

William P. Kenoi
Mayor



Duane Kanuha
Director

Joaquin Gamiao-Kunkel
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

April 7, 2016

Robert T. & Yvonne Bailey
P. O. Box 1033
Kurtistown, HI 96760-1033

Dear Mr. & Mrs. Bailey:

SUBJECT: Application: Variance – VAR-16-000340
Applicant: ROBERT T. & YVONNE BAILEY
Owner: ROBERT T. & YVONNE BAILEY
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into Northeast and Northwest
Side Yard Setback)
Tax Map Key: 2-4-006:049; Lot B

The Planning Director certifies the **approval** of Variance 15-00340, subject to conditions. The variance will allow portions of a new single-family dwelling with garage and agricultural/stable building to be constructed on Lot B, with a minimum 8-foot side (northwest) yard setback in lieu of the required 20-foot side yard setback and associated roof eave projection resulting with a 4-foot side (northwest) yard open space in lieu of the required 14-foot side yard setback requirement. It will also allow for a minimum 10-foot side (northeast) yard setback in lieu of the required 20-foot side yard setback and associated roof eave projection resulting with a 5-foot side (northwest) yard open space in lieu of the required 14-foot side yard open space requirement. The variance is from the subject property's minimum 20-foot side yard. These exceptions are in lieu of the required 20-foot side yard setback and 14-foot side yard open space as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 43,329 square feet and is situated in

the Waiākea Homesteads, Waiākea, South Hilo, Hawai‘i. The subject property’s street address is 28-2681 Hoaka Road.

2. **County Zoning.** Agricultural – 20 acres (A-20a).
3. **Flood Designation.** Majority of property is in Flood Zone “A” with exception of Pole Area Zone “X”.
4. **State Land Use Designation.** Agricultural.
5. **Setback Requirements.** Flag lot - 20 foot side yards. The minimum yards for a flag lot, excluding the access drive, shall be the minimum side yards required for a building site in the applicable zoning district.
6. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on January 22, 2016. The variance application’s site plan, prepared by the owners, denotes the location of the proposed single-family dwelling and agriculture/stables to be constructed into the side (northwest and northeast) yard setback and associated side yard open space. **(See Exhibit F & G)**

The site plan shows that the proposed new single-family dwelling with garage and agricultural/stable building encroaches 12 feet into the 20-foot side (northwest) yard setback and 10 feet into the 14-foot side (northwest) yard open space. The proposed single-family dwelling with garage and agricultural/stables also encroaches 10 feet into the 20-foot side (northeast) yard setback and 9 feet into the 14-foot side (northeast) yard open space.
7. **County Building Records.** None – Vacant Land.
8. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated February 8, 2016.
(See Exhibit A)
 - b. No comments received from the Department of Public Works Building Division.
9. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on January 22, 2016 and February 5, 2016, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 15, 2016.
10. **Comments from Surrounding Property Owners or Public.**

- a. Letter of support from Paula Vinoskey, adjacent property owner along the northeast boundary, TMK: 2-4-006:090. **(Exhibit B)**
 - b. Letter of concern from John Suehr and Laura Shiro-Suehr received on February 19, 2016, approximately 500 feet southeast of the subject site. **(See Exhibit C)**
 - c. Letter of concern from Wanda G. Meurs received on February 19, 2016, approximately 250 feet southeast of the subject site. **(See Exhibit D)**
11. **Time Extension.** The applicant's variance application was acknowledged by letter dated January 29, 2016 and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to April 7, 2016.

GROUNDS FOR APPROVING VARIANCE

Special and Unusual Circumstances

- (a) *There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property.***

The Variance application meets criterion (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of the proposed single-family dwelling and the proposed agriculture/Stable building to be constructed into the 20-foot side (northwest and northeast) yard setback and into the 14-foot side (northwest and northeast) yard open space as required by the Zoning Code.

The site plan shows that the proposed single-family dwelling with garage and agricultural/stable building encroaches 12 feet into the 20-foot side (northwest) yard setback and 10 feet into the 14-foot side (northwest) yard open space. The proposed single-family dwelling with garage and agricultural/stables also encroaches 10 feet into the 20-foot side (northeast) yard setback and 9 feet into the 14-foot side (northeast) yard open space.

At the end of the 905-foot pole portion of the subject property, there is a deep ravine consisting of approximately 3.960 acres, which is considered the large portion of the parcel; unfortunately, the entire area is considered in Flood Zone A (**see Exhibit E**), therefore making it extremely difficult to build. The owner/applicant has stated: *"In order to gain ingress to the larger part of the parcel, we would have to erect a large bridge and that would only take us to another small elevation of land which progresses on a downhill slope to the second ravine/waterway. Cost of erecting a bridge of this size would be astronomical and building beyond this would not be feasible because of the contour of the land."*

A site inspection was conducted on February 2, 2016 by Staff Planner, Larry Nakayama, and Zoning Inspector, Mark Iwamoto, to confirm and visualize the topography of the property.

Therefore, given the topography of the subject property and placement of the single-family dwelling, special and unusual circumstances exist on the subject property which would interfere with the construction of the single-family dwelling with garage and agricultural/stable building.

Alternatives

(b) There are no other reasonable alternatives that would resolve the difficulty.

The Variance application meets criterion (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected side yard of the subject property include the following actions:

Building in the larger portion of the parcel is basically impractical, short of obtaining an elevation certificate from FEMA, doing a flood study, building a bridge or roadway. All these alternatives are cost prohibitive; therefore, denial of this variance would deem the property unbuildable.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by another party, and to re-subdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical.

Therefore, given the topography of the subject property, there are no reasonable alternatives for the placement of the single-family dwelling with garage and agricultural/stable building.

Intent and Purpose

(c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The Variance application meets criterion (c) for the following reasons:

The intent and purpose of requiring building setbacks for a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

Letters of concern were submitted by Wanda G. Meurs and John and Laura Shiro-Sueher on February 19, 2016, with regards to flooding. This reason is why the Baileys are seeking a variance to allow them to construct a 2,304 square foot single-family dwelling with attached garage and a detached agricultural building/stable consisting of 1,920 square feet (refer to Exhibit F & G for visual reference), into the pole section of the flag lot, in lieu of the flood way which is the larger portion of the property. This variance will allow the owner/applicant to build outside of the floodway.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

Therefore, the variance would be consistent with the general purpose of the zoning district and not be materially detrimental to the public's welfare or cause substantial adverse impact to the area's character or to adjoining properties.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's site plan, the single-family dwelling with garage and agricultural building/stable to be constructed on the subject property (Lot B) will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).


This variance application is **approved** subject to the following variance conditions.

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai'i harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. An Ohana or farm dwelling shall not be approved for the subject property, subject to the provisions of the Hawai'i County Code, Chapter 25, (Zoning) or state law, which may change from time to time.
4. Future or new building improvements and permitted uses shall be subject to State law and County Ordinances and Regulations pertaining to building construction and building occupancy.

Robert T. & Yvonne Bailey
Page 6
April 7, 2016

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-15-000340.

Sincerely,

A handwritten signature in black ink, appearing to read "Duane Kanuha". The signature is fluid and cursive, with a large initial "D" and "K".

DUANE KANUHA
Planning Director

LHN/SG:nci

P:\Admin Permits Division\Variances From CoH02\Zone2\VAR16-000340TMK2-4-006-049Bailey.doc.rtf

xc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: February 8, 2016

TO: Mr. Duane Kanuha
Planning Director, County of Hawaii

FROM: Eric Honda *EH*
District Environmental Health Program Chief

SUBJECT: **Application: Variance – VAR 16-000340**
Applicant: ROBERT T. & YVONNE BAILEY
Owner: ROBERT T. & YVONNE BAILEY
Request: Variance from Chapter 25, Zoning, Article 5 Division 7,
Section 25-5-76 Minimum Yards and Section 25-4-44,
Permitted Projections into Yards and Open Space
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Tax Map Key: 2-4-006:049; Lot B

2016 FEB 9 PM 1:27
PLANNING DEPARTMENT
COUNTY OF HAWAII

The Health Department found no environmental health concerns with regulatory implications in the submittals.

EXHIBIT

A

FEB 13 2016
103549

PLANNING DEPARTMENT
COUNTY OF HAWAII

2016 FEB 22 PM 2: 52

Date: February 18, 2016

**From: Paula Vinoskey
541 Hoaka Rd.
Hilo, Hi 96720
(808) 825-9950**

**To: Mr. Duane Kanuha (Planning Director)
Planning Department of the Hawaii County Office Building
101 Pauahi St. Suite 3
Hilo, Hi 96720**

Dear Mr. Kanuha,

This letter is in regards to a Notice letter that I received from Robert T and Yvonne Bailey, requesting a variance to construct a single family residence and an agriculture building. (Please see copy of 2nd Notice letter enclosed).

I would like to let you know that I am in support of their request and look forward to having them as neighbors.

Should you have any question's please feel free to contact me at the above cell phone number.

Thank you very much for your time and have a great day!

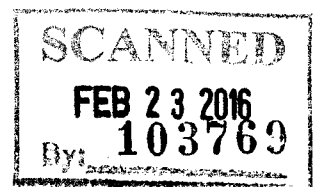
Sincerely,



Paula Vinoskey

EXHIBIT

B



15 February 2016
To Planning Director

Suite 3
101 PAVANA STREET
HONO, HAWAII

From JOHN AND LAURA SUGR
200 KAPONA STREET
HONO, HAWAII

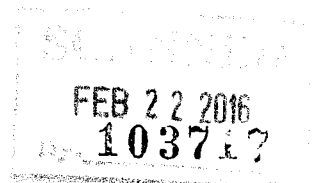
RE: APPLICATION FOR VARIANCE,
ROBERT AND YVONNE BERRY
HUAKA ROAD
HONO, HAWAII

IN THE NEAR NINETEEN YEARS THAT WE
HAVE LIVED HERE WE NOTE SERIOUS CONCERN
TOWARDS THE SUE & IN BACK OF OUR PROPERTY
LINES - WE DO NOT WANT TO IMPEDE ANYONE'S
HOUSE BUILDING, WE HAVE STRONG CONCERNS
ABOUT THE ENVIRONMENTAL IMPACT THE
PROPOSED PLANS MAY GENERATE.

John & Laura
Sugr

EXHIBIT

C



MAIL ROOM
FEB 19 2016

February 19, 2016

2016 FEB 19 PM 3: 24

Duane Kanuha, Hawaii County Planning Department

RE: Variance Application for Robert and Yvonne Bailey, Tax Map Key 3-2-4-006-049. Lot B

Dear Mr. Kanuha,

I am writing this letter in reference to the variance application submitted by Robert and Yvonne Bailey. I have property adjacent to the above subject property. My Tax Map Key is 2-4-006-123-0000. I have resided at this property for 26 years. I am concerned about possible alteration of the environment resulting in erosion and/or flooding of the adjacent properties, including my property. Erosion has been evident during the past years especially during heavy rains. I have been flooded 8 times and have had to purchase a more expensive flood insurance because of the numerous floodings.

Disruption of the natural flow of the water and the absence the trees and bushes may cause more flooding and more erosion resulting in a change in our property values and an increase in the cost of flood insurance.

I am asking for a complete evaluation of the proposed variance and how this will affect my property: erosion, flooding, destroying of trees and other flora before a variance is addressed.

Thank you very much.

Sincerely,

Wanda G. Meurs

Wanda G. Meurs , 200 A Kalona St., Hilo, Hawaii 96720

Phone: 808-990-4808 (cell), 808-969-3222 (office)

EXHIBIT

D

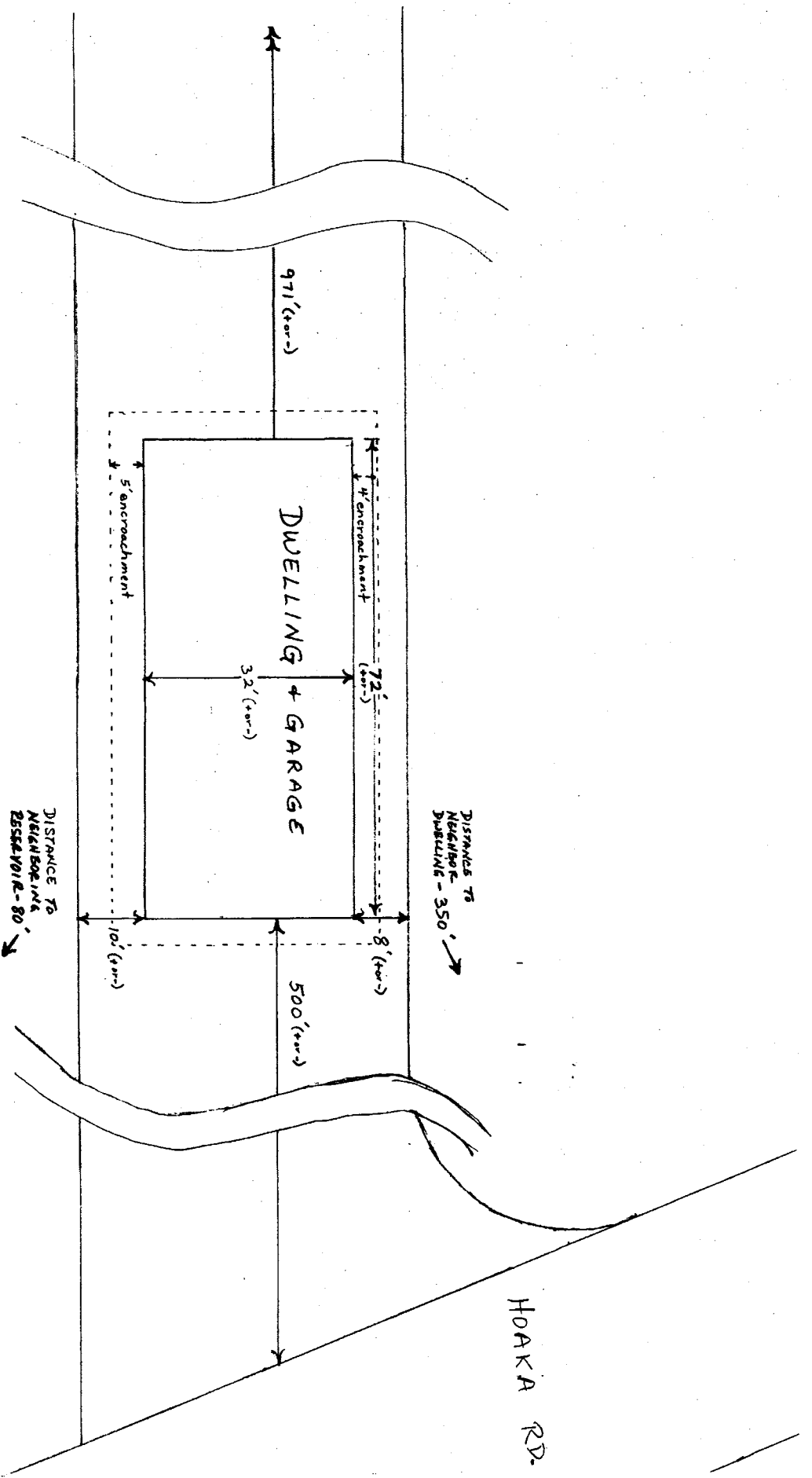
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EXHIBIT

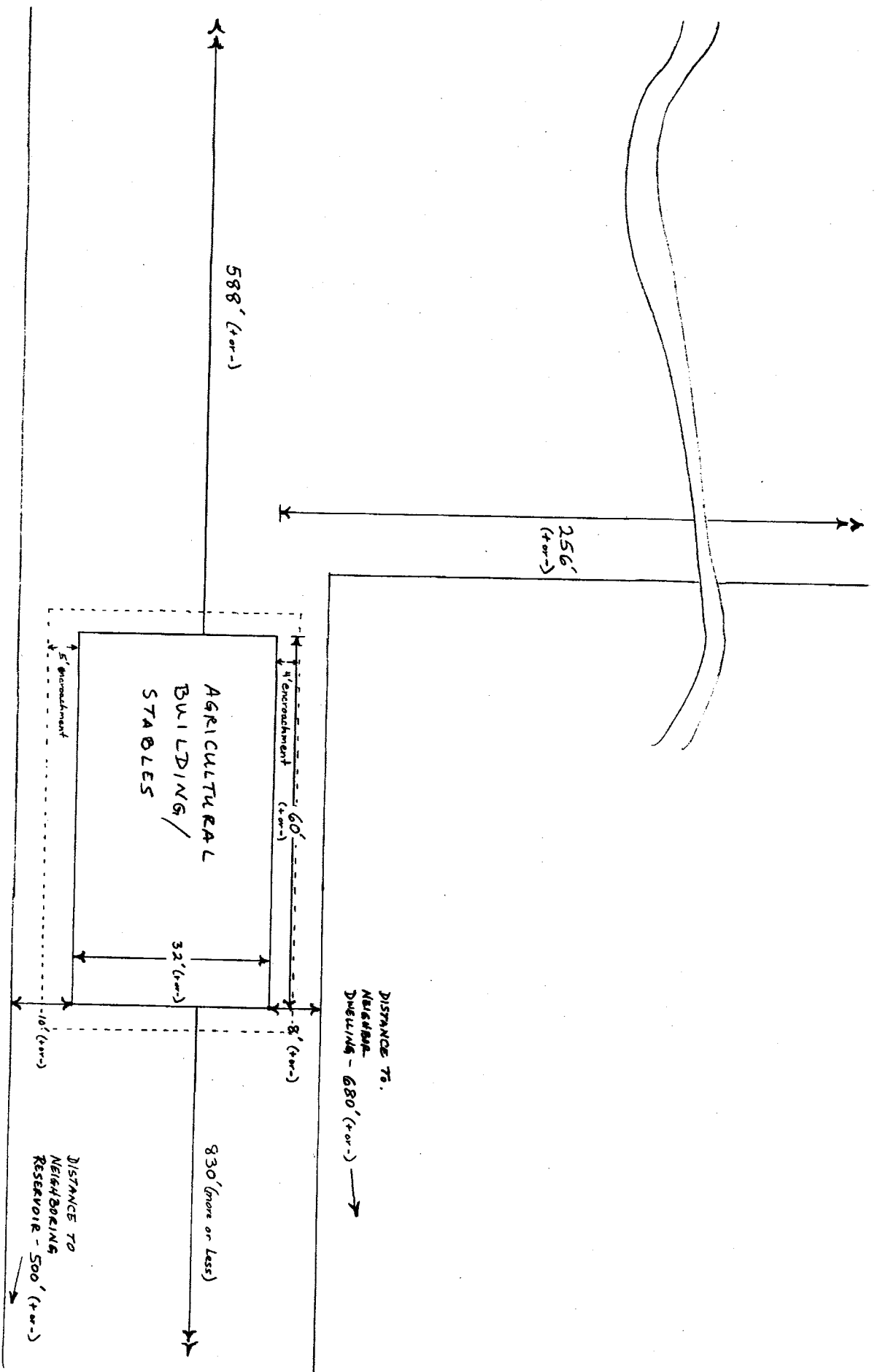
E



EXHIBIT

F

Proposed Side Setback Variance
 Owners: Robert & Yvonne Bailey
 TMK: (3) 2-4-006-049
 PAGE 1 OF 2
 SCALE: 1" = 10'



EXHIBIT

G

PROPOSED SIDE SETBACK VARIANCE
 OWNERS: ROBERT & YVONNE BAILEY
 TRK: (S) 2-4-006-049
 PAGE 2 OF 2
 SCALE: 1" = 10'