

TO: Zoning Board of Adjustment  
FROM: Peter Stith, AICP, Planning Department  
DATE: April 18, 2022  
RE: Zoning Board of Adjustment April 26, 2022

## **NEW BUSINESS**

1. 322 Lincoln Avenue
2. 607 Colonial Drive
3. 333 Borthwick Avenue
4. 728 State Street, Unit 1
5. 77 Meredith Way
6. 64 Vaughan Street
7. 994 South Street
8. 105 Bartlett Street - WITHDRAWN



## NEW BUSINESS

1.

Request of **Amanda J. Telford Revocable Trust (Owner)**, for property located at **322 Lincoln Avenue** whereas relief is needed to amend previously approved demolition of existing carriage house and construction of new accessory structure which requires the following: 1) Variances from Section 10.521 to allow a) 35% building coverage where 25% is the maximum allowed; b) a 3'6" side yard where 10' is required; and c) a 13' rear yard where 20' 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 shown on Assessor Map 130 Lot 26 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 accessory structure/construct new structure	Primarily residential
<u>Lot area (sq. ft.):</u>	5,378	5,378	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,378	5,378	7,500 min.
<u>Street Frontage (ft.):</u>	48	48	100 min.
<u>Lot depth (ft.):</u>	119	119	70 min.
<u>Primary Front Yard (ft.):</u>	6'10"	6'10"	15 min.
<u>Left Side Yard (ft.):</u>	17	17	10 min.
<u>Right Side Yard (ft.):</u>	2.5'	<b>3.5'</b>	10 min.
<u>Rear Yard (ft.):</u>	13	<b>13</b>	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	35	<b>35.5</b>	25 max.
<u>Open Space Coverage (%):</u>	51	51	30 min.
<u>Parking:</u>	2	2	1.3
<u>Estimated Age of Accessory Structure:</u>	100 years	<b>Variance request shown in red.</b>	

### Other Permits/Approvals Required

None.

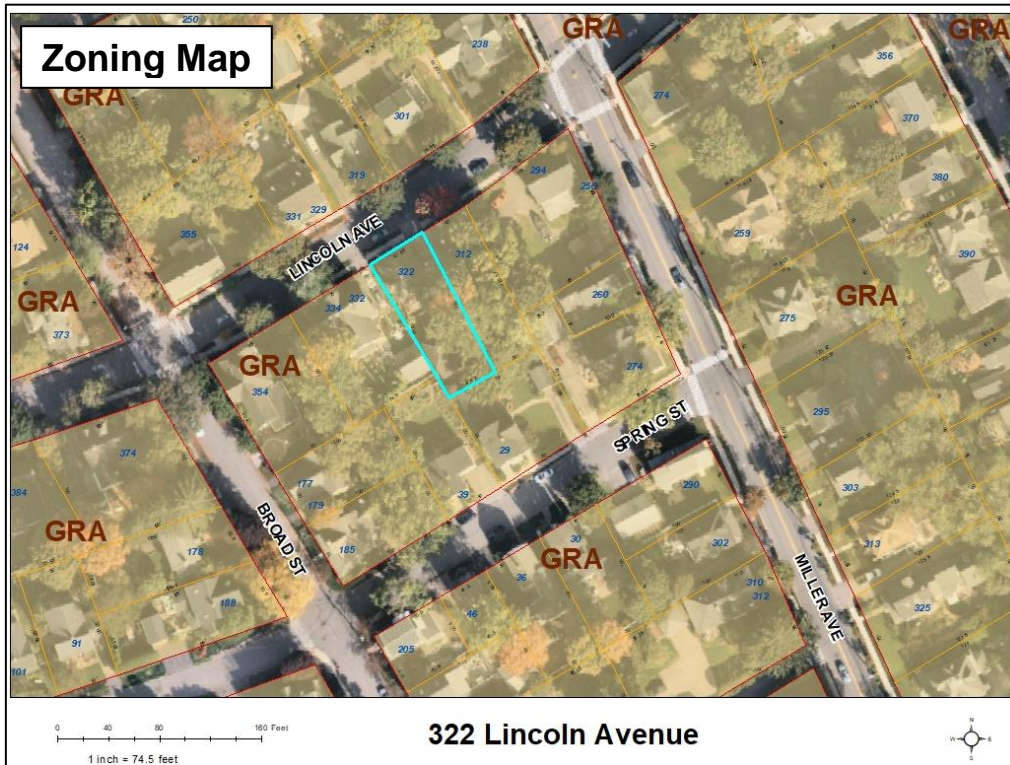
*April 26, 2022 Meeting*

## Neighborhood Context

**Aerial Map**



**Zoning Map**



## Previous Board of Adjustment Actions

September 17, 1996 – The Board **granted** variances to allow a deck with a 5' right side yard where 10' is required and a building coverage of 29.2% where 25% is the maximum allowed.

October 20, 2020 – The Board **granted** variances to demolish existing structure and construct new structure which requires the following: 1) Variances from Section 10.521 to allow a) 35.5% building coverage where 25% is the maximum allowed; b) a 3'6" right side yard where 10' is required; and c) a 13' rear yard where 20' 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.

## Planning Department Comments

The variances referenced in the history above were granted in 2020. The applicant has made some design changes which were not part of the original application in 2020. The applicant has provided images of what was approved in 2020 and what is now proposed. As stated below in Section 10.235 of the Ordinance, materials presented before the Board are deemed conditions of approval, thus the reason for this project coming back before the Board. The footprint will stay within the approvals that were granted, and actually will be slightly smaller than what was originally approved.

## 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.

*April 26, 2022 Meeting*



2.

Request of **William S. and Karen C. Bartlett (Owners)**, for property located at **607 Colonial Drive** whereas relief is needed to construct a 24' x 16' rear addition and 10'x 12' deck which requires the following: 1) A Variance from Section 10.521 to allow 25% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Map 260 Lot 26 and lies within the Single Residence B (SRB) District.

### Existing & Proposed Conditions

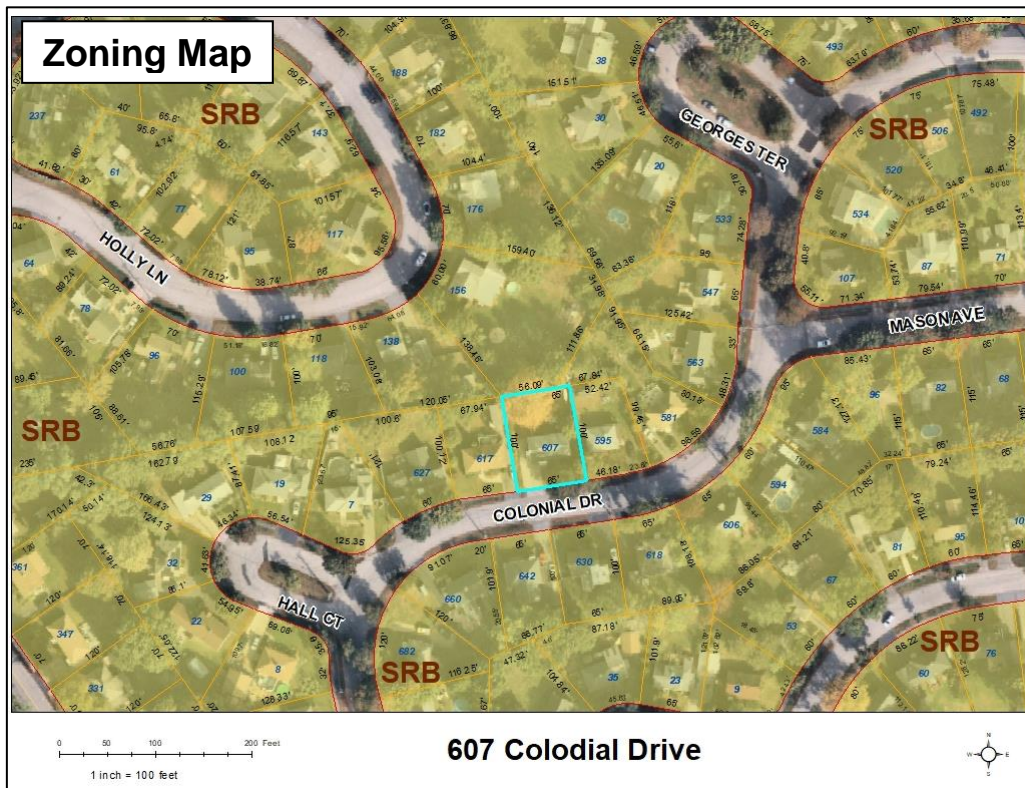
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Rear addition	Primarily single residence
<u>Lot area (sq. ft.):</u>	6,500	6,500	15,000 min.
<u>Lot area per dwelling (sq. ft.):</u>	6,500	6,500	15,000 min.
<u>Lot depth (ft.):</u>	100	100	100 min.
<u>Street Frontage (ft.):</u>	65	65	100 min.
<u>Primary Front Yard (ft.):</u>	25	25	30 min.
<u>Left Yard (ft.):</u>	13	13	10 min.
<u>Right Yard (ft.):</u>	10	10	10
<u>Rear Yard (ft.):</u>	50	34	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	17	<b>25</b>	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1942	Variance request(s) shown in red.	

### Other Permits/Approvals Required

None.



## Neighborhood Context



April 26, 2022 Meeting



## Previous Board of Adjustment Actions

April 22, 1986 - The Board **granted** a variance from Article III, Section 10-302 requested to allow the construction of a 7' x 25' 1½ story addition to a single family dwelling with a front yard of 24'5" where a 30' front yard is required.

## Planning Department Comments

The applicant is seeking to add a rear addition and deck to the existing dwelling. The proposed addition and deck will conform to the side and rear yard requirements, however the additional square footage will result in 25% building coverage where 20% is the maximum allowed for the SRB zone. The lot size is 6,500 where 15,000 is the standard for the SRB.

## 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 **HCA Health Services of NH, Inc. dba Portsmouth Regional Hospital (Owner)**, for property located at **333 Borthwick Avenue** whereas relief is needed for building addition on the existing hospital which requires the following: 1) A Variance from Section 10.531 to allow a 40' front yard where 50' is required. Said property is shown on Assessor Map 240 Lot 2 and lies within the Office Research (OR) District.

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Hospital	Front addition	Primarily Office
<u>Lot area (sq. ft.):</u>	909,097	909,097	130,680 min.
<u>Lot area per dwelling (sq. ft.):</u>	NA	NA	NA min.
<u>Lot depth (ft.):</u>	1187	1187	300 min.
<u>Street Frontage (ft.):</u>	1232	1232	300 min.
<u>Primary Front Yard (ft.):</u>	88	<b>40</b>	50 min.
<u>Left Yard (ft.):</u>	79	79	75 min.
<u>Right Yard (ft.):</u>	71	71	75
<u>Rear Yard (ft.):</u>	157	157	50 min.
<u>Height (ft.):</u>	65	15	60 max.
<u>Building Coverage (%):</u>	19	20	30 max.
<u>Open Space Coverage (%):</u>	40	39	30 min.
<u>Parking:</u>	783	1,303*	1,152
<u>Estimated Age of Structure:</u>	1987	<b>Variance request(s) shown in red.</b> *includes recently approved offsite parking area	

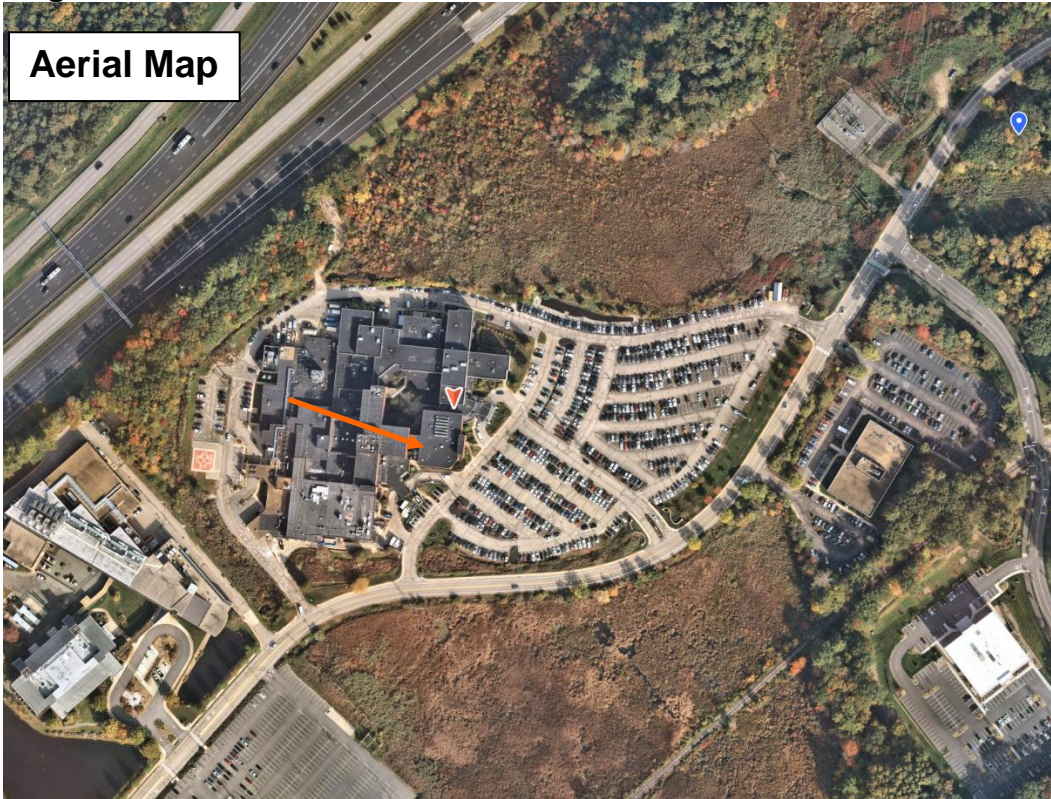
### Other Permits/Approvals Required

TAC/Planning Board – Amended Site Plan

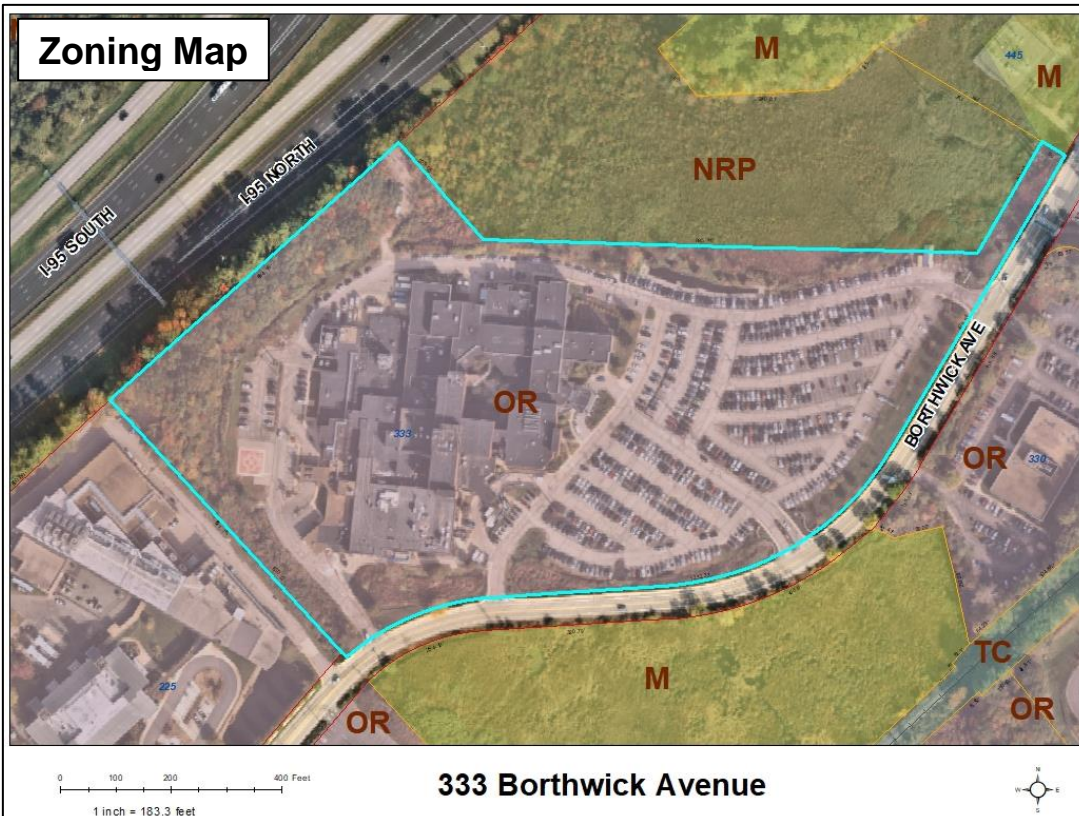
Conservation Commission/Planning Board – Wetland CUP

## Neighborhood Context

**Aerial Map**



**Zoning Map**



*April 26, 2022 Meeting*



## **Previous Board of Adjustment Actions**

June 20, 1989 – the Board **granted** a variance to allow the construction of an 88' high incinerator smoke stack

for waste disposal in a district which allows the maximum height of structures to be 60' with the **stipulation** that only waste material generated within the City's limits be allowed to be incinerated on the site; and, that the existing stack, as referenced in the Building Permit Application, be removed within 90 days of the new stack commencing operation. We also **stipulated** that approval from the NH DES be presented to the Building inspector prior to the issuance of a Certificate of Occupancy.

February 17, 1998 – The Board **granted** a Special Exception to allow a 24'x70' temporary modular computer training classroom from March 7, 1998 to August 30, 1998.

July 21, 1998 – The Board **granted** a Variance to allow the installation of panel antennae and related equipment on the roof of the Portsmouth Regional Hospital.

July 18, 2000 – The Board **granted** a Variance to allow the installation of wireless communication antenna and associated cabinets on the roof of the existing hospital building

October 17, 2000 – The Board **granted** a Variance to allow the installation G Cellular panel antennas, flush with rooftop of hospital penthouse; and the addition of one microwave on north side of penthouse. No antennas will be higher than existing walls on hospital building.

August 19, 2003 – The Board **granted** a Variance from Article II, Section 10-209 to allow the addition of PCS antennas and related base station equipment to the Portsmouth Hospital rooftop where such use is not allowed. The Board felt that this would not be contrary to public interest as we are becoming a "wireless" society and are becoming more dependent upon this technology.

December 18, 2007 – The Board **granted** petition to allow the installation of six new antennas with three of the existing antennas being removed with the following stipulations

- Antenna shall not exceed the height of the penthouse façade
- The antennas shall be painted the same color as the penthouse
- The related equipment shall be painted to match the existing hospital façade
- The fence screening the equipment shall be extended to shield the additional equipment.

May 15, 2012 – The Board **granted** a Special Exception under Section 10.232, Section 10.440 to allow a heliport as accessory use incidental to a permitted principal use in the emergency room parking lot to the left of the building.

July 22, 2014 – The Board **granted** a Special Exception under Section 10.440, Use #15.20 to allow a heliport as an accessory use incidental to a permitted principal use.

## Planning Department Comments

Portsmouth Regional Hospital is proposing to construct a front addition to accommodate a radiation unit. The proposed addition will encroach into the 50 foot front yard and will be setback 40' from the front lot line. Amended site plan approval and a wetland CUP are both required for the project for the addition and encroachment into the 100 foot wetland 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.

4.

Request of **Mark Griffin (Owner)**, for property located at **728 State Street, Unit 1** whereas relief is needed to demolish existing garage and construct a new garage which requires the following: 1) Variances from Section 10.521 to allow 61.5% building coverage where 35% is the maximum allowed. 2) Variances from Section 10.573.20 to allow a) a 1.5' side yard where 10' is required; b) a 0' front yard (Chatham St.) where 5' is required; and c) a 0.5' front yard (Winter St.) where 5' is required. 3) A Variance from Section 10.571 to allow an accessory structure in the front yard and closer to the street than the principal structure. 4) A Variance from Section 10.321 to allow a nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 137 Lot 10-1 and lies within the General Residence C (GRC) District.

### Existing & Proposed Conditions

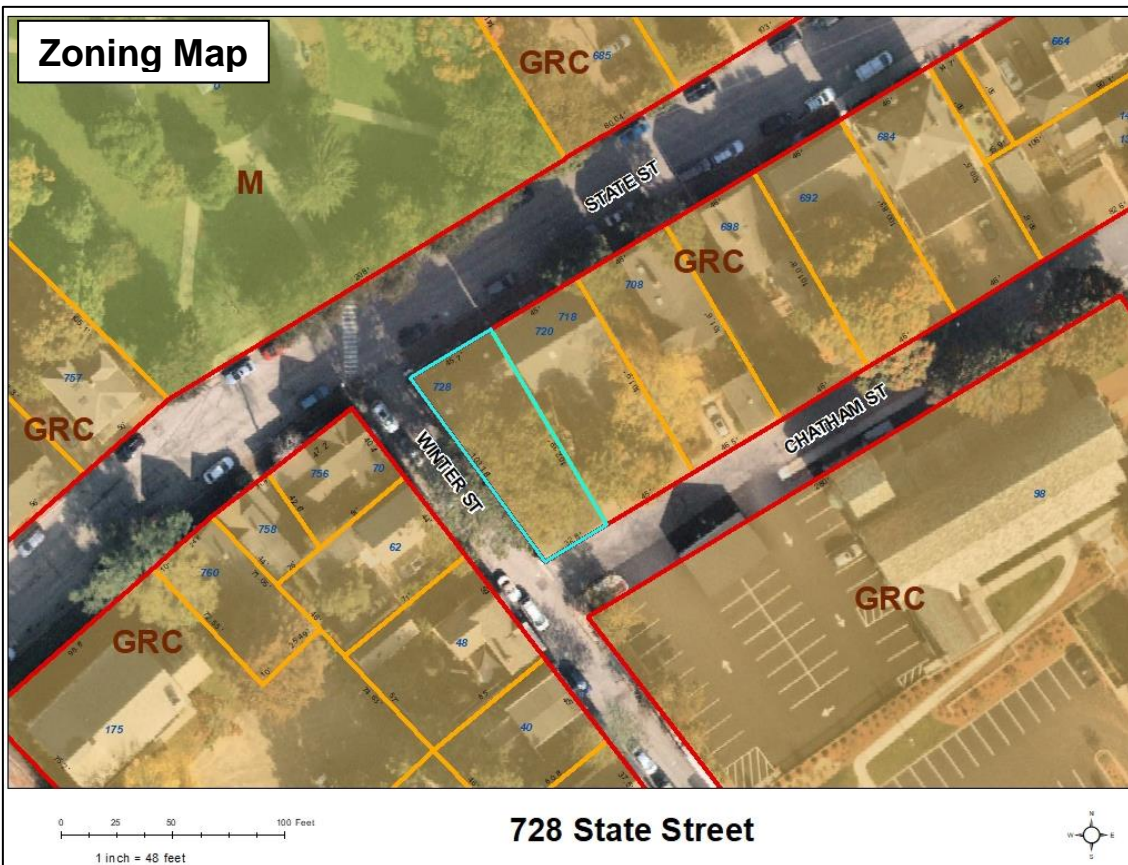
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	3 unit structure	Demo garage/construct new garage	Primarily residential
<u>Lot area (sq. ft.):</u>	4,201	4,201	3,500 min.
<u>Lot area per dwelling (sq. ft.):</u>	1,400	1,400	3,500 min.
<u>Lot depth (ft.):</u>	45	45	50 min.
<u>Street Frontage (ft.):</u>	78	78	70 min.
<u>Primary Front Yard (ft.): State St</u>	6	6	5 min.
<u>Secondary Yard (ft.): Winter St.</u>	0.2	<b>0.5'</b>	5 min.
<u>Left Yard (ft.):</u>	0.17	<b>1.5'</b>	10 min.
<u>Secondary Front Yard (ft.): Chatham St</u>	0'	<b>0</b>	5 min.
<u>Height (ft.):</u>			35 max.
<u>Building Coverage (%):</u>	61.6	<b>61.5</b>	35 max.
<u>Open Space Coverage (%):</u>	38	38	20 min.
<u>Parking:</u>	3	3	4
<u>Estimated Age of Structure:</u>	1860 (house)	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

None.

*April 26, 2022 Meeting*

# Neighborhood Context





## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is seeking to demolish the existing garage and construct a new garage that is slightly more conforming, but due to the location on the lot and the lot size, will need several variances in order to proceed with the project. The lot has frontage on three sides, so any accessory structure would likely need relief from Section 10.571. Along State Street the lot is 45 feet and narrows to just 32 feet along Chatham where the new garage will be located. As shown in the applicant's submission, the proposed garage will be less volume than what exists today.

## 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 **Randi and Jeff Collins (Owners)**, for property located at **77 Meredith Way** whereas relief is needed to construct a second free-standing dwelling which requires the following: 1) A Variance from Section 10.513 to allow a second principal structure on a lot. 2) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only 1 is allowed. Said property is shown on Assessor Map 162 Lot 16 and lies within the General Residence A (GRA) District.

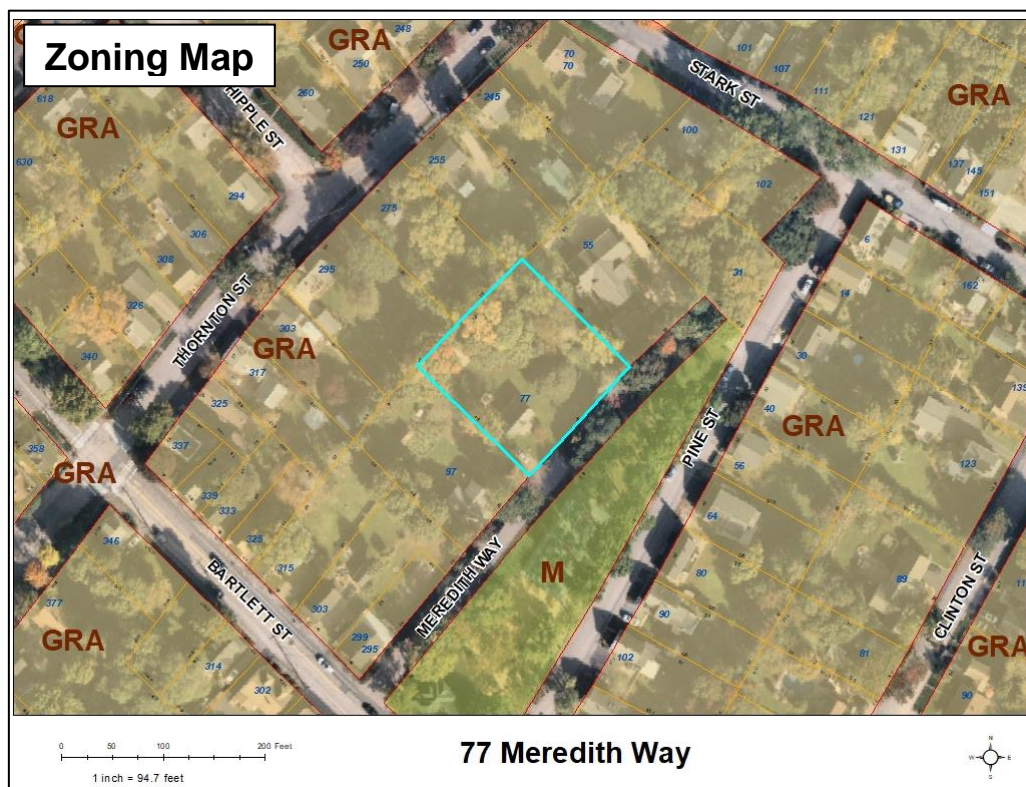
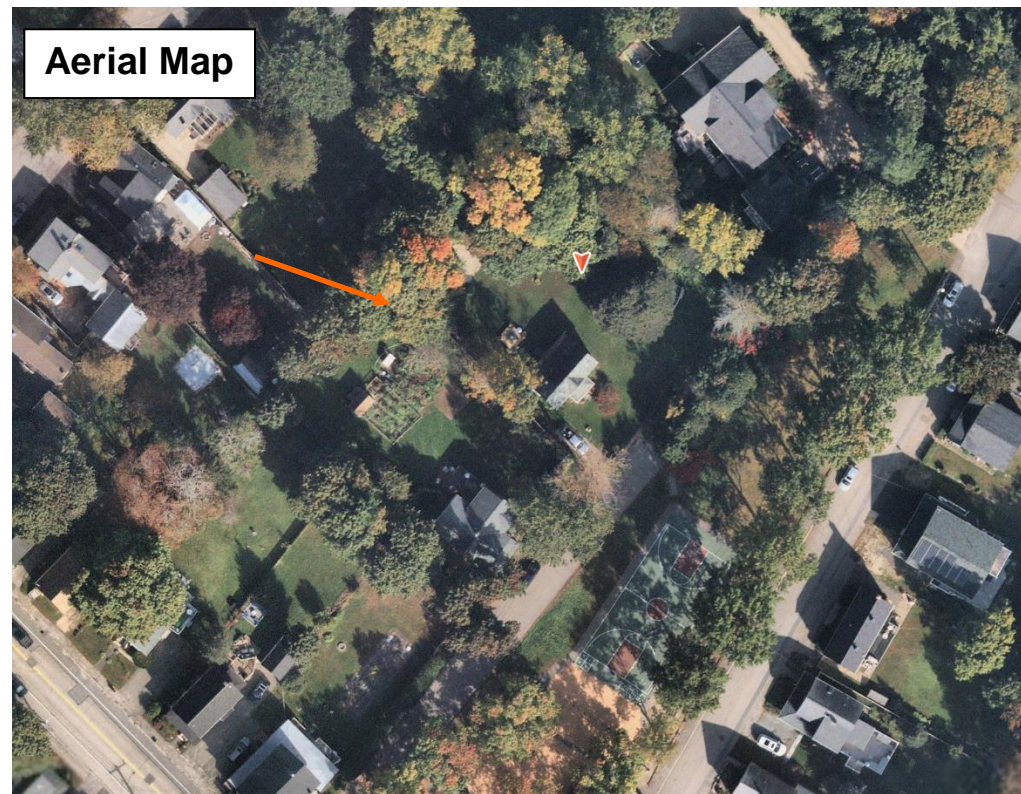
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family d	<b>Construct second principal dwelling</b>	Primarily single residence
<u>Lot area (sq. ft.):</u>	22,400	22,400	7,500 min.
<u>Lot area per dwelling (sq. ft.):</u>	22,400	11,200	7,500 min.
<u>Lot depth (ft.):</u>	151	151	70 min.
<u>Street Frontage (ft.):</u>	37	37	100 min.
<u>Primary Front Yard (ft.):</u>	26	19	15 min.
<u>Left Yard (ft.):</u>	11.5		10 min.
<u>Right Yard (ft.):</u>	102	22	10
<u>Rear Yard (ft.):</u>	86	77	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	3.5	11.5	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking:</u>	2	4	3
<u>Estimated Age of Structure:</u>	1870	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

None.

## Neighborhood Context



April 26, 2022 Meeting



## Previous Board of Adjustment Actions

June 16, 2020 The Zoning Board of Adjustment, at its regularly scheduled meeting of Tuesday, June 16, 2020, considered your request to withdraw the application to subdivide one lot into two lots which requires the following: A Variance from Section 10.521 to allow 0' of continuous street frontage for both lots where 100' is required for each. As a result of said consideration, the Board voted **to accept withdrawal** of the application.

## Planning Department Comments

The applicant is seeking to construct a second freestanding dwelling on the existing lot and add a second driveway, where only one is allowed per lot. The lot is 22,400 square feet, almost three times the minimum lot size for the district and could be subdivided into two conforming lots with the exception of street frontage and the owner would need to extend the road to service the second lot. As the applicant's representative pointed out, a two family could be built by-right.

The application shows a proposed building envelope and a house plan, however the narrative states the plans that have been provided are possible designs and that the location may change for both the house and driveway. The proposed building envelope, along with the existing dwelling, result in approximately 11.5% building coverage where 25% is the maximum allowed in the district. If the Board is willing to approve the requested variances with the possibility of a different design and or location of the house and driveway, the Board should add a stipulation(s) to that effect.

## 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.

*April 26, 2022 Meeting*



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.

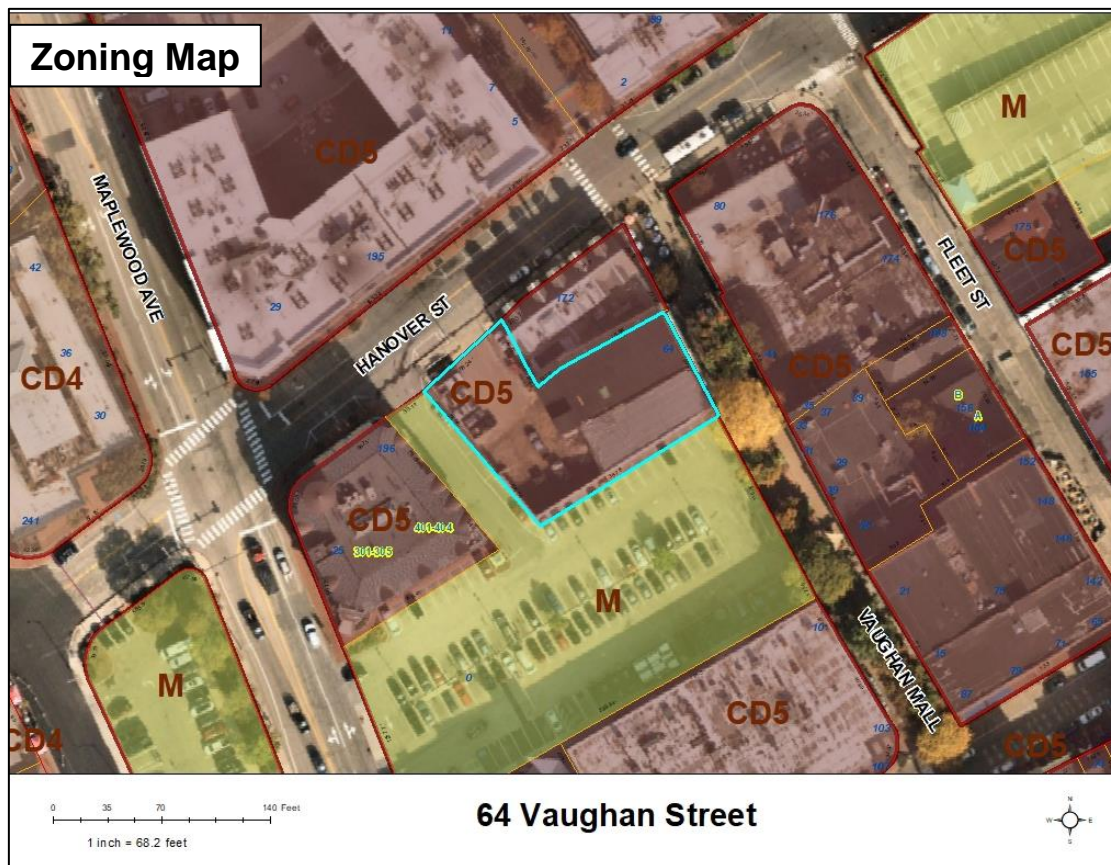
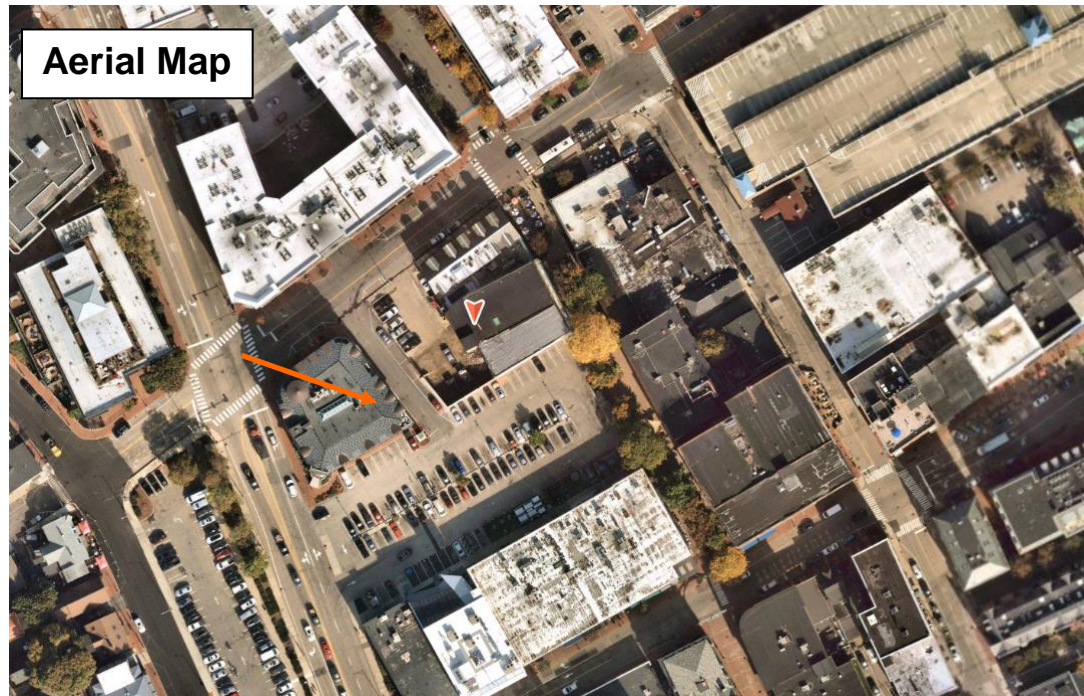
### Existing & Proposed Conditions

	<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.**

*April 26, 2022 Meeting*

## 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 **William H. Schefer Jr. and Donna Schefer (Owners)**, for property located at **994 South Street, Unit 2** whereas relief is needed to install a mini-split system which requires the following: 1) A Variance from Section 10.515.14 to allow a 1.5' setback where 10' is required. Said property is shown on Assessor Map 150 Lot 9-2 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>	Two-family	AC Unit	Primarily single residence
<u>Lot area (sq. ft.):</u>	6,969	6,969	15,000 min.
<u>Lot area per dwelling (sq. ft.):</u>	3,484	3,484	15,000 min.
<u>Lot depth (ft.):</u>	125	125	100 min.
<u>Street Frontage (ft.):</u>	51	51	100 min.
<u>Primary Front Yard (ft.):</u>	10	10	30 min.
<u>Left Yard (ft.):</u>	9.8'	9.8'	10 min.
<u>Right Yard (ft.):</u>	4	<b>1.5'</b>	10
<u>Rear Yard (ft.):</u>	66	66	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	16	16	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	4	4	3
<u>Estimated Age of Structure:</u>	1920	Variance request(s) shown in red.	

### Other Permits/Approvals Required

None.

## Neighborhood Context

**Aerial Map**



**Zoning Map**





## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is seeking to add an AC Unit on the right side of the house, which is nonconforming due to it being located in the right yard. With the unit off set from the house, the proposed setback is 1.5' where 10' is required.

## Review Criteria

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

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

**AND**

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

**OR**

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

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