



APPLICATION ACCEPTED: January 7, 2014
DATE OF PUBLIC HEARING: April 2, 2014
TIME: 9:00 a.m.

County of Fairfax, Virginia

March 26, 2014

STAFF REPORT

SPECIAL PERMIT APPLICATION NO. SP 2014-MA-002

MASON DISTRICT

APPLICANTS/ OWNERS: Saba Y. Tesfazgi & Merhawi K. Mebrahtu

LOCATION: 5009 Lincoln Ave., Lincolnia, 22312

SUBDIVISION: Lincolnia Park, Section 1

TAX MAP REFERENCE: 72-3 ((10)) 11

LOT SIZE: 24,773 square feet

ZONING DISTRICT: R-2

ZONING ORDINANCE PROVISION: 8-914

SPECIAL PERMIT PROPOSAL: To permit modification of minimum yard requirements based on error in building location to permit addition to remain 5.3 ft. from side lot line.

A copy of the BZA's Resolution setting forth this decision will be mailed within five (5) days after the decision becomes final.

O:\vgumk2\SP_VC Cases\4-2) SP 2014-MA-002 Tesfazgi (Error)\SP 2014-MA-002 Tesfazgi.docx

Laura Gumkowski

Department of Planning and Zoning
Zoning Evaluation Division
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035-5509
Phone 703-324-1290 FAX 703-324-3924
www.fairfaxcounty.gov/dpz/



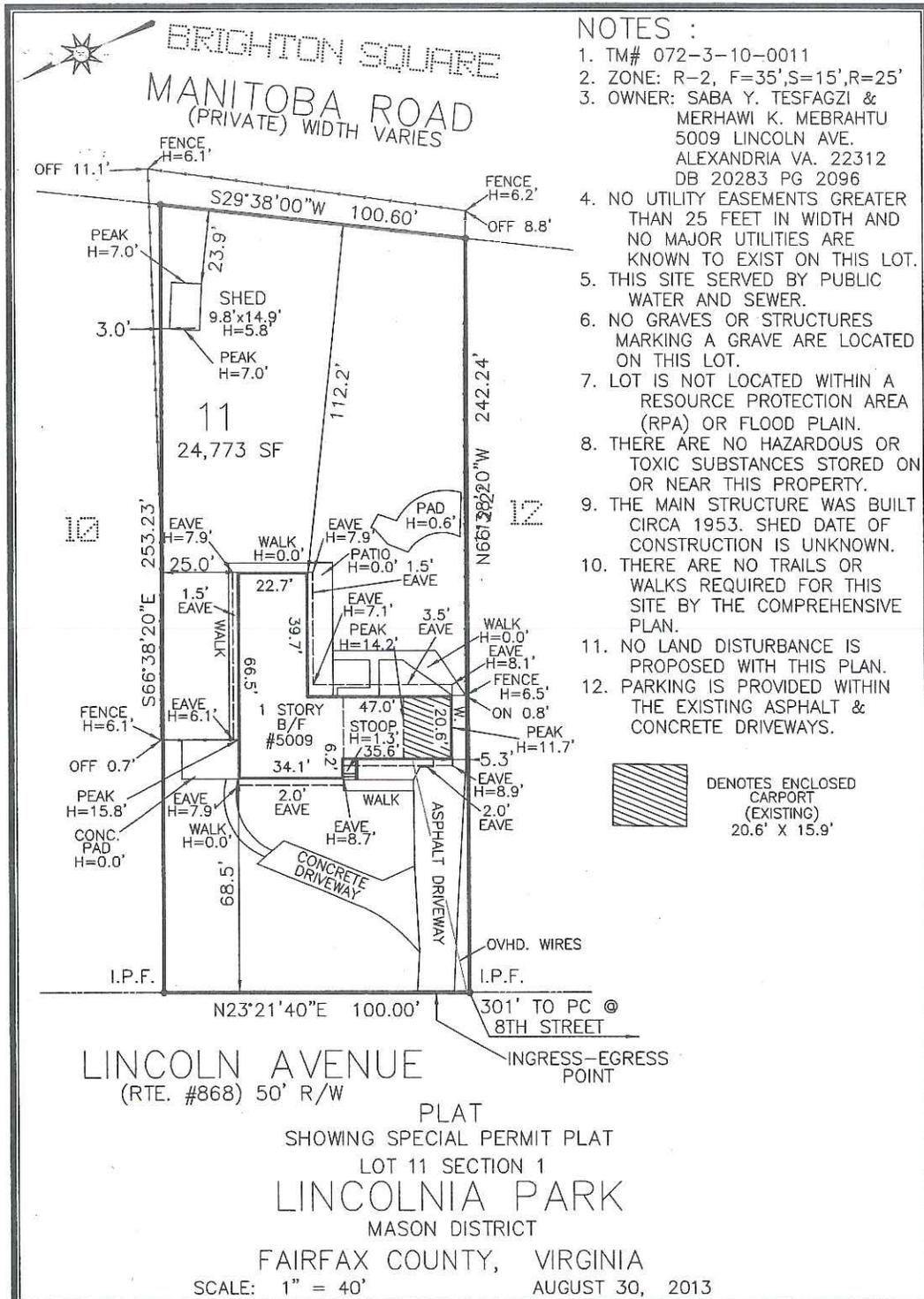
Excellence * Innovation * Stewardship
Integrity * Teamwork * Public Service

The approval of this special permit does not interfere with, abrogate or annul any easement, covenants, or other agreements between parties, as they may apply to the property subject to this application.

For additional information, call Zoning Evaluation Division, Department of Planning and Zoning at 324-1280, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035. **Board of Zoning Appeals' meetings are held in the Board Room, Ground Level, Government Center Building, 12000 Government Center Parkway, Fairfax, Virginia 22035-5505.**



Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).



- NOTES :
1. TM# 072-3-10-0011
 2. ZONE: R-2, F=35',S=15',R=25'
 3. OWNER: SABA Y. TEFAGZI & MERHAWI K. MEBRAHTU
5009 LINCOLN AVE.
ALEXANDRIA VA. 22312
DB 20283 PG 2096
 4. NO UTILITY EASEMENTS GREATER THAN 25 FEET IN WIDTH AND NO MAJOR UTILITIES ARE KNOWN TO EXIST ON THIS LOT.
 5. THIS SITE SERVED BY PUBLIC WATER AND SEWER.
 6. NO GRAVES OR STRUCTURES MARKING A GRAVE ARE LOCATED ON THIS LOT.
 7. LOT IS NOT LOCATED WITHIN A RESOURCE PROTECTION AREA (RPA) OR FLOOD PLAN.
 8. THERE ARE NO HAZARDOUS OR TOXIC SUBSTANCES STORED ON OR NEAR THIS PROPERTY.
 9. THE MAIN STRUCTURE WAS BUILT CIRCA 1953. SHED DATE OF CONSTRUCTION IS UNKNOWN.
 10. THERE ARE NO TRAILS OR WALKS REQUIRED FOR THIS SITE BY THE COMPREHENSIVE PLAN.
 11. NO LAND DISTURBANCE IS PROPOSED WITH THIS PLAN.
 12. PARKING IS PROVIDED WITHIN THE EXISTING ASPHALT & CONCRETE DRIVEWAYS.

 DENOTES ENCLOSED CARPORT (EXISTING) 20.6' X 15.9'

LINCOLN AVENUE
(RTE. #868) 50' R/W

PLAT
SHOWING SPECIAL PERMIT PLAT
LOT 11 SECTION 1
LINCOLNIA PARK
MASON DISTRICT
FAIRFAX COUNTY, VIRGINIA

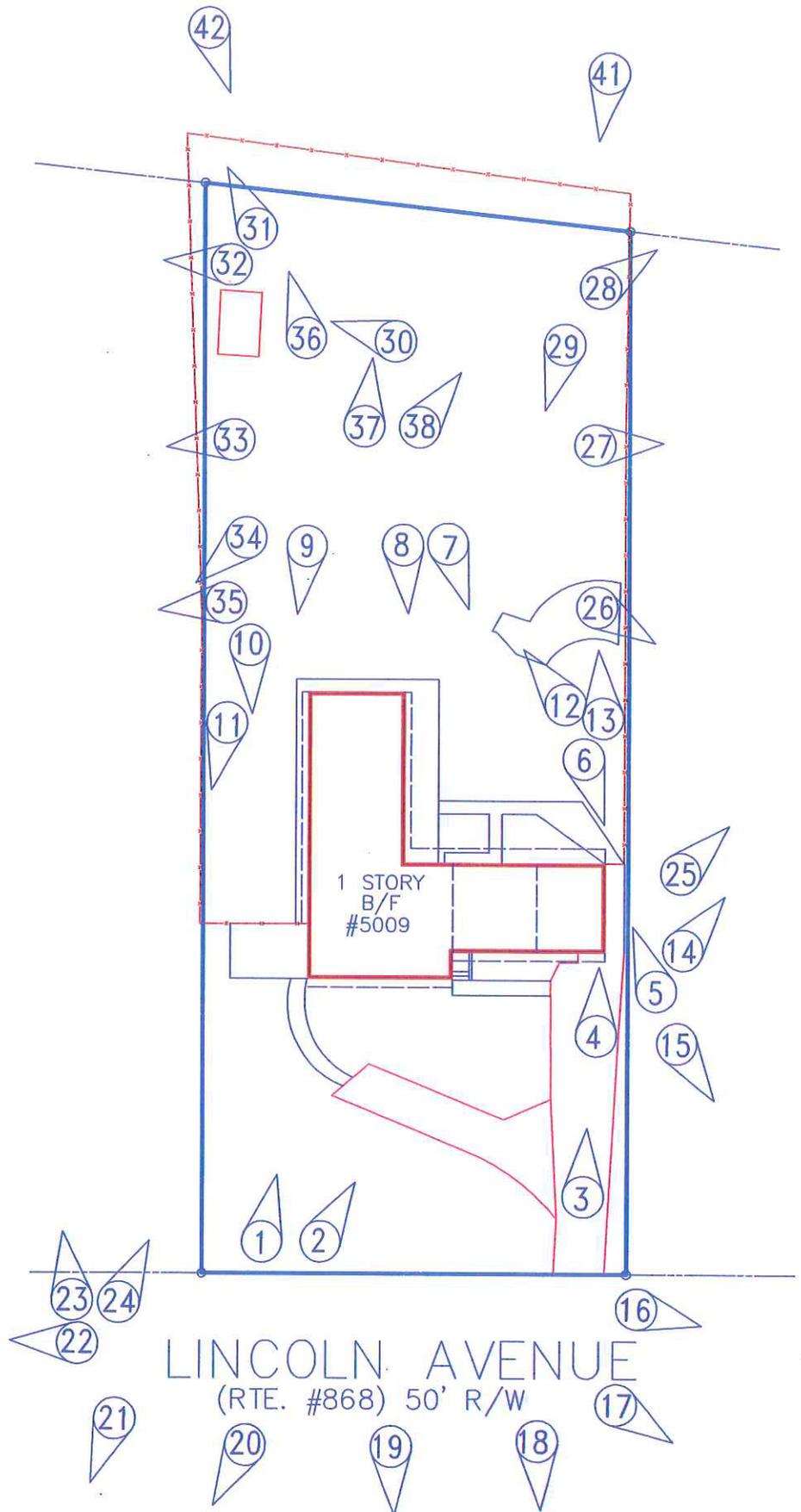
SCALE: 1" = 40' AUGUST 30, 2013

CASE NAME:	GRAPHIC SCALE 0 40 80
	<p>BY PROVISIONS OF THE VIRGINIA CODE: NO CORNER MARKERS SET. BOUNDARY SURVEY NOT PERFORMED. PLAT SUBJECT TO RESTRICTIONS OF RECORD, TITLE REPORT NOT FURNISHED.</p> <p>I HEREBY CERTIFY THAT THE POSITIONS OF ALL THE EXISTING IMPROVEMENTS HAVE BEEN CAREFULLY ESTABLISHED BY A CURRENT FIELD SURVEY, AND UNLESS OTHERWISE SHOWN, THERE ARE NO VISIBLE ENCROACHMENTS.</p> <p>REQUESTED BY: MERHAWI KABROM</p> <p>ALEXANDRIA SURVEYS, LLC 3949 PENDER DRIVE, STE #120 FAIRFAX, VIRGINIA 22030 TEL. NO. 703-636-1313 FAX NO. 703-636-4266</p>

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Department of Planning & Zoning

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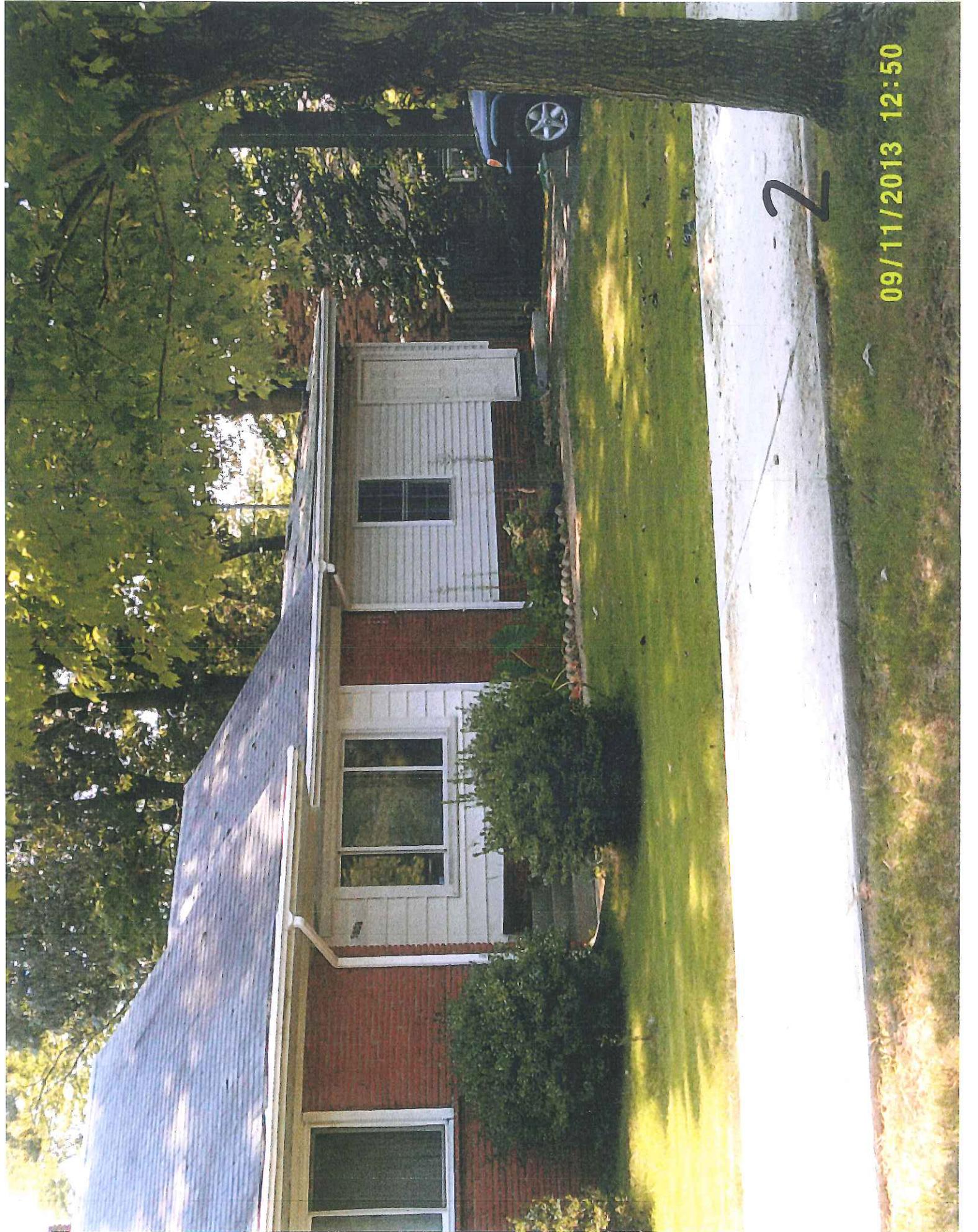
Zoning Evaluation Division



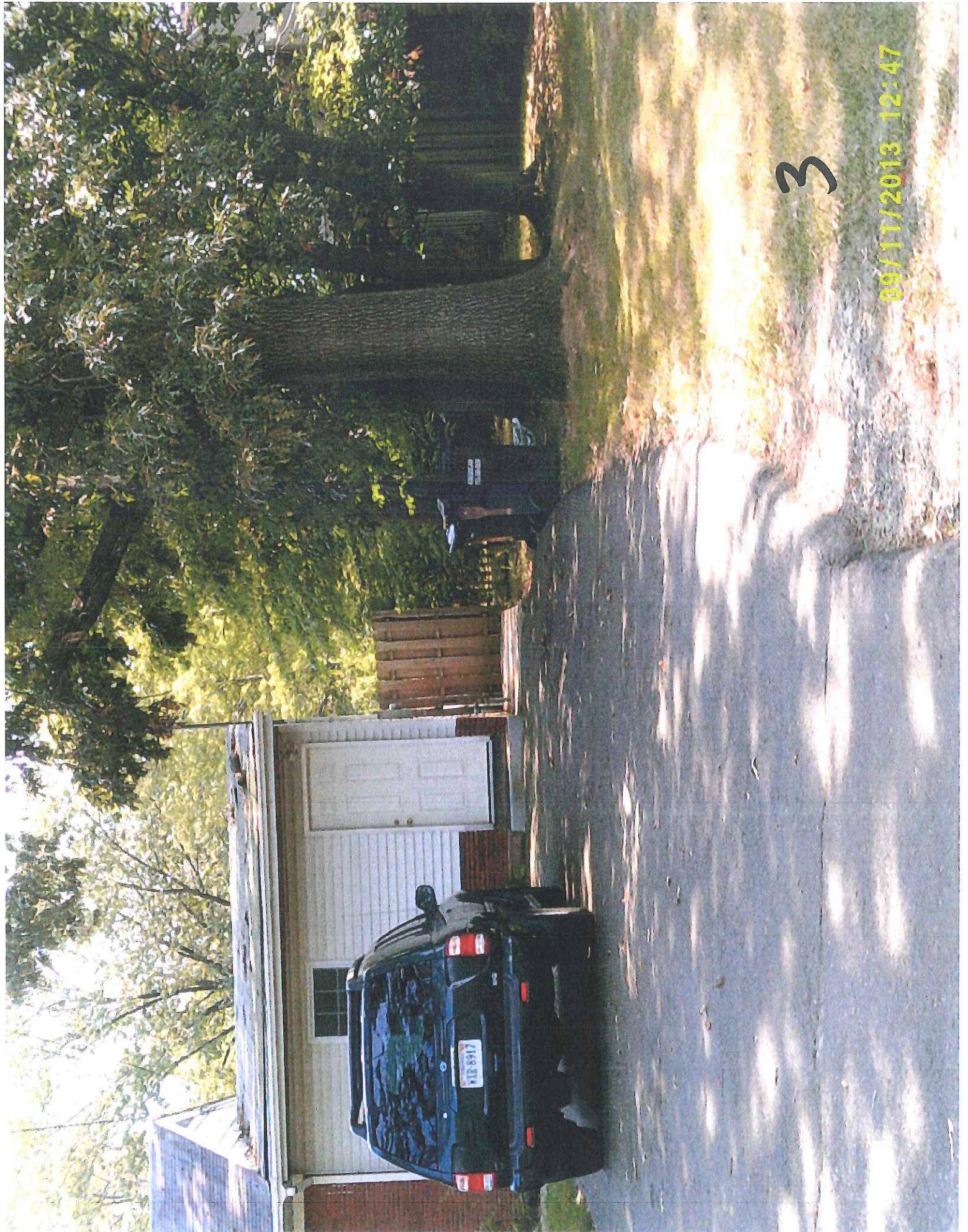


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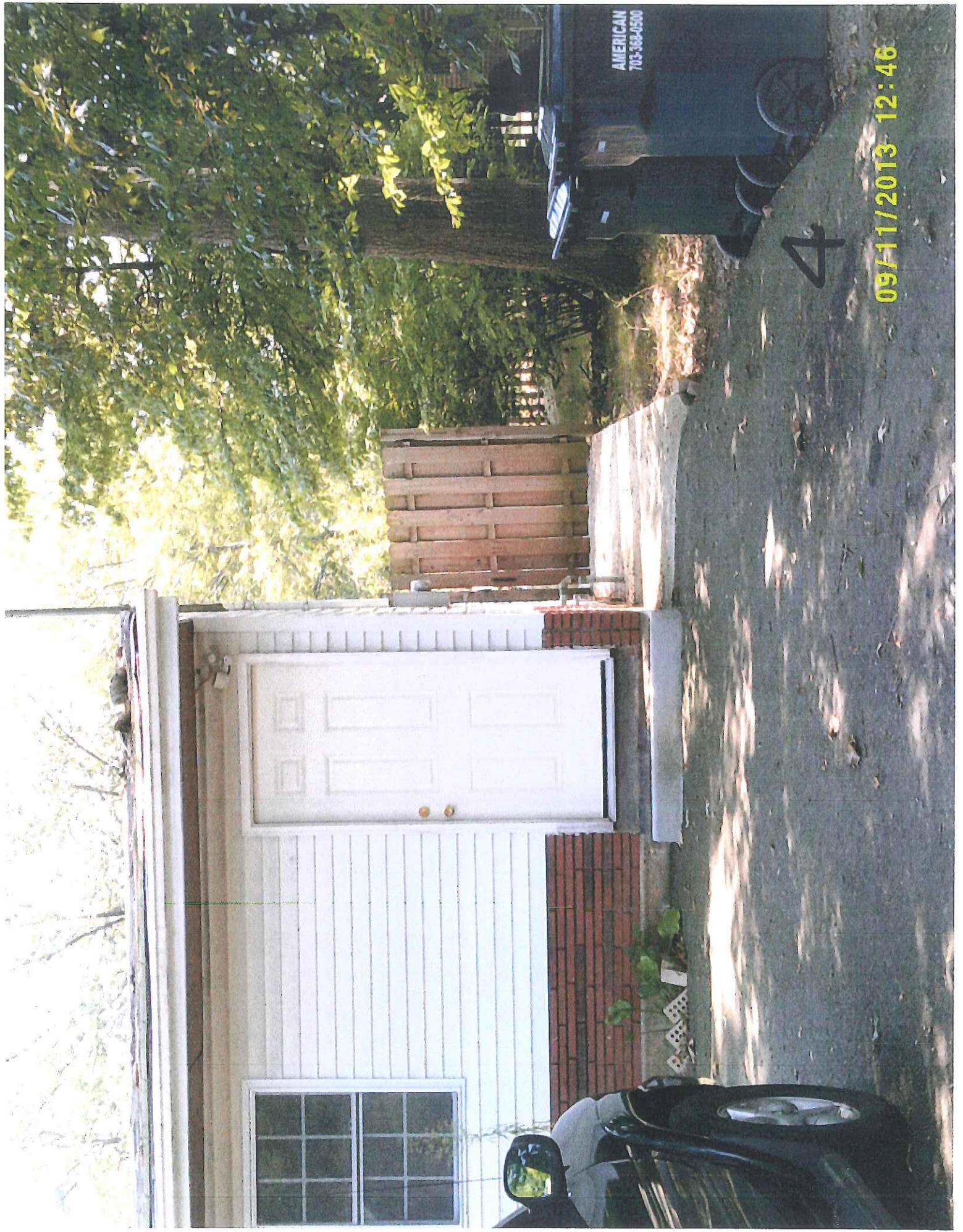


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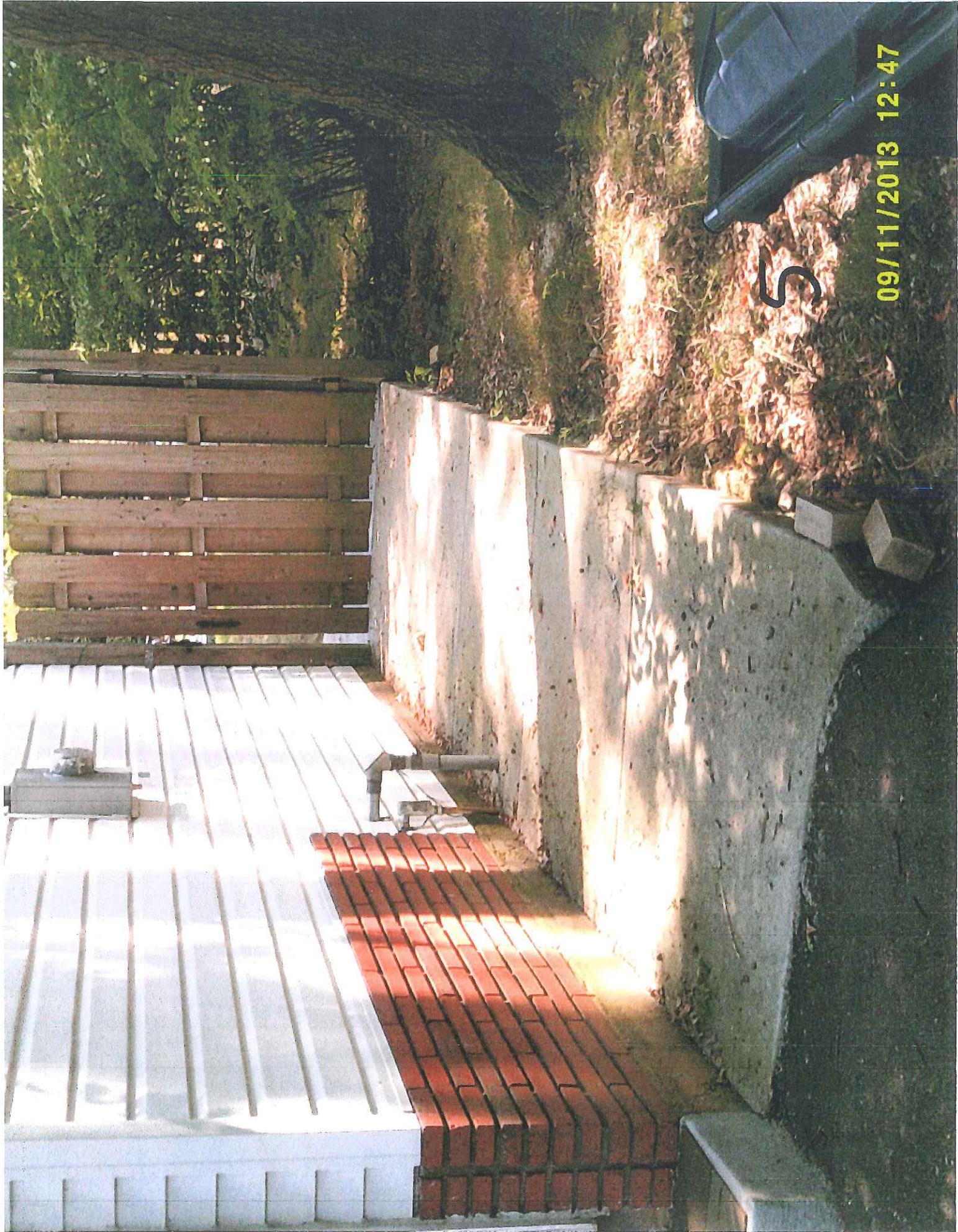
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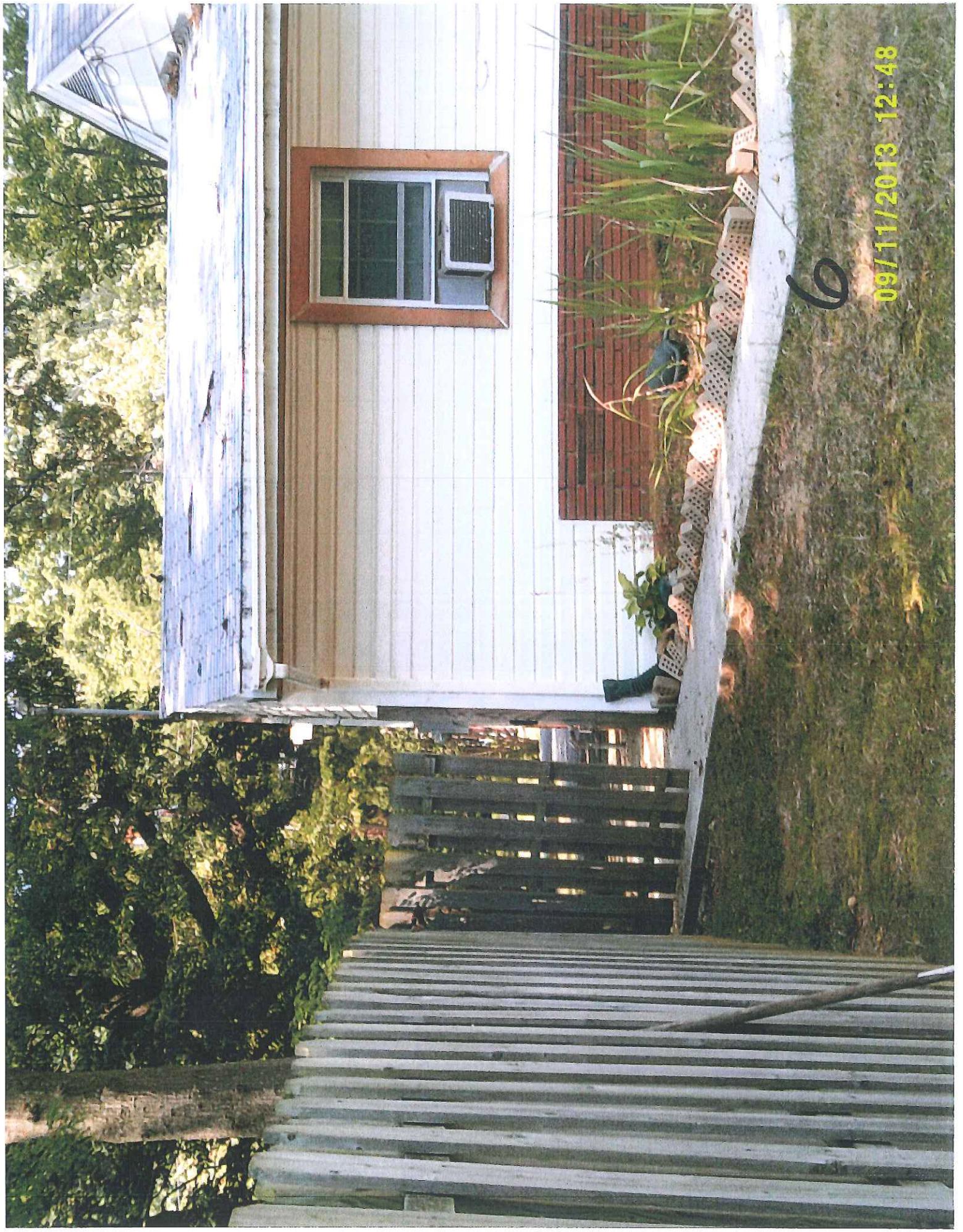
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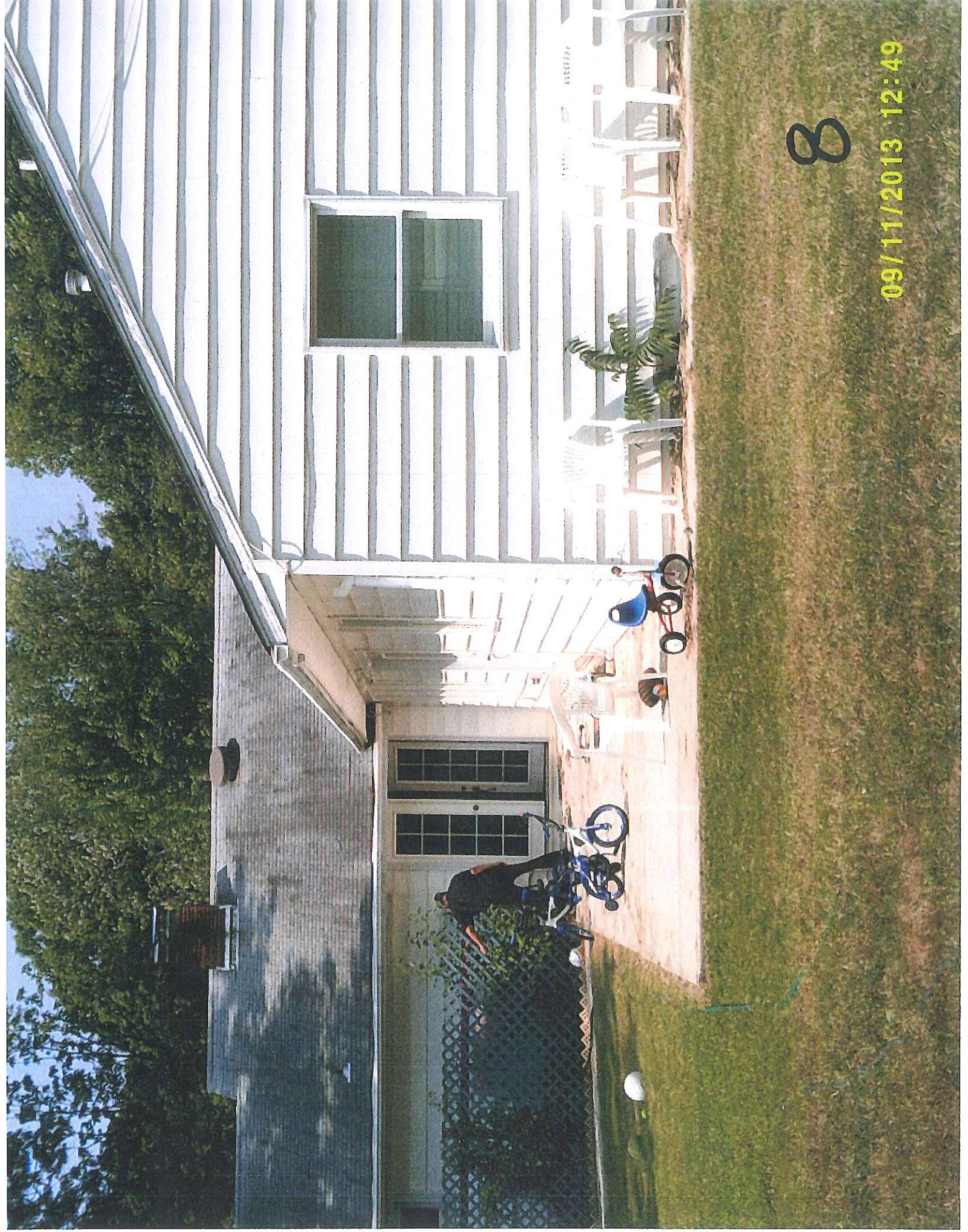
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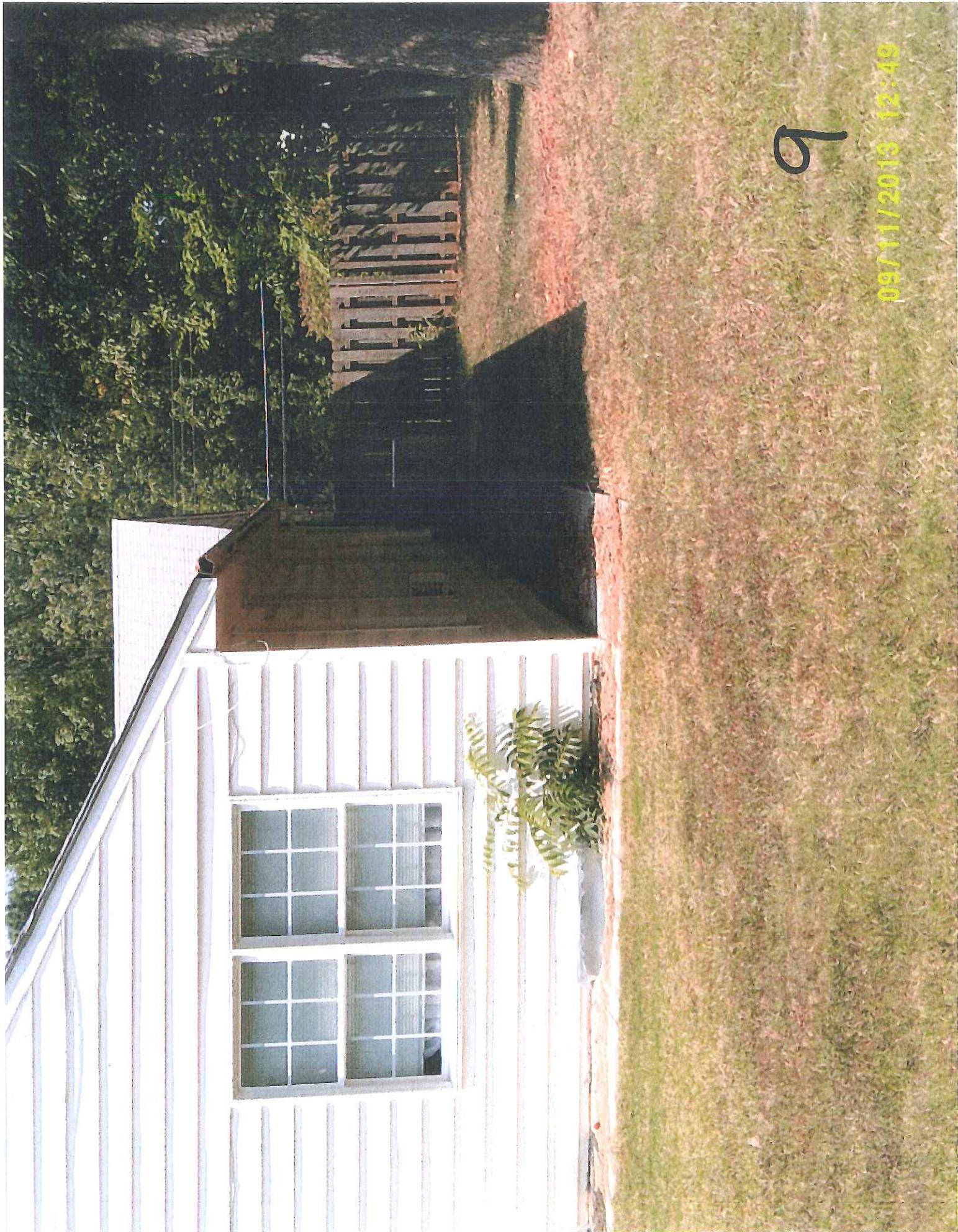
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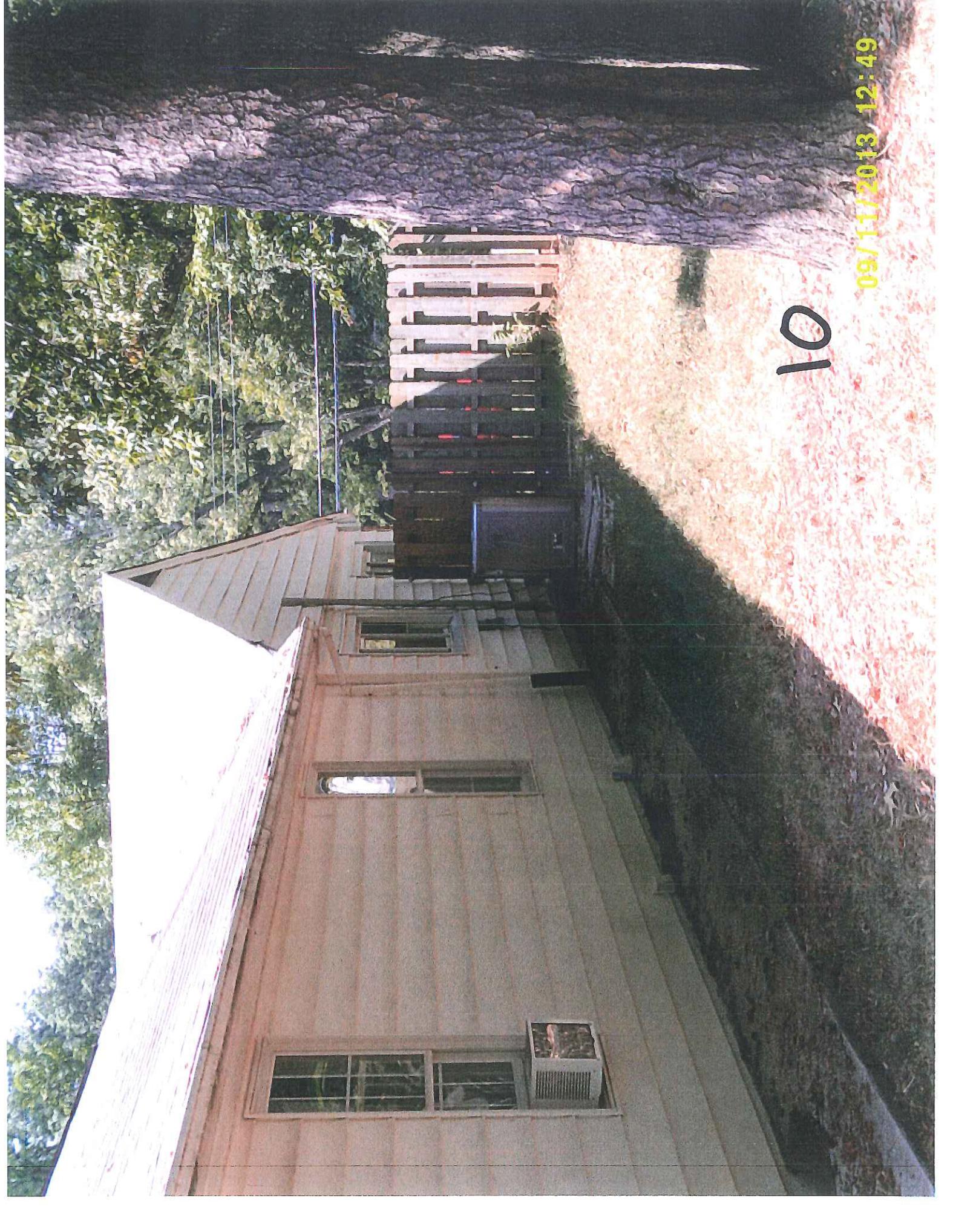
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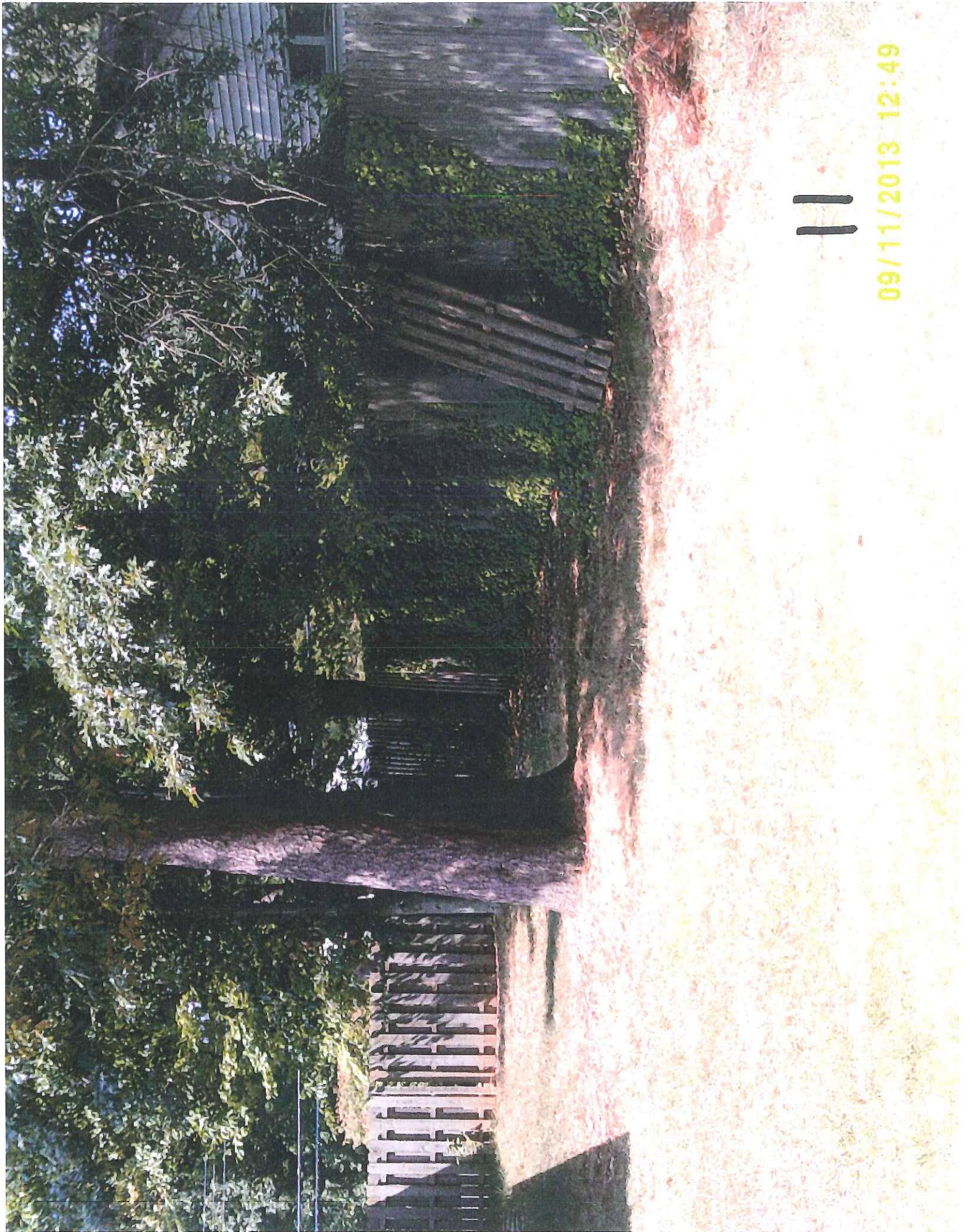
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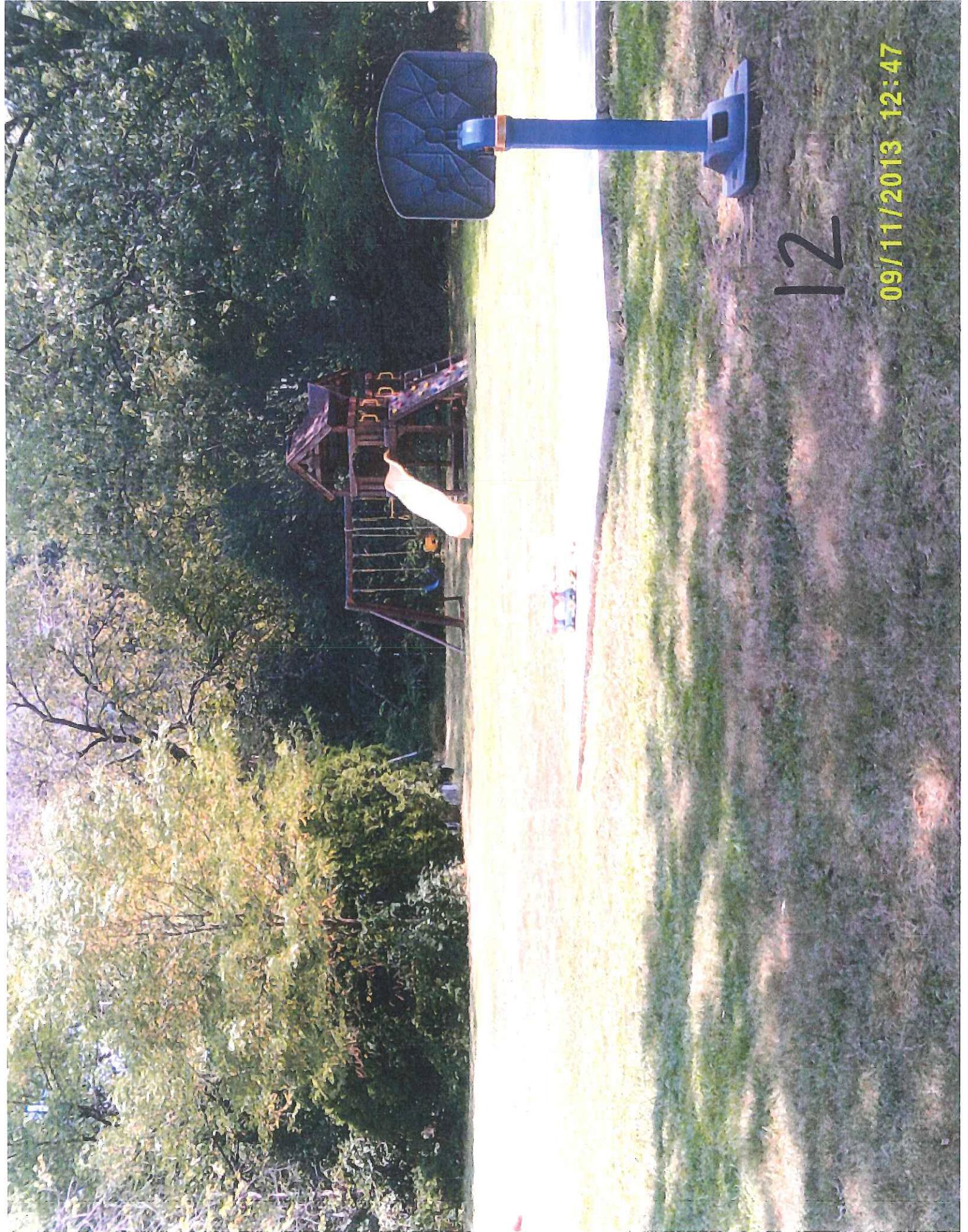
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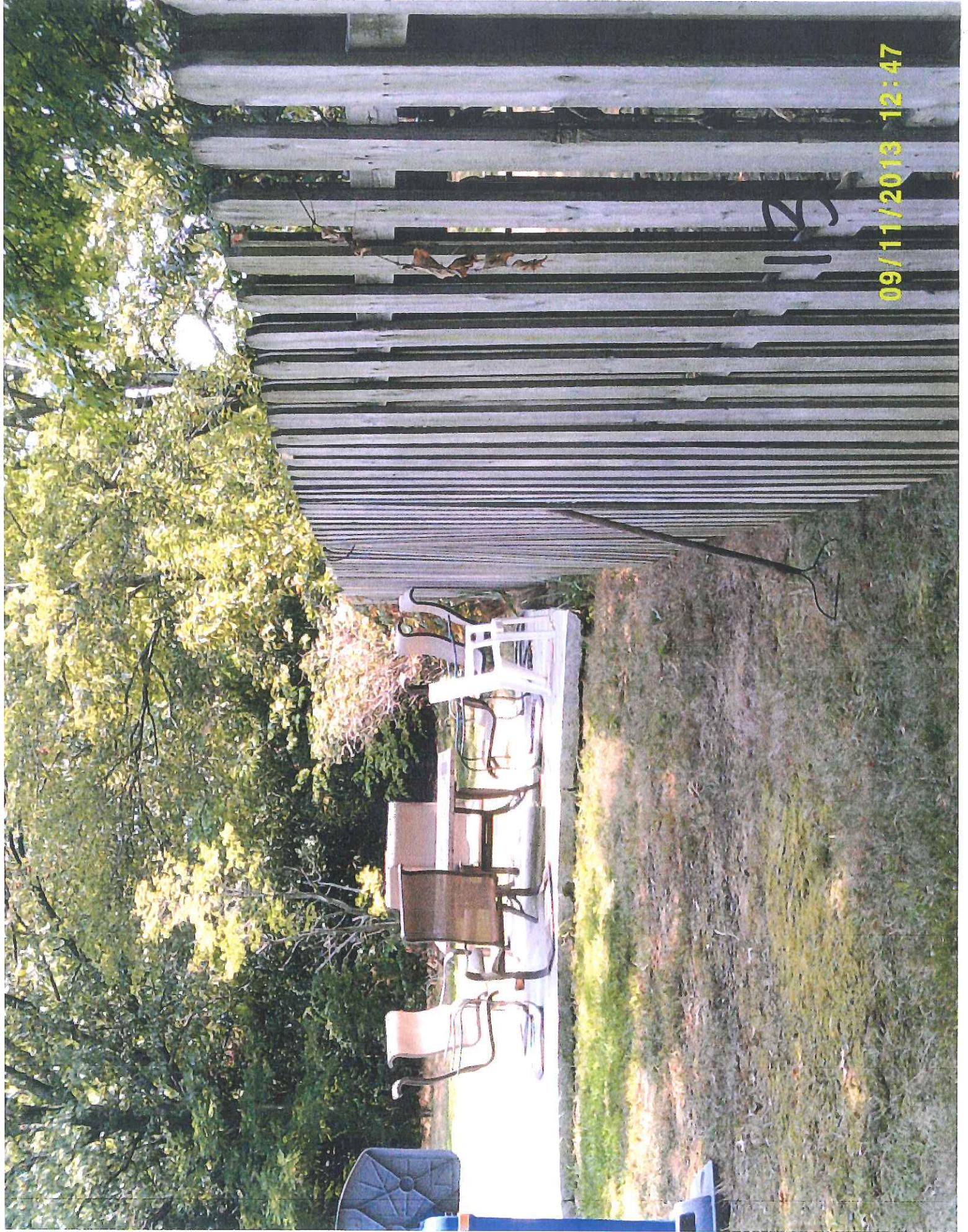
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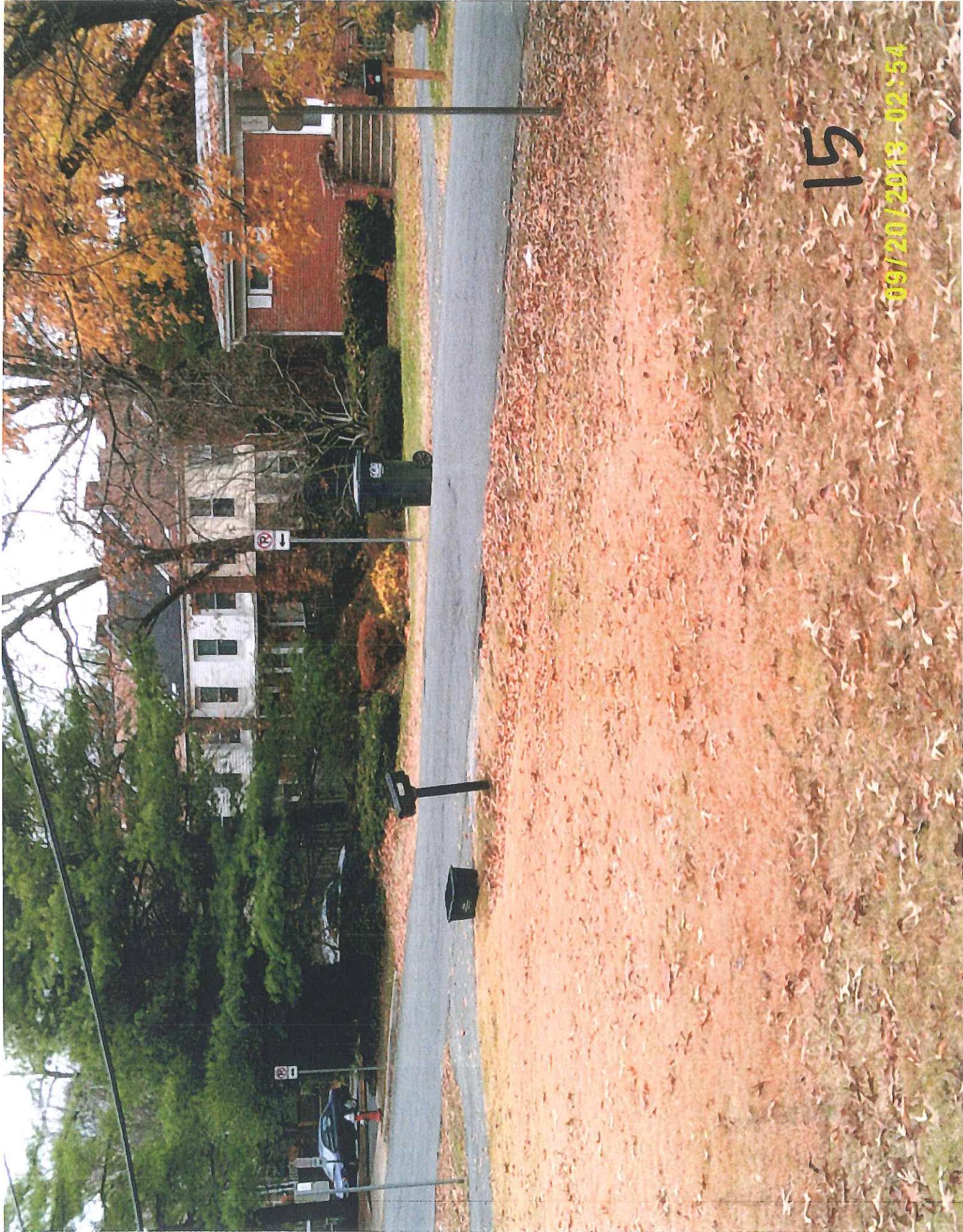


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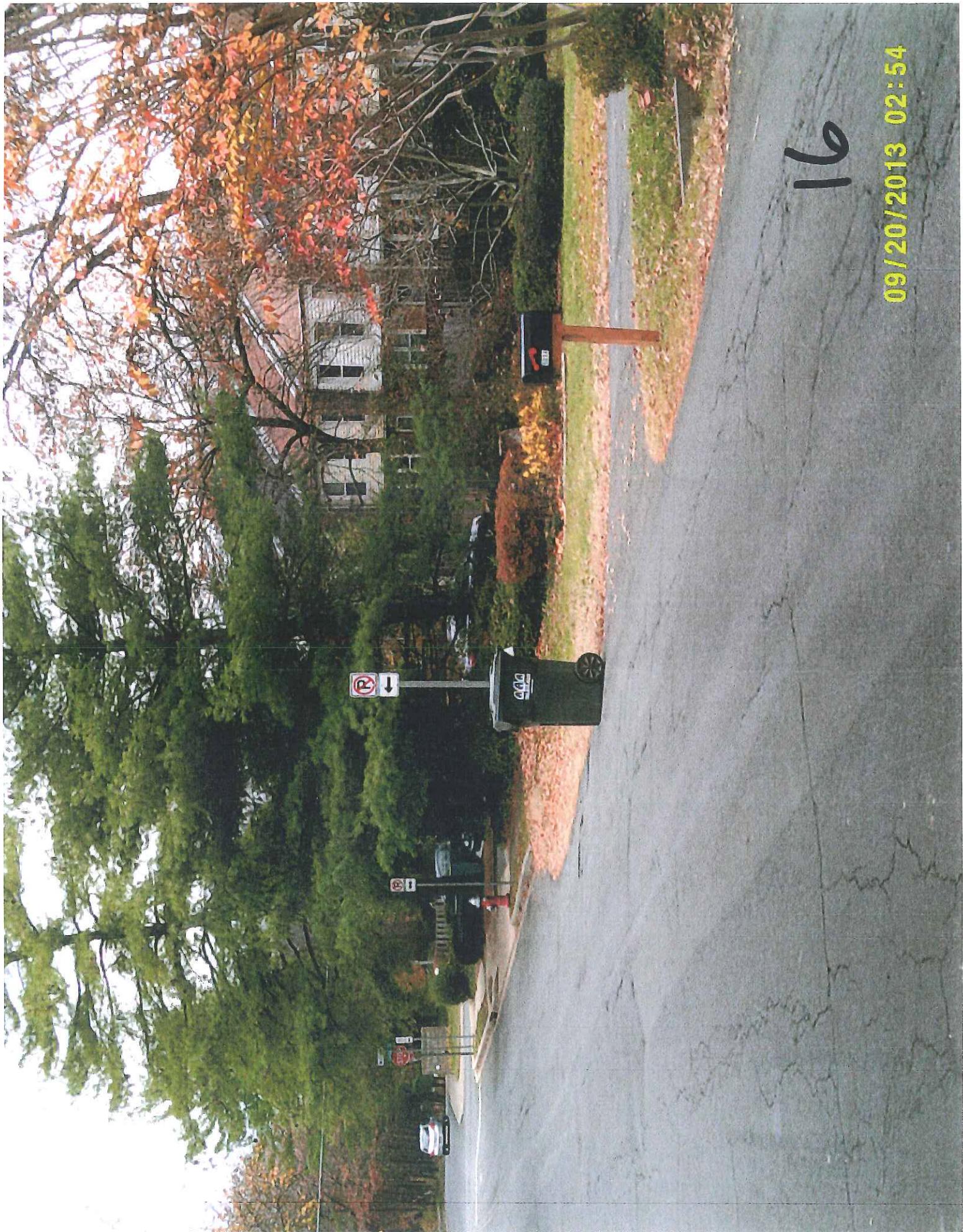
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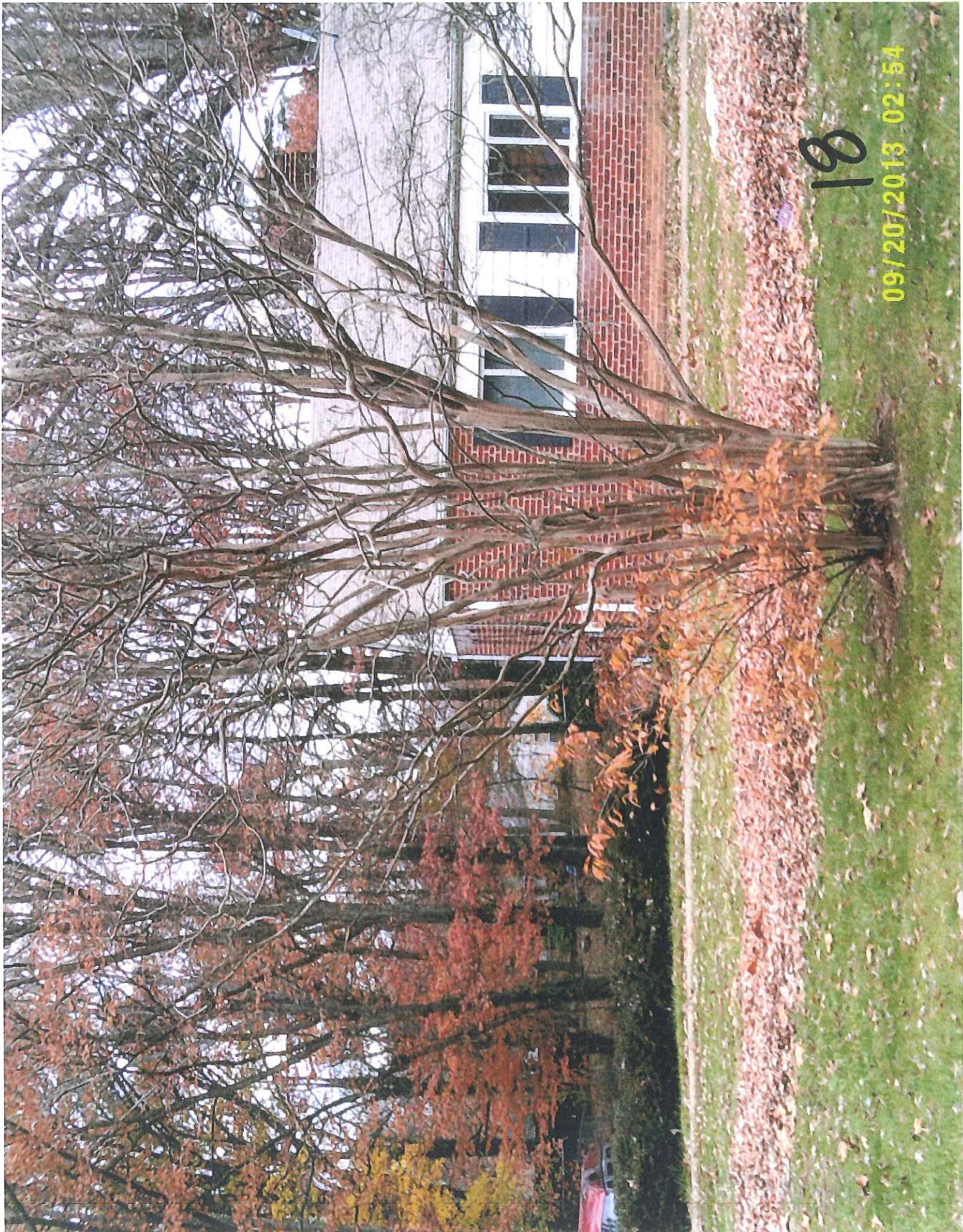
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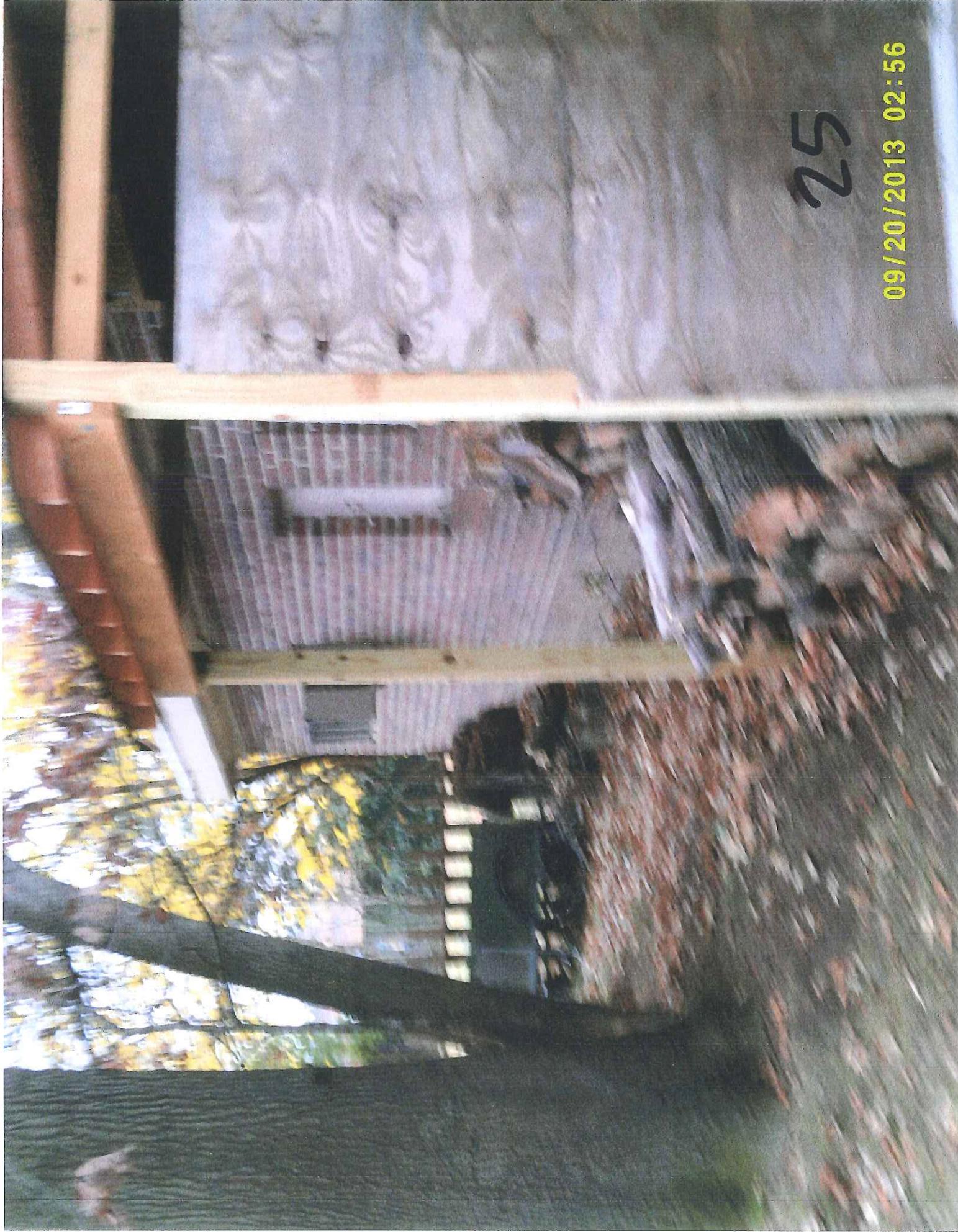
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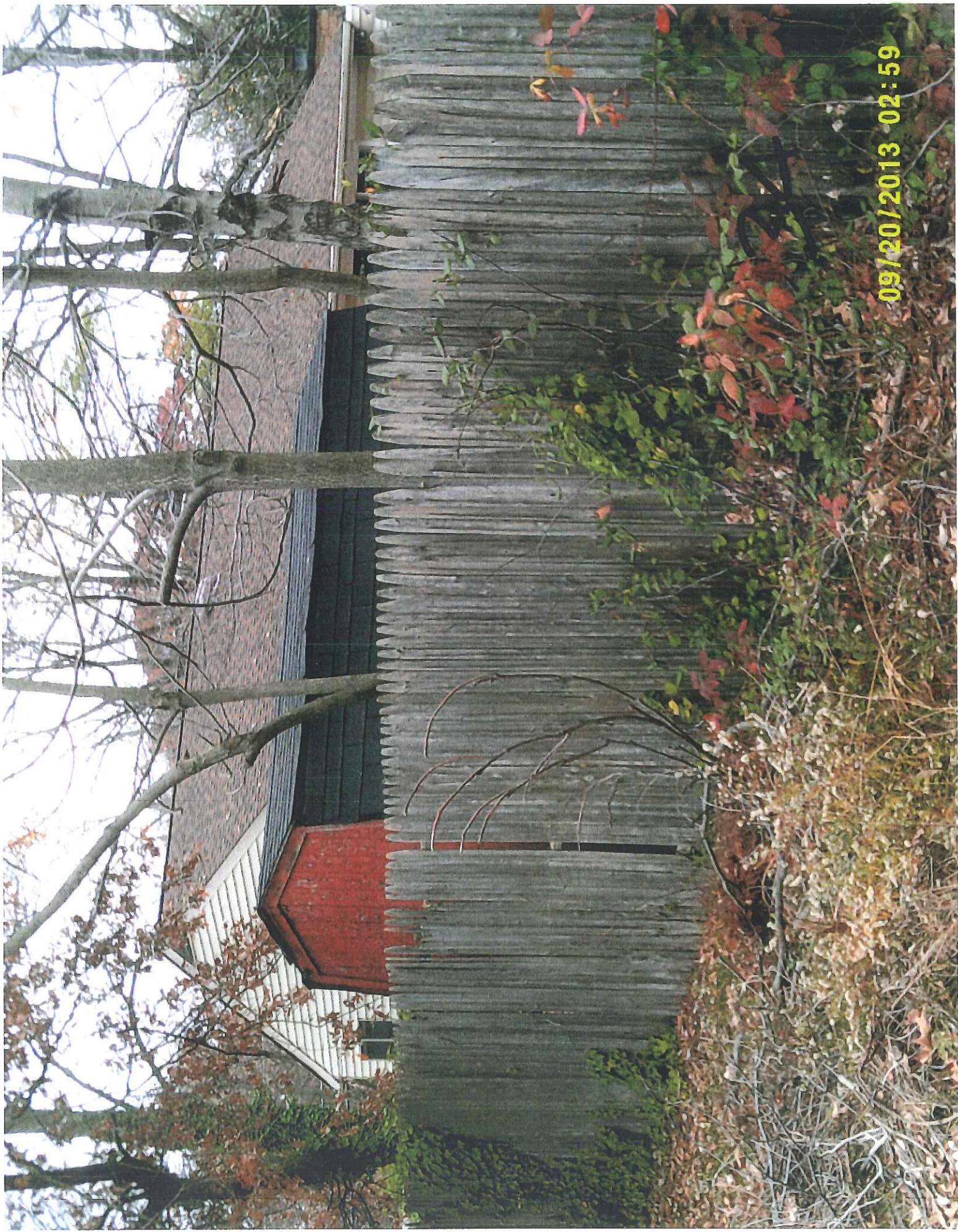
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DESCRIPTION OF THE APPLICATION

The applicant requests approval of a special permit to allow a modification of the minimum yard requirements based on an error in building location, to permit an addition to remain 5.3 ft. from the southern side lot line. The existing addition is 11.7 feet in height. A minimum side yard of 15.0 feet is required in the R-2 Zoning District, therefore a modification of 9.7 feet, or 64.7% is requested.

A copy of the special permit plat depicting the structures on site titled, "Plat Showing Special Permit Plat, Lot 11, Section 1, Lincolnia Park," prepared by Michael L. Flynn L.S., of Alexandria Surveys, LLC, dated August 30, 2013 and received by the Department of Planning and Zoning on February 27, 2014, is included at the front of the staff report.

CHARACTER OF THE SITE AND SURROUNDING AREA

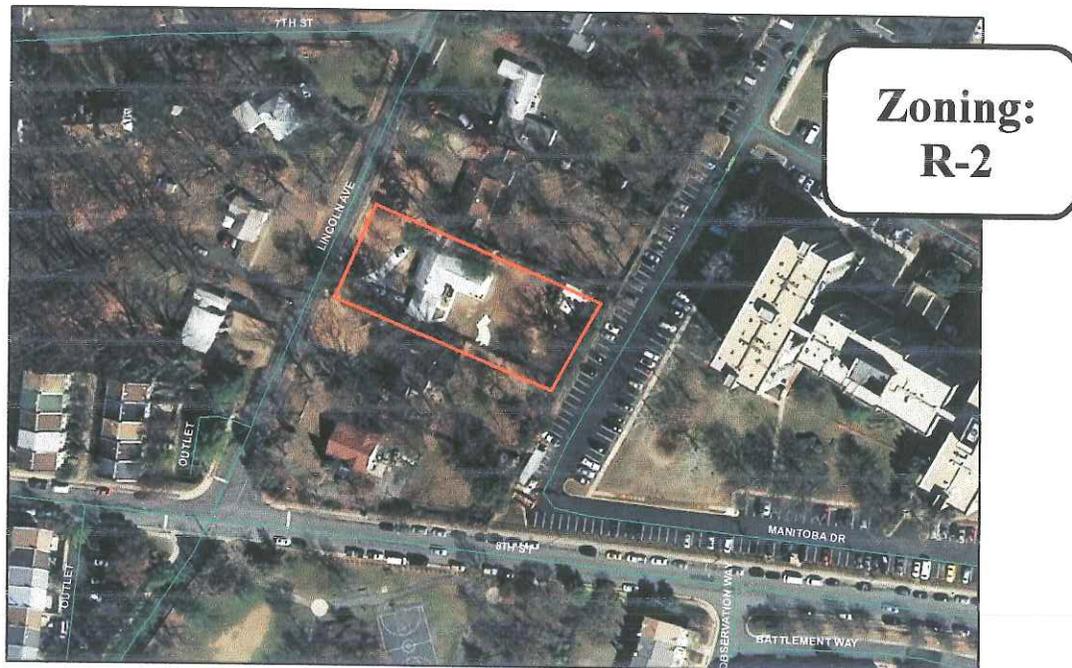
The 24,773 square foot lot is developed with a one story, single family detached dwelling. A one story addition is attached to the southwest side of the dwelling.

Two sheds are located in the northeast corner of the property and meet the requirements of the Zoning Ordinance. A play set, 11.2 feet in height, is located to the east of the dwelling. A concrete pad exists to the southeast of the dwelling.

A separate concrete pad is attached to the north side of the dwelling. A stoop, concrete walkway and combination asphalt and concrete driveway are located in the front yard of the property. The driveway provides vehicular access to Lincoln Avenue, and conforms with the 25% front yard coverage requirement in the R-2 District.

A wood fence, ranging from 6.1 to 6.5 feet in height, encloses the rear (eastern) yard. The property is relatively flat. The property has a mature tree west of the concrete driveway and a few mature trees in the southern side yard. The property has additional trees and screening along the eastern property line.

As depicted in the picture on the following page, the application property and surrounding lots to the north, south and west are zoned R-2 and developed with single family detached dwellings. The property to the east is zoned R-20 and developed with garden style apartments.



BACKGROUND

According to Fairfax County Tax Records the house was constructed in 1953 and purchased by the applicant in February 2009.

On October 16, 2002, a building permit was approved for a one story addition, a basement and a rear deck attached to the east of the dwelling.

On January 29, 2013, a complaint related to unpermitted interior renovations was filed with the County and is still pending.

On April 17, 2013, a Notice of Violation was issued for enclosure of a screen porch and a second kitchen installation without the issuance of building permits, inspections, or approvals. According to the Department of Code Compliance, the second kitchen has been removed but the enclosed screen porch remains (Appendix 4).

The addition on the south side of the dwelling related to this special permit and to the January 29, 2013 complaint was constructed before the applicants' purchased the property. Staff did not find a building permit in the records relating to the construction and/or upgrade of this addition.

Records indicate that no other applications to allow reductions in minimum required yards due to errors in building location have been heard by the Board of Zoning Appeals (BZA) in the surrounding area.

ZONING ORDINANCE REQUIREMENTS

- General Special Permit Standards (Sect. 8-006)
- Group 9 Standards (Sect. 8-903)
- Provisions for Approval of Reduction of the Minimum Yard Requirements Based on an Error in Building Location (Sect. 8-914)

This special permit is subject to sections of the Zoning Ordinance as referenced above, a copy of which is included in Appendix 5. Subject to development conditions, the special permit must meet these standards.

CONCLUSION

If it is the intent of the BZA to approve this application, the BZA should condition its approval by requiring conformance with the conditions set forth in Appendix 1 of this report, Proposed Development Conditions.

The approval of this special permit does not interfere with, abrogate or annul any easement, covenants, or other agreements between parties, as they may apply to the property subject to this application.

APPENDICES

1. Proposed Development Conditions
2. Applicant's Affidavit
3. Applicant's Statement of Justification
4. Notice of Violation dated April 17, 2013
5. Zoning Ordinance Provisions

PROPOSED DEVELOPMENT CONDITIONS

SP 2014-MA-002

March 26, 2014

1. This special permit is approved for the location of the addition as shown on the plat prepared titled, "Plat Showing Special Permit Plat, Lot 11, Section 1, Lincolnia Park," prepared by Michael L. Flynn of Alexandria Surveys, LLC, dated August 30, 2013 and received by the Department of Planning and Zoning on February 27, 2014.
2. All applicable permits and final inspections shall be obtained for the addition within 180 days of the approval of this application.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Application No.(s): SP 2014-MA-002
 (county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 9/12/13
 (enter date affidavit is notarized)

122767

I, Saba Y. Tesfazgi, do hereby state that I am an
 (enter name of applicant or authorized agent)

(check one) applicant
 applicant's authorized agent listed in Par. 1(a) below

and that, to the best of my knowledge and belief, the following is true:

1(a). The following constitutes a listing of the names and addresses of all **APPLICANTS, TITLE OWNERS, CONTRACT PURCHASERS, and LESSEES** of the land described in the application,* and, if any of the foregoing is a **TRUSTEE,**** each **BENEFICIARY** of such trust, and all **ATTORNEYS** and **REAL ESTATE BROKERS**, and all **AGENTS** who have acted on behalf of any of the foregoing with respect to the application:

(NOTE: All relationships to the application listed above in **BOLD** print must be disclosed. Multiple relationships may be listed together, e.g., **Attorney/Agent, Contract Purchaser/Lessee, Applicant/Title Owner**, etc. For a multiparcel application, list the Tax Map Number(s) of the parcel(s) for each owner(s) in the Relationship column.)

NAME (enter first name, middle initial, and last name)	ADDRESS (enter number, street, city, state, and zip code)	RELATIONSHIP(S) (enter applicable relationships listed in BOLD above)
Saba Y. Tesfazgi & Merhawi K. Mebrathu	5009 Lincoln Ave. Lincolnia Va. 22312	Applicant / Title Owner
Alexandria Surveys, LLC Roger K. Bohr Michael L. Flynn Sharon R. Hoofnagle	3949 Pender Dr. #120 Fairfax Va. 22030	Agent

(check if applicable) There are more relationships to be listed and Par. 1(a) is continued on a "Special Permit/Variance Attachment to Par. 1(a)" form.

* In the case of a condominium, the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium.

** List as follows: Name of trustee, Trustee for (name of trust, if applicable), for the benefit of: (state name of each beneficiary).

SP 2014-MA-002

Application No.(s): _____
(county-assigned application number(s), to be entered by County Staff)

Page Two

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 9/12/13
(enter date affidavit is notarized)

122717

1(b). The following constitutes a listing*** of the **SHAREHOLDERS** of all corporations disclosed in this affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 10 or less shareholders, a listing of all of the shareholders:

(NOTE: Include **SOLE PROPRIETORSHIPS, LIMITED LIABILITY COMPANIES, and REAL ESTATE INVESTMENT TRUSTS** herein.)

CORPORATION INFORMATION

NAME & ADDRESS OF CORPORATION: (enter complete name, number, street, city, state, and zip code)
Alexandria Surveys, LLC 3949 Pender Drive, #120, Fairfax Va. 22030

DESCRIPTION OF CORPORATION: (check one statement)

- There are 10 or less shareholders, and all of the shareholders are listed below.
- There are more than 10 shareholders, and all of the shareholders owning 10% or more of any class of stock issued by said corporation are listed below.
- There are more than 10 shareholders, but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.

NAMES OF SHAREHOLDERS: (enter first name, middle initial, and last name)

Michael L. Flynn
Sharon R. Hoofnagle

(check if applicable) There is more corporation information and Par. 1(b) is continued on a "Special Permit/Variance Attachment 1(b)" form.

*** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. *In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER or LESSEE* of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed.* Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.

Application No.(s): SP 2014-MA-002
(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 9/12/13
(enter date affidavit is notarized)

122717

1(c). The following constitutes a listing*** of all of the PARTNERS, both GENERAL and LIMITED, in any partnership disclosed in this affidavit:

PARTNERSHIP INFORMATION

PARTNERSHIP NAME & ADDRESS: (enter complete name, number, street, city, state, and zip code)

(check if applicable) The above-listed partnership has no limited partners.

NAMES AND TITLE OF THE PARTNERS (enter first name, middle initial, last name, and title, e.g. General Partner, Limited Partner, or General and Limited Partner)

None

(check if applicable) There is more partnership information and Par. 1(c) is continued on a "Special Permit/Variance Attachment to Par. 1(c)" form.

*** All listings which include partnerships, corporations, or trusts, to include the names of beneficiaries, must be broken down successively until: (a) only individual persons are listed or (b) the listing for a corporation having more than 10 shareholders has no shareholder owning 10% or more of any class of stock. *In the case of an APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all of its partners, of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land. Limited liability companies and real estate investment trusts and their equivalents are treated as corporations, with members being deemed the equivalent of shareholders; managing members shall also be listed.* Use footnote numbers to designate partnerships or corporations, which have further listings on an attachment page, and reference the same footnote numbers on the attachment page.

Application No.(s): SP 2014-MA-002
(county-assigned application number(s), to be entered by County Staff)

Page Four

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE: 9/12/13
(enter date affidavit is notarized)

122717

1(d). One of the following boxes must be checked:

In addition to the names listed in Paragraphs 1(a), 1(b), and 1(c) above, the following is a listing of any and all other individuals who own in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE*** of the land:

Other than the names listed in Paragraphs 1(a), 1(b), and 1(c) above, no individual owns in the aggregate (directly and as a shareholder, partner, and beneficiary of a trust) 10% or more of the **APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE*** of the land.

2. That no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household owns or has any financial interest in the subject land either individually, by ownership of stock in a corporation owning such land, or through an interest in a partnership owning such land.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on the line below.)

None

(check if applicable) There are more interests to be listed and Par. 2 is continued on a "Special Permit/Variance Attachment to Par. 2" form.

Application No.(s):

SP 2014-MA-002

(county-assigned application number(s), to be entered by County Staff)

SPECIAL PERMIT/VARIANCE AFFIDAVIT

DATE:

9/12/13

(enter date affidavit is notarized)

12277

3. That within the twelve-month period prior to the public hearing of this application, no member of the Fairfax County Board of Zoning Appeals, Planning Commission, or any member of his or her immediate household, either directly or by way of partnership in which any of them is a partner, employee, agent, or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent, or attorney or holds 10% or more of the outstanding bonds or shares of stock of a particular class, has, or has had any business or financial relationship, other than any ordinary depositor or customer relationship with or by a retail establishment, public utility, or bank, including any gift or donation having a value of more than \$100, singularly or in the aggregate, with any of those listed in Par. 1 above.

EXCEPT AS FOLLOWS: (NOTE: If answer is none, enter "NONE" on line below.)

None

(NOTE: Business or financial relationships of the type described in this paragraph that arise after the filing of this application and before each public hearing must be disclosed prior to the public hearings. See Par. 4 below.)

(check if applicable) [] There are more disclosures to be listed and Par. 3 is continued on a "Special Permit/Variance Attachment to Par. 3" form.

4. That the information contained in this affidavit is complete, that all partnerships, corporations, and trusts owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE* of the land have been listed and broken down, and that prior to each and every public hearing on this matter, I will reexamine this affidavit and provide any changed or supplemental information, including business or financial relationships of the type described in Paragraph 3 above, that arise on or after the date of this application.

WITNESS the following signature:

[Signature]

(check one)

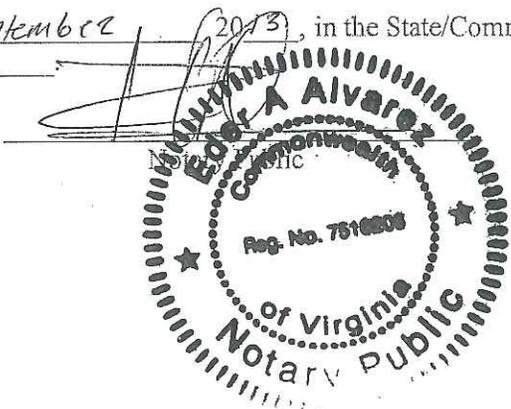
[x] Applicant

[] Applicant's Authorized Agent

Merhawi K. Mebrahtu Saba Y Tesfargi
(type or print first name, middle initial, last name, and title of signee)

Subscribed and sworn to before me this 12 day of September, 2013, in the State/Comm. of Virginia, County/City of Fairfax.

My commission expires: Nov 30, 2016



RECEIVED
Department of Planning & Zoning

DEC 12 2013

Zoning Evaluation Division

Statement of Justification

Special Permit

5009 Lincoln Avenue, Alexandria Va. 22312

The following is a statement of justification for the Special Permit on the project stated above. The Special Permit is being requested to allow an existing enclosed carport to remain 5.3 feet from the side lot line. Below is the justification keyed to list provided within the Special Permit Application Package (page 15):

- A. Type of Operation: Existing Residential Dwelling with enclosed carport.
- B. Hours of Operation: N/A, non-commercial use, private residence only.
- C. Estimated number of patrons / clients/ patients/ pupils etc.: N/A (only those associated with a single family residential use)
- D. Proposed number of employees / attendants / teachers etc.: N/A
- E. Estimate of traffic impact of the proposed use: There is no proposed change or increase in use or any estimated impact on traffic.
- F. Vicinity or general area to be served by the use: The enclosed carport is on the southern side of the existing dwelling.
- G. Description of building façade and architecture of proposed buildings or additions: N/A (no new construction)
- H. A listing, if known of all hazardous or toxic substances: N/A (no hazardous substances are currently used or proposed to be used on this site. Only those substances which are normally associated with a residential use, such as standard cleaning products, shall be used on-site and those are not considered hazardous. No commercial venture is existing or proposed on this site.)
- I. A statement of how the proposed use conforms to the provisions of all applicable ordinances: The proposed use is to allow an existing use to remain as is. In 2009 we purchased the dwelling in good faith. In early 2013 it was brought to the attention of the County that the existing dwelling did not meet the code requirements. A letter was issued to us on April 17th 2013. In the letter we were informed that the enclosed screen porch is encroaching within the required side yard setback for the R-2 Zoning and that a second kitchen existed on-site. The letter incorrectly stated that the house contained a second kitchen. The Inspector has signed off on the letter (and confirmed in an email dated Feb. 21, 2013, attached) that there was a full wet bar and the house never contained a second kitchen. We were informed to either get a permit to demolish the enclosed porch or obtain approvals for it to remain. We are attempting with this letter to get a Special Permit to allow the enclosed porch to continue its current encroachment into the side yard. The existing enclosed carport is 5.3 feet from the side lot line where a 15 foot setback is required. The enclosed carport does not encroach within the allowable front or rear yards. Other than the encroachment mentioned above no other portions of the site are non-conforming. An error in building location in accordance with ZO 8-914 is being requested in conjunction with this Special Permit. See information below stating how the site meets the requirements of the error in building location.

Since the condition is not of our making and had been existing prior to our purchase of the property it is our request that the existing non-conformity be allowed via the Special Permit process. We have partially complied with the letter (as stated above) by removing the second kitchen. The enclosed porch is consistent with surrounding properties and properties in the immediate vicinity which have rambler

type dwellings and small enclosed additions on the side of the dwelling, therefore, I do not feel allowing this would be out of character of the neighborhood. It is our wish that we be allowed to keep and maintain the existing enclosed screen porch.

This statement further asserts that per the Zoning Ordinance Section for "Error in Building Location" (ZO 8-914 (2)) the site meets the following criteria. Compliance is shown in parenthesis below each item:

- A. The error exceeds ten (10) percent of the measurement involved, or
(The required side yard is 15 feet and the current side yard is 5.3 feet)
- B. The error is up to ten (10) percent of the measurement involved and such reduction or modification is requested in conjunction with the approval of a special permit for another use or application for a variance on the property, or is in conjunction with another special permit for an error in building location on the property that exceeds ten (10) percent of the measurement involved, and
(A Special Permit is being requested along with the Error in Building Location which exceeds 10%)
- C. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required, and
(The Error in Building Location occurred prior to our ownership of the property. We purchased the dwelling in good faith with the assumption the dwelling complied with the required setbacks.)
- D. Such reduction or modification will not impair the purpose and intent of this Ordinance, and
(The granting of this modification would not impair the ordinance as it would allow us only to keep an encroachment that was not caused by us and it would only apply to the existing dwelling not new construction after this date.)
- E. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
(This enclosed carport has been an existing condition for a while and we have not had any issues which inhibit the enjoyment and use of our neighbors. The encroachment is entirely on our property and does not encroach on others)
- F. It will not create an unsafe condition with respect to both other property and public streets, and
(The encroachment into the side yard is entirely on our property and does not create any unsafe conditions to the public street or neighbors. The structure is sound and setback 5.3 feet from the side line. The structure does not affect the movement or site lines on the neighbors or within the public street.)
- G. To force compliance with the minimum yard requirements or location regulations would cause unreasonable hardship upon the owner.
(We feel that enforcement of compliance would require us to remove a portion of our home that is in noncompliance through no fault of our own. This would not only come as a great expense to us but also reduce the livable space within our home. Since this encroachment does not affect our neighbors we feel that removal of the encroachment would be an undue hardship.)

- H. The reduction or modification will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
(The modification to allow this encroachment would have no effect on the site density, as no new lots are being created. The current zoning (R-2) does not have a maximum floor area ratio for single-family dwellings.)

Sincerely,



Saba Tesfazgi



Merhawi K. Mebrahtu

SEP 19 2013

Statement of Justification

Special Permit

Zoning Evaluation Division

5009 Lincoln Avenue, Alexandria Va. 22312

The following is a statement of justification for the Special Permit on the project stated above. The Special Permit is being requested to allow an existing enclosed carport to remain 5.3 feet from the side lot line. Below is the justification keyed to list provided within the Special Permit Application Package (page 15):

- A. Existing Residential Dwelling with enclosed carport.
- B. N/A
- C. N/A (only those associated with a single family residential use)
- D. N/A
- E. There is no proposed increase in use or any estimated impact on traffic.
- F. The enclosed carport is on the southern side of the existing dwelling.
- G. N/A (no new construction)
- H. N/A (only substances associated with a residential use are proposed)
- I. The proposed use is to allow an existing use to remain as is. In 2009 we purchased the dwelling in good faith. In early 2013 it was brought to the attention of the County that the existing dwelling did not meet the code requirements. A letter was issued to us on April 17th 2013. In the letter we were informed that the enclosed screen porch is encroaching within the required side yard setback for the R-2 Zoning and that a second kitchen existed on-site. The letter incorrectly stated that the house contained a second kitchen. The Inspector has signed off on the letter (and confirmed in an email dated Feb. 21, 2013, attached) that there was a full wet bar and the house never contained a second kitchen. We were informed to either get a permit to demolish the enclosed porch or obtain approvals for it to remain. We are attempting with this letter to get a Special Permit to allow the enclosed porch to continue its current encroachment into the side yard. The existing enclosed screen porch is 5.3 feet from the side lot line where a 15 foot setback is required. The porch does not encroach within the allowable front or rear yards.

Since the condition is not of our making and had been existing prior to our purchase of the property it is our request that the existing non-conformity be allowed via the Special Permit process. We have partially complied with the letter (as stated above) by removing the second kitchen. The enclosed porch is consistent with surrounding properties and properties in the immediate vicinity which have rambler type dwellings and small enclosed additions on the side of the dwelling, therefore, I do not feel allowing this would be out of character of the neighborhood. It is our wish that we be allowed to keep and maintain the existing enclosed screen porch.

Sincerely,



Saba Testazgi



Merhawi K. Mebrahtu



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Uniform Statewide Building Code

DATE OF ISSUANCE: April 17, 2013
METHOD OF SERVICE: OFFICE OF THE SHERIFF
LEGAL NOTICE ISSUED TO: Saba Y. Tesfazgi
ADDRESS: 5009 Lincoln Avenue
Alexandria, VA 22312
TAX MAP REF: 72-3 ((10)) 11
LOCATION OF VIOLATION: 5009 Lincoln Avenue
Alexandria, VA 22312-1914

CASE #: 201300514 .. **SR#:** 91098

You were issued a Corrective Work Order on February 14, 2013, for violations of the Virginia Uniform Statewide Building Code (USBC) 2009 Edition, effective March 1, 2011. Staff confirmed on April 16, 2013, that the violations itemized below remain.

Explanation: On February 12, 2013, County staff inspected the above referenced premises and discovered that the screen porch has been enclosed and converted to living space and a second kitchen has been installed without the issuance of a Building Permit, inspections, and approvals.

*Second kitchen
has been
removed
R. B. [Signature]*

Order: Pursuant to *Section 108.1 When applications are required*, and *Section 113.3 Minimum Inspections*, of the USBC, 2009 edition, you are hereby directed to apply for and obtain the required permits, inspections, and approvals for the work described above or demolition of same at the above referenced address.

Corrective Action Required:

1. Apply for and obtain all necessary County Permits for the work described above within 20 calendar days from the date you receive this Notice, or obtain a County permit to demolish the work described above within the same timeframe.
2. Schedule and pass the required County inspection(s) for the work described above within 20 calendar days from the date you received this notice.
3. Contact me at (703) 324-1190 within the timeframe established to confirm the violations have been abated.

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 FAX 703-324-9346
www.fairfaxcounty.gov/code

4. Call (703) 222-0455 to schedule all inspections related to this matter. Please reference CASE #: 201300514.

Note:

*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.

Permit Application Center
The Herrity Building
12055 Government Center Parkway, 2nd Floor
Fairfax, Virginia 22035
Telephone: 703-222-0801

*When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit. If you have received a Zoning Notice of Violation, contact the inspector from the Department of Code Compliance at (703) 324-1300 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.

You have the right to appeal this decision within 30 days to the Fairfax County Board of Building and Fire Prevention Code Appeals. Appeal application forms may be obtained by contacting:

Fairfax County Board of Building and Fire Prevention Code Appeals
Attention:
Secretary to the Fairfax County Board of Building and Fire Prevention Code Appeals
Office of Building Code Services
Department of Public Works and Environmental Services
12055 Government Center Parkway, Suite 444
Fairfax, Va. 22035-5504
Telephone: (703) 324-1780

Information and forms can also be obtained at:

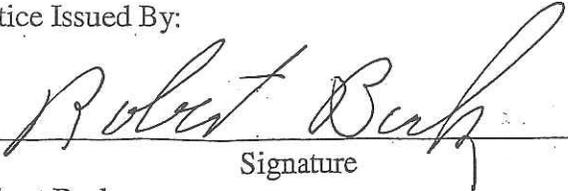
http://www.fairfaxcounty.gov/dpwes/publications/codemods_appeals.htm

Failure to submit an application for appeal within the time limit established shall constitute acceptance of the code official's decision. Failure to correct these defects within the time limits specified shall result in enforcement action being taken under the applicable State and County Codes.

Saba Y. Tesfazgi
April 17, 2013
SR 91098
Page 3

If you have any questions, would like to schedule an appointment to meet with me, or schedule a site visit, please contact me directly at (703) 324-1190 or the main office at (703) 324-1300.

Notice Issued By:


Signature

Robert Burk
(703) 324-1190
Technical Assistant to the Building Official
Department of Code Compliance

CC: Case File
Chuck O'Donnell, Residential Inspections Branch Chief

This is the e-mail conversation with the inspector Forshee

From: Merhawi Mebrahtu [mailto:merhawi80@gmail.com]

Sent: Tuesday, February 19, 2013 3:54 PM

To: Forshee, Charles "Danny"

Subject: 5009 Lincoln Avenue, Alexandria, VA, 22312

Hallo Mr. Forshee, please would you confirm me that the case for 5009 Lincoln Avenue, Alexandria, VA, 22312 is closed, and that I don't need to do any farther follow ups. with best regard,

Kubrom Merhawi

Response:

from: Forshee, Charles "Danny" <CharlesDanny.Forshee@fairfaxcounty.gov>

to: Merhawi Mebrahtu <merhawi80@gmail.com>

date: Thu, Feb 21, 2013 at 1:28 PM

subject: RE: 5009 Lincoln Avenue, Alexandria, VA, 22312

mailed-by: fairfaxcounty.gov

signed-by: fairfaxcounty.gov

: Important mainly because of your interaction with messages in the conversation.

Sent: Tuesday, February 19, 2013 3:54 PM

To: Forshee, Charles "Danny"

Subject: 5009 Lincoln Avenue, Alexandria, VA, 22312

Inspection of your property on February 19, 2013 revealed there was no violation of a second dwelling on the property. The addition to the rear of the house was built with a building permit. There was a full wet bar but no stove. Case closed. Thank you for allowing me into your dwelling to inspect.

Charles Forshee



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Uniform Statewide Building Code

DATE OF ISSUANCE: April 17, 2013

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Saba Y. Tesfazgi

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TAX MAP REF: 72-3 ((10)) 11

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You were issued a Corrective Work Order on February 14, 2013, for violations of the Virginia Uniform Statewide Building Code (USBC) 2009 Edition, effective March 1, 2011. Staff confirmed on April 16, 2013, that the violations itemized below remain.

Explanation: On February 12, 2013, County staff inspected the above referenced premises and discovered that the screen porch has been enclosed and converted to living space and a second kitchen has been installed without the issuance of a Building Permit, inspections, and approvals.

*Second kitchen
has been
removed
R. Bush*

Order: Pursuant to *Section 108.1 When applications are required*, and *Section 113.3 Minimum Inspections*, of the USBC, 2009 edition, you are hereby directed to apply for and obtain the required permits, inspections, and approvals for the work described above or demolition of same at the above referenced address.

Corrective Action Required:

1. Apply for and obtain all necessary County Permits for the work described above within 20 calendar days from the date you receive this Notice, or obtain a County permit to demolish the work described above within the same timeframe.
2. Schedule and pass the required County inspection(s) for the work described above within 20 calendar days from the date you received this notice.
3. Contact me at (703) 324-1190 within the timeframe established to confirm the violations have been abated.

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 FAX 703-324-9346
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4. Call (703) 222-0455 to schedule all inspections related to this matter. Please reference CASE #: 201300514.

Note:

*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.

Permit Application Center
The Herrity Building
12055 Government Center Parkway, 2nd Floor
Fairfax, Virginia 22035
Telephone: 703-222-0801

*When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit. If you have received a Zoning Notice of Violation, contact the inspector from the Department of Code Compliance at (703) 324-1300 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.

You have the right to appeal this decision within 30 days to the Fairfax County Board of Building and Fire Prevention Code Appeals. Appeal application forms may be obtained by contacting:

Fairfax County Board of Building and Fire Prevention Code Appeals
Attention:
Secretary to the Fairfax County Board of Building and Fire Prevention Code Appeals
Office of Building Code Services
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Information and forms can also be obtained at:

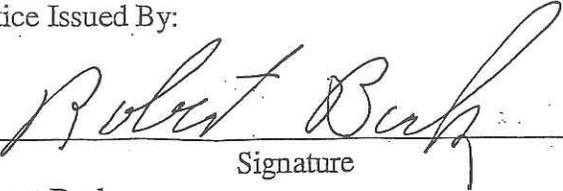
http://www.fairfaxcounty.gov/dpwes/publications/codemods_appeals.htm

Failure to submit an application for appeal within the time limit established shall constitute acceptance of the code official's decision. Failure to correct these defects within the time limits specified shall result in enforcement action being taken under the applicable State and County Codes.

Saba Y. Tesfazgi
April 17, 2013
SR 91098
Page 3

If you have any questions, would like to schedule an appointment to meet with me, or schedule a site visit, please contact me directly at (703) 324-1190 or the main office at (703) 324-1300.

Notice Issued By:



Signature

Robert Burk
(703) 324-1190
Technical Assistant to the Building Official
Department of Code Compliance

CC: Case File
Chuck O'Donnell, Residential Inspections Branch Chief

8-006 General Standards

In addition to the specific standards set forth hereinafter with regard to particular special permit uses, all special permit uses shall satisfy the following general standards:

1. The proposed use at the specified location shall be in harmony with the adopted comprehensive plan.
2. The proposed use shall be in harmony with the general purpose and intent of the applicable zoning district regulations.
3. The proposed use shall be such that it will be harmonious with and will not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the adopted comprehensive plan. The location, size and height of buildings, structures, walls and fences, and the nature and extent of screening, buffering and landscaping shall be such that the use will not hinder or discourage the appropriate development and use of adjacent or nearby land and/or buildings or impair the value thereof.
4. The proposed use shall be such that pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood.
5. In addition to the standards which may be set forth in this Article for a particular group or use, the BZA shall require landscaping and screening in accordance with the provisions of Article 13.
6. Open space shall be provided in an amount equivalent to that specified for the zoning district in which the proposed use is located.
7. Adequate utility, drainage, parking, loading and other necessary facilities to serve the proposed use shall be provided. Parking and loading requirements shall be in accordance with the provisions of Article 11.
8. Signs shall be regulated by the provisions of Article 12; however, the BZA, under the authority presented in Sect. 007 below, may impose more strict requirements for a given use than those set forth in this Ordinance.

8-903 Standards for All Group 9 Uses

In addition to the general standards set forth in Sect. 006 above, all Group 9 special permit uses shall satisfy the following standards:

1. All uses shall comply with the lot size and bulk regulations of the zoning district in which located, except as may be qualified below.
2. All uses shall comply with the performance standards specified for the zoning district in which located.
3. Before establishment, all uses, including modifications or alterations to existing uses, shall be subject to the provisions of Article 17, Site Plans, or other appropriate submission as determined by the Director.

8-914 Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location

The BZA may approve a special permit to allow a reduction to the minimum yard requirements for any building existing or partially constructed which does not comply with such requirements applicable at the time such building was erected, but only in accordance with the following provisions:

1. Notwithstanding Par. 2 of Sect. 011 above, all applications shall be accompanied by ten (10) copies of a plat and such plat shall be presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat shall be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat shall be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia and such plat shall contain the following information:
 - A. Boundaries of entire property, with bearings and distances of the perimeter property lines and of each zoning district.
 - B. Total area of the property and of each zoning district in square feet or acres.
 - C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.
 - D. Location of all existing structures, with dimensions, including height of any structure and penthouse, and if known, the construction date(s) of all existing structures.
 - E. All required minimum yards to include front, side and rear, and a graphic depiction of the angle of bulk plane, if applicable, and the distances from all existing structures to lot lines.
 - F. Means of ingress and egress to the property from a public street(s).
 - G. For nonresidential uses, the location of parking spaces, indicating minimum distance from the nearest property line(s).
 - H. If applicable, the location of well and/or septic field.
 - I. For nonresidential uses, a statement setting forth the maximum gross floor area and FAR for all uses.
 - J. Location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.
 - K. Seal and signature of professional person certifying the plat.

In addition, the application shall contain a statement of justification explaining how the error in building location occurred and any supportive material such as aerial photographs, Building Permit applications, County assessments records, a copy of the contract to build the structure which is in error, or a statement from a previous owner indicating how the error in building location occurred.

2. The BZA determines that:
 - A. The error exceeds ten (10) percent of the measurement involved, and
 - B. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the relocation of the building subsequent to the issuance of a Building Permit, if such was required, and
 - C. Such reduction will not impair the purpose and intent of this Ordinance, and
 - D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and
 - E. It will not create an unsafe condition with respect to both other property and public streets, and
 - F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.
 - G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
3. In granting such a reduction under the provisions of this Section, the BZA shall allow only a reduction necessary to provide reasonable relief and may, as deemed advisable, prescribe such conditions, to include landscaping and screening measures, to assure compliance with the intent of this Ordinance.
4. Upon the granting of a reduction for a particular building in accordance with the provisions of this Section, the same shall be deemed to be a lawful building.
5. The BZA shall have no power to waive or modify the standards necessary for approval as specified in this Section.