Plattsburgh, New York

Building & Zoning Dept. 41 City Hall Place Plattsburgh, New York 12901

Ph: 518-563-7707 Fax: 518-563-6426

Plattsburgh

1101		AREA	SUP	
USI CLASS A VARIAN		SS B VARIANCE	SPECIAL USE PERMIT	
Date: 8/15/20	41	Appeal No 2294		
An application is hereby made allow the property use as herein	n described.		f Plattsburgh Zoning Ordinance for a variance to	
Applicant:	Jamie La	rideal		
Applicant's Address:	162 Broad	(St. 1250/		
Telephone No.:	518 420	6574		
Parcel Identification:	207.18-2-	34.2		
Location of Request:	Yarl			
Property Owner:	Jamie Pa	e de la		
Request Description:	tence inst	fallation - t	high	
Zoning District:	RI			
Section Appealed:	360-14E			
Previous Appeal:	No.:	Date:		
Identify Applicant's Right to A	Apply for Variance:			
Ownership:	Long Term Lease:	Cc	ontract To Purchase:	
Other (Please Explain):				
	riances must be accompa g and proposed site plan g and proposed floor pla	plus original application	n.	
			tations of the most of one and one continu	

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.

Signature (Owner/Applicant)

Print First and Last Name

LISA M. BEEBIE Notary Public, State of New York No. 018E6395749 Qualified in Clinton County

*Signatures other than Property Owner require a Letter of Authorization to the than Property Owner require a Letter of Authorization to the than Property Owner require a Letter of Authorization to the than Property Owner require a Letter of Authorization to the than Property Owner require a Letter of Authorization to the than Property Owner require a Letter of Authorization to the than Property Owner require a Letter of Authorization to the theory of the third to the t

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?

10

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

10

(3) Is the requested area variance substantial?

10

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

10

(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.

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."

Variances

One of the basic powers given by law to a zoning board of appeals is called the "variance" power. The board has the authority to "vary," or modify, 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.

Appeals boards are frequently confronted with requests for variances. 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 request 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 standards contained in the zoning ordinance, and it requires a demonstration of "practical difficulty."

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 satisfying each of the following three tests:

1, Uniqueness

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. A 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 falled to meet each of the tests, it cans 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. The 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 zoning 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 economic injury.
- Once the applicant has demonstrated economic injury, then the municipality must show that the regulation in question is reasonably related to a legitlmate 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

- 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

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 allocable use may be established on the property. By contrast, a use variance permits the establishment of a use which is prohibled 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 contronted 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).

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

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

"Maschsberger v. Michalis, 19 Misc 2d 909 (1959).

Department of Flanning



Nate:

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.

617.20 Appendix B Short Environmental Assessment Form

Instructions for Completing

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.

Project Location (describe, and attach a location map): 1	Name of Action or	tence						
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5. Is the proposed action, a. A permitted use under the zoning regulations?	YES	N/A
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 U	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?	V	
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:		
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	NO	YES
b. Is the proposed action located in an archeological sensitive area?	V	П
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 Suburban	at apply:	
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?	D	$1\Box$
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	YE:
If Yes, a. Will storm water discharges flow to adjacent properties? NO YES	P	
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:		

	. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)?	r	10
If	Yes, explain purpose and size:		7
Ξ			
19	. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility?	1 1	10
If	Yes, describe:		U
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	. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoi completed) for hazardous waste? Yes, describe:	ing or	00
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T 4	AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO	O THE DE	000 4
KI	NOWLEDGE		
AI	pplicant/sponsor name: Jamie Rabideau Date: 8/1 gnature: Jamie Rabideau	0(
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2	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 erosion, flooding or drainage problems?		
11. Will the proposed action create a hazard to environmental resources or human health?		
element of the proposed action may or will not result in a significant adverse environmental impact, part 3 should, in sufficient detail, identify the impact, including any measures or design elements that the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determay or will not be significant. Each potential impact should be assessed considering its setting, probaduration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term cumulative impacts.	t have been mined that t ability of oc	included by he impact curring,
Check this box if you have determined, based on the information and analysis above, and any sthat the proposed action may result in one or more potentially large or significant adverse in environmental impact statement is required. Check this box if you have determined, based on the information and analysis above, and any that the proposed action will not result in any significant adverse environmental impacts.	pacts and a	in _

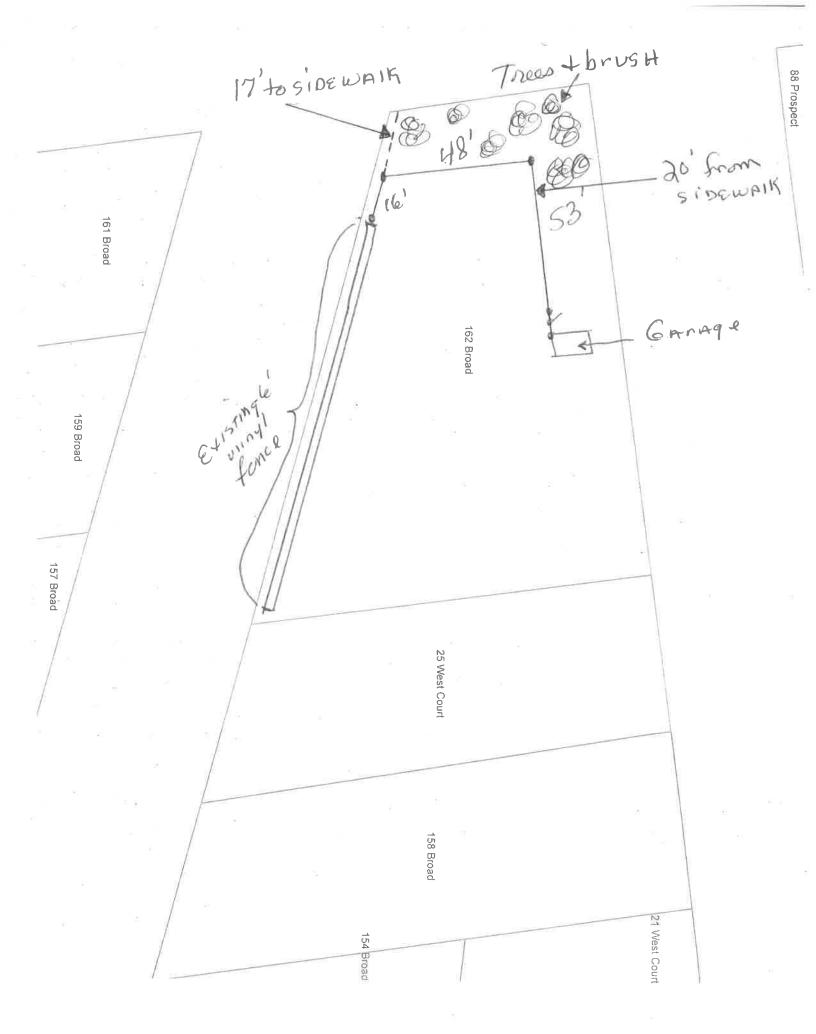
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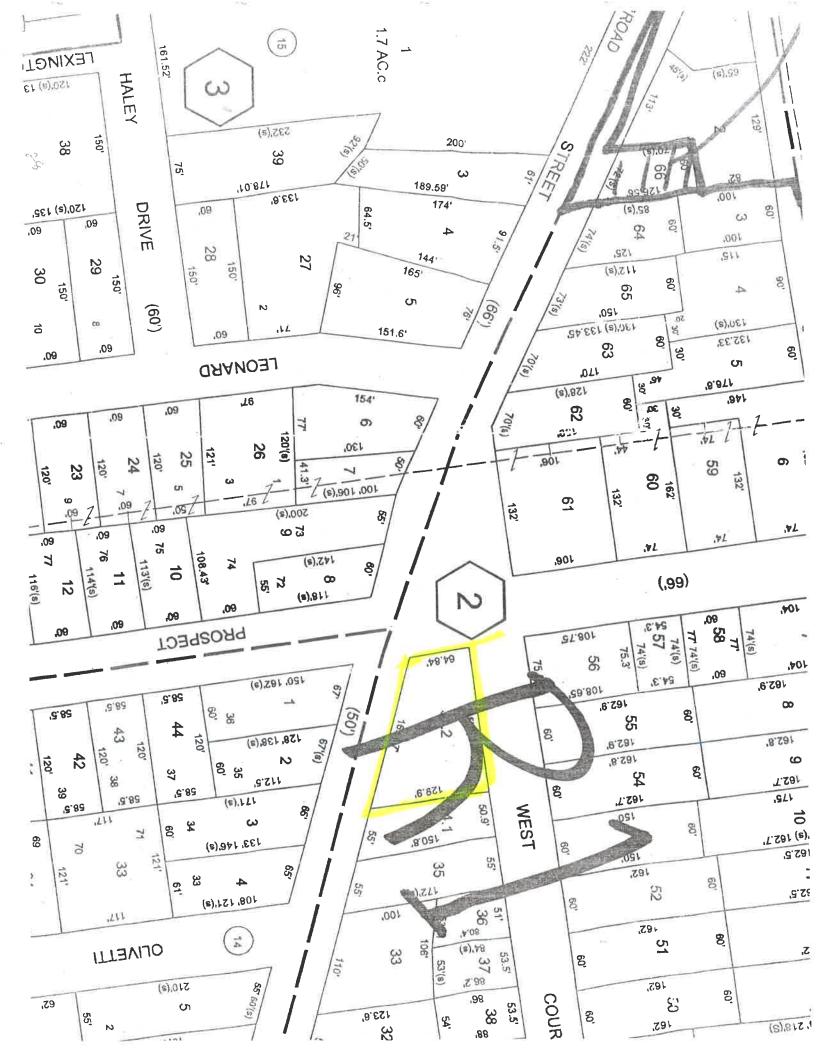
Print or Type Name of Responsible Officer in Lead Agency

Signature of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Preparer (if different from Responsible Officer)





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