

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: May 10, 2017
RE: Zoning Board of Adjustment May 2017 Meeting

OLD BUSINESS

1. 401 State St. – Request for Rehearing
2. 3110 and 3020 Lafayette Rd.

NEW BUSINESS

1. 495 Ocean Rd.
2. 209 Clinton St.
3. 100-102 State St.
4. 165 Deer St.
5. 10 Humphrey's Ct.
6. 416 Ocean Rd.

OLD BUSINESS

Case #3-2

Petitioners:	The Rockingham House Condominium Association, owner, Sean Tracey Associates, applicant
Property:	401 State Street
Assessor Plan:	Map 116, Lot 3
Zoning District:	Character District 4, Downtown Overlay District, Sign District 3
Description:	Request for Rehearing
Requests:	A request for Rehearing has been made pursuant to RSA 677:2.

Planning Department Comments

On March 21, 2017, the Board denied the request for a variance as described above. The applicant has filed a request for a rehearing within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, the rehearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

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. <p><i>(This petition was postponed from the April 18, 2017 meeting)</i></p>

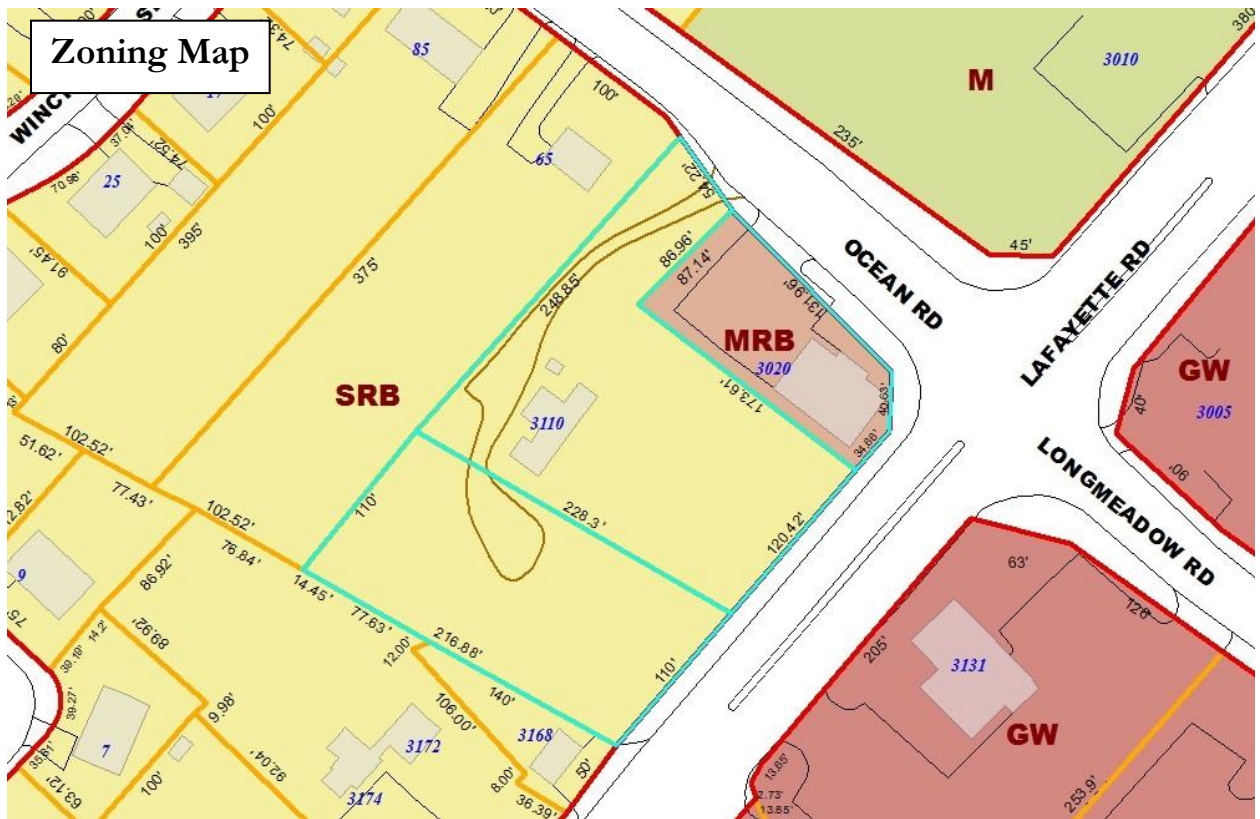
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
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.*

NEW BUSINESS

Case #5-1

Petitioners:	Eugene and Pamela Hunter
Property:	495 Ocean Road
Assessor Plan:	Map 283, Lot 35
Zoning District:	Single Residence A
Description:	Replace existing stairs with new 8'± x 16'± open porch.
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"> Variations from Section 10.521 to allow the following: a) a 20'± primary front yard where 30' is required and b) 17%± building coverage where 10% is the maximum allowed. A Variance from Section 10.321 to allow a nonconforming building to be reconstructed or enlarged without conforming to the requirements of the ordinance.

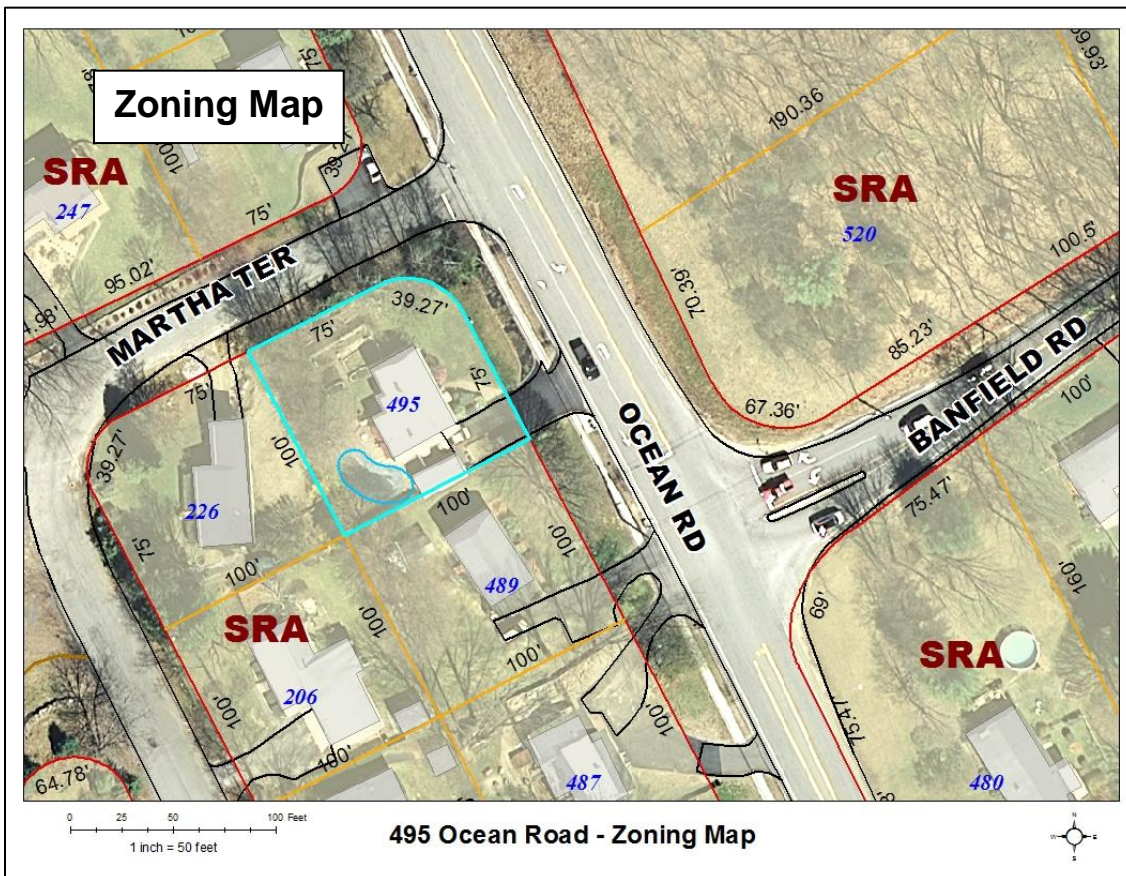
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>	
<u>Land Use:</u>	Single Family	Single Family	Primarily Single Family	
<u>Lot area (sq. ft.):</u>	10,018.80	10,018.80	43,560	min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,018.80	10,018.80	43,560	min.
<u>Street Frontage (ft.):</u>	98	98	150	min.
<u>Lot depth (ft.):</u>	100	100	200	min.
<u>Primary Front Yard (ft.):</u>	28	20	30	min.
<u>Secondary Front Yard (ft.):</u>	32	32	20	min.
<u>Left Yard (ft.):</u>	38	38	30	min.
<u>Rear Yard (ft.):</u>	22	22	40	min.
<u>Height (ft.):</u>	<35	<35	35	max.
<u>Building Coverage (%):</u>	16.21	17.5	10	max.
<u>Open Space Coverage (%):</u>	76.54	75.27	50	min.
<u>Parking (# of spaces):</u>		NC	2	min.
<u>Estimated Age of Structure:</u>	1963			
Variance request shown in red.				

Other Permits Required:

None.

Neighborhood Context



Previous Board of Adjustment Actions

June 24, 1986 – The Board **granted** a variance to allow a 10' x 24' shed with a 4' left side yard where 9'6" was required with the **stipulation** that the two existing sheds be removed when the new shed is ready for storage.

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 #5-2

Petitioners:	Pamela Gould
Property:	209 Clinton Street
Assessor Plan:	Map 159, Lot 27
Zoning District:	General Residence A
Description:	Keep four (4) chickens (hens) in a 73"± x 38.25"± movable coop.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance under Section 10.440, Use #17.20 to allow the keeping of farm animals in a district where the use is not allowed.

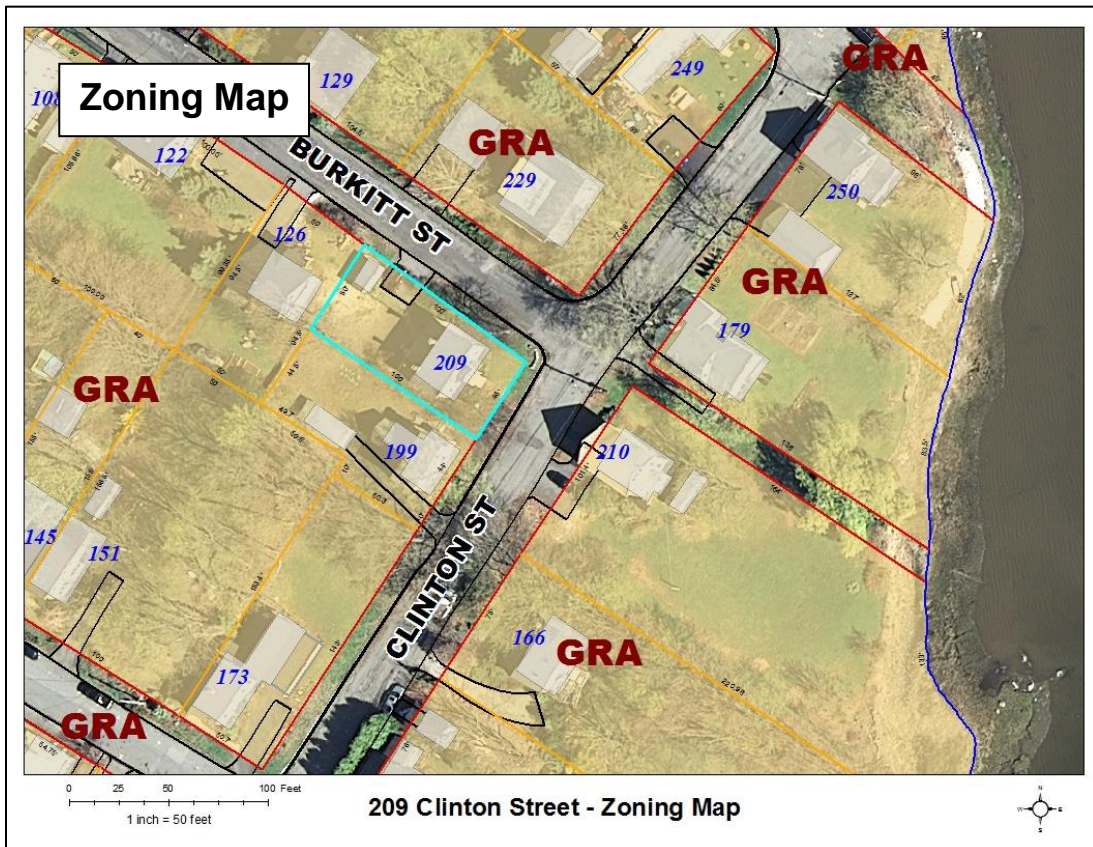
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family/ House	Single Family/ Chicken Coop	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	4,791.60	4,791.60	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,791.60	4,791.60	7,500 min.
<u>Street Frontage (ft.):</u>	46	46	100 min.
<u>Lot depth (ft.):</u>	100	100	70 min.
<u>Primary Front Yard (ft.):</u>	17	>15	15 min.
<u>Secondary Front Yard (ft.):</u>	3	>15	15 min.
<u>Left Yard (ft.):</u>	9	14	5 (for coop) min.
<u>Rear Yard (ft.):</u>	56	6	5 (for coop) min.
<u>Height (ft.):</u>	35	48"	35 max.
<u>Building Coverage (%):</u>	23.3	23.5	25 max.
<u>Open Space Coverage (%):</u>	68.5	68.3	30 min.

Other Permits Required

None

Neighborhood Context



Previous Board of Adjustment Actions

December 15, 2015 – The Board **granted** variances to construct a 10'6" x 30' single story rear addition with a left side yard of 9' where 10' was required and 27.5% building coverage where 25% was the maximum allowed.

February 16, 2016 – The Board **considered a request for clarification** of the above variances. Determining that an Equitable Waiver of Dimensional Requirements was the appropriate relief, the Board **granted an equitable waiver** to allow a left side yard of 8'4" where 9' had been granted and 10' was required and a secondary front yard setback to Burkitt Street of 9' where 15' was required.

March 18, 2016 – The Board **clarified** previous decisions determining that the information presented at the current meeting and the February 16, 2016 meeting fell within the boundaries of that presented and advertised for the original application and should be incorporated within the variances that were granted. The Board **confirmed** that the request before the February 16, 2016 meeting was to clarify a previous approval and not for an equitable waiver and the February 16, 2016 vote was an error. The following dimensional relief was confirmed as allowed:

- A left side yard setback of 8'4" where 10' was required and a variance for 9' had been granted;
- A secondary front yard setback to Burkitt Street of 9' where 15' was required; and
- 27.5% building coverage where 25% was the maximum allowed.

With this clarification of the original variances, the action of the Board in granting an Equitable Waiver at the February 16, 2016 meeting was **nullified** and the original granting of relief at the December 15, 2015 meeting **upheld**.

Planning Department Comments

If the variance is granted, the chicken coop will be treated as an accessory structure and must comply with accessory structure setbacks.

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 #5-3

Petitioners:	Brick Act LLC, owner & Kristin Finchera, applicant
Property:	100-102 State Street
Assessor Plan:	Map 107, Lot 52-1
Zoning District:	Character District 4, Historic District
Description:	Operate a preschool for a maximum of 20 children where no off-street parking is provided.
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 10.1112.30 to provide no off-street parking spaces where 0.5 spaces per client licensed capacity are required.

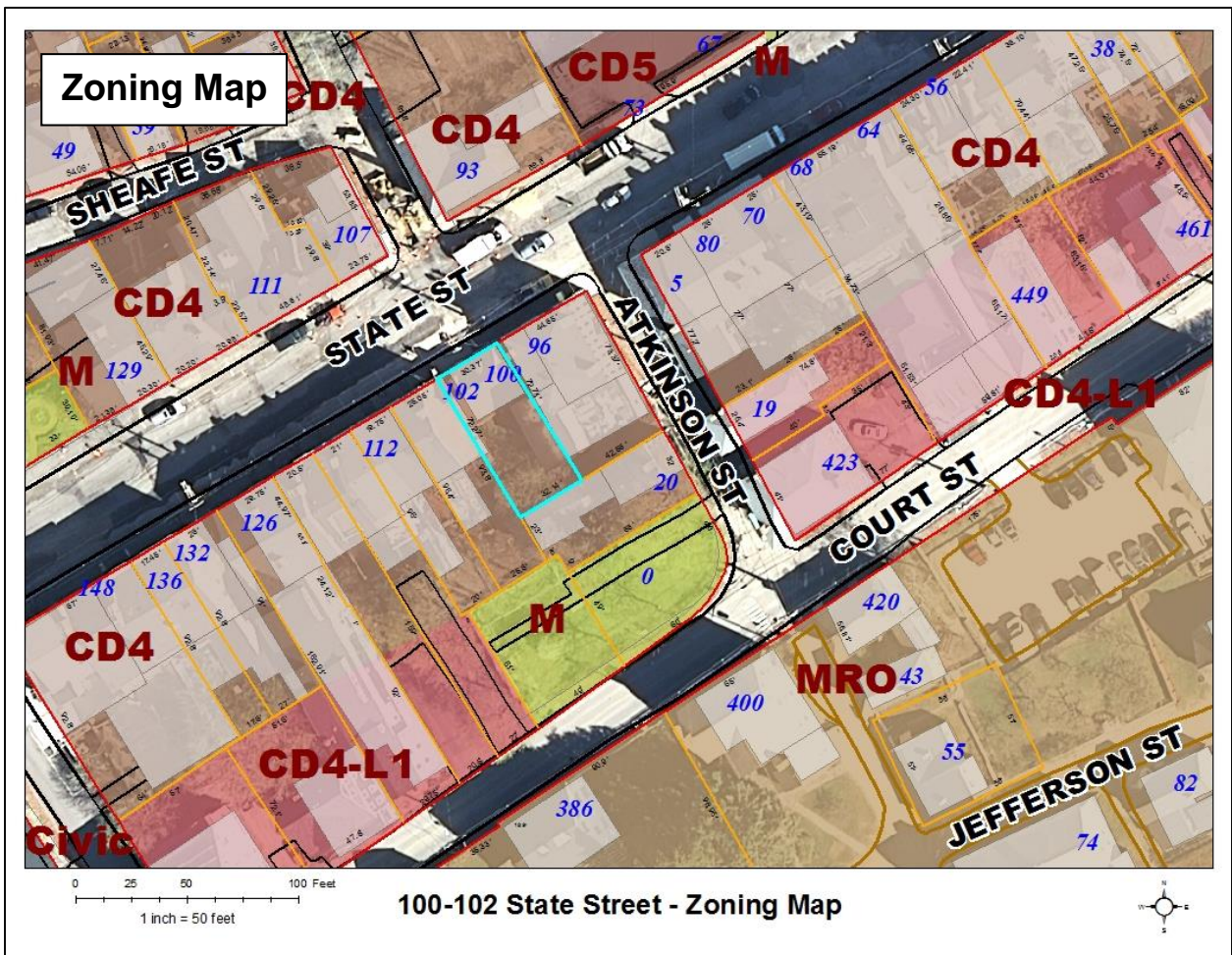
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted/Required</u>
<u>Land Use:</u>	Mixed-Use	Nursery School	Mixed-Use
<u>Max. principal front yard</u>	0	0	10 ft.
<u>Max. secondary front yard</u>	NA	NA	15 ft.
<u>Min. rear yard</u>	>45	>45	5 ft. or 10 ft. from alley centerline
<u>Max. building coverage</u>	25%	25%	90%
<u>Max. building footprint</u>			15,000 sf
<u>Min. open space</u>	>10%	>10%	10%
<u>Max. ground floor GFA/use</u>	>15,000	>15,000	15,000 sf
<u>Building height</u>	<40	<40	<40
<u>Parking (# of spaces)</u>	0	0	0.5 per client licensed capacity
Variance request shown in red.			

Other Permits Required

Although it is located within the Historic District, a change of use does not require approval from the HDC.

Neighborhood Context



Previous Board of Adjustment Actions

October 23, 2015 – The Board **granted** variances for an expanded retail use and a dwelling unit with the following: a) no off-street parking spaces to be provided where 6 were required; and b) the enlargement or alteration of a nonconforming use as to the requirements for off-street parking without complying with those requirements.

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 #5-4

Petitioners:	Deer Street Associates
Property:	165 Deer Street (Lot/Building 3)
Assessor Plan:	Map 125, Lot 7
Zoning District:	Character District 5, Downtown Overlay District
Description:	Construct a 5-story mixed use building with enclosed off-street parking utilizing 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. A Variance from Section 10.516.20 to allow a 5'± rear yard adjoining a railroad right-of-way where 15' is required. 2. A Variance from Section 10.1114.21 to allow 62 parking spaces utilizing a two-car lift system in each bay that does not meet the required dimensions for parking spaces. 3. A Variance from Section 10.1114.32(a) to allow vehicles to enter and leave parking spaces by passing over another parking space or requiring the moving of another vehicle.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Vacant	Mixed-Use	Mixed-Use
<u>Max. principal front yard</u>		>5	5 ft.
<u>Max. secondary front yard</u>		>5	5 ft. min.
<u>Side yard (right)</u>		NR	NR min.
<u>Side yard (left)</u>		NR	NR min.
<u>Min. rear yard</u>		5	15 from railroad ROW
<u>Min. front lot line buildout</u>		TBD	80% min.
<u>Max. building block length</u>		174'9"	225 ft. min.
<u>Max. façade modulation</u>		68'8"	100 ft. min.
<u>Min. entrance spacing</u>		<50	50 ft. min.
<u>Max. building coverage</u>		86	95% max.
<u>Max. building footprint</u>		22,872	30,000 sf max.
<u>Min. lot area</u>		NR	NR min.
<u>Min. lot area per DU</u>		NR	NR
<u>Min. open space</u>		12%	5%
<u>Max. ground floor GFA/use</u>		ok	15,000 sf
<u>Building height</u>		61'10"	62
<u>Max. finished floor surface of GF above sidewalk grade</u>		<36	36 in
<u>Min. ground story height</u>		13	12 ft.
<u>Min. second story height</u>		12	10 ft.
<u>Façade glazing</u>		80% shopfront 49% other	20% to 50% (70% min for shopfront)
<u>Roof type</u>		Flat	

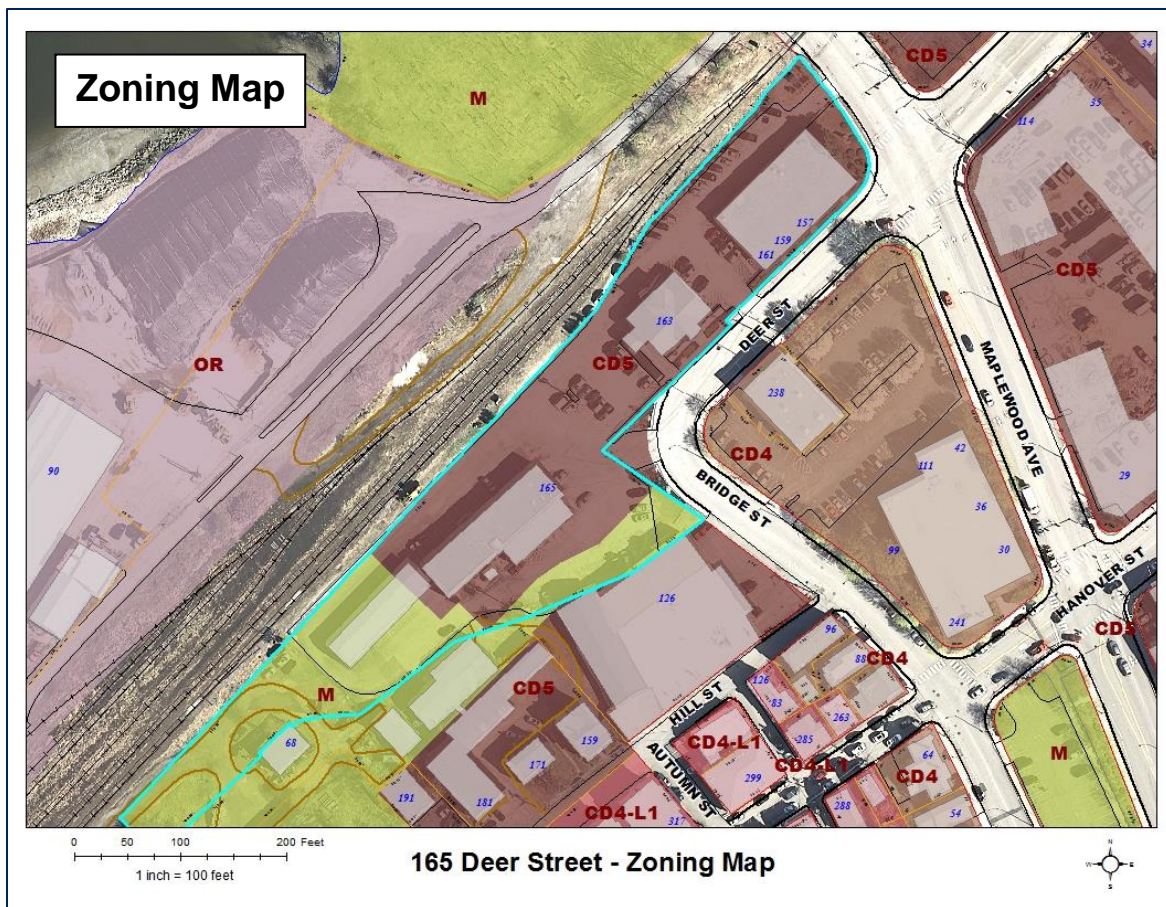
<u>Roof pitch</u>		Flat	0
<u>Parking (# of spaces)</u>		105	91
<u>Parking location</u>		ok	
<u>Community space</u>		Plaza	
Variance request shown in red.			

Other Permits Required

Site Plan Review

Neighborhood Context





Previous Board of Adjustment Actions

December 19, 1978 – The Board **granted** a variance to construct a 30' x 80' garage 45' from the front property line and contiguous with the left and rear property lines where 70', 50' and 50' respectively were required. The variance was granted with the **stipulations** that the peak would not exceed 20' from the ground level and that the building would be placed on the location as shown on the plans.

September 19, 1985 – The Board **granted** a variance to allow the erection of a 1,425 s.f. 1-story greenhouse adjacent to the garden center structure where no building or structure in the district was permitted to be less than two stories in height. The variance was granted with the **stipulations** that the existing greenhouse be removed with a \$5,000 bond to ensure its removal and that the petitioner would pave and mark the parking area as indicated on the plans.

January 13, 1987 – The Board **granted** a special exception to permit the installation of a free-standing sign in the Central Business district where they were allowed only by special exception and a variance to permit a 20 s.f. free-standing sign where 12 s.f. was the maximum allowed.

April 26, 1988 – The Board **granted** an appeal of an administrative decision of the Building Inspector in the interpretation of sections of the Zoning Ordinance regarding the resurfacing of an existing nonconforming rooftop sign. The appeal was granted with

the **stipulation** that the total amount of aggregate signage would not exceed what would be in conformance with the Zoning Ordinance. A request for a variance to achieve the same purpose should the appeal be denied was not considered by the Board due to their action on the appeal.

April 18, 1989 – The Board **granted** variances to permit the construction of a 30' x 30' garage with a 40' front yard, a 30' left yard and a 33' rear yard where 70', 50' and 50' respectively were required.

February 19, 2002 – The Board **granted** a variance to allow 2,150 s.f. of existing space to be used as a yoga studio/school in a district where schools were not allowed.

July 17, 2007 – The Board **granted** a special exception to install a ground mounted switch cabinet and manhole with the **stipulation** that the height of the screening for the installation be no more than 50" high.

February 21, 2012 – The Board **granted** a variance to permit the rental and storage of motorized scooters where the use was not allowed.

December 6, 2014 – The Board **denied** a request to install an illuminated sign in the Historic District and acknowledged that a request for an attached wall sign had been **withdrawn**.

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 #5-5

Petitioners:	Steven J. Craige
Property:	10 Humphrey's Court
Assessor Plan:	Map 101, Lot 43
Zoning District:	General Residence B, Historic District
Description:	Replace existing one-car garage with a two-car garage.
Requests:	<p>Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> 1. Variances from Section 10.521 to allow the following: a) a right side yard of 4'8" ± where 10' is required; b) an 8'1" ± rear yard where 25' is required; and c) 33%± building coverage where 30% is the maximum allowed. 2. A Variance from Section 10.321 to allow a nonconforming building to be reconstructed or enlarged without conforming to the requirements of the ordinance.

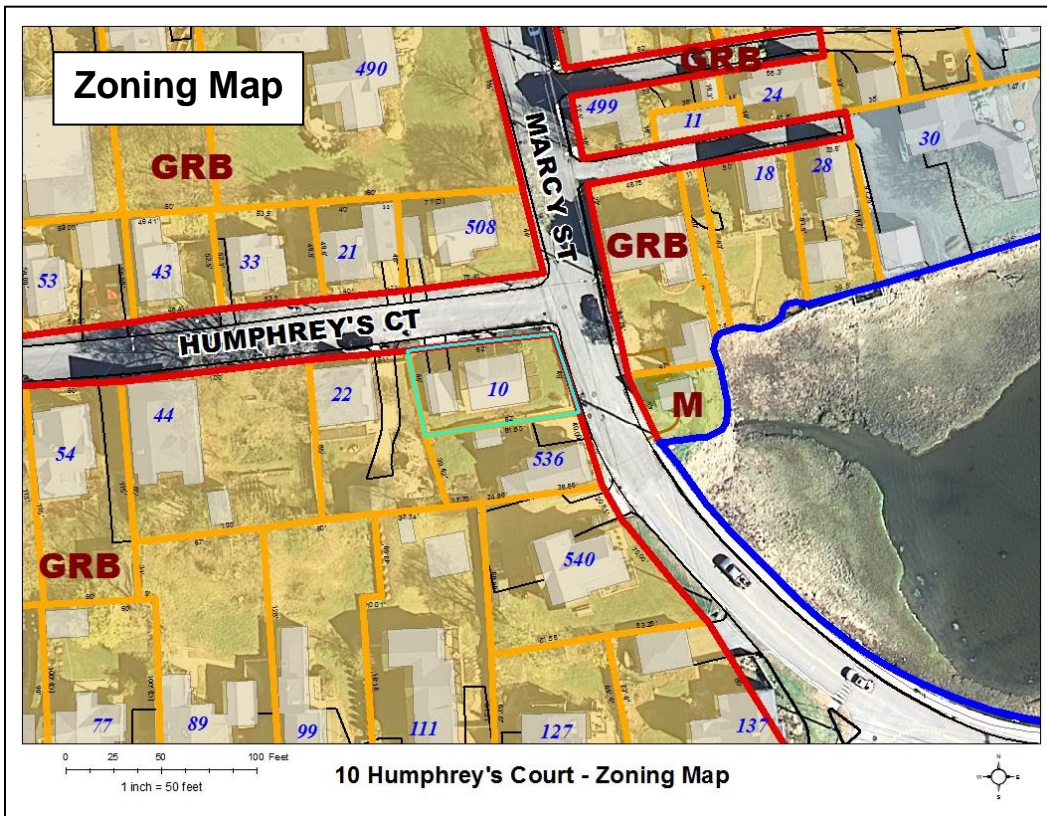
Existing & Proposed Conditions **REVISED**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>	
<u>Land Use</u>	Single family	Single family/new garage	Primarily single family	
<u>Min. lot area (sf)</u>	3,920.00	3,920.00	5,000	
<u>Lot area / dw unit (sf)</u>	3,920.00	3,920.00	5,000	
<u>Street frontage (ft)</u>	82	82.00	80	min.
<u>Lot depth (ft)</u>	45	45.00	60	min.
<u>Primary front yard (ft)</u>	11	11	5	min.
<u>Right side yard (ft)</u>	6'7"	2'10.25"	10	min.
<u>Secondary Front Yard</u>	20'5"	20'5"	5	min.
<u>Rear yard (ft)</u>	9'10"	8'1"	25	min.
<u>Height (ft)</u>	12'10"	16'6"	35	min.
<u>Bldg coverage (%)</u>	31.0%	33.9%	30%	max.
<u>Open Space (%)</u>	59.0%	56.9%	25%	max.
<u>Parking (#)</u>	2	2	2	min.
Variance request shown in red.				

Other Permits Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

November 15, 2011 – The Board **granted** variances for the construction of a rear shed dormer by allowing a nonconforming building to be enlarged in a manner not in conformity with the zoning ordinance and a 9' rear lot line for a dormer where 25' was required.

June 28, 2016 – The Board **granted** variances for the construction of a connector between the existing house and garage allowing the following: 1) a nonconforming structure to be enlarged without conforming to the ordinance; 2) a rear yard setback of 9' where 25' was required and a 6' right side yard setback where 10' was required; and 3) 32.0% building coverage where 30% was 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.*
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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 #5-6

Petitioners:	Matthew & Katherine Menchen, owners
Property:	416 Ocean Road
Assessor Plan:	Map 292, Lot 12
Zoning District:	Single Residence A
Description:	Keeping of chickens (hens) in a mobile coop.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <p>1. A Special Exception under Section 10.440, Use #17.20 to allow the keeping of farm animals in a district where the use is only allowed by Special Exception.</p>

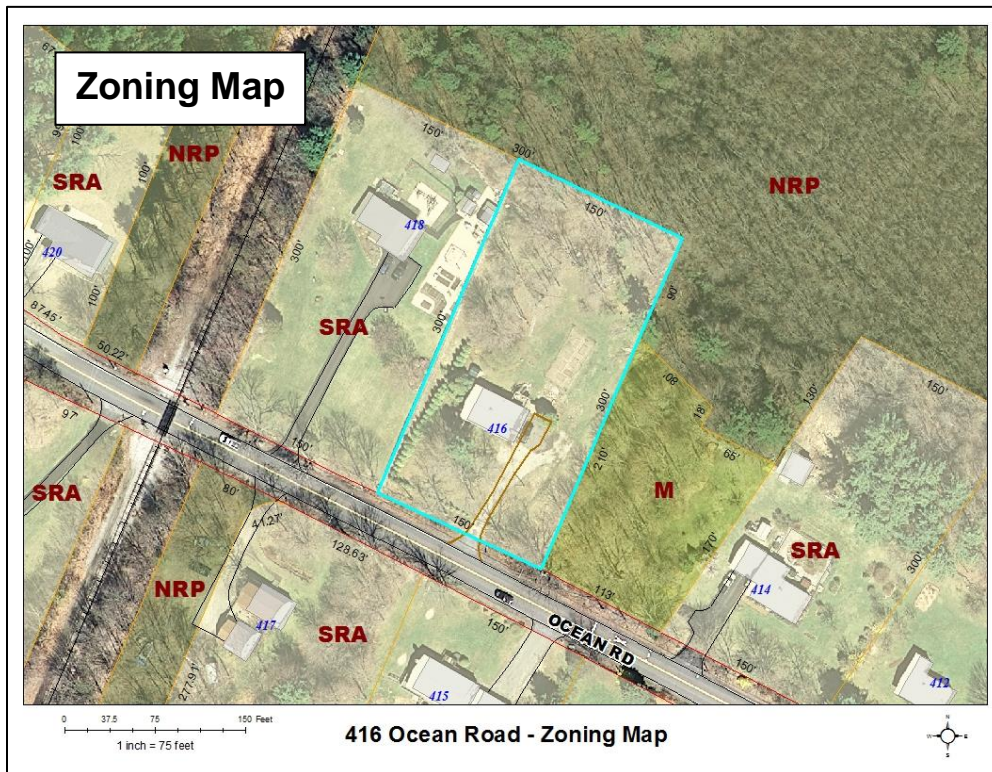
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Single Family/ Chicken Coop	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	44,866.8	44,866.8	43,560 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	44,866.8	44,866.8	43,560 min.
<u>Street Frontage (ft.):</u>	150	No Change(NC)	150 min.
<u>Lot depth (ft.):</u>	300	NC	200 min.
<u>Primary Front Yard (ft.):</u>	>30	>30	30 min.
<u>Right Yard (ft.):</u>			5 (for coop) min.
<u>Left Yard (ft.):</u>	9		5 (for coop) min.
<u>Rear Yard (ft.):</u>			5 (for coop) min.
<u>Height (ft.):</u>	35	8	35 max.
<u>Building Coverage (%):</u>	3.2	3.3	10 max.
<u>Open Space Coverage (%):</u>	91.14	91.06	50 min.

Other Permits Required

None

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

If the Special Exception is granted, the chicken coop will be treated as an accessory structure and must comply with setbacks.

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.*