

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: September 16, 2019
RE: Zoning Board of Adjustment September 24, 2019 Meeting

NEW BUSINESS

1. Case 9-3 1 Ashland Street
2. Case 9-4 57 Mount Vernon Street
3. Case 9-5 346 Colonial Drive
4. Case 9-6 1981 Woodbury Avenue
5. Case 9-7 163 Court Street
6. Case 9-8 557 State Street
7. Case 9-9 125 Austin Street (98 Summer)
8. Case 9-10 0 Sagamore Avenue at Wentworth Road
9. Case 9-11 Off Elwyn Avenue
10. Case 9-12 786 US Route One By-Pass

Case #9-3

Petition of **Helen Moore** for property located at **1 Ashland Street** wherein relief is required from the Zoning Ordinance to demolish existing garage and construct a new 18' x 22' garage including the following variances: a) from Section 10.573.20 to allow a 5'6" left side yard where 10' is required and a 9' rear yard where 12' is required; b) from Section 10.521 to allow 28% building coverage where 25% is the maximum allowed; and c) from Section 10.321 to allow a nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance. Said property is shown on Assessor Plan 209, Lot 16 and lies within the General Residence A District.

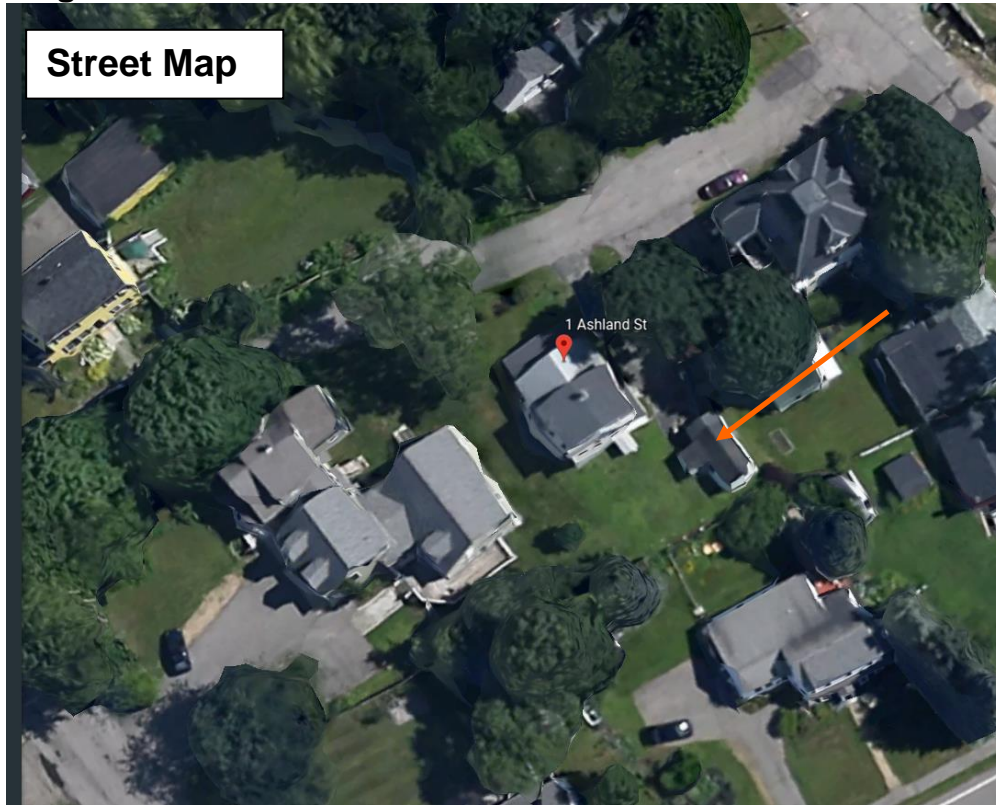
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Reconstruct garage	Primarily residential uses
<u>Lot area (sq. ft.):</u>	4,817	4,817	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,817	4,817	7,500 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.):</u>	100	100	70 min.
<u>Primary Front Yard (ft.):</u>	18	18	15 min.
<u>Right Yard (ft.):</u>	~2' (house)	22 (garage)	10 min.
<u>Left Yard (ft.):</u>	3 (garage)	5'6" (garage)	10 min.
<u>Rear Yard (ft.):</u>	7 (garage)	9 (garage)	20 min. 12' for garage
<u>Height (ft.):</u>	<35	12' (garage)	35 max.
<u>Building Coverage (%):</u>	25	28	25 max.
<u>Open Space Coverage (%):</u>	59	56	30 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1941 (house)	Variance requests 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 demolish the existing garage and construct a slightly larger garage in a different location. The new location is more conforming, however it still encroaches into the left side yard and rear yard and the resulting building coverage will exceed the maximum allowed. The applicant indicated in the application a 5.8' side yard and 27.6% building coverage. The legal notice advertised 5'6" and 28% building coverage, which if granted, will give the applicant a margin of error for the 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 #9-4

Petition of **Brendan Robert Cooney and Megan Tehan** for property located at **57 Mt. Vernon Street** wherein relief is required from the Zoning Ordinance for a second story addition with front entry deck and condenser unit including the following variances: a) from Section 10.515.14 to allow a 6' setback for a condenser unit where 10' is required; b) from Section 10.521 to allow a 4' side yard where 10' is required; and c) from Section 10.321 to allow a lawful nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance. Said property is shown on Assessor Plan 111, Lot 1 and lies within the General Residence B District.

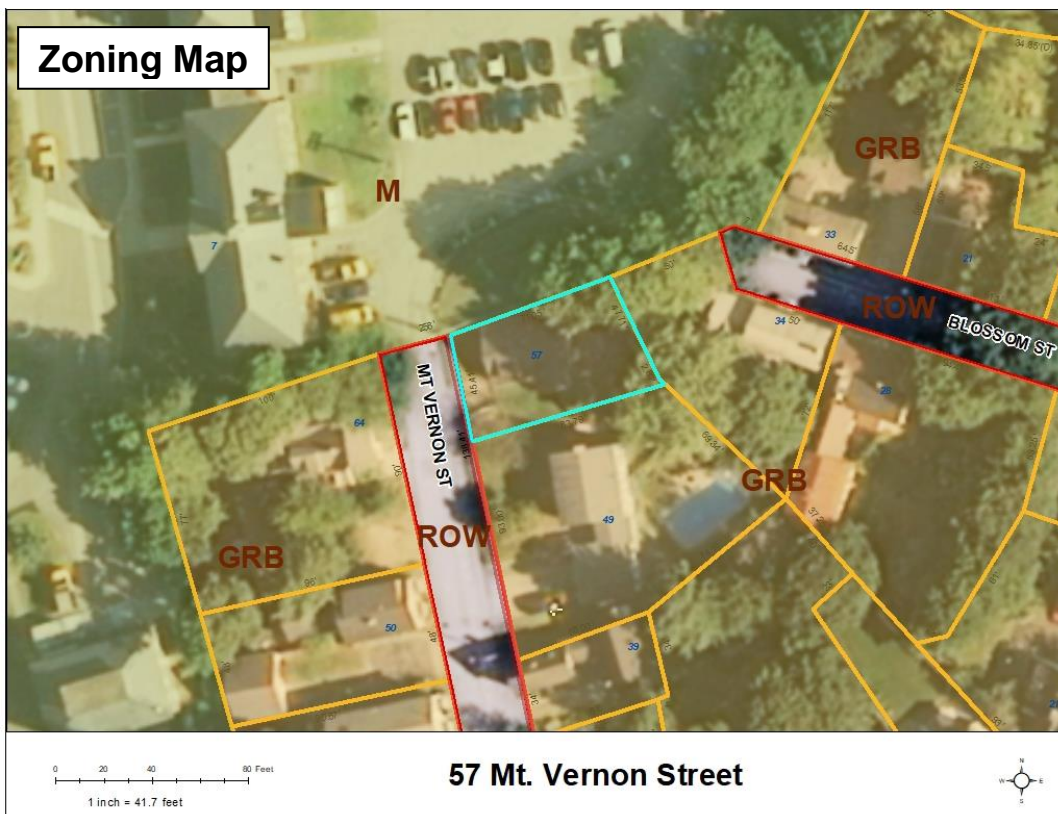
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Second story addition	Primarily residential uses
<u>Lot area (sq. ft.):</u>	3,647*	3,647	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,647*	3,647	5,000 min.
<u>Street Frontage (ft.):</u>	45.41*	45.41	80 min.
<u>Lot depth (ft.):</u>	77	77	60 min.
<u>Primary Front Yard:</u>	16	16	5 min.
<u>Right Yard (ft.):</u>	10	10	10 min.
<u>Left Yard (ft.):</u>	2.2*	4' (addition) 6' (condenser)	10 min.
<u>Rear Yard (ft.):</u>	15.8*	15.8	25 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Cov. (%):</u>	27.5	28	30 max.
<u>Open Space (%):</u>	54	52	25 min.
<u>Parking</u>	ok	ok	1.3
<u>Estimated Age of Structure:</u>	1963	Variance request shown in red. *variances granted on 2/27/18 when subdivision was completed.	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

March 23, 2004 – A petition to allow the construction of an 18' x 24' one-story addition on the same footprint of an existing garage (to be removed) with a 1'8" left side yard where 10' was required was **tabled** to the April 20, 2004 meeting.

April 20, 2004 – The Board **granted** a variance for the above petition.

February 27, 2018 – The Board **granted** variances to create a lot by subdivision containing an existing dwelling with a lot area and lot area per dwelling unit of 3,647, 5,000 s.f. required; 45.51' continuous street frontage, 80' required; a 2.2' left side yard, 10' required; and a 15.8' rear yard, 25' required.

Planning Department Comments

Variances were granted for this lot in 2018 when it was subdivided off from the adjacent property. The applicant is proposing a second story addition in the middle of the existing house and the closest point of the upward expansion is 4' from the left side yard. No increase in the footprint of the main house is proposed with this addition. A condenser unit, 6 feet from the left side yard is proposed where 10 feet is required. This side of the property abuts the back of City Hall. The applicant has had two work sessions with the HDC.

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 #9-5

Petition of **Kenneth W. Young** for property located at **346 Colonial Drive** wherein relief is required from the Zoning Ordinance for the demolition of existing garage and construction of a new single car garage with accessory dwelling unit above including the following variances: a) from Section 10.521 to allow a lot area of 6,099 square feet where 15,000 is the minimum required; b) from Section 10.521 to allow 23.5% building coverage where 20% is the maximum allowed; c) from Section 10.321 to allow a lawful nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the ordinance; d) from Section 10.521 to allow a 12' rear yard where 30' is required; and e) from Section 10.521 to allow a 19'6" front yard where 30' is required. Said property is shown on Assessor Plan 260, Lot 136 and lies within the Single Residence B District.

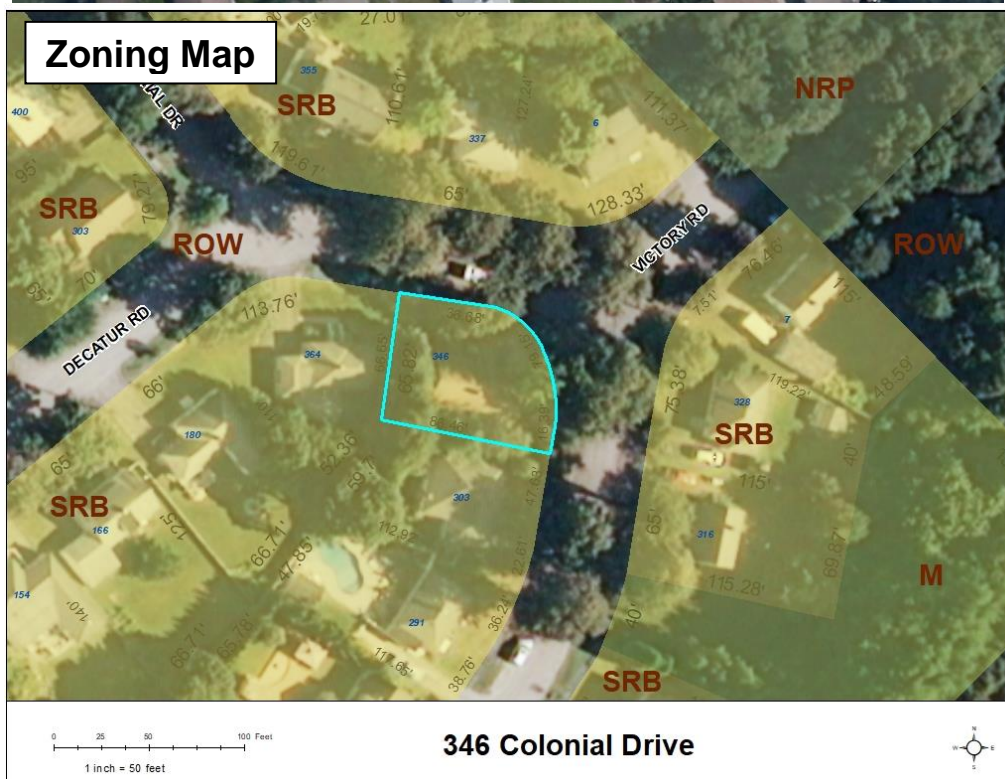
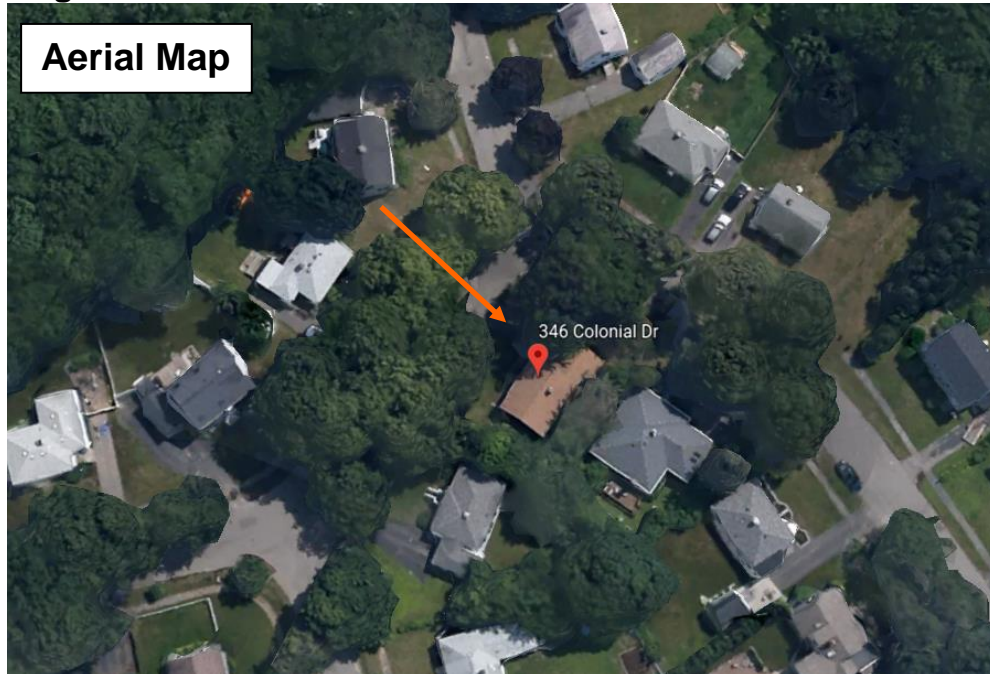
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	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	19'6"	30 min.
<u>Right Yard (ft.):</u>	16		10 min.
<u>Rear Yard (ft.):</u>	4'11"	12	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	19	23.5	20 max.
<u>Open Space Coverage (%):</u>	74	70	40 min.
<u>Parking</u>	3	3	2
<u>Estimated Age of Structure:</u>	1940	Variance request shown in red.	

Other Permits/Approvals Required

Planning Board – CUP for Accessory Dwelling Unit

Neighborhood Context



Previous Board of Adjustment Actions

July 16, 2019 – The Board **denied** a request to construct a 515 s.f. ADU above a proposed garage addition.

Planning Department Comments

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

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

The applicant has made changes to the design of the project to address concerns raised at the previous hearing, including reducing the height and moving the new garage forward. Although the applicant has made design changes to address the concerns of the Board and adjacent property owners, several waivers and/or modifications will be needed from the Planning Board for the ADU as designed, as the changes conflict with the requirements in the ADU section of the ordinance. The application uses the tax card information for the lot area. The Board may want to consider designating a margin of error for the lot area if the survey results in a smaller lot size than what is depicted on the tax maps.

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 #9-6

Petition of **Dangelo Inc, owner** and **Stephen and Claire McLaughlin**, applicants, for property located at **1981 Woodbury Avenue** wherein relief is required from the Zoning Ordinance to replace existing pylon sign with new sign including the following variance: a) from Section 10.1251.20 to allow a 140 square foot freestanding sign where 100 square feet is the maximum size allowed. Said property is shown on Assessor Plan 215, Lot 7 and lies within the G1, Gateway Neighborhood Corridor District.

Existing & Proposed Conditions

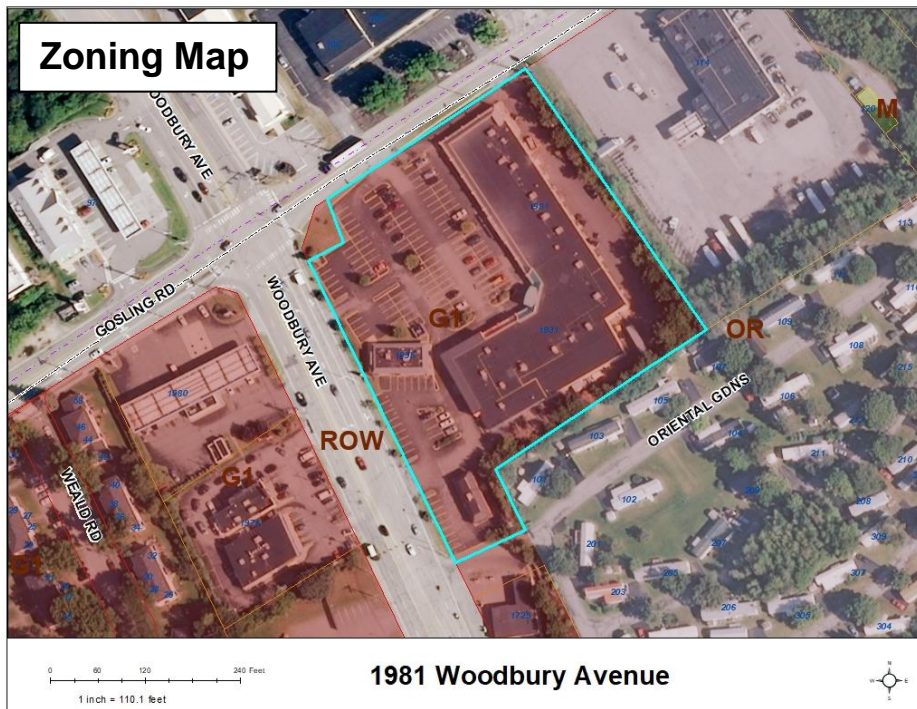
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed Commercial	Replace Pylon Sign	Primarily Mixed Use
<u>Sign District 5</u>			
<u>Freestanding sign area:</u>		140 s.f.	100 s.f. max.
<u>Sign Height</u>		20'	20' max.
<u>Setback</u>		10	10'
		Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context





Previous Board of Adjustment Actions

November 9, 1982 – the Board **granted** variances to allow: 1) 25' rear and right yards for a 1,500 sf one story bank building and a right yard of 65' for a proposed 35,097 s.f. one story retail sales building, 100' required for both. This was granted with the stipulation that a 4' barrier of concrete and evergreens be built around the back and right property lines; 2) a 50' front yard where 70' is required. The request for a variance to allow a free standing sign 10' from the front, and 20' from the left side property where 35' is required was tabled for presentation of a reasonable facsimile of the proposed sign.

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.

Planning Department Comments

The applicant is proposing to replace the existing freestanding sign with a new sign that exceeds the sign area allowed for this sign district. A 100 square foot sign is the maximum allowed and the applicant is proposing a sign that is 140 square feet.

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 #9-7

Petition of **KWA LLC**, owner, **Barre and Soul**, applicant, for property located at **165 Court Street** wherein relief is required from the Zoning Ordinance to place signage above the ground floor on both facades including the following variance: a) from Section 10.1242 to allow more than one sign above the ground floor on two facades. Said property is shown on Assessor Plan 116, Map 27 and lies within Character District 4.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u> <u>Sign District: 3</u>	Commercial	Signage above ground floor	Primarily mixed use
<u>Sign above ground floor:</u>	1 on each facade	More than one on each facade	1 on each façade
		Variance request shown in red.	

Other Permits/Approvals Required

HDC

Neighborhood Context





Previous Board of Adjustment Actions

April 22, 2014 – (For Unit #165) The Board **granted** variances to allow a personal services use in a district where the use was prohibited and to allow a change to a personal service use without providing the required parking.

May 29, 2014 – (Units 163A & B) The Board **granted** a variance to allow a change to a yoga studio use without providing the required parking.

Planning Department Comments

The sign regulations allow one sign above the first floor on each façade. The establishment has one projecting sign on each façade currently. Any additional signage above the first floor requires a variance. Because a variance is required in the Historic District, this will need HDC approval if the variance is granted.

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 #9-8

Petition of **Harry S. Furman & Kathleen E. Straube** for property located at **557 State Street** wherein relief is required from the Zoning Ordinance to demolish existing rear addition and construct new 2-story addition which requires the following variances: a) from Section 10.521 to allow a 0.6' right side yard where 10' is required; and, b) from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance. Said property is shown on Assessor Plan 137, Lot 33 and lies within the General Residence C District.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two dwelling units	Second floor addition.	Primarily residential uses
<u>Lot area (sq. ft.):</u>	5,695	5,695	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,847	2,847	3,500 min.
<u>Street Frontage (ft.):</u>	43	43	70 min.
<u>Lot depth (ft.):</u>	122	122	50 min.
<u>Primary Front Yard (ft.):</u>	2.5	2.5	5 min.
<u>Right Yard (ft.):</u>	0.6	0.6	10 min.
<u>Left Yard (ft.):</u>	24	>10	10 min.
<u>Rear Yard (ft.):</u>	99	>30	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	9	<20	35 max.
<u>Open Space Coverage (%):</u>	81	>40	20 min.
<u>Parking</u>			1.3
		Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

September 27, 2016 – The Board **granted** variances to construct a 160 sf second floor addition with an 8' right side yard where 10' was required and to allow a nonconforming structure to be enlarged without conforming to the Ordinance.

April 23, 2019 – The Board **granted** variances to allow a second floor addition with an 0.6' right side yard where 10' was required and to allow a nonconforming structure to be enlarged without conforming to the Ordinance.

Planning Department Comments

The applicant received variances in April 2019 and has since commenced work of the project. The original approval was for a second story addition on an existing foundation and first floor. The foundation was discovered to be in poor condition and the first floor and old foundation were removed, which exceed the scope of the originally approved variances. The applicant is back before the Board to seek approval for the additional work within the side 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 #9-9

Petition of the Roman Catholic Bishop of Manchester and Immaculate Conception Church, owners, Corpus Christi Parish, applicant, for property located at **98 Summer Street** (125 Austin Street) wherein relief is required from the Zoning Ordinance for the demolition of a building to create additional parking including the following variance: a) from Section 10.1113.20 to allow a parking lot between a principal building and a street. Said property is shown on Assessor Plan 137, Lot 1 and lies within the General Residence C District.

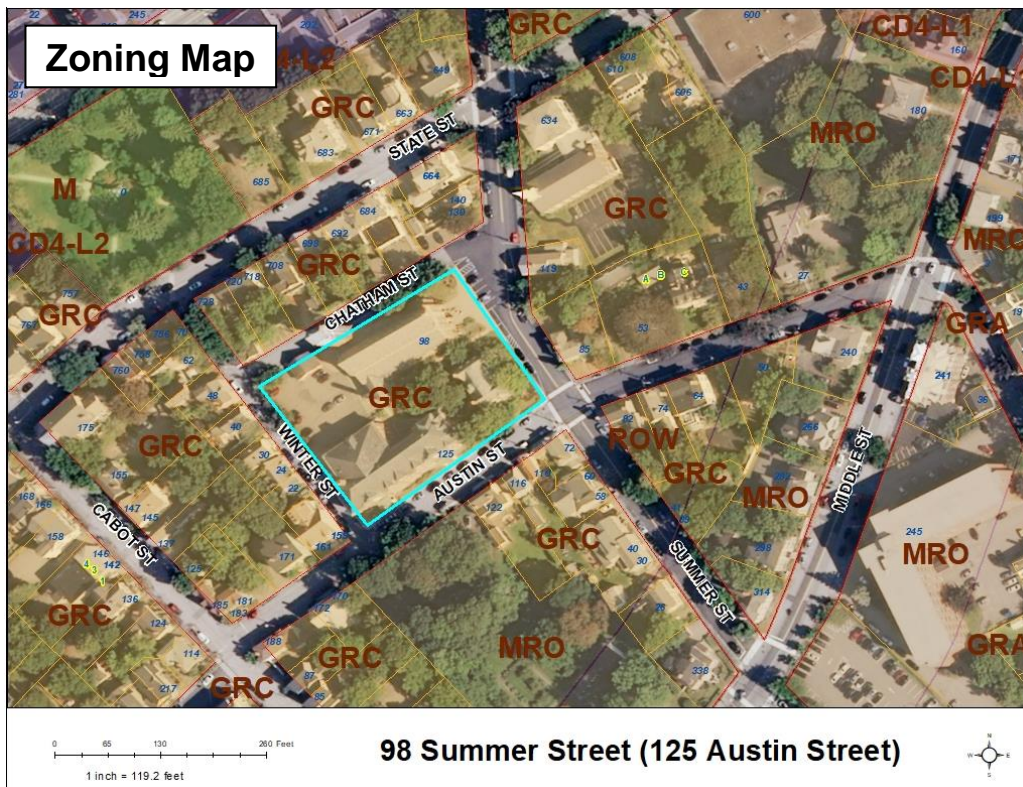
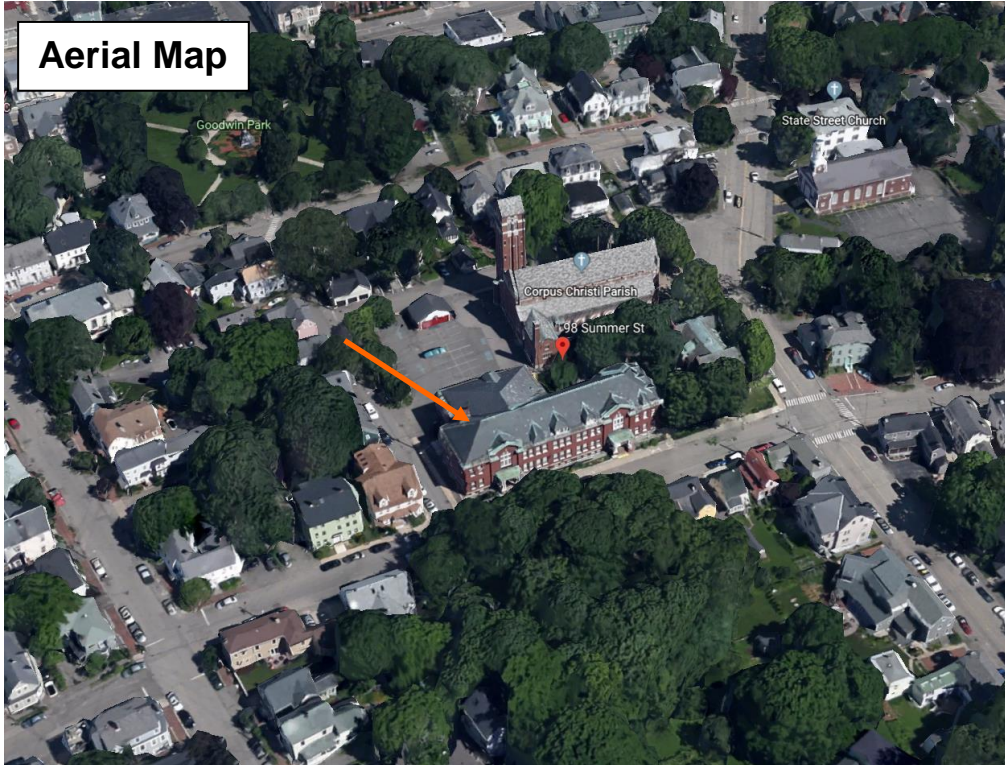
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Church/Old School	Demo school for parking lot	Primarily residential uses
<u>Lot area (sq. ft.):</u>	56,078	56,078	3,500 min.
<u>Building Coverage (%)</u> :	39	21	35 max.
<u>Open Space Coverage (%)</u> :	41	44	20 min.
<u>Parking</u>	37	67	*
<u>Estimated Age of Structure:</u>	1904	Variance request shown in red. *Information not provided.	

Other Permits/Approvals Required

Planning Board/TAC – Site Review

Neighborhood Context



Previous Board of Adjustment Actions

June 18, 1977 - (structure location - Chatham Street at the corner of Winter) – The Board **granted** a variance to erect a 22' x 32' attached garage (connected to part of the St. Patrick's school building) with a 1' right side yard setback (Chatham Street).

May 1, 1979 – The Board **granted** a variance to allow a 6' x 4' freestanding sign.

Planning Department Comments

Approval was given to demolish the old school on the subject property earlier this year. In order to convert the space into a parking lot, the requested variance is needed to allow the parking lot to be located between the principal building and the street. This property has street frontage on four sides. The existing structures are located towards the right side of the property. A parking calculation was not complete at the writing of this staff report to determine how many spaces are needed for the property, but that information was requested of the applicant.

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 #9-10

Petition of **Lucky Thirteen Properties LLC**, owner, and the **Bean Group**, applicant, for property located at **Sagamore Avenue (at Wentworth Road)** wherein relief is required from the Zoning Ordinance to construct a new business office with associated parking including the following variances: a) from Section 10.1113.20 to allow a parking area to be located between the principal building and a street; and b) from Section 10.1120 to provide zero loading spaces where 1 is required. Said property is shown on Assessor Plan 201, Lot 9 and lies within the Mixed Residential B District.

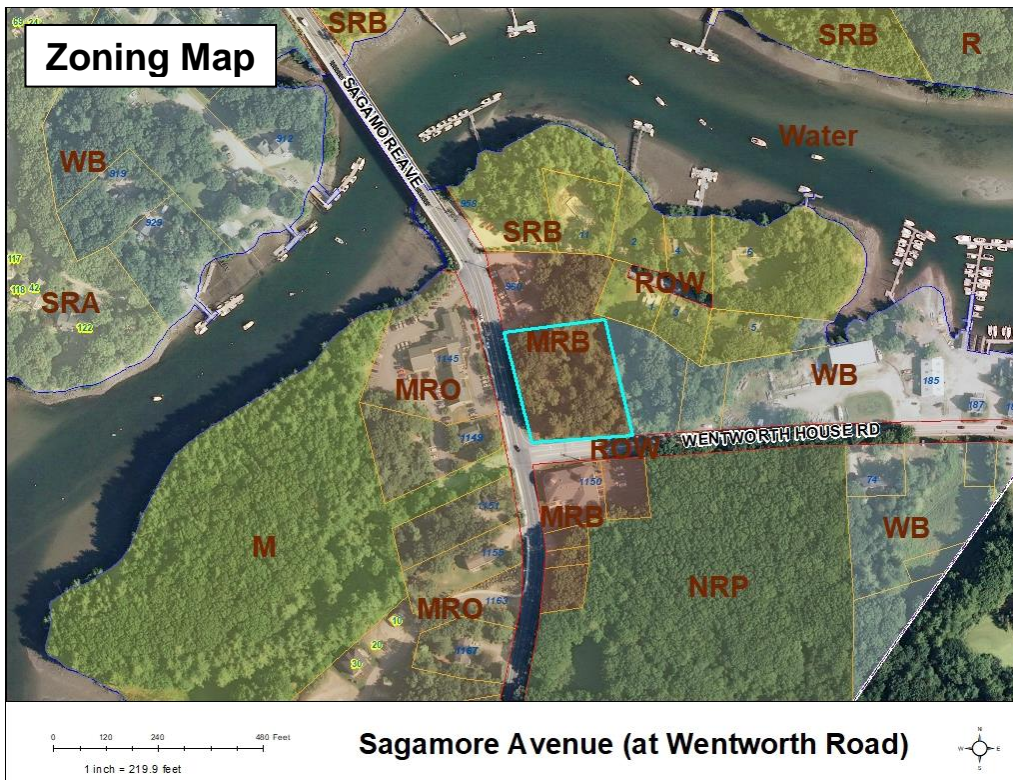
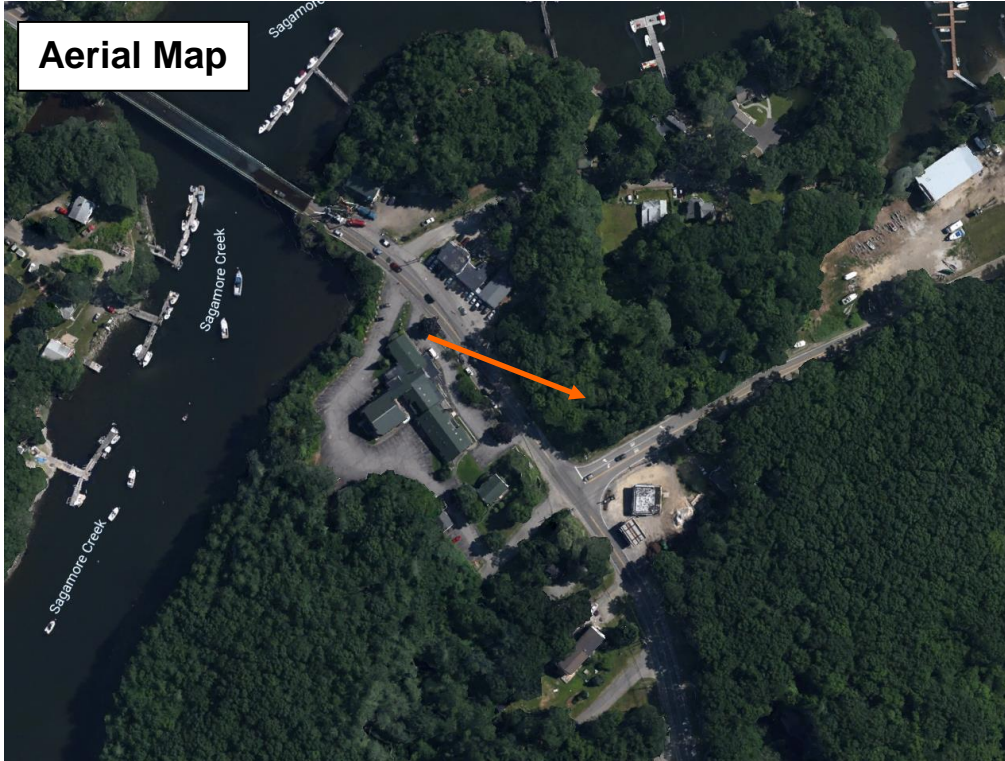
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant	Office Building	Primarily mixed residential business
<u>Lot area (sq. ft.):</u>	59,243	59,243	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	NA	7,500 min.
<u>Street Frontage (ft.):</u>	>300	>300	100 min.
<u>Lot depth (ft.):</u>	247	247	80 min.
<u>Front Yard (ft.):</u>	NA	6.5	5 min.
<u>Secondary Front:</u>	NA	80.4	5 min.
<u>Side Yard (ft.):</u>	NA	34/153	10 min.
<u>Rear Yard (ft.):</u>	NA	34/153	15 min.
<u>Height (ft.):</u>	NA	<35	35 max.
<u>Building Coverage (%):</u>	0	13	40 max.
<u>Open Space Coverage (%):</u>	100	59	25 min.
<u>Parking</u>	0	40	40
<u>Loading Spaces:</u>	NA	0	1
		Variance request shown in red.	

Other Permits/Approvals Required

Conservation Commission/Planning Board – Wetlands CUP
 TAC/Planning Board – Site Review

Neighborhood Context



Previous Board of Adjustment Actions

August 25, 2004 – The Board **denied** a request to allow a 3' x 4' free-standing sign where the use was not allowed.

Planning Department Comments

The applicant is proposing a new office building on the subject property. The property contains wetlands that, along with the 100 foot buffer, impact a large portion of the site as shown on the site plan. The parking lot is proposed to be located along Sagamore Avenue, in front of the principal building, which will be facing Wentworth House Road. In addition, an office building between 10,0001 – 100,000 square feet requires 1 loading space. The proposed building is approximately 13,900 s.f. and no loading space is provided. The applicant has had one work session with the Conservation Commission.

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 #9-11

Petition of **Arlene F. Beatty Trust**, owner, and **SAI Builders LLC** for property located at **Off Elwyn Avenue** wherein relief is required from the Zoning Ordinance to construct a new single-family dwelling on a vacant lot including the following variances: a) from Section 10.521 to allow a lot area and lot area per dwelling unit of 4,996 where 7,500 is required for each; and b) From Section 10.521 to allow 50' of street frontage where 100' is the minimum required. Said property is shown on Assessor Plan 113, Map 28-1 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>	Vacant lot	Single-family dwelling	Primarily residential uses
<u>Lot area (sq. ft.):</u>	4,996	4,996	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,996	4,996	7,500 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.):</u>	99	99	70 min.
<u>Front Yard (ft.):</u>	NA	15	15 min.
<u>Right Yard (ft.):</u>	NA	10.5	10 min.
<u>Left Yard (ft.):</u>	NA	11.5	10 min.
<u>Rear Yard (ft.):</u>	NA	>20	20 min.
<u>Height (ft.):</u>	NA	<35	35 max.
<u>Building Coverage (%):</u>	0	24	25 max.
<u>Open Space Coverage (%):</u>	100	64	30 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	Vacant lot	Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing a new single-family dwelling on an existing vacant lot. The lot is nonconforming for lot area and lot area per dwelling unit as well as frontage. The proposed dwelling meets all other applicable zoning requirements as shown on the surveyed plan.

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 #9-12

Petition of **GTY MA/NH Leasing Inc. c/o Nouria Energy Corporation**, owner **Greenman-Pedesen, Inc (GPI)**, applicant for property located at **786 US Route 1 Bypass** wherein relief is required from the Zoning Ordinance for an after-the -fact variance for replacement of a 6' fence with an 8' fence located within the rear yard including the following variance: a) from Section 10.515.13 to allow an 8' tall fence to be located 0.5' from the rear property line where 20' is required for fences over 6' in height. Said property is shown on Assessor Plan 161, Lot 42 and lies within the General Residence A District.

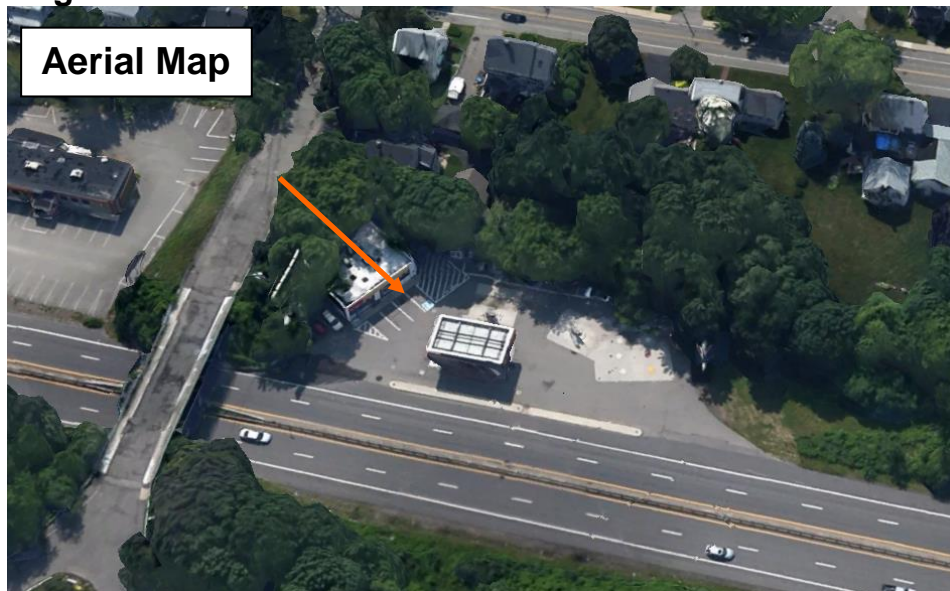
Existing & Proposed Conditions

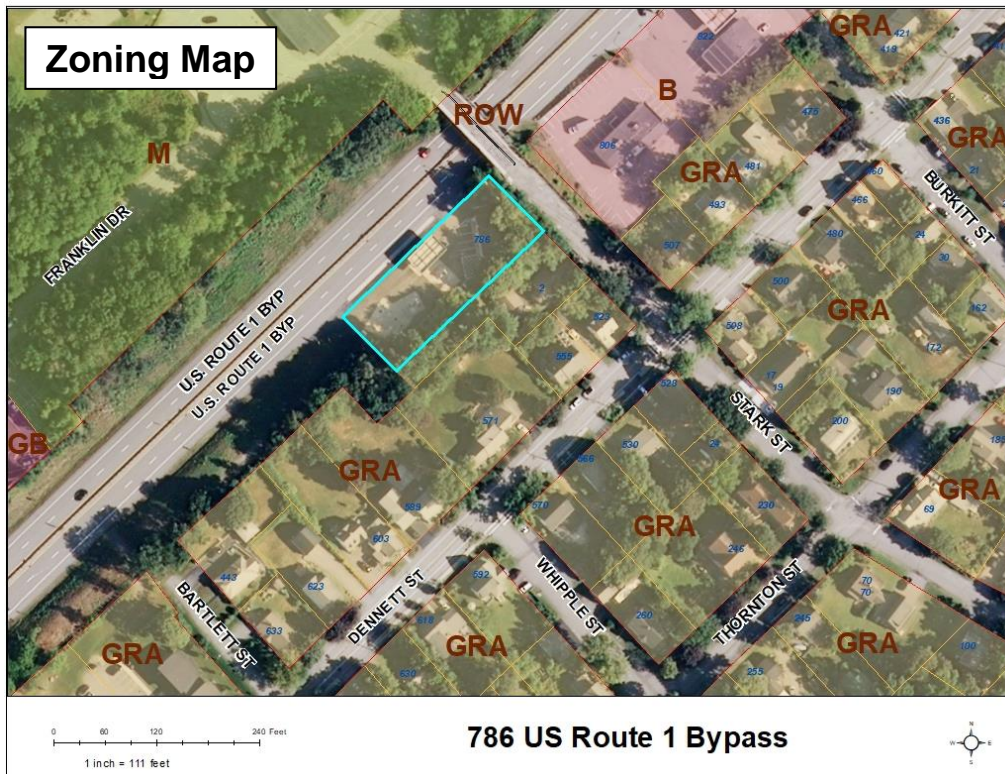
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Gas Station	8' fence	Primarily residential uses
<u>Front Yard (ft.):</u>	25		15 min.
<u>Right Yard (ft.):</u>		4	10 min.
<u>Rear Yard (ft.):</u>		.5	20 min.
<u>Height (ft.):</u>	6	8	6 max.
		Variance request shown in red.	

Other Permits/Approvals Required

Amended Site Plan Approval – Planning Director

Neighborhood Context





Previous Board of Adjustment Actions

November 20, 1990 – The Board **denied** variances to allow the installation of two attached illuminated signs totaling 43.81 s.f. in addition to the existing 180.88 s.f. for a total proposed sign area of 224 s.f. in a district where commercial establishments were not allowed signage and where the request would result in an increase in the extent of a nonconforming use where no increase is allowed.

January 15, 1991 – The Board **denied** a variance to allow the installation of two attached illuminated signs on a new canopy with a total area of 43.81 proposed signage in addition to 224 s.f. of existing signage resulting in a total sign area of 267.81 in a residential district where commercial establishments were not allowed signage.

February 20, 1991 – The Board **denied** a variance to allow the removal of three existing signs with an area of 77 s.f. and the installation of two attached illuminated canopy signs (36 s.f. and 7 s.f.) and a 22 s.f. free-standing sign for a proposed total of 265 s.f. in a residential district where commercial business were not allowed signage.

June 18, 1991 – The Board **granted** a variance to allow the removal of three existing signs totaling 77 s.f. in area and the installation of two attached illuminated canopy signs (43 s.f.) and a 22 s.f. free-standing sign for a proposed total on the property of 265 s.f. where the current total of 277 s.f. existed on the property in a residential district where commercial businesses were not allowed signage.

December 17, 2013 – The Board **tabled** to the next regular meeting a request to revise an existing free-standing sign to add a logo and LED display requiring variances to allow the following: (1) a nonconforming sign to be altered or reconstructed without bring the sign into conformity with the Zoning Ordinance; (2) a free-standing sign with an area of 168 s.f. in a district where a free-standing sign was not allowed; (3) a sign height of 50’ where 7’ was the maximum allowed and a front yard setback of 0’ where 5’ was required; (4) direct illumination where sign illumination was not allowed.

January 22, 2014 – The Board **granted** the above variances with the following stipulations: (1) The lighting on the canopy banding that faces Dennett Street would be permanently turned off; and (2) There would be no moving, blinking or scrolling lights or any change to the sign except as necessary to change the pricing.

Planning Department Comments

The applicant replaced an existing fence along the rear property line with an 8-foot vinyl fence. The zoning ordinance allows as a fence up to 6 feet in height to be exempt from side and rear yard requirements as provided for in the section below:

Section 10.515.13: Fences not over 4 feet in height shall be exempt from front yard requirements, and fences not over 6 feet in height shall be exempt from side and rear yard requirements.

The fence has already been installed and the applicant is seeking an after-the-fact variance for the encroachment.

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.