

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: July 17, 2019
RE: Zoning Board of Adjustment July 23, 2019 Meeting

OLD BUSINESS

1. Request for Rehearing – 201 Kearsarge Way
2. Case 7-7 183 Coolidge Drive

NEW BUSINESS

1. Case 7-9 3110 Lafayette Road
2. Case 7-10 673 Middle Street
3. Case 7-11 114 Maplewood Avenue
4. Case 7-12 346 Bartlett Street
5. Case 7-13 14 Market Square
6. Case 7-14 140 Edmonds Avenue
7. Case 7-15 88 Lincoln Avenue
8. Case 7-16 5 Sylvester Street
9. Case 7-17 15 Mt. Vernon Street

OLD BUSINESS

Case #6-5

Petitioners:	Richard Fusegni
Property:	201 Kearsarge Way
Assessor Plan:	Map 218, Lot 5
Zoning District:	Single Residence B (SRB)
Description:	Request for Rehearing.
Requests:	A request for Rehearing has been made pursuant to RSA 677:2.

Planning Department Comments

On June 18, 2019 the Board denied a variance to allow 83'± of continuous street frontage where 100' is required for a proposed 3 lot subdivision. The applicant has filed a request for a rehearing within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, the rehearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

Case #7-7

Petitioners: Matthew Wajda
 Property: 183 Coolidge Drive
 Assessor Plan: Map 268, Lot 29
 Zoning District: Single Residence B (SRB)
 Description: Subdivide one lot into two lots.
 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 and lot area per dwelling unit of 10,270 s.f. where 15,000 s.f. is required for each.
2. A Variance from Section 10.521 to allow a lot area and lot area per dwelling unit of 10,100 s.f. where 15,000 s.f. is required for each.
3. A Variance from Section 10.521 to allow 85' of continuous street frontage where 100' is required.
4. A Variance from Section 10.521 to allow a lot depth of 86' where 100 feet is required.

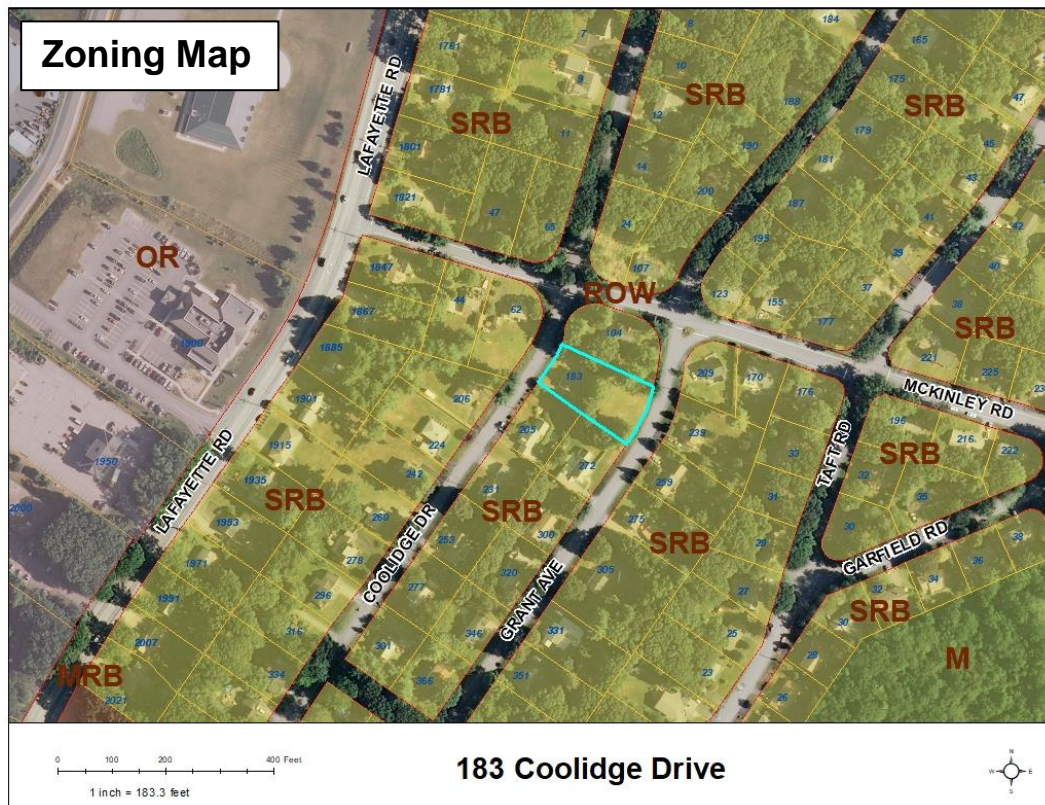
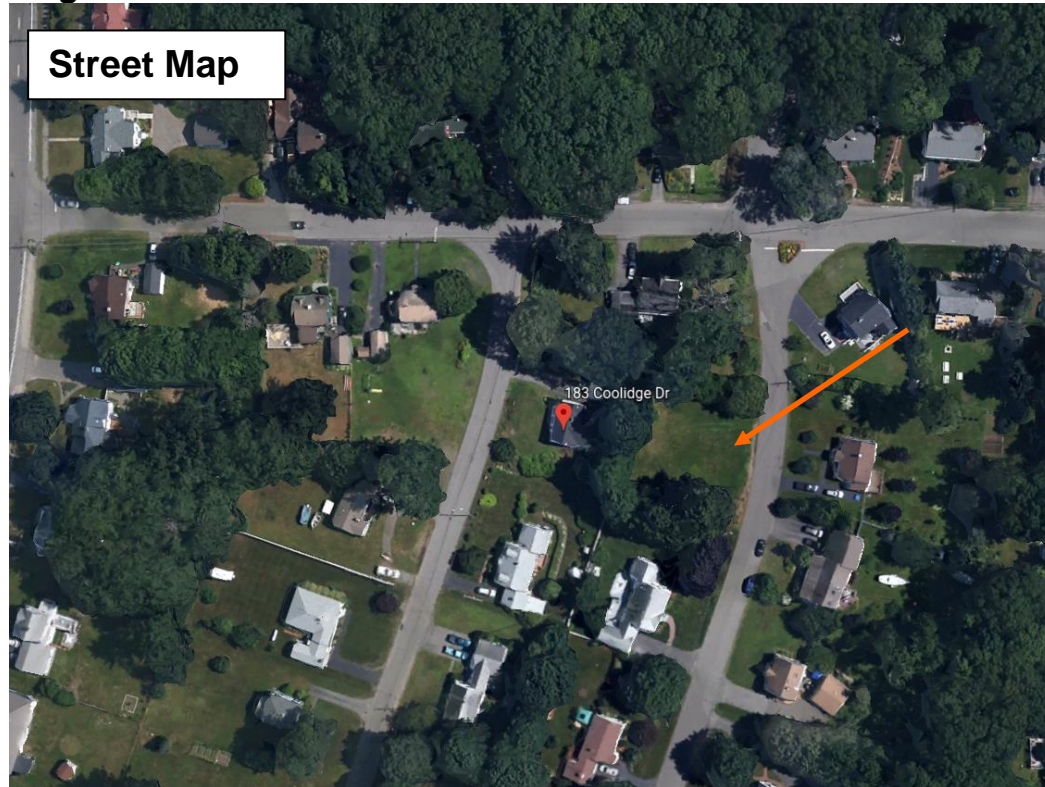
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>		<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Single-family Lot 2	183 Cool	Primarily residential uses
<u>Lot area (sq. ft.):</u>	5,938	10270	10100	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,938	10270	10100	15,000 min.
<u>Street Frontage (ft.):</u>	50	122	85	100 min.
<u>Lot depth (ft.):</u>	118	86	108	100 min.
<u>Primary Front Yard (ft.):</u>	0	n/a	30	30 min.
<u>Right Yard (ft.):</u>	5	n/a	23	10 min.
<u>Left Yard (ft.):</u>	22	n/a	12 (garage)	10 min.
<u>Rear Yard (ft.):</u>	>30	n/a	30	30 min.
<u>Height (ft.):</u>	<35	n/a	<35	35 max.
<u>Building Coverage (%):</u>	7	n/a	13	20 max.
<u>Open Space Coverage (%):</u>	89	100	77	40 min.
<u>Parking</u>	2	0		1.3
<u>Estimated Age of Structure:</u>	1948	Variance requests shown in red.		

Other Permits/Approvals Required

Planning Board/TAC – Subdivision

Neighborhood Context



Previous Board of Adjustment Actions

NO BOA history found.

Planning Department Comments

The applicant is proposing to subdivide the existing lot into two lots, which will result in both lots becoming nonconforming to lot area and lot area per dwelling unit. The proposed lot with the existing house will be nonconforming for street frontage and the new lot will be nonconforming for lot depth at 86 feet. The plan that was provided is titled "Variance Application Sketch" and is not an official survey. If this moves forward, a survey will be needed and may result in different dimensions for the requested variances.

If granted approval, staff recommends the Board consider designating a plus/minus range to account for discrepancies that may arise as a result of the survey.

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 #7-9

Petitioners:	Weeks Realty Trust, Kaley E. Weeks, Trustee and Chad Carter, owners and Tuck Realty Corporation, applicant
Property:	3110 Lafayette Road & 65 Ocean Road
Assessor Plan:	Map 292, Lots 151-1, 151-2 & 153
Zoning District:	Single Residence B (SRB)
Description:	Merge lots and construct 23 residential Townhouse units.
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 10.440, use #1.40 to allow townhouses where the use is not permitted in the district. 2. A Variance from Section 10.513 to allow more than one free-standing dwelling per lot. 2. A Variance from Section 10.521 a lot area per dwelling unit of 4,537 s.f. where 15,000 per dwelling unit is required.

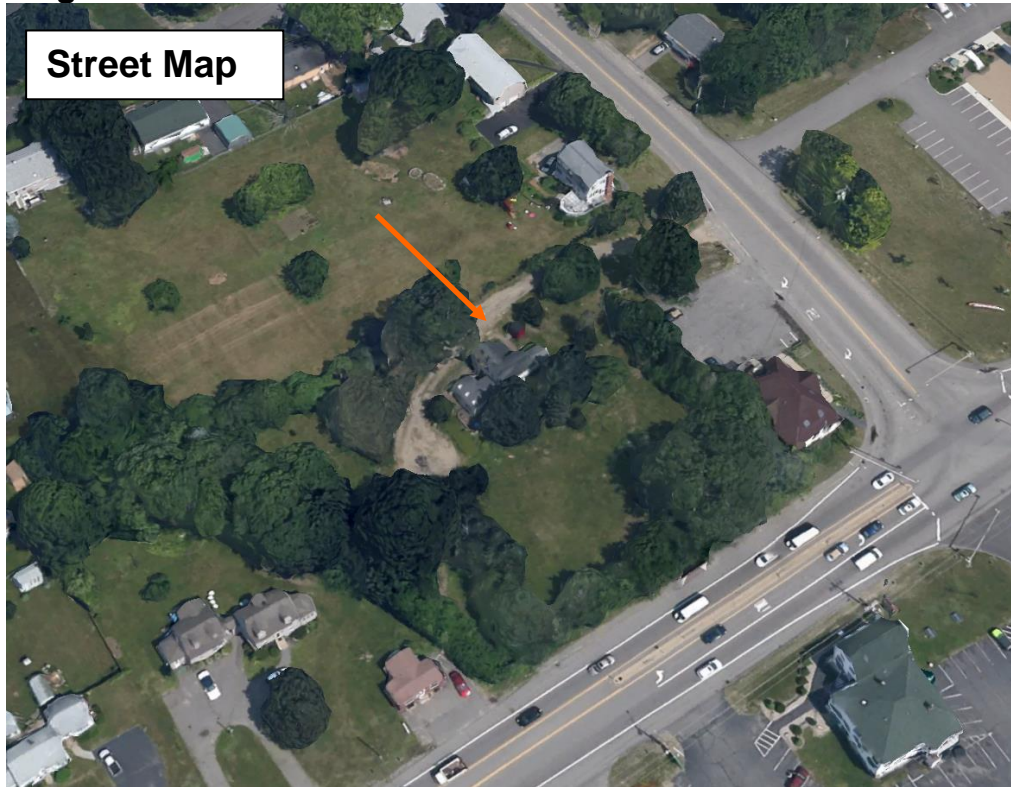
Existing & Proposed Conditions

	Existing	Proposed		Permitted / Required
<u>Land Use:</u>	Single family/ vacant	Town house	65 Ocean	Primarily single family uses
<u>Lot area (sq. ft.):</u>	153: 27,050 151-1: 33,977 151-2: 24,524	81,675	15,031	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	153: 27,050 151-1: 33,977 151-2: 24,524	4,537	15,031	15,000 min.
<u>Street Frontage (ft.):</u>	>100	>100	>100	100 min.
<u>Lot depth (ft.):</u>	>100	>100	>100	100 min.
<u>Primary Front Yard:</u>	150/194	80	40	30' or 80' from CL of Lafayette min.
<u>Secondary Front (ft.):</u>	>30	>30	NA	30 min.
<u>Left Yard (ft.):</u>	>10	10	13, 40 (rt)	10 min.
<u>Rear Yard (ft.):</u>	40	30	70	30 min.
<u>Height (ft.):</u>	<35	28	<35	35 max.
<u>Building Cov. (%):</u>	<20	19.5	8	20 max.
<u>Open Space (%):</u>	>40	43	85	40 min.
<u>Parking</u>	2	72	2	28 minimum
<u>Estimated Age of Structure:</u>	1977 (65 Ocean)	Variance request shown in red.		

Other Permits/Approvals Required

TAC & Planning Board – Site Review, Subdivision

Neighborhood Context



Previous Board of Adjustment Actions

3110 Lafayette Road as a single entity:

April 26, 1977 – The Board **granted** the operation of a nursery school in an existing single family residence with the **stipulation** that an area be enclosed with a 4' unclimbable fence and that the entrance be restricted to Lafayette Road and the exit onto Ocean Road.

March 22, 1988 – The Board **denied** a request to convert a single family dwelling to office use in a district where the use was not allowed.

October 15, 1991 – The Board **granted** a special exception to allow a home occupation (office use) in 240 s.f. of a single family dwelling with the **stipulations** that the special exception would be limited to the applicant only; that there would be no signage displayed on the property; and that there would only be one employee other than the applicant.

3110 Lafayette & 3020 Lafayette Road in a joint petition:

April 18, 2017 – As requested by the applicant the Board **postponed** to the May meeting a petition to construct a retail facility of up to 15,000 s.f. with a drive-through window and lanes. This would require special exception or variance for the use; and the following variances: a) for the location of off-street parking; b) to permit a drive-through facility within 100' of a residential district and 50' of a lot line; c) to permit drive-through lanes within 50' of a residential district and 30' of a lot line; and) to allow a building, structure or parking area 65' from the centerline of Lafayette Road where 80' was required.

May 16, 2017 - The Board denied the above petition.

March 26 2019 – The Board voted to **postpone** the petition to the April 16, 2019 meeting at the request of the applicant.

April 16, 2019 – The Board voted to accept the **withdrawal** of the applicant of a petition to merge lots and construct a four story mixed use building containing 30 apartments and professional/medical offices.

May 28, 2019 – The Board voted to **deny** a petition to construct 23 townhouses on three merged lots requiring variances to allow more than one dwelling per lot; a lot area per dwelling unit of 4,205 s.f. where 15,000 s.f. was required; and to allow townhouses where they are not permitted.

Planning Department Comments

As the above history states, the applicant was before the Board in April with a proposed mixed use building containing 30 apartments and the design was based on the Gateway-1 (G1) zoning. The original application was withdrawn based on the discussion during the meeting and the applicant revised the development, and proposed

a 23 unit townhouse development in May 2019, which was subsequently denied. The applicant has refined the proposal to include 18 townhouse units with variations in the size of the units and the house at 65 Ocean Road will remain on a new conforming lot. After merging the three lots and creating a conforming lot for 65 Ocean Road, the remainder will result in a lot that is 81,675 square feet.

In the G1 zone, multiple principal buildings or dwellings are allowed on a lot, however since the underlying zoning is SRB, only one dwelling per lot is allowed. The townhouse development is also a permitted use in the G1, however it is not permitted in the SRB. A survey will be required if the project gets final land use approval.

Since the application was denied in May, the Board may consider whether to invoke Fisher vs. Dover before this application is considered.

“When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan.” Fisher v. Dover, 120 N.H. 187, (1980)

The table below compares the three applications:

	Initial request (March 2019)	May Request	Current Proposal
<u>Building Type:</u>	Mixed use apartment building	Townhouse	Townhouse
<u>Number of units:</u>	30 apartments	23 Townhouses	18 Townhouses
<u>Number of lots:</u>	2 Lots; 65 Ocean Rd house to remain on conforming lot	1 Lot; 65 Ocean Rd house demolished and land incorporated in development	2 Lots; 65 Ocean Rd house to remain on conforming lot
<u>Density:</u>	2,722 s.f./unit	4,205 s.f./unit	4,537 s.f./unit

If the Board decides to move forward and grants approval of the petition, Staff would recommend the Board consider a stipulation that designates a plus/minus range to account for any discrepancy in the lot area per dwelling unit once a survey has been completed.

Review Criteria

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

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

AND

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

OR

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

Case #7-10

Petitioners:	Gruen Revocable Trust of 2019, Thomas W. & carol R. Gruen, Trustees
Property:	673 Middle Street
Assessor Plan:	Map 148, Lot 33
Zoning District:	General Residence A (GRA)
Description:	Construct 7.5' x 22' one-story rear 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 4.5' left side yard where 10' is required and b) from Section 10.521 to allow 40% building coverage where 25% is the maximum allowed. 2. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.

Existing & Proposed Conditions

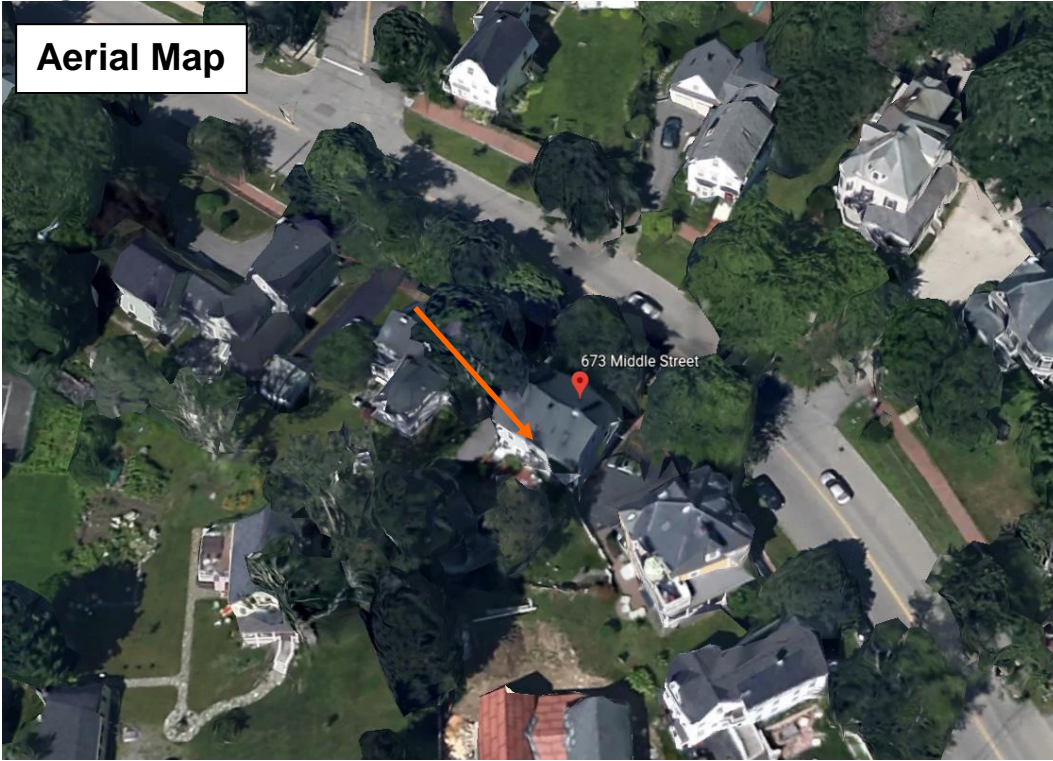
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Rear addition	Primarily residential uses
<u>Lot area (sq. ft.):</u>	5,227	5,227	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,227	5,227	7,500 min.
<u>Street Frontage (ft.):</u>	54.06	54.06	100 min.
<u>Lot depth (ft.):</u>	93.47	93.47	70 min.
<u>Primary Front Yard:</u>			15 min.
<u>Right Yard (ft.):</u>	>10	10	10 min.
<u>Left Yard (ft.):</u>	3.4	4.5	10 min.
<u>Rear Yard (ft.):</u>	50	42.5	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Cov. (%):</u>	39	40	25 max.
<u>Open Space (%):</u>	>40		30 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1900	Variance request shown in red.	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing a rear addition on the rear left side of the house. The house is currently nonconforming and is located within the left side yard. The proposed addition will be set in from the corner of the house approximately 6 inches. The existing coverage already exceeds the 25% maximum allowed in this district. The proposed addition will result in a 40% building coverage where 25% is the maximum allowed. This will require HDC approval if the variances are granted.

If the Board grants approval of the petition, staff would recommend the Board consider a plus/minus range for the left yard to account for any discrepancies.

Review Criteria

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

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

AND

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

OR

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

Case #7-11

Petitioners: Karen L. Bouffard Revocable Trust, Karen L. Bouffard, Trustee
 Property: 114 Maplewood Avenue
 Assessor Plan: Map 124, Lot 4
 Zoning District: Character District 4-L1 (CD4-L1), Historic District (HD)
 Description: Replace existing rear dwelling with 2-story dwelling.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. A Variance from Section 10.5A41.10A to allow the following: a) a 1.8' left side yard where 5' is required; b) a 2.5' rear yard where 5' is required; and c) to allow a lot area per dwelling unit of 1,685 s.f. per dwelling where 3,000 s.f. is required.
 2. A Variance from Section 10.321 to allow a lawful nonconforming 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>	3 dwellings/1 office	Demo and reconstruct rear dwelling	Primarily mixed uses
<u>Lot area (sq. ft.):</u>	5,057	5,057	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,685	1,685	3,000 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Primary Front Yard:</u>	2	2	15 max.
<u>Right Yard (ft.):</u>	>10	15.5	5 ft. min. – 20 ft. min.
<u>Left Yard (ft.):</u>	3.4	1.8	5 ft. min. – 20 ft. min.
<u>Rear Yard (ft.):</u>	0	2.5	Greater of 5 ft. or 10 ft. from center line of alley
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Cov. (%):</u>	36	39	60 max.
<u>Open Space (%):</u>	32	30	25 min.
<u>Parking</u>	3	4	5
<u>Estimated Age of Structure:</u>	1935	Variance request shown in red.	

Other Permits/Approvals Required

Planning Board/TAC – Site Review
 Historic District Commission
 NHDES Shoreland Permit

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing to demolish the existing dwelling and construct a new 2-story structure with a single car garage. The proposed location is more conforming, but still encroaches into the side and rear yards. The property abuts the North Cemetery on the left side.

If the Board grants approval of the petition, staff would recommend the Board consider a plus/minus range for the left and rear yard as well as the lot area per dwelling to account for any discrepancies once an as-built survey is completed.

Review Criteria

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

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

AND

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

OR

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

Case #7-12

Petitioners: John A. Byron
 Property: 346 Bartlett Street
 Assessor Plan: Map 162, Lot 54
 Zoning District: General Residence A (GRA)
 Description: Construct single-family dwelling on unoccupied lot.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. A Variance from Section 10.521 to allow the following: a) a lot area and lot area per dwelling unit of 5,026 s.f. where 7,500 s.f. is the minimum required for each; b) to allow 53.87' of continuous street frontage where 100' is required; and c) to allow a 7' right side yard where 10' is required.

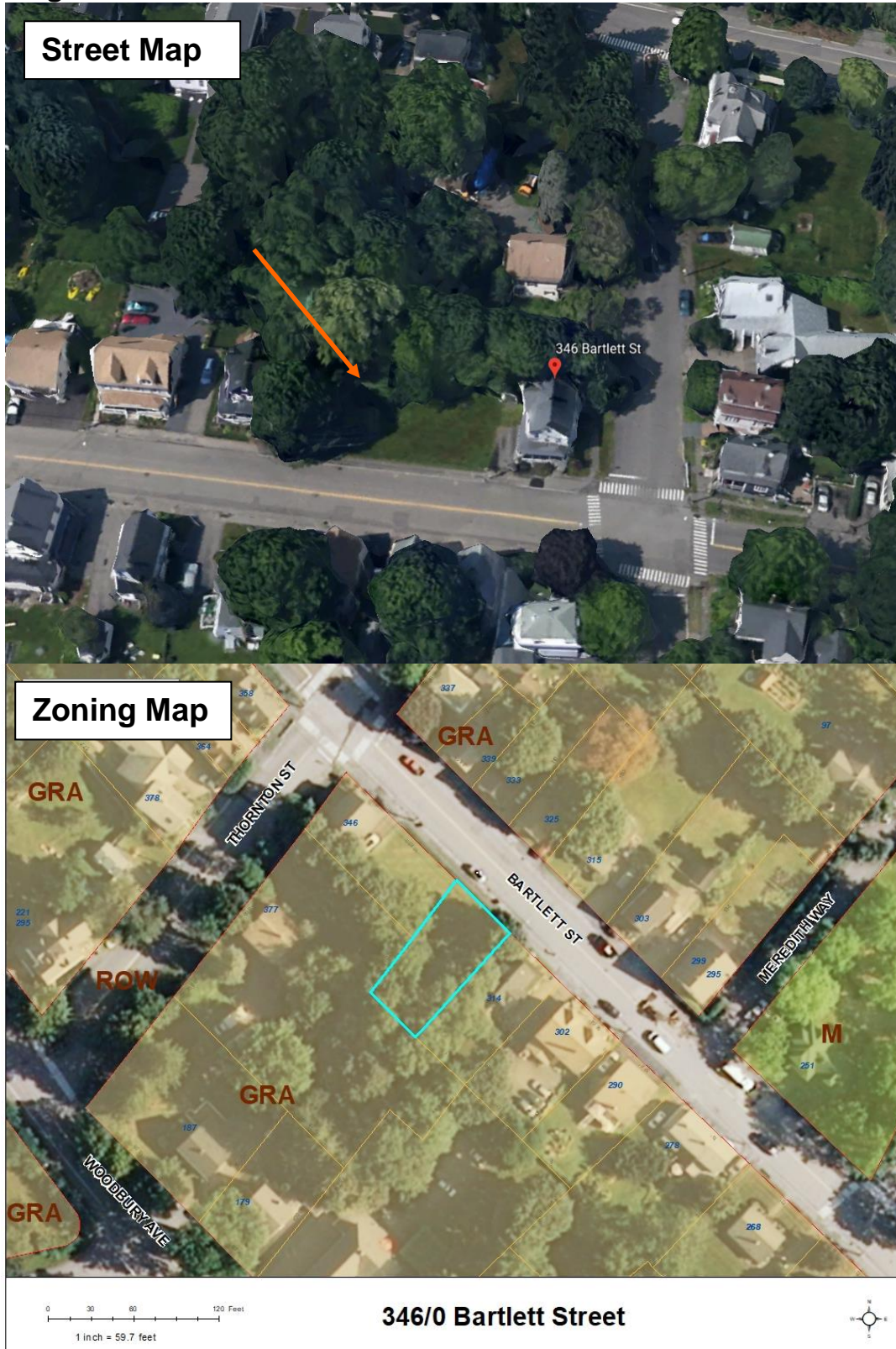
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant	Single family dwelling	Primarily residential uses
<u>Lot area (sq. ft.):</u>	5,026	5,026	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,026	5,026	7,500 min.
<u>Street Frontage (ft.):</u>	53.87	53.87	100 min.
<u>Lot depth (ft.):</u>	99.6	99.6	70 min.
<u>Front Yard (ft.):</u>	NA	26	15 min.
<u>Right Yard (ft.):</u>	NA	7	10 min.
<u>Rear Yard (ft.):</u>	NA	30+	20 min.
<u>Height (ft.):</u>	NA	<35	35 max.
<u>Building Coverage (%):</u>	0	24	25 max.
<u>Open Space Coverage (%):</u>	100	68	30 min.
<u>Parking</u>	0	2	1.3
<u>Estimated Age of Structure:</u>	NA	Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The subject property was previously involuntarily merged with 346 Bartlett Street and in 2017 the owners petitioned City Council to restore the lots. The owner is now proposing to construct a single family dwelling on the vacant parcel. Restoring involuntarily merged lots to their premerger status often creates nonconforming lots and in this case, the lot area, lot area per dwelling unit and frontage are all nonconforming. In addition, the applicant is proposing to place the home closer to the right side property line in attempt to create more space between the abutter at 314 Bartlett Street.

If the Board grants approval of the petition, staff would recommend the Board consider a plus/minus range for the right side yard as determined by the Board to account for any discrepancy once an as-built survey is complete.

Review Criteria

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

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

AND

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

OR

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

Case #7-13

Petitioners:	J & S Investments LLC
Property:	14 Market Square
Assessor Plan:	Map 107, Lot 29
Zoning District:	Character District 5, Downtown Overlay (DOD), Historic District (HD)
Description:	Appeal of Administrative decision or variances to allow two murals.
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. Appeal an Administrative Decision regarding signage. 2. A Variance from Section 10.1251.10 to allow to allow two murals, 124 s.f. and 68 s.f. wherein the following variances are required: a) from Section 10.1251.10 to exceed the allowed maximum aggregate sign area; and b) from Section 10.1251.20 to allow two wall signs that exceed 40 s.f. each, where 40 s.f. is the maximum allowed.

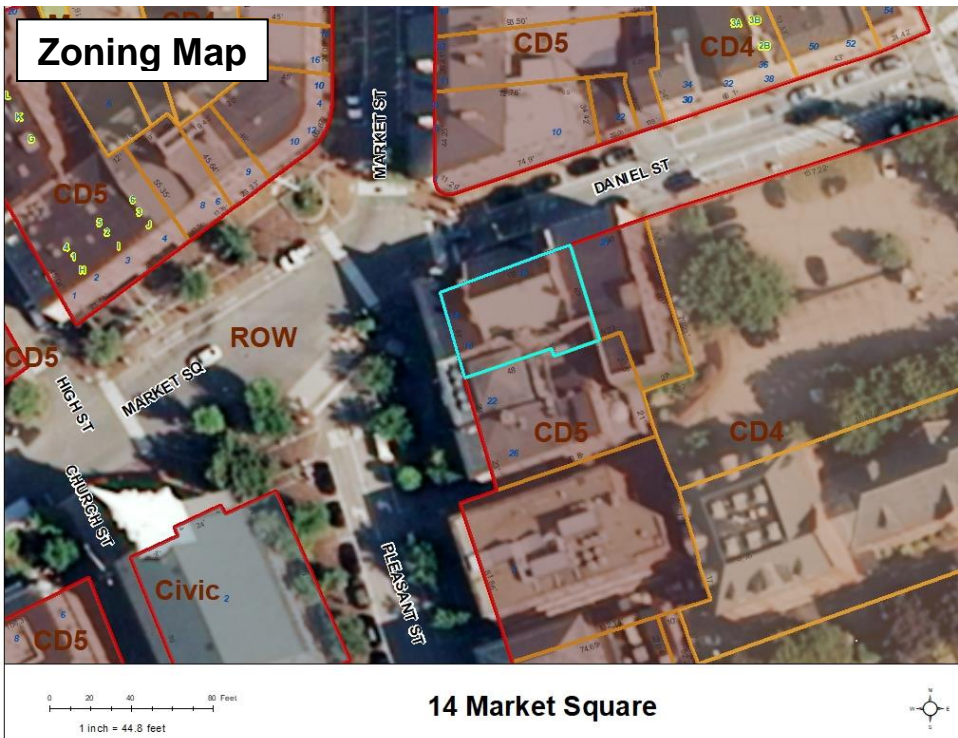
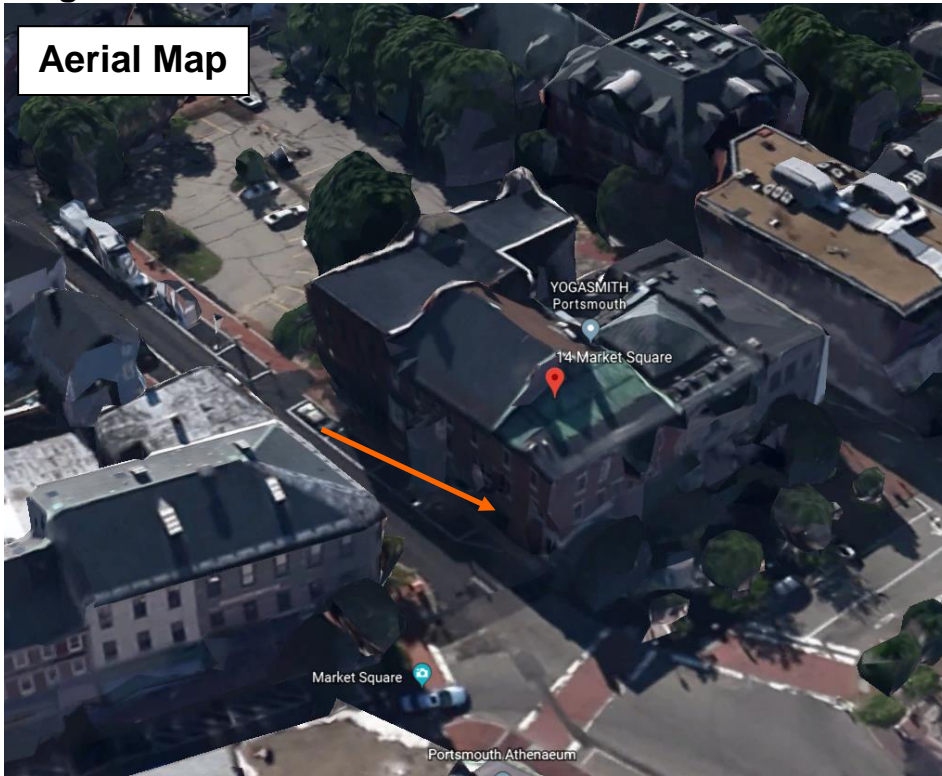
Existing & Proposed Conditions

	<u>Existing Signage on Daniel Street</u>	<u>Proposed</u>	<u>Permitted / Required</u>
Sign District 3	3 wall signs and 1 projecting sign	2 additional wall signs (murals)	
<u>Aggregate Sign Area:</u>	105	87 s.f. over the available sign area	144 s.f. available on Daniel Street side
<u>Wall Sign:</u>	9 s.f. 9 s.f. 9 s.f.	124 s.f. 68 s.f.	40 s.f. per wall sign
<u>Projecting Sign:</u>	12 s.f.	Variance request shown in red.	

Other Permits/Approvals Required

HDC

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The Board should first address the appeal of the administrative decision. Pursuant to RSA 674:33, I(a), the Board shall hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance. There are no specific criteria for an administrative appeal as with a variance or special exception. If the Board does not uphold the appeal then it should address the request for the two variances below.

The applicant is proposing to add two murals to the side of the building and is appealing the decision of the Planning Department that these constitute signs. If the appeal is not granted, the applicant is seeking variances to allow the signs which exceed the maximum size of a wall sign and exceeds the aggregate sign area for the building along Daniel Street. The definition in the zoning ordinance is broad and is below for your reference. An additional memo will be provided by the Planning Director on this matter.

Sign

Any symbol, design or device used to identify or advertise any place, business, product, activity, service, **person**, idea or statement. Any representation that is illuminated and consisting wholly or in part, of text, images or graphics shall be considered a **sign**. **Signs** need not include text, and may consist of stripes, spots, or other recognizable designs, shapes or colors. Displays comprising of merchandise, figurines, mannequins, decorations and other similar articles, arranged inside a **building** and visible outside of a window, shall not be considered a **sign**.

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:*
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AND

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

OR

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

Case #7-14

Petitioners:	Bacman Enterprises
Property:	140 Edmonds Avenue
Assessor Plan:	Map 220, Lot 81
Zoning District:	Single Residence B (SRB)
Description:	Expand nonconforming use (after-the-fact)
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 10.333 to allow a nonconforming use to be extended into other parts of the building. 2. A Variance from Section 10.1113.20 to allow off-street parking spaces to be located in the required front yard or between a principal building or the street. 3. A Variance from Section 10.1114.32 to allow vehicles to enter or leave a parking area by backing out into or from a public street or way.

Existing & Proposed Conditions

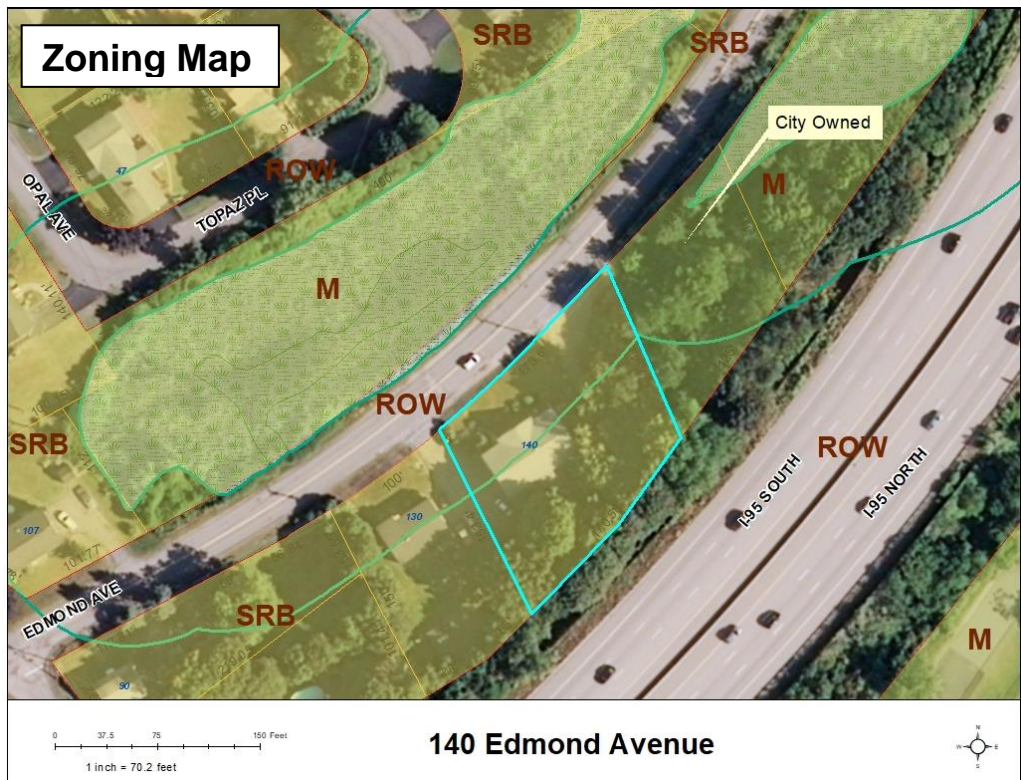
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two-family/ office	Two-family/ expand use	Primarily Single Family
<u>Lot area (sq. ft.):</u>	23,176	23,176	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,588	11,588	15,000 min.
<u>Street Frontage (ft.):</u>	>100	>100	100 min.
<u>Lot depth (ft.):</u>	154	154	100 min.
<u>Primary Front Yard (ft.):</u>	>30	>30	30 min.
<u>Right Yard (ft.):</u>	>10	>10	10 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>	12	12	20 max.
<u>Open Space Coverage (%):</u>	71	71	40 min.
<u>Parking</u>	9	9*	13
<u>Estimated Age of Structure:</u>	1957	Variance request shown in red. *Will need parking CUP for providing less than required.	

Other Permits Required

Planning Board/TAC – Site Review

Conservation Commission/Planning Board – Wetlands CUP

Neighborhood Context



Previous Board of Adjustment Actions

May 23, 1978 – the Board **granted** 300+ sf chiropractic office as part of a residence with the following stipulations:

- 5 parking spaces be established and kept separate from the existing driveway
- that the regularly scheduled office hours not include Saturday or Sunday.
-

August 17, 2004 - the Board **denied** variances to allow the entire lower level of the 2,300± sf building to be used as a chiropractic office and to allow the additional required parking to back out onto the street and park one behind another.

September 28, 2004 - the Board **denied** a Request for Rehearing. The owner subsequently appealed the denial to the Superior Court and there was an Administrative Inspection with the City Attorney, the Chief Planner, the Chief Building Inspector and the petitioners reference to the plan submitted by the Petitioner on April 20, 2005.

May 17, 2005 – (This meeting was preceded by a hearing in Superior Court with a subsequent Order to Bacman Enterprises regarding a new application to be submitted and surveyed site plan) The Board **granted** variances to allow the entire lower level to be used as a chiropractic office where a 300s.f. office and 5 parking spaces had been approved in 1978 in a district where the use was not allowed and to allow required parking to back out onto the street and park one behind another. The variances were subject to the **stipulations** that an engineered site plan, including parking spaces conforming in size and location as depicted on the plan be provided and that the property must meet current codes as referenced in the staff memorandum to the board.

August 16, 2005 – The Board **accepted** an engineered site plan submitted for approval as stipulated in the granting of the variances at the May 17, 2005 meeting.

April 18, 2006 – The Board granted a variance extension through May 16, 2007.

Planning Department Comments

As shown in the history, in 2005 a variance was granted for the expansion of the chiropractic office throughout the lower level of the house. An engineered site plan, wetland conditional use permit and site review were all required for the overall approval.

Although an extension to the variance was granted in 2007, a building permit was not obtained and therefore the variance expired. Additionally, the wetland conditional use permit expired and site plan approval was never applied for. The owner is now seeking to regain the prior approvals for the expansion of the nonconforming use. Since the parking area is located the front yard and in such a way that causes motorists to back out into or from a public right of way, variances are needed for both of these issues.

Work has been done in the wetlands on the adjacent parcel, which is owned by the City. A wetland conditional use permit will be required for the restoration of this area on city property. In addition to the office use, the upstairs contains two dwelling units. The parking requirements for the site are 13 spaces and there are 9 provided, which will require the applicant to seek a conditional use permit from the Planning Board. Two of the spaces near the building are stacked and should be assigned to the dwelling units.

If the Board grants approval of the request staff would recommend the following conditions for consideration:

- 1. The applicant must propose a restoration plan for the disturbance the adjacent property owned by the city.**
- 2. Assign parking spaces near the building to the dwelling units.**

Review Criteria

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

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*

(a) The property has special conditions that distinguish it from other properties in the area.

AND

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

OR

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

Case #7-15

Petitioners: Alex W. & Kathleen Greiner
 Property: 88 Lincoln Avenue
 Assessor Plan: Map 113, Lot 2
 Zoning District: General Residence A (GRA)
 Description: Renovation/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 3'7" rear yard where 20' is required.
 2. A Variance from Section 10.321 to allow a lawful nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the ordinance.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Two-story addition and new garage	Primarily residential uses
<u>Lot area (sq. ft.):</u>	5,127	5,127	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,127	5,127	7,500 min.
<u>Street Frontage (ft.):</u>	60	60	100 min.
<u>Lot depth (ft.):</u>	85	85	70 min.
<u>Primary Front Yard (ft.):</u>	12'9"	12'9"* (house)	15 min.
<u>Secondary Front Yard (ft.):</u>	0	0* (house)	15 min.
<u>Left Yard (ft.):</u>	33'	24'	10 min.
<u>Rear Yard (ft.):</u>	3'7"	3'7"	20 min.
<u>Height (ft.):</u>	32	32	35 max.
<u>Building Coverage (%):</u>	28	35** (33)	25 max.
<u>Open Space Coverage (%):</u>	66	59	30 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1900	Variance request shown in red. *per Section 10.516.10 for Front Yard Alignments. **35% was approved in December 2018, current proposal reduces to 33%.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

December 18, 2018 – The Board **granted** variances to replace a detached garage with one plus an attic and construct a two and a half story rear addition with a 3'7" rear yard (20' required), 35% building coverage (25%) and expansion of a nonconforming structure.

Planning Department Comments

The prior owner was before this Board in December 2018 and received the variances mentioned in the history above. The new owners have altered some of the plans, including increasing the height of the structure over the new garage which is proposed to maintain the 3'7" rear yard. By removing the shed the building coverage will be reduced from the originally approved 35% to 33%.

If granted approval, staff would recommend the Board apply a plus/minus range for the rear yard 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 #7-16

Petitioners: Matthew Allen Reichl & Beth Richmond
 Property: 5 Sylvester Street
 Assessor Plan: Map 232, Lot 41
 Zoning District: Single Residence B (SRB)
 Description: Construct 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 10.8' rear yard where 30' is required.
 2. A Variance from Section 10.321 to allow a lawful nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.

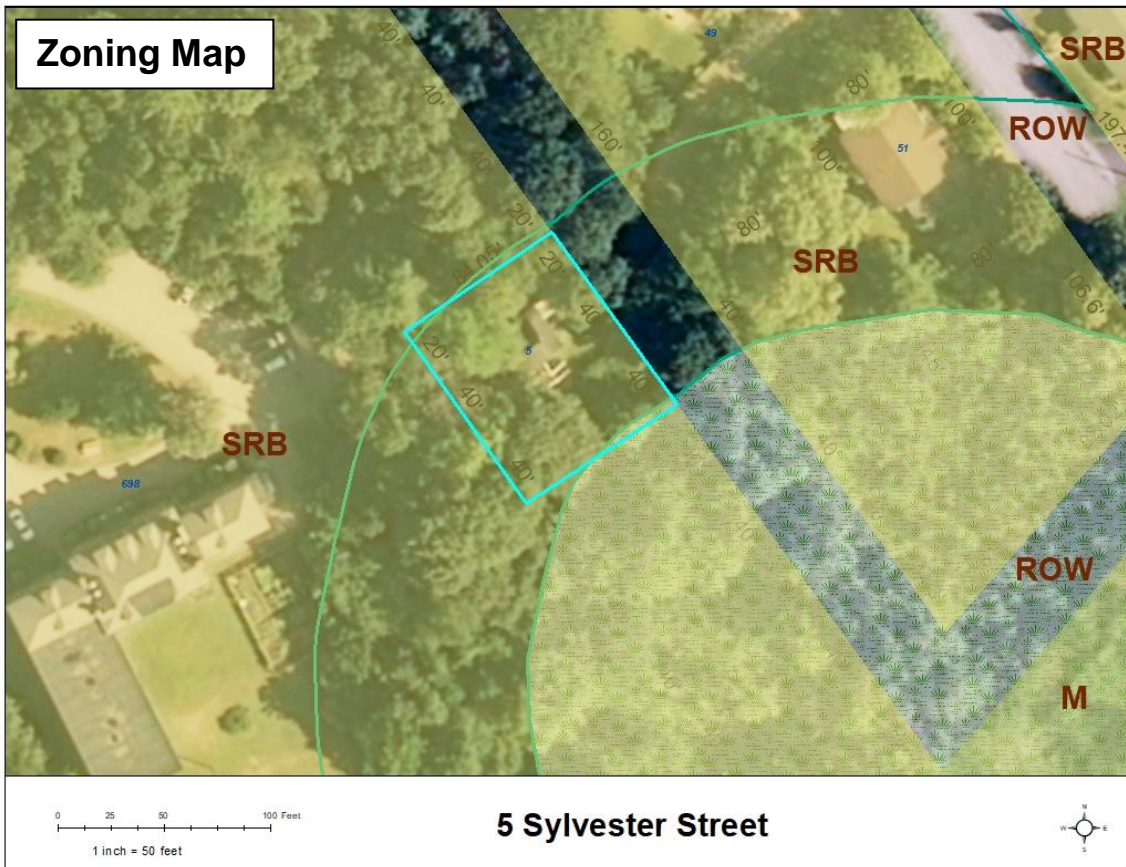
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Rear addition	Primarily single-family
<u>Lot area (sq. ft.):</u>	8,442	8,442	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,442	8,442	15,000 min.
<u>Lot depth (ft.):</u>	84	84	100 min.
<u>Street Frontage (ft.):</u>	100	100	100 min.
<u>Primary Front Yard (ft.):</u>	18	18	30 min.
<u>Left Yard (ft.):</u>	41	41	10 min.
<u>Right Yard (ft.):</u>	19	19	10 min.
<u>Rear Yard (ft.):</u>	19.9	10.8	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	13	16	20 max.
<u>Open Space Coverage (%):</u>	85	82	40 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1931	Variance shown in red.	

Other Permits/Approvals Required

Conservation Commission/Planning Board – Wetlands CUP

Neighborhood Context



Previous Board of Adjustment Actions

(As off Pinehurst Road) June 26, 1984 – The Board granted a variance to construct a single family dwelling on a lot with 11,282 s.f. for lot area where 20,000 s.f. were required. Granted with the stipulation that the owner tie into the Clipper Home sewer line and contact Building Inspector prior to construction.

April 4, 1985 – Same request but action noted on application is “**withdrawn**. Only 4 members sitting.”

June 3, 1986 – Same request **granted** but with the stipulation that the rear property line be maintained at its present grade

Planning Department Comments

The applicant is proposing to construct a rear addition. The existing house encroaches into the front and rear yard currently and the proposed addition will encroach further into the rear yard. The property is located within the 100 foot wetland buffer and the applicant is seeking a wetland conditional use permit in addition to the variances. The existing home is very secluded and surrounded by mature vegetation with no other dwellings or structures in close proximity as shown by the aerial image above. A surveyed plan was submitted with this petition, so the measurements should be accurate, however if the Board feels applying a plus/minus range is appropriate for the rear yard staff would offer the following recommendation:

If granted approval, staff would recommend the Board apply a plus/minus range for the rear yard 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 #7-17

Petitioners:	Drew & Brittany Schulthess
Property:	15 Mount Vernon Street
Assessor Plan:	Map 111, Lot 33
Zoning District:	General Residence B (GRB)
Description:	Construct addition over existing 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) a 2.5' front yard where 5' is required; b) an 8.9' right side yard where 10' is required; and c) a 20' rear yard where 25' 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.

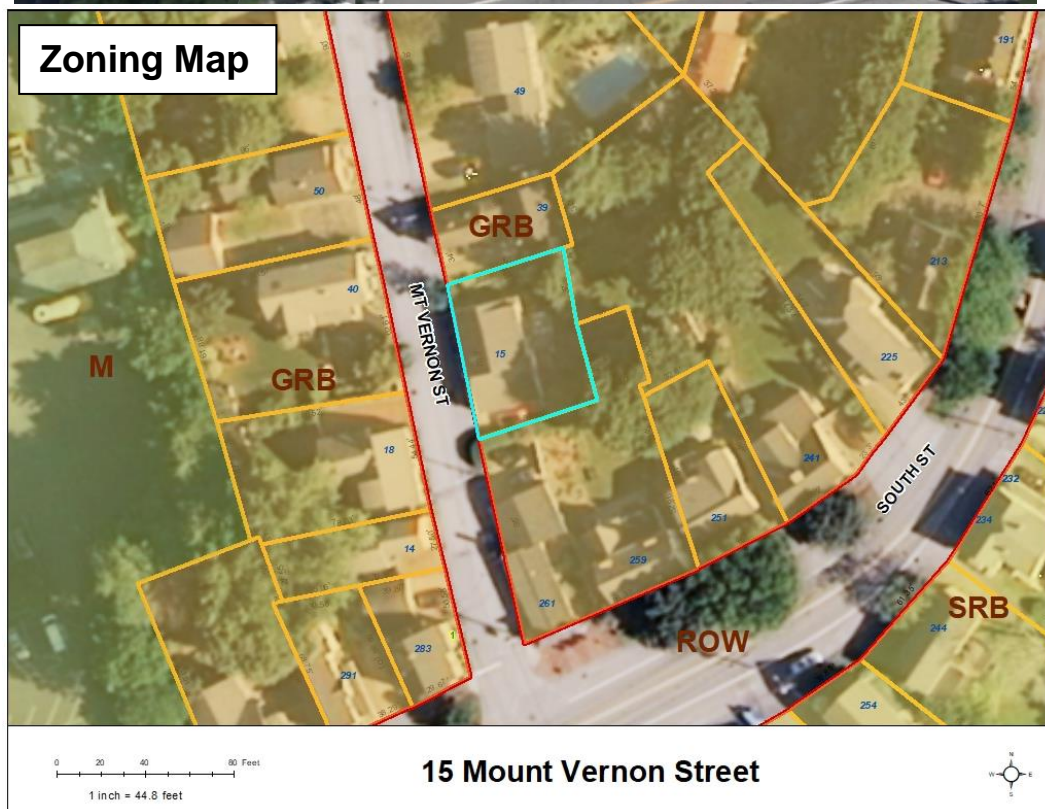
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Addition over garage	Primarily residential
<u>Lot area (sq. ft.):</u>	3,920	3,920	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,920	3,920	5,000 min.
<u>Lot depth (ft.):</u>	55	55	60 min.
<u>Street Frontage (ft.):</u>	70	70	80 min.
<u>Primary Front Yard (ft.):</u>	2.5	2.5	5 min.
<u>Left Yard (ft.):</u>	13	13	10 min.
<u>Right Yard (ft.):</u>	8.9	8.9	10 min.
<u>Rear Yard (ft.):</u>	20	20	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	36	36	30 max.
<u>Open Space Coverage (%):</u>	53	53	25 min.
<u>Estimated Age of Structure:</u>	1800	Variance shown in red.	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing an upward expansion above the garage and along the back of the house within the existing footprint. The existing house encroaches into the front, right side and rear yards, requiring relief for the proposed addition. There will be no increase in footprint.

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.