

TO: Zoning Board of Adjustment  
FROM: Peter Stith, AICP, Planning Department  
DATE: July 12, 2017  
RE: Zoning Board of Adjustment July 18, 2017 Meeting

## **OLD BUSINESS**

1. None

## **NEW BUSINESS**

1. 88 Sims Ave.
2. 525 Maplewood Ave.
3. 165 Deer St.
4. 217 Broad St.
5. 40 Winter St.
6. 1490 Islington St.

**Case #7-1**

Petitioners:	Chance & Edward Allen
Property:	88 Sims Avenue
Assessor Plan:	Map 232, Lot 131
Zoning District:	Single Residence B (SRB)
Description:	Construct a new 208 s.f. addition.
Requests:	Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.521 to allow a 26.5' front yard setback where 30' is required.

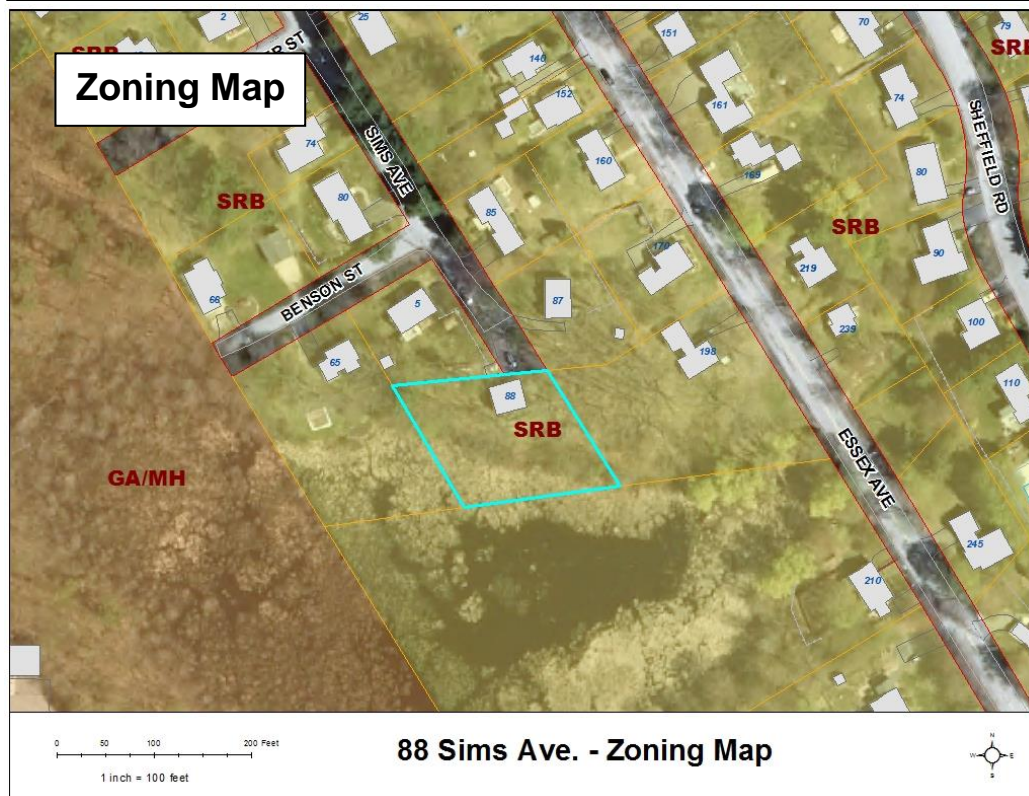
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Single-family/addition	Primarily Single-family
<u>Lot area (sq. ft.):</u>	21,086	21,086	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	21,086	21,086	15,000 min.
<u>Street Frontage (ft.):</u>	44	44	100 min.
<u>Lot depth (ft.):</u>	>100	>100	100 min.
<u>Primary Front Yard (ft.):</u>	19.6 (house)	<b>26.5 (addition)</b>	30 min.
<u>Right Yard (ft.):</u>	>30	>10	10 min.
<u>Left Yard (ft.):</u>	>30	>10	10 min.
<u>Rear Yard (ft.):</u>	>50	>30	30 min.
<u>Height (ft.):</u>	<35	17	35 max.
<u>Building Coverage (%):</u>	6	7	20 max.
<u>Open Space Coverage (%):</u>	88.5	87.6	40 min.
<u>Parking (# of spaces):</u>	2	2	2
<u>Estimated Age of Structure:</u>	1977	<b>Variance request shown in red.</b>	

**Other Permits Required**

Planning Board - Conditional Use Permit (Wetlands)

# Neighborhood Context



## **Previous Board of Adjustment Actions**

December 5, 1972 – The Board **granted** a variance to construct a single family house with a street frontage of 45.5’.

August 12, 1976 – The Board **granted** a variance to construct a residence with continuous frontage of 45.5’ where 100’ was required. The variance was granted with the **stipulation** that any house built on the lot tie in with City sewer and water.

January 18, 1994 – The Board **granted** a variance to allow an existing structure with a 19.5’ front yard to remain in a district where structures were required to have a 30’ front yard.

## **Planning Department Comments**

The entire house and proposed addition are located within the 100’ wetland buffer. The zoning ordinance allows for additions or extensions within the 100’ buffer if certain criteria are met. The proposed addition meets all of the criteria except for conformance with the front yard setback for which they need a variance and a Conditional Use Permit.

## **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:	Cutts Mansion Condominiums
Property:	525 Maplewood Avenue
Assessor Plan:	Map 209, Lot 85
Zoning District:	General Residence A (GRA)
Description:	Creation of two lots where one exists.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.521 to allow a lot area per dwelling unit of 4,506'± s.f. where 7,500 s.f. is required.

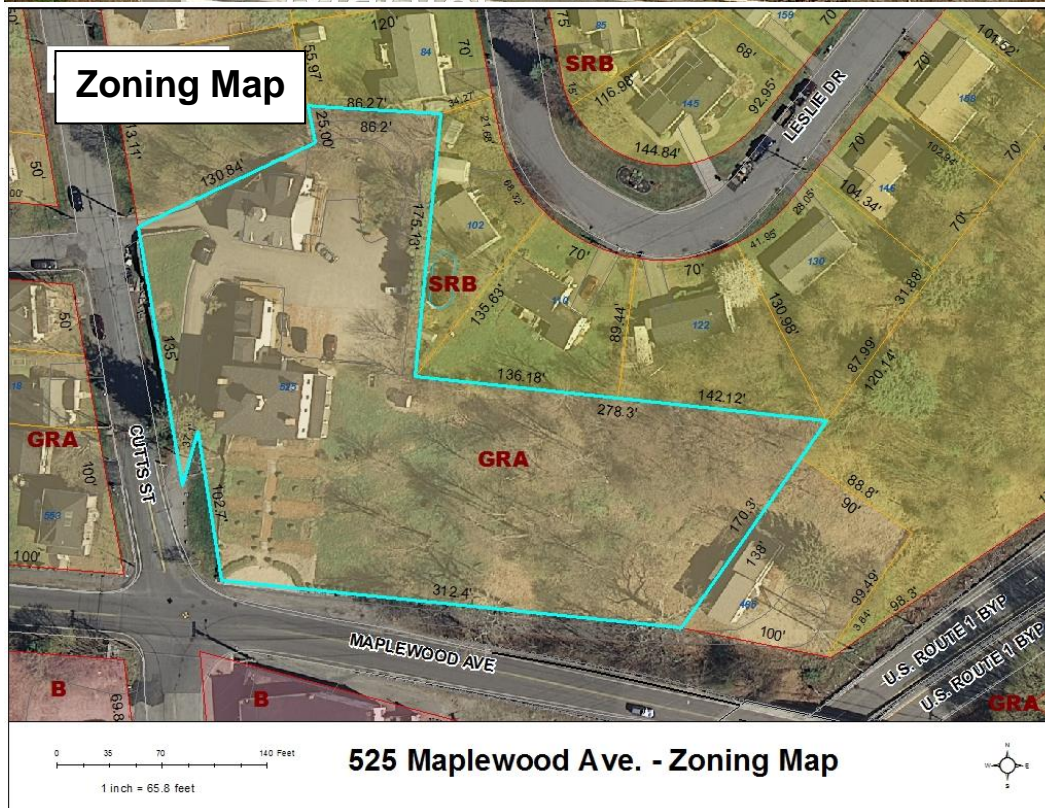
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Multi-family	Multi-family	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	80,693	35,628 (Lot 1) 45,065 (Lot 2)	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,141	35,628(Lot 1) <b>4,506</b> (Lot 2)	7,500 min.
<u>Street Frontage (ft.):</u>	>100	>100 (both lots)	100 min.
<u>Lot depth (ft.):</u>	>70	>70 (both lots)	70 min.
<u>Primary Front Yard (ft.):</u>	>15	>15 (Lot 2)	15 min.
<u>Secondary Front Yard (ft.):</u>	12	12 (Lot 2)	15 min.
<u>Right Yard (ft.):</u>	>10	>10 (Lot 2)	10 min.
<u>Rear Yard (ft.):</u>	>20	>20 (Lot 2)	20 min.
<u>Height (ft.):</u>	<35	<35 (Lot 2)	35 max.
<u>Building Coverage (%):</u>	<25	<25 (Lot 2)	25 max.
<u>Open Space Coverage (%):</u>	>30	>30 (Lot 2)	30 min.
<u>Estimated Age of Structure:</u>	1805	<b>Variance request shown in red.</b>	

**Other Permits Required**

Planning Board – Subdivision.

## Neighborhood Context



### Previous Board of Adjustment Actions

January 30, 1957 – The Board **granted** a variance to convert a four family dwelling into a ten apartment structure.

June 28, 1966 – The Board **tabled** a request to erect a sign for Theatre-By-The-Sea with the request that a letter be sent to the City Council urgently asking them to look into the need for adoption of a sign ordinance.

July 17, 1990 – The Board **denied** a request for the following: 1) to increase the extent of a nonconforming use of the property by creating a tenth dwelling unit where no such increase may be made; and 2) to permit the conversion of an existing storage barn into a dwelling unit for a total of 10 dwelling units on the lot where only one dwelling is allowed.

August 21, 1990 – The Board **denied** a Request for Rehearing on the above.

October 27, 1992 – The Board **denied** the following requests: 1) to allow an increase in the extent of a nonconforming use of a structure or land where no increase may be made; and 2) to allow the conversion of a garage/storage building into an apartment for a total of 10 dwelling units on a single lot in a single residence district where structures shall not accommodate more than a single family.

January 20, 1998 – The Board **granted** the following variances: 1) to allow the expansion of a nonconforming use by the addition of four dwelling units in the accessory barn/garage structure for a total of thirteen units where four dwelling units are the maximum allowed and nine grandfathered units presently exist; and 2) to allow a lot area per dwelling unit of 6,300 s.f. where 7,500 s.f. is required.

The request was granted **as per the letter sent to abutters by the Housing Partnership** as follows:

- The Cutts Mansion will be restored and renovated to its original glory, will enhance the entrance to your neighborhood;
- We will be spending over \$700,000 to renovate the property. This will increase the marketability of your property and perhaps its resale value;
- The grounds will be cleaned up, including removal of junk and any hazardous materials;
- The buildings will be brought up to meet all current building codes;
- A sprinkler system and completely new heating system will reduce the number of visits from the Portsmouth Fire Department;
- A landscape architect will supervise the removal of overgrown shrubs and trees and new landscaping;
- The property will be managed by a professional property management company; and
- Rubbish will be collected in a screened on-site dumpster, as opposed to curbside collection.

The Board members made the following **stipulations**:

- That the Planning Department be kept advised of the progress of the pending sale; and

- That the driveway be reviewed by the Traffic and Safety Committee (The committee met March 19, 1998 and approved the relocation of a driveway).

March 25, 1998 – The Chief Building Inspector sent a letter to the then owner advising of an unauthorized, newly created “dwelling/boarding room” in the main building and two dwellings and a business occupancy in the barn, which were in violation of the zoning ordinance and did not comply with building codes. The owner was **requested to remove** or have vacated the “three (3) illegal dwelling units and one (1) illegal business occupancy.”

May 19, 1998 – The Board **tabled** a request to allow the following: 1) the expansion of a nonconforming use by the addition of five dwelling units in the accessory barn/garage structure where four dwelling units had been previously granted and seven dwelling units to be in the main house for a total of twelve units on the lot where four dwelling units are the maximum allowed and nine grandfathered units presently existing in the main house; and 2) to allow a lot area per dwelling unit of 6,824 s.f. where 7,500 s.f. is required.

June 16, 1998 – The Board **granted** a variance to allow the following: 1) the expansion of a nonconforming use by the addition of five dwelling units in the accessory barn/garage structure where four dwelling units had been previously granted and eight dwelling units to be in the main house for a total of thirteen units on the lot where four dwelling units are the maximum allowed and nine grandfathered units presently exist in the main house. The request was granted subject to the **stipulations** from the letter to the Housing Partnership and the Board member **stipulations** attached to the variance granted at the January 20, 1998 meeting.

March 16, 1999 – The Board **granted** variances to allow the following: 1) to allow the existing barn to be converted into 5 dwelling units in addition to the existing 9 dwelling units in the main house for a total of 14 dwelling units on a lot where the maximum allowed is 4 dwelling units; and 2) to allow said dwelling units to be in two buildings where all dwelling units are to be in one building. The request was granted with the following **stipulations** submitted by Mr. Gary Dodds:

- Correct interior doors to and from apartments (to the general hallway);
- Install self closing mechanism on all doors to general hallway;
- Hard wire smoke detectors in basement, first floor, second floor, third floor and basement (19 total) (this work had been completed);
- Provide second means of egress to all units;
- Install new furnaces in both the Cutts Mansion and the Carriage House (barn); and
- The Carriage House will have a sprinkler system installed and be compliant with all other building codes.

The following to be addressed within the first year:

- Restore and renovate the Cutts Mansion to enhance its appearance with the neighborhood;
- Clean up the grounds and remove all hazardous materials;



- Landscape around the property to improve the neighborhood and the City of Portsmouth;
- Install fire extinguishers throughout the building; and
- Install an historic marker at the front of the property for people visiting the City to view and gain information about the property.

The Board added the following **stipulations**:

- That the rubbish area be screened; and
- That the building be brought up to meet all current building codes.

July 17, 2001 – The Board **granted** a variance to convert the nine apartments in the main building into fourteen rooms for a Bed and Breakfast Inn.

July 16, 2002 – The Board **granted** a one year extension of the above variance to expire on July 16, 2003.

July 15, 2008 – The applicant requested, and the Board **granted, a postponement** to the August meeting an Appeal from an Administrative Decision regarding the determination of the Code Officials that the Building Permit to convert the 9 apartments into a 14 room Bed and Breakfast has lapsed as the building continues to be used as 9 apartments. Notwithstanding that request, if the Administrative Appeal were denied, a request for a variance to allow the existing 9 apartments to be converted into a 14 room Bed and Breakfast.

August 19, 2008 – The Board **postponed** the above request to a time indefinite at the applicant's request.

December 28, 2009 – A **letter** was sent from the Principal Planner to the owner advising that there had been no action on the pending application and outlining the options in order to close the pending application.

January 19, 2010 – The Board acknowledged that the petition as outlined above for the July 15, 2008 meeting had been **withdrawn** at the applicant's request.

July 19, 2011 – The Board **denied** a request to construct a multi-bay garage with a 70' x 16' section and an 86' x 16' section with a 10' rear yard setback where 20' was required and a 5' right side yard setback where 10' was required.

July 28, 2015 – The Board **postponed** to the following month a request to create two lots out of one.

August 15, 2015 – The Board **postponed** the above request to the September meeting.

September 15, 2015 – A request to create two lots where one currently existed, which had been postponed from the July 28, 2015 and August 18, 2015 meetings, was **postponed** to an unspecified future meeting requesting that the applicant provide further information including: 1) the number and location of dwelling units proposed for

each lot; 2) a plan for access and circulation proposed for both lots; and 3) a rendering of the proposed building. The Board also referred the proposal to the Technical Advisory Committee for a related recommendation.

March 15, 2016 – The Board **denied** the above petition modified by the addition of a request to construct a building with four dwelling units. The relief now requested was for the following: a) a special exception to allow four dwelling units in a district where it was allowed by special exception; b) an 18' maneuvering aisle and a 20' access aisle where 24' was required; and c) a lot area per dwelling unit of 3,755 s.f. where 7,500 s.f. was required.

April 19, 2016 – The Board **denied** a request for rehearing regarding the above.

May 17, 2016 – The Board reconsidered the request for rehearing heard at the April meeting and voted to **take into record** the previous action and comments from the April 19, 2016 meeting and **deny** the request for rehearing with an effective date of May 17, 2016.

### **Planning Department Comments**

The Superior Court remanded this case back to the BOA to reconsider two issues. The first issue is to determine whether the property's special conditions satisfy either of the hardship definitions. The second issue deals with the spirit of the ordinance and how granting the variance for Lot 1 would violate the basic zoning objectives in Section 10.521. The current proposal does not include development of Lot 2 as was previously presented in 2016. The applicant is proposing to reduce the number of units on Lot 1 to 10 and is asking for relief from the lot area per dwelling unit requirement.

### **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**

Petitioners:	Deer Street Associates
Property:	165 Deer Street (Lots 2 and 3)
Assessor Plan:	Map 125, Lot 17 & 17.1
Zoning District:	Character District 5 (CD5), Downtown Overlay District (DOD)
Description:	Surface parking lot as a principal use.
Requests:	<p>Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> <li>1. A Variance from Section 10.440 to allow a surface parking lot as a principal use where such use is not allowed.</li> <li>2. A Variance from Section 10.5A44 to allow a parking lot that does not comply with the requirements of the ordinance.</li> </ol>

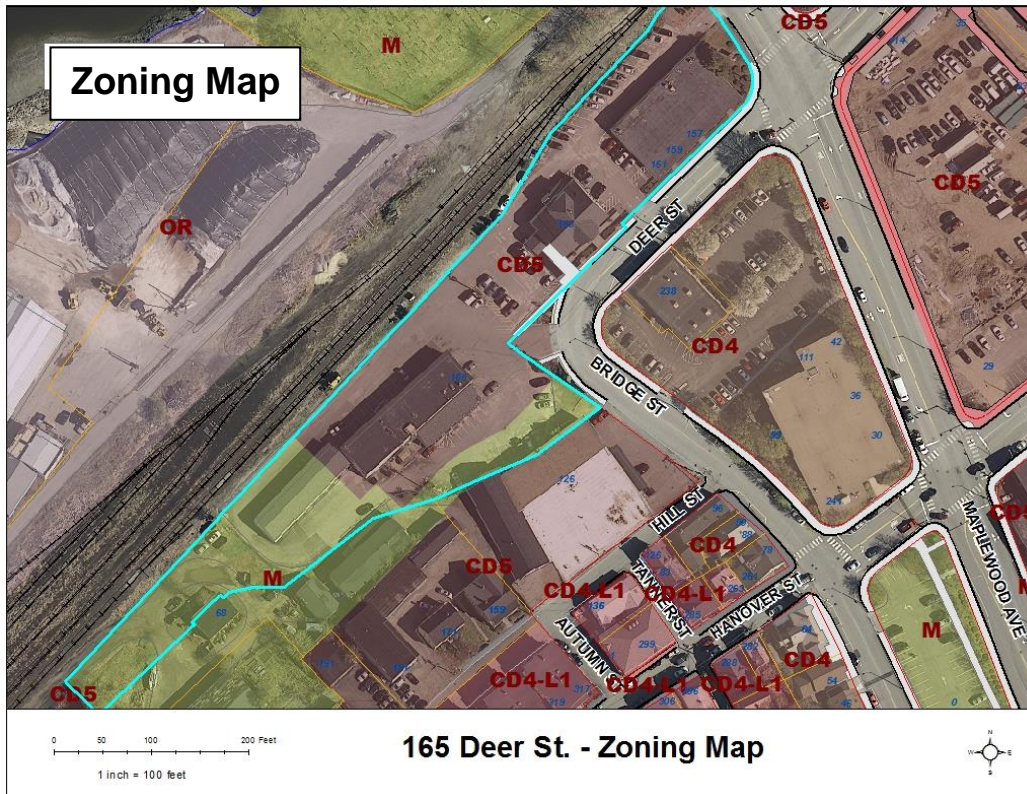
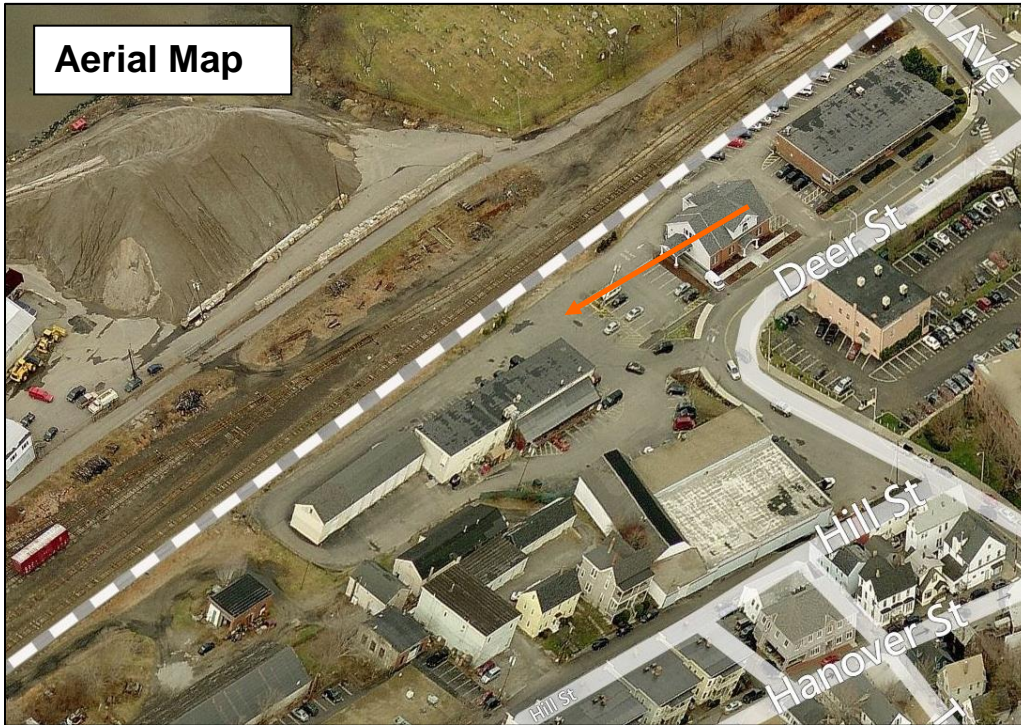
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant	Surface parking lot as a principal use.	Primarily Mixed Uses
<u>Lot area (sq. ft.):</u>	26,503 (Lot 17) 8,519 (Lot 17-1)	26,503 (Lot 17) 8,519 (Lot 17-1)	Not Req. min.
<u>Parking (# of spaces) (%):</u>	35	76	
		Variance request shown in red.	

**Other Permits Required**

Planning Board – Site Plan Review

# Neighborhood Context



## **Previous Board of Adjustment Actions**

December 19, 1978 – The Board **granted** a variance to construct a 30' x 80' garage 45' from the front property line and contiguous with the left and rear property lines where 70', 50' and 50' respectively were required. The variance was granted with the **stipulations** that the peak would not exceed 20' from the ground level and that the building would be placed on the location as shown on the plans.

September 19, 1985 – The Board **granted** a variance to allow the erection of a 1,425 s.f. 1-story greenhouse adjacent to the garden center structure where no building or structure in the district was permitted to be less than two stories in height. The variance was granted with the **stipulations** that the existing greenhouse be removed with a \$5,000 bond to ensure its removal and that the petitioner would pave and mark the parking area as indicated on the plans.

January 13, 1987 – The Board **granted** a special exception to permit the installation of a free-standing sign in the Central Business district where they were allowed only by special exception and a variance to permit a 20 s.f. free-standing sign where 12 s.f. was the maximum allowed.

April 26, 1988 – The Board **granted** an appeal of an administrative decision of the Building Inspector in the interpretation of sections of the Zoning Ordinance regarding the resurfacing of an existing nonconforming rooftop sign. The appeal was granted with the **stipulation** that the total amount of aggregate signage would not exceed what would be in conformance with the Zoning Ordinance. A request for a variance to achieve the same purpose should the appeal be denied was not considered by the Board due to their action on the appeal.

April 18, 1989 – The Board **granted** variances to permit the construction of a 30' x 30' garage with a 40' front yard, a 30' left yard and a 33' rear yard where 70', 50' and 50' respectively were required.

February 19, 2002 – The Board **granted** a variance to allow 2,150 s.f. of existing space to be used as a yoga studio/school in a district where schools were not allowed.

July 17, 2007 – The Board **granted** a special exception to install a ground mounted switch cabinet and manhole with the **stipulation** that the height of the screening for the installation be no more than 50" high.

February 21, 2012 – The Board **granted** a variance to permit the rental and storage of motorized scooters where the use was not allowed.

December 6, 2014 – The Board **denied** a request to install an illuminated sign in the Historic District and acknowledged that a request for an attached wall sign had been **withdrawn**.

*(As 163 Deer Street, Lot/Building 4):*

April 18, 2017 – The Board **granted** variances to install a drive-through facility in connection with the construction of a four-story mixed use structure and allow the following: 1) a drive-through facility as an accessory use; 2) a 5' rear yard adjoining a railroad right-of-way where 15' was required; 3) a front lot line buildout of 66% where 80% was required; 4) an outdoor service facility (ATM) 49.7' from the rear lot line and 48' from the front lot line where 50' was required; and 5) a drive-through bypass lane 11.3' from a lot line where 30' was required.

*(As 165 Deer Street (Lot/Building 3) :*

May 16, 2017 – The Board **granted** variances to construct a 5-story mixed use building with enclosed off-street parking utilizing a lift system and allow the following: a) a 5' rear yard adjoining a railroad right-of-way where 15' is required; b) 62 parking spaces utilizing a two-car lift system in each bay that did not meet the required dimensions for parking spaces; and c) vehicles to enter and leave parking spaces by passing over another parking space or requiring the moving of another vehicle.

### **Planning Department Comments**

A variance runs with the land and does not expire. While the applicant may offer to discontinue the use after a period of time, the variance would still be valid. Below is an excerpt from *New Hampshire Practice: Land Use Planning and Zoning*, Ch. 24 Variances:

#### **§ 24.05 Variance Runs With Land**

*A variance runs with the land and passes with the land to a subsequent purchaser.<sup>46</sup> By definition, a variance is granted with respect to a piece of property and not with respect to the personal needs, preferences, and circumstances of a property owner. Once granted, a variance can be enjoyed by both present and subsequent owners of the land.<sup>47</sup>*

*A board of adjustment may feel confident about "the good reputation, capacity, and reliability of a particular" applicant; however, land controls "apply to the land and not to the individuals."<sup>48</sup> Thus, the relief granted by the board cannot be limited to a particular individual nor can it be limited to a specific period of years.<sup>49</sup>*

<sup>46</sup> 2 P. Salkin, Anderson's American Law of Zoning, §31:1 (5th ed.).

<sup>47</sup> Carbonneau v. Exeter, 119 NH 259, 401 A.2d 675 (1979)

<sup>48</sup> Vlahos Realty Co., Inc. v. Little Boar's Head District, 101 NH 460, 461-62, 146 A.2d 257, 260 (1957).

<sup>49</sup> Vlahos Realty Co., Inc. v. Little Boar's Head District, 101 NH 460, 461-62, 146 A.2d 257, 260 (1957).

### **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**

Petitioners:	Albert & Melanie Sampson
Property:	217 Broad Street
Assessor Plan:	Map 130, Lot 17
Zoning District:	General Residence A (GRA)
Description:	Reconstruct existing porch.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> <li>1. A Variance from Section 10.521 to allow 28.3%± building coverage where 25% is required.</li> <li>2. A Variance from Section 10.321 to allow a lawful nonconforming structure to be reconstructed, extended, or enlarged without conforming to the requirements of the ordinance.</li> </ol>

**Existing & Proposed Conditions**

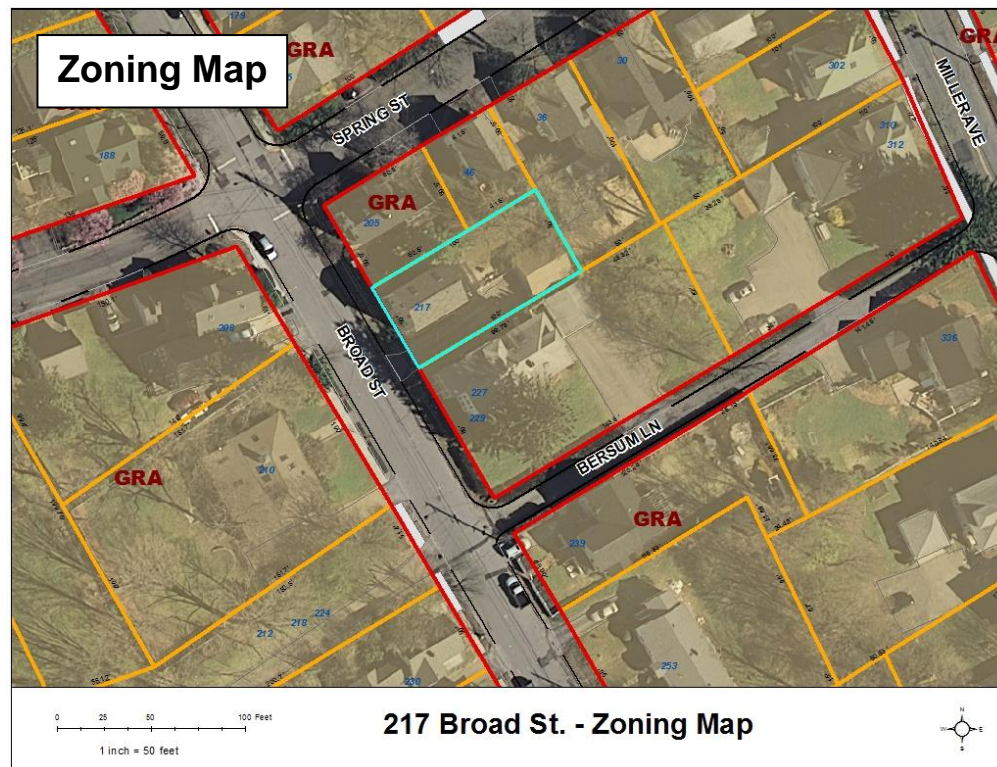
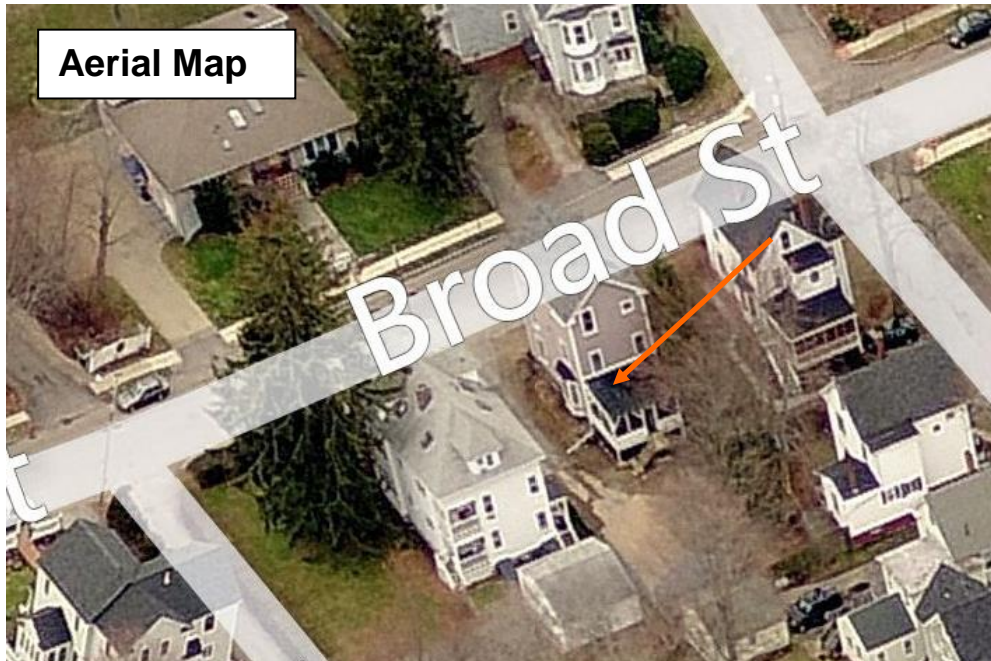
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Single-family	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	5,000	5,000	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,000	5,000	7,500 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.):</u>	100	100	70 min.
<u>Primary Front Yard (ft.):</u>	0	0	15 min.
<u>Right Yard (ft.):</u>	>10	>10	10 min.
<u>Left Yard (ft.):</u>	10	10	10 min.
<u>Rear Yard (ft.):</u>	>20	>20	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	28.3	<b>28.3</b>	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Estimated Age of Structure:</u>	1900		Variance request shown in red.

**Other Permits Required**

None



## Neighborhood Context



### Previous Board of Adjustment Actions

March 22, 1983 – The Board **granted** variances to allow the construction of a garage with a 2' right yard and 2' rear yard where 14'6" was required and 23.1% building coverage where a maximum of 20% was allowed.

May 19, 1992 – The Board **granted** a variance to construct a 19'6" x 11'6" rear screened porch with 27.5% building coverage where 23.7% had been previously granted.

### **Review Criteria**

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

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

#### **AND**

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

#### **OR**

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

## Case #7-5

Petitioners: Colleen Cook  
 Property: 40 Winter Street  
 Assessor Plan: Map 145, Lot 96  
 Zoning District: General Residence C (GRC)  
 Description: Relief from setback requirements in order to construct a shed dormer.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
 1. A Variance from Section 10.521 to allow a right side yard setback of 9'5 1/2" where 10' is required.  
 2. A Variance from Section 10.321 to allow a lawful nonconforming structure to be reconstructed, extended, or enlarged without conforming to the requirements of the ordinance.

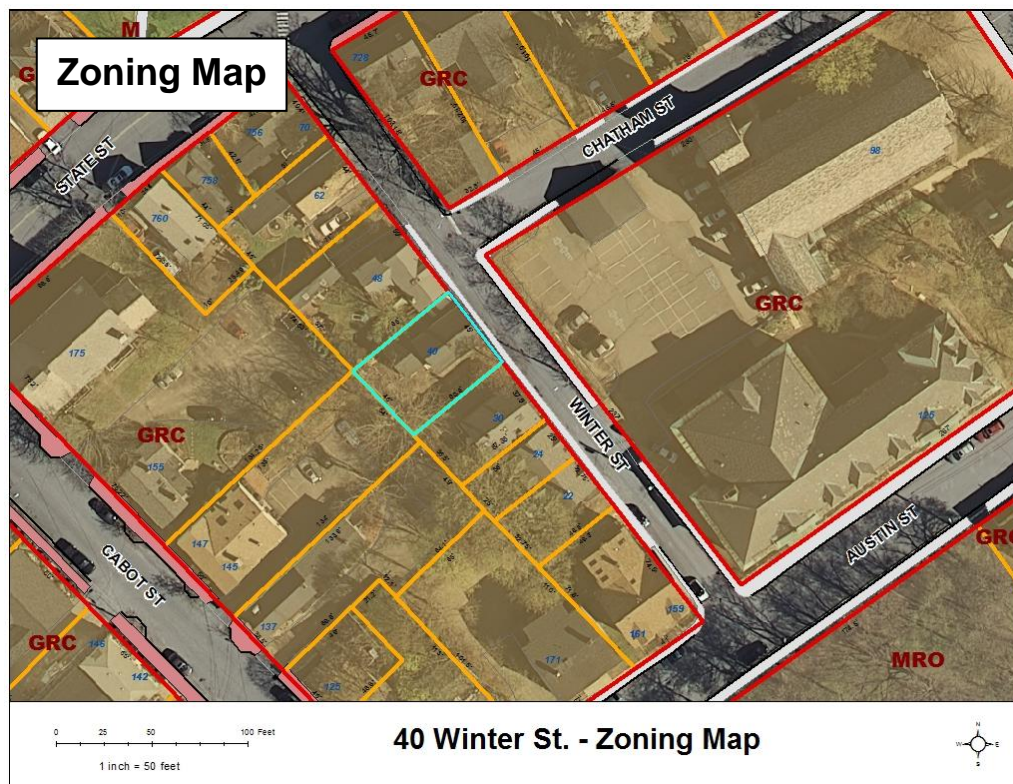
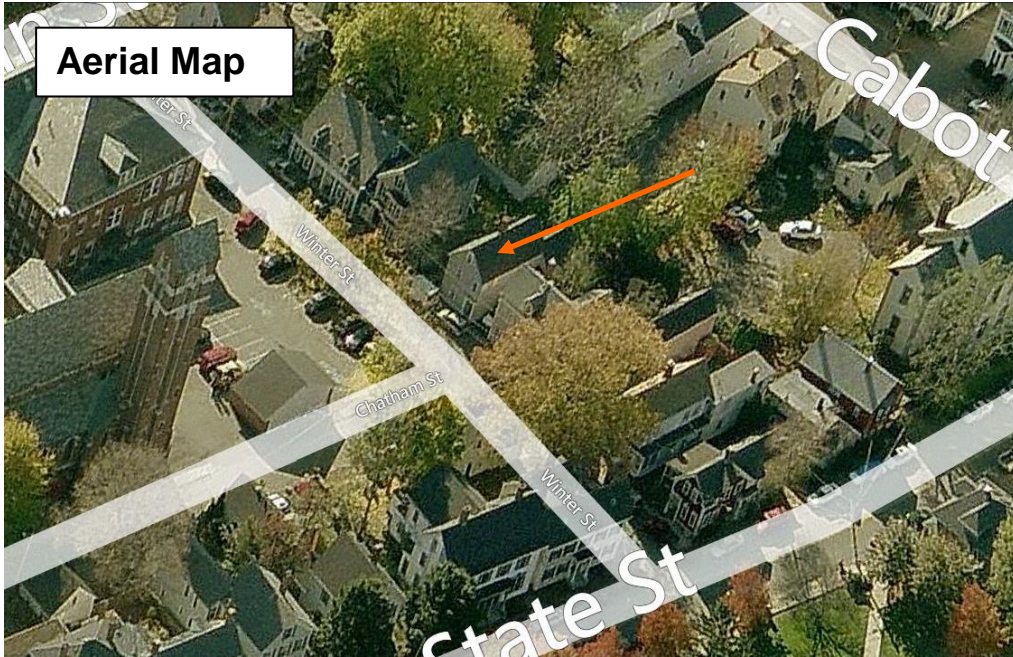
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Single Family	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	2,613	2,613	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,613	2,613	3,500 min.
<u>Street Frontage (ft.):</u>	45	45	70 min.
<u>Lot depth (ft.):</u>	60.8	60.8	50 min.
<u>Primary Front Yard (ft.):</u>	2'2"	2'2"	0 min.
<u>Right Yard (ft.):</u>	9.5	<b>9.5</b>	10 min.
<u>Left Yard (ft.):</u>	15	15	10 min.
<u>Rear Yard (ft.):</u>	15	15	20 min.
<u>Height (ft.):</u>	26	26	35 max.
<u>Building Coverage (%):</u>	37.6	37.6	35 max.
<u>Open Space Coverage (%):</u>	38	39	20 min.
<u>Estimated Age of Structure:</u>	1880	Variance request shown in red.	

### Other Permits Required

None.

## Neighborhood Context



## Previous Board of Adjustment Actions

No BOA history found.

## **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

Petitioners: Paul Mannle  
 Property: 1490 Islington Street  
 Assessor Plan: Map 233, Lots 108  
 Zoning District: Single Residence B (SRB)  
 Description: Interior attached accessory dwelling unit.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
 1. A Variance from Section 10.521 to allow a 5' front yard setback for an existing structure where 30' is required.

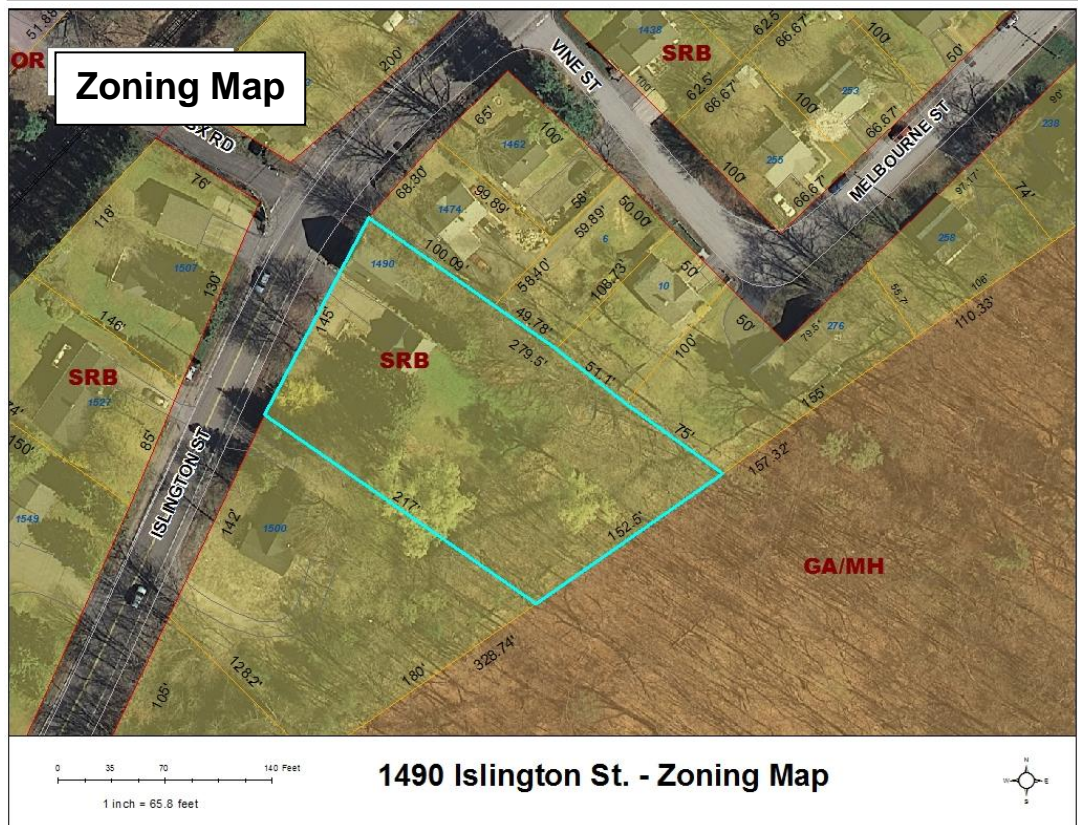
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Single Family/AADU	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	35,172	35,172	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,454.40	17,586	15,000 min.
<u>Street Frontage (ft.):</u>	>100	>100	100 min.
<u>Lot depth (ft.):</u>	>100	>100	100 min.
<u>Primary Front Yard (ft.):</u>	5	<b>5</b>	30 min.
<u>Right Yard (ft.):</u>	>10	>10	10 min.
<u>Left Yard (ft.):</u>	13	13	10 min.
<u>Rear Yard (ft.):</u>	>30	>30	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	<20	<20	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Estimated Age of Structure:</u>	1893		Variance request shown in red.

### Other Permits Required

Planning Board – Conditional Use Permit

## Neighborhood Context



## Previous Board of Adjustment Actions

No BOA history found.

## 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.*