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OF COUNSEL

JAMES H. SCHULTE

September 24, 2025

VIA HAND DELIVERY

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

RE: Application for Variance

Owner/Applicant: Double MC, LLC

Property: 134 Pleasant Street, Portsmouth, NH

Tax Map 116, Lot 30 Zoning District: CD4

Dear Chair Eldridge:

Enclosed please find a complete copy of the Zoning Board of Adjustment Application that was submitted online, along with a copy of the project narrative and other associated materials in support of the above-named Applicant's request for Variance.

We understand, by submitting this application today, that this matter will be placed on the board's agenda for its meeting of October 21, 2025.

Should there be any questions regarding this application, please do not hesitate to contact us.

Sincerely.

Francis X. Bruton, III, Esquire

Frances X But

E-mail: fx@brutonlaw.com

FXB/mas Enclosures

cc:

Double MC, LLC

Ambit Engineering, Inc.

ARCove, LLC

DOUBLE MC, LLC APPLICATION FOR VARIANCE

I. <u>INTRODUCTION</u>

Double Mc, LLC, holds title to property located at 134 Pleasant Street as depicted on the City of Portsmouth Tax Map 116 as Lot 30 (hereinafter the "Property"). The Property is adjacent to a right-of-way located in the Municipal Parrott Avenue Parking lot and lies within the City of Portsmouth Character District 4 (CD4) and Historic District Commission (HDC) Zoning Districts. The Property is currently developed with an existing two-story building and a surface parking lot. The current use is a banking facility with two drive-through teller lanes, and offices for Citizens Bank and Collins Engineering. The Property has been utilized since 1982 as a banking facility with drive thru teller lanes.

During a Conceptual Review with the Planning Board on September 18, 2025, the Property Owner was told that a variance would be required for the drive-through teller lanes because our plans proposed changing the side of the transaction window and other subtle changes and that use is not permitted within the CD4 zone. The drive-through teller lanes and transaction window has existed as an integral part of the Property, its use and value for the last 43 years. Downtown Portsmouth currently has drive-through teller lanes for TD Bank, M&T Bank and Piscataqua Savings Bank with all properties located within CD4 and CD5 zones. In recent history there were also teller drive-through lanes for Eastern Bank near the Foundry Garage and for Indian Head Bank and Trust at 3 Pleasant Street. To the best of the Applicant's knowledge, the site has not been the subject of any zoning enforcement action related to the drive-through teller lanes and its associated accessory structure. It appears the use of drive-through teller lanes was removed at the same time character based zoning was enacted in or around 2015. For those reasons, it is believed, and therefore averred, that the drive-through use is a valid nonconforming use.

The project consists of the adaptive reuse of the existing two-story structure, with horizontal and vertical building expansions toward Pleasant Street, below grade (basement) parking and relocating the drive-through teller lanes. By relocating the drive-through teller lanes and the parking underground, the extensive non-conforming surface parking lots will be removed in favor of a new building that will activate Pleasant Street and bring the front yard set-back into compliance with CD4 zone. The CD4 zone requires a front yard building setback of no greater than 10 feet and the existing building has a front yard setback of approximately 100 feet from the Pleasant Street front property line. The existing location of the drive-through makes it impossible to construct a new building that conforms to the zoning ordinance without changes to the drive-through location. Character based zoning requires front property lines to be activated with buildings and not parking lots or drive-through lanes. The Owner's proposed plans will bring life to a new pedestrian friendly sidewalk on Pleasant Street, cure the non-conforming front yard building set back, improve vehicular circulation and improve the non-conforming drive-through teller lane use. The new building and teller drive-through lanes will be the new home for Kennebunk Savings Bank.

The Portsmouth Zoning Ordinance provides:

10.331 A lawful nonconforming use may continue, but may not be extended, enlarged or changed except in conformity with this Ordinance.

Given the foregoing, the Applicant requests a variance from Section 10.331 to change the location and use of the drive-through, as described above.

For the foregoing reasons, and based upon the following, the Applicant respectfully submits that the grant of the variance requested herein is reasonable and appropriate.

II. VARIANCE CRITERIA

New Hampshire RSA 674:33, I (a)(2) and Section 10.233 of the Portsmouth Zoning Ordinance set forth five criteria upon which variances may be granted. The application of these criteria to the Applicant's proposal is discussed hereafter.

A. Granting the variances will not be contrary to the public interest.

To be contrary to the public interest or injurious to public rights, the variance must unduly and in a marked degree conflict with the basic zoning objectives of the ordinance. See *Chester Rod & Gun Club*, 152 N.H. at 581. In making the determination, the Board should determine whether the variance would "alter the essential character of the locality or threaten public health, safety or welfare."

Section 10.121 of the Portsmouth Zoning Ordinance states that, "[t]he purpose of this Ordinance is to promote the health, safety and general welfare of Portsmouth and its region in accordance with the City of Portsmouth Master Plan.

The existing drive-through window is located in the middle of the existing building and results in car headlights shining on the abutting property to the north and cars existing directly onto Pleasant Street. The Owner proposes to relocate the drive-through lanes as depicted on the attached plans which gets car headlights and any noise from transaction windows away from the residential scale abutter to the north and more appropriately accessed from the existing travel lanes and the Parrott Avenue Municipal Parking lot. The proposed construction on the Property will act as a solid buffer between the activities of the drive-through that currently exist, making the new location more desirable than the current location. The proposed relocation also provides for much needed expansion space for Kennebunk Savings Bank who has leased the Property. It is respectfully submitted that granting the variance would not alter the essential character of the locality or threaten public health, safety or welfare of the immediate neighborhood by relocating the existing drive-through as proposed.

B. The spirit of the ordinance is observed.

When considering whether the granting of the variance will observe the spirit of the ordinance, the New Hampshire Supreme Court has indicated this review is substantially related, and similar to the review regarding public interest. See *Harborside Associates, L.P. v. Parade*

Resident Hotel, LLC, 162 NH 508, 514 (2011). Thus, the Applicant submits that the rationale set forth above regarding "public interest" is equally applicable to the Board's review as to whether the spirit of the ordinance is observed with the grant of the variance.

C. The granting of the requested relief will do substantial justice.

In *Malachy Glen Associates v. Town of Chester*, 155 N.H. 102, 109 (2002), the New Hampshire Supreme Court held that, "...the only guiding rule [in determining whether the requirement for substantial justice is satisfied] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." The Court also noted that it would look at whether a proposed development was consistent with the area's present use. In this instance, the grant of the variance would result in substantial justice as it would allow the relocation of an existing drive-through use for banking purposes. The location of the drive-through will meet the performance and setback standards set forth in Section 10.835.20 and Section 10.835.30 of the Zoning Ordinance. The relocation of the drive-through would abut an existing large public parking lot, and would move the drive-through away from inhabited residential scale properties to the north. There is no negative aspect that the public will suffer from this relocation. Thus, denial of the variances would result in a loss to the Applicant that is not outweighed by any gain to the general public. As such, granting the requested relief would result in substantial justice.

D. Granting the variance will not result in the diminution on value of the surrounding properties.

It is respectfully submitted that all of the surrounding properties have a value associated with them which is premised upon existing buildings and uses located upon the Property. In this instance, it is believed, and therefore averred, that the aesthetic upgrades of the property and the changes to the drive-through, as described herein, will not result in a diminution of surrounding property values. The Applicant believes that the change will increase the value of surrounding property by improving the property with attractive architecture abutting Pleasant Street, incorporating a drive-through into the building design and extensive landscaping. Currently, the Property is non-conforming for the building set-back from Pleasant Street. The Zoning Ordinances requires a structure to be no more than 10 feet from the front property line and currently the Property has a parking lot on the front property line and the building is approximately 100 feet from the front property line. This plan continues an existing non-conforming use of a drive-through teller lane and at the same time cures the non-conforming front yard setback, so overall, it gets the Property closer to zoning conformance.

E. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

An unnecessary hardship exists when, owing to special conditions of the property that distinguish it from other property, no fair and substantial relationship exists between the public purposes of the ordinance provisions and the specific application of those provisions to the property and the proposed use is a reasonable one. (Section 10.233.31 of Zoning Ordinance).

The property is distinguished from other properties in the area given its large size, at approximately 1.22 acres, located next to the downtown area. The Property is also unique given the location of the property to a large public parking lot. In addition, the Property is one of only a few properties within its vicinity that has a nonconforming drive-through facility. This nonconforming drive-through has been utilized for over thirty years by a bank, as is now proposed.

The current location of the current drive-through is adjacent to inhabited parcels and points directly at Pleasant Street. The relocation diminishes these aspects of the current use by locating the drive-through to a location that is adjacent to the Parrot Street parking lot and away from the travel view of Pleasant Street. The proposed drive-through meets or exceeds all performance and setback standards of a drive-through regulated by the Zoning Ordinance. Meeting the performance and setback standards highlights how the general purpose of the Zoning Ordinance is preserved and met, all of which is possible given the unique size of the Property. Coupled with the improvements to the drive-through, as described hereinabove, the Applicant respectfully submits that the change of location and continued use of the existing drive-through improves the nonconforming use, and, for these reasons, denying the ability to so change this nonconforming use would result in an unnecessary hardship.

The Applicant respectfully submits that the change to the drive-through, as detailed herein, results in a reasonable change to this nonconforming use.

III. <u>CONCLUSION.</u>

For all the reasons set forth hereinabove, Double MC, LLC respectfully requests that the relief request herein be granted.









H0.2 EXISTING PHOTOS

134 PLEASANT STREET

PORTSMOUTH, NH 03801





07/25/2025

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OWNER: DOUBLE MC, LLC
PROPERTY LOCATION: 134 PLEASANT STREET
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE

GRAPHIC SCALE (IN FEET) 1 inch = 40 ft.

DATE: AUGUST 4, 2025 SCALE: 1"=40'



HALEY WARD

ENGINEERING | ENVIRONMENTAL | SURVEYING 200 Griffin Rd. Unit 14

Portsmouth, New Hampshire 03801 603.430.9282

FB 276 PG 60

JOB # 5010156.1532

OWNER: DOUBLE MC, LLC
PROPERTY LOCATION: 134 PLEASANT STREET
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE

PROPOSED DRIVE UP WINDOW DIMENSION SKETCH

GRAPHIC SCALE 0 0 20 40 80 120 (IN FEET) 1 inch = 40 ft.

1 111011 10 10

DATE: SEPTEMBER 24, 2025



SCALE: 1"=40'

HALEY WARD

ENGINEERING | ENVIRONMENTAL | SURVEYING 200 Griffin Rd. Unit 14 Portsmouth, New Hampshire 03801 603.430.9282

FB 276 PG 60

JOB # 5010156.1532

ZONING DEVELOPMENT STANDARD 10/7/2025

CD4 (CD-4, HDC): CHARACTER DISTRICT 4

| | REQUIRED | EXISTING | PROPOSED |
|----------------------------------|---|-------------------|---|
| Height | 2 stories with short 3rd = 35' max | 2 stories, 19'-6" | 2 STORIES, 27'-7" |
| Penthouses | may exceed bldg height by 2' | n/a | 25'-6" |
| Roof appurtenance | may exceed bldg height by 10' | n/a | 25'-6" |
| Facada Tunas | stoop, step, shopfront, officefront, recessed-entry, dooryard, gallery & | - (- | CHOPEDONIT |
| Façade Types | arcade | n/a | SHOPFRONT |
| | Rowhouse, Apartments, live/work, small or large commercial, mixed use, flex | | |
| Building Types | space & community. | commercial | large commercial & residential |
| Setback Front (principle) max | 10 | n/a | 10', principal façade |
| Setback Front (secondary) | | | |
| max | 15 | n/a | |
| Side | NR | n/a | 11'-8" (north) and 50'-9" (south, drivethrough) |
| Rear, min | >of: 5' from rear line or 10' from cl alley | n/a | 5' |
| Front lotline buildout | 50% min | n/a | 51% |
| Lot area (sf) | NR | 53,084 | 53,084 |
| LOT area per dwelling | NR | n/a | n/a |
| Coverage, maximum | 90% | 21.2% | 42.8% |
| Footprint, max* 10.5a43.40 | 15,000 | 11,241 | connected buildings, 11,717 & 11,012 |
| Ground floor area per use, | | | |
| max | 15,000 | 11,241 (bank) | 10,336 Bank & 10,701 Retail |
| Open space, minimum | 10% | > 10% | > 10% |
| Permitted uses (cd4 & cd5) | multifamily, live/work, office, retail, restaurant (<500occ) | office (bank) | coliving, retail & office (bank) |
| Block length, max (ft) | 200 | n/a | 104'-10" |
| Façade modulation length, | | | |
| max (ft) | 80 | n/a | 27'-8" |
| Entrance spacing, max (ft) | 50 | n/a | 50' |
| Floor height above sidewalk, max | 36" | 4" | 4" |
| Ground floor height, min | 12' | n/a | 14'-6" addition & 9'-11" existing |
| Second floor height, min | 10' | n/a | 10'-0" addition & 8'-9" existing |
| Glazing, shopfront, min | 70% | n/a | design is in development |
| Glazing, other | 20%-50% | n/a | design is in development |
| <u> </u> | flat, gable (6:12-12:12), hip(>3:12), | • • | |
| Roof types(pitch) | gambrel/mansard(6:12-30:12) | flat | flat and hipped |
| | when >20 spaces, max spaces = 120% of min required is the max allowed. 10.1112.60 mixed used - some shared | | design is in development, and will conform to ordinance |
| Parking, off-street | spaces allowed. | | |
| Parking, Residential | Coliving, .25 spaces per sleeping unit | | design is in development, see attached summary |
| Parking, Professional office | 1 per 350 GFA | | design is in development, see attached summary |
| Parking, Professional office | 1 per 300 GFA | | design is in development, see attached summary |

(IN FEET) 1 inch = 20 ft.

EXISTING AVERAGE GRADE WEST | NORTH SOUTH **EAST** N/A 19.47 N/A 19.21 18.79 19.34 18.95 18.61 18.43 18.46 18.37 18.44 18.34 18.80 17.98 17.35 17.10 17.23 18.14 18.67 N/A N/A N/A 331.68 331.68/18 N/A N/A N/A N/A N/A 18.43 *SPOT GRADES TAKEN AT POINTS 6' ON CENTER ALONG PROPOSED BUILDING FOOTPRINT.

EXISTING AVERAGE GRADE: 18.43



SEPTEMBER 2025 REVISED 10-08-2025

HALEYWARD

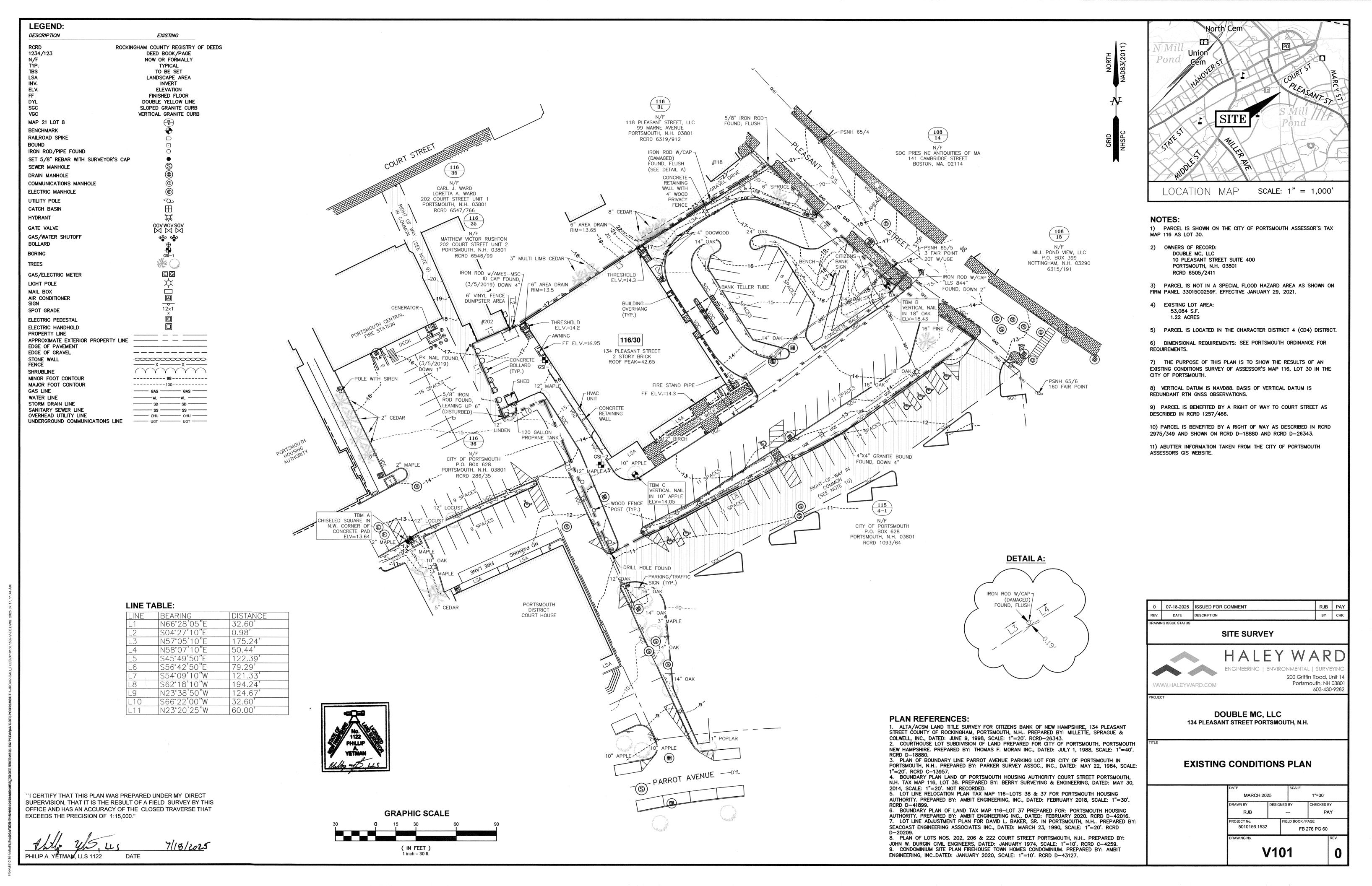
ENGINEERING | ENVIRONMENTAL | SURVEYING

200 Griffin Rd. Unit 14 Portsmouth, New Hampshire 03801 603.430.9282

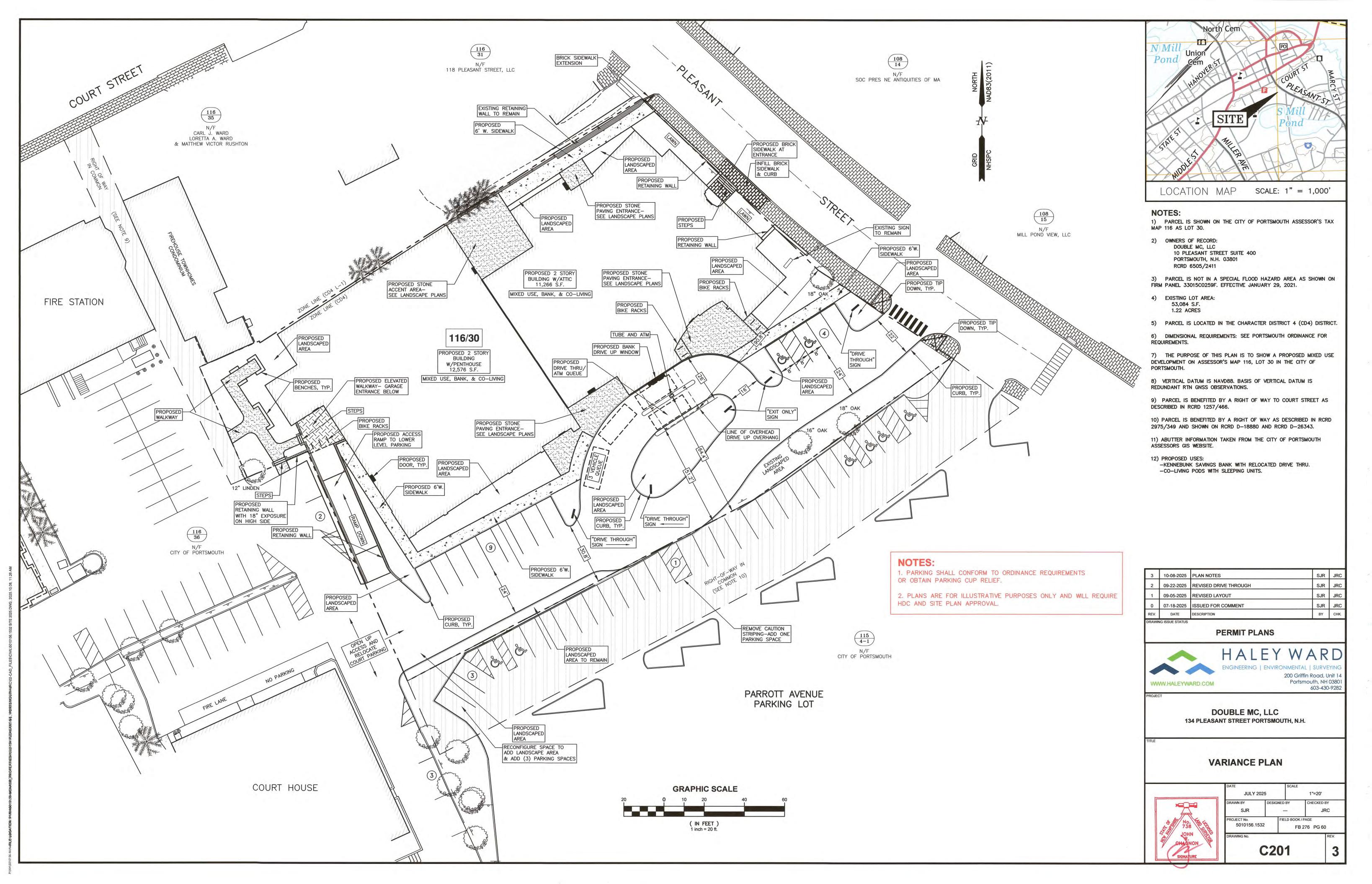
FB 276 PG 60

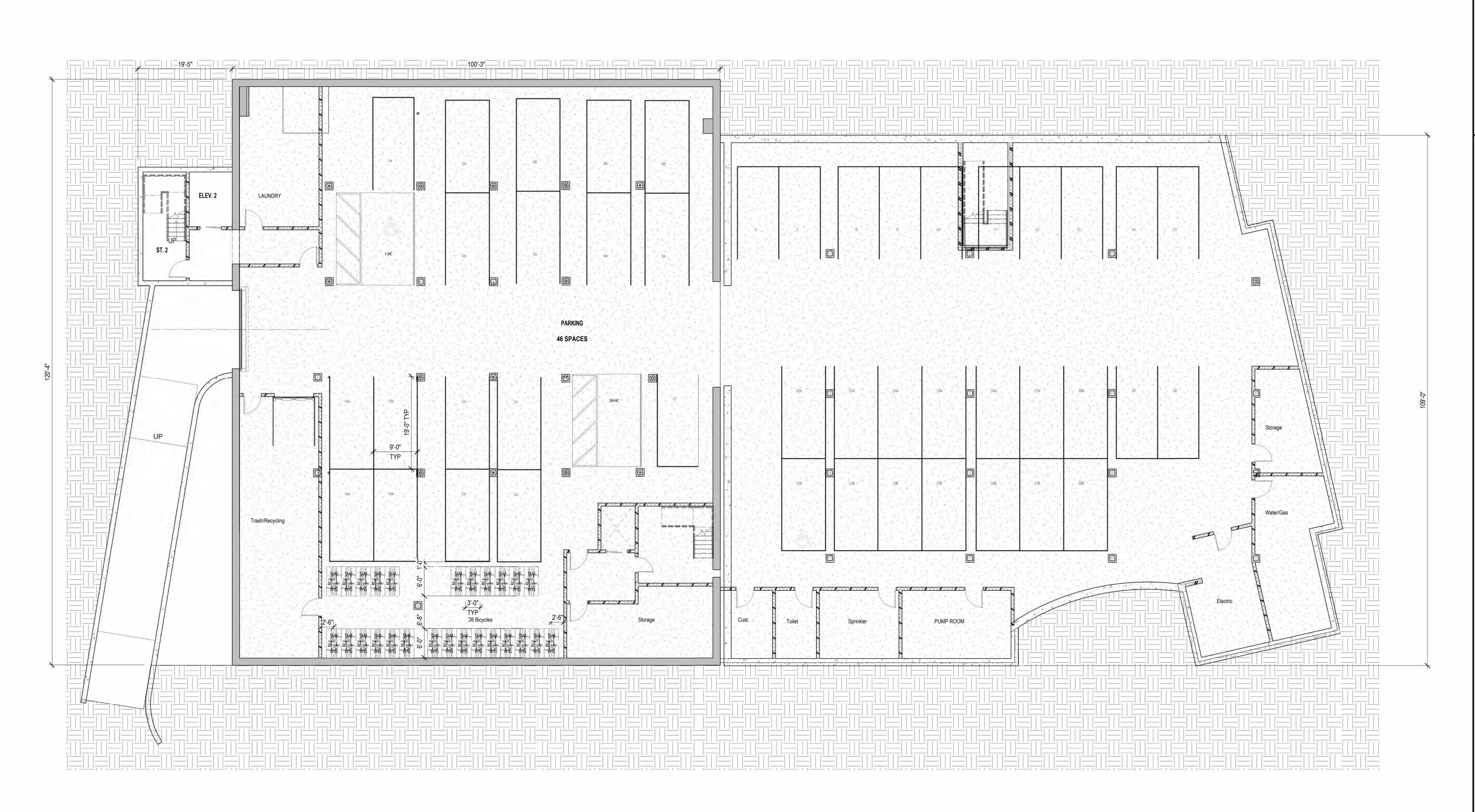
5010156.1532

PORTSMOUTH, N.H.









1 PB BASEMENT 3/32" = 1'-0"



3 CONGRESS ST., SUITE1 PORTSMOUTH NH 03801 603.988.0042 www.ARCove.com

134 PLEASANT STREET

PORTSMOUTH, NH 03801

PROJECT NO: 1028

OWNER

Double Mc, LLC 134 Pleasant Street Portsmouth, New Hampshire 03801

CIVIL ENGINEERING

Haley Ward
200 Griffin Road, Unit
Portsmouth, NH 03801
(603) 430-9282

LANDSCAPE ARCHITECT



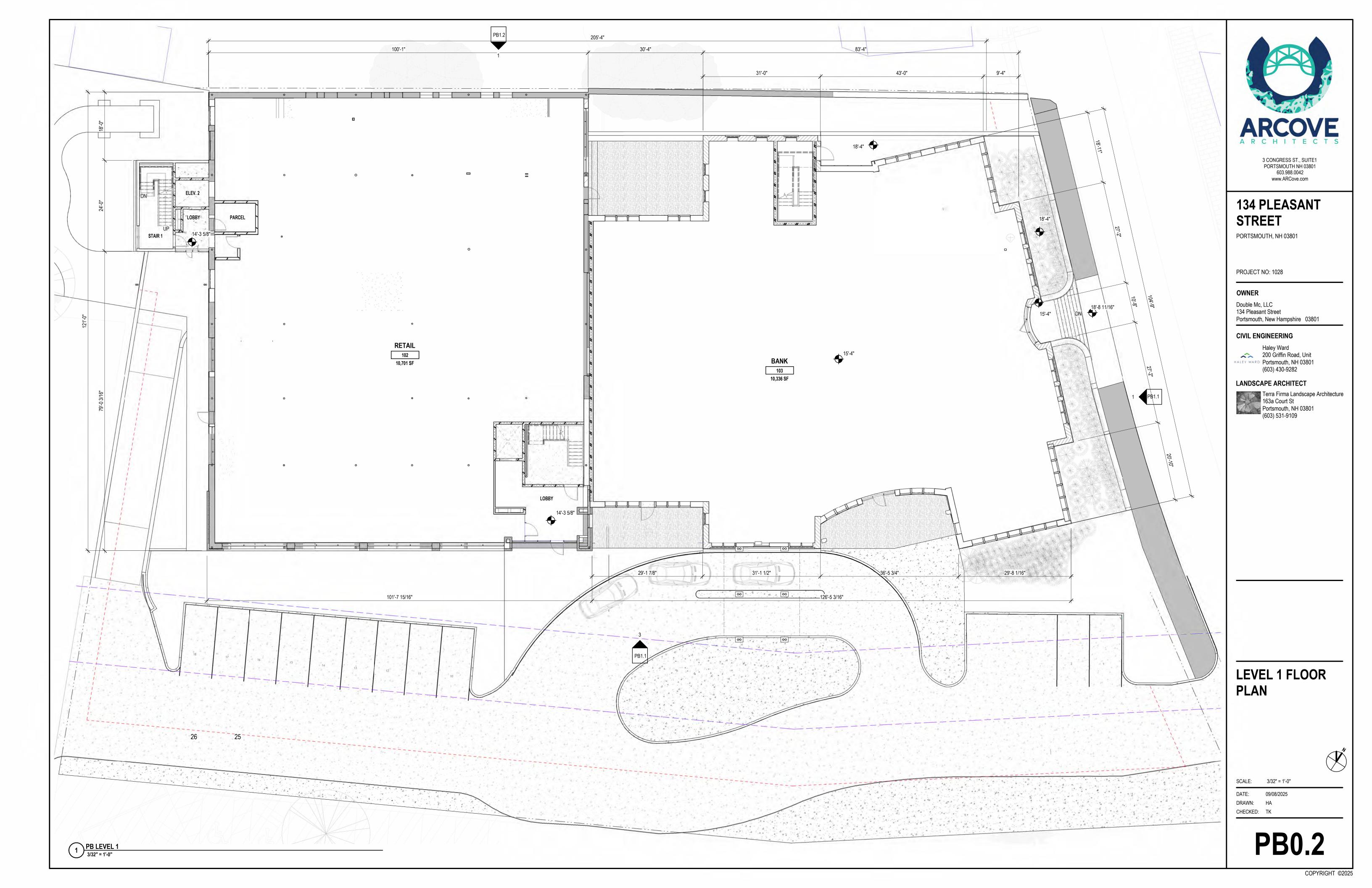
BASEMENT FLOOR PLAN

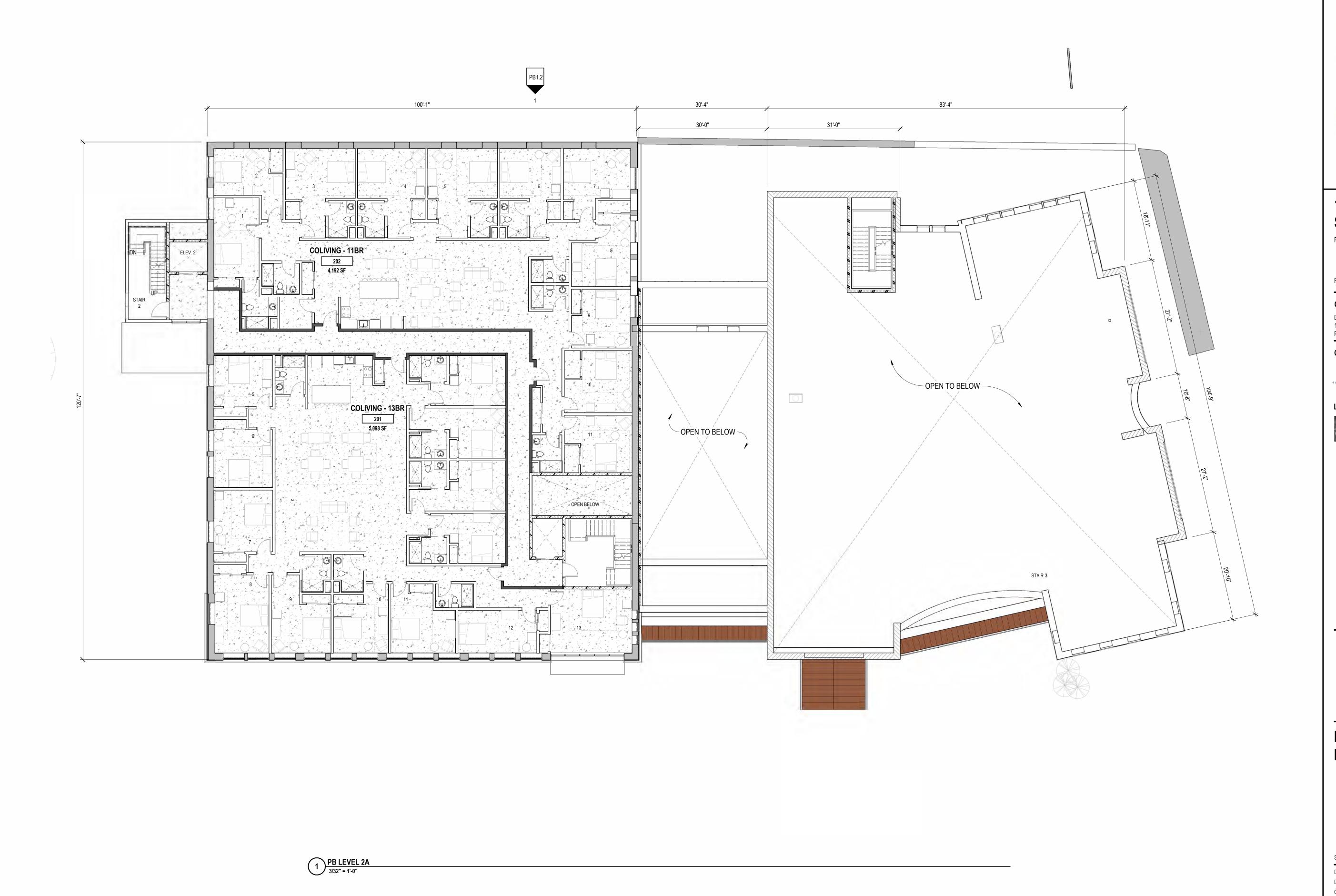
SCALE: 3/32" = 1'-0"

DATE: 09/17/202
DRAWN: Author
CHECKED: Checker

KED: Checker

PB0.1







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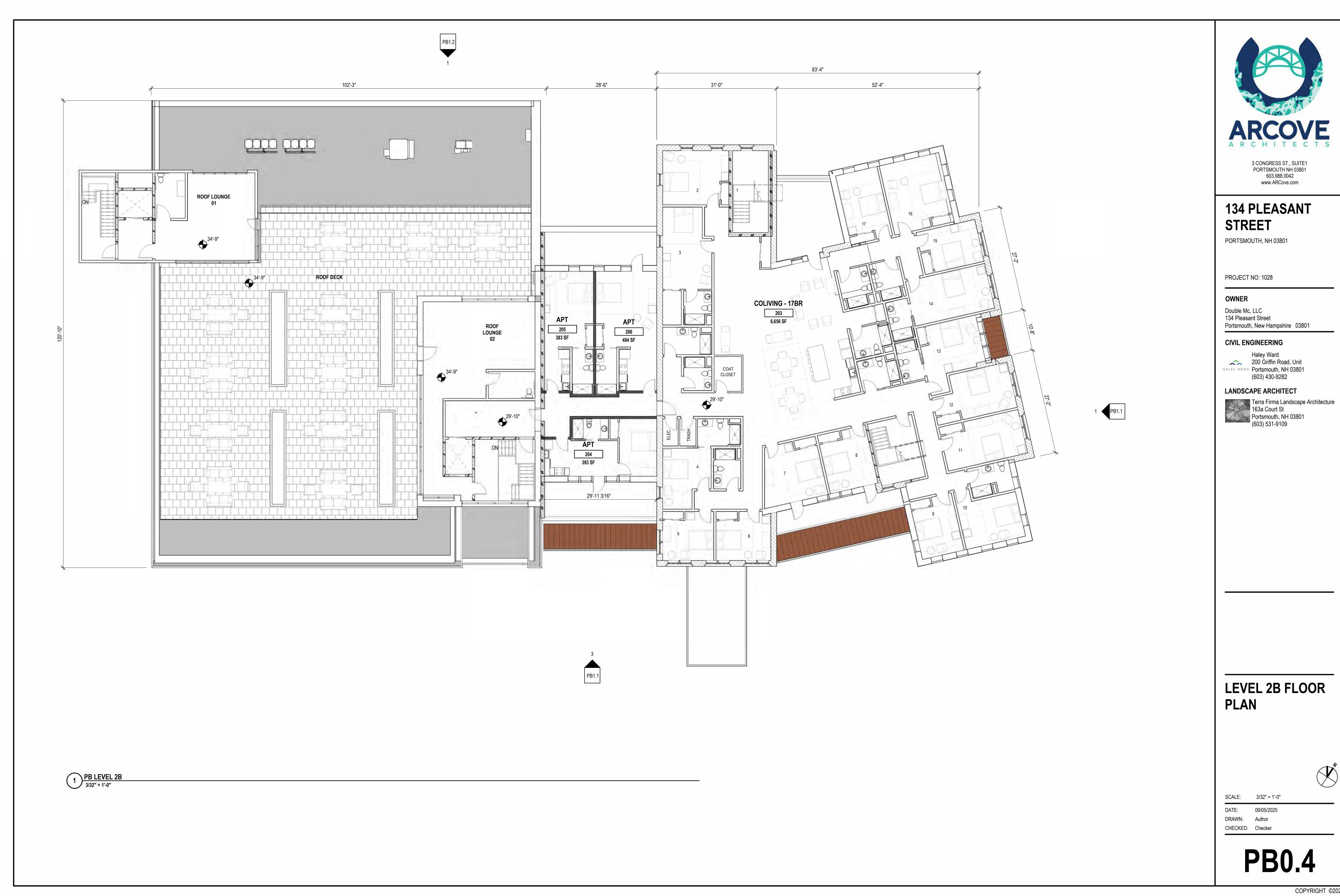
Terra Firma Landscape Architecture 163a Court St Portsmouth, NH 03801 (603) 531-9109

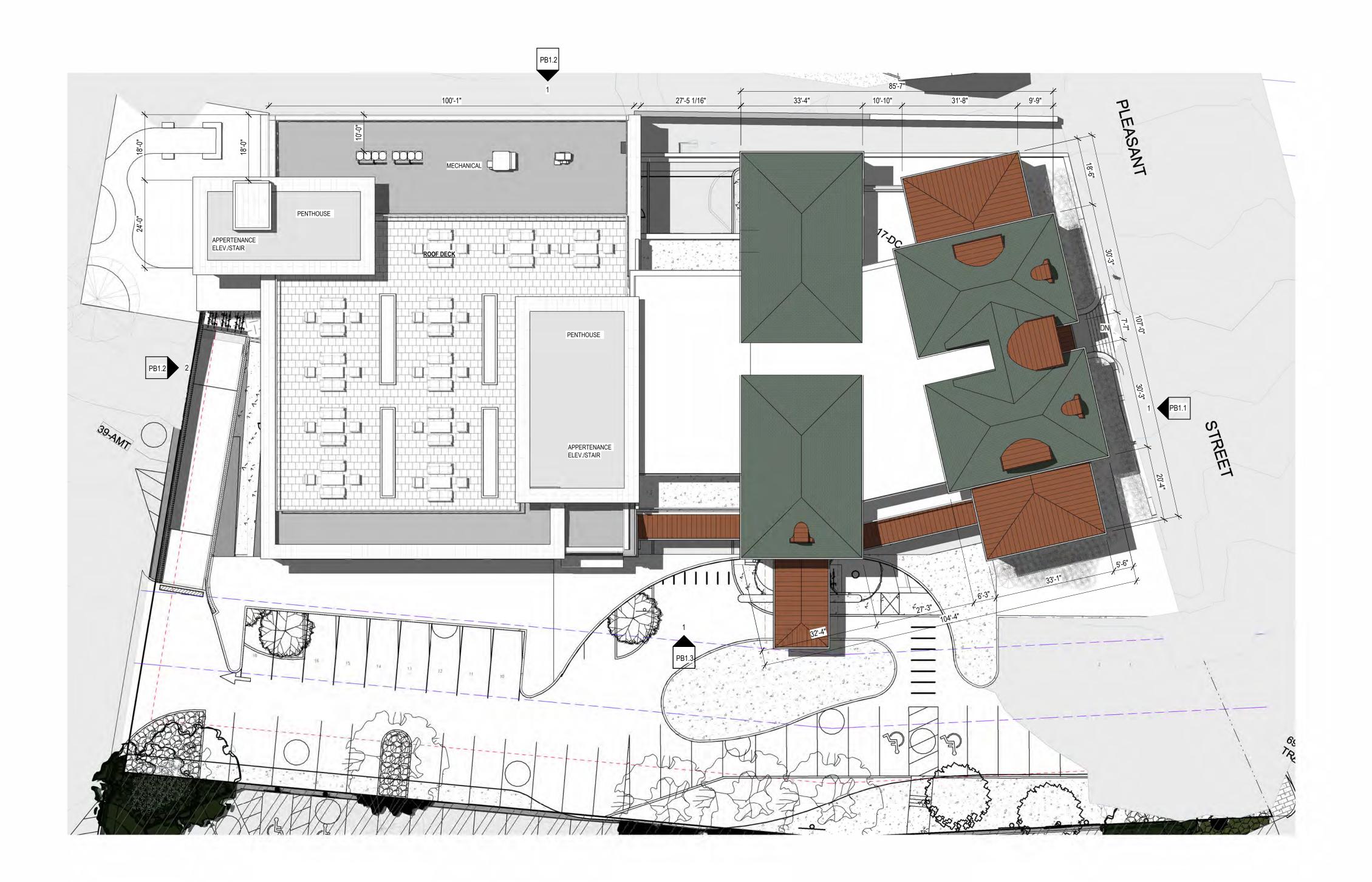
LEVEL 2A FLOOR PLAN

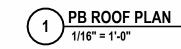
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CHECKED: TK

PB0.3









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LANDSCAPE ARCHITECT



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ROOF PLAN



SCALE: 1/16" = 1'-0"

CHECKED: Checker

PB0.5



1 PB EAST ELEVATION
3/32" = 1'-0"



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LANDSCAPE ARCHITECT



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SOUTH - EAST ELEVATIONS

SCALE: 3/32" = 1'-0"

DRAWN: Author CHECKED: Checker

PB1.1

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PB NORTH ELEVATION

3/32" = 1'-0"



2 PB WEST ELEVATION
3/32" = 1'-0"



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NORTH - WEST ELEVATIONS

SCALE: 3/32" = 1'-0"

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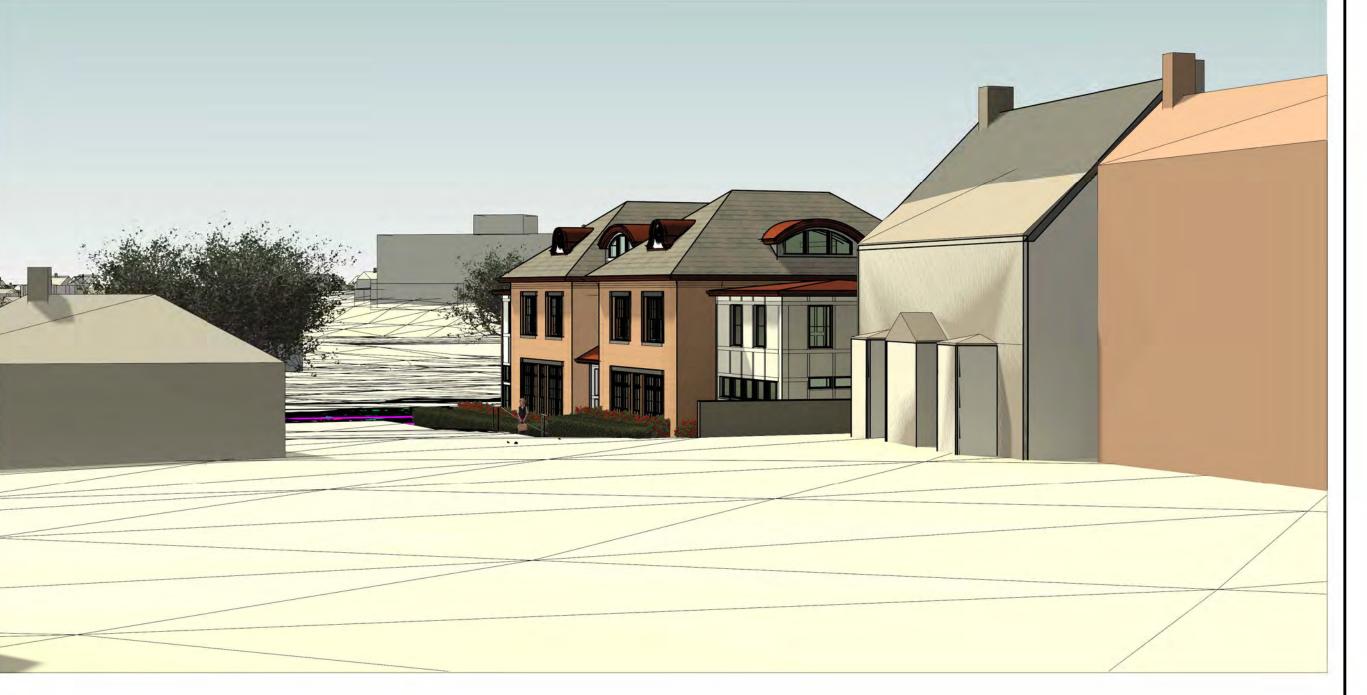


1 VIEW FROM LANGDON HOUSE PB



VIEW FROM JUNKINS AVENUE AT CITY HALL PB





VIEW FROM PLEASANT STREET AT TREADWELL HOUSE PB



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VIGNETTES

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2 3D View SE BOA



3 3D View SW BOA



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VIGNETTES



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