Platisburgh, New York

Building & Zoning Dept. 41 City Hall Place

Plattsburgh, New York 12901

Ph: 518-563-7707

			Fax: 518-563-	-6426
attsburgh		1		
USE CLASS A VARIAN		AREA	SUP SPECIAL USE PERMIT	
Date: AUG 2/	121	Appeal No.	2296	
An application is hereby made allow the property use as herein	to the Zoning Board of Appeals described.	s pursuant to the City of Pl	attsburgh Zoning Ordinance for a variance	e to
Applicant:	JAMES			
Applicant's Address:	36 H1110	REST AVE	PLATISBURGH N	14 129
Telephone No.:	(518) 56			
Parcel Identification:	091300	221.6-	8-45	
Location of Request:	36 Hiller	REST AVE	PLATTSBURGH NY 1290	
Property Owner:	JAMES	REIDY		
Request Description:	FRONT	PORCH DEC	rk	
Zoning District:		RI		
Section Appealed:		360-11		
Previous Appeal:	No.:	Date:		
Identify Applicant's Right to Ap	ply for Variance:			
Ownership:	Long Term Lease:	Contrac	et To Purchase:	
Other (Please Explain):	(8)			
	ances must be accompanied and proposed site plan plus and proposed floor plan.			

The Zoning Board of Appeals may impose reasonable conditions and restrictions on the grant of area and use variances provided they are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning law, and shall be imposed for the purpose of minimizing any adverse

impact such variance may have on the neighborhood or community.

PI

LISA M. BEEBIE Notary Public, State of New York No. 01BE6395749

Qualified in Clinton County *Signatures other than Property Owner require a Letter of Authorization 100mm espires August 5, 2023



Building and Zoning Department 41 City Hall Place Plattsburgh, NY 12901 Ph.: 518 563 7707

Fax: 518-563 6426

Plattsburgh, New York

PROCEDURE IN APPEALING THE ZONING ORDINANCE CLASS B VARIANCE

DEADLINE FOR FILING APPLICATION		8 20	0/21	
ZONING BOARD MEETING DATE	a	20	121	7:00 pm

The Zoning Board of Appeals has been empowered to hear and decide all appeals to the Zoning Ordinance and to do so the Board holds public meetings once a month.

The attached appeal application must be completely filled out and returned to the office for action by the Zoning Board of Appeals at their monthly meeting. The filing fee for said application is as follows:

One and Two-family dwellings - \$ 50.00 Multiple Dwellings \$150.00 Commercial Properties \$150.00

All checks should be made payable to the "City Chamberlain". In order for your appeal to be heard in the same month you apply, the appeal form and fee must be received by this office three weeks prior to the scheduled meeting of the Zoning Board of Appeals. All applicants or their representatives should attend the Zoning Board of Appeals Public Meeting of their appeal to answer any questions the Board may have regarding their request.

In filling out the form, please be specific and supply the Zoning Board of Appeals with all the necessary information requested on the form. If you are requesting a variance from the ordinance, you must detail why the literal enforcement of the ordinance will produce an undue hardship, while the variance requested will adhere to the spirit of the ordinance and do substantial justice. Financial disadvantage to the property is no proof of hardship within the purpose of zoning. In addition to the above, an applicant must submit adequate drawings and a site plan of all requests, which will involve any construction, alterations, or physical change of their property. THIRTEEN (13) copies of the entire packet including drawings, site plans and the original application are required (we recommend the plans be approved before the THIRTEEN (13) copies are made).

Before the Zoning Board of Appeals may hear and decide your appeal, this office must first:

- 1. Publish the request in three successive issues of the Press-Republican newspaper not less than five (5) nor more than ten (10) days before the hearings.
- 2. Notify, by letter, all adjoining property owners of your request

This office is responsible for implementing the above requirements.

If there are any questions, please contact this office. Thank you for your cooperation.

617.20 Appendix B Short Environmental Assessment Form

Instructions for Completing

X

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Povid De 1 4 10		
Part 1 - Project and Sponsor Information		
Name of Action or Project:		-
Project Location (describe, and attach a location map): 3 le Hillerest que Pla Haburgh Brief Description of Proposed Action:	NY 1296/	
Building a front Porch/a door of the house	lick at h	ont
door of the house	8x16	
Name of Applicant or Sponsor:	Telephone: 5-18-50	29-7524
Vames Reidy	E-Mail: Jamie. 12.	14/22 0 1/2
Address: 36 Hillorst are	yern, -	Jose Janes
City/PO: Pla Hshursh	State:	Zip Code:
Does the proposed action only involve the legislative adoption of a plan, administrative rule, or regulation? f Yes, attach a narrative description of the intent of the proposed action and pay be affected in the proposed.	the environmental resource	NO YES
ay so arrected in the municipality and proceed to Part 2. If no, continue to	question 2,	
. Does the proposed action require a permit, approval or funding from any	other governmental Agency	? NO YES
f Yes, list agency(s) name and permit or approval:		AN I
a. Total acreage of the site of the proposed action? b. Total acreage to be physically disturbed? c. Total acreage (project site and any contiguous properties) owned	acres acres	
or controlled by the applicant or project sponsor?	acres	
Check all land uses that occur on, adjoining and near the proposed action. Urban Rural (non-agriculture) Industrial Comm Forest Agriculture Aquatic Other (ercial Residential (subu	
Parkland	specify: Waren acres	53 746 EL

5. Is the proposed action,	YES	N/A
a. A permitted use under the zoning regulations?		
b. Consistent with the adopted comprehensive plan?		
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify:	NO	YES
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES
b. Are public transportation service(s) available at or near the site of the proposed action?		
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?		
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies:	NO	YES
10. Will the proposed action connect to an existing public/private water supply?	NO	YES
If No, describe method for providing potable water:		
11. Will the proposed action connect to existing wastewater utilities?	NO	YES
If No, describe method for providing wastewater treatment:	M	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic	NO	YES
Places? b. Is the proposed action located in an archeological sensitive area?	N	H
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres:		
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that Shoreline Forest Agricultural/grasslands Early mid-successional Wetland Urban	apply:	I.
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed	NO	YES
by the State or Federal government as threatened or endangered?		
16. Is the project site located in the 100 year flood plain?	NO/	YES
17. Will the proposed action create storm water discharge, either from point or non-point sources?	NO	YES
If Yes, a. Will storm water discharges flow to adjacent properties?		
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: YES		

774101 01 01	proposed action include construction or other activities that result in the impoundment ther liquids (e.g. retention pond, waste lagoon, dam)? In purpose and size:	ent of	NO
	. parposo and size.		
19. Has the site solid waste If Yes, describe	e of the proposed action or an adjoining property been the location of an active or comanagement facility?	closed	NO
- es, describe	е:		1
	of the proposed action or an adjoining property been the subject of remediation (of for hazardous waste?	ngoing or	NO
If Yes, describe			
I AFFIRM TH	AT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE	E TO THE T	D.Com.
KNOWLEDG	E PLANT ACCURATE	E TO THE E	SEST C
Signature:	James & Reedy Date: 6	aus 1/	21
	2 Kmaz		
otherwise availa	Assessment. The Lead Agency is responsible for the completion of Part 2. A 2 using the information contained in Part 1 and other materials submitted by the public to the reviewer. When answering the questions the reviewer should be guided easonable considering the scale and context of the proposed action?"	project sponso by the conce	or or pt "Hav
otherwise availa	ble to the reviewer. When answering the question of	No, or small impact may	Mod to l
otherwise availa responses been r	ble to the reviewer. When answering the question of	No, or small impact	Mod to l
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	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for crosion, flooding or drainage		
problems?] [
Part 3 - Determination of significance. The Lead Agency is responsible for the completion of P question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to e question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to e question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to e question in Part 2 that was answered "moderate to large impact adverse environmental impact, element of the proposed action may or will not result in a significant adverse environmental impact, elements the Part 3 should, in sufficient detail, identify the impact, including any measures or design elements the Part 3 should, in sufficient detail, identify the impact, also explain how the lead agency determined the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined the project sponsor to avoid or reduce impacts. Part 3 should be assessed considering its setting, protection will not be significant. Each potential impact should be assessed considering its setting.	at have been	n included by the impact

may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

Check this box if you have determined, based on the information that the proposed action may result in one or more poter environmental impact statement is required. Check this box if you have determined, based on the information that the proposed action will not result in any significant a	mation and analysis above, and any supporting
Name of Lead Agency	Date
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)

ZONING BOARD OF APPEALS

CITY HALL

PLATTSBURGH, NEW YORK 12901

STANDARDS OF PROOF - AREA VARIANCE

A. The applicant for an area variance is not entitled to an area variance unless he has furnished competent proof to satisfy the "practical difficulty standard" and that the variance, if granted will not alter the essential character of the neighborhood.

In order to satisfy the practical difficulty standard, the applicant must prove that the Zoning Ordinance as it applies to his land creates significant economic injury and that the variance, if granted, will not produce a substantial change in the character of the neighborhood. The courts of this state hold that "significant economic injury cannot be established except by dollars and cents proof which includes:

- 1. The original purchase price of the premises.
- 2. The current market value of the premises without an area variance.
- 3. The projected market value of the premises with the variance having been granted."

"Projected market value" in item 3 does not include any cost of valuation for the proposed construction. It includes only the current market value without any variance plus the "value of the right to build." The "value of the right to build" may be said to be the "value of the building permit". How much more valuable is the entire property with a building permit allowing the future construction of the proposed work? Projected market value which includes the value of the work to be constructed will be rejected.

Projected market value can be best shown by the in-person testimony of a real estate appraiser who is present at the hearing. Written appraisals may be less satisfactory because the writer is not present to answer any questions.

The difference between the current market value without the variance and the projected market value with the variance is the amount of economic injury. If the Zoning Board of Appeals determines that this economic injury is significant, then the applicant may be entitled to the area variance.

However, if a town official comes forward at the hearing with testimony establishing that it is important in this particular instance to enforce the Zoning Ordinance as it is written, in order to protect the health, safety and welfare, then the application must be denied. It is important to note that such testimony must be by a town official or someone hired by the town to give the testimony. If the Zoning Board of Appeals agrees with the Town Official that it is important in this case to enforce the Zoning Ordinance as written, then the applicant is not entitled to the area variance, unless he presents further testimony that the enforcement of the ordinance as written will deprive him of any reasonable use of his land. If applicant proves that, then he is entitled to the area variance.

B. The second question to be determined by the Zoning Board of Appeals is whether the the propose will alte the essential character of the neighborhood. Will a substantial detriment to adjoining properties be created? If it will, then the variance may be denied.

C. Other Grounds for Denial:

- 1. Whether the variance applied for is the minimum variance that is necessary.
- 2. Is the variance sought one that is merely desirable for the greater enjoyment of the property, as opposed to one that is necessary for continued practical utilization of the premises? (Bielak v. Zoning Board of Appeals, 78 AD 2d 435).

ZONING BOARD OF APPEALS

CITY HALL

PLATTSBURGH, NEW YORK 12901

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STANDARDS OF PROOF - AREA VARIANCE

- 3. Is this hardship self-created? An area variance cannot be denied solely on the ground of self-created hardship, but is a factor to be considered.
- 4. Is the plight of the owner due to personal problems of the owner as opposed to matters dealing with the land or buildings? While an area variance may not be denied solely on this basis, it is a factor to be considered.

Variance

One of the basic powers given by law to a zoning board of appeals is called the "variance" power. board has the authority to "vary," or modity, the strict letter of a zoning ordinance or local law in cases where this strict interpretation could cause practical difficulties or unnecessary hardships for an individual.

There are two types of requests that come before the board, and the standards by which they are judged differ. A use variance is a re-Appeals boards are frequently confronted with requests for variances. quest to utilize property for a use or activity which is not permitted by the zoning ordinance, and the applicant must demonstrate "unnecessary hardship." An area variance is a request for relief from dimensional activity and the second sec sional standards contained in the zoning ordinance, and it requires a demonstration of "practical diffi-

The basic standards for determining unnecessary hardship and practical difficulty have been established and refined by the courts in numerous cases.

Use Variance

An individual who wants to utilize property for a use that is not permitted by the zoning ordinance must apply for a use variance. An applicant for a use variance must demonstrate unnecessary hardship by satistying each of the following three tests:

1. Uniqueness

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The applicant must prove that there are certain features or conditions of the land that are not generally applicable throughout the zone AND that these features make it impossible to earn a reasonable return without some adjustment. If the features or conditions are generally applicable throughout the district, a variance should not be granted. In those situations where the difficulty is shared by others, the relief should be accomplished by an amendment to the zoning ordinance, not a variance.

2. Reasonable Return

The applicant must demonstrate an inability to realize a reasonable return under any of the uses permitted by the zoning ordinance. There must be a "dollars and cents" proof of the applicant's inability to realize reasonable return; speculation or qualitative assessment is inadequate. Failure to realize the highest return is not considered a hardship.

3. Character

The applicant must prove that the requested modification will not change the character or quality of the neighborhood. In addition, the "spirit" of the ordinance or local law should be preserved.

The applicant for a use variance must meet all three tests before the appeals board may grant relief. use variance should not be granted if the "unnecessary hardship" was created by the applicant. If the appeals board grants a use variance to an applicant who has failed to meet each of the tests, it runs the risk of assuming the function of the legislative body and making a decision contrary to the legislative Intent of the zoning ordinance.

An increasing number of use variance requests is often the sign of an "aged" zoning regulation. appeals board should not circumvent the legislative process by granting use variances. Instead, the appeals board should advise the governing body of the need to reexamine and amend the zonling ordinance.

Area Variance

in the case of an area variance, the applicant is seeking modification of dimensional standards, such as yard requirements, set-back lines, lot coverage, frontage requirements or density regulations, so that the property may be utilized for one of the uses permitted by the zoning ordinance. The appeals board may grant relief if the applicant can demonstrate that strict compliance with the regulations would cause practical difficulty.

The determination of practical difficulty is a three-step process. 3

- First, the applicant must demonstrate that the application of the zoning ordinance to his property causes significant uconomic injury.
- Once the applicant has demonstrated economic injury, then the municipality must show that the regulation in question is reasonably related to a legitimate exercise of the police power.
- 3. Last, assuming the municipality has met its burden of proof, the applicant must demonstrate that the restrictions, as strictly applied in his case, are unrelated to the public health, safety or welfare of the community and that granting the variance will not adversely affect the community.

in making a determination of practical difficulty, the appeals board may consider: 4

- 1. How substantial the variation is in relation to the requirement;
- 2. The potential effect of increased density on available municipal, county and state facilities and ser-
- 3. Whether the variance will cause a substantial change in the character of the neighborhood;
- 4. Whether the difficulty can feasibly be mitigated by some other method; or
- 5. Whether the interests of justice will be served in granting the variance.

The appeals board should grant the minimum relief necessary to allow reasonable use of the land in question. Not every applicant for an area variance is automatically entitled to receive relief. Each application should be carefully considered against the requirement for proof of practical difficulty.

Summary

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The major difference between a use variance and an area variance involves the use of the property. An area variance results in a modification of physical restrictions so that an allowable use may be established on the property. By contrast, a use variance permits the establishment of a use which is prohibited by the zoning ordinance and the zoning map. It is for this reason that the standards for a use variance are more stringent than the standards established for an area variance.

Frequently, the appeals board is encouraged to make legislative decisions under the guise of use variance requests. The appeals board should exercise caution when confronted with a request for a use variance, and only grant those which meet the tests established for determining unnecessary hardship. The appeals board should resist the inclination to correct deficiencies in the zoning ordinance through the exercise of its variance power. If particular provisions of the zoning ordinance are inappropriate or unjust, the appeals board should recommend that the legislative body (City Council, Town Board, Board of Trustees) take the necessary steps to amend the ordinance or local law.

Otto v. Steinhilber, 282 NY 71 (1939), Village of Bronxville v. Francis, 150 NYS 2d 906 (1956); Jayne Estates v. Raynor, 22 NY 2d 417 (1968); Douglaston Civic Association, Inc. v. Kieln, 51 NY 2d 963 (1980).

²Fayetteville v. Jarrold, 53 NY 2d 254 (1981).

" ³Fulling v. Palumbo, 21 NY 2d 30 (1967); National Merrit, Inc. v. Werst, 41 NY 2d 438 (1977).

"" Waschsberger v. Michalls, 19 Misc 2d 909 (1959).

Department of Planning



Note:

This Tech Memo was prepared by the Department of Planning as an informational publication for municipal governments. It is not intended to be a legal opinion.

Area Variances Standards

The state statues define area variances as: "the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by dimensional or physical requirements of the applicable zoning regulations."

General City Law, 81-b(1)

The state statues then go on to provide the zoning board with the standards for granting the area variances;

- "(b) In making it's determination, the zoning board shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:
- (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- (2) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
 - (3) whether the requested area variance is substantial;
- (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and
- (5) whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

The board of appeals , in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community."

Area or Dimensional Variances

Area variances may be granted where setback, frontage, lot size or yard requirements of this Code cannot be reasonably met. In making it's determination the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determinations the board shall also consider the following criteria:

Please give a written response to each section.

(1) Will an undesirable change be produced to the character of the neighborhood or a detriment to nearby properties be created by the granting of the area variance?

NO

- (2) Can the benefit sought by the applicant be achieved by some method, feasible to the applicant to pursue, other than an area variance?
- (3) Is the requested area variance substantial?

NO

(4) Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood?

No

(5) Has the alleged difficulty been self-created? This information shall be relevant to the decision of the board but shall not necessarily preclude granting of the variance.

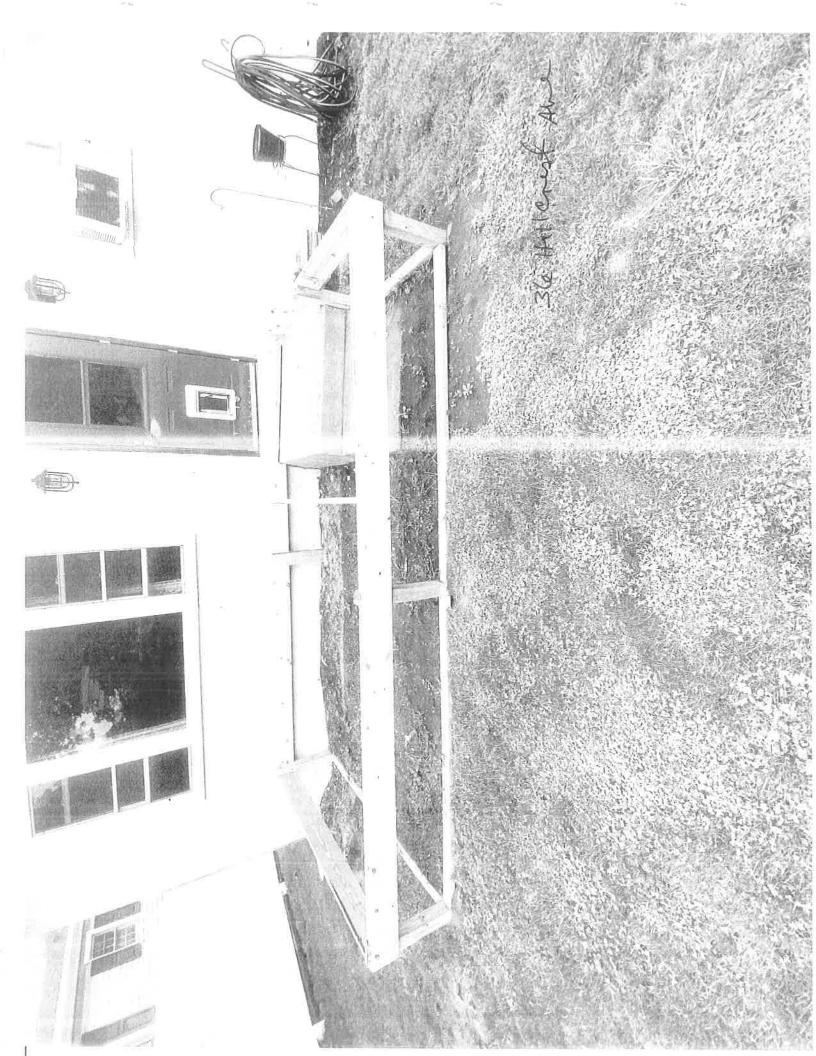


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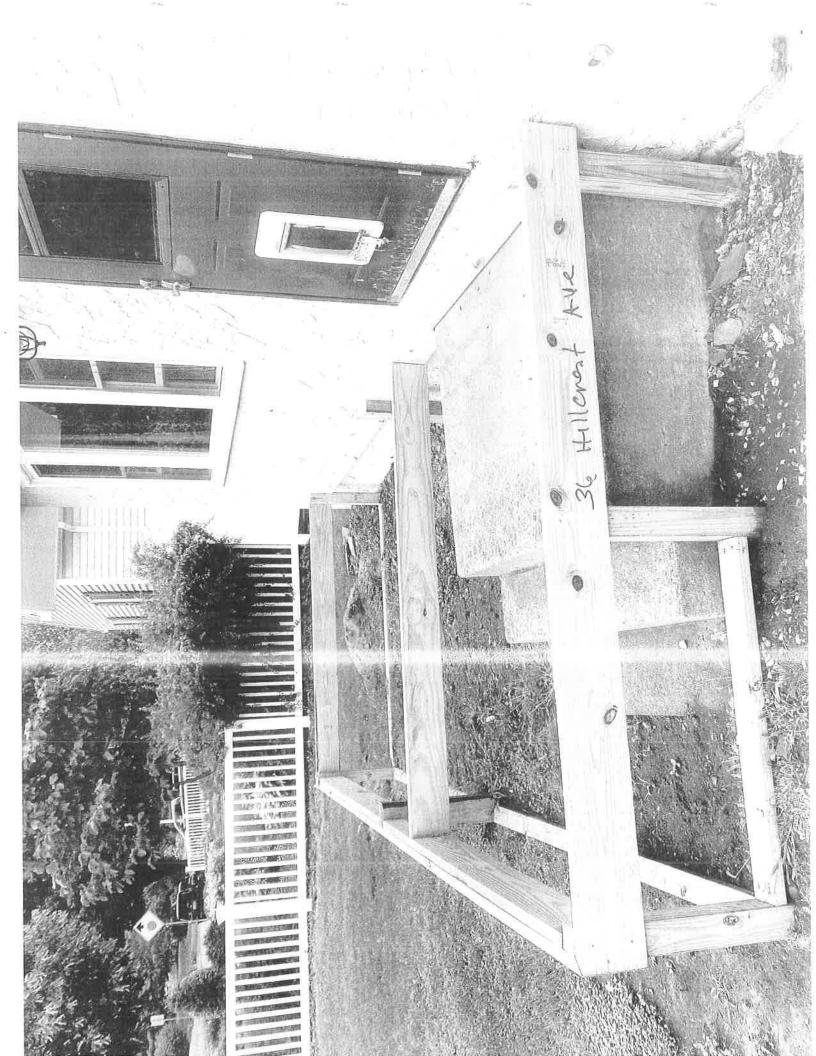
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