

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: March 10, 2020
RE: Zoning Board of Adjustment March 17, 2020 Meeting

NEW BUSINESS

1. 44 Gardner Street
2. 1001 Islington Street
3. 226 Park Street
4. 686 Maplewood Avenue
5. Bartlett Street
6. Sims Avenue

NEW BUSINESS

1.

P Petition of **Jeffrey & Delores Ives, Owners**, for property located at **44 Gardner Street** wherein relief is needed from the Zoning Ordinance to demolish existing rear porch and replace with a new sun room and rear landing with steps and kitchen bay expansion which requires the following: 1) A Variance from Section 10.521 to allow 36% building coverage where 30% is the maximum required; and 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 103 Lot 42 and lies within the General Residence B (GRB) District.

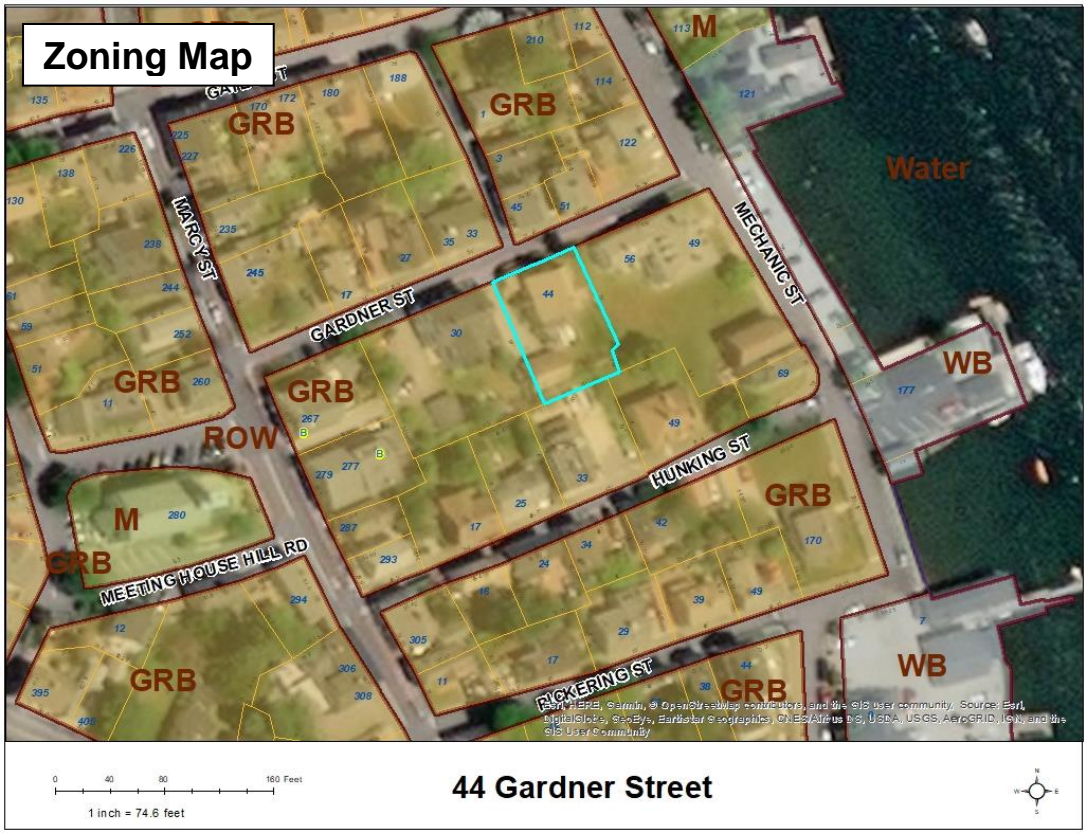
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Sunroom/kitchen bay	Primarily residential uses
<u>Lot area (sq. ft.):</u>	6,545	6,545	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,545	6,545	5,000 min.
<u>Street Frontage (ft.):</u>	68	68	80 min.
<u>Lot depth (ft.):</u>	95.6	95.6	60 min.
<u>Primary Front Yard (ft.):</u>	7	7	5 min.
<u>Left Side Yard (ft.):</u>	12	12	10 min.
<u>Right Side Yard (ft.):</u>	23	23	10 min.
<u>Rear Yard (ft.):</u>	42	41	25 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	33	34* (36 requested)	30 max.
<u>Open Space Coverage (%):</u>	43	42	25 min.
<u>Parking</u>	ok	Ok	1.3
<u>Estimated Age of Structure:</u>	1900	Variance request shown in red. *applicant used the tax map for calculation. Survey in prior variance file shows lot size = 6,545 sq. ft.	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

December 15, 1998 – The Board granted variances to allow the following: 1) a Variance from Article IV, Section 10-402(B) to allow a 1'± rear yard where 10' is the minimum required; 2) a Variance from Article IV, Section 10-401(2)(c) to allow the expansion of a nonconforming building.

The variances were granted with the following stipulations:

That a 2' rear yard and a 2' side yard setback be maintained;

That gutters be included on the structure to divert the water flow away from adjacent properties; and

That the space for storage not be used as an apartment or for commercial use.

Planning Department Comments

The applicant is seeking variances to construct a sunroom addition where a rear porch currently exists. The project also includes a bump out in the kitchen. The applicant submitted the application using the tax map to calculate the lot size and building coverage. A survey was provided for the variance application in 1998, which shows a larger lot size. Using the surveyed lot area, the proposed building coverage is actually 34% versus the requested 36%.

If granted approval, the Board should stipulate 34% 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.

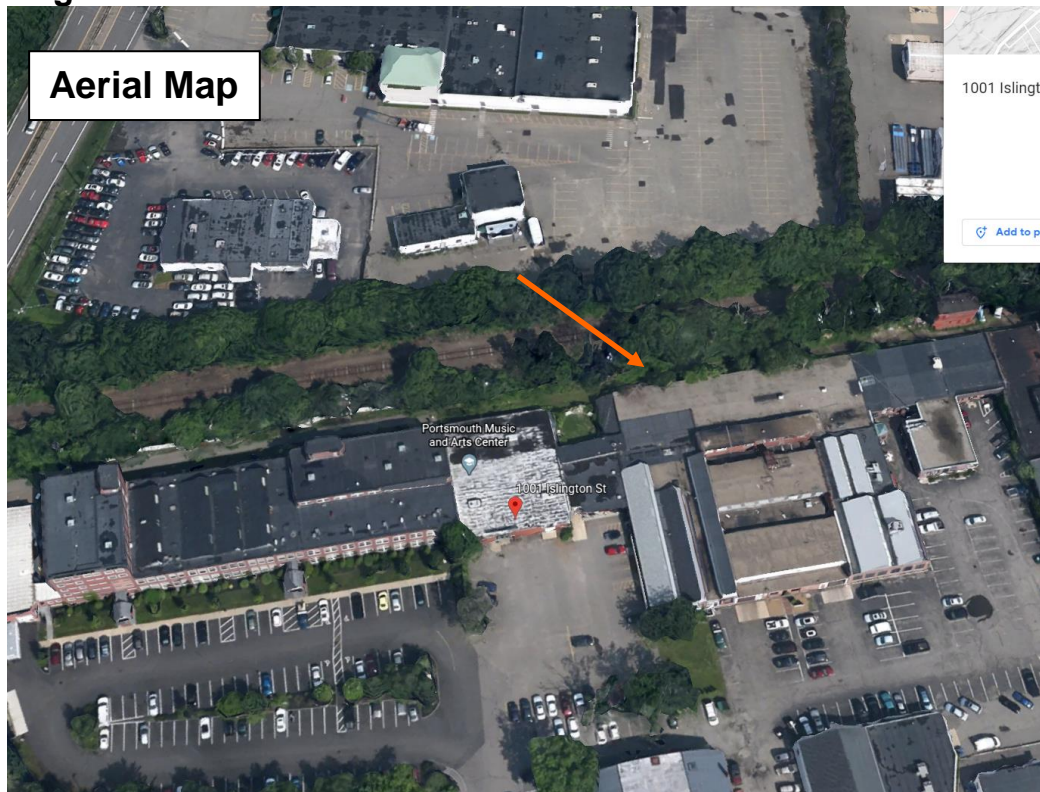
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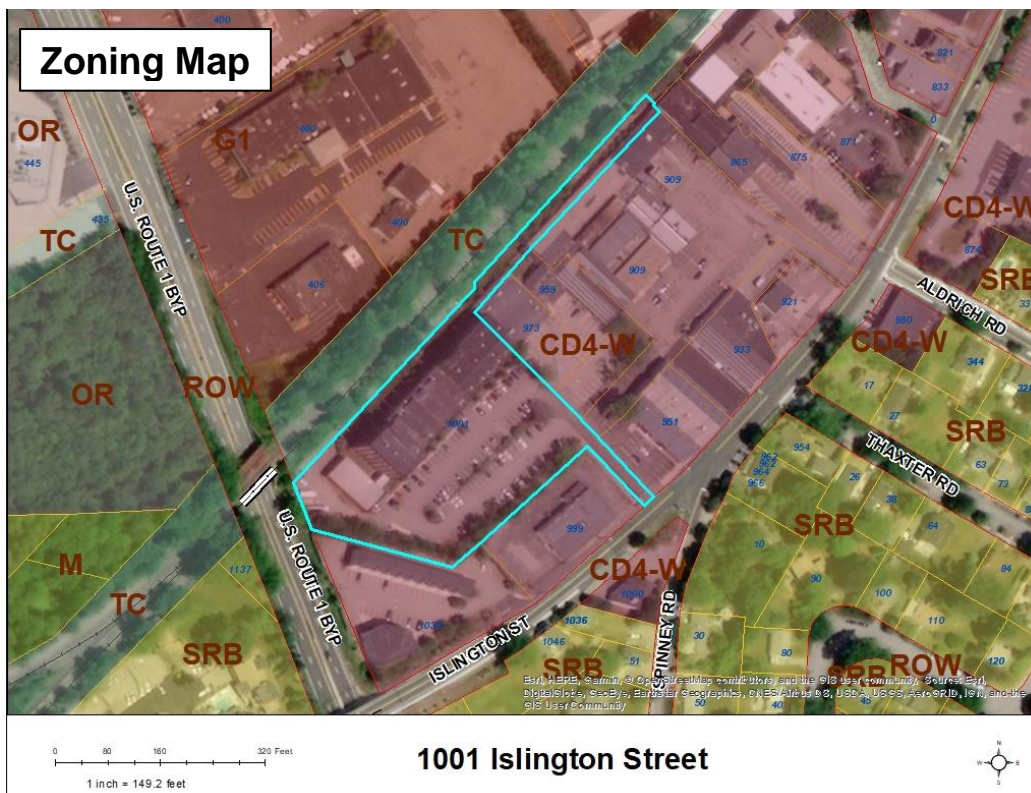
Petition of **Millport Inc., Owner** and **Thomas Bath, Applicant**, for property located at **1001 Islington Street** wherein relief is needed from the Zoning Ordinance to allow an accessory use on an adjacent lot which requires the following: A Variance from Section 10.1530 to allow an accessory use as defined in this section to be conducted on a lot adjacent to the lot containing the principal use or building. Said property is shown on Assessor Map 172 Lot 4 and lies within the Character District 4-W (CD4-W) District.

Other Permits/Approvals Required

Planning Board – Conditional Use Permit

Neighborhood Context





Previous Board of Adjustment Actions For 1001 Islington:

November 21, 1978 – The Board granted a variance to allow the following: a Variance from Article III, Section 10-302 to allow construction of an addition to an existing building, 40’ from the left and rear property lines where 50’ is required for each.

October 25, 1995 – The Board granted a variance to allow the following: a Variance from Article II, Section 10-207 to allow an existing building to be converted into 80 apartments with associated parking and site improvements in a district where such a use is not allowed. The variance was granted with the following stipulations:

That 64 apartments be approved rather than the 80 apartments that were advertised;

That a mix of one and two bedroom apartments be allowed; and

That the apartments be no greater than two bedrooms.

September 16, 1997 – The Board removed the stipulation that only one and two bedroom apartments be allowed, thus allowing (2) three bedroom apartments.

For 909 Islington

August 28, 1973 – the Board **granted** approval to construct an 80’ x 36’ building 3’4” from left property line and 2’ from right property line.

April 16, 1996 – the Board **granted** a request to allow building coverage to increase, as a result of a lot line relocation, from 43% to 47% where 35% was maximum allowed.

May 20, 2003 – the Board **granted** with stipulations, to allow a 2,400 s.f., 3-bay automotive service center with related office space and storage where the use is allowed by Special Exception.

October 21, 2003 – the Board **granted**, with neighborhood protective stipulations, a request to allow a dog day care and associated grooming facility in an existing building with parking where use was not allowed.

November 18, 2003 – the Board **granted** the same request as that granted on October 21, 2003 but deleting the stipulation stating that the landscaping not be degraded and adding a stipulation limiting to no more than 40 dogs at one time. Deleted from the amended application was the request for an outdoor elimination area on an abutting lot.

November 23, 2004 – the Board **granted** a request to allow 2,300 s.f. of the building to be used for the manufacture of counter tops and associated wood, metal and concrete items in a district where manufacturing is not allowed, with a stipulation against outdoor storage.

September 20, 2005 – the Board **granted** a variance to allow a bulk tea re-packaging and wholesale distribution business in a district where such use is not allowed.

August 21, 2007 – The Board **granted** a variance to allow 2,200± s.f. in an existing building to be used for a wholesale warehouse and distribution business in a district where such use is not allowed.

July 24, 2012 – The Board **granted** a variance to allow 83 off-street parking spaces to be provided where 90 off-street were required.

November 22, 2016 – The Board granted a variance to allow two freestanding signs on a lot where only one is allowed and to allow a freestanding sign to be set back 10' from the front lot line and 1.5' from the left side line where 20' is required for each.

Planning Department Comments

The applicant is proposing to have an outdoor dining and drinking area outside of Loaded Question Brewing, which is located on an adjacent parcel. The building where the brewery is located at 909 Islington sits on the rear property line between the two parcels (909 & 1001 Islington). The zoning ordinance allows an outdoor dining or drinking area as an accessory use to a permitted principal use. In the CD4-W, this requires a conditional use permit from the Planning Board. Since the proposal is to locate the seating area on a separate parcel, a variance is needed to allow an accessory use on an adjacent lot. The definition of accessory use is below, which requires the use to be located on the same lot as the principal use or building. No additional parking requirements are needed for the outdoor dining area.

Accessory use

A **use** that is incidental and subordinate to the **principal use** and located on the same **lot** with such **principal use** or **building**.

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.

3.

Petition of the **Neil A Fitzgerald Family Trust, Owner**, for property located at **226 Park Street** wherein relief is needed from the Zoning Ordinance to demolish an existing garage and construct a slightly larger 315 square foot garage which requires the following: 1) A Variance from Section 10.573.20 to allow a 1' right side yard where 9'2" is required; and 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 149 Lot 50 and lies within the General Residence A (GRA) District.

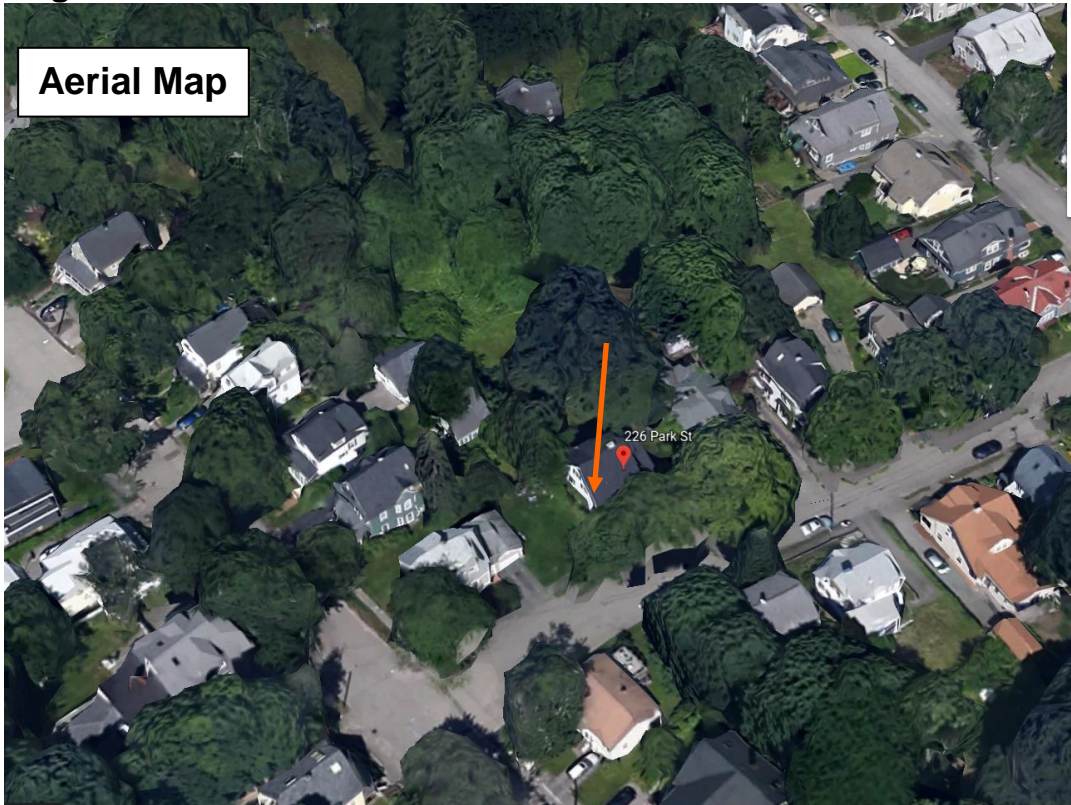
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Demo existing garage and construct new garage	Primarily residential uses
<u>Lot area (sq. ft.):</u>	8,736	8,736	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,736	8,736	7,500 min.
<u>Street Frontage (ft.):</u>	47.69	47.69	100 min.
<u>Lot depth (ft.):</u>	153	153	70 min.
<u>Front Yard (ft.):</u>	8'8"	8'8"	15 min.
<u>Right Yard (ft.):</u>	1 (garage)	1 (garage)	10 min.
<u>Left Yard (ft.):</u>	5	5	10 min.
<u>Rear Yard (ft.):</u>	>20	>20	20 min.
<u>Height (ft.):</u>		9'2" (garage)	9'2" (garage) max.
<u>Building Coverage (%):</u>	22.5	23	25 max.
<u>Open Space Coverage (%):</u>	64	62	30 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>		Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

February 20, 2019 – The Board **postponed** the application to the February 26, 2019 meeting.

February 26, 2019 – The Board acknowledged that the application was **withdrawn** by the applicant.

Planning Department Comments

The applicant is proposing to demolish the existing garage and construct a slightly larger one in approximately the same location. The proposed garage will have a flat roof as opposed to the existing gable roof. The applicant indicated the right side yard setback will be 1.3', however the legal notice stated a 1' setback, which would allow for some flexibility if the variance is granted. Reconstruction of the existing nonconforming garage requires relief from Section 10.321.

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.

4.

P Petition of the **Islamic Society of the Seacoast Area, Owner**, for property located at **686 Maplewood Avenue** wherein relief is needed from the Zoning Ordinance to construct a 4,000± s.f. building to house a religious place of assembly which includes the following: 1) A Special Exception under Section 10.440, Use #3.11 to allow a religious place of assembly in a district where the use is only allowed by Special Exception; and 2) A Variance from Section 10.521 to allow 47'± of continuous street frontage where 100' is required. Said property is shown on Assessor Map 220 Lot 90 and lies within the Single Residence B (SRB) District.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	vacant	Religious place of assembly	Primarily residential uses
<u>Lot area (sq. ft.):</u>	62,776	62,776	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	NA	15,000 min.
<u>Street Frontage (ft.):</u>	47	47	100 min.
<u>Lot depth (ft.):</u>	>100	>100	100 min.
<u>Front Yard (ft.):</u>	NA	151	30 min.
<u>Right Yard (ft.):</u>	NA	51	10 min.
<u>Left Yard (ft.):</u>	NA	13	10 min.
<u>Rear Yard (ft.):</u>	NA	>20	30 min.
<u>Height (ft.):</u>	NA	<35	35 max.
<u>Building Coverage (%):</u>	0	6	20 max.
<u>Open Space Coverage (%):</u>	99	40	40 min.
<u>Parking</u>	NA	60 (CUP granted 1/17/19)	71
		Variance/Special Exception request shown in red.	

Other Permits/Approvals Required

Planning Board – Site Review (Granted April 18, 2019)
 CUP for Parking (Granted January 17, 2019)

Neighborhood Context



Previous Board of Adjustment Actions

February 21, 2017 – The Board granted a special exception and a variance to allow the following: 1) a Special Exception from Section 10.440 to allow a religious place of

assembly in a district where the use is only allowed by special exception; 2) a Variance from Section 10.521 to allow 47'± of continuous street frontage where 100' is required.

February 25, 2019 – The Board granted a 1-year extension of the variance and special exception, to expire on February 21, 2020.

Planning Department Comments

The variance and special exception originally granted on February 21, 2017 have both expired prior to obtaining a building permit within the two year time frame and after the one-time, one-year extension that was granted by the Board on February 25, 2019. The applicant is requesting the same approvals that were originally granted in 2017. The applicant has been working through the site plan review process and received final site plan approval in April of 2019. A Conditional Use Permit to provide less than the required parking was granted in January of 2019.

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.

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.*

5.

Petition of **John Byron, Owner** and **Joseph Bezanson, Applicant**, for property located on **Bartlett Street** wherein relief is needed from the Zoning Ordinance for construction of a new single family dwelling which requires: 1) A Variance from Section 10.521 to allow the following: a) 37% building coverage where 25% is the maximum allowed; and b) an 8.5' right side yard where 10' is required. Said property is shown on Assessor Map 162 Lot 54-1 and lies within the General Residence A (GRA) District.

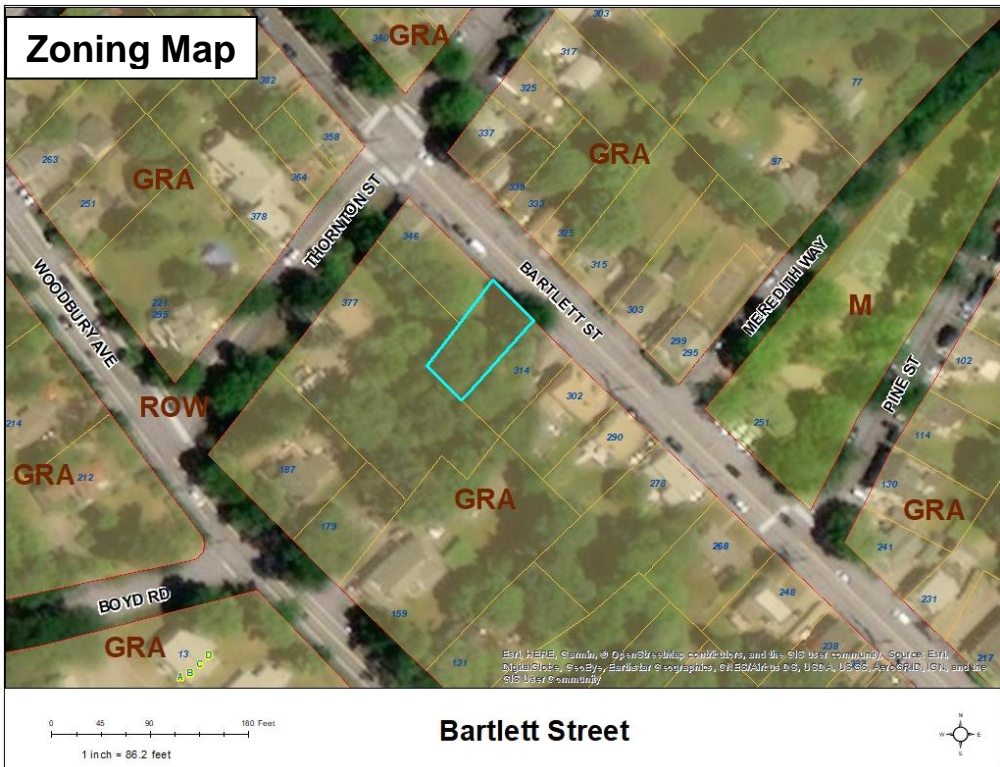
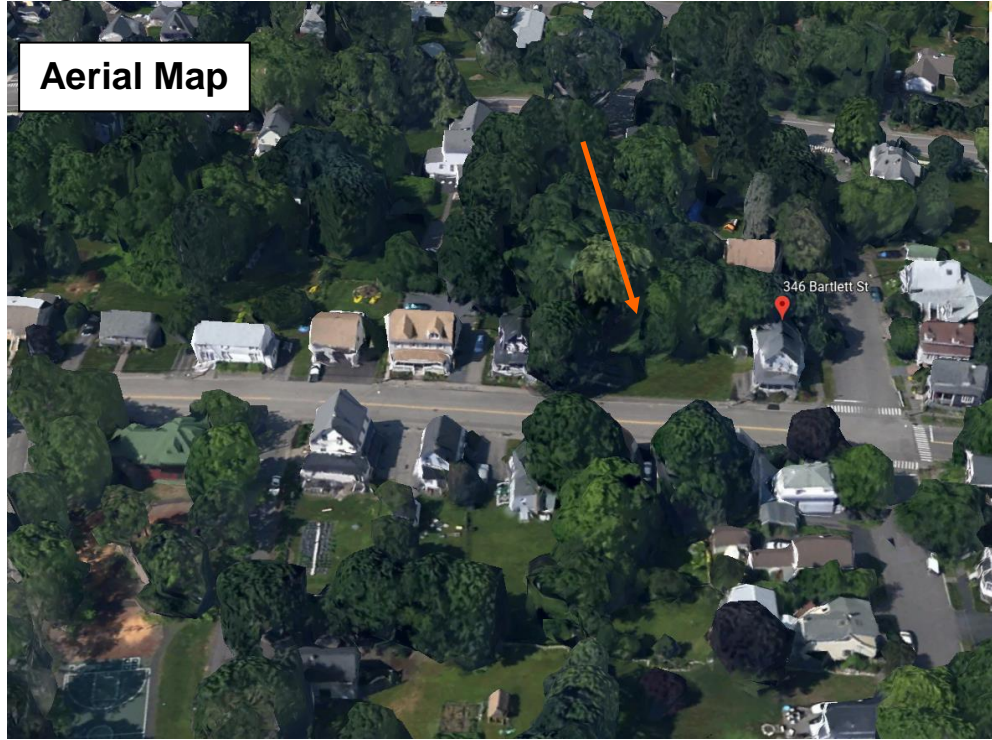
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant	Single family dwelling	Primarily residential uses
<u>Lot area (sq. ft.):</u>	5,026	5,026*	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,026	5,026*	7,500 min.
<u>Street Frontage (ft.):</u>	53.87	53.87*	100 min.
<u>Lot depth (ft.):</u>	99.6	99.6	70 min.
<u>Front Yard (ft.):</u>	NA	15	15 min.
<u>Right Yard (ft.):</u>	NA	8.5 (7* granted in 2019)	10 min.
<u>Left Yard (ft.):</u>	NA	10	10
<u>Rear Yard (ft.):</u>	NA	20	20 min.
<u>Height (ft.):</u>	NA	<35	35 max.
<u>Building Coverage (%):</u>	0	37	25 max.
<u>Open Space Coverage (%):</u>	100	>30	30 min.
<u>Parking</u>	0	2	1.3
<u>Estimated Age of Structure:</u>	NA	Variance request shown in red. *Variances granted in July 2019	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

July 23, 2019 – The Board granted variances and/or special exceptions from Section 10.521 to allow the following: 1) a lot area and lot area per dwelling unit of 5,026 s.f. where 7,500 s.f. is the minimum required for each; 2) 53.87' of continuous street frontage where 100' is required; and 3) a 7' right side yard where 10' is required.

Planning Department Comments

Variances were granted for this property in July of 2019 as shown in the history above. The new owner is proposing a different house with a more conforming right yard than the previous proposal, however the footprint is larger and the new proposal will exceed the maximum building coverage allowed in the district.

Due to drainage concerns raised by abutting property owners a variance for lot coverage should be contingent on the developer conducting an engineer drainage evaluation along with the incorporation of any recommendation to mitigate drainage impacts including abutting property owners and the City. This evaluation shall be reviewed and approved by the Department of Public Works. In addition, a stamped engineer's letter verifying the drainage improvements were installed properly shall be provided prior to a Certificate of Occupancy being issued.

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.

6.

Petition of **Mark Broderick and Emily Spencer, Owners**, for property located on **Sims Avenue** wherein relief is needed from the Zoning Ordinance to construct a single family dwelling on a nonconforming lot which requires: 1) A Variance from Section 10.521 to allow the following: a) a lot area and lot area per dwelling unit of 12,850 square feet where 15,000 square feet is required for each; and b) 57 feet of continuous street frontage where 100 feet is required. Said property is shown on Assessor Map 233 Lot 76-1 and lies within the Single Residence B (SRB) District.

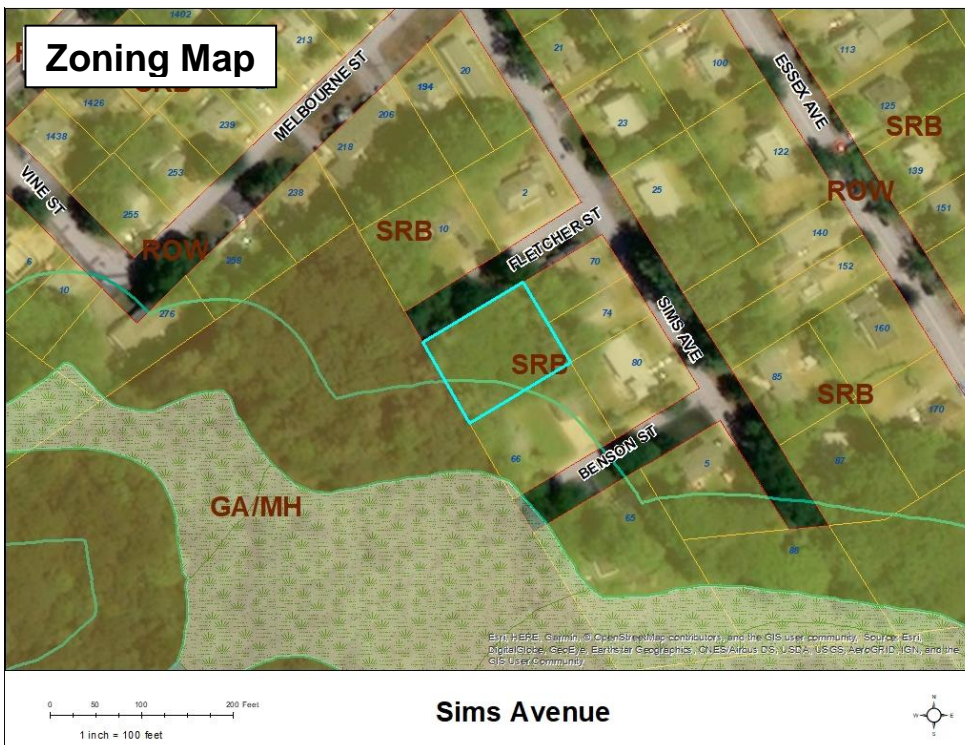
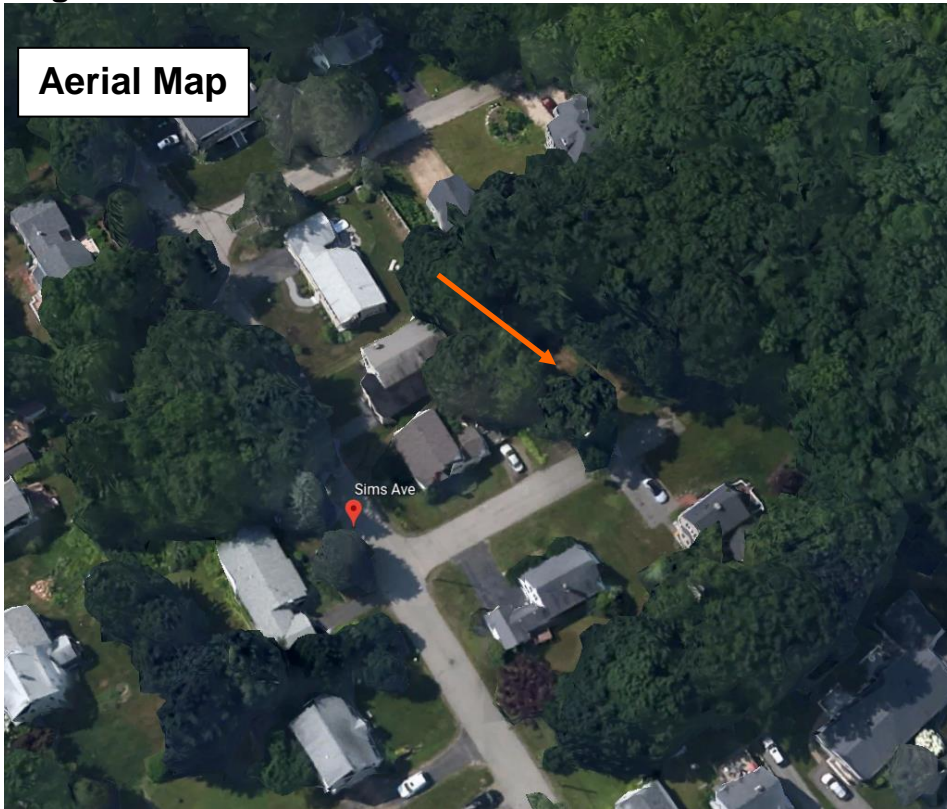
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant	Construct single-family dwelling	Primarily residential uses
<u>Lot area (sq. ft.):</u>	12,850	12,850	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	12,850	12,850	15,000 min.
<u>Street Frontage (ft.):</u>	57	57	100 min.
<u>Lot depth (ft.):</u>	100	100	100 min.
<u>Front Yard (ft.):</u>	NA	30	30 min.
<u>Right Side Yard (ft.):</u>	NA	25	10 min.
<u>Left Side Yard (ft.):</u>	NA	25	10 min.
<u>Rear Yard (ft.):</u>	NA	35	30 min.
<u>Height (ft.):</u>	NA	27	35 max.
<u>Building Coverage (%):</u>	0	17	20 max.
<u>Open Space Coverage (%):</u>	100	74	40 min.
<u>Parking</u>	NA	2+	1.3
		Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

As 70 Sims:

May 23, 2006 – The Board **granted** variances to allow the following: 1) a Variance from Article III, Section 10-302(A) and a Variance from Article IV, Section 10-401(A)(2)(c) to allow a 12'x12' deck with a 3'± right side yard where 10' is the minimum required.

The variance was granted with the following **stipulation**:

- That the deck remain open to the sky.

Planning Department Comments

The applicant is proposing to construct a new single family dwelling on a vacant lot that does not conform to the dimensional requirements in the Single Residence B district. The lot is nonconforming to size and frontage but the proposed dwelling will conform to all other dimensional standards for the district. The applicant's narrative has a slightly larger lot area of 12,901, however the lot area depicted on the site plan of 12, 850 is the correct size and is what was advertised for this petition. In addition, the applicant indicates they will need site review from the Planning Board, however the development of the single lot will not require any other land use approvals.

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.