

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: July 10, 2019
RE: Zoning Board of Adjustment July 16, 2019 Meeting

OLD BUSINESS

1. Case 5-5 56 Middle Street

NEW BUSINESS

1. Case 7-1 105 Bartlett Street
2. Case 7-2 27 Thaxter Road
3. Case 7-3 185 Cottage Street
4. Case 7-4 346 Colonial Drive
5. Case 7-5 11 Meeting House Hill Road
6. Case 7-6 32 Union Street
7. Case 7-7 183 Coolidge Drive
8. Case 7-8 65 Pinehurst Road

OLD BUSINESS

Case #5-5

Petitioners:	56 Middle Street LLC
Property:	56 Middle Street
Assessor Plan:	Map 126, Lot 19
Zoning District:	Character District 4-Limited (CD4-L1), Historic District (HD), Downtown Overlay District (DOD)
Description:	Convert to a duplex and construct 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 10.5A41.10A to allow a building footprint of 2,646± s.f. where 2,500 s.f. is the maximum allowed. 2-1. A Variance from Section 10.5A41, Figure 10.5A41.10A and Section 10.5A43.60 & Figure 10.5A43.60 to allow a duplex in the Downtown Overlay District where it is not permitted. 3. 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.

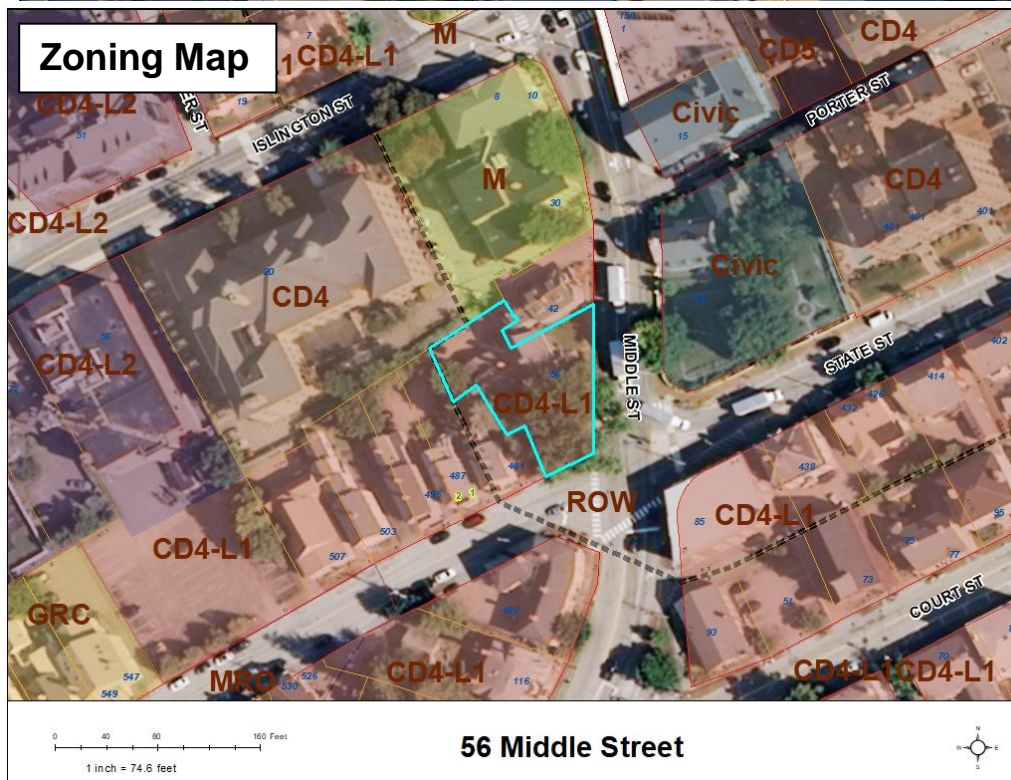
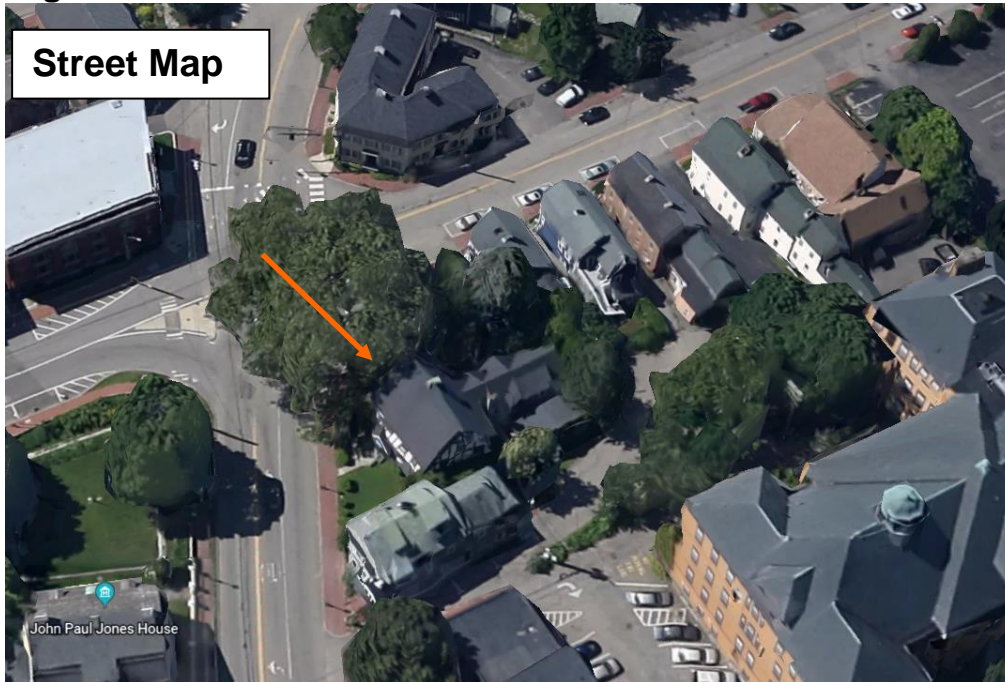
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	office	duplex	Primarily mixed uses
<u>Lot area (sq. ft.):</u>	10,266	10,266	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,266	5,133	3,000 min.
<u>Max Block Length:</u>	52	52	80 max.
<u>Front Yard (ft.):</u>	14	14	15 max.
<u>Right Side Yard (ft.):</u>	34	26.7	5 ft. – 20 ft. max
<u>Rear Yard (ft.):</u>	1.7'	1.7'	Greater of 5 ft. from rear or 10 ft. from alley
<u>Height (ft.):</u>	<40	<40	40 max.
<u>Building Footprint:</u>	2,281	2,646 -2,483*	2,500 max.
<u>Building Cov. (%):</u>	22	26	60 max.
<u>Open Space Coverage (%):</u>	36.5	39	25 min.
<u>Ground story height</u>	10.5	12 -13 (addition)	11
<u>Parking</u>	4	2	0**
<u>Estimated Age of Structure:</u>	1910	Variance request shown in red. *Per approval in Dec. 2018 **DOD allows credit of 4 parking spaces. 10.1115.23	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

August 31, 1965 – The Board granted a variance to use the premises for professional offices with the present dental office to remain unchanged.

December 18, 2018 – The Board granted variances to allow the following to restore property to a single family home: a) a residential principal use on the found floor of a building; b) a 1.7' rear yard where 5' was required; and c) the reconstruction of a lawful nonconforming structure.

May 21, 2019 – A request to convert the property to a residential duplex and replace the existing addition with a two-story addition/garage was **postponed** to the June meeting.

June 18, 2019 – The above petition, as amended to request relief solely to allow a duplex was tabled to the July meeting.

Planning Department Comments

In December of 2018, this applicant was granted variances listed above for a rear yard and to allow residential use on the ground floor. The applicant has submitted a letter to withdraw the request for the addition that would exceed the 2,500 square feet for the footprint and is now only requesting to convert the existing structure into a duplex. The CD4-L1 allows duplexes, however since this property is in the Downtown Overlay District, a duplex is not permitted.

UPDATE: At the last meeting, the subject of parking was an issue and the applicant was asked to show parking spaces on the site plan. Since the property is located in the DOD, they can receive a credit of 4 parking spaces per Section 10.1115.23 as outlined below:

*For any lot, the number of **off-street parking** spaces that would be required by applying the ratios in Section 10.1115.21 shall be reduced by 4 spaces. (Therefore, any lot that would be required to provide 4 or fewer **off-street parking** spaces shall not be required to provide any spaces.)*

The applicant has submitted additional documentation to address the concerns raised at the last meeting.

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 #7-1

Petitioners:	Iron Horse Properties, LLC, Clipper Traders, LLC and Portsmouth Lumber & Hardware, LLC, owners, Ricci Supply Company, Inc. dba Ricci Lumber, applicant
Property:	105 Bartlett Street
Assessor Plan:	Map 164, Lot 4-2
Zoning District:	Character District 4-W (CD4-W)
Description:	Replace sign cabinets and panels with a digital changeable sign for the bottom cabinet.
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 10.1212 to allow a sign as an accessory use to a permitted use on an adjacent lot. 2. A Variance from Section 10.1251.20 to allow a sign area of 142.33 s.f. where 20 s.f. is the maximum allowed for a freestanding sign. 3. A Variance from Section 10.1253.10 to allow a 25' tall freestanding sign where the maximum height is 12'. 4. A Variance from Section 10.1281 to allow a nonconforming sign to be altered, reconstructed, replaced or relocated without conforming to the ordinance.

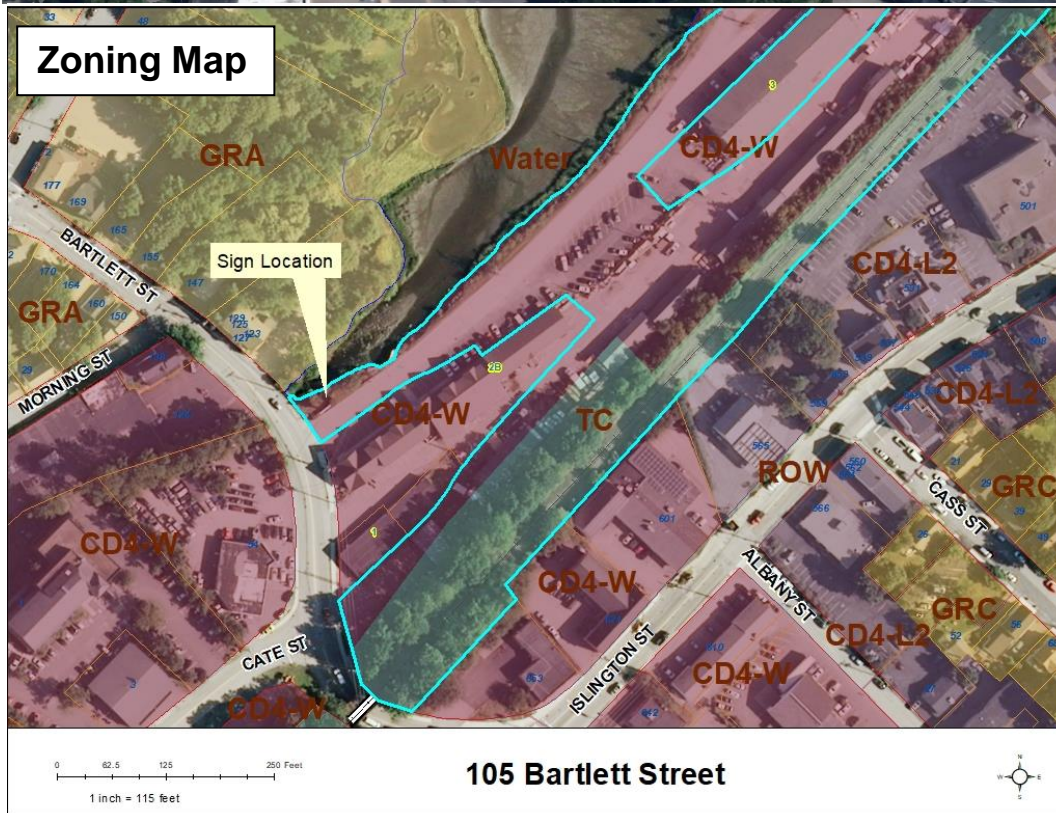
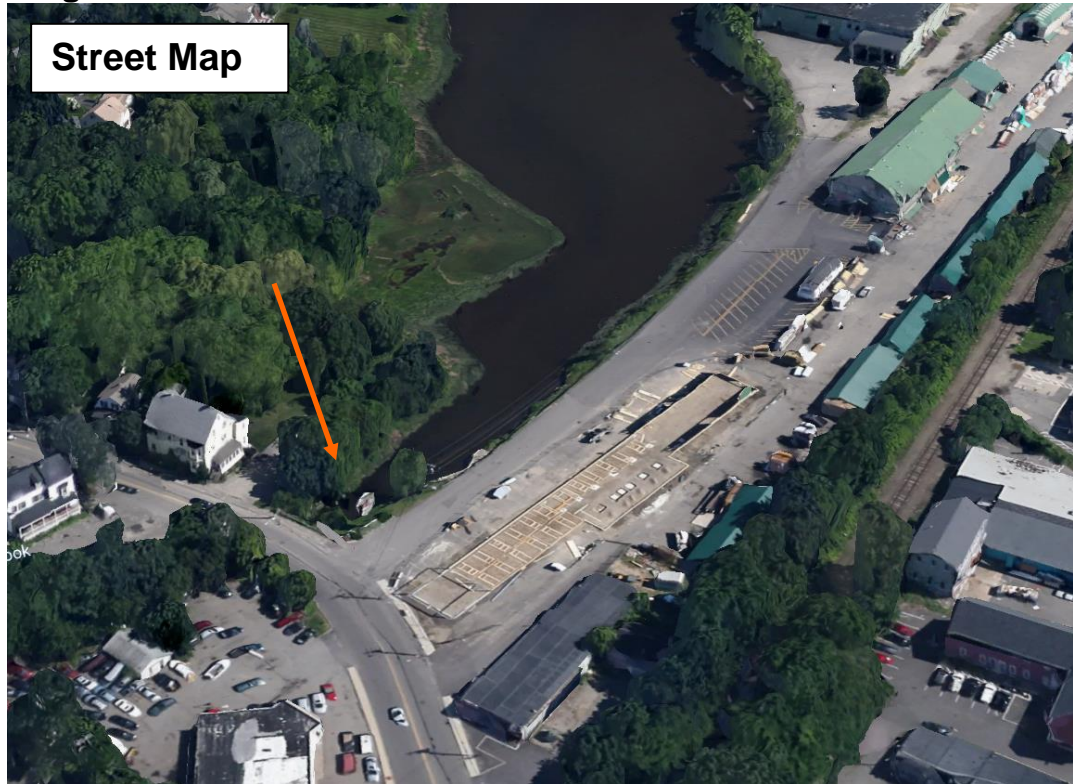
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u> Sign District 3	Sign	Vacant/Road	Primarily mixed uses
<u>Freestanding Sign:</u>	153.73	142.33 s.f.	20 s.f. max
<u>Height:</u>	25	25 s.f.	12 s.f. max
		Variance request shown in red.	

Other Permits/Approvals Required

None

Neighborhood Context



Previous Board of Adjustment Actions

December 15, 1987 – The Board **granted** variances to allow a 138 s.f. free-standing sign to be located 15' from the front lot line and 31' from the side lot line where 35' is required for both.

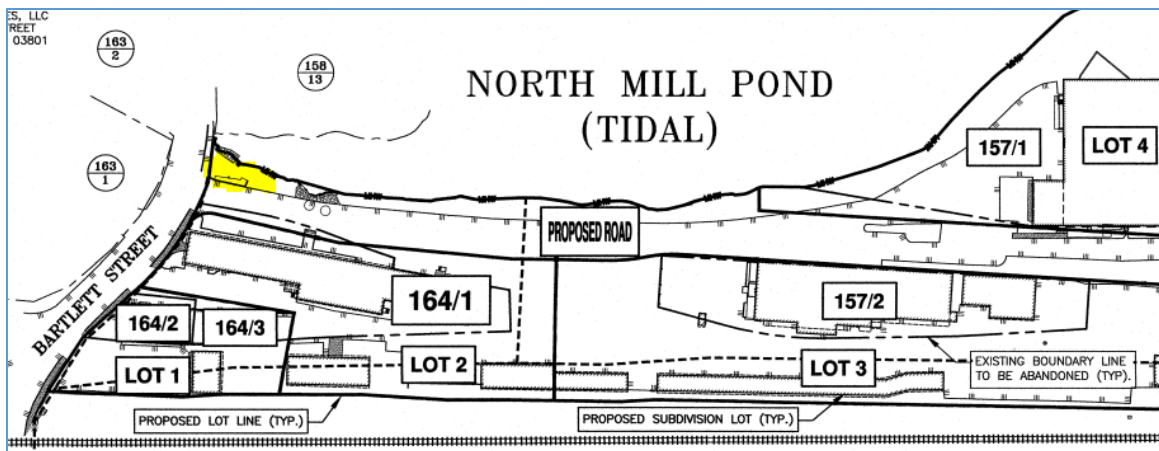
May 28, 1991 – The Board **granted** a variance to reconstruct a nonconforming building on the existing footprint which had been destroyed by fire with associated retail sales.

June 21, 2016 – The Board **granted** a variance to allow a brewery use with an 800 s.f. indoor tasting area and to **deny** the proposed outdoor tasting area.

April 17, 2018 – The Board granted variances to allow the following relief under then current zoning: a) front lot line buildouts; b) front yards; c) secondary front lot line buildout; d) principal front yards; e) secondary front yards; f) open space coverage; f) lot size, g) side yards, and h) rear yards; for Proposed Lots 1,2,3, 4, & 5. The Board also **granted** variances to allow the following relief under the proposed zoning: a) front lot line buildouts; b) open space coverage; c) building footprint; and d) front yard for Proposed Lots 3, 4 and 5.

Planning Department Comments

The subject sign is proposed to be updated by replacing the upper panels with new cabinets and replacing the existing marquee sign with an electronic changeable sign. This property was recently subdivided and the parcel the sign is now located is the "Road" parcel of the subdivision as shown below. There is no principal use on this property that the sign is accessory to, all of the uses that relate to the sign are on adjacent parcels.



As the applicant states and as shown in the history, variances were granted for the free-standing sign in 1987 for the size and location. The sign could be maintained by re-facing the sign, however the proposed upgrades require the sign to comply with zoning.

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 #7-2

Petitioners:	Kenneth K. & Deborah A. Jennings, appellants
Property:	27 Thaxter Road
Assessor Plan:	Map 166, Lot 39
Zoning District:	Single Residence B (SRB)
Description:	Appeal
Requests:	Appeal of City Council's decision to restore two involuntary merged lots at 27 Thaxter Road to their pre-merger status.

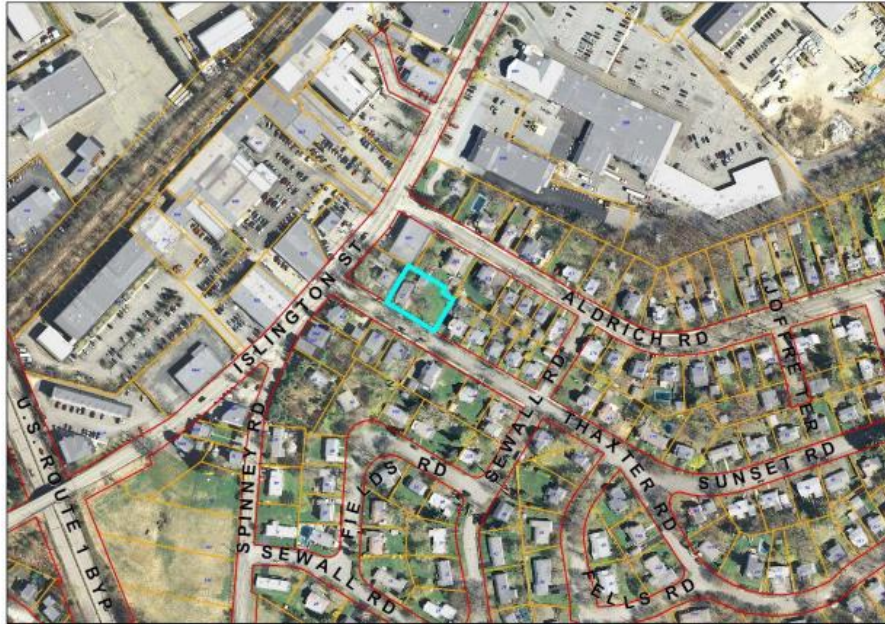
The decision made by City Council to restore an involuntary merged lot at 27 Thaxter Road is being appealed to the Board of Adjustment pursuant to RSA 676:5:

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.

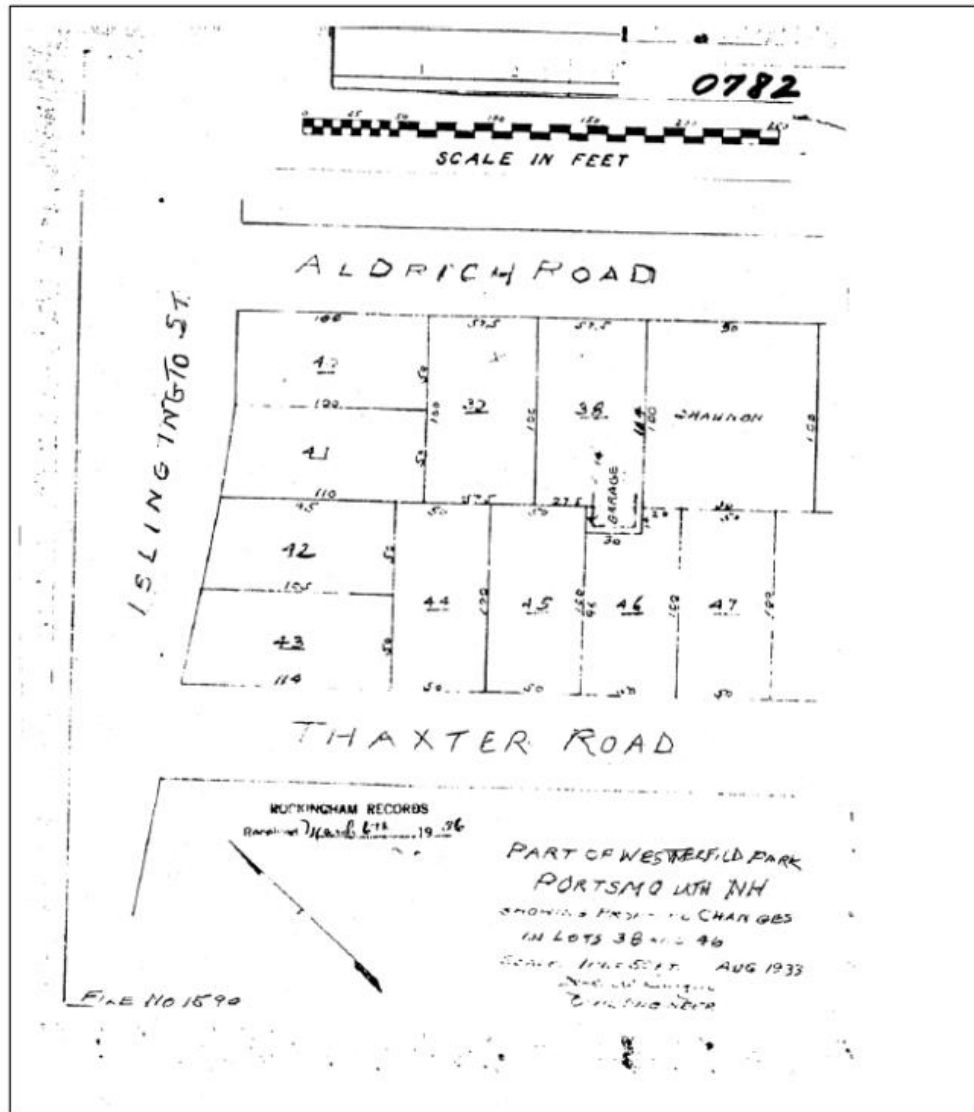
It is important to note that the granting of a request to restore lots to their premerger status does not mean that the resulting lots will be buildable or, if already developed, will conform to zoning. The statute states that “*The restoration of the lots to their premerger status shall not be deemed 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.

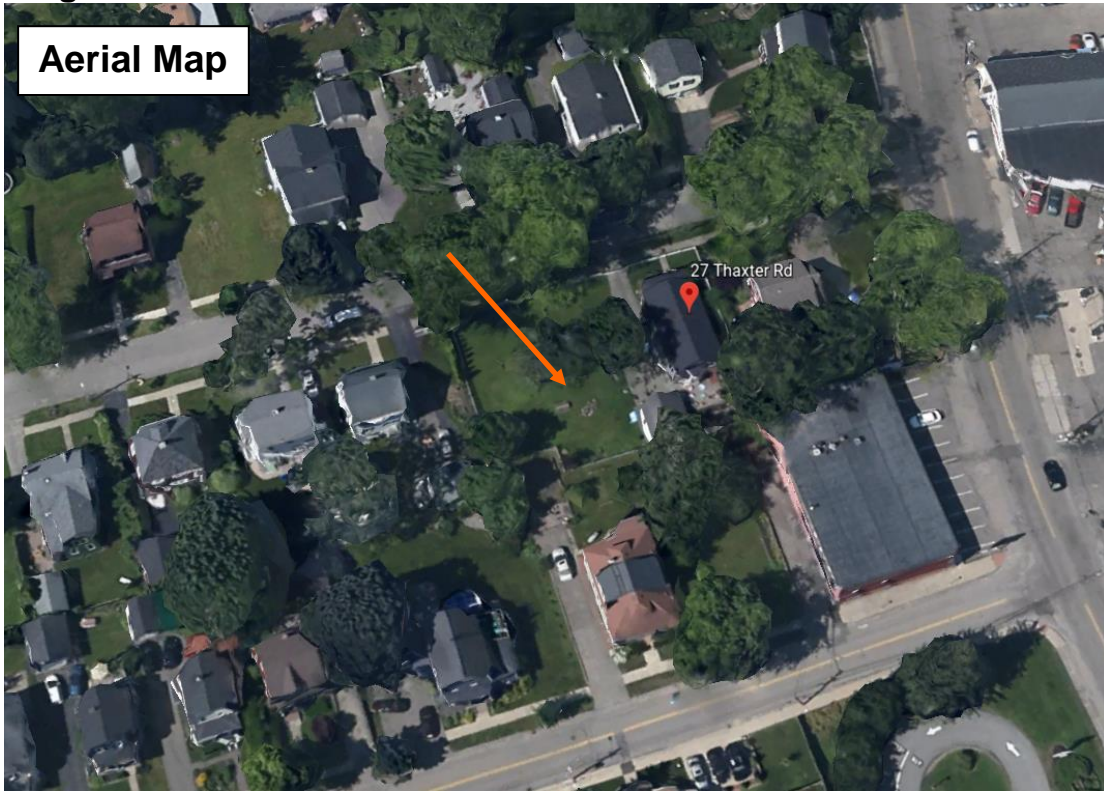


Other Permits/Approvals Required

None.

Neighborhood Context

Aerial Map



Zoning Map



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.

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.

Case #7-3

Petitioners:	AER RE LLC
Property:	185 Cottage Street
Assessor Plan:	Map 174, Lot 14
Zoning District:	General Residence A (GRA)
Description:	Signage.
Requests:	<p>Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> 1. A Variance from Section 10.1251 to allow 113 s.f. of signage where 40 s.f. of aggregate sign area is available. 2. A Variance from Section 10.1241 to allow a freestanding sign where freestanding signs are not allowed. 3. A Variance from Section 10.1253.10 to allow a 10' high free standing sign 15' from a lot line where a freestanding sign is not permitted. 4. A Variance from Section 1251.20 to allow a 44.4 s.f. wall sign where 4 s.f. is the maximum sign area allowed for a wall sign and a 60 s.f. freestanding sign. 5. A Variance from Section 1261.10 to allow halo illumination where no illumination is permitted.

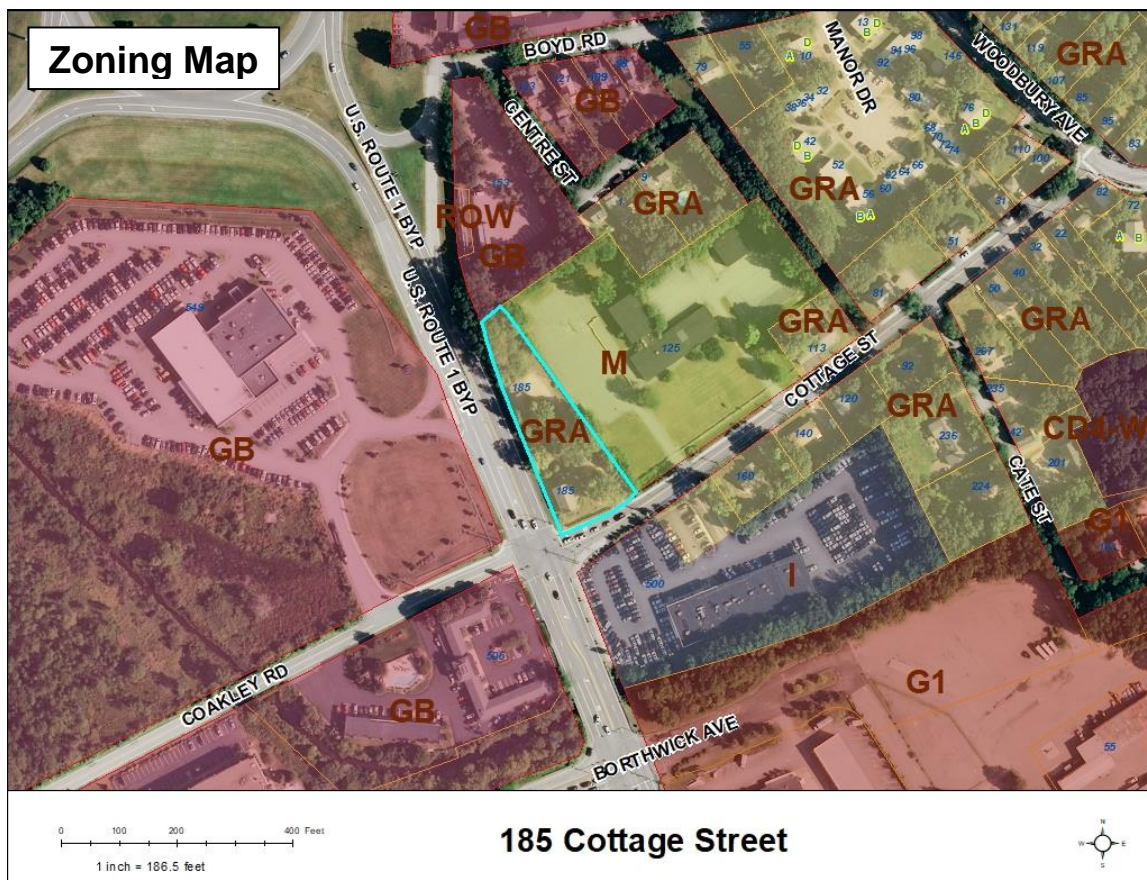
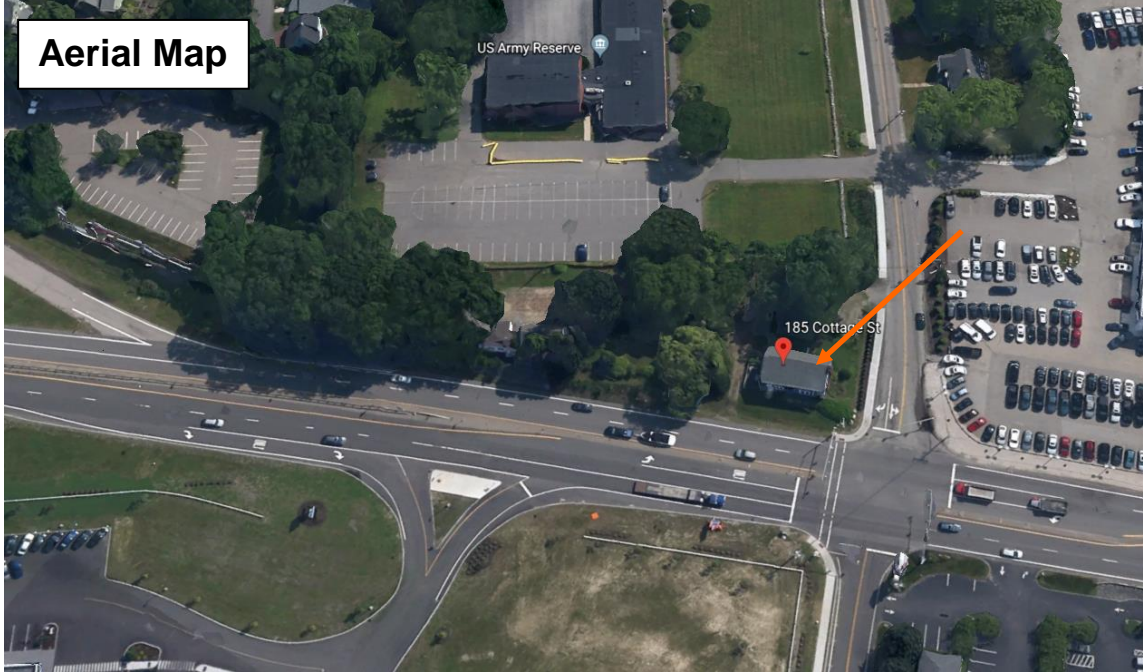
Existing & Proposed Conditions

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u> Sign District 1	Medical Office Building*	Primarily mixed uses
<u>Aggregate Sign Area:</u>	113 s.f.**	40 s.f.
<u>Wall Sign:</u>	44.4 s.f.	4 s.f. max
<u>Freestanding Sign:</u>	60 s.f.	Not Allowed
<u>Height for Freestanding Sign:</u>	10'	Not Allowed
<u>Setback for Freestanding Sign:</u>	15'	Not Allowed max.
<u>Illumination Type:</u>	Halo	Not Allowed
	<p>Variance request shown in red. *Use approved by BOA June 2018 **Only 105 s.f. needed.</p>	

Other Permits/Approvals Required

None

Neighborhood Context



Previous Board of Adjustment Actions

October 25, 2016 – The Board **denied** a request for a restaurant with a drive-through with less than required parking spaces and parking spaces in a required front yard.

June 26, 2018 – The Board **granted** a variance to allow a medical (dental) office where medical offices were permitted in connection with the construction of a two-story 3,725 s.f. medical office building.

Planning Department Comments

The dental office use was approved in June of 2018 and the project is currently under construction. The signs for the property were not part of the original approval and now the applicant is seeking relief for the two signs. Sign District 1 contains the residential zoning districts and is the most restrictive sign district in the City. It does not allow freestanding signs and only allows a wall sign up to 4 square feet. The proposed signage is facing Route 1, away from the residential areas. If the property was zoned GB or G1 and in Sign District 5, the proposed signage would be permitted and not need variances.

Staff would note the initial request and application was for 93 s.f. of aggregate sign area, consisting of a 48 s.f. free-standing sign and a 45 square foot wall sign. The base of the free-standing sign was initially not considered in the tabulation of the sign area. This brings the free-standing sign to 60 s.f. for a total of aggregate sign area of 104.4 s.f., not 113 s.f. The legal notice advertised 113 s.f. of aggregate sign area and a 44.4 s.f. wall sign. The area of the wall sign was most likely rounded up to 45 s.f.

If the Board approves the petition staff would recommend the Board approve 105 s.f. of aggregate sign area.

Review Criteria

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

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

AND

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

OR

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

Case #7-4

Petitioners: Kenneth W. Young
 Property: 346 Colonial Drive
 Assessor Plan: Map 260, Lot 136
 Zoning District: Single Residence B (SRB)
 Description: Reconstruct garage and addition for Attached ADU.
 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 of 6,099 s.f. where 15,000 s.f. is required for each; b) building coverage of 24% where 20% is the maximum allowed; c) a 4'11" rear yard where 30' is required; and d) a 17' front yard where 30' 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.

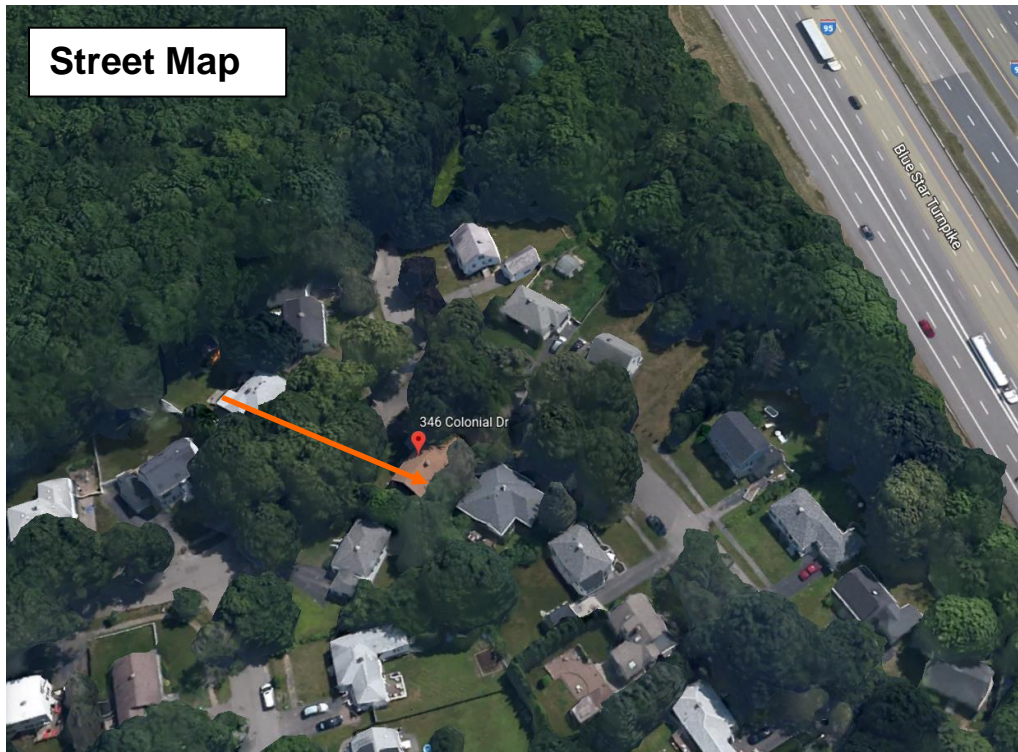
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Add two dormers	Primarily residential uses
<u>Lot area (sq. ft.):</u>	6,099	6,099	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,099	6,099	15,000 min.
<u>Street Frontage (ft.):</u>	132	132	100 min.
<u>Lot depth (ft.):</u>	65	65	100 min.
<u>Front Yard (ft.):</u>	25	17	30 min.
<u>Right Yard (ft.):</u>	16	16	10 min.
<u>Rear Yard (ft.):</u>	4'11"	4'11"	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	19	24	20 max.
<u>Open Space Coverage (%):</u>	74	68	40 min.
<u>Parking</u>	3	3	3
<u>Estimated Age of Structure:</u>	1940	Variance request shown in red.	

Other Permits/Approvals Required

Planning Board – CUP for ADU

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing to reconstruct the garage and add an attached accessory dwelling unit above. Three areas will be expanded in the rear of the house from the existing footprint and the height will increase. In addition, a new set of stairs and landing to access the ADU will be added that will result in an increase in building coverage over the maximum allowed. An attached ADU is permitted on a nonconforming lot within an existing nonconforming building if there is no change in height or building footprint (Section 10.814.22). Because the applicant is proposing to increase both, variances are needed for the nonconformities. Granting the variances will enable the applicant to apply for a CUP from the Planning Board.

If the Board grants approval, staff recommends consideration of the following stipulation:

To designate a plus/minus range for the rear and front yard as determined by the Board to account for any discrepancy.

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 #7-5

Petitioners: Argeris & Eloise Karberas
 Property: 11 Meeting House Hill Road
 Assessor Plan: Map 103, Lot 59
 Zoning District: General Residence B (GRB)
 Description: Add a dormer on either side of an existing dormer.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. A Variance from Section 10.521 to allow the following: a) a 3' right side yard where 10' is required; and b) a 14' 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>	Two-family	Add two dormers	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	3	10 min.
<u>Rear Yard (ft.):</u>	7'6" (garage)	14	25 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	43	42	30 max.
<u>Open Space Coverage (%):</u>	57	58	25 min.
<u>Parking</u>	3	3	1.3
<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 voted to **postpone** hearing a request to move one existing dwelling unit to a garage with added second story and connector to the existing home at the request of the applicants. The relief requested included the following: a) 48% building coverage where 30% was the maximum permitted; b) a 5.5' rear yard where 25' was required; and c) to allow a nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.

February 20, 2019 – The Board **granted** the above variances.

April 16, 2019 – The Board **denied** a Motion for Rehearing and an Amendment to Motion for Rehearing.

Planning Department Comments

The applicant is proposing to add two dormers to increase the head height of the upstairs in the main house. In addition, a small area (10 inches x 7 feet) will be added under the existing dormer located in the rear of the house. A shed and a portion of the rear bump out are proposed to be removed, resulting in less building coverage. The upward expansion of the dormers within the right yard and rear yard require relief from the BOA.

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 #7-6

Petitioners:	Francis T. Delbene and Gwyn M. Burdell
Property:	32 Union Street
Assessor Plan:	Map 145, Lot 29
Zoning District:	General Residence C (GRC)
Description:	Construct garage and carriage house with third dwelling unit.
Requests:	<p>Variiances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <p>1. VariANCES from Section 10.521 to allow the following: a) a lot area per dwelling unit of 1,843 where 3,500 s.f. is required; and b) a 6' rear yard where 20' is required.</p>

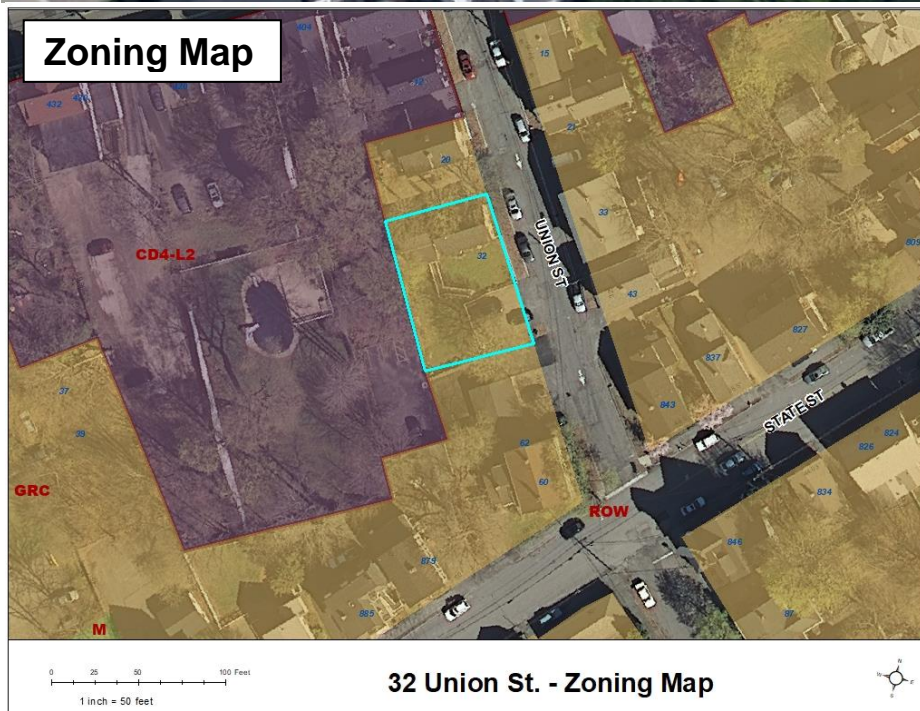
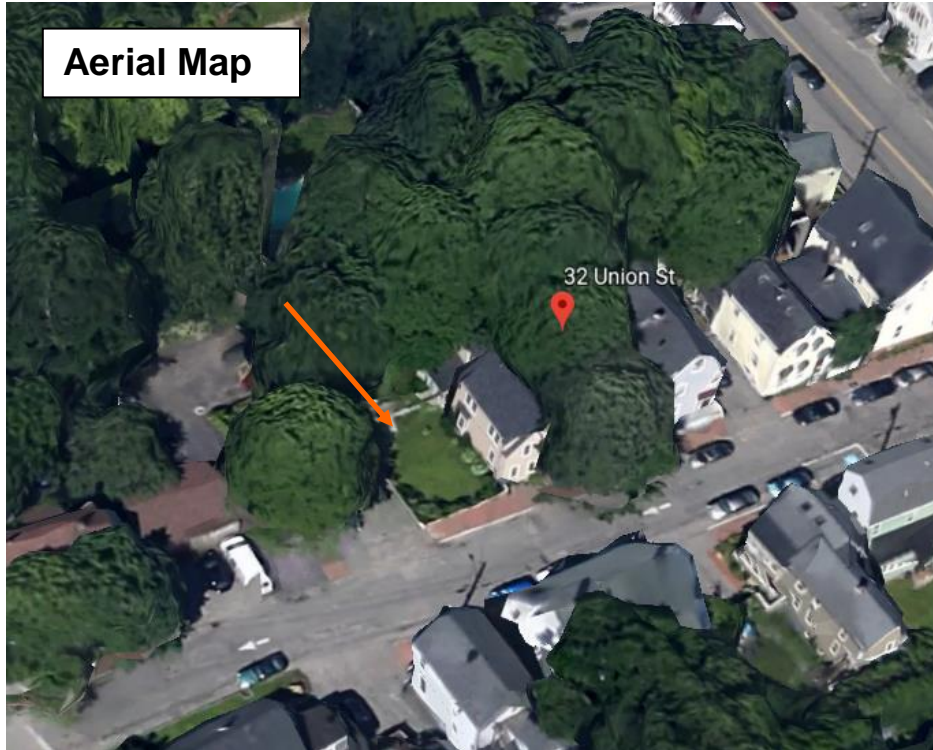
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two-family	Carriage house/garage	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	5,663	5,663	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,832	1,843	3,500 min.
<u>Street Frontage (ft.):</u>	89	89	70 min.
<u>Lot depth (ft.):</u>	62	62	50 min.
<u>Primary Front Yard (ft.):</u>	3	>5	5 min.
<u>Right Yard (ft.):</u>	3 (existing)	>10 (carriage)	10 min.
<u>Left Yard (ft.):</u>	>10	10	10 min.
<u>Rear Yard (ft.):</u>	6	6 (carriage)	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	20	34	35 max.
<u>Open Space Coverage (%):</u>	69	38	20 min.
<u>Parking</u>	ok	5	4
<u>Estimated Age of Structure:</u>	1890 (existing house)	Variance request shown in red.	

Other Permits Required

Planning Board – Site Review

Neighborhood Context



Previous Board of Adjustment Actions

June 19, 2018 – The Board granted variances to construct a 26' x 32' carriage house/garage with a third dwelling unit with a lot area per dwelling unit of 1,887 s.f. where 3,500 s.f. was required and a 6' rear yard where 20' was required.

Planning Department Comments

This property was before the Board in June of 2018 and received variances for lot area per dwelling unit based on the tax parcel data. A survey has since been completed, resulting in a lot area per dwelling unit of 1,843 square feet vs the 1,887 originally approved by the Board. The applicant is seeking relief for the lot area based on 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.

Case #7-7 THIS PETITION WILL BE ON THE JULY 23, 2019 AGENDA**

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:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> 1. A Variance from Section 10.521 to allow a 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.

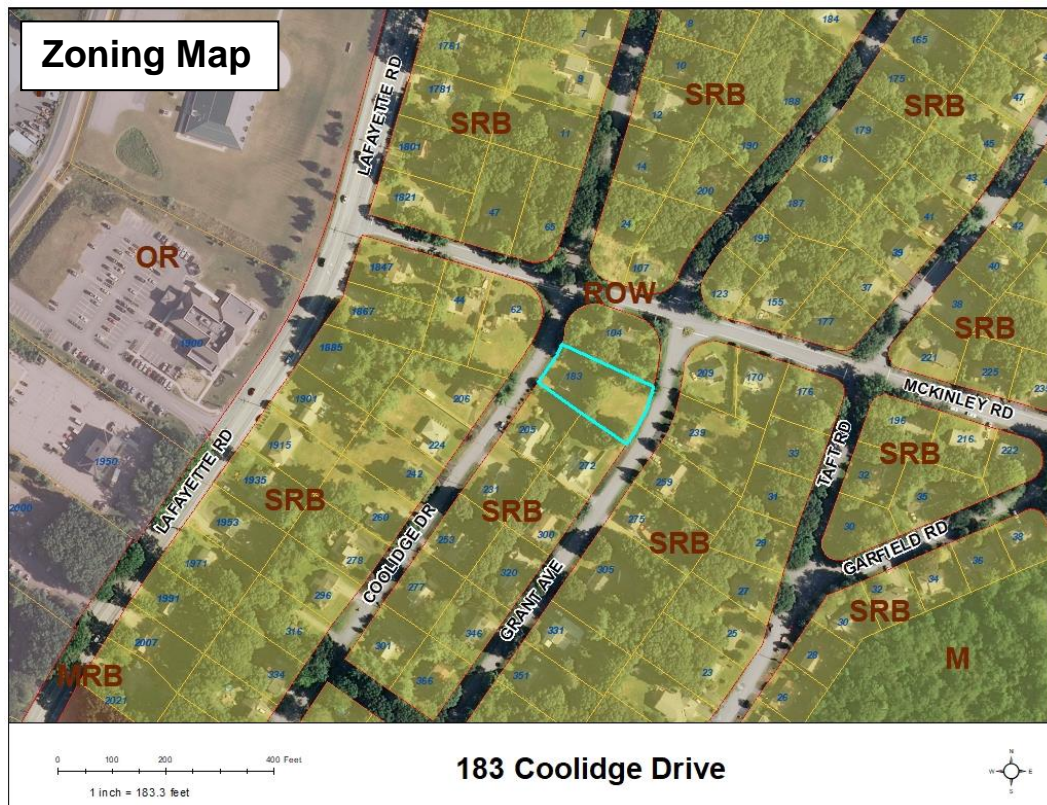
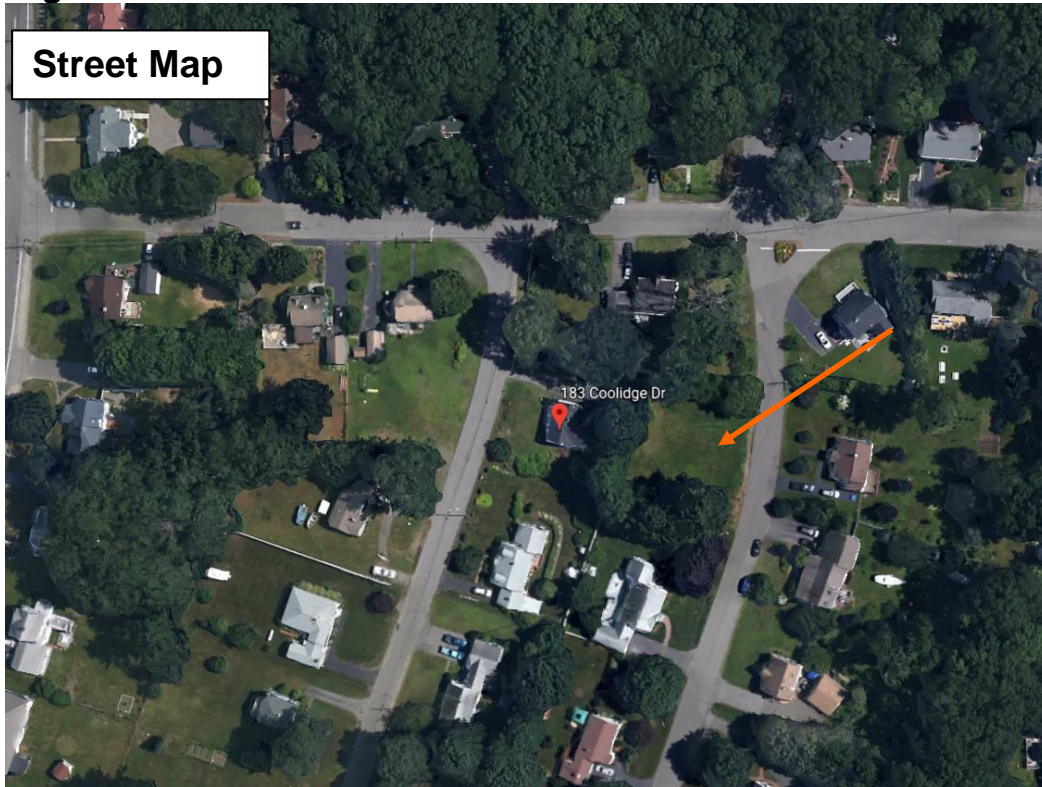
Existing & Proposed Conditions

	<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 – 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. Several of these variances were not advertised and the applicant is requesting to be moved to the July 23, 2019 meeting so the appropriate variances can be properly noticed.

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 #7-8

Petitioners:	Daniel Wyand & Lena Chamberland
Property:	65 Pinehurst Road
Assessor Plan:	Map 221, Lot 72
Zoning District:	General Residence A (GRA)
Description:	Construct new 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 10.573.20 to allow an accessory building or structure to be set back 3' from the left side property line where 10' is required and 6' from the rear property line where 16' is required.</p>

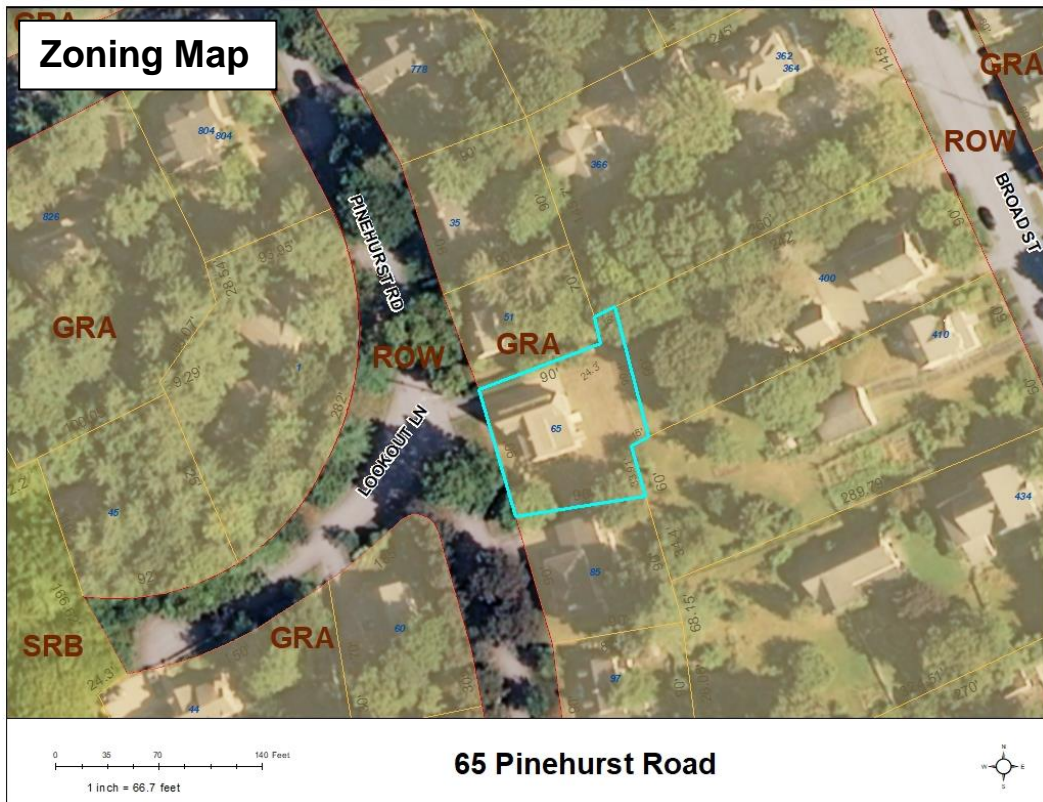
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Detached garage	Primarily residential
<u>Lot area (sq. ft.):</u>	9,800	9,800	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,800	9,800	7,500 min.
<u>Lot depth (ft.):</u>	89	89	70 min.
<u>Street Frontage (ft.):</u>	90	90	100 min.
<u>Primary Front Yard (ft.):</u>	20	20	15 min.
<u>Left Yard (ft.):</u>	19.9	3 (garage)	10 min.
<u>Right Yard (ft.):</u>	36	36	10 min.
<u>Rear Yard (ft.):</u>	35 (house)	6 (garage)	16 (for accessory structure) min.
<u>Height (ft.):</u>	<35	16 (garage)	35 max.
<u>Building Coverage (%):</u>	11.9	15.8	25 max.
<u>Open Space Coverage (%):</u>	79.5	72	30 min.
<u>Estimated Age of Structure:</u>	1933	Variance 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 to construct a detached one-car garage. Although the site plan provided is a surveyed plan, the Board may want to consider a stipulation that applies a plus/minus range to account for any discrepancy with the setbacks. Section 10.573.20 below, regulates the setbacks for this structure.

10.573.20 An **accessory building** or **structure** more than 10 feet in height or more than 100 square feet in area shall be set back from any **lot line** at least the height of the **building** or the applicable **yard** requirement, whichever is less.

The proposed garage height is 16 ft. which is less than the 20 ft. required rear yard, making it the required setback.

If granted approval, staff would recommend the Board apply a plus/minus range for the left side yard and 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.