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BY: VIEWPOINT & HAND DELIVERY

February 18, 2022

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

**RE: Variance Application of Mill Pond Way, LLC
139 Essex Avenue, Tax Map 223, Lot 60**

Dear Peter,

Our Office represents Mill Pond Way, LLC and its sole member, Joseph S. Caldarola. 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 139 Essex Avenue:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Existing and Proposed Conditions Plans (2 Sheets);
- 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.

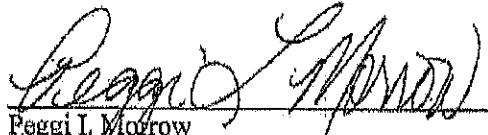
Sincerely,

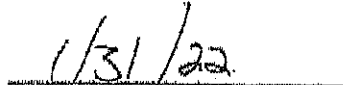


Derek R. Durbin, Esq.

LETTER OF AUTHORIZATION

Peggi I. Morrow, the owner of the property located at 139 Essex Street, Portsmouth, NH 03801 (the "Property") hereby authorizes Mill Pond Way, LLC, Durbin Law Offices PLLC, and Ambit Engineering to act as my agents and representatives in connection with all land use related applications and municipal permit requests being filed with the City of Portsmouth relative to the Property. Said Letter of Authorization shall be valid until expressly revoked in writing.


Peggi I. Morrow


Date

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

Peggi Morrow (Owner)
Mill Pond Way LLC (Applicant)
139 Essex Avenue
Portsmouth, NH 03801
Tax Map 233, Lot 60
(Owners/Applicants)

**INTRODUCTORY STATEMENT
& SUMMARY OF ZONING RELIEF**

Mill Pond Way LLC, by and through its sole member, Joseph Caldarola, is under agreement to purchase the property at 139 Essex Avenue in Portsmouth, identified on Portsmouth Tax Map 233, as Lot 60 (the "Property"). The Property is located within the SRB Zoning District.

In its present condition, the Property is non-conforming with respect to lot area (11,581 sf where 15,000 sf is required), continuous street frontage (75' where 100' is required) and the right yard setback (5' where 10' is required).

There is a small single-family home on the Property that is in poor condition. The home has an obsolete floor plan layout, poor finishes, various structural deficiencies and a driveway that slopes into the attached garage which has been damaged by water intrusion of a period of many years. In short, the home has no redeeming qualities that justify renovating or adding on to it.

The Applicant is purchasing the Property with the intent of demolishing the existing structures and constructing a modest two-story 3 bedroom, 2.5 bath single-family home on it with an attached garage. The proposed home will meet the dimensional requirements of the Ordinance, including the setback, building coverage and open space standards. However, because the Property fails to conform to the Ordinance's lot area per dwelling unit and continuous street frontage requirements, the Applicant must obtain 2 separate but interrelated variances under Section 10.521 to construct the proposed home on the Property, as follows:

Variance Relief

- 1) Lot Area per Dwelling Unit – to allow for the construction of a single-family home on a non-conforming lot of record that has 11,581 square feet of area where 15,000 is required; and
- 2) Continuous Street Frontage – to allow 75' of continuous street frontage where 100' is 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).

Minimum lot area and street frontage requirements are implemented primarily for the purposes of controlling density and maintaining the character of a neighborhood or area.

The Property is a non-conforming lot of record that predates current zoning standards. The Property is consistent in size and contains similar street frontage to most of the surrounding properties and already has a single-family home located on it. The use of the Property will not change. However, by demolishing the existing home and constructing a new one in its place, the Applicant will be bringing the Property into greater conformance with the Ordinance which is a benefit to abutters and the general public. The elimination of the existing right yard setback encroachment will directly benefit the abutter to the south (right) by increasing their light, air and space. The construction of a new home on the Property will observe the density goal of SRB Zoning and remain in keeping with the character of the surrounding area. For the foregoing reasons, granting the variances requested will not alter the essential character of the neighborhood.

The proposed home will replace a home that is not compliant with current life safety and building codes. The new home will comply with current code and will not create any undue demand upon municipal services. Therefore, it will not threaten public health, safety or welfare.

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).

There would be no gain to the public in denying the variance relief sought by the Applicant. The Property is an improved lot of record that predates current zoning that contains a home that is non-conforming and would be cost prohibitive to renovate and add on to. It would do nothing to benefit the public and would constitute a hardship upon the landowner to deny them the right to build a new single-family home on the Property. Under the circumstances, the equitable balancing test for determining whether substantial justice is done weighs overwhelmingly in favor of the Applicant.

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

There is ample evidence throughout the City of Portsmouth that proves that surrounding property values will only increase with the construction of a new home on the Property. The Applicant, who is a well reputed resident and developer in Portsmouth, intends to construct a tastefully designed home that will fit with surrounding architecture a new home construction in the area. There is no evidence to suggest that granting the variances will negatively impact surrounding property values.

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

An unnecessary hardship will be deemed to exist if:

- 1) The Property cannot be used in strict conformance with the Ordinance; or
- 2) Owing to the special conditions of the Property, there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property.

In the present instance, unnecessary hardship exists because the Property cannot be used in strict conformance the Ordinance. The Property does not have sufficient lot area or street frontage to meet current standards for the SRB Zoning District. Therefore, the construction of any new home on the Property requires variance relief.

In the alternative, it would be reasonable to conclude that an unnecessary hardship exists because the Property has special conditions that distinguish it from surrounding properties such that there is no fair and substantial relationship between the applicable Ordinance provisions and their application to the Property. The Property is relatively narrow and small, containing less area and street frontage, in comparison with many of the other properties on this side of Essex Avenue. It already contains a single-family. Denying the variances to construct a new single-family home on the Property would result in a worse outcome than granting them, as the Applicant is proposing to bring the Property into greater conformance with the Ordinance by eliminating the right yard setback encroachment.

The use of the Property for a single-family home is reasonable. Not only is the Property already used for this purpose, but the use is permitted by right and encouraged within the SRB Zoning District.

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,

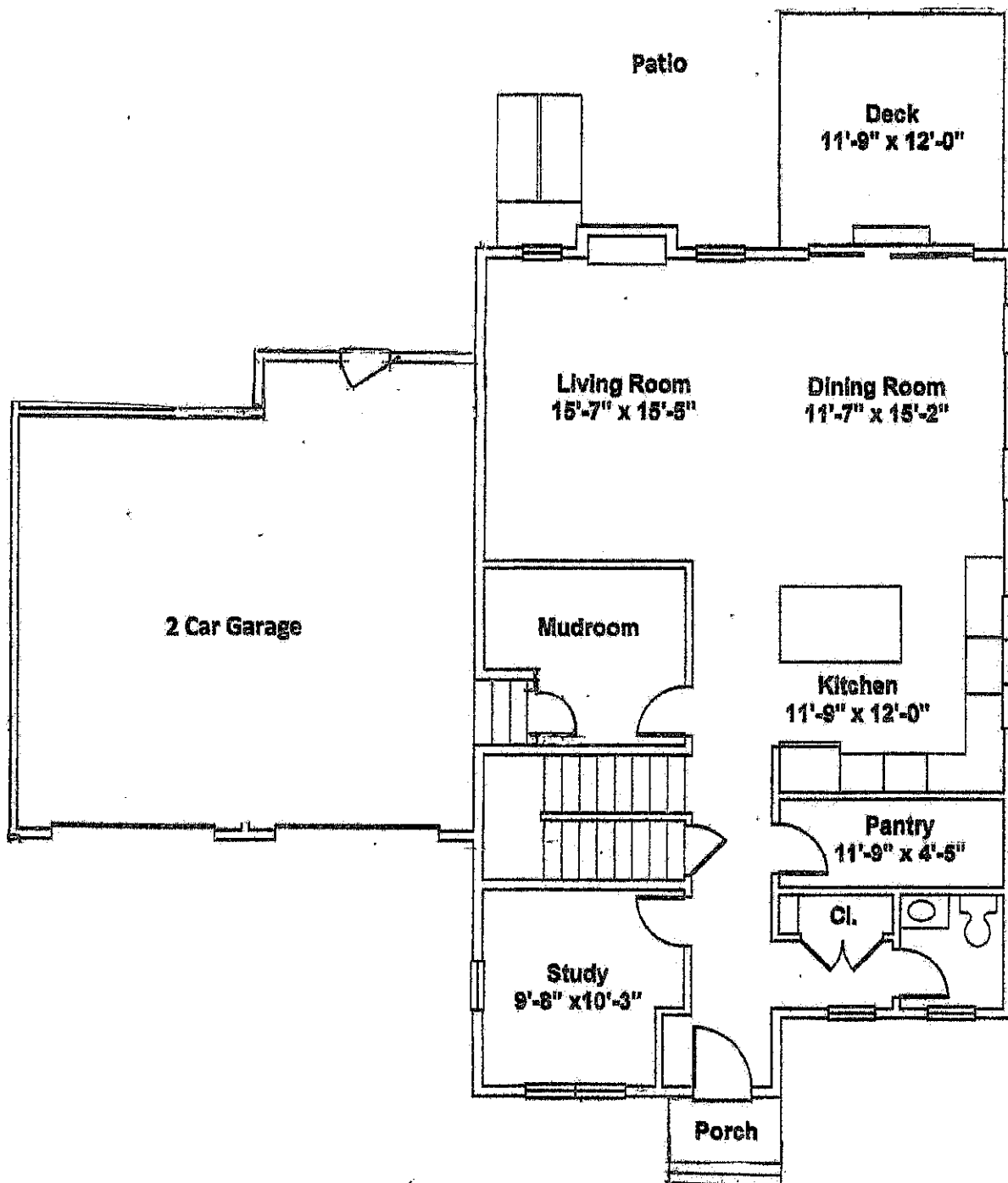
Dated: February 18, 2022

Mill Pond Way LLC

By and Through Their Attorneys,
Durbin Law Offices PLLC



By: _____
Derek R. Durbin, Esq.
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Portsmouth, NH 03801
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derek@durbinlawoffices.com

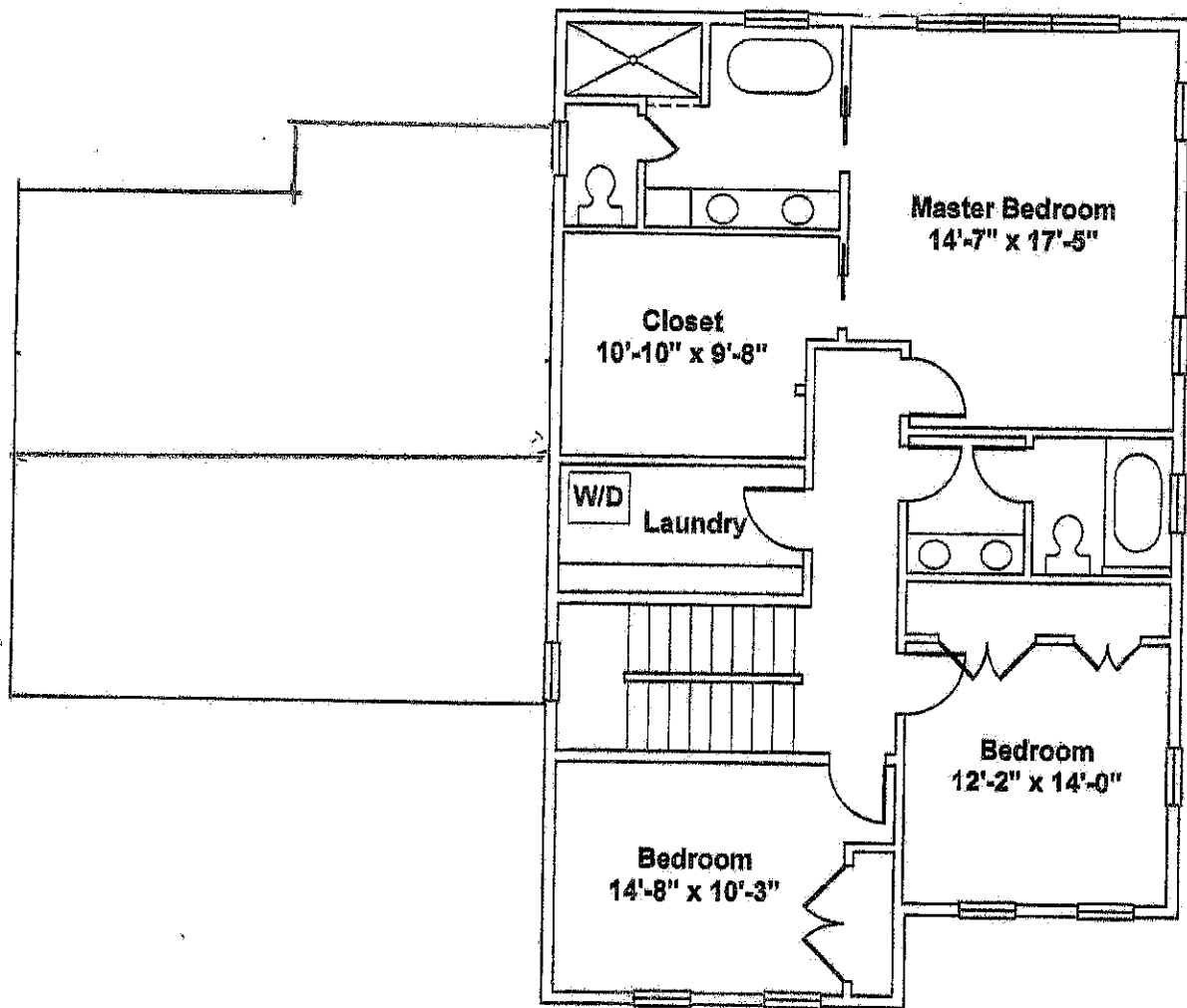


First Floor Plan

139 Essex Avenue Variance Application

Date: February 16, 2022

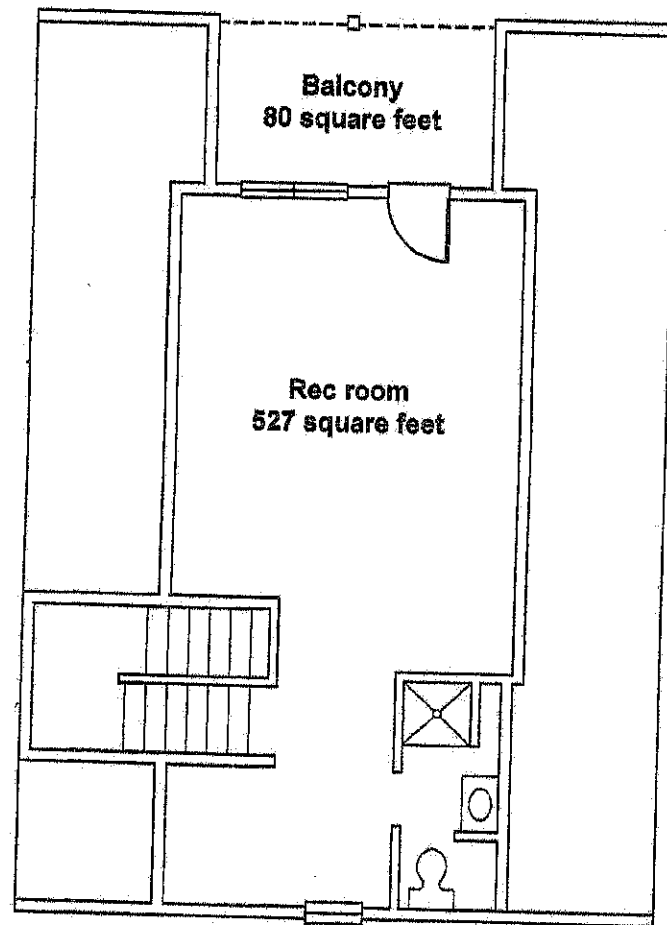
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Second Floor Plan

139 Essex Avenue Variance Application
Date: February 16, 2022

Scale: 1/8"=1'-0"

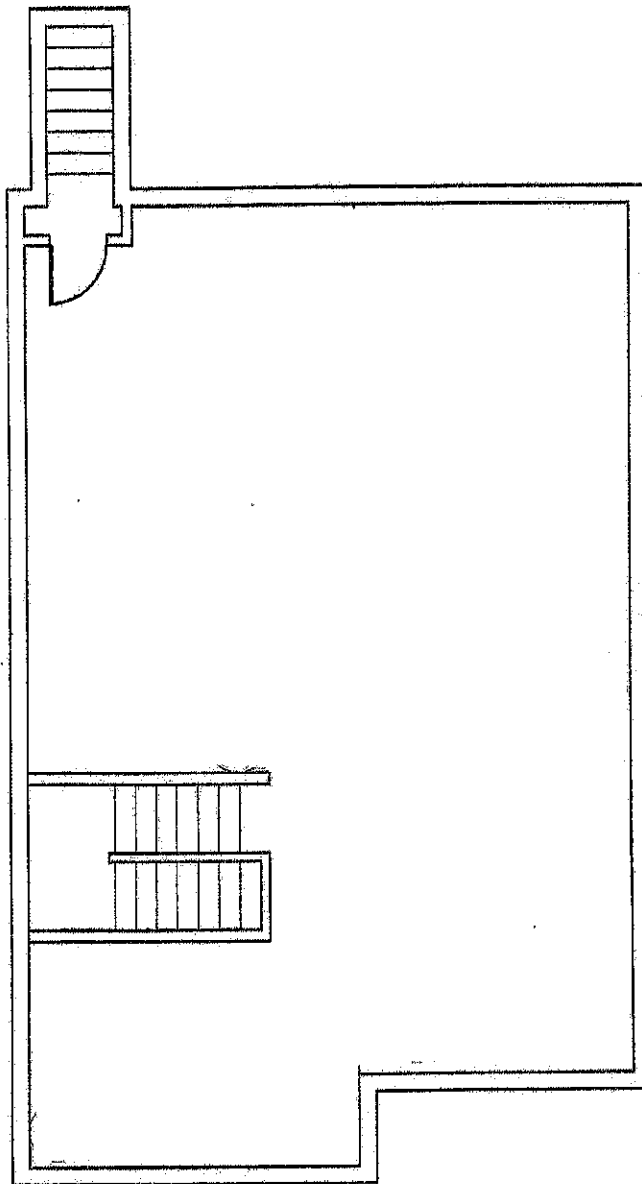


Third Floor Plan

139 Essex Avenue Variance Application

Date: February 16, 2022

Scale: 1/8"=1'-0"



Basement Floor Plan

139 Essex Avenue Variance Application

Date: February 16, 2022

Scale: 1/8"=1'-0"



Front Elevation

139 Essex Avenue Variance Application

Date: February 16, 2022

Scale: 1/8"=1'-0"

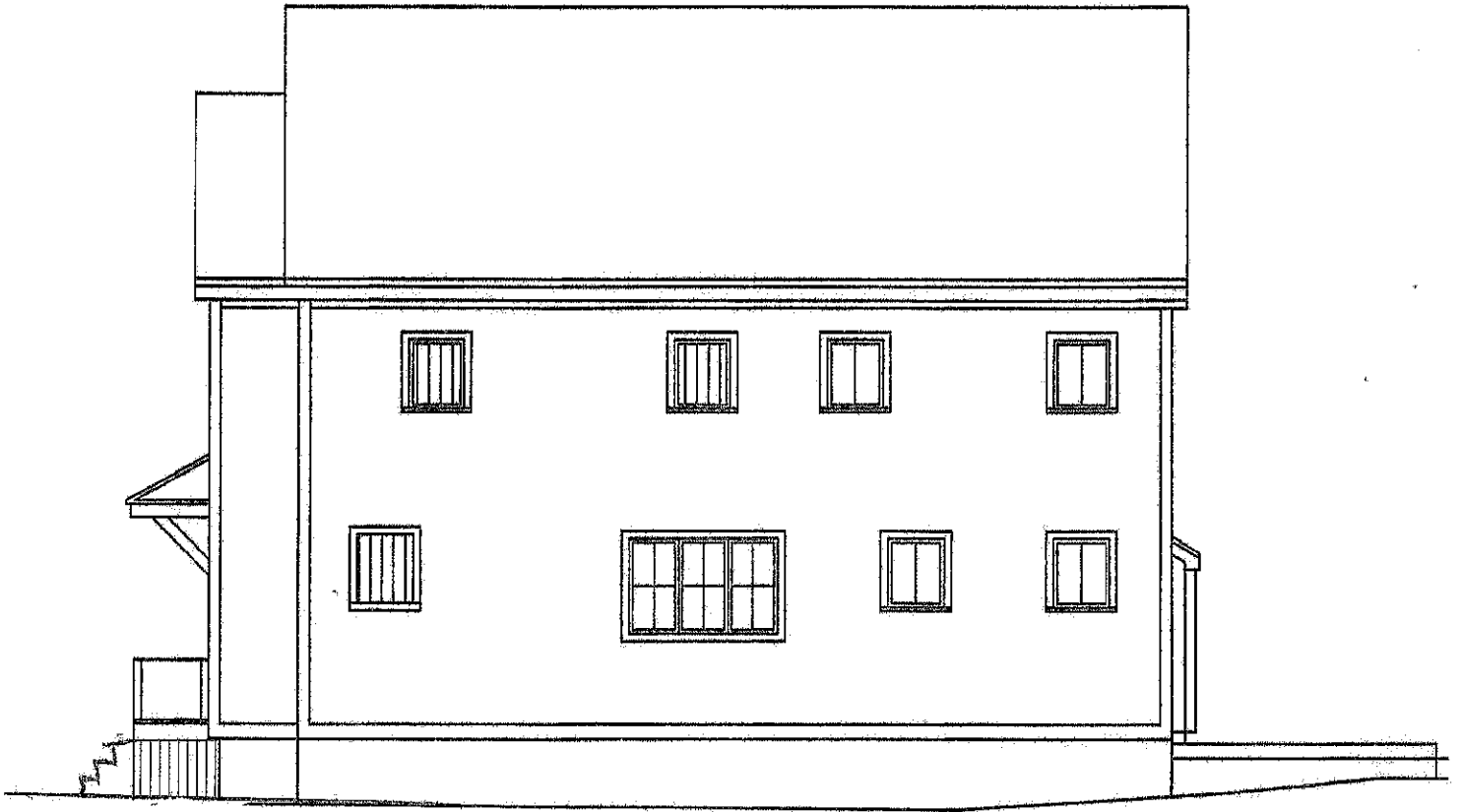


Rear Elevation

139 Essex Avenue Variance Application

Date: February 16, 2022

Scale: 1/8"=1'-0"

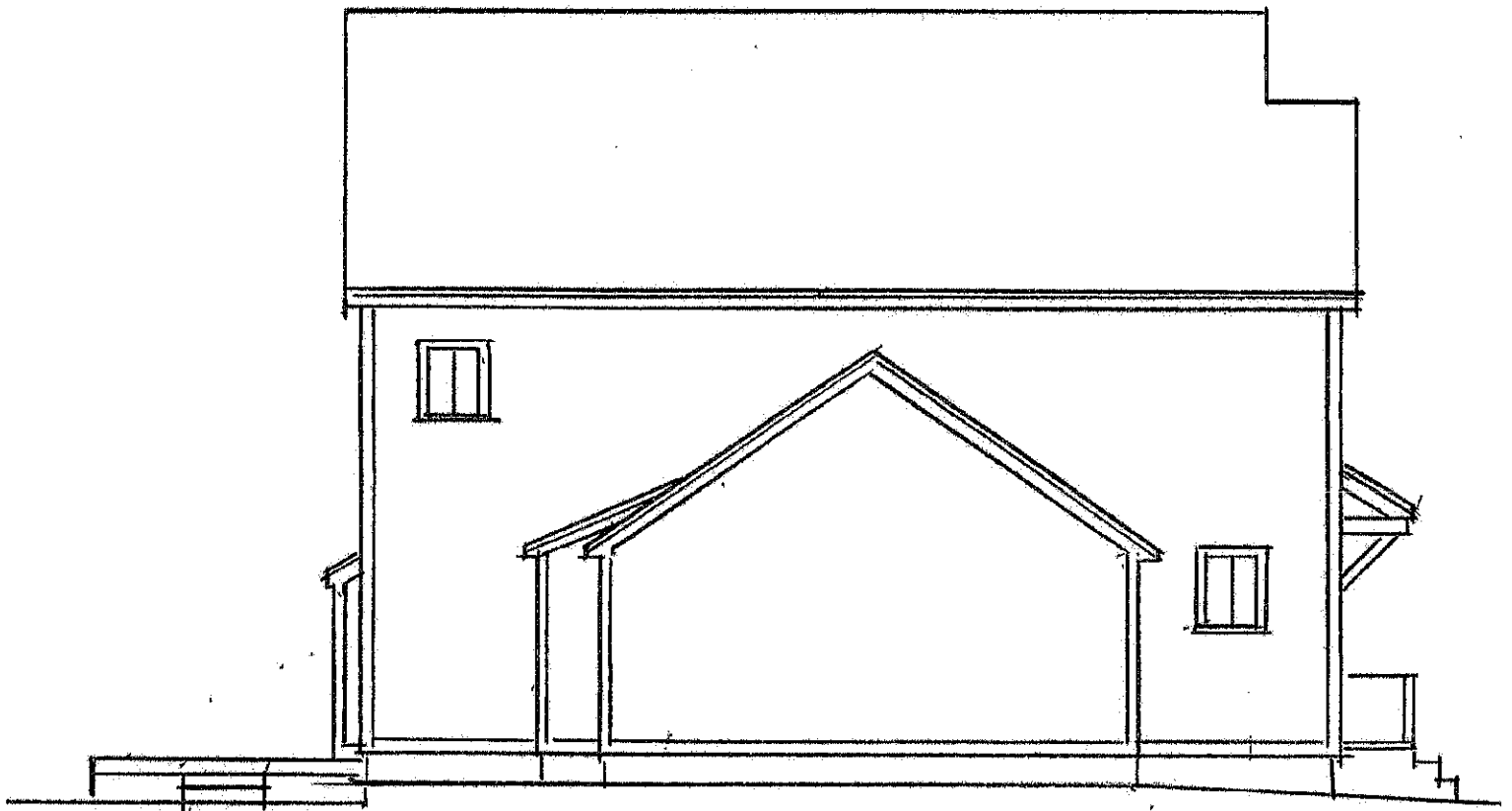


Right Elevation

139 Essex Avenue Variance Application

Date: February 16, 2022

Scale: 1/8"=1'-0"

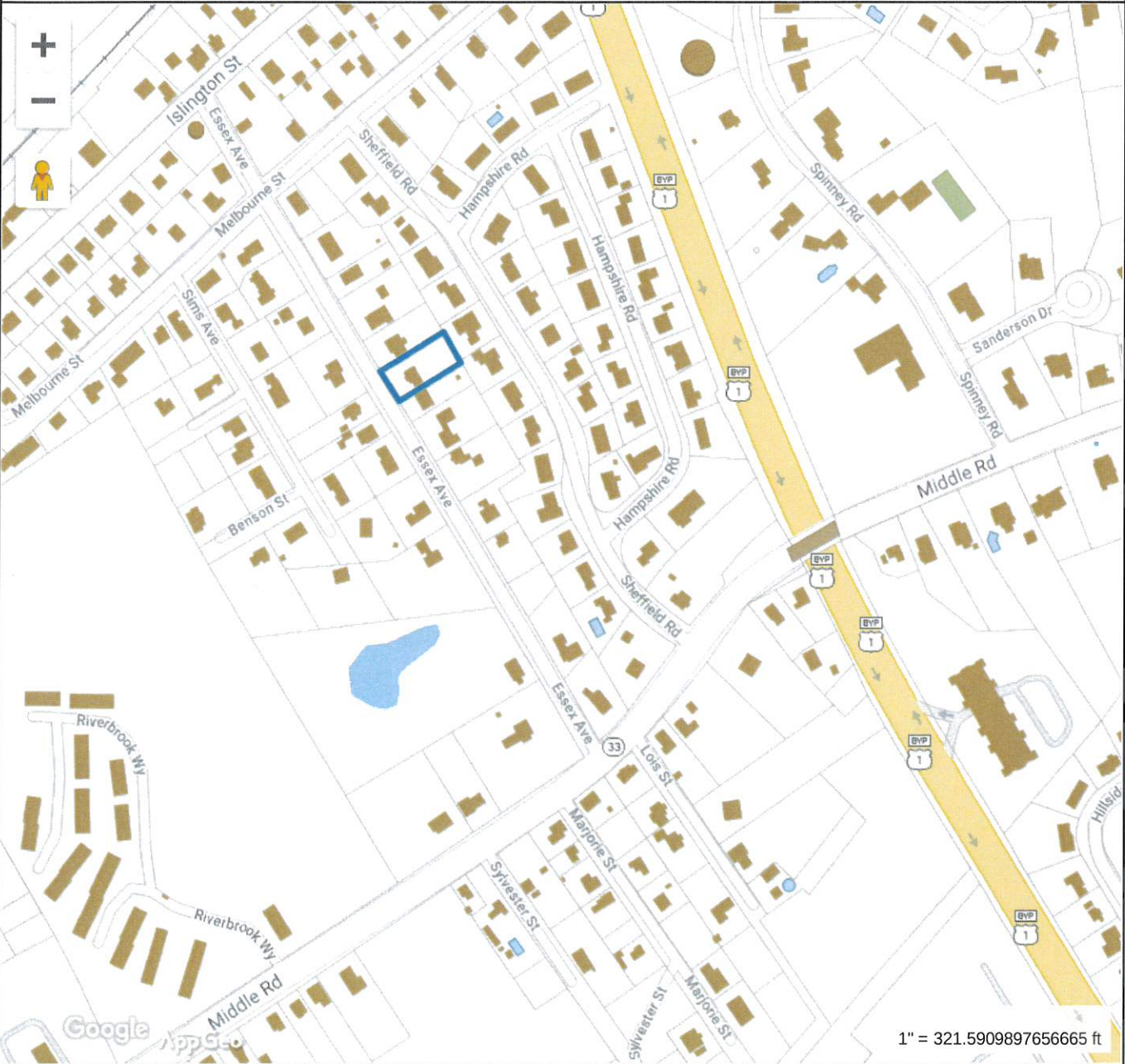


Left Elevation


139 Essex Avenue Variance Application

Date: February 16, 2022

Scale: 1/8"=1'-0"



Property Information	
Property ID	0233-0060-0000
Location	139 ESSEX AVE
Owner	MORROW PEGGI L



**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.



Front Yard View



Rear Yard View



View of Right Side of Property and Attached Garage from Front



View of Left Side of Property from Rear



View from Rear of Right Side of Property