

TO: Zoning Board of Adjustment  
FROM: Juliet Walker, Planning Department  
DATE: July 17, 2015  
RE: July 21, 2015 Board of Adjustment Meeting

## **OLD BUSINESS**

1. 336 Union St

## **NEW BUSINESS**

1. 31 Cabot St
2. 192 Park St.
3. 306 Oriental Gardens
4. 116 Sherburne Ave
5. 487 Ocean Rd
6. 428 Route 1 Bypass



# OLD BUSINESS

## Case #6-8

Petitioners:	Joseph & Lindsey B. Donohue
Property:	336 Union Street
Assessor Plan:	Map 134, Lot 58
Zoning District:	General Residence A
Description:	Convert single family dwelling to two dwelling units.
Requests:	<p>The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:</p> <ol style="list-style-type: none"> <li>1. A Variance from Section 10.521 to allow a lot area per dwelling unit of 2,178 s.f. ± where 7,500 s.f. is required and a building coverage of 39.3% where 25% is the maximum allowed.</li> <li>2. A Variance from Section 10.1112.30 to allow two off-street parking spaces to be provided where four off-street parking spaces are required.</li> </ol> <p><i>This petition was postponed from the June meeting and the request has been amended to include building coverage.</i></p>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residential	Primarily residential uses
<u>Lot area:</u>	4,356 sq. ft.	7,500 sq. ft. min.
<u>Lot Area per Dwelling Unit:</u>	4,356 sq. ft.	4,356 sq. ft. min.
<u>Street Frontage:</u>	136'	100' min.
<u>Lot depth:</u>	87'	70' min.
<u>Front Yard:</u>	8'	15' min.
<u>Left Yard:</u>	2'	10' min.
<u>Right Yard:</u>	7'	10' min.
<u>Rear Yard:</u>	12'	20' min.
<u>Height:</u>	30'	35' max.
<u>Building Coverage:</u>	39.1%	25% max.
<u>Open Space Coverage:</u>	>30%	30% min.
<u>Parking:</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1850	

### B. Proposed Changes

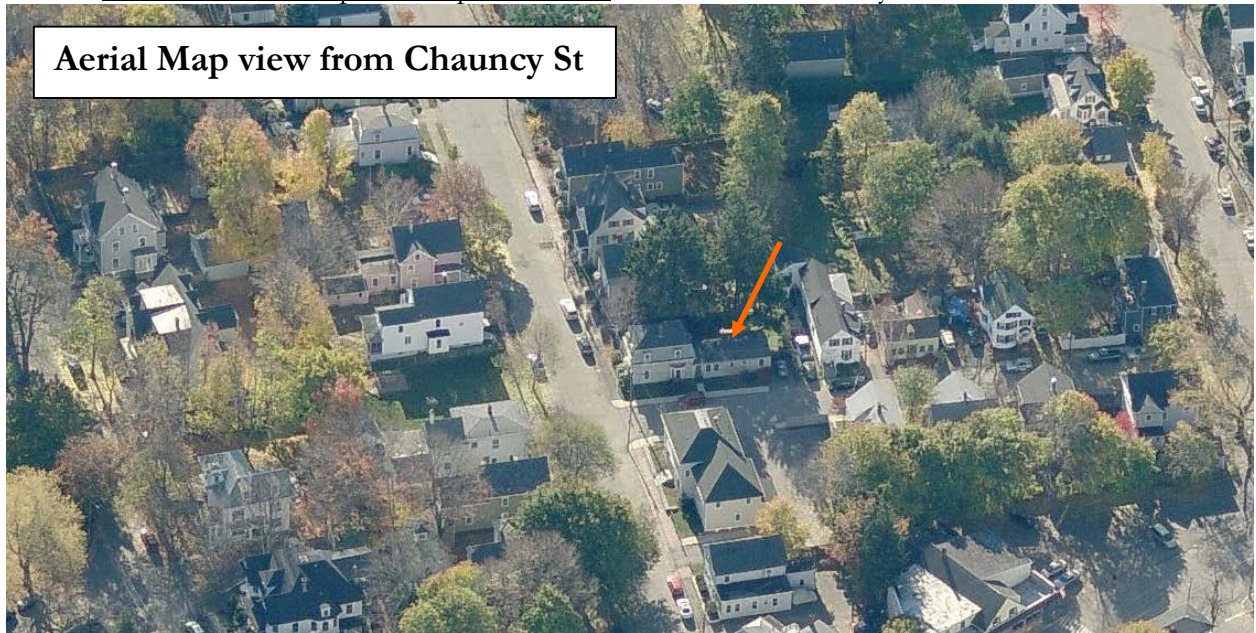
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two-family residential	Primarily residential uses
<u>Lot Area per Dwelling Unit:</u>	2,178 sq. ft.	7,500 sq. ft. min.
<u>Rear Yard:</u>	10'	10' min. (per 10.516.40)
<u>Height:</u>	24''	35' max.
<u>Building Coverage:</u>	39.3%	25% max.
<u>Open Space Coverage:</u>	>30%	30% min.
<u>Parking:</u>	2	4 min.

### C. Other Permits Required

- None.

### D. Neighborhood Context

- Surrounding Land Uses: Two and three-family residential, mixed use, single family residential
- Public View of Proposed Improvements: Visible from Chauncey St



## E. Previous Board of Adjustment Actions

February 18, 1997 – the Board **granted** variances to allow the construction of a 425 s.f., irregularly shaped one-story addition with a 7' side yard where 10' was required and a 10' rear yard where 20' was required and 35.3% building coverage where 25% was the maximum allowed. The variances were granted with the **stipulation** that the dwelling remain as a single family residence.

## F. Planning Department Comments

The applicant is providing additional materials clarifying where the parking is located for the current and proposed use. There is one space in the garage and the second space will be in the driveway on the rear of the lot next to the proposed second unit.

The applicant has recently had the lot surveyed and determined that the existing rear yard setback is actually 12' rather than 10' as originally presented. The applicant is providing additional materials to clarify the existing and proposed rear yard setback.

Although the existing space is fit out as a separate unit (with kitchen, sleeping, and bathroom facilities), it does not have a separate entrance and therefore is not technically considered a second dwelling unit by the City.

## G. 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.*



# NEW BUSINESS

## Case #7-1

Petitioners: Kristen J. Campbell  
 Property: 31 Cabot Street  
 Assessor Plan: Map 136, Lot 40  
 Zoning District: Mixed Residential Office  
 Description: Replace existing porch and stairs.  
 Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:  
 1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended or structurally altered without conforming to the requirements of the Ordinance.  
 2. A Variance from Section 10.521 to allow a left side yard of 7'6" and a right side yard of 6'6" where 10' is the minimum required and a building coverage of 43% where 40% is the maximum allowed.

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residential	Mix of residential and office uses
<u>Lot area:</u>	2,038 sq. ft.	7,500 sq. ft. min.
<u>Lot Area per Dwelling Unit:</u>	43%	40%min.
<u>Street Frontage:</u>	27.8'	100' min.
<u>Lot depth:</u>	73'	80' min.
<u>Front Yard:</u>	5'	5' min.
<u>Left Yard:</u>	2'	10' min.
<u>Right Yard:</u>	6'6"	10' min.
<u>Rear Yard:</u>	30'	15' min.
<u>Height:</u>	30'	40' max.
<u>Building Coverage:</u>	43%	40% max.
<u>Open Space Coverage:</u>	52.6%	25% min.
<u>Parking:</u>	1	2 min.
<u>Estimated Age of Structure:</u>	1915	

### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Left Yard:</u>	7'6"	10' min.
<u>Right Yard:</u>	6'6"	10' min.
<u>Rear Yard:</u>	30'	15' min.
<u>Height:</u>	10' 7"	40' max.
<u>Building Coverage:</u>	43%	40% max.
<u>Open Space Coverage:</u>	52.6%	25% min.

### C. Other Permits Required

- Historic District Commission

## D. Neighborhood Context

- Surrounding Land Uses: Single and two-family residential
- Public View of Proposed Improvements: Visible to direct abutters.





## E. Previous Board of Adjustment Actions

October 13, 1982 The Board denied a variance to convert two existing single family units on one lot to one duplex and on single family unit.

December 28, 1982 The Board granted variances to allow the subdivision of the existing lot into two nonconforming lots (31 and 33 Cabot St). Variances included lot size, building coverage, front yard setback, and street frontage.

## F. Planning Department Comments

This application meets the submission requirements and the applicant has discussed the project with Planning Department staff. The applicant will be bringing additional materials to the meeting that correctly reflect the dimensional relief requested for this project.

## G. 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.*



## Case #7-2

Petitioners:	Alyssa and Andrew Ervin
Property:	192 Park Street
Assessor Plan:	Map 149, Lot 53
Zoning District:	General Residence A
Description:	Construct a porch on the left side and a 2-story rear addition.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> <li>1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended or structurally altered without conforming to the requirements of the Ordinance.</li> <li>2. A Variance from Section 10.521 to allow a left side yard of 2' and a right side yard of 9' where 10' is the minimum required and a building coverage of 26.5% where 25% is the maximum allowed.</li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residential	Primarily residential uses
<u>Lot area:</u>	7,550 sq. ft.	7,500 sq. ft. min.
<u>Lot Area per Dwelling Unit:</u>	7,550 sq. ft.	4,356 sq. ft. min.
<u>Street Frontage:</u>	50'	100' min.
<u>Lot depth:</u>	151'	70' min.
<u>Front Yard:</u>	18'	15' min.
<u>Left Yard:</u>	0'	10' min.
<u>Right Yard:</u>	9'	10' min.
<u>Rear Yard:</u>	49'8"	20' min.
<u>Height:</u>	26'	35' max.
<u>Building Coverage:</u>	20%	25% max.
<u>Open Space Coverage:</u>	64.1%	30% min.
<u>Parking:</u>	4	2 min.
<u>Estimated Age of Structure:</u>	1920	

### B. Proposed Changes

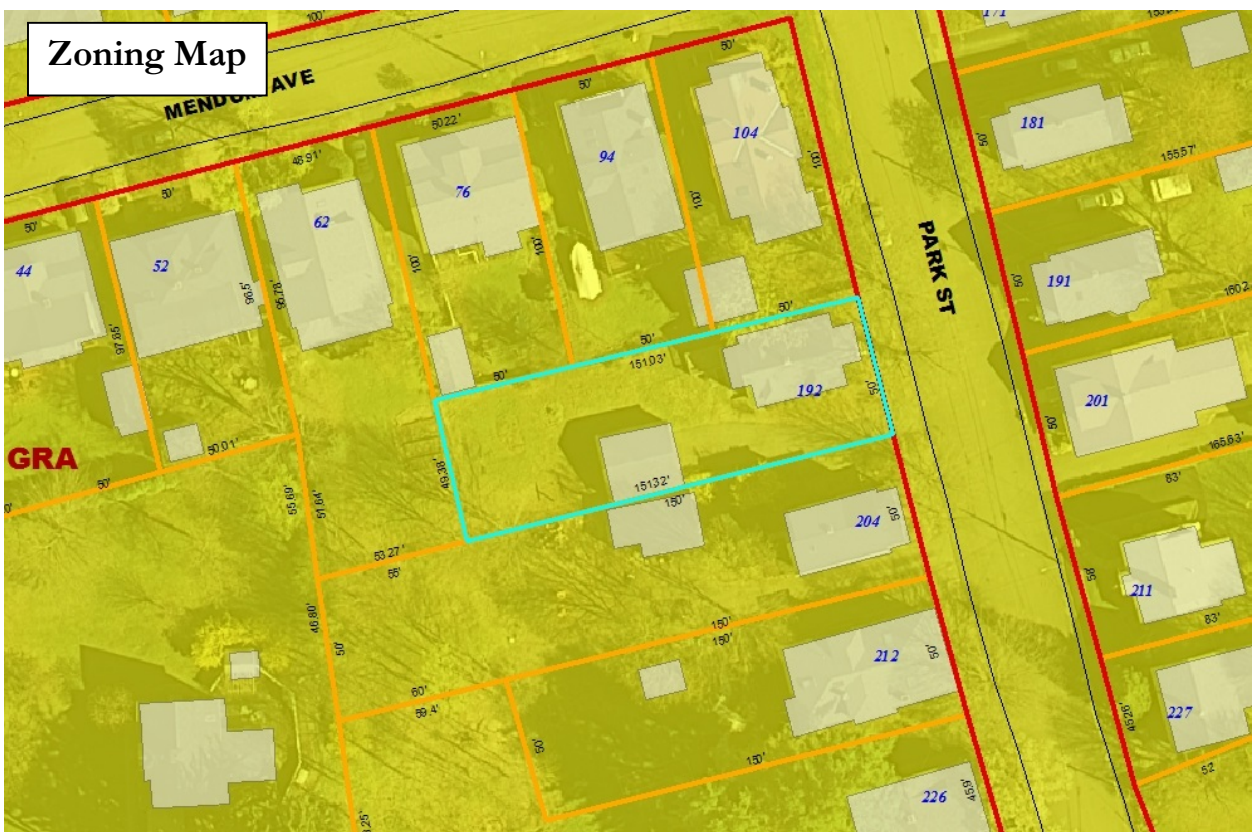
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Left Yard:</u>	2'	10' min.
<u>Right Yard:</u>	9'	10' min.
<u>Rear Yard:</u>	83'	20' min.
<u>Height:</u>	26'	35' max.
<u>Building Coverage:</u>	26.5%	25% max.
<u>Open Space Coverage:</u>	62.5%	30% min.

### C. Other Permits Required

None.

## D. Neighborhood Context

- Surrounding Land Uses: Single family residential
- Public View of Proposed Improvements: Partially visible from Park St.



## E. Previous Board of Adjustment Actions

April 16, 1985 The Board granted a variance to allow subdivision of an existing lot that would result in a nonconforming lot with less than the required minimum lot area.

## F. Planning Department Comments

This application meets the submission requirements.

## G. 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.*



## Case #7-3

Petitioner:	Debora A. Panebianco
Property:	306 Oriental Gardens
Assessor:	Map Plan 215, Lot 9-9
Zoning District:	Office Research
Description:	Place a new manufactured home on an existing concrete slab.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Variance from Section 10.440 to allow a manufactured home in a district where this use is not allowed.

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mobile home park	Primarily office and research uses

### B. Proposed Changes

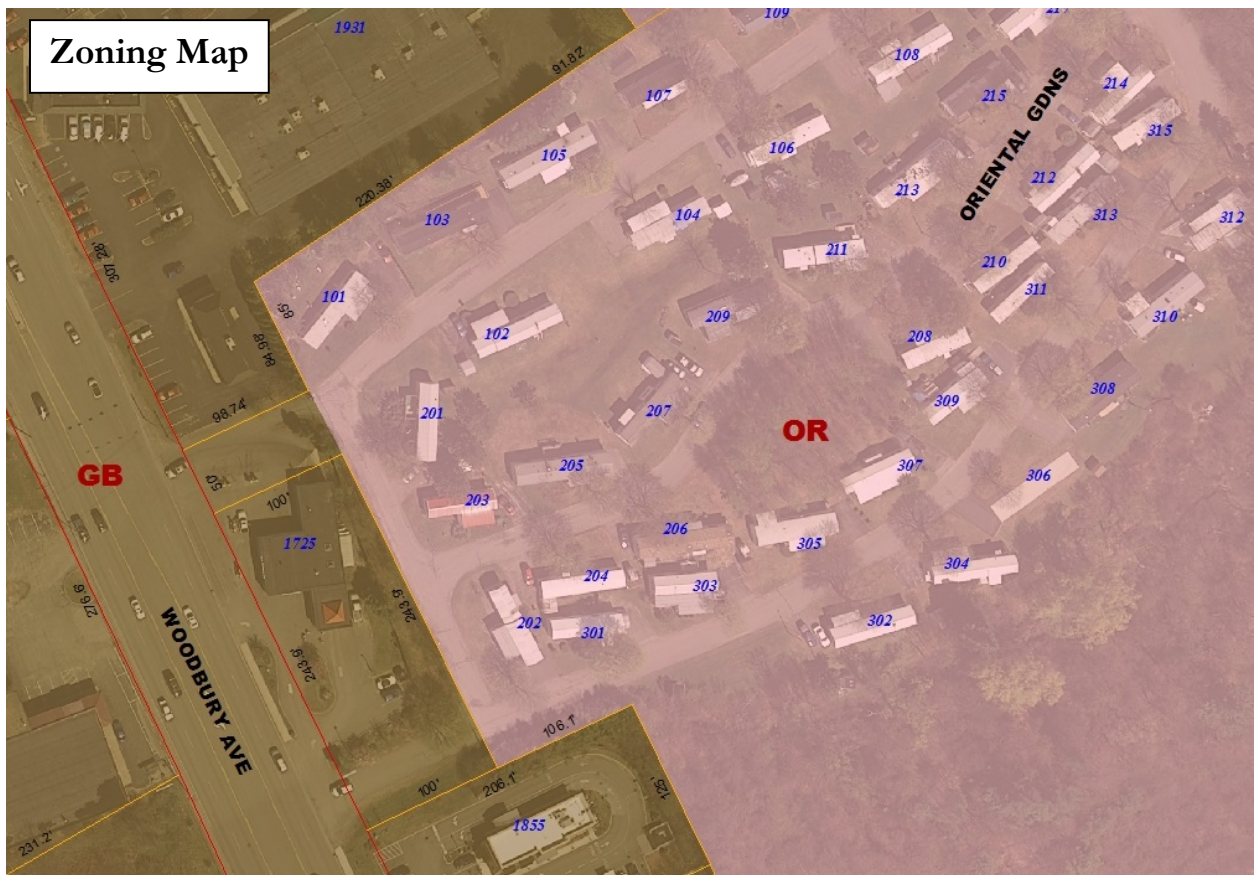
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Manufactured home	Primarily office and research uses

### C. Other Permits Required

- Wetlands Conditional Use Permit (Planning Board)

### D. Neighborhood Context

- Surrounding Land Uses: Manufactured homes.
- Public View of Proposed Improvements: Visible to direct abutters.



## E. Previous Board of Adjustment Actions

August 17, 2004 The Board granted a variance to allow an existing 10' x 53' manufactured home to be replaced with a new 14' x 56' mobile home in the same location (308 Oriental Gardens) in a district where mobile homes are not allowed.

August 21, 2007 The Board granted a variance to allow replacement of an 14' x 66' manufactured home in the same location (103 Oriental Gardens) with a new 14' x 66' manufactured home in a district where manufactured homes are not allowed.

April 15, 2008 The Board granted a variance to allow replacement of a 12' x 63' manufactured home in the same location with a new 13'4" x 66' manufactured home in a district where manufactured homes are not allowed.

## F. Planning Department Comments

This application meets the submission requirements and the applicant has discussed this project with Planning Department staff.



## G. 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.*



## Case #7-4

Petitioner:	Laurie J. Harrigan Revo Trust
Property:	116 Sherburne Avenue
Assessor Plan:	Map 112, Lot 37
Zoning District:	General Residence A <i>[NOTE: Legal notice incorrectly listed this zoning district as SRB]</i>
Description:	Construct 1 ½ story addition at rear of existing residence with new side entry deck and rear deck.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended or structurally altered without conforming to the requirements of the Ordinance. 1. A Variance from Section 10.521 to allow a building coverage of 27.1% where 25% is the maximum allowed.

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residential	Primarily residential uses
<u>Lot area:</u>	5,584 sq. ft.	7,500 sq. ft. min.
<u>Lot Area per Dwelling Unit:</u>	5,584 sq. ft.	4,356 sq. ft. min.
<u>Street Frontage:</u>	52.5'	100' min.
<u>Lot depth:</u>	110'	70' min.
<u>Front Yard:</u>	7'	15' min.
<u>Left Yard:</u>	20.5'	10' min.
<u>Right Yard:</u>	7.5'	10' min.
<u>Rear Yard:</u>	59'	20' min.
<u>Height:</u>	27.5'	35' max.
<u>Building Coverage:</u>	19.8%	25% max.
<u>Open Space Coverage:</u>	TBD	30% min.
<u>Parking:</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1990	

### B. Proposed Changes

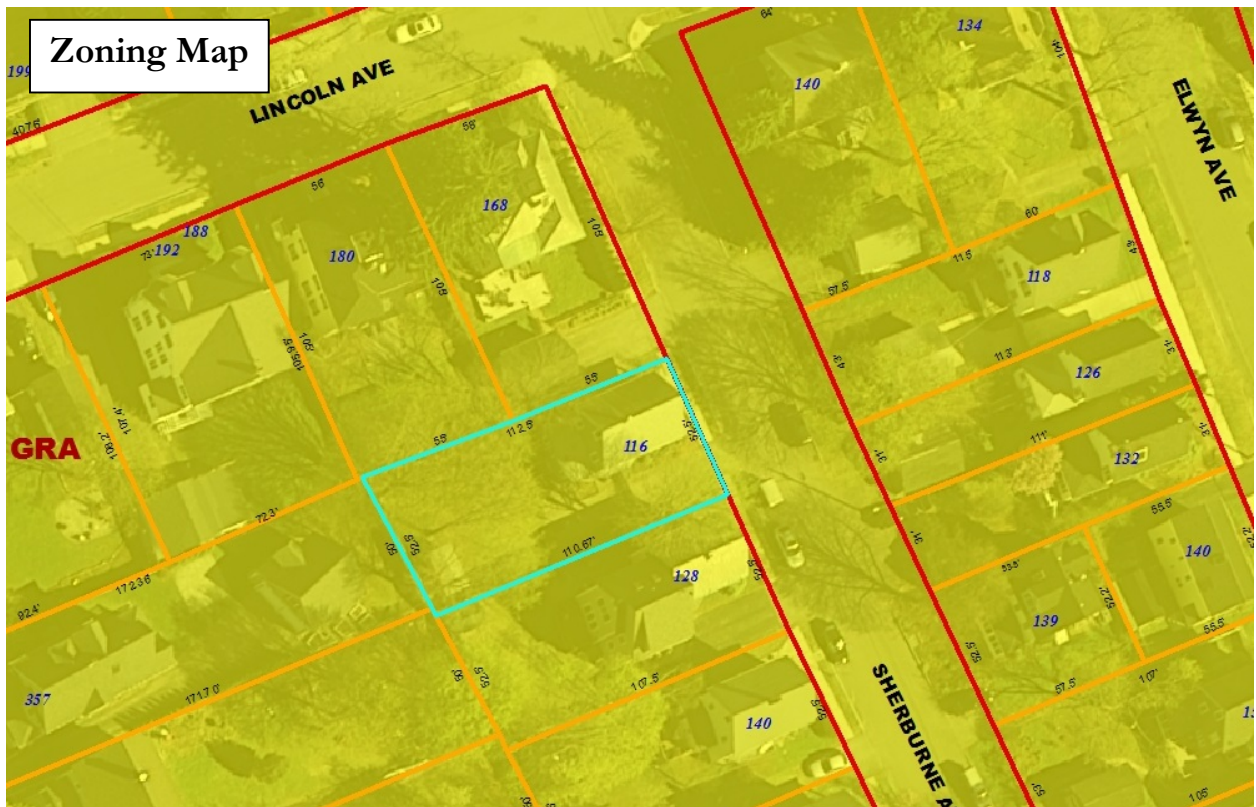
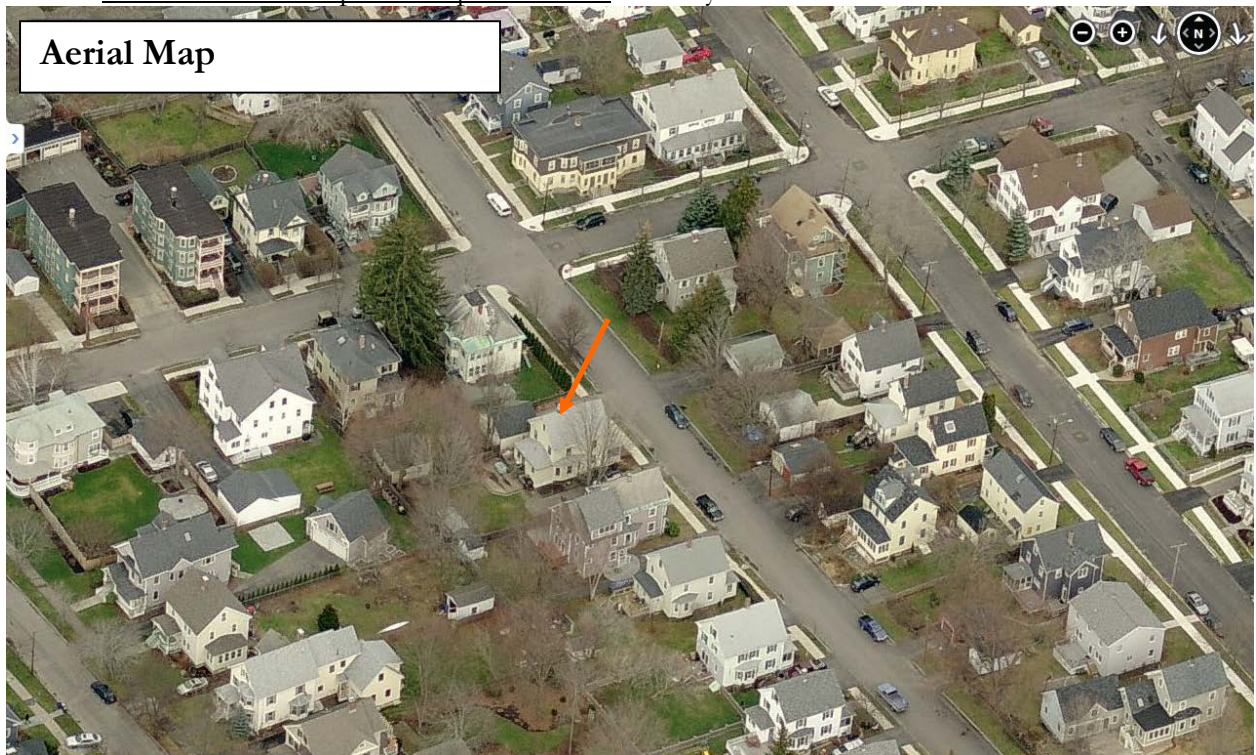
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Left Yard:</u>	10'	10' min.
<u>Right Yard:</u>	7.5'	10' min.
<u>Rear Yard:</u>	32'7"	20' min.
<u>Height:</u>	22.5'	35' max.
<u>Building Coverage:</u>	27.1%	25% max.
<u>Open Space Coverage:</u>	TBD	30% min.

### C. Other Permits Required

- None.

## D. Neighborhood Context

- Surrounding Land Uses: Single family residential.
- Public View of Proposed Improvements: Partially visible from Sherburne Ave.



## E. Previous Board of Adjustment Actions

November 21, 2014 The Board denied a request for variances to replace a one-story addition and deck with a 2-story 30' x 30' rear addition that would result in a building coverage of 30.9%.

## F. Planning Department Comments

The application meets the submission requirements.

## G. 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.*



## Case #7-5

Petitioner:	Algene and Sheila Bailey, Jr.
Property:	487 Ocean Road
Assessor Plan:	Map 283, Lot 33
Zoning District:	Single Residence A
Description:	Construct new front door overhang, attached 16' x 32' garage and 13' x 6' front deck, and 16' x 20' shed in backyard.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> <li>1. A Variance from Section 10.521 to allow a right side yard of 10' where a minimum of 20' is required and a building coverage of 26.6% where 10% is the maximum allowed.</li> <li>2. A Variance from Section 10.573.20 to allow a left side yard of 6' where 10' is the minimum required for an accessory structure.</li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residential	Primarily single family residential
<u>Lot area:</u>	10,000 sq. ft.	43,560 sq. ft. min.
<u>Lot Area per Dwelling Unit:</u>	10,000 sq. ft.	43,560 sq. ft. min.
<u>Street Frontage:</u>	100'	150' min.
<u>Lot depth:</u>	100'	200' min.
<u>Front Yard:</u>	34'	30' min.
<u>Left Yard:</u>	23'	20' min.
<u>Right Yard:</u>	26'	20' min.
<u>Rear Yard:</u>	23'	40' min.
<u>Height:</u>	<35'	35' max.
<u>Building Coverage:</u>	17.5%	10% max.
<u>Open Space Coverage:</u>	81.3%	50% min.
<u>Parking:</u>	6	2 min.
<u>Estimated Age of Structure:</u>	1963	

### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Front Yard:</u>	32'	30' min.
<u>Left Yard:</u>	10'	10' min. (per 10.573.20)
<u>Right Yard:</u>	10'	20' min.
<u>Rear Yard:</u>	6'	10' (per 10.573.20)
<u>Building Coverage:</u>	26.6%	10% max.
<u>Open Space Coverage:</u>	77.2%	50% min.
<u>Parking</u>	6	2 min.

### C. Other Permits Required

- None.

## D. Neighborhood Context

- Surrounding Land Uses: Single family residential
- Public View of Proposed Improvements: Visible from Ocean Rd





## E. Previous Board of Adjustment Actions

No BOA history found.

## F. Planning Department Comments

The application meets the submission requirements and the applicant has discussed this project with the Planning Department staff.

## G. 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.*



## Case #7-6

Petitioner:	Portsmouth Land Acquisition, LLC
Property:	428 Route 1 By-Pass (Building 2)
Assessor Plan:	Map 172, Lot 1
Zoning District:	Industrial
Description:	Allow dog daycare and boarding facility with associated parking.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Variance from Section 10.440 to allow a dog daycare and boarding facility in a district where this use is not permitted.

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant	Primarily industrial uses

### B. Proposed Changes

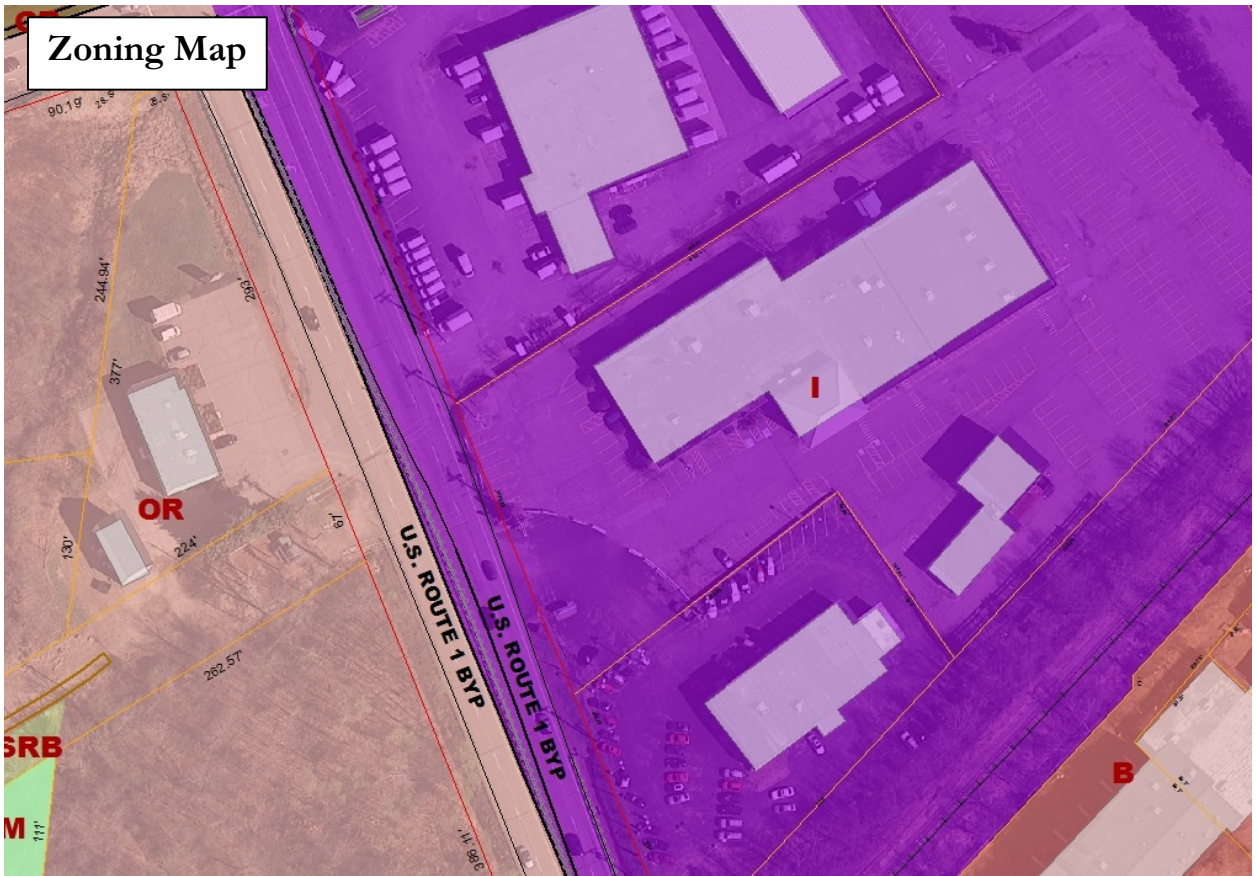
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Kennel / dog daycare	Primarily industrial uses
<u>Parking:</u>	13	Not specified

### C. Other Permits Required

- None.

### D. Neighborhood Context

- Surrounding Land Uses: Car dealership, railroad, truck rental and storage, manufacturing
- Public View of Proposed Improvements: Visible to direct abutters.



## E. Previous Board of Adjustment Actions

No BOA history found.

## F. Planning Department Comments

This application meets the submission requirements and the applicant has discussed the project with the Planning Department staff. This area is currently being considered by the City Council to be rezoned to Gateway. This use is not allowed in the proposed zoning either.

## G. 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.*