

CITY OF PORTSMOUTH
ZONING BOARD OF ADJUSTMENT

64 VAUGHAN STREET, PORTSMOUTH, NEW HAMPSHIRE

Tax Map 126 Lot 1

NOVOCURE, INC.

APPLICANT'S NARRATIVE

THE APPLICANT

Novocure Inc., acquired the property at 64 Vaughan Street, formerly the home of Cabot Furniture, in December 2021. Novocure is a global oncology company striving to extend survival in some of the most aggressive forms of cancer through the development and commercialization of its innovative therapy, Tumor Treating Fields. Novocure's commercialized products are approved in certain countries for the treatment of adult patients with glioblastoma, malignant pleural mesothelioma and pleural mesothelioma. Novocure has ongoing or completed clinical trials investigating Tumor Treating Fields in brain metastases, gastric cancer, glioblastoma, liver cancer, non-small cell lung cancer, pancreatic cancer and ovarian cancer. Novocure has begun renovations of the historic property to house its North American Flagship operations. Novocure intends to occupy the entire building, which will be used for executive offices and a training and development center where doctors and other health care professionals will be introduced to Novocure's products and technologies. Novocure expects 200 to 250 employees to be based at this facility.

THE PROPERTY

The lot is irregularly shaped, with approximately 75' of frontage on the pedestrian Vaughan Mall and 68' of frontage on Hanover Street and it abuts the rear alley connecting Hanover Street to the Worth Parking Lot. The existing structure dominates the site and is built up to or very close to the lot lines on Vaughan Mall and the Worth Lot. The property was previously approved for a mixed-use renovation including the addition of approximately 2,480 square feet of building footprint in 2021. The building addition brings the structure forward to approximately 5 feet from its Hanover Street frontage.

Built in the late 19th century as a 3-story brick and heavy timber structure with a flat roof and full basement, the main building was originally owned and occupied by the Margeson Bros. Furniture Co. Early in the 20th century, the building was more than doubled in size with an addition constructed of essentially the same materials and form on the Worth Lot side. A single

story “modern” block addition with a shed roof was added mid-century toward the rear facing Hanover Street which was used as a loading dock for shipping and receiving.

The previously approved redevelopment of the property ameliorates several adverse conditions on the site. Substandard utility and mechanical systems including water, sewer, drainage, HVAC and fire protection all will be upgraded to meet modern standards. Pedestrian connectivity around the building to Vaughan Mall from Maplewood Avenue, Hanover Street or the rest of downtown to the West, South and East will be enhanced via improvements to the building façade and to the Worth Lot. Underground parking will be constructed, where none exists, and none is required for this office use in the Downtown Overlay District. The redevelopment revives and restores this historic structure and integrates it into the surrounding community. As noted, the design was enthusiastically approved by the Historic District Commission.

As presently approved, the building has a rooftop structure housing building appurtenances (elevator overrun) of 14’-0’ in height above the flat roof. Adjacent to that structure is an approved outdoor, open-air terrace of approximately 2,158 square feet. Novocure seeks approval to cover the majority of this space with a glass penthouse.

THE PRIOR APPLICATION

Novocure did appear before this Board on May 17, 2022, and was denied a 11’6” height variance for a rooftop penthouse. Since then, the definition of a penthouse contained in Chapter 10, Article 15, Section 10.1530 has changed. Specifically, under Section 10.1530 (b) (2) a penthouse is now treated like a sloped roof where the height is measured between the floor and the midpoint to the top of the roof. Accordingly, only 7 feet of height relief is now required above the 40 foot roof. Also, the rooftop building has changed to include legal appurtenances shown on the plans submitted herewith, and the plans have changed thereby resulting in a materially different application. Specifically, the changes are as follows:

- a. Ordinance changed resulting in the need for a materially less height relief.
- b. Reduced penthouse setbacks.
- c. Reduced penthouse footprint.
- d. Modified rooftop design to include pitched roof and glass.
- e. Rooftop now invisible to abutters residing at 25 Maplewood Avenue.
- f. Project has support from abutters.
- g. Positive feedback from HDC work session.
- h. Applicant willing to consider as a condition of approval that there be no further development on the roof with the exception of reasonably necessary rooftop appurtenances for mechanical, etc.

THE PROPOSED PROJECT

Novocure’s intended use of the property will be professional office, which use is permitted by right. The building will host a daily influx of professionals that may at times exceed 300

people, including employees and visitors. Given Novocure's unique mission and its intention to convene visiting medical professionals, scientists and other partners for training, seminars and conferences, it desires to construct dedicated assembly space to accommodate such use. The convening space will not be dedicated to any type of permanent office space for Novocure employees. The convening space will provide employees and guests access to outdoor space where there is no other such space available on or near the property.

The approved open-air rooftop terrace on top the main, historic structure is the logical location to locate such a convening space with outdoor access. The already approved roof appurtenance structure (elevator overrun) is 14' (at its peak) above the allowed 40' building height. Because it is a Hip-topped Mansard form, its "height" is calculated to the midpoint which is well below the 10'-0" allowed for a roof appurtenance. We are proposing that the new penthouse be the same height at its peak as shown on the submitted plans. The penthouse will add approximately 2158 square feet of functional space, along with an outdoor patio and seating also shown on the plans. The proposed structure is designed to shield the necessary rooftop mechanical units.

It should be noted that, even with the additional proposed height, the building will be shorter than many of its recently renovated or constructed neighbors. The buildings across Hanover Street are 5-6 stories and 45'-70' tall. The neighboring mixed-use building at 25 Maplewood has a tower, skylight and mechanical appurtenances all of which are higher than what is proposed. Jimmy's Jazz Club across the Worth Lot is higher. Rooftop appurtenances on the building itself are permitted to a height of ten feet. Accordingly, the massing and scale of the proposed addition will not be out of place and will not in any manner dominate its surroundings. In fact, due to the siting of the proposed addition recessed from the building's edge, there are few ground-level locations where it will be visible at all. In any event, the project, if approved by this Board, will also require final approval from the HDC.

In addition to the Historic District, the property is in the CD-5 zone and the Downtown Overlay District.

The project as proposed requires a variance from Section 10.5A43.30 to permit the following:

- building height of 47 feet where 40 feet is the maximum allowed.

VARIANCE CRITERIA

The Applicant believes that this project meets the criteria necessary for granting the requested variances.

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 property is a very visible "cornerstone" of downtown where similar heights are not uncommon. The health, safety and welfare of the public will not be negatively impacted in any fashion, as the approved rooftop open-air terrace will be converted to all-season covered space that will allow Novocure's employees and guests an outdoor space in which to congregate, each lunch, etc.

The essentially urban character of the neighborhood will not be altered in any fashion by this project, nor will the health, safety or welfare of the public be threatened by granting the relief requested, as what is proposed is entirely consistent with the mass and scale of neighboring buildings. The project must obtain further approval from the HDC so the interest of the public will be more than 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. The proposed added height will in no way detract from any neighboring properties, many of which are taller than what is proposed. The proposed penthouse adds functionality to the space where an approved outdoor terrace would exist. The proposed penthouse will be similar in height with the roof appurtenance structure and will help shield rooftop mechanicals and provide much needed outdoor space.

In this case, there is no benefit to the public in denying the variances that is not outweighed by the hardship upon the owner.

The values of surrounding properties will not be diminished by granting the variances. The proposed penthouse addition is not visible from most ground level locations near the site. The surrounding properties and those in the vicinity have similar or taller heights than proposed here. The penthouse will sit entirely within the footprint of the existing building. The roof appurtenance structure (elevator overrun) will shield the penthouse from the residential neighbors at 25 Maplewood Avenue.

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 main building is an historic structure dating back to the late 19th century. The property has frontage on two rights of way, Vaughan Mall and Hanover Street, and

borders the Worth Lot which does not meet the definition of a “street” under the ordinance, but has many of the same characteristics of one – i.e., regular vehicular circulation throughout the site. There is no open, outdoor space on site in which the applicant’s employees and guests can congregate, eat lunch, etc. The building’s use as entirely office with no ground floor retail or other use is unusual in this vicinity. This is an irregular, L-shaped lot with a similar L-shaped building.

The use is a reasonable use. The proposed use is accessory to the office use which is permitted in this zone.

There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. The additional height requested is necessary to create functional space that adds to the environment. The additional height will not in any manner dominate or be out of scale with any of the neighboring properties. There is no fair and substantial relationship between the purposes of the height requirements and their application to this property.

As noted above, the proposed penthouse is not visible from almost all ground level locations, and certainly not in the area where relief is necessary.

I. Conclusion.

For the foregoing reasons, the applicant respectfully requests the Board grant the variances as requested and advertised.

Respectfully submitted,

DATE: July 25, 2023

John K. Bosen

John K. Bosen, Esquire



Property Information
Property ID 0126-0001-0000
Location 64 VAUGHAN ST
Owner 64 VAUGHAN MALL LLC



**MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**

City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 3/9/2022
 Data updated 3/9/2022

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.



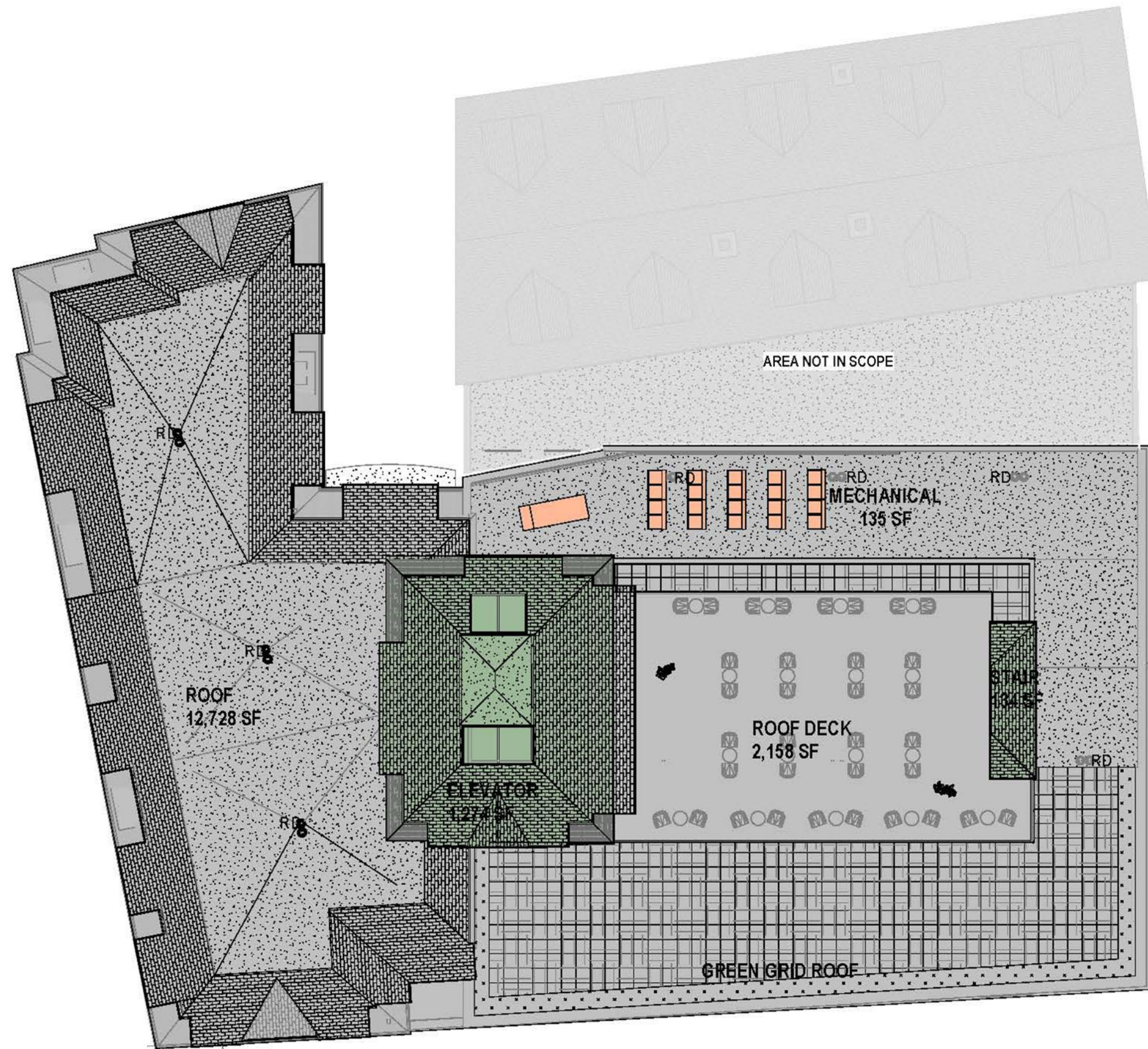
BOA-1

AERIAL VIEW

Novocure Flagship at 64 Vaughan Mall

JSA

7/24/23



Roof Appurtenance Calc

Elevator	1,274 SF
Stair	134 SF
Mech	135 SF
Total	1,543 SF
1,543 / 12,728 = 12%	

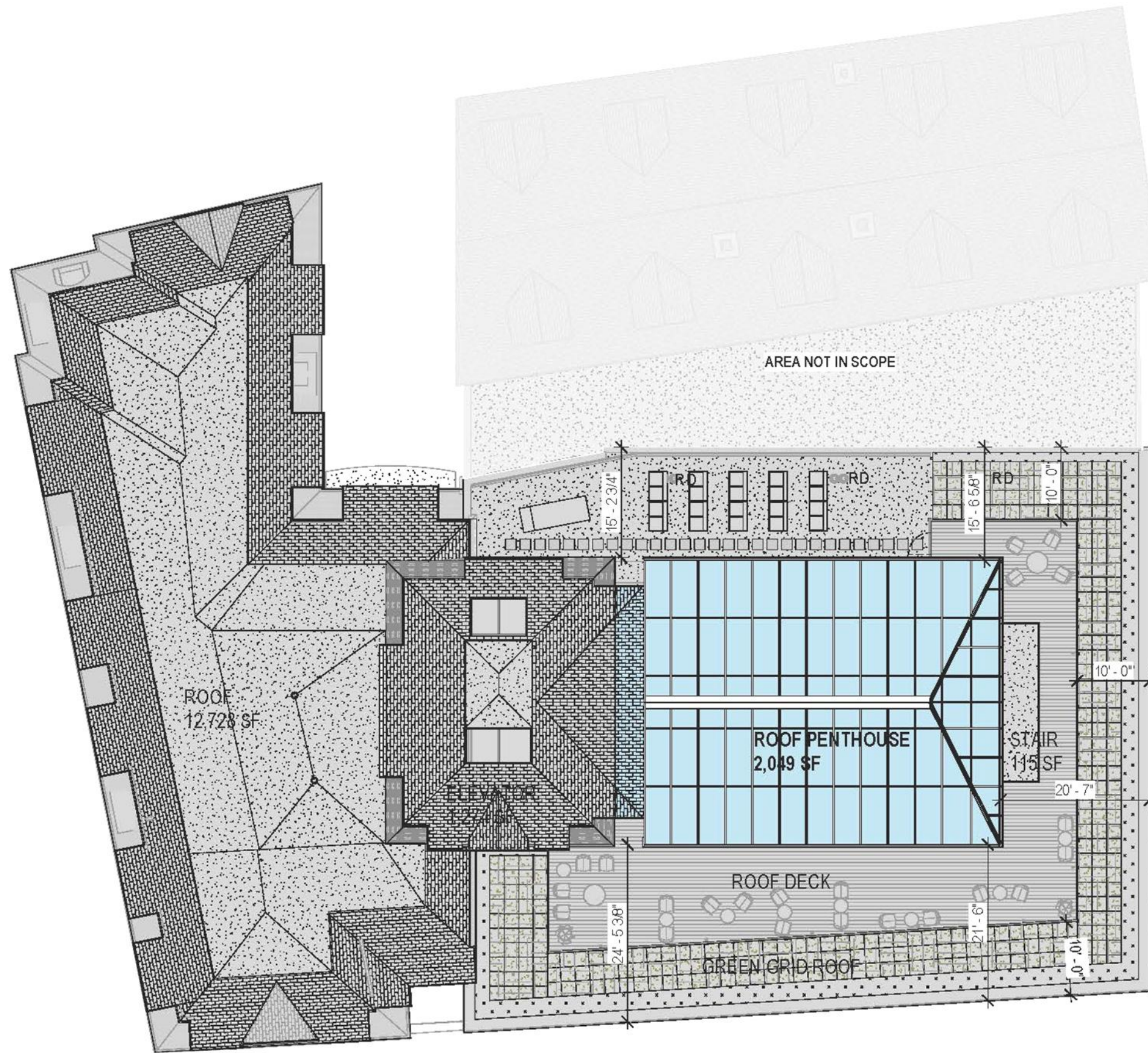
BOA-2

APPROVED ROOF PLAN

Novocure Flagship at 64 Vaughan Mall



7/24/23



Proposed Penthouse Calc

Penthouse 2,049 SF
 2,049/12,728 = 16%

BOA-3

PROPOSED PENTHOUSE
 Novocure Flagship at 64 Vaughan Mall



7/24/23



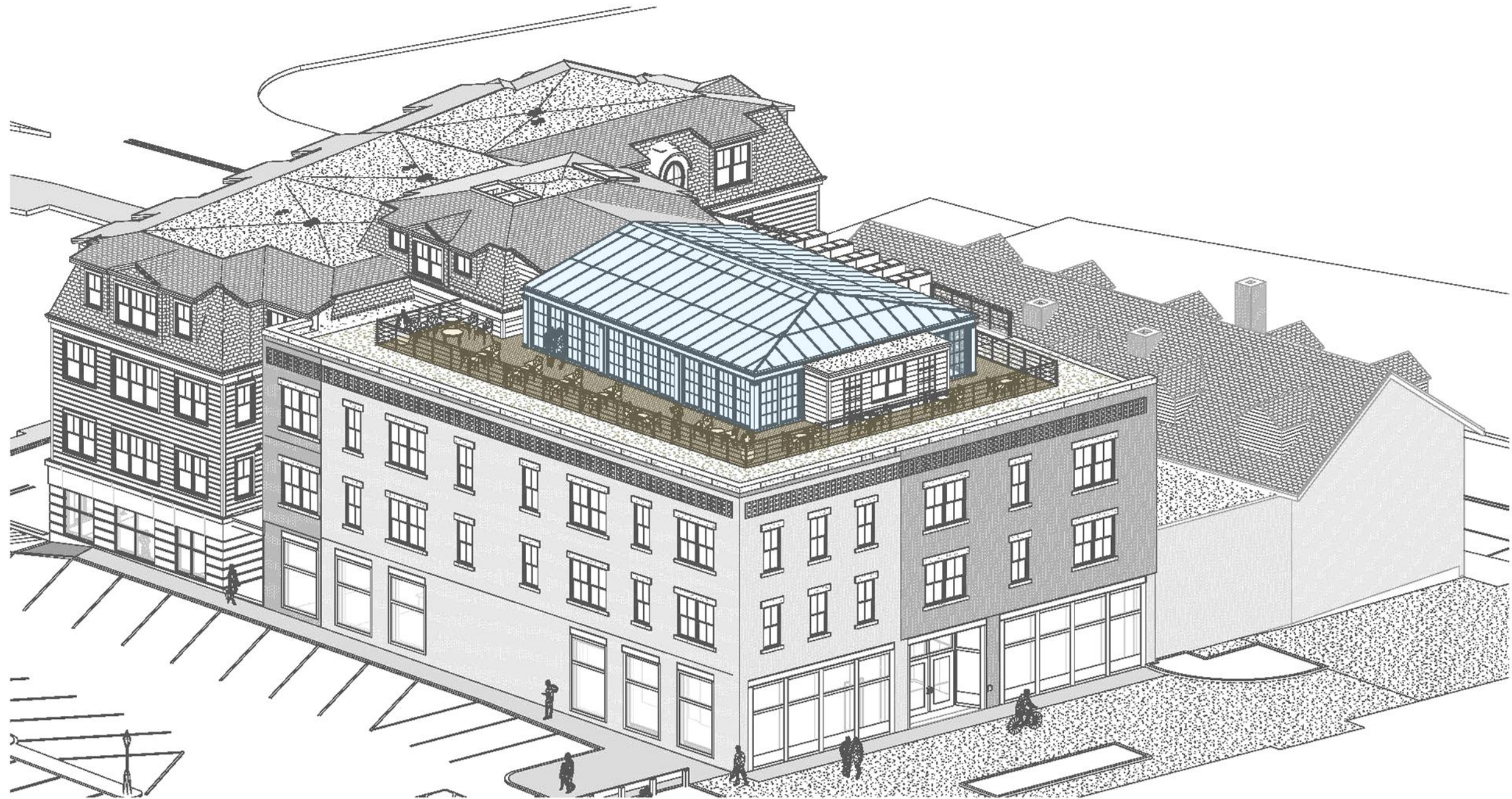
BOA-4a

APPROVED ROOF DECK

Novocure Flagship at 64 Vaughan Mall

JSA

7/24/23



BOA-4b

PROPOSED PENTHOUSE

Novocure Flagship at 64 Vaughan Mall

JSA

7/24/23



BOA-5

WORTH LOT VIEW 1
Novocure Flagship at 64 Vaughan Mall



7/24/23



BOA-6

WORTH LOT VIEW 2
Novocure Flagship at 64 Vaughan Mall



7/24/23



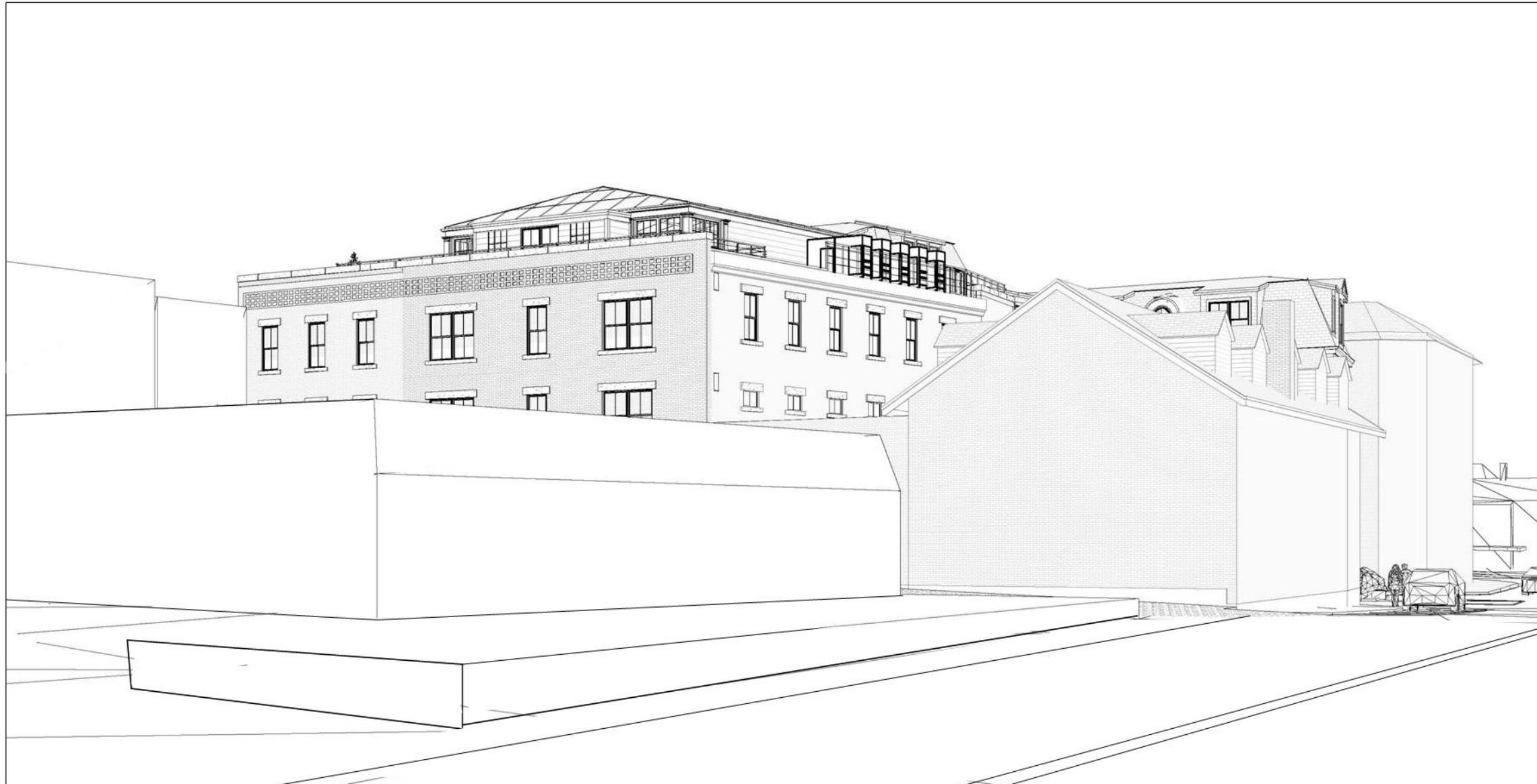
BOA-7

BRIDGE STREET VIEW

Novocure Flagship at 64 Vaughan Mall

JSA

7/24/23

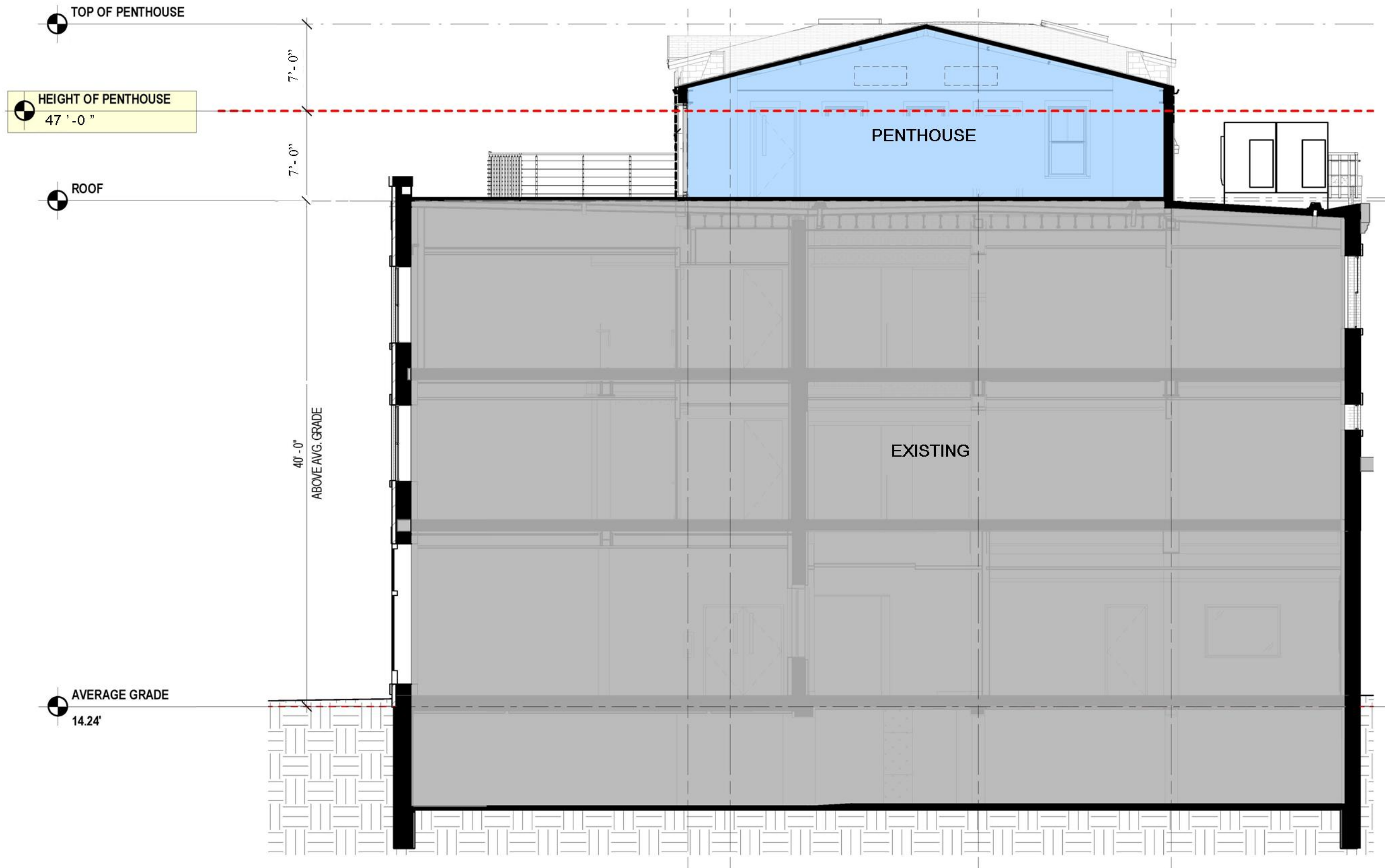


BOA-8

HANOVER STREET VIEW
Novocure Flagship at 64 Vaughan Mall



7/24/23



BOA-9a

BUILDING SECTION

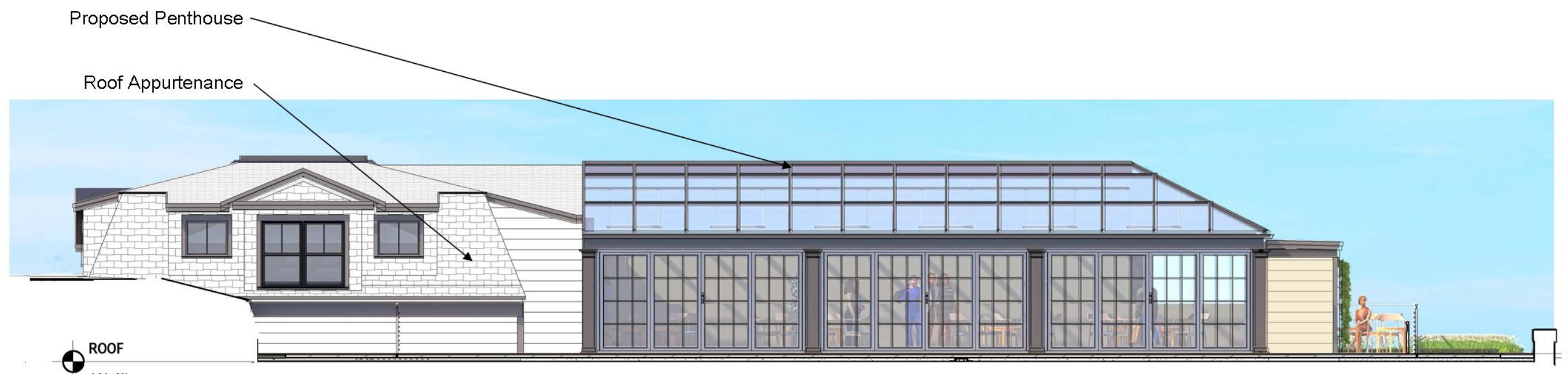
Novocure Flagship at 64 Vaughan Mall



7/24/23



East Elevation



South Elevation

BOA-9b

ELEVATIONS

Novocure Flagship at 64 Vaughan Mall



7/24/23



BOA-10

AERIAL VIEW – Evening
Novocure Flagship at 64 Vaughan Mall

JSA

7/24/23

July 21, 2023

To: The City of Portsmouth, Zoning Board of Adjustment

We are writing this letter of support for the approval of the Novacure Pavilion Enclosure for 64 Vaughan Mall. We ask that you approve the Pavilion Enclosure in place of the previously approved rooftop deck. The Pavilion enclosure Novacure is requesting will provide year round usage for their visiting doctors, scientists, patients, guests and professionals. In addition to year-round usage, another advantage to enclosing the approved deck is the reduction of noise and lighting for the abutting properties. Novacure has assured the 25 Maplewood Owners and other abutters that if the deck enclosure is approved by the BOA, no further requests for rooftop development or utilization will take place; please make this agreement part of the approved record.

One further benefit to approving this new design is for the way it visually ties the two very different buildings together, making the Novacure North American Flagship Building more aesthetically attractive. As direct abutters to this property, we have been watching this project very closely and support this new design.

As all of the above are of significant benefit to Novocure, the abutting buildings, and the City of Portsmouth, we request the Zoning Board of Adjustment approve Novocure's Variance Application for the enclosed rooftop pavilion.

Respectfully submitted,

John and Alison Griffin
25 Maplewood Ave #403
Portsmouth, NH 03801

July 24, 2023

City of Portsmouth - Zoning Board of Adjustment Office

1 Junkins Ave.

Portsmouth, NH 03801

Dear Sir/Madam,

We are writing this letter of support for the approval of the Novocure Pavilion Enclosure at 64 Vaughan Mall in Portsmouth, NH. It is expected that the new Pavilion enclosure being requested as a replacement for the previous rooftop deck will provide year round usage and reduce any noise and lighting to the abutting properties. In addition, it is our view that Novocure's pending variance application seeking approval of the enclosure with a glass roof on the existing rooftop deck will increase the overall value of the neighboring properties and continue to build on the uniqueness of that section of downtown Portsmouth.

In the spirit of maintaining downtown Portsmouth's look, feel and connectivity, the new design brings the buildings together in a much more cohesive manner. Novocure has assured the 25 Maplewood Owners and other abutters that if the deck enclosure is approved by the Board of Adjustment, no further requests for rooftop development or utilization will take place; please make this agreement part of the approved record.

Regards,

Chris and Rita Sadler

25 Maplewood Avenue Unit #305

John Bosen

From: Slattery Sr, Wayne <wslattery@baystatefinancial.com>
Sent: Sunday, July 23, 2023 3:25 PM
To: John Bosen
Subject: Fwd: Novacures Variance Application

Sent from my iPad

Begin forwarded message:

From: "Slattery Sr, Wayne" <wslattery@baystatefinancial.com>
Date: July 23, 2023 at 7:18:24 AM EDT
To: jbosen@bossenandassociates.com
Cc: John Griffin <jagriffinstraws@gmail.com>
Subject: **Novacures Variance Application**

Atty Bossen

As Abutters to Novacure, this email is to show complete support for Novacures Variance application to approve a roof pavilion "Penthouse" at 64 Vaughan Mall for the following reasons:

Novacure will have a beautiful rooftop outdoor space for year round use for visiting medical scientists, partners for training and conferences. In addition this space may be used by local Portsmouth organizations like the Boys and Girls clubs and the like.

As an abutter the enclosure will eliminate ambient noise and lighting that will naturally accompany an open air space. This will increase the value of the neighboring properties which already have the upscale Jimmy's Jazz Club.

Also the Pavilion will not be visible from the 3rd and 4th floors of 25 Maplewood Ave because of the already approved elevator shaft and stairwells which block that view. If the deck enclosure is approved, Novacure has agreed to move the cafeteria from the 4th floor of our side of the building to the Vaughan Mall side and put a conference room in its place.

All of the above are significant benefits to the Residential and commercial owners of 25 Maplewood Ave.

Sincerely

Wayne F Slattery
Paula M Slattery
25 Maplewood Ave. unit 301
Portsmouth , NH

Sent from my iPad

John Bosen

From: Anita Paul <ampaul240@gmail.com>
Sent: Thursday, July 20, 2023 5:19 PM
To: John Bosen
Subject: Support of Novocure

July 20, 2023

The City of Portsmouth
Zoning Board of Adjustments

This letter is written in support of Novocures variance application to approve a roof pavilion “penthouse” at 64 Vaughn Mall.

Architecturally the building adds a pleasant view for surrounding neighbors while melding into the historic skyline.

As one of the owners of 25 Maplewood Ave condominiums, the enclosure of the pavilion will help to eliminate noise and lighting vs. an open air deck. Being a direct abutter, this change will improve the value and use of the building for Novocure but the value of neighboring properties in the immediate vicinity.

We are in full support of approving the variance for Novocure.

Peter & Anita Paul
25 Maplewood Avenue
Suite 404
Portsmouth NH

25 Maplewood Avenue
Unit 303
Portsmouth, NH. 03801

July 20, 2023

City of Portsmouth New Hampshire
Zoning Board of Adjustment
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, New Hampshire 03801

RE: 64 Vaughan Mall: Abutter's Support of NOVOCURE'S Project as Designed and Forecasted to include its Enclosed Rooftop Pavilion

Dear Ms. Phyllis Eldridge, Chair, City of Portsmouth, NH. Zoning Board of Adjustment and Members of the Board:

Our Historic City is fortunate that Mr. William F. Doyle, Executive Chairman of Novocure Inc., chose Portsmouth as the location for Novocure's new United States Headquarters. Mr. Doyle's vision for the 64 Vaughan Mall structure thoughtfully considers the historic aspects of the building's internal and external facades while reconciling the need to bring this building into the 21st Century. When complete, this stellar building will exemplify the standards Mr. Doyle demands for his United States Headquarters.

I am a Direct Abutter to this project. My Unit, #303, in the 25 Maplewood Provident Condominium Association building spans the length of the third floor on the north side of the structure. It parallels the length of the south side of the third floor of the Novocure building.

As a medical professional, Combat Flight Nurse and Vietnam Veteran, I recognize the necessity of having a welcoming space in every medical-related facility for medical professionals, patients, guests, and ancillary staff to gather for conferences, training, scientific discussions, or merely to relax.

The enclosed pavilion the development team has proposed for Novocure's roof does this. The pavilion will provide a year-round venue for use that executives have said may be offered in off hours for civilian use. It will improve the value of surrounding city structures by providing a reduction in ambient noise and bright lighting.

In closing, Mr. Doyle has agreed that if the Enclosed Pavilion is approved by the City of Portsmouth's Zoning Board of Adjustment, he will authorize the cafeteria in his building to be moved to the north side facing the Vaughan Mall. In its place he will create a conference room. He has also agreed that no other area of the roof will be utilized for any purpose except maintenance.

This Declaration will be a MATTER OF RECORD included in NOVOCURE'S VARIANCE REQUEST to the City of Portsmouth, New Hampshire's Zoning Board of Adjustment.

Respectfully submitted,
Donna L. de Wildt
Captain Donna L. de Wildt-Olden
BSN; RN; MPA/NSA; IBC.
VietNam / Desert Shield Desert Storm Veteran

John Bosen

From: art.anker@gmail.com
Sent: Friday, July 14, 2023 4:03 PM
To: John Bosen
Subject: Support for Novocure's Variance Application, Roof Pavillion Penthouse, 64 Vaughn Mall

TO: The City of Portsmouth, Zoning Board of Adjustment

This letter is submitted in support of Novocure's Variance Application to approve an enclosed roof pavilion penthouse at 64 Vaughn Mall, Novocure's North American Flagship Building.

The benefits of the proposed pavilion include the following:

- To provide year round space for visiting medical professionals, scientists, and other partners for training, seminars and conferences
- To provide employees and guests access to outdoor space where there is no other such space available on the property
- To provide space on occasion to local Portsmouth organizations for weekend meetings and/or conferences
- Add to improvement of Vaughn Mall
- Increase the overall value of the neighboring properties

Enclosing the roof pavilion penthouse will eliminate ambient noise and lighting particularly at night.

As an abutting neighbor to Novocure at 64 Vaughn Mall, we request the Zoning Board of Adjustment to approve Novocure's Variance Application for the enclosed roof pavilion penthouse at 64 Vaughn Mall.

Respectfully,
Mary and Arthur Anker
Owners, Unit 304, The Provident Condominiums
25 Maplewood Ave., Portsmouth, NH 03801

John Bosen

From: George B. Heckler, Jr <gbheckler47@gmail.com>
Sent: Thursday, July 13, 2023 11:09 AM
To: John Bosen
Subject: Support for Novocure's Variance Application, Rooftop Deck Enclosure, 64 Vaughn

To:
The City of Portsmouth, Zoning Board of Adjustment

This letter is submitted in support of Novocure's Variance Application to approve the enclosure with a glass roof of the existing rooftop deck at 64 Vaughn Mall, Novocure's North America Flagship Building. The deck enclosure requested and referred to as the Pavilion, will provide a year round venue for Novocure, add to the improvement of Vaughn Mall, and increase the overall value of the neighboring properties. I respectfully suggest that the advantages of Novocure's deck enclosure may be fairly summarized as follows:

(1) Novocure

Will have a beautiful, unique rooftop outdoor space for year round use by visiting medical professionals, scientists, and partners for training and conferences. Novocure has confirmed that the Pavilion will not be utilized as any type of permanent office space for its employees. In addition to providing a one-of-a-kind venue for its guests and employees, Novocure's Associate Director of North America Facilities, Dean Smith, has advise that this space may also be made available to local Portsmouth organizations for weekend meetings, conferences.

(2) Abutting Neighbors

The enclosure of the rooftop deck will eliminate ambient noise and lighting that will naturally accompany an open air deck during the Spring, Summer and Fall seasons, particularly at night. The deck enclosure will not only improve the value and usage of Novocure's building but, also, the value of the neighboring properties which already have the upscale, new Jimmy's Jazz Club and 25 Maplewood Condominium building in the immediate vicinity. The Vaughn Mall will also benefit from Novocure's presence, which will be further enhanced by the enclosure of the rooftop deck.

(3)The Provident Condominiums/25 Maplewood In addition to the benefits of the enclosure of the rooftop deck as set forth above, this structure/Pavilion will not interfere with the view from the Condominiums as it will be blocked by the already approved elevator shaft and stairwells.

From a review of the plans and based upon its location on the Novocure roof, the enclosed deck/Pavilion will not be an intrusion but, rather, an attractive addition from any viewing vantage point along Vaughn Mall or the Worth Parking Lot. Novocure has also assured The Provident Condominiums that if the deck enclosure is permitted, Novocure will agree, as part of the BOA's approval, that there will be no further requests for rooftop development or utilization other than routine maintenance, so that this representation/agreement is made part of the approval record.

As all of the above are of significant benefit to Novocure, Abutting Neighbors, to include The Provident Condominiums/25 Maplewood, and the City of Portsmouth/Vaughn Mall, I request that the Board of Adjustment approve Novocure's Variance Application for the enclosure of its rooftop deck—Pavilion.

Respectfully submitted,
Barry Heckler
Owner, Unit 302, The Provident Condominiums
25 Maplewood Ave, Portsmouth, NH 03801
President, Board of Directors, The Provident Condominiums HOA



July 17, 2023

City of Portsmouth
Zoning Board of Adjustment Office
1 Junkins Ave.
Portsmouth, NH 03801

Dear Sir/Madam,

The Executive Management of BankProv request that this letter be submitted in support of Novocure's Variance Application to approve the enclosure with a glass roof of the existing rooftop deck at 64 Vaughn Mall (Novacure's North America Flagship building). It is the opinion of management that the deck enclosure -- referred to as the "Pavilion" will increase the overall value of the neighboring properties.

It is understood that Novocure will use the space for year-round use by visiting medical professionals, scientists, and partners for training and conferences. They have also committed to allowing this space to be available to local Portsmouth organizations for weekend meetings/conferences.

We believe the rooftop deck will improve value and usage of Novacure's building as well as the value of neighboring properties. The Pavilion will provide an attractive addition from any vantage point along the Vaughn Mall/Worth parking lot areas.

Novacure has also assured members of the Board of The Provident Condominiums that there will be no further requests for rooftop development or utilization other than routine maintenance, so this representation/agreement is made part of the approval record.

As the representative for BankProv, I request that the Board of Adjustment approve Novocure's Variance Application for the enclosure of its rooftop deck (Pavilion).

Sincerely,

A handwritten signature in cursive script that reads "Carol Houle".

Carol Houle
Co-CEO
BankProv