

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

## **OLD BUSINESS**

1. 150 Route 1 Bypass (Request for Rehearing)

## **NEW BUSINESS**

1. 25 Lafayette Rd
2. 30-46 Maplewood Ave
3. 834 Middle Rd
4. 4 Melbourne St
5. 26 Thaxter Rd
6. 5 Buckminster Way
7. 201 Kearsarge Way
8. 4 Cutts St
9. 105 Bartlett St
10. 195 Hillside Dr
11. 21 Dearborn St



# OLD BUSINESS

## 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:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: 1A. A Special Exception under Section 10.335 to allow a lawful nonconforming use to be changed to another nonconforming use. <i>If the Special Exception for the proposed use is not granted, then the following is requested:</i> 1B. A Variance from Section 10.440, Use #1.40 to allow a multifamily dwelling with 40 dwelling units. The following dimensional relief is also requested: 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. 3. A Variance from Section 10.521 to allow a structure height of 50' where 35' is the maximum allowed. 4. A Variance from Section 10.522 to allow a multifamily dwelling with a building length of 246' where 160' is the maximum allowed.

On May 17, 2016, the Board voted to deny the variances requested by the applicant. The applicant 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.

The applicant has also filed a new application, which will be heard by the Board at the June 28, 2016 meeting.



# NEW BUSINESS

## Case #6-1

Petitioners:	Colette TM Foley Revocable Trust, John D. & Colette TM Foley, Trustees
Property:	25 Lafayette Road
Assessor Plan:	Map 152, Lot 3
Zoning District:	General Residence A
Description:	Raising chickens
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, Use #17.20 to allow the keeping of chickens where this use is not 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>	13,068	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	13,068	7,500 min.
<u>Primary Front Yard (ft.):</u>	>15	15 min.
<u>Right Yard (ft.):</u>	>10	10 min.
<u>Left Yard (ft.):</u>	>10	10 min.
<u>Rear Yard (ft.):</u>	>20	20 min.
<u>Building Coverage (%):</u>	19.13%	25% max.
<u>Open Space Coverage (%):</u>	>30%	30% min.
<u>Parking (# of spaces):</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1902	

### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Keeping of chickens	Primarily residential uses

### C. Other Permits Required

None.

## D. Neighborhood Context



## E. Previous Board of Adjustment Actions

April 23, 1974 - The Board **denied** a request to use the first floor of an existing home for a doctor's office.

May 1, 1979 – The Board **granted** a special exception to convert a single family residence into a two family residence.

November 18, 1980 – The Board **denied** a special exception to allow a home occupation.

January 6, 1981 – The Board **denied** a request for rehearing regarding the above request.

## 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 #6-2

Petitioner:	30 Maplewood LLC
Property:	30-46 Maplewood Avenue
Assessor Plan:	Map 125, Lot 2
Zoning District:	Character District 4, Downtown Overlay District
Description:	Continue parking use on subdivided 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 under Section 10.440 to allow a surface parking lot as a principal use where such use is not allowed.</li> <li>2. A Variance from Section 10.5A44 to allow a parking lot that does not comply with the requirements of the Ordinance.</li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Mix of retail, restaurant, residential	Mix of residential and commercial uses
<u>Estimated Age of Structure:</u>	1978-2014	

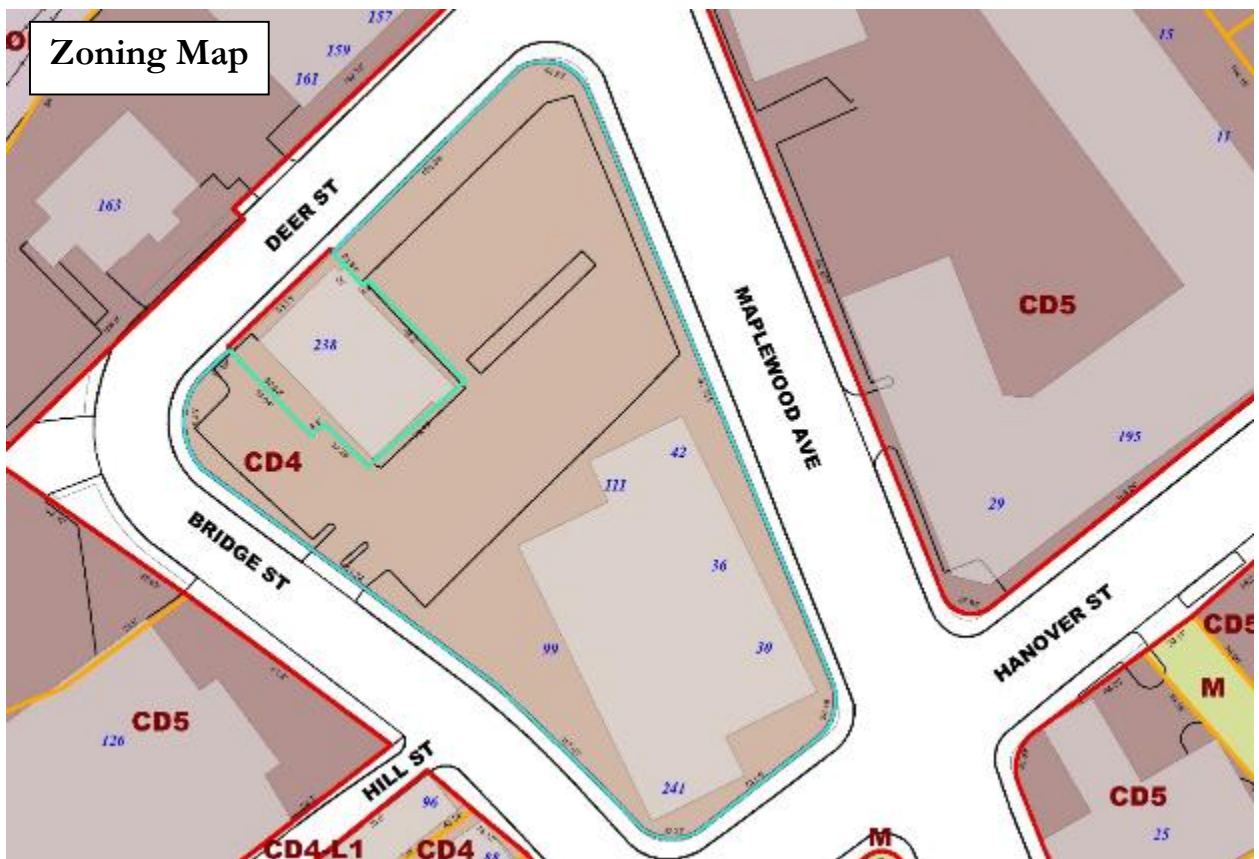
### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Surface parking lot	Mix of residential and commercial uses

### C. Other Permits Required

Planning Board – Subdivision

## D. Neighborhood Context



## E. Previous Board of Adjustment Actions

June 16, 1981 – The Board **granted** a variance to allow two free standing signs where one was allowed with the **stipulation** that the signs be 32 s.f. per sign where 12 s.f. was allowed for a total signage on the property not to exceed 64 s.f.

## 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**

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



## Case #6-3

Petitioners:	Jason Combs & Meghan Rose J. Parks
Property:	834 Middle Road
Assessor Plan:	Map 232, Lot 55
Zoning District:	Single Residence B
Description:	Construct new single-family home.
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 except in conformity with the Ordinance.</li> <li>2. A Variance from Section 10.516.10 to allow a secondary front yard setback of 12.8'± where 17.7' is required.</li> <li>3. A Variance from Section 10.521 to allow a rear yard setback of 22'± where 30' is required.</li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residence	Primarily single family residential
<u>Lot area (sq. ft.):</u>	9,346.00	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,346.00	15,000 min.
<u>Street Frontage (ft.):</u>	101.5	100 min.
<u>Lot depth (ft.):</u>	90.7	100 min.
<u>Primary Front Yard (ft.):</u>	19.8	30 min.
<u>Secondary Front Yard (ft.):</u>	12.8	30 min.
<u>Left Yard (ft.):</u>	10	10 min.
<u>Rear Yard (ft.):</u>	21.2	30 min.
<u>Building Coverage (%):</u>	16.87%	20 max.
<u>Open Space Coverage (%):</u>	>40	40 min.
<u>Estimated Age of Structure:</u>	1954	

### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residence	Primarily single family residential
<u>Primary Front Yard (ft.):</u>	25.8	30 min.
<u>Secondary Front Yard (ft.):</u>	12.8	30 min.
<u>Left Yard (ft.):</u>	>10	10 min.
<u>Rear Yard (ft.):</u>	22	30 min.
<u>Height (ft.):</u>	33	35 max.
<u>Building Coverage (%):</u>	12.71%	20 max.
<u>Open Space Coverage (%):</u>	>40%	40 min.
<u>Parking (# of spaces):</u>	2	2 min.

### C. Other Permits Required

None.

### D. Neighborhood Context



## E. Previous Board of Adjustment Actions

No history found.

## 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 #6-4

Petitioners:	Marc G. Goulet, owner, Stephanie A. Lane, applicant
Property:	4 Melbourne Street
Assessor Plan:	Map 233, Lot 18
Zoning District:	Single Residence B
Description:	Allow massage therapy use as a Home Occupation.
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 19.22 to allow a Home Occupation II in a district where it is allowed by special Exception.

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residence and Home Occupation 1	Primarily single family residences
<u>Lot area (sq. ft.):</u>	16,117.20	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	16,117.20	15,000 min.
<u>Parking (# of spaces):</u>	>2	2 min.

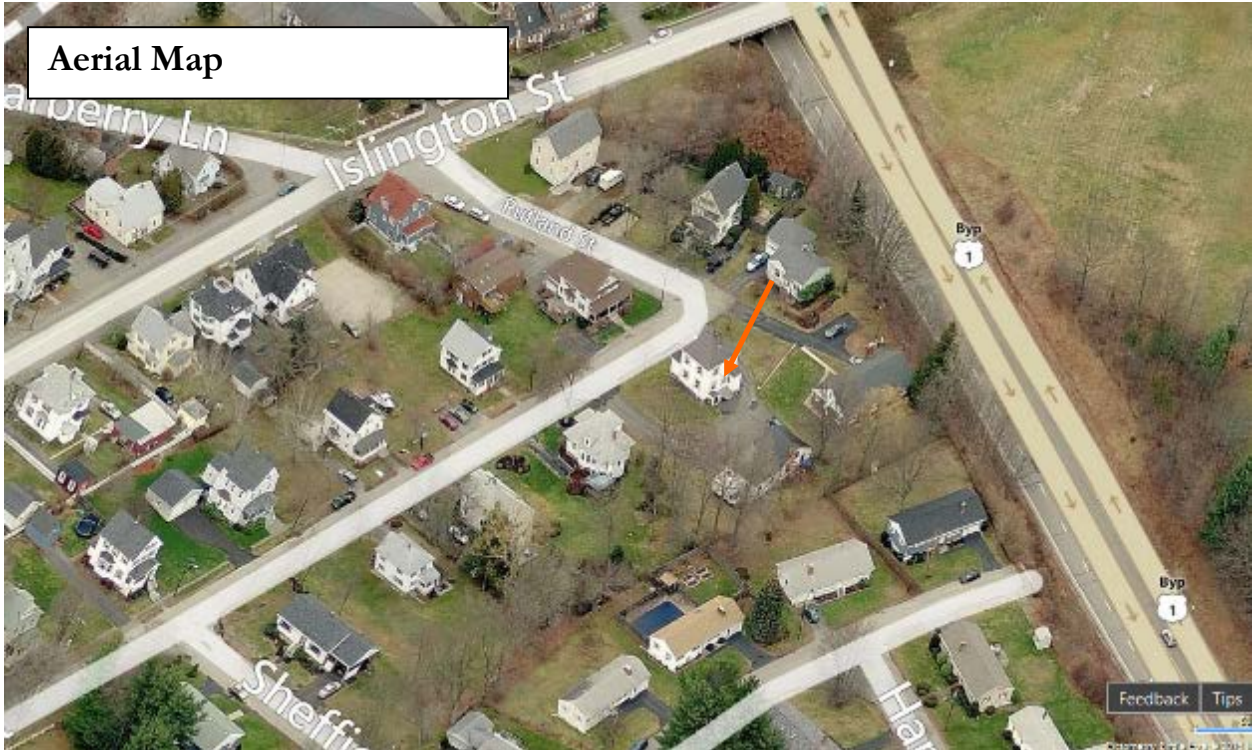
### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Home Occupation 2	Primarily single family residences

### C. Other Permits Required

None.

## D. Neighborhood Context



## E. Previous Board of Adjustment Actions

July 21, 1981 – The Board **granted** a variance for a lot line change with the lot area decreasing from 19,630 s.f. to 15,236 s.f. where 20,000 s.f. lot area was required. Note: subsequent to this action, the lot area in Single Residence B was reduced to 15,000 s.f.

## 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**

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



## Case #6-5

Petitioners:	Linda & John Leland
Property:	26 Thaxter Road
Assessor Plan:	Map 166, Lot 37
Zoning District:	Single Residence B
Description:	Covered front porch/entryway.
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 except in conformity with the Ordinance.</li> <li>2. A Variance from Section 10.521 to allow an 18'± front yard setback where 30' is required.</li> <li>3. A Variance from Section 10.521 to allow 31.39%± building coverage where 20% is the maximum allowed.</li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family residence	Primarily single family residences
<u>Lot area (sq. ft.):</u>	6,011.28	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,011.28	15,000 min.
<u>Street Frontage (ft.):</u>	60	100 min.
<u>Lot depth (ft.):</u>	100	100 min.
<u>Primary Front Yard (ft.):</u>	26	30 min.
<u>Right Yard (ft.):</u>	14	10 min.
<u>Left Yard (ft.):</u>	14	10 min.
<u>Rear Yard (ft.):</u>	>30	30 min.
<u>Height (ft.):</u>	18	35 max.
<u>Building Coverage (%):</u>	29.23	20 max.
<u>Parking (# of spaces):</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1956	

### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Primary Front Yard (ft.):</u>	18	30 min.
<u>Height (ft.):</u>	15	35 max.
<u>Building Coverage (%):</u>	31.39	20 max.

### C. Other Permits Required

None.

## D. Neighborhood Context



## E. Previous Board of Adjustment Actions

No history found.

## 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 #6-6

Petitioners:	Cristin Pugliese
Property:	5 Buckminster Way
Assessor Plan:	Map 282, Lot 6-23
Zoning District:	Single Residence A
Description:	Rental of a single family residence.
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 under Section 10.440 to allow a two family dwelling where only a single family dwelling is permitted.</li> <li>2. A Variance from Section 10.521 to allow a 21,997.8± s.f. lot area per dwelling unit where 43,560 s.f. (1 acre) is required.</li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residence	Primarily single family residences
<u>Lot area (sq. ft.):</u>	43,995.60	43,560 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	43,995.60	43,560 min.
<u>Parking (# of spaces):</u>	4	2 min.
<u>Estimated Age of Structure:</u>		

### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two-family residence	Primarily single family residences
<u>Lot area (sq. ft.):</u>	43,995.60	43,560 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	21,997.80	43,560 min.
<u>Parking (# of spaces):</u>	4	2 min.

### C. Other Permits Required

None.

## D. Neighborhood Context



## E. Previous Board of Adjustment Actions

(Applicable to Buckminster Way as part of the entire development:)

June 18, 1996 – The Board **granted** an Appeal of an Administrative Decision of the Code Office in the determination that Conditional Use Permits would be required prior to issuing building permits on lots within the approved subdivision which could not meet the required 75' buffer.

## 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 #6-7

Petitioner:	Richard P. Fusegni
Property:	201 Kearsarge Way
Assessor Plan:	Map 218, Lot 5
Zoning District:	Single Residence B
Description:	Construct home on one lot of a three-lot subdivision.
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 front yard setback of 15'± where 30' is required.

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residence	Primarily Single Family residences
<u>Lot area (sq. ft.):</u>	54,901	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	54,901	15,000 min.
<u>Street Frontage (ft.):</u>	>100	100 min.
<u>Lot depth (ft.):</u>	>100	100 min.
<u>Primary Front Yard (ft.):</u>	<30	30 min.
<u>Secondary Front Yard (ft.):</u>	>10	10 min.
<u>Left Yard (ft.):</u>	>10	10 min.
<u>Rear Yard (ft.):</u>	>30	30 min.
<u>Building Coverage (%):</u>	<20	20 max.
<u>Open Space Coverage (%):</u>	>40	40 min.
<u>Estimated Age of Structure:</u>	1954	

## B. Proposed Changes

	<u>Proposed Lot 1</u>	<u>Proposed Lot 2</u>	<u>Proposed Lot 3</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Single family	Single family	Primarily Single Family residences
<u>Lot area (sq. ft.):</u>	18,654	1,882.00	17,365.00	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	18,654	1,882.00	17,365.00	15,000 min.
<u>Street Frontage (ft.):</u>	106.73	100	100	100 min.
<u>Lot depth (ft.):</u>	129.55	158.38	126.415	100 min.
<u>Primary Front Yard (ft.):</u>	30	30	15	30 min.
<u>Secondary Front Yard (ft)</u>	N/A	N/A	30	10 min.
<u>Right Yard (ft)</u>	10	10	N/A	10
<u>Left Yard (ft.):</u>	10	10	10	10 min.
<u>Rear Yard (ft.):</u>	30	30	30	30 min.
<u>Height (ft.):</u>	35	35	35	35 max.
<u>Building Coverage (%):</u>	20	20	20	20 max.
<u>Open Space Coverage (%):</u>	40	40	40	40 min.
<u>Parking (# of spaces):</u>	2	2	2	2 min.

## C. Other Permits Required

Planning Board -- Subdivision

## D. Neighborhood Context





### E. Previous Board of Adjustment Actions

No history found.

### 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**

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





## Case #6-8

Petitioners:	Sarnia Properties, Inc., owner, Q, LLC, applicant
Property:	4 Cutts Street #3 (933 Route One By-Pass)
Assessor Plan:	Map 142, Lot 37
Zoning District:	Business
Description:	Design and engineering of firearms, silencers and related accessories to the sporting and defense industries.
Requests:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Variance under Section 10.440 to allow a light industry use in a district where this use is not allowed. 2. A Variance from Section 10.1112.30 to allow 84 parking spaces where 103 parking spaces are required.

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mix of commercial and warehouse uses	Primarily commercial uses
<u>Lot area (sq. ft.):</u>	152,460	20,000 min.
<u>Estimated Age of Structure:</u>	1962	

### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Design and engineering of firearms, silencers and related accessories to the sporting and defense industries	Primarily commercial uses
<u>Parking (# of spaces):</u>	84	103 min.

### C. Other Local Land Use Permits Required

None.

## D. Neighborhood Context



## E. Previous Board of Adjustment Actions

October 24, 1978 (as 4 Cutts Avenue but same property). The Board **granted** a variance to allow the construction of an addition to an existing building 2.5' from the left, 34' from the rear and 6.5' from the right property lines where 30', 50' and 30' respectively were required and a lot coverage of 47% where 30% was allowed.

January 5, 1988 (as 4 Cutts Avenue but same property). The Board **granted** a variance to allow the construction of a 14,570 s.f. addition to an existing structure with a 2' left yard where 30' was required, a 15' rear yard where 50' was required, and building coverage of 63% where 30% was allowed. This was granted with the **stipulation** that (then) Plan R-9, Lot 89 and Plan U-42, Lot 37 be consolidated into one lot which would result in 50% coverage where 30% was allowed. The Board also **granted** an increase in the extent of a nonconforming use of a structure (Portsmouth Paper Company – whole sale and warehousing)

March 16, 2010 – The Board **granted** a request for a Special Exception to allow an auto dealership in the Business Zone and within 150' of a residential or mixed residential district where 200' was required and a Variance to allow auto dealership parking, outdoor storage or display less than 40' from a street right-of-way with the following stipulations: 1) That no more than six vehicles will be on the lot for sale at any one time; 2) That the approved use will be conducted within the 75' x 87' area shown on the plan submitted with the application; and 3) that there will be no repair or washing of vehicles.

## 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 #6-9

Petitioners:	Clipper Traders, LLC, owner, Great Rhythm Brewing Company, applicant.
Property:	105 Bartlett Street
Assessor Plan:	Map 157, Lot 1
Zoning District:	Office Research
Description:	Brewery with tasting room and outdoor area.
Requests:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: 1. Amend previously granted variance to allow a brewery use with an 800± s.f. tasting area and adjoining outdoor seating area.

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Brewery with tasting room	Primarily office and research uses
<u>Parking (# of spaces):</u>	21	21 (per previous variance) min.

### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Brewery with expanded tasting room and outdoor seating area	Primarily office and research uses

### C. Other Permits Required

- Planning Board – Site Plan Review (to be determined)

## D. Neighborhood Context



## E. Previous Board of Adjustment Actions

May 28, 1991 – The Board **granted** a variance to reconstruct a nonconforming building on the existing footprint which had been destroyed by fire with associated retail sales.

June 23, 1998 – The Board **granted** the following: 1) a variance to expand an existing nonconforming seafood processing and freezing operation by the addition of a nitrogen tank on a pad within 500’ of a residential district and not allowed in the Office Research District; 2) a Special Exception to allow the outdoor storage of equipment; and 3) a variance to allow a nonconforming use to be expanded. These were granted with the following stipulations: 1) that approval is contingent on the removal of any zoning violation; 2) that a ground pump be installed and enclosed; and that a pressure release valve be installed with the muffler.

November 24, 2015 – The Board **granted** variances to allow the operation of a brewery in a district where the use is not allowed; a change of use without providing the necessary off-street parking; and to allow off-street parking spaces that do not meet the dimensional requirements.

## 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 #6-10

Petitioner:	Timothy R. Connolly
Property:	195 Hillside Drive
Assessor Plan:	Map 231, Lot 17
Zoning District:	Single Residence B
Description:	Addition over existing 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 10.321 to allow a nonconforming building or structure to be extended, enlarged or structurally altered except in conformity with the Ordinance.</li> <li>2. A Variance from Section 10.521 to allow a 7'± left side yard setback where 10' is required.</li> </ol>

### A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residence	Primarily single family residences
<u>Lot area (sq. ft.):</u>	10,900	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,900	15,000 min.
<u>Street Frontage (ft.):</u>	77	100 min.
<u>Lot depth (ft.):</u>	122	100 min.
<u>Primary Front Yard (ft.):</u>	36	30 min.
<u>Right Yard (ft.):</u>	17	10 min.
<u>Left Yard (ft.):</u>	7	10 min.
<u>Rear Yard (ft.):</u>	70	30 min.
<u>Height (ft.):</u>	22'-4"	35 max.
<u>Building Coverage (%):</u>	11.99%	20% max.
<u>Open Space Coverage (%):</u>	81.93%	40% min.
<u>Parking (# of spaces):</u>	4	2 min.
<u>Estimated Age of Structure:</u>	1945	

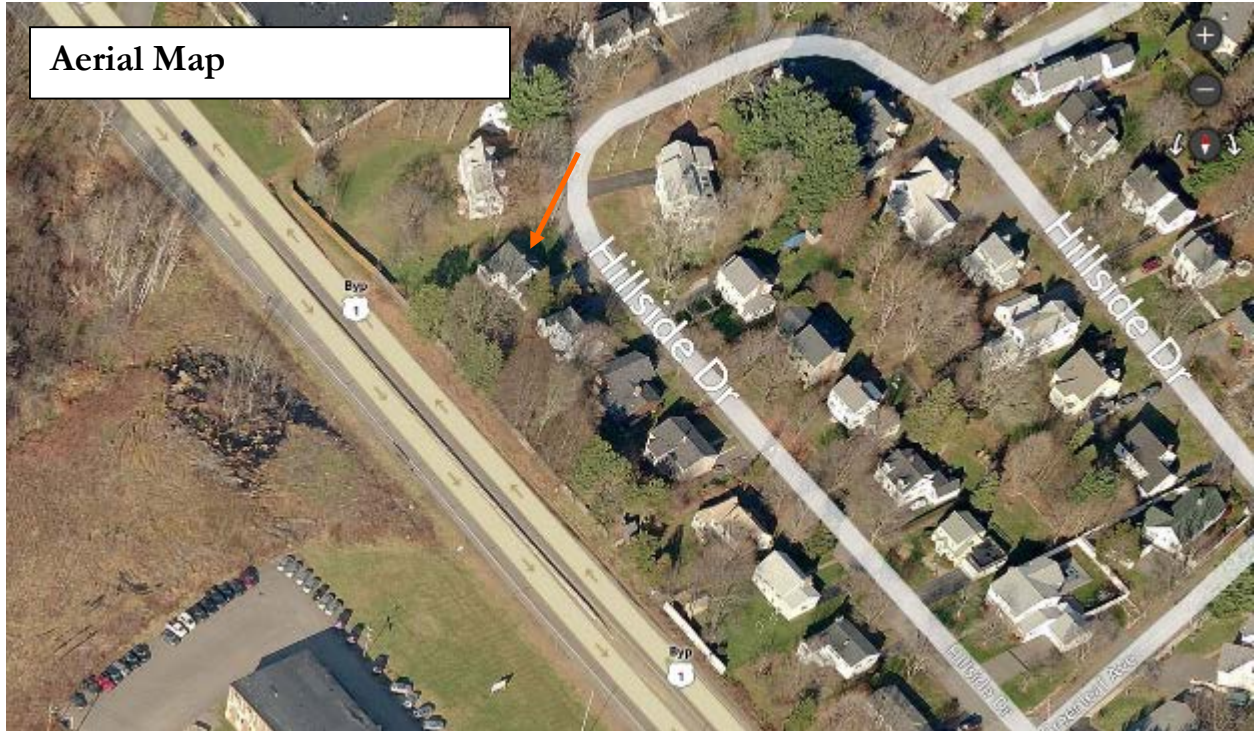
### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Primary Front Yard (ft.):</u>	25	30 min.
<u>Left Yard (ft.):</u>	7	10 min.
<u>Rear Yard (ft.):</u>	57	30 min.
<u>Height (ft.):</u>	24' 10"	35 max.
<u>Building Coverage (%):</u>	13.75%	20% max.
<u>Open Space Coverage (%):</u>	80.17%	40% min.

### C. Other Permits Required

None.

### D. Neighborhood Context



### E. Previous Board of Adjustment Actions

No history found.

## 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 #6-11

Petitioner:	Jeremy N. Mard
Property:	21 Dearborn Street
Assessor Plan:	Map 140, Lot 5
Zoning District:	General Residence A
Description:	Install rear condenser.
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 10.321 to allow a nonconforming building or structure to be extended, enlarged or structurally altered except in conformity with the Ordinance. 2. A Variance from Section 10.521 to allow a 0'± right side yard setback where 10' 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>	2,178	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,178	7,500 min.
<u>Street Frontage (ft.):</u>	42	100 min.
<u>Lot depth (ft.):</u>	50	70 min.
<u>Primary Front Yard (ft.):</u>	3	15 min.
<u>Right Yard (ft.):</u>	0	10 min.
<u>Left Yard (ft.):</u>	5	10 min.
<u>Rear Yard (ft.):</u>	5	20 min.
<u>Height (ft.):</u>	<35	35 max.
<u>Building Coverage (%):</u>	22.96	25 max.
<u>Open Space Coverage (%):</u>	>30	30 min.
<u>Parking (# of spaces):</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1850	

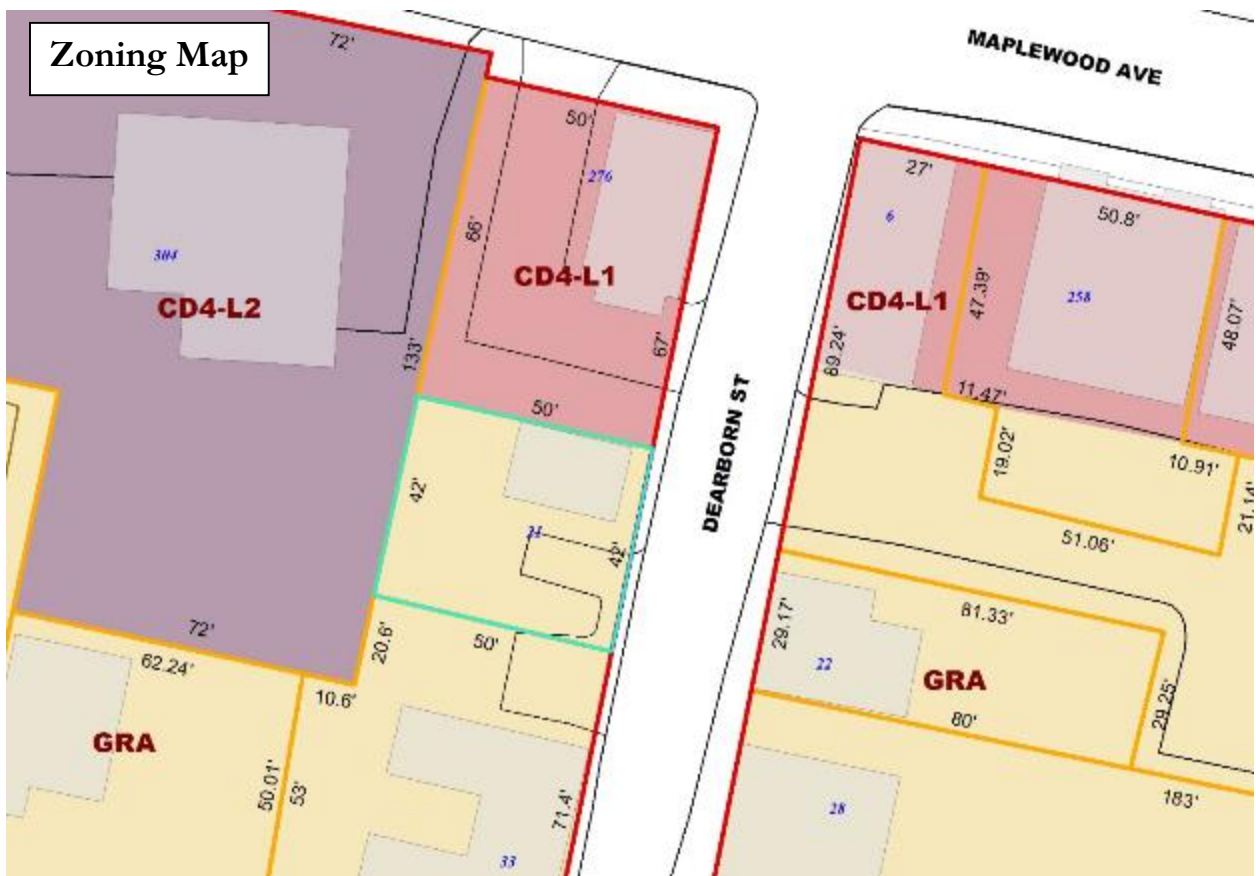
### B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Right Yard (ft.):</u>	0	10 min.
<u>Left Yard (ft.):</u>	>10	10 min.
<u>Rear Yard (ft.):</u>	>20	20 min.
<u>Height (ft.):</u>	4	35 max.
<u>Building Coverage (%):</u>	<35	25 max.
<u>Open Space Coverage (%):</u>	>30	30 min.

### C. Other Permits Required

None.

## D. Neighborhood Context



## E. Previous Board of Adjustment Actions

No history found.

## 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.*