



**AGENDA**  
**NEWMAN PLANNING COMMISSION**  
**REGULAR MEETING OF APRIL 21, 2011**  
**CITY COUNCIL CHAMBERS, 7:00 P.M., 1200 MAIN STREET**

1. Call To Order.
2. Pledge Of Allegiance.
3. Roll Call.
4. Approval Of The Agenda.
5. Approval Of Minutes From The March 17, 2011 Meeting.
6. Items From The Public.
7. New Business
  - a. Public Hearing
    - Variance No. 11-01
    - Applicant: Melinda Origel-Maier
    - Description: Allow An Attached Patio Cover That Would Exceed Rear Setback Standards.
    - Location: 210 Northampton Court, Approximately 100 Feet North Of Parliament Court;  
More Specifically Described As Assessor's Parcel Number 049-057-004.
8. Items From Commissioners.
9. Items From Director And Staff.
10. Adjournment.

MINUTES  
NEWMAN PLANNING COMMISSION  
REGULAR MEETING OF MARCH 17, 2011  
CITY COUNCIL CHAMBERS, 7:00 P.M., 1200 MAIN STREET

1. Call To Order - 7:00 P.M.

Commissioner Maurer Presided Over The Meeting At The Request Of Chairperson Applegate, Due To The Fact That He Was Not Feeling Well.

2. Pledge Of Allegiance.

3. Roll Call **PRESENT:** Sloan, Coleman, Maurer, Allan and Applegate.  
**ABSENT:** None.

4. Approval Of The Agenda.

**ACTION:** On Motion By Maurer Seconded By Sloan And Unanimously Carried, The Agenda Was Approved.

5. Approval Of Minutes From The January 20, 2011 Meeting.

**ACTION:** On Motion By Sloan Seconded By Coleman And Unanimously Carried, The Minutes From The October 21, 2010 Meeting Were Approved.

6. Items From The Public - None.

7. New Business

a. Public Hearing

**Zone Change No. 11-01**

**Applicant:** City Of Newman

**Description:** Recommendation To The City Council To Approve The Proposed City-Wide Re-Zoning For Conformance To The 2030 General Plan.

**Location:** 177 Various Parcels Within The City Of Newman City Limits.

Assistant Planner Ocasio Reviewed And Presented Zone Change No. 11-01.

Commissioner Maurer Opened The Public Hearing At 7:17 P.M.

Phyllis Peavler, 1032 Main Street, Stated That She Was Concerned About How The Re-Zoning Of The 1000 Block Of Highway 33/"N" Street And How It Would Affect Adjacent Properties On Main Street Directly. She Asked That The Commission Designate That Area As A Professional Office District Because She Was Concerned About Other Uses Negatively Impacting The Surrounding Residences.

Marge Carvalho, 1456 "L" Street, Explained That She Lives Near Golden Valley Health Clinic And That Her Property Is Currently Zoned R-2. She Mentioned That She Plans On Building A Second Home On Her Property In The Future And Wanted To Confirm That The Re-Zoning Would Still Allow Her To Do So.

City Manager Holland Assured Ms. Carvalho That She Would Still Be Allowed To Construct A Second Single Family Dwelling On Her Property, Provided She Met The Setback Requirements.

Martha Esprio, 1037 "N" Street, Noted That Her Home Will Be Rezoned From Residential To Commercial And She Stated That She Wanted To Be Sure That She Could Still Use It As A Residence.

Assistant Planner Ocasio Assured Ms. Esprio That She Would Still Be Able To Continue To Use Her Home As A Residence And That It Would Be Considered A Legal Nonconforming Use, Unless The Home Was More Than Fifty Percent Destroyed. Ocasio Noted That If The Home Was More Than Fifty Percent Destroyed, The Property Owner Could Apply For A Use Permit And If Approved Would Still Be Able To Utilize The Property As A Residence.

Jonathan Jenkins, 1043 "P" Street, Questioned Why The Property Behind Nob Hill Near Inyo And Main Streets Was Being Rezoned From Residential To Commercial. Jenkins Stated That He Was Concerned About Commercial Being So Close To Residential. Jenkins Inquired About The Status Of The Dog Park Project.

Commissioner Maurer Closed The Public Hearing At 7:43 P.M.

**ACTION:** On Motion By Coleman Seconded By Applegate And Unanimously Carried, Resolution No. 2011-01, A Resolution Of The Planning Commission Of The City Of Newman Recommending Approval To The City Council For Zone Change No. 11-01 Was Approved.

#### **8. Items From Commissioners.**

Commissioner Sloan Asked If The City Had Any Remedies Or Solutions For Neighborhood Pigeon Problems.

#### **9. Items From Director And Staff.**

Assistant Planner Ocasio Reported That The Second Phase Of The PQRST Project Bid Had Been Received And That The Project Would Be Awarded Soon. Ocasio Informed The Commission That The City Had Applied For Grant To Pay For Swim Field Trips This Summer And That The Architectural Review Committee Had Held The An Initial Review Of The Site Plan For New AutoZone Store That Would Be Located On The Northwest Corner Of Highway 33 And Inyo Avenue. She Mentioned That She Would Be Providing Each Of The Planning Commissioners With A Copy Of The PowerPoint Presentation From The Recent Stanislaus County Planning Commissioner's Workshop.

#### **10. Adjournment.**

**ACTION:** On Motion By Applegate Seconded By Allan And Unanimously Carried, The Meeting Was Adjourned At 7:58 P.M.

**CITY OF NEWMAN  
COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT**

**PLANNING COMMISSION MEETING DATE:** April 21, 2011

**AGENDA ITEM:** 7.a.

<b>VA</b>	<b>#11-01</b>	<b>Allow a 10' x 50' accessory building that would exceed lot coverage standards.</b>
<b>APN</b>	<b>049-057-004</b>	<b>Applicant: Melinda Origel-Maier</b>
<b>CEQA</b>	<b>Exempt</b>	

**REQUEST:**

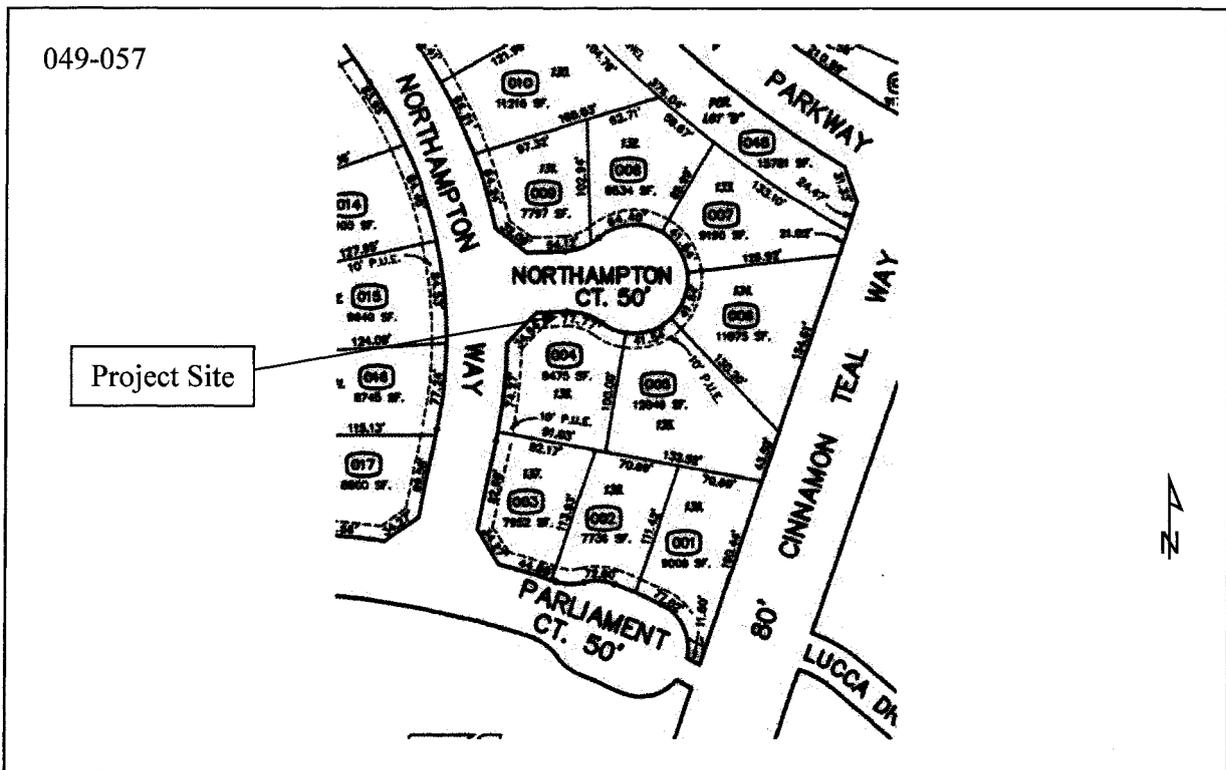
Allow a 10' x 50' attached patio cover that would encroach into the required 10 foot rear setback.

**LOCATION:**

The subject property is located at 210 Northampton Court, approximately 100 feet north of Parliament Court, more specifically described as Assessor's Parcel Number 049-057-004.

**ENVIRONMENTAL ASSESSMENT:**

Pursuant to the California Environmental Quality Act (CEQA) and the City of Newman Environmental Quality Guidelines, it has been determined that this project is categorically exempt under Class 32, Article 19 of CEQA



**LAND USE:**

<u>Property</u>	<u>Land Use</u>	<u>Zone</u>	<u>General Plan</u>
Subject site	Residential	R-1	LD
North	Residential	R-1	LD
South	Residential	R-1	LD
East	Residential	R-1	LD
West	Residential	R-1	LD

R-1 = Single Family Residential

LD = Low Density Residential

**SIZE OF PROPERTY:** Approximately 9,475 square Feet

**ACCESS:** Northampton Court

**ORDINANCES:**

NCC 5.03.020 Permitted Uses in R-1 District

NCC 5.23.030 Accessory Buildings

NCC 5.25.030 Variances

**PROJECT DESCRIPTION:**

The site plan identifies a single family dwelling and proposed attached accessory structure. The proposed patio cover measures 10' x 50' and stands 9'6" tall at the highest point (attaching to the residence). The proposed structure is identified as having a five (5') foot rear setback.

**ANALYSIS:**

*Background:* The applicant purchased the home in 2008 and has been planning to make improvements to the property since occupancy.

In February 2011, the applicant approached staff inquiring about the rules and regulations regarding attached accessory structures. Given the configuration of their lot, position of their home and location on a shortened cul-de-sac, it was found that a variance would be required in order to construct the proposed patio cover as desired. On March 31, 2011, the applicant applied for a variance to allow the patio cover as proposed.

*Land Use:* The subject site and surrounding properties are zoned R-1 (single-family residential). The R-1 zone identifies accessory structures as a permitted use. The proposed structure will have side setbacks measuring 26'2 1/2" and 15', meeting code standards. If constructed, the total lot coverage will be 40%, also within code standards for the lot.

Municipal code requirements vary for attached and detached accessory structures; NMC §5.23.030.1 and H state: "Where an accessory building is attached to the main building, it shall...comply with all respects with the requirements of this title applicable to the main building [i.e. setbacks, etc]. [And] Detached accessory buildings shall be placed no closer than five feet from a side or rear lot line." In the R-1 zone, rear setback requirements are a minimum of ten (10') feet, therefore an attached accessory building (such as a patio cover) must also have the same setback. However, if the applicant were to have a detached accessory building, they would only be required to have a five (5') rear setback. In the applicant's case, the house placement (given the shortened cul-de-sac) and orientation prevent them from utilizing a detached accessory building and thus triggering a variance request.

The proposed use is consistent with the zone district and the General Plan; however its placement is not unless a variance is granted.

*Lot Coverage:* If granted, the variance will result in a lot coverage of 40%, meeting code standards for the R-1 zone.

*Building Location:*

The intent of building setbacks were to:

- secure safety from fire, panic, and other dangers
- promote health and general welfare
- provide adequate light and air
- prevent overcrowding of land
- avoid undue concentrations of population
- facilitate the provision of adequate open space

The proposed patio cover is open-sided, does not decrease light and air, meets lot coverage and density standards, and does not increase population or significantly decrease open space for the applicant or surrounding neighborhood.

Due to the shortened cul-de-sac on which the property is located, the house had to be placed towards the rear of the lot. In fact, if the parcel's front property line was straight (as opposed to the existing curvature) the house would have been placed closer towards the front property line instead of the rear. Were it not for the placement of the home on the lot (minimizing the rear yard area) the applicant would not need a variance for the construction of the proposed patio cover.

Variance

Newman Municipal Code (NMC) section 5.01.070 (Definitions) defines setback line as "a line established by this title to govern the placement of buildings or structures with respect to lot lines, streets or alleys." Additionally, NMC §5.03.050.G (Property development standards) identifies that the minimum rear yard setback is ten (10') feet from property line and as referenced above, attached accessory structures must "...comply with all respects with the requirements of this title applicable to the main building" (NMC §5.23.030.1). However, NMC §5.23.030.H allows detached accessory buildings to have a rear setback of five (5') feet. The applicant is proposing a structure that would have a rear setback of five feet. The applicant has indicated the proposed placement of the patio cover is necessary because of:

- their shallow rear yard
- incessant direct sunlight (the home is north facing, causing day-long full sun in the rear yard)
- the need to provide coverage and protection from weather for rear entrances of the home
- the desire to provide a safe, shaded area for their family to enjoy

In order to comply with existing standards for the lot, the applicant would only be able to construct an accessory building measuring 5'1½" deep or less.

According to the California Governor's Office of Planning and Research, the following issues must be considered in order to approve a variance: special circumstances applicable to the proposal site (such as size, shape, topography, location and surroundings) exist, an "unnecessary hardship" depriving the applicant of privileges enjoyed by nearby properties is present, the use for the proposed variance is already allowed in that zone, the determination that the variance will not be a grant of special privilege and the existence of supportive findings for approval. Upon staff's review, the proposal site does have special circumstances, a hardship does exist, the proposed use is allowed in the zoning district and that variance approval should not be a granting of special interest.

The applicant states that the accessory building will not be a nuisance or be detrimental to public health and safety and that approval of the variance would afford them the same basic privileges that their neighbors have and that granting the variance would not constitute a special privilege or be inconsistent with other properties in the same zoning district. They believe that approval of the variance would continue to maintain the intent of the zoning requirements and the granting of the variance proposal would not be detrimental to public health, safety or general welfare.

NMC 5.25.030 (F) states "Neither personal, family, or financial difficulties; the loss of perspective profits; or the existing of neighboring violations shall constitute justification for a variance."

*Findings:* The planning commission may approve/conditionally approve a variance application only if the following findings can be made:

1. The variance does not form a grant of special privilege inconsistent with the limitations on other properties in the same zoning district and the vicinity.

Pro: Given that the subject property is located in an established residential area where attached accessory buildings (such as patio covers) are common and that detached accessory buildings require a five (5') foot setback (what the applicant is requesting), the approval of the variance will not constitute a granting of special privilege.

Con: Given that other properties within the general area abide by setback standards, approval of this request may constitute a granting of special privilege.

2. The variance will not be detrimental to the public health, safety and general welfare.

Pro: The proposed structure is a permitted use within the zone district; it should not be harmful to the public health, safety and general welfare. In fact, were it not for the unique shape and layout of the subject property, the variance would be unnecessary.

Con: The proposed structure would not meet rear setback requirements as stated in the code; however were it detached it would. Therefore, impact on the public health, safety and general welfare would be minimal, if any.

3. The variance will not substantially impair the purposes of this title or the General Plan.

Pro: Given that the proposed use is permitted within the zone district and approval of the request does not authorize a use that is inconsistent with the General Plan, approval of the variance will not substantially impair the purposes of this Title or the General Plan.

Con: None.

4. The subject property has special circumstances or conditions whereby the strict application of the zoning ordinance standards would deprive the property of privileges enjoyed by other properties in the same zoning district and the vicinity.

Pro: Given that the existing home on the subject property has a large footprint and is placed toward the rear corner of the lot, the configuration of the site imposes limitations on conforming to the requirements in the code. Coupled with the existence of attached patio covers on neighboring lots; the strict application of the zoning ordinance may deprive the property owner(s) of privileges enjoyed by other properties in the same zoning district and

the vicinity and therefore depriving them of rights normally afforded to others within the same zone

Con: Given that other properties within the vicinity and same zone district comply with the development standards identified within the municipal code, the subject property is not deprived of privileges enjoyed by other properties in the same zoning district and the vicinity.

5. The variance will be compatible with the neighborhood.

Pro: Given that other attached accessory structures exist within the general area, that the proposed accessory building is located at the rear one-half of the property and that the lot will never have an immediate neighbor to the west; the variance will be compatible with the current neighborhood.

Con: Given that the accessory building would encroach on the required setback and potentially affect the character of the existing neighborhood, the variance may not be compatible with the neighborhood.

Public Comment

Public Notices were published in the West Side Index on April 7, 2011 and mailed out to surrounding property owners within a 300' radius. As of this date (4-15-11), one telephone inquiry has been received, no opposition was noted.

**CONCLUSION:**

Each area of land is, to some degree, unique as to its suitability for and constraints on development. Development standards imposed under the zoning code cannot foresee all conceivable situations peculiar to the development of every property at every moment, but are designed as general standards applicable to most situations.

Variations, if appropriately administered, are intended to provide flexibility, adaptability, and reasonableness in the application and administration of the zoning code where special or extraordinary conditions exist; given that minimum criteria (i.e. findings) justifying the deviation are met and that the extent and impact of said deviation will be that which is reasonably necessary to meet said conditions.

Newman Municipal Code section 5.25.030 states that "The purpose of granting a variance is to allow, in certain cases, deviation from the strict application of the setback, building height, lot coverage, usable floor area, usable open space, floor area ratio, off-street parking or landscaped area requirements of the title, when appropriate. A variance may be granted only where the literal enforcement of the requirements of the title would involve practical difficulties or cause undue hardship that would necessarily deprive the property owner of reasonable use of the land or buildings involved by reason of the exceptional narrowness, shallowness or unusual shape of a parcel of property [and the] exceptional topographic conditions, natural features, existing improvements or other extraordinary situation or physical conditions." The proposed project is a permitted use within the zoning district; however NMC sections 5.03.050.G and 5.23.030.1 require that the rear setback be ten (10') feet (without the need for a variance).

Based on lot configuration, the shortened cul-de-sac, that the proposed attached accessory structure is for general residential purposes and is in keeping with required setbacks for detached accessory structures staff finds that an extraordinary situation/physical condition does exist on the subject property. Per the municipal code, the Planning Commission may grant the variance on the basis of "extraordinary situation". Staff has provided the commission findings supporting both

approval and denial. Given the existence of supportive findings and lack of irrefutable opposing findings, staff recommends approval of the variance.

**CONDITIONS OF APPROVAL:**

Should the Planning Commission grant the applicant's request for a Variance, staff has recommended the following conditions of approval:

1. The applicant shall apply for and receive a building permit for the structure.

**Standard Conditions**

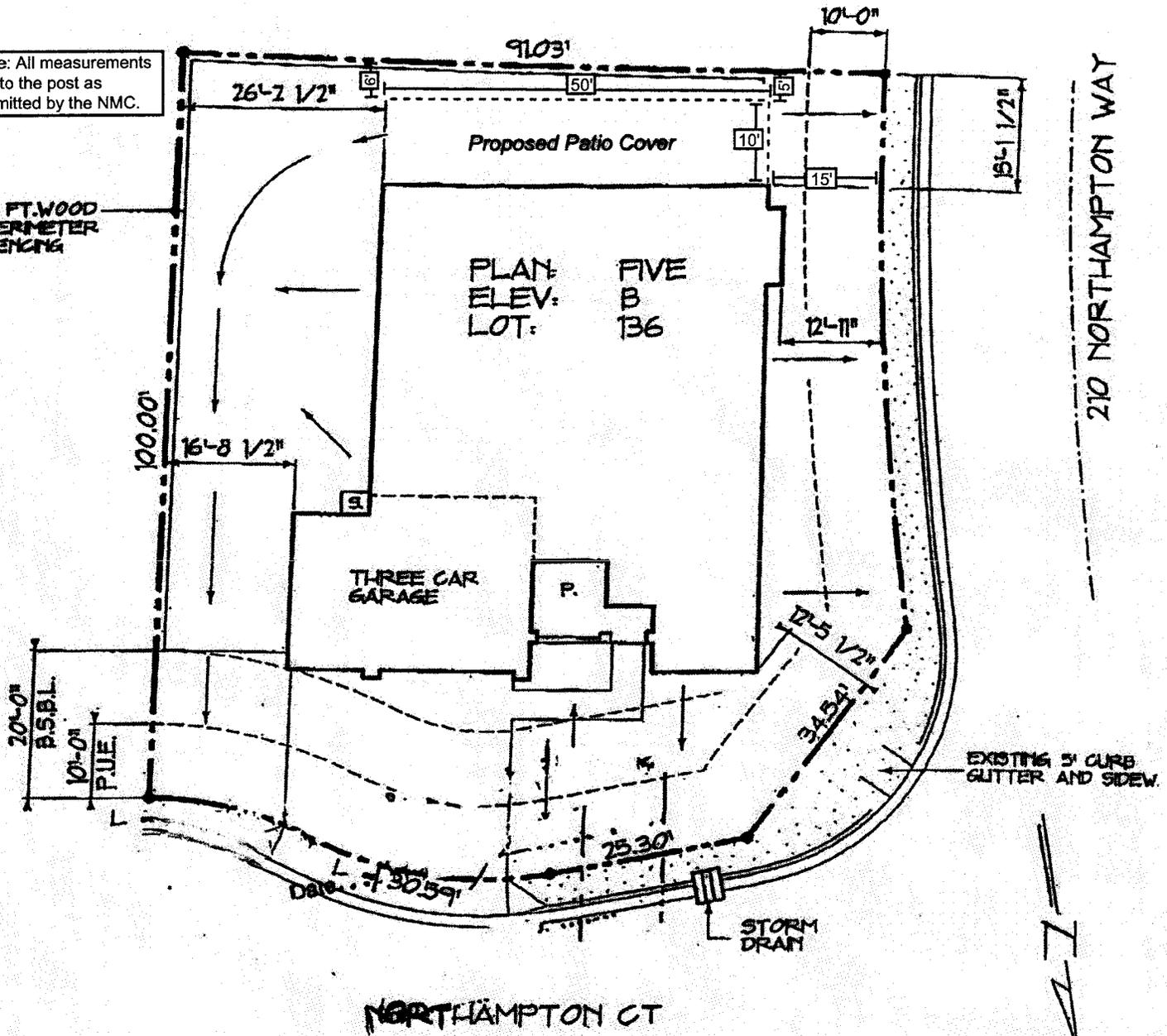
2. This application shall become null and void if the project is not initiated within one year from the date of approval.
3. The applicant and/or property owner shall comply with, and be responsible for obtaining encroachment permits from the City of Newman for work performed within the City's right-of-way.
4. All plans shall be consistent with the site plan, reflecting amendments as approved.
5. Any proposed modifications of a significant and/or permanent nature to the approved site plan may require approval of a new variance review application.
6. All night lighting shall be residential in nature and appropriate for the zoning district.
7. It shall be the responsibility of the applicant to convey copies of the conditions of approval to all contractors and sub-contractors.
8. During Construction, and for safety purposes, the applicant and assigned contractors shall keep the public right-of-way clear of obstructions, and provide for clean-up on a daily basis.
9. All contractors performing work relative to this project shall obtain City of Newman Business Licenses, prior to start of work on the project. All work performed on the project shall comply with the requirements of the State and Professions Code.

**ATTACHMENTS:**

1. Exhibit A, Site Plan
2. Exhibit B, Landscaping Plan
3. Exhibit C, Applicant Request Letter
4. Exhibit D, Site Photographs

Note: All measurements are to the post as permitted by the NMC.

6 FT. WOOD PERIMETER FENCING



210 NORTHAMPTON WAY

NORTHAMPTON CT

SCALE 1" = 20'

SURFACE WATER TO DRAIN AWAY FROM BUILDING AT ALL POINTS.

PLAN FIVE / OPTIONS

GUEST ROOM SUITE  
LAUNDRY SINK ROUGH IN  
MSTR. BEDRM. PATIO DR.

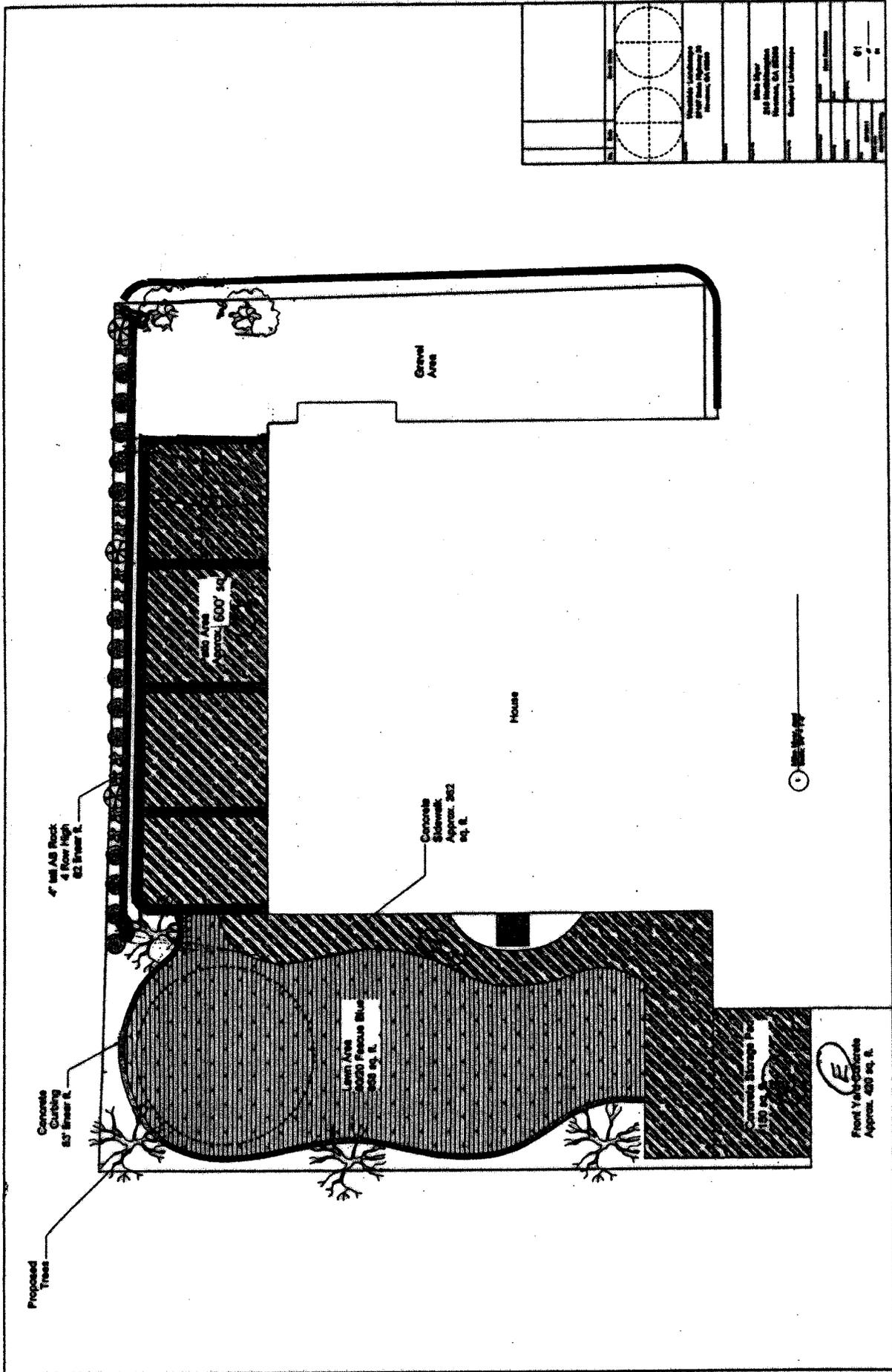
PLAN FIVE

LOT AREA: ----- 9,475 SQ. FT.

SHERMAN RANCH UNIT NO. 3

BEING A DIVISION OF A PORTION OF PARCEL "9" AS SHOWN ON THAT MAP FILED IN BOOK 52 OF PARCEL MAPS AT PAGE 88, S.C.R. & LYING WITHIN SECTION 17, T. 7 S. R. 9 E MOUNT Diablo MERIDIAN, CITY OF NEWMAN COUNTY OF STANISLAUS, STATE OF CALIFORNIA

LOT: 136  
PLAN: FIVE  
ADDRESS: 210 NORTHAMPTON CT



Proposed Trees

Concrete Cladding  
87 linear ft.

4" x 4" x 8' Rock  
4 Row High  
82 linear ft.

Patio Area  
Approx. 600' sq.

Concrete Stone Work  
Approx. 362  
sq. ft.

Lawn Area  
3000 Pegasus Blue  
sq. ft.

Concrete Storage Pad  
150 sq. ft.

Front Yard Concrete  
Approx. 400 sq. ft.

Gravel Area

House



Title Block Project Name: [Blank] Date: [Blank] Scale: [Blank] Drawing No.: [Blank]	
Designer: [Blank] Checker: [Blank] Approver: [Blank]	
Date: [Blank] Scale: [Blank] Drawing No.: [Blank]	

Melinda R. Origel-Maier  
210 Northampton Court  
Newman, CA 95360

March 29, 2011

City of Newman Planning Commission  
P.O. Box 787  
Newman, CA 95360

Subject: Request for Variance from Melinda and Mike Maier, 210 Northampton Court.

Dear Planning Commissioners,

It is with all do respect that I ask you to consider the approval of my Patio cover. I am requesting a variance to reduce the back yard setback from 10 feet to 5 feet for a proposed attached patio cover on the south side (rear) of my home. The Patio cover will require reduced setbacks; however I am only asking that they be reduced to the same setback standard that the City currently has for side yards and detached structures (i.e. sheds or detached patio covers) in the rear yard. Given the narrow shape of my rear yard, it is not be possible to construct an attached patio cover in the back yard if the setback is not reduced to 5 feet.

I believe that my irregularly shaped yard is one finding that justifies approval of my request since my back yard is only about fifteen to sixteen feet deep (from the house to the fence line). In addition to the irregular shaped yard, the back portion of my yard is in full sun for the entire day, preventing me from enjoying this portion of my property during the warm spring and summer months of the year, depriving me the privilege of utilizing my rear yard similarly to my neighbors. I believe the variance process was put into place for unusual pieces of property like mine; the variance procedure is there to lend some flexibility to the usual standards of the zoning ordinance. The approval of a variance allows property owners "to use their property in a manner basically consistent with the established regulations with such minor variations as will place him in parity with other property owners in the same zone" (*Longtin's California Land Use, 2nd edition*).

The only entrances to my home other than front door or the door to the garage are in the rear of the house making it a natural location for a patio cover. We considered placing a patio on the east side (side yard) of our home but it would be much more convenient to locate to the rear of the property; it would be closer to the two sliding doors at the back of the home near the living room, dining room, kitchen and master bedroom; it will help reduce energy costs as the back of the home is where our family spends most of its time and tends to be the warmest part of the home (which should be cooler once that patio cover is installed). We would like to also leave our side yard open as a grass area for our child to play and reserve it for future use as recreational vehicle parking.

If this variance were to be denied, I would feel as though I am not being afforded the same basic privileges that my neighbors have and I believe that granting the variance would not constitute a special privilege or be inconsistent with other properties in the same zoning district. I believe that approval of the variance would continue to maintain the intent of the zoning requirements and granting of this variance would not be detrimental to public health, safety or general welfare.

In essence, we are trying to create a place to entertain family and friends and have a shaded outdoor area for our young son to play. Our home was built in 2006 and we purchased it in 2008 but our backyard is just dirt and weeds; we are trying to make improvements to our home for the good of our family and do it in a manner that does not to detract from the neighborhood but enhance it.

I know that the Commission is always concerned about setting precedents but I am aware of other variances that have been granted by previous commissions for similar structures. As I stated previously, the setback would be that same as allowed on my side yard without a variance or for a shed or detached structure in the rear yard. I would not have spent the time, money and energy to submit this variance application if I did not feel it was a valid and reasonable request. I implore you to approve the variance as submitted and respectfully await your decision. Thank you for your time and consideration of this matter.

Sincerely,

A handwritten signature in black ink that reads "Melinda Origel-Maier". The signature is written in a cursive style with a large, sweeping "M" and "O".

Melinda R. Origel-Maier

