

TO: Zoning Board of Adjustment
FROM: Juliet Walker, Planning Department
DATE: April 19, 2017
RE: Zoning Board of Adjustment Meeting

NEW BUSINESS

1. 21 Brewster St
2. 4 Sylvester St
3. 39 Mt Vernon St
4. 65 Broad St
5. 19 Sunset Rd
6. 1953 Lafayette Rd
7. 3110 and 3020 Lafayette Rd
8. 163 Deer St (Lot 4)
9. Chevrolet Ave
10. 53 Summit Ave
11. Off Moffat St

NEW BUSINESS

Case #4-1

Petitioner:	Mark McNally
Property:	21 Brewster Street
Assessor Plan:	Map 138, Lot 11
Zoning District:	General Residence C
Description:	Expand a previously approved 6-bay, 6-car garage to accommodate 12 cars with a lift system.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> 1. Variations from Section 10.521 to allow the following: a) a 1.5'± right side yard where 10' is required; b) a 0.5'± rear yard where 20' is required; c) 54.1±% building coverage where 35% is allowed; and d) 4.6±% open space where 20% is required; 2. A Variance from Section 10.1114.32(a) to allow vehicles to enter or leave parking spaces by passing over another space or requiring the movement of another vehicle; 3. A Variance from Section 10.1114.21 to allow upper lift position parking spaces that are less than the required 19' in depth.

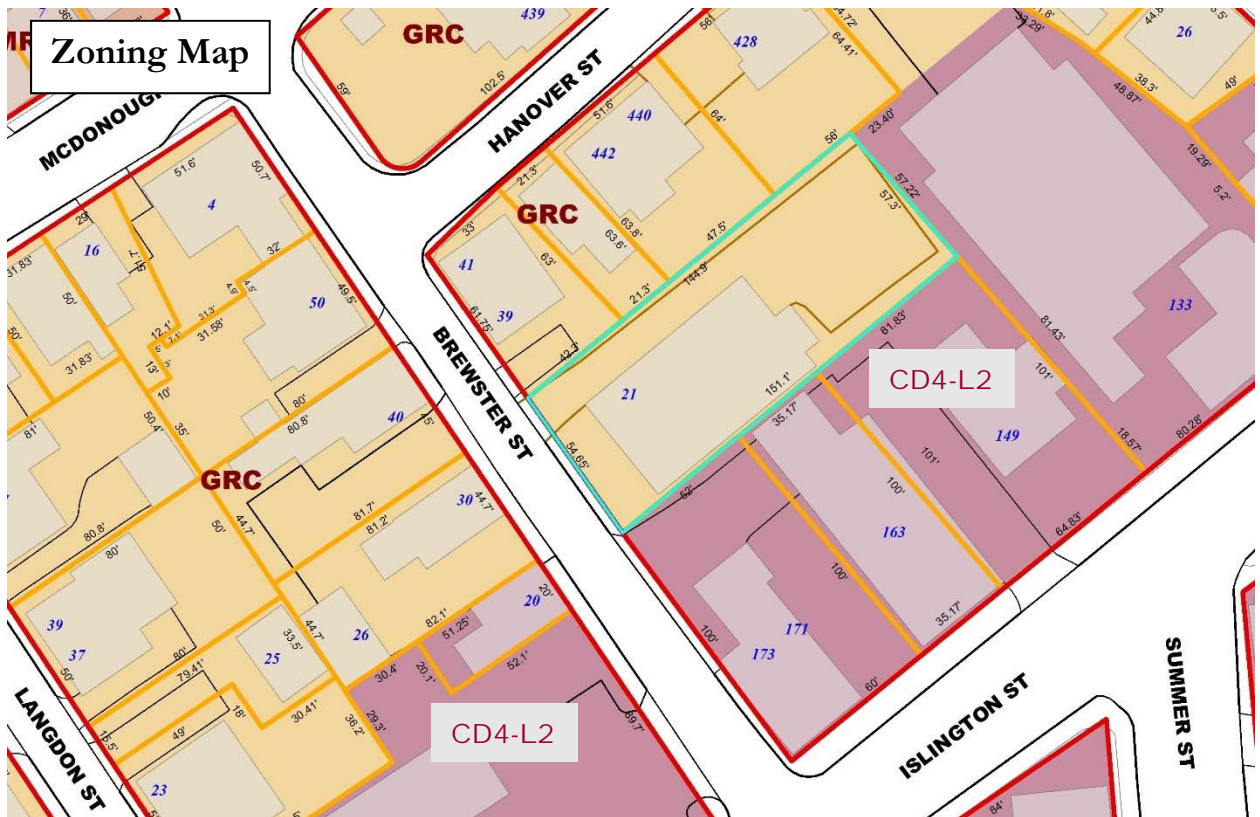
Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required	
<u>Land Use:</u>	Rooming house	6 dwelling units	Primarily residential uses	
Lot area (sq. ft.):	8,330	8,330	3,500	min.
Lot Area per Dwelling Unit (sq. ft.):	N/A	1,388	3,500	min.
Street Frontage (ft.):	54.6	54.6	70	min.
Lot depth (ft.):	148	148	50	min.
Primary Front Yard (ft.):	>5	>5	5	min.
Right Yard (ft.):	<10	1.5	10	min.
Left Yard (ft.):	>10	>10	10	min.
Rear Yard (ft.):	>20	0.5	20	min.
Height (ft.):	30	30	35	max.
Building Coverage (%):	37.9	54.1	35	max.
Open Space Coverage (%):	4.7	4.6	20	min.
Parking (# of spaces):		12	10	min.
Estimated Age of Structure:	1880			

Other Permits Required

Planning Board Site Plan Review

Neighborhood Context



Previous Board of Adjustment Actions

September 27, 2016 – The Board **granted** a special exception to allow converting a rooming house to a 6-unit condominium structure with a 6-bay garage and variances to allow the following: 1) A lot area per dwelling unit of 1,386.33 s.f. where 3,500 s.f. was required; 2) A 1.5' right side yard and an 0.5' rear yard where 10' and 20' were required; 3) 50.1% building coverage where 35% was the maximum allowed; 4) 10.44% open space where a minimum of 20% was required; and 5) A nonconforming building or structure to be reconstructed, enlarged or structurally altered except in conformity with the Ordinance; 6) Vehicles entering or leaving parking spaces to pass over another parking space or require the movement of another vehicle.

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

- (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

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

Case #4-2

Petitioners:	Gary & Aerial Sillanpaa
Property:	4 Sylvester Street
Assessor Plan:	Map 232, Lot 36
Zoning District:	Single Residence B
Description:	Keep 4 chickens in a 4' x 6' coop.
Requests:	Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including a Special Exception under Section 10.440, Use #17.20 to allow the keeping of farm animals in a district where it is only allowed by Special Exception.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
Land Use:	Single family residence	Keeping of chickens	Primarily single family residential uses
Lot area (sq. ft.):	16,117	NC	15,000 min.
Lot Area per Dwelling Unit (sq. ft.):	16,117	NC	15,000 min.
Street Frontage (ft.):	>100	NC	100 min.
Lot depth (ft.):	80	NC	100 min.
Primary Front Yard (ft.):	<30	NC	30 min.
Right Yard (ft.):	>10	>10	10 min.
Left Yard (ft.):	>10	>10	10 min.
Rear Yard (ft.):	<30	<30	30 min.
Building Coverage (%):	9.7%	9.8%	35 max.
Open Space Coverage (%):	86.6%	86.5%	20% min.
Parking (# of spaces):	2	2	40% min.

Other Permits Required

None.

Review Criteria

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

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

Case #4-3

Petitioners:	Peter N. Carey Revocable Living Trust, P. N. Carey & M-J Monusky, Trustees
Property:	39 Mount Vernon Street
Assessor Plan:	Map 111, Lot 32
Zoning District:	General Residence B
Description:	Install two free-standing condensers
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> 1. Variations from Section 10.521 to allow a right side yard and a rear yard of 8" where 10' is required for each; 2. A Variance from Section 10.521 to allow 47.5±% building coverage where 30% is the maximum allowed. 3. A Variance from Section 10.1332.20 to allow a sound pressure level at the lot line of the sender premises that exceeds the maximum allowed.

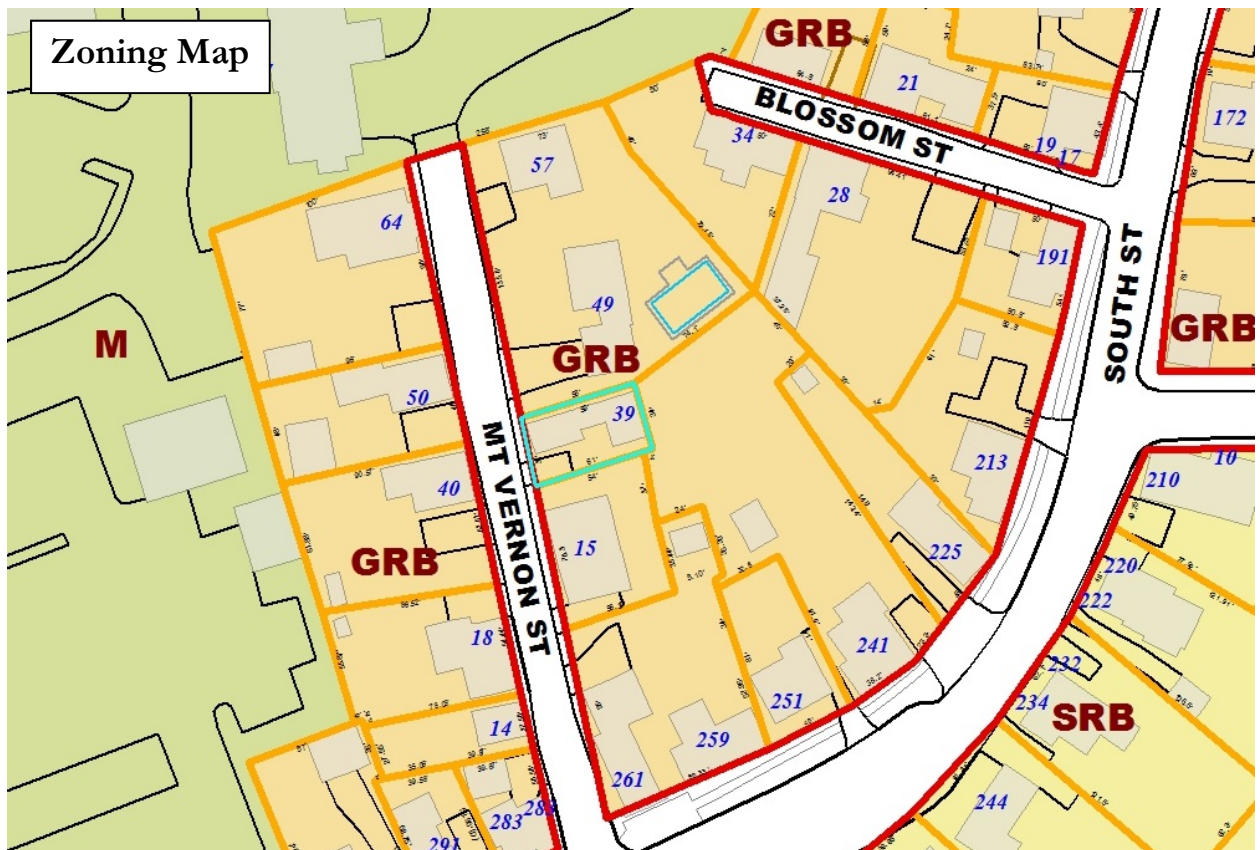
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Residence	Condensers	Primarily residential uses
Lot area (sq. ft.):	1,917	NC	5,000 min.
Lot Area per Dwelling Unit (sq. ft.):	1,917	NC	5,000 min.
Street Frontage (ft.):	34	NC	80 min.
Lot depth (ft.):	60	NC	60 min.
Primary Front Yard (ft.):	<5	NC	5 min.
Right Yard (ft.):	<10	8"	10 min.
Left Yard (ft.):	<10	NC	10 min.
Rear Yard (ft.):	0	8"	25 min.
Height (ft.):		30"	35 max.
Building Coverage (%):	47.4	47.5	30 max.
Open Space Coverage (%):	40.5	>25	25 min.
Parking (# of spaces):	1	1	2 min.
Estimated Age of Structure:	1880		

Other Permits Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

November 20, 2001 – The Board **granted** a variance to allow a 16'6" x 24'6" two story addition replacing an existing barn with a 9' rear yard where 25' was required and a 0' left side yard where 10' was required a 47.6% building coverage where 30% was the maximum allowed.

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*
AND
 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*
OR
 - Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

Case #4-4

Petitioner:	Richard M. & Francoise Kinney c/o the Connable Office Inc
Property:	65 Broad Street
Assessor Plan:	Map 129, Lot 11
Zoning District:	General Residence A
Description:	Construct a 1½ story right-side addition and front steps.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. Variances from Section 10.512 to allow the following: a) a 7'2" ± primary front yard where 15' is required; and b) a 4'4" ± right side yard where 10' is required.

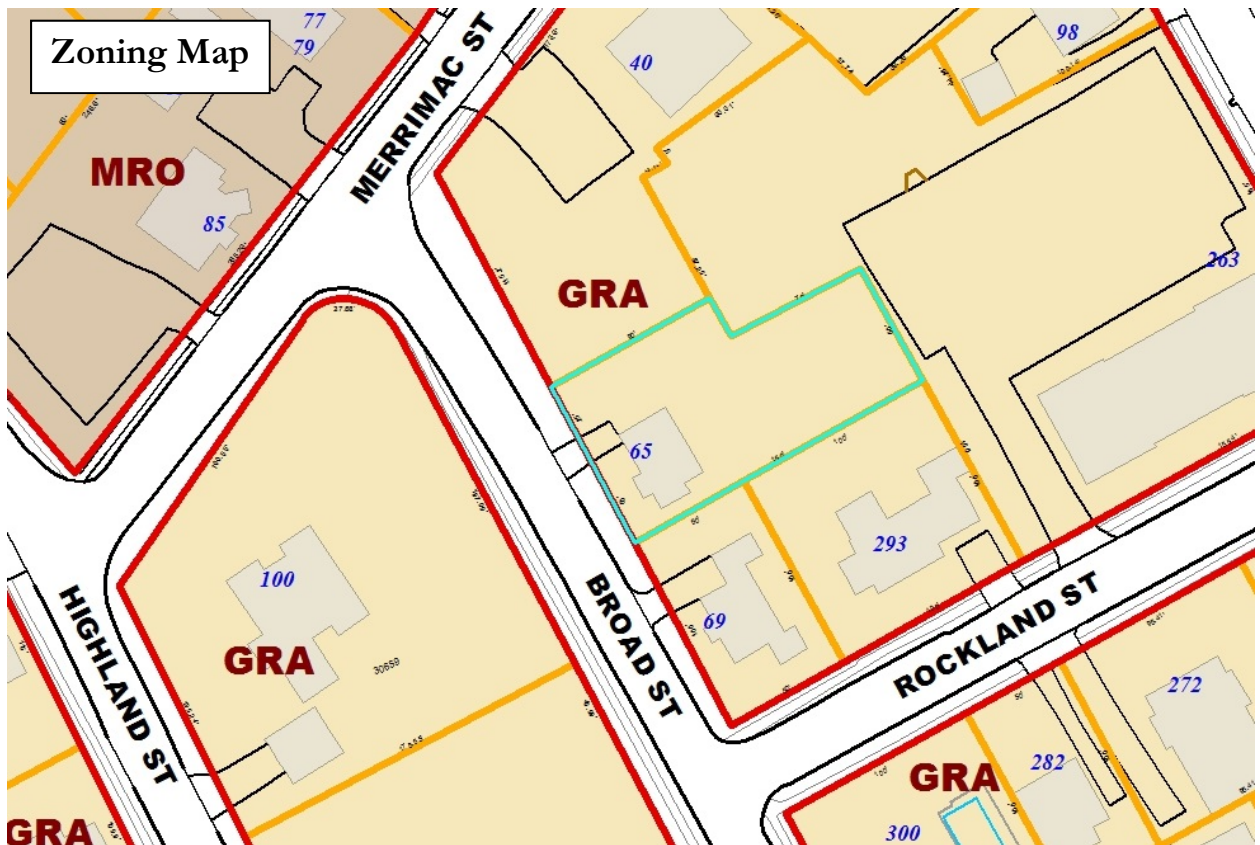
Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required
<u>Land Use:</u>	Single family residence	NC	Primarily Residential Uses
Lot area (sq. ft.):	11,850	NC	7,500 min.
Lot Area per Dwelling Unit (sq. ft.):	11,850	NC	7,500 min.
Street Frontage (ft.):	85	NC	100 min.
Lot depth (ft.):	160	NC	70 min.
Primary Front Yard (ft.):	15.5	7'2"	<7 (per 10.516.10) min.
Right Yard (ft.):	4'4"	4'4"	10 min.
Left Yard (ft.):	>10	NC	10 min.
Rear Yard (ft.):	>20	>20	20 min.
Height (ft.):	20	20	35 max.
Building Coverage (%):	9.9	14.4	25 max.
Open Space Coverage (%):	78.5	69.8	30 min.
Parking (# of spaces):		2	2 min.
Estimated Age of Structure:	1948		

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA 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 #4-5

Petitioners:	Jesse M. & Sarah L. Lynch
Property:	19 Sunset Road
Assessor Plan:	Map 153, Lot 19
Zoning District:	Single Residence B
Description:	Reconstruct an existing garage in the same footprint with an expansion in height.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including Variances from the following: <ol style="list-style-type: none">10.571 to allow an accessory structure to be located in the required front yard and closer to the street than the principal structure;10.573.20 to allow a 7'± rear yard where 19' is required;10.321 to allow a lawful nonconforming building to be reconstructed or enlarged without conforming to the requirements of the Ordinance.

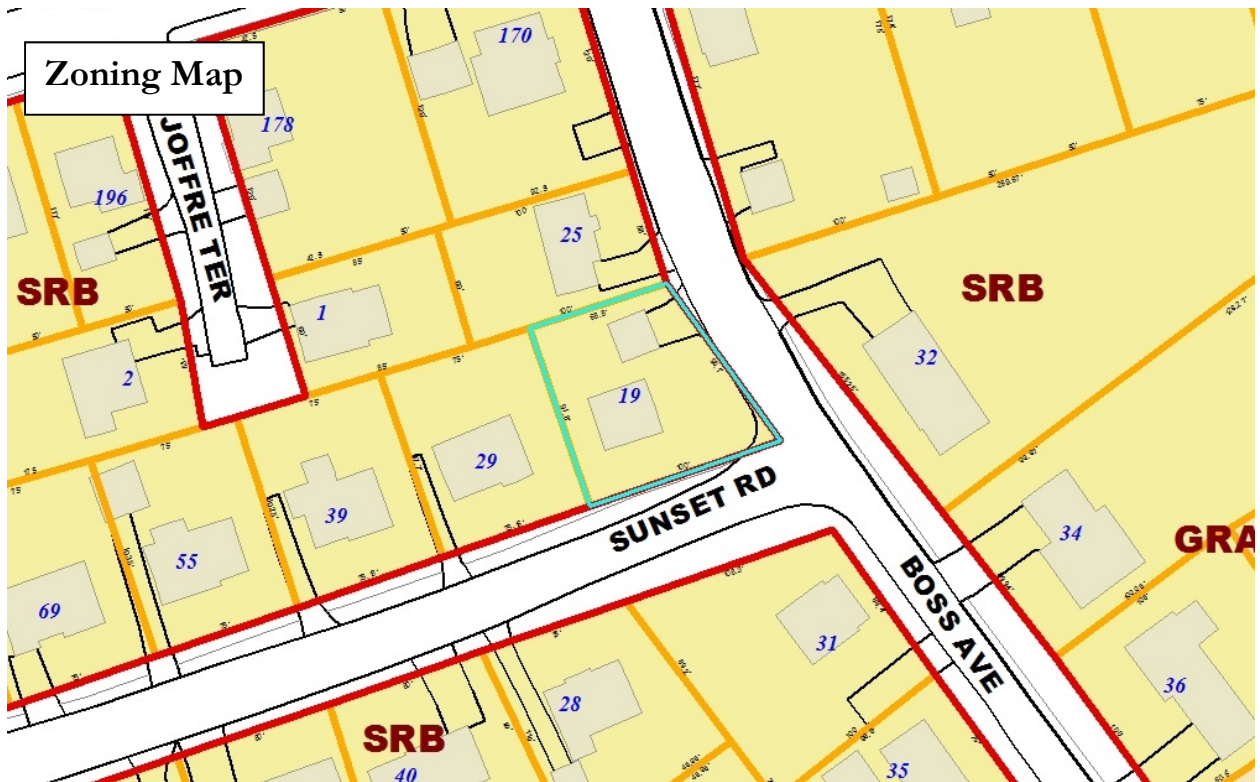
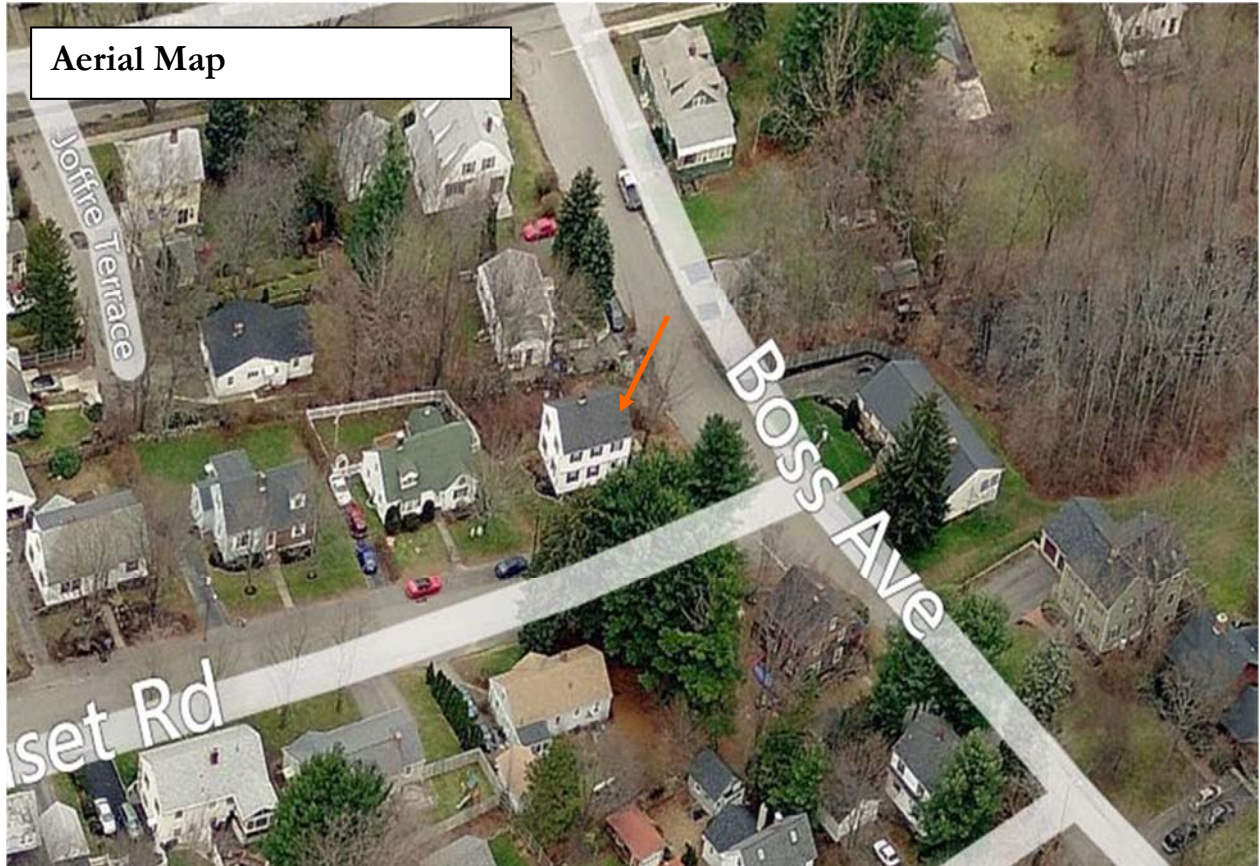
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residence	NC	Primarily single family uses
Lot area (sq. ft.):	7,841	NC	15,000 min.
Lot Area per Dwelling Unit (sq. ft.):	7,841	NC	15,000 min.
Primary Front Yard (ft.):	<30	NC	30 min.
Secondary Front Yard (ft.):	15'7"	15'7"	30
Primary Rear Yard (ft.):	7	7	19 min.
Secondary Rear Yard (ft.):	<30 (house)	NC	30 min.
Height (ft.):	10 (garage)	19 (garage)	35 max.
Building Coverage (%):	15.3	NC	20 max.
Open Space Coverage (%):	75.6	74.8	40 min.
Parking (# of spaces):	2	2	2 min.
Estimated Age of Structure:	1951		

Other Permits Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA 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**
- (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 #4-6

Petitioners:	Andrew Marks and Valerie Miller
Property:	1953 Lafayette Road
Assessor Plan:	Map 268, Lot 7
Zoning District:	Single Residence B
Description:	Conduct palm and tarot readings and install a free-standing sign.
Requests:	Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Special Exception under Section 10.440, Use # 19.22 to allow a Home Occupation II in a district where it is only allowed by Special Exception. 2. A Variance to allow a 15± s.f. free-standing sign in a district where free-standing signs are not allowed.

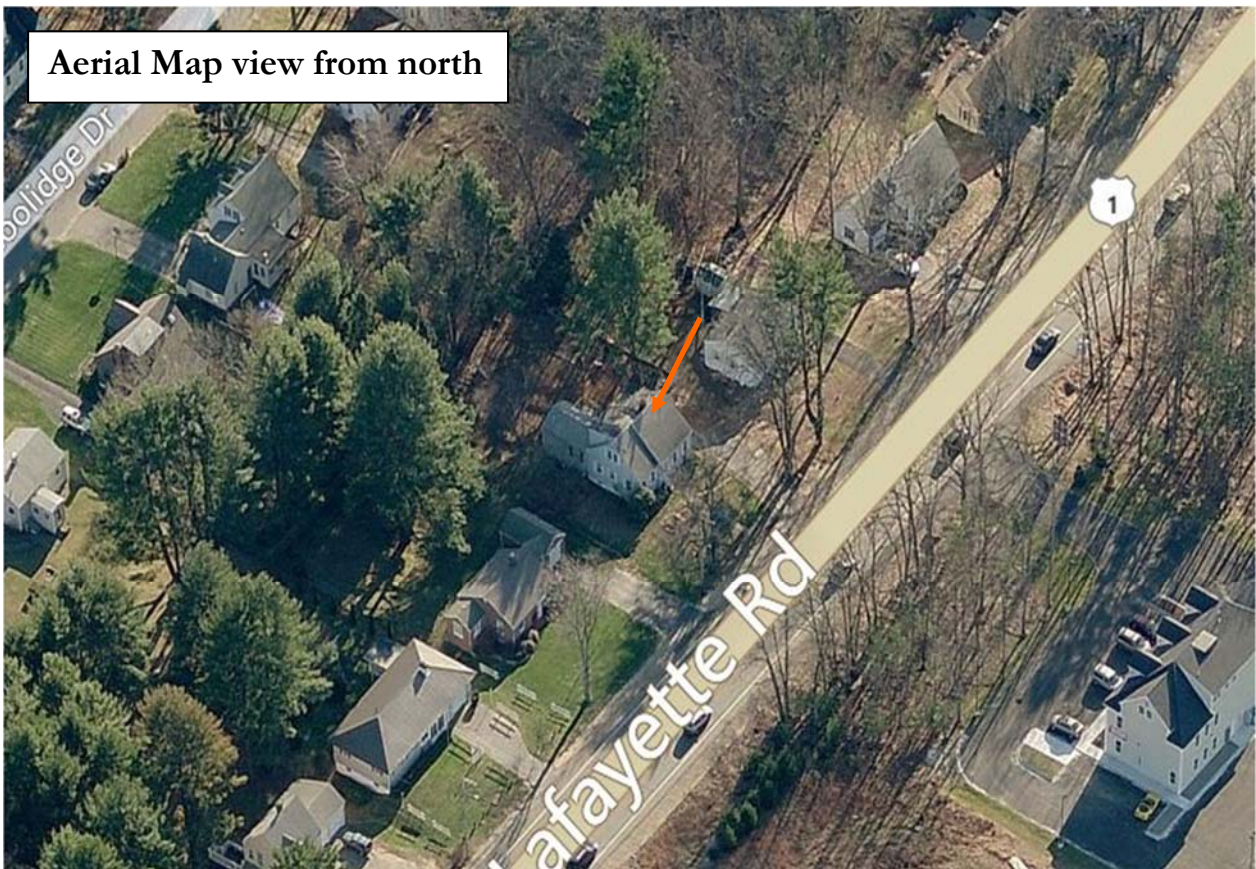
Existing & Proposed Conditions

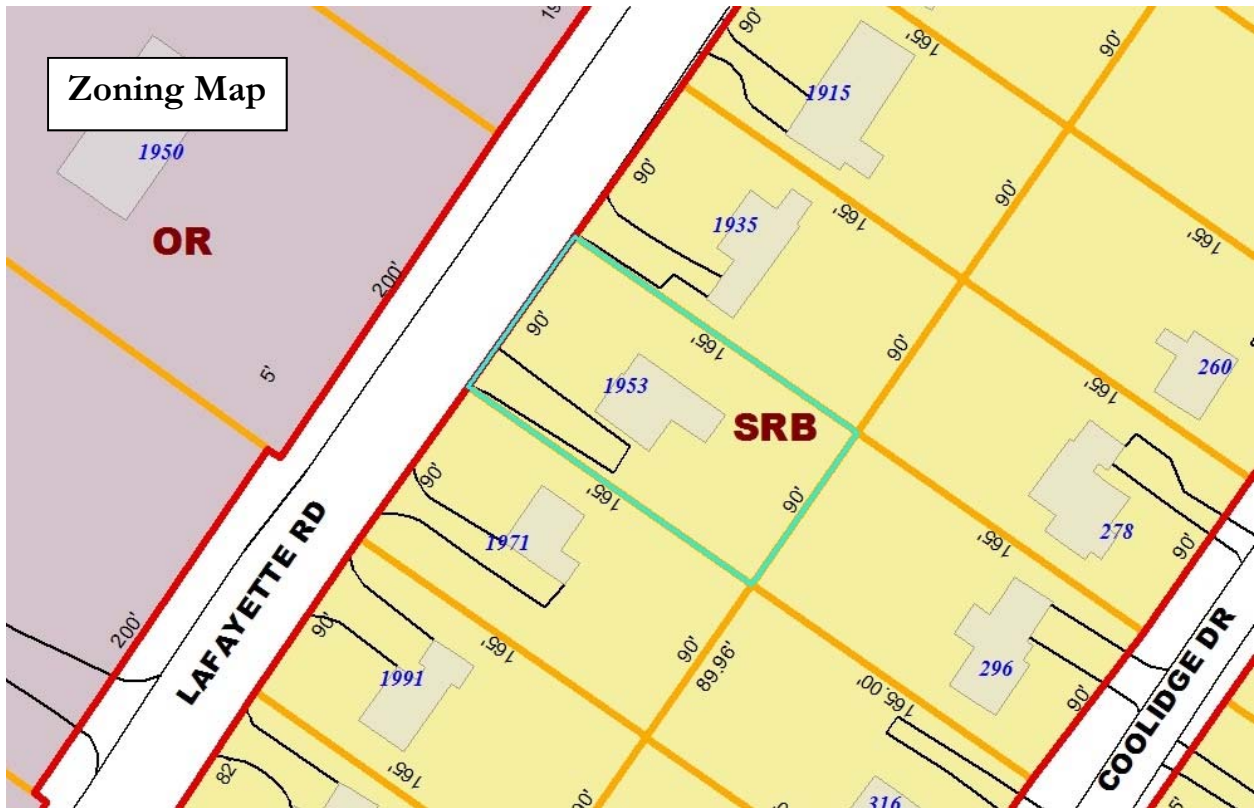
	Existing	Proposed	Permitted / Required
Land Use:	Single family residence	Home Occupation 2	Primarily single family residential uses
Parking (# of spaces):		3	2 min.

Other Permits Required

None.

Neighborhood Context





Previous Board of Adjustment Actions

No BOA 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

 - (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.*

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

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

Case #4-7

Petitioners:	Weeks Realty Trust, Kaley E. Weeks, Trustee and Bursaws Pantry, LLC, owners and Plan Ahead, Inc. applicant
Property:	3110 and 3020 Lafayette Road
Assessor Plan:	Map 292, Lots 151-1, 151-2 and 152
Zoning District:	Single Residence B (Lots 151-1&2) and Mixed Residential Business (Lot 152)
Description:	Construct a retail facility of up to 15,000 s.f. with a drive-through window and lanes.
Requests:	Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: <ol style="list-style-type: none">1. A Variance and/or Special Exception under Section 10.440 to allow a retail use in districts where it is not allowed or only allowed by Special Exception.2. A Variance from Section 10.1113.20 to allow off-street parking to be located in any front yard or between a principal building and a street.3. A Variance from Section 10.835.31 to permit a drive-through facility to be located within 100' of a residential district and within 50' of a lot line.4. A Variance from Section 10.835.32 to permit drive-through lanes to be located within 50' of a residential district and within 30' of a lot line.5. A Variance to allow a building, structure or parking area to be located 65'± from the centerline of Lafayette Road where 80' is required.

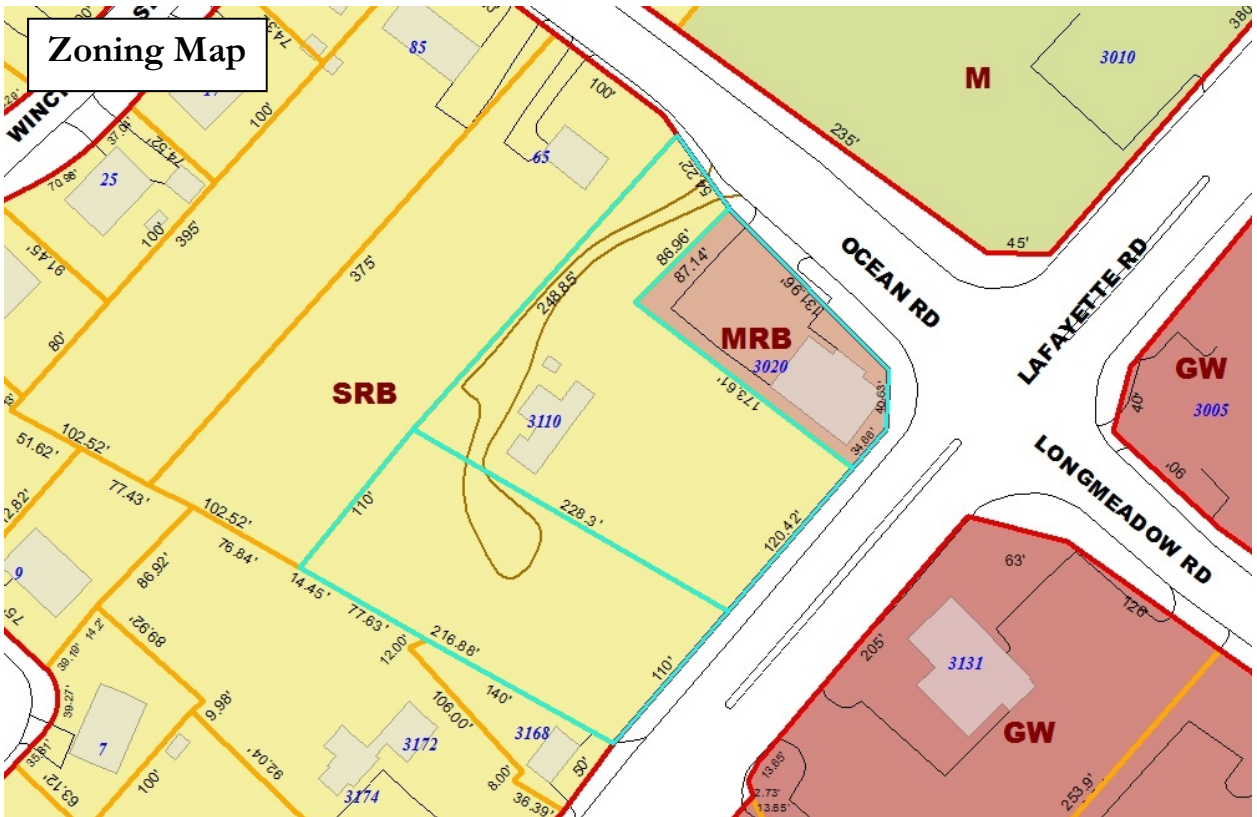
Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required
Land Use:	Retail, single family residence, vacant	Retail with drive-through	Primarily residential and office
Lot area (sq. ft.):	3 lots	70,507	7,500 min.
Lot Area per Dwelling Unit (sq. ft.):	N/A	N/A	7,500 min.
Street Frontage (ft.):	>100	>100	100 min.
Lot depth (ft.):	>80	>80	100 min.
Primary Front Yard (ft.):		62.6	80 min.
Right Yard (ft.):		81.7	5 min.
Left Yard (ft.):		>10	10 min.
Rear Yard (ft.):		>30	30 min.
Height (ft.):		<35	35 max.
Building Coverage (%):		21.3	20 max.
Open Space Coverage (%):		35.7	40 min.
Parking (# of spaces):		60	60 min.

Other Permits Required

Planning Board Site Plan Review

Neighborhood Context



Previous Board of Adjustment Actions

3110 Lafayette Road

April 26, 1977 – The Board **granted** the operation of a nursery school in an existing single family residence with the **stipulation** that an area be enclosed with a 4' unclimbable fence and that the entrance be restricted to Lafayette Road and the exit onto Ocean Road.

March 22, 1988 – The Board **denied** a request to convert a single family dwelling to office use in a district where the use was not allowed.

October 15, 1991 – The Board **granted** a special exception to allow a home occupation (office use) in 240 s.f. of a single family dwelling with the **stipulations** that the special exception would be limited to the applicant only; that there would be no signage displayed on the property; and that there would only be one employee other than the applicant.

3020 Lafayette Road

December 18, 1984 – The Board **granted** variances to allow the following: 1) A 10' front yard where a 105' minimum yard was required for front yards abutting Lafayette Road; 2) A 10' left yard and a 19' right yard where 20' was required; and 3) The construction of a second floor apartment in a proposed two-story building where only conversions to existing structures for a residential use were allowed.

June 24, 1986 – The Board **granted** variances to allow the following: 1) A 10' front yard where a 105' minimum yard was required for front yards abutting Lafayette Road; 2) A 10' left yard and a 19' right yard where 20' was required; and 3) The construction of a second floor apartment in a proposed two-story building where only conversions to existing structures for a residential use were allowed. (Note: No indication in the file regarding action following the first approval in 1984.)

October 20, 1987 – The Board **granted** a variance to permit the establishment of a 5' left side yard (due to a surveyor's error) in conjunction with a new structure where a 10' yard had been permitted by a previous variance.

March 15, 1988 – The Board **granted** variances to allow two attached signs totaling 43 s.f. and one 28 s.f. free-standing sign where free-standing signs were not allowed for a total of 71 s.f. of aggregate signage where 30 sf. was the maximum allowed.

August 30, 1988 – The Board **denied** a request to allow the construction of an exterior staircase on the south side of the building (for access to a dwelling unit) with a 2' left side yard where 30' was required.

January 21, 2003 – The Board **granted** a variance to allow an existing 2,111 s.f. Convenience Goods I store to be changed to a 2,111 s.f. Convenience Goods II store to allow the sale of prepared food for consumption off the premises where the maximum area for the latter was 2,000 s.f. The variance was granted with the **stipulation** that there would be no grilling or frying of prepared food on the premises.

January 20, 2004 – The Board **granted** a one-year extension of the above variance.

February 19, 2008 – The Board **granted** a variance to allow what had been requested and granted at the January 21, 2003, extended for one-year and allowed to lapse.

Planning Department Comments

The City's recently completed Master Plan has recommendations for future redevelopment of areas along primary transportation corridors, which are highlighted in the Corridor Focus Area chapter. Locations like this one are recommended for a mix of neighborhood scale uses with buildings on the street and parking behind.

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

- (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

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

Case #4-8

Petitioner:	Deer Street Associates
Property:	163 Deer Street (Lot/Building 4)
Assessor Plan:	Map 125, Lot 17-2
Zoning District:	Character District 5 and the Downtown Overlay District
Description:	Install a drive-through facility in connection with the construction of a four-story mixed use structure.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> 1. A Variance under Section 10.440, Use #19.40 to allow a drive-through facility as an accessory use. 2. A Variance from Section 10.516.20 to allow a 5'± rear yard adjoining a railroad right-of-way where 15' is required. 3. A Variance from 10.5A41.10D to allow a front lot line buildout of 66%± where 80% is required. 4. A Variance from Section 10.835.31 to allow an outdoor service facility (ATM) 49.7'± from the rear lot line and 48'± from the front lot line where 50' is required for each. 5. A Variance from Section 10.835.32 to allow a drive-through bypass lane 11.3'± from a lot line where 30' is required.

Existing & Proposed Conditions

	Proposed	Permitted / Required
Max. principal front yard	14	5 ft
Max. secondary front yard	NA	5 ft
Side yard (right)	30	NR
Side yard (left)	35	NR
Min. rear yard	5	15
Min. front lot line buildout	66%	80%
Max. building block length	116	225 ft
Max. façade modulation	74	100 ft
Min. entrance spacing	<50	50 ft
Max. building coverage	44	95%
Max. building footprint	8,736	30,000 sf
Min. lot area	NA	NR
Min. lot area per DU	NA	NR
Min. open space	5+	5%
Max. ground floor GFA/use	<15K	15,000 sf
Building height	49-9	<50
Max. finished floor surface of GF above sidewalk grade	<36	36 in
Min. ground story height	14	12 ft
Min. second story height	12	10 ft
Façade glazing	70%+	20% to 50% (70% min for shopfront)
Roof type	Flat / Gable	

	Proposed	Permitted / Required
Roof pitch	8:12	10.5A41.10D
Min. front yard (out)	NA	20 ft behind a façade of a principal building
Min. side yard (out, right)	NA	0 ft
Min. side yard (out, left)	NA	0 ft
Min. rear yard (out)	NA	3 ft
Building type	large commercial	
Façade type	shopfront	
Parking (# of spaces)	0	0
Parking location	NA	
Community space	NA	

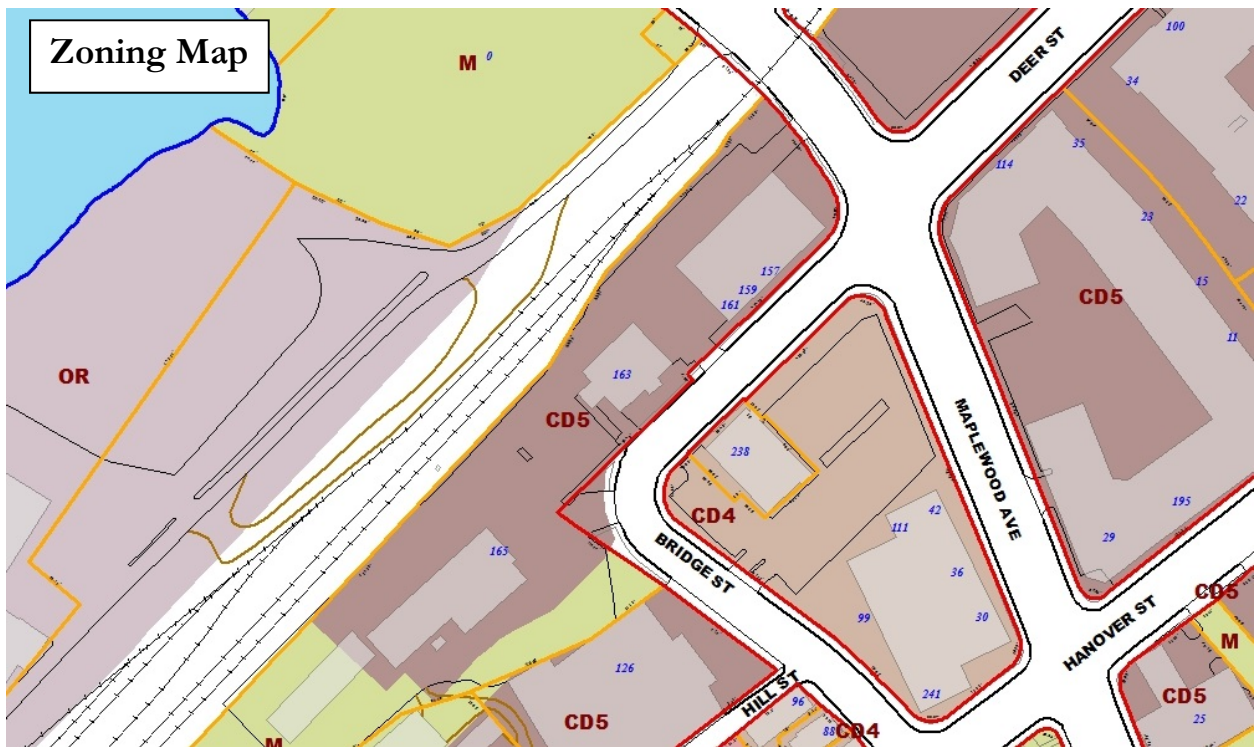
Other Permits Required

Historic District Commission
 Planning Board Site Plan Review

Neighborhood Context



Aerial Map



Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
 2. *Granting the variance would observe the spirit of the Ordinance.*
 3. *Granting the variance would do substantial justice.*
 4. *Granting the variance would not diminish the values of surrounding properties.*
 5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*
- OR**
- Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

Case #4-9

Petitioner:	S&G Realty
Property:	Chevrolet Avenue (number not assigned)
Assessor Plan:	Map 147, Lot 30
Zoning District:	General Residence C
Description:	Parking for three townhouses
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> 1. A Variance from Section 10.1113.20 to allow off-street parking to be located in any front yard or between a principal building and a street. 2. A Variance from Section 10.1114.32 to allow vehicles to enter and leave parking spaces by passing over another parking space or require the moving of another vehicle, and to leave the parking area by backing into a public street.

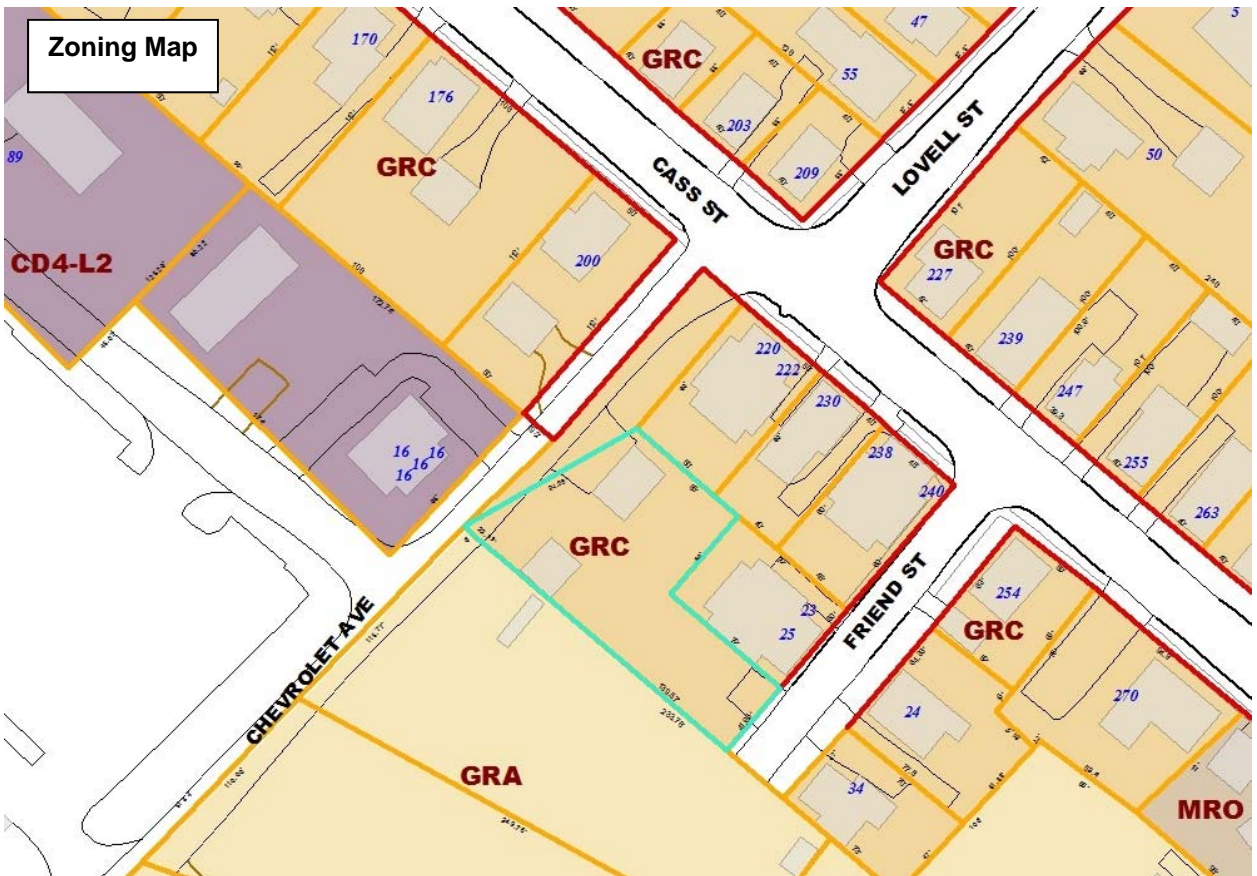
Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required
Land Use:	2 Garages	Three Residential Townhouses	Primarily residential uses
Lot area (sq. ft.):	10,071	10,071.00	3,500 min.
Lot Area per Dwelling Unit (sq. ft.):	N/A	3,357.00	3,500 min.
Street Frontage (ft.):	94.7	94.7	70 min.
Lot depth (ft.):	106.0	106.0	50 min.
Primary Front Yard (ft.):	>5	5	5 min.
Right Yard (ft.):	<10	14.8	10 min.
Left Yard (ft.):	<10	15.1	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	35%	20 min.
Parking (# of spaces):		6	6 min.
Estimated Age of Structure:			

Other Permits Required

Planning Board Site Plan Review

Neighborhood Context



Previous Board of Adjustment Actions

October 18, 2016 – The Board **granted** a variance, in order to construct a three-unit townhouse, to allow a lot area per dwelling unit of 3,357 s.f. where 3,500 s.f. were required.

Planning Department Comments

The applicant's attorney is working with the City to establish the property line at the edge of existing pavement and has also agreed to provide the City with a 15 foot easement for access to the City drainage line.

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

- (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

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

Case #4-10

Petitioners:	Lauren H. Wool and Jeffrey Bower
Property:	53 Summit Street
Assessor Plan:	Map 230, Lot 14
Zoning District:	Single Residence B
Description:	Construct an 8'± x 8'± mud room with a 4'± x 4'± covered front entry.
Requests:	<p>Variations 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 Variance from Section 10.521 to allow an 11'8" ± primary front yard where 30' is required. 2. A Variance from Section 10.321 to allow a lawful nonconforming building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required
Land Use:	Single family residence	Addition	Primarily single family residences
Lot area (sq. ft.):	10,925	10,925	15,000 min.
Lot Area per Dwelling Unit (sq. ft.):	10,925	NC	15,000 min.
Street Frontage (ft.):	115	NC	100 min.
Lot depth (ft.):	100	NC	100 min.
Primary Front Yard (ft.):	25	11'8"	30 min.
Secondary Front Yard (ft.):	30	>30	30 min.
Primary Rear Yard (ft.):	28	NC	30 min.
Secondary Rear Yard (ft.):	15	35'6"	30
Height (ft.):	26	13	35 max.
Building Coverage (%):	16.6	17.7	20 max.
Open Space Coverage (%):	86.3	86.3	40 min.
Parking (# of spaces):		NC	2 min.
Estimated Age of Structure:			

Other Permits Required

None.

Previous Board of Adjustment Actions

No BOA 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 #4-11

Petitioners:	Colman C. Garland & North Woods Revocable Trust, John D. Rust, Trustee & Rust Family Trust, Libby K Rust, Trustee, owners, & David Calkins, applicant
Property:	Off Moffat Street
Assessor Plan:	Map 243, Lots 25 through 28
Zoning District:	Single Residence B
Description:	Provide less than the required frontage while creating two residential lots from four existing lots.
Requests:	Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1) A Variance from Section 10.521 to allow 0'± continuous street frontage where 100' is required. <u>2) A Variance from Section 10.512 to allow a structure to be erected on a lot with no access to a public street or an approved private street.</u>

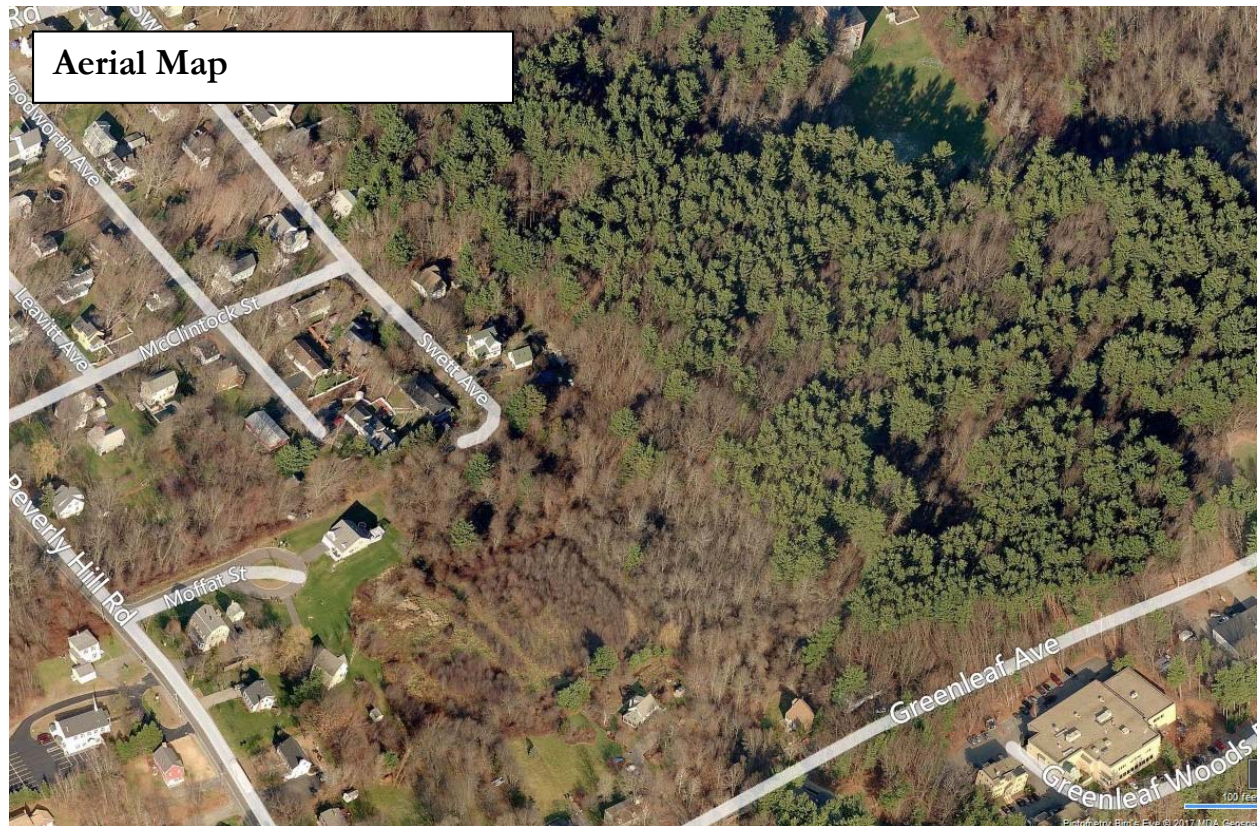
Existing & Proposed Conditions

	<u>Proposed</u>	<u>Permitted / Required</u>
Land Use:	Two single family residences	Primarily single family residential uses
Lot area (sq. ft.):	10,412 / 20,635	15,000 min.
Lot Area per Dwelling Unit (sq. ft.):	10,412 / 20,635	15,000 min.
Street Frontage (ft.):	0/0	100 min.
Lot depth (ft.):	120 / 240	100 min.
Primary Front Yard (ft.):	>30	30 min.
Right Yard (ft.):	>10	10 min.
Left Yard (ft.):	>10	10 min.
Rear Yard (ft.):	>10	30 min.
Height (ft.):	<35	35 max.
Building Coverage (%):	13.5 / 8.7	20 max.
Open Space Coverage (%):	77 / 87	40 min.
Parking (# of spaces):	2 / 2	2 min.

Other Permits Required

Planning Board Subdivision and Site Plan Review
City Council

Neighborhood Context



Previous Board of Adjustment Actions

February 21, 2017 – The Board, in considering the creation of two residential lots from four existing vacant lots, **granted** variances to allow a lot area and lot area per dwelling unit of 10,412 s.f. where 15,000 s.f. was required and continuous street frontages of 86.02' and 86.00' where 100' was required. The request was granted with the **stipulation** that the proposed plan would be submitted to the Planning Board for site plan review.

Planning Department Comments

The applicant was previously before the Board for zoning relief to allow a new subdivision on a subdivision road that would result in lots with less than the required street frontage. Since then, an abutting property owner has requested that a portion of the proposed subdivision road be released to them, which would mean that creation of the subdivision road would no longer be possible and at least one of the proposed lots would not have any street frontage. This request has been referred by the City Council to Planning Board for a recommendation. In order for the subdivision road to be created as originally envisioned by the applicant, all of the abutting property owners would need to be co-applicants to the subdivision. As noted below in the excerpt from the staff memo to the Planning Board, it is the Planning Department's opinion that the City has no interest in the paper street and therefore a vote is technically not required.

The owners of property at 85 Woodworth Avenue are requesting that the City release its interest, if any, in the portions of two "paper streets" abutting their lot... A paper street is one which shows on a plan, especially the City tax map, but which does not exist on the ground. The most common way for that situation to come about is when a street is "dedicated" to public use by a landowner recording a plan showing the street. This happened frequently in the days before planning board approval was required for the recording of plans. A street so dedicated becomes a public street only when "accepted" by the City. The acceptance can be formal, often by vote of the City Council, or by implication based on City use and maintenance of the street.

For a street dedicated (shown on a recorded plan) before 1969, the dedication was automatically terminated if the City did not accept the street within 20 years. The owners of lots fronting on those paper streets may have implied easements to use the paper streets for access and development, but such easements do not override local zoning and subdivision regulations.

As noted in the staff memorandum for the Board's February meeting, the lots and streets in this area originated in a 1902 subdivision plan of "Prospect Park". Several of the streets in the subdivision were partially constructed and accepted by the City, and a number of lots were developed. However, the area east of the Moffat Street cul-de-sac has remained undeveloped because of the extensive wetlands and challenging topography. As a result, the dedications of the paper streets in this area terminated in 1922. **While the City is being asked to formally release any interest it has in these paper streets, such a vote is not technically required and would not necessarily have any impact, except to clarify the record.**

The Planning Department has advised the applicant that even if the relief for frontage is granted by the Zoning Board of Adjustment, the applicant will also need to get approval from the City Council because of a state statute related to street access (RSA 674:40 and 674:41). This law prohibits the issuance of a building permit unless the lot has access to a street. The Planning Department does not feel that the City Council approval has to happen before the Zoning Board of Adjustment relief is considered.

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.*
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