

TO: Zoning Board of Adjustment  
FROM: Peter Stith, AICP, Planning Department  
DATE: June 11, 2019  
RE: Zoning Board of Adjustment June 18, 2019 Meeting

## **OLD BUSINESS**

1. Case 5-5 56 Middle Street

## **NEW BUSINESS**

1. Case 6-1 11 Elwyn Avenue
2. Case 6-2 9 Middle Road
3. Case 6-3 620 Peverly Hill Road
4. Case 6-4 2454 Lafayette Road
5. Case 6-5 201 Kearsarge Way
6. Case 6-6 165 Union Street
7. Case 6-7 105 Middle Road
8. Case 6-8 60 Elwyn Road
9. Case 6-9 187 McDonough Street

## 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"> <li>1. <del>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.</del></li> <li>2-1. A Variance from Section 10.5A41, Figure 10.5A41.10A and Section 10.5A43.60 &amp; Figure 10.5A43.60 to allow a duplex in the Downtown Overlay District where it is not permitted.</li> <li>3. <del>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.</del></li> </ol>

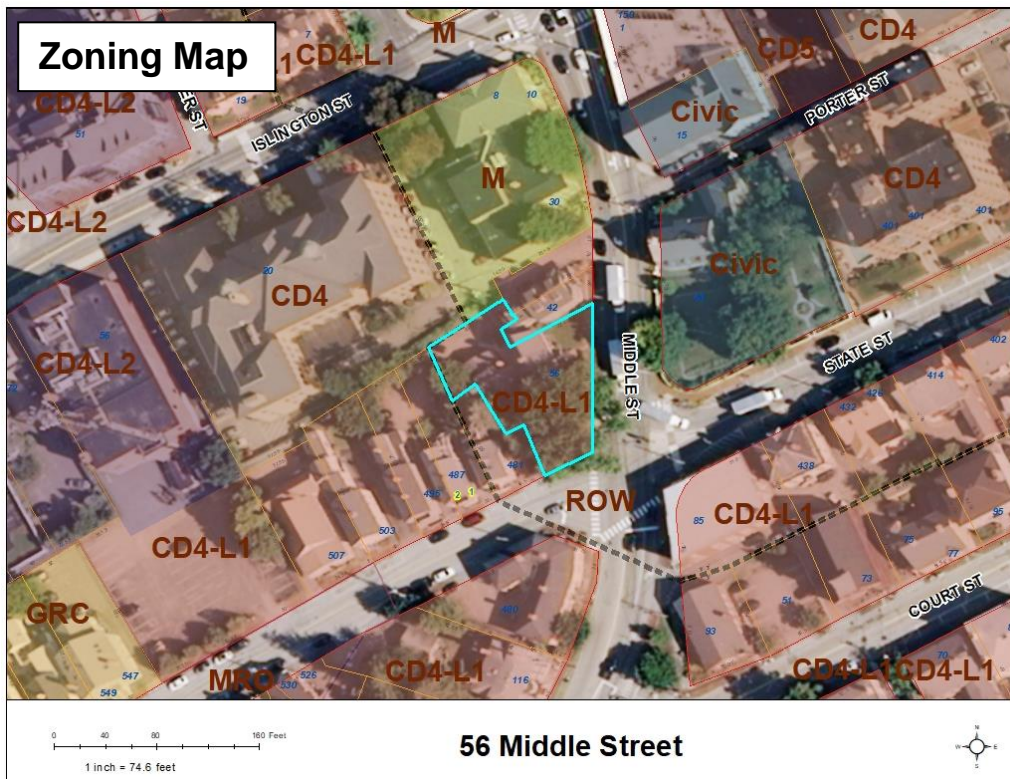
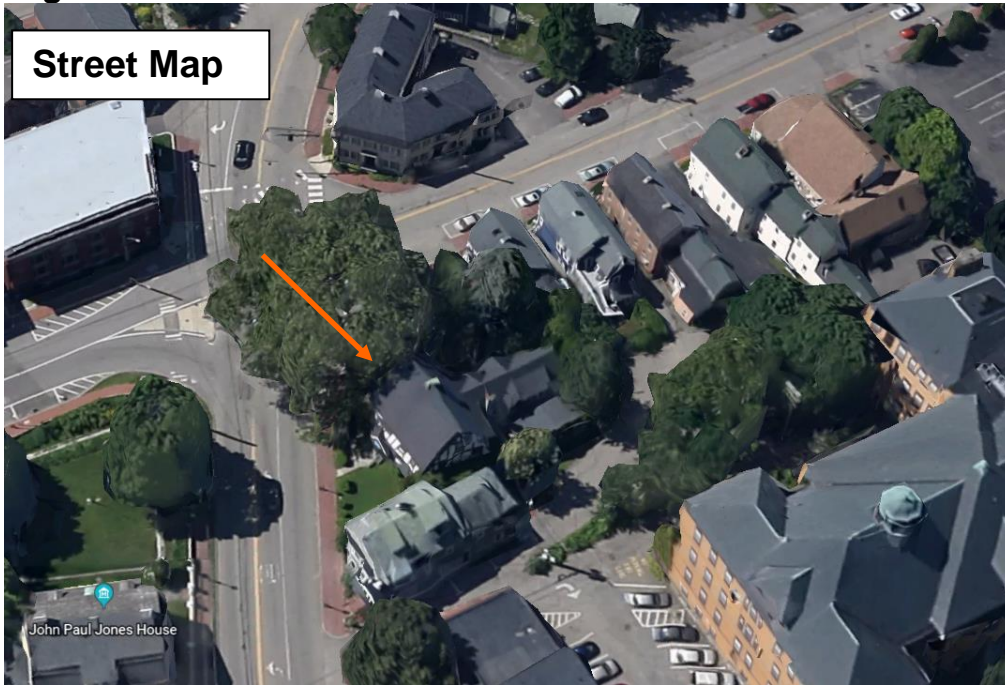
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	office	<b>duplex</b>	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>Primary 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	<del>2,646</del> 2,483*	2,500 max.
<u>Building Coverage (%):</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+	3
<u>Estimated Age of Structure:</u>	1910	<b>Variance request shown in red.</b> *Per approval in Dec. 2018	

# 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.

## 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.

## 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 #6-1

Petitioners:	William Brinton Shone & Tatjana Rizzo Shone
Property:	11 Elwyn Avenue
Assessor Plan:	Map 113, Lot 27
Zoning District:	General Residential A (GRA)
Description:	Installation and placement of HVAC condensers.
Requests:	Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.515.14 to allow a 7'± setback where 10' is required.

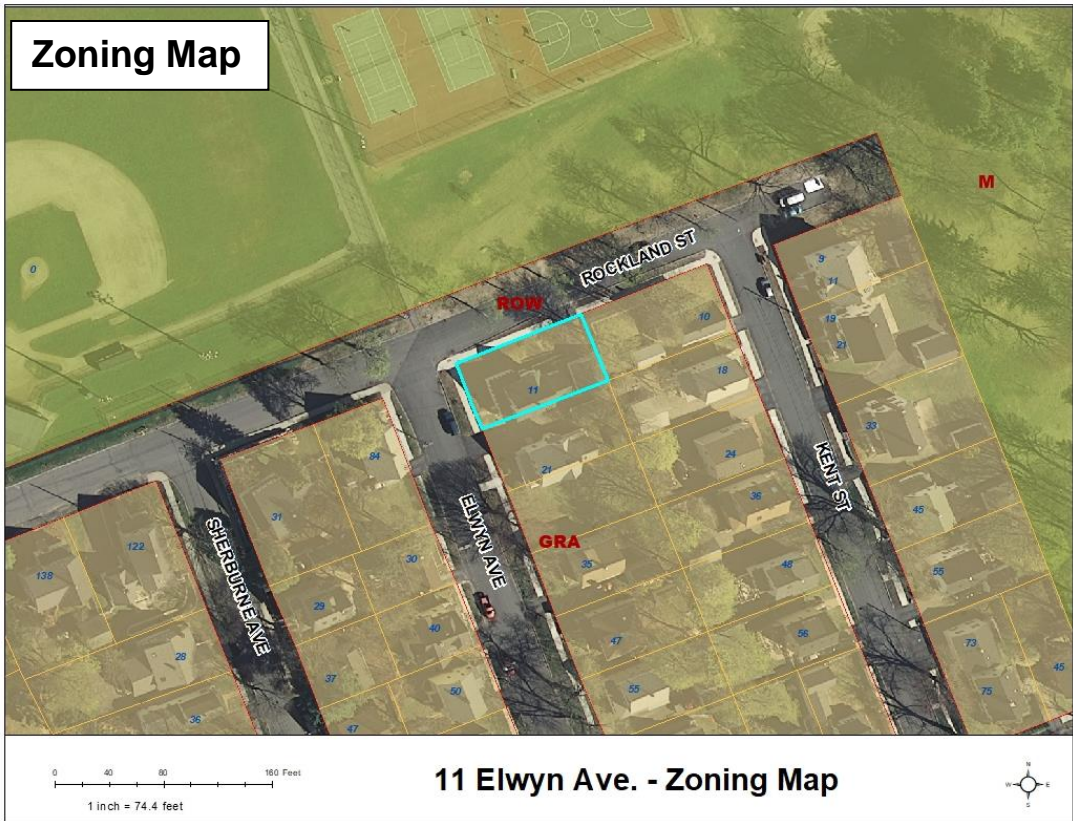
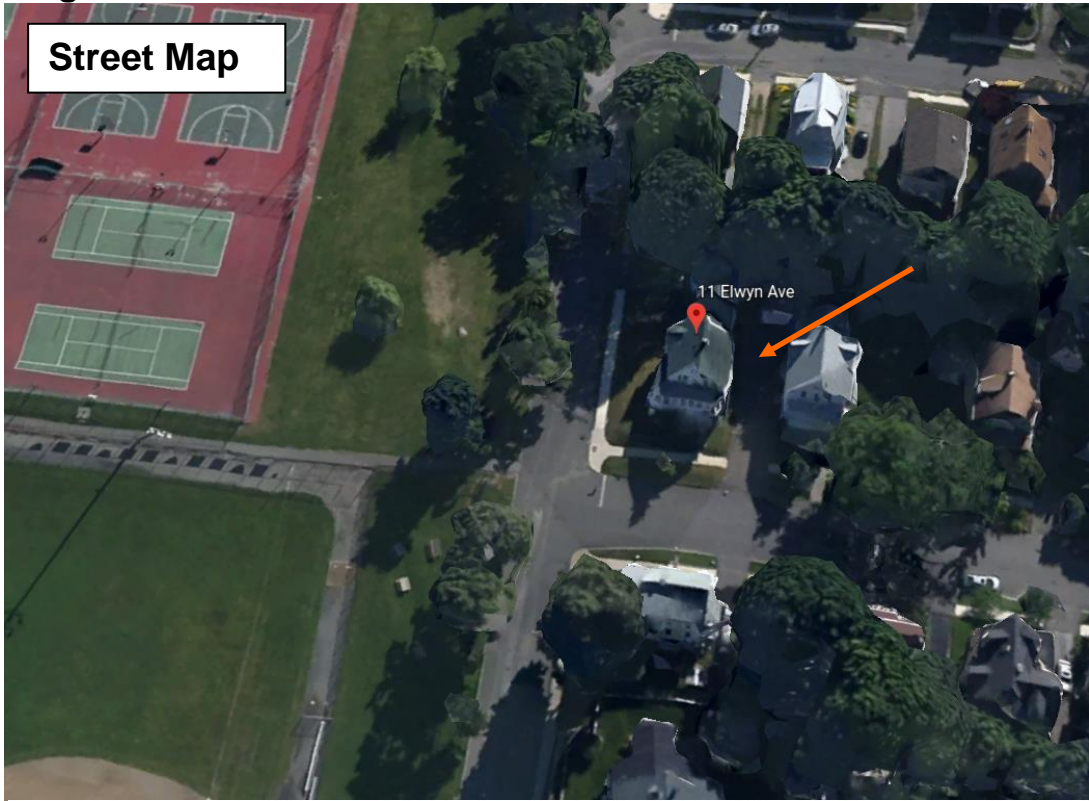
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Addition	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	5,000	5,000	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,000	5,000	7,500 min.
<u>Street Frontage (ft.):</u>	100	100	100 min.
<u>Lot depth (ft.):</u>	100	100	70 min.
<u>Primary Front Yard (ft.):</u>	22	22	15 min.
<u>Secondary Front Yard (ft.):</u>	14'9"	14'9"	15 min.
<u>Right Yard (ft.):</u>	5	<b>7 (condensers)</b>	10 min.
<u>Rear Yard (ft.):</u>	2	2	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	40	40	25 max.
<u>Open Space Coverage (%):</u>	40	40	30 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1900	<b>Variance request shown in red.</b>	

### Other Permits/Approvals Required

None

# Neighborhood Context



## Previous Board of Adjustment Actions

September 18, 2018 – after tabling the petition at the August meeting, the Board met and **granted** variances for an infill addition and dormer by allowing the following: a) a 5' right side yard, 10' required; b) 40% building coverage where 25% is the maximum allowed; c) a 14'10" rear yard where 20' was required; and, d) an existing nonconforming building or structure to be extended, reconstructed, or enlarged without meeting the requirements of the Ordinance.

## Planning Department Comments

The applicant received variances in 2018 as detailed in the history above and is now looking to locate condenser units which require a 10 foot setback and cannot be located closer to the street than the front of the principal structure. The size of the units meet the criteria for Section 10.515.14 (less than 36" above ground and mounting pad not exceeding 10 square feet) and units of this size do not count towards building coverage.

## 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 #6-2

Petitioners: Eric D. Weinrieb & Rebecca L. Hopkins  
 Property: 9 Middle Road  
 Assessor Plan: Map 152, Lot 47  
 Zoning District: General Residence A (GRA)  
 Description: Reconstruct deck and stairs with deck expansion.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
 1. from Section 10.521 for a 7'± secondary front yard where 15' is required.

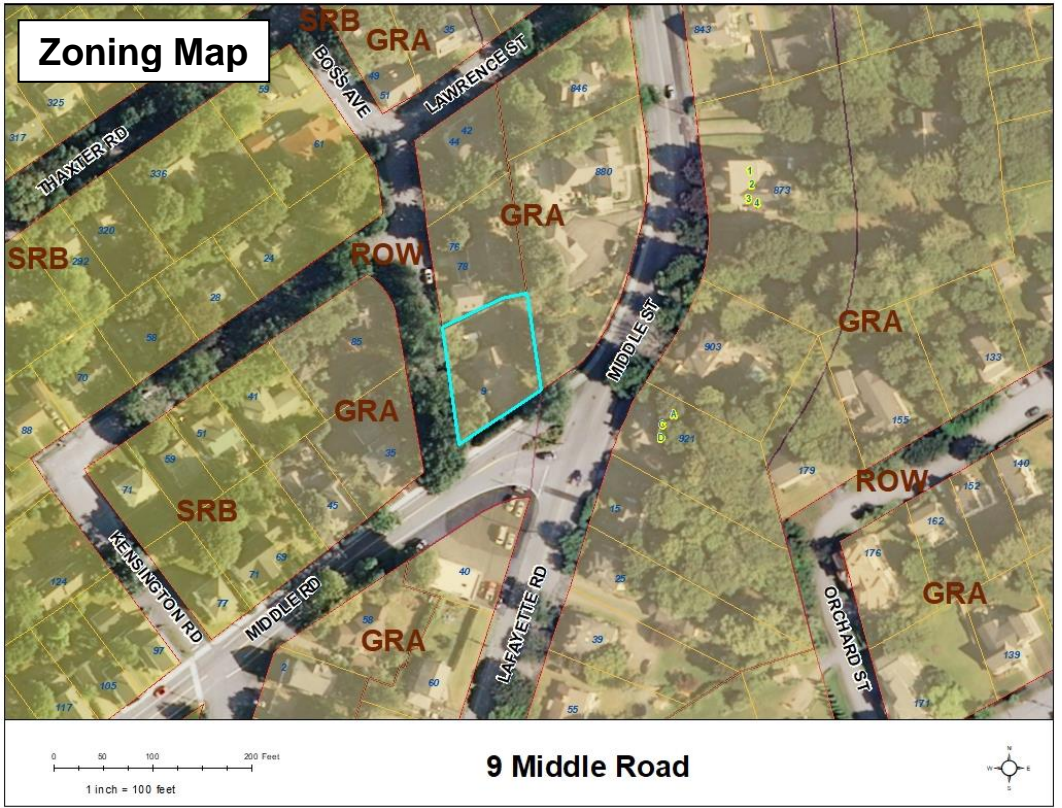
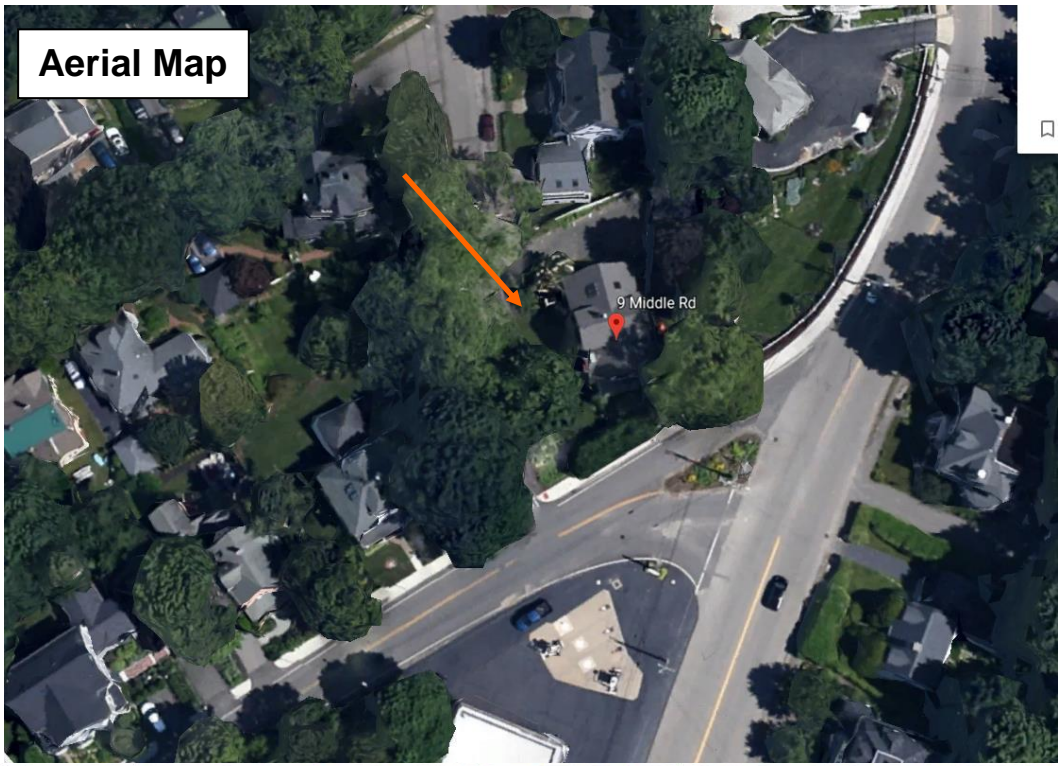
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Deck expansion	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	10,047	10,047	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,047	10,047	7,500 min.
<u>Street Frontage (ft.):</u>	106	106	100 min.
<u>Lot depth (ft.):</u>	66	66	70 min.
<u>Primary Front Yard (ft.):</u>	9	9	15 min.
<u>Secondary Front Yard (ft.):</u>	7	<b>7</b>	15 min.
<u>Right Yard (ft.):</u>	3 (garage)	>10 (deck)	10 min.
<u>Rear Yard (ft.):</u>	1 (garage)	>20 (deck)	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	<25	<25	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1915	<b>Variance request shown in red.</b>	

### Other Permits/Approvals Required

None.

### Neighborhood Context





## Previous Board of Adjustment Actions

November 20, 2001 – The Board granted a variance to allow a lot line relocation resulting in a 2.8' rear yard for an existing 20.4' x 27.4' garage, 10.2' required.

## Planning Department Comments

The applicant is seeking relief for reconstruction of an existing deck and stairs with a modest increase in the width of the deck. The subject property is a corner lot with two front yards. Staff would note the requested relief is measured to the bottom of the stairs, which are at a height less than 18 inches. The setback or yard requirement would be measured to the part of the structure that is 18 inches or greater, and the secondary front yard appears closer to 8 feet. If the Board grants the requested relief, staff would not recommend adding a plus/minus range 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 #6-3**

Petitioners:	Nancy H. Alexander Revocable Trust, Nancy H. Alexander, Trustee, owner and High Definition Fitness, LLC, applicant
Property:	620 Peverly Hill Road
Assessor Plan:	Map 254, Lot 6
Zoning District:	Industrial District (I)
Description:	Yoga studio.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A special exception from Section 10.440, Use #4.40 to allow a yoga studio up to 2,000 s.f. of gross floor area in the Industrial District.

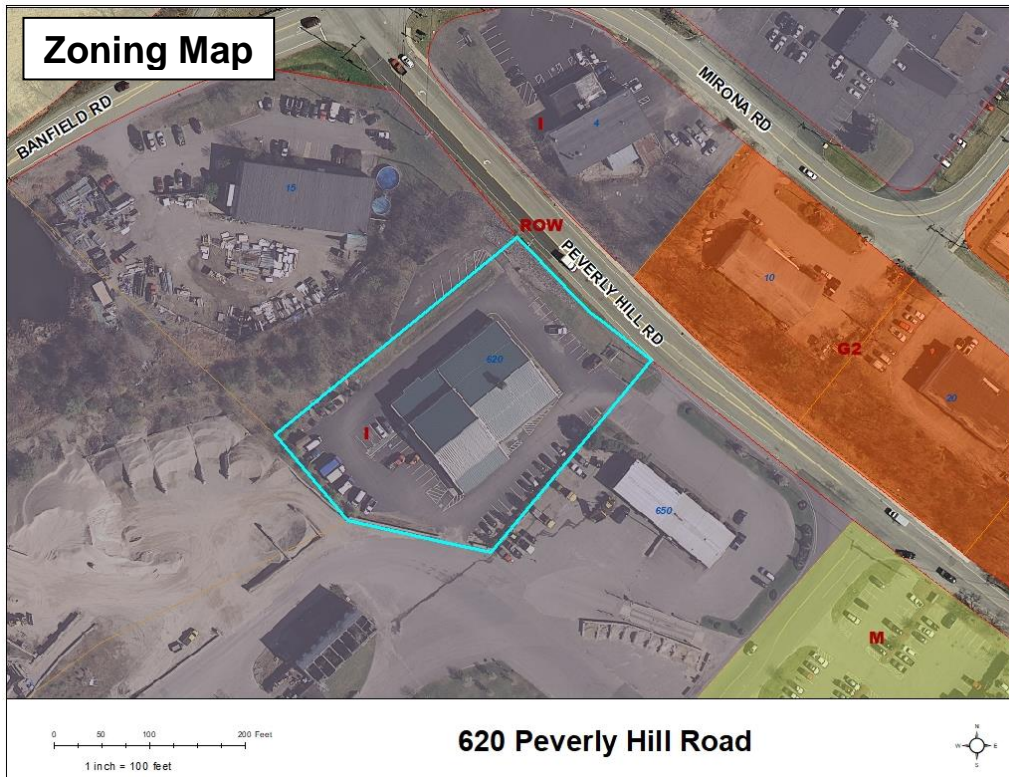
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant space	<b>Yoga Studio</b>	Primarily Industrial uses
<u>Lot area (sq. ft.):</u>	1.58 ac.	1.58 ac.	2 ac. min.
<u>Lot depth (ft.):</u>	294	294	200 min.
<u>Street Frontage (ft.):</u>	190	190	200 min.
<u>Primary Front Yard (ft.):</u>	77	77	70 min.
<u>Left Yard (ft.):</u>	51	51	50 min.
<u>Right Yard (ft.):</u>	50	50	50 min.
<u>Rear Yard (ft.):</u>	50	50	50 min.
<u>Height (ft.):</u>	<70	<70	70 max.
<u>Building Coverage (%)</u> :	22	22	50 max.
<u>Open Space Coverage (%)</u> :	24	24	20 min.
<u>Parking:</u>	60	60	54* see PD comments
<u>Estimated Age of Structure:</u>	2000	<b>Special Exception shown in red.</b>	

**Other Permits/Approvals Required**

None

# Neighborhood Context



## Previous Board of Adjustment Actions

September 19, 2000 – The Board **granted** a variance to allow parking 31' from the front property line where 50' was required.

May 27, 2008 – The Board **denied** a request, postponed from the first meeting on May 20<sup>th</sup>, to allow a private school for grades 6 through 12 in a district where such use was not allowed.

August 21, 2012 – The Board **granted** a special exception to allow a martial arts studio to operation in 2,000+ s.f. gross floor area and a variance to allow 69 parking spaces for the property where 80 parking spaces were required.

January 15, 2019 – The Board **granted** a special exception to allow a health club (children's gym) with a gross floor area exceeding 2,000 s.f.

## Planning Department Comments

In January, a special exception was granted to allow a children's gym, Rumble Tumble. That application indicated there were 60 parking spaces and the parking requirement for all the uses, including Rumble Tumble, was 53 spaces. When a change of use occurs, the off-street parking requirements for all uses (existing and proposed) must be verified. The proposed use is utilizing space that previously was office use resulting in a net increase of 1 parking space; the office space required 7 and the proposed use will require 8 spaces. The applicant has indicated Rumble Tumble is not moving into the space however Rumble Tumble's approval is valid for two years and in that time they could occupy this space. The parking would still be adequate, increasing the requirement from 53 to 54 spaces.

## Review Criteria

The application must meet all of the standards for a **special exception** (see Section 10.232 of the Zoning Ordinance).

1. *Standards as provided by this Ordinance for the particular use permitted by special exception;*
2. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*
3. *No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;*
4. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*
5. *No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and*
6. *No significant increase of stormwater runoff onto adjacent property or streets.*

**Case #6-4**

Petitioners:	2422 Lafayette Road Associates, LLC, owner, Pinz Portsmouth, LLC, applicant
Property:	2454 Lafayette Road
Assessor Plan:	Map 273, Lot 3
Zoning District:	Gateway Neighborhood Mixed Use Corridor District (G1)
Description:	Restaurant/bar with 250 – 500 patrons and a bowling alley.
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"> <li>1. A Special Exception from Section 10.440, Use #9.12 to allow a nightclub or bar with an occupant load from 250 to 500 where the use is only allowed by special exception.</li> <li>2. A Special Exception from Section 10.440, Use #4.20 to allow an indoor amusement use where the use is only allowed by special exception.</li> </ol>

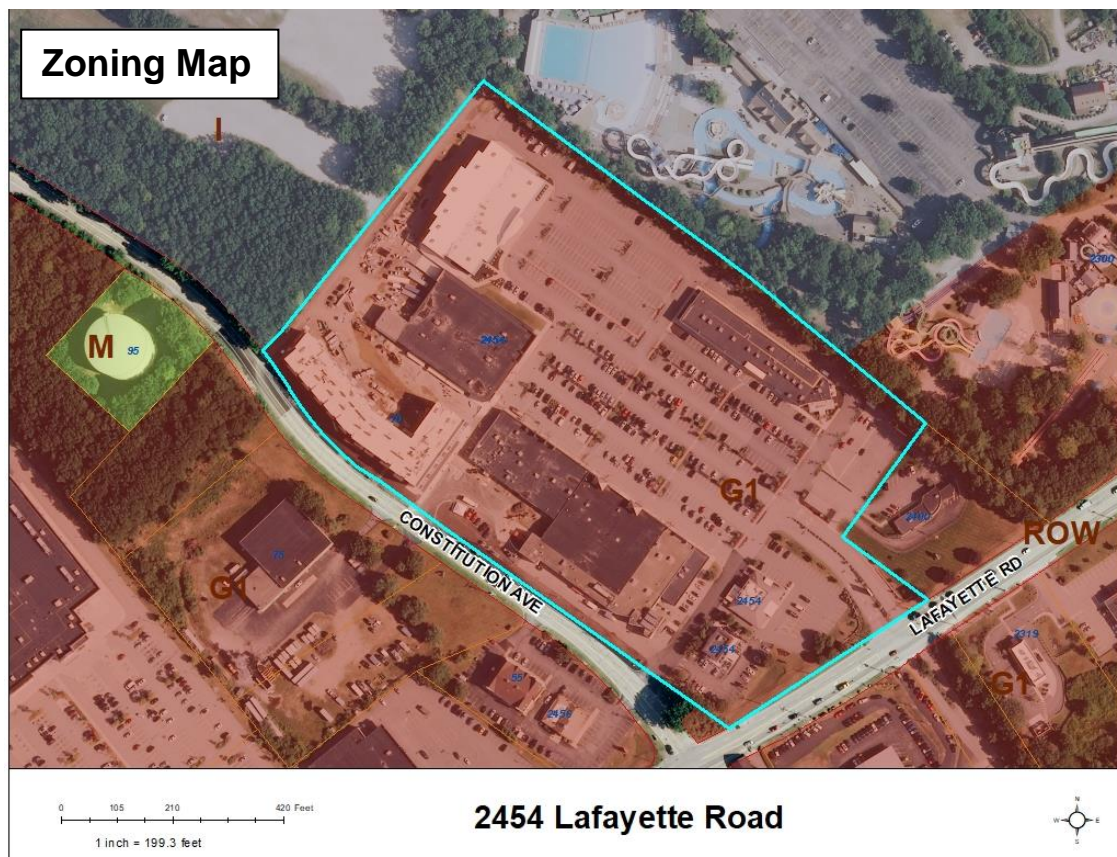
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant (former Big Lots)	<b>Bowling Alley Rest./Bar w/ 250 – 500 patrons</b>	Primarily mixed uses
<u>Estimated Age of Structure:</u>		<b>Special Exception requests shown in red.</b>	

**Other Permits/Approvals Required**

Amended Site Plan

# Neighborhood Context



## Previous Board of Adjustment Actions

March 23, 2004 – the Board **granted** a variance to allow a 75' front yard where 105' is the minimum required. The Board **denied** a Special Exception to allow a 2,400± s.f. car wash in a district where such use is allowed by Special Exception.

April 21, 2009 – The Board **granted** a variance to allow 731 parking spaces to be provided where 1,090 parking spaces are required in conjunction with renovations to the existing shopping center.

September 15, 2009 – The Board **granted** variances to allow the following the following:

- A primary free standing sign of 350 s.f. where 150 s.f. is allowed;
- A sign 17'10" in height where 25' is the maximum allowed;
- Two additional signs at the primary entrance where they are not allowed;
- The placement of structures within the right-of-way along Route 1 with a setback of 20' where 105' is required;
- The placement of a structure within the right-of-way along Route 1 with a setback of 50' where 105' is required.

The variances were granted with the **stipulation** that there be no lettering on the two stone walls at the main entryway, which were solely approved as an architectural element.

July 24, 2012 – The Board **granted** a variance to allow 859 parking spaces where 457 parking spaces are required and 503 parking spaces are the maximum allowed.

October 15, 2013 – The Board **granted** a variance to install a 225 s.f. sign on a cinema parapet where 100 s.f. is the maximum sign area allowed for a parapet sign.

August 18, 2015 – The Board **granted** variances to allow the following: (a) required off-street parking spaces (for an existing parking area) to be located between a principal building and a street; and (b) a front yard setback of 151' where 90' was the maximum allowed (measured from the centerline of Lafayette Road).

October 25, 2016 – The Board **granted** variances to allow the following signage: a) a sign on a façade of a building that does not face a street and where no public entrance exists; b) two directional signs each 7s.f. in area where 4 s.f. is the maximum allowed; c) 2 free-standing pre-order menu boards where they were not visible from a public right-of-way; and d) an existing non-conforming pylon sign to be modified without bringing it into conformance.

## Planning Department Comments

The proposal is for a bowling alley with a restaurant that will have an outdoor dining area. Both uses are allowed by Special Exception in the G1 district. At the time of writing this staff report, an updated parking calculation had not been provided. Staff has asked the applicant to provide one prior to the meeting. As the history shows, in 2012



the property received relief to provide more than the allowed parking, 859 spaces where 457 are required. The signage that is proposed for this site will require several variances and a sign permit has been submitted to the City. No application has been filed for this Board for the signage.

### **Review Criteria**

The application must meet all of the standards for a **special exception** (see Section 10.232 of the Zoning Ordinance).

1. *Standards as provided by this Ordinance for the particular use permitted by special exception;*
2. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*
3. *No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;*
4. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*
5. *No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and*
6. *No significant increase of stormwater runoff onto adjacent property or streets.*

**Case #6-5**

Petitioners:	Richard Fusegni
Property:	201 Kearsarge Way
Assessor Plan:	Map 218, Lot 5
Zoning District:	Single Residence B (SRB)
Description:	Subdivide one lot into three.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <p>1. A Variance from Section 10.521 to allow a 83'± of continuous street frontage where 100' is required.</p>

**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>			<u>Permitted / Required</u>	
<u>Land Use:</u>	1 lot	3 lots	1	2	3	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	<b>83</b>	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 - Subdivision

# Neighborhood Context



## 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.

## 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. It appears the current relief that is being sought is self-induced as a result of the subdivision of the corner lot in 2018.

## Review Criteria

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

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

**AND**

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

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

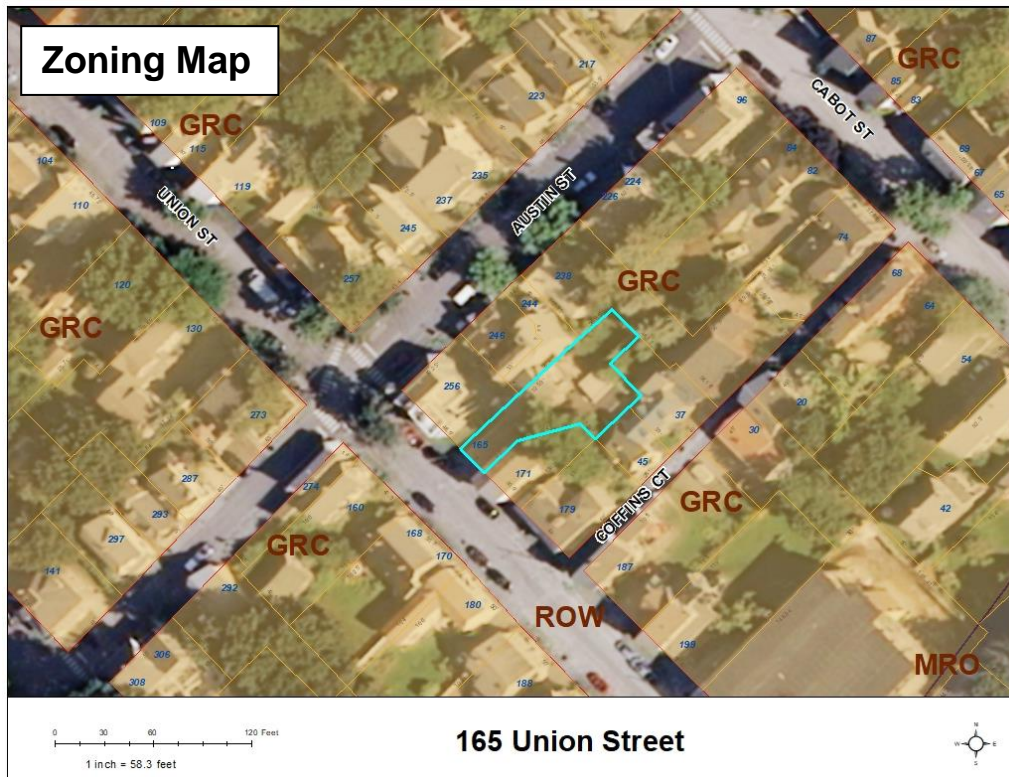
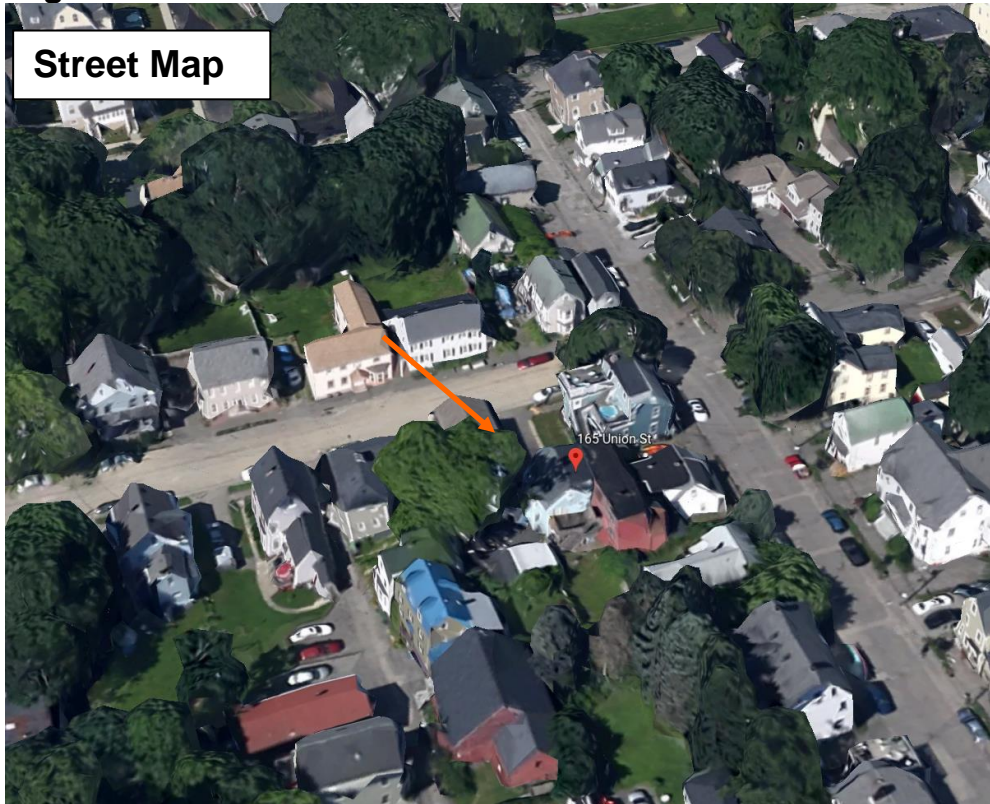
**Case #6-6**

Petitioners: Joel Johnson  
 Property: 165 Union Street  
 Assessor Plan: Map 135, Lot 65  
 Zoning District: General Residence C (GRC)  
 Description: After-the-fact variances for third floor dormer and deck.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
 1. A variance from Section 10.521 to allow a 2'± left side yard where 10' is required for the dormer.  
 2. A Variance from Section 10.521 to allow a 3.5'± left side yard where 10' is required for the deck.  
 3. 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.

	<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>	4,144	4,144	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,144	4,144	3,500 min.
<u>Street Frontage (ft.):</u>	21	21	70 min.
<u>Lot depth (ft.):</u>	>50	>50	50 min.
<u>Primary Front Yard (ft.):</u>	50	50	5 min.
<u>Right Yard (ft.):</u>	8 (house)	8 (house)	10 min.
<u>Left Yard (ft.):</u>	2 (house) 3.5 (deck)	<b>2 (house)</b> <b>3.5 (deck)</b>	10 min.
<u>Rear Yard (ft.):</u>	>40	>40	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	30	30	35 max.
<u>Open Space Coverage (%):</u>	>20	>20	20 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1870	<b>Variance requests shown in red.</b>	

**Other Permits/Approvals Required**  
None.

**Neighborhood Context**



## Previous Board of Adjustment Actions

No BOA history found.

## Planning Department Comments

In obtaining a demo permit as a result of water damage, the applicant discovered the third floor dormer and rear deck were built without permits by a previous owner and is now seeking to get after-the-fact variances for these additions.

## 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 #6-7**

Petitioners:	Charles J. & Kimberlee S. McCue
Property:	105 Middle Road
Assessor Plan:	Map 152, Lot 18
Zoning District:	Single Residence B (SRB)
Description:	Second floor bedroom 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"> <li>1. A Variance from Section 10.521 to allow a 5'± right side yard where 10' is required.</li> <li>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.</li> </ol>

**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>	5,938	5,938	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,938	5,938	15,000 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.):</u>	118	118	100 min.
<u>Primary Front Yard (ft.):</u>	0	0	30 min.
<u>Right Yard (ft.):</u>	5	<b>5</b>	10 min.
<u>Left Yard (ft.):</u>	22	22	10 min.
<u>Rear Yard (ft.):</u>	>30	>30	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	22	22	20 max.
<u>Open Space Coverage (%):</u>	77	77	40 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1900	<b>Variance requests shown in red.</b>	

**Other Permits/Approvals Required**

None.



# Neighborhood Context



## Previous Board of Adjustment Actions

October 28, 2014 – The Board **granted** variances for the reconstruction of a 10' x 18' rear addition and stairs in the same footprint, with a 5' right side yard, 10' required, 22.2% building coverage where 20% was the maximum allowed, and a lawful nonconforming building or structure to be extended or reconstructed without conforming to the requirements of the Ordinance.

## Planning Department Comments

The applicant is proposing a second story addition within the existing footprint of the house. The house currently sits 5 feet from the right property line, requiring relief for the upward expansion within the right yard.

## Review Criteria

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

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

**AND**

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

**OR**

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

## Case #6-8

Petitioners: Andrew J. Marden  
 Property: 60 Elwyn Avenue  
 Assessor Plan: Map 113, Lot 22  
 Zoning District: General Residence A (GRA)  
 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 the following: a) 3,457± s.f. lot area and lot area per dwelling unit where 7,500 s.f. is the minimum required; b) to allow 2,943± s.f. lot area and lot area per dwelling unit where 7,500 is the minimum required; c) to allow 50'± of continuous street frontage where 100' is required; d) to allow lot depths of 58'± and 68'± where 70' is the minimum required; and e) to allow 30%± building coverage where 25% is the maximum allowed.

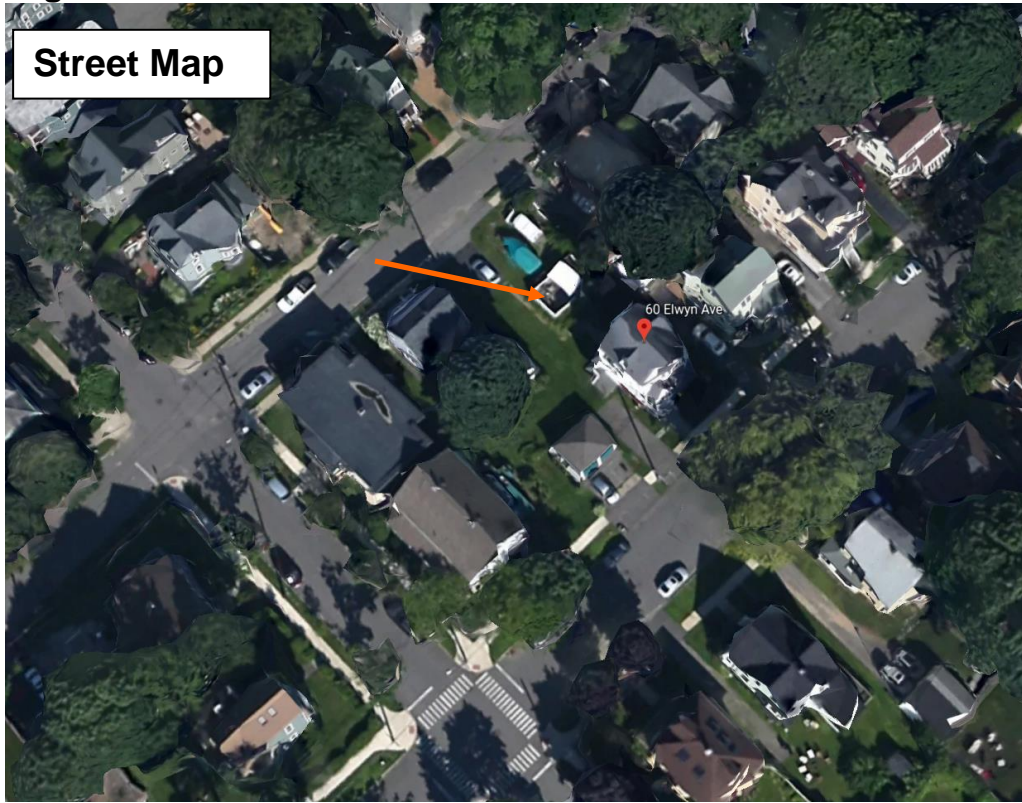
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>		<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Subdivide into 2 lots Lot 1    Lot 2		Primarily residential
<u>Lot area (sq. ft.):</u>	6,400	<b>3,457</b>	<b>2,943</b>	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,500	<b>3,457</b>	<b>2,943</b>	7,500 min.
<u>Lot depth (ft.):</u>	170	<b>68</b>	<b>58</b>	70 min.
<u>Street Frontage (ft.):</u>	50	<b>50</b>	<b>50</b>	100 min.
<u>Primary Front Yard (ft.):</u>	13.5	13.5*	8.3*	15 min.
<u>Left Yard (ft.):</u>	>10	>10	10	10 min.
<u>Right Yard (ft.):</u>	6.3	6.3	10	10 min.
<u>Rear Yard (ft.):</u>	78.8	20	20	20 min.
<u>Height (ft.):</u>	<35	<35	NA	35 max.
<u>Building Coverage (%):</u>	15	<b>30</b>	NA	25 max.
<u>Open Space Coverage (%):</u>	64	54	NA	30 min.
<u>Estimated Age of Structure:</u>	1905	<b>Variance shown in red.</b> *Ok per front yard averaging 10.516.10		

### Other Permits/Approvals Required

Subdivision.

## Neighborhood Context



## Previous Board of Adjustment Actions

No BOA history found.

### **Planning Department Comments**

The applicant is proposing to subdivide the lot into two lots, where both need relief for lot area/lot area per dwelling, frontage, lot depth and building coverage. The current lot is the last on this block that fronts on Elwyn and Sherburne Avenue. The front yard on the new vacant lot can utilize the front yard alignment to build approximately 8+/- feet from the front property line.

**If granted approval, staff would recommend the accessory items, hot tub and shed, be removed prior to recording the subdivision.**

### **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 #6-9

Petitioners: Haven Properties LLC  
 Property: 187 McDonough Street  
 Assessor Plan: Map 144, Lot 43  
 Zoning District: General Residence C (GRC)  
 Description: Demolish existing home and construct new dwelling; including lot line revision.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
 1. Variances from Section 10.521 to allow the following: a) a 4'± right side yard where 10' is required; b) a 2'± left yard where 10' is required; c) a 10'± rear yard where 20' is required d) 49%± building coverage where 35% is the maximum allowed e) a lot area and lot area per dwelling unit of 2,537± s.f. where 3,500 is required; and f) 48'± of continuous street frontage where 70' 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	Single-family	Primarily residential uses
<u>Lot area (sq. ft.):</u>	1,868	<b>2,537</b>	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,868	<b>2,537</b>	3,500 min.
<u>Street Frontage (ft.):</u>	48	<b>48</b>	70 min.
<u>Lot depth (ft.):</u>	46	57	50 min.
<u>Primary Front Yard (ft.):</u>	1	1*	5 min.
<u>Right Yard (ft.):</u>	14	<b>4</b>	10 min.
<u>Left Yard (ft.):</u>	0	<b>2</b>	10 min.
<u>Rear Yard (ft.):</u>	0	<b>10</b>	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	46	<b>49</b>	35 max.
<u>Open Space Coverage (%):</u>	47	41	20 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1870	<b>Variance requests shown in red.</b> *ok per front yard alignment Section 10.516.10	

# Other Permits/Approvals Required

Planning Board – Lot line Revision

## Neighborhood Context



## Previous Board of Adjustment Actions

No BOA history was found.

## Planning Department Comments

The applicant is proposing to demolish the existing home, acquire 10 feet of additional land from the railroad along the rear property line and construct a new dwelling unit. The lot line revision will provide a larger lot than what exists today, however it will still be nonconforming for lot area/lot area per dwelling and frontage. The proposed structure will not conform to the rear yard, right and left yards and building coverage. Due to the alignments of the existing front yards on adjacent properties, the 1 foot front yard is allowed. If granted approval, the Board may want consider a stipulation that allows a plus/minus range for the left, right and rear yards 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.*