

APPLICATION OF J&S INVESTMENTS, LLC
14 MARKET SQUARE

APPLICANT'S NARRATIVE

I. THE PROPERTY

J&S Investments, LLC is the owner of the property located at 14 Market Square. The property consists of a first floor commercial use, formerly Café Brioche, soon to be the Tuscan Market, on a lot containing 3,049 square feet. The lot is shown on Assessor's Map 107 as Lot 29. The parcel is located in Character District 5, the Historic District as well as the Downtown Overlay District. The site is within Sign District 3.

Sign District 3 allows 2 Sq. Ft. of aggregate signage per lineal foot of building frontage. 14 Market Square has 44 feet of frontage on Pleasant St. and 68 feet of frontage on Daniel St. for a total of 112 feet of frontage. Thus allowed aggregate signage is 224 sq. ft.

There presently exists 125 sq. ft. of existing and/or permitted signage on site. The Planning department has determined that 96.24 sq. ft. of aggregate signage is available to the Applicant for the site.

The Planning Department has also determined that 2 proposed wall paintings/murals, are "signs" as defined by the Zoning Ordinance. (see attached e-mail of Vincent Hayes). The applicant is Appealing the determination that the Art Works are signs, and concurrently submitting a Variance request to exceed the allowable Aggregate Signage, and to exceed the allowable square footage for a wall sign. (40 sq. ft. per sign)

II. ARGUMENT

The Applicant believes the Art Works do not meet the definition of a "sign" as defined in the Zoning Ordinance (see attached definition). The proposed Art Works would be reproductions of posters found in Italy in the early 1900's and brought to this country by Joe Faro's grandparents.

The applicant's position is that the re-creation of these antique posters as wall art would not be a design or device used to identify or advertise any place, business product activity service, person, idea or statement. The intent of the applicant is to decorate and beautify a presently void, unattractive blank wall area. As can be seen from the attached photos of Portsmouth's many examples of Wall Art/Murals, (most of which were not considered "signs" by the City), Wall Art has and continues to be a common practice on many of Portsmouth's older commercial buildings.

Should the Applicant's Administrative Appeal of the "sign" determination be unsuccessful, the Applicant is filing herewith an application for 2 variances from Article 10

sections 10.1251.10 and 10.1251.20 to exceed the maximum allowable aggregate signage on site, and to exceed the maximum allowable wall sign for each of the 2 proposed murals.

III. CRITERIA

It is the Applicant's position that the within Application meets the five (5) criteria necessary for the Board to grant the requested variance.

Granting the requested variance would not substantially alter the characteristics of the neighborhood or threaten public health, safety or welfare. Thus, the test set forth by the Supreme Court in the case of Malachy Glen v. Town of Chichester, 155 NH 102 (2007) is met for whether or not granting the variance would be contrary to the spirit and intent of the ordinance or contrary to the public interest. There are several examples of recent Wall Art installations especially in the Downtown area which have in no way changed the essential characteristics of the area. Wall Art does not threaten public health safety or welfare.

Substantial justice will be done by granting the requested variance as the hardship upon the owner is certainly not outweighed by some benefit to the general public should the variance requests be denied. The hardship upon the Applicant is that the Daniel St. façade would remain the unattractive blank wall. There would be no benefit to the general public in denying the requested variances which would outweigh the hardship on the owner.

There would be no diminution in value to surrounding properties. The proposed Wall Art would actually enhance the aesthetics of what is now a somewhat unattractive building façade. Thus surrounding property values would not be diminished.

Finally, there is a hardship created by the special conditions of the property. As can be seen from the Tax Map the property has frontage on two public streets. The Daniel Street façade is a secondary side wall that which bears little connection to the primary front façade facing Pleasant Street and Market Square. This is the property most associated with Market Square as its address denotes. The outdoor dining area associated with the property has been for many years the focal point of "Market Square". These factors differentiate 14 Market Square from the majority of the lots in the area.

The intent of the ordinance is to provide for signage which is not overly intensive and in keeping with the sign district. Given the nature and appearance of the proposed Wall Art and its location on the side wall, away from the front façade, there is no fair and substantial relationship between the purpose of the sign ordinance as it relates to this particular piece of property. The Wall Art proposed is reasonable and would be a welcome addition to the Downtown Area.

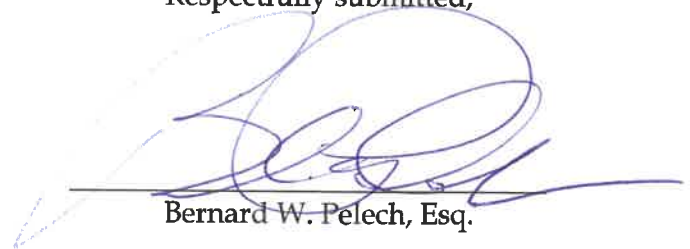
The Wall Art was reviewed by the Historic District Commission and comments regarding the concept were favorable. The HDC approved the submitted plans showing the proposed Wall Art and further requested that the applicant make a submission of types of materials to be used

(brick prep, primer, and paint type) to insure the upkeep and longevity of the Wall Art. This process differentiates the applicant's proposed Wall Art from most recent Downtown installations of Art, which have undergone little or no scrutiny or permitting.

IV. CONCLUSION

In conclusion, it is the Applicant's position that the variance request meets the five (5) criteria necessary for the Board to grant the requested variance are met by the within Application and it is respectfully requested that the Application be granted as presented and advertised.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Bernard W. Pelech', is written over a horizontal line. The signature is stylized and cursive.

Bernard W. Pelech, Esq.

Dated: June 25, 2019

Sign

Any symbol, design or device used to identify or advertise any place, business, product, activity, service, person, idea or statement. Any representation that is illuminated and consisting wholly or in part, of text, images or graphics shall be considered a **sign**. **Signs** need not include text, and may consist of stripes, spots, or other recognizable designs, shapes or colors. Displays comprising of merchandise, figurines, mannequins, decorations and other similar articles, arranged inside a **building** and visible outside of a window, shall not be considered a **sign**.

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From: Vincent J. Hayes [mailto:vjhayes@cityofportsmouth.com]

Sent: Tuesday, June 18, 2019 12:00 PM

To: John Bosen

Cc: Juliet T.H. Walker

Subject: 14 Market Sq.: Murals

Hi John,

My name is Vincent Hayes. I am one of the Planners in the Portsmouth Planning Department.

It has come to my attention that murals are proposed for the Daniel Street façade of the new Tuscan Market. Please be advised, these murals qualify as signs as defined by the Zoning Ordinance. As such, they will require a sign permit.

With the issuance of the last sign permit for this property, you have 96.24 square feet of aggregate sign area available to you on Daniel Street. Could you please provide the square area of each proposed signs?

I would appreciate any feedback you could provide.

Best,
Vincent

STATEMENT OF ADMINISTRATIVE APPEAL

**RE: 14 MARKET SQUARE
TUSCAN MARKET**

The Planning Department has notified the Applicant, J&S Investments, LLC that the proposed murals to be painted on the wall on the Daniel Street façade of the new Tuscan Market at 14 Market Square qualify as signs "as defined by the Zoning Ordinance"

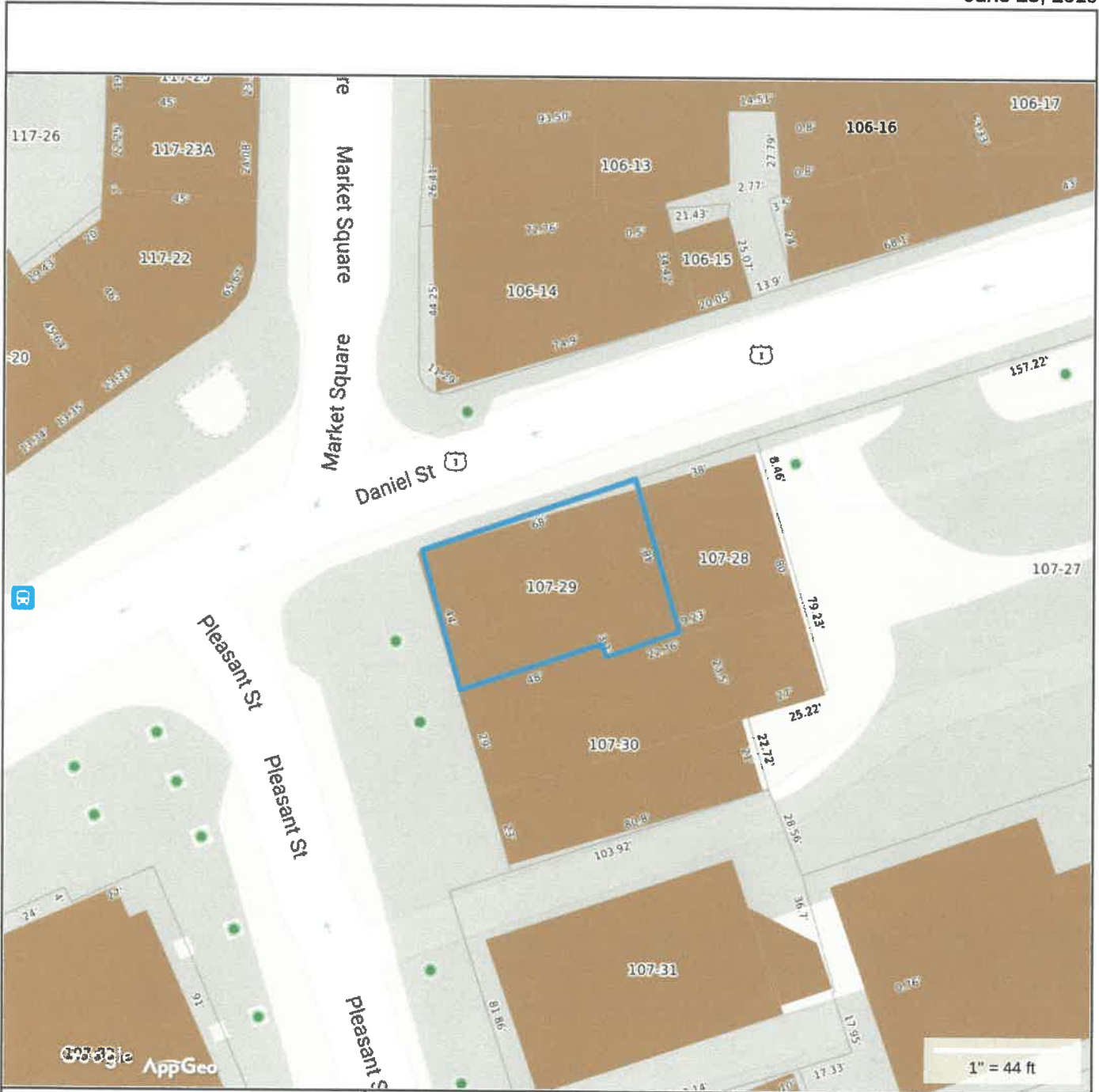
The Applicant wishes to Appeal the decision of the Planning Department finding that the proposed murals are "signs" as defined by the Ordinance.

The Application submitted by the Applicant was reviewed and approved by the Historic District Commission.

Dated: June 25, 2019



Bernard W. Pelech



Property Information

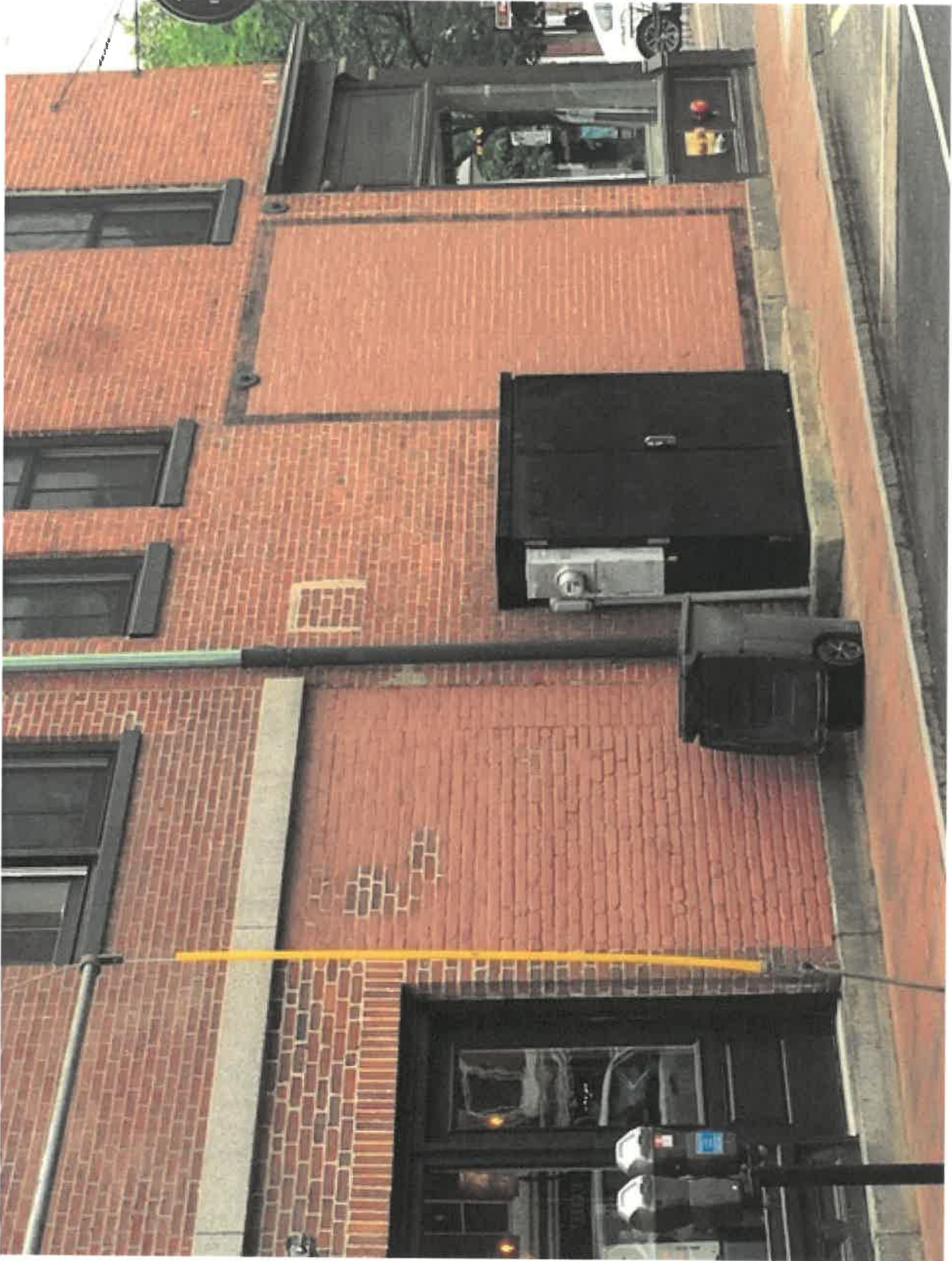
Property ID 0107-0029-0000
Location 14 MARKET SQ
Owner J&S INVESTMENTS LLC



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 11/30/2018
 Data updated 11/19/2018



EXTERIOR - PROPOSED WEST ELEVATION



Distressed mural on brick wall

Approx 68 sf

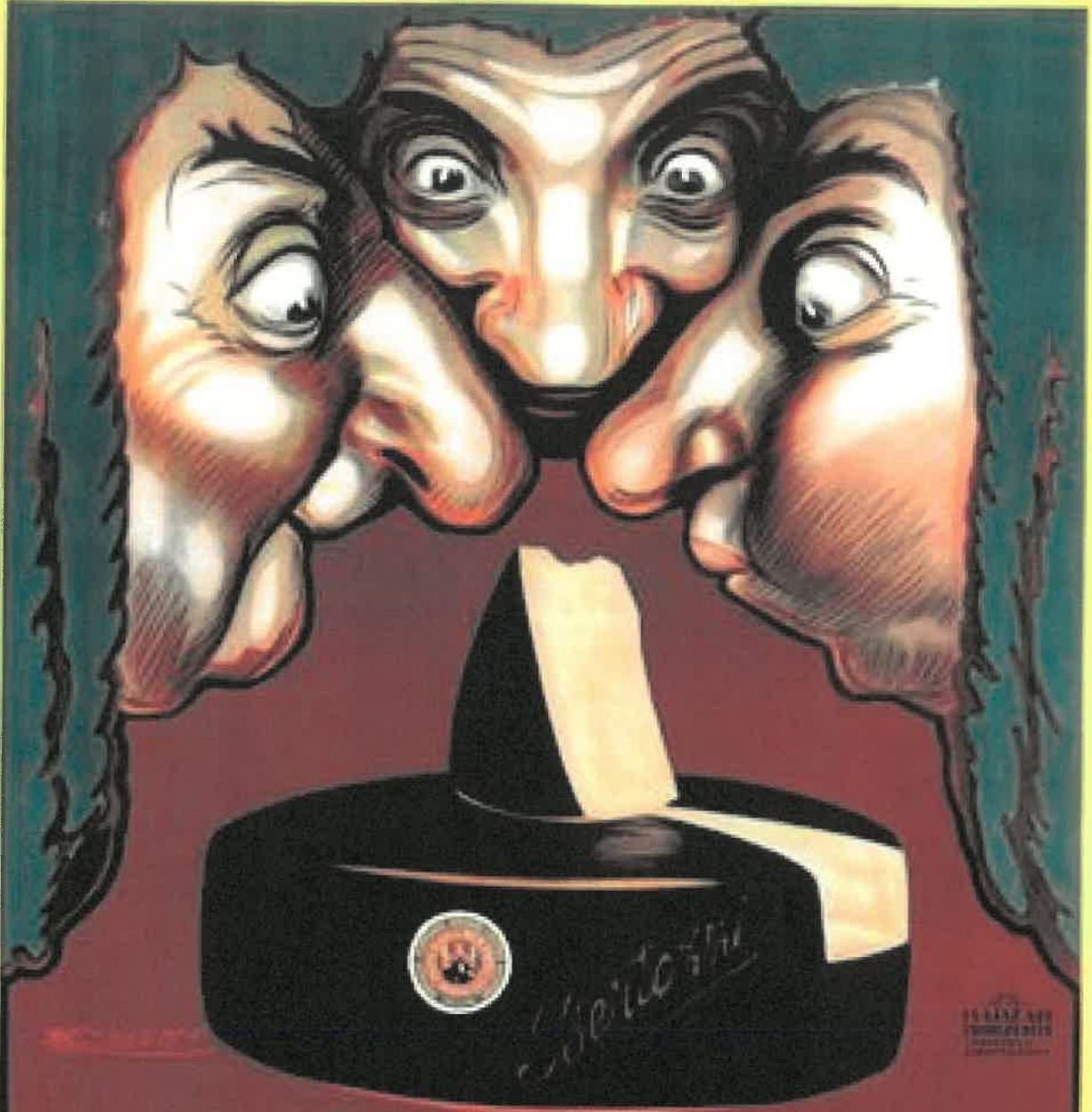
Approx 124 sf

Not To Scale

... così si mangia a Napoli!



**MACCHERONI
PIANIGIANI**



PARMIGIANO-REGGIANO
BERTOZZI
PARMA

CONFEZIONE DA 250g - 8,8 ONZIE
CONFEZIONE DA 500g - 17,6 ONZIE
CONFEZIONE DA 1kg - 35,2 ONZIE









