

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

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February 23, 2022

HAND DELIVERED

Peter Stith, Principal Planner
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Re: Christopher H. Garrett Revocable Trust of 2007, Owner/Applicant
1299 Islington Street
Tax Map 233/Lot 119
Single Residence B District

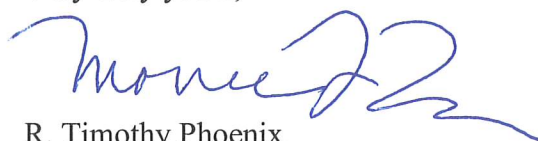
Dear Mr. Stith & Zoning Board Members:

On behalf of the Christopher H. Garrett Revocable Trust of 2007 ("Garrett"), enclosed please find the following in support of a request for zoning relief:

- Digital Application submitted via Viewpoint this morning.
- Owner's Authorization.
- 2/23/2022 – Memorandum and exhibits in support of Variance Application (original and 11 copies).

We look forward to presenting this application to the Zoning Board at its March 15, 2022 meeting.

Very truly yours,



R. Timothy Phoenix
Monica F. Kieser

Encl.

cc: Christopher & Leslie Garrett
Ross Engineering, LLC

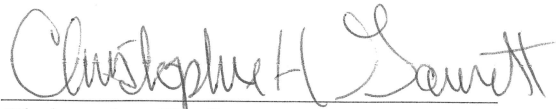
DANIEL C. HOEFLE	R. PETER TAYLOR	MONICA F. KIESER	AMANDA M. FREDERICK
R. TIMOTHY PHOENIX	KIMBERLY J.H. MEMMESHEIMER	SAMUEL HARKINSON	OF COUNSEL:
LAWRENCE B. GORMLEY	KEVIN M. BAUM	JACOB J.B. MARVELLEY	SAMUEL R. REID
STEPHEN H. ROBERTS	GREGORY D. ROBBINS	DUNCAN A. EDGAR	JOHN AHLGREN

OWNER'S AUTHORIZATION

I, Christopher H. Garrett, Trustee of the Christopher H. Garrett Revocable Trust of 2007, Owner/Applicant of 1299 Islington Street, Tax Map 233, Lot 119, hereby authorize law firm Hoefle, Phoenix, Gormley & Roberts, PLLC to represent me before the City of Portsmouth Zoning Board of Adjustment for permitting the project.

Respectfully submitted,

By:

A handwritten signature in cursive script, reading "Christopher H. Garrett", written over a horizontal line.

Christopher H. Garrett, Trustee

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
DATE: February 23, 2022
RE: Christopher H. Garrett Revocable Trust of 2007, Owner/Applicant
1299 Islington Street
Tax Map 233/Lot 119
Single Residence B District

Dear Chair Parrott and Zoning Board Members:

On behalf of the Owner/Applicant, Christopher H. Garrett Revocable Trust of 2007 (“Garrett”), we are pleased to submit this memorandum and attached exhibits in support of Zoning Relief for the subdivision of the existing lot to be considered by the ZBA at its March 15, 2022 meeting.

I. Exhibits

- A. Plan Set – issued by Ross Engineering, LLC.
 - Boundary Survey & Existing Conditions
 - Subdivision Plan
- B. Site Photographs.
 - Satellite view
 - Street views
- C. Map of area depicting lots with less than required area, frontage or both.
- D. Tax Map 233.

II. Property/Project

1299 Islington Street is a 27,366 s.f. lot developed with a single family home and barn on the eastern (right) half of the lot (the “Property”). The Property is located in the Single Residence B District and borders the railroad line; across the railroad line from the Property is the Office/Research District. Garrett proposes to subdivide the lot into two lots, one compliant lot containing 15,000 s.f., 100 ft. of frontage and the existing home and barn, and a second lot containing 12,366 s.f. and 99.33 ft. of frontage requiring relief (the “Project”). The Project confers the benefit of an additional buildable lot in a thickly settled area of Portsmouth, where housing opportunities are in high demand and many lots are less than the required 15,000 s.f., have less than the required 100 feet of frontage or both. **(Exhibits C)**. Approval for a lot with less than 15,000 s.f. and less than 100 ft. of frontage is necessary before an application to subdivide can be filed with the Planning Board.

III. Relief Required

<u>Variance Section/Requirement</u>	<u>Existing</u>	<u>Proposed</u>
<u>PZO§10.521: Dimensional Standards</u> 15,000 s.f. Lot area 15,000 s.f. Lot area/dwelling unit	27,366 s.f.	Lot 1: 15,000 s.f. (no relief) Lot 2: 12,366 s.f.
<u>PZO§10.521: Dimensional Standards</u> 100' Continuous Street Frontage	199.33'	Lot 1: 100' (no relief) Lot 2: 99.33'

V. Variance Requirements

1. The variances will not be contrary to the public interest.
2. The spirit of the ordinance is observed.

The first step in the ZBA's analysis is to determine whether granting the variances is not contrary to the public interest and is consistent with the spirit and intent of the ordinance, considered together pursuant to *Malachy Glen Associates, Inc. v. Town of Chichester*, 155 N.H. 102 (2007) and its progeny. Upon examination, it must be determined whether granting a variance "would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives". *Id.* "Mere conflict with the zoning ordinance is not enough". *Id.*

Portsmouth Zoning Ordinance ("PZO") Section 10.121 identifies the general purposes and intent of the ordinance "to promote the health, safety and general welfare of Portsmouth...in accordance with the...Master Plan" This is accomplished by regulating:

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The intended use of the property is and will remain residential. The requested relief will satisfy the need for additional housing with creation of additional building lot on an underutilized area of land in a densely populated area where many similar sized lots exist.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – Lot 2 has 99.33 ft. of frontage where 100 ft. is required, so is just shy of the required frontage; though under the required 15,000 s.f., it can accommodate a modest sized home without increasing the intensity of land use in the area. Many lots in the area are smaller than 15,000 s.f. and lack 100 feet of frontage so the new lot fits in the area.
3. The design of facilities for vehicular access, circulation, parking and loading – Both lots will have sufficient space to accommodate appropriate facilities for these needs.

4. The impact on properties on of outdoor lighting, noise, vibration, stormwater runoff and flooding – The creation of an additional residential lot will not impact surrounding properties.
5. The preservation and enhancement of the visual environment – Allowance of an additional residential building lot on a major thoroughfare in a thickly settled area of town will not negatively affect the visual environment.
6. The preservation of historic districts and building and structures of historic architectural interest – The Property is not located in the Historic Overlay District.
7. The protection of natural resources, including groundwater, surface water, wetlands, wild life habitat and air quality – The granting of the variances will not undermine these purposes of the Ordinance.

The intent of Single Residence B District is “[t]o provide areas for single-family dwellings at low to medium densities (approximately 1 to 3 dwellings per acre), and appropriate accessory uses. PZO §10.410. The Property exists in a transitional area on the edge of the Single Residence B District. The proposal meets the intentions of the Single Residence B District by providing another residential building lot that is consistent with many in the area. Given these factors, granting the limited requested variances will not conflict with the basic zoning objectives of the PZO.

In considering whether variances “in a marked degree conflict with the ordinance such that they violate the ordinance’s basic zoning objectives,” *Malachy Glen, supra*, also held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to determine whether it would alter the essential character of the locality... . Another approach to [determine] whether granting the variance violates basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare. (emphasis added)

Notably, there are many properties in the immediate area with lot areas less than 15,000 s.f. **and** less than 100 feet of frontage; more yet lack required lot area **or** frontage. (**Exhibit C**). Given the existence of many similar lots in the area, granting the variances for a lot on a major thoroughfare in a thickly settled area of town will not alter the essential characteristics of the neighborhood.

Similarly, there will be no threat to the public health, safety or welfare by granting the requested variances when the relief required is for a building lot size comparable to several existing in the surrounding area, and for an amount of frontage just under the required 100 feet. Allowance of an additional residential building lot on a major thoroughfare in a densely

populated residential zone satisfies the need for additional housing and affords Garrett the highest and best use of their land.

Clearly, the requested variances neither alter the essential character of the locality nor threaten the public health safety or welfare. Accordingly, none of the variances are contrary to the public interest and all observe the spirit of the ordinance.

3. Granting the variance will not diminish surrounding property values.

Granting the requested variances will not diminish surrounding property values. The proposal will satisfy the need for housing in Portsmouth through creation of an additional building lot on Islington Street. The later addition of a modest home on a lot similar in size to many in the area will not diminish surrounding property values.

4. Denial of the variances results in an unnecessary hardship.

a. Special conditions distinguish the property from others in the area.

The current lot is located in a transitional zone and is oversized, with the house and barn on one side. This configuration under-utilizes prospective Lot #2 as an additional yard, when a more productive use would be as an additional residential building lot. A hardship may be found where similar nonconforming uses exist within the neighborhood and the proposed use will have no adverse effect on the neighborhood. See *Walker v. City of Manchester*, 107 N.H. 382, 386 (1966). In *Walker*, an applicant sought to convert the use of a large building to a dwelling and funeral home in a residential zone. Denied by the Manchester Zoning Board of Adjustment, the Trial Court and Supreme Court found that a hardship existed, thus the variances should have been granted, where numerous other large dwellings in the area had been converted to office or other business use, and numerous funeral homes existed in an otherwise residential district via the issuance of variances. Here, the density resulting from the requested variances is similar to the density in the surrounding area comprised of many homes with similar sized lots and will have no adverse effect on the neighborhood, thus a hardship exists. *Walker*, supra.

Finally, a municipality's ordinance must reflect the current character of the neighborhood, See *Belanger v. City of Nashua*, 121 N.H. 389, 393 (1981). Granting the requested variances allow the subject lot to be in keeping with the character of other residential uses in the vicinity. Thus, the variances in this instance will allow the Ordinance to reflect the character of the area. In light of these conditions and restrictions, special conditions exist at the Property.

b. No fair and substantial relationship exists between the general public purposes of the ordinance and its specific application in this instance.

The purpose of dimensional requirements is to regulate density and prevent overcrowding of land and population. The purpose of frontage requirements is to provide air, light and promote visibility for motorists, cyclists, and pedestrians. The requested variances do not undermine the purpose of the Ordinance, particularly in the context of a surrounding area containing many similar sized properties.

c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. *Vigeant v. Hudson*, 151 N.H. 747 (2005). Residential use is permitted and the creation of Lot 2 is consistent with the overall intent of the zoning district and similar conditions in the neighborhood. Thus, the improvements and variances required for them are reasonable.

5. Substantial justice will be done by granting the variance.

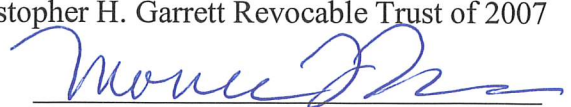
If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. *Harborside Associates, L.P. v. Parade Residence Hotel, L.L.C.*, 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice.” *Malachy Glen, supra* at 109. The variances needed to create a comparably sized building lot for a modestly sized residential home in this residential zone will not impact the general public. Conversely, Garrett will be greatly harmed by denial of any of the variances, as they will lose the ability to create needed housing in Portsmouth. Without question, substantial justice will be done by granting each variance while a substantial injustice will be done by denying any of them.

VI. Conclusion

For all of the reasons stated, the Christopher H. Garrett Revocable Trust of 2007 respectfully requests that the Portsmouth Zoning Board of Adjustment grant each variance request.

Respectfully submitted,

Christopher H. Garrett Revocable Trust of 2007

By: 
R. Timothy Phoenix
Monica F. Kieser

SEE NOTE 2

N/F BORTHWICK FOREST LLC
TAX MAP 241, LOT 25
RCRD: 4754-0626

N/F SHIRLEY N. GARRETT
TAX MAP 233, LOT 128
RCRD: 4248-2633

N/F BOSTON & MAINE CORP
TAX MAP 165, LOT 14

N/F JOHN R. & CHELSEA
S. CHAPIN
TAX MAP 233, LOT 120
RCRD 5128-1295

N/F BARBARA MARINO
TAX MAP 233, LOT 118
RCRD 6151-1045

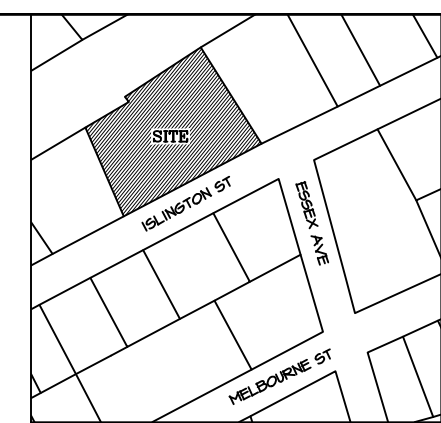
CHRISTOPHER H. GARRETT, TRUSTEE
CHRISTOPHER H. GARRETT
REVOCABLE TRUST OF 2007
TAX MAP 233, LOT 119
RCRD 4862-1609
27,366 SQFT, 0.63 ACRES

N/F BRADFORD L. &
CAROL A. MEADE
TAX MAP 233, LOT 97
RCRD 4080-2061

N/F CITY OF PORTSMOUTH
WATER DEPT DPW
TAX MAP 233, LOT 96

LEGEND

- EXISTING CONTOUR
- PROPOSED CONTOUR
- SPOT ELEVATION
- MONUMENT TO BE SET
- MONUMENT FOUND
- UTILITY POLE
- FENCE
- VERTICAL GRANITE CURB
- STONE WALL
- WATER LINE
- SEWER LINE



LOCUS PLAN
N.T.S.

NOTES

- OWNER OF RECORD:
CHRISTOPHER H. GARRETT, TRUSTEE
CHRISTOPHER H. GARRETT REVOCABLE TRUST OF 2007
TAX MAP 233, LOT 119
11 BARBERRY LN
PORTSMOUTH, NH 03801
RCRD: 4862-1609
AREA: 27,366 SF, 0.62 ACRES
- BASIS OF BEARING HELD FROM PLAN REFERENCE #3.
- PARCEL IS IN SINGLE RESIDENCE ZONE B (SRB):
MINIMUM LOT AREA.....15,000 SF
MIN. LOT AREA PER DWELLING UNIT.....15,000 SF
MINIMUM FRONTAGE.....100 FT
MINIMUM DEPTH.....100 FT
SETBACKS:
FRONT.....30 FT
SIDE.....10 FT
REAR.....30 FT
MAXIMUM BUILDING HEIGHT:
SLOPED ROOF.....35 FT
FLAT ROOF.....30 FT
MAXIMUM BUILDING COVERAGE.....20%
MINIMUM OPEN SPACE.....40%
- THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE, AS PER
FLOOD INSURANCE RATE MAP #33015C0254F, PANEL 254
OF 681, DATED JANUARY 29, 2021. VERTICAL DATUM IS
NAVD 1988.

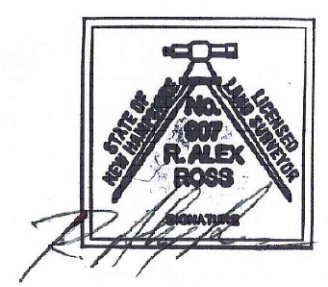
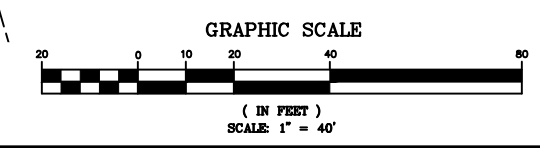
LENGTH TABLE

	BEARING	LENGTH
LI	N 40°14'51" W	10.00'

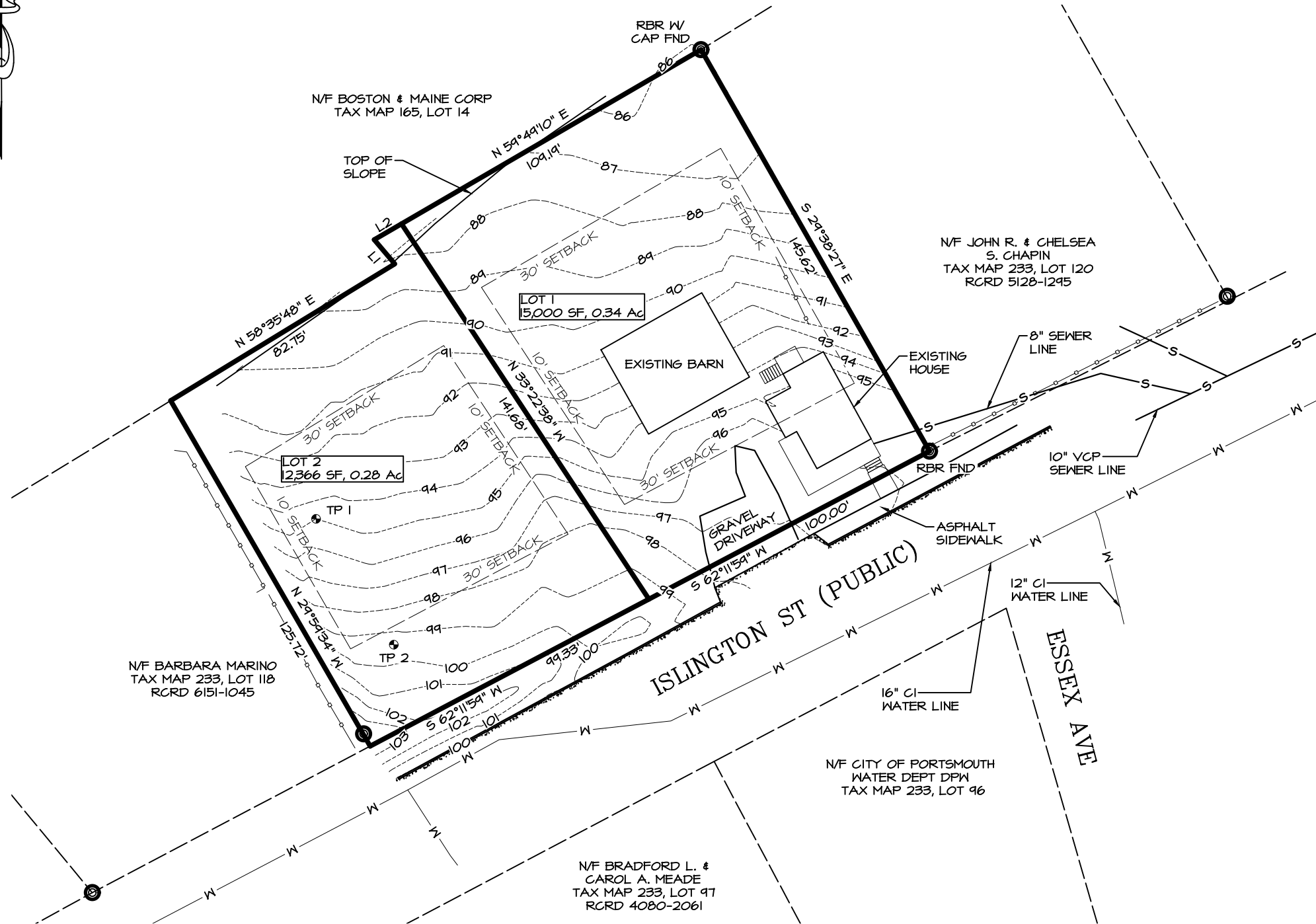
REFERENCE PLANS

- "RIGHT-OF-WAY AND TRACK MAP -
BOSTON AND MAINE RAILROAD STATION
2928+05 TO STATION 2966+20. V3N.H.54
- "LOT LINE REVISION FOR RUTH M. GATS &
FREDERICK C. & JACQUELINE O. MURRAY
TRUSTEES" BY E.J. COTE & ASSOCIATES
INC. DATED JANUARY 17, 2002. RCRD
C-29645
- "TAX MAP 233 LOT 120 BOUNDARY PLAN
PREPARED FOR: JOHN R. & CHELSEA S.
CHAPIN LOCATED AT: 1281 STREET
PORTSMOUTH, NH" BY S&H LAND SERVICES,
DATED NOVEMBER 12, 2012. RCRD
D-36296

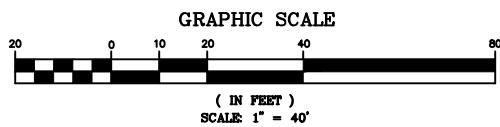
EXHIBIT A



2	2/21/2022	ZBA SUBMITTAL	
1	1/3/2022	ZBA SUBMITTAL	
ISS.	DATE	DESCRIPTION OF ISSUE	
SCALE	1" = 40'		
CHECKED	A.ROSS		
DRAWN	D.D.D.		
CHECKED			
ROSS ENGINEERING, LLC			
Civil/Structural Engineering & Surveying 909 Islington St. Portsmouth, NH 03801 (603) 433-7560			
CLIENT LESLIE & CHRIS GARRETT 1299 ISLINGTON ST PORTSMOUTH, NH 03801			
TITLE BOUNDARY SURVEY & EXISTING CONDITIONS 1299 ISLINGTON ST PORTSMOUTH, NH 03801 TAX MAP 233, LOT 119			
JOB NUMBER	DWG. NO.	ISSUE	
21-036	1 OF 2	2	



LENGTH TABLE		
	BEARING	LENGTH
L1	N 40°14'51" W	10.00'
L2	N 59°49'10" E	9.95'

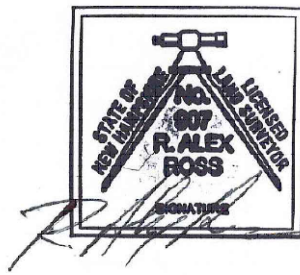


NOTES

- 1) OWNER OF RECORD:
CHRISTOPHER H. GARRETT, TRUSTEE
CHRISTOPHER H. GARRETT REVOCABLE TRUST OF 2007
TAX MAP 233, LOT 119
11 BARBERRY LN
PORTSMOUTH, NH 03801
RCRD: 4862-1609
AREA: 27,366 SF, 0.62 ACRES
- 2) BASIS OF BEARING HELD FROM PLAN REFERENCE #3.
- 3) PARCEL IS IN SINGLE RESIDENCE ZONE B (SRB):
MINIMUM LOT AREA.....15,000 SF
MIN. LOT AREA PER DWELLING UNIT.....15,000 SF
MINIMUM FRONTAGE.....100 FT
MINIMUM DEPTH.....100 FT
SETBACKS:
FRONT.....30 FT
SIDE.....10 FT
REAR.....30 FT
MAXIMUM BUILDING HEIGHT:
SLOPED ROOF.....35 FT
FLAT ROOF.....30 FT
MAXIMUM BUILDING COVERAGE.....20%
MINIMUM OPEN SPACE.....40%
- 4) THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE, AS PER FLOOD INSURANCE RATE MAP #33015C0254F, PANEL 254 OF 681, DATED JANUARY 29, 2021. VERTICAL DATUM IS NAVD 1988.
- 5) TEST PITS WERE PERFORMED ON 12/10/21 BY MARC JACOBS, CCS. SUITABLE SOILS FOR THE CONSTRUCTION OF A SEPTIC SYSTEM WERE FOUND.

LEGEND

- EXISTING CONTOUR
- - - - - PROPOSED CONTOUR
- 100x00 SPOT ELEVATION
- MONUMENT TO BE SET
- MONUMENT FOUND
- UTILITY POLE
- FENCE
- VERTICAL GRANITE CURB
- STONE WALL
- WATER LINE
- SEWER LINE



2	2/21/2022	ZBA SUBMITTAL	
1	1/3/2022	ZBA SUBMITTAL	
ISS.	DATE	DESCRIPTION OF ISSUE	
SCALE 1" = 40'			
CHECKED A.ROSS			
DRAWN D.D.D.			
CHECKED			
ROSS ENGINEERING, LLC Civil/Structural Engineering & Surveying 909 Islington St. Portsmouth, NH 03801 (603) 433-7560			
CLIENT LESLIE & CHRIS GARRETT 1299 ISLINGTON ST PORTSMOUTH, NH 03801			
TITLE SUBDIVISION PLAN 1299 ISLINGTON ST PORTSMOUTH, NH 03801 TAX MAP 233, LOT 119			
JOB NUMBER		DWG. NO.	ISSUE
21-036		2 OF 2	2

Google Maps 1299 Islington St



Imagery ©2022 Google, Imagery ©2022 Maine GeoLibrary, Maxar Technologies, U.S. Geological Survey, Map data ©2022 50 ft

Google Maps 1300 Islington St



Image capture: Oct 2018 © 2022 Google

Google Maps 1324 Islington St



Image capture: Oct 2018 © 2022 Google

Google Maps 1324 Islington St



Image capture: Oct 2018 © 2022 Google

Map of Surrounding Properties



EXHIBIT C



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.

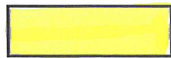
Geometry updated 4/1/2019
Data updated 7/17/2019

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

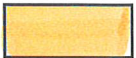
Subject Property



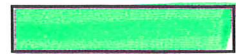
Less than 100' frontage
& less than 15,000 s.f.
lot area

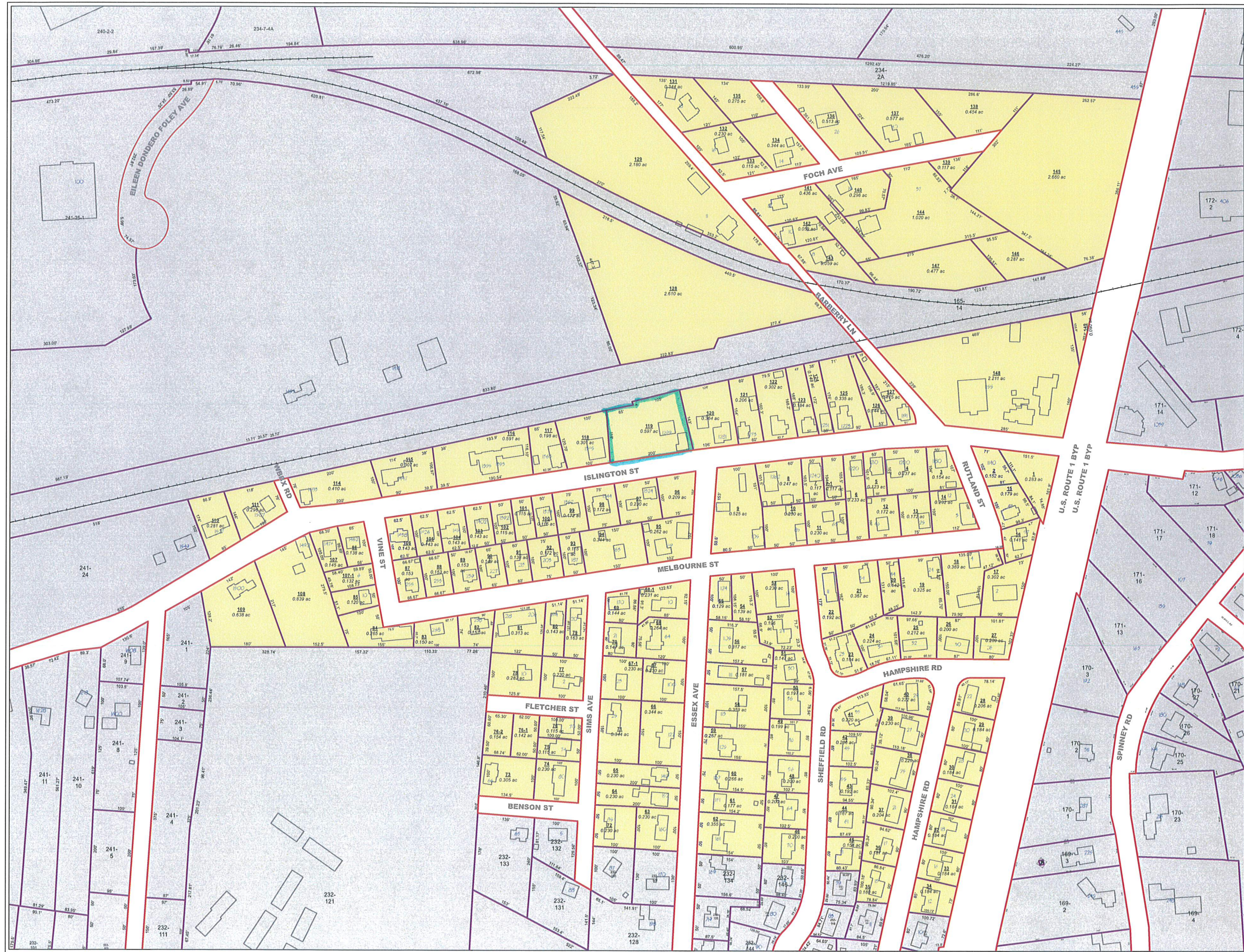


Less than 100' frontage



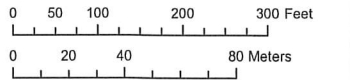
Less than 15,000 s.f.
lot area



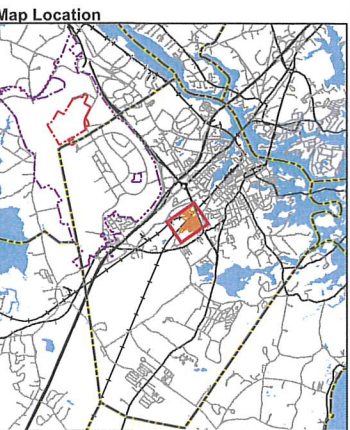
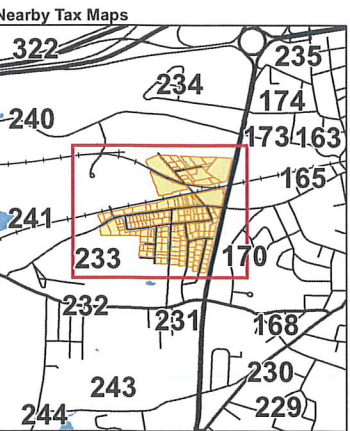


- Partial Legend**
See the cover sheet for the complete legend.
- 7-5A Lot or lot-unit number
 - 2.56 ac Parcel area in acres (ac) or square feet (sf)
 - 23 Address number
 - 233-137 Parcel number from a neighboring map
 - 66' Parcel line dimension
 - SIMS AVE Street name
 - Parcel/Parcel boundary
 - Parcel/ROW boundary
 - Water boundary
 - Structure (1994 data)
 - Parcel covered by this map
 - Parcel from a neighboring map (see other map for current status)

EXHIBIT D



This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over address numbers. Address numbers shown on this map may not represent posted or legal addresses.



Portsmouth, New Hampshire
2020
Tax Map 233