

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: April 10, 2019
RE: Zoning Board of Adjustment April 16, 2019 Meeting

OLD BUSINESS

1. Request for Rehearing – 11 Meeting House Hill Road
2. Case 2-1 53 Austin Street
3. Case 3-2 200 Chase Drive
4. Case 3-8 3110 Lafayette/65 Ocean Road

NEW BUSINESS

1. Case 4-1 14 Mt. Vernon Street – Request to Postpone
2. Case 4-2 299 Vaughan Street
3. Case 4-3 586 Broad Street
4. Case 4-4 49 Hunking Street
5. Case 4-5 557 State Street
6. Case 4-6 404 Middle Street

OLD BUSINESS

Case #1-2

Petitioners:	Ingrid Barr, Christopher Brodeur, Peter Brooks, Virna Brooks, Fred Engelbach, Barbara Engelbach, Sandra Gosser, Peter Harris, Judy Hiller, Jane Nelson, Barbara Renner, Paige Trace, Vernon Stump, Kristen Ward, Peter Whalen, and Edith Kean
Property:	11 Meeting House Hill Road
Assessor Plan:	Map 103, Lot 59
Zoning District:	General Residence B (GRB)
Description:	Request for rehearing.
Requests:	A request for Rehearing has been made pursuant to RSA 677:2.

Variances for building coverage and rear yard encroachment for 11 Meeting House Hill Road were granted at the February 20, 2019 meeting. A request for a rehearing was filed by the parties listed above 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 it is not a public hearing. The Board should evaluate the information provided in the request and make a decision based upon that evidence. 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 #2-1

Petitioners: Frank AJ Veneroso & Roslyn Weems
 Property: 53 Austin Street
 Assessor Plan: Map 127, Lot 26
 Zoning District: General Residential C (GRC)
 Description: Proposed Inn.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 1. A Variance from Section 10.440, Use #10.30 to allow an Inn where the use is not permitted in the district.

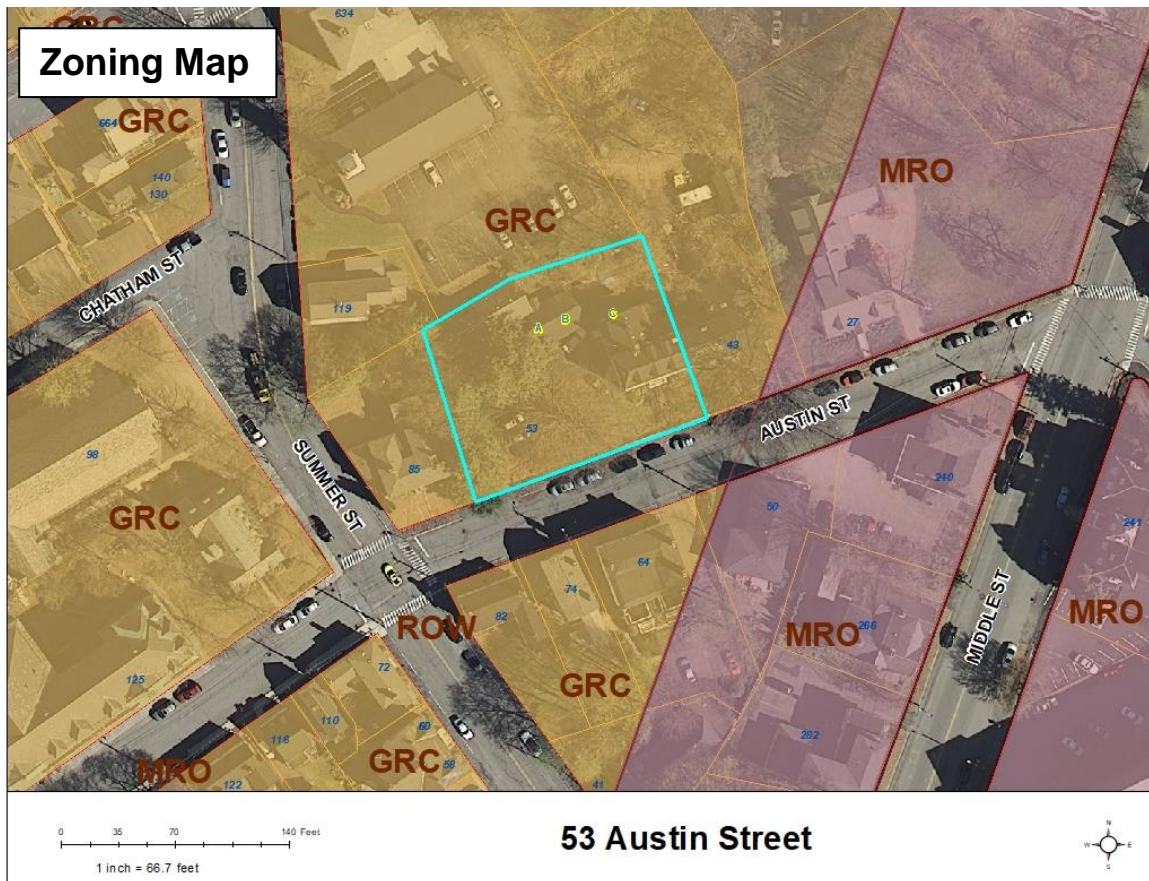
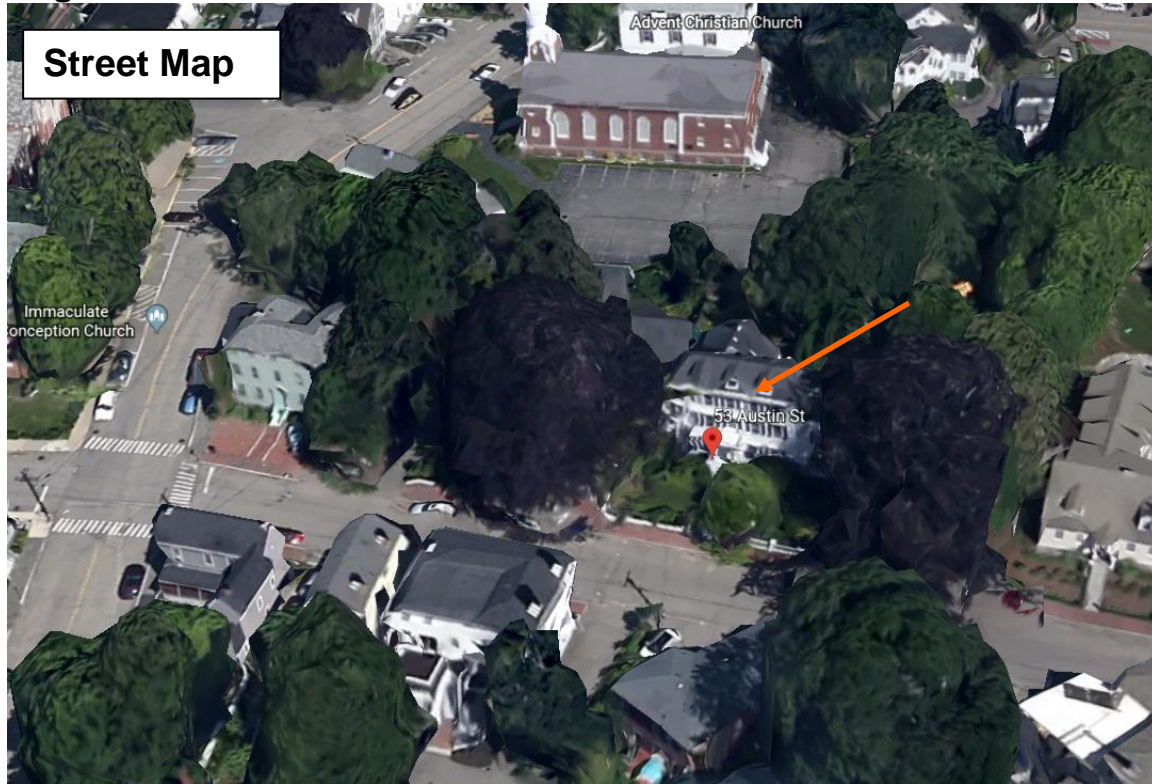
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	3 apts.; 1 main house	Inn	Primarily mixed residential uses
<u>Lot area (sq. ft.):</u>	17,424	17,424	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,356	NA	3,500 min.
<u>Street Frontage (ft.):</u>	151	151	70 min.
<u>Lot depth (ft.):</u>	114	114	50 min.
<u>Primary Front Yard (ft.):</u>	33	33	5 min.
<u>Right Yard (ft.):</u>	0	0	10 min.
<u>Left Yard (ft.):</u>	3	3	10 min.
<u>Rear Yard (ft.):</u>	0	0	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	27	27	35 max.
<u>Open Space Coverage (%)</u>	57	57	20 min.
<u>Parking</u>	ok	14*	17
<u>Estimated Age of Structure:</u>	1800	Variance request shown in red. *As presented by applicant; will require CUP	

Other Permits/Approvals Required

TAC & Planning Board – Site Plan and CUP for Parking

Neighborhood Context



Previous Board of Adjustment Actions

March 25, 1980 – The Board **denied** a request to allow a single residence to be converted to four professional offices and one apartment.

August 12, 1980 – The Board took the following action: a) **granted** a special exception to allow the conversion of a single family residence to four apartments with the **stipulation** that the parking for the apartments be on a lot at 53 Austin Street; b) **denied** a variance to convert the carriage house to two medical offices; and c) **denied** a special exception to allow six parking spaces on an adjoining lot at 85 Austin Street as well as **denying** a variance for the same six parking spaces.

April 7, 1981 – The Board **granted** a special exception to allow three apartments in an existing carriage house with the stipulation that the special exception granted August 12, 1980 to convert a single family residence to four apartments be negated and the main house to remain a single family residence.

June 30, 1981 – The Board **granted** a variance to allow a 5' left yard where 9' was required.

August 31, 1982 – The Board **granted** a special exception to allow conversion of a single family dwelling to 2 apartments for a total of 5 apartments on the lot.

February 20, 2019 – The Board **tabled** to the March meeting a petition for a proposed inn, requesting additional information and clarification.

March 19, 2019 – The Board further **tabled** the petition to the April meeting with a request for specific additional information.

Planning Department Comments

The applicant is proposing to convert the property from residential to an Inn use, which is not permitted in the GRC district. As defined in the zoning ordinance, an inn offers lodging up to 15 sleeping rooms. The applicant is proposing 8 sleeping rooms that include the three existing apartments and main dwelling unit. The applicant has indicated there may be future plans to demolish the existing garage and build a new one in a different location, which may require future variances. In addition, the parking requirements for the proposed use are not met and will require a Conditional Use Permit from the Planning Board. The parking plan provided shows 14 spaces and the applicant has indicated the dimensional standards can be met. This will also require site review and if deficiencies in any of the parking facilities are exposed, other variances may be required.

Staff would recommend the Board consider a stipulation of approval that limits the Inn to eight rooms, and if future expansion of the Inn is proposed, the applicant would be required to seek additional approval from this Board to increase the number of rooms.

UPDATE: Applicant has provided more information on addressing the criteria and the floor plan of the proposed inn.

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 #3-2

Petitioners:	Bethel Assembly of God, owner and Chase Drive LLC, applicant
Property:	200 Chase Drive
Assessor Plan:	Map 210, Lot 2
Zoning District:	Gateway Center Mixed Residential District (G2)
Description:	Construct an apartment building with 21 residential units.
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 10.5B33.20 to allow a front lot line buildout of 15% where 75 50% is required. 2. A Variance from Section 10.5B34.80 to allow a 56', 5-story building where the maximum building height allowed is 50 feet and 4 stories. 3. A Variance from Section 10.5B34.80 to allow 22%± façade glazing where 50% minimum is required. 4. A Variance from Section 10.5B22.20 to allow a 56' tall building to be within the set back and step back area.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Church (Lot 2)	Subdivide & construct Apartment building (Lot 2-1)	Primarily mixed uses
<u>Lot area (sq. ft.):</u>	116,590	Lot 2: 58,758 Lot 2-1: 57,832	NR
<u>Lot Area per DU (DU/Ac.):</u>	none	Lot 2-1: 21 units	16 units/Acre
<u>Street Frontage (ft.):</u>	Market: 750+ Chase: 575+	Market: 360 Chase: 416	50 min.
<u>Primary Front Yard (ft.):</u>	<50	14'	0-50 max.
<u>Secondary Front Yard (ft.):</u>	<50	16'	12 max.
<u>Front Lot Line Buildout:</u>		Chase Dr.: 15% Market St: 17%	75% 50%
<u>Max Height (ft.):</u>	NA	4 stories (50')	4 stories (50') max.
<u>Min. Street Facing Façade Glazing:</u>	NA	20%+	20% min.
<u>Open Space Coverage (%):</u>	>20	27	20 min.
<u>Parking</u>		26	32/26 w/ incentive
		Variance request shown in red.	

Other Permits/Approvals Required

TAC & Planning Board – Subdivision & Site Review

Neighborhood Context



Previous Board of Adjustment Actions

(As Off Cutts Avenue and Cutts Avenue Extension)

November 27, 1973 - The Board **granted** a request to conduct a day care center within the church provided a fence be installed around the play area.

April 22, 1986 – The Board **granted** the following:

- a special exception to construct a 14,300 s.f. 2-story addition to an existing church with seating for 525 people, and
- a variance to allow the structure to have a 23' front yard and a 15' rear yard with 30' was required, and
- a variance to allow a roof peak height of 55 feet where a maximum of 35 feet is allowed.

August 26, 1986 – The Board **granted** a special exception to permit the placement of approx. 3,500 cubic yards of fill on adjacent vacant lots under the same ownership with stipulations regarding grading, finishing and seeding.

February 4, 1987 – The Board **granted**:

- a special exception to permit the placing of a drive-thru for a church,
- a variance to permit the construction of a drive-thru canopy over the front entrance 10' in height with an area of approximately 1200 sf and having a 7' front yard where a minimum of 30' is required, and
- a variance to permit the placing of a 15.81 sf attached, illuminated sign on the southerly side of the church in a district where a maximum 4 sf of signage is allowed and where illuminated signs are not allowed.

November 20, 2001 – The Board **granted**:

- a variance to allow a 12' x 6' internally lit free-standing sign 11' in height and 3' from the property line that did not comply with the dimensional requirements for institutional signs in the district.

March 19, 2003 – The Board **granted**:

- a variance to allow a second dwelling unit over a proposed detached garage where only one single-family dwelling is allowed on a lot,
- a variance to allow two rectories for two ministers for one church in a district where such use is allowed for one rectory by Special Exception, and
- a variance to allow two free-standing dwelling units on a lot in a district where only one single-family dwelling is allowed on a lot, with the **stipulation** that the second dwelling unit be used by church personnel only.

October 21, 2003 – The Board **granted** a variance to allow a previously approved garage with a second-floor apartment to be converted entirely to a single-family dwelling by eliminating the garage on the first floor, with the **stipulation** that the dwelling unit be occupied by church personnel only.

July 26, 2011 – The Board **granted** a variance to allow construction of 5 residential dormitory type studios for students and establishment of a post-secondary Bible Study School within the existing Church structure.

October 16, 2012 – The Board **granted** a variance to allow a 2.3% reduction in open space on a pre-existing nonconforming lot where 31.6% existed prior to a lot line relocation transferring land to an abutter and 40% was required.

March 19, 2019 – The Board **acknowledged** that the applicant had **withdrawn** their request for relief from the maximum building height requirement as contained in the below petition and then voted to **table the revised petition** to the April 16, 2019 meeting with a request for specific additional information. Petition: to construct a mixed use building with office and residential units requiring variances to allow the following: a) a front lot line buildout of 15% where 75% was required; b) a 56' 5-story building where the maximum height is 50 feet and four stories; c) 22% façade glazing where 50% is the minimum required; and d) to allow a 56' tall building to be within the set back and step back area.

Planning Department Comments

The subject property falls within the recently adopted Gateway Center District (G2). The building step back and set back graphic from the zoning ordinance is below for your reference. The right of way on Chase Drive is less than 60 feet wide, so this requirement is applicable to the proposed development. In order to reach the maximum height allowed or proposed by the applicant, the portion of the building 50' or greater would have to be set back 50'. The applicant has provided a drawing of what the building would look like with this standard applied. It appears that redesigning the building could make it conform or be more conforming to this specific requirement.

UPDATE: The applicant has revised the project to comply with all zoning requirements with the exception of the front lot line buildout, which remains as originally proposed. The building will contain residential units only, with no commercial or office space. At the March meeting, the applicant withdrew the height request and is now proposing to meet the height requirement of the district, a 4 story, 50' tall 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.

Case #3-8

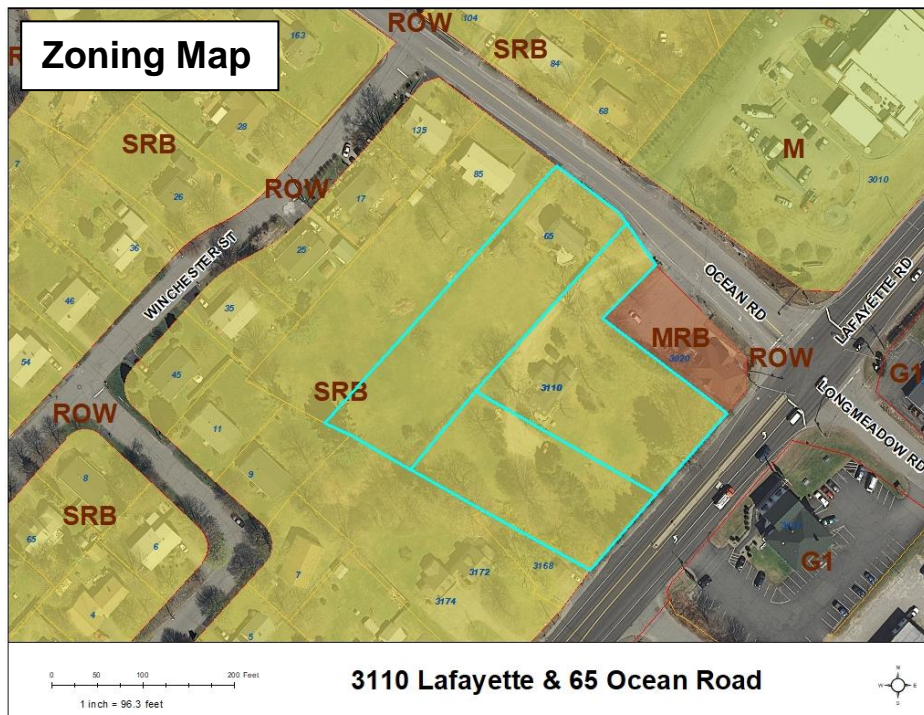
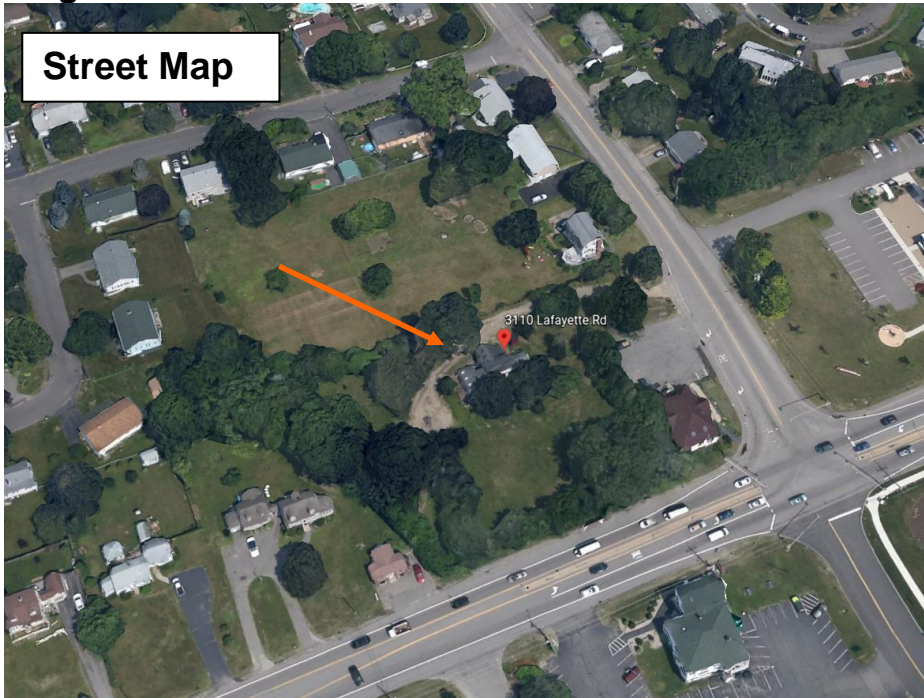
Petitioners:	Weeks Realty Trust, Kaley E. Weeks, Trustee and Chad Carter, owners and Tuck Realty Corporation, applicant
Property:	3110 Lafayette Road & 65 Ocean Road
Assessor Plan:	Map 292, Lots 151-1, 151-2 & 153
Zoning District:	Single Residence B (SRB)
Description:	Merge lots and construct four story mixed use building containing 30 apartments and professional/medical offices.
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 10.440 to allow professional, business and medical office uses where the uses are not allowed in the district. 2. A Variance from Section 10.533 to allow a front yard setback 27'± from the sideline and 70' from the centerline of Lafayette Road where 30' from the sideline or 80' from the centerline is the minimum required. 3. A Variance from Section 10.521 to allow a building height of 51'± where 35' for a sloped roof is the maximum allowed. <p>2. A Variance from Section 10.521 a lot area per dwelling unit of 2,722± s.f. where 15,000 per dwelling unit is required.</p>

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family/vacant	Mixed use with prof./medical uses	Primarily residential uses
<u>Lot area (sq. ft.):</u>	153: 27,050 151-1: 33,977 151-2: 24,524	New 153: 15,047 New Lot: 81,659	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	153: 27,050 151-1: 33,977 151-2: 24,524	153: 15,047 New Lot: 2,722	15,000 min.
<u>Street Frontage (ft.):</u>	>100	>100	100 min.
<u>Lot depth (ft.):</u>	>100	>100	100 min.
<u>Primary Front Yard:</u>	150/194	27'/70'	30' or 80' from CL of Lafayette min.
<u>Right Yard (ft.):</u>	>10	10	10 min.
<u>Left Yard (ft.):</u>	>10	45	10 min.
<u>Rear Yard (ft.):</u>	40	>200	30 min.
<u>Height (ft.):</u>	<35	51	35 max.
<u>Building Cov. (%):</u>	<20	16	20 max.
<u>Open Space (%):</u>	>40	51	40 min.
<u>Parking</u>	2	79	76
<u>Estimated Age of Structure:</u>	1900	Variance request shown in red.	

Other Permits/Approvals Required
TAC & Planning Board – Subdivision, Site Review

Neighborhood Context



Previous Board of Adjustment Actions

3110 Lafayette Road as a single entity:

April 26, 1977 – The Board **granted** the operation of a nursery school in an existing single family residence with the **stipulation** that an area be enclosed with a 4' unclimbable fence and that the entrance be restricted to Lafayette Road and the exit onto Ocean Road.

March 22, 1988 – The Board **denied** a request to convert a single family dwelling to office use in a district where the use was not allowed.

October 15, 1991 – The Board **granted** a special exception to allow a home occupation (office use) in 240 s.f. of a single family dwelling with the **stipulations** that the special exception would be limited to the applicant only; that there would be no signage displayed on the property; and that there would only be one employee other than the applicant.

3110 Lafayette & 3020 Lafayette Road in a joint petition:

April 18, 2017 – As requested by the applicant the Board **postponed** to the May meeting a petition to construct a retail facility of up to 15,000 s.f. with a drive-through window and lanes. This would require a special exception or variance for the use; and the following variances: a) for the location of off-street parking; b) to permit a drive-through facility within 100' of a residential district and 50' of a lot line; c) to permit drive-through lanes within 50' of a residential district and 30' of a lot line; and d) to allow a building, structure or parking area 65' from the centerline of Lafayette Road where 80' was required.

May 16, 2017 - The Board denied the above petition.

March 26 2019 – The Board voted to **postpone** the above petition to the April 16, 2019 meeting at the request of the applicant.

Planning Department Comments

The applicant is proposing to merge the three lots and then subdivide into two, with one conforming lot at 65 Ocean containing a dwelling, and second lot fronting on Lafayette Road will contain the proposed mixed used building. Being located on Lafayette Road and in a transitional area between the residential neighborhood to the west and the commercial area along the corridor, the applicant used the standards from the adjacent Gateway-1 district in the design of the development.

The applicant will need to go through subdivision and site review with the Technical Advisory Committee 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.

NEW BUSINESS

Case #4-1

Petitioners:	Donna L. Acox
Property:	14 Mt. Vernon Street
Assessor Plan:	Map 111, Lot 26
Zoning District:	General Residential B (GRB)
Description:	6 x 12 shed.
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 10.573.10 to allow a 1.5' right side yard where 5' is required. 2. A Variance from Section 10.521 to allow the following: a) 38%± building coverage where 30% is the maximum allowed; and b) to allow 22%± open space where 25% is the minimum required.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	6x12 shed	Primarily residential uses
<u>Lot area (sq. ft.):</u>	2,178	2,178	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,178	2,178	5,000 min.
<u>Street Frontage (ft.):</u>	27	27	80 min.
<u>Lot depth (ft.):</u>	76	76	60 min.
<u>Primary Front Yard (ft.):</u>	0 (house)	>50	5 min.
<u>Right Yard (ft.):</u>	3 (house)	1.5' (shed)	5 (shed) min.
<u>Left Yard (ft.):</u>	6.5 (house)	>10 (shed)	5 (shed) min.
<u>Rear Yard (ft.):</u>	30 (house)	10	5 (shed) min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	34	38	30 max.
<u>Open Space Coverage (%):</u>	25	22	25 min.
<u>Parking</u>	1	1	1.3
<u>Estimated Age of Structure:</u>	1918	Variance request shown in red.	

Other Permits/Approvals Required

HDC – Administrative Approval granted in April 2018

Neighborhood Context



Previous Board of Adjustment Actions

December 15, 2009 – The Board **granted** variances for the following to construct a new home: a) to allow a home on a 2,252 s.f. lot where 5,000 s.f. is required; b) to allow 39% lot coverage where 30% is the maximum allowed; c) to allow a left side setback of 7' and a right side setback of 3'6" where 10' was required for each; and d) to allow a front yard setback of 0' where 5' was required.

Planning Department Comments

The applicant received administrative approval from the HDC in April of 2018, but failed to obtain a building permit and additional land use review/approval. As a result, the applicant proceeded to have the shed installed earlier this year and is now seeking after the fact variances for the right side yard, building coverage and open space. The lot is a small, compact property with little room behind the house. There is a large bricked area in the back and what open space exists, consists of terraces and a small garden. The shed was placed on an area that is adjacent to the fence on the right side. The existing house exceeds the allowable building coverage by 4% and the addition of the shed increases coverage to 38% and the open space drops from 25% to 22%.

The property was granted relief in 2009 for construction of the existing dwelling. In reviewing the file, the building coverage calculation was in error, using 882 square feet as the footprint instead of the actual 774 square feet. This equated to a coverage of 39%, when it actually was 34%.

The applicant currently lives in New York and has employment conflicts that prevent her from being able to attend the April 16th meeting and has requested to postpone until the May 21st meeting so she can attend and present her petition to the 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 #4-2

Petitioners:	Vaughan Street Hotel LLC
Property:	299 Vaughan Street
Assessor Plan:	Map 124, Lot 10
Zoning District:	Character District 5 (CD5), Historic District (HD), Downtown Overlay District (DOD)
Description:	Signage and lighting for a hotel.
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 10.1251.20 for Signs #1 and #2 to allow two wall signs (124± s.f. and 70± s.f.) where 40 s.f. is the maximum allowed for an individual wall sign 2. A Variance from Sections 10.1271.10 and 10.1271.20 for Sign #5 to allow a sign on an exterior wall that does not face a street and is on the side of the building without a public entrance. 3. A Variance from Section 10.1261.30 for Sign #2 to allow internal illumination where only external illumination is allowed for signs in the Historic District. 4. A Variance from Section 10.1144.63 for Accent Light #1 to allow lights above the height of 25' on the building surface.

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u> Sign District 3	Hotel	Primarily mixed uses
<u>Wall Sign:</u>	124 s.f.	40 s.f. max
<u>Wall Sign:</u>	70 s.f.	40 s.f. Max
<u>Street Frontage (ft.):</u>	Green St: 173 Vaughan St: 236	2 s.f. per linear foot
<u>Secondary Front Yard (ft.):</u>	16'	12 max.
<u>Max Luminaire Height (ft.):</u>	32'9"	20' max.
<u>Max. Accent Luminaire Height:</u>	65	25' max.
<u>Total Sign Aggregate:</u>	287 s.f.	818 s.f.
<u>Illumination Type:</u>	Internal	External
	Variance request shown in red.	

Other Permits/Approvals Required

HDC

Neighborhood Context



Previous Board of Adjustment Actions

February 27, 2018 – The Board **granted** a variance to allow vehicles to enter and leave a parking space by passing over another parking space or requiring the moving of another vehicle.

Planning Department Comments

The AC Hotel is currently under construction and the requested relief is for the proposed signage and lighting on the building. Two of the signs exceed the maximum size allowed for a wall sign, and Sign #5 is proposed to be on an exterior wall that does not face a public street and does not have a public entrance. While the applicant has a different opinion of Section 10.1271, staff has interpreted this section to be able to place a wall sign on a building, the side of the building must be on a street or have a public entrance on that side. The illumination on the building is considered signage and the zoning ordinances limits how high accent lighting and luminaires can be located on a 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.

Case #4-3

Petitioners:	Christopher C. Martin and Hope W. Martin Revocable Trusts
Property:	586 Broad Street
Assessor Plan:	Map 221, Lot 56
Zoning District:	General Residential A (GRA)
Description:	Reconstruct and extend front porch.
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 6.5'± right side yard where 10' is required. 2. A Variance from Section 10.321 to allow a nonconforming structure or building be expanded, reconstructed or enlarged without conforming to the requirements of the ordinance.

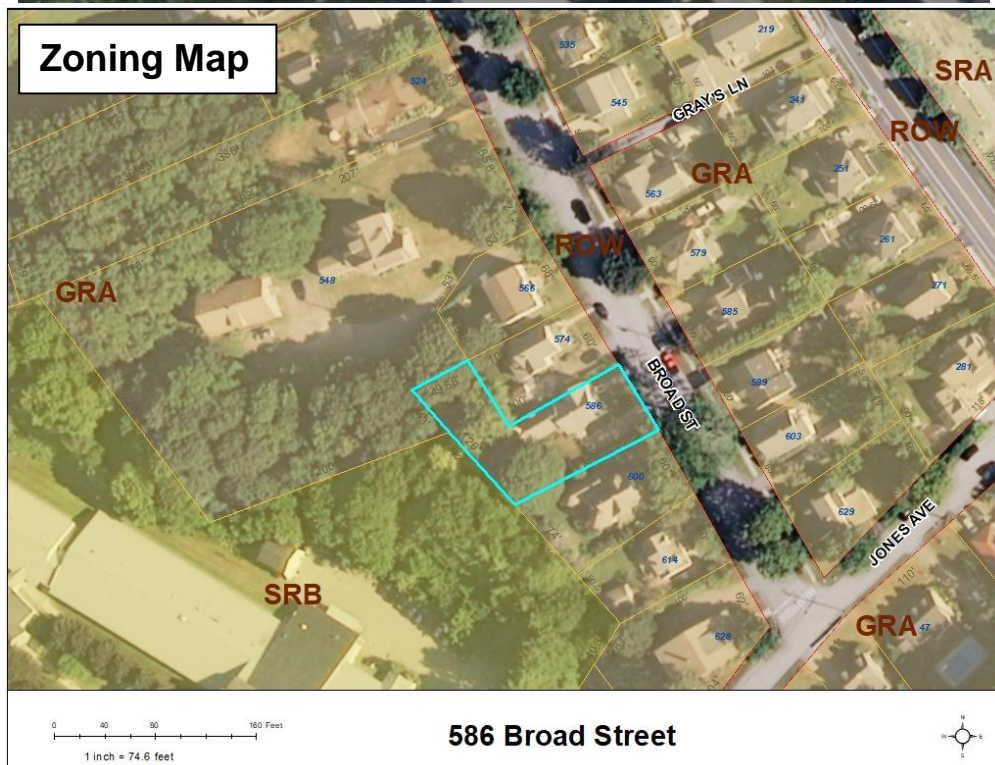
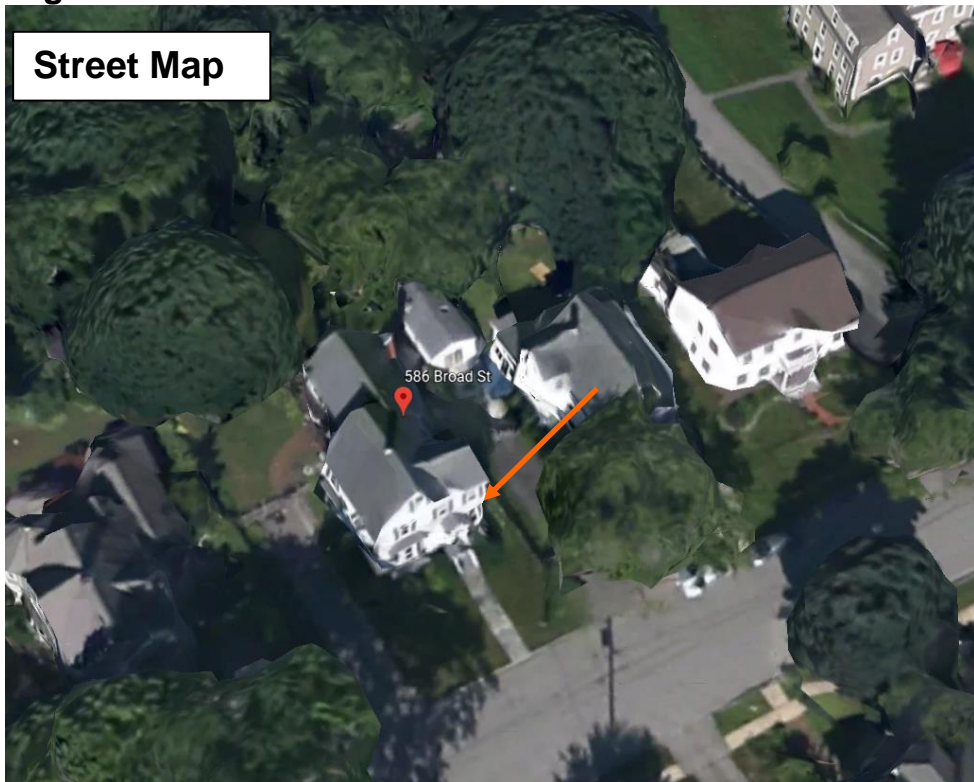
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Reconstruct & extend porch	Primarily residential uses
<u>Lot area (sq. ft.):</u>	10,890	10,890	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,890	10,890	7,500 min.
<u>Street Frontage (ft.):</u>	60	60	100 min.
<u>Lot depth (ft.):</u>	139	139	70 min.
<u>Primary Front Yard (ft.):</u>	25	25	15 min.
<u>Right Yard (ft.):</u>	6 (house)	6.5 (porch)	10 min.
<u>Left Yard (ft.):</u>	27 (house)	41 (porch)	10 min.
<u>Rear Yard (ft.):</u>	55	55	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	<25	<25	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	Ok	Ok	1.3
<u>Estimated Age of Structure:</u>	1920	Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

Although the subject property exceeds the 7,500 s.f. minimum lot size, the existing house is built very close to the right property line, creating a situation where relief is needed for any expansion within the right yard. The applicant is proposing to enlarge the existing porch and will be located approximately 6.5' from the right side yard and the existing house is approximately 6' from the right property line. There is no survey associated with this parcel and an as-built survey will not be required for the porch.

If granted approval, staff would recommend the Board consider a stipulation that the right yard is within a certain distance as determined by the 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 #4-4

Petitioners:	Wentworth-Gardner and Tobias Lear Historic Houses Association
Property:	49 Hunking Street
Assessor Plan:	Map 103, Lot 39
Zoning District:	General Residence B (GRB)
Description:	Convert to an Inn.
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 10.440 to allow an Inn in a district where the use is not allowed. 2. A Variance from Section 10.521 to allow a 5.7'± right yard where 10' is required. 3. A Variance from Section 10.321 to allow a nonconforming structure or building to be expanded, reconstructed or enlarged without conforming to the requirements of the ordinance.

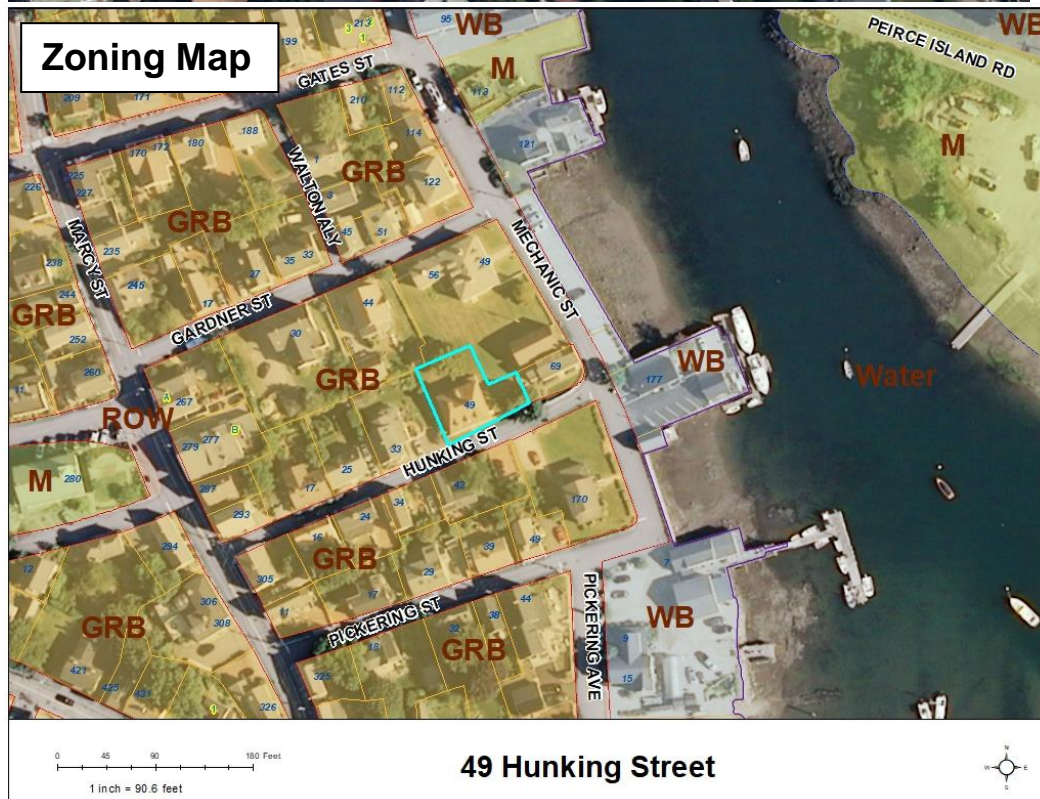
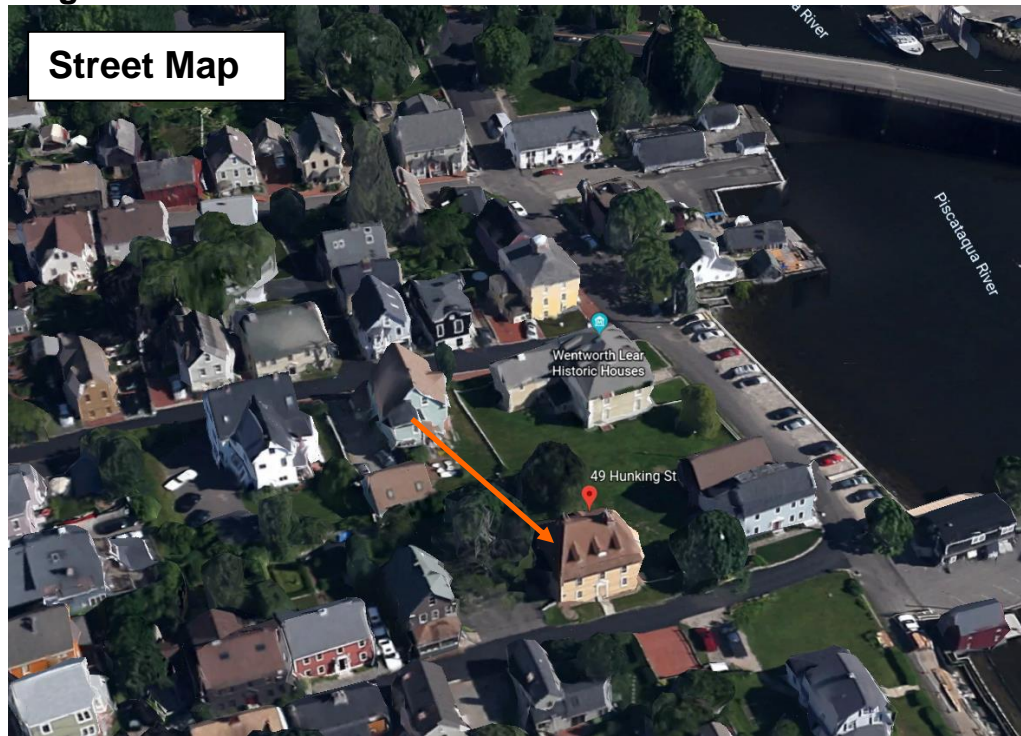
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Inn	Primarily residential uses
<u>Lot area (sq. ft.):</u>			5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>			5,000 min.
<u>Street Frontage (ft.):</u>	115	115	100 min.
<u>Lot depth (ft.):</u>	100	100	100 min.
<u>Primary Front Yard (ft.):</u>	~21.5*	~21.5*	30 min.
<u>Right Yard (ft.):</u>	6	5.7'	10 min.
<u>Left Yard (ft.):</u>	24	>10	10 min.
<u>Rear Yard (ft.):</u>	99	>30	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	9	<20	20 max.
<u>Open Space Coverage (%):</u>	81	>40	40 min.
<u>Parking</u>	ok	2	1.3
		Variance request shown in red.	

Other Permits/Approvals Required

- HDC
- TAC & Planning Board – Site Review
- Planning Board – Conditional Use Permit for Parking

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The Tobias Lear House is currently owned by the Wentworth-Gardner Association and currently it is used as part of the Wentworth-Gardner House, with occasional visitors touring the house, but it is otherwise used in any other manner. The proposal is to restore it and convert to a two-room Inn and to continue to have it open for tourist to visit. The applicant is proposing to lease parking spaces from the Wentworth-Gardner house and will need to seek a conditional use permit from the Planning Board.

If granted approval, staff would recommend the Board consider a stipulation of approval that limits the Inn to two rooms as proposed.

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 #4-5

Petitioners: Harry S. Furman and Kathleen E. Straube
 Property: 557 State Street
 Assessor Plan: Map 137, Lot 33
 Zoning District: General Residence C (GRC)
 Description: Second floor 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 0.6'± side yard where 10' is required.
 2. A Variance from Section 10.321 to allow a lawful nonconforming structure or building to be expanded, 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>	Two dwelling units	Second floor addition.	Primarily residential uses
<u>Lot area (sq. ft.):</u>	5,695	5,695	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,847	2,847	3,500 min.
<u>Street Frontage (ft.):</u>	43	43	70 min.
<u>Lot depth (ft.):</u>	122	122	50 min.
<u>Primary Front Yard (ft.):</u>	2.5	2.5	5 min.
<u>Right Yard (ft.):</u>	0.6	0.6	10 min.
<u>Left Yard (ft.):</u>	24	>10	10 min.
<u>Rear Yard (ft.):</u>	99	>30	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	9	<20	35 max.
<u>Open Space Coverage (%):</u>	81	>40	20 min.
<u>Parking</u>			1.3
		Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

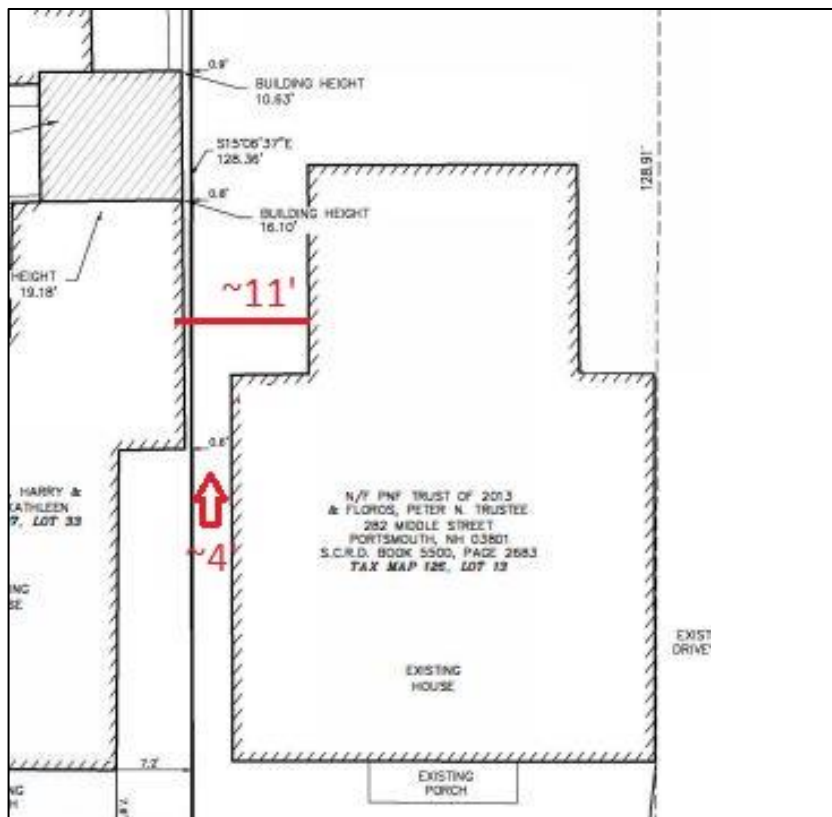
September 27, 2016 – The Board granted variances to construct a 160 s.f. second floor addition with an 8' right side yard where 10' was required and to allow a nonconforming structure to be enlarged without conforming to the Ordinance.

Planning Department Comments

The applicant is proposing a vertical expansion of the rear portion of the existing house. The existing structure is already nonconforming to the right yard, with a 0.6' distance between the structure and the lot line. Even though the footprint will remain the same, the vertical expansion within the setback requires relief from the Board. With a distance this close to the property line, light and air between properties and structures is factored into the decision. The neighboring property contains a large structure, one that is significantly larger than the subject dwelling, as shown in the street view below.



Where the existing structure is 0.6', the distance between the two structures is approximately 4' for a distance of about 7' as you move towards the rear of the property. As you continue in that direction, the adjacent structure jogs toward the interior of the lot and the distance between the two structures is approximately 11 feet as measured on the site plan. The applicant is proposing gutters and downspouts on the new roof, which will help mitigate storm water runoff from the new roof on to the adjacent 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 is therefore necessary to enable a reasonable use of it.

Case #4-6

Petitioners:	Deborah Chag Revocable Trust of 1993, Deborah Chag, Trustee
Property:	404 Middle Street
Assessor Plan:	Map 131, Lot 21
Zoning District:	Mixed Residential Office (MRO)
Description:	Covert single-family home to two units.
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 lot area per dwelling unit of 3,624± s.f. where 7,500 s.f. is required per unit.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family garage w/ apt.	Convert SFD to 2 family (total 3 units on property)	Primarily residential uses
<u>Lot area (sq. ft.):</u>	10,872	10,872	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,436	3,624	7,500 min.
<u>Street Frontage (ft.):</u>	218	218	100 min.
<u>Lot depth (ft.):</u>	83	83	80 min.
<u>Primary Front Yard (ft.):</u>	16	16	5 min.
<u>Secondary Front Yard (ft.):</u>	17	17	5 min.
<u>Right Yard (ft.):</u>	60	60	10 min.
<u>Rear Yard (ft.):</u>	24	24	15 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	30	30	40 max.
<u>Open Space Coverage (%):</u>	53	53	25 min.
<u>Parking</u>	4	6	4
		Variance request shown in red.	

Other Permits/Approvals Required

None.

allow a nonconforming building to be added to or enlarged without conforming to the Ordinance. The variances were granted with the stipulation that the structure would be set back 2' from the rear property line.

Planning Department Comments

As the above history states, the garage was approved in 2014 to be converted into a dwelling and relief was granted for its location. The current proposal is to convert the main dwelling into two units. There are no exterior changes proposed with the conversion and the site has adequate parking for 3 units. Although the development will result in 3 dwelling units, this project is exempt from site plan review because it meets the criteria for exemption of small projects as follows:

- No increase in building height or gross floor area;
- No reduction in the setback of any structure or vehicular service area from any property line; and
- Lot coverage by impervious surfaces does not increase by more than 500 sq. ft.

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.