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March 31, 2021

David Rheume, Chair
Zoning Board of Adjustment
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

RE: 800 Islington Street, Tax Map 154, Lot 1

Dear Chair Rheume and Board Members:

Enclosed please find supporting materials to accompany the information submitted via the City's on-line permitting system for variance relief regarding the proposed signage scheme at the above referenced property.

We respectfully request that this matter be placed on the Board's April 20, 2021 agenda. In the meantime, if you have any questions or require additional information do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

Justin L. Pasay
JLP/sac
Enclosures

cc: Maple Rock, LLC
Neil Hansen, Tighe & Bond

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VARIANCE APPLICATION FOR
Maple Rock, LLC (the “**Applicant**”)

The Applicant requests variances from Sections 10.1251.20 and 10.1271.10 of the City of Portsmouth’s Zoning Ordinance (the “Zoning Ordinance”), as detailed below, to accomplish its signage proposal for the property located at 800 Islington Street, further identified as City Assessor Map 154, Lot 1 (the “**Property**” or “**Hannaford**”), as depicted in **Enclosure 1**, which includes detailed signage plans and renderings.

A. Introduction

The Property is situated in the City’s West End within Character District 4 (“CD4-W”), the West End Incentive Overlay District and Sign District 3, and consists of 6.54 acres of lot area. The Property contains a shopping mall with various retail uses including the Hannaford Supermarket. As depicted in **Enclosures 2** and **3**, which are the City’s Tax Map depiction of the Property and an aerial overview of the area respectively, to the south, the Property is bound by a parcel identified as Assessor Map 154-1-A, which is home to Bank of America. To the west, the Property is bound by Islington Street. To the north and northeast, the Property is bound by its parking lot, parcels identified as City Assessor Map 155-13, which is the site of various commercial retail establishments to include the New Hampshire Liquor and Wine Outlet, Café Espresso and Cleary Cleaners Laundromat and Dry Cleaning, City Assessor Map 154-2, which is the site a commercial building as well as Chinburg Properties’ Brewery 145 residential development, and Brewery Lane. Finally, to the south and southeast, the Property is bound by several residential properties along Aldrich Road. The Applicant notes that the signs which are the subject of this Variance Application will not be discernible from these residential properties along Aldrich Road based on their nature proposed locations.

The Applicant is conducting a remodel of the Hannaford Store on the Property. To summarize the project, Hannaford is remodeling the interior of the space and the Applicant plans to add a grocery delivery service, “Hannaford To Go”, to the operation on the Property. Ordinarily, this use would be accessed via the front façade of a Hannaford building. However, due to existing site constraints, Hannaford is proposing to use a location on the back side of the building to accommodate the Hannaford To Go, as depicted on the Overall Sign Exhibit plan included as **Enclosure 4**. To accommodate the Hannaford To Go operation, the Applicant recently received Amended Site Plan Approval from the City of Portsmouth to 1) add six (6) reserved parking spaces for grocery pick up and associated improvements including painted islands, arrows and directional signs, and 2) regrade approximately 6,500 square feet to alleviate grading concerns with the new parking area. See Enclosure 4, Enclosure 5 (Amended Site Plan), Enclosure 6 (Amended Site Plan Approval).

The Hannaford To Go operation proposes to use a single non-illuminated wall mounted sign reading “Hannaford To Go” that is 18.25 sq ft in size, as depicted in the elevations and renderings included as **Enclosure 1** (the “Hannaford To Go Sign”). The Hannaford To Go Sign will face west towards the Bank of America Parking lot and Islington Street. See Enclosure 4. The Hannaford To Go operation will entertain limited hours of 10:00 AM to 8:00 PM.

In addition to adding the Hannaford To Go operation and corresponding Hannaford To Go Sign, the Applicant proposes to update the main Hannaford sign on the building's front façade (the "Primary Hannaford Sign") to bring the same into accord with Hannaford's current brand standards. As explained below, this proposal will add 8.96 sq ft of sign area.

Pursuant to the proposed upgrade to the Primary Hannaford Sign, the Hannaford icon will change slightly by increasing its size by .5 sq ft. Additionally, the font on the word "Hannaford" is proposed to change. The Applicant notes that the letters themselves are the exact same three-foot height as they are today, it is just the spacing between the letters that is increasing the length of the sign by one foot. The Applicant also proposes to add the sub-copy of "Supermarket" to the Primary Hannaford Sign for an additional 5.46 sq ft of sign area. Ultimately, the Applicant's proposal will yield a total increase in sign area of 8.96 sq ft to the Primary Hannaford Sign. Renderings and elevations of the existing and proposed Primary Hannaford Sign are included in **Enclosure 1**.

As depicted in **Enclosure 1**, the Applicant's signage proposal reflects the size and scale of the building, its location in the West End amidst commercial and mixed-use properties, and its orientation towards Islington Street and Brewery Lane. Moreover, effort has been taken to ensure a reasonable proposal which will have no discernable effect on abutters and members of the public and patrons accessing the Property. However, upon review by the City, it was determined that the following variances are needed to accommodate the Applicant's signage proposal.

- 1) **Variance from §10.1251.20 to permit a wall sign with 86.21 sq ft of sign area where 40 sq ft is the maximum in Sign District 3 per individual sign, and where 77.25 sq ft exists today:** §10.1251.20 of the Zoning Ordinance provides a maximum sign area for wall signs in Sign District 3 of 40 sq ft. The Applicant proposes to replace the existing wall sign on the northerly side of the building which is 77.25 sq ft, with a new sign, as described above, with a sign area of 86.21 sq ft.
- 2) **Variance from §10.1271.10 to permit wall sign on an exterior wall not facing a street:** In reviewing the Applicant's signage proposal, the City indicated that the Hannaford To Go Sign is not "approximately parallel to any street or right-of-way" and there "does not appear to be a public entrance at this location." As such, the City concluded that the Hannaford To Go Sign is not permitted at the proposed location. See Enclosure 4.

Section 10.1271.10 of the Zoning Ordinance states that "A use in a building with more than one exterior wall facing a street may have signs on each such wall." Further, §10.1271.20 of the Zoning Ordinance states that "An establishment with a public entrance on a side of the building not facing a street may have signs on that side as well as on the street-facing wall." As depicted in **Enclosure 1** and discussed in greater detail below, the Applicant proposes the Hannaford To Go Sign on the westerly wall which faces the Bank of America parking lot and Islington Street. Further, though the public will not be entering Hannaford through the Hannaford To Go location, the Hannaford To Go operation will cause the public to drive to and park

at this location, pursuant to the Amended Site Plan, and receive groceries. This location therefore is, for all intents and purposes, a “public entrance.”

For these reasons, and as discussed below, we request a finding from the Board of Adjustment that no variance from §10.1271.10 of the Zoning Ordinance is required to erect the Hannaford To Go Sign as proposed. Regardless, in an abundance of caution, we request relief as recommended by the City.

Because the Applicant’s signage proposal will advance the express purposes of the City’s Sign Ordinance, will not be inconsistent with the essential character of the surrounding area, will not compromise the public health in any way, will provide substantial justice, will not compromise the property values of surrounding properties, and because there is no rational connection between the intent of the City’s Sign Ordinance and its application to the Property under the unique circumstances of this case, as outlined below, we respectfully request that these variances be granted.

B. Statutory Variance Criteria

Pursuant to Article 2, Section 10.233 of the Zoning Ordinance, and RSA 674:33, to obtain a variance in New Hampshire, an applicant must show that: (1) the variance will not be contrary to the public interest; (2) the spirit of the ordinance is observed; (3) substantial justice is done; (4) the values of surrounding properties are not diminished; and (5) literal enforcement of the provisions of the ordinance would result in an unnecessary hardship, where said term means that, owing to special conditions of the property that distinguish it from other properties in the area: no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and the Proposed use is a reasonable one; or if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. See RSA 674:33, I (b).

We will address each individual variance request separately, below.

C. Primary Hannaford Sign Variance

The Applicant requests a variance from §10.1251.20 to permit a wall sign with 86.21 sq ft of sign area where 40 sq ft is the maximum in Sign District 3 per individual sign, and where 77.25 sq ft exists today. This request meets the statutory variance criteria as follows.

1. The variance will not be contrary to the public interest.

The New Hampshire Supreme Court has indicated that the requirement that a variance not be “contrary to the public interest” is coextensive and related to the requirement that a variance be consistent with the spirit of the ordinance. See Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577, 580 (2005); Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 105-06 (2007); and Farrar v. City of Keene, 158 N.H. 684, 691 (2009). A variance is

contrary to the public interest only if it “unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance’s basic zoning objectives.” Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691. See also Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011) (“[m]ere conflict with the terms of the ordinance is insufficient.”) Moreover, these cases instruct boards of adjustment to make the determination as to whether a variance application “unduly” conflicts with the zoning objectives of the ordinance “to a marked degree” by analyzing whether granting the variance would “alter the essential character of the neighborhood” or “threaten the public health, safety or welfare” and to make that determination by examining, where possible, the language of the Zoning Ordinance.

The purpose of the City’s Sign Ordinance is to “maintain and enhance the character of the City’s commercial districts and residential neighborhoods and to protect the public from hazardous and distracting displays.” Zoning Ordinance, §10.1211. This express purpose of the Sign Ordinance is substantially similar to the standard of review borne out through applicable case law, outlined above, that the Board of Adjustment must use in determining whether the requested variance will be contrary to the public interest and whether the spirit of the Ordinance is observed, mainly whether the proposed signage will alter the essential character of the neighborhood or threaten the public health, safety or welfare. The proposed Primary Hannaford Sign will do neither.

First, the Primary Hannaford Sign will fulfill the express intentions and stated purposes of the Sign Ordinance to maintain and enhance character of the area and protect the public from hazardous and distracting displays. With 261 ft of building frontage (see **Enclosure 1**), even considering the Hannaford To Go Sign, the Hannaford establishment will utilize substantially less than its permitted aggregate sign area. Specifically, under the Zoning Ordinance, the Hannaford establishment is permitted 522 sq ft of aggregate sign area where the Applicant’s signage proposal only constitutes 104.46 sq ft (86.21 sq ft for the Primary Hannaford Sign plus 18.25 sq ft for the proposed Hannaford To Go Sign). As a result, and as amended by this variance request, Hannaford’s aggregate sign area will still only be 20% of the 522 sq ft of sign area permitted by the Zoning Ordinance. See Zoning Ordinance, §10.1251.10. More persuasively, the Applicant’s proposal for the Primary Hannaford Sign is to add a mere 8.96 sq ft of sign area, a change that will be virtually indiscernible from the existing conditions.

The public interest is also served by virtue of the unique orientation of the building on the site. Though some patrons access the site via Brewery Lane, most come from the Property entrance off of Islington Street, or cut across the Bank of America parking lot. The orientation of the building, however, faces Brewery Lane and patrons have to navigate a large parking lot and other commercial/retail establishments before engaging Hannaford. In other words, due to these conditions and the large scale of the building, a large sign orienting the public is beneficial.

Because the signage for the Hannaford use will remain a small fraction of the permitted signage authorized by the Zoning Ordinance, because the Primary Hannaford Sign is only adding 8.96 sq ft of sign area, and because the nature of the sign will remain consistent with what exists today, the Applicant’s proposal will continue to maintain the character of the area and comply with the express purposes of the Sign Ordinance. In other words, the proposal will not, “unduly, and in a marked degree” conflict with the ordinance such that the proposal violates the

ordinance's basic zoning objectives, because the new Primary Hannaford Sign will be consistent with those express purposes.

Further, the proposed new Primary Hannaford Sign will not alter the essential character of the neighborhood or threaten the public health or safety. As described above, the new sign will be substantially similar to the existing sign, consistent with the neighborhood and surrounding commercial uses, and the Hannaford establishment will continue to utilize far less aggregate sign area than what it is permitted under the Zoning Ordinance. As a result, and because the nature of the sign will not be changed, the new Primary Hannaford Sign will neither alter the essential character of the neighborhood or threaten the public health or safety.

As the Primary Hannaford Sign will uphold the City's Sign Ordinance by maintaining the character of the area and not creating a hazardous or distracting display, and as the proposal will not alter the essential character of the neighborhood or threaten the public health or safety, the Applicant respectfully submits that it would be reasonable and appropriate for the Board of Adjustment to conclude that granting the variance will not be contrary to the public interest.

2. The spirit of the Ordinance is observed.

As referenced in Section (C)1, above, the requested variance observes the spirit of the Sign Ordinance and New Hampshire jurisprudence regarding the "public interest" prong of the variance criteria because the Applicant's signage proposal will not compromise the character of the City's commercial or residential neighborhoods and will not alter the essential character of the neighborhood or threaten the public health, safety, or welfare. As the New Hampshire Supreme Court has indicated in both Chester Rod & Gun Club and in Malachy Glen, the requirement that the variance not be "contrary to the public interest" is coextensive and is related to the requirement that the variance be consistent with the spirit of the ordinance. See Chester Rod & Gun Club, 152 N.H. at 580. A variance is contrary to the spirit of the ordinance only if it "unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance's basic zoning objectives." Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691. As discussed above, the requested variance is consistent with the spirit of the Sign Ordinance because of the reasons stated in Section (C)1. As a result, for the reasons stated above, the Applicant respectfully asserts that it would be reasonable and appropriate for the Board of Adjustment to conclude that the requested variances will observe the spirit of the Zoning Ordinance.

3. Substantial justice is done.

As noted in Malachy Glen, *supra*, "perhaps the only guiding rule [on this factor] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." Malachy Glen, *supra*, citing 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 24.11, at 308 (2000) (quoting New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997)). In short, there must be some gain to the general public from denying the variance that outweighs the loss to the Applicant from its denial.

In this case, the public does not stand to gain anything from denying the variance requested. Despite the scale of the building, the Applicant's signage proposal is very modest and the increase in sign area being proposed (8.96 sq ft) is *de minimus* and well within the aggregate sign area requirements of the Zoning Ordinance. See **Enclosure 1**. The changes to the Primary Hannaford Sign will be virtually indiscernible and the overall size of the same will help orient patrons and the public to the Hannaford.

On the other hand, the Applicant is pursuing signage that will complement and beautify the building and the area, be consistent with its remodeling efforts, and consistent with its new branding. The signage will not be contrary to the essential character of the City's West End or the neighborhood in question.

As there is no gain to the general public from denying the variance that outweighs the loss to the Applicant from its denial, granting the requested variance will accomplish substantial justice.

4. The proposal will not diminish surrounding property values.

Given the nature of the neighborhood, the surrounding commercial uses, and the size and scale of the building on the Property, none of the surrounding properties will suffer any diminution in value as a result of granting this variance. Certainly, the Applicant is aware of no evidence to the contrary. Accordingly, the Applicant respectfully requests that the Board of Adjustment find that the requested variance will not diminish surrounding property values.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

As set forth in the provisions of RSA 674:33, I, there are two options by which the Board of Adjustment can find that an unnecessary hardship exists:

(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) The Proposed use is a reasonable one.

or,

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The "special conditions" of the Property for purposes of this variance criterion include the size and scale of the Property, which is significantly larger than the majority of properties in

its area, the size of the building vis-à-vis the size of the Property, and the orientation of the building which essentially faces north and Brewery Lane when considering that the public accesses the site from the west and Islington Street.

In Harborside Assocs. v. Parade Residence Hotel, the New Hampshire Supreme Court upheld the Portsmouth Board of Adjustment's finding that the physical improvements on a property, in that case the size of a building when compared to other buildings in the area within the context of sign variance request, could be considered "special circumstances." Affirming the analysis of the Board of Adjustment, the Supreme Court stated:

The [Respondent] is not attempting to meet the 'special conditions' test by showing that its *signs* would be unique in their settings, but that its *property* – the hotel and conference center – has unique characteristics that make the signs themselves a reasonable use of the property.

Harborside, 162 N.H. at 518 (emphasis added). Cf Farrar, 158, N.H. 689 (where variance sought to convert large, historical single use residence to mixed use of two residence and office space, size of residence was relevant to determining whether property was unique in its environment).

Here, the Property's physical characteristics and improvements make the proposed signage reasonable under the circumstances where the building occupies a significant portion of the Property, where the Property is large and consists of parking lot which the public must traverse to get to the "front façade" of the Hannaford building, and where the orientation of the Hannaford faces north despite the majority of its patrons accessing the Property from the west.

Due to these special conditions of the Property, there is no fair and substantial relationship between the public purposes of the underlying ordinances and their specific application to the Property. On the contrary, despite its lack of conformity, the Applicant's proposed Primary Hannaford Sign is consistent with the public purposes of the relevant Zoning Ordinances, as described above, because it will maintain the character of the neighborhood and protect the public from hazardous and distracting displays and the changes to the sign will be virtually indiscernible from current conditions. Beyond all of this, the Hannaford establishment will remain well below the permitted aggregate sign area.

Put another way, strictly enforcing the underlying Zoning Ordinance and denying the variance request to add 8.96 sq ft to the Primary Hannaford Sign will not advance the public purposes of the Sign Ordinance but granting the requested variance will.

The Applicant respectfully reminds the Board of Adjustment that the mere fact that the Applicant is seeking a variance from the express provisions of the Zoning Ordinance is not a valid reason for denying the variance. See Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 107 (2007); see also Harborside Associates, 162 N.H. at 2011 ("mere conflict with the terms of the ordinance is insufficient").

Finally, because the proposed Primary Hannaford Sign will be conservatively and tastefully sited on the building in a manner substantially similar to the sign's existing conditions,

and to signs in the commercial area surrounding the Property, it is reasonable under the circumstances. See Vigeant v. Town of Hudson, 151 N.H. 747, 752 - 53 (2005); and Malachy Glen, 155 N.H. at 107; see also Harborside at 518-519 (applicant did not need to show signs were “necessary” rather only had to show signs were a “reasonable use”).

Accordingly, the Applicant respectfully asserts that its application complies with the standard for Option A of the unnecessary hardship criterion and the Board of Adjustment should so find.

D. Hannaford To Go Sign Variance

A legitimate threshold determination for any Board of Adjustment in New Hampshire is whether variance relief is needed in the first place. In this case, the Applicant is proposing to erect the Hannaford To Go Sign at the location depicted in **Enclosure 1** to support the Hannaford To Go use. As erected, the Hannaford To Go Sign will face Islington Street and the Bank of America parking lot, through which people access the Property. Though there will be onsite directional signage orienting people to the location of the Hannaford To Go location (see **Enclosure 6**), without the Hannaford To Go Sign as proposed, it will be difficult for the public to discern where it and the new parking spaces, are located.

Under the City’s Zoning Ordinances, where a use in a building has more than one exterior wall facing a street, that use may have signs on each wall. Zoning Ordinance, §10.1271.10. In this case, despite the City’s interpretation that the Hannaford To Go Sign is not approximately parallel to any street or right-of-way, as discussed above, it actually does face Islington Street and the direction from which patrons will primarily be coming. Accordingly, under a plain-language interpretation of the Zoning Ordinance, no variance relief from §10.1271.20 is needed.

Additionally, pursuant to §10.1217.20 of the Zoning Ordinance, when an establishment has a “public entrance” on a side of a building that is not facing a street, that establishment may have signs on that side as well as on the street-facing side. In this case, the Applicant has obtained Amended Site Plan Review Approval to construct additional parking spaces to accommodate the Hannaford To Go use at the location depicted in the enclosed materials. See **Enclosures 4, 6**. Patrons will be specifically traveling to this location of the Property to receive groceries. As a result, while the public will not be going into Hannaford via the Hannaford To Go location, this location constitutes, for all intents and purposes, a “public entrance” because patrons will be engaging the Hannaford business from this location, and, much like patrons seeking to go inside a commercial use or business, these patrons need to know where the use is located. As a result, the directional signage approved pursuant to the Amended Site Plan is insufficient.

For these reasons, the Applicant respectfully asserts that no variance relief is needed to erect the Hannaford To Go sign because: 1) the Hannaford To Go Sign is approximately parallel to Islington Street and the direction from which patrons will be engaging the use; and 2) in the alternative, the Hannaford To Go includes, for all intents and purposes, a “public entrance” because patrons need to appreciate how to locate and engage the Hannaford To Go use. The

Applicant requests that the Board of Adjustment take of this matter as a threshold consideration first.

If the Board of Adjustment finds that variance relief is nonetheless required, we provide the below analysis.

1. The variance will not be contrary to the public interest.

The Applicant herein incorporates the legal standard for reviewing this statutory variance criteria depicted in Section (C)(1), above.

The purpose of the City's Sign Ordinance is to "maintain and enhance the character of the City's commercial districts and residential neighborhoods and to protect the public from hazardous and distracting displays." Zoning Ordinance, §10.1211. This express purpose of the Sign Ordinance is substantially similar to the standard of review borne out through applicable case law, outlined above, that the Board of Adjustment must use in determining whether the requested variance will be contrary to the public interest and whether the spirit of the Ordinance is observed, mainly whether the proposed signage will alter the essential character of the neighborhood or threaten the public health, safety or welfare. The Hannaford To Go Sign will do neither.

First, the Hannaford To Go Sign will fulfill the express intentions and stated purposes of the Sign Ordinance to maintain and enhance character of the area and protect the public from hazardous and distracting displays. Specifically, as outlined above, even with the proposed Hannaford To Go Sign, the Hannaford establishment will have substantially less than the permitted aggregate sign area. Beyond this, the Hannaford To Go Sign will be unlit, will be indiscernible from residential properties, and will advance the purpose of the recently approved Amended Site Plan. Put another way, the proposed new sign will have an indiscernible impact. The signage will also orient people to the use in a thoughtful and logical way.

Because the signage for the Hannaford use will remain a small fraction of the permitted aggregate sign area authorized by the Zoning Ordinance, and because of the proposed location and modest size of the Hannaford To Go Sign, the Applicant's proposal will continue to maintain the character of the area, will advance public safety, and comply with the express purposes of the Sign Ordinance. In other words, the proposal will not, "unduly, and in a marked degree" conflict with the ordinance such that the proposal violates the ordinance's basic zoning objectives, because the new Hannaford To Go Sign will be consistent with those express purposes.

Further, the proposed new Hannaford To Go Sign will not alter the essential character of the neighborhood or threaten the public health or safety. As described above, the Property is surrounded primarily by commercial uses and the new sign will be in an innocuous location, will be unlit, will advance the Amended Site Plan, and will be utilized pursuant to the Hannaford To Go Operation's limited hours of operation. There is no evidence that new sign will cause any public hazard or threat to public safety. Common sense dictates the opposite. As a result, the Hannaford To Go Sign will neither alter the essential character of the neighborhood nor threaten the public health or safety.

Finally, the public interest is particularly advanced in this case because the requested variance will facilitate and compliment the Hannaford To Go use, which use is critically important in the age of COVID-19.

As the Hannaford To Go Sign will uphold the City's Sign Ordinance by maintaining the character of the area and not creating a hazardous or distracting display, and as the proposal will not alter the essential character of the neighborhood or threaten the public health or safety, the Applicant respectfully submits that it would be reasonable and appropriate for the Board of Adjustment to conclude that granting the variance will not be contrary to the public interest.

2. The spirit of the Ordinance is observed.

The Applicant herein incorporates the legal standard for reviewing this statutory variance criteria depicted in Section (C)(1) and (2), above.

As discussed above, the requested variance is consistent with the spirit of the Sign Ordinance because of the reasons stated in Section (D)1. As a result, for the reasons stated above, the Applicant respectfully asserts that it would be reasonable and appropriate for the Board of Adjustment to conclude that the requested variance will observe the spirit of the Zoning Ordinance.

3. Substantial justice is done.

The Applicant herein incorporates the legal standard for reviewing this statutory variance criteria depicted in Section (C)(3), above.

In this case, the public does not stand to gain anything from denying the variance requested. The proposed new Hannaford To Go Sign will compliment the directional signage for the Hannaford To Go use that was approved pursuant to the Amended Site Plan Approval and will help orient patrons and the public to the Hannaford To Go location. Without the sign, the public will be at a disadvantage and will not be able to access the site and engage the use as readily. Further, the sign will be unlit and be indiscernible from residential properties.

On the other hand, the Applicant is pursuing signage that will complement and beautify the building and the area, meaningfully engage the public and patrons to its new Hannaford To Go use, and be consistent with its remodeling efforts. The signage will not be contrary to the essential character of the City's West End or the neighborhood in question.

As there is no gain to the general public from denying the variance that outweighs the loss to the Applicant from its denial, granting the requested variance will accomplish substantial justice.

4. The proposal will not diminish surrounding property values.

Given the nature of the neighborhood, the surrounding commercial uses, the size and scale of the building on the Property, and the proposed location of the Hannaford To Go Sign,

none of the surrounding properties will suffer any diminution in value as a result of granting these variances. Certainly, the Applicant is aware of no evidence to the contrary. Accordingly, the Applicant respectfully requests that the Board of Adjustment find that the requested variance will not diminish surrounding property values.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

The Applicant herein incorporates the legal standard for reviewing this statutory variance criteria depicted in Section (C)(5), above.

The “special conditions” of the Property for purposes of this variance criterion include the size and scale of the Property, which is significantly larger than the majority of properties in its area, the size of the building vis-à-vis the size of the Property, the orientation of the building and the location of the proposed and approved Hannaford To Go use.

In Harborside Assocs. v. Parade Residence Hotel, the New Hampshire Supreme Court upheld the Portsmouth Board of Adjustment’s finding that the physical improvements on a property, in that case the size of a building when compared to other buildings in the area within the context of sign variance request, could be considered “special circumstances.” Affirming the analysis of the Board of Adjustment, the Supreme Court stated:

The [Respondent] is not attempting to meet the ‘special conditions’ test by showing that its *signs* would be unique in their settings, but that its *property* – the hotel and conference center – has unique characteristics that make the signs themselves a reasonable use of the property.

Harborside, 162 N.H. at 518 (emphasis added). Cf Farrar, 158, N.H. 689 (where variance sought to convert large, historical single use residence to mixed use of two residence and office space, size of residence was relevant to determining whether property was unique in its environment).

Here, the Property’s physical characteristics and improvements make the proposed signage reasonable under the circumstances where the building occupies a significant portion of the Property, where the Property is large and consists of parking lot which the public must traverse to get to the new use, and where the location of the proposed use and its orientation on the building are innocuous. Further the building’s location surrounded by commercial uses makes the proposal infinitely reasonable.

Due to these special conditions of the Property, there is no fair and substantial relationship between the public purposes of the underlying ordinances and their specific application to the Property. On the contrary, despite its lack of conformity, the Hannaford To Go Sign is consistent with the public purposes of the relevant Zoning Ordinance, as described above, because the Hannaford To Go Sign will maintain the character of the area, will compliment the approved directional signage for the Hannaford To Go use, will orient the public as to how to access that use, and will not, as an unlit wall mounted sign, create a hazardous or distracting

display. The Hannaford To Go use needs to be discernible to the public and to patrons accessing the site from the west, particularly in light of its relatively innocuous location on the building.

In this case and under the unique circumstances presented, strictly enforcing the underlying Zoning Ordinance will not advance the public purposes of the Sign Ordinance but granting the requested variance will.

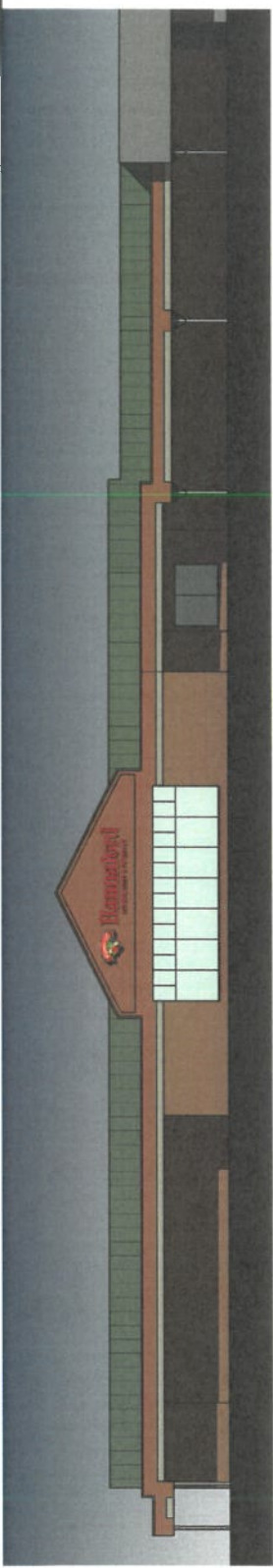
The Applicant respectfully reminds the Board of Adjustment that the mere fact that the Applicant is seeking a variance from the express provisions of the Zoning Ordinance is not a valid reason for denying the variance. See Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 107 (2007); see also Harborside Associates, 162 N.H. at 2011 (“mere conflict with the terms of the ordinance is insufficient”).

Finally, because the Hannaford To Go Sign will be conservatively and tastefully sited on the building, will compliment the Hannaford To Go use, and because it is in accord with the spirit and intent of the Ordinance, it is reasonable under the circumstances. See Vigeant v. Town of Hudson, 151 N.H. 747, 752 - 53 (2005); and Malachy Glen, 155 N.H. at 107; see also Harborside at 518-519 (applicant did not need to show signs were “necessary” rather only had to show signs were a “reasonable use”).

Accordingly, the Applicant respectfully asserts that its application complies with the standard for Option A of the unnecessary hardship criterion and the Board of Adjustment should so find.

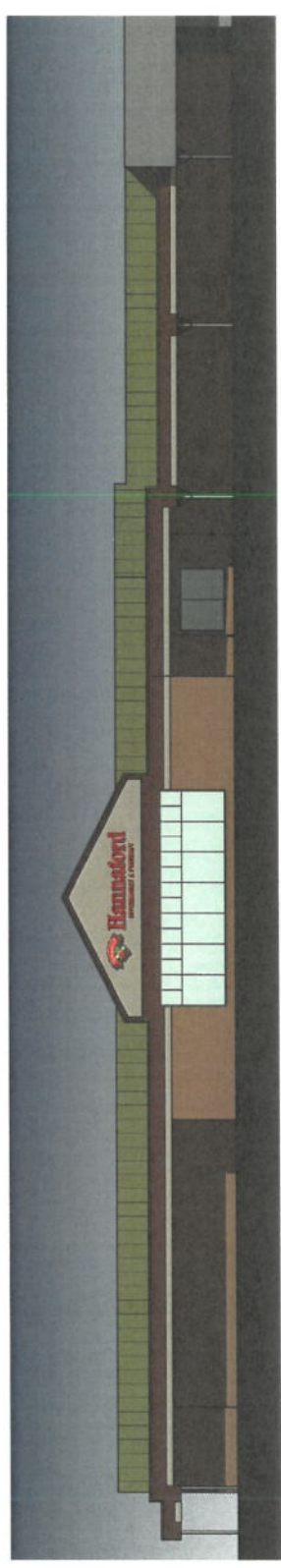
E. Conclusion

The Applicant respectfully submits that both the variances as requested have been met such that its Variance Application should be granted.







1 PORTSMOUTH EXISTING EXTERIOR ELEVATION

SCALE: 3/64" = 1'-0"



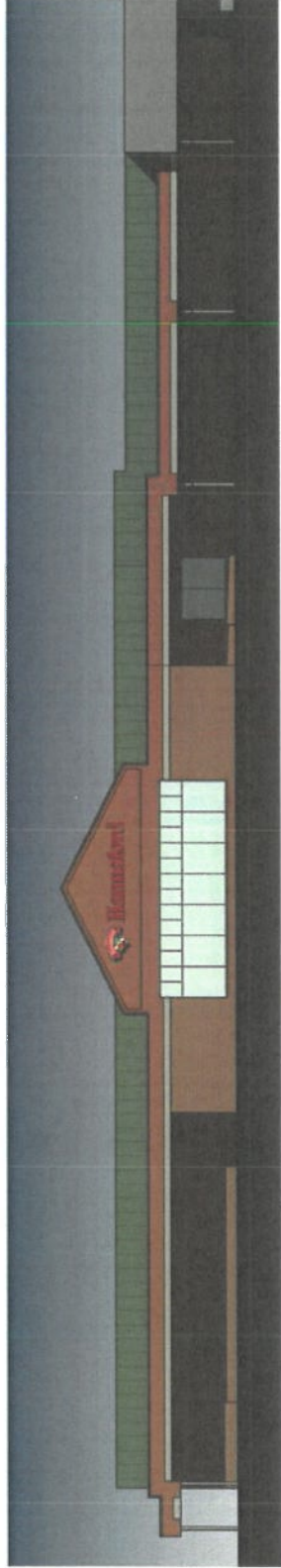
2 PORTSMOUTH EXTERIOR ELEVATION

SCALE: 3/64" = 1'-0"

			
PAINT: SW 7045 INTELLECTUAL GRAY	METAL TRIM: PAINT TO MATCH ATAS #25 "BOYSENBERRY"	METAL ROOF: PAINT TO MATCH ATAS #24 ANTIQUE PATINA	BRICK: EXISTING TO REMAIN

EXTERIOR FINISHES

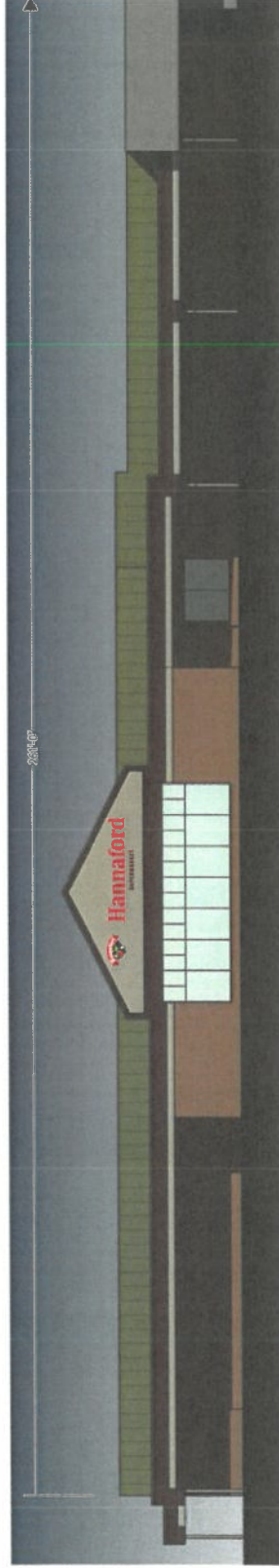
SCALE: 12" = 1'-0"



Existing Elevation

NTS

EXISTING SQ. FT.
ICON: 24.0
HANNAFORD: 53.25
TOTAL: 77.25



Proposed Condition

Scale: 1:250

PROPOSED SQ. FT.
ICON: 24.5
HANNAFORD: 56.25
SUB COPY: 5.46
TOTAL: 86.21

THOMAS
SIGN & AWNING CO. INC.
4590 118TH Avenue North
Clearwater, Florida 33762
800-526-3325
www.thomassign.com

CLIENT
HANNAFORD #8149
Design Number:
88039
Installation Address:
800 Islington St.
Portsmouth, NH
03801

Project Identity Number:
88629
Seller Associate: BB
Project Team: BB
Designer: MBV
Date: 07.30.20
Project Updates: None
10.15.20 MBV - Final approved
9.8 ft.

UL Laboratories, Inc.
Listing 68484
ELECTRIC SIGN
COMPLIES TO UL 48
TM
THIS LISTING IS BASED ON THE INFORMATION PROVIDED BY THE APPLICANT. THE LISTING OFFICE HAS CONDUCTED VISUAL GENERAL VERIFICATION OF THE LISTING INFORMATION AND HAS FOUND IT TO BE IN SUBSTANTIAL ACCORDANCE WITH THE LISTING INFORMATION PROVIDED BY THE APPLICANT.



3MTM MCSM Warranty
Approval:
 Approved
 Rejected
 Approved as noted
 Rejected
 Review & Re-Submit
DATE: _____
The design, concept, drawings and specifications provided by the applicant are the responsibility of the applicant. The listing office is not responsible for any errors, omissions or delays in the listing process. The listing office is not responsible for any errors, omissions or delays in the listing process. The listing office is not responsible for any errors, omissions or delays in the listing process.

HANNAFORD #8149
Portsmouth, NH



PROPOSED SQ. FT.
ICON: 24.5
HANNAFORD: 56.25
SUB. COPY: 5.46
TOTAL: 86.21

Icon and Channel Letters

Flex Face icon & LED illuminated channel letters

Scale: 1/4" = 1'0"

THOMAS
SIGN & AWNING CO INC
4590 118TH Avenue North
Clearwater, Florida 33762
800-526-3325
www.thomassign.com

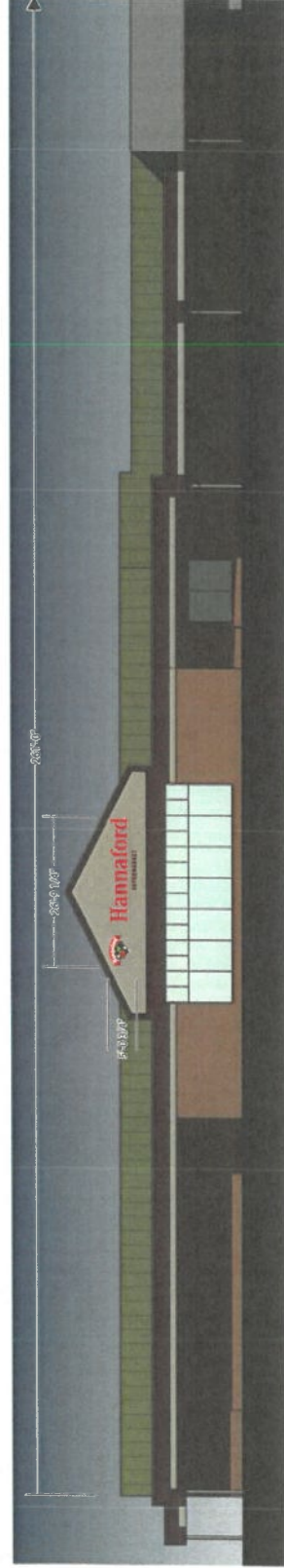
CLIENT
HANNAFORD #8149
Design Number:
88039
Installation Address:
800 Islington St
Portsmouth, NH
03801
Project Identity Number:
88629
Sales Associate: [redacted]
BB
Designer: [redacted]
Date: 07.30.20
MBV
Project Updates:
08.10.20 MBV - HDGD - WEL ADDED/UPDATED
11.10.20 MBV - HDGD - WEL ADDED/UPDATED
11.10.20 MBV - Revised Sign

Underwriters Laboratories, Inc.
LISTING 885714
ELECTRIC SIGN
COMPLIES TO UL 48
TM
This sign is a product of a manufacturer in accordance with the requirements of the UL Standard for the listing of signs. UL does not warrant the sign or the manufacturer's liability.



3M™ MCS™ Warranty
Approval:
 Approved
DATE:
 Approved as noted
DATE:
 Revise & Re-Submit
DATE:
This warranty covers materials and workmanship provided as the exclusive responsibility of the manufacturer. It does not cover any damage to the sign or the building caused by fire, theft, vandalism, or other causes not covered by this warranty. For more information, contact the manufacturer or the listing agency.

Proposed Condition



Scale: 1:250

HANNAFORD #88631
Portsmouth, NH

Celebrating 50 Years of Quality Manufacturing and Service

50

THOMAS
SIGN & AWNING CO INC
4590 118TH Avenue North
Clearwater, Florida 33762
800-526-3325
www.thomassign.com

CLIENT
HANNAFORD #8149
Design Number:
88040
Installation Address:
800 Islington St
Portsmouth, NH
03801
Project Identity Number:
88631
Sales Associate: BB
Designer: MBV
Date: 07.24.20
Project Update:
08.10.20 MBV - Update design



Pan Formed Acrylic Face Replacement
Scale: 1/2" = 1'-0" | Square Feet: 40sq
Scope of Work
White pan formed acrylic with 3M vinyl applied first surface.



Proposed Condition

NTS



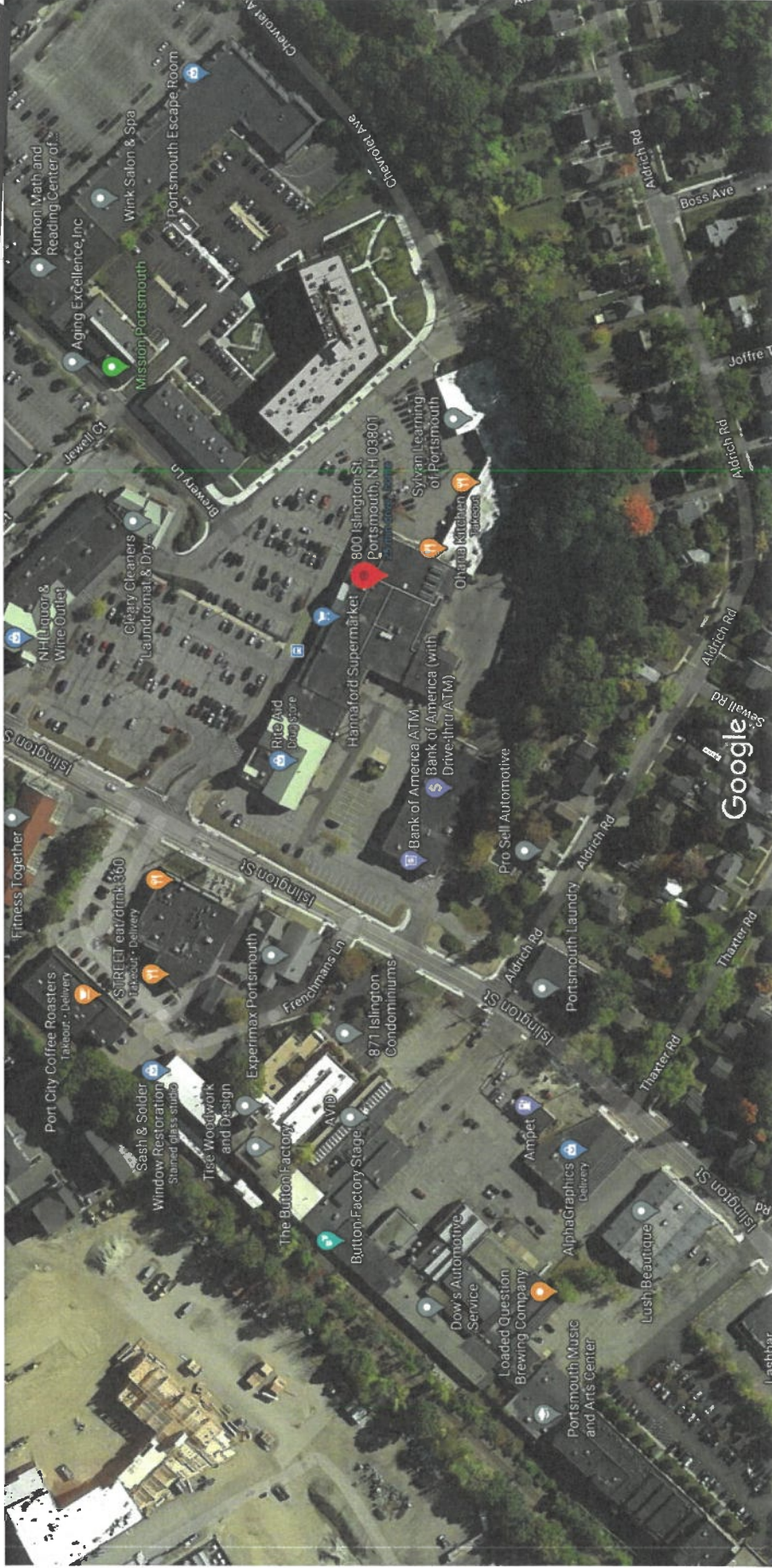
Proposed Condition

Scale: 3/16" = 1'-0"

3M™ MCS™ Warranty
 Approved
DATE: _____
 Approved as noted
DATE: _____
 Review & Re-Submit
DATE: _____
This warranty covers materials and workmanship only. It does not cover damage caused by misuse, abuse, or neglect. The warranty is void if the sign is not installed according to the manufacturer's instructions. For more information, please contact your local 3M representative or visit 3m.com/warranty.

Page **1** of 1
Sheet
Local: 727-573-7757
Fax: 727-573-0328

tabbler
EXHIBIT
Z



Imagery ©2021 Maine GeoLibrary, Maxar Technologies, U.S. Geological Survey, USDA Farm Service Agency, Map data ©2021 100 ft

EXHIBIT
3
tabbler

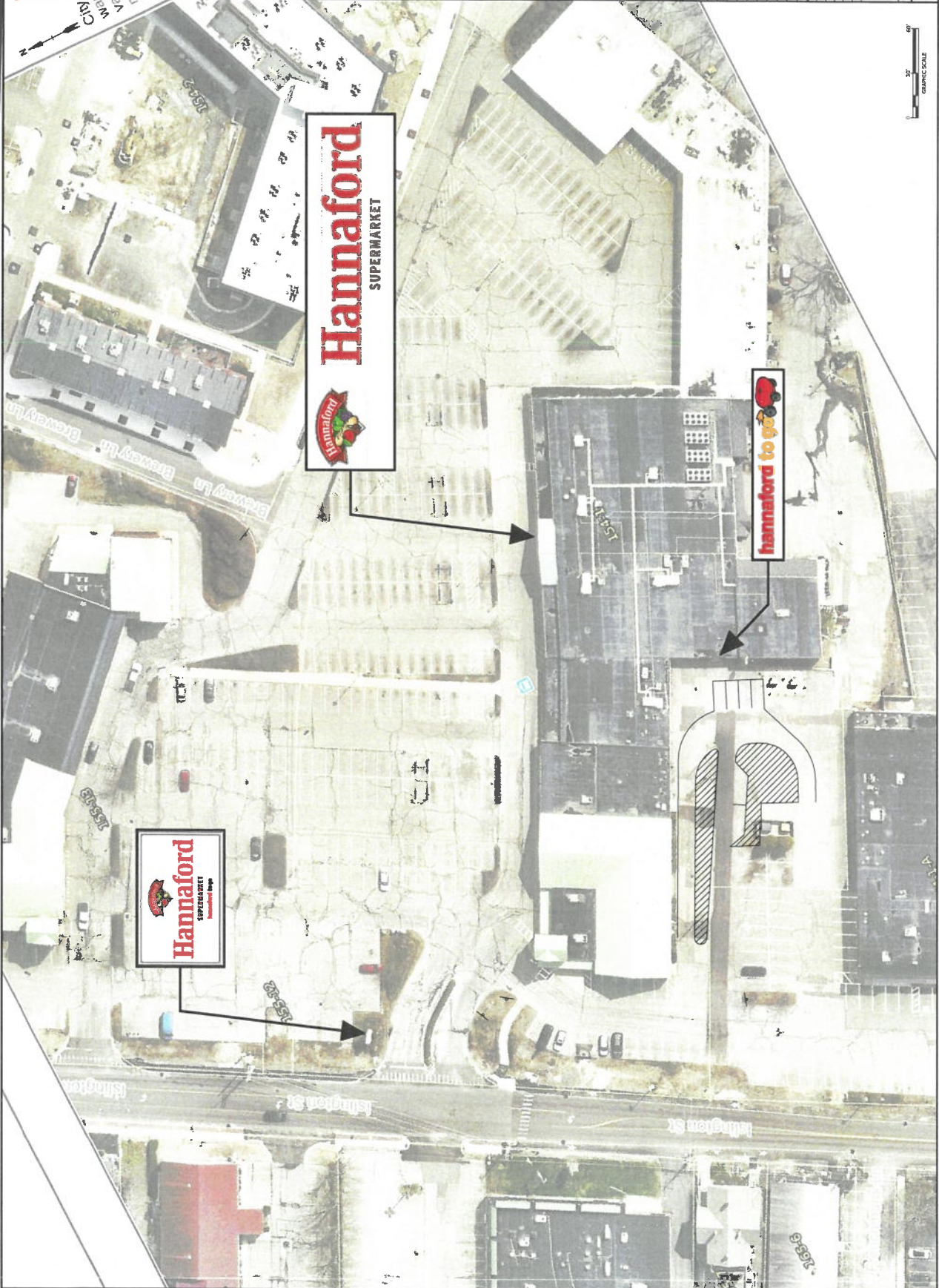


**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

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 7/1/2019

Tighe&Bond



PORTSMOUTH
HANNAFORD
STORE # 8149

Maple Rock, LLC

800 Islington Street
Portsmouth, New
Hampshire
03801

MARK	DATE	DESCRIPTION
PROJECT NO.	180121005	
DATE	7/26/2021	
FILE	180121-01_SIGN.DWG	
CREATED BY	JAC	
APPROVED BY	BLM	

OVERALL SIGN EXHIBIT

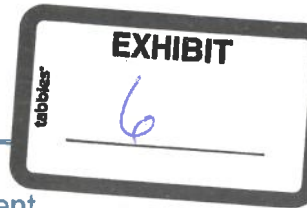
SCALE:

180121-01_SIGN.DWG
 Project: 180121-01_SIGN.DWG
 Date: 7/26/2021 10:46:01 AM
 User: JAC



CITY OF PORTSMOUTH

Planning Department
1 Junkins Avenue
Portsmouth, New
Hampshire 03801
(603) 610-7216



PLANNING BOARD

March 17, 2021

Griffin Family Corp
C/O CP Management Inc
11 Court St STE 100
Exeter, NH 03833

RE: Amended Site Plan approval for property located at 800 Islington Street

Dear Owners:

I have reviewed your application for amended site plan approval for the following:

- 1) Addition of 6 reserved parking spaces for grocery pick-up with associated improvements including painted islands, arrows and directional signage.
- 2) Regrading approximately 6,500 square feet to alleviate grading concerns within the new parking area.

As a result of my review, I hereby grant the request.

The above amendments are shown and described in the following documents received by the Planning Department on February 12, 2021 and March 15, 2021:

- 1) Site Plan Set titled "Hannaford Supermarket & Pharmacy Store #8149", prepared by Tighe & Bond, dated January 2021 and last revised February 15, 2021.
- 2) Letter from Patrick Crimmins, PE & Neil Hansen, PE, dated March 15, 2021.

This amends the site plan originally approved by the Planning Board on September 21, 1977.

This approval shall expire unless a building permit for the project is issued within a period of one (1) year from the date of this letter.

Very truly yours,

Juliet T. H. Walker, AICP, Planning Director

3/30/2021

cc: Robert Marsilia, Chief Building Inspector
Rosann Maurice-Lentz, City Assessor
Peter H. Rice, Director of Public Works

LETTER OF AUTHORIZATION

I, J.M. Lord, Manager of Maple Rock, LLC, do hereby authorize Donahue, Tucker and Ciandella, PLLC, to execute any land use applications regarding the Hannaford Store at 800 Islington Street to the City of Portsmouth and to take any action necessary for the application and permitting process, including but not limited to, attendance and presentation at public hearings, of the said property.

Dated: 3/26/2021

MAPLE ROCK, LLC

J Merrill Lord
J.M. Lord, Manager