03(c) states the BOA will use apply the standards in Part 317.01(c) in its review of the application. These standards are attached hereto under Review Criteria.

(a) For parcels located within the Industrial Zone, Business and Commercial Zone, Natural Resource Protection Zone or portions of the Airport Industrial Zone not acquired by the Pease Development Authority pursuant to Section 13(g) of the Surplus Property Act, requests for a variance from the provisions of this zoning rule shall be referred to the zoning board of adjustment for the municipality in which the parcel is situated for administration in accordance with the provisions of this section.

(b) Applications for a variance for parcels referred to in Subsection (a) shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board and referred to the applicable zoning board of adjustment.

(c) The zoning board of adjustment to which the application for a variance has been referred shall, in its review of the request, apply the substantive provisions of this Chapter.

(d) Recommendations to the Board regarding requests for a zoning variance shall be made by the applicable zoning board of adjustment within sixty (60) days of referral. Notice of the recommendation shall be provided to the applicant and the Board within 48 hours of the decision.

(e) The recommendation of the applicable zoning board of adjustment shall be forwarded to the Board along with a written report detailing the reasons for any recommendation for denial or approval with conditions.

(f) A recommendation of the applicable zoning board of adjustment shall be deemed a final decision of the Board upon the expiration of fourteen (14) days from the date of notice, unless the applicant/developer or a member of the Board requests a hearing by the Board.

(g) Where a hearing has been requested, the Board shall conduct a hearing and render a final decision on the variance request within thirty (30) days.

(h) At the discretion of the Board the time period for rendering a final decision may be extended an additional thirty (30) days, or such additional time as may be consented to by the applicant.

(i) The Board may approve, conditionally approve or deny the application notwithstanding the recommendation of the applicable zoning board of adjustment. In the case of denial of any application by the Board or where the Board elects not to follow the recommendation of the applicable zoning board of adjustment, the ground(s) for such action shall be stated in writing.

Review Criteria

This application must meet the criteria for a **variance** of Part 317.01(c) of the Pease Land Use Controls below.

PART 317. VARIANCES FROM ZONING PROVISIONS

317.01 General Provisions

- (a) Requests for a variance from the provisions of this zoning rule shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board.
- (b) Applications for zoning variance approval shall set forth the specific provision of the rule or regulation involved and reasons why a variance should be granted.
- (c) A variance shall not be approved or recommended for approval unless it is in harmony with the general purpose and intent of these regulations and meets the following criteria:
 - (1) No adverse effect or diminution in values of surrounding properties would be suffered.
 - (2) Granting the variance would be of benefit to the public interest.
 - (3) Denial of the variance would result in unnecessary hardship to the person seeking it.
 - (4) Granting the variance would be substantial justice.
 - (5) The proposed use would not be contrary to the spirit of this zoning rule.
- (d) Reasonable conditions necessary to meet one or more of the standards in subsection (c) above may be attached to approval of a variance.

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. .

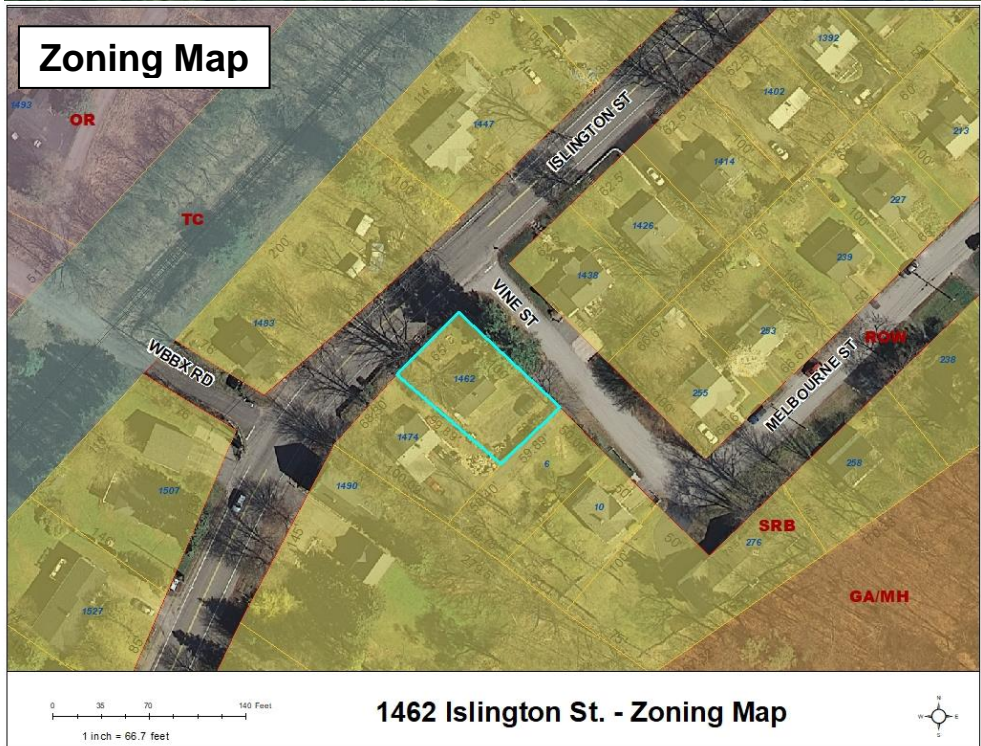
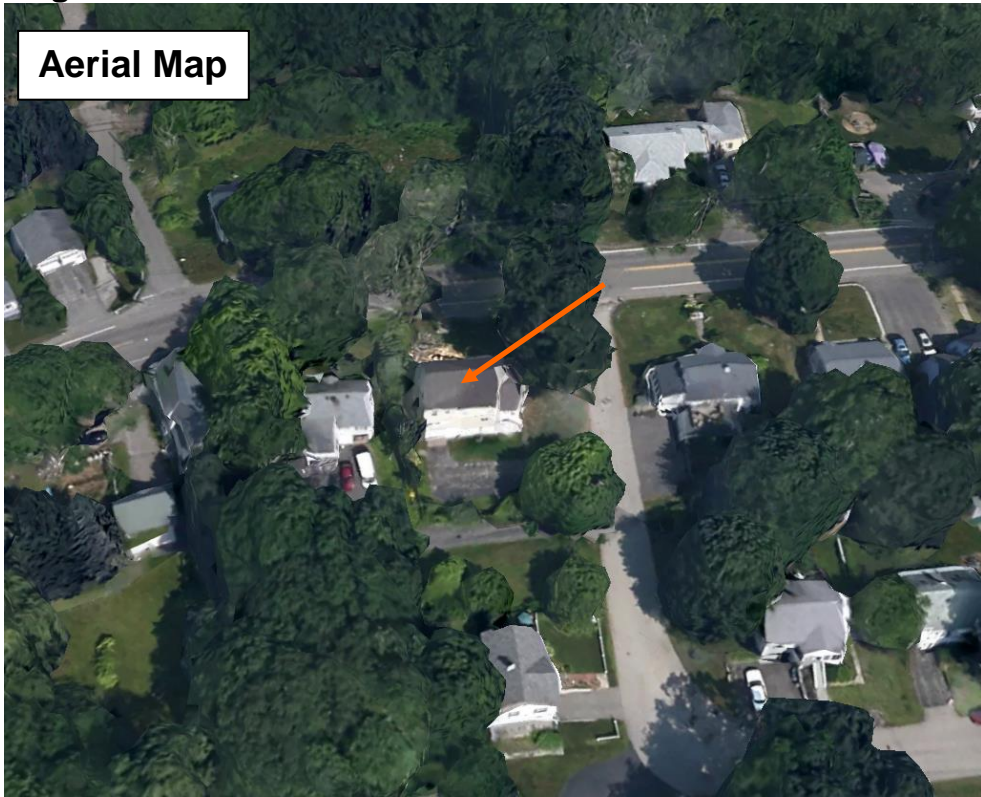
Existing & Proposed Conditions

	<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.

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.

NEW BUSINESS

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>Variances 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.

Existing & Proposed Conditions

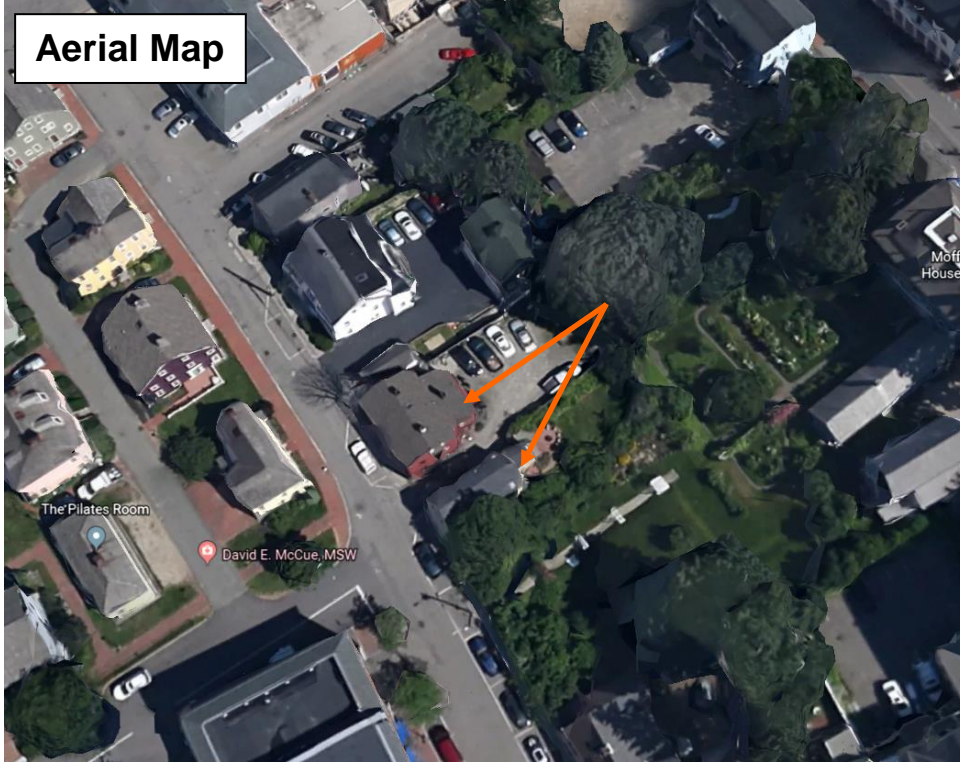
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Residential 137 / 127	Merge lots/3 dwelling units, including house & 1 comm. unit	Primarily mixed Residential
<u>Lot area (sq. ft.):</u>	3,997 / 2,792	7,249 (includes passage way parcel)	3,000 min.
<u>Lot Area per Dwelling Unit (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.	

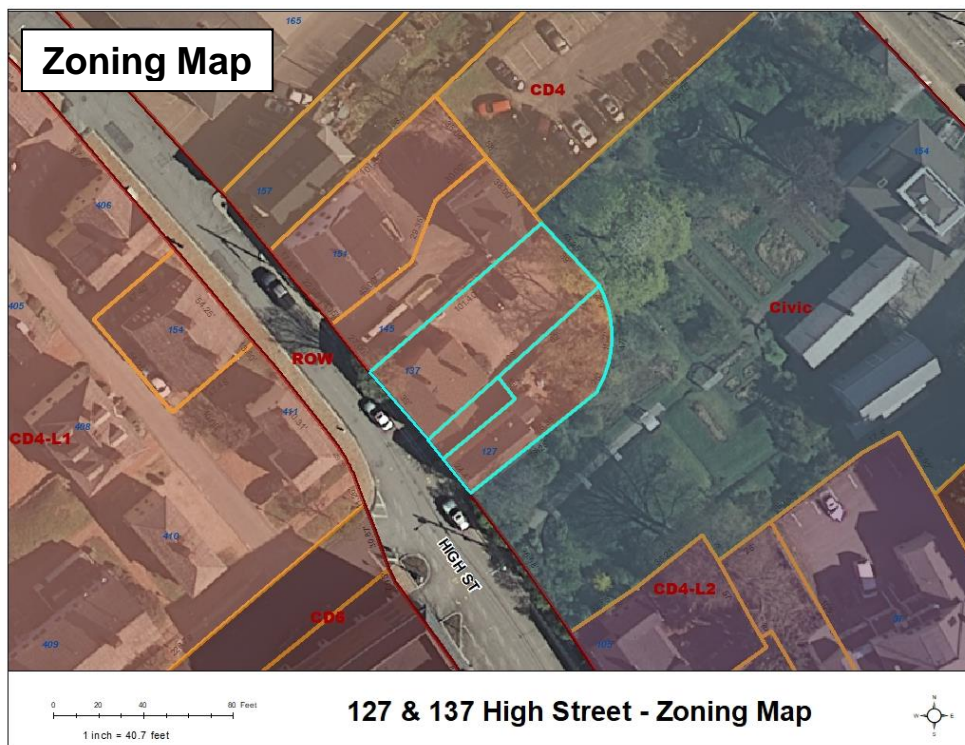
Other Permits Required

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.

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.

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 #9-2

Petitioners:	Brendan A. White & Jessica Paterson
Property:	119 Union Street
Assessor Plan:	Map 145, Lot 70
Zoning District:	General Residence C District (GRC)
Description:	Addition of a dormer.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> 1. A Variance from Section 10.521 to allow a 0'± 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

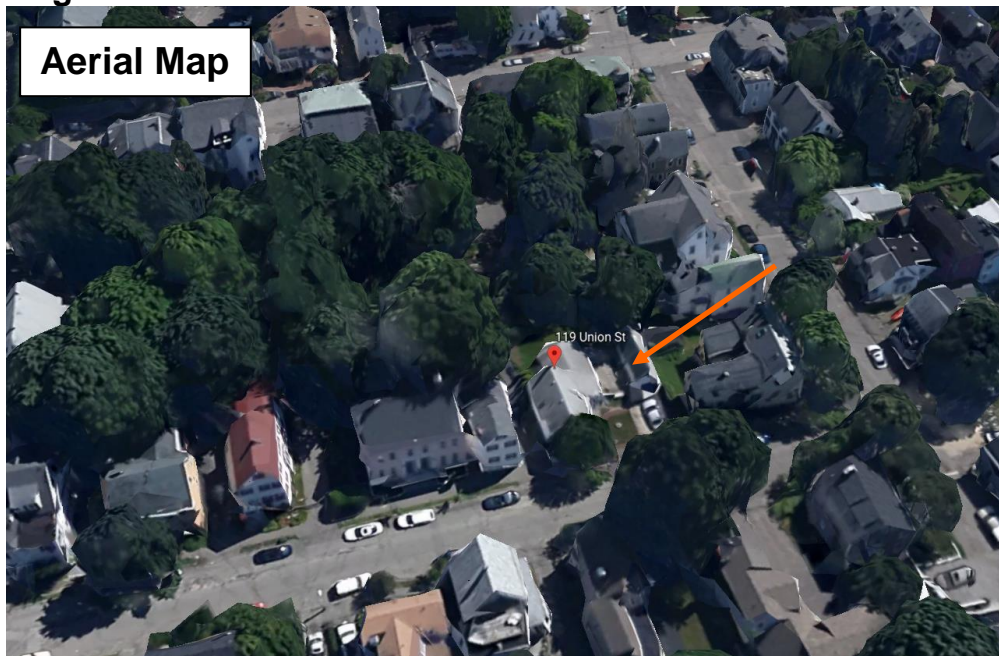
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Dormer	Primarily Residential Uses

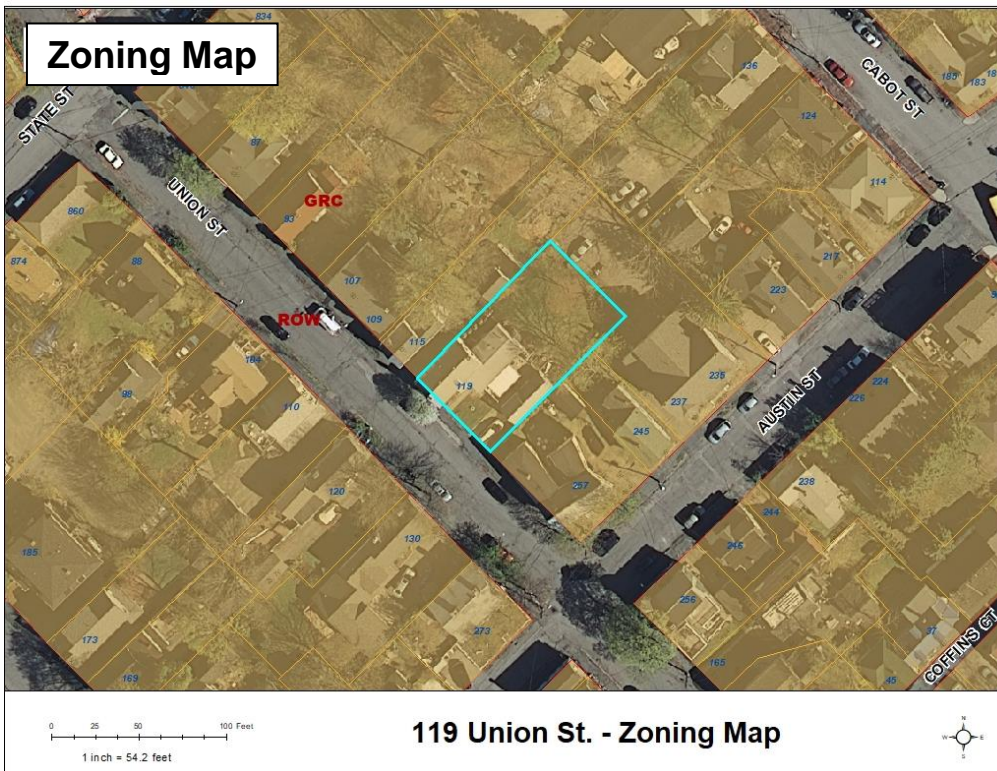
<u>Lot area (sq. ft.):</u>	6,600	6,600	3,500	min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,600	6,600	3,500	min.
<u>Street Frontage (ft.):</u>	60	60	70	min.
<u>Lot depth (ft.):</u>	110	110	50	min.
<u>Primary Front Yard (ft.):</u>	0	0	5	min.
<u>Left Yard (ft.):</u>	0	0	10	min.
<u>Right Yard (ft.):</u>	0	0	10	min.
<u>Rear Yard (ft.):</u>	55	55	20	min.
<u>Height (ft.):</u>	<35	<35	35	max.
<u>Building Coverage (%):</u>	30	30	35	max.
<u>Open Space Coverage (%):</u>	>20	>20	20	min.
<u>Parking</u>	Ok	Ok	Ok	
<u>Estimated Age of Structure:</u>	1839	Variance request shown in red.		

Other Permits Required

None

Neighborhood Context





Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The existing nonconforming house and garage span the entire width of this property. The applicant is proposing a dormer that would increase the ceiling height in the existing bathroom. The design of the dormer does not have windows facing the neighbors. The image below shows the adjacent structure and space between



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 #9-3

Petitioners:	Bonnie A Konopka & Stephanie Ross
Property:	5 Simonds Road
Assessor Plan:	Map 292, Lot 58
Zoning District:	Single Residence B (SRB)

Description: Rear addition.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. A Variance from Section 10.521 to allow a) a 16'± rear yard where 30' is required.

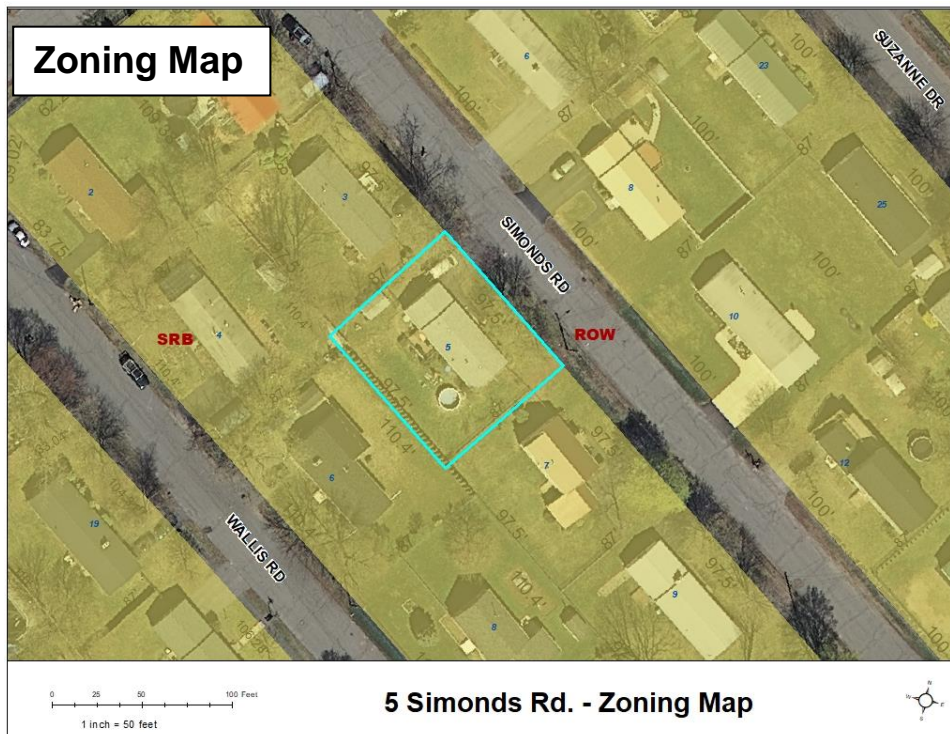
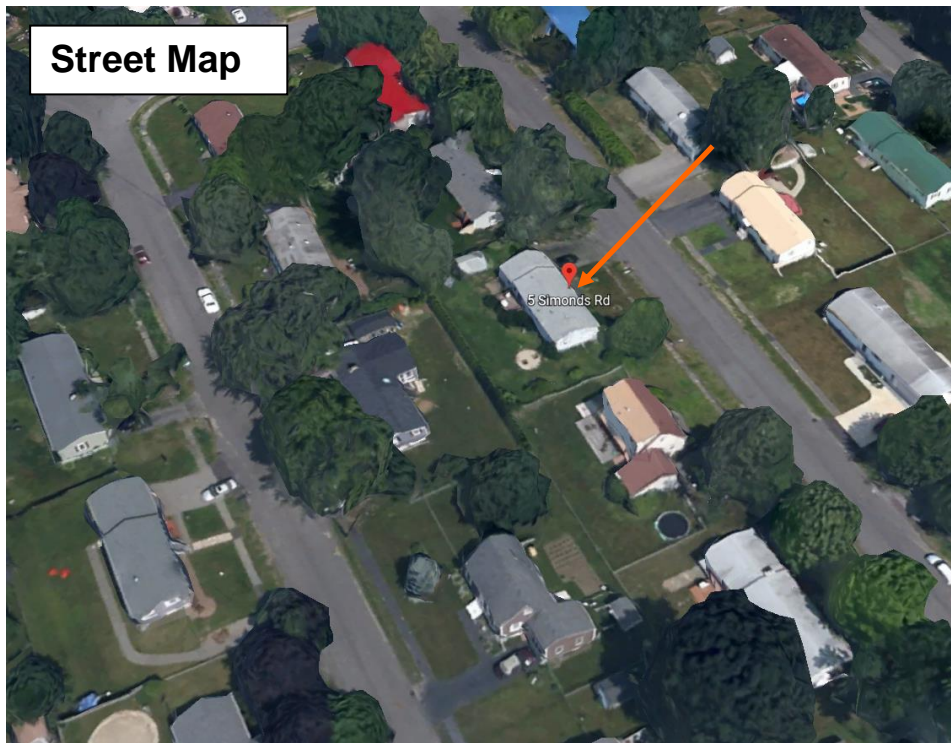
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	single-family	Rear addition	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	8,276	8,276	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,276	8,276	15,000 min.
<u>Street Frontage (ft.):</u>	97.5	97.5	100 min.
<u>Lot depth (ft.):</u>	87	87	100 min.
<u>Primary Front Yard (ft.):</u>	22	22	30 min.
<u>Right Yard (ft.):</u>	18	10	10 min.
<u>Left Yard (ft.):</u>	20	20	10 min.
<u>Rear Yard (ft.):</u>	30	16	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	20	24	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking</u>	ok	ok	ok
<u>Estimated Age of Structure:</u>	1901	Variance request shown in red.	

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

June 26, 2018 – The Board **granted** variances to construct a 20' x 16' rear addition with a 19' rear yard where 30' was required and 24% building coverage where 20% was the maximum allowed.

Planning Department Comments

A variance was granted in June for a 19' rear yard. The as-built foundation survey was completed in August and it shows the foundation closer than what was approved by the BOA. The applicant must seek additional relief for the increased encroachment into the rear yard.

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 #9-4

Petitioners:	Monarch Family Trust of 2018, Samantha D. King, Trustee
Property:	45 Miller Avenue

Assessor Plan: Map 129, Lot 21
 Zoning District: General Residence A District (GRA)
 Description: Construct basement and rear access structures and expand 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 28% building coverage where 25% is required.

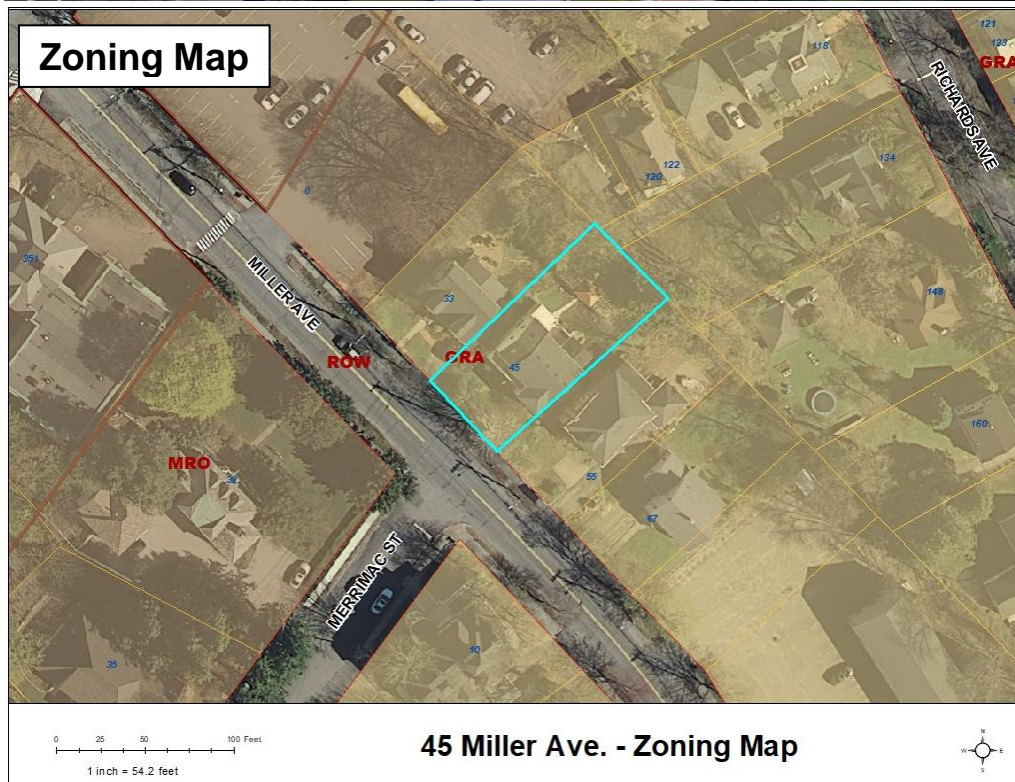
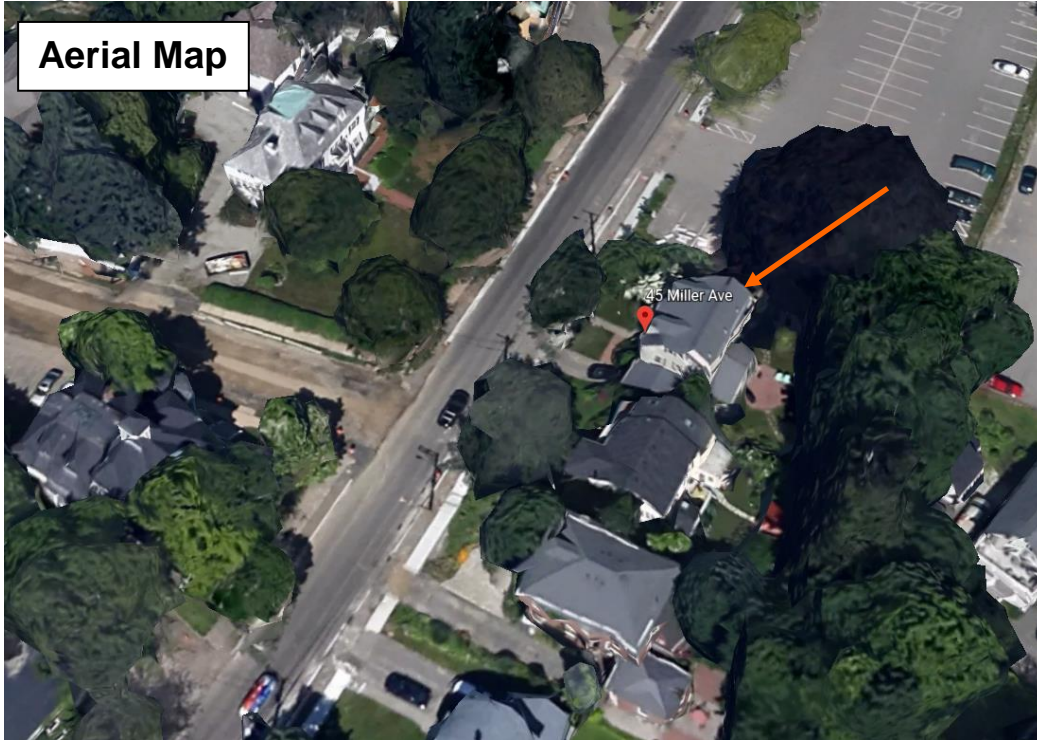
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Addition	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	5,000	5,000	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,000	5,000	7,500 min.
<u>Street Frontage (ft.):</u>	100	100	100 min.
<u>Lot depth (ft.):</u>	100	100	70 min.
<u>Primary Front Yard (ft.):</u>	24'10"	24'10"	15 min.
<u>Left Yard (ft.):</u>	7'8"	7'8"	10 min.
<u>Right Yard (ft.):</u>	7'10"	7'10"	10 min.
<u>Rear Yard (ft.):</u>	52	52	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	32	28	25 max.
<u>Open Space Coverage (%):</u>	34	40	30 min.
<u>Parking</u>	Ok	Ok	Ok
<u>Estimated Age of Structure:</u>	1938	Variance request shown in red.	

Other Permits Required

None

Neighborhood Context



Previous Board of Adjustment Actions

July 18, 1995 – The Board **granted** a variance to allow a 12' x23' addition over a one-story family room with a 9' side yard and a height of more than 30' in a district where the permitted side yard was 15' (one half of the building height).

October 16, 2002 – The Board **granted** a variance to allow a 9' x 17' one story addition to the dining room with an 8' right side yard where 10' was required.

(As 00 Miller Avenue – attached diagonally to 45 Miller Avenue)

July 20, 2010 – The Board **denied** a request to construct a new garage on a diagonally attached piece of land.

September 21, 2010 – The Board voted that Fisher v. Dover did not apply to the petition and **granted** variances to allow the replacement of an existing garage on the same footprint with a 4'8" left side yard and 6'2" right side yard where 10' was required and to allow the expansion of a lawful nonconforming structure and changing of a lawful nonconforming use.

Planning Department Comments

While the applicant is decreasing the building coverage from approximately 34% to 28%, new structures/additions are proposed which must conform to the regulations. The history shows a prior petition for a garage that would result in 28% building coverage, but that was denied.

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 #9-5

Petitioners:	Logan Properties, LLC, owner, Doug & Dan LLC, applicant
Property:	403 Deer Street #7-13
Assessor Plan:	Map 118, Lot 26-3
Zoning District:	Character District 4-L1 (CD4-L1)
Description:	Convert to a 10 room Inn
Request:	Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.440 Use #10.30 to all and "Inn" where the use is not permitted in the zoning district.

Existing & Proposed Conditions

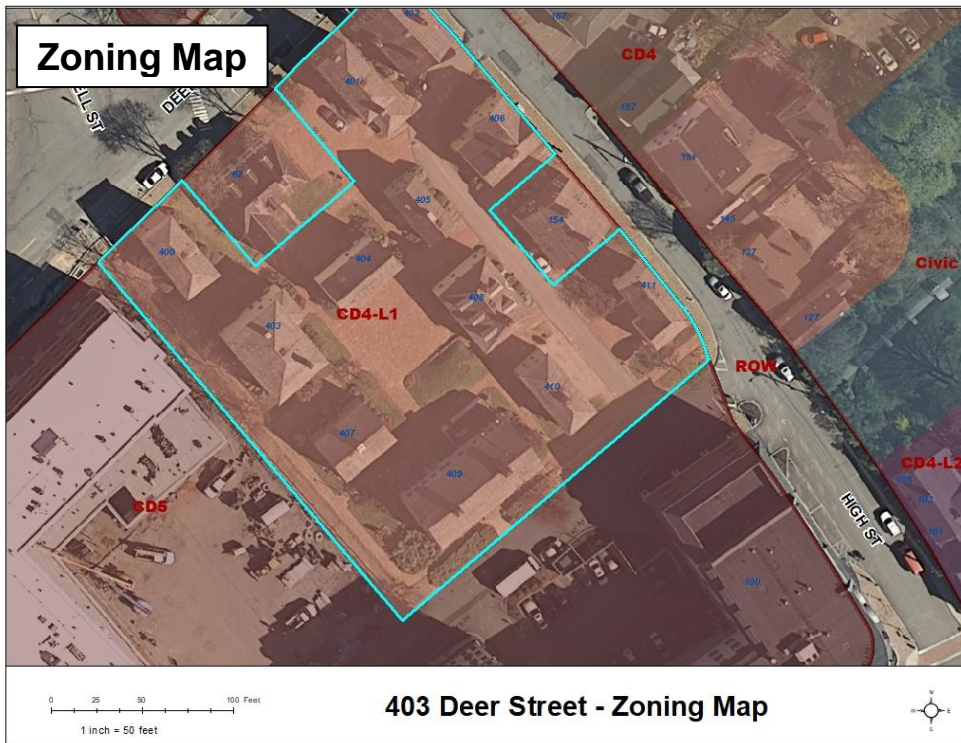
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	restaurant	Inn	Primarily Mixed Residential
<u>Parking</u>			No requirement in DOD
<u>Estimated Age of Structure:</u>	1870	Variance request shown in red.	

Other Permits/Approvals Required

HDC for exterior changes or modifications

Neighborhood Context





Previous Board of Adjustment Actions

August 15, 2017- The Board granted a variance to allow a 24 s.f. wall sign where 16 s.f. is the maximum allowed and to allow a sign on the side of a building not facing the street and without a public entrance.

Planning Department Comments

An Inn is not permitted in this district and by definition does not require a caretaker residence, does not have to be owner occupied and shall not serve food to the public. The definition of an Inn from the Zoning Ordinance is below:

Inn

A **building** offering lodging for transient boarders with up to 15 sleeping rooms. An **inn** may have a **caretaker residence** but does not have to be occupied by the owner, and shall not serve food to the public. (See also: **bed and breakfast, hotel, motel.**)

The property is located in the Downtown Overlay District and there are no off-street parking requirements per Section 10.1115.21. This change of use will not require site plan approval.

Review Criteria

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

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

AND

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

OR

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

Case #9-6

Petitioners: 335 Maplewood Ave LLC
 Property: 335 Maplewood Avenue
 Assessor Plan: Map 141, Lot 26
 Zoning District: Character District 4-L1 (CD4-L1)
 Description: Replace existing 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 3.4'± side 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 Residential
<u>Lot area (sq. ft.):</u>	6,111	6,111	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	N/A	6,111	3,000 min.
<u>Street Frontage (ft.):</u>	49	49	NR min.
<u>Primary Front Yard (ft.):</u>	11	11	15 max.
<u>Secondary Front Yard (ft.):</u>	3.7'	3.7'	15 max.
<u>Right Yard (ft.):</u>	5	3.4	5 ft. – 20 ft. max
<u>Rear Yard (ft.):</u>	43	43	Greater of 5 ft. from rear or 10 ft. from alley
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	22.5	26	60 max.
<u>Open Space Coverage (%):</u>	51	44	25 min.
<u>Parking</u>	Ok	ok	ok
<u>Estimated Age of Structure:</u>	1800	Variance request shown in red.	

Other Permits/Approvals Required

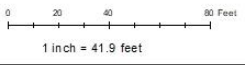
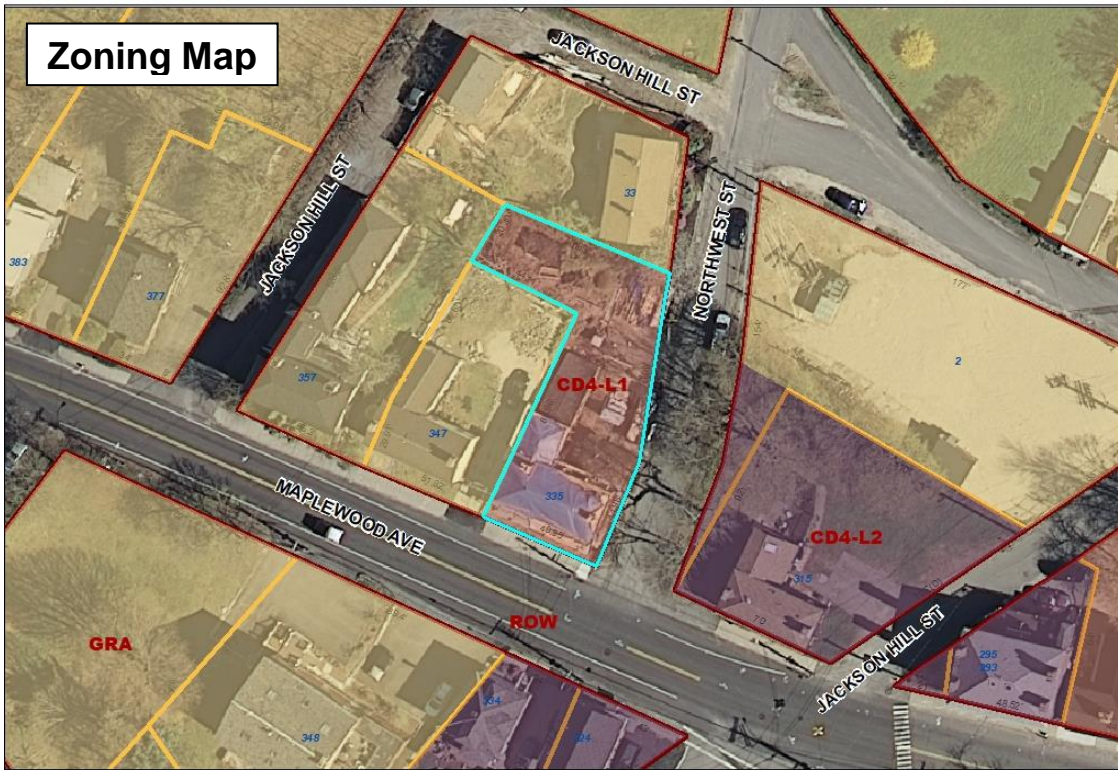
HDC

Neighborhood Context

Aerial Map



Zoning Map



335 Maplewood Avenue - Zoning Map



Previous Board of Adjustment Actions

July 28, 2009 – The Board **granted** a variance for an office use to provide 8 parking spaces where 12 were required with the following stipulations: a) that the entirety of the building would be used for business purposes; and b) that there would be a maximum of six employees.

August 18, 2009 – The Board considered a Request for Rehearing and/or Modification of Stipulations for the petition heard July 28, 2009. A motion to amend the stipulations failed to pass and the request was denied.

August 25, 2009 – The Board **granted** a rehearing on the petition heard July 28, 2009 to be included in the September 15, 2009 meeting.

September 15, 2009 – The Board **granted** the variance for an office use with 8 provided parking spaces where 12 were required. The variance was granted with no stipulations.

May 20, 2014 – The Board **granted** a variance for a lot line adjustment resulting in a left side yard of 3.08' where 4.35' existed and 10' was required.

Planning Department Comments

The applicant is proposing a renovation of the 1800's structure home which involves replacing the rear addition and garden shed and converting the use from office to single family residential. The project received HDC approval in March of 2018.

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.