

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

OLD BUSINESS

1. Case 7-2 27 Thaxter Road *(to be heard on August 27, 2019)*

NEW BUSINESS

1. Case 8-1 201 Kearsarge Way – Request to Postpone
2. Case 8-2 39 Dearborn Street
3. Case 8-3 306 Marcy Street
4. Case 8-4 41 Salem Street – Request to Postpone
5. Case 8-5 7 Suzanne Drive
6. Case 8-6 175 High Street
7. Case 8-7 187 McDonough Street
8. Case 8-8 202 Court Street
9. Case 8-9 20 Taft Road
10. Case 8-10 3 Pleasant Street
11. Case 8-11 0 Daniel Street
12. Case 8-12 181 Hill Street

*** (Case 8-8 through Case 8-12 will be heard at the second meeting on August 27, 2019) ***

OLD BUSINESS

Case #7-2 ****THIS APPEAL WILL BE HEARD ON AUGUST 27, 2019****

Petition of **Kenneth K. and Deborah A. Jennings**, appellants regarding property located at **27 Thaxter Road** appealing a decision of the Portsmouth City Council to restore two involuntary merged lots at 27 Thaxter Road to their pre-merger status. Said property is shown on current Assessor Plan 166, Lot 39 and lies within the Single Residence B District.

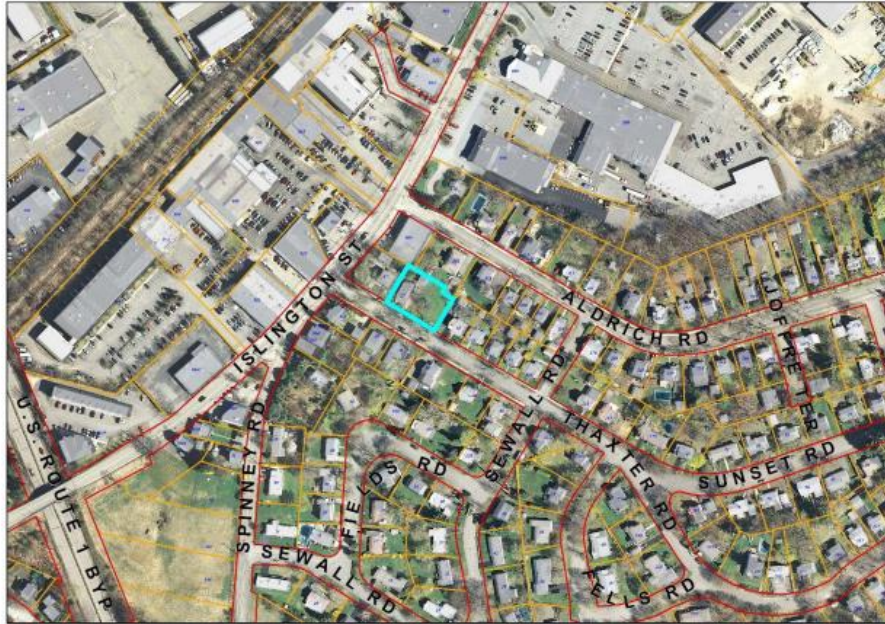
The decision made by City Council to restore an involuntary merged lot at 27 Thaxter Road is being appealed to the Board of Adjustment pursuant to RSA 676:5:

Appeals to the board of adjustment concerning any matter within the board's powers as set forth in RSA 674:33 may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

On May 20, 2019, City Council voted 6-3 to restore the two involuntary merged lots to their pre-merger status at the request of the current owner. Prior to voting on this request, City Council referred it to the Planning Board for a recommendation. The Planning Board recommended the lots be restored to their pre-merger status. Below is the staff memo to the Planning Board for your review.

VI. CITY COUNCIL REFERRAL – PUBLIC HEARING

- A. Request for restoration of involuntarily merged lots at 27 Thaxter Road, Assessor Map 166, Lot 39.**



Description

The parcel at 27 Thaxter Rd (Assessor Map 166, Lot 39) appears to have been created from 3 previous existing lots, which the owner's representative indicates were described in the City's tax records dating back to 1951. The owner is requesting that the lots be restored to their premerger status, former Lot 46 measuring 2,580 sq.ft. and former lots 44 and 45 measuring 5,000 sq.ft. severally. The 2,580 sq.ft. parcel (Lot 46 on the tax cards provided) fronts on Thaxter Rd and does not include any buildings, former lot 44 fronts on Thaxter Rd and includes the existing single family home and part of the detached garage. Former lot 45 includes part of the detached garage. This request is being made pursuant to RSA 674:39-aa, Restoration of Involuntarily Merged Lots.

Statutory Requirements

RSA 674:39-aa requires the City Council to vote to restore "to their premerger status" any lots or parcels that were "involuntarily merged" by municipal action for zoning, assessing, or taxation purposes without the consent of the owner. Unlike all other lot divisions, there is no statutory role for the Planning Board in this process, but the City Council is referring such requests to the Board for its review and report back.

The statute defines "voluntary merger" and "voluntarily merged" to include "any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line" (RSA 674:39-aa, I). It is therefore the City Council's responsibility to determine whether a merger was voluntary (i.e., requested by a lot owner) or involuntary (implemented by the City without the owner's consent). If the merger was involuntary, the Council must vote to restore the lots to their premerger status. Following such a vote, the City GIS and Assessing staff will update zoning and tax maps accordingly. It will then be up to the owner to take any further action to confirm the restoration to premerger status, such as recording a plan at the Registry of Deeds.

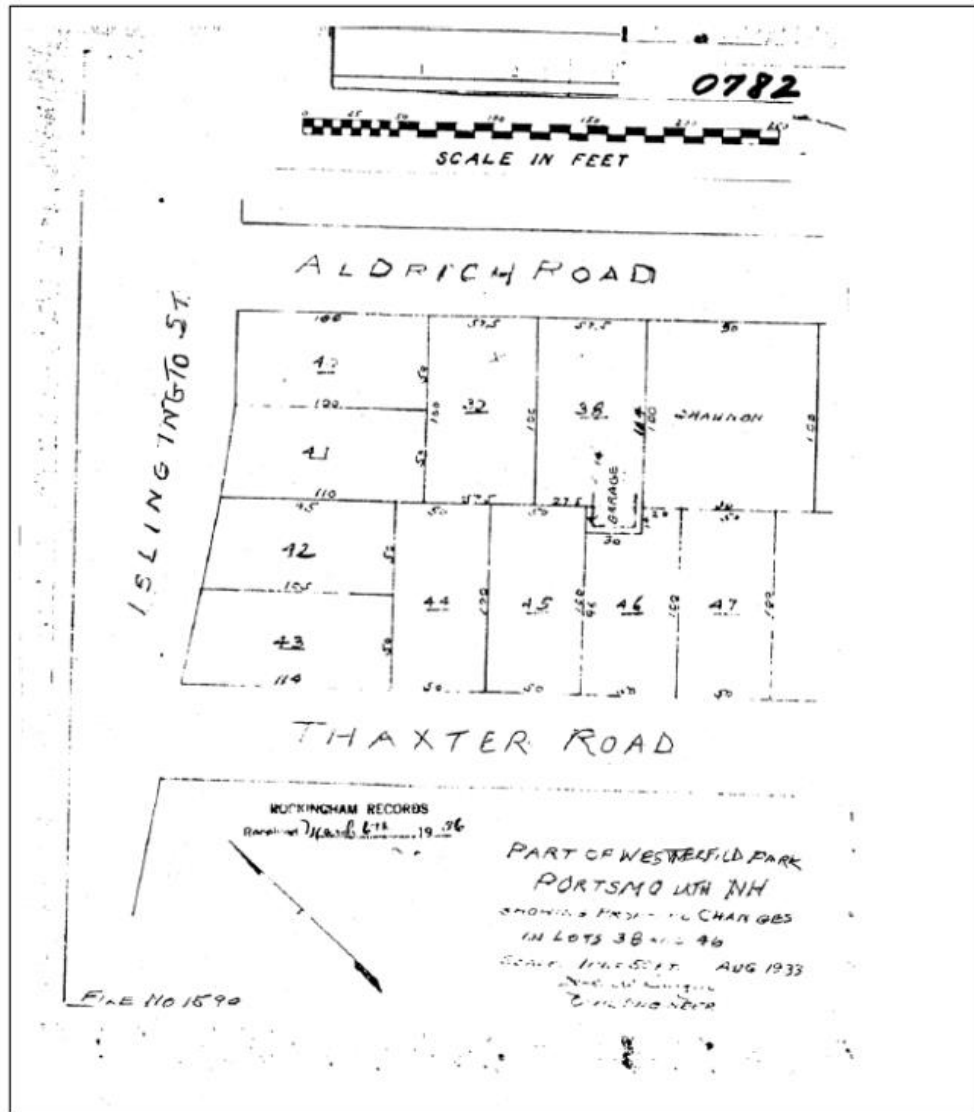
It is important to note that the granting of a request to restore lots to their premerger status does not mean that the resulting lots will be buildable or, if already developed, will conform to zoning. The statute states that "*The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing land use ordinances*" (RSA 674:39-aa, V). For example, the restored lots may not comply with current zoning requirements for lot area, frontage and depth, and the re-establishment of a lot line between any two premerger lots may introduce a new nonconformity with respect to maximum allowed building coverage or a minimum required side yard where a building already exists on one of the premerger lots. In such cases, the owner(s) of the applicable lot(s) would have to apply to the Zoning Board of Adjustment for the necessary variances to restore zoning compliance or to allow future development.

Analysis

While no original subdivision plan has been provided by the owner, a cursory review of the Rockingham County Registry of Deeds records by the Planning Department found a recorded deed (Book 0943, Page 0498) dated August 10, 1938 that described these lots as lots 44, 45 and a part of 46 as shown on a plan entitled "Plan of part of Westfield Park, drawn by John W. Durgin, C.E., dated August 1933 and recorded in Rockingham Records, Plat 25, Page 2". Further search of the County Records located the plan (#0782) dated August, 1933 which appear to show the lots referenced in the deed (See below). The lots described on these two documents from the Registry are also consistent with the dimensions provided in the tax cards provided by the owner in his request to restore the lots to their premerger status.

Planning Department Recommendation

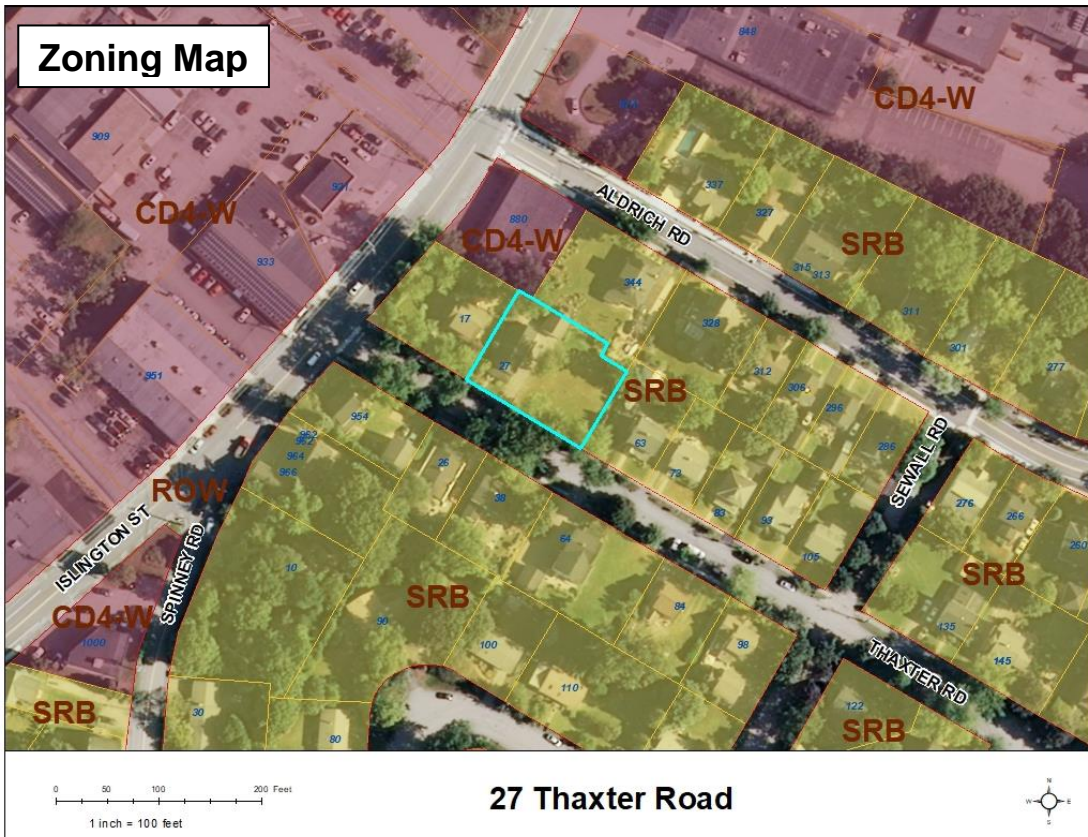
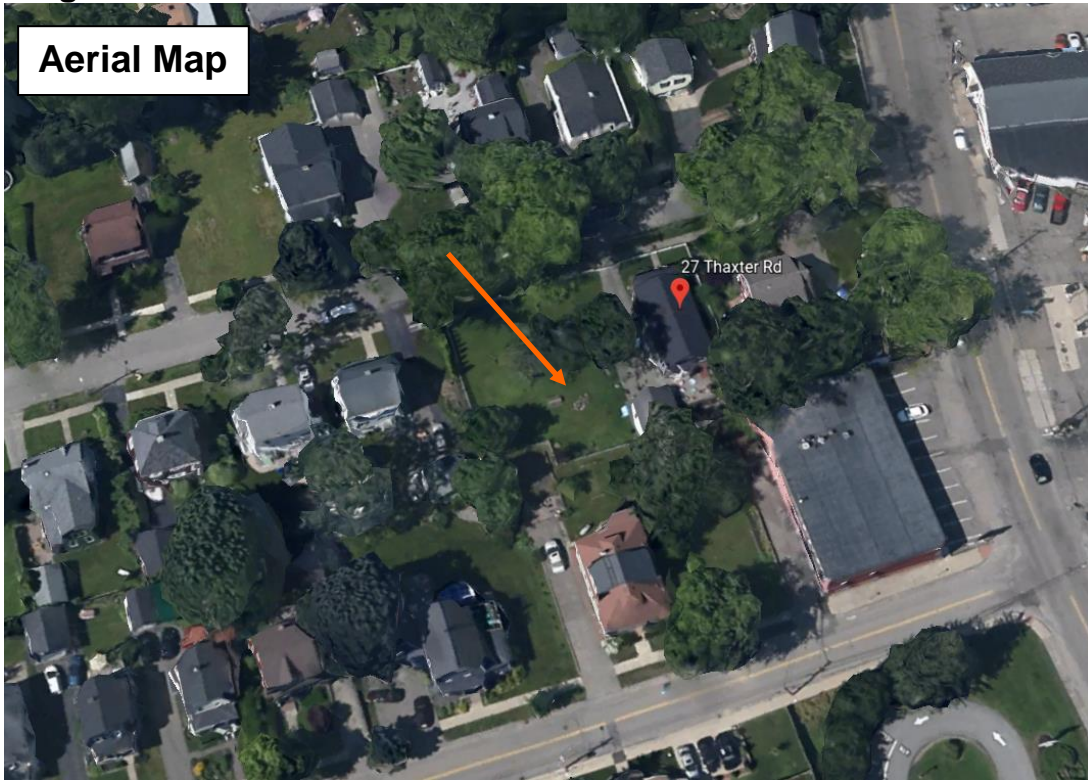
Vote to recommend to the City Council to restore the three involuntarily merged lots at 27 Thaxter St to their premerger status.



Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

May 25, 2004 The Board **granted** variances to allow the separation of two lots in common ownership with lot 52 having 10,475 s.f. and lot 39 having 12,580 s.f. where the minimum lot area was 15,000. The variances were granted with the stipulations that a) the curb cut be located on Thaxter Road; and b) there is no intent to stipulate how the house was oriented.

February 15, 2011. The Board granted variances (for Lot 39) to allow a 9' left side yard where 10' was required and a 26' rear yard here 30' was required and the expansion of a nonconforming structure in order to construction an addition on the rear and right side of the existing structure.

July 16, 2019 – The Board voted to **postpone** to the August 20, 2019 meeting an Appeal of a decision of the Portsmouth City Council to restore two involuntary merger lots. (With 4 sitting members, a request was made to **postpone** hearing the appeal to the August 27, 2019 meeting)

674:39-aa Restoration of Involuntarily Merged Lots. –

I. In this section:

(a) "Involuntary merger" and "involuntarily merged" mean lots merged by municipal action for zoning, assessing, or taxation purposes without the consent of the owner.

(b) "Owner" means the person or entity that holds legal title to the lots in question, even if such person or entity did not hold legal title at the time of the involuntary merger.

(c) "Voluntary merger" and "voluntarily merged" mean a merger under RSA 674:39-a, or any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line.

II. Lots or parcels that were involuntarily merged prior to September 18, 2010 by a city, town, county, village district, or any other municipality, shall at the request of the owner, be restored to their premerger status and all zoning and tax maps shall be updated to identify the premerger boundaries of said lots or parcels as recorded at the appropriate registry of deeds, provided:

(a) The request is submitted to the governing body prior to December 31, 2021.

(b) No owner in the chain of title voluntarily merged his or her lots. If any owner in the chain of title voluntarily merged his or her lots, then all subsequent owners shall be estopped from requesting restoration. The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots.

III. All decisions of the governing body may be appealed in accordance with the provisions of RSA 676.

IV. Any municipality may adopt local ordinances, including ordinances enacted prior to the effective date of this section, to restore previously merged properties that are less restrictive than the provisions in paragraph I and II.

V. The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing local land use ordinances.

VI. Municipalities shall post a notice informing residents that any involuntarily merged lots may be restored to premerger status upon the owner's request. Such notice shall be posted in a public place no later than January 1, 2012 and shall remain posted through December 31, 2016. Each municipality shall also publish the same or similar notice in its 2011 through 2015 annual reports. **Source.** 2011, 206:4, eff. July 24, 2011. 2016, 327:2, eff. Aug. 23, 2016.

NEW BUSINESS

Case #8-1

Petition of **Richard Fusegni** for property located at **201 Kearsarge Way** wherein relief is required from the Zoning Ordinance to subdivide one lot into three lots one of which will be nonconforming including the following variance from Section 10.521: a) to allow 83' of continuous street frontage where 100' is required. Said property is shown on Assessor Plan 218, Lot 5 and lies within the Single Residential District.

Existing & Proposed Conditions

	Existing		Proposed			Permitted / Required	
			1	2	3		
<u>Land Use:</u>			3 lots			Primarily single family	
<u>Lot area (sq. ft.):</u>	47,062		15,755	15,584	15,723	15,000	min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	47,062		15,755	15,584	15,723	15,000	min.
<u>Street Frontage (ft.):</u>	283		100	100	83	100	min.
<u>Lot depth (ft.):</u>	>100		>100	>100	>100	100	min.
<u>Year Built:</u>	1954		Variance request shown in red.				

Other Permits/Approvals Required

Planning Board/TAC - Subdivision

Previous Board of Adjustment Actions

June 21, 2016 – The Board **granted** a variance to construct a home on one lot of a three-lot subdivision with a front yard setback of 15' where 30' was required. The Board noted that the variance was specific to the presented lot.

March 20, 2018 – The Board **granted** variances to subdivide one lot into two by allowing a lot area and lot area per dwelling unit of 7,834 s.f. where 15,000 s.f. was required.

June 18, 2019 – The Board **denied** a request to subdivide one lot into three.

July 23, 2019 – The Board **granted** a rehearing to be held at the August 20, 2019 meeting.

Planning Department Comments

The applicant received a variance to subdivide one lot off of this parcel on the corner of Mangrove Street and Kearsarge Way in 2018 and is now proposing to subdivide the remaining parcel into three lots, one of which has less than the required street frontage. Two of the lots are conforming and the third lot conforms to all other requirements, less the frontage.

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 filed a request for a rehearing and on July 23, 2019, the Board granted the request and now the petition is before the Board for a new public hearing.

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 #8-2

Petition of **Michael Brandzel & Helen Long** for property located at **39 Dearborn Street** for a wall-mounted outdoor a/c condenser wherein the following variance is required:
 a) from Section 10.515.14 to allow a 2'6" right side yard where 10' is required. Said property is shown on Assessor Plan 140, Lot 3 and lies within the General Residence A District.

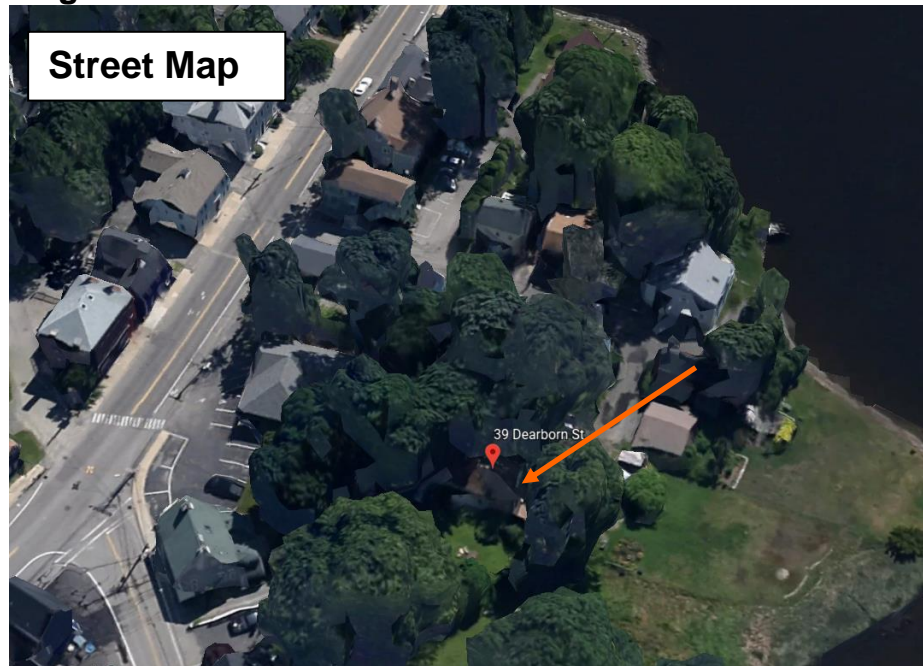
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	AC Unit	Primarily residential uses
<u>Lot area (sq. ft.):</u>	11,325	11,325	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,325	11,325	7,500 min.
<u>Street Frontage (ft.):</u>	20	20	100 min.
<u>Lot depth (ft.):</u>	76	76	70 min.
<u>Primary Front Yard (ft.):</u>	35	>35	15 min.
<u>Right Yard (ft.):</u>	4	2'6"	10 min.
<u>Left Yard (ft.):</u>	140	>160	10 min.
<u>Rear Yard (ft.):</u>	~2	>20	20 min.
<u>Height (ft.):</u>	<35	28"	35 max.
<u>Building Coverage (%):</u>			25 max.
<u>Open Space Coverage (%):</u>			30 min.
<u>Parking</u>	2	0	1.3
<u>Estimated Age of Structure:</u>	1700	Variance requests shown in red.	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

August 26, 2008 – The Board **postponed** to September a request for a 7'10" ± x 13'9" ± shed with a 4'± left side yard setback where 10' was required and a 65'± setback to salt water marsh or mean high water line where 100' was required.

October 21, 2008 – The above petition was **amended** as follows and **postponed** to the November 18, 2008 meeting: The request for a variance for a 4'± left side yard setback was removed and a request for a 5'± front setback where 15' was required was added.

November 18, 2008 – The above petition was **withdrawn** by the applicant.

March 17, 2015 – A petition to construct a 100 s.f. shed in the front yard and an 8' x 13' single story addition, as well as adding shed dormers was **postponed** to the April meeting.

April 21, 2015 – The Board **granted** variances for the above petition, with the shed reduced to 12' x 18'. The variances allowed the following: a) a 5' front yard where 15' was required; b) a 5' right side yard where 10' was required; c) a 3' rear yard where 20' was required and d) an accessory structure to be located in a required front yard. The variances were granted with **stipulations** regarding the following: a) the dimensions, construction and uses of the granted accessory structure; b) no flood lights on the accessory structure; c) the creation of an approximate 2,018 s.f. View Easement Area with specified components, rules regarding trees and vegetation, and removal of a utility trailer; and d) the review of the Planning Department, prior to issuance of a building permit, of the final building and site plans and determination that the plans and elevations were in compliance with the stipulations.

Planning Department Comments

The applicant is proposing to add an AC condenser to the right side of the house. The house is situated in the northwest corner of the property, sitting 4 feet from the property line. The proposed condenser will be located along the side of the house, 2'6" from the side property line.

If granted approval, staff recommends the Board consider designating a 6" plus/minus range to allow for a margin of error.

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

Petition of **Russell Serbagi** for property located at **306 Marcy Street, Unit 3** to install a mini split ductless a/c system including condenser and air handler system with lines in conduit wherein the following variance is required: a) from Section 10.515.14 to allow a 7' right side yard where 10' is required. Said property is shown on Assessor Plan 102, Lot 75-3 and lies within the General Residence B District.

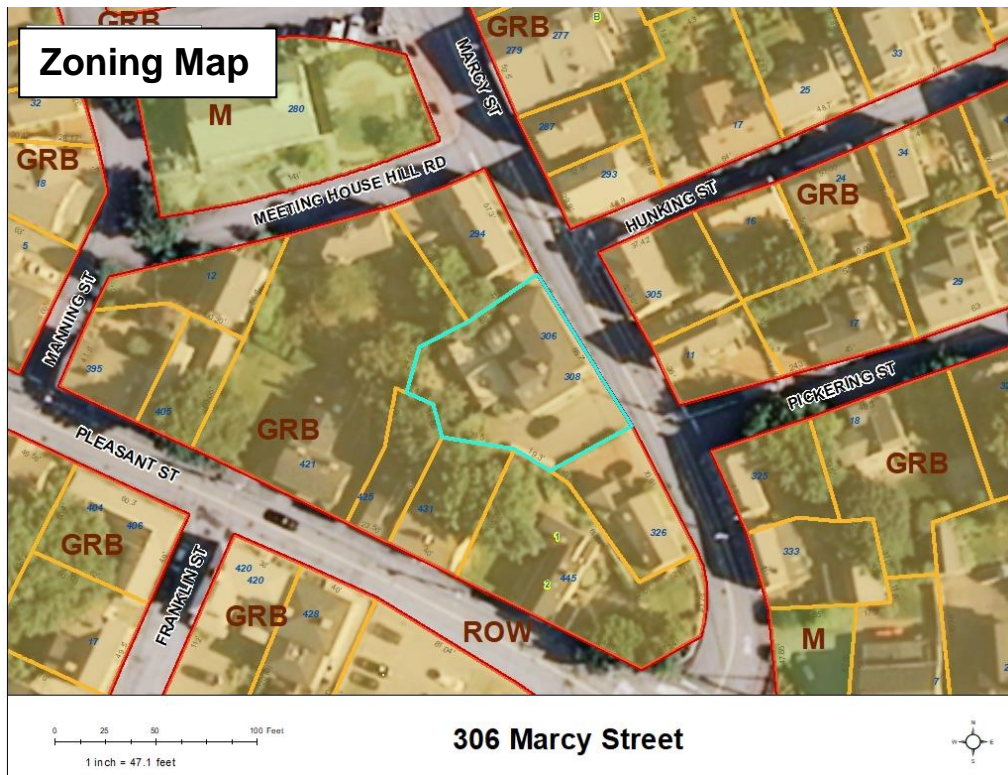
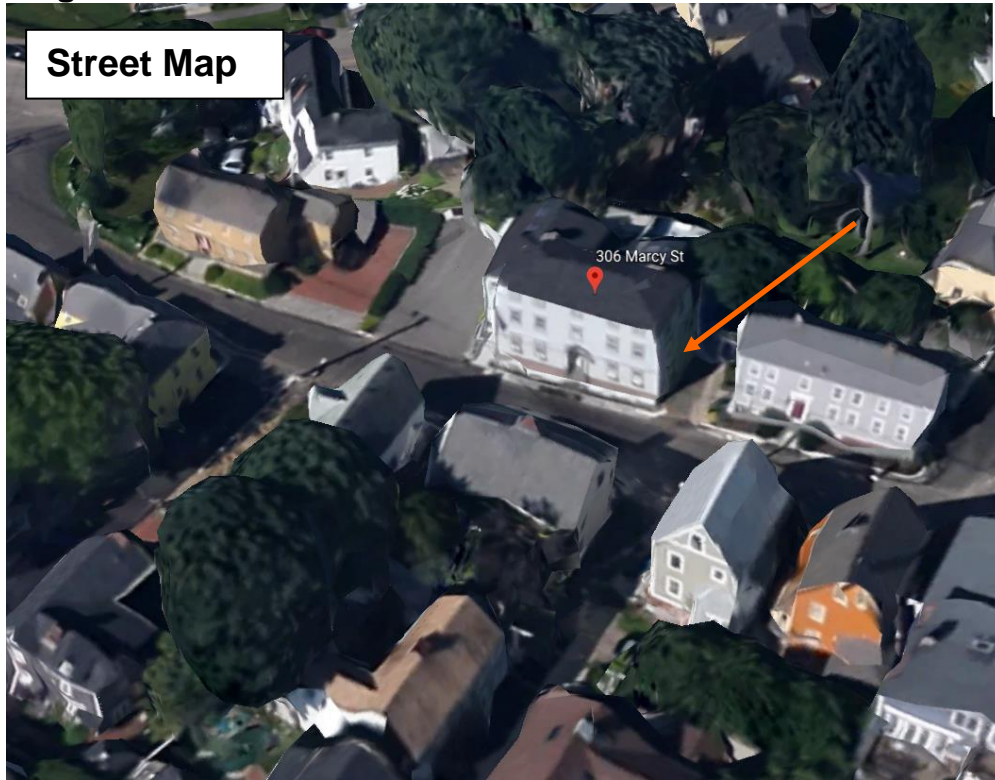
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	3 family condo	AC Unit	Primarily residential uses
<u>Lot area (sq. ft.):</u>	6,317	6,317	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,105	2,105	5,000 min.
<u>Street Frontage (ft.):</u>	88	88	80 min.
<u>Lot depth (ft.):</u>	69	69	60 min.
<u>Primary Front Yard (ft.):</u>	0	16 (AC Unit)	5 min.
<u>Right Yard (ft.):</u>	8.5	7 (AC Unit)	10 min.
<u>Left Yard (ft.):</u>	26	26	10 min.
<u>Rear Yard (ft.):</u>	20	>25	25 min.
<u>Height (ft.):</u>	<35	32"	35 max.
<u>Building Coverage (%):</u>	41	41	30 max.
<u>Open Space Coverage (%):</u>	35	35	25 min.
<u>Parking</u>	4	4	4
<u>Estimated Age of Structure:</u>	1790	Variance requests shown in red.	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

June 15, 1982 (as 306-308 Marcy Street) – The Board **granted** variances to allow the following: a) a retail use (antique shop) in a residential district; and 9% open space with 30% required. The variances were granted with the **stipulations** that the building only be used as an antique shop and that the open space was allowed with the removal of an existing barn. The Board **denied** a variance to permit cars to back into the street.

December 14, 1982 – (Re. 326, 306 and 308 Marcy Street) – The Board **tabled** a request to permit a lot line change conveying 420 s.f. from Lot A (#326) to Lot B (306). The petition was tabled until the petitioner was in compliance with the variance stipulations approved June 15, 1982.

February 26, 1985 – (as 306 Marcy Street) – The Board **granted** the following subject to Historic District Commission approval before a building permit could be issued: a) a special exception to convert a vacant store to three residential condominiums on a lot with access to a right-of-way less than 40' in width; and b) a variance to allow required parking to back into the street.

Planning Department Comments

The applicant is proposing to add an AC condenser to the right side of the house. The house is situated in the northern corner of the property, sitting 4 feet from the property line. The proposed condenser will be located along the right side of the house, 7' from the side property line adjacent to the driveway.

If granted approval, staff recommends the Board consider designating a 6” plus/minus range to allow for a margin of error.

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 #8-4

Petition of **Seacoast Veterans Properties, LLC** for property located at **41 Salem Street** to demolish existing structure and construct four townhouse residential units in two buildings wherein the following variance is required: a) from Section 10.521 to allow a lot area per dwelling unit of 2,726 s.f. where 3,500 s.f. is required. Said property is shown on Assessor Plan 144, Lot 31 and lies within the General Residential C District.

Request to Postpone

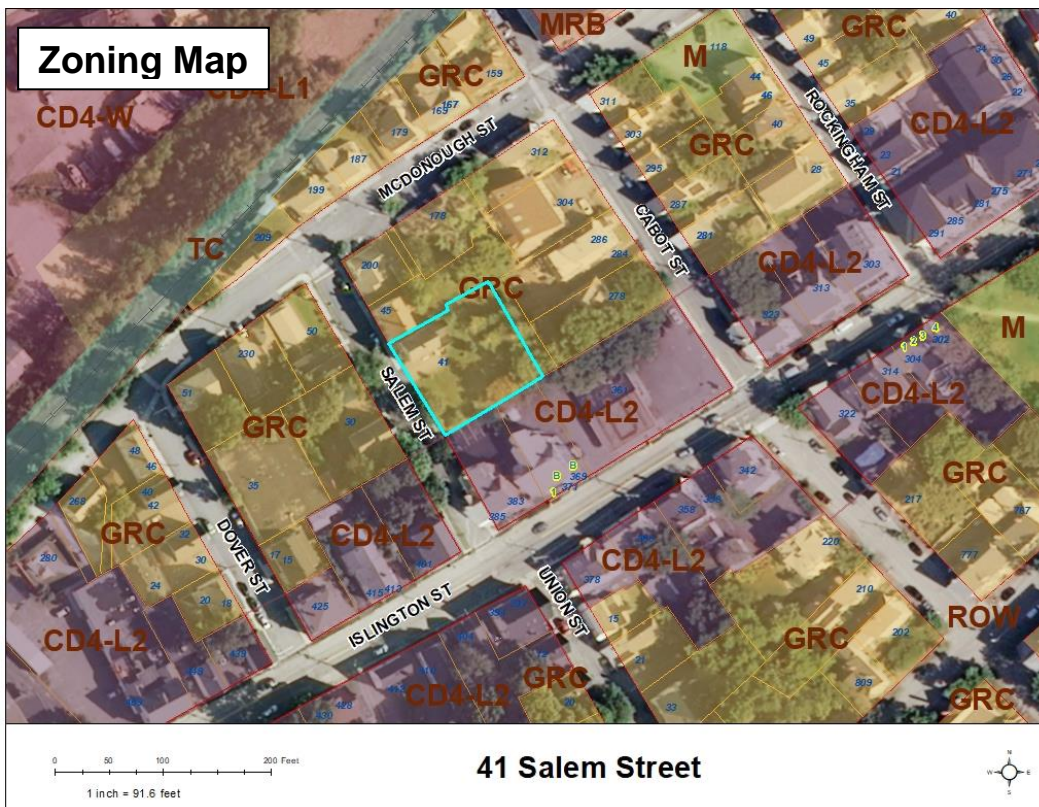
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	2 Duplex structures	Primarily residential uses
<u>Lot area (sq. ft.):</u>	10,903	10,903	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,903	2,726	3,500 min.
<u>Street Frontage (ft.):</u>	98.87	98.87	70 min.
<u>Lot depth (ft.):</u>	112	112	50 min.
<u>Primary Front Yard:</u>	1.9'	13	5 min.
<u>Right Yard (ft.):</u>	70	11	10 min.
<u>Left Yard (ft.):</u>	<1	11	10 min.
<u>Rear Yard (ft.):</u>	58	20.8	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Cov. (%):</u>	10	35	35 max.
<u>Open Space (%):</u>	83	49	20 min.
<u>Parking</u>	2	8	6
<u>Estimated Age of Structure:</u>	1870	Variance request shown in red.	

Other Permits/Approvals Required

Planning Board/TAC – Site Review

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing to demolish the existing structure and build two duplex structures on the lot. The property is located in the GRC where 4 dwelling units are allowed by right. More than one free-standing dwelling is also allowed in the GRC. The lot area per dwelling unit is 3,500 s.f. and four dwelling units on this property would result in 2,726 s.f. per unit. A surveyed plan was provided with the application, so there should be no discrepancies with the square footage of the lot. If granted approval, this will go through the site review and approval process with TAC and Planning 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 #8-5

Petition of **Scott D. Young** for property located at **7 Suzanne Drive** for a 12' x 46' rear addition wherein the following variance is required: a) from Section 10.521 to allow a rear yard of 21' where 30' is required; and b) 21% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 292, Lot 80 and lies within the Single Residence B District.

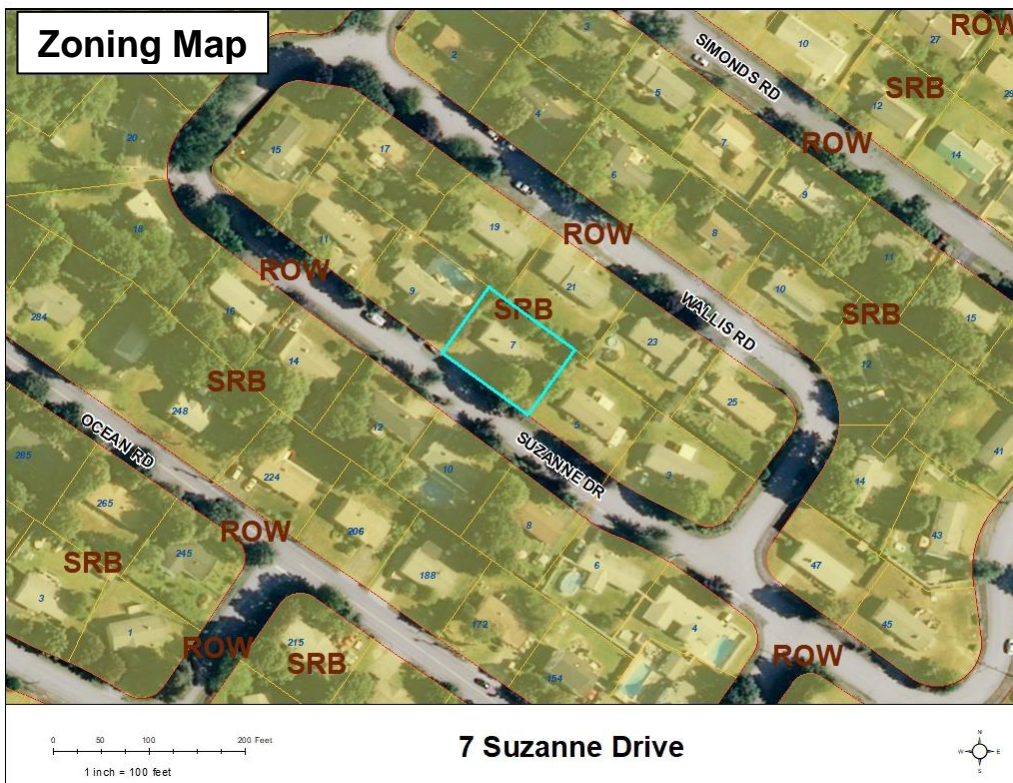
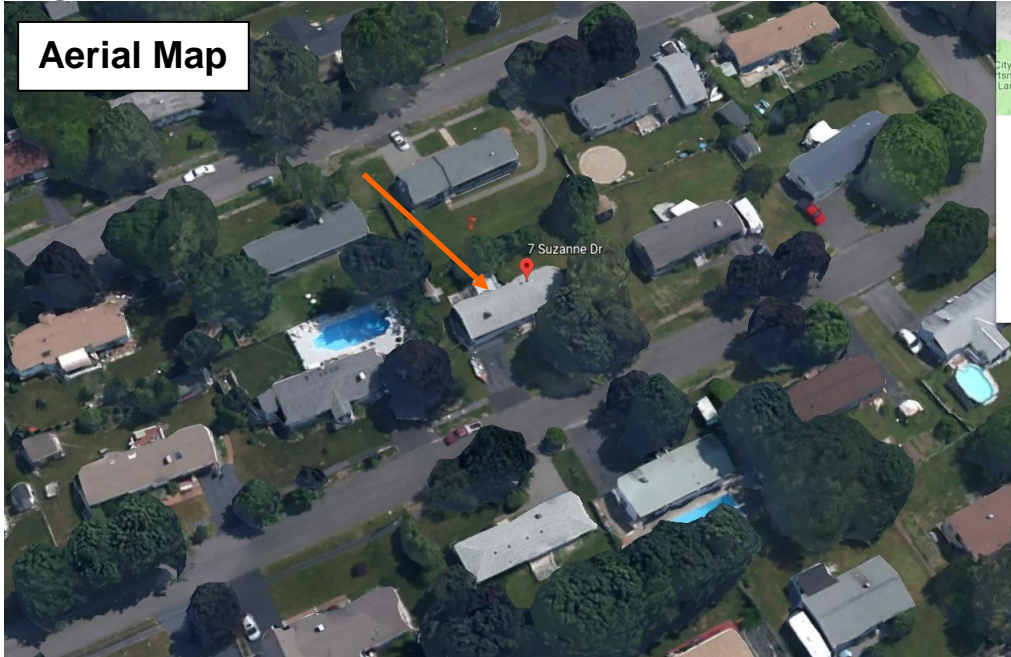
Existing & Proposed Conditions

	<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>	9,583	9,583	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,583	9,583	15,000 min.
<u>Street Frontage (ft.):</u>	110	110	100 min.
<u>Lot depth (ft.):</u>	87	87	100 min.
<u>Primary Front Yard (ft.):</u>	27	270	30 min.
<u>Right Yard (ft.):</u>	25	25	10 min.
<u>Left Yard (ft.):</u>	22	22	10 min.
<u>Rear Yard (ft.):</u>	33	21	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	17	21	20 max.
<u>Open Space Coverage (%):</u>	68	64	40 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1959	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 applicant is proposing a rear addition onto the existing dwelling. The property, located in the SRB, is nonconforming in size at 9,583 s.f. where 15,000 is required. A 30' rear yard is required and the proposed addition will encroach 9' into the rear yard. The addition will also exceed the 20% maximum building coverage by approximately 1%, resulting in 21% coverage.

If the Board grants approval of the petition, staff would recommend the Board consider a plus/minus range for the rear yard and a % for the building coverage 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 #8-6

Petition of **Galaro Properties LLC**, owner, **Earth Eagle Brewings**, applicant, for property located at **175 High Street** for seasonal outdoor entertainment wherein the following variances or special exceptions are required: a) a special exception from 10.440, Use # 3.521 to allow an outdoor performance facility with an occupancy up to 500 people; and b) a variance from Section 10.592 to allow an outdoor performance facility use to be within 500' from a residential district. Said property is shown on Assessor Plan 118, Lot 16 and lies within Character District 4.

Existing & Proposed Conditions

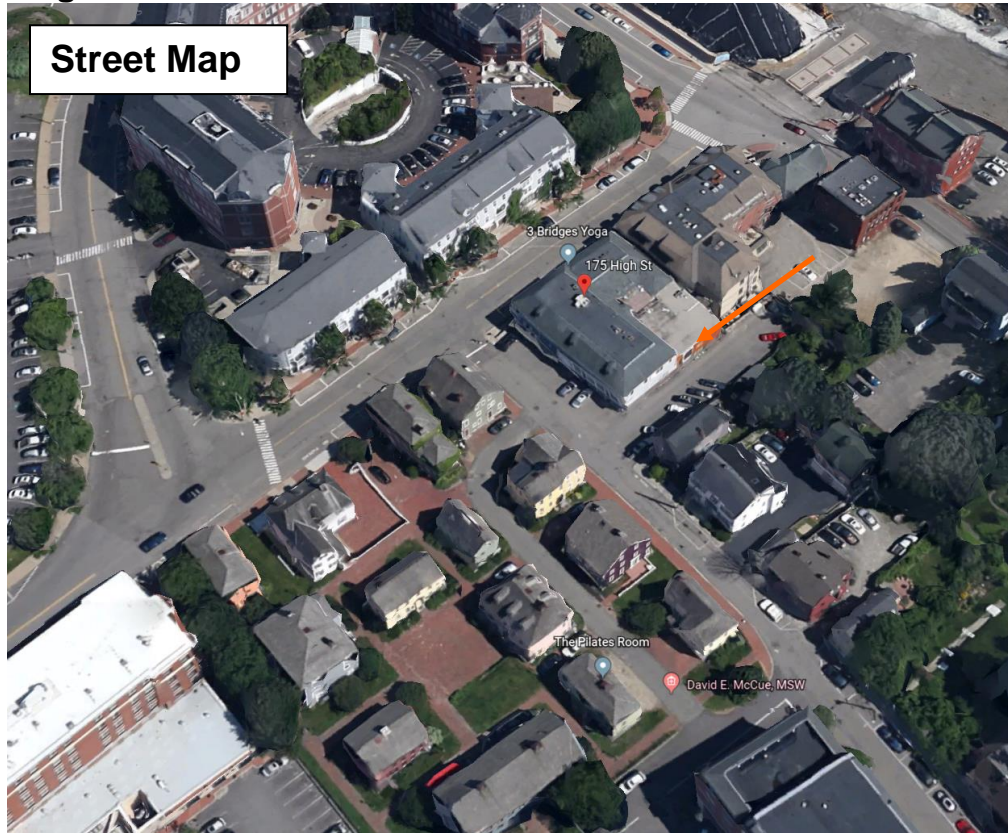
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Brewery	Outdoor Performance Facility*	Primarily Mixed Use
<u>Distance between lot and CD4-L1 district</u>	~30	~30	500 min.
<u>Estimated Age of Structure:</u>	1950	Variance request shown in red. *Special Exception required	



Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing an outdoor live entertainment series to occur between Memorial Day and Columbus Day within their outdoor patio area and has proposed hours of operation. The subject property is approximately 30 feet from CD4-L1 district across the street and to the east. Per Section 10.592, outdoor performance facilities must be a minimum of 500 feet from this district, thus the need for a variance from this section.

If the Board grants approval of the petition, staff would recommend the Board consider stipulating hours of operation, events run from May – October and sound is limited to portable amplification.

Other conditions the Board may consider would include limiting the days of the week and number of events in a given season.

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 #8-7

Petition of **Haven Properties LLC** for property located at **187 McDonough Street** for demolition of existing single family residence and construction of a new single family residence wherein variances from Section 10.521 are required to allow the following: a) a lot area of 2,537 s.f. where 3,500 s.f. is the minimum required; b) a lot area per dwelling unit of 2,537 s.f. where 3,500 s.f. is the minimum required; c) continuous street frontage of 48' where 70' is the minimum required; d) building coverage of 43% where 35% is the maximum allowed; e) a 4' left side yard where 10' is the minimum required; and f) a 9' rear yard where 20' is the minimum required. Said property is shown on Assessor Plan 144, Lot 43 and lies within the General Residence C District.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single- family	Single-family	Primarily residential uses
<u>Lot area (sq. ft.):</u>	1,868	2,537	3,500
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,868	2,537	3,500
<u>Street Frontage (ft.):</u>	48	48	70
<u>Lot depth (ft.):</u>	46	57	50
<u>Primary Front Yard (ft.):</u>	1	1*	5
<u>Right Yard (ft.):</u>	14		10
<u>Left Yard (ft.):</u>	0	4	10
<u>Rear Yard (ft.):</u>	0	9	20
<u>Height (ft.):</u>	<35	<35	35
<u>Building Coverage (%):</u>	46	43	35
<u>Open Space Coverage (%):</u>	47	41	20
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1870	Variance requests shown in red. *ok per front yard alignment Section 10.516.10	

Other Permits/Approvals Required

Planning Board – Lot Line Revision (on August 15th Agenda)

Neighborhood Context



Previous Board of Adjustment Actions

June 18, 2019 – The Board **denied** a request to demolish an existing home and construct a new dwelling requiring a lot line revision. The requested variances were to allow the following: a) a 4' right side yard and a 2' left side yard where 10' was required; b) a 10' rear yard where 20' was required; c) 49% building coverage (35% maximum allowed); d) a lot area and lot area per dwelling unit of 2,537 s.f. where 3,500 s. f. was required; and e) 48' of continuous street frontage where 70' was required.

Planning Department Comments

The applicant was before the Board on June 18, 2019 and the petition was denied. The applicant has submitted a new application with revised plans for the proposed house.

Since the application was denied in June, the Board should 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 site plan shows an 8'10" setback for the rear yard and a 9' rear yard was requested and advertised. If granted approval, staff recommends the following stipulation:

If the Board grants approval Staff would recommend considering designating a plus/minus of 6" for the rear yard to account for any discrepancy with the as-built 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.

