



Memorandum

May 29, 2019

TO: Zoning Board of Adjustment

FROM: Israel B. Roberts, AICP
Planning Manager

SUBJECT: Public hearing on a variance to the required side yard setback

BACKGROUND: This is a request for approval of a variance to allow for the expansion to an existing home that is located on a portion of the home that is within a side yard setback. The site is located at 430 Lakewood Drive and is zoned for the (RE-2) Two-acre Ranch Estate District. Applicant: Bob Roeder: Abernathy, Roeder, Boyd, Hullett PC, representing owners Matt and Shannon Van Beber (ZBA2019-03).

STATUS OF ISSUE: The (RE-2) Two-Acre Ranch Estate District requires a side yard setback of 50 feet. In this case, the original home was constructed in the early 1900's, the area was annexed in 1970, and the (RE-2) zoning district established in 2008. At this point, any features of the site that did not comply with the newly established zoning, became non-conforming. Recently, as part of the creation of a new subdivision, the plat for the Woodland Farms Addition, was established in 2017. Although the home was built before zoning was established in 2008, any new construction or development of the site, must comply with the established zoning district. As shown, a portion of the existing home, encroaches into the 50' side yard setback.

In November 2018, the ZBA considered a request to allow the addition of a second story deck with a stairwell on the portion of the home that is existing within the 50-foot side yard setback. This that case, the Town issued a building permit for the deck and stairwell in error, and at the time of the meeting, those items were partially constructed. After public comments and discussion on the variance request, upon recommendation by the Board, that item was withdrawn, in order to allow the owners and the adjacent neighbor time to discuss an amicable solution to the encroachment concerns. Since that time, the partially constructed deck has been demolished.

In order to release the hold on the original permit, a revised building permit was submitted reflecting the removal of the deck. Those plans also show a 30-inch extension of an existing dormer on the second story of the home with a “Juliette” balcony. Note that this extension was constructed with the original permit, was installed at the time of the ZBA meeting in November 2018, however, this extension was not shown on the original permit. Since this extension is within the 50-foot setback area, it too requires a variance, however, as noted has already been constructed. This extended dormer, has been moved out to match the wall line of the first floor (approximate 30 inches), and includes a bank of sliding glass doors. These doors were originally intended to access the previously requested deck, which, has been removed. The doors replaced a previous set of windows and were installed with the original permit. Since these doors can be opened, the plans call for the installation of a “Juliette” style balcony. This balcony serves as a safety feature only, since the doors can be opened, however, it is decorative and does not serve any structural purposes.

Additionally, according to the applicant, the owners have purchased a 15-20 foot tall magnolia tree that will be installed in the coming weeks. A rendering, and the approximate location is shown within the Applicant’s exhibits.

The submitted application is requesting approval of a variance to allow the encroachment of the constructed dormer in to the side yard setback.

ATTACHMENTS:

- Aerial
- Request
- Current Plans
- Applicant’s Exhibits
- Correspondence



**430 Lakewood Dr.
ZBA2018-05**

A | R | B | H

ABERNATHY ROEDER
BOYD HULLETT

EST. 1876

Robert H. Roeder
roeder@abernathy-law.com

1700 Redbud Boulevard, Suite 300 | McKinney, Texas 75069
Main: 214.544.4000 | Fax: 214.544.4044

May 16, 2019

Mr. Israel B. Roberts, Planning Manager
372 Town Place
Fairview, TX 75069

Re: 430 Lakewood Drive - Request for Variance

Dear Mr. Roberts:

On behalf of Matt and Shannon Van Beber, the owners of the property and improvements located at 430 Lakewood Drive, Fairview, Texas, I respectfully request an appearance before the Town's Board of Adjustment ("BOA") to seek approval for a variance allowing the exterior wall of a second-story dormer to be extended and relocated immediately above, and in line with, the weight-bearing exterior first floor wall, the effect of which is to move the dormer wall approximately 24" – 30" toward, but not over, the existing edge of the house.

The dormer in question is on the second story of an existing residence which is being upgraded and remodeled by my clients. The existing structure was constructed prior to the enactment of a zoning ordinance that established a 50' side yard setback for this lot and others within the subdivision. After enactment of the ordinance a portion of the existing residence where this dormer is located fell within the side yard setback. This variance request is necessitated because City has taken the position that, although the actual structure is not being moved further into the side yard setback, the relocation of the second-story dormer wall, in and of itself, constitutes an intrusion into the side yard setback.

I believe that you have a copy of the house plans showing the location of that portion of the house that encroaches into the side yard setback, as well as the location of the existing dormer.

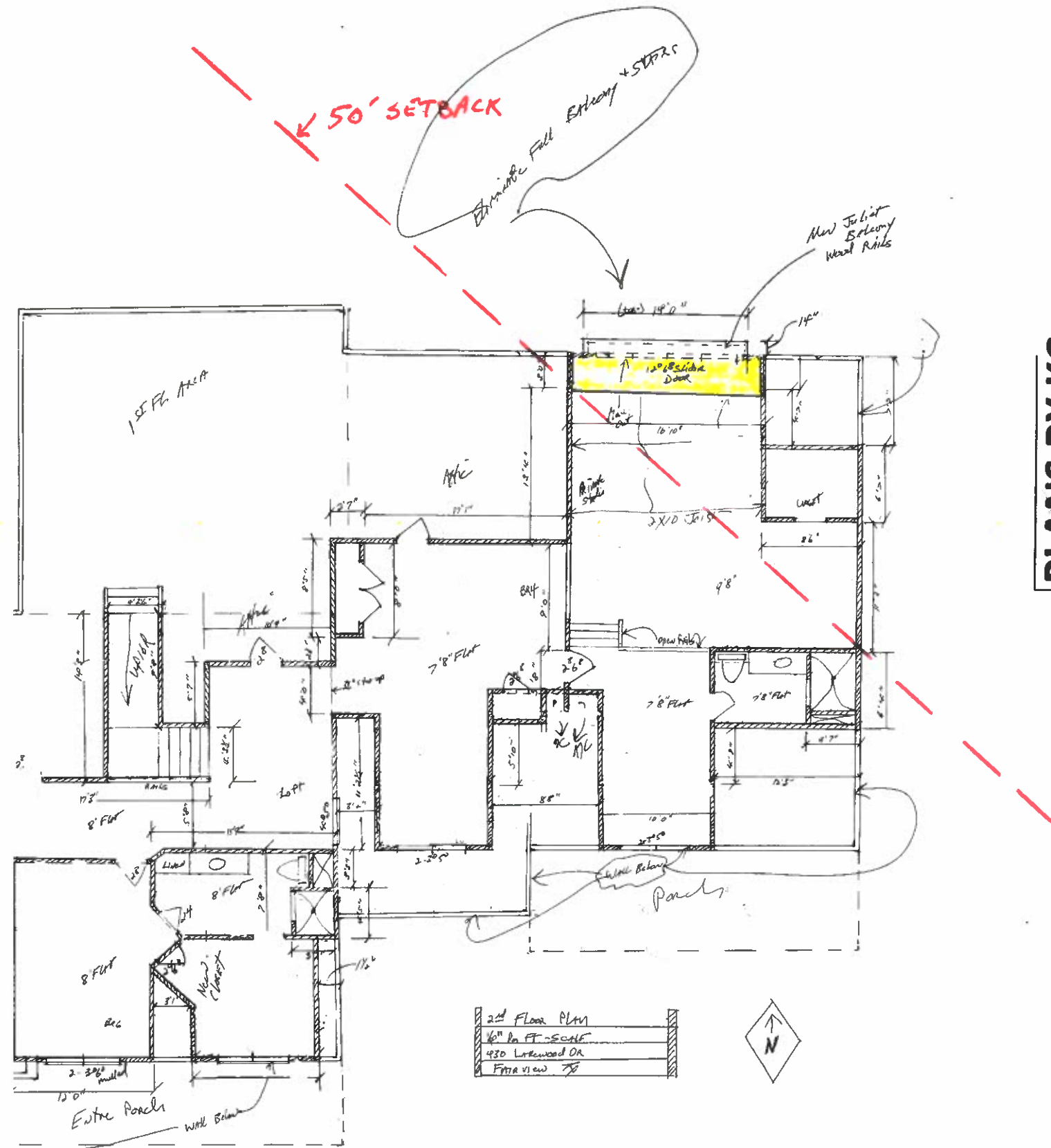
Please advise me of the date, time and location set for the Board of Adjustment hearing.

Very truly yours,



Robert H. Roeder

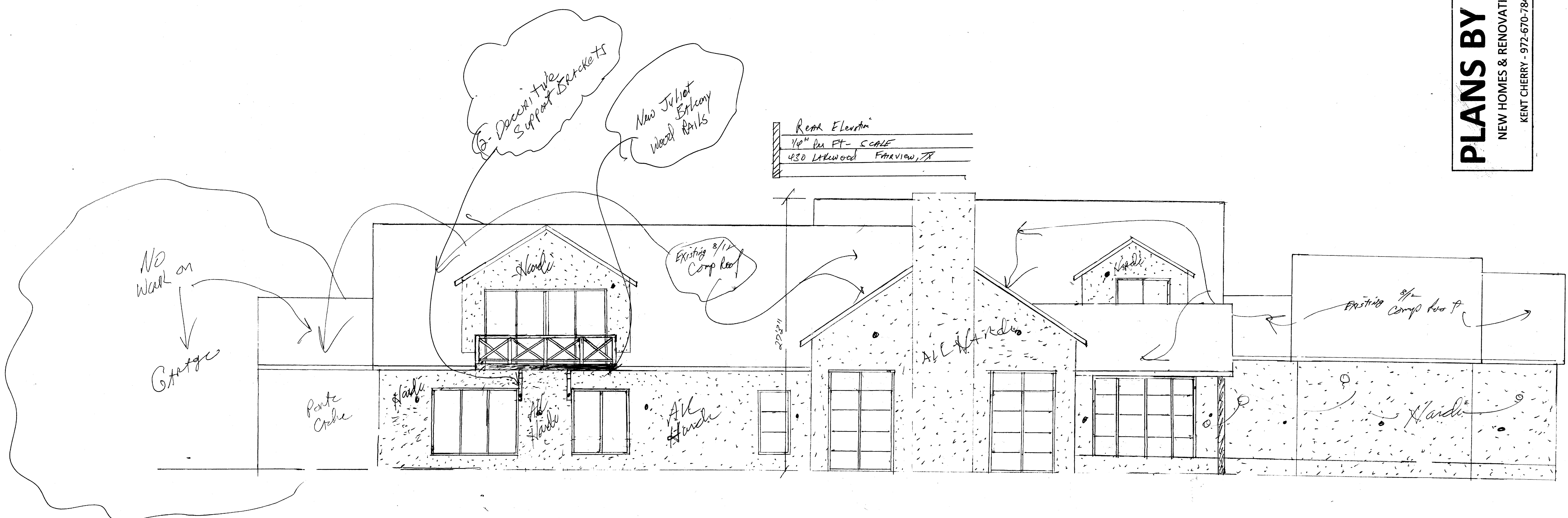
Current Plans



PLANS BY KC
 NEW HOMES & RENOVATIONS
 KENT CHERRY - 972-670-7843

2nd Floor Plan
 1/8" = 1'-0" Scale
 430 Lakewood Dr
 Front View 7/8



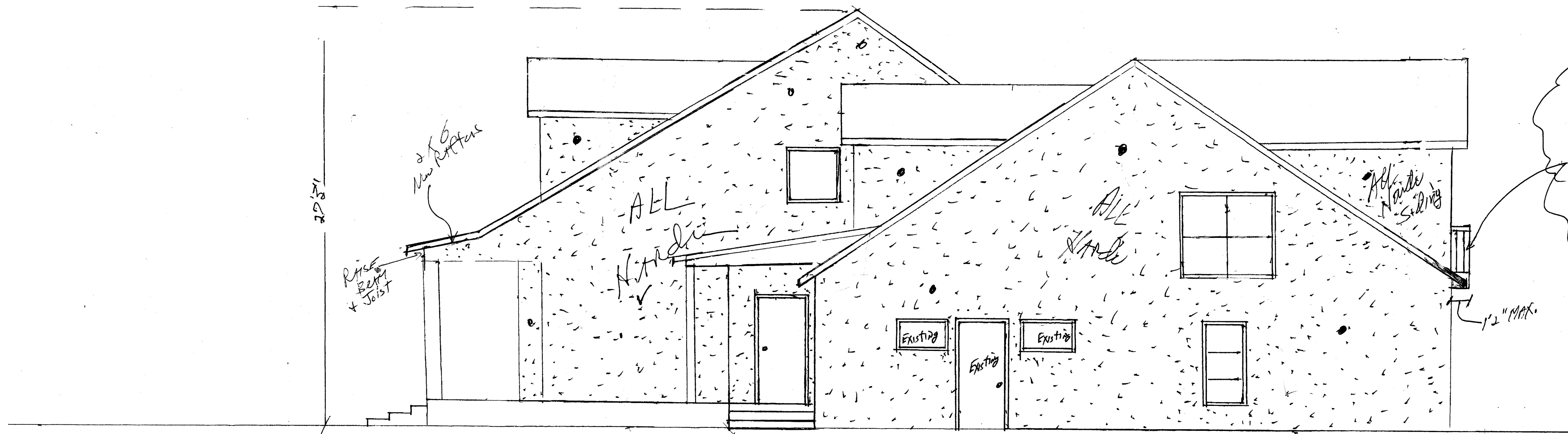


Rear Elevation
 1/8" Per FT - SCALE
 430 Lakewood Fairview, TX



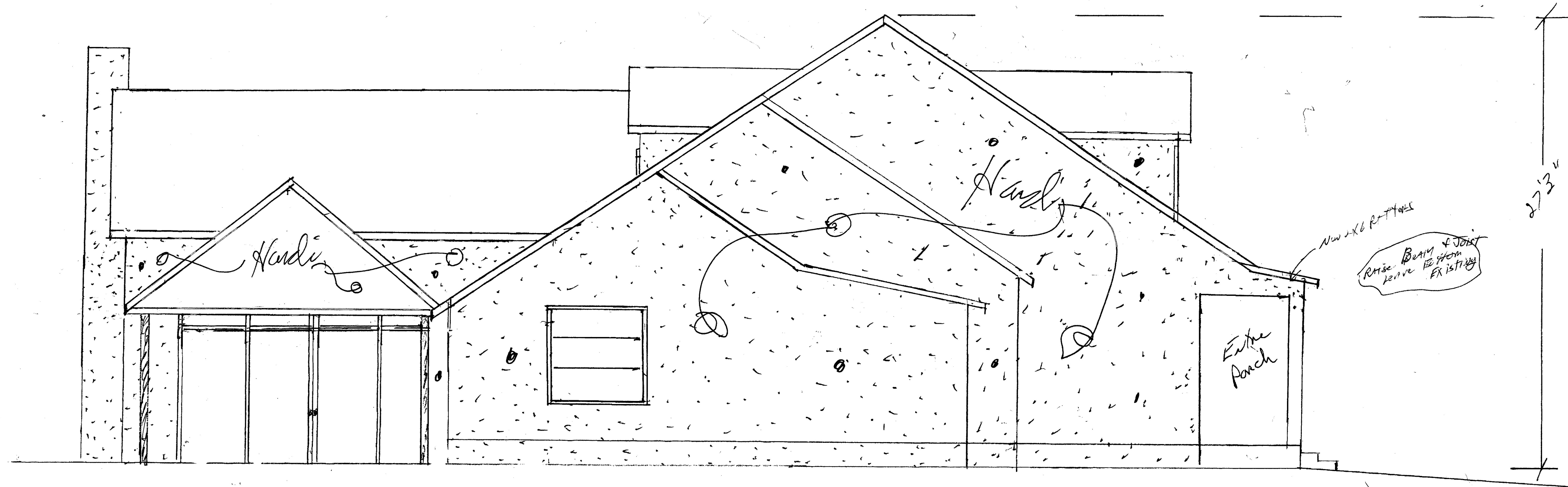
Fr Elevation
 1/8" Per FT - SCALE
 430 Lakewood Fairview, TX

RS - West Elevation
 1/4" Per FT - SCALE
 4030 Lakewood Fairview, TX



Eliminated Full Balcony + Stairs
 New Juliet Balcony
 Wood Railing

PLANS BY KC
 NEW HOMES & RENOVATIONS
 KENT CHERRY - 972-670-7843



LS - East Elevation
 1/4" Per FT - SCALE
 4030 Lakewood Fairview, TX

Applicant's Exhibits





12 foot deck



6 foot deck





12 foot deck



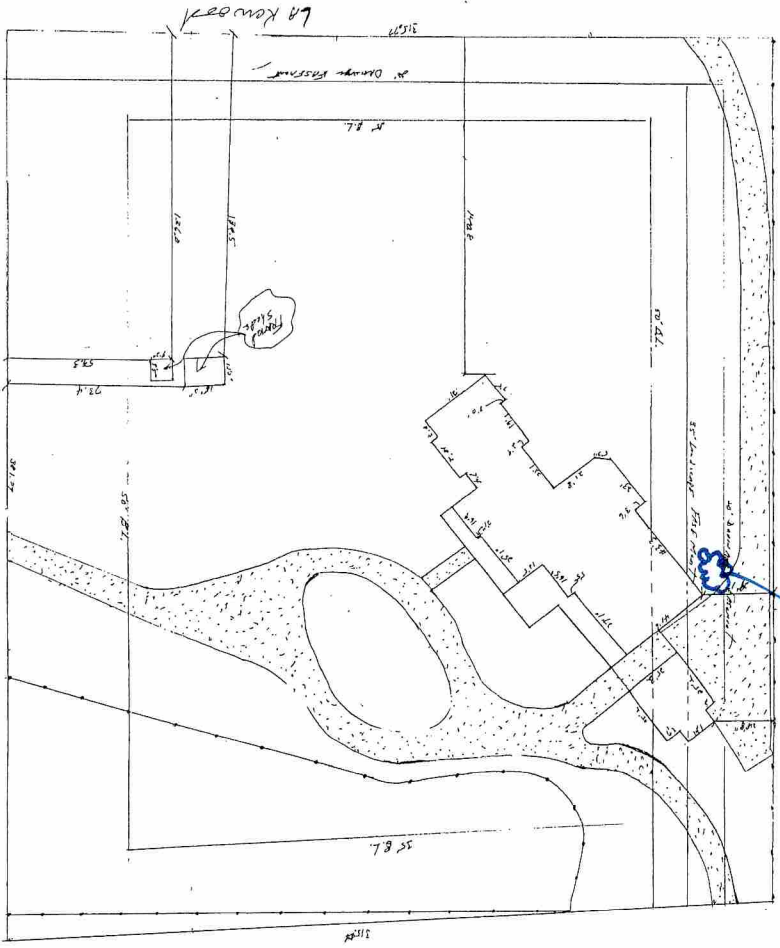
6 foot deck



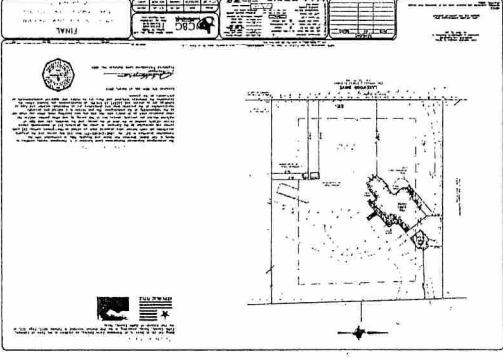
12 foot deck - Privacy screen



6 foot deck - Privacy screen



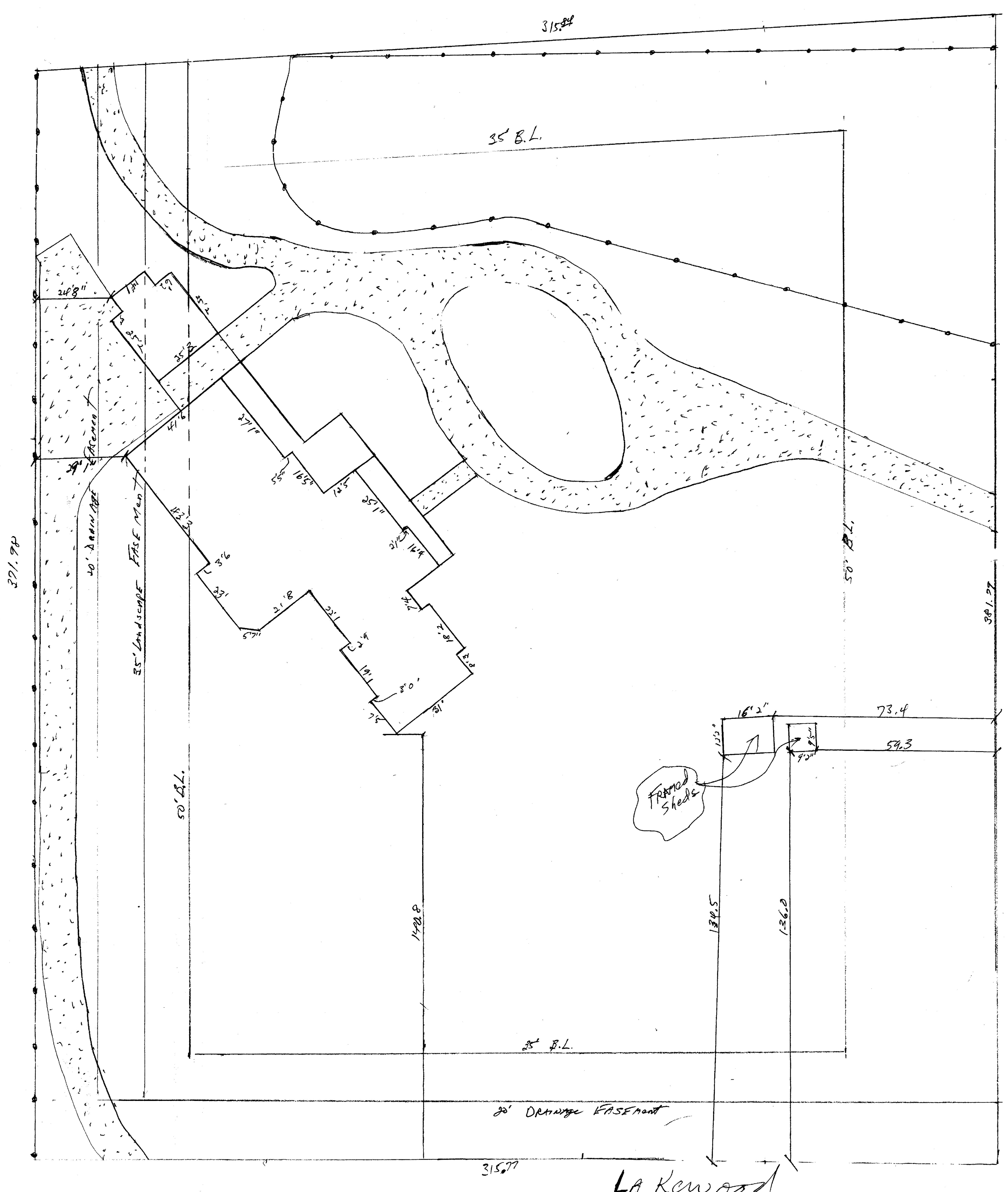
SITE PLAN
 30' PA 1" SCALE
 150' Lx 150' W
 30' DRIVEWAY



150' Lx 150' W
 30' DRIVEWAY
 150' Lx 150' W
 30' DRIVEWAY

PLANS BY KC
 NEW HOMES & RENOVATIONS
 KENT CHERRY - 972-570-7943

SITE PLAN
 20' Per 1" SCALE
 430 Lakewood
 Fairview TX



PLANS BY KC
 NEW HOMES & RENOVATIONS
 KENT CHERRY - 972-670-7843

Lot size 119,705
 Home, Porches, Deck, etc 10,018
 385 Garden 2-5125
 9870' Decking + 51 deck
 Total Cost 19,003

Handwritten notes:
 1/2" = 1' scale
 1/4" = 1' scale
 1/8" = 1' scale

Correspondence



May 17, 2019

To Whom It May Concern:

Notice is hereby given that the Zoning Board of Adjustment of the Town of Fairview, Texas, will convene for a public hearing on Wednesday, May 29, 2019 at 6:30 p.m., at Fairview Town Hall, 372 Town Place, Fairview, Texas. At such time and place, the Board will hold a public hearing and take action regarding the following:

- A request for approval of a variance to allow for the extension of the second floor of an existing home that is located within the side yard setback. The site is located at 430 Lakewood Drive and is zoned for the (RE-2) Two-acre Ranch Estate District. Owner/Applicant: Matt and Shannon Van Beber (ZBA2019-03).

All interested citizens and property owners are invited to attend and participate in this meeting. For questions and/or comments please contact Israel Roberts, Planning Manager, at 972-562-0522, extension 5094; or via email: iroberts@fairviewtexas.org. Citizens may also visit Town Hall, Monday-Friday from 8:30-4:30 PM to obtain more information on this matter prior to the public hearing.

If you wish to communicate your support or opposition for this variance request to the Zoning Board of Adjustment, please respond to the queries below and return it to Mr. Roberts via mail, email, or hand delivery.

Name: Jim Williams, Jr. Address: 421 Collinwood Drive
 Support Signature: [Signature]
 Oppose (provide comments below) Date: 5/23/19

Comments:

Woodland Farms, LP, the developer of Woodland Farm Estates, is completely supportive of the requested variance. The Van Beber's have made a huge investment in their home and property and the renovations that they have made to their home are a welcome

improvement to the neighborhood.



November 2, 2018

To Whom It May Concern:

Notice is hereby given that the Zoning Board of Adjustment of the Town of Fairview, Texas, will convene for a public hearing on Thursday, November 15, 2018 at 6:30 p.m., at Fairview Town Hall, 372 Town Place, Fairview, Texas. At such time and place, the Board will hold a public hearing and take action regarding the following:

- A request for approval of a variance to allow for the expansion to an existing home including an outdoor balcony and stairwell that is proposed to be located on a portion of the home that is within a side yard setback. The site is located at 430 Lakewood Drive and is zoned for the (RE-2) Two-acre Ranch Estate District. Owner/Applicant: Matt and Shannon Van Beber (ZBA2018-05).

All interested citizens and property owners are invited to attend and participate in this meeting. For questions and/or comments please contact Israel Roberts, Planning Manager, at 972-562-0522, extension 5094; or via email: iroberts@fairviewtexas.org. Citizens may also visit Town Hall, Monday-Friday from 8:30-4:30 PM to obtain more information on this matter prior to the public hearing.

If you wish to communicate your support or opposition for this variance request to the Zoning Board of Adjustment, please respond to the queries below and return it to Mr. Roberts via mail, email, or hand delivery.

Name: C. Kliana Morris

Address: 1040 TIMBER LANE

Support

Signature: C. Kliana Morris

Oppose (provide comments below)

Date: 11-12-2018

Comments:

The Developer already violated the 35' set Back buffer for natural growth. I don't want less than the 35' set back buffer for lot 1 thus, why would I wish this on any of my neighbors? I most definitely OPPOSE!

Setback Variance Request for 430 Lakewood

I have not yet seen the proposal as of this writing (5/22/19). My preference would be:

1. A variance should have been requested BEFORE they built the addition and deck. It's well over the setback line and should have never been built. My preference would be for the unapproved addition to be removed. However, I've tried to work with them on some screening solutions, but there has been delay and pushback from the homeowner.
2. After living through the last 15 months of construction I am now certain that any deck would be a major visual and noise intrusion. The owners have requested an exit stair from the second floor and I've told them that an absolute code minimum landing and stair with some visual screening might be acceptable – provided we also address the 2nd floor addition visibility. No deck should be allowed.
3. The large bank of windows on the 2nd story addition facing my property need some significant visual screening. This addition didn't even match the submitted building plans and was extended further into the setback than their drawing indicated. I would like to see a proposal for hard screening (tinting, shutters, ?) and a large evergreen tree / shrub row that is deed protected.

Timeline

- 2018 April - House renovations began in without a building permit.
- 2018 May – Construction was halted for about a month until permit was issued.
- 2018 Summer - A large second story addition and a deck were added well within the setback without the proper variance request.
- 2018 Fall - The town notified the owner of the setback violation issue.
- 2018 November - The owner requested a variance. I tried to work with the owners on suitable screening for the additions, but no detailed drawings or written agreements were offered.
- 2018 November 15 - The ZBA was on the path to denying the request so the owners withdrew the request. I again asked the owners for some detailed drawings of mitigation proposals.
- Over 4 months passed and they did not contact me or provide any proposals.
- 2019 March 26 - The owner's lawyer called me about what *"you perceive to be visual encroachments on your property."*
- 2019 March 27 - I called their lawyer back and explained the issues. I again requested some drawings showing the dimensions and possible mitigation solutions.
- 2019 March 28 - I received a very rough drawing with few and illegible dimensions. I also received a rough photo showing a proposal to plant (1) tree. I responded with a proposed drawing of a stair and screening solution and a list of concerns.
- 2019 March 29 – I noticed that the drawing they sent didn't actually match what was constructed. I alerted their lawyer that the 2nd floor addition was actually constructed several feet further into the setback than shown on the plan.
- 2019 April - The deck was removed but I received no follow up information as to what was planned or what screening or mitigation was proposed.
- 2019 April 11 - I was walking my dog on Lakewood Drive when I was verbally accosted by the former homeowner at 430 Lakewood, who had just pulled out of the Van Beber's driveway. I tried to explain my concerns but she just kept berating me and yelling "Why don't you and your wife move to Canada."
- 2019 April 12 - I called the owner's lawyer to inform him of the verbal attack and I was told they were dropping the variance request. I followed up with an email asking what the new plan was for the deck area and about the 2nd story addition and the screening. No response received
- 2019 May 12 - Matt Van Beber and I met to discuss my concerns about the additions. I again reiterated that we needed to be working from a detailed drawing and written agreement if we want to find a solution.
- 2019 May 20 – Noticed received for ZBA meeting on May 29th. I cancelled my travel plans to Arizona for next week so I could attend.

Paul Westbrook, 440 Lakewood Dr., Fairview

History and Details: Setback Variance Request for 430 Lakewood

Original concern from November 2018

I received notice that a setback variance has been requested for the house at 430 Lakewood Dr. **I am requesting rejection of this variance request for the following reasons:**

The previous owners of the existing built 25' over the setback line in 1994:

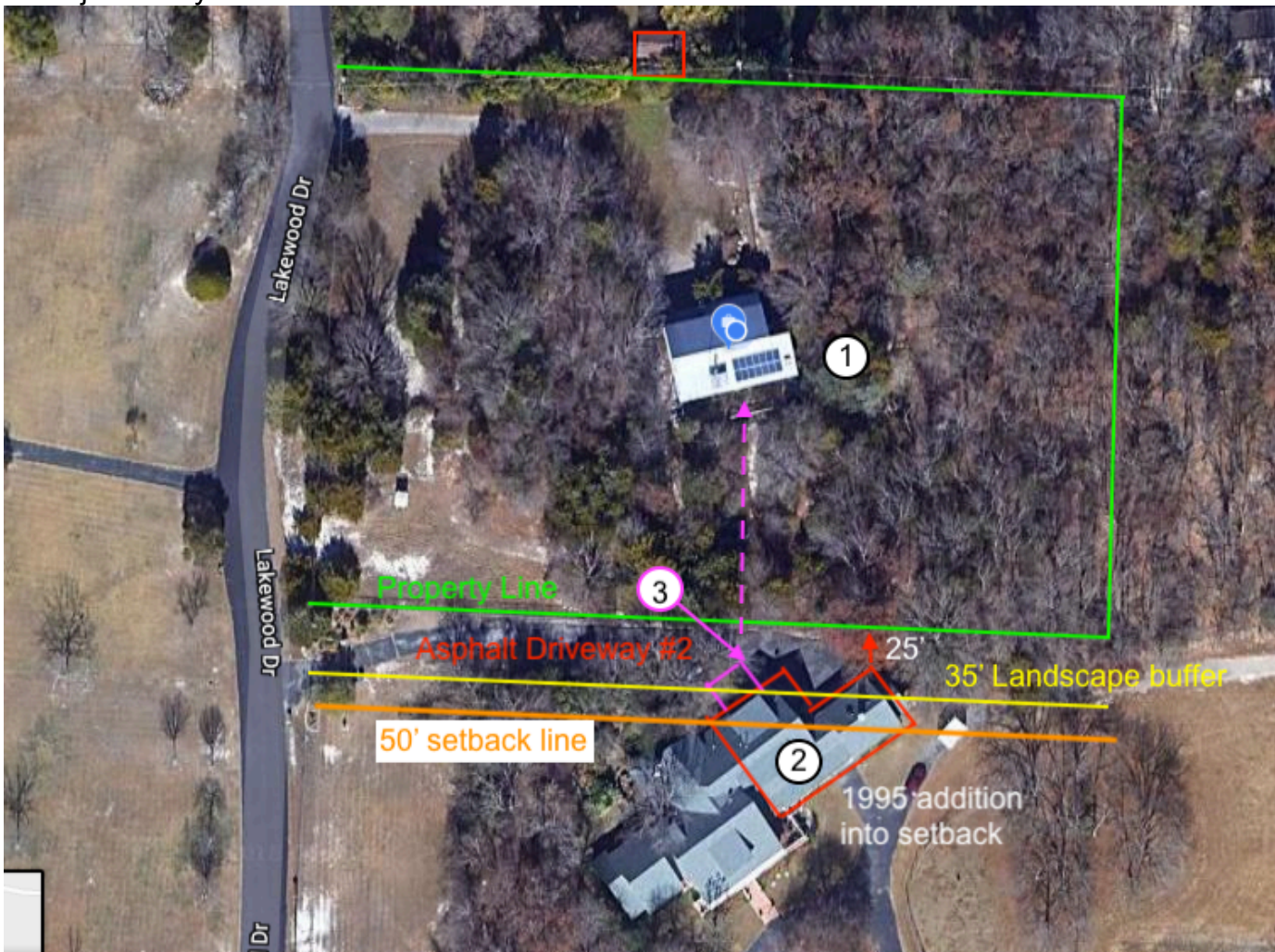
The adjacent house is already 25 feet from the property line (50' setback on plat).

There is a 2nd driveway running right against the property line.

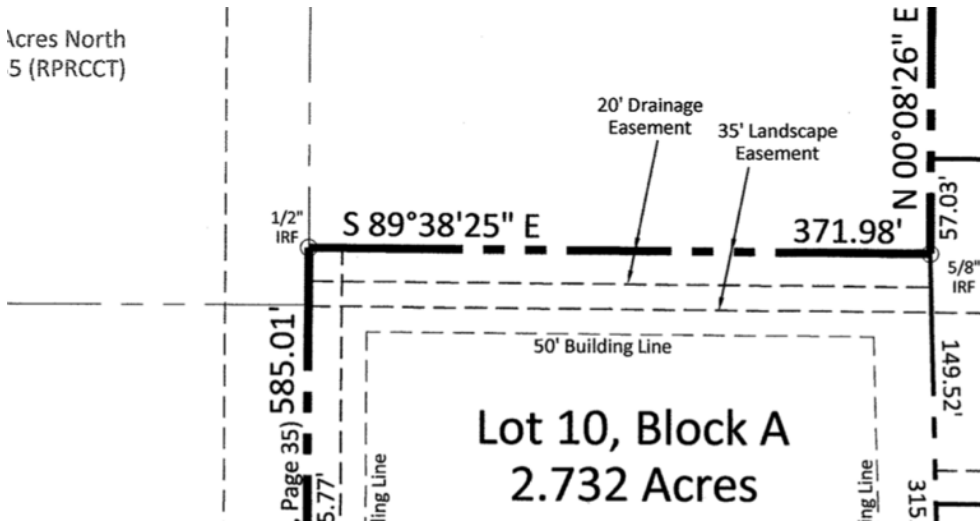
The garage doors face toward my house. This, plus a drive through, results in headlights shining into my house at night.

See numbers on photo below for a detailed explanation:

1. When I purchased my land in 1993 I specifically designed my house to be in the center of my lot (away from other homes) and angled the face 15 degrees east of true south so as not to look directly at the existing house at 430 Lakewood Dr.
2. Right after I prepared my house pad the previous owners at 430 Lakewood Dr. built a 2,700 square foot addition just 25' from the property line and in the line of sight where I had already adjusted my house.



3. In November 2018 the new owners requested to add a second story deck (~12'x16') that will be just 25' from the property line and will look directly into my lawn and into my house windows in the winter when the trees are bare. The property plat shows a 35' landscape buffer and a 50' setback on the plat. There is little landscaping in the landscape buffer as there is an asphalt driveway right against the property line. The deck was already framed in at the time of the request.

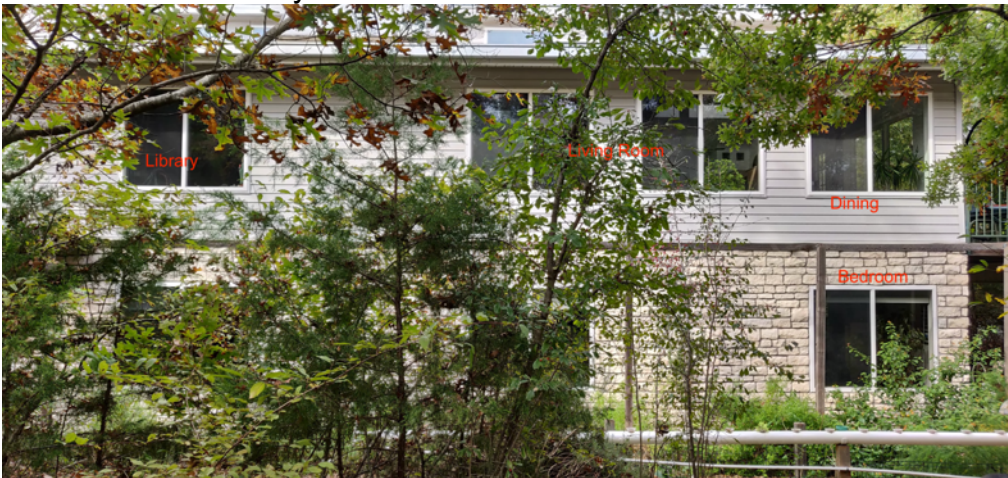


The new owners sent a flyer out saying the variance was to allow a 2nd floor fire escape stair. If they need an emergency egress stair then that can be built to hug the existing house and not protrude further toward the property line. If it's only used for emergency egress it's not as obtrusive as a deck looming over my property and facing my windows. A solution is available that doesn't further violate the property setback line.

Below: New deck already built 25' from property line. Visible from the private side of my house.



Below is a view of my house from the deck location. When leaves fall it will be more exposed.



Paul Westbrook, 440 Lakewood Dr., Fairview, TX 75069

Update May 2019

In the November ZBA hearing the owners did not agree to some of the screening issues we had discussed and were about to be denied, so they withdrew their request. As we were leaving the Town Hall I asked them for a detailed drawing and written agreement so there was no question about what would be done to mitigate the issues.

Over four months passed and they did not contact me at all. On Tuesday, March 26th I had this phone message from their lawyer (Google Voice translation provided below).

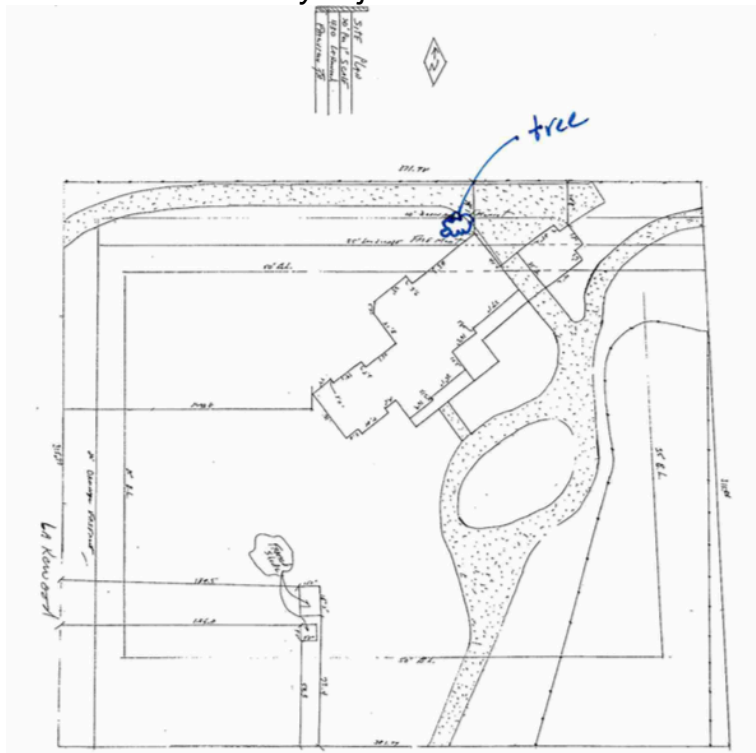
Mr. Westbrook, my name is Bob rotor 214-544-4003. I am an attorney in McKinney, Texas. I represent the van Bieber's and I have engaged me to work on the variance for their house, which is next to yours. I have visited with Mister Roberts at the city and got a flavor for the last Board of adjustment a meeting, and I am calling to see to visit with you about some items my client is willing to undertake in order to mitigate that you perceived to be encroachments visual encroachments on your property, and I'd like to visit with you if I might about those. I'd appreciate your call. Thank you.

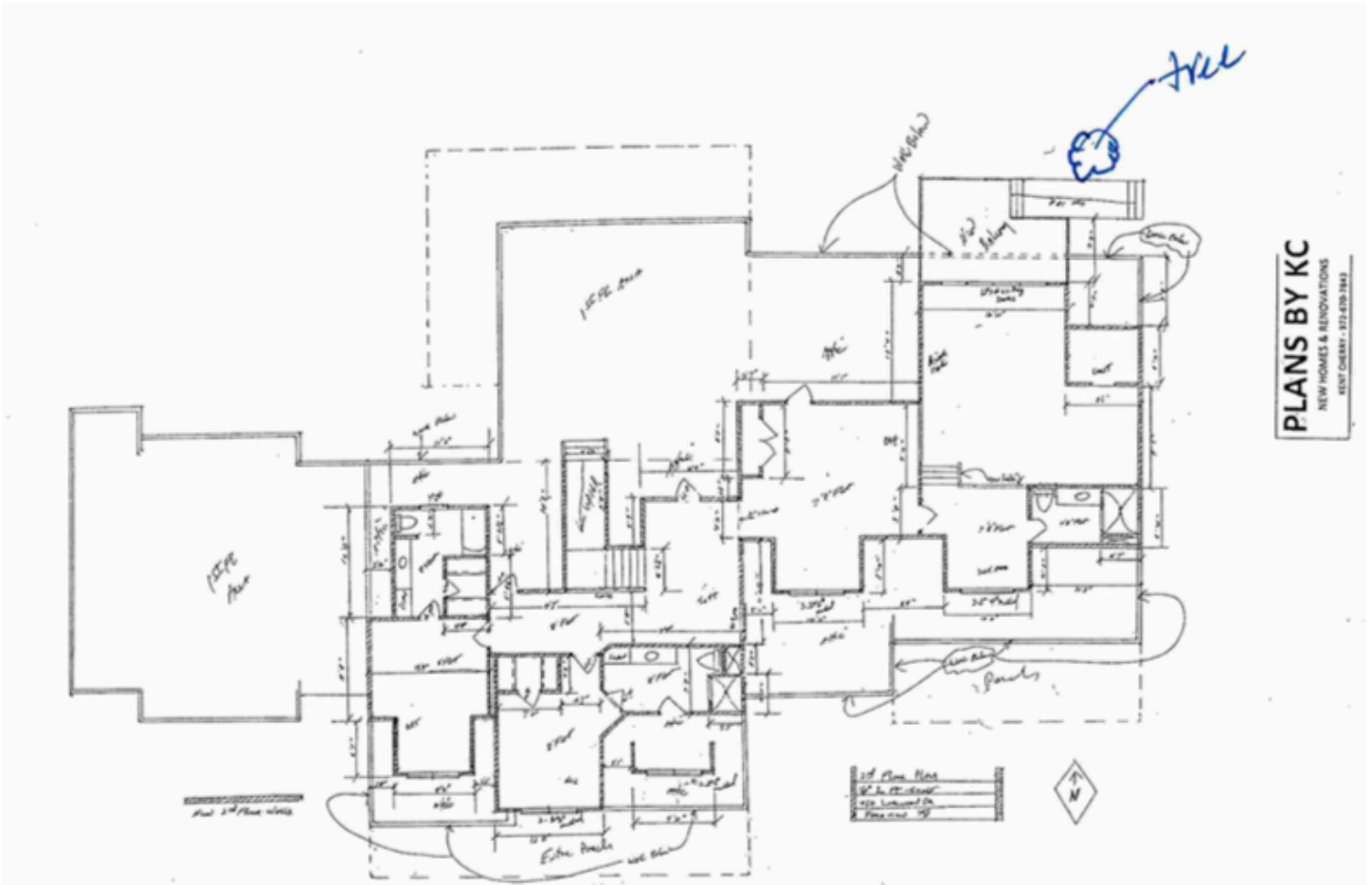
I returned his call on Wednesday, March 27th and updated him on my concerns and reiterated that I haven't even seen a dimensioned drawing of the proposed stairs. I asked if he could send some documents showing that plan and what mitigating items they were proposing.

I received this response and set of drawings from the lawyer:

Thanks for calling me back this morning. I have put together several drawings showing the overall site and the upstairs floor plan with proposed landing and stairway. I indicated on both the approximate location of the magnolia tree my clients propose to plant that should provide very adequate visual and noise attenuation. I have also attached a photo taken from the existing downstairs window area toward your property with the approximately location of the tree over-imposed. The tree should provide a visual barrier from the downstairs windows into your property as an added plus.

I visited with my client about the depth of the landing and have been informed that the dimension has been dictated by the width of the doors and the need to get the stairway away from the house and A/C units immediately adjacent to the house in that area.





PLANS BY KC
NEW HOMES & RENOVATIONS
KENT CHERRY - 572-629-7843

The drawing above isn't fully dimensioned (and the dimensions are not readable) and it shows no drive or property line distances. The only solution they proposed was planting one (1) tree on a tiny sliver of soil on the edge of the driveway. The tree proposal photo below is what they sent me.



Considering that in the recent months they've cleared almost all of the vegetation between our houses, one single tree does not represent any solution. Since November they have made the issue far worse.



Buffer understory plants and lower tree limbs all removed in landscape buffer space.



Now the added windows and deck have an unobstructed view into my property. If they were the required 50' away it would be less impactful, but they are well over the line – just 25' from the property line. The 2nd story extension was added and doesn't even match the submitted drawing – it extends further into the setback space.

See the before and after photos below.

Before they did tree clearing (this was already after some leaves had fallen):



After – vegetation cleared and branches removed:



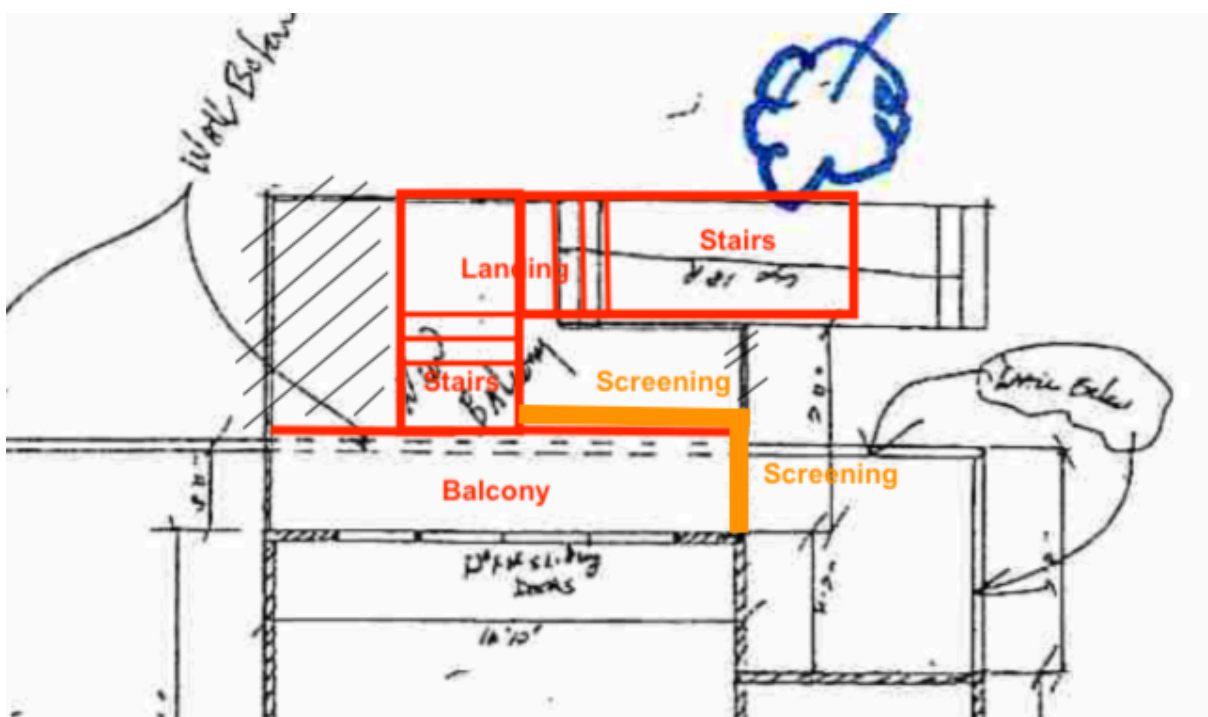
I sent this list of concerns back to their lawyer:
March 28, 2019

The drawings provided have minimal or unreadable dimensions and don't show the driveway, fence line, etc. I can't tell if the proposed stair cuts into the existing deck framing or attaches to the current face.

There doesn't appear to be much room there for a tree – especially a spreading tree like a magnolia. One tree won't act as an effective screen but it can help. The landscapers recently removed all the native understory plants which made the visibility even worse than last fall.

The entire deck structure is well over the setback line (15' – 25' over) and looms like an observation deck over my property. Over the past few months I clearly see and hear workers in that room and on the deck.

I would prefer no structure be built in the easement. However, I'll offer a design idea that might be acceptable. The design below will provide the requested emergency egress and minimize the deck area. The deck can be reduced to a smaller balcony. An L-shaped stair at code minimum width will provide egress and clear the lower walk path and AC units.



The design should address these issues:

1. The stated reason for the variance was an emergency egress stair. Reduce the deck size to just contain a landing area and emergency egress stair at code minimum width.
2. After reducing the size add visual screening around the deck – at least on the portion that faces our home. We discussed shutters (fixed Bahama style) last fall to screen the direct view.
3. Ensure all lighting is full-cutoff, dark-sky compliant (Fairview code) so it doesn't shine onto our property or into our windows. Shielded spotlights should be on motion sensors.
4. Plant as much native evergreen screening as possible – even if we have to put a few plants on my property. Good natives/adapted evergreens are Eastern Red Cedar, Yaupon Holly, and Nellie Stevens Holly.

I would like to see a detailed drawing and description of a plan in advance of the ZBA application so we are all in agreement on what will be built and done if the variance is granted.

Regards,

Paul Westbrook

Then I looked at the drawing again and realized that they didn't even follow the plans submitted. They removed a small dormer with a few small windows on the second floor and extended the wall all the way flush to the ground floor. I sent this follow up to their lawyer:

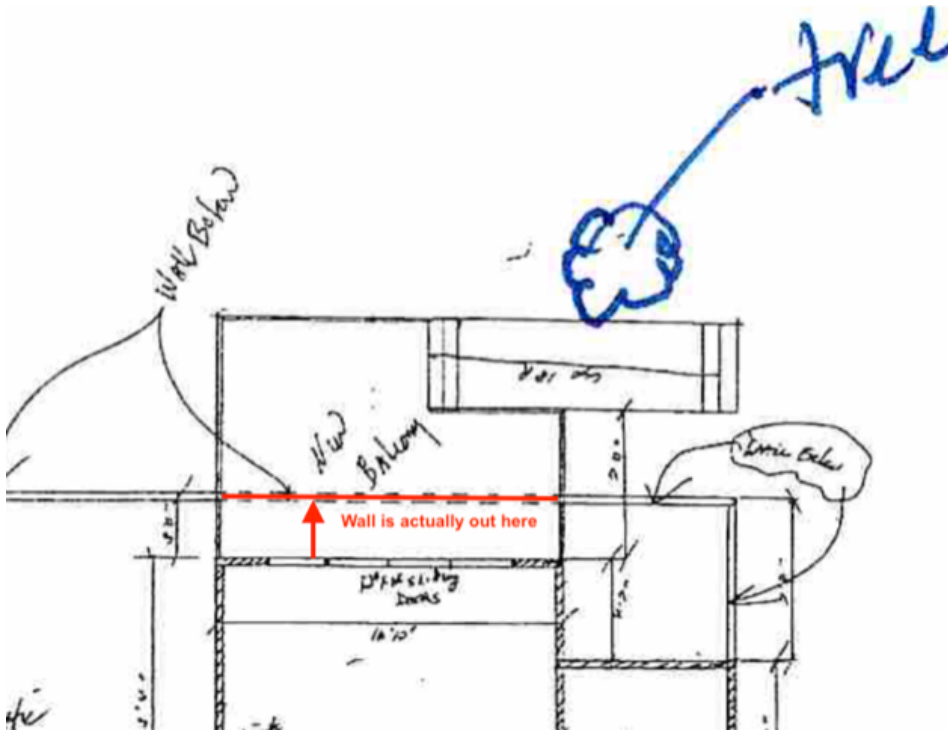
From: Paul Westbrook <pwestbrook@enerjazz.com>
Subject: Re: Van Beber Variance [IWOV-Legal.FID2959409]
Date: March 29, 2019 at 2:26:00 PM CDT
To: Bob Roeder <rroeder@ABERNATHY-LAW.com>

Something on the drawing looked off and I went out to look. It appears that they extended second story extension beyond the plans submitted for the project. It extends flush with the first floor and is probably un-permitted construction in the easement, unless better plans that I received were submitted to the town. That might need to go to the zoning board as well. Forget the balcony landing shown on my drawing - that space doesn't exist as the wall was pushed out.

We didn't move to Fairview for zero lot line homes. Forget a deck or balcony landing. If they need an emergency exit add a ladder or small stair as close to the house as possible.

Regards,

Paul Westbrook



On May 12th Matt and I met and again. Matt pushed for the larger deck area. I continued to reiterate the noise concern from a large deck. I said a code minimum deck landing and a code minimum exit stair might be acceptable. I requested some screening – shutters and plantings. Once again I asked for some detailed drawings and a written proposal. Nothing has been sent as of 5/22.

On May 20th I received a notice that another ZBA meeting was scheduled for May 29th.

Paul Westbrook, 440 Lakewood Dr., Fairview
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