

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: January 14, 2020
RE: Zoning Board of Adjustment January 22, 2020 Meeting

OLD BUSINESS

1. Case 12-6 95 Brewster Street/49 Sudbury Street

NEW BUSINESS

1. Case 1-1 11 Meeting House Hill Road
2. Case 1-2 36 Richmond Street
3. Case 1-3 592 Dennett Street
4. Case 1-4 21 Elwyn Avenue
5. Case 1-5 105 Bartlett Street (aka 0 Bartlett Street)

OLD BUSINESS

Case #12-6

Petition of Nickerson Home Improvement Company, Inc. and James S. Remick, Trustee of James S. Remick Revocable Trust of 2000 and Linette S. Remick, Trustee of Linette S. Remick Revocable Trust of 2000, owners and Perley Lane LLC, applicant for properties located at **95 Brewster Street and 49 Sudbury Street** wherein relief is required from the Zoning Ordinance to demolish existing structures, merge two lots into one and construct 3 dwelling units which require the following Variances from Section 10.521: a) to allow 42% building coverage where 35% is the maximum allowed; and b) to allow a 6' rear yard and a 17' rear yard where 20' is required. Said properties are shown on Plan 138, Lots 57 and 58 and lie within the General Residence C District.

Existing & Proposed Conditions

	<u>Existing</u>		<u>Proposed</u>	<u>Permitted / Required</u>	
<u>Land Use:</u>	SFD. 49 Sud.	Com. 95 Brew.	Merge and construct 3 units	Primarily mixed residential uses	
<u>Lot area (sq. ft.):</u>	3,817	6,930	10,747	3,500	min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,817	NA	3,582	3,500	min.
<u>Primary Front Yard:</u>	0	.5'	6"* (Brewster)	5	min.
<u>Secondary Front Yard (ft.):</u>	NA	>60'	0* (Sudbury)	5	min
<u>Side Yard (ft.):</u>	5,21	0	6	10	min
<u>Rear Yard (ft.):</u>	~40	~2'	6, 17	20	min
<u>Height (ft.):</u>	<35	<35	<35	35	max.
<u>Building Cov. (%):</u>	16	42.5	42	35	max.
<u>Open Space (%):</u>	24	10	43	20	min.
<u>Parking</u>	2	6+	6	4	
<u>Estimated Age of Structure:</u>	1780	1995	Variance request shown in red.		

Other Permits/Approvals Required

TAC & Planning Board – Site Review

Previous Board of Adjustment Actions

December 17, 2019 – The Board **postponed** an application to demolish existing structures, merge two lots into one and construct 3 dwelling units requiring 45% building coverage, 35% maximum allowed and a 5' rear yard, 20' required.

Planning Department Comments

The applicant is proposing to demolish the existing buildings, merge the two lots into one and construct three dwelling units, one two-family and one single family home. The merged lot size will be large enough to allow for three units. The lot will have frontage on both Sudbury and Brewster and it is yet to be determined how the addresses will be assigned but there will be separate street addresses. The rear lot line is defined below:

Lot line, rear

A boundary of a **lot** that is opposite and most distant from the **front lot line**. If the **rear lot line** is less than 10 feet in length, or if the **lot** forms a point at the rear, the **rear lot line** shall be deemed to be a line 10 feet in length within the **lot**, parallel to and at the maximum distance from the **front lot line**.

This lot has an odd shape creating a situation where the lot line opposite and *most distant* from Sudbury Avenue is a rear lot line and the lot line opposite and *most distant* from 95 Brewster is a rear lot line. The front yard modification for both Brewster and Sudbury per Section 10.516.10 allows for a 0' front yard on Sudbury and a 6" front yard on Brewster. The applicant has modified the proposal and reduced the previously proposed 45% building coverage and is now requesting 41% where 35% is the maximum allowed. Site plan review will be required for this project if the variances are 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.

NEW BUSINESS

Case #1-1

Petition of Argeris & Eloise Karabelas, owners, for property located at **11 Meeting House Hill Road** wherein relief is required from the Zoning Ordinance to remove and reconstruct garage roof and convert the second floor into a studio apartment which includes the following: 1) A Variance to increase the height of the garage to 20' 1" where a prior Board stipulated the height not exceed 18'. 2) A Variance from Section 10.521 to allow an 8' rear yard where 20' is required. Said property is shown on Assessor Plan 103, Lot 59 and lies within the General Residence B District.

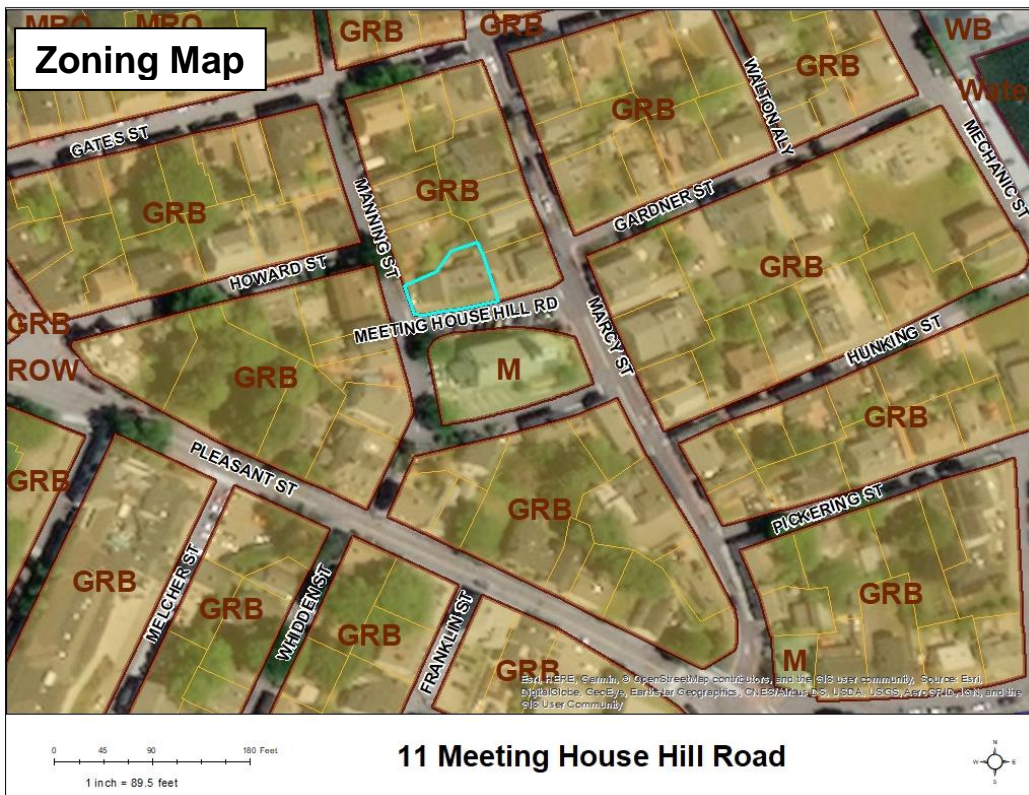
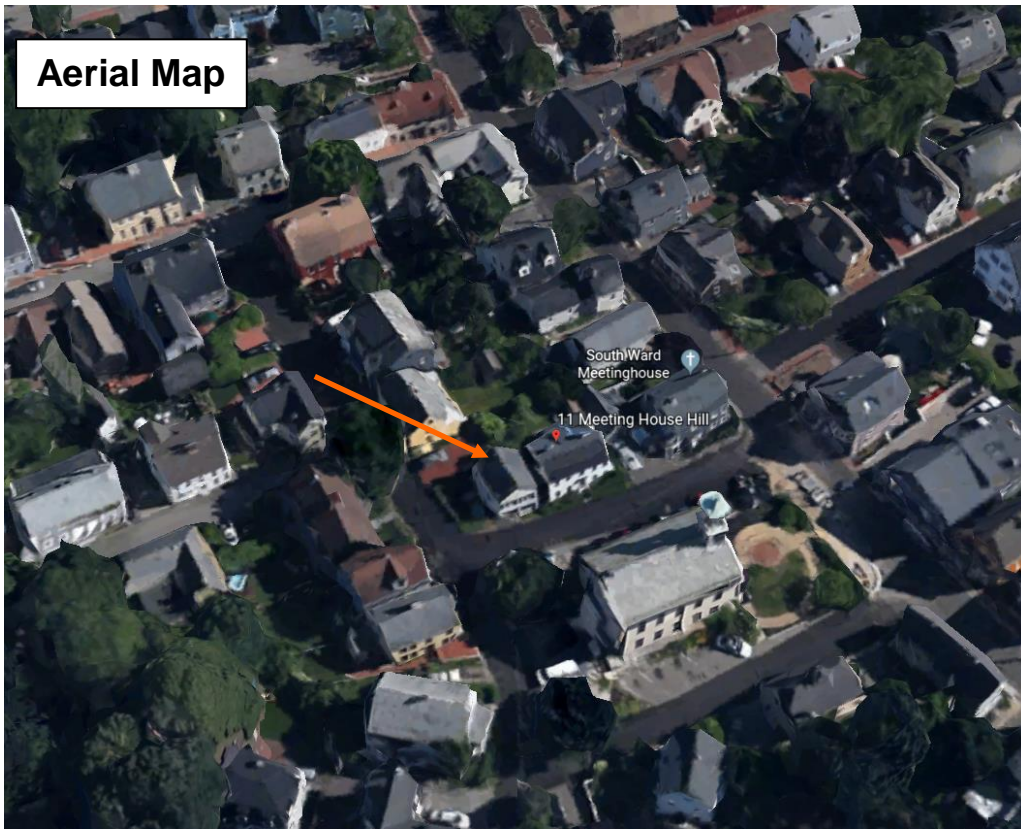
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two-family	Raise garage roof /move 1 DU into garage.	Primarily residential uses
<u>Lot area (sq. ft.):</u>	3,422	3,422	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,711	1,711	5,000 min.
<u>Street Frontage (ft.):</u>	78	78	80 min.
<u>Lot depth (ft.):</u>	44	44	60 min.
<u>Primary Front Yard (ft.):</u>	4 (garage)	4 (garage)	5 (2.7*) min.
<u>Secondary Front Yard (ft.):</u>	17 (garage)	17 (garage)	5 min.
<u>Right Yard (ft.):</u>	0 (house)	0 (house)	10 min.
<u>Rear Yard (ft.):</u>	8 (garage)	8	25 min.
<u>Height (ft.):</u>	18 (garage)	20'1"	35 max.
<u>Building Coverage (%):</u>	43	43	30 max.
<u>Open Space Coverage (%):</u>	57	57	25 min.
<u>Parking</u>	3	3	3
<u>Estimated Age of Structure:</u>	1900 (1790 house) 1981 (garage)	Variance request shown in red. *ok per Section 10.516.10 for Front Yard Alignments.	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

January 6, 1981 – The Board **granted** variances to allow the following: a) construction of a two story garage with a 4' front, 10' rear and 7' right setbacks (21' required for all); b) construction on a corner lot with a front setback of 4' and a left side setback of 10' where 10' was required; and c) 71.7% building coverage where 20% was allowed. The request was granted with the following **stipulations attached to a) and b)**: 1) the garage to be 16' from the left setback (Manning Street side); 2) the dimensions not to exceed 18' in width (Meeting House Hill side) and 24' in length (Manning Street side); and 3) the height not to exceed 18'. Building coverage (c) was granted with no stipulations.

January 15, 2019 – The Board voted to **postpone** hearing a request to move one existing dwelling unit to a garage with added second story and connector to the existing home at the request of the applicants. The relief requested included the following: a) 48% building coverage where 30% was the maximum permitted; b) a 5.5' rear yard where 25' was required; and c) to allow a nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.

February 20, 2019 – The Board **granted** the above variances.

April 16, 2019 – The Board **denied** a Motion for Rehearing and an Amendment to Motion for Rehearing.

July 16, 2019 – The Board **granted** variances to add a dormer on either side of an existing dormer with a 3' right side yard, 10' required and a 14' rear yard, 25' required.

Planning Department Comments

When the original garage was proposed in 1981, several variances were granted, one of which stipulated the height not exceed 18'. The applicant is proposing to renovate the garage and increase the height of the garage to just over 20 feet to allow for the second floor to be converted into an apartment. The main house consisted of 2 dwelling units, and the proposal is to move one into the upstairs of the garage and the main house is currently being converted into a single family dwelling. Conversion of the garage from an accessory structure into a dwelling requires that it meet principal yard requirements.

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 #1-2

Petition of Christopher Hudson Morrow, owner, for property located at **36 Richmond Street** wherein relief is required from the Zoning Ordinance which requires the following to construct a 2-story bay addition, third floor dormer and new heat pump which requires the following: 1) Variances from Section 10.521 to allow the following: a) a 9' right side yard where 10' is required; b) a 12.5' rear yard where 15' is required; and c) 41% building coverage where 40% is the maximum allowed. 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. 3) A Variance from Section 10.515.14 to allow a 7' right side yard where 10' is required. Said property is shown on Assessor Plan 108, Lot 5 and lies within the Mixed Residential Office District.

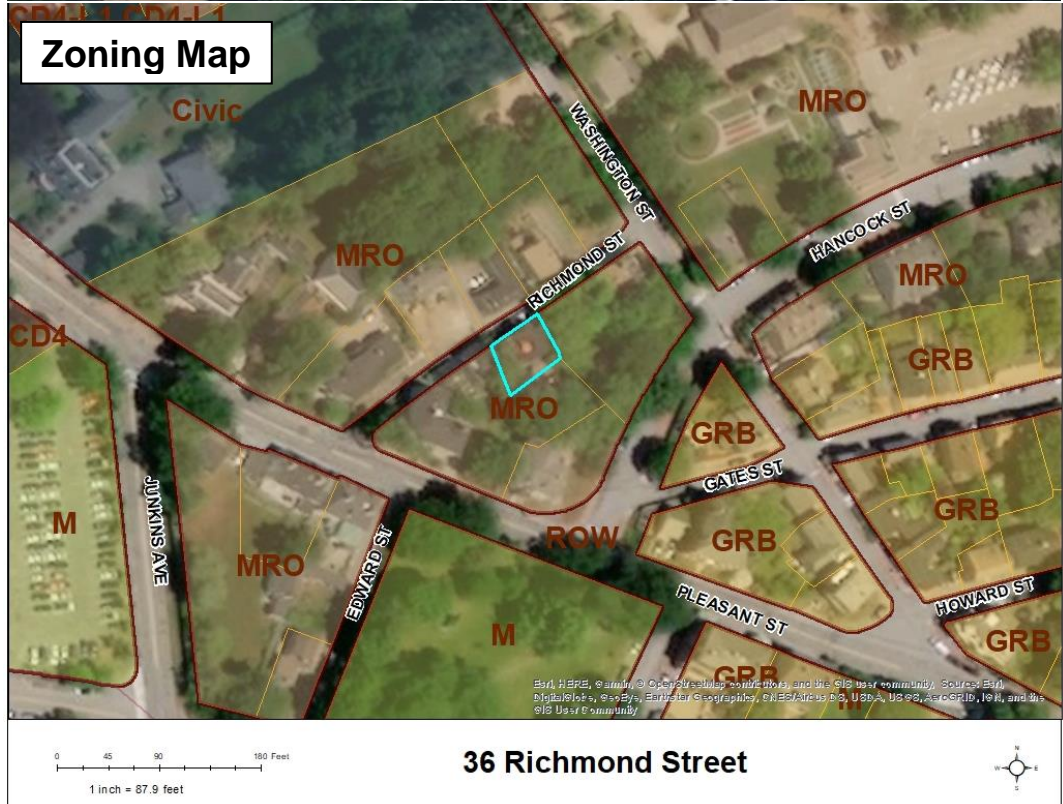
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Bay addition/Heat pump	Primarily residential uses
<u>Lot area (sq. ft.):</u>	2352	2352	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2352	2352	7,500 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.):</u>	44	44	80 min.
<u>Front Yard (ft.):</u>	10	10	5 min.
<u>Right Yard (ft.):</u>	8	9 (bay), 7 (heat pump)	10 min.
<u>Left Yard (ft.):</u>	7	7	10 min.
<u>Rear Yard (ft.):</u>	5.5	12.5'	15 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	40	41	40 max.
<u>Open Space Coverage (%):</u>	41	40	25 min.
<u>Parking</u>	ok	ok	1.3
<u>Estimated Age of Structure:</u>	1912	Variance request shown in red.	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing a 2-story bay addition that will encroach into the right side and rear yard. The plan also includes adding heat pump that falls within the 10 foot setback. The existing house is currently nonconforming with respect to the right side and rear yards and the building coverage is at the maximum allowed, with the lot being roughly a third of what is required for the district.

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 #1-3

Petition of James & Mallory Parkington, owners, for property located at **592 Dennett Street** wherein relief is required from the Zoning Ordinance to add an accessory dwelling unit above an attached garage which requires the following: 1) A Variance from Section 10.521 to allow a 4' secondary front yard where 15' is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Plan 161, Lot 18 and lies within the General Residence A District

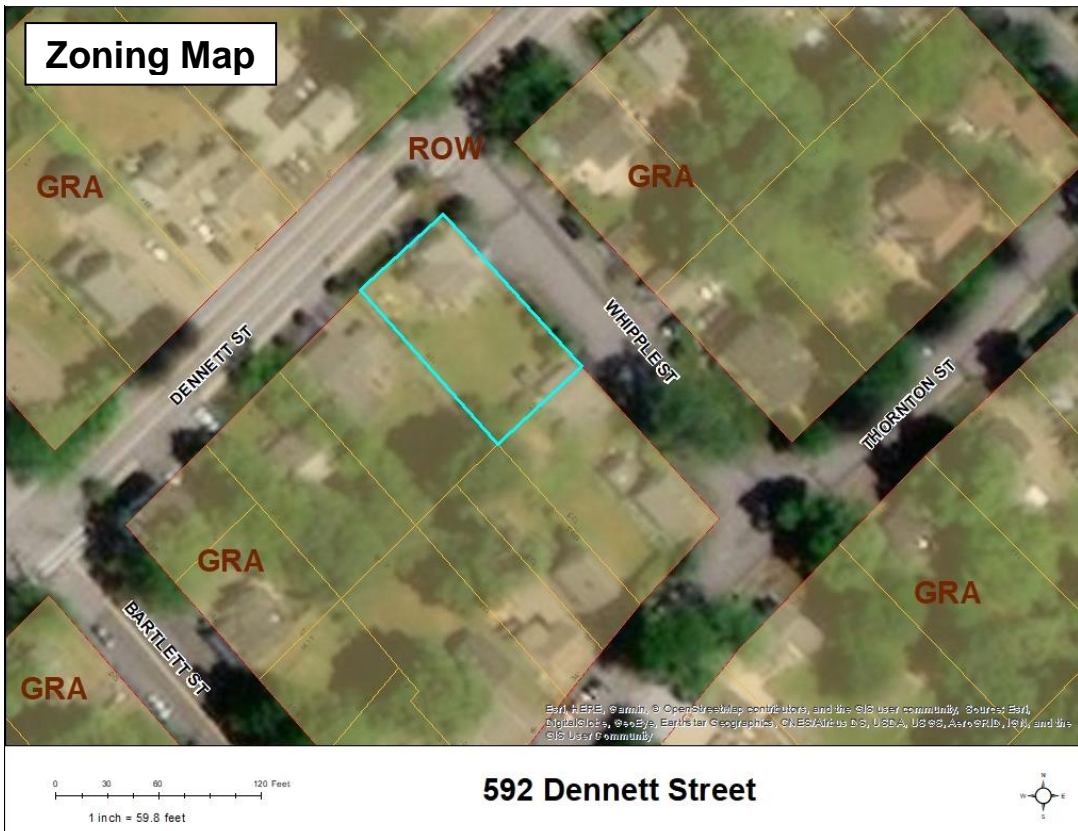
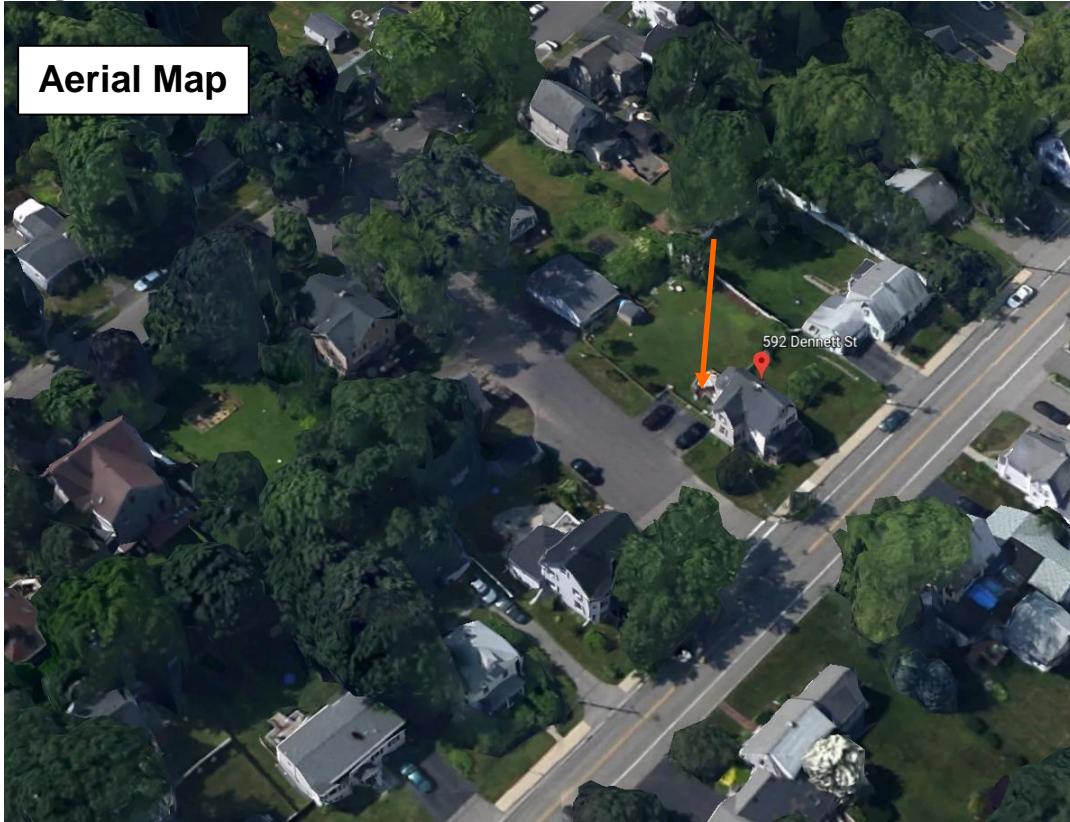
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Construct garage with AADU above	Primarily residential uses
<u>Lot area (sq. ft.):</u>	7,920	7,920	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,920	7,920	7,500 min.
<u>Street Frontage (ft.):</u>	180	180	100 min.
<u>Lot depth (ft.):</u>	66	66	70 min.
<u>Front Yard (ft.):</u>	9	9	15 min.
<u>Secondary Front Yard (ft.):</u>	0	4 (garage)	15(8)* min.
<u>Right Yard (ft.):</u>	25'6"	38 (garage)	10 min.
<u>Rear Yard (ft.):</u>	60	32'6"	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	17	25	25 max.
<u>Open Space Coverage (%):</u>	81	71.5	30 min.
<u>Parking</u>	3	2	3
<u>Estimated Age of Structure:</u>		Variance request shown in red. *8 feet allowed with front yard modification	

Other Permits/Approvals Required

Planning Board – Conditional Use Permit (CUP) for AADU.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The subject property is located on the corner of Dennett and Whipple Street. The proposal is to construct a garage facing Whipple Street with an attached Accessory Dwelling Unit (ADU) above. Using the front yard modification, the structure could be as close as 8 feet from the property line and not need a variance, however the applicant is seeking relief for a 4 foot secondary front yard. The applicant will need to seek a CUP for the ADU from 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 #1-4

Petition of SAI Builders, LLC, owner, for property located at **21 Elwyn Avenue** wherein relief is required from the Zoning Ordinance for the renovation of existing home including front porch reconstruction, kitchen expansion and second floor addition which requires the following: 1) A Variance from Section 10.521 to allow a) a 3'6" right side yard where 10' is required; and b) to allow 32% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Plan 113, Lot 28 and lies within the General Residence A District.

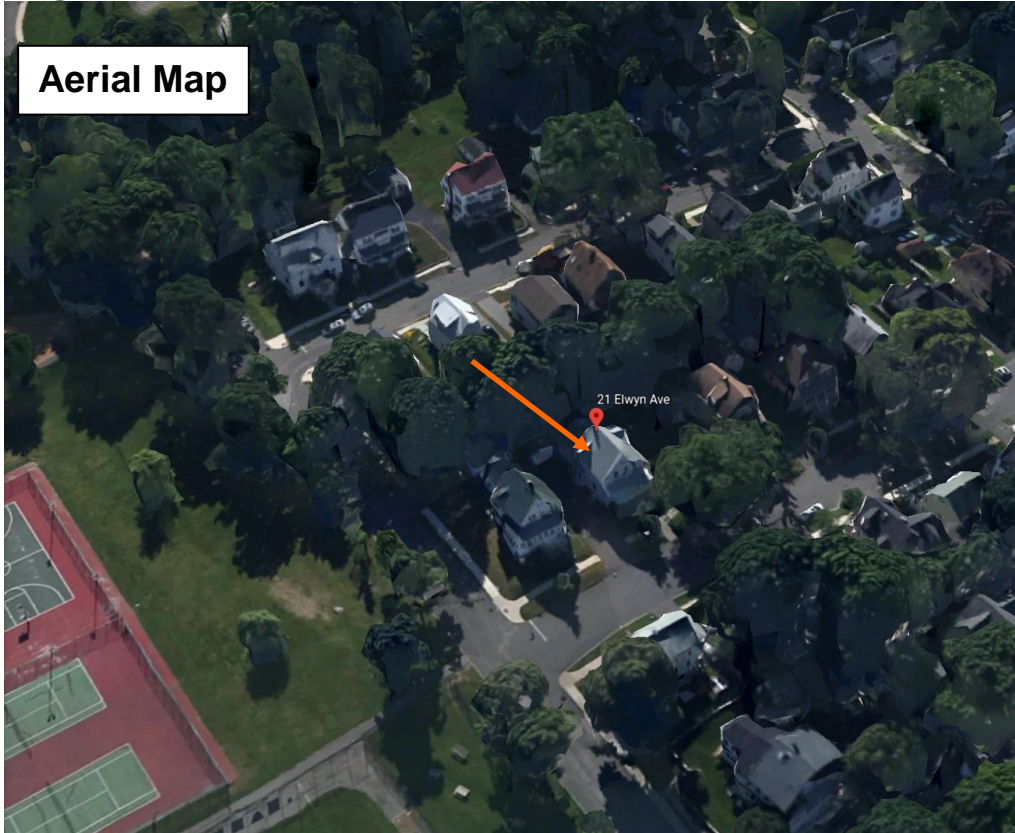
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	Front porch, kitchen expansion, 2 nd story addition	Primarily residential uses
<u>Lot area (sq. ft.):</u>	5,017	5,017	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,017	5,017	7,500 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.):</u>	100	100	70 min.
<u>Front Yard (ft.):</u>	16	16	15 min.
<u>Right Yard (ft.):</u>	3'6"	3'6"	10 min.
<u>Left Yard (ft.):</u>	19	19	10 min.
<u>Rear Yard (ft.):</u>	30	26	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	31	32	25 max.
<u>Open Space Coverage (%):</u>	36	36	30 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1850	Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing a major renovation to the 1850's house which includes reconstruction of the front porch, a rear 2 story addition and expansion of the kitchen. The house sits on the right side of the lot, encroaching into the right side yard along the full length of the house. The front porch is currently enclosed and the applicant is proposing to demolish the existing and construct an open porch in the same footprint. A new porch and steps off the expanded kitchen on the back of the house will increase the building coverage to 32% where 25% is the maximum allowed and 31% exists.

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 #1-5

Petition of Clipper Traders LLC and Portsmouth Lumber & Hardware, LLC, owners, Iron Horse Properties, LLC, owner and applicant for property located at **105 Bartlett Street (aka 0 Bartlett Street)** wherein relief is required from the Zoning Ordinance for the relocation of existing structure and construction of 178 unit mixed-use development which includes the following: 1) A Variance from Section 10.516.20 to allow a 6' setback from a railroad right of way where 15 feet is required. 2) A Variance from Section 10.5A42.40 to allow a new building to encroach into the Dover Street view corridor. 3) A Variance from Sections 10.5A43.31 & 10.5A46.10 to allow a portion of two buildings to be five-stories, 60 feet where a four-story, 50 foot building maximum is permitted with incentives in the CD4-W zone. Said property is shown on Assessor Plan 157, Lots 1 & 2 and Assessor Plan 164, Lot 4-2 and lies within Character District 4-W (CD 4-W) and Character District 4-L1 (CD4-L1).

Existing & Proposed Conditions

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed use development	Primarily mixed uses
<u>Lot area (sq. ft.):</u>	220,768	5,000 min.
<u>Building Block Length (ft.):</u>	185	200 max.
<u>Building Footprint:</u>	11,028 (Bldg A) 19,800 (Bldg B) 20,000 (Bldg C)	20,000 max.
<u>Max. Front Yard (ft.):</u>	0	10 max.
<u>Rear Yard (ft.):</u>	6	5 (15 from RR - ROW) min.
<u>Height (ft.):</u>	5 Stories, 60' (Bldg. B & C)	3 Stories, 40' 4 Stories, 50' (West End Incentive) max.
<u>Building Coverage (%):</u>	23	60 (80 w/ West End Incentive) max.
<u>Open Space Coverage (%):</u>	25	15 min.
<u>Community Space</u>	25%	20% for West End Incentive
	*Table shows CD4-W standards Variance request shown in red.	

Other Permits/Approvals Required

TAC and Planning Board – Lot Line Adjustment and Site Review
 Conservation Commission/ Planning Board – Wetlands CUP
 State Shoreland Permit

Previous Board of Adjustment Actions

May 28, 1991 – The Board **granted** a variance to reconstruct a nonconforming building on the existing footprint which had been destroyed by fire with associated retail sales.

June 23, 1998 – The Board **granted** the following: 1) a variance to expand an existing nonconforming seafood processing and freezing operation by the addition of a nitrogen tank on a pad within 500' of a residential district and not allowed in the Office Research District; 2) a Special Exception to allow the outdoor storage of equipment; and 3) a variance to allow a nonconforming use to be expanded. These were granted with the following stipulations: 1) that approval is contingent on the removal of any zoning violation; 2) that a ground pump be installed and enclosed; and that a pressure release valve be installed with the muffler.

November 24, 2015 – In two separate petitions, the Board **granted** the following:

- 1) Variances to allow the operation of a brewery in a district where the use was not allowed; a change of use without providing the necessary off-street parking; and to allow off-street parking spaces that do not meet the dimensional requirements; and
- 2) Variances to operate a dog daycare/boarding facility where the use was not allowed; a change of use without providing the necessary off-street parking; and to allow off-street parking spaces that do not meet the dimensional requirements.

June 21, 2016 – The Board **granted** a variance to allow a brewery use with an 800 s.f. indoor tasting area and to **deny** the proposed outdoor tasting area.

April 17, 2018 – The Board **granted** variances to allow the following relief under then current zoning: a) front lot line buildouts; b) front yards; c) secondary front lot line buildout; d) principal front yards; e) secondary front yards; f) open space coverage; f) lot size, g) side yards, and h) rear yards; for Proposed Lots 1, 2, 3, 4, & 5. The Board also **granted** variances to allow the following relief under the proposed zoning: a) front lot line buildouts; b) open space coverage; c) building footprint; and d) front yard for Proposed Lots 3, 4 and 5.

July 16, 2019 – The Board **granted** variances to allow replacement sign cabinets and panels with the understanding that the changeable sign portion would be located in the middle cabinet. The variances were granted with the **stipulation** that the lighting on all of the signs would be extinguished by 11:00 p.m. every evening.

Planning Department Comments

The applicant is proposing to construct a mixed-use development consisting of 178 apartments within three buildings, one of which will contain commercial/office space on the first floor. The existing building where Great Rhythm Brewery and Doggie Day Care is located will be converted into an amenities building for the development. One of the requested variances relates to the relocation of two existing outbuildings associated with Ricci Lumber as a result of reconfiguring a lot line to accommodate access to the site. The current location of the two buildings interferes with this access. While they

would meet the rear yard requirement for the CD4-W zone, they do will not comply with the setback from the Rail Road ROW per Section 10.516.20.

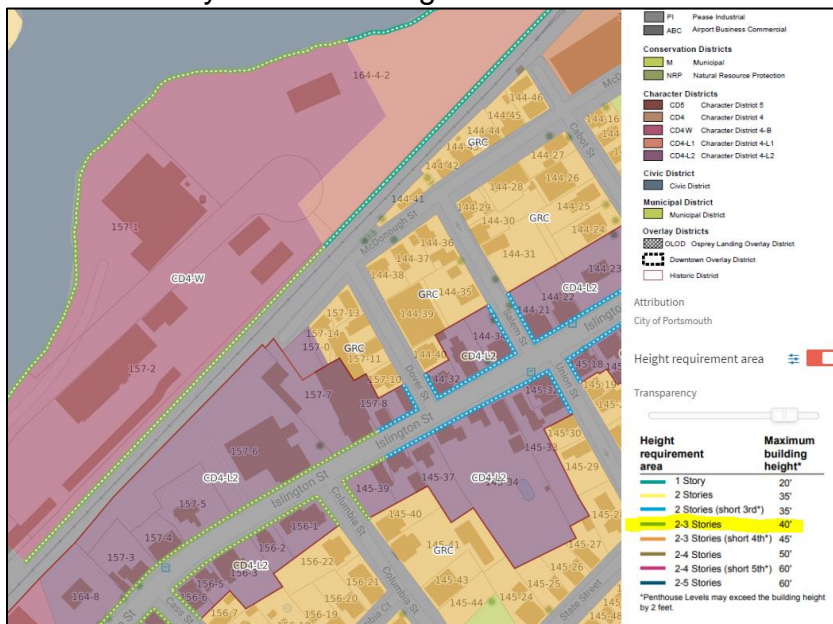
The second variance relates to the Dover Street View Corridor. Section 10.5A42.40 provides for preservation of view corridors to the North Mill Pond as stated below:

10.5A42.40 North Mill Pond Public View Corridors

All new **buildings** or structures located within 400’ of the North Mill Pond shall be located in such a way as to maintain existing public views with a terminal vista of the North Mill Pond from the intersecting **streets** of Dover Street, Cabot Street, Cornwall Street and Langdon Street. Except for existing obstructions, the public view corridor shall be maintained for a minimum width of the existing public right-of-way of the nearest intersecting **street** as listed above.

The intent of this language is to extend the corridor the width of the right-of-way. The proposal encroaches into the corridor with a portion of Building A as shown on the site plan. The proposal shows realignment of the view corridor so that it maintains the required width, but is almost perpendicular to McDonough Street. The applicant has proposed a condition that would provide a 40’ no-build zone adjacent to Building A to create permanent view corridor from Salem Street.

The required height for the portion of the property the proposed development is 2-3 stories or 40’ as shown in the image below. The property is also located in the West End Incentive Overlay (WEO) district. In the WEO, if 20% of the lot area is community space, an additional story up to 10’ is permitted, making the height requirement 4 stories or 50’. The plans show 25% community space provided and this will be vetted though the site review process with the Planning Board. The applicant is requesting to have a portion of two of the buildings (B and C) be 5 stories and 60 feet, exceeding the additional story allowed through the WEO district.



If granted approval, the Board should consider the stipulation proposed by the applicant to create a view corridor for Salem Street.

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.