

TO: Zoning Board of Adjustment  
FROM: Peter Stith, AICP, Planning Department  
DATE: May 10, 2022  
RE: Zoning Board of Adjustment May 17, 2022

### **OLD BUSINESS**

1. 189 Gates Street – Request for Rehearing
2. 138 Maplewood Avenue – Request for Extension
2. 1 Congress Street - Appeal of Administrative Decision/Variance – REQUEST TO POSTPONE TO JULY 19 MEETING
3. 635 Sagamore Avenue
4. 77 Meredith Way - WITHDRAWN
5. 64 Vaughan Street

### **NEW BUSINESS**

1. 96 Sparhawk Street
2. 411 South Street
3. 129 Aldrich Road
4. 213 Jones Avenue
5. 9 Schurman Avenue
6. 80 Fields Road
7. 462 Lincoln Ave Unit 4



## OLD BUSINESS

1.

Request of **Devan Quinn and James Butler**, pursuant to RSA 677:2, request a rehearing of 189 Gates Street. Said property is located on Assessor Map 103 Lot 6 and lies within the General Residence B (GRB) and Historic Districts.

On Tuesday, March 15, 2022, the Board heard the below request for relief:

The Nerbonne Family Revocable Trust (Owner), for property located 189 Gates Street whereas relief is needed for conversion of the existing garage into a Garden Cottage with a 12' x 16' addition and 6' x 14' deck which requires the following: 1) Variances from Section 10.521 to allow a) 35.5% building coverage where 30% is the maximum allowed; and b) a 1' right side yard where 10' is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. **The Board granted the request with the stipulation that the right side yard be 4' and the deck removed, resulting in 31% building coverage.**

A request for rehearing has been filed by the direct abutters within 30 days of the Board's decision and the Board must consider the request within 30 days. 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.

Petition of the **Donna Pantelakos Revocable Trust, Owner** for property located at **138 Maplewood Avenue** wherein relief is needed from the Zoning Ordinance to create a new dwelling unit by constructing a second floor addition over an existing garage which requires the following; 1) A Variance from Section 10.521 to allow: a) a lot area per dwelling unit of 2,616 where 3,000 is required; and b) a 1' right side yard where 5' 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 124 Lot 6 and lies within the Character District 4-L1 (CD4-L1) District.


The above variances were granted on June 16, 2020 and the applicant has not obtained a building permit to vest the variances. A request for a one year extension. The Ordinance allows for a one-time, one year extension if the request is made prior to the expiration date.

### 3.REQUEST TO POSTPONE TO JULY 19, 2022

Request of **Francis X. Bruton, (Attorney for Appellants)**, for Appeal of Administrative decision that the merged lot at **1 Congress** is not subject to the height allowances (2 stories, 4th short, 45 feet in height) pursuant to Map 10.5A21B and as permitted pursuant to Section 10.5A21.22(a) & (c) of the Zoning Ordinance. Said property is shown on Assessor Map 117 Lot 14 and lies within Character District 4 (CD-4), Character District 5 (CD-5) and the Historic District.

The appellants are appealing an administrative decision made by the Planning Director with regard to the proposed development on the recently merged parcels at 1 Congress Street. Below is the email from the Planning Director to the applicant stating that Section 10.5A21.22(c) does apply to this portion of the property and a variance is needed to allow the additional story and height. Additionally, a sketch showing how the height would be applied to this portion, showing the 50 foot setback from both High Street and Haven Court. The original request for the variance is the second item on the agenda and will be heard if the appeal is denied. If the appeal is granted, the applicant should withdraw the variance request, as it will not be needed if the decision of the Planning Director is overturned.

Reply
Reply All
Forward



Wed 2/23/2022 3:14 PM

**Beverly M. Zendt**

**RE: 1 Congress Street**


To FX Bruton; Nicholas J. Cradnell

Cc Mark McNabb; Peter M. Stith

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Message

RE: Tax Map 117, Lot 15 and Tax Map 117, Lot 14 Case: LU-22-12 (282 KB)


Exhibit 1 - 1 Congress Street.pdf (532 KB)

Good afternoon,

In response to your subsequent request for further consideration of our interpretation of Section 10.5A21.22 – Building Height Standards - and the applicability of the Building Height Standards shown under Map 10.5A21B to your client's merged lot at 1 Congress Street, we continue to conclude that your characterization of the current ownership status of Haven Court – being a private way owned in fee by your client with no public interest in property - as well as your interpretation of how the building height standards are applied on a "corner" or "through lots" to be incorrect.

As shown on the "Verra Plan" (11/22/05) that you provided, portions of Haven Court appear to be owned in fee by the city and it is unclear whether the area labelled as a "private way" on the plan is accurate. Map 10.5A21B shows the building height standards for both High Street and the full length of Haven Court. As such, the application of the building height standards are based on the "front lot line(s)", "street" or "water body" that fronts along the property. The Zoning Ordinance defines a "front lot line" follows:

**Lot line, front**

A boundary of lot that separates the lot from a street or public place. In the case of a corner lot or waterfront lot, the front lot line shall be the line bordering the street on which the lot has its address. A corner lot or a through lot shall have two front lot lines.

Given we believe that your client's merged lot fronts on three public streets, we agree that Section 10.5A21.22(C) allows for an increase in building height on the merged lot but importantly, it also restricts the increased height allowance to areas more than 50 feet from a front lot line(s). Thus, as shown in the attached Exhibit, a dimensional variance would be required for any increase in the maximum building height within 50 feet of High Street or Haven Court.

In closing, even if Haven Court was deemed not to qualify as a "street" or "public place", thereby potentially nullifying its building height designation on Map 10.5A21B, the presence of the lower height standard along High Street would still prevent a new building from being taller than 3 stories or 40' within 50 feet of High Street due to the corner lot provisions of the definition of front lot line stated above. Thus, regardless of the ownership status of Haven Court, we continue to support the need for a dimensional variance for your proposed project as currently designed.

Please contact me if I can provide any additional information.

**Best Regards,**

**Beverly Mesa-Zendt AICP**  
 Director | Planning Department  
 City of Portsmouth  
 1 Junkins Avenue  
 Portsmouth, NH 03801

.....  
 ☎ (603) 610-7216

✉ [Bmz@cityofportsmouth.com](mailto:Bmz@cityofportsmouth.com)

📍 [Planning Department | City of Portsmouth](#)



**Exhibit A – 1 Congress Street Project – Maximum Building Height (# Stories / Feet)\***

*\*Assumes Haven Court qualifies as a public street or public place*

**4. REQUEST TO POSTPONE TO JULY 19, 2022**

Request of **One Market Square LLC (Owner)**, for the property located at **1 Congress Street** whereas relief is needed to construct a 3 story addition with a short 4th story and building height of 44'-11" which requires the following: 1) A Variance from Section 10.5A.43.31 and Map 10.5A21B to allow a 3-story addition with a short 4th and building height of 44'-11" where 2 stories (short 3rd) and 40' is the maximum allowed. Said property is shown on Assessor Map 117 Lot 14 and lies within Character District 4 (CD-4), Character District 5 (CD-5) and the Historic District.

**Existing & Proposed Conditions**

<b>TABLE IS FOR CD4 ZONING</b>	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed use/parking lot	4 story addition	Primarily mixed uses
<u>Primary Front Yard (ft.):</u>	NA	1'6"	15 max.
<u>Right Yard (ft.):</u>	NA	15	NR
<u>Left Yard (ft.):</u>	NA	0	NR
<u>Rear Yard (ft.):</u>	NA	10	Greater of 5' from rear lot line or 10' from CL of alley min.
<u>Height (ft.):</u>	NA	<b>3 stories (short 4<sup>th</sup>), 44'-11"</b>	2-3 stories, 40' max.
<u>Building Coverage (%):</u>	0	67	90 max.
<u>Open Space Coverage (%):</u>		32	10 min.
<u>Parking:</u>	18	19	4 space credit for Residential/ 0 required for commercial use in DOD
<u>Estimated Age of Structure:</u>	1800	<b>Variance request(s) shown in red.</b>	

**Other Permits/Approvals Required**

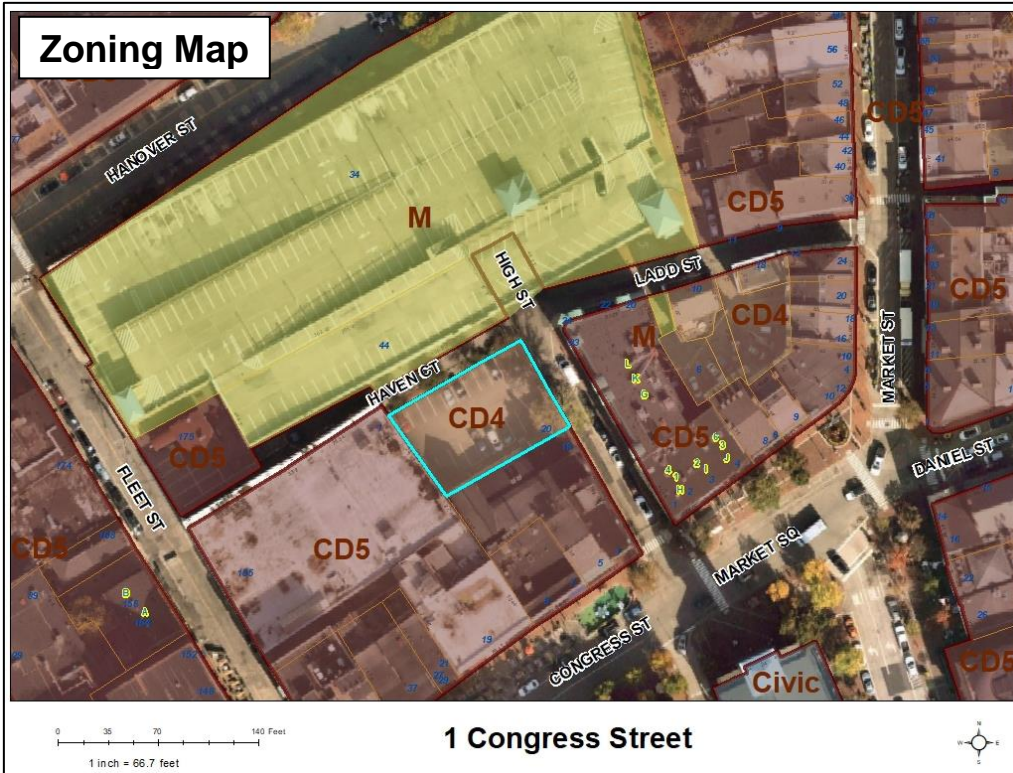
Planning Board/TAC – Site Review and Conditional Use Permit for Parking  
 Historic District Commission

### Neighborhood Context

**Aerial Map**



**Zoning Map**





## Previous Board of Adjustment Actions

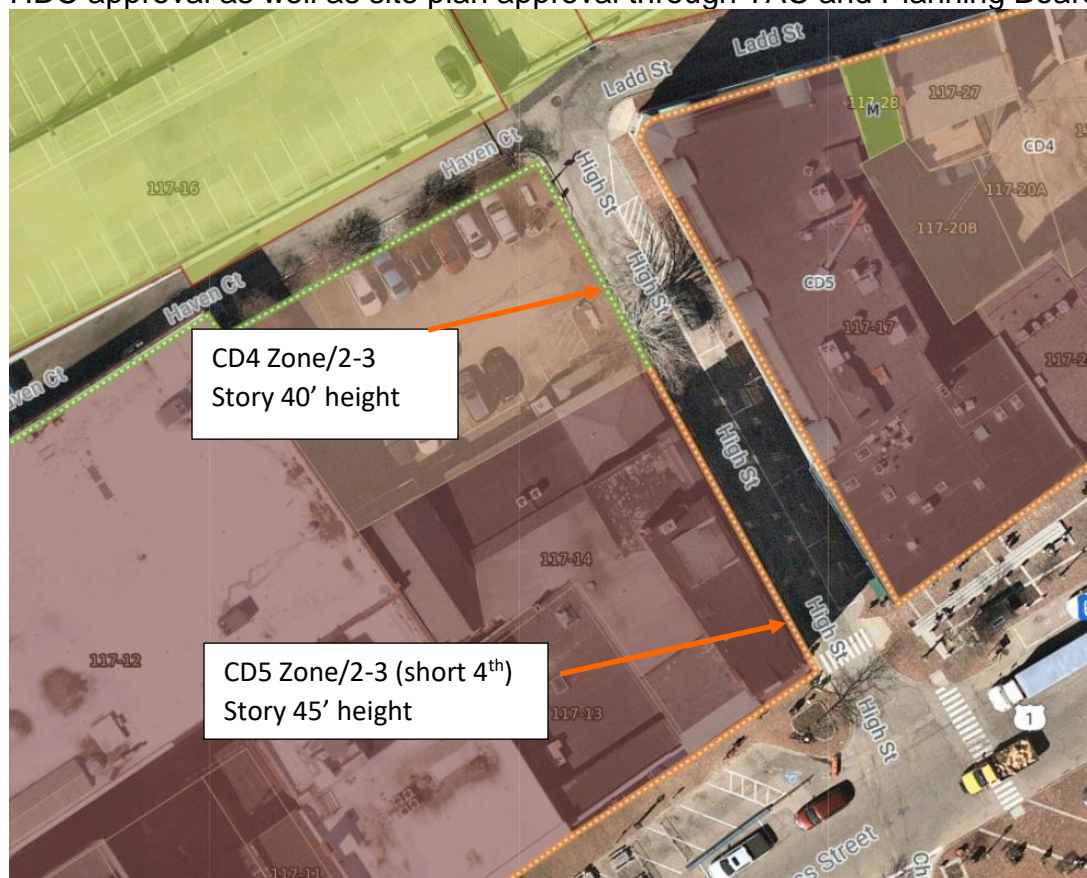
March 29, 2012 – Relief from Zoning Ordinance including:

1. Variance from Section 10.1115.20 and the requirements of 10.1115.30 to allow no off-street parking spaces to be provided where 1 space per 100 s.f. Gross Floor Area is required.
2. Special Exception under Section 10.1113.112 to allow 6 off-street parking spaces to be provided on another lot in the same ownership and within 300' of the property line of the lot in question.

The Board voted to **grant** the Variance as presented. With the granting of the Variance the Board determined the Special Exception would not be required.

## Planning Department Comments

The applicant is seeking to merge the two properties and construct a 3-story addition with a short 4<sup>th</sup>, which requires a variance to do so. The two parcels are zoned differently, one CD4 and one CD5 and both have separate height requirements as shown on the map below. All other dimensional requirements are met with the proposal. The project will need HDC approval as well as site plan approval through TAC and Planning Board.



## 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.*

## 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

5.

Request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing commercial structure and construct 5 new single-family dwellings which requires the following: 1) A Variance from Section 10.513 to allow 5 principal structures on a lot where only 1 is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 22,389 square feet where 1 acre per dwelling is required. Said property is shown on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District

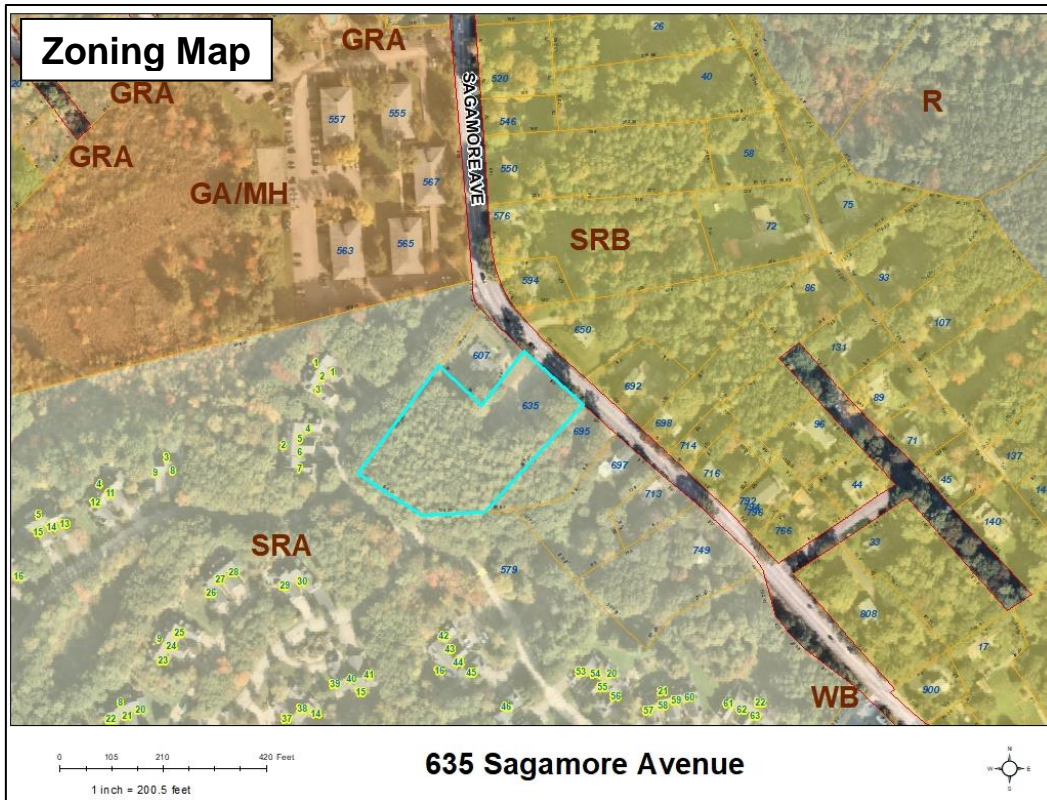
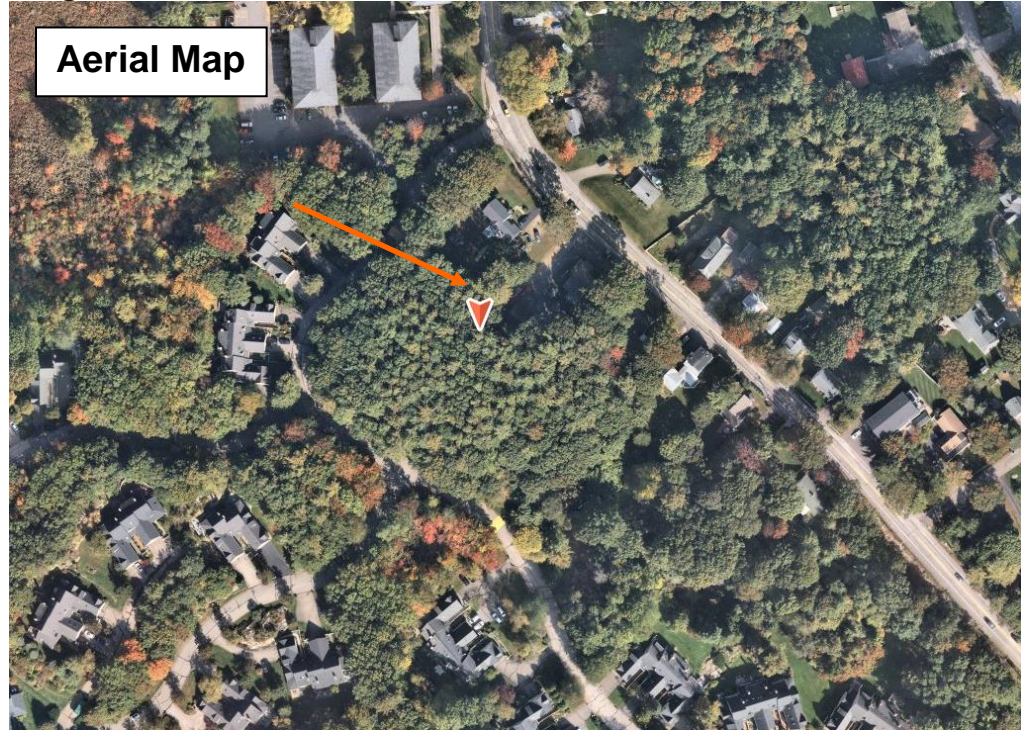
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial w/ 1 apartment	5 single family dwellings	Primarily residential
<u>Lot area (sq. ft.):</u>	84,795	84,795	43,560 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	84,795	<b>16,959</b>	43,560 min.
<u>Lot depth (ft.):</u>	358	358	200 min.
<u>Street Frontage (ft.):</u>	160	160	150 min.
<u>Primary Front Yard (ft.):</u>	28	>30	30 min.
<u>Right Yard (ft.):</u>	60	>20	20 min.
<u>Left Yard (ft.):</u>	30	21	20
<u>Rear Yard (ft.):</u>	219	>40	40 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	4	9.6	10 max.
<u>Open Space Coverage (%):</u>	>50	78	50 min.
<u>Parking:</u>	4+	20	8
<u>Estimated Age of Structure:</u>	1950	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

TAC/Planning Board – Site Plan Review

### Neighborhood Context



## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is proposing to demolish the existing structures and construct 5 free standing single family dwellings. The SRA zone requires 1 acre per dwelling unit and only allows 1 principal structure on a single lot. With 5 dwellings, the proposed lot area per dwelling will be 16,959, where 43,560 is required. With the exception of the density, all other dimensional requirements are in compliance with the proposed layout. This will require site plan review before TAC and Planning Board 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.*

## 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

6.

Request of **64 Vaughan Mall LLC (Owner)**, for property located at **64 Vaughan Street** whereas relief is needed for the addition of a rooftop penthouse which requires the following: 1) A Variance from Section 10.5A43.30 and Map 10.5A21B to allow a building height of 51'6" where 42' is the maximum allowed for a penthouse. 2) A Variance from Section 10.1530 to allow a penthouse with a 9.5' setback from the edge of the roof where 15 feet is required. Said property is shown on Assessor Map 126 Lot 1 and lies within the Character District 5 (CD-5) and Downtown Overlay and Historic Districts.

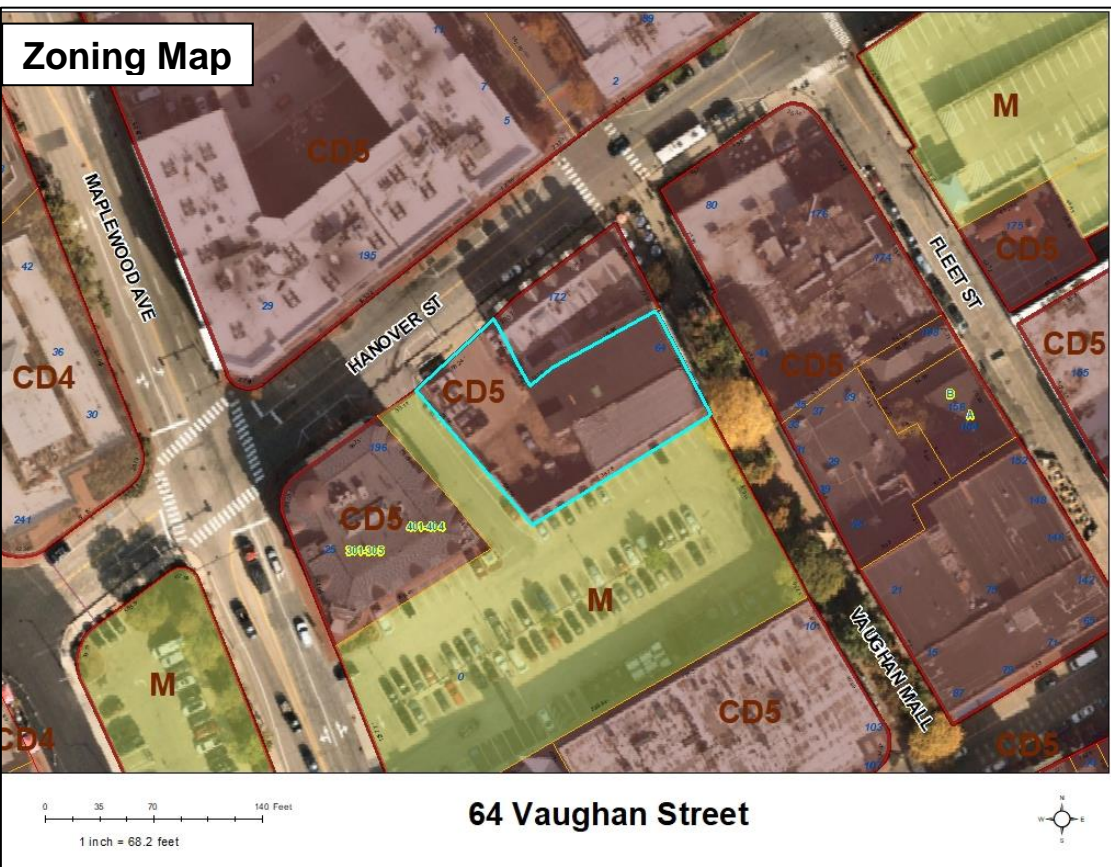
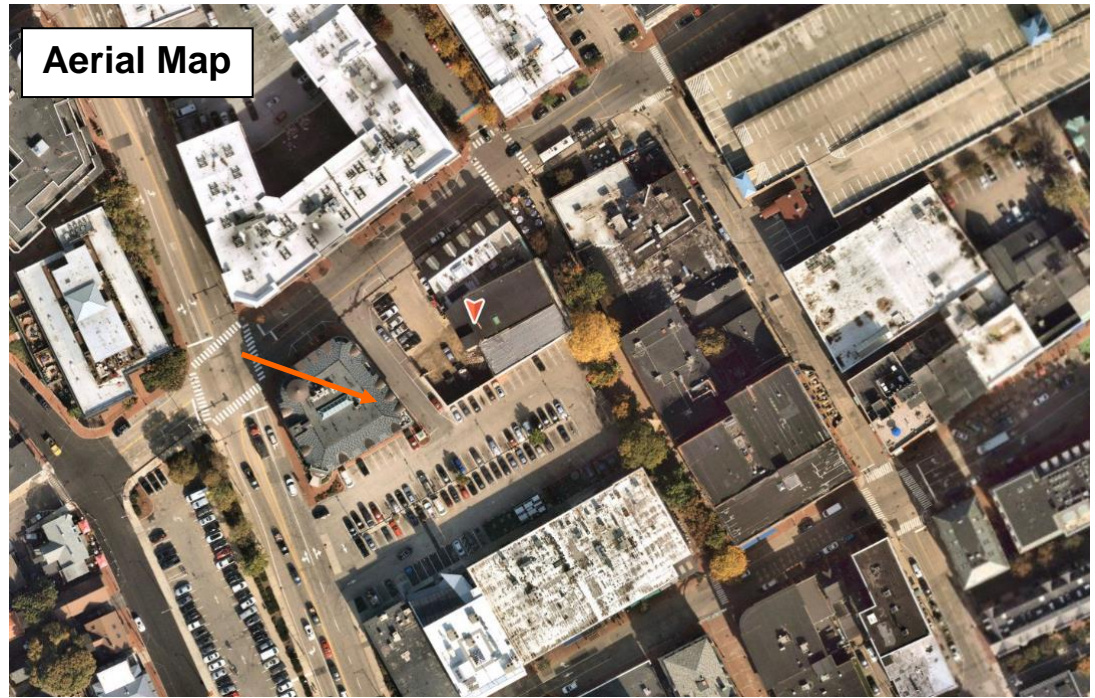
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>		Professional office	Primarily mixed use
<u>Lot area (sq. ft.):</u>	13,964	13,964	NR min.
<u>Penthouse Setback (ft.):</u>	NA	<b>9.5'</b>	15' from edge min.
<u>Height (ft.):</u>	40	<b>51'6"</b>	3 stories or 40' max. Extra 2' for penthouse (42')
<u>Building Coverage (%):</u>	70	89	95 max.
<u>Open Space Coverage (%):</u>	0	5	5 min.
<u>Parking:</u>	0	20	No requirement
<u>Estimated Age of Structure:</u>	New construction	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

Historic District Commission  
 Planning Board/TAC – Amended Site Plan

### Neighborhood Context



## Previous Board of Adjustment Actions

October 4, 1977 – the Board **granted** the following:

To construct a storage and loading addition to existing building with a single story, where two stories are required for new construction in the Central Business District.

March 23, 2021 – the Board **denied** the following:

Request for an addition of fourth story as part of redevelopment of the existing structure which requires 1) A Variance from Section 10.5A41.100 to allow a secondary front yard of 50.2 feet where 5 feet is the maximum. 2) A Variance from Section 10.5A41.100 to allow a building height of 52.5 feet and four stories where 40 feet and three stories is the maximum allowed.

## Planning Department Comments

The applicant was before the Board in March of 2021 seeking relief for a fourth story and building height of 52.5'. That request was denied and at that time the use of the building was going to be mixed use with 14 residential units. The new owner will use the building for professional office space only and is proposing a penthouse. Staff feels this is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether Fisher vs. Dover is applicable before this application is considered.

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

The applicant is seeking to add a penthouse that would result in a height of 51'6” where 42 feet is the maximum allowed. The definition of a penthouse is below from Article 15.

### **Penthouse**

A habitable space within the uppermost portion of a **building** above the **cornice** which is set back at least 15 feet from all edges of the roof and the total floor area of which does not exceed 50% of the area of the **story** below. For internal courtyards at least 40 feet from a **street** or vehicular right-of-way or easement, the **penthouse** shall be setback at least 8 feet from the edge of the roof of the **story** below.

There is a portion of the penthouse that does not meet the required 15 foot setback from the edge of the roof and the applicant is seeking relief to allow a penthouse that does not meet the required 15' setback from all edges of the roof. Since the project is still going through the Historic District Commission review, if the Board grants approval the following stipulation should be considered:

**The design of the penthouse may change according to final review and approval by the HDC.**



## Review Criteria

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

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
  - (a) *The property has special conditions that distinguish it from other properties in the area.*

**AND**

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

**OR**

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

## 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.



## NEW BUSINESS

1.

The request of **Adam Fitzpatrick and Emily Smith (Owners)**, for property located at **96 Sparhawk Street** whereas relief is needed to add an addition on the existing dwelling and an addition to a shed which requires the following: 1) Variances from Section 10.521 to allow a) a 4 foot right side yard where 10' is required; and b) an 8 foot front yard where 15 feet is required. 2) Variances from Section 10.573.20 to allow a) a 4 foot right side yard where 9.5 feet is required; and b) a 7 foot rear yard where 9.5 feet is required. 3) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 159 Lot 16 and lies within the General Residence A (GRA) District.

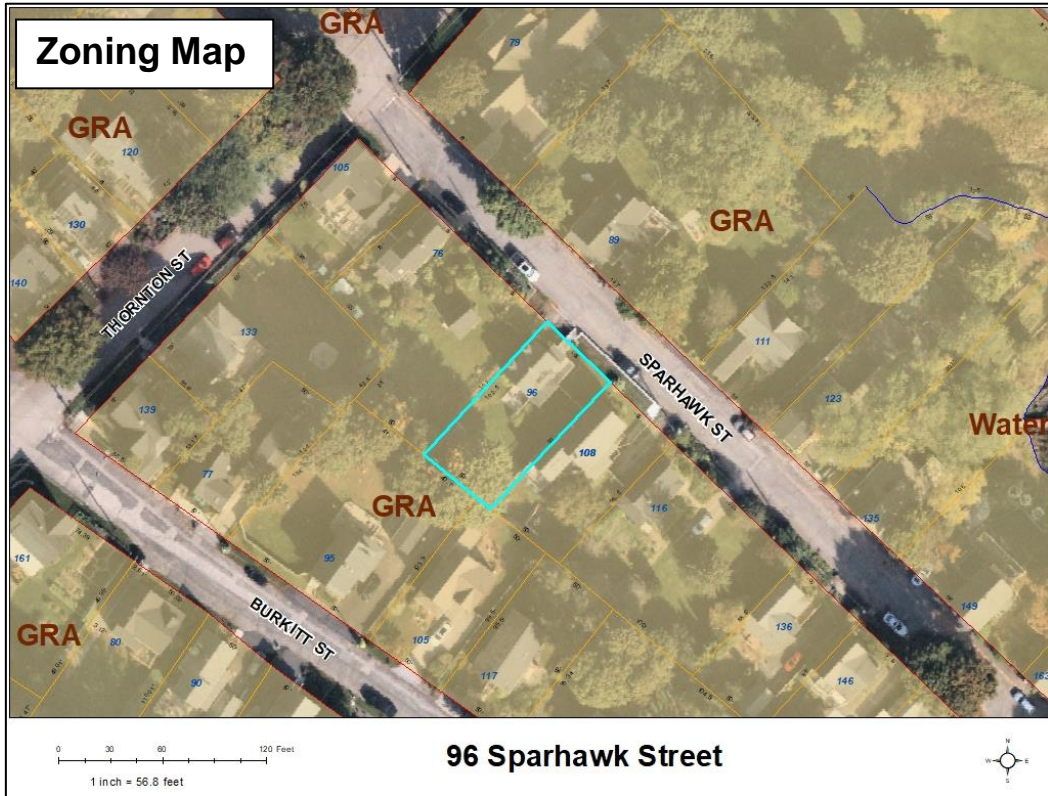
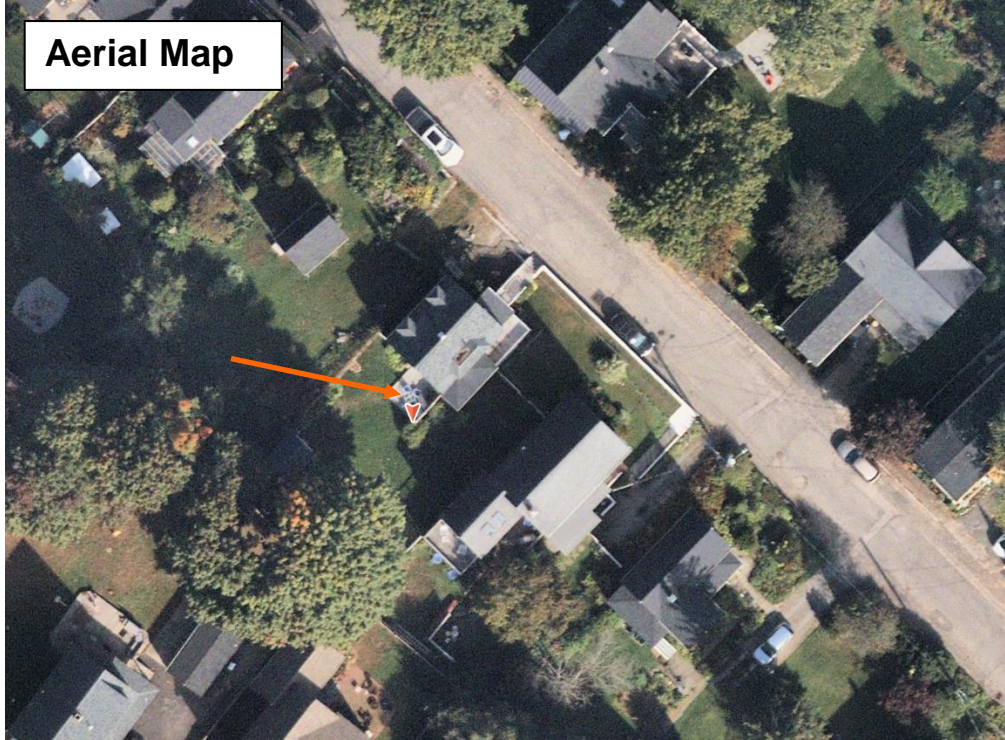
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	House addition & shed addition	Primarily residential uses
<u>Lot area (sq. ft.):</u>	5,204	5,204	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,204	5,204	7,500 min.
<u>Lot depth (ft.):</u>	50	50	70 min.
<u>Street Frontage (ft.):</u>	100	100	100 min.
<u>Primary Front Yard (ft.):</u>	8	<b>8</b>	15 min.
<u>Right Yard (ft.):</u>	4	<b>4</b> (shed) <b>4</b> (house)	10 min. 9.5 (shed)
<u>Left Yard (ft.):</u>	18	18	10 min.
<u>Rear Yard (ft.):</u>	13	<b>7</b> (shed)	20 min. 9.5 (shed)
<u>Height (ft.):</u>	<35	<35 9.5 (shed)	35 max.
<u>Building Coverage (%):</u>	17.5	24.6	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1915	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

None

### Neighborhood Context



## Previous Board of Adjustment Actions

May 17, 1994 – Relief from Zoning Ordinance:

- 1) Variance from Article III, Section 10-302 to allow:
  - a) 8' high garden shed to remain with a 2' side yard where a 10' rear yard is required.

The Board voted the request be **granted** as presented and advertised

## Planning Department Comments

The applicant is seeking relief to add a rear addition and an addition onto an existing shed that is located in the back corner of the property.

## 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.*

## 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.



2.

Request of **The Lonzoni Family Revocable Trust (Owner)**, for property located at **411 South Street** whereas relief is needed to demolish existing garage and construct new attached garage which requires the following: 1) Variance from Section 10.521 to allow a 6 foot rear yard where 20 feet is required. 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the Ordinance. Said property is shown on Assessor Map 112 Lot 55 and lies within the General Residence A (GRA) District.

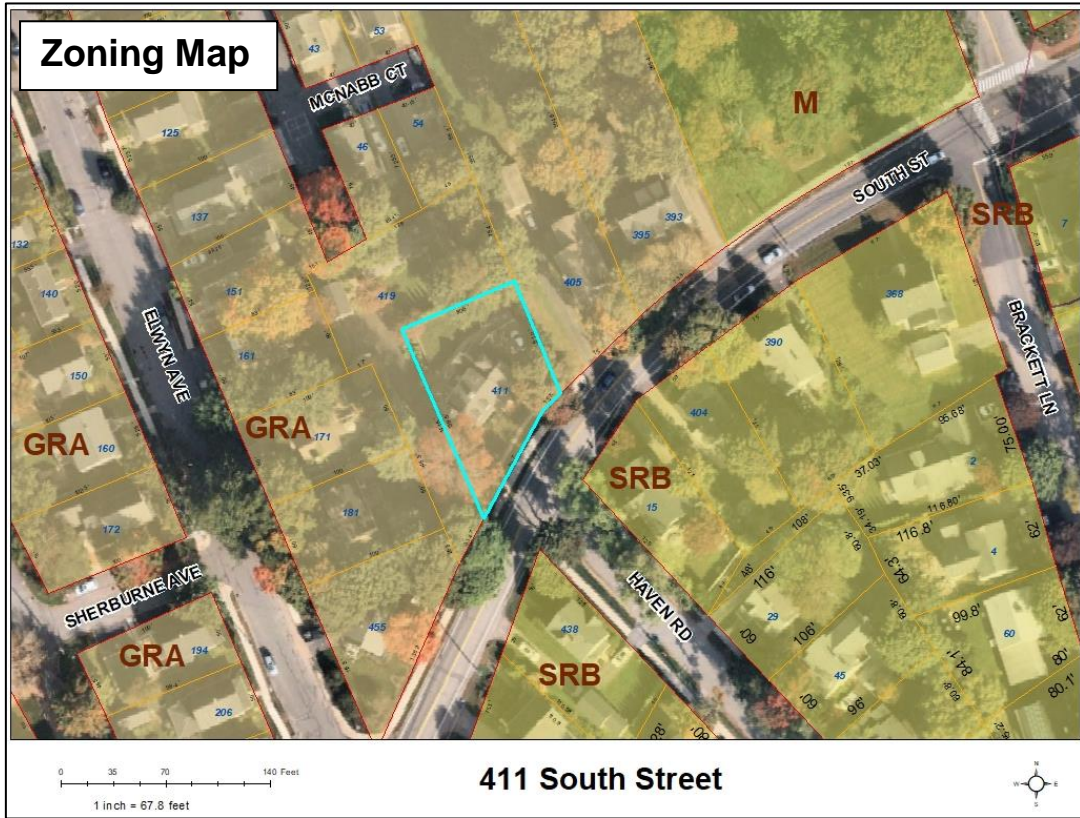
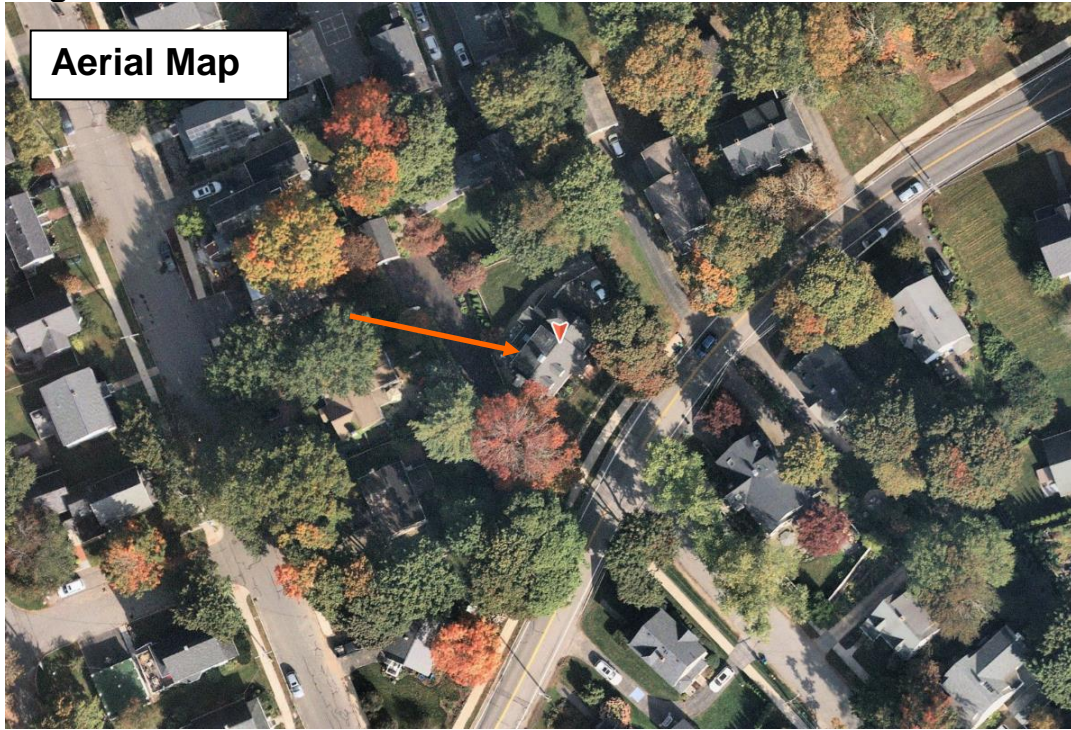
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Demo garage/construct new garage	Primarily residential
<u>Lot area (sq. ft.):</u>	8,581	8,581	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,581	8,581	7,500 min.
<u>Lot depth (ft.):</u>	102	102	70 min.
<u>Street Frontage (ft.):</u>	99	99	100 min.
<u>Primary Front Yard (ft.):</u>	15	15	15 min.
<u>Right Yard (ft.):</u>	6	14	10 min.
<u>Left Yard (ft.):</u>	5	5	10
<u>Rear Yard (ft.):</u>	6	<b>6</b>	20 min.
<u>Height (ft.):</u>	<35	17	35 max.
<u>Building Coverage (%):</u>	24	25	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1955	Variance request(s) shown in red.	

### Other Permits/Approvals Required

None.

### Neighborhood Context





## Previous Board of Adjustment Actions

October 17, 2017 – Relief from Zoning Ordinance:

- 1) Variance from Section 10.521 to allow:
  - a) 8.1' ± rear yard setback where 20' is required
  - b) 9.3' ± right yard setback where 10' is required
  - c) 26.4% ± building coverage where 25% is required
- 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance

The Board voted the request be **deny** as presented and advertised.

## Planning Department Comments

The applicant is proposing to demolish the existing garage and construct a new attached garage. As shown in the history and indicated in the current application, variances were denied in 2017 to construct a new garage with ADU above. The new proposal does not include an ADU and is not as tall as what was previously proposed in 2017.

Staff feels this is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether Fisher vs. Dover is applicable before this application is considered.

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

## 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.*

## 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.



3.

Request of **Andrea Hurwitz (Owner)**, for property located at **129 Aldrich Road** whereas relief is needed for a second floor addition with rear addition and deck which requires the following: 1) Variance from Section 10.521 to allow a 5.5 foot left side yard where 10 feet is required. 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 153 Lot 35 and is located within the Single Residence B (SRB) District.

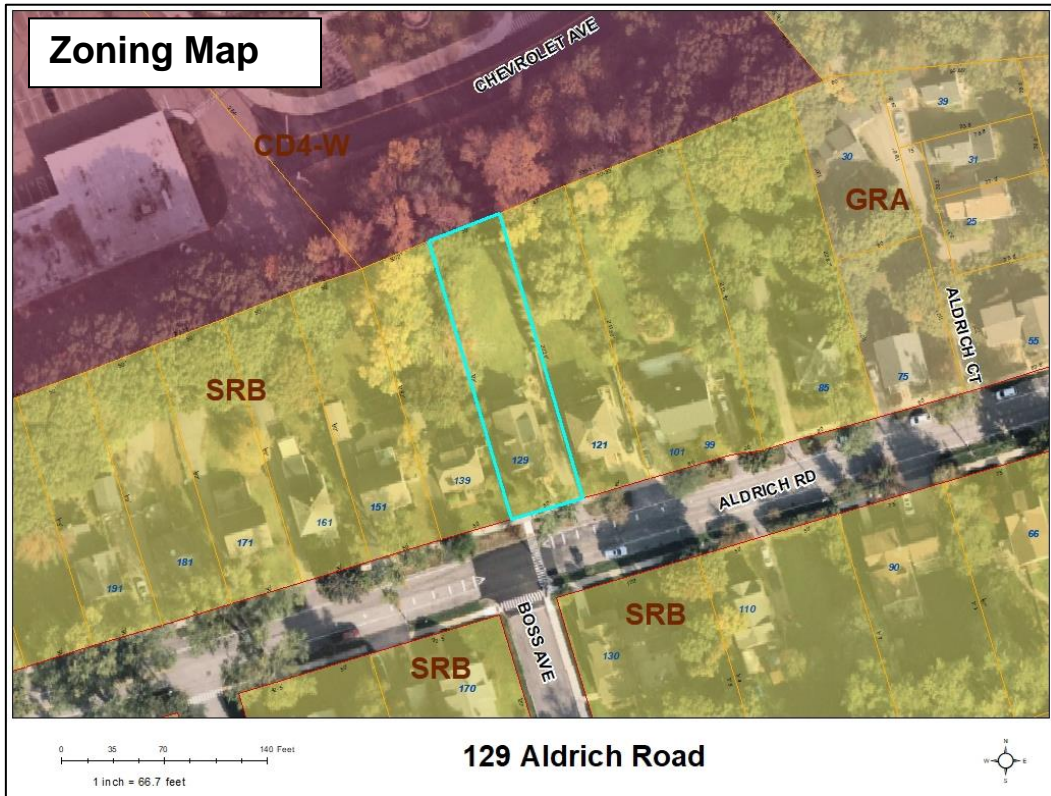
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Rear addition with deck	Primarily residential
<u>Lot area (sq. ft.):</u>	10,018	10,018	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,018	10,018	15,000 min.
<u>Lot depth (ft.):</u>	200	200	100 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Primary Front Yard (ft.):</u>	15	15	30 min.
<u>Right Yard (ft.):</u>	10.5	10.5	10 min.
<u>Left Yard (ft.):</u>	5.5'	<b>5.5'</b>	10
<u>Rear Yard (ft.):</u>	114	<b>92</b>	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	13	20	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1920	<b>Variance request(s) 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 proposing a rear addition and upward expansion of the existing dwelling. The current location is nonconforming on the left side. The upward expansion will not encroach further into the side yard than what currently exists, but the vertical expansion within the setback requires relief.

## 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.*

## 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.



4.

Request of **Donald Lowell Stickney III (Owner)**, for property located at **213 Jones Avenue** whereas relief is needed for the addition of a second driveway which requires the following: 1) Variance from Section 10.1114.31 to allow a second driveway on a lot where only one driveway is allowed. Said property is located on Assessor Map 222 Lot 69 and lies within the Single Residence B (SRB) District.

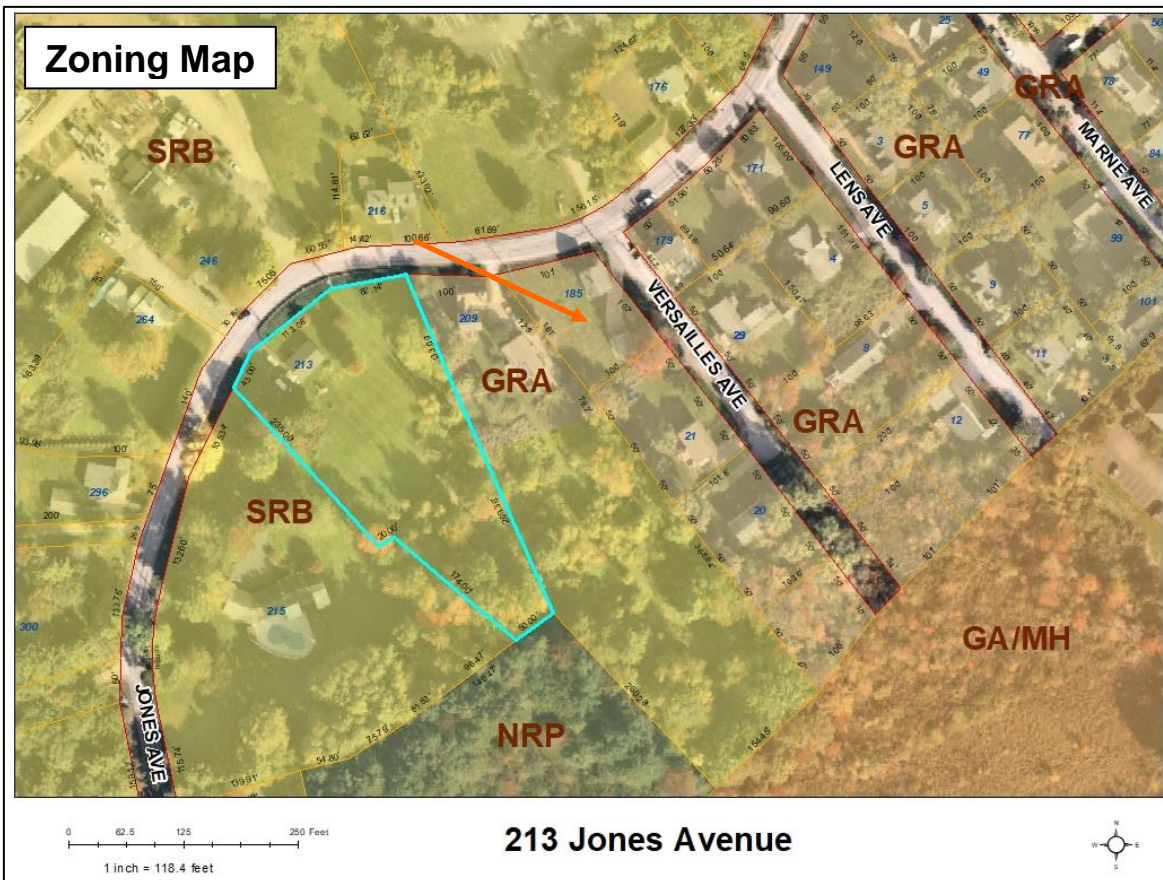
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	<b>Second driveway</b>	Primarily residential
<u>Lot area (sq. ft.):</u>	62,528	62,528	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	62,528	62,528	15,000 min.
<u>Lot depth (ft.):</u>	405	405	100 min.
<u>Street Frontage (ft.):</u>	238	238	100 min.
<u>Primary Front Yard (ft.):</u>	33	30	30 min.
<u>Right Yard (ft.):</u>	>10	>10	10 min.
<u>Left Yard (ft.):</u>	>10	22	10
<u>Rear Yard (ft.):</u>	>150	>150	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	<20	<20	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	4	4	3
<u>Estimated Age of Structure:</u>	1951	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

Planning Board – Wetland CUP & CUP for Accessory Dwelling Unit  
 Conservation Commission –Wetland CUP (recommended approval 3/9/22)

### Neighborhood Context





## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is seeking to construct a new dwelling on the lot and has an application before the Planning Board to convert the existing dwelling into a Detached Accessory Dwelling Unit (DADU). A wetland CUP is also required and received a recommendation of approval from the Conservation Commission in March. As part of the proposal, a second driveway is proposed to access the new principal dwelling. Only one driveway per lot is permitted per the Ordinance, thus the request before the Board.

## 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.*

## 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.



5.

Request of **Ann Genevieve Becksted Trust of 2004 (Owner)**, for property located at **9 Schurman Avenue** whereas relief is needed to add a 6' x 25' two story addition and side porch which requires the following. 1) A Variance from Section 10.521 to allow a 22 foot front yard where 30 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 260 Lot 158 and lies within the Single Residence B (SRB) District.

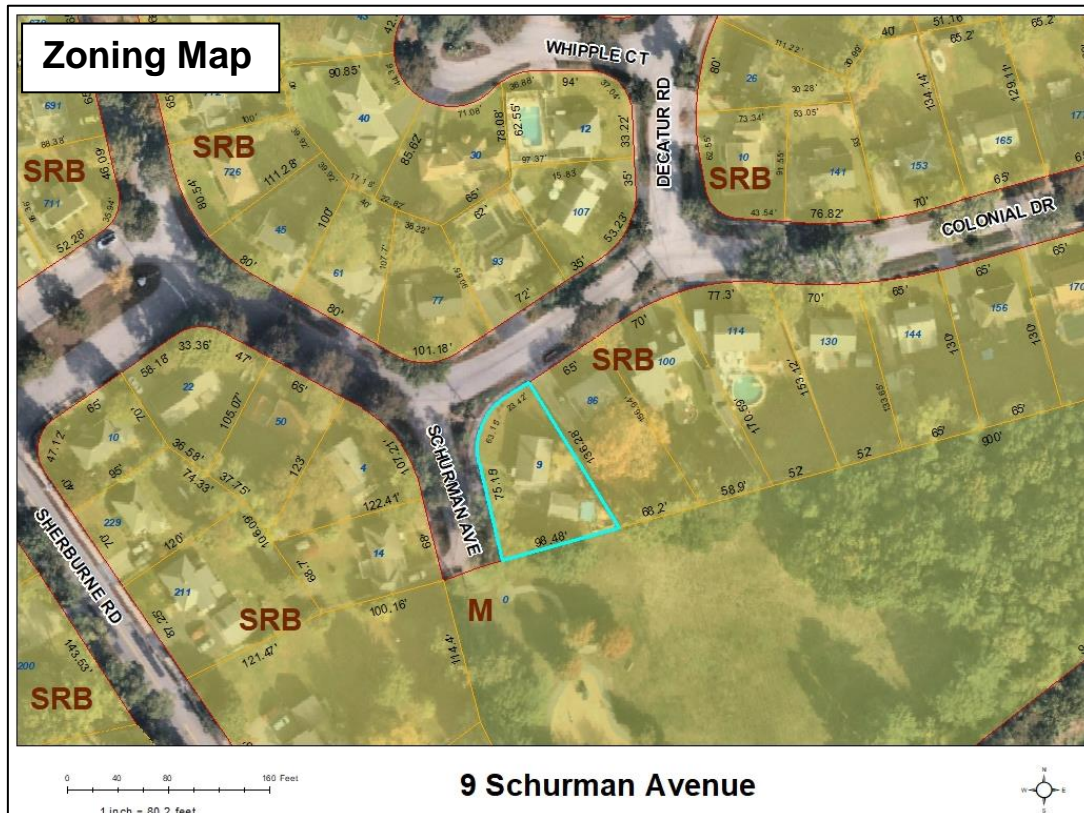
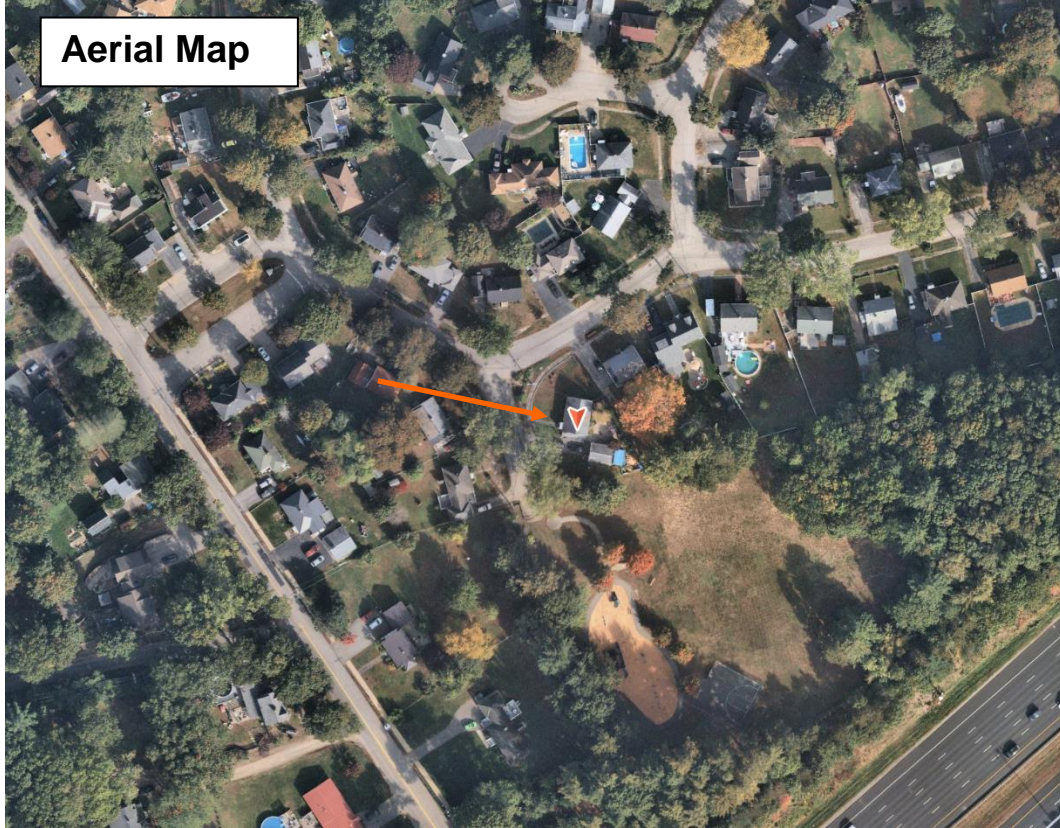
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Two story addition	Primarily residential
<u>Lot area (sq. ft.):</u>	9,147	9,147	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,147	9,147	15,000 min.
<u>Lot depth (ft.):</u>	117	117	100 min.
<u>Street Frontage (ft.):</u>	161	161	100 min.
<u>Primary Front Yard (ft.):</u>	24	<b>22</b>	30 min.
<u>Right Yard (ft.):</u>	48	42	10 min.
<u>Left Yard (ft.):</u>	7	7	10
<u>Rear Yard (ft.):</u>	54	54	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	14	17	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1940	Variance request(s) 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 seeking to add a two-story side addition, covered front porch and small deck on the rear of the existing dwelling. The two-story addition will encroach into the front yard. The rear deck will be under 18", therefore it does not need to conform to setbacks or coverage requirements.

## 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.*

## 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.



6.

Request of **Andrew DiPasquale (Owner)**, for property located at **80 Fields Road** whereas relief is needed to Construct rear addition and enclose existing carport to create sunroom with front porch which requires the following: 1) Variances from Section 10.521 to allow a) a 26 foot rear yard where 30 feet is required; b) a 9 foot right side yard where 10 feet is required; c) a 9 foot left side yard where 10 feet is required; d) a 23 foot front yard where 30 feet is required; and e) 29% building coverage where 20% is the maximum allowed. 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 171 Lot 8 and lies within the Single Residence B (SRB) District.

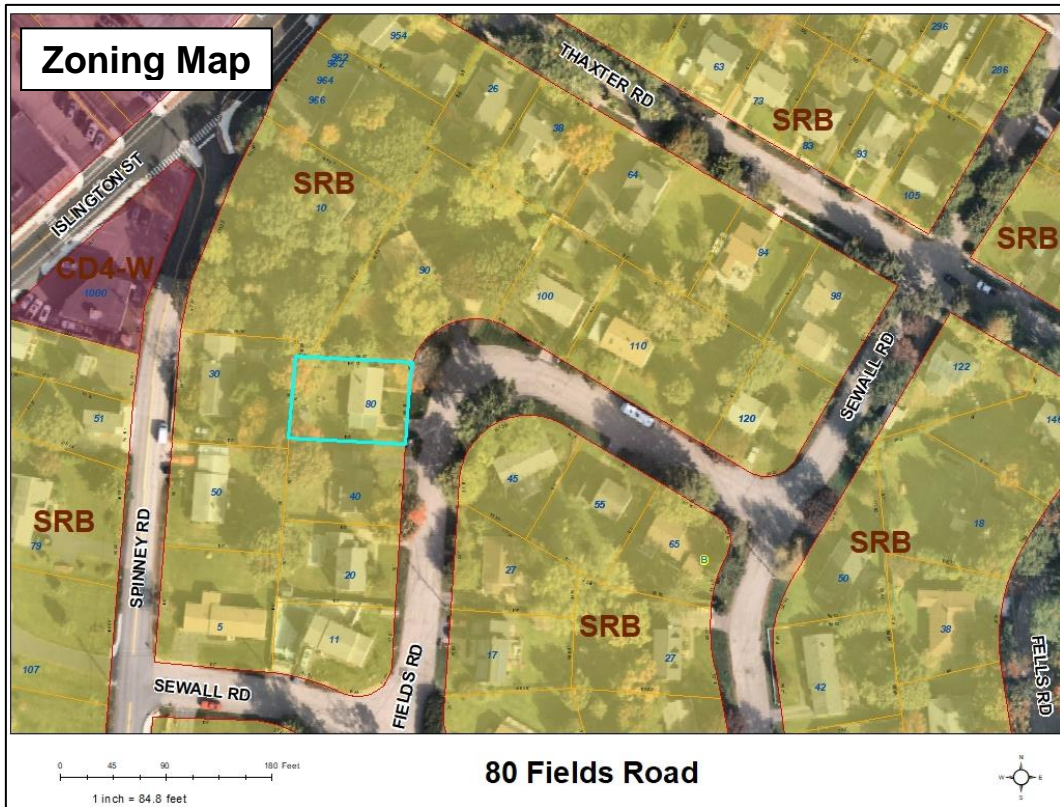
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Rear addition	Primarily residential
<u>Lot area (sq. ft.):</u>	6,969	6,969	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,969	6,969	15,000 min.
<u>Lot depth (ft.):</u>	100	100	100 min.
<u>Street Frontage (ft.):</u>	70	70	100 min.
<u>Primary Front Yard (ft.):</u>	28.5	<b>23</b>	30 min.
<u>Right Yard (ft.):</u>	9	<b>9</b>	10 min.
<u>Left Yard (ft.):</u>	9	<b>9</b>	10
<u>Rear Yard (ft.):</u>	50	<b>26</b>	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	20.5	<b>29</b>	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1957	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

None.

### Neighborhood Context





## Previous Board of Adjustment Actions

Mar 16, 2021 – Relief from Zoning Ordinance:

to remove an existing shed and construct a new 12' x 16' shed which requires the following:

- 1) Variance from Section 10.521 to allow:
  - a) a 3 foot rear yard where 9 feet is required
  - b) a 3 foot left side yard where 9 feet is required
  - c) to allow 20.5% building coverage where 20% is the maximum allowed.
- 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance

The Board voted the request be **granted** as presented and advertised.

## Planning Department Comments

The applicant is proposing to demolish the existing carport and construct a new addition in its place and add a rear addition on the right side of the existing dwelling. The house is currently nonconforming to the front and both side yards. The additions on both sides will not encroach further than what currently exists.

## 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.*

## 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.



7.

Request of **Pamela J. Katz Revocable Trust (Owner)**, for property located at **462 Lincoln Ave, Unit 4** whereas relief is needed to install a generator which requires the following: 1) A Variance from Section 10.515.14 to allow a 6 foot setback where 10 feet is required and to allow the generator to be closer to the street than the principal structure. Said property is located on Assessor Map 133 Lot 20-4 and lies within the General Residence A (GRA) District.

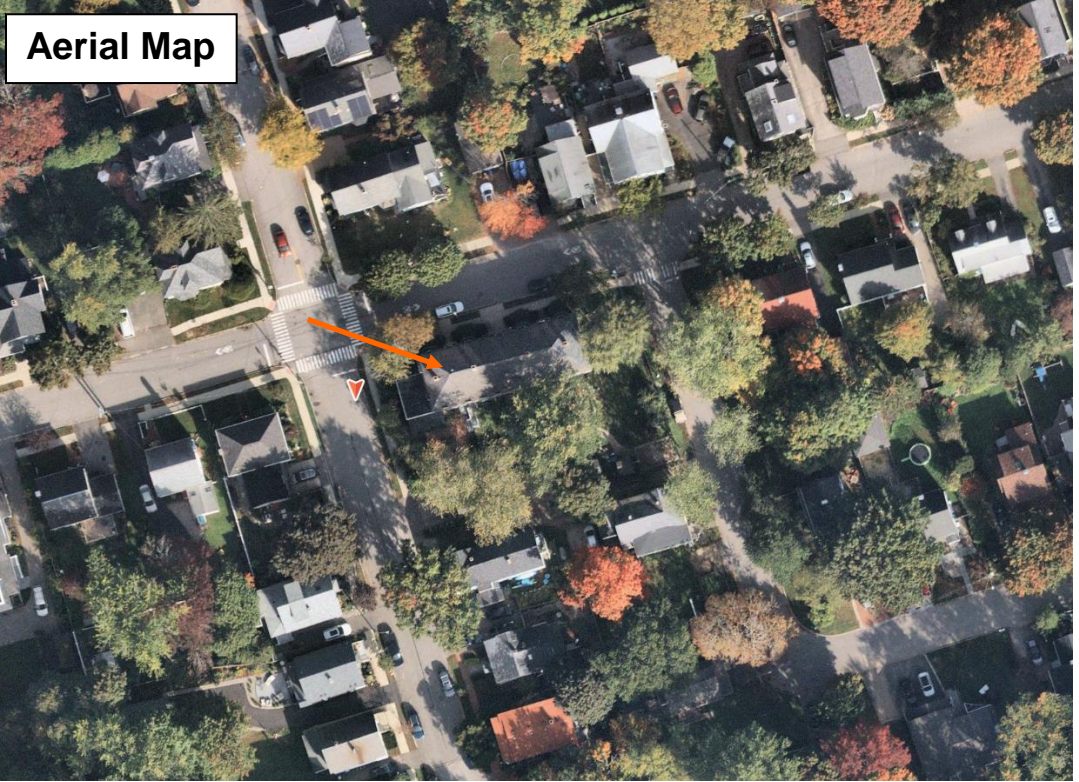
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	4 unit condo	Generator	Primarily residential
<u>Lot area (sq. ft.):</u>	13,949	13,949	7,500 min.
<u>Lot area per dwelling (sq. ft.):</u>	3,487	3,487	7,500 min.
<u>Lot depth (ft.):</u>	100	100	70 min.
<u>Street Frontage (ft.):</u>	238	238	100 min.
<u>Primary Front Yard (ft.):</u>	9.5	9.5	15 min.
<u>Secondary Front Yard (ft.):</u>	10	<b>6</b>	15 min.
<u>Left Yard (ft.):</u>	24	24	10
<u>Rear Yard (ft.):</u>	57	57	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	26.5	26.5	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking:</u>	8	8	6
<u>Estimated Age of Structure:</u>	1875	Variance request(s) shown in red.	

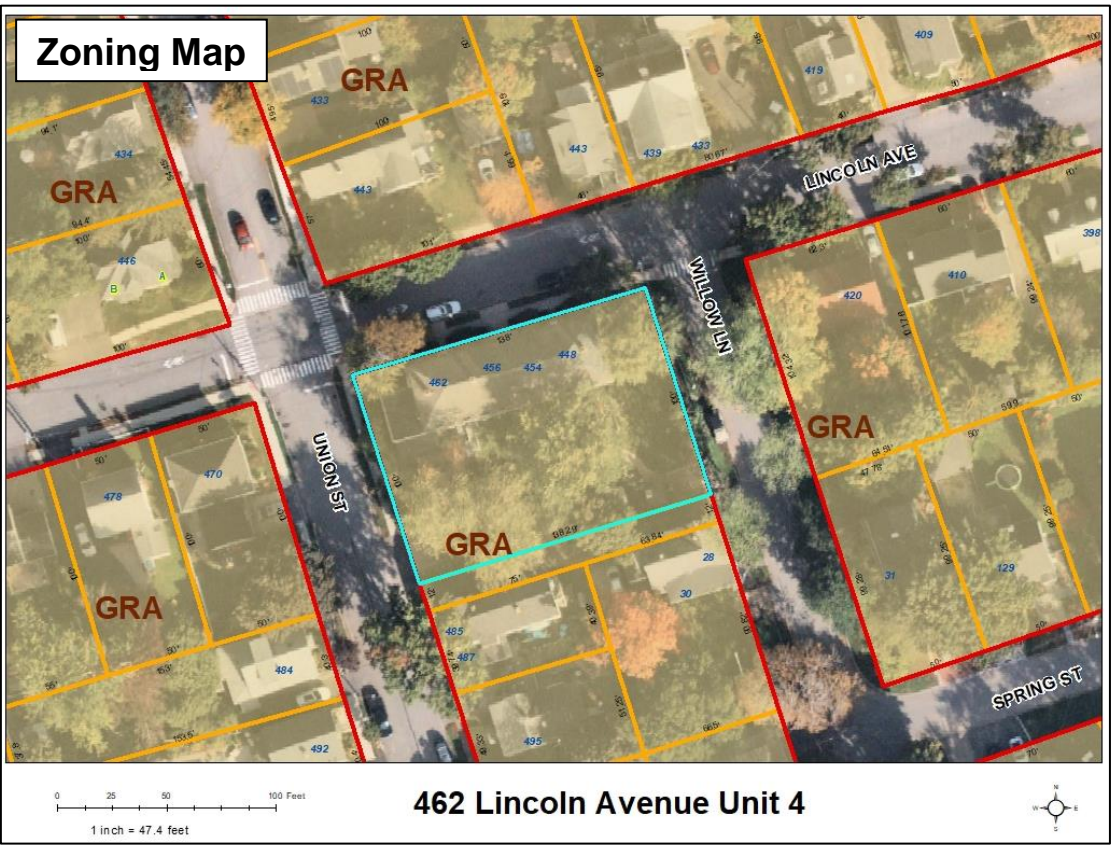
### Other Permits/Approvals Required

None.

### Neighborhood Context



**Aerial Map**



## Previous Board of Adjustment Actions

April 19, 2016 – Relief from Zoning Ordinance:

Construct a 6.5'± x 16.75' ± one-story addition and a 13.5' ± x 20' ± two story addition on the right side of existing building which requires:

- 1) Variance from Section 10.521 to allow:
  - a) 10.1'± secondary front yard setback where 15' is required.
- 2) Variance from Section 10.521 to allow:
  - a) 26.5'± building coverage where 25% is the maximum allowed.

The Board voted the request be **granted** with the following stipulation:

Full screening to be provided for the condensers proposed to be relocated

## Planning Department Comments

The applicant is seeking to add a generator for Unit 4. The lot is a corner lot with frontage on Lincoln and secondary frontage on Union. The location will be closer to the street and in front of the building on the Union side, with a proposed setback feet 6 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.*

## 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.