



City of Portsmouth
Planning Department
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Portsmouth, NH
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MEMORANDUM

TO: Zoning Board of Adjustment
FROM: Jillian Harris, Principal Planner
DATE: March 12, 2025
RE: Zoning Board of Adjustment March 18, 2025

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
- 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 th story/ 50 ft	3 full stories max and short 4 th / 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.	

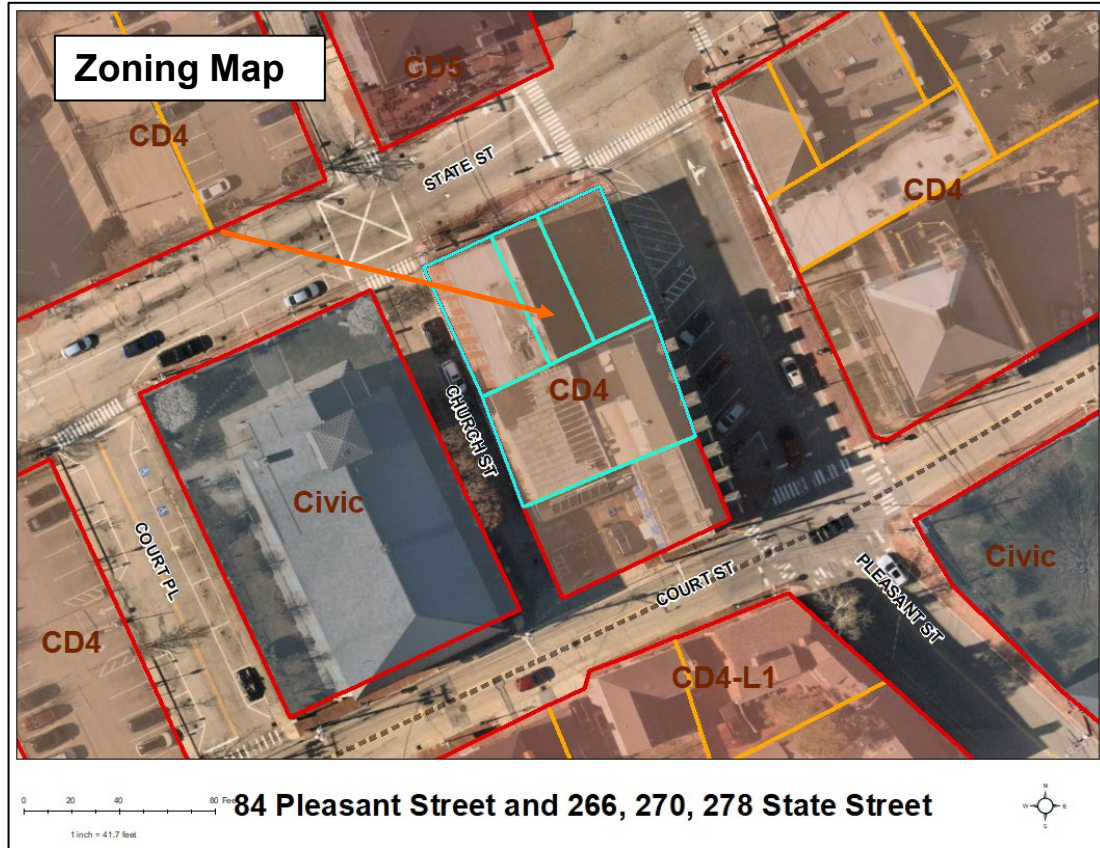
*Variance granted at the 11-19-2024 BOA Meeting

**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%20BOA%20Packet.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.

III. NEW BUSINESS

A. 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. (LU-25-25)

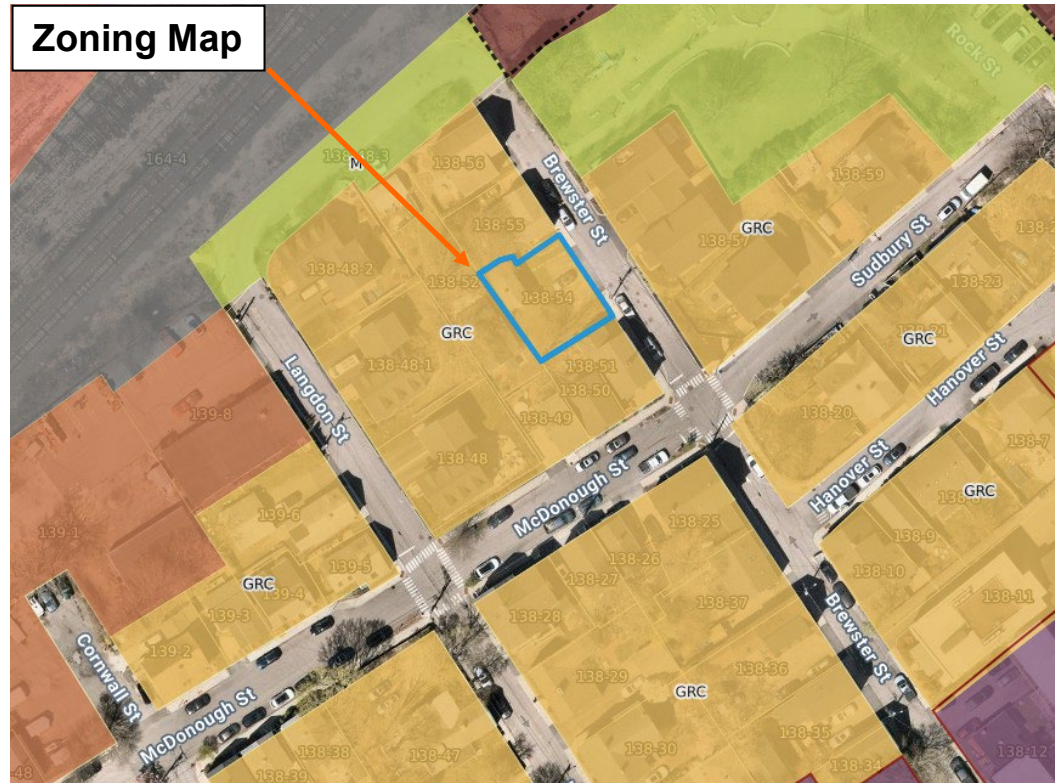
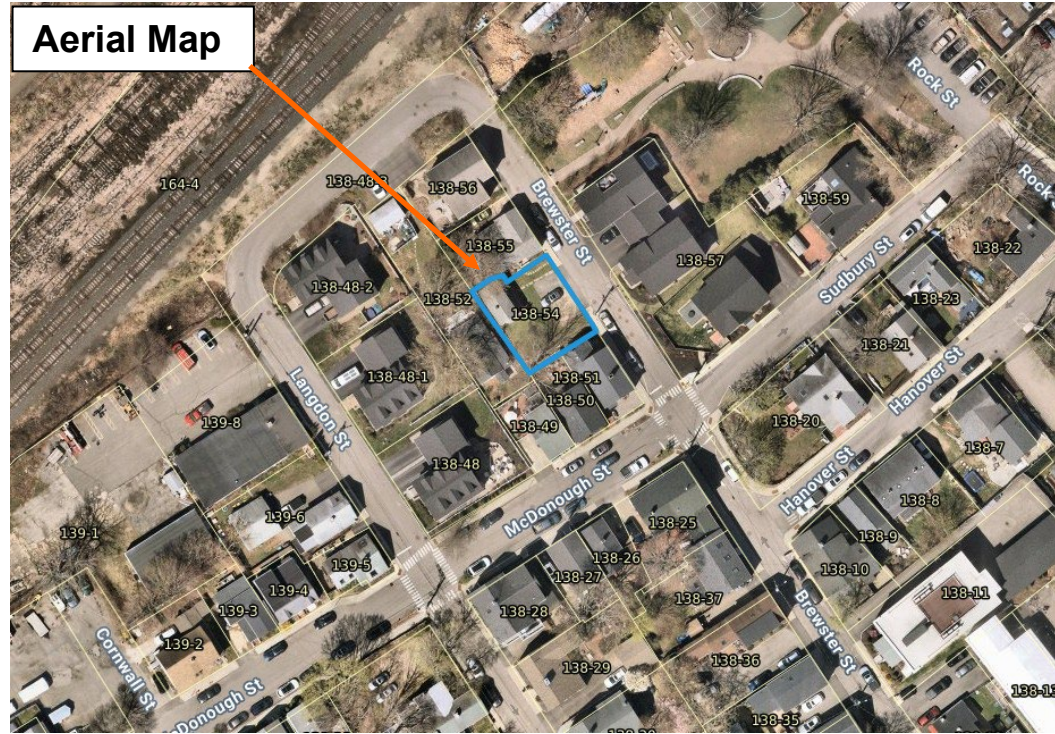
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	Demolish and construct new SF dwelling with ADU	Primarily residential
<u>Lot area (sq. ft.):</u>	2,884	2,884	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,884	2,884	3,500 min.
<u>Street Frontage (ft.):</u>	52	52	70 min.
<u>Lot depth (ft.)</u>	51	51	50 min.
<u>Front Yard (ft.):</u>	31.5	1.4	1 (Sec. 10.516.10) min.
<u>Left Yard (ft.):</u>	32	10	10 min.
<u>Right Yard (ft.):</u>	2.7	9.5	10 min.
<u>Rear Yard (ft.):</u>	3	10	20 min.
<u>Height (ft.):</u>	<35	30	35 max.
<u>Building Coverage (%):</u>	14.7	32.9	25 max.
<u>Open Space Coverage (%):</u>	57	45.9	30 min.
<u>Parking</u>	3	3	3
<u>Estimated Age of Structure:</u>	1790	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit
- ADU – Administrative Approval

Neighborhood Context



Previous Board of Adjustment Actions

- **September 10, 1985** – A variance from Article II, Section 10-205 to convert an existing single family residence into a contractor’s office in a residential district where neither business or professional offices are an allowed use; and, 2) a Special Exception as allowed in Article XII, Section 10-1201(1) (a) to permit two of the required three parking spaces to be located on another lot in common ownership and within 300’ of the property line of the lot in question. Said property is shown on Assessor Plan U-38 as Lots 53 and 54 and lies within Apartment and Historic B districts. Application was **Withdrawn** by applicant.

Planning Department Comments

The applicant proposes to demolish the existing single-family residential structure and construct a new single-family home with an attached Accessory Dwelling Unit (ADU). Historic deeds indicate the property was once two parcels that have since been merged.

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.

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

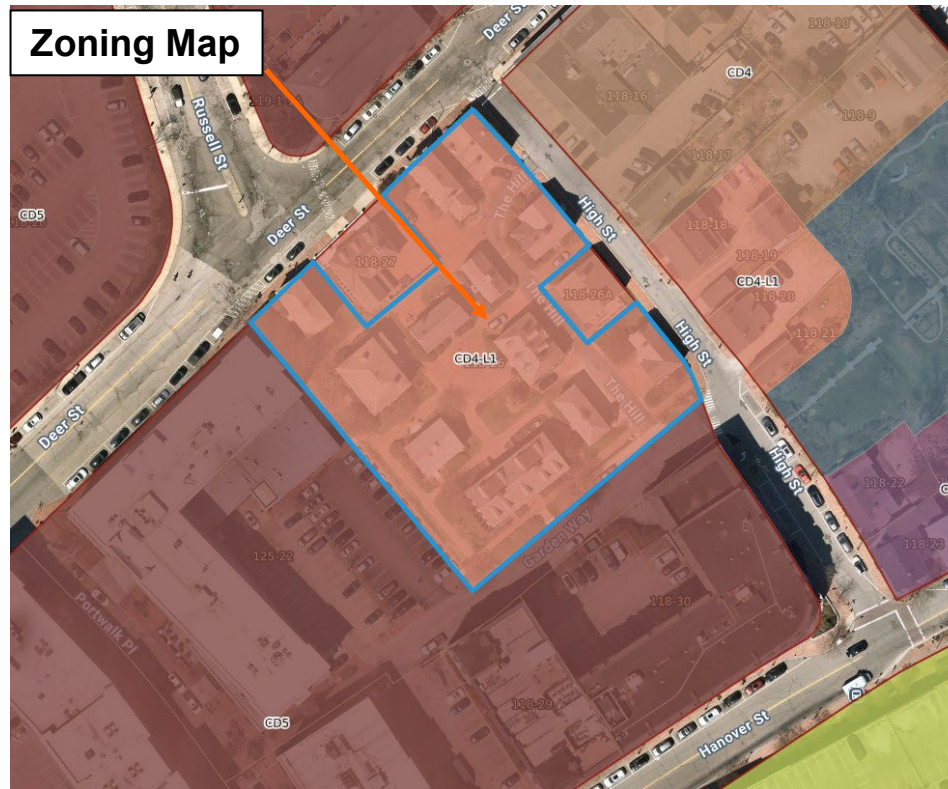
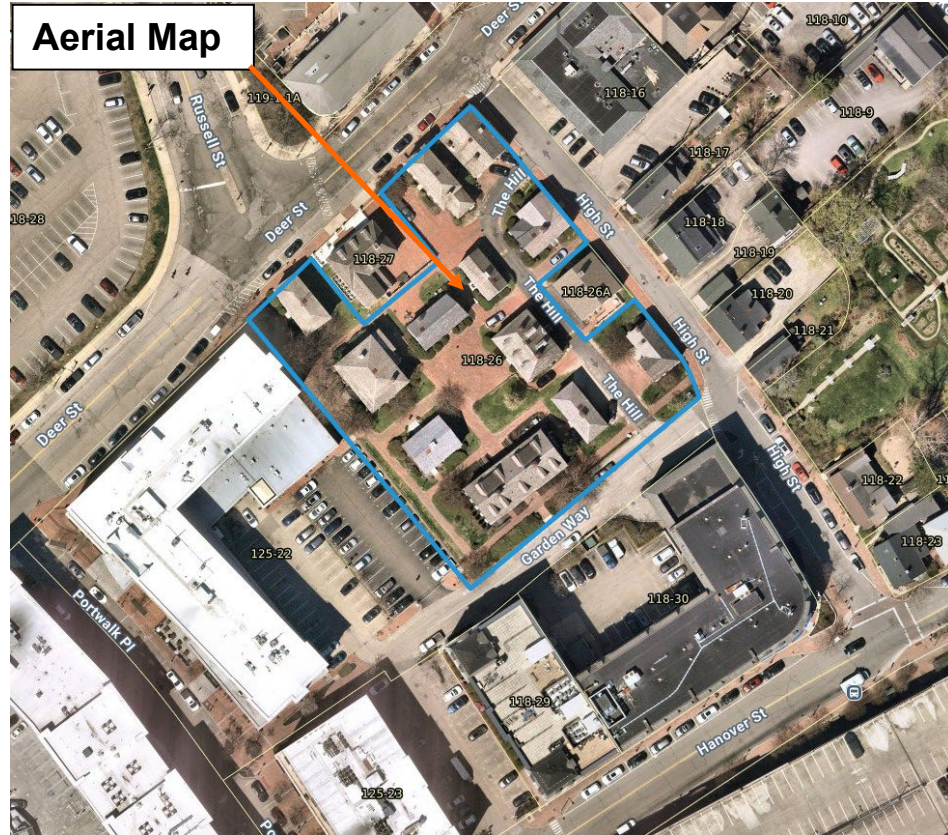
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	3 Commercial Units, 2 Residential Units	*Esthetician Business	Mixed residential and commercial uses
<u>Units #1-3 Area (sq. ft.)</u>	1,000	1,000	
<u>Parking (Spaces)</u>			N/A in DOD
<u>Estimated Age of Structure:</u>	1756	Variance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

***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

 - (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.*

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