

**REGULAR MEETING  
BOARD OF ADJUSTMENT  
EILEEN DONDERO FOLEY COUNCIL CHAMBERS  
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE  
PORTSMOUTH, NEW HAMPSHIRE**

*Members of the public also have the option to join the meeting over Zoom  
(See below for more details)\**

**6:30 P.M.** Non-Public Session (*Conf. Rm A*)  
**7:00 P.M.** - Regular meeting begins

**March 18, 2025**

**6:30PM - ANTICIPATED NON-PUBLIC SESSIONS ARE BEING HELD IN CONFERENCE ROOM A**  
1.) CONSIDERATION OF LEGAL ADVICE – RSA 91-A:3, II (I)

**AGENDA**

**I. APPROVAL OF MINUTES**

- A. Approval of the February 19, 2025 site walk minutes.
- B. Approval of the February 19, 2025 meeting minutes.

**II. OLD BUSINESS**

- A. **Rehearing** for the request of **PNF Trust of 2013, (Owner)**, for property located at **84 Pleasant Street and 266, 270, 278 State Street** originally heard on November 19, 2024. The project requested relief to merge the lots and construct a four-story mixed-use building. **As voted on at the February 19, 2025 meeting, the request for Variance 2(b) will be the only relief considered in the rehearing:** for a fourth story addition at 50 feet in height to the Church Street elevation where 3 full stories and a short fourth are allowed with 45 feet maximum height permitted. Said property is located on Assessor Map Lot Map 107 Lot 77, Map 107 Lot 78, Map 107 Lot 79, Map 107 Lot 80 and lies within the Character District 4 (CD4), Historic and Downtown Overlay Districts. (LU-24-195 and LU-24-219)

**III. NEW BUSINESS**

- A. **REQUEST TO POSTPONE** The request of **Harborside Property Management LLC (Owner)**, for property located at **92 Brewster Street** whereas relief is needed to demolish the

existing structure and construct a single-family home with Accessory Dwelling Unit which requires the following: 1) Variance from Section 10.521 to allow a) 2,884 s.f. of lot area where 3,500 s.f. are required, b) 2,884 s.f of lot area per dwelling unit where 3,500 s.f. are required, c) 52.33 feet of continuous street frontage where 70 feet are required, d) 9.5 foot right side yard where 10 feet are required, and e) 10 foot rear yard where 20 feet are required. Said property is located on Assessor Map 138 Lot 54 and lies within the General Residence C GRC District. **REQUEST TO POSTPONE** (LU-25-25)

- B.** The request of **Rosa Z. Delisle and Paul R. Delisle Revocable Trust (Owners)**, for property located at **408 The Hill, #6-17, (Units 1-3)** whereas after the fact relief is needed for the expansion of the existing business into the remaining first floor units which requires the following: 1) Variance from Section 10.440, Use #7.20 to allow a personal services business to expand where it is not allowed; and 2) Variance from Section 10.331 to allow a nonconforming use to be extended, enlarged or changed where not in conformity of the Ordinance. Said property is located on Assessor Map 118 Lot 26 and lies within the Character District 4-L1 CD4-L1), Historic and Downtown Overlay Districts. (LU-25-24)

### **III. OTHER BUSINESS**

- A.** Zoning Board of Adjustment Rules and Regulations

### **IV. ADJOURNMENT**

*\*Members of the public also have the option to join this meeting over Zoom, a unique meeting ID and password will be provided once you register. To register, click on the link below or copy and paste this into your web browser:*

[https://us06web.zoom.us/webinar/register/WN\\_yZztWqnVToe9fmJY7m-BsA](https://us06web.zoom.us/webinar/register/WN_yZztWqnVToe9fmJY7m-BsA)

**MINUTES OF THE  
BOARD OF ADJUSTMENT SITE WALK  
361 HANOVER STREET  
PORTSMOUTH, NEW HAMPSHIRE**

**4:00 P.M.**

**February 19, 2025**

**MEMBERS PRESENT:** Beth Margeson, Vice Chair; Paul Mannle; Jeffrey Mattson; Thomas Nies; Jody Record, Alternate

**ALSO PRESENT:** Jillian Harris, Planning Department; Stefanie Casella, Planning Department

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Members of the Board met at the site with the 361 Hanover Steam Factory LLC and Hampshire Development Corporation LLC project team. The Board explored the site and reviewed the renderings provided in the project application. Project team members were available to answer questions and members of the public were present to observe.

Submitted,  
Stefanie Casella  
BOA Staff Liaison

**MINUTES OF THE  
BOARD OF ADJUSTMENT MEETING  
EILEEN DONDERO FOLEY COUNCIL CHAMBERS  
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE  
PORTSMOUTH, NEW HAMPSHIRE**

**7:00 P.M.**

**February 19, 2025**

**MEMBERS PRESENT:** Beth Margeson, Vice Chair; David Rheame; Paul Mannle; Jeffrey Mattson; Thomas Nies; Jody Record, Alternate

**MEMBERS EXCUSED:** Phyllis Eldridge, Chair; Thomas Rossi

**ALSO PRESENT:** Jillian Harris, Planning Department

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Vice-Chair Margeson was Acting Chair. Alternate Jody Record took a voting seat for the evening.

**I. APPROVAL OF MINUTES**

**A. Approval of the **January 22, 2025** meeting minutes.**

Mr. Nies requested that on page 3, first paragraph, the sentence “Mr. Nies said the Board did not have that information” be changed to “Mr. Nies noted that information was not carried over to the summary table.” Mr. Rheame requested that the sentence on page 8 that reads “Mr. Rheame noted that the packet showed it as a right yard encroachment instead of a left yard one” be changed to “Mr. Rheame noted that the Staff Memo showed it as a right yard encroachment instead of a left yard one.” On page 9, first full paragraph, Mr. Rheame requested that the sentence “Vice-Chair Margeson said the packet showed a stamp for the Rockingham County Registry of Deeds from September 1977, so it was recorded” be changed to “Vice-Chair Margeson said the lot line adjustment plan showed a stamp of the Rockingham County Registry of Deeds from September 1977.” On page 10, top paragraph, Mr. Rheame asked that the sentence “Mr. Rheame said he supported the motion, noting that the front porch was an open structure with a lot of open space around the home and property and was something that he thought the Board would have easily allowed” have the words ‘prior to construction’ added at the end.

*Mr. Mattson moved to **approve** the minutes as amended, seconded by Ms. Record. The motion **passed** unanimously, 5-0, with Mr. Mannle absent.*

**B. Approval of the **January 28, 2025** meeting minutes.**

*Mr. Rheame moved to **approve** the minutes as submitted, seconded by Mr. Mattson. The motion **passed** unanimously, 5-0, with Mr. Mannle absent.*

Mr. Mannle arrived to the meeting at 7:07 p.m.

## II. OLD BUSINESS

### A. 84 Pleasant Street - Rehearing Request (LU-24-219)

[Timestamp 7:39] Acting-Chair Margeson said that the Board previously had concerns about some photos and illustrations referenced that were not included in the packet, so it was continued to the February meeting. She said if the Board were to grant the rehearing, it would be scheduled at a future meeting. Mr. Rheume noted that the Board granted almost all of the relief but the abutter requested a rehearing on a granted variance, Item 2B, the 4-story addition of 50-ft height on the Church Street elevation. He said the appellant's argument was that they were not clear on the Board's reasons for granting that variance. Mr. Rheume said it was a complicated project and that the Board tried to make a motion that was as clear as possible, but he thought there was a potential that their decision-making was not as clearly articulated as it could have been. He said the Board either make Item 2B more clear or perhaps revisit the issue entirely. Mr. Nies agreed. He said he reviewed the video and thought there was a legitimate concern that the Board did not clearly elaborate on how the criteria were met on Item 2B with respect to Church Street and the 50-ft height. Mr. Mattson said he was inclined to only hear Item 2B. Mr. Mannle said it should be specific to what the appellant was requesting, which was strictly Item 2B.

*Mr. Nies moved to **grant** the request for rehearing on only Part 2B at the March 18 meeting. Mr. Rheume seconded.*

Mr. Nies said he did not think the record clearly established the Board's rationale for granting the variance nor clearly described the special conditions of the property that warrant the variance.

*The motion **passed** unanimously, 6-0.*

### B. 222 Court Street – Extension Request (LU-23-12)

[Timestamp 15:54] Acting-Chair Margeson said the extension request for a variance was granted in February 2023 for the installation of a mural and a sign, and the approvals were scheduled to expire in 2025. She said the applicant asked for an extension because the permit had not yet been obtained, and there was a letter in the packet describing the reason for the request, which was funding that would allow the applicant to move forward with the project.

*Mr. Mannle moved to **grant** the extension request for one year, seconded by Mr. Rheume.*

Mr. Rheume said he was typically cautious about granting extensions, but in this case the applicant had a good reason in that they were not for profit and it took time to collect funds to execute the sign and mural. He said the extension request for another year was reasonable.

*The motion **passed** unanimously, 6-0.*

Mr. Rheaume recused himself from the following petition. The applicant's representative said they would move forward with the petition, even though there were only five voting Board members.

- C. The request of **361 Hanover Steam Factory LLC (Owner)**, and **Hampshire Development Corporation LLC (Applicant)**, for property located at **361 Hanover Street** whereas relief is needed to expand and renovate the existing commercial building and convert it to multi-family residential and to construct three new multi-family residential buildings which requires the following: 1) Variance from Section 10.642 to allow residential principal uses on the ground floor of the buildings; and 2) Variance from Section 10.5A41 - Figure 10.5A41.10D to a) allow for "Apartment", "Rowhouse" and "Duplex" building types where they are not permitted; and b) allow a ground floor height of 10.5 feet where 12 feet is required. Said property is located on Assessor Map 138 Lot 63 and lies within the Character District 5 (CD5) District and the Downtown Overlay District. (LU-24-196)

### **SPEAKING TO THE PETITION**

[Timestamp 20:22] Attorney John Bosen was present on behalf of the applicant, with the owners Steve Wilson and Shane Forsley and project engineer John Chagnon. Attorney Bosen said the project still had to go through full site review with the Planning Board, the Technical Advisory Board (TAC), and City Staff, where modifications would be made based on their input. He reviewed the petition and criteria.

[Timestamp 29:43] Mr. Nies asked if the project still included a subdivision into two lots, and Attorney Bosen agreed. Mr. Nies said the Board previously saw a lot of different numbers related to the number of apartments and now saw a range of apartments from 40 to 48. He said the floor plans showed 42 units, and he asked the applicant to elaborate more on the added six units. Mr. Forsley said Buildings B and C had a set number of units and Building A's current layout was subject to minor changes based on the building's floor plates. He said if the unit layouts changed, they would know they had 71 parking spaces that would support a maximum of 42 units, with some of the unit sizes increased. Mr. Nies asked if the applicant would have enough parking spaces if they went up to 48 units. Mr. Forsley agreed and further explained it. Mr. Nies clarified that the number of units was changed from 42 to 48 and the size of the units in Building A was changed, and the applicant would not consider another floor added to Building A. He said the proposal indicated that there were 71 parking spaces, yet the September traffic study that was previously submitted to the Board indicated that there were 60 parking spaces. Mr. Nies said there were now potentially more cars than there were when the parking study was completed, so he wanted to know if the results of that study were still valid. Mr. Chagnon said they submitted the memo from the traffic engineer that identified the trip generation and that it was not a parking study. He said the project-generated traffic was based on construction of a 51-unit multi-family residential development and was therefore based on more units than now proposed. He said parking in Portsmouth was based on unit size and had a sliding scale, so there could be a case where more units that are small require less parking under the ordinance. He said there would be less traffic proportionally going forward. Mr. Nies said he did not agree because the floor plan showed 42 units in the building but the summary indicated 45 units. He asked which number it was. Mr. Chagnon said he knew that the numbers given as the totals were scrutinized. Mr. Nies said the heights of adjacent buildings were compared to the project's building heights, but it seemed like there was a bit of a difference in that the heights

of the adjacent builds are shown to the peaks whereas the heights of the applicant's buildings are shown to the zoning ordinance height. Mr. Forsley said that he first wanted to answer Mr. Nies' question on the number of parking spaces for Building A. He said it would be 42 spaces in the interior and three spaces on the exterior. In respect to building height, he said their measurements were taken to the peak without calculating the true midpoint. He explained that they went around the perimeter of the known buildings and took pictures of the peaks of some of the different properties. Mr. Nies asked if the Board should then not be comparing peaks to peaks. Mr. Forsley said if the Board wanted to reference the peaks on his buildings vs. the peak on another building, it could be considered. Mr. Nies said the packet indicated that the applicant was requesting approval of the variance to allow for ground-floor commercial use of the buildings and that it would not adversely impact the health, safety, and welfare of the public, but the applicant was not really asking for ground-floor commercial uses. Attorney Bosen said it was a typo because they were asking for a variance from the requirements to put commercial uses on the ground floor. Mr. Nies referred to the renderings of Building D, saying that a hip-topped mansard roof had one height but a flat-topped mansard roof had a different height and that some of the renderings made it difficult to tell which it was. Mr. Forsley said they were hip-topped mansard roofs and qualified and that it was in the ordinance.

[Timestamp 42:47] Acting-Chair Margeson said the applicant's narrative indicated that the unit calculation was 26 to 34 for Building A, but the floor plans said it was 24 units in Building A. She asked the reason for the discrepancy. Mr. Forsley said there were two units on the first floor as well. He said on the floor plans there were eight units per floor, but they had the parking to support up to 32 units in Building A, so there was a floor plate with emergency access and egress, etc. that could support those unit counts. Acting-Chair Margeson asked if the variance request for 10.5' was also applicable for Buildings B, C, and D. Attorney Bosen agreed. Acting-Chair Margeson asked if the rowhouse/duplex/apartment variance requests were being requested because in CD5, there would not be those kinds of building types because commercial is required on the ground floor. Attorney Bosen agreed. It was further discussed. Mr. Nies asked for the ordinance reference that described the hip-topped mansard roof provision. Ms. Harris said it was included in the definitions. Attorney Bosen said that was a question for the Planning Board. Mr. Mattson asked if the Planning Department Staff reviewed the mansard hip roof condition and determined that no variance was needed. Ms. Harris agreed and said it was determined to be a hip-topped mansard roof, based on the application's architectural drawings. The mansard roof definition was further discussed.

Acting-Chair Margeson opened the public hearing.

### **SPEAKING TO, FOR, OR AGAINST**

[Timestamp 53:05] Elizabeth Bratter of 159 McDonough Street explained why she thought the application was filled with errors and misrepresentations and suggested a few conditions: that the Building A's current roof style and height should not be any longer than 60 feet, that Building C's roof style, front length and height could not be changed, and that Building D would be no longer than 40 feet and would have no mansard roof.

[Timestamp 57:39] Attorney John Lyons representing the Hill Hanover Group LLC was present. He said he submitted a letter setting on the basis of his client's rejection and the reason why the applicant failed to meet all the criteria, including specifically whether it was 42 or 48 units and the fact that the access down to the right-of-way on Hill Street would negatively impact the values of his client's properties. Acting-Chair Margeson asked if Hill Street was a two way street. Attorney Lyons said it could be. Acting-Chair Margeson asked if the easement extended through the parking lot of 361 Hanover and egressed onto Hanover Street. Attorney Lyons said he submitted a copy of the condominium plan that noted that the easement granted to his client went through the parking lot to Hanover Street and actually ran through the middle of what is described as Building D, but that was another issue that he hoped could be resolved. Acting-Chair Margeson said the Board noticed during their site walk that there was private parking on Hill Street. Attorney Lyons said the parking belonged to his client's buildings tenants who had parking spots assigned to them. Acting-Chair Margeson asked if the units were rentals, and Attorney Lyons agreed and said the value of the rentals included the parking in the back. Acting-Chair Margeson asked if the City maintained the private right-of-way. Attorney Lyons said the City did some maintenance as well as his client. Acting-Chair Margeson asked if the tenants would use the easement into the parking lot to exit onto Hanover Street. Attorney Lyons said the properties were owned by an attorney and that the tenants and occupants of the three buildings had continuously used the right-of-way down through the parking lot and the mill building, which was one of the reasons why the site plan documented that right-of-way. Acting-Chair Margeson asked if Attorney Lyons' client could work out the easement issue through the parking lot that would run down to Building D. Attorney Lyons said he would be filing suit to protect that easement but hoped that it would be able to be resolved, especially the location of where the easement went through what was the former parking lot. It was further discussed.

[Timestamp 1:03:20] Mr. Mattson asked how denying the variance requests would solve Attorney Lyons' problem. He said the applicant could build something similar without the variances. Attorney Lyons said he wanted to bifurcate the easement issue and that his client's objection to the variance request was the use of Hill Street for ingress and egress and how that would negatively impact his property values, whether it was parking or the amount of traffic. He said a condition stating that Hill Street could not be used for ingress and egress would satisfy his client's concerns.

Nicole Lapierre of 44 Rock Street said nothing in the application had really changed and she thought the applicant was holding the proposed Plan A with the monolithic building over the public's head. She said three-quarters of the land surrounding the Heinemann Building was City land. She said the project would negatively impact the neighborhood's character and home values.

Kate Waldwick of 30 Parker Street said the lot could be developed in accordance with the character of the neighborhood and that both plans the applicant submitted did not meet that goal. She said Islington Creek was quiet and safe and not overly developed, and the proposed density would affect that character. She said there would be about 96 added vehicles onto the tiny street and that no accurate traffic study was done. She said the applicant wanted to cherry pick zoning.

Marcie Vaughan of 407 Hanover Street said the applicant's argument on hardship was based on the fact that 361 Hanover Street was improperly zoned. She said a property's zoning was not a special



characteristic that causes undue hardship. She said the City should have rezoned the property but didn't, so the applicant was able to exploit a procedural nuance to lock in that improper zoning.

Robin Husslage of 27 Rock Street (via Zoom) said she was supportive of the proposal development but thought it should meet the five criteria or have conditions stating that the applicant should replace the mansard roofs on Buildings A and B with ones consistent with the neighborhood and should increase the modulation of the row house so that it did not appear to be an 82-ft long monolithic building. She said the callout of several surrounding buildings missed a lot of shorter building heights. Elizabeth Bratter then gave the Board documentation on Ms. Husslage's behalf.

Attorney Bosen said the neighborhood residents were emotional but most of their comments ignored his client's right to develop the property in a manner consistent with the ordinance. He said there was nothing underhanded and that all the issues brought forth from the neighborhood would be presented before TAC and the Planning Board. He said that evening's issue was whether the applicant would put ground-floor commercial or residential, and there were no comments about that. He said Attorney Lyons' conditions were complicated, noting that the attorney's client could not enter his property without getting onto the applicant's land and that he could not find any deed stating that Attorney Lyons' client could legally do so, but it was not the Board's purview.

### **Second Time Speakers [Timestamp 1:33:50]**

Kate Waldwick said the first plan was better because it had fewer units. She said commercial properties were struggling, so having more commercial property could increase the supply of commercial availability and make residential more affordable. She said first-floor residential would also increase density and affect character.

Marcie Vaughan said the neighborhood residents were challenging the legality of the applicant's request and that the issue was not commercial vs. residential but was the character of the neighborhood. She said the development would be too dense for the neighborhood and asked that the density be capped at 30 units if the variances were granted.

Elizabeth Bratter said the Downtown Overlay District should be removed and that the building lengths should be made shorter.

Attorney Bosen said the building used to be occupied by the Heinemann Company that had over 100 employees coming and going every day for years and that what his client proposed was less.

Nicole Lapierre said it wasn't a good comparison because Heinemann's employees came and left at the same time every day, the weekends were quiet and the parking lot was open to the public.

No one else spoke, and Acting-Chair Margeson closed the public hearing.

### **DISCUSSION OF THE BOARD**

[Timestamp 1:43:28] Mr. Mattson said the legal situation with the easement was not in the Board's purview. He said he thought that residential would be better than commercial because commercial units created more traffic turnover. He said allowing the 10.5-ft ceiling on the first floor was more favorable than requiring a higher first floor, and he also thought that allowing a duplex or rowhouse was good. He said the applicant could build something that could be considered more detrimental to the neighborhood. He said the requested variances had nothing to do with heights, parking, and so on and that the plan would change when the applicant went before the other boards. He said it would be beneficial to the neighborhood to have more broken-up housing on the parcel instead of a single large building. He said the applicant was making a good-faith effort to improve the project on a big and unique parcel. He noted that the higher buildings would be farther away from the single-family homes. Mr. Nies said the history of the zoning in that area was troublesome and that it wasn't the Board's job to resolve zoning problems or changes in zoning that did not happen. He said some of the comments seemed to imply that the Board was outside its lane by asking detailed questions about the project. He said the Board had criteria and were concerned about the public's health, welfare and safety, light and air issues, and the potential impact of the project on diminishing surrounding property values, and that those things were difficult to understand without having a full understanding of what the project is. He said it had been a complicated process and that the Board had had multiple versions of the project. Acting-Chair Margeson agreed. Mr. Mannle agreed and questioned the applicant's transition from the most dense CD5 district to the least dense GRC district. Acting-Chair Margeson said the Board did a site walk and had more than enough information, and she thought the variance application was clean. She said the typo Mr. Nies found was not fatal to the application. She said the CD5 zoning was problematic but was nothing that the Board could do anything about. She said the massing and height of the buildings were determined by the CD5 zoning, and no variances were required for height or massing on the properties. She said there was a concern about the rooftops, but the rooftops were all allowed in the CD5 zoning. She said the Board could not shorten the building lengths. She said the applicant had a good argument as to why commercial did not fit into the area. She said first-floor commercial would create more vehicular traffic in and out of the area. She said the difference in floor heights was not a significant ask and that the building types flowed from that variance request. She said she sympathized with the abutters and thought it was a big project in the middle of their neighborhood but it was a problem with the zoning and the Board could not change that. She suggested two conditions: 1) the design and location of the buildings may change as a result of the Planning Board's review and approval, and 2) the property cannot be accessed by the residents of 361 Hanover Street in ingress and egress through Hill Street. She said the legal concerns were not in the Board's purview. She said there were special conditions of the property that created the hardship for not having commercial on the first floor. She said the suggested conditions would deal with the easement on Hill Street, which would benefit the direct abutters. She said the circulation through the property itself and exiting onto Hanover Street could be dealt with separately by rerouting the easement to make sure the easement is still usable by the people on Hill Street. Mr. Mattson said the Board accepted applications as presented but that an approved application could be modified by other boards. He said if the Board tried to dictate the length of the building, it could get overturned in a lawsuit. He said there was nothing the Board could do about the zoning issue but they could grant a variance, which could be used in a case in which the Board felt that the zoning was not quite right for a specific parcel. Acting-Chair Margeson said the Planning Staff recommendation included TAC. Mr. Mattson said he thought residential would be better for the neighborhood than commercial, and it was further discussed. Mr. Nies said the NH Zoning Board of Adjustment Handbook stated that

conditions must relate to the land and are usually designed to remove features of the proposed use that are legally objectionable. He said he did not think that there was a proposed use about access on Hill Street and that Hill Street was not part of the land. He asked if it was a condition that the Board could impose. Acting-Chair Margeson said the condition related to the land that is the subject of the application, and it was as further discussed.

### **DECISION OF THE BOARD** [Timestamp 2:06:55]

*Mr. Mattson moved to **grant** the variances as presented with the following **conditions**:*

- 1. The design and locations of the buildings may change as a result of the Planning Board's review and approval, and*
- 2. The ingress and egress to 361 Hanover Street shall not be made through Hill Street.*

Ms. Harris asked if signage or physical features would block the ingress and egress, and it was further discussed. Mr. Mattson said he would withdraw the second condition.

The **amended** motion was:

*Mr. Mattson moved to **grant** the variances as presented with the following **condition**:*

- 1. The design and locations of the buildings may change as a result of the Planning Board's review and approval.*

*Ms. Record seconded.*

Mr. Mattson said granting the variances would not be contrary to the public interest, and the spirit of the ordinance would be observed. He said the proposed use must not conflict with the explicit or implicit purpose of the ordinance. He said in this case, the proposed use is residential multi-family homes, and it would not alter the essential character of the neighborhood, threaten the public's health, safety or welfare, or otherwise injure public rights. He said the proposed massing, dimensions, heights, and lengths were allowed by right. Referring to the essential character of the neighborhood, he said there was another home in the area with a height of its original form being restructured and that there were plenty of duplexes within 100 feet of the proposed duplex. He said a lot of details were heard about roof types, but it was a residential home and the Board could not dictate the design. He said granting the variances would do substantial justice because the benefit to the applicant would not be outweighed by any harm to the general public or other individuals. He said approving the variances would benefit both the applicant and the neighborhood. He said the values of surrounding properties would not be diminished, noting that there had been no expert testimony but in general, new construction with parking fetched a premium, especially that close to downtown. He said it would be a better use for the property than a parking lot and that having residential homes next to other residential homes would not diminish property values. He said literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property that distinguish it from others in the area, and there is no fair and substantial relationship between the general public purpose of the ordinance's provision and the specific application of that provision to the property, and the proposed use is a reasonable one. He said it was a reasonable use to add residential to a residential neighborhood instead of commercial. He said the Board could express its thoughts about how the area is zoned but it was not in their purview to change the

zoning. He said it did not make sense to have commercial on the property. Regarding the other two variances about the height of the first floor, he said allowing it to be less tall was beneficial. He said the taller height of the first floor was due to the commercial aspect. He said the parcel is on the periphery of the transitions to the GRC district that has duplexes and rowhouses. He said the property's special conditions were that it was an abnormally large lot that has development potential because it is underutilized with the vast surface parking area, and the entire Heinemann Building is a unique aspect. Ms. Record concurred and had nothing to add.

*The motion **passed** by a vote of 4-1, with Mr. Mannle voting in opposition and Mr. Rheume recused.*

Mr. Rheume resumed his voting seat for the evening.

- D.** The request of **Millport INC (Owner)**, for property located at **1001 Islington Street** whereas relief is needed for a change of use to extend the existing health club into the adjacent unit wherein relief is required from the Zoning Ordinance including the following special exception from Section 10.440, Use #4.42 to allow a health club greater than 2,000 s.f. of gross floor area. Said property is located on Assessor Map 172 Lot 4 and lies within the Character District 4-W (CD4-W). (LU-24-209)

## **SPEAKING TO THE PETITION**

[Timestamp 2:24:20] Kyle Bowser was present on behalf of the owners Millport INC and Form Fitness. He reviewed the petition and noted that Form Fitness wanted to expand from the current 1,530 sf space into the adjacent 1,695 sf space. He said it would remain a commercial space and would house the existing workshop into a new yoga studio. He said there would be no exterior changes except for a new window. He reviewed the criteria and said they would be met.

[Timestamp 2:30:45] Mr. Rheume said there were 109 parking spaces total on the lot, and the commercial use is on the end of the lot, whereas a 63-unit apartment building occupies the rest of it. He said the Staff Report indicated that 10 parking spots are required for the expanded business. He asked what the requirement was for the rest of the parking for the property and why the applicant felt that he was still able to find the necessary parking on site for the ten spots required. Mr. Bowser said the parking calculation was based on 94-1/2 parking spaces required for the 63 residential units, and the calculation for 3600 sf of commercial space at 14.4 spaces required. Mr. Rheume concluded that the residential use was about 90 spaces, which left more than 10 spots for the business. He said there were six spots plus a seventh parallel spot that were segregated from the main parking area. He asked if there were concerns with additional parking spots being a bit farther away. Mr. Bowser said the empty parking spots in the back allowed them to get to the 109 spots required for the 3600 square feet for the commercial spaces, along with the 63 residential uses. He said it was a shared use and that the six spots in the back were primarily used for the Pilates business, but the front had always been a mixed use for commercial and residential. He said there were no issues with the parking in the past and that he didn't see any issues in the future.

Acting-Chair Margeson opened the public hearing.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one spoke, and Acting-Chair Margeson closed the public hearing.

### **DECISION OF THE BOARD**

*Mr. Rheume moved to **grant** the special exception request as presented and advertised, seconded by Mr. Mannle.*

[Timestamp 2:35:10] Mr. Rheume said granting the special exception would pose no hazard to the public or adjacent properties on account of fire, explosion, or release of toxic materials. He said the nature of the business indicated that none of those would be a concern. He said there would be 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. He said the length of Islington Street had a combined mix of residential and business uses and light industrial uses, and the applicant's lot was an example of that. He said it was primarily residential with a small business use on the end and the applicant's request was just an expansion of an existing use that has proven to be very compatible with the residential uses. He said the scale of the building and the size of the structure would not change and that the applicant was simply occupying more of it. He said there would be sufficient parking to meet all the requirements for both uses. He said accessways, odors, smoke, gas, dust, noise, glare, heat, vibration, or unsightly outdoor storage of vehicles or equipment were not concerns. He said granting the special exception would pose no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. He said the increase in size of a relatively modest business on a relatively busy road that had all kinds of similar businesses and residential and light industrial uses and the small increase in potential clients for the space would not cause a traffic concern. He said there would be no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, and schools due to the nature of the business. He said granting the special exception would pose no significant increase in stormwater runoff onto adjacent properties or streets because the proposed structure was the same as what was there before. Ms. Record concurred and had nothing to add.

*The motion **passed** unanimously, 6-0.*

### **III. NEW BUSINESS**

Mr. Nies recused himself from the following two petitions.

- A.** The request of **Paula J. Reed Revocable Trust (Owner)**, for property located at **410 Richards Avenue** whereas an equitable waiver is needed for the construction of a garage which requires the following: 1) Equitable waiver for an accessory structure with a 3-foot left side yard where

3.5 feet was previously granted. Said property is located on Assessor Map 112 Lot 10 and lies within the General Residence A (GRA) District. (LU-25-10)

### **SPEAKING TO THE PETITION**

[Timestamp 2:39:42] The applicant/owner Paula Reed was present and explained that she was granted a variance in December 2023 to tear down a garage on her property and build a new one that conformed to the dimensional requirements granted in the approved variance. She said the original variance allowed her a longer and higher pitched garage while maintaining a 3.5-foot right yard side setback. She said the foundation and garage were built and it was discovered that the front corner of the garage encroached four inches into the allowed 3.5' setback and the rear corner encroached one inch into the same setback. She said the request for the equitable waiver from the 3.5' setback was to allow the garage construction to be completed per the survey foundation certification. She said it met all the criteria and the violation was a result of an error in measurement.

The Board had no questions. Acting-Chair Margeson opened the public hearing.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one spoke. Mr. Rheume noted that the Board received a letter in opposition from the direct abutter. Acting-Chair Margeson closed the public hearing.

### **DECISION OF THE BOARD**

[Timestamp 2:45:46] Acting-Chair Margeson said if the Board granted the request, City Staff recommended that the Board acknowledge that the approval would correct the relief granted for the left side yard where it was noted as the right side yard in the previous request. Ms. Harris agreed.

*Mr. Rheume moved to **grant** the equitable waiver, with the following **condition**:*

- 1. This approval will correct the relief granted for the left side yard where it was noted as the right side yard in the December 19, 2023 variance approval.*

*Mr. Mannle seconded.*

Mr. Rheume said an equitable waiver had two pieces to it: that it was something that existed more than ten years or was the result of a brand new dimensional issue with how the structure was built. He said there was also an abutter who had some concerns, but Mr. Rheume said he did not think they were sufficient reasons for the Board to not grant the waiver. He said one of the concerns was the size of the eave, but per the zoning ordinance, gutters, cornices and eaves no more than 30 inches from a vertical wall are not considered to be part of the setback requirements. He said the particular dimension was a max of about 18 inches, so it fell about 12 inches short of where there would be a concern. He said even though the applicant made the eave somewhat larger than originally indicated, it was still within the allowable amount per the ordinance. Mr. Rheume

reviewed the criteria and said the violation was not noticed or discovered by an owner, former owner, owner's agent or representative, or municipal official until after a structure violation had been completed. He said the error that occurred came down to a few inches but he thought the error was understandable in terms of the construction methodology that had to be used, considering that many of those lots were very narrow. He said it came about from some confusion that wasn't fully understood about where the foundation should have been placed, but it did end up to be slightly off. He said the violation was not an outcome of ignorance of the law or ordinance, or misrepresentation or bad faith on the part of any owner or representative but was instead a good-faith error in measurements or calculations made by an owner, agent or representative. He said it was a case of tight measurements and tolerances, and in the process a slightly misaligned foundation was placed. He said it was not an attempt to create a larger structure or do something nefarious. He said the physical or dimensional violations do not constitute a public or private nuisance nor diminish the values of other properties in the area, nor interfere with the adverse effect of any future uses of any such properties. He said it was a few inches off and although it did put it a little closer to the abutter, it would not make a substantial difference. He said some of the bigger concerns like the drainage were addressed by the nature of the project and not affected. He said due to the degree of past construction or investment made and ignorance of the facts constituting the violation, the correction far outweighed any public benefit to be gained. He said after the foundation was created, the survey was performed and the error was discovered, resulting in a substantial completion of the project, and trying to correct that would not be worth the imposition onto the property owner. He said it met all the criteria. Mr. Mannle concurred and had nothing to add.

*The motion passed unanimously, 5-0, with Mr. Nies recused.*

**B.** The request of **Paula J. Reed Revocable Trust (Owner)**, for property located at **410 Richards Avenue** whereas an after the fact variance is needed for the construction of a garage which requires the following: 1) Variance from Section 10.521 to permit a 3-foot left yard where 3.5 feet were previously granted. Said property is located on Assessor Map 112 Lot 10 and lies within the General Residence A (GRA) District. (LU-25-11)

## **DECISION**

Because the applicant's previous petition was approved, she withdrew the request and gave a letter of withdrawal to the Board.

## **IV. ADJOURNMENT**

The meeting adjourned at 9:54 p.m.  
Submitted,

Joann Breault  
BOA Recording Secretary



City of Portsmouth  
Planning Department  
1 Junkins Ave, 3<sup>rd</sup> Floor  
Portsmouth, NH  
(603)610-7216

**MEMORANDUM**

TO: Zoning Board of Adjustment  
FROM: Jillian Harris, Principal Planner  
DATE: **Revised** March 17, 2025  
RE: Zoning Board of Adjustment March 18, 2025

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The agenda items listed below can be found in the following analysis prepared by City Staff:

**II. Old Business**

- A. 84 Pleasant Street – Rehearing

**III. New Business**

- A. 92 Brewster Street - **REQUEST TO POSTPONE**
- B. 408 The Hill #6-17 (Units 1-3)



## II. OLD BUSINESS

- A. **Rehearing** for the request of **PNF Trust of 2013, (Owner)**, for property located at **84 Pleasant Street and 266, 270, 278 State Street** originally heard on November 19, 2024. The project requested relief to merge the lots and construct a four-story mixed-use building. **As voted on at the February 19, 2025 meeting, the request for Variance 2(b) will be the only relief considered in the rehearing:** for a fourth story addition at 50 feet in height to the Church street elevation where 3 full stories and a short fourth are allowed with 45 feet maximum height permitted. Said property is located on Assessor Map Lot Map 107 Lot 77, Map 107 Lot 78, Map 107 Lot 79, Map 107 Lot 80 and lies within the Character District 4 (CD4), Historic and Downtown Overlay Districts. (LU-24-195 and LU-24-219).

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed-Use	Merge lots and construct mixed-use buildings	Mixed-use
<u>Lot area (sq. ft.):</u>	Lot 107-77: 3,866 Lot 107-78: 1,440 Lot 107-79: 1,518 Lot 107-80: 1,458 Passageway: 165	8,447	NR min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	436	444	NR min.
<u>Front Lot Line Buildout (%):</u>	100	100	50 min.
<u>Ground Floor Residential Area</u>	n/a	43%*	20 max
<u>Shopfront Façade Glazing</u>	n/a	Pleasant St: 53* State St: 52*	70 min
<u>Height on Church St</u>	n/a	4 <sup>th</sup> story/ 50 ft	3 full stories max and short 4 <sup>th</sup> / 45 feet
<u>Height with Penthouse (ft.):</u>	53 (Prior to Demolition)	55**	47 max.
<u>Building Coverage (%):</u>	20	98*	90 max.
<u>Open Space Coverage (%):</u>	0	0*	10 min.
<u>Parking:</u>	2	17	23 min.
<u>Estimated Age of Structure:</u>	Lot 107-77: 1850	Variance request(s) shown in red.	

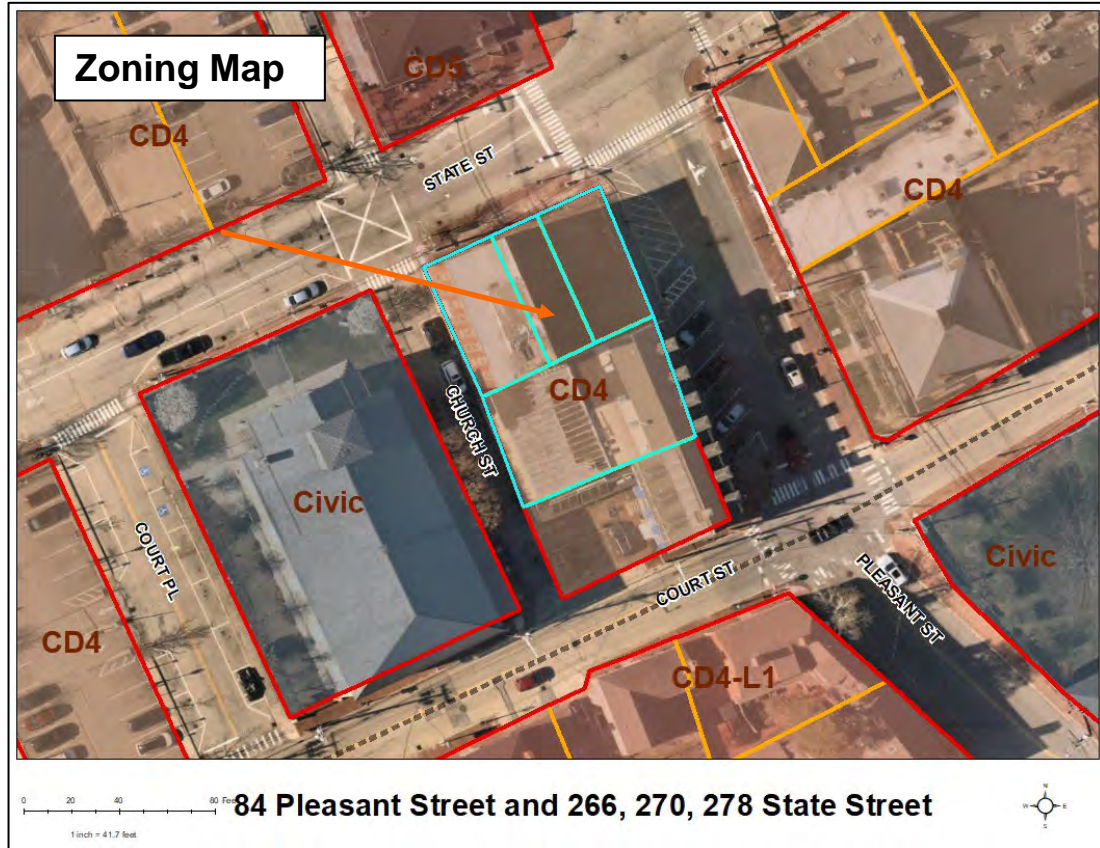
\*Variance granted at the 11-19-2024 BOA Meeting

\*\*Variance denied at the 11-19-2024 BOA Meeting

**Other Permits/Approvals Required**

- Building Permit
- Historic District Commission Approval
- Site Plan Review – Technical Advisory Committee and Planning Board
- Parking Conditional Use Permit – Planning Board

### Neighborhood Context



## Previous Board of Adjustment Actions

### 84 Pleasant Street

**August 20, 2013** – The Board **granted** the following: Special Exception under Section 10.440, Use #3.11 to allow a religious place of assembly in a district where such use is allowed by Special Exception.

**November 21, 2017** – The Board **granted** the following: 1) Variances from Section 10.5A41.10C to allow the following: a) 0% open space where 10% is required; and b) 100% building coverage where 90% is the maximum allowed; 2) Variance from Section 10.1111.10 to allow a change in the use or intensification of use in an existing building or structure without providing off-street parking; 3) Variance from Section 10.1111.20 to allow a use that is nonconforming as to the requirements for off-street parking to be enlarged or altered without providing off-street parking for the original building, structure or use and all expansions, intensifications or additions; and 4) 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.

**October 15, 2019** - The Board extended the variances granted November 21, 2017 for a period of one year to November 21, 2020.

### 266 State Street

**October 20, 2020** – The Board granted the following: 1) Variances from Section 10.5A41.10C to allow **a)** an entrance spacing greater than 50' where 50' is the maximum allowed; **b)** 100% building coverage where 90% is the maximum allowed; **c)** 0% open space where 10% is the minimum required; **d)** a 4-story, 45' tall building where 2-3 stories or a short 4th and 45' is the maximum allowed; **e)** less than 70% shopfront façade glazing where 70% is the minimum required and less than 20% other façade types where 20% is the minimum required; and **f)** to allow more than 20% of the ground floor use to be residential where 20% is the maximum allowed. Request granted with the following condition:

- 1) Item F above, regarding the amount of residential space on the first floor shall be approved only if there is a car lift/elevator installed in the building.

**September 20, 2022** – The Board **granted** a one-year extension for the variances granted on October 20, 2020

### 270 and 278 State Street

No History Found.

### 84 Pleasant Street, 266, 270 and 278 State Street

**November 19, 2024** - The Board **granted** the following: 1) Variance from Section 10.5A41.10.C to allow a) 98% building coverage where 90% is maximum, b) 0% open space where 10% is minimum, and c) 53% shopfront façade glazing on Pleasant Street and 52% on State Street where 70% is the minimum required; 2) Variance from Section 10.5A21.B to allow b) a fourth story addition at 50 feet in height to the Church street elevation where 3 full stories and a short fourth are allowed with 45 feet maximum



height permitted; 3) Variance from Section 10.642 to allow 43% ground floor residential area where 20% is maximum.

The Board **denied** the following: 2) Variance from Section 10.5A21.B to allow a) 55 feet of building height where 47 feet is permitted with a penthouse.

### Planning Department Comments

The applicant is proposing to demolish a portion of the existing structure on Lot 107-77, merge the 4 identified lots (107-80, 107-79, 107-78, and 107-77) and construct new buildings that will house residential and commercial uses.

These properties have been before the Board in 2019 and 2020. On both accounts the requests were granted, however the approvals have since expired. To review the past meeting application materials and decisions please visit the links below.

- May 2019 - <https://www.cityofportsmouth.com/city/events/board-adjustment>
- October 2020 - <https://www.cityofportsmouth.com/planportsmouth/events/zoning-board-adjustment-meeting-36>

At the November 19, 2024 Board of Adjustment meeting the Board considered the request of **PNF Trust of 2013, (Owner)**, for property located at **84 Pleasant Street** and **266, 270, 278 State Street** whereas relief is needed to merge the lots and construct a four-story mixed-use building which requires the following: 1) Variance from Section 10.5A41.10.C to allow a) 98% building coverage where 90% is maximum, b) 0% open space where 10% is minimum, and c) 53% shopfront façade glazing on Pleasant Street and 52% on State Street where 70% is the minimum required; 2) Variance from Section 10.5A21.B to allow a) 55 feet of building height where 47 feet is permitted with a penthouse, b) a fourth story addition at 50 feet in height to the Church street elevation where 3 full stories and a short fourth are allowed with 45 feet maximum height permitted; 3) Variance from Section 10.642 to allow 43% ground floor residential area where 20% is maximum.

*The Board voted to **grant** the variances as presented and advertised for Variance No. 1 in its entirety, Variance No. 3 in its entirety, and Variance 2(b) only. The Board voted to **deny** the request for variance No. 2(a).*

A request for rehearing was granted at the February 19, 2025, Board of Adjustment meeting to consider the request for **Variance 2(b) for a fourth story addition at 50 feet in height to the Church Street elevation where 3 full stories and a short fourth are allowed with 45 feet maximum height permitted.**

The past application can be referenced in November 19, 2024 meeting packet found at the following link: [https://files.cityofportsmouth.com/agendas/2024/BOA/11-19-2024%20Meeting/11-19-2024\\_BOA\\_Packet.pdf](https://files.cityofportsmouth.com/agendas/2024/BOA/11-19-2024%20Meeting/11-19-2024_BOA_Packet.pdf)

The Board should consider that the height of the “Times Building” was presented as 53 feet existing and proposed in the 11/19/2024 BOA decision and in the new decision if the intention is to re-affirm the height of that building in their consideration of the Variance request.

### **Variance Review Criteria**

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

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

**AND**

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

**OR**

  - (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.*

### **10.235 Certain Representations Deemed Conditions**

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

# HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue | Portsmouth, NH, 03801  
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

March 7, 2025

***Submitted electronically via Viewpoint  
and Hand Delivered***

Phyllis Eldridge, Chair  
City of Portsmouth  
Zoning Board of Adjustment  
1 Junkins Avenue  
Portsmouth, NH 03801

***RE: 266-278 State Street & 84 Pleasant Street  
LU-24-195***

Dear Ms. Eldridge:

On behalf of the applicant, PNF Trust of 2013, please accept this correspondence as our submission in advance of the March 18, 2025 meeting.

At the Board's February 19, 2025 meeting, it voted to grant Working Stiff Properties, LLC's December 16, 2024 request for rehearing with respect to the variance this Board granted on November 19, 2024 in which relief from Section 105A41.10C of the ordinance was granted to permit an addition at the Church Street elevation with four stories and 50 feet in height where three stories and a short fourth with 45 feet in height is the maximum permitted.

As a preliminary matter, the Board's decision on February 19, 2025 was untimely, and thus the Board was without jurisdiction to grant a rehearing at that time. The statutory procedure set forth in RSA 677:3 applies to Working Stiff's application for rehearing. In particular, RSA 677:3, II provides that "[u]pon filing of a motion for a rehearing, the board of adjustment . . . shall within 30 days either grant or deny the application, or suspend the order or decision complained of pending further consideration." (emphasis added). This statutory language is mandatory, and requires the Board act on a request for rehearing within thirty days, or, in this case, on or before January 15, 2025. The Board did not consider the application until January 22, 2025, when it continued its consideration to the February meeting. Municipalities only have the authority granted to them by the state, *Manchester Sch. Dist. v. Manchester*, 150 NH 664, 666 (2004), and while the statutory scheme set forth in RSA 677 is based upon the principle that a local board should have the first opportunity to pass upon any alleged errors in its decisions, *Blagbrough Family Realty Trust v. Town of Wilton*, 153 N.H. 234, 238-39 (2006), it

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DANIEL C. HOEFLE	ALEC L. MCEACHERN	PETER V. DOYLE	STEPHEN H. ROBERTS <i>In Memoriam</i>
R. TIMOTHY PHOENIX	KEVIN M. BAUM	MONICA F. KIESER	OF COUNSEL:
LAWRENCE B. GORMLEY	JACOB J.B. MARVELLEY	CHRISTOPHER P. MULLIGAN	SAMUEL R. REID
R. PETER TAYLOR	GREGORY D. ROBBINS	KAREN W. OLIVER	JOHN AHLGREN

is equally clear that a board must do so within the statutorily prescribed time period. *74 Cox Street LLC v. City of Nashua*, 156 NH 228 (2007) (“ . . . we see no basis for concluding that the legislature intended for ZBAs not to have the power to reconsider their own decisions, and potentially correct their own errors, *during the time period allotted by statute for parties to appeal those same decisions.*”) (emphasis added). By January 22, 2025, the variances granted in November were final, and the Board lacked jurisdiction to revisit them.

Without waiving the position that the variances granted in November are final, we are submitting herewith the latest elevations following from our March 5, 2025 work session with the Historic District Commission. We have removed any windows on the Court Street elevation which abut the 92 Pleasant Street property, resolving one of Working Stiff's objections. The applicant is entitled by right to a height of 45 feet and a short fourth story with a mansard roof design. What is proposed is a full fourth story as defined by the zoning ordinance at five additional feet of height. As proposed, this story is stepped back from the sideline of the abutting property and Church Street. This is a more desirable design for both aesthetic and practical reasons. A mansard roof design would have to extend to the Church Street and the Working Stiffs property lines, adding mass and perceived height to the building. The HDC has been clear that such a mansard design is not favored in such close proximity to the historic South Church. The proposed design also allows us to better control roof run-off in both directions.

The additional height that accommodates the proposed stepped back fourth story is necessary to properly align and integrate the stories with the replicated Times Building at the corner of State and Church Streets. It has the additional benefit of accommodating the automatic parking system to provide much needed on-site parking for the proposed residential use, which will promote the public interest and protect neighboring property values. Even with the additional height, the proposed addition is shorter than the South Church across the street. It is not in any manner out of character with the established neighborhood. Accordingly, we maintain the Board was correct in granting the variance in November, as follows:

**Granting the requested variances will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest.** The “public interest” and “spirit and intent” requirements are considered together pursuant to *Malachy Glen Associates v. Chichester*, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance is whether or not the variance being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public.

In this case, were the variances to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety or welfare be threatened.

The essentially urban character of the neighborhood will not be altered in any fashion by this project, nor would the health, safety or welfare of the public be threatened by granting the relief requested, as what is proposed is entirely consistent with what previously existed on site and with the mass and scale of neighboring buildings. The project must obtain final approval from the HDC and proceed through site plan approval at the Planning Board, so the interest of the public will be adequately protected.



**Substantial justice would be done by granting the variances.** Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property. In order to integrate the structure replacing the Times Building, which already exceeded the maximum allowed in the CD-4 zone, with the adjoining structures, height variances are necessary. The HDC must approve the project, so the result will be an aesthetically appropriate structure.

Over multiple sessions, the HDC has expressed its desire to have the applicant develop the property in a manner which evokes the Times Building. To achieve similar massing and window fenestration proportions, it is necessary to approximate the preexisting floor elevations. The additional height allows us to do so. Aligning the floors through each level of the project allows us to reasonably provide the required accessible egress and ingress to each unit and simplify the structural system to meet design parameters and to maximize on-site parking. Conversely, if the applicant did not align the floor levels, the complications to both the structural design, and design of ingress and egress along with the elimination of more than 1/3 of the available on-site parking would create a hardship to the owner that outweighs any benefit to the public by denying the variance.

In short, recreating the Times Building in proportion to the original building creates a hardship because of the preexisting floor heights. Overcoming that hardship places a burden on the project that outweighs any benefit to the public in denying the variance.

**The values of surrounding properties will not be diminished by granting variances.** The proposed uses are permitted in this zone by right. The surrounding properties and those in the vicinity have similar uses as this one does. A newly constructed project will increase property values. The values of the surrounding properties will not be negatively affected in any way.

**There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship.** The property is in the heart of the downtown and is being redeveloped in a manner that will facilitate the redevelopment of the Times Building parcel in a manner that evokes its historic mass and scale, which exceeded current story and height restrictions. Redevelopment poses logistical and engineering challenges and retaining the story heights of the Times Building requires the thoughtful integration of the adjoining structures. The present Church Street façade is totally out of character with the historic South Church facing it. A short fourth story with a mansard roof is permitted by right but is a far inferior design solution compared to what is proposed.

**The use is a reasonable use.** The proposed mixed residential/commercial use is permitted in this zone and is identical in character and is consistent with the existing use of the adjacent and abutting properties.

**There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property.** The Applicant is proposing to redevelop what is almost the entire block bounded by State, Pleasant and Church Streets. Both the historic Times Building adjacent to this site and the South Church across the street exceed the present height requirements without causing any negative effects on the neighborhood. There is no fair and substantial relationship between the purposes of these requirements and their application to this portion of the project.

For the foregoing reasons, we respectfully request the Bord reaffirm its original decision and grant the variance from Section 105A41.10C

Thank you for your attention.

Sincerely,

*Christopher P. Mulligan*

Christopher P. Mulligan

CPM/

mjk

Michael J. Keane  
Architects, PLLC

ARCHITECTURE  
PLANNING  
DESIGN

101 Kent Place  
Newmarket, NH  
03857

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CONSULTANTS

REVISIONS

APPROVALS

03/07/25 FOR  
BOA REHEARING  
MARCH 18 2025

Accept only original stamp and signature  
copies may contain unauthorized modifications

PROJECT

RESTORATION AND EXPANSION OF  
266, 270 278 STATE STREET  
AND 84 PLEASANT ST,  
PORTSMOUTH NH

PNF TRUST OF 2013  
282 MIDDLE STREET  
PORTSMOUTH, NH  
03801

TITLE

STATE STREET ELEVATION

DRAWN BY:

CHECKED BY:

DATE: 3/6/2025

SCALE: AS NOTED

DRAWING NO.

BOA.3

ELEVATOR OVERRIDE  
EXCLUDED FROM HEIGHT  
BY ZONING 10.517.30 AND  
BY "PENTHOUSE" DEFINITION

TOP OF WALL

TOP OF FLAT ROOF

50'-0"  
BUILDING HEIGHT BY ZONING [DEF. BUILDING HEIGHT (b) 2]

11'-1"

11'-1"

11'-1"

16'-9"

53'-0"

FLOROS BUILDING

STATE STREET ELEVATION  
SCALE: 1/4" = 1'-0"

DO NOT SCALE PRINTS



**PLEASANT STREET ELEVATION**

SCALE: 1/4" = 1'-0"

**mjk**

Michael J. Keane  
Architects, PLLC

ARCHITECTURE  
PLANNING  
DESIGN

101 Kent Place  
Newmarket, NH  
03857

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CONSULTANTS

REVISIONS


APPROVALS

03/07/25 FOR  
BOA REHEARING  
MARCH 18 2025

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PROJECT

RESTORATION AND EXPANSION OF  
266, 270 278 STATE STREET  
AND 84 PLEASANT ST,  
PORTSMOUTH NH

PNF TRUST OF 2013  
282 MIDDLE STREET  
PORTSMOUTH, NH  
03801

TITLE

PLEASANT ST ELEV

DRAWN BY:

CHECKED BY:

DATE: 3/6/2025

SCALE: AS NOTED

DRAWING NO.

DO NOT SCALE PRINTS

**BOA.4**





**mjk**

Michael J. Keane  
Architects, PLLC

ARCHITECTURE  
PLANNING  
DESIGN

101 Kent Place  
Newmarket, NH  
03857

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CONSULTANTS

REVISIONS


APPROVALS

03/07/25 FOR  
BOA REHEARING  
MARCH 18 2025

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copies may contain unauthorized modifications

PROJECT

RESTORATION AND EXPANSION OF  
266, 270 278 STATE STREET  
AND 84 PLEASANT ST,  
PORTSMOUTH NH

PNF TRUST OF 2013  
282 MIDDLE STREET  
PORTSMOUTH, NH  
03801

TITLE

CHURCH STREET ELEVATION

DRAWN BY:

CHECKED BY:

DATE: 3/6/2025

SCALE: AS NOTED

DRAWING NO.

DO NOT SCALE PRINTS

**BOA.5**

**CHURCH STREET ELEVATION**

SCALE: 1/4" = 1'-0"



**COURT STREET ELEVATION**  
 SCALE: 1/4" = 1'-0"

**mjk**

Michael J. Keane  
 Architects, PLLC

ARCHITECTURE  
 PLANNING  
 DESIGN

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 Newmarket, NH  
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603-292-1400  
 mjkarchitects.com

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CONSULTANTS

REVISIONS


APPROVALS

03/07/25 FOR  
 BOA REHEARING  
 MARCH 18 2025

Accept only original stamp and signature  
 copies may contain unauthorized modifications

PROJECT

RESTORATION AND EXPANSION OF  
 266, 270 278 STATE STREET  
 AND 84 PLEASANT ST,  
 PORTSMOUTH NH

PNF TRUST OF 2013  
 282 MIDDLE STREET  
 PORTSMOUTH, NH  
 03801

TITLE

COURT STREET ELEVATION

DRAWN BY:

CHECKED BY:

DATE: 3/6/2025

SCALE: AS NOTED

DRAWING NO.

**BOA.6**

DO NOT SCALE PRINTS

### III. NEW BUSINESS

**A. REQUEST TO POSTPONE** The request of **Harborside Property Management LLC (Owner)**, for property located at **92 Brewster Street** whereas relief is needed to demolish the existing structure and construct a single-family home with Accessory Dwelling Unit which requires the following: 1) Variance from Section 10.521 to allow a) 2,884 s.f. of lot area where 3,500 s.f. are required, b) 2,884 s.f of lot area per dwelling unit where 3,500 s.f. are required, c) 52.33 feet of continuous street frontage where 70 feet are required, d) 9.5 foot right side yard where 10 feet are required, and e) 10 foot rear yard where 20 feet are required. Said property is located on Assessor Map 138 Lot 54 and lies within the General Residence C GRC District. **REQUEST TO POSTPONE** (LU-25-25)

#### **Planning Department Comments**

The applicant has requested postponement of this item to the June 17, 2025 BOA Meeting to attend to an unexpected personal matter. Please see the letter from the applicant's representative dated March 17, 2025, as provided.

If the Board decides to grant approval of the postponement to the June meeting, staff recommends the following condition for consideration:

**1. The application will be re-advertised at the expense of the applicant.**

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC  
ATTORNEYS AT LAW

127 Parrott Avenue | Portsmouth, NH, 03801  
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

March 17, 2025

**HAND DELIVERED**

Stephanie Casella, Planner  
Portsmouth City Hall  
1 Junkins Avenue  
Portsmouth, NH 03801

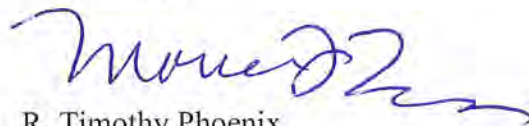
Re: LU-25-25  
Harborside Property Management, LLC  
92 Brewster Street, Tax Map 138, Lot 54  
General Residence C Zone

Dear Chair Eldridge and Zoning Board Members:

This matter is scheduled for a hearing before the ZBA tomorrow evening. Unfortunately, the applicant an unexpected personal matter has arisen for Applicant which may take a couple of months to resolve. On behalf of Harborside Property Management, LLC, we respectfully request that this matter be continued to the June 17, 2025 ZBA meeting.

We look forward to presenting this application to the Zoning Board at its June 17, 2025 meeting.

Very truly yours,



R. Timothy Phoenix  
Monica F. Kieser

cc: George Hails (email)  
Ross Engineering, LLC (email)  
Art Form Architecture (email)

---

DANIEL C. HOEFLE	ALEC L. MCEACHERN	PETER V. DOYLE	STEPHEN H. ROBERTS 2007-2023
R. TIMOTHY PHOENIX	KEVIN M. BAUM	MONICA F. KIESER	OF COUNSEL:
LAWRENCE B. GORMLEY	JACOB J.B. MARVELLEY	STEPHANIE J. JOHNSON	SAMUEL R. REID
R. PETER TAYLOR	GREGORY D. ROBBINS	KAREN W. OLIVER	JOHN AHLGREN



### III. NEW BUSINESS

A. The request of **Rosa Z. Delisle and Paul R. Delisle Revocable Trust (Owners)**, for property located at **408 The Hill, #6-17, (Units 1-3 )** whereas after the fact relief is needed for the expansion of the existing business into the remaining first floor units which requires the following: 1) Variance from Section 10.440, Use #7.20 to allow a personal services business to expand where it is not allowed; and 2) Variance from Section 10.331 to allow a nonconforming use to be extended, enlarged or changed where not in conformity of the Ordinance. Said property is located on Assessor Map 118 Lot 26 and lies within the Character District 4-L1 CD4-L1), Historic and Downtown Overlay Districts. (LU-25-24)

#### B. Existing & Proposed Conditions

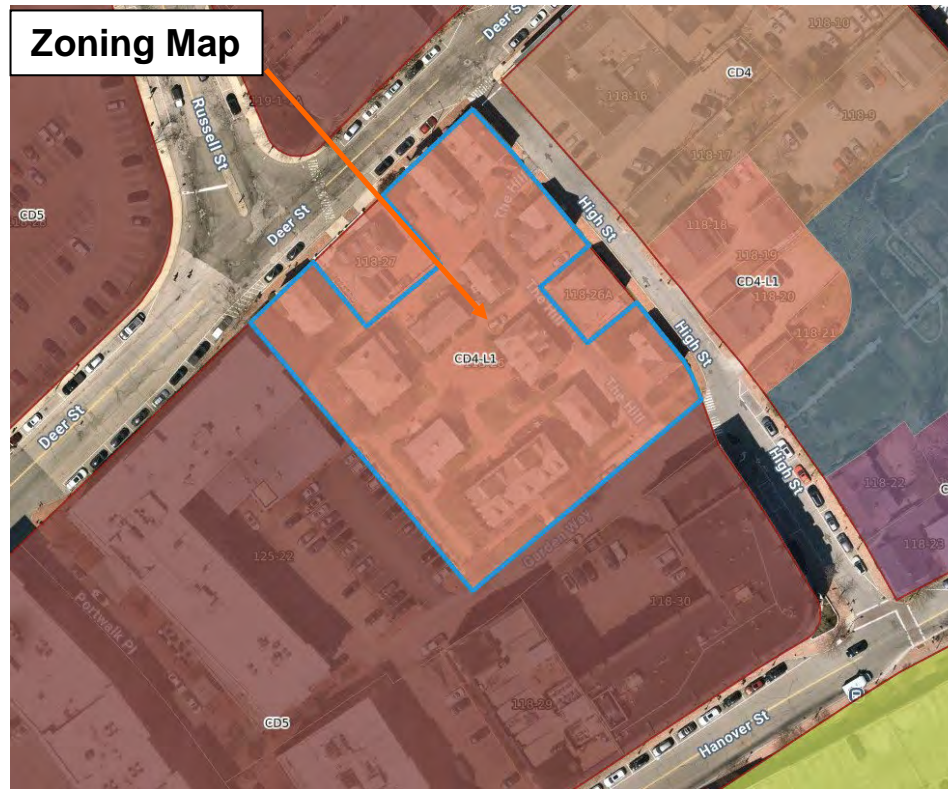
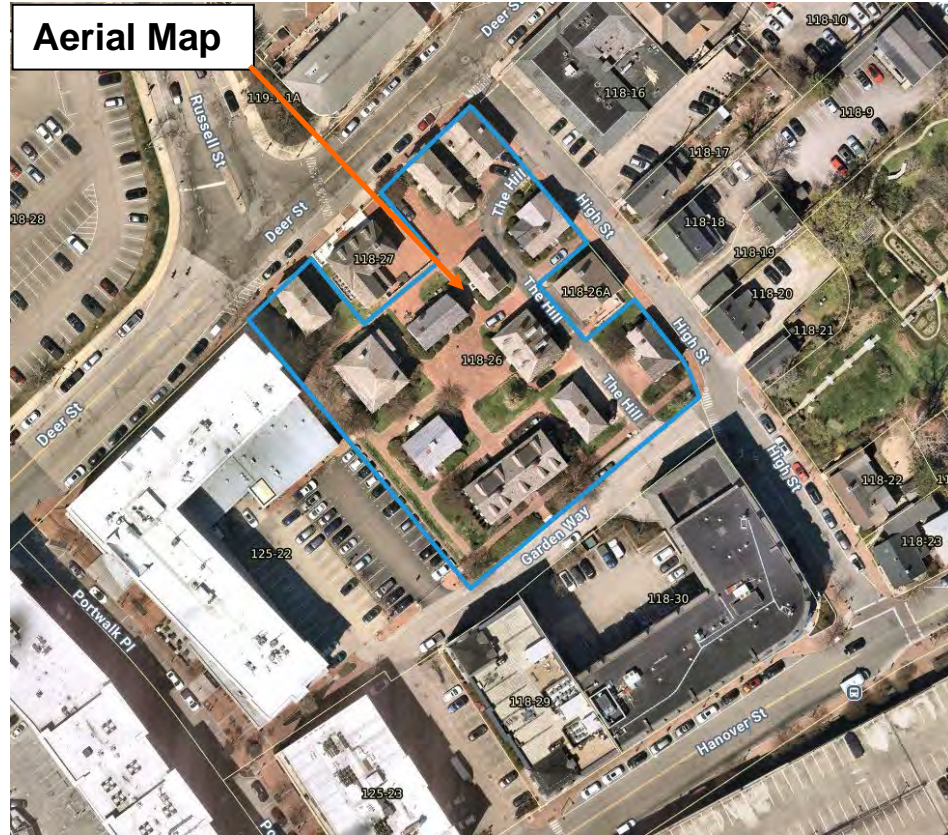
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	3 Commercial Units, 2 Residential Units	* <b>Esthetician Business</b>	Mixed residential and commercial uses
<u>Units #1-3 Area (sq. ft.)</u>	1,000	1,000	
<u>Parking (Spaces)</u>			N/A in DOD
<u>Estimated Age of Structure:</u>	1756	<b>Variance request(s) shown in red.</b>	

\***Esthetician Business** is considered a "personal services" use that is not a permitted use in CD4-L1

#### Other Permits/Approvals Required

- Building Permit (Tenant Fit-Up)

### Neighborhood Context



## Previous Board of Adjustment Actions

- No previous BOA history was found.

## Planning Department Comments

The applicant is seeking a variance to permit a personal service use for Blush Skin & Soul Spa as an expansion into units 1-3 on the first floor. There are 2 existing residential apartments on the second floor of the existing mixed-use building. The applicant was permitted in 2017 for a tenant fit-up in unit 2 of the first floor as a business ownership change to an existing esthetician studio. Since that time the applicant expanded into units 1 and 3 with permission from the property owner, although without a tenant fit-up permit for the expansion. The use and expansion of a nonconforming use requires relief as it is not a permitted use in the CD4-L1 District.

## Variance Review Criteria

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

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

**AND**

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

**OR**

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

## 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

## Project Narrative & Variance Request for Blush Skin & Soul Spa

**Property Address:** 408 The Hill, Units 1-3, Portsmouth, NH

**Applicant:** Blush Skin & Soul Spa

**Prepared For:** City of Portsmouth

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### Project Narrative

Blush Skin & Soul Spa has been a part of the Portsmouth community since **2017**, beginning as a **one-woman business in Unit 2 of 408 The Hill**. Over the years, it has grown into a **thriving wellness business**, now employing a **team of 10 professionals** who provide high-quality esthetic and massage therapy services that promote self-care and well-being for both residents and visitors.

Blush operates **seven days a week from 8:00 AM to 8:30 PM by appointment only**, ensuring a controlled and structured flow of clients throughout the day. The business's appointment-based model prevents excessive foot traffic and allows for an organized, low-impact operation.

During the **COVID-19 pandemic**, the two other tenants on the **first floor of 408 The Hill** vacated their spaces. The **landlord offered Blush Skin & Soul Spa the opportunity to expand into the entire first floor**, which allowed the business to continue growing and providing essential wellness services to the community.

I **mistakenly did not realize that additional permits were required** for this expansion. I sincerely **apologize for this oversight** and want to emphasize my commitment to **doing things the correct way**. The issue only came to my attention when the **New Hampshire State Board of Esthetics conducted a routine inspection** (their first since 2017), which led me to **discover that additional city permits were necessary**. I am now **proactively taking steps to ensure full compliance** with the City of Portsmouth.

Importantly, **no changes were made to the space** in order to operate as we currently do, and **no future changes are needed at this time**. The space remains in **its original, intended condition**, fully functional for the services provided.

Blush Skin & Soul Spa has sufficient **parking availability** for clients, with options along **High Street and Deer Street, as well as in the Hanover and Foundry garages**. These parking options ensure that customers can conveniently access the business without creating a burden on surrounding properties.

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### Variance Analysis

### **1. The variance will not be contrary to the public interest (10.233.21).**

Blush Skin & Soul Spa has long been a **positive contributor to the Portsmouth community**, supporting **local economic growth**, **participating in charitable initiatives**, and **offering a space dedicated to wellness and self-care**.

The spa operates in a **quiet, professional manner**, ensuring that it does not disrupt the character of The Hill or the surrounding businesses. The **appointment-only model** minimizes traffic and maintains a controlled flow of clients throughout the day, further reducing any potential impact on the area.

Granting the variance will allow Blush Skin & Soul Spa to **continue operating in a way that benefits the public without any negative impact**.

### **2. The spirit of the Ordinance will be observed (10.233.22).**

The purpose of zoning regulations is to **ensure compatible land use and maintain the integrity of the community**. Blush Skin & Soul Spa fully aligns with these objectives by:

- Operating within a **historically mixed-use commercial and residential district**.
- Maintaining a **professional, low-impact presence** that enhances the area.
- Contributing to **Portsmouth's vibrant small business economy**.

Since **no structural changes have been made and none are planned**, the business remains in harmony with the existing zoning intent while complying with city requirements.

### **3. Substantial justice will be done (10.233.23).**

Denying the variance would impose a **significant and unnecessary hardship** on a business that has operated successfully in this location since 2017. **There is no public benefit in forcing the business to relocate**, as it has already been successfully operating within the space for years without any issues.

Approving the variance will **allow Blush Skin & Soul Spa to continue serving the community** while ensuring all permitting requirements are met.

### **4. The values of surrounding properties will not be diminished (10.233.24).**

Blush Skin & Soul Spa **enhances the value of The Hill and the surrounding properties** by:

- **Maintaining a well-kept, professional space** that complements the historic nature of the area.
- **Attracting clientele who support other local businesses**, contributing to the area's economic health.
- **Operating in a quiet, appointment-based manner**, ensuring a seamless fit with the surrounding businesses and residences.

Since **no changes have been made to the building or its use**, the presence of Blush Skin & Soul Spa will not negatively impact neighboring property values.

## **5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship (10.233.25).**

Strict enforcement of the zoning ordinance would create an **unnecessary hardship** due to the **unique conditions of this property and its history**:

- **Blush Skin & Soul Spa has successfully operated in this location for over seven years without any prior concerns.**
- **The landlord encouraged the expansion during COVID**, making it a natural and necessary progression for the business.
- **There are no reasonable alternative uses for this space that would provide the same community and economic benefits.**

Since **no changes were made to the space and none are needed**, denying the variance would create an **artificial and undue burden on the business** without serving the public interest.

---

## **Special Conditions of the Property (10.233.31 & 10.233.32)**

### **1. Historic Character & Mixed-Use Designation**

The Hill is a **unique, historically significant district** that has long supported a **mix of commercial and residential uses**. Blush Skin & Soul Spa fits seamlessly into this environment by **providing a boutique wellness service that complements the area's historic charm and professional atmosphere**.

### **2. Layout & Suitability for a Wellness Business**

- **The existing structure and interior layout** of Units 1-3 are **ideally suited for a spa environment**, with private rooms that create a peaceful, professional setting.
- The spa operates **by appointment only**, ensuring minimal foot traffic and no disruption to the surrounding area.
- Since **no structural or operational changes have been made**, the space remains fully compatible with its intended use.

### **3. Reasonable Use & Lack of Alternative Options**

- **There is no fair and substantial relationship between strict enforcement of zoning regulations and this specific property.**
- **The property cannot be reasonably used in strict conformance with the Ordinance** without causing undue hardship to an already well-established business.



Because **no changes were made and no additional modifications are needed**, the variance is necessary to ensure that Blush Skin & Soul Spa can **continue operating without unnecessary disruption**.

---

## **Conclusion**

Blush Skin & Soul Spa **respectfully requests approval of the variance** to continue operating within **units one through three on the first floor of 408 The Hill**.

This request is made **in good faith**, with a commitment to full compliance with local regulations. The business:

- **Has been a valued part of the Portsmouth business community since 2017.**
- **Employs a team of 10 professionals, supporting the local economy.**
- **Operates seven days a week from 8:00 AM to 8:30 PM by appointment only, ensuring structured client flow.**
- **Provides sufficient parking availability for clients along High Street, Deer Street, and in the Hanover and Foundry garages.**
- **Has made no changes to the space and requires no future modifications.**

I sincerely appreciate the City of Portsmouth's consideration and am committed to **resolving this matter properly**. Please let me know if any additional information is required.

**Best regards,**  
Ashley Taylor  
**Owner, Blush Skin & Soul Spa**  
603-848-0991 (cell)  
603-783-5656 (spa)  
[blushportsmouth@gmail.com](mailto:blushportsmouth@gmail.com)

blushportsmouth.com



Unit 2 (room #1)





Unit 2 (room #2)



hall way (we don't use the second floor – it's just two residential units up there)





Unit 1

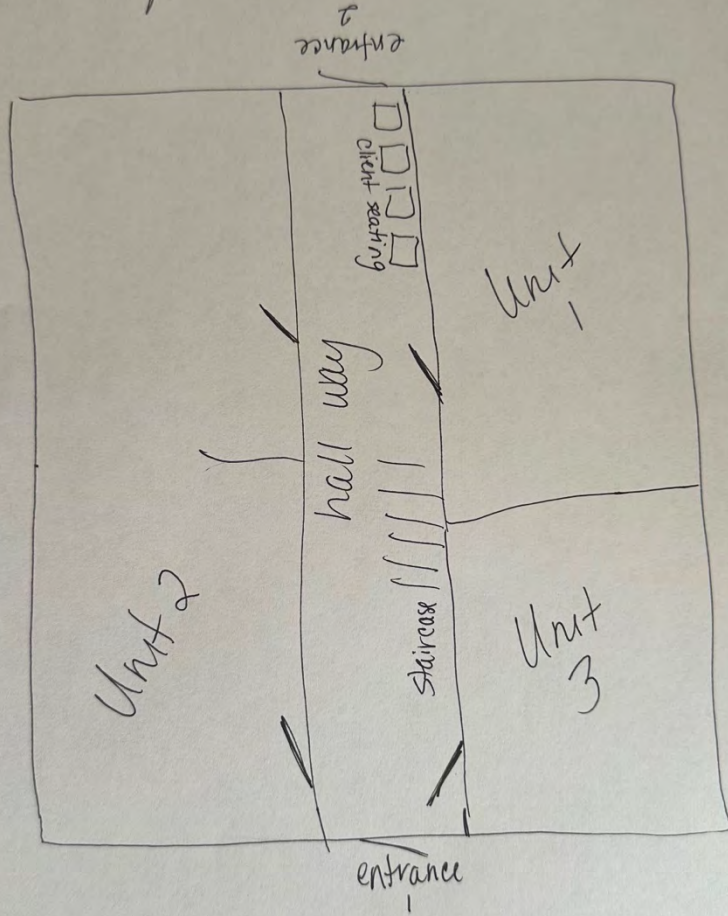


Unit 3



408 The Hill

Hill Courtyard



Garden Way

First floor layout

**The Hill Condo Association**  
Portsmouth, NH 03801

February 19, 2025

City of Portsmouth

Subject: Unit 408, The Hill

To Whom it may concern.

On behalf of The Hill Condo Association, this letter serves as confirmation that Blush Skin & Soul Spa has been approved by the condo association to operate within units one through three on the first floor of 408 The Hill, Portsmouth, NH.

Please let us know if any further documentation or information is required.

Sincerely,

	<small>dotloop verified 02/19/25 11:59 AM EST AKDQ-747H-XOU6-MZZD</small>
--	---

Douglas Palardy

President

The Hill Condo Association

603-501-9999