TO: Zoning Board of Adjustment
FROM: Juliet Walker, Assistant Planning Director
DATE: October 13, 2016
RE: October 18, 2016 Zoning Board of Adjustment Meeting

OLD BUSINESS

1. 393 New Castle Ave
2. 806 Route 1 Bypass
3. 246 Austin St

NEW BUSINESS

4. 114 Gosling Rd
5. 380 Richards Ave
6. 740 Woodbury Ave
7. Rockingham Ave
8. Chevrolet Ave
9. 29 Burkitt St
10. 600 Lafayette Rd
11. 736 Middle St

OLD BUSINESS

Case #9-1

Petitioner:	393 New Castle Avenue LLC
Property:	390 New Castle Avenue
Assessor Plan:	Map 207, Lot 6
Zoning District:	Single Residence B
Description:	Raise existing structure 18"± and convert to dwelling unit.
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, reconstructed, enlarged or structurally altered except in conformity with the Ordinance. 2. Variances from Section 10.521 to allow the following: a) 96'± continuous street frontage where 100' is required. b) A lot depth of 40'± where 100' is required. c) A rear yard setback of 2'± where 30' is required; *d) A front yard setback of 25' where 30' is required; and* *e) Minimum lot area per dwelling unit of 3,580± s.f. where 15,000 s.f. is required.*

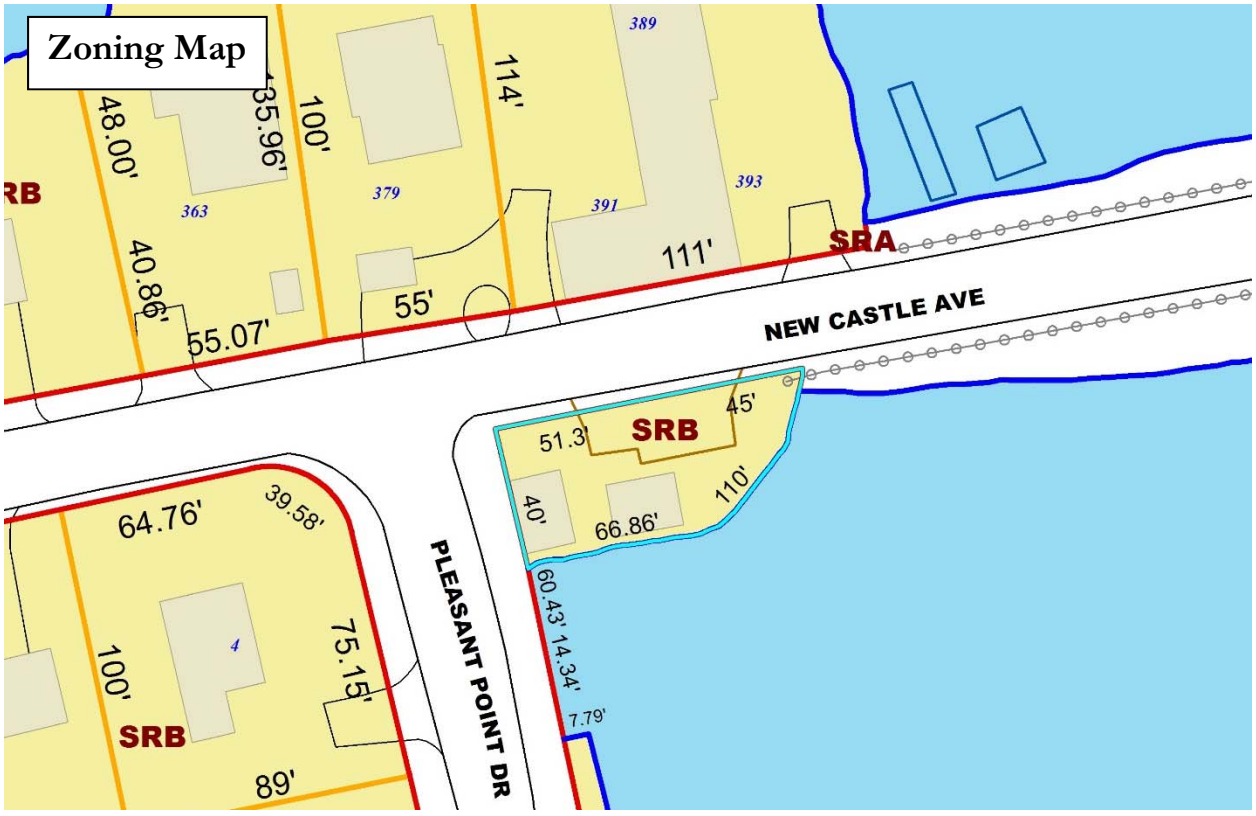
Existing and Proposed Conditions

	Required	Existing	Proposed	
Land Use:	Primarily single family residences	Accessory storage / garage	Single family residence	
Lot area (sq. ft.):	15,000	3,580	3,580	min.
Lot Area per Dwelling Unit (sq. ft.):	15,000	N/A	3,580	min.
Street Frontage (ft.):	100	96	96	min.
Lot depth (ft.):	100	40	40	min.
Primary Front Yard (ft.):	30	25	25	min.
Right Yard (ft.):	10	<10	>10	min.
Left Yard (ft.):	10	>10	>10	min.
Rear Yard (ft.):	30	2	2	min.
Height (ft.):	35	15	16.5	max.
Building Coverage (%):	20%	15.64	15.64	max.
Open Space Coverage (%):	40%	>40	>40	min.
Parking (# of spaces):	2	3	3	min.

Other Permits Required

- Planning Board – Wetland Conditional Use
- Historic District Commission – Certificate of Approval

Neighborhood Context



Previous Board of Adjustment Actions

February 20, 1986 – A letter was sent to the owner of the property advising that the **use of the property as a residence was a violation** of City regulations. On March 27, 1986, the City Attorney outlined further action that might be taken if the use as a residence continued.

June 9, 1987 – The Board **denied** a request to establish a single family use in an existing structure on a 3,580 s.f. lot where the minimum lot area required was 20,000 s.f. and to allow a 49' lot depth where 80' was required.

May 21, 1996 - The Board **denied** a request to expand the use of a personal library by making interior changes including a bathroom in an existing building currently used for personal storage.

Planning Department Comments

The Board voted to continue this petition from the September meeting so that files could be reviewed and information gathered relative to the applicability of the case law in Fisher v. Dover. The Board also requested a general layout of the proposed space from the applicant. The petition was also re-advertised to accurately reflect all required variances for the applicant's proposal. A memorandum from the City's legal department along with excerpts from the June 1987 petition is attached to this staff report.

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.

R.

CITY OF PORTSMOUTH

City Hall, 126 Daniel Street
Portsmouth, New Hampshire 03801
(603) 431-2000, ext. 200

REGULAR MEETING
BOARD OF ADJUSTMENT
PORTSMOUTH, NEW HAMPSHIRE

7:00 P.M. **CITY COUNCIL CHAMBERS** **JUNE 9, 1987**

MEMBERS PRESENT: Chairman W. Peter Torrey; Thomas J. Morgan, Vice-Chairman; Nathaniel Holloway; William A. Thomson, Jr.; Paul Connolly; George Savramis; Nicholas Moskevitch, Jr., alternate; and Linda Panori, alternate.

ALSO PRESENT : Steve Matatics, Zoning Officer; John J. 'Larry' Grattan, Zoning Officer; David Holden, Planner.

* *

I. OLD BUSINESS

A. Request for Rehearing - MacLeod Enterprises

Chairman Torrey and Nicholas Holloway did not vote on this rehearing because they did not vote at the public hearing.

George Savramis MOVED that the petition for rehearing be granted; Mr. Moskevitch SECONDED. Based on the letter received indicating new evidence, relief asked for is considerably less from height of 60'; therefore, the petition should be granted. No discussion from Mr. Moskevitch other than agreeing with Mr. Savramis.

Thomas Morgan regarded the Board's decision was proper and would not support the motion. The new evidence is the revision in the height of the building from 60' to 44'. The Board is being asked to hear what was previously advertised, but understand the applicant could inform the Board of the change in the plans.

The motion was denied by a 3-2 vote.

* *

II. PUBLIC HEARINGS

A) Petition of Anthony LaCava for property located at 390 New Castle Avenue wherein a Variance from Article III, Section 10-302 is requested to allow the following: a) the establishing of a single family use in an existing structure and being sited on a 3,580 s.f. lot in a district where a minimum lot area of 20,000 s.f. is required for a single family use; and, b) to allow said lot to have a lot depth of 49' where a minimum lot depth of 80' is required. Said property is shown on Assessor Plan R-7 as Lot 006 and lies within a Single Residence II district.

SPEAKING FOR THE PETITION

Atty. Tom Dudley, speaking on behalf of the petition, explained that Joseph Culp desired to purchase the property if relief was granted. The land and building are non-conforming; and, the building has been there since 1939. Mr. Culp will make extensive improvements to the existing building and this will be his residence. The land and building have been taxed as a residence since 1982. The City asked the tenants to leave the premises because there is no running water nor sewerage to lot.

The hardship is inherent in property itself. The river abutts one side and two sides abut city streets. Reasonable use is evident because there is an interested buyer. An easement is attached to the land that will remain intact that grants parking rights to the owners directly across the street. The deed does not specific square footage; but it is assumed there is less land then assumed. The property will be improved and will enhance the surrounding property values.

Marjorie Fay, real estate agent, had at lease three persons that say this is a valuable lot. There are plans to construct a seawall. It is in the public interest to return this lot to a residence than just a parking lot.

Joe Culp, option holder, will maintain two parking spaces for house across the street because there is ample space and it will not interfere with his use.

SPEAKING AGAINST THE PETITION

Charlie Vaughn, 50 Pleasant Point Drive, concerned that a lot of this size being utilized next to wetlands. At mean high water tide, the water runs along the property line and at times, runs over the land. He is sure that if you dig three feet down on the land you would hit water. There is less land for the owner because the City requires a right of way for the city streets.

Alvin Taylor, 4 Boyan Place, explained that the use as a dwelling has been an illegal use. The easement does not specify how many vehicles can park there. Traffic exiting from Pleasant Point Drive has limited visibility due to the vehicles parked on the lot. This is not a reasonable request and indicates no evidence to support it. The owner has created his own hardship when he purchased the property.

David Straus, Robin Lane, believes the lot is too small. He explained that the existing building was intended for a toll keeper when it was a toll bridge.

Robert Stuart, 65 Pleasant Point Drive, feels it is an eye sore because the property has not been maintained. It would be a detriment to the neighborhood to allow this request.

Stuart Hall, 4 Pleasant Point Drive, believes the lot should remain open space because the building will eventually collapse due to its poor condition.

Ken Rothwell, 393 New Castle Avenue, stated that this lot is half the size of other lots in the neighborhood and doubt as to the depth of the lot. There will be no benefit to the public interest. It is a self created hardship and there are alternate uses. He submitted a petition from the neighborhood.

DECISION OF THE BOARD

Thomas Morgan MOVED to deny both parts of the Variance; Mr. Holloway SECONDED. The spirit and intent of the ordinance is not met because the lot is one-fifth of what is required. The present owner created his own hardship when he divided up the property. Mr. Holloway feels it will diminish the make up of the lot. Mr. Connolly supports the motion because of the abutting land owners state granting of this request will diminish property values and will have an adverse affect. The lot is a fraction of the size of lots in the area. With the attached easement, it restricts the use of the parcel and lessens the actual lot size. Mr. Thomson feels the deed does not clearly state how much land is to be used for parking. The motion carried unanimously.

* *

B) Petition of Helen Winebaum, owner, and New England Telephone Company, applicant, for property located at 312 Miller Avenue wherein the following are requested: 1) a Variance from Article IV, Section 10-402(1) to allow the construction of a 51"x53"x22" electronic equipment cabinet with a 7' left yard and a 7' rear yard where a minimum yard of 10' is required for both; and, 2) a Special Exception as allowed by Article II, Section 10-205(26) to permit said use to be established. Said property is shown on Assessor Plan U-31 as Lot 29 and lies within a General Residence district.

SPEAKING FOR THE PETITION

Paul Bendrett, with New England Telephone, reviewed the proposed use of cabinet. No utility hook-ups required and will be constructed on a concrete slab. There will be no noise or high voltage extending from this building. There is a hedge present for screening from neighborhood. This building will be a minimal infringement to neighbors. This building will house only telephone lines coming in from underground.

CITY OF PORTSMOUTH

City Hall, 126 Daniel Street
Portsmouth, New Hampshire 03801
(603) 431-2000

June 11, 1987

Thomas M. Dudley, Esquire
Sanderson and Dudley
134 Pleasant Street
Portsmouth, NH 03801

Re: Property at 390 New Castle Avenue

Dear Attorney Dudley:

The Board of Adjustment at its regular meeting of June 9, 1987, and after due Public Hearing, completed its consideration of your application wherein a Variance from Article III, Section 10-302 is requested to allow the following: a) the establishing of a single family use in an existing structure and being sited on a 3,580 s.f. lot in a district where a minimum lot area of 20,000 s.f. is required for a single family use; and, b) to allow said lot to have a lot depth of 49' where a minimum lot depth of 80' is required. Said property is shown on Assessor Plan R-7 as Lot 006 and lies within a Single Residence II district.

As a result of such consideration, it was voted that your request be denied for the following reasons: 1) the owner created his own hardship when he transferred the property; 2) there would be an adverse effect or diminution in values of the surrounding properties; and, 3) the request is contrary to the spirit of the Zoning Ordinance.

Please be advised that under NH RSA 677:2 any person or party to the action or proceeding of the Board of Adjustment may ask for a rehearing within twenty days of the decision or order of the Board of Adjustment.

Respectfully submitted,

W. Peter Torrey

W. Peter Torrey, Chairman
Board of Adjustment

WPT/ca

cc: Richard A. Hopley, Building Inspector
Anthony LaCava
Joseph Coulp

431-2000 X215 X243 RECEIVED APR 23 1987

CITY OF PORTSMOUTH APPLICATION FOR BUILDING PERMIT

Please Print In Ink -- Complete All Blanks Or Use N/A

Application For ✓ Building Permit Application Received 4/23/87
✓ Change In Land Use Accepted Planning 1 1

Est. Cost of All Construction $ 2,000 Fee $ 10.00 Paid 1 1 Cash ____
Check # ____

****

1. Owner TONY LACAVA 2. Applicant JOSEPH COULP (OPTION-Holder)
Address 122 MECHANIC ST Address 219 LANDING RD, HAMPTON
Phone 436-1821 Phone 926-3879*

3. Lessee NA Address NA Phone NA

4. Location of Work 390 NEW CASTLE AVE Plan # R07 Lot # 006
Zoning District SR II Historic A ____ Historic B ____

5. Lot: Area 3580 Front Boundary 96'3" Rear Boundary 110'
Left Boundary ~~NA~~ 49± Right Boundary 40'

6. Existing Use of Land or Building VACANT ONE FAMILY HOME

7. Proposed Use of Land or Building OCCUPIED SINGLE FAMILY HOME

8. Residential - Total No. of Dwelling Units Existing 1 Total S.F. 290
Total No. of Dwelling Units Proposed 1 Total S.F. 290

9. Commercial/Other - Total No. of Structures Existing NA Total S.F. NA
Total No. of Structures Proposed NA Total S.F. NA

10. Size of All Existing Structure(s) - (For 3 Or More Structures Please Attach Sheet)
Structure 1 14'6" x 20, Bldg. Footprint Area 290, Stories 1, Basement CRAWL
Structure 2 14'5 x 18'4", Bldg. Footprint Area 265, Stories 1, Basement NA

11. Size of All Proposed Structure(s) - (For 3 Or More Structures Please Attach Sheet)
Structure 1 ~~NA~~ x ____, Bldg. Footprint Area NA, Stories ___, Basement ___
Structure 2 ____ x ____, Bldg. Footprint Area ____, Stories ___, Basement ___

12. Proposed Yard Setbacks 1: Front 24.7' Rear 6' Left 30' Right 10'
2: Front ____' Rear ____' Left ____' Right ____'

13. Provide complete Description of Work to be Done (Be Specific, Attach Sheet If Reqd.)
RENOVATE EXISTING VACANT HOUSE INTO A SINGLE FAMILY HOME. REMOVE ANY EXISTING WIRING. ADD NEW ELECT. SERVICE AND WIRING, NEW PLUMBING FOR BATH/KITCHEN. STUD IN BATH. ADD RELATED SHEETROCKING. INSULATE WALLS AND CEILING WHERE NEEDED. HOOK-UP TO TOWN WATER/SEWER. INSTALL A Hot WATER HEATER & ELECT. HEAT.

14. Contractor: UNKNOWN Address: NA Phone: NA

15. PROVIDE RELATED PARKING. INSTALL FENCE FROM DRIVEWAY ALONG NEIGHBORS HOUSE

15. Existing Building Data: (Check Applicable Type(s)) NA _____

Foundation: Stone _____, Block ✓, Conc._____, Other _____
Floor Framing: Wood ✓, Steel _____, Conc._____
Wall Framing: Wood ✓, Block _____, Metal _____, Conc._____
Roof Framing: Wood ✓, Steel _____, Conc._____

Fire Detection System: No ✓ Yes _____ (Local or Master), Contractor NA
Sprinkler System: No _____ Yes _____ (Wet or Dry), Contractor NA

16. Proposed Building/Addition/Renovation Data: (Check Applicable Type(s))

Foundation: Block NA, Conc._____, Other _____, Depth Below Grade _____
Floor Framing: Wood NA, Steel _____, Conc._____, Joist Size _____
Joist Spacing _____, Max Span _____
Wall Framing: Wood ✓, Steel _____, Block _____, Conc._____,
Stud Spacing 16", Stud Size 2x4
Ceiling/Roof Framing: Wood _____, Steel _____, Conc._____, Rafter Size ____,
NA Rafter Spacing _____, Max Span _____
Lumber Species Used: Spruce _____, Hem/Fir _____, Other (Specify) _____

Insulation Amount: Walls _____, Ceiling _____, Floors _____

Fire Detection System: No X, Yes ____ (Local or Master)
Heat Detectors _____, Smoke Detectors _____
Contractor _____
Sprinkler System: No X, Yes _____ (Wet, Dry), Contractor NA

17. Plumbing Work: No _____, Yes X, Contractor UNKNOWN

18. Electrical Work: No _____, Yes X, Contractor UNKNOWN

19. Plans Submitted: Site ✓, Framing _____, Floor ✓, Elec _____,
Plumbing _____, Eng. Site _____, Rolled Plans _____,
Other _____

20. I certify that the information given is true and correct to the best of my knowledge. No change from the above information will be made without approval of the Building Inspector. Construction activities shall not commence until the Building Permit is issued.

I realize that when all necessary approvals have been acquired, a Building Permit may be granted by the Chief Building Inspector to allow construction or change in land use in conformance with this application and those plans/specifications submitted in support thereof only.

I further acknowledge that the proposed structure or improvements shall not be occupied or otherwise utilized without the issuance of a Building Permit Certificate of Occupancy by the Chief Building Inspector.

Joseph A Coupe 4/23/87 OPTION HOLDER
Signature of Applicant Date If Not Owner, State Relationship

This project is subject to the following reviews and approvals prior to the issuance of a Building Permit:

____Site Review Committee - Result _____

_____

X Zoning Board of Adjustment - Result _____

_____

____Historic District Commission - Result _____

_____

____Building Code Board of Appeals - Result _____

_____

____Other _____

_____

BUILDING USE GROUP _____, BUILDING CONSTRUCTION CLASSIFICATION _____

	Initials	Date Denied	Date Approved
Building Inspector	_____	_____	_____
Comment _____			
Fire Department	_____	_____	_____
Comment _____			
Planning Department	OMH	4/28/87	_____

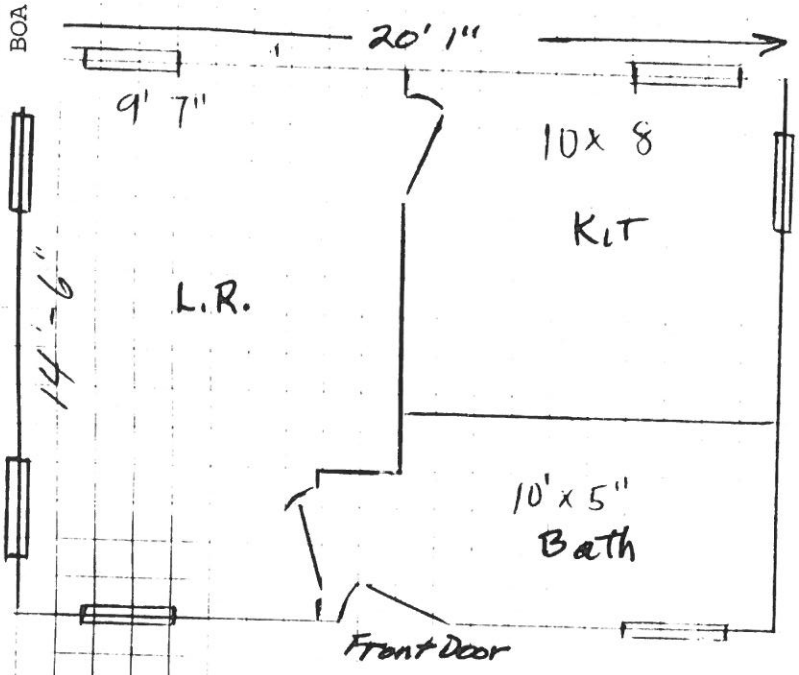
Comment Variances needed to establish a residential use; and, inadequate lot area for this district.

All conditions and requirements having been met, and there being no known outstanding violations to local codes or ordinances, I hereby approve the issuance of this Building Permit.

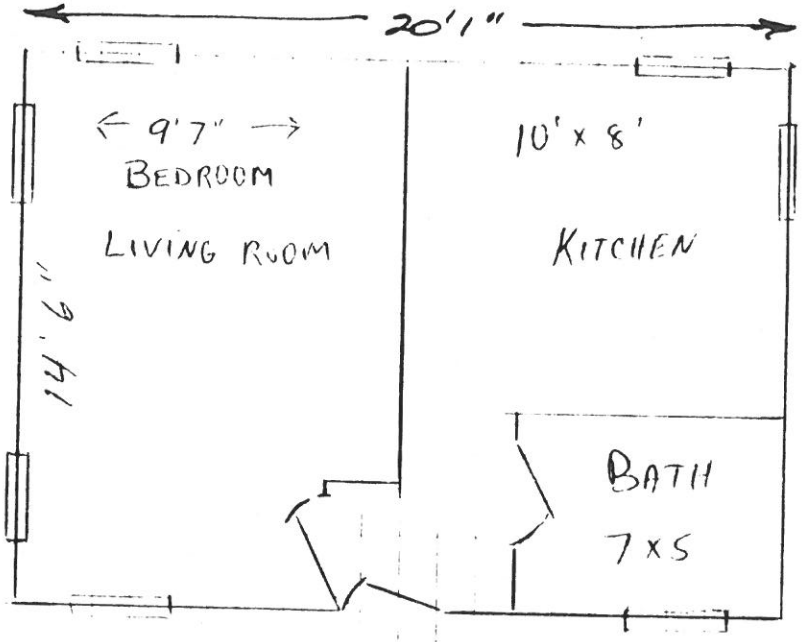
_____ / /

Permit Issuance Approved By Chief Building Inspector Date

EXHIBIT II.A.II.
ACAVA/COULP
390 NEW CASTLE ROAD
BOA MTG 6/9/87



EXISTING FLOOR PLAN
(1st floor)



PROPOSED FLOOR PLAN
(1st Floor)

New Castle Ave.

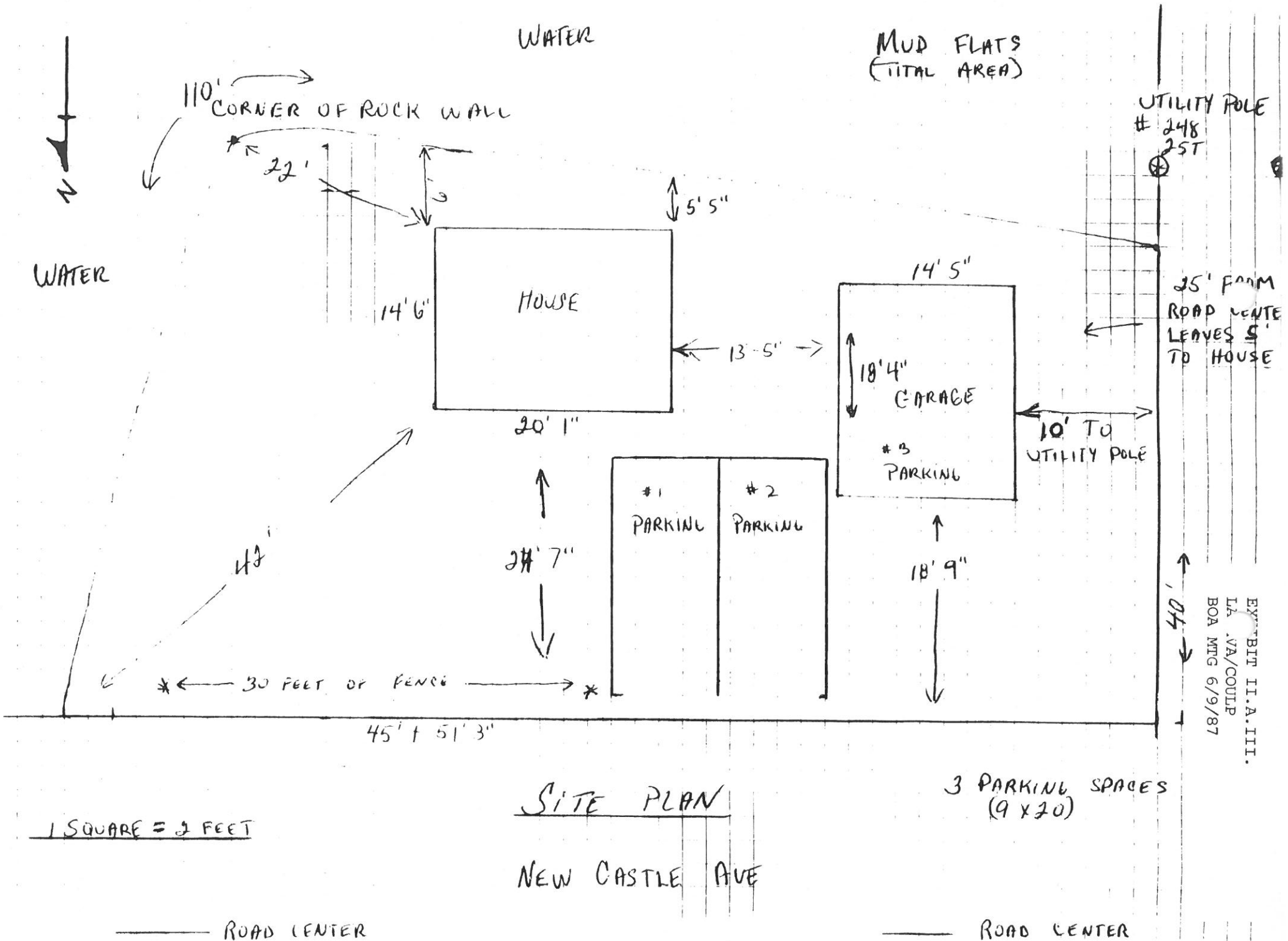


EXHIBIT II.A.III.
LA .VA/COULP
BOA MTG 6/9/87

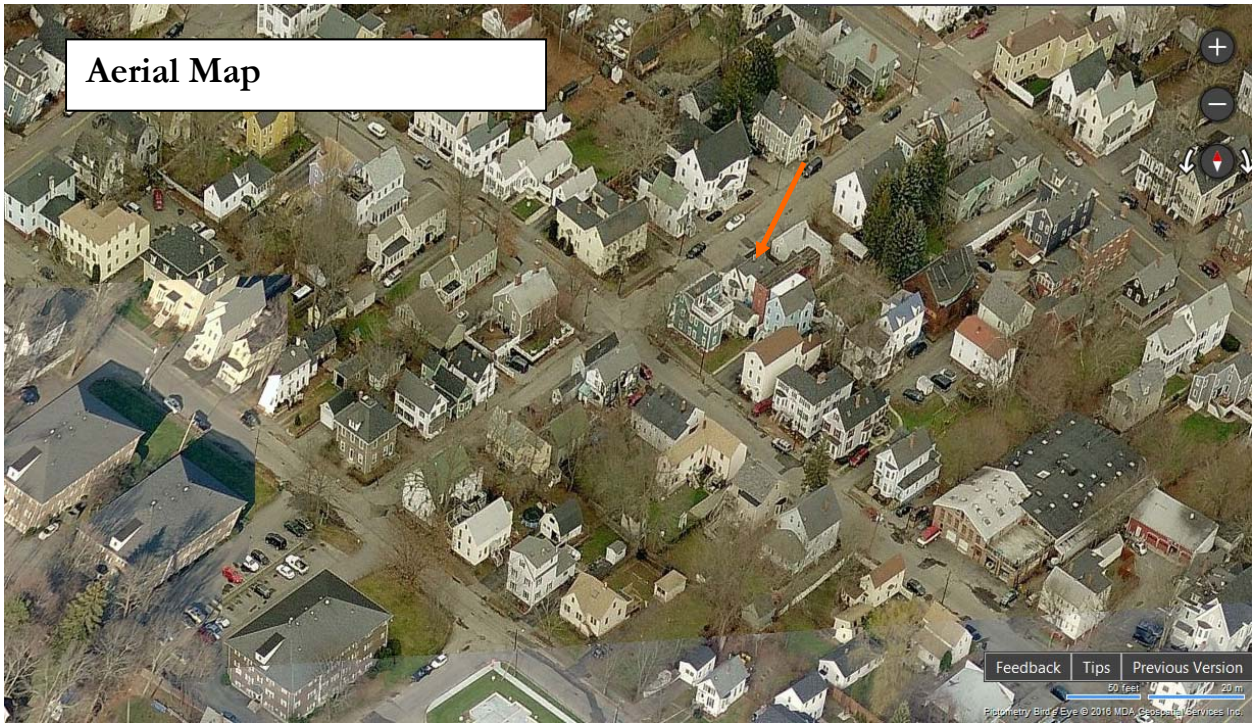
Case #9-11

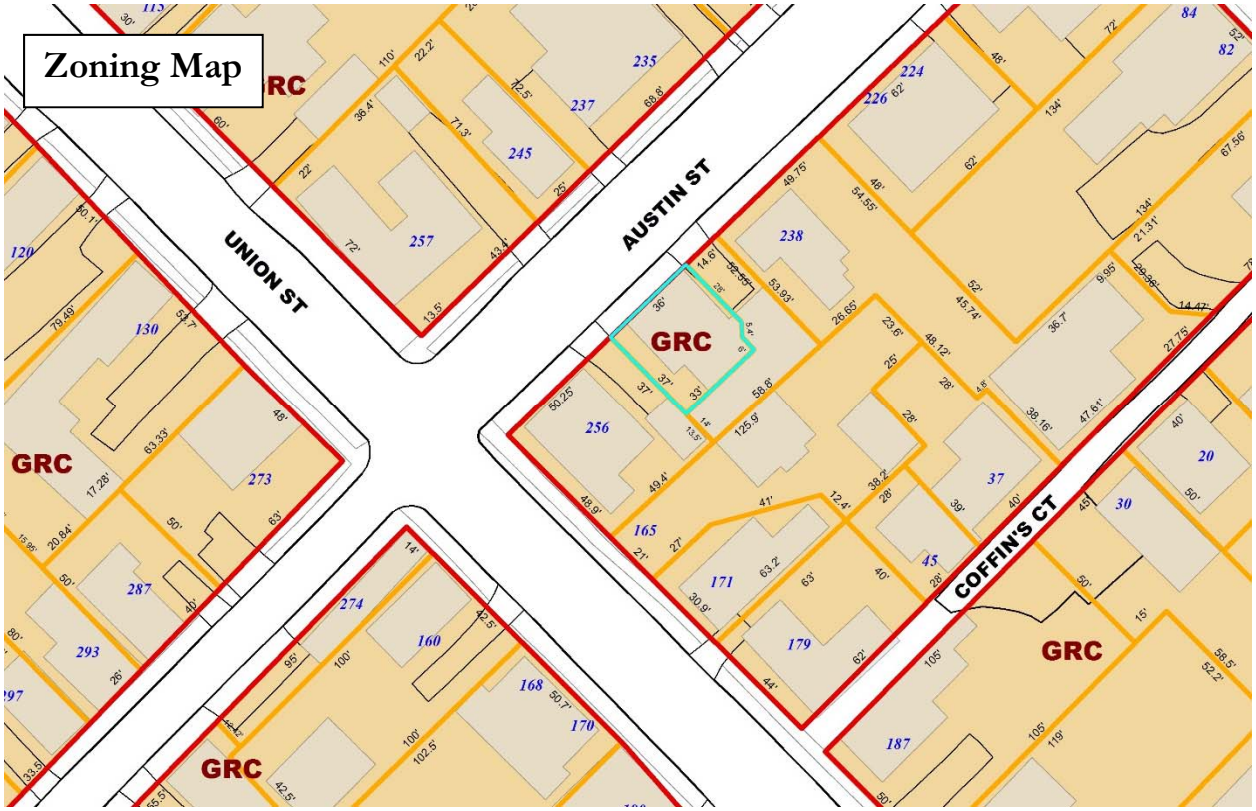
Petitioner:	Michael F. McNeilly, owner, Alden Properties, LLC, applicant
Property:	246 Austin Street
Assessor Plan:	Map 135, Lot 63
Zoning District:	General Residence C
Description:	Vertical expansion of existing two-family dwelling.
Requests:	The Variances and/or Special Exceptions necessary to grant 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, reconstructed, enlarged or structurally altered except in conformity with the Ordinance. *2. Variances from Section 10.521 to allow the following:* *a) A 0'± front yard setback where 5' is required;* *b) A 3.75'± right side yard setback where 10' is required;* *c) A 2.6'± left side yard setback where 10' is required; and* *d) 2'± rear yard setback where 20' is required.*

Existing Conditions and Proposed Changes

	Permitted / Required	Existing	Proposed	
Land Use:	Primarily residential uses	Two-family dwelling	No Change (NC)	
Lot area (sq. ft.):	3,500	1,306.80	NC	min.
Lot Area per Dwelling Unit (sq. ft.):	3,500	1,306.80	653.40	min.
Street Frontage (ft.):	70	35.93	NC	min.
Lot depth (ft.):	50	37	NC	min.
Primary Front Yard (ft.):	5	0	0	min.
Right Yard (ft.):	10	3.75	3.75	min.
Left Yard (ft.):	10	2.6	2.6	min.
Rear Yard (ft.):	20	2	2	min.
Height (ft.):	35	22	32	max.
Building Coverage (%):	35	67.61	NC	max.
Open Space Coverage (%):	20	>20	NC	min.
Parking (# of spaces):	4	0	0	min.
Estimated Age of Structure:		1900		

Neighborhood Context





Previous Board of Adjustment Actions

No history found.

Planning Department Comments

Due to a Planning Department error, the advertised legal notice for September incorrectly represented the relief required for this application. We have also realized that one of the direct abutter notices was sent out a day later than what is required by statute. The petition was postponed to October in order to correct these errors.

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.

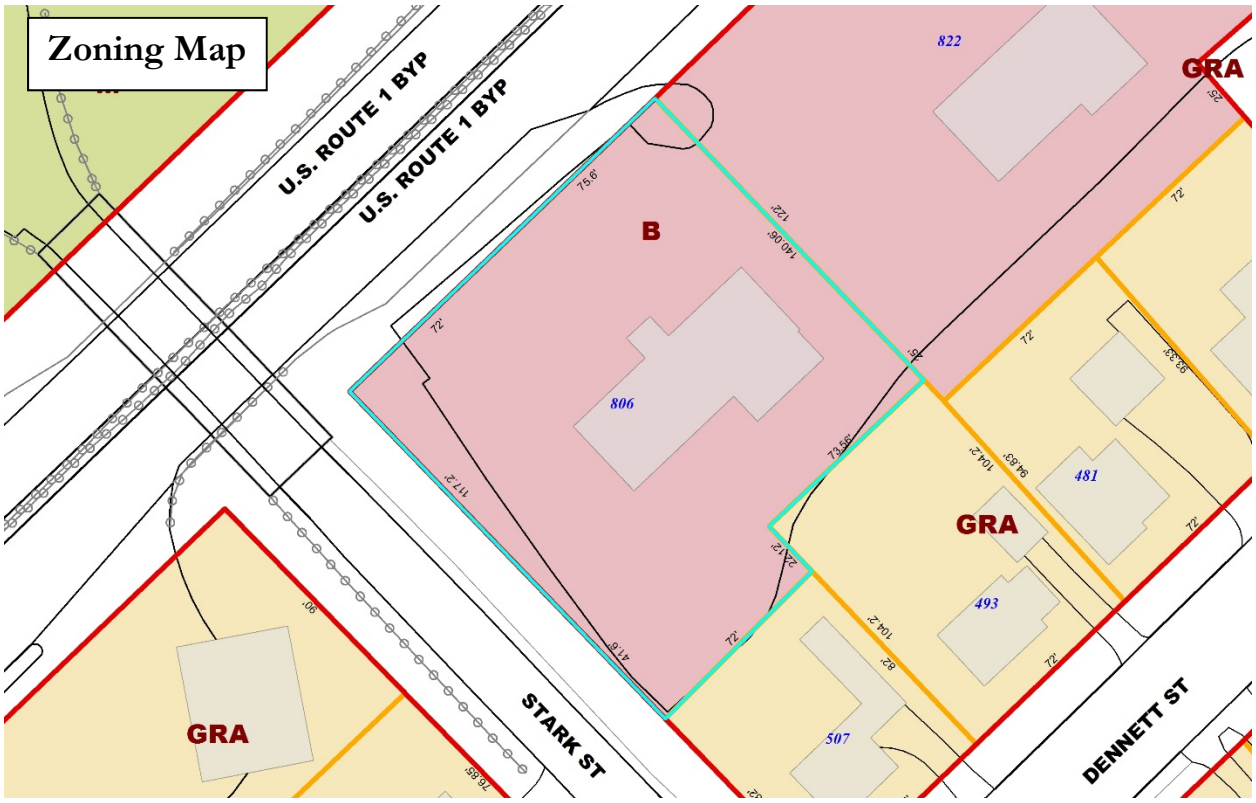
Case #9-5

Petitioner:	Amba Realty LLC
Property:	806 Route One By-Pass
Assessor Plan:	Map 161, Lot 43
Zoning District:	Business
Description:	Allow 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: 1. A Variance from Section 10.1243 to allow two free-standing signs on a lot where only one free-standing sign is allowed. Sign One (left side of lot) 2. A Variance from Section 10.1253.10 to allow a 4'± setback from the front lot line where 20' is the minimum required. Sign Two (right side of lot) 3. A Variance from Section 10.1251.20 to allow a sign area for a free-standing sign of 120± s.f. where 100 s.f. is the maximum sign area allowed. 4. A Variance from Section 10.1253.10 to allow a 12'± setback from the front lot line where 20' is the minimum required.

Proposed Conditions

	Required	Proposed
Freestanding Signs		
Setback (ft)	20	Sign 1: 4 min. Sign 2: 12
Area (sq. ft.)	100	Sign 1: 64 max. Sign 2: 120
Height (ft)	20	Sign 1: 12 max. Sign 2: 20

Neighborhood Context



Previous Board of Adjustment Actions

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

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

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

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

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

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

July 28, 2015 – At the reconvened July meeting, the Board **postponed** to the following month a request to expand the first floor in the existing structure to 5,150 s.f. of retail space and construct a second floor for office space requiring the following variances: 1) to allow 9 parking spaces located within the required front yard and between the principal building and the street; 2) to allow 26 fully available parking spaces and 2 restricted parking spaces where 28 were required and parking 6.5' from a residential zone where 50' was required; (3) to allow parking 0' front he front lot line where 20' was required; and (4) to allow no provision of landscaping and screening within the front setback.

August 18, 2015 – The Board **granted** a request to expand the first floor in the existing structure to 5,150 s.f. of retail space and construct a second floor for office space requiring the following variances: 1) to allow 9 parking spaces located within the required front yard and between the principal building and the street; 2) to allow parking 6.5' from a residential zone where 50' was required; (3) to allow parking 0' front he front lot line where 20' was required; and (4) to allow no provision of landscaping and screening within the front setback. *Stipulation*: That the applicant work with the Planning Board, through the site plan review process, to improve fencing along the southeast property line so that an effective buffer would be provided to mitigate the light and sound reaching surrounding properties and to prevent pedestrian access through or along the fencing.

Planning Department Comments

This application was postponed from the September meeting because the applicant was not present to speak to the application.

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.

NEW BUSINESS

Case #10-1

Petitioner:	Jask Realty Trust
Property:	114 Gosling Road
Assessor Plan:	Map 215, Lot 3
Zoning District:	Office Research, Sign District 4
Description:	Replace free-standing sign.
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 10.1281 to allow a nonconforming sign to be reconstructed or replaced without bringing it into conformity with the Ordinance. 2. Variances from Section 10.1253.10 to allow a 10'± front yard setback and a 10' right side yard setback where 20' is required for each setback.

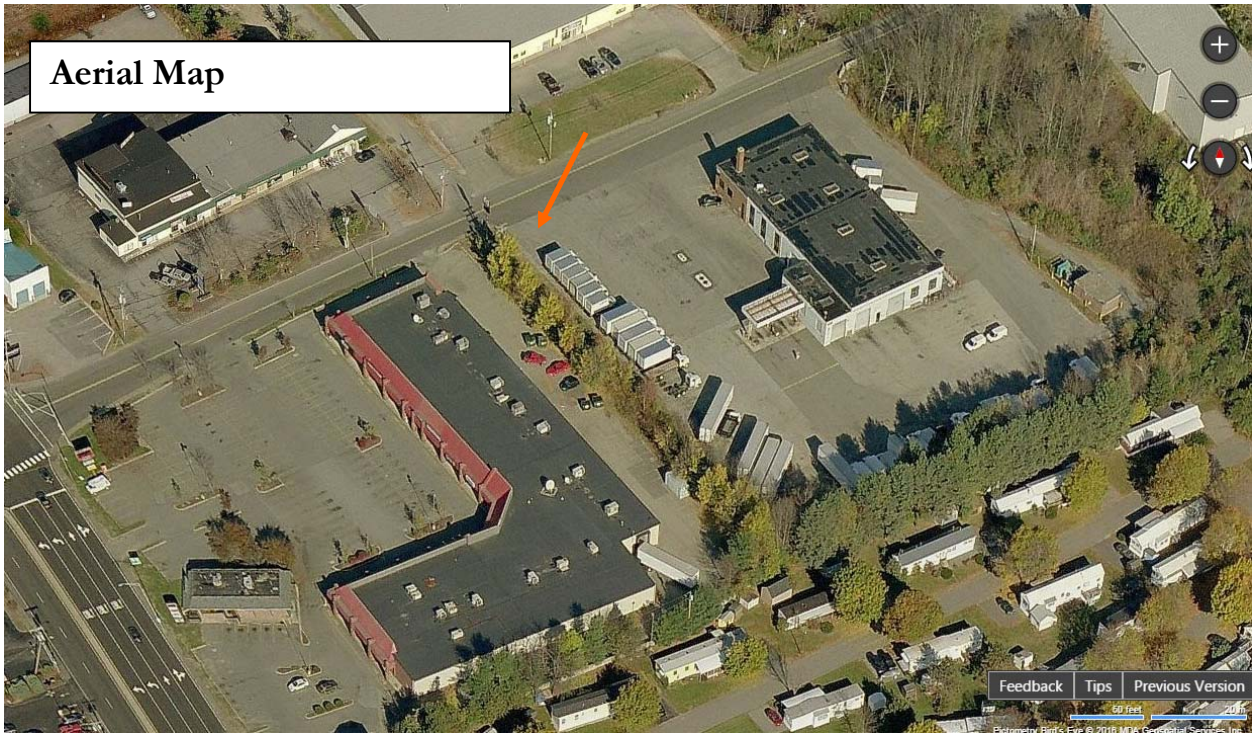
Existing Conditions and Proposed Changes

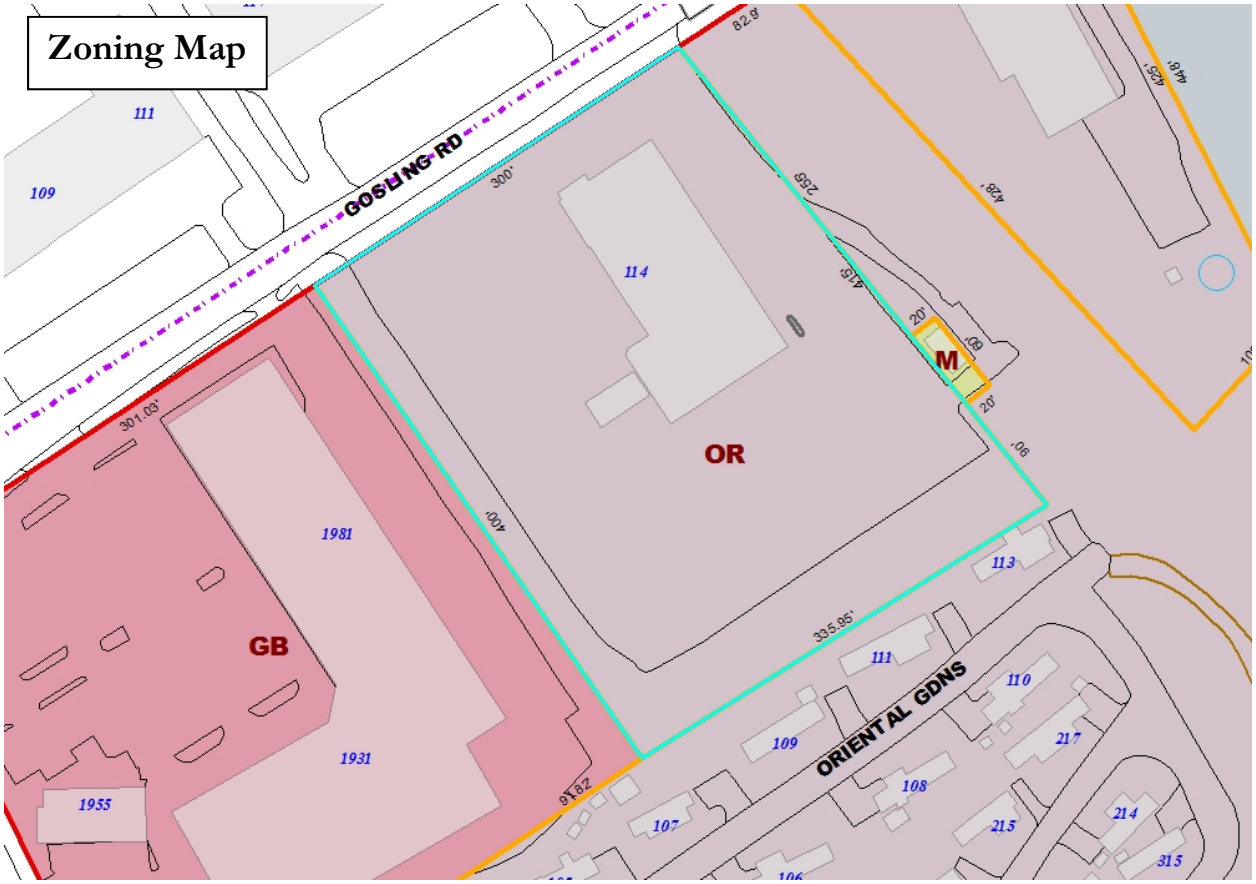
	Existing	Proposed	Permitted / Required	
Individual Sign Area (sq. ft.)				
Wall Signs	9.0	9.0	200	max.
Freestanding Signs	24.0	57.8	100	max.
Aggregate Sign Area (sq. ft.)	9.0	9.0	117	max.
Height (ft)				
Wall Signs	N/A	N/A	N/A	
Freestanding Signs	30	20	20	max.
Setback (ft)				
Freestanding Signs	10 (front) 10 (side)	10 (front) 10 (side)	20	min.

Other Land Use Reviews Required

None.

Neighborhood Context





Previous Board of Adjustment Actions

January 19, 1999 - the Board **granted** a Variance to park and service Coast Transportation buses with modification of the previous approval for the hours of operation for buses only to 5:45 a.m. to 11:15 p.m. instead of 7:00 a.m. to 12:00 a.m. on weekdays, and to 6:15 a.m. to 11:15 p.m. instead of 8:15 a.m. to 4:30 p.m. on Saturdays and to allow said buses to be parked 15' from the rear property line. The number of vehicles parked onsite will not exceed the previous approval. Stipulations: That there be no refrigeration trucks permitted on the site as long as the buses are being serviced and stored on the property; and that there be no more than thirty (30) vehicles including the buses allowed on the site.

May 21, 1991 - The Board **granted** a Variance to permit the erection of 56 s.f. free-standing sign with a 15' front yard and a 10' right yard where 35' is required in both instances.

October 16, 1990 - The Board **granted** a Special Exception to permit the renting, leasing and selling of motor vehicles (Ryder Trucks).

October 15, 2002 – The Board **granted** a request to amend previous approvals to allow for the parking and storage of Ryder Trucks and trailers, car carriers and/or tow dollies within 100' of the rear property line. The request was granted with the stipulation that no refrigeration trucks would be left running within the 100' area.

Planning Department Comments

The narrative indicates the sign will be placed 15' from the edge of Gosling Rd, the application itself indicates a 10' setback from the front and side lot line. The applicant should confirm which measurement accurately reflects the relief required.

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 #10-2

Petitioners:	John Douglas Deihl III & Stephanie Guay Deihl
Property:	380 Richards Avenue
Assessor Plan:	Map 112, Lot 12
Zoning District:	General Residence A
Description:	Reconstruct rear addition with 1 story and 2½ story sections.
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, reconstructed, enlarged or structurally altered except in conformity with the Ordinance. 2 A Variance from Section 10.521 to allow a 2.3'± right side yard setback where 10' is required. 3. A Variance from Section 10.521 to allow 29.8%± building coverage where 25% is the maximum allowed.

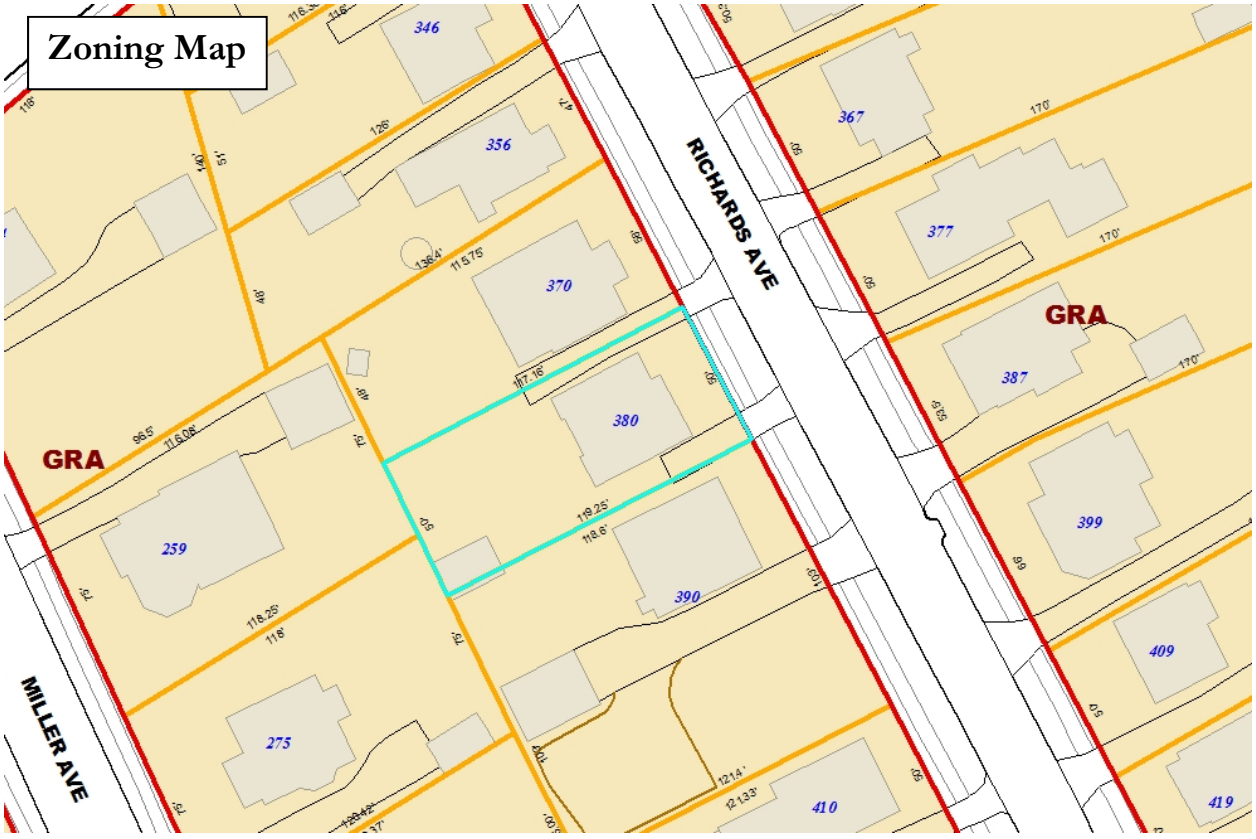
Existing Conditions and Proposed Changes

	Existing	Proposed	Permitted / Required	
Land Use:	Single Family residence	No Change (NC)	Primarily residential uses	
Lot area (sq. ft.):	5,924	NC	7,500	min.
Lot Area per Dwelling Unit (sq. ft.):	5,924	NC	7,500	min.
Street Frontage (ft.):	50	NC	100	min.
Lot depth (ft.):	118	NC	70	min.
Primary Front Yard (ft.):	15	NC	15	min.
Right Yard (ft.):	2.3	2.3	10	min.
Left Yard (ft.):	3.9	16.6	10	min.
Rear Yard (ft.):	0.33	47.25	20	min.
Height (ft.):	32	34	35	max.
Building Coverage (%):	30.0%	29.8%	25%	max.
Open Space Coverage (%):	61.2%	60.9%	30%	min.
Estimated Age of Structure:	1910			

Other Land Use Reviews Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

July 27, 1993 – The Board **granted** variances to allow a) the construction of a 7' x 12' one-story addition and a 20' x 15' rear deck on a nonconforming structure; a right yard setback of 2' where 10' was required; and c) lot coverage of 29.7% where 20% was the maximum allowed.

April 19, 1994 – The Board **granted** a variance to allow the expansion of a nonconforming structure with the conversion of a 12'4" x 20'2" building from a garage to a workshop.

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 #10-3

Petitioner:	Liro O. Lehtinen
Property:	740 Woodbury Avenue
Assessor Plan:	Map 236, Lot 8-1
Zoning District:	Single Residence B
Description:	Construct a 27'± x 24'± two-story garage.
Requests:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: 1. Variances from Section 10.573.20 to allow a 5'± left side yard setback where 10' is required and a 5'± rear yard setback where 17' is required.

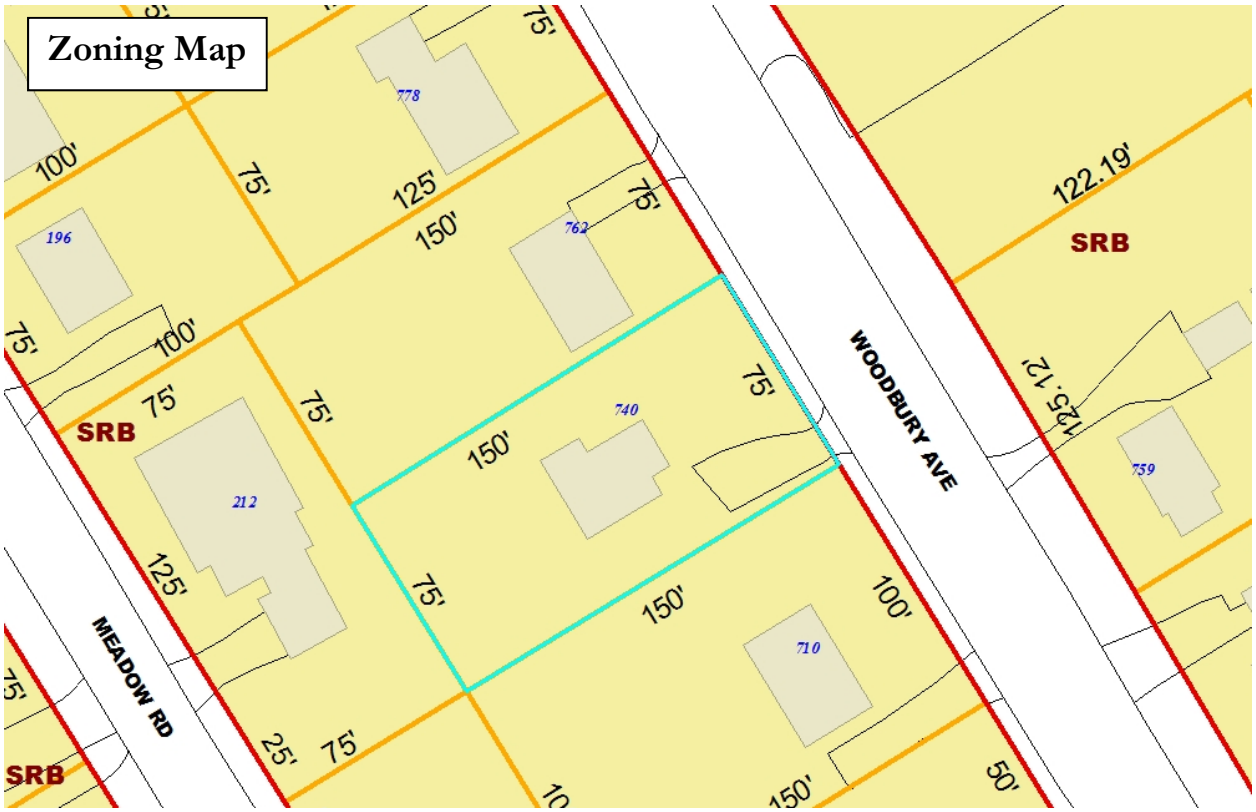
Existing Conditions and Proposed Changes

	Existing	Proposed	Permitted / Required	
Land Use:	Single family residence	No change (NC)	Primarily single family residences	
Lot area (sq. ft.):	11,325.6	NC	15,000	min.
Lot Area per Dwelling Unit (sq. ft.):	11,325.6	NC	15,000	min.
Street Frontage (ft.):	50	NC	100	min.
Lot depth (ft.):	117	ok	100	min.
Primary Front Yard (ft.):	60.3	115 (shed)	30	min.
Right Yard (ft.):	17.2	45 (shed)	10	min.
Left Yard (ft.):	27.1	5 (shed)	10	min.
Rear Yard (ft.):	54.1	5 (shed)	30 (15 per 10.573.20 and 10.516.40)	min.
Height (ft.):	32	22.5 (shed)	35	max.
Building Coverage (%):	7.7%	13.8%	20%	max.
Open Space Coverage (%):	84.5%	71.9%	40%	min.
Parking (# of spaces):	2	2	2	min.
Estimated Age of Structure:	1993			

Other Land Use Reviews Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No history found.

Planning Department Comments

Per the exception to the yard requirements provided by 10.573.20 an accessory structure can be setback at least 17' (75% the height of the structure) on rear yard and at least 10' on the side yard. In addition, a roof overhang can project up to 2' into the yard, reducing the actual required rear yard to 15' (per 10.516.40). As the rear side of the proposed garage has an overhang that is greater than 30" (36" total) it is not exempt from the yard requirements (per section 10.515.10a) therefore reducing the actual proposed rear yard setback from 8' (as shown on the site plan) to 5'.

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 #10-4

Petitioner:	Seacoast Development Group LLC
Property:	Rockingham Avenue
Assessor Plan:	Map 235, Lot 2, Sub-Lot #3
Zoning District:	Single Residence B
Description:	One lot in three-lot subdivision with less than required depth.
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 lot depth of 61.84'± for proposed Lot 3 where 100' is the minimum required.

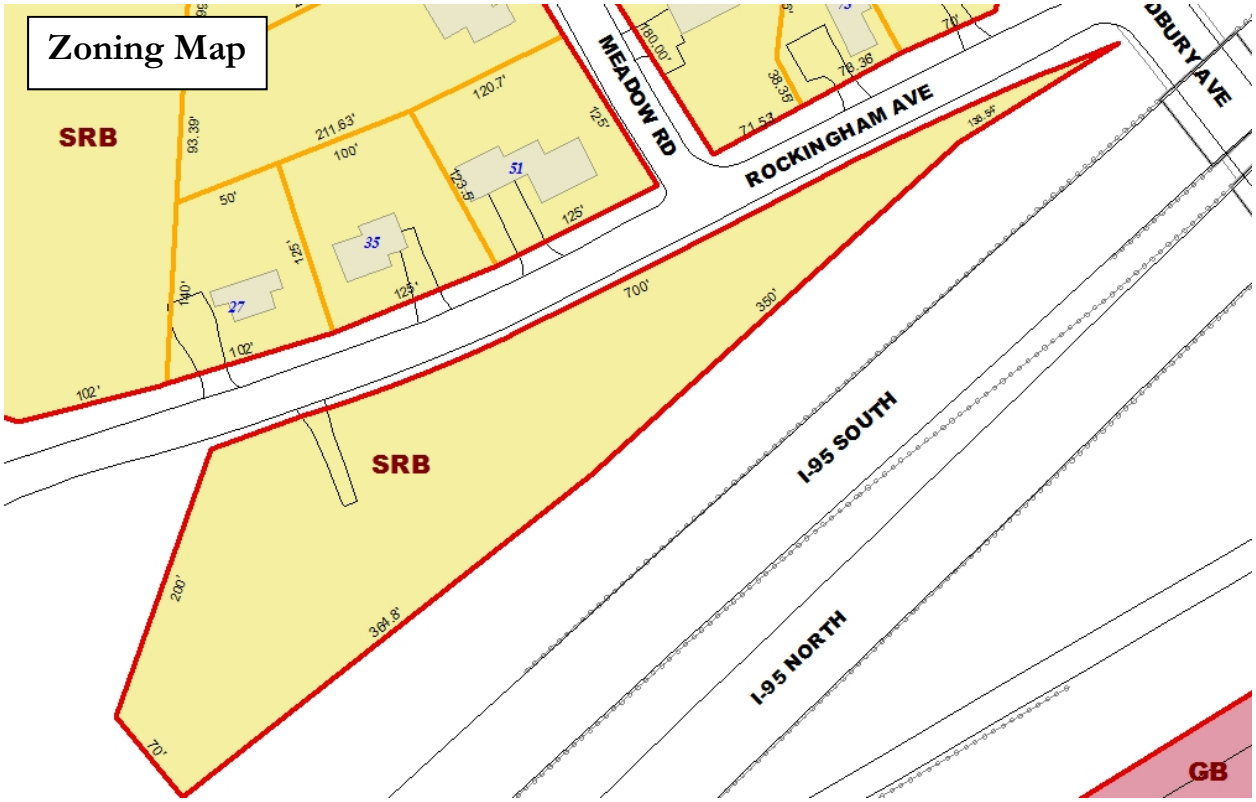
Existing Conditions and Proposed Changes

	Existing	Proposed			Permitted / Required	
		Lot 1	Lot 2	Lot 3		
Land Use:	Vacant	Single family	Single family	Single Family	Primarily Single Family Residences	
Lot area (sq. ft.):	73,384	38,466	15,874	19,044	15,000	min.
Lot Area per Dwelling Unit (sq. ft.):	N/A	38,466	15,874	19,044	15,000	min.
Street Frontage (ft.):	>100	119.8	128.6	193.7	100	min.
Lot depth (ft.):	<100	143.6	123.8	61.8	100	min.
Primary Front Yard (ft.):	N/A	>30	>30	>30	30	min.
Right Yard (ft.):	N/A	>10	>10	>10	10	min.
Left Yard (ft.):	N/A	>10	>10	>10	10	min.
Rear Yard (ft.):	N/A	>30	>30	>30	30	min.
Height (ft.):	N/A	<35	<35	<35	35	max.
Building Coverage (%):	N/A	<20	<20	<20	20%	max.
Open Space Coverage (%):	N/A	>40	>40	>40	40%	min.
Parking (# of spaces):	N/A	2	2	2	2	min.

Other Land Use Reviews Required

Planning Board Subdivision

Neighborhood Context



Previous Board of Adjustment Actions

No history found.

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 #10-5

Petitioner:	S&G Realty
Property:	Chevrolet Avenue
Assessor Plan:	Map 147, Lot 30
Zoning District:	General Residence C
Description:	Construct a three-unit townhouse.
Requests:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: 1. A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,357± s.f. where 3,500 s.f. per dwelling unit are required.

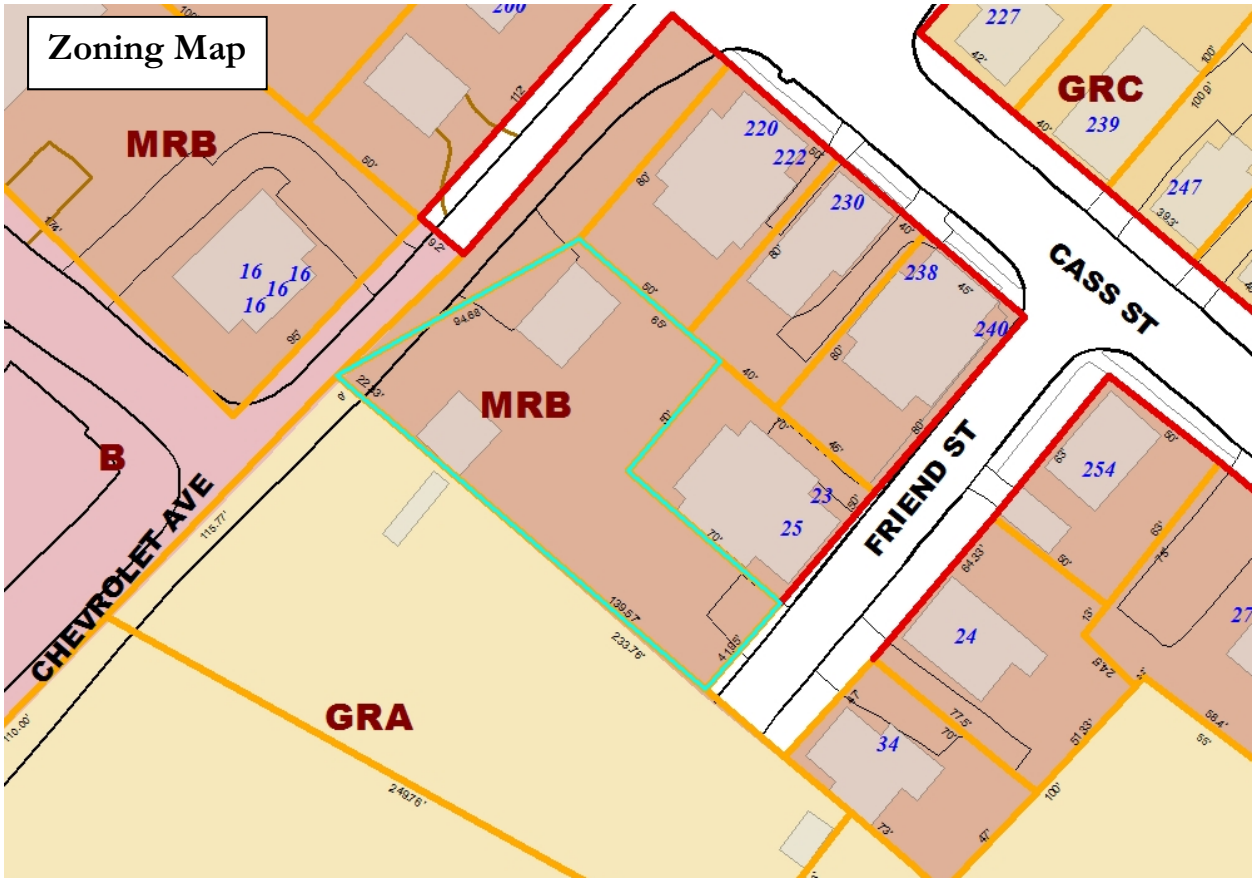
Existing Conditions and Proposed Changes

	Existing	Proposed	Permitted / Required	
Land Use:	Garages	3-Unit Townhouse	Primarily residential uses	
Lot area (sq. ft.):	10,071	No Change (NC)	3,500	min.
Lot Area per Dwelling Unit (sq. ft.):	N/A	3,357	3,500	min.
Street Frontage (ft.):	94.7	NC	70	min.
Lot depth (ft.):	148.44	NC	50	min.
Primary Front Yard (ft.):	>5	5	5	min.
Right Yard (ft.):	<10	10	10	min.
Left Yard (ft.):	<10	13	10	min.
Rear Yard (ft.):	>20	20	20	min.
Height (ft.):	<35	25	35	max.
Building Coverage (%):	<35%	28%	35%	max.
Open Space Coverage (%):	>20%	>20%	20%	min.
Parking (# of spaces):		6	6	min.

Other Land Use Reviews Required

Planning Board Site Plan Review

Neighborhood Context



Previous Board of Adjustment Actions

No history found.

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 #10-6

Petitioner:	Thomas M. Penaskovic
Property:	29 Burkitt Street
Assessor Plan:	Map 160, Lot 19
Zoning District:	General Residence A
Description:	Construct a 14'± x 23'± detached 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 10.521 to allow a 3'± right side yard setback where 10' is required. 2. A Variance from 10.521 to allow 28.93%± building coverage where 25% is the maximum allowed.

Existing Conditions and Proposed Changes

	Existing	Proposed	Permitted / Required	
Land Use:	Single family residence	No Change (NC)	Primarily residential uses	
Lot area (sq. ft.):	4,791.6	NC	7,500	min.
Lot Area per Dwelling Unit (sq. ft.):	4,791.6	NC	7,500	min.
Street Frontage (ft.):	57	NC	100	min.
Lot depth (ft.):	91	NC	70	min.
Primary Front Yard (ft.):	<15	>15 (garage)	15	min.
Right Yard (ft.):	>10	3 (garage)	10	min.
Left Yard (ft.):	>10	NC	10	min.
Rear Yard (ft.):	>20	>20 (garage)	20	min.
Height (ft.):	<35	12+ (garage)	35	max.
Building Coverage (%):	22.2%	28.9%	25%	max.
Open Space Coverage (%):	68.6%	61.9%	30%	min.
Parking (# of spaces):	4	4	2	min.
Estimated Age of Structure:	1900			

Other Land Use Reviews Required

None.

Neighborhood Context

Previous Board of Adjustment Actions

October 20, 1992 – The Board **granted** a variance to allow a 6'x 17' addition onto an existing 10' x 17' shed with 21.5% lot coverage where 20% was the maximum allowed.

Planning Department Comments

The applicant has indicated to the Planning Department staff that he is considering a taller garage than what he originally indicated in his application. It would not impact the relief required, but we have advised him that he should be as specific as possible with the Board regarding his plans for the garage. It is possible that he will be bringing a modified exhibit to the Board meeting. As the change is not substantial, we did not require him to bring the copies in advance, however, based on feedback received at the recent Board work session, we will make sure all revised submissions are received in advance of the Board meeting whenever possible in the future.

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 #10-7

Petitioner:	Cross Roads House
Property:	600 Lafayette Road
Assessor Plan:	Map 243, Lot 2
Zoning District:	Gateway
Description:	Erect a 12'± x 16'± shed.
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 10.573.20 to allow a 5'9" right side yard setback where 10' is required for an accessory structure.

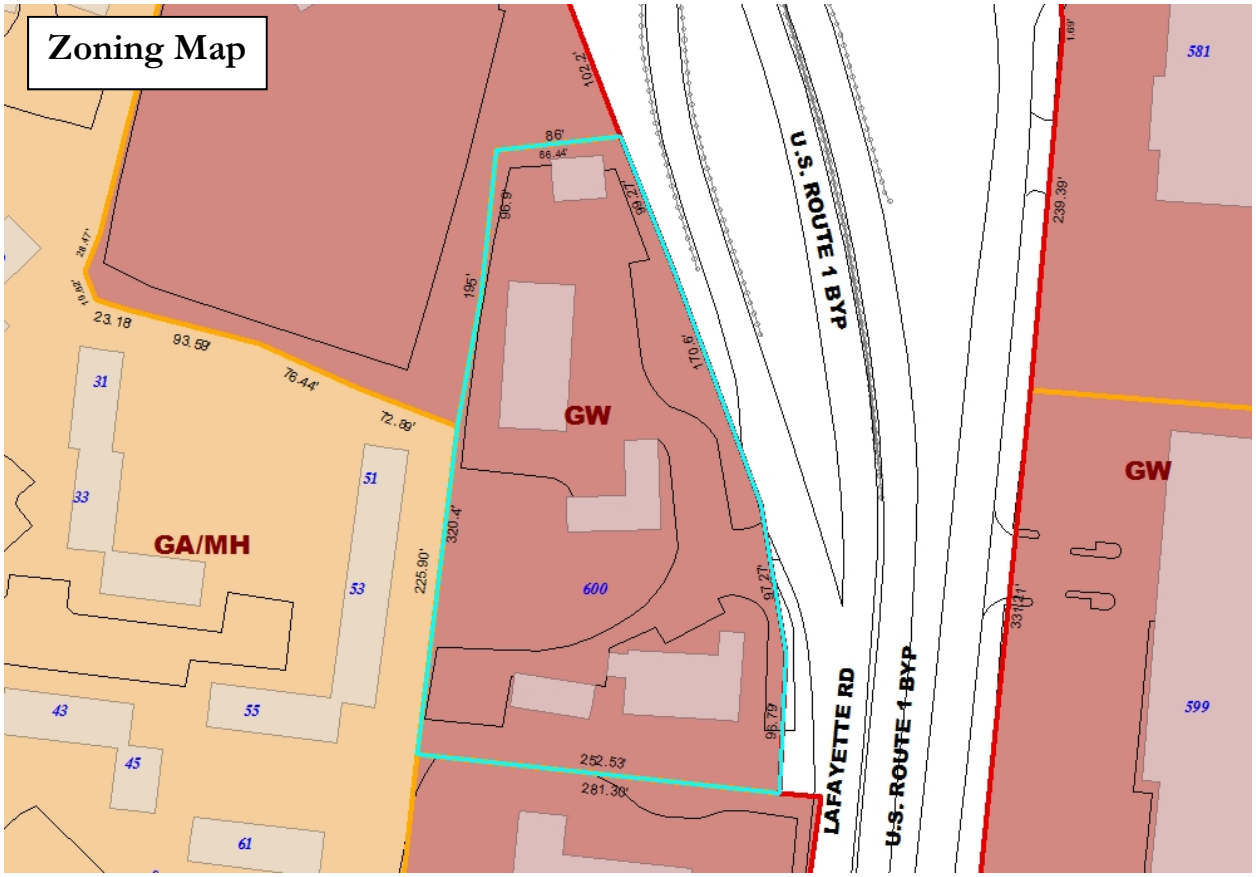
Existing Conditions and Proposed Changes

	Existing	Proposed	Permitted / Required	
Lot area (sq. ft.):	79,714.80	NC	43,560	min.
Street Frontage (ft.):	475	NC	200	min.
Lot depth (ft.):	169	NC	100	min.
Primary Front Yard (ft.):	20	>30 (shed)	30	min.
Right Yard (ft.):	10	5'9" (shed)	30	min.
Left Yard (ft.):	40	NC	30	min.
Rear Yard (ft.):	21	>10 (shed)	50	min.
Height (ft.):	-	8	40	max.
Building Coverage (%):	<30%	<30%	30%	max.
Open Space Coverage (%):	>20%	>20%	20%	min.

Other Land Use Reviews Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

December 16, 1952 – action of the Board not indicated on request to build a 25-unit motel and extend a district where the district bi-sects the lot.

November 18, 1980 – the Board **granted** variances to allow construction of 2 apartment buildings, one with a rear lot line setback of 90' and one with a rear setback of 54', both where 100' is required and to allow the establishment of an apartment complex in a General Business district.

July 22, 1986 – the Board **granted** a variance to permit the construction of two 4-unit apartments onto an existing structure in a district where apartments are not an allowed use.

October 7, 1986 – the Board **granted** variances to 1) allow the construction of an 11,000 s.f., two-story structure with a 53' front yard and 20' rear yard where a minimum of a 70' front and 50' rear yard are required; and 2) allow said structure to be used for offices and warehousing materials for the needy in a district where warehouse structures are not allowed.

February 4, 1987 – the Board **granted** variances to 1) allow the construction of a two-story office/warehouse structure and 2 two-story family apartment buildings (housing for indigents), with the structures sited within 100' of a residential zone where 100' is required; and 2) allow parking to be within 50' of a residential district where 50' is required.

August 18, 1992 – the Board **granted** a variance to allow the construction of a 1½ story 28' x 36' structure for storage with a 5' side yard where 30' is required, a 10' front yard where 70' is required, and a 42' rear yard where 50' is required.

June 16, 1998 – the Board **granted** a variance to allow: a) a 12' x 12' open pavilion with a 35'± front yard where 70' is the minimum required and a 12'± side yard where 30' is the minimum required, b) a 6'7"± x 9'10"± roof overhang at the front entry with a 17'± front yard where 70' is the minimum required; and, c) a 5'± x 5'± roof overhang at the side entry with a 46'± front yard where 70' is the minimum required and a 37'± side yard where 30' is the minimum required.

July 20, 1999 – the Board **granted** variances to allow Cross Roads House to expand its operation by installing a 1,758 s.f. one-story modular building with an access corridor from the main building for use as office space and to convert the existing office space in the main building back into 6 resident rooms.

September 21, 1999 – the Board **granted** variances to 1) allow the previously approved 1,758 s.f. one-story modular building with an access corridor from the main building with a 20' left side yard where 30' is the minimum required and 2) allow said building 86' from property zoned residentially where 100' is the minimum required.

November 16, 1999 – the Board **granted v**ariances to 1) allow a second story addition on an existing building being used as a family shelter 80'± from property zoned residentially where 100' is the minimum required; and 2) allow the second floor addition with two external staircases to be used for two bunk rooms for the homeless shelter and no additional parking being provided.

November 27, 2007 – The Board **granted** variances to allow: 1) homeless shelter uses currently in 3 buildings (to be removed) to be relocated to one new building; 2) construction of an irregular shaped

two story 10,843 s.f. homeless shelter with a 23.6 left side yard for the building and 20.2' for the loading area stairs, 30' required; and a 19.6' rear yard, required 50' required to the rear property line and 100' to the residentially zoned property line; and 3) parking to be located within the required 40' front yard and landscaped area.

October 21, 2008 – The Board **granted** a one-year extension of the above variances through November 27, 2009.

August 18, 2009 – The Board **granted** a 5' left side yard setback where 30' was required to expand the dumpster pad for the placement of a back-up generator.

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 #10-8

Petitioner:	Charles A. Corlin
Property:	736 Middle Street
Assessor Plan:	Map 148, Lot 24
Zoning District:	Single Residence B
Description:	Construct a 24'± x 24'± detached garage and 8'± x 16'± shed.
Requests:	The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following: 1. Variances from 10.573.20 to allow a 3'± right side yard setback for a shed where 10' is required and a 6'± rear yard setback for a garage where 15' is required.

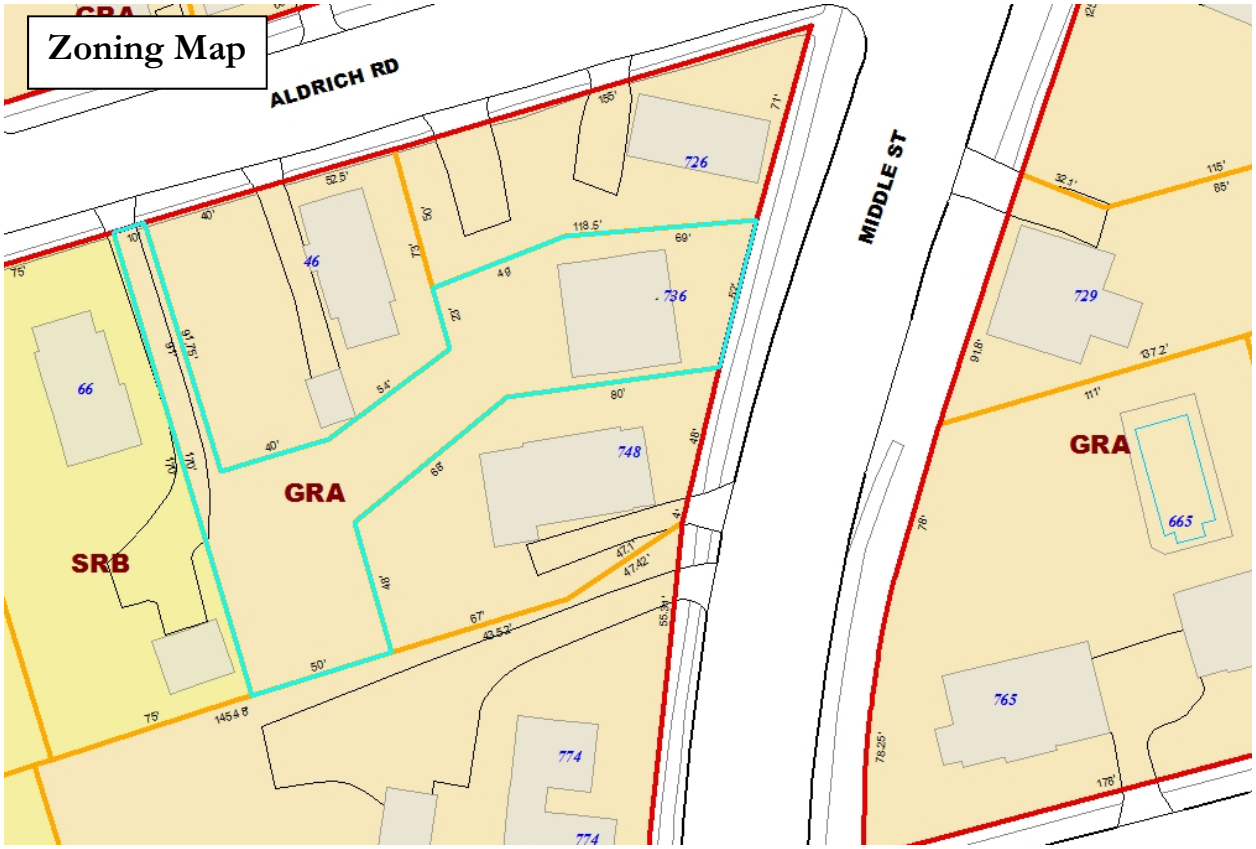
Existing Conditions and Proposed Changes

	Existing	Proposed	Permitted / Required	
Land Use:				
Lot area (sq. ft.):	11,325.6	11,325.6	15,000	min.
Lot Area per Dwelling Unit (sq. ft.):	11,325.6	11,325.6	1,500	min.
Street Frontage (ft.):	52	52	100	min.
Lot depth (ft.):	>100	>100	100	min.
Primary Front Yard (ft.):	14	14	30	min.
Right Yard (ft.):	<10	3 (shed)	10	min.
Left Yard (ft.):	<10	>10	10	min.
Rear Yard (ft.):	>30	6 (garage)	30	min.
Height (ft.):	24	<35	35	max.
Building Coverage (%):	12.4%	18.6%	20%	max.
Open Space Coverage (%):	>40	>40	40%	min.
Parking (# of spaces):	4	4	4	min.
Estimated Age of Structure:	1915			

Other Land Use Reviews Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

No history found.

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.