

TO: Zoning Board of Adjustment  
FROM: Peter Stith, AICP, Planning Department  
DATE: December 10, 2019  
RE: Zoning Board of Adjustment December 17, 2019 Meeting

## **OLD BUSINESS**

1. Case 11-2 53 Tanner Street – Request for Rehearing

## **NEW BUSINESS**

1. Case 12-1 175 High Street
2. Case 12-2 1600 Woodbury Avenue
3. Case 12-3 452 Richards Avenue
4. Case 12-4 105 Bartlett Street –Request to Withdraw
5. Case 12-5 270 Meadow Road
6. Case 12-6 95 Brewster Street

## OLD BUSINESS

Petition of MDM Rodgers Family Limited Partnership, Jody Rodgers, appellant, is requesting a rehearing of **Case #11-2**, 53 Tanner Street pursuant to RSA 677:2. Said property is shown on Assessor Plan 126, Lot 46 and lies within the Character District 4-Limited (CD4-L1).

### Planning Department Comments

On November 19, 2019 the Board **denied** variances to convert an existing dwelling into a two-family which required the following Variances: a) from Section 10.5A41.10A to allow a lot area per dwelling unit of 1,089 square feet where 3,000 per dwelling unit is required; b) from Section 10.5A41.10A to allow a 3' left side yard where 5 feet is required; and c) 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. The appellant has filed a request for a rehearing within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, the rehearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

## NEW BUSINESS

### Case #12-1

Petition of Galaro Properties, LLC, owner, and Portsmouth Buddhist Center, applicant, for property located at **175 High Street, Suite 2** wherein relief is required from the Zoning Ordinance to allow a religious place of assembly which requires the following: A Special Exception under Section 10.440 Use #3.11 to allow a religious place of assembly. Said property is shown on Assessor Plan 118, Lot 16 and lies within Character District 4.

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	retail	<b>Religious Place of Assembly</b>	Mixed Use
<u>Parking:</u>	0	0	0 (located in DOD)
		<b>Special Exception request shown in red.</b>	

### Other Permits/Approvals Required

None.

### Neighborhood Context

# Aerial Map



# Zoning Map



## **Previous Board of Adjustment Actions**

August 20, 2019 (entire property, not an individual suite) – The Board **denied** a request to allow a seasonal outdoor performance facility with an occupancy up to 500 people and within 500' of a residential district.

## **Planning Department Comments**

The applicant is seeking to use the space for a religious place of assembly which requires a Special Exception in this zone. The property is located within the Downtown Overlay District, thus no parking is required for the proposed use.

## **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.*



**Case #12-2**

Petition of DPF 1600 Woodbury Avenue LLC & c/o Marvin F. Poer & Company for property located at **1600 Woodbury Avenue** wherein relief is required from the Zoning Ordinance to install a fifth freestanding sign which requires the following: a) A Variance from Section 10.1251.30 to allow a 99.32 square foot free standing sign on the same street as the primary driveway where 40 square feet is the maximum allowed; b) A Variance from Section 10.1243 to allow a pre-existing sign in a location with no associated secondary driveway; and c) A Variance from Section 10.1251.30 to allow a pre-existing sign that exceeds the 12 foot maximum height. Said property is shown on Assessor Plan 238, Map 16 and lies within the Gateway Neighborhood Mixed Use Corridor District (G1).

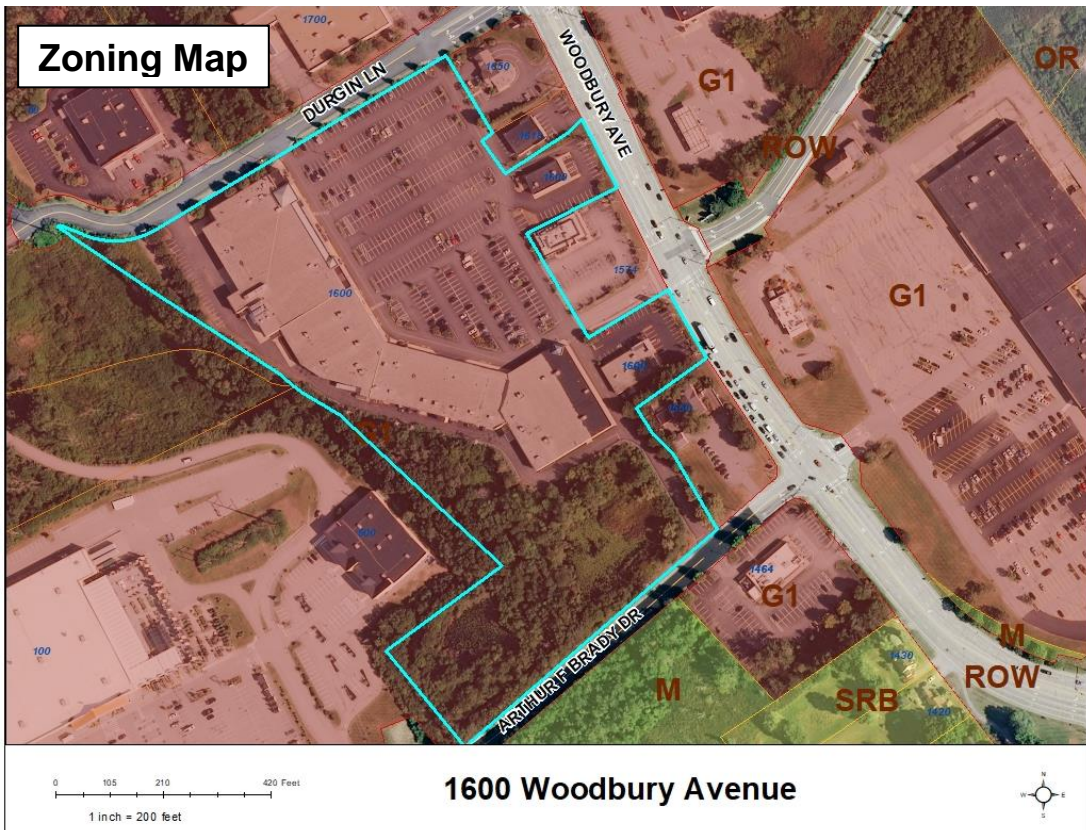
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial	Grocery Store	Mixed Use
<u>Sign Height (ft.): Existing Sign</u>	>12 ft	<b>28</b>	12 max.
<u>Sign Area (sq. ft.): New Sign</u>	NA	<b>99.32</b>	40 min.
<u>Sign Height (ft.): New Sign</u>	NA	11'9"	12 max.
		<b>Variance request shown in red.</b>	

**Other Permits/Approvals Required**

TAC/Planning Board - Site Review for new tenant and entrance.

# Neighborhood Context





## Previous Board of Adjustment Actions

March 16, 1993 – The Board **denied** a request for the installation of an additional 98.4 s.f. attached rear wall sign for an aggregate total of 1057.9 s.f. where an aggregate total of 959.5 s.f. was granted by previous variance.

December 15, 1992 – The Board voted to **grant part a)** of the variance request to allow 959 s.f. of attached signage where 784.5 s.f. is allowed; and to **deny parts b), c), and d)** to allow 223 s.f. of free-standing signage (2 pylon signs) where 150 s.f. of free-standing signage is allowed; 1,182 s.f. of aggregate signage where 934.5 s.f. is allowed; and to allow the 180 s.f. pylon sign to have a 15' setback from the property line on Woodbury Avenue where 35' is required.

May 18, 1993 – The Board **denied** the following: 1) an appeal of an administrative decision by the Building Inspector in the proposed location of a sign, and 2) a request to allow the installation of 2 attached wall signs on a “stand-alone” building with a total area of 92 s.f. in a district where 40 s.f. is the maximum allowed and an aggregate total area of 1,377 s.f. where 921 s.f. is the maximum allowed.

July 28, 1993 – The Board voted to **grant** a request to allow the erection of a 32 s.f. free-standing pylon sign with a) an aggregate sign area of 1277.55 s.f. (attached and free-standing) where 959 s.f. (attached) is allowed; and b) a total of 182 s.f. free-standing sign area where 150 s.f. is the maximum allowed. The request was granted with the **stipulation** was that the sign be turned off one half hour after closing. A variance request for a 5' left yard setback was withdrawn.

February 17, 1998 – The Board voted to **grant** a request to allow a **second free-standing sign** 20' from the side property line where 25' is the minimum required with the **stipulation** that the 4' open area under the sign remain open and kept clear from the line of sight.

August 16, 2006 – The Board **granted** a variance to relocate the existing 150 sf freestanding Primary Entrance sign to the new entrance with a 5' right side yard where 15' is required with the **stipulation** that the 4' open area under the sign remain open and kept clear for line of sight.

December 15, 2009 – The Board **granted** variances to allow 84 s.f. on an “out lot” where 60 s.f. was allowed and to allow a free standing sign on an “out lot” where one is not allowed. The variances were granted with the following **stipulations**: That the requested free standing 24' sign be erected in the same location on the island as the sign erected by the previous tenant; and, that the total aggregate signage allowed would not exceed 61 s.f. as would be allowed under the proposed new Zoning Ordinance.

June 15, 2010 – The Board **granted** a variance to allow a wall mounted sign to be located on a portion of the building (The Vitamin Shoppe) not facing a street.

October 15, 2013 – The Board **denied** a request to replace an existing 38 s.f. free-standing sign in front of the proposed restaurant which would have resulted in a third free-standing sign on a lot where only one was permitted.

**Planning Department Comments**

Durgin Plaza is a commercial site with four existing free standing signs throughout the site. The project will require site review for the new entrance and tenant fit up and had a work session with TAC on December 10, 2019. The applicant is seeking a variance for a new freestanding sign and two variances for a pre-existing freestanding sign for its location and height. The pre-existing sign is unrelated to the new freestanding sign and new tenant that will occupy the former Shaw’s space. The new free standing sign will be located near Game Stop. The proposal includes demolishing Game Stop and constructing a new right-in, right-out entrance to the site. This new entrance will be on the same street as the primary driveway and the standards for such signs are below:

10.1251.30 When a lot has more than one freestanding sign, the freestanding sign at the site’s primary driveway shall comply with the maximum sign area specified in Section 10.1251.20 and the maximum sign height specified in Section 10.1253.10; and the freestanding signs at other driveways shall comply with the following standards:

Sign District	On same street as primary driveway		On different street from primary driveway	
	Maximum Sign Area	Maximum Sign Height	Maximum Sign Area	Maximum Sign Height
2	10 sq. ft.	5 ft.	10 sq. ft.	5 ft.
3	10 sq. ft.	5 ft.	20 sq. ft.	5 ft.
4	20 sq. ft.	12 ft.	40 sq. ft.	12 ft.
5	40 sq. ft.	12 ft.	75 sq. ft.	15 ft.
6	40 sq. ft.	12 ft.	75 sq. ft.	15 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.

**Case #12-3**

Petition of Richard Alexander Hartley and Annelise Connors Hartley for property located at **452 Richards Avenue, Unit 1** wherein relief is required from the Zoning Ordinance for approval of a second dwelling unit in Unit 1 which requires the following: a) A Variance from Section 10.521 to allow a lot area per dwelling unit of 2,585 square feet where 7,500 square feet per dwelling is required. Said property is shown on Assessor Plan 112, Lot 6-1 and lies within the General Residence A District.

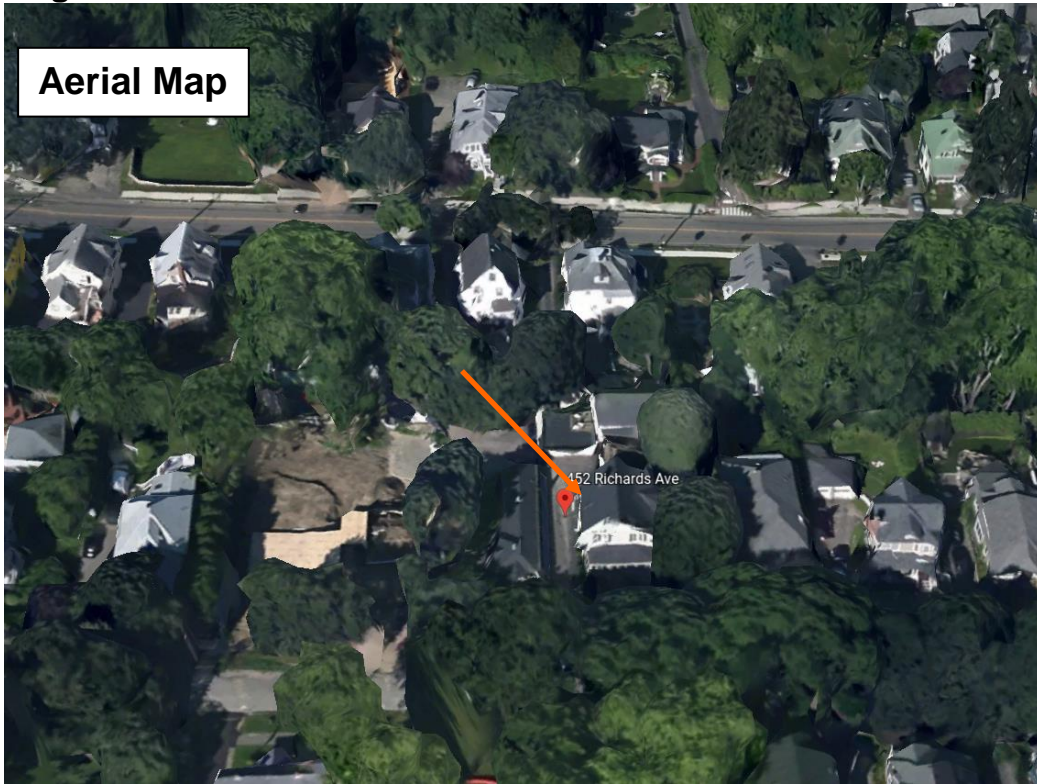
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	5 dwelling units in 3 structures	Approval for second dwelling in Unit 1	Primarily residential uses
<u>Lot area (sq. ft.):</u>	12,927	12,927	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,585	<b>2,585</b>	7,500 min.
<u>Street Frontage (ft.):</u>	100	100	100 min.
<u>Lot depth (ft.):</u>	106	106	70 min.
<u>Front Yard (ft.):</u>	24	24	15 min.
<u>Right Yard (ft.):</u>	12	7.9*	10 min.
<u>Left Yard (ft.):</u>	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	>20	>20	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	27	27	25 max.
<u>Open Space Coverage (%):</u>	36	36	30 min.
<u>Parking</u>	10	10	7
<u>Estimated Age of Structure:</u>		*variance granted in 1995 <b>Variance request shown in red.</b>	

**Other Permits/Approvals Required**

None.

# Neighborhood Context



## Previous Board of Adjustment Actions

June 26, 1979 – The Board **granted** a variance to allow construction of an apartment over an existing garage with a 7' rear setback (25' required) and a lot area per family of 2,586 s.f. where 10,000 s.f. was required.

October 17, 1995 – The Board **granted** a variance to allow an outside stairway from the third floor with a 7'9" right side yard (10' required). The variance was granted with the stipulations that there be no cooking facilities and no separation of the dwelling to accommodate an apartment.

## Planning Department Comments

The subject property contains 5 dwelling units in three separate buildings, with one of the 5 being the subject of this petition. As the history indicates, a variance was granted for an outside stairway to access the third floor of Unit 1. The variance was granted in 1995 for the stairway to access the third floor for Unit 1, however the Zoning Board stipulated that it not be used as a dwelling unit. It apparently has been used as an illegal dwelling since that time. The applicant seeks to establish the unit as a legal unit, with no other changes to the property proposed at this time.

## 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 #12-4 Request to Withdraw

Petition of Clipper Traders, LLC for property located at **105 Bartlett Street aka 0 Bartlett** Street wherein relief is required from the Zoning Ordinance to construct two multi-family structures, one mixed use structure, renovate existing building for use as an amenity building, and relocate two existing storage structures on an adjacent lot which requires the following Variances: **a)** from Section 10.516.20 to allow a 5'6" side yard adjoining a railroad right of way where 15' is required; **b)** from Section 10.5A41.10A to allow an 86' side yard where a minimum of 5' and a maximum of 20' is required; **c)** from Sections 10.5A43.31 & 10.5A46.10 to allow a portion of a building to be three-stories, 40' in height, where a two-story, 30' in height, building is permitted in the CD4-L1 zone; and **d)** from Sections 10.5A43.31 & 10.5A46.10 to allow a portion of a building to be five-stories, 60' in height, where a four-story, 50' in height, building is permitted in the CD4-W district. Said property is shown on Assessor Plan 157, Lots 1 & 2 and Assessor Plan 164, Lot 4-2 and lies within Character District 4-W (CD 4-W) and Character District 4-L2 (CD4-L1).

*See letter from applicant's representative in the packet.*





## Case #12-5

Petition of Peter J. Ehnstrom & Diane H. Desantis for property located at **270 Meadow Road** wherein relief is required from the Zoning Ordinance to subdivide one lot into two which requires the following Variances from Section 10.521: for Proposed Lot #16: a) to allow a lot area and lot area per dwelling unit of 10,005 square feet where 15,000 square feet is required for each; b) to allow a lot depth of 85 feet where 100 feet is required; and c) to allow a 26 foot front yard setback where 30 feet is required; for Proposed Lot #16-1: d) to allow a lot area and lot area per dwelling unit of 10,004 square feet where 15,000 is required for each; and e) to allow a lot depth of 85 feet where 100 feet is required. Said property is shown on Assessor Plan 236, Lot 16 and lies within the Single Residence B District.

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>		<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Subdivision Lot 16	Lot 16-1	Primarily residential uses
<u>Lot area (sq. ft.):</u>	20,009	<b>10,005</b>	<b>10,004</b>	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	20,009	<b>10,005</b>	<b>10,004</b>	15,000 min.
<u>Street Frontage (ft.):</u>	231	114	117	100 min.
<u>Lot depth (ft.):</u>	85	<b>85</b>	<b>85</b>	100 min.
<u>Front Yard (ft.):</u>	26*	<b>26*</b>	30	30 min.
<u>Right Yard (ft.):</u>	160	10	50	10 min.
<u>Left Yard (ft.):</u>	26.5	26.5	10	10 min.
<u>Rear Yard (ft.):</u>	29	<b>29</b>	30	30 min.
<u>Height (ft.):</u>	<35	<35	<35	35 max.
<u>Building Coverage (%):</u>	5.5	11	0	20 max.
<u>Open Space Coverage (%):</u>	89	76	100	40 min.
<u>Parking</u>	2	2	2	1.3
<u>Estimated Age of Structure:</u>	1980	*Per Section 10.516.10 Front Yard Modifications <b>Variance request shown in red.</b>		

### Other Permits/Approvals Required

TAC and Planning Board - Subdivision

# Neighborhood Context

**Aerial Map**



## Previous Board of Adjustment Actions

No prior BOA action found.

## Planning Department Comments

The applicant is proposing to subdivide the existing lot into two separate lots approximately 10,000 square feet in size where 15,000 is required in the SRB zone. Variances are needed for the exiting nonconformities on the lot with the house. Staff feels the front yard variance is not necessary due to Section 10.516.10 which allows a modification based on the average distance to the front property line for houses on the same side of the street within 200 feet of the subject property, however the applicant has requested relief for this preexisting condition of the house.

## 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 #12-6

Petition of Nickerson Home Improvement Company, Inc. and James S. Remick, Trustee of James S. Remick Revocable Trust of 2000 and Linette S. Remick, Trustee of Linette S. Remick Revocable Trust of 2000, owners and Perley Lane LLC, applicant for properties located at **95 Brewster Street and 49 Sudbury Street** wherein relief is required from the Zoning Ordinance to demolish existing structures, merge two lots into one and construct 3 dwelling units which require the following Variances from Section 10.521: a) to allow 45% building coverage where 35% is the maximum allowed; and b) to allow a 5' rear yard where 20' is required. Said properties are shown on Plan 138, Lots 57 and 58 and lie within the General Residence C District.

### Existing & Proposed Conditions

	<u>Existing</u>		<u>Proposed</u>	<u>Permitted / Required</u>	
<u>Land Use:</u>	SFD. 49 Sud.	Com. 95 Brew.	Merge and construct 3 units	Primarily mixed residential uses	
<u>Lot area (sq. ft.):</u>	3,817	6,930	10,747	3,500	min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,817	NA	3,582	3,500	min.
<u>Primary Front Yard:</u>	0	.5'	6''* (Brewster)	5	min.
<u>Secondary Front Yard (ft.):</u>	NA	>60'	0* (Sudbury)	5	min
<u>Side Yard (ft.):</u>	5,21		6	10	min
<u>Rear Yard (ft.):</u>	~40	~2'	<b>5</b>	20	min
<u>Height (ft.):</u>	<35	<35	<35	35	max.
<u>Building Cov. (%):</u>	16	42.5	<b>45</b>	35	max.
<u>Open Space (%):</u>	24	10	43	20	min.
<u>Parking</u>	2	6+	6	4	
<u>Estimated Age of Structure:</u>			Variance request shown in red.		

### Other Permits/Approvals Required

TAC & Planning Board – Site Review



## Previous Board of Adjustment Actions

April 29, 1983 – The Board **granted** a Special Exception to allow conversion of an existing building to 5 apartments and 2 retail business uses. The Special Exception was granted with the **stipulation** that Site Review was required.

## Planning Department Comments

The applicant is proposing to demolish the existing buildings, merge the two lots into one and construct three dwelling units, one two-family and a single family home. The merged lot size will be large enough to allow for three units. The lot will have frontage on both Sudbury and Brewster and it is yet to be determined how the addresses will be assigned for the units. The rear lot line is defined below:

### **Lot line, rear**

A boundary of a **lot** that is opposite and most distant from the **front lot line**. If the **rear lot line** is less than 10 feet in length, or if the **lot** forms a point at the rear, the **rear lot line** shall be deemed to be a line 10 feet in length within the **lot**, parallel to and at the maximum distance from the **front lot line**.

This lot has an odd shape creating a situation where the lot line opposite and *most distant* from Sudbury Avenue is a rear lot line and the lot line opposite and *most distant* from 95 Brewster is a rear lot line. The units that face Brewster Street are impacted by the rear yard. The front yard modification for both Brewster and Sudbury per Section 10.516.10 allow a 0' front yard on Sudbury and a 6" front yard on Brewster. The proposed development exceeds the maximum building coverage by 10%. All three proposed dwellings are 3 bedroom houses, ranging from approximately 1,300 -1500 square feet. It appears there could be some modifications made to the design to reduce the relief needed for this variance.

## 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.*