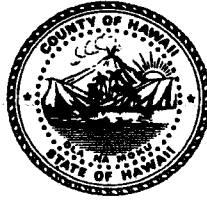


Harry Kim  
Mayor



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 14, 2019

Lawrence R. Alderman  
P.O. Box 377639  
Ocean View, HI 96737-7639

Dear Mr. Alderman:

**SUBJECT: Application: Variance - VAR 19-000521**  
**Applicant: LAWRENCE R. ALDERMAN**  
**Owners: LAWRENCE R. ALDERMAN**  
**Request: Variance from Chapter 25, Zoning, Article 5,**  
**Division 1, Section 25-5-76, Minimum Yards Requirements and Section**  
**25-4-44, Permitted projections into yards and open spaces**  
**(Encroachments into West Rear Yard Setback and South Side Yard**  
**Setback)**  
**Tax Map Key: 9-2-056:070 Lot 18**

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The Planning Director certifies the **approval** of Variance No. 19-000521, subject to variance conditions. The variance will allow portions of the proposed water catchment tank walls to be built with a minimum 10.00-foot rear (west) yard setback with minimum 10.00-foot (west) open space, in lieu of the required 30-foot rear yard setback and 24-foot open space requirement, and 10.00 foot side (south) yard setback with minimum 10.00-foot (south) open space, in lieu of the required 20-foot side yard setback and 14-foot open space requirement. These exceptions are in lieu of the required 30-foot rear yard setback, and 24-foot open space requirement, and 20-foot side yard setback and 14-foot open space requirement, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards requirements and Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property, Lot 18, contains approximately 43,610 square feet and is situated within the Por. Hawaiian Ocean View Estates, Gr. 2791, Kahuku, Kau, Hawai'i. The subject property's street address is 92-8855 Reef Parkway, Hawaiian Ocean View Estates, HI 96740.

2. **County Zoning.** Agricultural – one acre (A-1a).
3. **State Land Use Designation.** Agricultural.
4. **Setback Requirements.** 30 feet front and 20 feet for side.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on May 6, 2019. The variance application's site plan submitted June 6, 2019 was prepared by Lawrence R. Alderman and denotes that portions of the proposed water catchment tank would be built into the rear (west) yard setback and side (south) built into the rear (west) and side (south) yard open space requirement. **(See Exhibit A-Site Plan)**

The site map submitted June 6, 2019 shows portions of the proposed water catchment tank walls encroaching 20.00-foot into the minimum 30-foot (west) rear yard setbacks, in lieu of the required 30 foot-front yard setback and encroaching 4.00-feet into the minimum 24-foot (east) open space requirement

The encroachment leaves a minimum 10-foot rear (west) yard setback, in lieu of the required 30 foot rear yard setback, and a minimum 10-foot rear yard open space, and a minimum 10-foot side (south) yard setbacks, in lieu of the required 20 foot side yard setback, and a minimum 10-foot side yard open space, in lieu of the 14-foot open space requirement. These exceptions are in lieu of the required 30-foot rear yard setback, and 24-foot open space requirement, and 20-foot side yard setback and 14-foot open space requirement, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards requirements and Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements.

6. **County Building Records.** Hawai'i County Real Property Tax (RPT) Office records indicates there are no building permits on file for this property and the parcel is being taxed for its land value only; no assessments for buildings.
7. **Agency Comments and Requirements.**
  - a. State Department of Health (DOH) memo dated July 18, 2019. "The Health Department found no environmental health concerns with regulatory implications in the submittals."
  - b. No comments were received from Department of Public Works - Building Division as of this date.
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 May 30, 2019 and June 6, 2019, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 10, 2019.

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.
10. **Time Extension.** The applicant's supplemental variance information was submitted June 6, 2019, thereby extending the deadline.

## **GROUND FOR APPROVING VARIANCES**

### **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 request the encroachment of the proposed 4-foot tall water catchment tank walls into the 30-foot rear (west) yard and side (south) yard setbacks and encroachment of portions water catchment tank walls encroaching into the rear and side open space requirement, as required by the Zoning Code.

The site map submitted June 6, 2019 shows portions of the proposed water catchment tank walls encroaching 20.00-foot with a minimum 30-foot (west) rear yard setbacks, in lieu of the required 30 foot-front yard setback and encroaching 4.00-feet into the minimum 24-foot (east) open space requirement. In addition, the site plan shows portions of the proposed water catchment tank walls encroaching 10.00-foot with a minimum 20-foot (west) rear yard setbacks, in lieu of the required 20 foot-front yard setback and encroaching 4.00-feet into the minimum 14-foot (east) open space requirement.

No evidence has been found to show indifference or premeditation by the current owner or builders to deliberately create or intentionally allow the proposed encroachment problems to occur. It appears that due to the topographic conditions, and steepness of the lot, and for accessibility from a water delivery truck along the access driveway along the south side of the property, and distance of the water tank by the proposed location of a small dwelling, the most suitable placement of the water catchment tank is the requested location within the rear and side yard setbacks, and projection into the open space requirements.

The above special and unusual circumstances determine the owner is not at fault in creating the encroachment violation and requiring them to locate the water catchment tank to an alternative location to eliminate the encroachments would interfere with best use and development of the subject property.

## 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 proposed construction of a water catchment tank in the affected rear and side yard and open space requirements of the subject property include the following actions:

Relocate and cause additional grading for the proposed water catchment tank as 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 did his best to locate the proposed tank in consideration of the topographic and steep characteristics of his lot and proximity to access of water delivery and to the proposed dwelling.

There are no 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 structure 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. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

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.

This can be substantiated, to some degree, by the fact that no comments or objections were

received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

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 survey map, the proposed four feet tall by eighteen feet wide water catchment tank to be built on the subject property ("LOT 18") will not meet the minimum rear (west) yard and side (south) yard and open space 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 water catchment tank 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.
4. An Ohana 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.

Lawrence R. Alderman

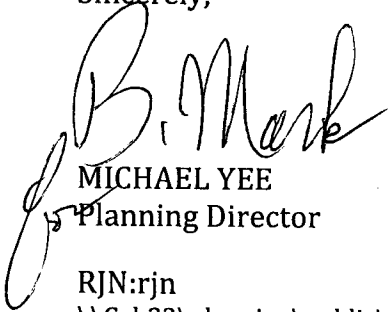
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Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-16-000466.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Yee", written in a cursive style.

MICHAEL YEE

Planning Director

RJN:rjn

\\Coh33\planning\public\Admin Permits Division\Variance\2019\Var-19-000521 Alderman -  
Setback\apprvl -.doc

xc: Natalie Whitworth, DPW Engineering Division  
Real Property Tax Office (Kona)  
Gilbert Bailado, GIS

ker  
rest

623ft to Reef Pkwy

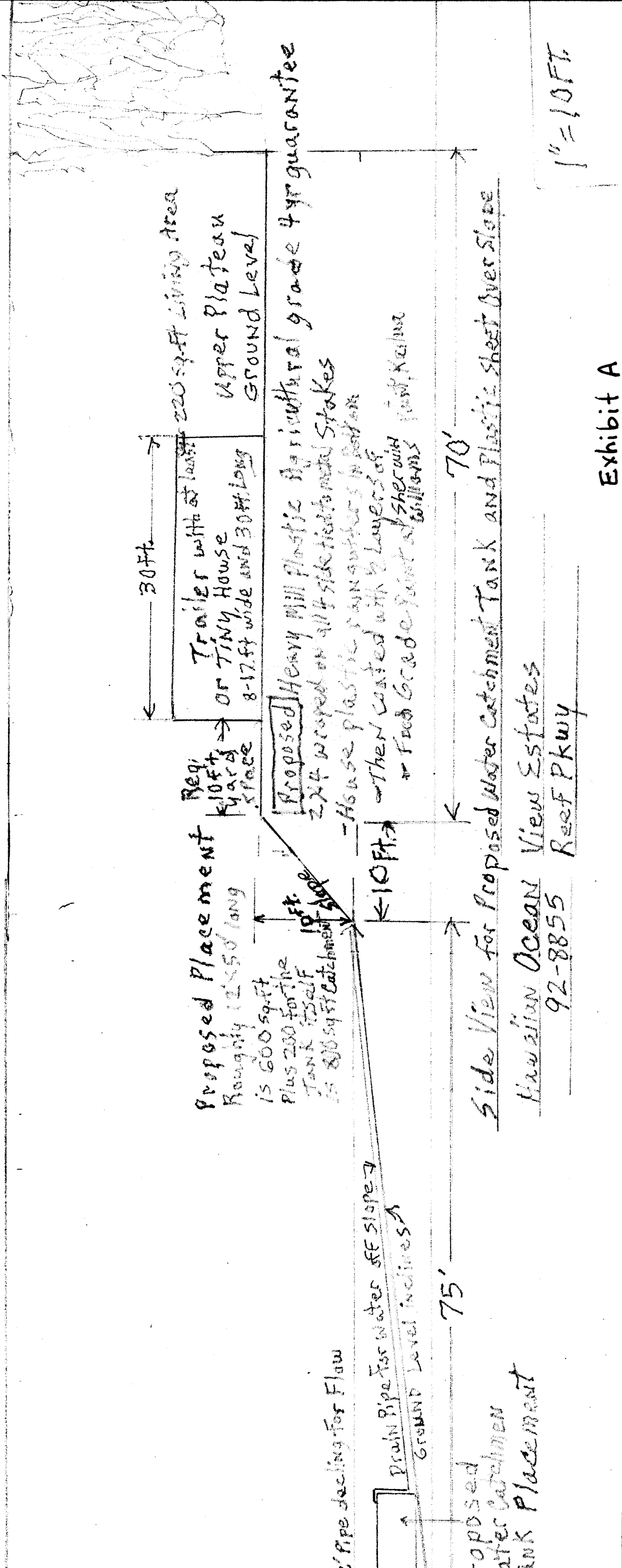


Exhibit A

Back of  
REAR  
Footprint  
LINE

623 ft To Reef Pkwy

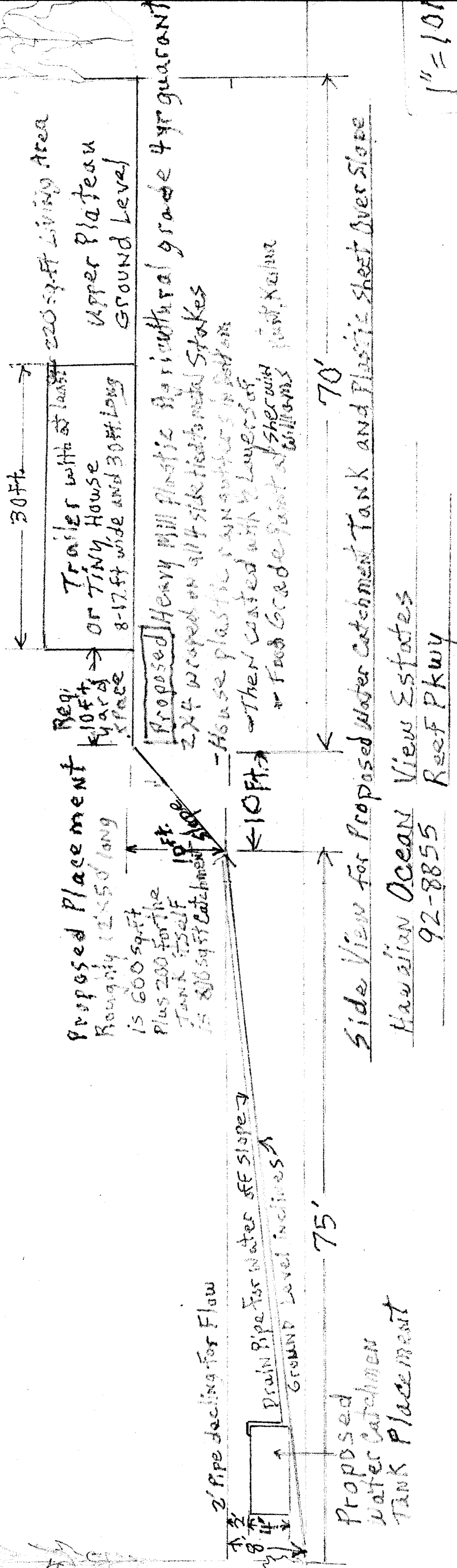


Exhibit A