

TO: Zoning Board of Adjustment  
FROM: Juliet Walker, Planning Department  
DATE: August 12, 2015  
RE: August 18, 2015 Board of Adjustment Meeting

### **OLD BUSINESS**

1. 806 Route 1 By-Pass
2. 215 & 235 Commerce Way
3. 89 Brewery Lane
4. 14 Hancock Street (Strawbery Banke)
5. 30 Cate Street
6. 525 Maplewood Avenue
7. 19 Woodbury Avenue

### **NEW BUSINESS**

8. 64 Pine Street
9. 2454 Lafayette Road
10. 305 Peverly Hill Road



# OLD BUSINESS

## Case #7-7

Petitioner:	Amba Realty, LLC
Property:	806 Route 1 By-Pass
Assessor Plan:	Map 161, Lot 43
Zoning District:	Business
Description:	Expand first floor to 5,150 sq. ft. of retail space and construct second floor for office space.
Requests:	<p>The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:</p> <ol style="list-style-type: none"> <li>1. A Variance from Section 10.1113.20 to allow 9 parking spaces to be located within the required front yard and between the principal building and the street;</li> <li>2. A Variance from Section 10.1112.30 to allow 26 fully available parking spaces and 2 restricted parking spaces where 28 are required and to allow parking 6.5' from a residential zone where 50' is required.</li> <li>3. A Variance from Section 10.1113.41 to allow parking 0' from the front lot line where 20' is required;</li> <li>4. A Variance from Section 10.1113.43 to not provide landscaping and screening within the front setback.</li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant (former restaurant)	Primarily commercial uses
<u>Lot area (sq. ft.):</u>	22,610	20,000 min.
<u>Street Frontage (feet):</u>	151	100 min.
<u>Lot depth (feet):</u>	140	80 min.
<u>Front Yard (feet):</u>	54	20 min.
<u>Left Yard (feet):</u>	51	15 min.
<u>Right Yard (feet):</u>	16	15 min.
<u>Rear Yard (feet):</u>	34	15 min.
<u>Height (feet):</u>	12	50 max.
<u>Building Coverage:</u>	13.4%	35% max.
<u>Open Space Coverage:</u>	14.3%	15% min.
<u>Parking (spaces):</u>	43	31 min. (for restaurant use)
<u>Estimated Age of Structure:</u>	1965	

### B. Proposed Changes

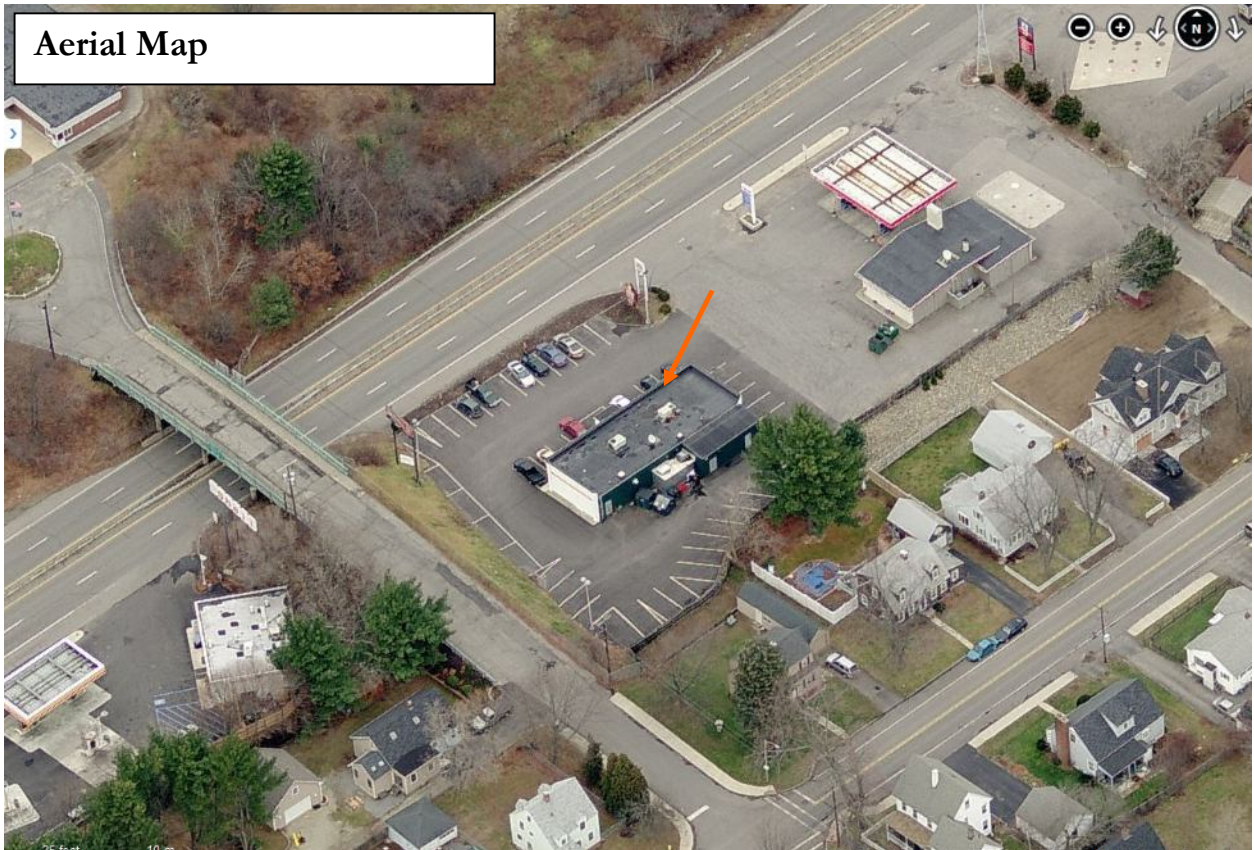
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Grocery and office	Primarily commercial use
<u>Front Yard (feet):</u>	35	20 min.
<u>Height (feet):</u>	24	50 max.
<u>Building Coverage:</u>	23%	35% max.
<u>Open Space Coverage:</u>	15.6%	15% min.
<u>Parking (spaces):</u>	26	28 min.

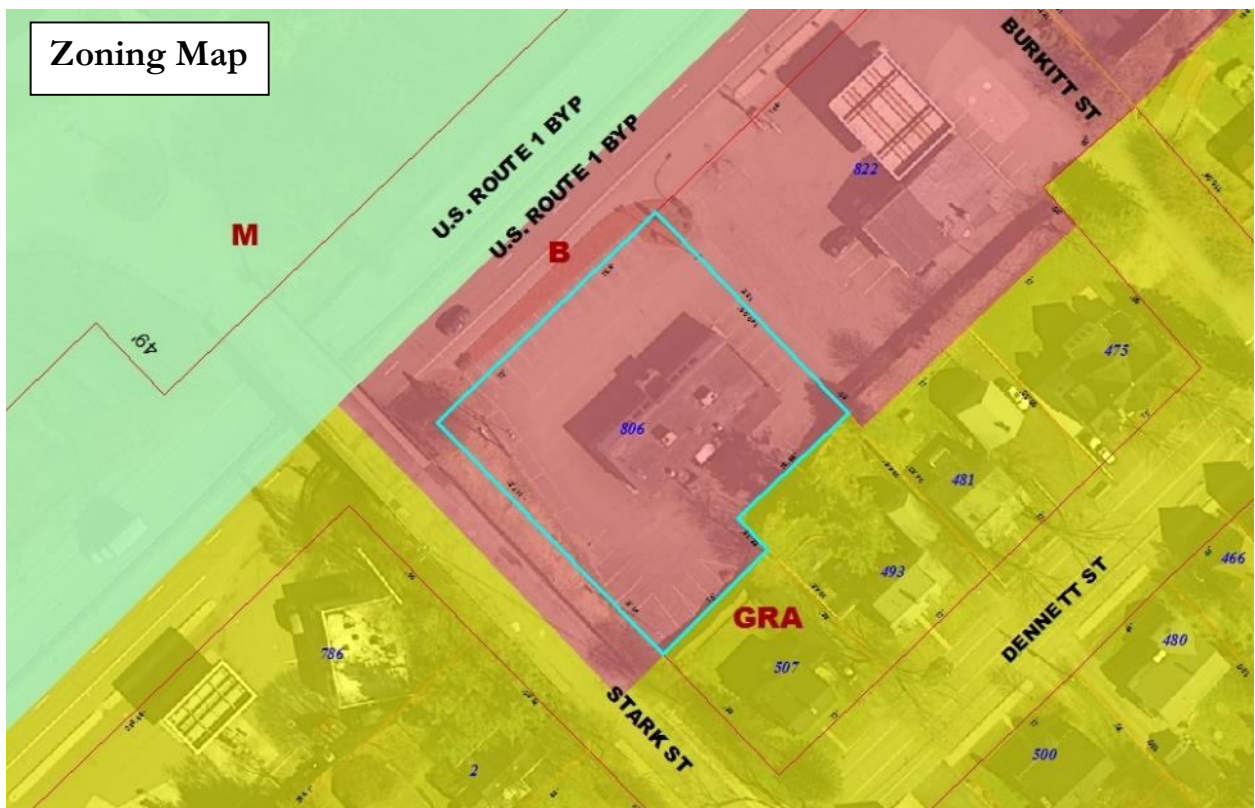
### C. Other Permits Required

- Planning Board Site Plan Review

### D. Neighborhood Context

- Surrounding Land Uses: Gas station, convenience store, single family residential, elementary school





## E. Previous Board of Adjustment Actions

August 21, 1990 – The Board **granted** a variance to allow an 8' x 12' refrigerator and a 6' x 6' freezer at the rear of the existing restaurant with a 40' rear yard setback where 50' was required.

December 20, 1994 – The Board **granted** a variance to allow a 10' x 10' one-story entryway with a 52' front setback where 70' was required.

April 25, 1995 – The Board **granted** variances to allow the following: 1) an 12' x 36' storage addition with a 20' side yard where 30' was required and a 36' rear yard where 50' was required; and 2) said addition to be constructed 36' from property used and zoned residential where a 100' setback was required. The variances were granted with the **stipulation** that there be no exterior storage on the property other than what was existing.

May 25, 2004 – The Board **withdrew** at the request of the applicant a petition to allow 37 parking spaces to be provided where 58 parking spaces were required.

June 22, 2004 – The Board **granted** a variance to allow 37 parking spaces to be provided where 58 spaces were required.

July 20, 2004 – The Board **granted** a rehearing on the above petition.

August 17, 2004 – The Board voted to **table** the rehearing at the request of the attorney for the appellants who had been granted the rehearing.

September 21, 2005 – The Board **granted** a variance, based on a newly submitted application, to allow 37 parking spaces where 58 were required and to allow parking within 50’ of a residential district with no screening provided.

(Subsequent correspondence includes a letter from Ms. Tillman, Planner to the attorney for the appellants noting that a rehearing had been granted and then tabled and, with no further correspondence, had been placed on the March, 2005 agenda with a recommendation to deny the rehearing and await a new submission. On March 3, an additional attorney for the appellants withdrew their request for a rehearing)

## **F. Planning Department Comments**

This application meets the submission requirements and the applicant has met with the Planning Department staff to discuss the project.

## **G. 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 #7-8

Petitioner:	Moray, LLC and 215 Commerce Way, LLC
Property:	215 & 235 Commerce Way
Assessor Plan:	Map 216, Lots 1-8A & 1-8B
Zoning District:	Office Research
Description:	Provide parking, on a corner lot, located between the street and the building.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Variance from Section 10.1113.20 to allow off-street parking spaces to be located in a front yard between a principal building and the street.

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Office building	Primarily office and research uses
<u>Lot area:</u>	2 lots (5.69 acres and 3.13 acres)	3 acres min.
<u>Estimated Age of Structure:</u>	1990	

### B. Proposed Changes

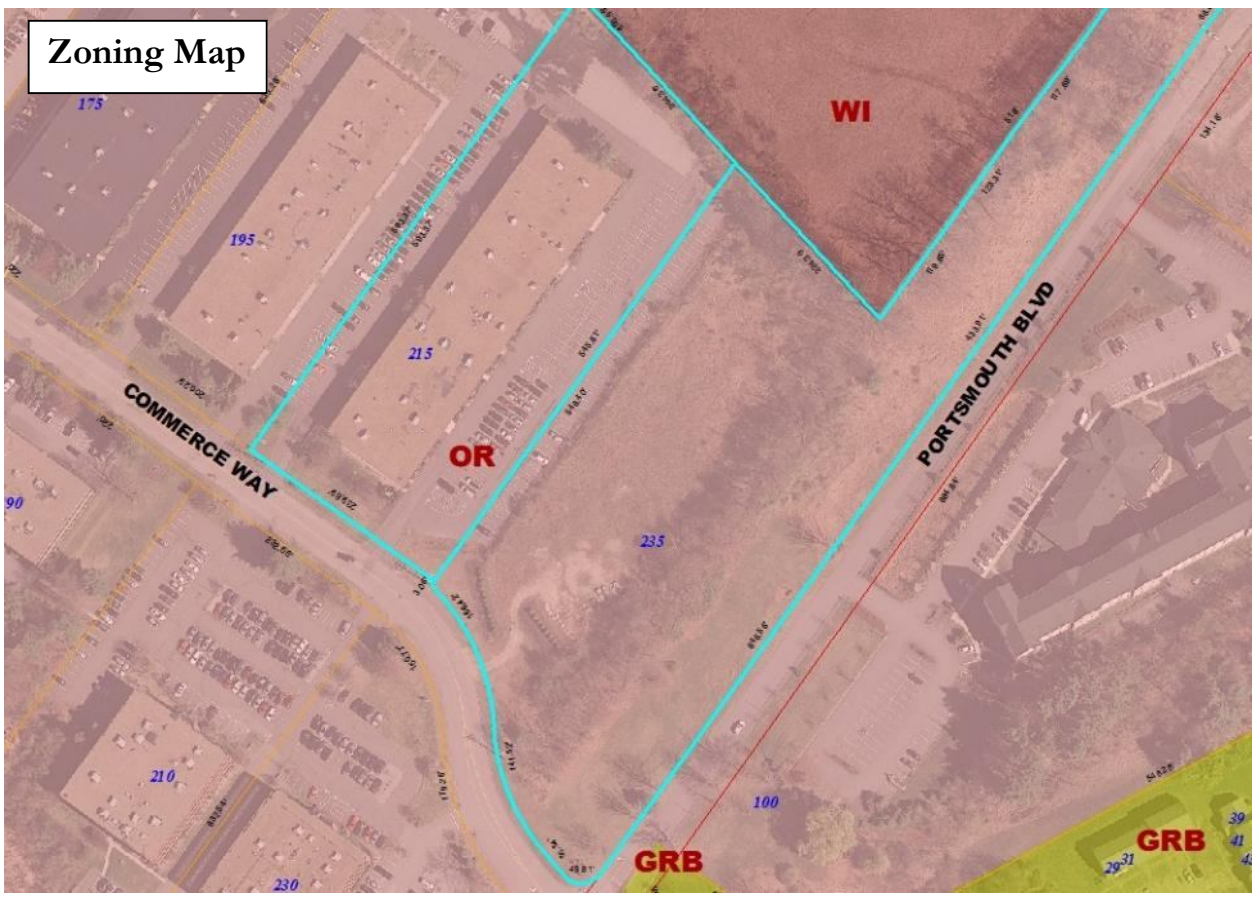
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Office building	Primarily office and research
<u>Lot area:</u>	8.82 acres	3 acres min.
<u>Street Frontage (feet):</u>	596	300 min.
<u>Lot depth (feet):</u>	>300	300 min.
<u>Front Yard (feet):</u>	52.8	50 min.
<u>Right Yard (feet):</u>	80.5	75 min.
<u>Rear Yard (feet):</u>	72.3	50 min.
<u>Height (feet):</u>	<60	60 max.
<u>Building Coverage:</u>	18%	30% max.
<u>Open Space Coverage:</u>	39.4%	30% min.
<u>Parking (spaces):</u>	610	610 min.

### C. Other Permits Required

- Planning Board Site Plan Review

### D. Neighborhood Context

- Surrounding Land Uses: Hotel, office buildings





## E. Previous Board of Adjustment Actions

(As 195, 215, 235 Commerce Way)

October 16, 1996 – The Board **granted** a variance to create three lots with the following dimensions:

- a) Proposed lot 8 (195 Commerce Way) would have an approximate lot area of 2.82 acres where 3 acres was required, 200.3' of continuous frontage where 300' was the minimum required, a 50' right side yard where 75' was the minimum required; and 20.75% open space where 30% was the minimum required;
- b) Proposed lot 7 (215 Commerce Way) would have 239.7' of continuous frontage where 300' was the minimum required and a 50' left side yard where 75' was the minimum required; and
- c) Proposed lot 6 (235 Commerce Way) would have an approximate lot area of 2.64 acres where 3 acres was required and 200' of continuous frontage where 300' was the minimum required.

The variances were granted with the **stipulation** that a stamped surveyed plan be submitted to the Planning Department.

(As 215 Commerce Way)

September 18, 2007 – The Board **granted** a variance to allow a veterinary hospital in a district where the use was not allowed with the stipulations that all efforts be made to mitigate any sound generated and that the services provided be limited to small companion animals, particularly dogs and cats.

## F. Planning Department Comments

The application meets the submission requirements and the applicant has reviewed this application with Planning Department staff.

## G. 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 #7-9

Petitioner:	Barbara R. Frankel
Property:	89 Brewery Lane
Assessor Plan:	Map 146, Lot 26
Zoning District:	Mixed Residential Business
Description:	Remove existing structure and construct 2-story assisted-living home with a 3,450 sq. ft. footprint.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> <li>1. A Special Exception from Section 10.440 to allow an assisted living home;</li> <li>2. A Variance from Section 10.512 to allow 30' of street frontage where a minimum of 100' is required.</li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residential	Mix of residential and business uses
<u>Lot area (sq. ft.):</u>	25,466	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	25,466	7,500 min.
<u>Street Frontage (feet):</u>	30	100 min.
<u>Lot depth (feet):</u>	258	80 min.
<u>Front Yard (feet):</u>	>5	5 min.
<u>Left Yard (feet):</u>	>10	10 min.
<u>Right Yard (feet):</u>	>10	10 min.
<u>Rear Yard (feet):</u>	>15	15 min.
<u>Height (feet):</u>	<40	40 min.
<u>Building Coverage:</u>	<40%	40% max.
<u>Open Space Coverage:</u>	>25%	25% min.
<u>Parking (spaces):</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1960	

### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Assisted living home	Mix of residential and business uses
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	25,466	7,500 min.
<u>Front Yard (feet):</u>	61	5 min.
<u>Left Yard (feet):</u>	15	10 min.
<u>Right Yard (feet):</u>	>30	10 min.
<u>Rear Yard (feet):</u>	22	15 min.
<u>Height (feet):</u>	<40	40 min.
<u>Building Coverage:</u>	14%	40% max.
<u>Open Space Coverage:</u>	44%	25% min.
<u>Parking (spaces):</u>	4	3 min.

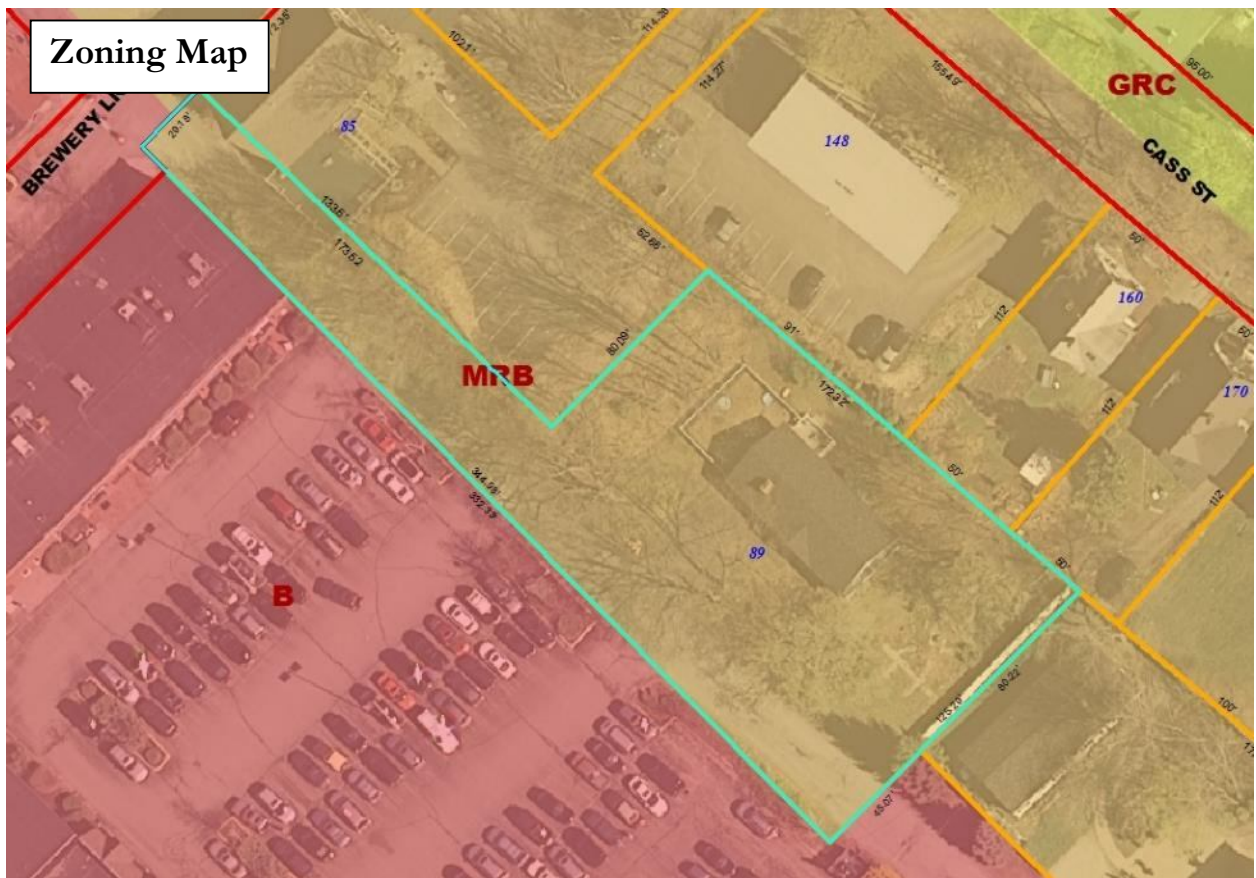
### C. Other Permits Required

- Planning Board Site Plan Review

### D. Neighborhood Context

- Surrounding Land Uses: Mixed commercial building, multiple unit residential buildings





## E. Previous Board of Adjustment Actions

No BOA history found.

## F. Planning Department Comments

This application meets the submission requirements and the applicant has discussed the application with Planning Department staff.

## G. 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.*

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 #7-10

Petitioner:	Strawbery Banke Inc.
Property:	14 Hancock Street (Strawbery Banke)
Assessor Plan:	Map 104, Lot 7
Zoning District:	Mixed Residential Office
Description:	Clarification/modification of previous approval for operation of the skating pond.
Requests:	Clarification/modification of the time period for use of the skating pond from November 1st to March 31st each year.

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Historic homes / outdoor museum with seasonal skating area	Mix of residential and office uses

### B. Proposed Changes

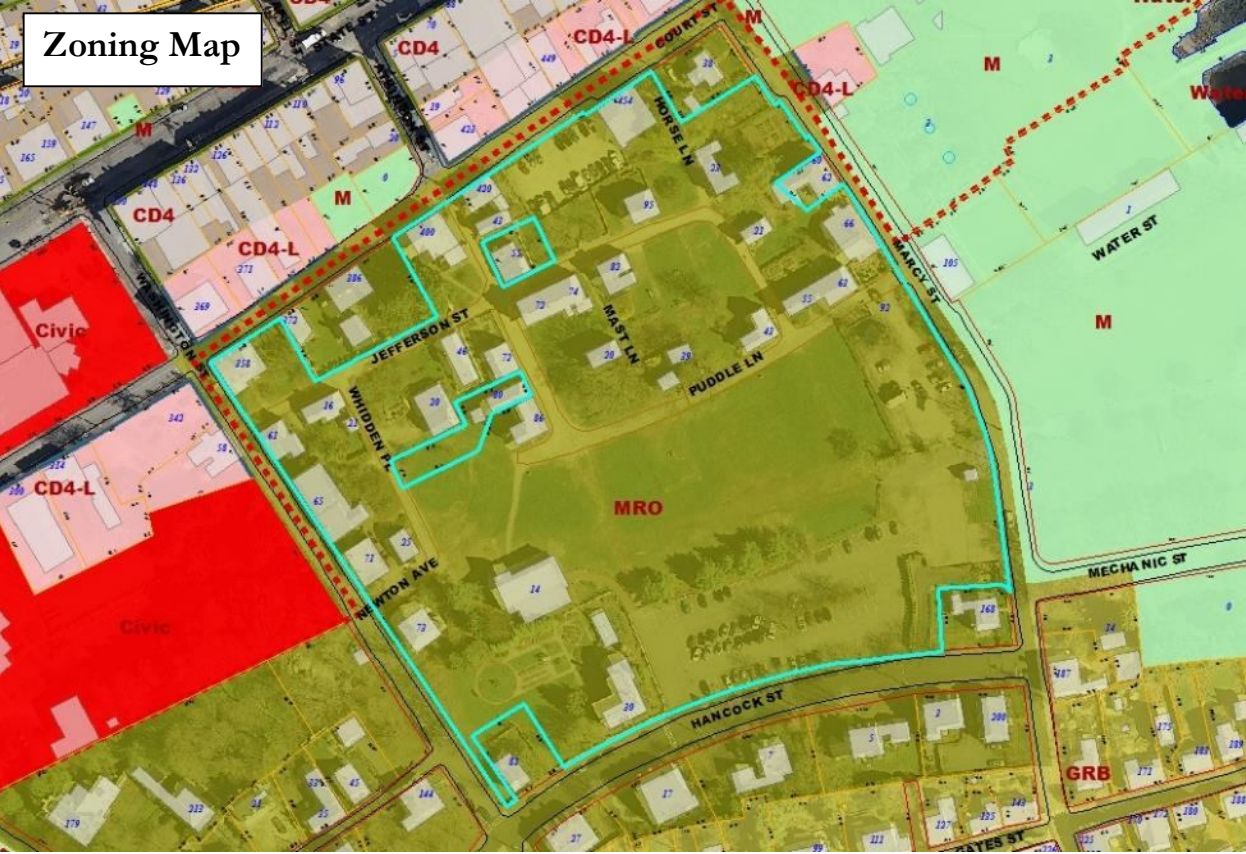
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Seasonal skating for three months per year	Mix of residential and office uses

### C. Other Permits Required

- None.

### D. Neighborhood Context

- Surrounding Land Uses: Residential, public park, business





## **E. Previous Board of Adjustment Actions**

*The following history is for the property known as Strawberry Banke, with a variety of addresses.*

June 13, 1988 – (454 Court Street) the Board **granted** a special exception to allow the erection of temporary structures (tents) in a district where temporary structures are limited to a term not to exceed 90 days with the stipulation that a \$500 bond be posted to ensure proper removal.

July 19, 1988 – (Marcy, Court, & Washington Streets) the Board **granted** a special exception to allow the erection of five temporary structures (tents) for a period not to exceed one week.

November 22, 1988 – (278 Court Street) the Board **granted** a special exception to permit the conversion of an existing structure from offices to offices and one dwelling unit on a less than 40' wide street.

July 11, 1989 – (Marcy Street) the Board **granted** a special exception to allow a 12 s.f. free-standing sign on the property.

February 16, 1993 - (454 Court Street) the Board **granted** a special exception to allow the construction of a 28' x 48' temporary structure on the museum lot to exhibit and demonstrate boat building where temporary structures may be allowed for up to 90 days with the stipulation that a \$2,000 bond be issued. Further extensions of time were granted at Board meetings on July 20, 1993, October 20, 1993, January 18, 1994, and April 19, 1994.

October 17, 1995 – (corner Marcy and Hancock Streets) the Board **granted** a variance to allow a 50' x 90' two-story Visitor's Center to accommodate ticketing, visitor orientation and support space including a catering kitchen with a building height of 43' where 35' was the maximum allowed.

October 17, 1995 – (corner Marcy and Hancock Streets) the Board **denied** an appeal of Gloria Guyette, Connie Boyle and Eunice Powell concerning the application of Strawberry Banke, Inc. for the construction of the two-story visitor center.

April 21, 1998 – (92 Marcy Street) the Board **granted** a special exception to allow a construction trailer to be used as a ticket booth and for 4 temporary port-a-potties from April to July 1998.

May 23, 2006 – (off Marcy Street) the Board **granted** a variance to allow the reconfiguration and expansion of the existing parking lot off Marcy Street with an 18' wide two-way travel aisle/new entrance where a 24' travel aisle was the minimum required.

September 19, 2006 (420 Court Street) – The Board **granted** a Variance to allow an irregular shaped two-story 2,724 s.f. building with the façade flush with the property line abutting Washington Street where 20' is the minimum side yard.

June 18, 2013 – The Board **granted** variances to construct an 85'± x 120'± oval and adjacent 60'± (in diameter) circular skating area with supporting structures including the following: 1) an outdoor recreational use in a district where such use was not allowed; and 2) an outdoor recreational use within 500' of a Residential or Mixed Residential District.

August 20, 2013 – The Board **denied** a Motion for Rehearing requested by a group of abutters.

February 17, 2015 – The Board **granted** a petition to clarify that the variances granted June 18, 2013 would apply to operation of a skating area during the winter months for a three-month period beginning on the date operations commenced each season and granted an extension for the current period of operation through March 15, 2015.

## **F. Planning Department Comments**

This application meets the submission requirements and has been submitted with the intention of modifying a previous Board decision to permit operation of a seasonal outdoor skating area by extending the seasonal operation to five months.

## **G. 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 #7-11

Petitioner:	Merton Alan Investments, LLC
Property:	30 Cate Street
Assessor Plan:	Map 165, Lot 1
Zoning District:	Industrial
Description:	Clarification of previous approval for construction of an office building.
Requests:	Clarification that the setback relief granted included the 15.4' front setback resulting from the City's future reconfiguration of Cate St.

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant	Primarily industrial, wholesale, and storage uses
<u>Lot area:</u>	2.34 acres	2 acres
<u>Street Frontage:</u>	539'	200' min.
<u>Lot depth:</u>	788'	200' min.

### B. Proposed Changes

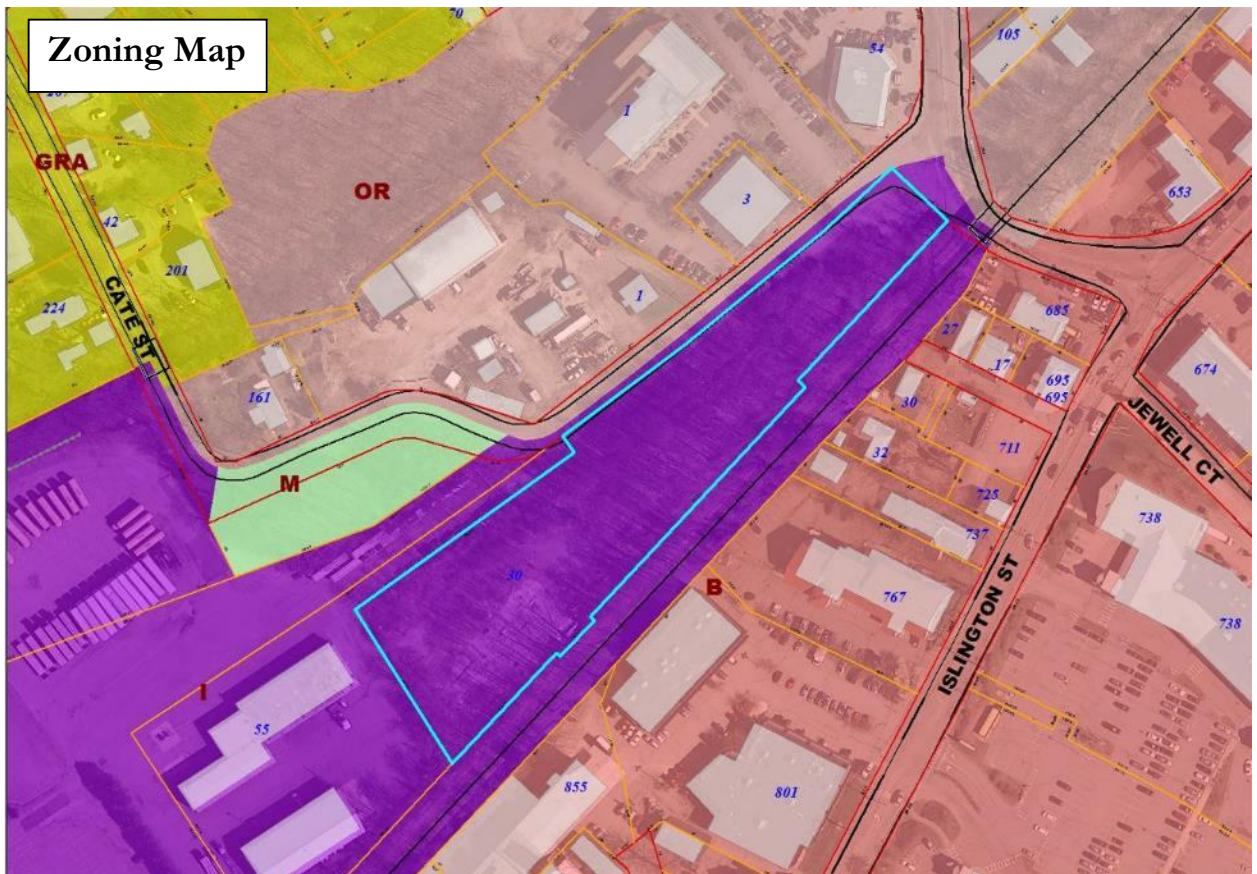
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Office building	Primarily industrial, wholesale, and storage uses
<u>Front Yard:</u>	30'	70' min.
<u>Left Yard:</u>	193'	50' min.
<u>Right Yard:</u>	392'	50' min.
<u>Rear Yard:</u>	8'	15' min. (per 10.516.20)
<u>Height:</u>	<70'	70' max.
<u>Building Coverage:</u>	9.9%	50% max.
<u>Open Space Coverage:</u>	54%	20% min.
<u>Parking:</u>	120	120

### C. Other Permits Required

- Planning Board – Site Plan Review

### D. Neighborhood Context

- Surrounding Land Uses: Industrial warehouse, single and two-family residential, general office building, residential condominiums, shopping center, retail
- Public View of Proposed Improvements: Visible from Cate St and Bartlett St.



## E. Previous Board of Adjustment Actions

January 23, 2009 – The Board **denied** a request to construct a 5-story, 60-unit residential apartment building with a 13,375 sq. ft. footprint with the following required variances: 1) to allow residential apartments in an Industrial district; 2) to allow 130' lot depth where 200' is required; 3) to allow an 18' front setback where 70' is required; 4) to allow a 14' rear setback where 50' is required; 5) to allow 80' setback from residential uses where 100' is required; 6) to allow parking 10' from the front property line where 50' is required.

December 2, 2014 – The Board **postponed** to the January meeting a request to construct a 10,000 s.f. three-story office building with associated parking and a left side yard setback of 15' and a right side yard setback of 17' where 50' is required for both.

February 3, 2015 - The Board **granted only variances #1(a) and #1(b)** to allow a front yard setback of 30' where 70' was required and a rear yard setback of 8' where 15' was required associated with construction of a 10,000 s.f. three-story office building with associated parking.

## F. Planning Department Comments

The application meets the submission requirements and the applicant has reviewed the application with the Planning Department staff.

## G. 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 #7-12

Petitioner: New England Glory, LLC  
 Property: 525 Maplewood Avenue  
 Assessor Plan: Map 209 Lot 85  
 Zoning District: General Residence A\*  
 Description: Creation of two lots where one currently exists.  
 Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:  
 1. A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,755 sq. ft. where 7,500 sq. ft. is the minimum required.  
*\*Note: The zoning district was incorrect in the legal notice.*

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	12-unit residential complex	Primarily residential
<u>Lot area (sq. ft.):</u>	80,693	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,724	7,500 min.
<u>Street Frontage (feet):</u>	551	100 min.
<u>Lot depth (feet):</u>	>70	70 min.
<u>Front Yard (feet):</u>	>15	15 min.
<u>Left Yard (feet):</u>	>10	10 min.
<u>Right Yard (feet):</u>	>10	10 min.
<u>Rear Yard (feet):</u>	<20	20 min.
<u>Building Coverage:</u>	<25%	25% max.
<u>Open Space Coverage:</u>	>30%	30% min.
<u>Parking (spaces):</u>		19 min.
<u>Estimated Age of Structure:</u>	1805	

## B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Lot area (sq. ft.):</u>	45,065 (Lot 1) 35,828 (Lot 2)	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,755 (Lot 1) Not yet determined (Lot 2)	7,500 min.
<u>Street Frontage (feet):</u>	354 (Lot 1)	100 min.
<u>Lot depth (feet):</u>	240 (Lot 1) 149 (Lot 2)	70 min.
<u>Front Yard (feet):</u>	>15 (Lot 1) Not yet determined (Lot 2)	15 min.
<u>Left Yard (feet):</u>	>10 (Lot 1) Not yet determined (Lot 2)	10 min.
<u>Right Yard (feet):</u>	>10 (Lot 1) Not yet determined (Lot 2)	10 min.
<u>Rear Yard (feet):</u>	<20 Not yet determined (Lot 2)	20 min.
<u>Building Coverage:</u>	<25% Not yet determined (Lot 2)	25% max.
<u>Open Space Coverage:</u>	>30% Not yet determined (Lot 2)	30% min.
<u>Parking (spaces):</u>		19 min. (Lot 1) Not yet determined (Lot 2)

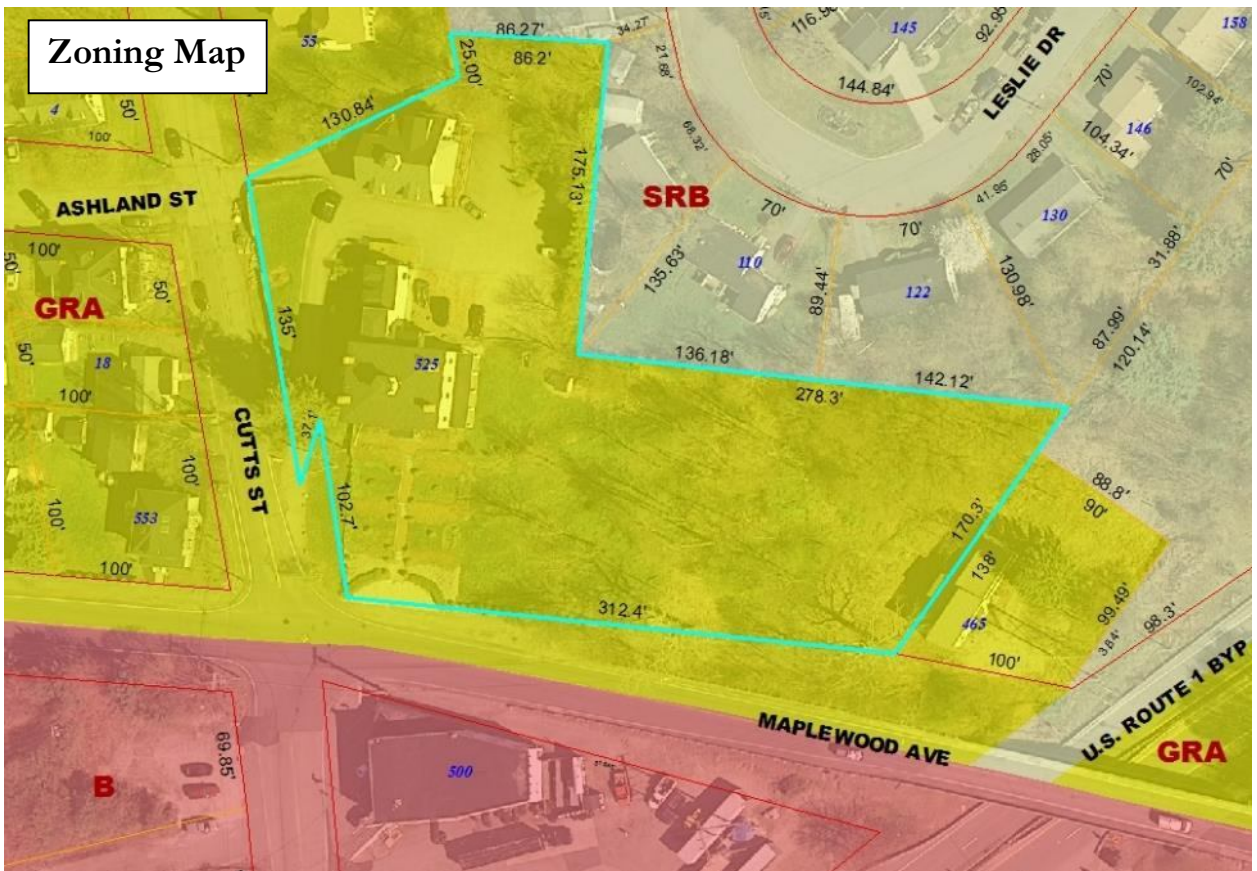
## C. Other Permits Required

- Planning Board Subdivision

## D. Neighborhood Context

- Surrounding Land Uses: Truck stop, single family residential, PSNH





## **E. Previous Board of Adjustment Actions**

January 30, 1957 – The Board **granted** a variance to convert a four family dwelling into a ten apartment structure.

June 28, 1966 – The Board **tabled** a request to erect a sign for Theatre-By-The-Sea with the request that a letter be sent to the City Council urgently asking them to look into the need for adoption of a sign ordinance.

July 17, 1990 – The Board **denied** a request for the following: 1) to increase the extent of a nonconforming use of the property by creating a tenth dwelling unit where no such increase may be made; and 2) to permit the conversion of an existing storage barn into a dwelling unit for a total of 10 dwelling units on the lot where only one dwelling is allowed.

August 21, 1990 – The Board **denied** a Request for Rehearing on the above.

October 27, 1992 – The Board **denied** the following requests: 1) to allow an increase in the extent of a nonconforming use of a structure or land where no increase may be made; and 2) to allow the conversion of a garage/storage building into an apartment for a total of 10 dwelling units on a single lot in a single residence district where structures shall not accommodate more than a single family.

January 20, 1998 – The Board **granted** the following variances: 1) to allow the expansion of a nonconforming use by the addition of four dwelling units in the accessory barn/garage structure for a total of thirteen units where four dwelling units are the maximum allowed and nine grandfathered units presently exist; and 2) to allow a lot area per dwelling unit of 6,300 s.f. where 7,500 s.f. is required.

The request was granted **as per the letter sent to abutters by the Housing Partnership** as follows:

- The Cutts Mansion will be restored and renovated to its original glory, will enhance the entrance to your neighborhood;
- We will be spending over \$700,000 to renovate the property. This will increase the marketability of your property and perhaps its resale value;
- The grounds will be cleaned up, including removal of junk and any hazardous materials;
- The buildings will be brought up to meet all current building codes;
- A sprinkler system and completely new heating system will reduce the number of visits from the Portsmouth Fire Department;
- A landscape architect will supervise the removal of overgrown shrubs and trees and new landscaping;
- The property will be managed by a professional property management company; and
- Rubbish will be collected in a screened on-site dumpster, as opposed to curbside collection.

The Board members made the following **stipulations**:

- That the Planning Department be kept advised of the progress of the pending sale; and
- That the driveway be reviewed by the Traffic and Safety Committee (The committee met March 19, 1998 and approved the relocation of a driveway).

March 25, 1998 – The Chief Building Inspector sent a letter to the then owner advising of an unauthorized, newly created “dwelling/boarding room” in the main building and two dwellings and a business occupancy in the barn, which were in violation of the zoning ordinance and did not comply with building codes. The owner was requested to remove or have vacated the “three (3) illegal dwelling units and one (1) illegal business occupancy.”

May 19, 1998 – The Board **tabled** a request to allow the following: 1) the expansion of a nonconforming use by the addition of five dwelling units in the accessory barn/garage structure where four dwelling units had been previously granted and seven dwelling units to be in the main house for a total of twelve units on the lot where four dwelling units are the maximum allowed and nine grandfathered units presently existing in the main house; and 2) to allow a lot area per dwelling unit of 6,824 s.f. where 7,500 s.f. is required.

June 16, 1998 – The Board **granted** a variance to allow the following: 1) the expansion of a nonconforming use by the addition of five dwelling units in the accessory barn/garage structure where four dwelling units had been previously granted and eight dwelling units to be in the main house for a total of thirteen units on the lot where four dwelling units are the maximum allowed and nine grandfathered units presently exist in the main house. The request was granted subject to the **stipulations** from the letter to the Housing Partnership and the Board member **stipulations** attached to the variance granted at the January 20, 1998 meeting.

March 16, 1999 – The Board **granted** variances to allow the following: 1) to allow the existing barn to be converted into 5 dwelling units in addition to the existing 9 dwelling units in the main house for a total of 14 dwelling units on a lot where the maximum allowed is 4 dwelling units; and 2) to allow said dwelling units to be in two buildings where all dwelling units are to be in one building. The request was granted with the following **stipulations** submitted by Mr. Gary Dodds:

- Correct interior doors to and from apartments (to the general hallway);
- Install self closing mechanism on all doors to general hallway;
- Hard wire smoke detectors in basement, first floor, second floor, third floor and basement (19 total) (this work had been completed);
- Provide second means of egress to all units;
- Install new furnaces in both the Cutts Mansion and the Carriage House (barn); and
- The Carriage House will have a sprinkler system installed and be compliant with all other building codes.

The following will be addressed within the first year:

- Restore and renovate the Cutts Mansion to enhance its appearance with the neighborhood;
- Clean up the grounds and remove all hazardous materials;
- Landscape around the property to improve the neighborhood and the City of Portsmouth;
- Install fire extinguishers throughout the building; and
- Install an historic marker at the front of the property for people visiting the City to view and gain information about the property.

The Board added the following stipulations:

- That the rubbish area be screened; and
- That the building be brought up to meet all current building codes.

July 17, 2001 – The Board granted a variance to convert the nine apartments in the main building into fourteen rooms for a Bed and Breakfast Inn.

July 16, 2002 – The Board granted a one year extension of the above variance to expire on July 16, 2003.

July 15, 2008 – The applicant requested, and the Board **granted, a postponement** to the August meeting an Appeal from an Administrative Decision regarding the determination of the Code Officials that the Building Permit to convert the 9 apartments into a 14 room Bed and Breakfast has lapsed as the building continues to be used as 9 apartments. Notwithstanding that request, if the Administrative Appeal were denied, a request for a variance to allow the existing 9 apartments to be converted into a 14 room Bed and Breakfast.

August 19, 2008 – The Board **postponed** the above request to a time indefinite at the applicant's request.

December 28, 2009 – A letter was sent from the Principal Planner to the owner advising that there had been no action on the pending application and outlining the options in order to close the pending application.

January 19, 2010 – The Board acknowledged that the petition as outlined above for the July 15, 2008 meeting had been **withdrawn** at the applicant's request.

July 19, 2011 – The Board **denied** a request to construct a multi-bay garage with a 70' x 16' section and an 86' x 16' section with a 10' rear yard setback where 20' was required and a 5' right side yard setback where 10' was required.

## **F. Planning Department Comments**

This application meets the submission requirements.

## **G. 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**

  - (c) *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 #7-13

Petitioner:	Jillian Mirandi
Property:	19 Woodbury Avenue
Assessor Plan:	Map 162 Lot 65
Zoning District:	General Residence A
Description:	Replace front entry and add shed in back yard.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> <li>1. A Variance from Section 10.521 to allow a front yard setback of 2' 10"+/- where 15' is the minimum required and a building coverage of 29.6% where 25% is the maximum allowed.</li> <li>2. A Variance from Section 10.573.10 to allow a left side yard of 2' and a 2' rear yard where 5' is the minimum required for an accessory structure.</li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residential	Primarily residential uses
<u>Lot area:</u>	2,986 sq. ft.	7, 500 sq. ft. min.
<u>Lot Area per Dwelling Unit:</u>	2,986 sq. ft.	7, 500 sq. ft. min.
<u>Street Frontage:</u>	40'	100' min.
<u>Lot depth:</u>	20'	20' min.
<u>Front Yard:</u>	5'	15' min.
<u>Left Yard:</u>	20'	10' min.
<u>Right Yard:</u>	0'	10' min.
<u>Rear Yard:</u>	>20'	20' min.
<u>Height:</u>	<35"	35' max.
<u>Building Coverage:</u>	26.1%	25% max.
<u>Open Space Coverage:</u>	>30%	30% min.
<u>Parking:</u>	1	2 min.
<u>Estimated Age of Structure:</u>	1915	

### B. Proposed Changes

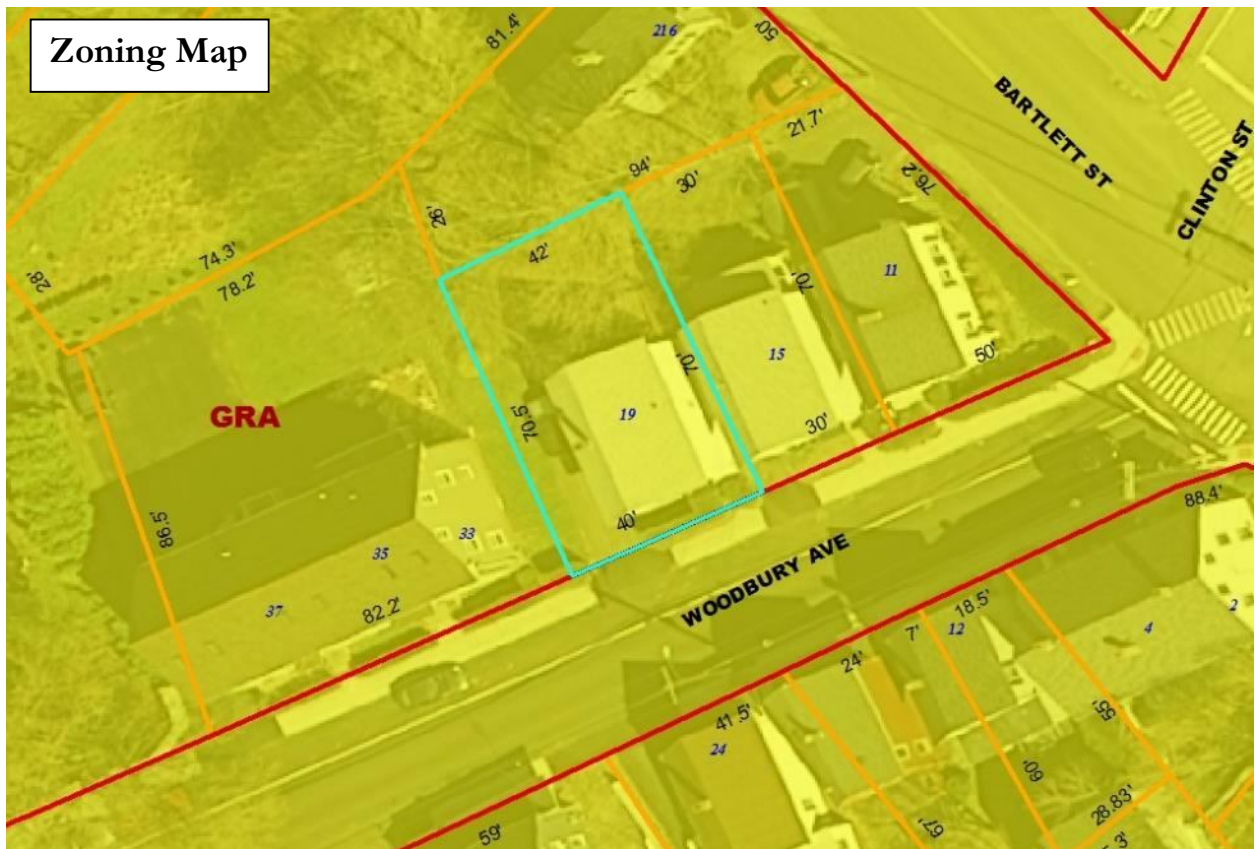
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Front Yard:</u>	2'10"	15' min.
<u>Left Yard:</u>	2' (to shed)	5' min. (per 10.573.10)
<u>Right Yard:</u>	>10' (to shed)	5' min. (per 10.573.10)
<u>Rear Yard:</u>	2'	5' min. (per 10.573.10)
<u>Height:</u>	10'	35' max.
<u>Building Coverage:</u>	29.6%	25% max.
<u>Open Space Coverage:</u>	>30%	30% min.

### C. Other Permits Required

- None.

## D. Neighborhood Context

- Surrounding Land Uses: Single family and two-family residential



## **E. Previous Board of Adjustment Actions**

June 23, 1992 The Board granted variances to allow construction of a 12' x 12' rear deck resulting in a 2' right yard, a 21' rear yard, and a building coverage of 25% with a stipulation that the proposed deck would not be enclosed at any time.

## **F. Planning Department Comments**

The Board requested that the applicant provide an updated scaled drawing of the proposed front entrance renovation that accurately reflects the relief being sought.

## **G. 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**
- (b) *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 #8-1

Petitioners:	Cherry Ventures LLC, owner, Mary Louise Brozena & Cheryl Kenney, applicants
Property:	64 Pine Street
Assessor Plan:	Map 162, Lot 24
Zoning District:	General Residence A
Description:	Rebuild home on non-conforming foundation.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> <li>1. A Variance from Section 10.321 to allow a lawful nonconforming building or structure to be extended, reconstructed or structurally altered except in conformance with the Ordinance.</li> <li>2. A Variance from 10.516.10 to allow a 0'± front yard setback where 6' is required.</li> <li>3. A Variance from Section 10.521 to allow a 0'± left side yard setback where 10' is the minimum required.</li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residential	Primarily residential
<u>Lot area (sq. ft.):</u>	7,770	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,770	7,500 min.
<u>Street Frontage (feet):</u>	60	100 min.
<u>Lot depth (feet):</u>	125	70 min.
<u>Front Yard (feet):</u>	0	15 min.
<u>Left Yard (feet):</u>	32.5	10 min.
<u>Right Yard (feet):</u>	0	10 min.
<u>Rear Yard (feet):</u>	92	20 min.
<u>Height (feet):</u>	1.75 story	35 max.
<u>Building Coverage:</u>	11.35%	25% max.
<u>Open Space Coverage:</u>	87.03%	30% min.
<u>Parking (spaces):</u>	1	2 min.
<u>Estimated Age of Structure:</u>	1850	

### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Front Yard (feet):</u>	0	6 (per 10.516.10) min.
<u>Left Yard (feet):</u>	19	10 min.
<u>Right Yard (feet):</u>	0	10 min.
<u>Rear Yard (feet):</u>	74	20 min.
<u>Height (feet):</u>	35	35 max.
<u>Building Coverage:</u>	22.74%	25% max.
<u>Open Space Coverage:</u>	71.58%	30% min.
<u>Parking (spaces):</u>	2	2 min.

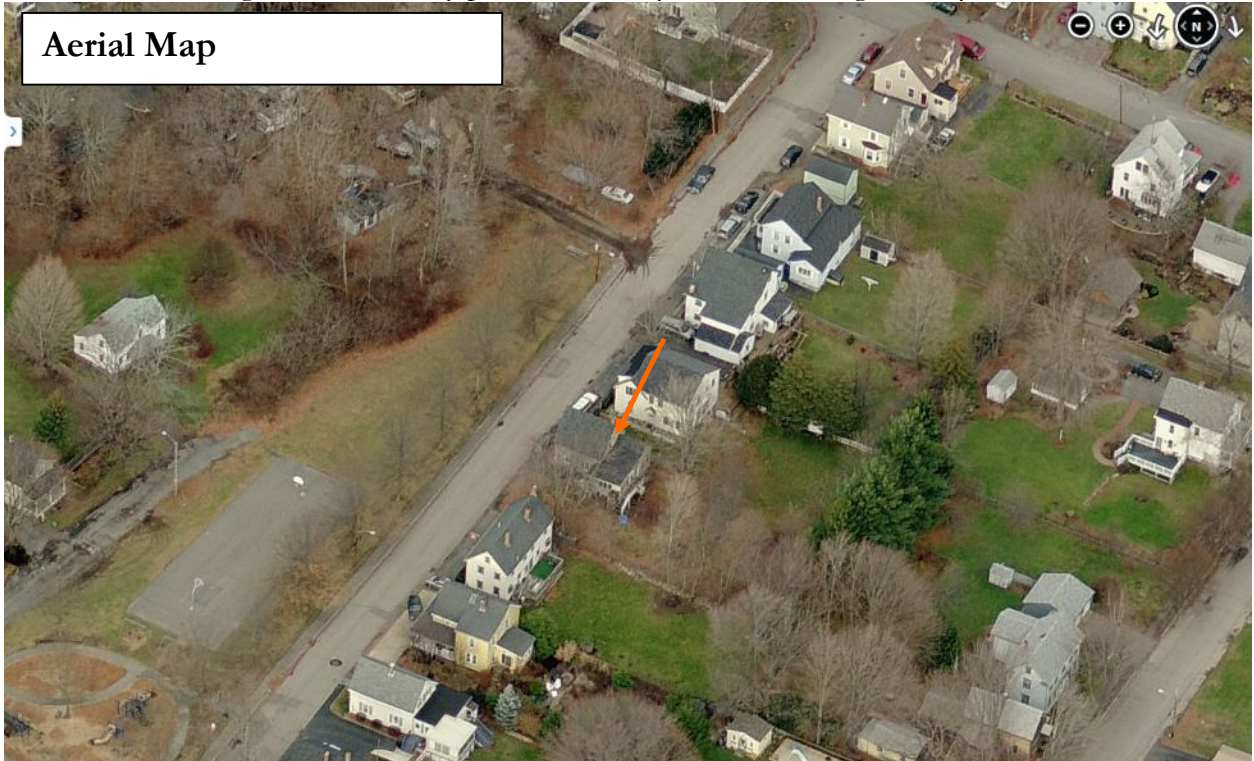


### C. Other Permits Required

- None.

### D. Neighborhood Context

- Surrounding Land Uses: City park, two-family residential, single family residential



## E. Previous Board of Adjustment Actions

No BOA history found.

## F. Planning Department Comments

The application meets the submission requirements and the applicant has met with the Planning Department to discuss the project.

## G. 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 #8-2

Petitioners:	2422 Lafayette Road Assoc LLC
Property:	2454 Lafayette Road
Assessor Plan:	Map 273, Lot 3
Zoning District:	Gateway
Description:	Allow a parking area between a principal building and a street.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> <li>1. A Variance from Section 10.1113.20 to allow required off-street parking spaces to be located in a required front yard or between a principal building and a street.</li> <li>2. A Variance from Section 10.734.20 to allow a front yard setback of 151'± where 90' is the maximum allowed.</li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Shopping Center	Mix of commercial and residential
<u>Lot area (sq. ft.):</u>	815,006	43,560 min.
<u>Street Frontage (feet):</u>	450	200 min.
<u>Lot depth (feet):</u>	1,112	100 min.
<u>Front Yard (feet):</u>	151	80 min (from centerline of Lafayette Rd)
<u>Left Yard (feet):</u>	>30	30 min.
<u>Right Yard (feet):</u>	>30	30 min.
<u>Rear Yard (feet):</u>	82	50 min.
<u>Height (feet):</u>	<40	40 max.
<u>Building Coverage:</u>	20.4%	30% max.
<u>Open Space Coverage:</u>	21.4%	20% min.
<u>Parking (spaces):</u>	829	859

### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Gateway Planned Development	Mix of commercial and residential
<u>Lot area (sq. ft.):</u>	815,006.99	43,560 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,367.90	2,500 min.
<u>Street Frontage (feet):</u>	450	100 min.
<u>Lot depth (feet):</u>	1112	100 min.
<u>Front Yard (feet):</u>	151	70 min. – 90 max.
<u>Left Yard (feet):</u>	>30	30 min.
<u>Right Yard (feet):</u>	>30	30 min.
<u>Rear Yard (feet):</u>	>50	50 min.
<u>Height (feet):</u>	66	60 max. (modifications allowed per 10.738.30)
<u>Building Coverage:</u>	21.20%	75% max.

<u>Open Space Coverage:</u>	21.00%	20% min.
<u>Parking (spaces):</u>	816	627 min. – 892 max.
<u>Floor Area Ratio (</u>	0.37	1.0 max.
<u>% of Lot Frontage Occupied by Buildings or Open Space:</u>	84%	60% min.

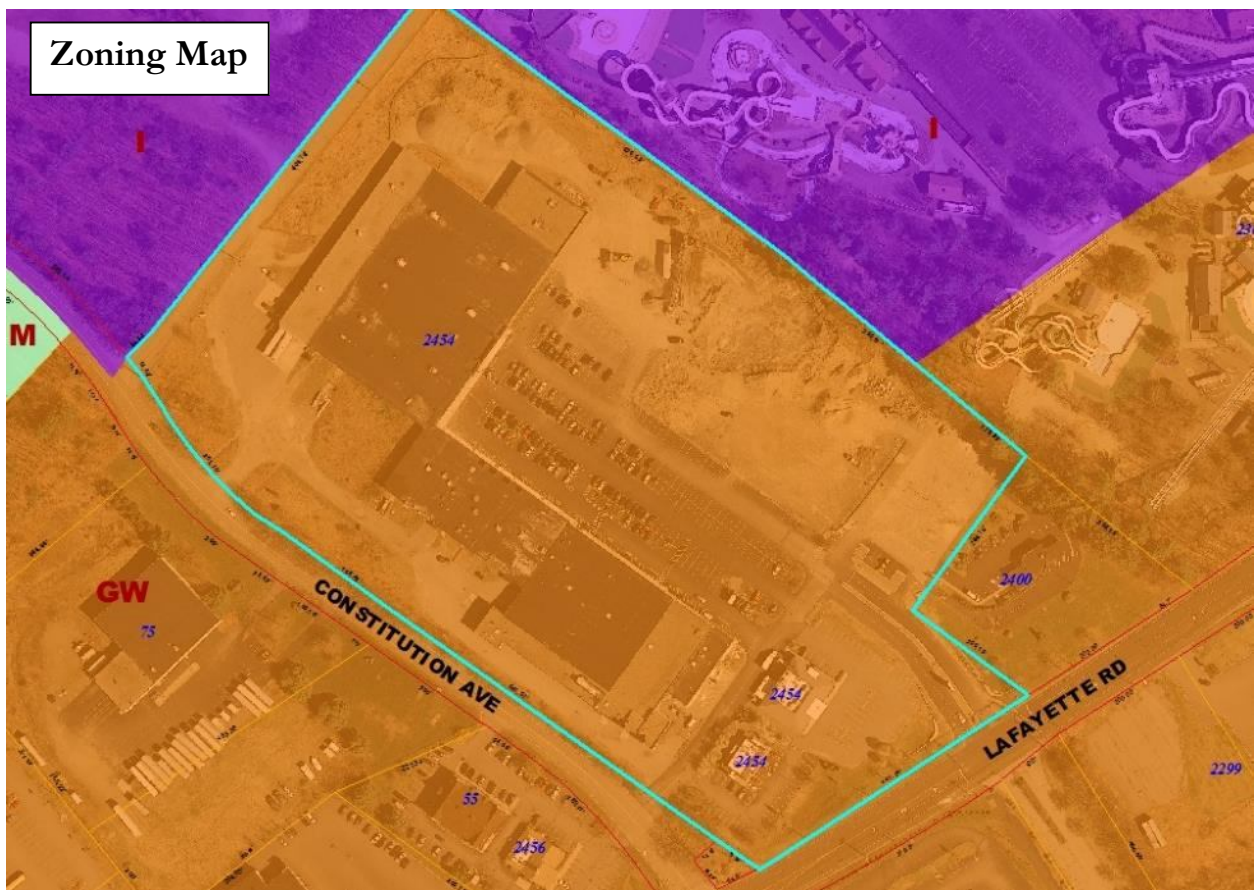
**C. Other Permits Required**

- Planning Board Site Plan Review

**D. Neighborhood Context**

- Surrounding Land Uses: Bank, automobile dealership, water park, mixed commercial strip





## E. Previous Board of Adjustment Actions

July 9, 1985 - the Board **denied** a request to allow the erection of a temporary 32 s.f. free-standing Developer's sign where a maximum of 6 s.f. free-standing Developer's sign is allowed.

October 1, 1985 - the Board **granted** a variance to allow the construction of a 44' x 50' structure for use as a office (walk-in health care) where professional offices are not an allowed use. The Board **denied** a request to allow said building to have a front yard of 91' where a minimum yard of 105' is required.

October 22, 1985 - the Board **denied** a request to allow the construction of a one-story 12,000 s.f. concrete block addition on the west side of an existing store (Rich's) with three loading berths and a trash compactor berth being provided where a minimum of seven loading berths are required.

January 5, 1988 – the **Board granted** a variance to allow the establishment of 22 on-site parking spaces where a minimum of 49 parking spaces are required.

April 16, 1991 - the Board **granted** a Special Exception to permit the establishment of a dry cleaning and laundry facility.

April 21, 1992 - the Board **granted** the following, as amended below: 1) a variance to allow 96 s.f. of attached signage on a proposed restaurant where 55 s.f. of attached sign area is the maximum allowed; 2) a variance to allow 148 s.f. of free-standing signage for a proposed restaurant, which

when added to existing signage, would provide an aggregate total of 581 s.f. of free-standing signage where 150 s.f. is the maximum allowed; and, 3) a Variance to allow a total of 1,249 s.f. of aggregate signage where 1,020 s.f. is the maximum aggregate signage allowed with the following **stipulations**:

- Variance #1 to allow 66 s.f. of attached signage where 96 s.f. was requested;
- Variance #2 to allow 124 s.f. of free-standing signage where 148 s.f. was requested; and,
- Variance #3 to allow 1,192 s.f. of aggregate signage where 1,249 s.f. was requested.

July 15, 1997 – the Board **granted** a variance to allow “The Candle Mill”, a retail/manufacturing/wholesale business to be located in the vacant space formerly occupied by Rich’s Department store with the **stipulation** that the space be used for candle manufacturing for wholesale and retail purposes only.

February 15, 2000 – the Board **granted** a variance to allow: (a) 89.8 sf of attached signage where 85’ is the maximum allowed; the Board **denied part b)** a 91.5 sf internally illuminated freestanding sign 20’ in height and a 32.6’ setback where the maximum allowed is a 25 sf monument 6’ in height.

March 21, 2000 – the Board **denied** a request to allow a 59.75 sf internally illuminated freestanding sign 17’ in height with a 32.6’ setback where the maximum allowed is a 25 sf monument sign 6’ in height.

May 16, 2000 – the Board **denied** a request to allow a 39.7 s.f. internally illuminated monument sign 23’9” in height, with a 32.6’ front yard and closer than 200’ to existing pylon signs where the maximum allowed is a 25 s.f. sign, 6’ in height and 200’ from existing pylon signs.

June 27, 2000 – the Board **granted** a variance to allow a 25 s.f. internally illuminated monument sign 10’ in height closer than 200’ to existing pylon signs where the maximum allowed is a sign 6’ in height located at least 200’ from existing signs.

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.

May 18, 2004 – a request for a Special Exception to allow a 60’ x 40’ bay car wash (with recycling water) where such is allowed by Special Exception was **withdrawn**.

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.

A primary free standing sign of 350 s.f. where 150 s.f. is allowed; September 15, 2009 – The Board **granted** variances to allow the following the following:

- 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.

## **F. Planning Department Comments**

The applicant has discussed this project with the Planning Department staff and the application meets the submission requirements.

## **G. 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**

  - (c) *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 #8-3

Petitioners:	Thomas E., Marybeth B., James B. & Meegan C. Reis
Property:	305 Peverly Hill Road
Assessor Plan:	Map 255, Lot 5
Zoning District:	Single Residence B & NRP
Description:	Construct a second free-standing dwelling on a lot.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Variance from Section 10.513 to allow a second free-standing dwelling on a lot where a second free-standing dwelling is not allowed in this district.

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residential	Primarily single family residential
<u>Lot area (sq. ft.):</u>	1,729,332	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,729,332	15,000 min.
<u>Street Frontage (feet):</u>	515	100 min.
<u>Lot depth (feet):</u>	>3000	100 min.
<u>Front Yard (feet):</u>	>30	30 min.
<u>Left Yard (feet):</u>	>10	10 min.
<u>Right Yard (feet):</u>	>10	10 min.
<u>Rear Yard (feet):</u>	>30	30 min.
<u>Height (feet):</u>	<30	30 max.
<u>Building Coverage:</u>	<20%	20% max.
<u>Open Space Coverage:</u>	>40%	40% min.
<u>Parking (spaces):</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1810	

### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two detached single family homes	Primarily single family residential
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	864,666	15,000 min.
<u>Parking (spaces):</u>	4	4 min.

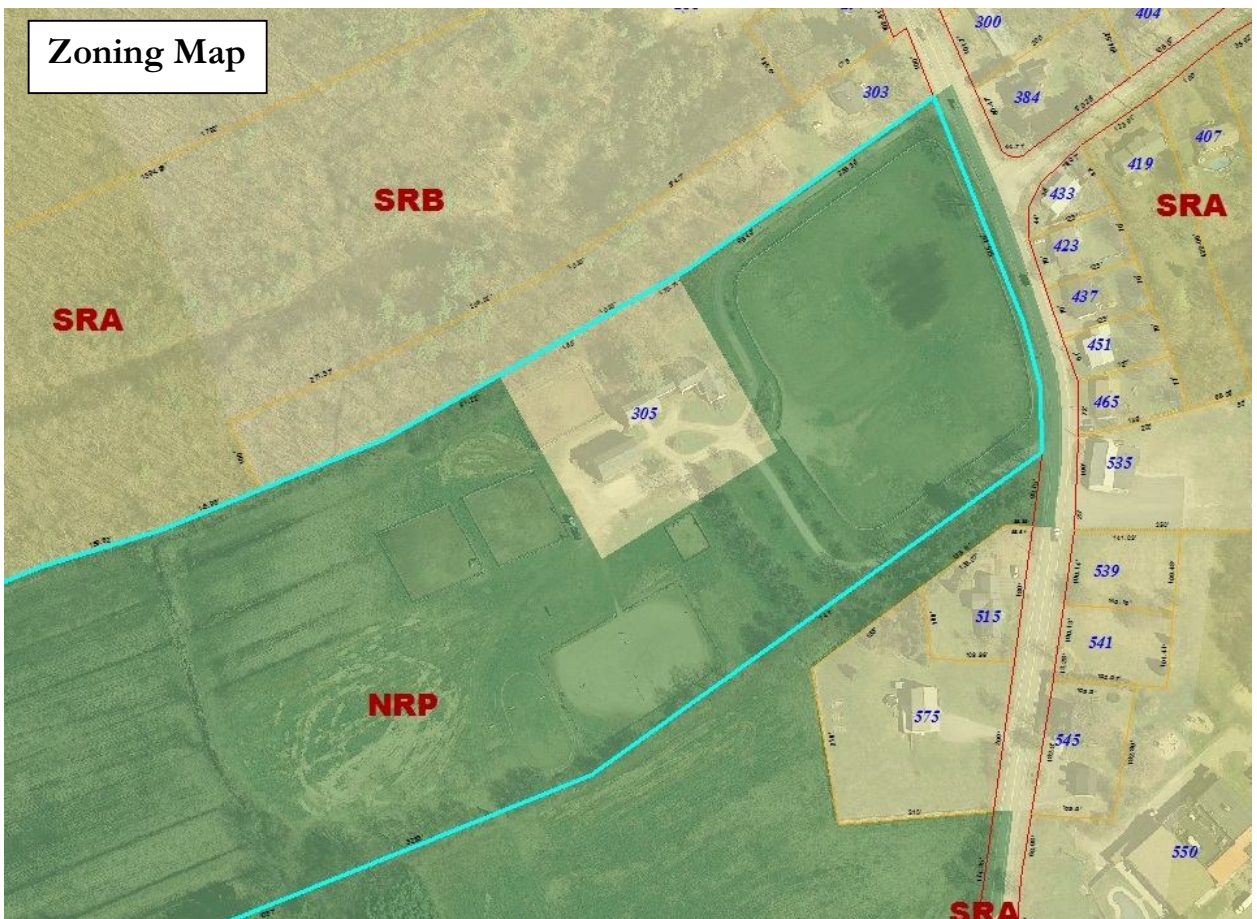
### C. Other Permits Required

- None.

### D. Neighborhood Context

- Surrounding Land Uses: Single family residential, horse farm





## E. Previous Board of Adjustment Actions

No BOA history found.

## F. Planning Department Comments

The application meets the submission requirements and the applicant has consulted the Planning Department about the project.

## G. 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.*