

TO: Zoning Board of Adjustment
FROM: Planning Department
DATE: March 10, 2016
RE: Zoning Board of Adjustment Meeting on March 15, 2016

OLD BUSINESS

1. 209 Clinton
2. 140 Thornton St
3. 482 Broad St
4. 525 Maplewood Ave

NEW BUSINESS

1. 45 Mill Pond Way
2. 378 Banfield Rd
3. 2300 Lafayette Rd
4. 211 Union St
5. 69 Hunking St
6. 606 Union St
7. 60-62 Market St

OLD BUSINESS

Case #12-3

Petitioner:	Pamela Gould
Property:	209 Clinton Street
Assessor Plan:	Map 159, Lot 27
Zoning District:	General Residence A
Description:	Construct a 10'6" ± x 30'± single story rear addition.
Requests:	The Variances necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none">1. A Variance from Section 10.321 to allow a lawful nonconforming building to be extended, enlarged or structurally altered except in conformity with the Ordinance.2. A Variance from Section 10.521 to allow a left side yard setback of 9'± where 10' is required.3. A Variance from Section 10.521 to allow 27.5% building coverage where 25% is the maximum allowed.

Last month, this application was before the Board for a clarification of a previously approved request. **It was not an application for an Equitable Waiver nor was it advertised as such.** Because the Board voted to grant an Equitable Waiver, staff is requesting that the Board correct the vote to confirm that this was before the Board as a clarification of a previous decision only and not as an Equitable Waiver request and as such no new public notification or public hearing is required. Once the Board has confirmed that, City staff will issue a corrected letter of decision.

The Board **granted** the requested relief at the December 15, 2015 meeting. Subsequently, after completing a foundation certification plan as required by the Inspections Department for the building permit, the setbacks of the addition were determined to be different than what was originally listed on the Board of Adjustment application. Although the initial request indicated that the left side yard setback was 9', the actual left side yard setback is 8'4". The applicant initially measured to the existing fence, which the foundation certification plan shows is actually partially located on the neighboring property.

In addition, while the applicant initially thought that the property line fronting on Burkitt St extended to the edge of pavement (17' from the proposed addition), the actual property line is only 9' from the addition. The required setback on this side is 15' (for the secondary front yard).

In reviewing the application materials submitted to the Board on December 15 and after reviewing the video of the meeting, Planning Department staff has concluded that although the lot lines were depicted incorrectly in the application, the project is being developed consistent with the applicant's presentation to the Board in her plans and at the public hearing. Therefore, it does not appear that a new application and hearing would be required. However, as this is a decision of the Board and staff cannot act on the Board's behalf, the applicant has been asked to return to the Board for a clarification.

The Board of Adjustment Rules and Regulations do not require that an applicant do a lot survey or lot line delineation plan for the application. This has been the Board's policy in part because it can

be a substantial up front cost burden particularly for small projects. In the absence of a property survey, applicants are allowed to use tax maps or other sources to determine, to their best estimation, where their property lines are located. The Board should be aware that, beginning this month, staff will be strongly encouraging any applicants that have projects coming before the Board to do a survey or lot line delineation particularly if the proposed setbacks or coverages are within a few feet of the requirement.

Staff has determined that the project as currently constructed, is consistent with the application as originally approved by the Board for the following reasons:

- 1) The Board approved a 9' left side yard setback, which the applicant explained was the measurement of the closest point on the building to the fence which ran along that edge of her property. That measurement is still accurate, however the lot line was subsequently determined to be 8" closer than the fence, which the applicant had no knowledge of when she initially submitted her application.
- 2) The applicant provided two site plans in the initial submission to the Board, one was from the City tax map and the other was a hand drawn sketch. While no setback dimensions were delineated on the tax map, it is apparent, based on the scale shown on the plan, that the existing building is located less than 15' from the lot line on the Burkitt St side. The applicant's hand drawn sketch indicated the lot line as the edge of pavement on Burkitt St and showed a 17' setback from the existing building to the street. While the applicant was mistaken about the location of the lot line on this side, the measurement of 17' from the building to the street was subsequently confirmed by the foundation certification plan. Furthermore, the discrepancy between the two exhibits was noted by the Board of Adjustment members in their discussion of the motion and therefore they were aware that the application as presented was using the edge of pavement as the point of reference for the setback on that side.
- 3) The addition as presented and as currently constructed, follows the existing line of the building and the total size and dimensions of the addition has not changed from the original application.

Case #1-2

Property:	140 Thornton Street
Assessor Plan:	Map 160, Lot 8
Zoning District:	General Residence A
Description:	Construct single-family home.
Requests:	Request for rehearing of variances granted: <ol style="list-style-type: none">1. A Variance from Section 10.516.10 to allow a 0'± primary front yard setback where 7.3' is required and a 5'± secondary front yard setback where 8.3' is required.2. A Variance from Section 10.521 to allow 30.28±% building coverage where 25% is the maximum allowed.

On January 19, 2016, the Board voted to grant the variances requested by the applicants (Ajeet Jai & Kathleen Jo Singh). A group of neighbors (appellants) have filed a request for a rehearing within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, the rehearing will be scheduled for the April Board meeting or at another time to be determined by the Board.

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

Case #1-9

Property:	482 Broad Street
Assessor Plan:	Map 229, Lot 8
Zoning District:	Gateway
Description:	Construct three townhouses.
Requests:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: 1. Special Exception under Section 10.440 to allow three dwelling units where the use is only allowed by Special Exception.

On January 26, 2016, the Board voted to grant the variances requested by the applicants (Paul E. Berton and Jane A. Ewell Living Trusts). A neighbor (appellant) has filed a request for a rehearing within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, the rehearing will be scheduled for the April Board meeting or at another time to be determined by the Board.

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

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 exists. Construct building with four dwelling units.
Requests:	<p>The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:</p> <ol style="list-style-type: none"> 1. A Special Exception under Section 10.440, Use #1.41 to allow four dwelling units in a district where the use is only allowed by Special Exception. 2. Variances from Section 10.1114.21 to allow an 18'± maneuvering aisle and a 20'± access aisle where 24' is required for both. 3. A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,755± s.f. where 7,500 s.f. is the minimum required.

This petition has been postponed from the September 15, 2015 meeting and modified by the addition of Requests #1 and #2.

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>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) 8,957 (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) >15 (Lot 2)	15 min.
<u>Left Yard (feet):</u>	>10 (Lot 1) >10 (Lot 2)	10 min.

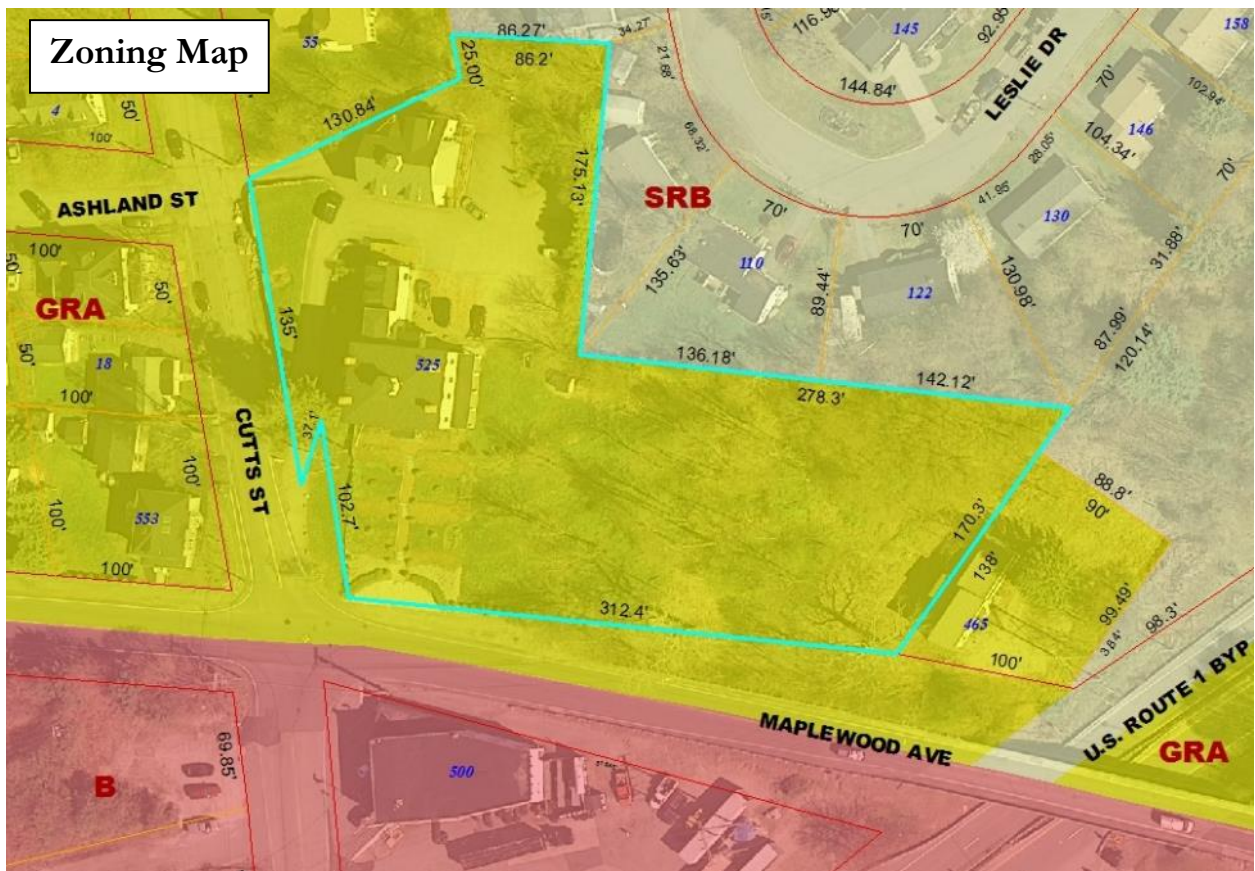
<u>Right Yard (feet):</u>	>10 (Lot 1) >10 (Lot 2)	10 min.
<u>Rear Yard (feet):</u>	<20 >20 (Lot 2)	20 min.
<u>Building Coverage:</u>	<25 <25 (Lot 2)	25% max.
<u>Open Space Coverage:</u>	>30% >30 (Lot 2)	30% min.
<u>Parking (spaces):</u>	16 (Lot 1) 10 (Lot 2)	16 min. (Lot 1) 7 min (Lot 2)

C. Other Permits Required

- Planning Board Subdivision

D. Neighborhood Context





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.

September 15, 2015 -- The Board voted to **postpone** further consideration of the petition to a future meeting requesting that the applicant provide information to clarify the proposal and aid in the assessment of its impact on abutters and the surrounding area, including:

- The number and location of dwelling units proposed for each lot.
- A plan for access and circulation proposed for both lots.
- A rendering of the proposed building.

The Board referred the proposal to the Technical Advisory Committee for a recommendation related to the above items.

F. Planning Department Comments

A memorandum from Rick Taintor, Planning Director, is enclosed which summarizes the comments from the Technical Advisory Committee as voted on at the February 2, 2016 TAC public hearing on this application.

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.*

MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Rick Taintor, Planning Director *RT.*
DATE: February 8, 2016
RE: 525 Maplewood Avenue

New England Glory, LLC, has requested a variance to create a lot with less than the required lot area per dwelling unit. Specifically, the applicant is requesting permission to subdivide an existing lot, which already exceeds the residential density allowed in the zoning district, into two lots. As a result of the subdivision, the existing nonconformity will be increased, which is the condition requiring a variance. At its meeting on September 15, 2015, the Zoning Board of Adjustment voted to refer this application to the Technical Advisory Committee for a recommendation on the variance request based on the number and location of dwelling units proposed for each lot, a plan for access and circulation proposed for both lots, and a rendering of the proposed building.

The Technical Advisory Committee reviewed this application at its meetings on December 1, 2015, January 5, 2016, and February 2, 2016. During the review process, the applicant presented several iterations of the site plan and the building rendering. Based on the plans presented at the February 2 meeting (last revision date 1/15/16), the TAC voted unanimously to report as follows:

- (1) Number and location of dwelling units proposed for each lot: TAC does not have an objection to the number and location of dwelling units as presented, with the caveat that the Committee did not look at the criteria for the special exception that is now required for construction of 4 dwelling units on a lot (per an amendment to the Zoning Ordinance adopted by the City Council on November 17, 2014).
- (2) Access and circulation for both lots: TAC recommends the access plan as presented, including any additional variances for driveway and access widths and any further variances that may be needed to achieve that plan. This recommendation incorporates the JSA report dated 1/24/2012 regarding the structure of the bridge and improvements that are required prior to the addition of any dwelling units and the implementation of this project.
- (3) Rendering of the proposed building: TAC recommends as follows:
 - (a) The building façade should be revised to a forecourt design to break up the massing of the structure;
 - (b) The rear retaining wall should be terraced if possible and should be faced with stone to match the design of the walls at the Cutts Mansion; and
 - (c) The front retaining wall should be faced with natural stone.

(continued)

Please note the following:

- (1) The TAC recommendations are based on the plan set submitted to the Planning Department on January 13, 2016, with a last revision date of 01/15/16.
- (2) The TAC review was limited to the three issues referred to it by the Zoning Board of Adjustment.
- (3) If the requested variance and special exception are granted, the applicant will need to apply to the Planning Board for subdivision approval to create the new building lot, and for site plan approval for both lots. This report to the ZBA should not be construed as preliminary approval of either application, as additional issues will be considered at that time.

NEW BUSINESS

Case #3-1

Petitioner:	Everard E. Hatch
Property:	45 Mill Pond Way
Assessor Plan:	Map 143, Lot 11
Zoning District:	General Residence A
Description:	Add dwelling unit in existing attached garage.
Requests:	The Variances and/or Special Exceptions 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 7,467± s.f. where 7,500 s.f. is required.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family residence	Primarily residential uses
<u>Lot area (sq. ft.):</u>	14,934	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	14,934	7,500 min.
<u>Street Frontage (ft.):</u>	106	100 min.
<u>Lot depth (ft.):</u>	128	70 min.
<u>Primary Front Yard (ft.):</u>	25	15 min.
<u>Right Yard (ft.):</u>	25	10 min.
<u>Left Yard (ft.):</u>	20	10 min.
<u>Rear Yard (ft.):</u>	32	20 min.
<u>Height (ft.):</u>	25	35 max.
<u>Building Coverage (%):</u>	12.32%	25% max.
<u>Open Space Coverage (%):</u>	80.98%	30% min.
<u>Parking (# of spaces):</u>	8	2 min.
<u>Estimated Age of Structure:</u>	2005	

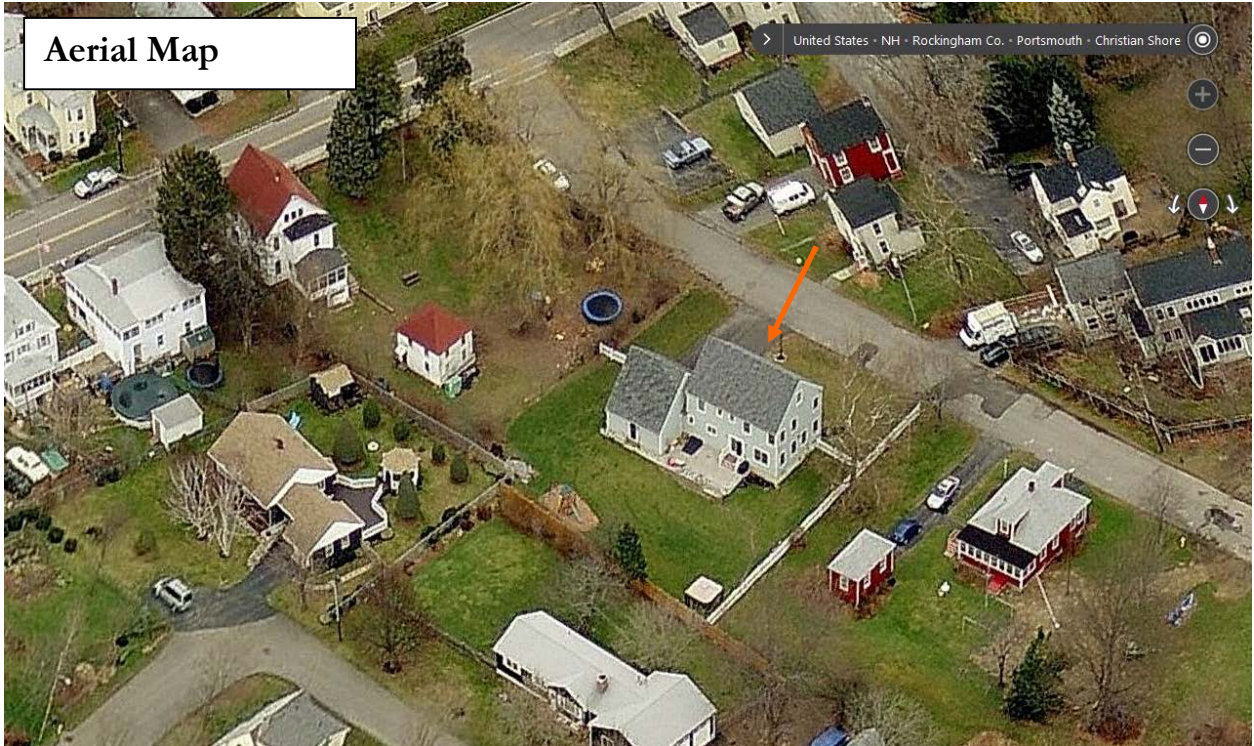
B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Second dwelling unit	Primarily residential uses
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,467	7,500 min.
<u>Parking (# of spaces):</u>	8	4 min.

C. Other Permits Required

None.

D. Neighborhood Context



E. Previous Board of Adjustment Actions

No BOA history found.

F. Planning Department Comments

- ✓ Application meets submission requirements.
- ✓ Applicant has reviewed this project 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 #3-2

Petitioners:	Virginia Copeland c/o James R. Copeland, owners, Seacoast Roadside Services, applicant
Property:	378 Banfield Road, Unit E
Assessor Plan:	Map 266, Lot 7
Zoning District:	Industrial
Description:	Use a portion of the property as an impound lot.
Requests:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Special Exception under Section 10.440, Use #11.40 to allow an impound lot in a district where the use is only allowed by Special Exception.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Auto repair	Primarily industrial uses

B. Proposed Changes

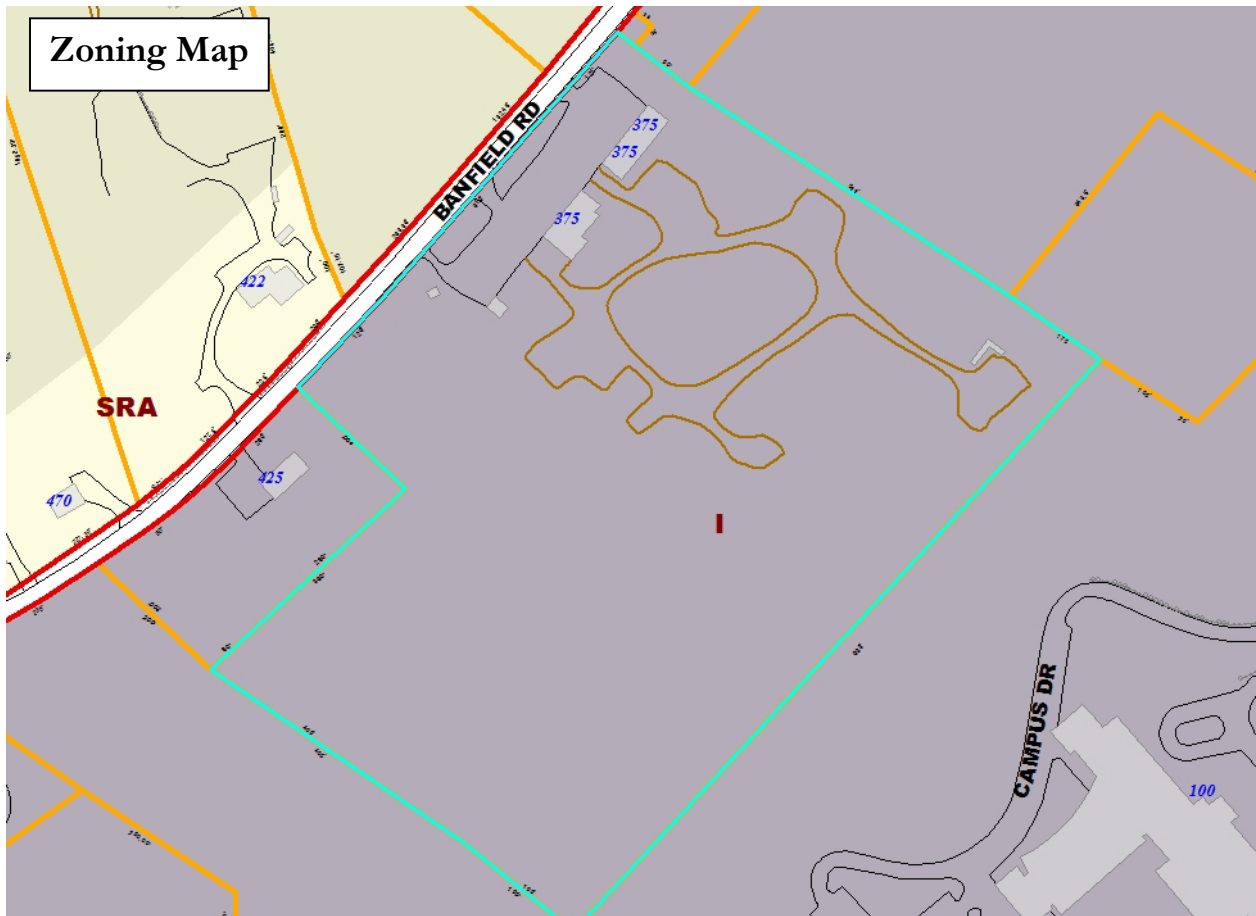
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Impound lot	Primarily industrial uses

C. Other Permits Required

None

D. Neighborhood Context





E. Previous Board of Adjustment Actions

June 19, 1990 – The Board **granted** 1,632 s.f. of an existing industrial building, and a 400 s.f. addition to the building, into a dwelling unit.

November 16, 1999 – The Board **granted** a 150 s.f. taxi dispatch office in Unit D and the outside storage of taxi cabs in a district where such use is not allowed with the stipulation that natural vegetation be provided to obscure the view from the abutter's property directly across the street on Banfield Road, to be completed by May of 2000.

September 19, 2000 – The Board **tabled** a petition to allow the outdoor storage of landscaping blocks, loam, mulch and trailers in a district where such use is not allowed.

October 17, 2000 – A request to eliminate the stipulation attached to the variance granted November 16, 1999 was **tabled** to the November 21, 2000 to allow a site walk to inspect the existing natural vegetation purported to fulfill the intent of the stipulation.

October 17, 2000 – The Board **granted** storage of vehicles in conjunction with Superior Towing, with the following stipulations:

- That a berm be implemented to keep silt out of the wetlands area.
- That corner posts be erected to delineate the outdoor storage area.
- That a map defining exactly the location for the storage of vehicles.

October 17, 2000 – The Board **granted** outdoor storage of raw or partially finished material, machinery, equipment and vehicles with the following stipulations:

- That a berm or barrier be implemented at the back side of the storage area to keep silt out of the wetlands area.
- That a map be presented to the Planning Department defining the areas of usage.

November 21, 2000 – The Board **denied** a request to eliminate the stipulation (to provide natural vegetation as screening) attached to its November 16, 1999 decision.

November 21, 2000 – The Board **granted** outdoor storage of landscaping blocks, loam, mulch and trailers with the following stipulations:

- That the 100' x 100' outdoor storage area be at least 100' from the wetlands.
- That 4 stakes mark the four corners of the outdoor storage area.

November 21, 2000 – The Board **granted** the sale of 15-20 vehicles and service of vehicles without regard to vehicle registration or weight in conjunction with Age Auto on a lot that is less than 500' from property zoned residential with the following stipulations:

- That the hours of operation be from 8:00 a.m. to 7:00 p.m. Monday through Friday and on Saturday from 8:00 a.m. to noon.
- That the lighting provided be for security purposes only.
- That no outside loudspeakers be used.
- That screening be provided in accordance with the Zoning Ordinance and verified by the Zoning Officer.

September 19, 2001 – The Board **granted** a temporary storage container for more than 90 days and the outdoor storage of construction equipment, trucks, trailers and vehicles with the following stipulations:

- That the storage trailer not be used as an office or have electricity.
- That the storage trailer be allowed only for DOC Residential Services.
- That the storage trailer be located as shown on the plan in the Board of Adjustment file.

March 21, 2006 – The Board **granted** a variance to allow an automobile repair facility within 500' of a residential district where a minimum of 500' is required, with the stipulation that screening be provided in accordance with the Zoning Ordinance and verified by the Zoning Officer.

December 15, 2009 – The Board **granted** a special exception and variance to allow an automobile repair facility and to allow an automobile repair facility within 200' of a Mixed Residential/Residential zone.

F. Planning Department Comments

- ✓ Application meets submission requirements.
- ✓ Applicant has reviewed this project with Planning Department staff.

G. Review Criteria

The application must meet all of the standards for a **special exception** (see Section 10.232 of the Zoning Ordinance).

1. *Standards as provided by this Ordinance for the particular use permitted by special exception;*
2. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*
3. *No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;*
4. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*
5. *No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and*
6. *No significant increase of stormwater runoff onto adjacent property or streets.*

Case #3-3

Petitioner:	Bellwood Associates LTD Partnership, owner, Festival Fun Parks dba Water Country, applicant
Property:	2300 Lafayette Road
Assessor Plan:	Map 273, Lot 5
Zoning Districts:	Industrial
Description:	Construct six workers' dormitories and bath house.
Requests:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Variance from Section 10.440 to allow six workers' dormitories and bath house where the use is not allowed by the Zoning Ordinance.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Water Park	Primarily industrial uses
<u>Lot area (sq. ft.):</u>	87,120	87,120 min.
<u>Street Frontage (ft.):</u>	>200	200 min.
<u>Lot depth (ft.):</u>	>200	200 min.
<u>Secondary Front Yard (ft.):</u>	>70	70 min.
<u>Rear Yard (ft.):</u>	>50	50 min.
<u>Building Coverage (%):</u>	<50	50 max.
<u>Open Space Coverage (%):</u>	>20	20 min.

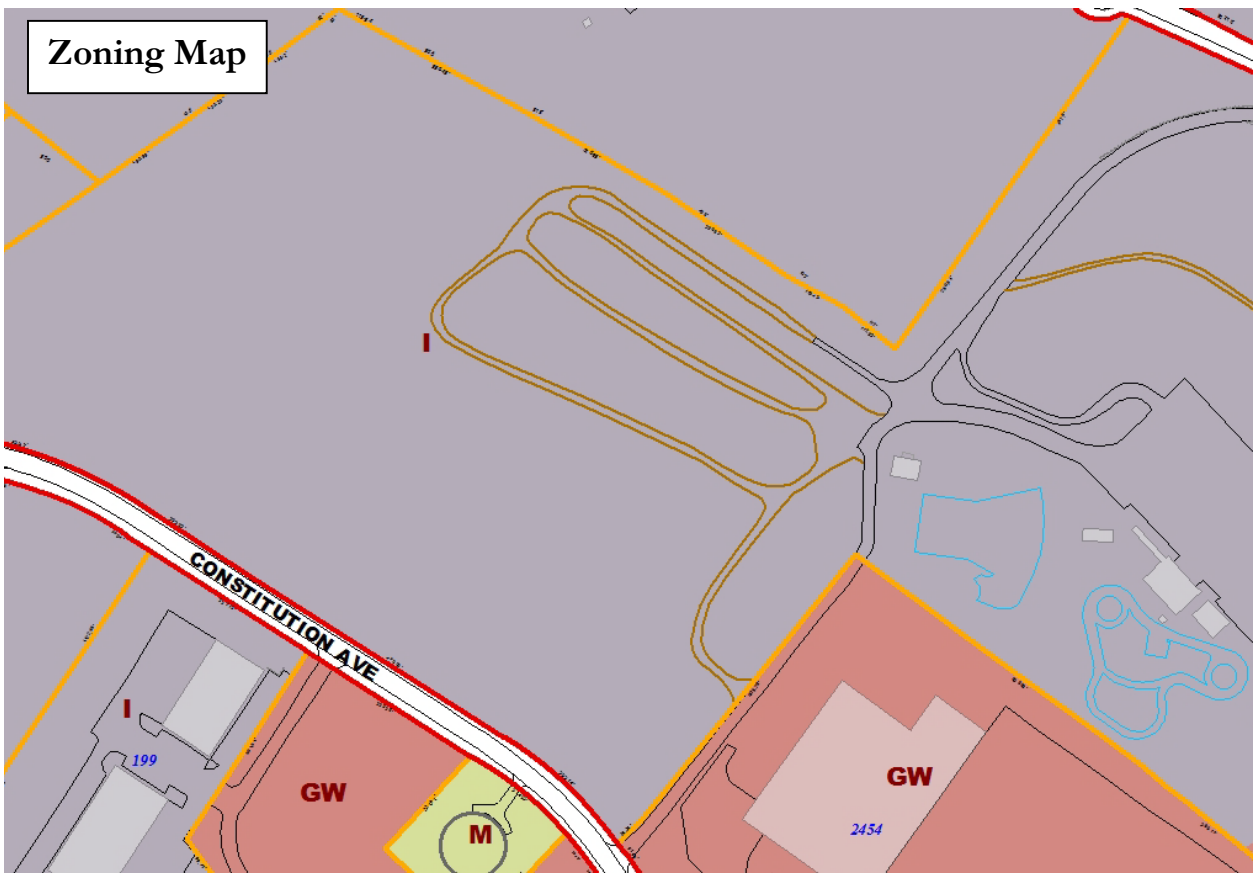
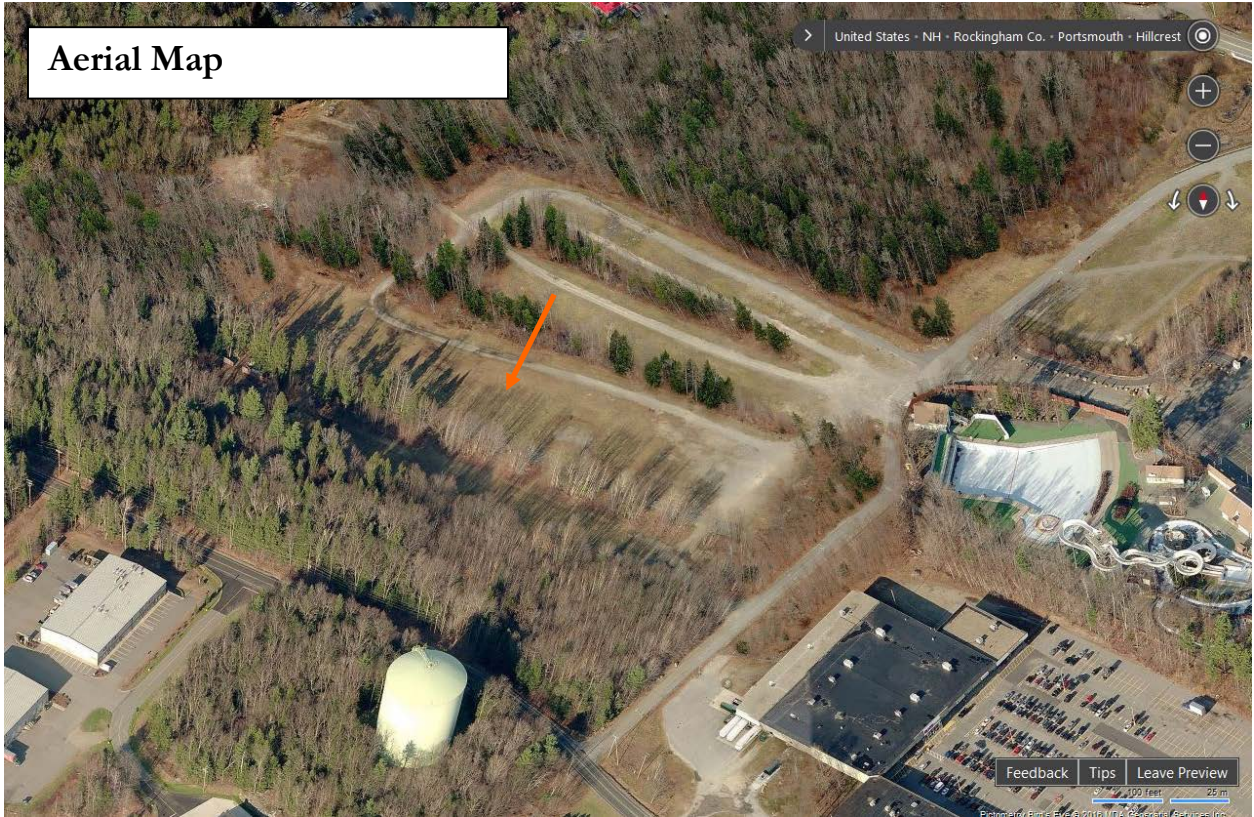
B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Workers' dormitories and bath house	Primarily industrial uses
<u>Secondary Front Yard (ft.):</u>	70	70 min.
<u>Rear Yard (ft.):</u>	>50	50 min.
<u>Height (ft.):</u>	13	70 max.
<u>Building Coverage (%):</u>	<50	50 max.
<u>Open Space Coverage (%):</u>	>20	20 min.
<u>Parking (# of spaces):</u>	13	min.

C. Other Permits Required

Planning Board Site Plan Review

D. Neighborhood Context



E. Previous Board of Adjustment Actions

May 8, 1984 – The Board **denied** a 190 sf free-standing sign where a maximum of 150 sf is allowed and a 12' front yard, 35' required.

June 26, 1984 – The Board **granted** a variance for a free-standing sign 20' from the front property line, 35' required.

October 1, 1985 – The Board **granted** variances to allow for the expansion in an industrial district of recreational facilities on the northerly portion of the lot where recreational facilities already exist in a district where outdoor recreation is not an allowed use; and to permit the increase in the extent of a nonconforming use of a structure or land for additional parking spaces where no such increase is permitted.

May 17, 1988 – The Board **granted** a variance to allow a 5,500 sf recreation/picnic facility adjoining an existing water recreation park in a district where such uses are not allowed with the stipulation that no outdoor lights be allowed.

April 18, 1989 – The Board **denied** a one year extension of time on the above variance.

September 18, 1990 – The Board **granted** variances to allow for the expansion of recreational facilities; to allow the creation of 7 additional acres of crushed stone for parking on the northerly portion of the same lot where recreational facilities already exist in a district where outdoor recreation is not an allowed use; and to permit the increase in the extent of a nonconforming use of a structure or land for said additions and crushed stone parking area where such increase is not permitted.

November 20, 1990 – The Board **granted** a Compliance Hearing.

April 18, 1995 – The Board **granted** a variance to allow an outdoor concert on August 25, 1995 from 6:00p.m. to 9:00 p.m. with associated admissions tent, musicians tent, stage with lighting and canopy and open air seating for 5,000 people in a district where such use is not allowed. The variance was granted with the stipulation that the Development Standards are adhered to, especially concerning noise.

March 19, 1996 – The Board **granted** a special exception to allow expansion of an outdoor recreation facility (water park) by constructing 2 slides with associated support structures and landing pool, kiddie pool, pirate ship, kiddie slides, restroom/snack bar building and filter/store building.

April 16, 1996 – The Board **granted** a special exception to allow a religious Crusade from June 2 through 9 of 2,500 to 3,000 people nightly between the hours of 7:30 p.m. and 9:30 p.m., including a tent, platform and meetings.

March 18, 1997 – The Board **granted** a special exception to allow an outdoor concert on June 15, 1997 (changed to June 14) for 3,000 to 5,000 people between the hours of 5:00 p.m. and 8:30 p.m., with a temporary stage, a tent for merchandise and an artist dressing room. The special exception was granted with the stipulation that the requirements in the Ordinance pertaining noise be adhered to and the noise not exceed 65 decibels at the property line.

July 28, 2009 – The Board **denied** a special exception to allow temporary structures on the property for up to 90 days and a variance to allow a nonconforming use of land to be extended into any part of the remainder of a lot of land.

April 19, 2011 – The Board **granted** a variance to allow the expansion of a nonconforming use by constructing a new building entrance and turnstile into the park.

October 18, 2011 – The Board **granted** variances to allow a new fun park attraction and to allow the expansion of a nonconforming use.

F. Planning Department Comments

- ✓ Application meets submission requirements.
- ✓ Applicant has reviewed this project with Planning Department staff.

The applicant was not aware of the secondary front yard definition when they initially discussed this project with the Planning Department staff. They have subsequently indicated that they will move the proposed units to comply with a 70' setback from Constitution Ave. Therefore, no additional relief is required.

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 #3-4

Petitioner: Terry Bennett
 Property: 211 Union Street
 Assessor Plan: Map 135, Lot 70
 Zoning District: General Residence C
 Description: Construct three-story building with eight dwelling units.
 Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Special Exception under Section 10.440, Use ~~1.53~~ 1.42 to allow eight dwelling units in a district where the use is only allowed by Special Exception.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 1,981± s.f. where 3,500 s.f. is required.
3. A Variance from Section 10.521 to allow 55%± building coverage where 73% exists and 35% is the maximum allowed.
4. A Variance from Section 10.114.21 to allow a 12'± maneuvering aisle where a 14' maneuvering aisle is required.

Note: The legal notice and application referenced use 1.53, which is for a conversion of an existing building. As this is new construction, the correct use reference is 1.42.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Multi-tenant residence	Primarily residential uses
<u>Lot area (sq. ft.):</u>	15,849	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	15,849	3,500 min.
<u>Street Frontage (ft.):</u>	112	70 min.
<u>Lot depth (ft.):</u>	147	50 min.
<u>Front Yard (ft.):</u>	>5	5 min.
<u>Left Yard (ft.):</u>	<10	10 min.
<u>Right Yard (ft.):</u>	<10	10 min.
<u>Rear Yard (ft.):</u>	<20	20 min.
<u>Height (ft.):</u>	2.5 stories	35 max.
<u>Building Coverage (%):</u>	73	35 max.
<u>Open Space Coverage (%):</u>	12.7	20 min.
<u>Estimated Age of Structure:</u>	1962	

B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	8-Unit residential	Primarily residential uses
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,981	3,500 min.
<u>Front Yard (ft.):</u>	5	5 min.
<u>Left Yard (ft.):</u>	10	10 min.
<u>Right Yard (ft.):</u>	10	10 min.
<u>Rear Yard (ft.):</u>	20	20 min.
<u>Height (ft.):</u>	3 story	35 max.
<u>Building Coverage (%):</u>	55	35 max.
<u>Open Space Coverage (%):</u>	32	20 min.
<u>Parking (# of spaces):</u>	16	13 min.

C. Other Permits Required

Planning Board Site Plan Review

D. Neighborhood Context





E. Previous Board of Adjustment Actions

May 28, 1969 – the Board **granted** a special exception and an extension of a nonconforming use to support and cover modern prefabricated refrigeration to replace existing one at 225 Union Street with the stipulations that 1) the entire area be blacktopped from the front line of the property; 2) that a chain link fence be installed around the remaining two unfenced sides of the lot; 3) that there be no truck deliveries after 8:00 p.m. nor before 6:00 a.m.; 4) that filters be installed to control unpleasant odors.

May 7, 1985 – the Board **denied** a request to allow an addition, an 8' x 22' storage shed with adjacent loading dock to be constructed onto an existing nonconforming wholesale business and to permit the increase in the extent of a nonconforming use of a structure or land where none was allowed.

June 20, 1985 – the Board **denied** a request for rehearing on the above.

June 21, 1994 – the Board **denied** a special exception to allow the temporary use of a steam generator trailer for 90 days.

May 23, 1995 – the Board **granted** a variance to allow a sale by appointment only of vehicles and associated minor repairs with the following stipulations: that there be no exterior signs with illumination; that all the industrial equipment inside the building be removed; that there be no outdoor storage of vehicles; that the property not become anything other than what was proposed; that hours of operation be by appointment only; that the used oil not be disbursed into the City sewer system; that the three car trailers be parked on the property; that the lighting changes to the

exterior of the building be at the pleasure of the neighborhood; that there be one part-time employee; that there be no tractor trailer trucks making deliveries; and, that there be no major repair of vehicles on the property.

August 15, 1995 – the Board **granted** a variance to allow two one story additions (32' x 37'10" and 7'8" x 38'6") to a building in which the sale of antique automobiles had been previously granted.

November 21, 1995 – the Board **granted** a variance to allow the construction of an outside fire escape from the rear of the second floor.

January 21, 1997 – the Board **denied** a request to allow an addition of the “sales and service of bicycles, etc.” to the previously granted use.

August 21, 2001 – the Board **denied** an Appeal from an Administrative Decision for removal of previously applied stipulations, due to abuse of process, overzealous enforcement thereof concerning the variance granted May 23, 1995 to allow “sale by appointment only of vehicles and associated minor repairs of such vehicles within the existing building.”

June 22, 2004 – the Board **denied** a special exception to allow the existing building to be converted into seven dwelling units and a variance to allow 3 of the required parking spaces to back out onto the street and 2 of the parking spaces in the garage to have a 13'4" maneuvering aisle where 18' is the minimum required.

September 18, 2007 – The Board **denied** a request to construct a 13 unit, three-story apartment building with 20 parking spaces on the ground level requiring variances to allow a) a 6,965 s.f. footprint three-story addition with a 6.9' rear yard for the building and 3.1' rear yard for stairs where 20' was the minimum required; b) 66% building coverage where 35% was the maximum allowed; and c) 1,219 s.f. per dwelling unit where 3,500 was required. Also a variance to allow stacked parking in an indoor garage where it was not allowed.

F. Planning Department Comments

- ✓ Application meets submission requirements.
- ✓ Applicant has reviewed this project 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 #3-5

Petitioners:	Walter W. & Patricia B. Bardenwerper
Property:	69 Hunking Street
Assessor Plan:	Map 103, Lot 40
Zoning District:	General Residence B
Description:	Install 4'± high fence with gates along stone wall on corner lot.
Requests:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Variance from Section 516.30 to allow a fence to be installed on a corner lot at the edge of the street line within 20' of the intersection.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residence	Primarily residential uses
<u>Lot area (sq. ft.):</u>	1,778	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,778	5,000 min.
<u>Street Frontage (ft.):</u>	47	80 min.
<u>Lot depth (ft.):</u>	25	60 min.
<u>Principal Front Yard (ft.):</u>	>5	5 min.
<u>Secondary Front Yard (ft.):</u>	<5	5 min.
<u>Side Yard (ft.):</u>	10	10 min.
<u>Rear Yard (ft.):</u>	<25	25 min.
<u>Estimated Age of Structure:</u>	1750	

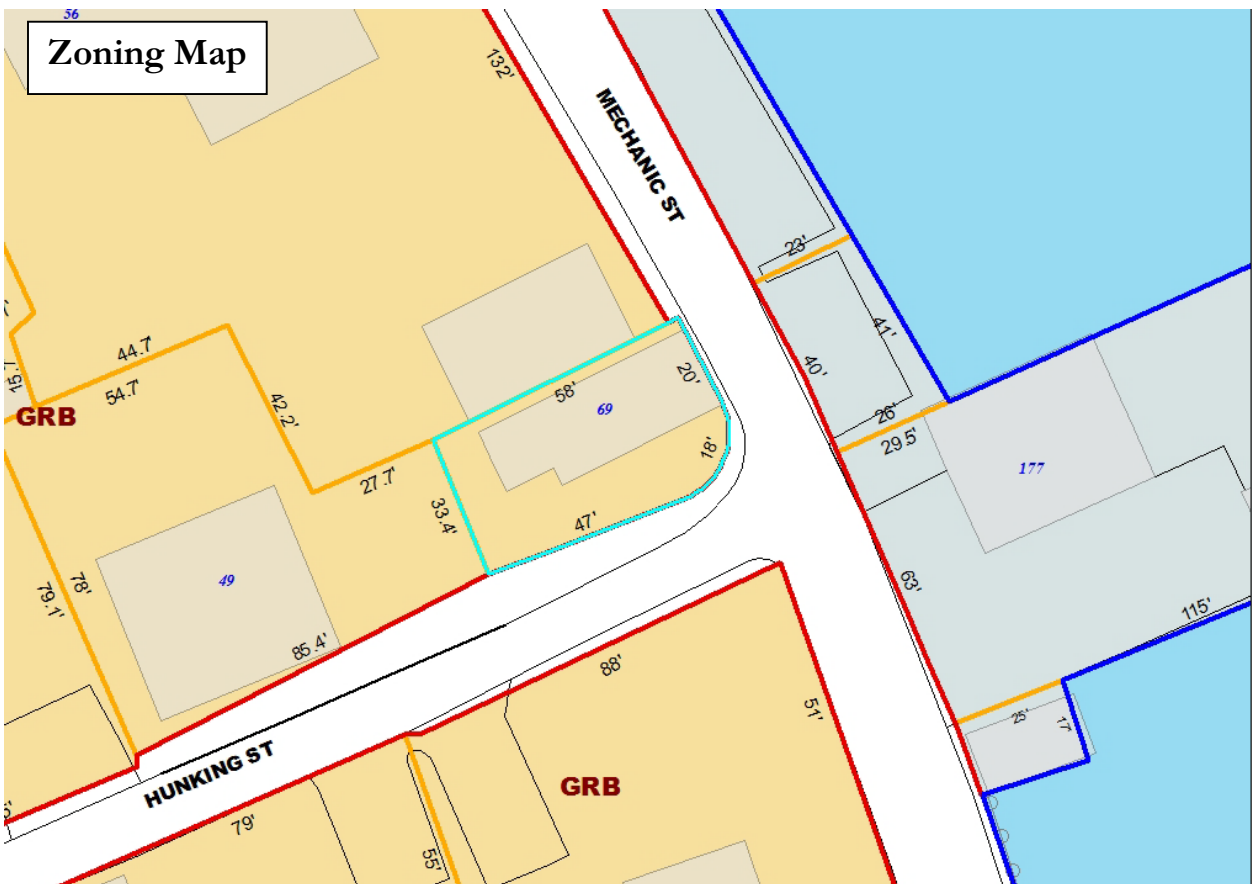
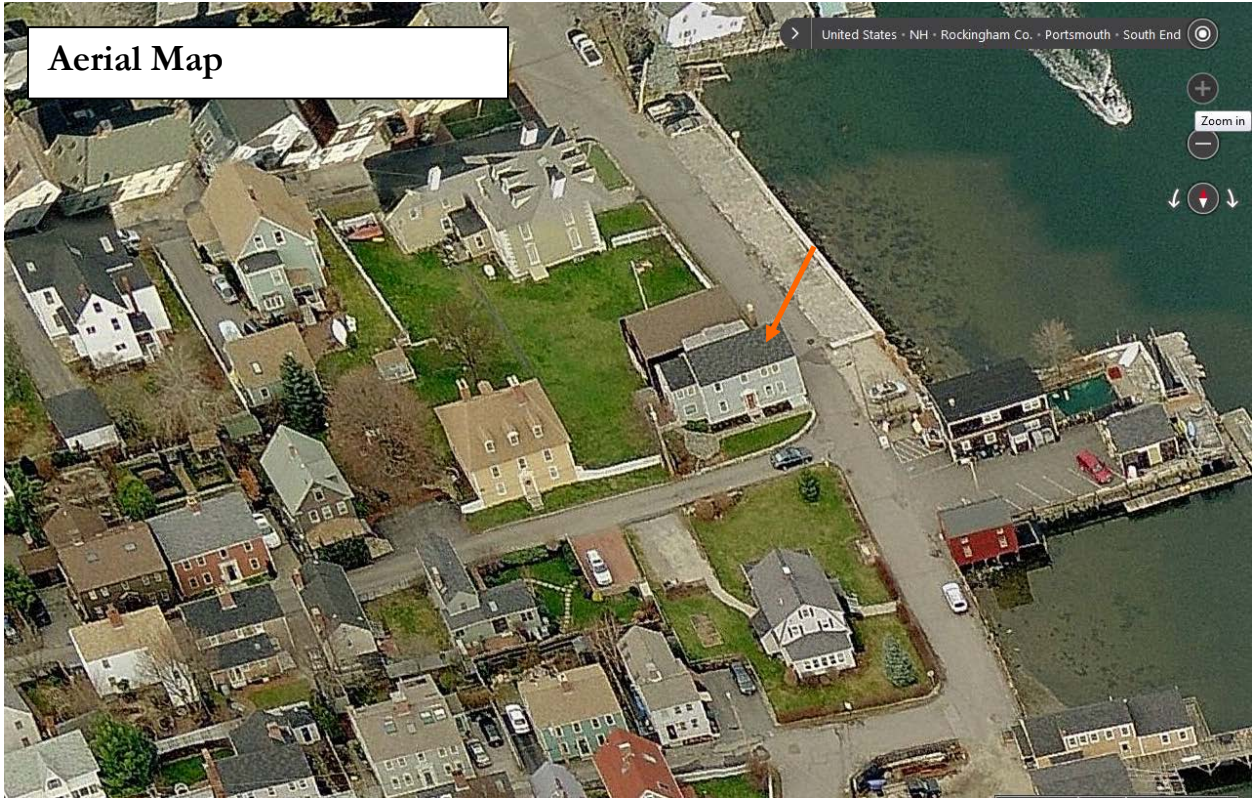
B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Corner Lot Setback from edge of right-of-way (ft)</u>	<20	20 min.

C. Other Permits Required

Historic District Commission

D. Neighborhood Context



E. Previous Board of Adjustment Actions

October 16, 2001 – The Board **granted** variances to allow a 10' x 14' two story left side addition with a 1' rear yard where 25' was the minimum required and 47.3% building where 30% was the maximum allowed. Also a variance to allow a nonconforming building to be enlarged in a manner not in conformance with the Ordinance.

F. Planning Department Comments

- ✓ Application meets submission requirements.
- ✓ Applicant has reviewed this project 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 #3-6

Petitioners:	Frank W. Getman, Jr. & Ingrid C. Getman
Property:	606 Union Street
Assessor Plan:	Map 132, Lot 20-1A
Zoning District:	General Residence A
Description:	Modification to a previous approval to construct a second single-family home on a lot.
Requests:	The Variances and/or Special Exceptions 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 unit on a lot where only one free-standing unit is allowed.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residence	Primarily residential uses
<u>Lot area (sq. ft.):</u>	21,664	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	21,664	7,500 min.
<u>Street Frontage (ft.):</u>	112	100 min.
<u>Lot depth (ft.):</u>	148	70 min.
<u>Front Yard (ft.):</u>	>15	15 min.
<u>Right Yard (ft.):</u>	<10 (to garage)	10 min.
<u>Left Yard (ft.):</u>	15	10 min.
<u>Rear Yard (ft.):</u>	18.8	20 min.
<u>Height (ft.):</u>	<35	35 max.
<u>Building Coverage (%):</u>	<25	25 max.
<u>Open Space Coverage (%):</u>	>30	30 min.
<u>Parking (# of spaces):</u>	4	2 min.
<u>Estimated Age of Structure:</u>	1890	

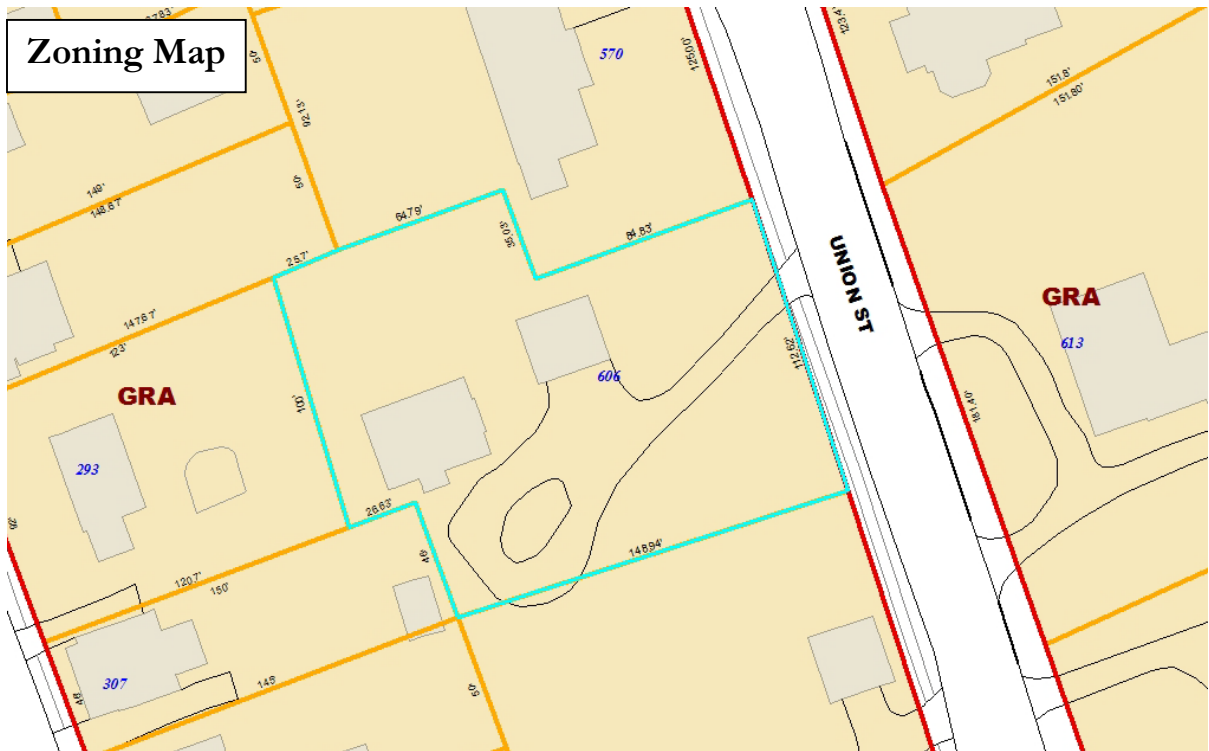
B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Second free standing dwelling unit	Primarily residential uses
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,832	7,500 min.
<u>Front Yard (ft.):</u>	33' 8"	15 min.
<u>Right Yard (ft.):</u>	21' 9"	10 min.
<u>Left Yard (ft.):</u>	16' 7"	10 min.
<u>Rear Yard (ft.):</u>	50	20 min.
<u>Height (ft.):</u>	<35	35 max.
<u>Building Coverage (%):</u>	14.9%	25 max.
<u>Open Space Coverage (%):</u>	>30	30 min.
<u>Parking (# of spaces):</u>	4	4 min.

C. Other Permits Required

- None.

D. Neighborhood Context



E. Previous Board of Adjustment Actions

November 17, 2015 -- The Board **granted** a variance to allow a second free-standing dwelling unit on a lot where only one free-standing dwelling unit was allowed.

F. Planning Department Comments

Although the applicant was previously approved to build a second free-standing dwelling unit on this property, they would like to change the location of the proposed unit and therefore need to return to the Board for a new approval. As the application was approved as “presented and advertised”, any alterations to the size or location of the dwelling unit that are substantially different from the application as it was originally presented require a new application to the Board. The proposed building footprint has also changed since the previous application. The proposed new garage has been removed as part of this project, and updated elevations have been provided by the applicant.

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 #3-7

Petitioner:	Kayla Realty LLC
Property:	60-62 Market Street
Assessor Plan:	Map 117, Lot 34
Zoning District:	Character District 5
Description:	Provide rooms for guest housing.
Requests:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Variance from Section 10.440 to allow the creation of rooms to provide guest housing for non-family members within an existing dwelling unit where such use is not allowed.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed use	Mix of commercial and residential uses

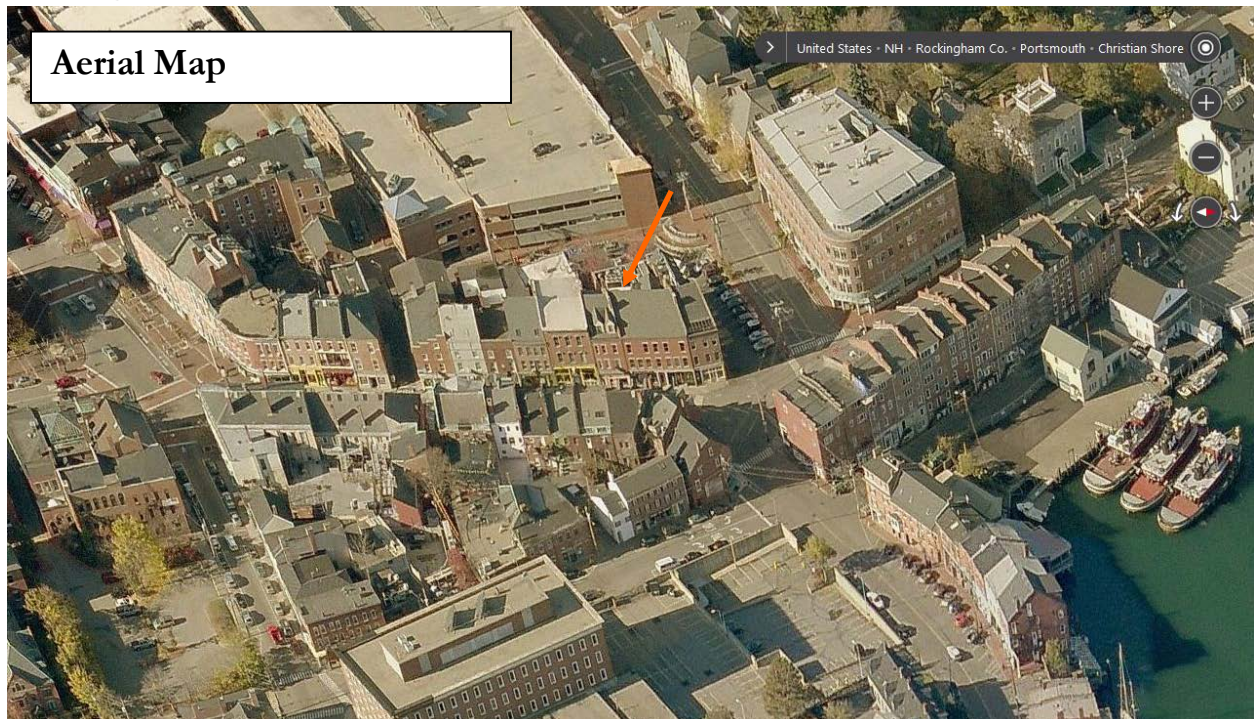
B. Proposed Changes

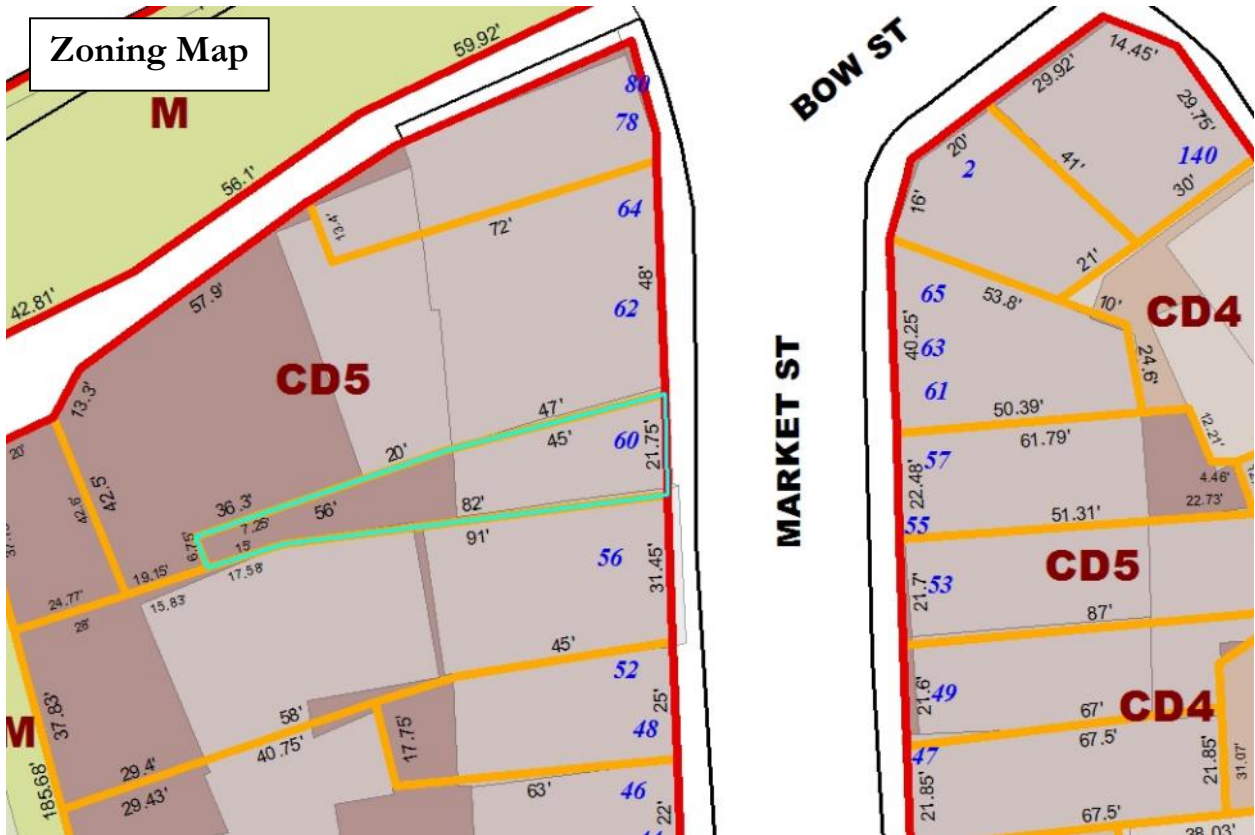
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Rooms for guest housing for non-family members	Mix of commercial and residential uses

C. Other Permits Required

None.

D. Neighborhood Context





E. Previous Board of Adjustment Actions

July 20, 2010 – The Board **granted** a variance to allow a projecting sign to project 42% from the building where 36” was the maximum allowed.

F. Planning Department Comments

- ✓ Applicant has reviewed this project with Planning Department staff.

While the applicant has provided a narrative describing the project, a written statement addressing the five criteria has not been submitted. The applicant’s attorney has indicated that he will be prepared to address the five criteria in both written and oral format at the meetings.

In order to be considered an independent dwelling unit, these guest rooms would need to provide complete independent living facilities including kitchen, bath, and sleeping areas. As the rooms are intended for non-family members this conflicts with the zoning ordinance definition for a single family dwelling. The proposed use could potentially meet the criteria for a bed and breakfast, although the lot does not meet requirements for parking and there is no indication that this is the intended use. Because no compensation is intended, the use also does not meet the zoning definition of a boarding house. Therefore, because the use does not fit any of the uses listed in the Table of Uses, it is not allowed.

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.