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AGENDA ITEM NO.: 8 (Action Item – Public Hearing)

PLANNING COMMISSION MEETING DATE: August 24, 2016

SUBJECT: Variance #2016-03/Ver Hoef

EXECUTIVE SUMMARY

The application is for a variance to encroach upon the 30-foot rear yard setback of a property zoned Rural Residential High Density (RRH) located at 51 Sundown Street in the Tecopa Hot Springs community. The variance is necessary to allow for an addition to the existing single-family residence. The addition is allowable for the zone and the construction will meet development standards.

PROJECT INFORMATION.

Supervisory District: Fifth

Project Applicant: Tom Ver Hoef, 5536 Claendon Way, Carmichael, CA 95608

Property Owner: The Ver Hoef Trust, 5536 Claendon Way, Carmichael, CA 95608

**Site Address/
Community:** 51 Sundown Street / Tecopa Hot Springs

A.P.N.: 046-370-19-00

General Plan: Residential Rural High Density (RH; RRH)

Zoning: Rural Residential – 1 acre (RR)

Size of Parcel: 1.1 acres

Surrounding Land Use:

Location	Use	General Plan Designation	Zone
Site	Developed – Single Family Residential	Residential Rural High Density (RRH)	Rural Residential (RR)
North	Undeveloped – Vacant; contains some trucks	Residential Rural High Density (RRH)	Rural Residential (RR)
East	Site of Poo-Ha-Bah native American spiritual healing center (parcel to the northeast) & contains an assortment of trailers (parcel to the east)	Resort/Recreational (REC) & Residential Rural High Density (RRH)	Commercial Recreation (C-5)
South	Undeveloped – Vacant	Residential Rural High Density (RRH)	Rural Residential (RR)
West	Undeveloped – County-operated dumpster site	Public Service Facility (PF)	Public District (P)

Staff Recommended Action: **1.) Approve the Variance.**

Alternatives:

- 1.) Deny the Variance.
- 2.) Approve the Variance with additional Conditions of Approval.
- 3.) Continue the public hearing to a future date, and provide specific direction to staff regarding what additional information and analysis is needed.

Project Planner: Michael Draper, Associate Planner

STAFF ANALYSIS

Variance Request & Site Characteristics

Applicant Tom Ver Hoef is requesting a variance to encroach on the rear setback of his property located at 51 Sundown Street in the Tecopa Hot Springs community. The encroachment would allow for an addition to the residence to add a large living room on the northern aspect of the home of approximately 836 square feet. The potential variance would allow the addition to extend 9’4” into the 30’ rear setback.

The property is located in a rural, undeveloped area within the Tecopa Hot Springs community and is zoned Rural Residential High Density, and has the following setbacks:

- Front: 50 feet
- Rear: 30 feet

- Side: 20 feet

Existing development on the parcel is a single family residence in the north and west portion with an art studio south of the residence and additional structures on the eastern portion. Due to the location of windows and the general layout of the residence, the location of the addition cannot be compromised. The placement of the addition allows for the only logical interior access to the room while maintaining interior air flow and natural lighting. The new room will act as a dining room to replace the former dining space which was found to be ineffective in meeting the Ver Hoef's needs.

It should be noted that the applicant bought the property with a small pre-existing structure and several other buildings on site. The applicant used the pre-existing structure as a residence while constructing the new home. The new home is now constructed and the applicant has physically incorporated/attached the pre-existing home into the now-existing larger home. The pre-existing structure was non-conforming with respect to setback requirements: it only had a 19'-8" rear yard setback, where a 30-foot setback is needed. Thus, the newly constructed home conformed with Section 18.78.260 of the Inyo County Code:

"A dwelling in a residential district which is non-conforming only with respect to a deficiency in yard dimensions or in parking spaces may be structurally altered or enlarged, provided that any addition or enlargement shall itself be fully conforming, and that the number of dwelling units in the structure shall not be increased."

However, Section 18.78.250 of the Inyo County Code states:

"A nonconforming building shall not be enlarged, extended or structurally altered without submission of, and approval by, the planning commission of a conditional use permit application. No nonconforming use of a building shall be changed to a different nonconforming use, except upon application to and approval by the planning commission as provided for a conditional use. (Ord. 943 § 4, 1994.)"

Staff recommends approval of the variance in substitution of a Conditional Use Permit with the understanding that the applicant has received a Conditional Use Permit for renovation and expansion of the pre-existing non-conforming home (CUP #2009-04/ Ver Hoef). Conditional Use Permit approval "runs with the land," and is not affected by future ownership issues. The application for an additional Conditional Use Permit would place an unnecessary financial burden on the applicant.

Project Impacts

The addition is unlikely to negatively affect or impinge on any neighboring properties due to the fact that:

- The applicant owns the property to the south.

- The property to the west is a County-operated dumpster site.
- Other neighboring sites to the north and east are intermittently used, and in any case would not be immediately adjacent to the proposed addition.

In addition, while other structures in the area are single story, the proposed addition is unlikely to cause any controversy or negative impacts with respect to obstructing the views/vistas of neighbors, since the topography immediately to the southwest of the site rises into a rocky hill, estimated by the applicant to be 150 feet high, which will buffer/provide a backdrop to the proposed addition.

Provision for Variances

The Inyo County Zoning Ordinance states that any variance to the terms of the Zoning Ordinance may be granted if such a variance would *“not be contrary to its general intent or the public interest, where due to special conditions or exceptional characteristics of the property or its location or surroundings, a literal enforcement would result in practical difficulties or unnecessary hardships”* (Section 18.81.040).

Further, the Zoning Ordinance states that the following three Findings must be affirmed in order for any variance to be granted:

1. That there are exceptional circumstances applicable to the property involved, or to the intended use, which do not generally apply to other property in the same district.
2. That the result would not be detrimental to the public welfare, or injurious to property in the vicinity.
3. That the strict application of the regulation sought to be modified would result in practical difficulties or hardships inconsistent with, and not necessary for the attainment of, the general purposes of this title.

In addition to the above Findings specified in the Inyo County Zoning Ordinance, California State Government Code requires the following Findings for any variance:

4. The proposed variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated.
5. The proposed variance does not authorize a use or activity that is not otherwise expressly authorized by the zoning regulation governing the parcel of property.
6. The proposed variance is consistent with the General Plan.
7. The requirements of the California Environmental Quality Act have been met.

Affirmative variance Findings must describe the special circumstances that act to physically differentiate the project site from its neighbors and make it unique, and thus uniquely justified for a variance; alternatively, negative findings must describe how the project’s physical characteristics are not unique or exceptional, and therefore do not justify a variance.

ALL seven of the Findings must be affirmed in order for a variance to be approved.

ENVIRONMENTAL REVIEW

This project is Categorically Exempt from the provisions of the California Environmental Quality Act (CEQA), under the Class 3 exemption: "New construction of limited small new facilities; installation of small, new equipment and facilities in small structures; and conversion of the use of small existing structures" (Section 15303)

RECOMMENDATIONS

Findings

Staff has reviewed this application and can find that all seven of the required Findings can be affirmed:

1. That there are exceptional circumstances applicable to the property involved, or to the intended use, which do not generally apply to other property in the same district.

(Affirmative – Evidence: The applicant/owner bought the property with a pre-existing non-conforming home on it, where part of the structure was encroaching on the rear setback. A Conditional Use Permit (CUP#2009-03/Ver Hoef) was received in order to build a second story on the non-conforming structure. Due to this pre-existing encroachment, the desired addition will inevitably also encroach on the rear setback. The location of the addition cannot be compromised because it is the only logical interior access to the room while maintaining interior air flow and natural lighting.)

2. That the result would not be detrimental to the public welfare, or injurious to property in the vicinity.

(Affirmative – Evidence: The majority of property in the vicinity is minimally developed. A County owned waste transfer station is located to the west along the property line this variance is for. The variance will not be detrimental to the public welfare or injurious to other property.)

3. That the strict application of the regulation sought to be modified would result in practical difficulties or hardships inconsistent with, and not necessary for the attainment of, the general purposes of this title.

(Affirmative – Evidence: Strict application of the rear yard setback will result in a burden to the applicate by causing construction to be displaced to an undesirable location of the house which will disrupt lighting, air flow, and continuity.)

4. The proposed variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated.

(Affirmative – Evidence: The vicinity has very little development. No other property owners adjacent to the applicant have constructed structures on their parcels, nor have any property owners in the vicinity applied for or been denied a privilege such as this.)

5. The proposed variance does not authorize a use or activity that is not otherwise expressly authorized by the zoning regulation governing the parcel of property.

(Affirmative – Evidence: In approving the variance for setback encroachment, the proposed addition to the structure will adhere to County Code requirements of the zone regulation governing the parcel of property (zoned RR).)

6. The proposed variance is consistent with the Inyo County General Plan

(Affirmative – Evidence: The parcel is designated Residential Rural High Density (RRH), and the variance allowing the proposed addition is consistent with this designation.)

7. The requirements of the California Environmental Quality Act have been met.

(Affirmative – Evidence: The project is exempt from the requirements of CEQA review under Class 3: “New construction of limited small new facilities; installation of small, new equipment and facilities in small structures; and conversion of the use of small existing structures” (CEQA Guidelines Section 15303).)

Conditions of Approval

- 1.) Hold Harmless: the applicant, landowner, and/or operator shall defend, indemnify and hold harmless Inyo County, its agents, officers and employees from any claim, action, or proceeding against the County, its advisory agencies, appeal boards, or its legislative body concerning Variance #2016-03/Ver Hoef or applicant’s failure to comply with conditions of approval.

EXHIBITS

- A. General Vicinity Map
- B. Zoning Map of Area
- C. Proposed Site Plan Provided by Owner

EXHIBIT A

General Vicinity: 51 Sundown Street

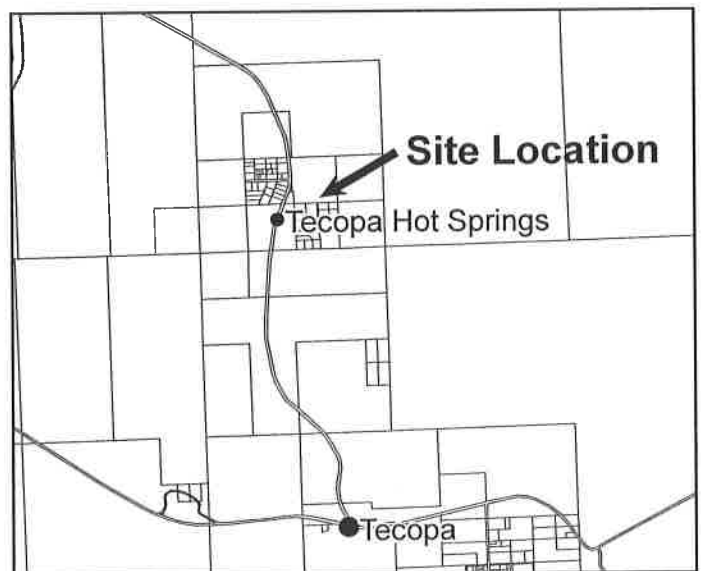


EXHIBIT B

Zoning Map: 51 Sundown Street

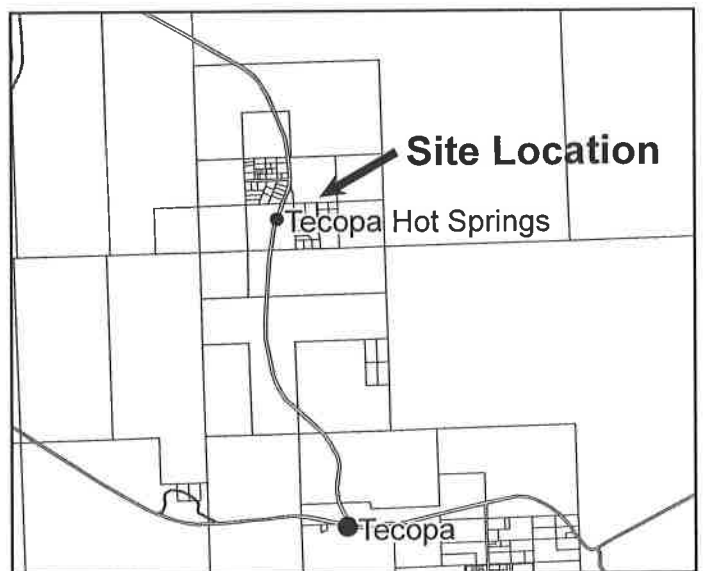
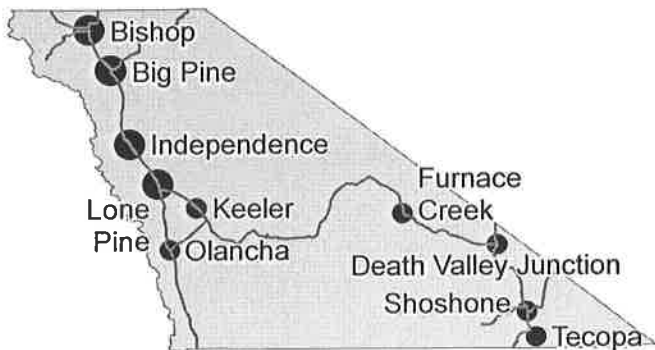
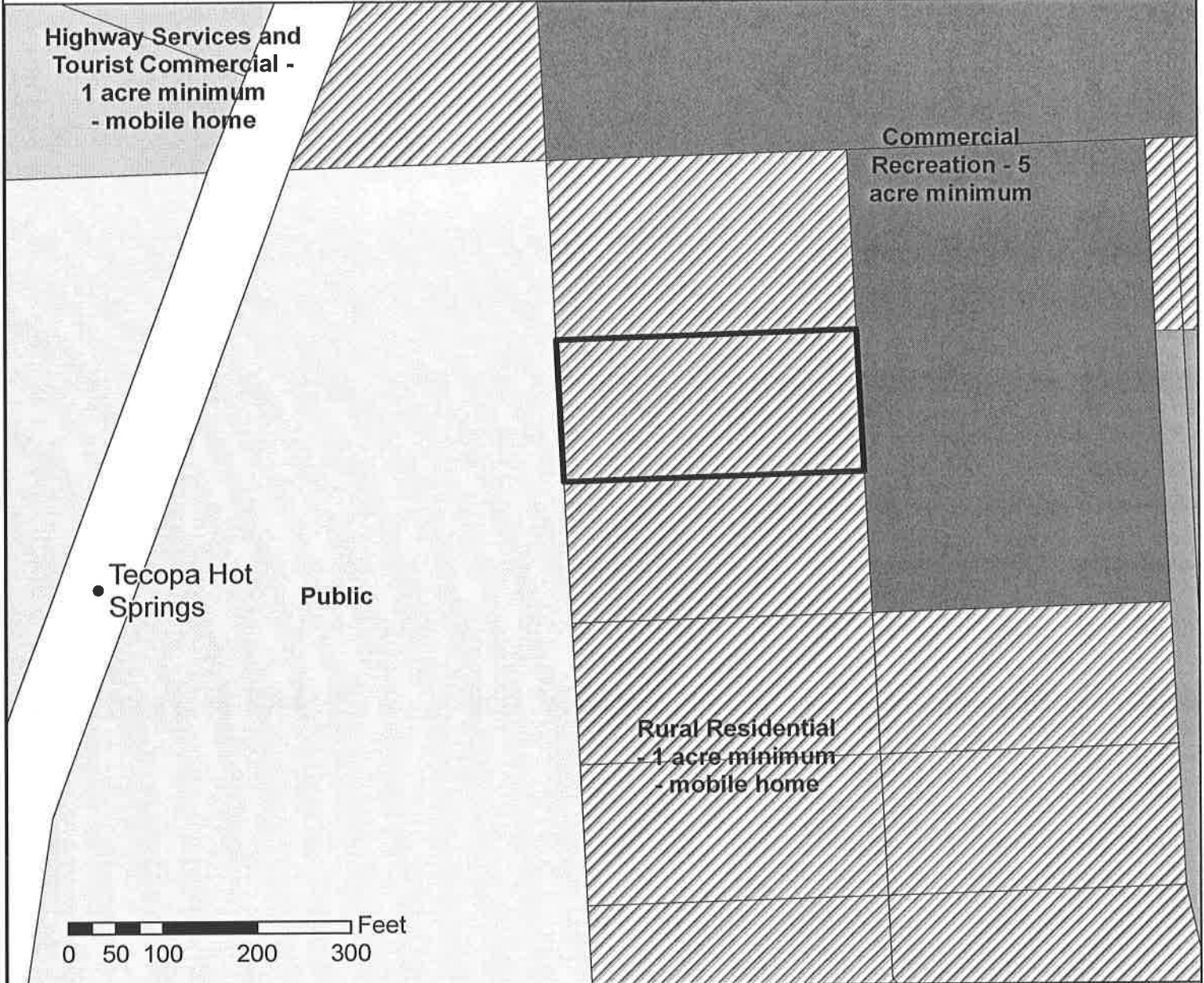
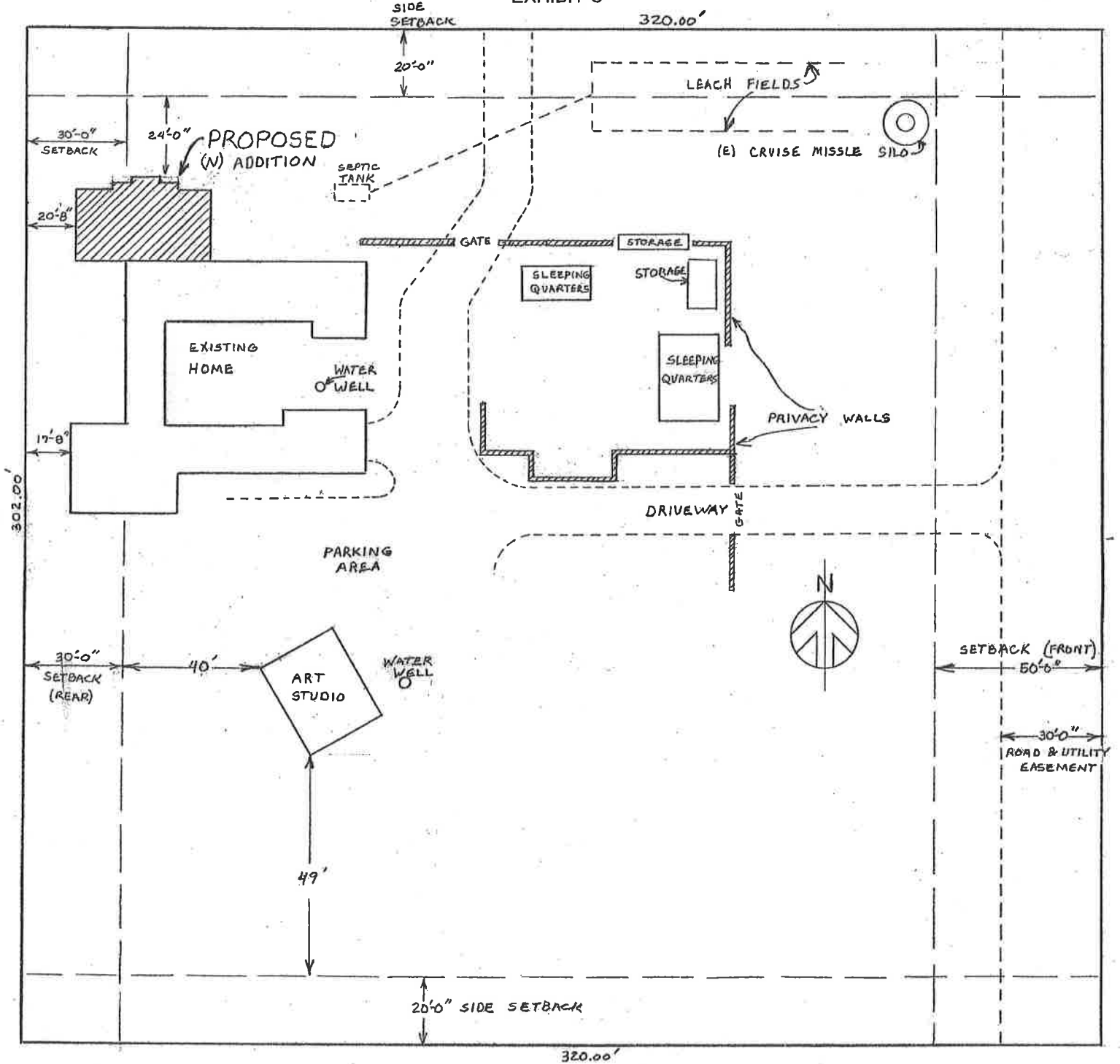


EXHIBIT C



SITE DEVELOPEMENT PLAN

SCALE 1/2" = 10'