MEMORANDUM

CITY/BOROUGH OF JUNEAU
155 South Seward Street, Juneau, Alaska 99801

DATE: May 3, 2011

TO: Board of Adjustment

FROM: Nicole Jones, Planner
Community Development Department

FILE NO.: VAR2010 0037

PROPOSAL: A Variance request to reduce the side yard setback from 3' to 0' for a newly constructed deck.

GENERAL INFORMATION

Applicant:	Miriha D. Scalf
Property Owners:	George E. Kauzlarich & Ryan R. Dean
Property Address:	2806 Peters Lane
Legal Description:	Treadwell Townhouse Lot 1
Parcel Code Number:	1-D05-0-L15-001-0
Site Size:	2,601 sq ft
Zoning:	D-18
Utilities:	Public water and Public Sewer
Access:	Peters Lane
Existing Land Use:	Single Family Residential

Surrounding Land Use:
North - D18, Single Family Residential
South - D18, Single Family Residential
East - D18, Single Family Residential
West - Peters Lane Right-of-way, D18 Single Family Residential

CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

ATTACHMENTS

Attachment A	Adjacent neighbor's submittals
Attachment B	Declaration of Restrictive Covenants and Easements for Treadwell Townhouses Subdivision
Attachment C	Additional public comment

PROJECT DESCRIPTION

The applicant requests a variance to reduce their side yard setback from 3 feet to 0 feet for an existing grade level deck.

BACKGROUND

This lot is part of a group of six townhouses. This development was done through a Conditional Use permit in 1980 (CU80-07). The Conditional Use permit authorized the applicant to increase the density and reduce the minimum lot size. At that time CDD staff recommended that access easements be provided in the final plat. The developer provided a 6' ingress/egress and drainage easement around the perimeter of the six unit cluster (see applicant's submittals). The easement is for the use of the other townhome owners, and is not a public easement.

The lot area is 2,601 square feet, which exceeds the minimum lot size for a common wall development in a D18 zoning district. The lot has some slope that increases significantly towards the rear of the lot.

The applicant rebuilt their rotting deck in the summer of 2010. When the applicant rebuilt the deck they also expanded the size of the deck and enclosed the new deck with a fence. The applicant intends on building a stair case from the newly constructed deck to the rear of the property. Charlie Ford, Building Codes Official confirmed that neither the deck nor the fence required a building permit. At grade decks are allowed to be in the side yard setback up to 3 feet from the property line per CBJ §49.25.430(4)(D) *Uncovered porch, terrace, or patio.*

> *An uncovered porch, terrace, or patio extending* ***no more than 30 inches above the finished grade may be no closer than three feet to a side lot line*** *and no closer than ten feet to a front, street side or rear lot line.*

The deck being built up to the property line was brought to the attention of the CDD through a neighbor complaint and resulted in an enforcement case, ENF2010 0031. After the enforcement case was opened the Variance application was submitted.

The neighbor has submitted written testimony outlining their concerns (see attachment A). The adjacent neighbor is concerned that their retaining wall is being impacted by the new deck and that they will not have adequate room to replace or maintain the retaining wall. The easement that is provided for ingress/egress and drainage is an easement that is for the cluster of townhomes that

2806 is attached to. The adjacent neighbor does not legally have any right to access this 6' easement.

The easement is currently blocked to all the other townhomes within this development. To satisfy the covenants established when this development was constructed, the applicant either needs to install a gate so that the other townhome owners can access the easement or get approval from all other townhome owners to dissolve the easement (see attachment B).

Staff solicited comments from General Engineering, Community Development Building Department, and the Fire Department.

Charlie Ford, Building Codes Official

After visiting the site, and looking through the Building Code book, the Building Dept. has no issues with this project. A Building Permit is not required for the deck, as it is less than 30" above grade, and a Building Permit is not required for the fence as it is not over 6' high.

Ron King, General Engineering

When the townhomes were subdivided it was a requirement to have access to the back of the building...the interior owner has a prescriptive right of access and the easement is used for common drainage.

ANALYSIS

Variance Requirements

Under CBJ §49.20.250 where hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of Title 49, the Board of Adjustment may grant a Variance in harmony with the general purpose and intent of Title 49. A Variance may vary any requirement or regulation of Title 49 concerning dimensional and other design standards, but not those concerning the use of land or structures, housing density, lot coverage, or those establishing construction standards. A Variance may be granted after the prescribed hearing and after the Board of Adjustment has determined:

1. ***That the relaxation applied for or a lesser relaxation specified by the Board of Adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.***

   The requested relaxation to allow the existing deck to remain up to the property line would give the applicant substantial relief, saving them from the cost of redesigning the deck to meet the setback requirement. Other property owners in the neighborhood have grade level decks in the side yard setback. Properties that are common wall developments allow decks to be built to the common property line, other properties with grade level decks closer than

three feet from the property line are in violation of Title 49. This property is a common wall development, but this lot is an end unit and does not share a common wall on the side of the lot that the deck is built on, therefore this property is not allowed to build the deck up to the property line.

The relaxation requested would give the applicant substantial relief but is not consistent with justice to other property owners.

No. Staff finds that criterion 1 is not met.

2. ***That relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare be preserved.***

The intent of Title 49 is established in Section CBJ §49.05.100 Purpose and Intent. If approved this variance will meet the intent of the Land Use Code, specifically CBJ §49.05.100(5) "to provide adequate open space for light and air." And in part CBJ § 49.05.100(4) "to ensure that future growth is of the appropriate type, design and location…."

As discussed above in comments received from Charlie Ford, Building Codes Official, the deck complies with the building code. The public health and welfare will be preserved as the deck is contained within the fence and will not affect open space for light and air.

Yes. Staff finds that criterion 2 is met.

3. ***That the authorization of the Variance will not injure nearby property.***

Comments have been received from the adjacent neighbor stating that this deck has and will continue to negatively impact their property. If this variance request is denied, the applicant would be responsible for removing the portion of the deck that is within three feet of the property line. The fence meets all zoning and building codes and is authorized to remain as is.

A concern of the neighbor is that the location of the deck and fence affects their ability to maintain and repair their retaining wall. The neighbor does not have a recorded easement to allow them to work across the property line. The neighbor states that the newly constructed deck is applying pressure to the soil beneath it further impacting their failing retaining wall. The retaining wall began failing approximately 3 years ago according to the neighbor. The newly constructed deck was built the summer of 2010. The soil erosion and failing retaining wall are not a direct result of the newly constructed grade level deck.

Additional public comment was received that is not in favor of granting the variance (see attachment C).

There is no clear evidence stating that the deck remaining in place would injure nearby property.

Yes. Staff finds that criterion 3 is met.

4. ***That the Variance does not authorize uses not allowed in the district involved.***

The current use is a single family home and porches are normally associated with this class of use. The use is allowed within this district, per CBJ § 49.25.300 Table of Permissible Uses, section 1.110.

Yes. Staff finds that criterion 4 is met.

5. ***That compliance with the existing standards would:***

(A) Unreasonably prevent the owner from using the property for a permissible principal use;

The permissible principal use of this property is a single family dwelling. The property is currently being used as a single family dwelling. Denying the variance would not prevent the applicant from using the property for a permissible principal use.

No. Staff finds that sub-criterion 5A is not met.

(B) Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property;

The applicant, before constructing this deck, had a deck that met the setback requirements. The other townhomes within the development have decks up to the property line, but those lots have common wall developments on both sides allowing decks to be built up to the property line with maintenance easements. The townhome at the opposite end from 2806 Peters Lane meets the setback requirement for their deck. The applicant can have a deck and meet the requirements of Title 49. Complying with the standards does not unreasonably prevent the owner from using the property in a manner consistent with scale, amenities, appearance or features, with existing development in the neighborhood.

No. Staff finds that sub-criterion 5B is not met.

(C) ***Be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive;***

Complying with the standards would consist of scaling back the deck by 3 feet. This property has a significant slope towards the rear of the property, but the area where the deck is constructed is relatively flat. Complying with the standards is not unnecessarily burdensome because of unique physical features.

No. Staff finds that sub-criterion 5C is not met.

or

(D) ***Because of preexisting nonconforming conditions on the subject parcel the grant of the Variance would not result in a net decrease in overall compliance with the Land Use Code, CBJ Title 49, or the building code, CBJ Title 19, or both.***

There are no preexisting nonconforming conditions on this parcel. This parcel meets all dimensional standards for a common wall development in a D18 zoning district.

N/A. Staff finds that sub-criterion 5D is not applicable.

No. Staff finds that because sub-criteria 5A, 5B, and 5C are not met, criterion 5 is not met.

6. ***That a grant of the Variance would result in more benefits than detriments to the neighborhood.***

No evidence has been presented that indicates allowing the ground level deck to remain in the side yard setback will be a benefit to the neighborhood.

No. Staff finds that criterion 6 is not met.

49.70.900-49.70.1097 COASTAL DEVELOPMENT, HABITAT, AND WETLANDS

ALASKA COASTAL MANAGEMENT PROGRAM (ACMP)

Not applicable. This project does not require a state-coordinated ACMP review.

FINDINGS

1. ***Is the application for the requested Variance complete?***

Yes. The variance application is complete.

2. ***Will the proposed development comply with the Alaska Coastal Management Program?***

Yes. As noted in the Alaska Coastal Management Program section of the staff report, the ACMP does not apply to this variance request.

3. ***Does the variance as requested, meet the criteria of Section 49.20.250, Grounds for Variances?***

No. As described in the variance criterion above, this variance as requested does not meet the criteria of Section 49.20.250 Grounds for Variances because criteria 1, 5, and 6 are not met.

RECOMMENDATION

It is recommended that the Board of Adjustment adopt the Director's analysis and findings and deny the requested Variance, VAR2010 0037. The Variance permit would allow for an existing grade level deck to remain in the 3' side yard setback up to the property line.

ATTACHMENT A

OUR RESPONSE TO

VARIANCE CASE #VAR2010-0037

BY LAWRENCE AND LAURA ROREM
PROPERTY OWNERS AT
2800-D PETERS LANE

RECEIVED
MAY 03 2011
PERMIT CENTER/CDD

OUR RESPONSE TO VARIANCE CASE #VAR2010-0037

BY LAWRENCE AND LAURA ROREM
PROPERTY OWNERS AT 2800-D PETERS LN

CONCERNS ABOUT THE VARIANCE APPLICATION:

These concerns are based on consulting with several civil engineers.

The old deck, at 2806 Peters Lane, was similar to our deck. It was reflective of the "decks" or small wooden porches in the neighborhood without large foundations.

The new fenced deck at 2806 is not a replacement in kind of the old unfenced deck. It is, rather, a new deck about 335 square feet, which is at least three times the size of the old deck.

1. The new deck encroaches into the Ingress / Egress and Drainage Easement, which will have an adverse impact. It impacts our ability to access and maintain our property.

    a. The wall on our property retains soil that supports the additional weight of their deck. It is weight on the soil that is putting strain on the retaining wall, not the deck itself.
    b. The wall also provides a stair access to our property and side door on our house.
    c. The townhouses from 2806-2816 Peters Lane are to use the 3 feet along the property line of 2806 for access below. Instead that access has been on our property at 2800-D. Our property is also used as access for utilities for the neighborhood.
    d. It also complicates and increases our repair cost to remove and replace our failing retaining wall.

2. Our concern is that repairing our retaining wall would compromise their new deck at 2806. There is only 29 inches of soil between their concrete deck support and our 3 1/2 foot tall retaining wall. We need written release of liability for any damage or settling that may occur to their deck in our endeavors to make necessary repairs. Beyond the 29 inches on our property is a 76 inch wide path of soil from the property line to their foundation that our retaining wall plays a significant role in holding up.

3. The new deck has impacted drainage and erosion between both houses. The original garden was installed as a cooperative effort between neighbors to deal with drainage and erosion issues. The garden and the landscaping absorbed more water than bare soil under the new deck, and could negatively impact drainage and erosion issues.

4. The retaining wall has slowly deteriorated over the past few years. Two years ago we approached George about cooperatively working on repairs. We planned to deal with it last year until we came home to the new deck. When we inquired at the Building Permit Office about repairing our retaining wall, we were told a permit was not needed if it was under 4 feet in height. Our failed retaining wall is now being held up by a temporary support beam. There is danger of the wall collapsing and pressing into our foundation and side door.

5. We are retired and on limited income and unsure of how to proceed. Our health issues limit us from solving this with our own "manual labor". Equipment access is no longer feasible.

OUR INITIAL REACTION UPON DISCOVERING THE NEW DECK

We arrived home from caring for Laura's 90 year old father on June 12, 2010 to discover four large concrete supports on our property line supporting a large, yet unfinished, deck. Our immediate thoughts were:

1. Why were we not consulted about this.
2. Did we receive notice of a Variance hearing and missed it?
3. Where were the neighbors?
4. What happened to our verbal agreement, in the summer of 2009, with owner George Kauzlarich to cooperatively address the failing retaining wall issue.
5. We immediately realized our intitial plan to use terracing as a cost effective solution to the retaining wall failure was no longer possible. We now faced a more complicated and costly solution.

HISTORY PRIOR TO OUR PURCHASE OF 2800-D PETERS LN IN 1998:

Previous owners of both properties had a history of solving erosion problems cooperatively. We have been told the original small deck on our property was built on the property line with the approval of the owner at 2806 at the time. When the next owner purchased the property at 2806, they objected, so the owner of 2800-D willingly downsized it to the present 2' 1" from the property line. The small deck, approximately 73 square feet at ground level, at 2800-D became part of that cooperative landscaping effort with the owners of 2806. The landscaped garden, primarily on 2806 property, was a joint effort to beautify and address erosion issues. At that time, the owner of 2800 D purchased large rocks for landscaping between the properties.

Along the north side of our house (2800-D), between the retaining wall and foundation, the wooden steps from our small deck, lead to the lower level of the various townhouses in the neighborhood. It is a well used access for all our neighbors. In fact our passage and property was used by Deputy Dawg Contractors to build the new deck at 2806. City representatives recently informed us that the 3 foot ingress/egress drainage easement on 2806 property line was to be used for access to the lower levels for the townhouses from 2806-2816 Peters Ln. In practice, our stairway has been used for all the adjoining townhouses in the area to access the lower level of property. We have willingly allowed our property to be used for this purpose.

THE BOTTOM LINE

The reality is we do not appreciate the new deck on the property line. We wish there had been cooperation so that we could have all benefited from working together to address the retaining wall, soil and deck issues before the deck was built. A variance obtained before proceeding would have saved a lot of stress for all concerned. We feel the contractor should have known that a variance was needed and it should have been his responsibility to follow correct CBJ procedure. We feel bad for the neighbors that the contractor did not carry out his ethical duty. It leaves our neighbors, and us, in a real dilemma.

Having said that, we do not want to bring financial hardship to our neighbors. In reality, we are not responsible for this problem. Simply put, we are concerned about the failing retaining wall and the impact on us of their new deck. If we had been informed prior to the decks construction, the failing wall could have been addressed at minimal cost. Furthermore, the stress and impending financial hardship on us has been significant. We don't know what to do. We are now faced with unavoidable possibility of damage to their deck. We need written assurance that we will not be held liable for any damage that could occur to their deck and structural supports, if it is decided to leave the new deck as is.

THE FAILING
RETAINING WALL
AT

2800-D PETERS LN

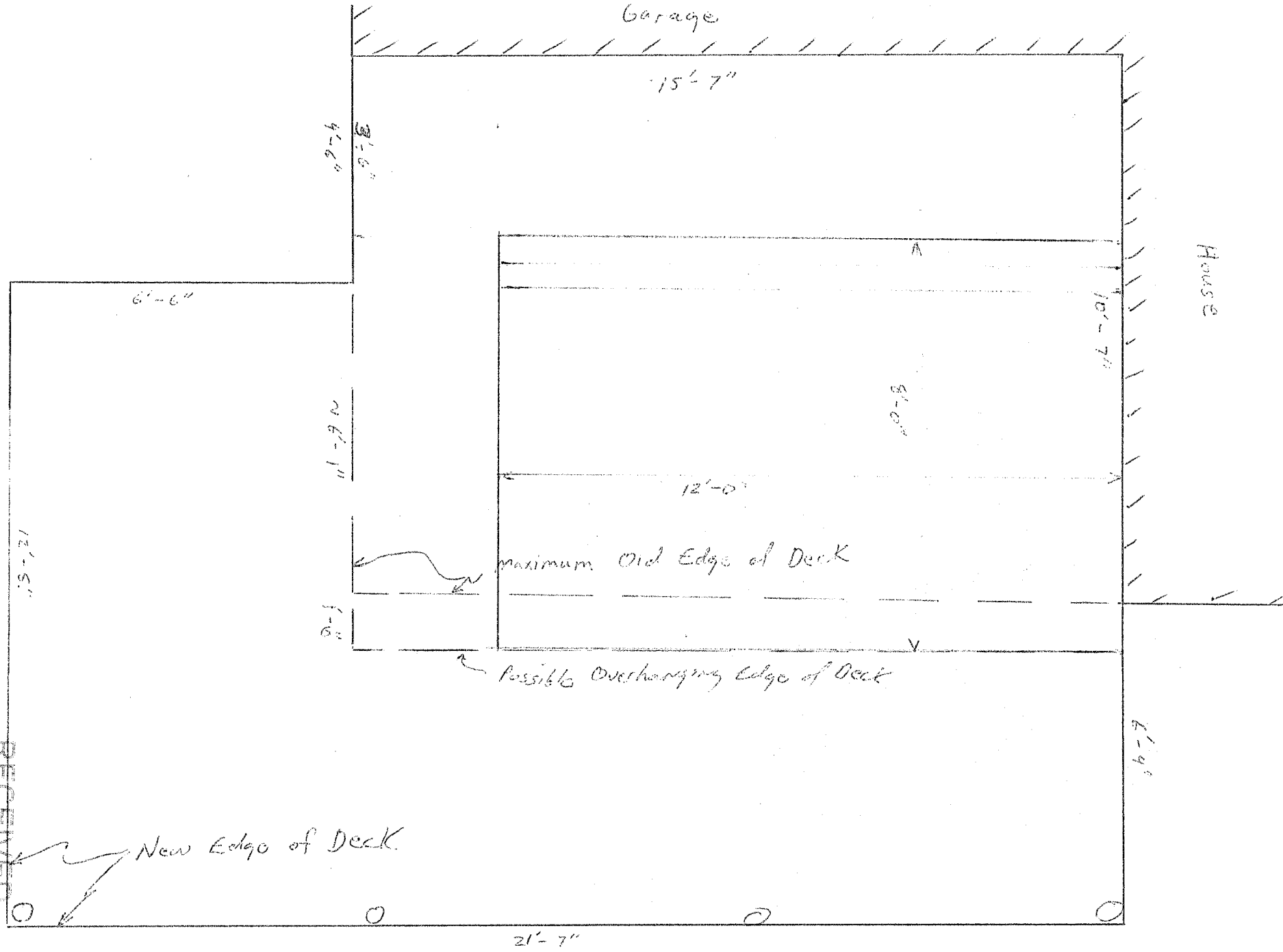
Drainage & Erosion Issues
2800-D & 2806 Peters Ln

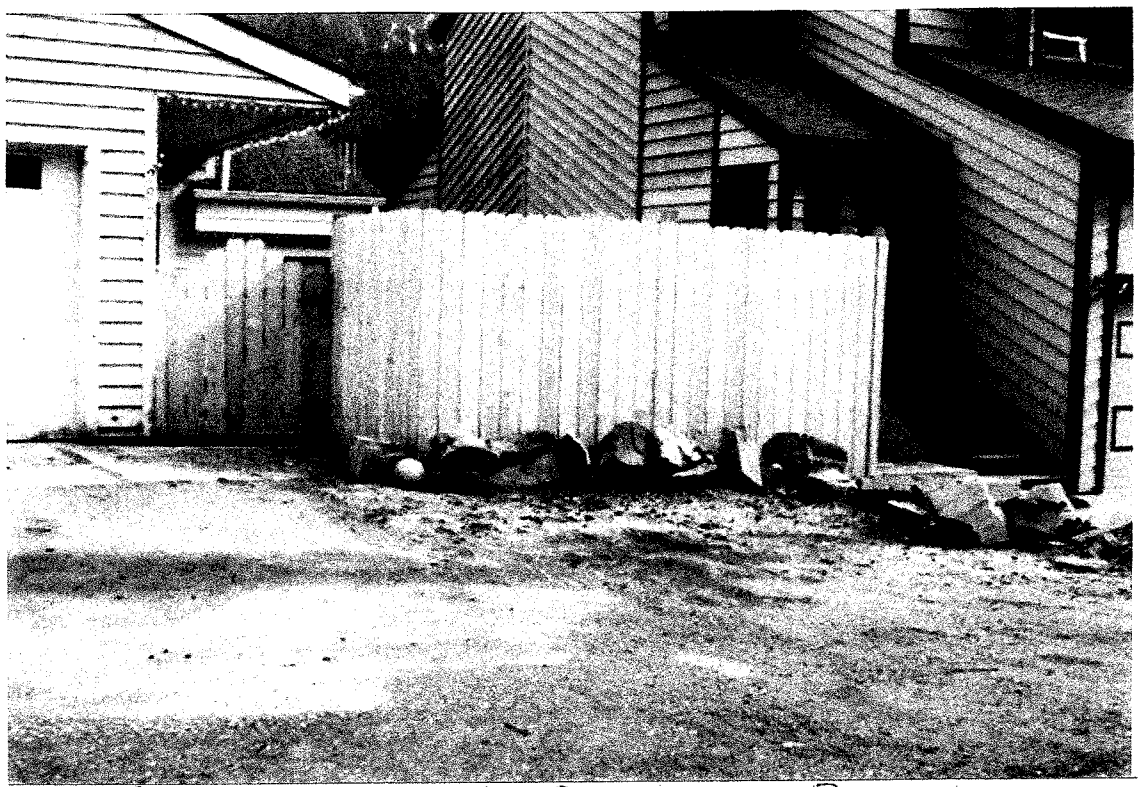
Left Top & Bottom:

Pictures of soil that contributes to failure of retaining wall at 2800-D.

Bottom Right

Drainage pipes at base of both properties



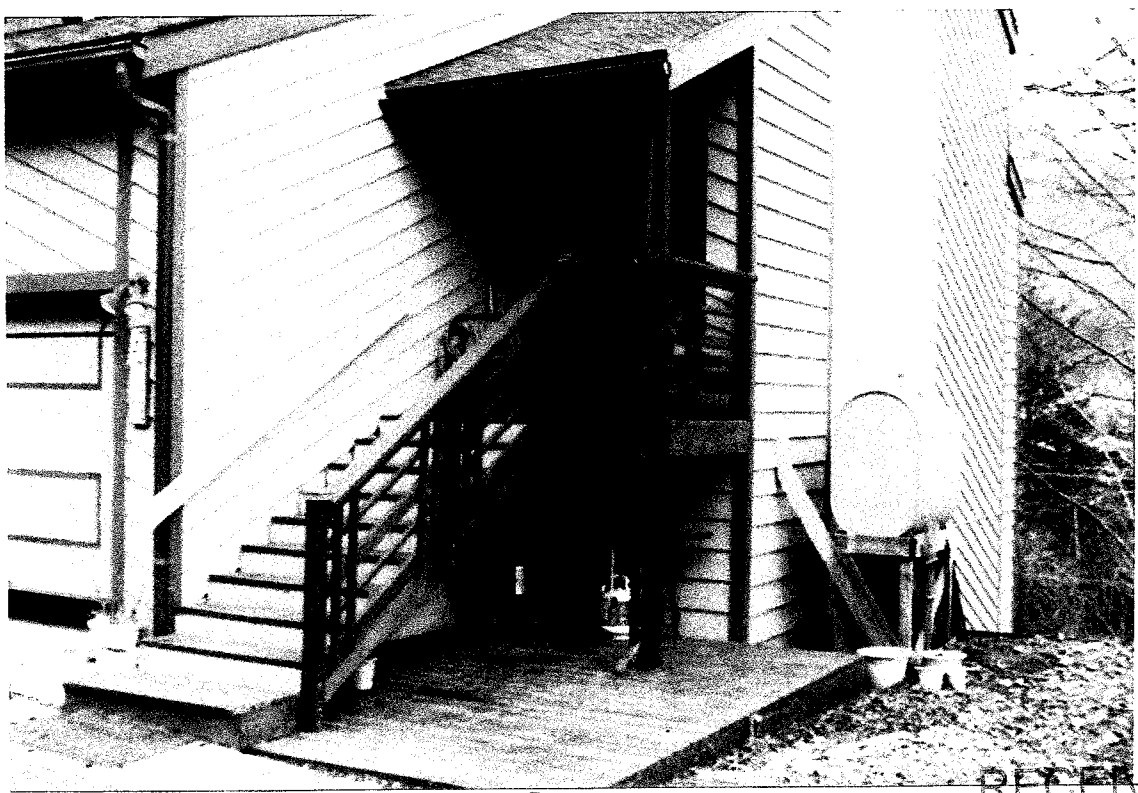


2806 PETERS LN WITH NEW DECK & 2800-D PETERS LN

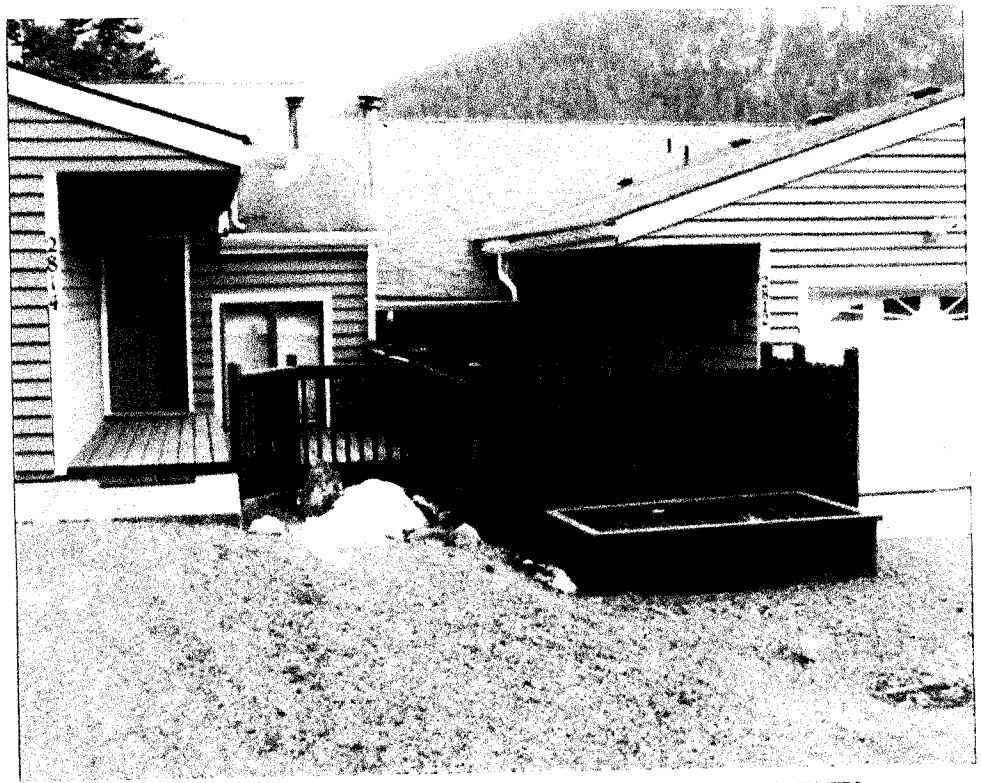
2800-C & 2800-D PETERS LN WITH NEW 2806 DECK

IN BACKGROUND

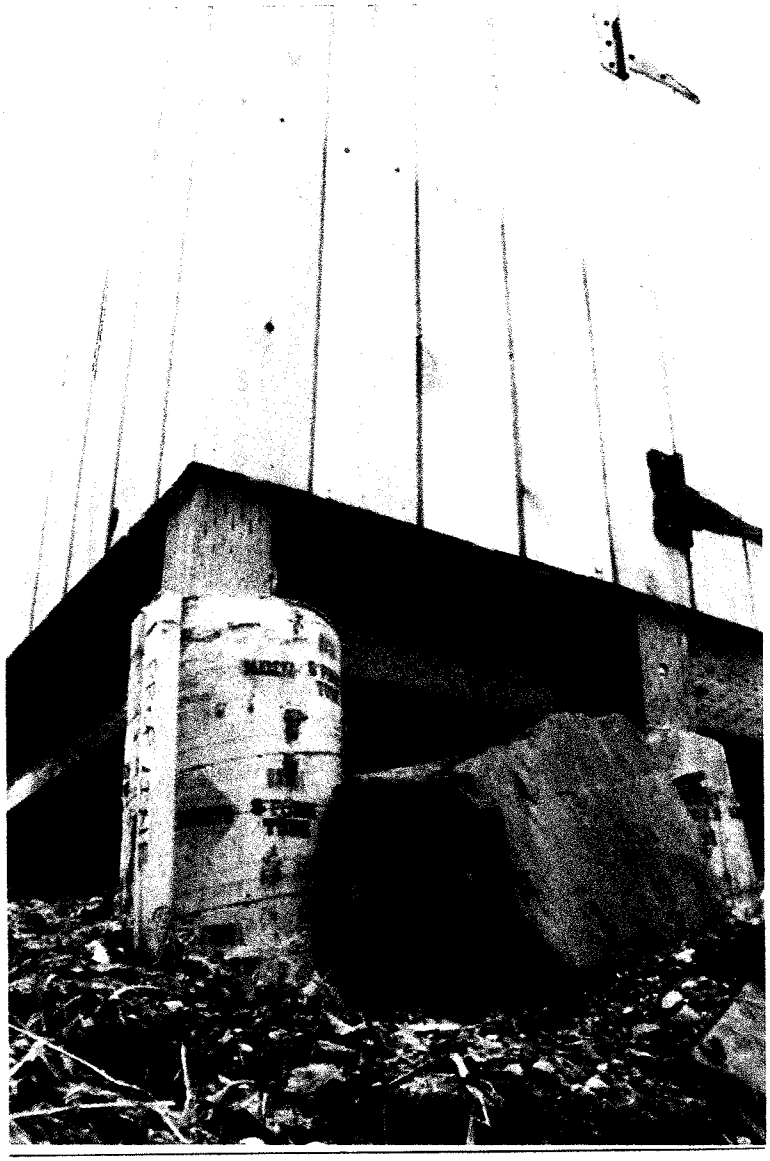
2800-C & 28 0-B PETERS LN



2800-A PETERS LN



2806 - 2816
PETERS LN



CONCRETE DECK SUPPORTS: 2806 PETERS LN

TOP LEFT

2800-D Peters Ln
New deck concrete
support 2806 Peters
Lane (Back)

TOP RIGHT

2806 Front view
deck support &
2800-D deck/porch

BOTTOM

2806 concrete
supports (back
view)

ATTACHMENT B

DECLARATION OF RESTRICTIVE
COVENANTS AND EASEMENTS
FOR
TREADWELL TOWNHOUSES SUBDIVISION

This Declaration is made by Larry Spencer ("Declarant"). Declarant is owner of certain real estate situated in the City of Juneau, State of Alaska, more particularly described as Lots 1 through 6, Treadwell Townhouses Subdivision, First Judicial District, Juneau, Alaska (the "Subdivision").

Declarant intends to construct substantially identical adjoining townhouses on each lot in the Subdivision and sell them to various purchasers. Each townhouse will be one-half of a duplex building; each building will adjoin one or two other buildings. To protect purchases of the townhouses, their successors and assigns, Declarant hereby creates the following easements and declares the following restrictions on lots in the Subdivision and on the buildings and party walls located thereon.

1. Party Walls

1.1 Party Wall Declaration. It is contemplated that the dividing wall between garages of each townhouse will be constructed on the boundary line between each adjoining townhouse with the dividing wall between the garages of two townhouses situated approximately one-half on each lot on which the townhouses are located. Each dividing wall will be owned one-half each by the owners of the two lots and is hereby declared to be a party wall and subject to the terms and conditions of this declaration.

1.2 Maintenance and Repair of Party Wall. The cost of maintaining the structural integrity of each party wall shall be borne equally by the owners of that party wall. In the event of damage or destruction of a party wall from any cause, other than negligence of an owner, both owners shall, as a joint expense, repair or rebuild the party wall. The owners of the townhouses on each side of the wall shall have the right to the full use of the wall as repaired or rebuilt. If the negligence of an owner causes damage to or destruction of a party wall, the negligent owner shall bear the entire cost of repair or reconstruction. If an owner shall neglect or refuse to pay the owner's share of expenses related to the party wall, or all of such cost in the case of that owner's negligence, the other owner may have the party wall repaired or restored and shall be entitled to have a lien on the lot of the owner so failing to pay for the amount of the defaulting party's share of the repair or replacement cost, plus interest at twelve percent per annum and reasonable attorney's fees.

1.3 Use of Party Walls. An owner shall not alter or change the party wall in any manner, except interior decoration. Each party wall shall remain in the same location as when erected. Each owner of a party wall shall have a perpetual easement in that part of the premises of the other owner of the party wall for party wall purposes.

2. Air Space Between Dwelling Areas. The dwelling area of each townhouse is separated from the dwelling portion of each adjoining townhouse by dead air space. The boundary line dividing each adjoining townhouse runs through the dead space. Any repair, modification, or penetration of the dead air space by an owner of a townhouse must be in compliance with all building, fire and life safety codes. In the event the damage or destruction of a townhouse results in exposing the wall of an adjoining townhouse, the owner of the damaged or destroyed townhouse shall promptly make such repairs to the exposed wall as are necessary to protect the adjoining townhouse from damage.

3. Roofs. Maintenance and repair of the roof of each duplex building shall be the responsibility of the owner of the lot upon which the roof is located. Each owner shall have the right to go upon the roof of an adjoining townhouse to repair a leak causing damage to that owner's townhouse; however, the owner of the repaired portion of the roof shall be responsible for the cost of such repair. In the event the entire roof of a duplex building requires replacement, unless otherwise agreed between the owners of that building, the roof shall be replaced with a roof substantially the same as the original roof, and the cost thereof shall be borne equally by the two owners. If replacement of the entire roof is required, and one owner refused to pay that owner's share of the cost of replacement, the other owner may replace the entire roof and shall be entitled to a lien on the lot of the so failing owner to pay for one-half of the cost of replacement, plus interest at twelve percent per annum and reasonable attorney's fees.

4. Footings and Foundations. Each owner shall maintain the footings and perimeter foundations of the owner's townhouse. In the event of the failure of an owner to properly maintain the owner's footings and foundations results in damage to another townhouse, the owner of the damaged townhouse shall have a lien on the lot of the owner failing to maintain for the cost to repair the damage and correct the footing and foundation deficiency, plus interest at twelve percent per annum and reasonable attorney's fees.

5. Exterior Decoration or Construction. An owner of a townhouse shall not make any material change to the exterior color or appearance of the townhouse without the written consent of the owner of the other townhouse in the duplex building in which the townhouse is located. Any change agreed to by the owners shall be uniform, consistent, and compatible for that duplex building. In the event the exterior of a duplex building requires repainting, and the owners of the townhouses in that building cannot agree on a consistent color scheme, the building shall be repainted, if at all, substantially the same as the original color scheme. No owner may construct an addition to a townhouse or any structure on a lot unless all owners of lots in the Subdivision give their prior written consent.

6. Repair and Restoration of Townhouse. In the event of damage to or total or partial destruction of a townhouse, the owner of the damaged or destroyed townhouse, unless all owners of lots in the Subdivision agree otherwise, shall promptly repair or restore the townhouse at the owner's sole expense, subject to the provisions for sharing expenses relating to a party wall set forth above or relating to a roof as set forth below.

7. Landscaping. Each owner shall, within 12 months of occupying the owner's townhouse, provide and thereafter maintain basic landscaping on the owner's lot.

8. Utilities. Each owner shall have an easement over, across and under each of the other lots for utility and drainage purposes. Each owner shall maintain and not obstruct the drainage easement on the owner's lot. Each owner shall have the right of access over the other lots for the purpose of repairing and maintaining the utilities serving that owner. The cost of repairing a utility shall be borne by the owner or owners which the utility serves. In the event an owner fails to pay the owner's share of the cost of repair, the other owner or owners shall have a lien on the lot of the owner so failing to pay for the amount of the owner's share, plus interest at twelve percent per annum and reasonable attorney's fees.

9. Commercial Uses Restricted. An owner or resident of a townhouse may conduct a business in that townhouse that is ancillary to a residential use of the townhouse. The business may not employ any person in the townhouse other than a resident of the townhouse. Small engine and auto repair businesses, storage of materials on a lot for business purposes and business activities that generate noise, smoke, or odors shall be prohibited.

10. Offensive Activity. No noxious or offensive activity shall be carried on in any townhouse or on any lot, nor shall anything be done thereon that may be or become a threat to the health and safety of or substantially interferes with an owner's ability to use the owner's townhouse or lot for its intended residential purpose.

11. Covenants Running with the Land. The easements hereby created and restrictions imposed hereunder are and shall be perpetual and construed as covenants running with the land and each and every person accepting a deed to any lot in the Subdivision shall be deemed to accept the deed with the understanding that each and every other purchaser is also bound by the provisions herein contained, and each and every purchaser, by accepting a deed to any lot, shall thereby consent and agree to be bound by the covenants herein contained to the same extent as if such person had signed this instrument.

12. Amendments. These restrictive covenants and easements may be amended with the written consent of each owner, provided the amendment is in conformance with City/Borough of Juneau Conditional Use Permit Number CU-7-80, and that changes in the Utility Restrictions are approved by the City/Borough Director of Public Works or his designee.

DATED THIS 4 day of May, 1981.

Larry Spencer
Larry Spencer

City and Borough of Juneau Conditional Use Permit
CU-7-80

The Planning Commission, at its August 27, 1980 meeting authorized the granting of a conditional use permit to establish a 6 unit townhouse project under the density zoning procedures on Lots 4 and 5 Block J, Belleview Subdivision. This includes the reduction of sideyard setback requirements between townhouse units to 0 feet, the reduction of minimum lot width to 22 feet, and the reduction of minimum lot size to 1900 square feet.

The following are the conditions of the permit:

1. That only 3 access drives be permitted as discussed earlier.
2. That maintenance agreements for individual units be provided along with provisions for repair of units damaged due to fire or disaster.
3. That maintenance agreements be provided for common areas and utilities, specifically sewer and water.
4. A method be provided for completion of the project as a whole.
5. That density be limited to 6 single family units.
6. That the density zoning be enacted concurrent with approval of the final plat.

PLAT OF
TREADWELL TOWNHOUSE SUBDIVISION
A PORTION OF U.S.S. 472; SEC. 25, T.41 N., R.67 E., C.R.M.
JUNEAU, ALASKA
SHT 2 OF 2

PLAT 81-28

not make any material change to the exterior color or appearance of the townhouse without the written consent of the owner of the other townhouse in the duplex building in which the townhouse is located. Any change agreed to by the owners shall be uniform, consistent, and compatible for that duplex building. In the event the exterior of a duplex building requires repainting, and the owners of the townhouses in that building cannot agree on a consistent color scheme, the building shall be repainted, if at all, substantially the same as the original color scheme. No owner may construct an addition to a townhouse or any structure on a lot unless all owners of lots in the Subdivision give their prior written consent.

6. Repair and Restoration of Townhouse. In the event of damage to or total or partial destruction of a townhouse, the owner of the damaged or destroyed townhouse, unless all owners of lots in the Subdivision agree otherwise, shall promptly repair or restore the townhouse at the owner's sole expense, subject to the provisions for sharing expenses relating to a party wall set forth above or relating to a roof as set forth below.

7. Landscaping. Each owner shall, within 12 months of occupying the owner's townhouse, provide and thereafter maintain basic landscaping on the owner's lot.

8. Utilities. Each owner shall have an easement over, across and under each of the other lots for utility and drainage purposes. Each owner shall maintain and not obstruct the drainage easement on the owner's lot. Each owner shall have the right of access over the other lots for the purpose of repairing and maintaining the utilities serving that owner. The cost of repairing a utility shall be borne by the owner or owners which the utility serves. In the event an owner fails to pay the owner's share of the cost of repair, the other owner or owners shall have a lien on the lot of the owner so failing to pay for the amount of the owner's share, plus interest at twelve percent per annum and reasonable attorney's fees.

9. Commercial Uses Restricted. An owner or resident of a townhouse may conduct a business in that townhouse that is ancillary to a residential use of the townhouse. The business may not employ any person in the townhouse other than a resident of the townhouse. Small engine and auto repair businesses, storage of materials on a lot for business purposes and business activities that generate noise, smoke, or odors shall be prohibited.

ATTACHMENT C

Nicole Jones

From: kellie walling [kelliewalling69@hotmail.com]

Sent: Tuesday, May 03, 2011 8:53 AM

To: Nicole Jones

Subject: File Number VAR2010-0037

Hello Nicole.
I just received you notice of public hearing for a variance to reduce the side yard setback from 3' to 0'..
I feel the deck should have been built to code prior to being constructed with all sets backs addressed according to CBJ.
I am against changing the set back..

Kellie Walling

C.B.J.
Community Development

RE: VARIANCE HEARING
FILE: 2010-0037

WE OBJECT to THIS VARIANCE FOR ONLY ONE PROPERTY OWNER. PETERS LANE HAS PARKING PROBLEMS AS IT IS NOW. IF THIS IS GRANTED, IT WOULD MEAN MORE PARKING DIRECTLY IN THE STREET RIGHT OF WAY

IF THIS IS GRANTED, IT SHOULD BE FOR ALL PROPERTY OWNERS.

Judy McDonald/Brogan
2811 Peters Ln
Juneau AK 99801

DEVELOPMENT PERMIT APPLICATION

Project Number	CITY and BOROUGH of JUNEAU	Date Received: 11/24/10
Project Name (City Staff to Assign Name)		

PROJECT / APPLICANT INFORMATION

Project Description
Replace old deck which is rotten and falling apart with a new deck (see attached AS-BUILT)

PROPERTY LOCATION

Street Address	City/Zip
2806 Peters Ln	Juneau, AK 99801

Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot)
Lot 1 of Treadwell Townhouse Subdivision

Assessor's Parcel Number(s)

LANDOWNER/ LESSEE

Property Owner's Name	Contact Person:	Work Phone:
Miriha D. Scalf	Miriha	465-1754
Mailing Address	**Home Phone:**	**Fax Number:**
2806 Peters Ln, Juneau, AK 99801	209-3517	
E-mail Address	**Other Contact Phone Number(s):**	
zepher27@mac.com		

LANDOWNER/ LESSEE CONSENT ****Required for Planning Permits, not needed on Building/ Engineering Permits****

I am (we are) the owner(s)or lessee(s) of the property subject to this application and I (we) consent as follows:
A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission.
B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.

X _____ Landowner/Lessee Signature — Date 11/15/10

X _____ Landowner/Lessee Signature — Date

NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.

APPLICANT If the same as OWNER, write "SAME" and sign and date at X below

Applicant's Name	Contact Person:	Work Phone:
SAME		
Mailing Address	**Home Phone:**	**Fax Number:**
	Other Contact Phone Number(s):	
E-mail Address		

X _____ Applicant's Signature — Date of Application 11/15/10

STAFF APPROVALS

----------OFFICE USE ONLY BELOW THIS LINE----------

	Permit Type	***SIGN	Date Received	Application Number(s)
	Building/Grading Permit			
	City/State Project Review and City Land Action			
	Inquiry Case (Fee In Lieu, Letter of ZC, Use Not Listed)			
	Mining Case (Small, Large, Rural, Extraction, Exploration)			
	Sign Approval (If more than one, fill in all applicable permit #'s)			
	Subdivision (Minor, Major, PUD, St. Vacation, St. Name Change)			
	Use Approval (Allowable, Conditional, Cottage Housing, Mobile Home Parks, Accessory Apartment)			
X	Variance Case (De Minimis and all other Variance case types)		11/24/10	VAR-20100037
	Wetlands Permits			
	Zone Change Application			
	Other (Describe)			

***Public Notice Sign Form filled out and in the file.

Comments:

Permit Intake Initials: EOF

NOTE: DEVELOPMENT PERMIT APPLICATION FORMS MUST ACCOMPANY ALL OTHER COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS

VARIANCE APPLICATION

Project Number	Project Name (15 characters)	Case Number	Date Received
		VAR20100037	11/24/10

TO BE COMPLETED BY THE APPLICANT

TYPE OF VARIANCE REQUESTED:

- ☐ Variance to the Sign Standard (VSG)
- ☐ Variance to Dimensional Standards (VDS)
- ☐ Variance to Habitat Setbacks (VHB)
- ☐ Variance to Parking Requirements (VPK)
- ☒ Variance to Setback Requirements (VSB)

DESCRIPTION OF ACTIVITY WHICH REQUIRES A VARIANCE:

I respectfully request a variance to the 3-foot setback requirement for my deck based on hardship as well as fair and equable treatment.

Previous Variance Applications? ☐ YES ☒ NO Date of Filing: _____

Previous Case Number(s): _____

Was the Variance Granted? ☐ YES ☐ NO

UNIQUE CHARACTERISTICS OF LAND OR BUILDING(S):

This deck replaced the old deck that was rotten and falling apart. I replaced the deck for safety reasons. Four of my neighbors in the townhouse development already have decks abutting their side yards with no set back; in addition, the neighbor to the south of me also has a deck that is within the three foot setback.

UTILITIES AVAILABLE: WATER: ☑ Public ☐ On Site SEWER: ☑ Public ☐ On Site

WHY WOULD A VARIANCE BE NEEDED FOR THIS PROPERTY REGARDLESS OF THE OWNER?

The townhouse subdivision consists of six townhouse lots. Four of my neighbors in the townhouse development already have decks abutting their side yards with no set back; in addition, the neighbor to the south of me also has a deck that is within the three foot setback. (see as-built)

WHAT HARDSHIP WOULD RESULT IF THE VARIANCE WERE NOT GRANTED?

See attached

For more information regarding the permitting process and the submittals required for a complete application, please see the reverse side.

If you need any assistance filling out this form, please contact the Permit Center at 586-0770.

VARIANCE FEES

	Fees	Check No.	Receipt	Date
Application Fees	$ [illegible]			
Adjustment	$			
Total Fee	$ [illegible]	1092	CDD283	11/24/10

NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM

WHAT HARDSHIP WOULD RESULT IF THE VARIANCE WERE NOT GRANTED?

A variance of the side yard set back is requested per 49.20.250(b). The original deck, because of its age condition of its foundation, was reconstructed (see photos of old deck). The new deck was contained within the fenced area (see photos of new deck, photos of fence, and as-built survey). The CBJ building staff is asserting that the deck is a structure and therefore can not be placed within 3-feet of the side yard set back. Their remedy for the situation is to have the owner remove 3-feet from the length of the deck.

Removal of 3-feet of the deck would have an adverse effect on the existing support beams and would not be practically possible. In addition, the expense of reconfiguring the deck (estimated at $1,500) would create a financial hardship.

Since the deck is contained within the fenced area, granting a variance for the deck to remain would be consistent with grounds for granting a variance as outlined in 49.20.250(b).

The neighbors' decks on each side yard of the subject property are closer than 3-feet to the property lines (see photos and as-built survey). Granting a variance from the set back requirements for the subject deck is consistent with the situations allowed for the benefit of the surrounding property owners.

Granting of the variance will not injure nearby property since the deck is contained within the fence boundary; and granting of the variance is not inconsistent with uses already allowed in the immediate area, i.e. neighbors decks already encroach into the side yard setbacks.

Forcing compliance with the existing setback requirement by requiring 3-feet of the length of the deck to be removed would prevent the owner from using a non-intrusive, secondary attribute of the residence. The deck allows a portion of the property, because of terrain, to be utilized. The deck is within a fenced area and allows the owner to use the property in a manner that is consistent with residential use and is compatible with the existing development of the neighborhood.

It would be unreasonable for the CBJ to force compliance with the side yard setback because the cost of reconfiguring the deck would be unreasonable expensive. It is unfair for the CBJ to force compliance when neighbors on both sides of the subject property have been allowed to have decks within the side yard setback.

Please note: Pictures can be supplied digitally.

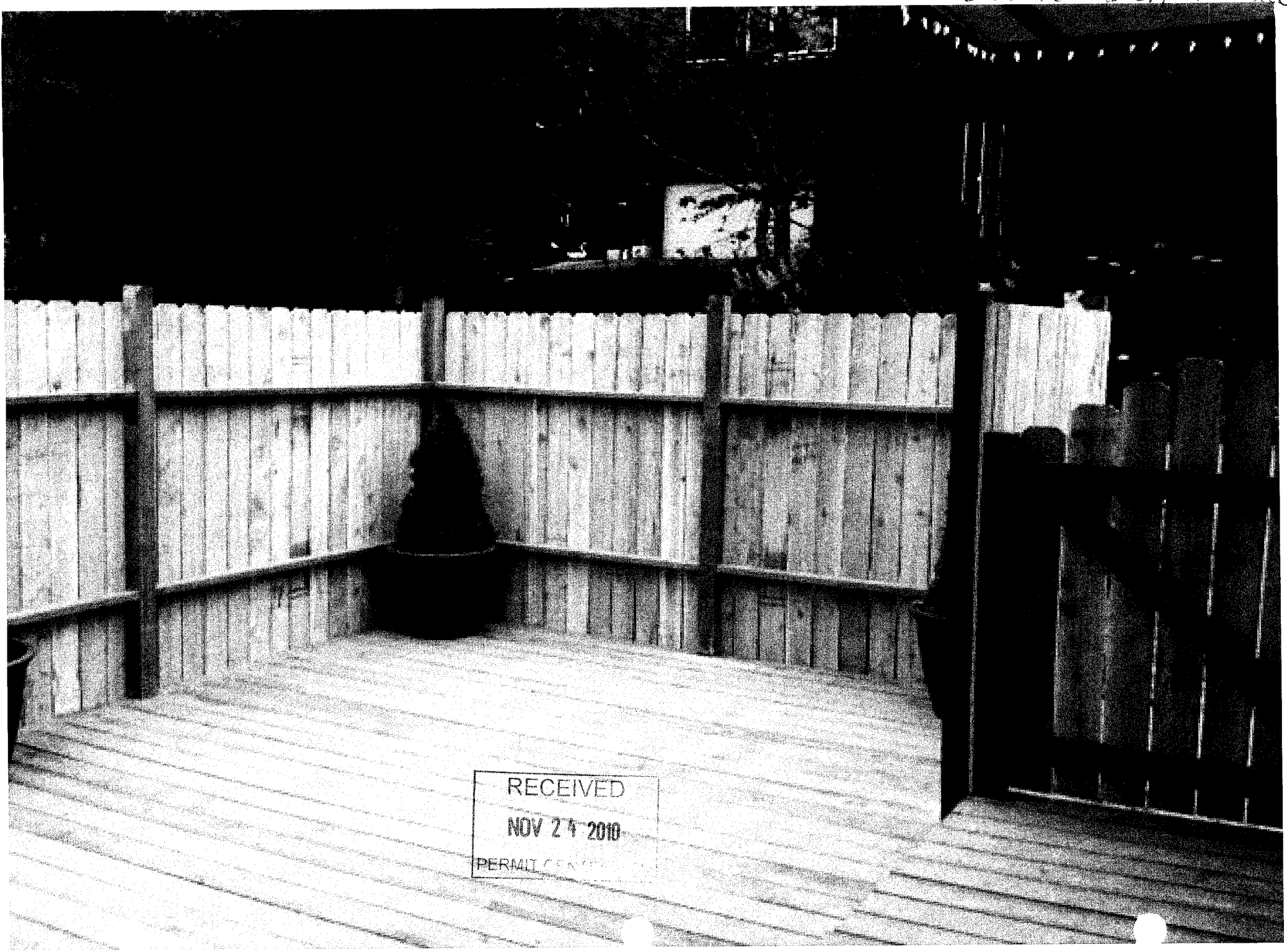
Marie Scott

2806 Peters Ln

Juneau, AK 99801

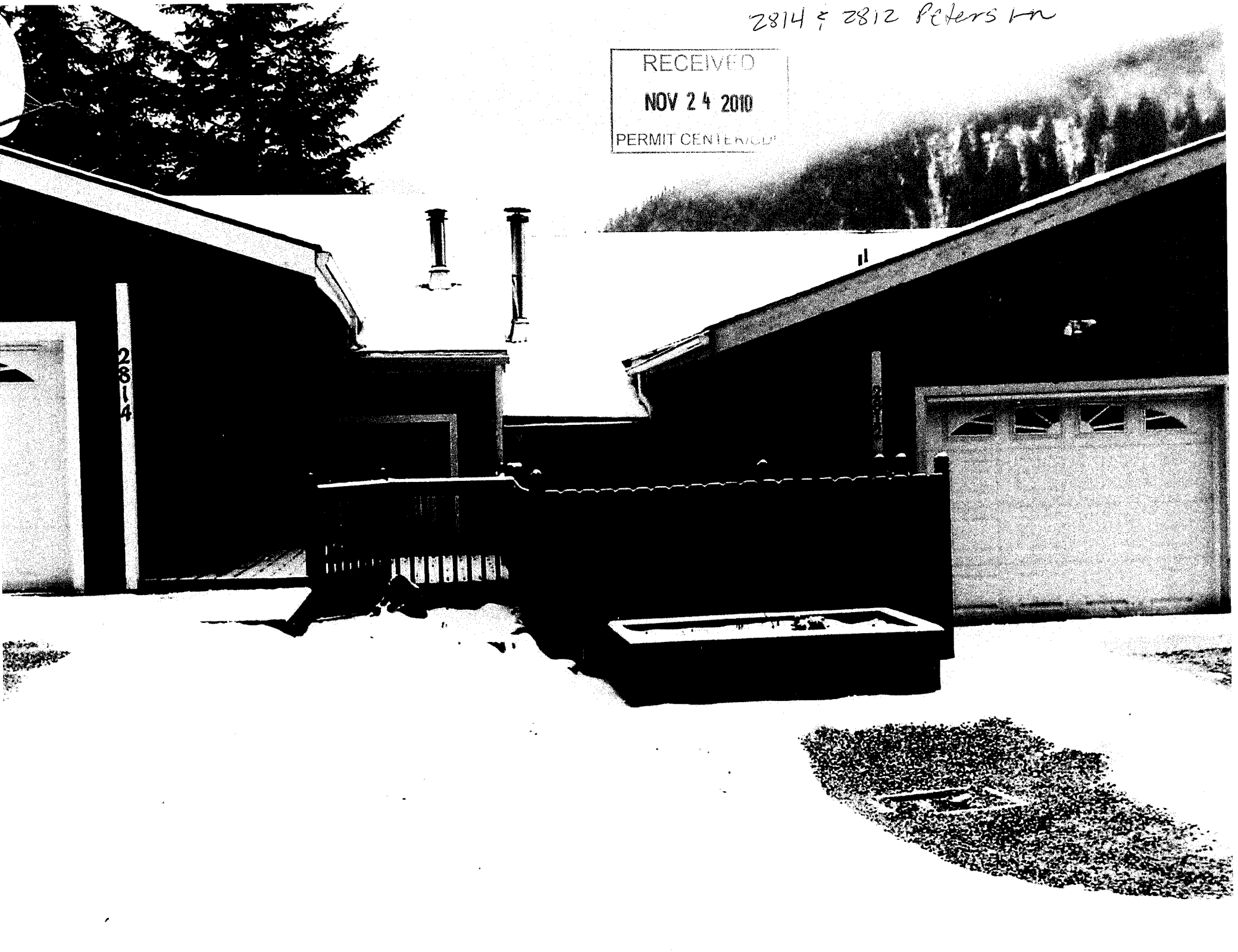
2806 Peters Ln Old deck

2806 Peters Ln NewDeck



2806 Peters Lane construction of new deck

2814 & 2812 Peters Ln



2810 & 2808 Peters Ln

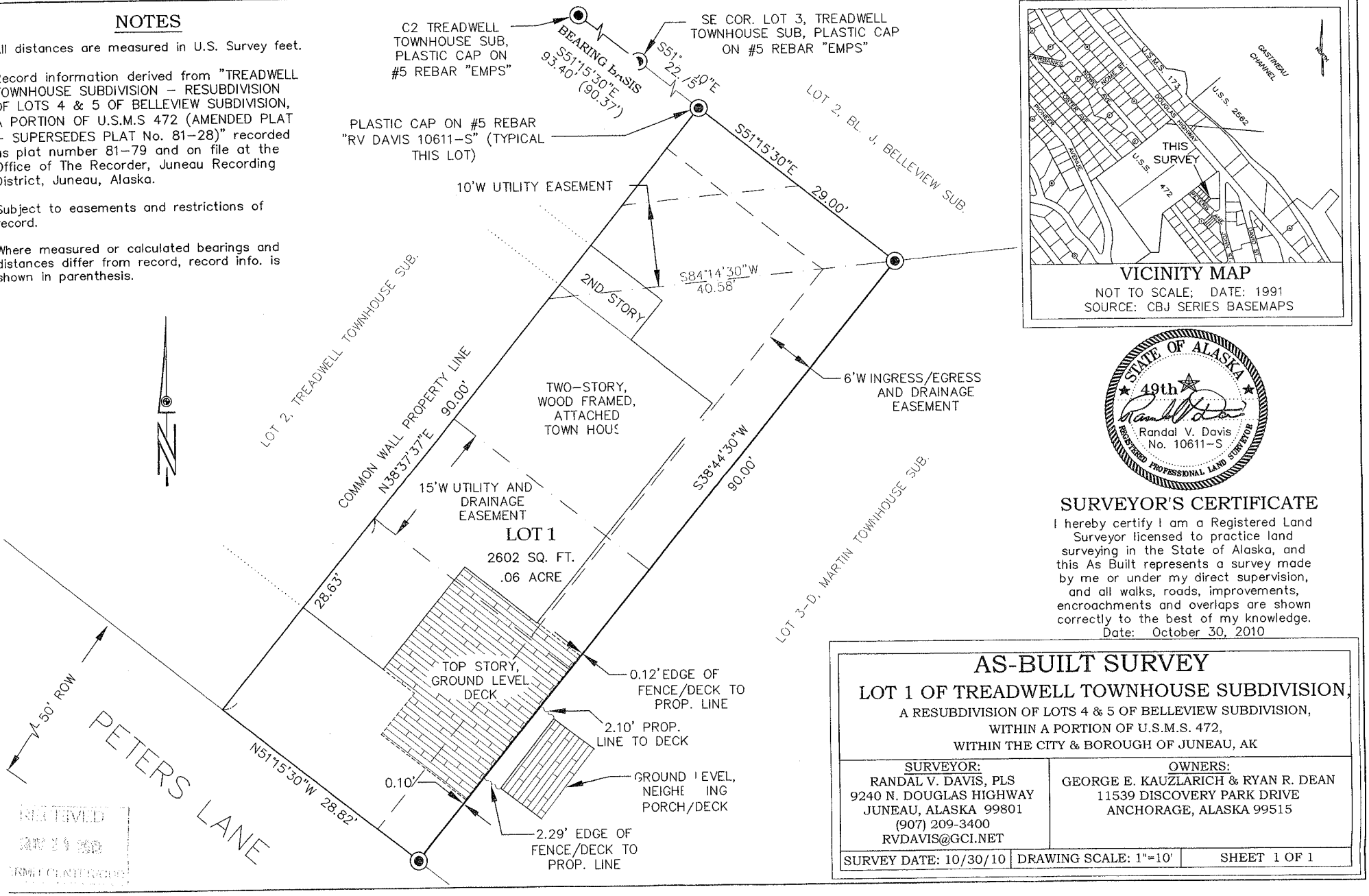
NOTES

All distances are measured in U.S. Survey feet.

Record information derived from "TREADWELL TOWNHOUSE SUBDIVISION – RESUBDIVISION OF LOTS 4 & 5 OF BELLEVIEW SUBDIVISION, A PORTION OF U.S.M.S 472 (AMENDED PLAT – SUPERSEDES PLAT No. 81–28)" recorded as plat number 81–79 and on file at the Office of The Recorder, Juneau Recording District, Juneau, Alaska.

Subject to easements and restrictions of record.

Where measured or calculated bearings and distances differ from record, record info. is shown in parenthesis.



VICINITY MAP
NOT TO SCALE; DATE: 1991
SOURCE: CBJ SERIES BASEMAPS

STATE OF ALASKA
49th
Randal V. Davis
No. 10611–S
REGISTERED PROFESSIONAL LAND SURVEYOR

SURVEYOR'S CERTIFICATE

I hereby certify I am a Registered Land Surveyor licensed to practice land surveying in the State of Alaska, and this As Built represents a survey made by me or under my direct supervision, and all walks, roads, improvements, encroachments and overlaps are shown correctly to the best of my knowledge.
Date: October 30, 2010

AS-BUILT SURVEY

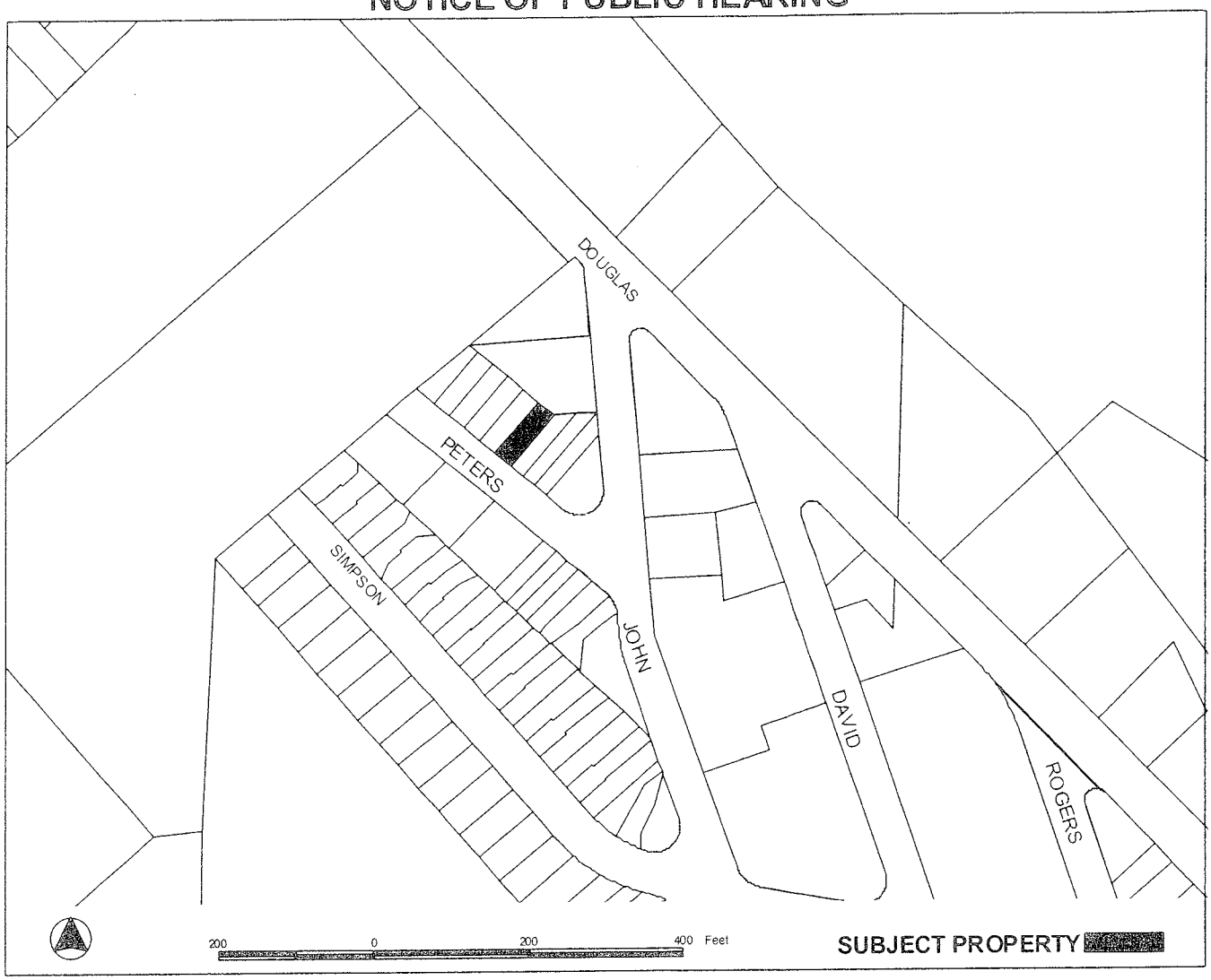
LOT 1 OF TREADWELL TOWNHOUSE SUBDIVISION,

A RESUBDIVISION OF LOTS 4 & 5 OF BELLEVIEW SUBDIVISION,
WITHIN A PORTION OF U.S.M.S. 472,
WITHIN THE CITY & BOROUGH OF JUNEAU, AK

SURVEYOR:	OWNERS:
RANDAL V. DAVIS, PLS 9240 N. DOUGLAS HIGHWAY JUNEAU, ALASKA 99801 (907) 209-3400 RVDAVIS@GCI.NET	GEORGE E. KAUZLARICH & RYAN R. DEAN 11539 DISCOVERY PARK DRIVE ANCHORAGE, ALASKA 99515

SURVEY DATE: 10/30/10	DRAWING SCALE: 1"=10'	SHEET 1 OF 1

NOTICE OF PUBLIC HEARING



PROPOSAL: A Variance request to reduce the side yard setback from 5' to 0' for an existing deck.

FILE NO: VAR2010-0037	**APPLICANT:** MIRIHA SCALF
TO: Adjacent Property Owners	**Property PCN:** 1-D05-0-L15-001-0
HEARING DATE: Mar 22, 2011	**Owner(s):** GEORGE E KAUZLARICH & RYAN R DEAN
HEARING TIME: 7:00 PM	**Size:** 2601 Sq Ft **Zoned:** D18
PLACE: ASSEMBLY CHAMBERS Municipal Building 155 South Seward St Juneau, Alaska 99801	**Site Address:** 2806 PETERS LN **Accessed via:** PETERS LN

PROPERTY OWNERS PLEASE NOTE:

You are invited to attend this Public Hearing and present oral testimony. The Planning Commission will also consider written testimony. You are encouraged to submit written material to the Community Development Department no later than 8:30 A.M. on the Wednesday preceding the Public Hearing. Materials received by this deadline are included in the information packet given to the Planning Commission a few days before the Public Hearing. Written material received after the deadline will be provided to the Planning Commission at the Public Hearing.

If you have questions, please contact the

Community Development Department Nicole Jones at nicole_jones@ci.juneau.ak.us or call 586-0218

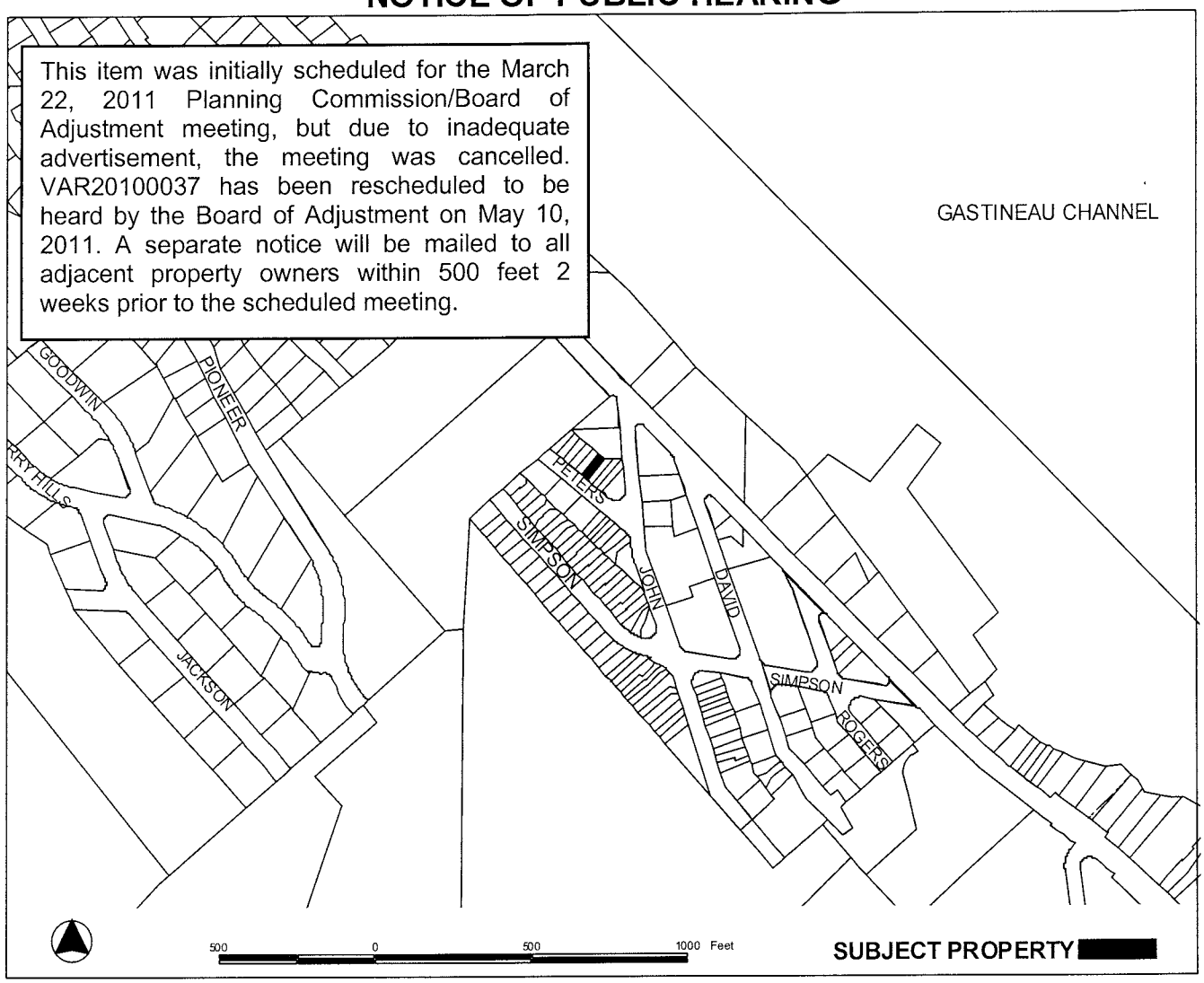
Planning Commission Agendas, Staff Reports and Meeting Results can be viewed at www.juneau.org/plancomm.

Date notice was printed: March 8, 2011

RESCHEDULED

NOTICE OF PUBLIC HEARING

This item was initially scheduled for the March 22, 2011 Planning Commission/Board of Adjustment meeting, but due to inadequate advertisement, the meeting was cancelled. VAR20100037 has been rescheduled to be heard by the Board of Adjustment on May 10, 2011. A separate notice will be mailed to all adjacent property owners within 500 feet 2 weeks prior to the scheduled meeting.



PROPOSAL: A Variance request to reduce the side yard setback from 5' to 0' for an existing deck.

FILE NO:	VAR20100037
TO:	**Adjacent Property Owners**
HEARING DATE:	May 10, 2011
HEARING TIME:	7:00 PM
PLACE:	**ASSEMBLY CHAMBERS** Municipal Building 155 South Seward St Juneau, Alaska 99801

APPLICANT:	MIRIHA SCALF
Property PCN:	1-D05-0-L15-001-0
Owner(s):	GEORGE E KAUZLARICH & RYAN R DEAN
Size:	2,601 sq ft
Zoned:	D-18
Site Address:	2806 PETERS LN
Accessed via:	PETERS LN

PROPERTY OWNERS PLEASE NOTE:

You are invited to attend this Public Hearing and present oral testimony. The Planning Commission will also consider written testimony. You are encouraged to submit written material to the Community Development Department no later than 8:30 A.M. on the Wednesday preceding the Public Hearing. Materials received by this deadline are included in the information packet given to the Planning Commission a few days before the Public Hearing. Written material received after the deadline will be provided to the Planning Commission at the Public Hearing.

If you have questions, please contact Nicole Jones at 907-586-0218 or e-mail: nicole_jones@ci.juneau.ak.us

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Date notice was printed: March 15, 2011