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Durbin Law Offices, P.L.L.C.

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**Also admitted in MA*

BY: HAND DELIVERY & EMAIL

August 28, 2019

City of Portsmouth
Zoning Board of Adjustment
Attn: David Rheume, Chairman
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Variance Application of SAI Builders LLC
Off Elwyn Avenue, Tax Map 113, Lot 28-1**

Dear Chairman Rheume,

Our Office represents SAI Builders LLC, owner of a lot off of Elwyn Avenue shown on Tax Map 113 as Lot 28-1. Please find twelve (12) copies of SAI Builders LLC's zoning application and related materials for consideration by the Zoning Board at its September hearing. The following are included in the package:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) ZBA Site Plan;
- 4) Tax Map Image of Property;
- 5) Recorded Subdivision Plan of 1899 (RCRD Plan 00176)
- 7) Photographs of Property; and
- 8) \$150.00 filing fee.

Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Derek R. Durbin', written over a large, stylized blue oval.

Derek R. Durbin, Esq.

LETTER OF AUTHORIZATION

SAI Builders LLC, of 12 Industrial Way, Salem, New Hampshire 03079, the owner of a lot located off of Elwyn Avenue, identified on Tax Map 113, as Lot 28-1 (the "Property"), hereby authorizes Durbin Law Offices PLLC to act as his agent and representative in connection with the filing of any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property. Said Letter of Authorization shall be valid until expressly revoked in writing.

Anton J. Miller, Manager
Printed Name: Anton J. Miller
Duly Authorized

August 28, 2019
Date

**CITY OF PORTSMOUTH
ZONING BOARD OF ADJUSTMENT
APPLICATION NARRATIVE**

SAI Builders LLC
(Owner/Applicant)
Tax Map 113, Lot 28-1
Off Elwyn Avenue
Portsmouth, NH 03801

INTRODUCTORY STATEMENT

SAI Builders LLC (the “Applicant”) is the owner of a vacant lot located off of Elwyn Avenue in Portsmouth. The lot is identified on Portsmouth Tax Map 113, as Lot 28-1 (the “Subject Property”). The Subject Property is a non-conforming lot of record that was first shown on a recorded Plan of Land prepared for Alfred L. Elwyn in August 1899, a copy of which is enclosed herewith. The Subject Property is in Portsmouth’s General Residence A (“GRA”) Zoning District. It is approximately 0.1147 acres in size (4,996 square feet).

The Subject Property is unique in the context of the surrounding neighborhood, as it appears to be the only “ancient” lot of record remaining that has not been developed. The Subject Property is identical in size to all other properties in the block that is bounded by Elwyn Avenue, Rockland Street, Kent Street and Lincoln Avenue, as shown on the Tax Map included with the foregoing Application. The Subject Property is non-conforming in its existing state with respect to lot area and frontage.

The Applicant desires to construct a single-family residence on the Subject Property of consistent size and character to other homes within the neighborhood. The proposed home would comply with the dimensional standards set forth in the Ordinance, including minimum setback, building coverage, and open space. However, because the lot itself is non-conforming, relief for lot area, lot area per dwelling unit and frontage is necessary in order for the Applicant to construct the proposed home.

SUMMARY OF VARIANCE RELIEF

The Applicant seeks the following variances from Section 10.521 (Table of Dimensional Requirements) of the Zoning Ordinance:

1. To allow 4,996 s.f. (+/-) of lot area where 7,500 s.f. is the minimum required;
2. To allow 4,996 s.f. (+/-) of lot area per dwelling unit where 7,500 s.f. is the minimum required; and
3. To allow 50’ (+/-) of street frontage on Elwyn Avenue where 100’ is the minimum required.

VARIANCE CRITERIA

Granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.

“There are two methods of ascertaining whether granting a variance would violate an ordinance’s basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare.” *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011).

The goal of GRA Zoning is “to provide areas for **single-family, two family and multifamily dwellings**, with appropriate **accessory uses**, at moderate to high densities...[.]” The Applicant is proposing to construct a single-family home on a property that is identical in size and contains the same road frontage as all other surrounding properties between Elwyn Avenue and Kent Street. None of the properties within this block comply with the minimum road frontage and lot area requirements applicable to the GRA Zoning District. In fact, very few properties in the larger surrounding area comply with the minimum lot area and road frontage requirements.

In June 2019, the Board granted a variance allowing the owner of 60 Elwyn Avenue, John Marden, to create a new single-family home lot with less lot area (2,943 s.f.) than what is being requested with the foregoing Application. As part of Mr. Marden’s approval, the Board also granted a variance to allow for 50’ of frontage associated with the lot being created.

By granting the variance relief sought, the Board will not alter the essential character of the neighborhood. Here, the Subject Property is in keeping with the characteristics of the other properties in the neighborhood. Granting the variance relief will also not threaten public health, safety or welfare in any way. The Subject Property does not contain any unusual or special features other than the fact that it is a vacant lot and the proposed home will be built to current codes, ensuring that public safety, health and welfare is protected.

In the case of *Belanger v. Nashua*, the New Hampshire Supreme Court recognized that municipalities have an obligation to have their zoning ordinances reflect current characteristics of the neighborhood. 121 N.H. 389 (1981). In the present instance, the dimensional standards applicable to the GRC District do not reflect the characteristics of the neighborhood in which the Subject Property is located.

Substantial justice will be done by granting the variance relief.

Any loss to the individual that is not outweighed by a gain to the general public is an injustice. *New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials* (1997); *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102 (2007).

If the Applicant were denied the relief that has been applied for, they would lose all economically viable use of the Subject Property. What has been applied for is a reasonable request for a modest-sized home that will comply with the building setback, lot coverage and open space requirements of the Ordinance, thus preserving the light, air and space between structures on abutting properties. There would be no benefit realized by the public in denying the relief sought. In the present instance, on the balance of equities, substantial justice is done by granting the relief requested.

The values of surrounding properties will not be diminished by granting the variance relief.

Surrounding properties will not be negatively impacted by the construction of a single-family home on the Subject Property. To the contrary, the construction of new, tastefully designed home on the Subject Property that complies with the Ordinance's setback, lot coverage and open space requirements may increase the values of surrounding properties. As such, it is reasonable for the Board to conclude that the value of surrounding properties will not be diminished by granting the variance relief sought.

Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

The Subject Property has special conditions that make it distinguishable from surrounding properties. Owing to these special conditions, there is no fair and substantial relationship between the general purposes of the Ordinance provision(s) and their application to the Property.

The fact that the Subject Property is the only undeveloped ancient lot of record that remains in the Elwyn Avenue neighborhood makes it distinguishable from surrounding properties. Unless you count Mr. Marden's newly created lot, which is located off of Sherburne Avenue, it does not appear that there are any other undeveloped lots which can be built upon in the area immediately surrounding the Subject Property. Because it is a lawfully non-conforming ancient lot of record that pre-dates current zoning, and was created with the reasonable expectation that a home could eventually be built upon it, there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Subject Property.

The proposed use is reasonable.

The Subject Property will be used as a single-family residence once a home is constructed upon it. This use is permitted by right within the GRA Zoning District and is a use that consistent many of the properties that surround it. Based on these facts, it is fair for the Board to conclude that the proposed use of the Subject Property is reasonable.

CONCLUSION

In conclusion, the Applicant has demonstrated that it meets the five (5) criteria for granting each of the variances requested. Accordingly, it respectfully requests that the Board approve its Variance Application.

Respectfully Submitted,

Dated: August 28, 2019

SAI BUILDERS LLC



By: Derek R. Durbin, Esq.
DURBIN LAW OFFICES PLLC
144 Washington Street
Portsmouth, NH 03801
(603)-287-4764
derek@durbinlawoffices.com



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
100 GARDNER AVE., SUITE 214
PORTSMOUTH, N.H. 02871-7144
TEL: (603) 428-2832
FAX: (603) 428-2832

NOTES:

- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 113 AS LOT 28-1.
- 2) OWNER OF RECORD: ARNE F. BEATTY TRUST
C/O SHARON FOSS
69 BEATTY'S PATH
WEST WARRIMOUTH, VA 02073
R.C.R.D. PLAN #20178 (LOTS 47)
- 3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD ZONE AS SHOWN ON THE PANEL 3010502230C EFFECTIVE DATE MAY 17, 2005.
- 4) EXISTING LOT AREA:
4,988 S.F.
0.1147 ACRES
- 5) PARCEL IS LOCATED IN THE GENERAL RESIDENCE A (GR) ZONING DISTRICT.
- 6) DIMENSIONAL REQUIREMENTS:
FRONT: 75.00 S.F.
REAR: 100 FEET
SIDE: 10 FEET
DEPTH: 70 FEET
SETBACKS: FRONT 15 FEET
REAR 20 FEET
MINIMUM STRUCTURE HEIGHT: 30-35 FEET
MINIMUM OPEN SPACE: 30%
MINIMUM LOT AREA: 7,500 S.F.
- 7) THE PURPOSE OF THIS PLAN IS TO SHOW A PROPOSED ONE AND A HALF STORY RESIDENCE ON PAR 104 113 LOT 28-1 IN THE CITY OF PORTSMOUTH.
- 8) PROPERTY IS SUBJECT TO CONDITIONS AND RESTRICTIONS CONTAINED IN RECORD 381/312 & 389/198.
- 9) PLANS BASED ON ARCHITECTURAL DESIGN BY O'SULLIVAN ARCHITECTS, INC. DATED: 8/27/2019

**PROPOSED RESIDENCE
TBD ELWYN AVENUE
PORTSMOUTH, N.H.**

NO.	ISSUED FOR COMMENT	DESCRIPTION	DATE
1	ISSUED FOR COMMENT		8/28/19

SCALE: 1" = 10'
VARIANCE APPLICATION
PLAN
C1
AUGUST 2019

**PROPOSED OPEN SPACE
AREA (S.F.)**

RESIDENCE	1,106
POURCH	70
DECK	23
STAIRS	12
DRIVEWAY	380
BULKHEAD	36
SIDEWALK	26
TOTAL COVERAGE	1,956
LOT AREA	4,988
PERCENT OPEN SPACE	64.1%

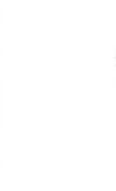
**PROPOSED BUILDING
COVERAGE AREA**

RESIDENCE	1,106
POURCH	70
DECK	23
TOTAL (S.F.)	1,199
LOT AREA (S.F.)	4,988
COVERAGE (%)	24.0%

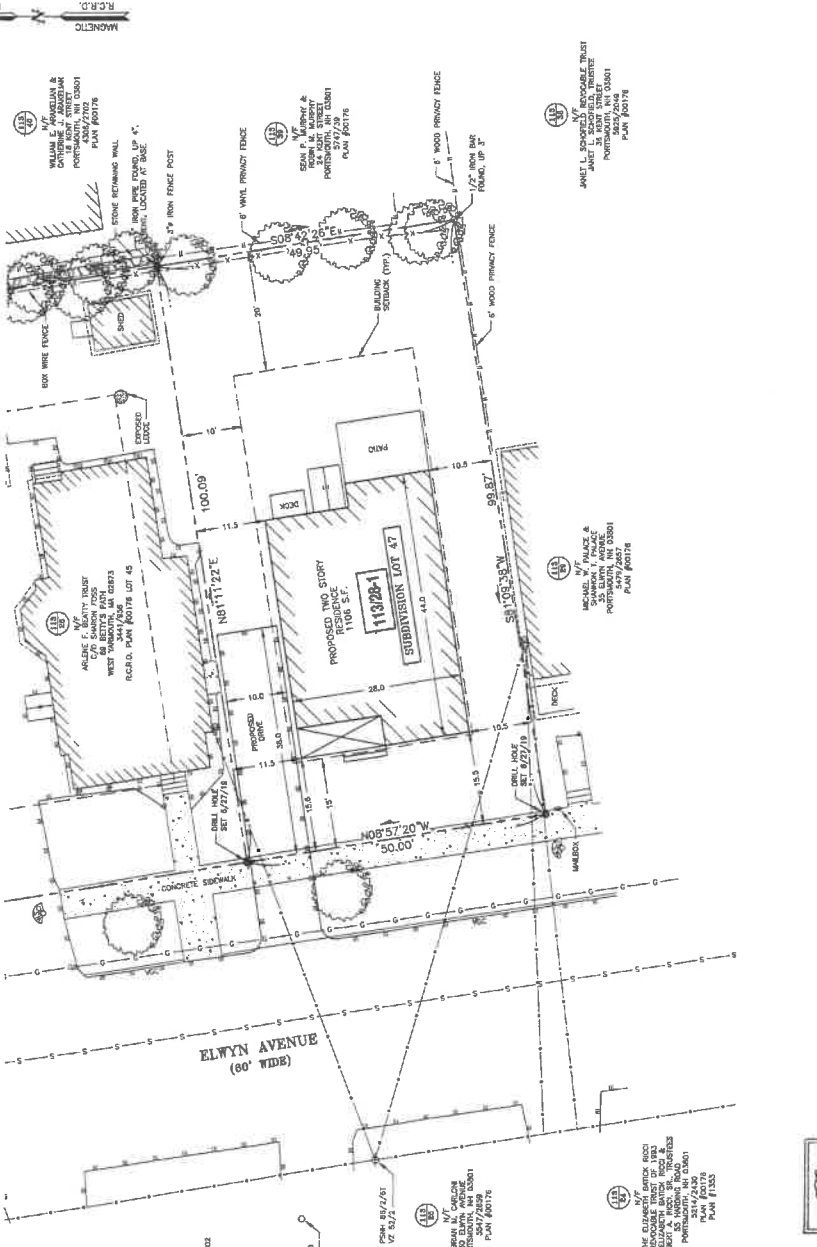
PLAN REFERENCES:

- 1) PLAN OF A LOT OF LAND OWNED BY ALFRED L. BROWN PORTSMOUTH, N.H. COMPILED FROM A SURVEY MADE 1899 BY A.C. HOYT C.E. PREPARED BY W.H. WHITNEY, DATED AUGUST 1899. R.C.R.D. PLAN #00176.
- 2) BOUNDARY LINE AGREEMENT & LOT LINE RELOCATION PLAN FOR MAP 113 - LOTS 15 & 28, JONATHAN AND MEGAN BROWN AND JOHN AND MARGARET BROWN, CITY OF PORTSMOUTH, COUNTY OF ROCKINGHAM, STATE OF NEW HAMPSHIRE, PREPARED BY AMBIT ENGINEERING, INC. DATED AUGUST 19, 2019. FINAL REVISION DATE NOVEMBER 1, 2019. R.C.R.D. PLAN #20178.
- 3) TAX MAP 113 30 BOUNDARY PLAN FOR: HACKETT BROWN AND JONATHAN AND MEGAN BROWN, CITY OF PORTSMOUTH, NEW HAMPSHIRE, PREPARED BY SALEM SERVICES, DATED JANUARY 18, 2015. R.C.R.D. PLAN D-38575.
- 4) PROPOSED SUBDIVISION MAPS & WIDE OPEN SPACES, N.H. PREPARED BY JAKENNA ASSOCIATES, DATED MAY 1988. R.C.R.D. PLAN #1553.

LOCATION MAP



SCALE 1"=300'



APPROVED BY THE PORTSMOUTH ZONING BOARD

CHAIRMAN
DATE

GRAPHIC SCALE



PAUL A. DOBERSTEIN, ILLS

DATE

THE CLERK OF THE CITY OF PORTSMOUTH

DATE

PAUL A. DOBERSTEIN, ILLS

DATE

PAUL A. DOBERSTEIN, ILLS

DATE

PAUL A. DOBERSTEIN, ILLS

DATE

"I, CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE ORDER OF ONE HUNDREDTH (1/100) OF AN INCH WHERE THAT EXCEEDS THE PRECISION OF THE SURVEY."
PAUL A. DOBERSTEIN, ILLS



Property Information

Property ID 0113-0028-0001
Location ELWYN AVE
Owner BEATTY ARLENE F TRUST



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 4/1/2019
Data updated 7/17/2019

SOUTH MILL POND

Marginal Road

Rockland St.

ROCKLAND ST.

ST.

EXTENSION

RICHARD'S

SHERBURNE

ELWYN

KENT

ST.

LANGDON PARK

Lincoln Ave.

LINCOLN AVE EXTENSION

AVE.

ST.

ST.

AVE.

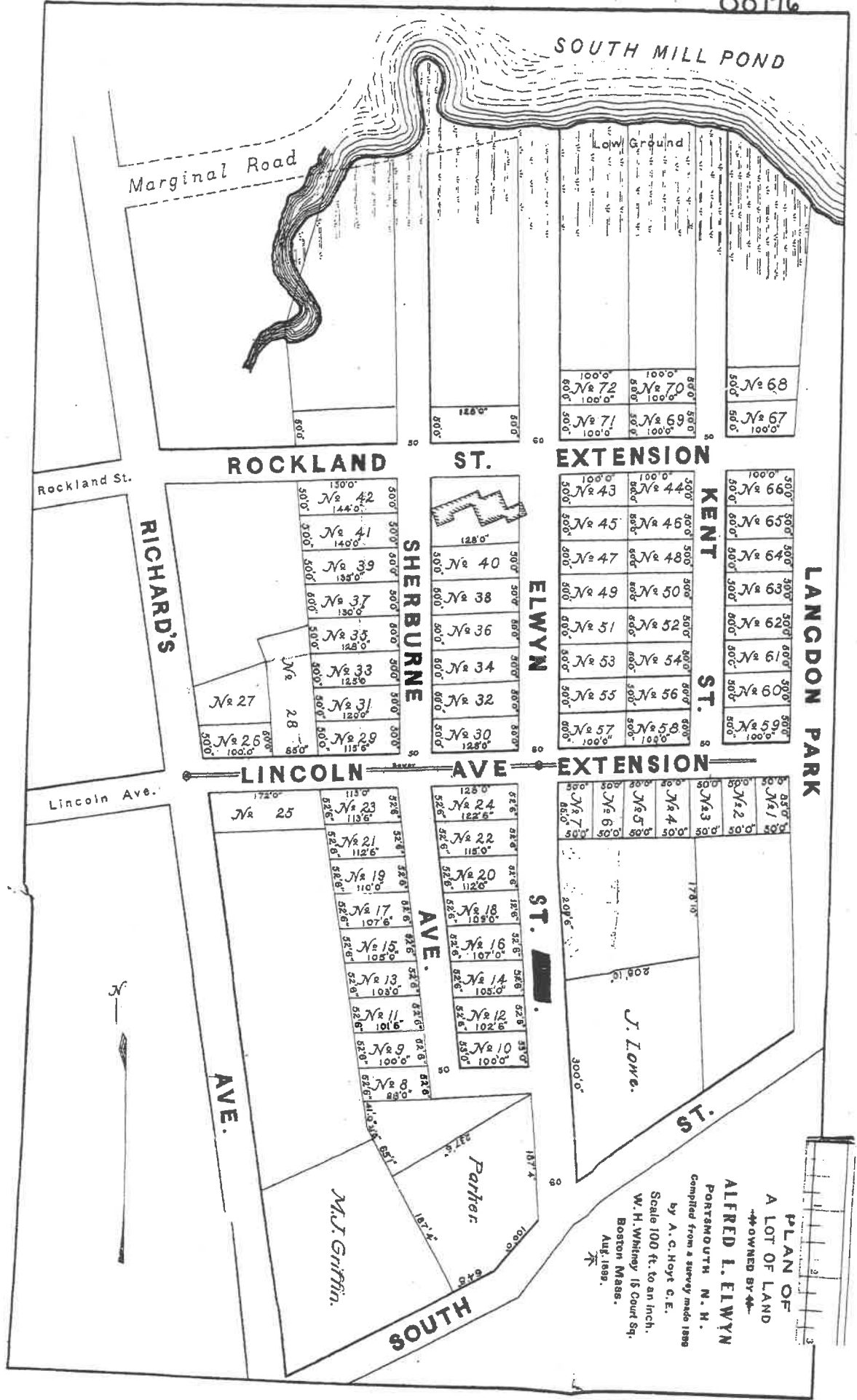
SOUTH

M.J. Griffin.

Parler

J. Lowe.

PLAN OF
A LOT OF LAND
OWNED BY
ALFRED I. ELWYN
PORTSMOUTH N. H.
Compiled from a survey made 1888
by A. C. Hoyt C. E.
Scale 100 ft. to an inch.
W. H. Whitney IS Court Sq.
Boston Mass.
Aug. 1889.





FRONT VIEW-ELWYN LOT



REAR VIEW-ELWYN LOT



SIDE VIEW(LEFT)-ELWYN LOT



SIDE VIEW(RIGHT)-ELWYN LOT

2165

Durbin Law Offices PLLC

Operating Account
P.O. Box 1222
Portsmouth, NH 03802
603-287-4764

TD BANK
America's Most Convenient Bank
54-7/114

08/28/2019

PAY TO THE
ORDER OF

City of Portsmouth

\$
**150.00

DOLLARS

One hundred fifty and 00/100*****

City of Portsmouth

Durbin Law Offices PLLC

AUTHORIZED SIGNATURE

MEMO

SAI Builders LLC - Variance Application Filing Fee

⑈002165⑈ ⑆011400071⑆ 9243456161⑈

Durbin Law Offices PLLC

2165

08/28/2019

City of Portsmouth

150.00

10000 10000 - Operating Account

SAI Builders LLC - Variance Application Filing Fee

150.00

Durbin Law Offices PLLC

08/28/2019

City of Portsmouth

2165

150.00

10000 10000 - Operating Account

SAI Builders LLC - Variance Application Filing Fee

150.00



Security features. Details on back.