

TO: Zoning Board of Adjustment
FROM: Stefanie Casella, Planning Department
DATE: February 16, 2023
RE: Zoning Board of Adjustment February 22, 2022

The agenda items listed below can be found in the following analysis prepared by City Staff:

II. OLD BUSINESS

- A. 32 Boss Avenue – Request for Rehearing
- B. 67 Ridges Court – Request for Reconsideration of Rehearing Request
- C. 635 Sagamore Avenue – Postponed to March (No action needed)
- D. 915 Sagamore Avenue

III. NEW BUSINESS

- A. 51 Spinney Road
- B. 55 Thornton Street
- C. 39 Dearborn Street
- D. 67 Madison Street

II. OLD BUSINESS

- A. The request to rehear the request of **Karen and Rick Rosania (Owners)**, of the December 20, 2022 decision of the Zoning Board of Adjustment for property located at **32 Boss Avenue**. Said property is located on Assessor Map 153 Lot 5 and lies within the Single Residence B (SRB) District. (LU-22-217)

Project Background

On Tuesday, December 20, 2022 the Board of Adjustment considered the request of Karen and Rick Rosania (Owners), for property located at 32 Boss Avenue whereas relief is needed to allow an art studio for classes up to 8 people which requires the following: 1) A Variance from Section 10.440 to allow an art studio where the use is not permitted. A motion to deny the application because the spirit of the ordinance was not observed and literal enforcement of the provisions of the Ordinance would not result in unnecessary hardship passed, therefore the petition was denied.

A request for rehearing has been filed within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, a hearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

"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).

II. OLD BUSINESS

- B. The request for reconsideration of rehearing request of **Jeffrey M. and Melissa Foy (Owners)**, of the November 15, 2022 decision of the Zoning Board of Adjustment for property located at **67 Ridges Court**. Said property is located on Assessor Map 207 Lot 59 and lies within the Single Residence B (SRB) District. (LU-22-199)

Project Background

On Tuesday, November 15, 2022, the Board considered the application of Jeffery M. and Melissa Foy (owners) for property located at 67 Ridges Court whereas relief is needed for construction of a 518 square foot garage addition which requires the following: 1) A Variance from Section 10.521 to allow a 15.5 foot front yard where 19 feet is required per Section 10.516.10. 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. A motion to determine that the petition does not fall under Fisher v. Dover failed, therefore the request was not heard.

On Tuesday, January 17, the Board considered the request of Jeffery M. and Melissa Foy (owners) for property located at 67 Ridges Court to rehear the request considered by the Board at the November 15, 2022 meeting. A motion to deny the request of rehearing because the material changes would not have altered the Board's original decision, or their second decision as all the objections that the Board found in the application were still in play and the Board did not error in making its decision passed. Therefore the request was denied.

A request for rehearing has been filed within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, a hearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

"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).

II. OLD BUSINESS

- C. **POSTPONED TO MARCH** The request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District. (LU-22-209) **POSTPONED TO MARCH**

Planning Department Comments

This item was postponed to the March 21, 2023 meeting. No action from the Board is required at this time.

II. OLD BUSINESS

- D. The request of **Nissley LLC (Owner)**, for property located at **915 Sagamore Avenue** whereas relief is needed to demolish the existing building and construct new mixed-use building which requires the following: 1) A Variance from Section 10.440 to allow a mixed-use building where residential and office uses are not permitted. 2) A Variance from Section 10.1113.20 to allow parking to be located in the front yard and in front of the principal building. 3) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only one is allowed. Said property is located on Assessor Map 223 Lot 31 and lies within the Waterfront Business (WB) District. (LU-22-229)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Demo existing building	Construct mixed use building	Primarily water dependent uses
<u>Lot area (sq. ft.):</u>	44,431	44,431	20,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	3,702	NR min.
<u>Street Frontage (ft.):</u>	440	440	100 min.
<u>Lot depth (ft.):</u>	145	145	100 min.
<u>Front Yard (ft.):</u>	20	30	30 min.
<u>Left Yard (ft.):</u>	145	>100	30 min.
<u>Secondary Front Yard (ft.):</u>	74	30	30 min.
<u>Rear Yard (ft.):</u>	99	70	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	3.5	18	30 max.
<u>Open Space Coverage (%):</u>	>20	>20	20 min.
<u>Parking</u>		34	34 (shared parking)
<u>Estimated Age of Structure:</u>	1970	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Conservation Commission/Planning Board – Wetland CUP
- TAC/Planning Board – Site Review

Neighborhood Context



Previous Board of Adjustment Actions

September 19, 1995 – The Board voted to grant the request as presented and advertised.

1. Variance from Article II, Section 10-206(20) is requested to allow use of cellar space for fish processing (frozen west coast cod and haddock, fresh cod, haddock and flounder) and sale to local wholesale of fish and lobsters to local markets and distributed to NY and PA.

Planning Department Comments

Please reference the memo as provided in the meeting packet for procedural guidance from City staff.

The applicant is proposing to demolish the existing scuba shop and construct a three-story mixed use building consisting of office space and 12 residential units. The property is located in the Waterfront Business (WB) district where uses other than water dependent uses, are not permitted. The proposal includes parking in the front of the building and a second driveway, both of which need relief variances. Five out of the eight parcels zoned WB in this area contain residential uses. If the variances are granted, the project will need review by the Conservation Commission and the Technical Advisory Committee prior to going before the Planning Board for a Wetland CUP and Site Plan approval. If granted approval, staff recommends the Board consider the following stipulation:

- 1. The design and location may change as a result of Planning Board 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:*
 - (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.

III. NEW BUSINESS

- A.** The request of **Valway Living Trust and William P and Elizabeth Valway Trustees (Owners)**, for property located at **51 Spinney Road** whereas relief is needed to construct a new detached garage which requires the following: 1) Variance from Section 10.573.20 to allow a) 4 foot side yard setback where 10 feet is required; and b) 4 foot rear yard setback where 10 feet is required. 2) Variance from Section 10.521 to allow 27% building coverage where 20% is required. Said property is located on Assessor Map 171 Lot 9 and lies within the Single Residence B (SRB) District. (LU-22-235)

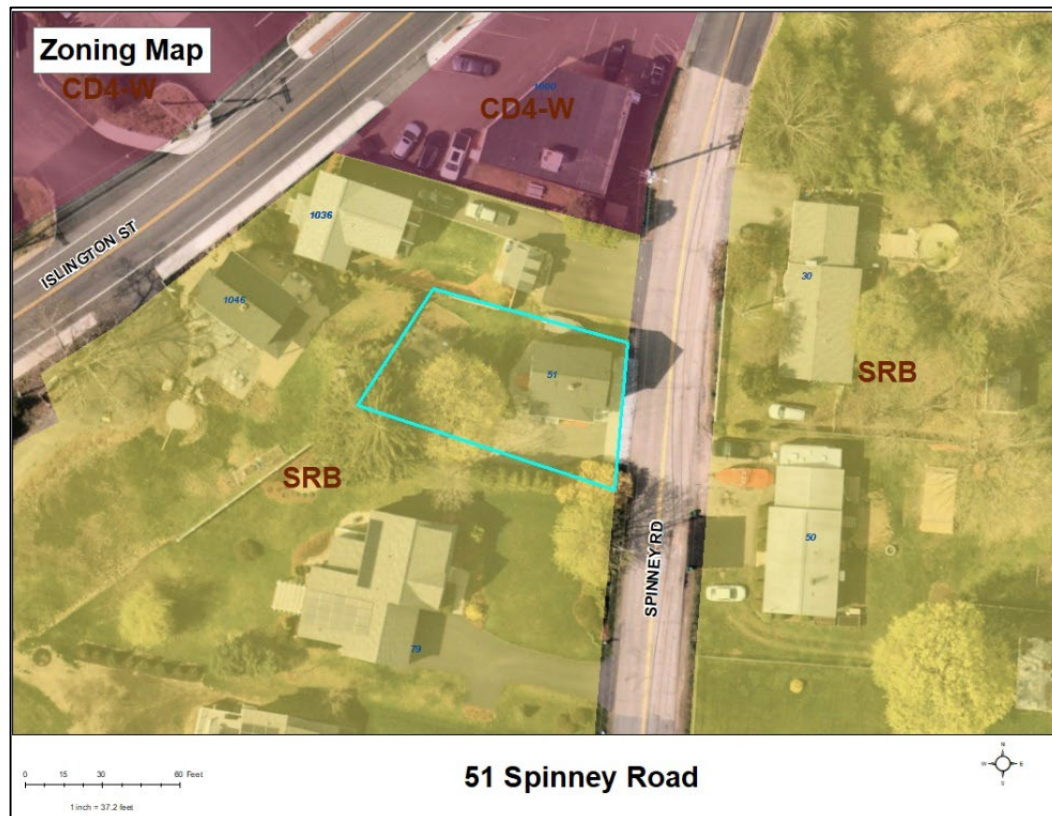
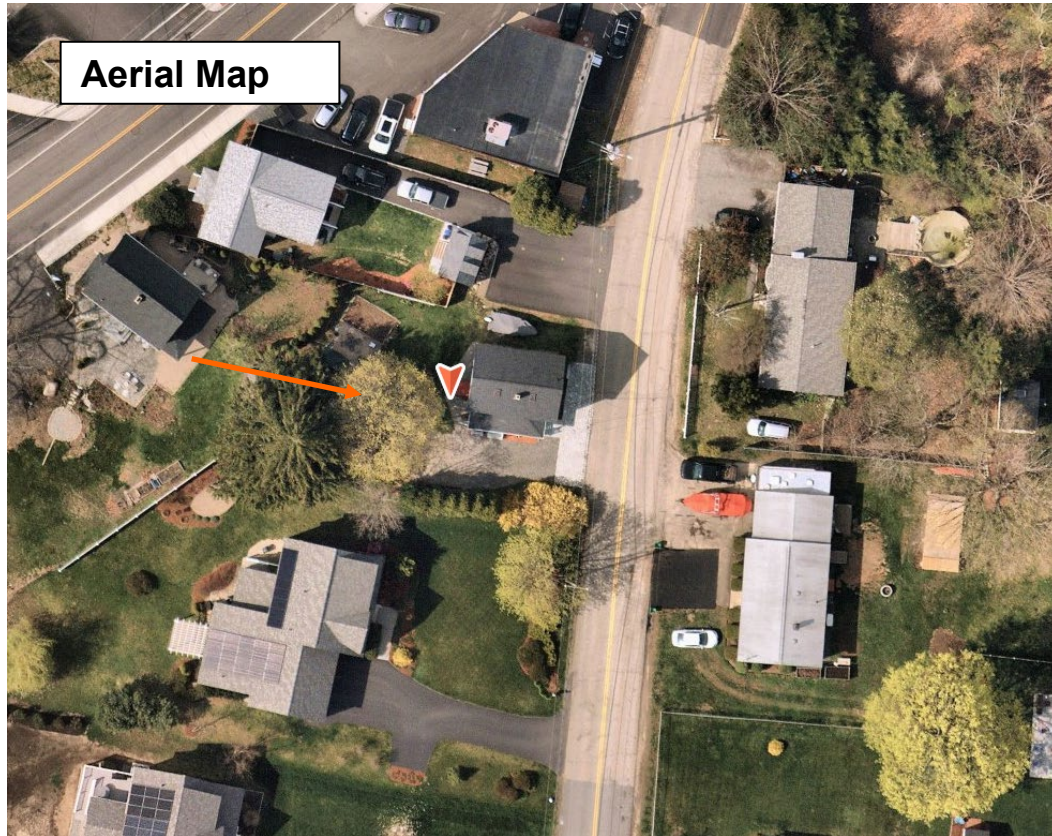
Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Single Family w/ Detached Garage	Primarily residential uses
<u>Lot area (sq. ft.):</u>	4365	4365	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4365	4365	15,000 min.
<u>Street Frontage (ft.):</u>	56.15	56.15	100 min.
<u>Lot depth (ft.):</u>	77.74	77.74	100 min.
<u>Primary Front Yard (ft.):</u>	7	7	30 min.
<u>Left Side Yard (ft.):</u>	22	4	10 min.
<u>Right Side Yard (ft.):</u>	7	7	10 min.
<u>Rear Yard (ft.):</u>	52	4	10 (with accessory structure setback per Section 10.573.20) min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	19	27	20 max.
<u>Open Space Coverage (%):</u>	>53	53	40 min.
<u>Parking:</u>	Ok	Ok	1.3
<u>Estimated Age of Structure:</u>	2007	Variance request shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is requesting relief to allow for the removal of a 48 square foot shed and the construction of a 384 square foot detached garage. The proposed garage location is within the 10 foot side yard and rear yard requirement (Section 10.573.20 of the [Zoning Ordinance](#)) and increases the building coverage from 19% to 27% (Section 10.521 of the [Zoning Ordinance](#)).

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.*

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.

Section 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.

III. NEW BUSINESS

- B. The request of **Paulsen Family Revocable Trust 2017 Christian Paulsen and Anja Paulsen Trustees (Owners)**, for property located at **55 Thornton Street** whereas relief is needed to construct a second story addition over the existing first floor which requires the following: 1) Variance from Section 10.521 to allow an 8.5 foot front yard setback where 15 feet is required. 2) Variance from Section 10.321 to allow the extension and enlargement of a non-conforming structure. Said property is located on Assessor Map 143 Lot 19 and lies within the General Residence A (GRA) District. (LU-23-2)

Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Dwelling	Single Family Dwelling	Primarily residential uses
<u>Lot area (sq. ft.):</u>	10,100	10,100	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,100	10,100	7,500 min.
<u>Street Frontage (ft.):</u>	101	101	100 min.
<u>Lot depth (ft.):</u>	100	100	70 min.
<u>Primary Front Yard (ft.):</u>	5	5 for existing first floor to remain 8.5 for second floor addition	15 min.
<u>Left Side Yard (ft.):</u>	13	13	10 min.
<u>Secondary Front (Right Side Yard) (ft.):</u>	>30	>30	15 min.
<u>Rear Yard (ft.):</u>	>30	>30	20 min.
<u>Height (ft.):</u>	29	29	35 max.
<u>Building Coverage (%):</u>	19%	21% (with deck expansion)	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	Ok	Ok	1.3
<u>Estimated Age of Structure:</u>	1863	Variance request shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is proposing an addition to the second story of the building where the proposed expansion will extend over the existing first floor. As the vertical expansion is within the front setback area, the project requires relief from Sections 10.521 and 10.321 of the [Zoning Ordinance](#). The applicant is also proposing a deck expansion at the rear of the existing structure which has been included in application. However, the deck portion of the project does not require a variance as it meets setback and building coverage requirements.

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.*
 - 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.*

Section 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.

III. NEW BUSINESS

- C. The request of **Michiyo Bardong and Shawn Bardong (Owners)**, for property located at **39 Dearborn Street** whereas relief is needed to construct a second story over the existing 1.5 story building, remove and expand the front porch, and remove and expand the existing mudroom on the eastern side of the structure which requires the following: 1) Variance from Section 10.521 to allow a) 2 foot rear yard where 20 feet is required; and b) 9 foot side yard where 10 feet is required. 2) Variance from Section 10.321 to allow the extension and enlargement of a non-conforming structure. Said property is located on Assessor Map 140 Lot 3 and lies within the General Residence A (GRA) and Historic District. (LU-23-5)

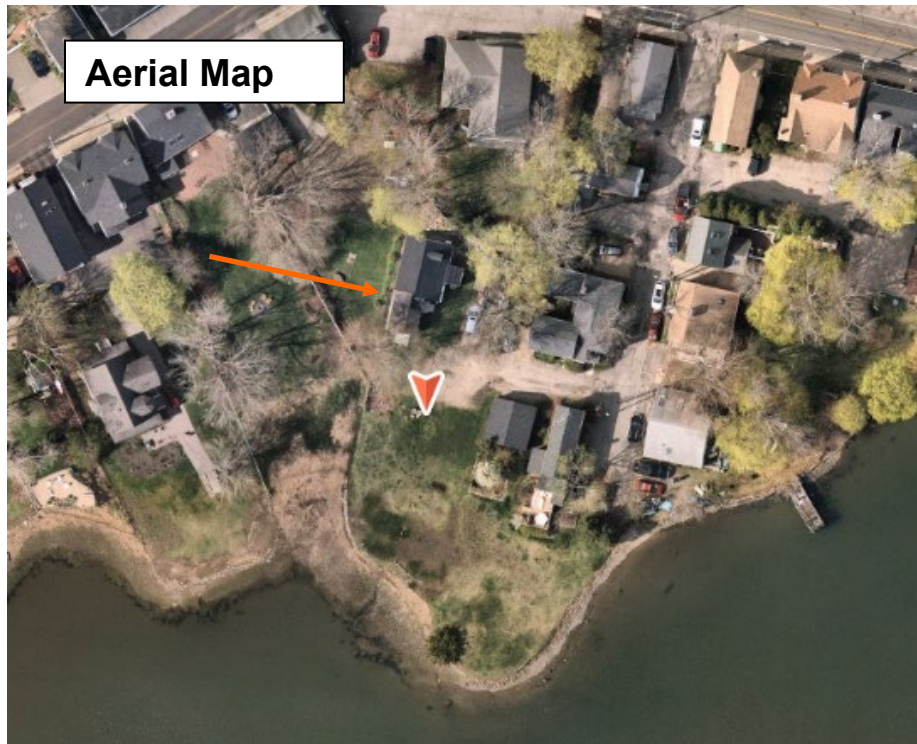
Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted/Required</u>
<u>Land Use:</u>	Single Family w/ detached garage	Expansion of livable space	Primarily residential uses
<u>Lot area (sq. ft.):</u>	11,236	11,236	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,236	11,236	7,500 min.
<u>Street Frontage (ft.):</u>	19	19	100 min.
<u>Lot depth (ft.):</u>	60	60	70 min.
<u>Primary Front Yard (ft.):</u>	5	5	15 min.
<u>Left Side Yard (ft.):</u>	114	114	10 min.
<u>Right Side Yard (ft.):</u>	2	2 – Addition of 2nd floor 9 – Expansion of mudroom/ family room area	10 min.
<u>Rear Yard (ft.):</u>	2	2 – Addition of the second floor	20 min.
<u>Height (ft.):</u>	22.5	30	35 max.
<u>Building Coverage (%):</u>	13	16	25 max.
<u>Open Space Coverage (%):</u>	>50	>50	30 min.
<u>Parking</u>	Ok	Ok	1.3
<u>Estimated Age of Structure:</u>	1700	Variance request shown in red.	

Other Permits/Approvals Required

- Building Permit
- Wetland Conditional Use Permit
- Historic District Commission Approval

Neighborhood Context



Previous Board of Adjustment Actions

August 26, 2008 – The Board **postponed** to September the request to construct a 7'10" by 13'9" shed which required the following relief:

- 1) 4'± left side yard setback where 10' was required; and
- 2) 65'± setback to salt water marsh or mean high water line where 100' was required.

September 16, 2008 – the above petition was **postponed** to October.

October 21, 2008 – The above petition was **amended** as follows and **postponed** to the November 18, 2008 meeting:

- 1) 5'± front setback where 15' was required was added

November 18, 2008 – The above petition was **withdrawn** by the applicant.

March 17, 2015 – The Board **postponed** the petition to construct a 100 s.f. shed in the front yard and an 8' x 13' single story addition, as well as adding shed dormers was to the April meeting.

April 21, 2015 – The Board **granted** variances for the above petition, with the shed reduced to 12' x 18'. Which required the following relief

- 1) a 5' front yard where 15' was required;
- 2) a 5' right side yard where 10' was required;
- 3) a 3' rear yard where 20' was required and
- 4) an accessory structure to be located in a required front yard.

The variances were **granted with stipulations** regarding the following:

- a) the dimensions, construction and uses of the granted accessory structure;
- b) no flood lights on the accessory structure;
- c) the creation of an approximate 2,018 s.f. View Easement Area with specified components, rules regarding trees and vegetation, and removal of a utility trailer; and
- d) the review of the Planning Department, prior to issuance of a building permit, of the final building and site plans and determination that the plans and elevations were in compliance with the stipulations.

August 27, 2019 – The Board voted to **granted** the following variance for the installation of a wall mounted outdoor AC condenser:

- 1) To allow a 2'6" right side setback where 10' is required

Planning Department Comments

The Applicant is proposing to remove the existing front porch and mudroom and construct a new entry, a new living area, and a second story above the existing first story. The extended living area is proposed to be constructed within the space between the existing structure and the shed but will not create a passable connection between the two structures.

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.*

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.

Section 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.

III. NEW BUSINESS

- D. The request of **Sean Morin (Owner)**, for property located at **67 Madison Street** whereas relief is needed to construct a 122 square foot covered front porch which requires the following: 1) Variance from Section 10.521 to allow a) 3 foot front yard setback where 5 feet is required; and b) 36% building coverage where 35% is maximum allowed. 2) Variance from Section 10.321 to allow the extension and enlargement of a non-conforming structure. Said property is located on Assessor Map 135 Lot 36 and lies within the General Residence C (GRC) District. (LU-23-4)

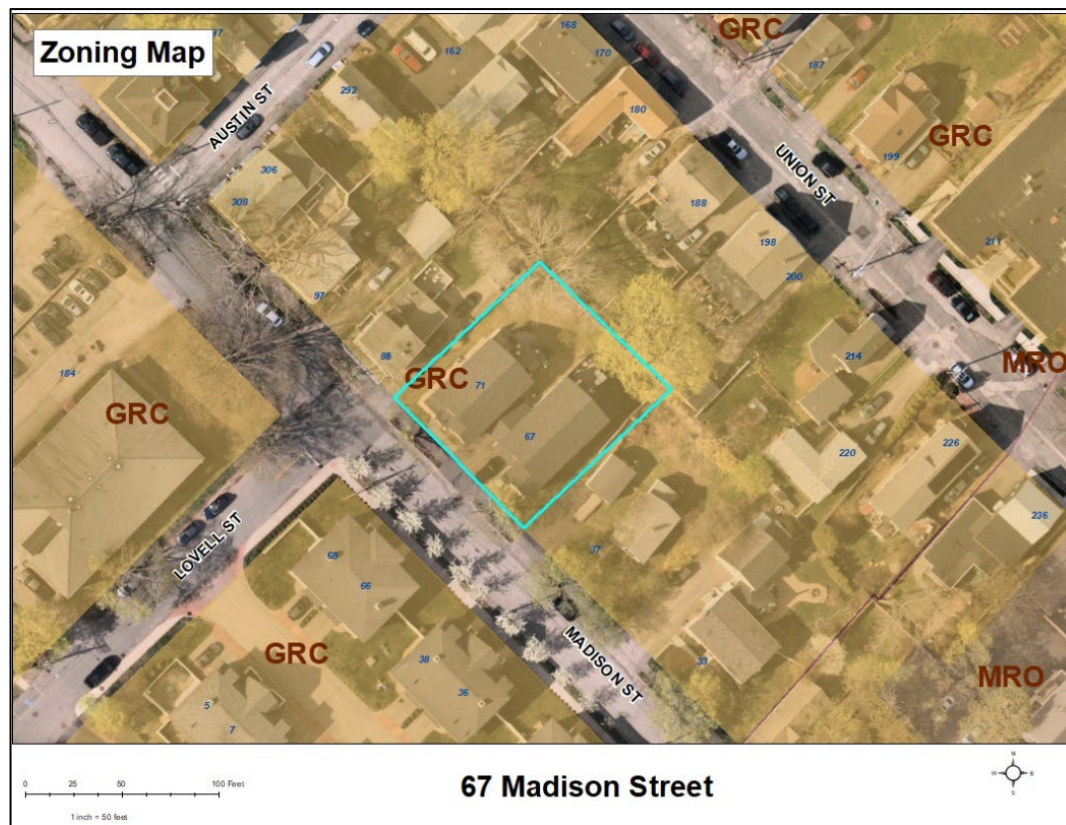
Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Addition of front porch	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	10,048	10,048	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,024	5,024	3,500 min.
<u>Street Frontage (ft.):</u>	97.75	97.75	70 min.
<u>Lot depth (ft.):</u>	105	105	50 min.
<u>Front Yard (ft.):</u>	5	3	5 min.
<u>Left Side Yard (ft.):</u>	>10	>10	10 min.
<u>Right Side Yard (ft.):</u>	10	10	10 min.
<u>Rear Yard (ft.):</u>	27	27	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	35	36	35 max.
<u>Open Space Coverage (%):</u>	>20	>20	20 min.
<u>Parking</u>	Ok	Ok	3
<u>Estimated Age of Structure:</u>	2020	Variance request shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is proposed to construct a new 122 square foot porch area which will extend 2 feet into the front yard area, leaving 3 feet of front yard where 5 feet is the minimum. Please note that the legal notice has an error stating that the existing structure is currently non-conforming. In fact, the existing structure is conforming in all aspects. Should the board vote to grant the request please consider adding the following language as a condition of approval.

- 1) The board acknowledges that error in the legal add and recognizes the existing structure as conforming, therefore the second variance as stated in the agenda and notice materials is not required and is not included in this motion for approval.

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.*

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.*

Section 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.