

TO: Zoning Board of Adjustment  
FROM: Peter Stith, AICP, Planning Department  
DATE: January 10, 2018  
RE: Zoning Board of Adjustment January 17, 2018 Meeting

**OLD BUSINESS**

1. 278 State Street – Request for Rehearing

**NEW BUSINESS**

1. 996 Maplewood - Appeal
2. 3020 Lafayette Road
3. 1850 Woodbury Avenue

## OLD BUSINESS

### Case #11-5

Petitioners:	PNF Trust of 2013, Peter N. Flores, Trustee
Property:	278 State Street
Assessor Plan:	Map 107, Lot 80
Zoning District:	Character District 4 (CD4)
Description:	Appeal decision of the Historic District Commission to deny the issuance of a demolition permit.
Requests:	Issuance of demolition permit.

#### Planning Department Comments

The Application for 278 State St. was denied a request for a demolition permit from the Historic District Commission on August 28, 2017. A Request for Rehearing was subsequently denied by the HDC on October 4, 2017. The applicant appealed the HDC decision to the BOA on November 21, 2017. The Board voted to **deny** the appeal with the stipulation that the applicant work with the Historic District Commission to arrive at a mutually agreeable plan for the property. The Board further stipulated that any reconstruction of the existing building must, at a minimum, fully preserve the State Street side façade and the Church Street side façade of the existing building.

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

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

The applicant is working with the HDC; a work session was held December which was continued until January 10<sup>th</sup> meeting and subsequently postponed until February.

## NEW BUSINESS

### Case #12-1

Petitioners:	James M. Fernald
Property:	996 Maplewood Avenue
Assessor Plan:	Map 219, Lot 4
Zoning District:	Single Residence B District (SRB)
Description:	Appeal
Requests:	Appeal from an Administrative Decision regarding the issuance of a building permit for Unit C of the above property.

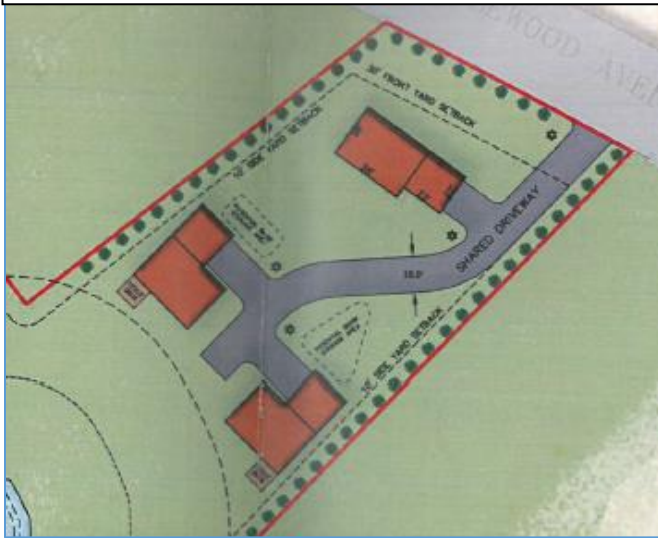
The applicant is appealing the issuance of a building permit for Unit C located at 996 Maplewood that was issued on November 15, 2017. On August 16, 2016, the BOA granted a variance for three dwellings on a single lot in the SRB district. Subsequently, the Planning Board granted Site Plan Review approval on December 15, 2016. In the original application submitted to the BOA, the square footage of each unit was originally estimated as 1,696 s.f. and the site plan approved by the Planning Board identified each unit as approximately 1,938 s.f. In both cases, the application complied with all applicable density and dimensional requirements of the zoning ordinance. The only nonconforming aspect of the proposal was the three free standing single family dwelling units on one lot, which became conforming based on the BOA approval.

The Planning Department does internal consistency reviews throughout the permitting process and, while the final architectural design and footprint changed (addition of a garage underneath, shorter and wider footprints for all units resulting in an actual square footage closer to 1910 s.f.), the overall proposal was found to be consistent with both the BOA's and the Planning Board's approvals. If that had not been the case, the applicant would have been advised to return to the BOA for a new variance and to the Planning Board for an amended site plan review approval.

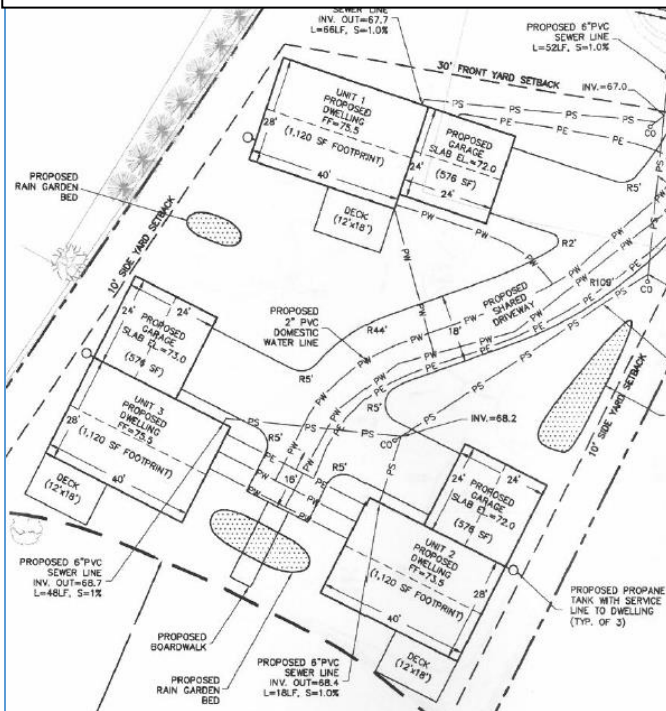
At the time the variance was granted in August 2016, the zoning ordinance did contain language that a variance or special exception shall expire after one year if a building permit is not issued. However, that language was not consistent with state law, which provides for a 2-year period before the approval expires. On January 9, 2017, the zoning ordinance was amended to be consistent with state law.

The first image below is the conceptual layout that was presented to the BOA at their August 16, 2016 meeting. The second and third images are from site plan submittals to the Planning Board for their review. The third image shows the final footprint that was approved.

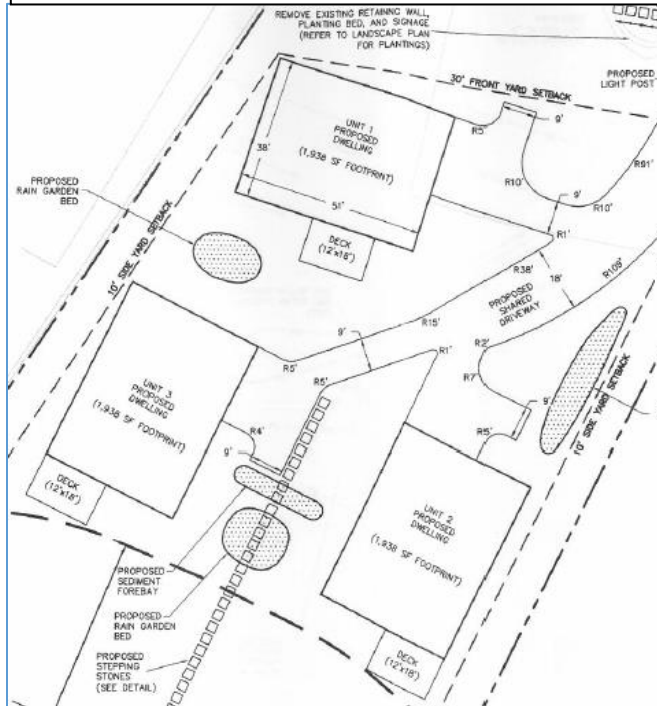
**Image 1: Concept Plan submitted to BOA on August 16, 2016**



**Image 2: Site Plan submitted to Planning Board on September 19, 2016**



**Image 3: Plan submitted to the Planning Board on November 16, 2016 showing final layout**



### **Previous Board of Adjustment Actions**

November 12, 1985 - The Board **granted** a Special Exception to allow construction of a greenhouse adjacent to an existing business.

May 27, 1997 – The Board **denied** a request to allow the sale of wedding apparel and formal wear in a grandfathered floral shop and to allow the expansion of a nonconforming retail floral business by selling wedding apparel and formal wear.

June 17, 1997 – The Board **denied** a request for rehearing regarding the above.

February 15, 2005 – The Board **denied** a request to allow a 4,944 s.f. chiropractic office on the first floor and one apartment on the second floor with associated parking where the current use was a retail florist.

June 28, 2005 – The Board **denied** a request to allow six dwelling units (a 4-unit and a 2-unit building) where only one dwelling per lot was allowed.

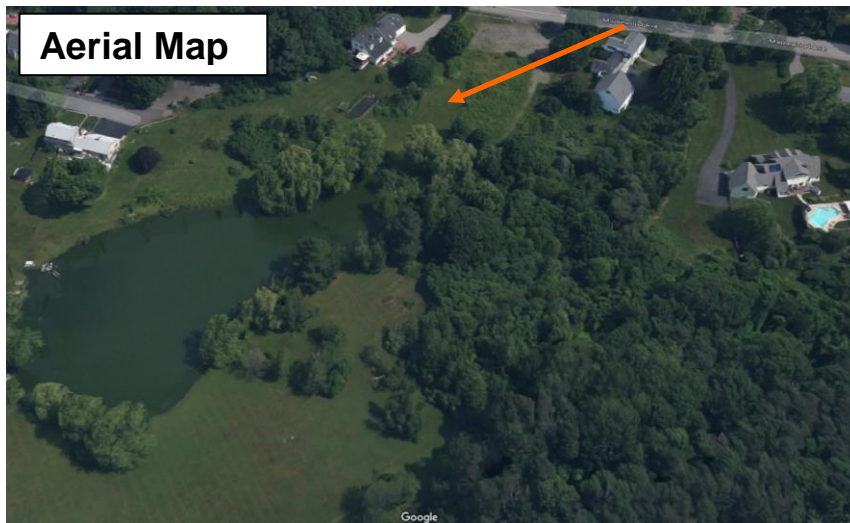
July 19, 2016 – The Board **denied** a request to construct five free-standing dwellings on a lot where one is the maximum allowed.

August 16, 2016 – The Board **granted** a variance to construct three free-standing dwellings allowing more than one free-standing dwelling on a lot. The petition was granted with a stipulation that the proposal be referred to the Planning Board for

placement of a protective conservation easement on a portion of the undeveloped area around the pond.

September 27, 2016 – The Board **denied** a request for rehearing regarding the above decision. Note: A subsequent appeal to the Superior Court was filed by an appellant group containing abutters and non-abutters. After reviewing the record and the Board’s application of the criteria, the Court, in a decision rendered April 26, 2017, **affirmed the Board’s decision** and dismissed the appeal.

## Neighborhood Context



## Case #1-2

Petitioners:	Bursaw's Pantry, LLC, owner and Robert and Kathleen Dockham, applicants
Property:	3020 Lafayette Road
Assessor Plan:	Map 292, Lot 152
Zoning District:	Mixed Residence Business (MRB)
Description:	Expand existing building to include three upstairs dwelling units and ground floor office with parking.
Requests:	<p>Variations and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:</p> <ol style="list-style-type: none"> <li>1. A Variance from Section 10.521 to allow a) a 3,938± s.f. lot area per dwelling unit where 7,500 s.f. is required; and b) to allow a 5.5'± left side yard setback where 10' is required.</li> <li>2. A Variance from Section 10.533 to allow a building or structure to be located 54'± from the centerline of Lafayette Road where a minimum of 80' is required.</li> </ol>

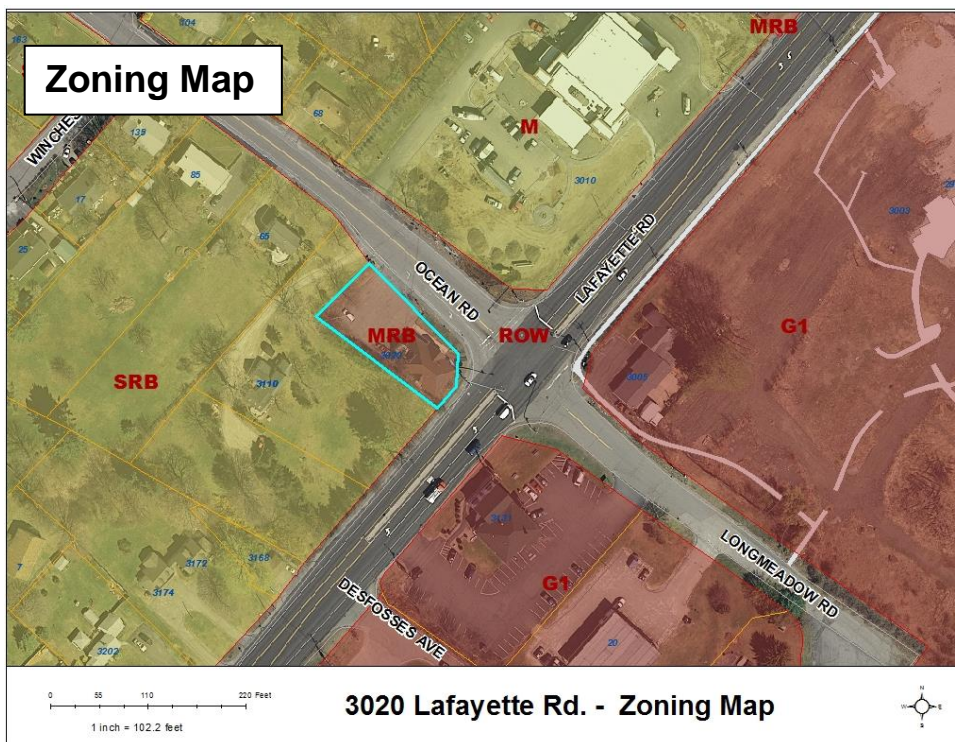
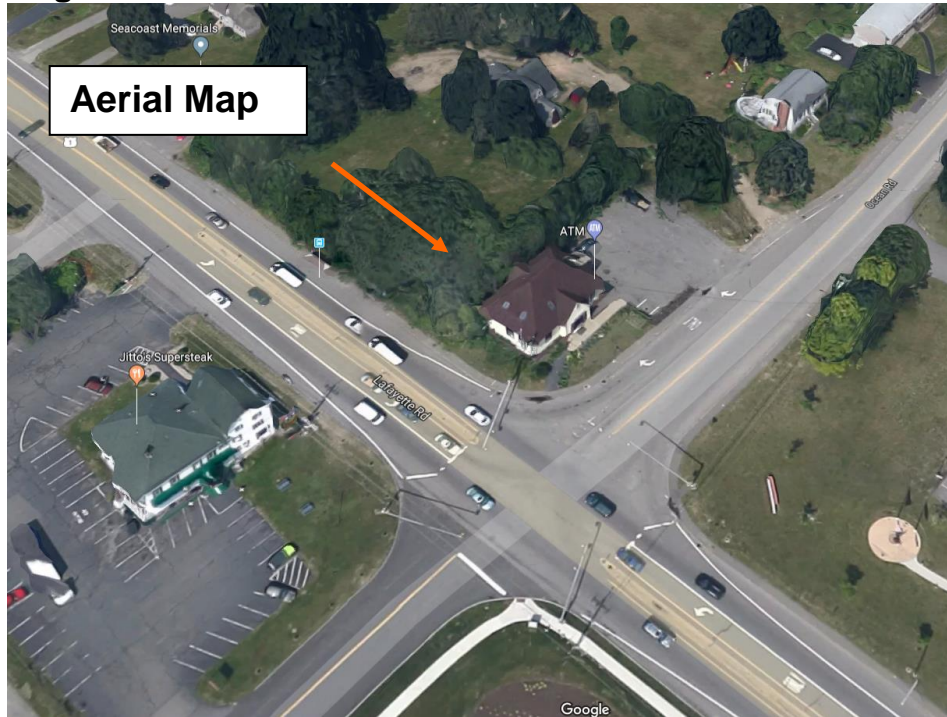
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant business with single-family above	Expand to 3 DU above ground floor office use	Primarily Mixed Uses
<u>Lot area (sq. ft.):</u>	11,815	11,815	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,815	<b>3,938</b>	7,500 min.
<u>Street Frontage (ft.):</u>	>100	>100	100 min.
<u>Lot depth (ft.):</u>	>80	>80	80 min.
<u>Primary Front Yard (ft.):</u>	54	<b>54</b>	80 (center Rt. 1) min.
<u>Secondary Front Yard (ft.):</u>	>5	>5	5 min.
<u>Left Yard (ft.):</u>	5.5	<b>5.5</b>	10 min.
<u>Rear Yard (ft.):</u>	>15	>15	15 min.
<u>Height (ft.):</u>	<40	<40	40 max.
<u>Building Coverage (%):</u>	18.5	19.2	40 max.
<u>Open Space Coverage (%):</u>	32.5	38.5	25 min.
<u>Parking</u>		12	12
<u>Estimated Age of Structure:</u>	1985	<b>Variance request shown in red.</b>	

### Other Permits Required

Site Plan – Planning Board, TAC.

## Neighborhood Context



## Planning Department Comments

Section 10.1112.60 of the new parking requirements have standards determining parking needs for shared parking. The applicant has provided a table of the proposed



uses and parking rates. The proposed number of parking spaces is based on the highest number of the parking time period table in Section 10.1112.60.

### **Previous Board of Adjustment Actions**

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

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

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

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

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

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

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

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

### **(As 3110 and 3020 Lafayette Road)**

April 18, 2017 – The Board **postponed** a request to construct a retail facility of up to 15,000 s.f. with drive-through window and lanes requiring the following: a) a special exception to allow a retail use; and variances to allow b) off-street parking to be located in a front yard or between a principal building and a street; c) a drive-through facility to be located within 100' of a residential district and within 50' of a lot line; d) drive-through lanes to be located within 50' of a residential district and within 30' of a lot line; and e) a

building, structure or parking area to be located 65' from the centerline of Lafayette Road where 80' is required.

May 16, 2017 – The Board **denied** the above petition.

### **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 #1-3

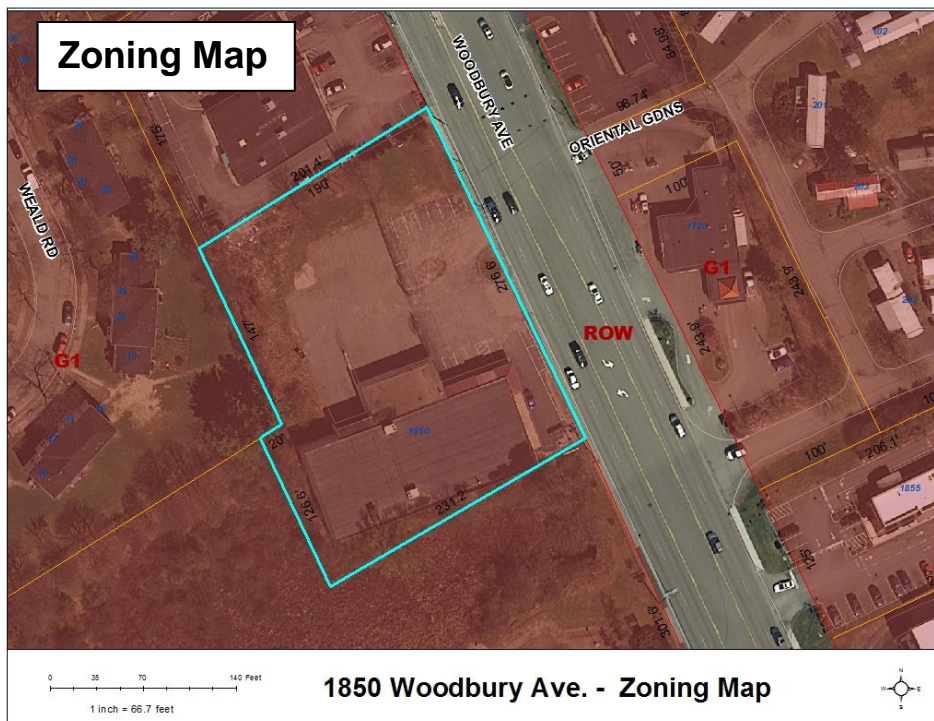
Petitioners:	Goodman Family Realty Trust, owner and Aroma Joe's Coffee, LLC, applicant
Property:	1850 Woodbury Avenue
Assessor Plan:	Map 239, Lot 9
Zoning District:	Gateway Neighborhood Mixed Use Corridor (G1)
Description:	Construct drive-thru take-out restaurant.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: 1. A Variance from Section 10.5B.34.90 to allow a building with no street facing entrance. 2. A Variance from Section 10.5B.41.80 to allow no community space coverage to be provided where 10% of the total site area is required.

### Other Permits Required

Planning Board – Conditional Use Permit.

### Neighborhood Context





## Planning Department Comments

The new Gateway Mixed Use zoning was adopted in December 2017 and this property falls within the Gateway Corridor (G1) district (new zoning regulations included in packet). The new Gateway zoning districts have standards for building types (one building type on an individual lot) and development sites (more than one building type on a lot or group of lots). Under the new zoning, the subject property is considered a development site, more specifically, a General Commercial Development Site because it contains an existing commercial building and the applicant is proposing to construct a second building that contains an Aroma Joe's. The proposed building type requires a street facing entrance and all development sites have a requirement that 10% of the total site area be designated as Community Space. There are several types of community spaces and different ones are permitted in the various development sites (See Table in Section 10.5B103), including outdoor café which the applicant is proposing (14x14 or 196 s.f.), however the request is for no community space coverage. Variances were granted on March 21, 2017 for this property as outlined in the history below.

## 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.

March 21, 2017 – The Board **granted** variances for a drive-through take-out restaurant and related signage to allow the following: a) a drive-through as a principal use where the use is only allowed as an accessory use; b) 21 off-street parking spaces to be provided where 22 spaces are required; c) accessways, traffic aisles, and drive-through bypass lanes to be set back 30' from a residential district where 50' to 100' are the minimum distances required; d) off-street parking areas, accessways & traffic aisles to be set back 30' from the front lot line where 40' is required; e) an outdoor service facility to be located 75' from a residential district where 100' is the minimum required; f) three free-standing signs on a lot where only one free-standing sign per lot is permitted; and g) 61 s.f. of non-freestanding signage where 30 s.f. is the maximum allowed.

The petition was granted with the **stipulation** that a fence or other barrier, approved by the Planning Department, would be erected to prevent light pollution from vehicles entering or leaving the property from spilling over onto the neighboring residential 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.*
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.*