MOTION FOR REHEARING
266, 270, 278 State Street & 84 Pleasant Street
Portsmouth, NH 03801
Tax Map 107, Lots 77-80
LU-24-195

I. INTRODUCTION.

Working Stiff Properties LLC ("WSP"), owner real property located at 92-94 Pleasant Street and abutter to the proposed project located at 266, 270, 278 State Street & 84 Pleasant Street Portsmouth, NH 03801, Tax Map 107, Lots 77-80 (the "Project Property") submits this Motion for Rehearing with respect to the Portsmouth Zoning Board of Adjustment's ("Board") grant of the variances, which as provided for in the Board's Notice of Decision is detailed as follows:

> The Zoning Board of Adjustment, at its regularly scheduled meeting of Tuesday, November 19, 2024, considered [the] application for merging the lots and constructing 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. Said property is shown on Assessor Map 107 Lot 77 Map 107 Lot 78, Map 107 Lot79, Map 107 Lot 80 and lies within the Character District 4 (CD4), Historic and Downtown Overlay Districts. As a result of said consideration, the Board voted to to [sic] 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.

Specifically, WSP requests rehearing relative to the Board's grant of 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.

WSP incorporates herein by reference all past testimony and submissions of the Project Property by its Owner and Applicant, the public, and the Board's deliberation of the same.

II. STANDARD OF REVIEW

RSA 677:2 states: "Within 30 days after any order or decision of the zoning board of adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefore; and the board of adjustment, a board of appeals, or the local legislative body, may grant such rehearing if in its opinion good reason therefore is stated in the motion."

"A motion for rehearing made under RSA 677:2 shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable." RSA 677:3. Upon the filing of a Motion for Rehearing, the ZBA is required to grant or deny the application within thirty (30) days or suspend the order or decision complained of pending further consideration. Id.

The purpose of the Motion for Rehearing process is to allow the ZBA the first opportunity to address or pass upon errors which it might have made at its public hearing, before an appeal to the Superior Court is taken. Bourassa v. Keene, 108 N.H. 261 (1967). As a general rule, a rehearing should be granted if the petitioner can demonstrate to the Board that it committed *technical error* or that there is *new evidence that was not available at the time of the first hearing*. The Board of Adjustment in New Hampshire, A Handbook for Local Officials, NH OEP, Pages IV-4 (2013) (emphasis added).

III. GROUNDS FOR REHEARING

VARIANCE 2(B) WAS NOT PROPERLY CONSIDERED BY THE BOARD, AND ITS VOTE TO GRANT THE SAME WAS NOT PROPERLY SUPPORTED

The ZBA erred in determining that Variance 2(b) satisfied the necessary requirements to obtain the requested variance.

Pursuant to New Hampshire law and the City of Portsmouth Zoning Ordinance, to obtain a variance, an applicant must satisfy each of five factors: (a) the variance will not be contrary to the public interest; (b) special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship; (c) the variance is consistent with the spirit of the ordinance; (d)

substantial justice is done; and (e) the variance must not diminish the value of the surrounding properties.

In considering the three (3) part application with subsections, the Board decided to lump five of the six variance requests together, resulting in a significant amount of confusion when it came time for the Board members to vote. The final vote swept Variance 2(b) into the "lump", though Variance 2(b) was not properly supported by the Board, and, furthermore, it is not referenced in 4 of the 5 Findings of Fact included with the Board's Notice of Decision; Variance 2(b) is only alluded to vaguely in the Finding of Facts relative to Section 10.233.24, which states in pertinent part:

- The penthouse on the Church Street side isn't objectionable and will not diminish the values of surrounding properties.
- There is a concern from one of the abutters [WSP], but it is the downtown area and the space taken up is slightly larger than what is called for. None of the things relief is being asked for are things that would affect the abutter.

WSP believes that "isn't objectionable" does *not* apply to any of the five (5) required Variance criteria; and, "Things" is vague and not descriptive to include any of the five (5) required variance criteria. WSP supports this as follows:

1. The Board should not have granted Variance 2(b) because:
    a. The Applicant did not prove hardship. The application is for new construction for a penthouse space, with a height of 50 feet which exceeds the current CMU (cinderblock building) addition height of 32 feet by 18 feet, and the zoning ordinance permitted height limit of 45 feet by 5 feet.
    b. Much like during its deliberation, the Board did not actually address the hardship criteria for Variance 2(b) in its Notice of Decision.
    c. The Applicant would like to build higher than the ordinance allows, however such height is *not necessary* (except to maximize profit).
    d. The Board "*mainly"* refers to the Times Building reproduction, noting "the additional height of 50 feet is a difficult issue."
    e. The Applicant's attorney, Christopher Mulligan "understands economic concerns are not first and foremost in consideration"
    f. Board Member comments include:
        i. Financial consideration "is not within our purview"
        ii. Did "not find any hardship for the penthouse to go up to 55 feet…"
        iii. "Because this is *new* construction, my feeling always goes to you have a blank slate, why can't you conform?"
        iv. "Penciling out a project is not one of our criteria"
        v. "I have a problem with clean-slate projects intentionally violating the variances when they don't have to."

g. In fact, the Board denied Variance 2(a) based on the lack of hardship, and as noted in the Finding of Fact "the Board voted to deny the request for variance No. 2(a) because it fails the hardship criterion as there are no special conditions of the property that drive the need for a penthouse."

2. Variance 2(b) is contrary to the character district zoning intent:
    a. Regarding Variance 2(a), the Board stated that the 'justice' criteria "*mainly"* refers to the Times Building historic reproduction, noting "the additional height of 50 feet is a difficult issue."
        i. The cinderblock addition behind 84 Pleasant, however, is decidedly *not* historic
        ii. There is no historic reproduction or restoration need for the existing cinderblock addition to go higher
        iii. Raising the height of the cinderblock addition to include a contemporary penthouse addition that exceeds the height of the historic townhouse, *and* juts forward up and over the ridgeline of the historic townhouse towards Pleasant Street is also decidedly not historic, and defies the character zoning intentions.
    b. The Board applied the variance criteria in an inconsistent and even contradictory manner in its approval of Variance 2(b) and its denial of Variance 2(a).
        i. In the Board's denial of Variance 2(a), discussed and voted upon immediately following the approval of Variance 2(b), a Board Member states that the building heights decided when the character zoning ordinances were created some ten years ago may seem arbitrary, "but still, they're the ordinance." The question remains, how do these acknowledgements of the ordinance *not* apply to Variance 2(b) if they apply to Variance 2(a)?
        ii. Note, the Applicant submitted plans and renderings labeled "B0A1," "B0A2," and "B0A4" which do not accurately depict the 84 Pleasant Street townhouse ridgeline as effected by the applicant's proposed 'rear' "Church Street" addition. The 50' addition 'in back' actually comes up and over the historic townhouse roof ridgeline to the front of the 84 Pleasant townhouse roof, as shown in applicant-submitted drawing B0A6. All renderings should depict an overframe over the top of the historic 1850 townhouse roof if B0A6 is accurate. See applicant drawing BOA6 which shows the 'jut-out' above the 84 Pleasant historic townhouse ridgeline (but does not show the depth dimension).
    c. The Board did not specifically address the 'justice' criteria regarding Variance 2(b) specifically in Findings of Fact.

3. The Board's grant of Variance 2(b) diminishes the value of WSP's property at 92-94 Pleasant Street:
    a. 92-94 Pleasant Street is a direct and contiguous abutter.
    b. WSP's original 1850 townhouse structure shares a firewall with the contiguous and original historic 1850 townhouses at 84 Pleasant Street.

c. The ell behind 92-94 Pleasant Street physically abuts the existing 1960s cinderblock addition of the Applicant's property at 84 Pleasant Street.
d. The Applicant's renderings neglect to include the dormered windows on the Church Street side of WSP's historic townhouse at 92-94 Pleasant Street, as well as the solar hot water panels atop the 1-story ell.
e. The Applicant's renderings *do* include non-code-compliant glazing on its proposed façade;
f. The Applicant's renderings depict new windows on the existing CMU addition and its proposed additional height which suggests a visual break, transparency, and reflection; windows are not permitted on a façade that sits on a property line, and they were not approved in the Applicant's first round of applications.
g. The increase in height of eighteen (18) feet above the existing 1960s cinderblock addition—which new addition as rendered in applicant-submitted drawing BOA6, goes up over the ridgeline of the original and historic townhouse towards Pleasant Street—would create a gargantuan solid mass hovering over 92-94 Pleasant Street.
h. The proposed CMU addition height would in actuality create a new looming solid mass outside WSP property's third floor dormered windows, greatly decreasing "light and air" compared to existing conditions, reducing sunset light time by more than an hour, photos and sketches of which are submitted herein and hereto.

IV. CONCLUSION

The Board's grant of Variance 2(b) is not consistent with the ordinance because a variance approval must meet all five (5) criteria, and the application did not do so as laid out directly above. In approving the Applicant's proposal, specifically Variance 2(b), the Board erred as it was in conflict with the Zoning Ordinance, State law, and its own comments during the meeting.

WSP respectfully requests that the Board rehear the Application as presented, or if the Board determines it to be appropriate and the rules so allow, just Variance 2(b) of the Application as it has met its burden of showing that good reason exists to rehear the Application.

Finally, WSP recognizes that the Applicant has submitted a request for rehearing regarding height, generally, and how the Board voted. Should the Applicant's request for rehearing be granted, and said rehearing reopens the issue for height to incorporate the concerns and requests contained herein in such a manner that WSP effectively argues its rehearing request, then WSP would withdraw its request or merge its rehearing request into that of the Applicant's.

December 16, 2024

Respectfully Submitted,

Working Stiff Properties LLC

Barbara Jenny, Manager

Matthew Beebe, Manager


PARKING FOR
82-84
PLEASANT ST
ONLY
THIS IS NOT A PUBLIC


DO NOT
ENTER

City of Portsmouth, NH

Property

Zoom To | Share | Print | 92 Pleasant St

92 PLEASANT ST

Location	92 PLEASANT ST
Map-Lot	0107-0076-0000
Vision Account Number	33164

Ownership

Owner	WORKING STIFF PROPERTIES LLC
Address	94 PLEASANT ST, PORTSMOUTH, NH 03801

Valuation

Total	$1,401,600
Last Sale	$710,000 on 2014-02-03
Deed Date	2014-02-03
Book/Page	5511/0446

Land

Land Use	0310
Land Use Description	PRI COMM
Market Delineation	305
Local District	C
Parcel Area (AC)	0.07

Zoning

Zoning

CD4

Search

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Showing 1-1 results. Scroll to see more.

92 PLEASANT ST
WORKING STIFF PROPERTIES LLC
0107-0076-0000

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

mjk
Michael J. Keane
Architects, PLLC
ARCHITECTURE
PLANNING
DESIGN
101 Kent Place
Newmarket, NH
03857
603-292-1400
mjkarchitects.com

CONSULTANTS

REVISIONS

APPROVALS

BOA - 10/22/24

Accept only original stamp and signature copies may contain unauthorized modifications

PROJECT

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

PNF TRUST OF 2013
282 MIDDLE STREET
PORTSMOUTH, NH
03801

TITLE

COURT STREET ELEVATION

DRAWN BY:
CHECKED BY:
DATE: 10/22/2024
SCALE: AS NOTED

DO NOT SCALE PRINTS

DRAWING NO.

B0A.6

Related search

266 State Street, Portsmouth,...


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STATE STREET SALOON
HOME OF THE $6.99 LOBSTER ROLL
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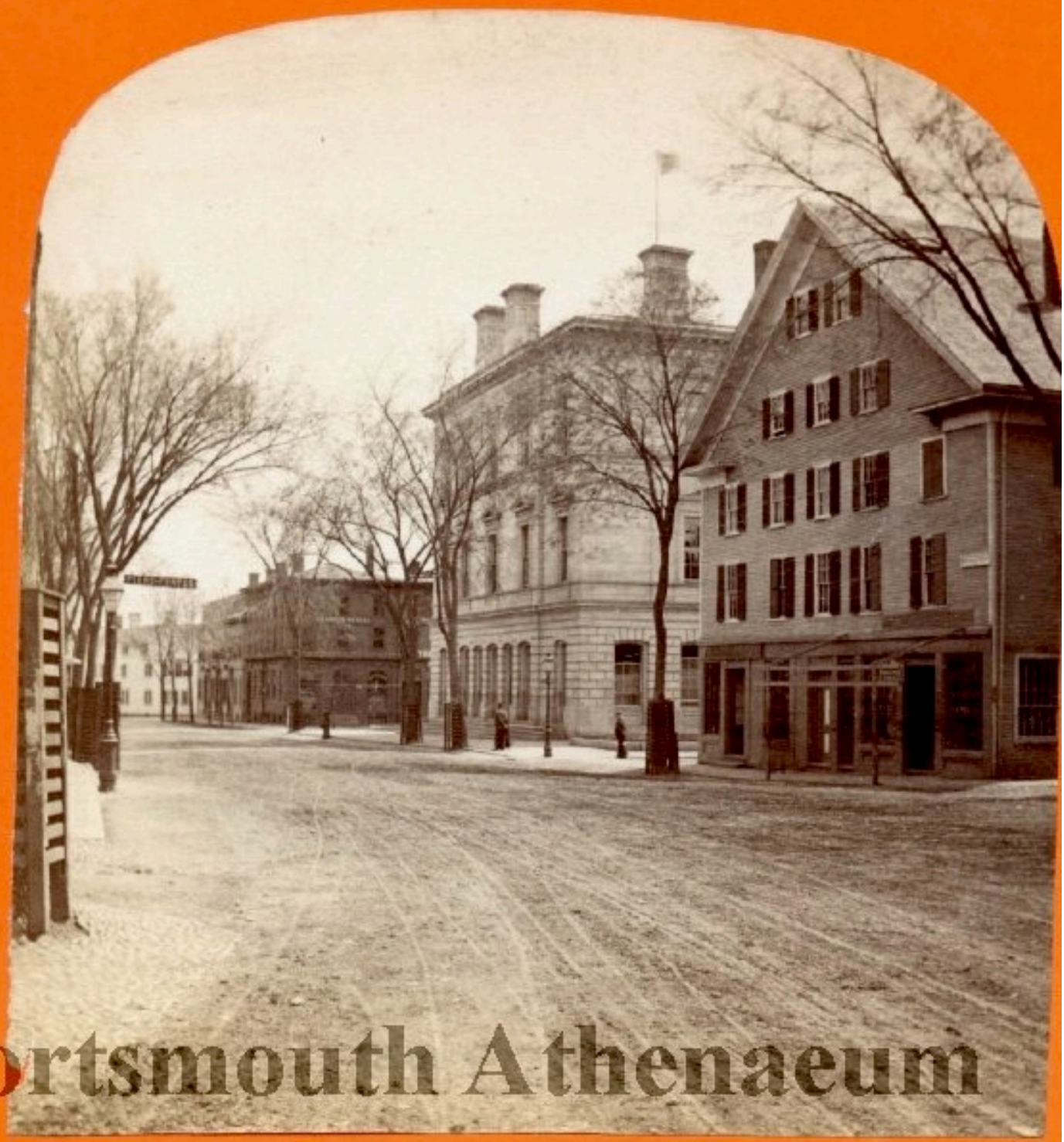
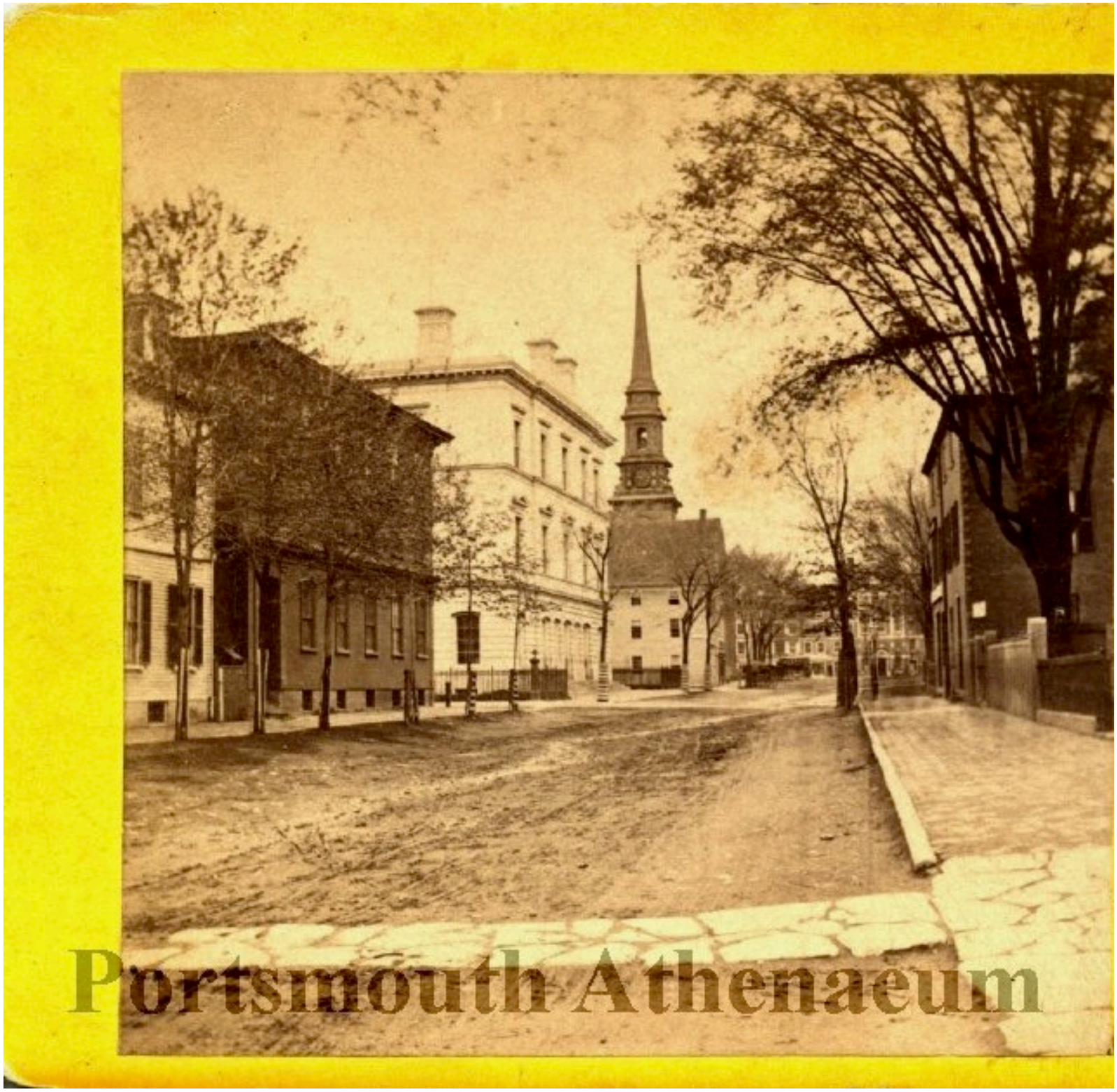
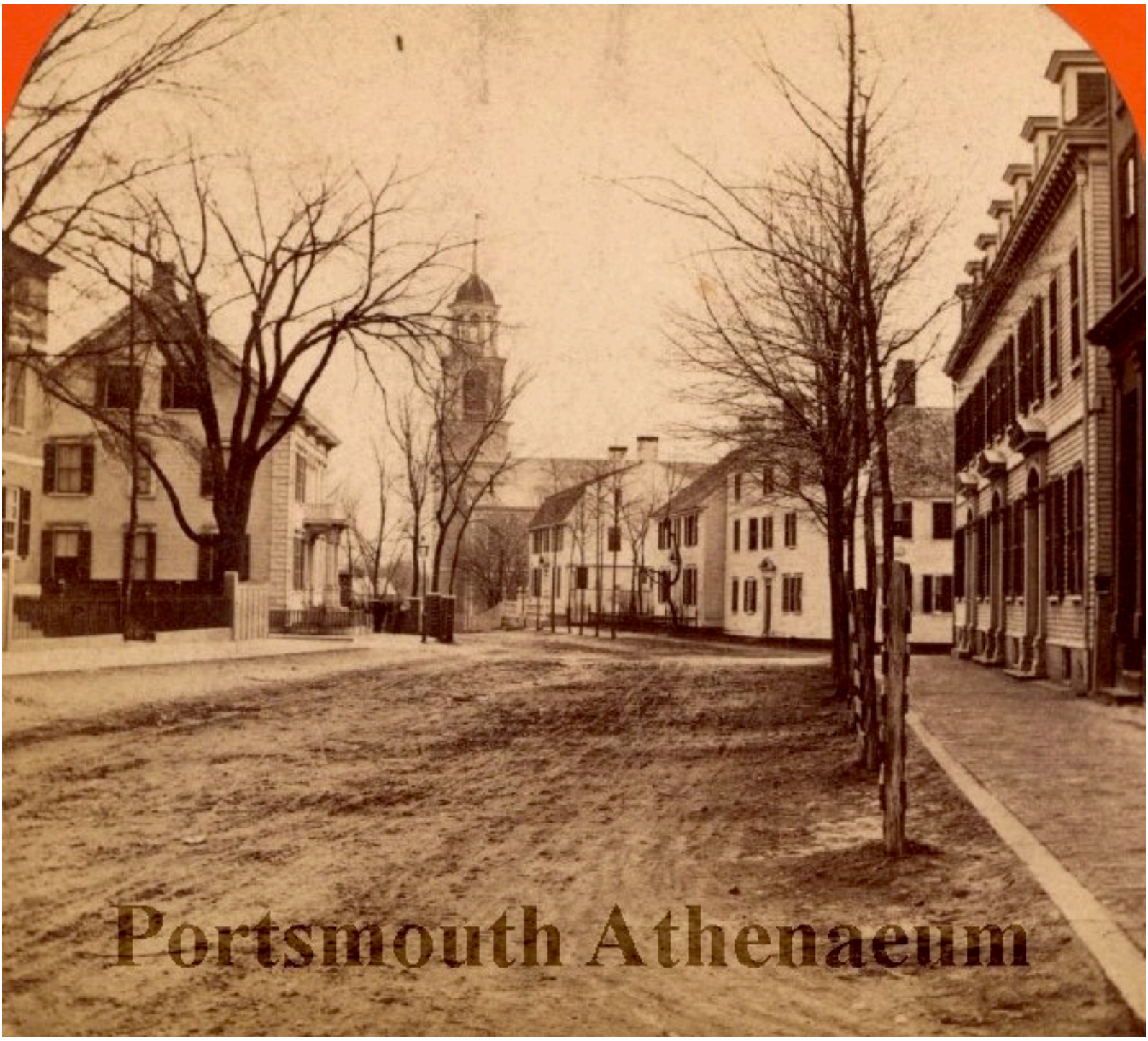
COME WATCH ALL OF YOUR FAVORITE
TEAMS HERE ON DIRECTV!
RESTAURANT & DINING ROOM
SALOON
SALOON
DRINK
DINING ROOM
STEAK
OPEN

Portsmouth and Vicinity.







Rebuild of 266, 270 & 278 State Street and 84 Pleasant Street after fire

(/dashboard/projects/9296)
Land Use Application

LU-24-219

Your Submission

Attachments

Guests (0)

- Preliminary Application Review
- Address Verification Review
- Land Use Permit -- Planning Department Review and Fee Calculation

Application Permit Fee

Land Use Code Review

Historic District Commission Approval

Land Use Conditions of Approval Review

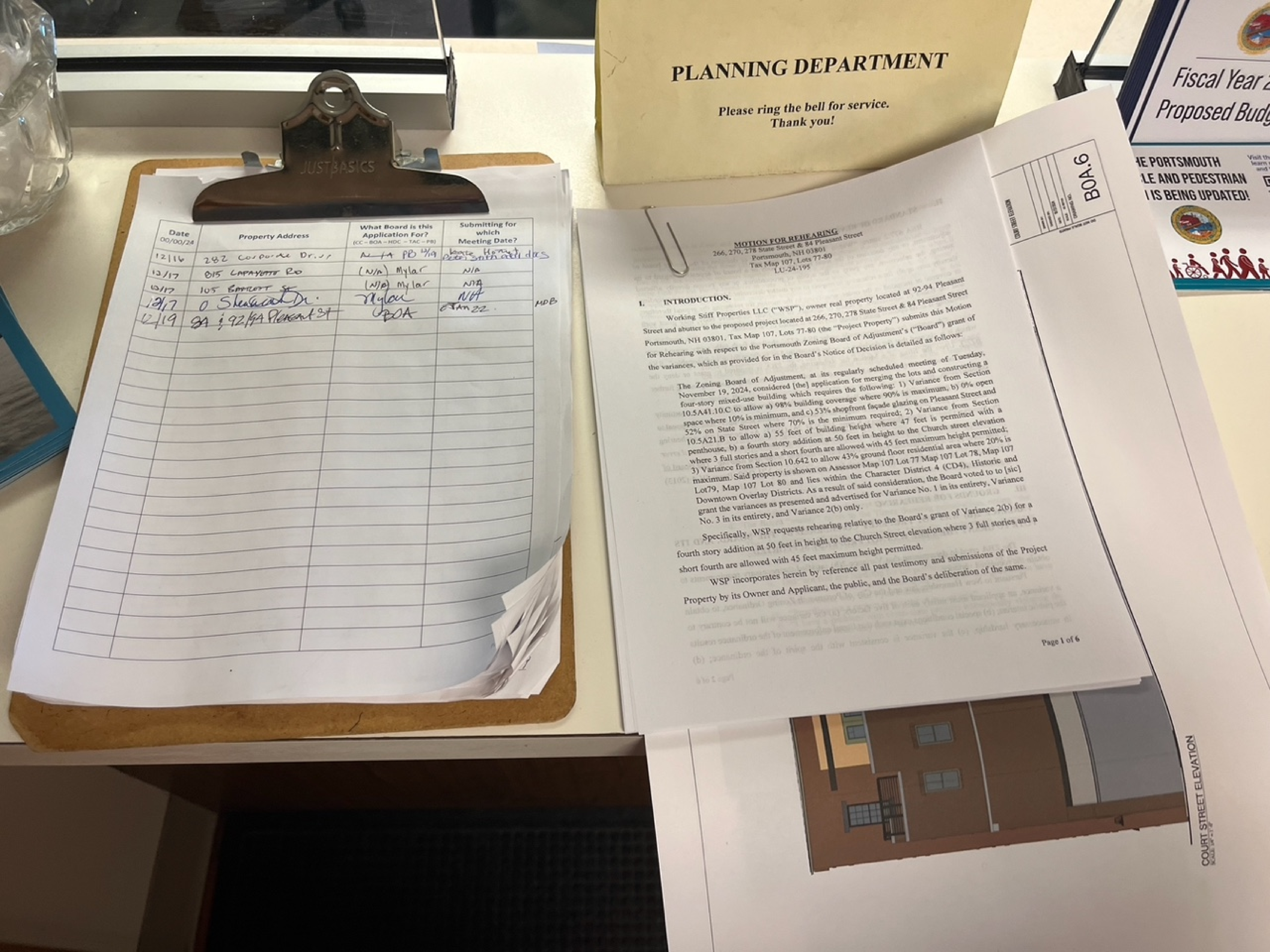
Building Permit Issued

Attachments

Attachment	File
Owner's Authorization Required Owner authorization is required for someone other than the owner of the property to submit an application.	Owner-Abutter.pdf Uploaded on Dec 16, 2024 at 7:38 pm
Site Plan A site plan is a required submission for most applications. In most cases, either tax maps or surveyed plans are acceptable. Tax maps can be accessed online through the City's online mapping tool at https://portsmouthnh.mapgeo.io (https://portsmouthnh.mapgeo.io) or at https://www.cityofportsmouth.com/city/maps-portsmouth. (https://www.cityofportsmouth.com/city/maps-portsmouth)	05 84-88 and 92-94 M... Uploaded on Dec 16, 2024 at 6:52 pm
Pleasant Motion for Rehearing.pdf Motion for Rehearing from Working Stiff Properties LLC - text	Pleasant Motion for Re... Uploaded on Dec 16, 2024 at 6:53 pm

01 photo - Court St POV 1 94 Pleasant existing 84 rear.jpeg existing conditions, photo, POV from Court St	01 photo - Court St PO... Uploaded on Dec 16, 2024 at 6:54 pm
02 Court Street POV - 94 Pleasant photo with proposed 84 mass.png Court St POV 1 , photoshopped, showing applicant's proposed addition mass	02 Court Street POV - ... Uploaded on Dec 16, 2024 at 6:56 pm
03 photo POV wide COurt St 94 Pleasant w 84 rear CMU existing.jpeg Court St POV2, wide angle photo of existing conditions, including South Church	03 photo POV wide CO... Uploaded on Dec 16, 2024 at 6:57 pm
04 Court Street wide POV 2 - 94 Pleasant photo with proposed 84 mass.png Court St POV 2 wide angle photo, photoshopped to include applicant's proposed addition mass	04 Court Street wide P... Uploaded on Dec 16, 2024 at 6:58 pm
06 B0A6 Applicant rendering.pdf Applicant's elevation from Court Street B0A6	06 B0A6 Applicant ren... Uploaded on Dec 16, 2024 at 7:27 pm
07 Screenshot.png thumbnails showing increase in height from 2019 to 2024 applications	07 Screenshot.png Uploaded on Dec 16, 2024 at 7:29 pm
08 Screenshot.png State St Saloon and Times Building pre-fire	08 Screenshot.png Uploaded on Dec 16, 2024 at 7:30 pm

09 p0004_167-2.jpeg history Atheneum photo, from Market Square POV	09 p0004_167-2.jpeg Uploaded on Dec 16, 2024 at 7:31 pm
10 p0004_169a-2.jpeg history - Atheneum photo POV Junkins Ave	10 p0004_169a-2.jpeg Uploaded on Dec 16, 2024 at 7:32 pm
Add attachment	


PLANNING DEPARTMENT
Please ring the bell for service.
Thank you!
Date 00/00/24
Property Address
What Board is this Application For? (CC – BOA – HDC – TAC – PB)
Submitting for which Meeting Date?
MOTION FOR REHEARING
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Portsmouth, NH 03801
Tax Map 107, Lots 77-80
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Page 1 of 6
BOA.6
COURT STREET ELEVATION
Fiscal Year 2
Proposed Budg
HE PORTSMOUTH
LE AND PEDESTRIAN
IS BEING UPDATED!