

EL PASO COUNTY

COLORADO

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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

**TO: El Paso County Board of Adjustment
Kevin Curry, Chair**

**FROM: Ryan Howser, Planner II
Lupe Packman, Engineer I
Craig Dossey, Executive Director**

**RE: Project File #: BOA-21-001
Project Name: Christian Residence
Parcel No.: 41260-01-008**

OWNER:

REPRESENTATIVE:

Christian Construction, Inc. 16230 Reata Road Peyton, CO 80831 (719) 332-2335	Christian Construction, Inc. 16230 Reata Road Peyton, CO 80831 (719) 332-2335
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Commissioner District: 2

Board of Adjustment Hearing Date:	6/9/2021
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EXECUTIVE SUMMARY

A request by Christian Construction, Inc., for approval of a dimensional variance to allow a side yard setback of 14.33 feet for an accessory structure where the minimum required side yard setback is 25 feet in the RR-5 (Residential Rural) zoning district. The 5.04-acre property is located on the north side of Reata Road, approximately 2.5 miles west of the Sweet Road and Peyton Highway intersection, and is within Section 26, Township 11 South, Range 64 West of the 6th P.M.

The accessory structure is existing and was constructed in 2016 without authorization of a building permit by the El Paso County Planning and Community Development Department. The use of the structure as a rural home occupation for a contractor's



equipment yard is the subject of a recent Code Enforcement case (Case No. CE-19-994). The applicant has submitted a concurrent request for approval of a special use to allow for the rural home occupation. During the review of the special use request staff discovered the illegal setback encroachment. The applicant will need to obtain approval of a site plan prior to obtaining a building permit to legalize the structure.

A. REQUEST

A request by Christian Construction, Inc., for approval of a dimensional variance to allow a side yard setback of 14.33 feet where the minimum required side yard setback is 25 feet in the RR-5 (Residential Rural) zoning district.

B. APPROVAL CRITERIA

Section 5.5.2.B.2.a, Variance to Physical Requirements, of the Land Development Code (2021), states the following:

The Board of Adjustment is authorized to grant variances from the strict application of any physical requirement of this Code which would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the property. Practical difficulties and hardship, in this context, may exist where the legal use of the property is severely restricted due to:

- 1) *The exceptional narrowness, shallowness, or shape of the specific piece of property.*

The subject property does not have exceptional narrowness, shallowness, size, or shape. The lot is 5.04 acres and conforms to the minimum lot size and minimum lot width requirements of the RR-5 zoning district.

- 2) *The exceptional topographic conditions or other extraordinary or exceptional situation or condition of the piece of property.*

The existing single-family dwelling was constructed and permitted in 1999 and conforms to all dimensional standards. The accessory structure, which was constructed in 2016, is located approximately 14 feet from the west property line where 25 feet is the minimum setback requirement. No building permit or site plan was approved for the accessory structure and it is, therefore, considered illegal. The applicant has indicated in their letter of intent that the slope of the property, drainage patterns, the presence of an equestrian easement on the east side of the property, and the presence of

vegetation on the north side of the property present an exceptional physical constraint that prevents the location of the accessory structure elsewhere on the property.

Staff has determined that the slopes on the property are gradual and do not exceed 30 percent. It may be feasible to locate the structure elsewhere on the property with minimal grading and stabilization. The equestrian and drainage easements are located on the far east side of the property, comprising approximately 0.59 acres and leaving approximately 4.44 acres of buildable area outside the easements.

Section 5.5.2.B.2.a, Variance to Physical Requirements, of the Code continues by stating the following:

The Board of Adjustment may also grant variances from the strict application of any physical requirement of this Code based upon equitable consideration, finding that the burdens of strict compliance with the zoning requirement(s) significantly exceed the benefits of such compliance for the specific piece of property and;

- *The variance provides only reasonably brief, temporary relief; or*

If approved, the variance would provide for permanent relief of the existing structure and would not meet this criterion.

- *The variance request includes an alternative plan, standards or conditions that substantially and satisfactorily mitigate the anticipated impacts or serve as a reasonably equivalent substitute for current zoning requirements; or*

An alternative plan, standard, or condition was not submitted by the applicant with this application.

- *Some other unique or equitable consideration compels that strict compliance not be required.*

The structure is existing and was constructed in 2016. The applicant has indicated in their letter of intent that due to direction provided by the Pikes Peak Regional Building Department, they were unaware of the need for a building permit and were instructed that the building would be exempt from requiring a building permit as an agricultural structure. However, an

agricultural exemption permit was not applied for and was never obtained for the structure. Additionally, the structure has not been used for an agricultural purpose and would not qualify for an agricultural exemption.

The applicant indicated in their letter of intent that the placement of the accessory structure was intended to preserve the natural features of the property as well as to ensure that all existing easements, views, and drainage patterns are preserved and not encroached upon.

C. BACKGROUND

The subject property was initially zoned to the A-4 (Farming) zoning district (EPC File No. P-73-044Z) on November 21, 1973 via an owner-initiated rezoning of the previously unzoned land. Due to changes in the nomenclature of the Land Development Code, the A-4 zoning district has been renamed as the RR-5 (Residential Rural) zoning district. The property was legally created on July 17, 1974 as Lot 287 of the Reata Filing No. 1 subdivision (Plat No. 4369).

The existing single-family dwelling was built in 1999. In 2016, the applicant constructed an accessory structure on the property, approximately 14 feet from the west property boundary where 25 feet is required in the RR-5 zoning district. A building permit was not obtained for the accessory structure and it is, therefore, considered a nonconforming structure.

On August 21, 2019, the applicant received a Notice of Violation from Code Enforcement regarding the use of the property for a contractor's equipment yard and home occupation. The home occupation consists of parking and storage of contractor equipment and vehicles within the accessory structure. On November 14, 2019, the applicant submitted an application for a rural home occupation as a special use in order to legalize the uses on the property through the administrative special use process (PCD File No. AL-19-030). The setback encroachment was discovered during the review process for the special use permit. Prior to consideration by the Planning and Community Development Director for approval or denial of the special use permit, the applicant must correct the side yard setback encroachment. The proposed setback reduction requires Board of Adjustment action. Approval of the variance request would legalize the location of the existing structure within the side yard setback.

D. ALTERNATIVES EXPLORED

There are three alternatives that would not require a dimensional variance request:

1. The applicant could remove the structure.

2. The applicant could relocate the structure so that it meets the dimensional standards.
3. The applicant could propose an internal lot line adjustment between their property and the property to the west to correct the setback encroachment. This alternative would require the consent and participation of the neighboring property owner.

E. APPLICABLE RESOLUTIONS

Approval: Resolution 3

Disapproval: Resolution 4

F. LOCATION

North: A-35 (Agricultural)

Homestead Ranch Park

South: RR-5 (Residential Rural)

Single-Family Dwelling

East: RR-5 (Residential Rural)

Single-Family Dwelling

West: RR-5 (Residential Rural)

Single-Family Dwelling

G. SERVICE

1. WATER

Water is provided via an existing permitted well located on the property (Permit No. 212671).

2. WASTEWATER

Wastewater is provided by an existing permitted on-site wastewater treatment system (OWTS) (Permit No. 4126001008).

3. EMERGENCY SERVICES

The lot is located within the Peyton Fire Protection District. The District was sent a referral and has no outstanding comments.

H. ENGINEERING

1. FLOODPLAIN

FEMA Flood Insurance Rate Map (FIRM) panel number 08041C0350G, which has an effective date of December 7, 2018 indicates the parcel is located within Zone X, which is outside of the 500-year floodplain.

2. DRAINAGE AND EROSION

The subject parcel is located in two drainage basins, La Vega Ranch (CHBR0400) and Upper Bracket Creek (CHBR0600). The drainage basins have not been studied and do not have basin and bridge fees associated with them.

A drainage report was not submitted or required with this application since the applicant is not proposing a replat or a land use approval that warrants concerns regarding drainage impacts. The existing accessory structure is not located within a drainage or utility easement.

3. TRANSPORTATION

The 2016 El Paso County Major Transportation Corridors Plan Update does not depict any roadway improvement projects in the immediate vicinity of the development.

The parcel is located on Reata Road, which is a rural local road currently maintained by the County. No public improvements are required with this application.

The variance request is not subject to the El Paso County Road Impact Fee Program (Resolution 19-471), as amended.

I. RECOMMENDED CONDITIONS OF APPROVAL

Should the Board of Adjustment determine that the application is consistent with the criteria for approval of a dimensional variance and that the applicant has met the review and approval criteria for granting variances from the applicable standards, staff recommends the following conditions and notation of approval:

CONDITIONS

1. The approval applies only to the plans as submitted. Any expansion or additions beyond those depicted on the associated site plan may require separate Board of Adjustment application(s) and approval(s) if the requirements of the applicable zoning district cannot be met.
2. The applicant shall not use the structure as contractor equipment storage as part of a rural home occupation without prior approval of a special use by the Planning and Community Development Department. Approval of the special use shall be obtained within 90 days of Board of Adjustment approval of the dimensional variance. The deadline may be extended by the PCD Director, at his or her discretion, if the Director finds that the applicant has made a good faith effort to secure such approval.

3. Approval of a site plan by the Planning and Community Development Department and issuance of a building permit from the Pikes Peak Regional Building Department are required prior to the initiation of any uses within the structure. Approval of an application for site plan shall occur within 90 days of special use approval by the Planning and Community Development Department. The deadline may be extended by the PCD Director, at his or her discretion, if the Director finds that the applicant has made a good faith effort to secure such approval.

NOTATIONS

1. Physical variances approved for a proposed structure (except for lot area variances) are valid only if construction of the structure is initiated within twelve (12) months of the date of the Board of Adjustment approval.
2. The PCD Director may require a survey, certified by a registered surveyor, licensed in the State of Colorado, depicting the improvement in relationship to the lot lines affected to demonstrate compliance with the approval of the dimensional variance.

J. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified six (6) adjoining property owners on May 18, 2021, for the Board of Adjustment meeting. Responses will be provided at the hearing.

K. ATTACHMENTS

Letter of Intent
Vicinity Map
Site Plan

Dear Sir,

Per provision of El Paso County Zoning we are requesting a variance for an existing structure side setback requirement from 25' to 10.6' at 16230 Reata Road, Peyton, CO 80831.

The structure was originally built and used as an Ag. Exempt structure, but a change in use with Regional Building permit is now in process.

Brief History

The building in question was started in 2014. At the time several people we know had stated that a pole barn structure was exempt from needing a permit. My father who is a commercial general contractor and has held a Class A license since 1993, did not believe that could be accurate. In May of 2014 he drew up by hand a set of plans for the proposed building and took them to Pikes Peak Regional Building Department permit counter to see if they were sufficient for permit or what else might be required. At that time, the person at the counter could not find any records or plans for our address in the system. At that point they took the plans to someone to review and ask questions. After 10-15 minutes they returned and said that no permit was required, and it was Ag. exempt. The site plan showed 15' off the fence line. My father specifically asked if there was anything else that needed to be done and was told there was not. At this point we proceeded with the plans to build the structure, fully believing that we had done everything that was required. (We have attached a copy of the plans.) The shop currently sits at 15'1" off of the fence line and 14.4' off of the property line. After having a survey done by High Prairie Survey, it was found that the fence sits approximately 6" over the property line. The fence was established before Robert and Samantha moved in. We believe the fence was installed at the same time as the home, which would be 1999.

Over the course of the next several years a concrete floor was added. Again, we checked to see if any permit was needed and was told not for flatwork. Then electrical was added to the building and a permit was pulled and all work was inspected and passed a final inspection. We actually tried to make sure we were setting the building correctly by placing the closest column at 16' off the fence line.

Square Footage of Accessory Structure and Use Limited

Based on Section 5.1.7K of the El Paso County Land Development Code, for 2.5 acres or greater the accessory structure building footprint may not exceed two times the size of the building footprint of the primary use (residence). According to county tax records, the primary structure (residence) footprint is 2839 sqft. In this case the doubled square footage would be 5,678 sqft for the allowable accessory structure. The survey that was done in accordance with the county, shows the accessory structure being 4,891 sqft.

Location of Structure

The location of the structure was picked for several reasons that are still applicable and with several constraints.

1. To the East and North of the existing residence we were aware of a drainage and an equestrian easement and any structure would block that drainage from the adjacent properties to the North. We have attached pictures from the road looking North.
2. Further back off the road would cause many of the few trees on the property to be removed.

3. On the West side of the home is the septic tank and leach fields. We allowed for clearance of this area as a drive access on the side of the structure we built.
4. Property is sloped from the north being at a higher elevation to the lower south property line, which is below Reata Rd. Most months the property is wet and marshy.
5. To keep views open to Homestead park on the north side of property for both our home and neighboring homes. Placed accessory structure between home and neighboring property steep, treed hill. Anywhere else on the property would obstruct views to park.

Other Considerations

Since we built this structure, we have become aware of several disputed property lines and incorrectly placed fencing in our immediate area. The three lots to the West of us found out that the western fence of their properties was actually in the wrong place and should have been 40 feet further West. After review we understand that the fences are in the wrong place, but because of Colorado law they are not allowed to move the fence.

This relates to our issue because the property adjacent to ours on our West boundary is where the setback issue is. There has been a new house built in the last couple of years and the lot was surveyed. They built a new fence that is 7' to the West of where the survey we have had done shows that property line. (See attached survey) The structure in question is then 21.4' from their fence line.

Meeting of Criteria for Relief

1. The property has extraordinary conditions with the drainage issue and slope of the property that limit the location of the structure.
2. We believe the intent of the Code is preserved.
 - a. The variance, if granted would not cause any infringement into the property boundaries, drainageways or easements. Additionally, since it is a side set back variance request and we are more than the required front setback the variance, if granted would not in anyways affect any adjacent road right of ways as the road is to the front of the structure and would not be an issue in any future road facilities improvements or expansion.
3. Granting of the variance will not result in any adverse impact on surrounding properties. In fact, we believe the structure is the best place in regards to the surrounding properties as it does not block views up to Homestead Park from the properties below ours.
4. Granting the variance will not in any way increase the number of dwelling units on the property.
5. Additionally, this allowed for the saving of numerous trees and existing vegetation.

We appreciate your consideration of this matter. If you need any additional information, please contact us at 719-352-6625 or 719-332-2335.





















El Paso County Parcel Information

PARCEL	NAME
4126001008	CHRISTIAN ROBERT E

File Name: BOA-21-001

Zone Map No. --

Date: May 17, 2021



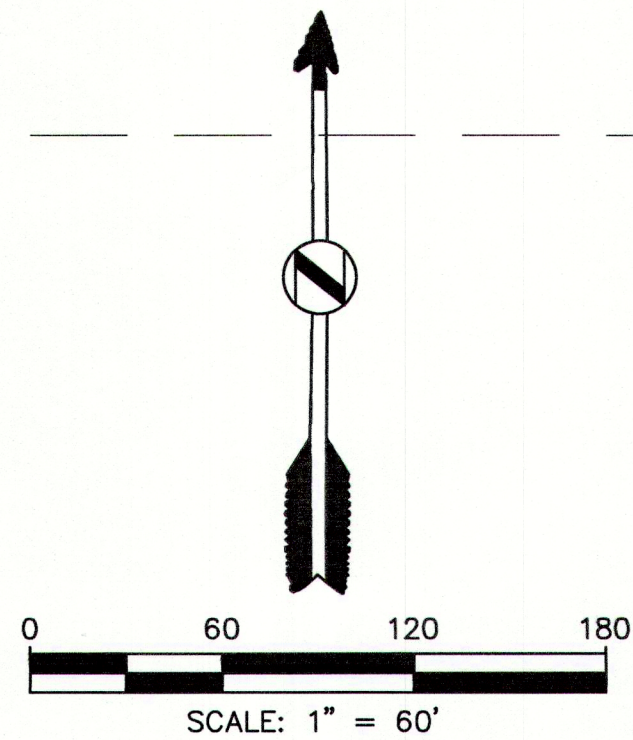
Please report any parcel discrepancies to:
El Paso County Assessor
1675 W. Garden of the Gods Rd.
Colorado Springs, CO 80907
20 (719) 520-6600



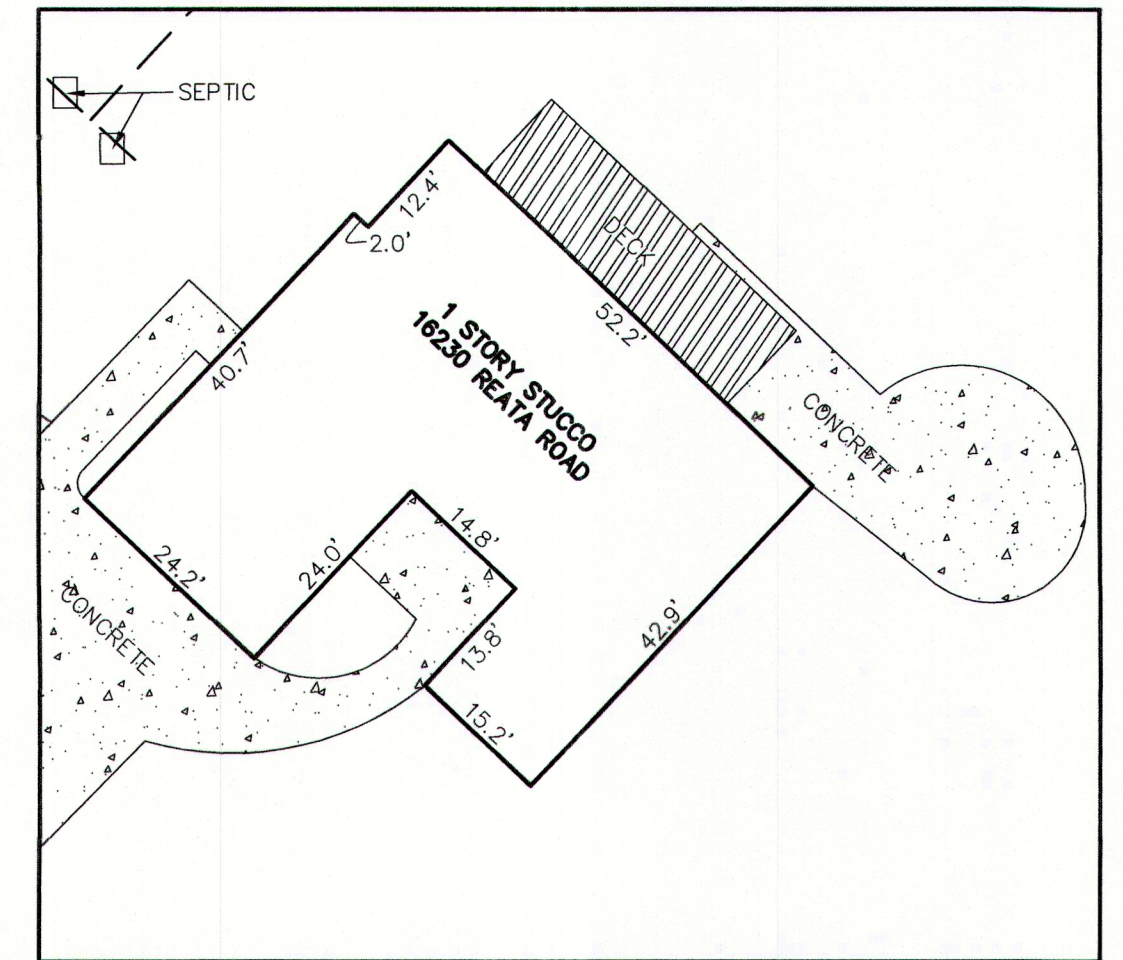
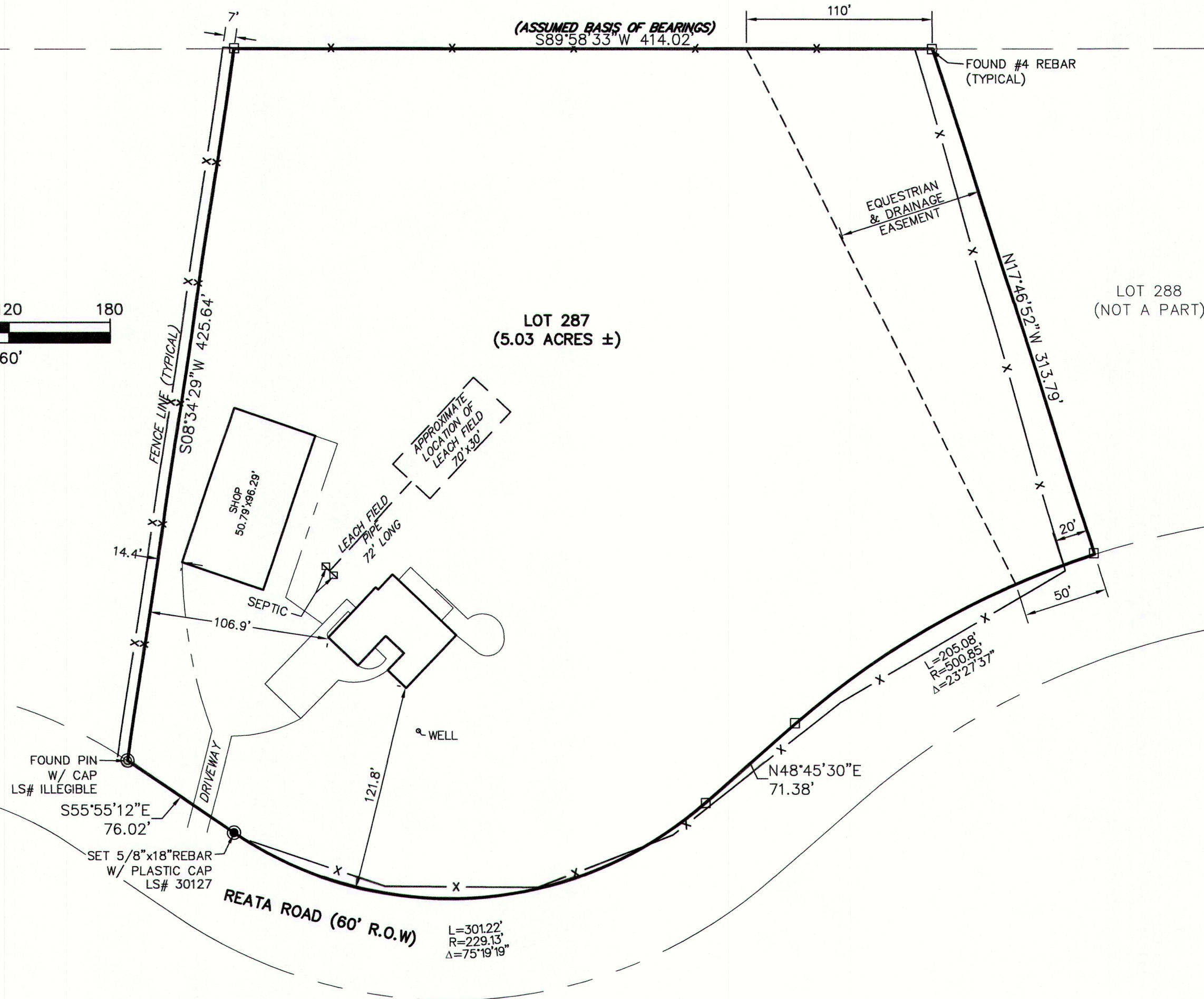
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IMPROVEMENT SURVEY PLAT

PART OF SECTION 26, T. 11 S, R. 64 W, 6TH P.M.
 COUNTY OF EL PASO, STATE OF COLORADO



LOT 286
(NOT A PART)



STRUCTURE DETAIL
 SCALE: 1"=20'

PROPERTY DESCRIPTION

LOT 287, REATA, FILING NO. 1,
 COUNTY OF EL PASO, STATE OF COLORADO

CERTIFICATE OF SURVEY:

This is to certify to Robert & Samantha Christian that on October 2nd, 2020 a survey was made under my direct supervision, of the hereon described property situated in El Paso County, Colorado. The survey was made on the ground using the normal standard of care of Professional Land Surveyors practicing in El Paso County, Colorado, and that this plat accurately represents said survey. The location and dimensions of all easements and rights of way in evidence or known to me and encroachments by or on the premises are accurately shown. This survey does not constitute a title search by High Prairie Survey Co., Inc. of the property shown and described hereon to determine:

1. Ownership of the tract of land.
2. Compatibility of this description with those of adjacent tracts of land.
3. Rights of way, easements and encumbrances of record affecting this tract of land. This survey was performed without the benefit of a title insurance commitment or a title insurance policy. A title insurance commitment or a title insurance policy may disclose facts not reflected on this survey. Corner monuments were set, or found and accepted as indicated hereon.

(Signature)
 Keith Westfall, Colorado PLS 30127
 For and on Behalf of
 High Prairie Survey Co.

INDEXING STATEMENT:

Deposited this _____ day of _____, 20____, in the County Surveyor's land survey plats/right-of-way surveys at LSP number _____, in the office of the El Paso County Clerk and Recorder.

County Surveyor _____

STATEMENT:

LINEAL UNITS ARE IN FEET.

DISCLAIMER: PLEASE NOTE THAT SURVEYING IS AN INEXACT SCIENCE AND IS SUBJECT TO A CERTAIN DEGREE OF INACCURACY AND OPINION.

BASIS OF BEARINGS:

CONSIDERING THE NORTH LINE OF LOT 287 TO HAVE AN ASSUMED BEARING OF S89°58'33"W AND MONUMENTED AS SHOWN HEREON.

"NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon."

DATE:	REVISIONS:
02/16/2021	REMOVED EQUESTRIAN EASEMENT & ADDED LEACH FIELD
02/24/2021	REMOVED EQUESTRIAN EASEMENT

REFERENCE DWG: _____

<h2>High Prairie Survey Co.</h2> <p>LAND SURVEYING CONSTRUCTION STAKING OIL AND GAS SURVEYING 303-621-8672 FAX 303-621-7749 P.O. BOX 384 KIOWA, COLORADO 80117</p>		TITLE IMPROVEMENT SURVEY PLAT PART OF SEC. 26, T11S, R64W, 6TH P.M. EL PASO COUNTY, STATE OF COLORADO	
		CLIENT ROBERT & SAMANTHA CHRISTIAN	
SCALE 1"=60'	DATE 10/05/2020	DRAWN BY CRR	JOB NUMBER 20236-ISP
SHEET 1 OF 1			COUNTY SURVEYOR