



County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING
ALAN WEAVER, DIRECTOR

Planning Commission Staff Report Agenda Item No. 4 October 22, 2015

SUBJECT: Variance Application No. 3980

Allow conversion of an existing patio cover to an accessory housing unit within the side and rear yard setbacks, plus a porch within the front yard setback, on a 12,700 square-foot parcel in the R-1-B(nb) (Single-Family Residential, 12,500 square-foot minimum parcel size, Neighborhood Beautification Overlay) Zone District.

LOCATION: The project site is located on the northeast corner of Wishon Avenue and Sussex Avenue, approximately 355 feet from the nearest city limits of the City of Fresno (4064 N. Wishon Avenue, Fresno, CA 93704) (SUP. DIST. 2) (APN 434-122-15).

OWNER: Bernard and Mary Clark
APPLICANT: Linda Dineen

Staff Contact: Daniel Brannick, Planner
(559) 600-4297

Eric VonBerg, Senior Planner
(559) 600-4569

RECOMMENDATION:

- Approve Variance Application No. 3980, subject to Conditions and Project Notes; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

IMPACTS ON JOB CREATION:

The Commission's action will not have any substantial effect on job creation.

EXHIBITS:

1. Condition of Approval and Project Notes
2. Location Map
3. Existing Zoning Map
4. Assessor's Map
5. Aerial Photo
6. Site Plan and Elevations
7. Applicant's Submitted Findings
8. Site Photographs
9. Map of Other Land Division Variances Filed within One-Mile Radius

SITE DEVELOPMENT AND OPERATIONAL INFORMATION:

Criteria	Existing	Proposed
General Plan Designation	Low Density Residential in the Fig Garden Neighborhood Plan	No change
Zoning	R-1-B(nb) (Single-Family Residential, 12,500 square-foot minimum parcel size, Neighborhood Beautification Overlay)	No change
Parcel Size	12,700 square feet	No change
Project Site	<ul style="list-style-type: none">• 1,932 square-foot single-family residence• 404 square-foot patio cover• Carport• Swimming pool	Convert existing patio cover to accessory housing unit; remove five square feet of space from patio cover as part of conversion Add a seven-foot by ten-foot front porch cover to existing residence
Structural Improvements	See Project Site description	See Project Site description
Nearest Residence	Approximately 40 feet to the east	No change
Surrounding Development	Single-family residences	No change

EXISTING VIOLATION (Y/N) AND NATURE OF VIOLATION: No

ENVIRONMENTAL DETERMINATION:

It has been determined, pursuant to Section 15061(b)(3) 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 86 property owners within 600 feet of the subject property, exceeding the minimum notification requirements prescribed by the California Government Code and County Zoning Ordinance.

PROCEDURAL CONSIDERATIONS:

A Variance Application (VA) may be approved only if four Findings specified in Zoning Ordinance Section 877 are made by the Planning Commission.

Specifically related to a Variance Application, in order to make Findings 1 and 2, a determination must be made that the property is subject to an exceptional or extraordinary physical circumstance that does not apply to other properties in the same Zone District, and a substantial property right held by other property owners of like-zoned parcels in the area must be identified.

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 Applicant is requesting a Variance to allow the conversion of an existing patio cover to an accessory housing unit within the rear yard setback, plus a porch within the front setback, on a 12,700 square-foot parcel within the R-1-B(nb) (Single-Family Residential, 12,500 square-foot minimum parcel size, Neighborhood Beautification Overlay) Zone District. The project area is designated Low Density Residential in the Fig Garden Neighborhood Plan and consists mostly of single-family residential uses. The project site is located within a County island on the northeast corner of Wishon Avenue and Sussex Avenue, approximately 355 feet north of the nearest city limits of the City of Fresno.

The subject parcel currently contains a 1,907 square-foot single-family residence, a carport, a swimming pool, and a patio cover enclosed on three sides. The patio cover is attached to the residence by a breezeway. The property is located on a corner lot, and although the address of the residence is listed as being on Wishon Avenue, the legal front yard of the property is located on Sussex Avenue (the short side of the lot).

The Applicant's proposal involves two parts: conversion of the existing patio to an accessory living unit, and construction of a porch over the entrance facing Sussex Avenue. County records indicate the residence was constructed in 1941, and according to the Applicant the existing covered patio was constructed some time during the early 1950s by the property's original owners. The R-1-B(nb) zoning for the Fig Garden Neighborhood was implemented in 1960. Many of the homes in the area were built prior to the establishment of the current zone

district and the setbacks in effect today. Subsequently, some homes and accessory buildings became legal non-conforming in terms of setbacks.

A Variance Application is required to allow an accessory housing unit in the side and rear yard setbacks within the R-1-B(nb) Zone District. Under Section 824.5 of the Fresno County Zoning Ordinance, R-1-B zoning requires a 35-foot front yard setback, a 20-foot rear yard setback, and a 20-foot street side yard setback for corner lots. The existing patio cover was built 12 inches from the rear property line and 17 feet from the street side property line, and the proposed conversion of the patio cover to an accessory housing unit would result in a 6-foot rear yard setback while maintaining the current 17-foot street side yard setback. The front (south) side of the residence is 25 feet from the front property line, so any development in the front yard would require a variance.

County records indicate that 46 variance applications have been previously filed within a one-mile radius of the subject property (Exhibit 9). Of those 46 applications, at least 7 involved carports, garages, or other structures located within required setbacks. None of the applications specifically involved front porches, although there are a number of applications that involved aesthetic and/or protective structures within front yard setbacks. A summary of the most relevant variance application history for the area is listed below:

Application No.	Project Description	Status	Date of Approval
VA 2724	Maintain trellis-covered walkway and fence-trellis around spa in front yard	Approved	10/14/1982
VA 2745	Allow conversion of existing, conforming masonry parking structures to be connected and converted to living space	Approved w/ conditions	1/13/1980
VA 3183	Allow a two-story garage structure on the northern property line (10-foot setback required)	Approved w/ conditions	2/9/1989
VA 3236	Allow a 4-foot rear yard setback (10 feet required) and a 12-foot side yard setback (25 feet required) for an existing carport	Denied	2/13/1990
VA 3291	Allow a 3-foot side yard setback for a two-story living quarters structure (10 feet required)	Approved w/ conditions	10/18/1990
VA 3326	Allow a 26-foot front yard setback (35 feet required) for a room addition to an existing residence	Approved w/ conditions	5/23/1991
VA 3784	Allow a 16-foot street side yard setback (25 feet required) and a 14-foot rear yard setback (20 feet required) for a detached garage and living quarters	Approved w/ conditions	7/1/2004

VA 3866	Allow a 7-foot side yard setback (10 feet required) for a proposed living addition in conjunction with an existing single-family residence	Approved w/ conditions	4/19/2007
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Although there is a history of variance requests within proximity of the subject property, each variance request is considered on its own merit, based on unique site conditions and circumstances.

ANALYSIS/DISCUSSION:

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.

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.

	Current Standard:	Proposed Operation:	Is Standard Met (y/n)
Setbacks	<u>R-1-B Standards</u> Front: 35 feet Side: 10 feet St. Side: 20 feet Rear: 20 feet <u>Existing</u> Front: 25 feet Side: 9 feet St. Side: 17 feet Rear: 1 foot	Front: 18 feet Side: 9 feet St. Side: 17 feet Rear: 6 feet	Front: No Side: Yes* St. Side: No Rear: No *Carport within side yard setback was permitted by County
Parking	N/A	N/A	N/A
Lot Coverage	35 percent	24 percent	Yes
Separation Between Buildings	6 feet	No change	Yes
Wall Requirements	N/A	No change	N/A
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	N/A	N/A
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Reviewing Agency/Department Comments:

Zoning Section of the Fresno County Department of Public Works and Planning: Permits for all proposed work will be required. Permits will be required for any structures/additions built after 1958 that exceed the 120 square-foot exception per California Building Code.

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

Analysis:

In support of Findings 1 and 2 concerning the proposed accessory housing unit, the Applicant states that the conversion involves an already-existing structure that was built prior to the adoption of zoning laws by the County. The Applicant also states that residential construction within required setbacks is a common occurrence in the Fig Garden neighborhood. Additionally, the Applicant states that maintaining the required setbacks would effectively not allow the proposed unit to be built due to size constraints.

Regarding Findings 1 and 2, staff notes that the existing pre-1958 patio cover is legal non-conforming and that the proposed conversion would result in a structure smaller than the current patio cover. Further, the proposed conversion would reduce the degree of encroachment in the rear yard and maintain the existing degree of encroachment in the street side yard. Given that the rules governing non-conforming structures are concerned primarily with expansion of such structures, it is staff’s opinion that the proposal here does not contradict the primary intent of these rules. Additionally, an accessory housing unit is a by-right use within the R-1-B Zone District.

In support of Findings 1 and 2 concerning the proposed front porch, the Applicant states that the existing front door has no protection from the elements and that such a lack of protection is unacceptable. The Applicant also states that the proposed porch cover would measure 40 feet from the existing paved edge of Sussex Avenue.

For Findings 1 and 2 here, staff notes that the residence’s location is legal non-conforming with respect to the front yard setback and that any development in the front yard would require a variance. Like with the existing patio cover, this development occurred prior to the adoption of zoning regulations. While staff notes that in examining the project area it is not uncommon to find residences without porches or other cover over front doors, staff acknowledges that the protection from the elements is not a self-imposed need.

An additional consideration in addressing Findings 1 and 2 is whether there are alternatives available that would avoid the need for the Variance. The Applicant could conceivably bring in the north and west walls to meet the required setback limits at the rear yard and street side

yard without expanding the roof or third existing wall, but the resulting unit would be constrained to approximately 200 square feet. A conversion that meets the setback requirements and provides more space would be more complicated and likely more costly than the Applicant's design because such a conversion would involve relocating an additional wall and adding building materials to the existing structure, in contrast to the Applicant's proposed conversion that only removes or relocates material from the existing structure.

Regarding the proposed covered porch, staff notes that certain architectural projections capable of providing protection from the elements similar to a porch cover (e.g., cornices, eaves) are normally permitted to extend a limited distance into required setbacks without requiring a variance (see Zoning Ordinance Section 822.5.E.5, via 824.5.E.5). However, the architectural projections allowance is not available here because the front of the house is already located ten feet within the front yard setback. In summary, alternatives not requiring a variance for either aspect of the Applicant's proposal are limited because of the primary residence's non-conforming layout attributable to its construction prior to the adoption of zoning regulations for this area, including setbacks.

Based on the above analysis, staff is able to make Findings 1 and 2 for the proposed accessory housing unit and for the proposed porch cover.

Recommended Conditions of Approval:

None

Conclusion:

Findings 1 and 2 can be made.

Finding 3: The proposal will not be materially detrimental to the public welfare or injurious to property and improvements in the vicinity in which the property is located.

Surrounding Parcels			
	Size:	Use:	Nearest Residence:
North:	0.56 acres	Single-family residence	165 feet
	0.52 acres	Single-family residence	155 feet
South:	0.5 acres	Single-family residence	132 feet
	0.45 acres	Single-family residence	140 feet
East:	0.77 acres	Single-family residence	11 feet
West:	0.81 acres	Single-family residence	18 feet

Reviewing Agency/Department Comments:

Building and Safety Section of the Fresno County Department of Public Works and Planning: If approved, plans, permits and inspections are required based upon the current California Codes in effect at the time of plan check submittal. The Designer of Record is to address fire-resistive construction based on the proximity of the structure to the property line.

Development Engineering Section of the Fresno County Department of Public Works and Planning: No comment.

Road Maintenance and Operations Division of the Fresno County Department of Public Works and Planning: No comment on this matter.

Fresno County Fire Protection District: No requirements at this time.

Fresno Metropolitan Flood Control District: The District has no drainage concerns or comments in regard to this project.

Analysis:

In support of Finding 3, the Applicant states that neither construction of the proposed porch cover nor conversion of the existing patio cover to an accessory housing unit will be detrimental to public welfare or injurious to property. Additionally, the Applicant states the proposed construction and conversion will be compatible with the existing construction of the residence and the construction in the surrounding area.

Regarding the proposed accessory housing structure, staff notes that the proposal involves an existing structure and would reduce the structure's current amount of encroachment into the rear yard setback. The existing patio cover has walls on three sides, including the side closest to the rear property line, so the addition of a fourth wall would not change the prevailing perspective from the property closest to the proposed accessory housing unit. Additionally, the proposed accessory housing unit would maintain the existing patio cover's aesthetic design, which matches that of the residence. No privacy concerns are anticipated, as there is fencing and vegetation present around the site of the unit.

Regarding the proposed front porch cover, staff notes that porch covers as well as other structures with protective and/or aesthetic purposes such as fences and arbors are commonly found in front yards within the Fig Garden neighborhood. Further, the proposed 40-foot distance of the patio cover from the paved edge of Sussex Avenue should limit any potential detrimental impacts on the public welfare or surrounding properties to a less-than-material level.

Considering these factors, the proposal would not be materially detrimental to the properties and improvements in the area.

Recommended Conditions of Approval:

See attached Exhibit 1

Conclusion:

Finding 3 can be made.

Finding 4: *Granting of this variance will not be contrary to the objectives of the General Plan Consistency.*

Relevant Policies:

No General Plan policies were identified for consideration by the Policy Planning Section of the Fresno County Department of Public Works and Planning.

Reviewing Agency/Department Comments:

Policy Planning Section of the Fresno County Department of Public Works and Planning: The Policy Planning Section has no comments.

Analysis:

In support of Finding 4, the Applicant states that no aspect of the development being proposed in the Variance Application is contrary to the objectives of the General Plan.

Regarding Finding 4, the project site is designated Low Density Residential in the Fig Garden Neighborhood Plan. General Plan policies do not specifically address requirements for development of structures within setbacks.

Based on this information, staff finds that the granting of this Variance would not be contrary to the objectives of General Plan.

Recommended Conditions of Approval:

None

Conclusion:

Finding 4 can be made.

PUBLIC COMMENT:

None

CONCLUSION:

Based on the factors cited in the analyses, staff is able to make the required findings for this Variance Application. Therefore, staff recommends approval of Variance Application No. 3980.

PLANNING COMMISSION MOTIONS:

Recommended Motion (Approval Action)

- Move to determine that the required Findings can be made based on the analysis in the Staff Report and move to approve Variance Application No. 3980, subject to Conditions and Project Notes; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

Alternative Motion (Denial Action)

- Move to determine that the required Findings cannot be made (state basis for not making the Findings) and move to deny Variance Application No. 3980; and
- Direct the Secretary to prepare a Resolution documenting the Commission's action.

Recommended Condition of Approval and Project Notes:

See attached Exhibit 1.

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**Variance Application No. 3980
Condition of Approval and Project Notes**

Condition of Approval	
1.	Development of the property shall be in accordance with the Site Plan 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.	If approved, plans, permits and inspections are required based upon the current California Codes in effect at the time of plan check submittal. The Designer of Record is to address fire-resistive construction based on the proximity of the structure to the property line.
2.	Permits will be required for any structures/additions built after 1958 that exceed the 120 square-foot exception per California Building Code.

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G:\4360Devs&Pin\PROJSEC\PROJDOCS\VA\3900-3999\3980\SR\VA3980 Conditions & PN (Ex 1).docx

LOCATION MAP

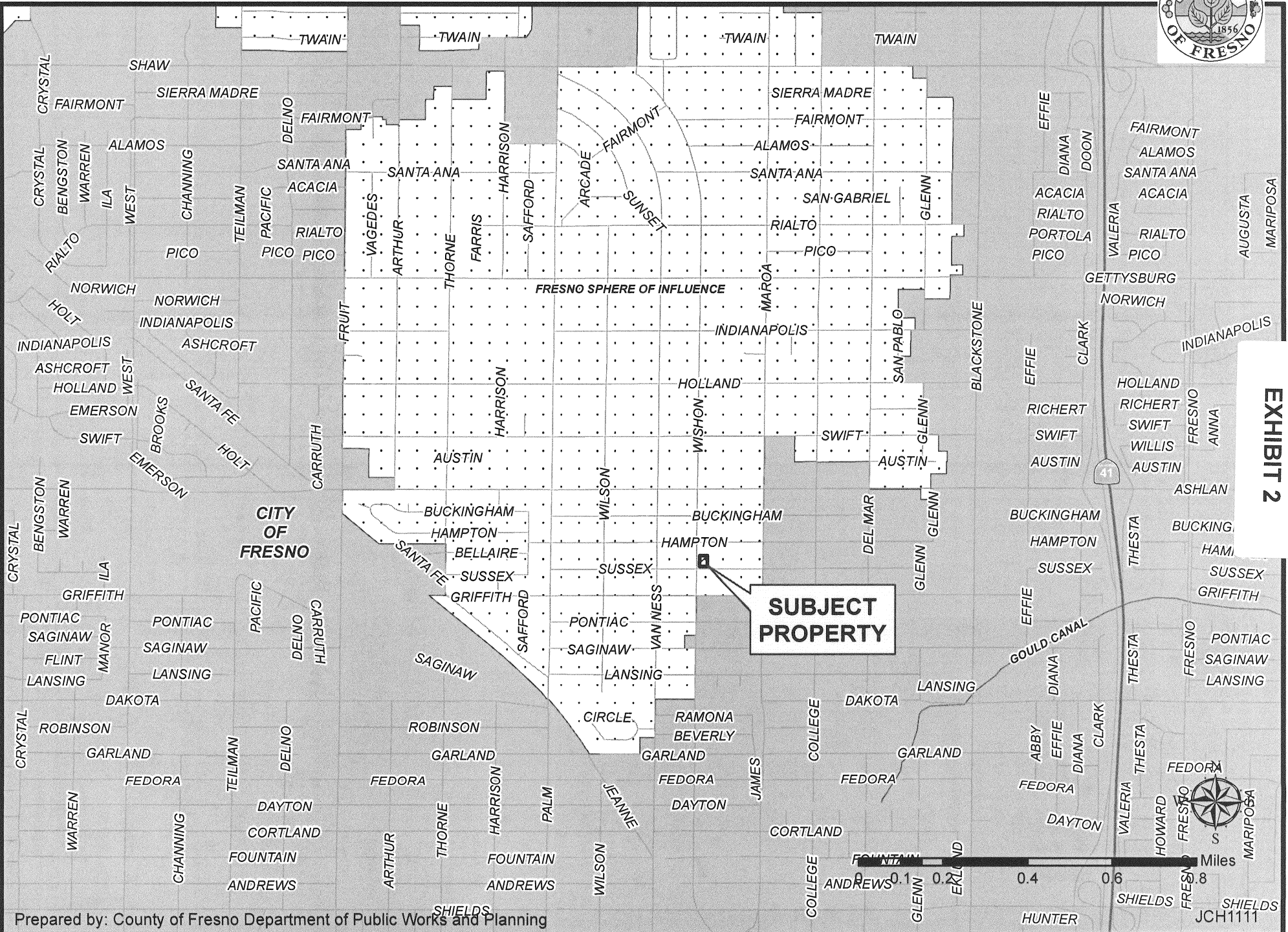


EXHIBIT 2

EXISTING ZONING MAP

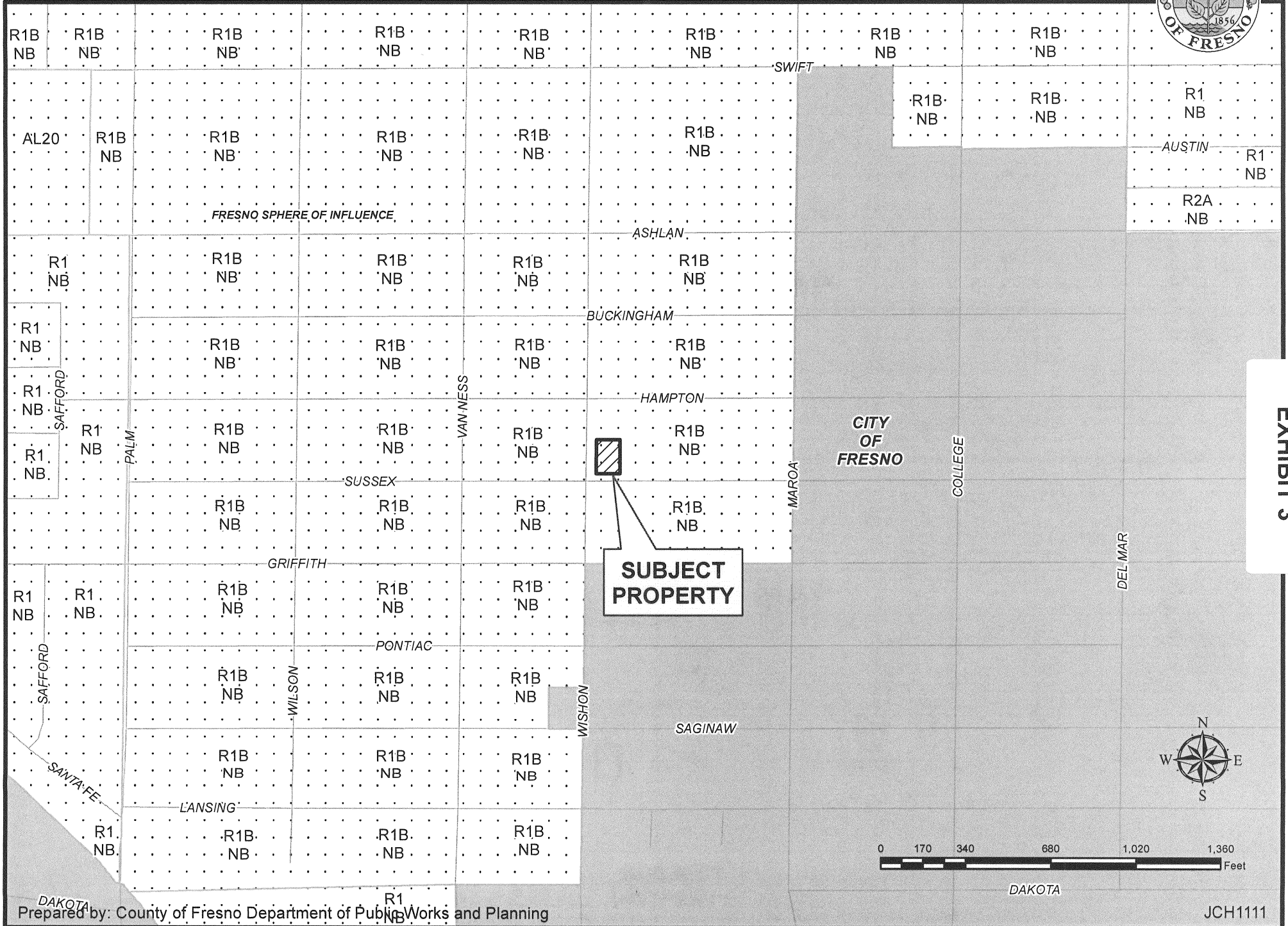


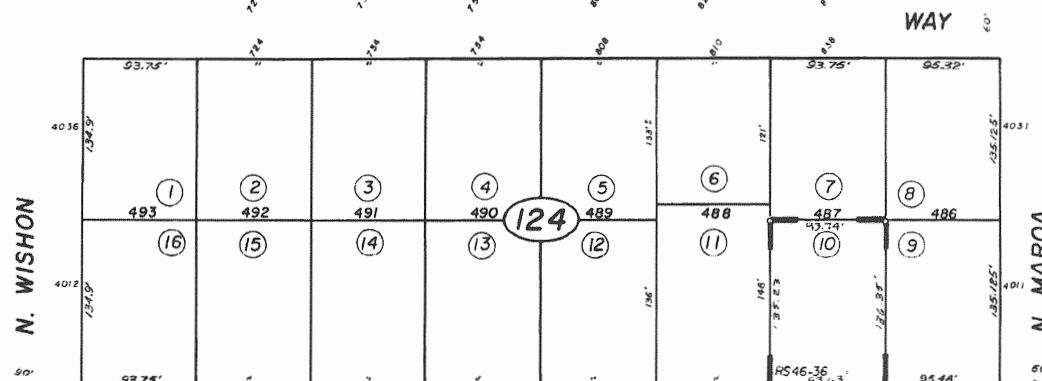
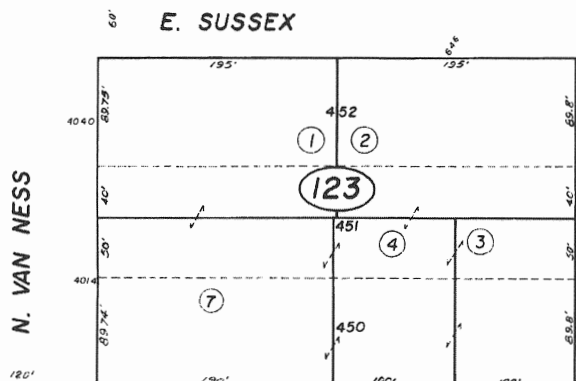
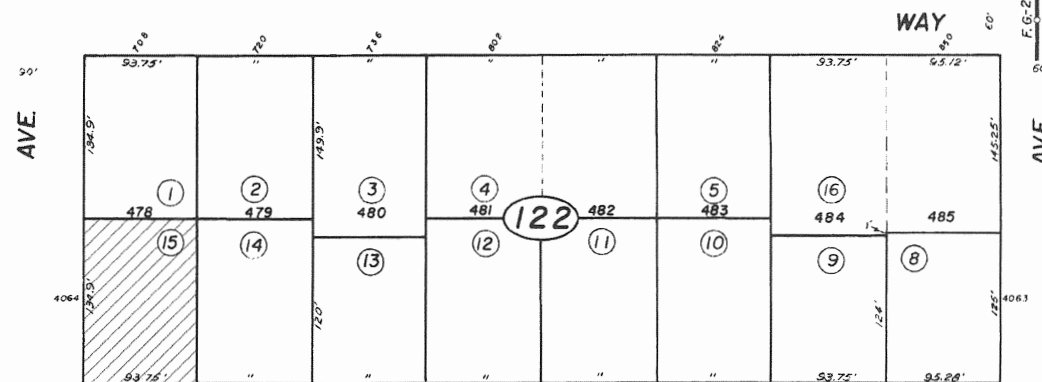
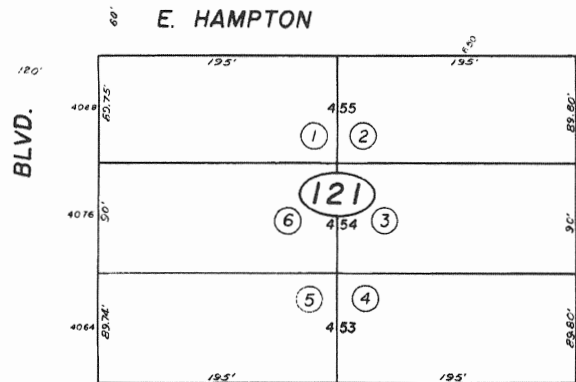
EXHIBIT 3

SUBDIVIDED LAND IN POR. SEC. 21, T. 13 S., R 20 E., M. D. B. & M.

Tax Area
98-030

434-12

— NOTE —
This map is for Assessment purposes only.
It is not to be construed as portraying legal
ownership or divisions of land for purposes
of zoning or subdivision law.



Forkner Giffen Fig Gardens Subdivision No. 2 - Plat Bk. 8, Pg. 62
Record of Survey - Bk. 46, Pg. 36

Assessor's Map Bk. 434-Pg. 12
County of Fresno, Calif.

NOTE - Assessor's Block Numbers Shown in Ellipses
Assessor's Parcel Numbers Shown in Circles

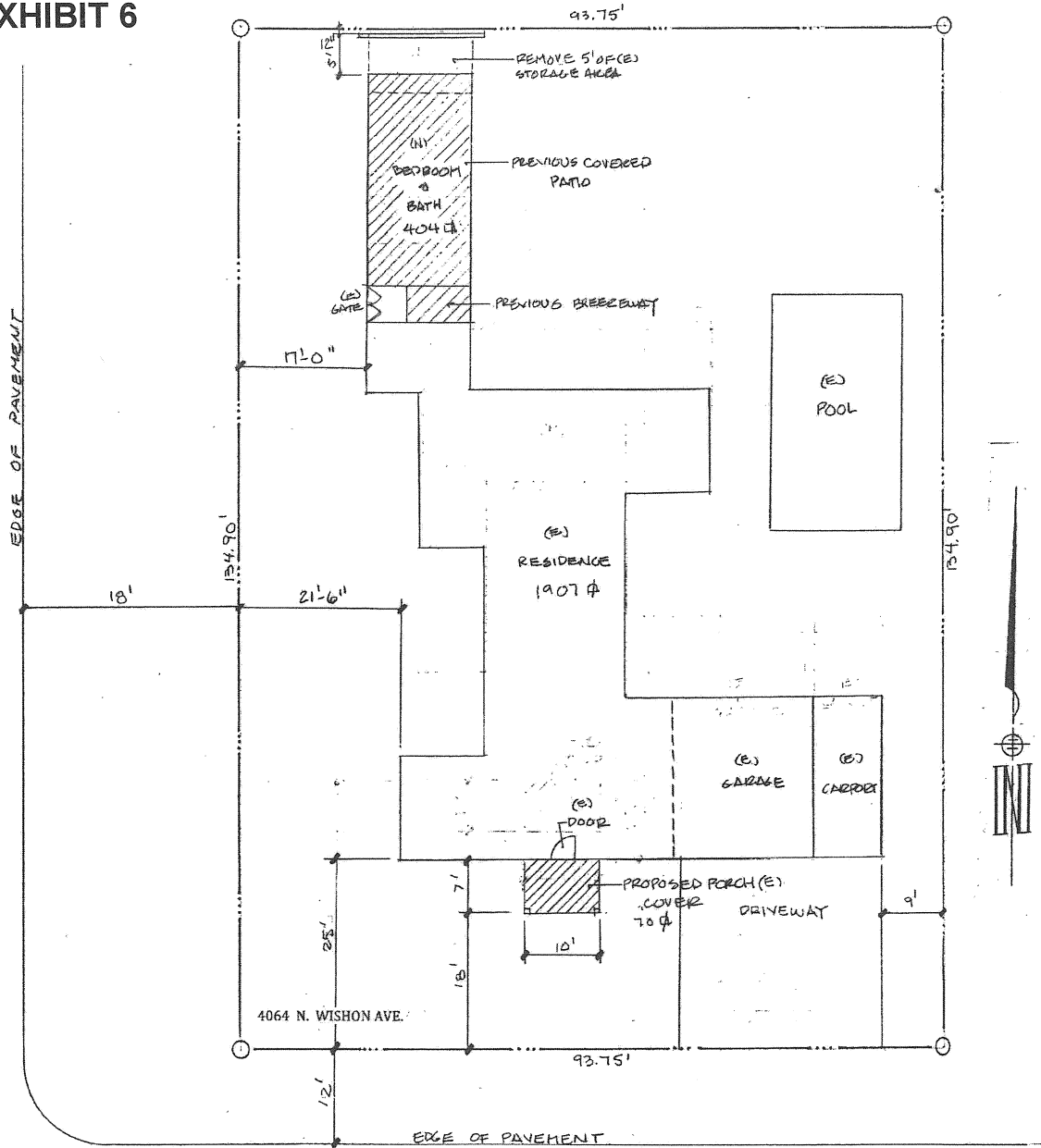
EXHIBIT 4

EXHIBIT 5



EXHIBIT 6

N. WISHON AVE.

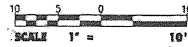


E. SUSSEX AVE.

SITE STATISTICS:

APN: 434-12-15	
Zoning: R1B	
Lot Area: 12,647 sq.ft.	
Existing Residence Area	1,902 sq.ft.
Proposed Patio Conversion	404 sq.ft.
Total New Building Area	2,311 sq.ft.
Lot coverage	2,994 sq.ft.
	24%

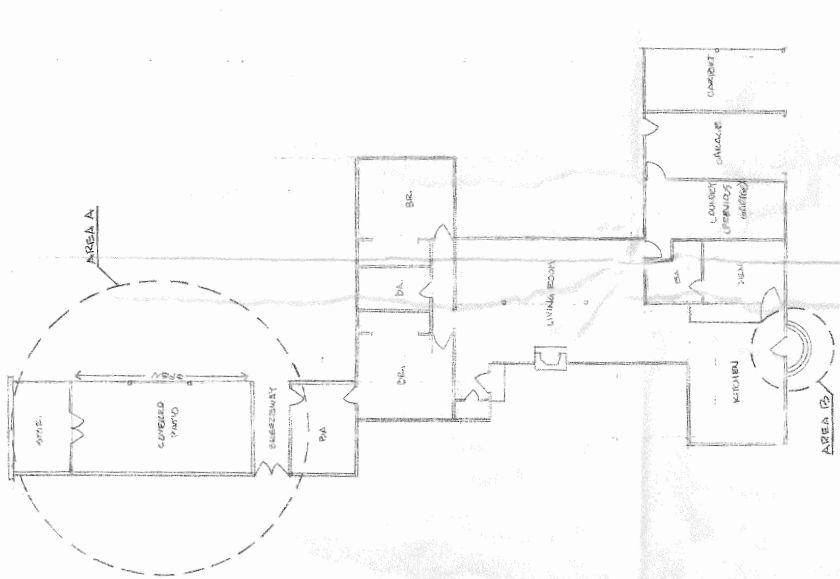
SITE PLAN



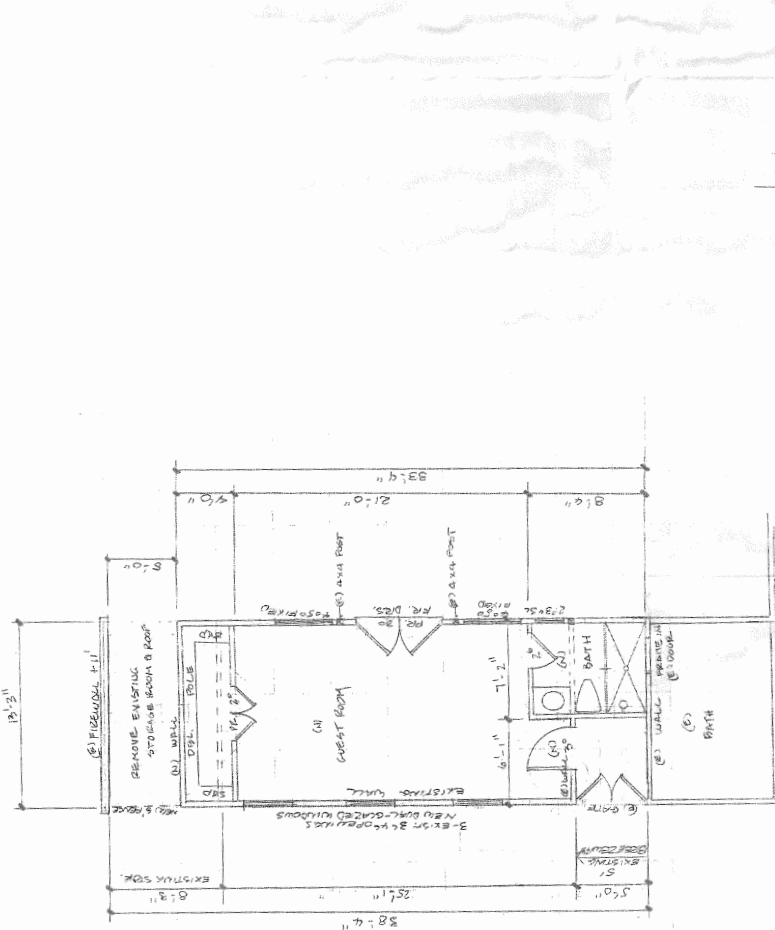
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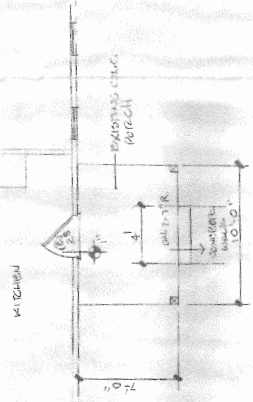
DEPARTMENT OF PUBLIC WORKS
AND PLANNING
DEVELOPMENT SERVICES DIVISION



COMPLETE FLOOR PLAN 1/02 ft
SCALE: 1/8" = 1'-0"



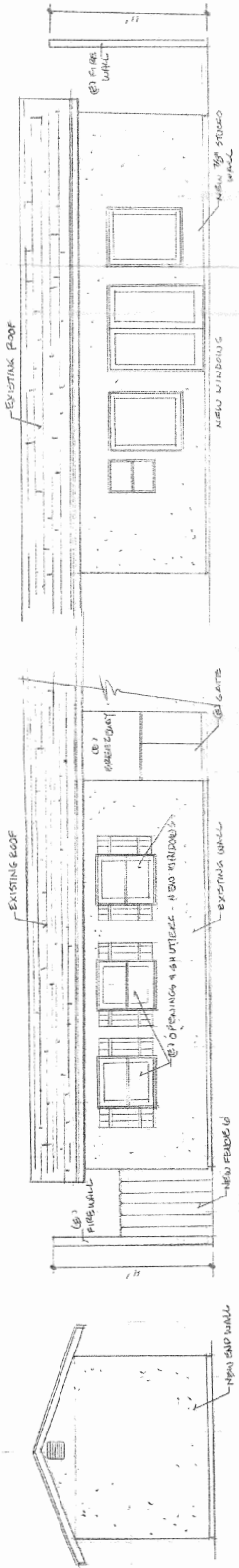
FLOOR PLAN A 5/03 ft
SCALE: 1/8" = 1'-0"



FLOOR PLAN B 7/0 ft
SCALE: 1/8" = 1'-0"

L. Dineen

L. Dineen

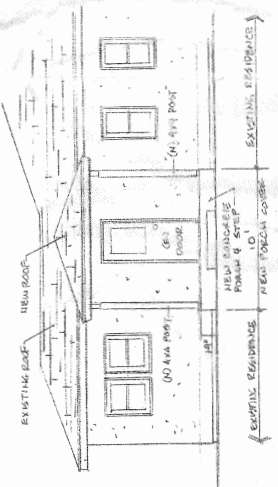


EAST

WEST

NORTH

ELEVATIONS **A**
SCALE: 1/4" = 1'-0"



SOUTH

ELEVATION **B**
SCALE: 1/4" = 1'-0"

EXHIBIT 7

DINEEN DRAFTING & DESIGN

2985 E. Willis Ave.
Fresno, CA 93726
(559) 221-6053

July 11, 2015

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DEPARTMENT OF PUBLIC WORKS
AND PLANNING
DEVELOPMENT SERVICES DIVISION

Required Findings for Variance Application

OWNERS: Bernard & Mary Clark
4064 N. Wishon Ave.
Fresno, CA 93704

JOB ADDRESS; 4064 N. Wishon Ave.

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.

This property is a lot on the northeast corner of N. Wishon and E. Sussex. The front of the lot as determined by Fresno County regulations is on E. Sussex, although the house is oriented towards N. Wishon and the address is also on N. Wishon. The front setback distance on the E. Sussex side according to the County is 35 feet. However, as is typical in the Fig Garden area, the residence is actually 47 feet from the edge of the street.

The residence garage opens to the front (E. Sussex) as does a door off of the kitchen area of the house. The residents use the garage and enter the house through this door. Currently there is no roof protection from the elements at this location. The owners are requesting approval for a 70 sq.ft. porch cover over this door that will extend 7 feet into the required front setback. This porch cover will still be 40 feet from E. Sussex.

Also, there is a covered patio and breezeway on the north side of the property that was constructed in the early 1950s by the original owners. It has walls on three sides and is connected to the main residence under roof. It was constructed with a concrete block firewall 12 inches from the north property line. Originally, this space had a kitchen which has been previously removed and there are plumbing and sewer to this area. The owners would like to demolish 5 feet of the rear of this structure effectively separating it from the rear property line and use this existing space as actual living space. The view of the residence from Wishon will not change as the gate to the breezeway will remain and the window openings and shutters will also remain. This construction is 17 feet from the property line and 35 feet from the edge of Wishon Ave.

2. Such a 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.

It is not acceptable to have an entrance door without roof protection. All other residences in the Fig Garden area and beyond have such protection from the elements over doors. The entry door on the south (Sussex Ave.) side of the residence is flush with the wall and has no porch roof. The owners use the garage and then usually enter the residence through this entry door into the kitchen.

The rear enclosure is already constructed with foundation, walls and roof. The only open side is on the east side toward the back yard. The owners desire to convert this space into a bedroom and bathroom. They are advanced in years and in increasingly failing health and will need their daughter to care for them. There are many residences in this area which have residential construction within the setbacks. The house on the lot to the north of this lot on Wishon also has construction to the property line. The desired construction will be 5 feet from the property line. The firewall in place will give the necessary protection in case of fire. This area is in effect the side of the house but technically the rear of the lot. Maintaining the 20 foot rear setback will not allow the desired bedroom/bath to be built. The view of this residence from Wishon will not change at all since the construction is already in place. Both the Wishon side and Sussex side of this residence are mostly screened from the streets by heavy landscaping.

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.

Both of the projects requested in this variance application are for the need of the property owners and are well within their property. There will be no detriment to any other residents in the area or public welfare. The construction on the new porch cover will be compatible with the existing construction of the residence and the 1940s to 1950s construction in the surrounding area.

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

The owners in the Fig Garden area care about their properties and the impact they have on the neighborhood. These owners desire to make improvements which will increase the value not only of their own property, but the values of the properties around them. The proposed requests will not be contrary to the objectives of the General Plan.

Respectfully Submitted,

**Linda Dineen
Dineen Drafting & Design**

EXHIBIT 8

**Variance application for: Bernie & Mary Clark
4064 N. Wishon Ave.
Fresno, CA**



#1 View from N. Wishon Ave. - Covered patio/shade structure



#2 View from E. Sussex Ave. - Door off kitchen

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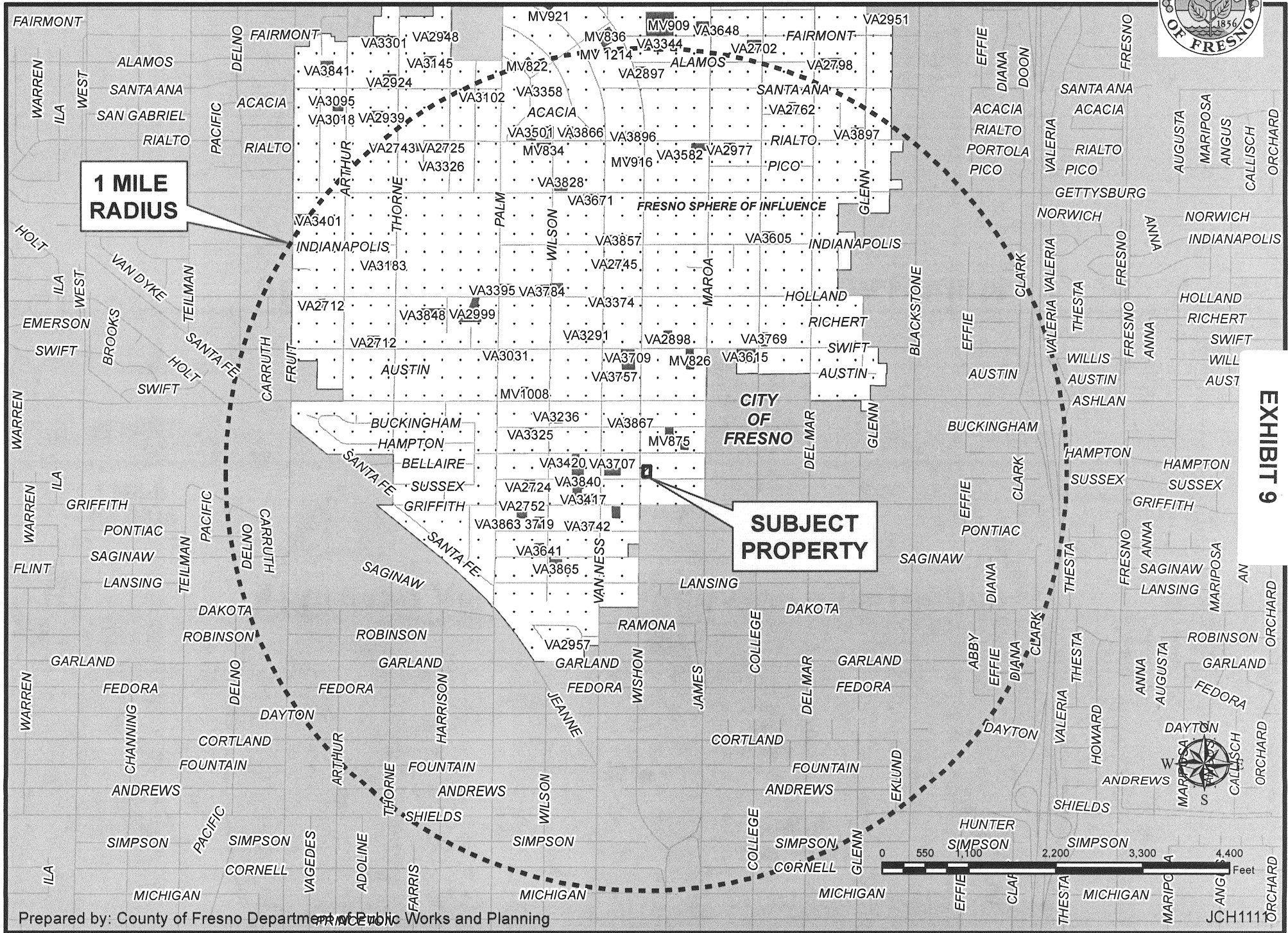
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DEPARTMENT OF PUBLIC WORKS
PLANNING AND ZONING
DEVELOPMENT SERVICES DIVISION



#3 View of Covered patio/shade structure from interior of lot

Approved Variances within One Mile Radius



**1 MILE
RADIUS**

**SUBJECT
PROPERTY**

EXHIBIT 9