



City of Concord

37 Green St

Concord, NH 03301

www.concordnh.gov

ZBA - VARIANCE PERMIT

Permit Number: **ZBA-0123-2023**

Job Address: **54 N Main St, Concord, NH**

Parcel: **3021**

Owner: **Mark Ciborowski**

Additional Information: **Zoning District: CBP**

ORDINANCE ARTICLE: Article 28-4-1(h) and Article 28-4-1(g)(2)

ORDINANCE SECTION: Article 28-4-1(h) and Article 28-4-1(g)(2)

To Permit the Following:: Applicant has filed herewith conceptual project plans which demonstrate the need for two (2) variances relative to the following provisions of the Concord Zoning Ordinance: (1) Article 28-4-1(h) – Table of Dimensional Regulations – to allow a portion of the proposed building to be constructed to a maximum height of 88' whereas 80' is allowed in the CBP district; and, (2) Article 28-4-1(g)(2) to allow a partial obstruction of views of the State House Dome from Interstate 93.

The applicant bears the burden of proof on applications before the ZBA. A concurring vote of three (3) members of the ZBA is required for a decision on all applications in front of the ZBA. If an application is approved, please be sure to check with the Code Administration Department to determine if additional actions or permits are required before you proceed with your project.

Anyone with standing aggrieved by a decision of the ZBA may request a rehearing, in accordance with RSA §677:2, any such request must be submitted in writing to the Zoning Board of Adjustment within thirty (30) days of the Board's decision, and must state all grounds justifying a rehearing. If application for a rehearing is denied, any further appeal must be made to the Superior Court within thirty (30) days thereafter (RSA §677:4). You must request a rehearing before the Zoning Board of Adjustment if you wish to preserve your right to appeal to Superior Court.



CITY OF CONCORD

New Hampshire's Main Street™

Memorandum

TO: Zoning Board of Adjustment
FROM: David Hall, Code Administrator
REGARDING: ZBA - 0123-2023
DATE: November 13, 2023

0123-2023 54 N. Main

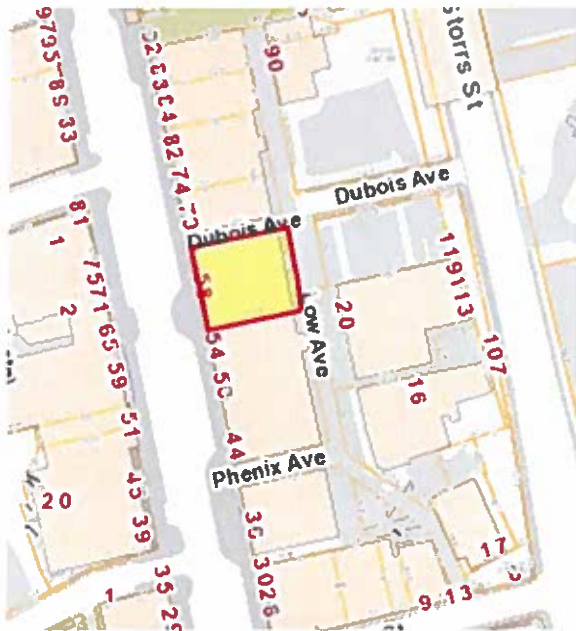
Zoning District: CBP – Central Business Performance District
Owners: CIBOROWSKI ASSOCIATES LLC

Applicant is proposing a complete redevelopment of 44-52 N Main Street (CVS) and 54-56 N. Main St (E&P Hotel) along with a connection to and renovation of 34-42 N. Main Street (Phenix Hall) and requires two variances:

Article 28-4-1(h) Table of Dimensional Regulations – to allow a portion of the proposed building to be constructed to a maximum height of 88' whereas 80' is allowed in the CBP.

Article 28-4-1(g)(2) to allow a partial obstruction of views of the State House Dome from Interstate 93.

The ordinance 28-4-1 (g) 2 and 28-5-48 (f) reference a building, structure or sign shall not obstruct the views of the State House Dome. The allowed height of buildings in the CBP seems to be in conflict with this requirement.



Application for Variances (2) – Ciborowski Associates, LLC
44-52 N. Main Street, Concord
November 2, 2023

I. Project Description:

Applicant proposes a complete redevelopment of 44-52 N. Main Street (CVS) and 54-56 N. Main Street (E+P Hotel), along with a connection to and renovation of 34-42 N. Main Street (Phenix Hall). The subject properties are all located within the Central Business Performance District (CBP). Preservation and redevelopment of historic Phenix Hall, including its unique performance space, has been featured in the City of Concord's Master Plan for multiple editions. The demolition of the former E+P Hotel, a necessary component of this proposed infill redevelopment project, received unanimous approval at the October 19, 2023 meeting of the City of Concord Heritage Commission – a rare endorsement reserved for only the most notable once-in-a-generation projects.

Applicant has filed herewith conceptual project plans which demonstrate the need for two (2) variances relative to the following provisions of the Concord Zoning Ordinance: (1) Article 28-4-1(h) – Table of Dimensional Regulations – to allow a portion of the proposed building to be constructed to a maximum height of 88' whereas 80' is allowed in the CBP district; and, (2) Article 28-4-1(g)(2) to allow a partial obstruction of views of the State House Dome from Interstate 93.

Other aspects of the proposed redevelopment can be accomplished in compliance with the terms of the Concord Zoning Ordinance, subject to typical site plan review by the Planning Board.

II. Arguments for the Height Variance:

1. **Hardship:** The subject property is located in the CBP district, where the maximum building height is stated to be 80'. Building height is measured from average mean grade. In the case of the subject property, base grade varies 10' from Main Street to Low Avenue as the grade falls away from the front of the building towards the rear. This grading change means that the total proposed building height from N. Main Street is actually 83', whereas the requested variance is required to be stated as 88'. Additionally, the height restriction falls in the midst of a proposed floor and the requested relief will allow the Applicant to add a rooftop restaurant venue, which would be accessed by elevators and open to the public. While the restaurant venue *could* be substituted for one of the proposed residential floor, the loss of revenue associated with the loss of a residential floor would cause the project proforma to fall deeply into the red – i.e., the project would not be financially viable.
2. **Reasonable Use** – The variance for building height is reasonable considering that the CBP district already allows high-rise structures and the requested variance seeks relief of 8' – a 10% variance, and only 3' along Main Street. Additionally, the proposed building height is consistent with other existing structures in the CBP district and having direct frontage upon Main Street.
3. **Public Interest** – The public interest in redeveloping underperforming elements of Concord's Main Street greatly outweighs any concern relating to overburdening of the subject site. In addition, the rooftop restaurant venue, per submitted concept plans, would be setback from the building façade and, therefore, be less visible from street grade at N. Main Street. Also, the rooftop venue only represents approximately 40% of the total building footprint, which can be

added as a condition of approval. Put differently, the variance would not be visible from the street-level and would not apply to the entirety of the rooftop surface.

4. Spirit and Intent of the Ordinance and Substantial Justice – The requested variance would be consistent with the spirit and intent of the ordinance in that mixed-use redevelopment on Main Street is to be encouraged, and the variance facilitates an otherwise conforming and desirable project in a recognized performance district. Substantial justice would be served in that the requested variance only adds 10% to the defined building height, and only half that to 83' along the N. Main Street façade.
5. Value of Surrounding Properties – There is no evidence to suggest that the immediately surrounding properties will suffer any material devaluation as a result of the proposed height variance. Put differently, there is no reason to conclude that an 88'-high building would affect surrounding values any differently than an 80'-high building. Additionally, replacement of the former and shuttered CVS would enhance market values by facilitating an attractive, allowed mixed-use infill redevelopment.

III. Arguments for the Viewscape Variance:

1. Hardship: The subject property is located in a performance district, which carries the additional obligation to “not obstruct the views of the State House Dome as can be seen from a passenger vehicle [travelling] Interstate 93”. Applicant’s materials illustrate the degree of obstructed views, which are only partial, intermittent from varying angles, and for fleeting moments at Interstate speeds. The Applicant’s hardship comes in applying this viewscape requirement to the subject property. For example, a building constructed to 80’ by right, or to 88’ by variance (as requested), will partially obstruct views of the Dome. In essence, a variance from one provision of the Ordinance is necessary to exercise an entitlement granted in another – a unique conflict justifying relief.
2. Reasonable Use – The variance for a partial obstruction of the views of the State House Dome allows a reasonable use and an infill redevelopment that is otherwise permitted and desirable in Concord’s performance district.
3. Public Interest – The public interest in protecting views of the State House Dome is noteworthy, but should not be employed to nullify an otherwise permissive project. The viewscape is already impacted by any number of other factors such as trees and vegetation along the Interstate, bridges and signage, and ramp and access grading. Moreover, NHDOT is presently proposing a redesign of the Capitol Corridor in a manner that will also serve to alter the viewscape and could place existing structures in the line of sight.
4. Spirit and Intent of the Ordinance and Substantial Justice – The spirit and intent of the ordinance is to avoid obstruction of the Dome. The language, while noteworthy, should be enforced as aspirational and not utilized to nullify otherwise desirable projects. For example, if enforced with a literal interpretation, the height entitlements in the CBP (80’), OCP (45’) and GWP (45’) districts could not be realized. Put differently, the Ordinance must be interpreted as protecting the viewscape wherever possible, while at the same time recognizing that partial obstructions can occur for fleeting moments so as not to nullify otherwise desirable projects.

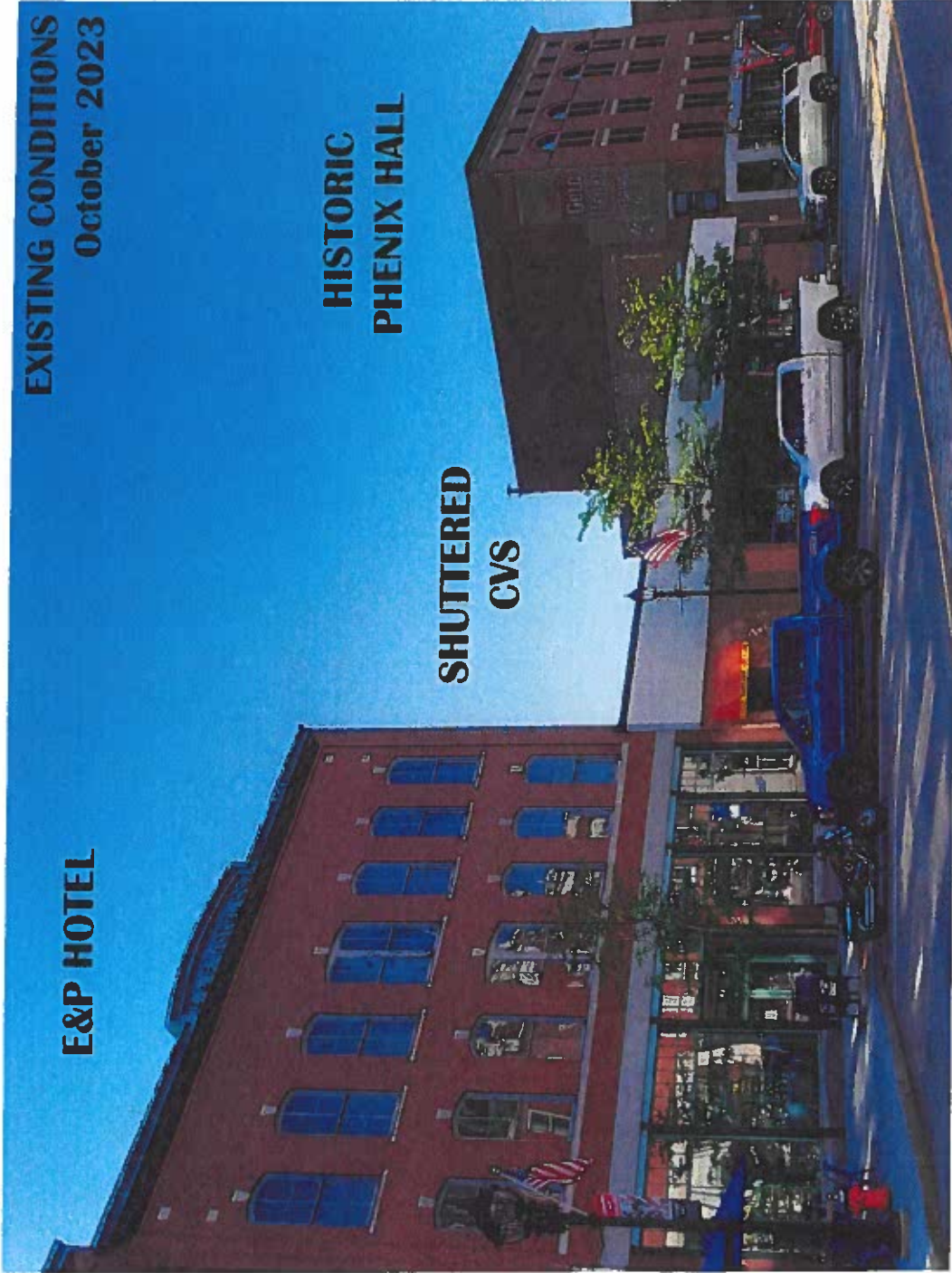
5. Value of Surrounding Properties – There is no evidence to suggest that a partial obfuscation of the views of the State House Dome from Interstate 93 would have any impact of the value of surrounding properties. To the contrary, revitalization of the subject properties would do far more to enhance adjacent property values than to injure value.

EXISTING CONDITIONS
October 2023

E&P HOTEL

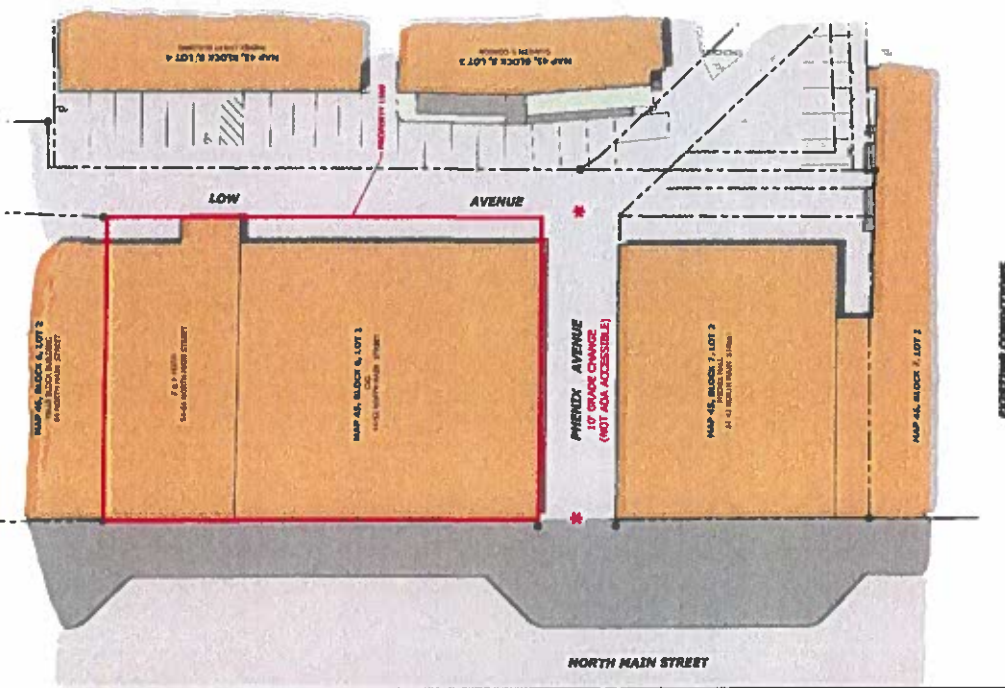
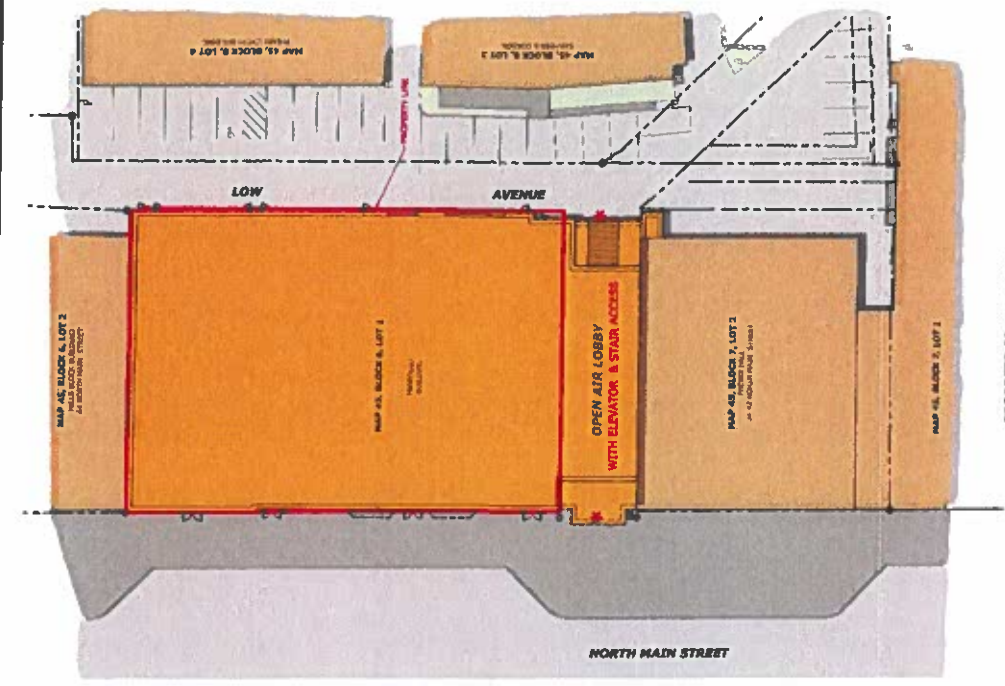
**HISTORIC
PHENIX HALL**

**SHUTTERED
CVS**



CIBOROWSKI ASSOCIATES
— HONORING THE PAST — BUILDING THE FUTURE —

smp
ARCHITECTURE
MILESTONE III
A COMMITMENT TO EXCELLENCE



ZBA SITE PLAN EXHIBIT

PROPOSED PLAN

PHENIX BLOCK REDEVELOPMENT

44 TO 45 NORTH MAIN STREET

CONCORD, NEW HAMPSHIRE

PROJECT:	PHENIX BLOCK REDEVELOPMENT
OWNER:	PHENIX BLOCK REDEVELOPMENT, LLC
DESIGNER:	NORTHPOINT ENGINEERS, LLC
DATE:	08/14/2024
SCALE:	AS SHOWN
PROJECT NO.:	2024-001
DRAWN BY:	J. SMITH
CHECKED BY:	M. JONES
DATE:	08/14/2024

NORTHPOINT ENGINEERS, LLC

100 Main St, 2nd Fl
Concord, NH 03301
Tel: 603-271-1111
Fax: 603-271-1112
www.northpoint-engineers.com

Professional Seal: [Blank]



New Mixed-use Community Providing:

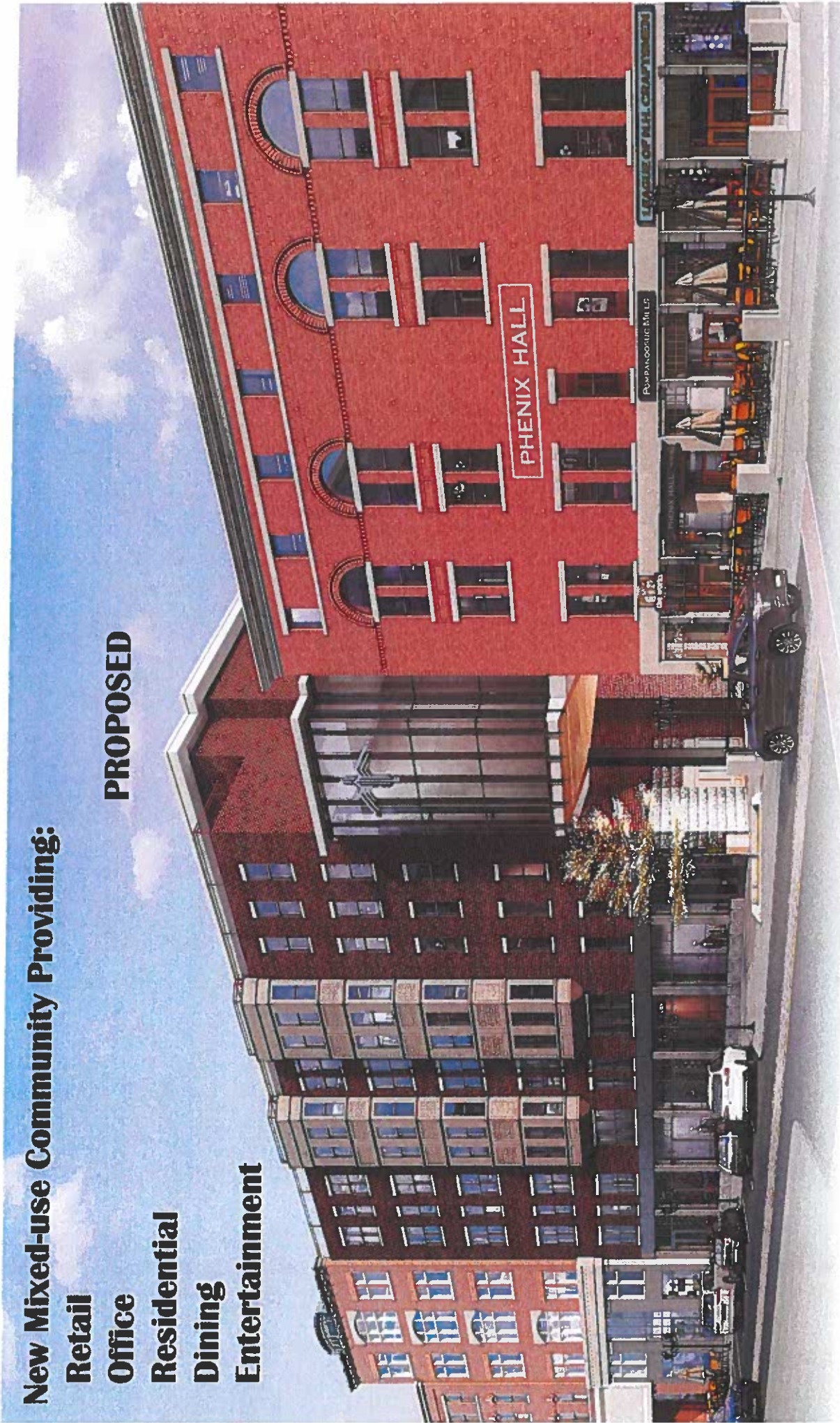
**Retail
Office**

Residential

Dining

Entertainment

PROPOSED



**ROOFTOP
RESTAURANT
PARTIAL 7th FLR**



MAIN STREET

PHENIX BLOCK
10-18-2023

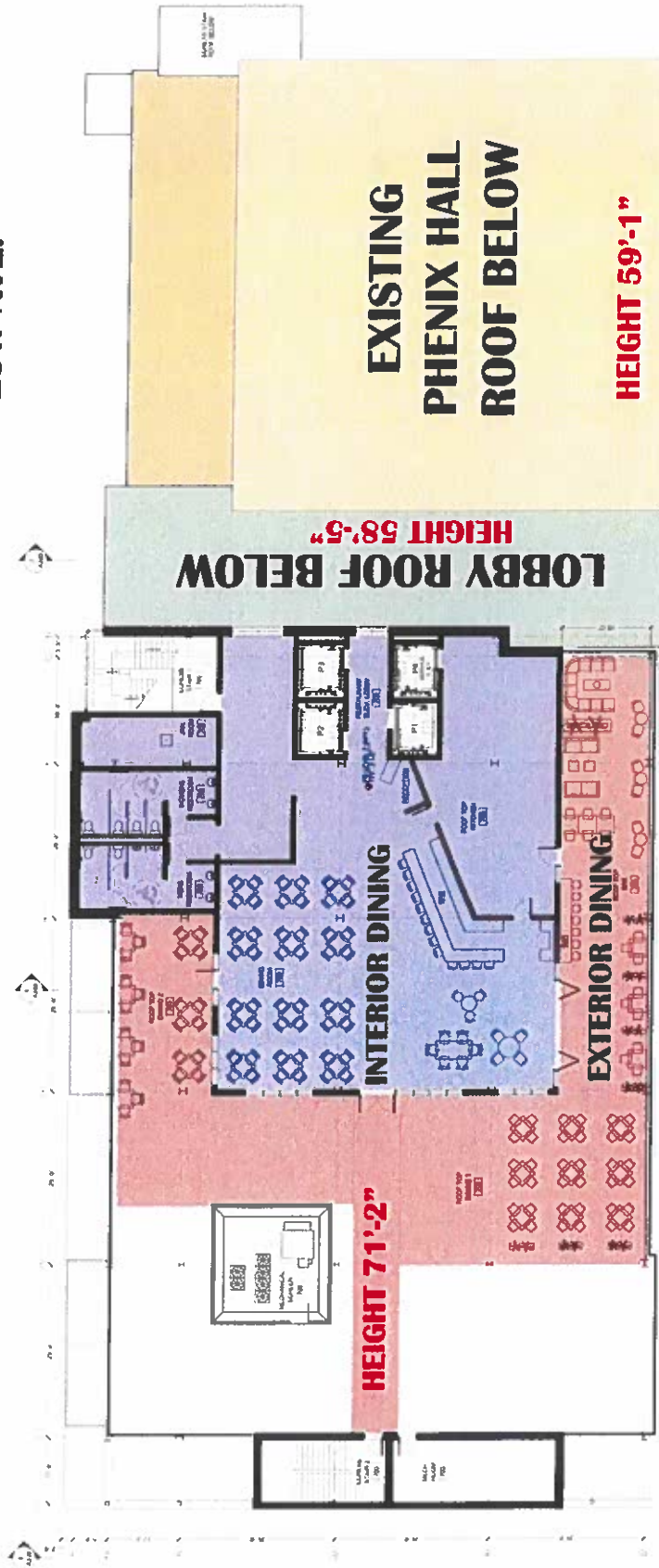


- Restaurant Roof from Low Ave. = 93'
- Mean Building Height = 88' proposed



ROOFTOP - RESTAURANT

LOW AVE.



S. MAIN ST.

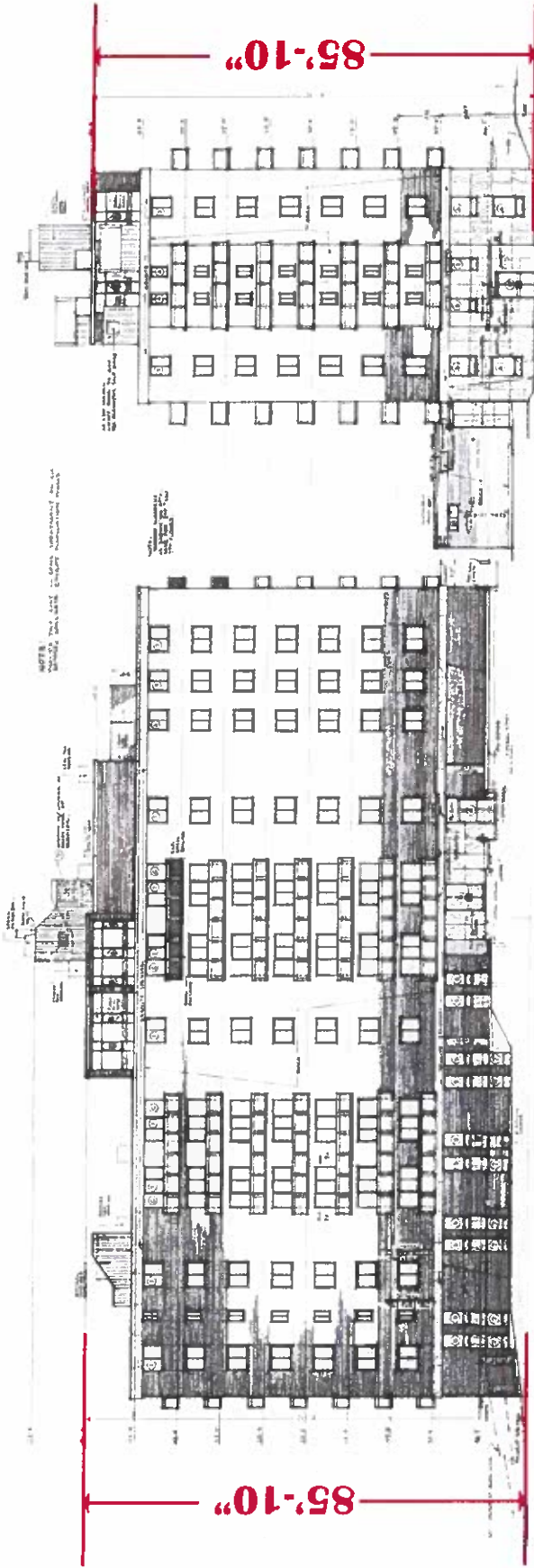
Preliminary
Not for
Construction

smp ARCHITECTURE PHONE: 603.228.8888 FAX: 603.228.8881 WWW.SMPERF.COM	LEVEL SEVEN PLAN	PROJECT NO. 27-000
	46 MAIN ST CONCORD NH 03301	DATE: 01.11.14
PHENIX BLOCK		SCALE: 1/8" = 1'-0"
REV. 01		DATE: 01.11.14
REV. 02		DATE: 01.11.14
REV. 03		DATE: 01.11.14
REV. 04		DATE: 01.11.14
REV. 05		DATE: 01.11.14
REV. 06		DATE: 01.11.14
REV. 07		DATE: 01.11.14
REV. 08		DATE: 01.11.14
REV. 09		DATE: 01.11.14
REV. 10		DATE: 01.11.14
REV. 11		DATE: 01.11.14
REV. 12		DATE: 01.11.14
REV. 13		DATE: 01.11.14
REV. 14		DATE: 01.11.14
REV. 15		DATE: 01.11.14
REV. 16		DATE: 01.11.14
REV. 17		DATE: 01.11.14
REV. 18		DATE: 01.11.14
REV. 19		DATE: 01.11.14
REV. 20		DATE: 01.11.14
REV. 21		DATE: 01.11.14
REV. 22		DATE: 01.11.14
REV. 23		DATE: 01.11.14
REV. 24		DATE: 01.11.14
REV. 25		DATE: 01.11.14
REV. 26		DATE: 01.11.14
REV. 27		DATE: 01.11.14
REV. 28		DATE: 01.11.14
REV. 29		DATE: 01.11.14
REV. 30		DATE: 01.11.14

A107

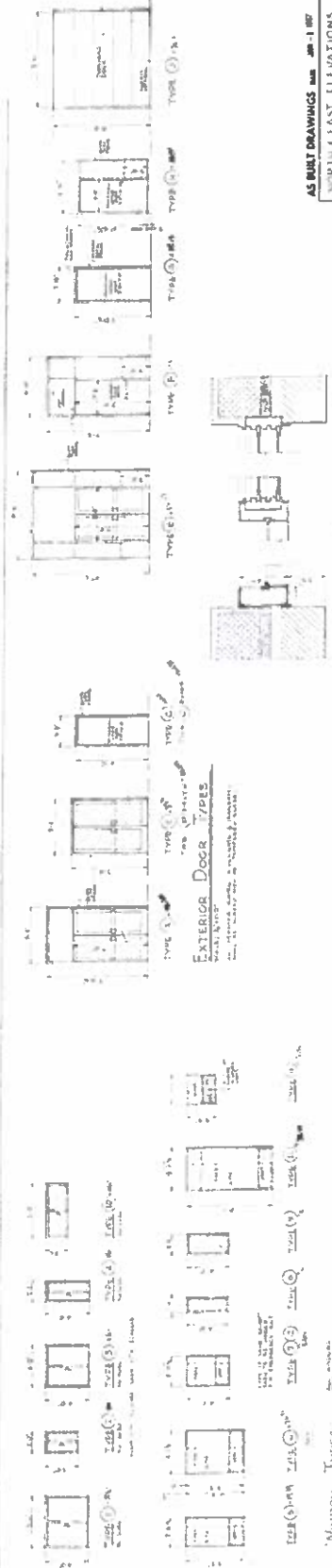
LEVEL SEVEN PLAN
1/8" = 1'-0"

KENEDY BUILDING SOUTH MAIN ST.



NORTH ELEVATION

EAST ELEVATION

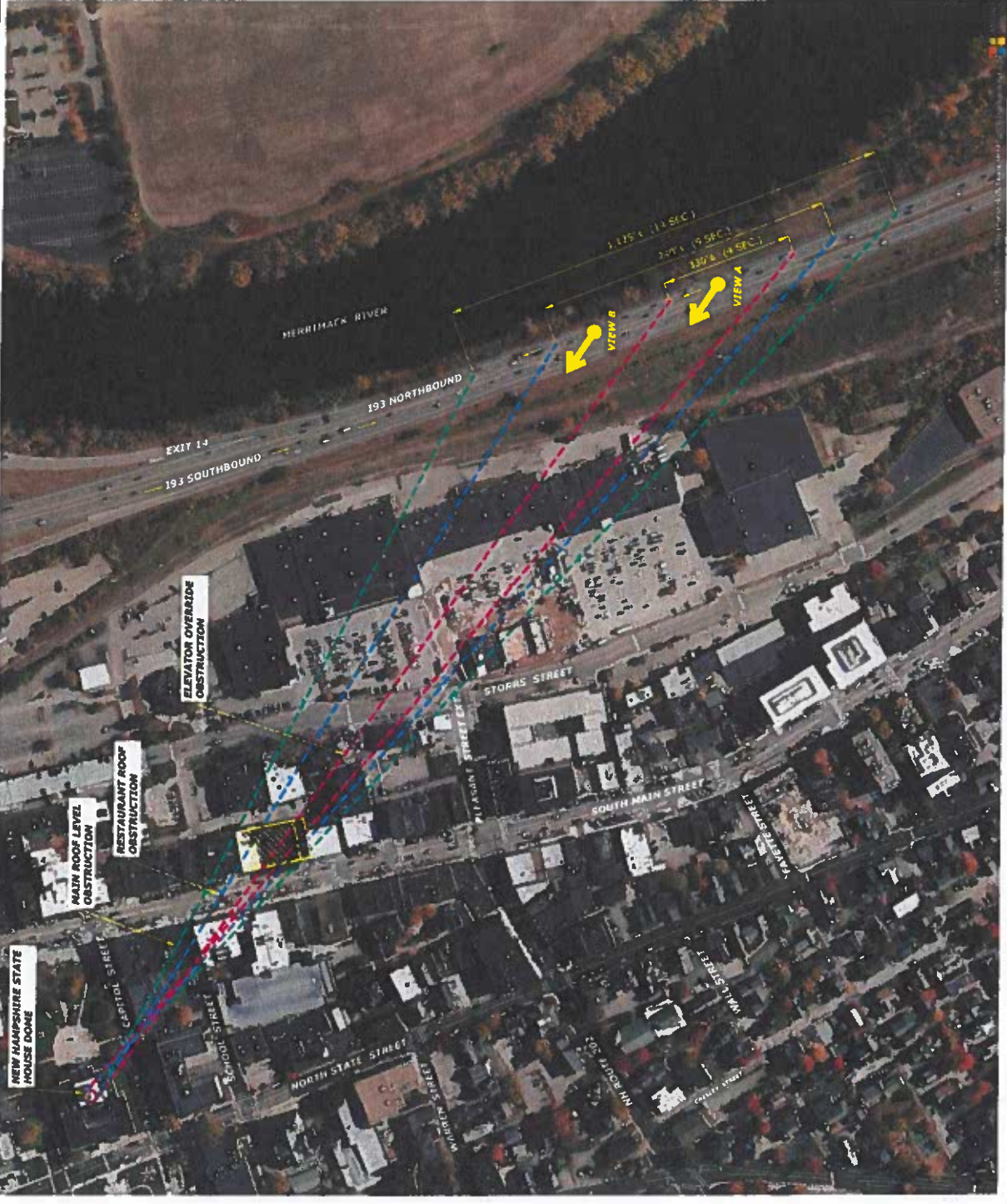


AS BUILT DRAWINGS FOR JOB NO. 1187

PROJECT	NORTH 4 LAST ELEVATIONS
PROPERTY	CONCORD MASSACHUSETTS
OWNER	M. H. B. I.
CONTRACT NO.	CONCORD MASSACHUSETTS
DATE	CONCORD, MASS.
SCALE	AS SHOWN
DRAWN BY	CLIFFORD BRIDGES ARCHITECTS
CHECKED BY	
DATE	



A 3



STATE HOUSE DOME SIGHT LINE EXHIBIT
 PREPARED FOR:
PHENIX BLOCK REDEVELOPMENT
 MAIN STREET
 CONCORD, NEW HAMPSHIRE

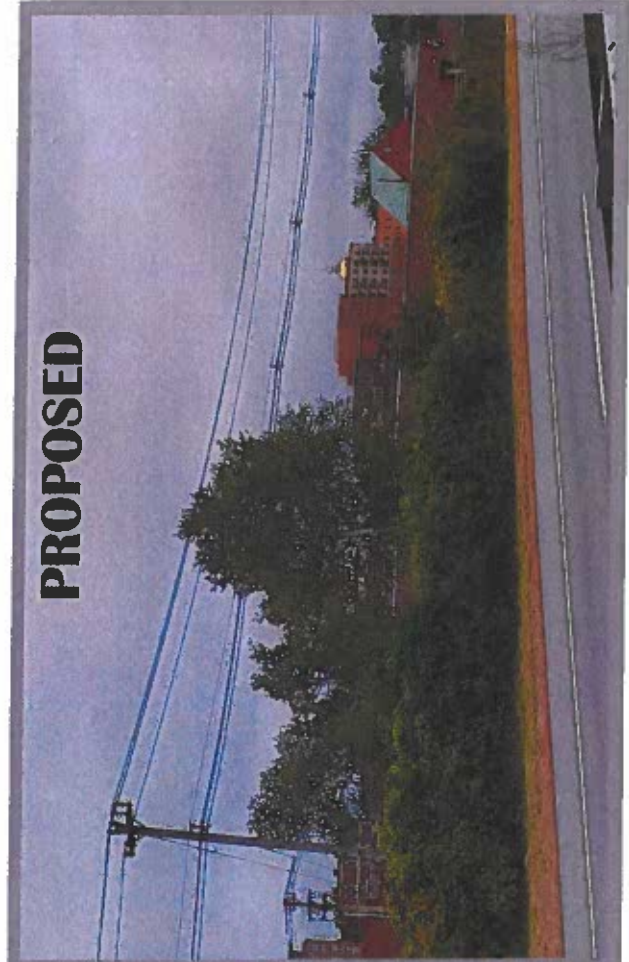
PROJECT NO. 2018-001
 DATE: 10/15/18
 DRAWN BY: [Name]
 CHECKED BY: [Name]

NORTHPOINT ENGINEERING LLC
 110 NORTH ST., SUITE 201
 CONCORD, NH 03301
 TEL: 603-236-1166
 FAX: 603-236-1167
 WWW.NORTHPOINT-ENG.COM

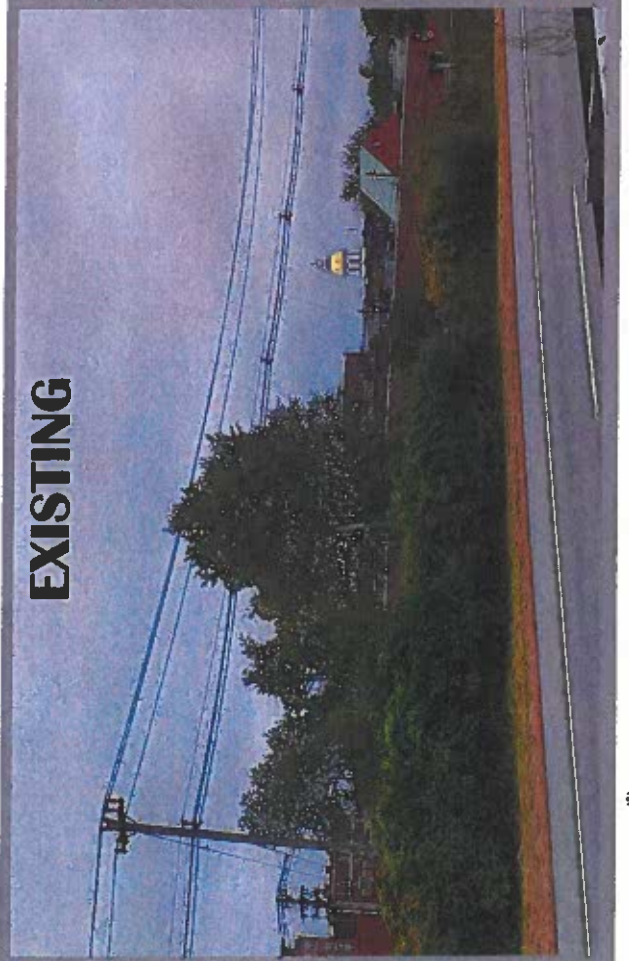


EXISTING

PROPOSED



PROPOSED



EXISTING

VIEW B

