

TO: Zoning Board of Adjustment  
FROM: Juliet Walker, Planning Department  
DATE: March 15, 2017  
RE: March 21, 2017 Zoning Board of Adjustment Meeting

## **NEW BUSINESS**

1. 1850 Woodbury Ave
2. 401 State St
3. 315 Banfield Rd
4. 268 & 276 Dennett St
5. 244 South St
6. 28 Chestnut St
7. 150 Sherburne Rd
8. 319 Vaughan St



# NEW BUSINESS

## Case #3-1

Petitioners:	Goodman Family Real Estate Trust, Nancy L. Goodman, owners and Aroma Joe's Coffee LLC, applicant
Property:	1850 Woodbury Avenue
Assessor Plan:	Map 239, Lot 9
Zoning District:	General Business
Description:	Drive-through take-out restaurant and add related signage
Requests:	<p>Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including Variances from the following Sections:</p> <ol style="list-style-type: none"> <li>1) 10.440 #19.40 to allow a drive-through as a principal use where the use is only allowed as an accessory use;</li> <li>2) 10.1112.30 to allow 21 off-street parking spaces to be provided where 22 spaces are required;</li> <li>3) 10.1113.31 and 10.835.32 to allow accessways, traffic aisles, and drive through bypass lanes to be set back 30'± from a residential district where 50' to 100' are the minimums required;</li> <li>4) 10.1113.41 to allow off-street parking areas, accessways &amp; traffic aisles to be set back 30'± from the front lot line where 40' is the minimum required;</li> <li>5) 10.591 and 10.835.31 for an outdoor service facility to be located 75'± from a residential district where 100' is the minimum required;</li> <li>6) 10.1243 to allow three free-standing signs on a lot where only one free-standing sign per lot is permitted;</li> <li>7) 10.1271.70 to allow signage to be located on a wall that does not face the street or include a public entrance;</li> <li>8) 10.1251.10 to allow 61± s.f. non-freestanding signs where 30 s.f. is the maximum allowed.</li> </ol>

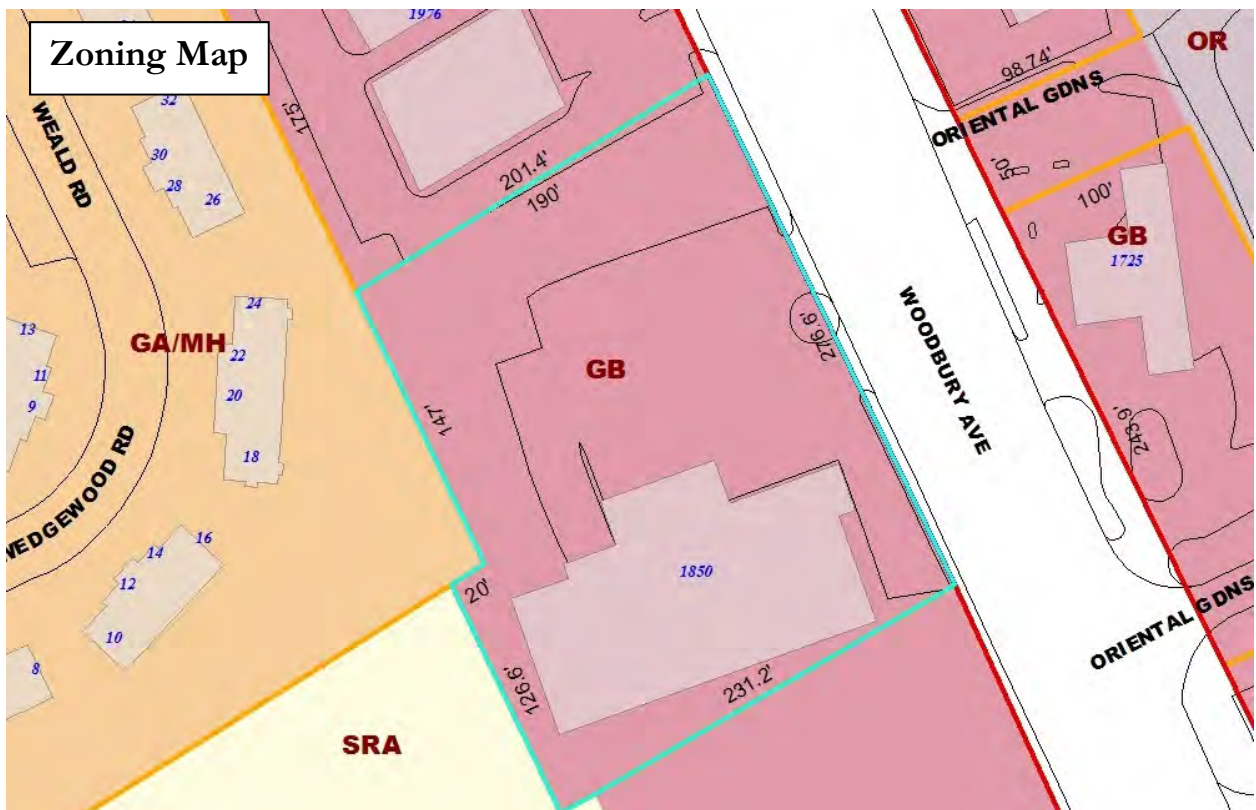
## Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Furniture store	Drive-through take-out restaurant	Primarily business uses
<u>Lot area (sq. ft.):</u>	65,300	NC (No Change)	43,560 min.
<u>Street Frontage (ft.):</u>	275	NC	200 min.
<u>Lot depth (ft.):</u>	200	NC	100 min.
<u>Primary Front Yard (ft.):</u>	25	70	30 min.
<u>Right Yard (ft.):</u>	>30	50	30 min.
<u>Left Yard (ft.):</u>	4	NC	30 min.
<u>Rear Yard (ft.):</u>	16	75	50 min.
<u>Height (ft.):</u>	<60	<60	60 max.
<u>Building Coverage (%):</u>	22	26	30 max.
<u>Open Space Coverage (%):</u>	47	39	20 min.
<u>Parking (# of spaces):</u>	21	21	30 min.

## Other Permits Required

Planning Board Site Plan Review

## Neighborhood Context



## Previous Board of Adjustment Actions

October 10, 1978 – A petition for a Special Exception to allow outdoor motor vehicle sales and a variance to allow this in an area less than the required 100' from a residential district was **withdrawn during the meeting**.

October 24, 1978 – A petition for a Special Exception to allow motor vehicle sales and a variance to allow such sales in an area 44' from a residential district was **tabled** to the next meeting.

November 21, 1978 – The Board **granted** the above Special Exception and variance.

May 22, 1984 – The Board **granted** a variance to allow a 12' x 5' free-standing sign 4' from the front property line where 35' is required with the **restriction that the sign be no closer than 8'** to the property line.

September 25, 1984 – The Board **granted** a variance to allow a 48 s.f. free-standing sign with an 8' left yard and an 8' front yard where a minimum of 35' is required.

May 19, 2009 – The Board **granted** variances to allow 1) the outdoor sales of plants, produce and nursery products where outdoor sales were not allowed; and 2) two 32 sf free-standing a-frame signs creating 156 s.f. of aggregate signage where 102 s.f. was allowed with a 1' front setback where 20' was required. The variances were granted with the following **stipulations**: a) That no trees or shrubs between the site and Lo's Seafood would be cut; b) That no chemicals or pesticides would be used on the property which would negatively impact the abutting wetland; c) that the old light poles on the property not be used due to safety considerations; and d) That any new proposed light poles would meet dark sky friendly standards and the applicant might be required to obtain the approval of the Technical Advisory Committee for placement and foot candle standards.

May 18, 2010 – The Board **granted** a one year extension of the above variances through May 19, 2011.

## Planning Department Comments

The application references required relief from 10.1113.31 and 10.591 which relate to required setbacks for off-street parking areas, accessways & traffic aisles and structures from residential districts. However, the City's Zoning Ordinance, has specific requirements outlined in Section 10.835.30 relating to setbacks for drive-through uses. While the project does not satisfy the requirements for either of the sections, technically the more restrictive requirement applies. Section 10.835.31 requires that any outdoor service facilities be set back 50' from a lot line and 100' from a residential zoning district. The applicant is proposing 75' (in this case the zoning district boundary and the lot line are one and the same), which satisfies the lot line requirement, but not the residential district requirement. Section 10.835.32 requires that all drive-through lanes be located 30' from any lot line and 50' from any residential zoning district. This applicant is proposing 30', which satisfies the lot line requirement, but not the residential district requirement. The relief granted by the Board should reference Sections 10.835.31 and 10.835.32.

## 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 #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:	Install a free-standing sign.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including: 1) A from section 10.1243 variance to allow three free-standing signs on a lot where only one free-standing sign per lot is permitted.

## Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required
<u>Wall</u>			
Individual Sign Area (sq. ft.)	Sign 1: 8.0 Sign 2: 2.2	NC NC	40
<u>Free-Standing</u>			
Individual Sign Area (sq. ft.)	Sign 3: 16.0 Sign 4: 4.0	Sign 5: 4.3	20
Height (ft.)	ok	Sign 5: 7'-6"	12
Setback (ft)	ok	Sign 5: >10	5
<u>Aggregate Sign Area (sq. ft.)</u>	10.2	NC	200

## Other Permits Required

Historic District Commission



## Neighborhood Context



## Previous Board of Adjustment Actions

June 15, 1976 – The Board (solely as a procedural action) denied a request for a free-standing sign 12 s.f. in area and 10' in height in the CBB district where such signs were prohibited. NOTE: This was a procedural action to close out the file as the City Council had just passed a Free-Standing Sign ordinance for the CBB District and note that the sign was already erected.



## 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 #3-3

Petitioner:	Hope for Tomorrow Foundation
Property:	315 Banfield Road
Assessor Plan:	Map 266, Lot 5
Zoning District:	Industrial
Description:	Construct a K-8 Elementary School.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1) A Variance from Section 10.1113.20 to allow off-street parking spaces to be located between a principal building and a street.

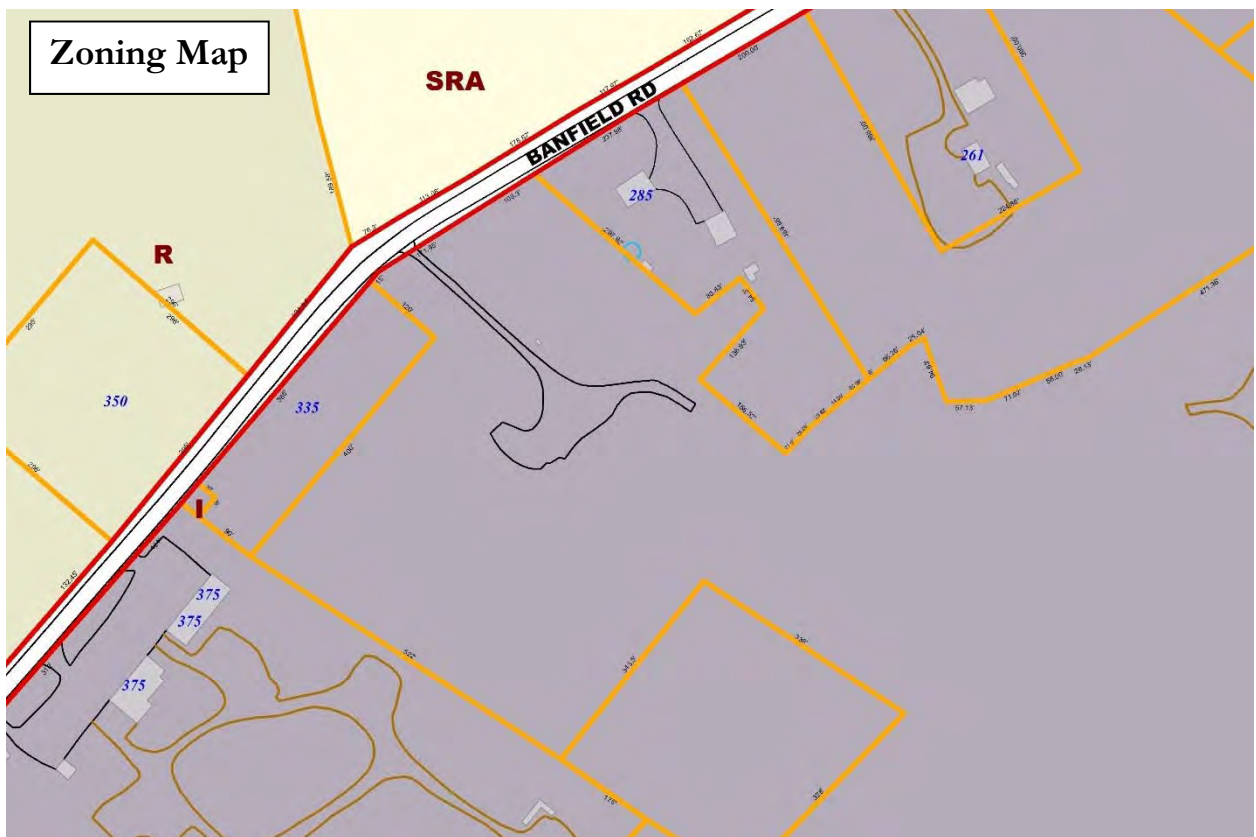
### Existing & Proposed Conditions

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant	K-8 School
<u>Lot area (sq. ft.):</u>	466,092	87,120 min.
<u>Street Frontage (ft.):</u>	365	200 min.
<u>Lot depth (ft.):</u>	>200	200 min.
<u>Primary Front Yard (ft.):</u>	360	70 min.
<u>Right Yard (ft.):</u>	145	50 min.
<u>Left Yard (ft.):</u>	68	50 min.
<u>Rear Yard (ft.):</u>	143	50 min.
<u>Height (ft.):</u>	<70	70 max.
<u>Building Coverage (%):</u>	<50	50 max.
<u>Open Space Coverage (%):</u>	>20	20 min.
<u>Parking (# of spaces):</u>	60	60 min.

### Other Permits Required

Planning Board Site Plan Review  
Planning Board Wetland Conditional Use Permit

## Neighborhood Context



## Previous Board of Adjustment Actions

September 27, 2016 – The Board **granted** a variance to allow a primary or secondary school in a district where the use was not permitted.

## Planning Department Comments

This application was granted conditional site plan review approval on March 16, 2017, contingent on zoning relief being granted to allow parking in front of the building.

## 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 #3-4

Petitioners:	Stewgood, LLC, Craig Steigerwalt and Anne Shiembob
Property:	268 & 276 Dennett Street
Assessor Plan:	Map 143, Lots 13 and 13-1
Zoning District:	General Residence A
Description:	Lot line adjustment
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: <u>Lot 13 (276 Dennett St)</u> 1) A variance from Section 10.521 to allow continuous street frontage of 57.6'± where 100' is required; <u>Lot 13-1 (268 Dennett St)</u> 2) Variances from Section 10.521 to allow: continuous street frontage of 42.4'± where 100' is required; a right side yard of 0'± where 10' is required; and 28.5%± building coverage where 25% is the maximum allowed.

### Existing & Proposed Conditions

	<u>Existing</u> (276 / 268)	<u>Proposed</u> (276 / 268)	<u>Permitted /</u> <u>Required</u>
<u>Land Use:</u>	Single Family Residences	NC	Primarily residential uses
<u>Lot area (sq. ft.):</u>	5,192 / 4,821	NC	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,192 / 4,821	NC	7,500 min.
<u>Street Frontage (ft.):</u>	50 / 50	57.6 / 42.4	100 min.
<u>Primary Front Yard (ft.):</u>	<15 / >15	NC	15 min.
<u>Right Yard (ft.):</u>	0 / -	NC / 0	10 min.
<u>Left Yard (ft.):</u>	>10 / >10	>10 / NC	10 min.
<u>Rear Yard (ft.):</u>	>20 / >20	NC	20 min.
<u>Building Coverage (%):</u>	28.8 / 25.1	25.6 / 28.5	25 max.
<u>Open Space Coverage (%):</u>	69 / 59.4	69.6 / 58.7	30 min.

### Other Permits Required

Planning Board Lot Line Revision

## Neighborhood Context



### Previous Board of Adjustment Actions

No BOA history found.

### Review Criteria

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

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

**AND**

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

**OR**

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

## Case #3-5

Petitioner:	Swirly Girl II
Property:	244 South Street
Assessor Plan:	Map 111, Lot 3
Zoning District:	Single Residence B
Description:	Convert a three dwelling unit building to two dwelling units and add an rear addition.
Requests:	<p>Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <p>1) Variances from Section 10.521 to allow: an 8.5'± right side yard where 10' is required; building coverage of 23%± where 20% is the maximum allowed; a lot area per dwelling unit of 3,802 s.f. where 15,000 s.f. is required;</p> <p>2) A Variance from Section 10.1112.30 to allow two off-street parking spaces to be provided where four off-street parking spaces are required.</p>

## Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	3-family residence	2-family residence	Primarily single family residence
<u>Lot area (sq. ft.):</u>	7,604	7,604	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,534	3,802	15,000 min.
<u>Street Frontage (ft.):</u>	61	NC	100 min.
<u>Lot depth (ft.):</u>	122	NC	100 min.
<u>Primary Front Yard (ft.):</u>	7.3	NC	30 min.
<u>Right Yard (ft.):</u>	9.5	8.5	10 min.
<u>Left Yard (ft.):</u>	7.2	12	10 min.
<u>Rear Yard (ft.):</u>	78	63.1	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	17	22	20 max.
<u>Open Space Coverage (%):</u>	78	66	40 min.
<u>Parking (# of spaces):</u>	2	2	2 min.
<u>Estimated Age of Structure:</u>	1750		

## Other Permits Required

Historic District Commission



An aerial photograph of a residential neighborhood. The houses are mostly two-story, with varying roof colors (grey, brown, red). A red arrow points to a specific house with a dark roof, located near a curved road. The surrounding area includes green lawns, bare trees, and some evergreens. A white box with the text 'Aerial Map' is in the top left corner.





## 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 #3-6

Petitioners:	Friends of the Music Hall
Property:	28 Chestnut Street
Assessor Plan:	Map 126, Lot 7
Description:	Replace the existing marquee with a lighted marquee and blade sign.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including Variances from the following: 1) Section 10.1251.20 allow a marquee and blade sign to exceed maximum sign area for individual sign types; 2) Section 10.1251.10 to allow an aggregate sign area that exceeds the maximum allowed; 3) Section 10.1261.30 to allow signs to be lit by internal and direct illumination where only external illumination is allowed; 4) Section 10.1273.10 to allow the marquee letters to be taller than 1.5'.

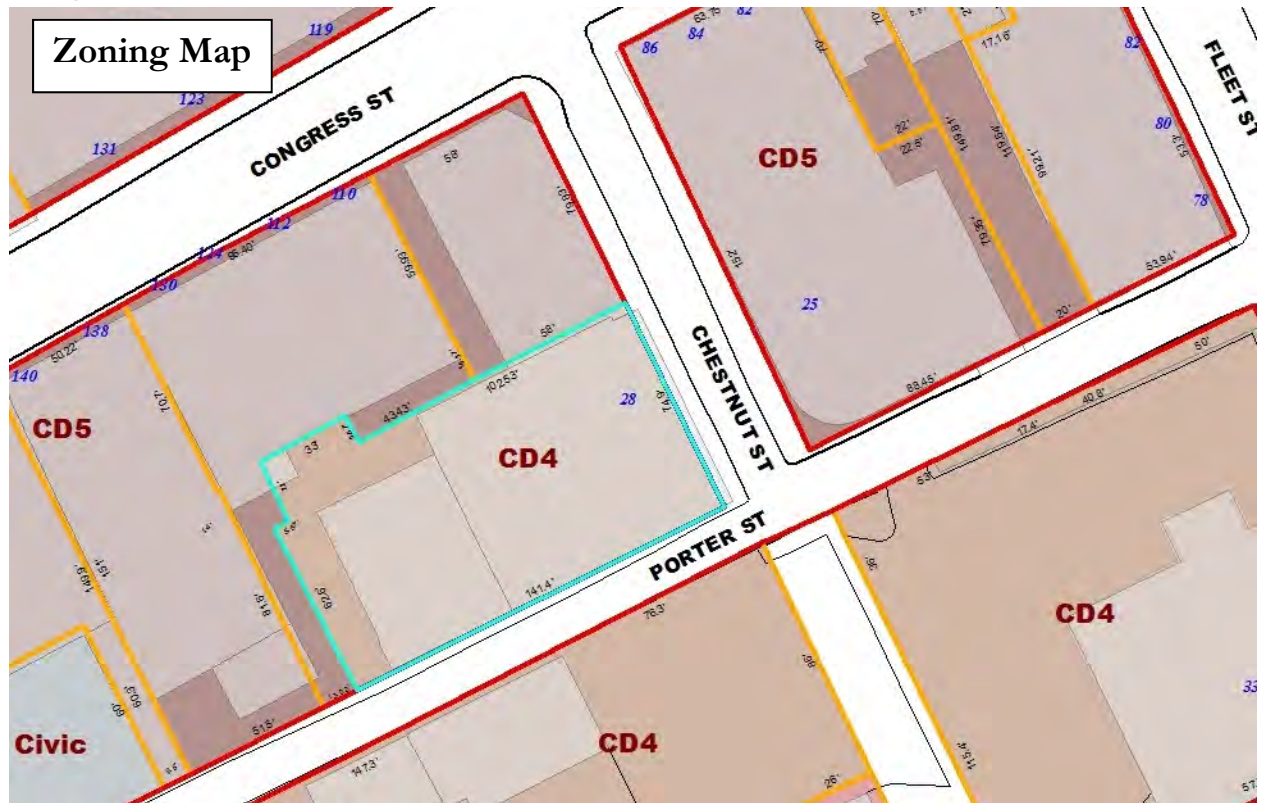
### Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required
<u>Wall / Attached</u>			
Individual Sign Area (sq. ft.)	Signs 1 and 2: 5.0 Signs 3 and 4: 24.1	No Change (NC)	40
<u>Projecting</u>			
Individual Sign Area (sq. ft.)	Signs 5-8: 132 ea	Signs 5-8: To be removed New Sign 10: 90.5 (see comment memo below)	16
Height (ft)	Signs 5-8: >16	New Sign 10: >7	7
<u>Marquee</u>			
Individual Sign Area (sq. ft.)	Sign 9: 76	Sign 9: To be removed New Sign 11: 136	20
<u>Aggregate Sign Area (sq. ft.)</u>	237.1 (see staff comment below)	255.6 (see staff comment below)	159

### Other Permits Required

Historic District Commission

## Neighborhood Context



### Previous Board of Adjustment Actions

July 30, 1985 – The Board **granted** a Special Exception to permit no parking spaces where 180± parking spaces were required and where the Board could allow by special exception the reduction or elimination of required parking considering the availability of parking within 500' of the proposed use in the Central Business District.

September 4, 1986 – The Board **denied** a request to allow the conversion of an existing theater structure into 29 residential dwelling units with 376.5 s.f. of lot area per family (unit) where 2,000 s.f. per family was required.

October 7, 1986 – The Board **denied** a Petition for Rehearing regarding the above.

(A subsequent Court Record was prepared with no outcome indicated in the file)

September 26, 1986 – A request to permit 16 residential units was **withdrawn**.

November 20, 1990 – A petition scheduled for that night's hearing was requested to be **tabled** to the December 18, 1990 meeting. The petition was to allow a Variance for the following: a) the erection of four 39 s.f. projecting (banner) signs and four 12 s.f. attached signs for a total of 204 s.f. in addition to 64 s.f. of existing signage for a total of 268 s.f. of aggregate signage where 75 s.f. was the maximum allowed; and b) of the proposed 156 s.f. of projecting signage where 15 s.f. was the maximum allowed.

December 18, 1990 – the Board **granted** a Special Exception to allow the erection of four 39 s.f. projecting (banner) signs and four 12 s.f. attached signs for a total of 204 s.f. of proposed signage in addition to 64 s.f. of existing signage for a total aggregate of 268 s.f., with 156 s.f. of the proposed signage to be projecting signage. *(Note: The published notice and letter of decision differs in the description of the petition from that published for the November 20, 1990 meeting as follows: a) A Special Exception was requested and not a Variance; and b) the maximum s.f. allowed for aggregate signage and projecting signage respectively were not listed.)*

February 17, 2004 – The Board **granted** a Variance to allow 1 20' antenna where the maximum height allowed was 10' for roof appurtenances. The Variance was granted with the following stipulations: a) The use of the antenna would not be extended to entities other than Portsmouth Community Radio; and b) The antenna would be removed when/if Portsmouth Community Radio ceased to exist.

June 15, 2004 – The Board **granted** a Variance to amend the previously approved 20' antenna to a 25' antenna with associated elements where the maximum height allowed for roof appurtenances was 10'.

## **Planning Department Comments**

Staff calculations for the projecting sign area are based on the information provided by the applicant, but do not match the area included in the requested relief. The applicant's attorney has been notified of the discrepancy and will address this at the hearing.

### On the sign application

Projecting (Blade) Individual Sign Area is listed by applicant 87.2, planning department calculation is 90.5. Proposed Aggregate Sign Area is listed by the applicant as 252.2, planning department calculation is 255.

### On the narrative requesting relief

The applicant's narrative summarizes the existing aggregate as 208 and proposed conditions for aggregate as 221.7 (which doesn't match the sign application). This does not match the City's calculations of 237 and 255.



## 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.*

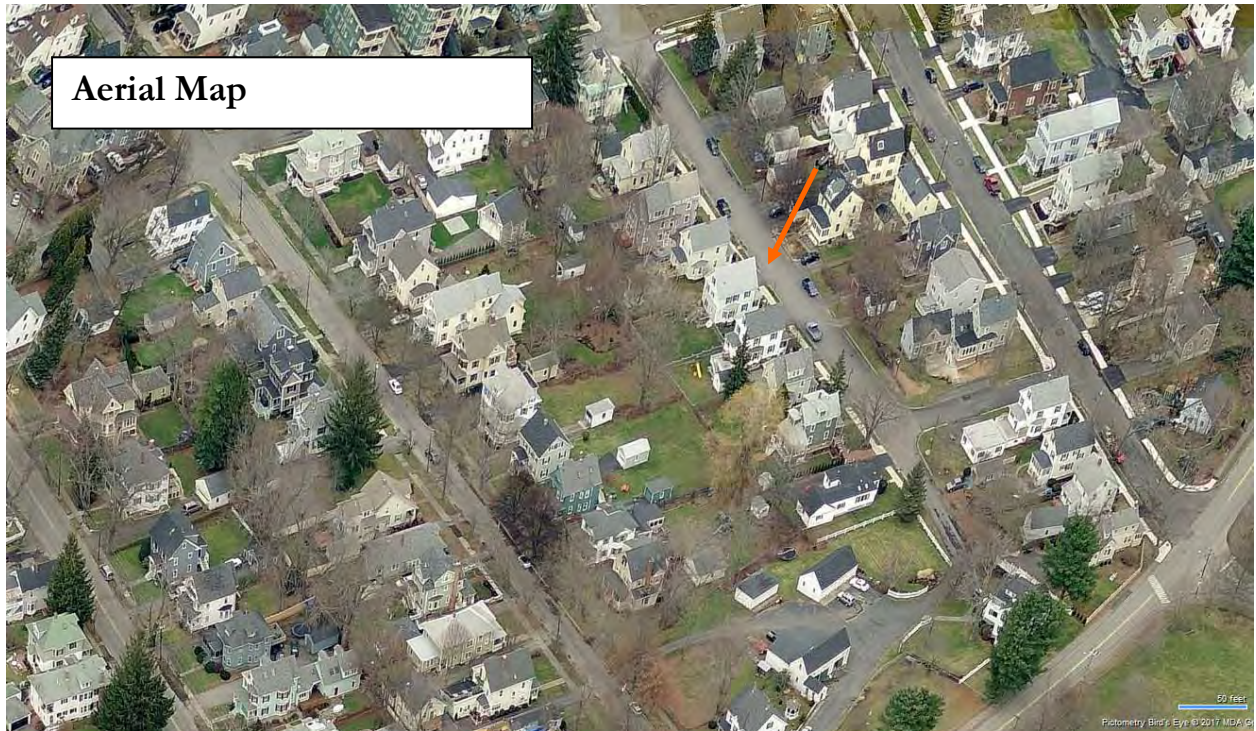
### Case #3-7

Petitioners:	Eric M. Katzman
Property:	150 Sherburne Ave
Assessor Plan:	Map 112, Lot 34
Zoning District:	General Residence A
Description:	Construct right and left side shed dormers.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1) A Variance from Section 10.521 to allow a right side yard of 7.5'± where 10' is required.

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family residence	No Change	Primarily residential uses
<u>Lot area (sq. ft.):</u>	5,662.80	NC	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,662.80	NC	7,500 min.
<u>Primary Front Yard (ft.):</u>	10	10	10 min.
<u>Right Yard (ft.):</u>	7.5	7.5	10 min.
<u>Left Yard (ft.):</u>	15	15	10 min.
<u>Rear Yard (ft.):</u>	51	NC	20 min.
<u>Height (ft.):</u>	31'-4"	31'-4"	35 max.
<u>Building Coverage (%):</u>	19	NC	25 max.
<u>Estimated Age of Structure:</u>	1950		

## Neighborhood Context



## Previous Board of Adjustment Actions

No BOA history found.

## Review Criteria

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

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





## Case #3-8

Petitioners:	319 Vaughan St. Center LLC, owner, and 3S Contemporary Artspace, applicant
Property:	319 Vaughan Street
Assessor Plan:	Map 124, Lot 9
Zoning District:	Character District 5 and the Downtown Overlay District
Description:	Hold a summer outdoor concert series.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1) A Special Exception from Section 10.1440 #3.521 to allow an outdoor performance facility use where the use is allowed by special exception; 2) A Variance from Section 10.592.10 to allow an outdoor performance facility use to be located less than 500' from a residential district.

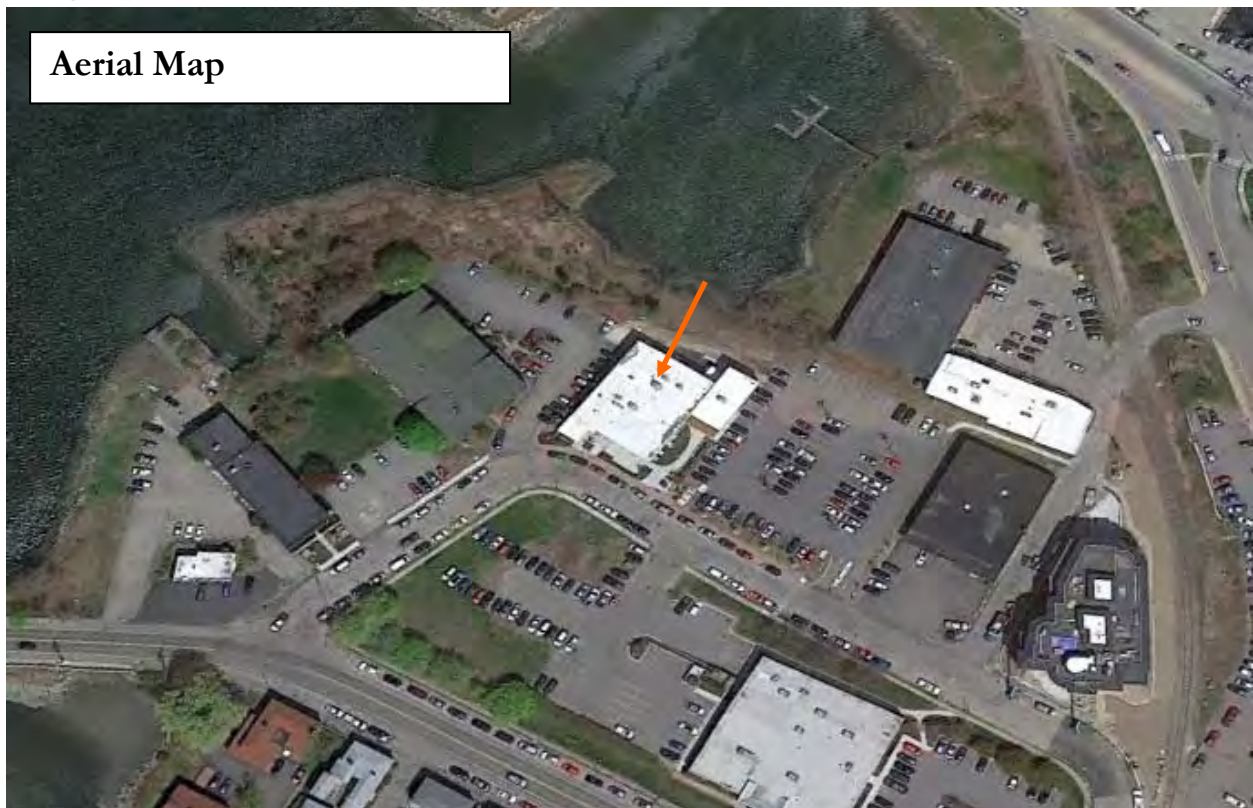
## Existing & Proposed Conditions

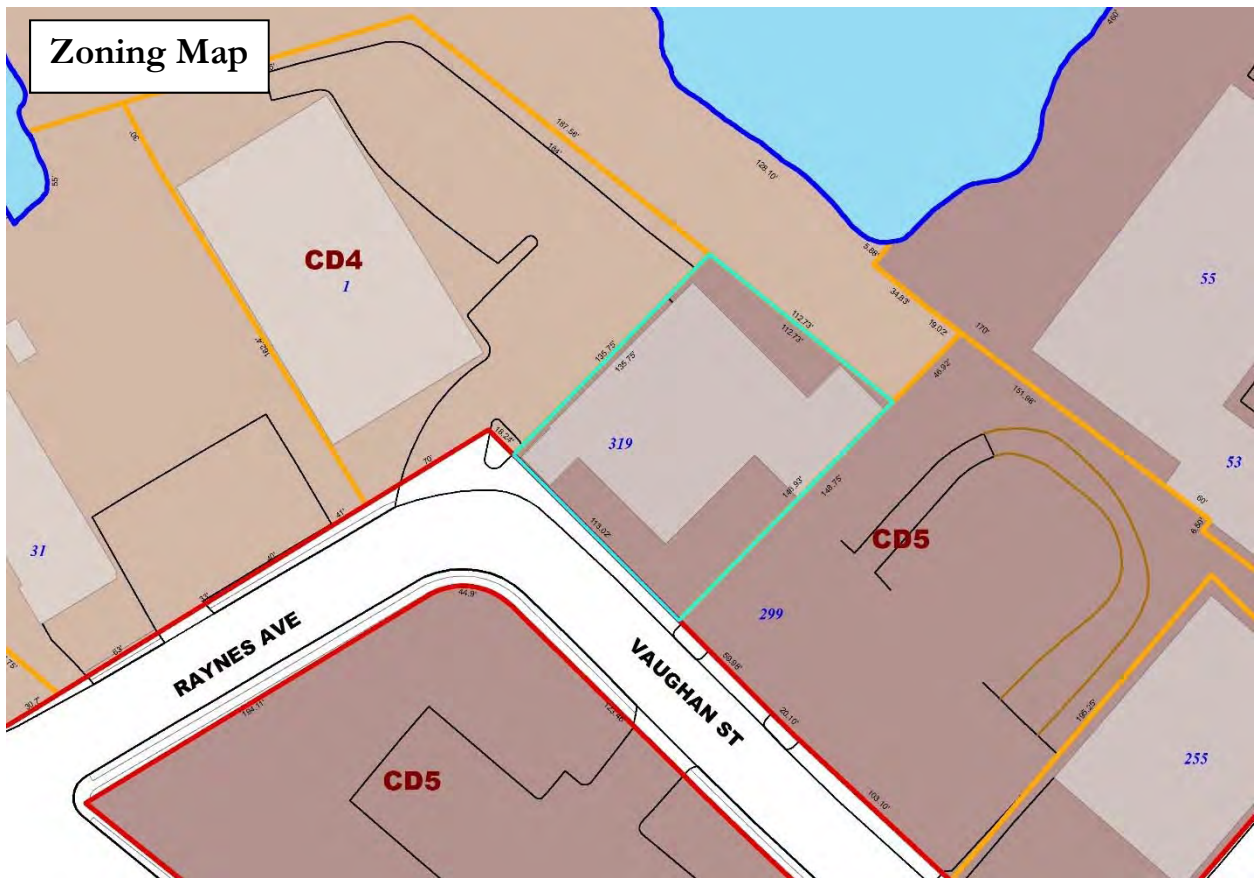
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Indoor performance space / restaurant	Outdoor performance space	Mix of residential and commercial uses

## Other Permits Required

None.

## Neighborhood Context





## Previous Board of Adjustment Actions

May 24, 2016 – the Board **granted** a Special Exception to allow a series of outdoor concerts in a district where the use was only allowed by Special Exception and a Variance to allow the use to be less than 500' from a CD4-L1 District.

## Review Criteria

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

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

**AND**

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

**OR**

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

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

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