

CITY OF PORTSMOUTH  
ZONING BOARD OF ADJUSTMENT

**RE: 266 - 278 State Street, Portsmouth, New Hampshire**

**Tax Map 107, Lots 78 - 80**

**PNF REALTY TRUST of 2013**

**APPLICANT'S NARRATIVE**

The Applicant, the PNF Realty Trust of 2013, seeks relief in order to proceed with the restoration and redevelopment of its property at the corners of State, Pleasant and Church Street.

As the Board is aware, in the late evening and early morning of April 9-10, 2017, a devastating fire destroyed the iconic State Street Saloon and the buildings housing it. The Saloon and fourteen residential apartments occupied 266, 270, and 278 State Street, with the bar/restaurant occupying the ground floors of each, and with several apartments in the floors above. 266 and 270 State were immediately deemed a total loss and were ordered demolished by the City of Portsmouth. 278 State has been deemed a total loss by the appellant's insurance carrier due to the demonstrable damage to the interior and exterior of the building.

The applicant unsuccessfully applied to the Historic District Commission for permission to demolish 278 State Street (a.k.a. "the Times Building"), and, upon appeal to this Board, was granted permission to partially demolish that structure, with the requirement that the exterior façade walls on both Church and State Street be maintained. An appeal of that decision to the Superior Court is pending, however, by agreement that proceeding has been stayed while the applicant sought approval for a revised project.

As this Board may recall, the requirement to retain the Times Building presents significant challenges for the applicant. First, due to the nature and extent of the damage to that structure, any renovation of it will now require extensive life and safety code upgrades. Among other things, this will cause a net loss of usable square footage in that building. Furthermore, the exterior glazing on the Times Building, which the applicant is required to maintain, requires that the existing floor heights in that building remain substantially as is. Had the new building been proposed with stories consistent with the Times Building, the result would be a much more massive building that would dominate the adjacent building at 84 Pleasant Street (aka "Louie's") and would not be favored by the HDC<sup>1</sup>. Thus, the Times Building's remaining usable floor space and layout cannot be integrated or "synched up" with the proposed new building adding significant expense and complexity planning and construction. Furthermore, the expense associated with renovating and redeveloping the interior of the Times Building while preserving its historic façade is significant, as the substantial structural protections must be employed.

<sup>1</sup> The Times Building was originally five stories.

In order to proceed with an economically viable redevelopment, the applicant needs a building large enough to approximate the square footage and number of residential units lost in the fire. However, concerns about height, massing, scale and harmony with surrounding buildings must be considered, as this property is within the Historic District.

At the time of this submission, this project has been the subject of three work sessions with the HDC. Based on feedback from the HDC, the applicant has modified the design to address concerns about massing and integrating aesthetically with both the Times Building on State Street and 84 Pleasant Street to the south. The applicant is confident the project will obtain final approval from the HDC.

In addition to the Historic District, the property is in the CD-4 zone and the Downtown Overlay District. The project as designed requires relief from §10.5A43.31 to have a height of 55 feet where 45 feet is the maximum allowed for a three story building with a short fourth story and to permit a "Penthouse" above the fourth story, where it would not otherwise be permitted. The Penthouse floor has been setback and sized to meet zoning definition of a "Penthouse" at the primary and secondary front of the building (State and Pleasant Street). A Penthouse is not counted as a story and is defined under the Ordinance as follows:

"A habitable space within the uppermost portion of a building above the cornice which is set back at least 15 feet from all edges of the roof and the total floor area of which does not exceed 50% of the area of the story below". For internal courtyards at least 40 feet from a street or vehicular right of way or easement, the penthouse shall be setback at least 8 feet from the edge of the roof of the story below.

As the plans show, the Penthouse meets this definition with the exception of the side against the fire separation wall adjacent to the narrow alleyway at the south side. As a result, a variance is needed for the roof edge setback as required under Article 15, definitions, Page 15-31.

The Historic District Commission Guidelines for Commercial Development and Storefronts contains further Design Standards for Rooftop Additions. The Proposed height is well under the allowed maximum. (12' allowed – 10' proposed above the roof) and the setback along the primary and secondary front is well over the required minimum of greater than or equal to the height (10' is allowed and 15' proposed). The project as proposed will have retail/commercial space on the first floor with that is 14'4" +/- in ceiling height, two full stories of residential with eight foot +/- ceiling heights, a "short story" fourth residential story with an eight foot +/- ceiling height and a stepped back penthouse level with a ten-foot +/- overall height. Although final interior design details remain to be worked out, it is anticipated that a total of up to 14 residential dwellings is achievable, with the potential for basement level parking to be accessed via Church Street<sup>2</sup>.

Lastly, a conservative reading of the Ordinance suggests that the project will require a relief from Section 10.5A41.10C for both Lot Coverage and the Rear Yard Setback. The

<sup>2</sup> There was no parking provided in the Times Building.

Ordinance requires a maximum building coverage of 90% and 5' minimum rear yard setback. The new building being proposed is 3' feet from the lot line at the center building and exceeds the coverage requirement. The Approximate lot coverage of 266 and 270 State Street is 92%. If 277 State Street is added to the calculation, the lot coverage is approximately 93%. The new building outline follows the footprint of the buildings destroyed by the fire and for this reason, may be grandfathered. Nevertheless, relief is being requested just the same.

The applicant believes the project meets the criteria necessary for granting the variances.

**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 property is a very visible "cornerstone" of downtown that requires a substantial building. The proposal does not in any way feel out of place in its surroundings and is cleverly integrated to respect the remaining façade at the Times Building.

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 the mass and scale of neighboring buildings. The project must obtain further 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. The applicant in this case has been without the use of his property for over two years, and the public has been left with an open wound in the heart of the downtown. The cost to redevelop this property is significantly greater than it otherwise would be due to the requirement to preserve the façade of the Times Building. In order to comply with that requirement and still produce an economically viable project, the applicant needs sufficient square footage and additional height and stories are necessary.

In this case, there is no benefit to the public in denying the variances that is not outweighed by the hardship upon the owner.

**The values of surrounding properties will not be diminished by granting the variances.** The proposed uses is permitted in this zone by right. The surrounding properties and those in the vicinity have similar heights as this one does. The new building will also sit in the footprint of the former buildings that were destroyed in the fire. 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 connection with the preservation of the façade of the Times Building. Redevelopment poses staggering logistical and engineering challenges, and retaining the story heights of the Times Building requires the thoughtful integration of the neighboring structure.

**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.** There is no fair and substantial relationship between the purposes of the height and building story limits, lot coverage or setbacks and their application to this property. This is especially true given the fact that the new building will sit in the footprint of the former buildings that were destroyed by the fire.

#### **I. Conclusion.**

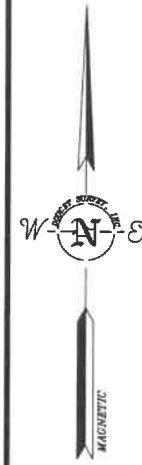
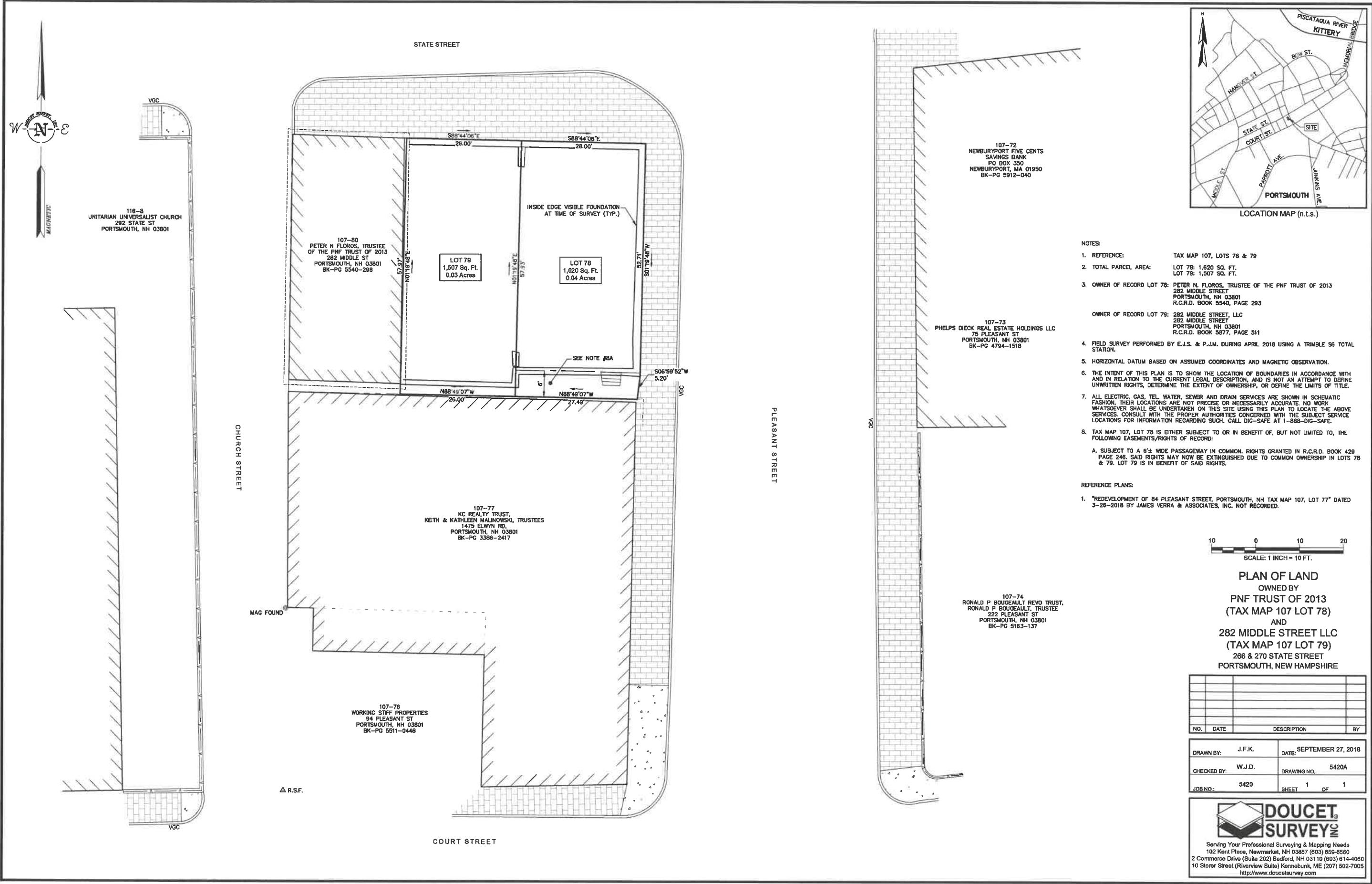
For the foregoing reasons, the applicant respectfully requests the Board grant the variances as requested and advertised.

Respectfully submitted,

DATE: May 6, 2019

\_\_\_\_\_  
John K. Bosen, Esquire





116-8  
UNITARIAN UNIVERSALIST CHURCH  
282 STATE ST  
PORTSMOUTH, NH 03801

107-80  
PETER N FLOROS, TRUSTEE  
OF THE PNF TRUST OF 2013  
282 MIDDLE ST  
PORTSMOUTH, NH 03801  
BK-PG 5540-298

LOT 79  
1,507 Sq. Ft.  
0.03 Acres

LOT 78  
1,620 Sq. Ft.  
0.04 Acres

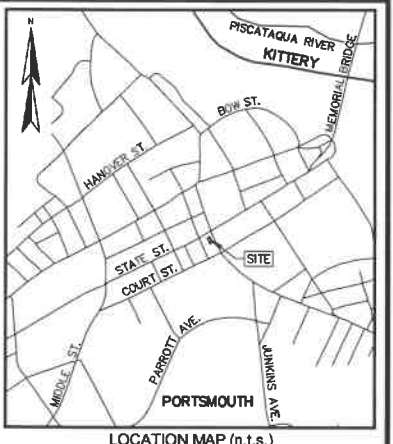
107-77  
KC REALTY TRUST,  
KEITH & KATHLEEN MALINOWSKI, TRUSTEES  
1475 ELWYN RD,  
PORTSMOUTH, NH 03801  
BK-PG 3386-2417

107-76  
WORKING STIFF PROPERTIES  
94 PLEASANT ST  
PORTSMOUTH, NH 03801  
BK-PG 5511-0446

107-72  
NEWBURYPORT FIVE CENTS  
SAVINGS BANK  
PO BOX 350  
NEWBURYPORT, MA 01950  
BK-PG 5912-040

107-73  
PHELPS DIECK REAL ESTATE HOLDINGS LLC  
75 PLEASANT ST  
PORTSMOUTH, NH 03801  
BK-PG 4784-1518

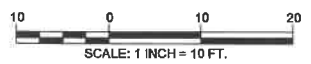
107-74  
RONALD P BOUGEAULT REVO TRUST,  
RONALD P BOUGEAULT, TRUSTEE  
222 PLEASANT ST  
PORTSMOUTH, NH 03801  
BK-PG 5163-137



LOCATION MAP (n.t.s.)

- NOTES:
1. REFERENCE: TAX MAP 107, LOTS 78 & 79
  2. TOTAL PARCEL AREA: LOT 78: 1,620 SQ. FT.  
LOT 79: 1,507 SQ. FT.
  3. OWNER OF RECORD LOT 78: PETER N. FLOROS, TRUSTEE OF THE PNF TRUST OF 2013  
282 MIDDLE STREET  
PORTSMOUTH, NH 03801  
R.C.R.D. BOOK 5540, PAGE 293  
OWNER OF RECORD LOT 79: 282 MIDDLE STREET, LLC  
282 MIDDLE STREET  
PORTSMOUTH, NH 03801  
R.C.R.D. BOOK 5877, PAGE 511
  4. FIELD SURVEY PERFORMED BY E.J.S. & P.J.M. DURING APRIL 2018 USING A TRIMBLE S6 TOTAL STATION.
  5. HORIZONTAL DATUM BASED ON ASSUMED COORDINATES AND MAGNETIC OBSERVATION.
  6. THE INTENT OF THIS PLAN IS TO SHOW THE LOCATION OF BOUNDARIES IN ACCORDANCE WITH AND IN RELATION TO THE CURRENT LEGAL DESCRIPTION, AND IS NOT AN ATTEMPT TO DEFINE UNWRITTEN RIGHTS, DETERMINE THE EXTENT OF OWNERSHIP, OR DEFINE THE LIMITS OF TITLE.
  7. ALL ELECTRIC, GAS, TEL, WATER, SEWER AND DRAIN SERVICES ARE SHOWN IN SCHEMATIC FASHION. THEIR LOCATIONS ARE NOT PRECISE OR NECESSARILY ACCURATE. NO WORK WHATSOEVER SHALL BE UNDERTAKEN ON THIS SITE USING THIS PLAN TO LOCATE THE ABOVE SERVICES. CONSULT WITH THE PROPER AUTHORITIES CONCERNED WITH THE SUBJECT SERVICE LOCATIONS FOR INFORMATION REGARDING SUCH. CALL DIG-SAFE AT 1-888-DIG-SAFE.
  8. TAX MAP 107, LOT 78 IS EITHER SUBJECT TO OR IN BENEFIT OF, BUT NOT LIMITED TO, THE FOLLOWING EASEMENTS/RIGHTS OF RECORD:  
A. SUBJECT TO A 6'-± WIDE PASSAGEWAY IN COMMON. RIGHTS GRANTED IN R.C.R.D. BOOK 429 PAGE 246. SAID RIGHTS MAY NOW BE EXTINGUISHED DUE TO COMMON OWNERSHIP IN LOTS 78 & 79. LOT 79 IS IN BENEFIT OF SAID RIGHTS.

- REFERENCE PLANS:
1. "REDEVELOPMENT OF 84 PLEASANT STREET, PORTSMOUTH, NH TAX MAP 107, LOT 77" DATED 3-28-2016 BY JAMES VERRA & ASSOCIATES, INC. NOT RECORDED.



PLAN OF LAND  
OWNED BY  
PNF TRUST OF 2013  
(TAX MAP 107 LOT 78)  
AND  
282 MIDDLE STREET LLC  
(TAX MAP 107 LOT 79)  
266 & 270 STATE STREET  
PORTSMOUTH, NEW HAMPSHIRE

NO.	DATE	DESCRIPTION	BY

DRAWN BY:	J.F.K.	DATE:	SEPTEMBER 27, 2018
CHECKED BY:	W.J.D.	DRAWING NO.:	5420A
JOB NO.:	5420	SHEET	1 OF 1

**DOUCET SURVEY INC**  
Serving Your Professional Surveying & Mapping Needs  
102 Kent Place, Newmarket, NH 03857 (603) 859-8560  
2 Commerce Drive (Suite 202) Bedford, NH 03110 (603) 814-4060  
10 Stoner Street (RiverView Suites) Kennebunk, ME (207) 502-7005  
<http://www.doucetsurvey.com>

FILE NAME: Y:\PROJECTS\107-78-79\107-78-79.dwg PLOTTED: 1/18/2019 10:00 AM, October 03, 2019 - 10:00 AM

ELEV OVERRIDE

EXISTING CHIMNEY  
TO BE REMOVED

**mjk**

Michael J. Keane  
Architects, PLLC

ARCHITECTURE  
PLANNING  
DESIGN

101 Kent Place  
Newmarket, NH  
03857

603-292-1400  
mjkarchitects.com

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APPROVALS

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PROJECT  
PROPOSED  
RESTORATION AND EXPANSION OF  
266, 270 AND 278 STATE STREET  
PORTSMOUTH, NH

FOR:  
PNF TRUST OF 2013  
282 MIDDLE STREET  
PORTSMOUTH NH 03801

TITLE  
NORTH ELEVATION

ZBA 05.01.19

DESIGN BY:  
CHECKED BY:  
DATE: 5/6/2019  
SCALE: 1/8" = 1'-0"  
DRAWING NO.

DO NOT SCALE PRINTS

**A-1**

10'-0"  
PENTHOUSE

45'-0"  
3 + SHORT 4TH STORY 45' ALLOWED

1'-0"  
10'-2"  
30:12 MAX PERMITTED FOR "SHORT STORY"  
9'-6"  
10'-0"  
14'-4"

14'-5"±  
11'-0"±  
11'-0"±  
16'-7"±

53'-0"  
55'-0"

NORTH ELEVATION



CONCEPT  
Monday, May 6, 2019



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PROJECT  
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 266, 270 AND 278 STATE STREET  
 PORTSMOUTH, NH  
 FOR:  
 PNF TRUST OF 2013  
 282 MIDDLE STREET  
 PORTSMOUTH NH 03801

TITLE  
 EAST ELEVATION  
 ZBA 05.01.19

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 DATE: 5/6/2019  
 SCALE: 3/8" = 1'-0"  
 DRAWING NO.

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**A-2**

3'-0"  
 270 REAR  
 SETBACK  
 6'-0"  
 266 REAR  
 SETBACK

EAST ELEVATION



CONCEPT  
 Monday, May 6, 2019





OUTLINE OF APPROVED REMODELING OF 84 PLEASANT ST

ELEVATOR OVERRIDE

FIRE SEPARATION WALL

SOUTH ELEVATION



CONCEPT  
Monday, May 6, 2019

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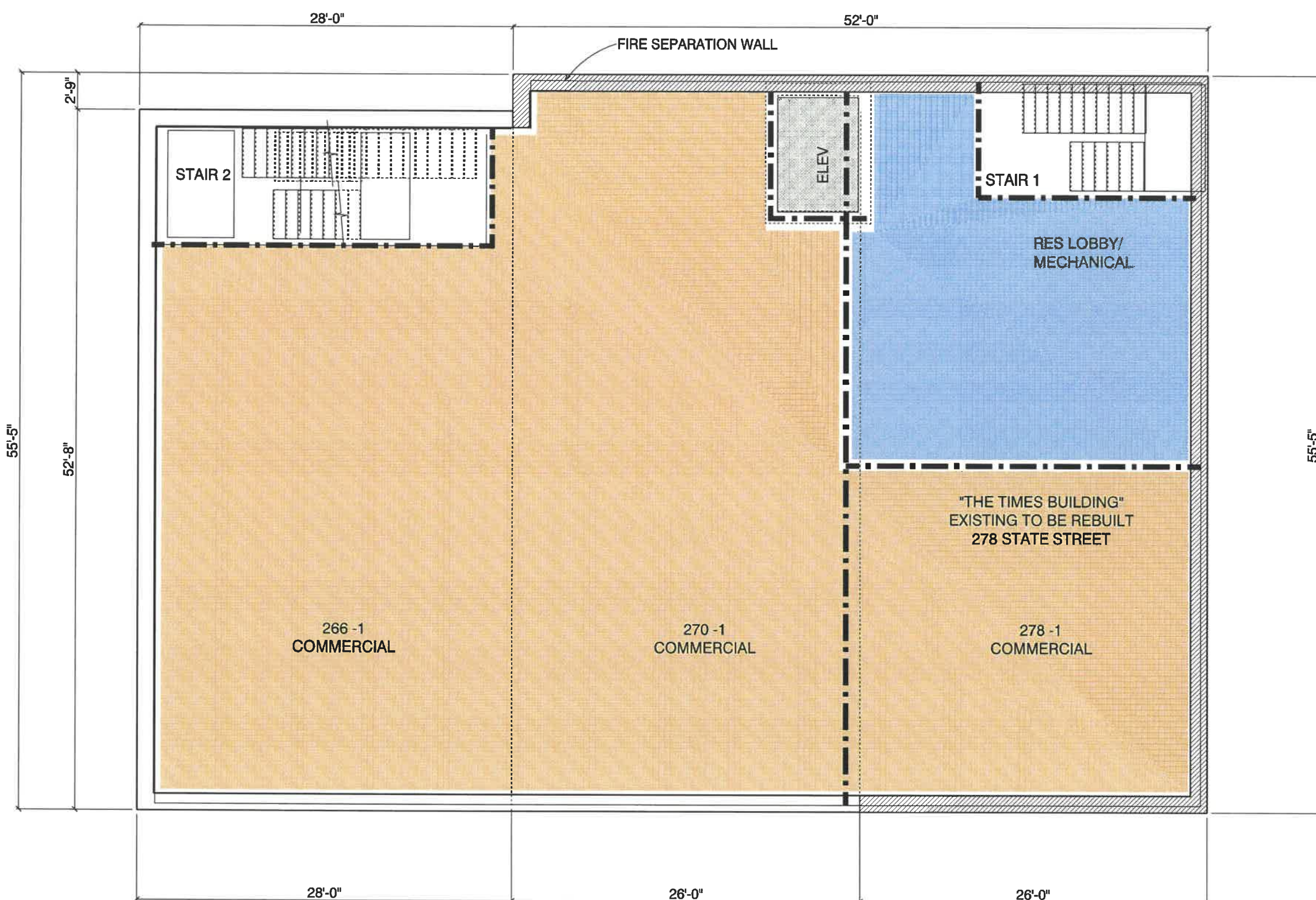
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FOR:  
PNF TRUST OF 2013  
282 MIDDLE STREET  
PORTSMOUTH NH 03801

TITLE  
SOUTH ELEVATION  
ZBA 05.01.19

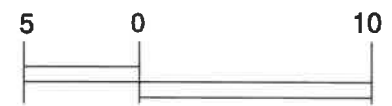
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A-3



# STREET LEVEL PLAN



CONCEPT  
Monday, May 6, 2019

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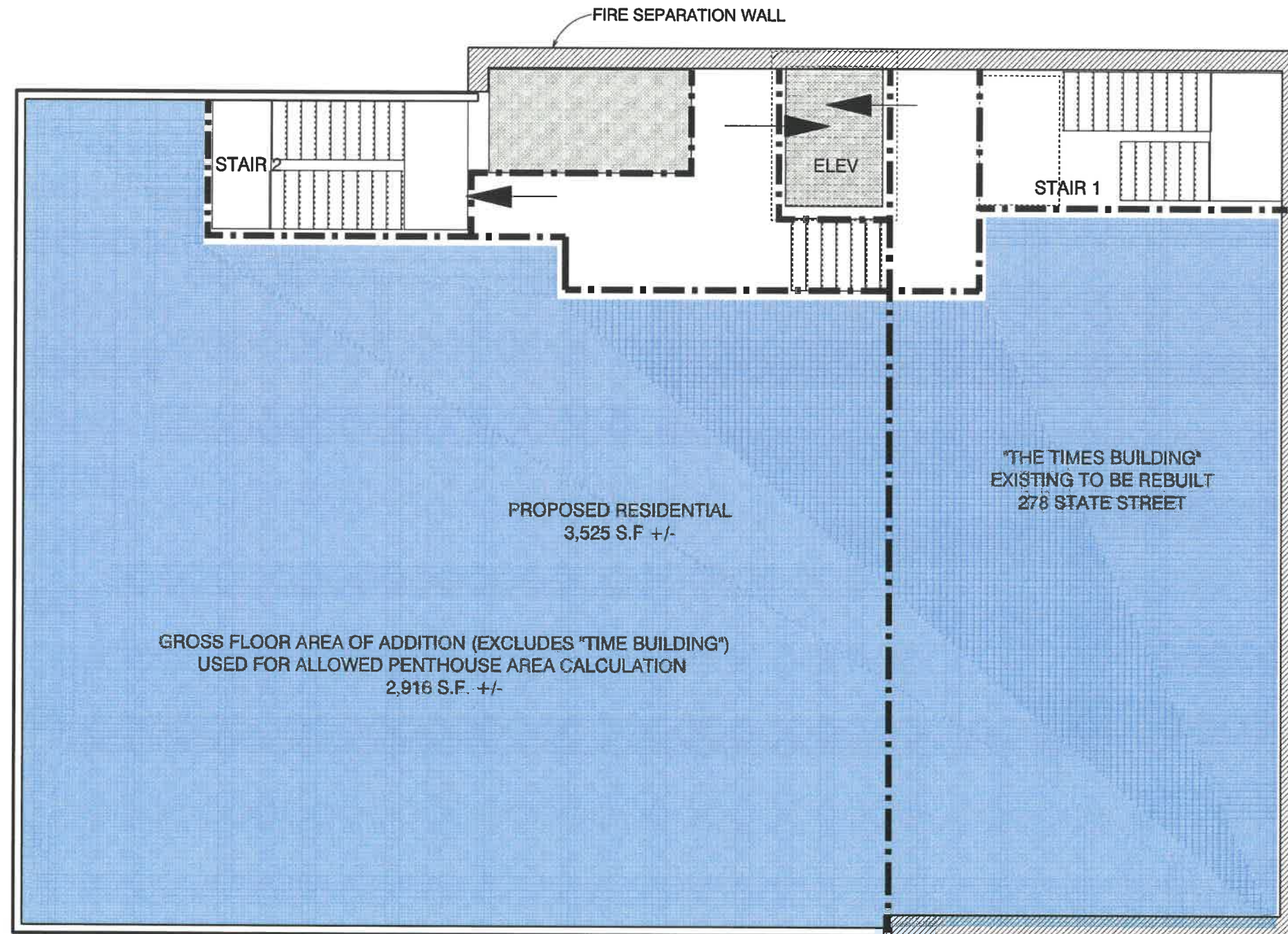
PROJECT  
PROPOSED  
RESTORATION AND EXPANSION OF  
266, 270 AND 278 STATE STREET  
PORTSMOUTH, NH  
FOR:  
PNF TRUST OF 2013  
282 MIDDLE STREET  
PORTSMOUTH NH 03801

TITLE  
STREET LEVEL PLAN  
ZBA 05.01.19

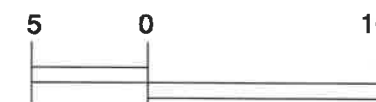
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DATE: 5/6/2019  
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DRAWING NO.

**A-4**

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# TYPICAL FLOOR 2-4 PLAN



CONCEPT  
Monday, May 6, 2019

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PROJECT  
PROPOSED  
RESTORATION AND EXPANSION OF  
266, 270 AND 278 STATE STREET  
PORTSMOUTH, NH

FOR:  
PNF TRUST OF 2013  
282 RIDGEMOUNT STREET  
PORTSMOUTH, NH 03801

TITLE  
TYPICAL PLAN 2-4

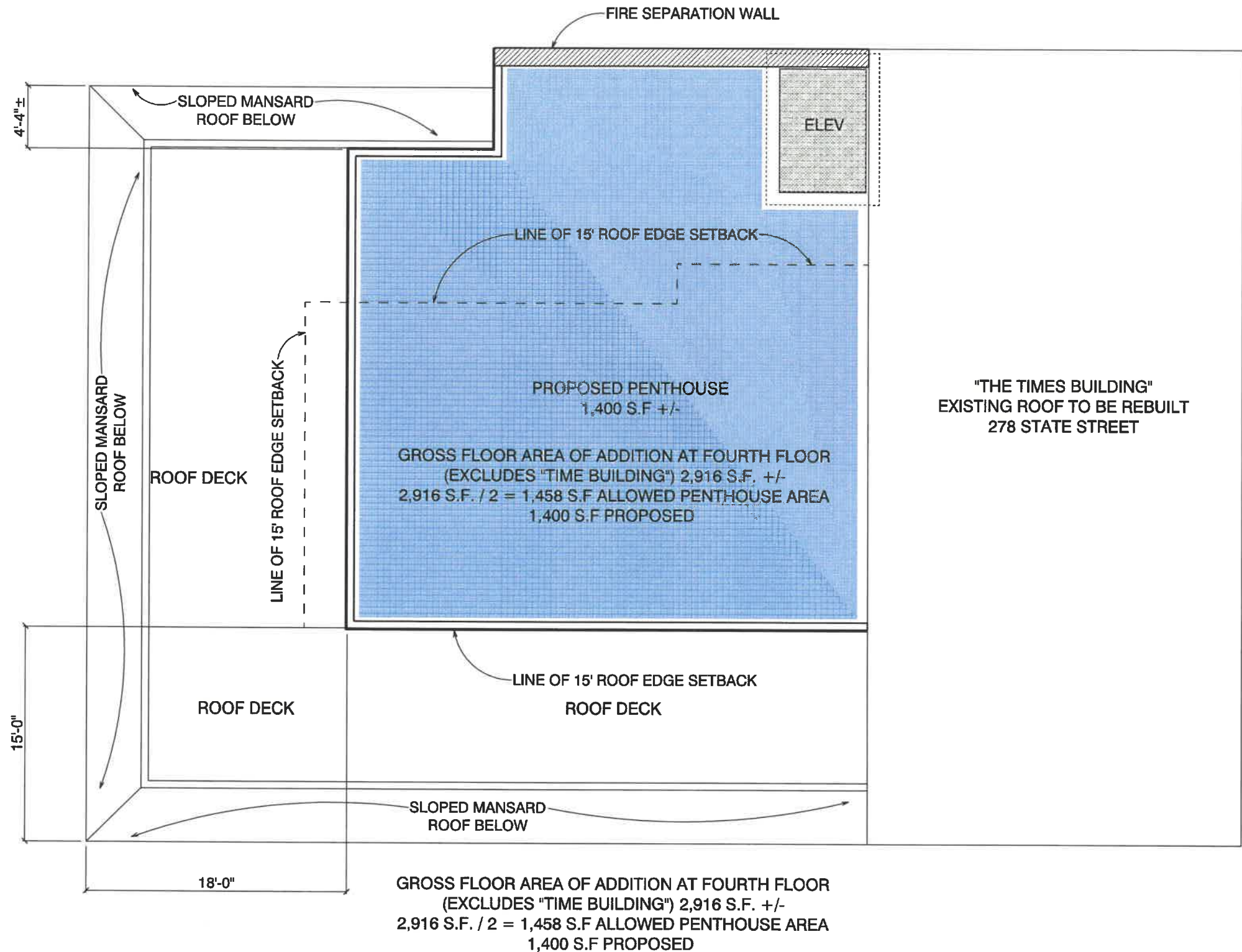
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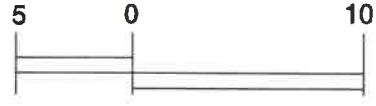
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**A-5**

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# PENTHOUSE LEVEL PLAN



CONCEPT  
Monday, May 6, 2019

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PROJECT  
PROPOSED  
RESTORATION AND EXPANSION OF  
266, 270 AND 278 STATE STREET  
PORTSMOUTH, NH

FOR:  
PNF TRUST OF 2013  
282 MIDDLE STREET  
PORTSMOUTH, NH 03801

TITLE  
PENTHOUSE FLOOR PLAN  
ZBA 05.01.19

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DATE: 5/6/2019  
SCALE: 1/8" = 1'-0"  
DRAWING NO.

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**A-6**



## Rusty Hammer

**mjk** MICHAEL J KEANE ARCHITECTS PLLC  
NEWMARKET, NEW HAMPSHIRE

PROPOSED RESTORATION AND  
EXPANSION OF 266,270 AND 278 STATE  
STREET PORTSMOUTH NH



## Custom House

**mjk** MICHAEL J KEANE ARCHITECTS PLLC  
NEWMARKET, NEW HAMPSHIRE

PROPOSED RESTORATION AND  
EXPANSION OF 266,270 AND 278 STATE  
STREET PORTSMOUTH NH

MAY 6, 2019



## Church Street

**mjk** MICHAEL J KEANE ARCHITECTS PLLC  
NEWMARKET, NEW HAMPSHIRE

PROPOSED RESTORATION AND  
EXPANSION OF 266,270 AND 278 STATE  
STREET PORTSMOUTH NH

MAY 6, 2019



Pleasant Street North



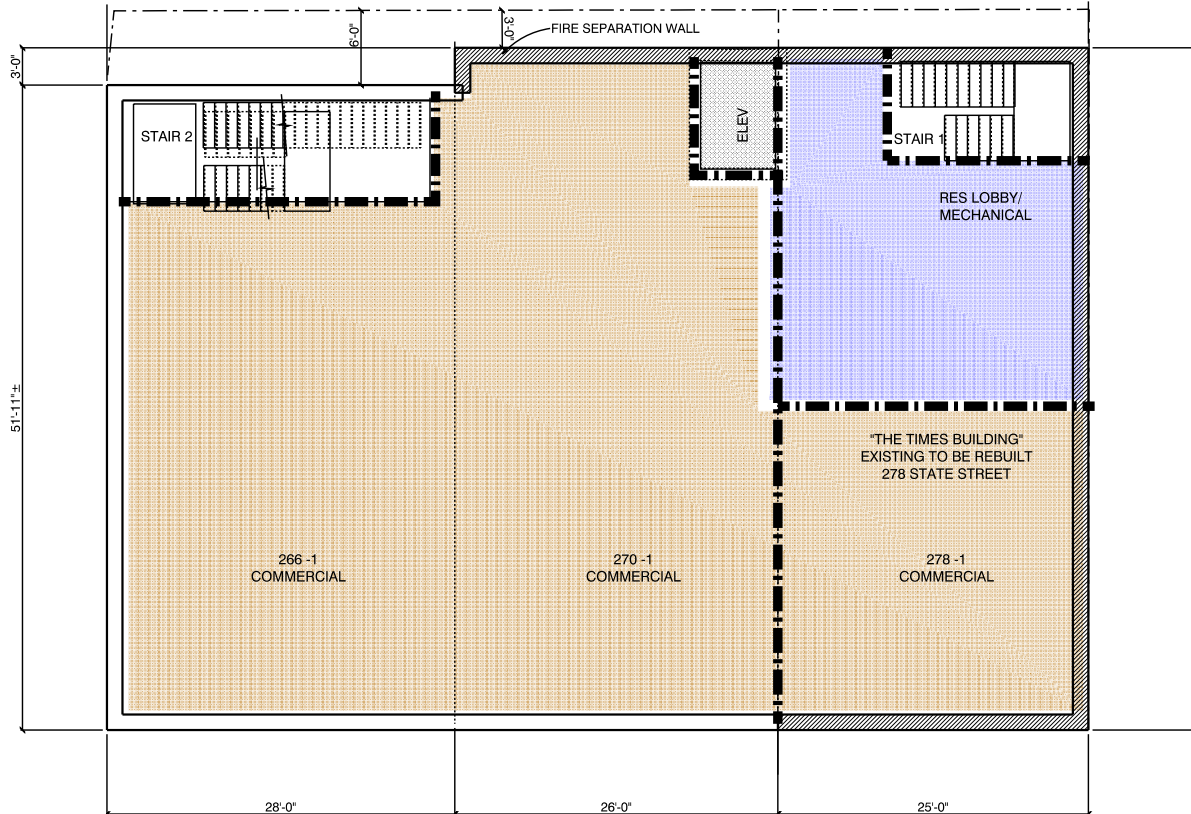


## Pleasant Street South

**mjk** MICHAEL J KEANE ARCHITECTS PLLC  
NEWMARKET, NEW HAMPSHIRE

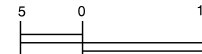
PROPOSED RESTORATION AND  
EXPANSION OF 266,270 AND 278 STATE  
STREET PORTSMOUTH NH

MAY 6, 2019



## STREET LEVEL PLAN

AGGREGATE LOT AREA - MAP 101 LOTS 80, 79 AND 78 = 4,576 S.F.  
 BUILDING AREA 4,255 S.F.  
 LOT COVER 92.8 %



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PROJECT

PROPOSED  
 RESTORATION AND EXPANSION OF  
 266, 270 AND 278 STATE STREET  
 PORTSMOUTH, NH

FOR:  
 PNF TRUST OF 2013  
 282 MIDDLE STREET  
 PORTSMOUTH, NH 03801

TITLE

STREET LEVEL PLAN  
 ZBA 05.01.19

DRAWN BY:

CHECKED BY:

DATE: 5/21/2019

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

DRAWING NO.

CONCEPT  
 Tuesday, May 21, 2019

DO NOT SCALE PRINTS  
**A-4**