

MEMORANDUM

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

DATE: October 15, 2013

TO: Board of Adjustment

FROM: Teri Camery, Senior Planner
Community Development Department

FILE NO.: VAR2013 0015

PROPOSAL: An after-the-fact Variance to reduce the side-yard and rear-yard setbacks to zero for construction of a sauna

GENERAL INFORMATION

Applicant: Vance F Putman

Property Owner: Vance F Putman

Property Address: 114 Sixth Street

Legal Description: Juneau Townsite Block 29 Lot 2

Parcel Code Number: 1-C06-0-A29-003-0

Site Size: 4,893 square feet

**Comprehensive Plan
Land Use Designation:** Medium Density Residential

Zoning: D-18

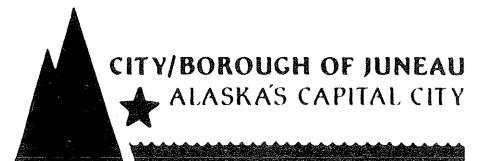
Utilities: CBJ Water and Sewer

Access: Sixth Street

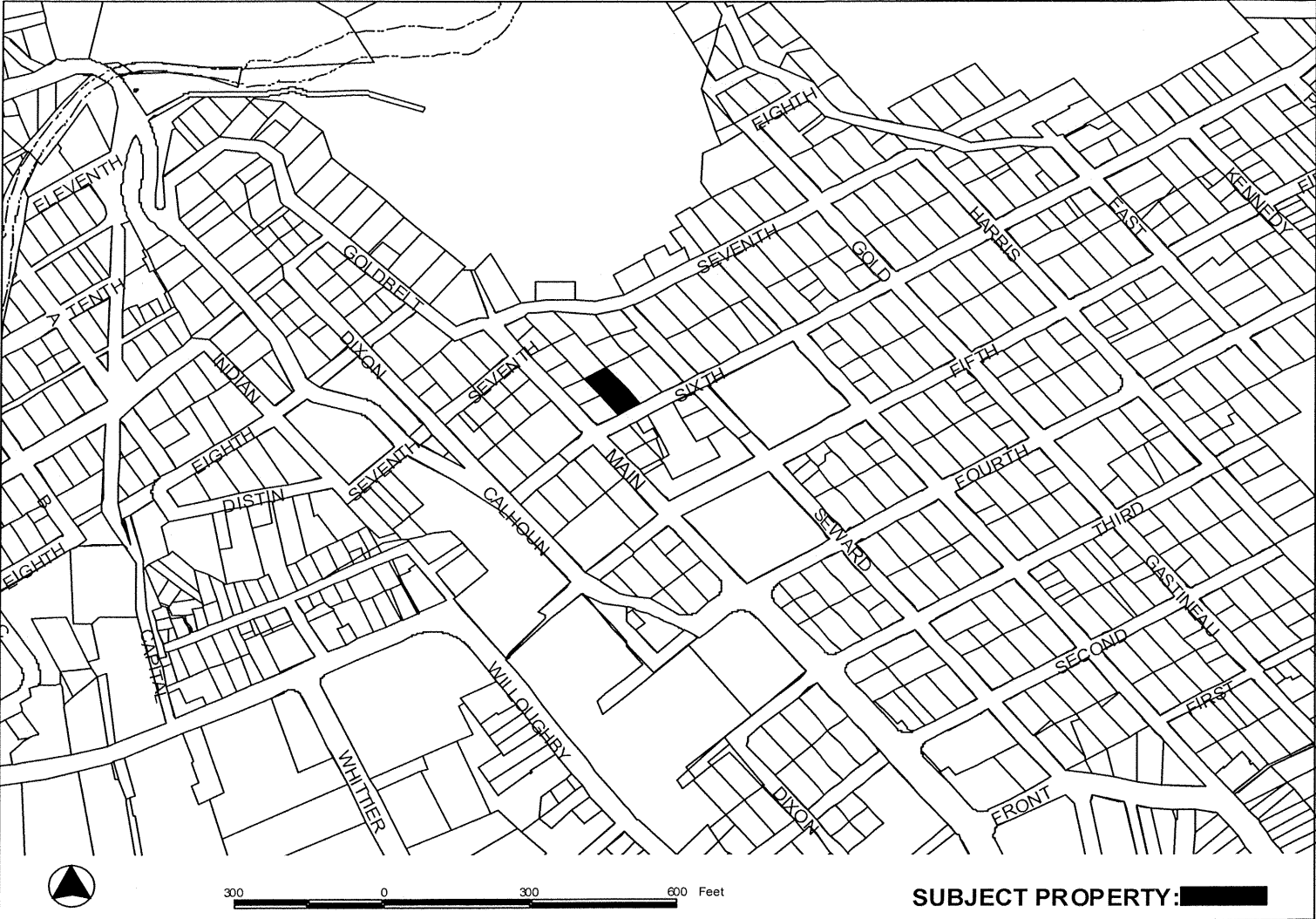
Existing Land Use: Single-family dwelling

Surrounding Land Use:

North	-	D-18 Residential
South	-	Sixth Street; D-18 Residential
East	-	D-18 Residential
West	-	D-18 Residential



Vicinity Map



ATTACHMENTS

- Attachment 1 Development Permit application
- Attachment 2 Variance application
- Attachment 3 Project Narrative
- Attachment 4 Easement Agreement
- Attachment 5 Applicant photographs
- Attachment 6 Survey
- Attachment 7 Additional Building Permit detail and elevations

PROJECT DESCRIPTION

The applicant requests an after-the-fact variance to reduce the five-foot side-yard setback to zero feet, and the 10-foot rear-yard setback to zero-four feet for construction of a sauna in the northwest corner of the lot (see survey, Attachment 6).

Because the sauna is under 120 square feet, the applicant was not required to apply for a building permit when it was first constructed, and therefore did not consider setback requirements. Approximately two years after construction, the applicant added electricity. The addition of electricity triggered the requirement for a building permit. During the building permit review, CDD requested an as-built survey to verify setbacks. The survey indicated that the structure was built to the zero setback line in the side-yard, and extended three inches into the neighboring property, and also encroached to the zero-four foot rear setback line. (The range of the encroachment is due to the angle of the property line.) The structure therefore requires a Variance.

ANALYSIS

The applicant has provided a detailed project narrative with photographs to explain why the structure was built in the corner of the lot within the setbacks. The lot has a 35 degree slope that shows signs of active erosion. In 2008, the applicant built a buttress to prevent the retaining wall (which was built in the 1950s) from moving downslope. The buttress became the foundation of the sauna. The retaining wall was built next to an old fence, also from the 1950s, which the applicant believed was the property line, and the applicant's intention was to build eight inches from the property line. However both the fence and the original retaining wall are actually located on the adjacent lot. This combination of factors resulted in construction of the building not only at the zero foot setback, but three inches into the neighboring property. The applicant has an easement agreement with the adjacent neighbor which allows use and maintenance of the structure on the property. (Attachment 4)

The applicant discovered the encroachment only after the as-built survey was completed. The applicant states that to remove the structure, he would have to reconstruct the entire buttress foundation as well as the building itself, which could cause further soil erosion. Because of the extreme slope in this neighborhood, the encroachment will not restrict views or light in the area.

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 Variance would allow the owner to retain the already-constructed sauna in the location of the lot that provides a stable foundation on the slope. The Variance is consistent with justice to other property owners, because this neighborhood has many old homes with legally non-conforming structures within setbacks.

Staff finds that this criterion is 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 49.05.100 Purpose and Intent. Those sections, which are applicable to the requested variance, are as follows:

- 1) To achieve the goals and objectives and implement the policies of the Juneau Comprehensive Plan and the coastal management program;
- 2) To ensure that future growth and development in the city and borough is in accord with the values of its residents;
- 3) To identify and secure, for present and future residences, the beneficial impacts of growth while minimizing the negative impacts;
- 4) To ensure that future growth is of the appropriate type, design, and location, and is served by a proper range of public services and facilities such as water, sewage, and electrical distribution systems, transportation, schools, parks and other public requirements, and in general to promote public health, safety and general welfare;
- 5) To provide adequate open space for light and air; and
- 6) To recognize the economic value of land and encourage its proper and beneficial use.

The proposed Variance meets the intent of Title 49, specifically items 3, 5, and 6, by allowing construction of an accessory structure in the most appropriate location without negatively impacting open space, light, air, or views.

Staff finds that this criterion is met.

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

No evidence indicates that authorization of the Variance will injure nearby property. The adjacent property owner has signed an easement allowing the structure to encroach three inches into the adjacent lot, and has also authorized maintenance of the structure. This neighborhood has many non-conforming structures at or near zero setback lines, and because of the steep slope, the encroachment will not affect views.

Staff finds that this criterion is met.

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

Personal-use saunas and similar structures are allowed as accessory structures in the D-18 zoning district, therefore the Variance does not authorize uses not allowed in the D-18 district.

Staff finds that this criterion 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 principal use in the D-18 zoning district is residential development. This use does not specifically include accessory structure such as saunas. Therefore compliance with existing standards would not unreasonably prevent the owner from using the property for a permissible principal use.

Staff finds that this sub-criterion is 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;*

Compliance with standards would unreasonably prevent the owner from using the property in a manner consistent with features of existing development in the neighborhood, because this neighborhood has many homes with legally non-conforming structures within setbacks. CBJ Assessor's Office information indicates that the applicant's home was constructed in 1914, which is common for many homes in this area.

Staff finds that this sub-criterion is met.

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

The subject property and surrounding Sixth Street properties have a slope of 35 degrees, which significantly limits where buildings may be constructed on the property.

Staff finds that this sub-criterion is 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.*

The subject parcel has a legally non-conforming lot size, legally non-conforming front yard-setbacks for the garage, and a legally non-conforming side-yard setback for the home. A grant of the Variance would therefore not result in a net decrease in overall compliance with the Land Use Code.

Staff finds that this sub-criterion is met.

Because staff finds that sub-criterion 5B, 5C, and 5D have been met, staff finds that this criterion is met.

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

A grant of the Variance would allow the sauna to remain where it has been constructed, in the most beneficial location for the property, without causing harm to adjacent residents through restriction of light, air, or views.

This criterion is met.

FINDINGS

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

Yes. Staff finds that the application contains the information necessary to conduct full review of the proposed development. The application submittal by the applicant, including the appropriate fees, substantially conforms to the requirements of CBJ Chapter 49.15.

Per CBJ §49.70.900 (b)(3), General Provisions, the Director makes the following Juneau Coastal Management Program consistency determination:

2. *Will the proposed development comply with the Juneau Coastal Management Programs?*

Not applicable.

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

Yes. Staff finds that the Variance meets criteria 1, 2, 3, 4, and 5.

RECOMMENDATION

Based upon the proposed plan (identified in Attachments 1-7) and the findings and conclusions stated above, the Community Development Department Director recommends that the Board of Adjustment approve the request.

(Variance)

DEVELOPMENT PERMIT APPLICATION

Project Number	CITY and BOROUGH of JUNEAU	Date Received: 5/21/13
Project Name (City Staff to Assign Name)		

INFORMATION	Project Description As-built survey determined sauna was built 3" over property line on NW corner.		
	PROPERTY LOCATION		
	Street Address 114 E 6th Street	City/Zip Juneau AK 99801	
	Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot) Juneau Townsite Block 29 Lot 2		
	Assessor's Parcel Number(s) 1C06A290030		
	LANDOWNER/ LESSEE		
	Property Owner's Name V Fate Putman and Kimberly Homme	Contact Person: F. Putman	Work Phone: 321-0773
	Mailing Address Box 204 73 Juneau 99802	Home Phone: 321-0773	Fax Number:
	E-mail Address fateputman@gmail.com	Other Contact Phone Number(s): 463-4975(w)	
	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	<u>Fate Putman</u> Landowner/Lessee Signature	<u>4/29/2013</u> Date	
X	<u>Kimberly Homme</u> Landowner/Lessee Signature	<u>4/29/2013</u> 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 same		Contact Person: same	
Mailing Address same		Home Phone: same	
E-mail Address same		Other Contact Phone Number(s):	
X	<u>Fate Putman</u> Applicant's Signature	<u>4/29/2013</u> Date of Application	

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

STAFF APPROVALS	<input checked="" type="checkbox"/>	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)			
	X	Use Approval (Allowable, Conditional, Cottage Housing, Mobile Home Parks, Accessory Apartment)			
	P	Variance Case (De Minimis and all other Variance case types)		5/21/13	VAR 13-015
		Wetlands Permits			
	Zone Change Application				
	Other (Describe)				
Comments: Attachment 1					Permit Intake Initials CNT

VARIANCE APPLICATION

Project Number	Project Name (15 characters)	Case Number <i>var 13-015</i>	Date Received <i>5/2/13</i>
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TYPE OF VARIANCE REQUESTED:

- | | |
|--|--|
| <input type="checkbox"/> Variance to the Sign Standard (VSG) | <input type="checkbox"/> Variance to Dimensional Standards (VDS) |
| <input type="checkbox"/> Variance to Habitat Setbacks (VHB) | <input type="checkbox"/> Variance to Parking Requirements (VPK) |
| <input checked="" type="checkbox"/> Variance to Setback Requirements (VSB) | |

DESCRIPTION OF ACTIVITY WHICH REQUIRES A VARIANCE:

attached

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):

attached

UTILITIES AVAILABLE:

WATER: Public On Site

SEWER: Public On Site

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

attached

WHAT HARDSHIP WOULD RESULT IF THE VARIANCE WERE NOT GRANTED?

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	\$ <u>400</u>	_____	_____	_____
Adjustment	\$ _____	_____	_____	_____
Total Fee	\$ <u>400</u>	<u>212</u>	<u>CAJ3608</u>	<u>5/2/13</u>

NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM

TO BE COMPLETED BY THE APPLICANT

TO: Board of Adjustment

FR: V. Fate Putman & Kimberly Homme, owners

RE: CBJ Variance Request for 114 E. 6th Street, JNU

DATE: April 24, 2013

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MAY 02 2013
PERMIT CENTER/ODD

1. Description of activity that requires a variance:

A sauna and dressing room were built on the NE property corner because of the sloping nature of the hillside. No other reasonable means was available to stop soil erosion from occurring from the up-slope side of the property except the use of retaining walls and buttress structures. The sliding hillside from 7th Street has been a continual problem since the 1950's when the first fence and retaining walls were built. Without the retaining walls and buttress structures the soil and debris would continue to erode down the hillside.

The buttress structures were built in 2008 to prevent the 1950's retaining wall from moving further downslope during high moisture periods. These buttresses became the foundation of the sauna & dressing room. Because the sauna and dressing room use both the original retaining wall and subsequent buttress structures as a foundation, based on the 1950 fence line, these buildings encroach on the adjacent property. The encroachment is approximately 3 inches into adjacent Lot 3, according to the As-Built Survey, attached.

2. Unique characteristics of land or building:

The unique characteristic of this land is the extreme slope, approximately 35 degrees. This steep slope erodes during high moisture events when the soil becomes saturated. Soil erosion normally occurs in the fall or spring, moving soil and debris such as broken glass and rusty metal down the hillside. Underneath and intermixed into the soils on this slope are layers of garbage from decades of this hillside use as a dump.

3. Why a variance would be needed, regardless of the owner:

Because of confusion in the 1950's about property lines, initial encroachment by Lot 1 to the west may have caused subsequent encroachment when a fence and retaining wall were constructed on Lot 2 which encroached into the adjoining Lot 3 to the east. Because of the unstable hillside and sliding soils the property corner may have moved. This encroachment was only discovered after the as-built survey was completed last year. The adjoining property owner recognizes the encroachment and has submitted an Easement Agreement to permit encroachment of the adjacent property lines, attached.

4. What hardship would result if the variance was not granted?

I would have to re-construct the entire buttress foundation, sauna and changing room to conform to the setback at considerable effort and expense. Removal of the buttress foundation would cause further soil erosion and sliding on this extreme slope.

5. How proposed project meets Variance Approval Criteria:

- (1) The buttress foundation is an asset constructed to address a critical soil erosion condition. This buttress and sauna structure facilitates my need for property and soil protection, it adds value to the property, and produces no adverse impacts on my neighbors.
- (2) Intent of title will be observed with no issues of safety or public welfare arising, and is open for inspection by CBJ planners.
- (3) The variance will not injure or impact nearby property or owners. Because of the extreme slope, the property to the north (7th Street) is well above the roofline of the sauna. There are no visual impacts with other properties, and the eastern property owner has granted an Easement Agreement (attached).
- (4) There are no proposed uses that are not already authorized in the district, with no commercial activities or additions to zoning density.
- (5) Compliance with existing standards:
 - a) Without a variance, the buttress foundation would need to be moved at considerable expense and effort. This removal would allow the slope to slide, as it has in the past.

- b) The buttress foundation and sauna were constructed in 2008 to blend in with the cedar fence and the 1914 main house. As such, they complement the main structure and are a basic amenity. Also, neither foundation nor sauna imposes an adverse visual profile in the neighborhood. The structure is surrounded by dense, steep undergrowth.
- c) Because of the unique, steep slope and placement of the original 1950 retaining wall and fence, and the subsequent use of that footprint in 2008 for construction, compliance with existing setback standards would be unreasonably expensive.
(Buttress structures are square boxes filled with soil. They are built down- slope from the retaining wall and are pressed up against the wall to prevent movement. The buttress structures are made from both concrete and treated wood and are used to support the leaning retaining walls. These buttress structures are built adjacent to where the 1950 retaining walls are located. Since the retaining walls are located on the property lines, the buttress structures are located adjacent to the retaining fence walls and in the setback.)
- d) Because of pre-existing, non-conforming conditions relative to the retaining wall, fence, buttress foundation and sauna, granting these public and adjoining property line variances would not result in a net decrease in overall compliance with the land use code, Title 49, or the building code, Title 19, or both; and,
- (6) Granting these variances will result in no detriments to the neighborhood. In fact, this structure stops continual soil sliding and is a positive asset for all. This structure and foundation will be well-kept and maintained at all times.

Since the sauna and dressing room are already constructed on top of the Buttress Structure, a variance from the setback requirements is needed for these buildings. The adjoining, east property owner has granted an Easement Agreement that permits access to the structures for repair and maintenance, attached.

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MAY 02 2013
PERMIT CENTER/CDD

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made this 22nd day of October 2012, by and between Richard and Kathy Ward, (hereinafter called "Grantors"), and Fate Putman and Kimberly Homme, (hereinafter called "Grantees").

WITNESSETH:

WHEREAS, Grantee desires the use of the property of Grantor for use as an Easement to maintain the Fence and Shed Outbuilding located primarily on Lot 2, Block 29, Juneau Township and extending partially onto the Northwest corner of Lot 3, Block 29, Juneau Township; and,

WHEREAS, in consideration of \$1.00 and valuable consideration, receipt of which is hereby acknowledged, Grantors is willing to enter into an easement agreement for the use of the property subject to the terms and conditions set forth herein.

NOW, THEREFORE, the parties mutually agree as follows:

1. Grantors hereby grants Grantees an easement to use the following described property: A small section of Lot 3, Block 29, Juneau Township, located in the Northwest corner of the property, adjacent to Lot 2, Block 29, Juneau Township to a distance of two (2) to three (3) feet onto Lot 3 from the edge of the fence and structure to allow for maintenance and repair. (See attached property As-built Survey, Appendix A)
2. This Easement Agreement shall automatically cease upon abandonment, herein defined as nonuse for any six (6) consecutive months, and all interests granted herein shall revert to grantor, or its successor, upon such abandonment.
3. The rights granted to and duties assumed by Grantees under this Easement Agreement may not be assigned or delegated by Grantees without the prior written consent of Grantors. Any attempted assignment or delegation by Grantees without the prior written consent of the Grantors shall be void.
4. This Easement Agreement may be amended from time to time, as may be necessary, by mutual consent of both parties; provided, however, that no amendment to the Easement Agreement shall be effective unless in writing and signed by both parties.
5. Both parties agree that time is of the essence and that time specifications contained herein shall be strictly construed.
6. Both parties represent and warrant that they have the authority to execute this Easement Agreement.
7. All notices referred to in the Easement Agreement shall be sent to the respective parties at the address stated below:

Grantors: KDW / RM

Grantees: KH / KH

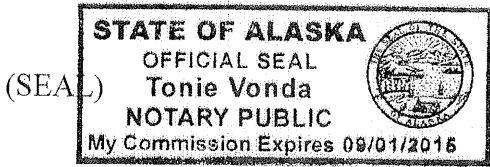
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Attachment 4

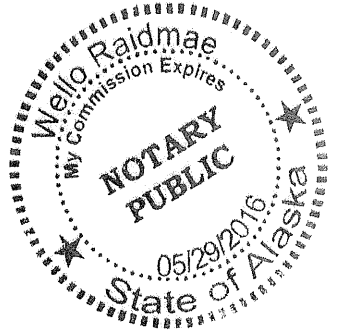
This is to certify that on this 22 day of October, 2012, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Katherine Ward to me known or proved upon adequate evidence to be the person who executed the foregoing instrument and acknowledged to me that she signed it voluntarily for the purposes therein stated.



[Signature]
NOTARY PUBLIC in and for ALASKA
My Commission Expires: 9-01-2015

DATED this 25th day of October, 2012.

GRANTEE:
[Signature]
VANCE FATE PUTMAN



STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

This is to certify that on this 25 day of October, 2012, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Vance Fate Putman, to me known or proved upon adequate evidence to be the person who executed the foregoing instrument and acknowledged to me that he signed it voluntarily for the purposes therein stated.

(SEAL)

[Signature]
NOTARY PUBLIC in and for ALASKA
My Commission Expires: 5/29/16

DATED this _____ day of _____, 2012.

GRANTEE:

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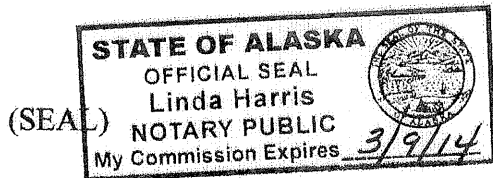
DATED this 1st day of November, 2012.

GRANTEE:

Kimberly Homme
KIMBERLY HOMME

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

This is to certify that on this 1 day of November, 2012, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Kimberly Homme, to me known or proved upon adequate evidence to be the person who executed the foregoing instrument and acknowledged to me that she signed it voluntarily for the purposes therein stated.



Linda Harris
NOTARY PUBLIC in and for ALASKA
My Commission Expires: 3/9/14

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ATTACHMENT 5



ATTACHMENT 5



ATTACHMENT 5



ATTACHMENT 5



ATTACHMENT 5



ATTACHMENT 5



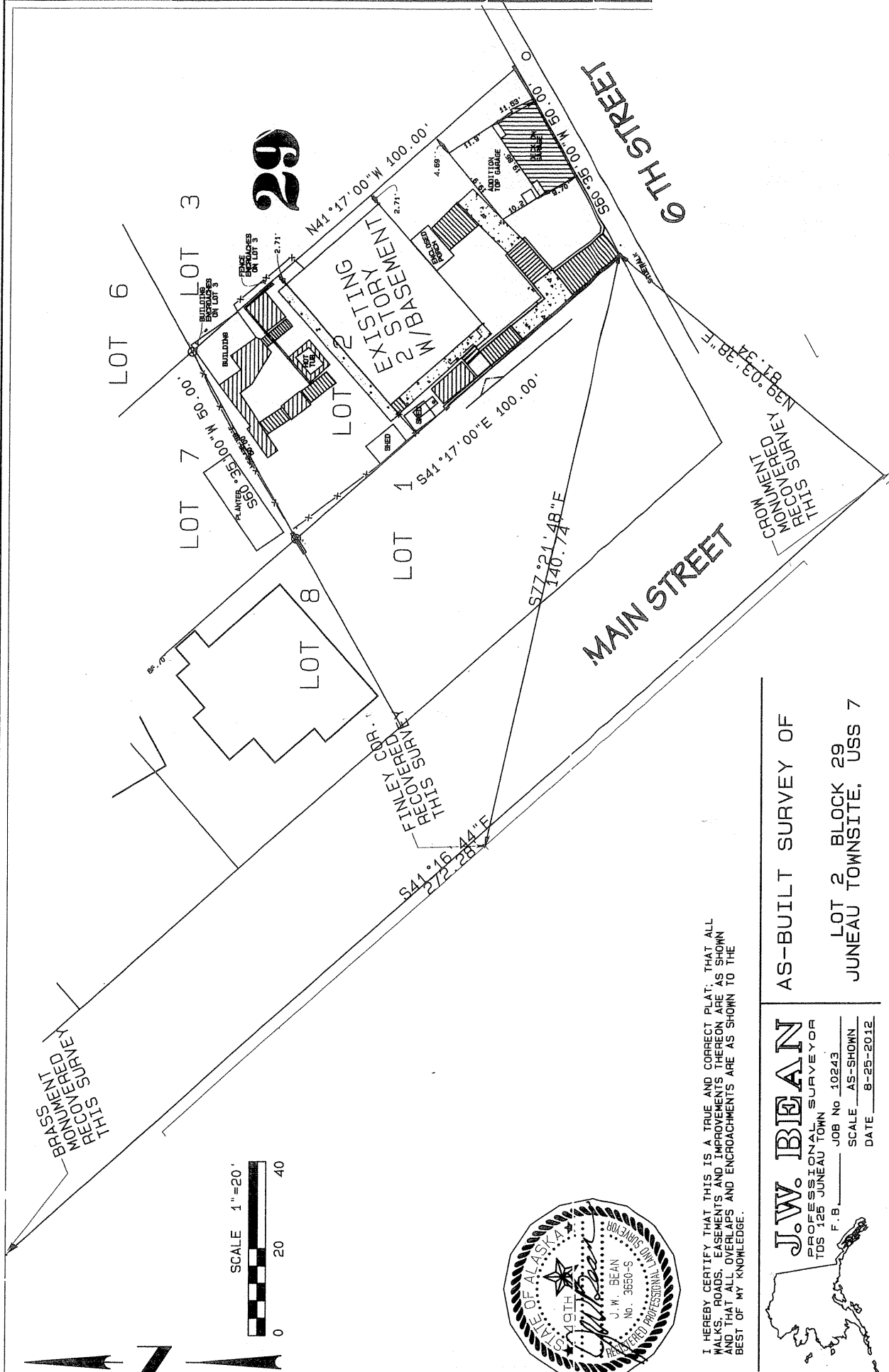
ATTACHMENT 5



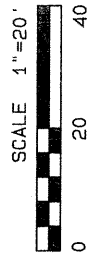
ATTACHMENT 5



ATTACHMENT 5



SCARB
MONUMENTED
THIS SURVEY



I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT PLAT, THAT ALL WALKS, ROADS, EASEMENTS AND ENCROACHMENTS THEREON ARE AS SHOWN AND THAT ALL OVERLAYS AND ENCROACHMENTS ARE AS SHOWN TO THE BEST OF MY KNOWLEDGE.

J.W. BEAN
PROFESSIONAL SURVEYOR
TDS 125 JUNEAU TOWN
F.B. _____ JOB NO. 10243
SCALE AS-SHOWN
DATE 8-25-2012

AS-BUILT SURVEY OF
LOT 2, BLOCK 29
JUNEAU TOWNSITE, USS 7

CHOM
MONUMENTED
THIS SURVEY

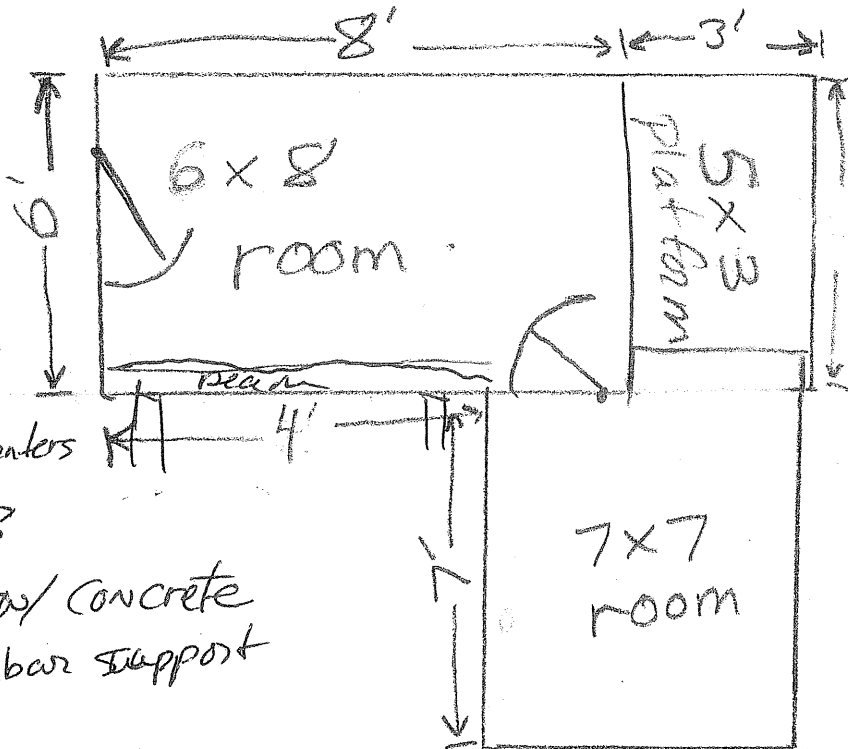
Putman Building Plans

114 E 6th St

Juneau, AK

(Accessory Structure
Detailed building Plans)

top view



Rafters 2x8/16" centers

Headers 2x6x8

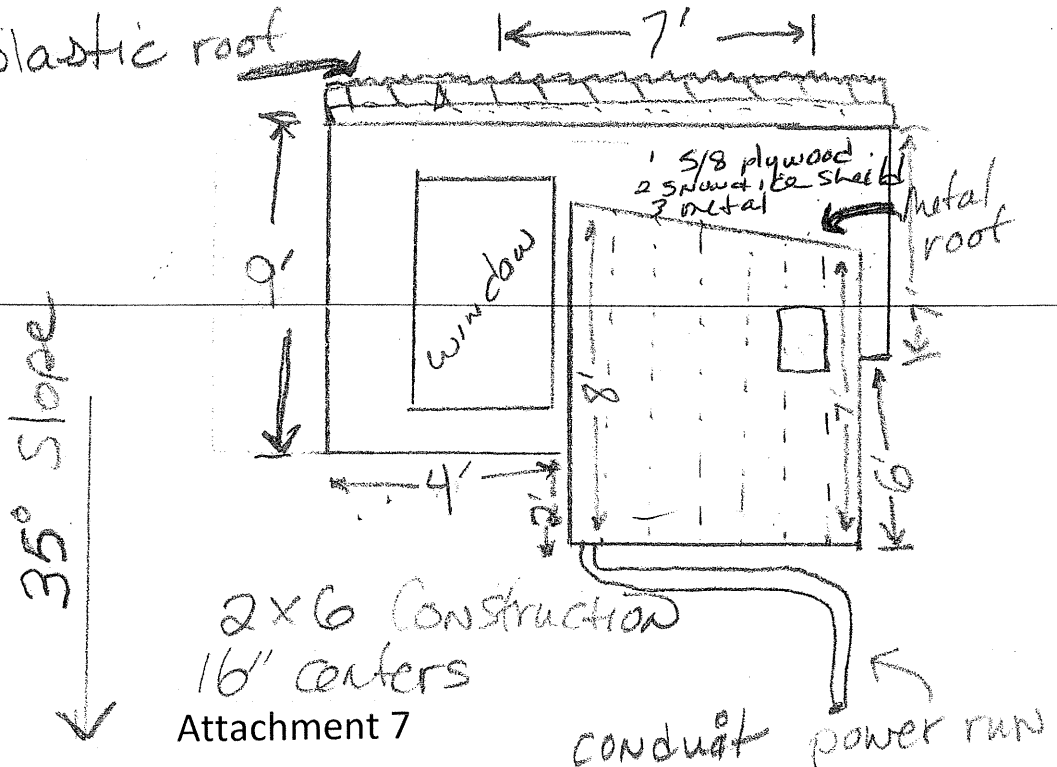
Foundation 4x4 w/ concrete
3' deep 1/2 rebar support

Hummer brackets

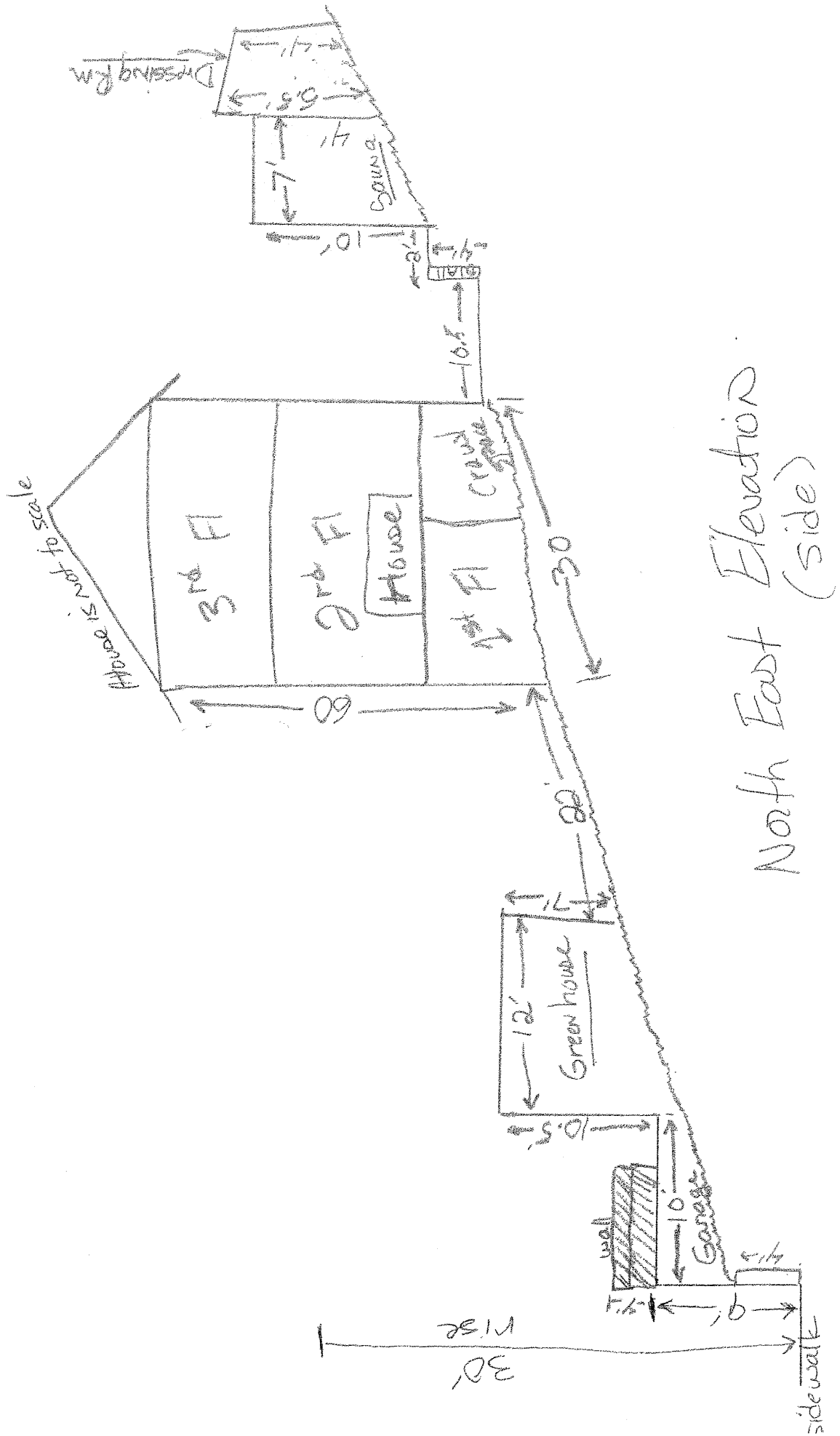
Plumber strap

(Foundation to Rafter) plastic roof

side view



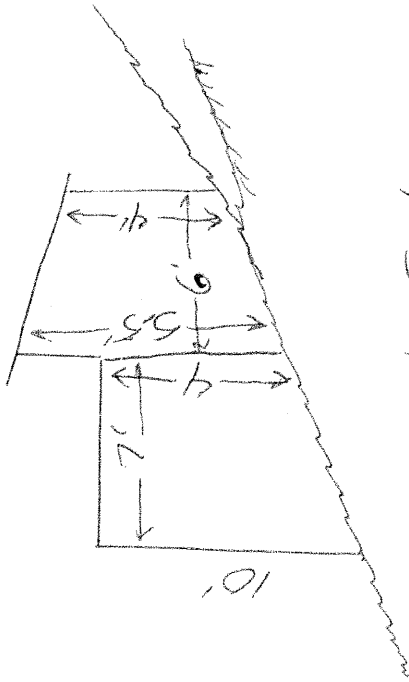
Putman Green House / Sawa
 (CJ Building Permit # BLD-0009-00455)



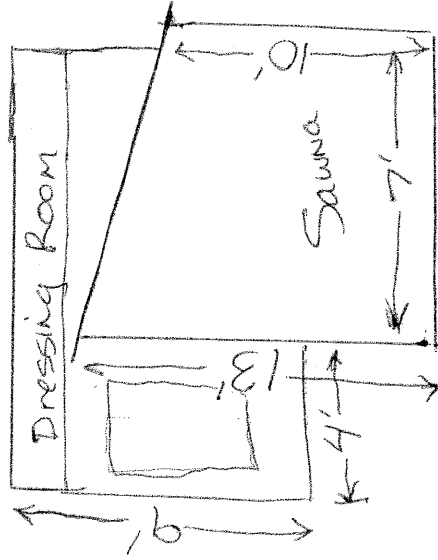
Received 11-8-12
 via email

Putman Greenhouse/Sauna
(CBS Permit # BLD 2008-04187)

Northeast Elevation



South East
Elevation



South east (Front)
Elevation

