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**Also admitted in MA*

BY: VIEWPOINT & HAND DELIVERY

February 23, 2022

City of Portsmouth
c/o Peter Stith
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Variance Application of SAI Builders, LLC
405 South Street, Tax Map 11, Lot 18**

Dear Peter,

Our Office represents SAI Builders, LLC. Enclosed herewith, please find the following materials for submission to the Zoning Board of Adjustment for consideration at its next regularly scheduled meeting relative to the property at 405 South Street:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Existing and Proposed Conditions Plans;
- 4) Floor Plans and Elevations;
- 5) GIS Map; and
- 6) Photographs of the Property.

Twelve (12) copies of the application submission are being hand-delivered to the Planning Department today. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,

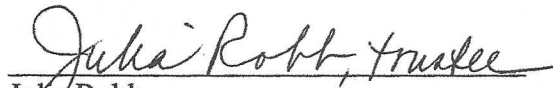
Derek R. Durbin, Esq.

AUTHORIZATION
405 South Street, Portsmouth, New Hampshire

I, Julia Robb, representing the Julia R. Tiebout Revocable Trust, owner of Tax Map 111 Lot 18 in the City of Portsmouth, hereby authorize representatives of Ambit Engineering, Inc., SAI Builders LLC, and Durbin Law to represent my interests before land use boards of the City of Portsmouth and any other State and/or federal agency necessary to obtain permits from for the above referenced property, and to submit any and all applications and materials related thereto on my behalf.

Date:

1/25/22


Julia Robb

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

Julia Robb, Trustee of the Julia R. Tiebout Revocable Trust of 1999 (Owner)
SAI Builders LLC (Applicant)
405 South Street
Portsmouth, NH 03801
Tax Map 111, Lot 18

INTRODUCTORY STATEMENT

SAI Builders LLC is under agreement to purchase a portion of the property at 405 South Street in Portsmouth, identified on Portsmouth Tax Map 111, as Lot 18 (the "Property"). The Property is located within the GRA Zoning District.

Property Features

The Property has more than 3x the total lot area required by the Ordinance, having 22,750 square feet where 7,500 is required in the GRA Zoning District. It has 76' of continuous street frontage on South Street and 30' on McNabb Court. Because the Property only has 76' of continuous street frontage on South Street and 30' on McNabb Court, it is a non-conforming lot of record in its existing state.

There is a modest single-family home, detached garage and small shed located on the front (southerly) portion of the Property bordering South Street. The rear of the Property consists of open land area that has been used primarily for gardening and other benign purposes.

Proposed Subdivision

The Applicant is seeking to subdivide the Property into two single-family home lots of nearly equal size. Proposed "Lot 1", as shown on the Plan Set included herewith, would be 11,172 square feet in size while "Lot 2" would have 11,575 square feet of area. Lot 1, which contains the existing single-family residence, would be retained by the current owner, Julia Robb. Lot 2 would be acquired by the Applicant, SAI Builders LLC, which intends to construct a 4-bedroom, 1.5-bathroom single-family home with attached 1 car garage on it.

In order to subdivide the Property into two single-family home lots, the Applicant needs a variance for the lack of required continuous street frontage on McNabb Court. To construct the proposed home on Lot 2, the Applicant needs a variance for the encroachment of the 1 car garage into the rear setback.

SUMMARY OF ZONING RELIEF

The Applicant seeks the following Variances pursuant to Section 10.521 of the Ordinance in order to subdivide the Property and construct the proposed single-family residence and garage:

- 1) **Continuous Street Frontage** – to allow 30' of continuous street frontage on McNabb Court where 100' is the minimum required.
- 2) **Rear Yard Setback** – to allow a 15.6' rear yard setback where 20' 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; (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).

Frontage Variance

Street frontage requirements are implemented primarily for the purposes of controlling density and maintaining the character of a neighborhood or area. Proposed Lot 2 will be larger than most of the surrounding properties. In fact, if you were to merge the four closest lots on McNabb Court together, they would be of nearly equal dimension to Lot 2. Lot 2 will be larger than all of the surrounding properties except for the property to the rear at 393 South Street (Tax Map 111, Lot 19). Therefore, the density goals of the GRA Zoning District are met by granting the frontage variance for Lot 2. In addition, the 30' of street frontage will be consistent with the neighboring properties on McNabb Court. Accordingly, granting the frontage variance will not alter the essential character of the neighborhood and will observe the spirit and intent of the Ordinance.

While the creation of Lot 2 will only add one single-family home to the local inventory, it will nonetheless create an opportunity where such opportunities are lacking. The new home will be built in accordance with current building code and life safety standards and will not add any undue burden upon the municipal services or otherwise threaten the public health, safety or welfare. Therefore, it will not be contrary to the public interest.

Rear Yard Setback Variance

The rear yard setback variance being sought by the Applicant relates to the proposed garage on Lot 2. While it is true that this will create a new non-conformity that does not presently exist, the request is reasonable when you consider the intent of the building setback provisions, proximity of the proposed garage to existing structures on neighboring properties, and the context of the surrounding area.

Building setback requirements are imposed primarily to protect the "light, air and space" between structures on abutting properties. The encroachment of the garage on Lot 2 into the rear setback will have no impact upon the nearest abutter at 393 South Street beyond that which the new house itself will have. The garage will encroach 4.4' into the rear setback, leaving a 15.6' buffer to the common boundary; however, the only structures on 393 South Street are a considerable distance away. The house and garage on 393 South Street are located at the front of that property. Thus, the light, air and space of the property at 393 South Street will not be negatively impacted by the garage.

It is also important to point out that there are numerous examples of surrounding properties with garages and other similar types of outbuildings that encroach into the applicable yard setbacks. Two of the closest properties to the north of proposed Lot 2 on Lincoln Avenue have detached garages that encroach into the rear yard setbacks.

In the local market, having a garage is almost viewed as essential given the harsh winters that New Hampshire often faces. It is a highly desired component of new construction.

The Applicant spent a considerable amount of time and effort in trying to locate the home on Lot 2 so that no variance relief would be needed for the garage. However, due to the topography of Lot 2, there was no other feasible location for the home and attached garage that would not have created potential impacts to surrounding properties. The left (northern) portion of Lot 2 is a low point and collects runoff from abutting properties. The grade also slopes down and drops 12' in elevation from right (south) to left (north). As proposed, the house and attached garage will integrate naturally with and "tuck" into the elevation change of the Property. In addition, the location of the proposed home and garage will allow for the City to plow snow down the McNabb Court extension and store it on Lot 2. Currently, snow is stored at the end of the McNabb Court extension against the fence on the Property. As a result, snow collects in front of the nearest abutting properties, thus restricting pedestrian access. Granting the rear yard setback variance for the garage will permit sufficient area to exist in front of the home for snow to safely accumulate away from the street driveway and other properties and provide for safe ingress and egress.

If the rear yard setback variance were to be denied, it would simply be for the purpose of requiring strict compliance with the Ordinance and would serve no public benefit. As such, granting the rear yard setback variance is reasonable and consistent with the spirit and intent of the Ordinance, which also means that it is not contrary to the public interest.

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).

Due to the length of the Property, the backyard area constituting proposed Lot 2 is underutilized and has little value to the landowner as anything other than open space for gardening and other similar uses. Because this portion of the Property has 30' frontage on McNabb Court, it is ideal for subdivision and the creation of a new single-family home.

The garage associated with the proposed house will be oriented so that it does not encroach into or impact the light, air and space of the nearest abutter. The proposed home and attached garage will benefit the nearest abutters on McNabb Court by allowing snow to be stored on Lot 2 rather than in front of their properties.

If the variances were denied, the landowner would be unable to subdivide the Property, sell Lot 2 for value and offset her existing tax burden with the underutilized land in the rear. She would be left with a property with an oversized backyard with frontage on two streets that is significantly larger than all of the other properties in the area except for the property at 393 South Street.

There would be no gain to the public in denying the variances requested. To the contrary, a valuable opportunity to create a new single-family house lot would be lost. The balance of equities weighs in favor of granting the variances.

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

To the contrary, there is ample evidence that proves that surrounding property values will only increase with the Applicant subdividing the Property and constructing a new single-family home on it. The Applicant has constructed or fully renovated several other homes on non-conforming lots in the South End of Portsmouth within the past two years that the Board can rely upon as evidence, including those at: 84 Rockland Street, 21 Elwyn Avenue, and 27 Elwyn Avenue. All of these properties required setback and other variance relief to renovate or develop.

The Applicant has taken a conscientious approach to its development by engaging surrounding properties owners to proactively address any concerns they might have. It designs its homes and related features so that they fit naturally within the contexts of the surrounding neighborhoods. Overall, this approach has led to successful results benefiting abutters.

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

Frontage Variance

The Property is longer and significantly larger than all of the surrounding properties, except for 393 South Street. It has frontage on two public streets. When subdivided, each lot will exceed the minimum lot area requirement for the GRA Zoning District, thus complying with the density goals of the Ordinance. The proposed street frontage for Lot 2 will be consistent with the nearest properties on McNabb Court. These special conditions of the Property make it distinguishable from those surrounding it, such that there is no fair and substantial relationship between the general purposes of the frontage requirement and its application to the Property.

Rear Yard Setback Variance

The topography of the Property, specifically the elevation change from south to north, as more specifically discussed above, is a special condition that justifies the granting the rear yard setback variance. The location of the home and garage on Lot 2 is the least impacting development alternative that will achieve the greatest benefit to abutting properties. Accordingly, there is no fair and relationship between the general purposes of the rear yard setback requirement and its application to the Property.

Reasonableness of Use

The use of Lot 2 for a single-family home is permitted by right in the GRA Zoning District. Therefore, the proposed use is reasonable.

CONCLUSION

In conclusion, the Applicant has demonstrated that its application meets the five (5) criteria for granting the variances requested. It respectfully requests that the Board approve its application.

Respectfully Submitted,

SAI Builders LLC

By and Through Its Attorneys,
Durbin Law Offices PLLC



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

PROPOSED RESIDENTIAL SUBDIVISION 405 SOUTH STREET PORTSMOUTH, NEW HAMPSHIRE PERMIT PLANS

OWNER:

JULIA R. TIEBOUT REVOCABLE
TRUST OF 1999
JULIA ROBB
(F/K/A JULIA R. TIEBOUT),
TRUSTEE

CONTRACTOR:

SAI BUILDERS
12 INDUSTRIAL WAY
SALEM, NH 03079
TEL. (603) 421-0470

ATTORNEY:

DURBIN LAW
144 WASHINGTON STREET
PORTSMOUTH, N.H. 03801
TEL. (603) 287-4764

ARCHITECT:

OSULLIVAN ARCHITECTS
606 MAIN STREET, SUITE 3001
READING, MA 01867
TEL. (781) 439-6166

AMBIT ENGINEERING, INC.

200 GRIFFIN ROAD, UNIT 3
PORTSMOUTH, N.H. 03801
TEL. (603) 430-9282
FAX (603) 436-2315

PORTSMOUTH ZONING MAP



INDEX OF SHEETS

DWG. NO.	SUBDIVISION PLAN
C1	EXISTING CONDITIONS PLAN
C2	SUBDIVISION SITE PLAN

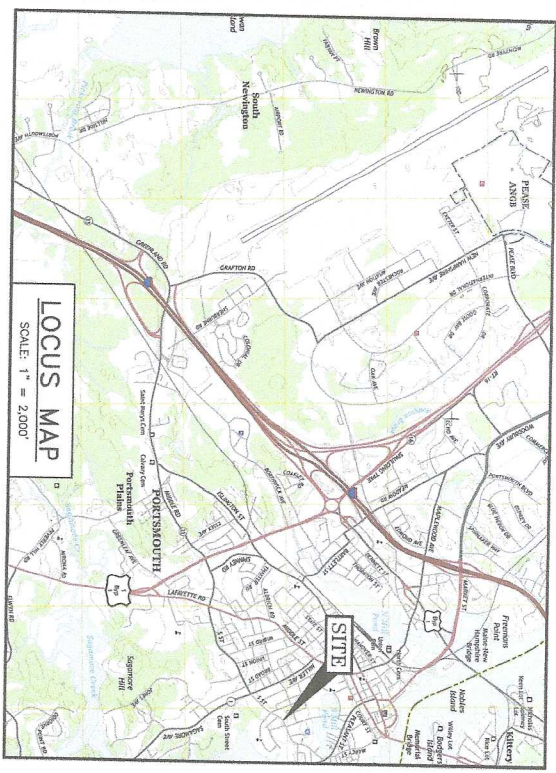
UTILITY CONTACTS

ELECTRIC:
PORTSMOUTH DEPARTMENT OF PUBLIC WORKS
1700 LAVETTE ROAD
PORTSMOUTH, N.H. 03801
TEL. (603) 436-7708, EXT. 555,5678
ATTN: MICHAEL BUSBY, P.E. (MANAGER)

NATURAL GAS:
UNIL
1700 LAVETTE ROAD
PORTSMOUTH, N.H. 03801
TEL. (603) 294-5144
ATTN: DAVE BEAULIEU

CABLE:
COMCAST
1700 LAVETTE ROAD
PORTSMOUTH, N.H. 03801
TEL. (603) 679-5695 (X1037)
ATTN: MIKE COLLINS

COMMUNICATIONS:
PORTSMOUTH DEPARTMENT OF PUBLIC WORKS
1700 LAVETTE ROAD
PORTSMOUTH, N.H. 03801
TEL. (603) 427-1530
ATTN: JIM TOW



REQUIRED PERMITS:
PORTSMOUTH SUBDIVISION: PENDING
PORTSMOUTH ZBA: PENDING

LEGEND:

EXISTING	PROPOSED
PROPERTY LINE	PROPERTY LINE
SETBACK	SETBACK
STRAIN PIPE	STRAIN PIPE
SEWER MANHOLE	SEWER MANHOLE
GAS LINE	GAS LINE
STORM DRAIN	STORM DRAIN
INTER LINE	INTER LINE
UNDERGROUND ELECTRIC	UNDERGROUND ELECTRIC
OVERHEAD ELECTRIC/WIRES	OVERHEAD ELECTRIC/WIRES
FOUNDATION DRAIN	FOUNDATION DRAIN
EDGE OF PAVEMENT (EP)	EDGE OF PAVEMENT (EP)
CONTOUR	CONTOUR
UTILITY POLE	UTILITY POLE
WALL MOUNTED EXTERIOR LIGHTS	WALL MOUNTED EXTERIOR LIGHTS
TRANSFORMER ON CONCRETE PAD	TRANSFORMER ON CONCRETE PAD
ELECTRIC HANDHOLD	ELECTRIC HANDHOLD
SHUT OFFS (WATER/GAS)	SHUT OFFS (WATER/GAS)
GATE VALVE	GATE VALVE
HYDRANT	HYDRANT
OUTLET BASIN	OUTLET BASIN
SEWER MANHOLE	SEWER MANHOLE
RAIN MANHOLE	RAIN MANHOLE
TELEPHONE MANHOLE	TELEPHONE MANHOLE
PARKING SPACE COUNT	PARKING SPACE COUNT
PARKING METER	PARKING METER
LANDSCAPED AREA	LANDSCAPED AREA
TO BE DETERMINED	TO BE DETERMINED
C&T FROM PIPE	C&T FROM PIPE
COPPER PIPE	COPPER PIPE
PVC	PVC
RCP	RCP
AC	AC
VC	VC
EL	EL
FF	FF
FINISHED FLOOR	FINISHED FLOOR
INTER FLOOR	INTER FLOOR
STAIR FLOOR	STAIR FLOOR
TRUNKED BENCH MARK	TRUNKED BENCH MARK
TYP	TYP



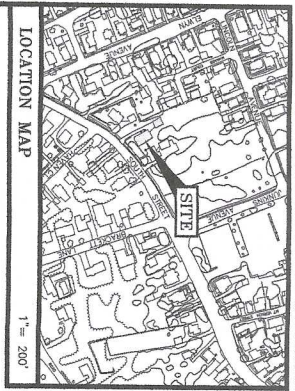
AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road - Suite 3
Portsmouth, NH 03801
Tel. (603) 430-9282
Fax (603) 436-2315

PLAN SET SUBMITTAL DATE: 26 JANUARY 2022

APPROVED BY THE PORTSMOUTH PLANNING BOARD

DATE

CHAIRMAN

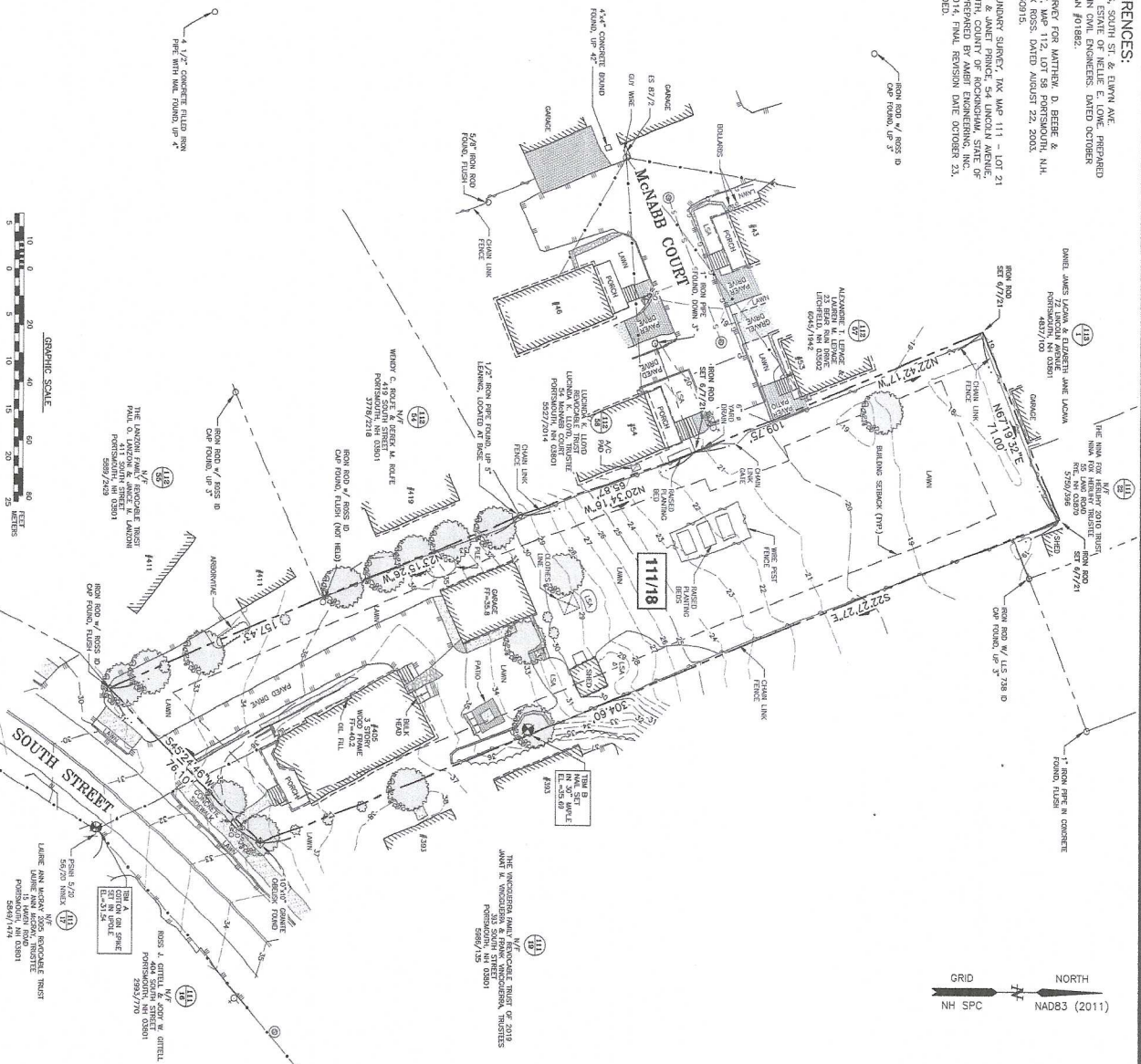


PLAN REFERENCES:

1. PLAN OF LOTS, SOUTH ST. & ELIYAH AVE.
PORTSMOUTH, NH. ESTATE OF E. LOWE.
PREPARED BY JOHN H. ROBSON, CIVIL ENGINEERS. DATED OCTOBER
1951. REEL PLAN #0262.
2. BOUNDARY SURVEY FOR MATTHEW D. BEEBE &
BARBARA R. JENNY, MAP 112, LOT 58 PORTSMOUTH, N.H.
PREPARED BY ALBERT KENNEDY, INC. DATED AUGUST 22, 2003.
R.C.I.D. PLAN # 309105.
3. STANDARD BOUNDARY SURVEY, TAX MAP 111 - LOT 2
FOR ETHEL BEHRE & JANEI PERRY, 34 LINCOLN AVENUE,
CITY OF PORTSMOUTH, COUNTY OF ROCKINGHAM, STATE OF
NEW HAMPSHIRE. PREPARED BY AMERI ENGINEERING, INC.
DATED OCTOBER 2014. FINAL REVISION DATE OCTOBER 23,
2014. NOT RECORDED.

LEGEND:

- [illegible]



PROPOSED SUBDIVISION
ROBB RESIDENCE
405 SOUTH STREET
PORTSMOUTH, N.H.

[illegible]

SCALE 1"=20'	JUNE 202
EXISTING CONDITIONS PLAN	C1

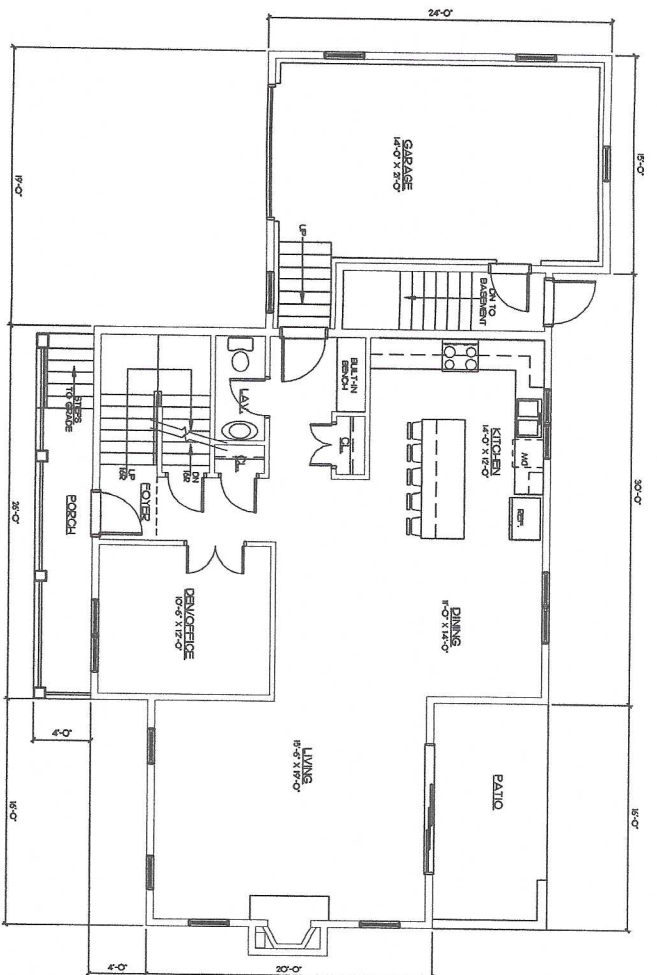


AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors

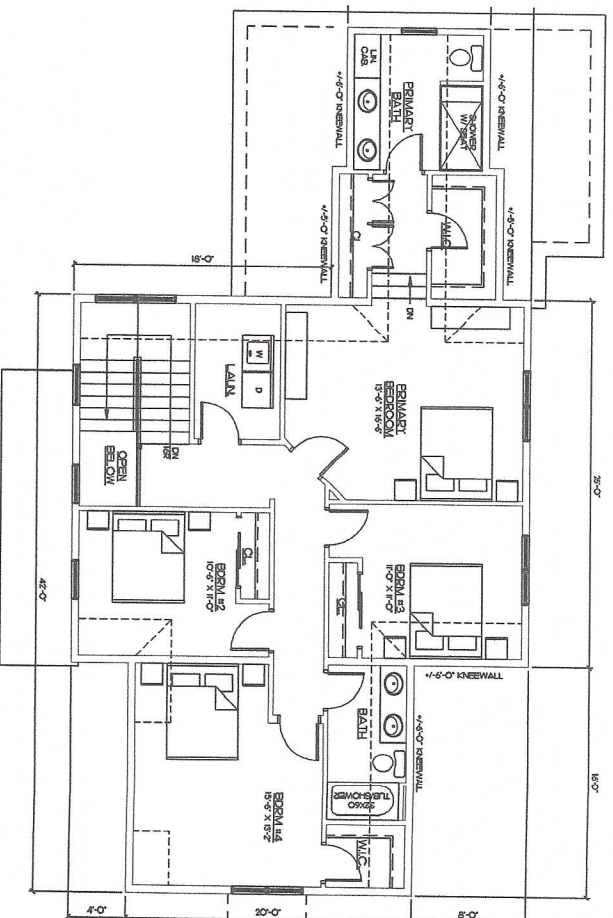
209 G-17th Road - Unit 3
Piedmont, N.H. 03501-7114
Tel (603) 430-9202
Fax (603) 430-2316

NOTES:

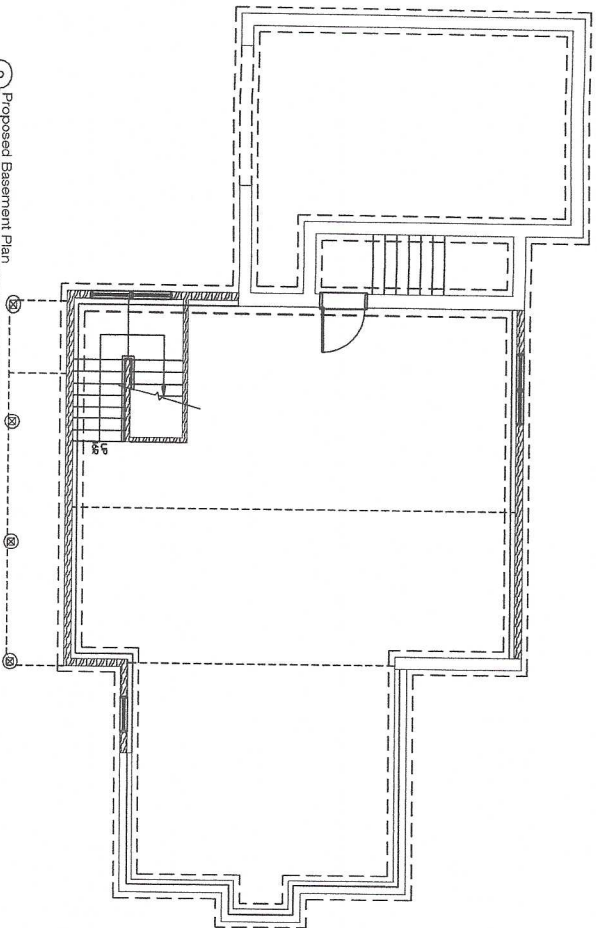
- 1) PARCELS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 111 AS LOT 1A.
- 2) OWNER OF RECORD:
JULIA R. TIBOUT
JULIA ROSE (VIA JULIA R. TIBOUT), TRUSTEE
PORTSMOUTH, NH 03801
509-6768
- 3) PARCELS NOT IN A SPECIAL FLAG ZONED AREA AS SHOWN ON PLAN AREA 3305C02599, EFFECTIVE DATE JANUARY 29, 2021.
- 4) EXISTING LOT AREA
22,240 S.F.
0.5223 ACRES
- 5) PARCELS LOCATED IN THE GENERAL RESIDENCE A (GRN) ZONING DISTRICT.
- 6) DIMENSIONAL REQUIREMENTS:
MIN. LOT AREA 7,500 S.F.
MIN. FRONT YARD SETBACK 75 FEET
MIN. DEPTH 20 FEET
SETBACKS 10 FEET
SIDE 10 FEET
REAR 20 FEET
MAXIMUM BUILDING HEIGHT 35 FEET
MAXIMUM LOT COVERAGE 25%
MAXIMUM LOT STAKE 30%
- 8) VERTICAL DATA IS LAYERS: BASIS OF VERTICAL DATA IS REDEMPTION RAIL CROSS DEMONSTRATIONS.
- 9) THE PURPOSES OF THIS PLAN IS TO SHOW THE EXISTING CONDITIONS ON ASSESSOR'S MAP 111 LOT 1B AND LOT OF PORTSMOUTH.



1 Proposed First Floor Plan
Scale: 1/4" = 1'-0"



2 Proposed Second Floor Plan
Scale: 1/4" = 1'-0"



3 Proposed Basement Plan
Scale: 1/4" = 1'-0"

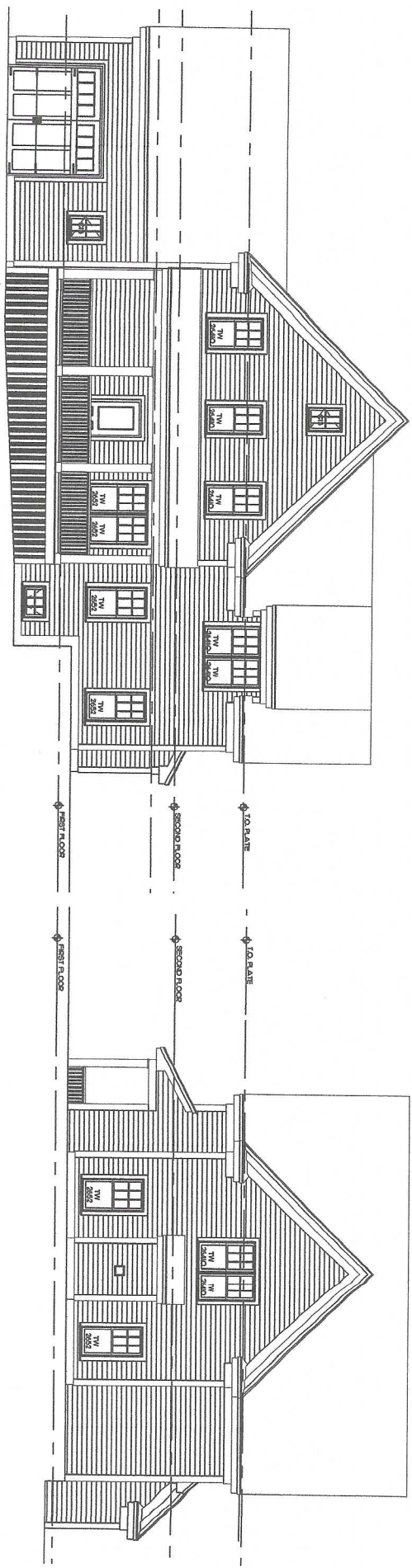
BUILDING S.F.	1210/21
FIRST FLOOR	1181 S.F.
SECOND FLOOR	1257 S.F.
TOTAL *	2438 S.F.
GARAGE	487 S.F.

405 South Street
Portsmouth, NH



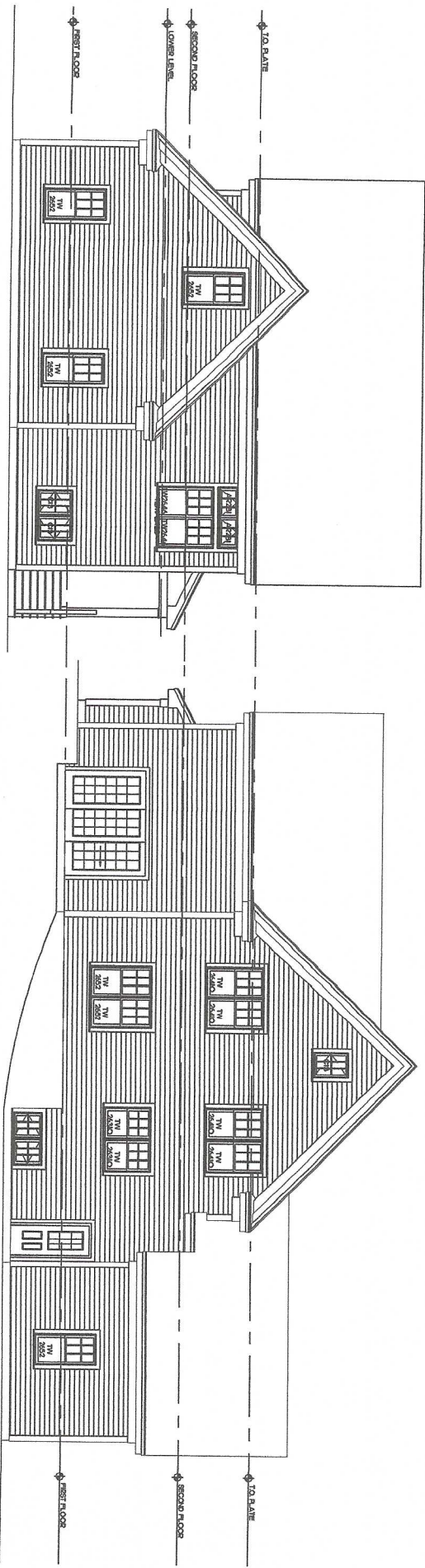
O'SULLIVAN ARCHITECTS, INC.
ARCHITECTURE • INTERIORS • PLANNING
606 MAIN STREET, SUITE 3001 • READING, MA 01 867
Tel: (781) 439-6166 • Fax: (781) 439-6170 • www.osullivanarchitects.com
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ISSUED	1/28/2021	SHEET NUMBER	1
REVISED / REVISED BY	12/22/2021	JOB NO.	21032



1 Proposed Front Elevation
Scale: 1/8" = 1'-0"

2 Proposed Right Elevation
Scale: 1/8" = 1'-0"

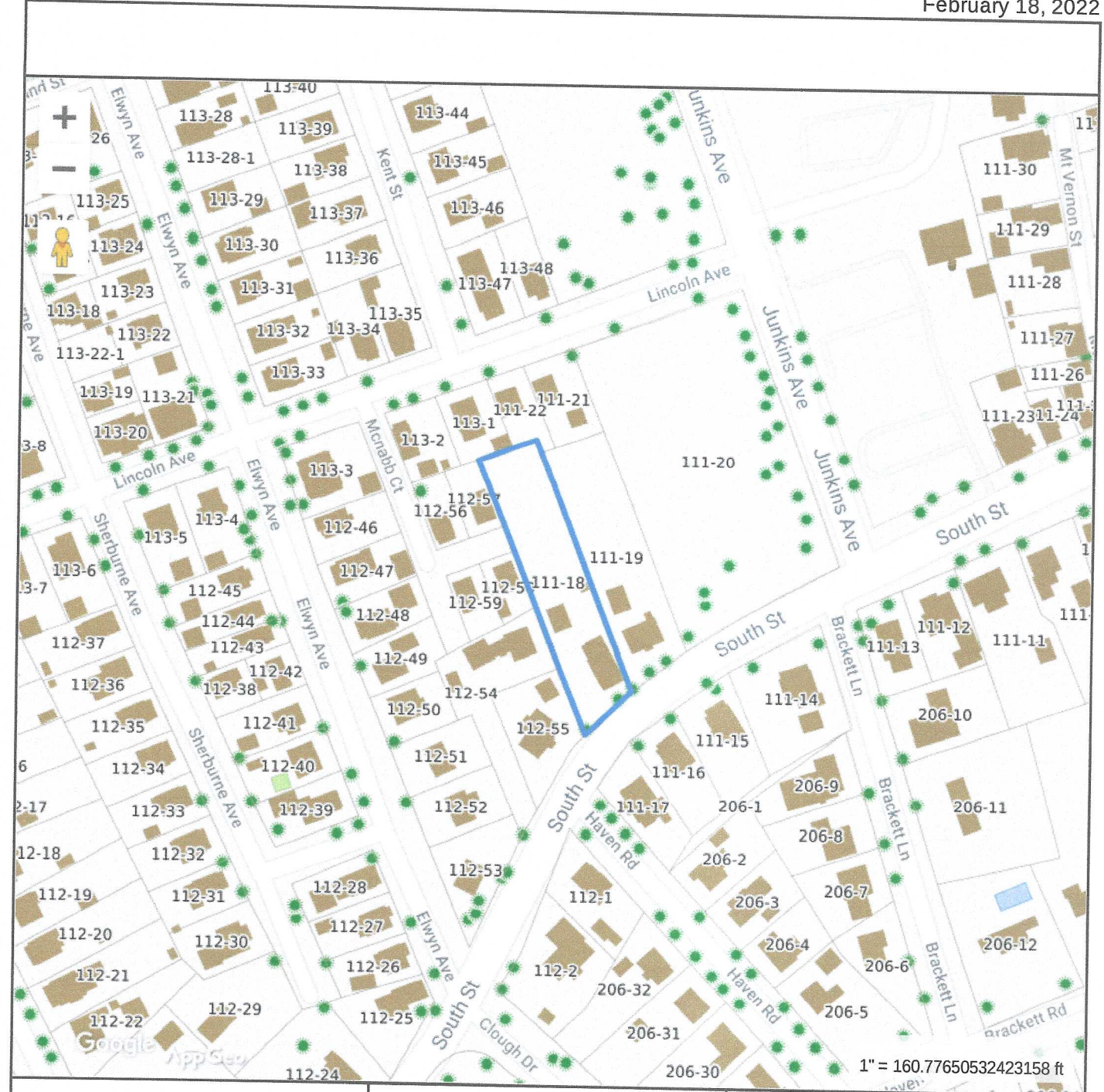


3 Proposed Left Elevation
Scale: 1/8" = 1'-0"

4 Proposed Rear Elevation
Scale: 1/8" = 1'-0"

405 South Street
Portsmouth, NH

 O'SULLIVAN ARCHITECTS, INC. ARCHITECTURE • INTERIORS • PLANNING 606 MAIN STREET, SUITE 3007 • READING, MA 01867 TEL: (781) 439-6166 • FAX: (781) 439-6170 • www.osullivanarchitects.com © 2015 Osullivan Architects Inc.	ISSUED 1/28/2021 REVISED / REVISED BY	SHEET NUMBER 2
	JOB NO: 21032	

**Property Information**

Property ID 0111-0018-0000
Location 405 SOUTH ST
Owner TIEBOUT JULIA R REVO TRUST 09



**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

Print map scale is approximate.
 Critical layout or measurement
 activities should not be done using
 this resource.



View of Property (Proposed Lot 2) from McNabb Court



View of McNabb Court from Property (Proposed Lot 2)



View of Property from Rear (North)



View of Property from Existing House (South)



View of Property from South Street