



COUNTY OF PLACER
Community Development/Resource Agency

Michael J. Johnson, AICP
Agency Director

PLANNING
SERVICES DIVISION

EJ Ivaldi, Deputy Director

HEARING DATE: January 22, 2015
ITEM NO.: 1
TIME: 10:05 AM

TO: Placer County Planning Commission
FROM: Development Review Committee
DATE: January 8, 2015
SUBJECT: ROGERS VARIANCE (PVAA 20120154)
APPEAL OF ZONING ADMINISTRATOR'S DENIAL OF A VARIANCE
SUPERVISORIAL DISTRICT 3 (HOLMES)

GENERAL/COMMUNITY PLAN: Placer County General Plan

COMMUNITY PLAN DESIGNATION: Rural Residential 1-10 acre minimum

ZONING: RA-B-100-SP (Residential Agricultural, combining minimum building site of 100,000 square feet, combining Special Purpose)

ASSESSOR'S PARCEL NUMBER: 032-152-041-000

STAFF PLANNER: Melanie Jackson, Associate Planner

LOCATION: 8555 Irish Lane, Newcastle

PROJECT APPLICANT: Daryl Rogers

APPELLANT: Daryl and Monica Rogers

PROPOSAL:

The applicant requested approval of a Variance to allow for the construction of an approximately 396 square foot shed one foot from the east side property line (where 30 feet is normally required) and the construction of an approximately 420 square foot barn eight feet from the east side property line (where 30 feet is normally required). The applicant also requested a Variance to allow for the placement of an animal enclosure zero feet from the east property line (where 30 feet is normally required) and to allow the animal enclosure to be located closer to the east property line than allowed per section 17.56.020(C)(Accessory Buildings and Uses; Animal Enclosures).

The Zoning Administrator denied all Variance requests at its October 16, 2014 meeting. An appeal (Attachment A) of the Zoning Administrator's decision was later filed by Daryl and Monica Rogers on October 23, 2014.

CEQA COMPLIANCE:

For the reasons outlined below, staff's recommendation is for denial of the appeal and upholding the Zoning Administrator's action to deny the requested variances. Under Section 15270 of the California Environmental Quality Act ("CEQA") Guidelines, CEQA does not apply to projects that a public agency disapproves.

PUBLIC NOTICES AND REFERRAL FOR COMMENTS:

Public notices were mailed to property owners of record within 300 feet of the project site. Community Development Resource Agency staff and the Departments of Public Works, Environmental Health, Air Pollution Control District and Newcastle/Ophir MAC were transmitted copies of the legal notice for review and comment. All County comments have been addressed and conditions have been incorporated into the staff report.

SITE CHARACTERISTICS:

The property consists of approximately 2.4 acres and contains moderate tree coverage. The property slopes heavily downward from the north side to the south side of the property and is developed in tiered segments where the property has been leveled out. The property is developed with a single-family residence, a secondary residence, an existing shop, horse arena, pool, septic system and leach fields. The property also contains a pond. The surrounding properties range in size from approximately 1.1-25 acres and are also developed with single-family residences.

EXISTING LAND USE AND ZONING:

Location	Zoning	Placer County General Plan Land Use Designations	Existing Conditions and Improvements
Site	RA-B-100-SP (Residential-Agricultural, combining minimum building site of 100,000 square feet, combining Special Purpose)	Rural Residential, 1-10 acre minimum	Single-family residential
North	RA-B-100 (Residential-Agricultural, combining minimum building site of 100,000 square feet)	Rural Residential, 1-10 acre minimum	Single-family residential
South	RA-B-100-SP (Residential-Agricultural, combining minimum building site of 100,000 square feet, combining Special Purpose)	Rural Residential, 1-10 acre minimum	Single-family residential
East	RA-B-100-SP (Residential-Agricultural, combining minimum building site of 100,000 square feet, combining Special Purpose)	Rural Residential, 1-10 acre minimum	Single-family residential
West	RA-B-100-SP (Residential-Agricultural, combining minimum building site of 100,000 square feet, combining Special Purpose)	Rural Residential, 1-10 acre minimum	Single-family residential

BACKGROUND:

Code Enforcement

This Variance originally came to the attention of the Development Review Committee by way of the Code Enforcement Section of the Building Services Division. The subject property was noticed for a Code Enforcement violation on January 24, 2011. The violation resulted from the construction of a 396 square-foot shed without the benefit of a building permit within the minimum setback requirement of 30-feet from the east side property line. Code Enforcement informed Mr. Rogers that the storage shed

required a building permit and that a Variance request was required in order to allow for the shed to remain within the 30-foot, east side setback, or that it would need to be removed.

On March 20, 2012, Mr. Rogers applied for a building permit (T45230.12) for the 396 square-foot shed. A few months later, on June 6, 2012, Mr. Rogers applied for a variance to allow the shed to remain within the 30-foot east side setback.

Zoning Administrator Hearings

On September 20, 2012, the Rogers Variance was considered by the Placer County Zoning Administrator. Prior to the hearing, a field review was conducted on the subject property and it was discovered that the shed (the subject of the Variance request) appeared to be located closer to the east side property line than what was represented on the site plan. In response, it was determined that a survey of the east side property line should be conducted to determine the actual distance of the shed from the property line. At the hearing, the Zoning Administrator took action to continue the item until the survey was completed.

Following the hearing and before the property line survey was completed, additional code enforcement violations on the property were identified. These violations included construction of an approximately 420 square foot barn located eight feet from the east side property line (where 30 feet is normally required), the placement of an animal enclosure zero feet from the east property line (where 30 feet is normally required) and an animal enclosure located closer to the common property line (east) than allowed per section 17.56.020(C)(Accessory Buildings and Uses; Animal Enclosures). As a result, the original Variance request was modified by the applicant/appellant to address these violations.

On October 16, 2014, the Zoning Administrator heard the appellants request for a variance a second time. The Zoning Administrator took comments from the Development Review Committee, the applicant (appellant) and the public. After closing the public comment period, the Zoning Administrator took action to deny the Variance. The Zoning Administrator could not make the finding that, due to the size, shape or topography of the subject property, a variance was necessary for construction on the subject property. The reason for this is three-fold:

- 1) The subject property is 2.4 acres in size, consistent with the minimum parcel size required for the zoning of the project site (Residential Agricultural, combining a 2.3 acre minimum parcel size). The size of a 2.4 acre property would allow for several areas for possible construction or the placement of a shed, barn or animal enclosure and, the required setbacks for this zone district are based in part on the minimum parcel size to allow for adequate buildable area on the project site.
- 2) The shape of the property is not irregular, and would not restrict the buildable area on the property such that a variance would be necessary for construction of the shed, barn or animal enclosure.
- 3) The topography of the property slopes heavily downward from the north side to the south side of the property. Although this does cause some restrictions on the buildable area of the site, the topography is not restrictive to the extent that a variance is required for construction of the shed, barn or animal enclosure on the subject property.

In addition, the Zoning Administrator also noted that the requested Variance would not be the minimum departure from the requirements of Placer County Code or the Residential Agricultural zone district. Moreover, the Zoning Administrator was able to identify an alternative building site on the northeast portion of the property.

January 8, 2015 Planning Commission Hearing

The Appeal of the Zoning Administrator's denial of the Roger's Variance requests was taken forward to the Planning Commission at its meeting on January 8, 2015. Prior to the hearing, the appellants requested a continuance due to not being able to attend on that date. At its January 8, 2015 meeting, the Planning Commission took action to continue the appeal to 10:05 AM on January 22, 2015.

LETTER OF APPEAL:

On October 23, 2014, a timely Appeal (Attachment A) of the Zoning Administrators denial of the Rogers Variance was filed by Daryl and Monica Rogers.

RESPONSE TO APPEAL LETTER

As stated above, the Zoning Administrator took action to deny the Variance requests based on an inability to make two of the necessary findings. In the Appeal materials, the appellants assert that all required Variance findings can be met based on restraints on the subject property and that the Zoning Administrator erred in his denial of the variances.

- 1. The appellants assert that there are special circumstances applicable to the subject property, including steep topography, leach fields, ponds and natural runoff. The appellants further assert that because of these circumstances, the strict application of the Zoning Ordinance would deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications.**

Section 17.60.100(D)(1)(a) (Variance; Action on a Variance; Findings) of the Placer County Zoning Ordinance states that a hearing body can only grant a Variance when it determines that the grounds for the Variance satisfy the criteria of the required variance findings provided in that section. It should be noted that the Zoning Code provisions for findings to support the grant of a variance comply and reiterate those found in State law. These findings include a requirement that the property has special circumstances that, without approval of a Variance, would deprive the property of privileges enjoyed by other properties in the vicinity and under identical zoning classification.

At the hearing, the Zoning Administrator determined that the subject property does not have special circumstances that would warrant the need for the Variance. The Zoning Administrators reasoning was that, while the subject property does include steep topography, leach fields, ponds and natural runoff, these circumstances did not deprive the property of alternate buildable areas. The Zoning Administrator identified the northeast portion of the property, which does not include leach fields, ponds or natural runoff as an example of an alternative building site. Additionally, it was also noted that the requested Variance would not be the minimum departure from the requirements of Placer County Code because there is enough area where the structures and the animal enclosure could be located in compliance with required setbacks.

- 2. The appellants assert that approval of the requested Variance would not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zone district. The appellants note in their appeal materials that the property located directly to the east of the subject property (Parcel 032-152-010) was previously granted a variance (PVAA 3264) that allowed the construction of two structures to be located 15-feet from the property line (property line shared with subject parcel). The appellant also notes that the property located directly to the west of the subject parcel contains two unpermitted agricultural structures. The appellants conclude that, the Variance request is consistent with the limitations on neighboring properties and therefore, would not constitute a grant of special privileges.**

In order for a hearing body to approve a Variance to structural setbacks, they must first make a determination that, due to the size, shape or topography of a parcel, the strict application of the Zoning Ordinance would deprive the parcel of those privileges that would otherwise be allowed in the Zone District. Because each parcel is unique, only circumstances specific to the subject each parcel are considered when making this determination and cannot be applied to surrounding properties.

In the present case, after reviewing the size, shape and topography of the subject property, the Zoning Administrator made the determination that the strict application of the Zoning Ordinance would not deprive the subject property of privileges that would otherwise be allowed in the zone district. As a result, the Zoning Administrator could not make the required findings (discussed above) and took action to deny the Variance. State law, as reiterated in County Code, requires the approving body make the above findings in the affirmative in order to grant a variance. Those findings must be supported by evidence in the record. As discussed above, the Zoning Administrator identify no evidence to support affirmative findings and, in fact, was able to identify evidence of an alternate location on the site for such structures.

RECOMMENDATION:

As detailed in this report, staff could find no merit in the appeal issues raised by the appellant because the size, shape and topography of the project site does not restrict the property to the extent that a variance is necessary for the construction of the shed, barn or animal enclosure. Moreover, there are alternative buildable areas on the property that would allow for construction without the need for a Variance. Staff has also not found any new evidence in the appellant's arguments above that would support a reversal of the Zoning Administrator's decision.

It is staff's recommendation that the Planning Commission uphold the decision of the Zoning Administrator and take the following actions supported by the following recommended findings:

1. Deny the appeal filed by Daryl and Monica Rogers.
2. Uphold the Zoning Administrator's Decision to deny all Variances.

FINDINGS:

CEQA:

Pursuant to Section 15270 of the CEQA Guidelines, CEQA does not apply to projects that a public agency disapproves.

VARIANCE (DENIAL):

1. There are no special circumstances applicable to the subject property such that the strict application of the Zoning Ordinance would deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications, because alternative locations exist within the subject property that would allow the shed, bard and animal enclosure to be built within the required setbacks. In addition, the size of the property (2.4-acres) is consistent with the minimum parcel size of the zone district and the shape and topography of the property are not unusually restrictive to the extent that a variance/s is warranted.
2. The granting of this Variance would constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zone district because it would allow for the location of structures within the minimum setback from the property line without justification and because alternative locations exist within the subject property that would allow for the construction of the shed, bard and animal enclosure to within the required setbacks.
3. The Variance would authorize a use not otherwise allowed in the zone district because the location of the structures is inconsistent with the minimum side setback requirements (30-feet from the side property line) set forth by the Residential-Agricultural zone district. In addition, alternative buildable areas have been identified on the subject property such that the construction of the shed, barn and animal enclosure would not require a variance.
4. The granting of the Variance does, under the circumstances of the particular case, adversely affects public health and safety and is materially detrimental to the public welfare and is injurious to nearby property or improvements. The approval of the variance would allow structures to encroach into side

setbacks, which are required for light, space and air and to reduce fire danger. Additionally, the location of an animal enclosure zero feet from the property line may cause adverse effects to neighboring properties because of the nature of keeping large animals on a property.

The Variance is not consistent with the *Placer County General Plan*.

Respectfully submitted,



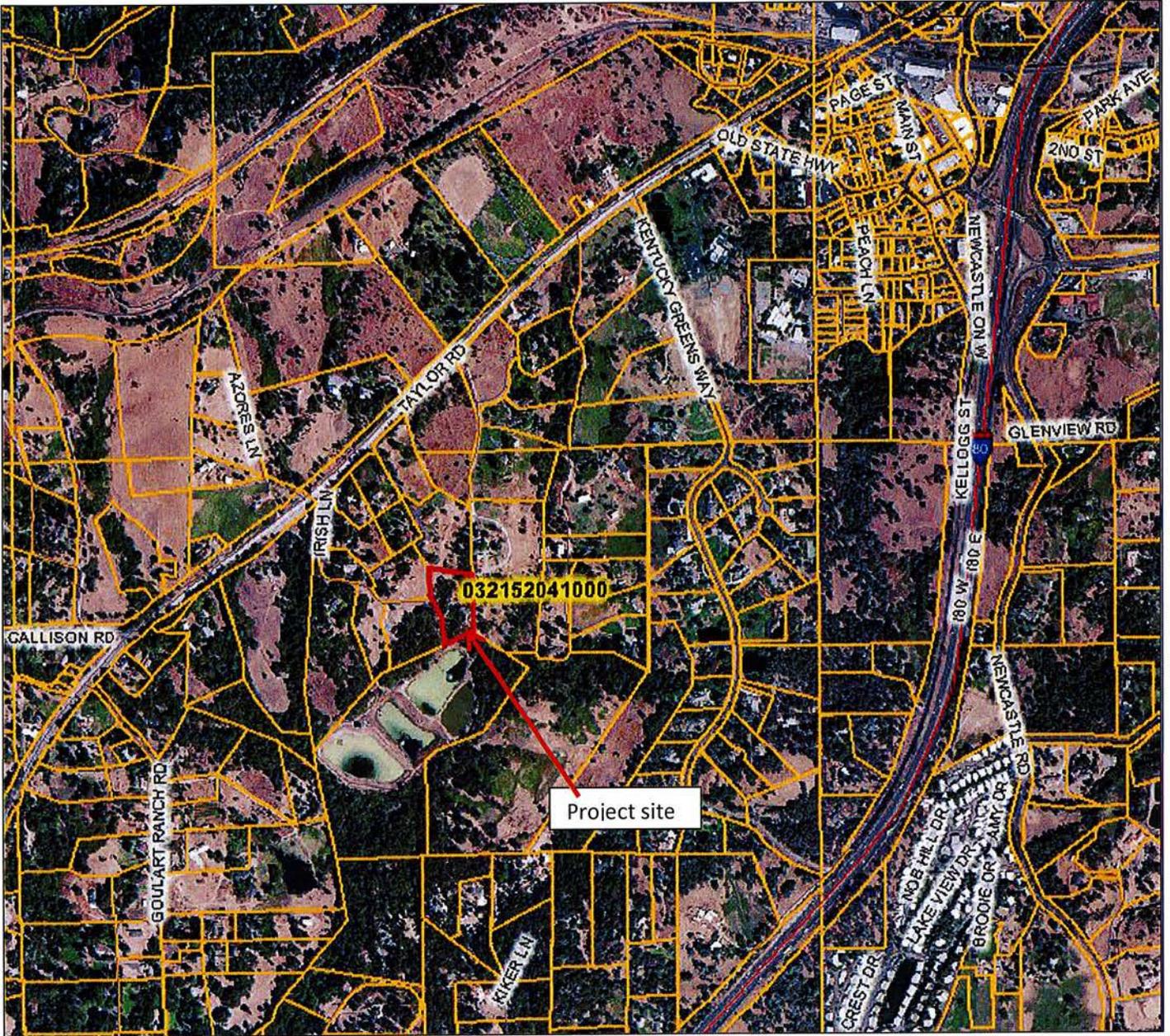
Melanie Jackson, Associate Planner

ATTACHMENTS:

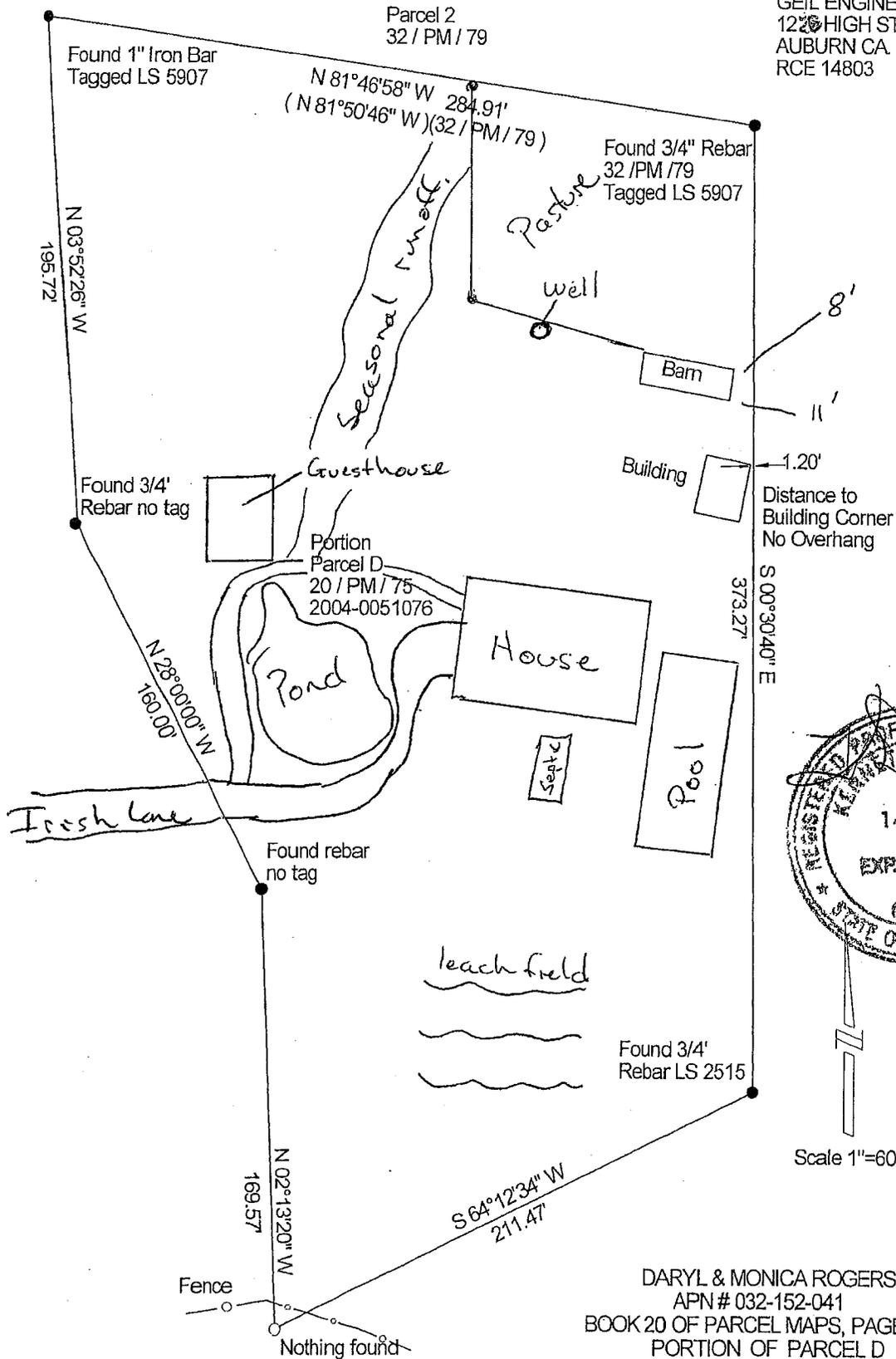
- Attachment A – Vicinity Map
- Attachment B – Site Plan
- Attachment C – Appeal Filed October 23, 2014
- Attachment D – October 16, 2014 Zoning Administrator Staff Report
- Attachment E – Conditions of Approval
- Attachment F – Correspondence

- cc: Daryl and Monica Rogers, Appellants
Karin Schwab, County Counsel
Michael Johnson, CDRA Director
EJ Ivaldi, Deputy Planning Director
Sharon Boswell, Engineering and Surveying Division
Mohan Ganapathy, Environmental Health Services
Andy Fisher, Parks Department

O: PLUS/PLN/PROJECT FILES/2012/20120154 Rogers/PC 2014/Rogers D SR.docx



GEIL ENGINEERING
 1225 HIGH ST.
 AUBURN CA. 95603
 RCE 14803



DARYL & MONICA ROGERS
 APN # 032-152-041
 BOOK 20 OF PARCEL MAPS, PAGE 75
 PORTION OF PARCEL D

Variance Request for setback requirements for Stalls, Shed, and Animal enclosure at 8555 Irish Lane,
Newcastle, CA. 95658

To: Placer County Planning Commission

On Wednesday, October 15th, 2014, my variance request for the above property was denied due to not meeting the "special circumstances" guidelines of the Planning and Zoning Code. I am writing to appeal that decision on the grounds that my request does meet the "special circumstances" guidelines and not all evidence was available at the time of the initial hearing for the Planning administrator to make the proper decision.

HISTORY- I would first like to give some history on this issue that will bring some facts to light regarding my "intent" and the accusation by one neighbor that I "willfully broke the rules and should not be rewarded". I have lived on this property for over 17 years and all that time I had what I referred to as an "ag building" or "shed". (Pictures exhibit A and B). This structure was there when I bought the property. I had never had any complaints about this building and I never believed that it was a structure that required a permit. In 2004, when I remodeled my home, the county informed me that the pool that was already there before I purchased was not permitted and I needed to do this and get a variance for its location. Because this was news to me I had them check the entire file for my property and the inspector looked at my entire property so that I could be sure I took care of any outstanding issues at that time. He found none and did not mention the shed at all. So I took care of the pool permit and variance and moved on.

In 2011, I decided to build a secondary dwelling so that I could move my mother into it on my property. After careful consideration of where it would fit, it was deemed that the best place was actually right where the existing shed was. My plan was to demolish the shed and rebuild it closer to the stables that were already on my property. I went through all the proper permitting procedures for my Mother's house but did not for the shed because I did not think it needed it. As a point of fact, I built the shed at the exact same time as my mothers' home in order to save costs. The same framer, roofer, etc was used. At one point, the inspector for my mothers framing inspection came by for his inspection and had to walk to the shed because that is where my General Contractor was. He walked into the shed being framed and discussed the inspection of my mothers' house while standing there. At no time, did he ask us to stop the building of the shed due to it not being permitted. (See exhibit C showing construction of both structures) I mention this because it has been claimed by one neighbor that I willfully disobeyed the county and built this shed. I built it in plain sight of them and at the same time as inspectors were making regular visits to my home. If I was trying to "sneak one by the county" as my neighbor accused, I chose a very bad time to do so as I would have over 10 different visits by inspectors on my mothers' house. This neighbor has also stated that as a licensed Real Estate agent I know all of the permitting and code rules. I am a licensed real estate agent but I have no expert knowledge of the zoning and building codes in Placer County. In fact, our contracts state clearly that any code violations, permit violations, etc. are the sole responsibility of the buyers since licensed agents are not experts in this. We are tested and regulated on purchase contracts and sales contracts, not building codes.

TIMELINE OF CURRENT ISSUE- This issue has dragged on for almost 2 years due to many delays. I would like to explain the entire process so that the delays can be understood. Sometime after the

completion of both my Mothers' home and the shed, I received a complaint from the Civil dept that a neighbor had filed regarding the shed needing a permit. I called in to the county and answered their questions regarding the building. To my surprise, they stated it did need a permit and I complied. I provided the county with as built letters from the contractors that built it as the county requested. After several back and forths of getting the paperwork in order, it was brought to my attention that the permit could not be issued without a variance due to the shed being closer than the setbacks requirement. This was also a surprise since my home was closer than 10 feet as well and it passed its final inspection. In addition, I was surprised because my neighbors mobile homes and shop were all closer to the property line than my house was and that was allowed. I came to learn that the setback requirements had changed over the years and that in addition, my neighbor had applied and received variances for his structures being too close to the property line. Because of this I was treated as if this was "no big deal" and to just fill out the variance request and turn it in. I did this but then two more problems came up. First the county now asked me to go back and get a survey to determine exactly where the property line was because they were concerned that the variance request needed to be exact on the measurements. Second, they now were asking me to include in my variance request my horse stalls and back pasture. This had never come up before in any of the discussions and these items had been here longer than the shed or my mother's home. I saw no reason why this needed to be done as well but I still complied and included them on my variance request. I had my two horses in these stalls for several years with no issues whatsoever. My neighbors on both sides have horse stalls, goat barns and shops and none of them are permitted. I am not really sure to this day, what structures require permits and which do not, but I decided to comply with the staff's recommendation because they once again had a very nonchalant attitude of just pay the fees, fill out the forms and this will all be done with. In fact, the staff recommended approval of this variance but it was still denied. That is why I was taken by surprise at my variance hearing when the request was denied. I had asked staff if I should bring anything to the hearing or if I needed to say anything and I was told it was just a standard procedure and the ZA could ask me questions and that was it. The ZA then denied the request due to not meeting the "special circumstances" requirement of the Variance code. I was not prepared to answer this question as I was unaware anything would be challenged. Since the hearing, I have gone to the county and asked for the "special circumstances" requirement and I absolutely do meet this requirement and I can now show that proof that I did not have with me at the initial hearing. In addition, the staff agreed that day and believed that I did meet the special circumstances. This included Sharon Boswell, Melanie Jackson and one member of Environmental Health.

Why I believe I meet the requirements of the variance code:

The variance code states 5 criteria that I must meet in order to be granted a variance but it is the following two criteria that the ZA felt I did not meet.

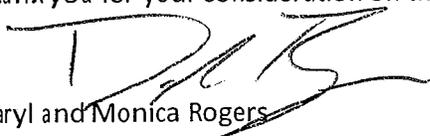
- a. There are special circumstances applicable to the property, including size, shape, topography, location or surroundings, and because of such circumstances, the strict application of this chapter would deprive the property of privileges enjoyed by other property in the same vicinity and under identical zoning classification.
- b. The Variance authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zone district.

I would like to provide the following proof that my request overwhelmingly meets these two criteria. Exhibit D is a Google Earth map image that shows the size, topography, and surroundings that prohibited me from building anywhere else on my property. I have 2.3 acres of land and it is not all buildable. Due to the hillsides, leach fields, ponds, and natural runoff swells, this is the only location I could build my shed. At the hearing the ZA had asked me if I could have built it on the land immediately above my mothers' house and I said no due to the size and topography, but all I had was a 2d drawing that did not show this. I am also including land level picture of this area (Exhibit E) so that you can clearly see that the shed could not be built here.

Exhibit F – This is a Google Map image showing the property line between my neighbor and I and the location of his 2 mobile homes and shop. As you can see his structures are at least as close if not closer than my shed. This neighbor lives at 1030 Cardoso Lane, Newcastle. The ZA approved his request for a variance on the setbacks and he was allowed to build his mobile homes and shop within the setback to my property. In addition Exhibit G shows my neighbors entire 10 acre property. There are acres of locations where he could have built the shop or the mobile homes. How can the ZA state that I have other options on my small 2.3 acres with two ponds and hillside topography, but then in turn grant my neighbor the same variance even though he has flatter land and over 10 acres to build them on? The image shows clearly all the possibilities he has. I am not trying to reverse the ZA's decision on my neighbors property, I am merely stating that based on the evidence I meet the criteria overwhelmingly: Per the criteria, my property is being "deprived of privileges enjoyed by other property in the vicinity and under identical zoning classification", it also does not "grant me special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zone district" See Exhibit  again and you will note in blue the two unpermitted structures on the property on my West side. Those are two stalls and a goat barn. Both are unpermitted. So I have neighbors on both sides of me who enjoy the privileges of stalls, barns, shops and two of them are unpermitted and three of them were granted variances, but I am being denied mine.

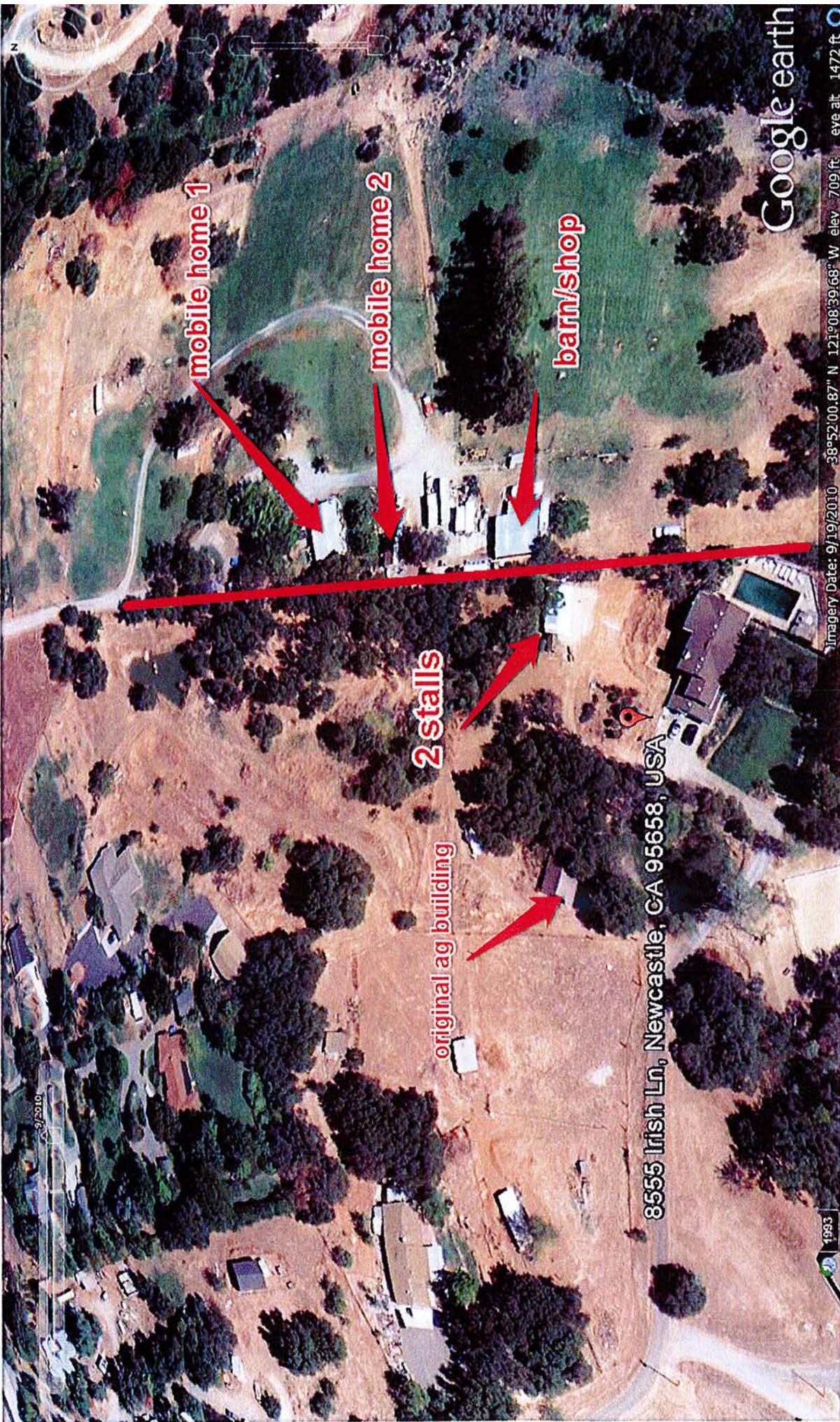
In conclusion I want to state that I do not believe the ZA had all of this information available to make this decision. I truly thought the original hearing was a basic acceptance after talking to Staff and seeing their Staff Report which recommended approval. This is a very important decision to me because this is more than just a shed. My wife is the Head Coordinator for the Del Oro Equestrian Team, the County Coordinator for 4H and the head of the Miners Ravine 4H Horse Group. This is where my wife and I volunteer countless hours of our time holding clinics for young kids allowing them to see Loomis Basin Vet do exams and teach horse health, study farrier techniques and learning proper Horsemanship for the County and State Fair competitions. We would just like the opportunity to continue this and to enjoy the privileges that our neighbors currently enjoy as well.

Thank you for your consideration on this matter.

 
Daryl and Monica Rogers

8555 Irish Lane, Newcastle, Ca. 95658

Exhibit A

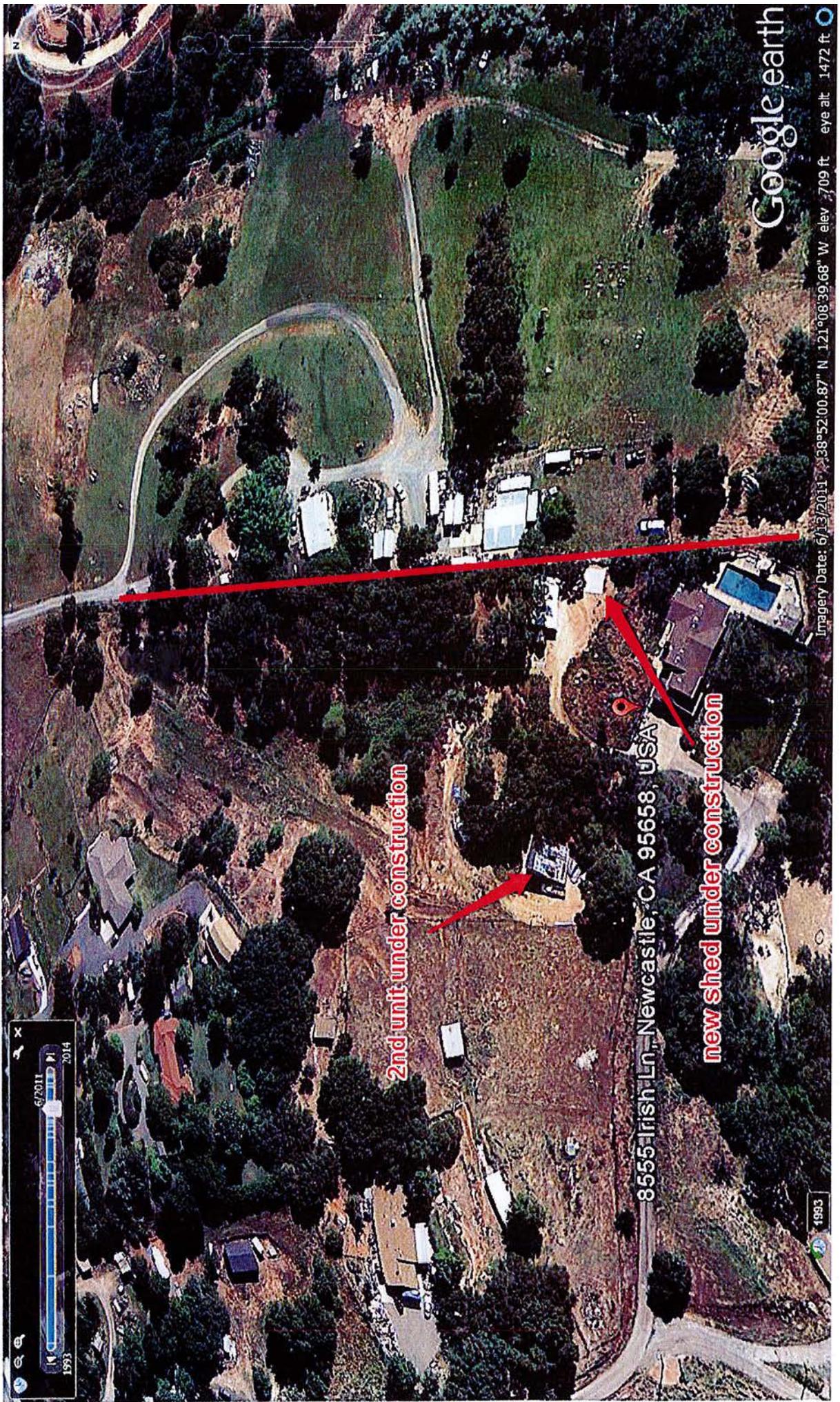


↑
Date



Original
Ag Building
Exhibit B

Exhibit C



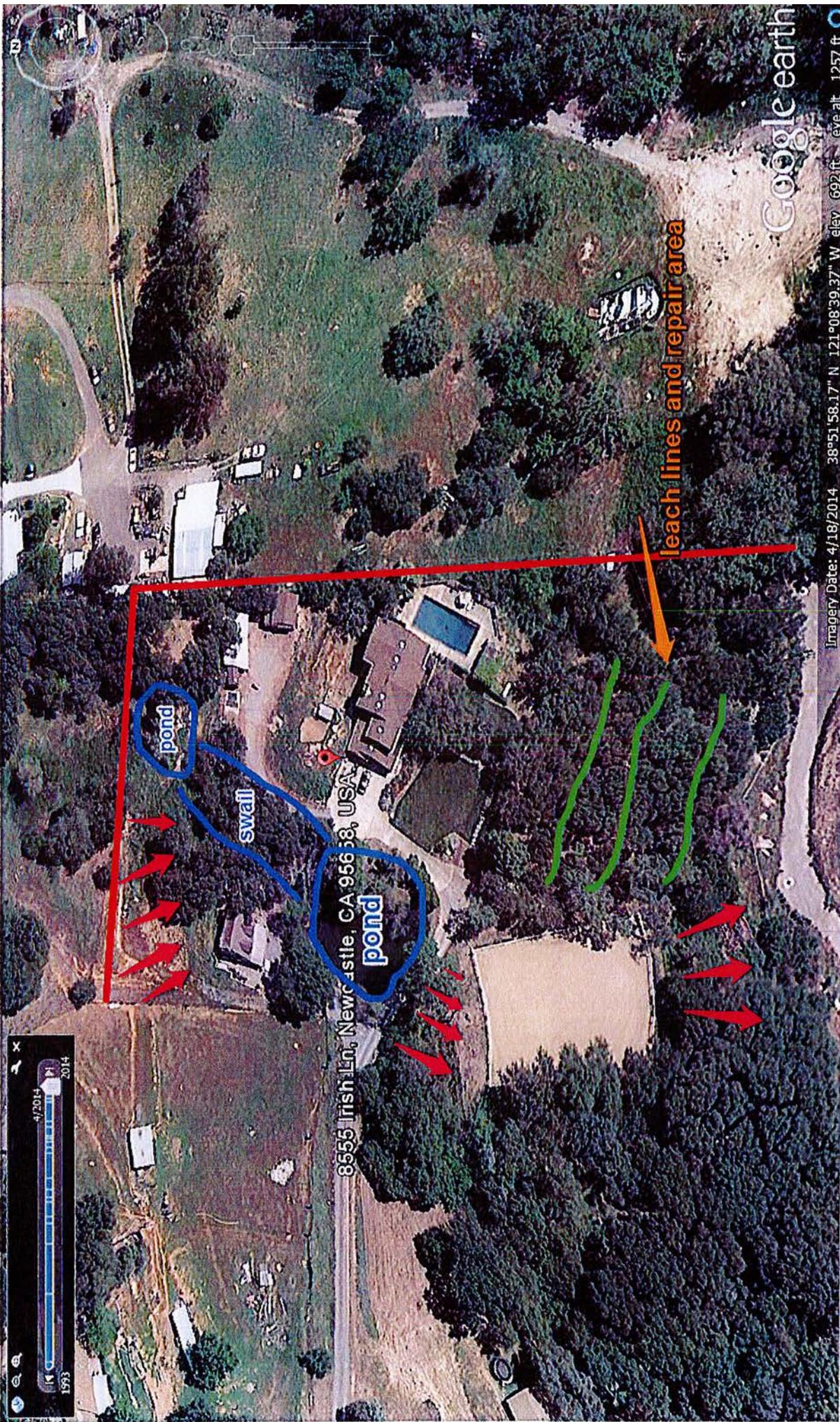


Exhibit D





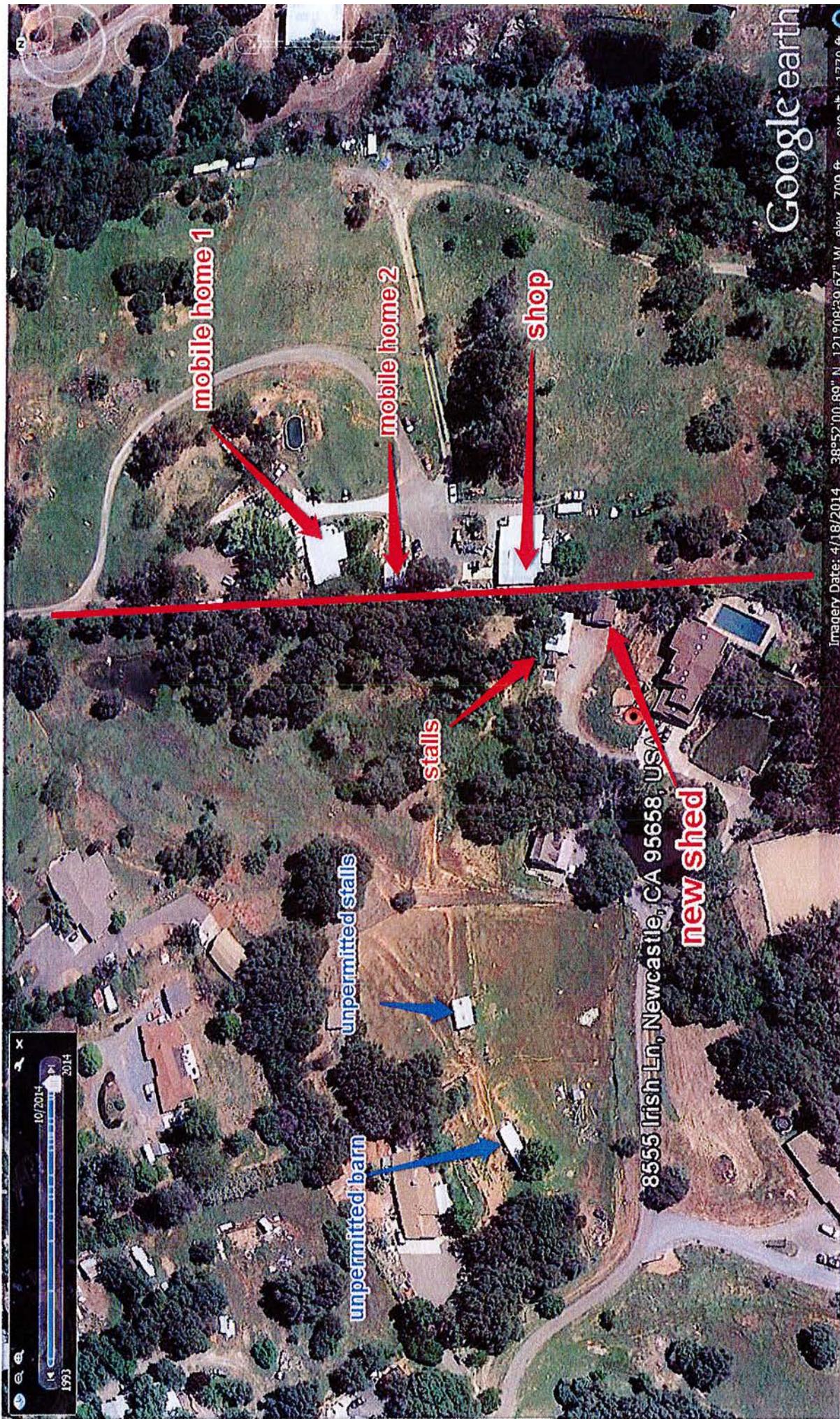


Exhibit F



Exhib. + Gr.



COUNTY OF PLACER
Community Development/Resource Agency

Michael J. Johnson, Agency Director

**PLANNING
SERVICES DIVISION**

EJ Ivaldi
Deputy Planning Director

MEMORANDUM

Hearing Date: October 16, 2014
Hearing Time: 9:20 A.M.

Date: October 16, 2014
To: Zoning Administrator
From: Planning Department
Subject: PVAA T20120154
Applicant: Daryl Rogers
Staff Planner: Melanie Jackson
Zoning: RA-B-100-SP [Residential Agricultural, combining Building Site Designation of 100,000 square foot minimum parcel size, combining Special Purpose]
Location: 8555 Irish Lane, Newcastle
APN: 032-152-041-000

Proposal:

The applicant is requesting a Variance to allow for the construction of an approximately 396 square foot shed one foot from the east side property line (where 30 feet is normally required) and the construction of an approximately 420 square foot barn eight feet from the east side property line (where 30 feet is normally required). The applicant is also requesting a Variance to section 17.56.020(c)(1)(Accessory Buildings and Uses; Animal Enclosures) to allow for the placement of an animal enclosure zero feet from the east property line (where 30 feet is normally required) and to allow the animal enclosure to be located closer to the common property line (east) than the distance from the property line to the adjacent residence.

CEQA Compliance:

The project is Categorical Exempt from environmental review pursuant to the provisions of Section 15303 of the California Environmental Quality Act Guidelines and Section 18.36.050 of the Placer County Environmental Review Ordinance (Class 3, New Construction or Conversion of Small Structures) and Section 15305 of the California Environmental Quality Act and Section 18.36.070 of the Placer County Environmental Review Ordinance (Class 5, Minor Alterations in Land Use Limitations).

Background:

This Variance originally came to the attention of the Development Review Committee by way of the Code Enforcement Division of the Building Services Division. The subject property was flagged for a Code Enforcement violation in November of 2011 due to the shed's location one foot from the east property line where 30 feet is required and due to the construction of the shed without a building permit. As a result, the applicant applied for this Variance in order to bring the structure into compliance with County Code.

The Variance was originally heard by the Zoning Administrator on September 20, 2012. However, while reviewing the application, staff discovered that a survey of the east property line should be performed prior to a decision on the Variance. The purpose of this survey was to ensure that the location of the shed in relation to the east side property line was accurately represented on the site plan. Taking this into account, the Zoning Administrator took action to continue the item until the survey was completed.

Between the date of the 2012 Zoning Administrator hearing and the date of the submittal of the completed survey, additional land use violations on the subject property were brought to the attention of the Code Enforcement Division. These violations include the placement of a 420 square foot barn and the placement of an animal enclosure zero feet from the east property line (where 30 feet is normally required) and within closer proximity to the common property line (east) than the distance from the property line to the adjacent residence. As a result, the applicant is now requesting two additional Variances to allow the barn and the animal enclosure to remain in their current location.

Analysis:

Staff conducted a field review of the site on September 10, 2012. The property consists of approximately 2.4 acres and contains moderate tree coverage. The property slopes heavily downward from the north side to the south side of the property and is developed in tiered segments where the property has been leveled out. The property is developed with a single-family residence, a secondary residence, an existing shop, horse arena, pool, septic system and leach fields. The property also contains a pond. The surrounding properties range in size from approximately 1.1-25 acres and are also developed with single-family residences.

The applicant is requesting a Variance to allow for the construction of an approximately 396 square foot shed one foot from the east side property line (where 30 feet is normally required) and the construction of an approximately 420 square foot barn eight feet from the east side property line (where 30 feet is normally required). The applicant is also requesting a Variance to section 17.56.020(c)(1)(Accessory Buildings and

Uses; Animal Enclosures) to allow for the placement of an animal enclosure zero feet from the east property line (where 30 feet is normally required) and to allow the animal enclosure to be located closer to the common property line (east) than the distance from the property line to the adjacent residence.

A completed survey was submitted as requested on August 4, 2014. Staff reviewed the survey and determined that it accurately represented the east side property line. The plot plan for the survey also represented the distance of the shed one foot from the property line. As a result, the Variance request was modified to allow for a one-foot setback from the east side property line.

The applicant cites the existing development and watercourse setbacks as reasons to support the Variances. Staff is in agreement with this finding, as the pond, existing structures, well and leach fields significantly constrain the buildable area on the property and create a circumstance such that the shed, barn and animal raising and keeping area would likely need a Variance regardless of where it was placed on the property.

Staff has concluded there are special circumstances on the subject property which warrant the need for a Variance, including the existing development on the property and the location of the pond. For these reasons, staff is in support of the Variance request, which allows for an approximately 396 square foot shed to be constructed one foot from the east side property line, the construction of a 420 barn eight feet from the east side property line and an animal enclosure zero feet from the east side property line.

Recommendation:

Staff recommends approval of the Variance (PVAA T20120154) based on the findings and subject to the conditions of approval listed below.

Findings:

CEQA Findings

The project is Categorical Exempt from environmental review pursuant to the provisions of Section 15305 of the California Environmental Quality Act Guidelines and Section 18.36.070 of the Placer County Environmental Review Ordinance (Class 5, Minor Alterations in land use limitations).

Variance Findings

1. There are special circumstances applicable to the subject property, including the existing development on the property and the location of the pond. Because of such circumstances, the strict application of the Zoning Ordinance has been found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications.
2. The granting of this Variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and in the same zone district.

3. The Variance does not authorize a use that is not otherwise allowed in the zone district.
4. The granting of this Variance does not, under the circumstances and conditions applied in this particular case, adversely affect public health or safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.
5. The Variance is consistent with the *Placer County General Plan*.

Recommended Conditions of Approval:

1. Approval of this Variance (PVAA T20120154) allows for the construction of an approximately 396 square-foot shed one foot from the east property line and the construction of an approximately 420 square foot barn eight feet from the east side property line. This Variance also allows for the placement of an animal enclosure zero feet from the east property line.
2. Building permits for all structures shall be obtained from the Placer County Building Services Division within six months of approval of this Variance.
3. The applicant shall, upon written request of the County, defend, indemnify, and hold harmless the County of Placer, the County Board of Supervisors, and its officers, agents, and employees, from any and all actions, lawsuits, claims, damages, or costs, including attorneys' fees awarded by a certain development project known as Rogers Variance. The applicant shall, upon written request of the County, pay or, at the County's option, reimburse the County for all costs for preparation of an administrative record required for any such action, including the costs of transcription, County staff time, and duplication. The County shall retain the right to elect to appear in and defend any such action on its own behalf regardless of any tender under this provision. This indemnification obligation is intended to include, but not be limited to, actions brought by third parties to invalidate any determination made by the County under the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) for the Project or any decisions made by the County relating to the approval of the Project. Upon request of the County, the applicant shall execute an agreement in a form approved by County Counsel incorporating the provision of this condition. (County Counsel)
4. This Variance (PVAA T20120154) shall expire on October 27, 2016 unless previously exercised.

Attachments:

Attachment A - Memo from Department of Engineering and Surveying

Attachment B - Memo from Department of Environmental Health Services

Attachment C - Site Plan

cc: Engineering and Surveying
Environmental Health Department
PVAA T20120154 File
Applicant

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**RECOMMENDED CONDITIONS OF APPROVAL - VARIANCE -
"ROGERS " (PVAA T20120154)**

THE FOLLOWING CONDITIONS SHALL BE SATISFIED BY THE APPLICANT, OR AN AUTHORIZED AGENT. THE SATISFACTORY COMPLETION OF THESE REQUIREMENTS SHALL BE DETERMINED BY THE DEVELOPMENT REVIEW COMMITTEE (DRC), COUNTY SURVEYOR, AND/OR THE PLANNING COMMISSION.

1. Approval of this Variance (PVAA T20120154) allows for the construction of an approximately 396 square-foot shed one foot from the east property line and the construction of an approximately 420 square foot barn eight feet from the east side property line. This Variance also allows for the placement of an animal enclosure zero feet from the east property line.
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4. This Variance (PVAA T20120154) shall expire on February 2, 2017 unless previously exercised.

LAW OFFICES OF ROBERT J. GONZALEZ

October 15, 2014

Zoning Administrator/Parcel Review Committee
COUNTY OF PLACER
3091 County Center Drive
Auburn, CA 95603

Re: Rogers Variance Set for Hearing 10/16/14
PVAA T20120154; APN 032-152-041-000

To Whom It May Concern:

I was just apprised of the Public Hearing scheduled for October 16, 2014, regarding the above-referenced variance application by Dale Rogers regarding property located at 8555 Irish Lane, Newcastle (APN No. 032-152-041-000). Please be advised that I represent Robert Cayton, who owns the adjacent 10 acre property which abuts the east of Mr. Rogers' property, the common address of which is 1030 Cardoso Lane, Newcastle.

I have reviewed the Staff Planner's memorandum and recommendation and, on behalf of my client, object to it. I wish to be heard by the Committee however I have a court appearance tomorrow morning with conflicts with the time set for hearing (9:20 a.m.). I am therefor requesting that the matter be put over to the next hearing and that I be advised of the new date and time.

As has been mentioned before, Mr. Rogers is a licensed real estate agent and has been for some 14 years, a time which precedes his constructing these structures without obtaining a building permit or variance. He was, we contend, well aware of the legal requirements but willfully failed to adhere to them. His post facto efforts to obtain the needed approvals, which occurred only after he was cited by the County, should not now be rewarded. Further, the existence of his structures diminishes the value of my client's property. Finally, I have concerns about the findings upon which the staff recommendation was made.

In the event that my request is denied, I would appreciate being informed of your process for appealing any decision you may make which is adverse to my client's interests.

Thank you for your assistance in this matter.

LAW OFFICES OF
ROBERT J. GONZALEZ


Robert J. Gonzalez
Attorney at Law

RJG:jak
cc: Robert Cayton

P.O. BOX 221239 • SACRAMENTO, CALIFORNIA 95822
PHONE: (916) 455-9991 • FAX: (916) 455-9992

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ATTACHMENT F

September 18, 2012

Placer County Zoning Administrator
COUNTY OF PLACER
Community Development Resource Agency
3091 County Center Drive
Auburn, CA 95603

Re: Variance (PVAA 20120154)
Daryl Rogers
Categorical Exemption
Supervisory District 3 (Holmes)

Dear Placer County zoning Administrator(s):

I have received a Notice of Public Hearing regarding the above-referenced variance application by Dale Rogers regarding property located at 8555 Irish Lane, Newcastle (APN No. 032-152-041-000). Please be advised that I am the owner of that certain real property which abuts, or is adjacent to, the east of that property. I own 10 acres with a common address of 1030 Cardoso Lane, Newcastle.

I note that Mr. Rogers is seeking a variance "to allow for the construction of" a shed four feet from my adjoining property line. **In fact, this shed has already been built**, as noted in the staff memorandum dated September 20, 2012, regarding this application. Accordingly, I object to the application and the notice in their entirety as appearing to be, at the very least, misleading. Indeed, the staff memorandum notes that this application was made subsequent to the issuance of a code enforcement violation dating back to November of 2011, part of which related to the fact that this structure was erected without a building permit.

Placer County Code Chapter 17, Part 3, Article 17.60 includes the following:

"Section 17.60.100 Variance

....

D. Action on a Variance. The zoning administrator or planning commission shall approve, approve subject to conditions, or disapprove a variance as set forth in this subsection.

1. Findings. Approval or conditional approval may be granted only when the granting authority first determines that the variance satisfies the criteria set forth in California Government Code Section 65906 by finding that:

....

d. The granting of the variance does not, under the circumstances and conditions applied in the particular case, adversely affect public health or

safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.”

As the owner of the property which is most affected by the placement of this structure which was built without proper permits or supervision by the County Building Inspector, I object strenuously to the granting of a post facto variance and building permit. As my property can be subdivided under the current Placer County Code and because I intend to do that, I contend that this encroachment to the western border of a proposed lot significantly impacts the feasibility and value of any lot which adjoins the corner located **less than four feet** from the property border. Damages will ensue for the diminution in value of this subdivided parcel that will be rendered less marketable, or saleable, due to the 26 foot encroachment of the Roger's shed into the 30 foot setback.

This is not a case of an uneducated homeowner, who has mistakenly and in good faith, built a structure without knowledge of the applicable legal requirements. Mr. Daryl Rogers is a licensed real estate agent and has been since 2000, according to the California Department of Real Estate. (Please see the enclosed print out from the California Department of Real Estate (DRE). He purportedly owns four (4) Keller-Williams Realty franchises, including ones in Auburn and Nevada City. As such, he certainly possessed the knowledge as to what was required to construct a building on his property **before** he ever began this undertaking. This is tantamount to intentional misrepresentation, or even fraud, since he knew, or should have known that the encroachment, especially 26 feet into the setback, was impermissible. One can only surmise that Mr. Roger's subterfuge is based on the adage of "It's better to ask for forgiveness, than to ask for permission." Given his professional knowledge, it is easy to assume that he knew his chances of getting an as-built variance were high. To have constructed the building, so as to comply with the setback requirements of the Code, he need only have applied for permission to cut down some of the existing trees on his property and obtain a valid building permit. Those things might well have had an additional cost, but would have had less impact on my property.

Mr. Rogers, a real estate licensee, has failed and refused to abide by the County Code; he, should not now be rewarded with a post facto variance nor should he merely be allowed to obtain a building permit after the fact. Furthermore, I have just learned that the Placer County Administrative Rules referenced in the Notice of Public Hearing, which is a legal notice, are outdated. Administrative Rule 15.10(c), which is cited in the Notice must be removed and replaced with the proper section. I had relied on this section in preparation for the hearing. As such, I respectfully request that I be given the advance opportunity to appeal an unfavorable decision, as well as have the right to pursue this matter in a court of law to remedy the damages incurred by the intentional act of Mr. Rogers.

I appreciate the building challenges noted in the County Memorandum, but this structure does in fact injure "nearby property or improvements" as addressed in the Code as ground for denial and the variance and building permit should therefore be denied accordingly.

Sincerely,



ROBERT CAYTON

Enclosures: Zillow photograph showing proximity to property line
Photograph of structure as built
Print out of State of California, Department of Real Estate License Record for Daryl J. Rogers

cc: Supervisor Holmes
Robert J. Gonzalez, Esq.

STATE OF CALIFORNIA DEPARTMENT OF REAL ESTATE

The license information shown below represents public information taken from the Department of Real Estate's database at the time of your inquiry. It will not reflect pending changes which are being reviewed for subsequent database updating. Also, the license information provided includes formal administrative actions that have been taken against licensees pursuant to the Business and Professions Code and/or the Administrative Procedure Act. All of the information displayed is public information. Although the business and mailing addresses of real estate licensees are included, this information is not intended for mass mailing purposes.

License information taken from records of the Department of Real Estate on 9/16/2012 6:14:11 PM

License Type:	SALESPERSON
Name:	Rogers, Daryl Jason
Mailing Address:	8555 IRISH LANE NEWCASTLE, CA 95658 (Above address is marked unreliable in DRE database)
License ID:	01293005
Expiration Date:	12/09/12
<u>License Status:</u>	LICENSED
<u>Salesperson License Issued:</u>	07/15/00
Former Name(s):	NO FORMER NAMES
Employing Broker:	License ID: 01902981 Reliance Partners, Inc. 11601 BLOCKER DR #200 AUBURN, CA 95603

Comment:

NO DISCIPLINARY ACTION

NO OTHER PUBLIC COMMENTS

>>>> Public information request complete
<<<<



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