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OF COUNSEL  
JAMES H. SCHULTE

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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: 53 Daniel Street, Portsmouth, NH**  
**Tax Map 107, Lot 27**  
**Zoning District: CD4/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](mailto:fx@brutonlaw.com)

FXB/mas  
Enclosures

cc: Dagny Taggart, LLC

**DAGNY TAGGART, LLC**  
**APPLICATION FOR VARIANCES**

**I. INTRODUCTION**

The property subject to this application is located at 53 Daniel Street in Portsmouth, New Hampshire and is depicted on the Portsmouth City Tax Maps as Map 107, Lot 27 (the “Lot”). The Lot is currently utilized as a private parking lot. The Lot is comprised of 0.53 acres of land and is located in the Character District 4 (CD4) 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 abuts Daniel Street and Penhallow Street.

The Lot itself is unique given its significant size at 0.53 acres of essentially undeveloped land located within the heart of the City. Other than the McIntyre lot, there are no surrounding properties that are comprised of as much area, with most surrounding lots being comprised of between 0.02 to 0.07 acres of land. It is the size of the Lot, along with the consideration of the existing high-density surrounding development, that makes the parcel suitable for the development proposed by the Applicant.

**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**

The project will consist of a four-story building with a mix of commercial uses, with the ground floor comprised of a plaza market retail concept, similar in kind to the market feel of Quincy Market. The remainder of the floors above the ground floor will contain office space. Aside from the basic structure, the proposed development will pay homage to the City’s maritime past with the incorporation of design elements within the façade of the building. Pictures, elevations and site plans are attached hereto, representing preliminary design concept that will be finalized through the site plan approval process.

The project is to be integrated by design with the redevelopment of another current project also owed by Dagny Taggart, located at 3 Pleasant 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 redeveloped of the McIntyre Building from Market Square.



The Applicant is currently working with the City to provide for widened sidewalk plazas, and bury overhead utilities 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 already had two work sessions with the Historical District Commission, and has received positive feedback as a result of that process.

Although the project is located within the Downtown Overlay District, and thus is not required to contain off-street parking, the project is being designed to provide for two (2) levels of subsurface parking and will be designed to provide for the relocation of existing power lines underground.

**IV. REQUEST OF THE APPLICANT FOR DIMENSIONAL VARIANCES**

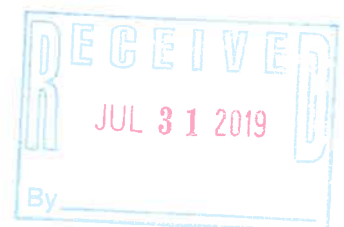
For the purpose of providing safe ingress and egress to the subsurface parking garage, and to provide for a safe and International Building Code (IBC) compliant means of travel including accessing parking spaces and ramps and turning maneuvers, the project will require two (2) dimensional variances from the Portsmouth Zoning Ordinance.

**Variance #1.** Safety will be enhanced and required dimensions for achieving compliance with International Building Codes (IBC) will require a building footprint that exceeds the permitted 15,000 sq. ft. Within the CD4 zoning district, pursuant to Section 10.5A41 & Figure 10.5A41.10C, the maximum building footprint is 15,000 sq. ft. Thus, for the subsurface parking to be added to the project the Applicant is proposing a building footprint that is currently 16,755 sq. ft. Because the project must still go through site plan approval and peer review approval, the Applicant seeks a variance to permit a footprint up to 17,500 sq. ft. The request is made with the understanding that the 16,755 sq. ft. may be all that is needed, however, knowing what can transpire through final engineering design, whether by the Applicant or through peer review, particularly for subsurface parking and access, the applicant seeks relief for the 17,500 sq. ft. limitation as to building footprint to account for minor changes that may arise during the final design process.

**Variance #2.** In order to create a safe vertical lead path from Penhallow Street to the first level of the subterranean parking lot, the building footprint will be only 3 feet from the rear lot line, where five (5) is required pursuant to Section 10.5A41 & Figure 10.5A41.10C.

**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 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...” The Portsmouth 2025 Master Plan establishes five overriding themes for the City, that is, to promote vibrancy, authenticity, diversity, connectedness and resiliency.

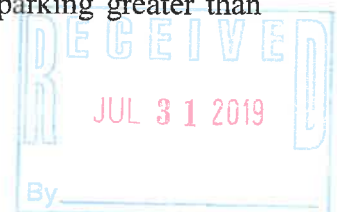
Figure 10.5A41.10C indicates that the Character District 4 “...consists of medium-to-high density transitional areas with a mix of building types...” The Figure acknowledges that the CD4 District contains building where “[t]here are shallow or no front yards and medium to no side yards.” The rear yard in this instance lies between the proposed building and the parcel located at 30 Penhallow Street. Although this is a “rear yard, as the address for the proposed building is located on Daniel Street, by all appearances, this “rear yard” will actually resemble a typical side yard, which, if considered as such, would have no requirement as to width.

Given the significant size of the Lot, it is believed and therefore averred that the size of the structure proposed, which is done so to address the needs of the subterranean parking, is appropriate, particularly given the existing coverage of lots by buildings on lots within the neighborhood, and given the additional benefit to the community of significant community space to be created between the lots under control by the Applicant. As such, 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. Further, considering these request vis-a-vis the Master Plan, it seems clear that the public market plaza concept creates a “vibrancy,” and the new community spaces will create a sense of “connectedness.”

In addition, considering that community space will cover approximately 27% of the three parcels identified above that will be burdened by such community space, the Applicant, by the very terms of Section 10.5A41 & Figure 10.5A41.10C, would be permitted to have a maximum building footprint of 30,000 sq. ft., with no story above the ground floor parking greater than



20,000 sq. ft. had the community space provided reached 30%. Given this allowance, had the Applicant been able to provide a mere 3% more community space, it is respectfully submitted that the grant of the variance will result in the spirit of the ordinance being observed.

**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 Lot to be utilized in a similar fashion as those within the surrounding neighborhood. In addition, the aesthetic nature of the property would be of superior quality. Granting the variances relates to the Applicant’s ability to provide for the two (2) levels of parking on site. There is no negative aspect that the public will suffer. Conversely, the public will be permitted to use the more expansive dedicated community 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.**

The need for the requested relief is based upon the provision of off-street, subterranean parking. As the property lies within the Downtown Overlay District, no parking need be required. Nonetheless, the Applicant is proposing off-street parking. In addition, the design of the structure is consistent with the similar uses in the vicinity, while provided, as a benefit to abutting parcels, increased vibrancy, access and connectivity to the City’s points of interest as well as space within the Lot that will be dedicated to public uses. For all of these reasons, it is believed and therefore averred that the improvements, and desired investment made by Dagny Taggart will result in higher property values of the surrounding properties.

**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. The property is approximately 0.53 acres in area. The surrounding area is populated by lots of an area between approximately .02 sq. ft. and .07 sq. ft. The building proposed by Dagny Taggart is



ideally suited for the property since it is large enough to support the building while also provided excess community/ open space (only 10% of open space is required in the CD4 zone).

Given the size and location of the property, and given the placement and scale of the building relative to existing structures and relative to the size of the Lot, no fair and substantial relationship exists between the ordinance provisions from which relief is sought and the application of those provisions to the property. There is no fair and substantial relationship between the public purpose of the ordinance and its specific application to the land in question. In fact, the grant of the variance will promote safety for the subterranean parking structure, with a modest encroachment as to the allowable building frontage. Character District 4 is designed to provide areas of medium-to-high density. The project proposed fits that description, with the added bonus that, by granting the variances, two (2) levels of safe underground parking will be provided. Denying the request for the increased building footprint and encroachment within the “rear” property line does not promote the objectives of the zoning ordinance. As such, there is no relationship between the granting of the variances and protection of the ordinance. In this context, given the special conditions of the property described above and the reasonableness of the use proposed, an unnecessary hardship exists under Section 10.233.31 of the Zoning Ordinance.

The use of the property as proposed will be consistent with the spirit and intent of the ordinance and the CD4 Zone. The very fact that the maximum building footprint could be 30,000 sq. ft. had 3% more community space have been provided, where approximately 27% of such space is provided, suggests that the use proposed is reasonable.

**VI. CONCLUSION.**

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





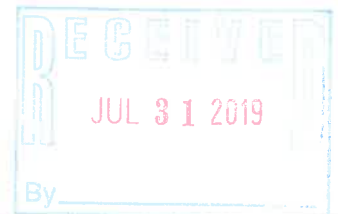
**Property Information**  
 Property ID 0107-0027-0000  
 Location DANIEL ST  
 Owner DAGNY TAGGART LLC

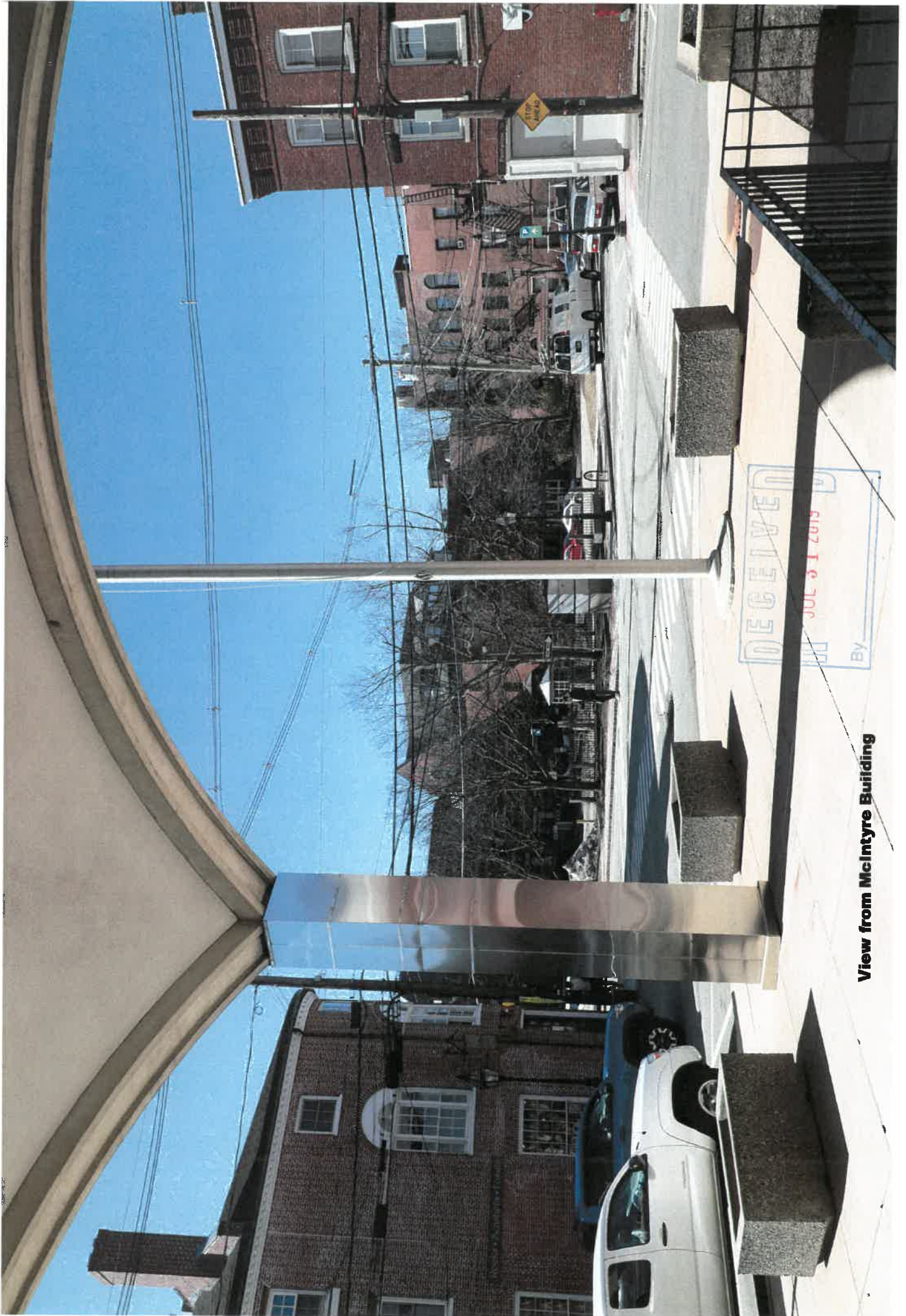


**MAP FOR REFERENCE ONLY  
 NOT A LEGAL DOCUMENT**

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.

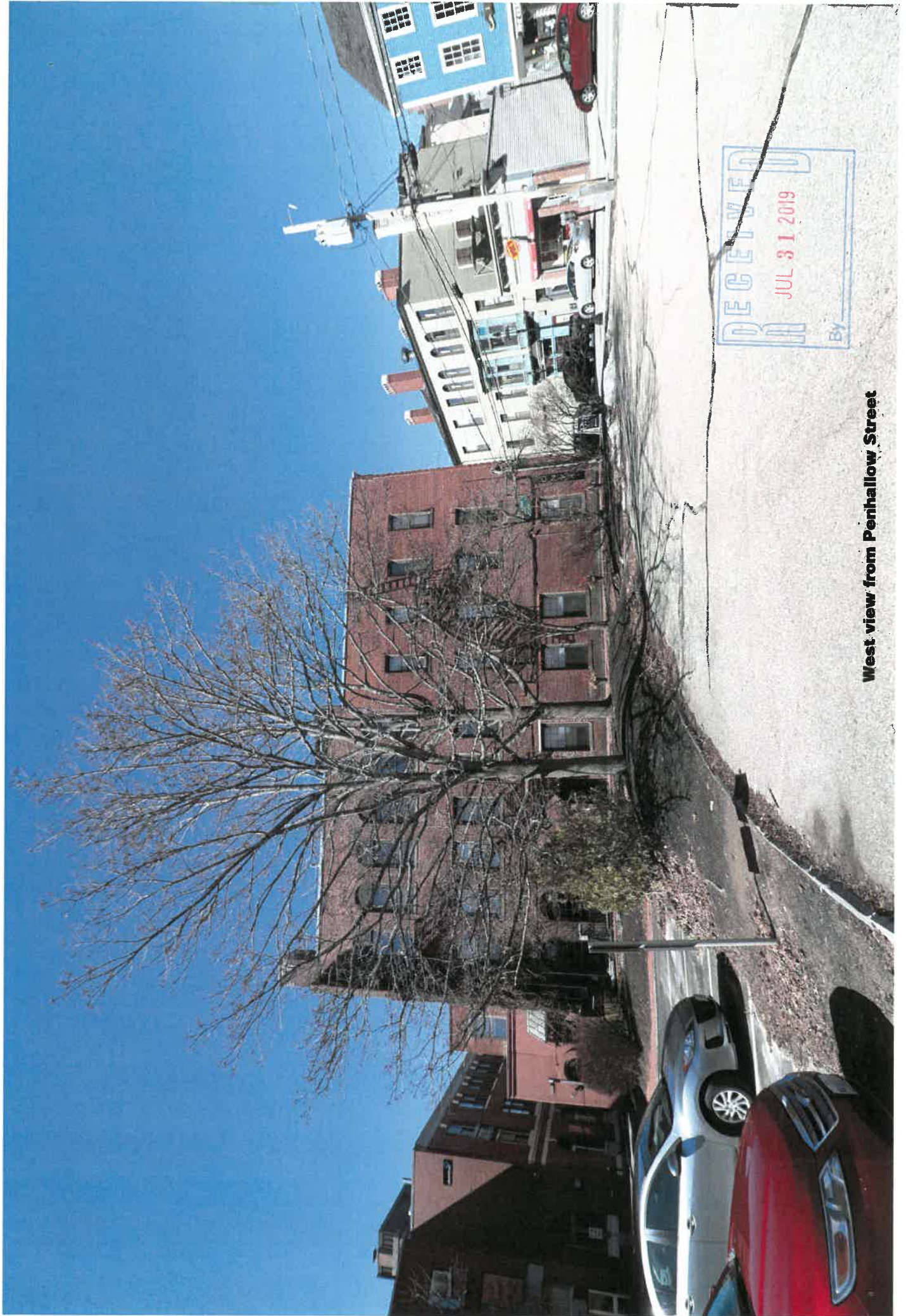
Geometry updated 4/1/2019  
 Data updated 7/17/2019



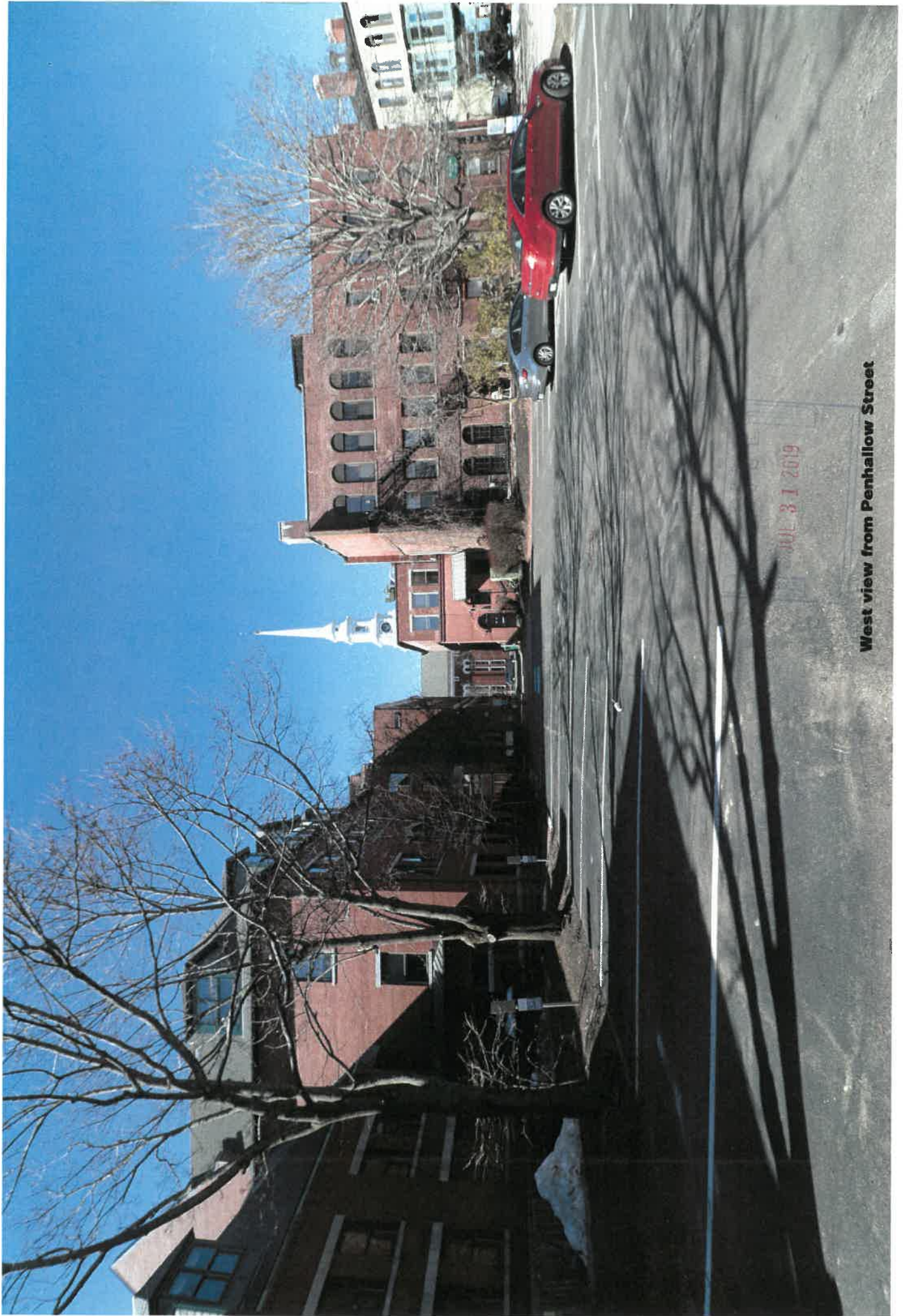


**View from McIntyre Building**

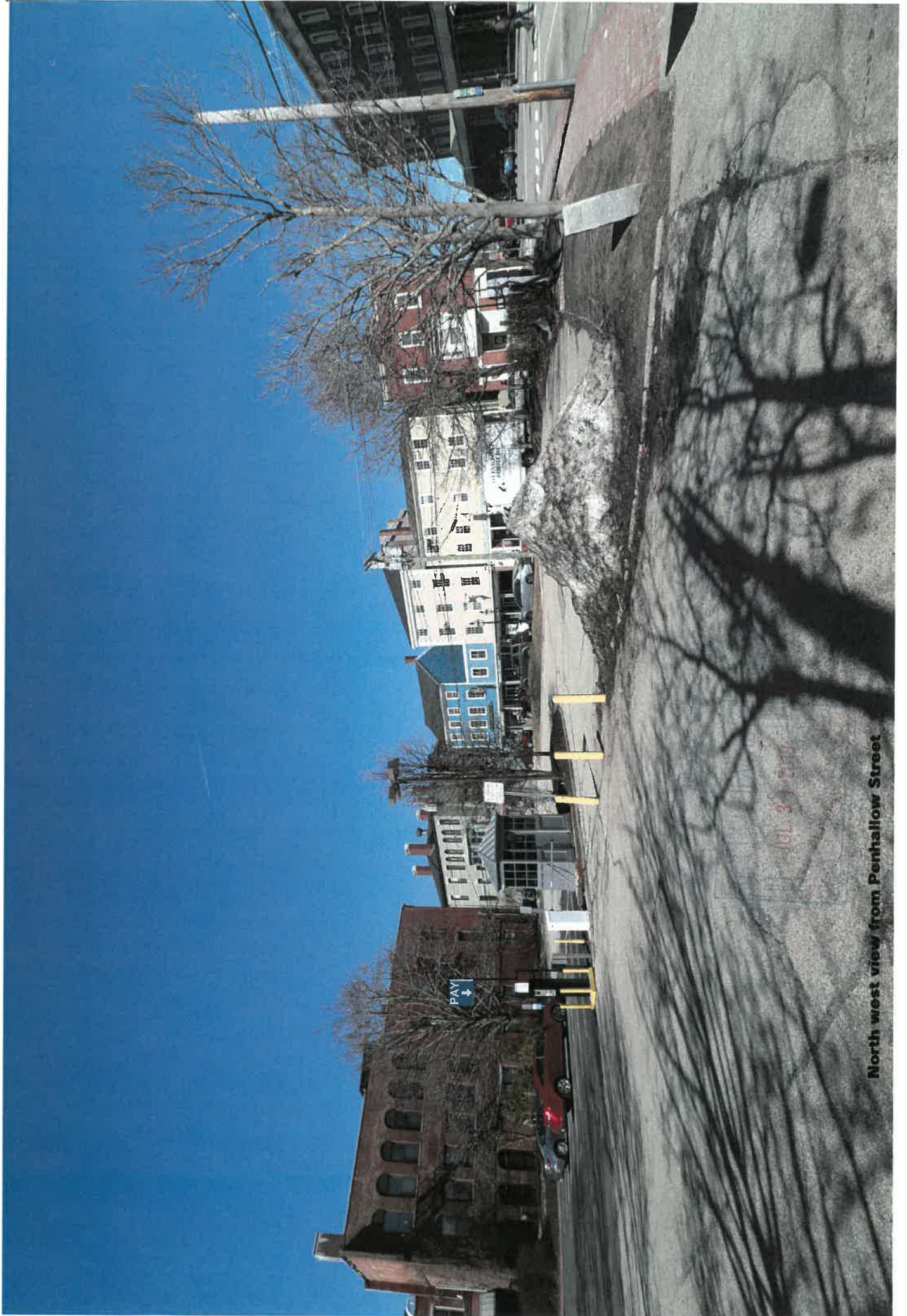




West view from Penhallow Street



West view from Penhallow Street



North west view from Penhallow Street

**NOTES:**  
 1) PARCELS ARE SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 107 AS LOTS 27, 31 & 42.

2) OWNERS OF RECORD:  
 107 PENNALLOW STREET, SUITE 300 EAST  
 PORTSMOUTH, NH 03801  
 599/729 (LOT 31) & 599/7103 (LOT 27)  
 C-1721, C-8101, & C-41108  
 COVENTRY ASSETS, LTD  
 107 DANIEL STREET, SUITE 300 E  
 PORTSMOUTH, NH 03801  
 3087/2440 (LOT 42)  
 C-28881 & C-28714

3) PARCELS ARE NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 3301502009E EFFECTIVE DATE MAY 17, 2008.

4) EXISTING LOT AREAS:  
 MAP 107 LOT 27  
 17,111 S.F.  
 0.3928 ACRES

MAP 107 LOT 31  
 17,111 S.F.  
 0.3928 ACRES

MAP 107 LOT 42  
 17,111 S.F.  
 0.3928 ACRES

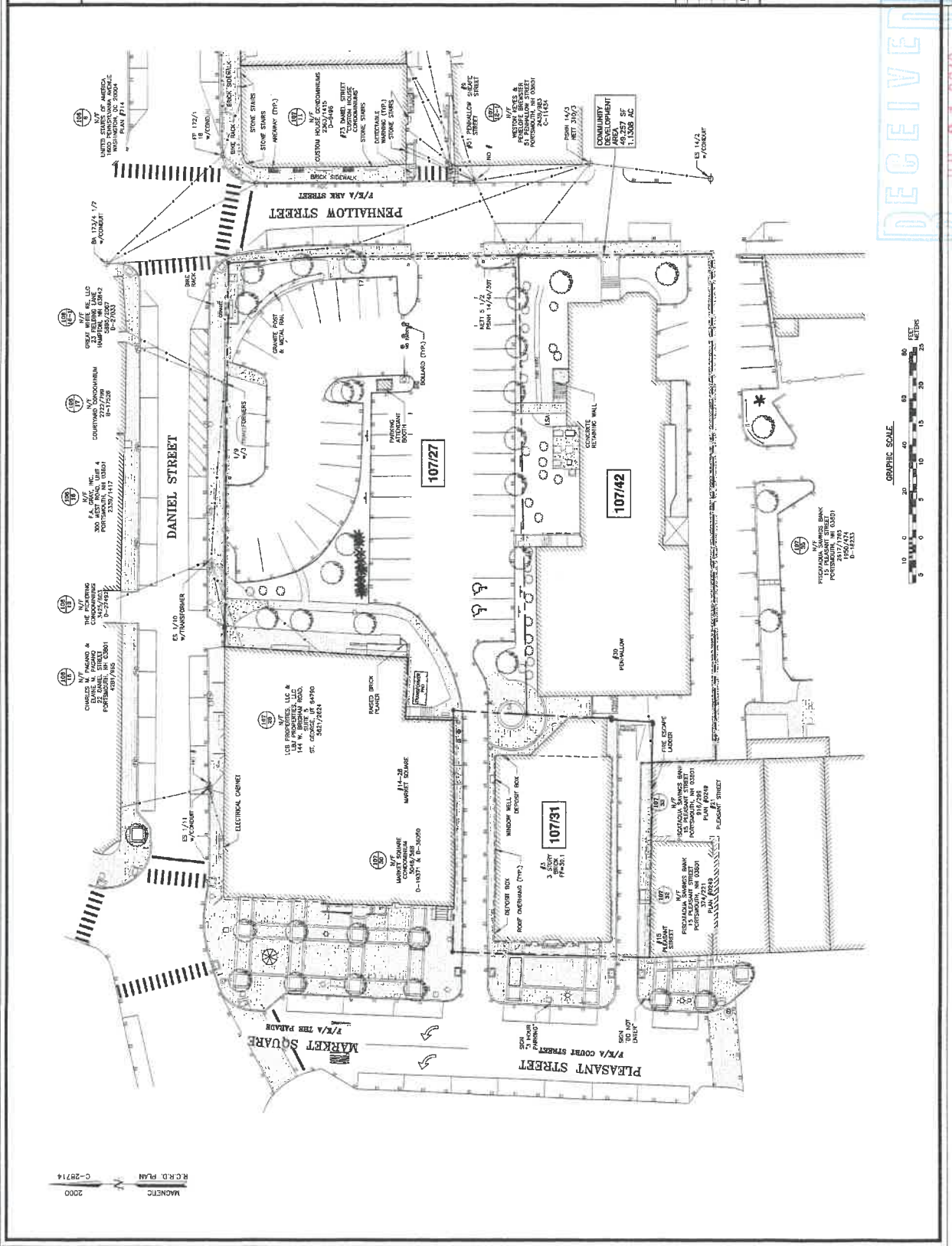
5) ASSESSOR'S MAP 107 LOTS 27 & 42 ARE LOCATED IN THE CHARACTER DISTRICT 4 (CDB) ZONING DISTRICT. THE ASSESSOR'S MAP 107 LOT 31 IS LOCATED IN THE CHARACTER DISTRICT 5 (CDB) ZONING DISTRICT. PARCELS ARE LOCATED WITHIN THE DOWNTOWN OVERLAY DISTRICT AND THE HISTORIC DISTRICT.

6) DIMENSIONAL REQUIREMENTS:  
 SEE ZONING ORDINANCE

NO.	ISSUED FOR COMMENT	DESCRIPTION	DATE
0			7/25/19

**MASTER PLAN**  
**EXISTING CONDITIONS**  
 TAX MAP 107  
**BRICK MARKET**  
 PROPERTY LOCATED AT:  
 3 PLEASANT STREET  
 30 PENNALLOW STREET  
 53 DANIEL STREET  
 CITY OF PORTSMOUTH  
 COUNTY OF ROCKINGHAM  
 STATE OF NEW HAMPSHIRE

SCALE 1"=20'  
 7/25/19 3019



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 JUL 31 2019  
 By



**AMBIT ENGINEERING, INC.**  
 Engineers & Land Surveyors  
 100 Commercial Street, Suite 200  
 Portsmouth, NH 03801-7114  
 Tel: (603) 435-2210  
 Fax: (603) 435-2210

**NOTES:**

- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 107 AS LOT 27.
- 2) OWNER OF RECORD:  
 DASHY TRACT  
 30 PENHALLOW STREET, SUITE 300 EAST  
 PORTSMOUTH, NH 03801
- 3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259E, EFFECTIVE DATE MAY 17, 2000.
- 4) EXISTING LOT AREA:  
 33,272 S.F.  
 0.764 ACRES
- 5) ASSESSOR'S MAP 107 LOT 27 IS LOCATED IN THE CHARACTER DISTRICT 4 (C4) ZONING DISTRICT, PARCEL IS LOCATED WITHIN THE DOWNTOWN OVERLAY DISTRICT (DOD) AND THE HISTORIC DISTRICT (HDC).
- 6) PARKING SPECIFICATIONS: NO PARKING REQUIRED
- 7) THE PURPOSE OF THIS PLAN IS TO SHOW THE PROPOSED STRUCTURE AND SETBACKS ON ASSESSOR'S MAP 107 LOT 27, CITY OF PORTSMOUTH FOR APPLICATION FOR VARIANCE.



**BRICK MARKET  
 53 DANIEL STREET  
 PORTSMOUTH, N.H.**

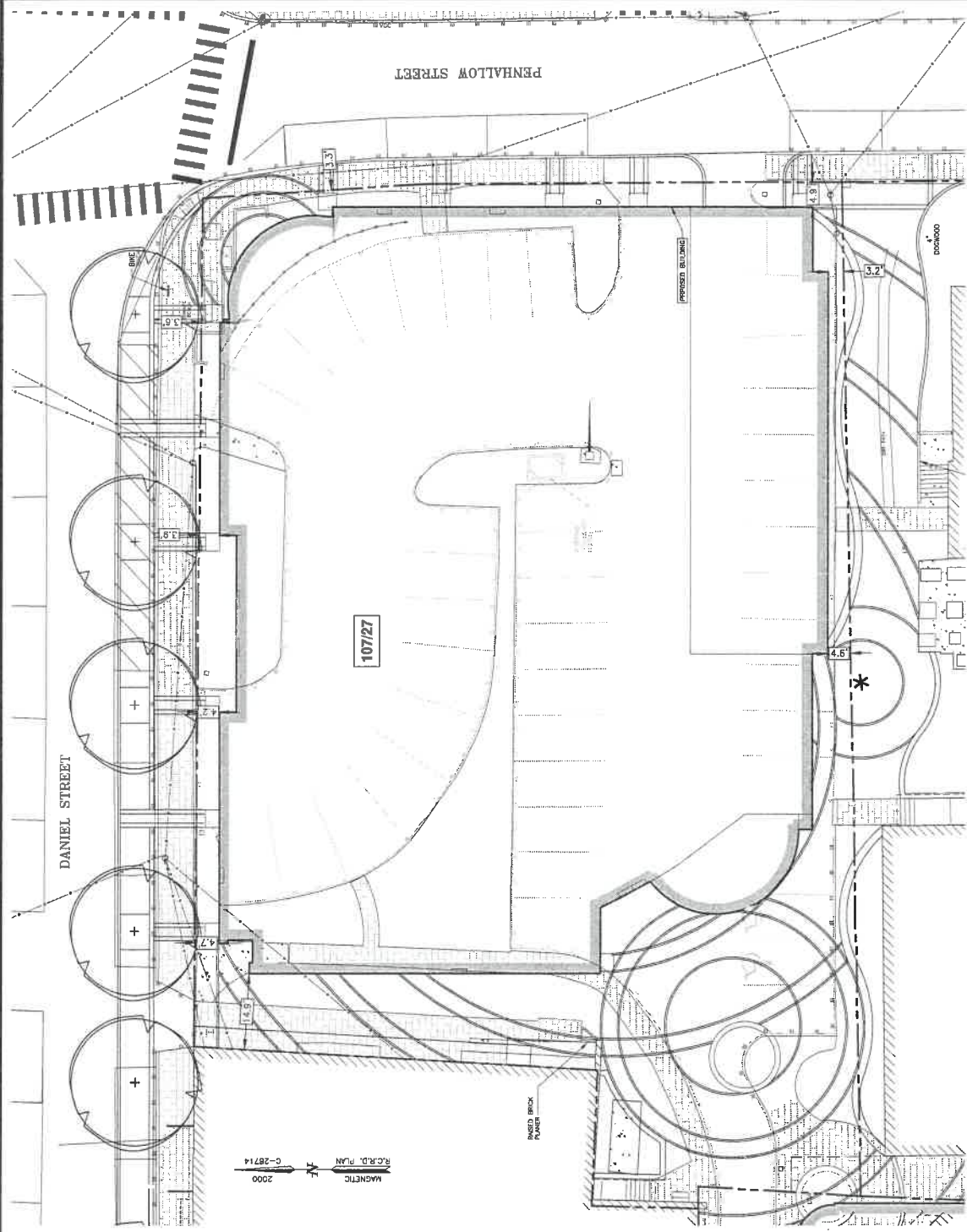
NO.	DESCRIPTION	DATE
0	ISSUED FOR COMMENT	7/31/19
	REVISED	

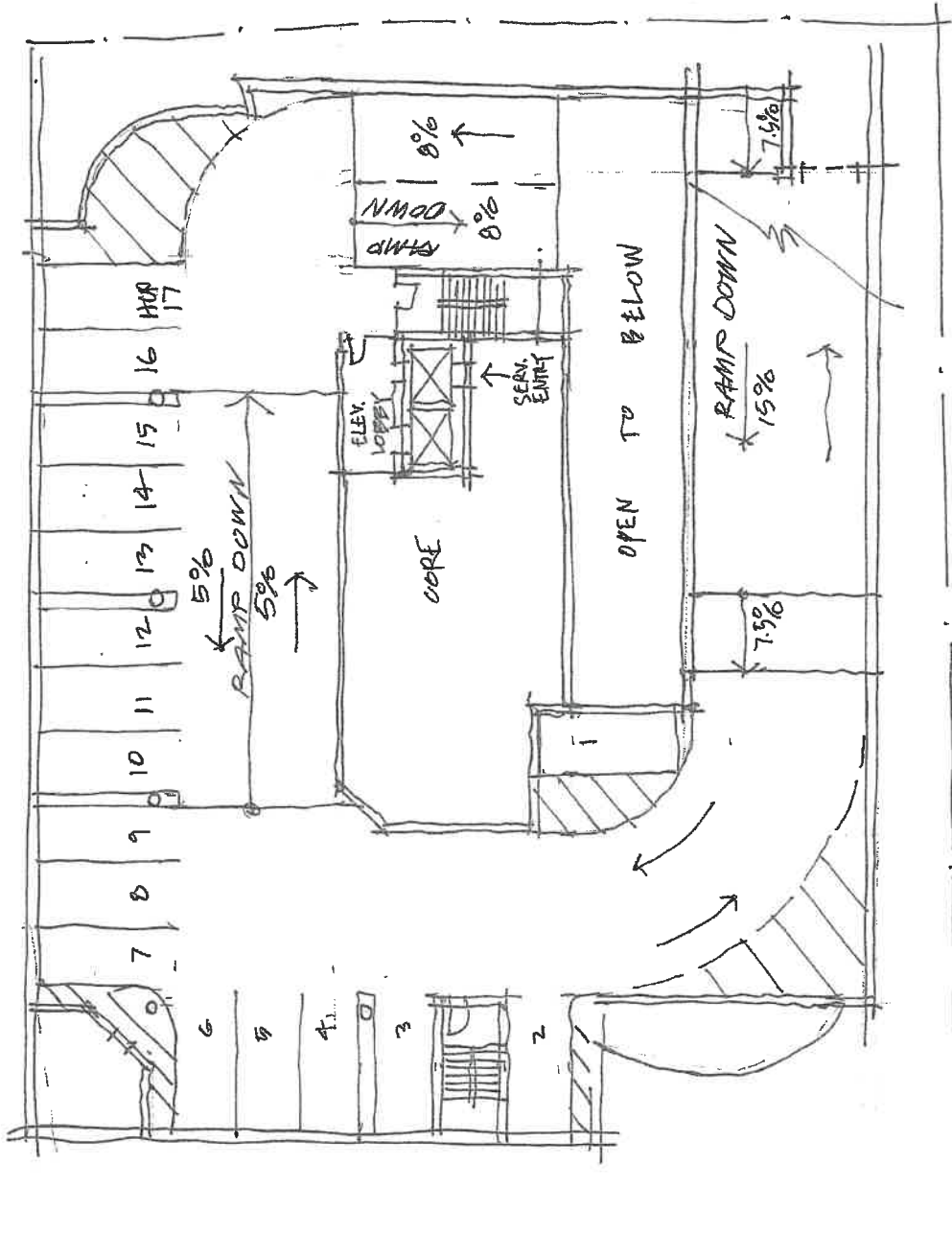
**Building Footprint Plan**

SCALE: 1"=10'  
 JULY 2019

VARIANCE  
 APPLICATION PLAN  
**V1**

FB 402 PE 3038

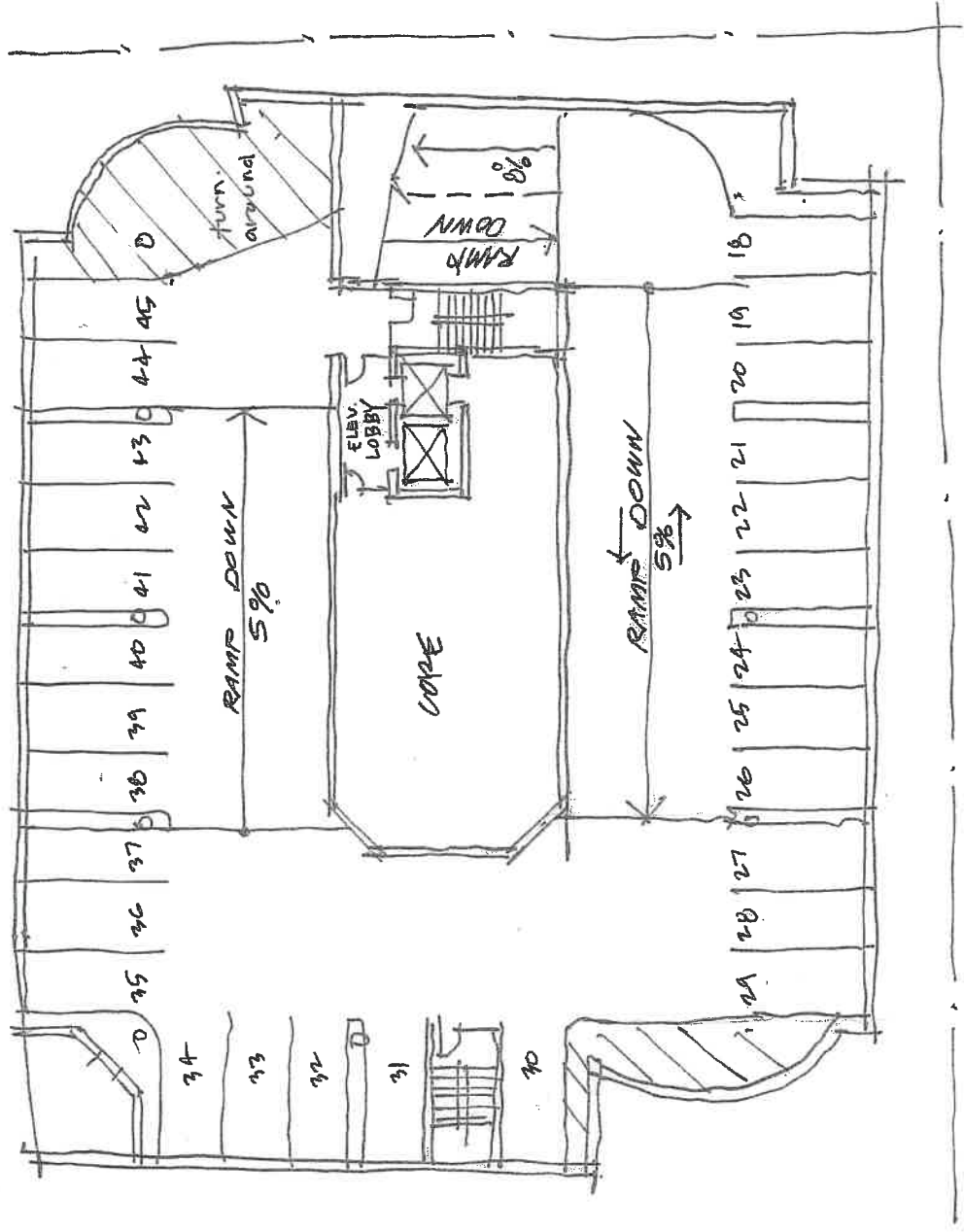




LEVEL P-1



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BY



LEVEL P.2

# 53 DANIEL STREET AT BRICK MARKET

HDC WORK SESSION 3  
AUGUST 2019



DRAWING LIST - DANIEL STREET	
NO.	NAME
D1.1	COVER
D1.2	MAP-EXISTING CONDITIONS & OBJECTIVES
D1.5	PROPOSED SITE PLAN
D1.7	FIRST FLOOR PLAN
D1.8	ROOF PLAN
D1.9	ELEVATIONS
D1.10	ELEVATIONS

RECEIVED  
JUL 31 2019  
By \_\_\_\_\_

D1.1

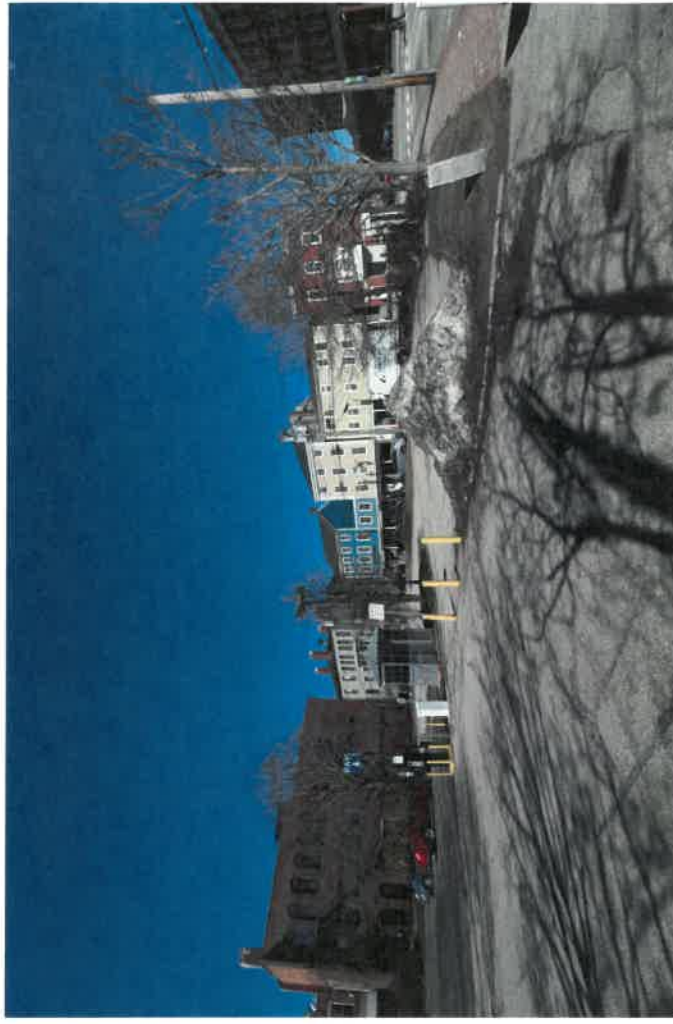
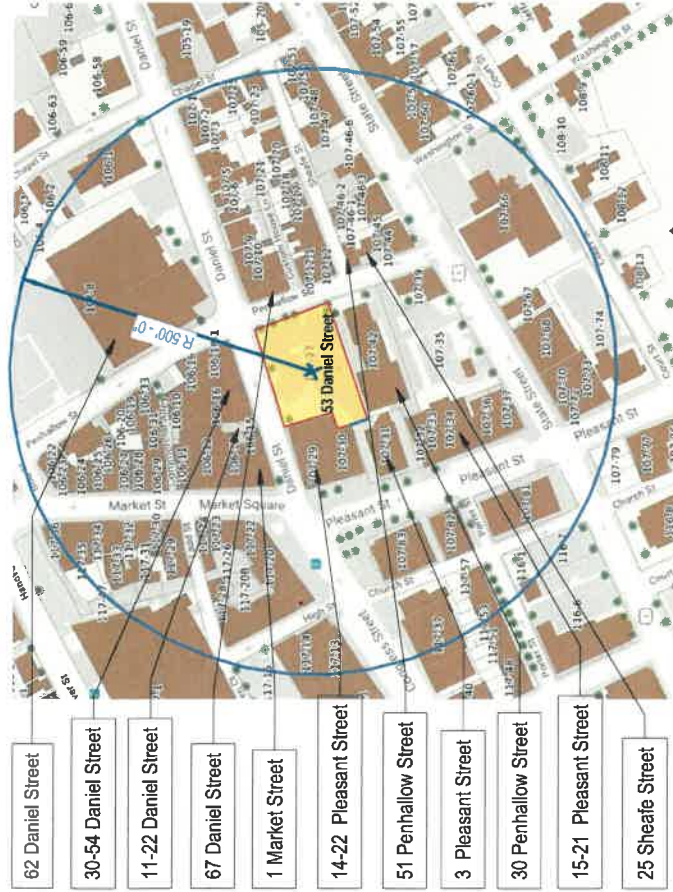
COVER

BRICK MARKET  
HDC AUGUST 2019

53 DANIEL STREET







- 62 Daniel Street
- 30-54 Daniel Street
- 11-22 Daniel Street
- 67 Daniel Street
- 1 Market Street
- 14-22 Pleasant Street
- 51 Penhallow Street
- 3 Pleasant Street
- 30 Penhallow Street
- 15-21 Pleasant Street
- 25 Sheate Street



**OBJECTIVES**

- Enliven and enhance pedestrian vibrancy & sense of place. Widened sidewalk plazas, outdoor dining, artist and musician spaces. *Master Plan 1.2; Zoning Ordinance 10.631.20 Purpose & Intent 1.6; 10.635.60 Review Factors 1-3; 10.635.70 Criteria 1-4.*
- Increased parking with two levels of on-site, underground parking. *Master Plan 4.3*
- Existing power lines relocated underground.
- Mixed use with street level public open market, and office space above. *Master Plan 3.3.2; ZO Purpose & Intent 4-6*
- Community accessible space with public courtyard pocket plaza, gardens and landscaped accessways.
- Connectivity - pedestrian connections between Market Square and McIntyre Building. *Master Plan 4.2*
- Public art at street level outdoor spaces. *Master Plan Goal 1.3*
- High performance resilience, sustainability and energy conservation. *Master Plan 5.1-5; ZO Purpose & Intent 45-6; Review Factor 3; Criteria 4*
- Building design with authentic materials, true to both its context and its time. Preserves iconic views of North Church steeple. Complements & enhances its surroundings. *Master Plan 2.1, 2.2; Urban Core: "Blend old & new architecture, preserve but not mimic old construction". HDC Design Guidelines Commercial Dev. & Infill - compatibility: visual connections with context; variety and vitality; "Present Day: contemporary design compatible within context of neighboring sites".*

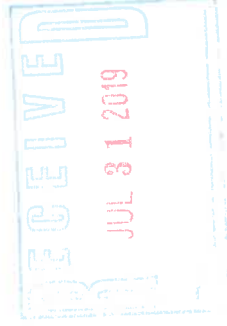
**D1.2**

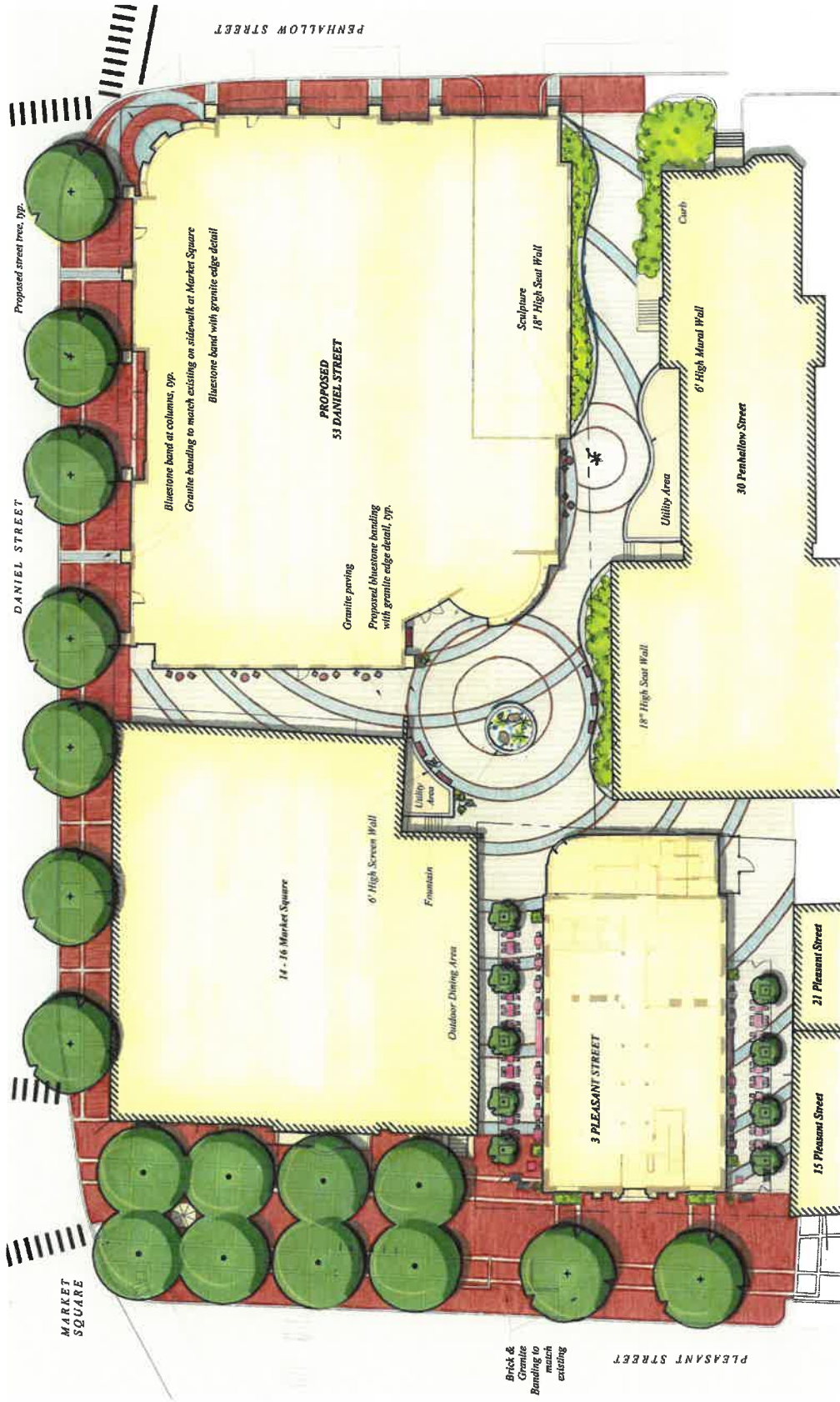
**MAP, EXISTING CONDITIONS & OBJECTIVES**  
BRICK MARKET  
HDC-AUGUST 2019

53 DANIEL STREET

**JSA**

ARCHITECTS  
INTERIORS  
PLANNERS





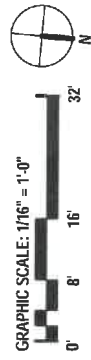
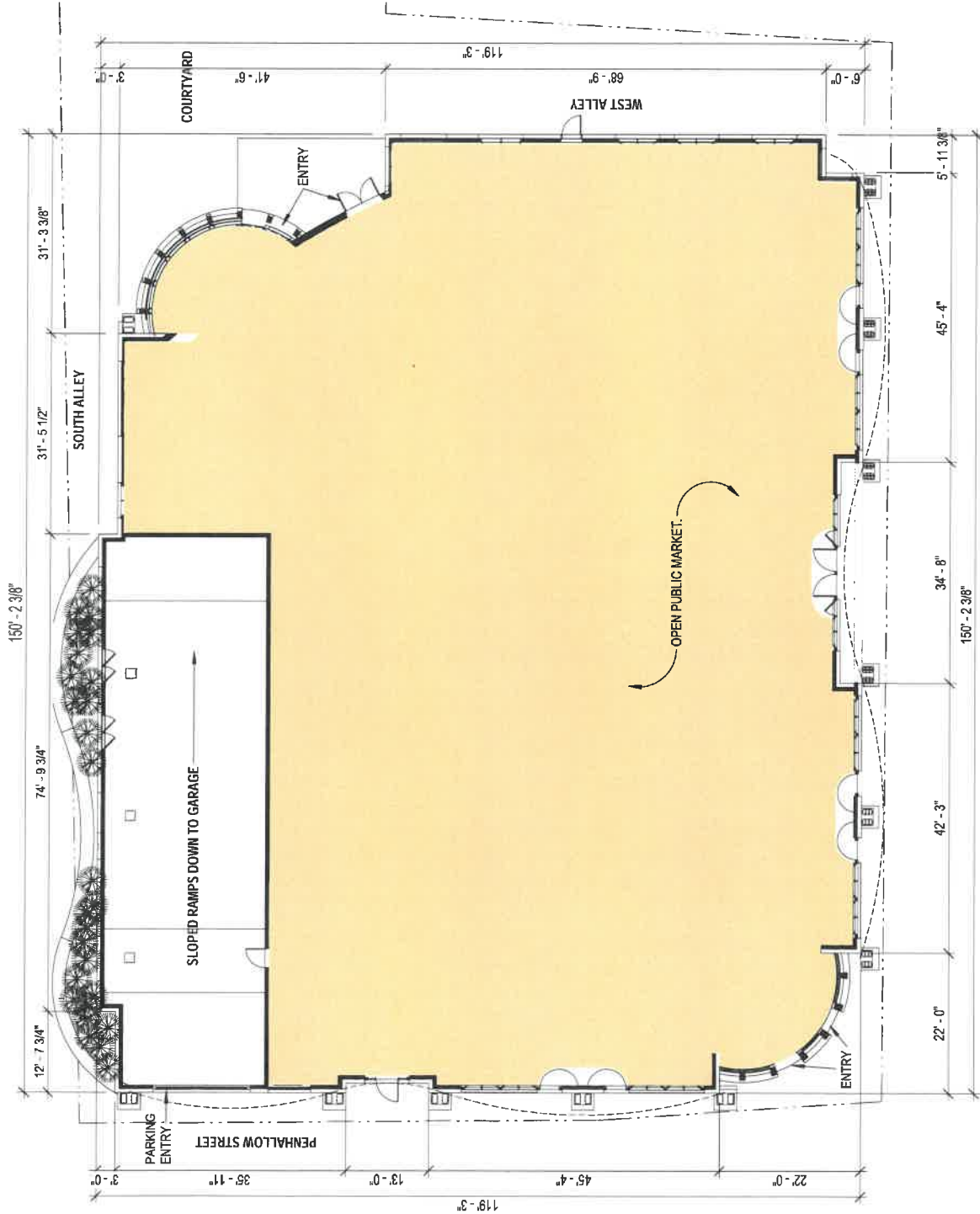
**D1.5**

**PROPOSED SITE PLAN**

BRICK MARKET  
HDC AUGUST 2019

53 DANIEL STREET





**FIRST FLOOR PLAN**  
 BRICK MARKET MASTER PLAN  
 HDC AUGUST 2019  
 53 DANIEL STREET

**D1.7**



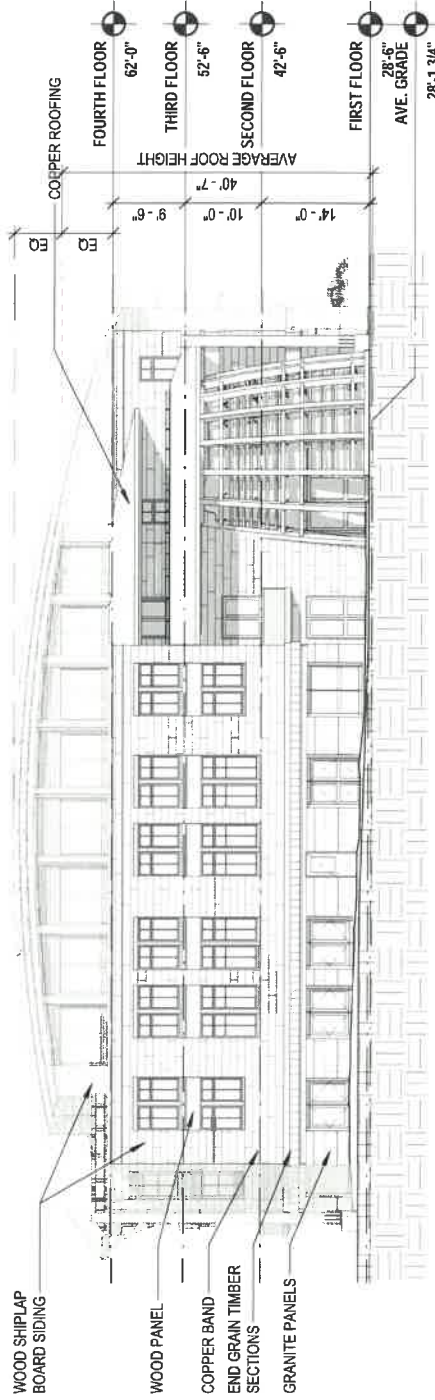
DANIEL STREET

**1** FIRST FLOOR OVERALL PLAN  
 1/16" = 1'-0"





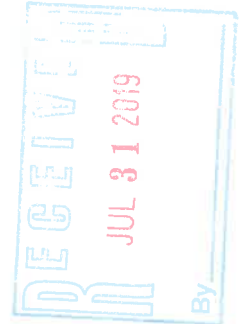
1 NORTH ELEVATION - DANIEL ST  
1/16" = 1'-0"



2 WEST ELEVATION - ALLEY  
1/16" = 1'-0"

D1.9

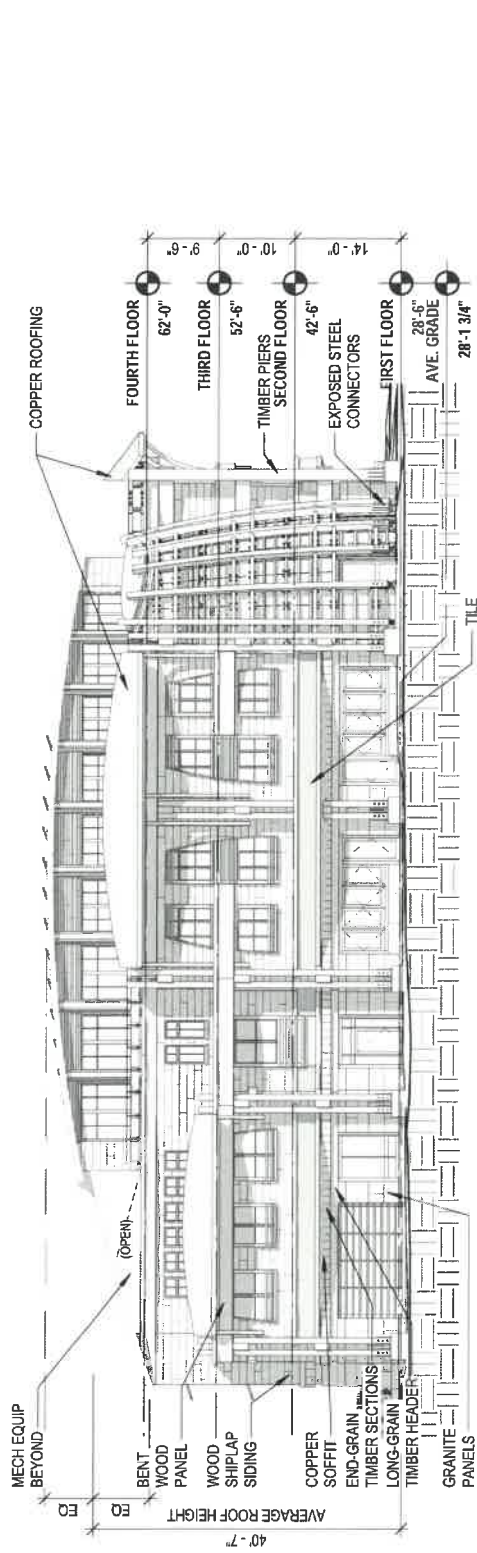
ELEVATIONS  
BRICK MARKET MASTER PLAN  
HDC AUGUST 2019



53 DANIEL STREET

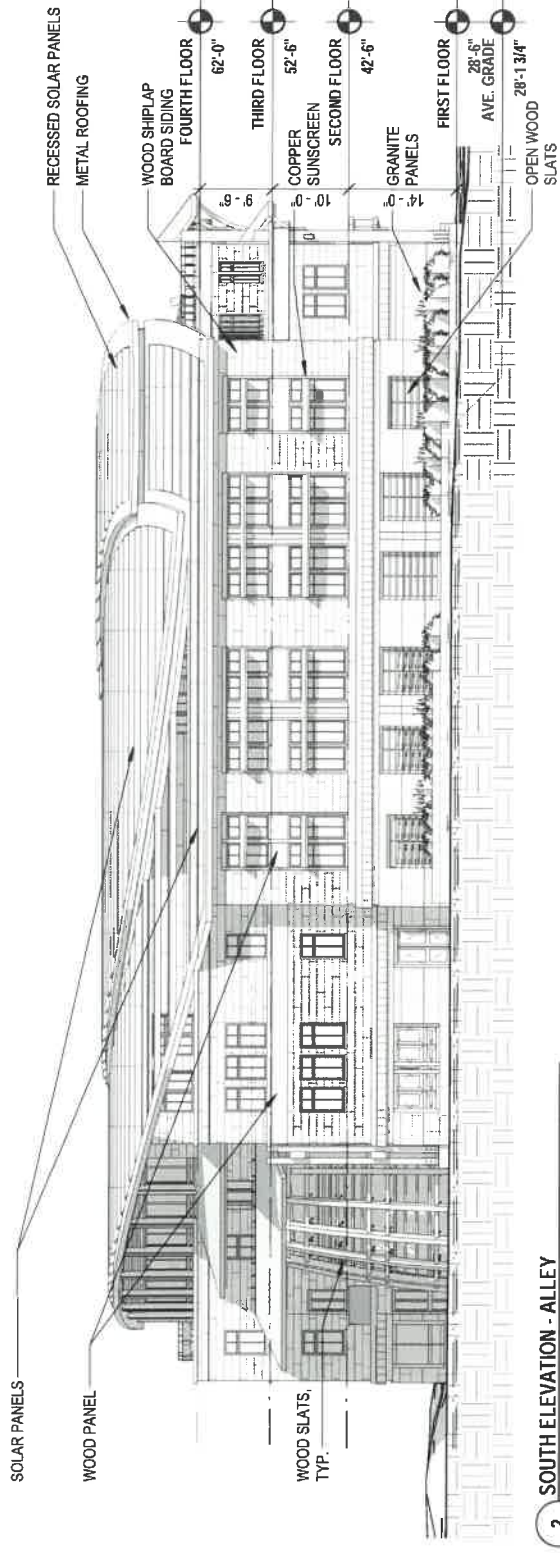
BRICK MARKET MASTER PLAN  
HDC AUGUST 2019

JSA  
ARCHITECTS  
INTERIORS  
PLANNERS



1 EAST ELEVATION - PENHALLOW STREET

1/16" = 1'-0"



2 SOUTH ELEVATION - ALLEY

1/16" = 1'-0"



D1.10

ELEVATIONS

BRICK MARKET MASTER PLAN  
HDC AUGUST 2019

53 DANIEL STREET

JSA

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INTERIORS  
PLANNERS