

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: August 10, 2021
RE: Zoning Board of Adjustment August 17, 2021
Meeting

OLD BUSINESS

1. 105 Bartlett – Request for Rehearing
2. 39 Pickering Street
3. 960 Sagamore Avenue
4. 546 Sagamore Avenue
5. 0 Islington Street
6. 2454 Lafayette Road

NEW BUSINESS

1. 3400 Lafayette Road
2. 361 Islington Street
3. 35 Park Street
4. 261 Sagamore Avenue

OLD BUSINESS

1.

Petition of **Iron Horse Properties, LLC** requesting a rehearing of pursuant to RSA 677:2 Said properties are shown on Assessor Map 157 Lot 1 and Lot 2 and Assessor Map 164 Lot 1 and 4-2 and lie within the Character District 4-W (CD4-W) and Character District 4-L1 (CD4-L1) Districts.

On Tuesday, July 20, 2021, the Board granted the following: Appeal of **Duncan MacCallum (Attorney for the Appellants)** of the April 15, 2021 decision of the Planning Board for property located at **105 Bartlett Street** which granted the following: a) a wetlands conditional use permit under Section 10.1017 of the Zoning Ordinance; b) a parking conditional use permit under Section 10.1112 of the Ordinance; c) site plan review approval; and d) approval of lot line revision.

A request for rehearing has been filed 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.

2.

Petition of **William H. and Barbara Ann Southworth, Owners**, for property located at **39 Pickering Street** whereas relief is needed from the Zoning Ordinance to replace existing 8' x 8' shed with a 10' x 12' shed which requires the following: 1) Variances from Section 10.521 to allow a) a 2' rear yard where 10' is required; b) a 2' right side yard where 10' is required; and c) 40.5% building coverage where 30% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 102 Lot 5 and lies within the General Residence B (GRB) District.

Existing & Proposed Conditions

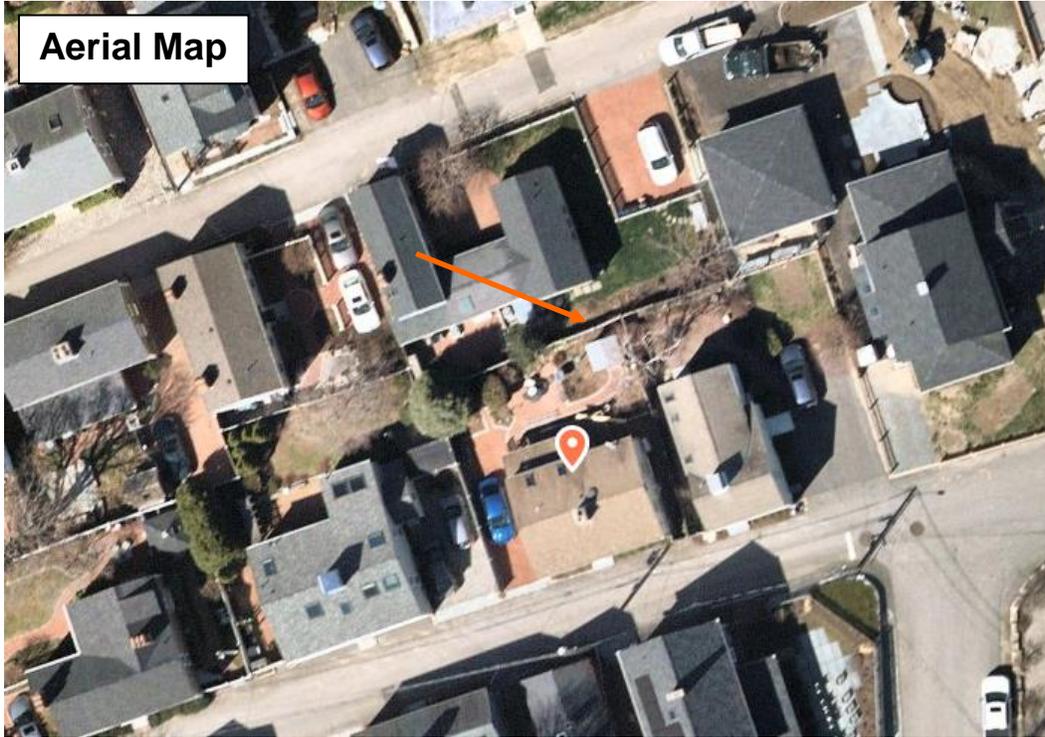
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Replace existing shed	Primarily residential uses
<u>Lot area (sq. ft.):</u>	2,476	2,476	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,476	2,476	5,000 min.
<u>Street Frontage (ft.):</u>	46	46	80 min.
<u>Lot depth (ft.):</u>	55	55	60 min.
<u>Front Yard (ft.):</u>	0	0	5 min.
<u>Right Yard (ft.):</u>	2	2	10 min.
<u>Left Yard (ft.):</u>	40	38	10 min.
<u>Rear Yard (ft.):</u>	2	2	25/ 10 (shed) min.
<u>Height (ft.):</u>	8	10	35 max.
<u>Building Coverage (%):</u>	39	40.5	30 max.
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1999	Variance request(s) shown in red.	

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

March 26, 1985 – The Board granted the following variances: The construction of a two story addition at the rear of an existing home with a right yard of 18' where 20' is required; and the increase in the extent of a nonconforming use of a residential structure or land where no increase in the extent of a nonconforming use of a residential structure of land is allowed.

September 15, 1992 – The Board granted the following variance: The construction of a one story 7' by 16' three story porch at the rear of the house with a) a 3' right yard where 10' is required; and 2) a lot coverage of 35.6% where maximum 20% is allowed.

July 18, 1995 – The Board granted the following variance: The construction of a 6' by 7' shed: a) creating 3' right side and 2' rear yard where 10' is minimum required; and b) a building cover of 37.6% where the maximum allowed is 20%.

July 15, 1997 - The Board granted the following variance: The construction of a one story 6' by 8' addition to the left rear of an existing building with a 20'5" rear yard where 25' is the minimum required; and, a variance to allow structural changes to a nonconforming structure by the demolition of a 5' by 24' portion of the existing structure resulting in 36.1% coverage where the existing is 37% and the maximum allowed is 30%.

April 20, 1999 – The board granted a request to amend the previously approved application

May 18, 1999 and reconvened on May 25, 1999 – The board granted the following variance: Article III, Section 10-302(A) to allow the reconstruction of a single family dwelling in exactly the same size and location.

Planning Department Comments

The applicant is proposing to replace the existing shed with a slightly larger 10 x 12 shed, maintaining the existing side and rear setbacks and the new square footage of the shed will be located towards the interior of the lot. The resulting coverage will be increase to 40.5% from the existing 39%. The applicant postponed in June to reconsider the location of the shed, however they are moving forward with the proposal as originally advertised.

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.*

Planning Department Comments 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.

3. Request to postpone

Petition of **Wentworth Corner LLC, Owners**, for the property located at **960 Sagamore Avenue** whereas relief is needed from the Zoning Ordinance to demolish existing structures and construct an 8 unit residential building which requires the following: 1) A Variance from Section 10.521 to allow a lot area per dwelling unit of 5,360 square feet where 7,500 square feet is required. 2) A Variance from Section 10.1114.31 to allow two driveways on a lot where one driveway is permitted. Said property is shown on Assessor Map 201 Lot 2 and lies within the Mixed Residential Business (MRB) District.

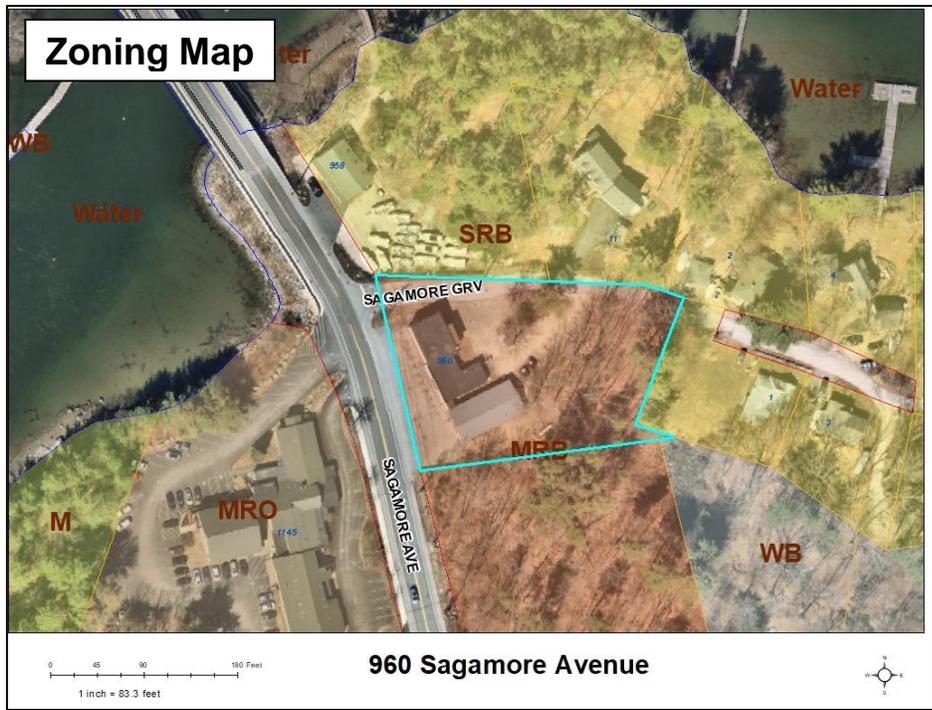
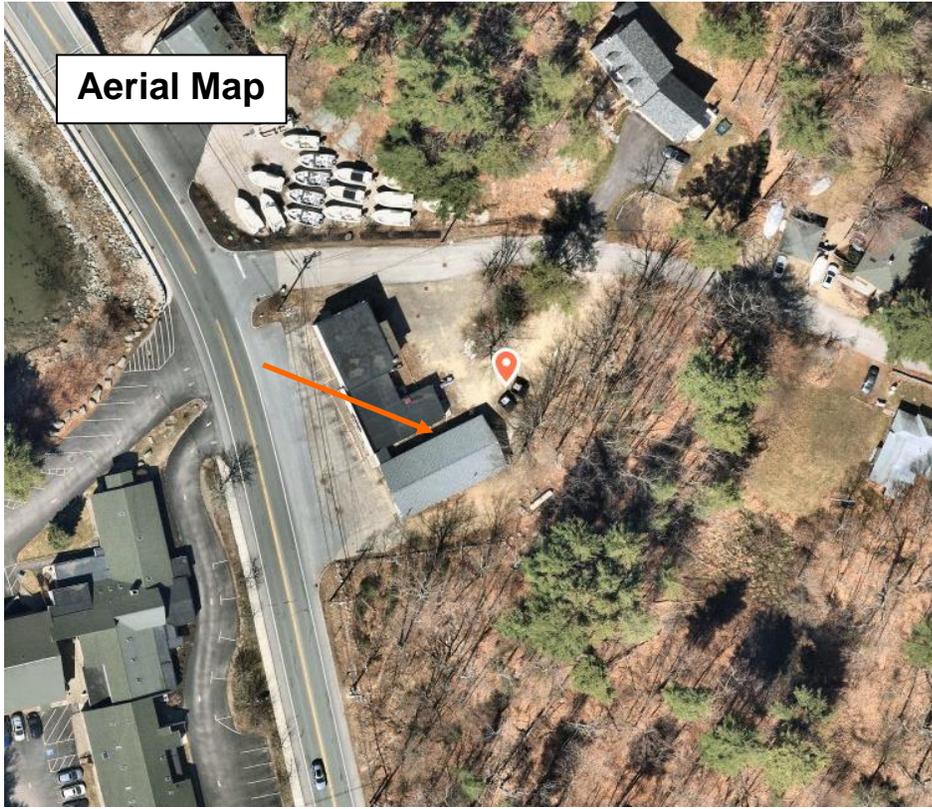
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Restaurant	Construct 8-unit dwelling	Primarily business/residential uses
<u>Lot area (sq. ft.):</u>	42,930	42,930	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	5,360	7,500 min.
<u>Street Frontage (ft.):</u>	194	194	100 min.
<u>Lot depth (ft.):</u>	212	212	80 min.
<u>Front Yard (ft.):</u>	17	18	5 min.
<u>Secondary Front Yard (ft.):</u>	>5	>5	10 min.
<u>Right Yard (ft.):</u>	21	11	10 min.
<u>Rear Yard (ft.):</u>	107	105	15 min.
<u>Height (ft.):</u>	22	<40	40 max.
<u>Building Coverage (%)</u>	11	20	40 max.
<u>Open Space Coverage (%)</u>	45	57.5	25 min.
<u>Parking</u>	15	25	11
<u>Estimated Age of Structure:</u>	1970	Variance request(s) shown in red.	

Other Permits/Approvals Required

TAC, Planning Board and Conservation Commission

Neighborhood Context



Previous Board of Adjustment Actions

August 16, 2011 – The Board granted the following special exception:

- Use #7.20 (personal services) under Section 10.440

Planning Department Comments

The applicant is proposing to demolish the existing structures and construct an 8 unit dwelling which will require a variance for lot area per dwelling unit. Five units are permitted by right per the lot size. The redevelopment of the property will have two driveways, where only one is allowed per lot, thus the need for a request for a variance. The project will need to go through site review with the TAC and the Planning Board and will need to get a wetlands CUP because there is some work and encroachment into the buffer area. On October 2, 1995 the City Council took action to treat Sagamore Grove as a public way and all of the property owners along Sagamore Grove signed off on an Acknowledgement and Release document that was recorded in the Registry of Deeds (see below page from the document).

<u>ACKNOWLEDGMENT AND RELEASE</u>	
ROCKINGHAM COUNTY REGISTRY OF DEEDS	<p>The undersigned, all property owners of Sagamore Grove Road in Portsmouth, County of Rockingham, State of New Hampshire for themselves, their heirs, successors and assigns do hereby acknowledge the action taken by the Portsmouth City Council on October 2, 1995 to treat a traveled way known as Sagamore Grove Road as a public way. The undersigned acknowledges that the action of the City Council will result in the City paving Sagamore Grove Road and maintaining it in the future in the same fashion as any other public way is maintained. The undersigned further acknowledges that deeming Sagamore Grove Road to be a public way may have implications for their properties, including but not limited to zoning matters, and how the property is to be taxed. It is understood that the land located under the right of way will not become public property; but will remain the property of the current owner or owners.</p> <p>In signing this document, the undersigned agrees that the area depicted on the attached Right of Way plan of Sagamore Grove Road, as prepared by Durgin Associates, will be the area that the City claims as the public way. This plan includes both the area to be paved and the remaining non-paved portion. The undersigned agrees that the City will be able to access the entire traveled way including the graveled portion of the traveled way. This access will be used as needed for maintenance purposes. The undersigned further agrees that they waive any claim to damages for such an interest. In doing so, the undersigned understands that they are releasing the City of Portsmouth from any and all claims that may be made for damages as a result of the City Council's decision on October 2, 1995 to treat this traveled way as a public way.</p>

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.*
- Planning Department Comments* 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.

4.

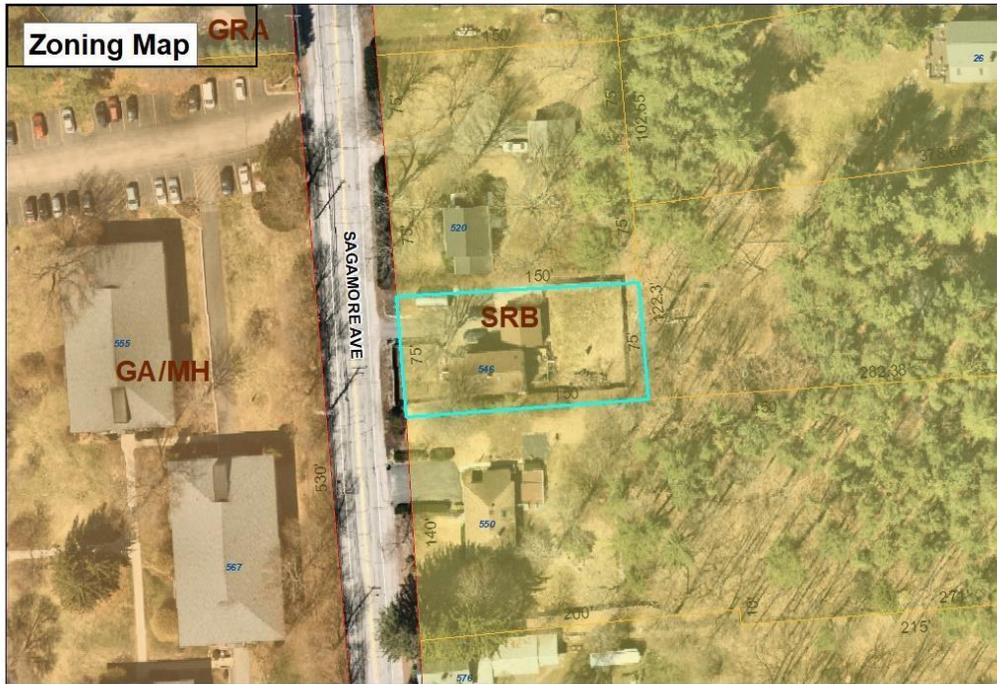
Petition of **Sarah Sommer Kaufman Revocable Trust, Owner** for the property located at **546 Sagamore Avenue** whereas relief is needed from the Zoning Ordinance to add a rear addition and vertical expansion of the garage which requires the following: 1) A Variance from Section 10.521 to allow a 4.5' right side yard where 10' is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 222 Lot 10 and lies within the Single Residence B (SRB) District.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Rear addition	Primarily single family uses
<u>Lot area (sq. ft.):</u>	11,401	11,401	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,401	11,401	15,000 min.
<u>Street Frontage (ft.):</u>	75	75	100 min.
<u>Lot depth (ft.):</u>	152	152	100 min.
<u>Front Yard (ft.):</u>	>30	>30	30 min.
<u>Left Yard (ft.):</u>	20	20	10 min.
<u>Right Yard (ft.):</u>	4.5	4.5'	10 min.
<u>Rear Yard (ft.):</u>	56	50	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	17.8	18.4	20 max.
<u>Open Space Coverage (%)</u>	67.5	66	40 min.
<u>Parking</u>	2+	2+	2
<u>Estimated Age of Structure:</u>	1890	Variance request(s) shown in red.	

Other Permits/Approvals Required None.

Neighborhood Context



0 30 60 120 Feet
1 inch = 58.5 feet

546 Sagamore Avenue



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is proposing to add a rear addition and second story above the existing garage. The house currently sits close to the southern lot line and is nonconforming to the right yard setback. The rear addition will be along this side, extending towards the rear of the property.

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.*
- Planning Department Comments* 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.

5.

Petition of **Jeremy James Conte, Owner** for the property located at **0 Islington Street** whereas relief is needed from the Zoning Ordinance to demolish existing structures and construct new single family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area of 5,225 square feet where 15,000 square feet is required; b) a lot area per dwelling unit of 5,225 square feet where 15,000 square feet is required; and c) 50 feet of frontage where 100 feet is required. Said property is shown on Assessor Map 233 Lot 7 and lies within the Single Residence B (SRB) District.

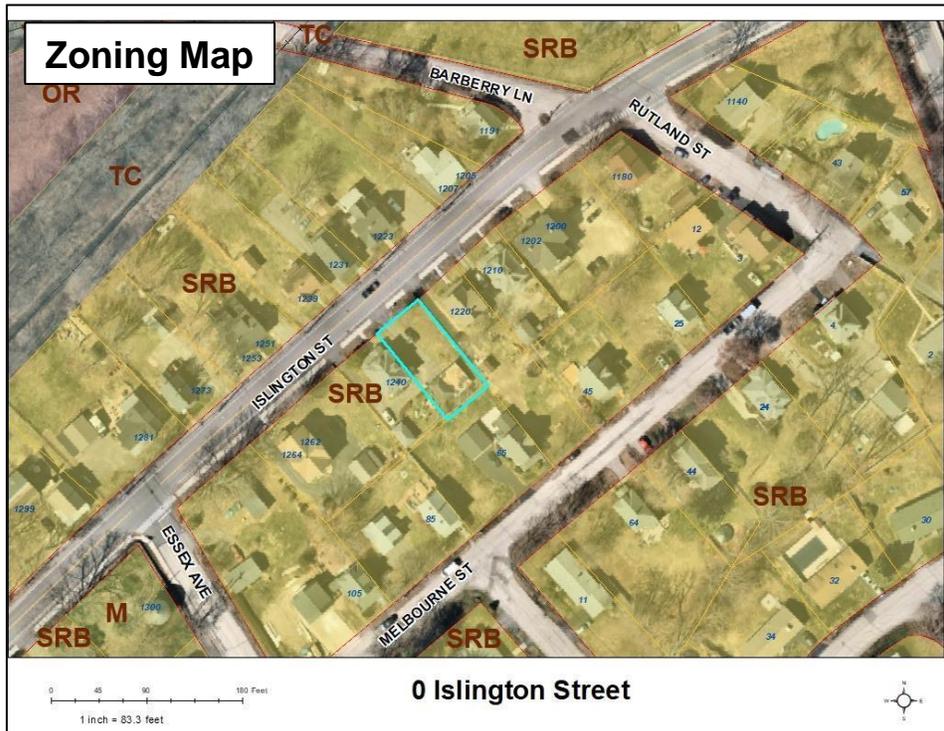
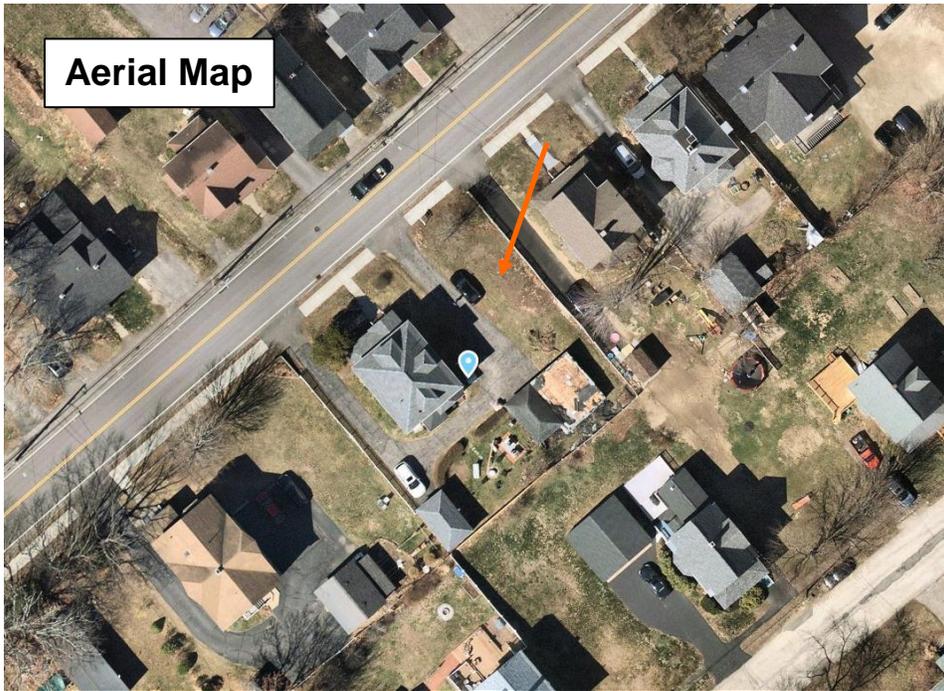
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant lot w/ accessory structures	Construct new dwelling	Primarily residential uses
<u>Lot area (sq. ft.):</u>	5,225	5,225	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,225	5,225	15,000 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.):</u>	104,5	104.5	100 min.
<u>Front Yard (ft.):</u>	72	23 (per Sec. 10.516.10)	30 min.
<u>Left Yard (ft.):</u>	10	10	10 min.
<u>Right Yard (ft.):</u>	6	12	10 min.
<u>Rear Yard (ft.):</u>	6	46	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	>20	18.7	20 max.
<u>Open Space Coverage (%):</u>	>40	61	40 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	NA	Variance request(s) shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions No
prior BOA history found.

July 27, 2021 Meeting

Planning Department Comments

The applicant is proposing to demolish the existing structures and construct a new single family home on a lot that was recently restored to its premerger status on April 21, 2020 as shown in the applicant's packet. As stated in the letter, the restoration of the lot does not exempt it from any nonconformities with zoning. As such, the lot is nonconforming to frontage, lot size and lot area per dwelling unit. Since the proposal is to remove all the structures and create a new dwelling, variances are needed for the lot nonconformities. As proposed, all other zoning requirements are met.

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.*

Planning Department Comments 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.

6.

Petition of **2422 Lafayette Road Association, LLC, Owner** for the property located at **2454 Lafayette Road** whereas relief is needed from the Zoning Ordinance to construct a standalone automated teller machine (ATM) which requires the following. 1) A Variance from Section 10.1530 to allow an automated teller machine (ATM) as defined in this section to be a principal freestanding structure and not located on the outside of a building, or in an access-controlled entrance to a building, or within a principal use in a building. Said property is shown on Assessor Map 273 Lot 3 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed use development	Freestanding ATM	Primarily mixed uses
		Variance request(s) shown in red.	

Other Permits/Approvals Required

TAC & Planning Board

Neighborhood Context



Previous Board of Adjustment Actions

March 23, 2004 – the Board granted a variance to allow a 75' front yard where 105' is the minimum required. The Board denied a Special Exception to allow a 2,400± s.f. car wash in a district where such use is allowed by Special Exception.

April 21, 2009 – The Board granted a variance to allow 731 parking spaces to be provided where 1,090 parking spaces are required in conjunction with renovations to the existing shopping center.

September 15, 2009 – The Board granted variances to allow the following the following:

- A primary free standing sign of 350 s.f. where 150 s.f. is allowed;
- A sign 17'10" in height where 25' is the maximum allowed;
- Two additional signs at the primary entrance where they are not allowed;
 - The placement of structures within the right-of-way along Route 1 with a setback of 20' where 105' is required;
- The placement of a structure within the right-of-way along Route 1 with a setback of 50' where 105' is required.

The variances were granted with the stipulation that there be no lettering on the two stone walls at the main entryway, which were solely approved as an architectural element.

July 24, 2012 – The Board granted a variance to allow 859 parking spaces where 457 parking spaces are required and 503 parking spaces are the maximum allowed.

October 15, 2013 – The Board granted a variance to install a 225 s.f. sign on a cinema parapet where 100 s.f. is the maximum sign area allowed for a parapet sign.

August 18, 2015 – The Board granted variances to allow the following: (a) required offstreet parking spaces (for an existing parking area) to be located between a principal building and a street; and (b) a front yard setback of 151' where 90' was the maximum allowed (measured from the centerline of Lafayette Road).

October 25, 2016 – The Board granted variances to allow the following signage: a) a sign on a façade of a building that does not face a street and where no public entrance exists; b) two directional signs each 7s.f. in area where 4 s.f. is the maximum allowed; c) 2 free-standing pre-order menu boards where they were not visible from a public right-of-way; and d) an existing non-conforming pylon sign to be modified without bringing it into conformance.

June 18, 2019 - The Board granted special exceptions to allow the following:

- a) from Section 10.440, Use #9.12 to allow a nightclub or bar with an occupant load from 250 to 500 where the use is only allowed by special exception; and

b) from Section 10.440, Use #4.20 to allow an indoor amusement use where the use is only allowed by special exception.

With the following stipulation:

- A suitable barrier will be provided around the outdoor seating area to protect it from vehicular traffic.

Planning Department Comments

The applicant is proposing to construct a free standing ATM on the subject lot. The definition in the Ordinance is below:

Automated teller machine (ATM)

An unattended electronic device that is activated by customers to conduct financial transactions. An **ATM** may be located on the outside of a **building**, or in an access-controlled entrance to a **building**, or within a principal **use** in a **building**, and may serve pedestrians or patrons in motor vehicles. An **ATM** servicing patrons in motor vehicles must meet the standards for **drive-through establishments** provided in this Ordinance. An **ATM** is permitted only as an **accessory use** to a related **principal use**, and is not permitted as a **principal use** or in a freestanding **structure** not attached to a **principal use**.

As defined, the use is only allowed as an accessory use to a principal use. The proposal is for the freestanding ATM to be a principal use and not “*located on the outside of a building, or in an access-controlled entrance to a building or within a principal use in a building*” as per the definition above, thus the need for a variance.

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

1.

Request of **Ricci Construction Co., Inc., Owner** for the property located at **3400 Lafayette** Road whereas relief is needed from the Zoning Ordinance to construct a 50-unit residential development which requires the following: 1) Variance from Section 10.5B22.40 to allow buildings to be constructed outside of the 70 - 90 foot setback from the centerline of Lafayette Road. 2) Variance from Section 10.5B33.20 to allow 0% front lot line buildout where 50% is required. Said property is shown on Assessor Map 279 Lot 11 and lies within the Natural Resource Protection (NRP) and Gateway Corridor (G1) Districts.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant/temp. storage	Townhouse development 50 units	Primarily residential uses
<u>Lot area (sq. ft.):</u>	45 acres	45 acres	NR min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	3 units/acre (G1 zone only)	16 units/acre
<u>Street Frontage (ft.):</u>	128	128	100 min.
<u>Setback from Lafayette Road (CL) (ft.):</u>	NA	>90	70 min. – 90 max.
<u>Front Lot Line Buildout (%):</u>	0	0	50 min.
<u>Left Yard (ft.):</u>	NA	11	10 min.
<u>Right Yard (ft.):</u>	NA	73	10/ 70 (NRP zone) min.
<u>Rear Yard (ft.):</u>	NA	>15	15 min.
<u>Height (ft.):</u>	NA	<35	2.5 stories or 35 feet max.
<u>Building Coverage (%):</u>	<50	5.6 (G1 zone only)	50 max.
<u>Open Opac Coverage (%):</u>	>20	85 (G1 zone) 100 (NRP zone)	20 min.
<u>Parking</u>	NA	110	75
		Variance request(s) shown in red.	

Other Permits/Approvals Required

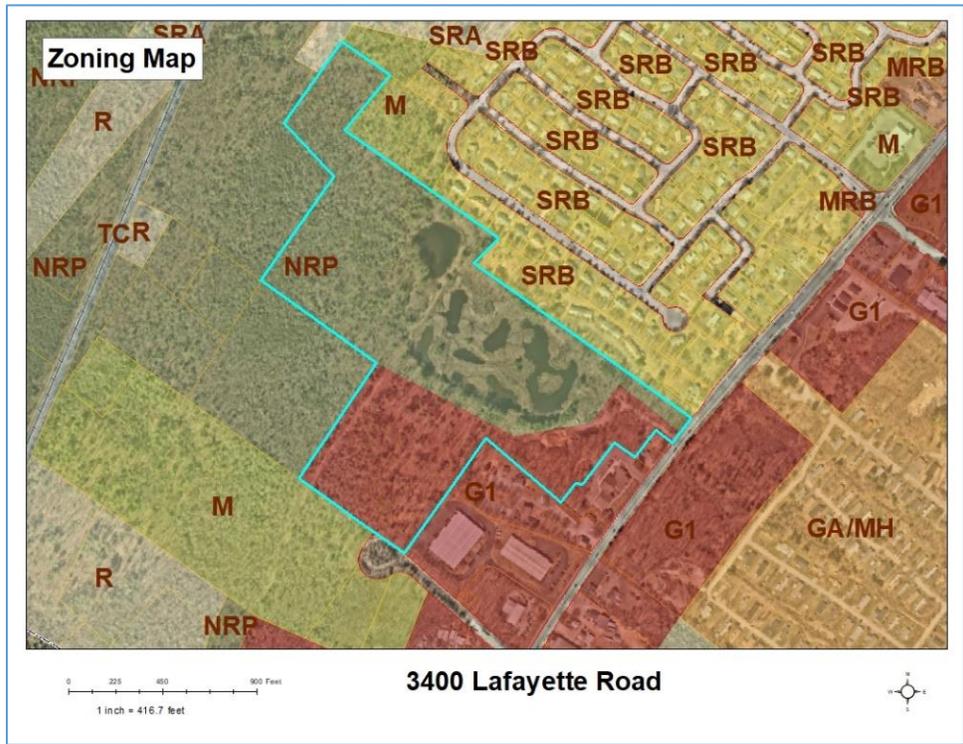
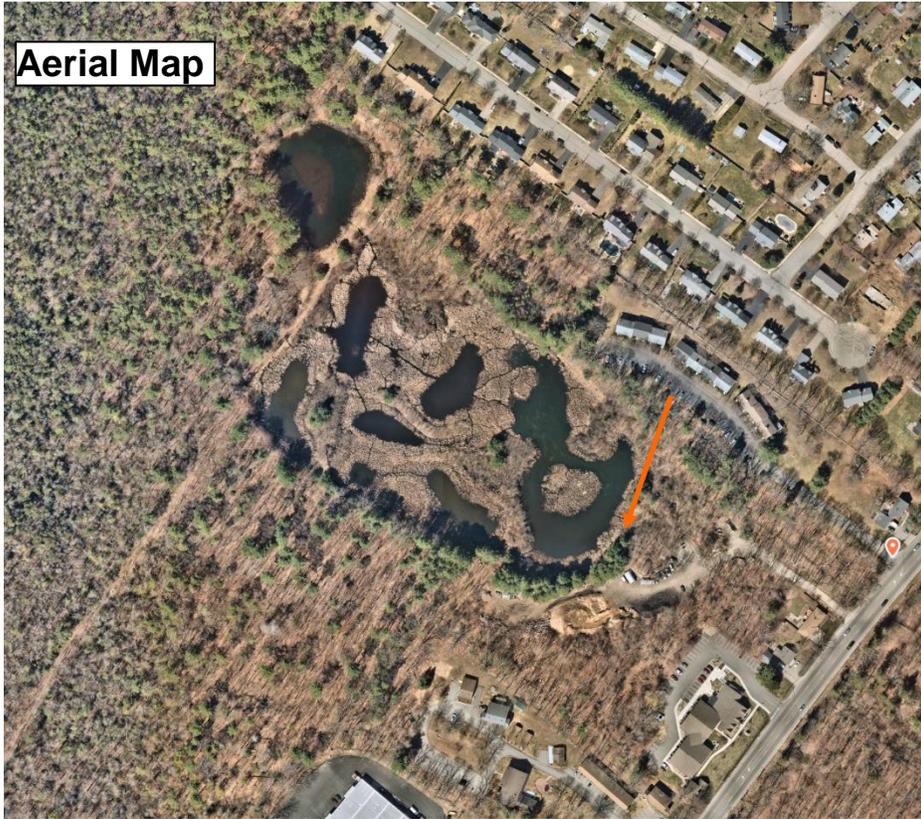
Planning Board & TAC – Site Plan Review

Conservation Commission & Planning

Board – Wetland CUP

August 17, 2021 Meeting

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The subject property is split zoned, with most of it zoned NRP and a portion zoned G1, where the applicant is proposing a 50 unit townhouse development site. The NRP zone is a conservation zone, with limited permitted uses, residential not one of them. Although the frontage requirement is exceeded for this property, the portion of the property is limited due to being split zoned and needed for access to the development. The front lot line buildout and setback from the centerline of Lafayette Road cannot be met, thus the need for variances.

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.*
- Planning Department Comments* 2. *Granting the variance would observe the spirit of the Ordinance.*
6. *Granting the variance would do substantial justice.*
7. *Granting the variance would not diminish the values of surrounding properties.*
8. *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.*

2.

Request of Lucky **Thirteen Properties, LLC, Owner** for the property located at **361 Islington Street** whereas relief is needed from the Zoning Ordinance to renovate the existing building to allow for a new restaurant which requires the following: 1) Variance from Section 10.440 Use #9.42 to allow a restaurant with an occupant load of 50 to 250. 2) Variance from Section 10.5A41.10A to allow a) a 29' left side yard where a 5 foot minimum and 20 foot maximum is required and b) 17% open space where 25% is required. 3) Variance from Section 10.5A44.31 to allow parking to be located in front of the building façade. 4) Variance from Section 10.5A44.32 to allow parking unscreened by a building or street screen. 5) Variance from Section 10.575 to allow a dumpster within 20 feet of a residential zoned lot and within 10 feet of any lot line. 6) Variance from Section 10.1113.20 to allow parking in the front yard and between a principal building and a street. Said property is shown on Assessor Map 144 Lot 23 and lies within the Character District 4-L2 (CD4-L2).

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	No current use	Restaurant	Primarily residential uses
<u>Lot area (sq. ft.):</u>	15,114	15,114	3,000 min.
<u>Front Yard (ft.):</u>	40	40	15 max.
<u>Secondary Front Yard (ft.):</u>	65	65	12 max.
<u>Left Yard (ft.):</u>	32	29	5 min – 20 max
<u>Rear Yard (ft.):</u>	32	32	Greater of 5' or 10' from alley
<u>Height (ft.):</u>	17.5	17.5	2 stories or 35' max.
<u>Building Coverage (%)</u>	10	10.5	60 max.
<u>Open Space Coverage (%)</u>	6	17	25 min.
<u>Parking</u>	15	15	30
<u>Estimated Age of Structure:</u>	1960	Variance request(s) shown in red.	

Other Permits/Approvals Required

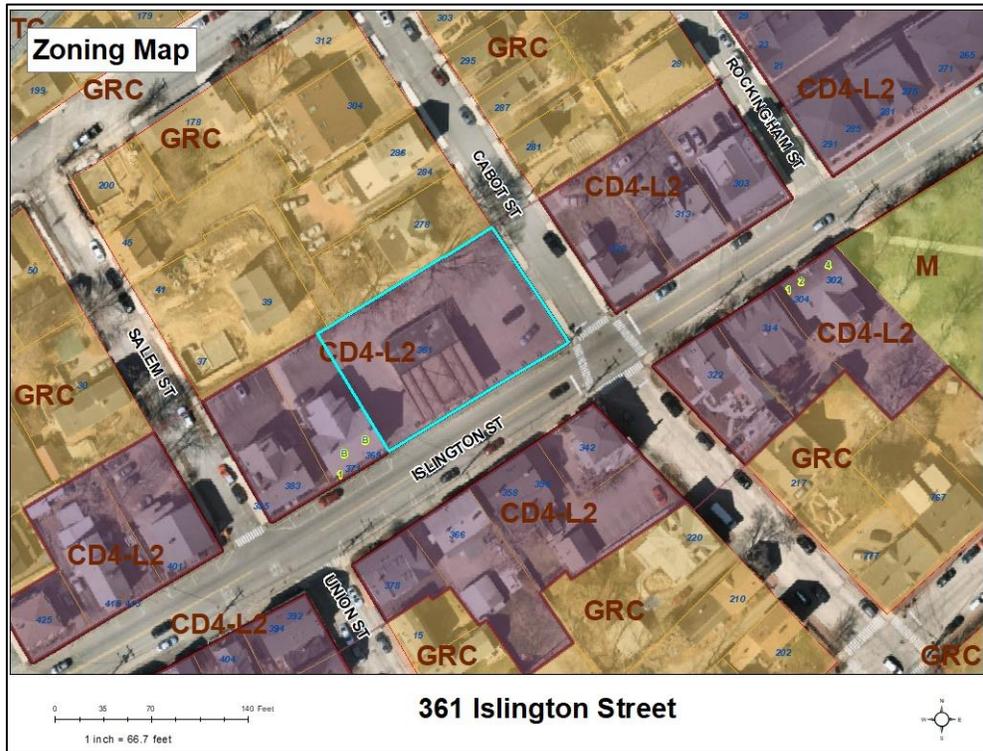
Historic District Commission

Planning Board & TAC – Site Plan Review

August 17, 2021 Meeting

CUP for Parking & Outdoor dining & drinking area

Neighborhood Context



Previous Board of Adjustment Actions

January 30, 1956 – The Board granted a request to erect a filling station.

February 19, 2002 – The Board denied a request to allow a Ryder Truck renting facility with three trucks on display where the use was not allowed and to allow a nonconforming accessory use in addition to the existing nonconforming use.

May 28, 2013 – A petition to construct a multi-use building with first floor Laundromat and second floor office space within a building footprint of 3,030± s.f. was **withdrawn** by the applicant.

August 19, 2014 - The Board **granted** a variance to allow the detailing of automobiles in a district where the use was not allowed.

December 19, 2017 – The Board **granted** the following variances to convert an existing building plus small addition to restaurant use: a) a secondary front yard of 66', 12' maximum permitted; b) a 30' left side yard, 20' maximum permitted; c) 14.9% open space, 25% required; d) shopfront façade glazing of 47% where 70% is minimum required; e) off-street parking to be located in a required front yard between principal building and street and to be located less than 20' behind the façade of a principal building; and f) to allow a nonconforming building to be extended, reconstructed or enlarged without conforming to requirements of Ordinance.

August 21, 2018 – The Board **tabled** the petition to operate a food truck style establishment so that the applicants can work with the Planning Department regarding issues raised at the hearing and specifically work to develop a complete plan and information packet including the number of food trucks, issues of traffic, light and noise control, and specific barriers between seating areas and parking spots and accessways, as well as determining whether evening hours are appropriate.

September 18, 2018 - The Board **granted** the above request with the following stipulations: That only one food truck will be allowed on the property; the power source for the food truck will be the electrical supply in the existing building and not from a generator or engine in the truck; the food truck may only operate during the following times: after 11 a.m. on any day of the week; before 8 p.m. on Sunday through Thursday; and before 10 p.m. on Friday and Saturday.

Planning Department Comments

The applicant is proposing to renovate the former service station and add a small side addition to convert it into a new restaurant. The prior use was a food truck style restaurant, which received approval from this Board in 2018 with several stipulations. Prior to that, as indicated in the applicant's memo, the Board granted variances for a

restaurant use in 2017 without any stipulations. The side addition is the only change to the footprint, all other changes are interior or cosmetic on the exterior. The proposed restaurant's occupancy is greater than 50, which requires a variance. The application does not state what the proposed occupancy will be, just that it will be more than 50. In addition to the parking CUP, the applicant will need a CUP for the outdoor dining and/or drinking area. This was added as an accessory use in the Ordinance in 2018.

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.*

Planning Department Comments 2. *Granting the variance would observe the spirit of the Ordinance.*

9. *Granting the variance would do substantial justice.*

10. *Granting the variance would not diminish the values of surrounding properties.*

11. *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.

3.

Request of **Faribault Family Revocable Trust of 2019, Owner** for the property located at **35 Park Street** whereas relief is needed from the Zoning Ordinance for the conversion a single -family dwelling to a two family which requires the following: 1) A Special Exception from Section 10.440 #1.61 to allow the conversion of a building existing on January 1, 1980, with less than the required minimum lot area per dwelling unit into 2 dwelling units where the use is allowed by special exception. Said property is shown on Assessor Map 148 Lot 45 and lies within the General Residence A (GRA) District.

Existing & Proposed Conditions

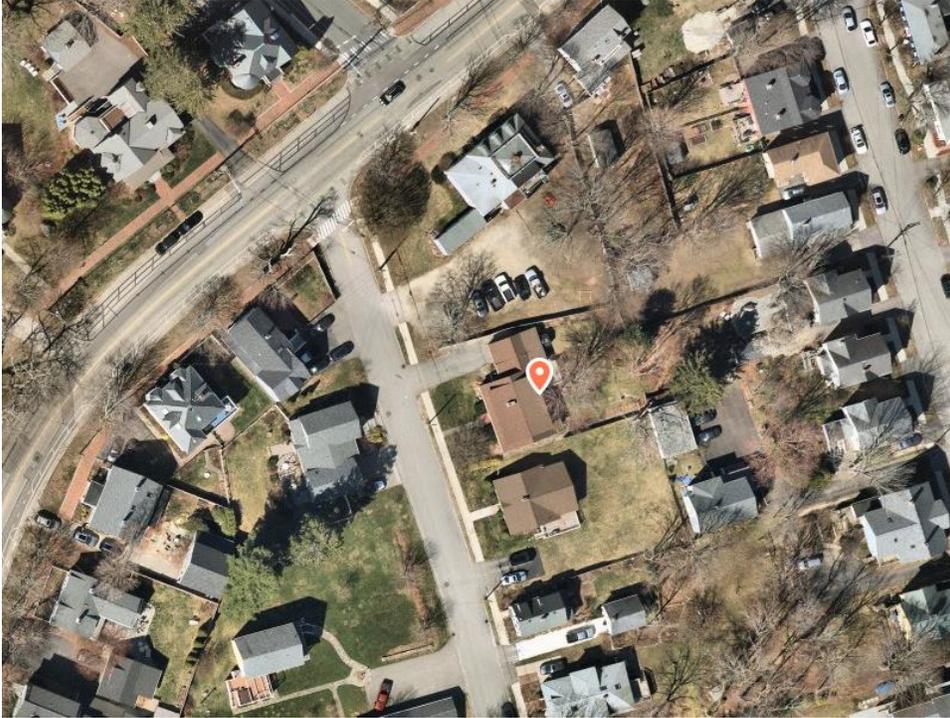
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Two family	Primarily residential uses
<u>Lot area (sq. ft.):</u>	9,148	9,148	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,148	4,537	7,500 min. 3,000 (for conversion to two family)
<u>Street Frontage (ft.):</u>	75	75	100 min.
<u>Lot depth (ft.):</u>	122	122	70 min.
<u>Front Yard (ft.):</u>	27	27	15 min.
<u>Left Yard (ft.):</u>	4	4	10 min.
<u>Right Yard (ft.):</u>	10	10	10 min.
<u>Rear Yard (ft.):</u>	50	50	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u> :	23.5	23.5	25 max.
<u>Open Space Coverage (%)</u> :	>30	>30	30 min.
<u>Parking</u>	3	3	3
<u>Estimated Age of Structure:</u>	1940	Special Exception request shown in red.	

Other Permits/Approvals Required

August 17, 2021 Meeting

None.

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is proposing to convert the existing dwelling into a two family per Section 10.812 of the zoning ordinance that allows a structure existing on or before January 1, 1980 to be converted if it meets certain criteria which include the following:

- No exterior changes except for minimum egress components.
- Must comply with building coverage, open space and parking.

If it meets the criteria, the lot area per dwelling unit may be reduced from 7,500 square feet to 3,000 square feet in the GRA district.

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.*

4.

Request of **261 Sagamore Ave, LLC**, Owner for the property located at **261 Sagamore Avenue** whereas relief is needed from the Zoning Ordinance to demolish the existing dwelling and construct a new single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling unit of 6,669 square feet where 7,500 is required for each; b) 60 feet of continuous street frontage where 100 feet is required; and c) 27% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Map 221 Lot 16 and lies within the General Residence A (GRA) District.

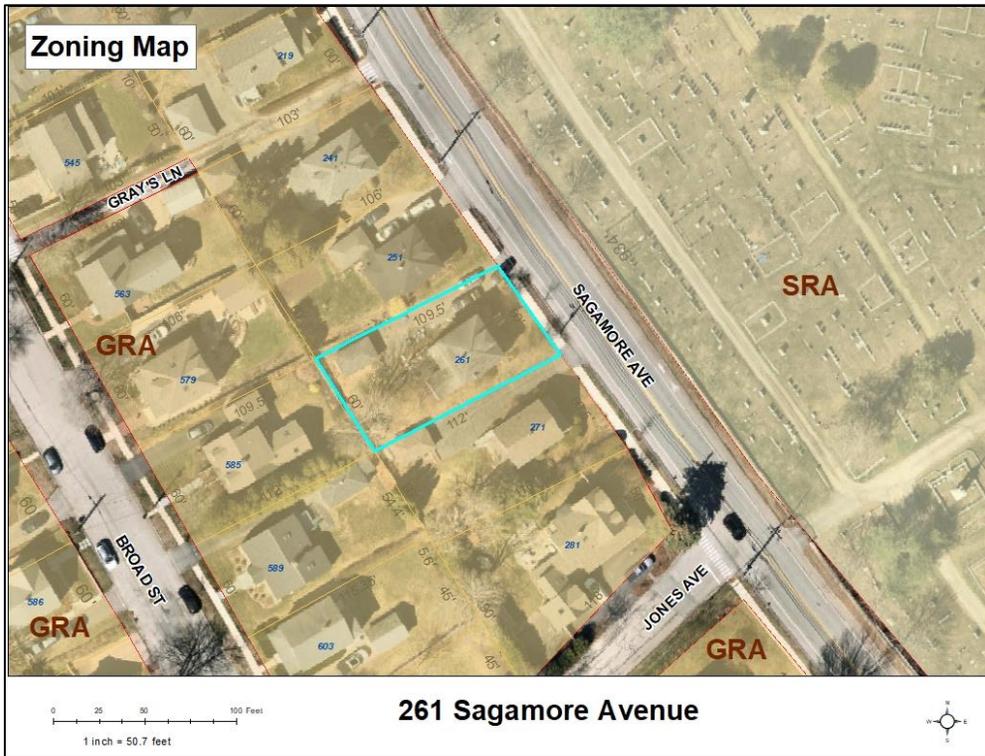
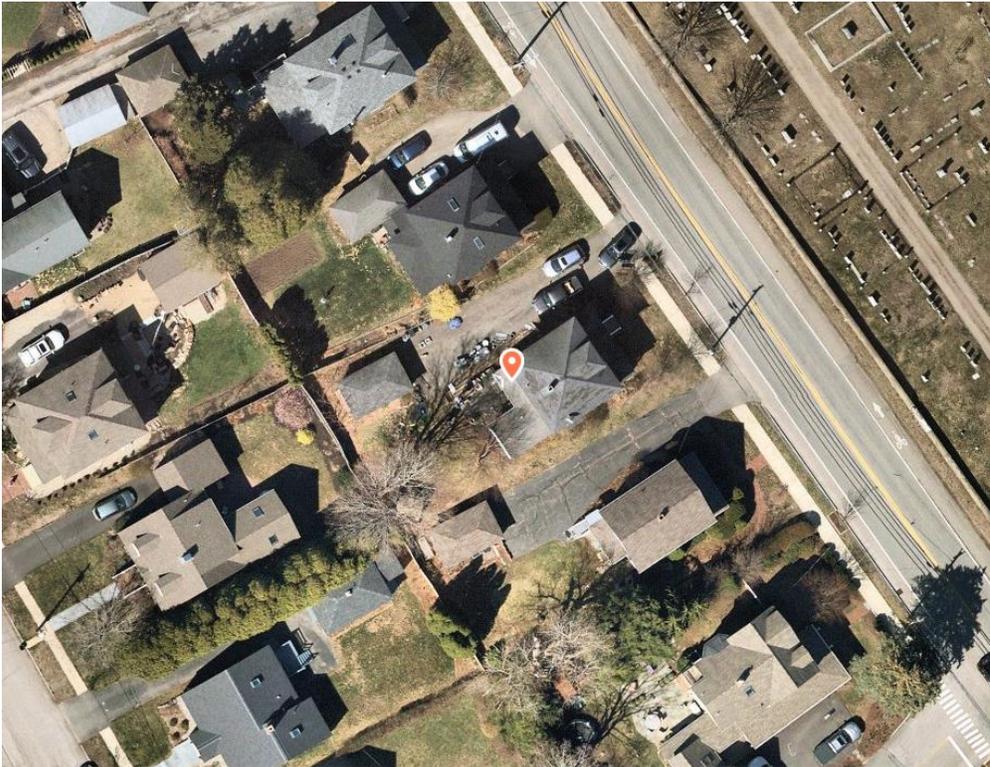
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	2-family	Demo existing/construct new dwelling	Primarily residential uses
<u>Lot area (sq. ft.):</u>	6,669	6,669	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,334.5	6,669	7,500 min.
<u>Street Frontage (ft.):</u>	60	60	100 min.
<u>Lot depth (ft.):</u>	111	111	70 min.
<u>Front Yard (ft.):</u>	18.6'	15.5'	15 min.
<u>Left Yard (ft.):</u>	5	10	10 min.
<u>Right Yard (ft.):</u>	20	16.8'	10 min.
<u>Rear Yard (ft.):</u>	44	21.7'	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u> :	26	27	25 max.
<u>Open Space Coverage (%)</u> :	49.5	49	30 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1922	Variance request(s) shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is proposing to demolish the existing structures and construct a new single family home. The lot is nonconforming for lot area and lot area per dwelling as well as street frontage. The proposed new structure will exceed the maximum allowed building coverage by 2%, which equates to approximately 100 square feet. If the proposed structure was reduced by 100 square feet, they would comply with the 25% maximum building coverage requirement.

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.*

Planning Department Comments 2. Granting the variance would observe the spirit of the Ordinance.

12. *Granting the variance would do substantial justice.*

13. *Granting the variance would not diminish the values of surrounding properties.*

14. *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.