



County of Fresno

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

Planning Commission Staff Report Agenda Item No. 4 April 28, 2022

SUBJECT: Variance Application No. 4134 & Environmental Review No. 8125

Reduce front yard setback requirement in the AE-20 (Exclusive Agricultural, 20-acre minimum) Zone District and allow an as-built addition to encroach 14 feet of the required 35-foot setback.

LOCATION: The subject parcel is located on the east side of S. Chestnut Avenue, 114 feet north of E. Clayton Ave., and approximately 2 miles south of the City of Fresno (APN: 340-170-10) (6649 S. Chestnut Ave.) (Sup. Dist. 4).

OWNER Valdivia Olmos

APPLICANT: Elidia Olmos

STAFF CONTACT: Marissa Parker, Planner
(559) 600-9669

David Randall, Senior Planner
(559) 600-4052

RECOMMENDATION:

- Deny Variance Application No. 4134; 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. Site Plans

- 6. Photographs
- 7. Applicant's Variance Findings

SITE DEVELOPMENT AND OPERATIONAL INFORMATION:

Criteria	Existing	Proposed
General Plan Designation	Agricultural	No change
Zoning	AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District	No change
Parcel Size	0.78-acres	No change
Project Site	See above	No change
Structural Improvements	Single-Family Residence	No change
Nearest Residence	86 feet	No change

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

ENVIRONMENTAL ANALYSIS:

It has been determined pursuant to Section 15305 of the California Environmental Quality Act (CEQA) guidelines, that the proposed project will not have a significant effect on the environment and is not subject to CEQA.

PUBLIC NOTICE:

Notices were sent to 27 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.

PROCEDURAL CONSIDERATIONS:

A Variance Application may be approved only if four Findings specified in the Fresno County Zoning Ordinance, Section 873-F are made by the Planning Commission.

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 parcel is zoned Agricultural and is not part of any Specific or Community Plans.

The current Variance request, submitted on March 14, 2022, proposes to allow a reduced front yard setback requirement in the AE-20 (Exclusive Agricultural, 20-acre minimum) Zone District. The existing structure was built without benefit of building permits or inspections. If this Variance is approved, the existing addition will be allowed to encroach into the front required

yard setback, but will need to obtain relevant building permits and pass required inspections.

Only one variance request regarding setback reductions, from 34 years ago, has been processed within one mile of the subject property. That variance is described in the table below:

Application/Request	Staff Recommendation	Final Action	Date of Action
VA NO. 3128: Allow a six-foot rear yard setback (20 ft required) for a permanent second resident (m/h).	N/A	Approved	January 21, 1988

Although there is a history of a variance requests in proximity to the subject parcel, each variance application is considered on its own merit, based on unique site conditions and circumstances. The approval of other variances in the vicinity of this project does not create a precedent for approval.

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.*

	Current Standard:	Proposed Configuration:	Is Standard Met (y/n):
Setbacks	Front: 35 feet Side: 20 feet Rear: 20 feet	Front: 21 feet Side: 20 feet Rear: 20 feet	No (existing improvements encroach into front-yard 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
Septic Replacement Area	100 percent of the existing system	N/A	N/A

	Current Standard:	Proposed Configuration:	Is Standard Met (y/n):
Water Well Separation	Building sewer/ septic tank: 50 feet Disposal field: 100 feet Seepage pit/cesspool: 150 feet	No change	Yes

Reviewing Agencies/Departments Comments:

There were no comments from reviewing Agencies/Departments regarding any exceptional or extraordinary circumstances.

Finding 1 Analysis:

In support of Finding 1, the Applicant’s findings describe the subject parcel as a smaller lot in comparison to adjacent larger lots that both meet variance requirements and other lots that do not meet setback requirements within the same zoning classification. Applicant states that previous owners obtained a permit to add-on to the home, however the work was never signed off. Thus, infringing on the 35-foot front yard setback, only allowing a 21-foot setback. The Applicant expresses that there have been no issues with the safety of the home.

With regard to Finding 1, staff asserts that the parcel must show exceptional or extraordinary circumstances or conditions which do not apply to other parcels under the same zoning classification.

Staff does not believe that the presence of other parcels larger in size to those proposed with this Variance request is an extraordinary physical characteristic demonstrating a circumstance which merits the requested parcel configurations.

Recommended Conditions of Approval:

None

Finding 1 Conclusion:

Finding 1 cannot be made as there are no extraordinary circumstances relating to the property that apply to other 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’s findings state that this request has not created any adverse or dangerous conditions in the area for over 50 years. In addition, it does not interfere with the property’s zoning. The Applicant states that other properties have structures that do not seem to meet setback regulations. Therefore, noting that the approval of this variance is necessary to the preservation and enjoyment of the applicant.

With regard to Finding 2, the Applicant must demonstrate they are denied a property right which is enjoyed by neighboring parcels under the same zoning classification. The continuous ownership of this parcel does not demonstrate denial of a property right. Additionally, denial of this Variance would not deprive the Applicant of any right enjoyed by other property owners in the AE-20 Zone District, since all property owners are subject to the same development standards. Staff could not identify any impacted rights of the Applicant.

Variances can provide relief preserving a “substantial property right” to be able to utilize the property for the intended use of the zoning. If regulations and unique physical attributes prohibit properties from developing any residential development a Variance would be appropriate to preserve the “substantial property right”.

A consideration in addressing Finding 2 is whether there are alternatives available that would avoid the need for the Variance.

Recommended Conditions of Approval:

None.

Finding 2 Conclusion:

Finding 2 cannot be made based on the above analysis as the front-yard 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	1.93-acres	Residential/Agricultural	AE-20	92.5 feet
South	0.31-acres	Residential/Agricultural	AE-20	67 feet
East	2.6-acres	Residential/Agricultural	AE-20	327 feet
West	1.71-acres	Residential/Agricultural	AE-20	186 feet

Reviewing Agency/Department Comments:

Department of Public Health, Environmental Health Division: See project notes

Reviewing Agency/Department Comments

Road Maintenance and Operations Division of the Department of Public Works and Planning:
See project notes

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 states that the structure has been in place for 52 years. There has been no injury to the structure or to the public welfare.

There is no recorded history of complaints or obvious impact from the existing structures presence. While the intrusion into the setback may have some erosion of purpose of the setback requirement the impact is not demonstrative or pervasive so as to be materially detrimental to public welfare of the area.

Recommended Conditions of Approval:

None

Finding 3 Conclusion:

Finding 3 can be made, as the history of the impact of the existing structures 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.

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

Reviewing Agency Comments:

Policy Planning Section of the Department of Public Works and Planning: No applicable General Plan Policies were identified by the Policy Planning Section regarding front yard setbacks.

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 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 while there are zoning regulations relative to setback, there are no General Plan policies specifically pertinent to the proposed reduction in setback requirement.

Recommended Conditions of Approval:

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.

PUBLIC COMMENT:

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

CONCLUSION:

As the requested Variance is not a unique situation or a substantial property right that has commonly been afforded to other properties in the area, staff believes Findings 1 and 2, cannot be made and recommends denial of Variance No. 4134.

PLANNING COMMISSION MOTIONS:

Recommended Motion (Denial Action)

- Move to determine that the required Findings 1 and 2 cannot be made based on the reasons described in the Staff Report and move to deny Variance Application No. 4134; 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. 4134; 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.

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EXHIBIT 1

**Variance Application (VA) No. 4134
Conditions of Approval and Project Notes**

Conditions of Approval	
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.

Notes	
The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.	
1.	Plans related to construction of the project shall be submitted to the Development Services Division of the Fresno County Department of Public Works and Planning for review and approval in order to acquire building and installation permits, and necessary inspections.
2.	The requested variance is for a 21-foot front yard setback. Chestnut Avenue currently has 60 feet of road right-of-way and an ultimate right-of-way of 84 feet per the Fresno County General Plan. An additional 12 feet of road right-of-way should be dedicated along the parcel frontage to meet the ultimate right-of-way for Chestnut Avenue. With the dedication to the ultimate right of way, the setback will only be 9 feet.
3.	An approved Variance will allow the property owner to obtain building permits for the family room addition. If permits are not obtained, a violation will be issued for construction done without permits and inspections.

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EXHIBIT 1

EXHIBIT 2 LOCATION MAP

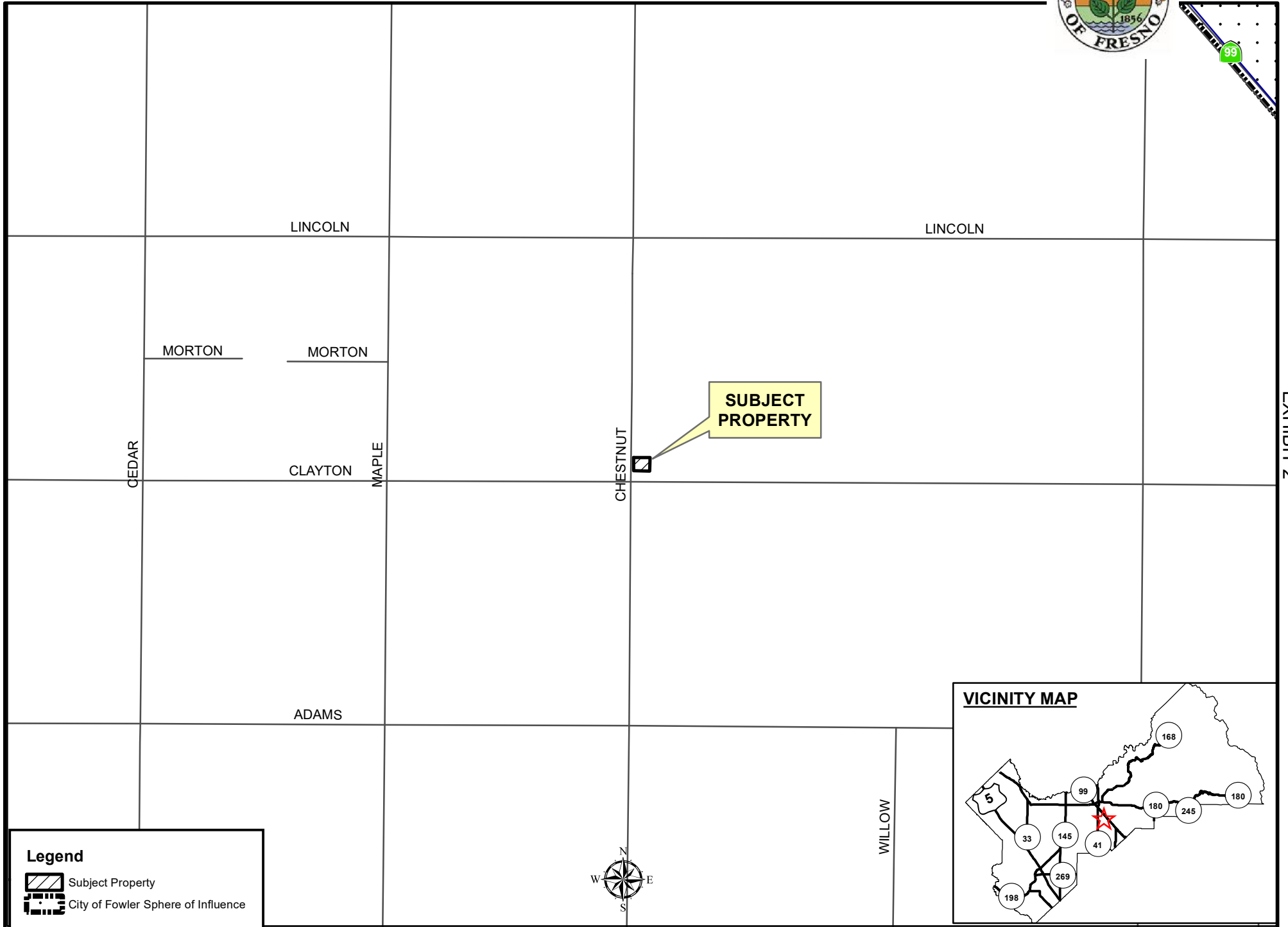
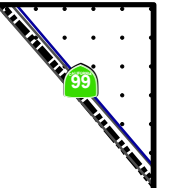
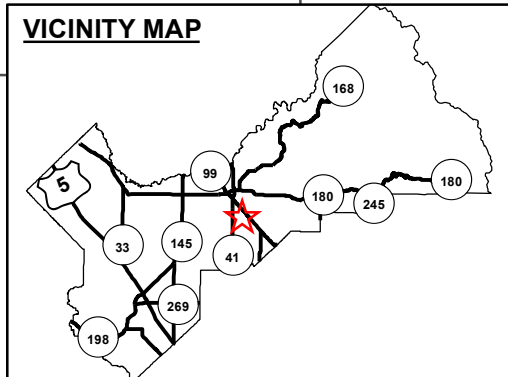




EXHIBIT 2



Legend

-  Subject Property
-  City of Fowler Sphere of Influence

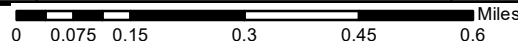


EXHIBIT 3
EXISTING ZONING MAP

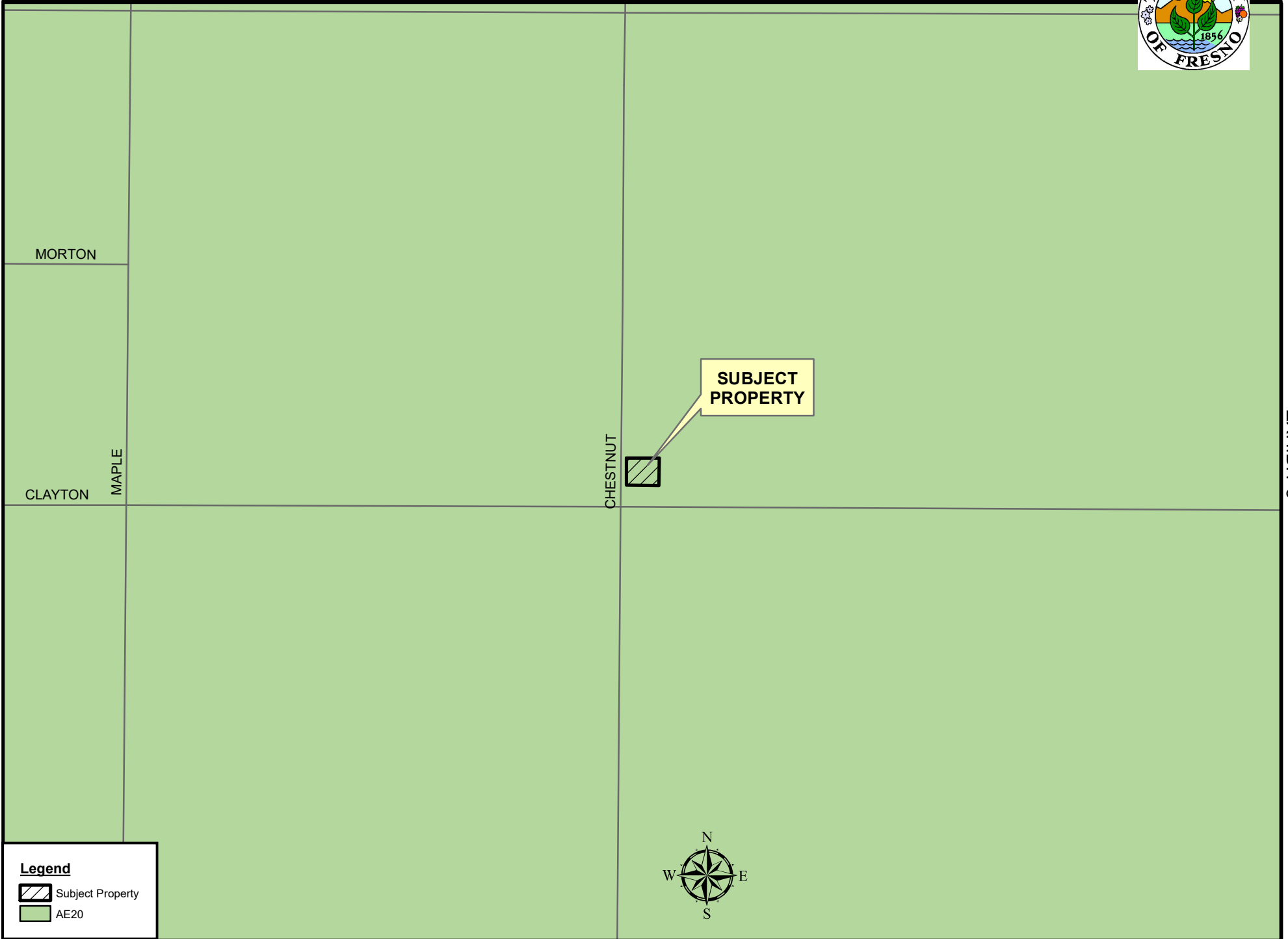
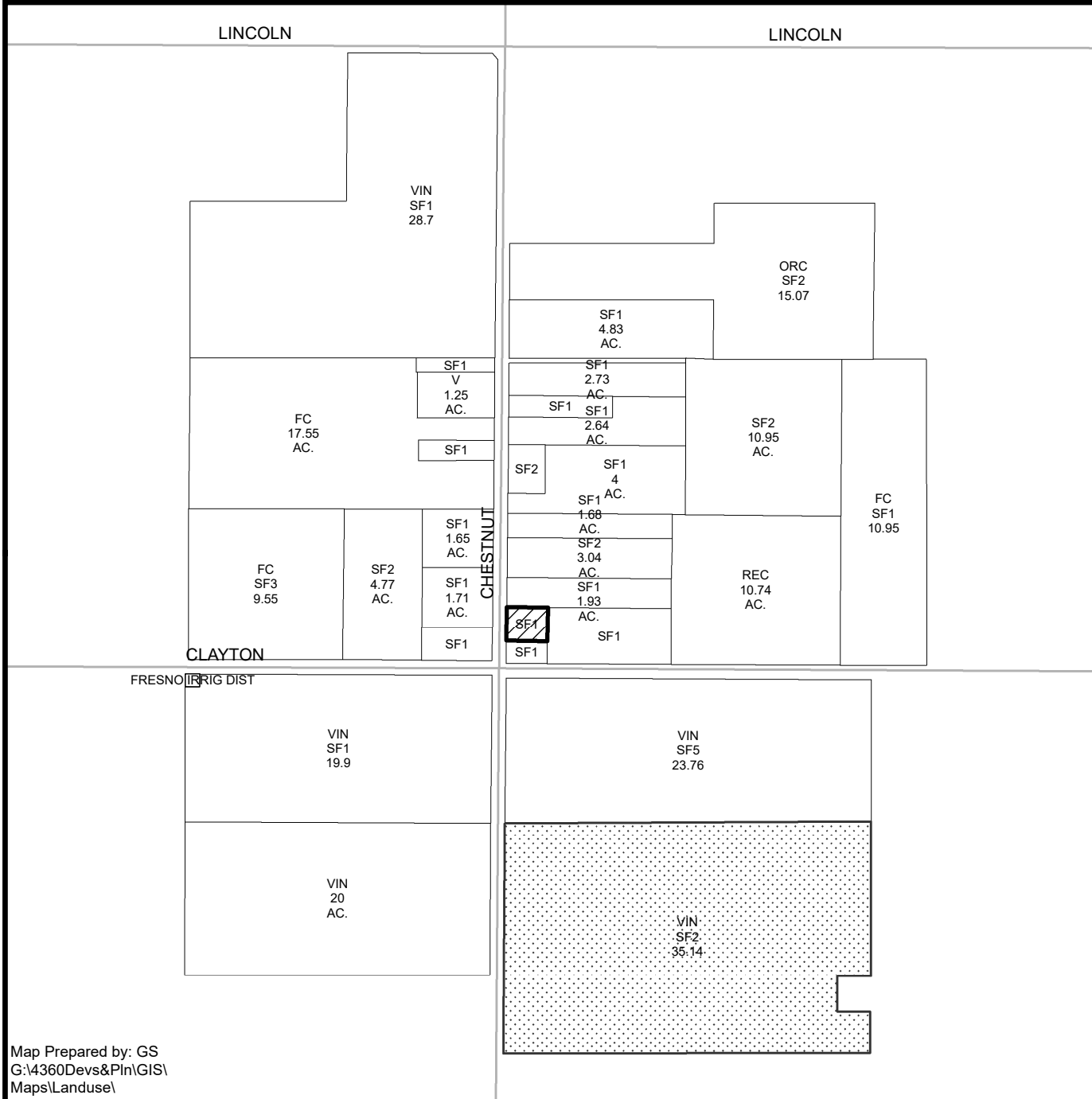


EXHIBIT 3

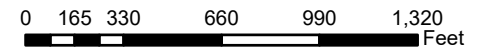
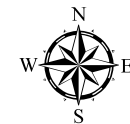
EXHIBIT 4 EXISTING LAND USE MAP



LEGEND	
FC	FIELD CROP
ORC	ORCHARD
REC	RECREATION
SF#	SINGLE FAMILY RESIDENCE
V	VACANT
VIN	VINEYARD

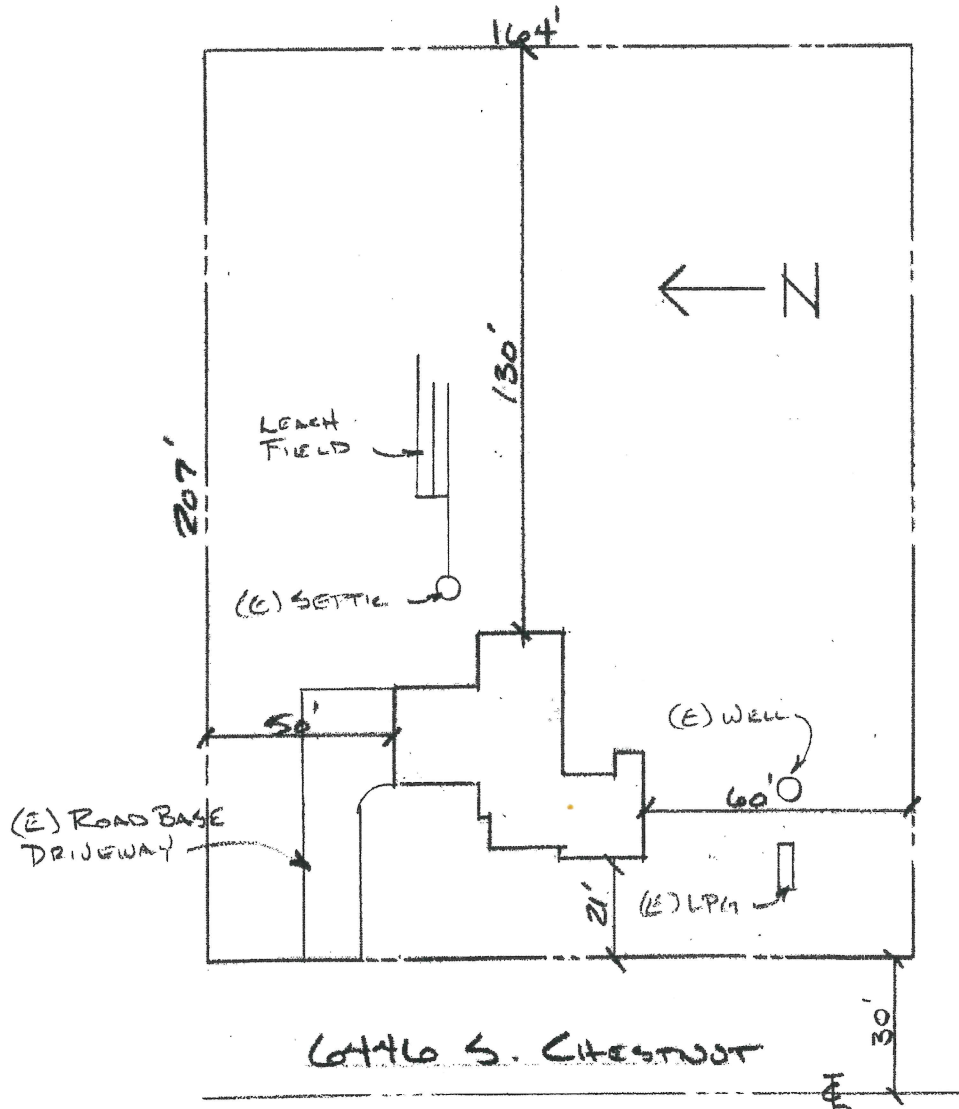
LEGEND:

- Subject Property
- Ag Contract Land



1" = 40'

25'



SITE PLAN
SCALE: 1" = 40'

EXHIBIT 6



Front of House from the West



Front of House from the West



Front of the House from S. Chestnut Ave., Fresno



The House looking South



House from S. Chestnut Ave.



House looking North



House looking North

EXHIBIT 7

There are exceptional and 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.

Yes. The 6446 S. Chestnut Street (2130 sq. ft.) home sits in small lot (33948 sq. ft) adjacent to other larger lots that both meet variance requirements and other lots that do not meet variance within the same zoning classification. The property has had two owners since the property and house was purchased in 1935. Improvement to the property first happened in 1961 (8.18.1981, permit# 27924, see exhibit A) and again in 1969 (9.24.69, permit, 14851, exhibit B). In 1969, the property owners added square footage to the house and pulled a permit (Exhibit B). The permit was pulled on 9.24.69 but the work was not signed off in the 1969. The house has been in the current size since 1969 and previous owners pulled permits for roof repairs and inspection of the structure.

The house was sold to current owner (elderly widow) in 2015. The Deed of Property shows that the house is 3 bedrooms and 2 bathrooms with 2130 sq ft. Current owner were aware of a "Construction Permit – Single Family Dwelling – Damage Investigation" on January 21, 2014 (Application#: 14-100338, Exhibit C) and March 18, 2014 (Application#: 14-101603, Exhibit C). Previous owners pulled permits for Re-Roofing on October 1, 2012 (Application#: 12-104751, Exhibit C). Current owner (elderly widow) pulled a permits 9 days after transfer of title for Miscellaneous (Application#: 15-101579, Exhibit C) and Remodel (Application#: 15-101580, Exhibit C). In pulling the permit for various projects on the property and on the main structure, the variance was not an issue.

Since 1969, the house has been sitting on the lot in its current spot without any issues to public safety or out of zoning compliance and matches other structures around the lot, granting a Variant Exemption for the structure meets the exceptional and extraordinary circumstance.

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.

The house on the property in its current form has been in existence since 1969. It has not created any adverse or out place or dangerous conditions in the zoning area for over 50 years and does not interfere with the zoning area or classification. Other properties have structures that meet variance while older structures in the area seem not meet variance requirements.

Preserving the current variance is necessary for the preservation and enjoyment of the applicant. Any change to the variance would create an unnecessary expense to applicant and/or create such a loss of value that applicant would not be able to financially recover.

The granting of 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.

The structure has been in place for 52 years without major injury to the structure or to the public welfare. The property in its current form has not been and will not be materially detrimental to the public welfare or injurious to the property.

The granting of such a Variance will not be contrary to the objectives of the General Plan.

Granting the Variance on 6446 South Chestnut Avenue does violate objectives to the General Plan of Fresno County.