

TO: Zoning Board of Adjustment  
FROM: Peter Stith, AICP, Planning Department  
DATE: September 14, 2021  
RE: Zoning Board of Adjustment September 21, 2021

**OLD BUSINESS**

- 1. 0 Sagamore Avenue – Request for Extension
- 2. 960 Sagamore Avenue

**NEW BUSINESS**

- 1. 276 Melbourne Street
- 2. 126 Elwyn Avenue
- 3. 139 Cass Street
- 4. 125 Elwyn Avenue
- 5. 44 Gardner Street
- 6. 21 Fernald Court
- 7. 319 Lincoln Avenue
- 8. 449 Court Street



## OLD BUSINESS

1.

Petition of **Lucky Thirteen Properties LLC**, owner, and the **Bean Group**, applicant, for property located at **Sagamore Avenue (at Wentworth Road)** wherein relief is required from the Zoning Ordinance to construct a new business office with associated parking including the following variances: a) from Section 10.1113.20 to allow a parking area to be located between the principal building and a street; and b) from Section 10.1120 to provide zero loading spaces where 1 is required. Said property is shown on Assessor Plan 201, Lot 9 and lies within the Mixed Residential B District.

The applicant has submitted a request for an extension for the property above. Variance “a” was granted on September 24, 2019 and variance “b” was denied. The following stipulation was part of the approval of the request in 2019:

*Stipulation: Suitable berming will be provided along Sagamore Avenue and Wentworth Road to screen the parking areas from the two streets. The Planning Department will determine the acceptable type and extent of the berming.*

The applicant has yet to obtain a building permit. The Ordinance allows for a one-time, one-year extension if the request is acted on prior to the expiration date.



2.

Petition of **Wentworth Corner LLC, Owners**, for the property located at **960 Sagamore Avenue** whereas relief is needed from the Zoning Ordinance to demolish existing structures and construct a 6 unit residential building which requires the following: 1) A Variance from Section 10.521 to allow a lot area per dwelling unit of 7,155 square feet where 7,500 square feet is required. 2) A Variance from Section 10.1114.31 to allow two driveways on a lot where one driveway is permitted. Said property is shown on Assessor Map 201 Lot 2 and lies within the Mixed Residential Business (MRB) District.

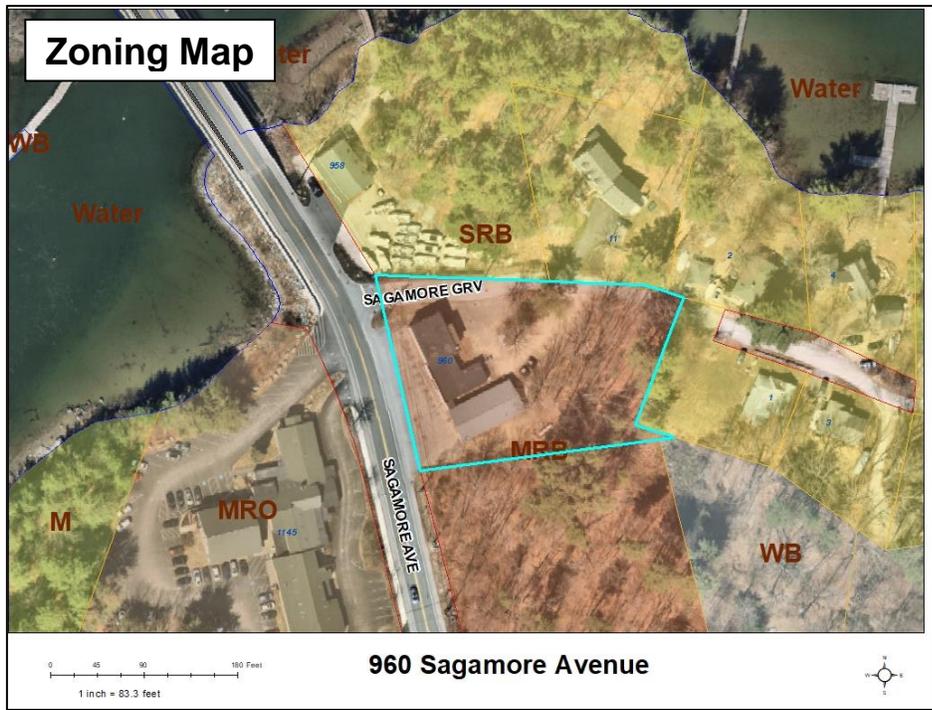
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Restaurant	Construct 6-unit dwelling	Primarily business/residential uses
<u>Lot area (sq. ft.):</u>	42,930	42,930	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	<b>7,155</b>	7,500 min.
<u>Street Frontage (ft.):</u>	194	194	100 min.
<u>Lot depth (ft.):</u>	212	212	80 min.
<u>Front Yard (ft.):</u>	17	18	5 min.
<u>Secondary Front Yard (ft.):</u>	>5	18	5 min.
<u>Right Yard (ft.):</u>	21	11	10 min.
<u>Rear Yard (ft.):</u>	107	121	15 min.
<u>Height (ft.):</u>	22	<40	40 max.
<u>Building Coverage (%)</u>	11	18	40 max.
<u>Open Space Coverage (%)</u>	45	58	25 min.
<u>Parking</u>	15	19	9
<u>Estimated Age of Structure:</u>	1970	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

TAC, Planning Board and Conservation Commission – Site Review and Wetland CUP

# Neighborhood Context



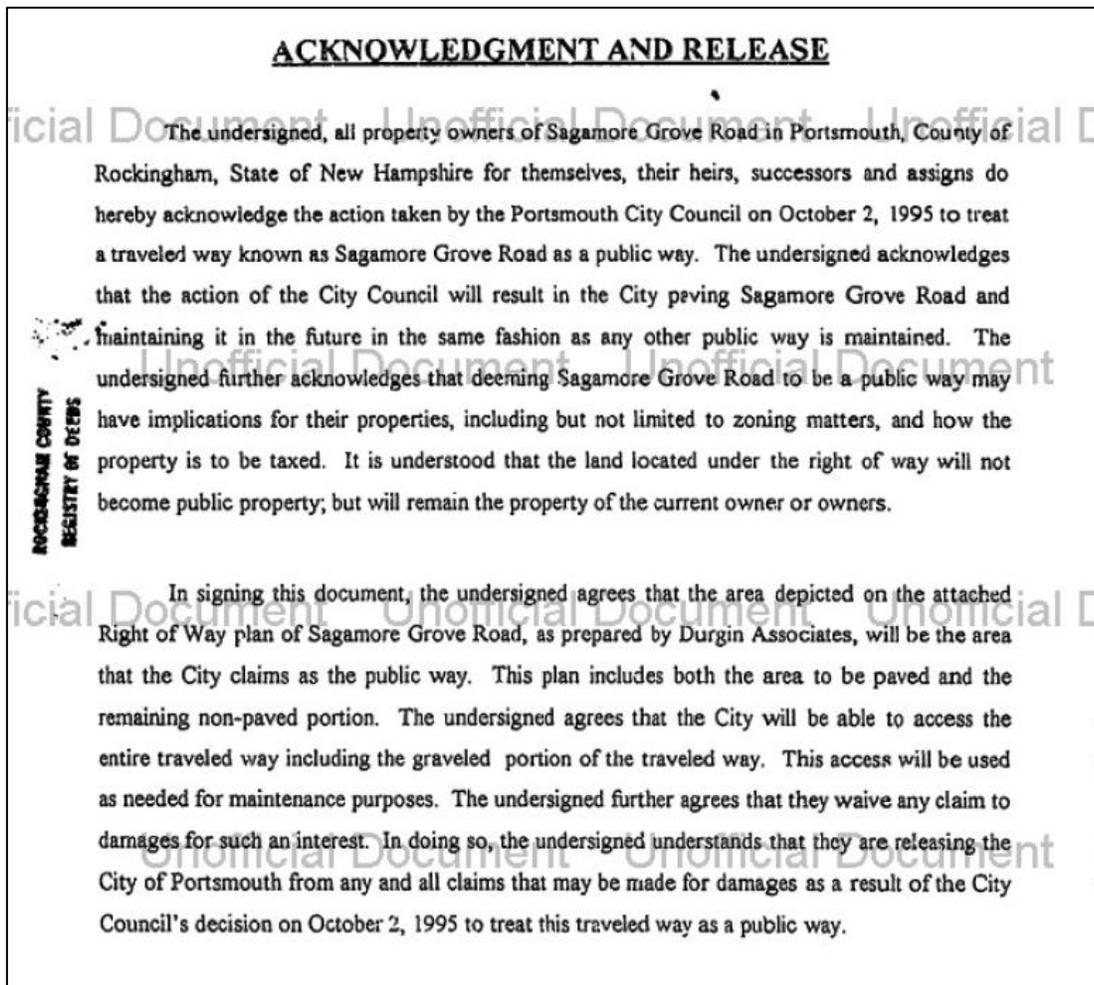
### Previous Board of Adjustment Actions

August 16, 2011 – The Board **granted** the following special exception:

- Use #7.20 (personal services) under Section 10.440

### Planning Department Comments

The applicant originally proposed 8 dwelling units, but due to neighbor opposition, has scaled the project down to 6 units, which still requires a variance for lot area per dwelling unit. The revised plan reduces the size of the building and the encroachment into the wetland buffer. The redevelopment of the property will have two driveways, where only one is allowed per lot, thus the need for a request for a variance. The project will need to go through site review with the TAC and the Planning Board and will need to get a wetlands CUP because there is some work and encroachment into the buffer area. On October 2, 1995 the City Council took action to treat Sagamore Grove as a public way and all of the property owners along Sagamore Grove signed off on an Acknowledgement and Release document that was recorded in the Registry of Deeds (see below page from the document).



## 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**

1.

Request of **Shirley W. Scarponi Trust (owner)**, and **Shirley W. Scarponi, (Trustee)**, for the property located at **276 Melbourne Street** whereas relief is needed from the Zoning Ordinance to construct a Detached Accessory Dwelling Unit (DADU) which requires the following: 1) Variances from Section 10.521 to allow a) a lot area of 10,867 sq. ft. where 15,000 sq. ft. is required; b) 34.5% building coverage where 20% is the maximum allowed; and c) a 15 foot rear yard where 30 feet is required. Said property is shown on Assessor Map 233 Lot 84 and lies within the Single Residence B (SRB) District.

**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Construct DADU	Primarily single family uses
<u>Lot area (sq. ft.):</u>	10,867	<b>10,867</b>	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,867	10,867	15,000 min.
<u>Street Frontage (ft.):</u>	139	139	100 min.
<u>Lot depth (ft.):</u>	76.5	76.5	100 min.
<u>Front Yard (ft.):</u>	4	38	30 min.
<u>Left Yard (ft.):</u>	3	3	10 min.
<u>Right Yard (ft.):</u>	52	11	10 min.
<u>Rear Yard (ft.):</u>	5	<b>15</b>	30 min.
<u>Height (ft.):</u>	<35	<15	35 max.
<u>Building Coverage (%)</u> :	25	<b>34.5</b>	20 max.
<u>Open Space Coverage (%)</u> :	59	45	40 min.
<u>Parking</u>	4	4	3
<u>Estimated Age of Structure:</u>	1954	<b>Variance request(s) shown in red.</b>	

**Other Permits/Approvals Required**

- Planning Board – CUP for DADU & Wetland CUP
- Conservation Commission – Wetland CUP

### Neighborhood Context



## Previous Board of Adjustment Actions

October 17, 2000 The Board granted a variance to allow a 1,096 s.f. addition and 576 s.f. attached garage with a) a 5' rear yard setback where 30' was required; b) a 10' front yard setback where 30' was required; and c) 22% lot coverage where 20% was the maximum allowed.

October 20, 2015- The Board granted a variance to allow a screened in porch on an extended rear deck with a) a 5' rear yard where 30' was required; b) 22.2% building coverage where 20% was the maximum allowed. 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.

## Planning Department Comments

The applicant is proposing to add a detached accessory dwelling unit (DADU) to the property. To add a DADU in the Single Residence district, the lot must conform to lot area, which is 15,000 square feet, but not need to comply with lot area per dwelling unit. The existing building coverage exceeds the maximum allowed and with the DADU, coverage will be 34.5%. The majority of the lot is within the 100 foot wetland buffer, thus a wetland CUP is required in addition to the CUP for the accessory dwelling unit.

## 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.*



2.

Request of **Michael J. and Wendy L. Joanis, (Owners)**, for the property located at **126 Elwyn Avenue** whereas relief is needed from the Zoning Ordinance to construct a 15' x 22' single car garage which requires the following: 1) Variances from Section 10.521 to allow a) a 4' secondary front yard where 15' is required; b) a 3' side yard where 10' is required; and c) 31.5% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.571 to allow an accessory structure to be located in any required front yard and closer to the street than the principal building. Said property is shown on Assessor Map 112 Lot 44 and lies within the General Residence A (GRA) District.

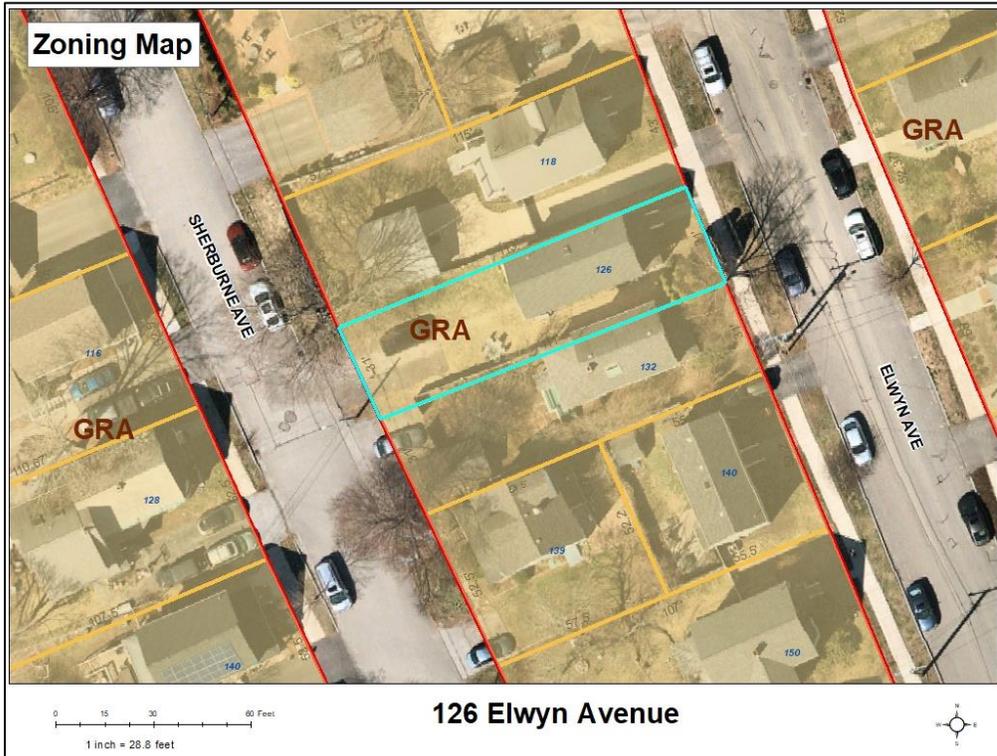
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	Construct single car garage	Primarily residential uses
<u>Lot area (sq. ft.):</u>	3,485	3,485	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,485	3,485	7,500 min.
<u>Street Frontage (ft.):</u>	31	31	100 min.
<u>Lot depth (ft.):</u>	112	112	70 min.
<u>Front Yard (ft.):</u>	15	15	15 min.
<u>Secondary Front Yard (ft.):</u>	56	4	15 min.
<u>Right Yard (ft.):</u>	5	13 (garage)	10 min.
<u>Left Yard (ft.):</u>	6	3 (garage)	10 min.
<u>Height (ft.):</u>	<35	17 (garage)	35 max.
<u>Building Coverage (%):</u>		31.5	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1919	Variance request(s) shown in red.	

### Other Permits/Approvals Required

None.

### Neighborhood Context



## Previous Board of Adjustment Actions

September 22, 2015- The Board **granted** variances to replace an existing garage in the same footprint which included the following: Variance to allow a lawful nonconforming building or structure to be reconstructed except in conformance with the Ordinance. Variances to allow a 3'± left side yard setback where 10' is required; a 9' right side yard setback where 10' is required; a 4' rear yard setback where 10.5' is required; and to allow 33% building coverage where 25% is required.

July 22, 2014 - The Board **granted** variances for an 11 x 18 two and a half story rear addition which included the following: Variance to allow a lawful nonconforming building or structure to be reconstructed except in conformance with the Ordinance. Variance to allow a 6' right side yard where 10' is required.

## Planning Department Comments

The variances that were granted in 2015 expired and the new owners are seeking variance to construct a smaller garage in approximately the same footprint. The lot is a through lot, with the principal frontage on Elwyn Ave and the secondary on Sherburne Ave. Through lots have two front lot lines, thus the need for relief from Section 10.571.

## 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.*



3.

Request of **Todd E. Hedges Revocable Trust, (Owner)** and **Todd E. Hedges, (Trustee)**, for the property located at **139 Cass Street** whereas relief is need to construct a two-car garage with apartment above which requires the following: 1) A request for an Equitable Waiver pursuant to RSA 674:33-a or A Variance from Section 10.521 to allow a 9' rear yard where 20' is required. Said property is shown on Assessor Map 146 Lot 6 and lies within the General Residence C (GRC) District.

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Construct two car garage with apartment above	Primarily residential uses
<u>Lot area (sq. ft.):</u>	7,650	7,650	3,500 min.
<u>Lot area per dwelling (sq. ft.):</u>	3,825	3,825	3,500
<u>Street Frontage (ft.):</u>	48	48	70 min.
<u>Lot depth (ft.):</u>	159	159	50
<u>Front Yard (ft.):</u>	0.3' (house)	~122 (garage)	5 min.
<u>Right Yard (ft.):</u>	7 (house)	10 (garage)	10 min.
<u>Left Yard (ft.):</u>	>10	10 (garage)	10 min.
<u>Rear Yard (ft.):</u>	100 (house)	<b>9</b>	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	19.6	29	35 max.
<u>Open Space Coverage (%):</u>	57	42.5	20 min.
<u>Parking</u>	4	4	3
<u>Estimated Age of Structure:</u>	1890	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

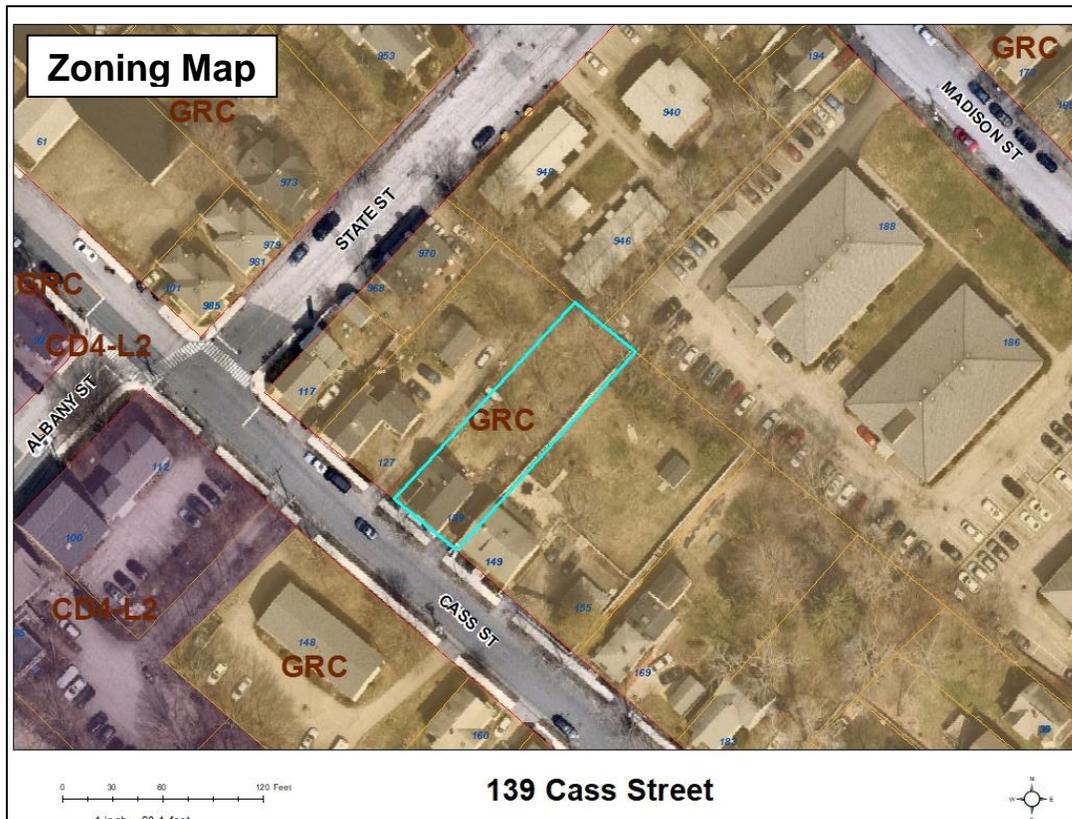
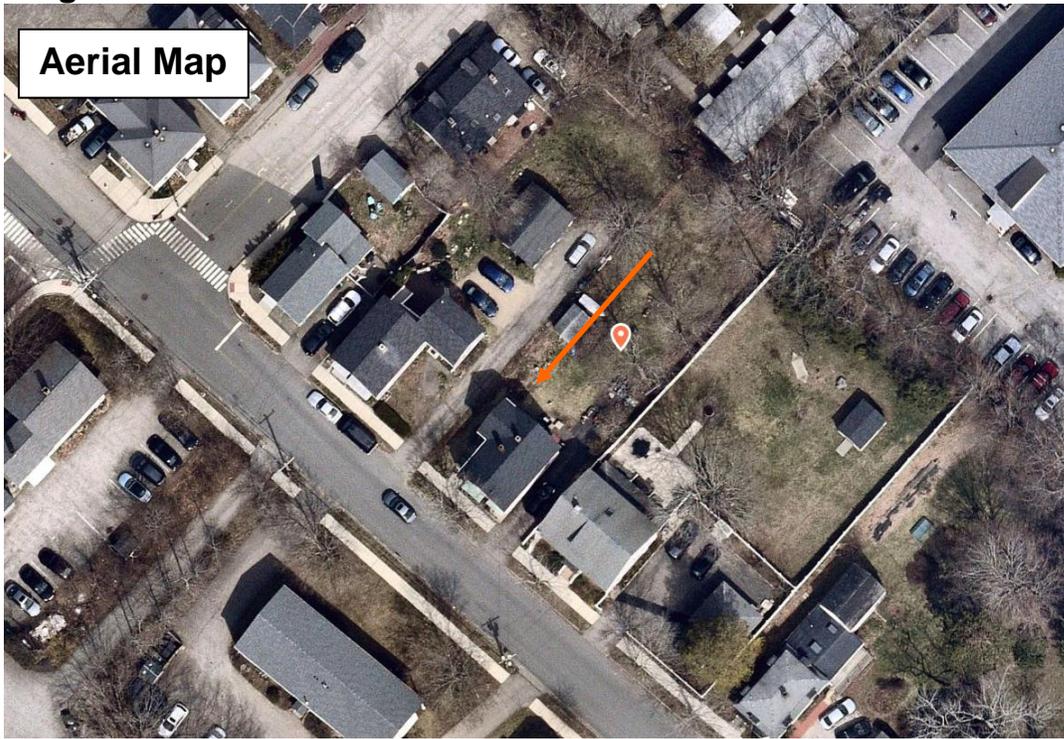
None.

September 21, 2021

Meeting



### Neighborhood Context



September 21, 2021

Meeting

## Previous Board of Adjustment Actions

May 28, 2021 - The Board **granted** a variance to construct a new garage with a dwelling unit on the second floor with the following: a) a 10' rear yard where 20' is required.

## Planning Department Comments

The applicant was granted the above variance in May and obtained a building permit to construct the garage. The as-built survey revealed the middle of the structure is closer than the 10 feet the Board granted by almost a foot. The applicant has requested an equitable waiver to allow the structure to be slightly closer than what was originally approved. If the Board determines a waiver is not applicable, the applicant is requesting a variance to allow a 9 foot rear yard. If the Board determines a waiver is appropriate, the findings are below:

### **674:33-a Equitable Waiver of Dimensional Requirement.**

I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

- (a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;
- (b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;
- (c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and
- (d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

II. In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

*September 21, 2021*

*Meeting*

**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.*

September 21, 2021

Meeting



4.

Request of **Ashley Dickenson and Elyse Hambacher, (Owners)**, for the property located at **125 Elwyn Avenue** whereas relief is needed to demolish existing garage and rear addition on main structure and construct a new garage with dwelling unit above and reconstruct the rear addition on the main structure including two shed dormers which requires the following: 1) Variances from Section 10.521 to allow a) lot area per dwelling of 2,559 square feet where 7,500 is required; b) a 1' secondary front yard where 15' is required; c) a 5' left side yard where 10' is required; d) a 2' right side yard where 10' is required; and e) 39% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.513 to allow more than one free-standing dwellings on a lot. 3) 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. Said property is shown on Assessor Map 112 Lot 47 and lies within the General Residence A (GRA) District.

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two family	Demo garage/build free-standing dwelling	Primarily residential uses
<u>Lot area (sq. ft.):</u>	5,118	5,118	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,559	<b>2,559</b>	7,500 min.
<u>Street Frontage (ft.):</u>	52	52	100 min.
<u>Lot depth (ft.):</u>	100	100	70 min.
<u>Primary Front Yard (ft.):</u>	14	14	15 min.
<u>Left Side Yard (ft.):</u>	2'4"	<b>5</b>	10 min.
<u>Right Side Yard (ft.):</u>	>10 (house) 2 (garage)	<b>2</b> (new structure)	10 min.
<u>Secondary Front Yard (ft.):</u>	1(garage)	<b>1</b> (new structure)	15 min.
<u>Height (ft.):</u>	<35	21 (new structure)	35 max.
<u>Building Coverage (%):</u>	34	<b>39</b>	25 max.
<u>Open Space (%):</u>	>30	>30	30 min.
<u>Parking</u>	3	4	3
<u>Estimated Age of Structure:</u>	1910	<b>Variance request shown in red.</b>	

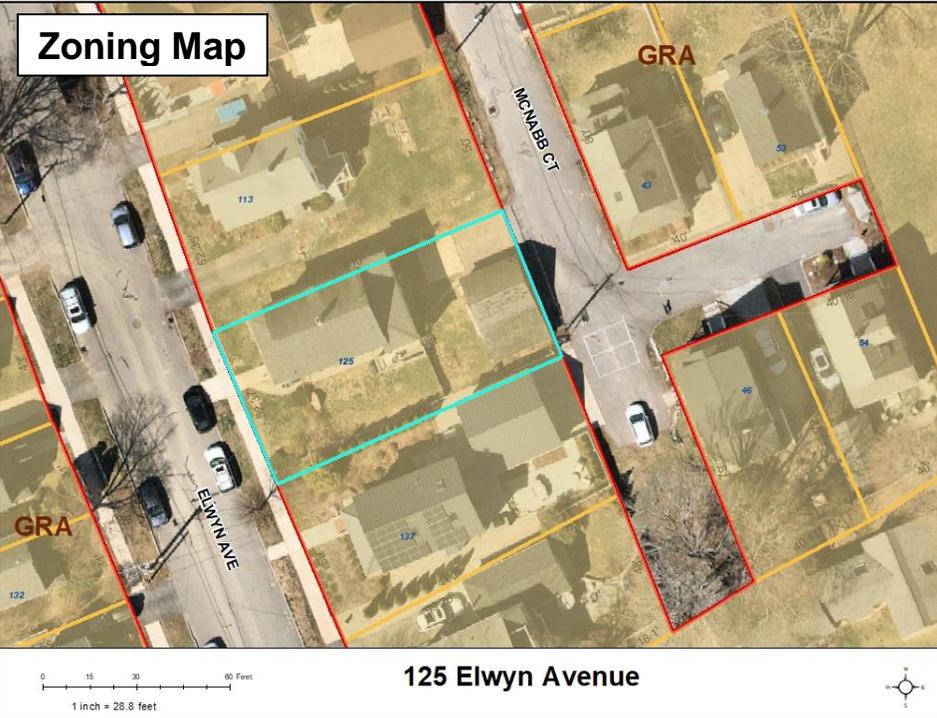
September 21, 2021

Meeting

### Other Permits/Approvals Required

None.

### Neighborhood Context



September 21, 2021

Meeting

## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The existing dwelling is a two-family and the applicant is proposing to demolish the existing garage and construct a new garage with a dwelling unit above and converting the main structure into a single-family dwelling. The new structure is considered a free standing dwelling, which requires a variance to allow more than one on a lot in the GRA. The applicant is proposing to remove the rear addition from the main dwelling and construct a new rear addition and reduce the encroachment into the left side yard. The resulting coverage will increase from 34 to 39 percent.

## 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.*

September 21, 2021

Meeting



4.

Request of **Jeffrey L. and Dolores P. Ives, (Owners)**, for the property located at **44 Gardner Street** whereas relief is needed to construct a 6' x 12' mudroom addition with new landing and steps which requires the following: 1) A Variance from Section 10.521 to allow 34% building coverage where 30% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be expanded, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 103 Lot 42 and lies within the General Residence B (GRB) District.

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Sunroom/kitchen bay	Primarily residential uses
<u>Lot area (sq. ft.):</u>	6,545	6,545	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,545	6,545	5,000 min.
<u>Street Frontage (ft.):</u>	68	68	80 min.
<u>Lot depth (ft.):</u>	95.6	95.6	60 min.
<u>Primary Front Yard (ft.):</u>	7	7	5 min.
<u>Left Side Yard (ft.):</u>	12	12	10 min.
<u>Right Side Yard (ft.):</u>	23	18	10 min.
<u>Rear Yard (ft.):</u>	42	41	25 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	33	<b>34</b>	30 max.
<u>Open Space Coverage (%):</u>	43	42	25 min.
<u>Parking</u>	ok	Ok	1.3
<u>Estimated Age of Structure:</u>	1900	Variance request shown in red.	

### Other Permits/Approvals Required

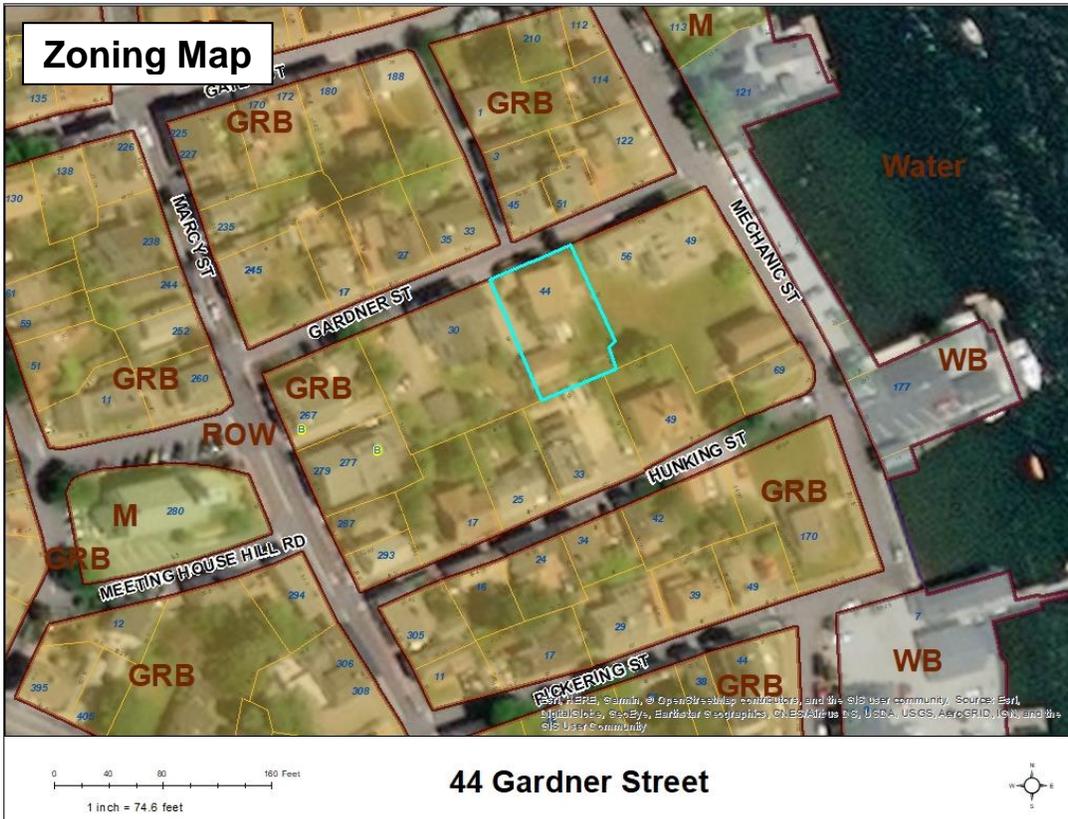
Historic District Commission

### Neighborhood Context

**Aerial Map**



**Zoning Map**



## Previous Board of Adjustment Actions

April 21, 2020 – The Board granted variances for a new sunroom and rear landing which required the following: 36% building coverage where 30% is the maximum allowed and to allow a nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

The following stipulation: Limit the proposed building coverage to a maximum of 34% instead of the requested 36%.

December 15, 1998 – The Board granted variances to allow the following: 1) a Variance from Article IV, Section 10-402(B) to allow a 1'± rear yard where 10' is the minimum required; 2) a Variance from Article IV, Section 10-401(2)(c) to allow the expansion of a nonconforming building.

The variances were granted with the following stipulations:

That a 2' rear yard and a 2' side yard setback be maintained;

That gutters be included on the structure to divert the water flow away from adjacent properties; and

That the space for storage not be used as an apartment or for commercial use.

## Planning Department Comments

The applicant obtained variances in 2020 to construct a sunroom addition and bump out for the kitchen. They are now proposing a mudroom on the right side of the house and as part of the plan will remove the shed at the rear of the property. The resulting coverage will be just under 34%.

## 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.*



5.

Request of **Potter Schwartz Revocable Trust of 2013 (Owner)**, and **Michael F. Schwartz, (Applicant)**, for the property located at **21 Fernald Court** whereas relief is needed to construct a 16' x 23' deck and add an 8'x8' shed which requires the following. 1) Variances from Section 10.521 to allow a) 29% building coverage where 20% is the maximum allowed; and b) a 13' front yard where 30 feet 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. Said property is shown on Assessor Map 207 Lot 55 and lies within the Single Residence B (SRB) and Historic Districts.

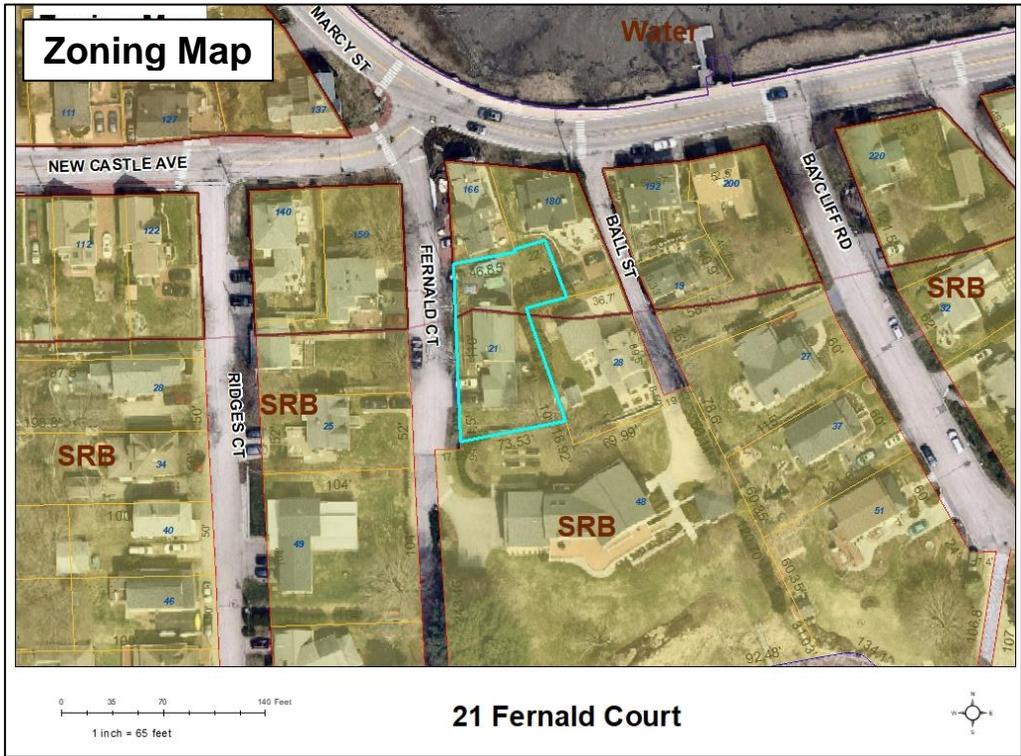
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Second story addition	Primarily Single-family Uses
<u>Lot area (sq. ft.):</u>	8,712	8,712	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,712	8,712	15,000 min.
<u>Street Frontage (ft.):</u>	110	110	100 min.
<u>Lot depth (ft.):</u>	71	71	100 min.
<u>Primary Front Yard (ft.):</u>	9	<b>13</b>	30 min.
<u>Left Yard (ft.):</u>	36	36	10 min.
<u>Right Yard (ft.):</u>	13	13	10 min.
<u>Rear Yard (ft.):</u>	8	8	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	24	<b>29</b>	20 max.
<u>Open Space Coverage (%):</u>	50	58	40 min.
<u>Parking:</u>	4	4	1.3
<u>Estimated Age of Structure:</u>	1952	<b>Variance request shown in red.</b>	

### Other Permits/Approvals Required

Historic District Commission

### Neighborhood Context



## Previous Board of Adjustment Actions

January 26, 2021 – The Board **granted** variances for a second story addition which required the following: 1) Variances from Section 10.521 to allow: a) a 9' front yard where 30' is required; and b) an 8' rear yard where 30' 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.

July 17, 2007 – The Board **granted** variances from Article III, Section 10-302(A) and Article IV, Section 401(A)(2)(c) to allow an 8' x 38' open deck with a 13 foot front yard where 30 feet is the minimum with the following stipulation:

- The deck remain open and clear to the sky.

May 25, 1971 – The Board **granted** building garage and attached breezeway onto the existing dwelling leaving a 20 foot setback from the street whereas 30 feet is required and a 24 foot setback from the rear property line whereas 30 feet is required and a 12 foot setback from the side property line whereas 10 feet is required.

## Planning Department Comments

The applicant received variances to construct a second story addition on the existing dwelling in January of 2021. The current proposal is to add a side deck and small storage shed at the rear of the property. The shed conforms to setbacks, however it adds to the building coverage.

## 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.*



6.

Request of **Brian S. Porter and Erica J. Wygonik (Owners)**, for property located at **319 Lincoln Avenue** whereas relief is needed to demolish existing garage and construct one-car attached garage and construct new dormer which requires the following: 1) Variances from Section 10.521 to allow a) a 2.5' left side yard where 10' is required; b) a 4' right side yard where 10' is required; and c) 33.5% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be expanded, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 130 Lot 31 and lies within the General Residence A (GRA) District.

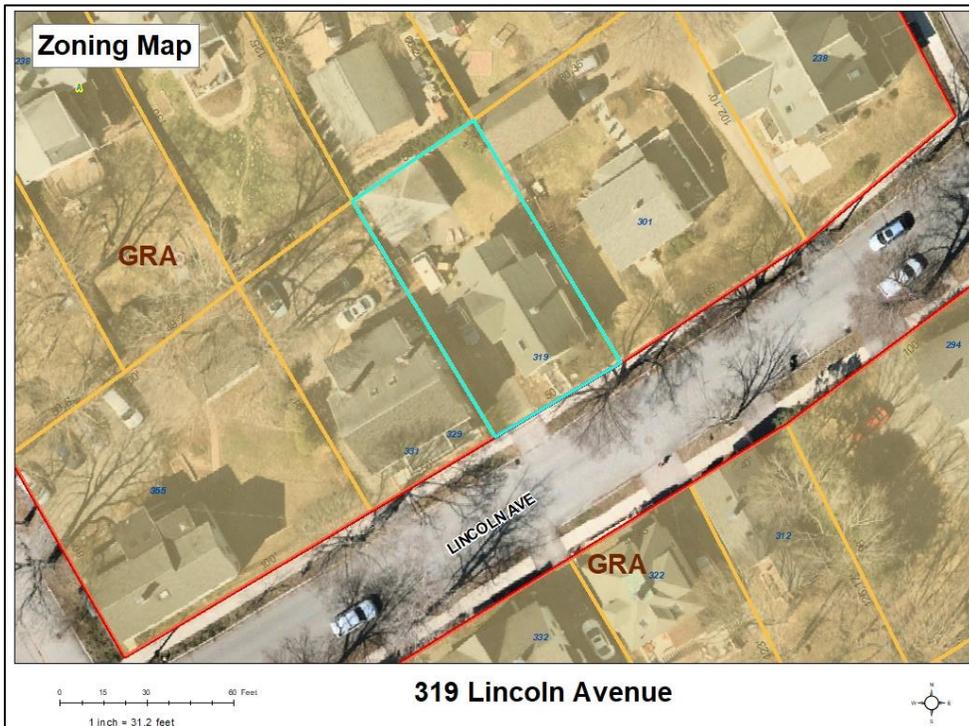
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Demo garage/ construct new attached garage	Primarily residential uses
<u>Lot area (sq. ft.):</u>	4,844	4,844	7,500 min.
<u>Lot area per dwelling (sq. ft.)</u>	4,844	4,844	7,500 min.
<u>Front Yard (ft.):</u>	5'5"	5'5"	15 max.
<u>Right Yard (ft.):</u>	1'10"	<b>4</b>	10 max.
<u>Left Yard (ft.):</u>	3'9"	<b>2.5</b>	10 min.
<u>Rear Yard (ft.):</u>	2"	23	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	36	<b>33.5</b>	25 max.
<u>Open Space Coverage (%)</u>	43	55	30 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1915	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

None.

### Neighborhood Context



## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is proposing to demolish the existing nonconforming detached garage and construct a new single-car garage and mudroom attached to the existing dwelling. The proposal also includes a dormer on the right side to enlarge a bathroom. The existing right setback is just under 2 feet due to a bump out but the new dormer will be in line with the existing wall of the house. The building coverage will be reduced, but will still be over the maximum allowed.

## 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.*



7.

Request of **Mary H. and Ronald R. Pressman, (Owners)**, for property located at **449 Court Street** whereas relief is need to construct a 4th story dormered addition with a height of 41.5' which requires the following: 1) Variance from Section 10.5A43.31 to allow a fourth story addition with at a height of 41.5 feet where 2 stories (short 3rd) and 35 feet is the maximum allowed. 2) A Variance from Section 10.5A41.10A to allow a 6" left side yard where 5 feet is required. 3) 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. Said property is shown on Assessor Map 105 Lot 6 and lies within the Historic District and Character District 4-L1 (CD4-L1).

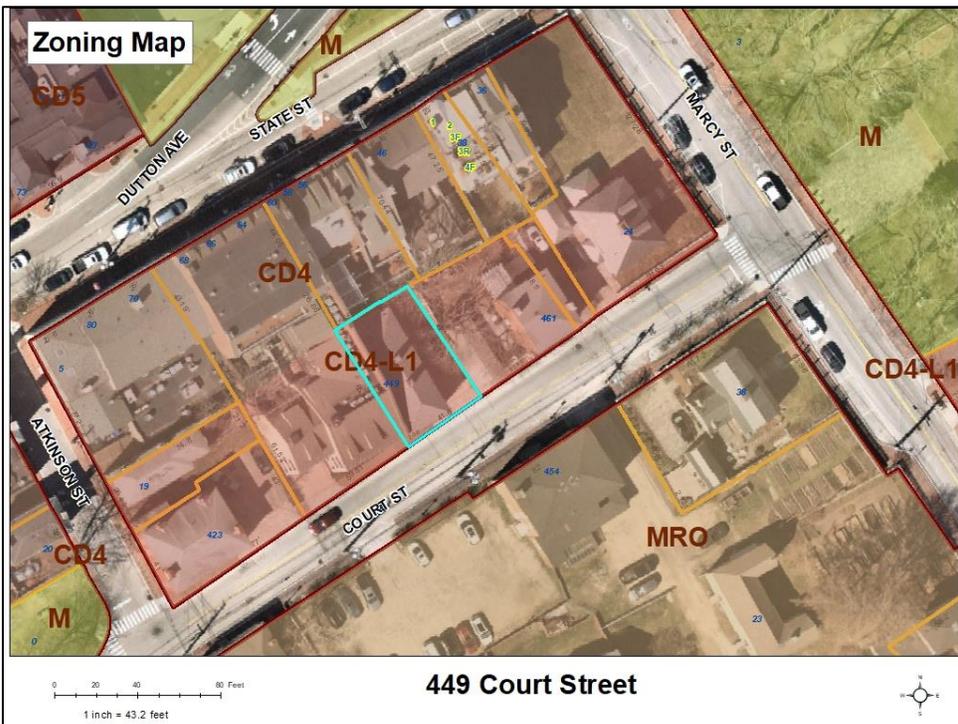
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	4 <sup>th</sup> story addition	Primarily residential uses
<u>Lot area (sq. ft.):</u>	2,744	2,744	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,744	2,744	3,000 min.
<u>Front Yard (ft.):</u>	~1	~1	15 max.
<u>Left Yard (ft.):</u>	10"	<b>6"</b>	5 ft. min to 20 ft. max.
<u>Right Yard (ft.):</u>	<20	<20	5 ft. min. to 20 ft. max.
<u>Rear Yard (ft.):</u>	5	5	Greater of 5 ft. from lot line or 10 ft. from alley
<u>Height (ft.):</u>	34'11"	<b>41.5' 4 stories</b>	35' 2 stories (short 3 <sup>rd</sup> ) max.
<u>Building Coverage (%)</u> :	43	43	60 max.
<u>Open Space Coverage (%)</u> :	>25	>25	25 min.
<u>Parking</u>	3	3	2
<u>Estimated Age of Structure:</u>	2006	<b>Variance request shown in red.</b>	

### Other Permits/Approvals Required

Historic District Commission

### Neighborhood Context



## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is proposing to add a fourth story addition to the existing structure, which will result in a height of 41.5 feet. This area has a maximum height of 35 feet and is limited to 2 stories (short third). The image below shows the height requirements for this side of Court 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.*