

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: July 10, 2018
RE: Zoning Board of Adjustment July 17, 2018 Meeting

OLD BUSINESS

1. 75 Congress

NEW BUSINESS

1. 160-170 Union Street - Rehearing
2. 1465 Woodbury Avenue
3. 17 Fields Road
4. 1000 Lafayette Road
5. 50 Sunset Road

THE FOLLOWING PETITIONS WILL BE HEARD ON TUESDAY, JULY 24, 2018

6. 120 Spaulding Turnpike
7. 254 South Street
8. 115 Heritage Avenue
9. 86 Thornton Street
10. 130 Pine Street
11. 122 Essex Avenue
12. 869 Woodbury Avenue
13. 893 Woodbury Avenue
14. 206 Court Street

OLD BUSINESS

Case #5-9

Petitioners:	Michael De La Cruz
Property:	75 Congress Street
Assessor Plan:	Map 117, Lot 5
Zoning Districts:	Character District 5, Downtown Overlay District (DOD), Historic District (HD)
Description:	Basement parking.
Requests:	Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance: 1. A Variance from Section 10.1114.20 to allow the following: a) eight parking spaces with less than the required dimensions and b) a 12'± wide maneuvering aisle where 14' is required.

Existing & Proposed Conditions

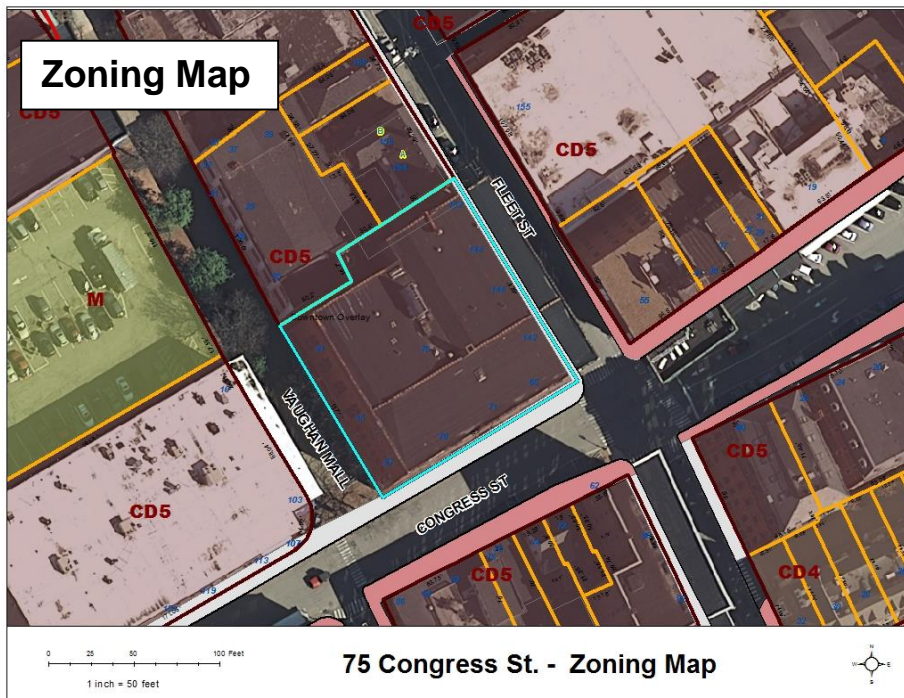
See submission from applicant showing dimensions and layout of proposed parking area.

Other Permits Required

TAC, Planning Board – Site Review

Neighborhood Context





Previous Board of Adjustment Actions

February 28, 1984 – The Board **granted** a special exception to permit the elimination of required parking.

August 30, 1988 – The Board **determined**, as required by the Zoning Ordinance, that the number of parking spaces required for Antioch College of N. E. was 1 space for every 4 students and 1 space for each professor/teacher.

December 13, 1988 – The Board **granted** a request for a school not to exceed four classrooms.

July 18, 2006 – the Board **tabled** to August an Appeal of an Administrative Decision of the Code Official involving the interpretation of the Ordinance as requiring a variance to allow the continuance of an existing 10' wide accessway to a below grade parking garage to continue where a 24' wide accessway was required for a two-way accessway.

August 22, 2006 – The Board **failed to pass** a motion to grant the Appeal so the Appeal was **denied**.

April 26, 2016 – The Board **postponed** a request to construct five residential use dormers and one office dormer with walkways and decks and to restore pediments and allow the following building heights where the maximum allowed are 40' for a 2-3 story height requirement area and 45' for a 2-3 story (short 4th) height requirement area: 62'11" for the proposed pediments, 65'6" for the proposed office dormer, and 58'11" for the proposed residential dormers.

May 17, 2016 – The Board **postponed** the petition to the June meeting so that additional information requested to the Board could be provided. The requested building

heights were revised as follows: 62'11" for the proposed pediments (no change), 64'6" (a change) for the proposed office dormer, and 60'5" (a change) for the proposed residential dormers.

June 21, 2016 – The Board **postponed** the pending petition to the July meeting with a final revision to the requested building heights as follows: 62'11" for the proposed pediments (no change), 64'6" for the proposed flat roofed office dormer onto existing sloped roof, and 60'5" for the proposed residential dormers.

July 19, 2016 – The Board **granted** the petition with these final building heights: a) 62'11" for the proposed pediments (no change); b) 65'11" for the proposed flat roofed office dormer onto existing sloped roof (a change); and c) 58'11" for the proposed residential dormers (a change).

December 19, 2017 – A petition to construct 15 residential units with no off-street parking spaces to be provided where off-street parking spaces are required was **withdrawn**.

February 27, 2018 – The Board **granted** a variance to allow no off-street parking spaces to be provided where off-street parking spaces were required for the construction of 15 residential units.

Planning Department Comments

The applicant was granted a variance on February 27, 2018 to provide no off-street parking for the additional residential units, resulting in no parking requirements for this property. It seems difficult to identify a hardship for relief from the dimensional requirements for the parking spaces that are proposed because of the recent variance granted earlier this year. It appears that fewer spaces could be created that comply with the dimensional standards in the ordinance. If approved, this will go through site review with TAC and the Planning Board. The Board may refer this to TAC prior to making a decision if needed.

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 #7-1

Petitioners:	LCSG LLC, applicant
Property:	160 & 168-170 Union Street
Assessor Plan:	Map 135, Lots 29 & 30
Zoning District:	General Residence C (GRC)
Description:	Merge two lots into one with four dwelling units in three buildings.
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 per dwelling unit of 2,363± s.f. where 3,500 s.f. is required; b) a right side yard setback of 5'± where 10' is required; c) a left side yard setback of 5'4"± where 10' is required; and d) a rear yard setback of 10'± where 20' 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.

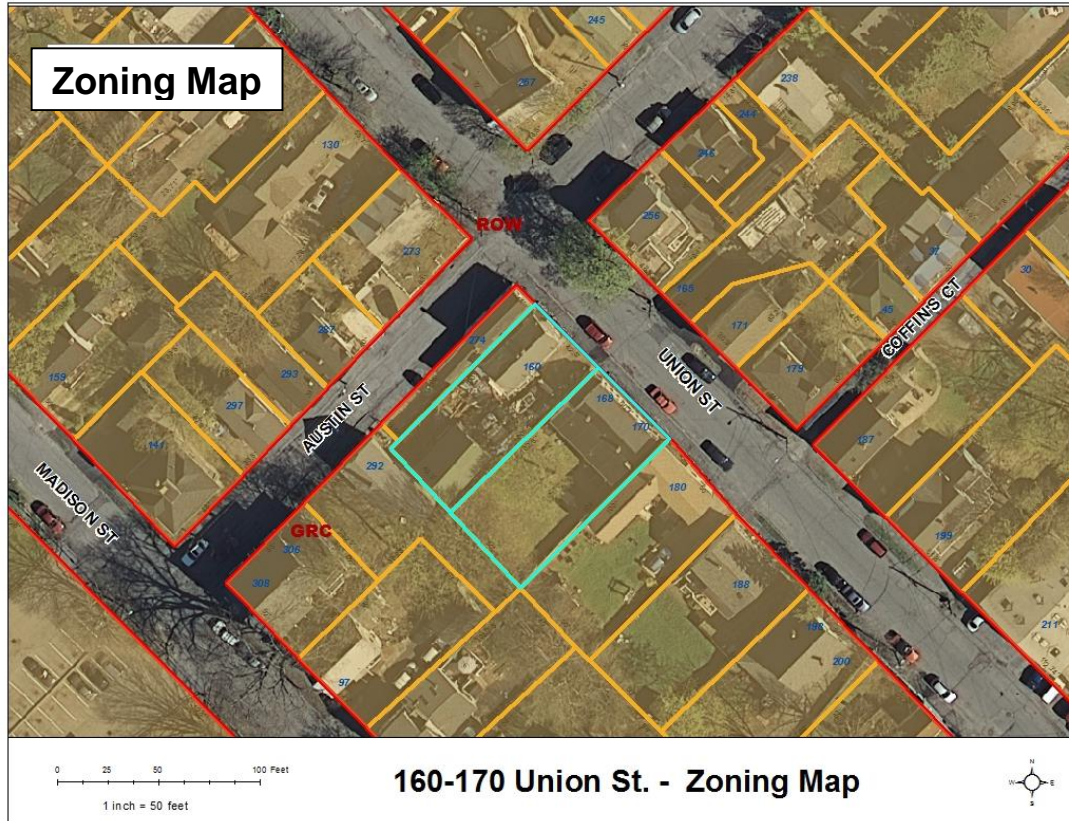
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family/duplex	Merge lots with four dwellings	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>		9,452	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>		2,363	3,500
<u>Street Frontage (ft.):</u>	42.5/50.7	93.2	70 min.
<u>Lot depth (ft.):</u>	100	102	50 min.
<u>Primary Front Yard (ft.):</u>	1'3"	1'3"	5 min.
<u>Right Side Yard (ft.):</u>	3	5	10 min.
<u>Left Yard (ft.):</u>	5'4"	5'4"	10 min.
<u>Rear Yard (ft.):</u>	3'6"	10'	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>		34	35 max.
<u>Open Space Coverage (%):</u>		30	20 min.
		Variance request shown in red.	

Other Permits Required

Planning Board – Site Review

Neighborhood Context



Previous Board of Adjustment Actions

November 22, 2016 – The Board **denied** a petition to allow the following: a) 10 dwelling units where 8 dwelling units were the maximum allowed; b) 945 s.f. lot area per dwelling unit where 3,500 s.f. was required; c) 15 off-street parking spaces to be provided for 10 residential units where 16 were required; d) off-street parking spaces with dimensions of 8.1' x 18' where 8.5' x 19' were required; and e) a 22' wide maneuvering aisle where 24' was required.

February 21, 2017 – The Board **denied** a petition to construct two (2) three-unit dwellings on a combined lot requiring the following variances: a) a lot area per dwelling unit of 1,575 s.f. where 3,500 s.f. was required; 15.3% open space where 20% was required; and ten off-street parking spaces to be provided where 12 spaces were required.

March 20, 2018 – The Board failed to pass and thus **denied** a request to merge two lots into one with four dwelling units.

May 15, 2018 – The Board **tabled** to the May 22, 2018 meeting a request for rehearing regarding the property.

May 22, 2018 – The Board voted to **postpone** consideration of the request to the June meeting. The request was made by the applicant with only five members scheduled to sit on the petition.

June 19, 2018 – The Board **granted** a rehearing to be held at the regular July meeting.

Planning Department Comments

The Application for 160-170 Union was denied (3-3 vote) at the March 20, 2018 meeting. The applicant filed a request for a rehearing within 30 days of the Board's decision and a rehearing was granted at the June meeting.

The applicant has provided revised drawings and a narrative. The proposed rear yard was 8'6" and is now proposed to be 10'.

The proposed front yard setback is permitted per Section **10.516.10 Front Yard Exception for Existing Alignments**.

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 #7-2

Petitioners:	Bromley Portsmouth LLC, RCQ Portsmouth LLC c/o Quincy & Co. Inc.
Property:	1465 Woodbury Avenue
Assessor Plan:	Map 216, Lot 3
Zoning District:	Gateway 1 (G1)
Description:	Wall Signage
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <p>1. A Variance from Section 10.1251.20 to allow 246± s.f. of wall signs where 200 s.f. is the maximum allowed. (<i>Actual relief needed is 230.7 s.f. for proposed Sign A.</i>)</p>

Existing & Proposed Conditions

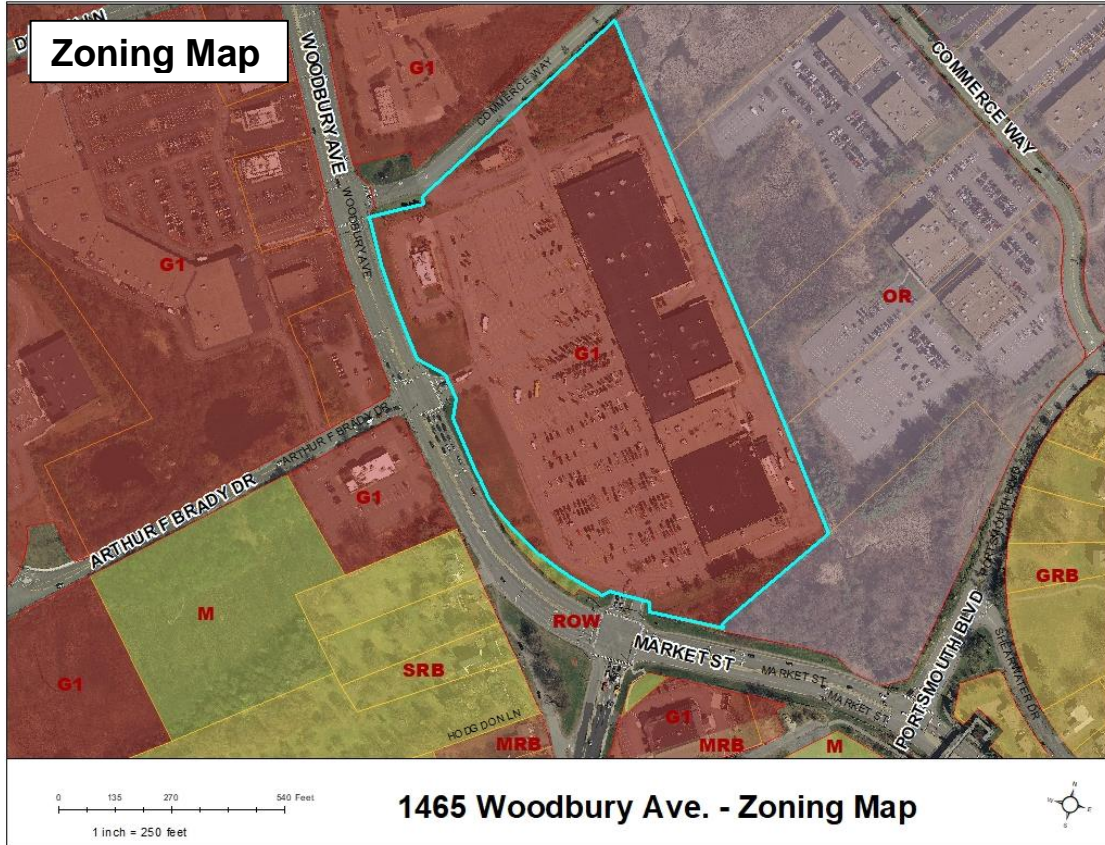
Renovations are underway to divide the old Kmart space into two units. One of the units will be occupied by Burlington Coat.

<u>Sign District 4</u>	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
Wall Sign A	none	230.7	200 s.f. max
Wall Sign B	none	16	
Aggregate sign area = 1.5 x 199'11" (building frontage)		246	299'10.5"
<u>Estimated Age of Structure:</u> 1976		Variance request shown in red.	

Other Permits Required

Administrative Approval for site plan amendments.

Neighborhood Context



Previous Board of Adjustment Actions

(For the overall shopping center which included K-Mart Plaza. Other petitions, not included here, were regarding signage for other parts of the plaza, use of the schoolhouse and for a fuel alcohol plant)

September 17, 2002 – The Board **tabled** a request to allow 917 parking spaces to be provided where 1,057 were required for the multi-purpose shopping center.

October 15, 2002 – The Board **granted** a request to **table indefinitely** the above request.

Planning Department Comments

The aggregate sign area for this building is approximately 300 square feet. The maximum area of a wall sign in this sign district is 200 square feet. Proposed Sign A is 230.7 s.f. and Sign B is 16 s.f. The variance needed is for **the large sign only** (230.7), as the two signs together add up to less than the allowable sign aggregate for the building. The legal add noted 246 square feet, and if granted approval, the Board should state the approval is for a 230.7 s.f. wall sign.

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 #7-3

Petitioners:	Byron D. & Sophie M. Matto
Property:	17 Fields Road
Assessor Plan:	Map 170, Lot 8
Zoning District:	Single Residence B (SRB)
Description:	Add second story addition.
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. Variations from Section 10.521 a) a front yard of 17'11"± where 30' is required; b) a right side yard of 3'11"± where 10' is required; and c) 25.5 % building coverage where 20% is the maximum allowed. 2. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

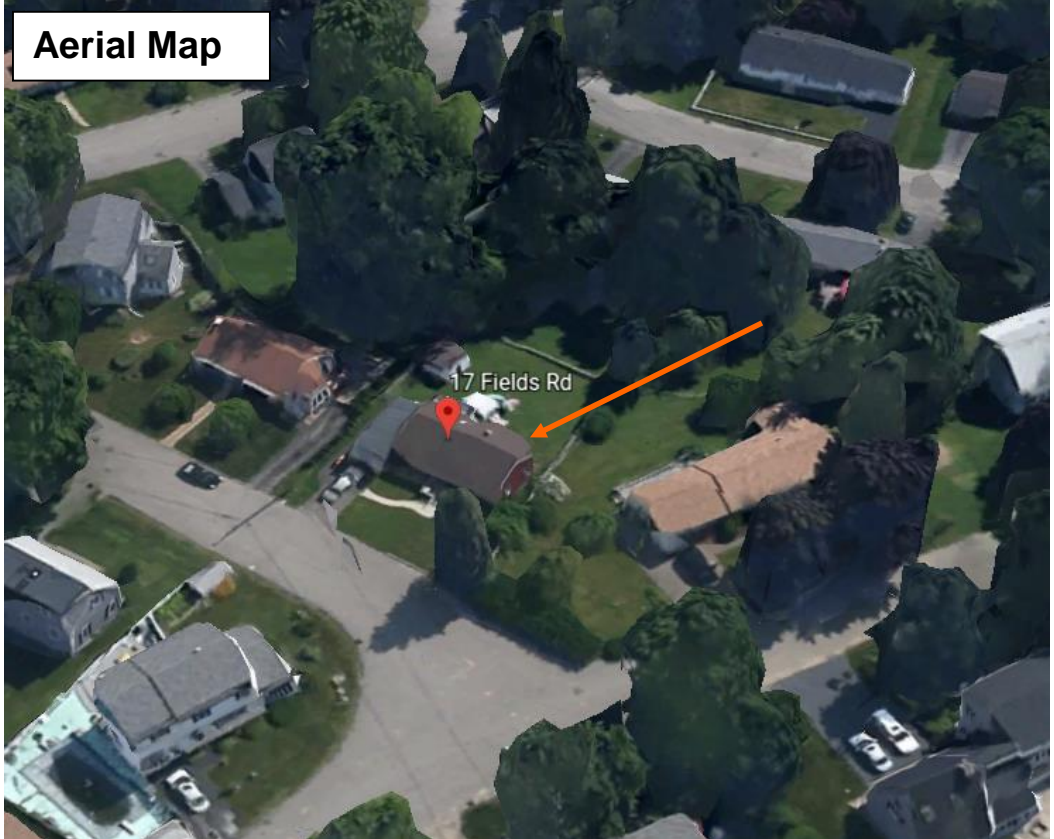
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Second -story addition	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	6,970	6,970	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,970	6,970	15,000 min.
<u>Street Frontage (ft.):</u>	74.3	74.3	100 min.
<u>Lot depth (ft.):</u>	106	106	100 min.
<u>Primary Front Yard (ft.):</u>	17'11"	17'11"	30 min.
<u>Right Yard (ft.):</u>	3'11"	3'11"	10 min.
<u>Left Yard (ft.):</u>	10	10	10 min.
<u>Rear Yard (ft.):</u>	52	46'6"	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>		25.5	20 max.
<u>Open Space Coverage (%):</u>		83	40 min.
<u>Parking</u>	Ok	ok	
<u>Estimated Age of Structure:</u>	1955	Variance request shown in red.	

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA 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 #7-4

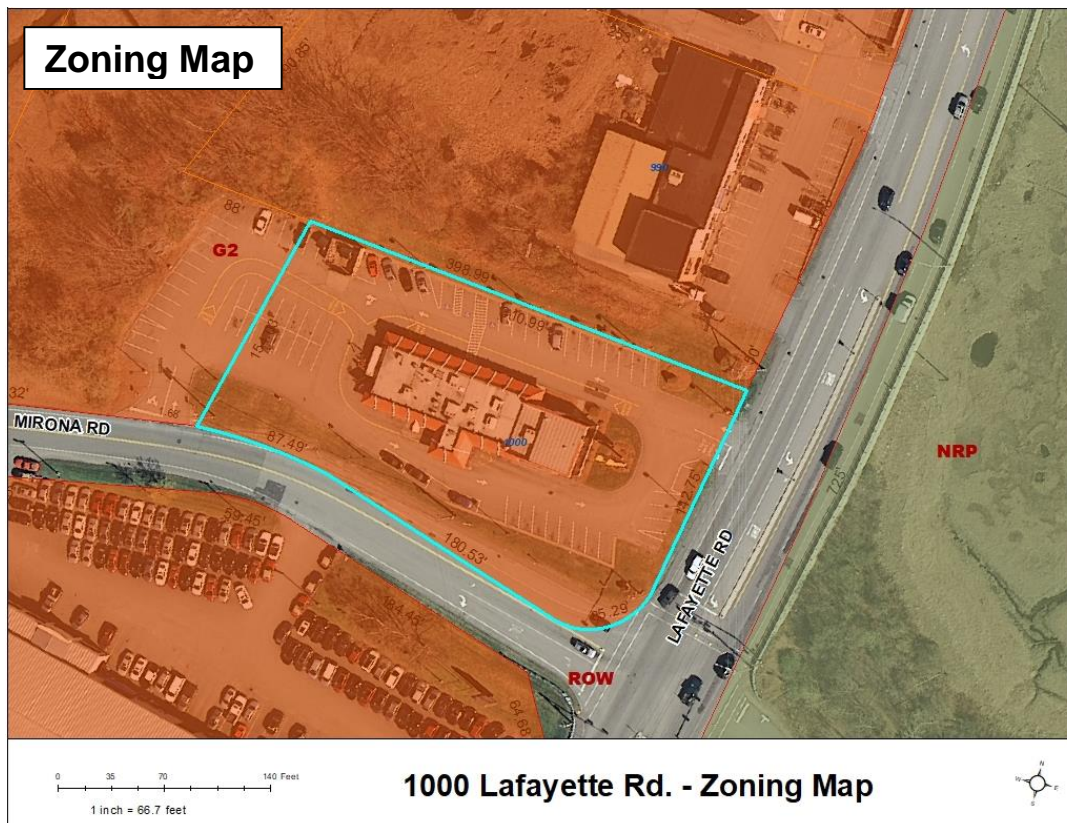
Petitioners: McDonalds Corporation c/o The Napoli Group
Property: 1000 Lafayette Road
Assessor Plan: Map 253, Lot 12
Zoning District: Gateway 2 (G2)
Description: Signage.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. Variance from Section 10.1223.10 to allow animated signs where they are not allowed.
2. A Variance from Section 10.835.22 to allow illuminated menu boards or other signs associated with the drive-through facility that are not shielded from public streets and residential properties.

Other Permits Required

Administrative Approval for site plan amendments.

Neighborhood Context





Previous Board of Adjustment Actions

March 22, 1971 – Application received for a McDonalds on the corner of Lafayette and Mirona Road requesting parking for 69 vehicles where 30 were allowed and a sign 40' from the property line.

April 2, 1971 - A Public Notice issued April 2 for the meeting indicated a request for a sign 58' from the property line.

April 7, 1971 – Letter received from the State Department of Public Works detailing **potential problems with 69 vehicles. No further correspondence or indication of action regarding this item.**

April 12, 1971 – The request for a **sign was withdrawn** with an indication that applicant would comply with ordinance.

June 28, 1983 (as McDonalds on Lafayette Road) – The Board **granted** a variance to allow an accessory use, a child's playground and picnic area, in a required front yard where an accessory use is not permitted. The variance was granted with the condition that proper fencing be provided.

June 30, 1987 (as 1000 Lafayette Road) – The Board **denied** a request to (a) permit the reestablishment of 59 parking spaces where 62 parking spaces were required; (b) allow a maximum aggregate sign area of 435 s.f. where a maximum of 200 s.f. was allowed; and (c) to permit the relocation of the free-standing sign to a 0' front yard where 35' was required.

July 18, 1995 – The Board **granted** variances to allow the following: (a) a 35'4" x 41'9" building addition to enclose the existing play area and provide additional interior seating with a 72'6" front yard where 105' was required; and (b) 70 parking spaces where 72 parking spaces were 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.*
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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 #7-5

Petitioners:	Emily H. Foster for Patricia A. Wallace Revocable Trust, Patricia A. Wallace, Trustee
Property:	50 Sunset Road
Assessor Plan:	Map 153, Lot 13
Zoning District:	Single Residence B (SRB)
Description:	Install 8'x8' shed.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <p>1. A Variance from Section 10.573 to allow a shed with a 0'± right yard where 5' is required.</p>

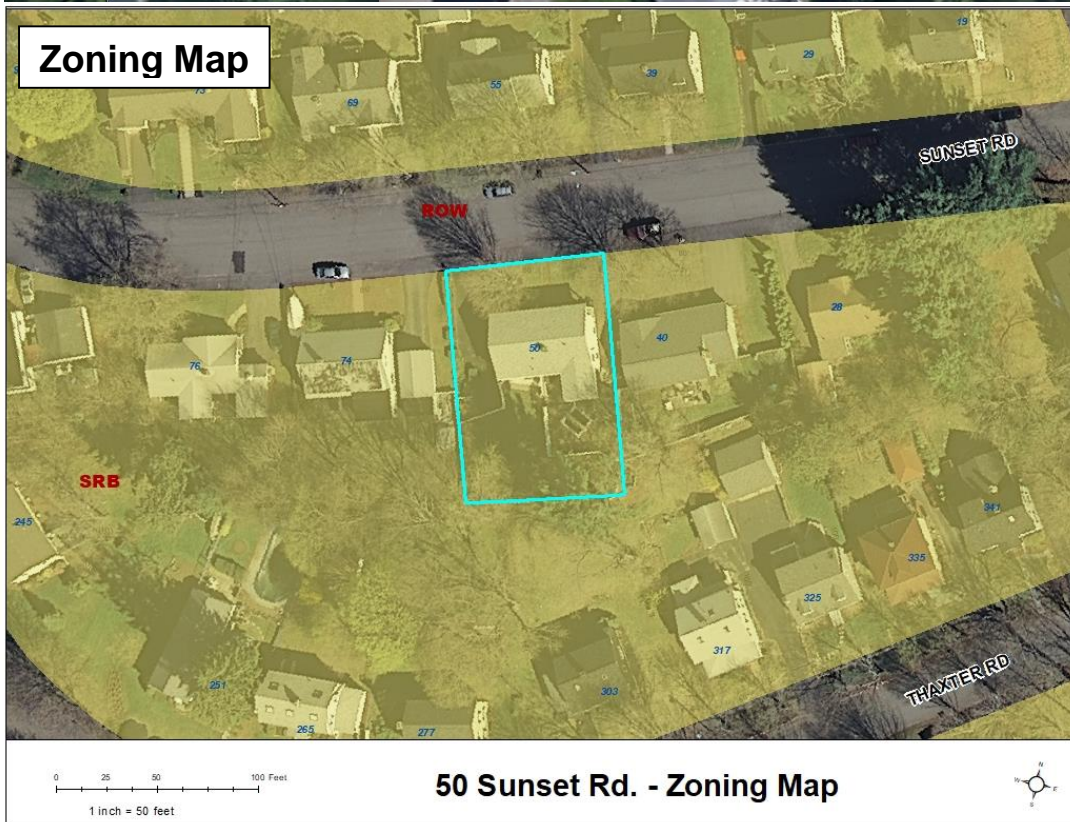
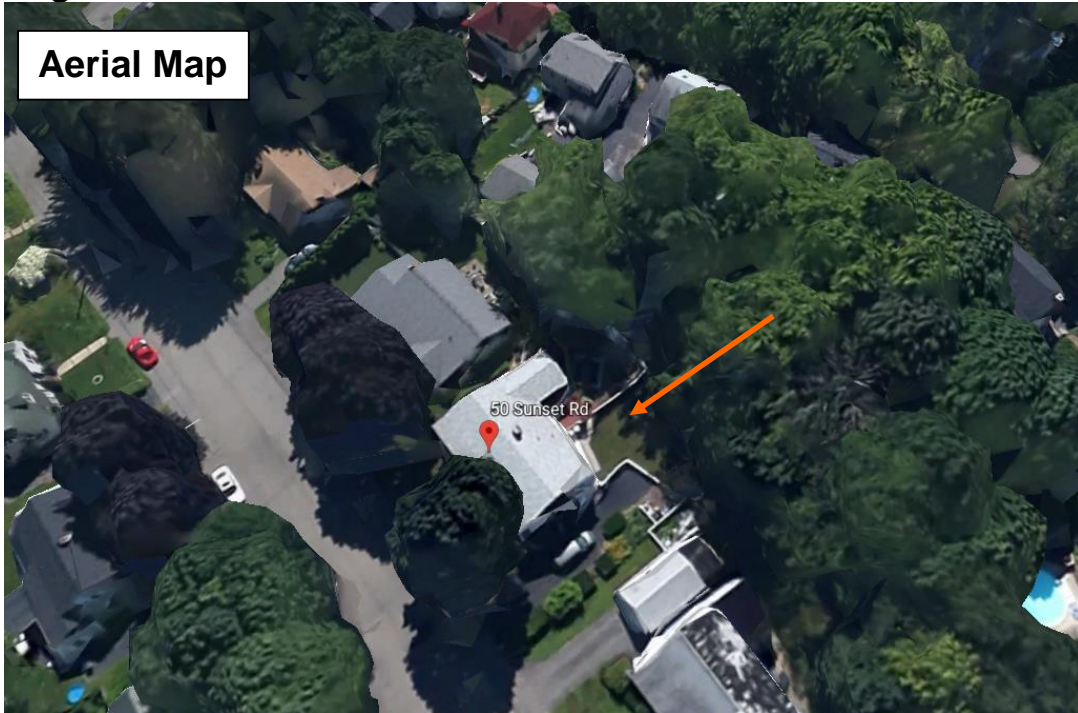
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Rear addition	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	9,583	9,583	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,583	9,583	15,000 min.
<u>Street Frontage (ft.):</u>	89	89	100 min.
<u>Lot depth (ft.):</u>	117	117	100 min.
<u>Primary Front Yard (ft.):</u>	25	>30	30 min.
<u>Right Yard (ft.):</u>	24	0	5 (for shed) min.
<u>Left Yard (ft.):</u>	4	>10	5 (for shed) min.
<u>Rear Yard (ft.):</u>	46	>5	5 (for shed) min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	18.5	19	20 max.
<u>Open Space Coverage (%):</u>	39	30	40 min.
<u>Parking</u>	ok	ok	ok
<u>Estimated Age of Structure:</u>	1958	Variance request shown in red.	

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

A shed of this size requires a 5' setback from the property line. The applicant is proposing to place it on the property line, or as close as 6-10". It appears there is space to set the shed off of the property line a couple feet before it slopes towards the front.

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.