

TO: Zoning Board of Adjustment  
FROM: Stefanie Casella, Planning Department  
DATE: January 12, 2023  
RE: Zoning Board of Adjustment January 17, 2022

The agenda items listed below can be found in the following analysis prepared by City Staff:

## **II. OLD BUSINESS**

- A. 45 Richmond Street – Request for 1-Year Extension
- B. 67 Ridges Court – Request for Rehearing
- C. 635 Sagamore Avenue
- D. 915 Sagamore Avenue

## **III. NEW BUSINESS**

- A. 47 Howard Street
- B. 199 Constitution Avenue
- C. 19 Sunset Road
- D. 36 Hunters Hill Avenue
- E. 65 Mendum Avenue
- F. 147 Congress Street
- G. 396 Miller Avenue
- H. 114 Maplewood Avenue
- I. 305 Peverly Hill Road

## II. OLD BUSINESS

- A. Cherie Holmes and Yvonne Goldsberry - **45 Richmond Street** request a 1-year extension to the variances granted on January 19, 2021. (LU-20-249)

### Project Background

On Tuesday, January 19, 2021 the Board of Adjustment granted the request for the removal of existing garage and rear addition and construct new garage and 2-story addition which requires the following:

- 1) *Variances from Section 10.521 to allow:*
  - a) *a 0.5 foot front yard where 5 feet is required;*
  - b) *a 4.5 foot rear yard where 15 feet is required; and*
  - c) *a 4 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.*

The request was granted with the following stipulation:

- 1) *The rear yard setback shall be 5 feet.*

The approvals listed above are scheduled to expire on January 19, 2023. The Ordinance allows for a one-time, one-year extension if the request is acted on prior to the expiration date. The applicant has requested an extension as a building permit has yet to be obtained due to limited availability of the contractor.

## II. OLD BUSINESS

- B.** The request to rehear the request of **Jeffrey M. and Melissa Foy (Owners)**, of the November 15, 2022 decision of the Zoning Board of Adjustment for property located at **67 Ridges Court**. Said property is located on Assessor Map 207 Lot 59 and lies within the Single Residence B (SRB) District. (LU-22-199)

### Project Background

On Tuesday, November 15, 2022, the Board considered the application of Jeffery 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. A motion to determine that the petition does not fall under Fisher v. Dover failed, therefore the request was not heard.

A request for rehearing has been filed within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, a hearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

*"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).*

## II. OLD BUSINESS

- C. The request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District.

### Existing & Proposed Conditions

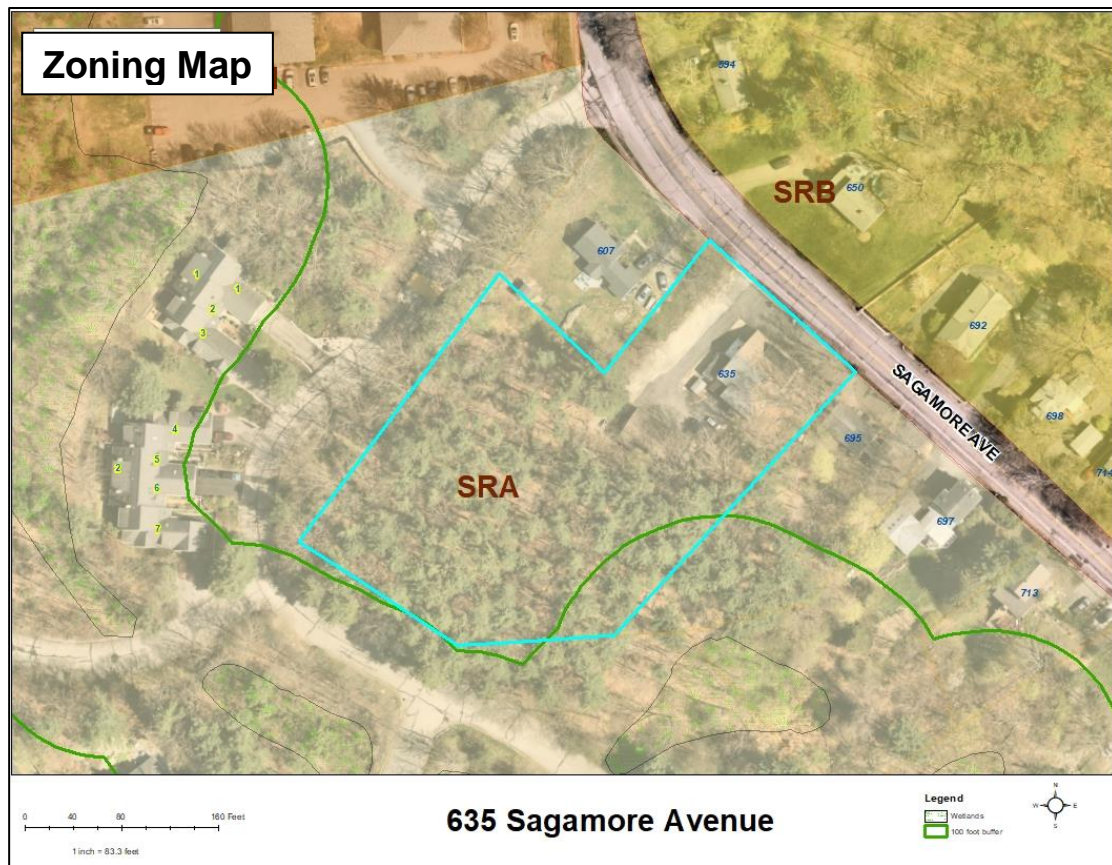
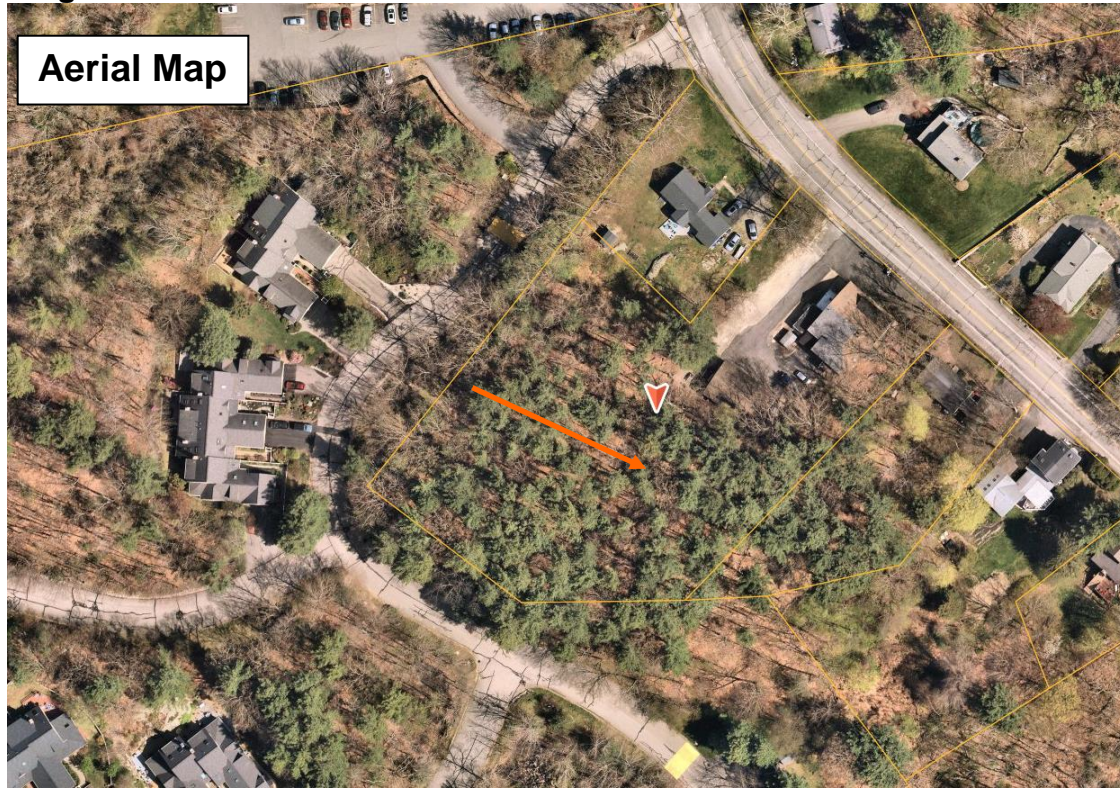
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial w/ 1 apartment	4 single family dwellings	Primarily residential
<u>Lot area (sq. ft.):</u>	84,795	84,795	43,560 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	84,795	<b>21,198</b>	43,560 min.
<u>Lot depth (ft.):</u>	358	358	200 min.
<u>Street Frontage (ft.):</u>	160	160	150 min.
<u>Primary Front Yard (ft.):</u>	28	>30	30 min.
<u>Right Yard (ft.):</u>	60	>20	20 min.
<u>Left Yard (ft.):</u>	30	21	20
<u>Rear Yard (ft.):</u>	219	>40	40 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	4	9.2	10 max.
<u>Open Space Coverage (%)</u>	>50	81	50 min.
<u>Parking:</u>	4+	16	6
<u>Estimated Age of Structure:</u>	1950	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

TAC/Planning Board – Site Plan Review



## Neighborhood Context



## Previous Board of Adjustment Actions

**April 19, 2022** – The BOA considered your application for remove existing commercial structure and construct 5 new single-family dwellings which requires the following: 1) A Variance from Section 10.513 to allow 5 principal structures on a lot where only 1 is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 22,389 square feet where 1 acre per dwelling is required. The Board granted your request to **postpone** to the May meeting.

**May 17, 2022** – The Board **granted** your request to postpone to the June meeting

**June 22, 2022** – The Board voted to acknowledge the **withdrawal** of the application.

## Planning Department Comments

As shown in the history above, the applicant was before the Board this past spring with a proposal to construct 5 single family dwellings on one lot. Due to concerns from the abutters, the application was withdrawn so they could work on addressing concerns from the abutters. The new application proposes to demolish the existing structures and construct 4 free standing single family dwellings. The SRA zone requires 1 acre per dwelling unit and only allows 1 principal structure on a single lot. With 4 dwellings, the proposed lot area per dwelling will be 21,198, where 43,560 is required. With the exception of the density, all other dimensional requirements are in compliance with the proposed layout. This will require site plan review before TAC and Planning Board if the variances are granted. If granted approval, staff recommends the following stipulation for consideration:

**1. The design and location of the dwellings may change as a result of 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.

## II. OLD BUSINESS

- D. The request of **Nissley LLC (Owner)**, for property located at **915 Sagamore Avenue** whereas relief is needed to demolish the existing building and construct new mixed-use building which requires the following: 1) A Variance from Section 10.440 to allow a mixed-use building where residential and office uses are not permitted. 2) A Variance from Section 10.1113.20 to allow parking to be located in the front yard and in front of the principal building. 3) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only one is allowed. Said property is located on Assessor Map 223 Lot 31 and lies within the Waterfront Business (WB) District. (LU-22-229)

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Demo existing building	Construct <b>mixed use building</b>	Primarily water dependent uses
<u>Lot area (sq. ft.):</u>	44,431	44,431	20,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	3,702	NR min.
<u>Street Frontage (ft.):</u>	440	440	100 min.
<u>Lot depth (ft.):</u>	145	145	100 min.
<u>Front Yard (ft.):</u>	20	30	30 min.
<u>Left Yard (ft.):</u>	145	>100	30 min.
<u>Secondary Front Yard (ft.):</u>	74	30	30 min.
<u>Rear Yard (ft.):</u>	99	70	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	3.5	18	30 max.
<u>Open Space Coverage (%):</u>	>20	>20	20 min.
<u>Parking</u>		34	34 (shared parking)
<u>Estimated Age of Structure:</u>	1970	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

Conservation Commission/Planning Board – Wetland CUP  
TAC/Planning Board – Site Review



## Neighborhood Context





## Previous Board of Adjustment Actions

September 19, 1995 – The Board voted to grant the request as presented and advertised.

1. Variance from Article II, Section 10-206(20) is requested to allow use of cellar space for fish processing (frozen west coast cod and haddock, fresh cod, haddock and flounder) and sale to local wholesale of fish and lobsters to local markets and distributed to NY and PA.

## Planning Department Comments

The applicant is proposing to demolish the existing scuba shop and construct a three-story mixed use building consisting of office space and 12 residential units. The property is located in the Waterfront Business (WB) district where uses other than water dependent uses, are not permitted. The proposal includes parking in the front of the building and a second driveway, both of which need relief variances. Five out of the eight parcels zoned WB in this area contain residential uses. If the variances are granted, the project will need review by the Conservation Commission and the Technical Advisory Committee prior to going before the Planning Board for a Wetland CUP and Site Plan approval. If granted approval, staff recommends the Board consider the following stipulation:

1. **The design and location may change as a result of 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**

  - (c) *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.

### III. NEW BUSINESS

- A. The request of **Sarah M Gardent Revocable Trust (Owner)**, for property located at **47 Howard Street** whereas relief is needed for the installation of a mechanical heat pump which requires the following 1) Variance from section 10.515.14 to allow a 8 foot setback where 10 feet is required. Said property is located on Assessor Map 103 Lot 84 and lies within the General Residence B (GRB) and Historic District. (LU-22-242)

#### Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Mechanical Heat Pump	Primarily residential uses
<u>Lot area (sq. ft.):</u>	2,619	2,619	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,619	2,619	5,000 min.
<u>Street Frontage (ft.):</u>	44.3	44.3	80 min.
<u>Lot depth (ft.):</u>	53.75	53.75	60 min.
<u>Primary Front Yard (ft.):</u>	0	0	5 (0 feet with averaging) min.
<u>Left Side Yard (ft.):</u>	0	<b>8</b>	10 min.
<u>Right Side Yard (ft.):</u>	0	0	10 min.
<u>Rear Yard (ft.):</u>	0	0	25 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	47	47	30 max.
<u>Open Space Coverage (%)</u>	47	47	25 min.
<u>Parking:</u>	Ok	Ok	1.3
<u>Estimated Age of Structure:</u>	2007	Variance request shown in red.	

#### Other Permits/Approvals Required

- Building Permit
- Historic District

## Neighborhood Context



0 10 20 40 Feet  
1 inch = 23.2 feet

**47 Howard Street**



## Previous Board of Adjustment Actions

July 17, 2007 – The Board voted to grant the request as presented and advertised as follows:

- 1) Variances from Article III, Section 10-302 (A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 4' x 19.2' one story addition and a 7.7' x 15.4' two story addition to the rear of an existing dwelling with:
  - a) a 0' right side yard where 10' is the minimum required,
  - b) 46.7% building coverage where 30% is the maximum allowed; and,
  - c) 24.8% open space where 25% is the minimum required.

## Planning Department Comments

The applicant is requesting relief to allow for the installation of heat pump at the rear of the primary structure. The proposed mechanical unit location is within the 10 foot side yard requirement (Section 10.520 of the [Zoning Ordinance](#)) and section 10.515.14 as stated below.

### **10.515.14**

*A mechanical system (i.e. HVAC, power generator, etc.) that is less than 36 inches above the ground level with a mounting pad not exceeding 10 square feet shall be exempt from yard requirements, but shall be set back at least 10 feet from a property line; and shall not be located closer to the street than the front of the principal structure.*

The house is currently non-conforming and is surrounded on 3 sides with properties that also have existing non-conforming structures.

## Variance 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.*

**Section 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.

### III. NEW BUSINESS

- B. The request of **Antonio Salema, Trustee of Salema Realty Trust (Owner)**, for property located at **199 Constitution Avenue** whereas relief is needed to build a climbing, yoga, and general and specialty fitness studio in an existing building which requires the following 1) Special Exception from Section 10.440 Use #4.42 to allow a health club, yoga studio, martial arts school, or similar use that is greater than 2,000 GFA. Said property is located on Assessor Map 285 Lot 16-301 and lies within the Industrial District. (LU-22-249)

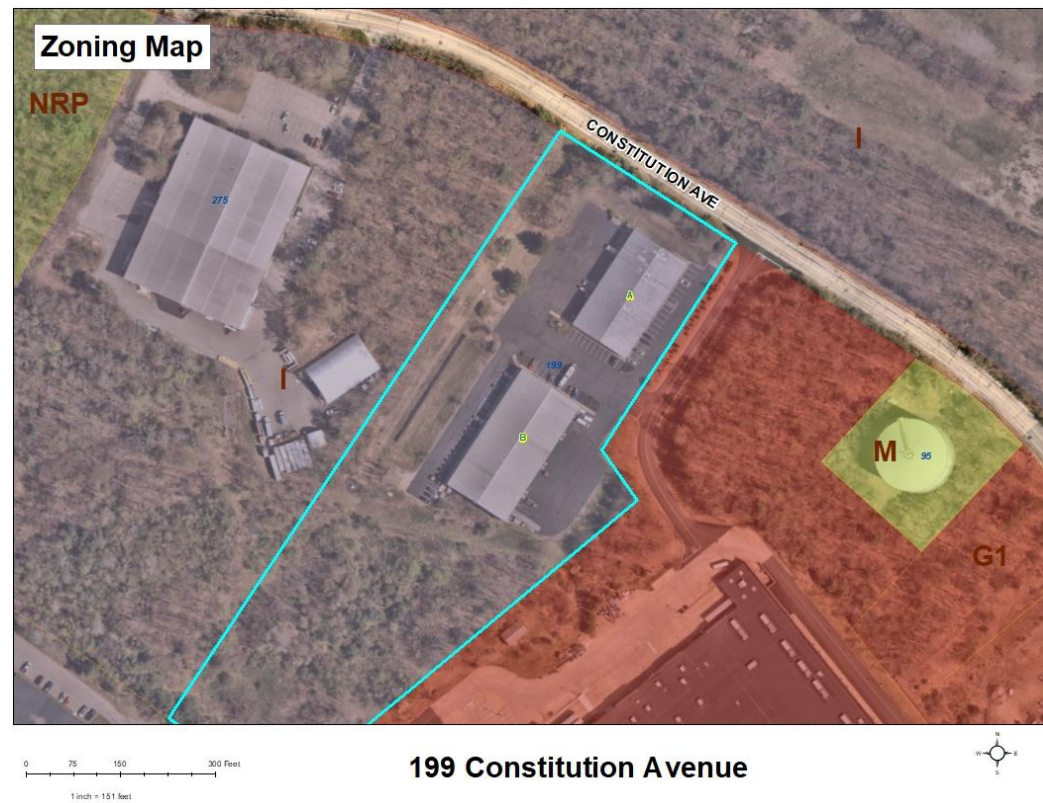
#### Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Industrial	<b>Health Club</b>	Warehouse and Office Uses
<u>Lot area (sq. ft.):</u>	366660	366660	87300 (2 ac) min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	N/A	N/A	N/A min.
<u>Street Frontage (ft.):</u>	>300	>300	200 min.
<u>Lot depth (ft.):</u>	>1000	>1000	200 min.
<u>Primary Front Yard (ft.):</u>	70	70	70 min.
<u>Left Side Yard (ft.):</u>	>180	>180	50 min.
<u>Right Side Yard (ft.):</u>	50	50	50 min.
<u>Rear Yard (ft.):</u>	>300	>300	50 min.
<u>Height (ft.):</u>	<70	<70	70 max.
<u>Building Coverage (%)</u>	11.5	11.5	50 max.
<u>Open Space Coverage (%)</u>	>55	>55	20 min.
<u>Parking</u>	Ok	67	66
<u>Estimated Age of Structure:</u>	1998	<b>Variance request shown in red.</b>	

#### Other Permits/Approvals Required

- Building Permit (Tennent Fit-up)

## Neighborhood Context



**199 Constitution Avenue**

## Previous Board of Adjustment Actions

June 3, 1997 – The Board **granted** a variance from Article II, Section 10-209 to allow the following:

- 1) An indoor recreational facility (dance studio/8 students, climbing wall/24 persons, gymnastics/12 students, tutor center/1 teacher & 2 students, trick blade and board course/20 persons) with associates babysitting service for members in a district where such use is not allowed.

October 21, 1997 – The Board **granted** an amendment to the June 3, 1997 variance as follows:

- 1) To change the located from Building #1 to Building #2.

January 20, 1998 – The Board **granted** a variance from Article II, Section 10-209(21) to allow the following:

- 1) The establishment of a 3,000 s.f. millwork sales for both retail and wholesale sales with more than 25% of the space being devoted to retail sales showroom.

June 27, 2000 The Board **granted** the following requests with stipulations:

- 1) A special exception as allowed in Article II, Section 10-209(35)(b) to place a 24' x 38' modular training trailer for a period of 6 months for use in training existing employees on a new manufacturing process software in a district where temporary structure may be allowed for 180 days by Special Exception, and,
- 2) A variance from Article III, Section 10-304(A) to allow said trailer within the required 50' rear yard setback where a 50' setback is the minimum required.

These were granted with the following stipulations:

- a) The variance be in conjunction with the Special Exception; and,
- b) A bond be posted in the amount of \$1,000.00 to ensure removal of the trailer.

May 25, 2020 – The Board **denied** the request as follows:

To consider the application for construction of a multifamily dwelling containing 40 - 70 dwelling units in a zone where residential uses are not permitted which requires the following:

- 1) A Variance from Section 10.440 Use # 1.53 to allow more than 8 dwelling units where the use is not permitted in the district. Said property is shown on Assessor Map 285 Lot 16 and lies within the Industrial (I) District.

## Planning Department Comments

The applicant is proposing the installation of a health club that includes climbing, exercise, and yoga facilities. The use is allowed by special exception under Section 10.440 Use # 4.42 of the [Zoning Ordinance](#).

## Special Exception Review Criteria

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

1. *Standards as provided by this Ordinance for the particular use permitted by special exception;*



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

### **Section 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.

### III. NEW BUSINESS

- C. The request of **Jesse M Lynch and Sarah L Lynch (Owners)**, for property located at **19 Sunset Road** whereas relief is needed to construct a connector structure from primary structure to the garage which requires the following: 1) Variance from Section 10.521 to allow a) 27 foot setback where 30 feet is required; and b) 22 % building coverage where 20% is required. 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 153 Lot 19 and lies within the Single Residence B (SRB) District. (LU-22-250)

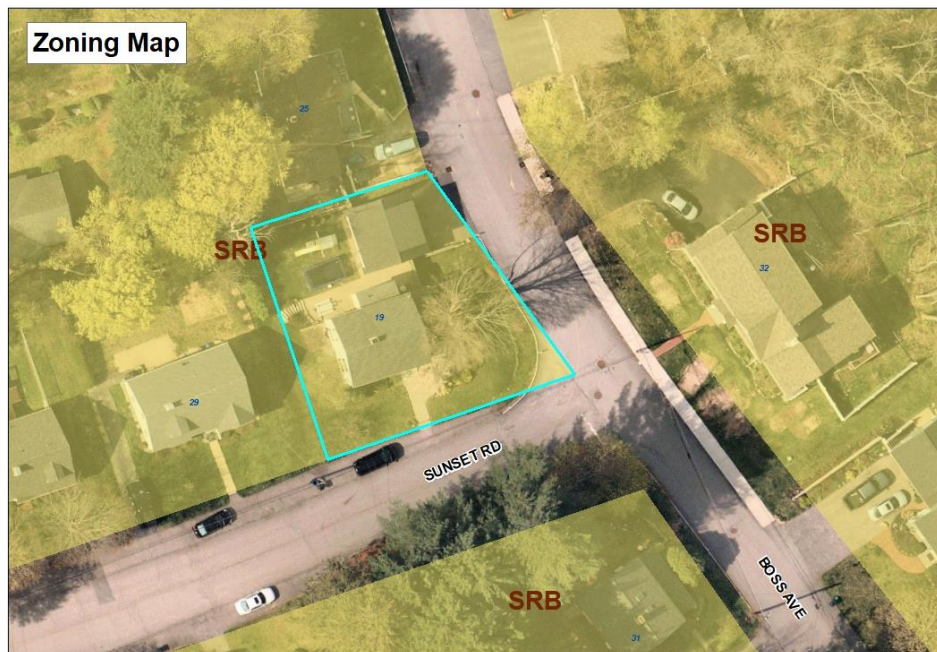
#### Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Connector between primary structure and garage	Primarily residential uses
<u>Lot area (sq. ft.):</u>	7754	7754	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7754	7754	15,000 min.
<u>Street Frontage (ft.):</u>	>100	>100	100 min.
<u>Lot depth (ft.):</u>	95.6	95.6	100 min.
<u>Primary Front Yard (ft.):</u>	25	25	30 min.
<u>Secondary Front Yard (ft.):</u>	10.8	10.8 (25 for new connector)	30 (per averaging 16) min.
<u>Right Side Yard (ft.):</u>	15.1	15.1	10 min.
<u>Rear Yard (ft.):</u>	3.5 – Existing Garage	3.5 – Existing Garage <b>27 – New Connector Structure</b>	30 min.
<u>Height (ft.):</u>	25	25	35 max.
<u>Building Coverage (%):</u>	20.3	<b>22</b>	20 max.
<u>Open Space Coverage (%):</u>	68.7	66.8	40 min.
<u>Parking</u>	Ok	Ok	2
<u>Estimated Age of Structure:</u>	1951	<b>Variance request shown in red.</b>	

## Other Permits/Approvals Required

- Building Permit

## Neighborhood Context



0 15 30 60 Feet  
1 inch = 32.8 feet

**19 Sunset Road**



## Previous Board of Adjustment Actions

April 18, 2017 – The Board **granted** variances to reconstruct an existing garage in the same footprint and an expansion in height with the following:

- 1) An accessory structure to be located in the required front yard and closer to the street than the principal structure;
- 2) A 7' rear yard where 19' was required; and
- 3) A lawful nonconforming building to be reconstructed or enlarged without conforming to the Ordinance.

June 20, 2017 – Relief from Zoning Ordinance including:

- 1) Variances from Section 10.521 to allow the following:
  - a) a 10.975'± secondary front yard where 30' is required;
  - b) 20.30% ± building coverage where 20% is the maximum allowed;
- 2) Variance from Section 10.571 to allow an accessory building or structure to be located in a required front yard or closer to the street than the principal building;
- 3) Variance from Section 10.573.20 to allow an accessory building or structure more than 10" in height or 100 s.f. in area to be closer to any property line than the height of the structure;
- 4) Variance from Section 10.321 to allow a lawful nonconforming building or structure to be reconstructed or enlarged without conforming to the ordinance.

## Planning Department Comments

Applicant is proposing to construct a connector between the primary structure and the accessory structure. The corner lot has two front yards, with the secondary front located on Boss Avenue. Relief is being requested for the extension of an existing non-conforming structure, exceeding the 20% building coverage threshold and building within 30 feet of the rear lot boundary line. Per the averaging calculation found in section 10.516 of the [Zoning Ordinance](#), as provided below, the yard requirement on the secondary front yard is 16 feet. Therefore, the proposed connector structure meets the requirements of the ordinance when building within 25 feet of the secondary front lot line.

### **10.516 Exceptions to Yard Requirements**

#### **10.516.10 Front Yard Exception for Existing Alignments**

*If existing principal buildings on the same side of the same street, in the same zoning district, and within 200 feet of a lot are located closer to the street than the minimum required front yard specified in this Article, the required front yard for the principal building on such lot shall be the average of the existing alignments of all such principal buildings, rounded to the nearest foot. For the purpose of this provision, buildings on the subject lot shall not be included in the average of existing alignments.*



## Variance 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.*

## Section 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.

### III. NEW BUSINESS

- D. The request of **Patrick and Nicole Mullaly (Owners)**, for property located at **36 Hunters Hill Ave** whereas relief is needed to construct an addition with a second living unit which requires the following: 1) Variance from Section 10.440 Use #1.30 to allow a two-family dwelling unit in the Business District. 2) Variance from Section 10.531 to allow a 5 foot setback where 10 feet is required. Said property is located on Assessor Map 160 Lot 38 and lies within the Business (B) District. (LU-22-243)

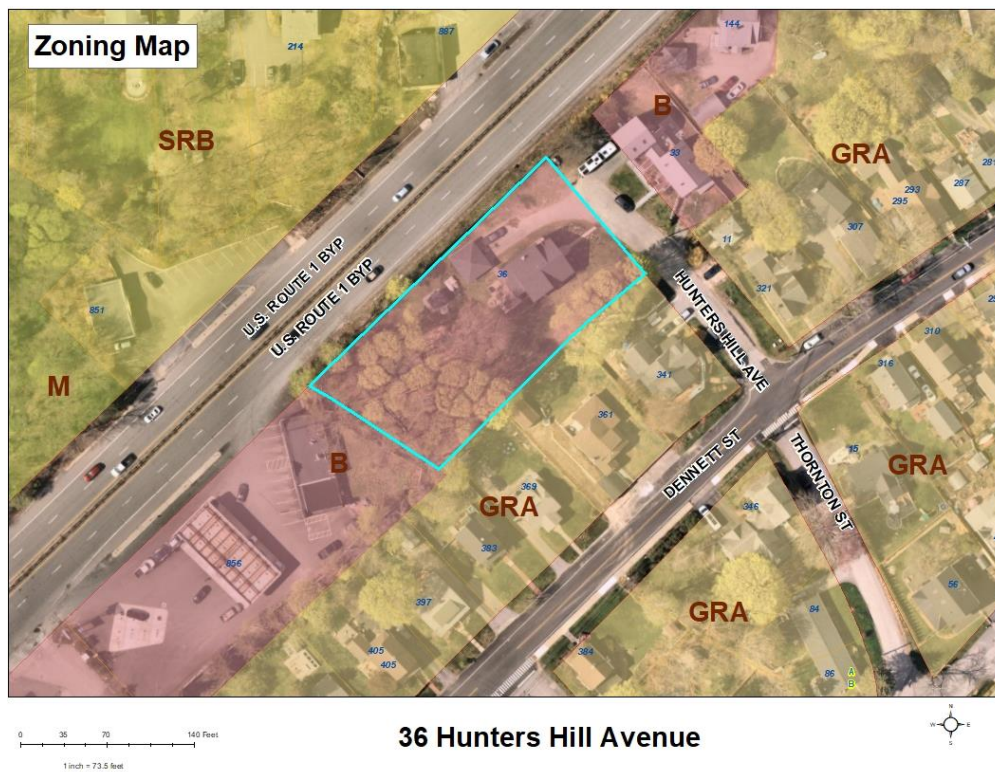
#### Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	<b>Addition of a second living unit</b>	Primarily Commercial Uses
<u>Lot area (sq. ft.):</u>	26,628	26,628	20,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	26,628	13314	2,500 min.
<u>Street Frontage (ft.):</u>	123	123	100 min.
<u>Lot depth (ft.):</u>	265	265	80 min.
<u>Front Yard (ft.):</u>	>20	>20	20 min.
<u>Left Side Yard (ft.):</u>	8.5	<b>5</b>	15 min.
<u>Right Side Yard (ft.):</u>	>15	>15	15 min.
<u>Rear Yard (ft.):</u>	>15	>15	15 min.
<u>Height (ft.):</u>	<50	<50	50 max.
<u>Building Coverage (%)</u>	8	10	35 max.
<u>Open Space Coverage (%)</u>	90	89	15 min.
<u>Parking</u>	Ok	3	1.3
<u>Estimated Age of Structure:</u>	1930	<b>Variance request shown in red.</b>	

#### Other Permits/Approvals Required

- Building Permit

## Neighborhood Context



## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is proposing to demolish the existing detached garage and to construct an addition that will create an additional living unit on the property. The corner of the new structure will no closer than 5 feet from the left side property boundary line with the building tapering back as distance increases towards the front of the property. The left side of the property abuts US Route 1. The property is located within the Business District where 2-family units are not permitted but higher density residential uses including 3-4 family units is permitted by right.

## Variance 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.*

## Section 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.



### III. NEW BUSINESS

- E. The request of **Ashley and Robert T Blackington (Owners)**, for property located at **65 Mendum Avenue** whereas relief is needed to construct an addition to the existing primary structure which requires 1) Variance from Section 10.531 to allow a 7 foot setback where 10 feet is required. Said property is located on Assessor Map 148 Lot 11 and lies within the General Residence A (GRA) District. (LU-22-241)

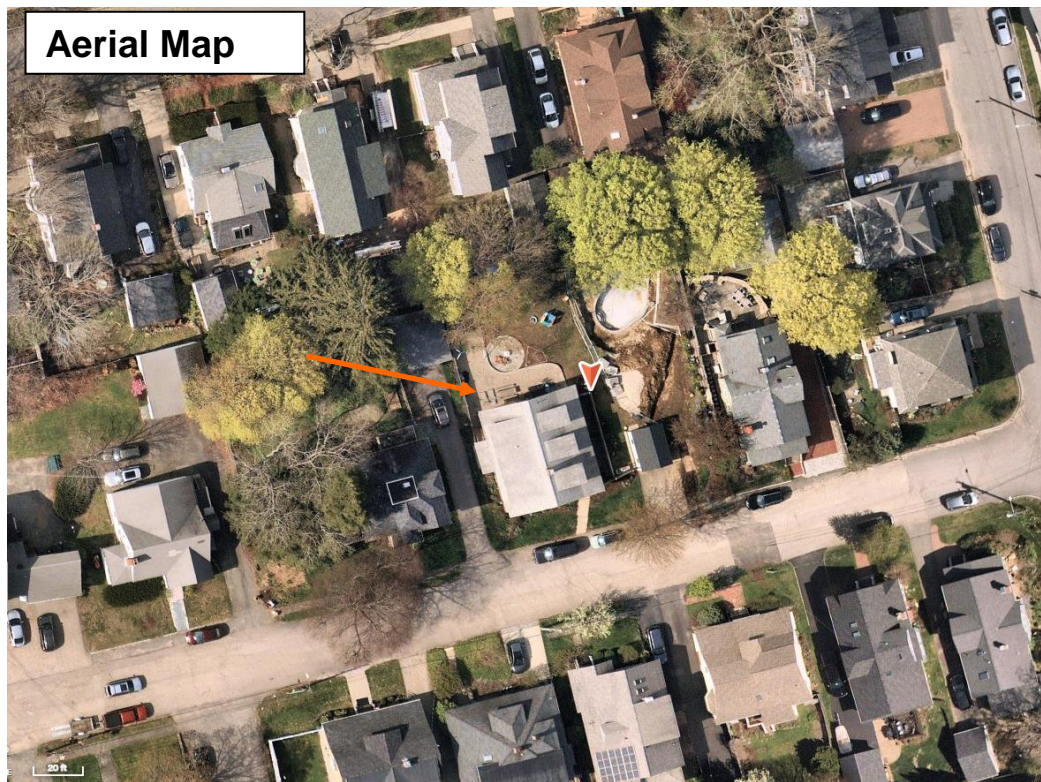
#### Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Addition to rear of primary structure	Primarily residential uses
<u>Lot area (sq. ft.):</u>	11,574	11,574	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,574	11,574	7,500 min.
<u>Street Frontage (ft.):</u>	99.47	99.47	100 min.
<u>Lot depth (ft.):</u>	102.97	102.97	70 min.
<u>Primary Front Yard (ft.):</u>	15	15	15 min.
<u>Left Side Yard (ft.):</u>	1	1 (7 for the addition)	10 min.
<u>Right Side Yard (ft.):</u>	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	>20	>20	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	15.5	16.5	25 max.
<u>Open Space Coverage (%)</u>	>30	>30	30 min.
<u>Parking</u>	Ok	Ok	2
<u>Estimated Age of Structure:</u>	1912	Variance request shown in red.	

#### Other Permits/Approvals Required

- Building Permit

## Neighborhood Context



## Previous Board of Adjustment Actions

April 21, 2015 – The Board acknowledged receipt of your request to **withdraw** the following petition to construct a second dwelling unit above a detached garage which would require the following:

- 1) A Variance from Section 10.513 to allow a second free-standing dwelling unit on a lot.
- 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 5,787± s.f. where 7,500 s.f. per dwelling unit is required.

November 17, 2015 – The Board of Adjustment completed its consideration of the **appeal** by the owners of an abutting property of the action taken by the Portsmouth City Council to restore involuntarily merged lots for this property under RSA 674:39. The Board voted to **grant** the petition as presented and advertised which had the effect of reversing the City Council's action to restore the lots to their pre-merger status. The Board determined that the lots had been voluntarily merged by overt action or conduct of the owners in the chain of title indicating that the owners regarded the lots as merged; and that, as a result, there had been no involuntary merger under RSA 674:39

January 19, 2016 – The Board of Adjustment completed its consideration of your Motion for **Rehearing**. The Board voted to **deny** the Motion for Rehearing. The Board found it made no errors in procedure or application of the law in their action taken at the November 17, 2015 meeting.

## Planning Department Comments

The applicant is proposing to construct an addition onto the rear of the existing structure which will put the exterior wall at 7 feet from the left side boundary line where 10 is required. The existing primary structure is existing non-conforming with an existing exterior wall located at about 1 foot from the left side boundary line.

## Variance 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.*

### **Section 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.



### III. NEW BUSINESS

- F. The request of **Lucky Thirteen Properties LLC (Owner)**, for property located at **147 Congress Street** whereas relief is needed to expand the existing structure which requires 1) Variance from Section 10.5A41.10D to allow 2% open space where 5% is required. Said property is located on Assessor Map 126 Lot 4 and lies within the Character District 5 (CD5), Downtown Overlay and Historic District. (LU-22-192)

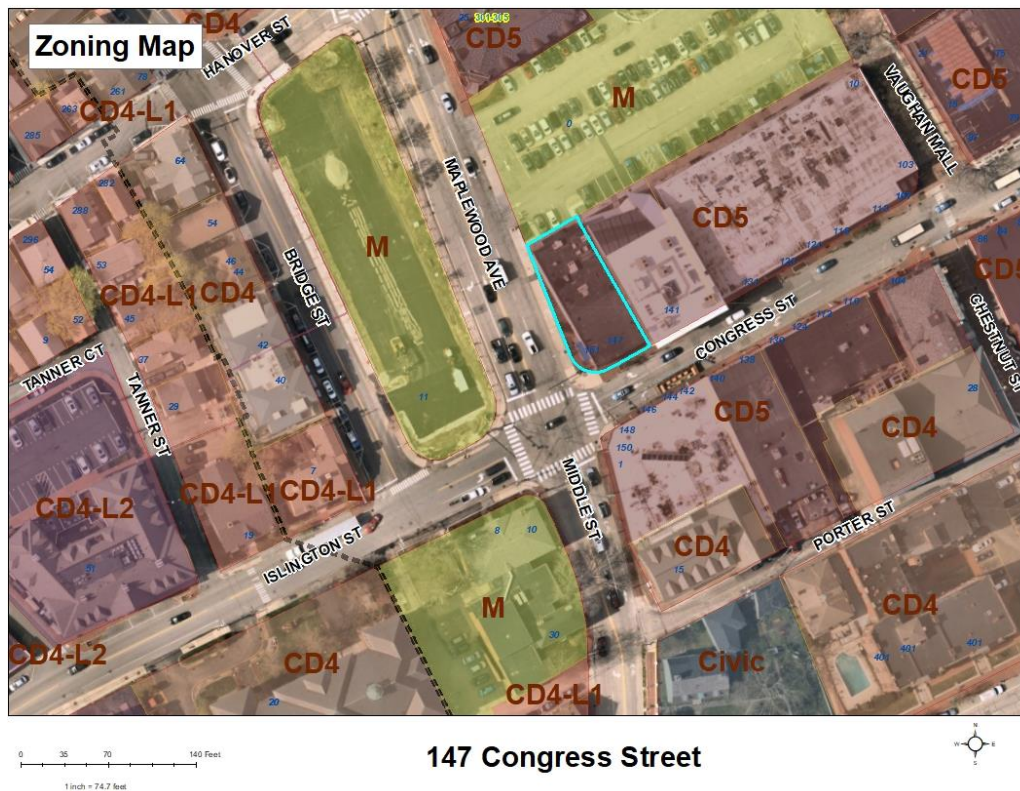
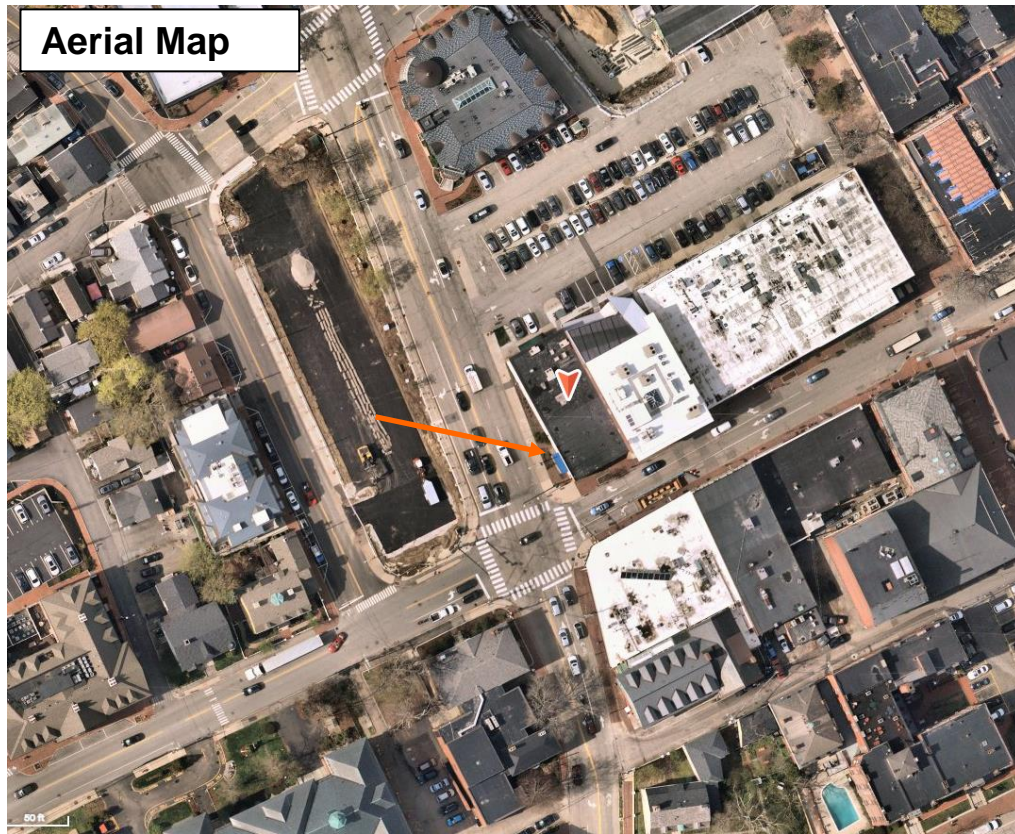
#### Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial	Addition	Primarily Commercial Uses
<u>Lot area (sq. ft.):</u>	6,245	6,245	Not Required min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	Not Required	Not Required	Not Required min.
<u>Minimum Front Lot Line Buildout (ft.):</u>	>80	>80	80 min.
<u>Max Building Block Length (ft.):</u>	<225	<225	225 max.
<u>Front Yard (ft.):</u>	5	5	5 max.
<u>Left Side Yard (ft.):</u>	0	0	Not Required min.
<u>Right Side Yard (ft.):</u>	0	0	Not Required min.
<u>Rear Yard (ft.):</u>	<5	<5	5 max.
<u>Height (ft.):</u>	<40	<40	2-3 Stories, 40' max.
<u>Building Coverage (%)</u>	78	94.6	95 max.
<u>Open Space Coverage (%)</u>	18.5	<b>2</b>	5 min.
<u>Parking</u>	Ok	Ok	Not required in the Downtown Overlay
<u>Estimated Age of Structure:</u>	1950	<b>Variance request shown in red.</b>	

#### Other Permits/Approvals Required

- Historic District Commission Certificate of Approval
- Building Permit
- Site Review (TAC/Planning Board)

# Neighborhood Context



## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

Applicant is proposing an addition to the existing structure to accommodate for the proposed redevelopment on the inside of the structure. The addition will reduce the open space to 2% where 5% is required.

## Variance 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.*

## Section 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.

### III. NEW BUSINESS

- G.** The request of **Timothy and Rebecca OBrien (Owners)**, for property located at **396 Miller Avenue** whereas relief is needed to create a second driveway which requires 1) Variance from Section 10.1114.31 to allow two driveways where only one per lot is permitted. Said property is located on Assessor Map 131 Lot 24 and lies within the General Residence A (GRA) District. (LU-22-211)

#### Existing and Proposed Conditions

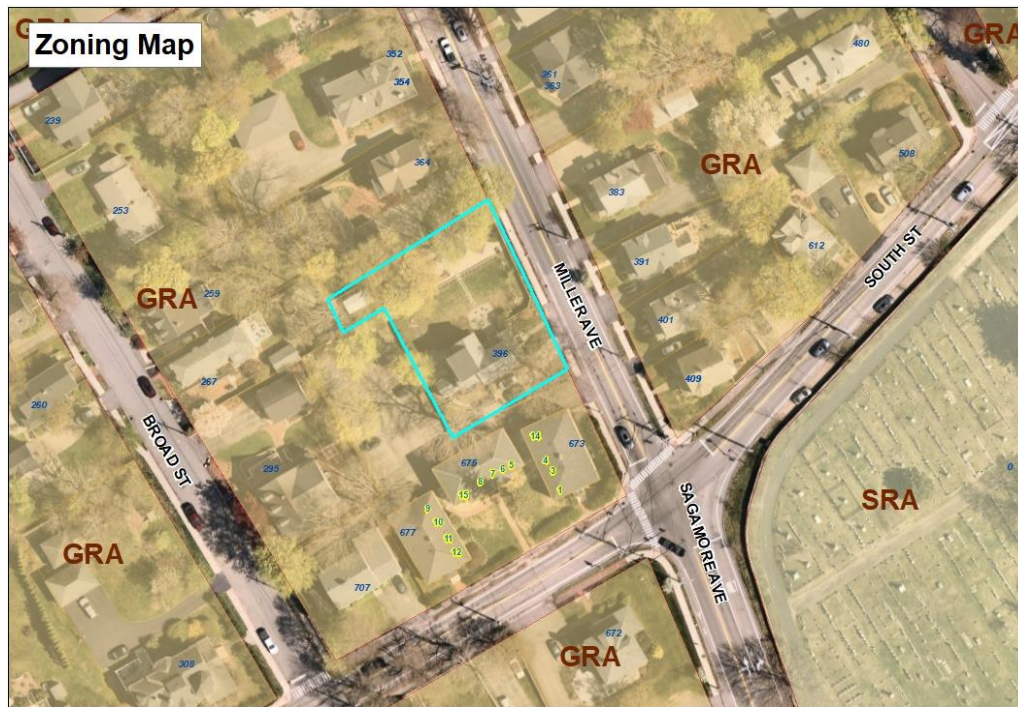
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	<b>Addition of a second driveway</b>	Primarily residential uses
<u>Lot area (sq. ft.):</u>	13,640	13,640	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	13,640	13,640	7,500 min.
<u>Street Frontage (ft.):</u>	134.53	134.53	100 min.
<u>Lot depth (ft.):</u>	96	96	70 min.
<u>Front Yard (ft.):</u>	22.6	22.6	15 min.
<u>Left Side Yard (ft.):</u>	11.4	11.4	10 min.
<u>Right Side Yard (ft.):</u>	24.1	24.1	10 min.
<u>Rear Yard (ft.):</u>	8.1	8.1	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	13	13	25 max.
<u>Open Space Coverage (%)</u>	86	86	30 min.
<u>Parking</u>	Ok	Ok	1.3
<u>Estimated Age of Structure:</u>	1870	<b>Variance request shown in red.</b>	

#### Other Permits/Approvals Required

- DPW Driveway Permit



## Neighborhood Context



396 Miller Avenue

January 17, 2023 Meeting

## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is proposing to create a second driveway to access the property in order to address growing safety concerns. The City Transportation Engineer in the Department of Public Works has done a preliminary review and has no issues with proposed design.

## Variance 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.*

## Section 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.

### III. NEW BUSINESS

- H. The request of **Karen Bouffard Revocable Trust and Karen Bouffard Trustee (Owner)**, for property located at **114 Maplewood Avenue** whereas relief is needed for the installation of a A/C Condenser Unit which requires the following 1) Variance from section 10.515.14 to allow a 2 foot setback where 10 feet is required. Said property is located on Assessor Map 124 Lot 4 and lies within the Character District 4-L1 (CD4-L1) and Historic District. (LU-22-256)

#### Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed Use	AC Condenser	Mixed Use
<u>Lot area (sq. ft.):</u>	5,057	5,057	3000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,685	1,685	3000 min.
<u>Front Yard (ft.):</u>	2	2	15 max.
<u>Left Side Yard (ft.):</u>	1.8	1.8	5 min.
<u>Right Side Yard (ft.):</u>	2.5	2.5	5 min.
<u>Rear Yard (ft.):</u>	1	2	5 min. 10 feet (for HVAC unit)
<u>Height (ft.):</u>	<35	<35	2 Stories, 35' max.
<u>Building Coverage (%)</u>	35	35	60 max.
<u>Open Space Coverage (%)</u>	>25	>25	25 min.
<u>Parking</u>	4	4	5
<u>Estimated Age of Structure:</u>	2022	Variance request shown in red.	

#### Other Permits/Approvals Required

- Building Permit
- Historic District Commission



## Neighborhood Context





## Previous Board of Adjustment Actions

July 23, 2019 – The Board voted to **grant** the petition as presented and advertised as follows:

- 1) Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from Section 10.5A41.10A to allow the following:
  - a) an 1.8' left side yard where 1.5' exists and 5' is the minimum required;
  - b) a 2.5' rear yard where 0' exists and 5' is the minimum required; and
  - c) a lot area per dwelling unit of 1.685 s.f. where 3,000 s.f. is required. and
  - d) from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.

## Planning Department Comments

The applicant is proposing the installation of a mechanical unit to the rear of the structure where it will be located 2 feet from the rear boundary line where 10 feet is required.

## Variance 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.*

## Section 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.

### III. NEW BUSINESS

- I. The request of **Thomas E, Marybeth B, James B, and Meegan C Reis (Owners)**, for property located at **305 Peverly Hill Road** whereas relief is needed to renovate the existing primary dwelling into a two unit dwelling and to construct a new single unit dwelling which requires the following 1) Variance from Section 10.440 Use #1.30 to allow a two unit dwelling in the SRB District. 2) Variance from Section 10.513 to allow more than one free standing dwelling on a lot in the SRB District. Said property is located on Assessor Map 255 Lot 5 and lies within the Single Residence A (SRA); Single Residence B (SRB) and Natural Resource Protection (NRP) District. (LU-22-251)

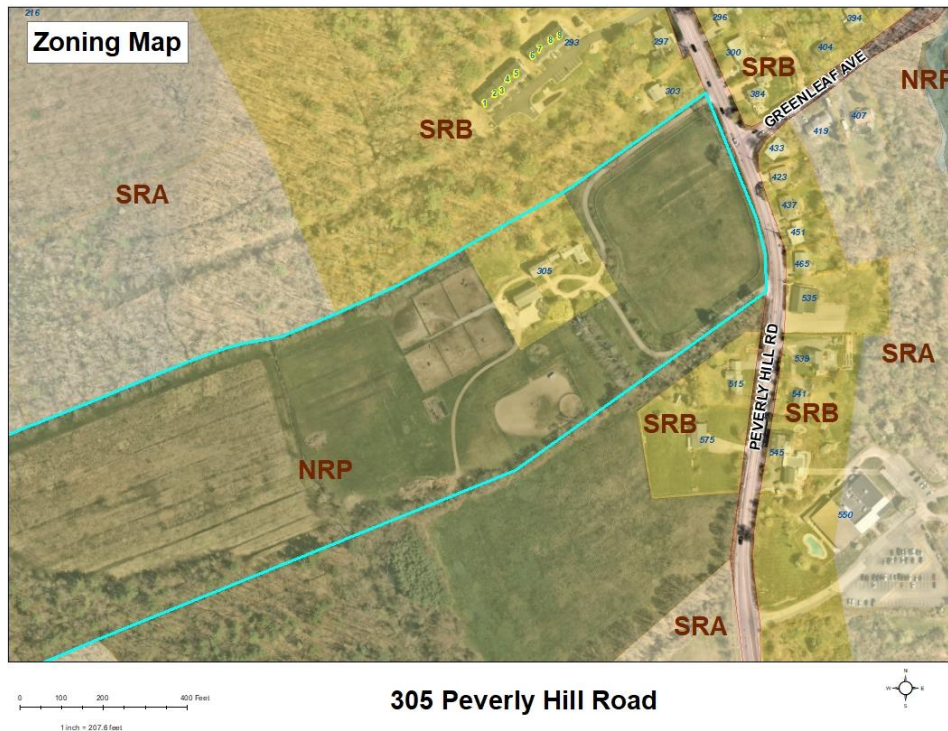
#### Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	<b>Addition of an second unit to the existing structure and the new construction of a free standing single-living unit</b>	Primarily residential uses
<u>Lot area (sq. ft.):</u>	1,732,905 (39.7 ac)	1,732,905 (39.7 ac)	43,650 (1 ac) min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,732,905 (39.7 ac)	577,635 (13.23 ac)	43,650 (1 ac) min.
<u>Street Frontage (ft.):</u>	500	500	150 min.
<u>Lot depth (ft.):</u>	>200	>200	200 min.
<u>Primary Front Yard (ft.):</u>	>30	>30	30 min.
<u>Left Side Yard (ft.):</u>	>20	>20	20 min.
<u>Right Side Yard (ft.):</u>	>20	>20	20 min.
<u>Rear Yard (ft.):</u>	>40	>40	40 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	<20	<20	20 max.
<u>Open Space Coverage (%)</u>	>40	>40	40 min.
<u>Parking</u>	4	4	4
<u>Estimated Age of Structure:</u>	1810	<b>Variance request shown in red.</b>	

## Other Permits/Approvals Required

- Site Plan Review
- Building Permit

## Neighborhood Context



## Previous Board of Adjustment Actions

August 18, 2015 – The Board voted to **grant** the petition as presented and advertised noting that the variance was from Section 10.440, Use #1.20 to allow a second dwelling unit on a lot. As follows:

- 1) A Variance from Section 10.513 to allow a second free-standing dwelling on a lot where a second free-standing dwelling is not allowed in this district.

August 15, 2017 – The Board voted to **grant** a one year extension of the variance granted August 18, 2015.

## Planning Department Comments

Applicant is proposing to create two living units in the existing single family structure and construct one free standing single family unit to create 3 units in 2 structures. The property exceeds all dimensional requirements and is the only working farm in the City.

## Variance 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.*

## Section 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.