

TO: Zoning Board of Adjustment  
FROM: Juliet Walker, Planning Department  
DATE: May 11, 2016  
RE: May 17, 2016 Zoning Board of Adjustment Meeting

**NEW BUSINESS**

1. 1150 Sagamore Ave
2. 75 Congress St
3. 379 New Castle Ave
4. 75 Monroe St
5. 150 US Route 1 Bypass
6. 3605 Lafayette Rd



# NEW BUSINESS

## Case #4-8

Petitioner:	Wentworth Sagamore, LLC
Property:	1150 Sagamore Avenue
Assessor Plan:	Map 201, Lot 22
Zoning District:	Mixed Residential Business
Description:	Install a wall sign and a second free-standing sign on a lot.
Requests:	The Variances and/or Special Exceptions 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 10.1243 to allow a second free-standing sign on a lot.</li> <li>2. A Variance from Section 10.1251.20 to allow a 28.4± s.f. free-standing sign where 20 s.f. is the maximum allowed.</li> <li>3. A Variance from Section 10.51251.20 to allow a 25± s.f. wall sign where 16 s.f. is the maximum allowed.</li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Professional Office	Mix of residential and business uses
<u>Storefront Linear Frontage (ft.):</u>	170	N/A
<u>Sign Setback from Lot Line (ft.):</u>	>5	5 min.
<u>Sign Height (ft.):</u>	10	7 max.
<u>Individual Sign Area (sq. ft.)</u>	40 (freestanding)	20 max.

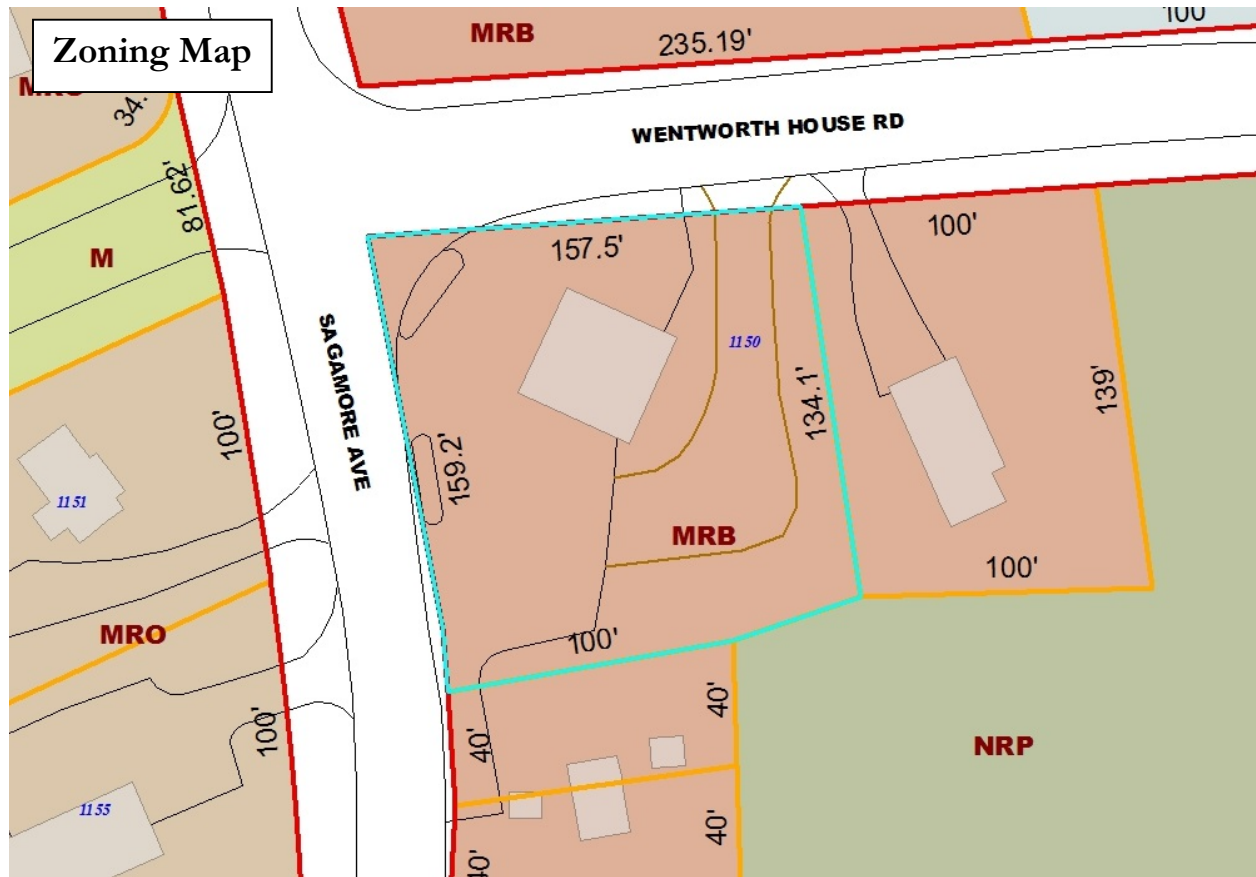
### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Sign Setback from Lot Line (ft.):</u>	>5	5 min.
<u>Sign Height (ft.):</u>	6.7 6.3	7 max.
<u>Total Aggregate Sign Area (excluding free standing signs) (sq. ft.):</u>	25	170 max.
<u>Individual Sign Area (sq. ft.)</u>	A) 25 (wall sign) B) 28.4 (freestanding) C) N/A (directional)	20 max. 16 N/A

### C. Other Permits Required

Planning Board – Site Plan Review

## D. Neighborhood Context



## E. Previous Board of Adjustment Actions

March 27, 1990 – The Board **granted** a special exception to allow a 24'± x 36'± canopy over a gas pump and variances to allow the following: a) the canopy to have a 16.5'± front yard where 50' was required; and b) the elimination of the required screening from properties used or zoned residentially.

November 19, 1991 – The Board **granted** a special exception to permit the construction of a 600 s.f. addition to an existing automotive service station.

September 22, 1992 – The Board **accepted** a letter from the attorney for the owners of the above property to construct a 10'± x 40'± (400 s.f.) addition rather than the previously approved 20' x 30' (600 s.f.) addition.

## F. Planning Department Comments

- ✓ Application meets 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**
- 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 #4-9

Petitioner:	Michael De La Cruz
Property:	75 Congress Street (63 Congress Street)
Assessor Plan:	Map 117, Lot 5
Zoning District:	Character District 5, Downtown Overlay District
Description:	Construct five residential use dormers and one office use dormer, with walkways and decks. Restore pediments.
Requests:	The Variances and/or Special Exceptions 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 nonconforming building or structure to be extended, enlarged or structurally altered without conforming to the Ordinance.</li> <li>2. A Variance from Section 10.5A43.31 and Section 10.5A21.22 to allow the following building heights where the maximum building heights allowed per Map 10.5A21B are 40' for a 2-3 stories height requirement area and 45' for a 2-3 stories (short 4th) height requirement area: <ol style="list-style-type: none"> <li>a. 62'11" for the proposed pediments</li> <li>b. <del>65'6"</del> 64'6" for the proposed office dormer, and</li> <li>c. <del>58'41"</del> 60'5" for the proposed residential dormers</li> </ol> </li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Retail and office uses	Mix of residential and commercial uses
<u>Principal Front Yard (ft.)</u>	0 +/-	0 max.
<u>Secondary Front Yard (ft.)</u>	0 +/-	0 max.
<u>Rear Yard (ft.)</u>	5 +/-	0 max.
<u>Front Lot Line Buildout (%)</u>	100	100 max.
<u>Building Block Length (ft.)</u>	133	250 max.
<u>Building Façade Modulation (ft.)</u>	<100	100 max.
<u>Entrance Spacing (ft.)</u>	>60	60 min.
<u>Building Coverage (%)</u>	95 +/-	95 max.
<u>Building Footprint (sq. ft.)</u>	15,000 +/-	15,000 max.
<u>Lot Area (sq. ft.)</u>	17,058	2,000 min.
<u>Open Space (%)</u>	5 +/-	5 min.
<u>Building Height (ft.)</u>	60'9"	40-45 max.
<u>Estimated Age of Structure:</u>	1879	

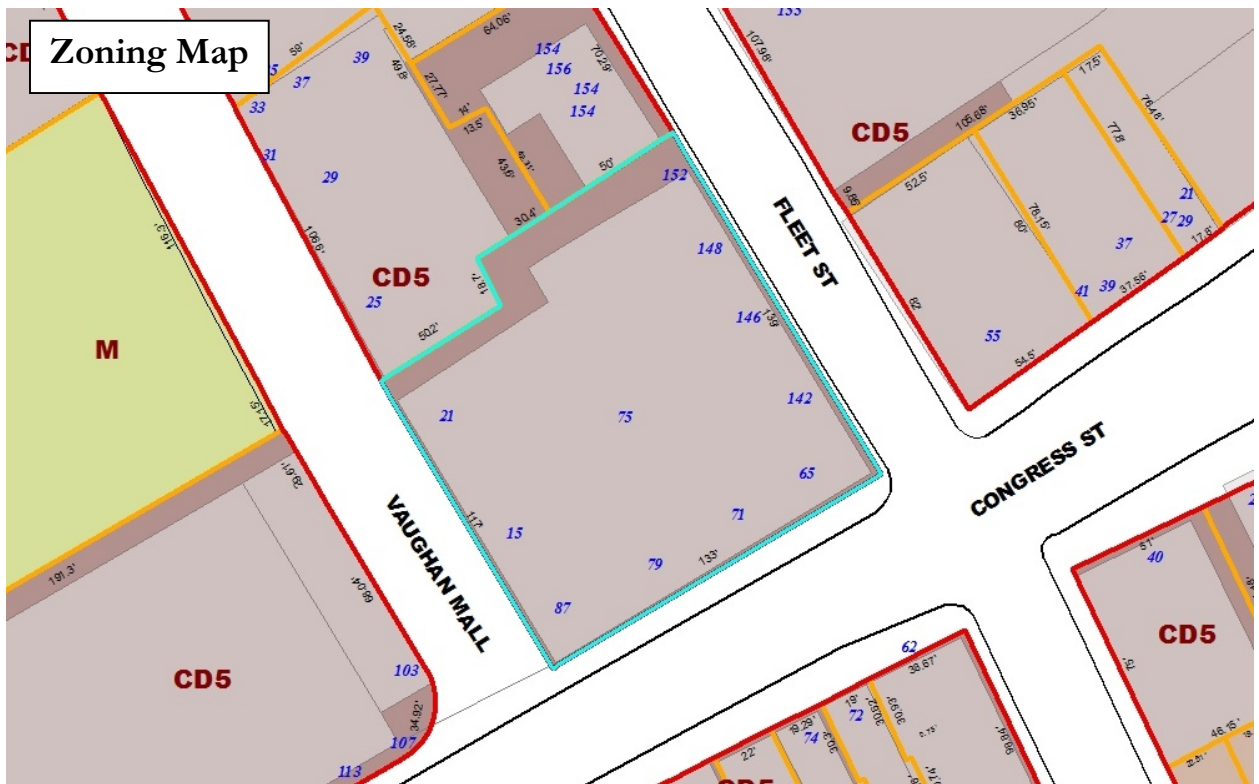
### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Retail, office, and residential	Mix of residential and commercial uses
<u>Building Height (ft.)</u>	58'11"-64'6"	40-45 max.

## C. Other Permits Required

Planning Board Site Plan Review  
 Historic District Commission

## D. Neighborhood Context





## E. Previous Board of Adjustment Actions

February 28, 1984 – The Board **granted** a special exception to permit the elimination of required parking.

August 30, 1988 – The Board **determined**, as required by the Zoning Ordinance, that the number of parking spaces required for Antioch College of N. E. was 1 space for every 4 students and 1 space for each professor/teacher.

December 13, 1988 – The Board **granted** a school not to exceed four classrooms.

July 18, 2006 – the Board **tabled** to August an Appeal of an Administrative Decision of the Code Official involving the interpretation of the Ordinance as requiring a variance for an existing 10' wide accessway to a below grade parking garage to continue where a 24' wide accessway was required for a two-way accessway.

August 22, 2006 – The Board failed to pass a motion to grant the Appeal so the Appeal was **denied**.

## F. Planning Department Comments

- ✓ Application meets submission requirements.
- ✓ Applicant has discussed 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 #4-10

Petitioner:	Robert McDowell
Property:	379 New Castle Avenue
Assessor Plan:	Map 207, Lot 4
Zoning District:	Single Residence B
Description:	Construct a 20' x 20' detached garage.
Requests:	The Variances and/or Special Exceptions 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 7.25' where 30' is required.</li> <li>2. A Variance from Section 10.521 to allow 20.6% building coverage where 20% is the maximum allowed.</li> <li>3. A Variance from Section 10.571 to allow an accessory building to be located in a required front yard.</li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residential	Primarily single family residential uses
<u>Lot area (sq. ft.):</u>	8,520.00	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,520.00	15,000 min.
<u>Street Frontage (ft.):</u>	60	100 min.
<u>Lot depth (ft.):</u>	135.34	100 min.
<u>Primary Front Yard (ft.):</u>	2.25	30 min.
<u>Right Yard (ft.):</u>	12.8	10 min.
<u>Left Yard (ft.):</u>	10	10 min.
<u>Rear Yard (ft.):</u>	50	30 min.
<u>Height (ft.):</u>		35 max.
<u>Building Coverage (%):</u>	20.8	20 max.
<u>Open Space Coverage (%):</u>	69.2	40 min.
<u>Parking (# of spaces):</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1850	

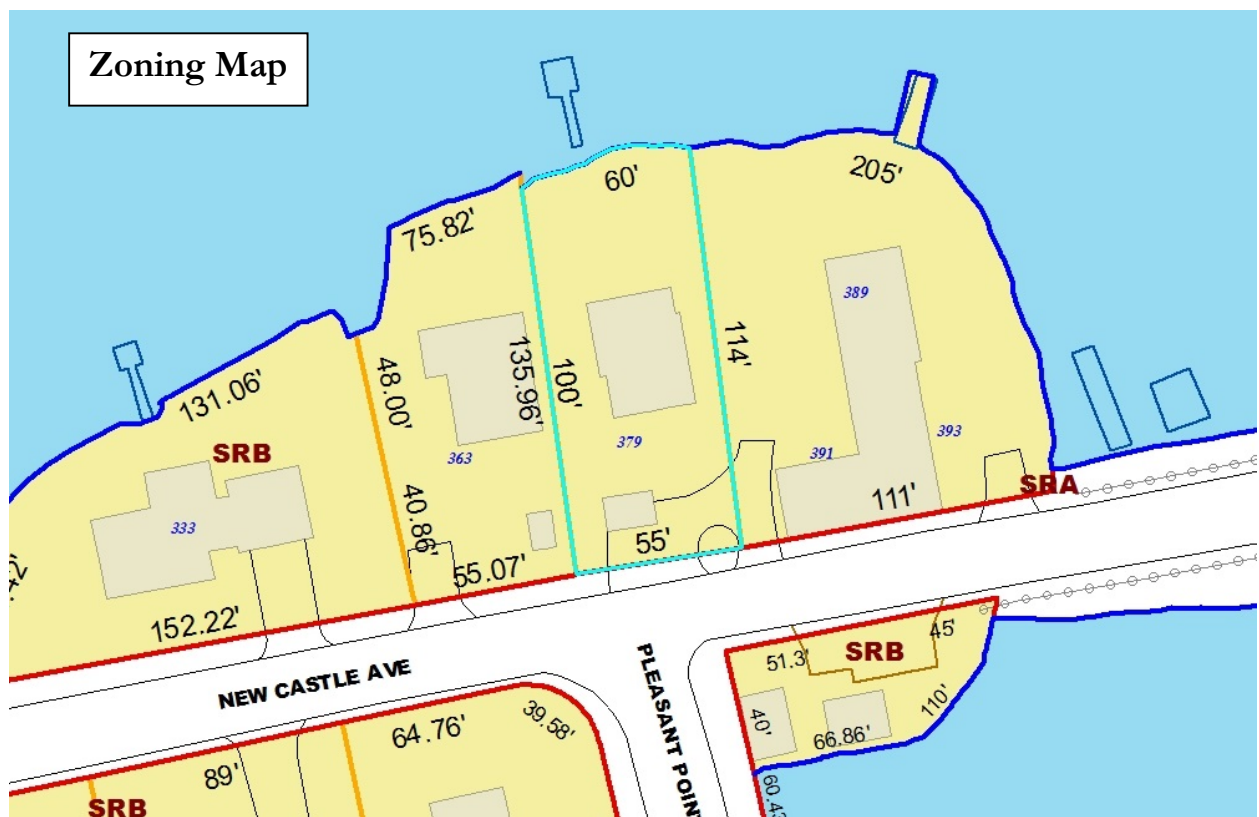
### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Primary Front Yard (ft.):</u>	7.25	30 min.
<u>Right Yard (ft.):</u>	>10	10 min.
<u>Left Yard (ft.):</u>	>10	10 min.
<u>Rear Yard (ft.):</u>	>50	30 min.
<u>Height (ft.):</u>	12.5	35 max.
<u>Building Coverage (%):</u>	20.6	20 max.
<u>Open Space Coverage (%):</u>	69.4	40 min.
<u>Parking (# of spaces):</u>	2	2 min.

### C. Other Permits Required

Historic District Commission

### D. Neighborhood Context



## E. Previous Board of Adjustment Actions

November 16, 2004 – The Board **denied** an 8'± front yard for a 10'8" ± x 16'± garage where 30' was the minimum required.

December 28, 2004 – The Board **granted** a variance to allow a 10'8" ± x 16'± one story garage with a 14.3' front yard where 30' was the minimum required.

## F. Planning Department Comments

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

The existing “mobile garage” that is currently located on the property has not received any permits or land use approvals from the City and will need to be removed regardless of whether this variance is granted.

## 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 #4-11

Petitioners:	Natan Aviezri Revocable Trust, Debra Klein & Natan Aviezri, Trustees
Property:	75 Monroe Street (Middle Road at Ward Place)
Assessor Plan:	Map 168, Lot 27 (merged from Lots 34 & 35)
Zoning District:	General Residence A
Description:	Construct a single-family home and garage on two re-merged lots.
Requests:	The Variances and/or Special Exceptions 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 lot area of 5,954± s.f. where 7,500 s.f. is required.</li> <li>2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 5,954± s.f. where 7,500 s.f. per dwelling unit is required.</li> <li>3. A Variance from Section 10.521 to allow continuous street frontage of 85.59'± where 100' of continuous street frontage is required.</li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant lot	Primarily residential uses
<u>Lot area (sq. ft.):</u>	6,022	7,500

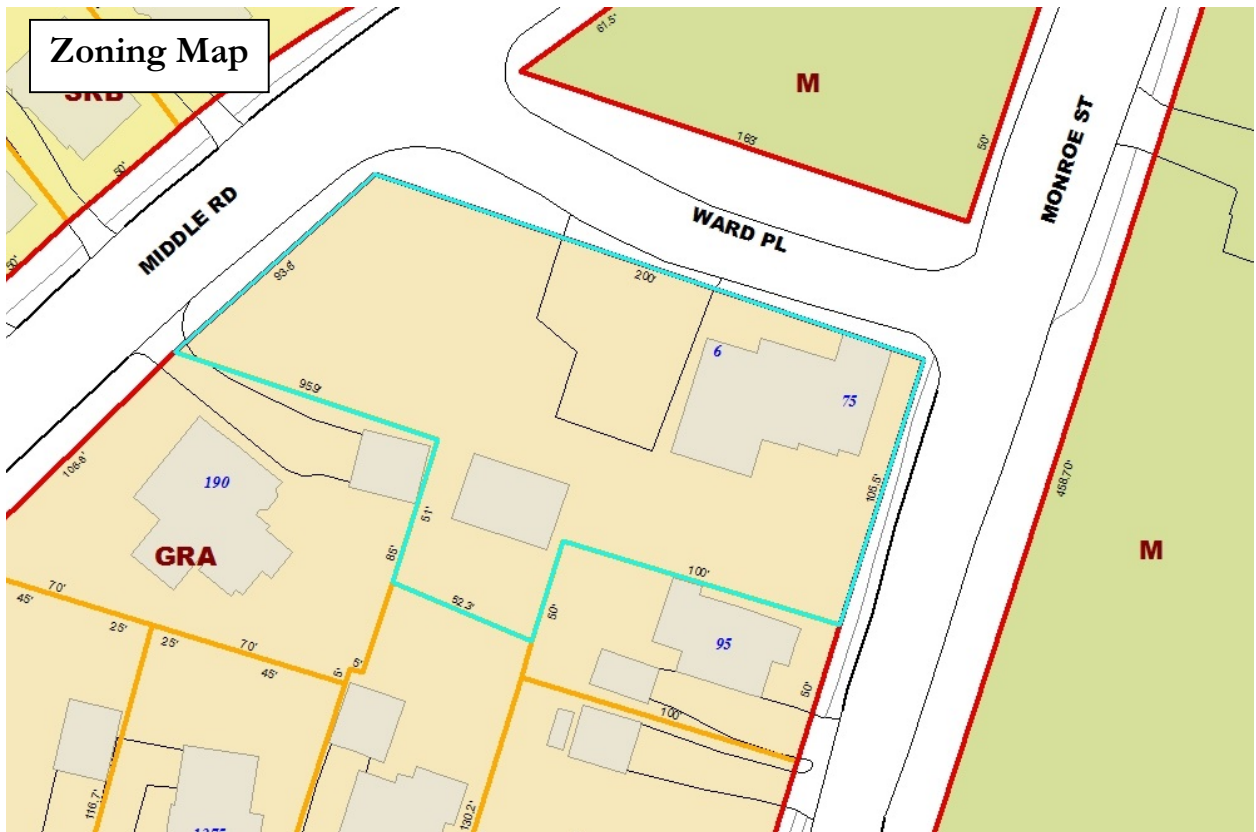
### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Residential	Primarily residential uses
<u>Lot area (sq. ft.):</u>	5,954	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,954	7,500 min.
<u>Street Frontage (ft.):</u>	85.59	100 min.
<u>Lot depth (ft.):</u>	72.40	70 min.
<u>Front Yard (ft.):</u>	>15	15 min.
<u>Left Yard (ft.):</u>	>10	10 min.
<u>Right Yard (ft.):</u>	>15	10 min.
<u>Rear Yard (ft.):</u>	>20	20 min.
<u>Height (ft.):</u>	<35	35 max.
<u>Building Coverage (%):</u>	<25	25 max.
<u>Open Space Coverage (%):</u>	>30	30 min.
<u>Parking (# of spaces):</u>	2	2 min.

### C. Other Permits Required

None.

## D. Neighborhood Context



## E. Previous Board of Adjustment Actions

February 16, 2016 – the Board **granted** variances to allow the construction of a single family home and garage on two re-merged lots with a lot area and lot area per dwelling unit of  $6,022 \pm$  s.f. (7,500



s.f. required) and 93.6'± continuous street frontage (100' required). The Board requested that the Planning Board in their review specify the location of the driveway cut.

## F. Planning Department Comments

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

This application is for dimensional relief for a lot on which the applicant is intending to construct a single family residence. No relief is being requested for the house itself, which the applicant has indicated will comply with zoning requirements. Per the application requirements, the applicant has provided a conceptual lot plan showing that the house can be located on the lot in compliance with zoning requirements. With the previous application, the applicant also provided examples of the housing style being considered for this lot.

In 2015, the City Council determined that this lot had been involuntarily merged from five pre-existing lots and voted to unmerge the lots on the condition that the two vacant lots be merged into one lot and the three lots on the Monroe Street side be merged together. The City Council also stipulated that the two resulting lots not be allowed to be unmerged again in the future.

An abutter has notified the Planning Department that two private sewer services cross the parcel from lots on South Street to the sewer main on Ward Place, and has requested that the plan for the unmerged lots acknowledge these sewer lines and provide easements to ensure their continued use. The plan submitted by the applicant to the Board does not show the sewer lines or any proposed easements. As such, the Board should consider a stipulation to require compliance with this request.

## 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 #4-12

Petitioner:	Seacoast Trust LLP
Property:	150 US Route One By-Pass
Assessor Plan:	Map 231, Lot 58
Zoning District:	Single Residence B
Description:	Construct four-story, 40 unit, multi-family building.
Requests:	<p>The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:</p> <p>1A. A Special Exception under Section 10.335 to allow a lawful nonconforming use to be changed to another nonconforming use.</p> <p><i>If the Special Exception for the proposed use is not granted, then the following is requested:</i></p> <p>1B. A Variance from Section 10.440, Use #1.40 to allow a multifamily dwelling with 40 dwelling units.</p> <p>The following dimensional relief is also requested:</p> <p>2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,254 s.f. where 15,000 s.f. is required.</p> <p>3. A Variance from Section 10.521 to allow a structure height of 50' where 35' is the maximum allowed.</p> <p>4. A Variance from Section 10.522 to allow a multifamily dwelling with a building length of 246' where 160' is the maximum allowed.</p>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Medical office building	Primarily single family residential
<u>Lot area (sq. ft.):</u>	130,175	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	130,175	15,000 min.
<u>Street Frontage (ft.):</u>	711.86	100 min.
<u>Lot depth (ft.):</u>	318.57	100 min.
<u>Primary Front Yard (ft.):</u>	33.3	30 min.
<u>Right Yard (ft.):</u>	57.2	10 min.
<u>Left Yard (ft.):</u>	>30	30 min.
<u>Rear Yard (ft.):</u>	141.1	30 min.
<u>Height (ft.):</u>		35 max.
<u>Building Coverage (%):</u>	8.6%	20% max.
<u>Open Space Coverage (%):</u>	58.1%	40% min.
<u>Parking (# of spaces):</u>	82	61 min.
<u>Estimated Age of Structure:</u>	1963	

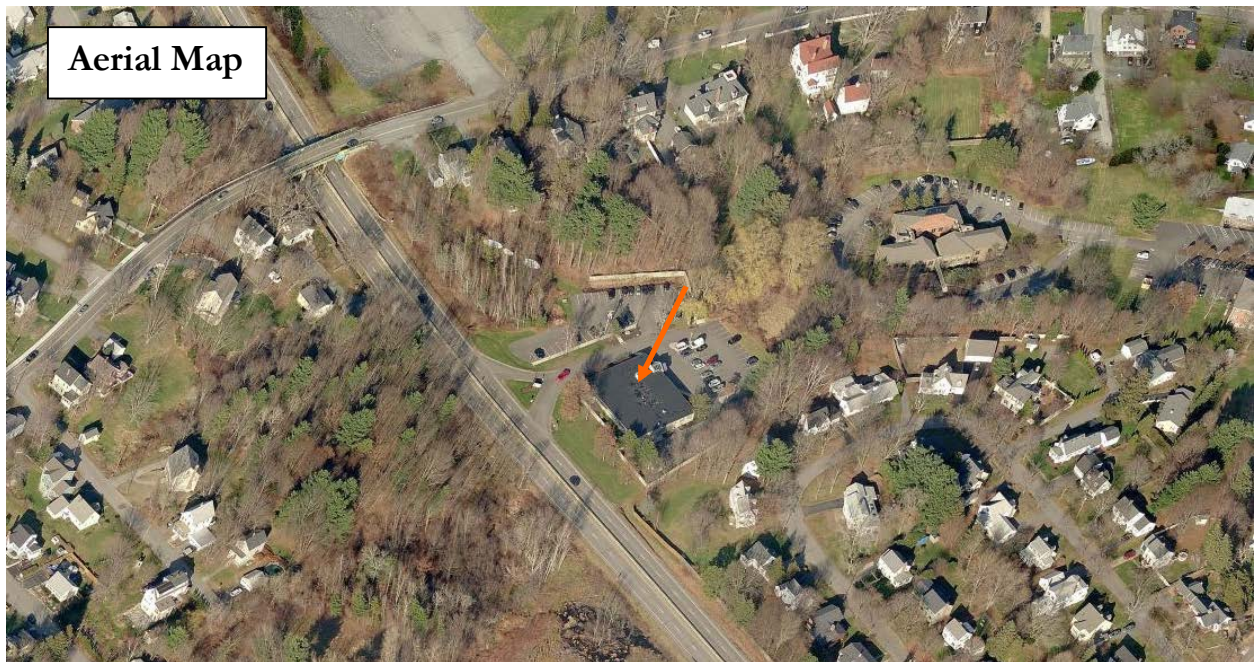
## B. Proposed Changes

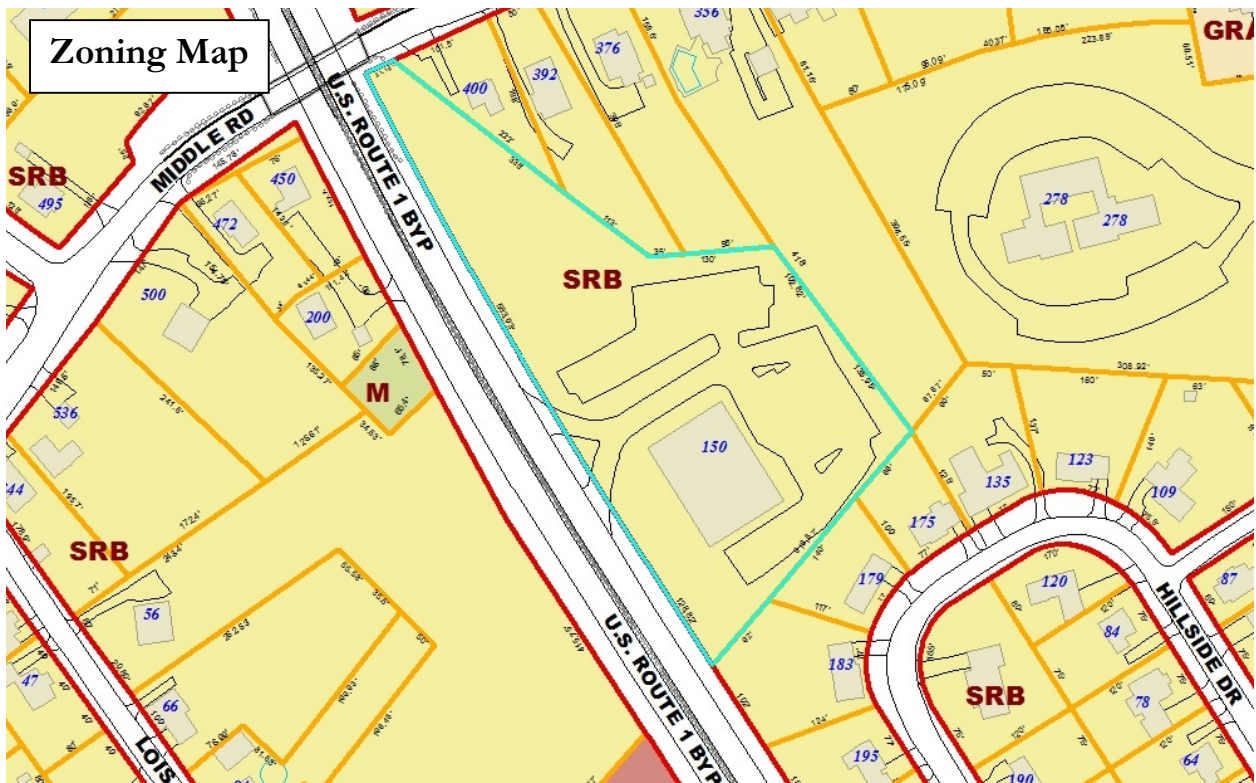
	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	40-unit multi-family residential building	Primarily single family residential
<u>Lot area (sq. ft.):</u>	130,175	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,254.38	15,000 min.
<u>Street Frontage (ft.):</u>	711.86	100 min.
<u>Lot depth (ft.):</u>	318.57	100 min.
<u>Primary Front Yard (ft.):</u>	85	30 min.
<u>Right Yard (ft.):</u>	50	10 min.
<u>Left Yard (ft.):</u>	56	30 min.
<u>Rear Yard (ft.):</u>	>30	30 min.
<u>Height (ft.):</u>	50	35 max.
<u>Building Coverage (%):</u>	15.0	20 max.
<u>Open Space Coverage (%):</u>	65.0	40 min.
<u>Parking (# of spaces):</u>	66	61 min.

## C. Other Permits Required

Planning Board Site Plan Review

## D. Neighborhood Context





### E. Previous Board of Adjustment Actions

September 18, 1990 - the Board **denied** a request to allow the erection of an additional 80 s.f. free-standing, non-illuminated sign for a total aggregate sign area of 163 s.f. in a residential district where signs are not allowed.

August 15, 1995 – the Board **granted** a variance to allow the construction of a 14'± x 16'± storage building for medical records and other items where such use is not allowed.

May 27, 1997 – the Board **granted** a variance to allow the expansion of a parking lot serving a commercial use with the stipulations that: Map 31, Lots 058 and 059 be combined; that the trees not be removed from the lots; that a solid fence be moved and erected on the lot line; that no additional lighting be installed; and that a lock be installed on the gate.

March 20, 2001 – the Board **granted** a variance to allow the construction of a second floor addition (124'± x 86'±, 10,800 s.f.) on top of the existing first floor for use as professional offices and to enlarge the parking lot for required parking, both in a residential district where such uses are not allowed.

January 15, 2002 – the Board **granted** variances to allow a 5,208 one-story addition to the right side of the existing medical office building for additional medical office use, with the following **stipulations**: that the gravel driveway to Middle Road be closed off; that all the lights in the parking areas be down shielded away from the abutting residential dwellings; that arbor vitae be placed along the fence between the property line and the new addition on Hillside Drive; and that the hours of operation be from 7:00 a.m. to 8:00 p.m. Monday through Friday and from 7:00 am. to 12:00 noon on Saturdays as well as by appointment for emergencies only on Sundays.

January 21, 2003 – the Board **granted** a one-year extension of the variances granted January 15, 2002 until January 15, 2004.

August 28, 2007 – the Board **granted** a Variance to allow the placement of a mobile coach for diagnostic services in the existing parking lot in a district where such use is not allowed.

October 16, 2007 – the Board **denied** an abutter's Motion for Rehearing on the Variance granted August 28, 2007.

July 15, 2008 – The Board **granted** variances to allow the following with **stipulations** regarding noise levels, screening and hours of operation: a) a 5,208± s.f. one story addition to the right side of the existing professional office building; b) two parking spaces at the rear of the lot; and c) amending location of previously approved portable coach for diagnostic services to front of the building. Additional **stipulations** were the following: a) the gravel driveway to Middle Road remain closed off; and b) the light sin the parking areas be down shielded away from the abutting residential buildings, both as previously stipulated in 2002.

August 19, 2008 – The Board **amended** the variances granted July 15, 2008 to remove the stipulation that arborvitae screening be extended along the entire length of the property line and reinstate the stipulation attached to the January 16, 2002 variance that the arborvitae be placed along the fence between the property line and the new addition on Hillside Drive as depicted on the plan by Charles LeBlanc. The Board also voted to request that the Site Review Committee, as part of its deliberations, determine whether the arborvitae screening was adequate.

July 21, 2009 – The Board **granted** a one year extension of the variance, with the August 19, 2008 amendment, through July 15, 2010.

April 16, 2013 – The Board **granted** variances to allow a use not specifically authorized in Article 4 of the Zoning Ordinance; to allow a lawful nonconforming use to be extended, enlarged or changed in a manner not conforming to the Ordinance; to allow a nonconforming use of land to extend into any part of the remainder of a lot of land; and to allow an accessory building, structure or use to be located in any required front yard. The variances were inconsideration of approval to place a 51'± x 8.5'± mobile diagnostic coach in front of the existing building with fencing with a notation that the advertised variance from Section 10.571 regarding a front yard setback was not needed. The variances were granted with the stipulation that there would be no signage, printing or advertising on the coach.

## **F. Planning Department Comments**

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

Section 10.335 provides that a lawful nonconforming use may be changed to another nonconforming use provided the proposed use is equally or more appropriate to the district and that the impact on adjacent properties less adverse than the impact of the existing use. The determination shall be made by the Board of Adjustment via an application for a Special Exception.

## 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 [SEE STAFF COMMENT ABOVE RE: 10.335]*
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.*

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 #4-13

Petitioners:	Blueberry Lafayette Investors LLC & Edward Walsh, owners, William P. Walsh, applicant
Property:	3605 (3607) Lafayette Road
Assessor Plan:	Map 298, Lot 2
Zoning District:	Gateway & Rural
Description:	Motor vehicle repair
Requests:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: <ol style="list-style-type: none"> <li>1. A Special Exception under Section 10.440, Use #11.20 to allow a motor vehicle repair use in a district where the use is allowed only by Special Exception.</li> <li>2. A Variance from Section 10.1111 to allow a change of use which does not meet the requirements for off-street parking.</li> <li>3. A Variance from Section 10.843.12 to allow more than two 40' wide curb cuts or access or egress points on each abutting street.</li> <li>3. A Variance from Section 10.843.21 to allow areas for parking, outdoor storage and outdoor display of vehicles or equipment to be set back less than 40 feet from the street right-of-way.</li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Motor vehicle sales, office, light manufacture, warehousing, construction services	Primarily commercial uses
<u>Lot area (sq. ft.):</u>	16.76 acres	2 acres min.
<u>Street Frontage (ft.):</u>	297	200 min.
<u>Lot depth (ft.):</u>	>100	100 min.
<u>Primary Front Yard (ft.):</u>	25	30 min.
<u>Right Yard (ft.):</u>	<30	30 min.
<u>Left Yard (ft.):</u>	<30	30 min.
<u>Rear Yard (ft.):</u>	>50	50 min.
<u>Building Coverage (%):</u>	<30	30 max.
<u>Open Space Coverage (%):</u>	>20	20 min.
<u>Parking (# of spaces):</u>	62	26 min.

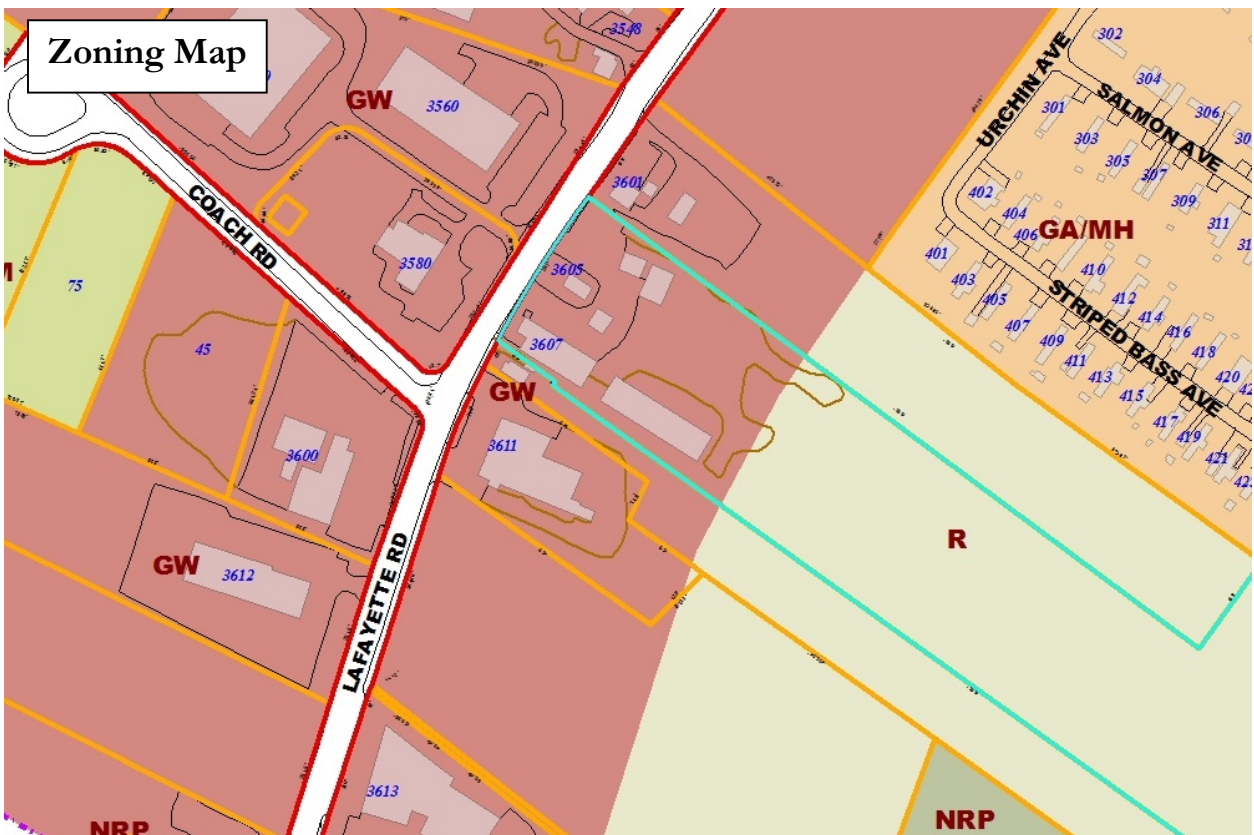
### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Motor vehicle repair	Primarily commercial uses

### C. Other Permits Required

None.

### D. Neighborhood Context



## E. Previous Board of Adjustment Actions

December 30, 1963 – The Board **denied** an extension of the commercial zone to a depth of 250 feet.

February 18, 1997 – The Board **granted** a variance to allow an existing 30' x 40' building to be used as an automobile repair facility with a 32'± side yard where 50' is the minimum required and the use would require a Special Exception if all the criteria were met.

September 25, 2012 – The Board failed to pass a motion to grant and thus **denied** a special exception to allow the outdoor storage of vehicles and a variance to allow a vehicle display area to be located 5' from the front property line where a display or storage area must be located less than 80' from the centerline of Lafayette Road or 30' from the sideline of Lafayette Road, whichever is greater.

November 20, 2012 – The Board **denied** a Request for Rehearing regarding the above petition.

## F. Planning Department Comments

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

There are standards for this particular use that are specified in Section 10.843. The application does not meet all of those standards and therefore variances as well as a special exception are required for this property.

## 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 [special requirements for this use are provided in Section 10.843 of the Ordinance]*
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.*

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.*