

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: March 13, 2019
RE: Zoning Board of Adjustment March 19, 2019 Meeting

OLD BUSINESS

1. 53 Austin Street

NEW BUSINESS

1. Case 3-1 196 Sherburne Avenue
2. Case 3-2 200 Chase Drive
3. Case 3-3 1 International Drive
4. Case 3-4 29 Sparhawk Street
5. Case 3-5 170 West Road
6. Case 3-6 799 South Street
7. Case 3-7 36 Ruby Road
8. Case 3-8 3110 Lafayette Road & 65 Ocean Road

OLD BUSINESS

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.

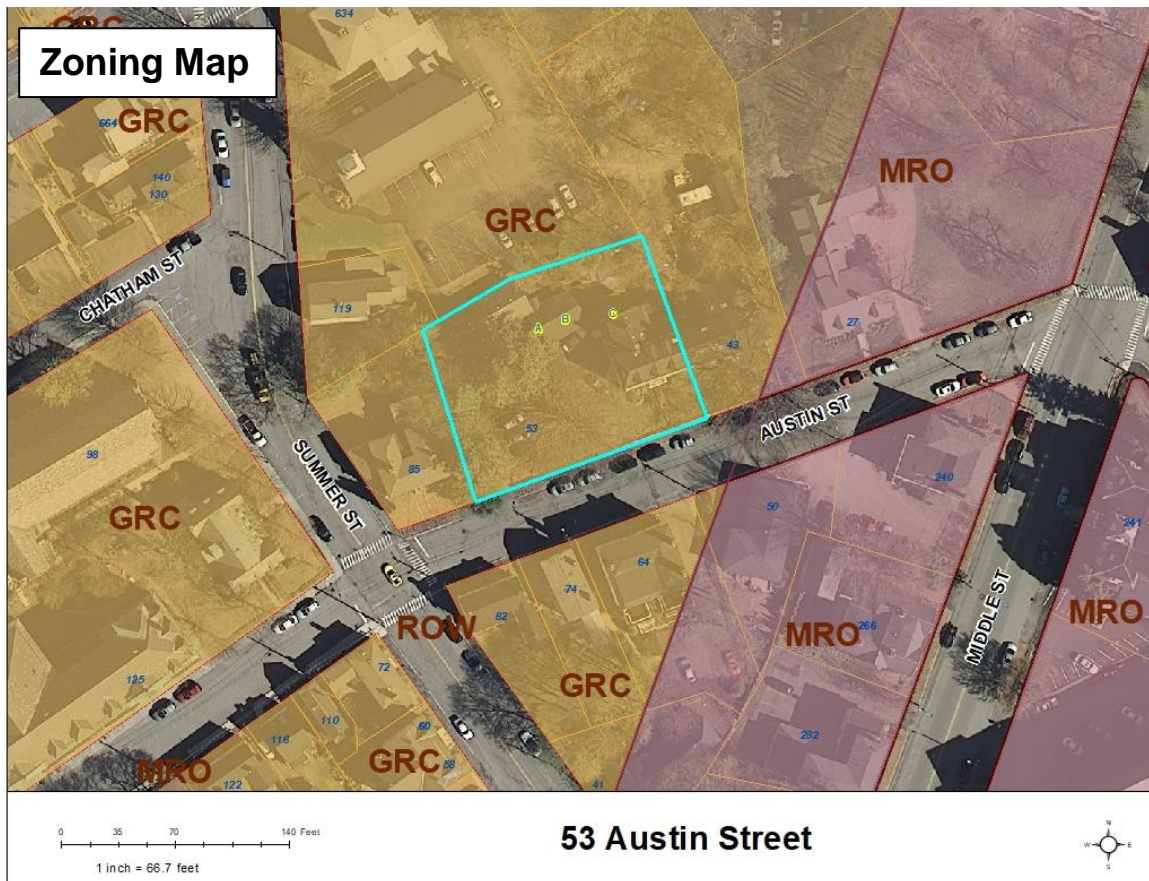
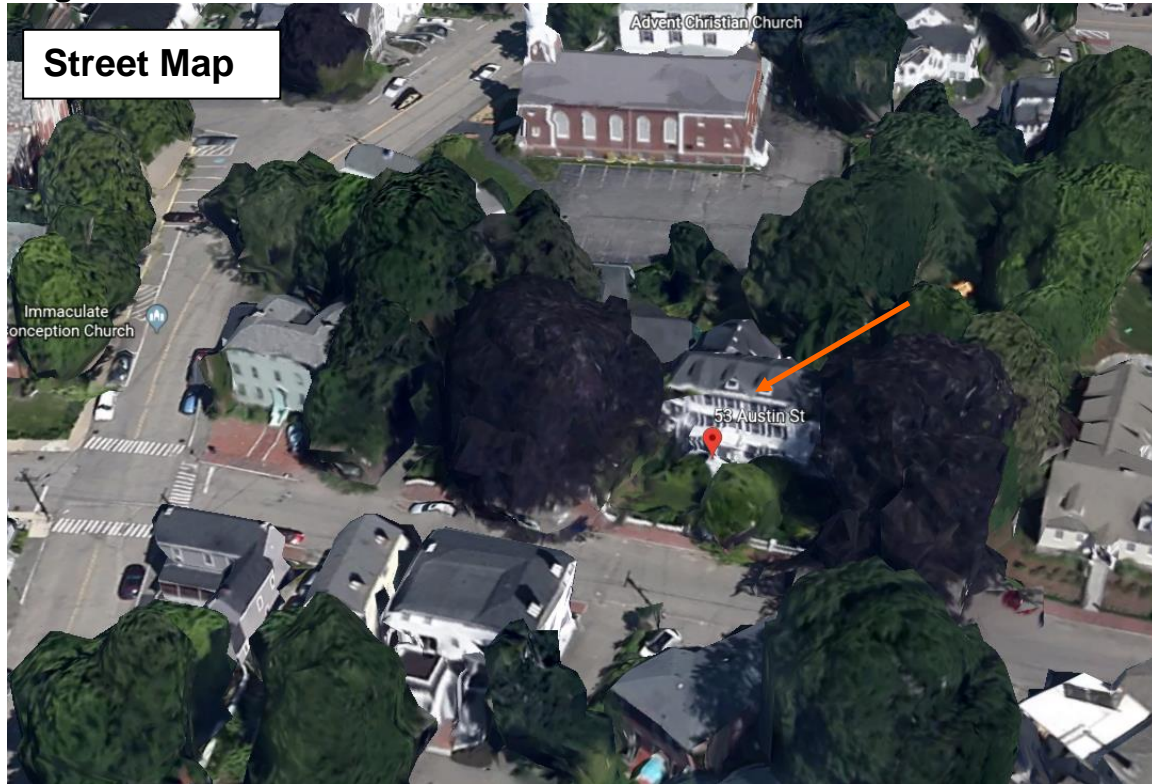
Existing & Proposed Conditions

	<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.

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 a more detailed site plan.

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 #3-1

Petitioners:	Stacie A. Yonkin & Eric L. Moyer
Property:	196 Sherburne Avenue
Assessor Plan:	Map 112, Lot 30
Zoning District:	General Residential A (GRA)
Description:	Demolition and replacement of existing house. Existing garage and rear addition to remain.
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 32%± building coverage where 25% is the maximum allowed. 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.

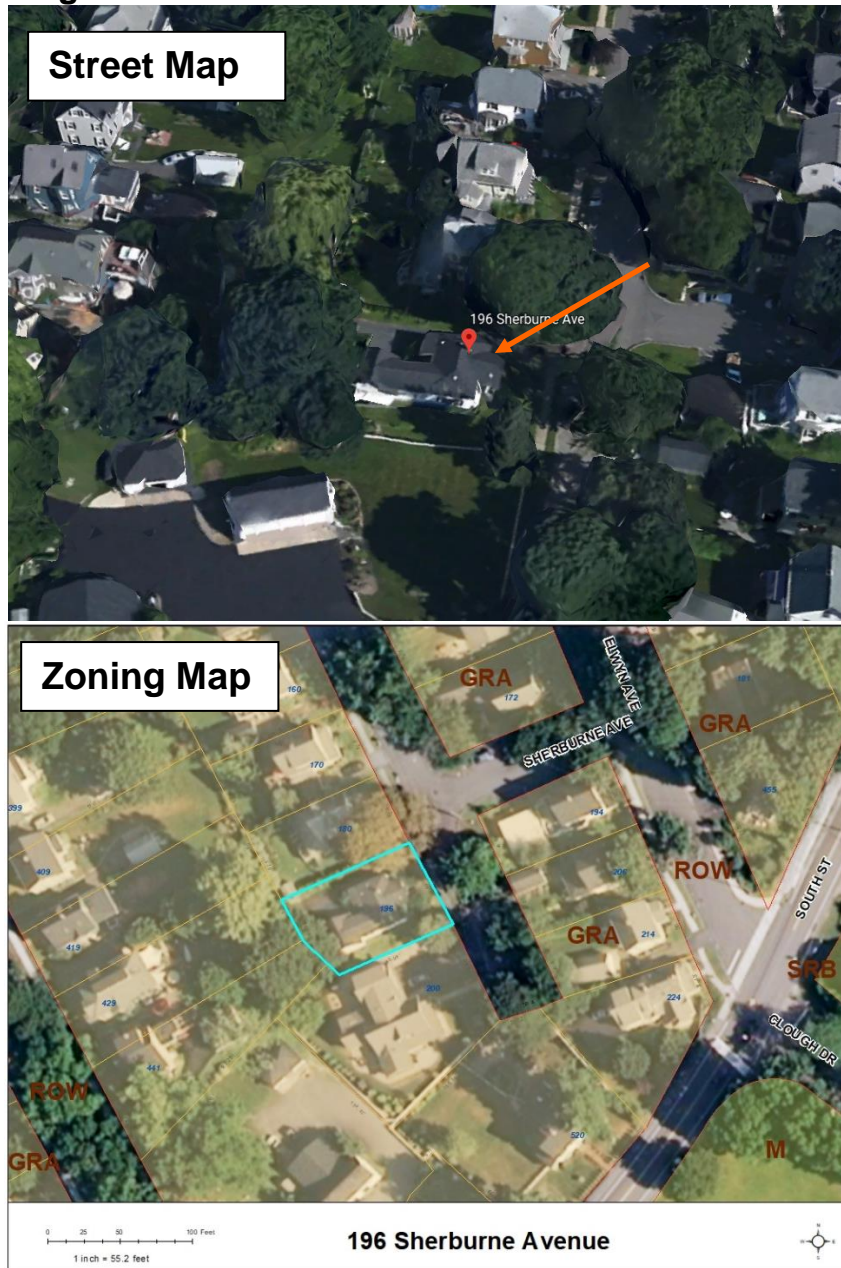
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Partial demo/reconstruction	Primarily residential uses
<u>Lot area (sq. ft.):</u>	5,662	5,662	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,662	5,662	7,500 min.
<u>Street Frontage (ft.):</u>	60	60	100 min.
<u>Lot depth (ft.):</u>	91.5	91.5	70 min.
<u>Primary Front Yard (ft.):</u>	15	16	15 min.
<u>Right Yard (ft.):</u>	15	16	10 min.
<u>Left Yard (ft.):</u>	8.5	8.5	10 min.
<u>Rear Yard (ft.):</u>	10	10	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	26	32	25 max.
<u>Open Space Coverage (%):</u>	55	48	30 min.
<u>Parking</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1918	Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

July 31, 1979 – The Board **granted** variances to allow a 14' x 14' addition and attached garage 10' from the rear property line where 25' was required and 27.2% lot coverage where 20% was allowed.

Planning Department Comments

The proposal includes demolition of the main part of the house, while retaining the garage and a rear bedroom. The new construction will result in a building coverage increase of 6%.

Because the site plan submitted is not an official survey, staff would recommend the Board consider a stipulation that the allowable building coverage is within a certain percentage to account for a plus/minus range that would allow for some flexibility. This would prevent the applicant from having to come back to the Board if there is a minor discrepancy between the site plan submitted for this request and the as-built survey.

If granted approval, Staff recommends consideration of a condition that would allow the building coverage to be within 0.5% or as otherwise 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 #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 a mixed use building with office space and 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% 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 Mixed Use 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%
<u>Max Height (ft.):</u>	<35	56', 5-Stories	4 stories (50') max
<u>Min. Street Facing Façade Glazing:</u>	NA	22%	50% min
<u>Open Space Coverage (%):</u>	>20	27	20 min
<u>Parking</u>		28	31/25 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.

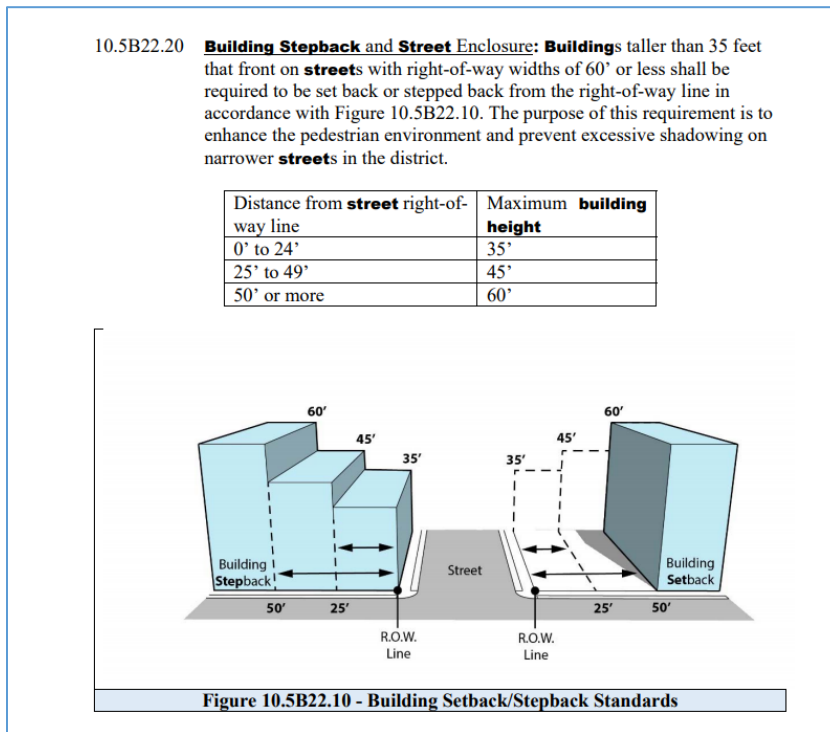
October 21, 2003 – The Board **granted** a variance to allow a previously approved garage with a second-floor apartment to be converted entirely to a single-family dwelling by eliminating the garage on the first floor, with the **stipulation** that the dwelling unit be occupied by church personnel only.

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.

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.



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 #3-3

Petitioners:	Happy Dreams, LLC/Resport L.L.C. c/o Ocean Properties, LTD
Property:	1 International Drive
Assessor Plan:	Map 303, Lot 2
Zoning District:	Pease Airport Business Commercial District (ABC)
Description:	Encroachment of constructed foundation for hotel addition.
Request:	Variances and/or Special Exceptions necessary to grant the required relief from the Pease Development Ordinance including: 1. A Variance from Section 304.04(e) to allow a 49'± rear yard where 50' is the minimum required.

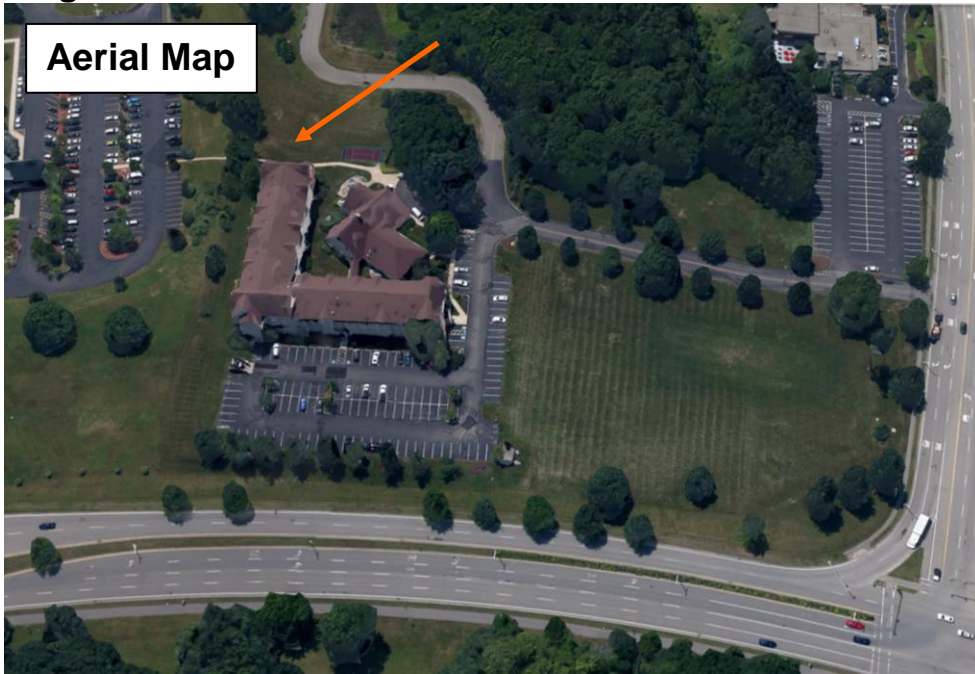
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Hotel	Addition	Primarily bus./com. uses
<u>Lot area (acres):</u>	10 acres	10 acres	5 acres min.
<u>Street Frontage (ft.):</u>	>150	>150	200 min.
<u>Primary Front Yard (ft.):</u>	133	133	70 min.
<u>Right Yard (ft.):</u>	>30	>30	30 min.
<u>Left Yard (ft.):</u>	>30	>30	30 min.
<u>Rear Yard (ft.):</u>	50	49.38	50 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Open Space Coverage (%):</u>		4.4 acres	2.5 acres min.
<u>Parking</u>		151	141
<u>Estimated Age of Structure:</u>	1998	Variance request shown in red.	

Other Permits/Approvals Required

Pease Development Authority

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The Planning Board granted site plan approval on January 18, 2018 for the expansion of the Residence Inn hotel. The site plan showed the rear setback at 50'. An as-built survey was recently completed after the foundation was poured, revealing the encroachment into the rear yard at various locations, with the closest distance being 49.38'. An after the fact variance is being sought by the applicant and they will go before the Pease Development Authority (PDA) Board on March 14, 2019.

The PDA has its own land use and zoning regulations and is exempt from the City's regulations ordinance. For certain parcels in Pease, variance requests are sent to the City for a **recommendation** from the BOA. A motion to approve or deny will be a recommendation and the recommendation will become an approval by the PDA Board after 14 days unless the applicant or PDA Board member requests a hearing (see Part 317.03(f) below).

The Chapter in the Pease Land Use Controls regarding the process for a variance is below. Part 317.03(c) states the BOA will use apply the standards in Part 317.01(c) in its review of the application. These standards are attached hereto under Review Criteria.

(a) For parcels located within the Industrial Zone, Business and Commercial Zone, Natural Resource Protection Zone or portions of the Airport Industrial Zone not acquired by the Pease Development Authority pursuant to Section 13(g) of the Surplus Property Act, requests for a variance from the provisions of this zoning rule shall be referred to the zoning board of adjustment for the municipality in which the parcel is situated for administration in accordance with the provisions of this section.

(b) Applications for a variance for parcels referred to in Subsection (a) shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board and referred to the applicable zoning board of adjustment.

(c) The zoning board of adjustment to which the application for a variance has been referred shall, in its review of the request, apply the substantive provisions of this Chapter.

(d) Recommendations to the Board regarding requests for a zoning variance shall be made by the applicable zoning board of adjustment within sixty (60) days of referral. Notice of the recommendation shall be provided to the applicant and the Board within 48 hours of the decision.

(e) The recommendation of the applicable zoning board of adjustment shall be forwarded to the Board along with a written report detailing the reasons for any recommendation for denial or approval with conditions.

(f) A recommendation of the applicable zoning board of adjustment shall be deemed a final decision of the Board upon the expiration of fourteen (14) days from the date of notice, unless the applicant/developer or a member of the Board requests a hearing by the Board.

(g) Where a hearing has been requested, the Board shall conduct a hearing and render a final decision on the variance request within thirty (30) days.

(h) At the discretion of the Board the time period for rendering a final decision may be extended an additional thirty (30) days, or such additional time as may be consented to by the applicant.

(i) The Board may approve, conditionally approve or deny the application notwithstanding the recommendation of the applicable zoning board of adjustment. In the case of denial of any application by the Board or where the Board elects not to follow the recommendation of the applicable zoning board of adjustment, the ground(s) for such action shall be stated in writing.

Review Criteria

This application must meet the criteria for a **variance** of Part 317.01(c) of the Pease Land Use Controls below.

PART 317. VARIANCES FROM ZONING PROVISIONS

317.01 General Provisions

- (a) Requests for a variance from the provisions of this zoning rule shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board.
- (b) Applications for zoning variance approval shall set forth the specific provision of the rule or regulation involved and reasons why a variance should be granted.
- (c) A variance shall not be approved or recommended for approval unless it is in harmony with the general purpose and intent of these regulations and meets the following criteria:
 - (1) No adverse effect or diminution in values of surrounding properties would be suffered.
 - (2) Granting the variance would be of benefit to the public interest.
 - (3) Denial of the variance would result in unnecessary hardship to the person seeking it.
 - (4) Granting the variance would be substantial justice.
 - (5) The proposed use would not be contrary to the spirit of this zoning rule.
- (d) Reasonable conditions necessary to meet one or more of the standards in subsection (c) above may be attached to approval of a variance.

Case #3-4

Petitioners:	Samantha Finigan and Peter Gorman
Property:	29 Sparhawk Street
Assessor Plan:	Map 160, Lot 6
Zoning District:	General Residence A (GRA)
Description:	Replacement rear deck with stairs.
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 28%± building coverage where 25% is the maximum allowed. 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.

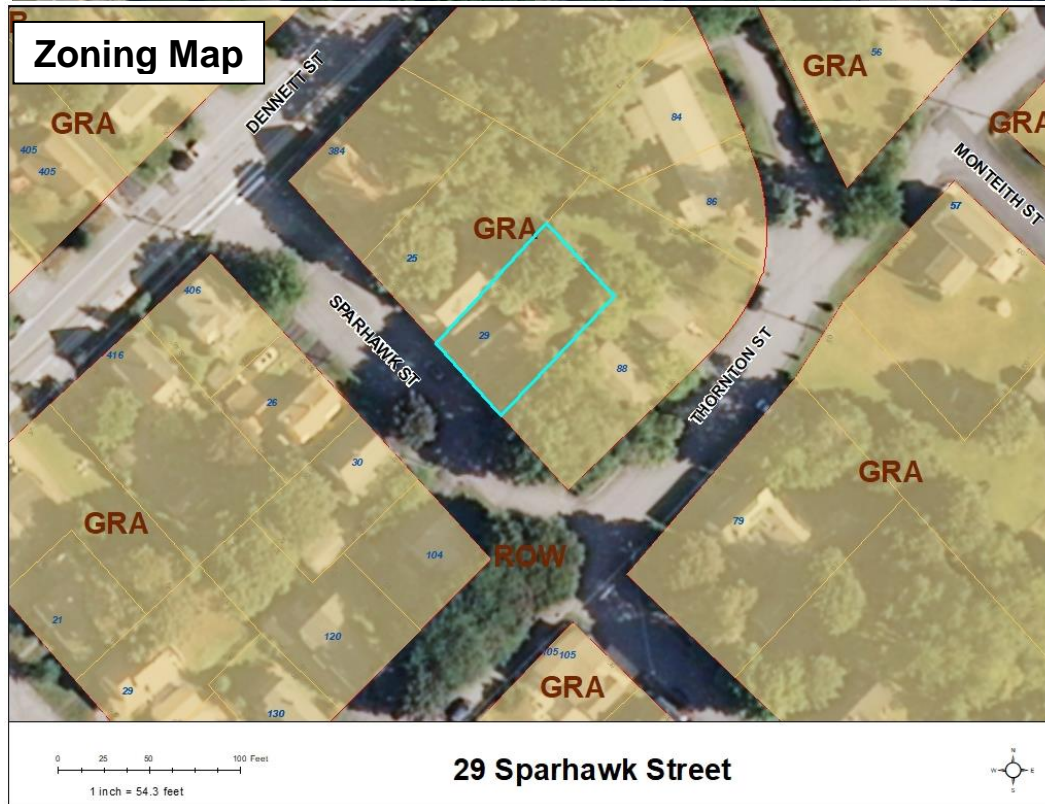
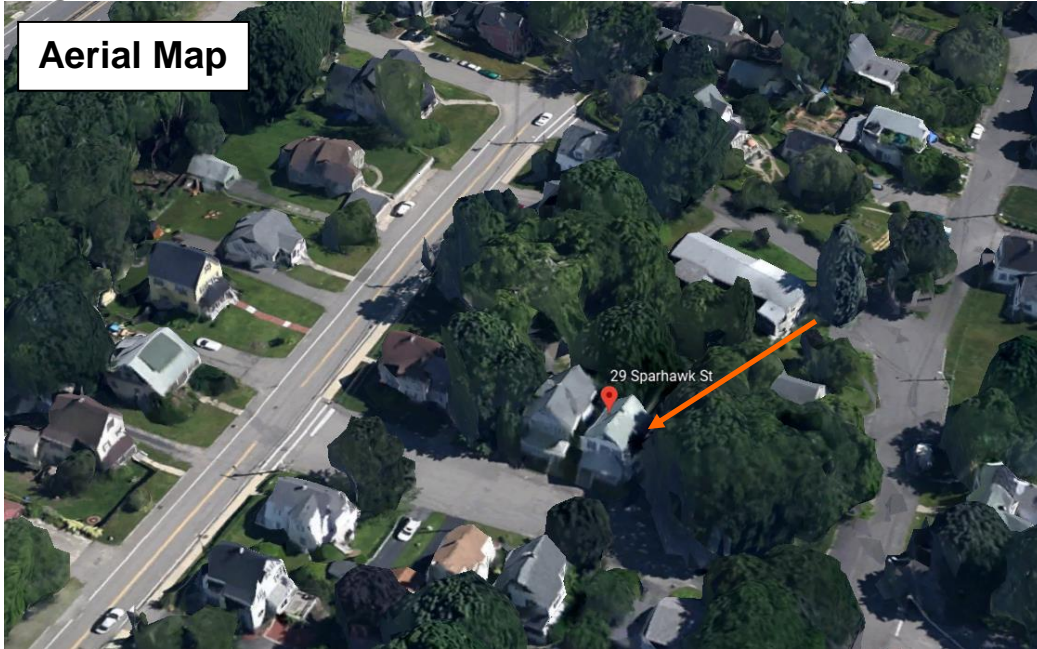
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Deck	Primarily residential
<u>Lot area (sq. ft.):</u>	4,792	4,792	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,792	4,792	7,500 min.
<u>Lot depth (ft.):</u>	90	90	70 min.
<u>Street Frontage (ft.):</u>	54	54	100 min.
<u>Primary Front Yard (ft.):</u>	3	3	15 min.
<u>Left Yard (ft.):</u>	0 (house)	10 (deck)	10 min.
<u>Right Yard (ft.):</u>	10	10	10 min.
<u>Rear Yard (ft.):</u>	48	40 (deck)	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	25	28	25 max.
<u>Open Space Coverage (%):</u>	67	64	30 min.
<u>Estimated Age of Structure:</u>	1900	Variance shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant has a current building permit for an addition to the right side of the house. There was an old odd shaped deck off of the rear of the house. It has since been removed as part of the current work for the addition. The applicant is proposing a modest deck off the back of the house that is smaller than what was previously there and will provide access to the rear yard.

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 #3-5

Petitioners:	Litchfield Portsmouth, LLC, owner, and New England Sporting Goods, LLC/Portsmouth Strategic Partners, LLC, applicants
Property:	170 West Road
Assessor Plan:	Map 252, Lot 2-14
Zoning District:	Industrial (I)
Description:	Sports training facility
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Special Exception under Section 10.440, Use #442 to allow a sports training facility where a health club or similar use is allowed by special exception.

Existing & Proposed Conditions

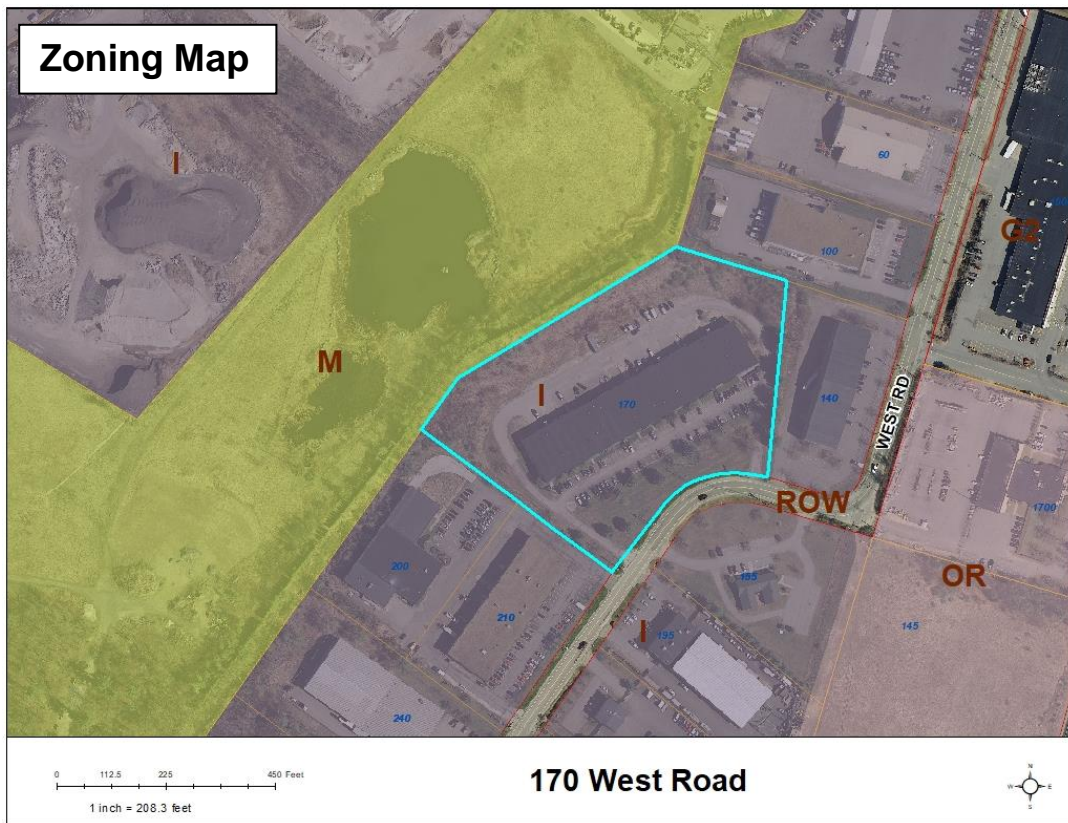
The property is located in the Industrial district and the building contains multiple tenant spaces, most of which are occupied by wholesale/warehouse operations or used as office space. The proposal is to use one unit for a sports training facility, which is allowed by special exception in this district. Adequate parking is provided for the existing uses as well as the proposed use.

Other Permits/Approvals Required

None.

Neighborhood Context





Previous Board of Adjustment Actions

March 15, 1988 – The Board **denied** a request to allow 1,160 s.f. in an industrial building to be used for retail sales where the use was not allowed.

February 18, 1992 – The Board **granted** a variance to allow 4,625 s.f. of an industrial building to be used for retail sales of food products in a district where retail sales are not allowed. The variance was granted with the following stipulations: a) that the retail sales area be limited to the 4,625 s.f. indicated on the submitted plan; b) that retail sales be limited to the sale of paper, non-perishable food, and cleaning products; and c) that there be no outside signage indicating that retail sales are allowed on the property.

July 15, 1997 – The Board **granted** variances to allow computer equipment auctions one Saturday per month for four successive months in one suite and to allow parking for up to 200 additional people where parking was available on-site (100 spaces) and on West Road. The variances were granted with the following **stipulations**: 1) that the auctions be allowed for Saturdays only for the months of September through December; 2) that the hours of operation be from 8:00 a.m. to 4:00 p.m.; and 3) that the application be reviewed after the four month time period has expired. (No indication of whether this review was conducted or any further action taken beyond the four-month period.)

November 22, 2016 – The Board **granted** a special exception to allow a studio for lessons, set production and non-performance rehearsals.

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 #3-6

Petitioners:	Noele M. Clews
Property:	799 South Street
Assessor Plan:	Map 132, Lot 24
Zoning District:	General Residential A (GRA)
Description:	Subdivide one lot into three lots.
Requests:	Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.521 to allow 95'± continuous street frontage where 100' is required.

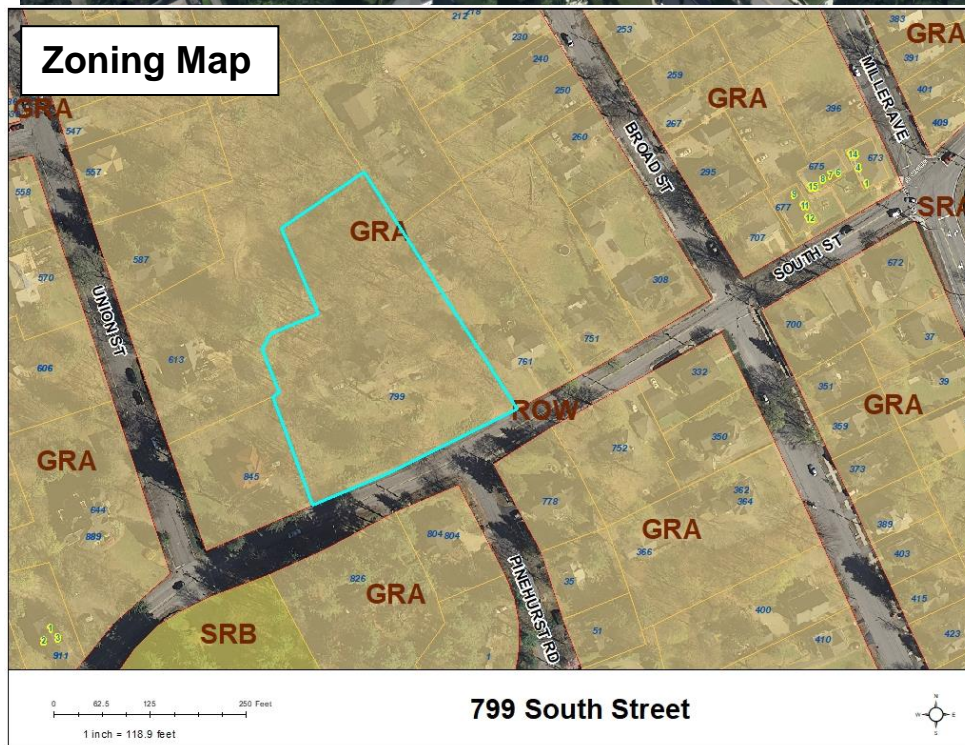
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	4 family	Subdivide into 3 lots	Primarily residential uses
<u>Lot area (sq. ft.):</u>	76,889	Lot 1: 9,004 Lot 2: 58,885 Lot 3: 9,000	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	19,222	Lot 1: 9,004 Lot 2: 14,721 Lot 3: 9,000	7,500 min.
<u>Street Frontage (ft.):</u>	295.08	Lot 1: 100 Lot 2: 95.08 Lot 3: 100	100 min.
<u>Lot depth (ft.):</u>	152	Lot 1: 109 Lot 2: >100 Lot 3: 105	70 min.
<u>Primary Front Yard (ft.):</u>	110	No new structures proposed. Applicant states new dwellings will meet zoning requirements.	15 min.
<u>Right Yard (ft.):</u>	>10		10 min.
<u>Left Yard (ft.):</u>	>10		10 min.
<u>Rear Yard (ft.):</u>	>20		20 min.
<u>Height (ft.):</u>	<35		35 max.
<u>Building Coverage (%):</u>	<25		25 max.
<u>Open Space Coverage (%):</u>	>30		30 min.
<u>Parking</u>	ok		
<u>Estimated Age of Structure:</u>	1862	Variance request shown in red.	

Other Permits/Approvals Required

TAC & Planning Board – Subdivision Review
DPW – Driveway Permit

Neighborhood Context



Previous Board of Adjustment Actions

April 24, 1973 – The Board **denied** a request for a nursery school and granted a request to allow a recognized profession at the property.

May 8, 1973 – a special meeting was convened to consider a request for rehearing

(noted in a letter to applicant's attorney). No letter of decision but the Minutes for the special meeting indicated that the **request for rehearing had been granted**.

May 29, 1973 – A request to operate a nursery school was **granted** with the following stipulations: a) an 'entrance' and 'exit' sign to be placed on the driveway entrance and exit; and b) the petitioners to confer with the Traffic and Parking Committee to receive their approval for proper traffic control prior to opening.

April 27, 1976 – The Board **granted** a request to operate a non-profit school in an existing dwelling and nursery school. The request was granted with the following stipulations: a) that there would be no more than thirty-six students on the entire property at any one time including any and all nursery school students; and b) that the regular school hours would be between 8:00 a.m. and 4:00 p.m.

Planning Department Comments

This will require TAC and Planning Board review and approval for the subdivision. In addition, a driveway permit will be required for Lot 2, which contains the existing house. The two new vacant lots will have access via the existing driveway on either side of the lot.

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 #3-7

Petitioners:	Thirty-Six Ruby Road Trust, Phillip J. Stiles, Trustee
Property:	36 Ruby Road
Assessor Plan:	Map 220, Lot 51
Zoning District:	Single Residence B (SRB)
Description:	Create a buildable residential lot.
Requests:	Variations 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 and lot area per dwelling unit of 11,844± s.f. where 15,000 s.f. is required for each.

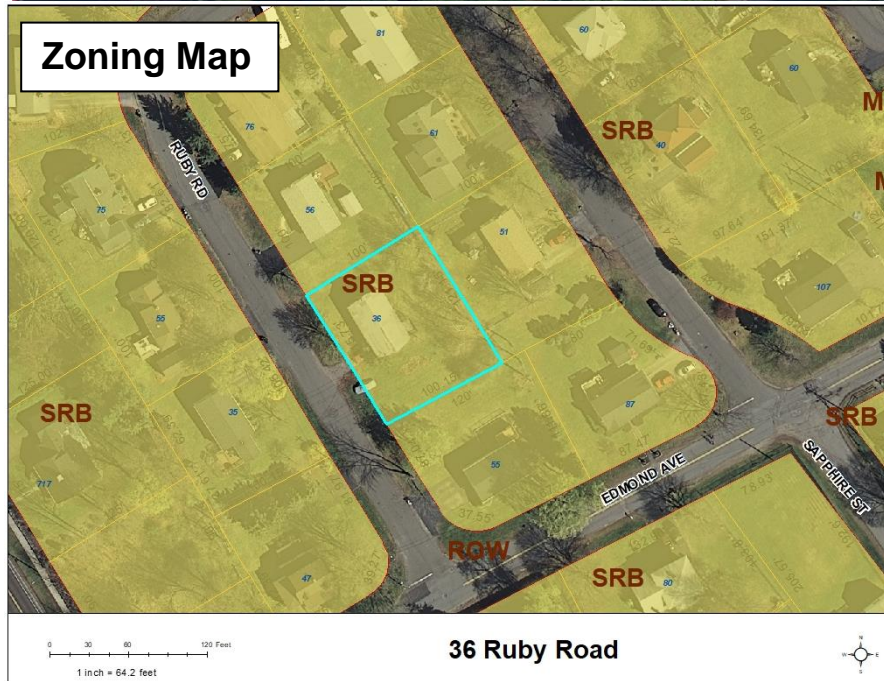
Existing & Proposed Conditions

	<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>	11,844	11,844	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,844	11,844	15,000 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>	49	>40	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. *10.516.10 Front yard alignment appears this would be the approximate front yard but would have to be verified.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

September 21, 1982 – The Board **granted** a variance to allow a front yard of 28.25' on an existing residence where 30' was required.

Planning Department Comments

A foundation exists on the lot from the previous home that was demolished in 2018. The lot is nonconforming for lot size and lot area per dwelling unit. The applicant is seeking to get relief for these dimensional requirements in order to sell the lot as a buildable lot. The lot is constrained by a power line easement that impacts the right side yard. A site sketch showing the buildable area has been submitted, demonstrating

there is adequate space to build a dwelling without having to seek additional variances for this property despite the easement.

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

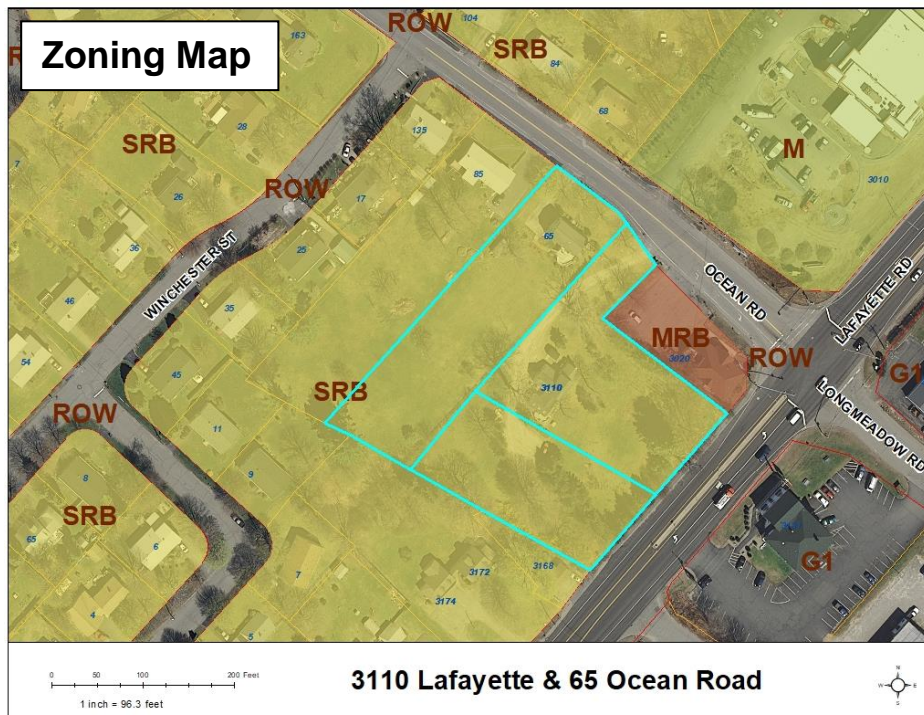
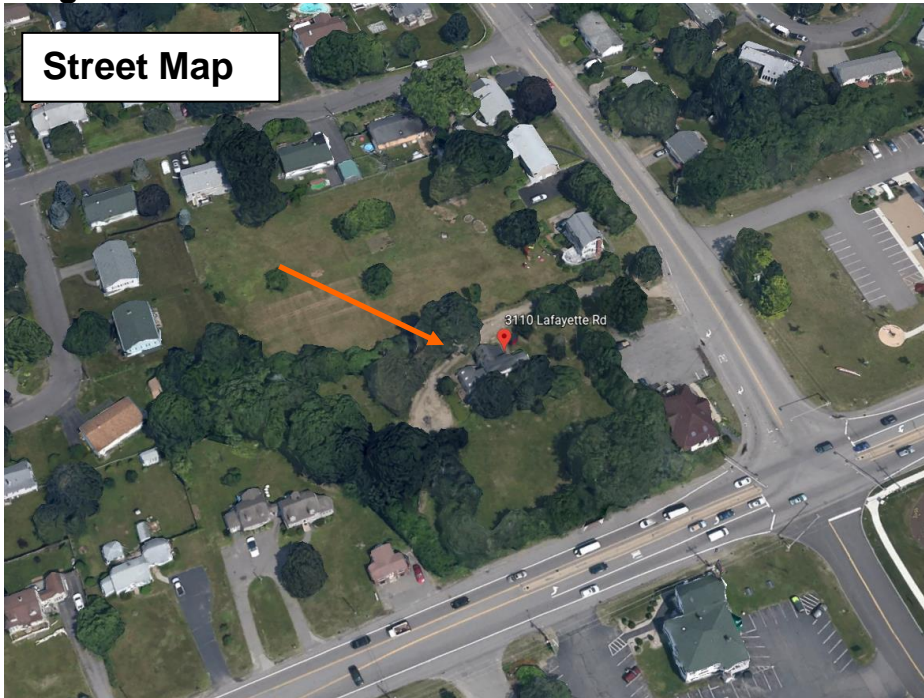
Petitioners:	Weeks Realty Trust, Kaley E. Weeks, Trustee and Chad Carter, owners and Tuck Realty Corporation, applicant
Property:	3110 Lafayette Road & 65 Ocean Road
Assessor Plan:	Map 292, Lots 151-1, 151-2 & 153
Zoning District:	Single Residence B (SRB)
Description:	Merge lots and construct four story 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.

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.