

TO: Zoning Board of Adjustment  
FROM: Peter Stith, AICP, Planning Department  
DATE: March 8, 2022  
RE: Zoning Board of Adjustment March 15, 2022

## **OLD BUSINESS**

1. 1 Congress Street - Appeal of Administrative Decision/Variance

## **NEW BUSINESS**

1. 725 Colonial Drive
2. 27 Sewall Road
3. 189 Gates Street
4. 1299 Islington Street
5. 405 South Street
6. 139 Essex Avenue
7. 169 Martha Terrace



## OLD BUSINESS

1.

Request of **Francis X. Bruton, (Attorney for Appellants)**, for Appeal of Administrative decision that the merged lot at **1 Congress** is not subject to the height allowances (2 stories, 4th short, 45 feet in height) pursuant to Map 10.5A21B and as permitted pursuant to Section 10.5A21.22(a) & (c) of the Zoning Ordinance. Said property is shown on Assessor Map 117 Lot 14 and lies within Character District 4 (CD-4), Character District 5 (CD-5) and the Historic District.

The appellants are appealing an administrative decision made by the Planning Director with regard to the proposed development on the recently merged parcels at 1 Congress Street. Below is the email from the Planning Director to the applicant stating that Section 10.5A21.22(c) does apply to this portion of the property and a variance is needed to allow the additional story and height. Additionally, a sketch showing how the height would be applied to this portion, showing the 50 foot setback from both High Street and Haven Court. The original request for the variance is the second item on the agenda and will be heard if the appeal is denied. If the appeal is granted, the applicant should withdraw the variance request, as it will not be needed if the decision of the Planning Director is overturned.

Reply Reply All Forward

Wed 2/23/2022 3:14 PM

 Beverly M. Zendt  
RE: 1 Congress Street

To FX Bruton; Nicholas J. Cradnell  
Cc Mark McNabb; Peter M. Stith

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Message RE: Tax Map 117, Lot 15 and Tax Map 117, Lot 14 Case: LU-22-12 (282 KB)  
 Exhibit 1 - 1 Congress Street.pdf (532 KB)

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Good afternoon,

In response to your subsequent request for further consideration of our interpretation of Section 10.5A21.22 – Building Height Standards - and the applicability of the Building Height Standards shown under Map 10.5A21B to your client’s merged lot at 1 Congress Street, we continue to conclude that your characterization of the current ownership status of Haven Court – being a private way owned in fee by your client with no public interest in property - as well as your interpretation of how the building height standards are applied on a “corner” or “through lots” to be incorrect.

As shown on the “Verra Plan” (11/22/05) that you provided, portions of Haven Court appear to be owned in fee by the city and it is unclear whether the area labelled as a “private way” on the plan is accurate. Map 10.5A21B shows the building height standards for both High Street and the full length of Haven Court. As such, the application of the building height standards are based on the “front lot line(s)”, “street” or “water body” that fronts along the property. The Zoning Ordinance defines a “front lot line” follows:

**Lot line, front**  
A boundary of lot that separates the lot from a street or public place. In the case of a corner lot or waterfront lot, the front lot line shall be the line bordering the street on which the lot has its address. A corner lot or a through lot shall have two front lot lines.

Given we believe that your client’s merged lot fronts on three public streets, we agree that Section 10.5A21.22(C) allows for an increase in building height on the merged lot but importantly, it also restricts the increased height allowance to areas more than 50 feet from a front lot line(s). Thus, as shown in the attached Exhibit, a dimensional variance would be required for any increase in the maximum building height within 50 feet of High Street or Haven Court.

In closing, even if Haven Court was deemed not to qualify as a "street" or "public place", thereby potentially nullifying its building height designation on Map 10.5A21B, the presence of the lower height standard along High Street would still prevent a new building from being taller than 3 stories or 40' within 50 feet of High Street due to the corner lot provisions of the definition of front lot line stated above. Thus, regardless of the ownership status of Haven Court, we continue to support the need for a dimensional variance for your proposed project as currently designed.

Please contact me if I can provide any additional information.

**Best Regards,**

**Beverly Mesa-Zendt AICP**  
 Director | Planning Department  
 City of Portsmouth  
 1 Junkins Avenue  
 Portsmouth, NH 03801

☎ (603) 610-7216

✉ [Bmz@cityofportsmouth.com](mailto:Bmz@cityofportsmouth.com)

📍 [Planning Department | City of Portsmouth](#)



**Exhibit A – 1 Congress Street Project – Maximum Building Height (# Stories / Feet)\***

\*Assumes Haven Court qualifies as a public street or public place

2.

Request of **One Market Square LLC (Owner)**, for the property located at **1 Congress Street** whereas relief is needed to construct a 3 story addition with a short 4th story and building height of 44'-11" which requires the following: 1) A Variance from Section 10.5A.43.31 and Map 10.5A21B to allow a 3-story addition with a short 4th and building height of 44'-11" where 2 stories (short 3rd) and 40' is the maximum allowed. Said property is shown on Assessor Map 117 Lot 14 and lies within Character District 4 (CD-4), Character District 5 (CD-5) and the Historic District.

### Existing & Proposed Conditions

<b>TABLE IS FOR CD4 ZONING</b>	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed use/parking lot	4 story addition	Primarily mixed uses
<u>Primary Front Yard (ft.):</u>	NA	1'6"	15 max.
<u>Right Yard (ft.):</u>	NA	15	NR
<u>Left Yard (ft.):</u>	NA	0	NR
<u>Rear Yard (ft.):</u>	NA	10	Greater of 5' from rear lot line or 10' from CL of alley min.
<u>Height (ft.):</u>	NA	<b>3 stories (short 4<sup>th</sup>), 44'-11"</b>	2-3 stories, 40' max.
<u>Building Coverage (%):</u>	0	67	90 max.
<u>Open Space Coverage (%):</u>		32	10 min.
<u>Parking:</u>	18	19	4 space credit for Residential/ 0 required for commercial use in DOD
<u>Estimated Age of Structure:</u>	1800	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

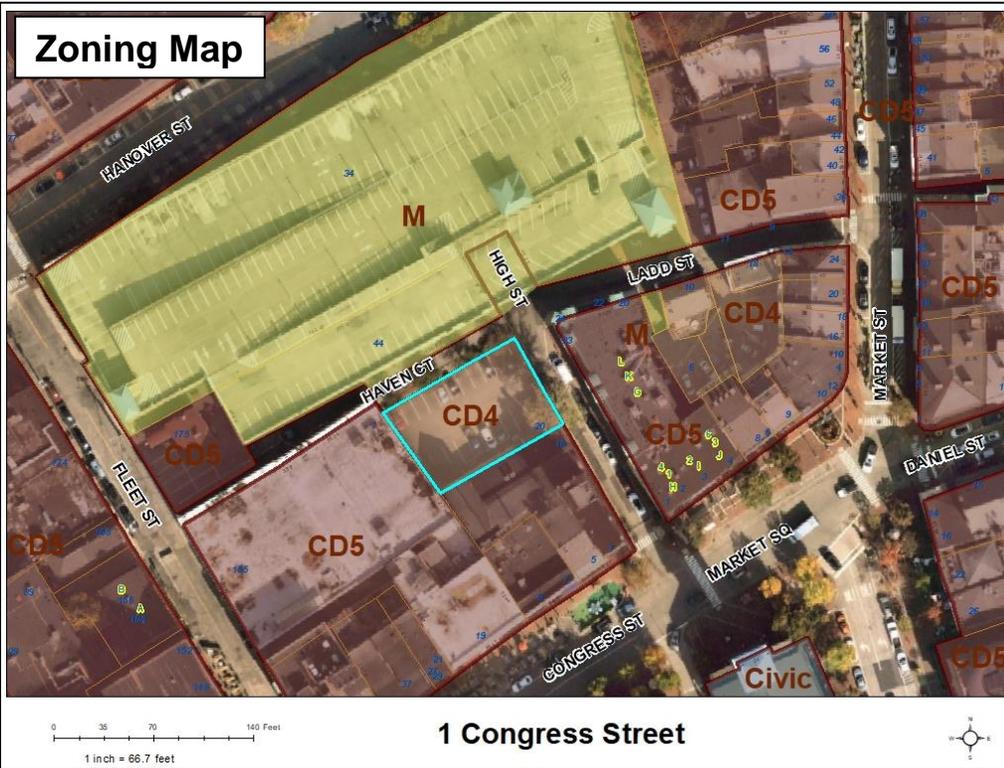
Planning Board/TAC – Site Review and Conditional Use Permit for Parking  
 Historic District Commission

### Neighborhood Context

**Aerial Map**



**Zoning Map**



## Previous Board of Adjustment Actions

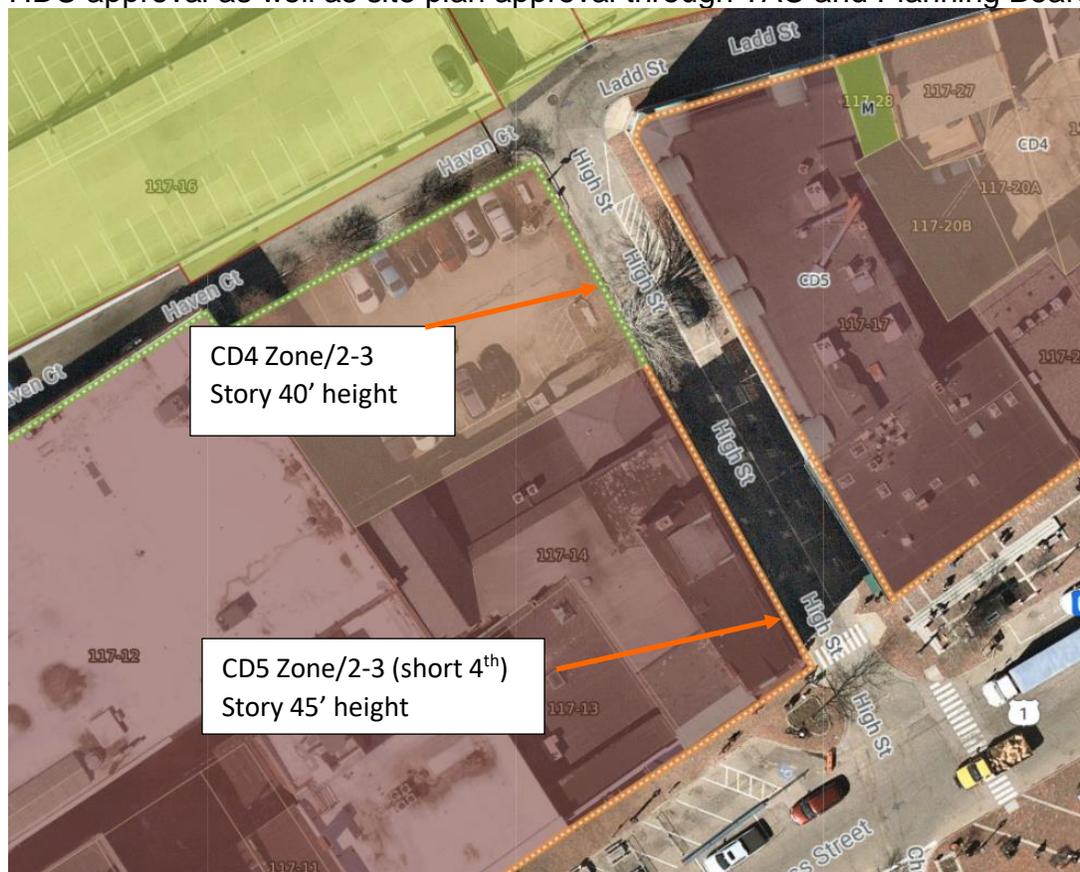
March 29, 2012 – Relief from Zoning Ordinance including:

1. Variance from Section 10.1115.20 and the requirements of 10.1115.30 to allow no off-street parking spaces to be provided where 1 space per 100 s.f. Gross Floor Area is required.
2. Special Exception under Section 10.1113.112 to allow 6 off-street parking spaces to be provided on another lot in the same ownership and within 300' of the property line of the lot in question.

The Board voted to **grant** the Variance as presented. With the granting of the Variance the Board determined the Special Exception would not be required.

## Planning Department Comments

The applicant is seeking to merge the two properties and construct a 3-story addition with a short 4<sup>th</sup>, which requires a variance to do so. The two parcels are zoned differently, one CD4 and one CD5 and both have separate height requirements as shown on the map below. All other dimensional requirements are met with the proposal. The project will need HDC approval as well as site plan approval through TAC and 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.*

## NEW BUSINESS

1.

The request of **Kelly Rose Shea (Owner)**, for property located at **725 Colonial Drive** whereas relief is needed to demolish existing garage and construct new 24' x 28' addition with single car garage which requires the following: 1) Variances from Section 10.521 to allow a) a 5.5' right side yard where 10' is required; b) a 20' rear yard where 30' is required; and c) a 20' front yard where 30' is required; and d) 25% building coverage where 20% 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. Said property is located on Assessor Map 260 Lot 14 and lies within the Single Residence B (SRB) District.

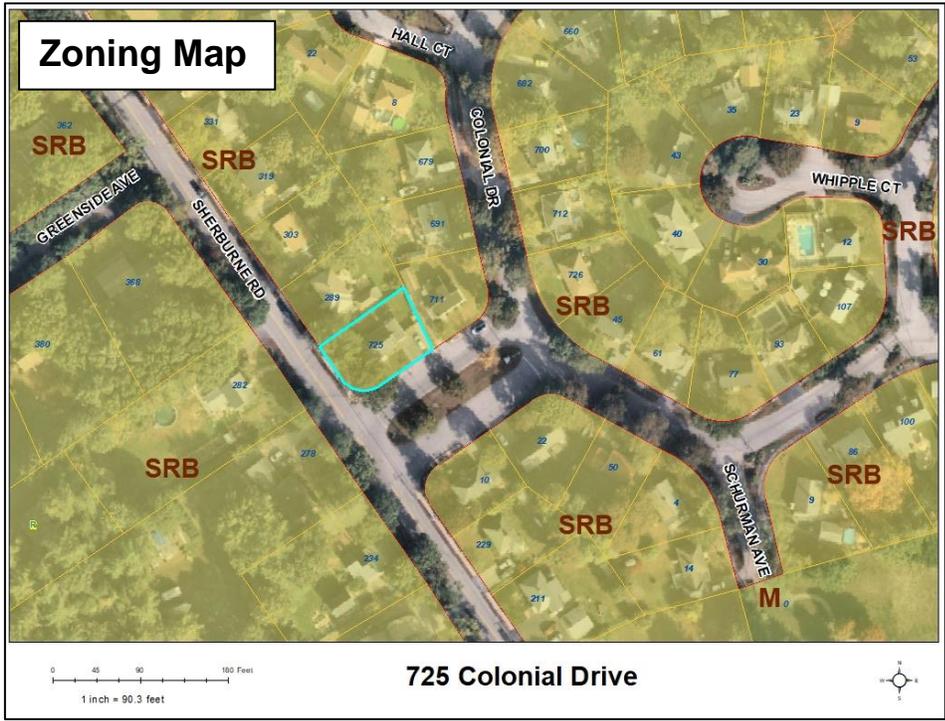
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Construct garage addition	Primarily residential uses
<u>Lot area (sq. ft.):</u>	6,360	6,360	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,360	6,360	15,000 min.
<u>Lot depth (ft.):</u>	95	95	100 min.
<u>Street Frontage (ft.):</u>	152	152	100 min.
<u>Primary Front Yard (ft.):</u>	25	<b>20</b>	30 min.
<u>Right Yard (ft.):</u>	18	<b>5.5'</b>	10 min.
<u>Rear Yard (ft.):</u>	20	<b>20</b>	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	17	<b>25</b>	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1940	<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 seeking relief to add a new right side addition with new one-car garage located 5.5' off the right lot line. The lot size is less than half the size of what is required in the SRB zone. The addition will increase the coverage to approximately 25% where 20% is 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.*



2.

Request of **Christopher S. and Kristin L. Martin (Owners)**, for property located at **27 Sewall Road** whereas relief is needed to construct a rear addition with 2 decks and a 10x10 shed which requires the following: 1) Variances from Section 10.521 to allow a) a 6.5' left side yard where 10' is required; and b) 22% building coverage where 20% is the maximum allowed. Said Property is located on Assessor Map 170 Lot 12 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	Rear addition w/ decks	Primarily residential
<u>Lot area (sq. ft.):</u>	10,018	10,018	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,018	10,018	15,000 min.
<u>Lot depth (ft.):</u>	126	126	100 min.
<u>Street Frontage (ft.):</u>	75	75	100 min.
<u>Primary Front Yard (ft.):</u>	26	26	30 min.
<u>Right Yard (ft.):</u>	11	11	10 min.
<u>Left Yard (ft.):</u>	8	<b>6.5'</b>	10
<u>Rear Yard (ft.):</u>	59	45	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	13.5	<b>22</b>	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1961	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

None.



## Previous Board of Adjustment Actions

### Dec 20 2016 – Relief from Zoning Ordinance including:

1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a 22'± front yard for the dormer where 30' is required.
3. A Variance from Section 10.521 to allow a 9'± left side yard for the dormer where 10' is required.

The Board voted the request be **granted** as presented and advertised.

### Planning Department Comments

The applicant is proposing rear addition with decks on either side which will result in encroachment into the left side yard and building coverage over the 20% maximum. The narrative and plans have different proposed coverage amounts, but staff confirmed with the applicant that the proposed building coverage is slightly less than 22%, and the legal ad stated a request for 22% building coverage. The proposed shed will be 100 square feet and 10 feet in height, which allows it to be setback 5 feet from the side and rear lot lines.

### 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 **Nerbonne Family Revocable Trust (Owner)**, for property located **189 Gates Street** whereas relief is needed for conversion of the existing garage into a Garden Cottage with a 12' x 16' addition and 6' x 14' deck which requires the following: 1) Variances from Section 10.521 to allow a) 35.5% building coverage where 30% is the maximum allowed; and b) a 1' right side yard where 10' is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 103 Lot 6 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	Convert garage into garden cottage	Primarily residential
<u>Lot area (sq. ft.):</u>	5,184	5,184	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,184	5,184	5,000 min.
<u>Lot depth (ft.):</u>	102	102	60 min.
<u>Street Frontage (ft.):</u>	50	50	80 min.
<u>Primary Front Yard (ft.):</u>	4.5 (house) 39 (garage)	4.5/39	5 min.
<u>Right Yard (ft.):</u>	0 (garage)	<b>1</b> (addition)	10 min.
<u>Left Yard (ft.):</u>	6	31 (addition)	10
<u>Rear Yard (ft.):</u>	45	27 (addition)	25 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	28	<b>33.5</b> (actual) <b>35.5</b> (req.)	30 max.
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Parking:</u>	4	3	3
<u>Estimated Age of Structure:</u>	1864	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

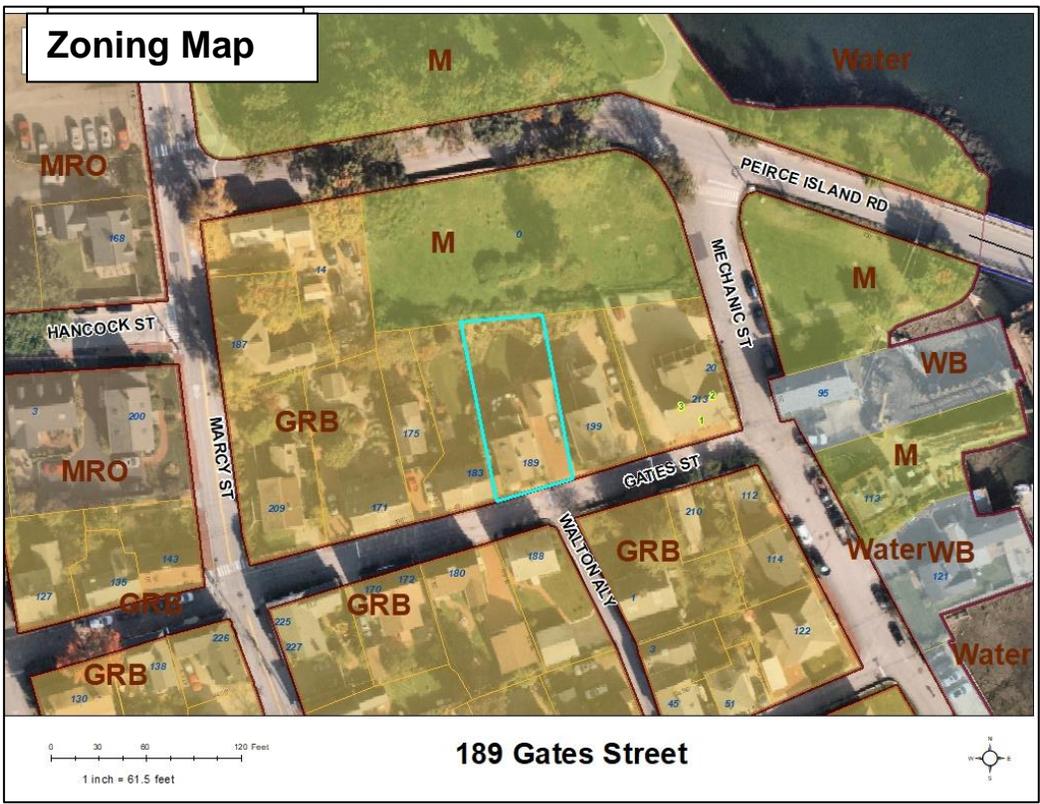
Historic District Commission  
 Planning Board – CUP for Garden Cottage

### Neighborhood Context

**Aerial Map**



**Zoning Map**



## Previous Board of Adjustment Actions

**June 25, 1991** (reconvened from June 18, 1991 Meeting) – Relief from Zoning Ordinance including:

1. A Variance from Article III, Section 10.302 to allow demolition of existing 19' x 20' garage and replacing it with a 19' x 20' one story garage in the same location, with a right yard of 2' where a 10' right yard is required.

The Board voted the request be **granted** as presented and advertised

**January 21, 1997** – Relief from Zoning Ordinance including:

1. A Variance from Section 10.402 (B) to allow existing garage to have roof rebuilt changing the pitch to match the existing house which will create a new building height with an existing 1' ± side yard to remain in a district where 10' is the minimum side yard.
2. A Variance from Section 10.401 (A) (2) (c) to allow a 3' x 6' front entry roof over the front steps after demolition of the front porch with a 4'2" front yard where 5' is the minimum.

The Board voted the request be **granted** as presented and advertised

## Planning Department Comments

The applicant is seeking to convert the existing garage into a one-story Garden Cottage that involves a rear addition and deck. The addition on the back of the garage will be a little over 1 foot from the right side property line. The applicant will need a Conditional Use Permit from the Planning Board for the accessory dwelling and is requesting a modification for an addition on a Garden Cottage. The initial building coverage calculation included a stone wall, which resulted in the advertised 35.5%. This would not typically be included in the calculation, therefore staff is suggesting if the Board grants approval, to state the allowable building coverage is 33.5%.

## 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.*



4.

Request of **Christopher H. Garrett Revocable Trust of 2007 (Owner)**, for property located at **1299 Islington Street** whereas relief is needed to Subdivide one lot into two lots which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling unit of 12,366 square feet where 15,000 is required for each; and b) 99' of continuous street frontage where 100' is required. Said property is located on Assessor Map 233 Lot 119 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	Subdivide one lot into two lots Lot 1    Lot 2		Primarily residential	
<u>Lot area (sq. ft.):</u>	27,366	15,000	<b>12,366</b>	15,000	min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	27,366	15,000	<b>12,366</b>	15,000	min.
<u>Lot depth (ft.):</u>	135	143	133	100	min.
<u>Street Frontage (ft.):</u>	199.33	100	<b>99.33</b>	100	min.
<u>Primary Front Yard (ft.):</u>	5	5	>30	30	min.
<u>Right Yard (ft.):</u>	13	13	>10	10	min.
<u>Left Yard (ft.):</u>	>160	60	>10	10	
<u>Rear Yard (ft.):</u>	90	90	>30	30	min.
<u>Height (ft.):</u>	<35	<35	<35	35	max.
<u>Building Coverage (%):</u>	7	13	0	20	max.
<u>Open Space Coverage (%):</u>	>40	>40	100	40	min.
<u>Parking:</u>	2	2	2	2	
<u>Estimated Age of Structure:</u>	1900	<b>Variance request(s) shown in red.</b>			

### Other Permits/Approvals Required

Planning Board/TAC – Subdivision Approval

### Neighborhood Context

**Aerial Map**



**Zoning Map**



## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is seeking to subdivide the existing lot into two lots with proposed Lot 1 containing the existing dwelling on a conforming lot. Proposed Lot 2 is less than the 15,000 square foot minimum for lot area and lot area per dwelling as well as just under the 100 foot frontage requirement. No structure is proposed as part of this request, however a building envelope is shown that would accommodate a new dwelling.

## 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 **Julia R. Tiebout Revocable Trust of 2009 (Owner)**, for the property located at **405 South Street** whereas relief is need to Subdivide one lot into two lots and construct single family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) 30' of continuous street frontage where 100' is require for proposed Lot 2; and b) 15.5' rear yard where 20' is required. Said property is located on Assessor Map 111 Lot 18 and lies within the General Residence A (GRA) district.

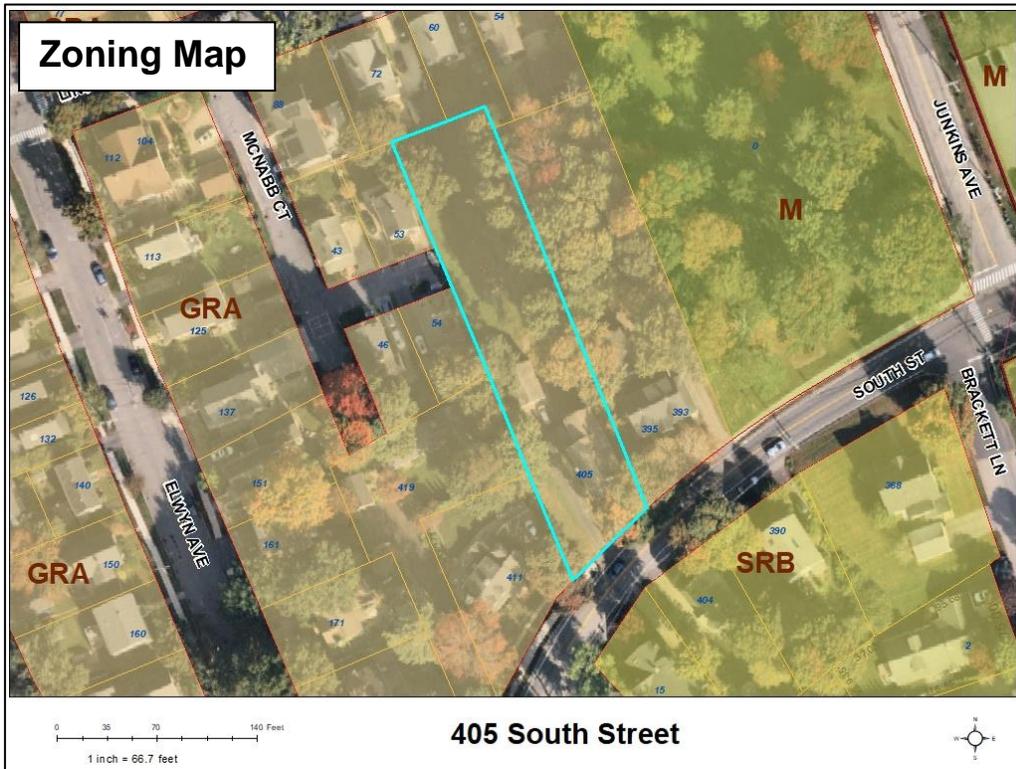
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>		<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Subdivide one lot into two lots Lot 1    Lot 2		Primarily residential
<u>Lot area (sq. ft.):</u>	22,750	11,172	11,578	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	22,750	11,172	11,578	7,500 min.
<u>Lot depth (ft.):</u>	>300	>100	71	70 min.
<u>Street Frontage (ft.):</u>	76	76	<b>30</b>	100 min.
<u>Primary Front Yard (ft.):</u>	15	15	15	15 min.
<u>Right Yard (ft.):</u>	6.5	6.5	20	10 min.
<u>Left Yard (ft.):</u>	28	28	>50	10
<u>Rear Yard (ft.):</u>	220 (house)	20 (garage)	<b>15.5'</b>	20 min.
<u>Height (ft.):</u>	<35		<35	35 max.
<u>Building Coverage (%):</u>	9	18	14	25 max.
<u>Open Space Coverage (%):</u>	82	64	75	30 min.
<u>Parking:</u>	4	4	4	2
<u>Estimated Age of Structure:</u>	1904	<b>Variance request(s) shown in red.</b>		

### Other Permits/Approvals Required

TAC/Planning Board – Subdivision

# Neighborhood Context



## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is seeking to subdivide the existing lot into two lots with the proposed Lot 2 having access off of McNabb Court. The existing dwelling will remain on proposed Lot 1 that will be 11,172 square feet. The existing nonconformities with Lot 1 such as the right yard setback and frontage will not become more nonconforming, thus no relief is needed for Lot 1. Proposed Lot 2 will only have 30 feet of frontage and the proposed garage is located in the 20' rear yard. Proposed Lot 2 will be 11,578 square feet and appears to have ample room to accommodate a garage that would not need dimensional relief.

## Review Criteria

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

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

**AND**

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

**OR**

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



6.

Request of **Peggi L. Morrow (Owner)**, for property located at **139 Essex Avenue** whereas relief is needed to demolish existing dwelling and construct new single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) lot area and lot area per dwelling unit of 11,581 square feet where 15,000 is required for each; and b) 75' of continuous street frontage where 100' is required. Said property is located on Assessor Map 233 Lot 60 and lies within the Single Residence B (SRB) District.

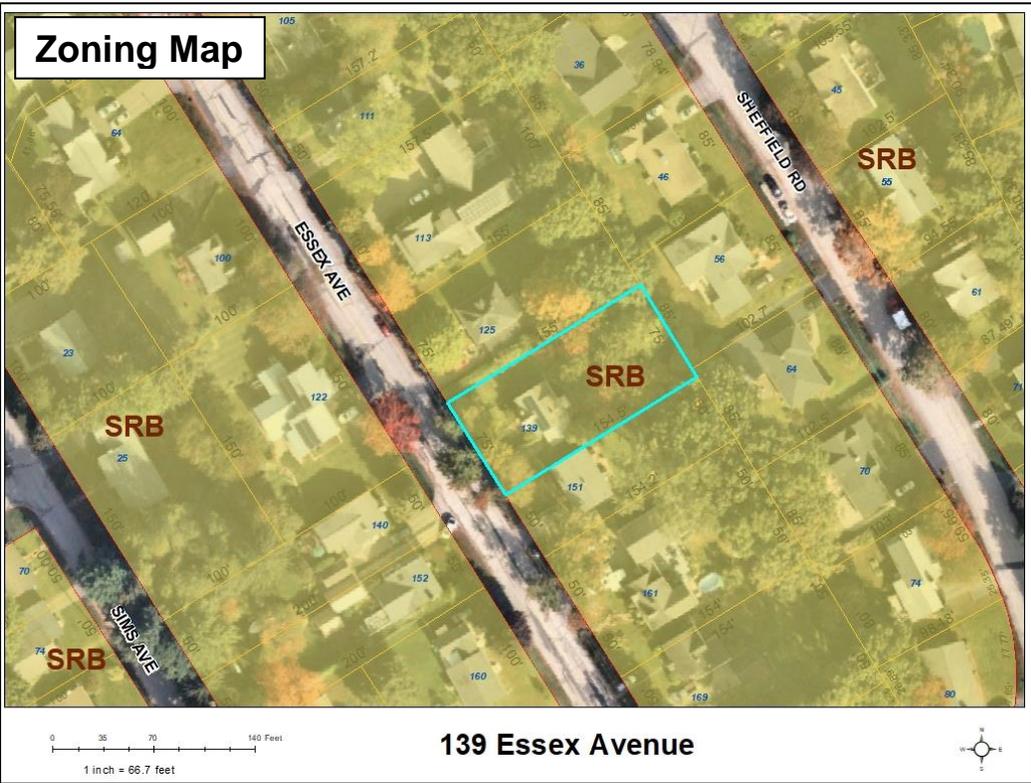
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Demolish existing/construct new single-family	Primarily residential
<u>Lot area (sq. ft.):</u>	11,581	<b>11,581</b>	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,581	<b>11,581</b>	15,000 min.
<u>Lot depth (ft.):</u>	154	154	100 min.
<u>Street Frontage (ft.):</u>	75	<b>75</b>	100 min.
<u>Primary Front Yard (ft.):</u>	30	34	30 min.
<u>Right Yard (ft.):</u>	6	11	10 min.
<u>Left Yard (ft.):</u>	21	11	10
<u>Rear Yard (ft.):</u>	>80	54	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	10.5	17.5	20 max.
<u>Open Space Coverage (%):</u>	82	70	40 min.
<u>Parking:</u>	3	4	2
<u>Estimated Age of Structure:</u>	1925	<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 structures and construct a new dwelling, conforming to all of the dimensional requirements for the SRB district related to the location of the new dwelling. The relief is needed for the lot nonconformities based on the current requirements in the SRB 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.*



7.

Request of **Brian A. Fritz (Owner)**, for property located at **169 Martha Terrace** whereas relief is needed to add a second floor on the existing dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a 37' rear yard where 40' is required; and b) 14% building coverage where 10% is the maximum 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 located on Assessor Map 283 Lot 9 and lies within the Single Residence A (SRA) district.

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Construct second story addition	Primarily single residence
<u>Lot area (sq. ft.):</u>	10,018	10,018	43,560 min.
<u>Lot area per dwelling (sq. ft.):</u>	10,018	10,018	43,560 min.
<u>Lot depth (ft.):</u>	114	114	200 min.
<u>Street Frontage (ft.):</u>	113	113	150 min.
<u>Primary Front Yard (ft.):</u>	35	35	30 min.
<u>Left Yard (ft.):</u>	30	30	20 min.
<u>Right Yard (ft.):</u>	30	30	20 min.
<u>Rear Yard (ft.):</u>	37	<b>37</b>	40 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	14	<b>14</b>	10 max.
<u>Open Space Coverage (%):</u>	>50	>50	50 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1965	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

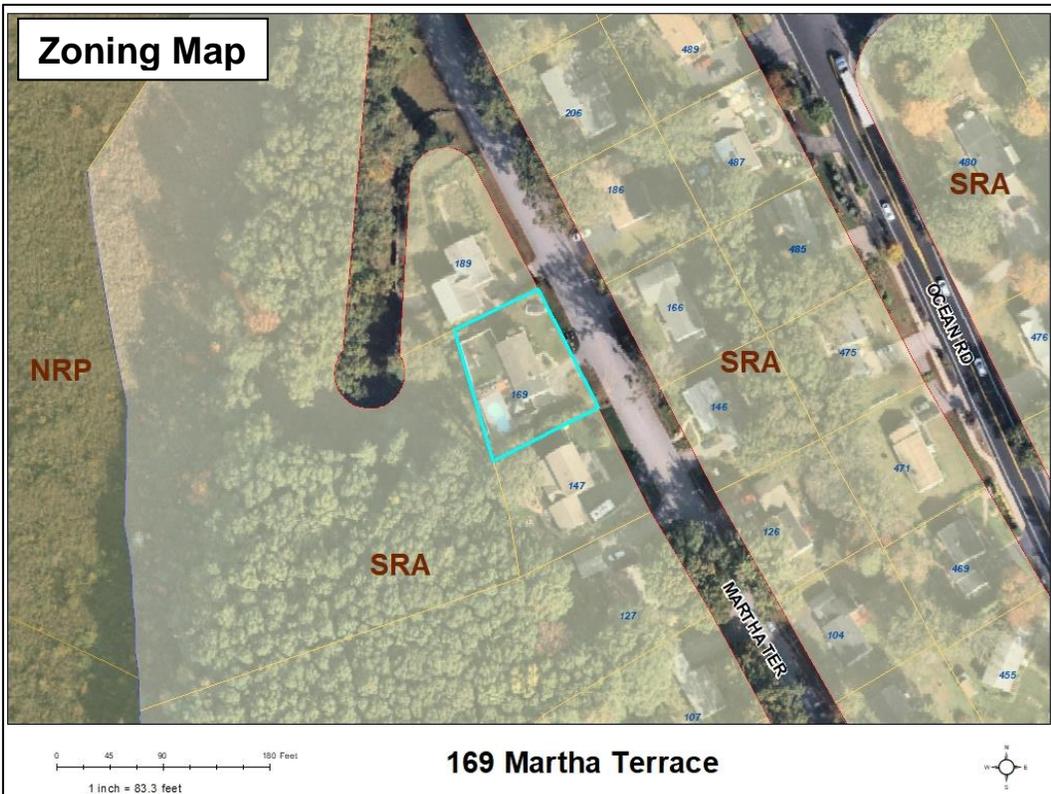
None.

Neighborhood Context

Aerial Map



Zoning Map



## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is seeking to construct a second story addition on the existing dwelling and not expanding the footprint. The lot is undersized for the SRA zone, having only 10,018 square feet where an acre is required. However, most of the setbacks are met with the location of the existing dwelling except the rear yard, which is 3 feet shy of the 40 foot rear yard requirement. The applicant did not initially include relief for building coverage, however staff recommended adding the request to bring the property into compliance with coverage at this time.

## 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.*