



# County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING  
STEVEN E. WHITE, DIRECTOR

## Planning Commission Staff Report Agenda Item No. 3 January 11, 2024

**SUBJECT:** Variance Application No. 4155

Allow a 20-foot street side yard setback (35-foot minimum required) to accommodate a proposed single family residence on an existing 1.57-acre parcel located within the AE-20 (Exclusive Agricultural, 20-acre minimum) Zone District.

**LOCATION:** The subject parcel is located on the southeast corner of East Birkhead Ave. and North Old Friant Road, approximately 1-mile north from the City of Fresno (APN: 579-050-20S) (Sup. Dist. 2).

**OWNER/APPLICANT:** Raymond Deathrage

**STAFF CONTACT:** Alyce Alvarez, Planner  
(559) 600-9669

David Randall, Senior Planner  
(559) 600-4052

**RECOMMENDATION:**

- Deny Variance Application No. 4155; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

**EXHIBITS:**

1. Conditions of Approval and Project Notes
2. Location Map
3. Existing Zoning Map
4. Existing Land Use Map
5. Variances within ¼ mile
6. Site Plans
7. Photographs
8. Applicant's Variance Findings

**SITE DEVELOPMENT AND OPERATIONAL INFORMATION:**

<b>Criteria</b>	<b>Existing</b>	<b>Proposed</b>
General Plan Designation	Agricultural	No change
Zoning	AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District	No change
Parcel Size	1.57-acres	No change
Project Site	See above	No change
Structural Improvements	None	Single-Family Residence
Nearest Residence	185 feet	No change
Surrounding Development	Agriculture & Single-Family Residences	No change

**EXISTING VIOLATION (Y/N) AND NATURE OF VIOLATION: N**

**ENVIRONMENTAL ANALYSIS:**

It has been determined pursuant to Article 5: Review for Exemption, Section 15061(b)(3) of the California Environmental Quality Act (CEQA) guidelines: The activity is covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

**PUBLIC NOTICE:**

Notices were sent to 12 property owners within 1,320 feet of the subject parcel, exceeding the minimum notification requirements prescribed by the California Government Code and County Zoning Ordinance.

**PUBLIC COMMENT:**

No public comment was received as of the date of preparation of this report.

**PROCEDURAL CONSIDERATIONS:**

A Variance Application may be approved only if all four Findings specified in the Fresno County Zoning Ordinance, Section 873-F are made by the Planning Commission. Staff notes that every variance request is considered on its own merit and is based upon the four required Findings and circumstances of the property.

The decision of the Planning Commission on a Variance Application is final, unless appealed to the Board of Supervisors within 15 days of the Commission’s action.

**BACKGROUND INFORMATION:**

The subject 1.57-acre property is currently not developed. Surrounding land uses consist of farmland with sparsely located single family residences.

On the western side of the property there is a 20-foot access easement (Old Friant Road) that runs along the entire side. There is a 35-foot setback required from this easement. The proposed new residence and pool house encroach into the required street side setback.

The current Variance request proposes to reduce the street side yard setback requirement to encroach 20 feet of the required 35-foot setback to allow the construction of residence.

There were no records of variances related to setback reductions proposed within one mile of the subject parcel. Below in general information regarding he project site.

	<b>Current Standard:</b>	<b>Proposed Configuration:</b>	<b>Is Standard Met (y/n):</b>
Setbacks	Front: 35 feet (from access easement) Side: 20 feet Rear: 20 feet St. Side: 35 feet (from access easement)	Front: 35 feet (from access easement) Side: 20 feet Rear: 20 feet St. Side: 15 feet (from access easement)	No (proposed residence encroach into Street Side setback)
Parking	N/A	N/A	N/A
Lot Coverage	No requirement	N/A	N/A
Separation Between Buildings	No requirement for residential or accessory structures, excepting those used to house animals which must be located a minimum of 40 feet from any human-occupied building.	N/A	N/A
Wall Requirements	N/A	N/A	N/A

	<b>Current Standard:</b>	<b>Proposed Configuration:</b>	<b>Is Standard Met (y/n):</b>
Septic Replacement Area	N/A	N/A	N/A
Water Well Separation	Building sewer/septic tank: 50 feet Disposal field: 100 feet Seepage pit/cesspool: 150 feet	Proposed 1,500-Gal Septic System	N/A

**Finding 1:** **There are exceptional or extraordinary circumstances or conditions applicable to the property involved which do not apply generally to other property in the vicinity having the identical zoning classification.**

**Reviewing Agency/Department Comments Regarding Site Adequacy:**

No comments specific to the adequacy of the site were expressed by reviewing Agencies or Departments.

**Finding 1 Analysis:**

In support of Finding 1, the Applicant's findings describe the subject parcel as "the only property of the parcels that is required to have a 20 foot Easement on the east side of the property as well as an additional 35 foot setback from the easement line...."

The other properties have the same setback requirements, the setback is measured from a either a dedicated right-of-way, or an easement. The other parcels adjacent to the subject property also have 35-foot setbacks from their road frontage on Birkhead Avenue.

There is no unique physical feature or situation not common to other properties in the area with the same zoning. The 35-foot side yard setback standard applies to all parcels in general vicinity that are zoned AE-20.

**Recommended Conditions of Approval:**

None

**Finding 1 Conclusion:**

Finding 1 cannot be made as there are no extraordinary circumstances relating to the property that do not apply to other similar properties in the same zone classification.

**Finding 2:** **Such Variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners under like conditions in the vicinity having the identical zoning classification.**

**Finding 2 Analysis:**

In support of Finding 2, the applicant reiterates the subject property is the only one with the 35-foot setback from easement standard. The Applicant states that other properties adjacent to the property do not have those restrictions and notes that this request is necessary to allow for proper design of the home and enjoyment by the owner.

With regard to Finding 2, the Applicant must demonstrate they are denied a property right which is enjoyed by neighboring parcels under like conditions under the same zoning classification. The 35-foot setback from access easement is not depriving the Applicant of any right enjoyed by other property owners in the AE-20 Zone District with like conditions since all property owners under like conditions are subject to the same development standards. All property owners have the same constraints and opportunities there is nothing that prohibits the property from being used for its allowed use in the zoning ordinance. A property owner has the right to develop their property, but not the right to have a devolvement standard waived simply to meet their personal design preferences, sometimes structures may have to be made wider or narrower on a parcel to meet the development standards. The vacant 1.57-acre property, approximately 325 feet x (175 to 198) feet, has ample area to build a home and other allowed structures with conformity to the development standard.

**Recommended Conditions of Approval:**

None.

**Finding 2 Conclusion:**

Finding 2 cannot be made based on the above analysis as the street side setback does not, in this circumstance, create a situation where it creates a loss of a substantial property right of the applicant, which right is possessed by other property owners under like conditions.

**Finding 3:** **The granting of a variance will not be materially detrimental to the public welfare or injurious to property and improvement in the vicinity in which the property is located.**

**Surrounding Parcels**

	Size:	Use:	Zoning:	Nearest Residence:
North	20-acres	Residential/Agricultural	AE-20	600 feet
South	19.57-acres	Residential/Agricultural	AE-20	165 feet
East	1.3-acres	Flat Dirt land	AE-20	N/A
West	20.22-acres	Residential/Agricultural	AE-20	930 feet

**Reviewing Agency/Department Comments:**

Department of Public Health, Environmental Health Division: Septic system density will be limited to one system per two acres. Any new development of less than two acres or secondary dwelling may require a nitrogen loading analysis by a qualified professional, demonstrating to the Department of Public Works and Planning (Department) that the regional characteristics are such that an exception to the septic system density limit can be

accommodated. The Department will refer any analysis to the Regional Water Quality Control Board, Central Valley Region for their concurrence and input.

No other comments specific to land use compatibility were expressed by reviewing Agencies or Departments.

**Finding 3 Analysis:**

In support of Finding 3, the Applicant asserts it will not affect other property owners and the 35-foot setback from the property line would still allow access to the lot to the south and would be large enough for any emergency vehicles to pass through.

Although Old Friant Road is not a county-maintained road, as stated by the applicant, it does affect other property owners, as specified in applicant’s finding, neighboring APNs 579-050-05 and 579-050-03 access is from Old Friant Road. However, an encroachment into the setback has not been shown to be materially detrimental to the public welfare or injurious to property.

**Recommended Conditions of Approval:**

None

**Finding 3 Conclusion:**

Finding 3 can be made, as encroachment into the setback has not been shown to be materially detrimental to the public welfare or injurious to property and improvement in the vicinity in which the property is located.

**Finding 4: The granting of such a variance will not be contrary to the objectives of the General Plan.**

<b>Relevant Policies:</b>	<b>Consistency/Considerations:</b>
No applicable General Plan Policies were identified.	N/A

**Reviewing Agency Comments:**

Policy Planning Section of the Department of Public Works and Planning: While there were no applicable General Plan Policies identified by the Policy Planning Section regarding front yard setbacks Appendix G of the General Plan does include the setbacks for AE zoning.

No other comments specific to General Plan Policy were expressed by reviewing Agencies or Departments.

**Finding 4 Analysis:**

In support of Finding 4, the Applicant asserts that the proposed home is not contrary to the objectives of the Fresno County General Plan, as this is an individual lot. It does not effect the General Plan or adjoining parcels as they would still have access to Old Friant Road.

Staff notes that while there are zoning regulations and the General Plan appendix relative to setbacks, there are no General Plan policies specifically pertinent to the proposed reduction in setback requirement that would conflict with the objectives of the General Plan.

In support of Finding 4, the Applicant states that the proposed addition is not contrary to the objectives of the Fresno County General Plan. The Applicant states that the granting of this Variance would be in accordance with the objectives of the General Plan.

Staff notes that there are no General Plan policies specifically pertinent to the proposed reduction in setback requirements.

**Finding 4 Conclusion:**

Finding 4 can be made as there are no relevant General Plan Policy issues.

**SUMMARY CONCLUSION:**

Finding 1 and 2 cannot be made because the situation is not unique nor does it protect a property right enjoyed by properties in the surrounding area.

The desire to accommodate a preferred design layout is not a basis for granting a variance. Granting of the variance could be construed as inconsistent with Government code section 65906 which prohibits granting of unqualified variances and states in part “...*shall constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.*”

Based on the factors cited in the analysis, the required Findings for granting the Variance Application cannot be made as there are no exceptional or extraordinary circumstances or conditions applicable to the property and the variance is not necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners under like conditions in the vicinity.

**PLANNING COMMISSION MOTIONS:**

**Recommended Motion** (Denial Action)

- Move to determine that required Findings 1 and 2 cannot be made as stated in the staff report and move to deny Variance Application No. 4155; and
- Direct the Secretary to prepare a Resolution documenting the Commission’s action.

**Alternative Motion (Approval Action)**

- Move to determine the required Findings can be made (stating the basis for the findings) and move to approve Variance Application No. 4155; subject to the Conditions of Approval and Project Notes listed in Exhibit 1; and
- Direct the Secretary to prepare a Resolution documenting the Commission’s action.

**Recommended Conditions of Approval and Project Notes:**

See attached Exhibit 1.

AA:jp  
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EXHIBIT 1  
**Variance Application (VA) No. 4155**  
**Conditions of Approval and Project Notes**

<b>Conditions of Approval</b>	
1.	Development shall be in substantial compliance with the site plan, floor plan and elevations, as approved by the Planning Commission.

Conditions of Approval reference recommended Conditions for the project.

<b>Notes</b>	
<b>The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.</b>	
1.	The project site is located within the Fresno Metropolitan Flood Control District (FMFCD) Drainage Zone and Boundary. A copy of written clearance from FMFCD is required prior to County issuing a grading permit/voucher for any proposed work.
2.	Any additional storm water runoff generated by the development of this site cannot be drained across property lines or into the County Road right-of-way, and must be retained on-site, per County Standards unless FMFCD specifies otherwise.
3.	The end of curbed/taper edge of any existing or proposed access driveway approach should be set back a minimum of 5 feet from the property line.
4.	Any existing or proposed entrance gate should be set back a minimum of 20 feet from the road right-of-way line or the length of the longest truck entering the site and shall not swing outward.
5.	A minimum of 10 foot x 10 foot corner cut-off should be improved for sight distance purposes at any existing or proposed driveway accessing Birkhead Avenue or Old Friant Road if not already present.
6.	Any work done within the County road right-of-way to construct a new driveway or improve an existing driveway will require an Encroachment Permit from the Road Maintenance and Operations Division.
7.	Septic system density will be limited to one system per two acres. Any new development of less than two acres or secondary dwelling may require a nitrogen loading analysis by a qualified professional, demonstrating to the Department of Public Works and Planning (Department) that the regional characteristics are such that an exception to the septic system density limit can be accommodated. The Department will refer any analysis to the Regional Water Quality Control Board, Central Valley Region for their concurrence and input. Contact Department of Public Works and Planning at (559) 600-4540 for more information.

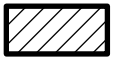
EXHIBIT 1

AA:jp

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Legend



Subject Property

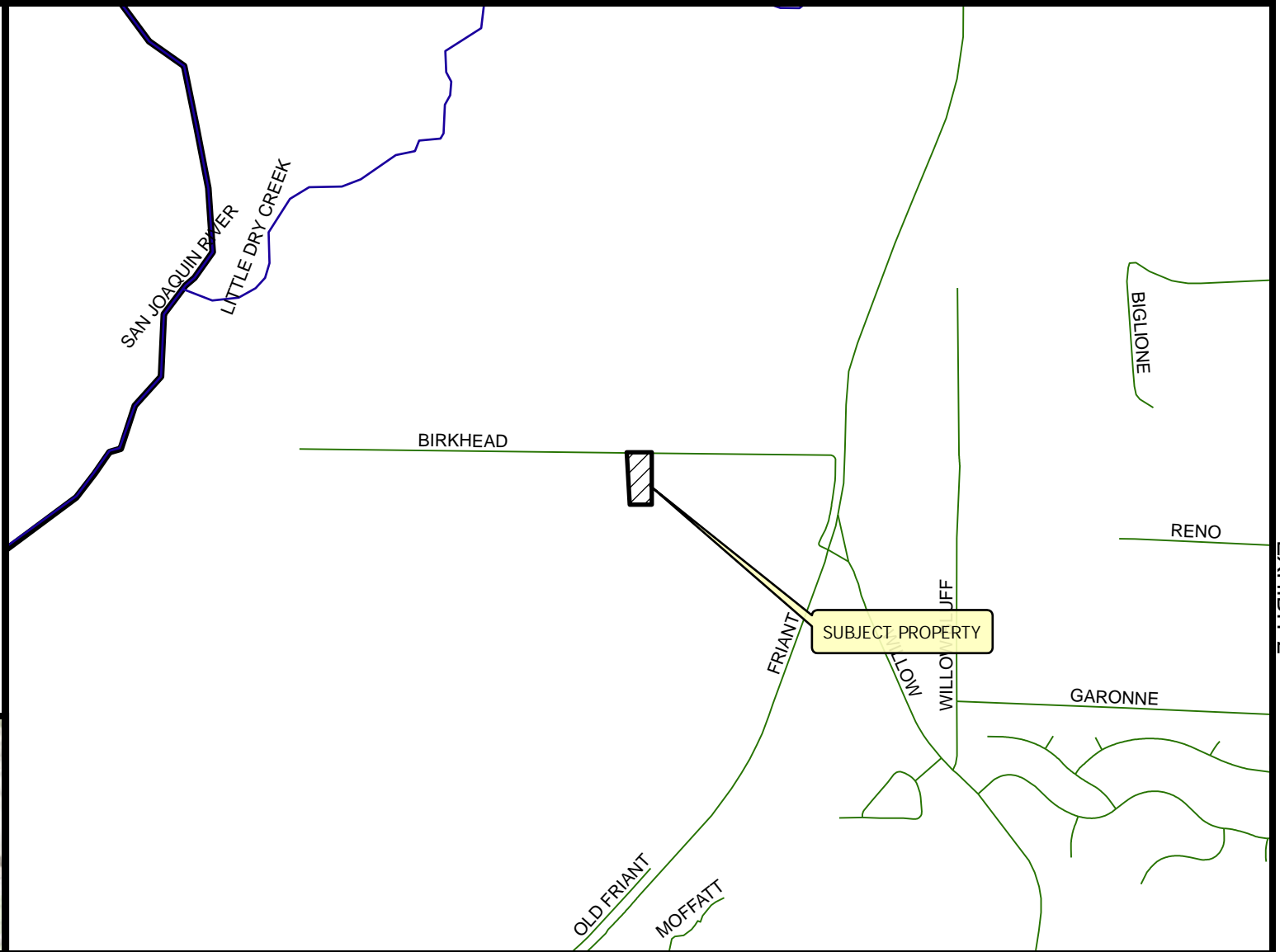
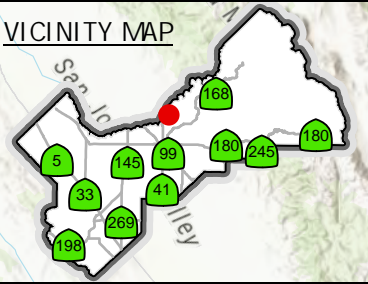


EXHIBIT 2

VICINITY MAP

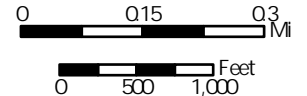


# LOCATION MAP

## VA4155

## 2023

Prepared by : County of Fresno, Department of Public Works and Planning, Development Services Division  
 Person Prepared by : jocervantes  
 On Date : 9/26/2023



Legend

-  Subject Property
-  AE20
-  R1B
-  RR

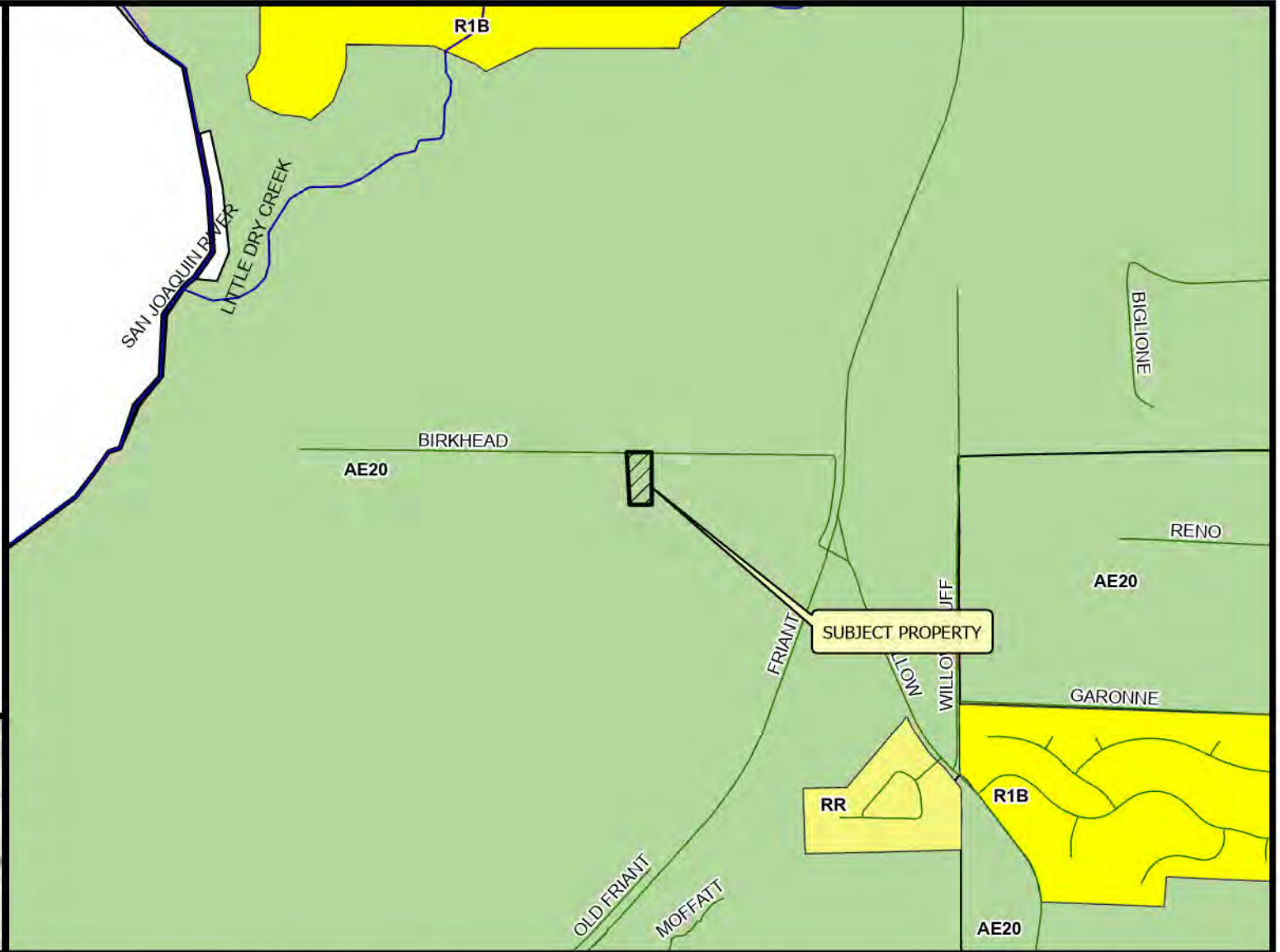
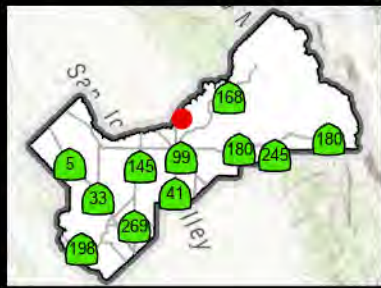


EXHIBIT 3

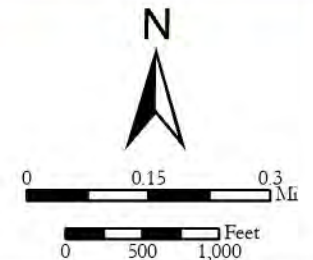


# Existing Zoning Map


VA4155  
STR 1 - 12S/20E

2023

Prepared by : County of Fresno, Department of Public Works and Planning, Development Services Division  
Person Prepared by : jocervantes  
On Date : 9/26/2023



**LEGEND:**

 Subject Property

LEGEND
FC - FIELD CROP
I - INDUSTRIAL
ORC - ORCHARD
SF#- SINGLE FAMILY RESIDENCE
V - VACANT
VIN - VINEYARD

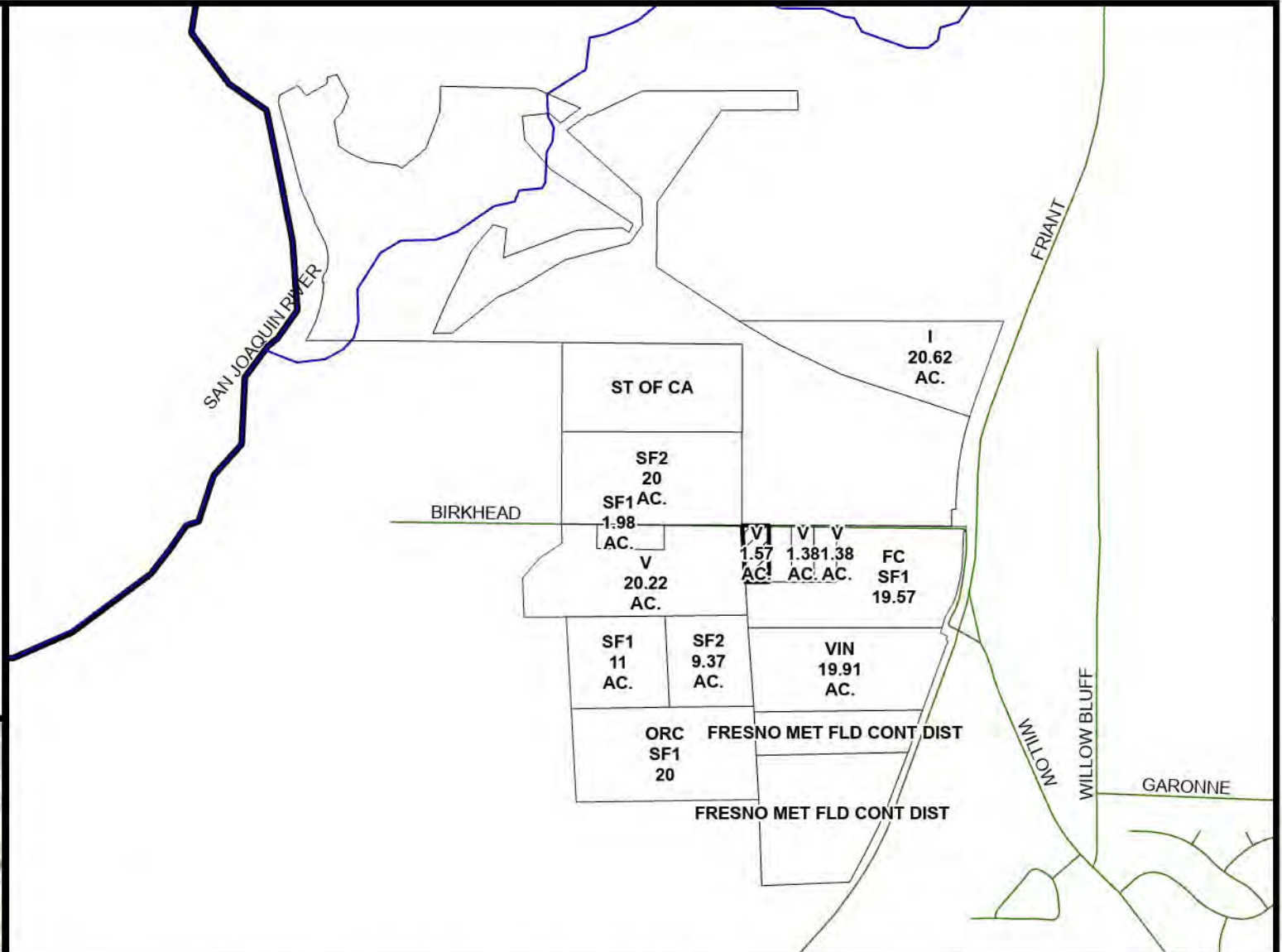


EXHIBIT 4

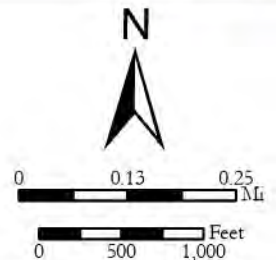


**Existing Land Use Map**

**VA4155**




**2023**

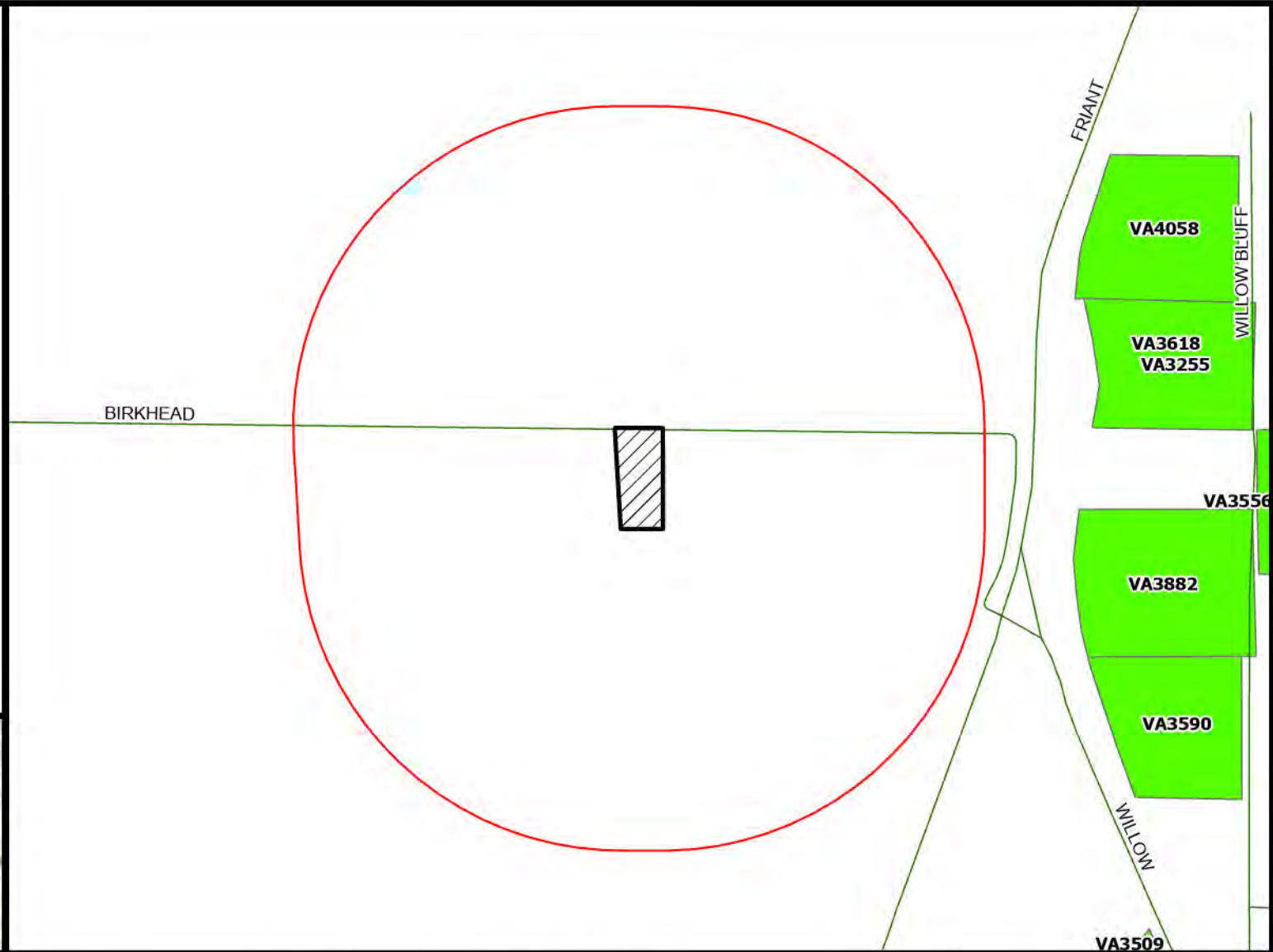
Prepared by : County of Fresno, Department of Public Works and Planning, Development Services Division  
 Person Prepared by : jocervantes  
 On Date : 9/26/2023





Legend

-  Quarter Mile Buffer
-  Subject Property
-  LU Permits



# Proximity Map

## VA4155

## 2023

Prepared by : County of Fresno, Department of Public Works and Planning, Development Services Division  
 Person Prepared by : jocervantes  
 On Date : 9/26/2023

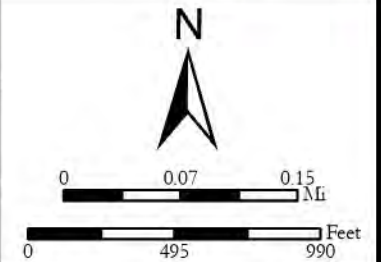


EXHIBIT 5

# EXHIBIT 6

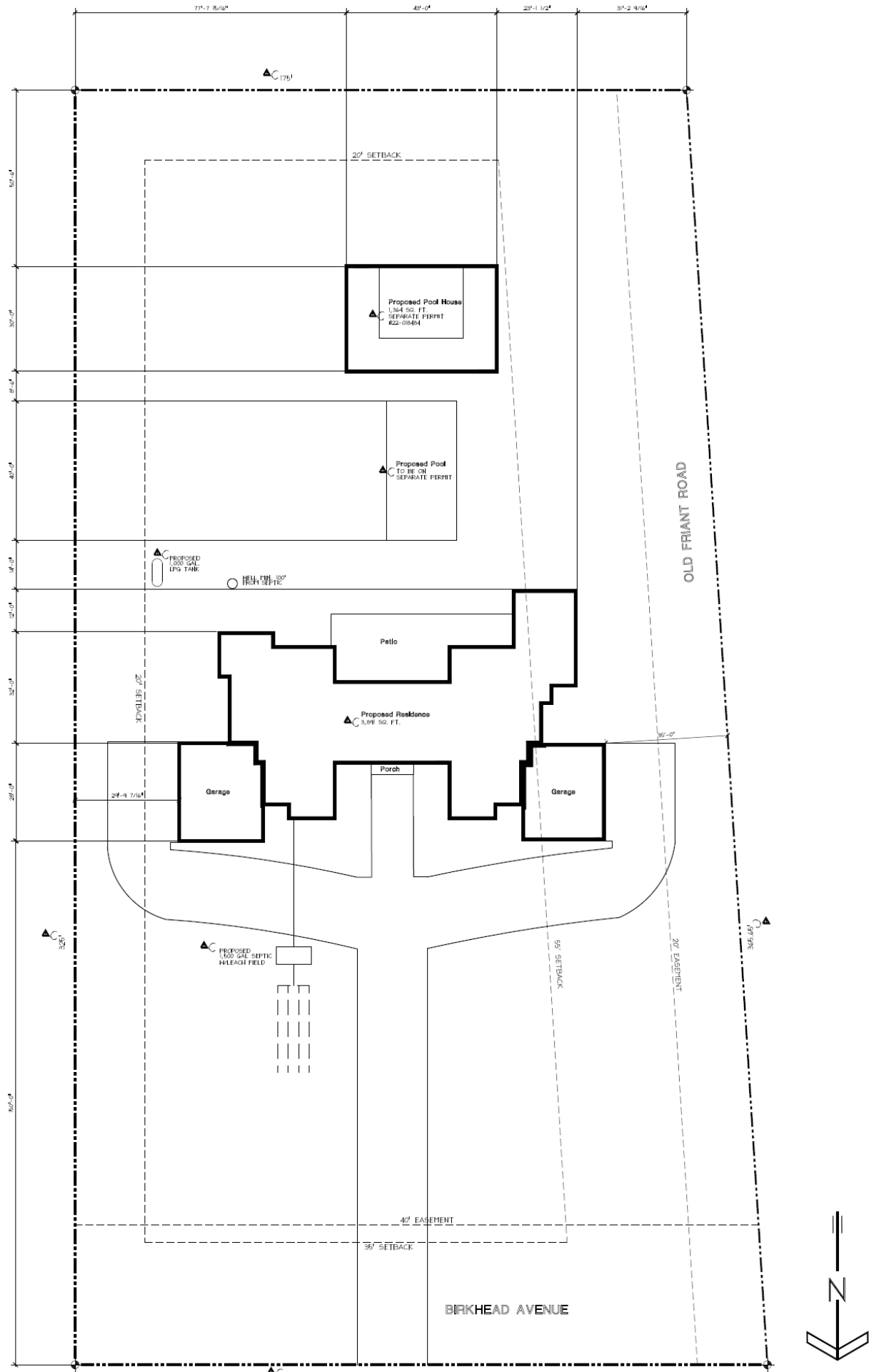


EXHIBIT 7



NORTH



SOUTH

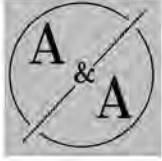




EAST



WEST



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August 23, 2023

County of Fresno  
Planning Division

RE: Variance Findings APN - 579-050-20s

To whom it may concern,

Below is a list of findings supporting the Variance for the property (APN) listed above.

1. This is the only property of the parcels that is required to have a 20' Easement on the west side of the property as well as an additional 35' setback from the easement line. Thus it becomes a 55' setback on the east side of the property. The east side of the property has a 20' side yard setback as well as the other lots that were developed in the Parcel Map. The 35' setback is reasonable for the owners due to the design of the home with a side load garage. All of the other lots of the parcel map (5) in total have the 40' easement along what is known as Birkhead Road for access. Old Friant Road easement along the west side is a privately maintained road by the neighboring parcel owners. This does in fact constitute extraordinary circumstances and hardships for our parcel.
2. The variance is necessary to allow for the proper design of the home and for the preservation and enjoyment by the owner. The other lot owners in the development have a 20' side yard setback and our property owner has a 55' side yard in essence. This is the only property developed in the Parcel Map that has such restrictions on the owner / developer of this parcel. It takes a 175' wide lot at the narrowest point to a 100' wide lot of buildable width for our lot, thus creating somewhat of a hardship on the property owner.
3. The allowance of this variance would not effect other property owners in the development. All others are set at a standard of the 20' side yard. By keeping the 35' setback from the property line would still allow access to the lot to the south, it would also allow my owners to complete there project as designed. It will not effect any other properties. The only lot effected would be our lots with APN 579-050-05 and 579-050-03 which are accessed from Old Friant Road (that is a



privately maintained access easement. It would still maintain a 35' access easement. That would be large enough for any Emergency Vehicles to pass thru without interference.

4. The granting of the variance will not effect the zoning, access or any items contrary to the General Plan. This is an individual lot and will only allow for the placement of the residence as per the owners intent. The variance granting would not effect the General Plan or any of the adjoining parcels. They would still have access via the private maintained road (Old Friant Road) and for others it would not effect Birkhead Road access in anyway.

Thank you,



Fred R. Avila  
Avila & Associates, Inc