

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

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

October 12, 2017

Laura Brezinsky
P. O. Box 504
Keaau, Hawaii 96749

Dear Ms. Brezinsky:

SUBJECT: Application: Variance - VAR 17-000426
Applicant: LAURA BREZINSKY
Owner: LAURA BREZINSKY
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76 Minimum Yards, Article 4, Division 4, Section 25-4-44(a) Permitted Projections into Yards and Open Space Requirements (Encroachment into Southeast Side Yard Setback)
Tax Map Key: 1-1-101:050 (Lot 8502)

The Planning Director certifies the **approval** of Variance No. 17-000426, subject to variance conditions. The variance will allow a storage shed to remain with a minimum 15-foot southeast side yard setback, in lieu of the required 20-foot side yard setback. These exceptions are in lieu of the required 20-foot side yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 20.001 acres and is located in Kopua Farms Subdivision, Keaau, Puna, Hawai'i. The subject property's street address is 11-2991 Waunaja O Pele Road, Keaau, Hawaii.
2. **County Zoning.** Agricultural – 3 acres (A-3a).
3. **State Land Use Designation.** Agricultural.
4. **Setback Requirements.** 30-foot front and rear; 20 feet for sides.

5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on May 15, 2017. The variance application's site plan was prepared by the owner and denotes a portion of the storage shed built into the southeast side yard setback. **(See Exhibit A & B-Site Plan)**

The site plan was prepared by the owner and shows a section of the storage shed encroaching 5 feet into the 20-foot southeast side yard setback in lieu of the required 20-foot southeast side yard setback. The encroachment leaves the storage shed a minimum 15-foot southeast side yard setback, in lieu of the required 20-foot side yard setback requirement.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit #BH2006-1863H was issued on July 25, 2006, and finalized on February 8, 2007, for a single-family dwelling consisting of 2 bedrooms, 1 bathroom, galvanized water tank, open covered entry, living room, and kitchen. An additional building permit B2005-0817H was issued on April 5, 2005, for a 72-square feet storage shed and finalized on February 5, 2007.

7. **Agency Comments and Requirements.**

a. State Department of Health (DOH) memorandum dated June 5, 2017 states: "*The Health Department found no environmental health concerns with regulatory implications in the submittals.*"

b. No comments received from Department of Public Works Building Division.

8. **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 June 15, 2017 and July 14, 2017, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 5, 2017.

9. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.

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 allow the storage shed to remain with a minimum 15-foot southeast side yard setback, in lieu of the required 20-foot side yard setback requirement.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the 72-square foot storage shed was authorized under building permit B2005-0817H, issued on April 5, 2005, and finalized on February 5, 2007. It also appears that the affected agencies during construction of the storage shed and the building permit inspections of the premise, did not disclose any building encroachment issues or building setback irregularities at that time.

The above special and unusual circumstances determine the owner was not at fault in creating the encroachment violation. Requiring them to fix the encroachments would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the water tank was in compliance with all County requirements.

Alternatives

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

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

The applicant could be requested to remove the building encroachments and/or redesign the storage shed denoted on the site plan to fit within the correct building envelope as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the storage shed was in compliance with all County requirements. Any structural or design correction of the storage shed to meet setback requirement would leave unattractive reconstruction scars.

The applicant/owner also owns the adjacent property. Because she is in the process of selling the subject property, she prefers not to consolidate the subject property with the adjacent side yard property and re-subdivide the property to modify property lines and adjust minimum side yard setback. There are no other reasonable alternatives to resolve the encroachment issue.

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.

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. The storage shed was constructed under valid building permits and other construction permits issued by the County of Hawai'i. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding 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 storage shed built on the subject property ("LOT 8502") 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. Should the storage shed built on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, Zoning and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.

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4. An Ohana or Additional Farm Dwelling permit 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.
5. 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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-17-000426.

Sincerely,



MICHAEL YEE
Planning Director

LHN:nci

P:\public\Admin Permits Division\Variances From CoH02\Zone1\VAR-17-000426 TMK 1-1-101-050 Brezinsky.rtf5

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

1-1-101-050

General Overview of ENTIRE parcel

PrintFreePaper.com

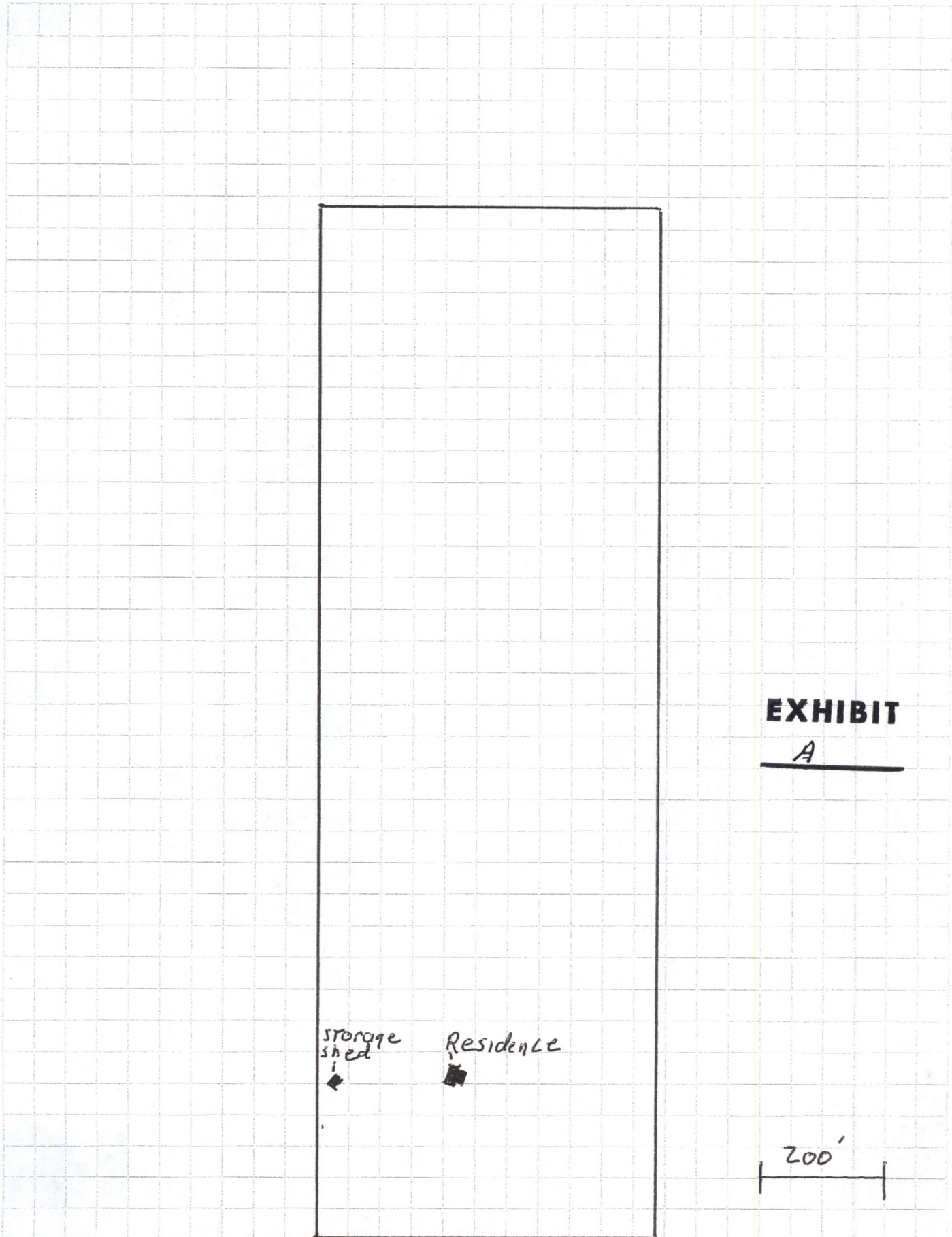


EXHIBIT
A

storage
shed
↓

Residence
↓

200'

Waimaka © Pele

1-1-101-050 Scaled drawing showing storage shed, Parcel Boundary and Set Back

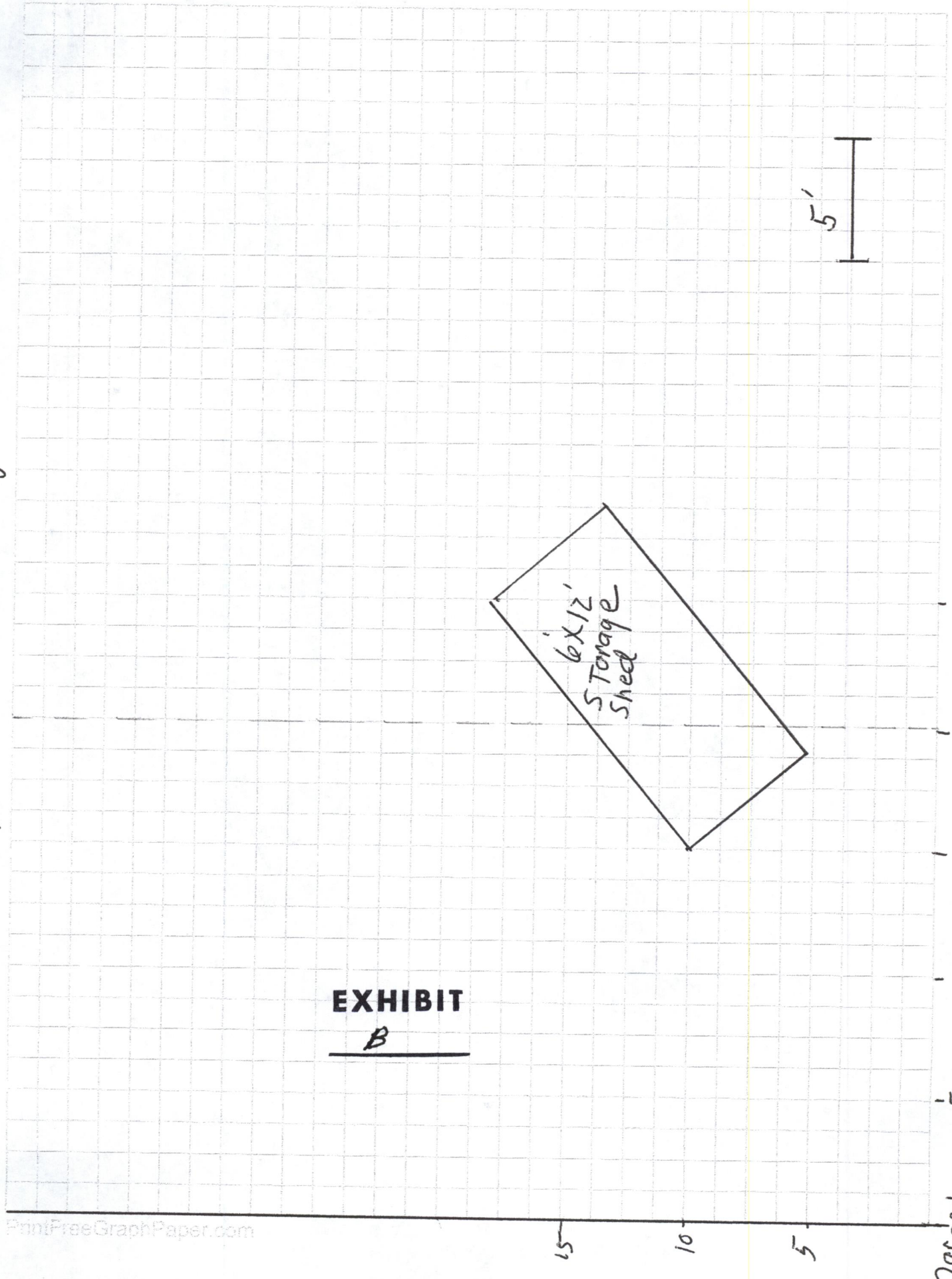


EXHIBIT
B

Parcel Boundary

20 Set Back

5'