



Agenda
Gallatin Municipal Board of Zoning Appeals

Thursday, March 28, 2013
DR. J. DEOTHA MALONE COUNCIL CHAMBERS

Municipal Board of Zoning Appeals - 5:30 p.m.
CITY HALL

1. APPROVE PRIOR MINUTES
February 28, 2013, MBZA Regular Meeting

2. GMBZA Resolution No. 2013-04
DALE, HARRIET C. & JAMES R. VARIANCE
HARRIET DALE

PC0098-13

Public Hearing

Applicant requests approval of a nine (9) foot side yard variance per Section 06.05.040.B.2 of the Gallatin Zoning Ordinance. The property contains 0.46 (+/-) acres and is located at 135 Lake Point Drive.

3. OTHER BUSINESS

4. MOVE TO ADJOURN

ORIGINAL

MINUTES OF THE GALLATIN
MUNICIPAL BOARD OF ZONING APPEALS

February 28, 2013

MEMBERS PRESENT

Jimmy Moore, Chair
John Puryear
James Pope

STAFF PRESENT

Katherine Schoch, Interim Director Codes/Planning
Kevin Chastine, Planner II
Marianne Mudrak, Board Secretary

MEMBERS ABSENT

Eddie Wyatt, Vice Chair
Jeannie Gregory, Secretary

OTHERS

Applicants

The Gallatin Municipal Board of Zoning Appeals met in a regular meeting on Thursday, February 28, 2013, at 5:30 p.m., in the Dr. J. Deotha Malone Council Chambers of Gallatin City Hall. Mr. Jimmy Moore, Chair, called the meeting to order. A copy of the meeting agenda is attached to these minutes as Exhibit A.

Item 1
Approve Prior Minutes

Mr. Puryear motioned to approve the minutes of the January 31, 2013 Gallatin Municipal Regional Board of Zoning Appeals meeting. Mr. Pope seconded the motion and the motion passed by unanimous vote.

Item 2

GMBZA Resolution No. 2013-03 – PC0090-13 – Gallatin Wrecker Service – Rogers Engineering Group – Public Hearing – Applicant requests a side yard variance per Section 08.03.030.D of the Gallatin Zoning Ordinance to allow an existing building to encroach 0.58 feet to 1.66 feet into the required 10-foot side yard on property containing 0.57 (+/-) acres located at 134 East Schell Street.

Mr. Kevin Chastine, Planner II, presented the staff report and stated the applicant is requesting a side yard variance upwards to 1.66 feet into the side yard. Mr. Chastine said Staff visited the site and discovered the building was nearly complete and was to be used for Gallatin Wrecker. Mr. Chastine said the applicant has submitted a site plan to present to the Gallatin Planning Commission next month, if this variance is approved. Mr. Chastine said when reviewing the site plan, Staff noticed that the garage building had been built too close to the eastern property line.

Mr. Chastine said the applicant answered the standards for variance questions. Mr. Chastine said Staff agrees with eight of the variance standards; however, Staff does not agree that the first variance standard has been met, because the site is fairly rectangular and the building could have been built to meet the side yard to the eastern property line.

Gallatin Municipal Board of Zoning Appeals Meeting Minutes

Mr. Chastine said Staff does not recommend the Municipal Board of Zoning Appeals approve the side yard variance as presented.

Mr. Richard Jones, with Rogers Engineering Group, represented the applicant, and said he understands that Staff cannot go against the ordinance and recommend the variance. Mr. Jones said when the building was put up the adjacent owner was in attendance with the developer and a string was pulled in agreement at the property line. Mr. Jones said the building was originally to be used to garage vehicles. Mr. Jones said he later decided to use the building for Gallatin Wrecker Service with an office. Mr. Jones said both parties believed that the building was setback 10 feet.

Mr. Jones said the plan for the lot is a great improvement to the site. Mr. Jones said the building is near completion and asked for the variance for that reason. Mr. Jones said the building is not abusive to either neighbor.

Chair Moore opened public hearing. No one came forward to speak; therefore, Chair Moore closed public hearing.

Mr. Jones said when the fence was built, the neighbor, Mr. Mike Fritz, was in attendance and agreement. Mr. Fritz also poured the concrete on the building. Mr. Jones said when the permit was issued Mr. Kelly, the developer, did not realize he needed to call the City for an inspection.

Ms. Katherine Schoch, Interim Director Codes/Planning, said the permit was issued for residential use, not commercial use. Ms. Schoch said the existing residential structure is a legal non conforming structure. Ms. Schoch said a structure to be used as accessory to the house on the lot is legal. Ms. Schoch said this is an active zoning violation because it is acting as a commercial building without a site plan.

Mr. Jones clarified that when Mr. Kelly applied for the permit he intended to use the building as a garage for his vehicles. Mr. Jones said Mr. Kelly did not realize he had to re-apply for another permit because he changed the intended use of the building.

Ms. Schoch said Staff is willing to work with the applicant. Mr. Jones said the applicant is willing to add brick to the building to meet the regulations. Mr. Puyear said architectural materials would be a Planning Commission issue.

Mr. Puyear said it makes complete sense to have a wrecker service on this property. Mr. Puyear said he is concerned that the Municipal Board of Zoning Appeals does not have the authority to grant this variance without the finding of facts. Mr. Puyear suggested that the applicant buy the amount of property he needs from his neighbor and add it to the lot with a minor subdivision plat so the building no longer encroaches into the side yard. Mr. Puyear said the City does not want to cause the applicant to take down his building. Mr. Puyear said to grant the appeal all nine standards must be met.

Mr. Paul Kelly, applicant, said he was not aware that he needed to submit a site plan when he decided to use the building as a commercial building instead of a residential outbuilding. Mr. Kelly reiterated how he determined the placement of the building with the help of his neighbor.

Gallatin Municipal Board of Zoning Appeals Meeting Minutes

Ms. Schoch reiterated that the original application for a building permit was for a residential structure. Ms. Schoch said the building is oversized and is not accessory to the principle structure. Mr. Kelly said he did not know he was going to use the building for commercial purposes when he first applied for the permit.

Mr. Jones explained that on the left side of the property there is only a fifteen foot driveway and if they had gone over to that side it would narrow the driveway even more.

Mr. Jones said the applicant was trying to meet the setbacks. Ms. Schoch said there was never a call for a building inspection, which would have brought the mistake to the attention of the applicant before the structure was complete.

Mr. Puryear asked if it would be possible to give the applicant 30 days to speak to his neighbor about purchasing the required land. Mr. Puryear said he was sure that Planning Commission would not have a problem approving the use if the property line could be resolved. Mr. Puryear said he could not vote for this variance; however, he wants to find a way to make this work for the applicant. Mr. Puryear said he is not comfortable setting a precedent by voting to approve a variance that does not meet all nine standards.

Chair Moore agreed that the applicant should try to purchase the property needed. Ms. Schoch said the City Attorney agreed that the variance request did not meet the standards.

Mr. Kelly said he could take down a part of the building if necessary.

Mr. Puryear motioned to defer the item to the next Municipal Board of Zoning Appeals meeting. Mr. Pope seconded the motion and the motion passed by unanimous vote.

Item 3
Other Business

Mr. Puryear said he is not in favor of the paperless agendas.

Item 4
Move to Adjourn

There being no further business, Chair Moore adjourned the meeting at 6:30 p.m.

Respectfully submitted:

Marianne Mudrak, Board Secretary

Approve:

Jimmy Moore, Chair

Jeannie Gregory, Secretary



EXHIBIT A

Agenda Gallatin Municipal Board of Zoning Appeals

Thursday, February 28, 2013
DR. J. DEOTHA MALONE COUNCIL CHAMBERS

Municipal Board of Zoning Appeals - 5:30 p.m.
CITY HALL

1. **APPROVE PRIOR MINUTES**
January 31, 2013, MBZA Regular Meeting

2. **GMBZA Resolution No. 2013-03**
GALLATIN WRECKER SERVICE
ROGERS ENGINEERING GROUP

PC0090-13

Public Hearing

Applicant requests a side yard variance per Section 08.03.030 D. of the Gallatin Zoning Ordinance to allow an existing building to encroach 0.58 feet to 1.66 feet into the required 10-foot side yard on property containing 0.57 (+/-) acres located at 134 East Schell Street.

3. **OTHER BUSINESS**

4. **MOVE TO ADJOURN**

RESOLUTION OF THE CITY OF GALLATIN, TENNESSEE MUNICIPAL BOARD OF ZONING APPEALS PERTAINING TO A VARIANCE FROM SECTION 06.05.040.B.2 OF THE ZONING ORDINANCE OF GALLATIN, TENNESSEE –JAMES AND HARRIETT DALE – 135 LAKE POINT DRIVE – PC0098-13

WHEREAS, THE CITY OF GALLATIN, TENNESSEE MUNICIPAL BOARD OF ZONING APPEALS considered the variance request for a 9 foot variance from the western side yard for property located at 135 Lake Point Drive, per Section 06.05.040.B.2 of the Gallatin Zoning Ordinance, submitted by the applicant, James and Harriett Dale, at its regular meeting on March 28, 2013; and

WHEREAS, THE CITY OF GALLATIN, TENNESSEE MUNICIPAL BOARD OF ZONING APPEALS has reviewed the application materials and supporting documentation submitted by the applicant, the analysis, findings and recommendations presented by City Staff and in the Municipal Board of Zoning Appeals Staff Report, attached hereto as Exhibit A, and evidence and testimony presented during the meeting; and

WHEREAS, THE CITY OF GALLATIN, TENNESSEE MUNICIPAL BOARD OF ZONING APPEALS is required in its deliberations, pursuant to Gallatin Zoning Ordinance § 15.04.028.F, to indicate the specific section of the Zoning Ordinance of Gallatin, Tennessee under which the variance is being considered and state specific findings; and

NOW THEREFORE BE IT RESOLVED BY THE CITY OF GALLATIN, TENNESSEE MUNICIPAL BOARD OF ZONING APPEALS in its deliberations finds that the variance request for a 9 foot variance from the western side yard for property located at 135 Lake Point Drive, per Section 06.05.040.B.2 of the Gallatin Zoning Ordinance does meet all nine (9) of the following Standards for Variances set forth in Gallatin Zoning Ordinance, Section 15.05.030:

- A. The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this Ordinance were carried out must be stated;
- B. The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district;
- C. The variance will not authorize activities in a zone district other than those permitted by this Ordinance;
- D. Financial returns only shall not be considered as a basis for granting a variance;
- E. The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this Ordinance;
- F. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same districts;
- G. The variance is the minimum variance that will make possible the reasonable use of the land, building, or structure;
- H. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located; and
- I. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of

fire, endanger the public safety, or substantially diminish or impair property values within the area.

BE IT FURTHER RESOLVED BY THE CITY OF GALLATIN, TENNESSEE MUNICIPAL BOARD OF ZONING APPEALS that the side yard variance are hereby approved with the condition that the applicant obtain a building permit prior to construction.

BE IT FURTHER RESOLVED BY THE CITY OF GALLATIN, TENNESSEE MUNICIPAL BOARD OF ZONING APPEALS that this resolution shall take effect from and after its final passage, the public welfare requiring such.

IT IS SO ORDERED.

PRESENT AND VOTING

AYE:

NAY:

DATED: 3/28/13

Jimmy Moore, Chair

Jeannie Gregory, Secretary

APPROVED AS TO FORM:

JOE H. THOMPSON
CITY ATTORNEY

EXHIBIT A

ITEM 2 3/28/13 GMBZA MEETING

Public Hearing

Applicant requests approval of a nine (9) foot side yard variance per Section 06.05.040.B.2 of the Gallatin Zoning Ordinance. The property contains 0.46 (+/-) acres and is located at 135 Lake Point Drive. (PC0098-13)

Attachment	2-1	Variance Request Exhibit
Attachment	2-2	Variance Request Checklist
Attachment	2-3	Boundary Survey of Property Dated 9/7/12
Attachment	2-4	Photographs of Residence and Deck

G.Z.O. DEFINITIONS

Required Yard – That portion of a zone lot that is required by the specific district regulations to be open from the ground to the sky and may contain only explicitly listed obstructions.

Yard – That part of a zone lot extending open and unobstructed from the lowest level to the sky along the entire length of a lot line, and from a lot line equivalent to a depth or width set forth in the applicable regulations.

Yard, Side - A yard extending along a side lot line from the required front yard to the required rear yard. In the case of a corner lot, any yard which abuts a street line and which is not designated a front yard shall be considered a side yard. In the case of a through lot, side yards shall extend between the required front yards, except when such corner lots are required by these regulations specifically to have more than one front yard. A side yard abutting a street shall be twice the required minimum side yard.

15.04 The Board of Zoning Appeals

15.04.024 Powers of the Board

The Board is hereby vested with the powers to:

- A. Hear and decide appeals from any order, requirement, decision, or determination made by the Zoning Administrator in carrying out the enforcement of this Ordinance, whereby it is alleged in writing that the Zoning Administrator is in error or has acted in an arbitrary manner;
- B. Hear and act upon application for variances in accordance with Section 15.05 of this Article to alleviate hardships by virtue of the inability of the landowner to comply strictly with the provisions of this Ordinance by reasons of unique shape, topography, or physical features of the zone lot;
- C. Hear and act upon applications for conditional use permits in the manner and subject to the standards set out in Section 15.05 of this Article;
- D. Hear and decide all matters referred to it on which it is required to act under this Ordinance;
- E. Within its budget appropriation and other funds at its disposal, enter into contracts for such services as it may require.

15.05 Zoning Variances

The Board of Zoning Appeals may grant variances where it makes findings of fact based upon the standards prescribed in this section.

15.05.030 Standards for Variances

The Board shall not grant a variance unless it makes findings based upon evidence presented to it as follows:

EXHIBIT A

- A. The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this Ordinance were carried out must be stated;
- B. The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district;
- C. The variance will not authorize activities in a zone district other than those permitted by this Ordinance;
- D. Financial returns only shall not be considered as a basis for granting a variance;
- E. The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this Ordinance;
- F. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same districts;
- G. The variance is the minimum variance that will make possible the reasonable use of the land, building, or structure;
- H. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located; and
- I. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area.

15.05.040 Non-conformity Does Not Constitute Grounds for Granting of a Variance

No non-conforming use of neighboring lands, structures, or buildings in the same district, and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

15.05.050 Prohibition of Use Variances

Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

15.05.060 Conditions and Restrictions by the Board

The Board may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to comply with the provisions set out in Section 15.05.030 to reduce or minimize the injurious effect to such variation; upon surrounding property and better carry out the general intent of this Ordinance. The Board may establish expiration dates as a condition or as a part of the variances.

ANALYSIS

The applicant is requesting approval of a nine (9) foot side yard variance per Section 06.05.040.B.2 of the Gallatin Zoning Ordinance, in order to replace an existing staircase with a larger deck area and to construct a new staircase on the western side of the new deck. The property contains 0.46 (+/-) acres and is located at 135 Lake Point Drive which is at the intersection of Lake Point Drive and Lock 4 Road. The property is zoned Residential-15 (R15); Dwelling, One-family Detached is a permitted use in the R15 zone district. No portion of this property is located in a flood hazard area.

SITE HISTORY

Mr. and Mrs. James Dale purchased the property in October 2012. Recently the property owners removed the existing staircase leading to the second story entrance and replaced them with a large deck area. The deck is approximately 532 square feet and wraps around the rear of the house over the garage doors and parking area. The property owners installed a new staircase at

Item 2 3/28/13 GMBZA Meeting, Page 2
03/22/13 9:48 AM

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RK/DK

EXHIBIT A

the rear of the house leading up to the new deck. The property owners obtained a building permit to construct the deck in January 2013. Upon inspection of the deck, the building inspector noted encroachment into the side yard setback.

This property was platted as Lot 19 as part of the Lake Point Estates Subdivision in 1964. The Lake Point Estates Subdivision was platted with 100 foot minimum building setback lines along Lake Point Drive, 20 foot minimum building setback lines and side yard setbacks along Lock 4 Road, ten (10) foot interior side yard setbacks and 25 foot rear yard setbacks. The large front yard setback required the home to be constructed much further back from the front property line than other properties zoned R15. This also shifts the building envelope further back towards the western side and rear property lines. The home was constructed in 1976 and is situated on the irregular shaped lot at an extreme angle. Please refer to the survey provided as Attachment 2-3. The second story entrance, which is located on the side elevation near the southwest corner of the home, is approximately four (4) feet from the side yard setback; therefore, making it difficult to provide access to this entrance without encroaching on the side yard setback. The area of encroachment the applicant is seeking approval for is 110 (+/-) square feet. The leading edge of one of the desk supports is only approximately one (1) foot from the property line.

Standards for a Variance

Section 15.05.030 of the Gallatin Zoning Ordinance states the Municipal Board of Zoning Appeals shall not grant a variance unless it makes findings based upon evidence presented to it in nine (9) specific categories. The applicant responses are listed below in *italics* and Staffs responses are listed in **bold**.

- A. The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this Ordinance were carried out must be stated.
- *The property possesses an irregular shaped lot and the house was constructed at an extreme angle. If the deck is located within the required side yard setback owners could not access the upper part of the house for entrance/emergency exit.*
 - **Staff agrees with this response.**
- B. The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district.
- *The variance request is based on the irregular shape of the lot and the extreme angle of the house. The required side yard setback will require an awkward structure. These are a unique set of circumstances related to this Lot 19 of Lake Point Estates.*
 - **Staff agrees with this response.**
- C. The variance will not authorize activities in a zone district other than those permitted by this Ordinance.
- *This variance is related to the structure and does not relate to the user of the property. In no way will this variance authorize uses or activities that are not currently permitted in Residential-15 (R15) zone district.*
 - **Staff agrees with this response.**

EXHIBIT A

- D. Financial returns only shall not be considered as a basis for granting a variance.
- *No financial records/returns have been supplied or considered as a basis for reviewing this variance request.*
 - **Staff agrees with this response.**
- E. The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this Ordinance.
- *The applicant/owner of this property did not create the hardship for which the variance is being requested. The house existed at the time the owner purchased the property.*
 - **Staff agrees that the house was already constructed in the current location when the owner purchased the property; however, it is important to note that a smaller new deck could have been constructed by the current property owners that fit within the building envelope.**
- F. That granting the variance requested would not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same districts.
- *This variance will only allow the reduction of the required ten (10) foot side yard. It will not provide any special privileges that the Gallatin Zoning Ordinance and/or the Residential-15 (R15) zone district currently denies as applied to land structures and/or buildings.*
 - **Staff agrees with this response.**
- G. The variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.
- *The requested variance of a nine (9) foot side yard variance is the minimum variance for the property to develop as proposed.*
 - **Staff agrees with this response.**
- H. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the area in which the property is located.
- *The variance will allow the property to be developed in a manner that will not be detrimental to the public welfare or injurious to other property or improvements in the existing subdivision.*
 - **Staff agrees with this response.**
- I. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the area.
- *This variance is related to the positioning of a structure on the property, and will in no way impair the supply of light and air to adjacent properties, substantially increase traffic congestion, increase the danger of fire, endanger the public safety or substantially diminish property values within the area.*
 - **Staff agrees with this response.**

EXHIBIT A

RECOMMENDATION

Staff believes the request meets the Gallatin Zoning Ordinance's Standards for a Variance due to the difficulty in providing access to the second story entrance/emergency exit because of the irregular shaped lot and the home situated at an extreme angle, Staff recommends that the Municipal Board of Zoning Appeals approve the nine (9) foot side yard variance containing a 110 (+/-) square foot area, for 135 Lake Point Drive.

RESUBMITTAL

RECEIVED
MAR 12 2013

VARIANCE CHECKLIST	
Project Name: DALE, VARIANCE	Map #: 135H Group: B Parcel #: 007-00
Contact Person: HARRIETT DALE	PC File Number: PC0098-13

GALLATI PLANNING & ZONING

The Variance checklist is designed to assist applicants with identifying the information that must be included on all Boards of Zoning Appeals (BZA) applications. Initial submittals must include a completed BZA Application Form, a completed Variance checklist, and nine (9) folded copies of the Variance documents by 4:30 PM on the submittal deadline.

ATTACHMENT 2-2
EXHIBIT A

The Municipal and Regional Boards of Zoning Appeals may grant variances where it makes findings of fact based upon the standards outlined below. Please provide a written description that explains how the variance being requested addresses the following nine standards for variances:

- A The particular physical surroundings, shape, topographic conditions of the specific property involved that would result in a particular hardship upon the owner as distinguished from a mere inconvenience, if the strict application of this Ordinance were carried out must be stated; **The property possesses an irregular shape lot and the house was constructed at an extreme angle. If the deck is located within the required side yard variance it could not access the upper part of the house for access or entrance and emergency exit.**
- B The conditions upon which the petition for a variance is based would not be applicable, generally, to other property within the same district; **The variance request is based on the irregular shape of the lot and the extreme angle of the house. The required side yard variance which will require an awkwardly sited structure. These are a unique set of circumstances related to this lot 19 of Lakepoint Estates.**
- C The variance will not authorize activities in a zone district other than those permitted by this Ordinance; **This variance is related to the structure and does not relate to the use of the property. In no way will this variance authorize uses or activities that are not currently permitted in Residential 15 (R15) zone district**

D Financial returns only shall not be considered as a basis for granting a variance; **No financial records/returns have been supplied or considered as a basis for reviewing this variance request.**

E The alleged difficulty or hardship has not been created by any person having an interest in the property after the effective date of this Ordinance; **The applicant/owner of this property did not create the hardship for which the variance is being requested. The house existed at the time the owner purchased the property.**

SURVEY DONE PRIOR TO PURCHASE
OF THIS PROPERTY

RECEIVED
FEB 22 2013

GALLATIN PLANNING
& ZONING

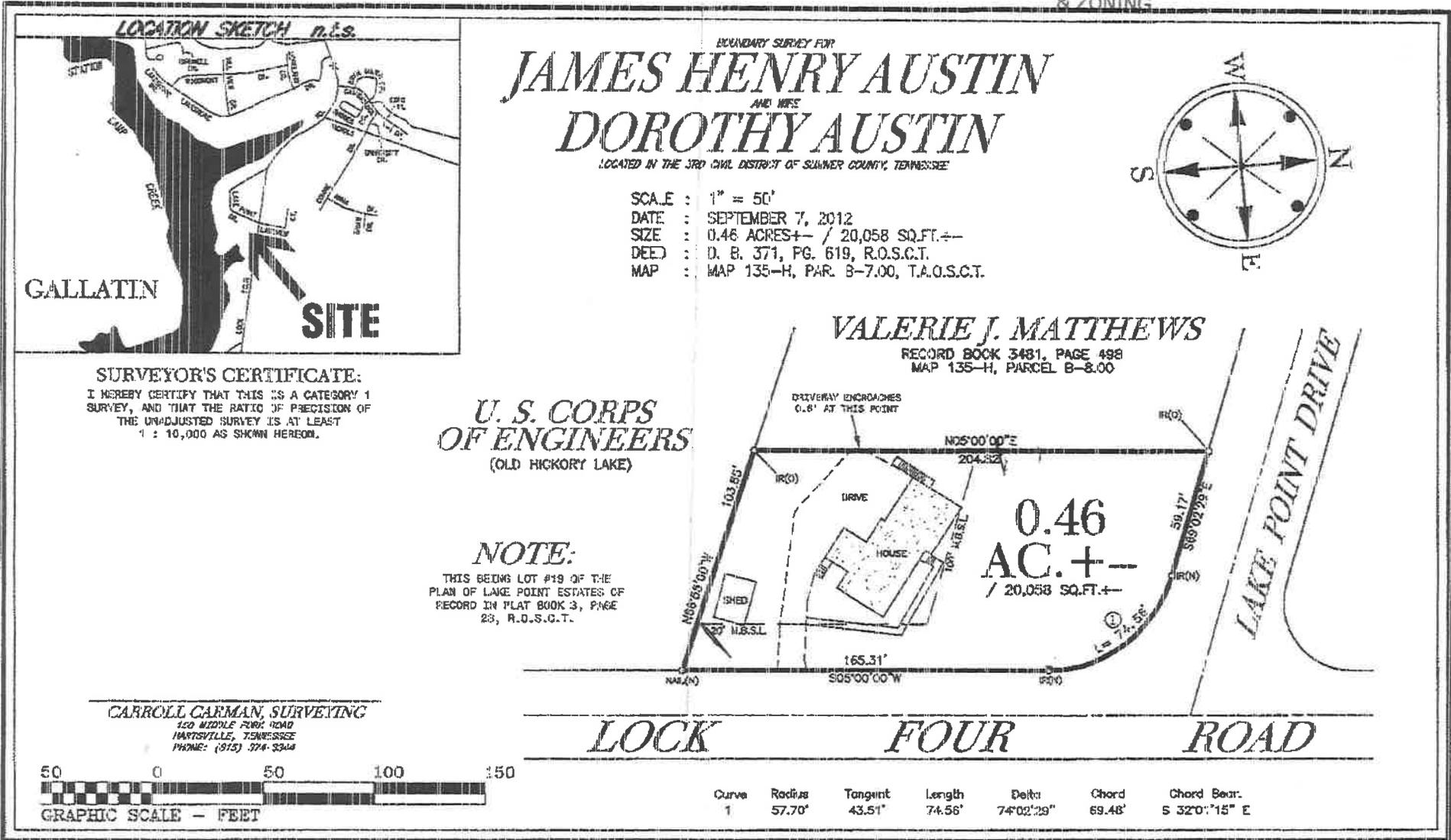
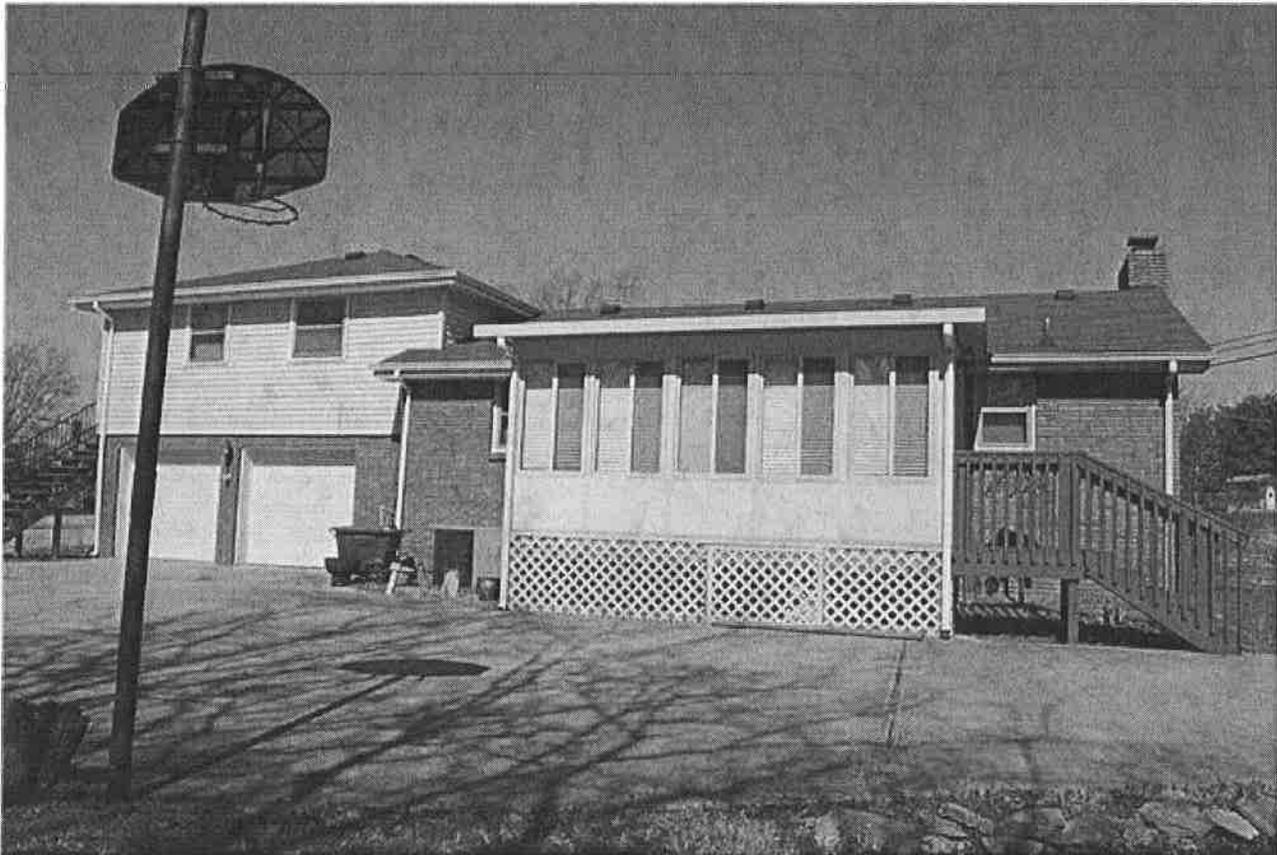


EXHIBIT A

ATTACHMENT 2-3 PC0098-13



REAR ELEVATION - PREVIOUS CONDITION

ATTACHMENT 2-4

EXHIBIT A

EXHIBIT A ATTACHMENT 2-4

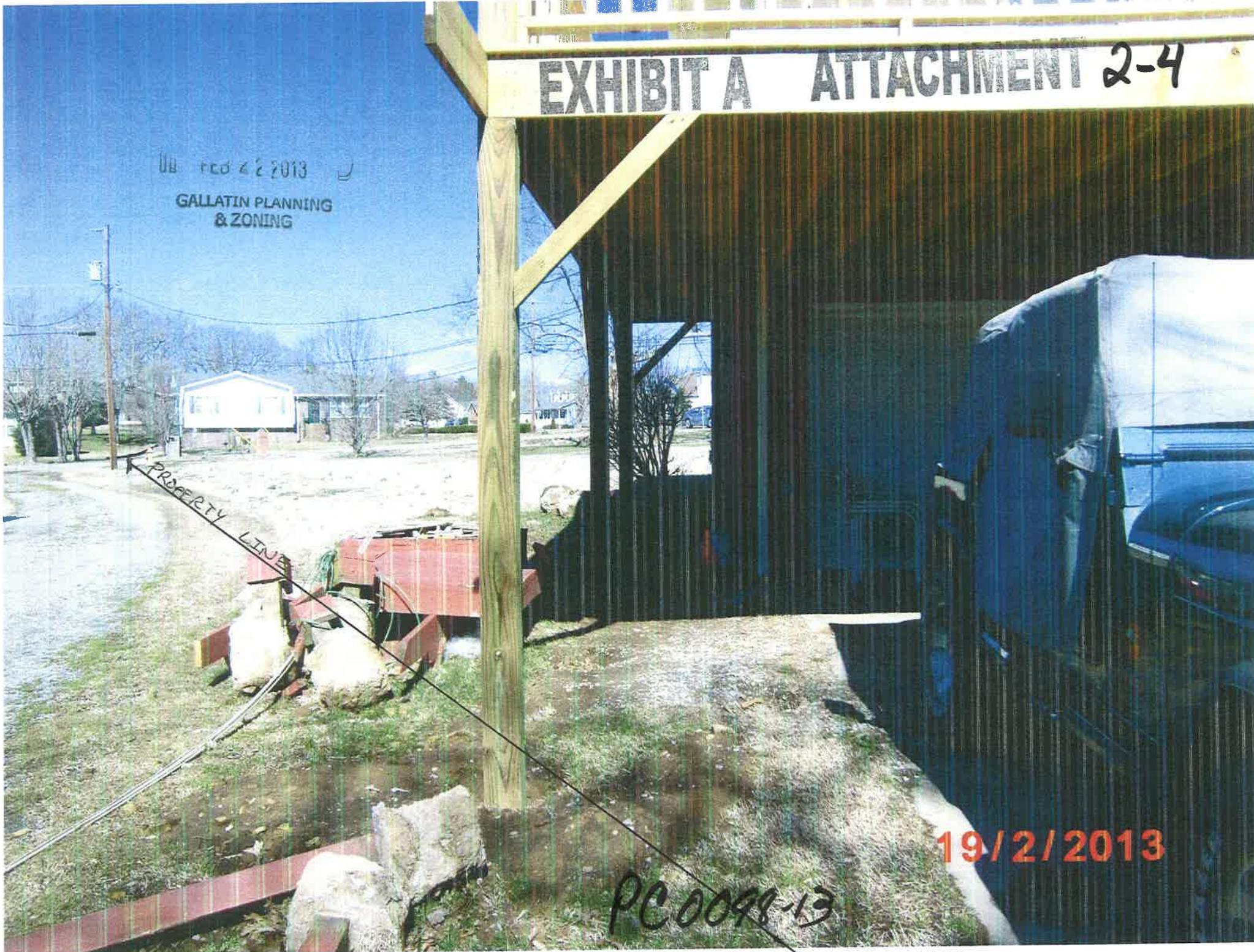
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GALLATIN PLANNING
& ZONING

PROPERTY LINE

19/2/2013

PC 0098-13



Deck poles placed in exact
location of former staircase

ATTACHMENT 2-4

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& ZONING

EXHIBIT A



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ATTACHMENT 2-4

EXHIBIT A



19/2/2013

PC 0098-13

PROPOSED AREA AFFECTED = 110-54 FT