

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

July 13, 2012

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

LOD S-25639

Oahu

RESUBMITTAL - Request Approval of Plans for Construction of New Residence, Patricia Moore, Diamond Head View Lots Unit Two, Increment One, Lot 42, Honolulu, Oahu, Hawaii, Tax Map Key: (1) 3-1-048:050

RECOMMENDATION: That the Board:

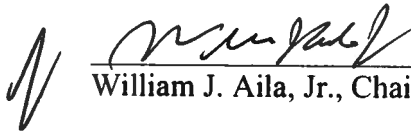
Upon the stipulation by the parties involved, this request was deferred to the July 13, 2012 Board meeting. Copy of the May 11, 2012 submittal is attached herein as **EXHIBIT A**.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

DEFERRED

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 11, 2012

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

LOD S-25639

Oahu

Request Approval of Plans for Construction of New Residence, Patricia Moore, Diamond Head View Lots Unit Two, Increment One, Lot 42, Honolulu, Oahu, Hawaii, Tax Map Key: (1) 3-1-048:050

BACKGROUND:

In the 1960s, the Board of Land and Natural Resources approved the sale at public auction of 59 residential lots in the Diamond Head View Lots (DHVL) subdivision, Unit Two, Increment One. The State developed the subdivision with infrastructure improvements, but the lots were sold without dwellings or other structures on them. The deeds by which the State conveyed the lots contained certain restrictive covenants regarding setbacks and building height designed to protect the view plane within the subdivision and of Diamond Head itself. The power to enforce the covenants was reserved to the Board.

As the residences originally constructed on the lots reach the limit of their useful lives, owners are seeking the necessary City and Board approvals to demolish the structures and rebuild. Applicant Patricia Moore (Applicant) has demolished the house on her lot and has submitted plans to Land Division for the approval of a new and larger residence under building permit application no. A2011-10-1621. Applicant's upslope neighbors, Herbert and Marsha Klein, object to the plans as inconsistent with the height restriction in the deed.

Based on staff's review of the plans, the proposed residence complies with the height restriction.

REMARKS:

According to Land Division files, the public auction bid packet for the sale of the DHVL lots included, among other documents, the draft Special Sale Agreement (SSA), draft

Deferred APPROVED BY THE BOARD
LAND AND NATURAL RESOURCES *DK*
AT ITS MEETING HELD ON
May 11, 2012

deed, and the Building Requirements. These documents all set forth certain design criteria, including height restrictions, which purchasers were required to follow in constructing their residences. The Building Requirements provide the most detail as to the design criteria and additionally explain that:

The Board of Land and Natural Resources has obtained the services of professional architects as consultants who, in the capacity of an Architectural Advisory Committee, will review each Purchaser's preliminary plans and final working drawings.¹

The Architectural Advisory Committee (AAC) reviewed the grading and building plans for each residence, and made a recommendation to the Chairperson. If the recommendation was favorable, the Chairperson would sign the plans and send the lot owner a letter confirming approval. The AAC was later dissolved.

The State ultimately issued a deed for each lot. The deeds did not reference or incorporate the SSA or the Building Requirements. Accordingly, staff understands that only the covenants reserved in the deeds can be enforced against current lot owners.

The original grantees of Applicant's lot, Lot 42, were Theodore F. Wilson and Rosemary Wilson under Land Office Deed No. S-25639 issued on February 7, 1972 (Wilson deed). The restrictive covenants in the Wilson deed relating to construction are as follows:

- (d) Building setback lines are as shown on Exhibit "B", attached hereto and made a part hereof; provided, however, that the Board, by and through its Chairman, reserves the right to modify building setback lines.
- (e) The Board, by and through its Chairman, reserves the right to judge interference of view, and to require adjustment in design to lessen such interference of views from neighboring lots; provided, however, that:
 - 1. No portion of any structure(s) shall be more than 15 feet above the highest approved finished grade at the building line.
 - 2. No radio or television antenna shall extend more than more than 10 feet above the highest point of the roof. All lead-in wires shall be concealed. All other antenna shall be subject to approval.
- (f) That accessory buildings may be constructed only with the prior written consent of the Chairman of the Board of Land and Natural Resources.²

¹ A copy of the Building Restrictions is attached hereto as Exhibit 1.

² A copy of the Wilson deed is attached hereto as Exhibit 2. Staff notes that the deed form used

The enforcement authority under covenant (e) appears to be discretionary with the Board. That is, the Board has the right to require adjustment of design plans to lessen interference of view from neighboring lots, but is not obligated to do so. A neighbor impacted by non-conforming construction apparently has standing to sue the violator as is evidenced by past litigation involving another lot in DHVL, Kam v. Noh, 70 Haw. 321 (Sup. Ct. 1989).

When building plans are submitted to Land Division, staff reviews them to ensure that the height of the proposed structure does not exceed the deed restriction, but does not perform any detailed design review, such as checking roof pitch.³ In short, staff reviews the plans for the original structure to determine the elevation of the highest approved finished grade, then looks at the plans for the new structure to see whether they use the same elevation control point.

In Applicant's case, the highest approved finished grade of Lot 42 is 149.2 feet. See Exhibits 3 and 4 attached, which are copies the grading plan dated June 14, 2010 for Lot 42 depicting the floor plan of the original structure before demolition. The highest approved finished grade is shown in close-up on Exhibit 4.⁴ See also Exhibit 5 attached, which is a copy of a section of the plot plan for the original structure built on Lot 42 approved by the Chairperson in 1970. The highest approved finished grade appears to be approximately 148-49 feet.⁵ Attached as Exhibit 6 is a copy of the left or southwestern elevation of the original dwelling on the lot. Exhibit 7 attached is a copy of a section of the site plan for the proposed new residence showing the control point for the building height envelope at 149.2 feet above sea level. Additionally, attached as Exhibit 8 is a copy of a section of the plans for the proposed new dwelling showing the left or southwestern elevation of the structure at the highest approved finished grade. The plans show the structure does not exceed 15 feet in height at that point.

Applicant's neighbors, the Kleins, have taken the position that the building height must be measured from some lower point on the property. The Kleins cite later proceedings in

for earlier conveyances in DHVL contained slightly different language. It measured structure height from the "highest approved finished grade at the building" instead of the "highest approved finished grade at the building line." The reason for the different language in the deeds is not clear from Land Division files.

³ Roof pitch was one of the criteria of the Building Requirements issued in the 1960s. As discussed above, however, the Building Requirements do not appear to be enforceable as a covenant running with the land.

⁴ The figure shown in the topographical survey is actually 149.3 feet. But the buildings plans for the new construction referred to later in this submittal use 149.2 feet.

⁵ The plot plan is not a surveyed topographical map of Lot 42, while the topographical survey is (Exhibits 3 and 4). For that reason, staff gives more weight to the 149.2-foot elevation shown in the topographical survey.

the Kam v. Noh case above that ultimately resulted in the court issuing a mandatory injunction against a DHVL owner to remove a third story built on its home that exceeded the 15-foot height limitation. But in that case, the highest approved finished grade was located at a point excavated deep into the lot, and is distinguishable from the present request for that reason.

Although the deed restriction gives the Board “the right to judge interference of view, and to require adjustment in design to lessen such interference of views from neighboring lots” that apparently goes beyond the height restriction, staff does not have the architectural expertise or resources to perform a detailed design review and make a recommendation to the Board on such matters. The Building Restrictions are no longer in force. Accordingly, staff will continue to limit its review and recommendations to the building height of proposed new construction, unless the Board directs otherwise.⁶

For discussion purposes, staff raises two additional issues. First, the height restriction in the deeds has no expiration date, meaning that the Board will be involved in design review for new construction into the indefinite future. It might be desirable to reconstitute an architectural review committee to assist Land Division staff and the Board with plan review. A review fee could be assessed against owners submitting plans to cover the committee’s professional time.

Second, as an alternative to Board review of design plans, it might be possible for the Board to convey the reserved rights in the deeds to an association of homeowners of DHVL. Staff understands that a loose association exists, but there is no requirement that the DHVL owners become members of the association or pay dues. The association has no enforcement powers against the homeowners. But if the Board conveyed the reserved rights to the association, the association might be able to develop into a viable governing entity over time on the theory that a DHVL owner seeking design review would have to become a member of the association in order to have plans reviewed and approved by the association.

If there is Board interest in either of these possibilities, staff can return to the Board at a later date with a formal submittal recommending action on them.

⁶ The Kleins additionally objected to the types of trees shown on the landscaping plan for the Applicant’s residence. The Kleins argued that the kukui nut trees to be planted could grow as high as 80 feet and block the Kleins’ view. Staff believes that policing tree type and height throughout DHVL would be a time-consuming task for both staff and the Board.

RECOMMENDATION: That the Board:

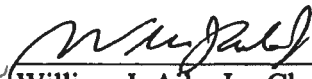
1. Find that the plans for construction of the proposed new dwelling on Lot 42 under city building permit application no. A2011-10-1621 are compliant with the building height restriction in Land Office Deed No. S-25693 and are therefore approved.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

Land Board Meeting: May 11, 2012: D-8: Deferred:

By stipulation of the parties, the matter was deferred until the next meeting on May 25, 2012.

BUILDING REQUIREMENTS
DIAMOND HEAD VIEW LOTS
UNIT II, INCREMENT I

INTRODUCTION:

The Board of Land and Natural Resources, State of Hawaii, in response to many requests and in order to protect the interests of the purchasers, as well as of the public in general, is endeavoring to develop and maintain the general attractiveness of this subdivision as seen from all public areas, to assure each purchaser as much ~~undisturbed~~ ^{undisturbed} view, unobstructed breeze and privacy as possible, to promote aesthetic standards for the buildings and their relationship to each other, to public spaces and to the site, and to assist the purchaser with problems of access and siting.

To this end the Board of Land and Natural Resources has obtained the services of professional architects as consultants who, in the capacity of an Architectural Advisory Committee, will review each Purchaser's preliminary plans and final working drawings.

ARTICLE I. LAWS, CODES AND ORDINANCES

All work undertaken within the subdivision shall comply with the appropriate existing laws, codes and ordinances.

Where the requirements hereunder are more stringent than the applicable laws, codes and ordinances, the requirements hereunder shall govern.

ARTICLE II. GENERAL REQUIREMENTS

The purchaser of each lot shall, within a period of two (2) years next following the date of sale, construct on such lot a dwelling consisting of a principal building providing for a single-family dwelling unit and such accessory buildings as may be desired, in conformity with the following requirements:

EXHIBIT 1

1. The principal building shall contain not less than 1200 square feet of enclosed floor space, exclusive of garage, basement and open lanai, said dwelling to cost not less than \$20,000.00. All buildings whether for dwelling or accessory use shall be of new construction suitable for island living.
2. Preliminary plans to be followed by final plans and specifications for the foregoing dwelling, together with a plot plan showing building locations, shall be prepared by or under the direct and responsible supervision of a registered architect and shall be submitted to the Chairman of the Board of Land and Natural Resources for his approval, prior to the commencement of construction.
3. The preliminary drawings shall consist of:
 - a. Site Plan at a 1/16 inch = 1 foot, showing the existing and proposed topography.
 - b. Diagrammatic Site Plan at a 1/40 inch = 1 foot, showing the house, garage, driveway and major retaining walls in outline.
 - c. House Plan at a 1/8 inch = 1 foot, showing floor plans for each floor. Floor levels shall be indicated in numerals and shall refer to the City and County Datum, based on mean sea level.
 - d. Elevations at a 1/8 inch = 1 foot, showing each exposed side of the proposed structure(s), indicating proposed materials and colors for roofs, house walls and garden walls and fences.
 - e. Section at a 1/16 inch = 1 foot through the structure and property, commencing at the street and extending to the opposite end of the property.
 - f. Working Drawings: Before commencing with any work at the site, the purchaser shall submit to the Board of Land and Natural Resources for approval completed working drawings and specifications prepared by or under the direct and responsible supervision of a registered architect and so certified by him.
4. Any revision or amendment thereto shall also require prior approval by the Chairman before commencement of construction.

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5. To assure construction in accordance with approved plans and specifications, the Chairman or his duly authorized representative shall have the right to make periodic inspections during the course of the construction of said dwelling.
 6. Preliminary Drawings: The Board of Land and Natural Resources, upon receipt of a recommendation from the Architectural Advisory Committee, will approve the submitted preliminary drawings, provided that they comply with all of the requirements hereunder, and are, in the Board's opinion, suitable for this subdivision. Approval may also be made subject to other special conditions which the Board may deem appropriate in each particular case. Approval, however, will not be unreasonably withheld.
 7. Working Drawings: The Board of Land and Natural Resources, upon receipt of a recommendation from the Architectural Advisory Committee, will approve the submitted working drawings provided that they comply with the conditions under which the preliminary drawings were approved and meet all requirements hereunder.
 8. Variances: Individual solutions at variance with the General and Special Requirements, or substantial departure from the approved preliminary drawings, will be considered on their architectural merit and on their contribution to the objectives stated in the Introduction. The Board of Land and Natural Resources reserves the right, for good cause of which the Board shall be the sole judge, based upon a finding that strict compliance with all of the foregoing building requirements, including set-backs, would be unduly burdensome or impracticable with respect to any

one or more lots, to waive or modify such provisions as related thereto as may be deemed to be proper under the circumstances; provided, however, such waiver or modification shall not relieve the purchaser from the necessity of the erection of a suitable dwelling on the lot in question, nor shall the waiver or modification of a provision with respect to one lot waive such provisions for all lots.

ARTICLE III SPECIAL REQUIREMENTS

1. Materials.

All materials used for structures shall be termite and fungus free.

2. Building Set-Backs.

Building set-backs have been established for all residential lots in the subdivision and these set-backs are indicated: (1) on an over-all map of the subdivision area which is on file at the Office of the Department of Land and Natural Resources, Honolulu, Hawaii, and at the Offices of the Land Agents on the Islands of Hawaii, Maui and Kauai, and (2) on the sketch of each lot which will be attached to the special sale agreement document. A 3-foot wide landscaping area has been established on all street front property lines within the subdivision. No construction, other than driveways and entry walks or steps will be allowed within this area. Where the lots are higher than the fronting roadway, garages and storerooms may be permitted within the set-back areas provided the maximum projecting height of the garage and storeroom above the top of cut slope adjoining the roadway does not exceed an average of four feet.

3. Garage.

To each principal building there shall be an attached double garage containing not less than 400 square feet of parking area under

roof. Detached double garages may be substituted in cases where attached garages to the principal buildings are not found feasible; provided, however, that every garage, whether attached or detached, the vehicular entrance to which faces a street, shall provide not less than an additional 100 square feet of covered floor space for use for service and storage facilities. Such additional area shall be adequately screened from street view.

4. Grading.

(a) The Purchaser shall accept the condition of the lot as is, as of the day of signing the Agreement to Purchase. All clearing grading and site work required thereafter shall be done only in accordance with approved preliminary drawings and at the expense of the Purchaser.

(b) Fill material brought to the site shall be free of adobe, red dirt, termites and deleterious matter.

(c) The Purchaser shall obtain a grading permit for cuts and fills as required by the ordinances of the City and County of Honolulu, and shall abide by all requirements of these ordinances.

(d) Exposed cut areas shall be landscaped to prevent erosion.

(e) Surface run-offs shall be dispersed or channeled in such a manner as to prevent erosion, and wherever possible, shall be directed away from adjoining properties and toward streets or other storm drain structures.

5. Driveways.

(a) Driveways of a slope of 16% or more shall be paved with concrete.

(b) Drop Driveways shall be constructed prior to any work being done and shall be used during the construction period, in order to prevent damage to existing concrete gutters, curbs and sidewalks and any underground utility lines.

Any damage caused by the Purchaser, his contractor or agent, shall become the responsibility of the Purchaser.

6. Garden Walls and Fences.

(a) No garden wall or fence, whether or not used as a retaining wall, shall be higher than 6 feet at any point, as measured from the top of the wall to the existing or approved finished grade level.

(b) The street exposure of all garden and retaining walls shall be built of lava rock.

(c) All other fences and garden walls shall be subject to approval by the Board of Land and Natural Resources.

7. Refuse Can Enclosures.

Unless adequately screened, specific provisions for storage of refuse cans are made within the house or garage. Purchaser shall construct refuse can enclosures within 20 feet of a street entrance or driveway to conceal refuse cans from view, and shall follow the requirements for Garden Walls and Fences.

8. Electric Service.

(a) All electric and telephone lines shall be underground.

(b) The electric service conductor shall be rated for not less than 120/240 V, single phase, 3 wire, 115 amps.

(c) The telephone service conduit shall be rigid and not less than 3/4" in diameter.

9. Water Service.

The main service pipe from the water meter to the house shall not be less than 1 inch in diameter; provided, however, that a 1-1/2 inch diameter service pipe will be required if a lawn sprinkler system is contemplated or subsequently installed.

10. Sanitary and Water Piping.

All piping shall be concealed. All sanitary pipe joints, other than cast iron, shall be concrete packed.

11. Ground Termite Treatment.

(a) Soil under all concrete slabs on ground and under all building floors, whether on ground or over air space, and all footings and masonry foundation walls shall be treated against subterranean termites by a reliable, established and licensed termite control agency.

(b) Chemical used outside of the building or in accessible spaces under buildings shall be non-poisonous to human beings and pets.

12. Roofs.

(a) Pitched roofs surfaced with wood shakes or shingles, clay tile, copper, tern metal, or other approved materials are preferred. The minimum slope for such roofs shall be 3-1/2 to 12.

(b) No corrugated metal roofs will be allowed.

(c) No built-up roofs surfaced with gravel coral, mineral-surfaced roll roofing, or other materials will be allowed on the main building. Garages and accessory structures will be considered on their compliance with the over-all subdivision standards.

(d) Adequate provision shall be made to obtain true eave lines and to prevent the sagging of eave soffits.

(e) Variances, particularly for prominent sites, will be considered on the basis of the objectives stated in the Introduction.

13. Height of Buildings.

The Board of Land and Natural Resources reserves the right to judge interference of views, and may require adjustment in design to lessen such interference of views from neighboring lots. Two of the general guides to be used by the Board are:

(a) No portion of the structure shall be more than 15 feet above the highest finish grade at the building.

(b) No radio or television antenna shall extend more than 10 feet above the highest point of the roof. All lead-in wires shall be concealed. All other antenna shall be subject to approval.

14. Height of the Under House.

(a) Vertical support members of the main floor shall be not longer than 9 feet measured from the finished floor level to the finished ground grade at the foundation.

(b) The underhouse construction shall be concealed by enclosing walls. No open lattice work will be allowed.

(c) Because of the visual importance of the under house construction, individual solutions will be reviewed and approved on the basis of the objectives stated in the Introduction.

15. Utility Connections.

Stub-outs for underground utility connections to each lot are conveniently located and are shown on development plans and specifications on file at the Office of the Chairman of the Board of Land and Natural Resources. Tie-ins to such connections will be the responsibility of the purchaser of the lot.

RECORDATION REQUESTED BY:

DEPT. OF LAND AND NATURAL RESOURCES
LAND MANAGEMENT DIVISION

AFTER RECORDATION, RETURN TO:

DEPT. OF LAND AND NATURAL RESOURCES
LAND MANAGEMENT DIVISION

RETURN BY: MAIL () PICKUP ()

72- 0036

LIBER 8108 PAGE 250
1972 - 10 - 10 AM 10:54

[Signature]
REGISTER

D E E D

KNOW ALL MEN BY THESE PRESENTS:

THAT, the STATE OF HAWAII, hereinafter referred to as the "GRANTOR", by its Board of Land and Natural Resources, acting under authority in it vested by the laws of the State of Hawaii relating to public lands and all other laws applicable hereto, and for and in consideration of the sum of FORTY THOUSAND AND NO/100 DOLLARS (\$40,000.00), together with interest, paid at the Department of Land and Natural Resources by THEODORE F. WILSON and ROSEMARY WILSON, husband and wife, whose residence and post office address is 1520 Kalaniiki Street, Honolulu, Oahu, Hawaii, hereinafter referred to as the "GRANTEES", the receipt whereof is hereby acknowledged, does hereby remise, release and forever quitclaim unto said Grantees, their assigns, and the heirs, administrators, executors and assigns of the survivor of them, all of its right, title, interest, claim and demand in and to that certain parcel of land situate at Kapahulu, Honolulu, Oahu, Hawaii, being Lot 42, Diamond Head View Lots, Unit Two, Increment One, more particularly described in Exhibit "A" and delineated on Exhibit "B", both of which are attached hereto and made a part hereof, said Exhibits being, respectively, a survey

description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, both being designated C.S.F. Oahu File, Folder 1 and dated February 12, 1965.

RESERVING TO THE STATE OF HAWAII, ITS SUCCESSORS AND ASSIGNS, THE FOLLOWING:

1. All minerals as hereinafter defined, in, on or under the land and the right, on its own behalf or through persons authorized by it, to enter, sever, prospect for, mine and remove such minerals by deep mining, strip mining, drilling and any other means whatsoever, and to occupy and use so much of the surface of the land as may be required therefor. "Minerals", as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, in, on or under the land; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and when used in road construction.

2. All surface and ground waters appurtenant to the said land and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of said land as may be required in the exercise of this reserved right.

Provided, however, that as a condition precedent to the exercise of the rights reserved in Paragraphs 1 and 2, just compensation shall be paid to the Grantees for any of Grantees' improvements taken.

TO HAVE AND TO HOLD the same, together with all the rights, easements, privileges and appurtenances thereunto belonging, or in anywise appertaining or held and enjoyed therewith, unto said Grantees, as Tenants by the Entirety, their assigns, and the heirs, administrators, executors and assigns of the survivor of them, forever, except as aforesaid.

AND the Grantees, for themselves, their assigns, and the heirs, administrators, executors and assigns of the survivor of them, covenant with the Grantor and its successors as follows:

- (a) That the land hereby conveyed shall be used only for residence purposes for a period of ten (10) years from the date of issuance of this deed, or for fifteen (15) years from the date of sale by the State, whichever period is shorter; provided, that any change in the use of the land herein conveyed after the said ten (10) or fifteen (15) years, as the case may be, shall be in accordance with applicable State, county or city and county zoning requirements.
- (b) That should the Grantees, their assigns and the heirs, administrators, executors and assigns of the survivor of them, within five (5) years from the date of sale, decide to sell, assign, bargain, convey, lease or otherwise transfer or dispose of any interest in the land for other than security purposes, the State of Hawaii, within a reasonable period of time after receipt of notice of such determination, shall have the option to repurchase said land for the original sales price or the

fair market value at the time of repurchase, whichever is lower. Any improvements affixed to the land shall be purchased at its fair market value. At the time of repurchase the fair market value of the land and improvements shall be determined by a qualified contract appraiser; provided, however, that should the Grantees fail to agree upon the fair market value, they may appoint their own appraiser who together with the State's appraiser shall appoint a third appraiser, and the value shall be determined by arbitration and as provided in Section 658-1, Hawaii Revised Statutes. The Grantees shall pay for their own appraiser and the cost of the third appraiser shall be borne equally by the Grantees and the State of Hawaii.

- (c) That the use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color or national origin.
- (d) Building setback lines are as shown on Exhibit "B", attached hereto and made a part hereof; provided, however, that the Board, by and through its Chairman, reserves the right to modify building setback lines.
- (e) The Board, by and through its Chairman, reserves the right to judge interference of view, and to require adjustment in design to lessen such interference of views from neighboring lots; provided, however, that:

- 1. No portion of any structure s) shall be more than 15 feet above the highest approved finished grade at the building line.
- 2. No radio or television antenna shall extend more than 10 feet above the highest point of the roof. All lead-in wires shall be concealed. All other antenna shall be subject to approval.

(f) That accessory buildings may be constructed only with the prior written consent of the Chairman of the Board of Land and Natural Resources.

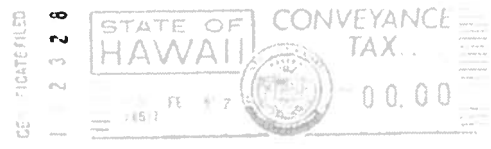
IN WITNESS WHEREOF, the STATE OF HAWAII, the Grantor herein, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed this 3rd day of February, 1972.

STATE OF HAWAII
 By *Sumner Kido*
 Chairman and Member
 Board of Land and
 Natural Resources

And By *Walter J. ...*
 Member
 Board of Land and
 Natural Resources

APPROVED AS TO FORM AND LEGALITY:

Donald H. H. ...
 Deputy Attorney General
 Dated: Dec 27, 1971



OAHU FILE
FOLDER 1

C.S.F. No. _____

STATE OF HAWAII
SURVEY DIVISION
DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

February 12, 1963

DIAMOND HEAD VIEW LOTS
UNIT TWO, INCREMENT ONE

LOT 42

Kapahulu, Honolulu, Oahu, Hawaii

Being a portion of L. P. 8165, Part B on a portion of
L. C. Aw. 8559-B, Apana 32 to William C. Lunaliilo

Being also a portion of the land conveyed to the Minister
of Interior by the Trustees of William C. Lunaliilo Estate
by Deed dated June 17, 1884, and recorded in Liber 88 on
Pages 223 and 224 (Land Office Deed 136), set aside as
Fort Ruger Military Reservation, Tract 1, by Presidential
Executive Order 6408, dated November 7, 1933 and subse-
quently restored to the possession, use and control of
the Territory of Hawaii by Presidential Executive Order
10648 (Part I, Parcel 1) dated December 8, 1955.

Beginning at the east corner of this lot, the south
corner of Lot 43-A of Diamond Head View Lots, Unit Two, Increment
One, and on the northwesterly side of Pokapahu Place, the coordinates
of said point of beginning referred to Government Survey Triangu-
lation Station "LEAHI" being 581.14 feet North and 4620.76 feet
East, as shown on Government Survey Registered Map HSS Plat 2175,
thence running by azimuths measured clockwise from True South:

1. Along the northwesterly side of Pokapahu Place on a curve to
the right having a radius of 53.00 feet, the
chord azimuth and distance being 64° 15' 15"
19.01 feet;

EXHIBIT "A"

February 12, 1965

OAHU FILE
FOLDER 1

-2-

Diamond Head View Lots
Unit Two, Increment One
Lot 42

2. Thence along the northwesterly side of Pokapahu Place on a curve to the left having a radius of 97.00 feet, the chord azimuth and distance being $58^{\circ} 16' 05''$ 54.51 feet;
3. $41^{\circ} 57'$ 35.10 feet along the northwesterly side of Pokapahu Place;
4. $131^{\circ} 57'$ 95.00 feet along Lot 41 of Diamond Head View Lots, Unit Two, Increment One;
5. $221^{\circ} 57'$ 105.00 feet along Lot 44 of Diamond Head View Lots, Unit Two, Increment One;
6. $311^{\circ} 57'$ 117.53 feet along Lot 43-A of Diamond Head View Lots, Unit Two, Increment One, to the point of beginning and containing an Area of 10,577 Square Feet.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

By Robert T. Hashimoto
ROBERT T. HASHIMOTO ts
Land Surveyor

Compiled from survey
by Wright, Harvey and
Wright and Govt. Survey
Records.

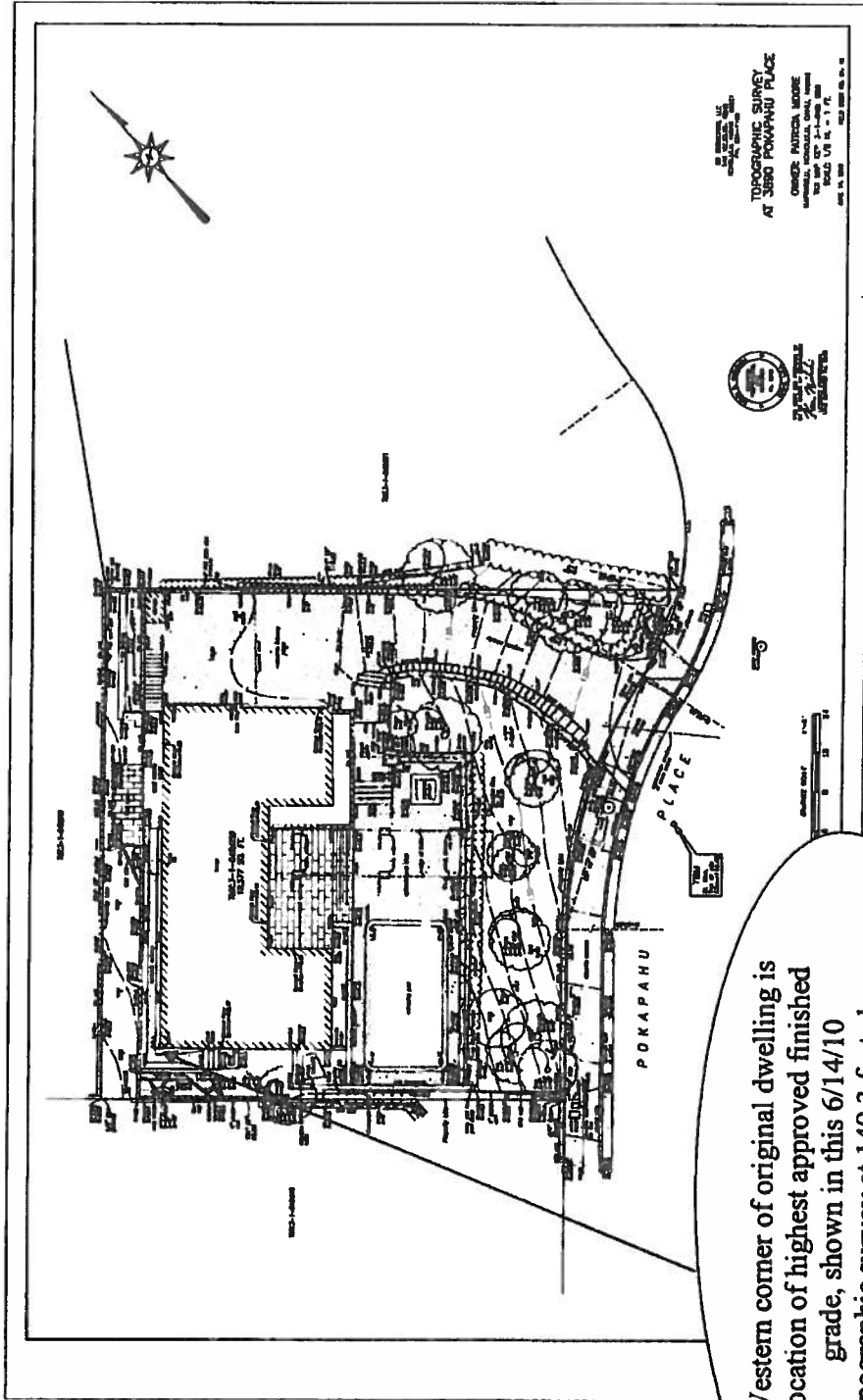


EXHIBIT 3

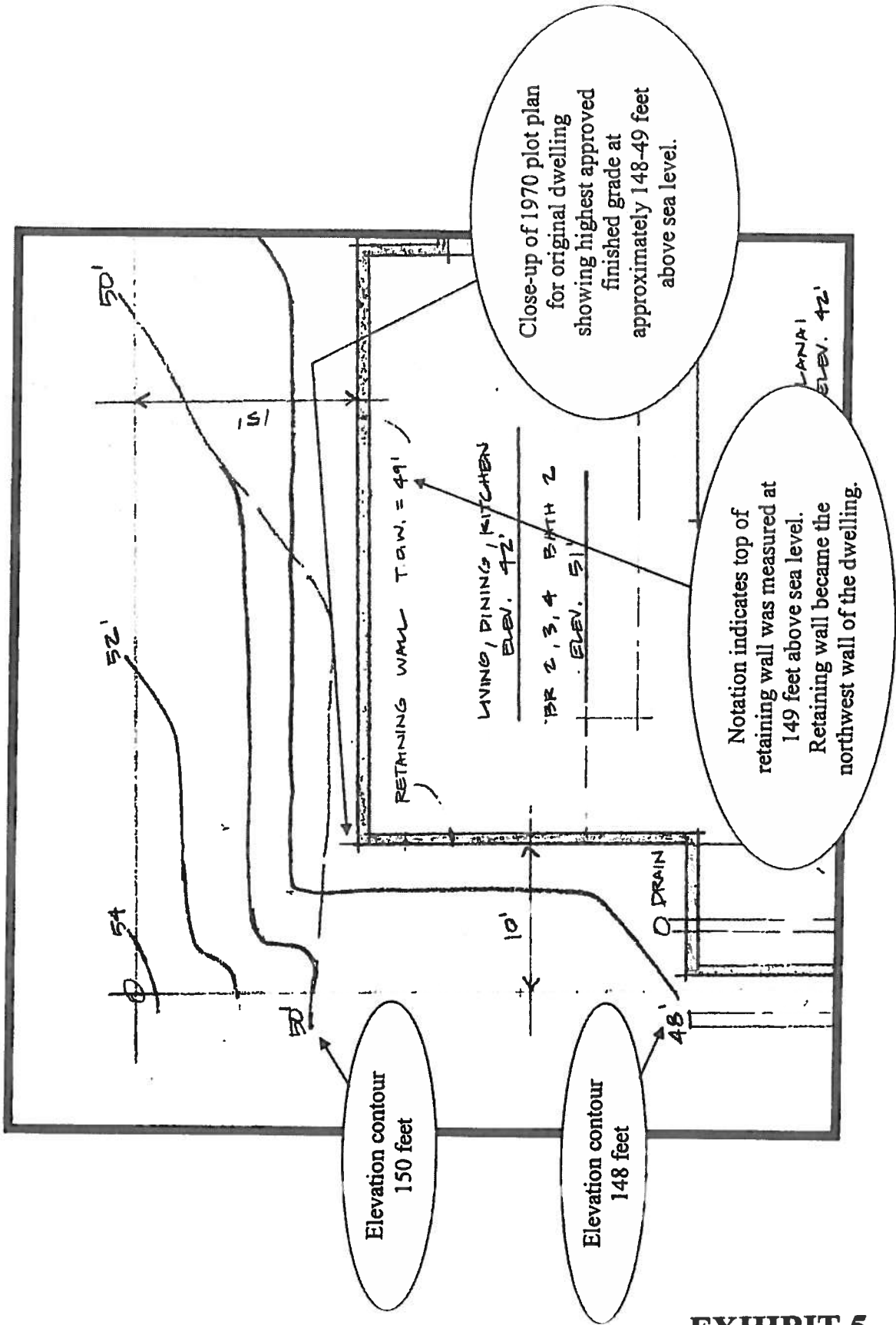


EXHIBIT 5

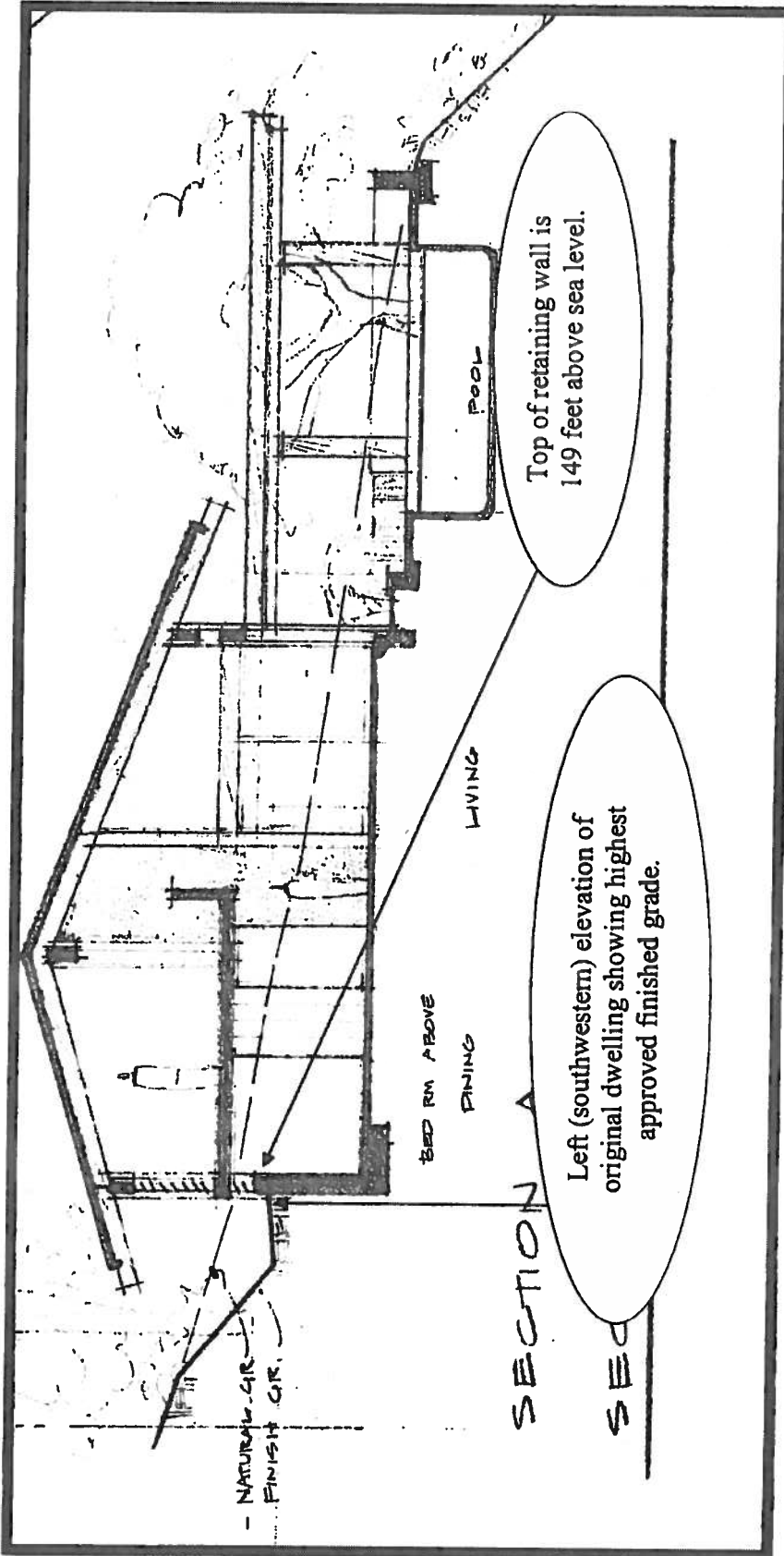
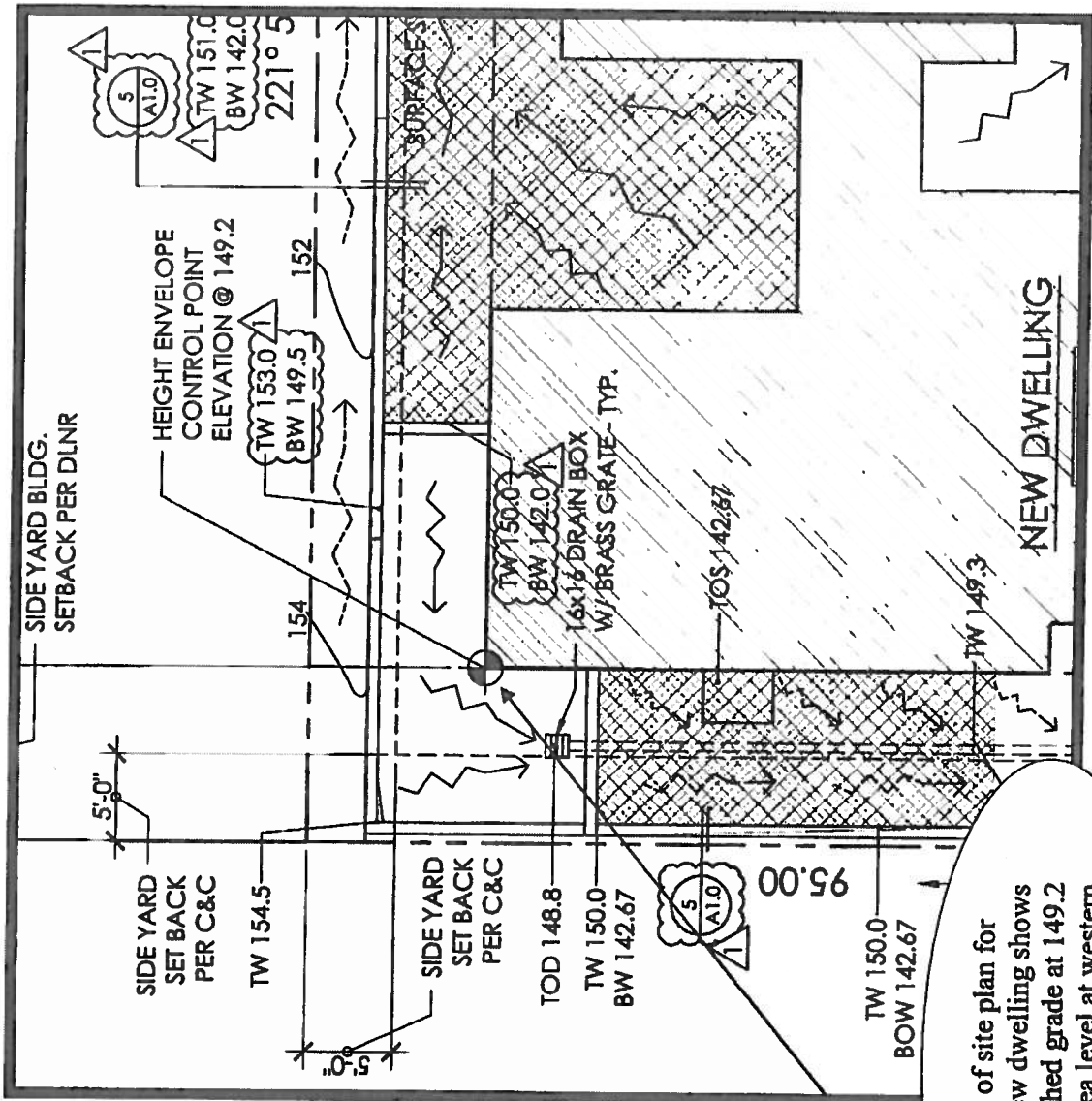
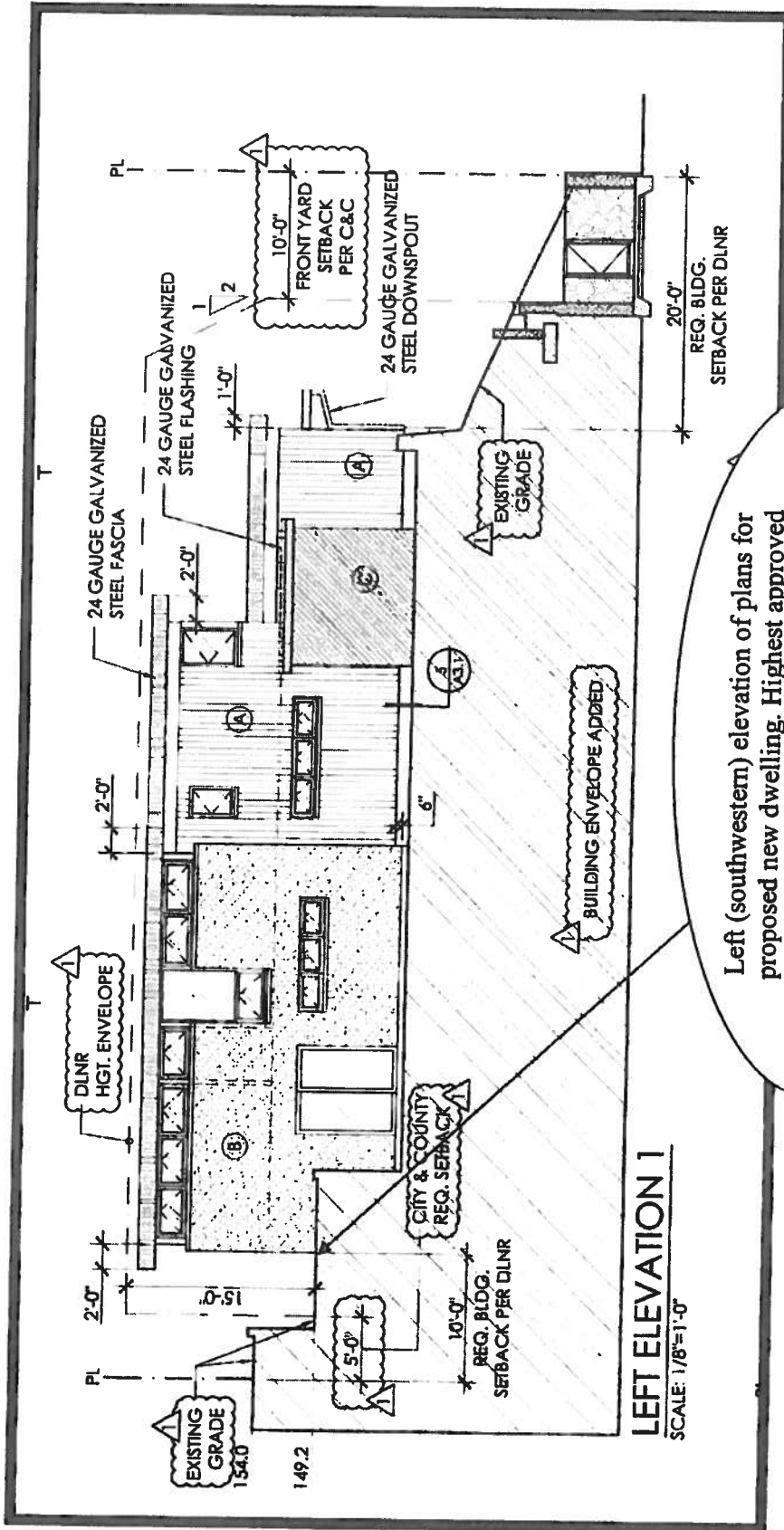


EXHIBIT 6



Close-up of site plan for proposed new dwelling shows highest finished grade at 149.2 feet above sea level at western corner of structure

EXHIBIT 7



Left (southwestern) elevation of plans for proposed new dwelling. Highest approved finished grade is shown at 149.2 feet above sea level. Dwelling height does not exceed 15 feet from highest approved finished grade.