CITY OF PORTSMOUTH ZONING BOARD OF ADJUSTMENT

64 VAUGHAN STREET, PORTSMOUTH, NEW HAMPSHIRE Tax Map 126 Lot 1 NOVOCURE, INC.

APPLICANT'S NARRATIVE

THE APPLICANT

The Applicant, Novocure Inc., acquired the property at 64 Vaughan Street, formerly the home of Cabot Furniture, in December, 2021. Novocure is a global oncology company focused on treating some of the most aggressive cancers. Novocure has begun renovations of the historic property to house its North American Flagship operations. Novocure intends to occupy the entire building which will be used for executive offices and a training and development center where doctors and other health care professionals will be introduced to Novocure's products and technologies. Novocure expects 200 to 250 employees to be based at this facility.

THE PROPERTY

The lot is irregularly shaped, with approximately 75' of frontage on the pedestrian Vaughan Mall and 68' of frontage on Hanover Street and it abuts the rear alley connecting Hanover Street to the Worth Parking Lot. The existing structure dominates the site and is built up to or very close to the lot lines on Vaughan Mall and the Worth Lot. The property was previously approved for a mixed-use renovation including the addition of approximately 2,480 square feet of building footprint in 2021. The building addition brings the structure forward to approximately 5 feet from its Hanover Street frontage. The exterior design has been fully approved by the Historic District Commission.

Built in the late 19th century as a 3-story brick and heavy timber structure with a flat roof and full basement, the main building was originally owned and occupied by the Margeson Bros. Furniture Co. Early in the 20th century, the building was more than doubled in size with an addition constructed of essentially the same materials and form on the Worth Lot side. A single story "modern" block addition with a shed roof was added mid-century toward the rear facing Hanover Street which was used as a loading dock for shipping and receiving. In 1993, artist Robert Wyland received the owner's permission to install a mural on the side of the building facing the Worth Lot, which became a landmark of sorts referred to as the "Whaling Wall." Unfortunately, through inappropriate preparation and application of paints, over time the mural has significantly degraded along with the facade of the building.

The previously approved redevelopment of the property ameliorates several adverse conditions on the site. Substandard utility and mechanical systems including water, sewer, drainage, HVAC and fire protection all will be upgraded to meet modern standards. Pedestrian connectivity around the building to Vaughan Mall from Maplewood Avenue, Hanover Street or the rest of downtown to the West, South and East will be enhanced via improvements to the building façade and to the Worth Lot. Underground parking will be constructed, where none exists and none is required for this office use in the Downtown Overlay District. The redevelopment revives and restores this historic structure and integrates it into the surrounding community. As noted, the design was enthusiastically approved by the Historic District Commission.

THE PROPOSED PROJECT

Novocure's acquisition of the property and it's intended use changes the mixed-use aspect of the development as now no residential, retail or restaurants will be incorporated into the site. The intended use will be professional office, which use is permitted by right. The building will host a daily influx of professionals that may at times exceed 300 people, including employees and visitors. Given Novocure's unique mission and its intention to convene visiting medical professionals, scientists and other partners for training, seminars and conferences, it desires to construct dedicated assembly space to accommodate such use. The convening space will not be dedicated to any type of permanent office space for Novocure employees. The convening space will provide employees and guests access to outdoor space where there is no other such space available on or near the property.

The existing flat rubber membrane roof on top the main, historic structure is the logical location to locate such a convening space with outdoor access. Accordingly, we are proposing to add an additional 11 feet, 6 ¼" of height to that portion of the building to accommodate the recessed, semi-transparent penthouse shown on the submitted plans. The penthouse will provide approximately 2,500 square feet of functional space, along with an outdoor patio and seating also shown on the plans. The proposed structure is designed to shield the necessary rooftop mechanical units.

It should be noted that, even with the additional proposed height, the building will be shorter than many of its recently renovated or constructed neighbors. The buildings across Hanover Street are 5-6 stories and 45'-70' tall. The neighboring mixed-use building at 25 Maplewood has a tower, skylight and mechanical appurtenances all of which are higher than what is proposed. Jimmy's Jazz Club across the Worth Lot is higher. Rooftop appurtenances on the building itself are permitted to a height of ten feet. Accordingly, the massing and scale of the proposed addition will not be out of place and will not in any manner dominate its surroundings. In fact, due to the siting of the proposed addition recessed from the building's edge, there are few ground-level locations where it will be visible at all. In any event, the project, if approved by this Board, will also require approval from the HDC.

¹ Please note that the site plan submitted herewith represents the plan previously approved by the Planning Board for a mixed-use development. The final amount of underground parking to be provided with this project has yet to be determined. No off street parking at all is required for this use. 10.1115.21.

In addition to the Historic District, the property is in the CD-5 zone and the Downtown Overlay District.

The project as proposed requires a variance from Section 10.5A43.30 and Map 10.5A21.B to permit the following:

- building height of 54' at the peak, 51' 6 1/8" to midpoint where 40 feet plus 2 feet for penthouse level is the maximum allowed.

Due to the unique shape of the lot and building, at the edge of the chamfered parapet the exterior face of the penthouse is 9'-9 3/4" from the parapet edge of the roof, thus a variance from section 10.1530 is also required, to permit a penthouse with a setback from the roof edge of 9'-9 3/4" where 15 feet is required.

VARIANCE CRITERIA

The Applicant believes that this project meets the criteria necessary for granting the requested 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 where similar heights are not uncommon. The health, safety and welfare of the public will not be negatively impacted in any fashion, as the introduction of the proposed penthouse will eliminate the existing, environmentally deleterious flat, membrane roof and replace it with activated space that will allow Novocure's employees and guests an outdoor space in which to congregate, each lunch, etc.

The essentially urban character of the neighborhood will not be altered in any fashion by this project, nor will 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 so the interest of the public will be more than adequately protected.

<u>Substantial justice would be done by granting the variances</u>. 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 proposed added height will in no way detract from any neighboring properties, many of which are taller than what is proposed. The proposed penthouse adds functionality to the space where otherwise an unattractive flat roof would exist. It shields the rooftop mechanicals and provides the building's occupants with access to outdoor space that is not available anywhere else on or near the site.

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

<u>The values of surrounding properties will not be diminished by granting the variances</u>. The proposed penthouse addition is not visible from most ground level locations near the site. The surrounding properties and those in the vicinity have similar or taller heights than proposed here. The penthouse will sit entirely within the footprint of the existing building.

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 main building is an historic structure dating back to the late 19th century. The property has frontage on two rights of way, Vaughan Mall and Hanover Street, and borders the Worth Lot which does not meet the definition of a "street" under the ordinance, but has many of the same characteristics of one – i.e., regular vehicular circulation throughout the site. There is no open, outdoor space on site in which the applicant's employees and guests can congregate, eat lunch, etc. The building's use as entirely office with no ground floor retail or other use is unusual in this vicinity. This is an irregular, L-shaped lot with a similar L-shaped building.

<u>The use is a reasonable use</u>. The proposed use is accessory to the office use which is permitted in this zone.

There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. The additional height requested is necessary to create functional space that adds to the environment. The additional height will not in any manner dominate or be out of scale with any of the neighboring properties. There is no fair and substantial relationship between the purposes of the height requirements and their application to this property.

The requested penthouse setback relief is driven by the irregular L-shaped lot and building. The purpose of the 15-foot penthouse setback presumably is to limit its visibility. As noted above, the proposed penthouse is not visible from almost all ground level locations, and certainly not in the area where relief is necessary.

I. Conclusion.

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

Respectfully submitted,

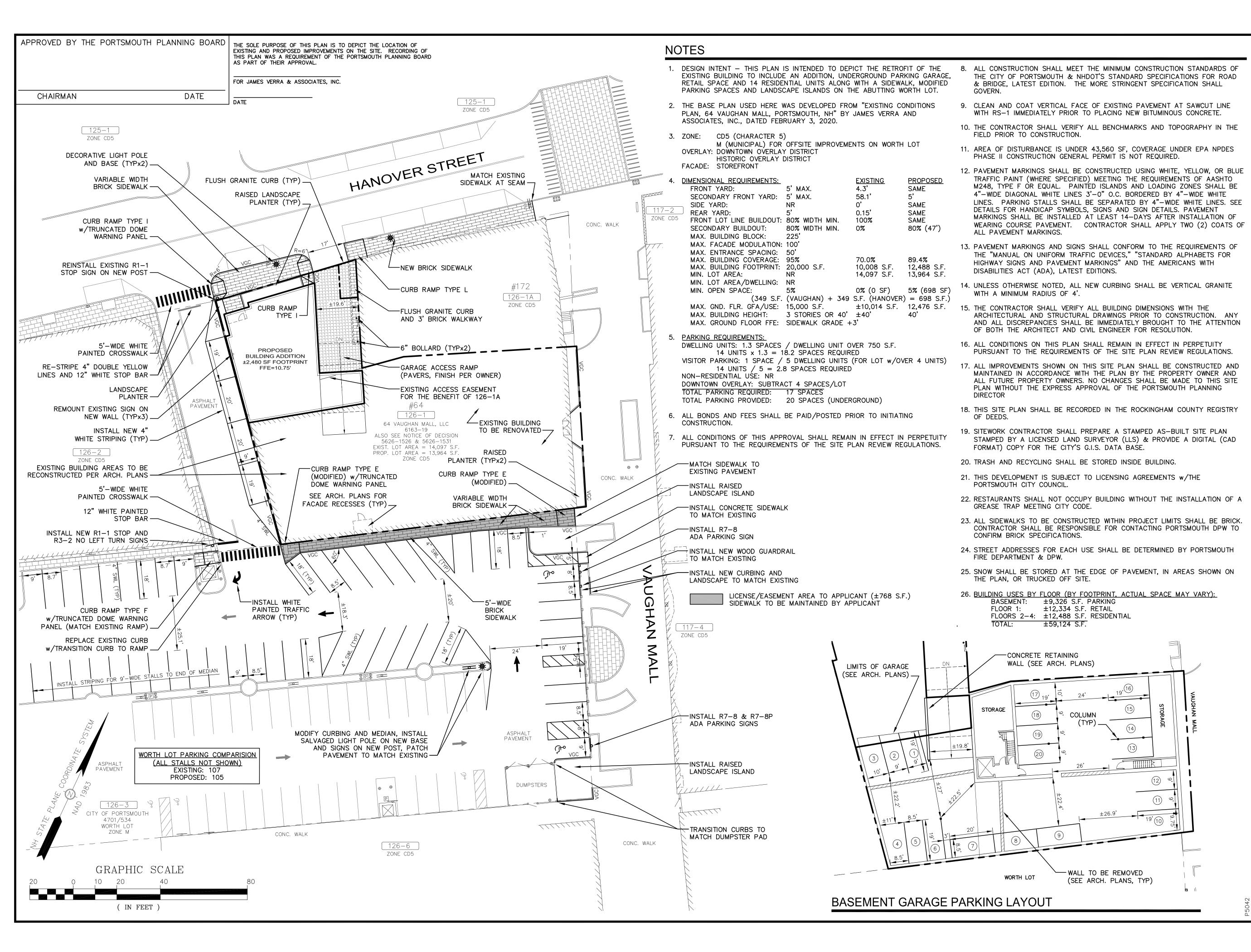
DATE: April 7, 2022

Christopher P. MulliganChristopher P. Mulligan, Esquire

AUTHORIZATION 64 VAUGHAN STREET, PORTSMOUTH Map 126, Lot 1

Novocure Inc., owner of the above-referenced property in Portsmouth, New Hampshire, hereby authorizes representatives of Bosen & Associates, PLLC and JSA Architects, Inc. to represent its interests before the Portsmouth land use boards and to submit any and all applications and materials related thereto on our behalf.

	Novocure Inc.	
Date:	By:	
	Name: 319C91BBCD58423	3
	Title:	





133 Court Street Portsmouth, NH 03801 (603) 433-2335 www.altus-eng.com

NOT FOR CONSTRUCTION

ISSUED FOR:

PLANNING BOARD

<u>ISSUE DATE:</u>

NOVEMBER 18, 2021

<u>REVISIONS</u>				
NO.	DESCRIPTION	BY	DATE	
0	TAC WORK SESSION	EBS	05/05/20	
1	TAC WORK SESSION	EBS	07/07/20	
2	TAC	EBS	10/19/20	
3	PB CONSULTATION		11/02/20	
4	REV. BLDG. HEIGHT	EBS	01/26/21	
5	TAC	EBS	03/22/21	
6	REV. FOOTPRINT FOR HDC	EBS	04/08/21	
7	TAC	EBS	04/19/21	
8	TAC	EBS	05/19/21	
9	TAC	EBS	06/21/21	
10	10 PLANNING BOARD		07/28/21	
11	REV. VAUGHAN ENTRANCE	EBS	11/18/21	

DRAWN BY: _____EBS

APPROVED BY: _____EDW

DRAWING FILE: _____5042-SITE.dwg

SCALE: $22" \times 34" \ 1" = 20'$ $11" \times 17" \ 1" = 40'$

OWNER:

64 VAUGHAN MALL, LLC

41 INDUSTRIAL DRIVE EXETER, NH 03833

APPLICANT:

HAMPSHIRE DEVELOPMENT CORP.

41 INDUSTRIAL DRIVE EXETER, NH 03833

PROJECT:

64 VAUGHAN MALL BUILDING RESTORATION

TAX MAP 126, LOT 1

64 VAUGHAN MALL PORTSMOUTH, NH 03801

TITLE:

SITE PLAN

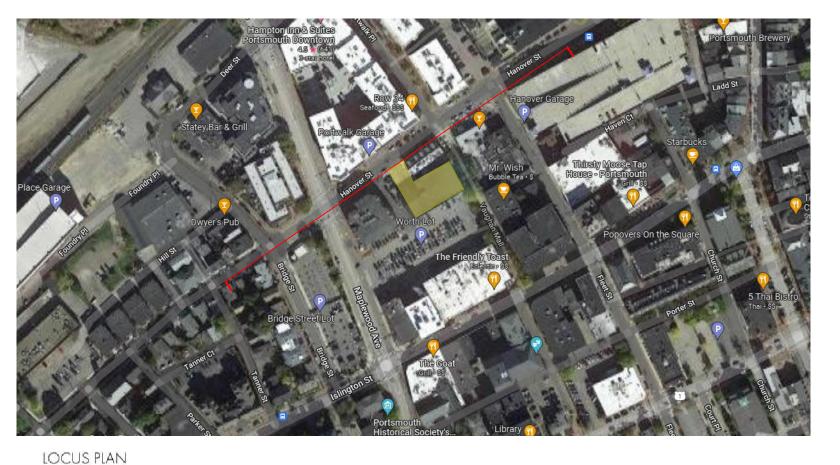
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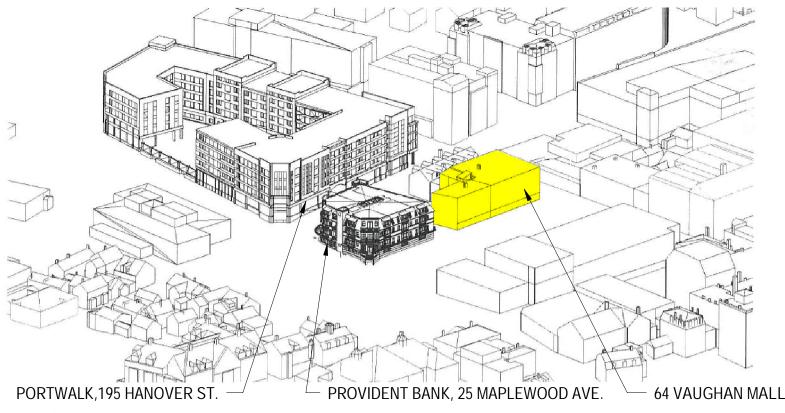
C-3

NOVOCURE FLAGSHIP 64 VAUGHAN MALL, PORTSMOUTH, NH

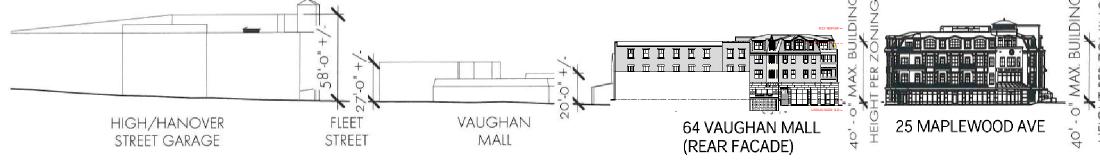
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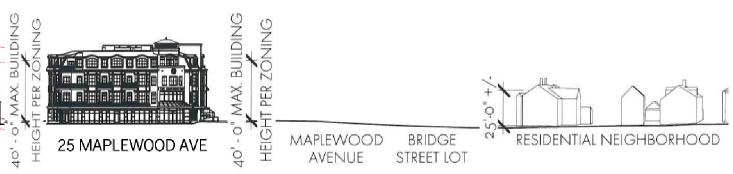
SCALE:





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SITE SECTION ALONG HANOVER STREET AS APPROVED



SITE SECTION ALONG HANOVER STREETWITH PENTHOUSE ADDED

SPACE & MASSING DIAGRAM

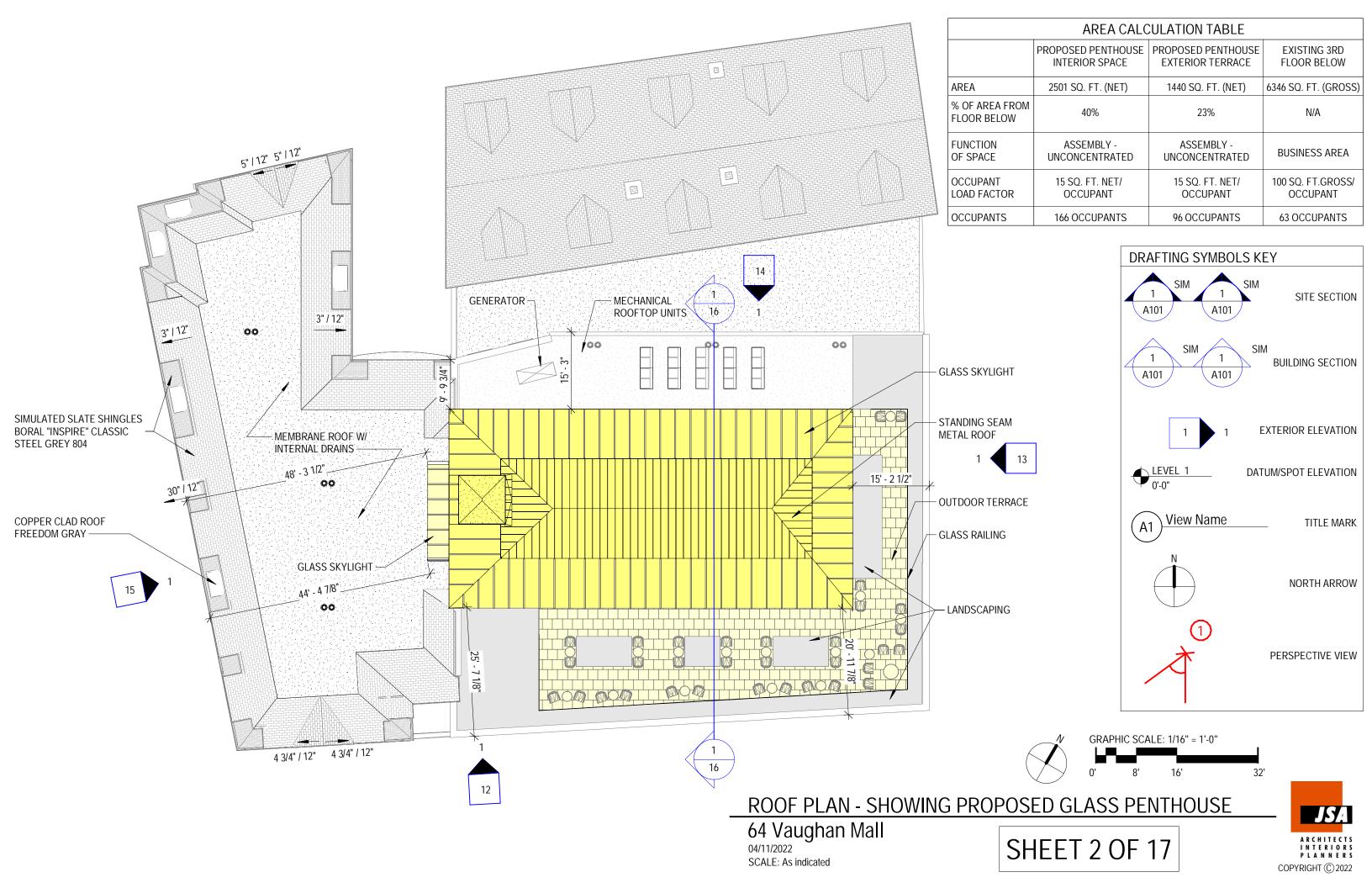
CITY OF PORTSMOUTH 3D MODEL EXISTING CONDITIONS

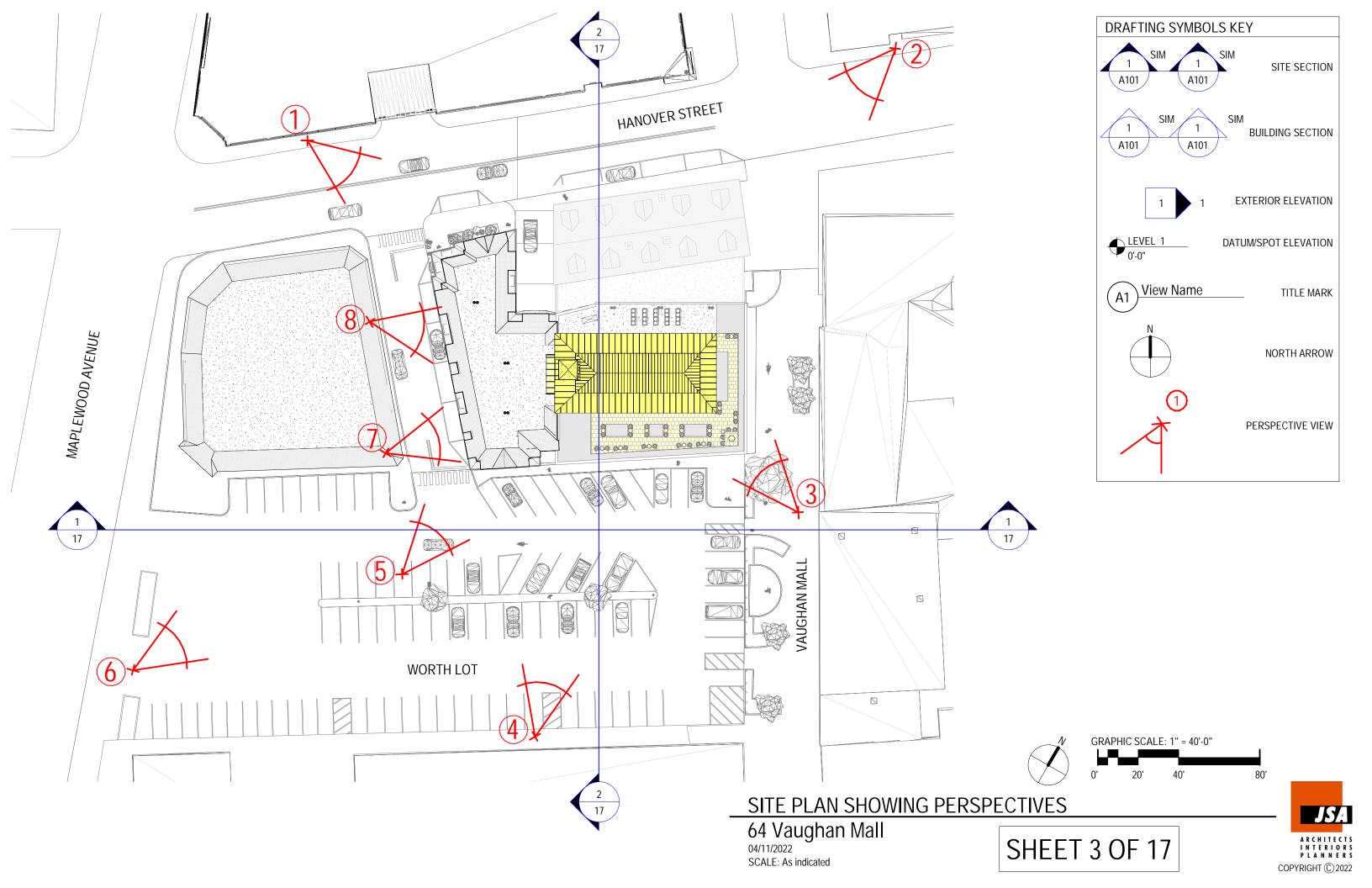
64 Vaughan Mall

04/11/2022 SCALE: 1/64" = 1'-0"









WITH PENTHOUSE ADDED



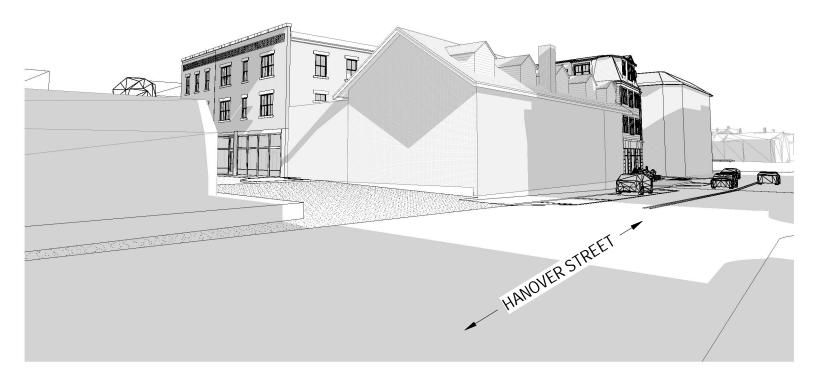








WITH PENTHOUSE ADDED



HANOVER STREET VIEW 02 - HDC APPROVED SUBMISSION 11/19/2021

HANOVER STREET VIEW 02





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WITH PENTHOUSE ADDED





VAUGHAN MALL VIEW - HDC APPROVED SUBMISSION 11/19/2021

VAUGHAN MALL VIEW







WITH PENTHOUSE ADDED





WORTH LOT VIEW 01 - HDC APPROVED SUBMISSION 11/19/2021

WORTH LOT VIEW 01







WITH PENTHOUSE ADDED





WORTH LOT VIEW 02 - HDC APPROVED SUBMISSION 11/19/2021

WORTH LOT VIEW 02







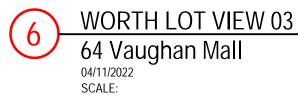
WITH PENTHOUSE ADDED





WORTH LOT VIEW 03 - HDC APPROVED 11/19/2021

WORTH LOT VIEW 03





WITH PENTHOUSE ADDED





ADJACENT BUILDING FOURTH FLOOR DECK VIEW 01 - HDC APPROVED SUBMISSION 11/19/2021

ADJACENT BUILDING FOURTH FLOOR DECK VIEW 01







WITH PENTHOUSE ADDED





ADJACENT BUILDING FOURTH FLOOR DECK VIEW 02

O ADJACENT BUILDING FOURTH FLOOR DECK VIEW 02

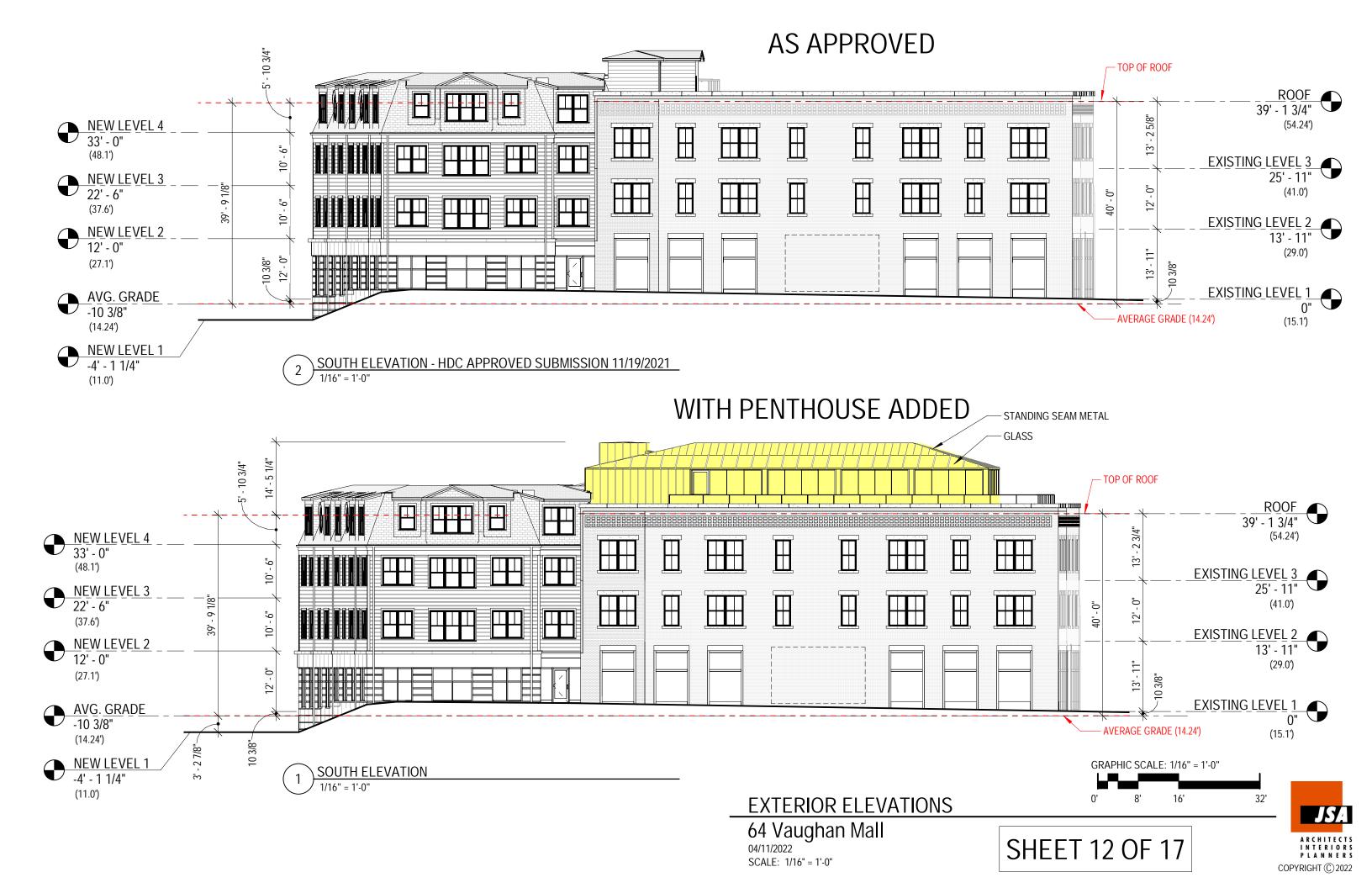




64 Vaughan Mall
04/11/2022
SCALE:

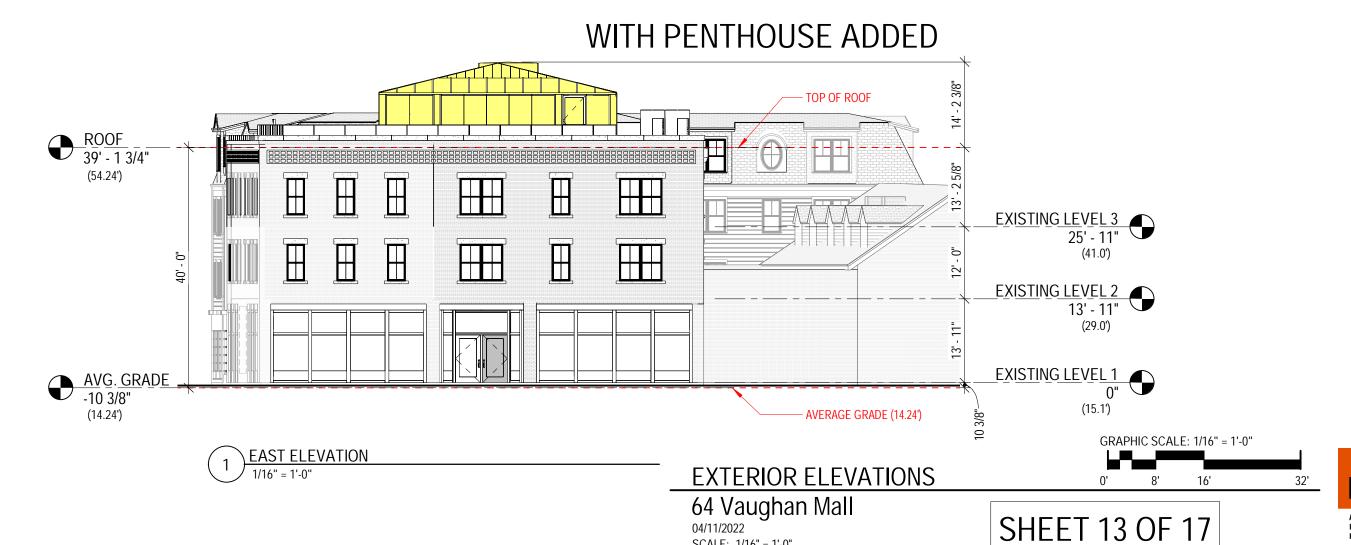
SHEET 11 OF 17





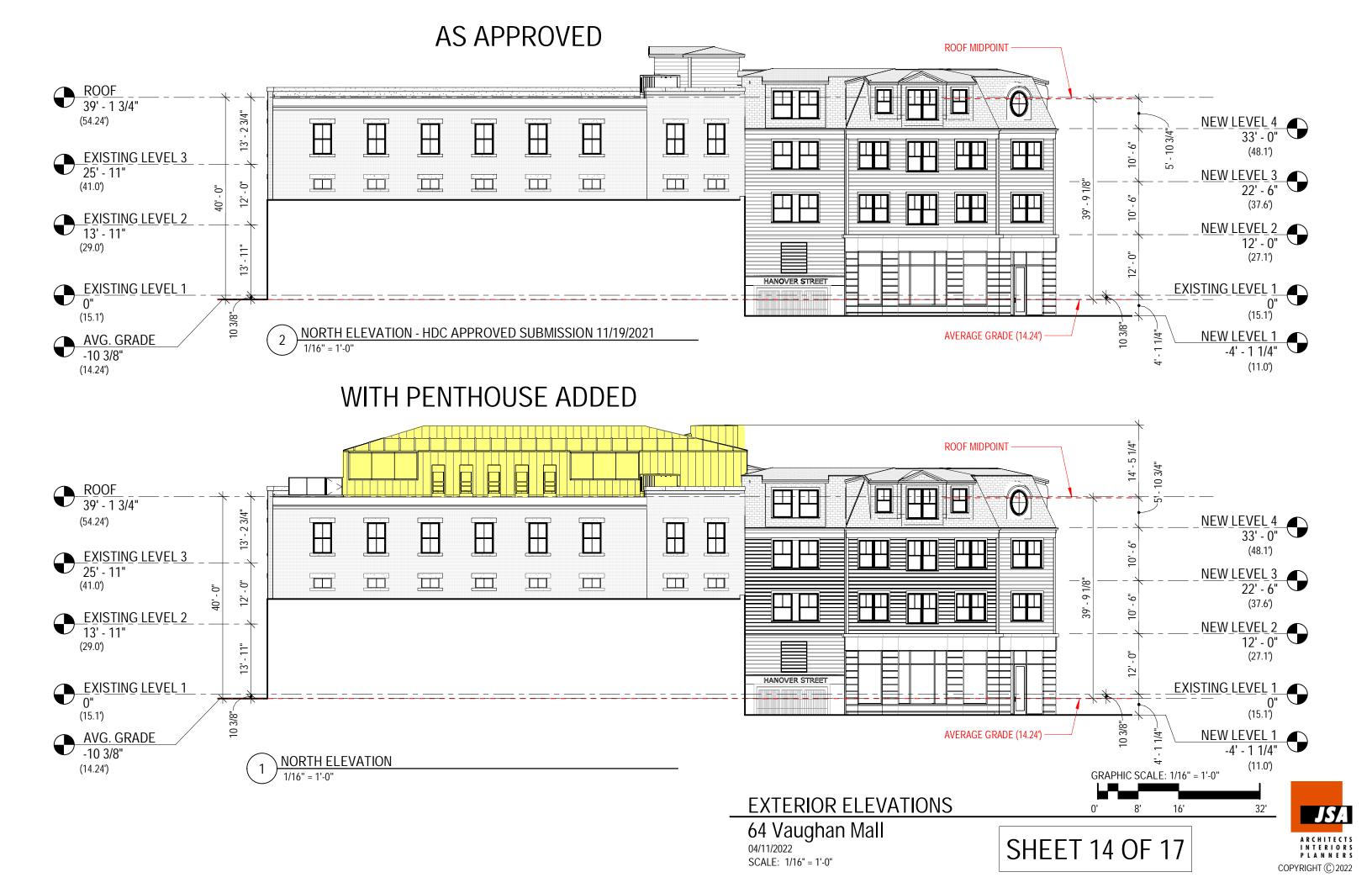
AS APPROVED ROOF 39' - 1 3/4" (54.24') EXISTING LEVEL 3 25' - 11" (41.0') EXISTING LEVEL 2 13' - 11" ______ 13' - 11" (29.0')EXISTING LEVEL 1 AVG. GRADE. 0" (15.1') (14.24') AVERAGE GRADE (14.24') 10 3/8"-

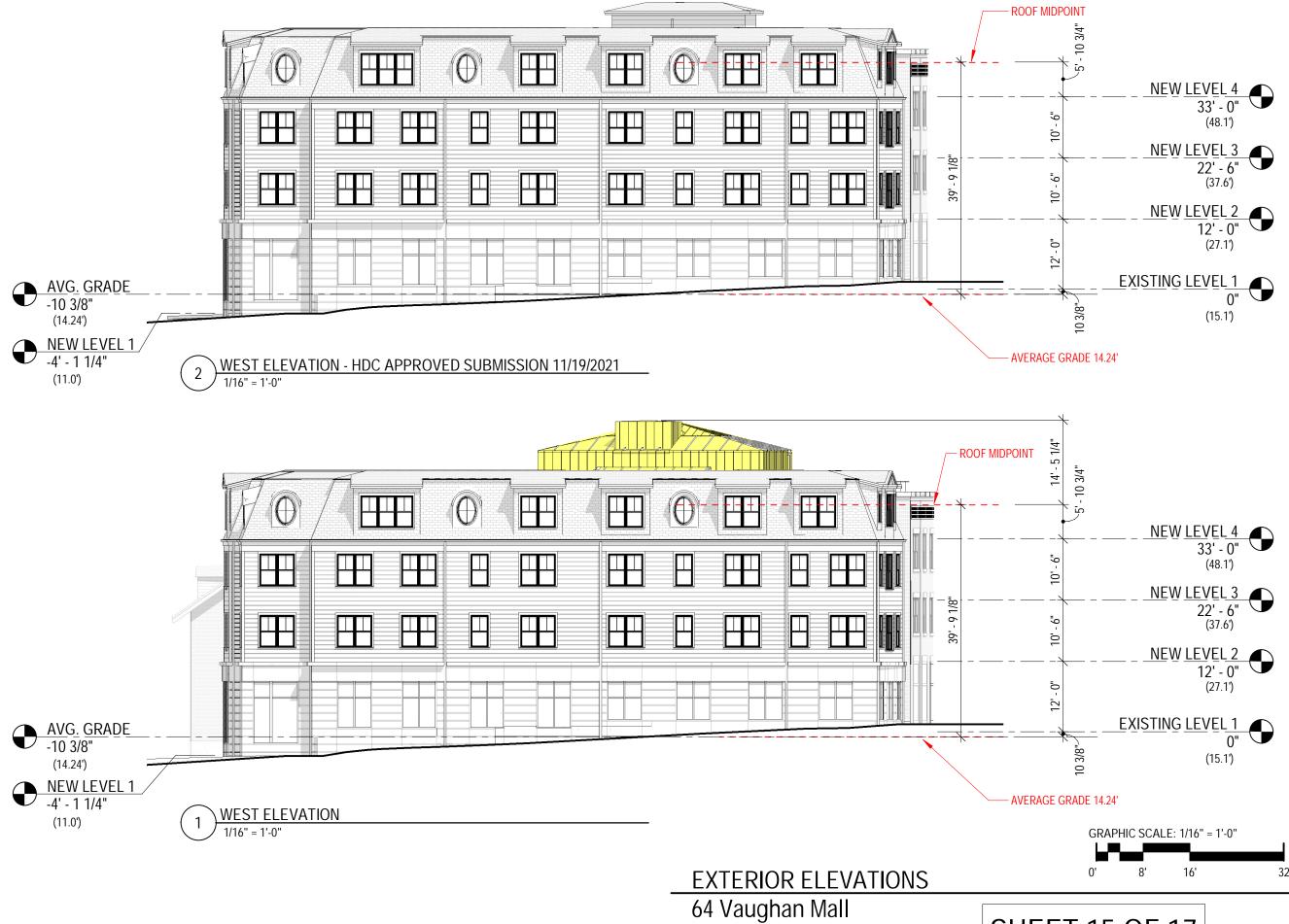
EAST ELEVATION - HDC APPROVED SUBMISSION 11/19/2021



SCALE: 1/16" = 1'-0"

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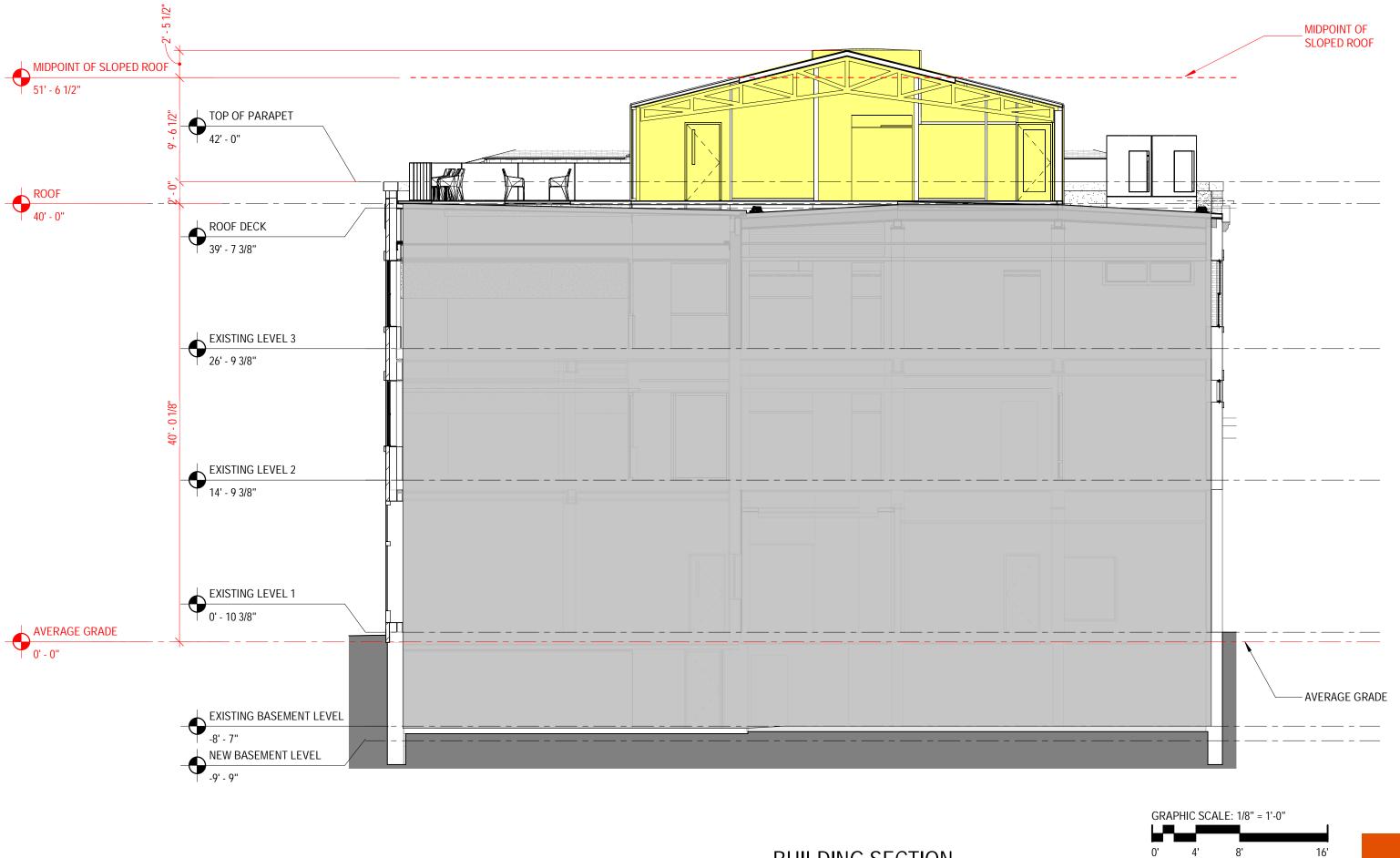
04/11/2022

SCALE: 1/16" = 1'-0"

SHEET 15 OF 17

JSA

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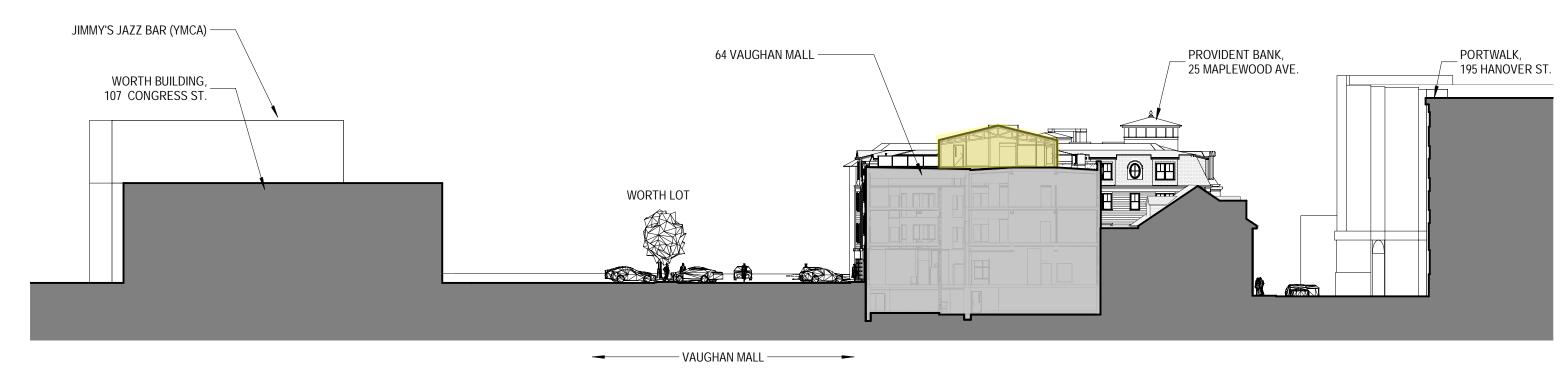


BUILDING SECTION

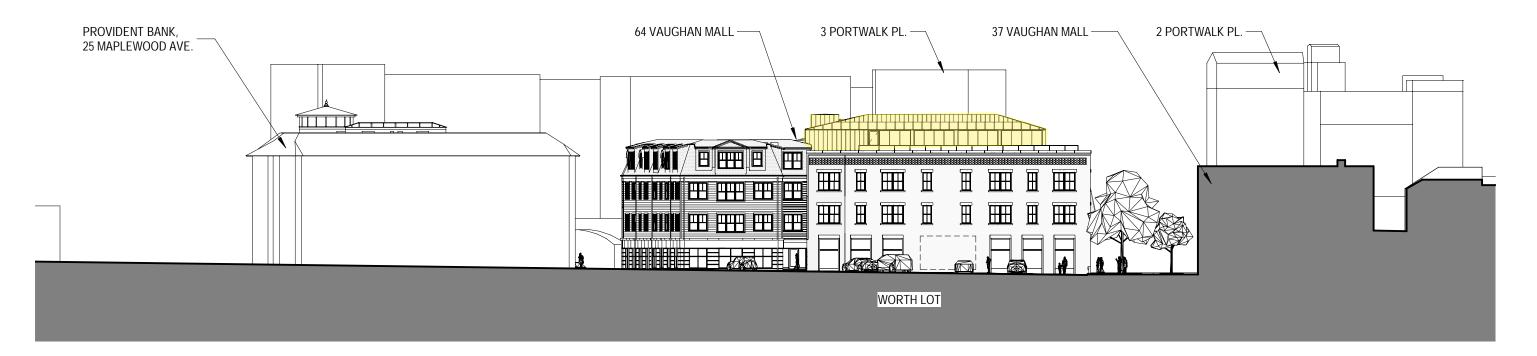
64 Vaughan Mall 04/11/2022 SCALE: 1/8" = 1'-0"

SHEET 16 OF 17





2 SITE SECTION - 02 1/32" = 1'-0"



1 SITE SECTION - 01 1/32" = 1'-0"

SITE SECTIONS

64 Vaughan Mall

04/11/2022 SCALE: 1/32" = 1'-0"

