

TO: Zoning Board of Adjustment  
FROM: Peter Stith, AICP, Planning Department  
DATE: June 15, 2022  
RE: Zoning Board of Adjustment June 22, 2022

## **OLD BUSINESS**

1. 635 Sagamore Avenue - Withdrawn

## **NEW BUSINESS**

1. 45 Coffins Court
2. 333 State Street
3. 1474 Islington Street
4. 910 Sagamore Avenue
5. 225 Wibird Street
6. 1900 Lafayette Road
7. 15 Central Avenue
8. 57 Sherburne Avenue
9. 77 Meredith Way
10. 1 Walton Alley – Request to Postpone



## OLD BUSINESS

1.

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

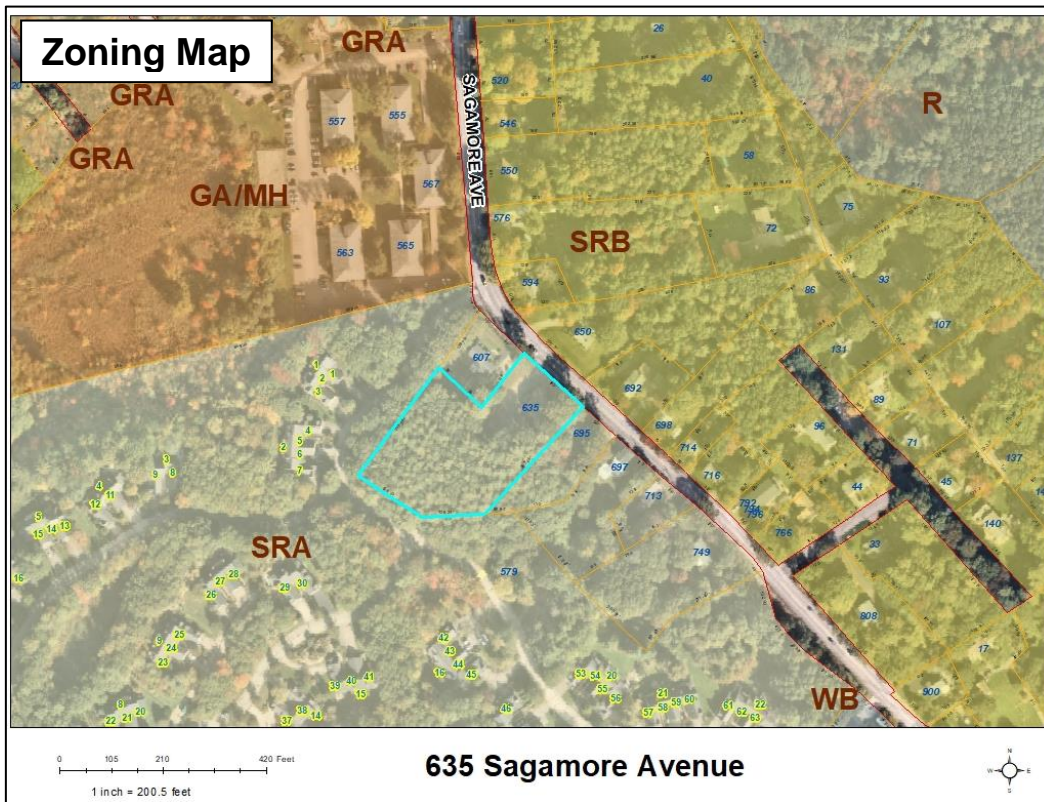
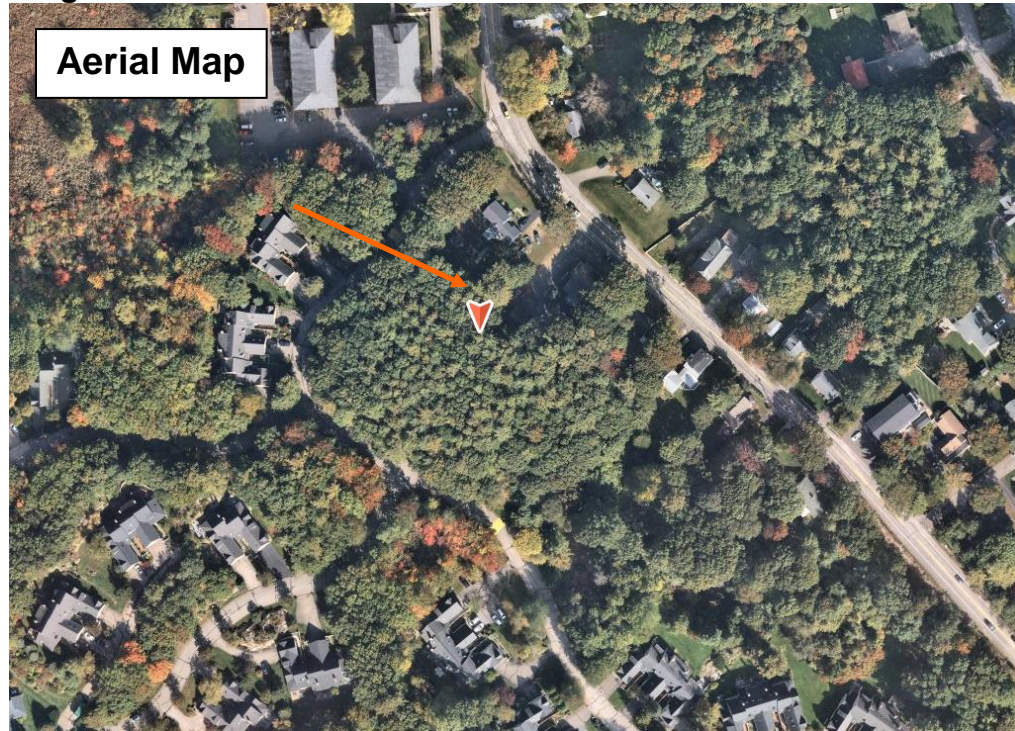
### Existing & Proposed Conditions

	<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.

## NEW BUSINESS

1.

The request of **Michael Lucas (Owner)**, for property located at **45 Coffins Court** whereas relief is needed to renovation of the existing structure including new dormers, second story bathroom over an existing one story addition and a new second story open porch which requires the following: 1) Variances from Section 10.521 to allow a) a 1' rear yard where 20' is required; b) a 0' right side yard where 10' is required; c) an 8' left side yard where 10' is required; d) a 3' front yard where 5' is required; and e) 57% building coverage where 35% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be expanded, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 135 Lot 55 and lies within the General Residence C (GRC) District.

### Existing & Proposed Conditions

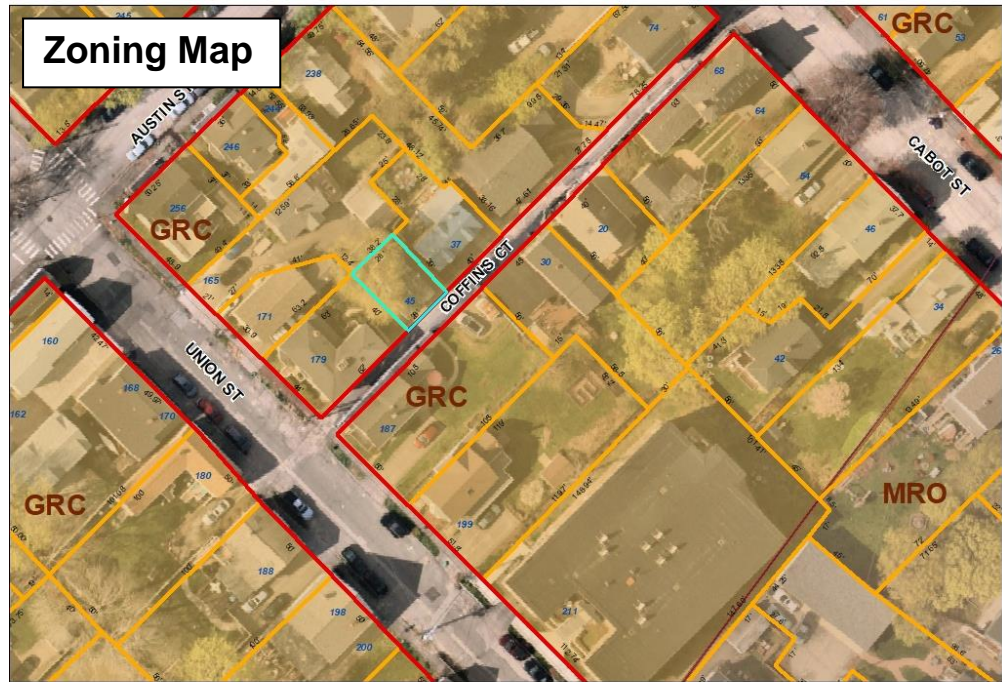
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two family	House renovation	Primarily residential uses
<u>Lot area (sq. ft.):</u>	1,307	1,307	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	653	653	3,500 min.
<u>Lot depth (ft.):</u>	39.5	39.5	50 min.
<u>Street Frontage (ft.):</u>	28	28	70 min.
<u>Primary Front Yard (ft.):</u>	3	<b>3</b>	5 min.
<u>Right Yard (ft.):</u>	0	<b>0</b>	10 min.
<u>Left Yard (ft.):</u>	6	<b>8</b>	10 min.
<u>Rear Yard (ft.):</u>	1	<b>1</b>	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	53	<b>57</b>	35 max.
<u>Open Space Coverage (%):</u>	>20	>20	20 min.
<u>Parking:</u>	0	0	2
<u>Estimated Age of Structure:</u>	1840	Variance request(s) shown in red.	

### Other Permits/Approvals Required

None



### Neighborhood Context



0 25 50 100 Feet  
1 inch = 48.9 feet

45 Coffins Court



## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is seeking relief to renovate the existing two family dwelling by adding dormers, a rear porch and second story to an existing one story addition. The existing dwelling is nonconforming and encompasses the majority of the lot. Likely any expansion of the existing structure would require some sort of relief due to the nonconformity.

## 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 The request of **Portsmouth Savings Bank/Bank of NH (Owner)**, for property located at **333 State Street** whereas relief is needed to alter existing internally illuminated wall signs which require the following: 1) A Variance from Section 10.11261.30 to allow signs in the Historic District to be internally illuminated where only external illumination is allowed. 2) A Variance from Section 10.1144.63 to allow luminaires used for sign illumination to be higher than 25 feet where 25 feet is the maximum allowed. 3) A Variance from Section 10.1281 to allow a nonconforming sign to be altered, reconstructed, replaced or relocated without conforming to the Ordinance. Said property is located on Assessor Map 116 Lot 5 and lies within the Character District 4 (CD4), Historic and Downtown Overlay Districts.

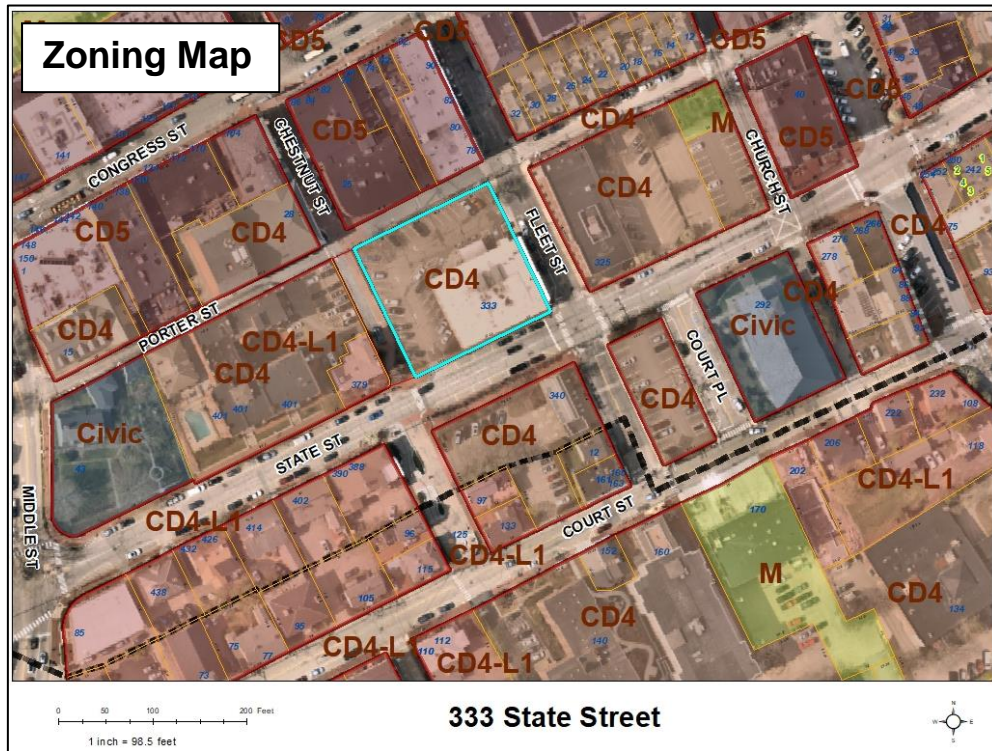
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Bank	Alter existing signage	Primarily mixed use
<u>Lot area (sq. ft.):</u>	24,393	24,393	NR
<u>Sign District:</u>	3	3	3
<u>Illumination Type:</u>		<b>Internal Illumination</b>	External (HDC)
<u>Height (ft.):</u>		35	25 max.
<u>Estimated Age of Structure:</u>	1953	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

Historic District Commission

# Neighborhood Context



## Previous Board of Adjustment Actions

June 19, 2007 – Relief from Zoning Ordinance concerning:

1. Article IX, Section 10-901(I) and Article I, Section 10-102(A) wherein the City has determined that the green band surrounding the building is signage
  2. Article IX, Section 10-901(I) is requested to calculate the sign without the banding
- The Board voted the Appeal be **denied**.

## Planning Department Comments

The applicant is proposing a complete update of the signage on the property for the TD Bank, the majority of which complies with the sign regulations in the Zoning Ordinance. Two signs do not comply and need relief for the location and illumination type in the Historic District. One sign is currently 35 feet high, where 25 feet is the maximum allowed. This sign will be replaced with a new sign that is slightly larger by 2.5 square feet. The second sign will be slightly smaller than what currently exists, but since it is a brand new sign, it must comply with the illumination type in the Historic District, and internal illumination is not permitted. This will need HDC approval 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.





3.

Request of **Michael J. Fregeau (Owner)**, for property located at **1474 Islington Street** whereas relief is needed to construct an 8' x 12' shed which requires the following: 1) Variance from Section 10.573.10 to allow a) A 2' left side yard where 5' is required: and b) a 2' rear yard where 5' is required. 2) A Variance from Section 10.521 to allow 22% building coverage where 20% is the maximum allowed. Said property is located on Assessor Map 233 Lot 107 and lies within the Single Residence B (SRB) District.

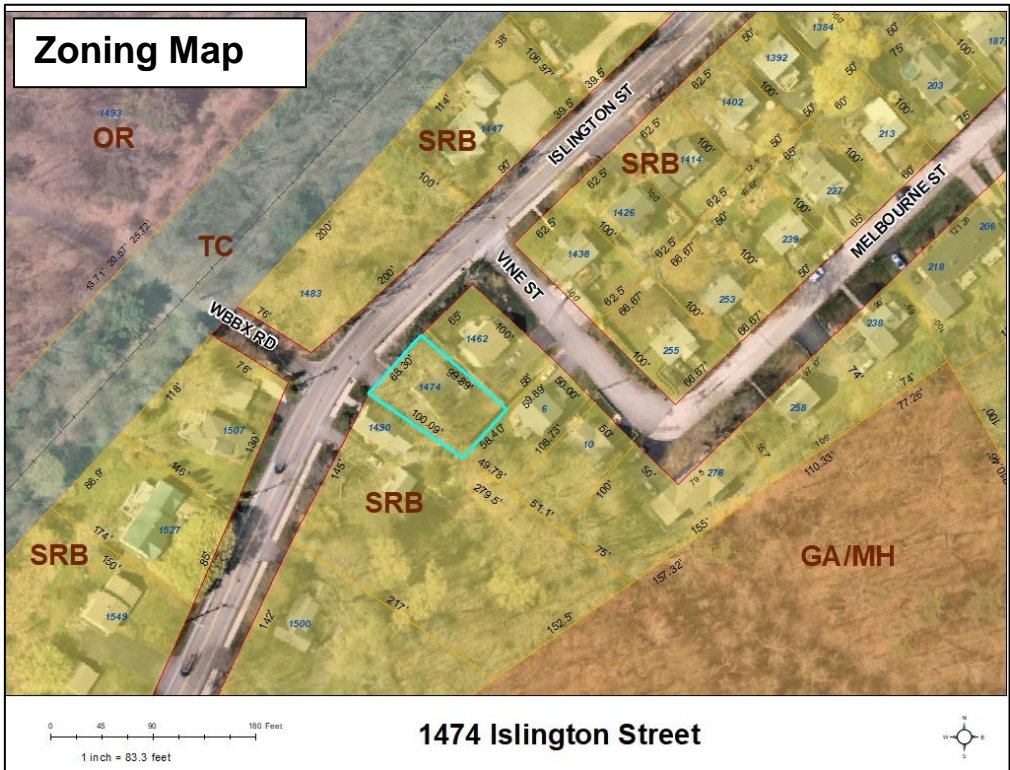
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	8' x 12' shed	Primarily residential
<u>Lot area (sq. ft.):</u>	6,098	6,098	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,098	6,098	15,000 min.
<u>Lot depth (ft.):</u>	99	99	100 min.
<u>Street Frontage (ft.):</u>	68	68	100 min.
<u>Primary Front Yard (ft.):</u>	26	26	30 min.
<u>Right Yard (ft.):</u>	13	13	10 min.
<u>Left Yard (ft.):</u>	11	<b>2</b>	5 (shed) min.
<u>Rear Yard (ft.):</u>	34	<b>2</b>	5 (shed) min.
<u>Height (ft.):</u>	<35	8 (shed)	35 max.
<u>Building Coverage (%):</u>	20.7	<b>22</b>	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1951	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 to locate a shed 2' from the left side and 2' from the rear yard where 5' is required for a shed that is 100' square feet or less and less than 10' in height. The proposed shed height is 8' and it will be 96 square feet in size. Privacy fences run along the left side and rear of the property lines between both abutting properties.

## 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

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4.

Request of **Karen Butz Webb Revocable Living Trust (Owner)**, for property located at **910 Sagamore Avenue** whereas relief is needed to remove an existing 150 s.f. addition and construct a new 512 s.f. addition with deck and stairs which requires the following: 1) A Variance from Section 10.531 to allow a 20.5' side yard where 30' is required. 2) A Variance from Section 10.331 to allow a nonconforming use to be expanded. 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 located on Assessor Map 223 Lot 26A and lies within the Waterfront Business (WB) District.

### Existing & Proposed Conditions

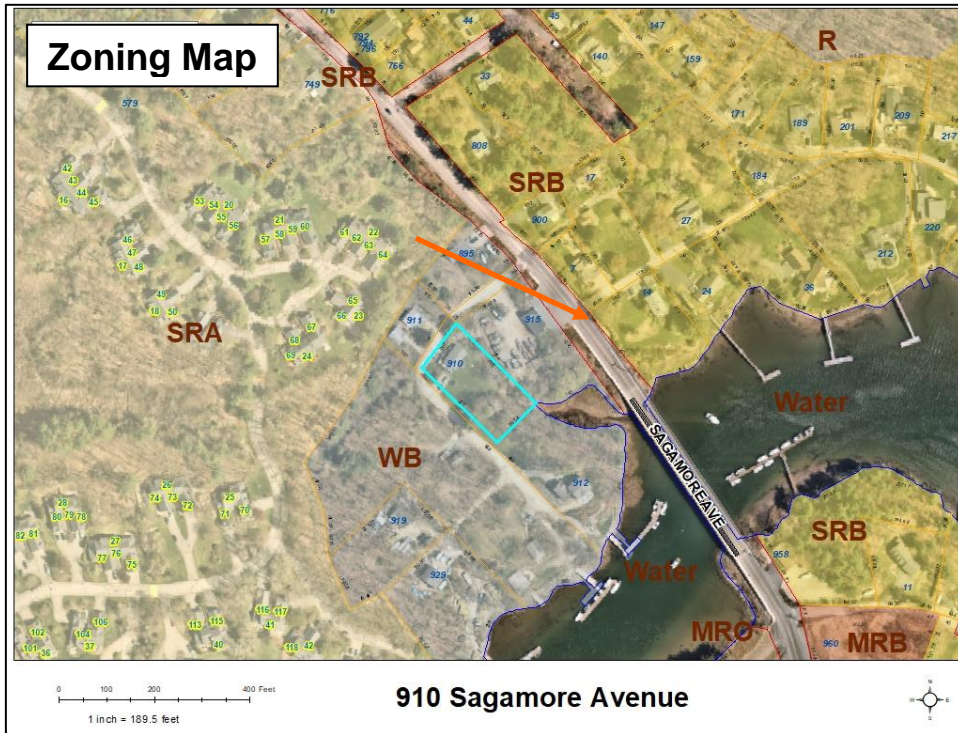
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Rear addition	Primarily water related uses
<u>Lot area (sq. ft.):</u>	26,237	26,237	20,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	26,237	26,237	No Requirement min.
<u>Lot depth (ft.):</u>	105	105	100 min.
<u>Street Frontage (ft.):</u>	350	350	100 min.
<u>Primary Front Yard (ft.):</u>	19	19	30 min.
<u>Left Yard (ft.):</u>	17	<b>21.5</b> (20.5 advertised)	30 min.
<u>Rear Yard (ft.):</u>	>150	>150	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	8.5	10	30 max.
<u>Open Space Coverage (%):</u>	82	80	20 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1978	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

Planning Board – Wetland CUP (granted on October 21, 2021)

Conservation Commission –Wetland CUP

### Neighborhood Context



## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is seeking to demolish a rear addition and construct a larger addition with a small deck and stairway. The applicant was granted a wetland conditional use permit in October of 2021 by the Planning Board. The property is located in the Waterfront Business district, where residential uses are not permitted, however many exist in this district. The expansion of the residential use requires a variance in addition to the expansion of the nonconforming structure. The advertised setback was 20.5' and the plan shows 21.7'. If granted approval, staff would recommend stipulating a 21.5' setback variance for the addition.

## 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 **Blus O’Leary Family Living Trust (Owner)**, for property located at **225 Wibird Street** whereas relief is needed to construct a detached accessory dwelling unit which requires the following: 1) A Variance from Section 10.521 to allow a lot area per dwelling unit of 6,412 where 7,500 square feet is required for each dwelling. Said property is located on Assessor Map 133 Lot 54 and lies within the General Residence A (GRA) District.

### Existing & Proposed Conditions

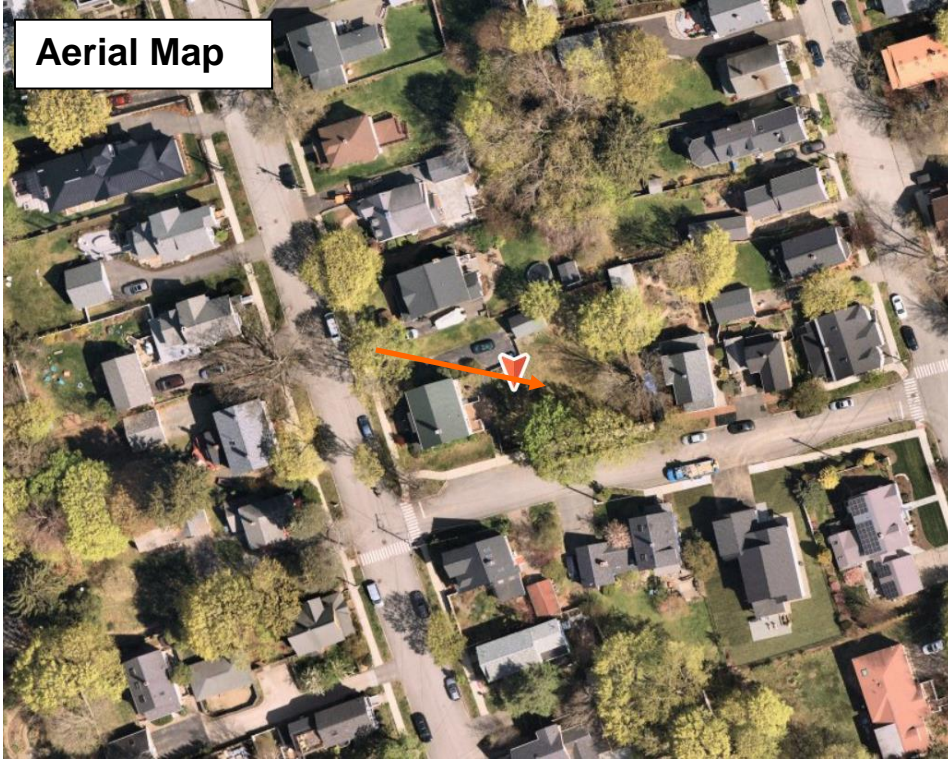
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Detached ADU	Primarily residential
<u>Lot area (sq. ft.):</u>	12,824	12,824	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	12,824	<b>6,412</b>	7,500 min.
<u>Lot depth (ft.):</u>	157	157	70 min.
<u>Street Frontage (ft.):</u>	71	71	100 min.
<u>Primary Front Yard (ft.):</u>	13	13	15 min.
<u>Secondary Front Yard (ft.):</u>	8.6	8.6	15 min.
<u>Left Yard (ft.):</u>	3	3	10
<u>Rear Yard (ft.):</u>	44	20	20 min.
<u>Height (ft.):</u>	31	31	35 max.
<u>Building Coverage (%):</u>	11.6	17	25 max.
<u>Open Space Coverage (%):</u>	76	67	30 min.
<u>Parking:</u>	3	3	3
<u>Estimated Age of Structure:</u>	1900	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

Planning Board – CUP for DADU

### Neighborhood Context

**Aerial Map**



**Zoning Map**



## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is seeking to construct a detached ADU at the back of the property. In order to construct a detached ADU, the lot must conform to the lot area per dwelling for both the existing dwelling and the proposed. In the GRA district, the lot area per dwelling is 7,500 square feet. The existing lot size is 12,824 which will result in a lot are per dwelling of 6,412. All other dimensional requirements of the Ordinance will be in compliance. The applicant will need approval from the Planning Board through a conditional use permit and modifications may be made or requested through that process. If granted approval, staff recommends consideration of the following stipulation:

**The design and location of the ADU may change based on review and approval from the 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.*

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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 **WSS Lafayette Properties LLC (Owner)**, for property located at **1900 Lafayette Rd** whereas relief is needed for ambulatory Surgical Center use which requires the following: 1) A Special Exception from Section 10.440, Use #6.40 to allow an Ambulatory Surgical Center where the use is permitted by Special Exception. Said property is located on Assessor Map 267 Lot 8 and lies within the Office Research (OR) District.

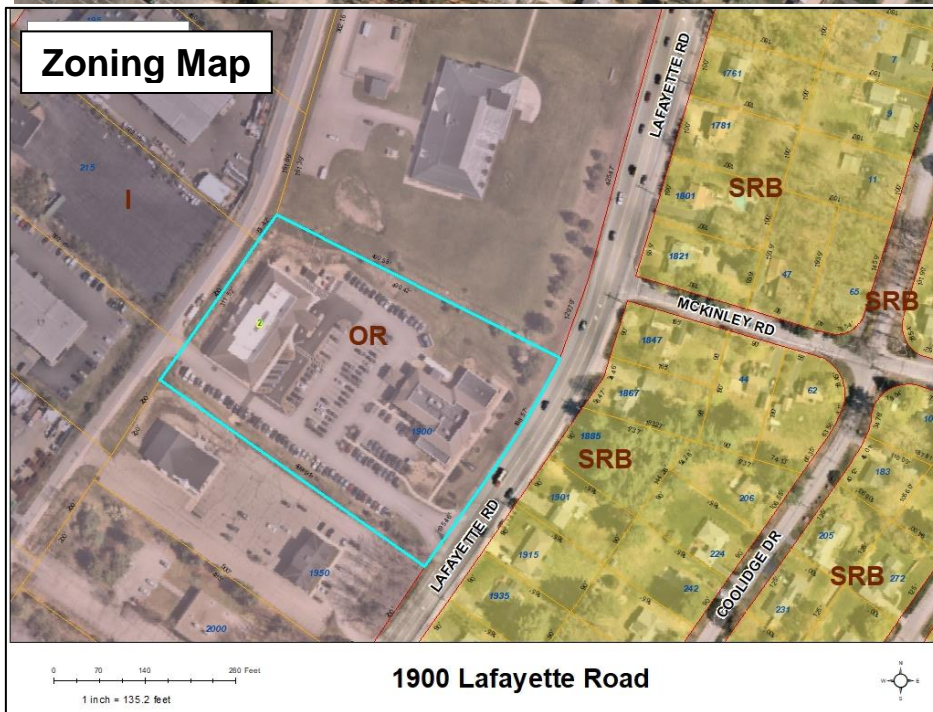
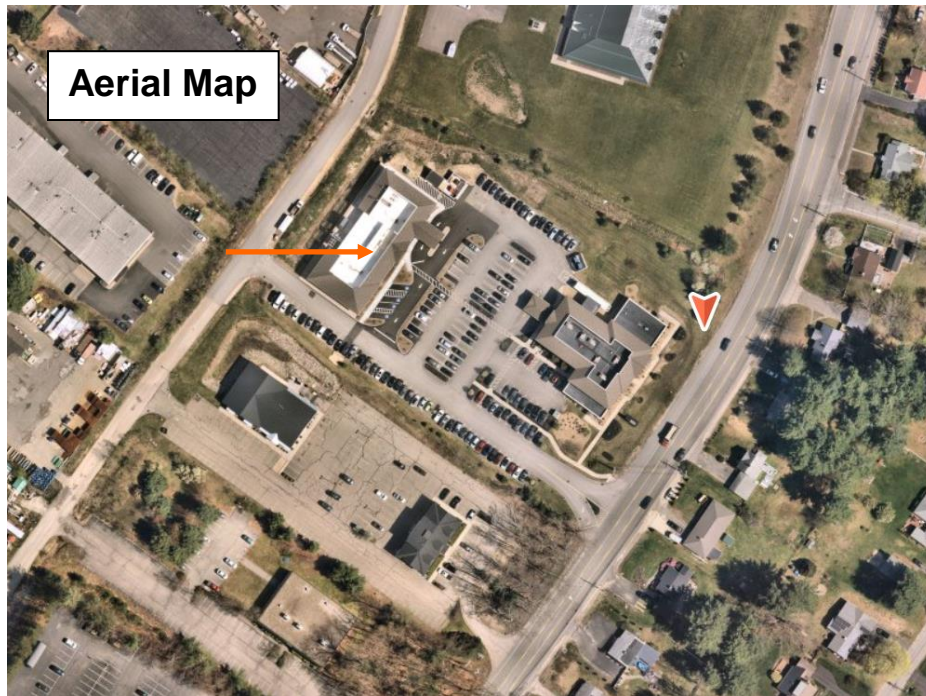
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Medical office/Ambulatory surgical center	Medical office/ <b>Ambulatory surgical center</b>	Primarily office use
<u>Lot area (sq. ft.):</u>	4 acres	4 acres	3 acres min.
<u>Lot depth (ft.):</u>	495	495	300 min.
<u>Street Frontage (ft.):</u>	387	387	300 min.
<u>Primary Front Yard (ft.):</u>	>80	>80	50/80 from CL of Lafayette rd. min.
<u>Right Yard (ft.):</u>	>75	>75	75 min.
<u>Left Yard (ft.):</u>	>75	>75	75
<u>Rear Yard (ft.):</u>	50	50	50 min.
<u>Height (ft.):</u>	<60	<60	60 max.
<u>Building Coverage (%)</u> :	15	15	30 max.
<u>Open Space Coverage (%)</u> :	43	43	30 min.
<u>Parking:</u>	138	138	130
<u>Estimated Age of Structure:</u>	2020	<b>Special Exception request(s) shown in red.</b>	

### Other Permits/Approvals Required

None.

### Neighborhood Context



### Previous Board of Adjustment Actions

October 15, 2002 – Request for Special Exception concerning: Article VIII, Section 10-802 to allow more than 100 cubic yards of fill to be placed on the property where such use is only allowed by Special Exception.

The Board voted the request be **granted** as presented and advertised with the following stipulations:

- That the granting of this variance is subject to the approval of the City Engineer
  - That a dust control plan be submitted;
  - That the composition of the proposed fill be determined

**Planning Department Comments**

The two buildings at 1900 Lafayette were originally approved as medical office buildings and were constructed in phases, with Phase I being completed in 2015. Prior to starting the second building, an amended site plan approval request was submitted, reducing the building from two stories to one story, with a slightly larger footprint. The permit application and plans submitted for the amended plan described the use as ambulatory surgical center. The Zoning Ordinance has an ambulatory surgical center use in the table of uses, however there is not a definition for the use. It is permitted by Special Exception in the OR district.

P = Permitted S = Special Exception CU = Conditional Use Permit N = Prohibited																		
Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	I	WI	Supplemental Regulations
6.20 <b>Medical offices and clinics (outpatient only)</b>	N	N	N	N	N	S	S	S	P	P	P	P	P	N	<b>P</b>	N	N	
6.30 <b>Clinics with inpatient care</b>	N	N	N	N	N	N	N	N	N	S	S	N	S	N	S	N	N	
6.40 <b>Ambulatory surgical center</b>	N	N	N	N	N	N	N	N	N	S	S	N	S	N	<b>S</b>	N	N	
6.50 <b>Substance abuse treatment facility</b>	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
6.60 <b>Psychiatric hospital for the criminally insane</b>	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	

The Ordinance does have a use for medical office and clinics (outpatient only) and it is permitted by right in the OR zone. Definition of an outpatient clinic is below:

**Clinic**

A facility providing care and treatment for sick or injured human patients, not including a **medical office, hospital or substance abuse treatment facility.**

**Outpatient clinic**

A **clinic** providing care and treatment on an outpatient basis, including ambulatory care or similar medical services that generally require a stay of less than 24 hours, that does not include overnight care facilities.

As the applicant states, the property is under contract to be sold and this issue arose out of the due diligence by the buyer. It is staffs opinion that this use is a medical clinic and that an ambulatory surgical center is synonymous with a medical outpatient clinic.

**Review Criteria**

The application must meet all of the standards for a **special exception** (see Section 10.232 of the Zoning Ordinance).

1. *Standards as provided by this Ordinance for the particular use permitted by special exception;*
2. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*

3. *No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;*
4. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*
5. *No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and*
6. *No significant increase of stormwater runoff onto adjacent property or streets.*

7.

Request of **Peter V. Ward (Owner)**, for property located at **15 Central Avenue** whereas relief is needed for vertical expansion of existing dwelling and garage which requires the following: 1) Variances from Section 10.521 to allow a) a 6' front yard where 30' is required; and b) a 4' side yard where 10' is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be expanded, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 209 Lot 4 and is located within the Single Residence B (SRB) District.

### Existing & Proposed Conditions

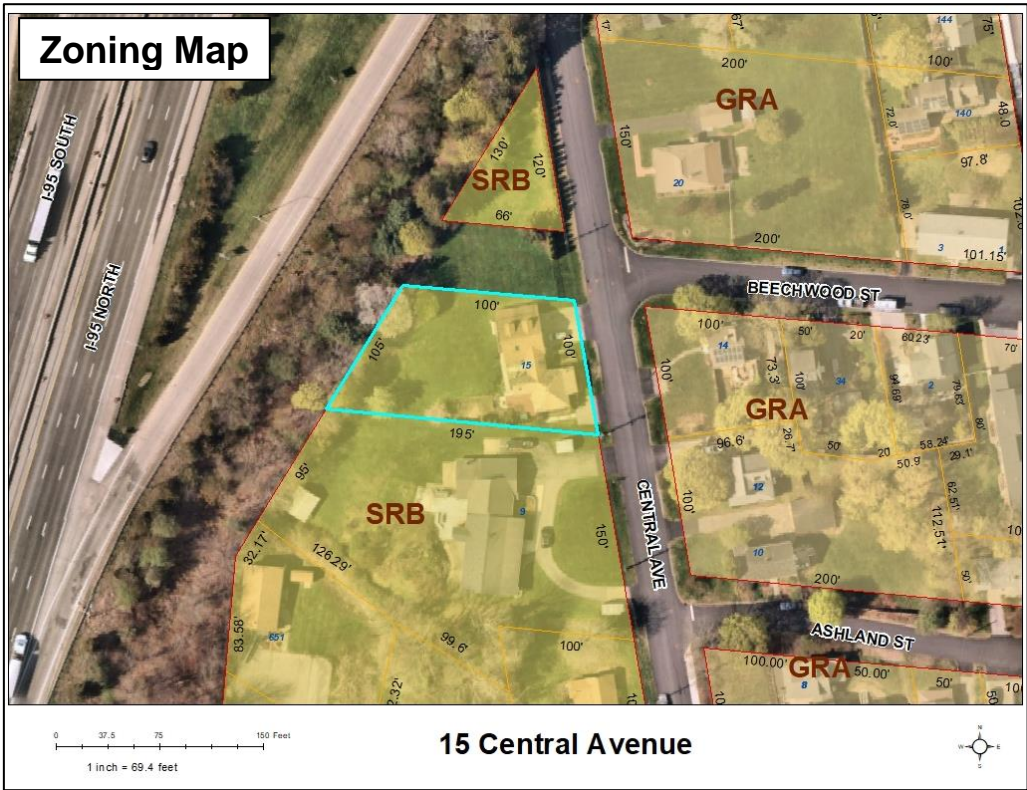
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Vertical expansion and garage addition	Primarily residential
<u>Lot area (sq. ft.):</u>	15,476	15,476	15,000 min.
<u>Lot area per dwelling (sq. ft.):</u>	15,476	15,476	15,000 min.
<u>Lot depth (ft.):</u>	147.5	147.5	100 min.
<u>Street Frontage (ft.):</u>	100	100	100 min.
<u>Primary Front Yard (ft.):</u>	6	<b>6</b>	30 min.
<u>Right Yard (ft.):</u>	8	<b>4</b>	10 min.
<u>Left Yard (ft.):</u>	11	11	10
<u>Rear Yard (ft.):</u>	98	98	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	17	17.5	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	4	4	3
<u>Estimated Age of Structure:</u>	1935	Variance request(s) shown in red.	

### Other Permits/Approvals Required

Planning Board – CUP for ADU



# Neighborhood Context



## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is seeking to vertically expand the dwelling and add living space above the garage to create an attached accessory dwelling unit. The new stairs proposed to provide access to the garage will encroach into the side yard. . The applicant will need approval from the Planning Board through a conditional use permit and modifications may be made or requested through that process. If granted approval, staff recommends consideration of the following stipulation:

**The design and location of the ADU may change based on review and approval from the 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.



8.

Request of **English and Hopkins LLC (Owner)**, for property located at **57 Sherburne Avenue** whereas relief is needed to construct a new single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) 34% building coverage where 25% is the maximum allowed; b) a 16' rear yard where 20' is required; and c) a 5.5' front yard where 15' is required. Said property is located on Assessor Map 113 Lot 22-1 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>	Vacant	Single family	Primarily residential
<u>Lot area (sq. ft.):</u>	2,943	2,943*	7,500 min.
<u>Lot area per dwelling (sq. ft.):</u>	2,943	2,943*	7,500 min.
<u>Lot depth (ft.):</u>	58	58*	70 min.
<u>Street Frontage (ft.):</u>	50	50*	100 min.
<u>Primary Front Yard (ft.):</u>	NA	<b>5.5</b>	15 min.
<u>Right Yard (ft.):</u>	NA	10	10 min.
<u>Left Yard (ft.):</u>	NA	10	10
<u>Rear Yard (ft.):</u>	NA	16	20 min.
<u>Height (ft.):</u>	NA	<35	35 max.
<u>Building Coverage (%):</u>	0	<b>34</b>	25 max.
<u>Open Space Coverage (%):</u>	100	47	30 min.
<u>Parking:</u>	NA	2	2
<u>Estimated Age of Structure:</u>	NA	<b>Variance request(s) shown in red.</b> *Prior variances granted per subdivision	

### Other Permits/Approvals Required

None.

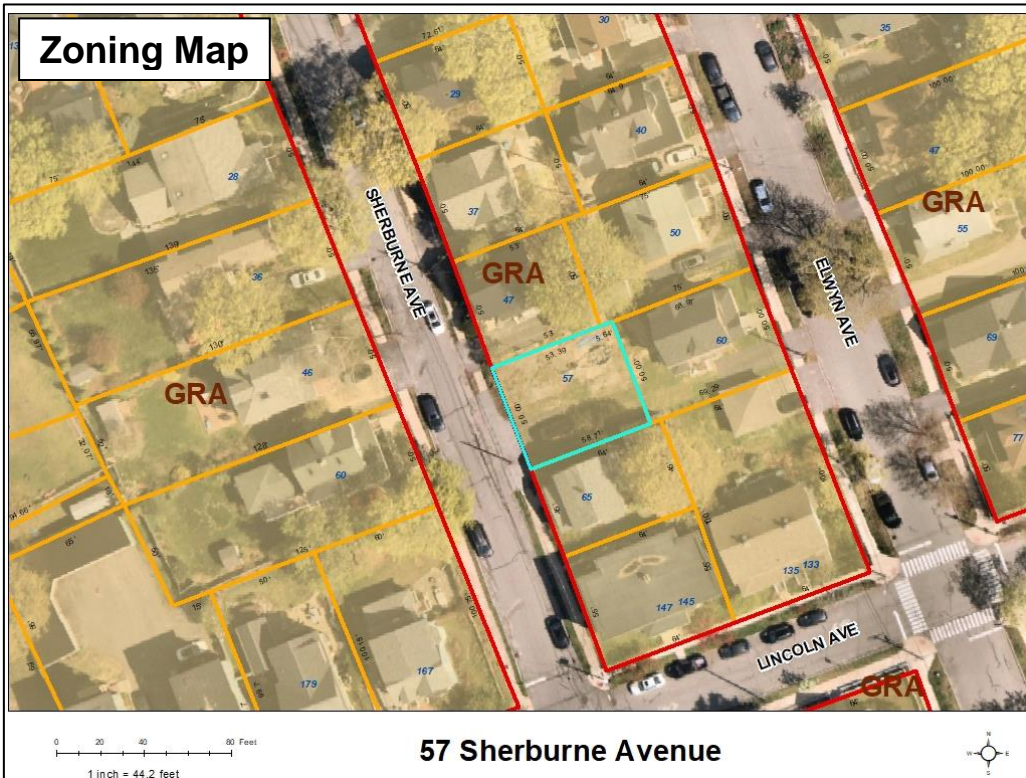


### Neighborhood Context

Aerial Map



Zoning Map



### Previous Board of Adjustment Actions

June 18, 2019 – The Board **granted** the request to subdivide one lot into two lots. Variances from Section 10.521 to allow the following:

*June 22, 2022 Meeting*



- a) 3,457± s.f. lot area and lot area per dwelling unit where 7,500 s.f. is the minimum required;
- b) 2,943± s.f. lot area and lot area per dwelling unit where 7,500 is the minimum required;
- c) 50'± of continuous street frontage where 100' is required;
- d) lot depths of 58'± and 68'± where 70' is the minimum required; and
- e) 30%± building coverage where 25% is the maximum allowed.

### Planning Department Comments

The applicant is seeking to construct a single family dwelling on the vacant lot that was created as a result of the subdivision in 2019. Variances were granted for lot area, lot area per dwelling, frontage and depth. The applicant is seeking relief for building coverage, front and rear setbacks for the proposed dwelling.

### 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.

9.

Request of **Randi and Jeff Collins (Owners)**, for property located at **77 Meredith Way** whereas relief is needed to subdivide one lot into two lots which requires the following: 1) A Variance from Section 10.521 to allow 73 feet of frontage for Lot A and 31 feet of frontage for Lot B where 100 feet is required for both. Said property is located 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	Subdivide into two lots Lot A    Lot B		Primarily single residence	
<u>Lot area (sq. ft.):</u>	22,400	11,198	11,265	7,500	min.
<u>Lot area per dwelling (sq. ft.):</u>	22,400	11,198	11,265	7,500	min.
<u>Lot depth (ft.):</u>	151	151	152	70	min.
<u>Street Frontage (ft.):</u>	37	<b>73</b>	<b>31</b>	100	min.
<u>Primary Front Yard (ft.):</u>	26	22	22	15	min.
<u>Left Yard (ft.):</u>	11.5	>10	>10	10	min.
<u>Right Yard (ft.):</u>	102	23	23	10	
<u>Rear Yard (ft.):</u>	86	69	70	20	min.
<u>Height (ft.):</u>	<35	<35	<35	35	max.
<u>Building Coverage (%):</u>	3.5	21	21	25	max.
<u>Open Space Coverage (%):</u>	>30	70	70	30	min.
<u>Parking:</u>	2	2	2	2	
<u>Estimated Age of Structure:</u>	1870	Variance request(s) shown in red.			

### Other Permits/Approvals Required

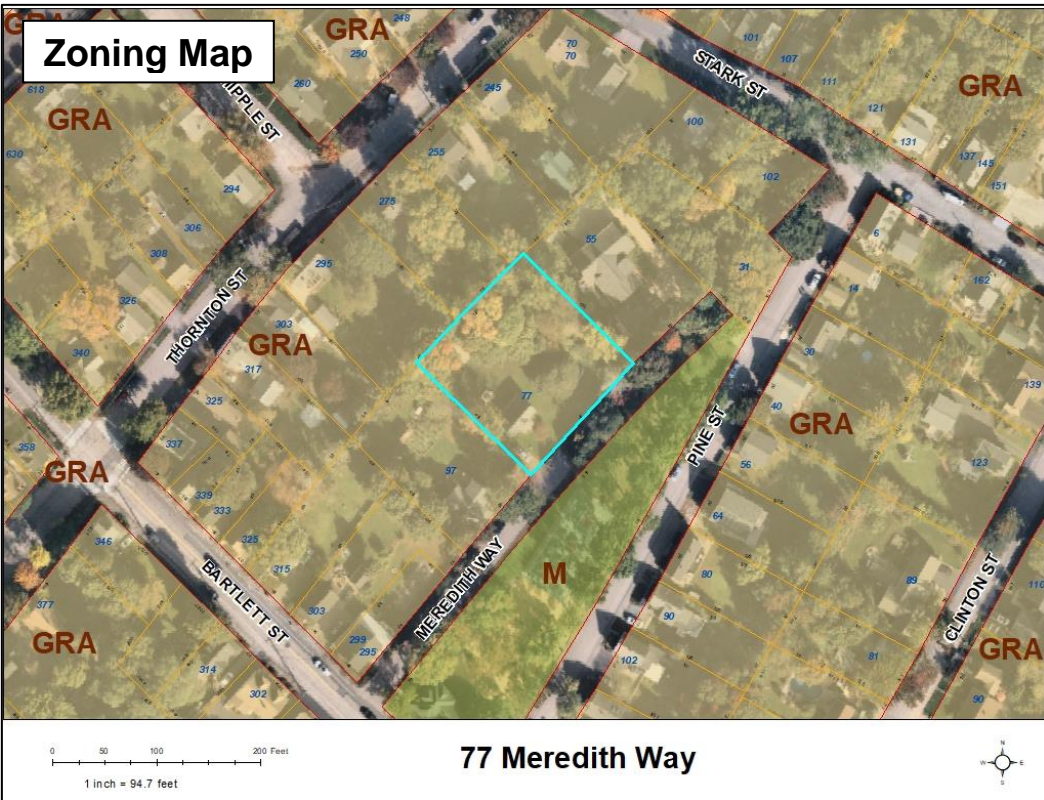
TAC/Planning Board – Subdivision

### Neighborhood Context

**Aerial Map**



**Zoning Map**



77 Meredith Way

## 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.

April 26, 2022 – Relief from Zoning Ordinance concerning:

1. Variance from Section 10.513 to allow a second principal structure on a lot.
2. Variance from Section 10.1114.31 to allow 2 driveways on a lot where only 1 is allowed.

The Board voted to **postpone** to the May meeting.

May 17, 2022 – Request to withdraw application submitted April 2022 for construction of a second free-standing dwelling concerning:

1. Variance from Section 10.513 to allow a second principal structure on a lot.
  2. Variance from Section 10.1114.31 to allow 2 driveways on a lot where only 1 is allowed.
- The Board voted to acknowledged the **withdraw** of the application.

## Planning Department Comments

The applicant is seeking to subdivide the existing lot into two lots. Meredith Way currently ends approximately 37 feet in front of the existing lot. The applicant is proposing to extend Meredith Way an additional 73 feet to provide access to proposed Lot B. The packet shows proposed dwellings for each lot that would conform to the dimensional standards for the district, however the applicant states that these are conceptual and if the Board approves the requested variances, staff recommends the following for consideration:

**The proposed house plans are conceptual and may change from what was presented to the Board as long as they conform to the requirements of the Zoning Ordinance.**

## 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.





10.

Request of **James William Woods** and **Anna Roeline Meinardi (Owners)**, for property located at **1 Walton Alley** whereas relief is needed to construct a 1 story, 12' x 18' detached garage which requires the following: 1) Variances from Section 10.573.20 to allow a) a 1.5' side yard where 10' is required; and b) a 5' rear yard where 13'10" is required. Said property is located on Assessor Map 103 Lot 27 and lies within the General Residence B (GRB) and Historic Districts.

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Detached Garage	Primarily residential
<u>Lot area (sq. ft.):</u>	5,672	5,672	5,000 min.
<u>Lot area per dwelling (sq. ft.):</u>	5,672	5,672	5,000 min.
<u>Lot depth (ft.):</u>	73	73	60 min.
<u>Street Frontage (ft.):</u>	149	149	80 min.
<u>Primary Front Yard (ft.):</u>	2	2	5 min.
<u>Secondary Front Yard (ft.):</u>	42	42	5 min.
<u>Right Yard (ft.):</u>	14	<b>1.5'</b>	10
<u>Rear Yard (ft.):</u>	39	<b>5</b>	25/13'10" (garage) min.
<u>Height (ft.):</u>	<35	13'10" (garage)	35 max.
<u>Building Coverage (%):</u>	16	22	30 max.
<u>Open Space Coverage (%):</u>	67	57	25 min.
<u>Parking:</u>	2	2	3
<u>Estimated Age of Structure:</u>	1750	<b>Variance request(s) shown in red.</b>	

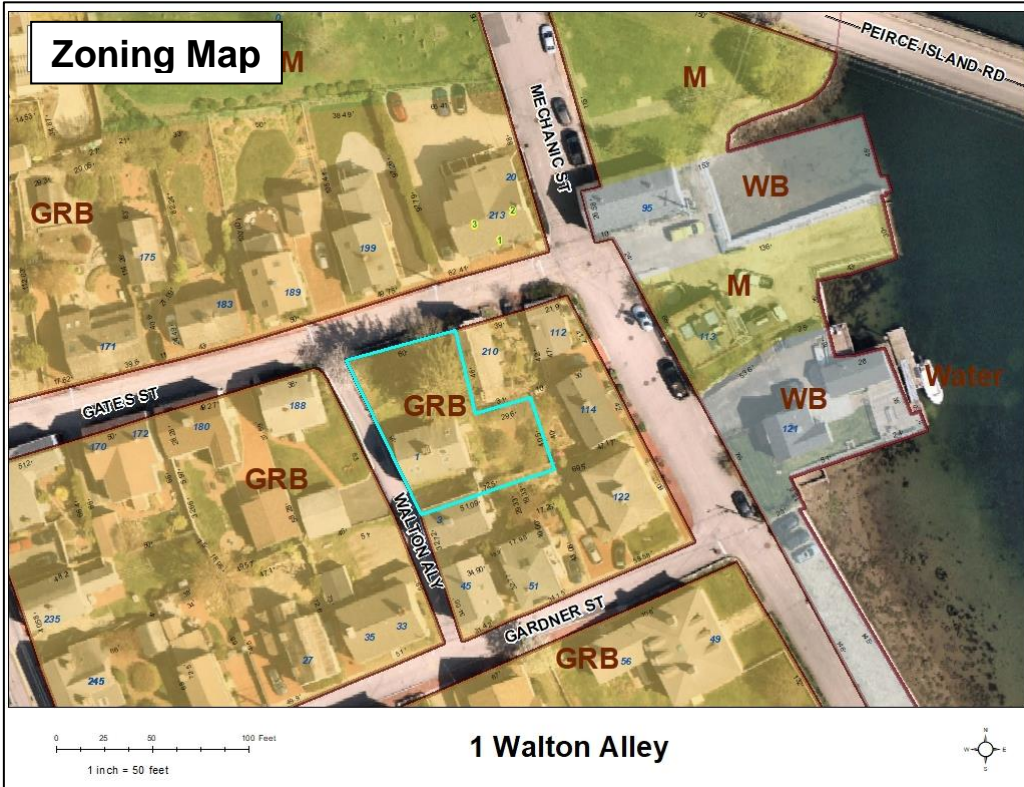
### Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Aerial Map



## Previous Board of Adjustment Actions

July 15, 2003 – Relief from Zoning Ordinance concerning:

1. Article III, Section 10-301(A)(6) Requested to allow picket fence 4' from intersection of Walton Alley and Gates Street where 20' from intersection was the minimum required from the corner.

The Board voted the request be **granted**.

## Planning Department Comments

The applicant is seeking to construct a one car garage and extend the existing driveway. A rear addition is proposed on the main dwelling, but does not need any relief from the Zoning Board. The application provides a photo imposed view of what the garage will look like, however some of the design elements are different than what the elevation show for the garage. The project has not received final approval from the HDC. If granted approval, staff would recommend the following for consideration:

**The final design of the garage may change as a result of the HDC review and 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:*
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**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

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