

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: September 21, 2022
RE: Zoning Board of Adjustment September 27, 2022

NEW BUSINESS

1. 127 Willard Avenue
2. 55 Aldrich Road
3. 42 Harvard Street
4. 44 Harding Road
5. 38 Thaxter Road
6. 325 Little Harbor Road
7. 74 Sunset Road
8. 324 Maplewood Avenue
9. 67 Ridges Court

1.

The request of **Emily Morgan Revocable Trust of 2021 (Owner)**, for property located at **127 Willard Avenue** whereas relief is needed to replace the existing front porch with new covered landing with steps which requires the following: 1) A Variance from Section 10.521 to allow a 6 foot secondary front yard where 15 feet 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 149 Lot 37 and lies within the General Residence A (GRA) district.

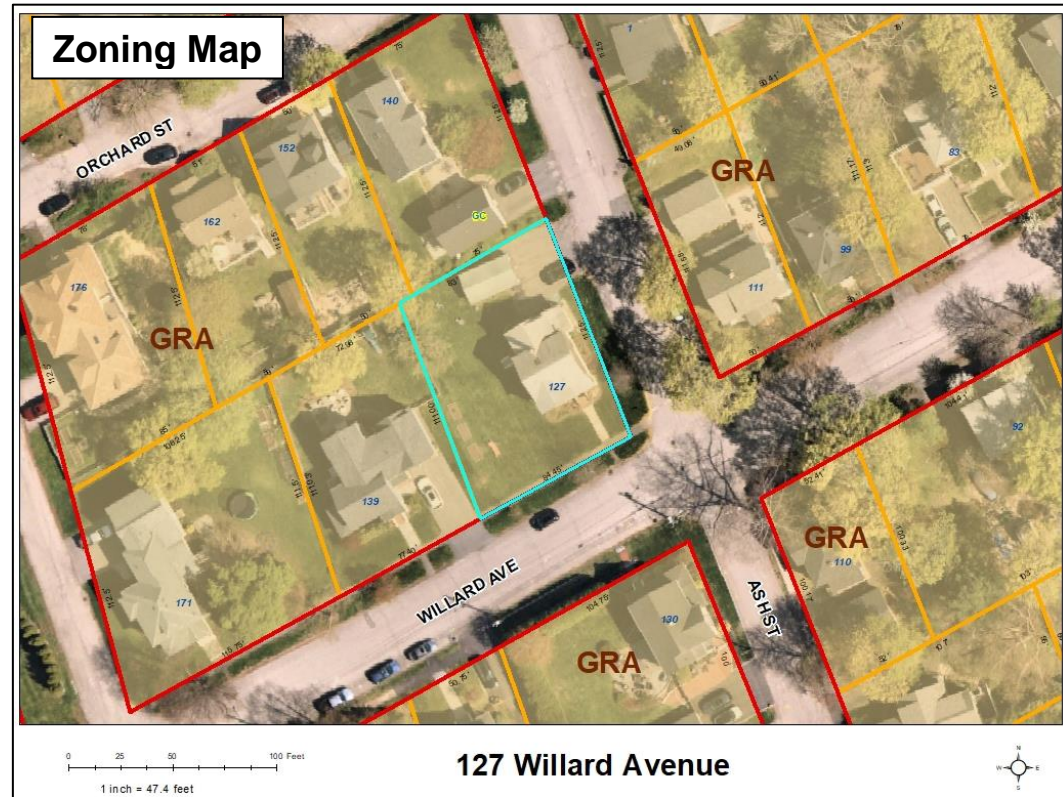
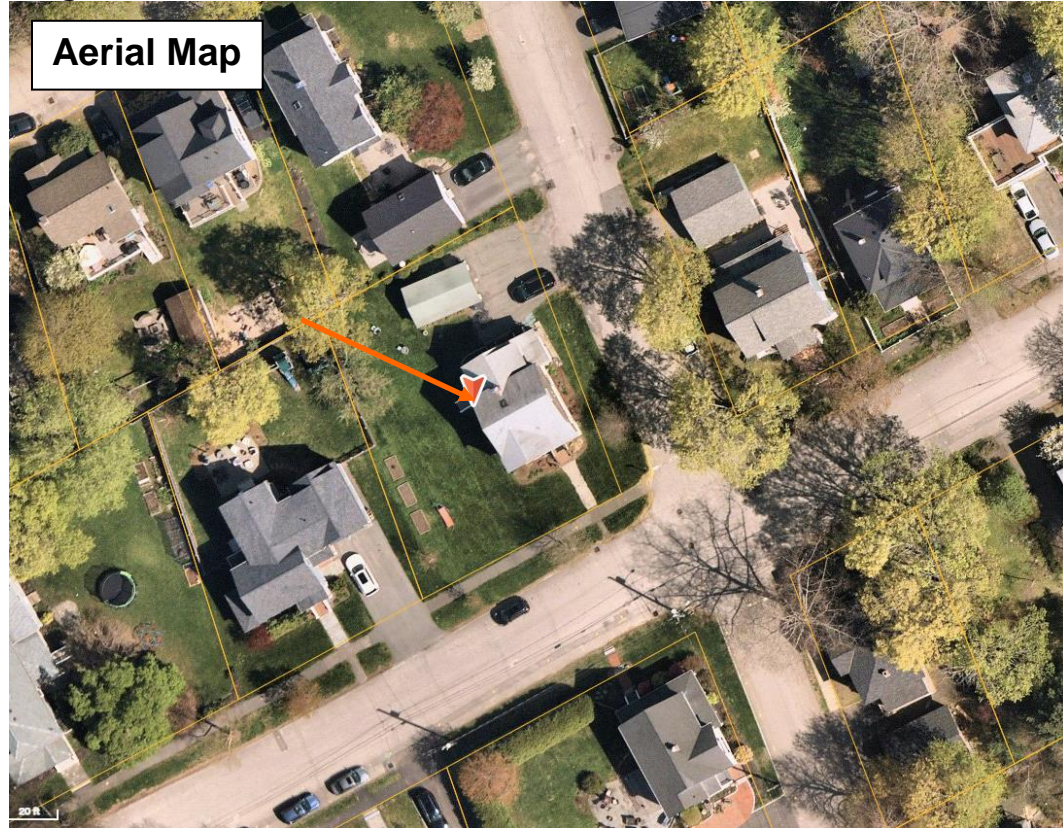
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single family	New front porch	Primarily residential
<u>Lot area (sq. ft.):</u>	9,148	9,148	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,148	9,148	7,500 min.
<u>Lot depth (ft.):</u>	111	111	70 min.
<u>Street Frontage (ft.):</u>	196.5	196.5	100 min.
<u>Primary Front Yard (ft.):</u>	27	26.5	15 min.
<u>Secondary Front Yard (ft.):</u>	6	6	15 min.
<u>Left Yard (ft.):</u>	42	42	10
<u>Rear Yard (ft.):</u>	41	41	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	<25	<25	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1910	Variance request(s) shown in red.	

Other Permits/Approvals Required

None

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is seeking to replace the existing front landing and steps with a new, covered front landing. The existing house is nonconforming to the secondary front yard and the proposed landing will extend to the right side of the house, requiring relief from the secondary front yard setback. All other dimensional requirements are met with the proposal.

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.

The request of **Anne R. Landau Bellaud (Owner)**, for property located at **55 Aldrich Rd** whereas relief is needed to remove existing front steps and construct new deck and steps which requires the following: 1) A Variance from Section 10.521 to allow a 2.5 foot front yard where 15 feet 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 153 Lot 44 and lies within the General Residence A (GRA) district.

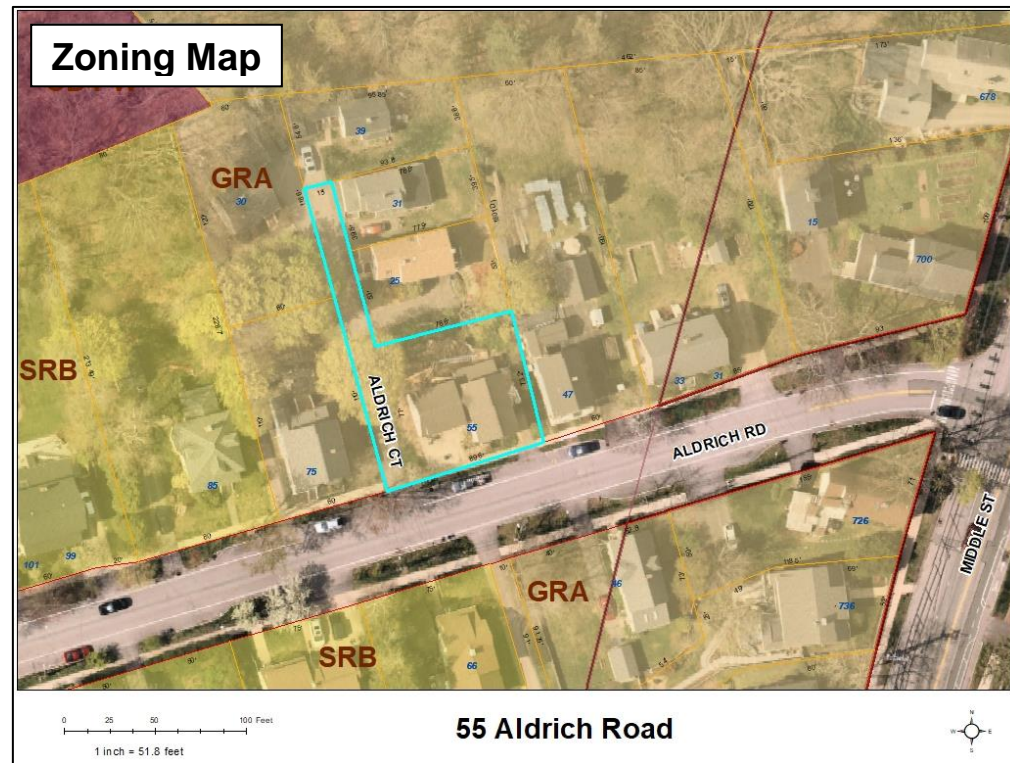
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single family	New front porch	Primarily residential
<u>Lot area (sq. ft.):</u>	8,276	8,276	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,276	8,276	7,500 min.
<u>Lot depth (ft.):</u>	73	73	70 min.
<u>Street Frontage (ft.):</u>	199	199	100 min.
<u>Primary Front Yard (ft.):</u>	17.5"	2.5'	15 min.
<u>Left Yard (ft.):</u>	11.5	11.5	10 min.
<u>Right Yard (ft.):</u>	15	15	10
<u>Rear Yard (ft.):</u>	28	28	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	<25	<25	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking:</u>	2	3	2
<u>Estimated Age of Structure:</u>	1830 (2020)	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 property is currently undergoing renovations, including the addition of a 2 car garage. The existing front steps are old and need to be repaired or replaced. The applicant is proposing to remove the existing front landing and steps and replace with a new, wider landing with steps that will increase the front yard setback slightly more than what exists, from 17.5 inches to 2.5 feet.

Review Criteria

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

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

AND

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

OR

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

10.235 Certain Representations Deemed Conditions

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

3.

The request of **Seth Monkiewicz (Applicant)**, and **Betty Ann Fraser (Owner)**, for property located at **42 Harvard Street** whereas relief is needed for the upward expansion of existing garage and mudroom to create and attached ADU which requires the following: 1) A Variance from Section 10.521 to allow a 22 foot front yard where 30 feet is required and **to allow a lot area of 13,039 square feet where 15,000 square feet is required (not originally advertised)**. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be expanded, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 259 Lot 30 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	Garage expansion w/ AADU	Primarily residential
<u>Lot area (sq. ft.):</u>	13,039	13,039*	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	13,039	13,039	15,000 min.
<u>Lot depth (ft.):</u>	122	122	100 min.
<u>Street Frontage (ft.):</u>	106	106	100 min.
<u>Primary Front Yard (ft.):</u>	22	22	30 min.
<u>Right Yard (ft.):</u>	34	30	10 min.
<u>Left Yard (ft.):</u>	10	10	10
<u>Rear Yard (ft.):</u>	70	55	30 min.
<u>Height (ft.):</u>	>35	<35	35 max.
<u>Building Coverage (%):</u>	11	16	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	2	3	3
<u>Estimated Age of Structure:</u>	1953	Variance request(s) shown in red. *was not advertised*	

Other Permits/Approvals Required

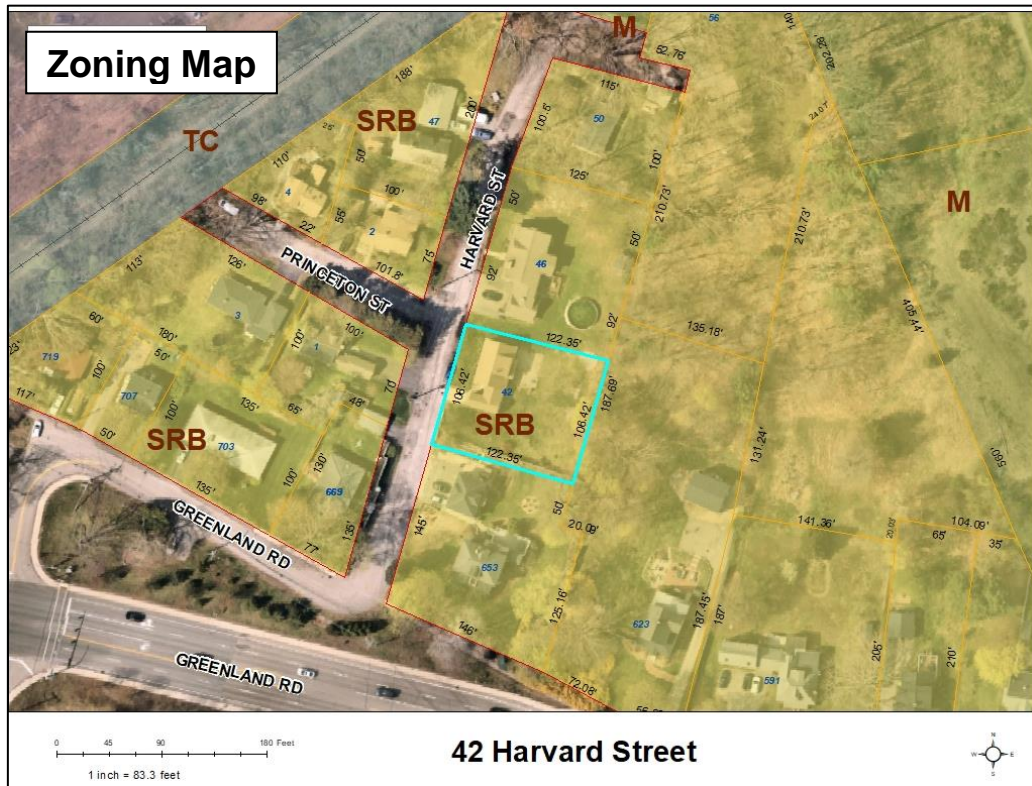
Planning Board – CUP for ADU

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is seeking to renovate the existing garage and add a second floor to accommodate an attached Accessory Dwelling Unit (ADU) which includes squaring off the addition with the existing front wall plane of the house, which sits at 22 feet from the front lot line where 30 is required. In order to qualify for an attached ADU, the lot must be conforming. The lot area for this lot is just under the 15,000 minimum, at 13,039 square feet. This was not originally advertised as part of the legal notice. This relief recognizes the nonconforming lot size, and if the Board feels sufficient notice was provided for this application votes to approve the request, staff would recommend the Board include the following stipulation:

1) The lot area shall be 13,039 square feet.

Review Criteria

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

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

AND

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

OR

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

10.235 Certain Representations Deemed Conditions

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

4.

The request of **Brian and Charlene Huston (Owners)**, for property located at **44 Harding Road** whereas relief is needed to remove existing deck and construct new deck with stairs which requires the following: 1) A Variance from Section 10.521 to allow 25% building coverage where 20% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 250 Lot 75 and lies within the Single Residence B (SRB) district.

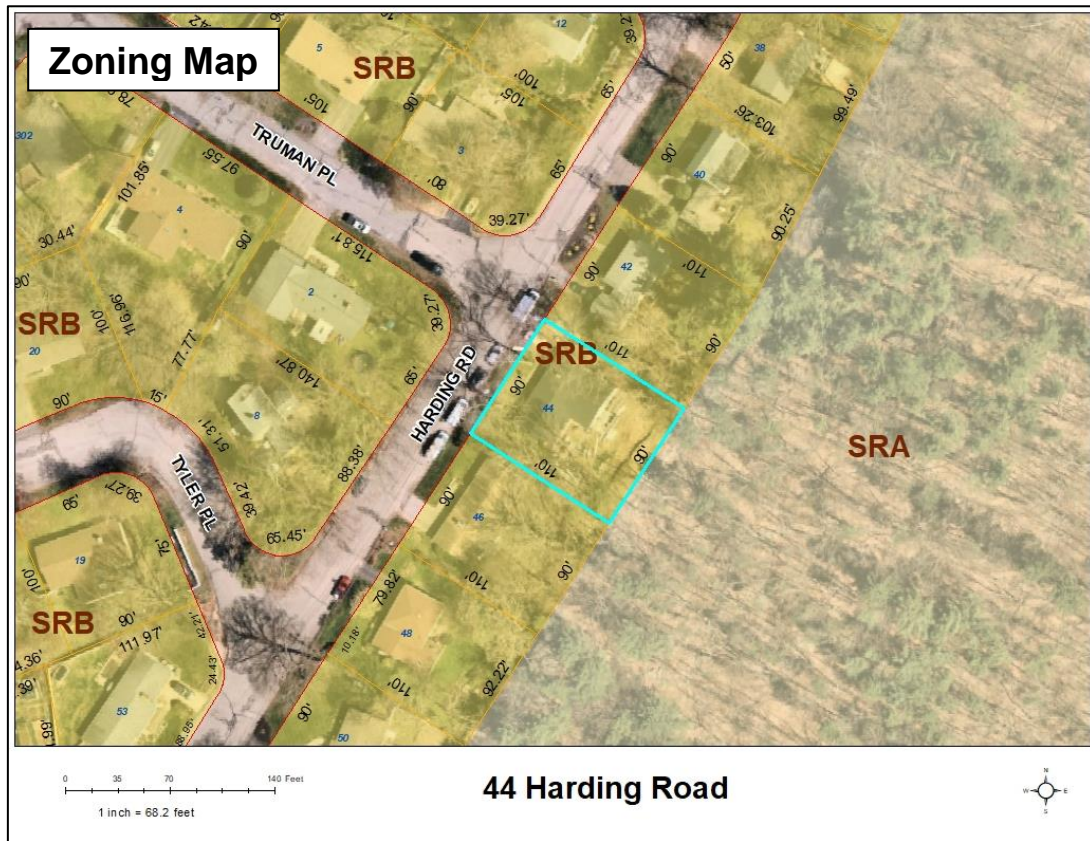
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single family	New deck	Primarily residential
<u>Lot area (sq. ft.):</u>	10,018	10,018	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,018	10,018	15,000 min.
<u>Lot depth (ft.):</u>	110	110	100 min.
<u>Street Frontage (ft.):</u>	90	90	100 min.
<u>Primary Front Yard (ft.):</u>	22	22	30 min.
<u>Right Yard (ft.):</u>	20	20	10 min.
<u>Left Yard (ft.):</u>	10	10	10
<u>Rear Yard (ft.):</u>	42	30	30 min.
<u>Height (ft.):</u>	<35	38" (deck)	35 max.
<u>Building Coverage (%):</u>	22	25	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	3	3	2
<u>Estimated Age of Structure:</u>	1966	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 demolish the existing deck and construct a larger deck on the property. The existing building coverage is nonconforming at 22% in the SRB. The original proposal had a 14 foot deck would encroach into the rear yard by 2 feet, which would require a new dimensional variance that was not part of the application or notice. The applicant is willing to reduce the depth of the deck to 12 feet to meet the 30 foot rear yard, which will also reduce the building coverage to 24.5%. If the Board grants approval, staff would recommend the following stipulation:

- 1) **The deck shall be 12 feet in depth; and**
- 2) **The allowed building coverage shall be 24.5%.**

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 of Madison **Tidwell & Brendan Barker (Owners)**, for property located at **38 Thaxter Road** whereas relief is needed to construct a 14' x 25' rear second story over an existing structure which requires the following: 1) A Variance from Section 10.521 to allow a 23 foot rear yard where 30 feet 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 166 Lot 36 and lies within the Single Residence B (SRB) district.

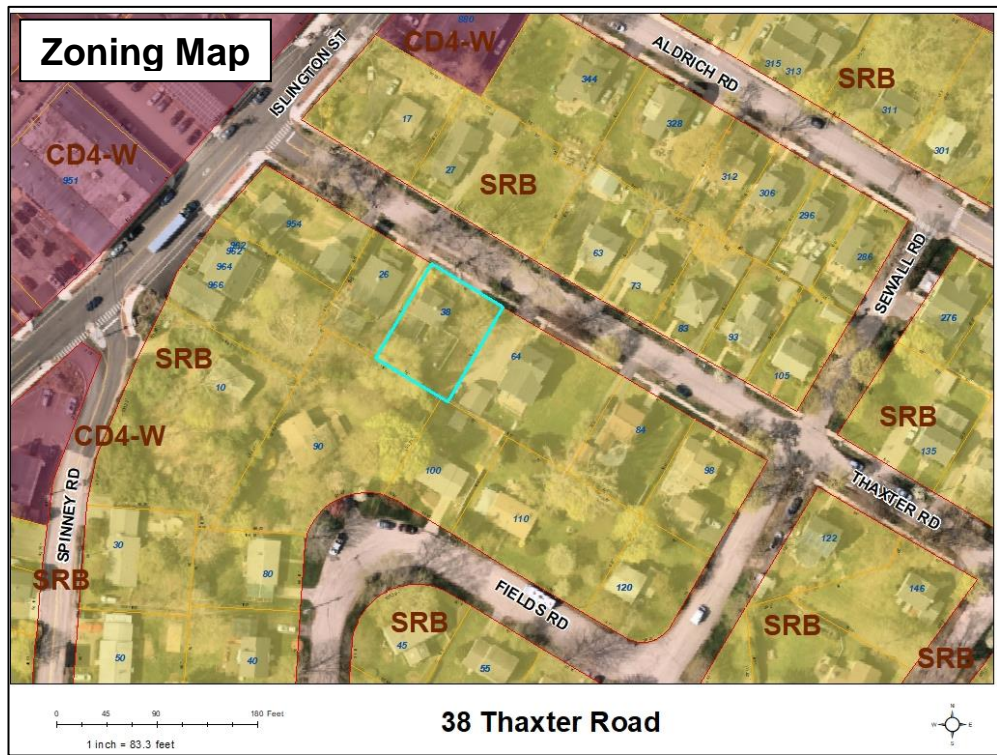
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single family	Rear second story addition	Primarily residential
<u>Lot area (sq. ft.):</u>	7,500	7,500	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,500	7,500	15,000 min.
<u>Lot depth (ft.):</u>	100	100	100 min.
<u>Street Frontage (ft.):</u>	75	75	100 min.
<u>Primary Front Yard (ft.):</u>	15	15	30 min.
<u>Right Yard (ft.):</u>	10	10	10 min.
<u>Left Yard (ft.):</u>	32	32	10
<u>Rear Yard (ft.):</u>	23	23	30 min.
<u>Height (ft.):</u>	<35	~26	35 max.
<u>Building Coverage (%):</u>	18	18	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1950	Variance request(s) shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

April 20, 2004 – The Board considered request for the following Variance:

Article IV, Section 10-402(B) is requested to allow a 22'x 22' one story garage with: a) 3' rear yard where 10' is the minimum required and b) 25.1% building coverage where 20% is the maximum allowed.

As a result of this consideration, the motion to grant failed; therefore, the petition was **denied** with a vote of 3 to 4.

Planning Department Comments

The applicant is seeking to add a second story addition over the existing one-story rear section of the house. The existing house is nonconforming with a 23 foot rear yard. Thus, a variance is required to increase the height within the rear yard. No expansion of the footprint is proposed with this project.

Review Criteria

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

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

AND

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

OR

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

10.235 Certain Representations Deemed Conditions

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

6.

The request of **ADL 325 Little Harbor Road Trust (Owner)**, for property located at **325 Little Harbor Road** whereas relief is needed to renovate an existing historic barn which requires the following: 1) A Variance from Section 10.628.30 to permit a bottom/basement finished floor elevation of 8 feet where 7.88 feet exist where 9 feet is required. Said property is located on Assessor Map 205 Lot 2 and lies within the Rural (R) district.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single family	Barn renovation	Primarily residential
<u>Lot area (acres):</u>	12.36 acres	12.36	5 acres min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	12.36	12.36	5 acres min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	<5	<5	5 max.
<u>Open Space Coverage (%):</u>	>75	94	75 min.
<u>Base Flood Elevation:</u>	7.88	8	9
<u>Estimated Age of Structure:</u>	mid-1800's	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 property is currently undergoing significant renovations, including demolition of the house and construction of a new dwelling, renovation of the historic barn and other structures on the property. The barn is the subject of the variance due to part of the structure being located in the flood zone, thus it must comply with the floodplain ordinance, due to the substantial improvements that are underway. The Ordinance requires the lowest floor (including the basement) to be elevated 1 foot above the base flood elevation. The base flood elevation is 8 feet, thus the plus 1 requirement is 9 feet. In order to comply, they would need to add a foot of concrete in the basement or elevate the entire structure to allow for the extra foot to be added to the foundation. In addition to addressing the 5 criteria for a variance, Section 10.629.20 states additional measures must be addressed by the applicant.

10.629.20 If the applicant, upon appeal, requests a variance as authorized by the provisions of State law, the applicant shall have the burden of showing in addition to the usual variance standards under State law:

*(a) That the variance will not result in increased **flood** heights, additional threats to public safety, or extraordinary public expense;*

*(b) That if the requested variance is for activity within a designated **regulatory floodway**, no increase in **flood** levels during the **base flood** discharge will result; and*

*(c) That the variance is the minimum necessary considering the **flood** hazard, to afford relief.*

10.629.30 The Board of Adjustment shall notify the applicant in writing that:

*(a) The issuance of a variance to construct below the required elevation may result in increased premium rates for **flood** insurance up to amounts as high as \$25 for \$100 of insurance coverage; and*

(b) Such construction below the required elevation increases risks to life and property.

Review Criteria

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

1. *Granting the variance would not be contrary to the public interest.*

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

AND

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

OR

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

10.235 Certain Representations Deemed Conditions

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

7.

The request of **John T. & Mary R. McDonald (Owners)**, for property located at **74 Sunset Road** whereas relief is needed to add a front porch, front dormer and connection to garage which requires the following: 1) Variances from Section 10.521 to allow a) a 16 foot front yard where 30' is required; and b) 26.5% building coverage where 20% 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 153 Lot 14 and lies within the Single Residence B (SRB) district.

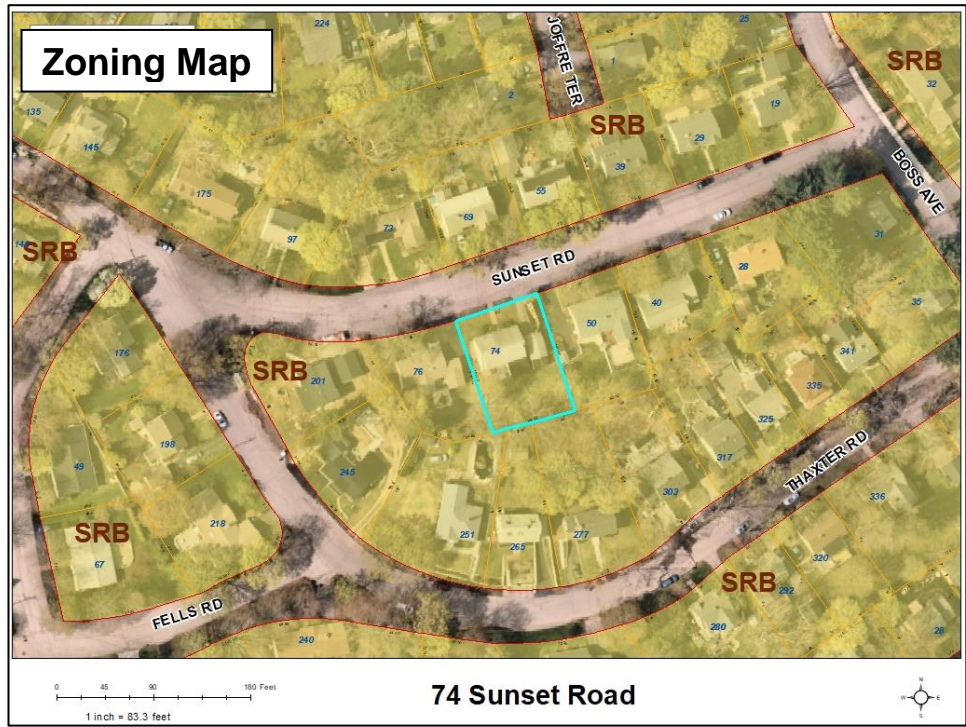
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single family	New front porch And connector to garage	Primarily residential
<u>Lot area (sq. ft.):</u>	8,936	8,936	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,936	8,936	15,000 min.
<u>Lot depth (ft.):</u>	110	110	100 min.
<u>Street Frontage (ft.):</u>	80	80	100 min.
<u>Primary Front Yard (ft.):</u>	24	16	30 min.
<u>Right Yard (ft.):</u>	9	9	10 min.
<u>Left Yard (ft.):</u>	8	8	10
<u>Rear Yard (ft.):</u>	41	41	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	23	26.5	20 max.
<u>Open Space Coverage (%):</u>	66	64	40 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1959	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 subject lot is located in the SRB district where the minimum lot size is 15,000 square feet. The lot size is 8,836, which is slightly over half of what is required for a lot in this district. The applicant is seeking to get approval to add a front porch onto the existing dwelling and a connector between the house and the garage, which will increase the already nonconforming building coverage from approximately 23% to 26.5%. The project also includes adding dormers on the front, however no relief is needed for that part of the project. The front porch will encroach into the front yard, with a proposed setback of 16 feet.

Review Criteria

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

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

AND

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

OR

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

10.235 Certain Representations Deemed Conditions

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

8.

The request of **Neila LLC (Owner)**, for property located at **324 Maplewood Avenue** whereas relief is needed to convert existing garage into a dwelling unit which requires the following: 1) Variances from Section 10.5A41.10A to allow a) a lot area per dwelling unit of 1,780 square feet where 3,000 square feet is required; and b) a 1 foot side yard where 5 feet is required. 2) A Variance from Section 10.1114.21 to allow an 8.5 foot wide by 18 foot long parking space where 8.5 feet by 19 feet is required. Said property is located on Assessor Map 141 Lot 1 and lies within the Character District 4-L2 (CD4-L2) and the Historic district

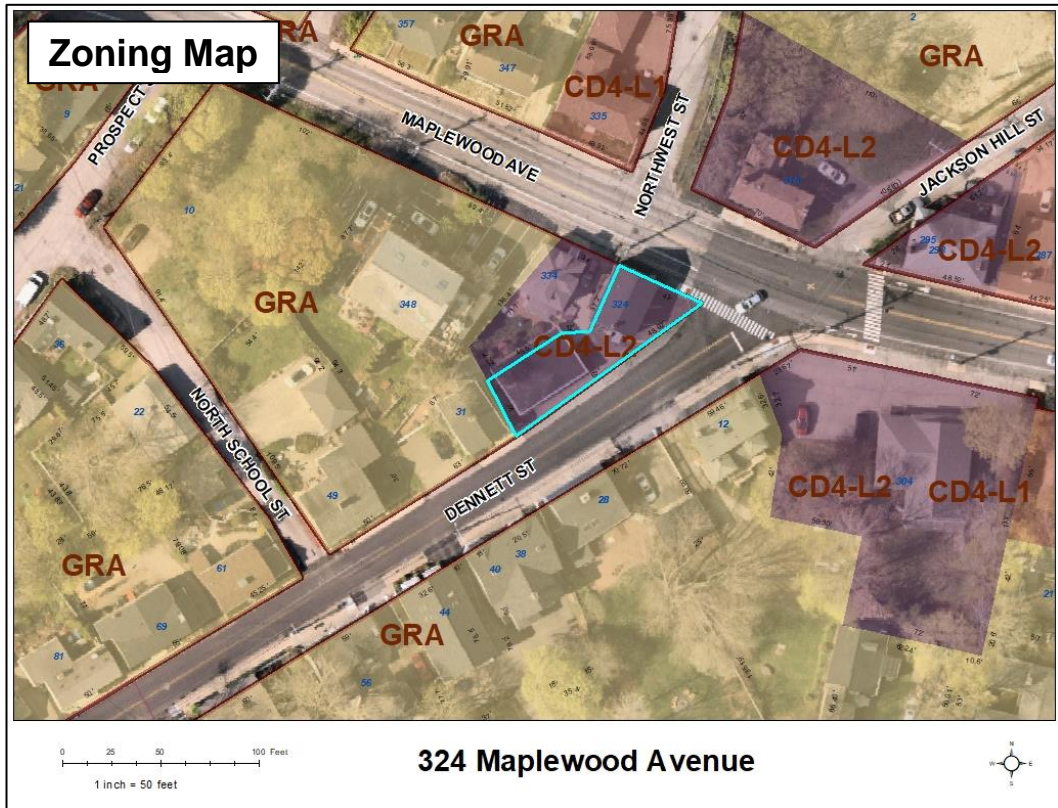
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single family/ commercial	Convert garage into dwelling	Primarily residential
<u>Lot area (sq. ft.):</u>	3,560	3,560	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,560	1,780	3,000 min.
<u>Primary Front Yard (ft.):</u>	0	0	15 max
<u>Secondary Front Yard (ft.):</u>	>6	>6	12 max
<u>Right Yard (ft.):</u>	1	1	5
<u>Rear Yard (ft.):</u>	>5	>5	5 min.
<u>Height (ft.):</u>	<20 (garage)	<20 (garage)	35 max.
<u>Building Coverage (%)</u> :	49	49	60 max.
<u>Open Space Coverage (%)</u> :	7.7	7.7	25 min.
<u>Parking:</u>	6	6	6
<u>Estimated Age of Structure:</u>	1948	Variance request(s) shown in red.	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

July 25, 1972, the Board **granted** a variance; to add a floor to an existing building for a workshop not to exceed 12' in height.

October 23, 1979, the Board **denied** a request to allow the following: Variance: Article II, Section 10-206 to allow a take-out and delivery restaurant. Said property is shown on Assessor Plan 80 as Lot 63 and lies within a General Residential District.

August 18, 2009, the Board **denied** a request to allow the following:

- 1) a two story addition on an existing garage/storage building housing two additional dwelling units on a 3,210 sf lot (which also contains a second building with a commercial use on the 1st floor and a dwelling unit on the 2nd floor) with a) a 5.47 ± left side setback, 10' required and b) a 1'± rear setback 15' required and c) 1,070 sf of lot area per dwelling unit, 7,500 sf required;
- 2) The required parking spaces to back out onto the street, and
- 3) Dwelling units in two separate buildings on a lot.

December 15, 2009, after consideration, the Board determined that Fisher v. Dover was not applicable to this request and it could be heard as a new application. The Board then voted to **deny** the request as all the criteria necessary to grant the variances had not been met.

1. Article III, Section 10-301 (A)(2) to allow a dwelling unit in each of two (2) free-standing buildings on the same lot.
2. Article III, Section 10-303 (A) to allow 1,780 square feet of lot area per dwelling unit, where 7,500 square feet of a lot area is required.
3. Article III, Section 10-303 (A) to allow a rear yard setback of 5.47 feet where 15 feet is required; a right side yard setback of 1 foot where 10 feet is required; and a left side yard setback of 6.21 feet where 10 feet is required.
4. Article IV, Section 10-401 A (2)(c) to allow expansion of a non-conforming structure by addition of a second story.
5. Article XII, Section 10-1201(A)(3) to allow the required parking spaces to back out onto the street where such parking layout is not allowed.

Planning Department Comments

The applicant is seeking to convert the existing garage into a dwelling unit. As shown in the history above, this property was before this Board in 2009 to develop the property to add a dwelling unit

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. The image of what was proposed in 2009 is below to show the building vs what is proposed currently.

“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).

2009 Proposal:

Received at Meeting  place signature
DEC 15 2009
From B. Pelech



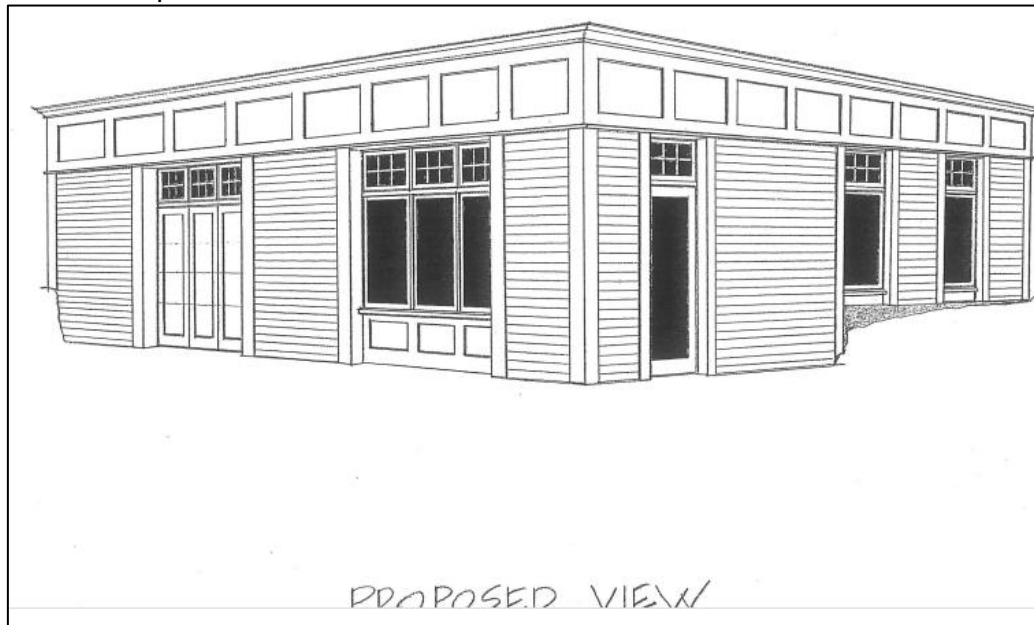
BEFORE



AFTER

	SINGLE FAMILY HOME 324 MAPLEWOOD AVE. PORTSMOUTH, NH 03801	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;">No.</th> <th style="width: 70%;">Description</th> <th style="width: 25%;">Date</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	No.	Description	Date										<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="text-align: left;">Elevation</th> </tr> </thead> <tbody> <tr> <td style="width: 80%;">Project No. 2009.8</td> <td rowspan="4" style="text-align: center; vertical-align: middle; font-weight: bold;">A 108</td> </tr> <tr> <td>Date: NOVEMBER 18, 2009</td> </tr> <tr> <td>Drawn by</td> </tr> <tr> <td>Checked by</td> </tr> <tr> <td colspan="2" style="text-align: right;">Scale 1 1/2" = 1'-0"</td> </tr> </tbody> </table>	Elevation		Project No. 2009.8	A 108	Date: NOVEMBER 18, 2009	Drawn by	Checked by	Scale 1 1/2" = 1'-0"	
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Drawn by																								
Checked by																								
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Current Proposal:



The applicant is proposing to use a portion of the garage for a parking space that will not conform to the City's dimensional requirements for a parking space which are 8.5 feet wide by 19 feet long. The proposed space will be 18 feet long instead of the 19 feet 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.

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.

The request of **Jeffrey & Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed for the expansion of existing main roof and front porch roof and addition of new roof over side doorway which requires the following: 1) Variances from Section 10.521 to allow a) an 8 foot front yard where 30 feet is required to expand the existing front porch; b) a 13.5 foot front yard where 30 is required to expand the main roof of the house; c) a 13.5 foot front yard where 30 feet is required for a new roof over an existing doorway; and d) a 9.5 foot left side yard where 10 feet is required for a new roof over an existing doorway. 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 207 Lot 59 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	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	8, 13.5	30 *(19 feet per front yard averaging) min.
<u>Left Yard (ft.):</u>	10	9.5	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	14	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

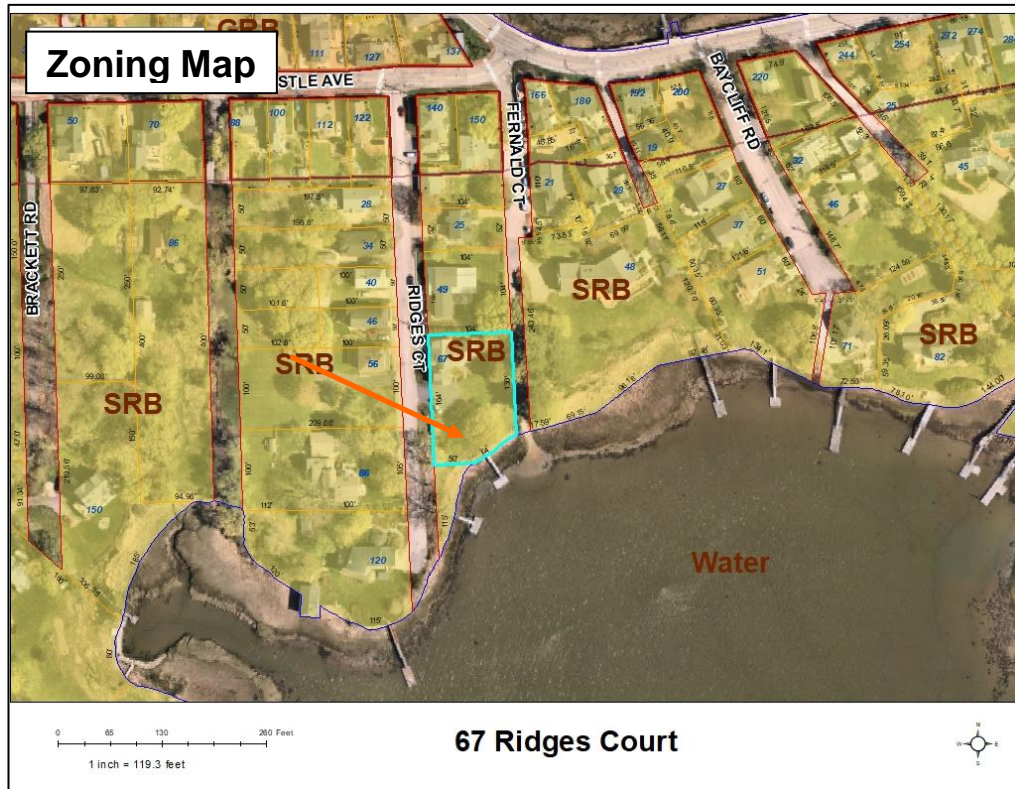
None

Neighborhood Context

Aerial Map



Zoning Map



67 Ridges Court

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.

July 19, 2022 - 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.

The Board voted to **grant** the request to **postpone** to the August meeting.

August 16, 2022 The Board voted to **deny** the request of July 19, 2022 because there was no hardship.

Planning Department Comments

The applicant was before the Board in August for a garage addition that was subsequently denied by the Board. The current proposal is for a front porch expansion and addition of a roof over an existing doorway on the left side of the house. The applicant is also proposing to raise the roof of the rear portion of the main house to accommodate a dormer. After the current application was submitted, a survey of the front yards of adjacent properties was completed to determine the average front yard under Section 10.516.10. The results show an average front yard of 19 feet. In addition, the scope of the main roof expansion has changed and item "b" will not require a variance.

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.*

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