

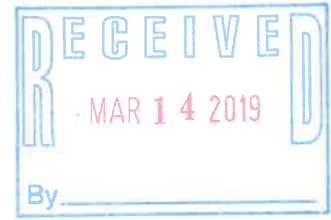
# *Peter J. Loughlin*

ATTORNEY AT LAW

LEONARD COTTON HOUSE • STRAWBERRY BANKE  
144 WASHINGTON STREET  
P.O. BOX 1111  
PORTSMOUTH, NH 03802-1111

TELEPHONE 603-431-6466  
FAX 603-436-4079

E-MAIL  
peter.loughlin@pjllaw.com



March 15, 2019

David Rheaume, Chairman  
Portsmouth Zoning Board of Adjustment  
Municipal Complex  
1 Junkins Avenue  
Portsmouth, NH 03801

**Re: 299 Vaughan Street – Tax Map 124, Lot 10**

Dear Chairman Rheaume & Members of the Zoning Board of Adjustment:

This letter is to provide the Board with information concerning the variance request filed by Vaughan Street Hotel LLC for the AC Hotel it is constructing at 299 Vaughan St. Relief is requested for three signs and for lighting at the building as summarized in the chart included in Attachment #8.

## **Sign Relief Requested**

The AC Hotel is located in a Character District 5 Zone and in Sign District 3 where all of the types of signs being requested are permitted. In Sign District 3, the maximum aggregate permitted sign area is 2 s.f. of signage per linear foot of building frontage. Since the hotel has 173 feet of frontage on Green Street and 236 feet of frontage on Vaughn Street, 818 s.f. of signage is permitted by Section 10.1251.10 of the Sign Ordinance. The hotel is seeking approval for a total of 287 s.f. of signage on this building. However, Section 10.1251.20 limits the size of individual wall signs to 40 s.f. Relief is requested for:

- (1) **Sign #1 (Wall Sign):** 11'2" x 11'2" (124 s.f.) sign proposed for the south elevation of the building (Vaughn Street side).
- (2) **Sign #5 (Wall Sign):** 8'4" x 8'4" (70 s.f.) sign proposed for the north side of the building.<sup>1</sup>

### **Illumination Relief Requested**

Relief is also being requested from three of the outdoor lighting provisions in the Zoning Ordinance:

- (1) **Sign #2 Halo Lite Main Entrance Sign:** The 18 s.f. sign over the main entrance to the hotel on Vaughn Street consists of 17 letters 12 inches high spelling out "AC HOTEL PORTSMOUTH." To be consistent with the hotel's branding, internal illumination of these letters is proposed. Because section 10.1261.30 of the Outdoor Lighting Ordinance requires external illumination in the Historic District, relief is requested.
- (2) **Accent Light #1:** Subtle accent lighting (with the light fixtures hidden from view) is designed to softly illuminate the building. These types of accent luminaires may be mounted at any height to a maximum of 25 feet regardless of the lumen rating. Since these lights are designed to illuminate the entire surface of the building, relief is requested from Section 10.1144.63 to allow the lights above the height of 25 feet on the building surface.
- (3) **Light L20:** The full cutoff lights to illuminate the parking deck are attached to the back of the building 19'7" above the second floor of the parking deck and 32'9" above the grade of surrounding property. Since Section 10.1144.60 limits the height of luminaires to 20 feet above the grade, relief from this section is requested.

### **The Requirements for Variance Relief Are Satisfied**

- (1) *The granting of the requested relief will not result in the diminution in value of surrounding properties.*

---

<sup>1</sup> Section 10.1271 allows "signs on more than one façade of a building" and 10.1271.10 specifically provides that "a use in a building with more than one exterior wall facing a street may have signs on each wall." Since sign #5 is facing a street we believe this sign location is permitted as a matter of right. Because the Planning Staff disagrees, we are also seeking relief from this section.

Perhaps more than any other location in any of the Character Based Zoning Districts, the AC Hotel is in a rapidly evolving District and is surrounded by commercial buildings. The nearest historic buildings or older residential homes are approximately 250 feet away and those will be separated from the hotel by the proposed 3-½ story, 74,000 s.f. office building at 111 Maplewood Avenue. The tasteful, understated signage and lighting will be visible from some surrounding properties, however, it will not in any way diminish the value of those surrounding properties.

(2) *The granting of the variance will not be contrary to the public interest.*

*Chester Rod & Gun Club v. Town of Chester*, 152 N.H. 577, 581 (2005), and *Harborside Associates v. Parade Residence Hotel, LLC*, 162 N.H. 508 (2011),<sup>2</sup> make it clear that to be “contrary to the public interest or injurious to the public rights of others, the variance must unduly and in a marked degree conflict with the Ordinance such that it violates the Ordinance’s ‘basic zoning objectives’.” In determining whether an Ordinance would violate the “basic zoning objectives,” the Court indicated that the test is whether it would “alter the essential character of the neighborhood,” or “threaten the public health, safety or welfare.” The proposed signage and lighting is not going to be contrary to the public interest, in fact, it will promote the public interest by identifying the hotel which may otherwise be challenging to find because it is not located directly on a main thoroughfare. This will allow travelers coming by way of Maplewood Avenue or Market Street to proceed directly to the hotel having a minimum impact on downtown traffic.

---

<sup>2</sup> In a case involving signage for the Marriott Residence Hotel on High Street, the Portsmouth Zoning Board of Adjustment granted relief from the Sign Ordinance which was upheld by the NH Supreme Court. In its opinion, the Court recounted that following a hearing on Parade’s application, the ZBA voted to grant Parade’s variance requests for the following reasons:

- The parapet signs as placed do not feel like visual clutter or overreach as to height.
- The signs will not be contrary to the public interest, resulting in no change in the essential character of the neighborhood or harm to health, safety and welfare.
- The sheer mass of the building and the occupancy by a hotel create a special condition. Visitors to the hotel need to be able to identify their destination.
- The proposal is reasonable and not overly aggressive.
- The marquee signs will not be disruptive to the visual landscape and may actually enhance the streetscape
- In the justice test, there is no benefit to the public that would outweigh the hardship on the applicant if the variance[s] were denied.
- There is no evidence that this well thought out design would negatively impact surrounding property values. (Harborside decision at pages 511-512)

(3) *The granting of the requested relief will do substantial justice.*

As Board members have often noted, the only guiding rule in determining whether the requirement for substantial justice is satisfied is whether there is any loss to the individual that is not outweighed by a gain to the general public. It is difficult to identify any benefit to the public by denying the requested sign and illumination relief, however, the detriment to the hotel of not having appropriate identification would be significant.

(4) *The granting of the variance will not be contrary to the spirit or intent of the Ordinance.*

The purpose of the Sign Ordinance is to regulate signage in such a way as 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." (Section 10.1211) The purpose of the City's Outdoor Lighting Ordinance is to "enhance public safety and welfare by providing for adequate and appropriate outdoor lighting, providing for lighting that will complement the character of the City, reduce glare, minimize light trespass, reduce the cost and waste of unnecessary energy consumption, and prevent the degradation of the night sky." (Section 10.1141)

The proposed signage is consistent with the City's Ordinance in that it will enhance the character of the City's Commercial District, identify a destination building for motorists and not, in any way, create a hazardous distracting display. The proposed illumination is consistent with the City's Outdoor Lighting Ordinance in that it will complement the character of the City, not create glare, minimize light trespass, reduce the cost and waste of unnecessary consumption and not create any degradation of the night sky.

(5) *The literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.*

- **No Fair and Substantial Relationship:**

RSA 674:33, I(b)(5)(A) provides that for purposes of the variance criteria test, "'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 purpose of the ordinance provision and the specific application of the provision to the property; and
- ii. the proposed use is a reasonable one.

There are special conditions about this property that distinguish it from other properties in the area. Although hotels have long been a permitted use in this area for decades, and although the hotel donated land to the City to expand Green Street so that it can provide easier access to all of the buildings on Vaughan Street, the AC Hotel is the only hotel in the Character Districts that is set back significantly from the nearest heavily traveled roadway. While a 40 s.f. wall sign may be practical and appropriate in other areas of the Character District/ Historic District neighborhoods such as Deer Street, Hanover Street, Market Street, High Street or Russell Street, it is not effective at this location. The prohibition on internally illuminated signs makes sense in most of the Historic District, however, it does not serve the same purpose in a neighborhood characterized chiefly by modern commercial buildings.

Although the proposed signage and illumination is rather modest, it is necessary and important to identify a building that is not directly on a main roadway but which relies on public patronage. The proposed illumination and signage is reasonable and appropriate in its size and scope and will direct travelers to the building without unnecessary searching and without having to drive through the downtown.

Respectfully submitted,  
Vaughan Street Hotel LLC  
By its Attorney:



---

Peter J. Loughlin

PJL/dea  
cc: Vaughan Street Hotel LLC

March 15, 2019  
David Rheaume, Chair  
Page 6

**Attachments:**

1. Portion of Zoning Map
2. Portion of Tax Map 123
3. Portion of Tax Map 124
4. MapGeo Building/Lot Locations
5. MapGeo Aerial Photo
6. Illustration of 111 Maplewood
7. Site Plan
8. Chart Summarizing Sign and Light Variance Relief Requested
- 9A, 9B, 9C Details of Signs for Which Relief is Requested
- 10A, 10B, 10C Elevations Showing Lighting for Which Relief is Requested
- 11A, 11B, 11C Building Elevations
- 12A, 12B Labeled Photos
13. Example of Internally Illuminated Branded Canopy Signage









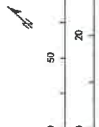


**Partial Legend**  
See the cover sheet for the complete legend.

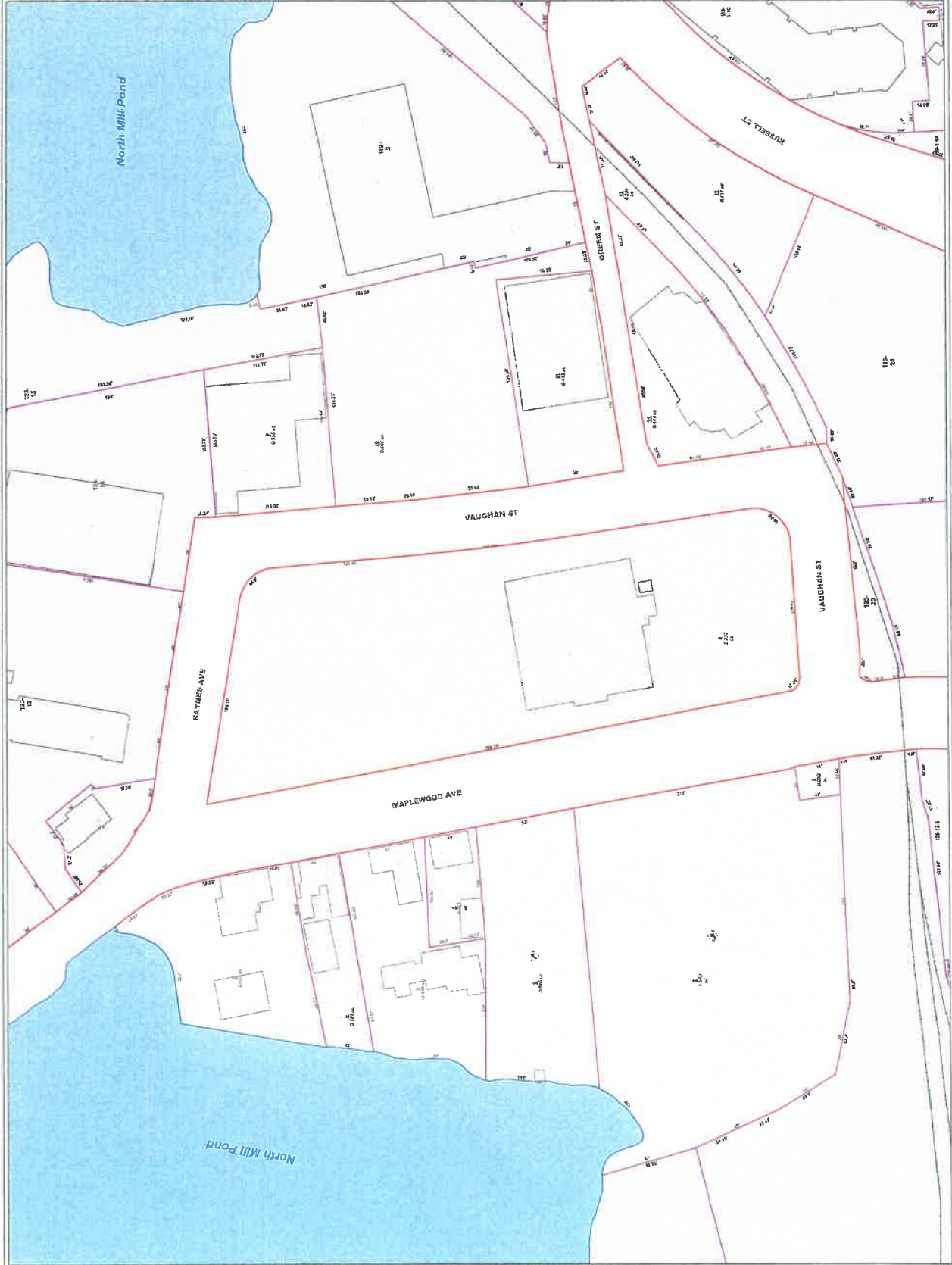
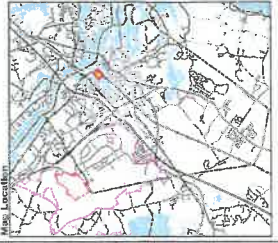
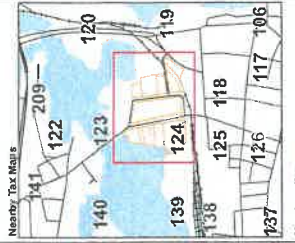
7-5A Lot or block number  
2-5B Parcel area in acres (ac) or square feet (sq ft)  
20-137 Parcel number from neighborhood map  
or  
Parcel area description

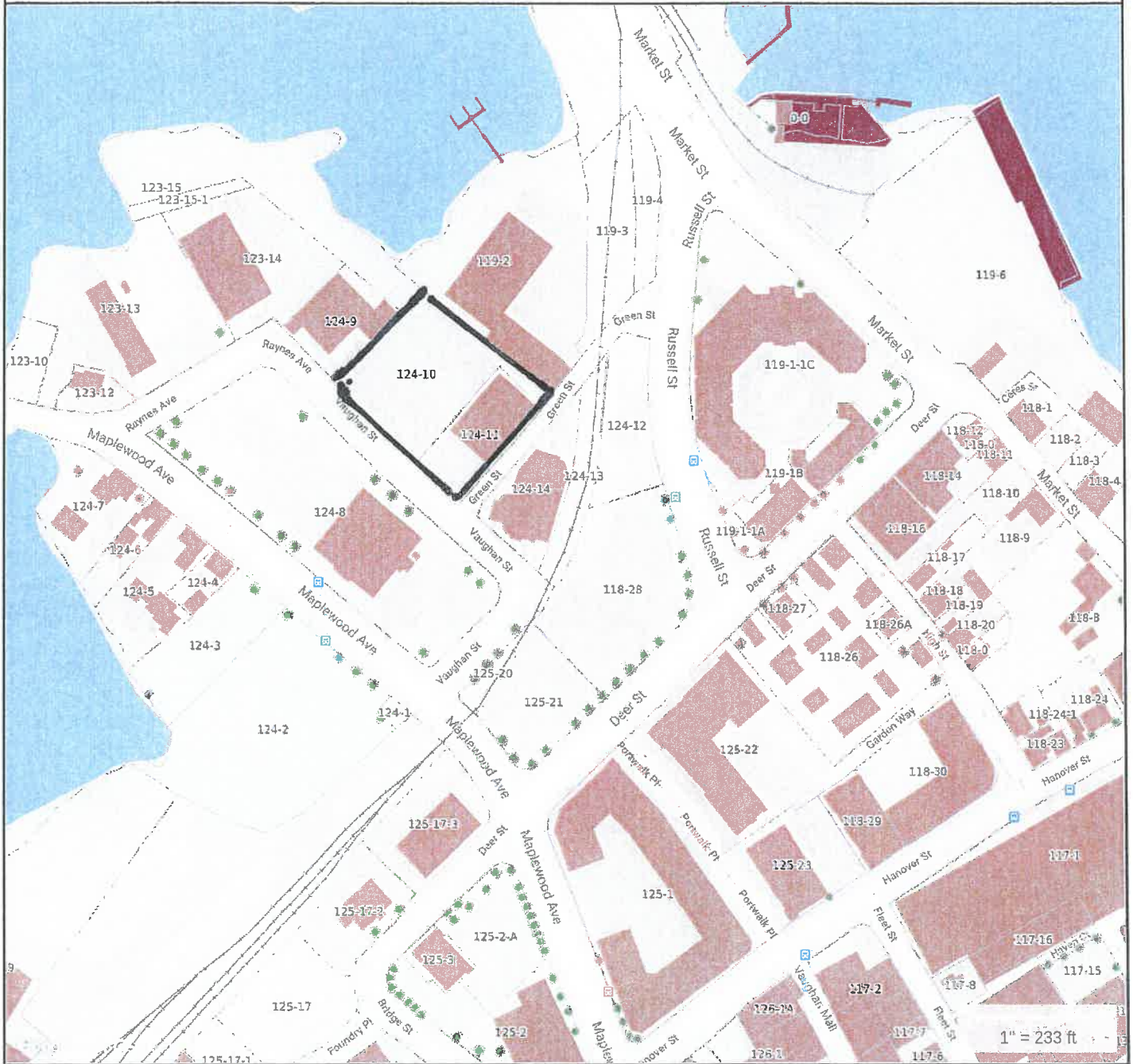
**STMS AVE** Street lines

Providence boundary  
 Precinct/borough boundary  
 Water boundary  
 Structure (1994 data)  
 Street created by this map  
 Parcel from a neighborhood map  
 Area other than lot or current status



This map is for assessment purposes only. It is not intended for legal description or conveyance. Building footprints are 2005 data and may not represent current structures. Streets appearing on this map may be paper numbers. Address numbers shown on this map may not represent actual or legal addresses.





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

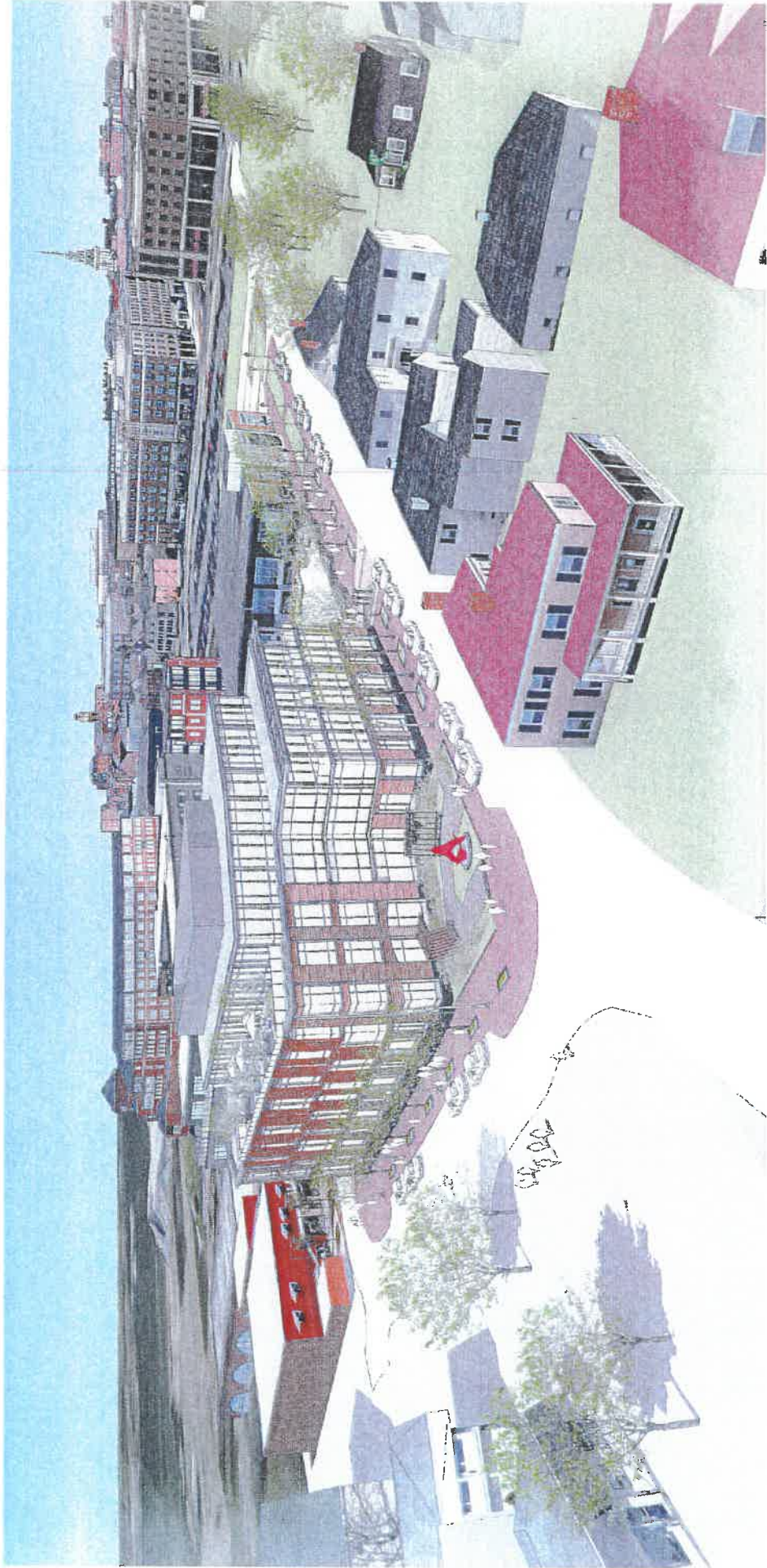
City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

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









Birdseye View of Maplewood & Raynes Avenue





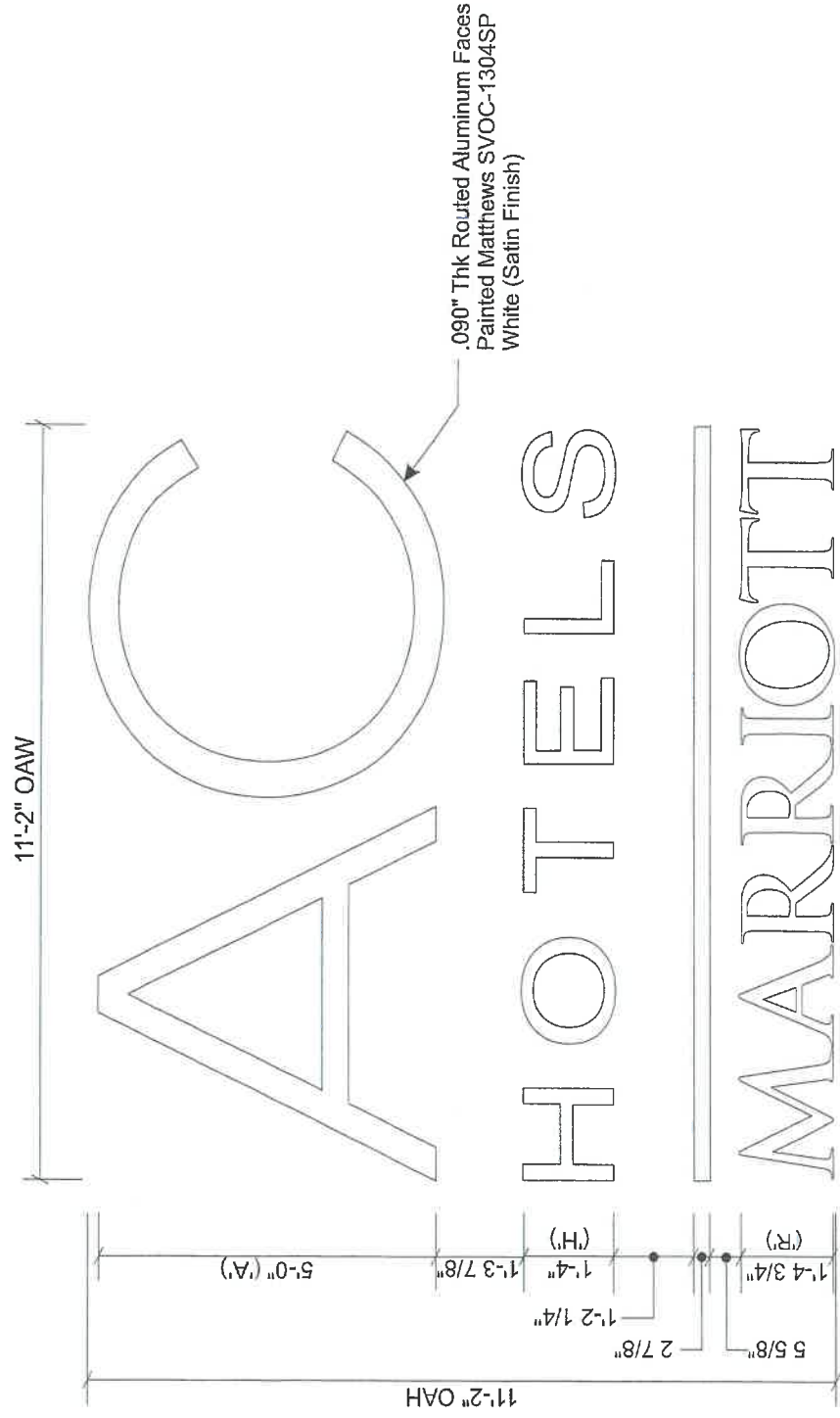
## AC Hotel by Marriott 299 Vaughan Street - Proposed Signage and Lighting

SIGN #	SIGN TYPE	ILLUMINATION	ALLOWED AREA	PROPOSED AREA
SIGN 1	WALL SIGN	HALO	40 SF	124 SF
SIGN 2	MARQUEE SIGN	INTERNAL	20 SF	18 SF
SIGN 3	INTERIOR SIGN			
SIGN 4	WALL SIGN	HALO	40 SF	25 SF
SIGN 5	WALL SIGN	HALO	40 SF	70 SF
LIGHT 1 - GREEN STREET	ACCENT LIGHT	REF LIGHT TABLE	40 SF	21 SF
LIGHT 1 - VAUGHAN STREET	ACCENT LIGHT	REF LIGHT TABLE	40 SF	22 SF
LIGHT 2	ACCENT LIGHT	REF LIGHT TABLE	40 SF	3 SF AGGREGATE
LIGHT 17	ACCENT LIGHT	REF LIGHT TABLE	40 SF	4 SF AGGREGATE
TOTAL			VAUGHAN: 236 LF GREEN ST: 173 LF SIGN FACTOR: 2.0  ALLOWABLE AREA (236 = 173) X 2.0 = 818 SF	287 SF

ATTACHMENT #8

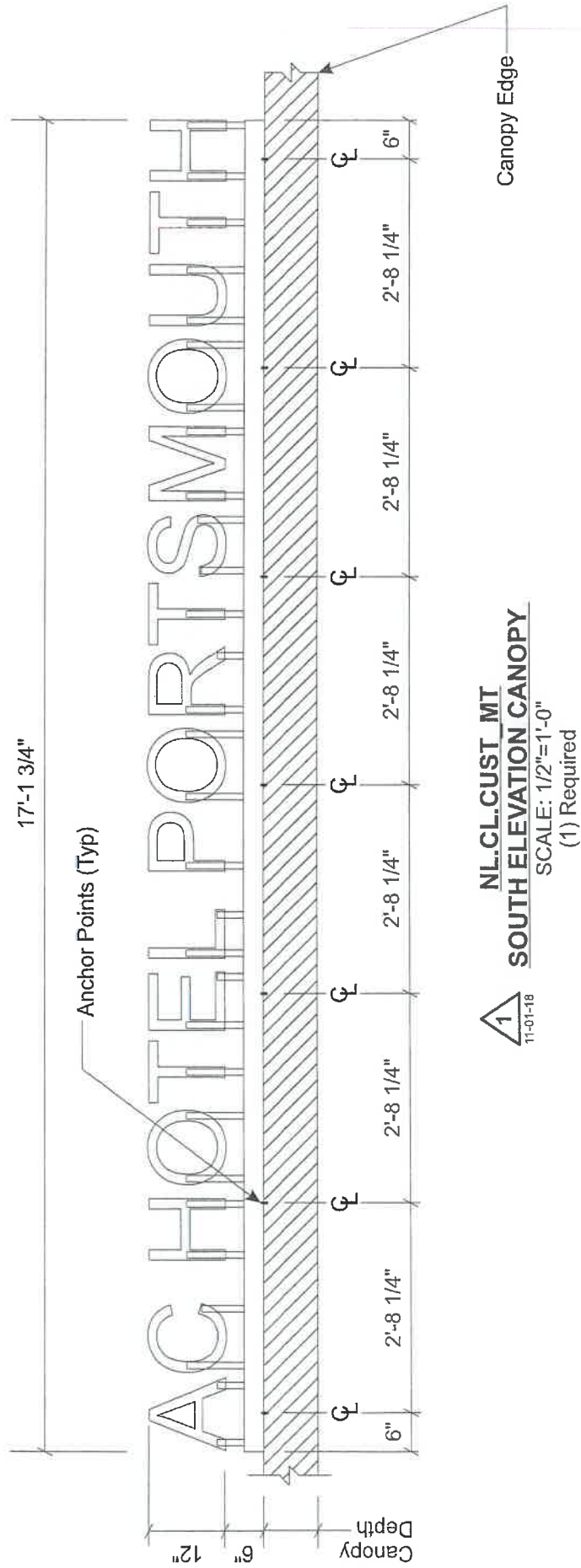
LIGHT #	QTY	ALLOWED HEIGHT	PROPOSED HEIGHT	REMARKS
LIGHT 1	1	25'	VARIES UP TO 65'	TAPE LIGHT IN FULL CUT OFF NICHE
LIGHT 2	1	N/A	N/A	FULL CUTOFF; BUILDING ENTRANCE LIGHTING
LIGHT L14	2	N/A	55'-0"	BUILDING ACCENT LIGHT UNDER 900 LUMENS
LIGHT L17	4	N/A	29'-10"	BUILDING ACCENT LIGHT UNDER 900 LUMENS
LIGHT L20	11	20'-0"	32'-9"	FULL CUT-OFF; PARKING LIGHTING

**AC Hotel by Marriott 299 Vaughan Street - Sign 1: 124 square feet Halo Lit**



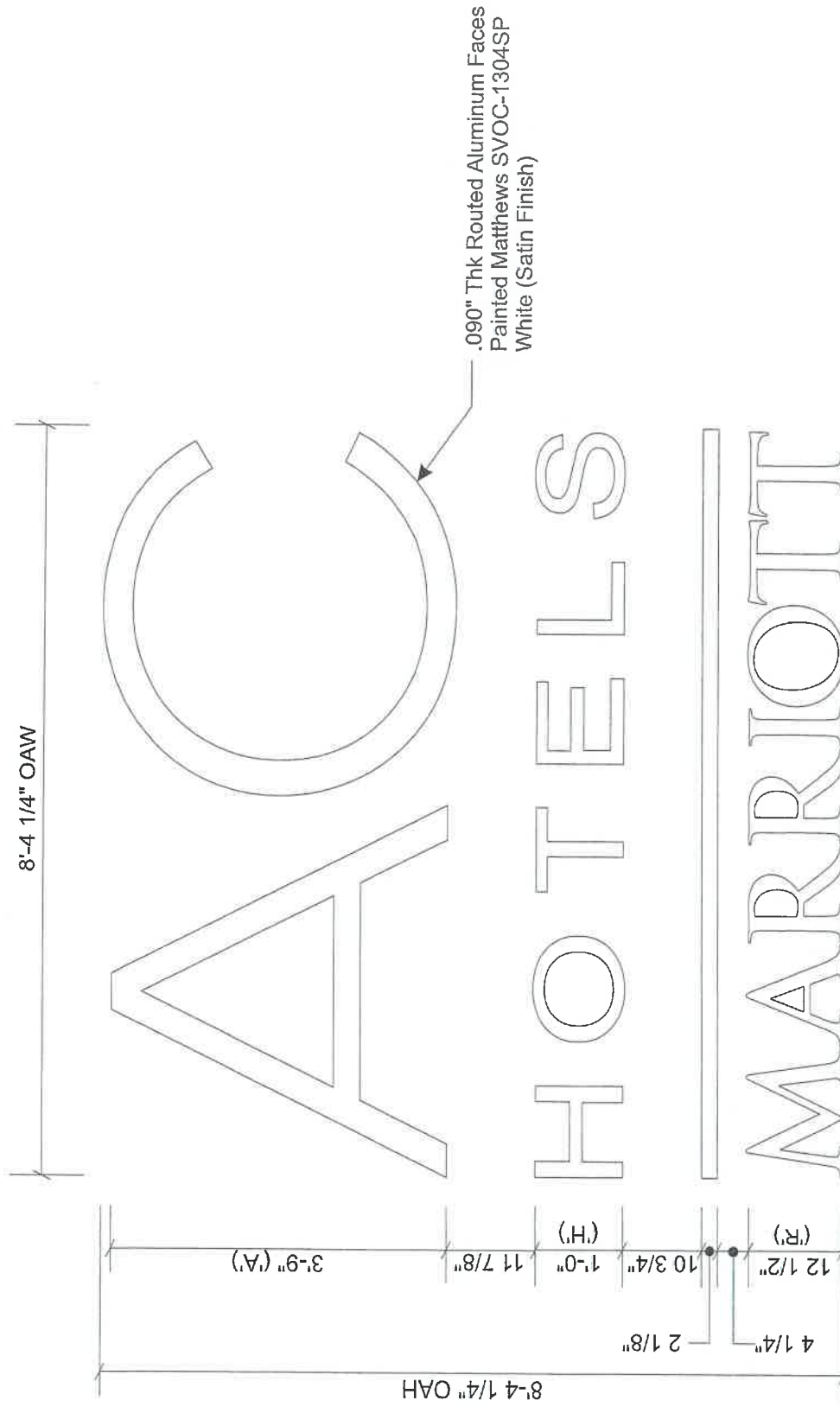
**IL.CL.CUST.MT**  
**SOUTH ELEVATION**  
SCALE: 3/8"=1'-0"

**AC Hotel by Marriott 299 Vaughan Street - Sign 2: 18 square feet Internal Illumination**





**AC Hotel by Marriott 299 Vaughan Street - Sign 5: 70 square feet Halo Lit**

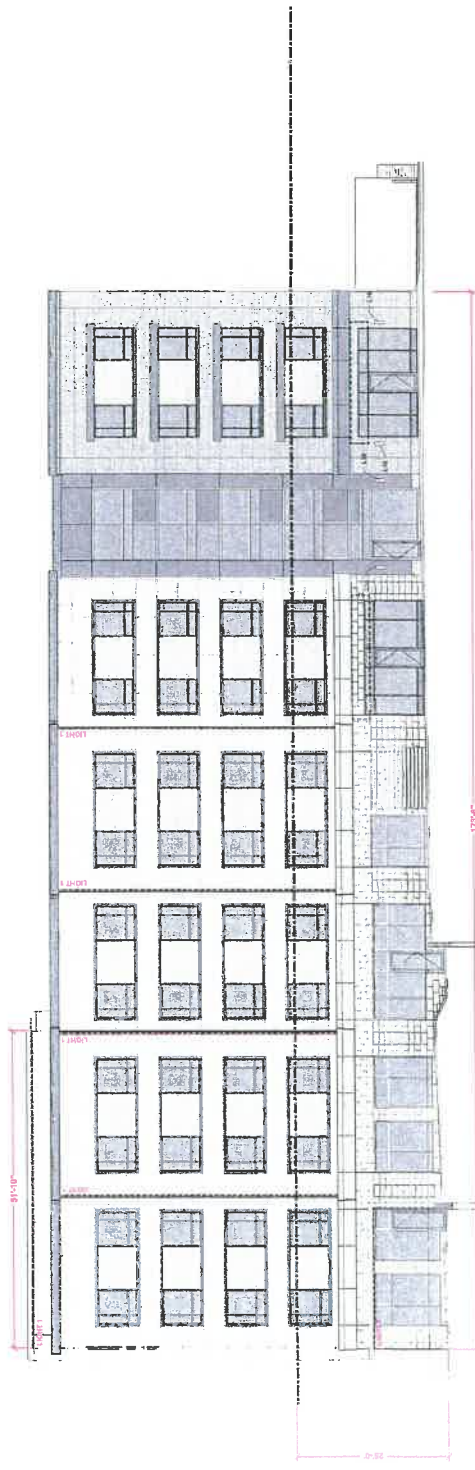


**IL.CL.CUST MT**  
**NORTH ELEVATION**  
SCALE: 1/2"=1'-0"





1 OVERALL - EXTERIOR SOUTH ELEVATION  
1/8" = 1'-0"



2 OVERALL - EXTERIOR EAST ELEVATION  
1/8" = 1'-0"

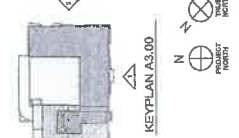
LIGHT #	QTY	ALLOWED HEIGHT	PROPOSED HEIGHT	REMARKS
LIGHT 1	1	25'	VARIES UP TO 85'	TABLE LIGHT IN FULL CUT OFF NICHE
LIGHT 2	1	N/A	N/A	FULL CUT OFF BUILDING ENTRANCE LIGHTING
LIGHT L14	2	N/A	85'-0"	BUILDING ACCENT LIGHT UNDER 800 LUMENS
LIGHT L17	4	N/A	89'-10"	BUILDING ACCENT LIGHT UNDER 800 LUMENS
LIGHT L20	11	28'-0"	28'-0"	FULL CUT OFF PARAPET LIGHTING

SIGN #	SIGN TYPE	ILLUMINATION	ALLOWED AREA	PROPOSED AREA
SIGN 1	WALL SIGN	FIELD	40 SF	124 SF
SIGN 2	WALL SIGN	DIRECT	23 SF	18 SF
SIGN 3	WALL SIGN	HALO	40 SF	25 SF
SIGN 4	WALL SIGN	HALO	40 SF	70 SF
LIGHT 1	ACCENT LIGHT	REF LIGHT TABLE	40 SF	43 SF
LIGHT 2	ACCENT LIGHT	REF LIGHT TABLE	40 SF	3 SF AGGREGATE
LIGHT L17	ACCENT LIGHT	REF LIGHT TABLE	40 SF	4 SF AGGREGATE
TOTAL			233 SF	237 SF

**AC PORTSMOUTH**  
 200 MAJUMBAR STREET  
 PORTSMOUTH, NH  
 PROJECT NO. 2017-100-001  
 DRAWING NO. EX-001

DATE: 08/15/18  
 DRAWN BY: AJD  
 PROJECT NO.: 2017-100-001  
 DRAWING NO.: EX-001  
 SHEET NO.: 1 OF 1

Scale: **A3.00**  
 Drawing Title: **EXTERIOR ELEVATIONS**





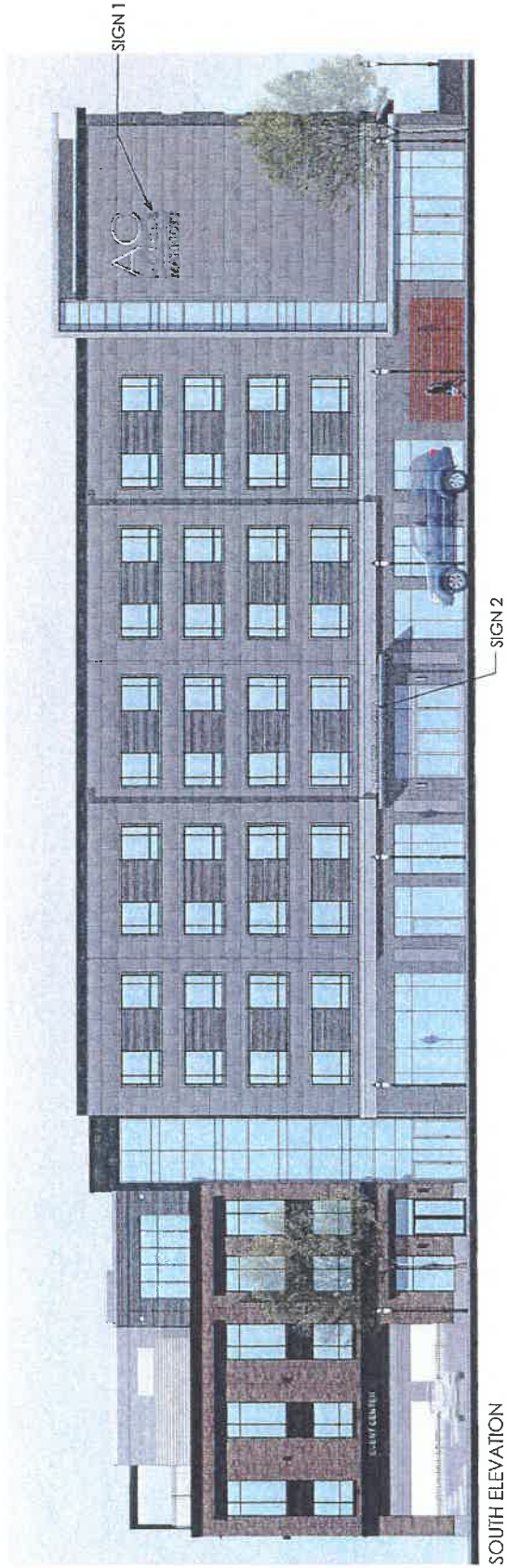












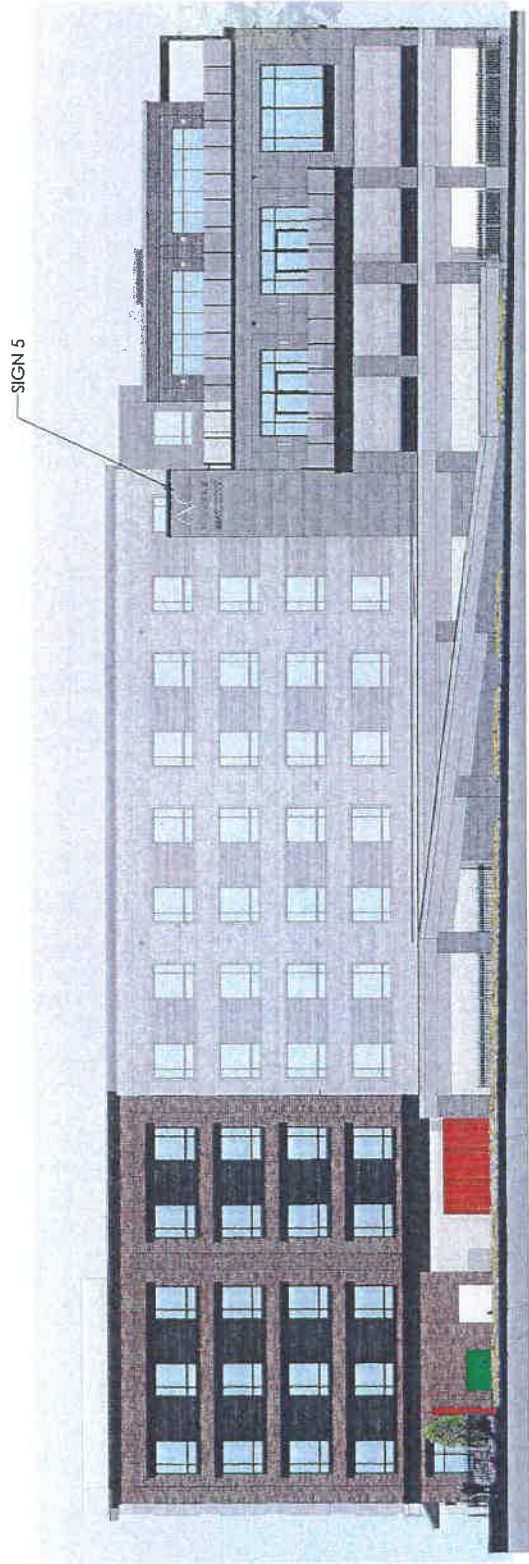
SOUTH ELEVATION



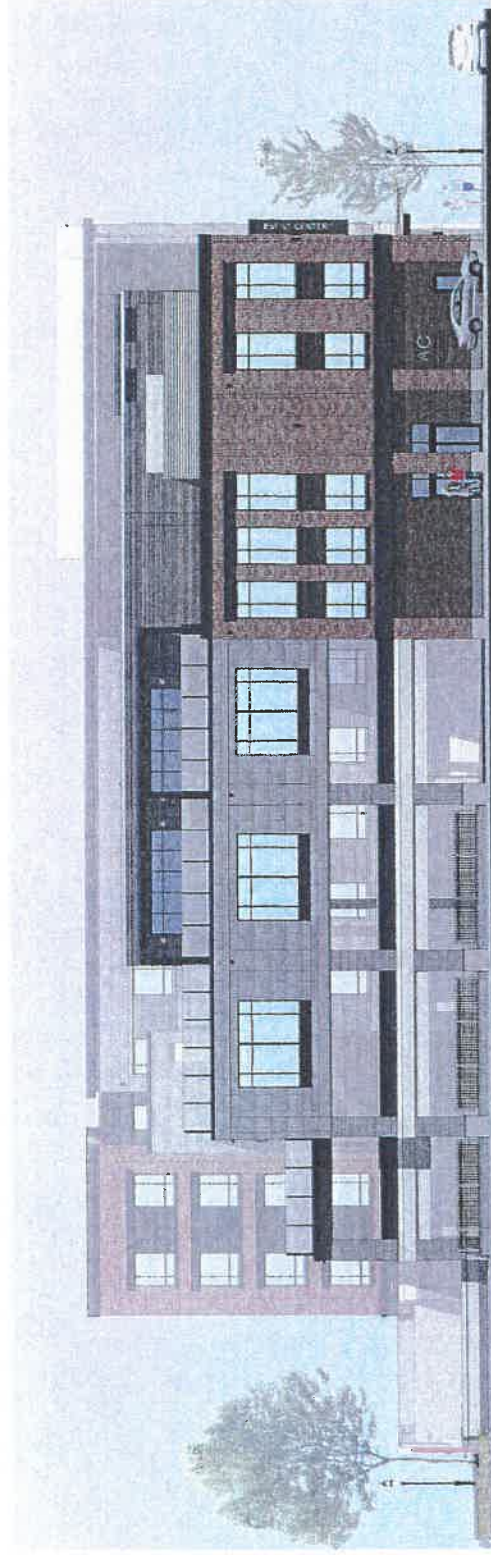
EAST ELEVATION

<p>299 VAUGHAN STREET PORTSMOUTH, NEW HAMPSHIRE</p>	<p>SIGNAGE ELEVATIONS SIGNAGE REVIEW - MARCH 13, 2019</p>	<p>XSS HOTELS CATHARTES</p>	<p>S.0</p>
---	---	-----------------------------	------------





NORTH ELEVATION



WEST ELEVATION

299 VAUGHAN STREET  
 PORTSMOUTH, NEW HAMPSHIRE

SIGNAGE ELEVATIONS

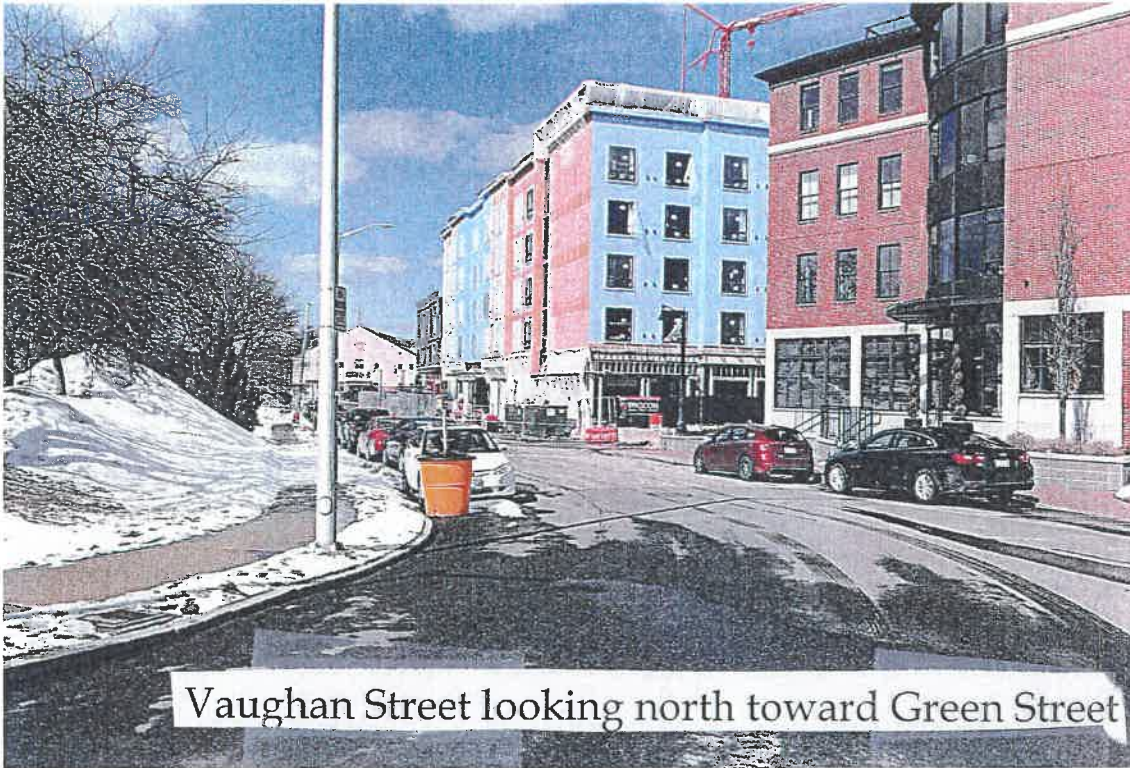
SIGNAGE REVIEW: MARCH 13, 2019



CATHARTES

S.1





49



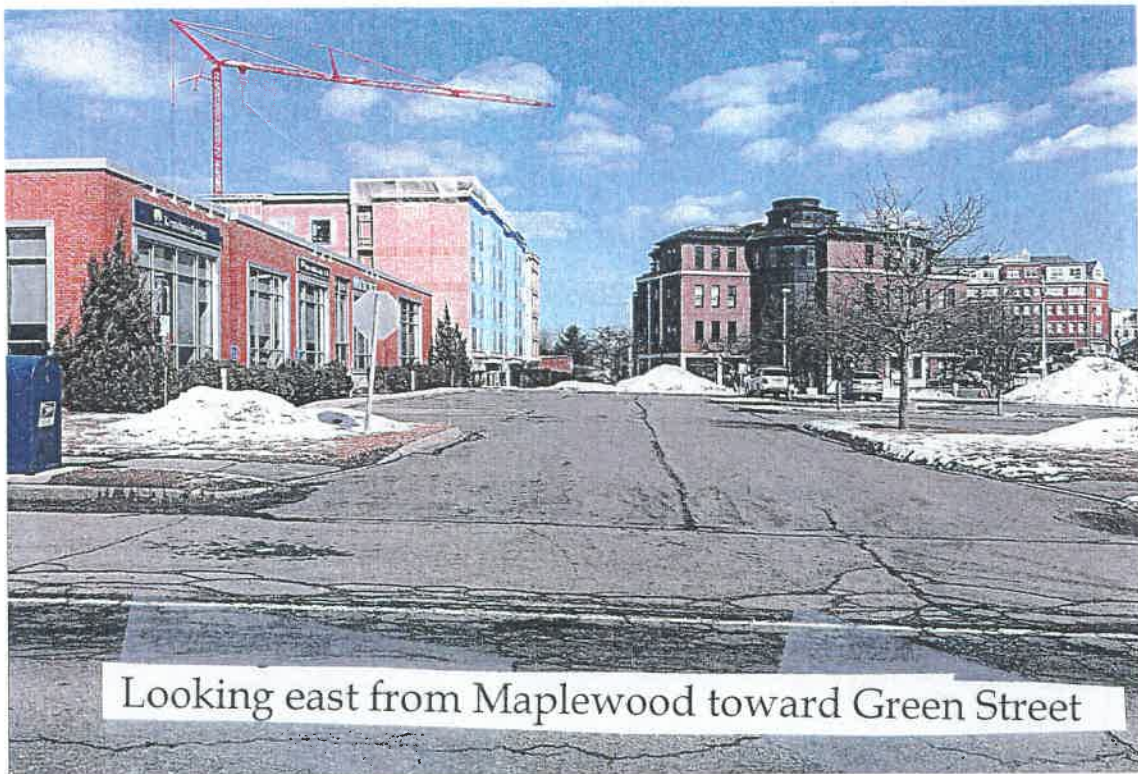
52





Looking east from Maplewood Ave toward AC Hotel

53



Looking east from Maplewood toward Green Street

54



Example of Internally Illuminated Branded Canopy Signage

