

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: May 20, 2020
RE: Zoning Board of Adjustment May 26, 2020 Meeting

NEW BUSINESS

1. 83 Rockingham Avenue
2. 268 Dennett Street
3. 48 Hillside Drive
4. 0 Islington Street
5. 246 Thornton Street
6. 199 Constitution Avenue

NEW BUSINESS

1.

Petition of **Barry & Martha White, Owners**, for property located at **83 Rockingham Avenue** wherein relief is needed from the Zoning Ordinance to demolish existing structures and construct new single-family dwelling which requires the following: A Variance from Section 10.521 to allow a lot area and lot area per dwelling unit of 14,258 where 15,000 is required for each. Said property is shown on Assessor Map 236 Lot 20 and lies within the Single Residence B (SRB) District.

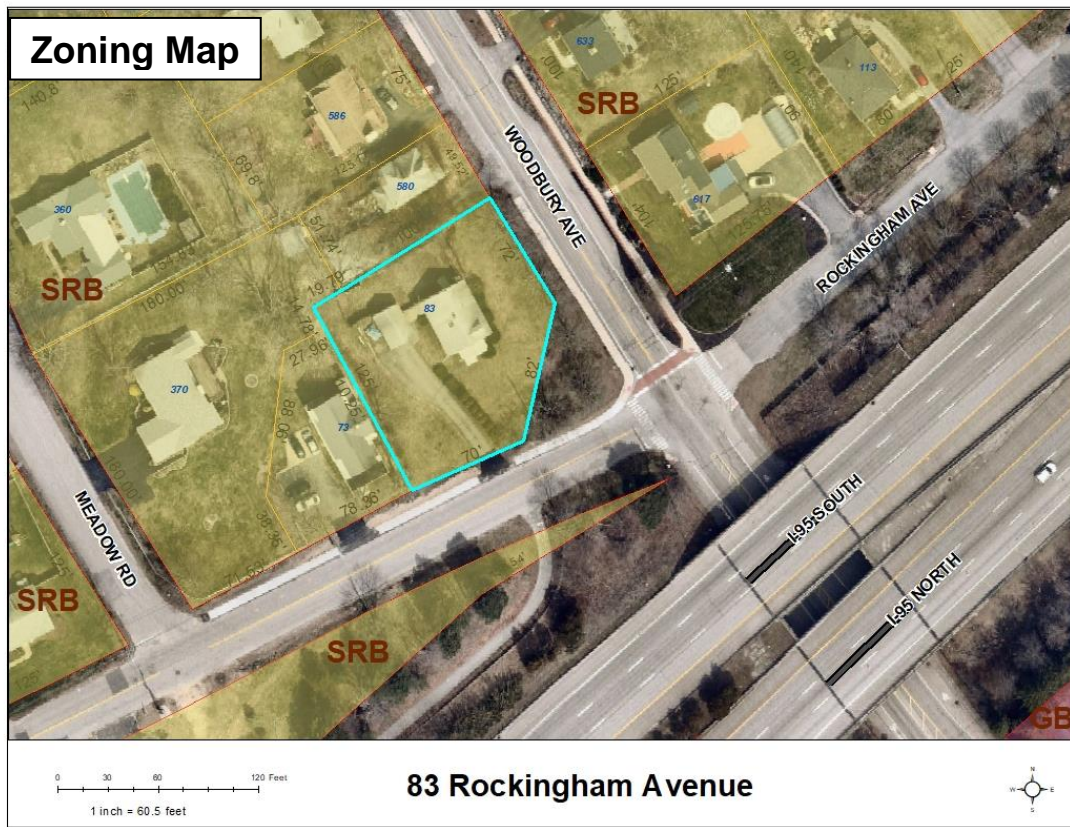
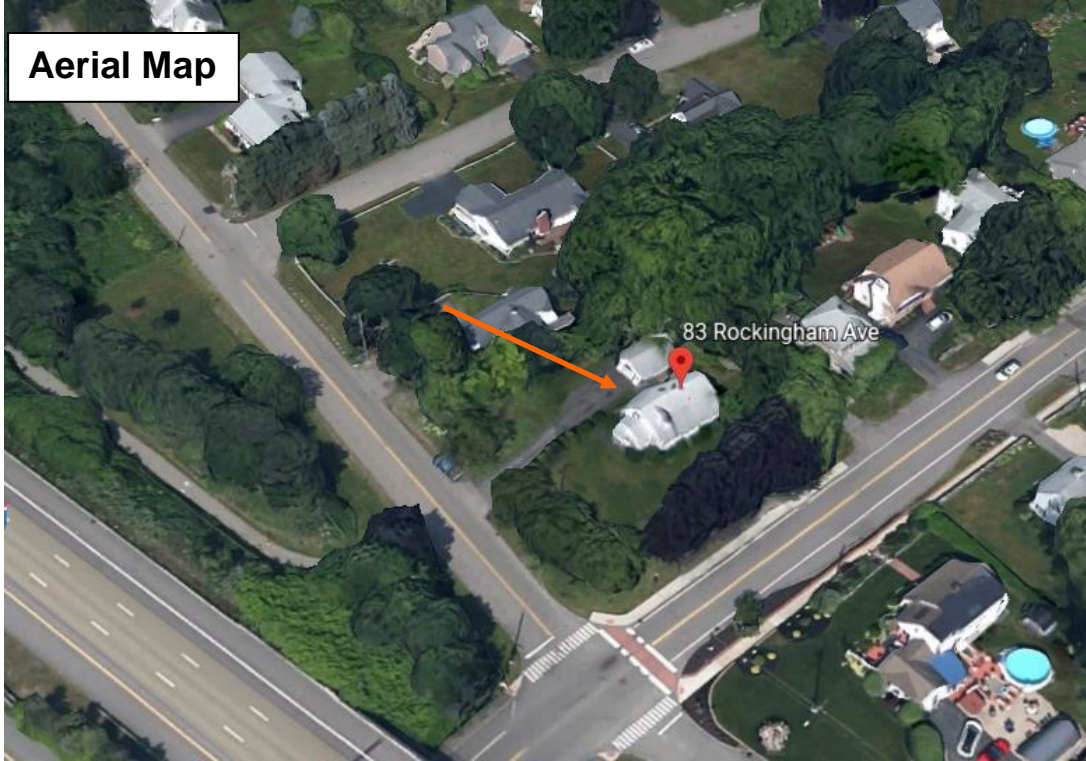
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Condenser unit	Primarily residential uses
<u>Lot area (sq. ft.):</u>	14,258	14,258	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	14,258	14,258	15,000 min.
<u>Street Frontage (ft.):</u>	222	222	100 min.
<u>Lot depth (ft.):</u>	125	125	100 min.
<u>Primary Front Yard (ft.):</u>	26	21	30 (15 per 10.516.10) min.
<u>Secondary Front Yard (ft.):</u>	40	30	30 (26 per 10.516.10) min.
<u>Left Side Yard (ft.):</u>	26	22	10 min.
<u>Rear Yard (ft.):</u>	26	30.5	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u> :	10	19	20 max.
<u>Open Space Coverage (%)</u> :	>40	>40	40 min.
<u>Parking</u>	2+	2+	1.3
<u>Estimated Age of Structure:</u>	1920	Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is proposing to demolish the existing structures on the lot and construct a new single-family dwelling. Because the existing lot is nonconforming, variances are required for lot area and lot area per dwelling unit. Application of Section 10.516.10 reduces the required front setback from 30 feet to 15 feet on Rockingham Ave, however the proposed front yard is 21 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.

2.

Petition of **Michael Petrin, Owner**, for property located at **268 Dennett Street** wherein relief is needed from the Zoning Ordinance to demolish the right side portion of house and reconstruct new addition which requires the following: 1) A Variance from Section 10.521 to allow a 0' right side yard where 10' is required. 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 143 Lot 13-1 and lies within the General Residence A (GRA) District.

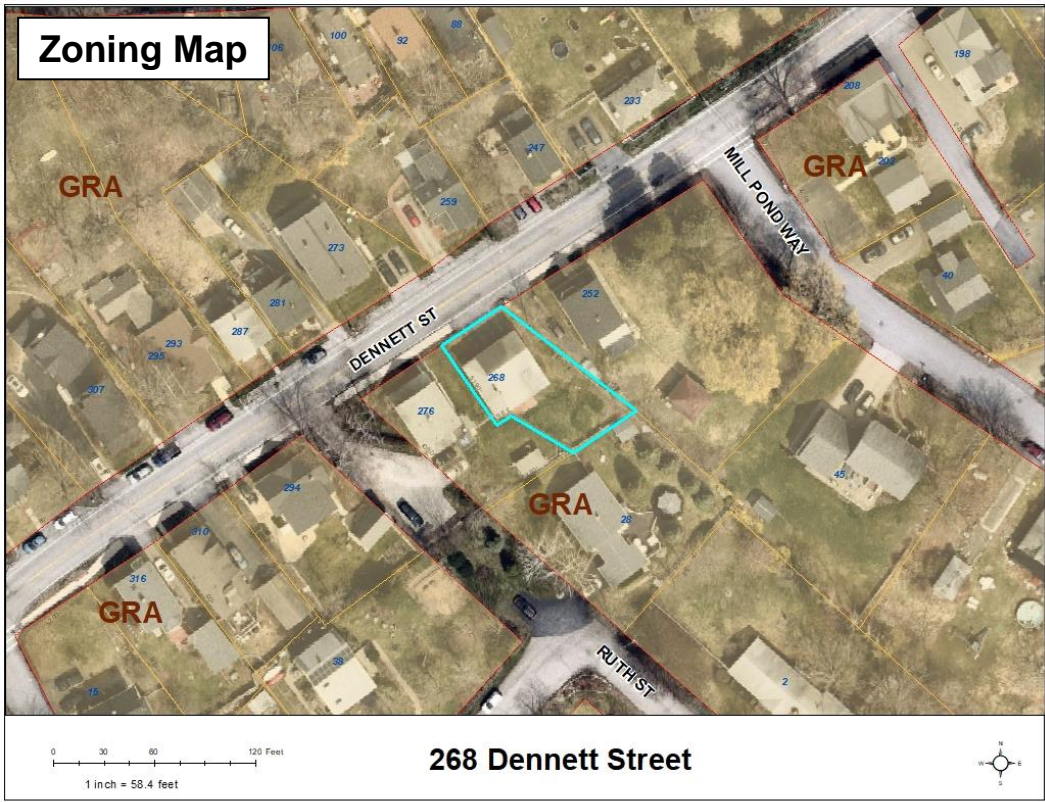
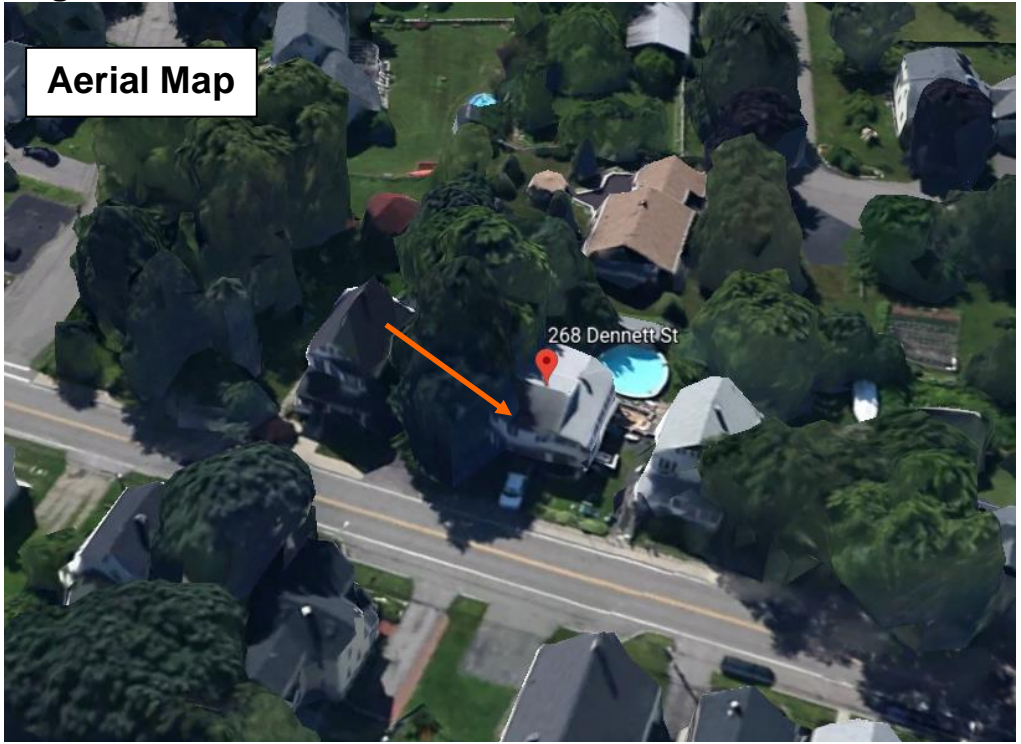
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Construct addition	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	4,821	4,821	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,821	4,821	7,500 min.
<u>Street Frontage (ft.):</u>	42	42*	100 min.
<u>Lot depth (ft.):</u>	>100	>100	70 min.
<u>Primary Front Yard (ft.):</u>	20	20	15 min.
<u>Right Side Yard (ft.):</u>	0	0*	10 min.
<u>Left Side Yard (ft.):</u>	11	11	10 min.
<u>Rear Yard (ft.):</u>	39	39	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	28.5	28.5*	25 max.
<u>Open Space Coverage (%):</u>	59	59	30 min.
<u>Parking:</u>	4	4	1.3
<u>Estimated Age of Structure:</u>	1955	Variance request shown in red. *prior variances granted in 2017	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

March 21, 2017 The Board granted variances for a lot line adjustment as follows: Section 10.521 to allow continuous street frontage of 42.4'± where 100' is required; a right side yard of 0'± where 10' is required; and 28.5%± building coverage where 25% is the maximum allowed.

Planning Department Comments

Variances were granted as part of a lot line revision approval in 2017, as shown in the history above. The proposal is an upward expansion of the existing house within the right side yard. As the applicant's representative states, there is a building and maintenance easement for 268 Dennett Street on 276 Dennett Street that would allow for construction and maintenance of the house, if the variances are 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.

3.

Petition of **Stacey & Philip Gibson, Owners**, for property located at **48 Hillside Drive** wherein relief is needed from the Zoning Ordinance for the keeping of chickens including a Special Exception from Section 10.440 Use #17.20 to allow the keeping of farm animals where the use is permitted by special exception. Said property is shown on Assessor Map 231 Lot 32 and lies within the Single Residence B (SRB) District.

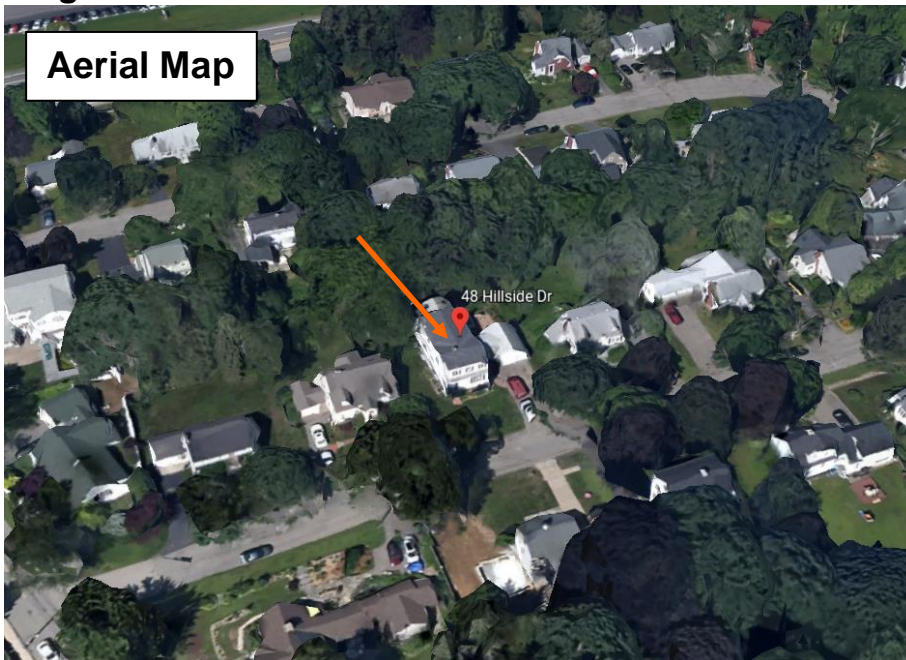
Existing & Proposed Conditions

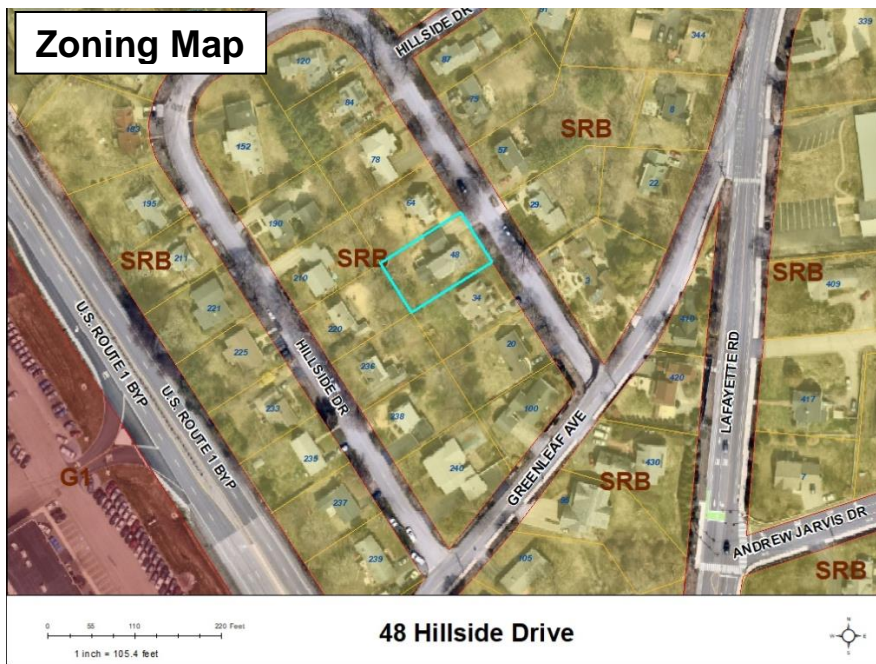
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Keep chickens	Primarily residential uses
		Special exception request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context





Previous Board of Adjustment Actions

June 25, 1991 The Board granted variances to construct an addition to an existing garage as follows: Article III, Section 10-302 to allow a 3' right yard where a 10' right hard is required; and a lot coverage of 29.15% where a lot coverage of 20% is the maximum allowed.

Planning Department Comments

The applicant is proposing to have 2 chickens (hens) including a 6x2 foot coop on wheels. If granted approval the Board should consider a stipulation that prohibits roosters and limits the number of chickens.

Review Criteria

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

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

4.

Petition of **Borthwick Forest, LLC, Owner**, for property located at **0 Islington Street** wherein relief is needed from the Zoning Ordinance for installation of a monument sign which requires the following: A Variance from Section 10.1253.10 to allow a 3.6' setback for a monument sign where 20' is required. Said property is shown on Assessor Map 241 Lot 25 and lies within the Office Research (OR) District.

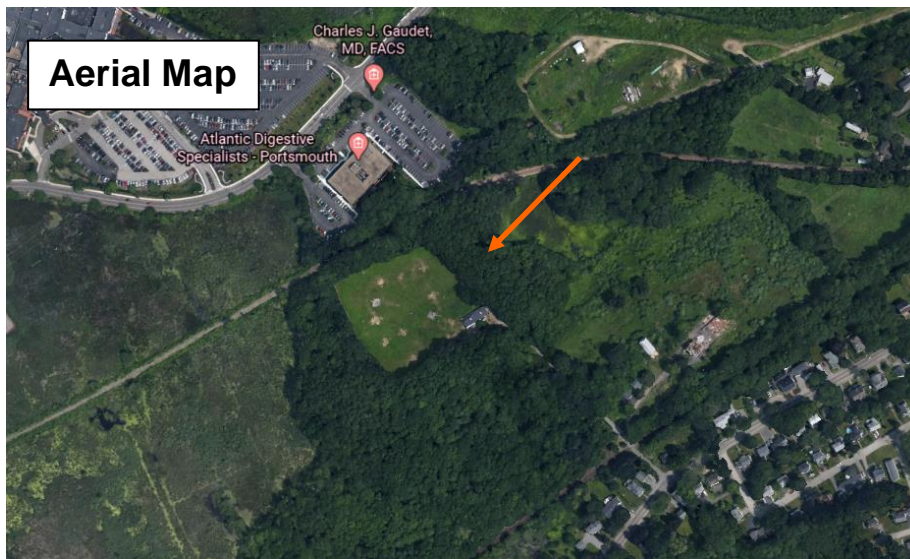
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u> Sign District 4:	Medical facility	Monument sign	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	41.56	41.56	3 acres min.
<u>Setback (ft.):</u>	NA	3.6'	20 min.
<u>Height (ft.):</u>	NA	5'2"	20 max.
<u>Sign area (sq. ft.):</u>	NA	45	100 max.
<u>Estimated Age of Structure:</u>	Under Construction	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 property is located in sign district 4 where the minimum setback from any lot line for a freestanding sign is 20 feet. The development for this property includes the new medical office building and a new road extension off of Borthwick Avenue. The road ends in a cul-de-sac just beyond the office building and includes a new multi-use path as part of the development. As shown on Exhibit 3 in the application, the multi-use path is located on the same side of the road as the new building, which results in a greater setback distance. It appears from this exhibit that in this location a variance would be needed if the path was not on this side of the road.

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.

5.

Petition of **James E. Gould, Owner**, for property located at **246 Thornton Street** wherein relief is needed from the Zoning Ordinance to un-merge two lots and construct a single-family dwelling on the vacant lot which requires the following: For lot 23: Variances from Section 10.521 to allow: a) 61' feet of continuous street frontage where 100' is required; b) a 4' left side yard where 10 feet is required; c) lot area of 7,183 sq. ft. where 7,500 is required; and d) lot area per dwelling unit of 3,591 where 7,500 is required. For lot 25: Variances from Section 10.521 to allow: a) 60.61' of continuous street frontage where 100' is required; b) a 6' left side yard where 10 feet is required; c) 26% building coverage where 25% is the maximum allowed; d) lot area and lot area per dwelling unit of 7,161 where 7,500 is required for each. Said property is shown on Assessor Map 161 Lot 7 and lies within the General Residence A (GRA) District.

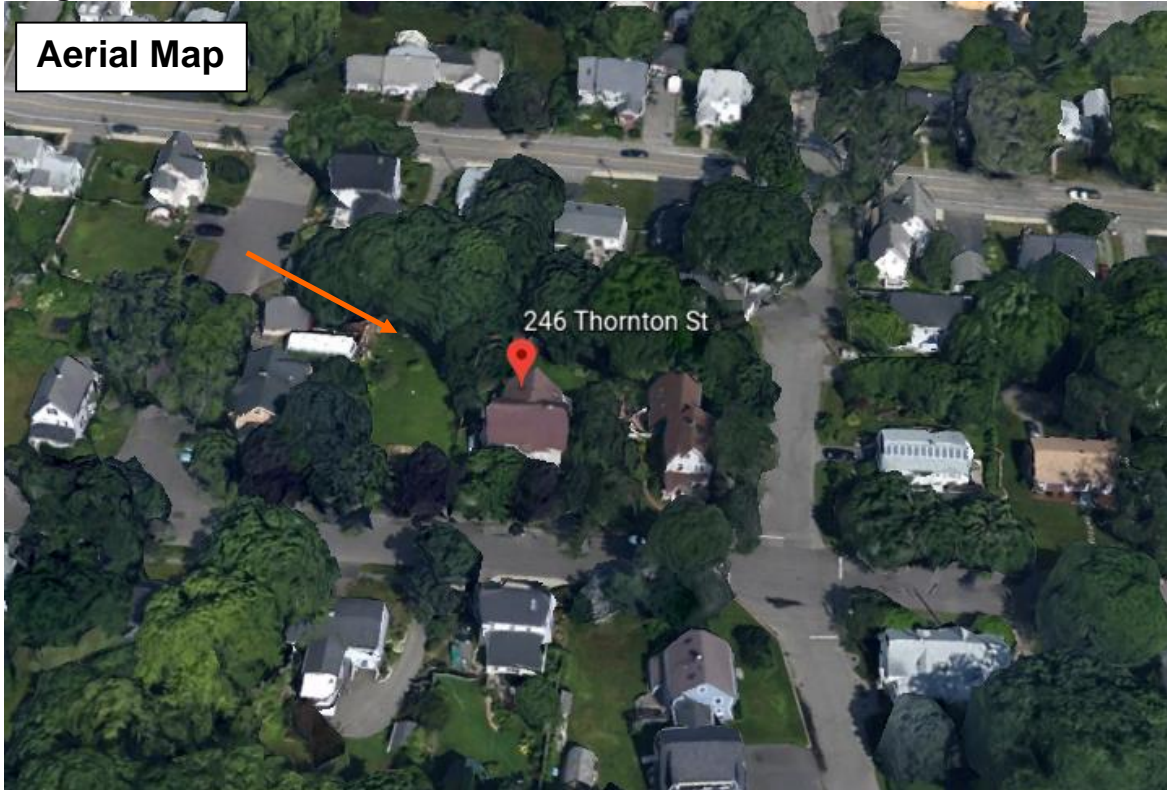
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>		<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Un-merge lots Lot 23 Lot 25		Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	14,344	7,183	7,161	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,172	3,591	7,161	7,500 min.
<u>Street Frontage (ft.):</u>	121.61	61	60.61	100 min.
<u>Lot depth (ft.):</u>	118	118	118	70 min.
<u>Primary Front Yard (ft.):</u>			16	15 min.
<u>Right Side Yard (ft.):</u>	12.8	12.8	10.4	10 min.
<u>Left Side Yard (ft.):</u>	67	4	6	10 min.
<u>Rear Yard (ft.):</u>	52	52	41	20 min.
<u>Height (ft.):</u>	<35	<35	<35	35 max.
<u>Building Coverage (%):</u>	13	20	26	25 max.
<u>Open Space Coverage (%):</u>	81	53	61	30 min.
<u>Parking:</u>	3	3	3	3 (lot 23) 1.3 (lot 25)
<u>Estimated Age of Structure:</u>	1890	Variance request shown in red.		

Other Permits/Approvals Required

City Council – Un-merge lot to premerger status

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing to unmerge the lots pursuant to RSA 674-39aa. Reverting back to two lots will result in several nonconformities with both lots. The existing two-family will become more nonconforming to lot area per dwelling unit and the existing side yard will become nonconforming. The proposed dwelling on lot 25 will encroach into the left side yard and will result in 26% building coverage where 25% is the maximum allowed. It appears the shed side yard will become nonconforming as a result of restoring the property line between the two lots. This was not advertised and the applicant has indicated the approximate height at 9'4", which would be the required setback. If the Board grants approval of the requested variances, and feels that sufficient notice was given to account for the side yard setback for the shed, the motion should indicate approval of the shed location. Otherwise, the shed would need to be relocated to a conforming location or a separate variance application would be required.

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 **Salema Realty Trust, Owner**, for property located at **199 Constitution Avenue** wherein relief is needed from the Zoning Ordinance for construction of a multifamily dwelling containing 40 - 70 dwelling units in a zone where residential uses are not permitted which requires the following: A Variance from Section 10.440 Use #1.53 to allow more than 8 dwelling units where the use is not permitted in the district. Said property is shown on Assessor Map 285 Lot 16 and lies within the Industrial (I) District.

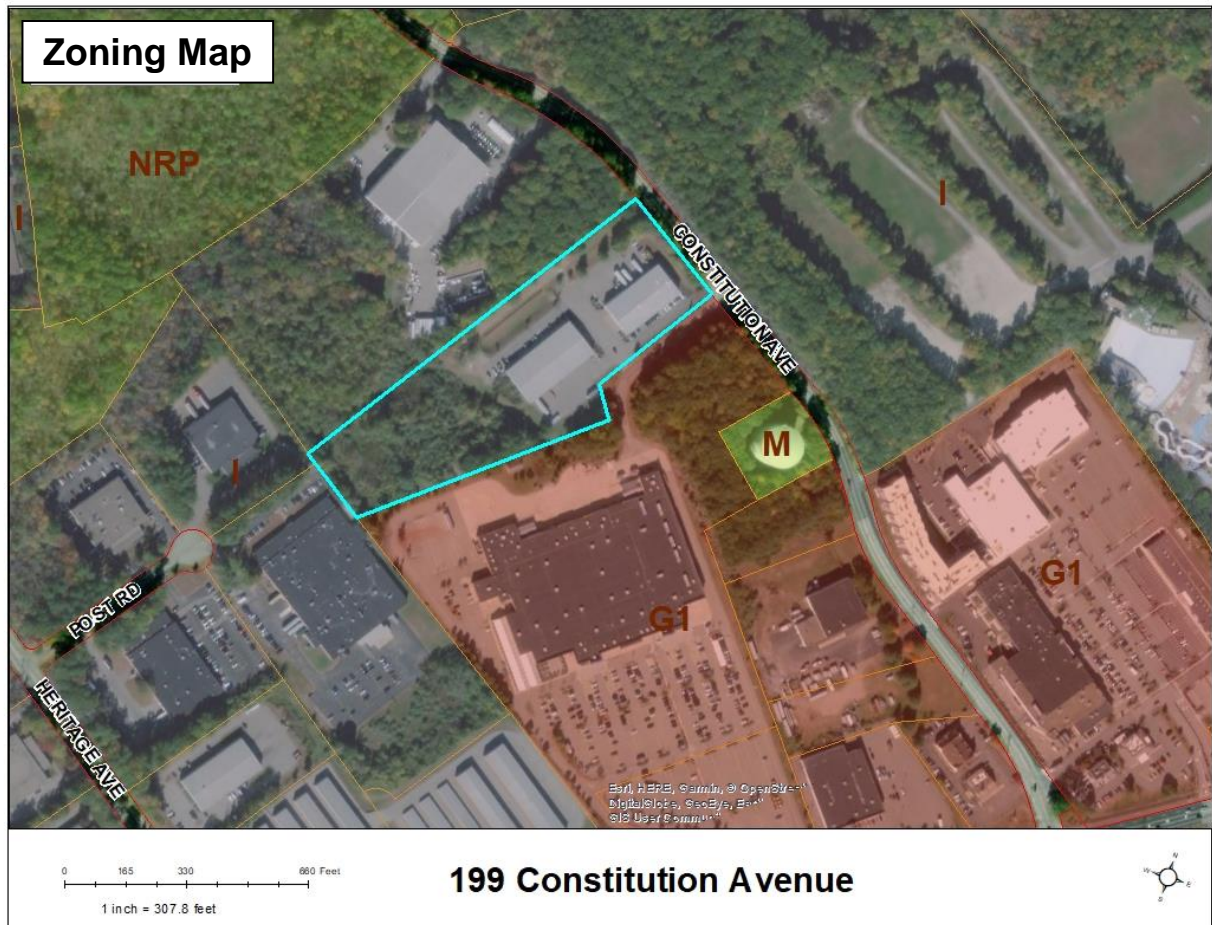
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Industrial/ Commercial	Multifamily residential 40- 70 units	Industrial uses
<u>Lot area (sq. ft.):</u>	8.49 acres	8.49 acres	2 acres min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	5,287 (70 units)	NA min.
<u>Street Frontage (ft.):</u>	331	331	200 min.
<u>Lot depth (ft.):</u>	1123	1123	200 min.
<u>Parking</u>		86 shown on plan	61/73 (depending on # of units)
		Variance request shown in red.	

Other Permits/Approvals Required
TAC/Planning Board – Site Plan review

Neighborhood Context





Previous Board of Adjustment Actions

January 20, 1998 The Board granted a variance from Article II, Section 10-209(21) to allow the establishment of a 3,000 s.f. millwork sales for both retail and wholesale sales with more than 25% of the space being devoted to retail sales showroom.

June 3, 1997 The Board granted a variance from Article II, Section 10-209 to allow an indoor recreational facility (dance studio/8 students, climbing wall/24 persons, gymnastics/12 students, tutor center/1 teacher & 2 students, trick blade and board course/20 persons) with associates babysitting service for members in a district where such use is not allowed.

- October 21, 1997 The Board granted an amendment to that variance to change the located from Building #1 to Building #2.

June 27, 2000 The Board granted the following:

A special exception as allowed in Article II, Section 10-209(35)(b) to place a 24' x 38' modular training trailer for a period of 6 months for use in training existing employees on a new manufacturing process software in a district where temporary structure may be allowed for 180 days by Special Exception, and,

A variance from Article III, Section 10-304(A) to allow said trailer within the required 50' rear yard setback where a 50' setback is the minimum required.

These were granted with the following stipulations:

- The variance be in conjunction with the Special Exception; and,
- A bond be posted in the amount of \$1,000.00 to ensure removal of the trailer.

Planning Department Comments

The applicant is proposing to construct a 4-story multi-family residential building in the Industrial district where residential uses are not permitted. The lot currently contains two other buildings that are used for commercial and industrial purposes. The proposed residential building location conforms to all of the dimensional requirements for the zone, as well as the parking requirements. If granted approval, the proposal will go through site review with TAC and the Planning Board. The application indicates the final number of units will be determined through the planning process, however the Board should consider stipulating the maximum number for this proposal.

If the variance is granted, the Board should consider a stipulation that sets a maximum number of units for the proposal.

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.