

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: June 20, 2018
RE: Zoning Board of Adjustment June 26, 2018 Meeting

OLD BUSINESS

1. 160-168/170 Union Street – Request for Rehearing
2. 75 Congress

NEW BUSINESS

1. 586 Woodbury Avenue
2. 177 Bartlett Street
3. 32 Union Street
4. 42 Hunking Street
5. 454 & 456 Middle Street

THE FOLLOWING PETITIONS WILL BE HEARD ON TUESDAY, JUNE 26, 2018

6. 636 Middle Road
7. 64 & 74 Emery Street
8. 5 Simonds Road
9. 62 Woodbury Avenue
10. 185 Cottage Street
11. 54 Court Street
12. 21 Langdon Street

Case #6-6

Petitioners:	Emily H. Foster
Property:	636 Middle Road
Assessor Plan:	Map 232, Lot 44
Zoning District:	Single Residence B (SRB)
Description:	Install 10' long, 6' high section of fence.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.515.13 to allow a fence over 4' in height in a front yard.

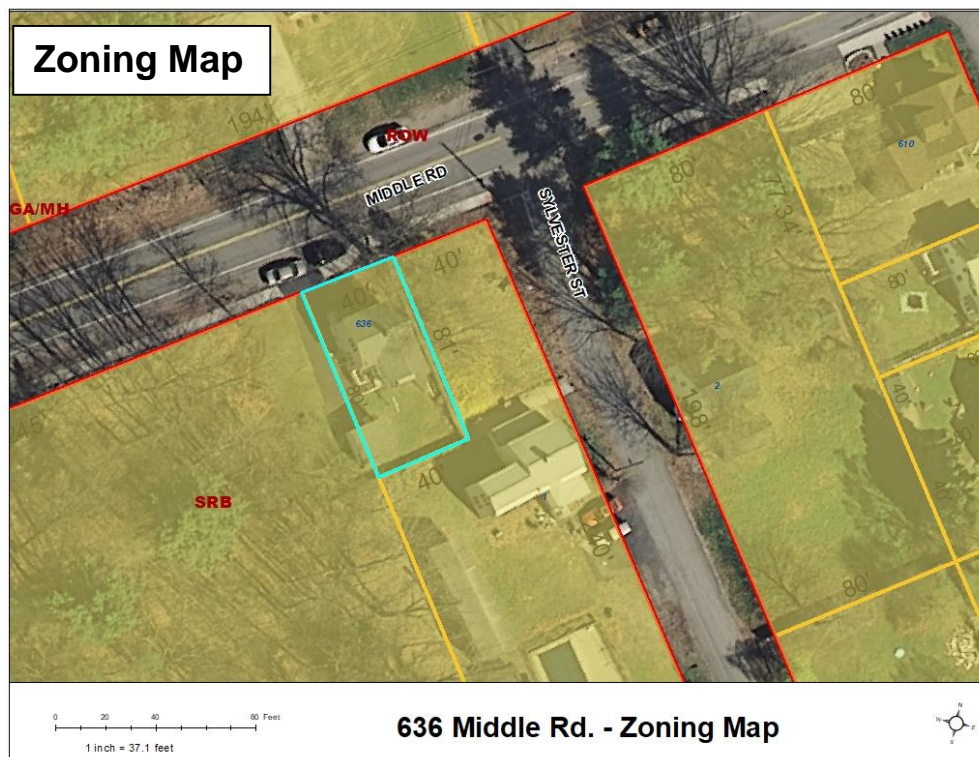
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	single-family	6' fence	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	3,049	3,049	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,049	3,049	15,000 min.
<u>Street Frontage (ft.):</u>	40	40	100 min.
<u>Lot depth (ft.):</u>	80	80	100 min.
<u>Primary Front Yard (ft.):</u>	17	17 (fence)	30 min.
<u>Right Yard (ft.):</u>	10	10	10 min.
<u>Left Yard (ft.):</u>	7	7	10 min.
<u>Rear Yard (ft.):</u>	30	30	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	30	30	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking</u>	ok	ok	ok
<u>Estimated Age of Structure:</u>	1901	Variance request shown in red.	

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

Fences up to 4' in height are exempt from front yard requirements and fences that exceed 4' must comply. The dwelling on this lot sits approximately 17 feet from the front property line, where the required yard distance is 30 feet. In addition to the 10' section, there is also a portion of the fence that runs parallel to the side yard and is also located in the front yard, approximately 13'.

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 #6-7

Petitioners: Happy Mountain Holdings LLC
Property: 64 & 74 Emery Street
Assessor Plan: Map 220, Lots 87-2 and 87-3
Zoning District: Single Residence B (SRB)
Description: Construct a two-family dwelling on each lot.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.440, Use #1.30 to allow a two family dwelling on each of the two lots where a two family dwelling on a lot is not allowed.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit for Lot 220-87-3 (64 Emery Street) of 10,616 s.f. where 15,000 s.f. is required.

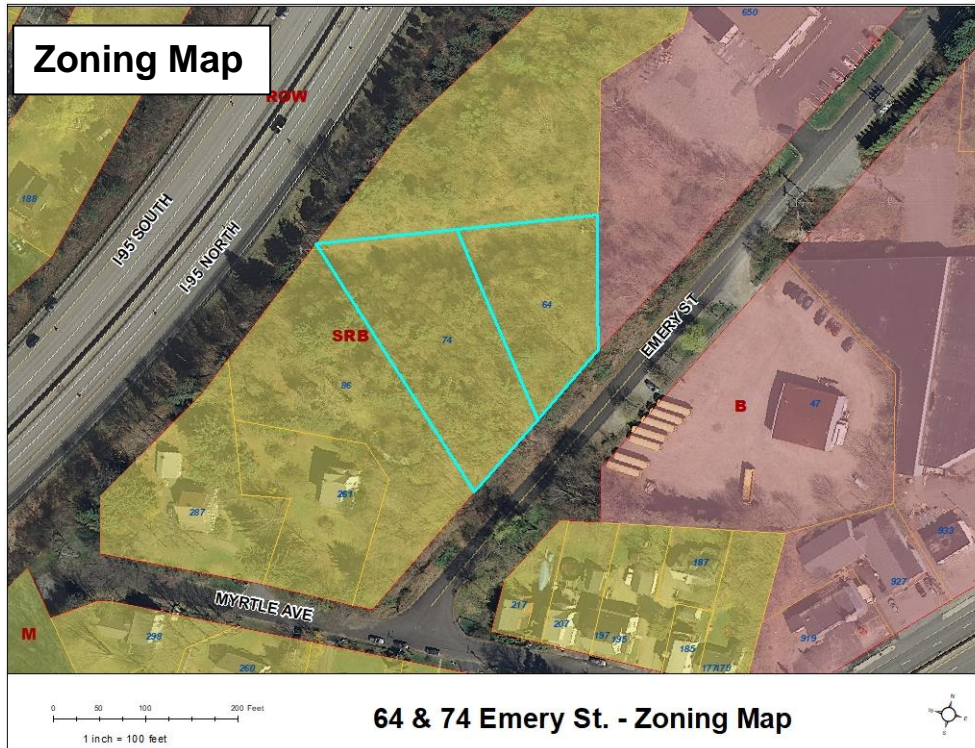
Existing & Proposed Conditions

	<u>Existing</u>		<u>Proposed</u>		<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant 64	74	2 – two family DU 64	74	Primarily single Residential
<u>Lot area (sq. ft.):</u>	21,232	32,427	21,232	32,427	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	NA	10,616	16,213	15,000 min.
<u>Street Frontage (ft.):</u>	100	104	100	104	100 min.
<u>Lot depth (ft.):</u>	>100	>100	>100	>100	100 min.
<u>Primary Front Yard (ft.):</u>	NA	NA	>30	>30	30 min.
<u>Right Yard (ft.):</u>	NA	NA	>10	>10	10 min.
<u>Left Side Yard (ft.):</u>	NA	NA	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	NA	NA	>30	>30	30 min.
<u>Height (ft.):</u>	NA	NA	<35	<35	35 max.
<u>Building Coverage (%)</u>	0	0	12.5	8	20 max.
<u>Open Space Coverage (%)</u>	100	100	>40	>40	40 min.
<u>Parking</u>			Ok	Ok	ok
<u>Estimated Age of Structure:</u>			Variance request shown in red.		

Other Permits Required

Planning Board - Site Review

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

This project will require site review because it will result in 3 or more dwelling units. In February, the Board approved a two-family dwelling on the adjacent property with stipulations that one of the units must be owner occupied, both units must be under the same ownership and an annual certificate must be submitted certifying the first two stipulations.

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 #6-8

Petitioners:	Bonnie A Konopka & Stephanie Ross
Property:	5 Simonds Road
Assessor Plan:	Map 292, Lot 58
Zoning District:	Single Residence B (SRB)
Description:	Rear addition.
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) a 19' rear yard where 30' is required and b) 24% building coverage where 20% is the maximum allowed.

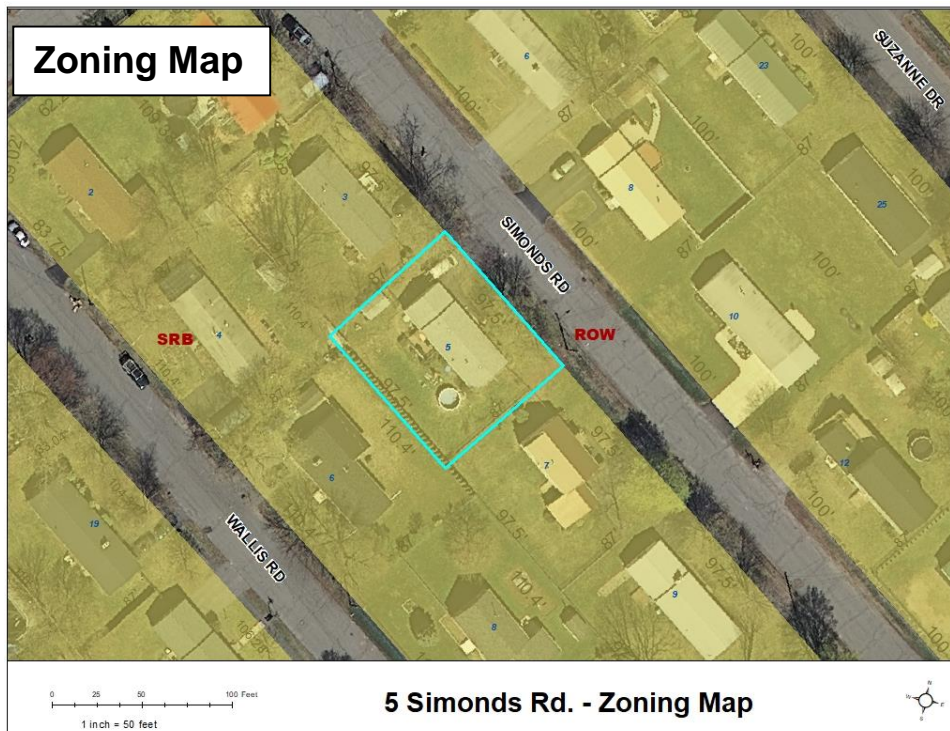
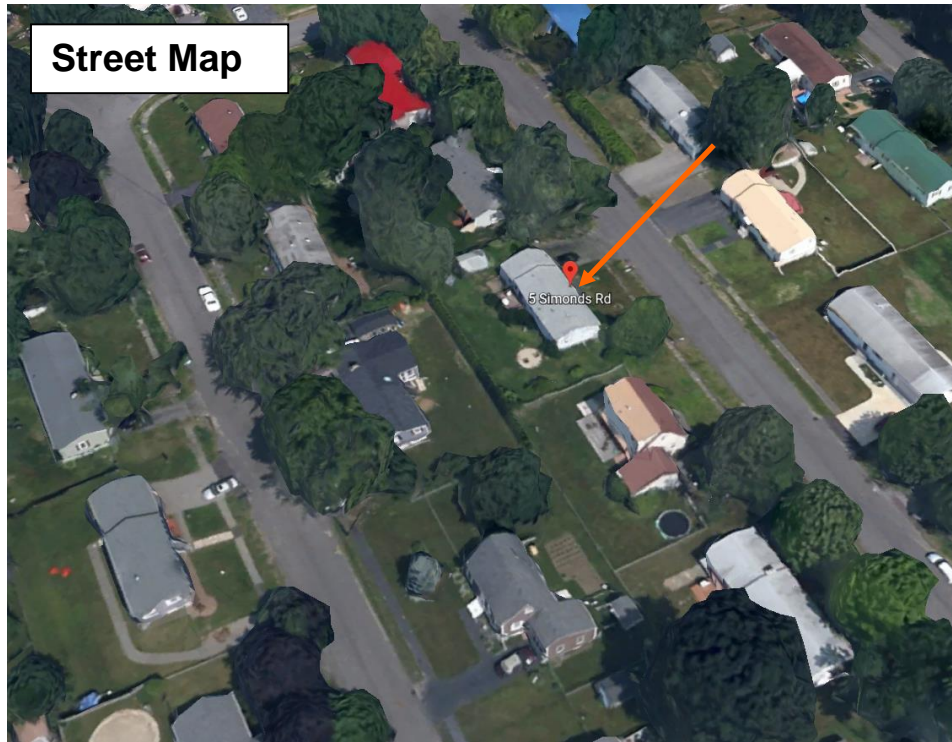
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	single-family	Rear addition	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	8,276	8,276	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,276	8,276	15,000 min.
<u>Street Frontage (ft.):</u>	97.5	97.5	100 min.
<u>Lot depth (ft.):</u>	87	87	100 min.
<u>Primary Front Yard (ft.):</u>	22	22	30 min.
<u>Right Yard (ft.):</u>	18	10	10 min.
<u>Left Yard (ft.):</u>	20	20	10 min.
<u>Rear Yard (ft.):</u>	30	19	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	20	24	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking</u>	ok	ok	ok
<u>Estimated Age of Structure:</u>	1901	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 #6-9

Petitioners:	Jean G. Merrill & Timothy G. Gilman
Property:	62 Woodbury Avenue
Assessor Plan:	Map 163, Lot 23
Zoning District:	General Residence A (GRA)
Description:	Two-family dwelling.
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, Use #1.61 to allow two dwelling units with less than the required lot area per dwelling unit.

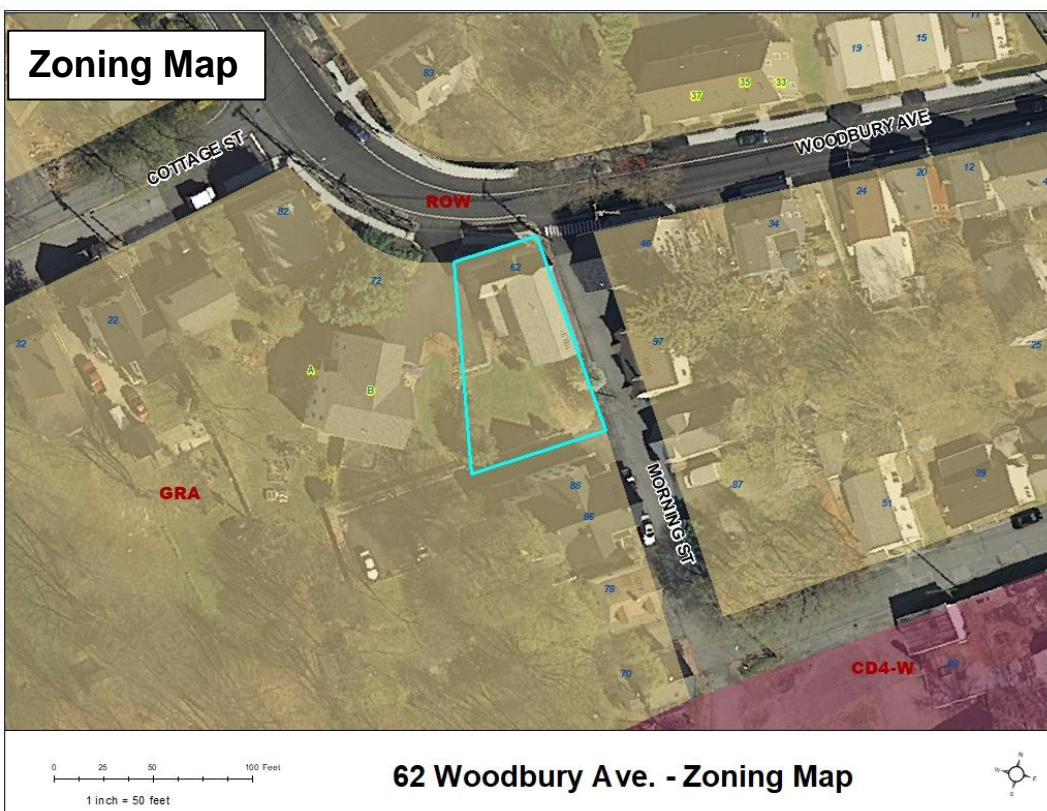
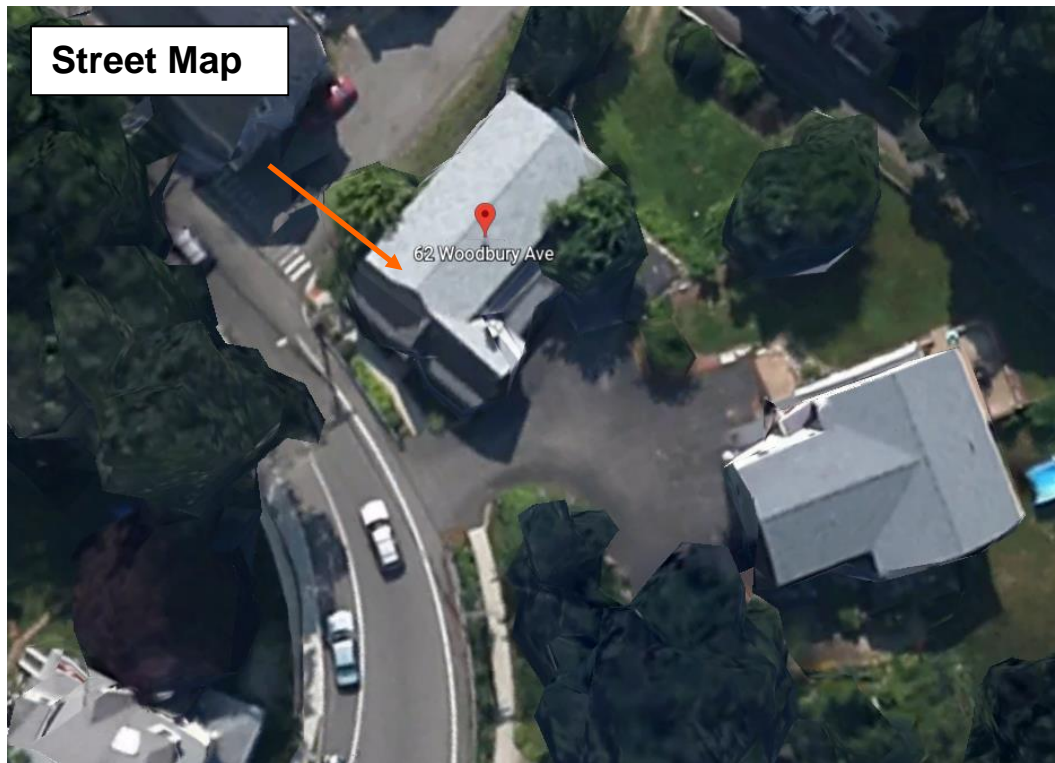
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Two-family	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	6,098	6,098	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,098	3,049	7,500 min.
<u>Street Frontage (ft.):</u>	>100	>100	100 min.
<u>Lot depth (ft.):</u>	>70	>70	70 min.
<u>Primary Front Yard (ft.):</u>	4	4	15 min.
<u>Right Yard (ft.):</u>	5	5	10 min.
<u>Secondary Front Yard (ft.):</u>	4	4	15 min.
<u>Rear Yard (ft.):</u>	45	45	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	24	24	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	ok	ok	3
<u>Estimated Age of Structure:</u>	1848		

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

March 20, 2001 – The Board **granted** a variance to allow a 22' x 25' two story addition and an 8' x 20' porch on a single family dwelling with a 5' left side yard where 10' was required.

Planning Department Comments

A building in the GRA district existing on January 1, 1980 with less than the minimum lot area per dwelling unit may be converted to two dwelling units through a Special Exception. Additional criteria in Section 10.812 pertaining to the conversion of an existing dwelling to a multifamily dwelling states there will be no exterior changes, the lot must comply with open space, building coverage and parking, and the lot shall have a minimum lot area per dwelling of 3,000 square feet. The property complies with all of the standards in this section. There are no exterior changes proposed, only adding a second kitchen and closing off access to separate the spaces into two units.

Review Criteria

The application must meet all of the standards for a **special exception** (see Section 10.232 of the Zoning Ordinance).

1. *Standards as provided by this Ordinance for the particular use permitted by special exception;*
2. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*
3. *No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;*
4. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*
5. *No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and*
6. *No significant increase of stormwater runoff onto adjacent property or streets*

Case #6-10

Petitioners:	Colman C. Garland
Property:	185 Cottage Street
Assessor Plan:	Map 174, Lot 14
Zoning District:	General Residence A (GRA)
Description:	Construct two-story medical office building.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.440, Use #6.20 to allow medical (dental) offices where medical offices are not permitted.

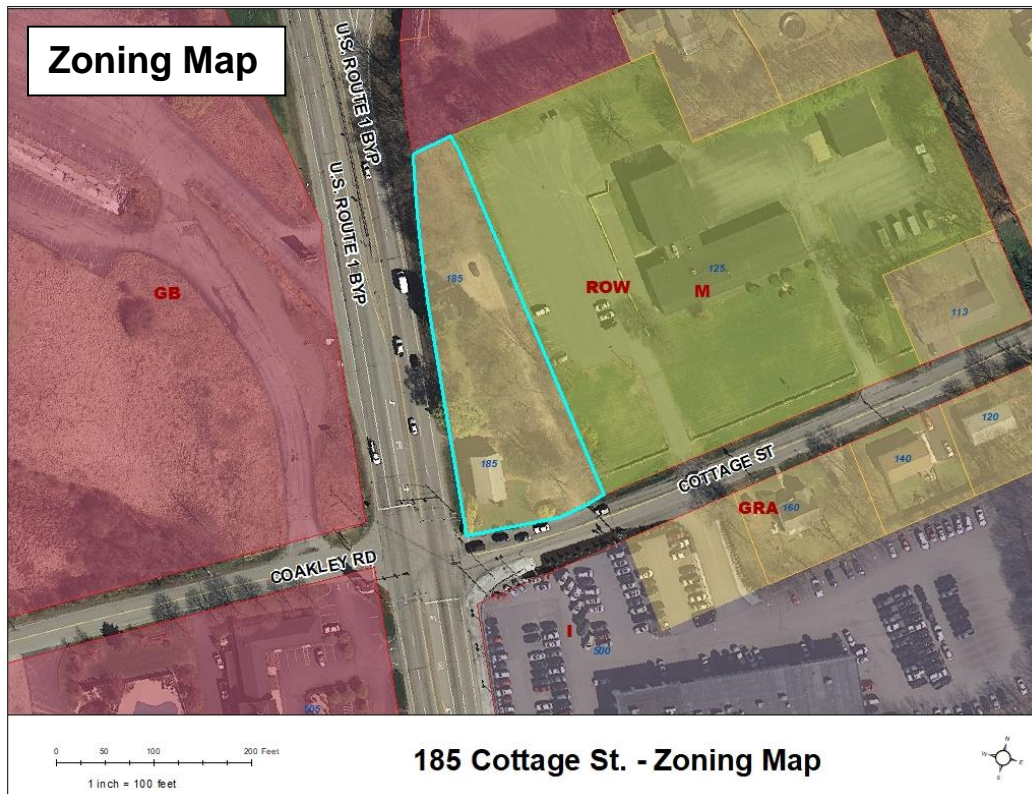
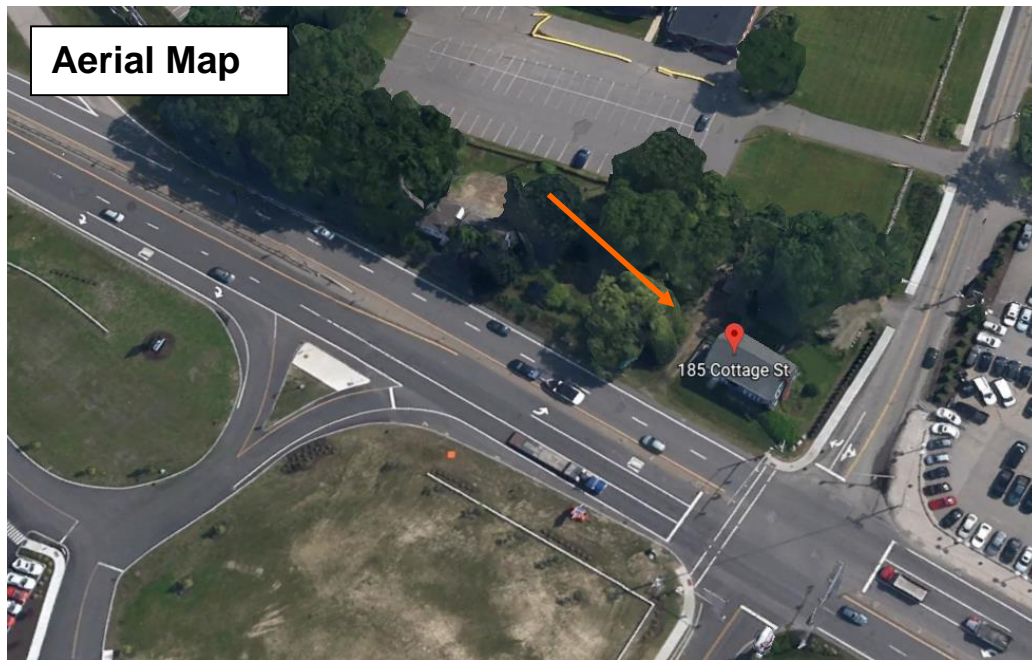
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Multifamily	Medical facility	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	38,768	38,768	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	12,922	NA	7,500 min.
<u>Street Frontage (ft.):</u>	>100	>100	100 min.
<u>Lot depth (ft.):</u>	>70	>70	70 min.
<u>Primary Front Yard (ft.):</u>		27	15 min.
<u>Right Yard (ft.):</u>		43	10 min.
<u>Secondary Front Yard (ft.):</u>		15	15 min.
<u>Rear Yard (ft.):</u>		>20	20 min.
<u>Height (ft.):</u>		<30	30 (flat) max.
<u>Building Coverage (%):</u>		11.3	25 max.
<u>Open Space Coverage (%):</u>		46	30 min.
<u>Parking</u>	ok	32	30 (36 max.)
<u>Estimated Age of Structure:</u>		Variances shown in red.	

Other Permits Required

Planning Board – Site Review.

Neighborhood Context



Previous Board of Adjustment Actions

October 25, 2016 – The Board **denied** a request for a restaurant with a drive-through with less than required parking spaces and parking spaces in a required front yard.

Planning Department Comments

The proposed medical facility is not permitted in this district and therefore requires a use variance. The site plan submitted conforms to all dimensional and parking requirements in the GRA district. This will require site review with TAC and the Planning Board.

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 #6-11

Petitioners:	Irene R. Lebel Revocable Trust, owner, Matthew Lebel, Applicant
Property:	54 Court Street
Assessor Plan:	Map 116, Lot 54
Zoning District:	Character District CD4-L1
Description:	Convert office space to retail.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.440, Use #8.31 to allow retail sales to be conducted within a building where the use is not allowed. 2. A Variance from Section 10.1114 to allow parking to be provided that does not meet the requirements of the ordinance.

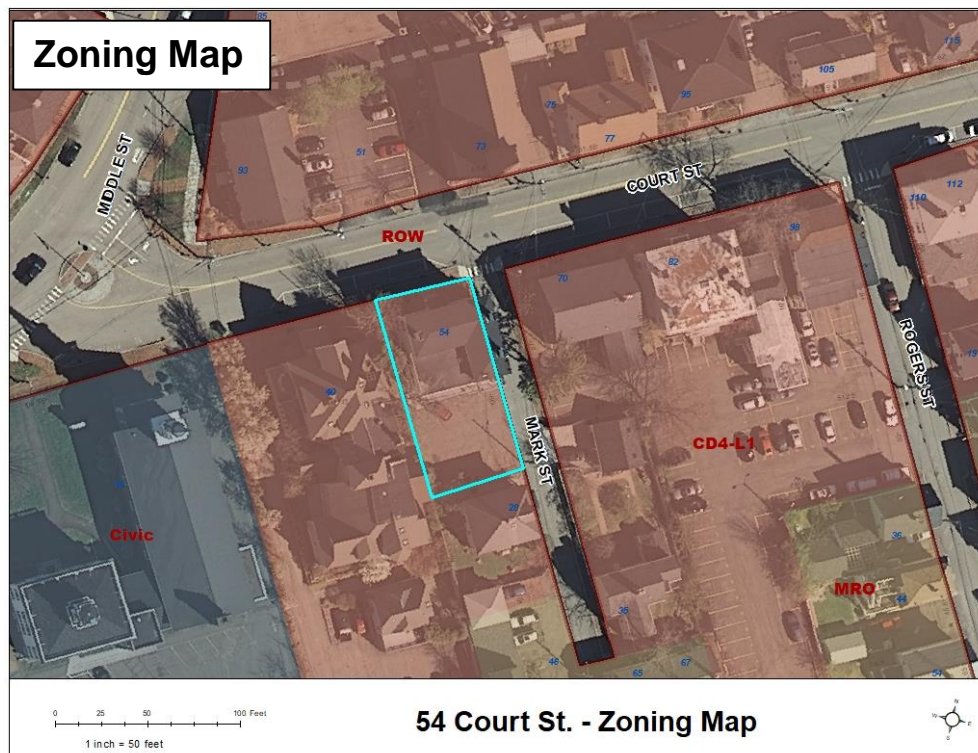
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Office	Retail space	Primarily Mixed Uses
<u>Lot area (sq. ft.):</u>	5,662	5,662	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	NA	3,000 min.
<u>Primary Front Yard (ft.):</u>	10	10	15 max.
<u>Right Yard (ft.):</u>	5	5	5 min to 20 max
<u>Secondary Front Yard (ft.):</u>	0	0	15 max.
<u>Rear Yard (ft.):</u>	53	53	5 min.
<u>Building Coverage (%):</u>	36	36	60 max.
<u>Open Space Coverage (%):</u>	13	13	25 min.
<u>Parking</u>	10 (nonconforming)		1(for retail use)
<u>Estimated Age of Structure:</u>	1800	Variance request shown in red.	

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The existing parking spaces do not conform to the parking requirements in the zoning ordinance. There are three apartments on the upper two floors and the remaining area of the first floor consists of office space. The required parking for the existing uses is 7 spaces (4 for residential and 3 for office) and the proposed retail space requires 1 parking space for a total of 8 spaces. The site plan shows 10 spaces, however, they are nonconforming in their dimensions.

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 #6-12

Petitioners:	Neil Cohen
Property:	21 Langdon Street
Assessor Plan:	Map 138, Lot 32
Zoning District:	General Residence C (GRC)
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".

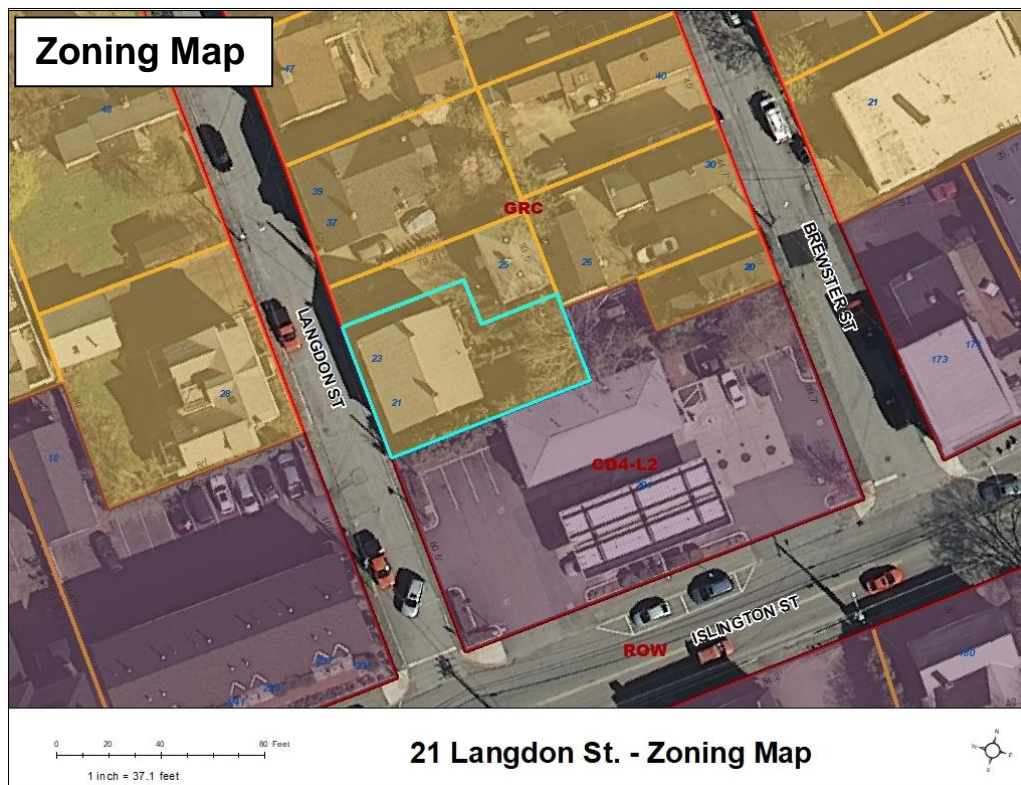
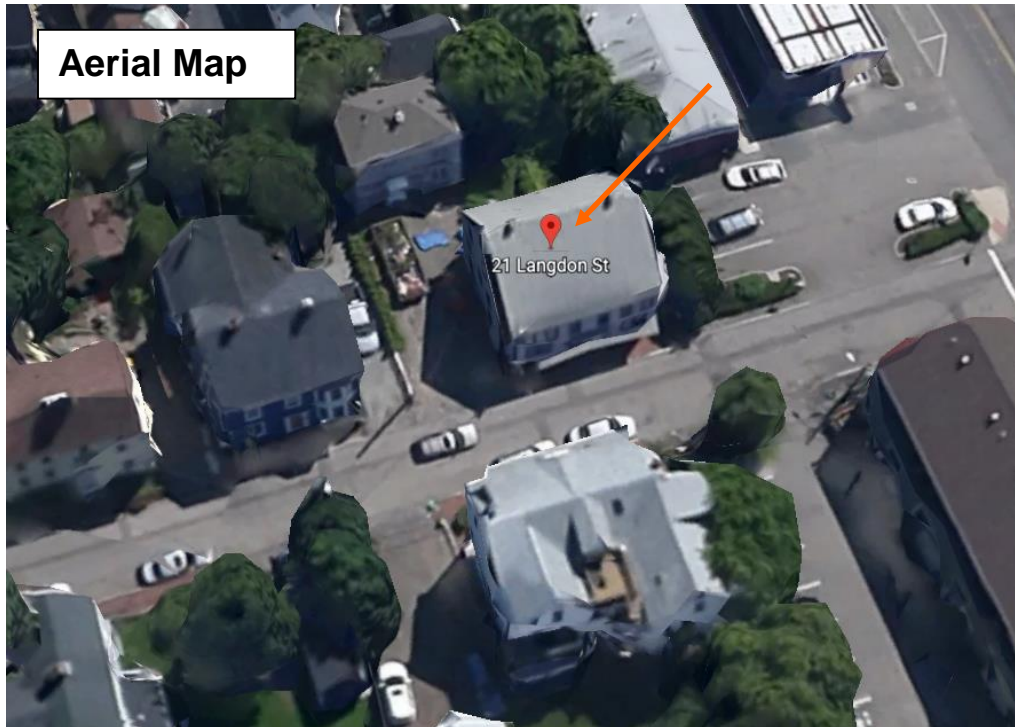
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two-family	2nd Driveway	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	3,485	3,485	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,742	1,742	3,500 min.
<u>Street Frontage (ft.):</u>	53.7	53.7	70 min.
<u>Lot depth (ft.):</u>	>50	>50	50 min.
<u>Primary Front Yard (ft.):</u>	1.83	1.83	5 min.
<u>Right Yard (ft.):</u>	6.7	6.7	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>	39.7	39.7	35 max.
<u>Open Space Coverage (%):</u>	36	29	20 min.
<u>Parking</u>	Ok	ok	ok
<u>Estimated Age of Structure:</u>	1910	Variance request shown in red.	

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.*

Paving has been completed recently on Landgon Street. If the variance is granted and a driveway permit is issued, the owner will be responsible for the cost of restoring any damage to the road, which could be significant, given the work was just completed.

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.