

TO: Zoning Board of Adjustment  
FROM: Peter Stith, AICP, Planning Department  
DATE: November 16, 2018  
RE: Zoning Board of Adjustment November 20, 2018 Meeting

## **OLD BUSINESS**

1. 127 & 137 High Street – Request for Rehearing

## **NEW BUSINESS**

1. Case 11-1 137 Wibird Street
2. Case 11-2 442 & 444 Middle Street
3. Case 11-3 145 Lang Road
4. Case 11-4 55 Lafayette Road
5. Case 11-5 428 Hanover Street
6. Case 11-6 65 Fields Road
7. Case 11-7 746 Middle Road
8. Case 11-8 Gosling Road (40 Wedgewood)

## OLD BUSINESS

### Case #9-1

Petitioners:	Colonial Dames of America
Property:	127 & 137 High Street
Assessor Plan:	Map 118, Lots 20 & 21
Zoning District:	Character District 4-L1, Downtown Overlay District, Historic District
Description:	Request for Rehearing
Requests:	A request for Rehearing has been made pursuant to RSA 677:2.

#### **Planning Department Comments**

On October 16, 2018, the Board granted variances for the property referenced above. The abutter's have 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.

## NEW BUSINESS

### Case #11-1

Petitioners:	Ryan and Karen Baker
Property:	137 Wibird Street
Assessor Plan:	Map 134, Lot 48
Zoning District:	General Residence A (GRA)
Description:	Attached single car garage.
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 10.521 to allow the following: a) a 0'± left side yard where 10' is required; and b) 27% building coverage where 25% is the maximum allowed.</p>

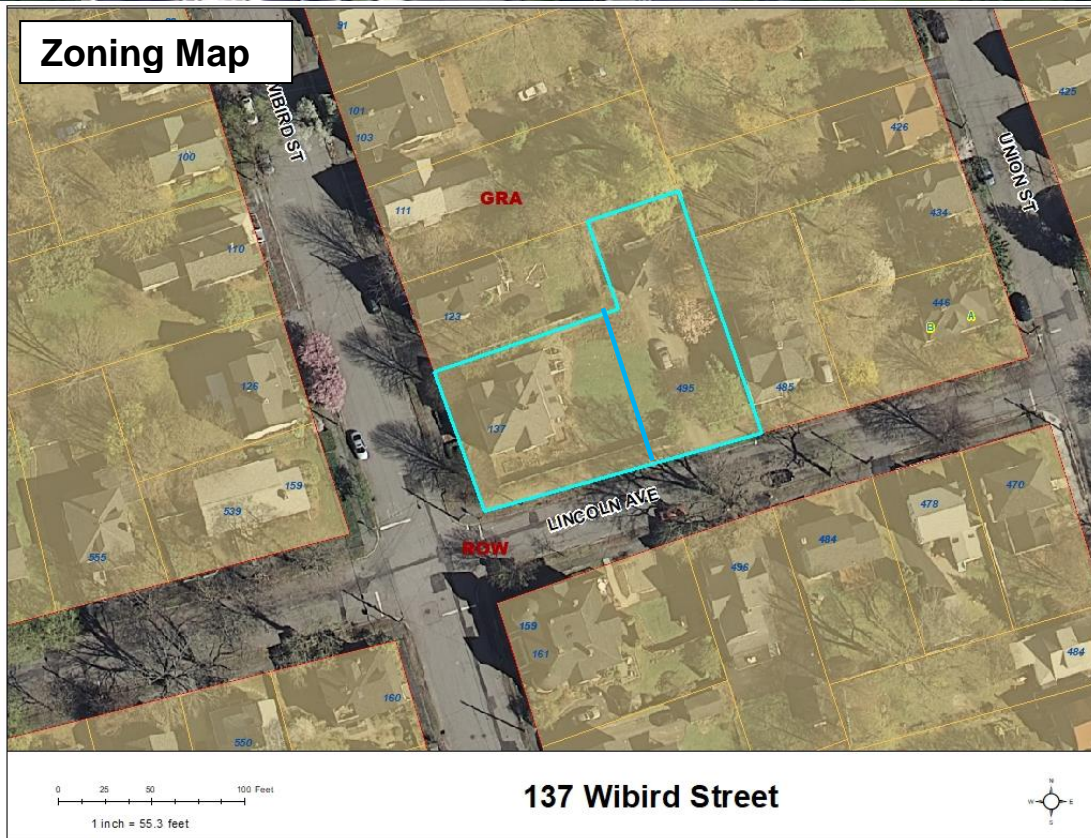
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Single Family	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	9,583.20	9,583.20	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,583.20	9,583.20	7,500 min.
<u>Street Frontage (ft.):</u>	103	103	100 min.
<u>Lot depth (ft.):</u>	>70	>70	70 min.
<u>Primary Front Yard (ft.):</u>	>15	20 (garage)	15 min.
<u>Secondary Front Yard (ft.):</u>	>15	>15	15 min.
<u>Left Yard (ft.):</u>	12.9' ±	<b>0</b>	10 min.
<u>Rear Yard (ft.):</u>	>20	>20	20 min.
<u>Height (ft.):</u>	<35	13	35 max.
<u>Building Coverage (%):</u>	24	<b>27</b>	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Estimated Age of Structure:</u>	1902	<b>Variance request shown in red.</b>	

### Other Permits Required

None.

# Neighborhood Context



## **Previous Board of Adjustment Actions**

August 16, 2016 – The Board **granted** variances to subdivide one lot into two with Parcel B having 58.85' of continuous street frontage and containing an accessory structure as a principal use.

## **Planning Department Comments**

This property was recently subdivided as noted in the history above and a new single family home was constructed on the new lot. Prior to the subdivision, the driveway was on Lincoln Avenue and it led to a garage that has since been removed and replaced with a new single family home. The new driveway is off of Wibird Street and located along the left property line. The images below are from the subdivision file, the first showing the property prior to being subdivided, with the driveway off Lincoln Ave. The second image shows the existing conditions and the new driveway off Wibird Street.

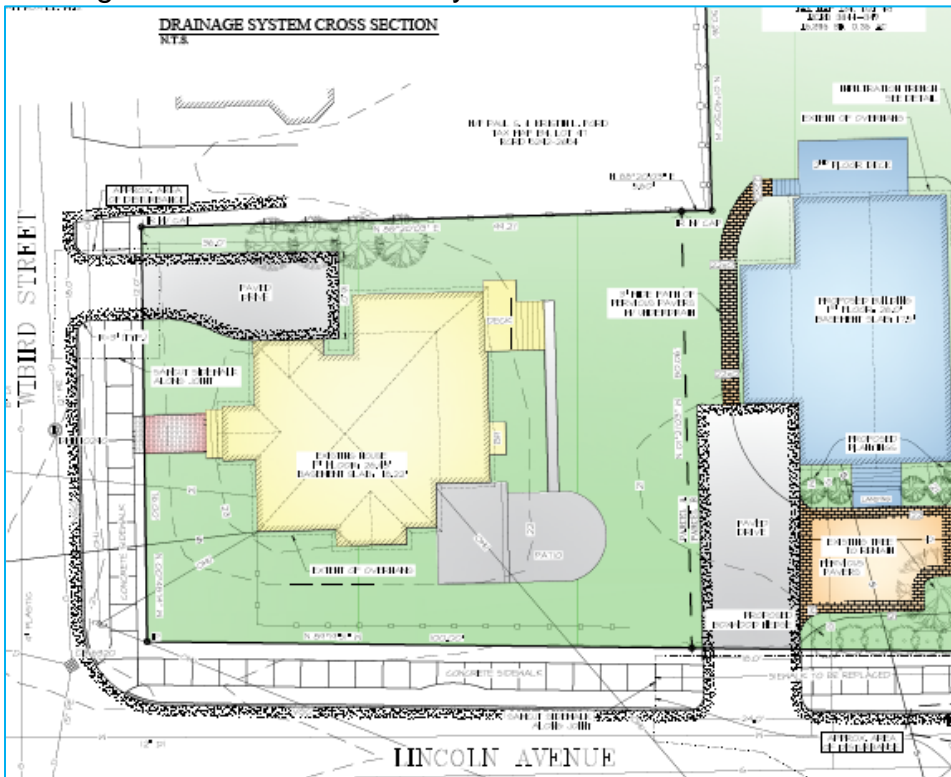
If the Board grants a 0' left yard, staff recommends a condition that the applicant gets permission from the direct abutter to construct the garage. It appears there is more than 12 feet between the existing house and property line and the Board could grant less relief than a 0' setback and the applicant could still build the proposed garage. As built surveys are typically required for projects such as these and in certain cases in the past, have resulted in applicants having to come back before the Board because of either not having a survey or inaccuracies in measuring. The Board could condition the approval that the garage be at least 9" from the property line. In addition, staff recommends the Board consider conditioning approval +/- 0.5% for the building coverage.



Conditions prior to subdivision:



Existing conditions with driveway off of Wibird Street:



## **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 #11-2

Petitioners:	Potter-Schwartz Family Revocable Trust, Michael Schwartz and Sharon Potter, Trustees
Property:	442/444 Middle Street
Assessor Plan:	Map 135, Lot 44
Zoning District:	Mixed Residential Office (MRO)
Description:	Vehicular circulation for office use.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.1114.32 to allow the following: a) to allow vehicles to enter and leave a parking space by passing over any other parking space or requiring the moving of another vehicle; and b) to allow vehicles to enter and leave the parking area by backing into or from a public street or way.

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two-family	Office space	Primarily mixed uses
<u>Lot area (sq. ft.):</u>	6,098	6,098	7,500 min.
<u>Parking spaces:</u>	ok	4 (for office use)	4 min.
<u>Age of structure</u>	1840		

### Other Permits/Approvals Required

None.



# Neighborhood Context



## Previous Board of Adjustment Actions

No BOA history found.

## Planning Department Comments

Only one and two-family dwellings can have stacked parking and/or back out into a public street or way. The proposed use is changing from a dwelling unit into an office. There is a long driveway with a one car garage at the end of it. The applicant has submitted a sketch showing four conforming spaces can be provided, however they will be stacked and have to back into the street or into the driveway from the street in order to park.

## 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 #11-3

Petitioners:	Arbor View and The Pines LLC c/o Forest Properties Management Inc.
Property:	145 Lang Road
Assessor Plan:	Map 287, Lot 1
Zoning District:	Garden Apartment/Mobile Home Park District (GA/MH)
Description:	Construct two additional apartment buildings increasing total dwelling units to 186.
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"> <li>1. A Variance from Section 10.521 to allow a lot area per dwelling of 8,321± s.f. where 10,000 s.f. is required.</li> <li>2. A Variance from Section 10.522 to allow two new multifamily buildings with a maximum building length exceeding 160 feet.</li> </ol>

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	5 apartment buildings	Two additional apartment buildings	Primarily apartments and mobile homes
<u>Lot area (sq. ft.):</u> 0	1,547,700	1,547,700	217,800 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,673	<b>8,321</b>	10,000 min.
<u>Street Frontage (ft.):</u>	77	77	100 min.
<u>Lot depth (ft.):</u>	>70	>70	70 min.
<u>Primary Front Yard (ft.):</u>	71	71	30 min.
<u>Left Yard (ft.):</u>	25	35	25 min.
<u>Right Yard (ft.):</u>	25	35	25 min.
<u>Rear Yard (ft.):</u>	25	35	25 min.
<u>Height (ft.):</u>	<35	33.5	35 max.
<u>Building Coverage (%):</u>	4.1	5	20 max.
<u>Open Space Coverage (%):</u>	87	85	50 min.
<u>Parking</u>		340	340 max.
<u>Building Length:</u>	285	<b>170, 225</b>	160
<u>Estimated Age of Structure:</u>	1984	<b>Variance request shown in red.</b>	

### Other Permits/Approvals Required

TAC/Planning Board – Site Review



# Neighborhood Context



## Previous Board of Adjustment Actions

July 19, 1983 – The Board **granted** a variance to allow 2,870 s.f. of lot area per family and allow portions of two lots to be retained by applicant as open space. The petition was granted with the **stipulation** that Forum Development enter into an agreement, subject to approval of City Attorney, covering density requirements.

December 21, 2004 – The Board granted a request to allow the manager’s apartment to be used as a real estate rental management office. The petition was granted with the **stipulation** that the granting of a previous variance to allow the construction of a building on the Stonecroft property (see February 24, 2004 below) be vacated.

June 13, 1978 – The Board **granted** a variance to allow 3500 s.f. per unit where 10,000 s.f. was required.

February 24, 2004 – The Board **granted** variances to allow construction of a 1630 s.f. one story building with basement with a 10’ right side yard, 25 required and to allow the building to be used for a real estate management office where use not allowed.

## Planning Department Comments

The majority of the 35 acres consists of wetlands or wetland buffer, with the development confined to the western portion of the property. The five existing apartment buildings were constructed in the 1980’s and they all exceed the current building length standard of 160 feet. Four of the five existing buildings are 285 feet in length and the fifth one is 228 feet. The two proposed apartment buildings, although they will exceed the allowable length, will be shorter than any of the existing buildings and will be located outside of any wetland or wetland buffer areas. If the variances are granted this will require site plan review with TAC and the Planning Board.

## Review Criteria

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

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

**AND**

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

**OR**

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

**Case #11-4**

Petitioners:	Wayne and Kristin Barrows
Property:	55 Lafayette Road
Assessor Plan:	Map 151, Lot 10
Zoning District:	General Residence A (GRA)
Description:	Subdivide one lot into two lots.
Request:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <p>1. A Variance from Section 10.521 to allow the following: a) a lot area and lot area per dwelling unit of 6,251± s.f. where 7,500 is required for each; and b) 96'± continuous street frontage where 100' is required.</p>

**Existing & Proposed Conditions**

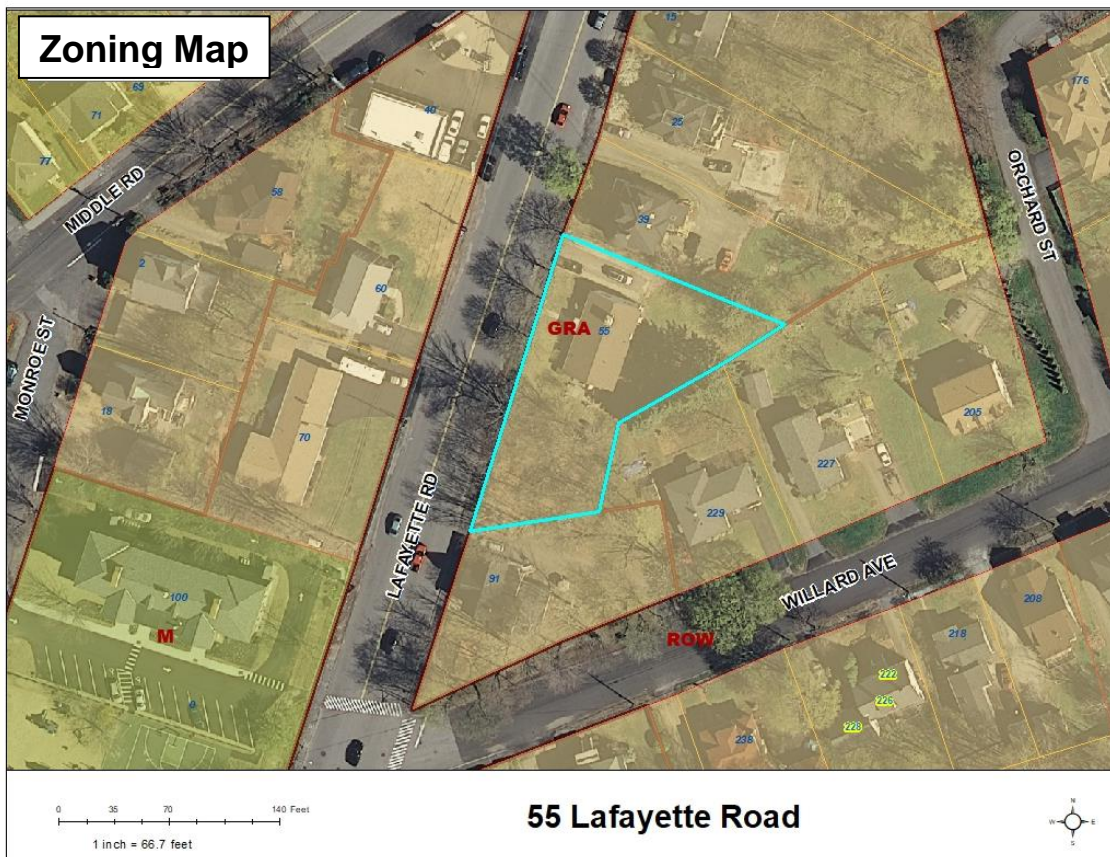
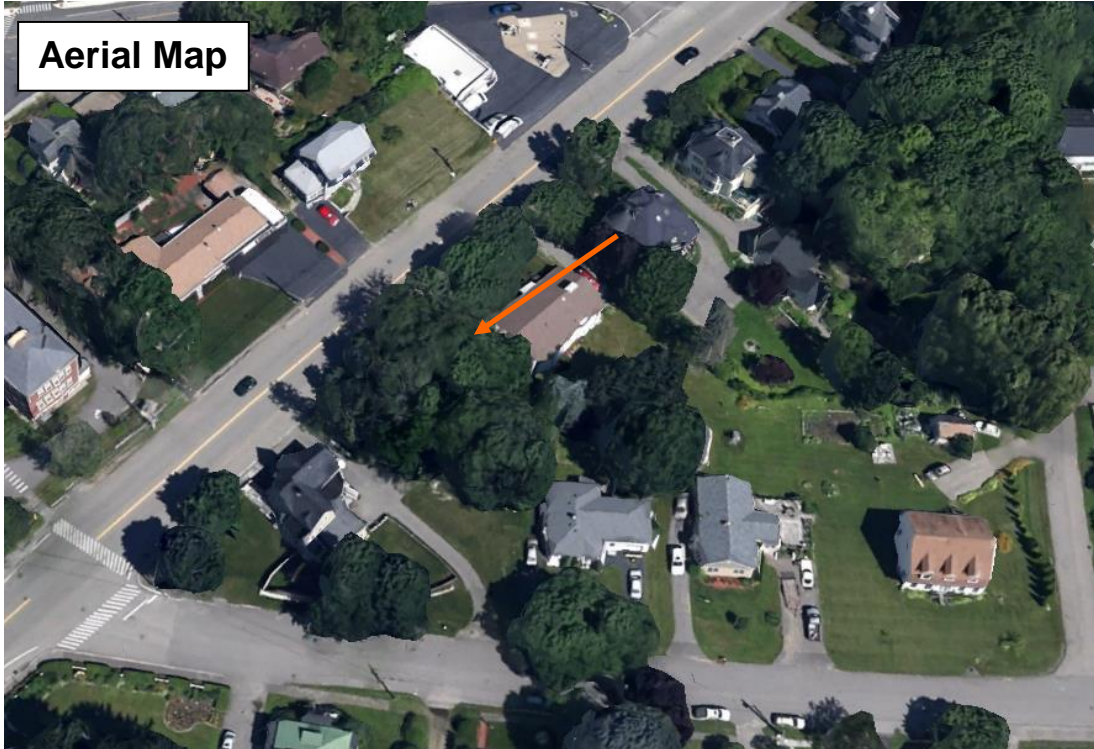
	<u>Existing</u>	<u>Proposed</u>		<u>Permitted / Required</u>
<u>Land Use:</u>	1 Lot/ Single-family	Lot 1 - Single-family Lot 2 - Vacant		Primarily Residential Uses
	Lot 1	Lot 1	Lot 2	
<u>Lot area (sq. ft.):</u>	17,024	10,773	<b>6,251</b>	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,246	10,773	<b>6,251</b>	7,500 min.
<u>Street Frontage (ft.):</u>	196.4	100	<b>96.4</b>	100 min.
<u>Lot depth (ft.):</u>	>70	>70	>70	70 min.
	<b>Variance request shown in red.</b>			

**Other Permits/Approvals Required**

Planning Board - Subdivision



# Neighborhood Context



## Previous Board of Adjustment Actions

No BOA history found.

## Planning Department Comments

The proposed subdivision will create one conforming lot (Lot 1) and one nonconforming lot (Lot 2). Proposed Lot 2 is mostly covered by exposed ledge, likely a reason it has never been subdivided or developed. This will require Planning Board review and approval for the subdivision.

## 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 #11-5

Petitioners: Paul Lane  
 Property: 428 Hanover Street  
 Assessor Plan: Map 138, Lot 7  
 Zoning District: General Residence GRC (GRC)  
 Description: Rear 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 left side of 5.2'± where 10' is required; and b) a rear yard of 9.4'± 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

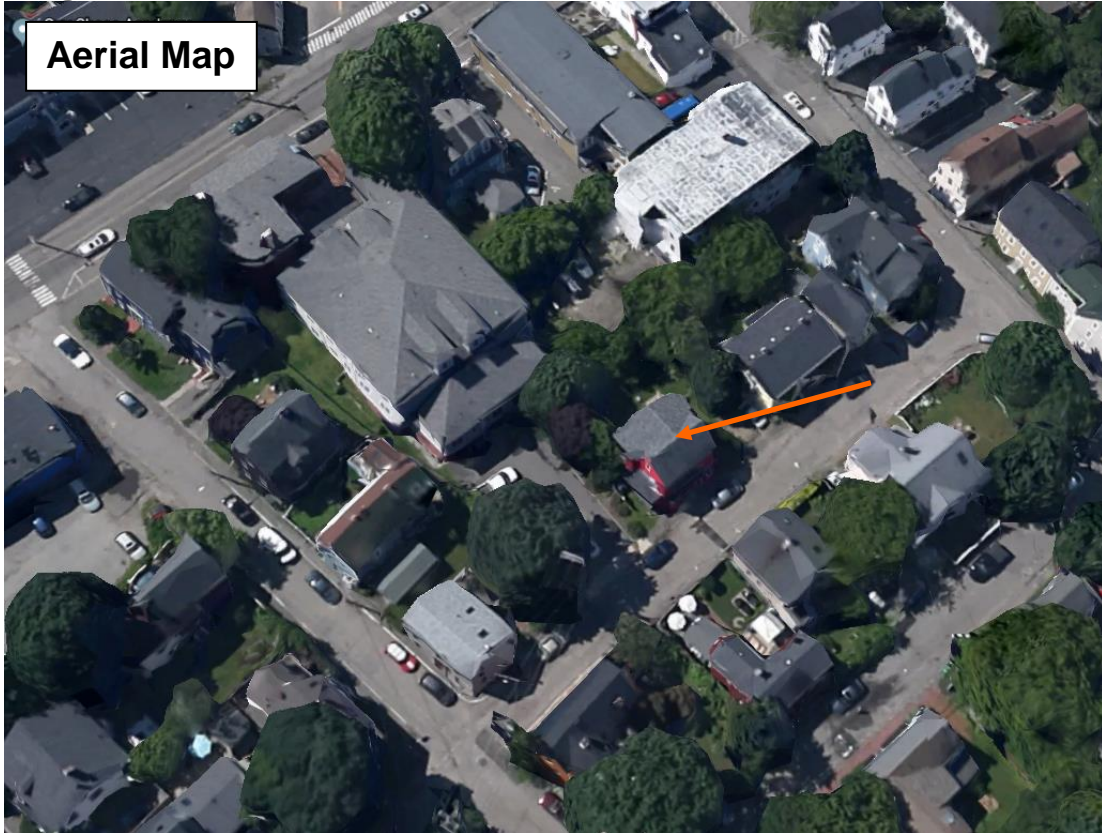
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Rear addition	Primarily mixed Residential
<u>Lot area (sq. ft.):</u>	3,606	3,606	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,606	3,606	3,500 min.
<u>Lot depth (ft.):</u>	64	64	50 min.
<u>Street Frontage (ft.):</u>	56	56	70 min.
<u>Primary Front Yard (ft.):</u>	0	3	5 min.
<u>Left Yard (ft.):</u>	2.1'	<b>5.2'</b>	10 min.
<u>Right Yard (ft.):</u>	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	>20	<b>9.4'</b>	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	27	35	35 max.
<u>Open Space Coverage (%):</u>	>25	>25	20 min.
<u>Parking</u>	Ok	ok	ok
<u>Estimated Age of Structure:</u>	1790	<b>Variance request shown in red.</b>	

### Other Permits/Approvals Required

None.



# Neighborhood Context



## Previous Board of Adjustment Actions

November 18, 2003 – The Board **granted** a variance to allow a 12' x 22' garage with a 1'6" rear yard where 20' was required and a 1'6" right side yard where 10' was required.

September 27, 2005 – The Board **granted** a variance to allow the reconstruction of two 3' x 6' bump outs on the front of the building with a 3'6" x 21'6" roof and front door with a 1' front yard where 5' was required. The request was granted with the **stipulation** that gutters would be installed on three sides with a downspout directing rainwater onto the owner's property and away from the City sidewalk.

## Planning Department Comments

A garage was never constructed on this property in accordance with the variance that was granted in 2003. The side porch, which is setback 2.1' from the left side property line will be removed as part of this project, increasing the separation from the adjacent property. The new addition will be approximately 5.2' from the left side. The building coverage for this property will be maxed out at 35% if the proposed addition is approved.

As presented, this project is just under the 35% allowable building coverage. If the Board grants approval of the requested variances and to avoid the possibility of having the applicant having to return in the future, staff recommends the Board add a condition of approval that the setbacks are within +/-6" of the requested setbacks as long as the building coverage does not exceed 35%.

## 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 #11-6

Petitioners:	Patrick Liam Hughes
Property:	65 Fields Road
Assessor Plan:	Map 170, Lot 4
Zoning District:	Single Residence B (SRB),
Description:	Variances for nonconformities in order to be eligible to seek CUP for attached accessory dwelling unit.
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 10.521 to allow the following: a) a lot area of 7,405± s.f. where 15,000 is the minimum required; b) a 16.9'± rear yard where 30' is required; c) a secondary front yard of 17'± where 30' is required; and d) building coverage of 23%± where 20% is the maximum allowed.</p>

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Single-family	Primarily mixed Residential
<u>Lot area (sq. ft.):</u>	7,405	<b>7,405</b>	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,405	7,405	15,000 min.
<u>Lot depth (ft.):</u>	90	90	100 min.
<u>Street Frontage (ft.):</u>	55	55	100 min.
<u>Primary Front Yard (ft.):</u>	26	26*	30 min.
<u>Secondary Front Yard (ft.):</u>	17.1'	<b>17.1'</b>	30 min.
<u>Right Yard (ft.):</u>	13.5	13.5	10 min.
<u>Rear Yard (ft.):</u>	16.9	<b>16.9</b>	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	23	<b>23</b>	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1963	<b>Variance request shown in red.</b>	

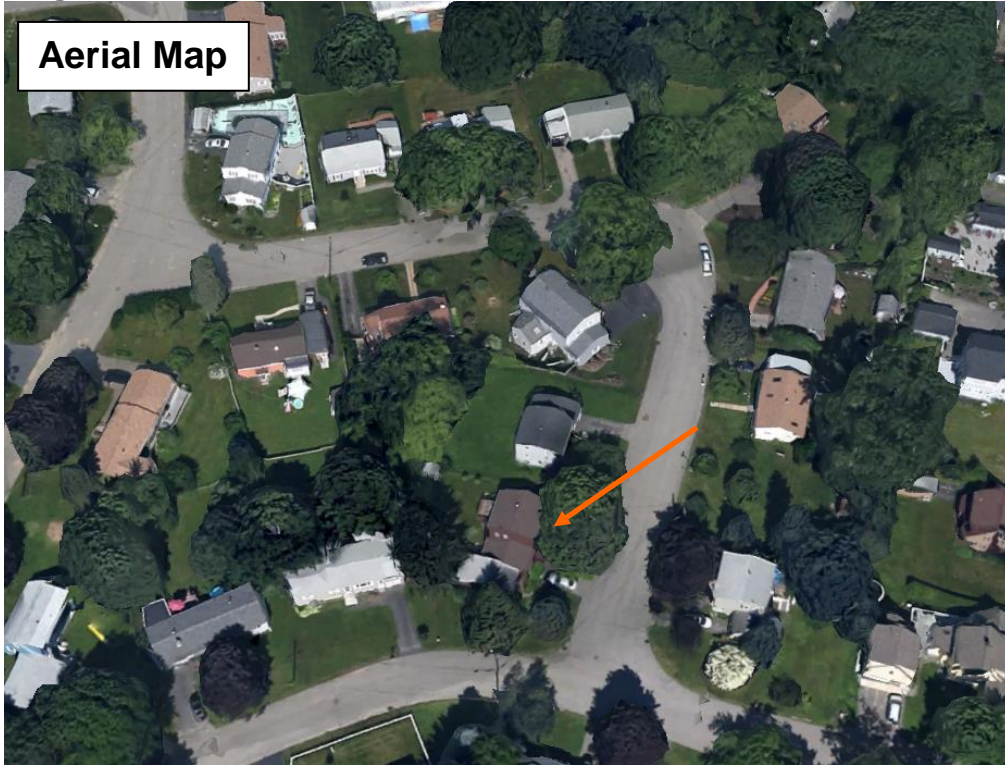
\*Front yard ok per Section 10.516.10 for existing alignments.

### Other Permits/Approvals Required

Planning Board – Conditional Use Permit for AADU



# Neighborhood Context



## Previous Board of Adjustment Actions

August 26, 1986 – The Board **considered** an application for variances to allow an existing above-ground pool with a 15' rear yard and an existing deck with a 25' rear yard where 30' was required for both instances and to allow 25.3% building coverage for both where 20% was allowed. The Board **noted** that the east deck should be allowed to remain and the above-ground pool and attached deck should be removed. (No indication in letter of decision as to the impact on building coverage and the wording did not specify that the east deck was “granted.”)

September 16, 1986 – The Board **granted** the applicants a request for rehearing, with particular reference to removal of the deck attached to the pool which they maintained was constructed at an earlier date and for which a building permit had been issued.

October 7, 1986 – The Board **considered** the initial requested variances and voted that a variance be **granted** to allow the existing decks to remain on the property, the decks being approximately 12' x 12' and 8' x 15'. (No specific dimensions stated in letter of decision for granted rear yard or building coverage.)

November 22, 2016 – The Board **granted** variances to replace an existing 8' x 8' shed with an 8' x 12' shed with a 3' right side yard where 10' was required, a 3' rear yard where 30' was required and 23.1% building coverage where 20% was allowed.

## Planning Department Comments

In order to be eligible to apply for a Conditional Use Permit for an attached accessory dwelling unit (AADU), the lot and dwelling must be conforming. This property and dwelling has several nonconformities and the petition before the Board is to seek variances for the existing nonconformities so the owner can apply for a conditional use permit with the Planning Board for an AADU. Granting the variances before the Board will not permit approval of an accessory dwelling unit for this property.

## 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*

## Case #11-7

Petitioners: Joseph and Ellen Yarborough  
 Property: 746 Middle Road  
 Assessor Plan: Map 232, Lot 49  
 Zoning District: Single Residence B (SRB)  
 Description: Subdivide one lot into 2 with less than the required frontage.  
 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 50'± of continuous street frontage for each lot where 100' is the minimum required.

### Existing & Proposed Conditions

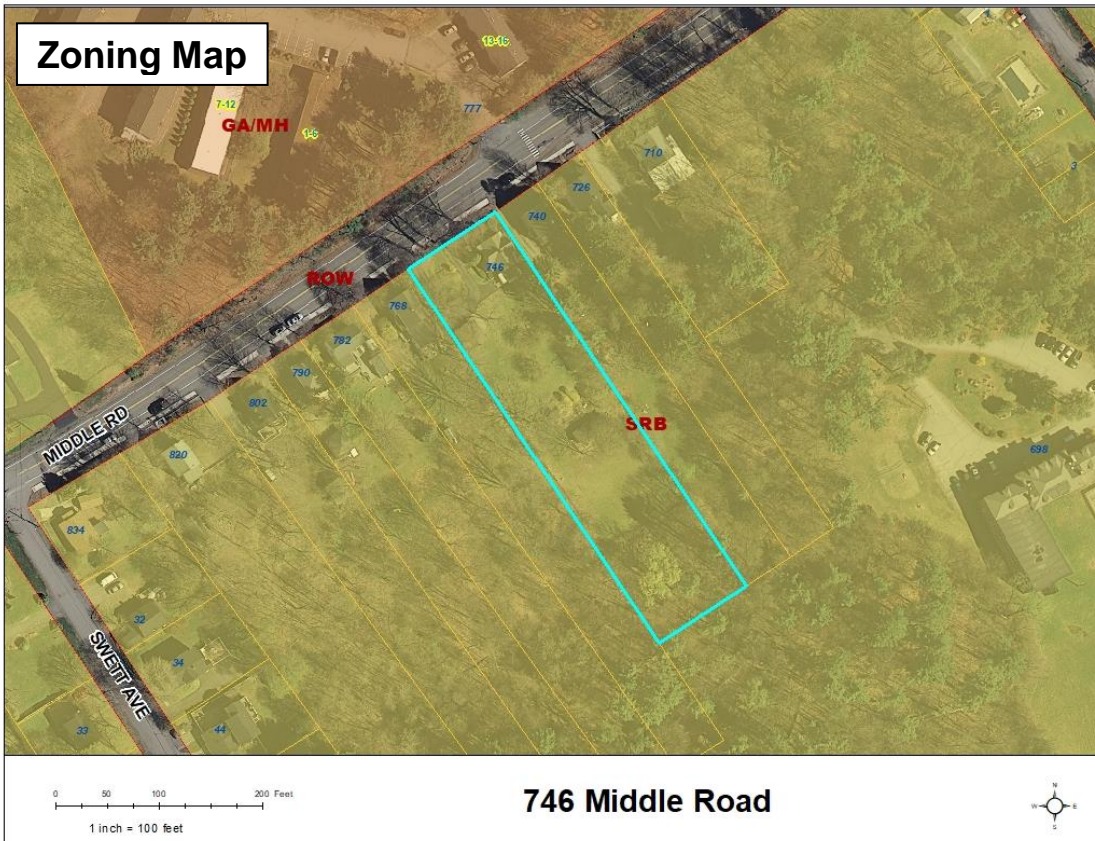
	<u>Existing</u>	<u>Proposed</u>		<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Lot 1	Lot 2	Primarily Single-family Residential
<u>Lot area (sq. ft.):</u>	4,791	21,747	21,747	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,791	21,747	21,747	15,000 min.
<u>Lot depth (ft.):</u>	435	435	435	100 min.
<u>Street Frontage (ft.):</u>	100	<b>50</b>	<b>50</b>	100 min.
<u>Primary Front Yard (ft.):</u>	20	18	20	30 min.
<u>Left Yard (ft.):</u>	10	10	10	10 min.
<u>Right Yard (ft.):</u>	>50	10	10	10 min.
<u>Rear Yard (ft.):</u>	>30	>30	>30	30 min.
<u>Height (ft.):</u>	<35	<35	<35	35 max.
<u>Building Coverage (%):</u>	3.7	5	7	20 max.
<u>Open Space Coverage (%):</u>	>40	>40		40 min.
<u>Parking</u>	Ok	ok		Ok
<u>Estimated Age of Structure:</u>	1889	Variance request shown in red.		

### Other Permits/Approvals Required

Planning Board – Subdivision Approval



# Neighborhood Context



## Previous Board of Adjustment Actions

June 17, 2014 – The Board **denied** a request for a lot subdivision creating two nonconforming lots.

August 19, 2014 – The Board **denied** a request for rehearing. File note: The decision was appealed to Superior Court by the applicants and an index of record prepared. No indication of outcome in file.

## Planning Department Comments

Because the Board denied a request to subdivide the property into two lots with 50 feet of frontage in 2014, the Board should consider whether to invoke Fisher vs. Dover before this application is considered.

*“When a material change of circumstances affecting the merits of the application has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan.” Fisher v. Dover, 120 N.H. 187, (1980)*

A Conditional Use Permit was granted in May 2017 for a detached accessory dwelling unit for this property.

## 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*



## Case #11-8

Petitioners:	Portsmouth Housing Authority
Property:	Gosling Road (40 Wedgewood Road)
Assessor Plan:	Map 239, Lot 12
Zoning District:	Gateway Neighborhood Mixed Use Corridor District (G-1)
Description:	Convert existing recreation center to preschool use.
Requests:	Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Special Exception under Section 10.440, Use #7.12 to allow a group day care facility including private preschool and kindergarten where the use is only allowed by special exception.

### Existing & Proposed Conditions

Existing recreation center building in the Gosling Meadows community with approximately 640 square feet proposed to be converted to a preschool use to accommodate 16 students. Property is located in the G-1 District and the use is permitted by Special Exception.

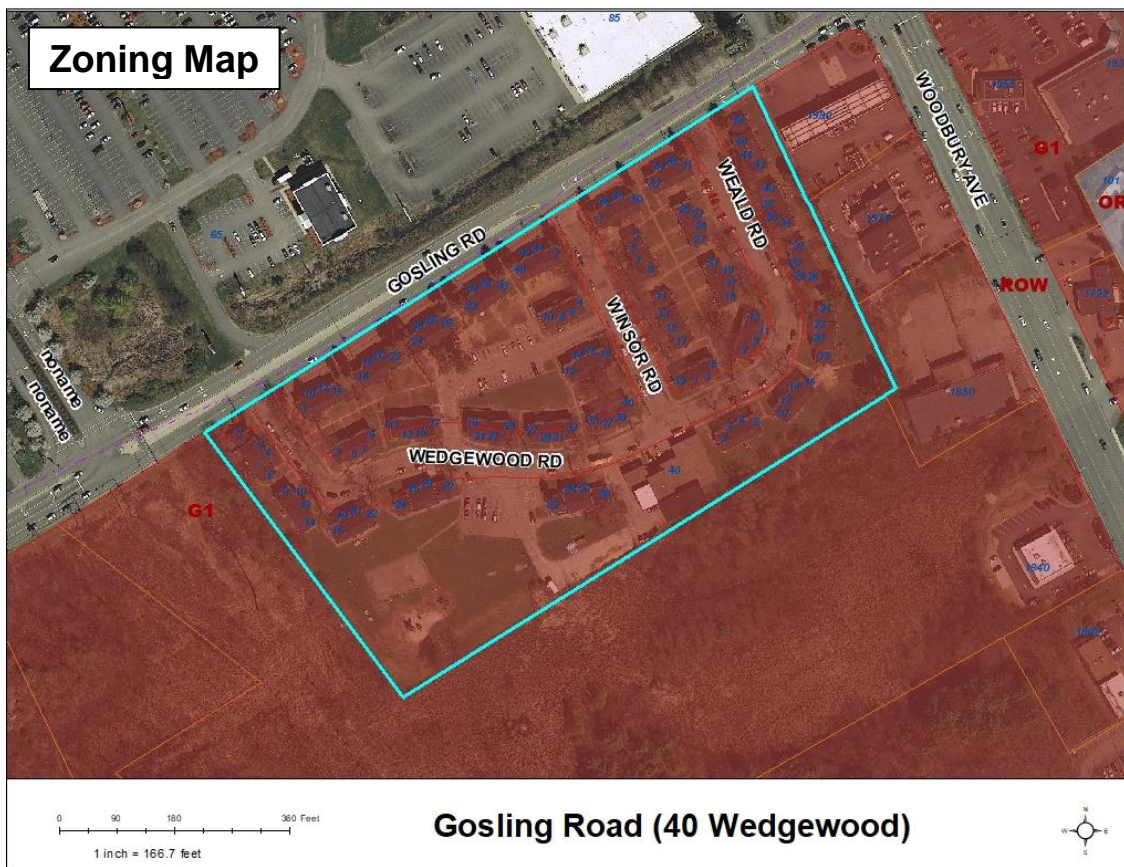
### Other Permits/Approvals Required

None.

### Neighborhood Context







### Previous Board of Adjustment Actions

October 17, 1983 – The Board **granted** a variance for an addition within 18’ of the front property line.

April 1, 1986 – The Board **granted** a variance to construct a 2,380 s.f. garage addition to an existing maintenance structure with an 8.5’ rear yard where 25’ was required.

### Planning Department Comments

The proposed preschool anticipates serving the community within Gosling Meadows, with the likelihood that some students may come from outside of the immediate vicinity. Interior work is proposed to bring up to code the portion that is proposed to be used for the school.

### Review Criteria

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

1. *Standards as provided by this Ordinance for the particular use permitted by special exception;*
2. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*

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