

TO: Zoning Board of Adjustment
FROM: Juliet Walker, Planning Department
DATE: 12/9/2015
RE: December 15, 2015 Zoning Board of Adjustment Meeting

OLD BUSINESS

1. 536 Marcy Street
2. 13 McDonough Street (2nd request to postpone)
3. 140 Orchard Street
4. 100 Peverly Hill Road

NEW BUSINESS

1. 18 Manning Street
2. 169 Madison Street
3. 209 Clinton Street

OLD BUSINESS

Case # 11-3

Petitioner:	Douglas F. Fabbriatore
Property:	536 Marcy Street
Assessor Plan:	Map 101, Lot 56
Zoning District:	General Residence B
Description:	Construct second story addition.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> 1. A Variance from Section 10.321 to allow a lawful nonconforming building or structure to be extended, enlarged or structurally altered except in conformance with the Ordinance. 2. A Variance from Section 10.521 to allow a 0'± left side yard setback where 10' is required.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residence	Primarily residential uses
<u>Lot area (sq. ft.):</u>	3,209	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,209	5,000 min.
<u>Street Frontage (ft.):</u>	40	80 min.
<u>Lot depth (ft.):</u>	81	60 min.
<u>Front Yard (ft.):</u>	2	5 min.
<u>Left Yard (ft.):</u>	0	10 min.
<u>Right Yard (ft.):</u>	15	10 min.
<u>Rear Yard (ft.):</u>	32	25 min.
<u>Height (ft.):</u>	28	35 max.
<u>Building Coverage (%):</u>	31.69	30 max.
<u>Open Space Coverage (%):</u>	>25	25 min.
<u>Parking (# of spaces):</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1873	

B. Proposed Changes

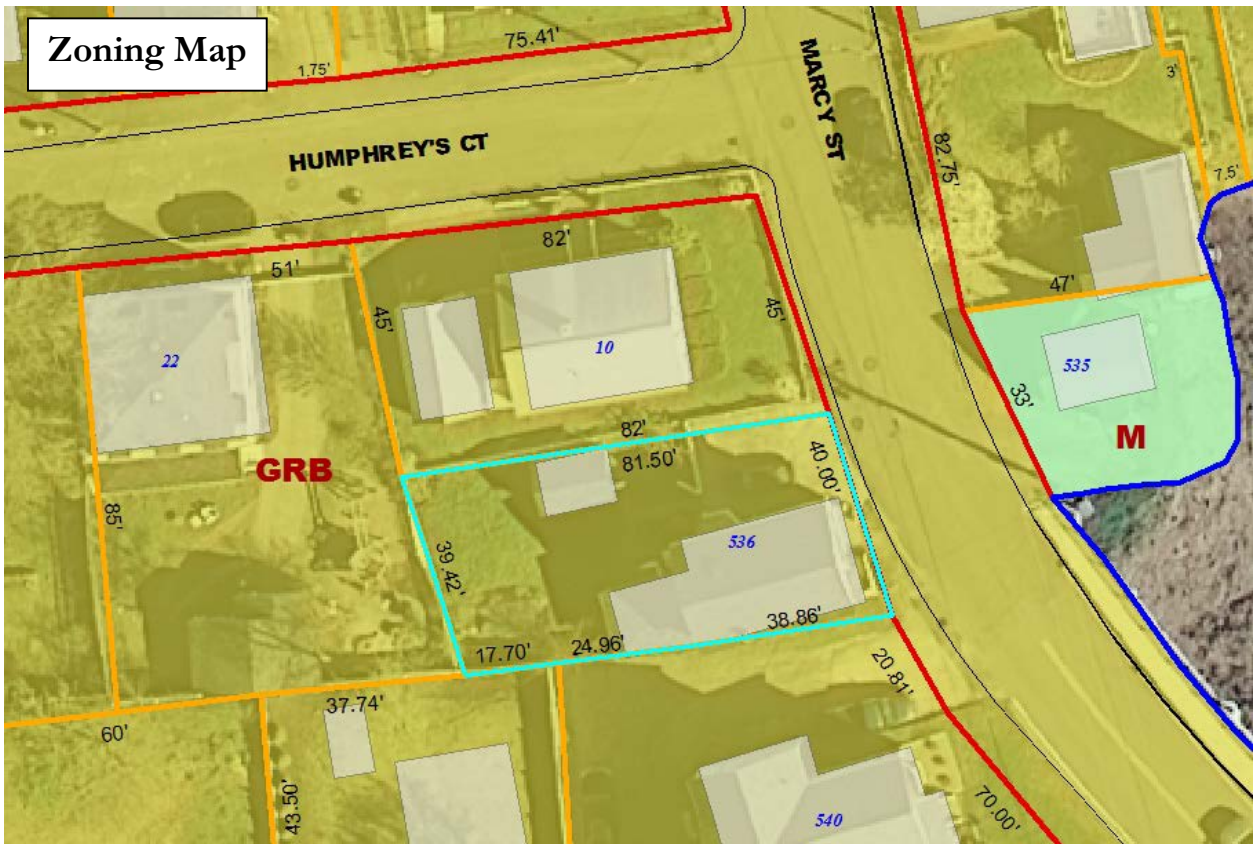
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Left Yard (ft.):</u>	0	10 min.
<u>Right Yard (ft.):</u>	>15	10 min.
<u>Rear Yard (ft.):</u>	32	25 min.
<u>Height (ft.):</u>	<21	35 max.

C. Other Permits Required

- Historic District Commission Certificate of Approval

D. Neighborhood Context

- Surrounding Land Uses: Single family residences, city pump station



E. Previous Board of Adjustment Actions

November 16, 1999 – The Board **granted** Variances to allow the following: a) A 4' x 7'5" front replacement landing & stairs with a 1'6"± front yard, 5' required, and a 6'± left side yard, 10' required; and b) An 8'6" front bay window with a 5'± front yard, 5' required.

July 16, 2013 – The Board **granted** variances to allow a 2'10" front yard setback, 5' required and a 0' left side yard setback, 10' required for the construction of an 11' x 16' rear addition over the existing kitchen, lifting the main roof over the existing front section of the home and adding shed dormers. A variance for building coverage was determined to not be needed.

F. Planning Department Comments

The applicant has discussed the project with the Planning Department staff. The applicant has been advised that he will need to provide an explanation of how his project meets the five criteria for granting the variance.

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 # 11-8

Petitioner:	Tammy Gewehr
Property:	13 McDonough Street
Assessor Plan:	Map 138, Lot 49
Zoning District:	Mixed Residential Business
Description:	Provide less than the required off-street parking for a Bed and Breakfast.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> 1. A Variance from Section 10.1112.30 to allow two off-street parking spaces to be provided where three spaces are required for a Bed and Breakfast use. 2. A Variance from Section 10.1114.32 to allow off-street parking spaces that do not comply with the vehicular circulation requirements of the Ordinance.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residential	Mix of residential and some business uses
<u>Lot area (sq. ft.):</u>	1,568	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,568	7,500 min.
<u>Street Frontage (ft.):</u>	30	100 min.
<u>Lot depth (ft.):</u>	49	80 min.
<u>Front Yard (ft.):</u>	4.5	5 min.
<u>Left Yard (ft.):</u>	12	10 min.
<u>Right Yard (ft.):</u>	2' (to house)	10 min.
<u>Rear Yard (ft.):</u>	7"	15 min.
<u>Height (ft.):</u>	<40'	40 max.
<u>Building Coverage (%):</u>	42	40 max.
<u>Open Space Coverage (%):</u>	>25	25 min.
<u>Parking (# of spaces):</u>	1	2 min.
<u>Estimated Age of Structure:</u>	1840	

B. Proposed Changes

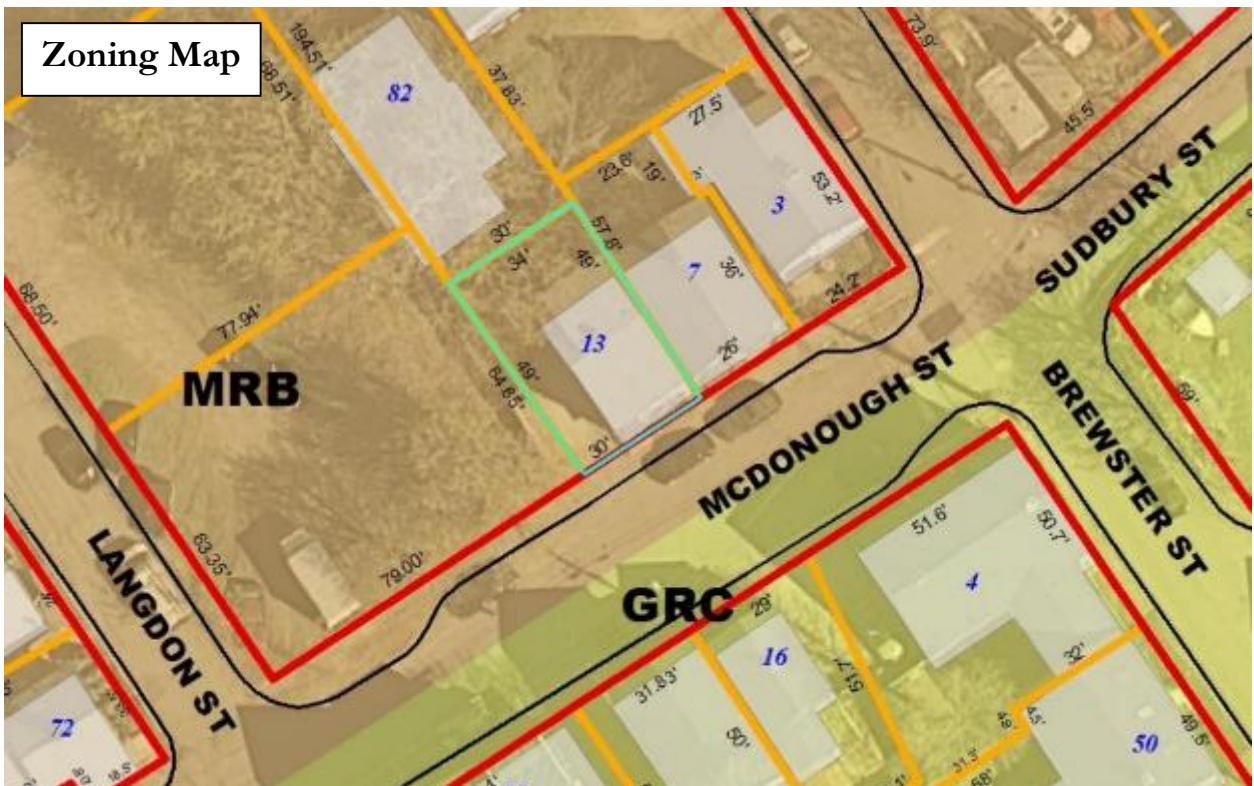
	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Bed and breakfast	Mix of residential and some business uses
<u>Open Space Coverage (%):</u>	20	25 min.
<u>Parking (# of spaces):</u>	3	2 (nonconforming) min.

C. Other Permits Required

- None.

D. Neighborhood Context

- Surrounding Land Uses: Single family residential, vacant land, 4-8 unit apartments, residential condo



E. Previous Board of Adjustment Actions

December 16, 2014 - The Board granted variances to relocate a 6' x 8' shed to the right rear of the property allowing the following: 1) a 2' right side yard setback, 5' required; and 2) 42% building coverage, where 40% is the maximum allowed.

F. Planning Department Comments

The application meets the submission requirements and the applicant has discussed the change of use request with the Planning Department staff. After the initial advertising of this application, the applicant confirmed that she would not meet the open space coverage requirement. Therefore, in addition to the advertised relief, the applicant will also need relief from the open space coverage.

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 # 11-14

Petitioners:	Christopher L. & Anna D. Shultz
Property:	140 Orchard Street
Assessor Plan:	Map 149, Lot 38
Zoning District:	General Residence A
Description:	Rebuild barn in existing footprint and add separate dwelling unit.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> 1. A Variance from Section 10.321 to allow a lawful nonconforming building or structure to be reconstructed except in conformance with the Ordinance. 2. A Variance from Section 10.513 to allow a second free-standing dwelling on a lot where only one free-standing dwelling is allowed. 3. A Variance from Section 10.521 to allow 4,218.75. \pm s.f per dwelling unit where 7,500 s.f. is required. 4. A Variance from Section 10.573.20 to allow a rear yard setback of 10^{\pm} where 14.8' is required. 5. A Variance from Section 10.1112.30 to allow two off-street parking spaces to be provided where four are required.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residence	Primarily residential uses
<u>Lot area (sq. ft.):</u>	8,437.50	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,437.50	7,500 min.
<u>Street Frontage (ft.):</u>	75	100 min.
<u>Lot depth (ft.):</u>	112.5	70 min.
<u>Front Yard (ft.):</u>	13	15 min.
<u>Right Yard (ft.):</u>	15	10 min.
<u>Left Yard (ft.):</u>	33	10 min.
<u>Rear Yard (ft.):</u>	10	20 min.
<u>Height (ft.):</u>	<35	35 max.
<u>Building Coverage (%):</u>	18.55	25 max.
<u>Open Space Coverage (%):</u>	>30	30 min.
<u>Parking (# of spaces):</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1910	

B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two single family dwellings on one lot	Primarily residential uses
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,218.75	7,500 min.
<u>Right Yard (ft.):</u>	15	10 min.
<u>Left Yard (ft.):</u>	16	10 min.
<u>Rear Yard (ft.):</u>	10	20 min.

<u>Height (ft.):</u>	19.75	35	max.
<u>Building Coverage (%):</u>	18.55%	25	max.
<u>Open Space Coverage (%):</u>	ok	30	min.
<u>Parking (# of spaces):</u>	2	4	min.

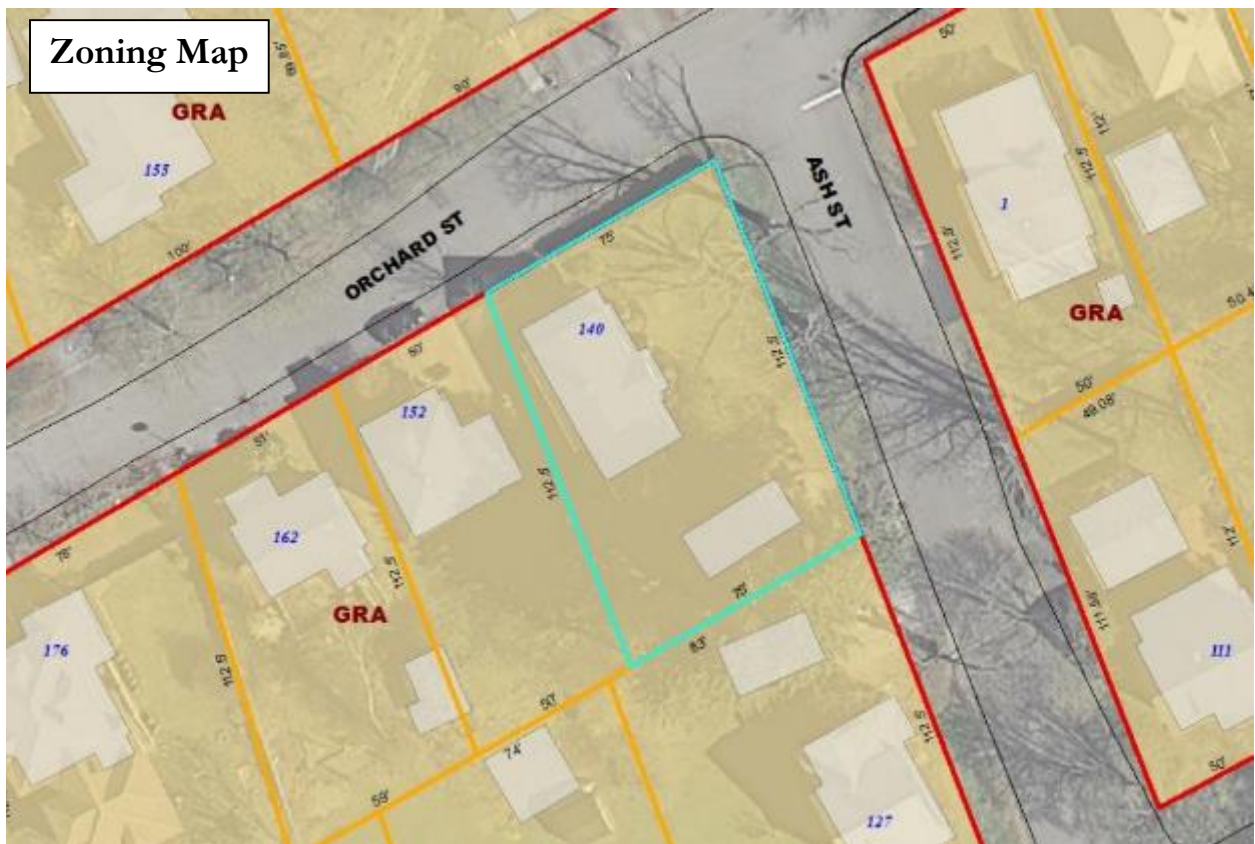
C. Other Permits Required

- None.

D. Neighborhood Context

- Surrounding Land Uses: Single family and two-family residential





E. Previous Board of Adjustment Actions

No BOA history found.

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

 - (c) *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 # 11-15

Petitioners:	Ryan & Jennifer Smith
Property:	100 Peverly Hill Road
Assessor Plan:	Map 243, Lot 51
Zoning District:	Single Residence B
Description:	Allow two residential dwelling units and a two story deck addition.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> 1. A Variance from Section 10.321 to allow a lawful nonconforming building or structure to be extended, enlarged or structurally altered except in conformance with the Ordinance. 2. A Variance from Section 10.440 to allow a two-family dwelling where only a single family dwelling is allowed. 3. A Variance from Section 10.521 to allow a 4791.6± s.f. lot area per dwelling unit where 15,000 is required. 4. A Variance from Section 10.516.40 to allow a 21'± front yard setback where 24' is required for an unenclosed deck.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residential	Primarily single family residential
<u>Lot area (sq. ft.):</u>	9,583.20	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,583.20	15,000 min.
<u>Street Frontage (ft.):</u>	120	100 min.
<u>Lot depth (ft.):</u>	80	100 min.
<u>Front Yard (ft.):</u>	9	30 min.
<u>Right Yard (ft.):</u>	40	10 min.
<u>Left Yard (ft.):</u>	40	10 min.
<u>Rear Yard (ft.):</u>	43	30 min.
<u>Height (ft.):</u>	1.75 stories	35 max.
<u>Building Coverage (%):</u>	11.63	20 max.
<u>Open Space Coverage (%):</u>	80.02	40 min.
<u>Parking (# of spaces):</u>	4	min.
<u>Estimated Age of Structure:</u>		

B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two-family residential	Primarily single family residential
<u>Lot area (sq. ft.):</u>	9,583.20	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,791.60	15,000 min.
<u>Front Yard (ft.):</u>	21	30 min.
<u>Right Yard (ft.):</u>	28	10 min.
<u>Rear Yard (ft.):</u>	<30	30 min.
<u>Building Coverage (%):</u>	12.89	20 max.
<u>Open Space Coverage (%):</u>	78.76	40 min.
<u>Parking (# of spaces):</u>	4	min.

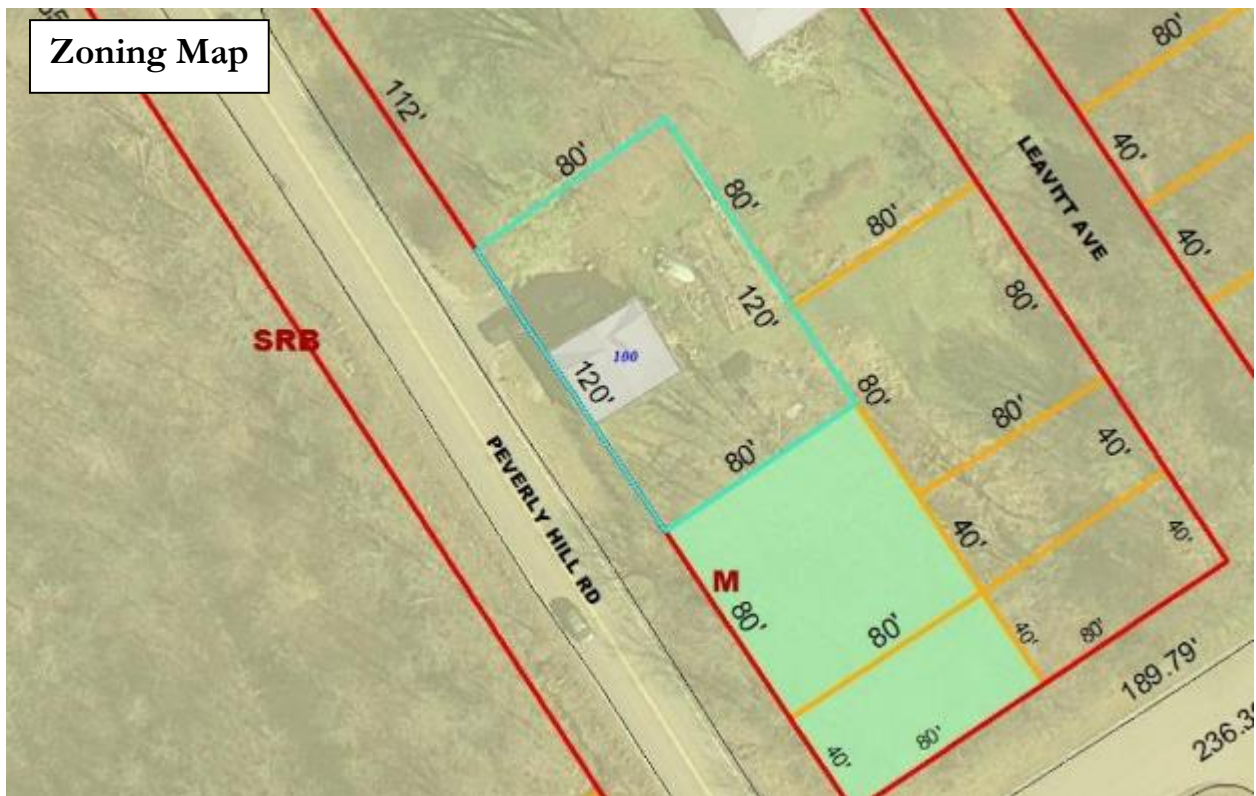
C. Other Permits Required

- None.

D. Neighborhood Context

- Surrounding Land Uses: Single family residential, vacant land





E. Previous Board of Adjustment Actions

November 24, 2015 The Board voted to **table** the petition until the December 15, 2015 meeting requesting that the applicants work with the Planning Department to obtain additional information on the zoning history of the property and specific information on how the property had been assessed in the past. The applicants were also requested to provide proposed floor plans.

F. Planning Department Comments

The applicant has consulted with Planning Department staff about this request and has been reviewing City files and undertaking additional research to determine whether the property can be classified as a legal non-conforming two-family residential use. In order for that determination to be made, there has to be evidence that the property was built as a two-family unit prior to the district becoming a single family residence zoning district, and that it has been continuously used as such since that time. In order to complete the additional research required, the applicant will likely be requesting a postponement to the January Board of Adjustment hearing. The staff would support the Board's granting of a postponement so that this matter can be further researched.

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 # 12-1

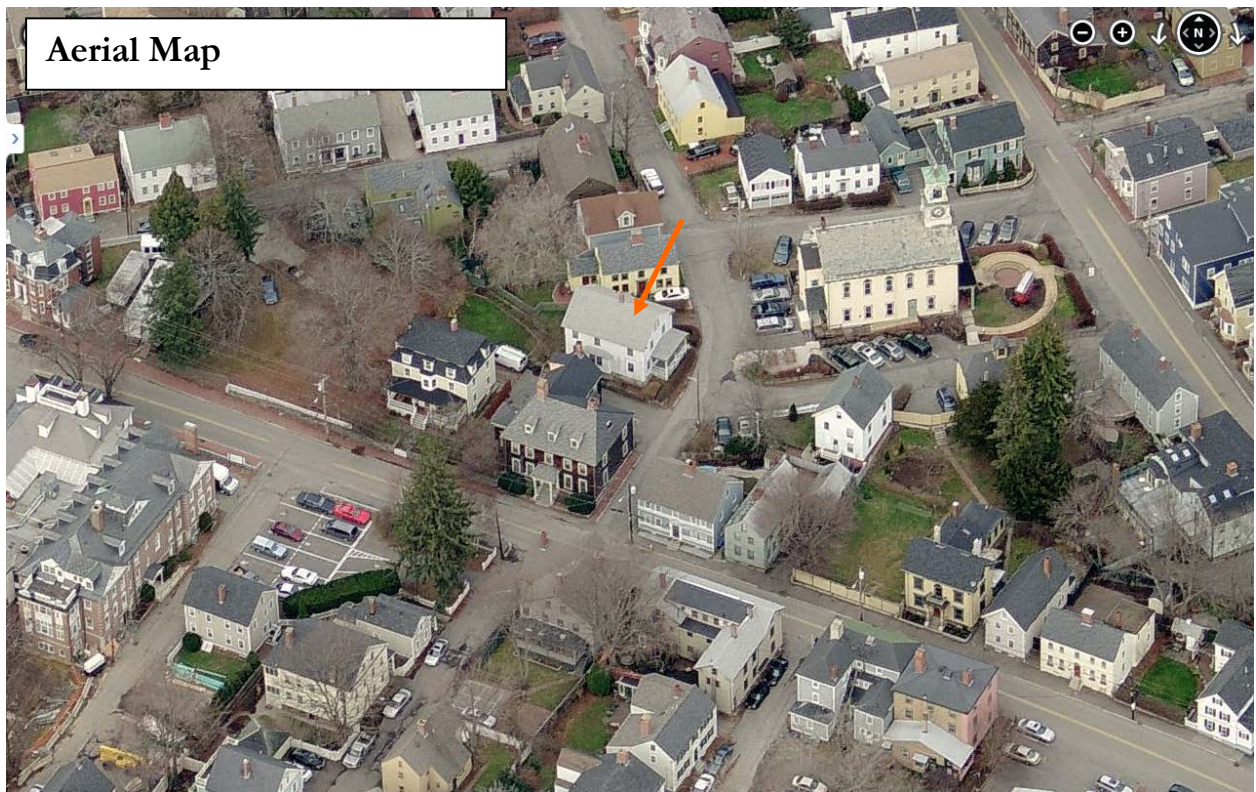
Petitioner:	Judith L. Hiller & John B. Wilkens
Property:	18 Manning Street
Assessor Plan:	Map 103, Lot 67
Zoning District:	General Residence B
Description:	Appeal decision of the Historic District Commission
Request:	Appeal the decision of the Historic District Commission to deny a Certificate of Approval for the use of full screens on windows instead of half screens.

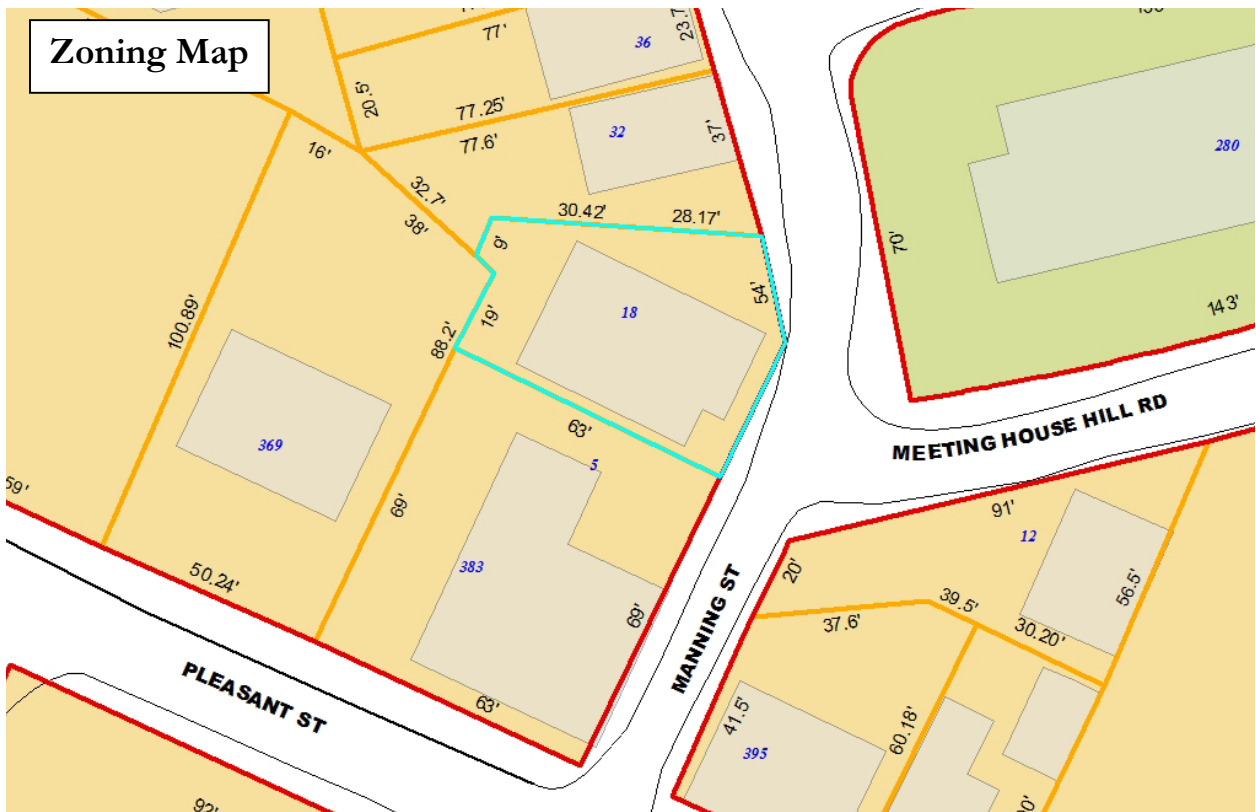
A. Planning Department Comments

The Applicant applied to the Historic District Commission (HDC) for a Certificate of Approval from the Historic District Commission which was denied on October 7, 2015.

Although the appellants' request is termed an "appeal" from the decision of the HDC, it is unlike the other types of appeals and applications that the Board receives. The role of the Board of Adjustment is not to review the HDC's action, but instead to conduct a new hearing and make its own decision on the matter in issue using the HDC criteria.

B. Neighborhood Context





C. Review Criteria

The Board must conduct a new hearing and evaluate the application with respect to the standards for the HDC contained in the Zoning Ordinance.

Certificate of Approval

In considering the application for a Certificate of Approval, the Board's decision must be based on the Purpose and Objectives in Section 10.631, Review Factors in Section 10.635.60, and the Review Criteria in Section 10.635.70. The Board's action on the application will be either to grant a Certificate of Approval or to issue a Notice of Disapproval.

10.631 Purpose and Objectives

10.631.10 The Historic District is established to preserve the architectural and historic resources of the City of Portsmouth; to foster its architectural and historic character and its sense of place; to conserve property values; to strengthen the local economy; and to promote the use of the District for education, pleasure and welfare of residents and visitors.

10.631.20

This Section is intended to achieve the following objectives:

- (1) To preserve the integrity of the Historic District;
- (2) To maintain the special character of the District as reflected in the scale, mass, location and style of buildings;
- (3) To assess the historical and architectural value of buildings and structures, their settings, and their local or national significance in terms of the represented time period, visible architecture, construction materials, or relationship to a historically recognized individual or event;

- (4) To encourage designs for new buildings and structures, additions to buildings and structures, and the reuse of existing buildings and structures that complement and enhance the City's architectural and historic character and contribute to its sense of place;
- (5) To foster Portsmouth's heritage and economic well-being through the conservation and enhancement of property values; and
- (6) To promote the District's contribution to the education, pleasure and welfare of the City's residents and visitors.

10.635.60 Review Factors

In conducting reviews under this Section, the Commission shall consider factors that render a site architecturally or historically significant, including:

- (1) the historical time period, context or immediate setting;
- (2) the structure's architecture, including stylistic features, design elements and mass;
- (3) construction materials, including technological systems and features; and
- (4) importance relative to a historically recognized individual or event.

10.635.70 Review Criteria

The Commission shall review an application for a Certificate of Approval and determine whether the application is consistent with and furthers the purpose and objectives set forth in Section 10.631. In making this determination, the Commission shall make Findings of Fact by referring to the following criteria:

- (1) The special and defining character of surrounding properties, including architectural details, design, height, scale, mass, width of surrounding structures, street frontages, types of roofs, facades and openings.
- (2) The significant historical or architectural value of an existing structure for which a Certificate is sought, including its setting, scale and mass; and the general size of new construction with consideration of such factors as height, width, materials and architectural details.
- (3) The extent to which a proposed project's exterior design, scale, arrangement, texture, detailing and materials complement or enhance the existing structure and are compatible with surrounding properties.
- (4) Encouraging the innovative use of technologies, materials and practices provided these are compatible with the character of surrounding properties.

Case #12-2

Petitioners:	Abbie J. & Lee M. Frank
Property:	169 Madison Street
Assessor Plan:	Map 145, Lot 53
Zoning District:	General Residence C
Description:	Replace rear deck & porch with 18'± x 24'± two- story addition.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> 1. A Variance from Section 10.321 to allow a lawful nonconforming building to be extended, enlarged or structurally altered except in conformity with the Ordinance. 2. A Variance from Section 10.521 to allow a left side yard setback of 0'± where 10' is required. 3. A Variance from Section 10.521 to allow 42.45%± building coverage where 35% 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 (sq. ft.):</u>	3,477.00	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,477.00	3,500 min.
<u>Street Frontage (ft.):</u>	32.5	70 min.
<u>Lot depth (ft.):</u>	105	50 min.
<u>Front Yard (ft.):</u>	2	5 min.
<u>Right Yard (ft.):</u>	4.5	10 min.
<u>Left Yard (ft.):</u>	0	10 min.
<u>Rear Yard (ft.):</u>	2	20 min.
<u>Height (ft.):</u>	28.8	35 max.
<u>Building Coverage (%):</u>	37.13%	35% max.
<u>Open Space Coverage (%):</u>	36.99%	20% min.
<u>Parking (# of spaces):</u>	>2	2 min.
<u>Estimated Age of Structure:</u>	1882	

B. Proposed Changes

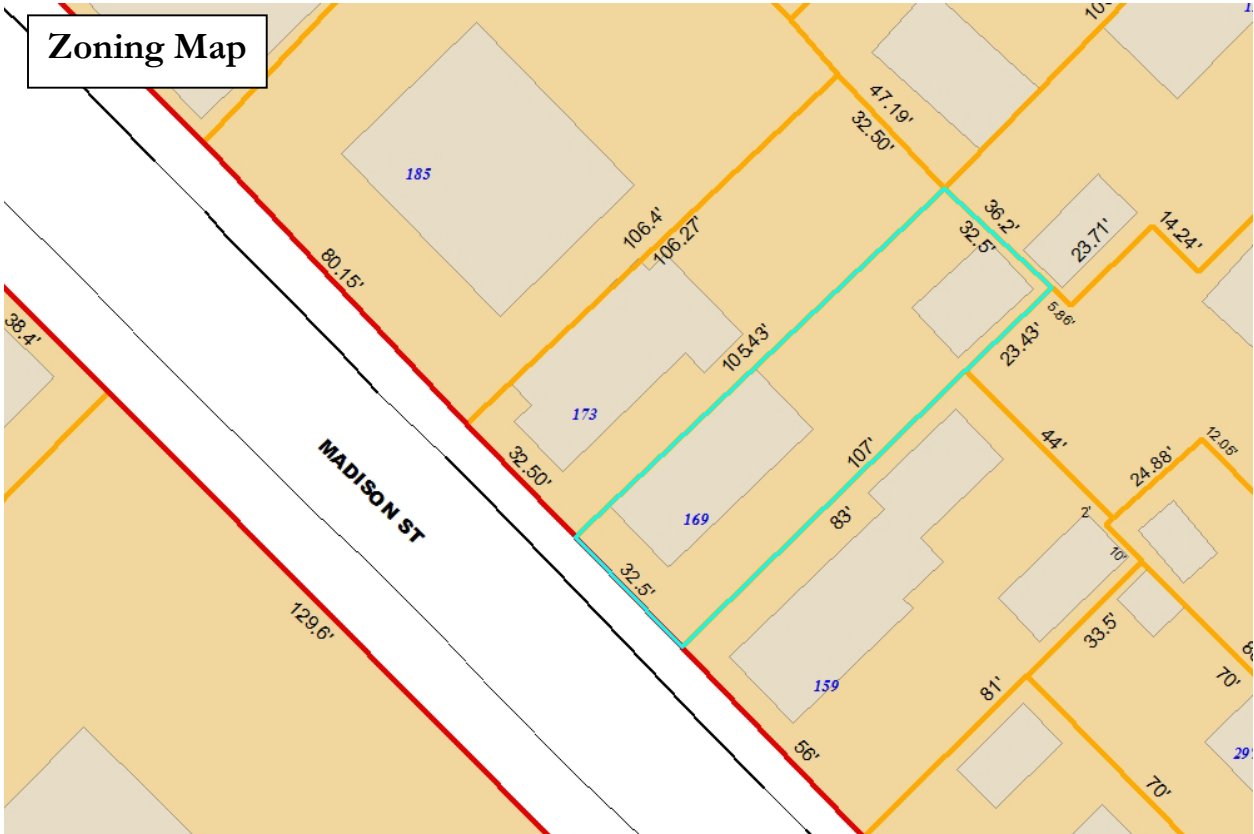
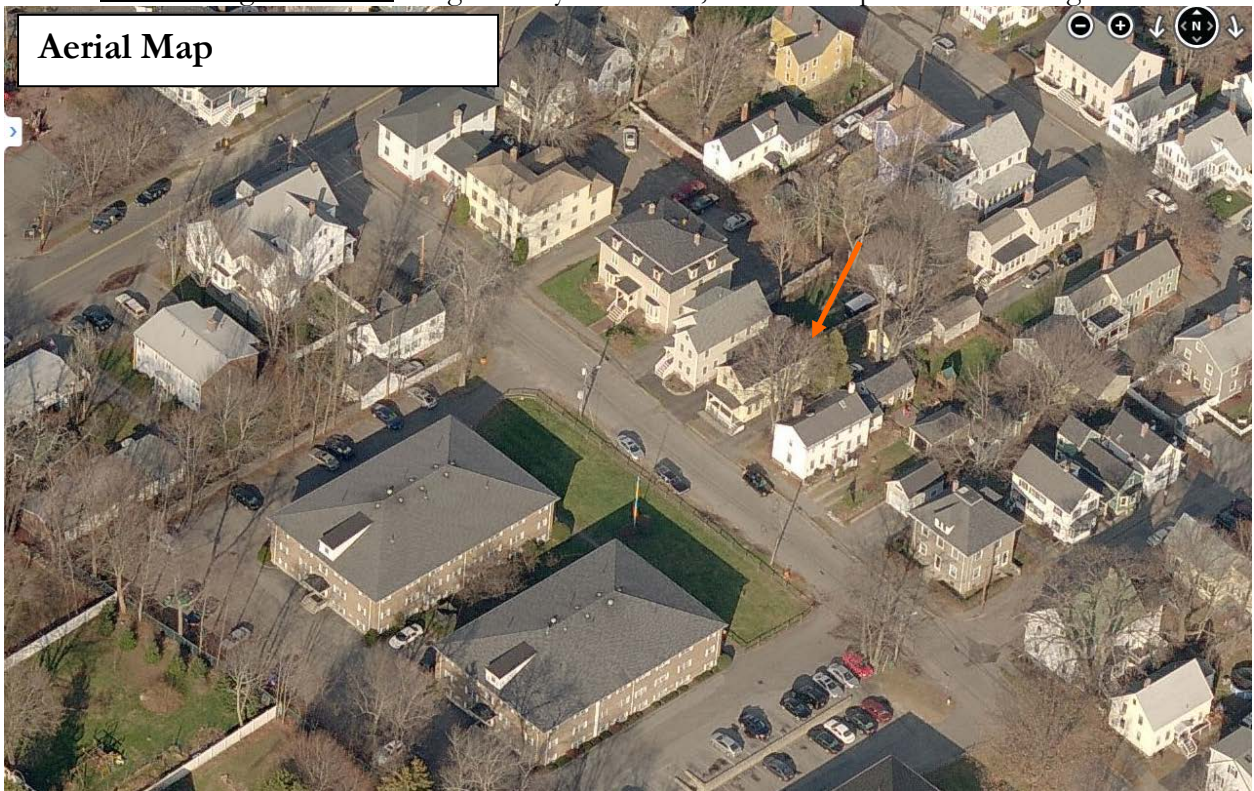
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Right Yard (ft.):</u>	13.5 (to addition)	10 min.
<u>Left Yard (ft.):</u>	0	10 min.
<u>Rear Yard (ft.):</u>	32.8 (to addition)	20 min.
<u>Height (ft.):</u>	29.4	35 max.
<u>Building Coverage (%):</u>	42.45%	35% max.
<u>Open Space Coverage (%):</u>	31.67%	20% min.

C. Other Permits Required

- None.

D. Neighborhood Context

- Surrounding Land Uses: Single family residential, multi-unit apartment buildings



E. Previous Board of Adjustment Actions

No history found.

F. Planning Department Comments

The application meets the submission requirements and the applicant has discussed this project with the planning department.

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 #12-3

Petitioner:	Pamela Gould
Property:	209 Clinton Street
Assessor Plan:	Map 159, Lot 27
Zoning District:	General Residence A
Description:	Construct a 10'6" ± x 30'± single 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"> 1. A Variance from Section 10.321 to allow a lawful nonconforming building to be extended, enlarged or structurally altered except in conformity with the Ordinance. 2. A Variance from Section 10.521 to allow a left side yard setback of 9'± where 10' is required. 3. A Variance from Section 10.521 to allow 27.5% building coverage 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 (sq. ft.):</u>	4,782	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,782	7,500 min.
<u>Street Frontage (ft.):</u>	46	100 min.
<u>Lot depth (ft.):</u>	100	70 min.
<u>Front Yard (ft.):</u>	19.5	15 min.
<u>Right Yard (ft.):</u>	17	15 min.
<u>Left Yard (ft.):</u>	8	10 min.
<u>Rear Yard (ft.):</u>	52.5	20 min.
<u>Height (ft.):</u>	28	35 max.
<u>Building Coverage (%):</u>	21.12%	25% max.
<u>Open Space Coverage (%):</u>	70.60%	30% min.
<u>Parking (# of spaces):</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1870	

B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Right Yard (ft.):</u>	17	15 min.
<u>Left Yard (ft.):</u>	9 (to addition)	10 min.
<u>Rear Yard (ft.):</u>	42.5 (to addition)	20 min.
<u>Height (ft.):</u>	28	35 max.
<u>Building Coverage (%):</u>	27.50%	25% max.
<u>Open Space Coverage (%):</u>	64.22%	30% min.

C. Other Permits Required

- None.

D. Neighborhood Context

- Surrounding Land Uses: Single family residential



E. Previous Board of Adjustment Actions

No history found.

F. Planning Department Comments

The application meets the submission requirements and the applicant has discussed the 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.*