

OLD BUSINESS

Case #6-20

Petitioners:	Anthony DiLorenzo, c/o Portsmouth Chevrolet, owner, Portsmouth Used Car Superstore, Inc., applicant
Property:	2219 Lafayette Road
Assessor Plan:	Map 272, Lot 1
Zoning District:	Gateway
Description:	Appeal Administrative Decision.
Requests:	The actions necessary to grant the required relief from the Ordinance, including the following: 1. Granting an Appeal of an Administrative Decision of a Code Official in the application of Section 10.1280 of the Ordinance.

On June 28, 2016, the Board denied the appeal of an administrative decision submitted the applicant. The applicant has filed a request for a rehearing 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, the rehearing 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.

Case #7-4

Petitioners: Thunderbolt Realty Trust of 2011 c/o Alison Jewett
 Property: 17 Gardner Street
 Assessor Plan: Map 103, Lot 14
 Zoning District: General Residence B
 Description: Reconstruct rear additions.
 Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
 1. Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
 2. Variances from Section 10.521 to allow the following:
 a) A front yard setback of 4'10" ± where 5' is required;
 b) A left side yard setback of 1" ± where 10' is required;
 c) A rear yard setback of 9'2" ± where 25' is required; and
 d) Building coverage of 40.2%± where 30% is the maximum allowed.

Note: This petition was postponed from the July 19, 2016 meeting at the request of the applicant.

Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residence	Primarily residential uses
<u>Lot area (sq. ft.):</u>	2,690	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,690	5,000 min.
<u>Street Frontage (ft.):</u>	34	80 min.
<u>Lot depth (ft.):</u>	68	60 min.
<u>Primary Front Yard (ft.):</u>	4'-10"	5 min.
<u>Right Yard (ft.):</u>	13'-9"	10 min.
<u>Left Yard (ft.):</u>	1"	10 min.
<u>Rear Yard (ft.):</u>	9'-2"	25 min.
<u>Building Coverage (%):</u>	35.6	30 max.
<u>Open Space Coverage (%):</u>	>25	25 min.
<u>Parking (# of spaces):</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1782	

Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Right Yard (ft.):</u>	13'-9"	10 min.
<u>Left Yard (ft.):</u>	1"	10 min.
<u>Rear Yard (ft.):</u>	9'-2"	25 min.
<u>Height (ft.):</u>	21'-7"	35 max.
<u>Building Coverage (%):</u>	40.3	30 max.
<u>Open Space Coverage (%):</u>	>25	25 min.

Other Permits Required

- Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

May 18, 1999 – The Board **granted** a variance to allow the reconstruction of two existing additions with the following: a) a 10' rear yard where 25' was required; b) a 6' left side for the 16' x 14' addition where 10' was required; and c) a 1' left side for the 11.5' x 8.6' addition where 10' was required.

Review Criteria

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

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*

(a) The property has special conditions that distinguish it from other properties in the area.

AND

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

OR

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

NEW BUSINESS

Case #8-1

Petitioners:	Liva-Blaisdell Family Revocable Trust of 2016, Liva F. J. & Blaisdell B.L., Co-Trustees
Property:	71 Baycliff Road
Assessor Plan:	Map 207, Lot 46
Zoning District:	Single Residence B
Description:	Replace and expand front deck and stairs.
Requests:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> 1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance. 2. A Variance from Section 10.521 to allow a 27.79'± front yard setback where 30' is required and a 7.84'± right left side yard setback where 10' is required.

Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family home	Primarily single family residential
<u>Lot area (sq. ft.):</u>	12,283.92	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	12,283.92	15,000 min.
<u>Primary Front Yard (ft.):</u>	27.76	30 min.
<u>Right Yard (ft.):</u>	7.58	10 min.
<u>Left Yard (ft.):</u>	7.84	10 min.
<u>Rear Yard (ft.):</u>	27.76	30 min.
<u>Height (ft.):</u>	16'-4"	35 max.
<u>Building Coverage (%):</u>	15.63%	20% max.
<u>Open Space Coverage (%):</u>	75.54%	40% min.
<u>Parking (# of spaces):</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1942	

Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Primary Front Yard (ft.):</u>	27.76	30 min.
<u>Right Yard (ft.):</u>	7.84	10 min.
<u>Rear Yard (ft.):</u>	27.76	30 min.
<u>Height (ft.):</u>	20'-11"	35 max.

Neighborhood Context



Previous Board of Adjustment Actions

March 16, 1999 – the Board **granted** a variance to allow a 35' x 26' irregular shaped two car garage with an 8' left side yard and 30' from the marsh/mean high water line where 100' is the minimum required.

August 16, 2005 – the Board voted to **table** to the September 20, 2005 meeting a request for 1) a variance to allow a 14' x 14' two story addition with a 22'5"± front yard and a 3'± rear yard where 30' is the minimum required in both instances, and 2) an Equitable Waiver to allow the existing garage/deck with a 2'± left side yard where a variance for 8' was previously granted on an earlier survey. The Board requested an as-built site plan and copies of the referenced surveys.

September 20, 2005 – the Board voted to **table** the above request to a time indefinite at the request of the applicant.

August 19, 2008 – The Board failed to pass, thus **denying**, a request to allow the replacement of the original gravel driveway with a paver stone driveway located within 100' of the salt water marsh or mean high water line where 100' is the minimum required.

September 16, 2008 – The Board denied a Motion for Rehearing regarding the above.

January 20, 2009 – The Board **accepted a Settlement Agreement**, as presented by the City Attorney and with reference to Docket #08-E-0540 of the Rockingham Superior Court regarding the determination of the City of Portsmouth that the owners had placed paving stones in a right-of-way which connected Baycliff Road to the tidal waters of Little Harbor without necessary municipal approvals.

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.*

Case #8-2

Petitioners:	Frederic & Priscilla Roue
Property:	14 Harding Road
Assessor Plan:	Map 247, Lot 10
Zoning District:	Single Residence B
Description:	Replace rear deck.
Requests:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Variance from Section 10.521 to allow 21.33%± building coverage where 20% is the maximum allowed.

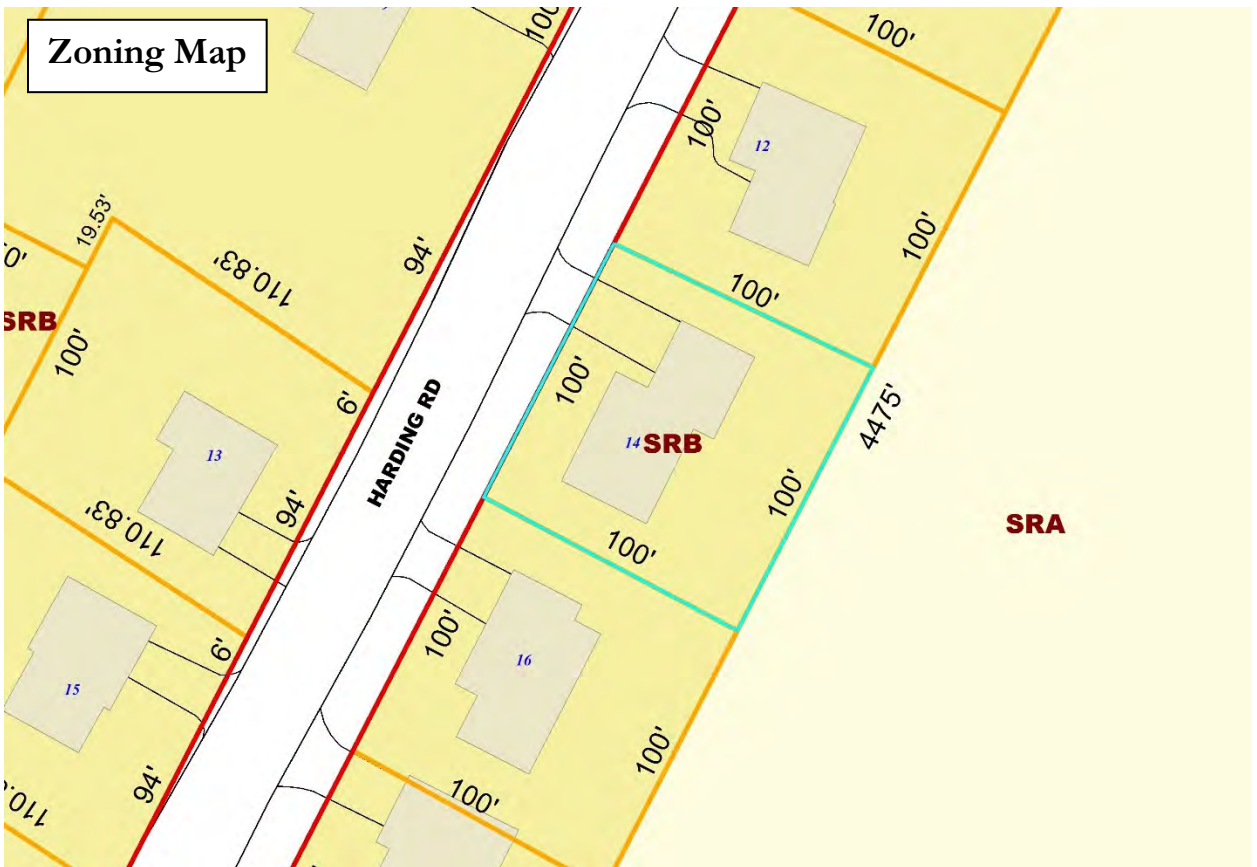
Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residence	Primarily single family residential
<u>Lot area (sq. ft.):</u>	10,018.80	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,018.80	15,000 min.
<u>Street frontage (ft.)</u>	100	100
<u>Lot depth (ft.)</u>	100	100
<u>Primary Front Yard (ft.):</u>	>30	30 min.
<u>Right Yard (ft.):</u>	>10	10 min.
<u>Left Yard (ft.):</u>	>10	10 min.
<u>Rear Yard (ft.):</u>	>30	30 min.
<u>Building Coverage (%):</u>	20.01%	20% max.
<u>Open Space Coverage (%):</u>	74.00%	40% min.
<u>Parking (# of spaces):</u>	4	2 min.
<u>Estimated Age of Structure:</u>	1969	

Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Right Yard (ft.):</u>	22	5 (per 10.516.40) min.
<u>Left Yard (ft.):</u>	>5	5 (per 10.516.40) min.
<u>Rear Yard (ft.):</u>	60	15 (per 10.516.40) min.
<u>Height (ft.):</u>	2.5 (to deck)	35 max.
<u>Building Coverage (%):</u>	21.33%	20% max.
<u>Open Space Coverage (%):</u>	72.68%	40% min.

Neighborhood Context



Previous Board of Adjustment Actions

No history found.

Review Criteria

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

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

AND

 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*
- OR**
- Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

Case #8-3

Petitioners:	Abigail Kell Sutcliffe, owner, Fred Kell, applicant
Property:	12 Woodbury Avenue
Assessor Plan:	Map 163, Lot 9
Zoning District:	General Residence A
Description:	Add rear porch.
Requests:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> 1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance. 2. A Variance from Section 10.521 to allow 55.94%± building coverage where 25% is the maximum allowed.

Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residence	Primarily residential uses
<u>Lot area (sq. ft.):</u>	1,306.80	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,306.80	7,500 min.
<u>Street Frontage (ft.):</u>	18.5	100 min.
<u>Lot depth (ft.):</u>	57.5	70 min.
<u>Primary Front Yard (ft.):</u>	<15	15 min.
<u>Right Yard (ft.):</u>	<10	10 min.
<u>Left Yard (ft.):</u>	<10	10 min.
<u>Rear Yard (ft.):</u>	24	20 min.
<u>Building Coverage (%):</u>	50.58%	25% max.
<u>Estimated Age of Structure:</u>	1911	

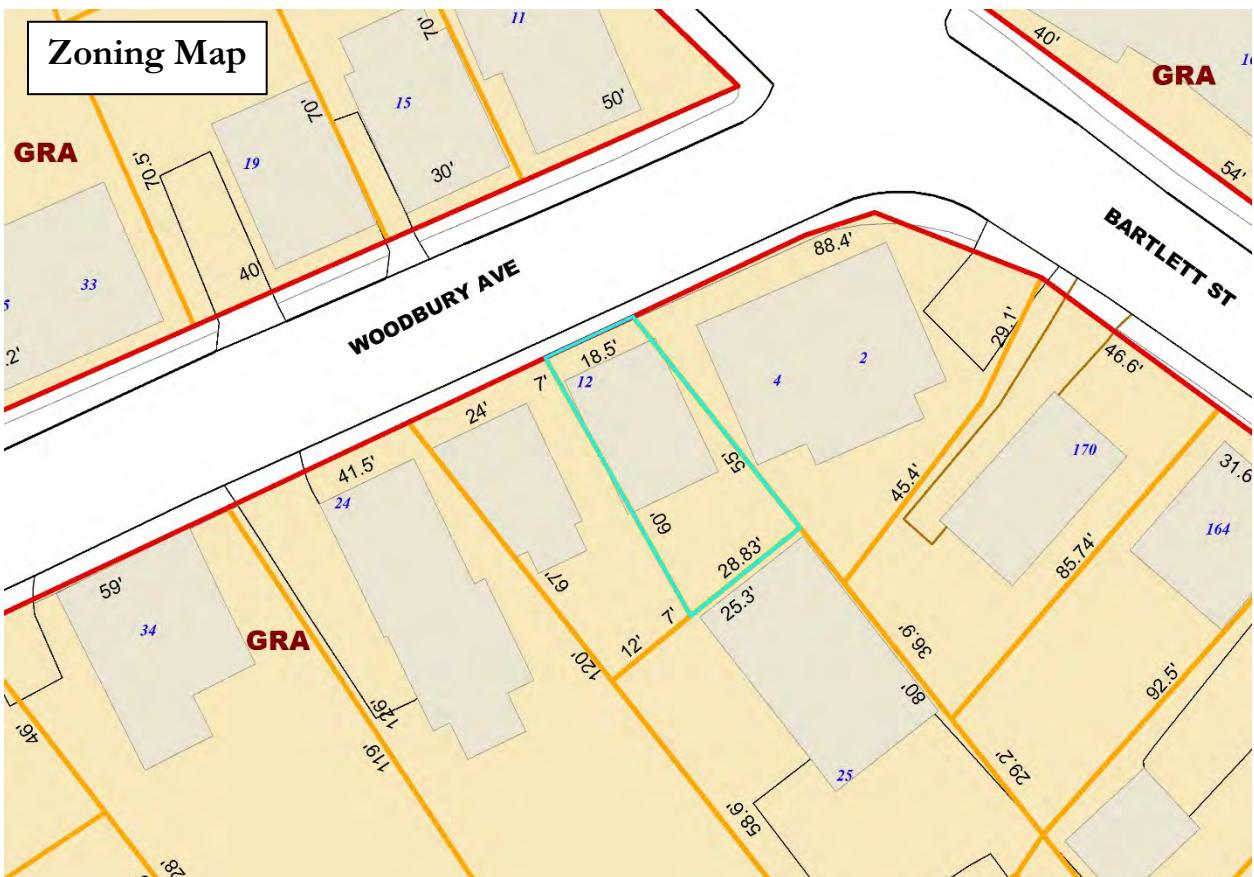
Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Right Yard (ft.):</u>	7	5 (per 10.516.40) min.
<u>Left Yard (ft.):</u>	5	5 (per 10.516.40) min.
<u>Rear Yard (ft.):</u>	12.5	10 (per 10.516.40) min.
<u>Height (ft.):</u>	<4 (new deck)	35 max.
<u>Building Coverage (%):</u>	55.94%	25% max.

Other Permits Required

Planning Board – Wetland Conditional Use Permit

Neighborhood Context



Previous Board of Adjustment Actions

No history found.

Review Criteria

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

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

AND

 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*
- OR**
- Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

Case #8-4

Petitioner:	Public Service Company of NH
Property:	280 & 300 Gosling Road
Assessor Plan:	Map 214, Lots 2 & 3
Zoning District:	Waterfront Industrial & Office Research
Description:	Lot line revision affecting setbacks and frontage.
Requests:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: Lot #1 (214/2) 1. A Variance from Section 10.531 to allow 134.95'± continuous street frontage where 200' is required. 2. A Variance from Section 10.573.20 to allow right side yard setbacks of 3'± to 20'± for accessory structures. Lot #2 (214/3) 3. A Variance from Section 10.573.20 to allow left side yard setbacks of 0'± to 50'± for accessory structures.

Existing Conditions

	Existing	Permitted / Required
<u>Land Use:</u>	Electric transmission & generation facility	Mix of industrial and office research uses
<u>Lot area (sq. ft.):</u>	Lot 1 -- 3,454,308 Lot 2 -- 13,068	87,120 min.
<u>Street Frontage (ft.):</u>	Lot 1 -- 1,557.9 Lot 2 -- 127.67	200 min.
<u>Lot depth (ft.):</u>	>200	200 min.

Proposed Changes

	Proposed	Permitted / Required
<u>Land Use:</u>		
<u>Lot area (sq. ft.):</u>	Lot 1 -- 1,685,772 Lot 2 -- 1,781,604	87,120 min.
<u>Street Frontage (ft.):</u>	Lot 1 -- 134.95 Lot 2 -- 1,550.62	200 min.
<u>Lot depth (ft.):</u>	>200	200 min.
<u>Primary Front Yard (ft.):</u>	>70	70 min.
<u>Right Yard (ft.):</u>	Lot 1 -- 3 to 20 Lot 2 -- >50	26 (per 10.573.20) min.
<u>Left Yard (ft.):</u>	Lot 1 -- >50 Lot 2 -- 0 to 50	10-50 (per 10.573.20) min.
<u>Rear Yard (ft.):</u>	Lot 1 -- >50	50 min.
<u>Building Coverage (%):</u>	<30	30 max.
<u>Open Space Coverage (%):</u>	>30	30 min.

Other Permits Required

Planning Board -- Subdivision

Previous Board of Adjustment Actions

280 Gosling Rd

June 18, 2013 – The Board **granted** a special exception to allow expansion of a transformer substation providing community-wide or regional service.

300 Gosling Road

August 19, 1997 – The Board **granted** variances to allow the following: (1) a 12' x 25' one story addition to an existing nonconforming veterinary clinic; and (2) the addition to have a 29.3' front yard, 70' required; a 49' side yard, 50' required; and a 14.2' rear yard, 50' required.

October 21, 1997 – The Board **granted** a variance to allow a 2-way maneuvering aisle 13' in width where 24' was required (also for the veterinary clinic).

Review Criteria

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

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

AND

 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*
- OR**
- Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

Case #8-5

Petitioners:	Carol I. Cooper, owner & Lorax Sustainable Development, LLC, applicant
Property:	996 Maplewood Avenue
Assessor Plan:	Map 219, Lot 4
Zoning District:	Single Residence B
Description:	Construct three free-standing dwellings.
Requests:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Variance from Section 10.513 to allow more than one free-standing dwelling on a lot.

Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant	Primarily single family residential
<u>Lot area (sq. ft.):</u>	113,485.00	15,000 min.
<u>Street Frontage (ft.):</u>	139	100 min.
<u>Lot depth (ft.):</u>	>100	100 min.

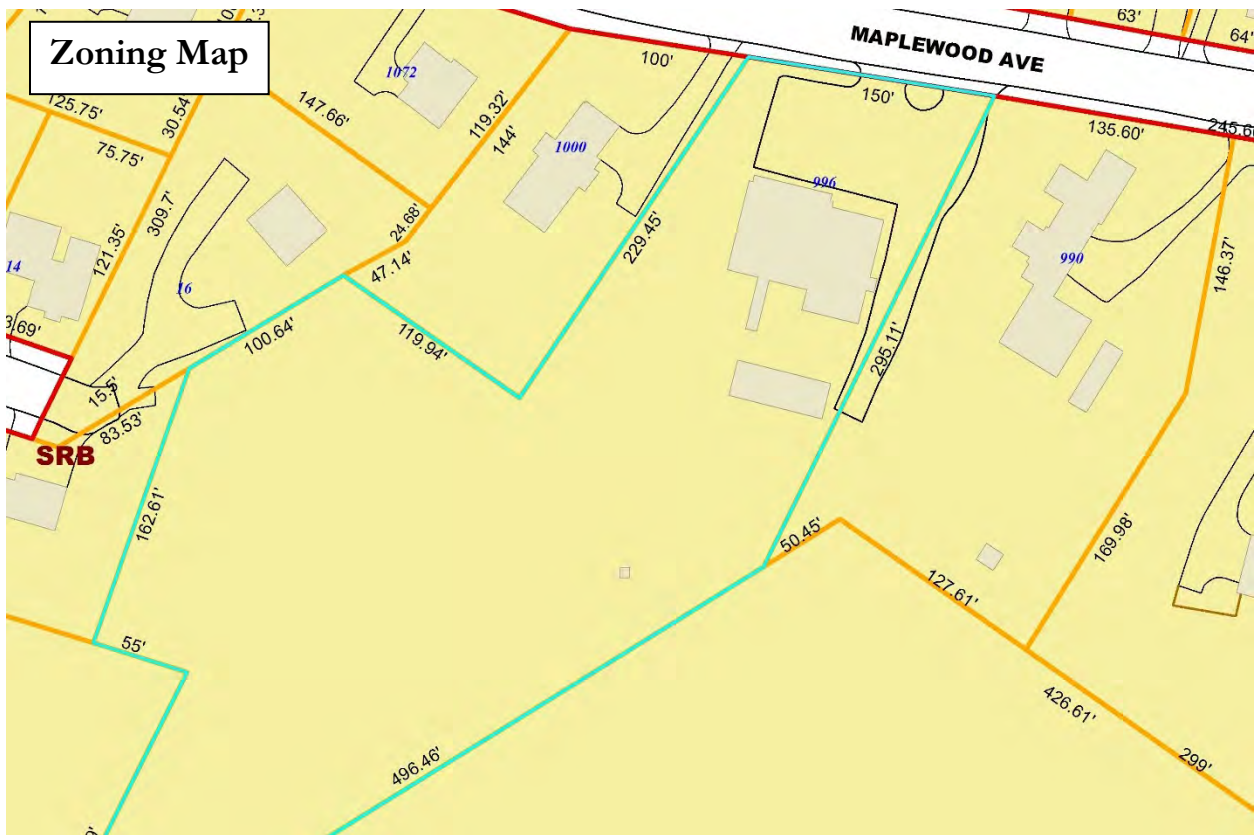
Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	3 single family homes	Primarily single family residential
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	37,828	15,000 min.
<u>Primary Front Yard (ft.):</u>	>30	30 min.
<u>Right Yard (ft.):</u>	>10	10 min.
<u>Left Yard (ft.):</u>	>10	10 min.
<u>Rear Yard (ft.):</u>	>30	30 min.
<u>Height (ft.):</u>	<35	35 max.
<u>Building Coverage (%):</u>	<20	20 max.
<u>Open Space Coverage (%):</u>	91.2	40 min.
<u>Parking (# of spaces):</u>	6	6 min.

Other Permits Required

Planning Board Site Plan Review

Neighborhood Context



Previous Board of Adjustment Actions

November 12, 1985 - The Board **granted** a Special Exception to allow construction of a greenhouse adjacent to an existing business.

May 27, 1997 - The board **denied** a request to allow the sale of wedding apparel and formal wear in a grandfathered floral shop and to allow the expansion of a nonconforming retail floral business by selling wedding apparel and formal wear.

June 17, 1997 - The Board **denied** a request for rehearing regarding the above.

February 15, 2005 - The Board **denied** a request to allow a 4,944 s.f. chiropractic office on the first floor and one apartment on the second floor with associated parking where the current use was a retail florist.

June 28, 2005 - The Board **denied** a request to allow six dwelling units (a 4-unit and a 2-unit building) where only one dwelling per lot was allowed.

July 19, 2016 - The Board **denied** a request to construct five free-standing dwellings on a lot where one 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

 - (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.*

Case #8-6

Petitioners:	Andrew F. & Jennifer B. Cotrupi
Property:	137 Wibird Street
Assessor Plan:	Map 134, Lot 48
Zoning District:	General Residence A
Description:	Subdivide one lot into two.
Requests:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Variance from Section 10.521 to allow proposed Parcel B to have 58.85'± of continuous street frontage where 100' is required. 2. A Variance under Section 10.440 to allow proposed Parcel B to contain an accessory structure as a principal use.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residence	Primarily residential uses
<u>Lot area (sq. ft.):</u>	15,295.00	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	15,295.00	7,500 min.
<u>Street Frontage (ft.):</u>	158.85	100 min.
<u>Lot depth (ft.):</u>	>70	70 min.
<u>Primary Front Yard (ft.):</u>	15	15 min.
<u>Secondary Front Yard (ft.):</u>	>15	15
<u>Left Yard (ft.):</u>	10	10 min.
<u>Rear Yard (ft.):</u>	>20	20 min.
<u>Building Coverage (%):</u>	14.11%	25 max.
<u>Open Space Coverage (%):</u>	>30	30 min.
<u>Estimated Age of Structure:</u>	1902	

B. Proposed Changes

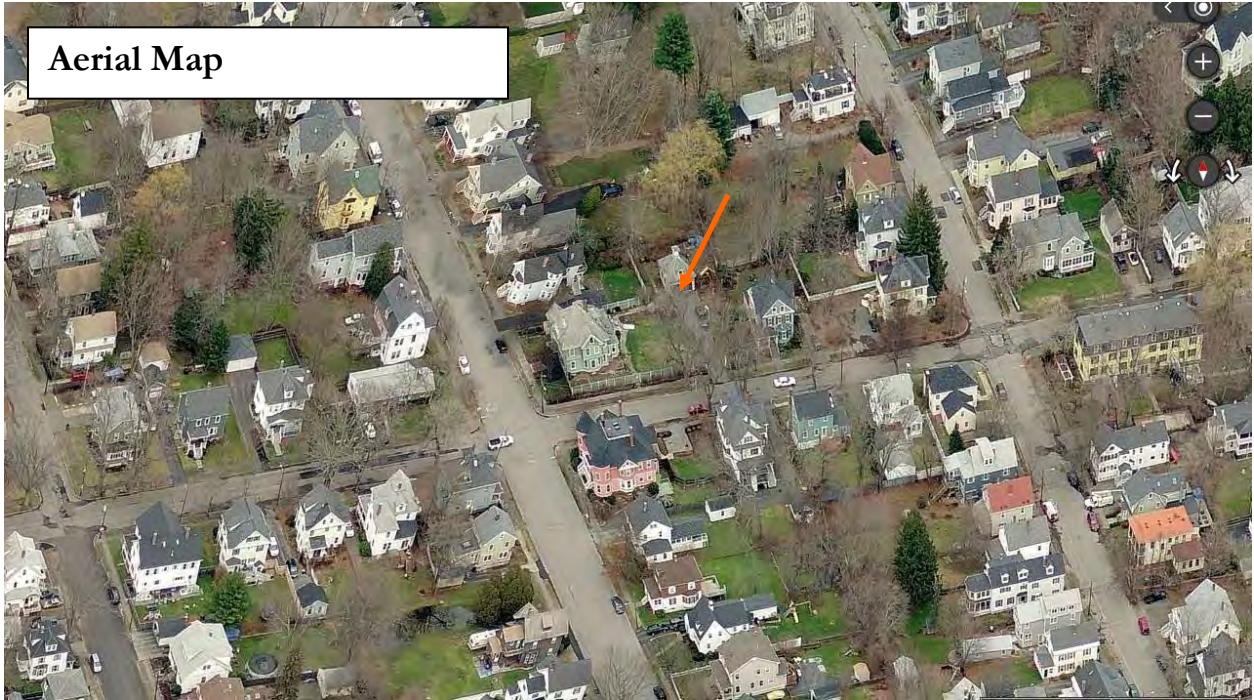
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>		
<u>Lot area (sq. ft.):</u>	Lot 1 -- 7,770 Lot 2 -- 7,525	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	Lot 1 -- 7,770 Lot 2 -- N/A	7,500 min.
<u>Street Frontage (ft.):</u>	Lot 1 -- 100 Lot 2 -- 58.85	100 min.
<u>Lot depth (ft.):</u>	Lot 1 -- >70	70 min.
<u>Primary Front Yard (ft.):</u>	Lot 1 -- 15 Lot 2 -- >15	15 min.
	Lot 1 -- >15 Lot 2 -- >10	15
<u>Right Yard (ft.):</u>	Lot 1 -- N/A Lot 2 -- >10	10 min.
<u>Left Yard (ft.):</u>	Lot 1 -- 10	10 min.

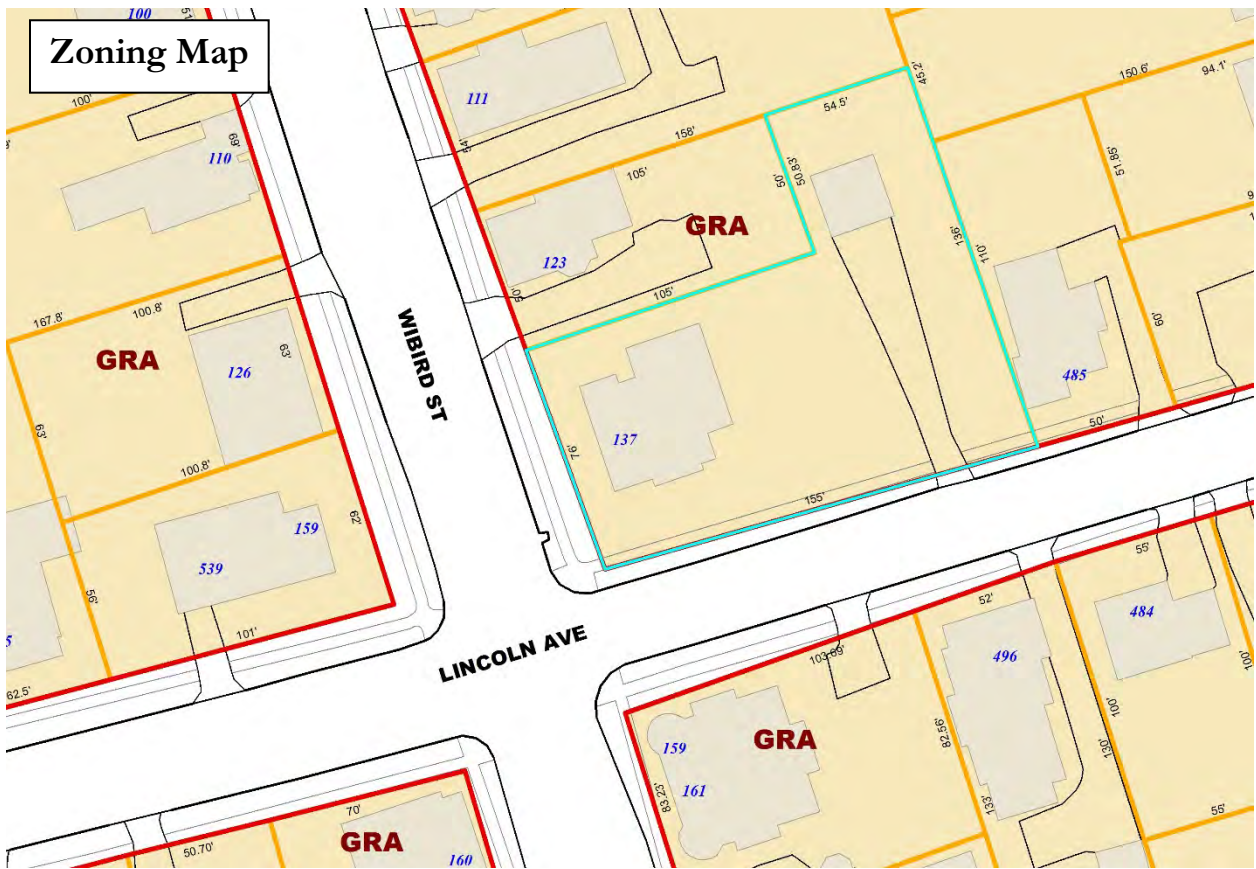
	Lot 2 -- >10		
<u>Rear Yard (ft.):</u>	Lot 1 -- >26 Lot 2 -- >20	20	min.
<u>Building Coverage (%):</u>	Lot 1 -- 22.63 Lot 2 -- 5.32	25	max.
<u>Open Space Coverage (%):</u>	>30	30	min.

Other Permits Required

Planning Board Subdivision

Neighborhood Context





Previous Board of Adjustment Actions

No history found.

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.*

Case #8-7

Petitioner:	Old Tex Mex, LLC
Property:	3510 Lafayette Road
Assessor Plan:	Map 297, Lot 8
Zoning District:	Gateway
Description:	Convert existing structure into twenty-five residential dwelling units.
Requests:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Variance from Section 10.440, Use # 1.43 to allow a 25-unit multi-family dwelling where such is not allowed.

Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Residence and commercial warehouse/office building	Mix of commercial and multi-family residential
<u>Lot area (sq. ft.):</u>	84,506.00	43,560 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	84,506.00	NR min.
<u>Street Frontage (ft.):</u>	320	200 min.
<u>Lot depth (ft.):</u>	210	100 min.
<u>Primary Front Yard (ft.):</u>	80	30 min.
<u>Right Yard (ft.):</u>	85	30 min.
<u>Left Yard (ft.):</u>	13	30 min.
<u>Rear Yard (ft.):</u>	70	50 min.
<u>Estimated Age of Structures:</u>	1957, 1960, 2005	

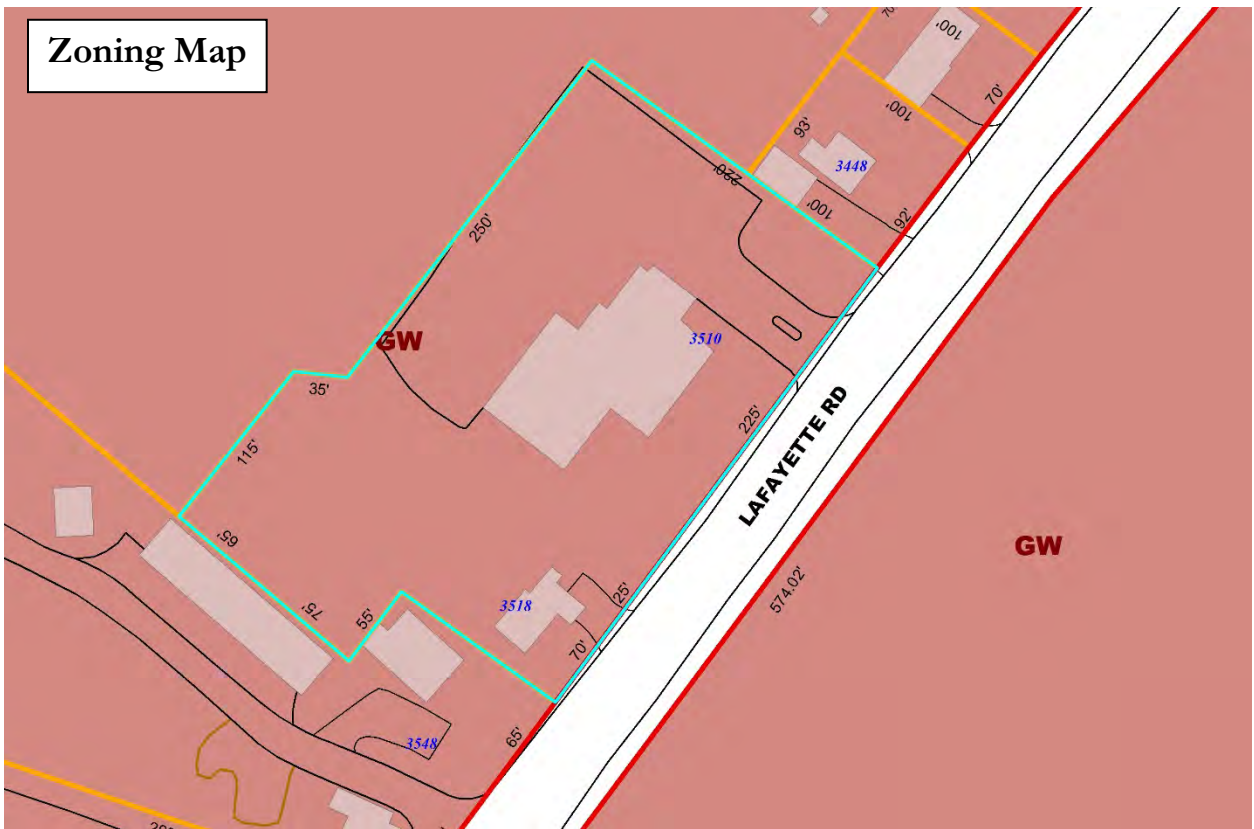
Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	25-unit multi-family complex	Mix of commercial and multi-family residential
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,250.23	NR min.
<u>Building Coverage (%):</u>	17	30% max.
<u>Open Space Coverage (%):</u>	54	20% min.
<u>Parking (# of spaces):</u>	49	43 min – 52 max

Other Permits Required

Planning Board Site Plan Review

Neighborhood Context



Previous Board of Adjustment Actions

June 10, 1975 – the Board **granted** a variance to use the property for a restaurant with the following **stipulations**:

- 1) that there be no parking in front of the buildings or within 70' from the front property line;
- 2) that a \$5,000 bond be posted to insure the landscaping and paved parking are completed as shown on the plans presented within 90 days after opening;
- 3) that the petitioner will be allowed to remove the two willow trees in the middle of the parking lot if necessary;
- 4) that the petition for a use variance does not include a sign variance; and
- 5) that the cottage existing on the property is excluded from the use variance and shall not be used for retail business purposes.

July 22, 1975 – the Board **granted** a variance to erect a commercial sign (27.75 s.f.) 25' from the front property line, to be mounted 8' high on double stanchions rising to a height of 18', with a mansard-type roof. The request was granted with the following **stipulations**: (1) that the sign be constructed in accordance with the plans and drawings submitted to the Board, dated July 8, 1975; and (2) that the lighting of the sign be discontinued one hour after closing.

May 18, 1976 – the Board **granted** a variance to erect a 6' x 8' free-standing sign in a residential zone larger than the 27.75 s.f. previously granted, with the following **stipulations**: (1) that the height of the sign shall not exceed 18'; and (2) that the lighting for the sign be turned off one hour after closing.

August 24, 1976 – the Board **denied** a request to erect an off-premises, free-standing sign 4' x 8' in area and 15' in height extending to within 2' of the front of the property line on property owned by the Portsmouth Mobile Home Park.. The Board granted a variance to relocate the present restaurant sign from a setback of 25' to within approximately 2' of the front property line at the closest point. The request was granted with the following **stipulations**: (1) 1) that there be no change in the dimensions of the present sign or its height; and (2) that the lighting be hooded or guided so that it will not shine into the view of motorists going north.

March 28, 1978 – the Board **denied** a request to further increase signage area to 10' x 12' (principal sign variance is 6' x 8' not including any auxiliary projecting signs).

September 1, 1981 – the Board **granted** a variance to construct a single floor 24' x 40' single family dwelling on a single lot with one building in existence and a front yard of 21' and rear yard of 20' where 40' is required for both. The request was granted with the **stipulation** that the applicant complete the site review process.

February 28, 1984 – the Board **granted** a variance to permit the placing of an indirectly lighted 40 s.f. free-standing sign with 10' approximate front yard setback where neither free-standing nor illuminated signs are allowed and a maximum sign area of 4 s.f. is permitted. The variance was granted with the following **stipulations**: (1) that the sign area be no more than 35 s.f.; and (2) that the sign be placed in the same location as the previous signs and be 10' back from the lot line.

May 15, 1990 – the Board **granted** a variance to permit a 28' x 28' two-story addition to an existing non-conforming structure, with the following **stipulations**: (1) that there will be no increase in the

seating capacity; and (2) that the basement and the attic of the existing structure will be used for storage only.

December 21, 1999 – the Board **granted** 1) a special exception to allow the use to be changed from the former Tortilla Flat restaurant to a specialty food store for the retail sale of specialty food items and the processing of food for on-premises and off-premises consumption; 2) a variance to allow a) a 10' x 39'6" farmers porch on the front of the building with a 39' front yard; b) a 28' x 28' 1½ story addition over an existing patio with a 49' front yard; and c) a 15' x 48' 1 story addition with basement with a 77' front yard where 105 is required for all three additions; 3) a variance to allow all three additions within 100' of property zoned residentially; and 4) a variance to allow the proposed uses to be located in the new additions in a residential district.

February 15, 2000 – the Board **granted** variances to allow a) a 10' x 39'6" farmers porch on the front of the building with a 35.8' front yard; b) a 28' x 28' 1½ story addition over an existing patio with a 45.6' front yard; and c) a 15' x 48' 1-story addition with basement with a 74.2' front yard where 105' is required for all three additions and a variance to allow 39% open space where 50% is the minimum required.

January 16, 2001 – the Board **granted** a request for a one-year extension of the above approval through February 15, 2002.

July 17, 2001 – the Board **granted** a variance to allow a day care facility for up to 150 children with 30 employees with the following stipulations:

- 1) that the hours of operation be Monday through Friday 6:30 a.m. to 6:00 p.m.;
- 2) that there be evergreen screening planted along the side property line abutting Lot 9;
- 3) that the owners of Lot 9 and Lot 10 be notified when the application goes to the Traffic and Safety Committee; and
- 4) that the panhandle section of the property to the northwest not be clear cut or used as a playground.

November 20, 2001 – the Board **granted** a special exception to allow the existing building previously approved as a day care center to be used for retail sales in a district where retail sales are not allowed.

June 17, 2003 – the Board **granted** a special exception to change a retail business to a construction/restoration company with associated business office and indoor storage space; and a Variance to allow the construction of a 60' x 72' garage for the company.

July 15, 2003 – the Board **granted** a variance to allow 1) a 28' x 28' addition with a 47.2' front yard and a 60' x 70' garage with a 79.4 front yard where 105' is required; and 2) said addition to be used as part of the previously approved office space.

February 19, 2008 – The Board **granted** variances to allow the following: (1) 1,570 s.f. in the basement to be used for office/assembly; (2) 2,160 in the existing garage addition for a landscaping business including inside storage of equipment with a 288 s.f. mezzanine office; and (3) 314 s.f. of office space on the mezzanine of the existing ICI space within the garage.

The variances were granted with the **stipulation** that there be no outdoor storage of materials or products.

June 17, 2008 (as 3510 & 3518) – The Board **granted** variances to allow the following: (1) a 60' x 72' addition with a 20' x 72' office mezzanine for use by trades contractors in a residential district where the use was not allowed; (2) a 55' front setback for the addition where 105 was required; (3) 16.8% building coverage, 10% maximum allowed; (4) 46.7% open space, 50% required; and (5) off-street parking and accessway 20' from a residential property line, 50' required.

Planning Department Comments

Although this application references the criteria for a Gateway Planning Development, this is for comparison purposes only. This application, as proposed, does not meet the minimum requirements for a GPD.

Review Criteria

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

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*

(a) The property has special conditions that distinguish it from other properties in the area.

AND

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

OR

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

Case #8-8

Petitioners:	James C. Lucy Revocable Living Trust, James C. & Kimberley A. Lucy, Trustees
Property:	127 & 137 High Street
Assessor Plan:	Map 118, Lots 20 & 21
Zoning District:	CD4-L1 and Downtown Overlay Districts
Description:	Construct two-family dwelling unit with parking underneath.
Requests:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> 1. A Variance from Sections 10.5A41.10A & 10.5A43.31 to allow a three-story building where up to a two-story building is the maximum permitted. 2. Variances from Section 10.5A41.10A to allow the following: <ol style="list-style-type: none"> (a) A minimum lot area per dwelling unit of 1,200± s.f. where 3,000 s.f. is required. (b) A duplex building type where duplexes are not permitted in the Downtown Overlay District. (c) The minimum ground story to be 8'8"± in height where 11' is required. 3. A Variance from Section 10.1114.20 to allow a 20'± maneuvering aisle where 24' is required.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single and 3-family homes	Mix of residential and office uses
<u>Lot Area (sq. ft.)</u>	Lot 21 – 3,049 Lot 20 – 3,920	3,000
<u>Lot Area per Dwelling Unit (sq. ft.)</u>	Lot 21 – 1,016 Lot 20 – N/A	3,000
<u>Estimated Age of Structure:</u>	1860 and 1820	

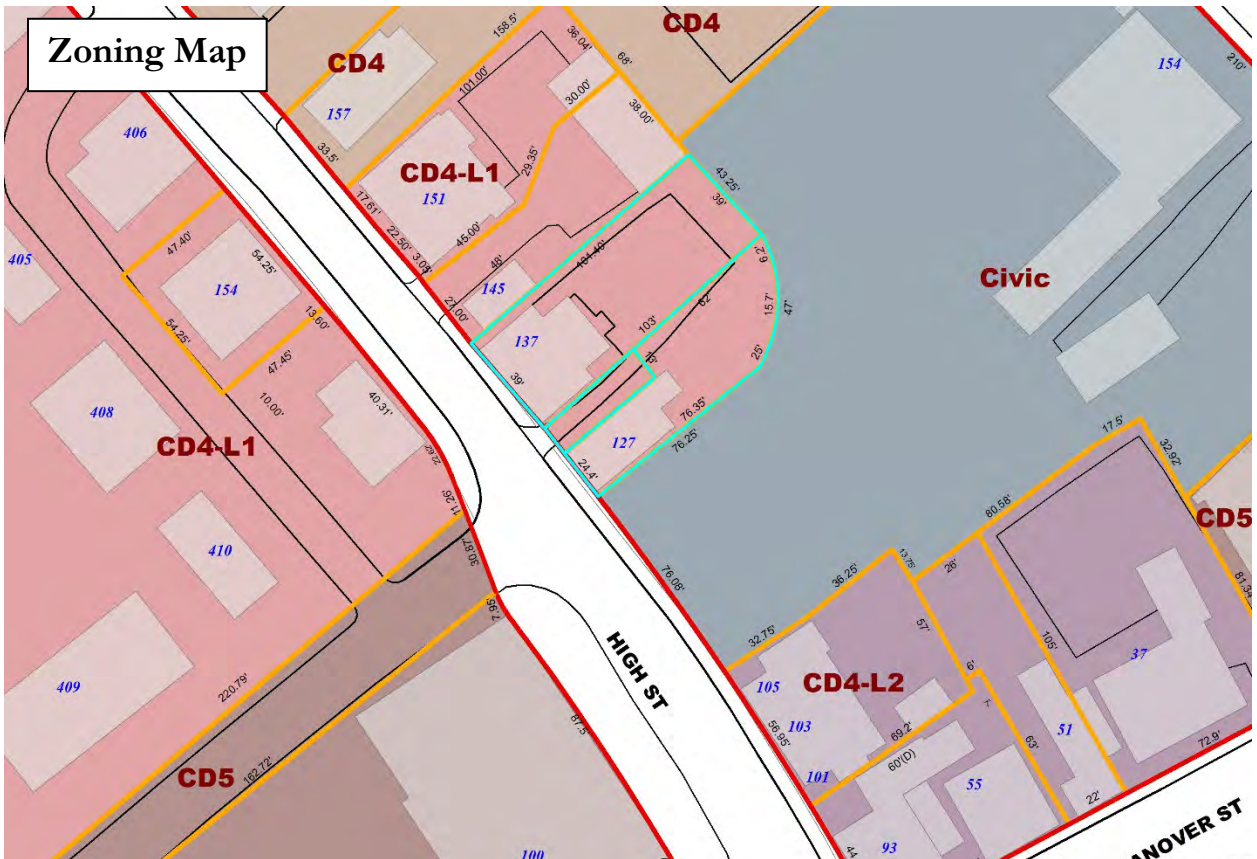
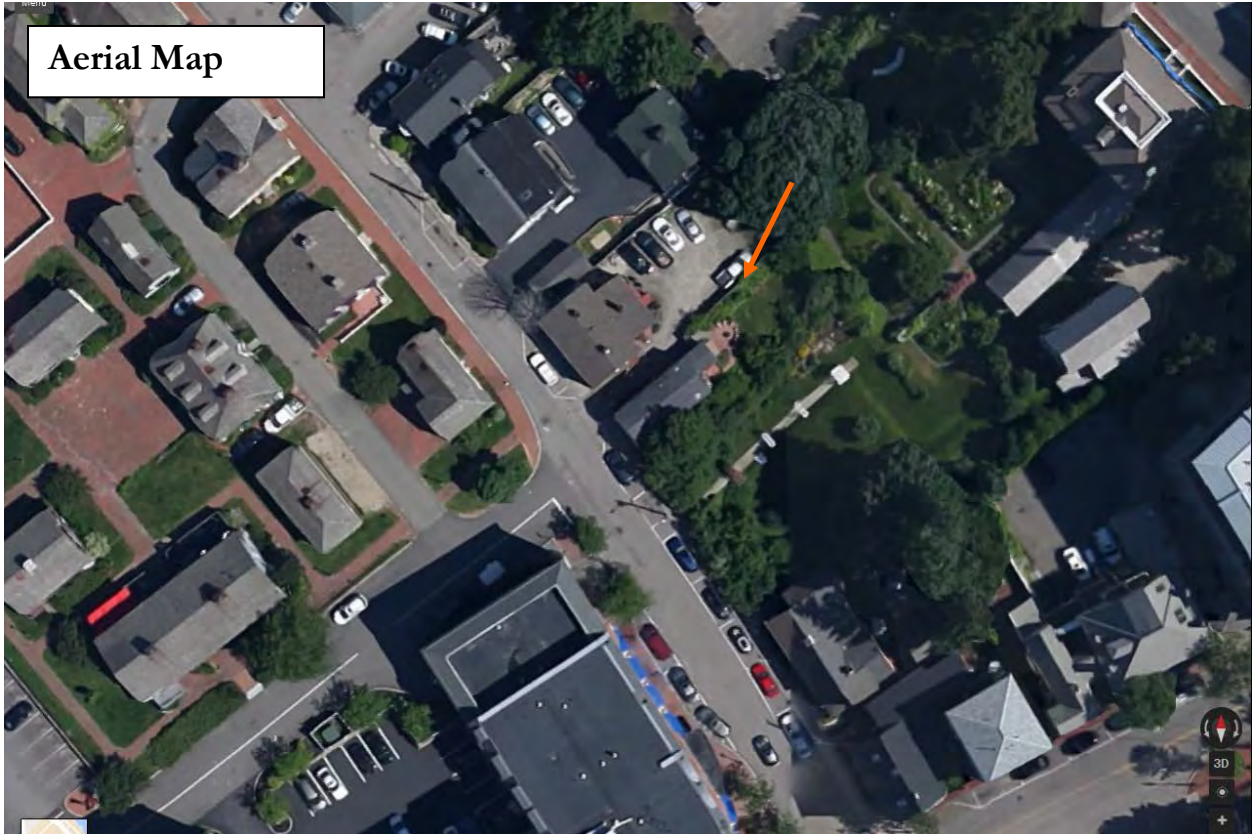
B. Proposed Changes

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Merge existing lots, convert office to dwelling unit, and add 2-unit multi-family dwelling	Mix of residential and office uses
<u>Lot Area (sq. ft.)</u>	7,248	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.)</u>	1,200	3,000 min.
<u>Building Height (ft.)</u>	Three-story	Two-story max.

Other Permits Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found for 127 High Street.

The following is for 137-139 High Street:

October 24, 1989 – The Board failed to pass a motion to grant and thus **denied** a request to permit the conversion of an existing office structure to 4 dwelling units on a 4,791 s.f. lot where an 8,000 s.f. lot was required.

November 14, 1989 – The Board **granted** a variance to allow the conversion of an existing structure into 3 dwelling units on a 4,791 s.f. lot where an 8,000 s.f. lot was required.

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.