

TO: Zoning Board of Adjustment  
FROM: Peter Stith, AICP, Planning Department  
DATE: February 10, 2022  
RE: Zoning Board of Adjustment February 15 & 23, 2022

### **OLD BUSINESS**

1. 242 Leslie Drive – Request for Extension
2. Rehearing – 53 Green Street
3. 389 Lincoln Avenue

### **NEW BUSINESS**

1. 64 Mt. Vernon Street
2. 70 Court Street
3. 2255 Lafayette Road
4. 230 Commerce Way
5. 0 Borthwick Avenue
6. 1 Congress Street
7. 28 South Street
8. Raynes Avenue –Appeal (POSTPONED)



## OLD BUSINESS

1.

Petition of Matthew Carl Beal and Heidi Leigh Medlyn for property located at **242 Leslie Drive** wherein relief is needed from the Zoning Ordinance to demolish an existing garage in order to construct an 829 square foot addition, with garage on the basement level, which requires the following: 1) A Variance from Section 10.521 to allow 30% building coverage where 20% is the maximum allowed and 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 Plan 209 Lot 52 and lies within the Single Residence B District.

The above referenced variances were granted on February 19, 2020 and a building permit has not been issued for the project. The applicant has submitted a request for an extension which the Ordinance allows for a one-time, one-year extension if the request is submitted prior to the expiration date.



2.

Rehearing of the Appeal of **Duncan MacCallum, (Attorney for the Appellants)**, of the July 15, 2021 decision of the Planning Board for property located at **53 Green Street** which granted the following: a) a wetlands conditional use permit under Section 10.1017 of the Zoning Ordinance; b) preliminary and final subdivision approval; and c) site plan review approval. Said property is shown on Assessor Map 119 Lot 2 and lies within the Character District 5 (CD5) and Character District 4 (CD4).

The Board voted to grant the rehearing at the December 21, 2021 meeting, which resulted in a 3-3 vote. Per the Rules & Regulations, a motion to grant a rehearing requires the majority of the members present or in the case of a tie vote, 3 votes are necessary. Two memos from the legal department are provided. One is a procedural memo on the rehearing and the second memo is related to the Housing Appeals Board decision on the 105 Bartlett case. For the rehearing, the Board should set rules and procedures for the rehearing.

The history is below going back to the original approval on July 15, 2021 and the actions taken by the Board of Adjustment throughout the appeal process.

Prior BOA history:

**June 15, 2021** – Relief is needed from the Zoning Ordinance for the demolition of an existing building and construction of a 5-story mixed-use building which requires the following: 1) A Variance from Section 10.5A41.10D to allow 42.89% front lot line buildout where 80% is required. Said property is shown on Assessor Map 119 Lot 2 and lies within the Character District 5 (CD5) District.

The Board **approved** the request, however with a vote of 3-2, the motion did not have the four positive votes required for granting a variance, therefore the **application was denied**.

**September 28, 2021** – Said property is shown on Assessor Map 119 Lot 2 and lies within the Character District 5 (CD5) and Character District 4 (CD4).

On the matter of standing, the Board voted that the appellants **do have standing to bring the appeal forward**. On the matter of whether the Board has jurisdiction to hear the appeal of the granting of a wetland Conditional Use Permit, the Board voted that it **does not have jurisdiction to hear the appeal of the granting of a wetland Conditional Use Permit** pursuant to RSA 676:5, III, which delegates the administration including the granting of conditional or special uses to the Planning Board, and provides that decisions made pursuant to that delegation cannot be appealed to the BOA but may be appealed to the Superior Court. The Board voted to continue to the remaining items of the appeal to the October 19, 2021 meeting.

**October 19, 2021** – The Board voted that the request be **denied**. A motion to grant the appeal resulted in a 3-3 tie and did not receive 4 affirmative votes.

**December 21, 2021** – The Board voted that the request be **granted**. A motion to grant the appeal resulted in a 3-3 tie, therefore the request for the rehearing was granted.

**January 18, 2022** - The Board voted to **deny** the request to reconsider the granting of the rehearing.

2.

Request of **Evan C. Maloney and Jill Maloney (Owners), and Duncan McCallum (Applicant)**, for the property located at **389 Lincoln Avenue** requesting an equitable waiver or variance for approval of a previously constructed tree house which requires the following: 1) A Variance or Equitable Waiver from Section 10.573.20 to allow a) a 0 foot rear yard where 8 feet is required; and b) a 5' left side yard where 8 feet is required. Said property is shown on Assessor Map 135 Lot 17 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	Tree house	Primarily residential
<u>Lot area (sq. ft.):</u>	8,712	8,712	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,712	8,712	7,500 min.
<u>Lot depth (ft.):</u>	84.5	84.5	70 min.
<u>Street Frontage (ft.):</u>	100	100	100 min.
<u>Primary Front Yard (ft.):</u>	0.5'	0.5'	15 min.
<u>Right Yard (ft.):</u>	1	1	10 min.
<u>Left Yard (ft.):</u>	72 (house)	<b>5 (tree house)</b>	8 (tree house)
<u>Rear Yard (ft.):</u>	0 (deck)	<b>0 (tree house)</b>	8 (tree house) min.
<u>Height (ft.):</u>	<35	8'	35 max.
<u>Building Coverage (%):</u>	21	23	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1900	<b>Equitable Waiver or Variance request(s) shown in red.</b>	

**Other Permits/Approvals Required**

None.

### Neighborhood Context

**Aerial Map**



**Zoning Map**



## Previous Board of Adjustment Actions

**April 20, 1993** – The Board **granted** a Special Exception to allow the conversion of a 21' x 24' garage to an office / drafting area for a home occupation designing handbags to be produced off-site.

Said property is shown on Assessor Plan U-34 as Lot 017 and lies within the General Residential district.

**September 20, 2016** – The Board **granted** a Variance to allow the replacement and expansion of rear deck Required relief from the Zoning Ordinance, including the following:

- 1) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
- 2) A Variance from Section 10.521 to allow 32.3%± building coverage wither 25% is the maximum allowed.

## Planning Department Comments

The applicant is seeking an equitable waiver or variance for an existing tree house structure that was constructed without a permit. If the Board determines a waiver is not applicable, the applicant is requesting a variance to allow the structure to be located within the setbacks as advertised. The history shows a variance for building coverage in 2016, however after reviewing the application, it appears the square footages represented were larger than what actually exists on the property currently and the building coverage is under the maximum allowed as shown in the table above.

Per discussions with the Chief Building Inspector, a play structure that is fabricated on site is not exempt from permitting, but a swing set or playground equipment from a kit is exempt per the Building code below:

2015 International Residential Code-City Residential Amendment:

*105.2 Work exempt from permits. Exemptions from permit requirements of this Code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this Code or any laws or ordinances of this jurisdiction. Permits shall not be required for the following:*

**Building:**

2. Ordinary repairs as defined in Section 105.2.2 provided such repairs do not exceed \$3,000 in construction value.
3. Any painting or wall papering; and tiling when not part of a kitchen or bath remodel.
4. Fences not over 6 (six) feet high or not in the Historic District.
5. Sidewalks, driveways or patios constructed on grade with earth products.
6. Prefabricated (including air inflated) swimming pools, accessory to a Group R-3 occupancy which are less than 18 inches deep, do not exceed 5,000 gallons and are entirely above grade.
7. Swings and other playground equipment accessory to dwellings and which are erected or assembled from a kit.

According to 105.1 any play structure that is fabricated on site is not exempt from permitting and therefore potentially subject to structure setbacks and certainly would meet the definition of “structure” as provided in Article 15 of the City Zoning Ordinance:

*Structure (including roof structure) Any production or piece of work, artificially built up or composed of parts and joined together in some definite manner. Structures include, but are not limited to, buildings, fences over 4 feet in height, signs, and swimming pools. (See also: temporary structure.)*

Regardless of needing a building permit or not, zoning review and compliance as stated in the letter from Peter Britz, the structure falls under the definition in the Zoning Ordinance of a structure (above). If the Board denies the request, the applicant could remove the structure, relocate it to a conforming location or make it smaller so that it conforms to the required setbacks.

**674:33-a Equitable Waiver of Dimensional Requirement.**

I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

- (a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;
- (b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;
- (c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and
- (d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

## 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 **Cyrus Beer** and **Erika Caron (Owners)**, for the property located at **64 Mount Vernon Street** whereas relief is needed to add a condenser unit which requires the following: 1) A Variance from Section 10.515.14 to allow a 4 foot setback where 10 feet is required. Said property is shown on Assessor Map 111 Lot 30 and lies within the General Residence B (GR-B) and Historic Districts.

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Add AC unit	Primarily residential
<u>Lot area (sq. ft.):</u>	7,840	7,840	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,840	7,840	5,000 min.
<u>Lot depth (ft.):</u>	98	98	60 min.
<u>Street Frontage (ft.):</u>	90	90	80 min.
<u>Primary Front Yard (ft.):</u>	0 (house)	0 (house)	5 min.
<u>Right Yard (ft.):</u>	4	<b>4</b> (ac unit)	10 min.
<u>Left Yard (ft.):</u>	>10	>10	10
<u>Rear Yard (ft.):</u>	>25	>25	25 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	<30	<30	30 max.
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1812	Variance request(s) shown in red.	

### Other Permits/Approvals Required

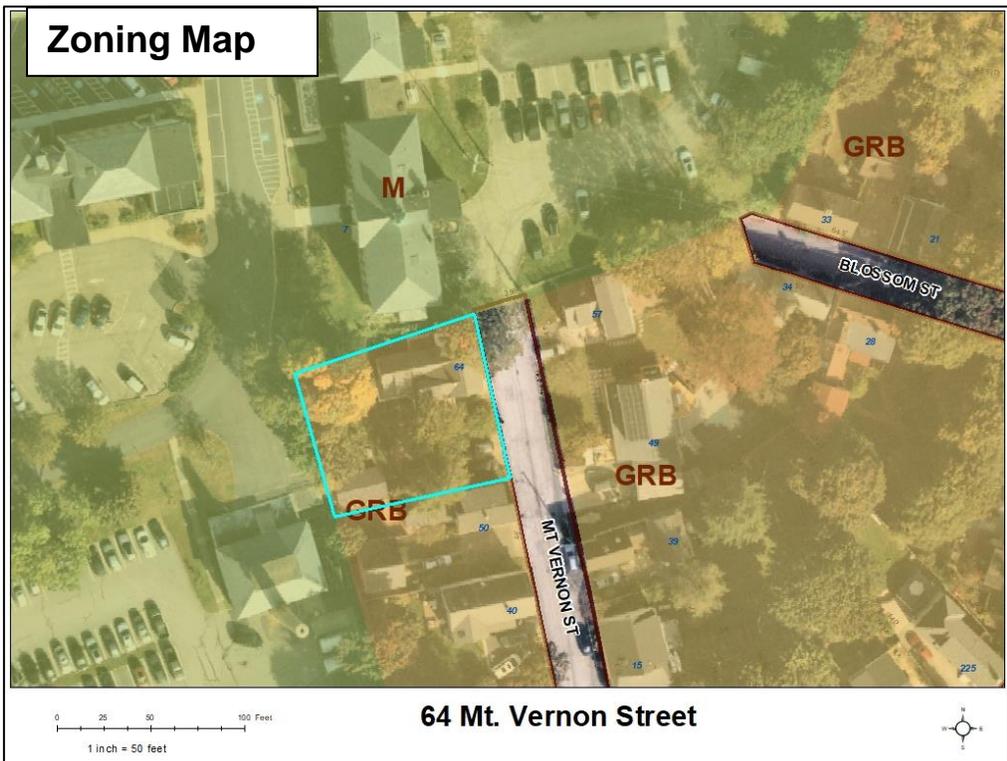
Historic District Commission

### Neighborhood Context

**Aerial Map**



**Zoning Map**



## Previous Board of Adjustment Actions

March 20, 2018 – Relief from Zoning Ordinance including:

1. Variance from Section 10.440, Use #17.20 to allow the keeping of farm animals where the use is not allowed.
2. Variance from Section 10.573.10 to allow an accessory Structure 3' ± from the rear property line where 5' is required. The Board voted the request be **granted** with the stipulation of no more than six chickens and no roosters.

## Planning Department Comments

The applicant is proposing to add an AC unit on this side of the dwelling that abuts City Hall, where it is currently nonconforming to the side yard requirement. The applicant is proposing to screen the unit, and being located next to City Hall, would likely have no adverse impact if the unit was not screened in the proposed location.

## 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.*



2.

Request of **Treadwell House INC (Owner)**, for the property located at **70 Court Street** whereas relief is needed to convert the building into an 8 room inn with caretaker residence which requires the following: 1) A Variance from Section 10.440 Use #10.30 to allow an Inn where the use is not permitted. 2) A Variance from Section 10.114.21 to allow a 13' maneuvering aisle where 24' is required. Said property is shown on Assessor Map 116 Lot 49 and lies within the Character District 5 (CD5) and Character District 4-L1 (CD4-L1).

### Existing & Proposed Conditions

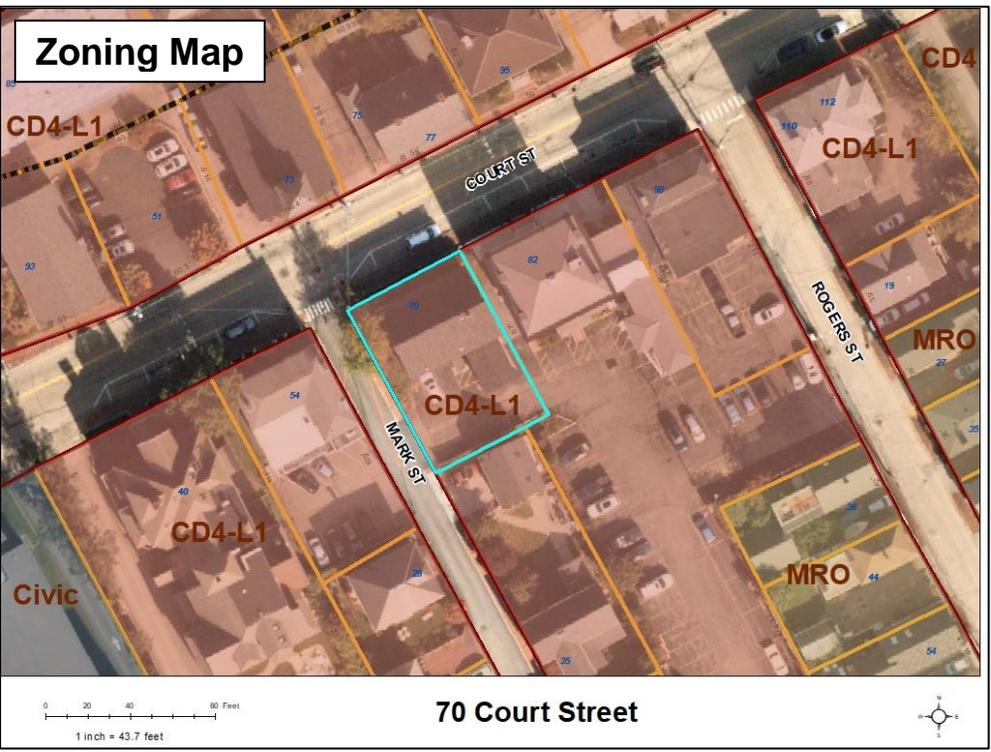
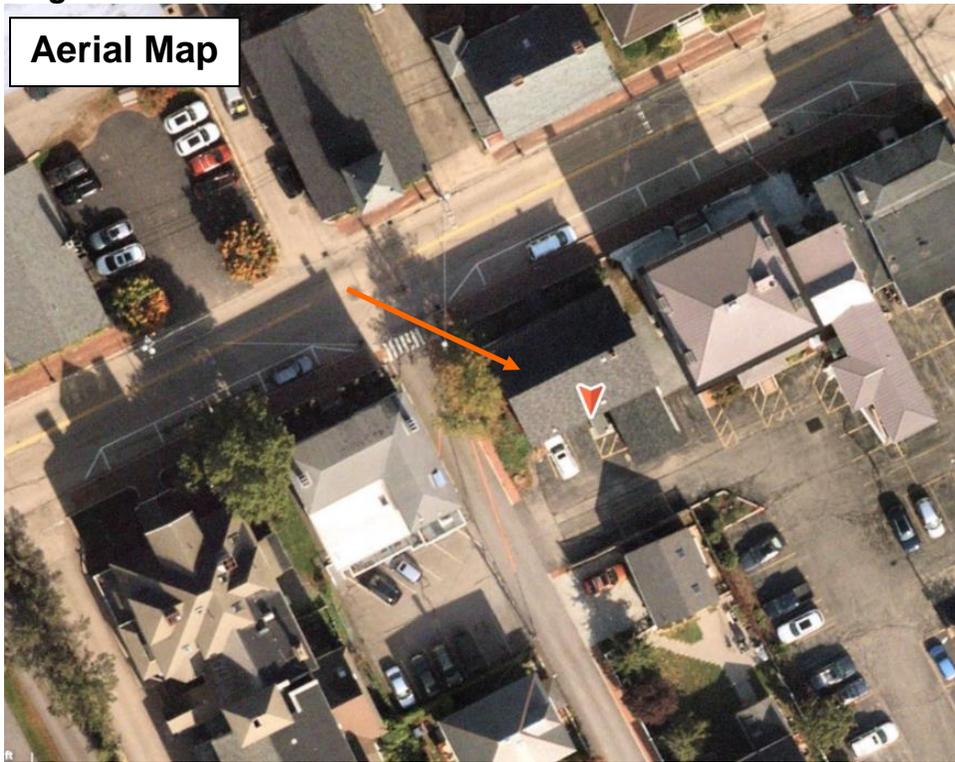
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Office	Convert to an <b>Inn</b>	Primarily mixed uses
<u>Lot area (sq. ft.):</u>	5,380	5,380	3,000 min.
<u>Street Frontage (ft.):</u>	148	148	150 min.
<u>Primary Front Yard (ft.):</u>	9	9	15 max.
<u>Secondary Front Yard (ft.):</u>	11	11	12 max.
<u>Left Yard (ft.):</u>	4	4	5' min. to 20' max
<u>Rear Yard (ft.):</u>	22	22	5' from lot line or 10 ft. from center of alley
<u>Height (ft.):</u>	<35	<35	35' (2 stories, short 3 <sup>rd</sup> ) max.
<u>Building Coverage (%):</u>	36	36	60 max.
<u>Open Space Coverage (%):</u>	23	27	25 min.
<u>Parking:</u>	4	5	11
<u>Estimated Age of Structure:</u>	1758	Variance request(s) shown in red.	

### Other Permits/Approvals Required

Planning Board/TAC – Conditional Use Permit for Parking  
Historic District Commission

### Neighborhood Context

**Aerial Map**



## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is seeking to convert the existing building into an 8 room Inn which is not a permitted use in the CD4-L1 district. The property is currently used as office use. Since a new use is proposed and the parking is being reconfigured, relief is needed for the noncompliant maneuvering aisle width of 13' where 24' is required. An Inn may have a caretaker's residence, but it is not required. The proposal includes a residence for the caretaker and in addition to the 8 rooms proposed. The project will need to go through TAC and Planning Board for a conditional use permit to provide less than the required number of parking spaces for the proposed use.

## 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.*



3.

Request of **Mastoran Restaurants Inc.** (Owner), for the property located at **2255 Lafayette Road** whereas relief is needed to demolish the existing Burger King and construct a 5,555 square foot convenience store with drive-thru and fueling island which requires the following: 1) A Variance from Section 10.5B33.20 to allow 0% front lot line buildout where 75% is required. 2) A Variance from Section 10.5B22.40 to allow a building to be constructed outside of the 70 - 90 foot setback from the centerline of Lafayette Road. 3) A Variance from Section 10.1113.20 to allow parking to be located between a principal building and a street. 4) A Variance from Section 10.1114.31 to allow more than one driveway. 5) A Variance from Section 10.835.32 to allow a bypass lane for a drive thru to be set back 24 feet from a lot line where 30 feet is required. 6) A Variance from Section 10.1251.20 to allow a 160 square foot freestanding sign where 100 square feet is the maximum allowed. Said property is shown on Assessor Map 272 Lot 3 and lies within the Gateway Corridor (G-1) district.

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Burger King	Service station with restaurant	Primarily mixed use
<u>Building Footprint (sq. ft.):</u>	4,770	5,555	10,000 max.
<u>Street frontage (ft.):</u>	280	280	50 min.
<u>Front Lot line buildout (%):</u>	0	<b>0</b>	75 min.
<u>Setback from Lafayette Rd (ft.):</u>	140	<b>120 - 203</b>	70 min. – 90 max.
<u>Right Yard (ft.):</u>	99	63	10 min.
<u>Left Yard (ft.):</u>	102	83	10
<u>Rear Yard (ft.):</u>	207	173	15 min.
<u>Height (ft.):</u>	1 story, <40'	1 story, <40'	40' or 3 stories max.
<u>Building Coverage (%):</u>	<70	47	70 max.
<u>Open Space Coverage (%):</u>	>10	52	10 min.
<u>Parking:</u>	73	35	28
<u>Bypass Lane setback (ft.):</u>	~30	<b>24</b>	30 min.
<u>Freestanding Sign (sq. ft.)</u>	160	<b>160</b>	100 max
<u>Estimated Age of Structure:</u>	1990	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

TAC/Planning Board – Site Review, Wetland CUP  
Conservation Commission

### Neighborhood Context



## Previous Board of Adjustment Actions

July 19, 1983 – Relief from Zoning Ordinance including:

1. Variance from Article III, Section 10-302 to allow a structure, roofed portion of children's play area to be established approximately 83' from the front yard where 105' is required.
2. Variance from Article IV, Section 10-402 (I) to allow construction of an accessory use, children's play area, within the required front yard where no accessory use is permitted.

The Board voted the request be **granted**.

## Planning Department Comments

The applicant is seeking variances to demolish the existing Burger King and construct a new food service with drive-thru and gas station. The intent of the Gateway zoning is to locate buildings closer to the road and parking behind the buildings to create a more pedestrian friendly environment and there are dimensional requirements in the Ordinance that promote this intent. The proposal does not comply with several of the dimensional requirements for this zone including the special setback from Lafayette Road, front lot line buildout and location of parking spaces in front of the principal structure. Drive-through facilities required setbacks for drive-through lanes, stacking lanes and bypass lanes as well as menu boards and speakers. The by-pass lane as proposed, does not meet the required 30 foot setback from the property line, all other components of the drive-through are compliant. The applicant is proposing a new 160 square foot free-standing sign which will exceed the 100 square foot 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.*



**THE FOLLOWING PETITIONS WILL BE HEARD AT THE  
FEBRUARY 23, 2022 MEETING**

4.

Request of **230 Commerce Way LLC (Owner)**, for the property located at **230 Commerce Way** whereas relief is needed to construct a new Veterinary care building which requires the following: 1) A Special Exception from Section 10.440 Use #7.50 to allow a Veterinary Care use in a district where it is allowed by Special Exception. Said property is shown on Assessor Map 216 Lot 5 and lies within the Office Research (OR) district.

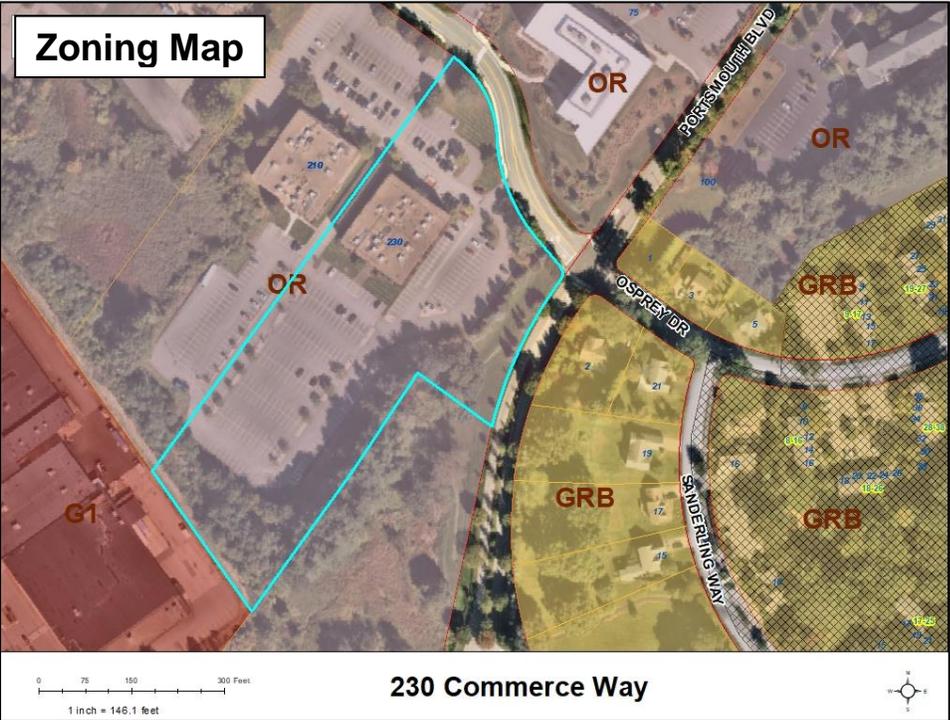
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Office	<b>Veterinary Care Facility</b>	Primarily mixed uses
<u>Lot area (sq. ft.):</u>	5.5 Acres	5.5 Acres	3 Acres min.
<u>Lot depth (ft.):</u>	682	682	300 min.
<u>Street Frontage (ft.):</u>	675	675	300 min.
<u>Primary Front Yard (ft.):</u>	110	385	50 min.
<u>Secondary Front Yard (ft.):</u>	200	>75	50 min.
<u>Right Yard (ft.):</u>	30	>75	75 min.
<u>Rear Yard (ft.):</u>	500	151	50 min.
<u>Height (ft.):</u>	<	<30	60 max.
<u>Building Coverage (%):</u>	7	10	30 max.
<u>Open Space Coverage (%):</u>	>30	52	30 min.
<u>Parking:</u>	300	229	204
<u>Estimated Age of Structure:</u>	11997	<b>Special Exception request shown in red.</b>	

**Other Permits/Approvals Required**

Planning Board/TAC – Site Review and Wetland CUP  
Conservation Commission

### Neighborhood Context



## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is seeking to construct a new building on the property for a veterinary care facility. The use requires a Special Exception in the Office Research district. All other aspects of the proposal will conform to the dimensional requirements of the Ordinance. The applicant will need a wetland conditional use permit for work within the buffer and site review approval from the Planning Board.

## 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.*



5.

Request of **HCA Realty (Owner)**, for the property located at **0 Borthwick Avenue** whereas relief is needed to construct a remote parking area for hospital use which requires the following: 1) A Variance from Section 10.113.41 to allow a 35 foot front setback for a parking lot where 50 feet is required. 2) A Special Exception from Section 10.1113.112 to allow a parking lot on another lot in the same ownership as the lot in question within 300 feet of the property line of the lot in question. Said property is shown on Assessor Map 234 Lot 7-4A and lies within the Office Research (OR) District.

### Existing & Proposed Conditions

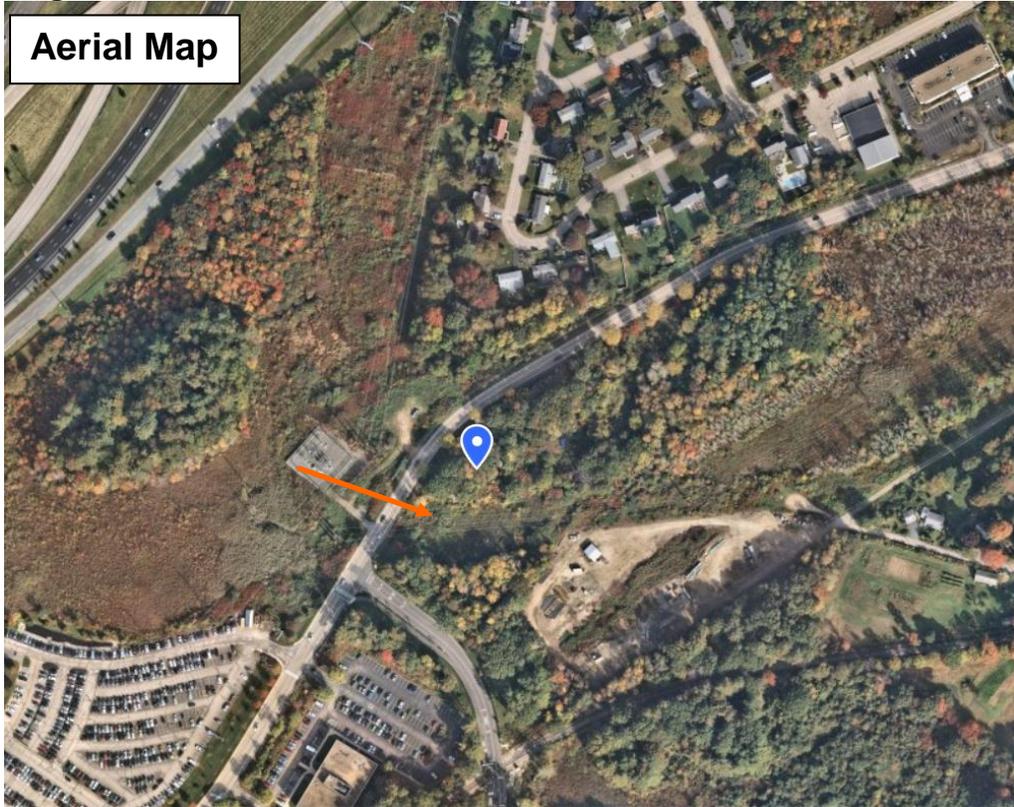
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant	<b>Remote parking lot</b>	Primarily mixed uses
<u>Lot area (sq. ft.):</u>	9.09 acres	9.09 acres	3 acres min.
<u>Lot depth (ft.):</u>	>300	>300	300 min.
<u>Street Frontage (ft.):</u>	>300	>300	300 min.
<u>Primary Front Yard (ft.):</u>	NA	<b>35</b>	50 min.
<u>Building Coverage (%):</u>	0	0	30 max.
<u>Open Space Coverage (%):</u>	~100	>20	20 min.
<u>Parking:</u>	NA	520 (1,303 total for hospital)	1,152
<u>Estimated Age of Structure:</u>	NA	<b>Variance or Special Exception request(s) shown in red.</b>	

### Other Permits/Approvals Required

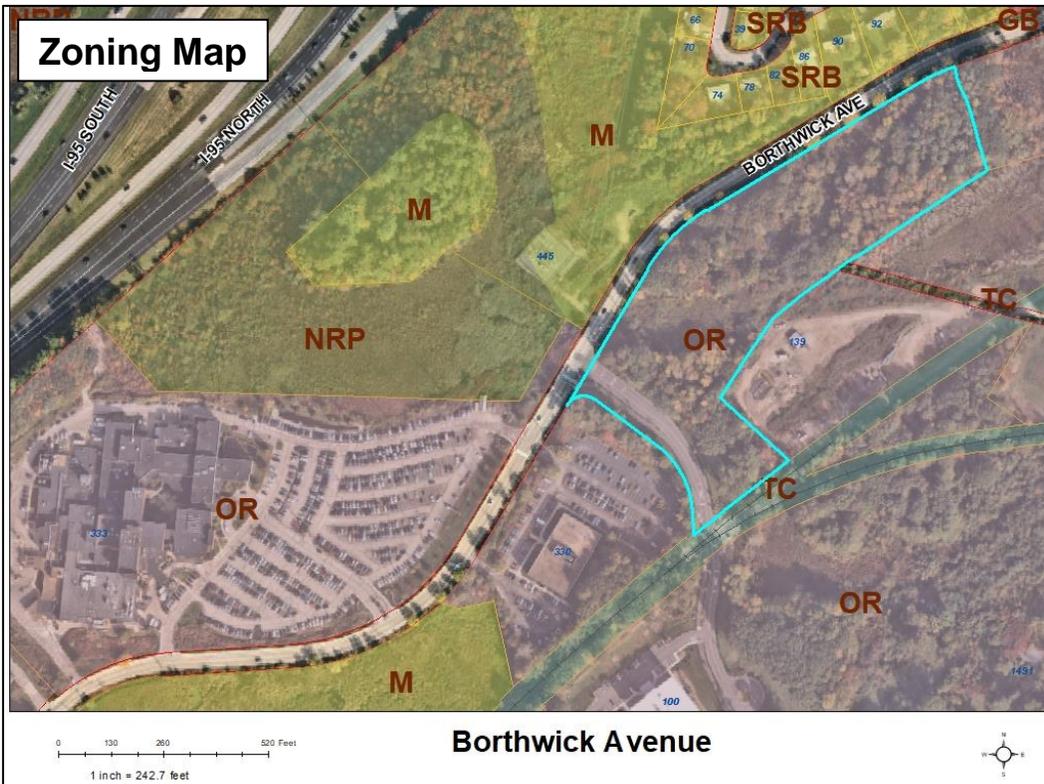
Planning Board/TAC – Site Review and Conditional Use Permit for Parking  
Historic District Commission

### Neighborhood Context

**Aerial Map**



**Zoning Map**



## Previous Board of Adjustment Actions

No prior BOA history found.

## Planning Department Comments

The applicant is seeking to construct a remote parking lot across the street from the hospital parcel to provide additional parking for the campus. Per Section 10.1113.12 below, the Board may approve such use through a special exception if the lot is under the same ownership and within 300 feet of the subject parcel.

10.1113.112 The Board of Adjustment may authorize a special exception for the provision of required parking on another **lot** in the same ownership as the **lot** in question and within 300 feet of the property line of the **lot** in question.

The applicant is seeking a variance for the front lot line setback where 50 feet is required for parking lots and maneuvering aisles, accessways, and traffic aisles. Eileen Dondero Foley Avenue runs through the subject lot and the lot line is across the road as shown on the site plan.

## 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.*



6.

Request of **One Market Square LLC (Owner)**, for the property located at **1 Congress Street** whereas relief is needed to construct a 3 story addition with a short 4th story and building height of 44'-11" which requires the following: 1) A Variance from Section 10.5A.43.31 and Map 10.5A21B to allow a 3-story addition with a short 4th and building height of 44'-11" where 2 stories (short 3rd) and 35' is the maximum allowed. Said property is shown on Assessor Map 117 Lot 14 and lies within the Character District 4 (CD4) and Character District 5 (CD5).

### Existing & Proposed Conditions

<b>TABLE IS FOR CD4 ZONING</b>	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed use/parking lot	4 story addition	Primarily mixed uses
<u>Primary Front Yard (ft.):</u>	NA	1'6"	15 max.
<u>Right Yard (ft.):</u>	NA	15	NR
<u>Left Yard (ft.):</u>	NA	0	NR
<u>Rear Yard (ft.):</u>	NA	10	Greater of 5' from rear lot line or 10' from CL of alley min.
<u>Height (ft.):</u>	NA	<b>3 stories (short 4<sup>th</sup>), 44'-11"</b>	2-3 stories, 40' max.
<u>Building Coverage (%):</u>	0	67	90 max.
<u>Open Space Coverage (%):</u>		32	10 min.
<u>Parking:</u>	18	19	4 space credit for Residential/ 0 required for commercial use in DOD
<u>Estimated Age of Structure:</u>	1800	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

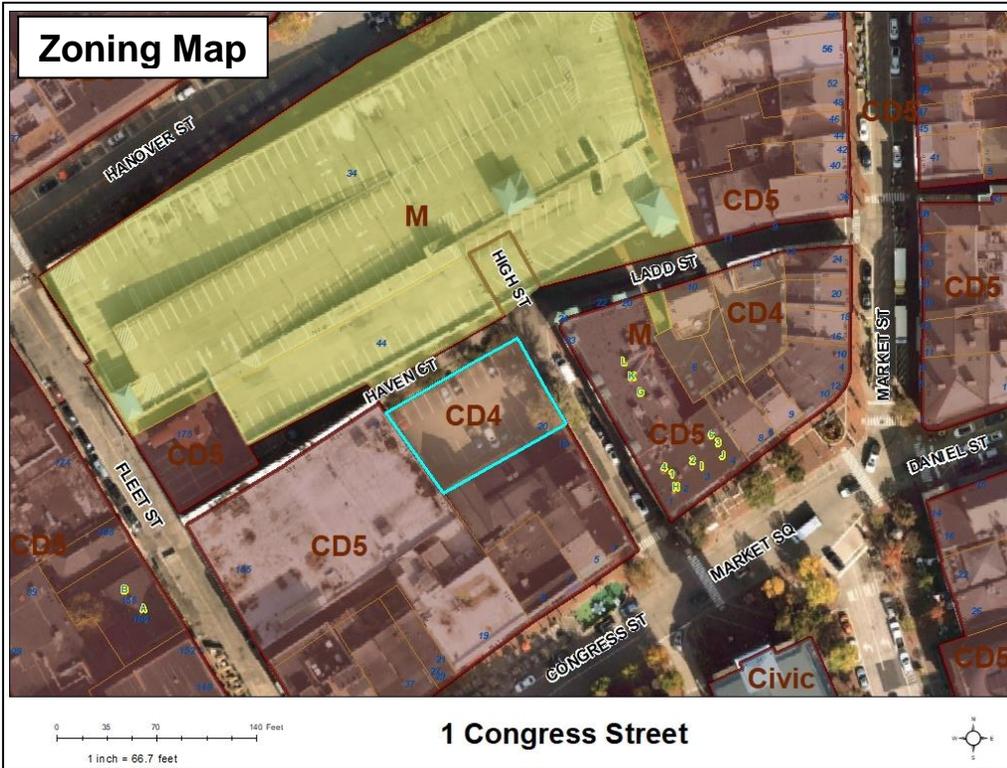
Planning Board/TAC – Site Review and Conditional Use Permit for Parking  
Historic District Commission

### Neighborhood Context

**Aerial Map**



**Zoning Map**



## Previous Board of Adjustment Actions

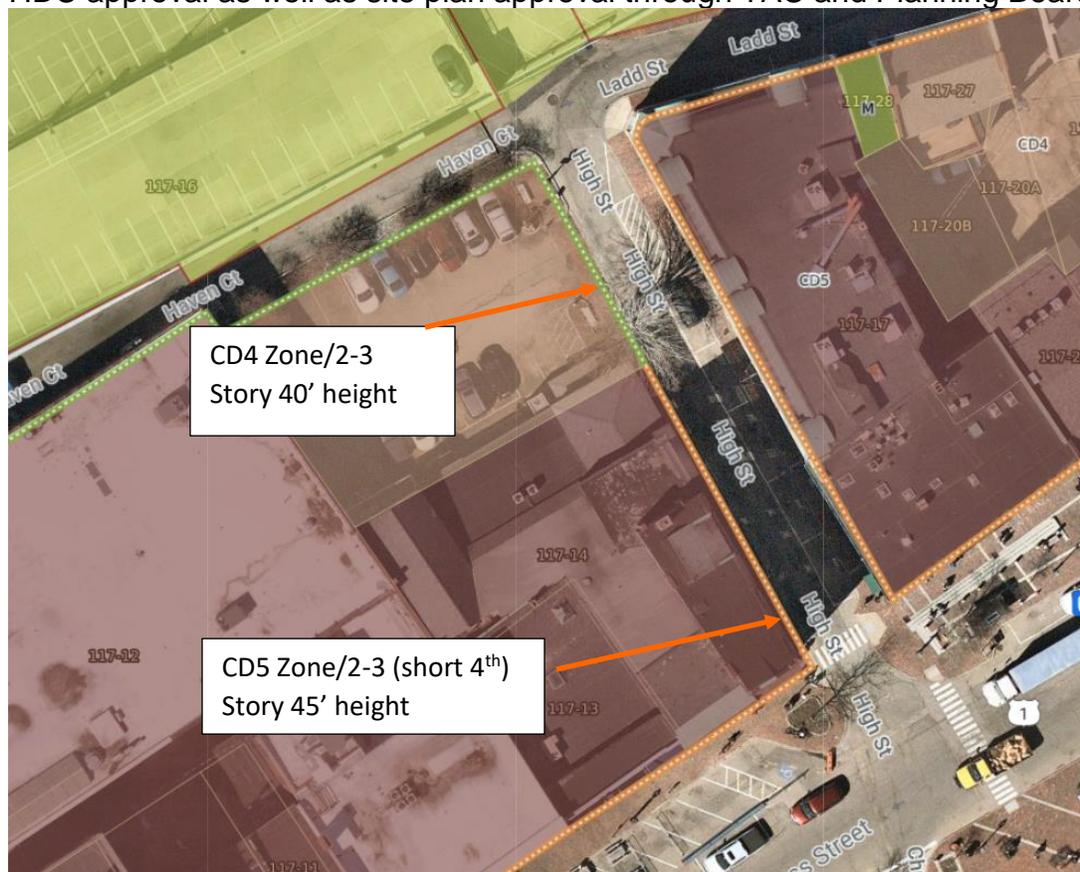
March 29, 2012 – Relief from Zoning Ordinance including:

1. Variance from Section 10.1115.20 and the requirements of 10.1115.30 to allow no off-street parking spaces to be provided where 1 space per 100 s.f. Gross Floor Area is required.
2. Special Exception under Section 10.1113.112 to allow 6 off-street parking spaces to be provided on another lot in the same ownership and within 300' of the property line of the lot in question.

The Board voted to **grant** the Variance as presented. With the granting of the Variance the Board determined the Special Exception would not be required.

## Planning Department Comments

The applicant is seeking to merge the two properties and construct a 3-story addition with a short 4<sup>th</sup>, which requires a variance to do so. The two parcels are zoned differently, one CD4 and one CD5 and both have separate height requirements as shown on the map below. All other dimensional requirements are met with the proposal. The project will need HDC approval as well as site plan approval through TAC and Planning Board.



## 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.*

7.

Request of **Theodore M. Stiles (Owner)**, for the property located at **28 South Street** whereas relief is needed to add two rear additions to the existing dwelling which requires the following: 1) Variances from Section 10.521 to allow a) 30.5% building coverage where 30% is the maximum allowed; and b) a 5' left side yard where 10' is required. 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 43 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	Rear addition	Primarily residential uses
<u>Lot area (sq. ft.):</u>	4,792	4,792	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,792	4,792	5,000 min.
<u>Lot depth (ft.):</u>	123	123	60 min.
<u>Street Frontage (ft.):</u>	51	51	80 min.
<u>Primary Front Yard (ft.):</u>	5	5	5 min.
<u>Right Yard (ft.):</u>	12	12	10 min.
<u>Left Yard (ft.):</u>	3	<b>5</b>	10
<u>Rear Yard (ft.):</u>	>25	>25	25 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	28	<b>30.5</b>	30 max.
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1774	Variance request(s) shown in red.	

### Other Permits/Approvals Required

Historic District Commission

### Neighborhood Context

**Aerial Map**



**Zoning Map**



## Previous Board of Adjustment Actions

January 18, 1994 – Relief from Zoning Ordinance including:

Variance from Article IV, Section 10.401 (5) to allow an increase of a non-conforming use or structure by the demolition of an existing 1-1/2 story ‘ell’ addition and its reconstruction to two full stories in height were no increase in the extent of a non-conforming use of a structure or land.

The Board voted the request be **granted** with the stipulation the addition be reconstructed within the existing footprint of the demolished ‘ell’.

April 24, 2012 – Relief from Zoning Ordinance including:

1. Variance from Section 10.321 to allow lawful nonconforming building to be extended or enlarged in a manner that is not in conformity with the Zoning Ordinance.
2. Variance from Section 10.521 to allow a right side yard setback of 1.6'± where 10' is the minimum required.

The Board acknowledged this petition was **withdrawn**.

May 22, 2012 – Relief from Zoning Ordinance including:

1. Variance from Section 10.321 to allow lawful nonconforming building to be extended or enlarged in a manner that is not in conformity with the Zoning Ordinance.
2. Variance from Section 10.572 and Section 10.521 to allow a right side yard setback of 1.6'± where 10' is the minimum required.

The Board voted the request be **granted** with the stipulation to exclude construction of the dormer proposed for the side of the structure closest to the right (southwestern) property line.

April 16, 2013 – Board voted to **grant** One-Year Extension of the variances granted on May 22, 2012 through May 22, 2014.

## Planning Department Comments

The applicant is seeking to add two rear additions onto the existing dwelling. The house is already nonconforming to the left side yard and one of the additions will be located 5 feet from the side where 10 is required. The resulting building coverage will be slightly over the 30% maximum and the legal notice stated 30.5% where the applicant indicates the coverage will be 30.3%.

## 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.*

8.

**REQUEST TO POSTPONE** The appeal of **Duncan McCallum (Attorney for Appellants)**, of the December 16, 2021 decision of the Planning Board for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** which granted the following: a) site plan approval, b) wetlands conditional use permit; and c) certain other, miscellaneous approvals, including an approval related to valet parking. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District.

The Planning Board approved a wetland CUP, site plan and a parking CUP on December 16, 2021. A request for rehearing was submitted to the Planning Board on January 14, 2022 as well as an appeal to the Zoning Board of the Planning Board's December 16<sup>th</sup> decision. The Planning Board granted the rehearing request at the January 27, 2022 meeting which will be heard at their February 17, 2022 meeting. A request to postpone the appeal before the Zoning Board was submitted on February 4, 2022 pending the result of the Planning Board rehearing.