

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: October 10, 2017
RE: Zoning Board of Adjustment October 17, 2017 Meeting

OLD BUSINESS

1. Off Sylvester St. - Rehearing
2. 411 South St.
3. 135-143 Daniel St.

NEW BUSINESS

1. 87 Lincoln Ave.
2. 315 Wibird St.
3. 1079 Maplewood Ave.
4. 96 Woodlawn Cir.
5. 53 Columbia St./Columbia St. (unassigned)
6. 1 High Liner Ave.

OLD BUSINESS

Case #8-6

Petitioners: Arne LLC
 Property: 0 Sylvester Street
 Assessor Plan: Map 232, Lots 43-1 & 43-2
 Zoning District: Single Residence B (SRB)
 Description: Merge two lots and construct a single-family home.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. A Variance from Section 10.521 to allow the following: a) continuous street frontage of 80.64'± where 100'; b) a lot area and lot area per dwelling unit of 6,713± s.f. where 15,000 s.f. is required; c) a lot depth of 82.2'± where 100' is required; and d) a front yard setback of 21.7'± where 30' is required.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant	Single Family	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>		6,713	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>		6,713	15,000 min.
<u>Street Frontage (ft.):</u>		80.84	100 min.
<u>Lot depth (ft.):</u>	>100	82.20	100 min.
<u>Primary Front Yard (ft.):</u>	5	21.7	30 min.
<u>Right Yard (ft.):</u>	>10	13	10 min.
<u>Left Yard (ft.):</u>	13	16	10 min.
<u>Rear Yard (ft.):</u>	>30	31	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	<20	19.3	20 max.
<u>Open Space Coverage (%):</u>	>40	73.3	40 min.
<u>Estimated Age of Structure:</u>	1893		Variance request shown in red.

Other Permits Required

None.

Previous Board of Adjustment Actions

August 22, 2017 – The Board **granted** the following variances necessary to construct a single-family home on two merged lots: a) continuous street frontage of 80.84' where 100' was required; b) a lot area and lot area per dwelling unit of 6,713 sf. where 15,000 s.f. was required; and c) lot depth of 82.2' where 100' was required. The Board **denied** the request for a front yard setback of 21.7' where 30' was required.

September 19, 2017 – The Board granted a request to rehear the following stipulation attached to their approval of variance items 1a), 1b) and 1c) at the August 22, 2017 reconvened meeting of the Board. The stipulation as included in the letter of decision for that meeting reads, "The proposed project will be put before the Planning Board for site review."

September 19, 2017 – The Board **granted** a variance to construct a single-family home on two merged lots with a rear yard setback of 22.1' where 30' was required.

Planning Department Comments

On August 22, 2017, the Board granted the request for the variances requested above with the exception of the front setback with the stipulation of going to the Planning Board for site plan review. The applicant filed a request for a rehearing, specifically to reconsider the stipulation for site plan review and the Board voted to grant the request on September 19, 2017. At the same meeting in September, the Board granted a variance for encroachment into the rear yard setback.

Case #9-5

Petitioners: Paul Lanzoni, owner, Paul & Janice Lanzoni, applicants
 Property: 411 South Street
 Assessor Plan: Map 112, Lot 55
 Zoning District: General Residence A (GRA)
 Description: Attached garage with accessory dwelling unit and hallway addition.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. A Variance from Section 10.521 to allow the following: (a) a rear yard setback of 8.1' ± where 20' is required, (b) a right yard setback of 9.3' ± where 10' is required; and (c) a building coverage of 26.4% ± where 25% 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.

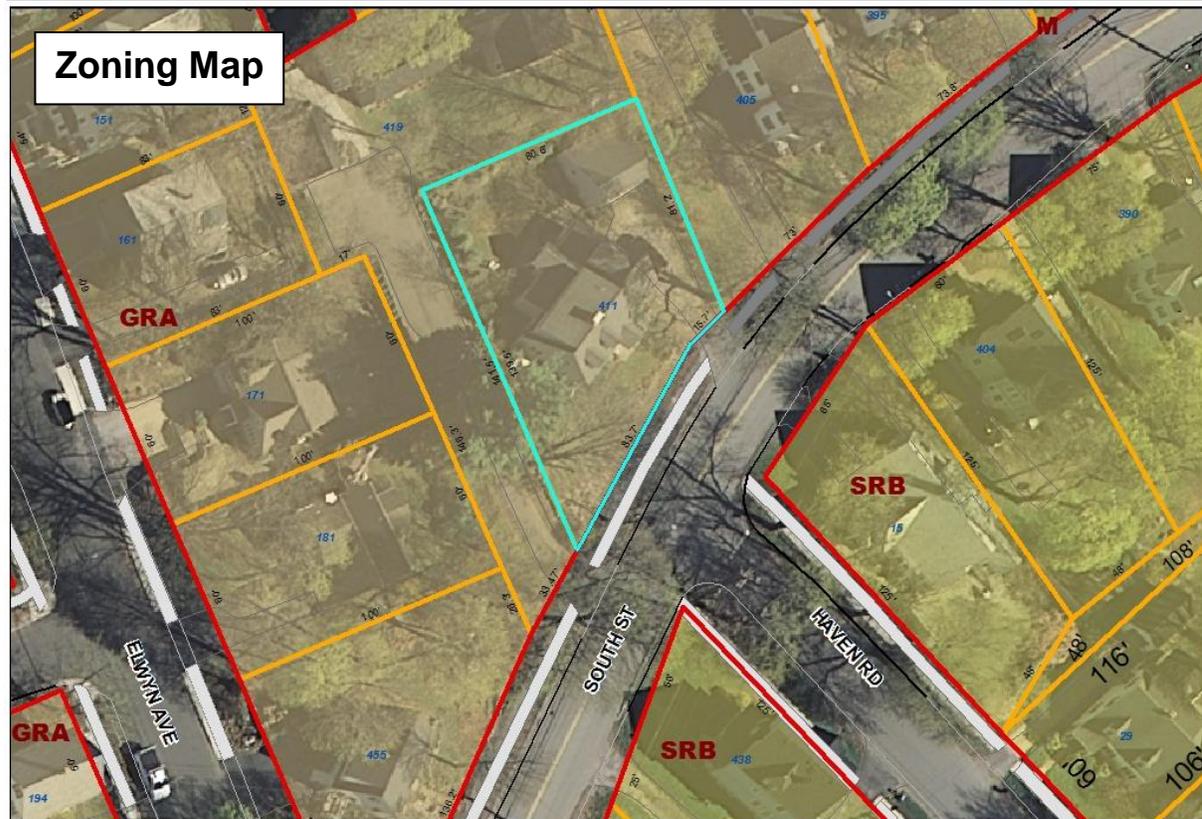
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Garage addition w/ AADU	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	8,581	8,581	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,581	8,581	7,500 min.
<u>Street Frontage (ft.):</u>	ok	ok	100 min.
<u>Lot depth (ft.):</u>	ok	ok	70 min.
<u>Primary Front Yard (ft.):</u>	>15	>15	15 min.
<u>Right Yard (ft.):</u>	6	9.3	10 min.
<u>Left Yard (ft.):</u>	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	6.2	8.1	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	23.8	26.4	25 max.
<u>Open Space Coverage (%):</u>	39.6	37.3	30 min.
<u>Estimated Age of Structure:</u>	1955	Variance request shown in red.	

Other Permits Required

Conditional Use Permit for Accessory Dwelling Unit – Planning Board.

Neighborhood Context



411 South St. - Zoning Map

Previous Board of Adjustment Actions

September 19, 2017 – The Board **continued** a petition to construct an attached garage, containing an accessory dwelling unit, and a hallway addition requiring variances to allow a) a rear yard setback of 6.5' where 20' was required; b) 26.4% building coverage where 25% was the maximum allowed; and c) a nonconforming building to be extended, reconstructed or enlarged without conforming to the Ordinance.

Planning Department Comments

The Board postponed this petition in September, requesting the applicant move the garage forward as far as possible and reduce the height. The new proposal encroaches into the right yard setback and less relief is needed in the rear and the height has been reduced.

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 #9-10

Petitioners:	143 Daniel Street LLC
Property:	135 – 143 Daniel Street
Assessor Plan:	Map 105, Lot 19
Zoning District:	Character District 4 (CD4), Character District 5 (CD5), Historic District (HD), and Downtown Overlay District (DOD)
Description:	Create additional underground parking space.
Requests:	<p>Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <p>1. A Variance from Section 10.1114.20 to allow an 8'± x 16' ± parking space where an 8½' x 19' space is required; and (b) to allow a 16' ± wide travel aisle where a 24' wide travel aisle is required.</p>

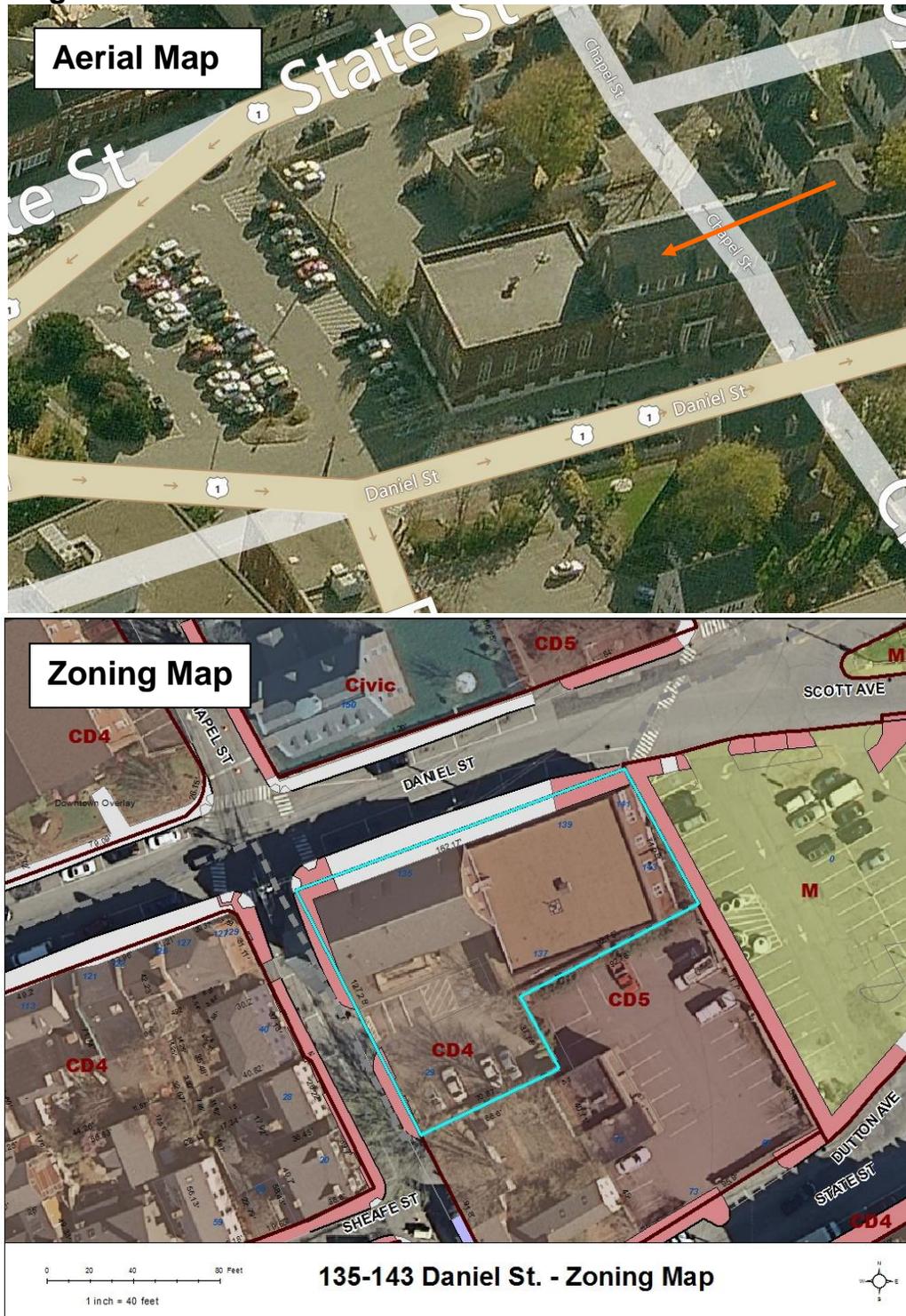
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed Use	Addition of parking space	Mixed Use
<u>Width of Parking Space (ft.):</u>		8.0	8.5
<u>Depth of Parking Space (ft.):</u>		16	19
<u>Width of Travel Aisle (ft.):</u>		16	24
		Variance request shown in red.	

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

April 23, 2013 – The Board **granted** variances to allow a ground floor residential use in the Downtown Overlay District; accessory off-street parking facilities providing spaces for more than 2 vehicles to be located within 30' of Daniel Street; and a parking layout with a 20.8' wide maneuvering aisle and driveways where a 24' width is required. The

Variances were granted with the following **stipulations** and Other **notations**:

Stipulations:

- That, as represented by the applicant, the variances (from Article 10.642.1) associated with the residential principal use on the ground floor will be confined to the portion of the building identified as the “1916 portion” and to the building to be newly constructed on Chapel Street.
- That the variance (from Article 10.1114.20) is granted for a 20'± wide maneuvering aisle and not 20.8' as advertised

Other:

The Board recognized that the specific requirements of the Downtown Overlay District Ordinance include a prohibition on ground floor residential uses, but noted that the general purposes of the Ordinance also include the preservation of historic districts, buildings and structures. In this particular case, the Board determined that adapting the original 1916 portion of the building for a commercial use would require modifications that would damage its historic character, and that such modifications are not required for converting the building to residential use.

With respect to allowing ground floor residential use in the proposed new building, the Board considered the narrowness and residential character of Chapel Street, and determined that a new residential use would have less impact on the neighboring residences than a new nonresidential use.

September 26, 2017 – The Board **postponed** a request to create additional underground parking space by allowing the following: a) an 8' x 16' parking space where an 8½' x 19' space was required; and b) a 16' wide travel aisle where a 24' wide travel aisle 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.

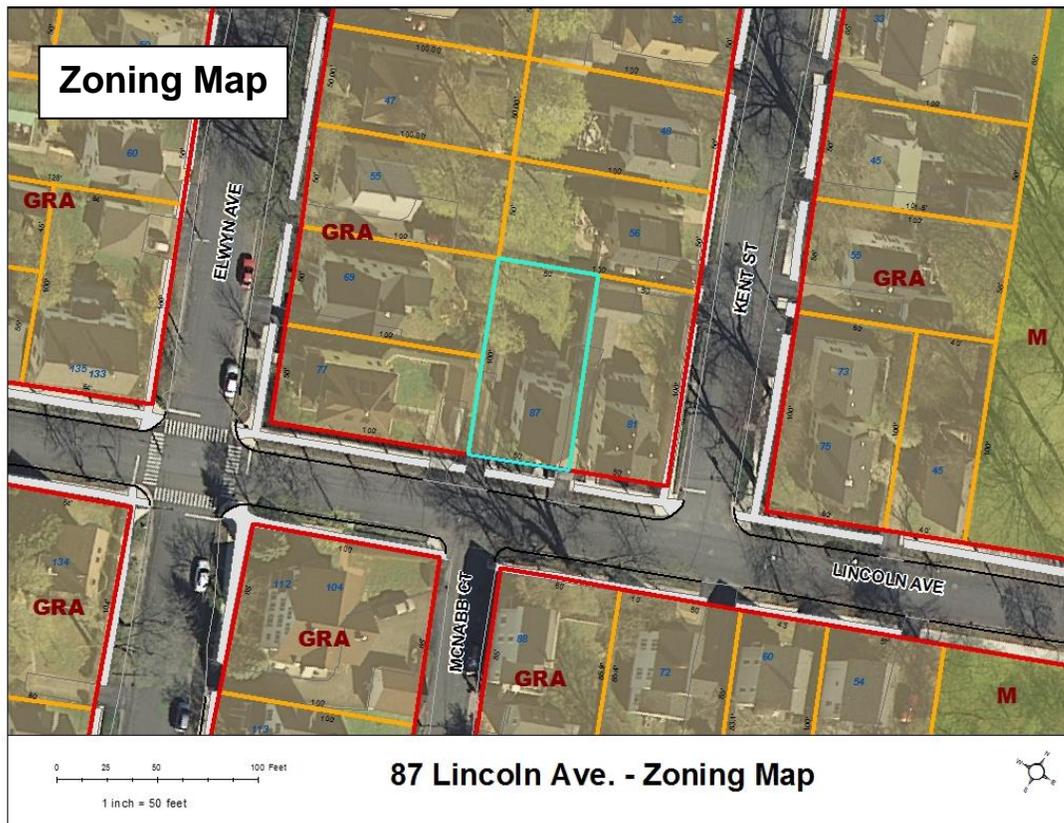
NEW BUSINESS

Case #10-1

Petitioners:	Working Stiff Properties LLC, owner, Matthew Beebe & Barbara Jenny, applicants
Property:	87 Lincoln Avenue
Assessor Plan:	Map 113, Lot 34
Zoning District:	General Residence A (GRA)
Description:	Appeal.
Requests:	Appeal by the owners of the action taken by the City of Portsmouth issuing a cease and desist for a non-permitted use as a short term rental for the property referenced above.

Neighborhood Context





Planning Department Comments

Section 10.211 of the City's Zoning Ordinance, designates the responsibility of *enforcement and administration* of the ordinance to the Code Official, which by definition includes any employee of the City who has been authorized to administer or enforce the Zoning Ordinance. The Planning Director is one of the Code Officials so authorized. The administrative policy developed under the previous Planning Director, Rick Taintor, regarding short-term rentals is still in place and is consistent with the state's definition of short-term rentals. This policy was developed in response to City Council discussions at that time about short-term rentals, and it was written to summarize and clarify the City's zoning regulations regarding these types of uses. The definition of dwelling unit is referenced in the memo, but the full definition is below for your reference.

Dwelling unit

A building or portion thereof providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. This use shall not be deemed to include such transient occupancies as hotels, motels, rooming or boarding houses.

Also attached is a letter from the City Attorney dated January 5, 2017 advising the property owners to meet with the Planning Department. No consultation with the Planning Department took place as a result of this letter. A letter will be forthcoming

from the Planning Director providing additional information on this matter in advance of meeting.

A bed and breakfast 1 is allowed by special exception in this district and would be limited to a maximum of 5 rooms. No other lodging use is allowed in the GRA district.

M E M O R A N D U M

TO: Planning Department
Legal Department

FROM: Rick Taintor, Planning Director *RT.*

DATE: August 1, 2016

RE: Administrative Policy Regarding Short-Term Rentals

The Zoning Ordinance definition of “dwelling unit” states, “This use shall not be deemed to include such transient occupancies as hotels, motels, rooming or boarding houses” (emphasis added). The City interprets this limitation to exclude short-term rental arrangements such as those arranged through Airbnb, HomeAway and VRBO. Thus, short-term rentals of dwelling units are not allowed by the City’s Zoning Ordinance except when specifically authorized as a bed and breakfast or inn.

The City has not enacted an ordinance defining a short-term rental so as to distinguish it from an allowed dwelling unit use. In the absence of such a definition, the following is hereby established as an administrative policy until replaced or revised by City ordinance or State law:

A short-term rental is the rental of a dwelling unit for occupancy for a period of less than 30 consecutive days, but does not include an authorized lodging use of a dwelling unit (such as a bed and breakfast or inn) that has received all required land use approvals.

The rental of a dwelling unit for 30 or more consecutive days, or a calendar month, will not be considered a short-term rental. A written agreement that defines the parties, describes the premises to be rented, and specifies a rental period of at least 30 consecutive days, or a calendar month, shall be evidence that the rental is not a short-term rental.



CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney – 603-610-7204 (Direct Dial)
Suzanne M. Woodland, Deputy City Attorney – 603-610-7240 (Direct Dial)
Kathleen M. Dwyer, Assistant City Attorney – 603-498-2126 (Direct Dial)
Jane M. Ferrini, Assistant City Attorney – 603-610-7256 (Direct Dial)

January 5, 2017

Matthew and Barbara Beebe
Beebe Matthew D Rev. Trust 2006
81 Lincoln Avenue
Portsmouth, NH 03801

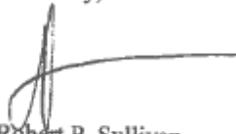
RE: 87 Lincoln Avenue

Dear Mr. and Mrs. Beebe:

The City has been advised by neighbors of your property at 87 Lincoln Avenue that you may be proposing to use it for some sort of commercial or short term rental purposes.

This will advise that such uses of property are regulated by the City and not permitted in every location. Therefore, it is my strong recommendation that before you would use the 87 Lincoln Avenue property for any purpose other than single family residential, that you contact the City's Planning Department to confirm that the proposed use would be permitted.

Sincerely,



Robert P. Sullivan
City Attorney

cc: Rick Taintor, Planning Director
Jason Page, Zoning Enforcement Officer

Municipal Complex

1 Junkins Avenue

Portsmouth, NH 03801

Case #10-2

Petitioners:	Todd A. Milne Revo Trust (50% INT), Todd A. Milne, applicant
Property:	315 Wibird Street
Assessor Plan:	Map 132, Lot 13
Zoning District:	General Residence A (GRA)
Description:	Enclose rear stairway and screened porch in accessory structure.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> 1. A Variance from Section 10.521 to allow a right side yard of 4' ± where 10' is required. 2. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

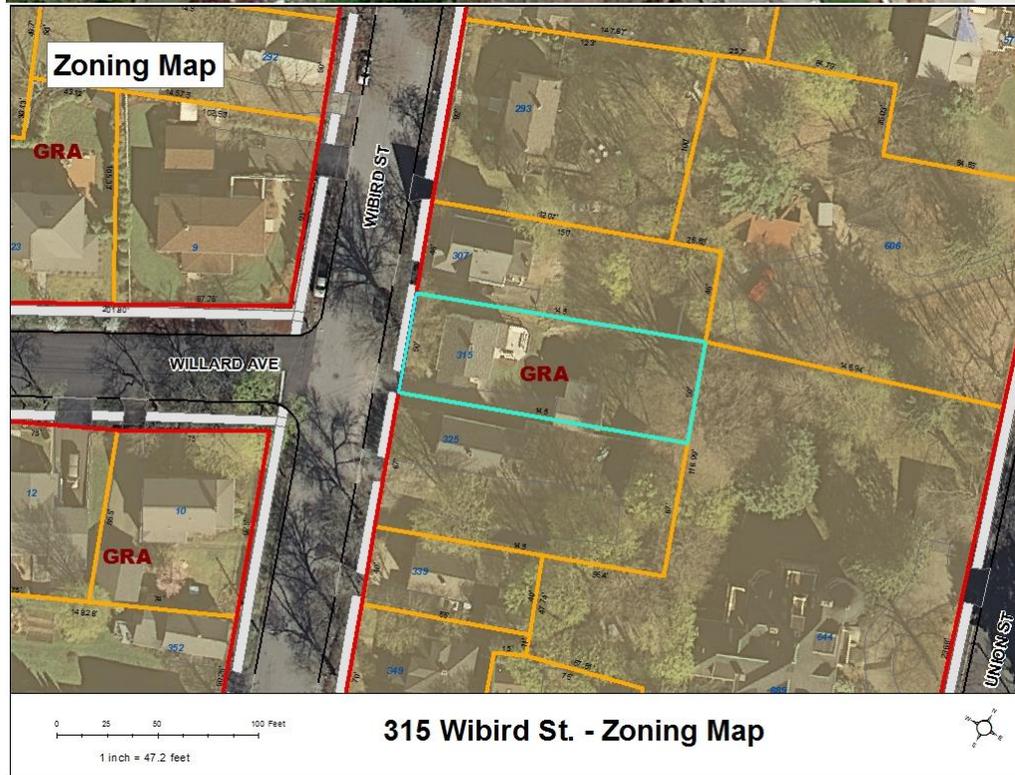
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Enclose stairs and screened porch in accessory structure	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	7,250	7,250	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,250	7,250	7,500 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.):</u>	145	145	70 min.
<u>Primary Front Yard (ft.):</u>	>15	>15	15 min.
<u>Right Yard (ft.):</u>	4	4	10 min.
<u>Left 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>	22	<25	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	0	ok	ok
<u>Estimated Age of Structure:</u>	1938	Variance request shown in red.	

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

September 18, 2012 – The Board **granted** variances to replace a rear addition and deck with a two-story addition allowing a left side yard setback of 5.8' where 10' was

required and a lawful nonconforming structure to be reconstructed or enlarged in a manner not in conformity with the Ordinance.

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 #10-3

Petitioners:	Juanita Lancaster (1/8 Int.) and Eddie, Devon, Darren, and Tiffany Thomas, owners, John Anastas and Gloria Esposito-Anastas, applicants
Property:	1079 Maplewood Avenue
Assessor Plan:	Map 219, Lot 49
Zoning District:	Single Residence B (SRB)
Description:	Replace existing structures with new construction of a single-family home and attached garage.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> 1. A Variance from Section 10.521 to allow the following: (a) a lot area and lot area per dwelling unit of 9,563'± where 15,000 s.f. is required; (b) continuous street frontage of 72'± on Maplewood Ave where 100' is required; and (c) a secondary front yard setback of 17.3'± where 30' is required. 2. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Demo existing and build new single-family	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	9,563	9,563	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,563	9,563	15,000 min.
<u>Street Frontage (ft.):</u>	72	72	100 min.
<u>Lot depth (ft.):</u>	138	138	100 min.
<u>Primary Front Yard (ft.):</u>	28	30	30 min.
<u>Right Yard (ft.):</u>	>10	>10	10 min.
<u>Secondary Front Yard (ft.):</u>	0	17.3	30 min.
<u>Rear Yard (ft.):</u>	30	>30	30 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>	2	2	2
<u>Estimated Age of Structure:</u>	2002	Variance request shown in red.	

Planning Department Comments

The applicant is proposing to demolish the existing structure and build a new single-family dwelling on a nonconforming lot, thus the request for relief from lot area, lot area per dwelling unit and frontage. Although the proposed dwelling will encroach into the secondary front yard, the placement is more conforming and in line with the current setbacks.

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 #10-4

Petitioners: Dovev Levine, owner and Dovev & Jannell Levin, applicants
 Property: 96 Woodlawn Circle
 Assessor Plan: Map 237, Lot 7
 Zoning District: Single Residence B (SRB)
 Description: Construct front portico and right side addition.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. A Variance from Section 10.521 to allow a) a primary front yard of 18'± where 30' is required and b) a 28'9" ± rear yard where 30' is required.
 2. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

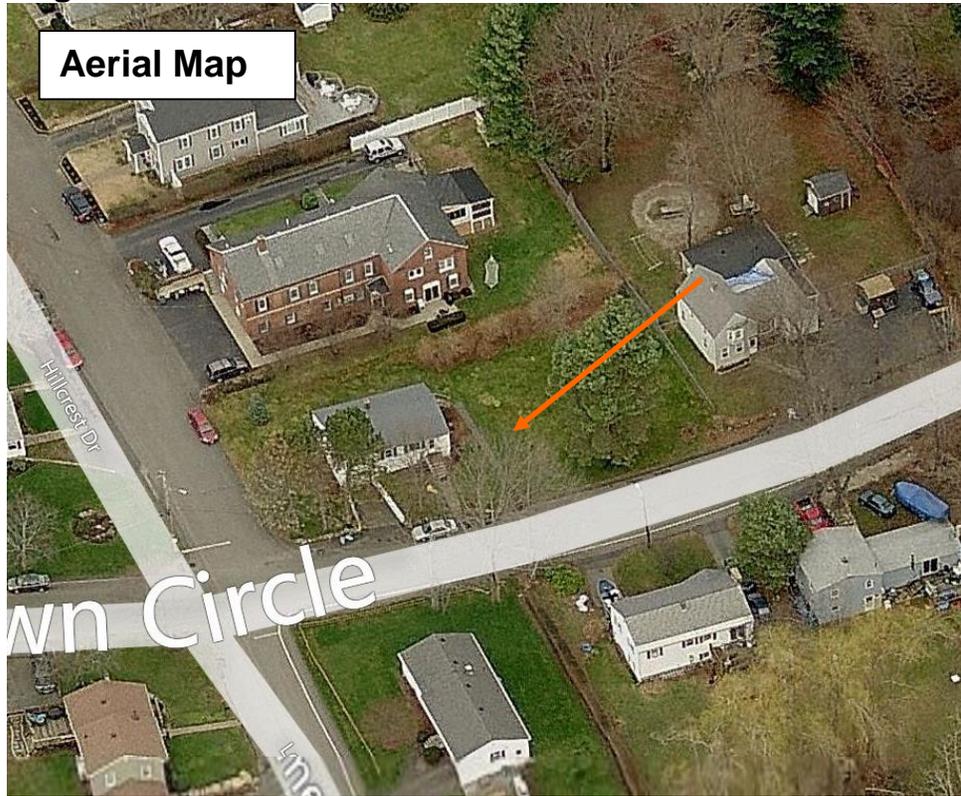
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Construct front portico and right side addition	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	12,196	12,196	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	12,196	12,196	15,000 min.
<u>Street Frontage (ft.):</u>	150	150	100 min.
<u>Lot depth (ft.):</u>	88.75	88.75	100 min.
<u>Primary Front Yard (ft.):</u>	18	18	30 min.
<u>Right Yard (ft.):</u>	70	65.6	10 min.
<u>Secondary Front Yard (ft.):</u>	13.2	13.2	30 min.
<u>Rear Yard (ft.):</u>	25.9	28.9	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	26.8	12.7	20 max.
<u>Open Space Coverage (%):</u>	59.7	59.7	30 min.
<u>Parking</u>	0	0	4
<u>Estimated Age of Structure:</u>	2002	Variance request shown in red.	

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

June 15, 2010 – The Board **granted** variances to allow the expansion of a nonconforming structure with a front yard setback of 19.6' where 30' was required and a rear yard setback of 23.9' where 30' 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.

Case #10-5

Petitioners:	Columbia Street Development LLC, owner, Revision Development, LLC, applicants
Property:	53 Columbia Street and Columbia Street (No address)
Assessor Plan:	Map 145, Lots 43 & 44
Zoning District:	General Residence C (GRC)
Description:	Merge two lots and build 8 unit dwelling.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> 1. A Special Exception under Section 10.440, Use #1.52 to allow eight dwelling units on a property where they are allowed by special exception. 2. A Variance from Section 10.521 to allow a) a lot area per dwelling unit of 1,289 s.f. where 3,500 s.f. is required; and b) 44.4% building coverage where 35% is the maximum allowed.

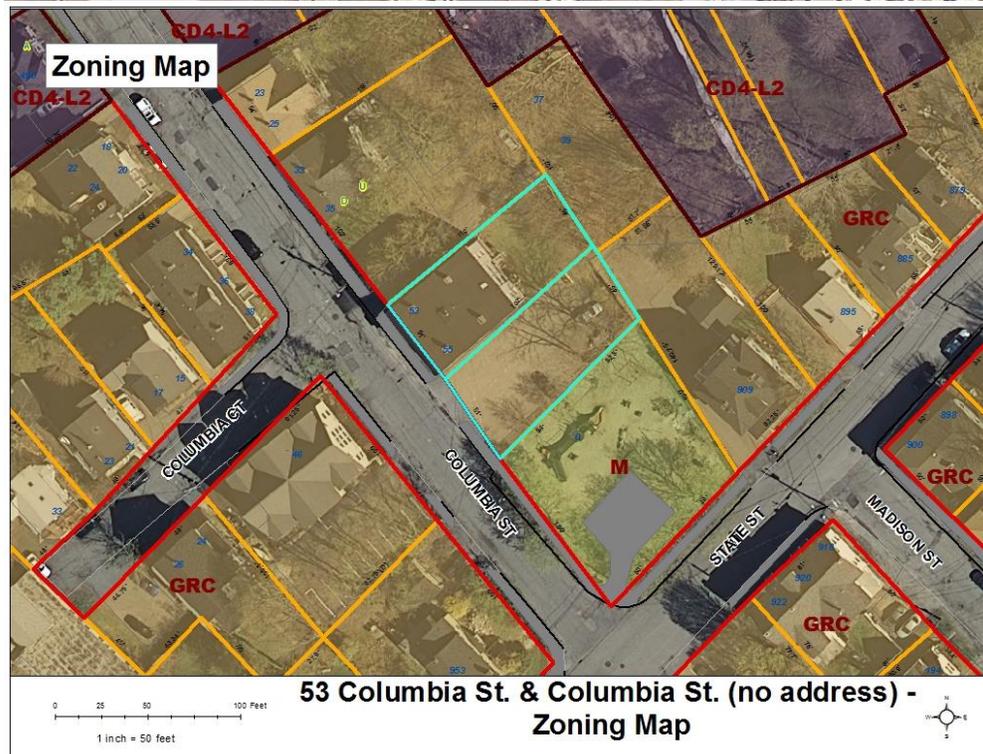
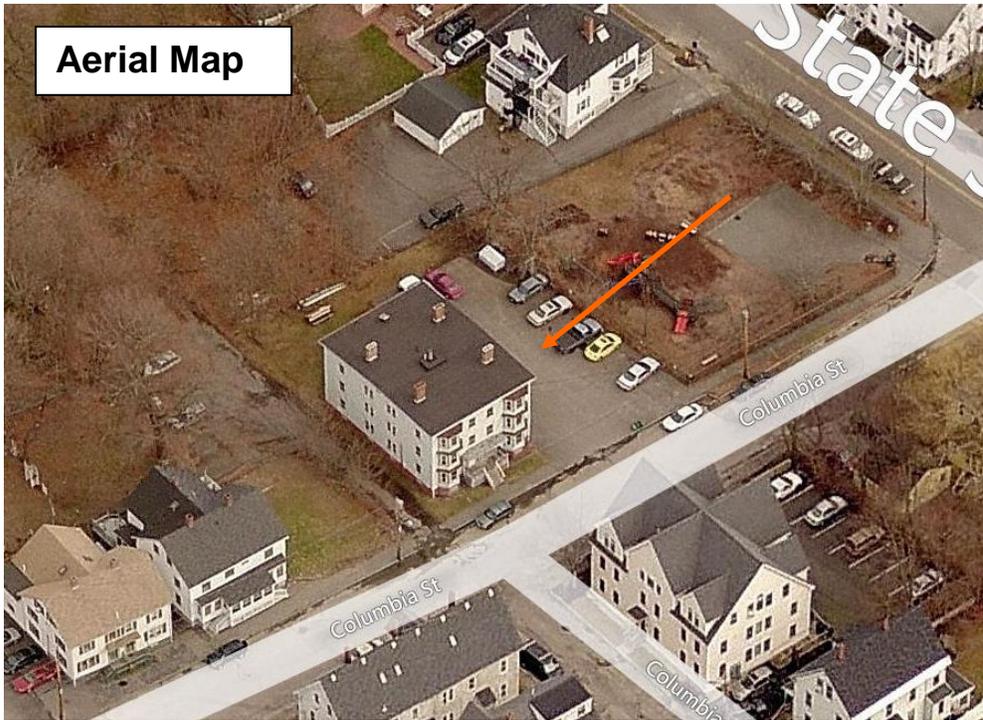
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Twelve unit dwelling	Eight unit dwelling	Primarily multi-family Residential Uses
<u>Lot area (sq. ft.):</u>	5,259 (Lot 1) 5,058 (Lot 2)	10,317	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	438 (Lot 1) 5,058 (Lot 2)	1,289	3,500 min.
<u>Street Frontage (ft.):</u>	51.67 (Lot 1) 50.65 (lot 2)	102	70 min.
<u>Lot depth (ft.):</u>	105	105	50 min.
<u>Primary Front Yard (ft.):</u>	3.6	6	5 min.
<u>Right Yard (ft.):</u>	2	>10	10 min.
<u>Left Yard (ft.):</u>	4.7	11.5	10 min.
<u>Rear Yard (ft.):</u>	43	22	20 min.
<u>Height (ft.):</u>	38	<35	35 max.
<u>Building Coverage (%):</u>		44.4	35 max.
<u>Open Space Coverage (%):</u>	29	23	20 min.
<u>Parking</u>		14	13
		Variance request shown in red.	

Other Permits Required

Site Plan Review – Planning Board.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The current building consists of 12 dwelling units on Lot 1 and the parking area on Lot 2. The current zoning ordinance does not permit parking as a principal use on a lot. The applicant is proposing to merge the two lots, provide fewer dwelling units (from 12 down to 8), and accommodate most of the parking in the rear of the lot and underneath the back of the proposed building.

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.

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.*

Case #10-6

Petitioners: High Liner Foods Inc.
Property: 1 High Liner Avenue
Assessor Plan: Map 259, Lot 14
Zoning District: Industrial (I)
Description: Replace and reface wall signs.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.1251.20 to allow a 600 s.f. wall sign where 100 s.f. is the maximum allowed for a wall sign;
2. A Variance from Section 10.1271.20 to allow a wall sign on a façade not facing a street and with no public entrance; and
3. A Variance from Section 10.1251 to allow a wall sign with no aggregate sign area available.

Existing & Proposed Conditions

See attached sign permit.

Other Permits Required

None.

Neighborhood Context





Previous Board of Adjustment Actions

February 23, 1988 – The Board **failed to pass a motion to grant (thus denying)** a variance to allow the following: 1) a 16 s.f. freestanding sign for a total of 1,554 s.f. of aggregate sign area where a maximum of 200 s.f. was allowed; and 2) 1,339 s.f. of attached sign area where a maximum of 200 s.f. was allowed.

April 19, 1997 – the Board **granted** variances to allow the following: a) 2 loading berths where 11 were required; b) 2 loading berths to be located in the front yard where they were only allowed in the side and rear yards; and c) 250 parking spaces to be provided for the National Sea building after the lot was subdivided where 295 were required for the new lot to be created.

October 2, 2009 – The Board **granted** a special exception to allow the expansion (by 400 s.f.) of food processing operations including those involving the preparation of sea related products.

February 15, 2011 – The Board **granted** a special exception to allow the expansion of a seafood processing facility in the Industrial District by adding 4,493 s.f. to the existing maintenance building and 3,200 s.f. to the existing office space.

July 17, 2012 – The Board **granted** a special exception to allow the expansion of a seafood processing facility in the Industrial District with 4,493 s.f. and 3,200 s.f. rear additions. (Note: The permit for the February 15, 2011 meeting request lapsed and the applicant failed to request an extension within the (then) one-year period.)

Planning Department Comments

The side of the building facing Interstate 95 does not have a public entrance and it does not face a street. As a result, this side of the building cannot be used for signage nor can any excess aggregate from the building fronts facing Borthwick or High Liner be allocated for signage on that side of the building.

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.