

TO: Zoning Board of Adjustment  
FROM: Juliet Walker, Planning Department  
DATE: April 16, 2015  
RE: Board of Adjustment Meeting on April 21, 2015

**OLD BUSINESS**

1. 3613 Lafayette Rd
2. 39 Dearborn St

**NEW BUSINESS**

3. 648 Lincoln Ave
4. 233 Vaughan St
5. 275 Islington St
6. 124 Broad St
7. 65 Mendum Ave
8. 44 Melbourne St



# OLD BUSINESS

## Case # 3-3

Petitioner:	State Street Discount House
Property:	3613 Lafayette Road
Assessor Plan:	Map 298, Lot 6
Zoning District:	Gateway
Description:	Allow a changeable sign to be changed more than once a day.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Variance from Section 10.1290 to allow a changeable sign to be changed more than once a day.

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Retail	Mix of commercial and high density residential
<u>Individual Wall Sign Area:</u>	Sign 1 -- 70.0 sq. ft. Sign 2 -- 70.0 sq. ft.	200 sq. ft. max. (for each)
<u>Individual Free-Standing Sign Area:</u>	Sign 3 -- 162 sq. ft. Sign 4 -- 12 sq. ft.	100 sq. ft. max. (for each)
<u>Aggregate Sign Area (per Establishment):</u>	140 sq. ft. (excludes freestanding signs)	565.5 sq. ft. max.
<u>Free-Standing Sign Height</u>	Sign 3 -- 30' Sign 4 -- TBD	20' max.

### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Retail	Mix of commercial and high density residential
<u>Individual Free-Standing Sign Area:</u>	Sign 3 -- 152 sq. ft.	100 sq. ft. max. (for each)
<u>Sign Type</u>	Animated sign	All sign types defined in Ordinance, with exception of animated signs
<u>Free-Standing Sign Height</u>	30'	20' max.

### C. Other Permits Required

- None.

### D. Neighborhood Context

- Surrounding Land Uses: Motor vehicle sales and service, vacant land, restaurant
- Public View of Proposed Improvements: Visible from Lafayette Rd



## E. Previous Board of Adjustment Actions

September 24, 1974 – The Board **granted** a request to construct an addition within 22' of the side property line.

May 13, 1986 – The Board **tabled** to the June 3, 1986 meeting a request for the following: 1) a variance to allow the construction of a 16.5'± x 40.5'± storage shed with a front yard of 70'± where 105' was required; and 2) a special exception to permit 2 storage trailers to remain on the lot for 90 days while a proposed addition was constructed. The petition was tabled so that matters could be clarified for the Board.

June 3, 1986 – The Board **denied** the request for a variance and tabled the request for a special exception until the petitioner removed the existing trailer which was in violation of the Zoning Ordinance.

June 3, 1986 – A separate letter stated that the Board denied both the variance and special exception.

July 15, 1986 – The Board **denied** a request for rehearing in the above matter (unclear if for both variance and no special exception but no further action taken on special exception).

June 23, 1992 – The Board **denied** a request to allow the construction of a one story 3,800± s.f. addition to an existing 9,100 s.f. nonconforming building with a 42'± front yard where 105' was required.

July 21, 1992 – The Board **denied** a request for rehearing in the above matter. (Subsequent filing with the court – decision not indicated in file.)

December 16, 2014 – The Board **postponed** a request to allow an animated sign (changeable sign) where an animated sign was not allowed.

January 21, 2015 – The Board **denied** a request to allow an animated sign where such signs were not allowed and **granted** variances to allow the following: a) a 152± s.f. freestanding sign where 100 s.f. was the maximum allowed, with the stipulation that the other existing freestanding reader board sign located along the roadway to the north of the approved sign would be removed; and b) a sign height of 30'± where 20' was the maximum allowed.

March 17, 2015 – The applicant requested a variance to allow a changeable sign to be changed more than once a day. The Board decided that Fisher v. Dover applied to this request and declined to hear the petition.

## F. Planning Department Comments

The Applicant has filed a request for a rehearing 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 May Board meeting or at another time to be determined by the Board.

Although the request refers to a "changeable sign", the definition in the City's Zoning Ordinance includes a statement that "*A sign on which the message changes more than once per day shall be regulated as an animated sign.*" Animated signs are not allowed, and this is a request to allow an animated sign that was previously denied by the Board. Due to the similarity of this request to the January 21, 2015 application, the Board considered whether to invoke Fisher vs Dover.

*"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)

## Case # 3-5

Petitioners:	Michael Brandzel & Helen Long
Property:	39 Dearborn Street (Dearborn Lane)
Assessor Plan:	Map 140, Lot 3
Zoning District:	General Residence A
Description:	Construct a 12'± x 18'± shed in front yard. Construct an 8'± x 13'± single story addition and add shed dormers.
Requests:	<p>The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:</p> <ol style="list-style-type: none"> <li>1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or structurally altered without conforming to the requirements of the Ordinance.</li> <li>2. Variances from Section 10.521 to allow the following: <ol style="list-style-type: none"> <li>(a) A front yard setback of 5'± where 15' is required.</li> <li>(b) A right side yard setback of 4'± where 10' is required.</li> <li>(c) A rear yard setback of 3'± where 20' is required.</li> </ol> </li> <li>3. A Variance from Section 10.571 to allow an accessory structure to be located in a required front yard.</li> </ol>

*This petition was postponed from the March 17th meeting and revised by a change in the size of the proposed shed.*

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residential	Primarily residential uses.
<u>Lot area:</u>	11,236 sq. ft.	7,500 sq. ft. min.
<u>Lot Area per Dwelling Unit:</u>	11,236 sq. ft.	7,500 sq. ft.min.
<u>Street Frontage:</u>	20'	100' min.
<u>Lot depth:</u>	62'	70' min.
<u>Front Yard:</u>	25'	15' min.
<u>Left Yard:</u>	90'	10' min.
<u>Right Yard:</u>	4'	10' min.
<u>Rear Yard:</u>	3'	20' min.
<u>Height:</u>	<35'	35' max.
<u>Building Coverage:</u>	12.3%	25% max.
<u>Open Space Coverage:</u>	75.5%	30% min.
<u>Parking:</u>	5	2 min.
<u>Estimated Age of Structure:</u>	1700	

## B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Front Yard:</u>	5' (to shed)	15' min.
<u>Left Yard:</u>	95'	10' min.
<u>Right Yard:</u>	4' (to dormer)	10' min.
<u>Rear Yard:</u>	3' (to dormer)	20' min.
<u>Height:</u>	<22'	35' max.
<u>Building Coverage:</u>	14.6%	25% max.
<u>Open Space Coverage:</u>	72.3%	30% min.

## C. Other Permits Required

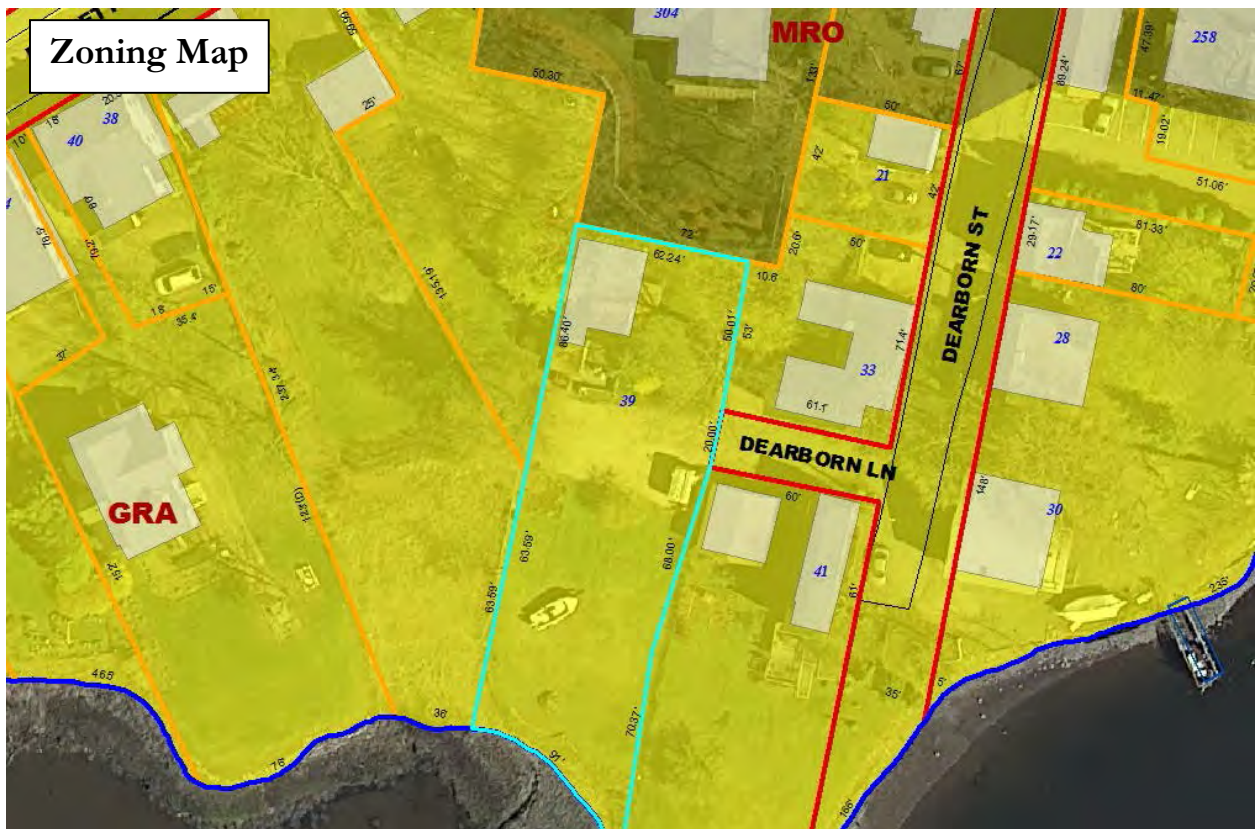
- Historic District Commission

## D. Neighborhood Context

- Surrounding Land Uses: Single family and two-family residential, general office building, 4-8 unit apartment building
- Public View of Proposed Improvements: Visible to direct abutters and from North Mill Pond







## E. Previous Board of Adjustment Actions

August 26, 2008 – The Board **postponed** to September a request for a 7'10" ± x 13'9" ± shed with a 4'± left side yard setback where 10' was required and a 65'± setback to salt water marsh or mean high water line where 100' was required.

September 16, 2008 – the above petition was **postponed** to October.

October 21, 2008 – The above petition was **amended** as follows and **postponed** to the November 18, 2008 meeting: The request for a variance for a 4'± left side yard setback was removed and a request for a 5'± front setback where 15' was required was added.

November 18, 2008 – The above petition was **withdrawn** by the applicant.

March 17, 2015 – The Board **postponed** to April a request to construct a 100 s.f. shed in the front yard, an 8'x13' single story addition and dormers with a front yard setback of 5' where 15' was required, a right side yard setback of 4' where 10 was required and a 3' rear yard setback where 20' was required. Also requested were the following: a) A Variance to allow an accessory structure to be located in a required front yard, and b) a Variance to allow extension or reconstruction of a lawful nonconforming structure without conforming to the requirements of the Ordinance.

## F. Planning Department Comments

The application meets the submission requirements and the applicant has met with the Planning Department staff to review the application.

## G. 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

## Case #4-1

Petitioners:	Peter O. & Karen G. Dawson Revocable Trusts
Property:	648 Lincoln Avenue
Assessor Plan:	Map 148, Lot 18
Zoning District:	General Residence A
Description:	Install two HVAC compressors.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Variance from Section 10.521 to allow 30.4%± building coverage where 25% is the maximum allowed.

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residential	Primarily residential uses.
<u>Lot area:</u>	4,350 sq. ft.	7,500 sq. ft. min.
<u>Lot Area per Dwelling Unit:</u>	4,350 sq. ft.	7,500 sq. ft.min.
<u>Street Frontage:</u>	50'	100' min.
<u>Lot depth:</u>	104'	70' min.
<u>Front Yard:</u>	8'	15' min.
<u>Left Yard:</u>	13'	10' min.
<u>Right Yard:</u>	10'	10' min
<u>Rear Yard:</u>	0'	20' min.
<u>Height:</u>	32'	35' max.
<u>Building Coverage:</u>	30.1%	25% max.
<u>Open Space Coverage:</u>	60.7%	30% min.
<u>Parking:</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1890	

### B. Proposed Changes

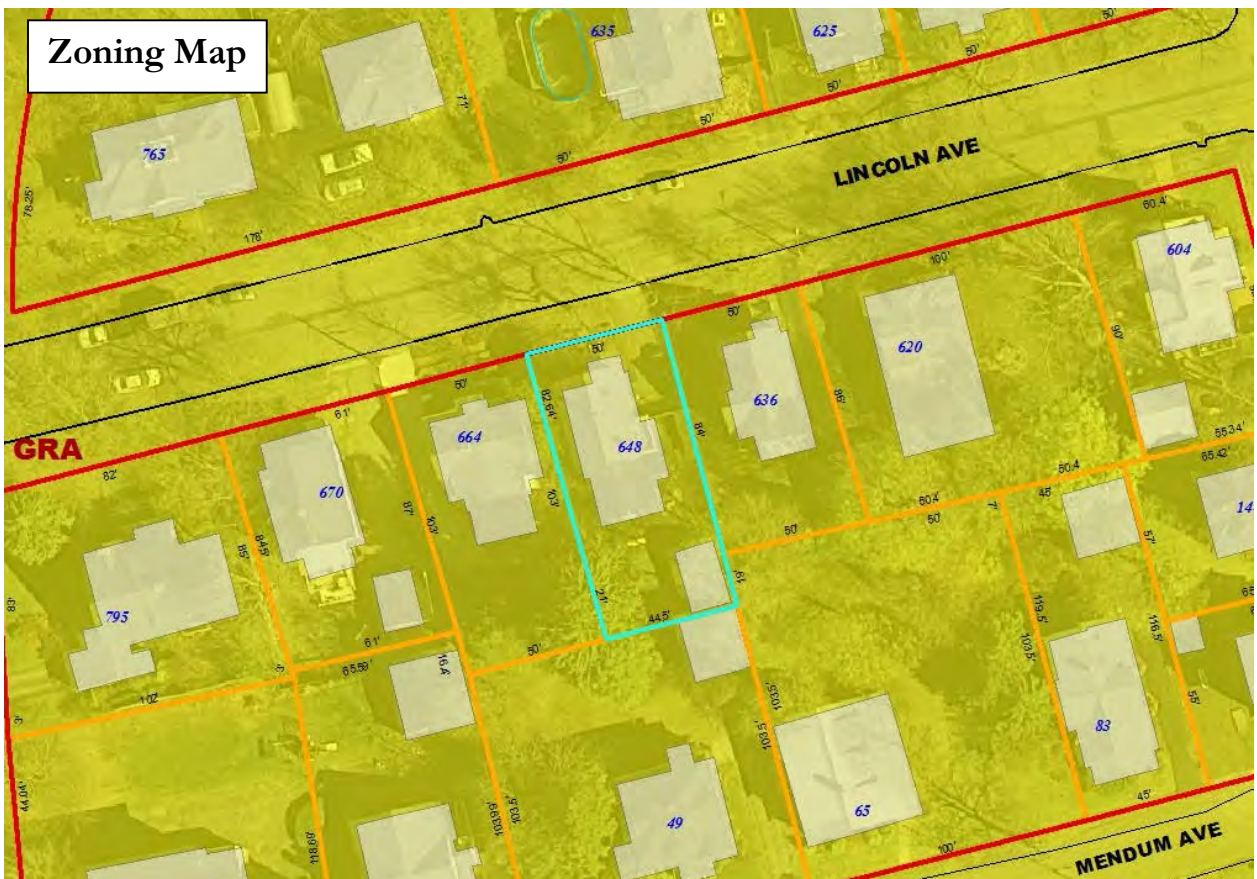
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Right Yard:</u>	5'	5' min. (per 10.573.10)
<u>Building Coverage:</u>	30.4%	25% max.
<u>Open Space Coverage:</u>	60.4%	30% min.

### C. Other Permits Required

- None.

### D. Neighborhood Context

- Surrounding Land Uses: Single family residential
- Public View of Proposed Improvements: Visible to direct abutter.



## E. Previous Board of Adjustment Actions

December 16, 1997 – The Board **granted** a Variance to allow an 8' x 20' addition and a 5' x 18' addition with 27.3% building coverage where 25% was the maximum allowed.

## F. Planning Department Comments

The application meets the submission requirements and the applicant has met with the Planning Department staff to review the application.

## G. 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 #4-2

Petitioner:	233 Vaughan Street LLC
Property:	233 Vaughan Street
Assessor Plan:	Map 124, Lot 14
Zoning District:	Central Business A
Description:	Install a bathroom in space designated for mechanical equipment.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Variance from Section 10.531 to allow a structure height of 57'3" for the habitable space of the building where 50' is the maximum allowed

### A. Previously Approved Changes

	<u>Approved</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed use	Mix of residential and non-residential uses
<u>Lot area:</u>	19,528 sq. ft.	1,500 sq. ft. min.
<u>Street Frontage:</u>	>126'	NR (no requirement)
<u>Lot Depth:</u>	>257'	NR
<u>Front Yard:</u>	10'	NR
<u>Left Side Yard:</u>	<10'	NR
<u>Right Side Yard:</u>	>10'	NR
<u>Height:</u>	50'	50' max.
<u>Building Coverage:</u>	<95%	95% max.
<u>Open Space Coverage:</u>	>5%	NR
<u>Parking:</u>	24	8 min.

### B. Proposed Changes

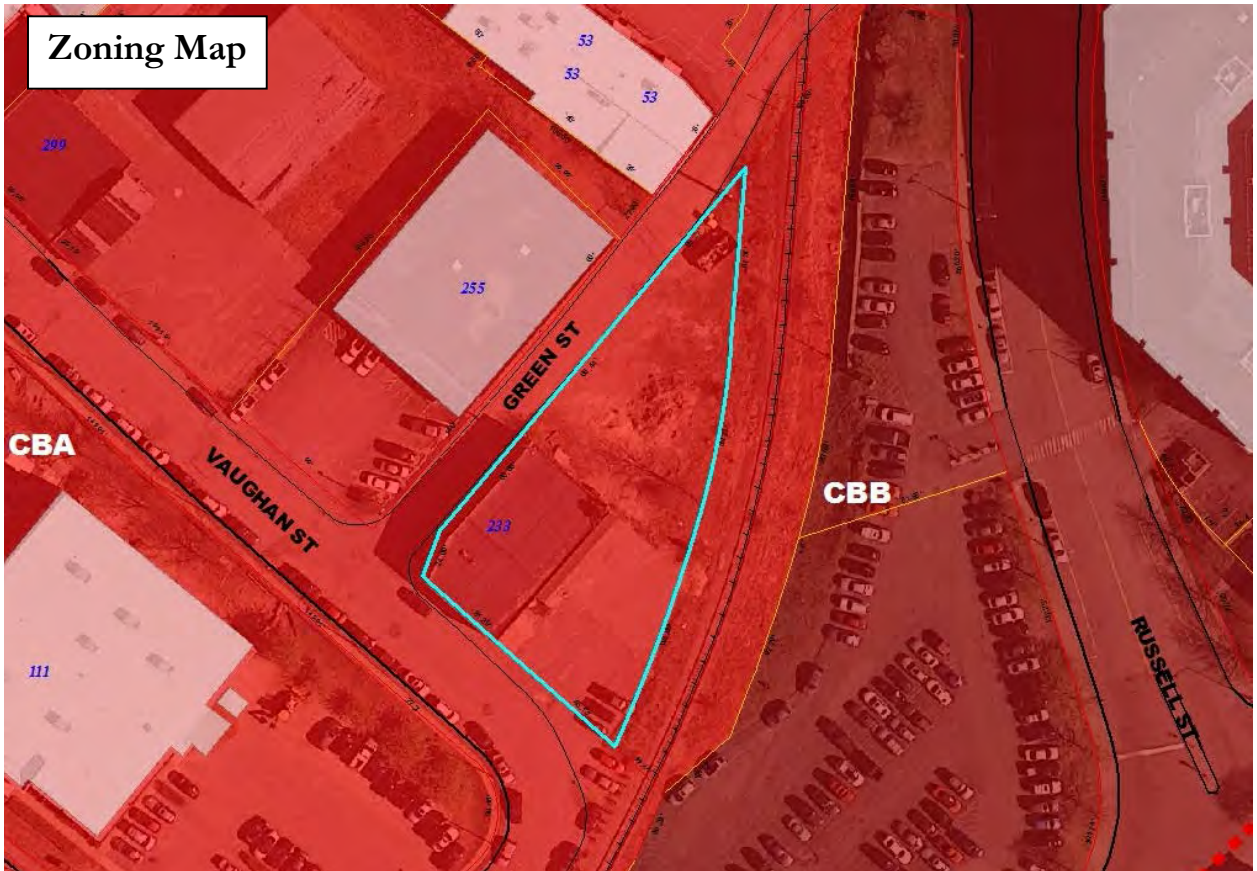
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Bathroom for rooftop pool	Mix of residential and non-residential uses
<u>Height:</u>	57' 3"	50' max.

### C. Other Permits Required

- Planning Board – Site Plan Review

### D. Neighborhood Context

- Surrounding Land Uses: Commercial





## E. Previous Board of Adjustment Actions

January 18, 2011 – The Board **postponed** to the January 25, 2011 meeting the following Variance requests needed to construct a building exceeding maximum heights allowed in the CBA District:

- (1) To permit a structure designed for human occupancy (elevator penthouse and lobby) with a structure height of 62'5" where 50' is the maximum structure height allowed;
- (2) To permit a structure designed for human occupancy (corridors, bathrooms and kitchens) with a structure height of 59'8" where 50' is the maximum structure height allowed;
- (3) To permit a structure height of 52'8" (parapet and railing extending more than 2' above the roof surface) where 50' is the maximum structure height allowed; and
- (4) To permit a portion of a building within 10 feet of a street right of way line in the CBA district with a height of 52 feet where 40 feet is the maximum height allowed.

January 25, 2011 – The Board **denied** the above requests.

## F. Planning Department Comments

The application meets the submission requirements and the applicant has discussed the application with the Planning Department staff.

## G. 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 # 4-3

Petitioners:	Dale W. & Sharyn W. Smith
Property:	275 Islington Street
Assessor Plan:	Map 144, Lot 8
Zoning District:	Central Business B
Description:	Clarification of previously granted variances regarding the construction of four multi-family residences and an addition to a rear building creating 14 residential units.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Variance from Section 10.521 to allow 12±% open space where 14.1±% was previously granted and 15% is required.

### A. Previously Approved Changes

	<u>Approved</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	14 residential units	Mix of residential and non-residential uses
<u>Lot Area per Dwelling Unit:</u>	1,735 sq. ft.	No requirement (NR)
<u>Front Yard:</u>	1'	0' min.
<u>Left Yard:</u>	0.12'	10' min.
<u>Right Yard:</u>	0.73'	10' min.
<u>Rear Yard:</u>	5' (to HVAC units)	10' min.
<u>Height:</u>	40'	40' max.
<u>Building Coverage:</u>	44.7%	60% max.
<u>Open Space Coverage:</u>	14.1%	15% max.

### B. Proposed Changes

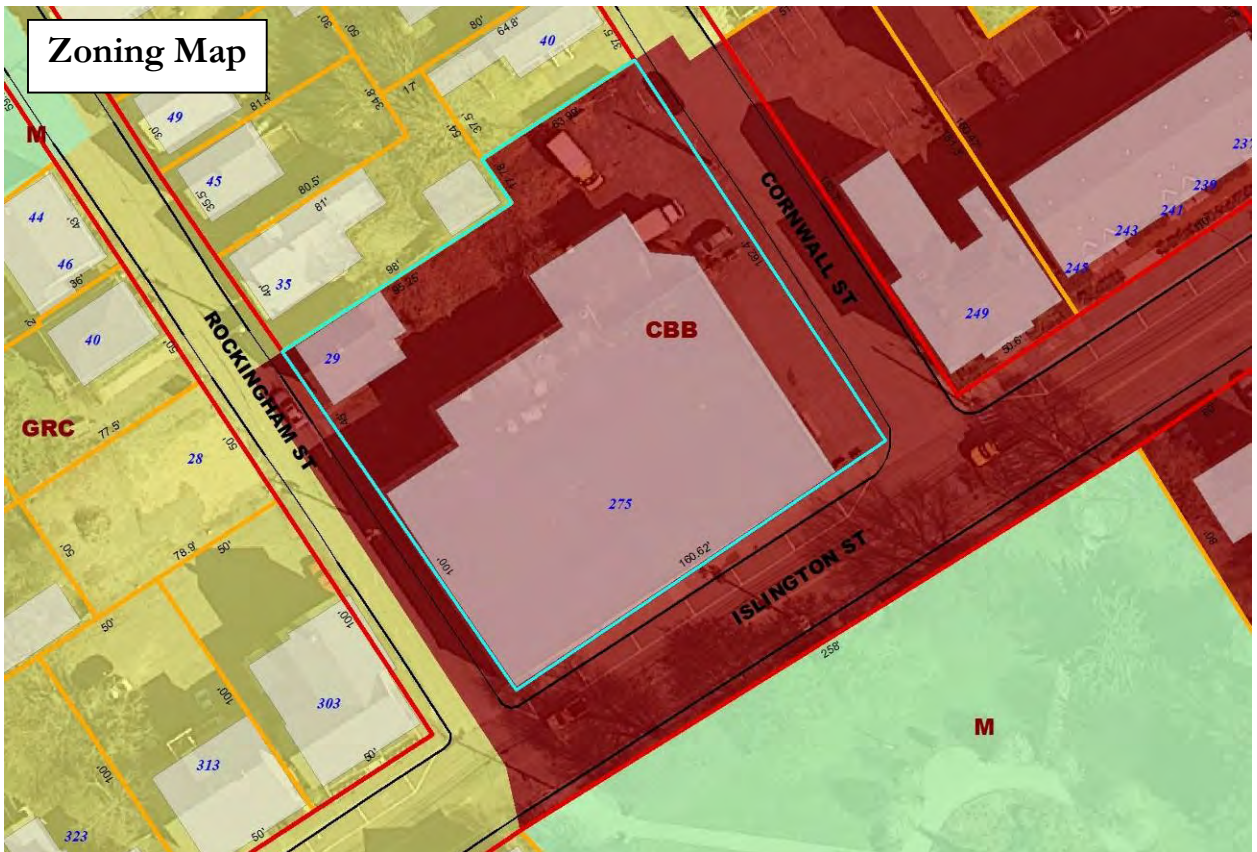
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Open Space Coverage:</u>	12%	15%

### C. Other Permits Required

- Historic District Commission – Certificate of Approval (received)
- Planning Board – Site Plan Review (received)

### D. Neighborhood Context

- Surrounding Land Uses: General office building, single family residential, 3-family residential, park, condominiums
- Public View of Proposed Improvements: Visible from Islington St, Cornwall St, and Rockingham St.



## E. Previous Board of Adjustment Actions

July 31, 1979 – The Board **granted** Variances to allow reconstruction of a building destroyed by fire on a lot with the following: 1) an area of 20,200 s.f. and 161' of frontage where 43,560 s.f. and 200' were required; 2) a 6' front setback and 1' left side setback where 15' and 10' respectively were required where 20' was required from a street right-of-way intersection; and 3) lot coverage of 65% where 40% was allowed; 4) open space of 1% where 10% was required; 5) 22 parking spaces where 32 were required where 8 of the spaces would require backing onto a street; and 6) a loading berth depth of 27' where 45' was required. The request was granted with the **stipulation** that parallel parking would only exist on Cornwall Street.

June 26, 1984 – The Board **granted** Variances to allow the following: (1) parking as a principal use on a vacant lot in a Residential District where this was not permitted; (2) parking spaces to be located in a Residential District; (3) 30 parking spaces to be provided where a minimum of 43 were required; and (4) a third required loading berth to be 32' in depth where a minimum depth of 45' was required. The Board **granted** a Special Exception to allow a portion of the required parking to be established on another lot in common ownership and within 300' of the property line of the lot in question.

August 9, 1988 – The Board **granted** Variances to allow the following: (1) the construction of an angled 149 s.f. loading dock to an existing building reducing the loading docks to 2 where 3 were required; (2) a reduction in parking spaces from 30 to 27 where 79 parking spaces were required; and building coverage of 63% where 40% was the maximum allowed.

March 16, 1994 – The Board **granted** a Variance to allow 100 public storage units to be constructed in the basement of an existing building in a district where storage facilities were not allowed. The Variance was granted with the following **stipulations**: (1) that the hours of operation be from 7:00 a.m. to 7:00 p.m. Monday through Saturday and 9:00 a.m. to 5:00 p.m. on Sunday; and (2) that no renters be allowed in the building without a manager present.

December 2, 2014 – The Board **granted** Variances to construct four multi-family residences and an addition to the rear building creating 14 residential units and to install four HVAC units, allowing the following: (1) A nonconforming structure to be extended, reconstructed or structurally altered without conforming to the requirements of the Ordinance; (2) a left side yard setback of .12'± and a right side yard setback of .73'± where 10' is required for both; (3) 4 HVAC units with a 5'± rear yard setback where 10' is required for units greater than 36" above ground level; and (4) A 42" ± wide pedestrian path where 5' is required.

December 16, 2014 – The Board **granted** a Variance to allow 14.1%± open space where 15% was required.

## F. Planning Department Comments

The application meets the submission requirements.

## G. 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 # 4-4

Petitioner:	Ellen S. Cohn Revocable Living Trust
Property:	124 Broad Street
Assessor Plan:	Map 134, Lot 19
Zoning District:	General Residence A
Description:	Construct 6'± x 14'6" ± second floor addition.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> <li>1. A Variance from Section 10.324 to allow a lawful nonconforming structure to be extended, reconstructed or structurally altered without conforming to the requirements of the Ordinance.</li> <li>2. A Variance from Section 10.521 to allow a 4'± left side yard setback where 10' is required.</li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residential	Primarily residential uses.
<u>Lot area:</u>	5,500 sq. ft.	7,500 sq. ft. min.
<u>Lot Area per Dwelling Unit:</u>	5,500 sq. ft.	7,500 sq. ft.min.
<u>Street Frontage:</u>	52.45'	100' min.
<u>Lot depth:</u>	109.95'	70' min.
<u>Front Yard:</u>	23'	15' min.
<u>Left Yard:</u>	3'	10' min.
<u>Right Yard:</u>	4'6"	10' min
<u>Rear Yard:</u>	17'	20' min.
<u>Height:</u>	32'	35' max.
<u>Building Coverage:</u>	29%	25% max.
<u>Open Space Coverage:</u>	60%	30% min.
<u>Parking:</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1925	

### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Left Yard:</u>	4'	10' min.
<u>Right Yard:</u>	4'6"	10' min
<u>Rear Yard:</u>	17'	20' min.
<u>Height:</u>	32'	35' max.

### C. Other Permits Required

- None.

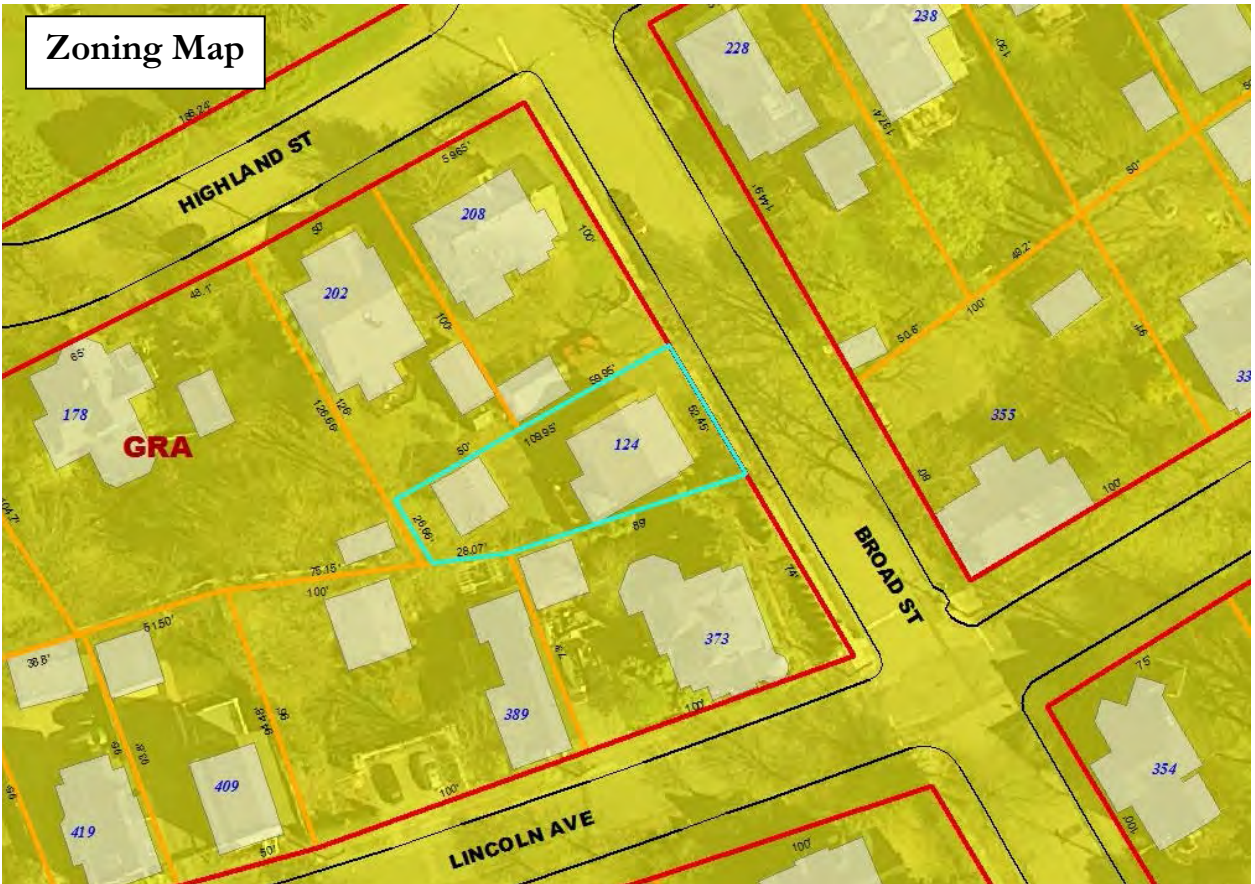
### D. Neighborhood Context

- Surrounding Land Uses: Single family residential, two-family residential
- Public View of Proposed Improvements: Visible to abutters.

Aerial Map



Zoning Map





## E. Previous Board of Adjustment Actions

October 21, 2003 – The Board **granted** Variances to allow an 8' x 18' deck with a 3' left side yard with 10' was the minimum required and 36.5% building coverage where 25% was the maximum allowed.

## F. Planning Department Comments

The application meets the submission requirements and the applicant has met with the Planning Department staff to review the application.

## G. 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 # 4-5

Petitioners:	Patricia L. & Burton S. Russell
Property:	65 Mendum Avenue
Assessor Plan:	Map 148, Lot 11
Zoning District:	General Residence A
Description:	Construct a second dwelling unit above an existing detached garage.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> <li>1. A Variance from Section 10.513 to allow a second free-standing dwelling unit on a lot.</li> <li>2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 5,787± s.f. where 7,500 s.f. per dwelling unit is required.</li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residential	Primarily residential uses.
<u>Lot area:</u>	11,574 sq. ft.	7,500 sq. ft. min.
<u>Lot Area per Dwelling Unit:</u>	11,574 sq. ft.	7,500 sq. ft.min.
<u>Street Frontage:</u>	100'	100' min.
<u>Lot depth:</u>	103.5'	70' min.
<u>Front Yard:</u>	14'	15' min.
<u>Left Yard:</u>	1'	10' min.
<u>Right Yard:</u>	55.4'	10' min
<u>Rear Yard:</u>	63.5'	20' min.
<u>Height:</u>	23'	35' max.
<u>Building Coverage:</u>	14.1%	25% max.
<u>Open Space Coverage:</u>	72.7%	30% min.
<u>Parking:</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1912	

### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Second detached single family dwelling unit	Primarily residential uses
<u>Lot Area per Dwelling Unit:</u>	5,787 sq. ft.	7,500 sq. ft.min.
<u>Front Yard:</u>	52' (to addition)	15' min.
<u>Left Yard:</u>	58' (to addition)	10' min.
<u>Right Yard:</u>	14.5'	10' min
<u>Rear Yard:</u>	14'	20' min.
<u>Height:</u>	23'	35' max.
<u>Building Coverage:</u>	23.6%	25% max.
<u>Open Space Coverage:</u>	61.6%	30% min.
<u>Parking:</u>	4	4 min.

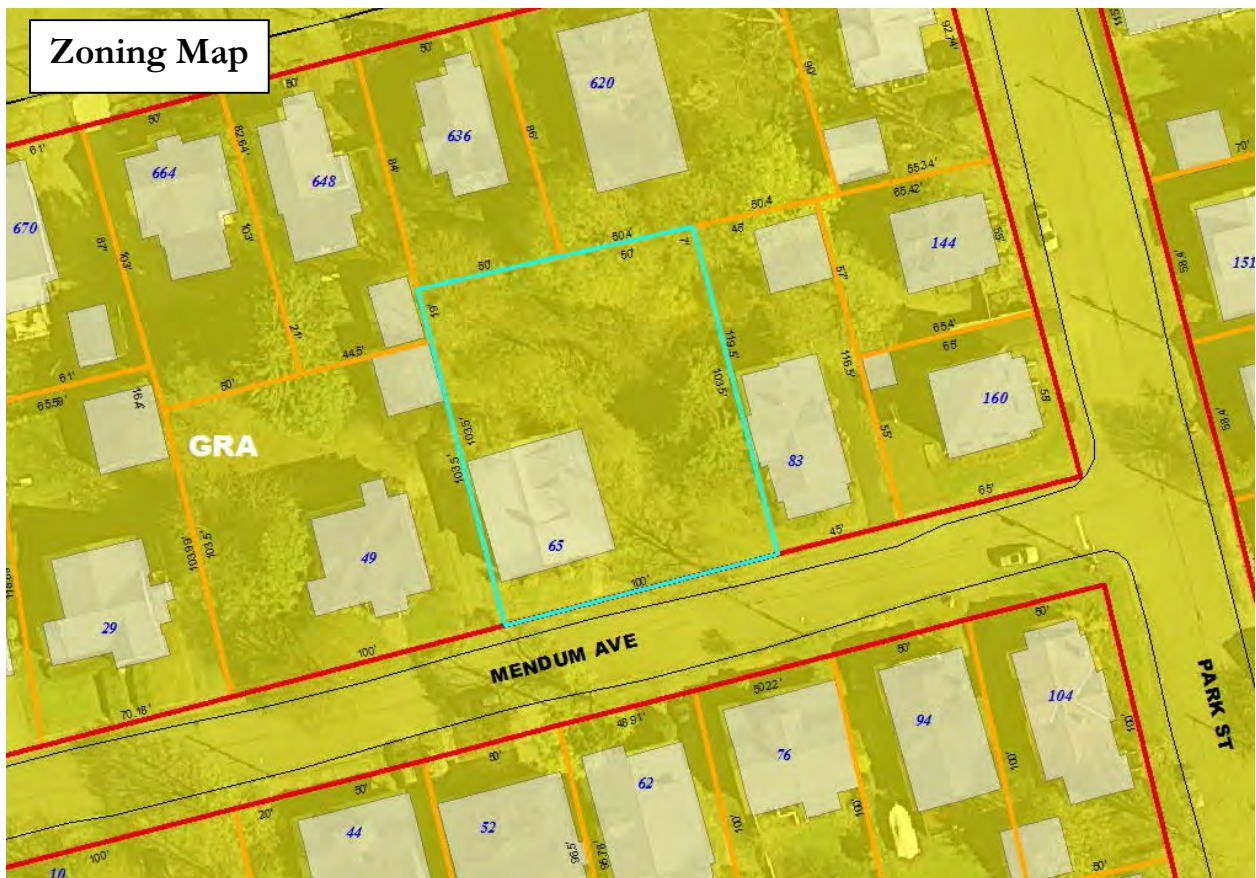
### C. Other Permits Required

- None.

### D. Neighborhood Context

- Surrounding Land Uses: Single family residential
- Public View of Proposed Improvements: Visible from Mendum Ave.





## E. Previous Board of Adjustment Actions

No BOA history found.

## F. Planning Department Comments

The application meets the submission requirements.

## G. 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**

  - (c) *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 # 4-6

Petitioners:	Kelly Whalen (Cioe), owner, Scott & Kelly Cioe, applicants
Property:	44 Melbourne Street
Assessor Plan:	Map 233, Lot 20
Zoning District:	Single Residence B
Description:	Expand third floor in existing nonconforming footprint.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> <li>1. A Variance from Section 10.324 to allow a lawful nonconforming structure to be extended, reconstructed or structurally altered without conforming to the requirements of the Ordinance.</li> <li>2. Variances from Section 10.521 to allow the following: <ol style="list-style-type: none"> <li>a) A 4'± left side yard setback where 10' is required.</li> <li>b) A 15'± front yard setback where 30' is required.</li> </ol> </li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residential	Primarily single family residences
<u>Lot area:</u>	6,172 sq. ft.	15,000 sq. ft. min.
<u>Lot Area per Dwelling Unit:</u>	6,172 sq. ft.	15,000 sq. ft. min.
<u>Street Frontage:</u>	50'	100' min.
<u>Lot depth:</u>	115'	100' min.
<u>Front Yard:</u>	15'	30' min.
<u>Left Yard:</u>	4'	10' min.
<u>Right Yard:</u>	15'	10' min.
<u>Rear Yard:</u>	43'	30' min.
<u>Height:</u>	32'	35'
<u>Building Coverage:</u>	21.3%	20% max.
<u>Open Space Coverage:</u>	70.6%	40% min.
<u>Parking:</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1917	

### B. Proposed Changes

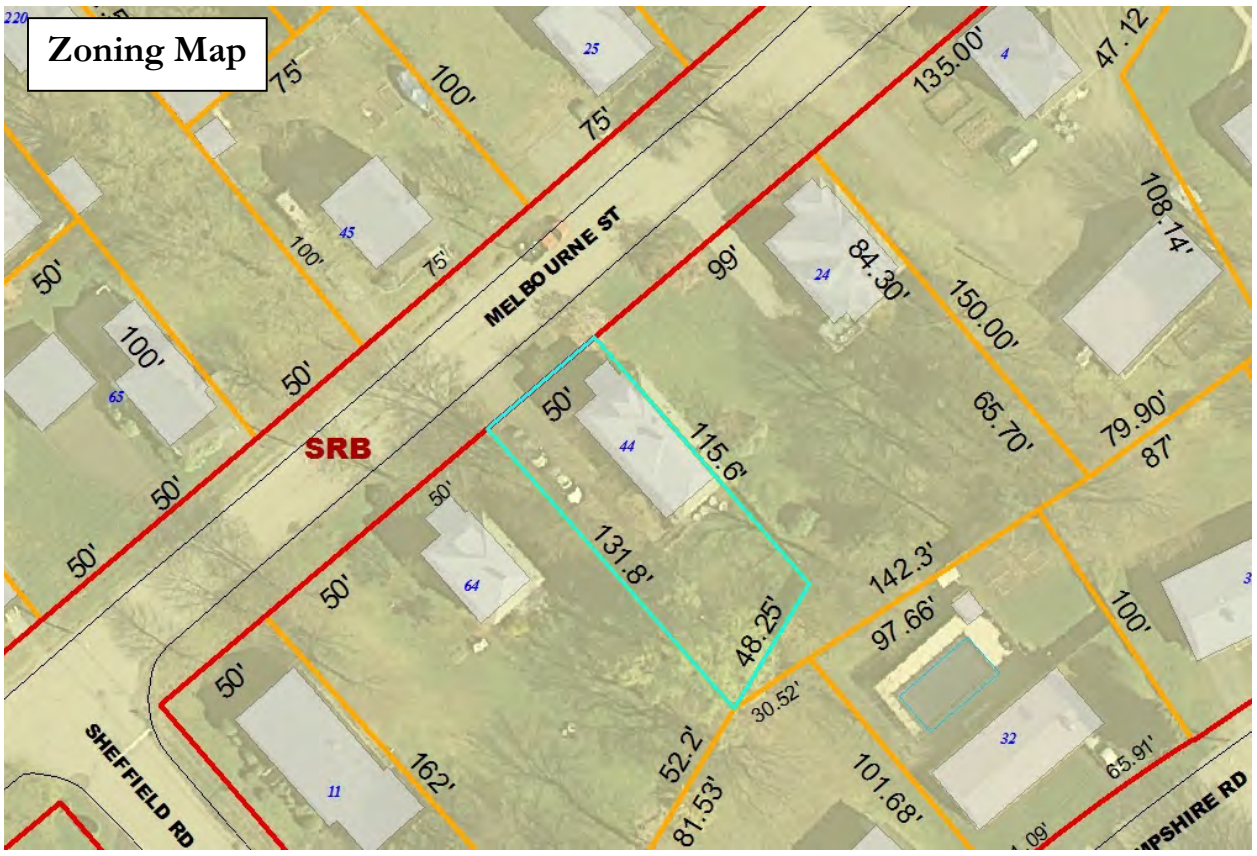
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Front Yard:</u>	32' (to addition)	30' min.
<u>Left Yard:</u>	4'	10' min.

### C. Other Permits Required

- None.

### D. Neighborhood Context

- Surrounding Land Uses: Single family residential
- Public View of Proposed Improvements: Visible from Melbourne St.





## E. Previous Board of Adjustment Actions

February 17, 2015 – The Board **granted** a Variance to allow a left side yard setback of 0'± where 10' was required for an air conditioning unit.

## F. Planning Department Comments

Applicant has corrected the front yard setback as measured to the proposed addition. It is greater than 30', therefore no relief is required as originally advertised. The only relief required is for the side yard setback. The application meets the submission requirements and the applicant has discussed this application with the Planning Department staff.

## G. 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.*