

TO: Zoning Board of Adjustment  
FROM: Peter Stith, AICP, Planning Department  
DATE: December 14, 2021  
RE: Zoning Board of Adjustment December 21, 2021

### **OLD BUSINESS**

1. Request for Rehearing – 53 Green Street
2. 194 Madison Street
3. 45 Miller Avenue
4. 437 Lafayette Road

### **NEW BUSINESS**

1. 64 Haven Road
2. 295 Maplewood Avenue

### **OTHER BUSINESS**

1. 15 Pickering Street



## OLD BUSINESS

1.

Request of Duncan MacCallum (Attorney for the Appellants) requesting a rehearing of pursuant to RSA 677:2 Said properties are shown on Assessor Map 119 Lot 2 and lies within the Character District 5 (CD5) and Character District 4 (CD4) Districts.

On Tuesday, October 19, 2021, a motion to grant the appeal of the July 15, 2021 decision of the Planning Board for property located at 53 Green Street which granted the following: a) a wetlands conditional use permit under Section 10.1017 of the Zoning Ordinance; b) preliminary and final subdivision approval; and c) site plan review approval resulted in a tie, therefore was denied.

A request for rehearing has been filed within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, the rehearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.



2.

Request of **Richard E. Tully Revocable Trust and Madeline F. Tully Revocable Trust, (Owners)**, for the property located at **194 Madison Street** whereas relief is needed from the Zoning Ordinance to convert a single family dwelling into a two-family dwelling which requires the following: 1) A Variance from Section 10.521 to allow a lot area per dwelling unit of 1,219 square feet where 3,500 is required. Said property is shown on Assessor Map 146 Lot 17 and lies within the General Residence C (GRC) District.

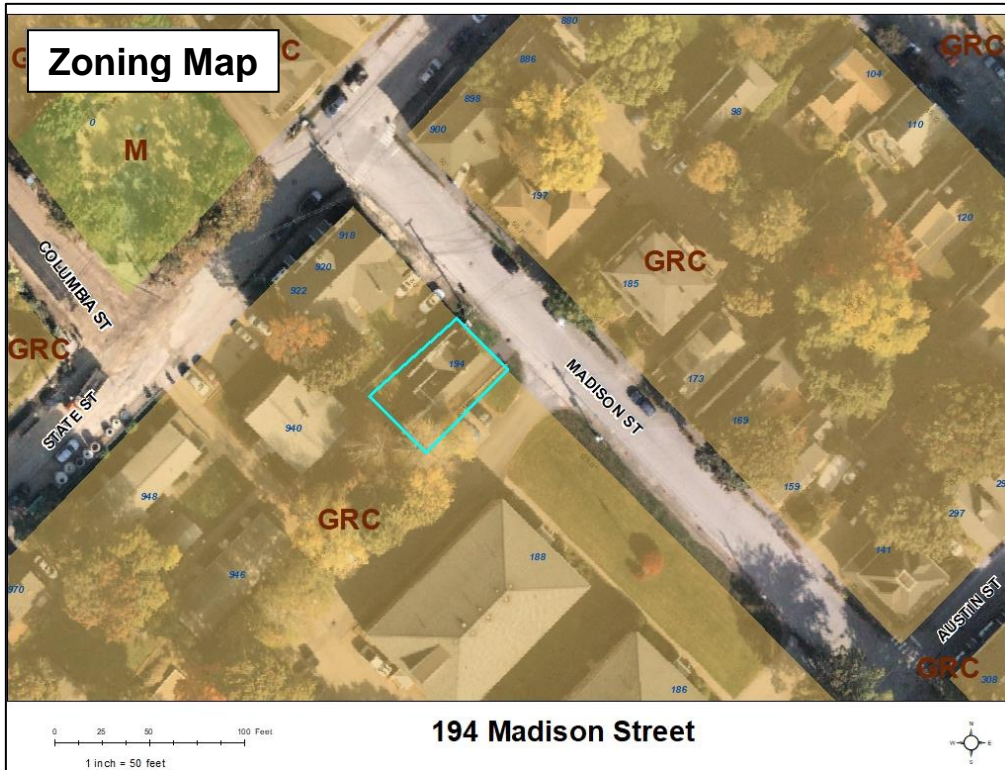
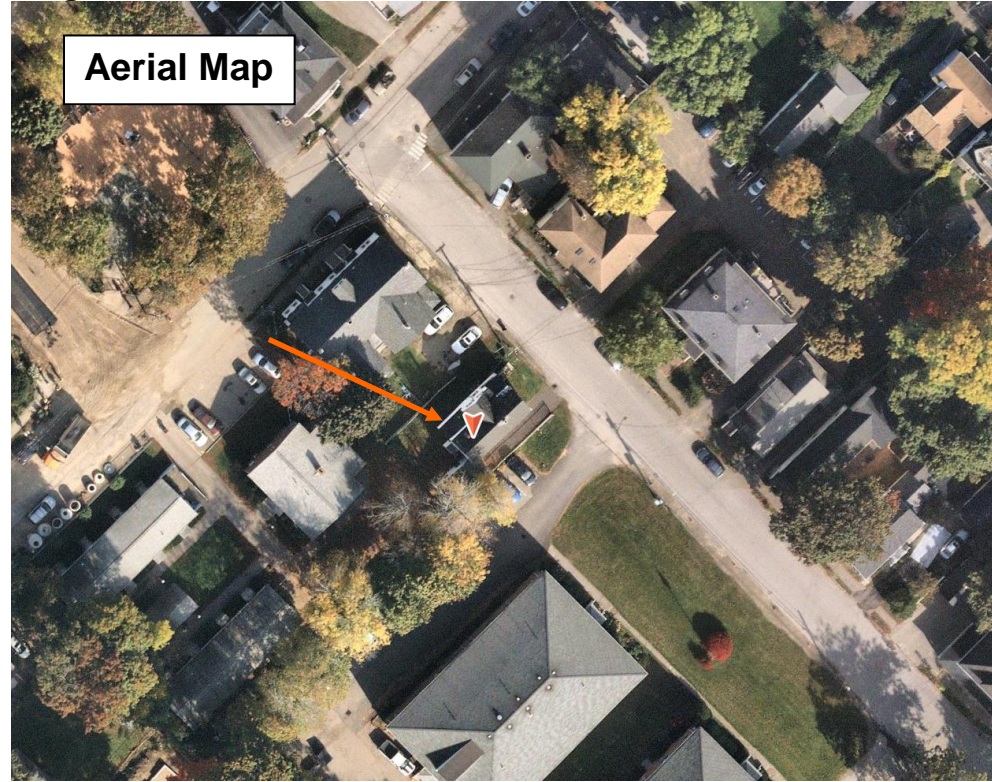
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Convert to two family	Primarily residential uses
<u>Lot area (sq. ft.):</u>	2,439	2,439	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,439	<b>1,219</b>	3,500 min.
<u>Street Frontage (ft.):</u>	38	38	70 min.
<u>Lot depth (ft.):</u>	61	61	50 min.
<u>Primary Front Yard (ft.):</u>	6	6	5 min.
<u>Left Side (ft.):</u>	0	0	10 min.
<u>Right Side (ft.):</u>	9	9	10 min.
<u>Rear Yard (ft.):</u>	1	1	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	38	38	35 max.
<u>Open Space (%):</u>	>20	>20	20 min.
<u>Parking</u>	4	4	3
<u>Estimated Age of Structure:</u>	1880	<b>Variance request shown in red.</b>	

### Other Permits/Approvals Required

None.

## Neighborhood Context



## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is seeking a variance to convert the dwelling into a two family. Initially, the applicant was going to seek a Special Exception under Section 10.812 which allows for the conversion of a dwelling existing on January 1, 1980 to be converted to more than one dwelling unit if it meets certain criteria including compliance with open space, maximum building coverage and off-street parking. If all the criteria were met, the lot area per dwelling unit could be reduced to 1,000 per unit in the GRC. Unfortunately, they do not comply with the maximum building coverage, thus the reason for requesting a variance for lot area per dwelling unit. The applicant states there are no exterior changes, only interior modifications for the conversion.

## 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.

Request of **Monarch Family Trust of 2018, (Owner)**, for the property located at **45 Miller Avenue** whereas relief is needed from the Zoning Ordinance for an addition of a covered front porch and conversion of existing balcony into enclosed bathroom which requires the following: 1) Variances from Section 10.521 to allow a) an 8' left side yard where 10' is required; and b) 28% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be expanded, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on assessor Map 129 Lot 21 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	Covered front porch/enclose balcony for bathroom	Primarily residential
<u>Lot area (sq. ft.):</u>	7,239	7,239	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,239	7,239	7,500 min.
<u>Lot depth (ft.):</u>	127	127	70 min.
<u>Street Frontage (ft.):</u>	55	55	100 min.
<u>Primary Front Yard (ft.):</u>	24'10"	24'10"	15 min.
<u>Left Yard (ft.):</u>	8	<b>8</b>	10 min.
<u>Right Yard (ft.):</u>	7	7	10
<u>Rear Yard (ft.):</u>	56'10"	56'10"	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	25.7	<b>28</b>	25 max.
<u>Open Space Coverage (%):</u>	76	72	30 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1938	Variance request(s) shown in red.	

### Other Permits/Approvals Required

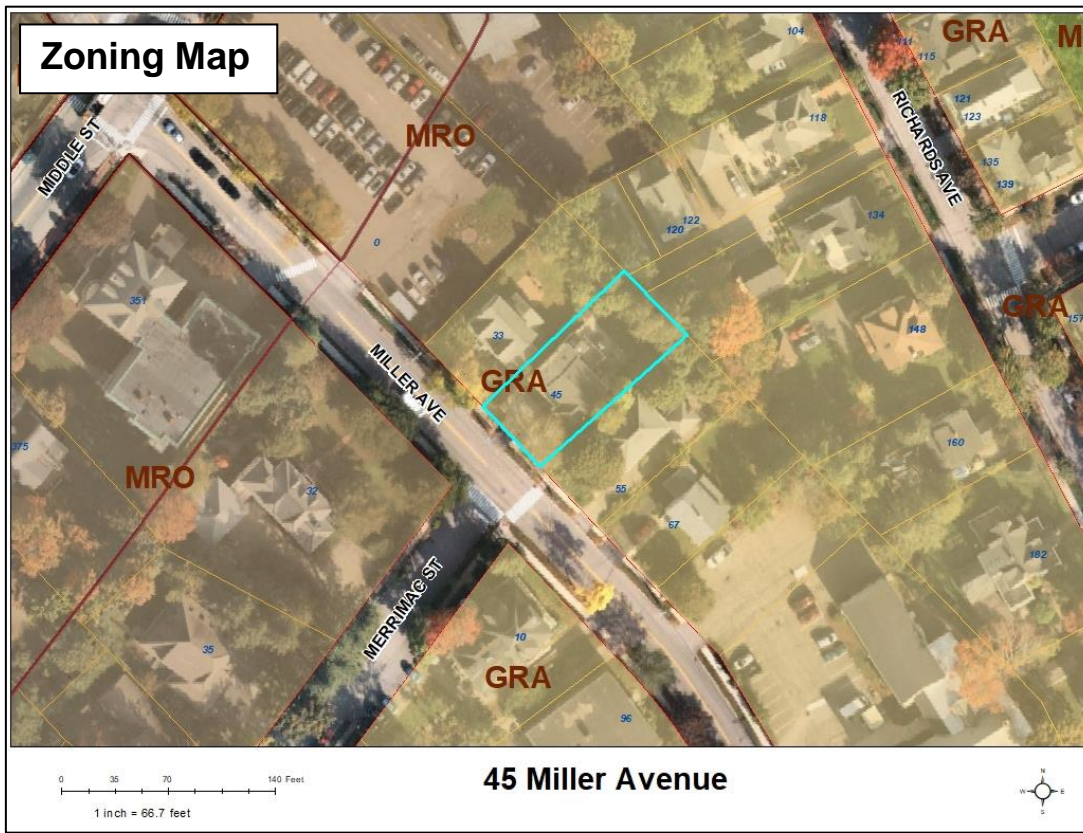
None.

## Neighborhood Context

**Street Map**



**Zoning Map**



## Previous Board of Adjustment Actions

July 18, 1995 – The Board **granted** a variance to allow a 12' x 23' addition over a one- story family room with a 9' side yard and a height of more than 30' in a district where the permitted side yard was 15' (one half of the building height).

October 16, 2002 – The Board **granted** a variance to allow a 9' x 17' one story addition to the dining room with an 8' right side yard where 10' was required.

July 20, 2010 – The Board **denied** a request to construct a new garage on a diagonally attached piece of land.

September 21, 2010 – The Board voted that Fisher v. Dover did not apply to the petition and **granted** variances to allow the replacement of an existing garage on the same footprint with a 4'8" left side yard and 6'2" right side yard where 10' was required and to allow the expansion of a lawful nonconforming structure and changing of a lawful nonconforming use.

September 18, 2018 – The Board **granted** a request to construct basement and rear house access structures and expand an existing deck.

Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:

**a)** from Section 10.521 to allow 28%± building coverage where 25% is the maximum allowed.

## Planning Department Comments

The applicant is proposing add a front covered porch and enclose an existing balcony as part of a renovation that will add an upstairs bathroom. The existing dwelling is nonconforming to both side yards and building coverage. The existing coverage is just over the 25% maximum and the requested relief is for 28% as stated in the narrative, however the plan shows a proposed coverage of 27.5%.

## 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.

Request of **Artwill, LLC, (Owner)**, for the property located at **437 Lafayette Road** whereas relief is needed from the Zoning Ordinance for a proposed four (4) lot subdivision which requires the following: 1) Variances from Section 10.521 to allow a) 60.6' of continuous street frontage where 100' is required for proposed Lot 3; and b) 67.2' of continuous street frontage where 100' is required for proposed Lot 4. Said property is shown on Assessor Map 229 Lot 1 and lies within the Single Residence B (SRB) District.

### Existing & Proposed Conditions

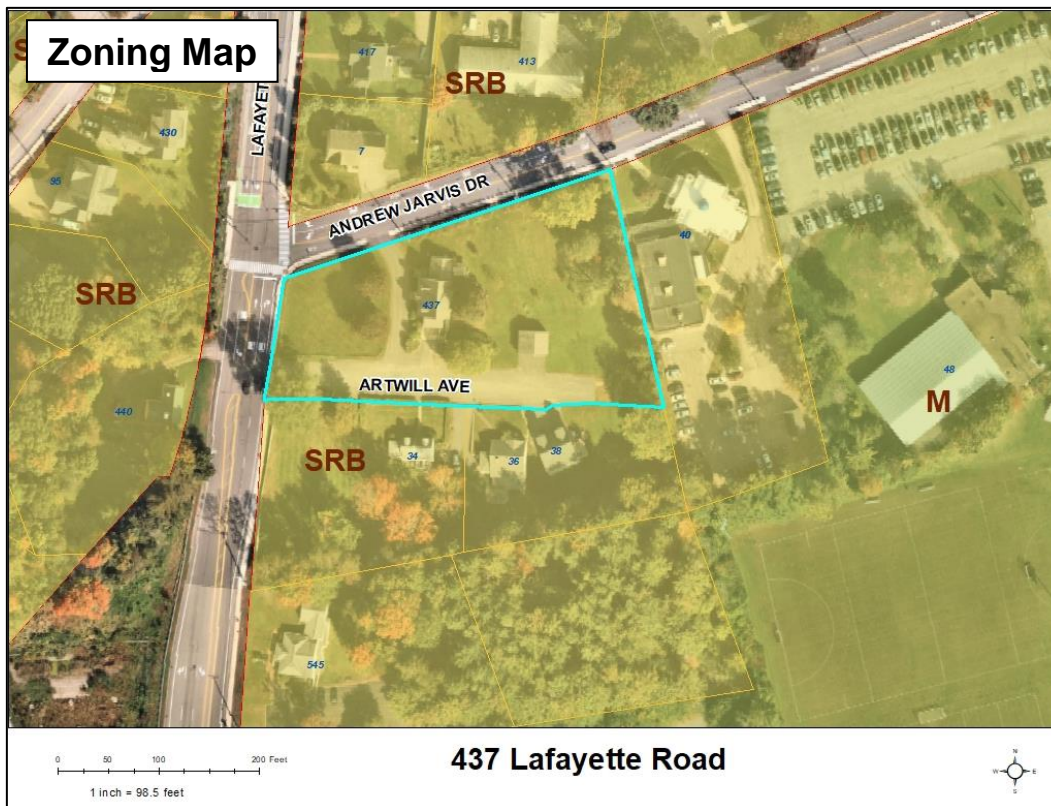
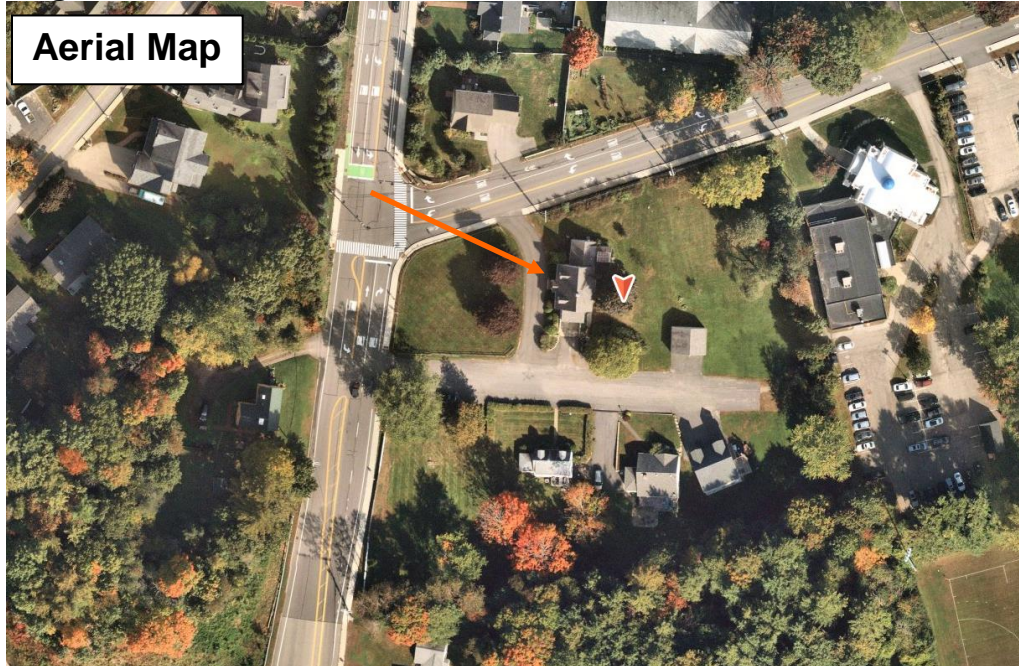
	<u>Existing</u>	<u>Proposed</u>				<u>Permitted</u> <u>/</u> <u>Required</u>
<u>Land Use:</u>	Single family	4 lot subdivision 1                      2                      3                      4				Primarily residential uses
<u>Lot area (sq. ft.):</u>	65,568	15,630	15,951	15,049	18,938	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	65,568	15,630	15,951	15,049	18,938	15,000 min.
<u>Street Frontage (ft.):</u>	461	234	100.5	60.6	67.2	100 min.
<u>Lot depth (ft.):</u>	392	117	177	184.5	210	100 min.
<u>Primary Front Yard (ft.):</u>	146	NA	29.5'	NA	NA	30 min.
<u>Left Side (ft.):</u>		NA	10	NA	NA	10 min.
<u>Right Side (ft.):</u>	76	NA	29	NA	NA	10 min.
<u>Rear Yard (ft.):</u>	172	NA	76	NA	NA	30 min.
<u>Height (ft.):</u>	<35	NA	<35	NA	NA	35 max.
<u>Building Coverage (%):</u>	4.4	0	14.5	0	0	20 max.
<u>Open Space (%):</u>	>40	>40	>40	>40	>40	40 min.
<u>Parking</u>	4	4	NA	NA	NA	2
<u>Estimated Age of Structure:</u>	1937	Variance request(s) shown in red.				

### Other Permits/Approvals Required

TAC/Planning Board – Subdivision/Site Review



## Neighborhood Context



## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is seeking variances for frontage on two proposed lots in a four lot subdivision of the subject property. The applicant states this was part of a subdivision shown on a plan from 1958 but has since been treated as one lot. In an effort to make the lots more conforming to the current zoning, all of the proposed lots will exceed the 15,000 square foot minimum for lot area. The existing dwelling will remain on proposed lot 2 and conform to all dimensional requirements, however the new principal front will be located off of Andrew Jarvis. The survey shows the front yard setback as 29.97 feet where 30 feet is required and the variance request is 29.5' to account for any discrepancies.

## Review Criteria

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

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

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

**AND**

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

**OR**

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





## NEW BUSINESS

1.

Request of **Clark J. Anthony (Owner)**, for the property located at **64 Haven Road** whereas relief is needed from the Zoning Ordinance to construct a 10' x 12' shed which requires the following: 1) A Variance from Section 10.573.20 to allow a 5' side yard where 10' is required; and 2) A Variance from Section 10.571 to allow an accessory structure to be located closer to the street than the principal building. Said property is shown on Assessor Map 206 Lot 30 and lies within the Single Residence B (SRB) District.

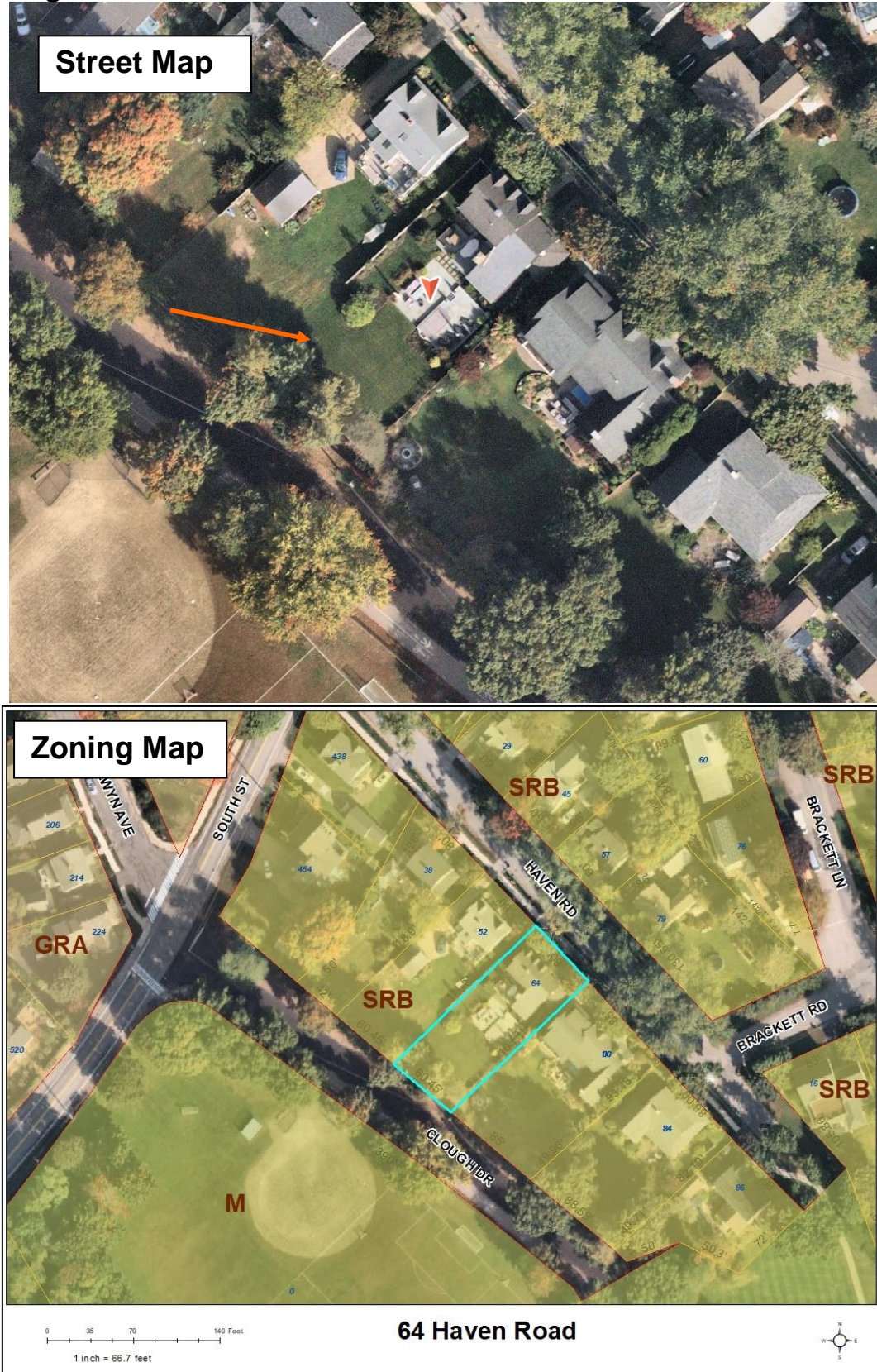
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Add 10' x 12' shed	Primarily residential
<u>Lot area (sq. ft.):</u>	9,583	9,583	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,583	9,583	15,000 min.
<u>Lot depth (ft.):</u>	107	107	100 min.
<u>Street Frontage (ft.):</u>	60	60	100 min.
<u>Primary Front Yard (ft.):</u>	16	16	30 min.
<u>Secondary Front Yard (ft.):</u>	95	95 15 (shed)	30 min.
<u>Left Yard (ft.):</u>	8	8 45 (shed)	10
<u>Right Yard (ft.):</u>	13	<b>5</b> (shed)	10 min.
<u>Height (ft.):</u>	<35	10 (shed)	35 max.
<u>Building Coverage (%):</u>	17	18.5	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1940	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

None.

## Neighborhood Context



## Previous Board of Adjustment Actions

March 18, 1997 – The Board voted that the request be **granted** as presented and advertised with the stipulation that the driveway be configured so that cars drive out onto Clough Drive rather than back out onto the street. Variance from Article III, Section 10-302(A) to allow:

- a) a 2' x 14' addition to the front of the dwelling with a 20' front yard where 30' is the minimum required,
- b) The reconstruction of an existing 7'4" x 17' sun porch to be used as part of the living space with a 3' side yard where 10' is the minimum required; and,
- c) 24' x 26' garage creating a building coverage of 21.7% where 20% is the maximum allowed.

May 20, 1997 – The Board of Adjustment at its meeting of May 20, 1997, after due Public Hearing, completed its consideration of the rehearing of your application as requested by the School Department concerning a Variance from Article III, Section 10-302(A) that was granted at the March 18, 1997 meeting. As a result of such consideration, it was voted that the request for a Variance be **granted** as advertised and presented and the stipulation made at the March 18, 1997 meeting that the driveway be configured so that cars drive out onto Clough Drive rather than back out onto the street be adhered to.

July 15, 1997 – The Board considered request by School Department wherein the following were requested: a Variance from Article III, Section 10-302A (A) concerning the access for a 24' x 26' garage which creates a building coverage of 21.7% where 20% is the maximum allowed to clarify the egress onto Clough Drive be discussed. As a result of such consideration, it was voted the **prior approval be amended** as follows:

- 1) Any other city approvals be obtained as required; and
- 2) if Clough Drive access is approved, then the driveway shall be configured so that cars drive out onto Clough Drive rather than back out onto the Clough Drive.

## Planning Department Comments

The applicant is proposing to construct a 10' x 12' shed on the property. The lot is a through lot with frontage on Haven Road as well as Clough Drive. Any accessory structure placed between the principal dwelling and Clough Drive would need relief from Section 10.571. The applicant is proposing to place the shed 5 feet from the side lot line where 10 is the 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.*



4.

Request of **35 Pines, LLC (Owner)**, for the property located at **295 Maplewood Avenue** whereas relief is needed from the Zoning Variance to establish a barber shop which requires the following: 1) A Special Exception from Section 10.440 Use #7.20 to allow a barber shop where the use is allowed by special exception. Said property is shown on Assessor Map 141 Lot 35 and lies within the Character District 4-L2 (CD4-L2) and Historic District.

### Existing & Proposed Conditions

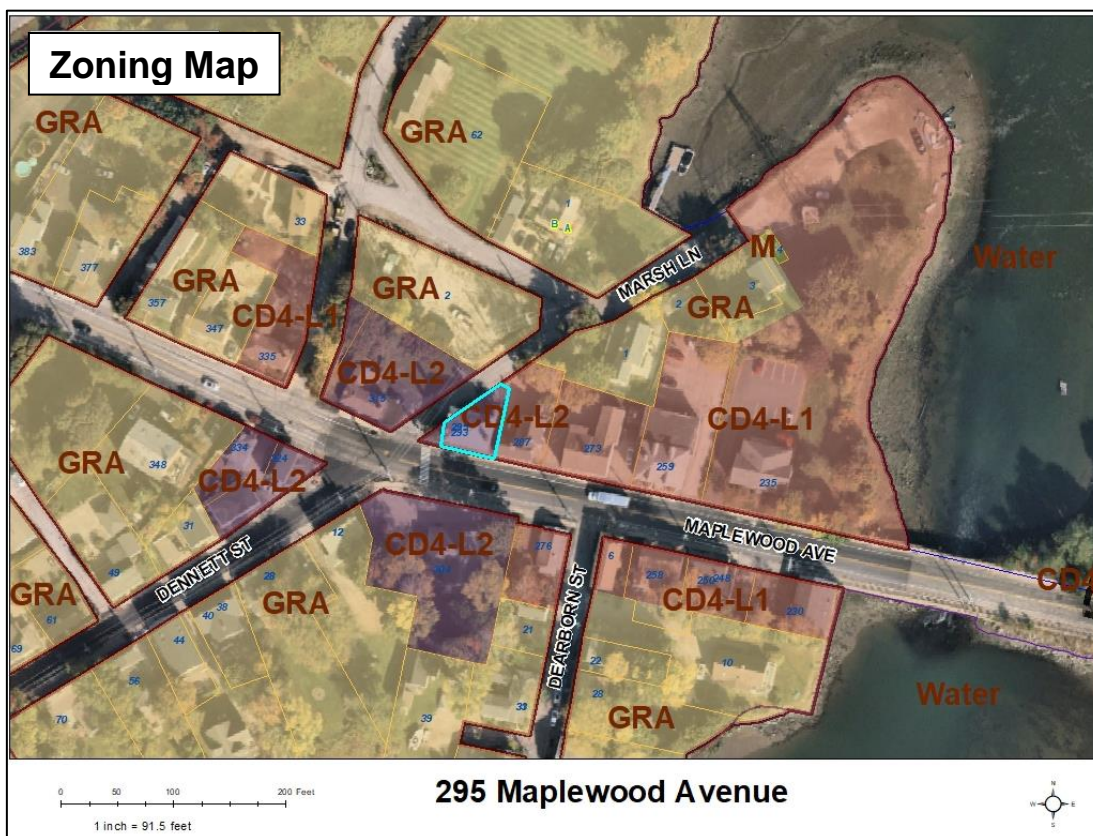
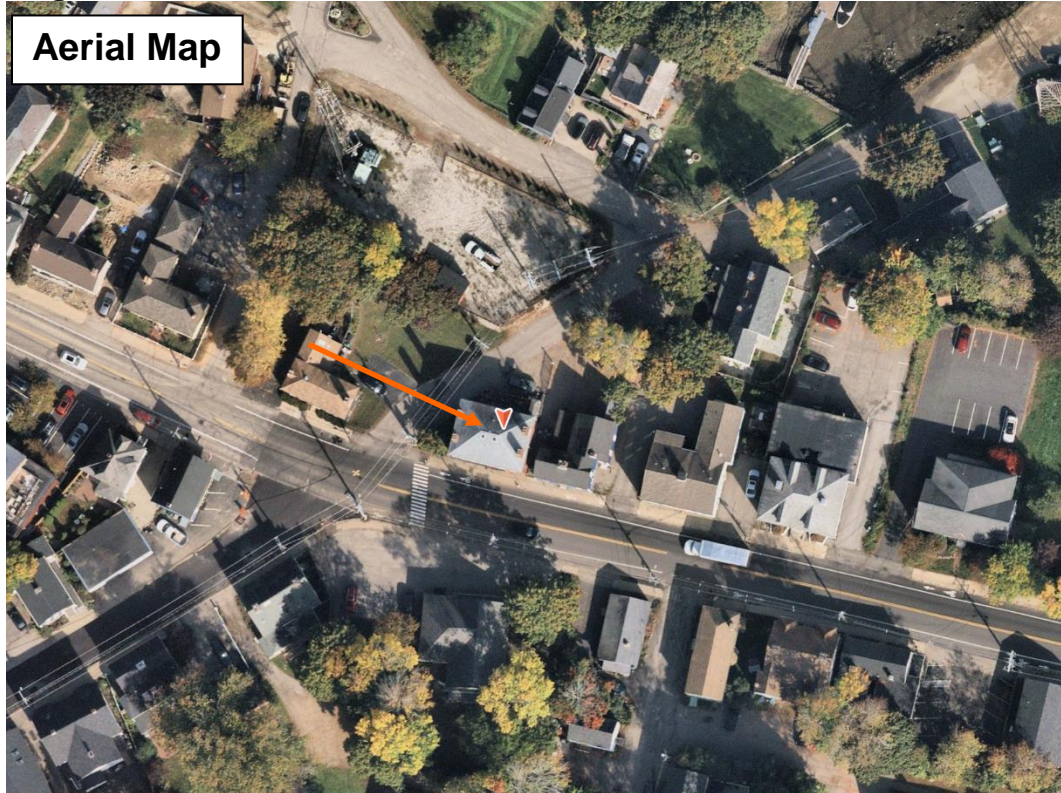
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed use	<b>Barber Shop</b>	Primarily residential
<u>Lot area (sq. ft.):</u>	2,178	2,178	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,089	1,089	3,000 min.
<u>Primary Front Yard (ft.):</u>	3	3	15 max.
<u>Left Yard (ft.):</u>	0	0	5 ft. – 20 ft. max.
<u>Right Yard (ft.):</u>	5	5	5 ft. – 20 ft. max.
<u>Rear Yard (ft.):</u>	20	20	5 ft. from lot line or 10 ft. from center line of alley
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	52	52	60 max.
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Parking:</u>	2	0*	3 for proposed use
<u>Estimated Age of Structure:</u>	1730	<b>Special Exception request(s) shown in red.</b> *Seeking CUP from Planning Board	

### Other Permits/Approvals Required

TAC/Planning Board – Cup for Parking



## Neighborhood Context



## Previous Board of Adjustment Actions

January 25, 2011 (postponed from January 18, 2011) – Board voted to **grant** the variance to construct a sign projecting over the sidewalk 42" where 31.6" is allowed. (Variance from Section 10.1253.50 to allow a projecting sign to project more than one-third the width of the sidewalk.)

September 28, 2010 – The Board **granted** a variance to allow the first floor space to be used by a use permitted in the zoning district with no off-street parking spaces.

February 18, 2003 – The Board **granted** variances to allow a 2<sup>nd</sup> floor irregular shaped 10' x 36' deck with a 0' left and right side yards where 10' is required, 15% open space where 25% is the minimum required and 64% building coverage where 40% is required. The variances were granted with the stipulation that appropriate screening be placed on the left side of the deck from the ground to the upper level.

September 15, 1998 – The Board **granted** variances to allow the retail business, "Portsmouth Curtain Call" to expand upstairs into an existing apartment which will be eliminated; and to allow no parking to be provided where 2 additional spaces would be required. The variances were granted with the stipulation that the maximum people on site be the owner plus two employees.

July 19, 1994 – The Board **granted** a variance to allow the establishment of a workshop offering consumer services specializing in custom window treatments including the sale of fabrics and accompanying hardware where such use is not allowed, with the stipulation that the hours of operation be from 10:00 a.m. to 4:30 p.m. Tuesday through Saturday and that no upholstering of furniture take place on site.

May 16, 1995 – The Board **adjusted** the hours of operation granted above to one evening a week until 7:00 p.m.

September 21, 1981 – The Board **denied** a special exception to establish a furniture store, and variances to allow the following: (a) an 8.5 s.f. projecting sign; (b) three parking spaces where five are required; and (c) to allow vehicles to back into the street.

## Planning Department Comments

The applicant is seeking a special exception to allow a barber shop which falls under the personal services use in the Ordinance. The applicant is seeking a conditional use permit to allow 0 parking spaces where 3 are required for the proposed use. The Planning Board meeting is on December 16<sup>th</sup>, so an update can be provided to the Board at the meeting whether or not the CUP was granted. Otherwise, no changes are proposed to the site or structure with the proposed use.

## 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.*



## **OTHER BUSINESS**

### **15 Pickering Avenue**

The request from the property owner is for removal of a stipulation that was put on the property in 1989 as part of a settlement between the former owner and the City. The original variances that were granted allowed residential use for buildings A and B and that the remaining buildings could not be used for residential purposes. Stipulation #4 of the Order prohibits the owner from applying to the BOA for any residential use for buildings C, D E and F as shown on the exhibit. Mr. Normandeau is requesting that this stipulation be removed by the BOA. The City attorney has written a memo in support of removing the stipulation and is attached to this memo for your review. Residential uses are not permitted in the Waterfront Business District and removal of the stipulation would not permit such a use. It would however, allow the owner or future owner to seek a variance to allow additional residential use(s) on the property.