

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: November 12, 2019
RE: Zoning Board of Adjustment November 19, 2019 Meeting

OLD BUSINESS

1. Case 8-11 0 (53) Daniel Street – Request to Postpone

NEW BUSINESS

1. Case 11-1 105 Corporate Drive
2. Case 11-2 53 Tanner Street
3. Case 11-3 51 Cottage Street
4. Case 11-4 57 Porpoise Way
5. Case 11-5 1981 Woodbury Avenue
6. Case 11-6 492 Union Street
7. Case 11-7 100 Islington Street
8. Case 11-8 272 Ocean Road
9. Case 11-9 284 New Castle Avenue

OLD BUSINESS

Petition of **Dagny Taggart, LLC** for property located at **0 (53) Daniel Street** for a five-story building with mixed commercial uses wherein variances from Section 10.5A41 & Figure 10.5A41.10C are required to allow the following: a) a building footprint up to 17,500 s.f. where 15,000 s.f. is the maximum allowed; and b) a 3' rear yard where 5' is required. Said property is shown on Assessor Plan 107, Lot 27 and lies within Character District 4 and the Downtown Overlay District.

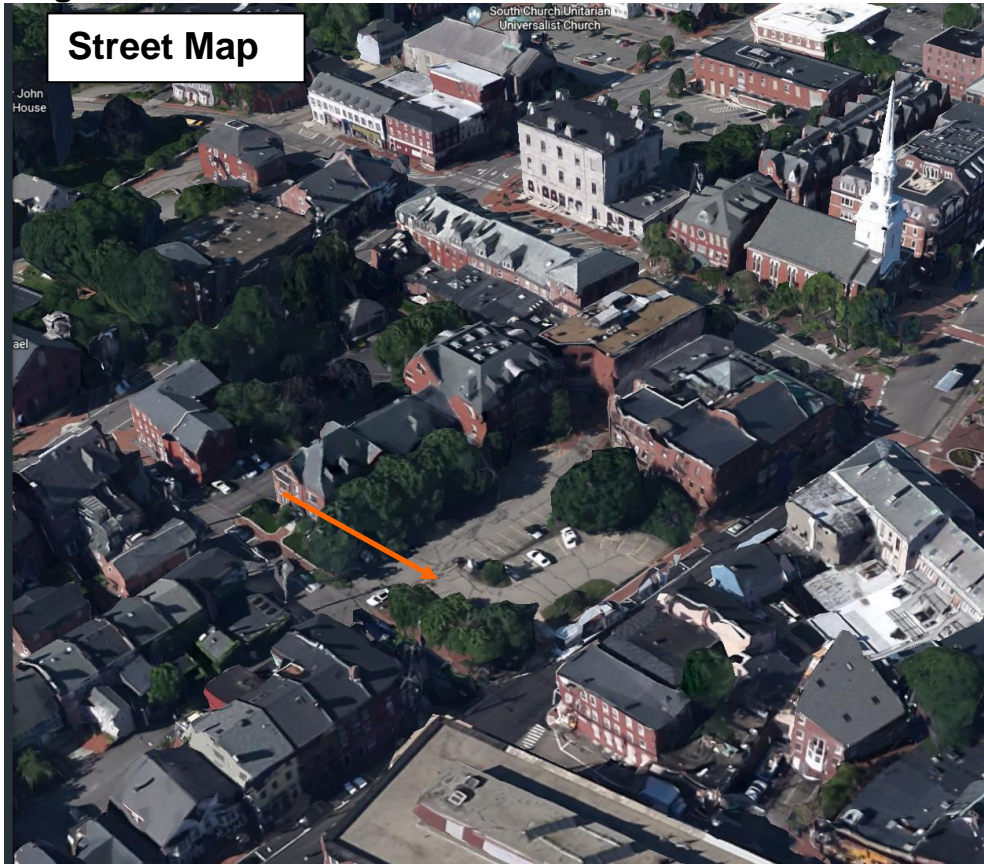
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Parking lot	Mixed Commercial building	Mixed Use
<u>Lot area (sq. ft.):</u>	23,279	23,279	NR min.
<u>Primary Front Yard (ft.):</u>	NA	<10	10 max.
<u>Secondary Front Yard (ft.):</u>	NA	<15	15 max.
<u>Rear Yard (ft.):</u>	NA	3	Greater of 5' from rear lot line or 10' from center of alley
<u>Height (ft.):</u>	NA	40'-7"*	2-3 Stories 40' max.
<u>Building Coverage (%):</u>	0	75	90 max.
<u>Open Space Coverage (%):</u>			10 min.
<u>Building Footprint:</u>	NA	17,500	15,000 max.
		Variance shown in red. *10.5A43.33 height incentive for providing 20% community space if development is at least 1 acre in size.	

Other Permits/Approvals Required

Planning Board/TAC – Site Review
 Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

July 15, 2008 – (as off Daniel Street) - The Board **granted** a variance to allow a prefabricated 4' x 6' metal and glass parking attendant booth less than 20' in height where a minimum of 20' in height was required for buildings.

Planning Department Comments

The applicant is proposing a new building where the current Bank of America parking lot exists at the corner of Penhallow and Daniel Street. This building is part of a development that includes 2 Pleasant and 30 Penhallow Street. The applicant has indicated they may not need the requested building footprint size, but in order to plan accordingly, has asked for the 17,500 s.f. footprint. The applicant has had 2 work sessions with the HDC.

UPDATE: A request to postpone from the October meeting was granted and the applicant is now requesting to postpone until December as they are still working on the site design for this project.

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 #11-1

Petition of Pease Rehab LLC c/o Northeast Rehab for property located at **105 Corporate Drive** wherein relief is required from the Zoning Ordinance to construct a 30,910 s.f. addition over two floors that requires a Variance from Part 304.04(e) of the Pease Development Authority’s Zoning Ordinance to allow a 10 foot setback where 50 feet is required. Said property is shown on Assessor Plan 303, Lot 7 and lies within the Airport Business Commercial District.

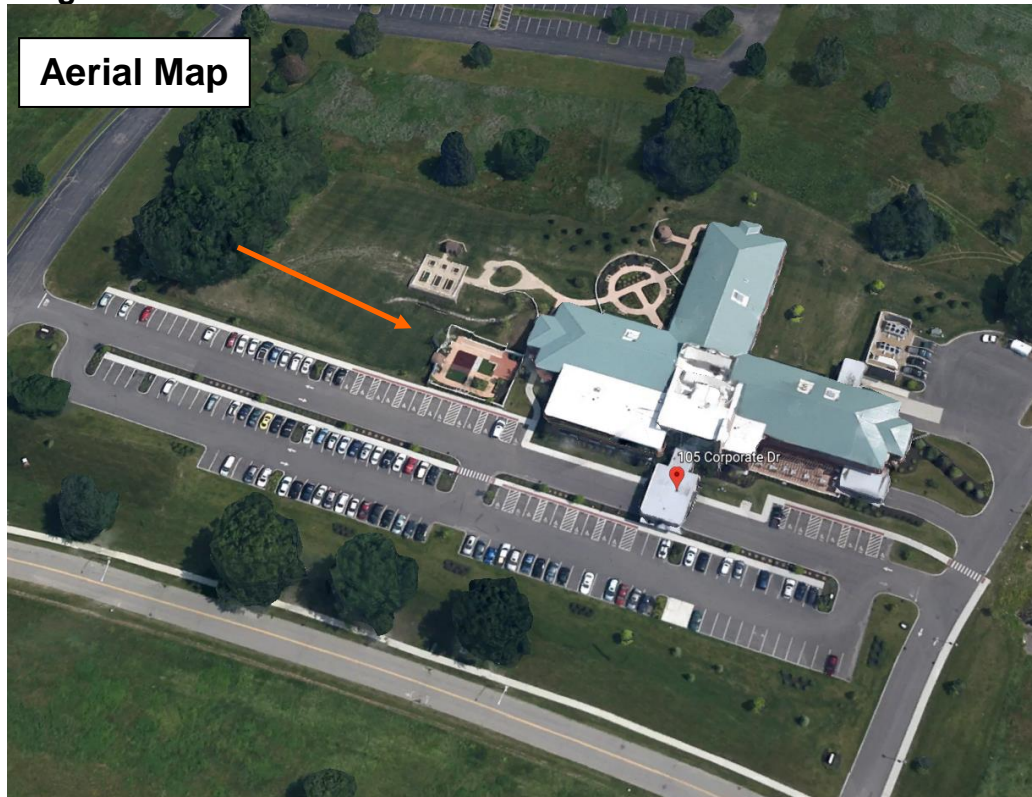
Existing & Proposed Conditions

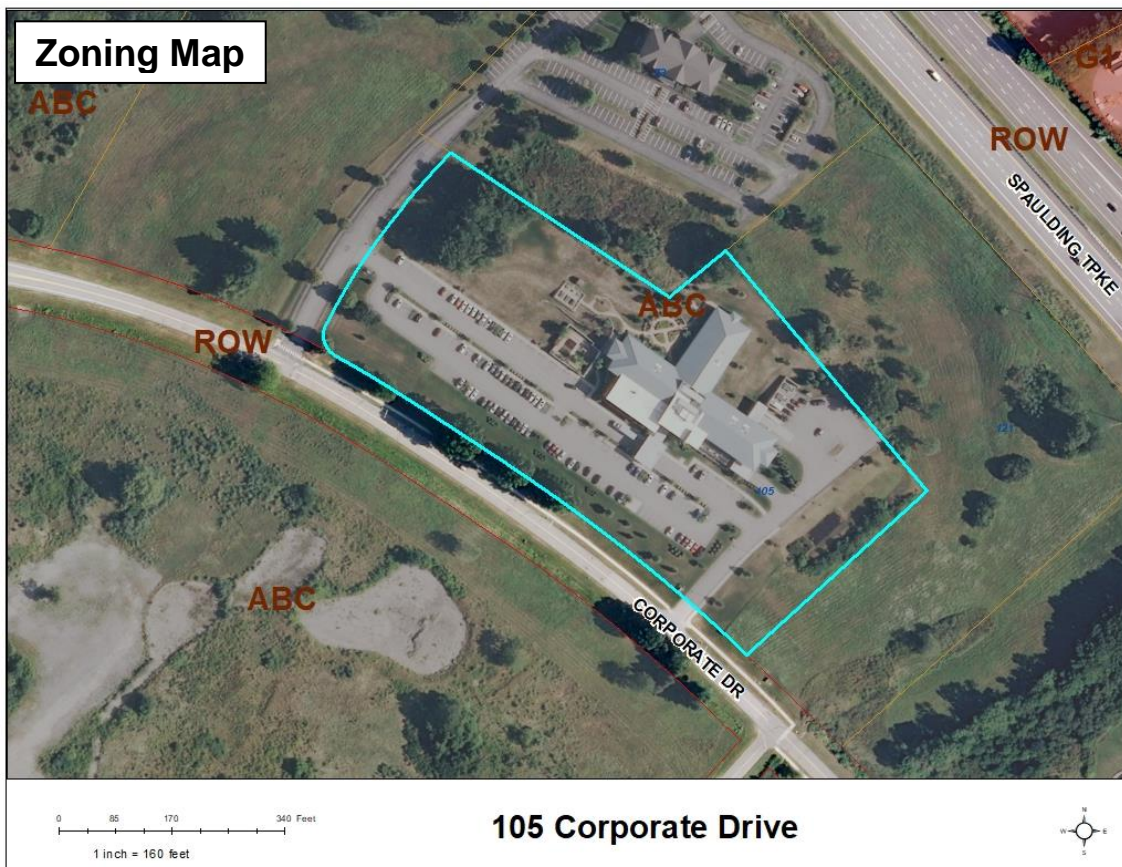
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Hospital	Addition to existing building	Buisness/Commercial
<u>Front Yard:</u>	170	191	70
<u>Left Side Yard:</u>	370	149	30
<u>Rear Yard:</u>	50	10	50
<u>Right Side Yard:</u>	212	212	30
		Variance request shown in red.	

Other Permits/Approvals Required

Site Review

Neighborhood Context





Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The minutes of the Pease Development Authority (PDA) Board meeting on are provided in the applicant's packet. The PDA Board unanimously voted to support the applicant's request to move forward to seek a variance.

The PDA has its own land use and zoning regulations and is exempt from the City's regulations ordinance. For certain parcels in Pease, variance requests are sent to the City for a recommendation from the BOA. A motion to approve or deny will be a recommendation and the recommendation will become an approval by the PDA Board after 14 days unless the applicant or PDA Board member requests a hearing (see Part 317.03(f) below).

The Chapter in the Pease Land Use Controls regarding the process for a variance is below. Part 317.03(c) states the BOA will use apply the standards in Part 317.01(c) in its review of the application. These standards are attached hereto under Review Criteria.

(a) For parcels located within the Industrial Zone, Business and Commercial Zone, Natural Resource Protection Zone or portions of the Airport Industrial Zone not acquired by the Pease Development Authority pursuant to Section 13(g) of the Surplus Property Act, requests for a variance from the provisions of this zoning rule shall be referred to the zoning board of adjustment for the municipality in which the parcel is situated for administration in accordance with the provisions of this section.

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(b) Applications for a variance for parcels referred to in Subsection (a) shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board and referred to the applicable zoning board of adjustment.

(c) The zoning board of adjustment to which the application for a variance has been referred shall, in its review of the request, apply the substantive provisions of this Chapter.

(d) Recommendations to the Board regarding requests for a zoning variance shall be made by the applicable zoning board of adjustment within sixty (60) days of referral. Notice of the recommendation shall be provided to the applicant and the Board within 48 hours of the decision.

(e) The recommendation of the applicable zoning board of adjustment shall be forwarded to the Board along with a written report detailing the reasons for any recommendation for denial or approval with conditions.

(f) A recommendation of the applicable zoning board of adjustment shall be deemed a final decision of the Board upon the expiration of fourteen (14) days from the date of notice, unless the applicant/developer or a member of the Board requests a hearing by the Board.

(g) Where a hearing has been requested, the Board shall conduct a hearing and render a final decision on the variance request within thirty (30) days.

(h) At the discretion of the Board the time period for rendering a final decision may be extended an additional thirty (30) days, or such additional time as may be consented to by the applicant.

(i) The Board may approve, conditionally approve or deny the application notwithstanding the recommendation of the applicable zoning board of adjustment. In the case of denial of any application by the Board or where the Board elects not to follow the recommendation of the applicable zoning board of adjustment, the ground(s) for such action shall be stated in writing.

Review Criteria

This application must meet the criteria for a **variance** of Part 317.01(c) of the Pease Land Use Controls below.

PART 317. VARIANCES FROM ZONING PROVISIONS

317.01 General Provisions

- (a) Requests for a variance from the provisions of this zoning rule shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board.
- (b) Applications for zoning variance approval shall set forth the specific provision of the rule or regulation involved and reasons why a variance should be granted.
- (c) A variance shall not be approved or recommended for approval unless it is in harmony with the general purpose and intent of these regulations and meets the following criteria:
 - (1) No adverse effect or diminution in values of surrounding properties would be suffered.
 - (2) Granting the variance would be of benefit to the public interest.
 - (3) Denial of the variance would result in unnecessary hardship to the person seeking it.
 - (4) Granting the variance would be substantial justice.
 - (5) The proposed use would not be contrary to the spirit of this zoning rule.
- (d) Reasonable conditions necessary to meet one or more of the standards in subsection (c) above may be attached to approval of a variance.

Case #11-2

Petition of MDM Rodgers Family Limited Partnership, owner, Charles Caldwell, applicant for property located at **53 Tanner Street** wherein relief is required from the Zoning Ordinance to convert an existing dwelling into a two-family which requires the following Variances: a) from Section 10.5A41.10A to allow a lot area per dwelling unit of 1,089 square feet where 3,000 per dwelling unit is required; b) from Section 10.5A41.10A to allow a 3' left side yard where 5 feet is required; and c) 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. Said property is shown on Assessor Plan 126, Lot 46 and lies within the Character District 4-Limited (CD4-L1).

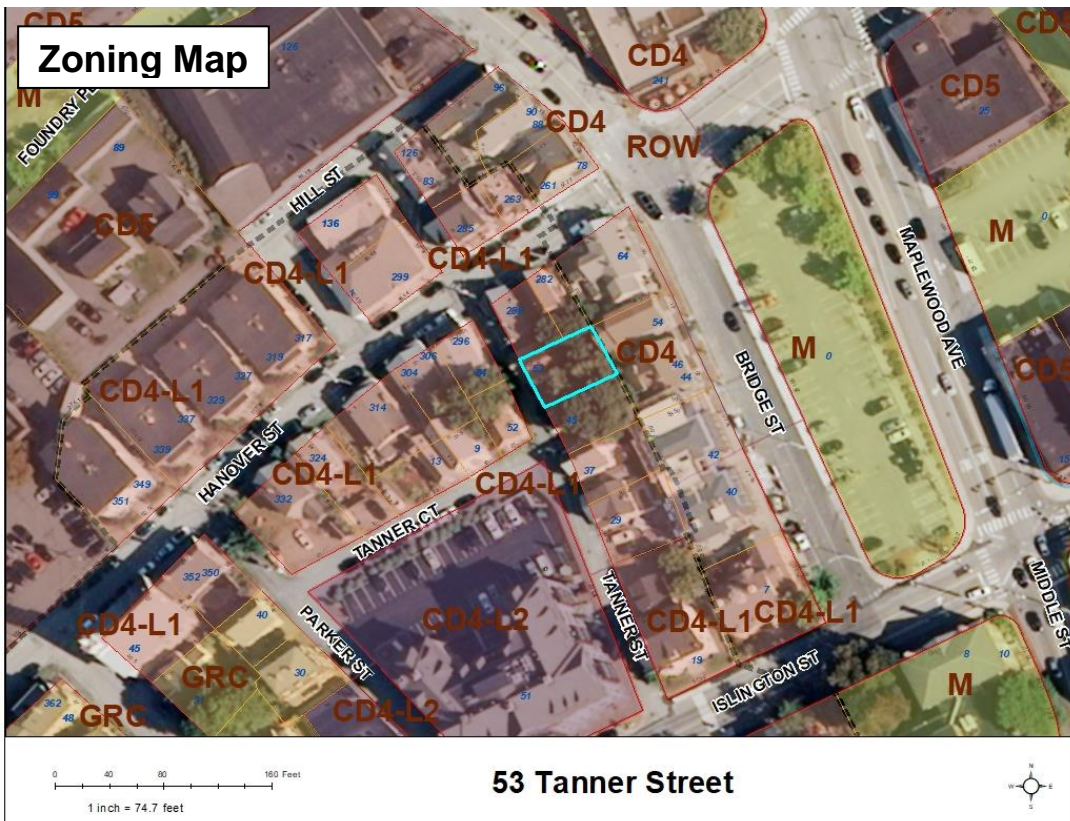
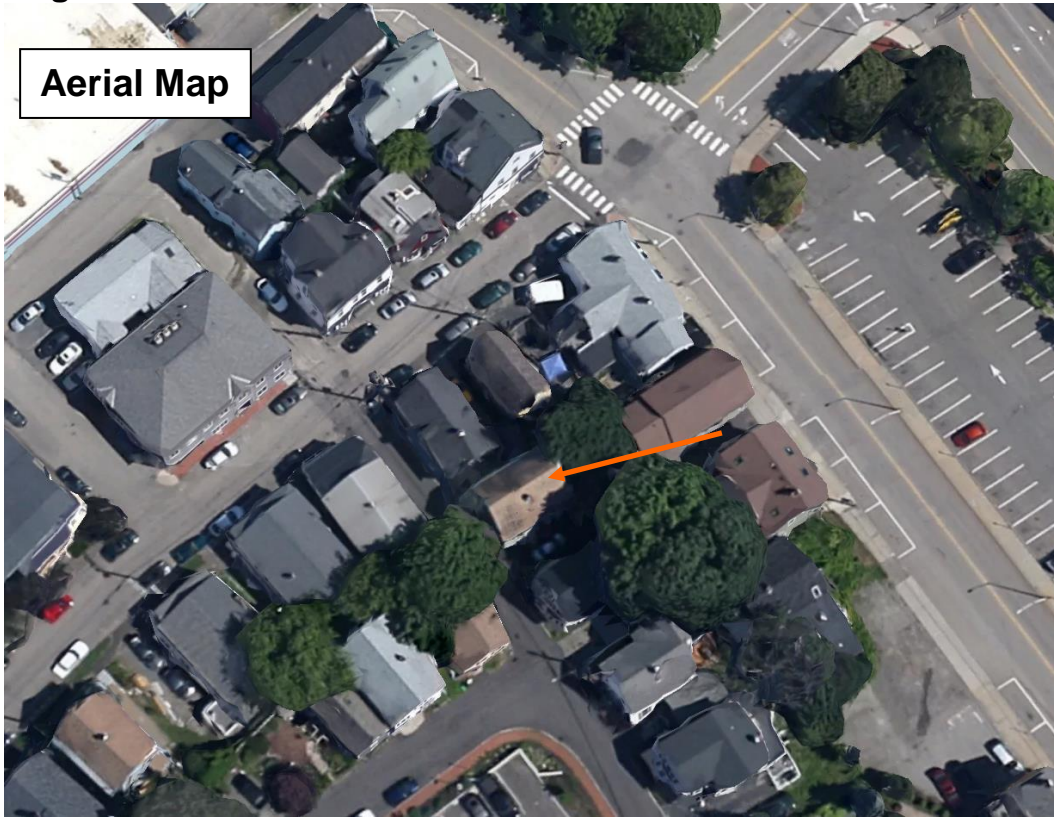
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Add second driveway	Primarily residential uses
<u>Lot area (sq. ft.):</u>	2,178	2,178	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,178	1,089	3,000 min.
<u>Front Yard (ft.):</u>	3	3	15 max.
<u>Right Yard (ft.):</u>	18	18	5 min to 20 max
<u>Left Yard (ft.):</u>	3	3	5 min to 20 max
<u>Rear Yard (ft.):</u>	21	21	Greater of 5 ft. from lot line or 10 ft. from CL of alley
<u>Height (ft.):</u>	<40	<40	2-3 stories or 40' max.
<u>Building Coverage (%):</u>	36	36	60 max.
<u>Open Space Coverage (%):</u>	34	34	25 min.
<u>Parking</u>	3	3	3
<u>Estimated Age of Structure:</u>	1900	Variance request shown in red.	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is seeking to add a second dwelling unit on the third floor of the existing house which will include construction of dormers and rear addition for a stair case that will be constructed in an existing footprint. The new construction will not encroach further into any yard than how they exist today, but will both be vertical expansions of a preexisting nonconforming structure.

Review Criteria

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

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

AND

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

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

Case #11-3

Petition of Mark & Linda Mattson Trust Agreement, Jeffrey M. & Tyler E. Mattson, Trustees for property located at **51 Cottage Street** wherein relief is required from the Zoning Ordinance to keep up to ten (10) hens that requires a Variance from Section 10.440, Use #17.20 to allow the keeping of farm animals. Said property is shown on Assessor Plan 174, Lot 18 and lies within the General Residence A District.

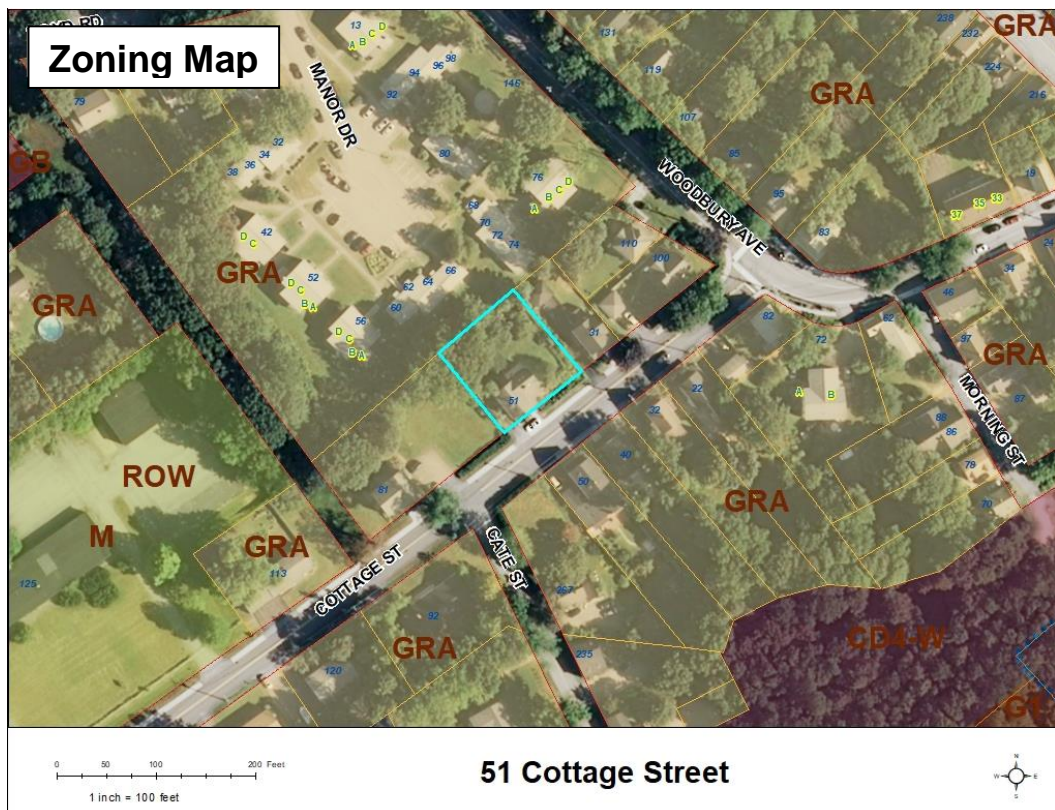
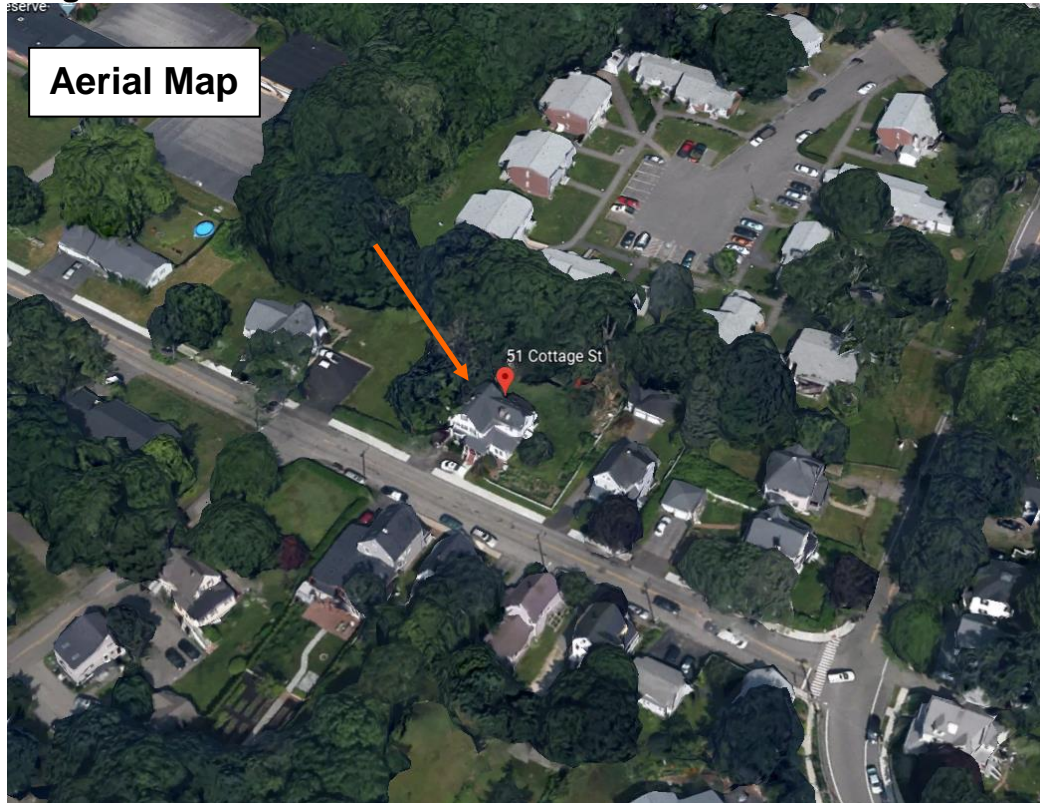
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Keeping of farm animals	Primarily residential uses
<u>Lot area (sq. ft.):</u>	10,454	10,454	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,454	10,454	7,500 min.
<u>Street Frontage (ft.):</u>	100	100	100 min.
<u>Lot depth (ft.):</u>	106	106	70 min.
<u>Front Yard (ft.):</u>	0	90 (coup)	15 min.
<u>Right Yard (ft.):</u>	40	22 (coup)	10 min.
<u>Left Yard (ft.):</u>	15	67 (coup)	10 min.
<u>Rear Yard (ft.):</u>	60	17 (coup)	20 min.
<u>Height (ft.):</u>	<35	9 (coup)	35 max.
<u>Building Coverage (%):</u>	18	18	25 max.
<u>Open Space Coverage (%):</u>	65	65	30 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1900	Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant has indicated they have had chickens for 15 years at their property. A recent complaint from a neighbor to the City about a rooster resulted in a cease and desist order. The applicant has relocated the rooster and is now seeking a variance to keep 10 hens. If the Board grants approval of the request, a stipulation that prohibits roosters should be considered.

Review Criteria

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

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

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

AND

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

OR

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

Case #11-4

Petition of Christine W. Culver for property located at **57 Porpoise Way** wherein relief is required from the Zoning Ordinance to construct a two-story addition within the existing footprint which requires the following Variances: from Section 10.521 to allow a 12.5 foot rear yard where 25 feet is required; and from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the Ordinance. Said property is shown on Assessor Plan 212, Lot 62 and lies within the General Residence B District.

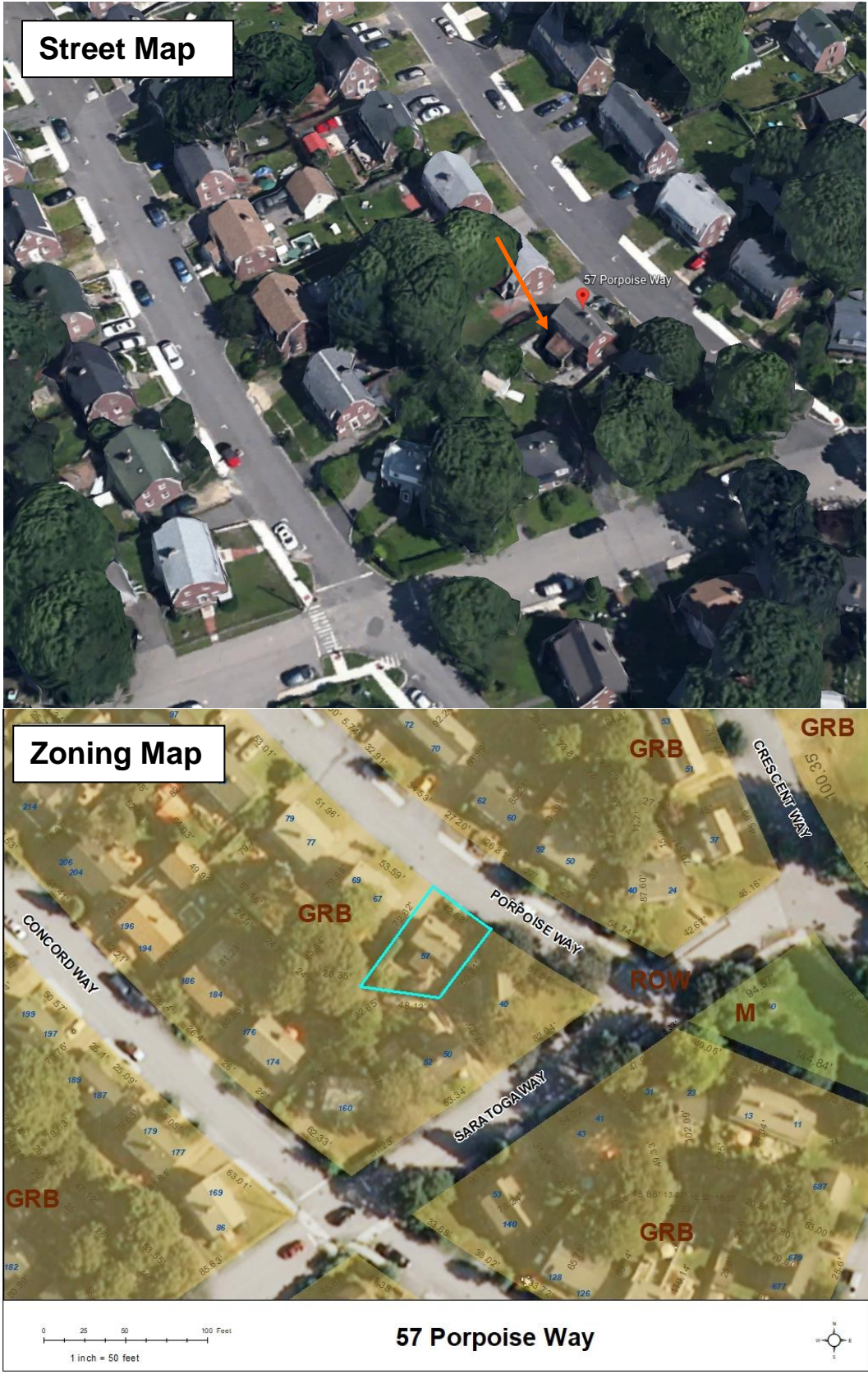
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Rear addition	Primarily residential uses
<u>Lot area (sq. ft.):</u>	2,614	2,614	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,614	2,614	5,000 min.
<u>Street Frontage (ft.):</u>	42	42	80 min.
<u>Lot depth (ft.):</u>	61	61	60 min.
<u>Front Yard (ft.):</u>	18	18	5 min.
<u>Right Yard (ft.):</u>	8	16 (addition)	10 min.
<u>Left Yard (ft.):</u>	8	16 (addition)	10 min.
<u>Rear Yard (ft.):</u>	12.5	12.5	25 min.
<u>Height (ft.):</u>	<35	15 (addition)	35 max.
<u>Building Coverage (%):</u>	24	24	30 max.
<u>Open Space Coverage (%):</u>	67	67	25 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1917	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 to replace the existing one-story rear addition with a two story addition within the same footprint. The existing footprint sits within the rear yard and the upward expansion requires a variance. The applicant noted the rear yard distance is 15 feet, however the closest point is actually 12.5 feet because of the angle of the rear lot line. The legal advertisement indicated relief for a 12.5' rear 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 #11-5

Petition of Dangelo Inc. for property located at **1981 Woodbury Avenue** wherein relief is required from the Zoning Ordinance to install a 30" x 180" Wall sign that requires a Variance from Section 10.1271 to allow a sign where there is no frontage or public entrance. Said property is shown on Assessor Plan 215, Lot 7 and lies within the Gateway Neighborhood Mixed Use Corridor District (G1).

Existing & Proposed Conditions

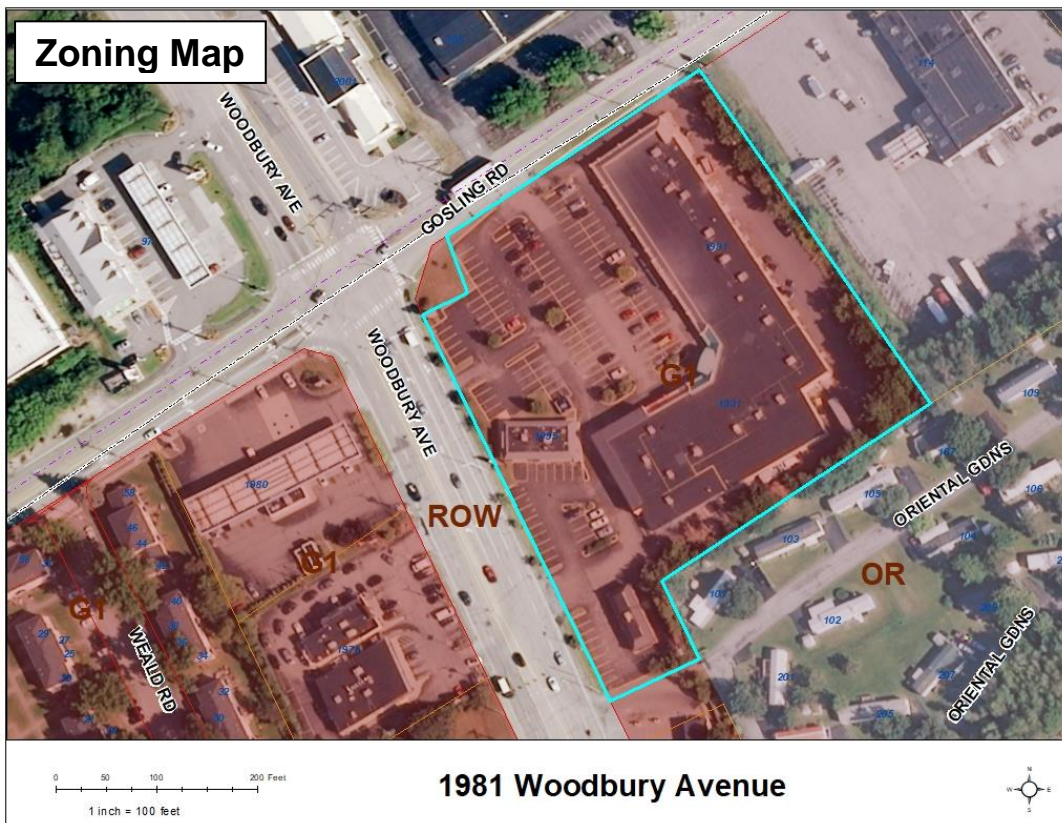
	<u>Existing</u>	<u>Proposed</u>	<u>Total (sq. ft.)</u>	<u>Permitted / Required</u>
<u>Land Use:</u> <u>Sign District:</u> <u>5</u>	Com.	Signage on a side that does not have a public entrance or face a street.		Primarily mixed use
<u>Sign area (Sq. ft.)</u>	37	37	74	112.5
		Variance request shown in red.		

Other Permits/Approvals Required

None.

Neighborhood Context





Previous Board of Adjustment Actions

January 25, 1983 – the Board **granted sign variances** to allow (1) in free standing signage: a) an 84 s.f. sign 10' from the front and left yards where 35' is required; b) a 60 s.f. bank identification sign 15' from the front yard where 35' is required; and c) a total of 216 s.f. of free standing signage where 150 s.f. is the maximum allowed; (2) 1.5 s.f. of attached signage for a total of 762 s.f. where a maximum of 1 s.f. of attached signage for a total of 508 s.f. is allowed; and (3) 762 s.f. of attached signage and 216 s.f. of free standing signage for a total aggregate sign area of 978 s.f. where a total aggregate sign area of 508 s.f. is the maximum allowed.

October 28, 1986 – the Board **denied** a variance to allow an additional 40 s.f. of free standing signage creating a total aggregate free standing signage of 124 s.f. where a maximum of 84 s.f. is allowed and with a 3' left yard where 10' is allowed.

September 21, 1993 – the Board **granted** a variance to allow a 42 s.f. attached sign where a 37.5 s.f. attached sign is allowed by **previous variance**.

April 19, 1994 – the Board **denied** a variance to allow an additional 4 s.f. of free-standing signage to an existing free-standing sign for a total of 220 s.f. of free-standing signage where 216 s.f. had been previously permitted by variance and 1,236 s.f. aggregate sign area where 1,232 s.f. had been previously granted by variance.

February 17, 2009 – a petition to allow 158 sf of internally illuminated channel letter flush mounted signage where 65 sf is the maximum allowed, and to allow the sign to be located above the roof, was **withdrawn**.

March 17, 2009 – The Board **granted** variances to allow 85± s.f. of internally illuminated channel letter, flush mounted, signage where 65 sf was the maximum allowed and to allow the sign to be located above the roof where signs were not allowed to be located. The variances were granted with the **stipulation** that the top of the letters on the sign would be no more than 16' above grade.

September 24, 2019 – The Board **granted** a variance (for a request amended by a sign rendering at the meeting) for replacement of an existing pylon sign with a 140 s.f. free-standing sign, 100 s.f. allowed.

Planning Department Comments

This property was before the Board earlier this year for a new freestanding pylon sign that advertised tenants within the larger building. Aside from the large strip mall, there are 2 other freestanding buildings on this property. The proposed sign is for the building located near the southeastern portion of the property that sits away from the larger building. The applicant has a wall sign that faces Woodbury Avenue and is requesting to install an identical sign that is perpendicular to Woodbury Avenue. This location does not have frontage nor does it have a public entrance, thus requiring a variance for the location of the sign.

Review Criteria

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

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

(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 #11-6

Petition of Stanley & Michelle Brandon for property located at **492 Union Street** wherein relief is required from the Zoning Ordinance to remove two existing sheds and construct a new, 24' x 24' two-car garage which requires the following Variances from Section 10.521 a) to allow 26% building coverage where 25% is the maximum allowed; b) to allow a 4' left side yard where 10' is required; and c) to allow a 7' rear yard where 20' is required. Said property is shown on Assessor Plan 133, Lot 43 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	Detached garage	Primarily single family uses
<u>Lot area (sq. ft.):</u>	5,966	5,966	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,966	5,966	7,500 min.
<u>Street Frontage (ft.):</u>	40.4	40.4	100 min.
<u>Lot depth (ft.):</u>	151	151	70 min.
<u>Primary Front Yard: (ft.)</u>	4.6	4.6	15 min.
<u>Right Yard (ft.):</u>	10	10.5 (garage)	10 min.
<u>Left Yard (ft.):</u>	0.1 (ext. shed)	4 (garage)	10 min.
<u>Rear Yard (ft.):</u>	5 (ext. shed)	7 (garage)	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Cov. (%):</u>	16	26	25 max.
<u>Open Space (%):</u>	68	41.5	30 min.
<u>Parking</u>	2	4	1.3
<u>Estimated Age of Structure:</u>	1903	Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

July 17, 2007 – The Board **granted** variances for the construction of dormers on the left and right sides of the roof.

Planning Department Comments

The applicant is proposing to remove two existing nonconforming sheds and construct a new detached garage at the rear of the property and expand the driveway and paving to access the garage. The new garage will result in a building coverage of 26% where 25% is the maximum allowed. The lot is narrow and a garage of this size would not be able to conform to the side yard requirements without violating one or both of the side yards. However, it appears it could be located where it is closer to or meets the rear yard requirement.

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 #11-7

Petition of 100 Islington Street Condominium Association, owner, 100 Islington Street Development, LLC, applicant, for property located at **100 Islington Street** wherein relief is required from the Zoning Ordinance to demolish existing building and construct a 14,582 square foot building with 24 dwelling units that requires the following Variances from Section 10.5A41.10A: a) to allow a building footprint of 14,582 square feet where 2,500 square feet is the maximum allowed; b) to allow a lot area per dwelling unit of 1,015 square feet where 3,000 square feet per dwelling unit is required; and c) to allow a front lot line buildout of 37% where 60% is the minimum required. Said property is shown on Assessor Plan 137, Lots 25-1 through 25-7 and lies within the Character District 4-Limited (CD4-L2).

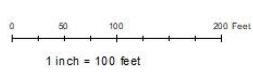
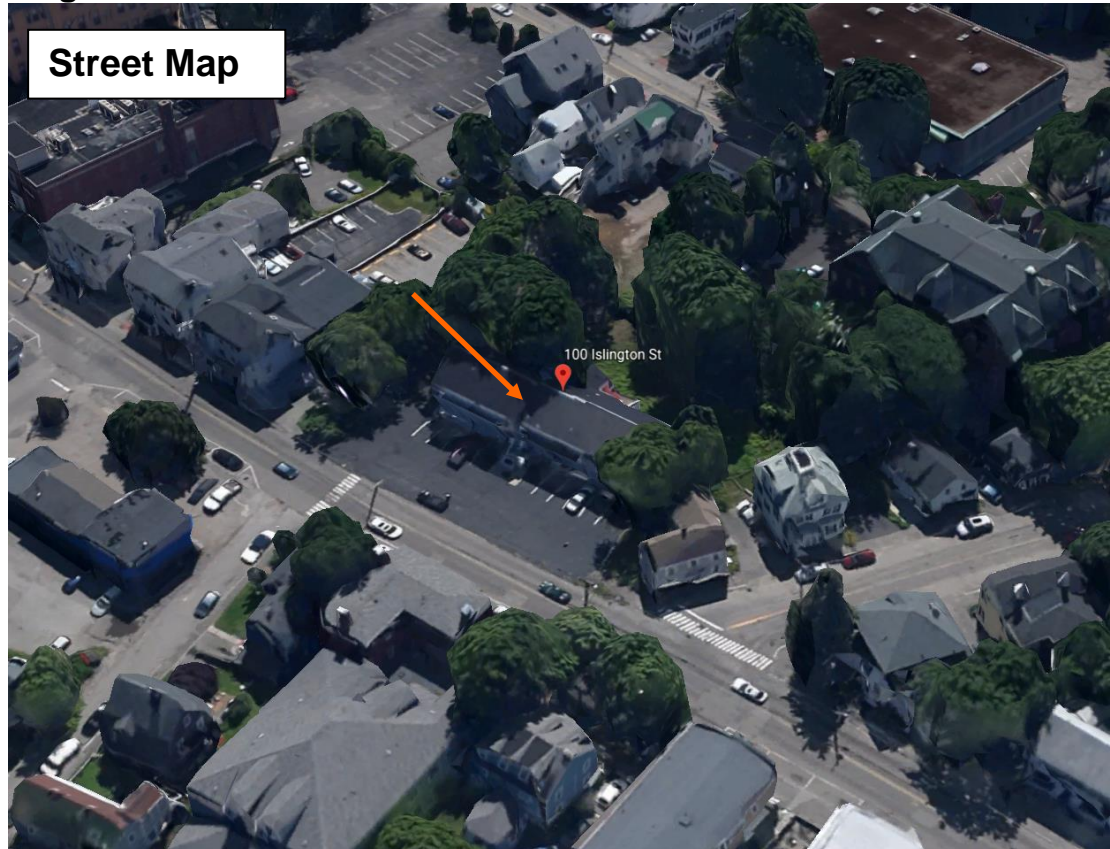
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed res. and com.	Construct 24 unit building	Primarily mixed residential uses
<u>Lot area (sq. ft.):</u>	24,358	24,358	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,090	1,015	3,000 min.
<u>Primary Front Yard:</u>	42	8'8"	15 max.
<u>Right Yard (ft.):</u>	22	7	5 ft. min to 20 ft. max
<u>Left Yard (ft.):</u>	44	6	5 ft. min to 20 ft. max
<u>Rear Yard (ft.):</u>	50	8	Greater of 5 ft. from lot line or 10 ft. from center of alley.
<u>Height (ft.):</u>	<40	40	2-3 stories/ 40' max.
<u>Min. Lot Line Buildout:</u>	0%	37%	60% min.
<u>Building Footprint (sq.ft.):</u>	2,366	14,582	2,500 max.
<u>Building Cov. (%):</u>	10	60	60 max.
<u>Open Space (%):</u>	60	35	25 min.
<u>Parking</u>	16	39	39
<u>Estimated Age of Structure:</u>	1984	Variance request shown in red.	

Other Permits/Approvals Required

TAC & Planning Board – Site Review, Subdivision
Historic District Commission

Neighborhood Context



100 Islington Street



Previous Board of Adjustment Actions

April 29, 1983 – The Board **granted** a Special Exception to allow conversion of an existing building to 5 apartments and 2 retail business uses. The Special Exception was granted with the **stipulation** that Site Review was required.

December 6, 1983 – The Board **granted** a Special Exception to permit a 12% reduction in parking spaces for 16 spaces where 18 parking spaces were required and a parking reduction up to 25% was allowed by Special Exception.

April 18, 1995 – The Board **denied** a Special Exception for a 75% reduction in the amount of required parking from 29.43 spaces to 22.07 spaces required by Special Exception. A requested variance to allow 16 spaces to be provided where 22.07 would be required was conditional on the granting of the Special Exception.

Planning Department Comments

The applicant is proposing to demolish the existing building that consists of mixed residential and commercial tenants and construct a new, 24-unit residential building. The CD4-L2 district has a maximum building footprint of 2,500 square feet and a front lot line buildout minimum of 60%. The proposed development consists of a footprint of 14,582 square feet and 37% front lot line buildout. Additionally, the 24 units will result in a lot area per dwelling unit is 1,015 square feet where 3,000 is required per unit. By right, the applicant would be able to have 8 dwelling units on this parcel. The applicant is scheduled for a work session with the HDC on November 13th and will require site review if the project moves forward.

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 #11-8

Petition of Donahue Realty Trust & Daniel J. Donahue, Trustee for property located at **272 Ocean Road** wherein relief is required from the Zoning Ordinance to establish a wholesale lumber yard which requires the following Variances: a) from Section 10.440 Use #13.30 to allow a Wholesale Lumber Yard where the use is not permitted; and b) from Section 10.521 to allow 35% open space where 50% minimum is required. Said property is shown on Assessor Plan 282, Lot 3 and lies within the Single Residence A District.

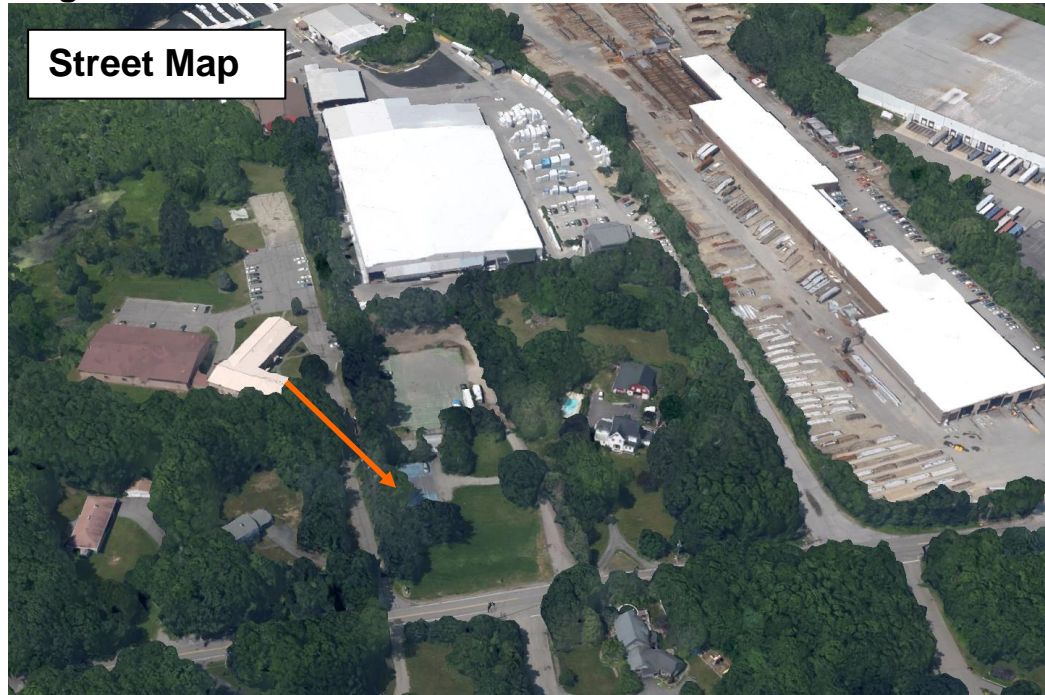
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Tennis court	Wholesale lumber yard	Primarily single family uses
<u>Lot area (sq. ft.):</u>	38,942	38,942	43,560 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	38,942	38,942	43,560 min.
<u>Street Frontage (ft.):</u>	210	210	150 min.
<u>Open Space (%):</u>		35	50 min.
		Variance request shown in red.	

Other Permits/Approvals Required

TAC & Planning Board – Site Review

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

As stated in the application, this property is split by the town line between Portsmouth and Greenland, with the portion in Portsmouth containing old tennis courts. The proposal is to use this portion of the lot as a storage area for finished lumber. The main operation of Boise Cascade is on the portion of the parcel located in Greenland. The request includes paving a large portion of the property for storage of finished product. They are proposing fencing and a buffer along Ocean Road. If granted approval, the Board should consider a stipulation requiring the fencing and buffering.

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 #11-9

Petition of Karen B. Leon for property located at **284 New Castle Avenue** wherein relief is required from the Zoning Ordinance to construct a front porch and detached garage and add two condenser units that requires the following Variances: a) from Section 10.521 to allow a 3'6" front yard where 30' is required; b) from Section 10.521 to allow a 5'6" left side yard where 10' is required; c) an after-the-fact Variance from Section 10.515.14 to allow a 5' right side setback where 10 feet is required; and d) 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. Said property is shown on Assessor Plan 207, Lot 73 and lies within the Single Residence B District.

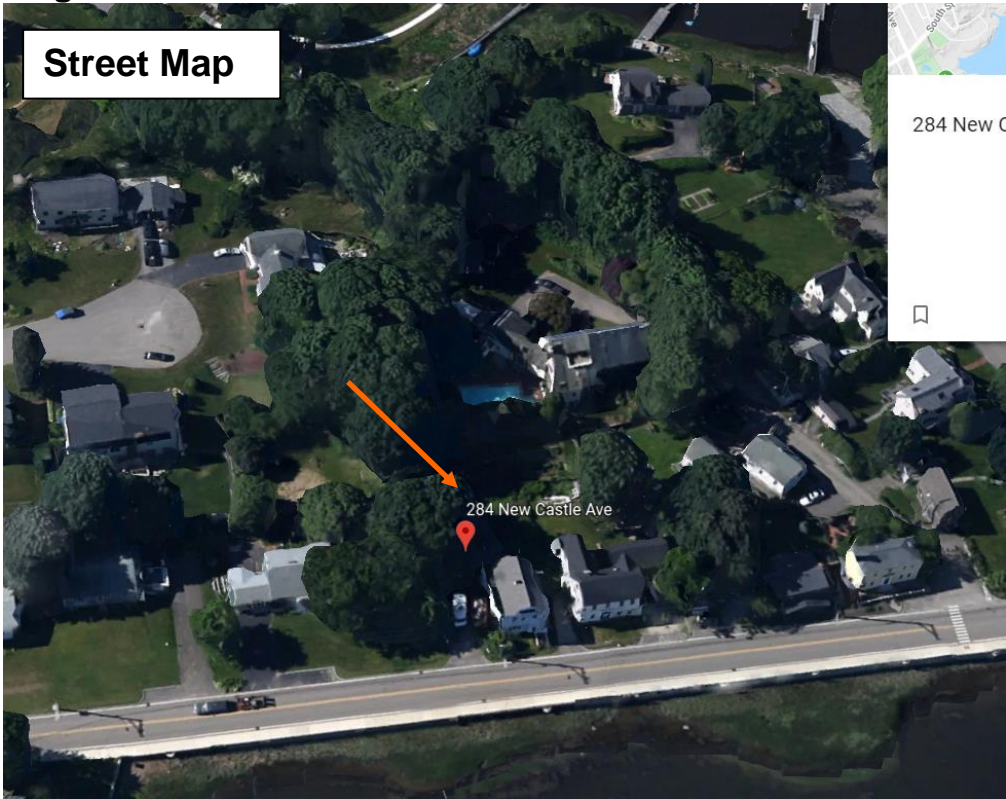
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Porch addition, new garage & condenser	Primarily single family uses
<u>Lot area (sq. ft.):</u>	8,949	8,949	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,949	8,949	15,000 min.
<u>Street Frontage (ft.):</u>	97.69	97.69	100 min.
<u>Lot depth (ft.):</u>	107	107	100 min.
<u>Primary Front Yard:</u>	11	3'6"	30 min.
<u>Right Yard (ft.):</u>	9	5 (condensers) 10 (porch)	10 min.
<u>Left Yard (ft.):</u>		5'6"	10 min.
<u>Rear Yard (ft.):</u>			30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Cov. (%):</u>	10	18	20 max.
<u>Open Space (%):</u>	80	72	40 min.
<u>Parking</u>	2	4	1.3
<u>Estimated Age of Structure:</u>	1820	Variance request shown in red.	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

July 18, 2000 - (as 272-284 New Castle Avenue) The Board **granted** variances to allow the creation of two lots from an existing lot containing 15,770 s.f. of lot area and 163.85' of continuous frontage with both a single-family dwelling and a duplex with Lot 1 having 6,821 s.f. of l.a. and 66.15' of continuous frontage for the duplex and Lot 2 having 8,949 s.f. of l.a. and 97.69' frontage for the single family dwelling with a 1.2' right side yard, 10' required.

September 22, 2015 (Subdivided Lot 2 above, 284 New Castle Avenue) – The Board **granted** a variance to replace an existing entry deck with a front yard of 9'2", 26' required and **considered** a variance request to add a garage with an 11' rear yard where 13.5' was required for an accessory structure. A variance was **granted** with the stipulation that the garage would be moved forward to meet the 13.5' rear yard requirement so that the second variance was not needed.

Planning Department Comments

The applicant is proposing a front porch addition, detached garage and an after-the-fact variance for two condenser units. The condenser units were before the HDC earlier this summer and were installed prior to obtaining a variance for the location. They have been added to this application for the garage and the front porch.

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.