

TO: Zoning Board of Adjustment
FROM: Juliet Walker, Planning Department
DATE: June 23, 2016
RE: June 28, 2016 Zoning Board of Adjustment Meeting

OLD BUSINESS

1. 56 Lois St (see memo from legal department)

NEW BUSINESS

1. 250 Broad St
2. 200 McDonough St
3. 21 Humphreys Court
4. 10 Humphreys Court
5. 78 Marne Ave
6. 540 Marcy St
7. 150 US Route 1 Bypass
8. 786 US Route 1 Bypass
9. 100 Peverly Hill Rd

OLD BUSINESS

Case #6-6

Petitioners:	Estate of John F. Cronin III, Crystal Cronin, Administrator, owner and Michael Lefebvre, applicant
Property:	56 Lois Street
Assessor Plan:	Map 232, Lot 8
Zoning District:	Single Residence B
Description:	Create new lot for a single-family residence with 20' street frontage.
Requests:	1-year extension to Variance granted in June 2014 from Section 10.521 to allow continuous street frontage of 20'± where 100' is required.

A memo from the Legal Department is included in the Board of Adjustment Packet.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Residential	Primarily single family residential
<u>Lot area:</u>	4.25 acres	15,000 sq. ft.
<u>Street Frontage:</u>	100'	100'
<u>Lot depth:</u>	>243'	100'
<u>Estimated Age of Structure:</u>	2001	

B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Residential	Primarily single family residential
<u>Lot area:</u>	3.2 acres	15,000 sq. ft.
<u>Street Frontage:</u>	20'	100'
<u>Lot depth:</u>	>100'	100'

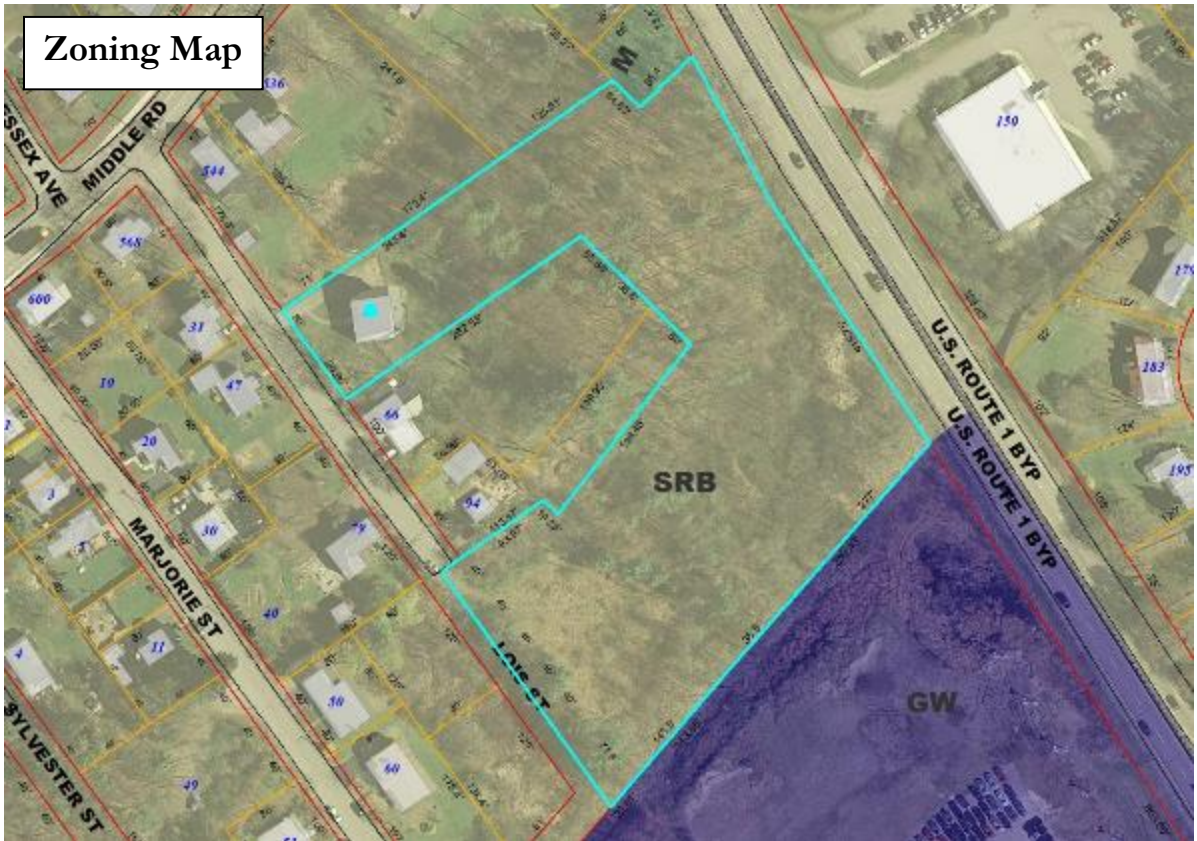
C. Other Permits Required

- Planning Board -- Subdivision

Aerial Map



Zoning Map



NEW BUSINESS

Case #6-12

Petitioner:	Beth P. Griffin Revocable Trust of 2011, Beth P. Griffin, Trustee
Property:	250 Broad Street
Assessor Plan:	Map 131, Lot 10
Zoning District:	General Residence A
Description:	Second floor addition and relocation of barn/office/rec. room.
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 right side yard setback of 3.09'± for the barn/office and 4.05'± for the second story addition where 10' is required.

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>	11,025	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,025	7,500 min.
<u>Street Frontage (ft.):</u>	55.05	100 min.
<u>Lot depth (ft.):</u>	200	70 min.
<u>Primary Front Yard (ft.):</u>	<15	15 min.
<u>Right Yard (ft.):</u>	1.29	10 min.
<u>Left Yard (ft.):</u>	>10	10 min.
<u>Rear Yard (ft.):</u>	>20	20 min.
<u>Height (ft.):</u>	<35	35 max.
<u>Building Coverage (%):</u>	19.80%	25% max.
<u>Open Space Coverage (%):</u>	>30%	30% min.
<u>Parking (# of spaces):</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1900	

B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Right Yard (ft.):</u>	3.09, 4.05	10 min.
<u>Left Yard (ft.):</u>	>10	10 min.
<u>Rear Yard (ft.):</u>	>20	20 min.
<u>Height (ft.):</u>	<35	35 max.
<u>Building Coverage (%):</u>	23.95	25 max.
<u>Open Space Coverage (%):</u>	>30	30 min.

C. Other Permits Required

None.

D. Neighborhood Context





E. Previous Board of Adjustment Actions

May 13, 1986 – The Board **granted** a variance to construct an 18' x 24' rear addition with a 7' side yard where 10' was required. The variance was granted with the stipulation that the existing barn must be demolished as presented.

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 #6-13

Petitioners:	CSS Realty Trust, Christopher D. McInnis, Trustee, owner, White Acquisitions, applicant
Property:	200 McDonough Street
Assessor Plan:	Map 144, Lot 29
Zoning District:	General Residence C
Description:	Single family home on pre-existing nonconforming 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"> 1. A Variance from Section 10.321 to allow a nonconforming building or structure to be reconstructed except in conformity with the Ordinance. 2. A Variance from Section 10.516.30 to allow a structure obstructing visibility to be erected on a corner lot between the heights of 2.5' and 10' above the edge of pavement grades within the area outlined in the Ordinance.

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>	2,588	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,588	3,500 min.
<u>Street Frontage (ft.):</u>	50	70 min.
<u>Lot depth (ft.):</u>	51	50 min.
<u>Primary Front Yard (ft.):</u>	1.45	5 min.
<u>Right Yard (ft.):</u>	0	5 min.
<u>Left Yard (ft.):</u>	1.52	10 min.
<u>Rear Yard (ft.):</u>	5.84	20 min.
<u>Height (ft.):</u>	<30	35 max.
<u>Building Coverage (%):</u>	46.8	35 max.
<u>Open Space Coverage (%):</u>	27.9	20 min.
<u>Parking (# of spaces):</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1900	

B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Primary Front Yard (ft.):</u>	5	5 min.
<u>Right Yard (ft.):</u>	5	5 min.
<u>Left Yard (ft.):</u>	10.1	10 min.
<u>Rear Yard (ft.):</u>	20	20 min.
<u>Height (ft.):</u>	33.2	35 max.
<u>Building Coverage (%):</u>	33.81	35 max.
<u>Open Space Coverage (%):</u>	46.4	20 min.

C. Other Permits Required

None.

D. Neighborhood Context



E. Previous Board of Adjustment Actions

May 24, 2016 – The Board **denied** the following variances requested to build a single family home on a pre-existing nonconforming lot: 1) To allow a nonconforming building or structure to be reconstructed except in conformity with the Ordinance; 2) To allow a structure obstructing visibility on a corner lot between the heights of 2.5' and 10' above the edge of pavement grades within the area outlined in the Ordinance; 3) To allow a) a secondary front yard setback of 1.2'± where 5' was required; b) a 1.8'± left side yard setback where 10 was required; and c) 44.4%± building coverage where 35% was the maximum allowed.

F. Planning Department Comments

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

The Board may consider whether to invoke Fisher vs. Dover before this application is considered.

“When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan.” Fisher v. Dover, 120 N.H. 187, (1980)

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 #6-14

Petitioner:	Eleanor C. Bradshaw
Property:	21 Humphreys Court
Assessor Plan:	Map 101, Lot 42
Zoning District:	General Residence B
Description:	Add left side bay window.
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"> 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 10.516.40 to allow a bay window to project more than 2'± into the required left side and rear yard. 3. A Variance from Section 10.521 to allow a building coverage of 46.8% where 46.7% exists and 30% is the maximum allowed. <p><i>Note: The required relief has been amended to include the rear yard encroachment and increase in building coverage.</i></p>

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	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,178	5,000 min.
<u>Street Frontage (ft.):</u>	44	80 min.
<u>Lot depth (ft.):</u>	50	60 min.
<u>Primary Front Yard (ft.):</u>	10	5 min.
<u>Right Yard (ft.):</u>	2.5	10 min.
<u>Left Yard (ft.):</u>	3	10 min.
<u>Rear Yard (ft.):</u>	3	25 min.
<u>Height (ft.):</u>	<35	35 max.
<u>Building Coverage (%):</u>	46.7	30 max.
<u>Open Space Coverage (%):</u>	>25	25 min.
<u>Parking (# of spaces):</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1900	

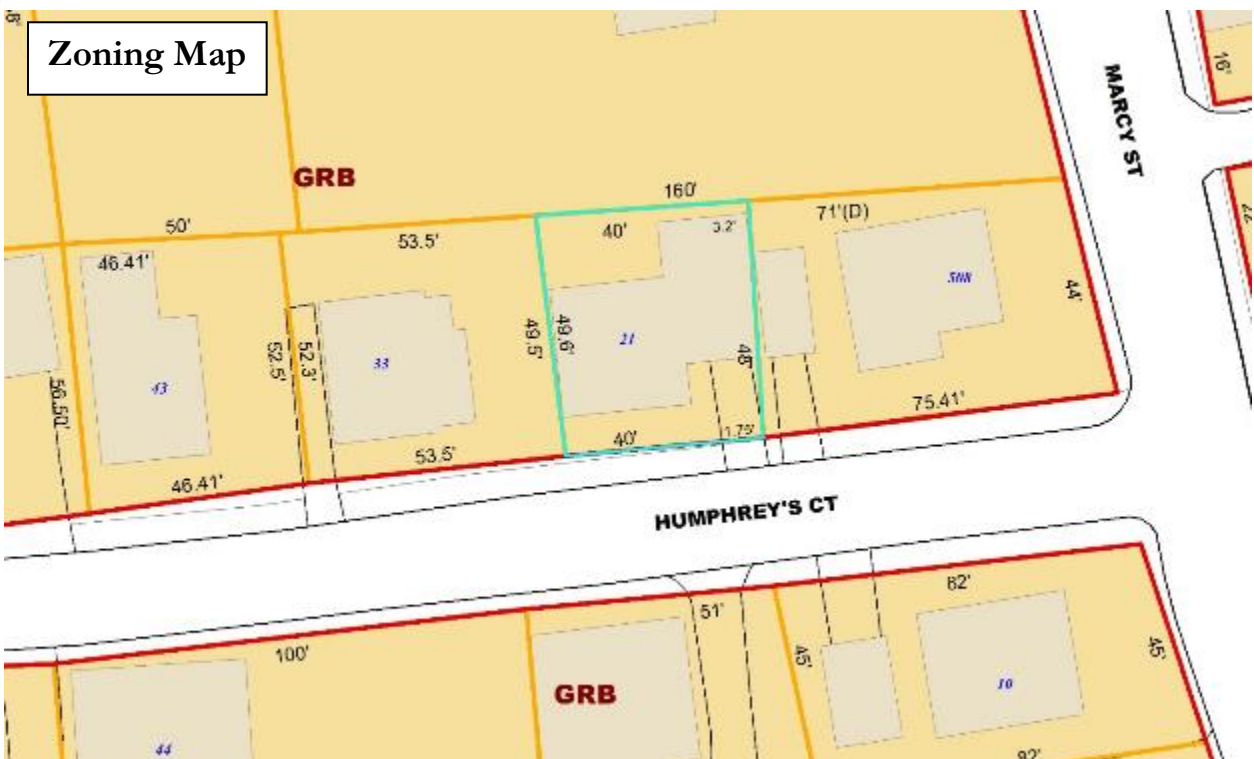
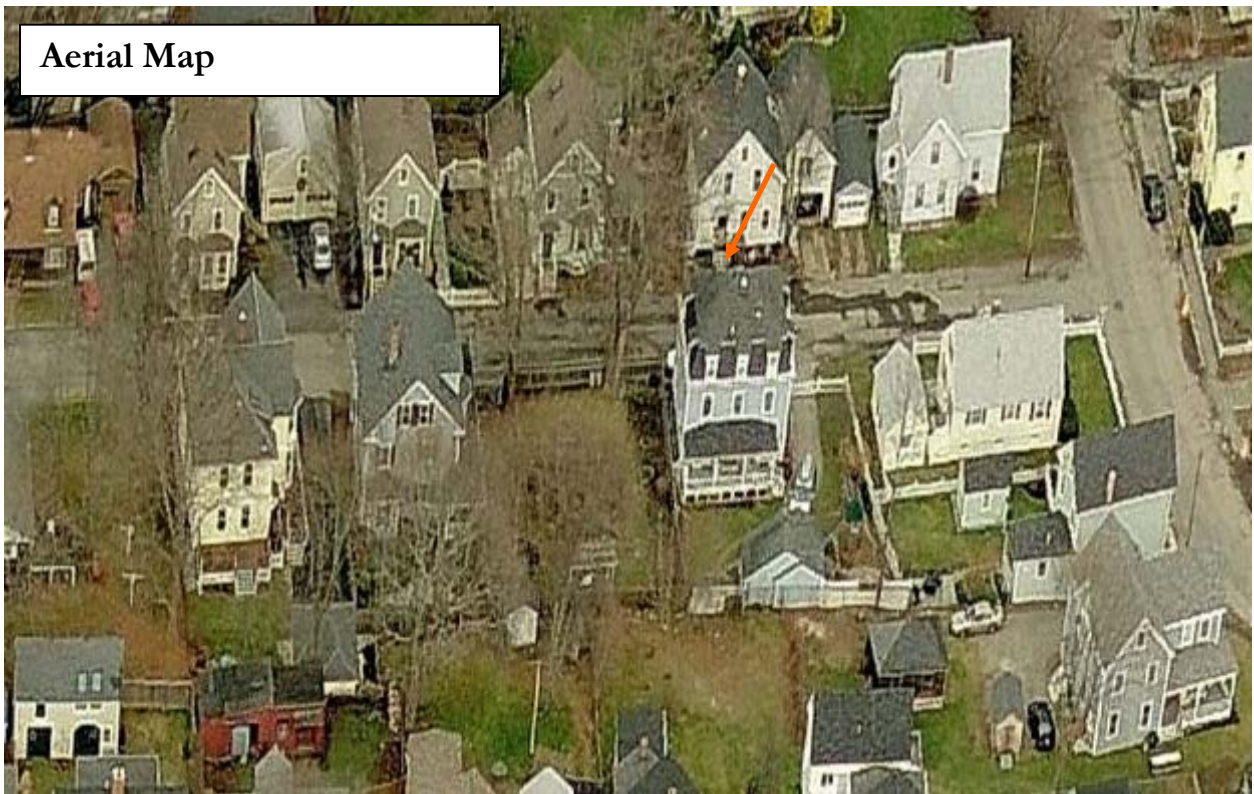
B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Primary Front Yard (ft.):</u>	10	5 min.
<u>Right Yard (ft.):</u>	2.5	10 min.
<u>Left Yard (ft.):</u>	2'2"	8 (per 10.516.40) min.
<u>Rear Yard (ft.):</u>	22	23 (per 10.516.40) min.
<u>Building Coverage (%):</u>	46.8	30 max.
<u>Open Space Coverage (%):</u>	>25	25 min.

C. Other Permits Required

Historic District Commission.

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.

The required relief has been amended since the legal notice was advertised to include the rear yard encroachment and increase in building coverage.

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 #6-15

Petitioners: Brian J. Bednarek & Sophie Bednarek
 Property: 10 Humphreys Court
 Assessor Plan: Map 101, Lot 43
 Zoning District: General Residence B
 Description: Construct connector between existing house and 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 10.321 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 rear yard setback of 9'± where 25' is required **and a 6' right side yard setback where 10' is required.**
3. A Variance from Section 10.521 to allow 32.0%± building coverage where 30% is the maximum allowed.

Note: The required relief has been amended to include the right side yard encroachment for the upward expansion on the existing garage.

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>	3,789.72	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,789.72	5,000 min.
<u>Street Frontage (ft.):</u>	82	80 min.
<u>Lot depth (ft.):</u>	45	60 min.
<u>Primary Front Yard (ft.):</u>	13	5 min.
<u>Right Yard (ft.):</u>	6	10 min.
<u>Left Yard (ft.):</u>	20	5 min.
<u>Rear Yard (ft.):</u>	8'3"	25 min.
<u>Building Coverage (%):</u>	31%	30% max.
<u>Open Space Coverage (%):</u>	>25%	25% min.
<u>Parking (# of spaces):</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1960	

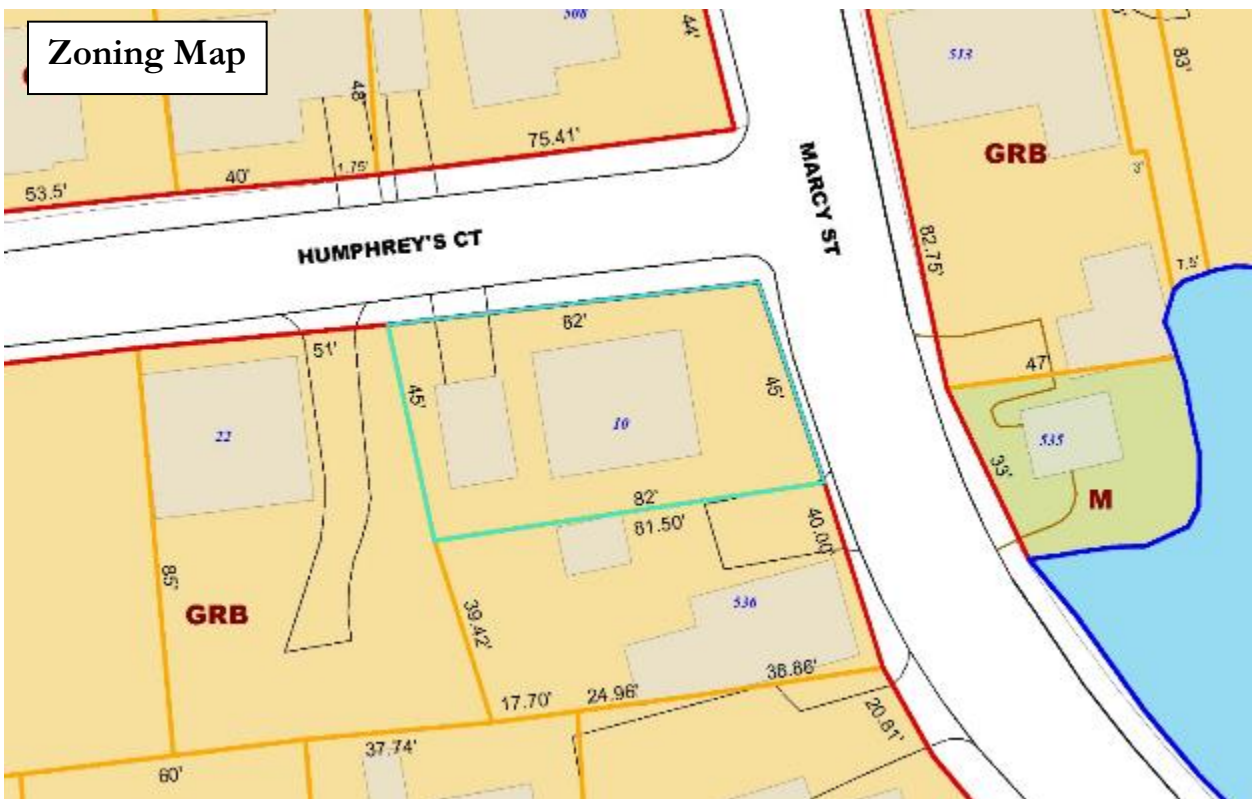
B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Primary Front Yard (ft.):</u>	19	5 min.
<u>Rear Yard (ft.):</u>	9	25 min.
<u>Right Yard</u>	6	10 min.
<u>Height (ft.):</u>	<35	35 max.
<u>Building Coverage (%):</u>	32%	30% max.
<u>Open Space Coverage (%):</u>	>25%	25% min.

C. Other Permits Required

Historic District Commission

D. Neighborhood Context



E. Previous Board of Adjustment Actions

November 15, 2011 – The Board **granted** variances to allow a lawful nonconforming building to be enlarged in a manner not in conformity with the Ordinance and to allow construction of a dormer 9'± from the rear lot line where 25' was required.

F. Planning Department Comments

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

The required relief has been amended since the legal notice was advertised to include the right yard encroachment for the expansion of the existing garage.

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 #6-16

Petitioners:	Stephen M. & Bridget M. Viens
Property:	78 Marne Avenue
Assessor Plan:	Map 222, Lot 40
Zoning District:	General Residence A
Description:	Single story right side addition.
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"> 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 rear yard setback of 15.9'± where 20' is required.

A. Existing Conditions

	Existing	Permitted / Required
<u>Land Use:</u>		
<u>Lot area (sq. ft.):</u>	8,712.00	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,712.00	7,500 min.
<u>Street Frontage (ft.):</u>	Ok	100 min.
<u>Lot depth (ft.):</u>	Ok	70 min.
<u>Primary Front Yard (ft.):</u>	>15	15 min.
<u>Secondary Front Yard (ft.):</u>	>15	15 min.
<u>Right Yard (ft.):</u>	>10	20 min.
<u>Rear Yard (ft.):</u>	11.8	10 min.
<u>Height (ft.):</u>	Ok	35 max.
<u>Building Coverage (%):</u>	17.90%	25 max.
<u>Open Space Coverage (%):</u>	72.30%	30 min.
<u>Parking (# of spaces):</u>	2	2 min.
<u>Estimated Age of Structure:</u>	1950	

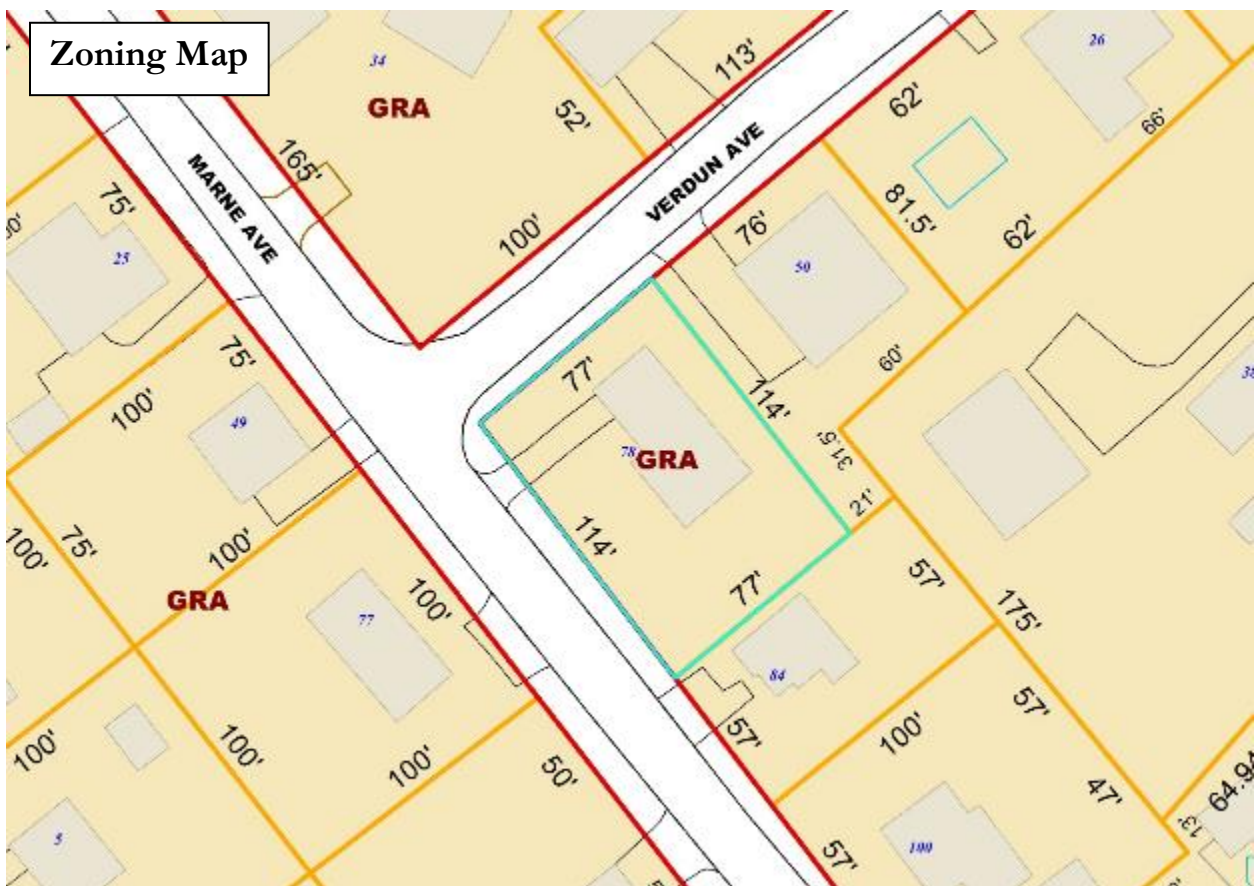
B. Proposed Changes

	Proposed	Permitted / Required
<u>Primary Front Yard (ft.):</u>	>15	15 min.
<u>Left Yard (ft.):</u>	11.3	10 min.
<u>Rear Yard (ft.):</u>	15.9	20 min.
<u>Height (ft.):</u>	18	35 max.
<u>Building Coverage (%):</u>	23.7%	25 max.
<u>Open Space Coverage (%):</u>	67%	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

 - (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 #6-17

Petitioners:	Eric & Joan Landis
Property:	540 Marcy Street
Assessor Plan:	Map 101, Lot 79
Zoning District:	General Residence B
Description:	Replace existing shed with two-car, one story 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 3'± rear yard setback where 25' 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>	5,000	6,882 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,000	6,882 min.
<u>Street Frontage (ft.):</u>	80	90 min.
<u>Lot depth (ft.):</u>	60	89 min.
<u>Primary Front Yard (ft.):</u>	5	11.5 min.
<u>Right Yard (ft.):</u>	10	21 min.
<u>Left Yard (ft.):</u>	10	21 min.
<u>Rear Yard (ft.):</u>	25	25 min.
<u>Height (ft.):</u>	35	31'-8" max.
<u>Building Coverage (%):</u>	30	19.82 max.
<u>Open Space Coverage (%):</u>	25	41.62 min.
<u>Parking (# of spaces):</u>	2	4 min.
<u>Estimated Age of Structure:</u>	2004	

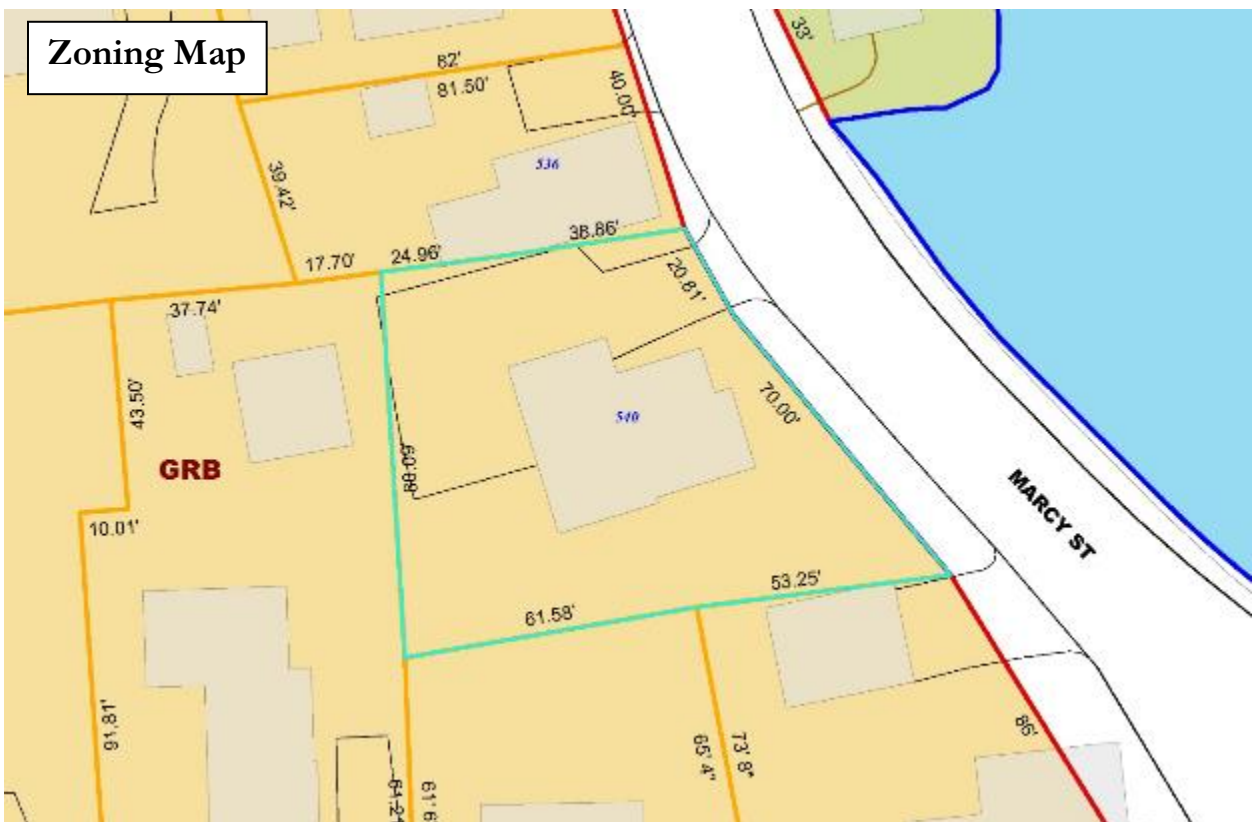
B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Right Yard (ft.):</u>	10	31'1" min.
<u>Left Yard (ft.):</u>	10	24'7" min.
<u>Rear Yard (ft.):</u>	25	3 min.
<u>Height (ft.):</u>	35	<35 max.
<u>Building Coverage (%):</u>	30	25.8 max.
<u>Open Space Coverage (%):</u>	25	47.6 min.

C. Other Permits Required

Historic District Commission

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 #6-18

Petitioners:	Seacoast Trust, LLP, Stonegate Construction, LLC, applicant
Property:	150 US Route One By-Pass
Assessor Plan:	Map 231, Lot 58
Zoning District:	Single Residence B
Description:	Construct three-story, 30 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> <ol style="list-style-type: none"> 1. A Special Exception under Sections 10.440 and 10.335 to allow a lawful nonconforming use to be changed to another nonconforming use. <p><i>If the Special Exception for the proposed use is not granted, the following are requested:</i></p> <ol style="list-style-type: none"> 2. A Variance under Section 10.440 to allow a multi-family dwelling in a district where the use is not permitted. 3. A Variance from Section 10.521 to allow a lot area per dwelling unit of 4,339.17± s.f. where 15,000 s.f. is required. 4. A Variance from Section 10.522 to allow a multi-family dwelling with a building length of 246'± where 160' is the maximum allowed.

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>Building Coverage (%):</u>	8.6%	20% max.
<u>Open Space Coverage (%):</u>	58.1%	40% min.
<u>Parking (# of spaces):</u>	82	min.
<u>Estimated Age of Structure:</u>	1963	

B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>	
<u>Land Use:</u>	30-unit multi-family residential building	Primarily single family residential	
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,339.17	15,000	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>	35	35	max.
<u>Building Coverage (%):</u>	15.0	20	max.
<u>Open Space Coverage (%):</u>	65.4	40	min.
<u>Parking (# of spaces):</u>	55	55	min.

C. Other Permits Required

Planning Board -- Site Plan Review

Planning Board – Wetland Conditional Use Permit

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.

May 17, 2016 – The Board **denied** a Special Exception to allow a lawful n onconforming use to be changed to another nonconforming use and, with that not granted, then considered and **denied** a Variance to allow a multifamily dwelling with 40 dwelling units; a lot area of 3,254 s.f. per dwelling unit where 15,000 s.f. was required; a structure height of 50' where 35' was the maximum allowed; and to allow a multifamily dwelling with a building length of 246' where 160' was the maximum allowed.

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.

The Board may consider whether to invoke Fisher vs. Dover before this application is considered.

“When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan.” Fisher v. Dover, 120 N.H. 187, (1980)

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

 - (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 #6-19

Petitioner:	GTY MA/NH Leasing Inc., c/o Nouria Energy Corporation
Property:	786 US Route One By-Pass
Assessor Plan:	Map 161, Lot 42
Zoning District:	General Residence A
Description:	Relocate existing free-standing sign and add changeable LED fuel price display.
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"> 1. A Variance from Section 10.1241 to allow a free-standing sign where a free-standing sign is not permitted. 2. A Variance from Section 10.1243 to allow a second free-standing sign on a lot. 3. A Variance from Section 10.1240 to allow a changeable sign where a changeable sign is not permitted. 4. A Variance from Section 10.1253.10 to allow a free-standing sign with a height of 24'10.5" ± where 7' is the maximum height allowed. 5. A Variance from Section 10.1253.10 to allow a free-standing sign with a right side yard setback of 2'± where 5' is required. 6. A Variance from Section 10.1261.10 to allow a free-standing sign to be illuminated where it is not permitted.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>	
<u>Land Use:</u>	Auto service station	Primarily residential uses	
<u>Lot area (sq. ft.):</u>	21,780	7,500	min.
<u>Aggregate Sign Area (sq. ft.) (excludes free standing sign area)</u>	17.7	24.3	max.
<u>Wall / Attached</u>			
Area (sq. ft.)	2.0	4	max.
Lighting*	No	Not permitted	
<u>Free-Standing</u>			
Area (sq. ft.)	168.0 120.5	Sign type not permitted	
Height (ft.)	50.0 24.9	7	max.
Lighting*	LED I/F	Not permitted	
Setback (ft.)	Off-site	5	min.
<u>Awning</u>			
Area (sq. ft.)	44.0	Sign type not permitted	
Height (ft.)	18.0	No requirement	
Lighting*	I/F	Not permitted	
<u>Canopy</u>			
Area (sq. ft.)	15.7	Sign type not permitted	

Height (ft.)	18.0	No requirement	
Lighting*	I/F	Not permitted	

*E=External, I/F=Internal/Florescent, I/N=Internal/Neon, H=Halo, LED=Light Emitting Diode

B. Proposed Changes

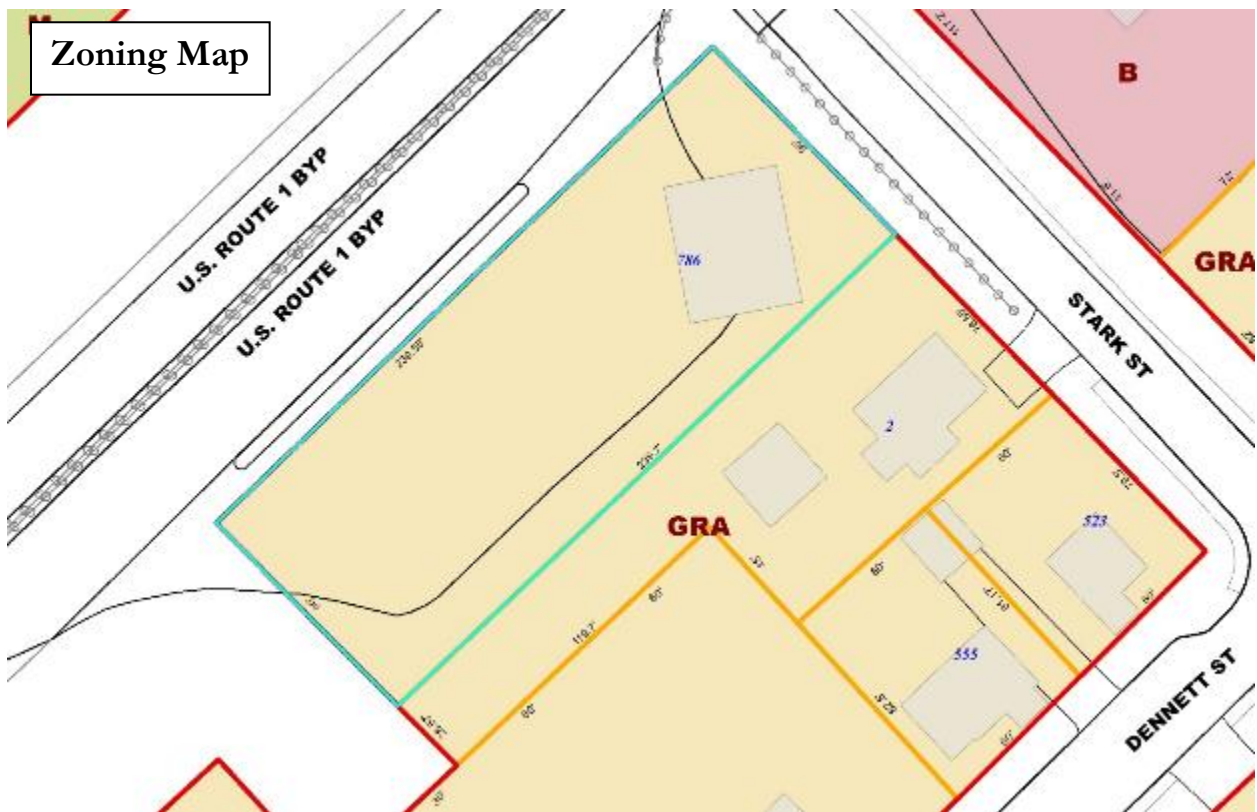
	Proposed	Permitted / Required	
<u>Free-Standing</u>			
Area (sq. ft.)	101.4	Sign type not permitted	
Height (ft.)	24.9	7	max.
Lighting	LED	Not permitted	
Setback (ft.)	2	5	min.

C. Other Permits Required

None.

D. Neighborhood Context





E. Previous Board of Adjustment Actions

June 19, 1990 – The Board **denied** requests to replace the existing nonconforming gas pump island with a new island with a front setback of 14.42’ where 20’ were required and to allow the construction of a new 28’ x 40’ canopy with a height above grade of 15.25’ and a front yard of 3.4’ where 50’ was required.

September 18, 1990 – The Board **granted** variances to allow the following: (1) construction of a gas island canopy with a 10’ front yard where 20’ were required; (2) increasing the extent of a nonconforming use of land where none may be made.

The Board **denied** a request to install three 2.5’ x 14.5’ and three 2.75’ x 2.75’ attached signs for a total of six new attached signs totaling 131.4 s.f., added to the existing five signs with an area of 181 s.f. for a total aggregate sign area of 312.4 s.f. where signs were not allowed.

November 21, 1990 – The Board **denied** variances to allow the following: (1) installation of two attached illuminated signs totaling 43.81 s.f. in addition to the existing 181 s.f. of signage for a total proposed sign area of 224 s.f. in a district where commercial establishments are not allowed signage; and (2) an increase in the extent of a nonconforming use of a structure where no increase may be made.

January 15, 1991 – The Board **denied** a variance to allow the installation of two attached illuminated signs on a new canopy with a total area of 43.81 s.f. of proposed signage in addition to 224 s.f. of existing signage resulting in a total sign area of 267.81 s.f. in a residential district where commercial establishments were not allowed signage.

February 20, 1991 – The Board **denied** a variance to allow the removal of three existing signs with an area of 77 s.f. and the installation of two attached illuminated canopy signs (36 s.f. and 7 s.f.) and a 22 s.f. free-standing sign for a proposed total on the property of 265 s.f.² in a residential district where commercial businesses were not allowed signage.

June 18, 1991 – The Board **granted** a variance to allow the removal of three existing signs totaling 77 s.f. in area and the installation of two attached illuminated canopy signs (43 s.f.) and 22 s.f. freestanding sign for a proposed total on the property of 265 s.f. where the current total of 277 s.f. exists on the property in a residential district where commercial businesses are not allowed signage.

December 17, 2013 – The Board **tabled** to the January meeting the following variance requests: 1) to allow a nonconforming sign to be altered or reconstructed without bringing the sign into conformity with the Ordinance; 2) to allow a free-standing sign with an area of 168 s.f. where a free-standing sign was not permitted; 3) to allow a sign height of 50' where 7' was the maximum allowed and front yard setback of 0' where 5' was required; and 4) to allow direct illumination where sign illumination was not allowed.

January 27, 2014 – The Board **granted** the above request with the **stipulations** that a) The lighting on the canopy banding that faces Dennett Street would be permanently turned off and; that there would be no moving, blinking or scrolling lights or any change to the sign except as necessary to change the pricing.

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 #6-20

Petitioners:	Anthony DiLorenzo, c/o Portsmouth Chevrolet, owner, Portsmouth Used Car Superstore, Inc., applicant
Property:	2219 Lafayette Road
Assessor Plan:	Map 272, Lot 1
Zoning District:	Gateway
Description:	Appeal Administrative Decision.
Requests:	The actions necessary to grant the required relief from the Ordinance, including the following: 1. Granting an Appeal of an Administrative Decision of a Code Official in the application of Section 10.1280 of the Ordinance.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>	
<u>Land Use:</u>	Automobile dealership	Mix of commercial and mixed use	
<u>Lot area:</u>	18 acres	43,560	min.
<u>Free-Standing</u>			
Area (sq. ft.)	128	100	max.
Height (ft.)	19	20	max.
Lighting*	Yes	Yes	
Setback (ft.)	TBD	10	min.

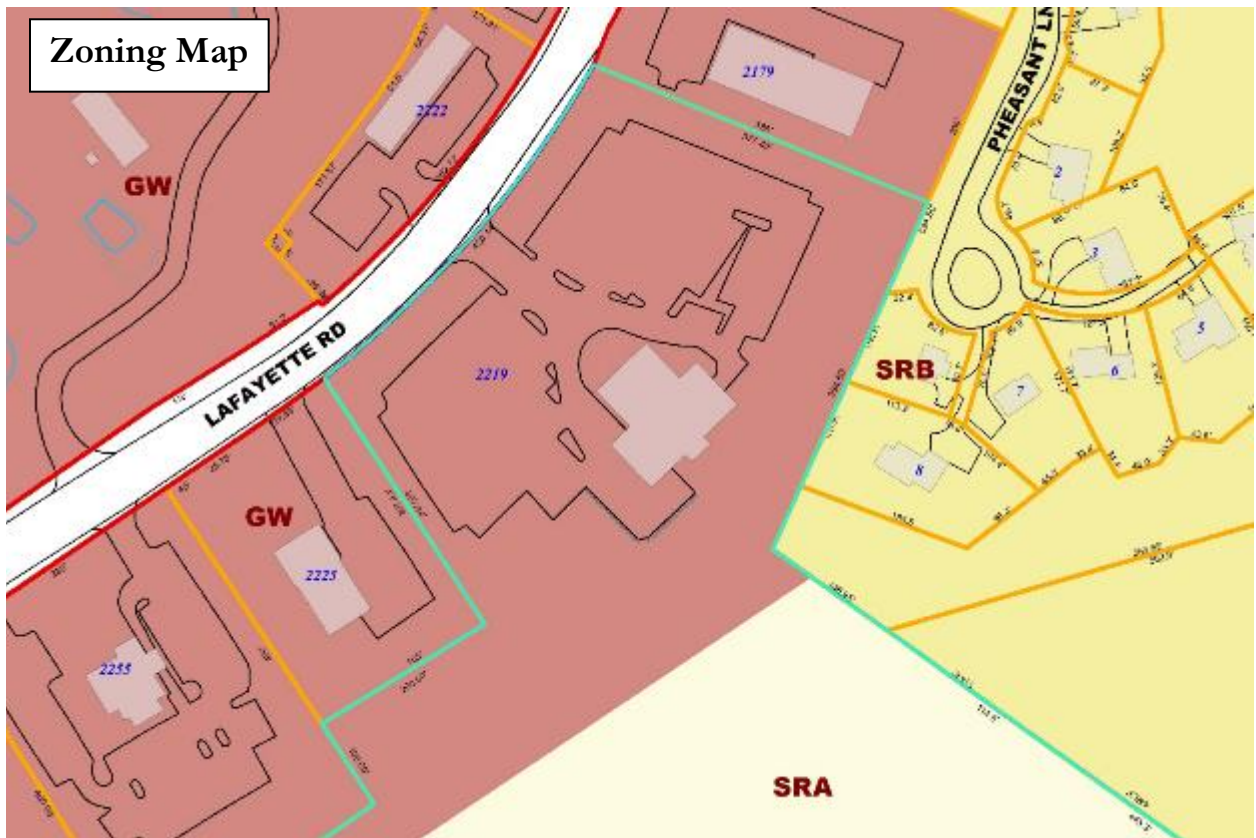
*E=External, I/F=Internal/Florescent, I/N=Internal/Neon, H=Halo, LED=Light Emitting Diode

B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>	
<u>Free-Standing</u>			
Area (sq. ft.)	128	100	max.
Height (ft.)	19	20	max.
Lighting	Yes	Yes	
Setback (ft.)	TBD	10	min.

C. Other Permits Required

D. Neighborhood Context



E. Previous Board of Adjustment Actions

June 8, 1964 – An appeal regarding the Code Official’s decision denying a light industrial use in a Commercial Zone was **withdrawn**.

August 28, 1973 – The Board **granted** a variance to construct an addition to an existing home and extend a nonconforming use.

June 29, 1976 – The Board **denied** the following requests: 1) to place a mobile home within a General Business District on a nonconforming residential property; 2) to locate a mobile home outside of a mobile home park; and 3) to place a mobile home on an existing independent lot of 10,000 s.f.

July 20, 1976 – The Board **denied** a request for rehearing regarding the above.

October 25, 1983 – The Board **granted** variances to allow construction of a structure 44’ in height where 35’ was the maximum permitted and to allow parking in an Industrial District with the stipulation that the proposal receive Site Review approval.

(This is for the same owner as previous requests but appears to be for the establishment of Water Country-doesn’t appear to have happened on this lot)

June 15, 1993 – The Board **granted** variances to allow the following: a) the sale of automobiles and motorcycles with a display area 40’ from the front property line and less than 100’ from property zoned residential; 2) indoor repair of motorcycles in an existing structure with a 0’ front yard where 50’ was required; and 3) an increase in the extent of a nonconforming use or structure. The variances were granted with the **stipulations** that vehicles on the property be inspectable and operable and that there be no more than 12 each cars and motorcycles on the property at any one time. (Subsequent to this decision, a Notice of Violation of the stipulations attached to the variances was issued by the Chairman of the Board of Adjustment.)

September 19, 2000 – The Board **denied** a request to allow a 261.8 s.f. attached sign creating an aggregate of 393.8 s.f. where 200 s.f. was the maximum allowed.

March 24, 2005 – The Board **denied** a request to allow a 7.6 s.f. free-standing A-frame sign creating 207.6 s.f. of aggregate signate where 200 s.f. was the maximum allowed.

F. Planning Department Comments

- ✓ Application meets submission requirements.

G. Review Criteria

The Board should vote to grant or deny the appeal of the administrative decision.

Case #6-21

Petitioners:	Ryan P. & Jennifer L. Smith
Property:	100 Peverly Hill Road
Assessor Plan:	Map 243, Lot 51
Zoning District:	Single Residence B
Description:	Construct a front porch and new second story.
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"> 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 front yard setback of 0'± for the addition and 5'11" ± for the porch where 30' is required for each.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two-family residential	Primarily single family residential
<u>Lot area (sq. ft.):</u>	9,583.20	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,791.60	15,000 min.
<u>Street Frontage (ft.):</u>	120	100 min.
<u>Lot depth (ft.):</u>	80	100 min.
<u>Front Yard (ft.):</u>	9	30 min.
<u>Right Yard (ft.):</u>	40	10 min.
<u>Left Yard (ft.):</u>	40	10 min.
<u>Rear Yard (ft.):</u>	43	30 min.
<u>Height (ft.):</u>	1.75 stories	35 max.
<u>Building Coverage (%):</u>	11.63	20 max.
<u>Open Space Coverage (%):</u>	80.02	40 min.
<u>Parking (# of spaces):</u>	4	min.
<u>Estimated Age of Structure:</u>	1924	

B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Front Yard (ft.):</u>	0 (addition) 5'11" (porch) 19'7" (deck)	30 min.
<u>Right Yard (ft.):</u>	28'6"	10
<u>Left Yard (ft.):</u>	33' 3"	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.

C. Other Permits Required

- Planning Board – Wetland Conditional Use Permit

D. Neighborhood Context

Aerial Map (view from north)



Zoning Map



E. Previous Board of Adjustment Actions

November 24, 2015 The Board voted to **table** for more information a request to allow two residential dwelling units and a two story deck addition requiring the following variances: a) to allow a lawful nonconforming building or structure to be extended, enlarged or structurally altered except in conformance with the Ordinance; 2) to allow a two-family dwelling where only a single family dwelling was allowed; to allow a 4,791.6 s.f. lot area per dwelling unit where 15,000 s.f. was required; and 4) a 21' front yard setback where 24' was required for an unenclosed deck.

January 19, 2016 – The Board **granted** the above request for variances.

F. Planning Department Comments

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

The applicant is permitted to replace the roof and reconstruct the ½ story in kind (with no additional height or expansion of the footprint) without seeking a variance as this is required in order to bring the building in compliance with current building codes. The variance is required because of the applicant's desire to create a full second story.

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.*