

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: February 13, 2019
RE: Zoning Board of Adjustment February 20, 2019 Meeting

OLD BUSINESS

1. 11 Meeting House Hill Road

NEW BUSINESS

1. Case 2-1 53 Austin Street
2. Case 2-2 44 Rock Street
3. Case 2-3 322 Islington Street
4. Case 2-4 101 Martha Terrace
5. Case 2-5 7 Laurel Court
6. Case 2-6 50 Pleasant Point Drive
7. Case 2-7 226 Park Street

OLD BUSINESS

Case #1-2

Petitioners:	Katherine Balliet & Carol Hollings, owners and Lisa Koppelman & Nicholas Cracknell, applicants
Property:	11 Meeting House Hill Road
Assessor Plan:	Map 103, Lot 59
Zoning District:	General Residence B (GRB)
Description:	Move one existing dwelling unit into a garage with added second story and connector to existing home.
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 5.5'± rear yard where 25' is required; and b) a 48% 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>	Two-family	Garage addition/move 1 DU into garage.	Primarily residential uses
<u>Lot area (sq. ft.):</u>	3,422	3,422	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,711	1,711	5,000 min.
<u>Street Frontage (ft.):</u>	78	78	80 min.
<u>Lot depth (ft.):</u>	44	44	60 min.
<u>Primary Front Yard (ft.):</u>	3'9"	3'1"*	5 (2.7*) min.
<u>Secondary Front Yard (ft.):</u>	17	7	5 min.
<u>Right Yard (ft.):</u>	0	0	10 min.
<u>Rear Yard (ft.):</u>	7'6"	5'6"	25 min.
<u>Height (ft.):</u>	19	26	35 max.
<u>Building Coverage (%):</u>	43	48	30 max.
<u>Open Space Coverage (%):</u>	57	49	25 min.
<u>Parking</u>	3	4	3
<u>Estimated Age of Structure:</u>	1900 (1790 house) 1981 (garage)	Variance request shown in red. *ok per Section 10.516.10 for Front Yard Alignments.	

Other Permits/Approvals Required

HDC

Neighborhood Context



Previous Board of Adjustment Actions

January 6, 1981 – The Board **granted** variances to allow the following: a) construction of a two story garage with a 4' front, 10' rear and 7' right setbacks (21' required for all); b) construction on a corner lot with a front setback of 4' and a left side setback of 10' where 10' was required; and c) 71.7% building coverage where 20% was allowed. The

request was granted with the following **stipulations attached to a) and b)**: 1) the garage to be 16' from the left setback (Manning Street side); 2) the dimensions not to exceed 18' in width (Meeting House Hill side) and 24' in length (Manning Street side); and 3) the height not to exceed 18'. Building coverage (c) was granted with no stipulations.

January 15, 2019 – The Board **postponed** a request to move an existing dwelling unit to a garage with an added second story and to construct a connector to the existing home. The required requests were to allow 48% building coverage where 30% was the maximum allowed, a 5.5' rear yard where 25' was required, and a nonconforming structure to be extended, reconstructed or enlarged without conforming to the ordinance.

Planning Department Comments

The applicant has had two work sessions with the HDC and has provided additional information from the latest HDC work session as part of the application for this petition. It appears this lot was involuntarily merged and although it shows up on the tax maps as one lot, there are actually two deeds describing the two lots. The relief sought for the variances granted in 1981 reflect setbacks for the corner lot (43 Manning St), and not the larger, merged lot. The applicant is seeking relief based on the merged lot.

The applicant has indicated the proposed rear yard is approximately 5 feet 6 inches on the site plan that was submitted. Since the site plan is not an official survey, the Board may want to consider a condition of approval that the rear yard is within a certain distance to specify a plus/minus range that would allow for some flexibility. This would prevent the applicant from having to come back to the Board if there is a minor discrepancy between the site plan submitted for this request and the as-built survey for the addition.

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

Review Criteria

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

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

AND

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

OR

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

NEW BUSINESS

Case #2-1

Petitioners: Frank AJ Veneroso & Roslyn Weems
 Property: 53 Austin Street
 Assessor Plan: Map 127, Lot 26
 Zoning District: General Residential C (GRC)
 Description: Proposed Inn.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. A Variance from Section 10.440, Use #10.30 to allow an Inn where the use is not permitted in the district.

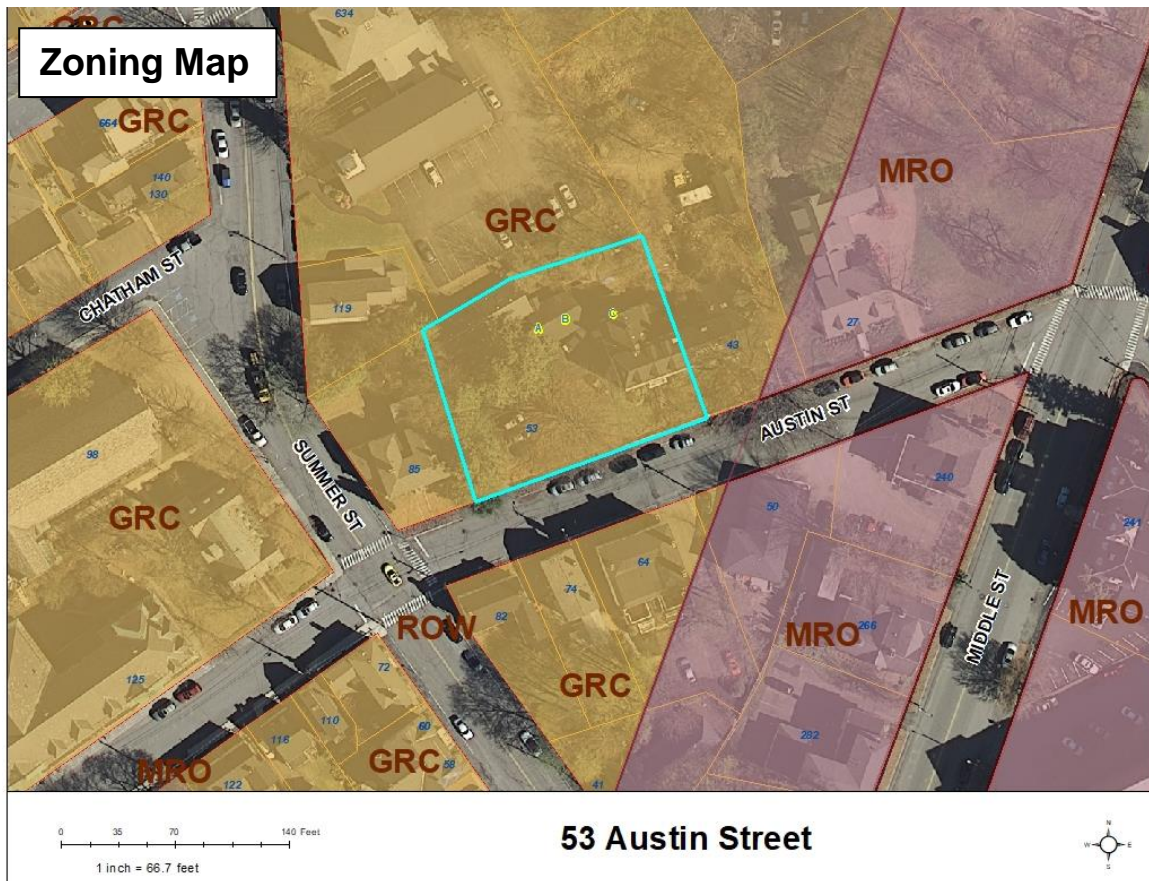
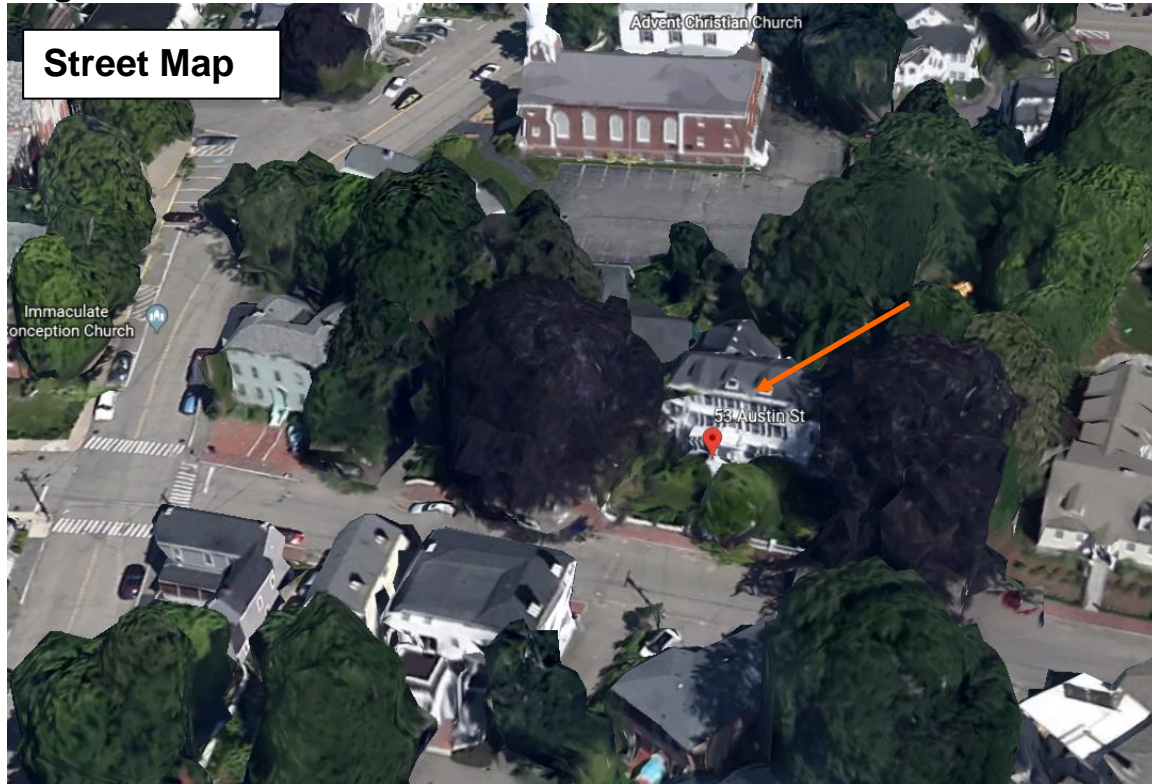
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	3 apts.; 1 main house	Inn	Primarily mixed residential uses
<u>Lot area (sq. ft.):</u>	17,424	17,424	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,356	NA	3,500 min.
<u>Street Frontage (ft.):</u>	151	151	70 min.
<u>Lot depth (ft.):</u>	114	114	50 min.
<u>Primary Front Yard (ft.):</u>	33	33	5 min.
<u>Right Yard (ft.):</u>	0	0	10 min.
<u>Left Yard (ft.):</u>	3	3	10 min.
<u>Rear Yard (ft.):</u>	0	0	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	27	27	35 max.
<u>Open Space Coverage (%):</u>	57	57	20 min.
<u>Parking</u>	ok	14*	17
<u>Estimated Age of Structure:</u>	1800	Variance request shown in red. *As presented by applicant; will require CUP	

Other Permits/Approvals Required

Planning Board – Site Plan and CUP for Parking

Neighborhood Context



Previous Board of Adjustment Actions

March 25, 1980 – The Board **denied** a request to allow a single residence to be converted to four professional offices and one apartment.

August 12, 1980 – The Board took the following action: a) **granted** a special exception to allow the conversion of a single family residence to four apartments with the **stipulation** that the parking for the apartments be on a lot at 53 Austin Street; b) **denied** a variance to convert the carriage house to two medical offices; and c) **denied** a special exception to allow six parking spaces on an adjoining lot at 85 Austin Street as well as **denying** a variance for the same six parking spaces.

April 7, 1981 – The Board **granted** a special exception to allow three apartments in an existing carriage house with the stipulation that the special exception granted August 12, 1980 to convert a single family residence to four apartments be negated and the main house to remain a single family residence.

June 30, 1981 – The Board **granted** a variance to allow a 5' left yard where 9' was required.

August 31, 1982 – The Board **granted** a special exception to allow conversion of a single family dwelling to 2 apartments for a total of 5 apartments on the lot.

Planning Department Comments

The applicant is proposing to convert the property from residential to an Inn use, which is not permitted in the GRC district. As defined in the zoning ordinance, an inn offers lodging up to 15 sleeping rooms. The applicant is proposing 8 sleeping rooms that include the three existing apartments and main dwelling unit. The applicant has indicated there may be future plans to demolish the existing garage and build a new one in a different location, which may require future variances. In addition, the parking requirements for the proposed use are not met and will require a Conditional Use Permit from the Planning Board. The parking plan provided shows 14 spaces and the applicant has indicated the dimensional standards can be met. This will also require site review and if deficiencies in any of the parking facilities are exposed, other variances may be required.

Staff would recommend the Board consider a stipulation of approval that limits the Inn to eight rooms, and if future expansion of the Inn is proposed, the applicant would be required to seek additional approval from this Board to increase the number of rooms.

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 #2-2

Petitioners:	Keith A. Kohler & Nicole Gabrielle Lapierre
Property:	44 Rock Street
Assessor Plan:	Map 138, Lot 19
Zoning District:	General Residential C (GRC)
Description:	Demo garage and deck and add 2 ½ story addition.
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 5'± left side yard where 10' is required; and b) 37%± building coverage where 35% is the maximum allowed. 2. A Variance from Section 10.321 to allow a lawful nonconforming structure or building to be expanded, reconstructed or enlarged without conforming to the requirements of the ordinance.

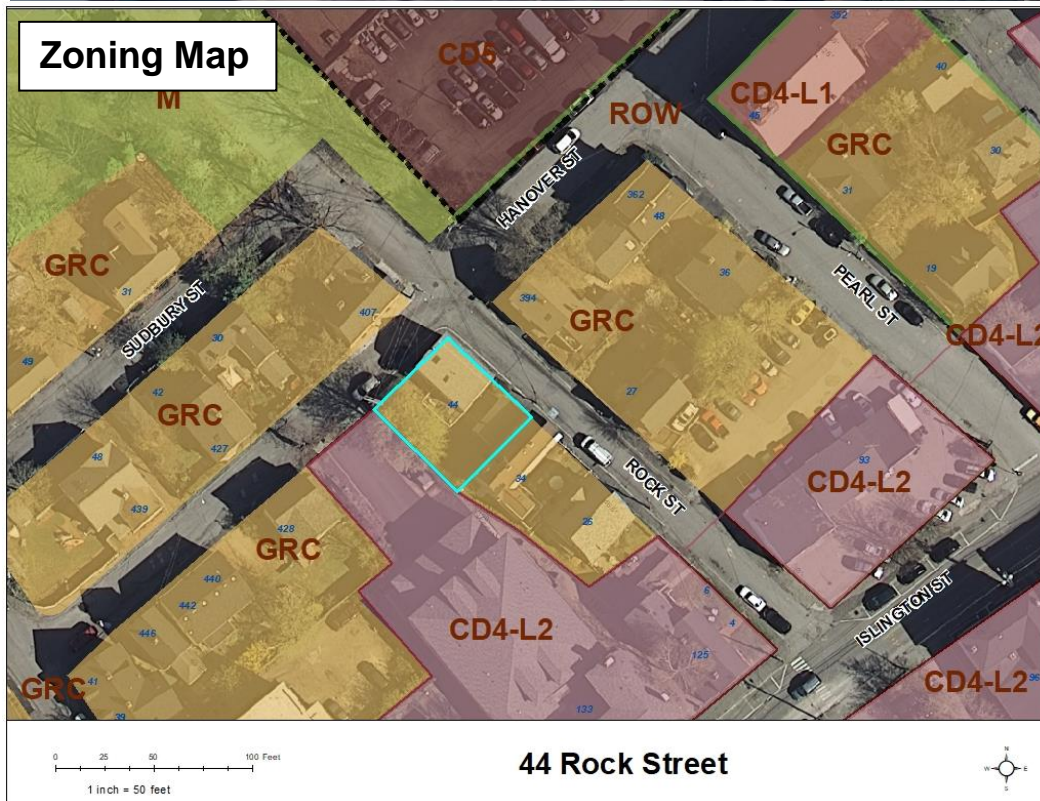
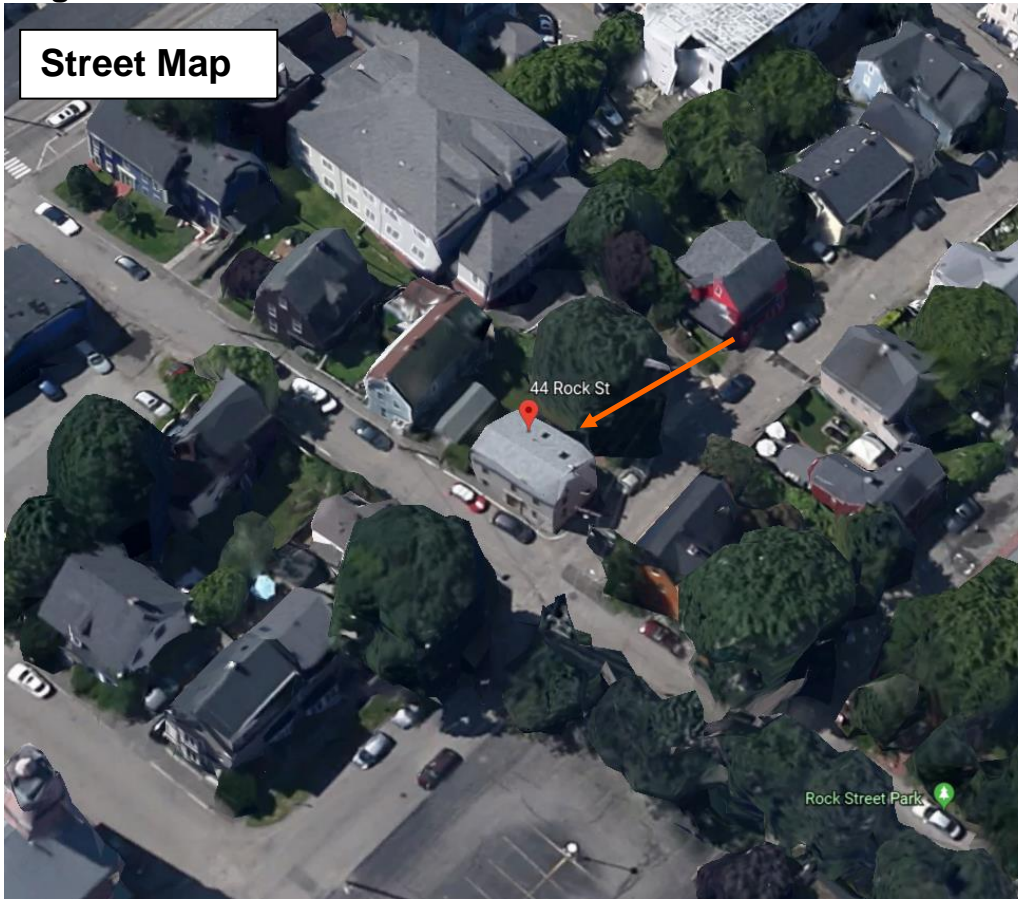
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	2.5 story addition	Primarily residential uses
<u>Lot area (sq. ft.):</u>	3,152	3,152	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,152	3,152	3,500 min.
<u>Street Frontage (ft.):</u>	107	107	70 min.
<u>Lot depth (ft.):</u>	50	50	50 min.
<u>Primary Front Yard (ft.):</u>	0	0	5 min.
<u>Secondary Front Yard (ft.):</u>	<1' (house) 3.5' (garage)	7.8' addition	5 min.
<u>Left Yard (ft.):</u>	4	5	10 min.
<u>Rear Yard (ft.):</u>	20	>20	20 min.
<u>Height (ft.):</u>	<35	33	35 max.
<u>Building Coverage (%):</u>	36	37	35 max.
<u>Open Space Coverage (%):</u>	59	52	20 min.
<u>Parking</u>	1	2	1.3
<u>Estimated Age of Structure:</u>	1781	Variance request shown in red.	

Other Permits/Approvals Required

DPW - Driveway Permit

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The proposal includes demolition of the existing garage and deck and construction of a new 2 ½ story addition attached to the house and relocation of the driveway from Rock Street to Hanover Street. While the new addition will be more conforming than the existing garage, it will still encroach into the right side yard and will increase the building coverage slightly. The applicant will need a driveway permit from Public Works for the new driveway location on Hanover Street.

The plan submitted is not an official survey, so staff would recommend the Board consider a stipulation that the right side yard is within a certain distance to account for a plus/minus range that would allow for some flexibility. This would prevent the applicant from having to come back to the Board if there is a minor discrepancy between the site plan submitted for this request and the as-built survey for the addition.

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

Review Criteria

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

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

AND

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

OR

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

Case #2-3

Petitioners:	Stephen G. Bucklin
Property:	322 Islington Street
Assessor Plan:	Map 145, Lot 3
Zoning District:	Character District 4-L2 (CD4-L2), Historic District (HD)
Description:	Move existing carriage house to new foundation and add one-story connector to existing house.
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 10.5A41.10A to allow the following: a) a 1'± rear yard where 5' is required; and b) a 2'± left side yard where 5' 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.

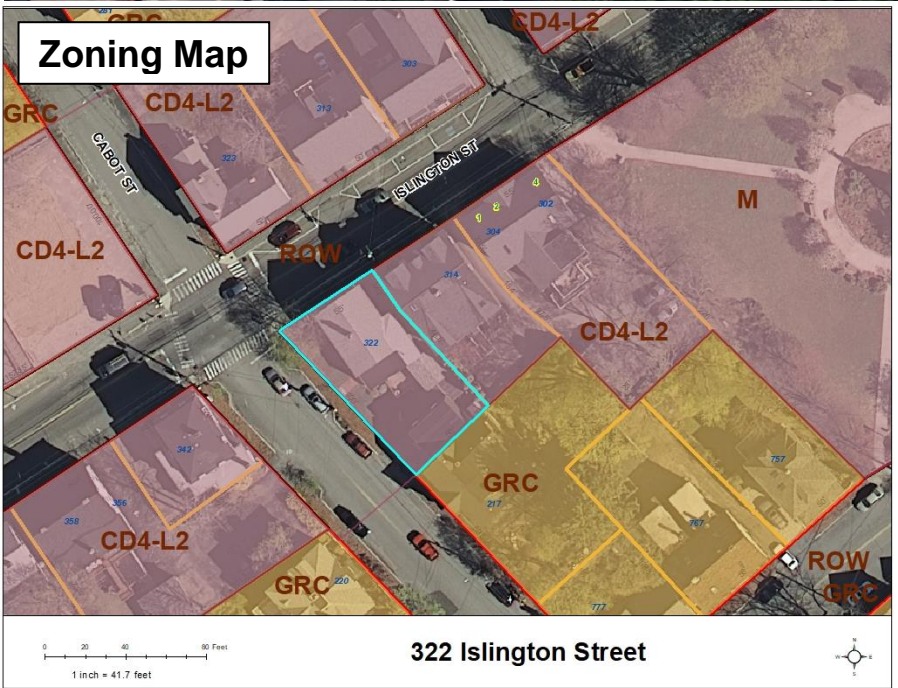
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two-family	Connect carriage house to main house.	Primarily residential uses
<u>Lot area (sq. ft.):</u>	4,748	4,748	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,374	2,374	3,000 min.
<u>Street Frontage (ft.):</u>	149	149	80 min.
<u>Primary Front Yard (ft.):</u>	3'9"	3'1"	15 max.
<u>Secondary Front Yard (ft.):</u>	14	14	12 max.
<u>Left Yard (ft.):</u>	2	2	5 min.
<u>Rear Yard (ft.):</u>	0	1	Greater of 5 ft. from PL or 10 ft from center of alley
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	55	55	60 max.
<u>Open Space Coverage (%):</u>	27	26	25 min.
<u>Parking</u>	2**	2**	3
<u>Estimated Age of Structure:</u>	1900 (1790 house) 1981 (garage)	Variance request shown in red. *ok per Section 10.516.10 for Front Yard Alignments. **Existing and proposed spaces do not conform but are grandfathered.	

Other Permits/Approvals Required

HDC

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant's proposal is to move the existing carriage house that currently encroaches onto the neighbor's property and connect it to the principal dwelling which will result in a more conforming structure, however it will still be 1' from the rear and 2' from the side yard. Moving the structure back will create a more conforming parking area. The applicant's representative has stated they are working with the abutter to have an agreement for performing the work, since part of the existing structure is on the adjacent property.

If granted approval, Staff recommends consideration of a condition that would allow the rear yard and side yard to be within a certain distance as determined by the Board. In addition, Staff recommends the Board consider a stipulation that prior to the issuance of a building permit, a document between the owner and abutter at 217 Cabot is recorded in the Registry of Deeds, to ensure access for the initial construction and future maintenance of the 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 #2-4

Petitioners:	Carrie Richesson
Property:	101 Martha Terrace
Assessor Plan:	Map 283, Lot 5
Zoning District:	Single Residence A (SRA)
Description:	Construct 20' x 24' garage attached to the existing house with a 10' x 10' mudroom.
Request:	<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 the following: a) a 12'± secondary front yard where 30' is required; and b) 16% building coverage where 10% is the maximum allowed.</p>

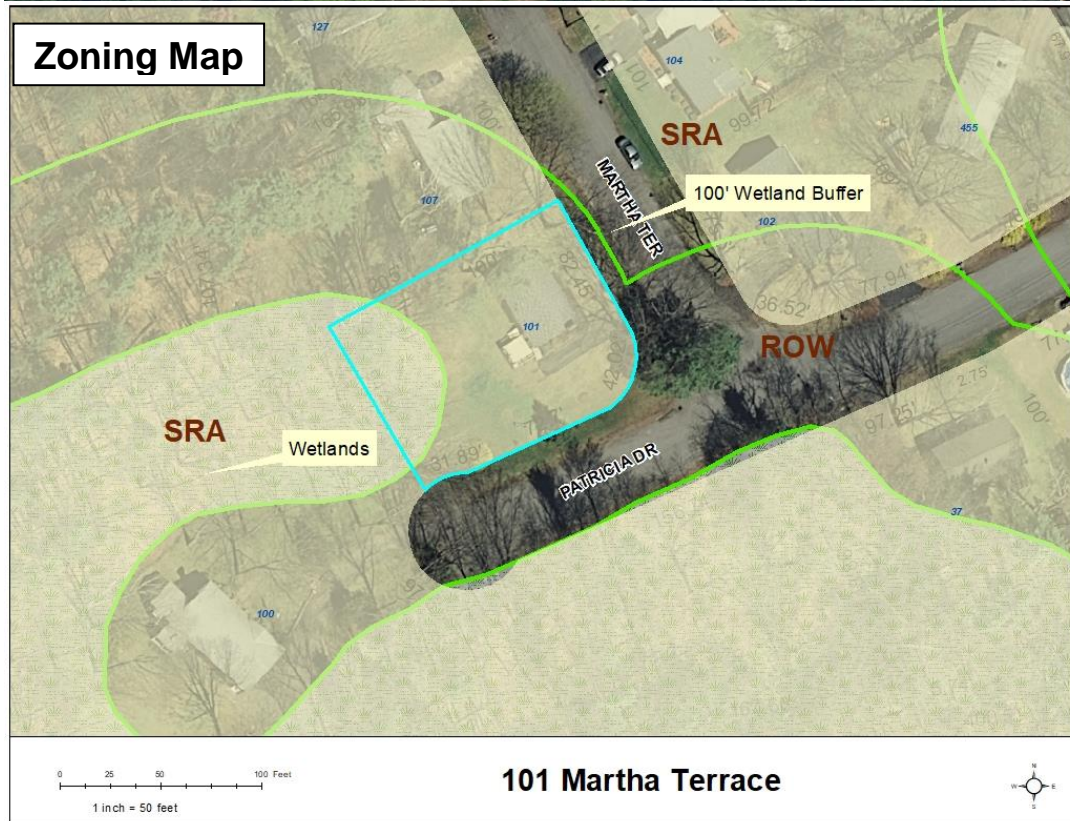
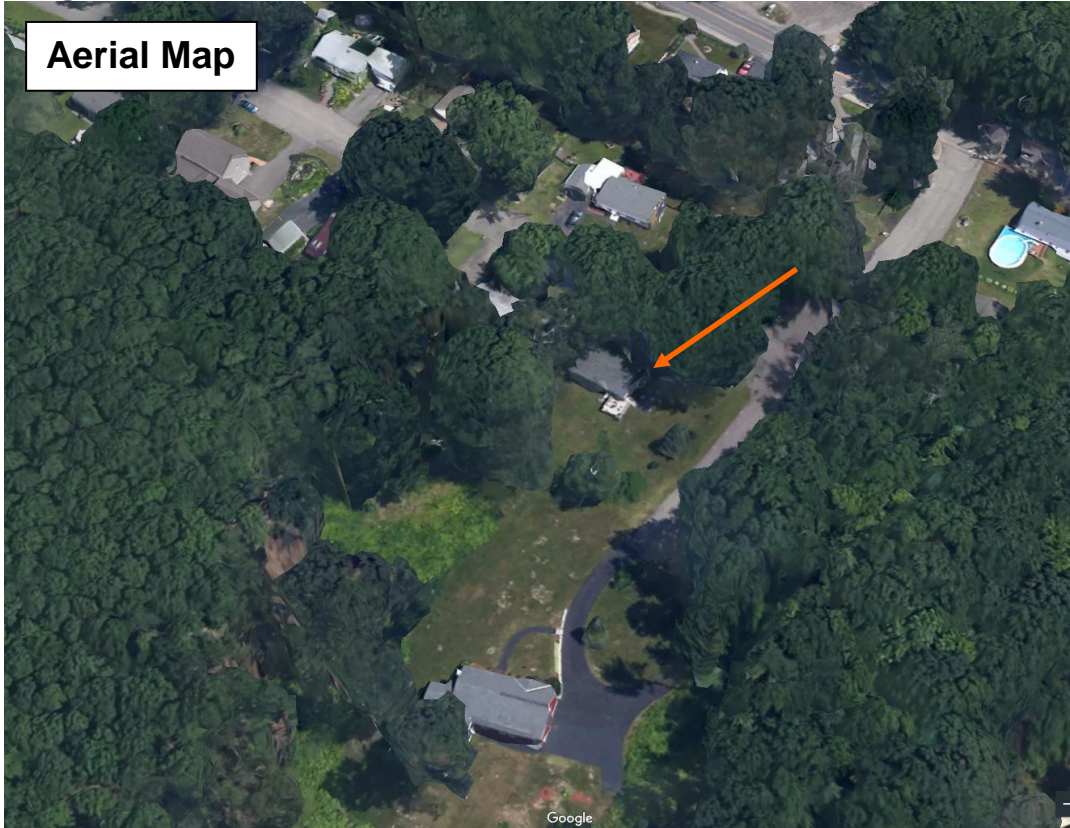
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Construct attached garage	Primarily residential uses
<u>Lot area (sq. ft.):</u>	10,454	10,454	43,560 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,454	10,454	43,560 min.
<u>Street Frontage (ft.):</u>	>150	>150	150 min.
<u>Lot depth (ft.):</u>	128	128	200 min.
<u>Primary Front Yard (ft.):</u>	25	33 (garage)	30 min.
<u>Right Yard (ft.):</u>	>20	>20	20 min.
<u>Secondary Front Yard (ft.):</u>	45	12	30 min.
<u>Rear Yard (ft.):</u>	67	71	40 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	11	16	10 max.
<u>Open Space Coverage (%):</u>	78	77	75 min.
<u>Parking</u>	2	4	1.3
<u>Estimated Age of Structure:</u>	1965	Variance request shown in red.	

Other Permits/Approvals Required

Conservation Commission and Planning Board – Wetlands Conditional Use Permit

Neighborhood Context



Previous Board of Adjustment Actions

January 16, 1979 – The Board **denied** a request for a special exception to allow a shelter for a riding horse and a variance to allow the shelter to be less than 100' from any lot line.

Planning Department Comments

As shown by the map above, the entire lot is constrained by the 100 foot wetlands buffer. The proposed garage addition encroaches into the secondary front yard and increases the building coverage to 16% where only 10% is allowed in the SRA district. Since the site plan is not an official survey, the Board may want to consider a condition of approval that the secondary front yard is within a certain distance to specify a plus/minus range that would allow for some flexibility. This would prevent the applicant from having to come back to the Board if there is a minor discrepancy between the site plan submitted for this request and the as-built survey for the addition.

If granted approval, Staff recommends consideration of a condition that the secondary front yard is within a certain distance as determined by the Board to account for a plus/minus range.

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 #2-5

Petitioners:	Ryan P. and Jennifer L. Smith
Property:	7 Laurel Court
Assessor Plan:	Map 212, Lot 191
Zoning District:	General Residence B (GRB)
Description:	Equitable Waiver for rear and front yard encroachments.
Requests:	Equitable Waiver under RSA 674:33-a 1. An Equitable Waiver to allow a previously constructed deck with a 22'± rear yard and a previously constructed bulkhead with a 24.7'± rear yard where 25' is required for each and to allow a 4'± front yard where 5' is required.

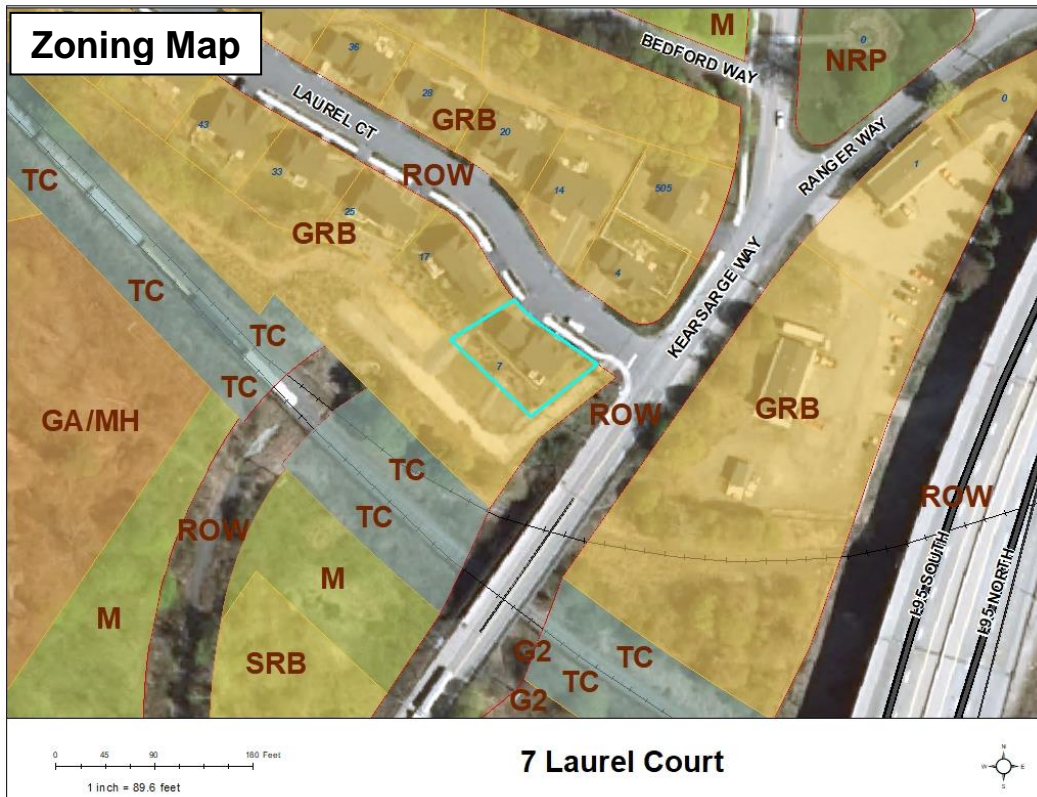
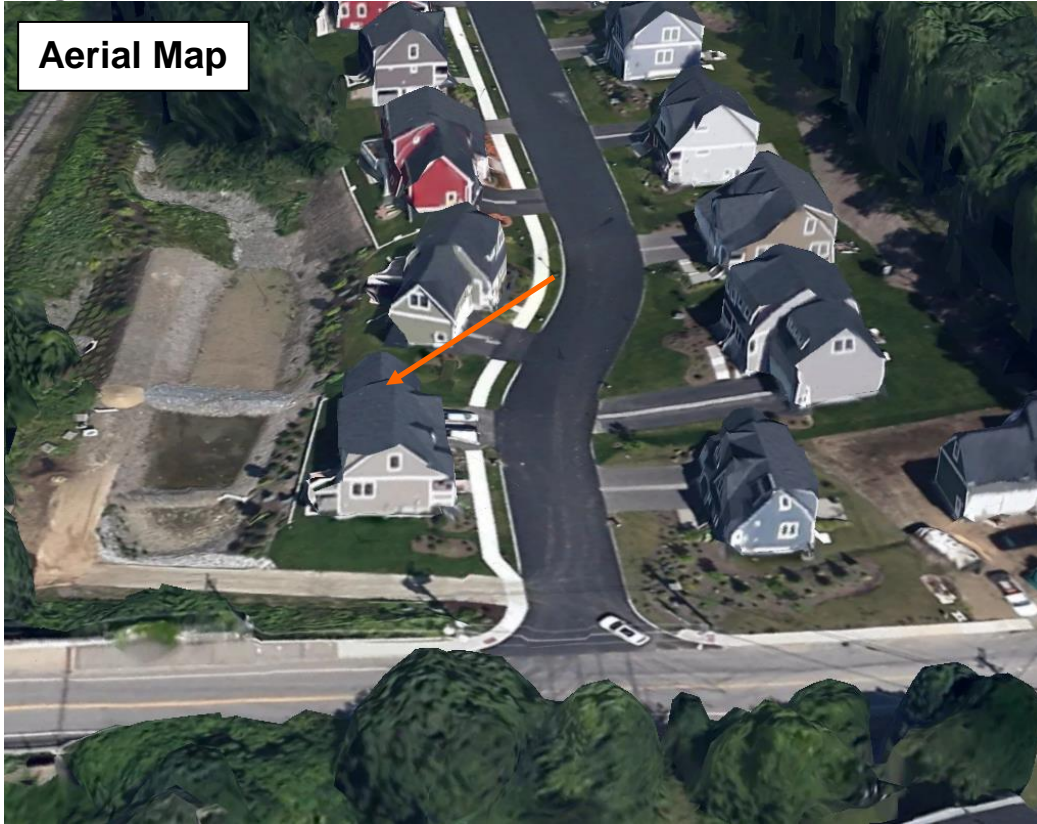
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	No proposal	Primarily residential
<u>Lot area (sq. ft.):</u>	6,783	6,783	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,783	6,783	5,000 min.
<u>Lot depth (ft.):</u>	73	73	60 min.
<u>Street Frontage (ft.):</u>	57	57	80 min.
<u>Primary Front Yard (ft.):</u>	4.4	4.4	5 min.
<u>Left Yard (ft.):</u>	17	17	10 min.
<u>Right Yard (ft.):</u>	12	12	10 min.
<u>Rear Yard (ft.):</u>	22	22	25 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	22	22	30 max.
<u>Open Space Coverage (%):</u>	>20	>20	25 min.
<u>Estimated Age of Structure:</u>	2013	Equitable Waiver Request in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is in the process of selling the property and in an attempt to get confirmation that the house is conforming, it was discovered there were encroachments that should have required variances. The work was completed when the house was built and the original permit had listed a deck as optional, but it was never shown on the site plan. Subsequently, a Certificate of Occupancy was issued by the City. The applicant is requesting an equitable waiver in order to have the violations corrected. The language from the State Statute for an Equitable Waiver is below.

Review Criteria

674:33-a Equitable Waiver of Dimensional Requirement.

I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

- (a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;
- (b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;
- (c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and
- (d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

II. In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

Case #2-6

Petitioners:	Vaughan Family Revocable Trust, Charles & Sally Vaughan, Trustees, owners, Craig & Diane Alie, applicants
Property:	50 Pleasant Point Drive
Assessor Plan:	Map 207, Lot 11
Zoning District:	Single Residence B (SRB)
Description:	Second story addition and new two-story garage.
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) an 18'± secondary front yard for a vertical expansion of the existing dwelling; and b) a 21'± secondary front yard for a new two-story garage where 30' is required for each. 2. A Variance Section 10.321 to allow a nonconforming structure or building to be expanded, reconstructed or enlarged without conforming to the requirements of the ordinance.

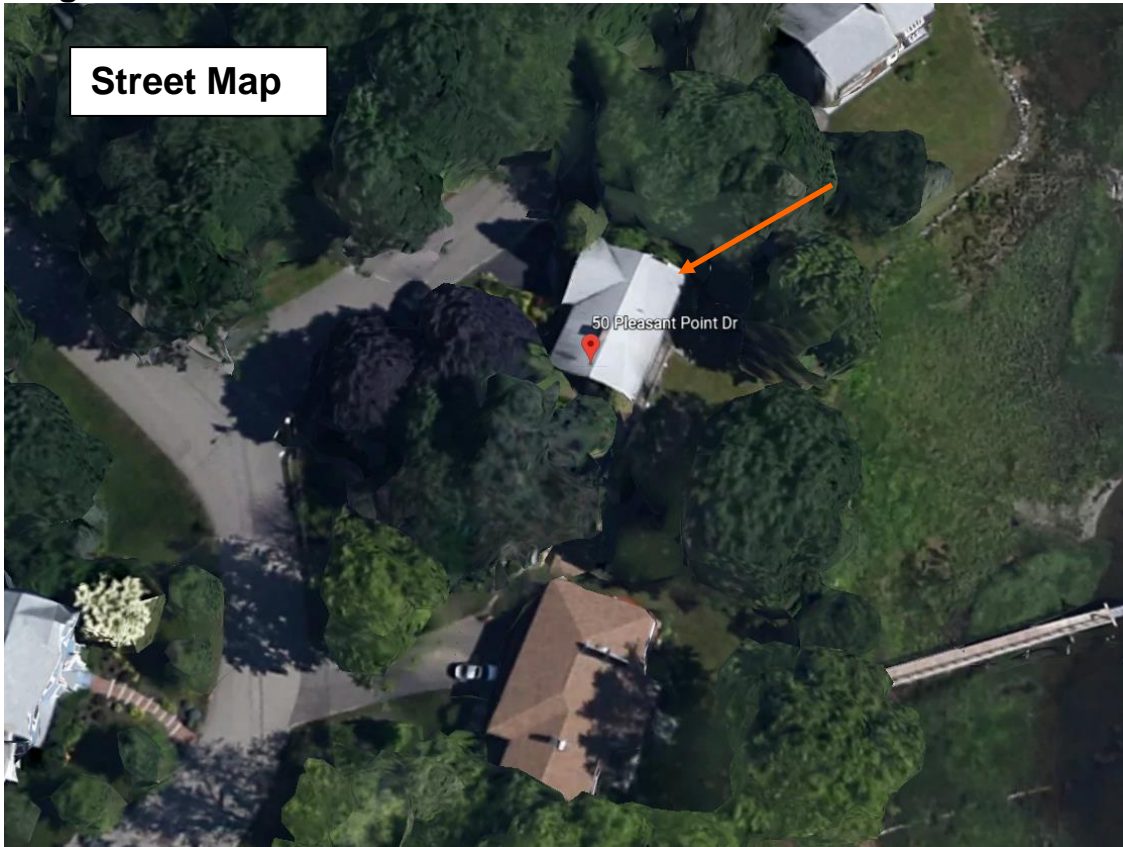
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Upward expansion; new 2-story garage	Primarily single family
<u>Lot area (sq. ft.):</u>	17,046	17,046	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	17,046	17,046	15,000 min.
<u>Street Frontage (ft.):</u>	>100	>100	100 min.
<u>Lot depth (ft.):</u>	132	132	100 min.
<u>Primary Front Yard (ft.):</u>	>30	>30	30 min.
<u>Secondary Front Yard (ft.):</u>	18	18 (house) 21 (garage)	30 min.
<u>Left Yard (ft.):</u>	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	>30*	>30*	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	10	16	20 max.
<u>Open Space Coverage (%):</u>	80	81	40 min.
<u>Parking</u>	Ok	4	1.3
<u>Estimated Age of Structure:</u>	1955	Variance request shown in red. *Located within 100' buffer	

Other Permits/Approvals Required

Planning Board & Conservation Commission – Wetlands CUP

Neighborhood Context



Previous Board of Adjustment Actions

March 19, 1997 – The Board **granted** a variance to rebuild a 6' x 32' deck within 100' of the mean high water of Little Harbor.

Planning Department Comments

A large portion of this property is within the 100 foot wetlands buffer with the existing house located entirely within the buffer. The applicants propose to do a major renovation to the existing house, including a second story addition. A two-story attached garage is proposed and will encroach into the secondary front yard on Robin Lane. In order for the garage to be in the proposed location, it must be attached, or otherwise they would need to seek additional relief from this Board. It appears the garage location is an attempt to have as much of the structure outside of the wetland buffer. The applicant is proposing to remove existing impervious areas to create additional open space.

This will require a Wetlands Conditional Use Permit through the Conservation Commission and Planning Board.

The plan submitted was completed by a land surveyor, however if the Board feels it is appropriate to allow for a plus/minus range for the secondary front yard for the garage, then a stipulation to that effect should be considered.

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 #2-7

Petitioners:	Neil A. Fitzgerald Family Trust, Kara Moss and Linda Fitzgerald, Trustees
Property:	226 Park Street
Assessor Plan:	Map 149, Lot 50
Zoning District:	General Residential A (GRA)
Description:	Rear addition, single-story 410± s.f. detached accessory dwelling unit (DADU) and a detached one car garage.
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 the following: a) 31% building coverage where 25% is the maximum allowed; and b) a lot area per dwelling unit of 4,368 where 7,500 per dwelling unit is required.</p>

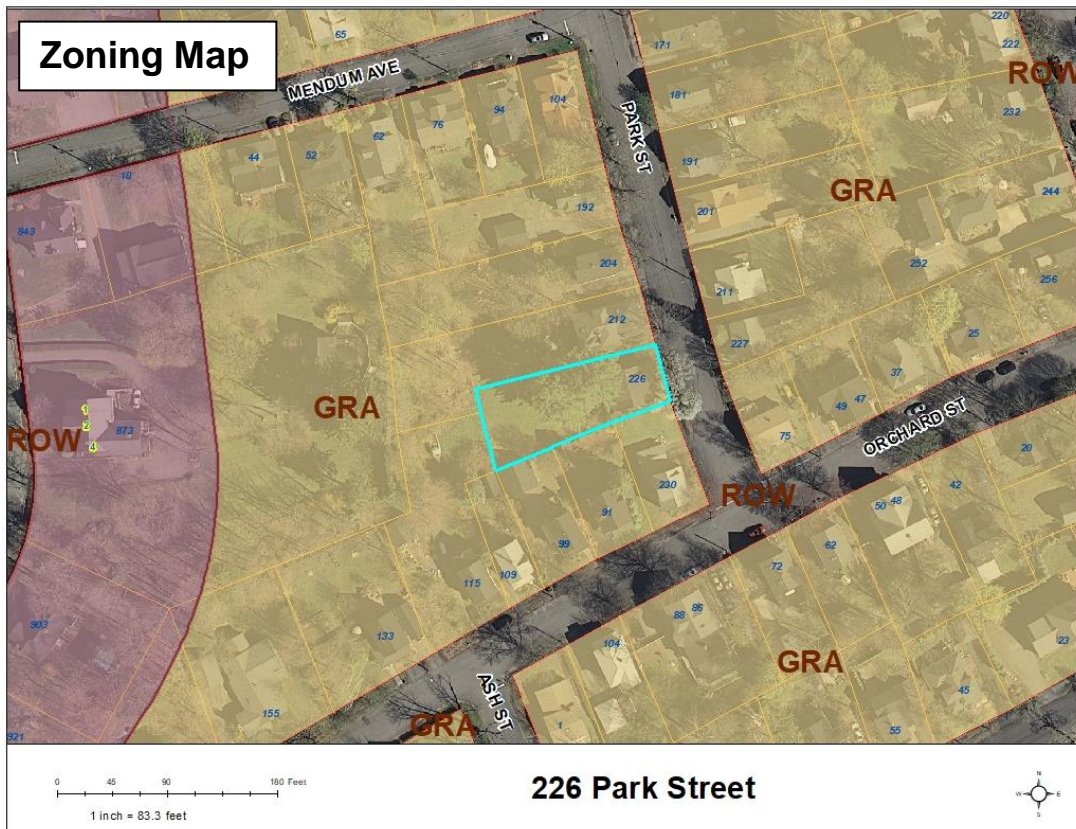
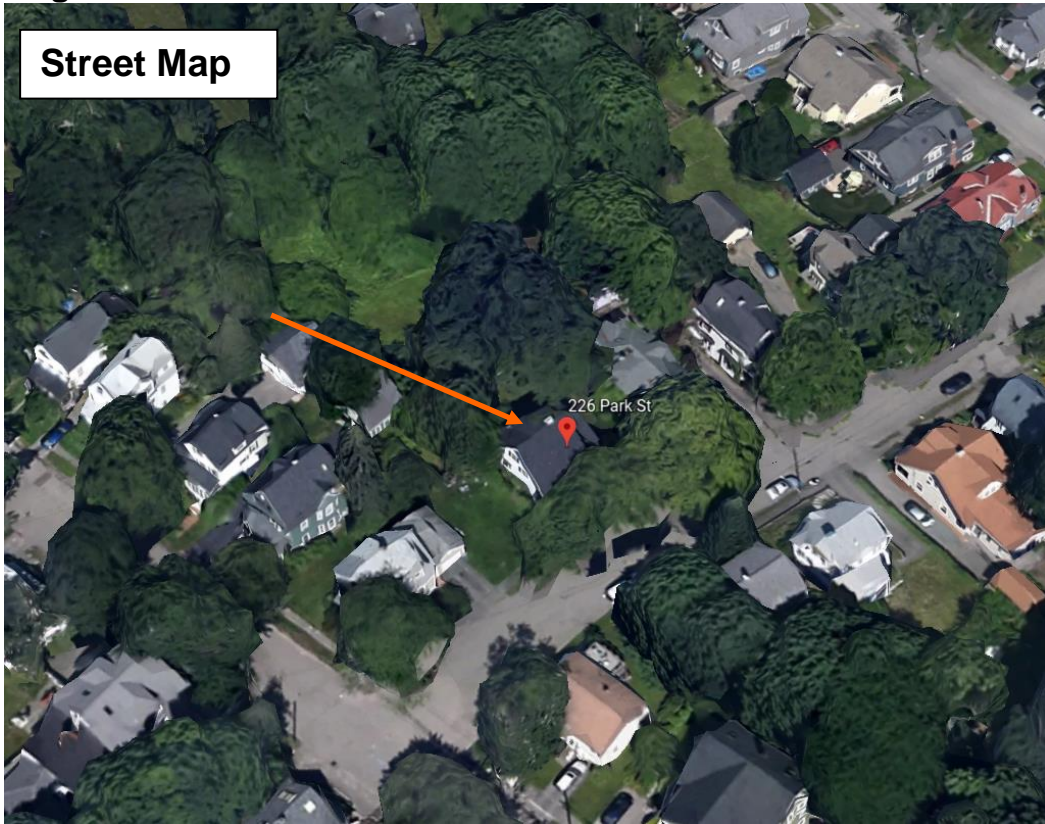
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Addition and DADU	Primarily residential uses
<u>Lot area (sq. ft.):</u>	8,736	8,736	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,736	4,368	7,500 min.
<u>Street Frontage (ft.):</u>	47	47	100 min.
<u>Lot depth (ft.):</u>	152	152	70 min.
<u>Primary Front Yard (ft.):</u>	9	9	15 min.
<u>Right Yard (ft.):</u>	1 (garage)	10 (garage)	10 min.
<u>Left Yard (ft.):</u>	3.6	3.6	10 min.
<u>Rear Yard (ft.):</u>	99	20	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	16	31	25 max.
<u>Open Space Coverage (%):</u>	70	51	30 min.
<u>Parking</u>	2	3+	2
<u>Estimated Age of Structure:</u>	1924	Variance request shown in red.	

Other Permits/Approvals Required

Planning Board – CUP for DADU

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The proposed single story addition, new garage and detached accessory dwelling unit (DADU) will result in approximately 31% building coverage, where 25% is the maximum allowed in the GRA district. It appears the elongated single story addition on the main house is driving much of the increase in building coverage due to the desire to provide one story living for the owner to be able to age in place. A more compact two-story addition could result in building coverage that complies with, or is closer to what is permitted in this district and would result in a house that is more in line with the character of surrounding properties.

In order to be eligible for an accessory dwelling unit, the lot must be conforming. In the GRA district, the lot must meet the minimum lot area per dwelling unit requirement of 7,500 square feet per unit. Otherwise, the proposed structures and additions comply with yard requirements, although staff would note that all of the new structures are proposed to be built right on the rear and side yard lines. As-built surveys will be required for the foundations, and if they encroach into any of the yards, additional relief would be necessary.

The applicant will need to get a Conditional Use Permit from the Planning Board for the DADU, which will include a design review of the accessory dwelling.

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.