

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: May 10, 2018
RE: Zoning Board of Adjustment May 22, 2018 Meeting

OLD BUSINESS

1. 160-168/170 Union Street – Request for Rehearing
2. 140- 152 Court Street

NEW BUSINESS

1. 100 Colonial Drive
2. 188 Broad Street
3. 5 Central Avenue
4. 87 Mason Avenue
5. 238 Deer Street

THE FOLLOWING PETITIONS WILL BE HEARD ON TUESDAY, MAY 22, 2018

6. 325 Thaxter Street
7. 319 Vaughan Street
8. 49 Pickering Street
9. 75 Congress Street
10. 15 Thornton Street
11. 17/19 Stark Street

Case #5-6

Petitioners: Jeffery J. Caron, owner
 Property: 325 Thaxter Road
 Assessor Plan: Map 152, Lot 39
 Zoning District: Single Residence B (SRB)
 Description: Construct one-story rear addition.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. Variances from Section 10.521 that include the following: a) to allow a right side yard setback of 4'± where 10' is required.
 2. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	One-story addition	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	6,534	6,534	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,534	6,534	15,000 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.):</u>	>100	>100	100 min.
<u>Primary Front Yard (ft.):</u>	25	25	30 min.
<u>Right Yard (ft.):</u>	2 (existing house)	4 (addition)	10 min.
<u>Left Side Yard (ft.):</u>	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	>30	>30	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	27.2	28.1	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking</u>	ok	ok	ok
<u>Estimated Age of Structure:</u>	1940	Variance request shown in red.	

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

February 21, 2018 - The Board granted variances for a one-story right rear addition with a 4' right side yard (10' required) and 28.1% building coverage where 20% was the maximum allowed.

Planning Department Comments

Similar to 100 Colonial, this project is back before the Board to amend a previously approved variance that was granted on February 21, 2018. A modification in the height and design of the roof that falls within the side yard is now larger than what was approved in February. The structure is in the same location but the roof pitch has changed and resulted in a larger massing of the addition. There is no additional encroachment into the setback.

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 #5-7

Petitioners: 319 Vaughan Street Center LLC
Property: 319 Vaughan Street
Assessor Plan: Map 124, Lot 9
Zoning District: Character District 5 (CD5)
Description: Outdoor performance facility.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Special Exception from Section 10.0440 #3.521 to allow an outdoor performance facility.
2. A Variances from Section 10.592.10 to allow an outdoor performance facility to be located 500' from a residential district.

Existing & Proposed Conditions

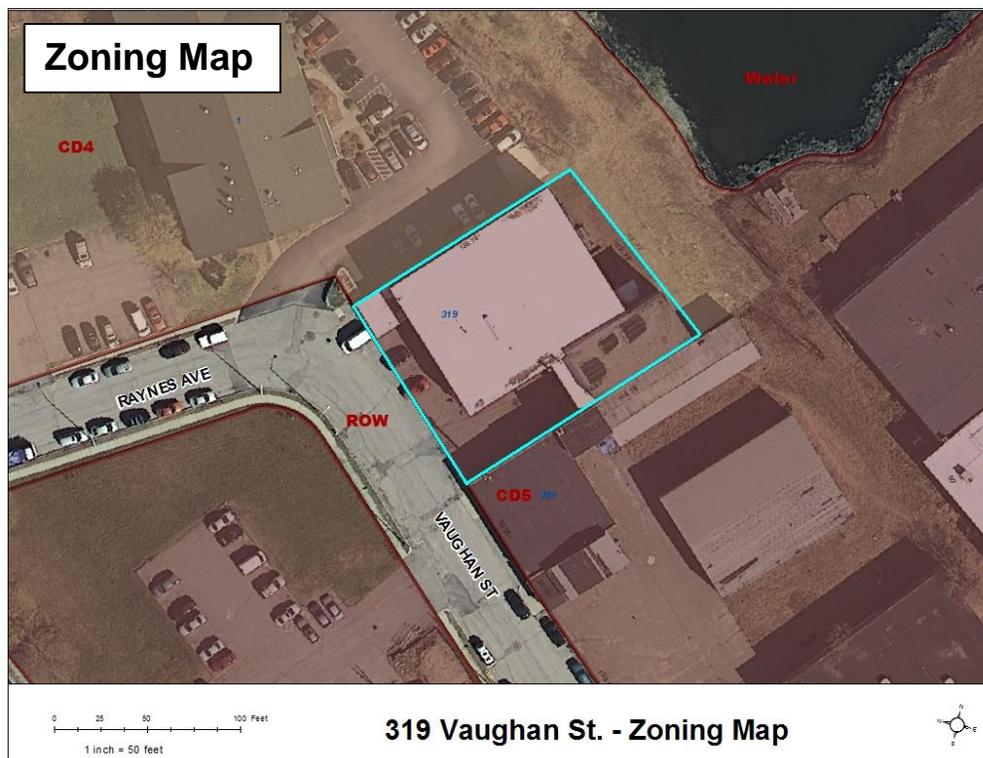
Proposed timeframe: June 1 – October 1
Hours of operation: 6 – 9 pm
Number of events: no more than 10 per season

Other Permits Required

None.

Neighborhood Context





Previous Board of Adjustment Actions

May 24, 2016 – the Board **granted** a special exception to allow a date-specified series of outdoor concerts in a district where the use was only allowed by special exception and a variance to allow the use to be less than 500' from a CD4-L1 District.

March 21, 2017 – The Board **granted** the same relief for a date-specified series of outdoor concerts for 2017.

Planning Department Comments

The applicant has come before this Board the past two years for the same request, each time identifying specific dates during the season when performances would take place. The new proposal is in keeping with prior requests, although instead of identifying specific dates, the request is to have the concert series between June 1 and October 1 of any year, run from 6 – 9 pm and have no more than 10 events per season. If granted approval, the Board should consider these standards as stipulations for the proposed use. This would allow the applicant to operate under these standards without having to come back each year.

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 #5-8

Petitioners:	Peter G. Morin Trust, Peter G. Morin, Trustee
Property:	49 Pickering Street & 170 Mechanic Street
Assessor Plan:	Map 102, Lots 6 & 7
Zoning District:	General Residence B (GRB)
Description:	Lot line revision.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <p>1. Variations from Section 10.521 to allow a rear yard of 7.9'± where 25' is required.</p>

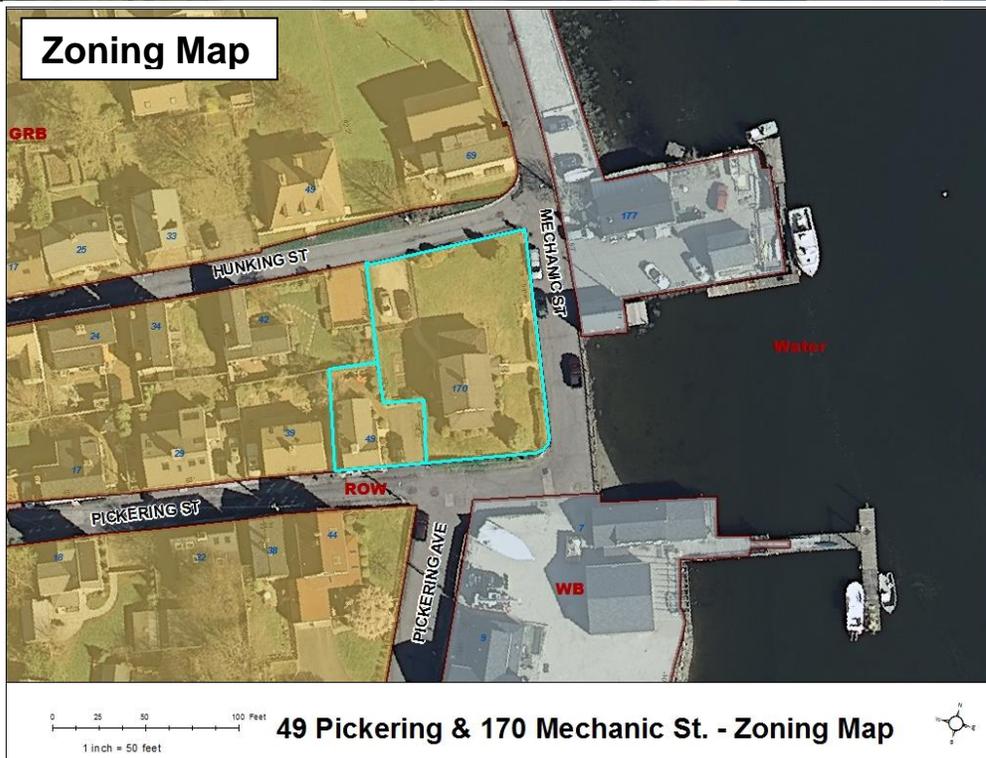
Existing & Proposed Conditions

	Existing		Proposed		Permitted / Required	
	49 P.	170 M.	49 P.	170 M.	Primarily Res Uses	
<u>Land Use:</u>	Single-family		Lot line rev.			
<u>Lot area (sq. ft.):</u>	2,296	9,161	2,777	8,680	5,000	min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,296	9,161	2,777	8,680	5,000	min.
<u>Street Frontage (ft.):</u>	49.10	>100	49.10	>100	80	min.
<u>Lot depth (ft.):</u>	56	75	56	75	60	min.
<u>Primary Front Yard (ft.):</u>	0	>5	0	>5	5	min.
<u>Right Yard (ft.):</u>	6	>10	>10	>10	10	min.
<u>Left Side Yard (ft.):</u>	5		5	>10	10	min.
<u>Rear Yard (ft.):</u>	19	7.9	19	7.9	25	min.
<u>Height (ft.):</u>	<35	<35	<35	<35	35	max.
<u>Building Coverage (%)</u>	17				30	max.
<u>Open Space Coverage (%)</u>	>40				25	min.
<u>Parking</u>	Ok				ok	
<u>Estimated Age of Structure:</u>			Variance request shown in red.			

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

49 Pickering Street

August 16, 1994 - The Board **granted** variances for the demolition of a shed and part of a dwelling and construction of a 398 s.f. two story rear addition with a 6' left yard and a 4'6" right yard, 10' required for each; a 19'3" rear yard where 25' was required; and maintaining the existing 30.4% building coverage after the demolition and construction.

April 25, 1995 – The Board **granted** a variance to allow a decayed structure to be rebuilt in the same location and configuration as the existing structure.

170 Mechanic Street –

January 16, 1996 – The Board **granted** a variance to allow the addition of a 2' x 5' mud room with an 8' rear yard where 25' was required.

March 18, 2003 – The Board **granted** a variance to allow a 3' x 5' one story rear addition with an 8' rear yard where 25' was required.

May 17, 2005 – The Board **denied** a request to allow a room and bath to be used for a Bed and Breakfast in a single family dwelling where the use was not allowed and to allow a travel aisle less than 24' where 24' was required.

Planning Department Comments

The applicant owns both properties and is proposing to revise the lot line to provide 49 Pickering St. with additional area, primarily for snow storage. The current rear setback for the house on 170 Mechanic Street is 7.9 feet and the lot line adjustment will maintain that distance. Although 49 Pickering will continue to be a nonconforming lot, the lot line adjustment will make it more conforming.

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 #5-9

Petitioners: Michael De La Cruz
Property: 75 Congress Street
Assessor Plan: Map 117, Lot 5
Zoning Districts: Character District 5, Downtown Overlay District (DOD), Historic District (HD)
Description: Basement parking.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance:
1. A Variance from Section 10.1114.20 to allow the following: a) eight parking spaces with less than the required dimensions and b) a 12'± wide maneuvering aisle where 14' is required.

Existing & Proposed Conditions

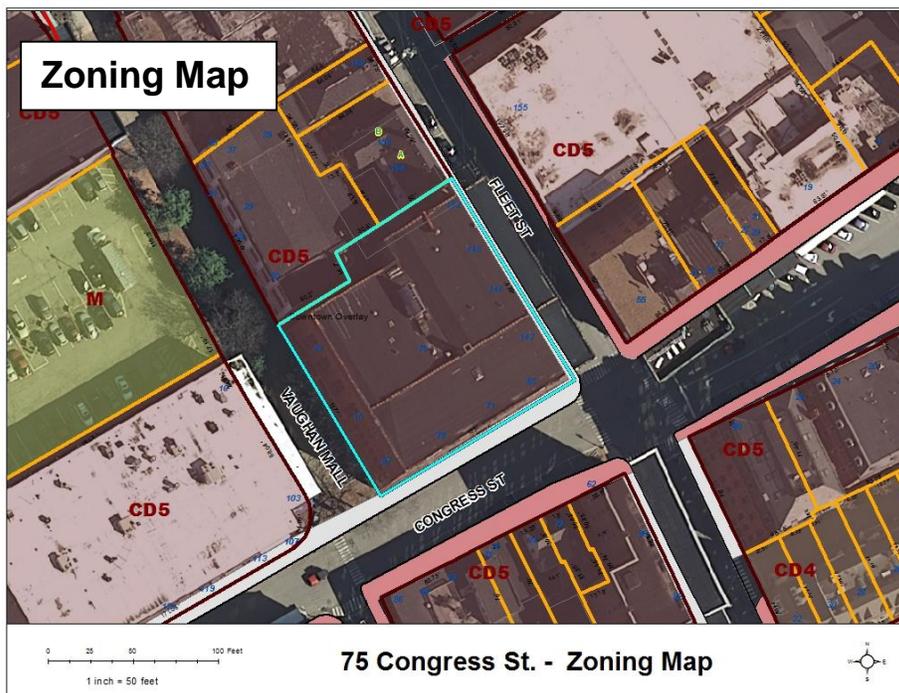
See submission from applicant showing dimensions and layout of proposed parking area.

Other Permits Required

Planning Board – Site Review

Neighborhood Context





Previous Board of Adjustment Actions

February 28, 1984 – The Board **granted** a special exception to permit the elimination of required parking.

August 30, 1988 – The Board **determined**, as required by the Zoning Ordinance, that the number of parking spaces required for Antioch College of N. E. was 1 space for every 4 students and 1 space for each professor/teacher.

December 13, 1988 – The Board **granted** a request for a school not to exceed four classrooms.

July 18, 2006 – the Board **tabled** to August an Appeal of an Administrative Decision of the Code Official involving the interpretation of the Ordinance as requiring a variance to allow the continuance of an existing 10' wide accessway to a below grade parking garage to continue where a 24' wide accessway was required for a two-way accessway.

August 22, 2006 – The Board **failed to pass** a motion to grant the Appeal so the Appeal was **denied**.

April 26, 2016 – The Board **postponed** a request to construct five residential use dormers and one office dormer with walkways and decks and to restore pediments and allow the following building heights where the maximum allowed are 40' for a 2-3 story height requirement area and 45' for a 2-3 story (short 4th) height requirement area: 62'11" for the proposed pediments, 65'6" for the proposed office dormer, and 58'11" for the proposed residential dormers.

May 17, 2016 – The Board **postponed** the petition to the June meeting so that additional information requested to the Board could be provided. The requested building

heights were revised as follows: 62'11" for the proposed pediments (no change), 64'6" (a change) for the proposed office dormer, and 60'5" (a change) for the proposed residential dormers.

June 21, 2016 – The Board **postponed** the pending petition to the July meeting with a final revision to the requested building heights as follows: 62'11" for the proposed pediments (no change), 64'6" for the proposed flat roofed office dormer onto existing sloped roof, and 60'5" for the proposed residential dormers.

July 19, 2016 – The Board **granted** the petition with these final building heights: a) 62'11" for the proposed pediments (no change); b) 65'11" for the proposed flat roofed office dormer onto existing sloped roof (a change); and c) 58'11" for the proposed residential dormers (a change).

December 19, 2017 – A petition to construct 15 residential units with no off-street parking spaces to be provided where off-street parking spaces are required was **withdrawn**.

February 27, 2018 – The Board **granted** a variance to allow no off-street parking spaces to be provided where off-street parking spaces were required for the construction of 15 residential units.

Planning Department Comments

The applicant was granted a variance on February 27, 2018 to provide no off-street parking for the additional residential units, resulting in no parking requirements for this property. It seems difficult to identify a hardship for relief from the dimensional requirements for the parking spaces that are proposed because of the recent variance granted earlier this year. It appears that fewer spaces could be created that comply with the dimensional standards in the ordinance.

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 #5-10

Petitioners: Jonathan & Diana Guilbert
 Property: 15 Thornton Street
 Assessor Plan: Map 160, Lot 1
 Zoning District: General Residence A (GRA)
 Description: Subdivide one lot into two.
 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 the following for Proposed Lot 1: a) an 8.6'± front yard where 15' is required; b) a 14.7'± rear yard where 20' is required; and c) a lot depth of 64.66'± where 70' is required.

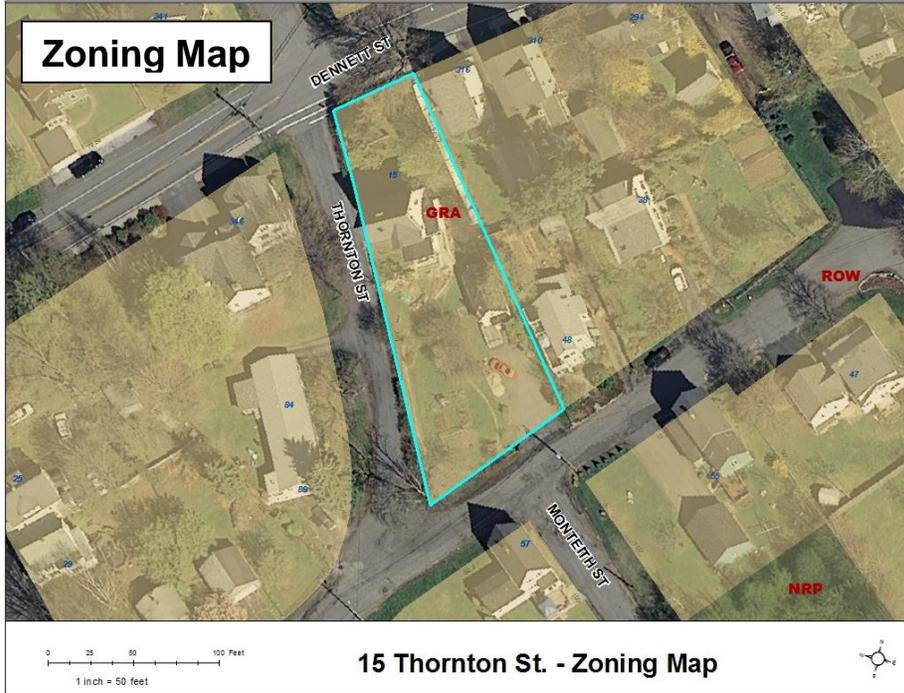
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>		<u>Permitted / Required</u>
<u>Land Use:</u>	1 lot	Subdivide into 2 lots		Primarily Residential Uses
		Lot 1	Lot 2	
<u>Lot area (sq. ft.):</u>	16,838	9,074	7,762	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	16,838	9,074	7,762	7,500
<u>Street Frontage (ft.):</u>	>200	>100	>100	100 min.
<u>Lot depth (ft.):</u>	74.5	64.66	87	70 min.
<u>Primary Front Yard (ft.):</u>	8.6	8.6	NA	15 min.
<u>Right Side Yard (ft.):</u>	>10	>10	NA	10 min.
<u>Left Yard (ft.):</u>	>10	11	NA	10 min.
<u>Rear Yard (ft.):</u>	14.7	14.7	NA	20 min.
<u>Height (ft.):</u>	<35	<35	NA	35 max.
<u>Building Coverage (%):</u>	<25	<25	NA	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	100	30 min.
		Variance request shown in red.		

Other Permits Required

Planning Board – Subdivision Approval.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

If granted approval, the Board should consider a stipulation that the building on Lot 2 must be demolished or removed prior to recording the subdivision to prevent a nonconforming situation where the applicant would have to come back to ask for additional relief.

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 #5-11

Petitioners:	Derek T. Hayward
Property:	17 Stark Street
Assessor Plan:	Map 161, Lot 3
Zoning District:	General Residence A (GRA)
Description:	Second driveway.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.1114.31 to allow a driveway which does not meet the standards for "General Access and Driveway Design".

Other Permits Required

DPW – Driveway Permit.

Neighborhood Context





Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

Section 10.1114.31 of the Zoning Ordinance states: *Access to and egress from all parking areas shall be on via driveways which meet the standards for "General Accessway and Driveway Design" in the Site Plan Review Regulations.*

Section 3.3.2(3) in the Site Plan Regulations states: *Driveways shall be limited to one per lot.*

There are no issues with parking for this property currently, but there are plans to construct a sidewalk as soon as this fall. If the variance is granted, the applicant will have to seek a driveway permit through DPW for the second driveway.

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.