

TO: Zoning Board of Adjustment  
FROM: Peter Stith, AICP, Planning Department  
DATE: May 21, 2019  
RE: Zoning Board of Adjustment May 28, 2019 Meeting

## **NEW BUSINESS**

1. Case 5-8 85 New Hampshire Avenue
2. Case 5-9 101 International Drive
3. Case 5-10 3110 Lafayette Road
4. Case 5-11 254 South Street
5. Case 5-12 266-278 State Street
6. Case 5-13 2219 Lafayette Road

**Case #5-8**

Petitioners:	75 NH Ave, LLC
Property:	85 New Hampshire Avenue
Assessor Plan:	Map 306, Lot 3
Zoning District:	Airport Business Commercial District (ABC, Pease)
Description:	New signage.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Pease Zoning Ordinance including:</p> <p>1. Variations from Section 306.01(d) to allow 256.75 s.f. of sign area where 200 square feet per lot is the maximum.</p>

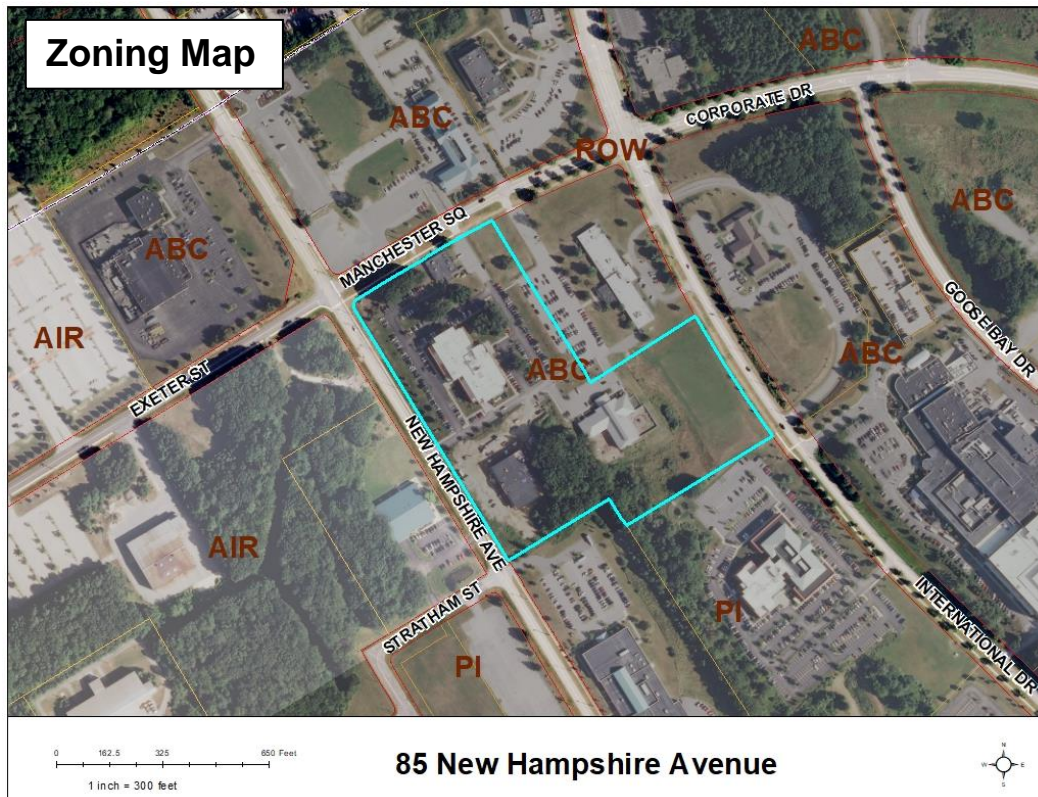
**Existing & Proposed Conditions**

<u>Sign District 6</u>	<u>Existing</u>	<u>Proposed</u>	<u>Total</u>	<u>Permitted / Required</u>
<u>Wall Sign:</u>	79.8 s.f. (3 signs)	51.75 s.f. (1 sign)	131.55 s.f. (4 signs)	200 s.f. max per lot
<u>Ground Sign:</u>	80.1 s.f. (4 signs)	39 s.f. (1 sign)	119.1 s.f (5 signs)	200 s.f. max per lot
<u>Awning Sign:</u>	6.1 s.f. (1 sign)		6.1 s.f. (1 sign)	
<u>Total sign area:</u>			<b>256.75</b>	200 s.f. max per lot
			<b>Variance request shown in red.</b>	

**Other Permits/Approvals Required**

Pease Development Authority Board

## Neighborhood Context



## Previous Board of Adjustment Actions

(As 75 New Hampshire Avenue – Several entities on a single lot)

September 21, 2007 – The Board recommended to the Pease Development Authority (PDA) that a variance be **granted** to allow two 12' x 20' loading berths to be provided where one 12' x 20' and eight 12' x 45' loading berths are required.

July 20, 2010 – The Board recommended to the PDA that variances be **granted** to allow more than 1 freestanding sign per lot and to allow a freestanding sign (for one of the entities - Pixel Media) to be 12'6" from a lot line where 20' was required and to allow 218.9 s.f. of aggregate sign area where 200' was the maximum allowed.

### **Planning Department Comments**

The minutes of the Pease Development Authority (PDA) Board meeting on April 18, 2019 are provided in the applicant's packet. The PDA Board unanimously voted to support the applicant's request to move forward to seek a variance.

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 #5-9**

Petitioners:	Lonza Biologics, Inc.
Property:	101 International Drive
Assessor Plan:	Map 305, Lot 6
Zoning District:	Airport Business Commercial District (ABC, Pease)
Description:	Two new generators with above ground storage facilities.
Requests:	<p>Variances and/or Special Exceptions necessary to grant the required relief from the Pease Zoning Ordinance including:</p> <p>1. Variances from Section 308.03(c) to allow two (2) above ground storage facilities that exceed a capacity of 2,000 gallons per facility.</p>

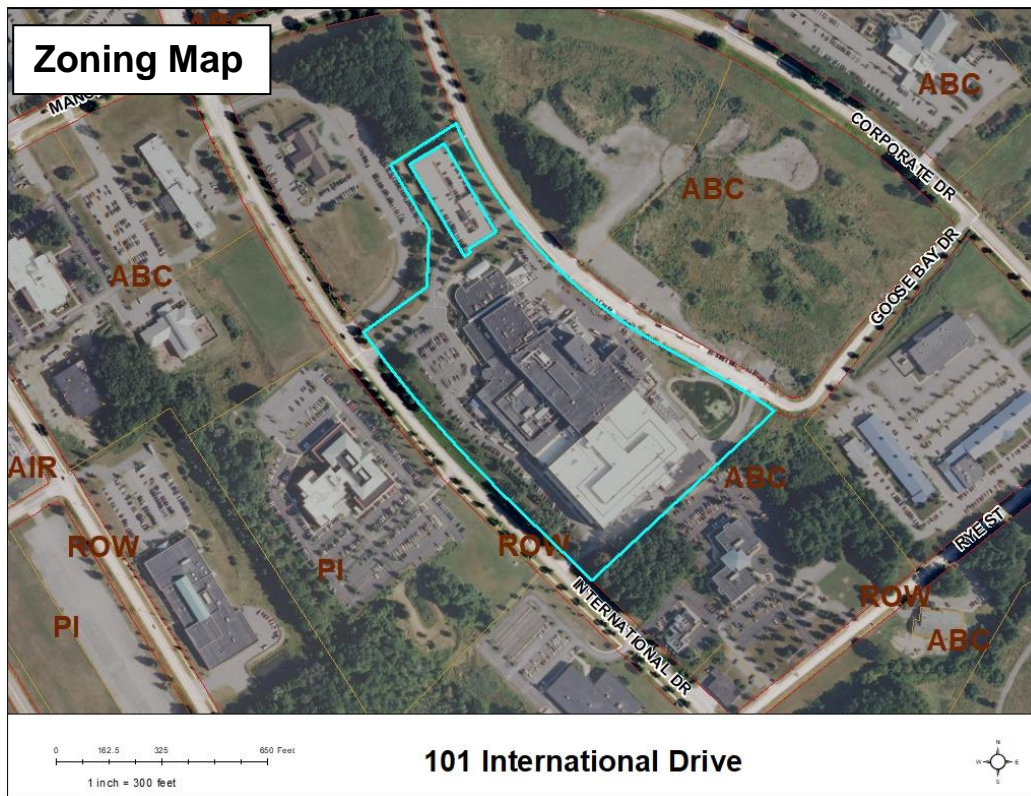
**Existing & Proposed Conditions**

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	2 above ground storage tanks	Business, com. & trade related enterprises
<u>Above Ground Storage Facility:</u>	2 @ <b>3,312</b> gal each	2,000 gal max.
	<b>Variance request shown in red.</b>	

**Other Permits/Approvals Required**

Pease Development Authority (PDA)

# Neighborhood Context





## **Previous Board of Adjustment Actions**

December 15, 1998 – The Board granted a variance pursuant to the PDA regulations to allow 5 loading docks to be provided where 13 loading docks were required for the 130,000 s.f. expansion of the facility.

February 20, 2001 – The Board recommended to the Pease Development Authority that a variance be granted to allow 5 loading docks where 28 loading docks are required.

June 16, 2015 – The Board recommended approval to the Pease Development Authority of a variance to allow above ground storage tanks exceeding 2,000 gallon capacity for two existing and two proposed generators. The recommendation was given with a request to provide information on the life span of the above ground tanks.

## **Planning Department Comments**

The minutes of the Pease Development Authority (PDA) Board meeting on April 18, 2019 are provided in the applicant's packet. The PDA Board unanimously voted to support the applicant's request to move forward to seek a variance.

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 #5-10

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 23 residential Townhouse 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"> <li>1. A Variance from Section 10.440, use #1.40 to allow townhouses where the use is not permitted in the district.</li> <li>2. A Variance from Section 10.513 to allow more than one free-standing dwelling per lot.</li> <li>2. A Variance from Section 10.521 a lot area per dwelling unit of 4,205± s.f. where 15,000 per dwelling unit is required.</li> </ol>

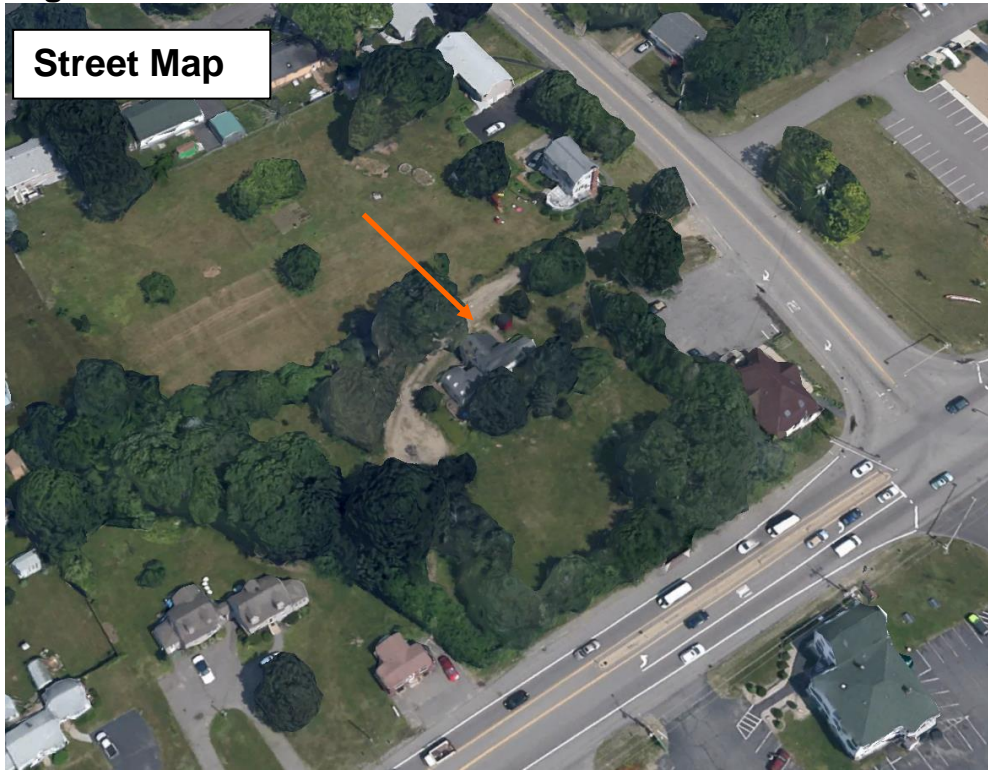
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family/vacant	<b>Townhouse</b> development	Primarily single family uses
<u>Lot area (sq. ft.):</u>		96,706*	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>		<b>4,205</b>	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	80	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	<35	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	<b>Variance request shown in red.</b>	

### Other Permits/Approvals Required

TAC & Planning Board – 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 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) 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.

April 16, 2019 – The Board voted to accept the **withdrawal** of the applicant of a petition to merge lots and construct a four story mixed use building containing 30 apartments and professional/medical offices.

### **Planning Department Comments**

As the above history states, the applicant was before the Board in April with a proposed mixed use building containing 30 apartments. The applicant has based the development and design on the Gateway-1 (G1) zoning. The original application was withdrawn based on the discussion during the meeting and the applicant has revised the development, and is now proposing a townhouse development, which is a permitted building type in the G1 district, however it is not permitted in the SRB. The permitted density in the G1 district is 16 units per acre. Merging the three lots will result in 2.22 acres which would equate to a permitted density of 35 units and the proposed density is 23 units. In the G1 zone, multiple principal buildings or dwellings are allowed on a lot, however since the underlying zoning is SRB, only one dwelling per lot is allowed. A survey will be required if the project gets final land use approval.

**Staff would recommend the Board consider a plus/minus range to account for any discrepancy in the lot area once a survey has been completed.**

### **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 #5-11

Petitioners:	Michael R. & Denise Todd
Property:	254 South Street
Assessor Plan:	Map 111, Lot 4
Zoning District:	Single Residence B (SRB), Historic District (HD)
Description:	Install A/C unit.
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 6.5'± left side yard where 10' is required.

### Existing & Proposed Conditions

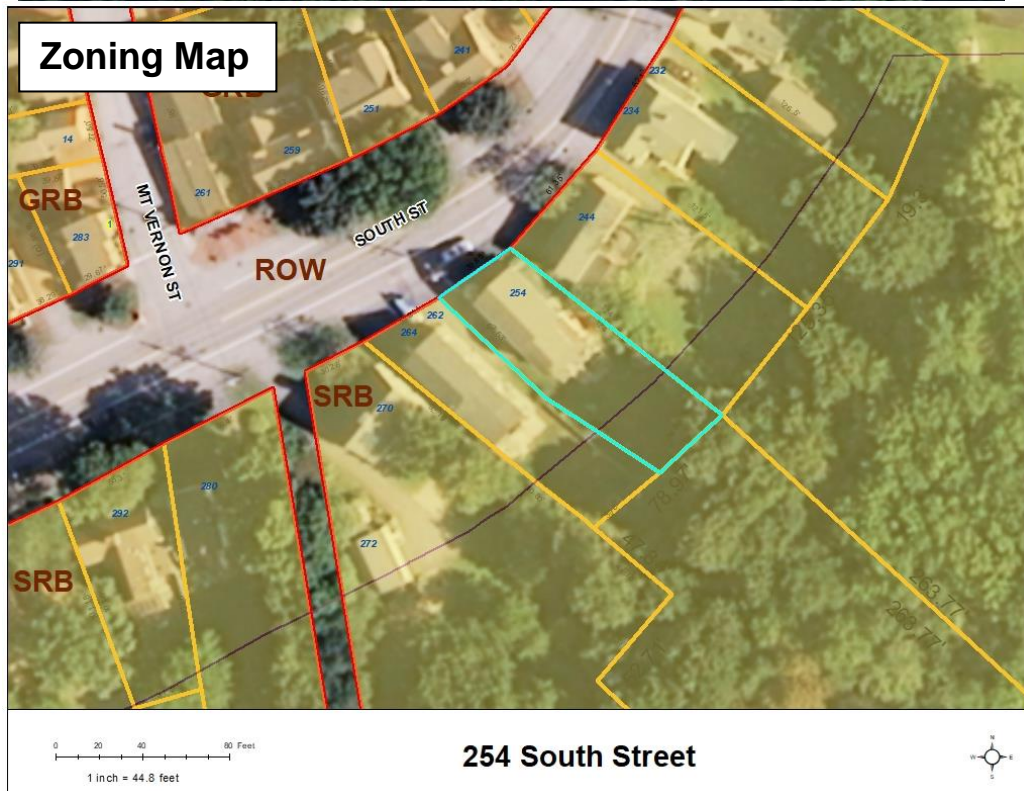
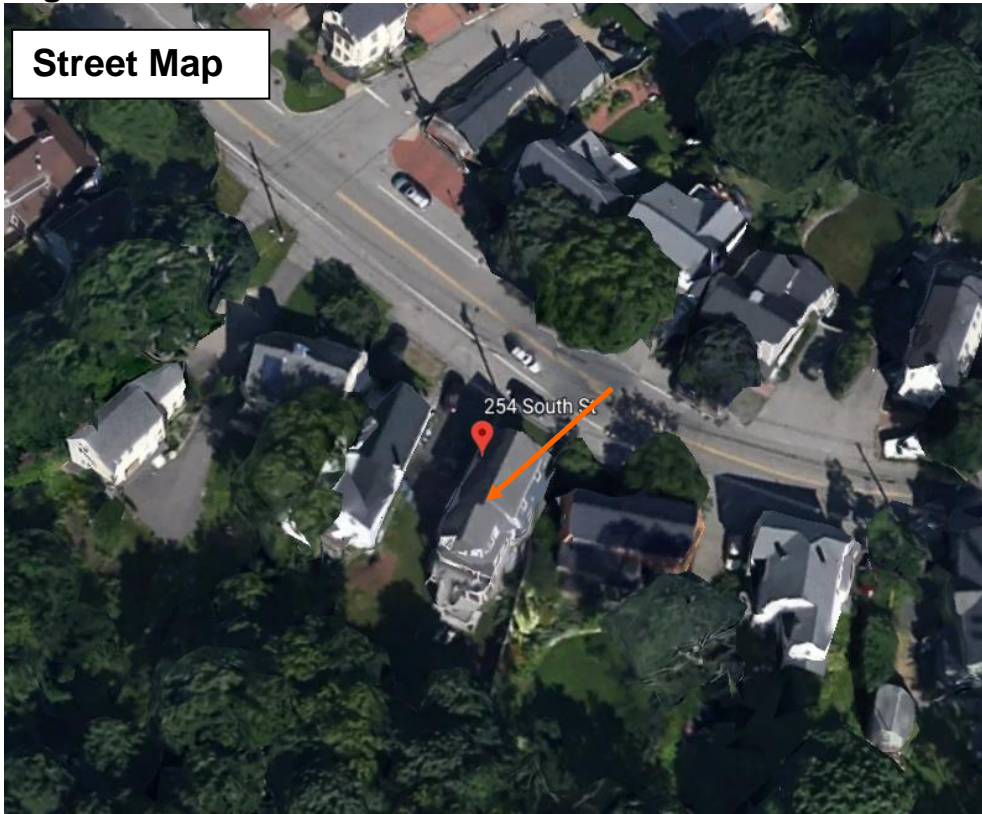
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	A/C unit	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	5,160	5,160	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,160	5,160	15,000
<u>Street Frontage (ft.):</u>	39.85	39.85	100 min.
<u>Lot depth (ft.):</u>	>100	>100	100 min.
<u>Primary Front Yard (ft.):</u>	8.5	8.5	30 min.
<u>Right Side Yard (ft.):</u>	12	12	10 min.
<u>Left Yard (ft.):</u>	1.2' (house)	<b>6.5</b> (A/C unit)	10 min.
<u>Rear Yard (ft.):</u>	>30	>30	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	27	27	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Age of Structure:</u>	1900	<b>Variance request shown in red.</b>	

### Other Permits/Approvals Required

Historic District Commission



# Neighborhood Context



## Previous Board of Adjustment Actions

March 28, 1955 - The Board **granted** a petition to alter the premises from a single residence to a double residence.

November 18, 2008 – The Board **granted** variances to allow an I-shaped porch 4'6" x 14' plus 4.5' x 21' (157.5 s.f. total) and a deck 4'6" x 21'9" (94.5 s.f.) with 36.9 s.f. of steps creating 24.1% building coverage where 20% was allowed.

July 24, 2018 – The Board **granted** a variance to allow 27% building coverage, 20% allowed in the construction of a rear deck addition.

## Planning Department Comments

The applicant is proposing to add a condenser on the left side of the house and is proposing to fence in the area, so it is not visible from the abutting property or the street.

## Review Criteria

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

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

**AND**

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

**OR**

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

## Case #5-12

Petitioners:	PNF Trust of 2013, Peter N. Floros, Trustee
Property:	266-278 State Street
Assessor Plan:	Map 107, Lots 78-80
Zoning District:	Character District 4 (CD4), Historic District (HD), Downtown Overlay District (DOD)
Description:	Construct a mixed-use three story building with a short fourth and a penthouse.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> <li>1. A Variance from Section 10.5A43.31 to allow a 55' height where 45' is the maximum allowed for 2-3 stories (short 4<sup>th</sup>).</li> <li>2. A Variance to allow a structure to be designated as a penthouse without meeting the 15' setback from the edge of the roof as outlined in the definition of a penthouse.</li> <li>2. A Variance from Section 10.5A41.10C to allow the following: a) 93%± building coverage where 90% is the maximum allowed; and b) a 3'± rear yard where 5' is required.</li> </ol>

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant	Mixed Use building	Primarily mixed uses
<u>Lot area (sq. ft.):</u>	1,750 1,507 1,620	4,877 (merged)	NR min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	~14 units	NR min.
<u>Secondary Front Yard:</u>	NA	0	15 max.
<u>Primary Front Yard (ft.):</u>	NA	0	10 max.
<u>Right Side Yard (ft.):</u>	NA	0	NR
<u>Rear Yard (ft.):</u>	NA	<b>3'</b>	Greater of 5 ft. from rear or 10 ft. from alley
<u>Height (ft.):</u>	NA	<b>55'</b>	2-3 Stories max. (short 4 <sup>th</sup> )
<u>Building Coverage (%):</u>	NA	<b>93</b>	90 max.
<u>Open Space Coverage (%):</u>		7*	10 min.
<u>Parking</u>		TBD	TBD
		<b>Variance request shown in red.</b> *May require additional relief for Open Space.	

# Other Permits/Approvals Required

Historic District Commission  
Planning Board & TAC – Site Review

## Neighborhood Context



## **Previous Board of Adjustment Actions**

November 21, 2017 – The Board **denied** the appeal of the decision by the applicant of the Historic District Commission to deny issuance of a demolition permit. The denial included stipulations that (a) the applicant work with the Historic District Commission to arrive at a mutually agreeable plan for the property and (b) any reconstruction of the existing building must at a minimum fully preserve the State Street and the Church Street side facades of the existing building.

January 17, 2018 – The Board **denied** a request for rehearing of the above appeal. (A subsequent appeal was made to the Superior Court)

## **Planning Department Comments**

A new mixed use building is proposed at the former location of the State Street Saloon that was destroyed in a fire in 2017. The applicant's representative has confirmed the three lots will be merged once all land use approvals have been granted and that the building coverage is based on a percentage of the three lots combined. The proposal includes an increase in height from what is allowed in the district, and includes a penthouse that does not meet the roof edge setback. The definition of a penthouse is below from the zoning ordinance and the proposal meets the other applicable requirements for a penthouse.

### **Penthouse**

A habitable space within the uppermost portion of a **building** above the **cornice** which is set back at least 15 feet from all edges of the roof and the total floor area of which does not exceed 50% of the area of the **story** below. For internal courtyards at least 40 feet from a **street** or vehicular right-of-way or easement, the **penthouse** shall be setback at least 8 feet from the edge of the roof of the **story** below.

The relief is sought for the rear property line where the penthouse is proposed to be constructed to the edge of the building. Because the three lots are proposed to be merged, the interior wall of the penthouse adjacent to the Times building is not subject to the 15 foot setback. The applicant has been before the HDC for two work sessions and there will likely be some design changes that do not impact the requested variances before the Board.

As of the writing of this report, staff has asked for the applicant to provide an open space calculation. With the proposed building coverage at 93% and a 10% minimum open space requirement it appears there is not enough area to meet the open space requirement and additional relief would be required from this Board.

**If granted approval, the Board should consider a stipulation that the three lots must be merged.**

## **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 #5-13

Petitioners:	2219 Lafayette Road LLC
Property:	2219 Lafayette Road
Assessor Plan:	Map 272, Lot 1
Zoning District:	Gateway Neighborhood Mixed Use Corridor (G1), Single Residence A (SRA)
Description:	Parking space size and location.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> <li>1. A Variance from Section 10.1113.20 to allow parking between a principal building and a street.</li> <li>2. A Variance from Section 10.1114.21 to allow 8.5' x 18' parking spaces where 8.5' x 19' spaces are required.</li> </ol>

### Existing & Proposed Conditions

Data in table is only for G1 portion of property.

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Auto sales	Addition with parking	Primarily mixed uses
<u>Lot area (sq. ft.):</u>	801,382	801,382	NA min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	NA	NA min.
<u>Primary Front Yard (ft.):</u>	200+	174	70-90 Min.
<u>Left Side Yard (ft.):</u>	200+	197	15
<u>Right Side Yard (ft.):</u>	200+	189	15
<u>Rear Yard (ft.):</u>	108	108	15
<u>Height (ft.):</u>	<40	<40	4 Stories/50 ft max.
<u>Space Dimensions:</u>	8.5' x 19'	<b>8.5' x 18'</b>	8.5' x 19'
<u>Parking</u>	49	63	63
<u>Estimated Age of Structure:</u>	2000	<b>Variance request shown in red.</b>	

### Other Permits/Approvals Required

TAC & Planning Board – Amended Site Plan

## Neighborhood Context



### Previous Board of Adjustment Actions

June 8, 1964 – An appeal regarding the Code Official’s decision denying a light industrial use in a Commercial Zone was withdrawn.

August 28, 1973 – The Board denied the following requests: 1) to place a mobile home within a General Business District on a nonconforming residential property; 2) to locate



a mobile home outside of a mobile home park; and 3) to place a mobile home on an existing independent lot of 10,000 s.f.

July 20, 1976 – The Board **denied** a request for rehearing regarding the above.

October 25 1983 – The Board **granted** variances to allow construction of a structure 44' in height where 35' was the maximum permitted and to allow parking in an Industrial District with the stipulation that the proposal receive Site Review approval.

June 15, 1993 – The Board **granted** variances to allow the following: a) the sale of automobiles and motorcycles with a display area 40' from the front property line and less than 100' from property zoned residential; 2) indoor repair of motorcycles in an existing structure with a 0' front yard where 50' was required; and 3) an increase in the extent of a nonconforming use or structure. The variances were granted with the **stipulations** that vehicles on the property be inspectable and operable and that there be no more than 12 each cars and motorcycles on the property at any one time. (Subsequent to this decision, a **Notice of Violation of the stipulations** attached to the variances was issued by the Chairman of the Board of Adjustment).

September 19, 2000 – The Board **denied** a request to allow a 261.8 s.f. attached sign creating an aggregate signage of 393.98 s.f. where 200 s.f. was the maximum allowed.

March 24, 2005 – The Board **denied** a request to allow a 7.6 s.f. free-standing a-frame sign creating 207.6 s.f. of aggregate signage where 200 f.f. was the maximum allowed.

June 28, 2016 – The Board **denied** an appeal of an administrative decision of a Code Official in the application of Section 10.1280 of the Ordinance, upholding the decision of the Planning Director in denying a sign permit applicant. The Board also upheld the Director's determination that the request for a sign went beyond the parameters set out in the Settlement Agreement and Order issued by the Superior Court on October 21, 2003.

August 16, 2016 – The Board **denied** a request for rehearing regarding the above. (The decision was subsequently appealed to the Superior Court).

### **Planning Department Comments**

The subject property is split zoned, with the area fronting on Lafayette Road zoned G1 and the rear undeveloped portion of the property zoned SRA with the majority of that area consisting of wetlands. The wetland buffer extends into the existing development as shown on the zoning map above. The applicant is proposing additions to the front, sides and a small addition in the rear of the existing building which will impact existing parking areas and the increase in gross floor area will require additional parking. The new designated parking will be located in spaces that were previously used for vehicle display areas and will be in front of the building, which is not permitted. In addition, the new spaces will be 18' instead of the required 19'. All of the parking areas are located on existing pavement. While there is space available to locate new parking behind the

building, this would impact wetland buffer area or would require creating more impervious surface and additional clearing.

### **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.*