

FRANCIS X. BRUTON, III
CATHERINE A. BERUBE
JOSHUA P. LANZETTA

OF COUNSEL
JAMES H. SCHULTE

Bruton & Berube, PLLC

ATTORNEYS AT LAW

601 Central Avenue
Dover, NH 03820

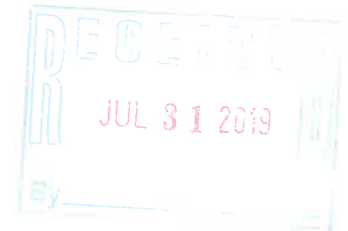
TEL (603) 749-4529
(603) 743-6300
FAX (603) 343-2986

www.brutonlaw.com

July 31, 2019

VIA HAND DELIVERY

Mary E. Koepenick, Administrative Clerk
City of Portsmouth Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801



RE: Application for Variances
Owner/Applicant: Dagny Taggart, LLC
Property: 3 Pleasant Street, Portsmouth, NH
Tax Map 107, Lot 31
Zoning District: CD5/DOD

Dear Ms. Koepenick:

Enclosed please find the following materials in support of the above-named Applicant's request for Variances:

1. Zoning Board of Adjustment Application (submitted online on July 31, 2019);
2. Authorization of the Property Owner;
3. Project Narrative and associated materials (12 copies);
4. Project Plans (12 copies); and
5. A check in the amount of \$3,000.00, which funds represent the associated filing fee.

By submitting this application today, we understand that this matter will be heard at the Board of Adjustment meeting of August 20, 2019.

Sincerely,

Francis X. Bruton, III, Esquire
E-mail: fx@brutonlaw.com

FXB/mas
Enclosures

cc: Dagny Taggart, LLC

STATEMENT OF AUTHORIZATION

The undersigned, Mark McNabb, Manager of Dagny Taggart, LLC, a New Hampshire limited liability company (the "Company"), owner of property located at 3 Pleasant Street, Portsmouth, NH, does hereby authorize Francis X. Bruton, III, Esquire, or any other attorney with the law firm of Bruton & Berube, PLLC, to prepare, sign and file any and all applications and supporting materials with the City of Portsmouth land use boards and departments, including, but not limited to, the Zoning Board of Adjustment, Historic District Commission and/or Planning Board, and further authorize Francis X. Bruton, III, and any other attorney associated with the firm of Bruton & Berube, PLLC, to represent the Company's interests before the said land use boards with regard to the property located at 3 Pleasant Street, Portsmouth, NH.

Dagny Taggart, LLC

Dated July 31, 2019

By: 
Mark McNabb, Manager



DAGNY TAGGART, LLC
APPLICATION FOR VARIANCES

I. INTRODUCTION

The property subject to this application is located at 3 Pleasant Street in Portsmouth, New Hampshire and is depicted on the Portsmouth City Tax Maps as Map 107, Lot 31 (the “Lot”). The Lot is currently utilized on a commercial basis, with Bank of America on the first floor, with office space on the additional floors. The building itself has been in the same location for over one-hundred years. The Lot is comprised of 0.2036 acres of land and is located in the Character District 5 (CD5) zoning district (See attached relevant portion of the City of Portsmouth Tax Map). The Lot is also located within the Downtown Overlay District (DOD) zoning district. The Lot has frontage along Pleasant Street.

The Lot itself is unique as the structure upon it is historic, with a significant building structure, including a portion of the building upon the rear lot line, which was permissible at the time of construction, but which would now require a five (5) foot setback.

II. THE APPLICANT

The Applicant, Dagny Taggart, LLC (“Dagny Taggart”), is a Portsmouth-based development company that is the current owner of the parcel. The principal of Dagny Taggart is Mark A. McNabb, a well-respected developer with Portsmouth, known for employing context sensitive designs within projects that foster a continued economic vitality of the City’s downtown.

III. THE PROJECT

Dagny Taggart intends to renovate the existing building and add an additional story, demolish a portion of the rear of the building and construct an area along the rear of the building with access components to facilitate handicap access and an elevator. Currently, the building has an elevator approximately 50 years old that is not handicap accessible and inadequate in size for a modern office building requiring replacement. Replacement will be required in order that the project can satisfy the Americans with Disabilities Act (the “Act”), which requires the upper floors to be handicap accessible. Without adding a handicap accessible elevator, the building would fail to meet the requirements under the Act. Given the configuration of the building, the addition on the rear of the building will need to be constructed along the rear lot line, encroaching on the 5-foot set back required pursuant to Section 10.5A41 & Figure 10.5A41.10D.

The project is to be integrated by design with the redevelopment of another current project also owed by Dagny Taggart, located at 53 Daniel Street, as well as with the use of land under common control located at 30 Penhallow Street. This integration includes reshaping the existing open spaces, and creating new ones, through the use of reciprocal easements, defining community spaces and pathways that will increase connectivity with other parcels in the area by inviting and encouraging the community to pass through the properties as they never could before, whether to access the project itself, the waterfront or other properties, including the redeveloped McIntyre Building from Market Square.



The Applicant is currently working with the City to provide for widened sidewalk plazas, which will promote more outdoor dining, and provide artist and musician spaces. Significant landscaping will be added to the Lot, and within the community spaces that are proposed. The Applicant has discussed the project as well with the Historical District Commission on two occasions, and has received positive feedback as a result of that process.

IV. REQUEST OF THE APPLICANT FOR DIMENSIONAL VARIANCES

For the purpose of providing a safe means of handicap access and in order to satisfy building code requirements, the project will require a dimensional variance from the Portsmouth Zoning Ordinance.

Variance #1. In order to create a safe and handicap accessible access to the building, the building footprint will be up to the rear lot line, where five (5) is required pursuant to Section 10.5A41 & Figure 10.5A41.10D.

V. VARIANCE CRITERIA

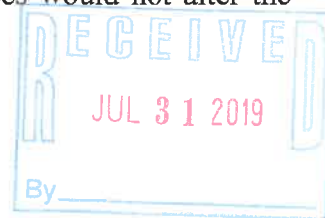
New Hampshire RSA 674:33, I (a)(2) and Section 10.233 of the Portsmouth Zoning Ordinance set forth five criteria upon which variances may be granted. The application of these criteria to the Applicant's proposal is discussed hereafter.

A. **Granting the variance 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. Moreover, “mere conflict with the terms of the ordinance is insufficient.” *Id.* 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 Ordinance is intended to implement the goals and objectives of the Master Plan.

In this instance a portion of the existing building is located already along the rear yard property line. The addition proposed relates to adding new stairs and a handicap accessible elevator in order to satisfy the Americans with Disabilities Act. As the structure of the existing building is over 100 years old, the internal integrity of the structure must remain intact, the only means of addressing the modernized access for the building is to add the proposed addition and components for construction. Given the existing location of a portion of the building that is located on the rear lot line, it is respectfully submitted that granting the variances would not alter the



essential character of the locality or threaten public health, safety or welfare of the immediate neighborhood.

B. The spirit of the ordinance is observed.

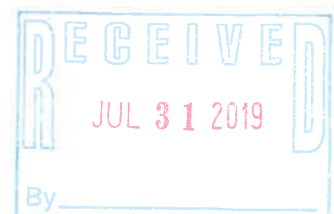
When considering whether the granting of the variances will observe the spirit of the ordinance, the New Hampshire Supreme Court has indicated this review is substantially related, and similar to the review regarding public interest. See *Harborside Associates, L.P. v. Parade Resident Hotel, LLC*, 162 NH 508, 514 (2011). Thus, the Applicant submits that the rationale set forth above is equally applicable to the Board's review as to whether the spirit of the ordinance is observed with the grant of the variance. Certainly, providing for handicap access components to the building will foster the intent of the ordinance, and Federal law, as such will benefit the health, welfare and safety of those members of the public utilizing the building.

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 variances would result in substantial justice as that would allow the addition of handicap access and an elevator to a historic building. The location of the addition is close to the existing location of the rear of the building, and, as such would be consistent with the area's present use. There is no negative aspect that the public will suffer. Conversely, the public will be permitted to use the more accessible public space. 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 of the requested relief would result in 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 the existence of the existing buildings and uses located upon the applicant's property. In this instance, it is believed, and therefore averred, that the aesthetic upgrades of the property and considering the existing uses of the property, with a portion of the existing building already located on the rear property line, will not result in a diminution of surrounding property values.



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

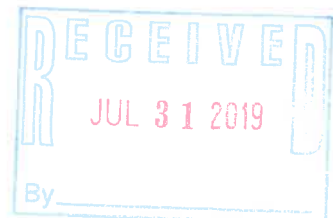
An unnecessary hardship exists when, owing to special conditions of the property that distinguish it from other property, no fair and substantial relationship exists between the public purposes of the ordinance provisions and the specific application of those provisions to the property and the proposed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

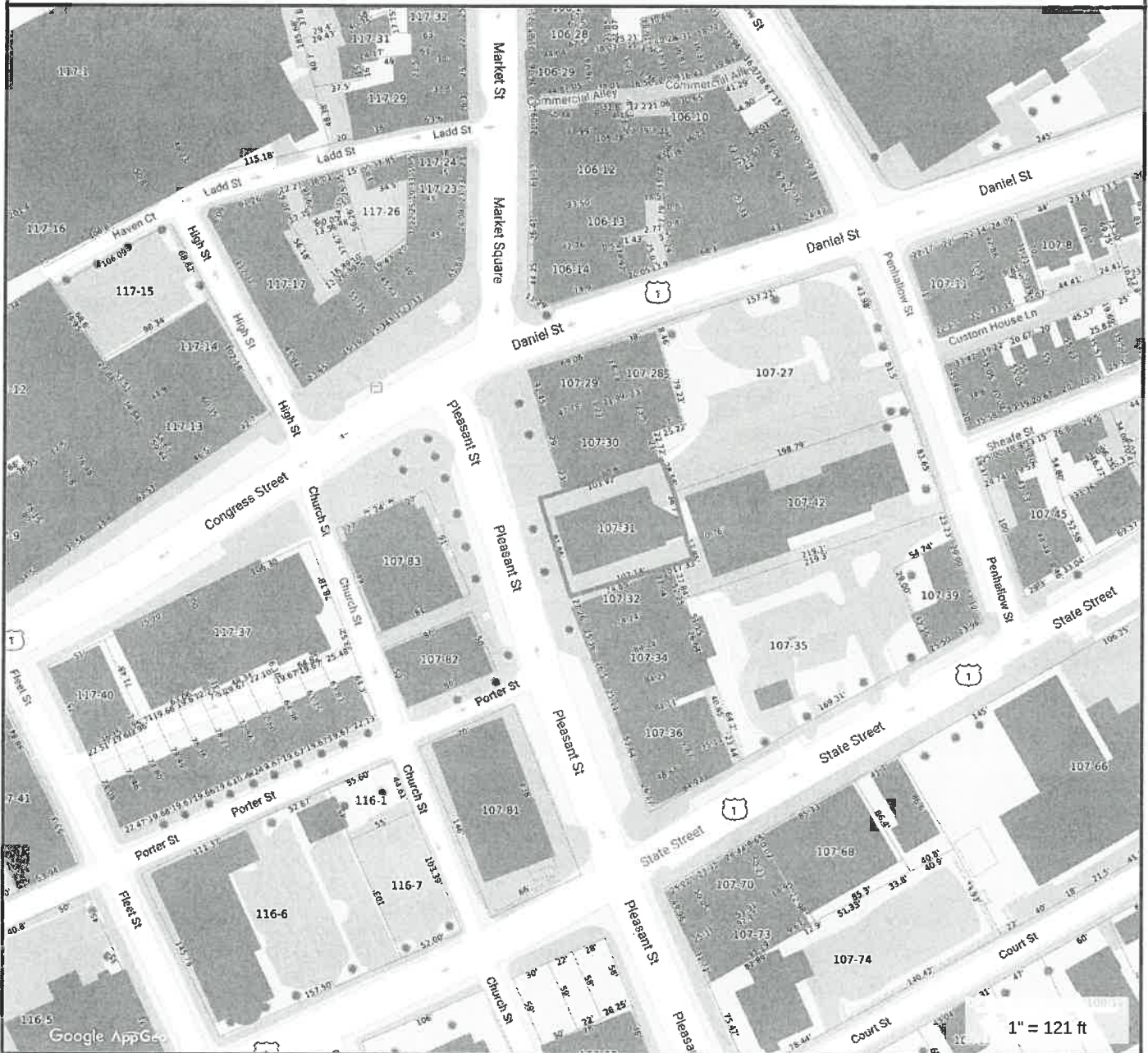
The property is distinguished from other properties in the area given the location of the existing building and its encroachment onto the rear property line. The building, as well, is unique and historic, being over one-hundred years old. In this instance, the interior portion of the building cannot be modified structurally in order to locate an elevator in any other location than where the addition is proposed. The addition of stairs and an elevator within the proposed addition will not pose a conflict with the public purpose of the ordinance as such additions will create a safer and more convenient means of egress and ingress to the building not only for the general public but for those that will need the handicap facilities to be provided. As the building has no elevator due to its historic nature, and the area where an elevator can be constructed already encroaches upon the rear lot line, it would be unnecessary to deny the variance, as the variance will allow such improvements.

The addition of an elevator and handicap accessible components as proposed will be consistent with the spirit and intent of the ordinance and the CD5 Zone, which promotes the high density uses contained within the zone.

VI. CONCLUSION.

For all of the reasons set forth above Dagny Taggart, LLC respectfully requests that the relief request herein be granted.





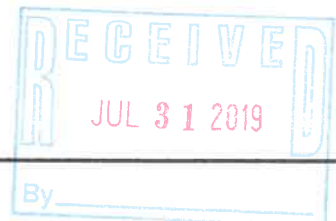
Property Information
 Property ID 0107-0031-0000
 Location 3 PLEASANT ST
 Owner DAGNY TAGGART LLC



**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.

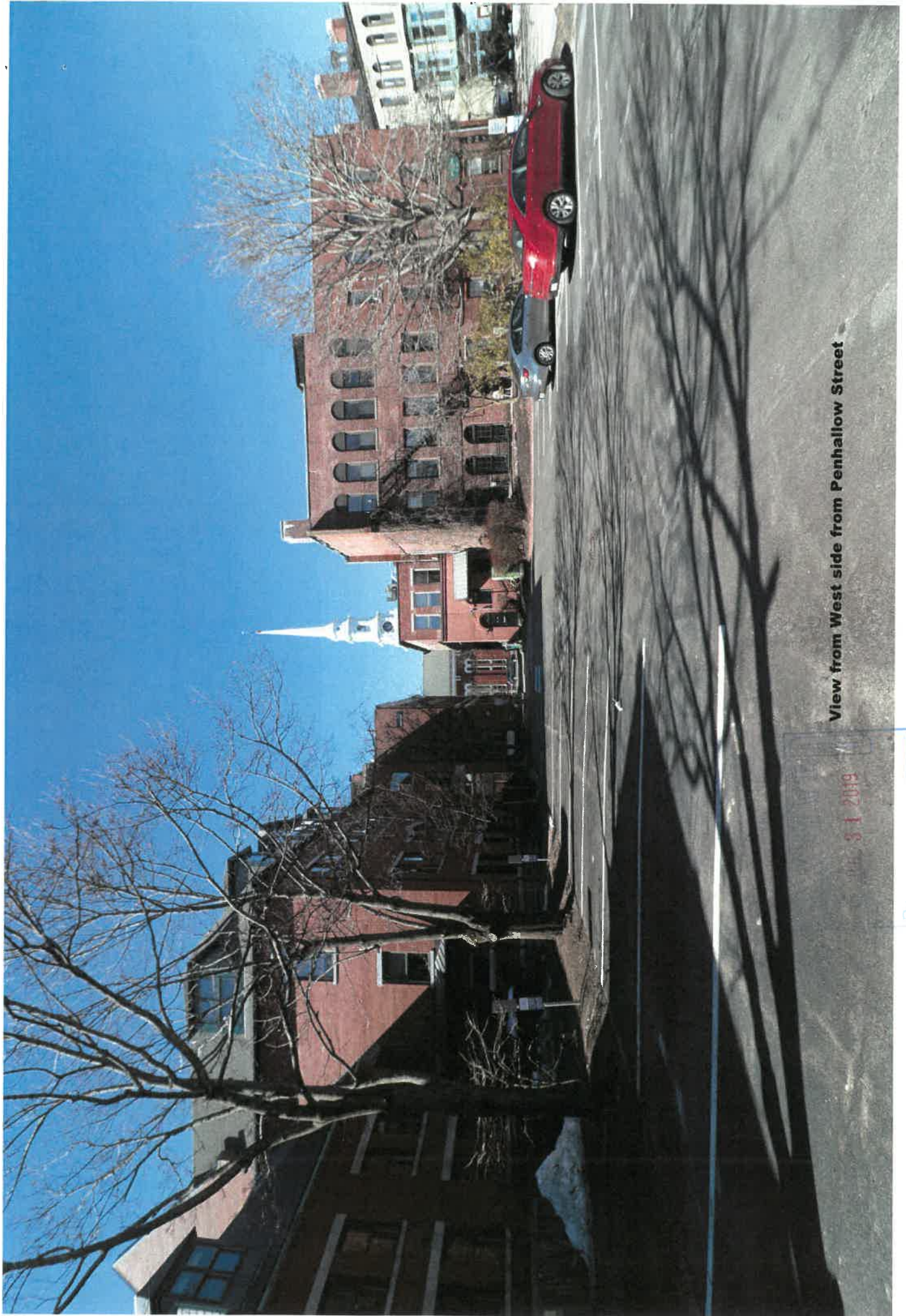
Geometry updated 4/1/2019
 Data updated 7/17/2019





View from Market Square & Pleasant Street

RECEIVED
JUL 31 2019
By _____



View from West side from Penhallow Street

31 2019

By

RECEIVED
JUL 31 2019
By _____

West view towards Pleasant Street

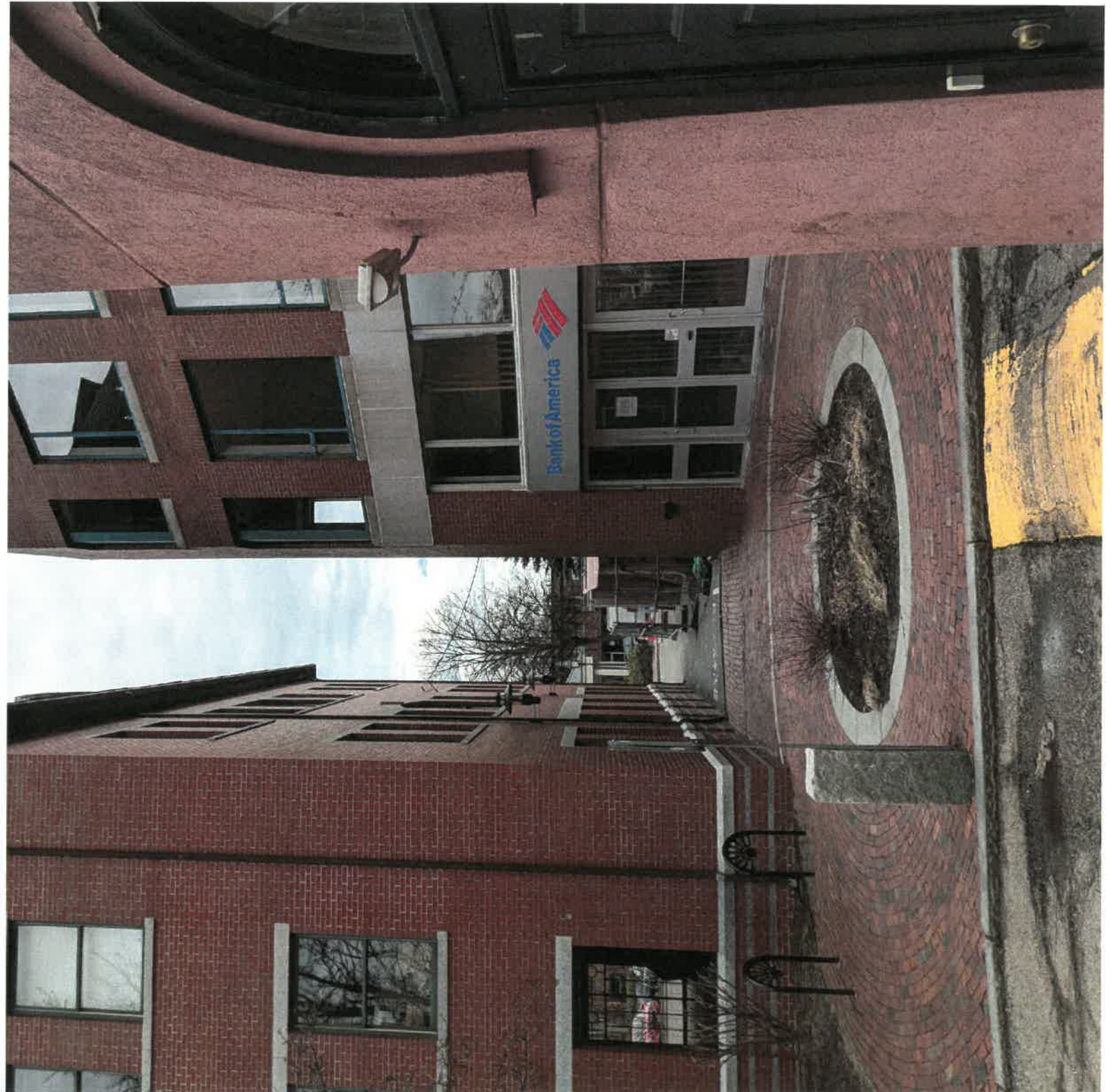




View from parking lot from adjacent parcel

RECEIVED
JUL 31 2019
By _____

RECEIVED
JUL 31 2019
By _____



NOTES:

- 1) THE CONTRACTOR SHALL NOTIFY THE CITY OF PORTSMOUTH AT LEAST 72 HOURS PRIOR TO COMMENCING ANY EXCAVATION OR PUBLIC OR PRIVATE PROPERTY.
- 2) UNDERGROUND UTILITY LOCATIONS ARE BASED UPON RECORD DRAWINGS AND FIELD SURVEY. THE CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO EXCAVATION. UNDERGROUND UTILITIES SHALL BE PROTECTED AND MAINTAINED AT ALL TIMES. ANY DAMAGE TO UTILITIES SHALL BE REPAIRED AT THE CONTRACTOR'S EXPENSE.
- 3) CONTRACTOR SHALL INSTALL AND MAINTAIN EROSION CONTROL MEASURES IN ACCORDANCE WITH THE "NEW HAMPSHIRE EROSION CONTROL MANUAL, VOLUME 3, EROSION CONTROL MEASURES DURING CONSTRUCTION," (JULY DECEMBER 2009).



**BRICK MARKET
 3 PLEASANT STREET
 PORTSMOUTH, N.H.**

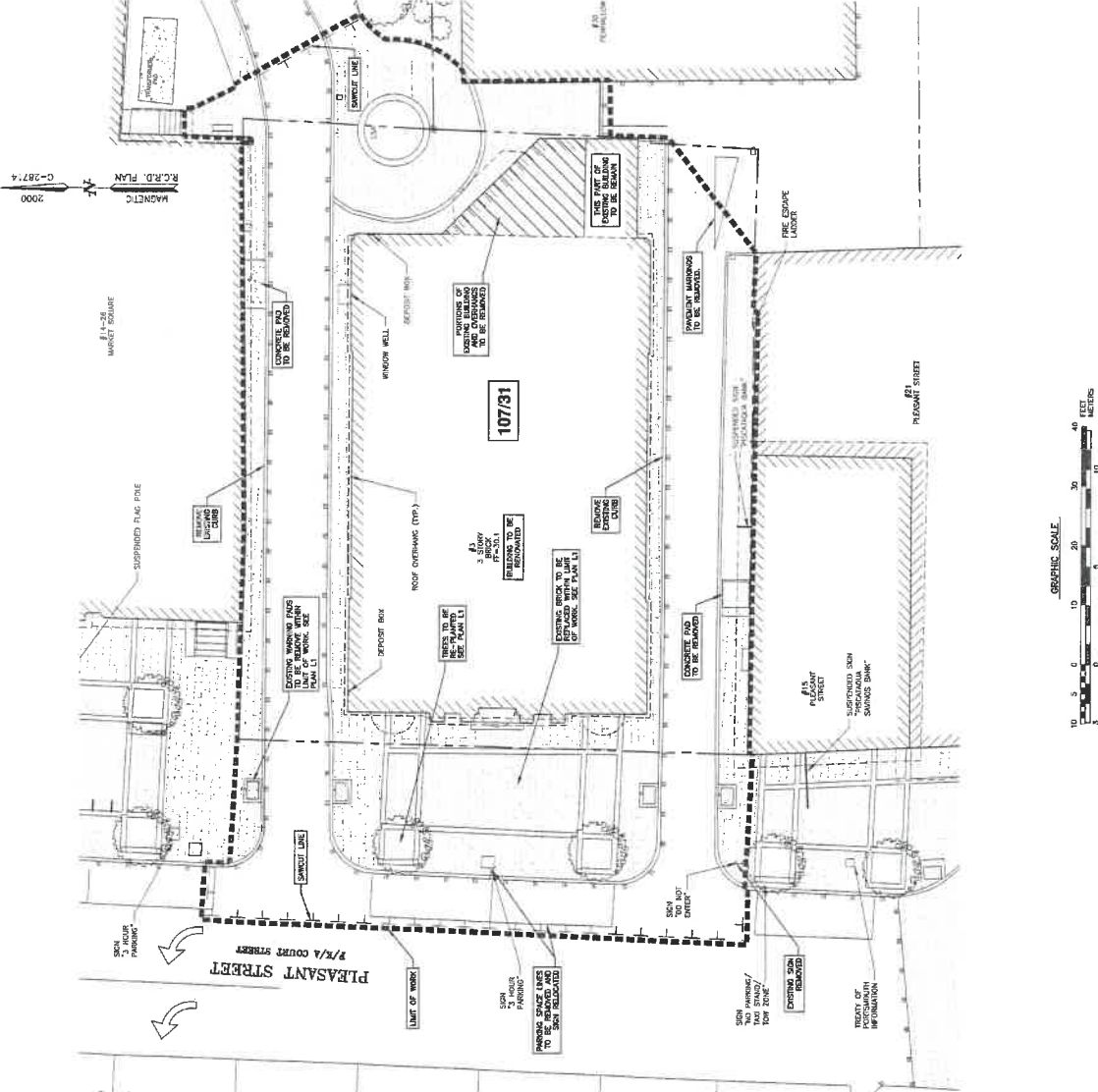
NO.	DESCRIPTION	DATE
2	ISSUED FOR TAC	7/15/19
1	ISSUED FOR REVIEW	6/4/19
0	ISSUED FOR COMMENT	5/7/19
0		



SCALE: 1"=10'

DEMOLITION PLAN

C2



DEMOLITION NOTES

- A) THE LOCATION OF UNDERGROUND UTILITIES ARE APPROXIMATE AND THE LOCATIONS ARE NOT GUARANTEED BY THE OWNER OR THE DESIGNER. IT IS THE CONTRACTOR'S RESPONSIBILITY TO VERIFY THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO EXCAVATION. UNDERGROUND UTILITIES SHALL BE PROTECTED AND MAINTAINED AT ALL TIMES. ANY DAMAGE TO UTILITIES SHALL BE REPAIRED AT THE CONTRACTOR'S EXPENSE.
- B) ALL MATERIALS SCHEDULED TO BE REMOVED SHALL BECOME THE PROPERTY OF THE CONTRACTOR. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE TRANSPORT, DISPOSAL, AND RECYCLING OF ALL MATERIALS TO BE REMOVED. THE CONTRACTOR SHALL OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM THE FEDERAL, STATE, AND LOCAL REGULATORY AGENCIES AND AGENCIES THAT HAVE JURISDICTION OVER THE PROJECT.
- C) ANY EXISTING WORK OR PROPERTY DAMAGED OR DISRUPTED BY CONSTRUCTION/DEMOLITION ACTIVITIES SHALL BE REPAIRED OR REPLACED AT THE CONTRACTOR'S EXPENSE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL UTILITIES AND STRUCTURES DURING CONSTRUCTION/DEMOLITION ACTIVITIES.
- D) THE CONTRACTOR SHALL VERIFY THE LOCATION OF ALL EXISTING UTILITIES AND STRUCTURES PRIOR TO EXCAVATION. UNDERGROUND UTILITIES SHALL BE PROTECTED AND MAINTAINED AT ALL TIMES. ANY DAMAGE TO UTILITIES SHALL BE REPAIRED AT THE CONTRACTOR'S EXPENSE.
- E) THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL UTILITIES AND STRUCTURES DURING CONSTRUCTION/DEMOLITION ACTIVITIES.
- F) IT IS THE CONTRACTOR'S RESPONSIBILITY TO MAINTAIN THE SCHEDULED WITH THE CONDITIONS OF ALL THE PERMIT APPROVALS.
- G) THE CONTRACTOR SHALL OBTAIN AND PAY FOR ALL NECESSARY PERMITS AND APPROVALS FROM THE FEDERAL, STATE, AND LOCAL REGULATORY AGENCIES AND AGENCIES THAT HAVE JURISDICTION OVER THE PROJECT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL UTILITIES AND STRUCTURES DURING CONSTRUCTION/DEMOLITION ACTIVITIES.
- H) THE CONTRACTOR SHALL REMOVE AND DISPOSE OF ALL EXISTING CONTAMINATED SOIL WITHIN THE WORK LIMITS SHOWN UNLESS SPECIFICALLY NOTED OTHERWISE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL UTILITIES AND STRUCTURES DURING CONSTRUCTION/DEMOLITION ACTIVITIES.
- I) ALL WORK WITHIN THE CITY OF PORTSMOUTH RIGHT OF WAY SHALL BE COORDINATED WITH THE CITY OF PORTSMOUTH DEPARTMENT OF PUBLIC WORKS AND CONSTRUCTION OPERATIONS SHOULD ANY ADMINISTRATION STRUCTURE TO BE PLACED WITHIN.
- J) PROVIDE NELEF PROFESSION ENGINEERS AT ALL STAGES WITHIN CONSTRUCTION LIMITS AND MAINTAIN FOR THE DURATION OF THE PROJECT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL UTILITIES AND STRUCTURES DURING CONSTRUCTION/DEMOLITION ACTIVITIES.
- K) THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL UTILITIES AND STRUCTURES DURING CONSTRUCTION/DEMOLITION ACTIVITIES.
- L) THE CONTRACTOR SHALL PAY ALL COSTS NECESSARY FOR TEMPORARY EROSION CONTROL MEASURES AND MAINTENANCE OF A CLEAN AND SAFE CONSTRUCTION SITE.
- M) THE CONTRACTOR SHALL MAINTAIN A HEALTH AND SAFETY PLAN IN PLACE, AND SHALL MAINTAIN ALL APPLICABLE PERMITS, APPROVALS, ALIENATIONS, AND REGULATIONS.

APPROVED BY THE PORTSMOUTH PLANNING BOARD

DATE _____

CHUBMAN _____

3 PLEASANT STREET AT BRICK MARKET

VARIANCE APPLICATION
AUGUST 2019



DRAWING LIST

- P1.1 Cover
- P1.2 Locus Map & Objectives
- P1.3 Site Plans
- P1.4 Floor Plans
- P1.5 Exterior Elevations - West
- P1.6 Exterior Elevations - East
- P1.7 Exterior Elevations - North
- P1.8 Exterior Elevations - South
- P2.0 First Floor Plans
- P2.1 West Elevations



P1.1 COVER
BRICK MARKET
SCALE:
VARIANCE APPLICATION

AUGUST 2019 COPYRIGHT ©2019



Pleasant Street Lot

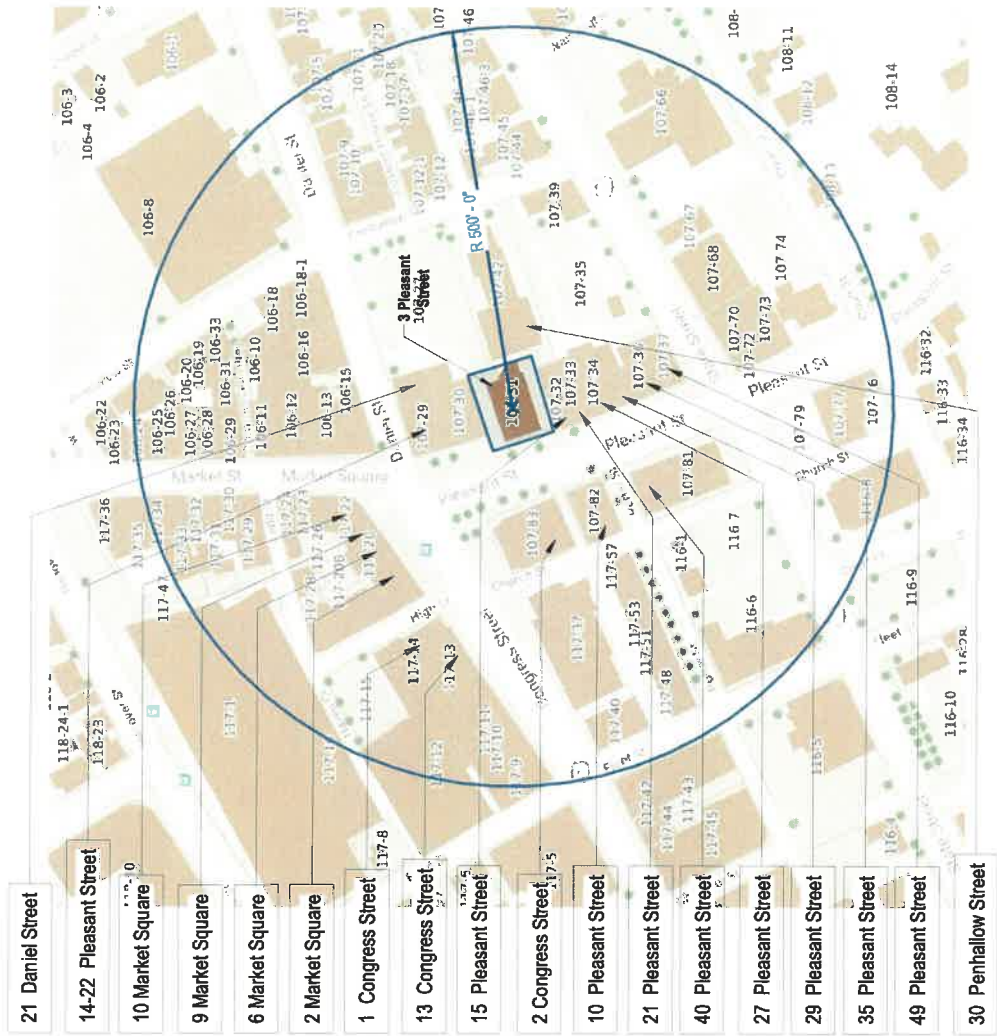


Project Area - Aerial Perspective Image



OBJECTIVES

- Enliven and enhance pedestrian vibrancy.
- Widened sidewalk plazas, outdoor dining, artist and musician spaces.
- Street level restaurant, with office space above.
- Public courtyard pocket plaza, gardens and landscaped accessways.
- Public art at street level outdoor spaces.

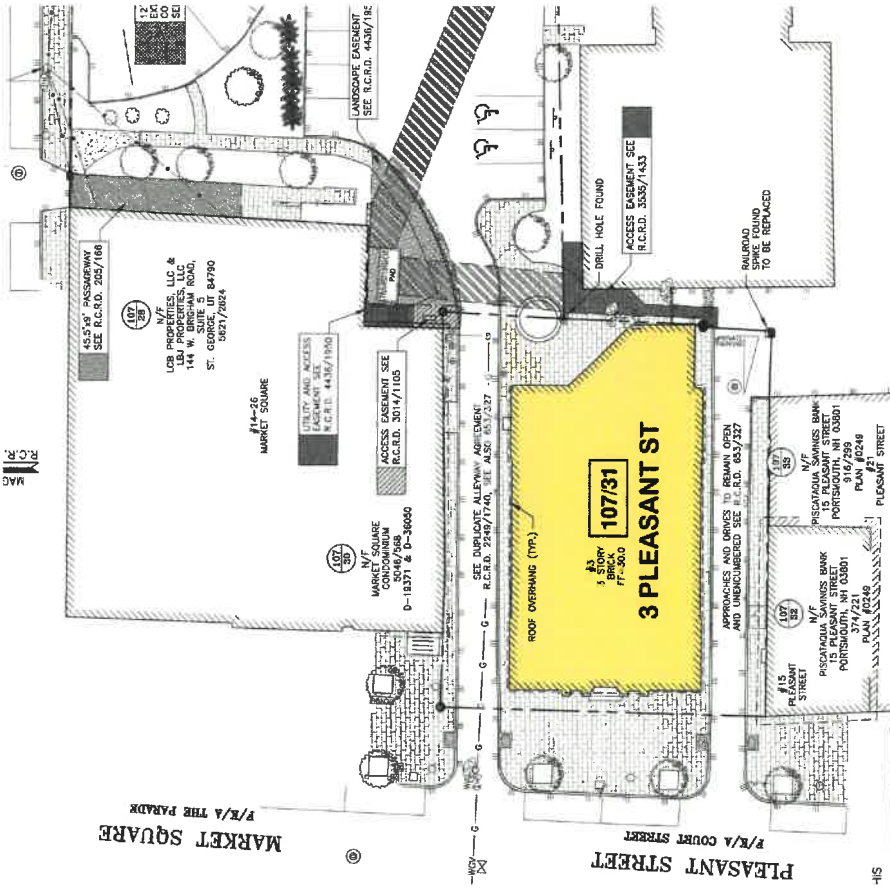


P1.2 **LOCUS MAP & OBJECTIVES**
BRICK MARKET

SCALE: As Indicated
VARIANCE APPLICATION

AUGUST 2019 COPYRIGHT © 2019

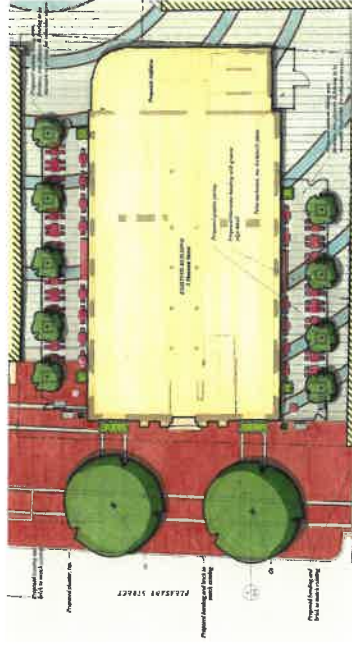




EXISTING



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



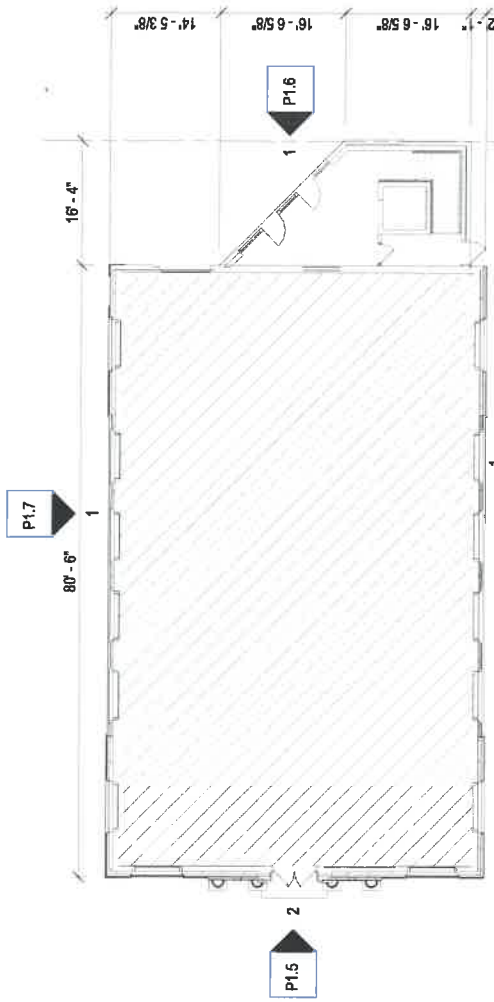
PROPOSED

P1.3 **SITE PLANS**
3 PLEASANT STREET at BRICK MARKET

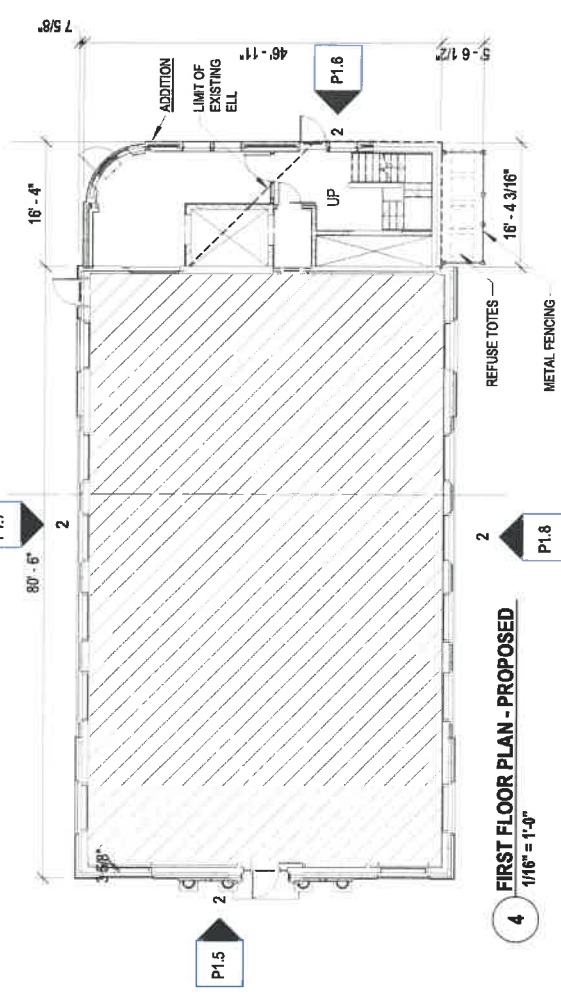
SCALE: 1/32" = 1'
VARIANCE APPLICATION

AUGUST 2019 COPYRIGHT © 2019

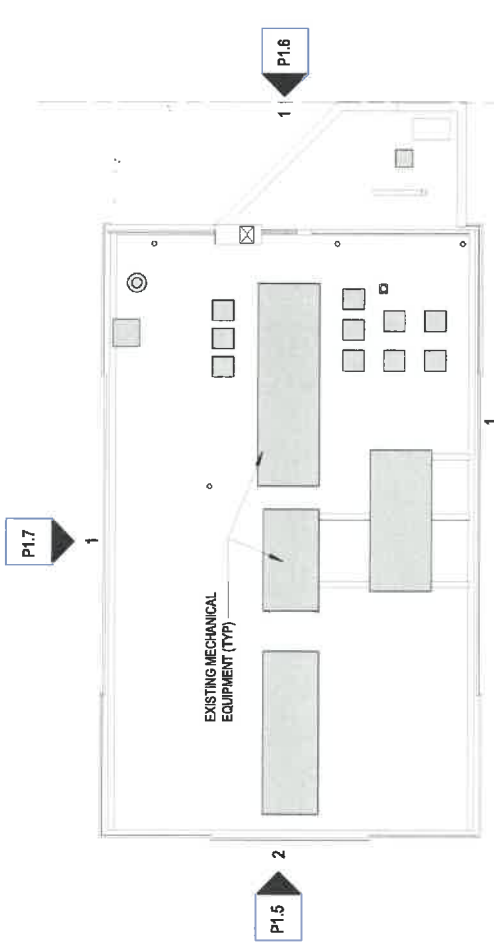




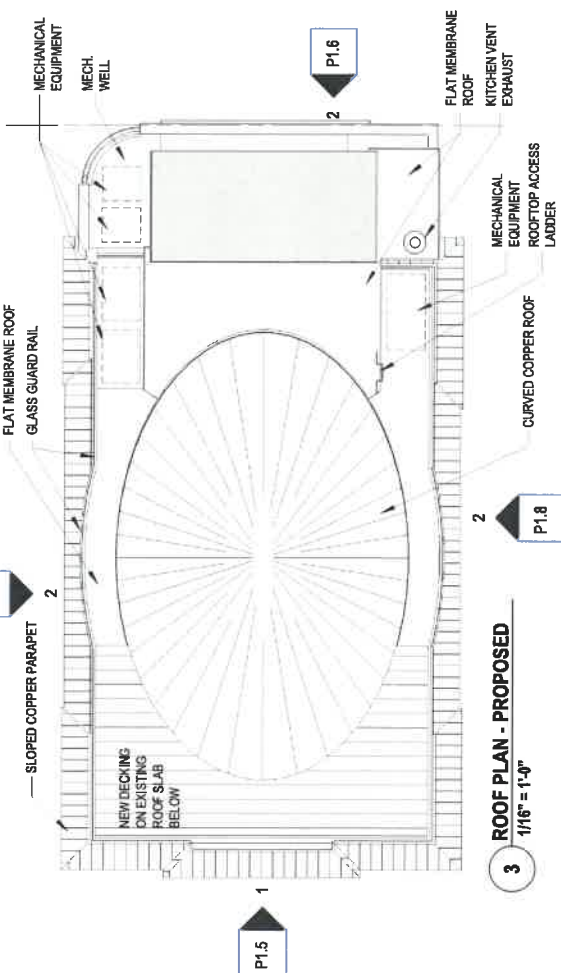
2 FIRST FLOOR PLAN - EXISTING
1/16" = 1'-0"



4 FIRST FLOOR PLAN - PROPOSED
1/16" = 1'-0"



1 ROOF PLAN - EXISTING
1/16" = 1'-0"



3 ROOF PLAN - PROPOSED
1/16" = 1'-0"

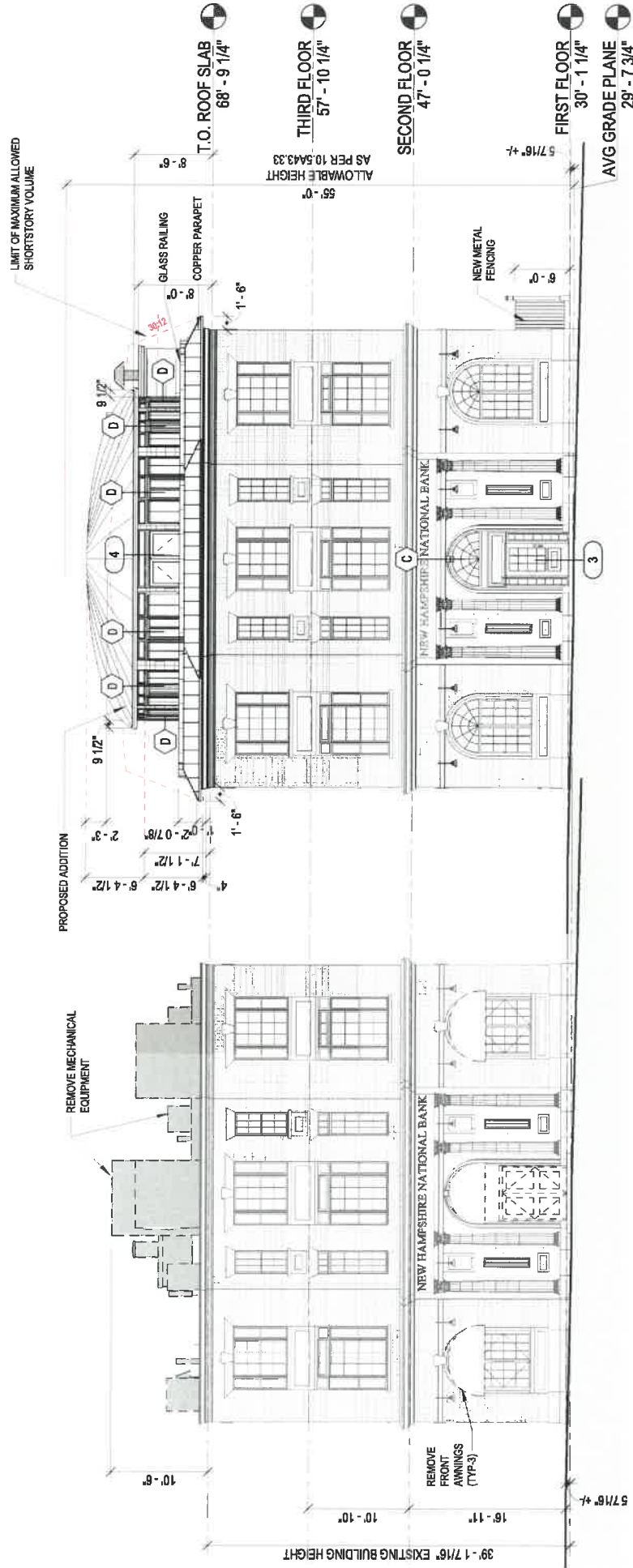
JSA
ARCHITECTS
PLANNERS

P1.4 FLOOR PLANS
3 PLEASANT STREET at BRICK MARKET
SCALE: 1/16" = 1'-0"
VARIANCE APPLICATION

AUGUST 2019 COPYRIGHT © 2019

TABLE

JUL 31 2019



1 FRONT (WEST) ELEVATION - PROPOSED
312" = 1'-0"

2 FRONT (WEST) ELEVATION - EXISTING/DEMOLITION
312" = 1'-0"

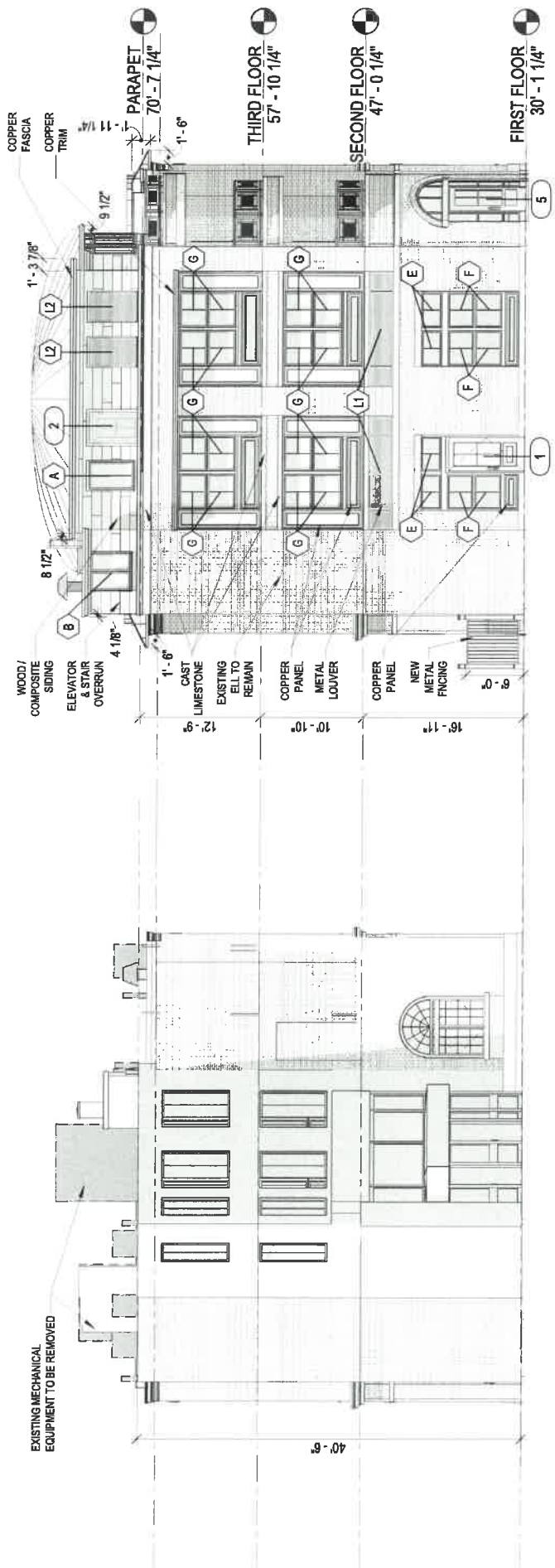
P1.5 EXTERIOR ELEVATIONS - WEST
3 PLEASANT STREET at BRICK MARKET

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

AUGUST 2019 COPYRIGHT © 2019

JSA
ARCHITECTS
INTERIORS
PLANNERS





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

2 EAST ELEVATION - PROPOSED
3/32" = 1'-0"



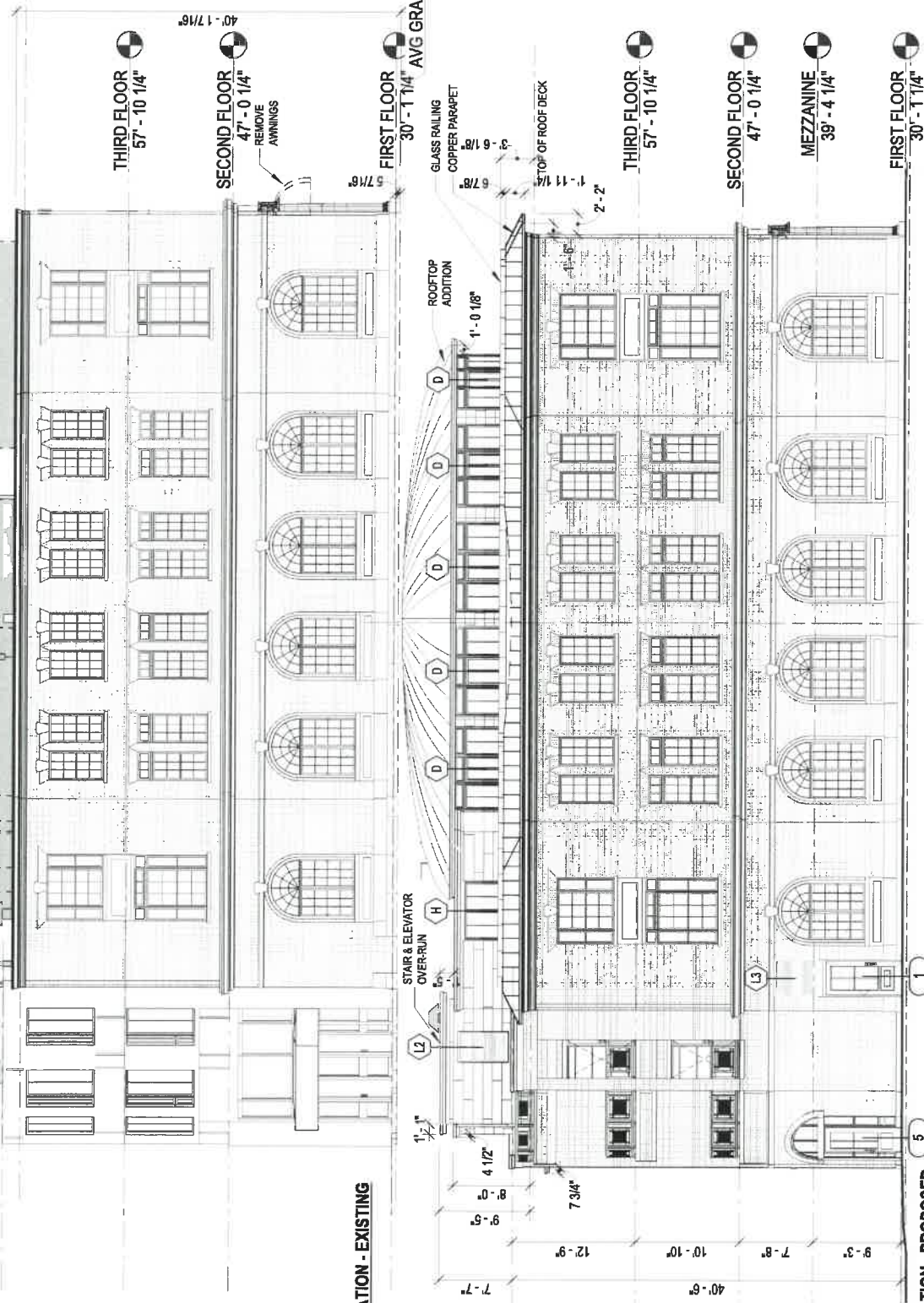
P1.6 EXTERIOR ELEVATIONS - EAST
3 PLEASANT STREET at BRICK MARKET

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

AUGUST 2019 COPYRIGHT © 2019



EXISTING MECHANICAL EQUIPMENT
TO BE REMOVED



1 NORTH ELEVATION - EXISTING
392' - 1/4"

2 NORTH ELEVATION - PROPOSED
392' - 1/4"

THIRD FLOOR
57' - 10 1/4"

SECOND FLOOR
47' - 0 1/4"

FIRST FLOOR
30' - 1 1/4"

AVG GRADE PLANE
29' - 7 3/4"

THIRD FLOOR
57' - 10 1/4"

SECOND FLOOR
47' - 0 1/4"

MEZZANINE
39' - 4 1/4"

FIRST FLOOR
30' - 1 1/4"

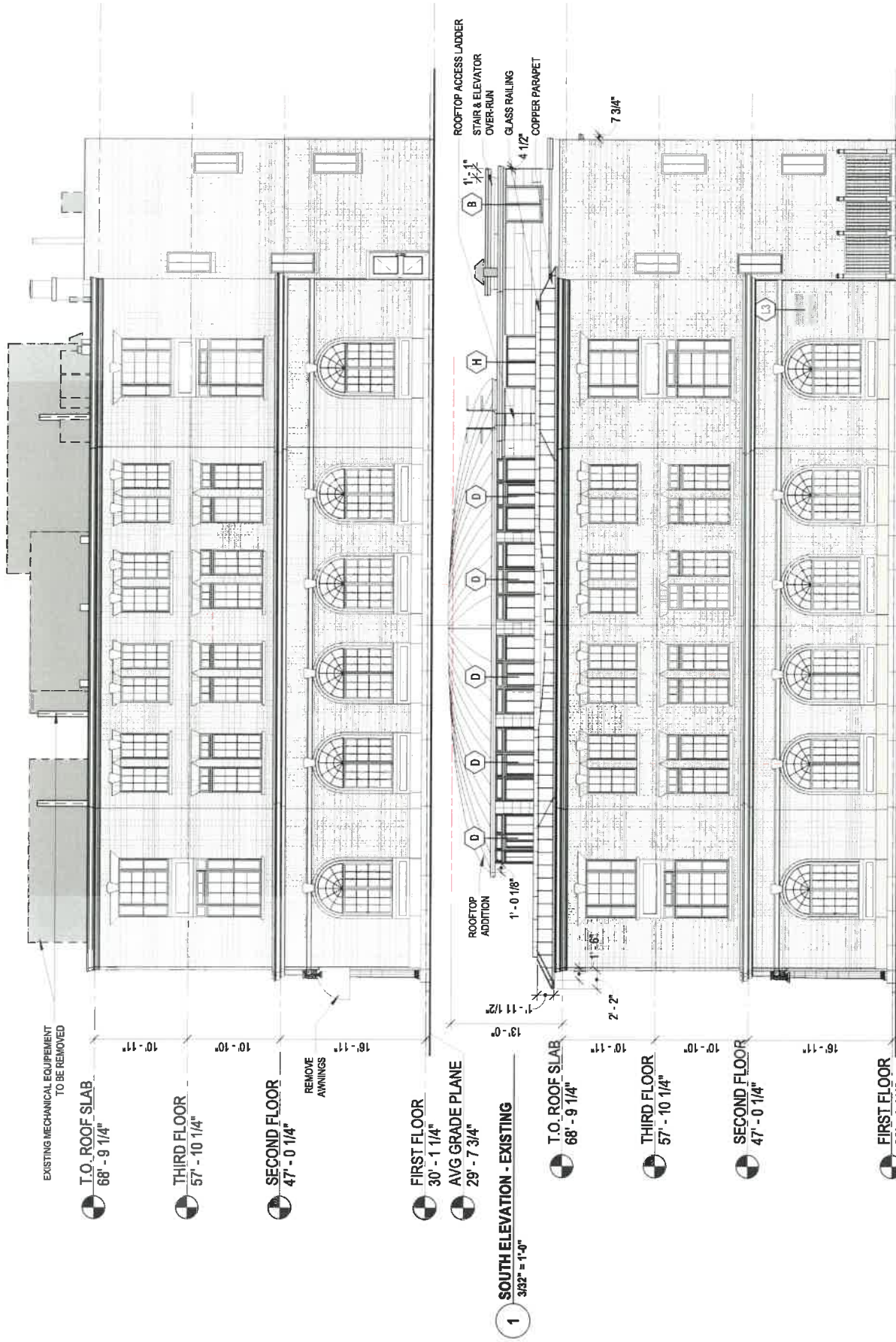
P1.7 EXTERIOR ELEVATIONS - NORTH
3 PLEASANT STREET at BRICK MARKET

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

AUGUST 2019 COPYRIGHT © 2019

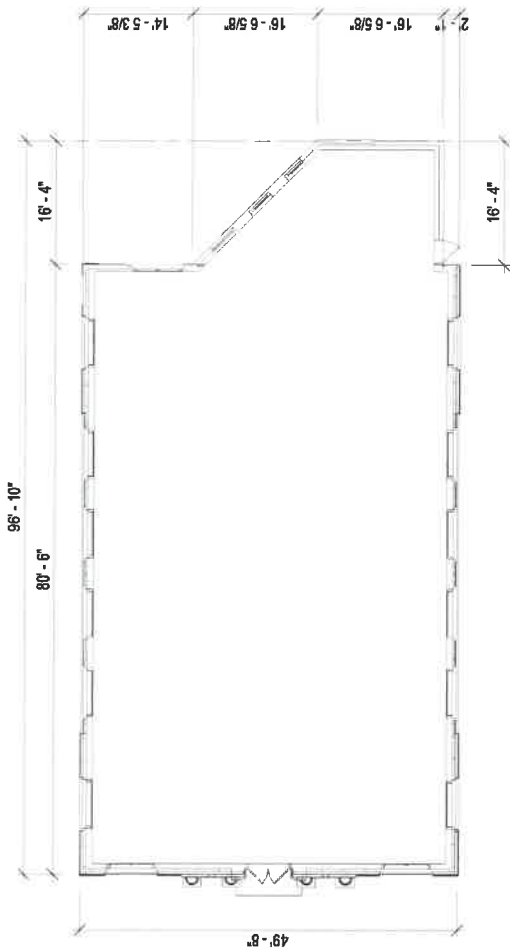


JUL 31 2019

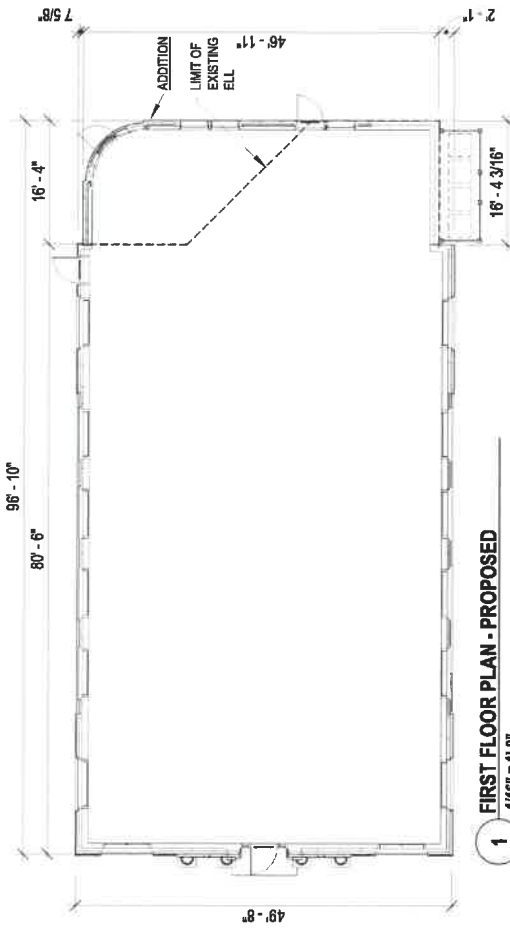


1 SOUTH ELEVATION - EXISTING
3/32" = 1'-0"

2 SOUTH ELEVATION - PROPOSED
3/32" = 1'-0"



2 FIRST FLOOR PLAN - EXISTING
1/16" = 1'-0"



1 FIRST FLOOR PLAN - PROPOSED
1/16" = 1'-0"

EXISTING GROSS SQUARE FOOTAGE	
BASEMENT	4,403
FIRST FLOOR	4,431
SECOND FLOOR	4,380
THIRD FLOOR	4,377
(MEASURED TO EXTERIOR FACE OF FINISH)	

PROPOSED GROSS SQUARE FOOTAGE	
BASEMENT	4,748
FIRST FLOOR	4,792
SECOND FLOOR	4,723
THIRD FLOOR	4,707
FOURTH FLOOR	2,479
(MEASURED TO EXTERIOR FACE OF FINISH)	

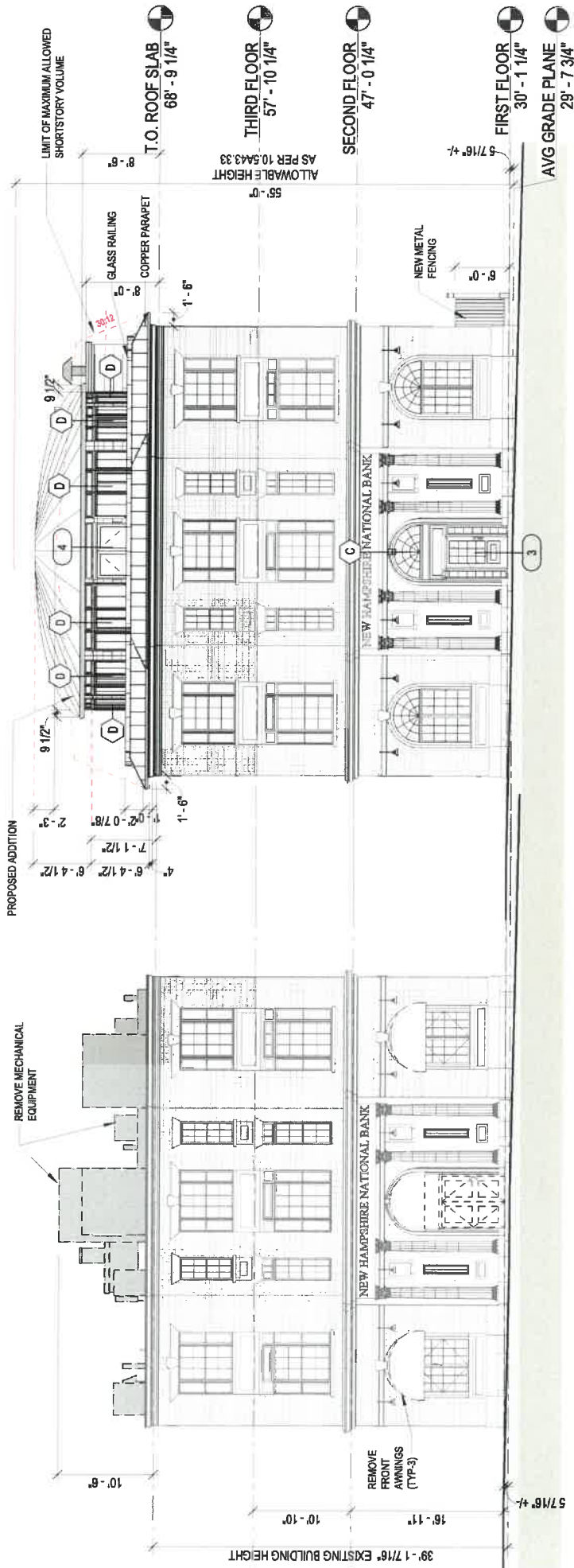


FIRST FLOOR PLANS
3 PLEASANT STREET at BRICK MARKET

SCALE: As Indicated
VARIANCE APPLICATION

AUGUST 2019 COPYRIGHT © 2019





2 FRONT (WEST) ELEVATION - EXISTING/DEMOLITION
3/32" = 1'-0"

1 FRONT (WEST) ELEVATION - PROPOSED
3/32" = 1'-0"

