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Durbin Law Offices, P.L.L.C.
Derek R. Durbin, Esq.
603.287.4764
derek@durbinlawoffices.com
**Also admitted in MA*

BY: HAND DELIVERY & EMAIL

May 29, 2019

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

**RE: Variance Application of Andrew John Marden
60 Elwyn Avenue, Tax Map 113, Lot 22**

Dear Chairman Reauhme,

Our Office represents Andrew John Marden ("John Marden"), owner of the property located at 60 Elwyn Avenue, Portsmouth. Please find twelve (12) copies of Mr. Marden's zoning application and related materials for consideration by the Zoning Board at its June hearing. The following are included in the package:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) ZBA Site Plan;
- 4) Existing Conditions Plan;
- 5) Tax Map Image of Property;
- 6) Recorded Plan for Elwyn/Sherburne Ave. Neighborhood;
- 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.

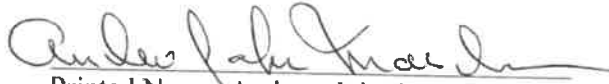
Sincerely,

A handwritten signature in blue ink, appearing to read 'Derek R. Durbin', with a large, stylized flourish extending to the right.

Derek R. Durbin, Esq.

LETTER OF AUTHORIZATION

Andrew John Marden, the owner of real property located at 60 Elwyn Avenue, Portsmouth, New Hampshire 03801, identified on Tax Map 113, as Lot 22 (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.



Printed Name: Andrew John Marden

22 MAY 2019

Date

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

Andrew John Marden
(Owner/Applicant)
Tax Map 113, Lot 22
60 Elwyn Avenue
Portsmouth, NH 03801

INTRODUCTORY STATEMENT

Andrew John Marden ("John Marden") is the owner of property located at 60 Elwyn Avenue, Portsmouth, New Hampshire 03801, identified on Tax Map 113, as Lot 22 (the "Subject Property"). The Subject Property is in Portsmouth's General Residence A ("GRA") Zoning District. It is approximately 0.147 acres in size (6,400 square feet). The Subject Property is unique in that it has frontage on both Elwyn and Sherburne Avenues. A majority of the properties that surround it between Elwyn and Sherburne Avenues are significantly smaller in size than the Subject Property, which gives it the appearance of being a double lot despite the fact that it does not currently meet the minimum lot size requirement for the GRA District of 7,500 square feet. In fact, it appears that it is the only property between Elwyn and Sherburne Avenues that has not been subdivided over the past century or so, as evidenced by an early plan of record (see Plan enclosed with Application).

Mr. Marden is proposing to subdivide the Subject Property into two (2) lots. He would construct a single-family residence on the newly created lot while maintaining the existing residence on the remainder lot. The shed and covered hot tub shown on the Existing Conditions Plan submitted herewith will be removed to make way for the single-family home to be constructed on the newly created lot.

By allowing a subdivision of the Subject Property, Mr. Marden would be able to sell the remainder lot with the existing house and use the proceeds to construct a single-family home on the newly created lot. Mr. Marden is seventy-four (74) year-old military veteran that is permanently disabled as a result of being exposed to agent orange during his military service in Vietnam and Korea from 1966 to 1969. Forty-seven (47) years following his military service, he developed Laryngeal Cancer with secondary lung collapse on two (2) occasions. This requires him to have supplemental oxygen 95% of the time, which makes walking and climbing stairs and just about all other daily activities most find normal, extremely difficult and compromising for Mr. Marden. Mr. Marden also has developed a twenty-five (25) to thirty (30) degree lower spine curvature which now causes him to have constant pain in his back, groin, left knee and left hip.

If Mr. Marden is granted the relief necessary to subdivide the Subject Property, he will be able to design a home on the new lot that suits his medical needs whereas his current house would require significant renovation work to make that possible, which is not economically feasible or practical for him at this stage of life. Any home to be constructed on the new lot would be modest in size, as demonstrated by the proposed building footprint of seven hundred and fifteen (715)

square feet and would comply with the zoning setback requirements to protect the light, air and space of abutting properties.

Mr. Marden's family originally acquired the Subject Property in 1950. Mr. Marden was raised on the Subject Property. The Subject Property and the neighborhood have sentimental value to him. Granting the Variance Application would give him the opportunity to remain in the neighborhood where he grew up and age-in-place.

SUMMARY OF VARIANCE RELIEF

Mr. Marden seeks the following variances from Section 10.521 (Table of Dimensional Requirements) of the Zoning Ordinance:

1. To allow 3,457 (+/-) square feet of lot area where 7,500 square feet is the minimum required for the newly created lot (Lot 113-22-1);
2. To allow 2,943 (+/-) square feet of lot area where 7,500 square feet is the minimum required for the remainder lot (Lot 113-22);
3. To allow 3,457 (+/-) square feet of lot area per dwelling unit where 7,500 square feet is the minimum required for Lot 113-22-1;
4. To allow 2,943 (+/-) square feet of lot area where 7,500 square feet is the minimum required for Lot 113-22;
5. To allow 50' (+/-) of street frontage on Sherburne Avenue where 100' is required for Lot 113-22-1;
6. To allow lot depth of 58' (+/-) where 70' is the minimum required for Lot 113-22-1;
7. To allow lot depth of 68' (+/-) where 70' is the minimum required for Lot 113-22; and
8. To allow building coverage of 29.8% (+/-) where 25% is the maximum allowed for Lot 113-22.

VARIANCE CRITERIA

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

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court observed that the requirements that a variance not be "contrary to the public interest" or "injure the public rights of others" are coextensive and are related to the requirement that the variance be consistent with the spirit of the ordinance. 152 N.H. 577 (2005). The Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to 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.'" Id. "Mere conflict with the terms of the zoning ordinance is insufficient to constitute a violation of the ordinance's basic zoning objectives." *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011). "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.” *Id.*

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*...[.]” (*italics added*). The Subject Property is significantly larger than all but three (3) other properties between Elwyn and Sherburne Avenues. The neighborhood can be characterized as moderately dense due to the relatively small lots sizes and mixture of single-family, two-family and multi-family uses. There are three (3) properties along this block, only one (1) of which is larger than the Subject Property, that contain two (2) or more dwelling units.¹ With respect to the Elwyn/Sherburne neighborhood, the minimum lot size requirements are not reflective of the character of the area.

The subdivided lots will be of nearly equal size to most other properties in the Elwyn/Sherburne neighborhood with similar lot depths, building coverages, and frontages. Both lots will contain single-family homes, consistent with six (6) of the other nine (9) properties between Elwyn and Sherburne Avenues. Therefore, granting the variances and allowing the subdivision of the Subject Property will promote greater dimensional uniformity in this neighborhood despite resulting in greater non-conformity under the provisions of the Zoning Ordinance.

Mr. Marden is not requesting any setback relief as part of his Zoning Application and the height of the home will be >35’. As such, the proposed subdivision and new home will not negatively affect the light, air and space of abutting properties. The subdivision of the Subject Property will not alter the essential characteristics of the neighborhood or otherwise cause any undue demand on municipal services or threat to the public, health, safety or welfare. Overall, the proposed subdivision of the Subject Property will be consistent with the spirit and intent of GRA Zoning, which is to promote *moderate to high densities* in residential neighborhoods.

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 Mr. Marden were denied the zoning relief sought, he would be unable to subdivide the Subject Property, thus denying him the opportunity to construct a modest single-family residence designed around his medical needs. This would create a hardship upon Mr. Marden that would not be outweighed by any corresponding public benefit. The subdivided lots would be of nearly dimension to most of the other properties located on the Elwyn/Sherburne Avenue block. The equitable balancing test weighs heavily in favor of the landowner in the present instance.

¹ Lot 113-20 contains 4 dwelling units;
Lot 113-21 contains 2 dwelling units; and
Lot 113-24 contains 2 dwelling units.

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 may increase the values of surrounding properties. Accordingly, it is fair 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 Subject Property is uniquely situated. It is the only property located between Elwyn and Sherburne Avenues that has frontage on both streets. The existing home on the Subject property is located very close (approx. 13.5') to Elwyn Avenue, leaving the remainder of the lot mostly open with the exception of a shed and covered hot tub. To anyone looking at a tax map or aerial image of the Subject Property in the context of surrounding properties, you would assume that it contains two (2) merged lots, as most of the surrounding properties are roughly half the size of the Subject Property and do not contain frontage on both streets. The subdivision of the Subject Property into two (2) lots will conform to the character of other properties in the Elwyn/Sherburne neighborhood and the moderate/higher density goals of the GRA Zoning District. For the foregoing reasons, 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 use of the subdivision of the lots for single-family purposes will be consistent with the spirit and intent of GRA Zoning, which promotes a mixture of single-family, two-family and multi-family uses. The proposed home on the newly created lot will not have any adverse impacts to abutters, as it will respect their light, air and space by complying with the setback and height requirements of the Zoning Ordinance. The new home will allow Mr. Marden to age-in-place in the neighborhood that he grew up in. Accordingly, the proposed use of the Subject Property is reasonable.

CONCLUSION

In conclusion, Mr. Marden has demonstrated that his proposed use of the Subject Property meets the five (5) criteria for granting each of the variances requested. Accordingly, he respectfully requests that the Board approve his Variance Application.

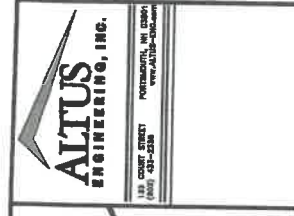
Respectfully Submitted,

Dated: May 29, 2019

ANDREW JOHN MARDEN



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



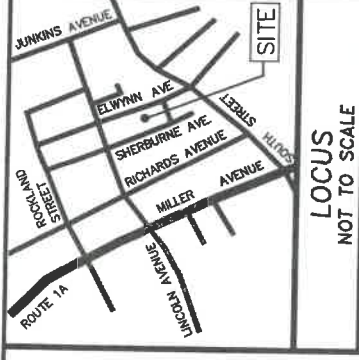
ISSUED FOR: BOARD OF ADJUSTMENT
 ISSUE DATE: MAY 28, 2019
 REVISIONS:
 NO. DESCRIPTION BY DATE
 0 INITIAL SUBMISSION EDW 06/28/19

DRAWN BY:
 APPROVED BY:
 DRAWING FILE: 50050A010
 SCALE: 11" x 17", 1" = 15'

APPLICANT/OWNER:
 ANDREW JOHN MARDEN
 80 ELWYN AVENUE
 PORTSMOUTH, NH 03801

PROJECT:
 2-LOT
 SUBDIVISION
 ASSESSOR'S PARCEL: 113-22-1
 80 ELWYN AVENUE
 PORTSMOUTH, NEW HAMPSHIRE

TITLE: BOARD OF ADJUSTMENT SITE PLAN
 SHEET NUMBER: 1 OF 1



ZONING SUMMARY

REQUIRED	ASSESSOR'S PARCEL: 113-22 (REMAINDER)	ASSESSOR'S PARCEL: 113-22-1 (NEW LOT)
MIN. LOT AREA:	3,457 S.F.	2,943 S.F.
MIN. LOT AREA PER DWELLING UNIT:	7,500 S.F.	2,943 S.F.
MIN. STREET FRONTAGE:	100'	50'
MIN. LOT DEPTH:	70'	50'
MIN. FRONT SETBACK:	15'	50'
MIN. SIDE SETBACK:	10'	50'
MIN. REAR SETBACK:	10'	50'
MAX. BUILDING COVERAGE:	25%	<35%
MIN. OPEN SPACE:	30%	5%

• FRONT YARD AVERAGE OF ABUTTING BUILDINGS (0.8' AND 9.8') - 8.3'

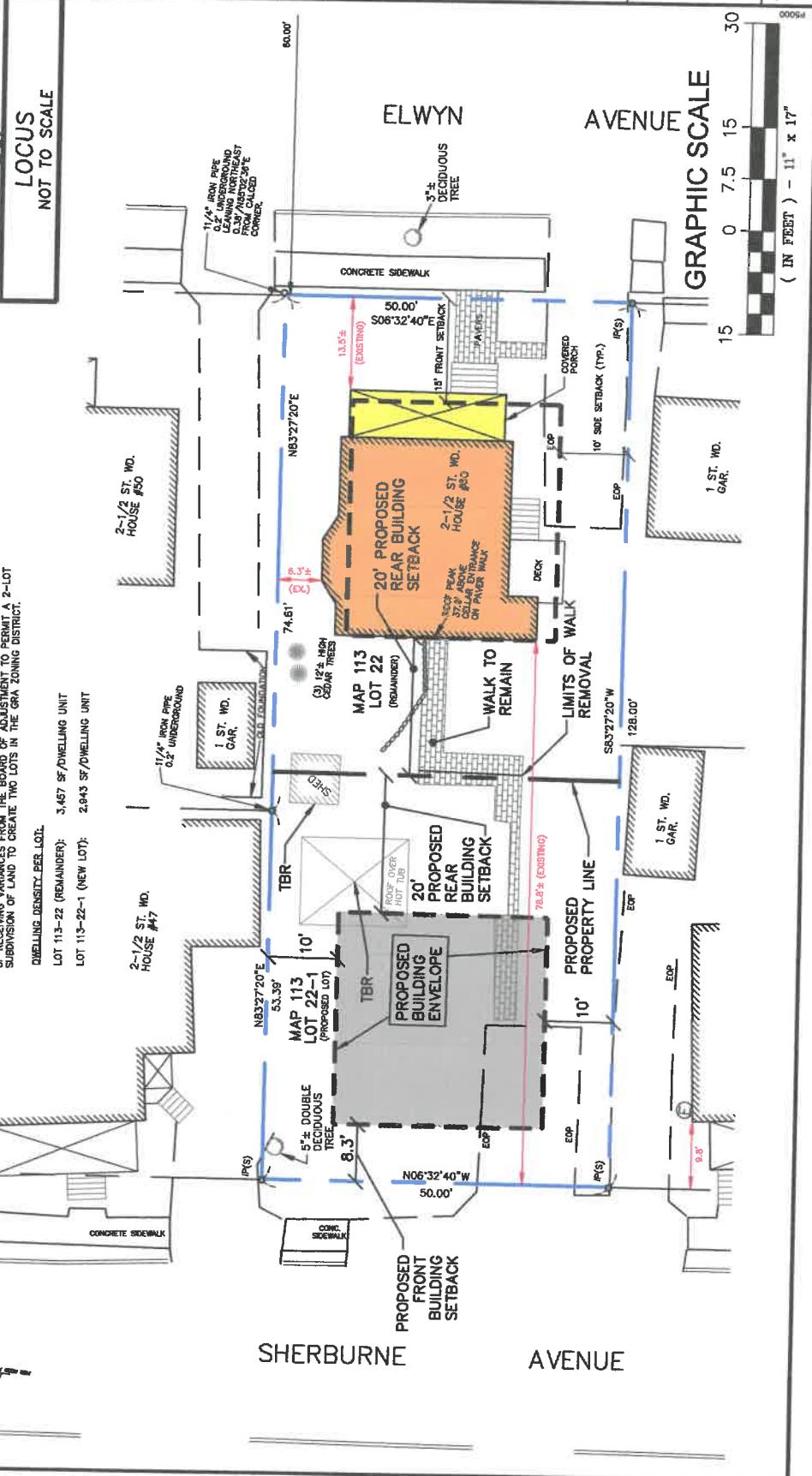
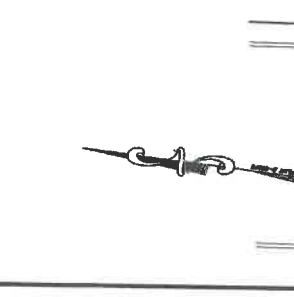
PLAN INTENT: THE INTENT OF THIS PLAN IS TO ILLUSTRATE FOR THE PURPOSE OF ADJUSTING THE DISTANCES FROM THE BOARD OF ADJUSTMENT TO PERMIT A 2-LOT SUBDIVISION OF LAND TO CREATE TWO LOTS IN THE GRA ZONING DISTRICT.

DWELLING DENSITY PER LOT:
 LOT 113-22 (REMAINDER): 3,457 SF/DWELLING UNIT
 LOT 113-22-1 (NEW LOT): 2,943 SF/DWELLING UNIT

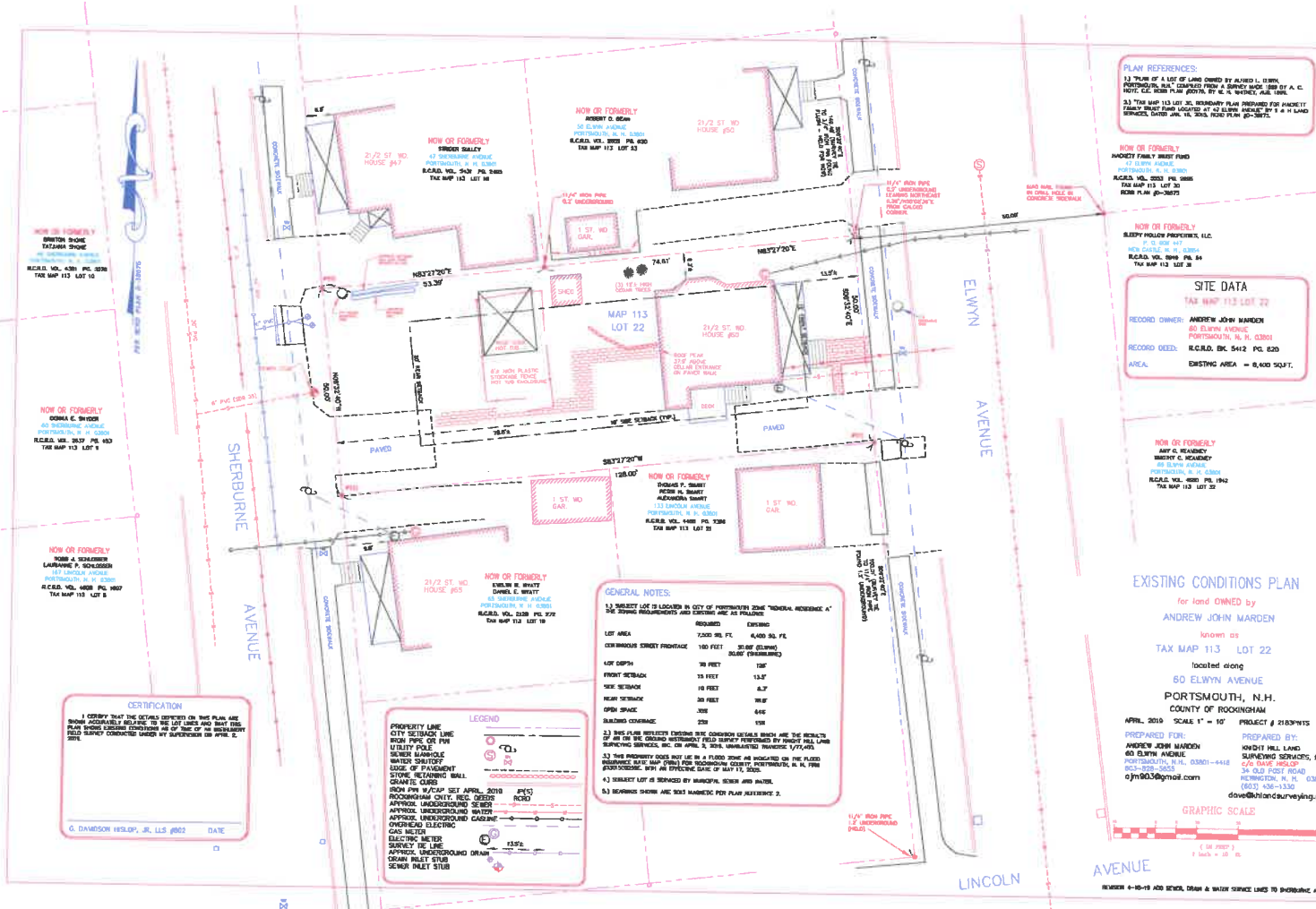
ZONE: CSA (GENERAL RESIDENCE A)
 EXISTING LOT AREA: 8,400 S.F. ± (14,786) ±

DIMENSIONAL REQUIREMENTS

MIN. LOT AREA: 7,500 S.F.
 MIN. LOT AREA PER DWELLING UNIT: 7,500 S.F.
 MIN. STREET FRONTAGE: 100'
 MIN. LOT DEPTH: 70'
 MIN. FRONT SETBACK: 15'
 MIN. SIDE SETBACK: 10'
 MIN. REAR SETBACK: 10'
 MAX. BUILDING COVERAGE: 25%
 MIN. OPEN SPACE: 30%



00094



PLAN REFERENCES:
 1) PLAN OF A LOT OF LAND OWNED BY ALVIN L. GIBBS, PORTSMOUTH, N.H., DATED FEBRUARY 2, 1955, BEING OF A C. CITY OF PORTSMOUTH, N.H., BEING, MAP 113, LOT 22.
 2) THE MAP 113 LOT 22, RECONSTRUCTION PLAN FOR THE PROPERTY FRONT STREET FRONT LOCATED AT 45 ELWYN AVENUE BY T & H LAND SERVICES, DATED APR. 15, 2008, FILED PLAN 60-3872.

NOW OR FORMERLY
 ANDREW FAMILY TRUST FUND
 60 ELWYN AVENUE
 PORTSMOUTH, N.H. 03801
 RECAL. NO. 2008 P.L. 0088
 TAX MAP 113 LOT 22
 THE MAP 113 LOT 22

NOW OR FORMERLY
 SLOTT HOUSE PROPERTIES, LLC
 60 ELWYN AVENUE
 PORTSMOUTH, N.H. 03801
 RECAL. NO. 2008 P.L. 0088
 TAX MAP 113 LOT 22

SITE DATA
 TAX MAP 113 LOT 22
 RECORD OWNER: ANDREW JOHN MARDEN
 60 ELWYN AVENUE
 PORTSMOUTH, N.H. 03801
 RECORD DEED: R.C.R.D. DE. 5412 P.L. 020
 AREA: EXISTING AREA = 9,400 SQ.FT.

NOW OR FORMERLY
 WENDY C. MARDEN
 60 ELWYN AVENUE
 PORTSMOUTH, N.H. 03801
 RECAL. NO. 2008 P.L. 0088
 TAX MAP 113 LOT 22

GENERAL NOTES:

1) SUBJECT LOT IS LOCATED IN CITY OF PORTSMOUTH ZONE "GENERAL RESIDENCE A" THE ZONING REQUIREMENTS AND EXISTING ARE AS FOLLOWS:

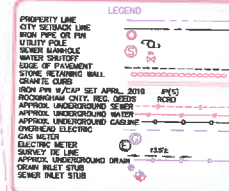
	REQUIRED	EXISTING
LOT AREA	7,200 SQ. FT.	6,400 SQ. FT.
CONTIGUOUS STREET FRONTAGE	100 FEET	30.00 FEET (ELWYN)
LOT DEPTH	70 FEET	50.00 FEET (ELWYN)
FRONT SETBACK	10 FEET	13.00 FEET
REAR SETBACK	10 FEET	10.00 FEET
OPEN SPACE	300	616
SHADING COEFFICIENT	20%	10%

2) THIS PLAN REFLECTS EXISTING AND PROPOSED CONDITIONS AND THE RESULTS OF ALL THE SURVEYING FIELD WORK PERFORMED BY SURVEY HILL LAND SURVEYING SERVICES, INC. ON APRIL 5, 2010. UNLESS OTHERWISE SPECIFIED.

3) THIS PROPERTY DOES NOT LIE IN A FLOOD ZONE AS INDICATED ON THE FLOOD INSURANCE RATE MAP (FIRM) FOR WINDHAM COUNTY, PORTSMOUTH, N.H., FROM 1999. THE FIRM IS AVAILABLE AT WWW.FEMA.GOV.

4) SUBJECT LOT IS BOUNDARY BY WINDHAM, NEW HAMPSHIRE.

5) SERVICES SHOWN ARE BASED ON THE PLAN REFERENCES.



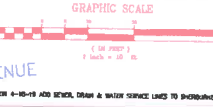
CERTIFICATION

I CERTIFY THAT THE DETAILS SHOWN ON THIS PLAN ARE TRUE AND CORRECTLY SET OUT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT THE PLAN SHOWS EXISTING CONDITIONS AS OF THE DATE OF THE SURVEYING FIELD WORK CONDUCTED UNDER MY SUPERVISION ON APRIL 5, 2010.

G. DAMONSON HESLOP, JR., L.L.S. (002) DATE

EXISTING CONDITIONS PLAN
 for land OWNED by
ANDREW JOHN MARDEN
 known as
TAX MAP 113 LOT 22
 located along
60 ELWYN AVENUE
PORTSMOUTH, N.H.
COUNTY OF ROCKINGHAM

APRIL, 2010 SCALE 1" = 10' PROJECT # 2183PNTS
 PREPARED BY: ANDREW JOHN MARDEN
 60 ELWYN AVENUE
 PORTSMOUTH, N.H. 03801-4448
 603-226-2005
 ajm033@gmail.com
 PREPARED BY: SURVEY HILL LAND SURVEYING SERVICES, INC.
 C/O GUY HESLOP
 34 OLD POST ROAD
 WINDHAM, N.H. 03093
 (603) 436-1330
 dave@hillsurveying.com



2183PNTS



Property Information

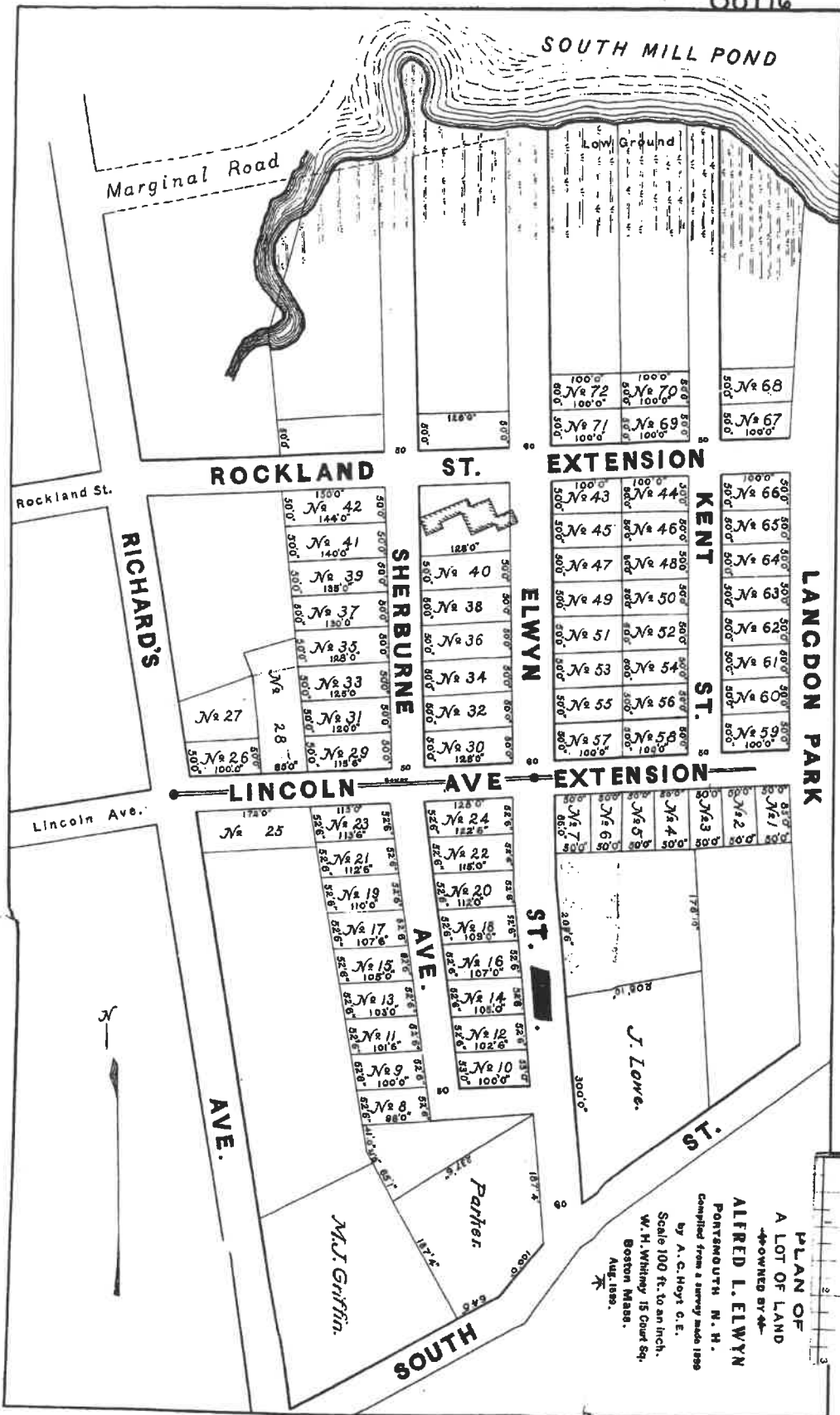
Property ID 0113-0022-0000
Location 60 ELWYN AVE
Owner MARDEN ANDREW JOHN



**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



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.

J. Lowe.

ST.

AVE.

M.J. Griffin

Parker

SOUTH

PLAN OF
A LOT OF LAND
SHOWED BY
ALFRED L. ELWYN
PORTSMOUTH, N. H.
Compiled from a survey made 1898
by A. C. Hoyt C. E.
Scale 100 ft. to an inch.
W. H. Whitney 15 Court St.,
Boston Mass.
Aug. 1899.





Front of Property from Elwyn Avenue



Left Side of Property from Elwyn Avenue



Right Side of Property from Elwyn Avenue



Rear View of Property from Sherburne Avenue



Shed in Rear Yard to be removed.



Fence, patio and hot tub to be removed.

2044

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

05/29/2019

PAY TO THE
ORDER OF City of Portsmouth

\$ **150.00

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

DOLLARS

City of Portsmouth

Durbin Law Offices PLLC

MEMO

Marden Variance Application Filing Fee

⑈002044⑈ ⑆011400071⑆ 9243456161⑈

Durbin Law Offices PLLC

2044

05/29/2019 City of Portsmouth

150.00

10000 10000 · Operating Account

Marden Variance Application Filing Fee

150.00

Durbin Law Offices PLLC

2044

05/29/2019 City of Portsmouth

150.00

10000 10000 · Operating Account

Marden Variance Application Filing Fee

150.00

