

# HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

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March 7, 2025

***Submitted electronically via Viewpoint  
and Hand Delivered***

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

***RE: 266-278 State Street & 84 Pleasant Street  
LU-24-195***

Dear Ms. Eldridge:

On behalf of the applicant, PNF Trust of 2013, please accept this correspondence as our submission in advance of the March 18, 2025 meeting.

At the Board's February 19, 2025 meeting, it voted to grant Working Stiff Properties, LLC's December 16, 2024 request for rehearing with respect to the variance this Board granted on November 19, 2024 in which relief from Section 105A41.10C of the ordinance was granted to permit an addition at the Church Street elevation with four stories and 50 feet in height where three stories and a short fourth with 45 feet in height is the maximum permitted.

As a preliminary matter, the Board's decision on February 19, 2025 was untimely, and thus the Board was without jurisdiction to grant a rehearing at that time. The statutory procedure set forth in RSA 677:3 applies to Working Stiff's application for rehearing. In particular, RSA 677:3, II provides that "[u]pon filing of a motion for a rehearing, the board of adjustment . . . shall within 30 days either grant or deny the application, or suspend the order or decision complained of pending further consideration." (emphasis added). This statutory language is mandatory, and requires the Board act on a request for rehearing within thirty days, or, in this case, on or before January 15, 2025. The Board did not consider the application until January 22, 2025, when it continued its consideration to the February meeting. Municipalities only have the authority granted to them by the state, *Manchester Sch. Dist. v. Manchester*, 150 NH 664, 666 (2004), and while the statutory scheme set forth in RSA 677 is based upon the principle that a local board should have the first opportunity to pass upon any alleged errors in its decisions, *Blagbrough Family Realty Trust v. Town of Wilton*, 153 N.H. 234, 238-39 (2006), it

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DANIEL C. HOEFLE	ALEC L. MCEACHERN	PETER V. DOYLE	STEPHEN H. ROBERTS In Memoriam
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is equally clear that a board must do so within the statutorily prescribed time period. *74 Cox Street LLC v. City of Nashua*, 156 NH 228 (2007) (“ . . . we see no basis for concluding that the legislature intended for ZBAs not to have the power to reconsider their own decisions, and potentially correct their own errors, *during the time period allotted by statute for parties to appeal those same decisions.*”) (emphasis added). By January 22, 2025, the variances granted in November were final, and the Board lacked jurisdiction to revisit them.

Without waiving the position that the variances granted in November are final, we are submitting herewith the latest elevations following from our March 5, 2025 work session with the Historic District Commission. We have removed any windows on the Court Street elevation which abut the 92 Pleasant Street property, resolving one of Working Stiff's objections. The applicant is entitled by right to a height of 45 feet and a short fourth story with a mansard roof design. What is proposed is a full fourth story as defined by the zoning ordinance at five additional feet of height. As proposed, this story is stepped back from the sideline of the abutting property and Church Street. This is a more desirable design for both aesthetic and practical reasons. A mansard roof design would have to extend to the Church Street and the Working Stiffs property lines, adding mass and perceived height to the building. The HDC has been clear that such a mansard design is not favored in such close proximity to the historic South Church. The proposed design also allows us to better control roof run-off in both directions.

The additional height that accommodates the proposed stepped back fourth story is necessary to properly align and integrate the stories with the replicated Times Building at the corner of State and Church Streets. It has the additional benefit of accommodating the automatic parking system to provide much needed on-site parking for the proposed residential use, which will promote the public interest and protect neighboring property values. Even with the additional height, the proposed addition is shorter than the South Church across the street. It is not in any manner out of character with the established neighborhood. Accordingly, we maintain the Board was correct in granting the variance in November, as follows:

**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 essentially urban character of the neighborhood will not be altered in any fashion by this project, nor would the health, safety or welfare of the public be threatened by granting the relief requested, as what is proposed is entirely consistent with what previously existed on site and with the mass and scale of neighboring buildings. The project must obtain final approval from the HDC and proceed through site plan approval at the Planning Board, so the interest of the public will be 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. In order to integrate the structure replacing the Times Building, which already exceeded the maximum allowed in the CD-4 zone, with the adjoining structures, height variances are necessary. The HDC must approve the project, so the result will be an aesthetically appropriate structure.

Over multiple sessions, the HDC has expressed its desire to have the applicant develop the property in a manner which evokes the Times Building. To achieve similar massing and window fenestration proportions, it is necessary to approximate the preexisting floor elevations. The additional height allows us to do so. Aligning the floors through each level of the project allows us to reasonably provide the required accessible egress and ingress to each unit and simplify the structural system to meet design parameters and to maximize on-site parking. Conversely, if the applicant did not align the floor levels, the complications to both the structural design, and design of ingress and egress along with the elimination of more than 1/3 of the available on-site parking would create a hardship to the owner that outweighs any benefit to the public by denying the variance.

In short, recreating the Times Building in proportion to the original building creates a hardship because of the preexisting floor heights. Overcoming that hardship places a burden on the project that outweighs any benefit to the public in denying the variance.

**The values of surrounding properties will not be diminished by granting variances.** The proposed uses are permitted in this zone by right. The surrounding properties and those in the vicinity have similar uses as this one does. A newly constructed project will increase property values. 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 property is in the heart of the downtown and is being redeveloped in a manner that will facilitate the redevelopment of the Times Building parcel in a manner that evokes its historic mass and scale, which exceeded current story and height restrictions. Redevelopment poses logistical and engineering challenges and retaining the story heights of the Times Building requires the thoughtful integration of the adjoining structures. The present Church Street façade is totally out of character with the historic South Church facing it. A short fourth story with a mansard roof is permitted by right but is a far inferior design solution compared to what is proposed.

**The use is a reasonable use.** The proposed mixed residential/commercial use is permitted in this zone and is identical in character and is consistent with the existing use of the adjacent and abutting properties.

**There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property.** The Applicant is proposing to redevelop what is almost the entire block bounded by State, Pleasant and Church Streets. Both the historic Times Building adjacent to this site and the South Church across the street exceed the present height requirements without causing any negative effects on the neighborhood. There is no fair and substantial relationship between the purposes of these requirements and their application to this portion of the project.

For the foregoing reasons, we respectfully request the Bord reaffirm its original decision and grant the variance from Section 105A41.10C

Thank you for your attention.

Sincerely,

*Christopher P. Mulligan*

Christopher P. Mulligan

CPM/

mjk

Michael J. Keane  
Architects, PLLC

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PLANNING  
DESIGN

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CONSULTANTS

REVISIONS

APPROVALS

03/07/25 FOR  
BOA REHEARING  
MARCH 18 2025

Accept only original stamp and signature  
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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

STATE STREET ELEVATION

DRAWN BY:

CHECKED BY:

DATE: 3/6/2025

SCALE: AS NOTED

DRAWING NO.

BOA.3

ELEVATOR OVERRIDE  
EXCLUDED FROM HEIGHT  
BY ZONING 10.517.30 AND  
BY "PENTHOUSE" DEFINITION

TOP OF WALL

TOP OF FLAT ROOF

50'-0"  
BUILDING HEIGHT BY ZONING [DEF. BUILDING HEIGHT (b) 2]

11'-1"

11'-1"

11'-1"

16'-9"

53'-0"

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

DO NOT SCALE PRINTS



**PLEASANT STREET ELEVATION**

SCALE: 1/4" = 1'-0"

**mjk**

Michael J. Keane  
Architects, PLLC

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PLANNING  
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03801

TITLE

PLEASANT ST ELEV

DRAWN BY:

CHECKED BY:

DATE: 3/6/2025

SCALE: AS NOTED

DRAWING NO.

DO NOT SCALE PRINTS

**BOA.4**



**mjk**

Michael J. Keane  
Architects, PLLC

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PORTSMOUTH, NH  
03801

TITLE

CHURCH STREET ELEVATION

DRAWN BY:

CHECKED BY:

DATE: 3/6/2025

SCALE: AS NOTED

DRAWING NO.

DO NOT SCALE PRINTS

**BOA.5**

**CHURCH STREET ELEVATION**

SCALE: 1/4" = 1'-0"



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

**mjk**

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 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: 3/6/2025

SCALE: AS NOTED

DRAWING NO.

**BOA.6**

DO NOT SCALE PRINTS