

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: October 11, 2022
RE: Zoning Board of Adjustment October 18, 2022

OLD BUSINESS

1. 1344 Islington Street
2. 130 Gates Street
3. 11 Walden Street

NEW BUSINESS

1. 361 Islington Street
2. 765 Middle Street
3. 50 Cornwall Street
4. 3020 Lafayette Road
5. 67 Ridges Court
6. 232 Wibird Street
7. 219 Sagamore Avenue

OLD BUSINESS

1.

The request of **Jessica Tia Nashahl (Owner)**, for property located at **1344 and 1346 Islington Street** whereas relief is needed to construct a new deck and add detached garage which requires the following: 1) Variances from Section 10.521 to allow: a) a 28' rear yard for the deck where 30' is required; b) a 2' left side yard where 10' is required for the garage; and c) a Variance from Section 10.521 to allow 30% building coverage where 20% is the maximum allowed. Said property is located on Assessor Map 233 Lot 98 and lies within the Single Residence B (SRB) district.

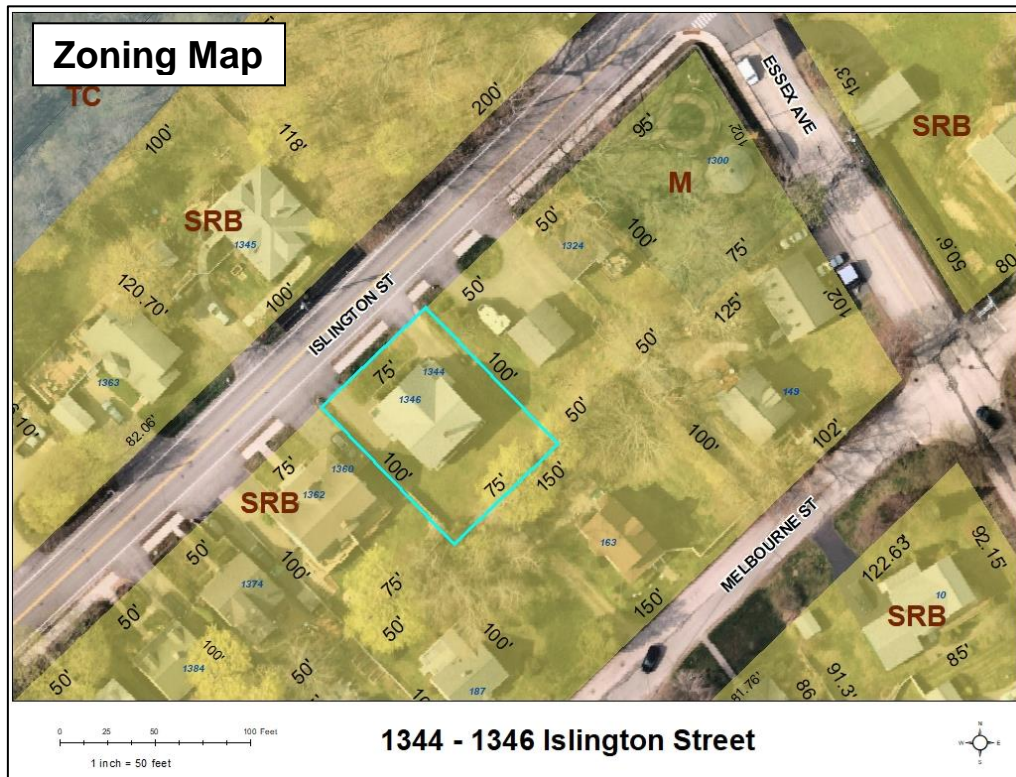
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two family	New deck and detached garage	Primarily residential uses
<u>Lot area (sq. ft.):</u>	7,500	7,500	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,750	3,750	15,000 min.
<u>Lot depth (ft.):</u>	100	100	100 min.
<u>Street Frontage (ft.):</u>	75	75	100 min.
<u>Primary Front Yard (ft.):</u>	23	23	30 min.
<u>Right Yard (ft.):</u>	12	11	100 min.
<u>Left Yard (ft.):</u>	20	2 (4 based on revised plans)	10 min.
<u>Rear Yard (ft.):</u>	36	28	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	20	30	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	4	4	3
<u>Estimated Age of Structure:</u>	1910	Variance request(s) shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

September 20, 2022 - The Board voted to continue the request to the October so the applicant could provide additional documentation.

Planning Department Comments

The application is seeking relief to add a rear deck and a detached garage, which will result in 30% building coverage where 20% is the maximum. Both new structure will need setback relief, the deck will encroach 2 feet into the required 30 foot rear yard and the garage is proposed to be located 2 feet off of the left side yard. At 7,500 square feet, the lot is half the size of what is required for the SRB zone, making it challenging to comply with the dimensional standards based on a 15,000 square foot lot.

Updated Comments

The applicant has provided additional information on the criteria and the plans for the garage and deck. The revised plans show an 18' x 22' garage which is setback and additional 2 feet from the left side lot line. The applicant has also provided information on how they will address drainage with two drywells. If the Board has concerns with the drainage, a stipulation requiring an engineer to stamp the design could be added, if the variances are granted. The applicant states a privacy fences will be installed on the lot line. It is important to note that a fence height of 4 feet is allowed in the front yard and anything over 4 feet would need to be setback 30 feet from the front lot line. If the Board grants approval of the request, staff would recommend the following stipulation:

1. **The left side yard shall be 4 feet.**

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.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

2.

The request of **Martin Hanssmann (Owner)**, for property located at **130 Gates Street** whereas relief is needed to add an HVAC unit which requires the following: 1) A Variance from Section 10.515.14 to allow a 3' setback where 10' is required. Said property is located on Assessor Map 103 Lot 55 and lies within the General Residence B (GRB) and Historic districts.

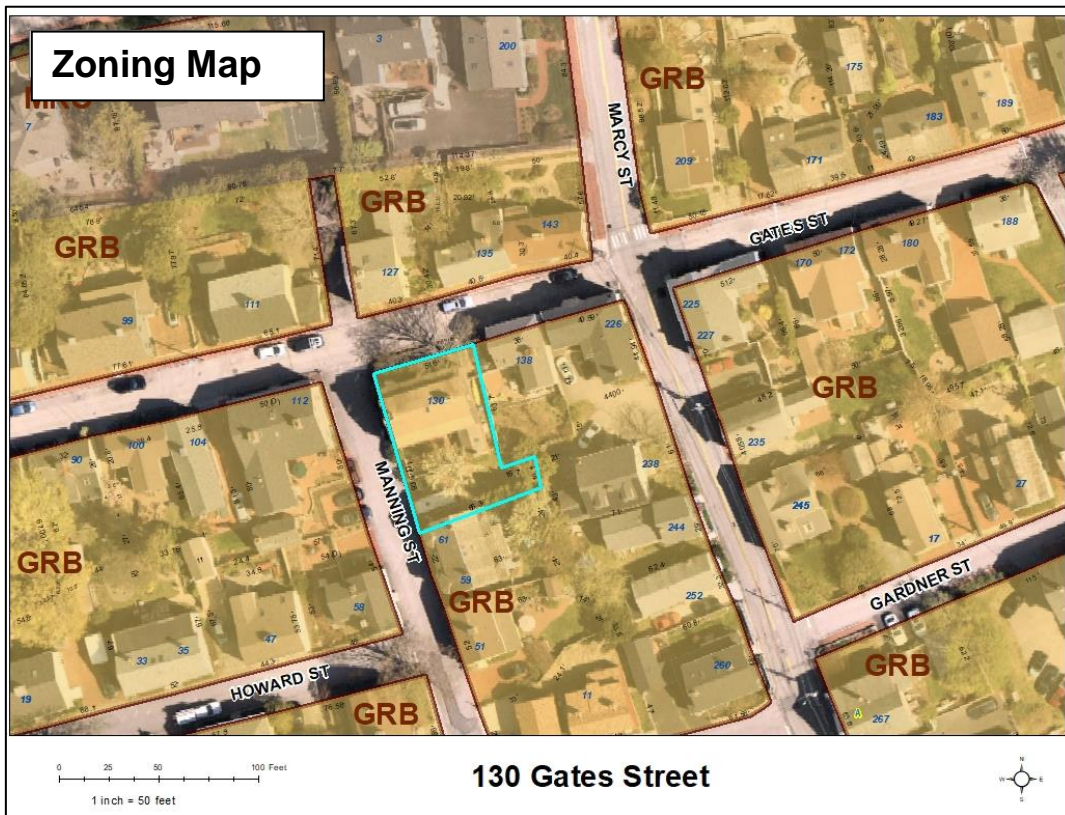
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	HVAC unit	Primarily residential uses
<u>Lot area (sq. ft.):</u>	4,356	4,356	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,356	4,356	5,000 min.
<u>Lot depth (ft.):</u>	63	63	60 min.
<u>Street Frontage (ft.):</u>	144	144	80 min.
<u>Primary Front Yard (ft.):</u>	8	8	5 min.
<u>Secondary Front Yard (ft.):</u>	2	2	5 min.
<u>Left Yard (ft.):</u>	6	3	10 min.
<u>Rear Yard (ft.):</u>	20	20	25 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	32	32	30 max.
<u>Open Space Coverage (%)</u>	>25	>25	25 min.
<u>Estimated Age of Structure:</u>	1730	Variance request(s) shown in red.	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

September 20, 2022 - The Board voted to continue the request to the October meeting since no one was present to speak for the application.

Planning Department Comments

The applicant proposing to add an HVAC unit that will be located on the left side of the house adjacent to an existing unit. The house is nonconforming to all setbacks and locating the unit in a conforming location would put it in the middle of the patio on the back of the house.

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.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

3.

The request of **Judith A. Mraz Revocable Trust (Owner)**, for property located at **11 Walden Street** whereas relief is needed to install a heat pump which requires the following: 1) A Variance from Section 10.515.14 to allow a 1 foot rear yard setback and a 1.5 foot side yard setback where 10 feet is required for each. Said property is located on Assessor Map 101 Lot 17 and lies within the General Residence B (GRB) and Historic districts.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	HVAC unit	Primarily residential uses
<u>Lot area (sq. ft.):</u>	752	752	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	752	752	5,000 min.
<u>Lot depth (ft.):</u>	16	16	60 min.
<u>Street Frontage (ft.):</u>	46	46	80 min.
<u>Primary Front Yard (ft.):</u>	0	0	5 min.
<u>Right Yard (ft.):</u>	0	0	5 min.
<u>Left Yard (ft.):</u>	1	1.5	10 min.
<u>Rear Yard (ft.):</u>	1	1	10 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	87	87	30 max.
<u>Open Space Coverage (%):</u>	13	13	25 min.
<u>Estimated Age of Structure:</u>	1780	Variance request(s) shown in red.	

Other Permits/Approvals Required

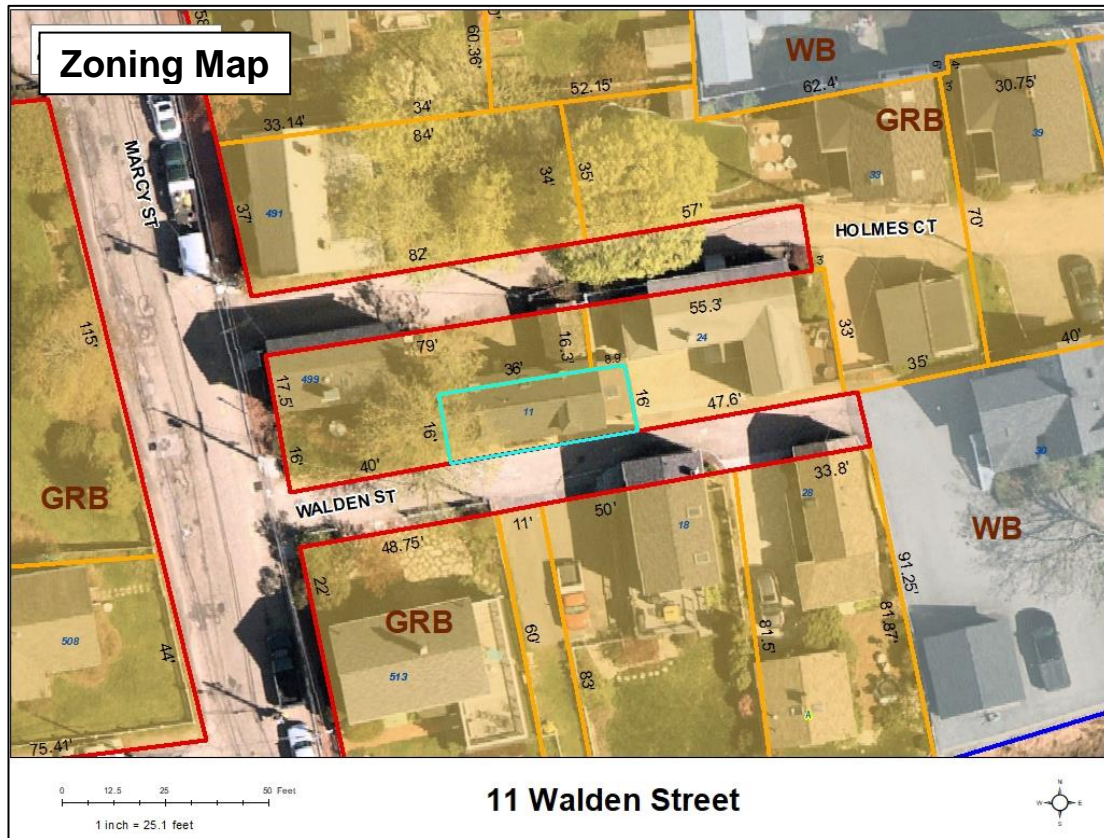
Historic District Commission

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

September 20, 2022 - The Board voted to continue the request to the October meeting since no one was present to speak for the application.

Planning Department Comments

The applicant is to add an attached HVAC unit to the left side of the house where relief is needed for side and rear yard setbacks. The house nearly covers the entire lot, with a small area of open space on the left side. Any other location on the house would likely create a situation where the unit would be on the property line, if not over it.

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.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

NEW BUSINESS

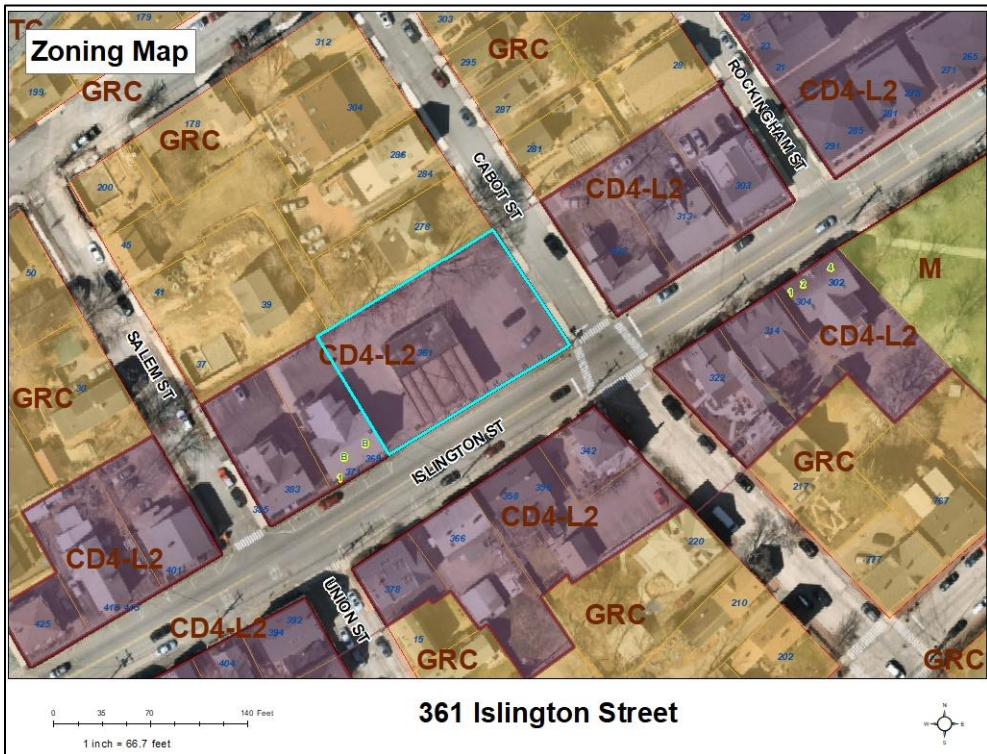
1.

Request of **Lucky Thirteen Properties (Owner)**, for property located at **361 Islington Street** whereas relief is needed for the conversion of use to a restaurant which requires the following: 1) Variances from Section 10.5A41.10A to allow a) s secondary front yard setback of 66 feet where 12 feet is the maximum allowed; b) to allow a front lot line buildout of 32% where 60-80% is required; c) to allow a left yard setback of 30' where 20' is the maximum allowed; and d) 14.5% open space where 25% is the minimum required. 2) A Variance from Section 10.5A44.31 to allow off-street parking spaces to be located in front of the façade of the primary building. 3) A Variance from Section 10.440, Use #9.42 to allow a restaurant with an occupancy load between 50 and 250. 4) A Variance from Section 10.5A44.32 to allow parking to be unscreened from the street. 5) A Variance from Section 10.575 to allow a dumpster to be located 19 feet from a residential zoned lot where 20 feet is required. 6) 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 144 Lot 23 and lies within the Character District 4-L2 (CD4-L2) and Historic Districts.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	No current use	Restaurant	Primarily residential uses
<u>Lot area (sq. ft.):</u>	15,114	15,114	3,000 min.
<u>Front Yard (ft.):</u>	40	40	15 max.
<u>Secondary Front Yard (ft.):</u>	65	66	12 max.
<u>Left Yard (ft.):</u>	32	30	5 min – 20 max
<u>Rear Yard (ft.):</u>	32	32	Greater of 5' or 10' from alley
<u>Height (ft.):</u>	17.5	17.5	2 stories or 35' max.
<u>Building Coverage (%)</u>	10	10.5	60 max.
<u>Open Space Coverage (%)</u>	5.5	14.5	25 min.
<u>Front Lot Line Buildout (%)</u>	32	32	60-80%
<u>Parking</u>	15	15	30
<u>Estimated Age of Structure:</u>	1960	Variance request(s) shown in red.	

Other Permits/Approvals Required
Historic District Commission
Planning Board & TAC – Site Plan Review
CUP for Parking & Outdoor dining & drinking area
Neighborhood Context



Previous Board of Adjustment Actions

January 30, 1956 – The Board granted a request to erect a filling station.

February 19, 2002 – The Board denied a request to allow a Ryder Truck renting facility with three trucks on display where the use was not allowed and to allow a nonconforming accessory use in addition to the existing nonconforming use.

May 28, 2013 – A petition to construct a multi-use building with first floor Laundromat and second floor office space within a building footprint of 3,030± s.f. was **withdrawn** by the applicant.

August 19, 2014 - The Board **granted** a variance to allow the detailing of automobiles in a district where the use was not allowed.

December 19, 2017 – The Board **granted** the following variances to convert an existing building plus small addition to restaurant use: a) a secondary front yard of 66', 12' maximum permitted; b) a 30' left side yard, 20' maximum permitted; c) 14.9% open space, 25% required; d) shopfront façade glazing of 47% where 70% is minimum required; e) off-street parking to be located in a required front yard between principal building and street and to be located less than 20' behind the façade of a principal building; and f) to allow a nonconforming building to be extended, reconstructed or enlarged without conforming to requirements of Ordinance.

August 21, 2018 – The Board **tabled** the petition to operate a food truck style establishment so that the applicants can work with the Planning Department regarding issues raised at the hearing and specifically work to develop a complete plan and information packet including the number of food trucks, issues of traffic, light and noise control, and specific barriers between seating areas and parking spots and access-ways, as well as determining whether evening hours are appropriate.

September 18, 2018 - The Board **granted** the above request with the following stipulations: That only one food truck will be allowed on the property; the power source for the food truck will be the electrical supply in the existing building and not from a generator or engine in the truck; the food truck may only operate during the following times: after 11 a.m. on any day of the week; before 8 p.m. on Sunday through Thursday; and before 10 p.m. on Friday and Saturday.

August 17, 2021 – The Board voted to **deny** the petition for renovating the existing building to allow for a new restaurant which requires the following: 1) Variance from Section 10.440 Use #9.42 to allow a restaurant with an occupant load of 50 to 250. 2) Variance from Section 10.5A41.10A to allow a) a 29' left side yard where a 5 foot minimum and 20 foot maximum is required and b) 17% open space where 25% is required. 3) Variance from Section 10.5A44.31 to allow parking to be located in front of the building façade. 4) Variance from Section 10.5A44.32 to allow parking unscreened by a building or street screen. 5) Variance from Section 10.575 to allow a dumpster within 20 feet of a residential zoned lot

and within 10 feet of any lot line. 6) Variance from Section 10.1113.20 to allow parking in the front yard and between a principal building and a street.

September 28, 2021 – The Board voted to **deny** the request for Rehearing.

Planning Department Comments

Staff feels this is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether Fisher vs. Dover is applicable before this application is considered.

“When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan.” Fisher v. Dover, 120 N.H. 187, (1980).

The applicant is proposing to renovate the former service station and add a small side addition to convert it into a new restaurant. The most recent application for a restaurant over 50 people was denied in 2021. In addition to the other relief needed, the current proposal’s occupancy will exceed 50 people. In addition to the parking CUP, the applicant will need a CUP for the outdoor dining and/or drinking area. This was added as an accessory use in the Ordinance in 2018. If approved, this project will require approval from the HDC, TAC and Planning Board. If the Board grants approval, staff would recommend the following stipulations:

- 1. The maximum occupancy shall be 74.**
- 2. The design and location of the project may change based on HDC and Planning Board review and approval.**

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.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

2.

The request of **David A. Sinclair and Nicole J. Giusto (Owners)**, for property located at **765 Middle Street** whereas relief is needed for construction of a new detached garage with dwelling unit above which requires the following: 1) A Variance from Section 10.513 to allow 3 principal dwellings on a lot where only 1 is allowed per lot. 2) Variances from Section 10.521 to allow a) a lot area per dwelling of 5,376 square feet where 7,500 is required per dwelling unit; and b) a 10 foot rear yard where 20 feet is required. Said property is shown on Assessor Map 148 Lot 37 and lies within the General Residence A (GRA) and Historic Districts.

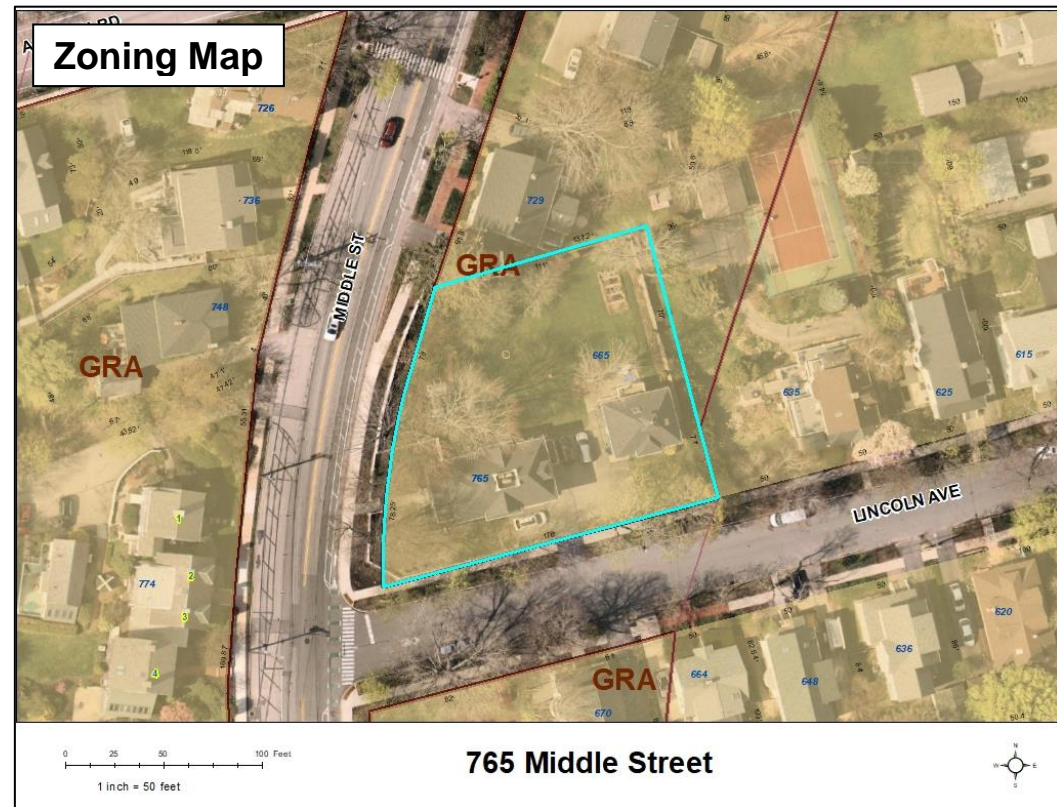
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single family w/ 2 family detached	New detached garage w/ dwelling	Primarily residential
<u>Lot area (sq. ft.):</u>	21,504	21,504	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,168	5,376	7,500 min.
<u>Lot depth (ft.):</u>	111	111	70 min.
<u>Street Frontage (ft.):</u>	334	334	100 min.
<u>Primary Front Yard (ft.):</u>	26	26	15 min.
<u>Secondary Front Yard (ft.):</u>	19.5	19.5	15 min.
<u>Left Yard (ft.):</u>	74	10	10
<u>Rear Yard (ft.):</u>	8	10	20 min.
<u>Height (ft.):</u>	<35	<24	35 max.
<u>Building Coverage (%):</u>	12	23	25 max.
<u>Open Space Coverage (%):</u>	70	55	30 min.
<u>Parking:</u>	4	6	6
<u>Estimated Age of Structure:</u>	1902	Variance request(s) shown in red.	

Other Permits/Approvals Required

Historic District Commission
TAC & Planning Board – Site Plan Review

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The existing property consists of a single family dwelling and a carriage house with 2 dwelling units. The proposal is to add a detached garage with an apartment above. The GRA district permits only 1 free standing dwelling per lot and the project will result in 3. If the variances are granted, the project will need approval from the HDC and will need to go to TAC and Planning Board for site plan review. If the Board grants approval staff would recommend the following stipulation:

1. **The design and location of the garage may change based on HDC and Planning Board review and approval.**

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.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

3.

The request of **Cornwall Properties LLC (Owner)**, for property located at **50 Cornwall Street** whereas relief is needed for the addition of a shed dormer which requires the following: 1) A Variance from Section 10.521 to allow a 3 foot right side yard where 10 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 144 Lot 2 and lies within the General Residence C (GRC) District.

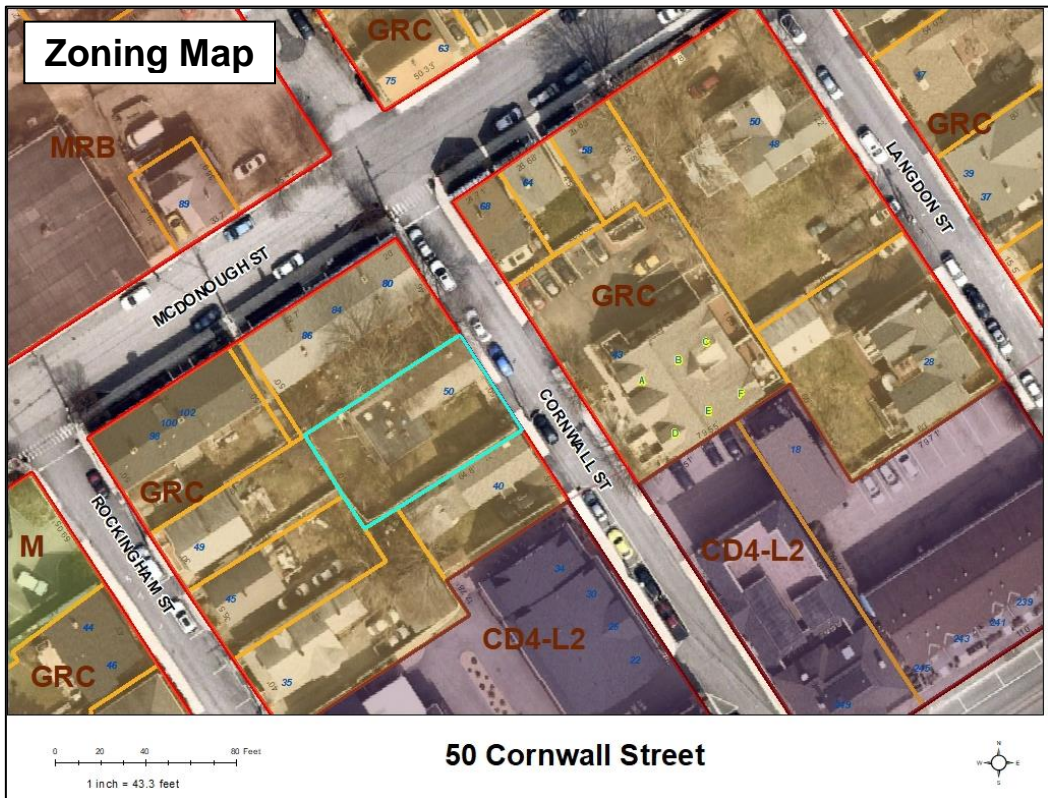
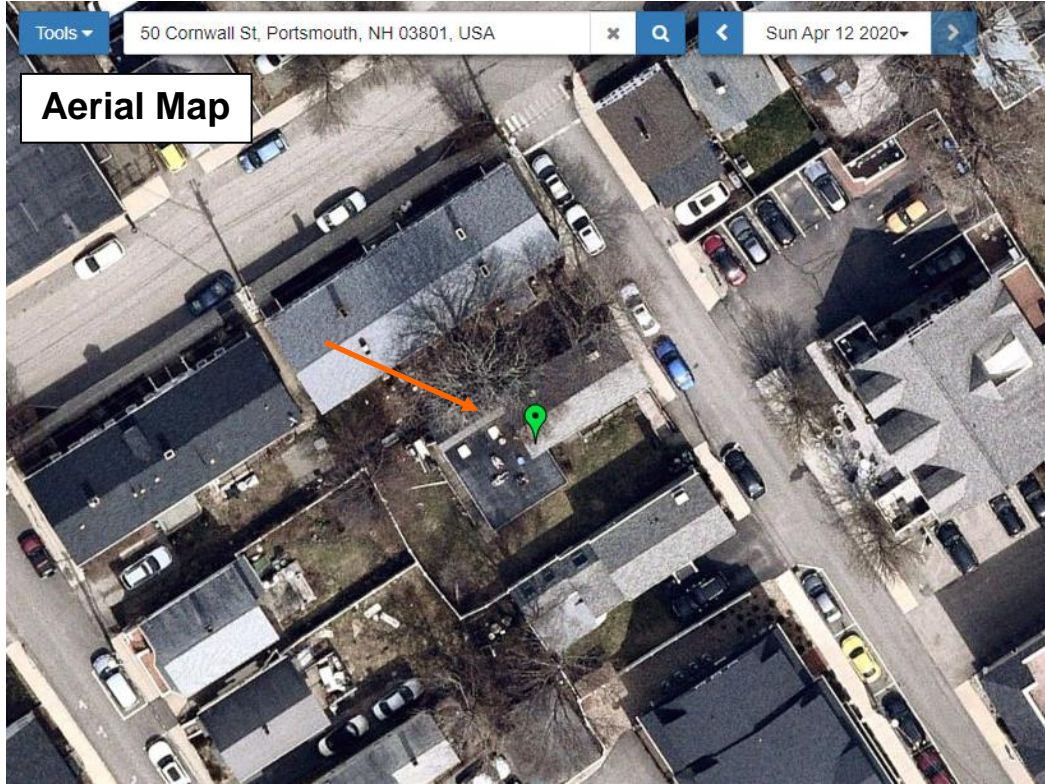
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	New 2 story rear addition/convert to 2 family	Primarily residential uses
<u>Lot area (sq. ft.):</u>	4,000	4,000	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,000	2,000	3,500 min.
<u>Street Frontage (ft.):</u>	50	50	70 min.
<u>Lot depth (ft.):</u>	80	80	50 min.
<u>Front Yard (ft.):</u>	2	2	5 min.
<u>Right Yard (ft.):</u>	1	3	10 min.
<u>Left Yard (ft.):</u>	15	15	10
<u>Rear Yard (ft.):</u>	22	22	20 min.
<u>Height (ft.):</u>	28	32	35 max.
<u>Building Coverage (%):</u>	36.3	36.5	35 max.
<u>Open Space Coverage (%):</u>	57	40	20 min.
<u>Parking:</u>	0	3	3
<u>Estimated Age of Structure:</u>	1820	Variance request(s) shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

March 23, 2021 – The Board voted to **grant** your request as advertised and presented. For relief needed from the Zoning Ordinance for partial demolition of existing structure and construction of new two-story rear addition to convert into two-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a 1 foot right side yard where 10 feet is required; b) to allow 36.5% building coverage where 35% is the maximum allowed; and c) to allow a lot area per dwelling unit of 2,000 square feet where 3,500 per dwelling 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.

Planning Department Comments

As shown in the history, the applicant received variances in 2021. They are proposing to add a shed roof over a portion of the addition that was not on the original submission in 2021, and it is located in the side yard setback. Although it is not the closest portion of the project to the right side, it is still within the setback and requires a variance for the placement.

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.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

4.

The request of **Lucia Investments LLC (Owner)**, for property located at **3020 Lafayette Road** whereas relief is needed to remove existing deck and stairs and construct new stairs to second floor behind the building and add new HVAC units which requires the following: 1) A Variance from Section 10.521 to allow an 8 foot side yard where 10 feet is required. 2) A Variance from Section 10.515.14 to allow an 8 foot setback for the HVAC units where 10 feet is required. Said property is located on Assessor Map 292 Lot 152 and lies within the Mixed Residential Business (MRB) District.

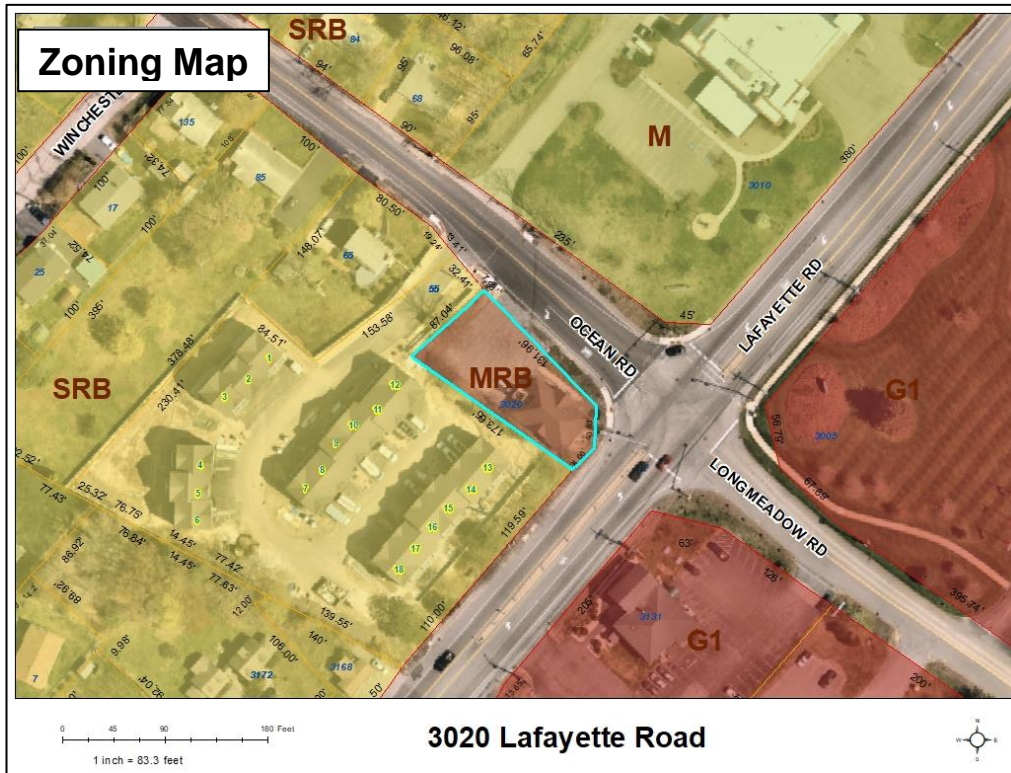
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant business with single-family above	Add stairs & HVAC	Primarily Mixed Uses
<u>Lot area (sq. ft.):</u>	11,815	11,815	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,815	11,815	7,500 min.
<u>Street Frontage (ft.):</u>	>100	>100	100 min.
<u>Lot depth (ft.):</u>	>80	>80	80 min.
<u>Primary Front Yard (ft.):</u>	54	54	80 (center Rt. 1) min.
<u>Secondary Front Yard (ft.):</u>	>5	>5	5 min.
<u>Left Yard (ft.):</u>	5.5	5.5	10 min.
<u>Rear Yard (ft.):</u>	>15	8	15 min.
<u>Height (ft.):</u>	<40	<40	40 max.
<u>Building Coverage (%):</u>	18.5	19.2	40 max.
<u>Open Space Coverage (%):</u>	32.5	38.5	25 min.
<u>Parking</u>	13	13	13
<u>Estimated Age of Structure:</u>	1985	Variance request shown in red.	

Other Permits/Approvals Required

None

Neighborhood Context



Previous Board of Adjustment Actions

No December 18, 1984 – The Board **granted** variances to allow the following:

- 1) A 10' front yard where a 105' minimum yard was required for front yards abutting Lafayette Road;
- 2) A 10' left yard and a 19' right yard where 20' was required; and
- 3) The construction of a second floor apartment in a proposed two-story building where only conversions to existing structures for a residential use were allowed.

June 24, 1986 – The Board **granted** variances to allow the following:

- 1) A 10' front yard where a 105' minimum yard was required for front yards abutting Lafayette Road;
- 2) A 10' left yard and a 19' right yard where 20' was required; and
- 3) The construction of a second floor apartment in a proposed two-story building where only conversions to existing structures for a residential use were allowed. (Note: No indication in the file regarding action following the first approval in 1984.)

October 20, 1987 – The Board **granted** a variance to permit the establishment of a 5' left side yard (due to a surveyor's error) in conjunction with a new structure where a 10' yard had been permitted by a previous variance.

March 15, 1988 – The Board **granted** variances to allow two attached signs totaling 43 s.f. and one 28 s.f. free-standing sign where free-standing signs were not allowed for a total of 71 s.f. of aggregate signage where 30 sf. was the maximum allowed.

August 30, 1988 – The Board **denied** a request to allow the construction of an exterior staircase on the south side of the building (for access to a dwelling unit) with a 2' left side yard where 30' was required.

January 21, 2003 – The Board **granted** a variance to allow an existing 2,111 s.f. Convenience Goods I

store to be changed to a 2,111 s.f. Convenience Goods II store to allow the sale of prepared food for consumption off the premises where the maximum area for the latter was 2,000 s.f. The variance was granted with the stipulation that there would be no grilling or frying of prepared food on the premises.

January 20, 2004 – The Board **granted** a one-year extension of the above variance.

February 19, 2008 – The Board **granted** a variance to allow what had been requested and granted at the January 21, 2003, extended for one-year and allowed to lapse. (As 3110 and 3020 Lafayette Road)

April 18, 2017 – The Board **postponed** a request to construct a retail facility of up to 15,000 s.f. with

drive-through window and lanes requiring the following: a) a special exception to allow a retail use; and variances to allow b) off-street parking to be located in a front yard or between a principal building and a street; c) a drive-through facility to be located within 100' of a residential district and within 50' of a lot line; d) drive-through lanes to be located within

50' of a residential district and within 30' of a lot line; and e) a building, structure or parking area to be located 65' from the centerline of Lafayette Road where 80' is required.

May 16, 2017 – The Board **denied** the above petition

January 17, 2018 - The Board voted to **grant** the following petition as presented and advertised.

Relief from the Zoning Ordinance including:

1. A Variance from Section 10.521 to allow a) a 3,938± s.f. lot area per dwelling unit where 7,500 s.f. is required; and b) to allow a 5.5'± left side yard setback where 10' is required.
2. A Variance from Section 10.533 to allow a building or structure to be located 54'± from the centerline of Lafayette Road where a minimum of 80' is required.

September 20, 2022 – The Board voted to **grant** the following petition as presented and advertised. Relief from the Zoning Ordinance including:

- 1) A Special Exception from Section 10.440, Use #8.31 to allow retail sales conducted within a building which is permitted by special exception.

Planning Department Comments

The applicant was before the Board in September and was granted a special exception for the retail sales use for the cabinet outlet. The property is in considerable disrepair and the applicant is beginning to renovate the building. The HVAC units are nonconforming and the applicant is proposing to replace with new units, which do not meet the 10 foot setback requirement. The existing stairs and deck will be removed and a new set of stairs is proposed on the back of the building, where they will encroach into the 10 foot setback requirement.

Review Criteria

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

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

AND

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

OR

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

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

October 18, 2022 Meeting

5.

The request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed for construction of a 518 square foot garage addition which requires the following: 1) A Variance from Section 10.521 to allow a 15.5 foot front yard where 19 feet is required per Section 10.516.10. 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 located on Assessor Map 207 Lot 59 and lies within the Single Residence B (SRB) District.

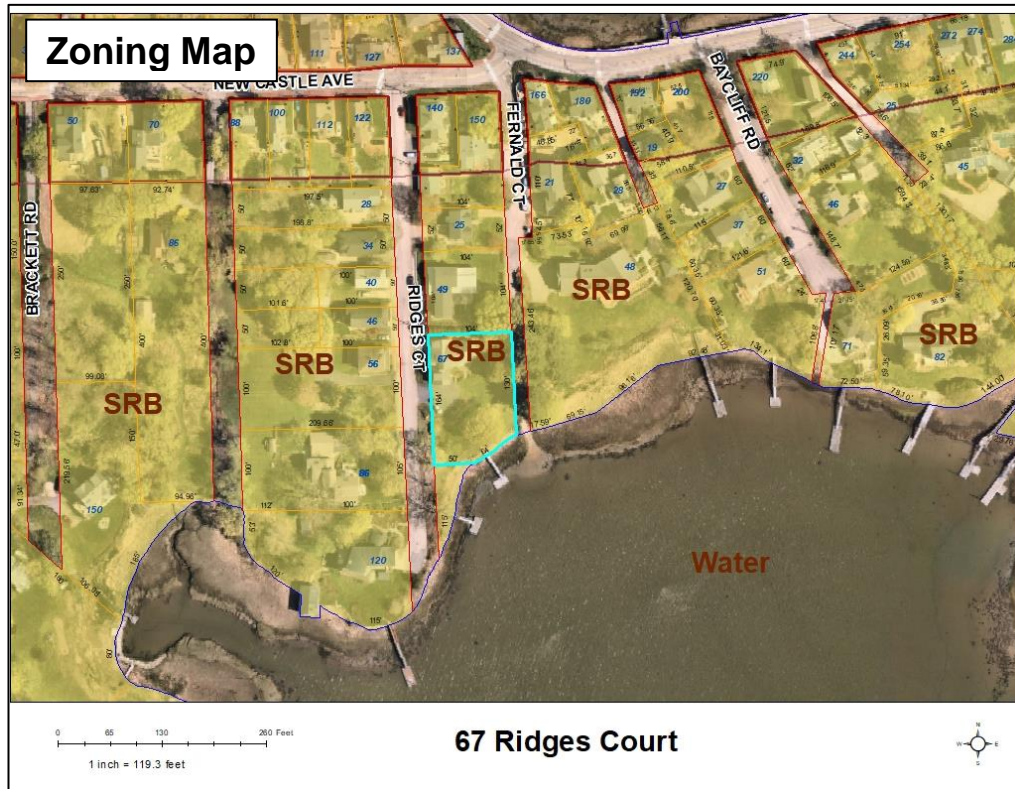
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Garage addition	Primarily single residence
<u>Lot area (sq. ft.):</u>	16,500	16,500	15,000 min.
<u>Lot area per dwelling (sq. ft.):</u>	16,500	16,500	15,000 min.
<u>Lot depth (ft.):</u>	109	109	100 min.
<u>Street Frontage (ft.):</u>	164	164	100 min.
<u>Primary Front Yard (ft.):</u>	8	15.5	30 *(19 feet per front yard averaging) min.
<u>Left Yard (ft.):</u>	10	9.5	10 min.
<u>Right Yard (ft.):</u>	95	>67	10
<u>Rear Yard (ft.):</u>	40	40	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	14	17.5	20 max.
<u>Open Space Coverage (%):</u>	73	77	40 min.
<u>Parking:</u>	4	4	2
<u>Estimated Age of Structure:</u>	2002	Variance request(s) shown in red.	

Other Permits/Approvals Required

Conservation Commission & Planning Board – Wetland CUP

Neighborhood Context



67 Ridges Court

Previous Board of Adjustment Actions

July 15, 1986 – the Board **granted** a Variance to permit the construction of a 20' x 20' addition onto an existing single family dwelling with a front yard of 9' where a 30' front yard is required.

August 20, 2002 – The Board considered request for the following Variance: Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) is requested to allow a 5'9" x 10'3" front porch/entry with an 8'1" front yard where 30' is the minimum required The Board voted the request be **granted** as advertised and presented.

October 15, 2002 – The Board considered request for the following Variance: Article III, Section 10-302(A) is requested to allow the existing single family dwelling to be demolished and rebuilt with a 13'11" front yard where 30' is the minimum required The Board voted the request be **granted** as advertised and presented.

July 19, 2022 - Relief is needed to construct a 718 square foot garage addition with living space and deck above which requires the following:

- 1) A Variance from Section 10.521 to allow a 15.5' front 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. Said property is located on Assessor Map 2074 Lot 59 and is located within the single residence B (SRB) District.

The Board voted to **grant** the request to **postpone** to the August meeting.

August 16, 2022 The Board voted to **deny** the request of July 19, 2022 because there was no hardship.

September 27, 2022 – The Board voted to **grant** the following with the exception of item “b” which was determined to not be required:

- 1) Section 10.521 to allow a) an 8' front yard where 30' is required to expand the existing front porch; b) a 13.5 foot front yard where 30 is required to expand the main roof of the house; c) a 13.5 foot front yard where 30 feet is required for a new roof over an existing doorway; and d) a 9.5 foot left side yard where 10 feet is required for a new rood over an existing doorway.
- 2) Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance

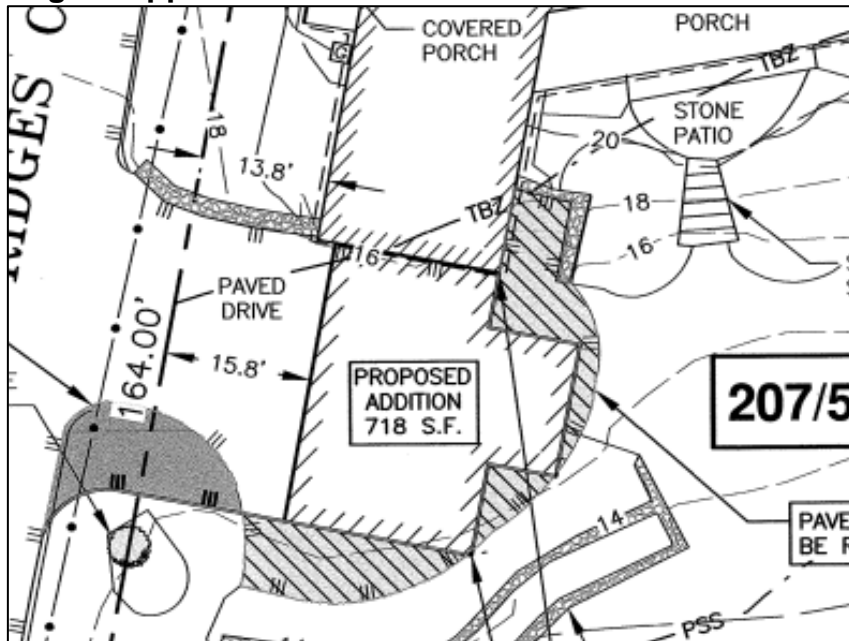
Planning Department Comments

Staff feels this is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether Fisher vs. Dover is applicable before this application is considered.

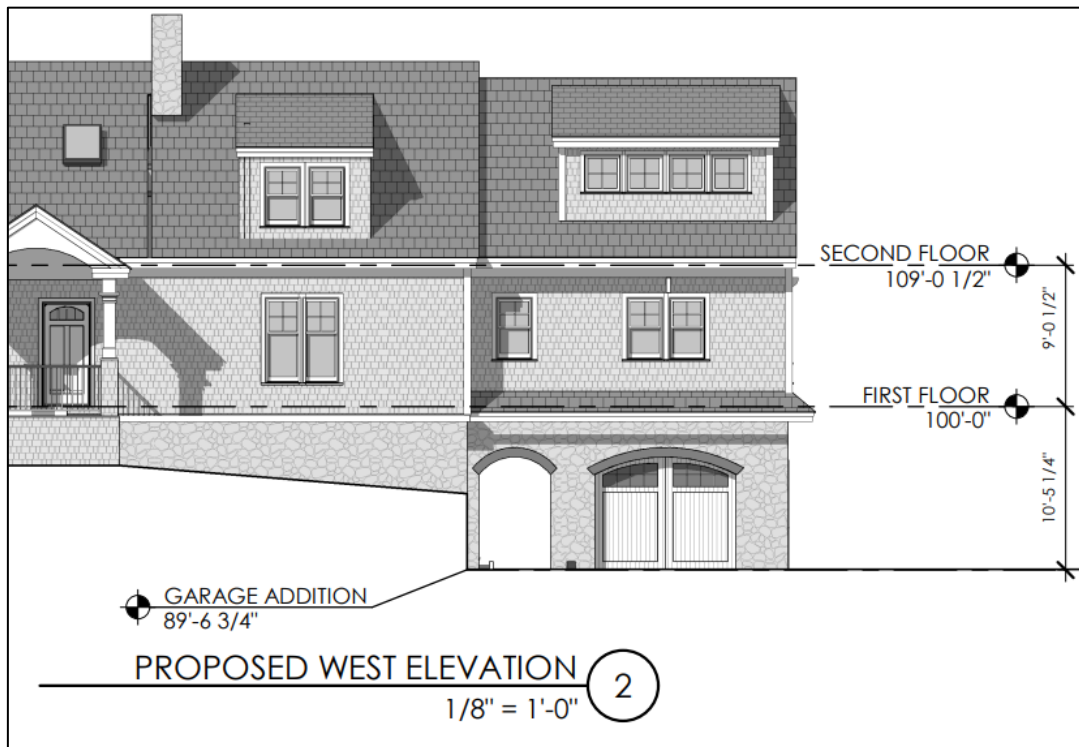
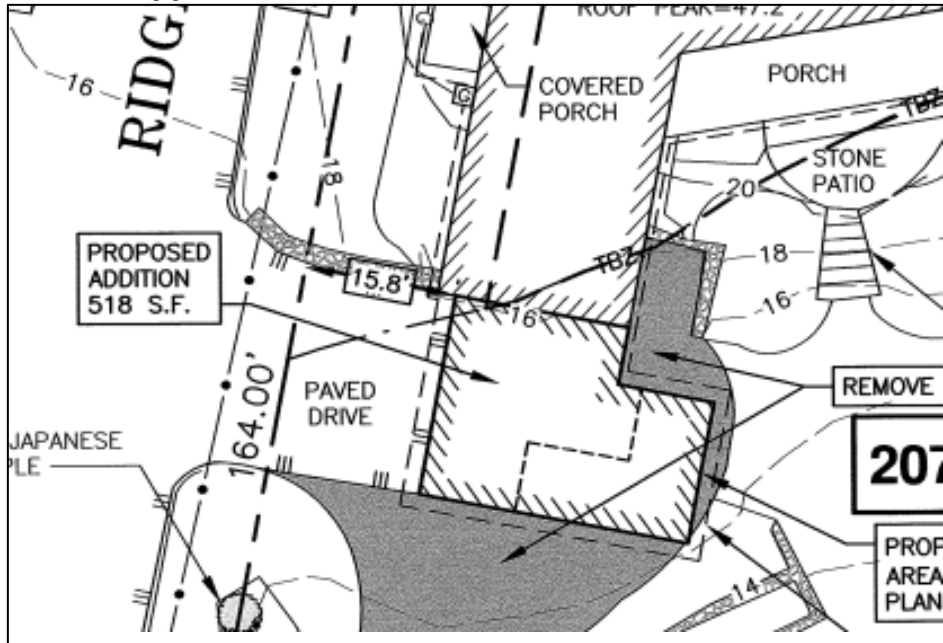
“When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan.” Fisher v. Dover, 120 N.H. 187, (1980).

The applicant was before the Board in August for a garage addition that was subsequently denied by the Board. The applicant has revised the scope of work from a 718 square foot two car garage to a 518 square foot one car garage addition. On the original plan there was a roof deck trellis above the second bay of the addition. The new proposal removes the second bay and a smaller roof deck and trellis is located towards the rear of the addition. A survey of the front yards of adjacent properties was completed to determine the average front yard under Section 10.516.10. The results show an average front yard of 19 feet.

August Application:



Current Application:



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.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

6.

The request of **Jessica Kaiser and Andrew McMahon (Owners)**, for property located at **232 Wibird Street** whereas relief is needed for the demolition of existing structures and construction of a new dwelling with attached garage which requires the following: 1) Variances from Section 10.521 to allow a) 66.5 feet of frontage where 100 feet is required; b) a 7 foot right side yard where 10 feet is required; and c) a 12 foot front yard where 15 feet is required. Said property is located on Assessor Map 149 Lot 14 and lies within the General Residence A (GRA) district.

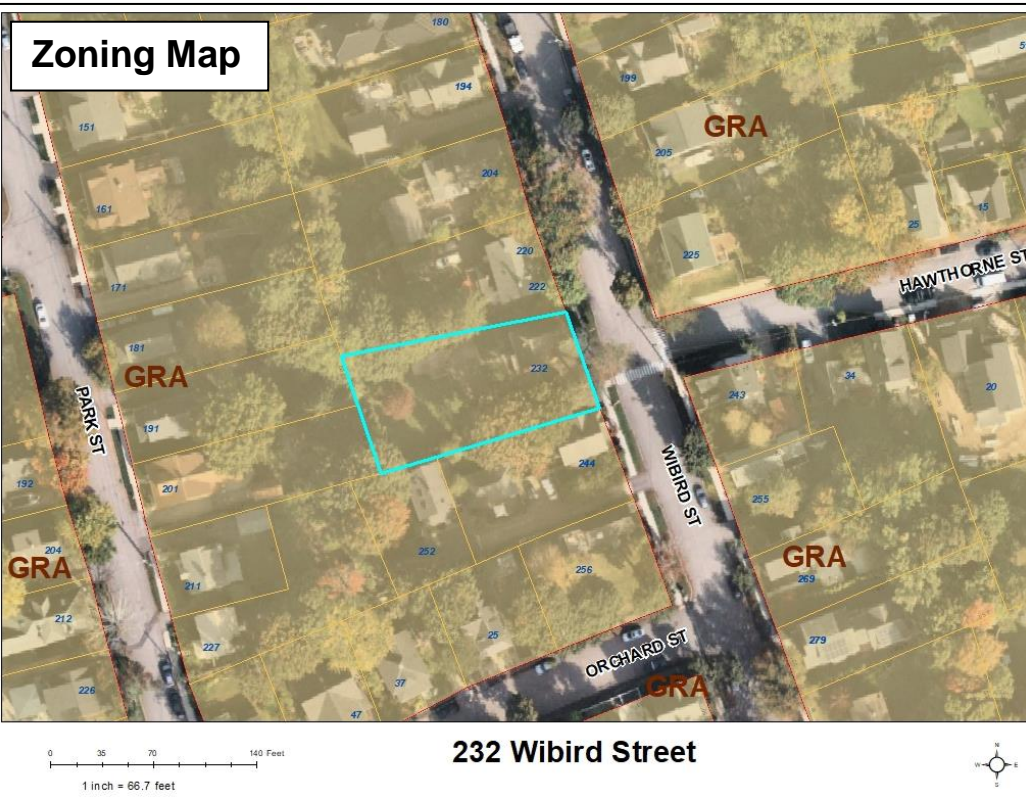
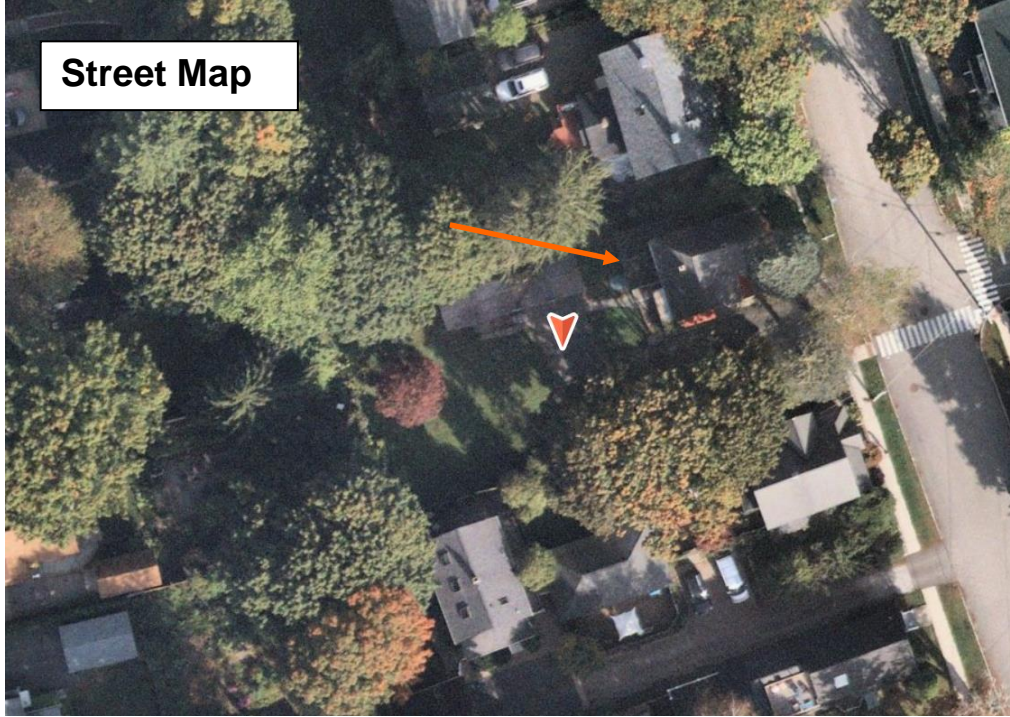
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Demo structures/construct new dwelling	Primarily residential
<u>Lot area (sq. ft.):</u>	11,785	11,785	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,785	11,785	7,500 min.
<u>Lot depth (ft.):</u>	156	156	100 min.
<u>Street Frontage (ft.):</u>	66.5	66.5	70 min.
<u>Primary Front Yard (ft.):</u>	3	12	15 min.
<u>Right Yard (ft.):</u>	1	7	10 min.
<u>Left Yard (ft.):</u>	30	10	10
<u>Rear Yard (ft.):</u>	96	56	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	17	19	25 max.
<u>Open Space Coverage (%):</u>	64	73	30 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1915	Variance request(s) shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

January 18, 2022 – The Board voted to **grant** the following:

- 1) Section 10.521 to allow a 6 foot right side yard where 10 feet is required.
- 2) Section 10.321 to allow a nonconforming building or structure be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Planning Department Comments

The applicant is proposing to demolish the existing garage and construct a two-story addition with a new attached garage. The existing dwelling is nonconforming to the right side yard as well as the existing garage. The new addition will be 7 feet from the right side yard where 1 foot exists with the garage and 12 feet in the front where 15 feet is required. Since all structures will be removed, any existing lot nonconformities require variances, which in this case is the street frontage.

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.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

7.

Request of **Thomas M. Hammer Revocable Trust of 2015 (Owner)**, for property located at **219 Sagamore Avenue** whereas relief is needed to add an additional dormer to a previously approved garage which requires the following: 1) A Variance from Section 10.573.20 to allow a 9' rear yard where 15' is required for the dormer. 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 located on Assessor Map 221 Lot 19 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	Add dormer to garage	Primarily residential
<u>Lot area (sq. ft.):</u>	6,132	6,132	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,132	6,132	7,500 min.
<u>Lot depth (ft.):</u>	102	102	70 min.
<u>Street Frontage (ft.):</u>	60	60	100 min.
<u>Primary Front Yard (ft.):</u>	11	11	15 min.
<u>Left Yard (ft.):</u>	10	11	10 min.
<u>Right Yard (ft.):</u>	4	4	10
<u>Rear Yard (ft.):</u>	1	9	20 min.
<u>Height (ft.):</u>	,35	15 (garage)	35 max.
<u>Building Coverage (%):</u>	30.5	30.5	25 max.
<u>Open Space Coverage (%):</u>	40	42	30 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1925	Variance request(s) shown in red.	

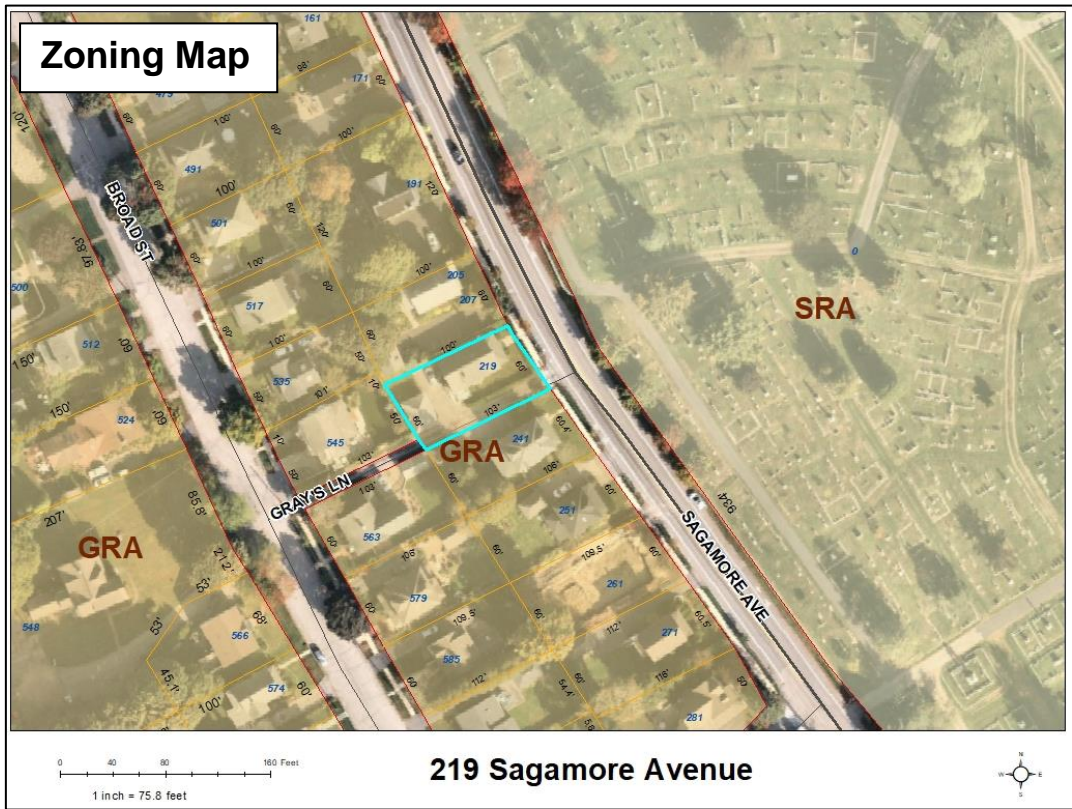
Other Permits/Approvals Required

None.

Neighborhood Context



Aerial Map



Previous Board of Adjustment Actions

May 24, 2022 – The Board voted to **grant** the following:

- 1) Section 10.521 to allow 30.5% building coverage where 25% is the maximum allowed.
- 2) Section 10.573.20 to allow a 2.5 foot rear yard where 15 feet is required.
- 3) Section 10.571 to allow an accessory structure to be located closer to a street than the principal structure.
- 4) 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 received variances earlier this year as shown above in the history. The previous application had 1 dormer on the proposed garage. A second dormer is proposed which is in the setback and needs approval from the Board, as it was not part of the original approval.

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.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.