

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: July 20, 2021
RE: Zoning Board of Adjustment July 27, 2021 Meeting

OLD BUSINESS

1. 187 McDonough

NEW BUSINESS

1. 500 Market Street
2. 552 State Street
3. 9 Middle Road
4. 1011 Banfield Road
5. 145 Cabot Street
6. 204 Wibird Street – Request to Postpone
7. 546 Sagamore Avenue
8. 0 Islington Street
9. 125 Bow Street
10. 2454 Lafayette Road
11. 101 International Drive

July 27, 2021 Meeting

OLD BUSINESS

1.

Petition of **Haven Properties LLC** for property located at **187 McDonough Street** for demolition of existing single family residence and construction of a new single family residence wherein variances from Section 10.521 are required to allow the following: a) a lot area of 2,537 s.f. where 3,500 s.f. is the minimum required; b) a lot area per dwelling unit of 2,537 s.f. where 3,500 s.f. is the minimum required; c) continuous street frontage of 48' where 70' is the minimum required; d) building coverage of 43% where 35% is the maximum allowed; e) a 4' left side yard where 10' is the minimum required; and f) a 9' rear yard where 20' is the minimum required. Said property is shown on Assessor Plan 144, Lot 43 and lies within the General Residence C District.

The applicant has submitted request for an extension for the property above. Variances were granted on August 20, 2019 and the applicant has yet to obtain a building permit. The Ordinance allows for a one-time, one-year extension if the request is acted on prior to the expiration date.

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NEW BUSINESS

1.

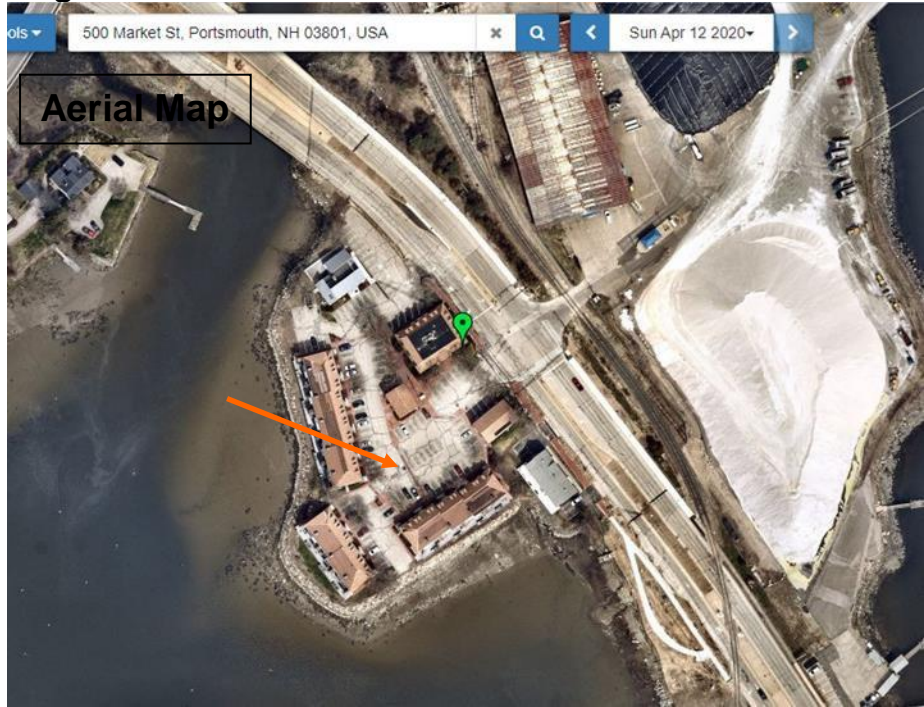
Petition of **Nobles Island Condos, Owner** for the property located at **500 Market Street, Unit 7** whereas relief is needed from the Zoning Ordinance to allow a medical office which requires the following: 1) A Special Exception from Section 10.440, Use #6.20 to allow a medical office where the use is permitted by Special Exception. Said property is shown on Assessor Map 120 Lot 2 and lies within the Character District 4L1 (CD4-L1) District.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Medical office	Medical office	Primarily mixed uses
<u>Lot area (sq. ft.):</u>	111,513	111,513	3,000 min.
<u>Parking</u>	115	115	114
<u>Estimated Age of Structure:</u>	1983	Special Exception request shown in red.	

Other Permits/Approvals Required None.

Neighborhood Context



Previous Board of Adjustment Actions

August 19, 2008 – **Denied** variance from Article IX, Section 10-908 to allow the following

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- 4 freestanding signs totaling 103 square feet where 10 square feet is the maximum square footage allowed.
- 3 attached signs totaling 99 square feet where 60 square feet is the maximum square footage allowed.
- 202 square feet of aggregate signage where 75 square feet is the maximum allowed.

January 20, 2009 – **Approved** variance from Article IX, Section 10-908 to allow:

- 100.19 square feet of attached signage where 60 square feet is the maximum allowed.
- 26.18 square feet of freestanding signage where 10 square feet is the maximum allowed.
- 126.37 square feet of aggregate signage wherein 75 square feet is the maximum allowed.

January 19, 2021 – **Approved** special exception from Section 10.440, Use #6.20 to allow a medical office.

Planning Department Comments

The applicant is seeking a special exception for a medical office with a procedure room. No exterior changes are proposed, only interior renovations. The applicant indicates the prior use was a medical consultation office, however there was no prior approval for such use. A shared parking analysis was completed in November 2020 as part of another application for this property and the subject unit was considered professional office. A professional office requires 4 spaces and a medical office requires 5, so there is an increase of 1 parking space 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.*

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2.

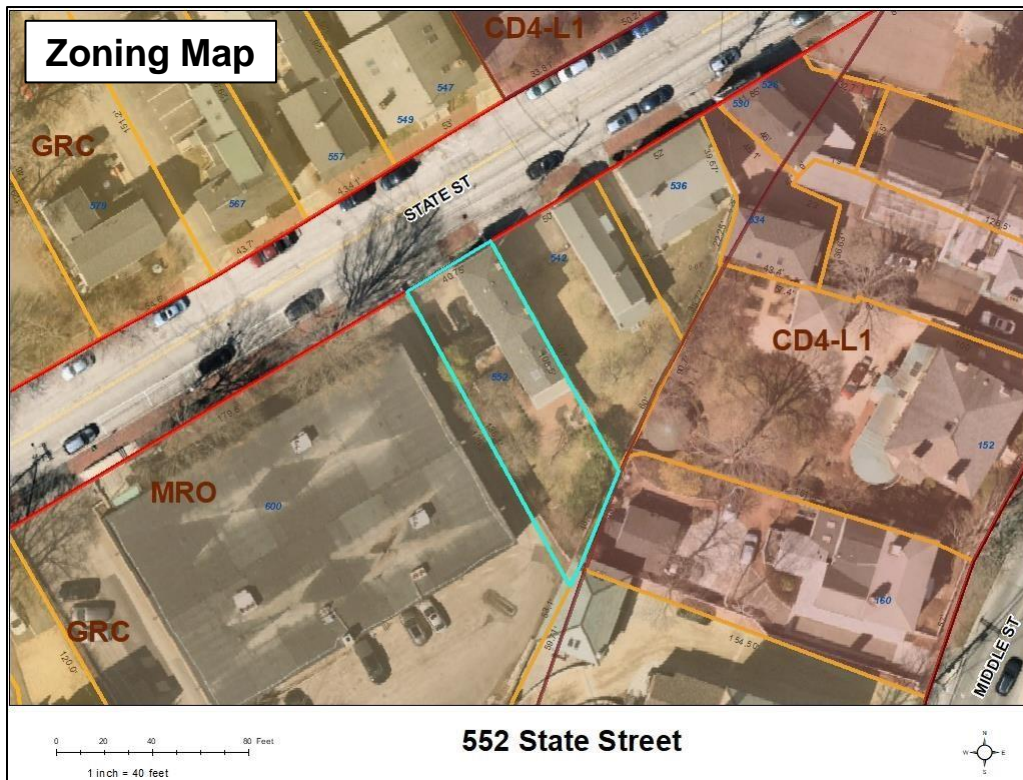
Petition of **Robert B. Tozier** and **Alison M. Tozier, Owners** for the property located at **552 State Street** whereas relief is needed from the Zoning Ordinance to relocate an existing mini-split to a different location on the property which requires the following: 1) A Variance from Section 10.521 to allow a 3' side yard setback where 10' is required. Said property is shown on Assessor Map 127 Lot 19 and lies within the Mixed Residential (MRO) District.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Relocate condenser	Primarily mixed residential uses
<u>Lot area (sq. ft.):</u>	5,270	5,270	7,500 min.
<u>Lot area per dwelling (sq. ft.):</u>	5,270	5,270	7,500 min.
<u>Street frontage (ft.):</u>	40.75	40.75	100 min.
<u>Lot depth (ft.):</u>	121.5	121.5	80 min.
<u>Front Yard (ft.):</u>	5	5	5 min.
<u>Right Yard (ft.):</u>	21	3	10 min.
<u>Left Yard (ft.):</u>	0	0	10 min.
<u>Rear Yard (ft.):</u>	>15	>15	15 min.
<u>Height (ft.):</u>	<40	<40	40 max.
<u>Building Coverage (%)</u>	23	23	40 max.
<u>Open Space Coverage (%)</u>	>25	>25	25 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1812	Variance request(s) shown in red.	

Other Permits/Approvals Required None.

Neighborhood Context



Previous Board of Adjustment Actions

November 27, 2001 – The Board granted the following variance:

Article IV, Section 10-402(B) to allow 5' x 11' addition to an existing shed with a 1' right side yard where 10' is the minimum.

Planning Department Comments

The applicant is proposing to relocate their existing condenser unit closer to the right side property line adjacent to an existing shed. The current location is conforming, however the proposed location in the application states the unit will be 3 feet 5 inches from the lot line. The legal notice indicated a 3 foot setback. The adjacent property consists of commercial condo units at 600 State Street. The image below shows the commercial building and driveway adjacent to the applicant's fence and shed where the unit is proposed to be located.



In 2001 a variance was granted for a shed expansion shown in the history above, however it was never constructed.

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.

3.

Petition of **Eric D. Weinrieb** and **Rachel L. Hopkins, Owner** for the property located at **9 Middle Road** whereas relief is needed from the Zoning Ordinance to demolish existing garage and construct new garage which requires the following: 1) Variances from Section 10.521 to allow a) a 1.5' rear yard where 10 feet is required; b) a 2.5' left side yard where 10' is required; and c) 27% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 152 Lot 47 and lies within the General Residence A (GRA) District.

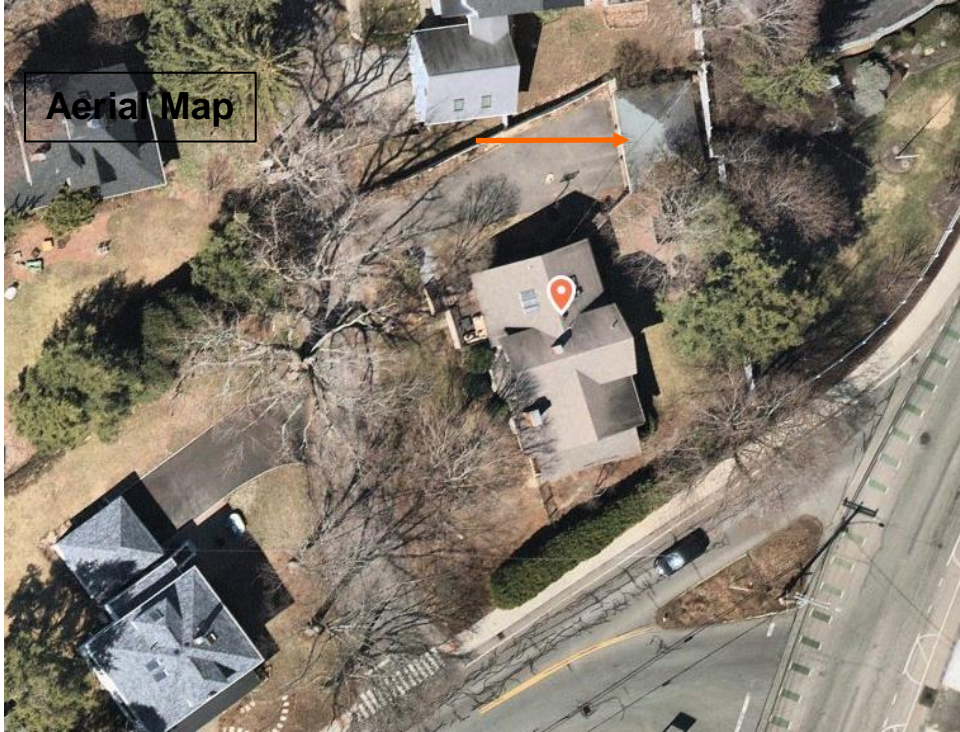
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Demo garage & construct new garage	Primarily residential uses
<u>Lot area (sq. ft.):</u>	10,047	10,047	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,047	10,047	7,500 min.
<u>Street Frontage (ft.):</u>	212	212	100 min.
<u>Lot depth (ft.):</u>	>70	>70	70 min.
<u>Front Yard (ft.):</u>	9.3	9.3	15 min.
<u>Secondary Front Yard (ft.):</u>	7.5	7.5	15 min.
<u>Left Yard (ft.):</u>	2.8	2.5'	10 min.
<u>Rear Yard (ft.):</u>	.6'	1.5'	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	24.9	27	25 max.
<u>Open Space Coverage (%)</u>	61.6	60	30 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1915 (house)	Variance request(s) shown in red.	

Other Permits/Approvals Required None.

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Neighborhood Context



Previous Board of Adjustment Actions

November 20, 2001 – The Board granted the following variance:

- Article III, Section 10-302(A) to allow a lot line relocation resulting in a 2.8' rear yard for the existing 20.4'x27.4' garage located at 9 Middle Road where 10.2' is the minimum.

June 18, 2019 – The Board granted the following variance:

- Section 10.521 for a 7' secondary front yard where 15' is required. Stipulation:
The final setback may be 1' plus or minus from 7'

Planning Department Comments

The applicant is proposing to demolish the existing garage and construct a new, slightly larger garage. The location will marginally improve the setbacks, however the proposed garage needs relief from the left side and rear yard requirements. The existing coverage is just under the 25% maximum allowed and the increase in size of the new garage will result in 27% coverage (application indicates 26.6%). The applicant is requesting to add plus or minus 0.5' feet the Board grants approval. The application shows the left side yard as 2.9 feet, however the legal notice stated 2.5' to account for any discrepancies. The rear yard was advertised as submitted at 1.5'. Therefore, if the Board wants to accommodate the request of the applicant, a stipulation allowing a 1 foot rear yard would be necessary.

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.*

Planning Department Comments 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.

4.

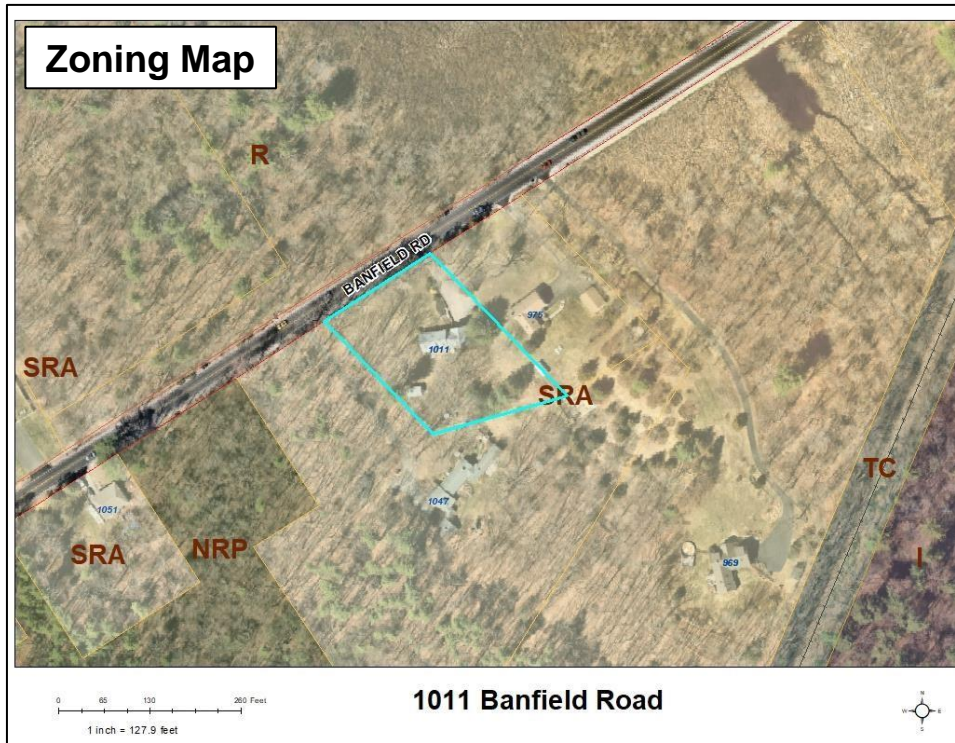
Petition of **Igor Mihailov, Owner** for the property located at **1011 Banfield Road** whereas relief is needed from the Zoning Ordinance for the keeping of chickens which requires the following: 1) A Special Exception from Section 10.440, Use #17.20 to allow the keeping of farm animals where the use is allowed by Special Exception. Said property is shown on Assessor Map 283 Lot 40 and lies within the Single Residence A (SRA) District.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Keeping of chickens	Primarily business/residential uses
<u>Lot area (sq. ft.):</u>	1 acre	1 acre	1 acre min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1 acre	1 acre	1 acre min.
<u>Street Frontage (ft.):</u>	178	178	150 min.
<u>Lot depth (ft.):</u>	251	251	200 min.
<u>Front Yard (ft.):</u>	94	94	30 min.
<u>Left Yard (ft.):</u>	29	29	20 min.
<u>Right Yard (ft.):</u>	74	17 (coop)	20/6 (coop) min.
<u>Rear Yard (ft.):</u>	111	10 (coop)	40/6 (coop) min.
<u>Height (ft.):</u>	<35	6 (coop)	35 max.
<u>Building Coverage (%)</u>	5.5	5.8	10 max.
<u>Open Space Coverage (%)</u>	88	88	50 min.
<u>Parking</u>	2+	2+	2
<u>Estimated Age of Structure:</u>	1983	Special Exception request shown in red.	

Other Permits/Approvals Required None.

Neighborhood Context



Previous Board of Adjustment Actions No
prior BOA history found.

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Planning Department Comments

The applicant is requesting a special exception to keep farm animals on the subject property and has indicated he would like to have 12 chickens. The property is in the SRA district in a more rural part of the city along Banfield Road. The lot is an acre, which is the minimum size in the SRA. The applicant did not indicate whether or not there will be roosters, but if the Board grants approval, the following stipulation should be considered.

The number of chickens shall be limited to 12 and no roosters.

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.*

5.

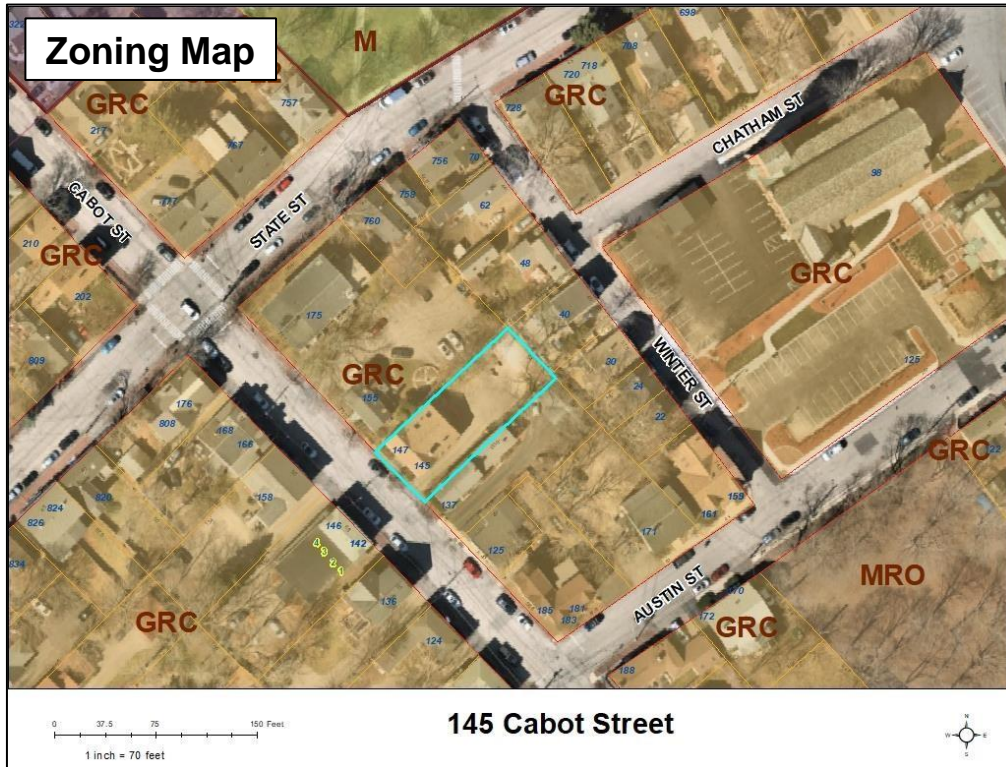
Petition of **145 Cabot Street Condos, Owner** and **Jason Stringer, Owner/Applicant** for the property located at **145 Cabot Street** whereas relief is needed from the Zoning Ordinance to construct a new storage shed which requires the following: 1) Variances from Section 10.521 to allow a) a 7.5' rear yard where 8'9" is required; and b) an 8' side yard where 8'9" is required. Said property is shown on Assessor Map 145 Lot 88 and lies within the General Residence C (GRC) District.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	4 unit condo	Construct shed	Primarily residential uses
<u>Lot area (sq. ft.):</u>	6,970	6,970	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,742.5	1,742.5	3,500 min.
<u>Street Frontage (ft.):</u>	50	50	70 min.
<u>Lot depth (ft.):</u>	134.5	134.5	50 min.
<u>Front Yard (ft.):</u>	9	9	5 min.
<u>Left Yard (ft.):</u>	1'6"	8	10 (8'9" (shed) min.
<u>Right Yard (ft.):</u>	1'6"	>10	10 min.
<u>Rear Yard (ft.):</u>	>20	7.5	20 (8'9" shed) min.
<u>Height (ft.):</u>	<35	8'9" (shed)	35 max.
<u>Building Coverage (%)</u>	23	28	35 max.
<u>Open Space Coverage (%)</u>	26	26	20 min.
<u>Parking</u>	6	6	6
<u>Estimated Age of Structure:</u>	1970	Variance request(s) shown in red.	

Other Permits/Approvals Required None.

Neighborhood Context



Previous Board of Adjustment Actions

September 25, 1956 – The Board granted the following variance:

- To construct a garage to within one (1) foot of your lot line on Lot #52 Plan #25.

Planning Department Comments

The applicant is proposing to construct a shed that will allow each condo unit access to a portion of the shed for their individual storage needs. The site plan shows distances from the side and rear lot lines to the overhang of the shed, however the setbacks are measured to the wall of the structure, thus the difference in what was advertised versus what is shown on the site plan. The height of the shed is 8'9" which is what the required setback is for a shed greater than 100 square feet.

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.*

Planning Department Comments 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.

6. Request to postpone

Petition of **Anne and Andrew McPherson, Owners** for the property located at **204 Wibird Street** whereas relief is needed from the Zoning Ordinance to add a second story rear addition and deck expansion which requires the following: 1) Variances from Section 10.521 to allow a) A 7.5' right side yard where 10' is required; and b) 27.5% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 149 Lot 116 and lies within the General Residence A (GRA) District.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	2nd story addition/extend deck	Primarily residential uses
<u>Lot area (sq. ft.):</u>	9,136	9,136	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,136	9,136	7,500 min.
<u>Street Frontage (ft.):</u>	60	60	100 min.
<u>Lot depth (ft.):</u>	152	152	70 min.
<u>Front Yard (ft.):</u>	4	4	15 min.
<u>Right Yard (ft.):</u>	8	7.5'	10 min.
<u>Left Yard (ft.):</u>	1.9	1.9	10 min.
<u>Rear Yard (ft.):</u>	54	>20	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	26	27.5	25 max.
<u>Open Space Coverage (%):</u>	57	53	30 min.
<u>Parking</u>	2+	2+	2
<u>Estimated Age of Structure:</u>	1890	Variance request(s) shown in red.	

Other Permits/Approvals Required None.

Neighborhood Context



Previous Board of Adjustment Actions No prior BOA history found.

Planning Department Comments

The applicant is proposing to extend the kitchen out onto the existing deck and construct a second story addition. A bump out to accommodate stairway to the second story is proposed and will encroach into the right side yard setback. The existing house is already nonconforming to the right side yard. The applicant is also proposing to extend the existing deck further into the yard, which will result in an increase in the building coverage, which is already nonconforming.

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.*
- Planning Department Comments* 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.

7.

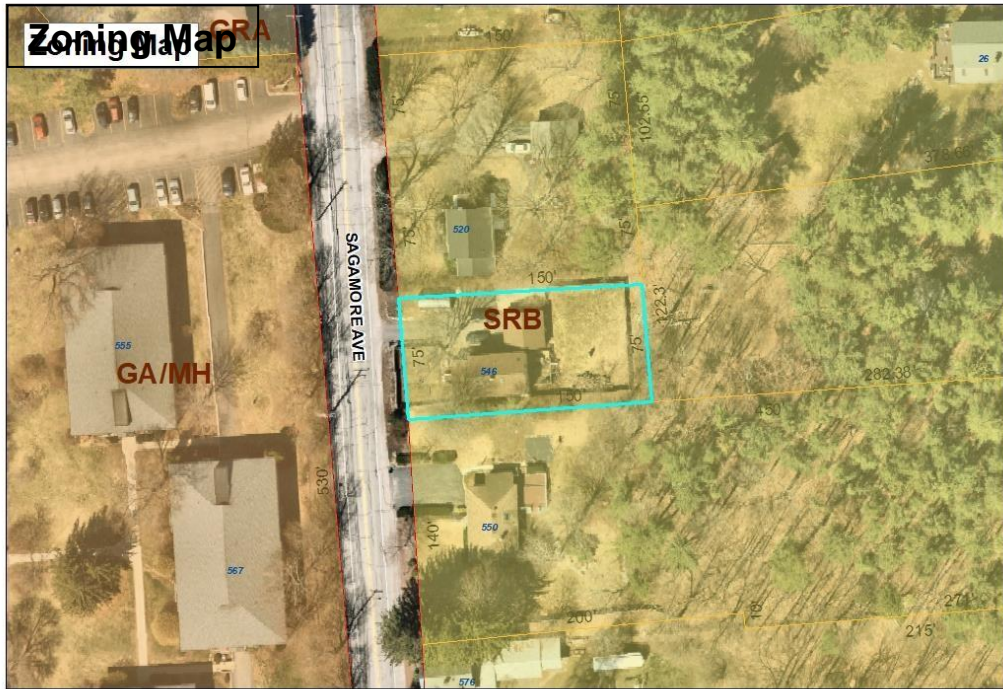
Petition of **Sarah Sommer Kaufman Revocable Trust, Owner** for the property located at **546 Sagamore Avenue** whereas relief is needed from the Zoning Ordinance to add a rear addition and vertical expansion of the garage which requires the following: 1) A Variance from Section 10.521 to allow a 4.5' right side yard where 10' is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 222 Lot 10 and lies within the Single Residence B (SRB) District.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Rear addition	Primarily single family uses
<u>Lot area (sq. ft.):</u>	11,401	11,401	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,401	11,401	15,000 min.
<u>Street Frontage (ft.):</u>	75	75	100 min.
<u>Lot depth (ft.):</u>	152	152	100 min.
<u>Front Yard (ft.):</u>	>30	>30	30 min.
<u>Left Yard (ft.):</u>	20	20	10 min.
<u>Right Yard (ft.):</u>	4.5	4.5'	10 min.
<u>Rear Yard (ft.):</u>	56	50	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	17.8	18.4	20 max.
<u>Open Space Coverage (%)</u>	67.5	66	40 min.
<u>Parking</u>	2+	2+	2
<u>Estimated Age of Structure:</u>	1890	Variance request(s) shown in red.	

Other Permits/Approvals Required None.

Neighborhood Context



0 30 60 120 Feet
1 inch = 58.5 feet

546 Sagamore Avenue



Previous Board of Adjustment Actions No prior BOA history found.

Planning Department Comments

The applicant is proposing to add a rear addition and second story above the existing garage. The house currently sits close to the southern lot line and is nonconforming to the right yard setback. The rear addition will be along this side, extending towards the rear of the property.

Review Criteria

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

1. *Granting the variance would not be contrary to the public interest.*
- Planning Department Comments* 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.

8.

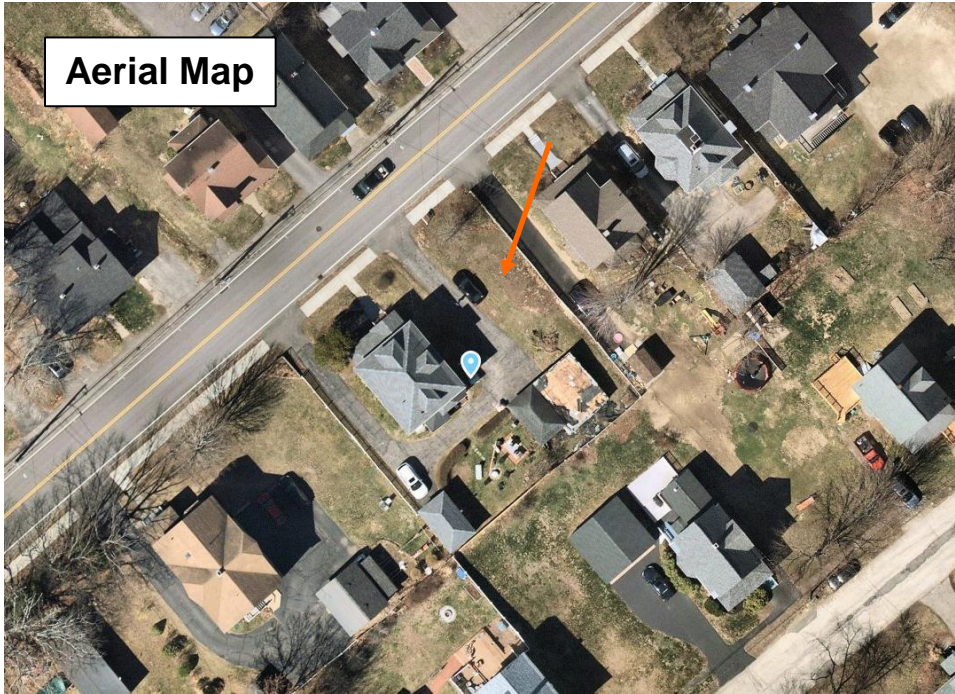
Petition of **Jeremy James Conte, Owner** for the property located at **0 Islington Street** whereas relief is needed from the Zoning Ordinance to demolish existing structures and construct new single family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area of 5,225 square feet where 15,000 square feet is required; b) a lot area per dwelling unit of 5,225 square feet where 15,000 square feet is required; and c) 50 feet of frontage where 100 feet is required. Said property is shown on Assessor Map 233 Lot 7 and lies within the Single Residence B (SRB) District.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant lot w/ accessory structures	Construct new dwelling	Primarily residential uses
<u>Lot area (sq. ft.):</u>	5,225	5,225	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,225	5,225	15,000 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.):</u>	104,5	104.5	100 min.
<u>Front Yard (ft.):</u>	72	23 (per Sec. 10.516.10)	30 min.
<u>Left Yard (ft.):</u>	10	10	10 min.
<u>Right Yard (ft.):</u>	6	12	10 min.
<u>Rear Yard (ft.):</u>	6	46	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	>20	18.7	20 max.
<u>Open Space Coverage (%):</u>	>40	61	40 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	NA	Variance request(s) shown in red.	

Other Permits/Approvals Required None.

Neighborhood Context



Previous Board of Adjustment Actions No
prior BOA history found.

July 27, 2021 Meeting

Planning Department Comments

The applicant is proposing to demolish the existing structures and construct a new single family home on a lot that was recently restored to its premerger status on April 21, 2020 as shown in the applicant's packet. As stated in the letter, the restoration of the lot does not exempt it from any nonconformities with zoning. As such, the lot is nonconforming to frontage, lot size and lot area per dwelling unit. Since the proposal is to remove all the structures and create a new dwelling, variances are needed for the lot nonconformities. As proposed, all other zoning requirements are met.

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.*

Planning Department Comments 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.

9.

Petition of **Seacoast Repertory Theater, Owner** for the property located at **125 Bow Street** whereas relief is needed from the Zoning Ordinance to construct a platform for new mechanical equipment which requires the following: 1) A Variance from Section 10.5A41.10C to allow a 2.5' rear yard where 5' is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 105 Lot 1F lies within the Character District 4 (CD4) District.

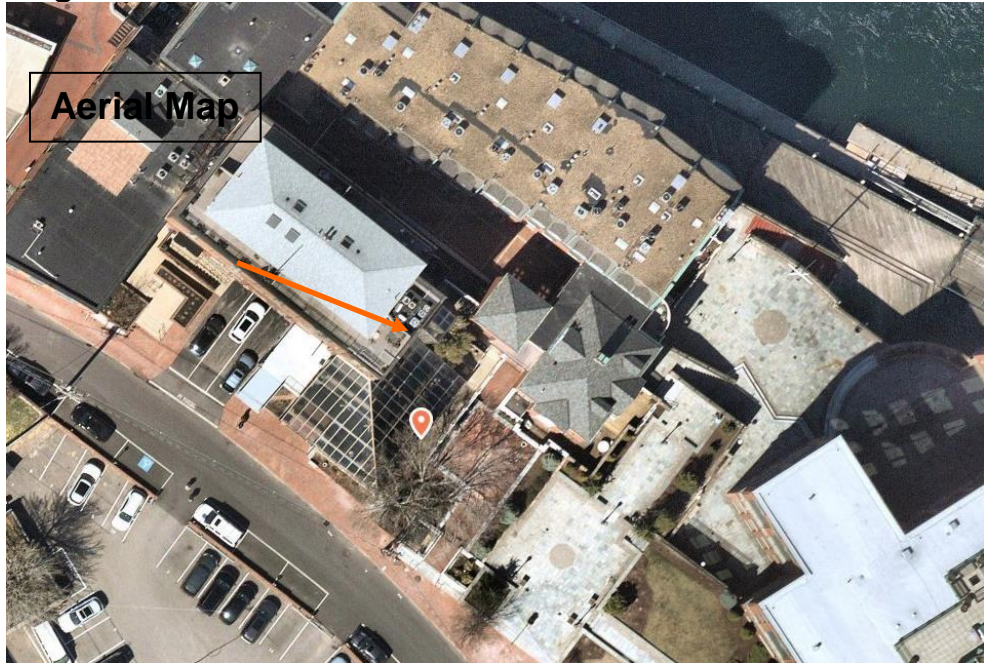
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed use	Platform/HVAC	Primarily mixed uses
<u>Front Yard (ft.):</u>	5	5	10 max.
<u>Left Front Yard (ft.):</u>	0	0	NR min.
<u>Right Yard (ft.):</u>	12	12	NR min.
<u>Rear Yard (ft.):</u>	0	2.5'	5 ft. or 10 ft. from center of alley
<u>Building Coverage (%)</u> :	64	67.4	90 max.
<u>Open Space Coverage (%)</u> :	>15	>15	15 min.
<u>Estimated Age of Structure:</u>	1981	Variance request(s) shown in red.	

Other Permits/Approvals Required

HDC

Neighborhood Context



Previous Board of Adjustment Actions

November 22, 1988 – The Board granted the following variance:

- Article II, section 10-206 to allow approximately 1,500 s.f. in Unit B to be used for a school (dance and theater arts classrooms) in a district where a school is not an allowed use.

November 22, 1988 – The Board granted the following special exception:

- Article XII, Section 10-1201 (Table 7) to obtain a determination by the board of Adjustment as to the required parking spaces needed for the establishment of a school which would be used by approximately 150 students and 10 instructors and administrators.

Stipulation:

1 parking space be required for every 4 students and 1 parking space be required for each instructor or administrator not to exceed 50 required parking spaces.

Planning Department Comments

The applicant is proposing to construct a raised platform for a new HVAC system for the building. The HVAC system exceeds the dimensions for mechanical units in Section 10.515.14, therefore it is treated as an accessory structure, which in the CD4 is 3 feet. The platform is an expansion of the principal structure, thus the need for relief from the 5 foot rear yard 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.

10.

Petition of **2422 Lafayette Road Association, LLC, Owner** for the property located at **2454 Lafayette Road** whereas relief is needed from the Zoning Ordinance to construct a standalone automated teller machine (ATM) which requires the following. 1) A Variance from Section 10.1530 to allow an automated teller machine (ATM) as defined in this section to be a principal freestanding structure and not located on the outside of a building, or in an access-controlled entrance to a building, or within a principal use in a building. Said property is shown on Assessor Map 273 Lot 3 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed use development	Freestanding ATM	Primarily mixed uses
		Variance request(s) shown in red.	

Other Permits/Approvals Required

TAC & Planning Board

Neighborhood Context



Previous Board of Adjustment Actions

March 23, 2004 – the Board granted a variance to allow a 75' front yard where 105' is the minimum required. The Board denied a Special Exception to allow a 2,400± s.f. car wash in a district where such use is allowed by Special Exception.

April 21, 2009 – The Board granted a variance to allow 731 parking spaces to be provided where 1,090 parking spaces are required in conjunction with renovations to the existing shopping center.

September 15, 2009 – The Board granted variances to allow the following the following:

- A primary free standing sign of 350 s.f. where 150 s.f. is allowed;
- A sign 17'10" in height where 25' is the maximum allowed;
- Two additional signs at the primary entrance where they are not allowed;
 - The placement of structures within the right-of-way along Route 1 with a setback of 20' where 105' is required;
- The placement of a structure within the right-of-way along Route 1 with a setback of 50' where 105' is required.

The variances were granted with the stipulation that there be no lettering on the two stone walls at the main entryway, which were solely approved as an architectural element.

July 24, 2012 – The Board granted a variance to allow 859 parking spaces where 457 parking spaces are required and 503 parking spaces are the maximum allowed.

October 15, 2013 – The Board granted a variance to install a 225 s.f. sign on a cinema parapet where 100 s.f. is the maximum sign area allowed for a parapet sign.

August 18, 2015 – The Board granted variances to allow the following: (a) required offstreet parking spaces (for an existing parking area) to be located between a principal building and a street; and (b) a front yard setback of 151' where 90' was the maximum allowed (measured from the centerline of Lafayette Road).

October 25, 2016 – The Board granted variances to allow the following signage: a) a sign on a façade of a building that does not face a street and where no public entrance exists; b) two directional signs each 7s.f. in area where 4 s.f. is the maximum allowed; c) 2 free-standing pre-order menu boards where they were not visible from a public right-of-way; and d) an existing non-conforming pylon sign to be modified without bringing it into conformance.

June 18, 2019 - The Board granted special exceptions to allow the following:
 a) from Section 10.440, Use #9.12 to allow a nightclub or bar with an occupant load from 250 to 500 where the use is only allowed by special exception; and

b) from Section 10.440, Use #4.20 to allow an indoor amusement use where the use is only allowed by special exception.

With the following stipulation:

- A suitable barrier will be provided around the outdoor seating area to protect it from vehicular traffic.

Planning Department Comments

The applicant is proposing to construct a free standing ATM on the subject lot. The definition in the Ordinance is below:

Automated teller machine (ATM)

An unattended electronic device that is activated by customers to conduct financial transactions. An **ATM** may be located on the outside of a **building**, or in an access-controlled entrance to a **building**, or within a principal **use** in a **building**, and may serve pedestrians or patrons in motor vehicles. An **ATM** servicing patrons in motor vehicles must meet the standards for **drive-through establishments** provided in this Ordinance. An **ATM** is permitted only as an **accessory use** to a related **principal use**, and is not permitted as a **principal use** or in a freestanding **structure** not attached to a **principal use**.

As defined, the use is only allowed as an accessory use to a principal use. The proposal is for the freestanding ATM to be a principal use and not “*located on the outside of a building, or in an access-controlled entrance to a building or within a principal use in a building*” as per the definition above, thus the need for a 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.

11.

Petition of **Lonza Biologics, Inc.** for property located at **101 International Drive** to add an above ground storage tank which requires the following: 1) from Section 308.02(c) of the Pease Development Ordinance to allow an above ground storage tank (AST) exceeding 2,000 gallon capacity per facility. Said property is shown on Assessor Plan 305 Lot 6 and lies within the (Pease) Airport Business Commercial (ABC) District.

Existing & Proposed Conditions

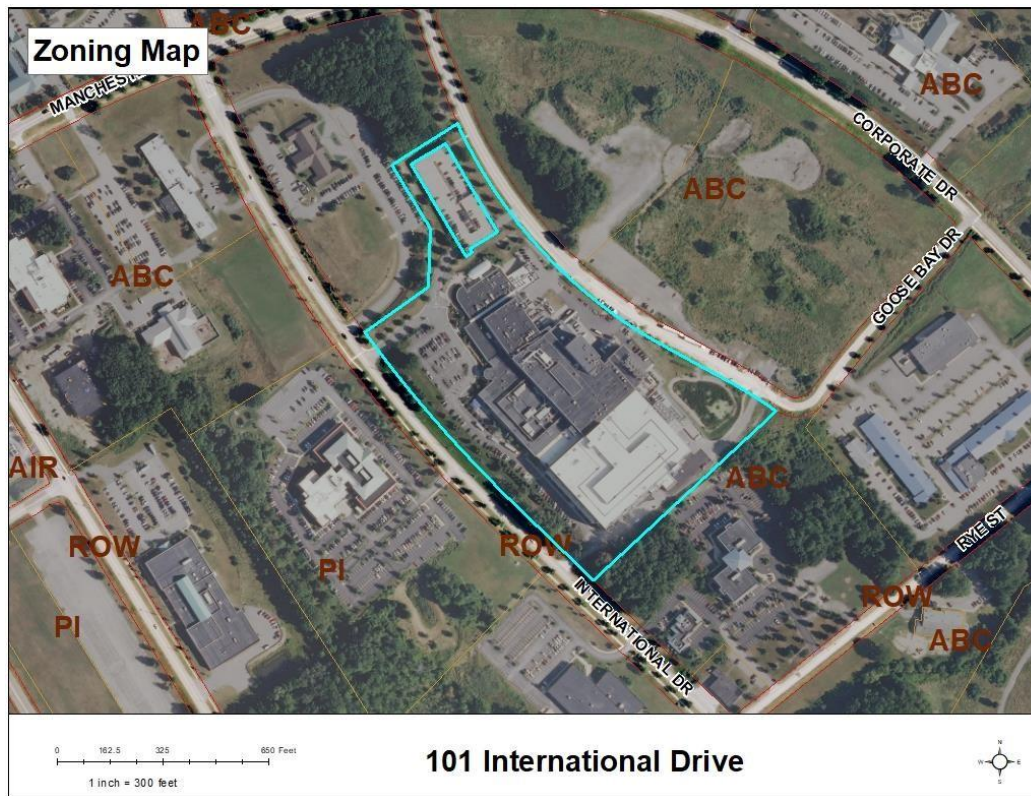
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	above ground storage tank >2,000 gallons	Business, com. & trade related enterprises
<u>Above Ground Storage Facility:</u>	1 @ 3,312 gal	2,000 gal max.
	Variance request shown in red.	

Other Permits/Approvals Required

Pease Development Authority (PDA)

Neighborhood Context





Zoning Map

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.

May 28, 2019 - The Board recommended approval to the Pease Development Authority of a variance to allow above ground storage tanks exceeding 2,000 gallon capacity.

Planning Department Comments

The application was before the Pease Development Authority (PDA) Board meeting on June 17, 2021 and the PDA Board voted to support the applicant's request to move forward to seek a variance.

July 27, 2021 Meeting

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.

317.03 Zoning Variances Referred to Local Municipalities for Administration

(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.

55

(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 PROVISIONS317.01 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.