

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: August 9, 2022
RE: Zoning Board of Adjustment August 16, 2022

OLD BUSINESS

1. 67 Ridges Court
2. 108 Burkitt Street – Postponed until September

NEW BUSINESS

1. 225 Banfield Road - Rehearing –Request to Postpone
2. 101 International Drive
3. 201 Kearsarge Way
4. 303 Thaxter Road
5. 22 Maple Street

OLD BUSINESS

1.

The request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed to construct a 718 square foot garage addition with living space and deck above which requires the following: 1) A Variance from Section 10.521 to allow a 15.5' front yard where 30' 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 2074 Lot 59 and is located within the single residence B (SRB) District.

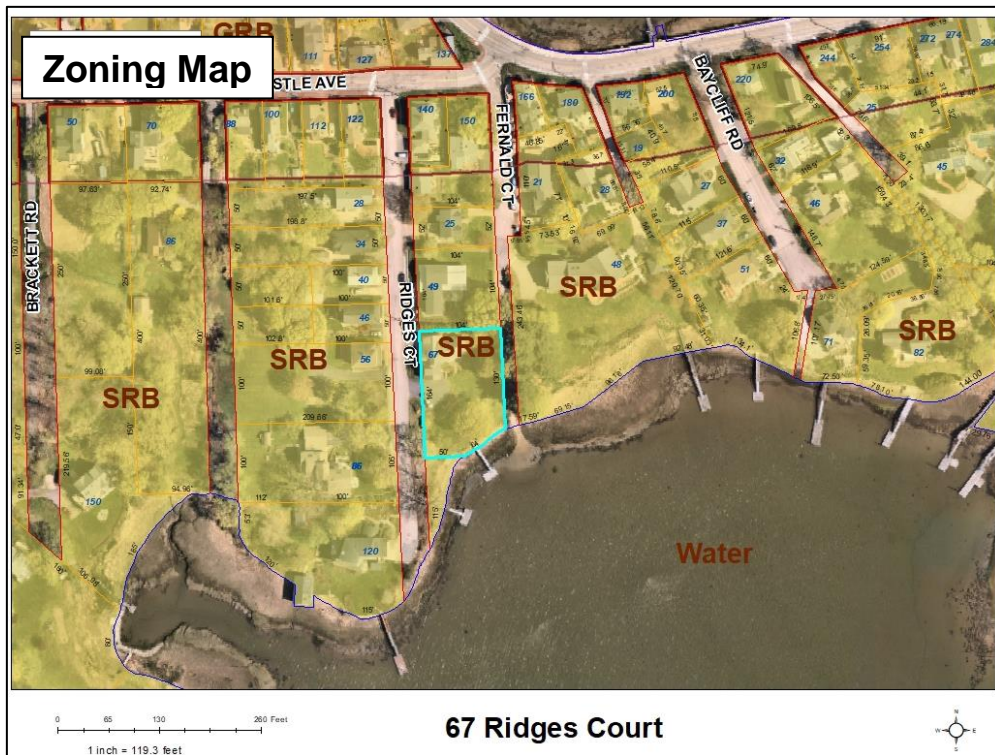
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Garage addition	Primarily single residence
<u>Lot area (sq. ft.):</u>	16,500	16,500	15,000 min.
<u>Lot area per dwelling (sq. ft.):</u>	16,500	16,500	15,000 min.
<u>Lot depth (ft.):</u>	109	109	100 min.
<u>Street Frontage (ft.):</u>	164	164	100 min.
<u>Primary Front Yard (ft.):</u>	8	15.5	30 min.
<u>Left Yard (ft.):</u>	10	10	10 min.
<u>Right Yard (ft.):</u>	95	>67	10
<u>Rear Yard (ft.):</u>	40	40	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	14	18.5	20 max.
<u>Open Space Coverage (%):</u>	73	75	40 min.
<u>Parking:</u>	4	4	2
<u>Estimated Age of Structure:</u>	2002	Variance request(s) shown in red.	

Other Permits/Approvals Required

Conservation Commission/Planning Board – Wetland CUP

Neighborhood Context



Previous Board of Adjustment Actions

July 15, 1986 – the Board **granted** a Variance to permit the construction of a 20' x 20' addition onto an existing single family dwelling with a front yard of 9' where a 30' front yard is required.

August 20, 2002 – The Board considered request for the following Variance:

Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) is requested to allow a 5'9" x 10'3" front porch/entry with an 8'1" front yard where 30' is the minimum required. The Board voted the request be **granted** as advertised and presented.

October 15, 2002 – The Board considered request for the following Variance:

Article III, Section 10-302(A) is requested to allow the existing single family dwelling to be demolished and rebuilt with a 13'11" front yard where 30' is the minimum required. The Board voted the request be **granted** as advertised and presented.

Planning Department Comments

The applicant is seeking to add a right side garage addition with living space above connected to the main dwelling. As shown in the history above, variances were granted in 2002 to allow the reconstruction of the dwelling at 13'11" from the front lot line and a front porch at 8' from the front lot line. The proposed addition will be setback an addition 2 feet from the front of the existing dwelling at 15.5'. The proposed addition will be located over existing pavement and the open space will actually increase with the removal of additional impervious areas as part of the project. All other dimensional requirements are compliant with the proposal. The applicant will need to go to the Conservation Commission and Planning Board for a Wetland CUP for the encroachment into the buffer.

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.

August 16, 2022 Meeting

NEW BUSINESS

1.

The request of **Jeffrey C. Christensen (Attorney for the Appellants)**, for property located at **225 Banfield Road** for a rehearing of the May 24, 2022 decision of the Zoning Board of Adjustment's granting of a request for variances to demolish the existing building and constructing a new 5 unit commercial building and 60 unit residential building with underground parking which requires the following: 1) A Variance from Section 10.440 to allow a 60 unit residential building where residential uses are not permitted in the Industrial district. Said property is located on Assessor Map 254 Lot 1 and Map 266 Lot 1 and lies within the Industrial (I) District.

At the July meeting, the Board granted the rehearing request submitted by Pike Industries. In advance of the August meeting, the applicant requested to postpone the rehearing to the September meeting. Both parties have agreed to postpone to the September 20th meeting.

2.

The request of **Lonza Biologics (Owner)**, for property located at **101 International Drive** whereas relief is needed for the addition of a 372 square foot wall sign which will result in 487.5 square feet of total sign area which requires the following: 1) A Variance from Section 306.01(d) to allow 487.5 square feet of total sign area where 200 square feet is the maximum allowed per lot. Said property is located on Assessor Map 305 Lot 6 and is located in the Airport Business Commercial (ABC) District.

Existing & Proposed Conditions

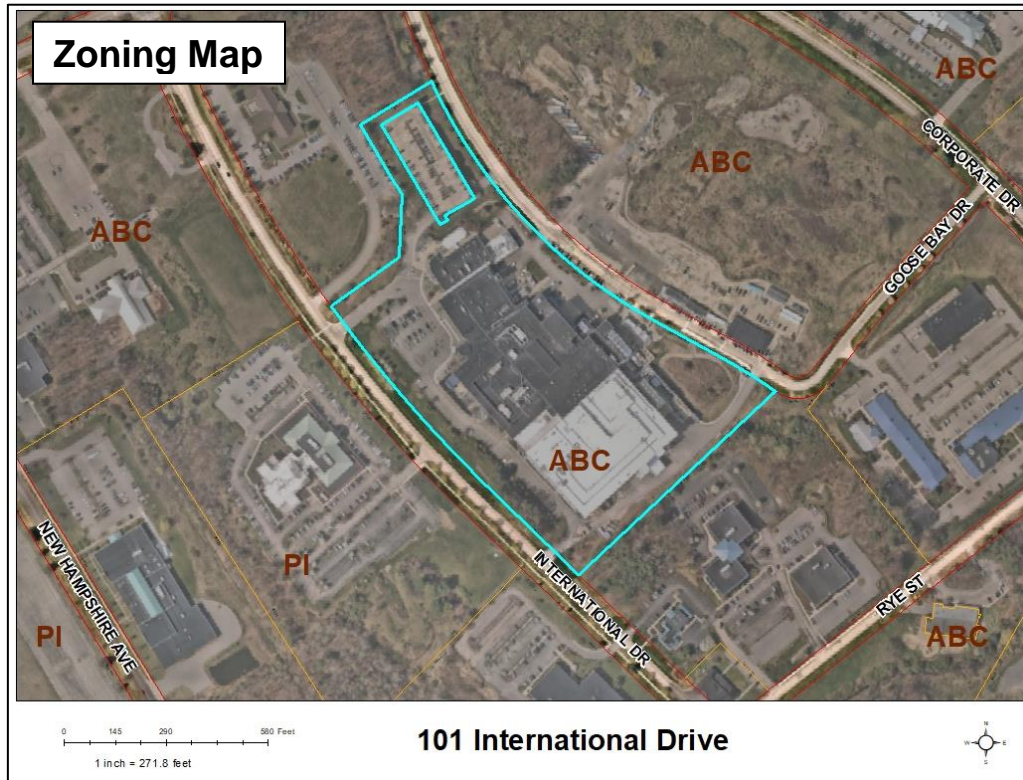
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Lonza	Additional signage	Business, com. & trade related enterprises
<u>Sign area (sq. ft.):</u>	196.44	487.5	200 max.
		Variance request(s) shown in red.	

Other Permits/Approvals Required

Pease Development Authority (PDA)

Neighborhood Context





Previous Board of Adjustment Actions

December 15, 1998 – The Board **granted a variance** pursuant to the PDA regulations to allow 5 loading docks to be provided where 13 loading docks were required for the 130,000 s.f. expansion of the facility.

February 20, 2001 – The Board **recommended approval** to the Pease Development Authority that a variance be granted to allow 5 loading docks where 28 loading docks are required.

June 16, 2015 – The Board **recommended approval** to the Pease Development Authority of a variance to allow above ground storage tanks exceeding 2,000 gallon capacity for two existing and two proposed generators. The recommendation was given with a request to provide information on the life span of the above ground tanks.

May 28, 2019 - The Board **recommended approval** to the Pease Development Authority of a variance to allow above ground storage tanks exceeding 2,000 gallon capacity.

July 27, 2021 - The Board **recommended approval** to the Pease Development Authority to allow an above ground storage tank (AST) exceeding 2,000 gallon capacity per facility. Said property is shown on Assessor Map 305 Lot 6 and lies within the Airport Business Commercial (ABC) District.

Planning Department Comments

The application was before the Pease Development Authority (PDA) Board meeting on June 16, 2022 and the PDA Board voted to support the applicant's request to move forward to seek a variance.

The PDA has its own land use and zoning regulations and is exempt from the City's regulations ordinance. For certain parcels in Pease, variance requests are sent to the City for a recommendation from the BOA. A motion to approve or deny will be a recommendation and the recommendation will become an approval by the PDA Board after 14 days unless the applicant or PDA Board member requests a hearing (see Part 317.03(f) below).

The Chapter in the Pease Land Use Controls regarding the process for a variance is below. Part 317.03(c) states the BOA will use apply the standards in Part 317.01(c) in its review of the application. These standards are attached hereto under Review Criteria.

317.03 Zoning Variances Referred to Local Municipalities for Administration

(a) For parcels located within the Industrial Zone, Business and Commercial Zone, Natural Resource Protection Zone or portions of the Airport Industrial Zone not acquired by the Pease Development Authority pursuant to Section 13(g) of the Surplus Property Act, requests for a variance from the provisions of this zoning rule shall be referred to the zoning board of adjustment for the municipality in which the parcel is situated for administration in accordance with the provisions of this section.

55

(b) Applications for a variance for parcels referred to in Subsection (a) shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board and referred to the applicable zoning board of adjustment.

(c) The zoning board of adjustment to which the application for a variance has been referred shall, in its review of the request, apply the substantive provisions of this Chapter.

(d) Recommendations to the Board regarding requests for a zoning variance shall be made by the applicable zoning board of adjustment within sixty (60) days of referral. Notice of the recommendation shall be provided to the applicant and the Board within 48 hours of the decision.

(e) The recommendation of the applicable zoning board of adjustment shall be forwarded to the Board along with a written report detailing the reasons for any recommendation for denial or approval with conditions.

(f) A recommendation of the applicable zoning board of adjustment shall be deemed a final decision of the Board upon the expiration of fourteen (14) days from the date of notice, unless the applicant/developer or a member of the Board requests a hearing by the Board.

(g) Where a hearing has been requested, the Board shall conduct a hearing and render a final decision on the variance request within thirty (30) days.

(h) At the discretion of the Board the time period for rendering a final decision may be extended an additional thirty (30) days, or such additional time as may be consented to by the applicant.

(i) The Board may approve, conditionally approve or deny the application notwithstanding the recommendation of the applicable zoning board of adjustment. In the case of denial of any application by the Board or where the Board elects not to follow the recommendation of the applicable zoning board of adjustment, the ground(s) for such action shall be stated in writing.

Review Criteria

This application must meet the criteria for a **variance** of Part 317.01(c) of the Pease Land Use Controls below.

PART 317. VARIANCES FROM ZONING PROVISIONS

317.01 General Provisions

- (a) Requests for a variance from the provisions of this zoning rule shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board.
- (b) Applications for zoning variance approval shall set forth the specific provision of the rule or regulation involved and reasons why a variance should be granted.
- (c) A variance shall not be approved or recommended for approval unless it is in harmony with the general purpose and intent of these regulations and meets the following criteria:
 - (1) No adverse effect or diminution in values of surrounding properties would be suffered.
 - (2) Granting the variance would be of benefit to the public interest.
 - (3) Denial of the variance would result in unnecessary hardship to the person seeking it.
 - (4) Granting the variance would be substantial justice.
 - (5) The proposed use would not be contrary to the spirit of this zoning rule.
- (d) Reasonable conditions necessary to meet one or more of the standards in subsection (c) above may be attached to approval of a variance.

3.

The request of **Richard P. Fusegni (Owner)**, for property located at **201 Kearsarge Way** whereas relief is needed to subdivide one lot into three lots which requires the following: 1) A Variance from Section 10.521 to allow 82.5 feet of street frontage where 100 feet is required for proposed Lot 3. Said property is located on Assessor Map 218 Lot 5 and lies within the Single Residence B (SRB) District.

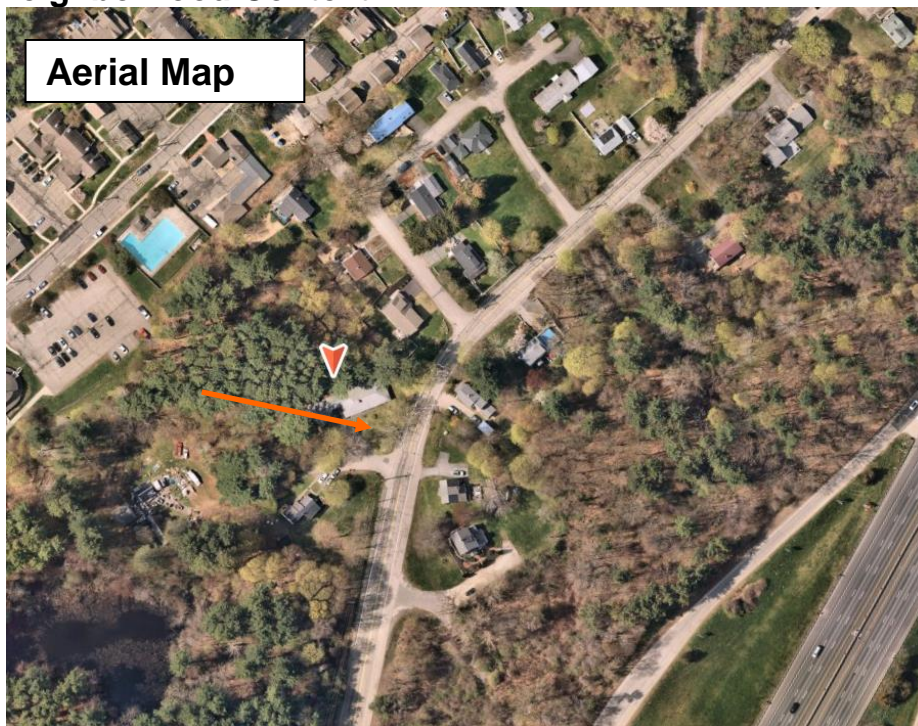
Existing & Proposed Conditions

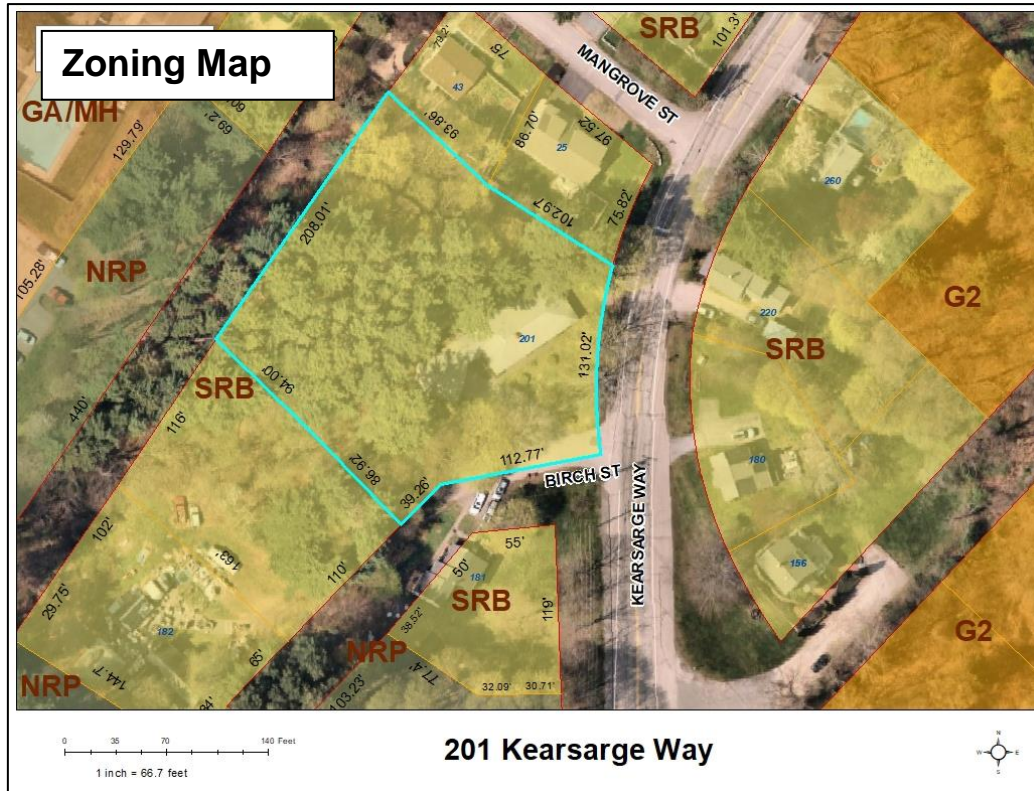
	<u>Existing</u>	<u>Proposed</u>			<u>Permitted / Required</u>	
<u>Land Use:</u>	1 lot	3 lots			Primarily single family	
		1	2	3		
<u>Lot area (sq. ft.):</u>	52,254	17,125	17,406	17,723	15,000	min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	52,254	17,125	17,406	17,723	15,000	min.
<u>Street Frontage (ft.):</u>	282.5	100	100	82.5	100	min.
<u>Lot depth (ft.):</u>	>100	>100	>100	>100	100	min.
<u>Year Built:</u>	1954	Variance request shown in red.				

Other Permits/Approvals Required

TAC/Planning Board - Subdivision

Neighborhood Context





Previous Board of Adjustment Actions

June 21, 2016 – The Board **granted** a variance to construct a home on one lot of a three-lot subdivision with a front yard setback of 15' where 30' was required. The Board noted that the variance was specific to the presented lot.

March 20, 2018 – The Board **granted** variances to subdivide one lot into two by allowing a lot area and lot area per dwelling unit of 7,834 s.f. where 15,000 s.f. was required.

June 18, 2019 – The Board **denied** a request to subdivide one lot into three.

July 23, 2019 – The Board **granted a rehearing** to be held at the August 20, 2019 meeting.

August 20, 2019 – The Board **postponed** the new hearing to the September 17, 2019 meeting at the request of the applicant (5 sitting members).

September 17, 2019 – The Board considered the application for Variance from Section 10.521 to allow a lot with 83' of frontage where 100' is required. Said property is shown on Assessor Map 218, Lot 5 and lies within the Single Residence B District. As a result of said consideration, the Board voted to **grant** the application as presented.

Planning Department Comments

As shown in the history, on June 18, 2019 the Board **denied** a variance to allow 83'± of continuous street frontage where 100' is required for a proposed 3 lot subdivision. The applicant filed a request for a rehearing and on July 23, 2019, the Board **granted** the request and ultimately approved the request on September 17, 2019. The subdivision was ultimately approved by the Planning Board, however the applicant did not follow through with the post approval process to finalize the subdivision and thus the approval expired. They are seeking similar relief for the 3 lot subdivision.

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.

The request of **Marcio Goldani Von Muhlen (Owner)**, for property located at **303 Thaxter Road** whereas relief is needed to replace existing entry way with 2-story addition including front landing and steps which requires the following: 1) A Variance from Section 10.521 to allow a 14.5' front yard where 30' is required. Said property is located on Assessor Map 152 Lot 37 and lies within the single residence B (SRB) district

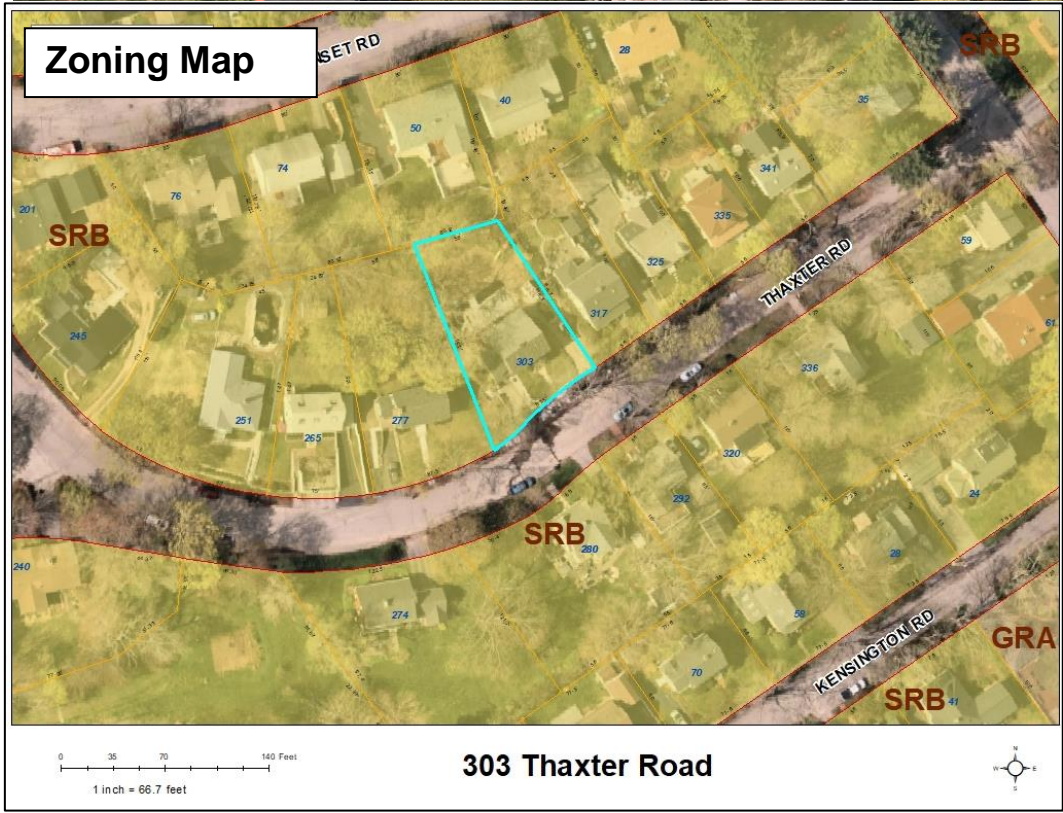
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single family	2-story addition	Primarily residential
<u>Lot area (sq. ft.):</u>	9,270	9,270	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,270	9,270	15,000 min.
<u>Lot depth (ft.):</u>	130	130	100 min.
<u>Street Frontage (ft.):</u>	87.5	87.5	100 min.
<u>Primary Front Yard (ft.):</u>	20	14.5'	30 (20.3' per Section 10.516.10) min.
<u>Left Yard (ft.):</u>	13	13	10 min.
<u>Right Yard (ft.):</u>	20	15	10
<u>Rear Yard (ft.):</u>	>30	>30	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	12	15	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 proposing a 2-story addition and new front landing with steps. The new landing and steps will encroach into the front yard. Based on the front yard averaging per Section 10.516.10, the front yard is just over 20 feet, which the existing conditions comply with. Due to the grade the new landing will require several steps to reach the ground which will extend further into the front yard.

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.

The request **John A Signorello (Owner)**, for property located at **22 Maple Street** whereas relief is needed to subdivide one lot into two lots and construct new dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling unit of 8,530 and 10,400 where 15,000 is required for each; b) a lot depth of 85' where 100' is required; c) 98' of continuous street frontage where 100' is required; d) an 18' front yard where 30' is required; and e) a 19' rear yard where 30' is required. Said property is located on Assessor Map 237 Lot 1 and lies within the single residence B (SRB) district.

Existing & Proposed Conditions

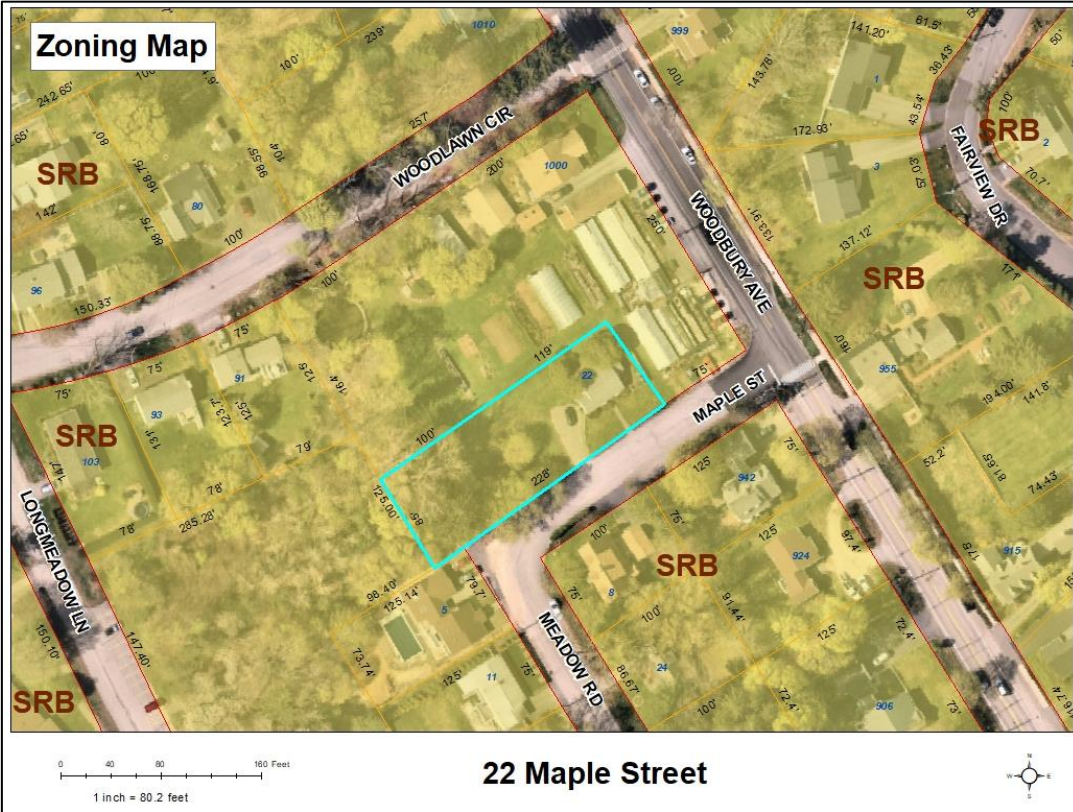
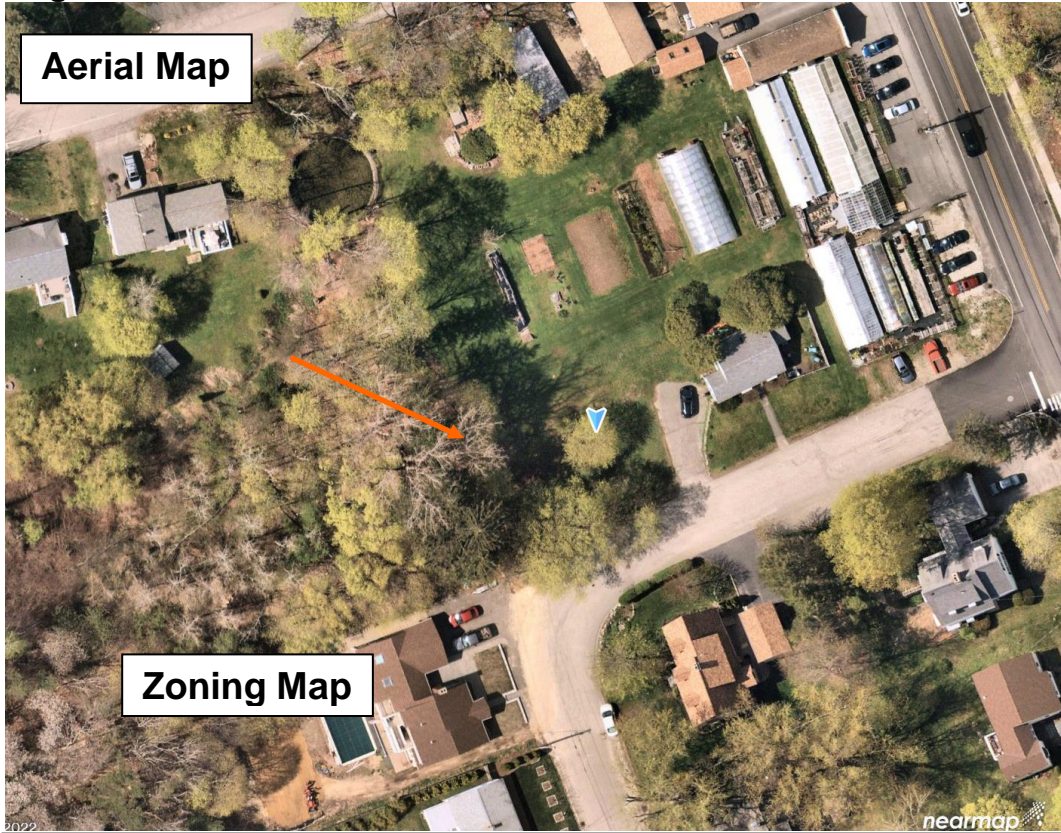
	<u>Existing</u>	<u>Proposed</u>		<u>Permitted / Required</u>
<u>Land Use</u>	Single family	Subdivision into 2 lots Lot 1 Lot 2		Primarily residential
<u>Lot area (sq. ft.):</u>	18,930	8,530	10,400	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	18,930	8,530	10,400	15,000 min.
<u>Lot depth (ft.):</u>	85	85	85	100 min.
<u>Street Frontage (ft.):</u>	198	100	98	100 min.
<u>Primary Front Yard (ft.):</u>	30	30	18	30 min.
<u>Left Yard (ft.):</u>	165	>10	38	10 min.
<u>Right Yard (ft.):</u>	11	11	>10	10
<u>Rear Yard (ft.):</u>	30	30	19	30 min.
<u>Height (ft.):</u>	<35	<35	<35	35 max.
<u>Building Coverage (%):</u>	5	12	14	20 max.
<u>Open Space Coverage (%):</u>	>40	75	65	40 min.
<u>Parking:</u>	2	2	2	2
<u>Estimated Age of Structure:</u>	1955	Variance request(s) shown in red.		

Other Permits/Approvals Required

TAC/Planning Board – Subdivision

Conservation Commission/Planning Board – Wetland CUP

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is seeking to subdivide the existing lot into two lots and construct a dwelling on the new lot. The subdivision will result in both lots being smaller than the required 15,000 square foot minimum for lot size and lot area per dwelling. The new lot will be 2 feet short of the 100 foot frontage requirement and the proposed structure as presented, will need relief from the front and rear yard requirements. There is a wetland located adjacent to this property and the majority of the proposed dwelling is located within the 100 foot wetland buffer. If the Board grants approval, staff would recommend the following stipulation:

1. The location of the proposed dwelling may change as a result of the Conservation Commission and Planning Board review, as long as the front and rear setbacks are consistent with this approval.

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.