



# Community Planning & Permitting

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302 • Tel: 303.441.3930 • Fax: 303.441.4856  
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • [www.bouldercounty.gov](http://www.bouldercounty.gov)

**BOULDER COUNTY BOARD OF ADJUSTMENT**

**AGENDA ITEM**

**Wednesday September 4, 2024 4:00 P.M.**

## PUBLIC HEARING

**STAFF PLANNER:** Sam Walker, Planner II

**RECOMMENDATION:** Staff recommends denial of the variance request

**Docket VAR-24-0004: Eckert Setback Reduction**

Request:	Request to reduce the supplemental 110-foot setback along SH170 to 84 feet to allow construction of a detached garage.
Location:	5941 Marshall Drive, located on the north side of SH 170 approximately .4 miles east of the intersection of SH170 and Cherryvale Road, on an approximately 1.2 acre parcel, in Section 22, Township 1S, Range 70W.
Zoning:	Agricultural (A) Zoning District
Applicant/Owner:	Jodi & Jeff Eckert

## PACKET CONTENTS

Item	Pages
○ Staff Recommendation	1 – 9
○ Application Materials (Attachment A)	A1 – A21
○ Referral Agency Responses (Attachment B)	B1 – B8
○ Adjacent Property Owner Comments (Attachment C)	C1 – C2
○ Staff Measurements on Applicants’ Site Plan (Attachment D)	D1
○ Applicants’ Supplemental Narrative Statement (Attachment E)	E1 – E2

## SUMMARY

The applicant requests a reduction in the required supplemental setback along State Highway 170 (SH 170, also known as Marshall Drive) from 110 feet to 84 feet to allow for the approval of an accessory detached garage. Staff recommends that this variance request be denied because the applicable review criteria in Article 4-1202(B)(2) of the Boulder Country Land Use Code (the Code) cannot be met.

## **DISCUSSION**

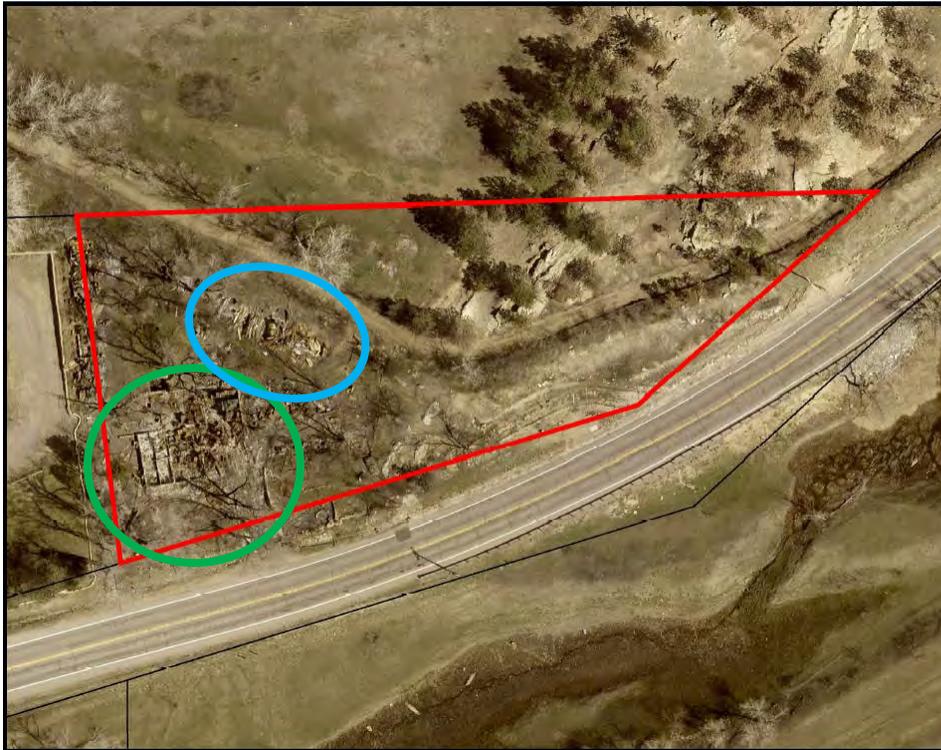
The subject property is located on the north side of SH 170 approximately .4 miles east of the intersection of SH 170 and Cherryvale Road, generally southeast of the City of Boulder. The property is approximately 1.2 acres in size, is located in the Agricultural zoning district, and is a legal building lot. Access to the parcel is via an existing driveway onto SH 170.

Prior to the 2021 Marshall Fire, the property had been developed with a residence and loafing shed/barn but there was no permit record for either structure. Historic aerial photography indicates that the burned residence was constructed within the supplemental setback but existed at least as far back as 1963, therefore predating County adoption of supplemental setbacks and meeting the definition of a Nonconforming Structure as described in Article 4-1002 of the Code. Because the residence was burned during the Marshall Fire, it is eligible for rebuilding as allowed in Article 19-500 of the Code, which was adopted following the fire.

Article 19-500 rebuilding criteria allow previously nonconforming structures (like the previously existing residence) to be rebuilt at their previous degree of nonconformity or relocated to lessen their nonconformity. A staff Rebuilding Coordinator assigned to the parcel has already reviewed and given a preliminary approval for the new residence location, which will be within the supplemental setback but located further from the centerline of SH 170 than the previous residence. The proposed detached garage is a new structure that did not exist prior to the Marshall Fire, and so does not have the same nonconforming status as the previously existing residence.

Because the residence will be permitted to be rebuilt within the supplemental setback, as allowed by Article 19-500, the applicants have also requested to locate the newly proposed detached garage within the supplemental setback as well. In particular, the applicants have requested to reduce the required 110-foot supplemental setback, which is measured from the centerline of SH 170, to 84 feet to allow the construction of the new proposed detached garage. The proposed setback would roughly match the already-approved setback for the reconstructed residence, which will be located 80 feet from the centerline of SH 170 as shown in the submitted plans.

The proposed location requires a variance because the detached garage was not legally existing at the time of the fire, and therefore, does not qualify for the location allowances in Article 19-500 of the Code. Instead, the proposed detached garage constitutes new floor area and will require Site Plan Review or Site Plan Review Waiver approval prior to construction.



***Figure 1: 2022 Aerial detail photo, showing destroyed residence circled in green and destroyed agricultural structure circled in blue.***



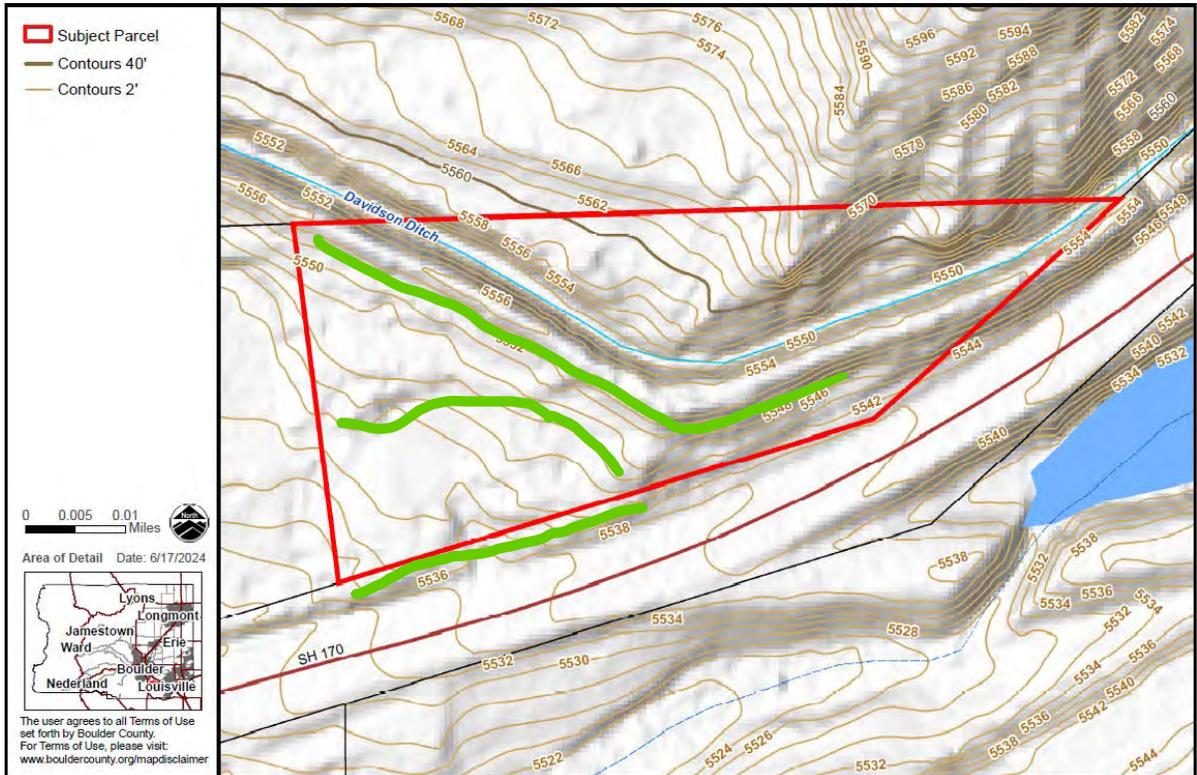
***Figure 2: 2018 Aerial photo, showing previously existing residence circled in green and previously existing agricultural structure circled in blue.***

In support of this variance request, the applicants provided a hardship statement which indicates that the parcel is shallow in depth relative to SH 170, and is also bisected by the Davidson Ditch, which runs east-west through the parcel as shown in Figures 1 and 2 above as well as Figure 3, below. The presence of the Davidson Ditch further constrains development on the property. The Code requires a 50-foot setback from the centerline of the ditch for all structures, with a provision that the setback can be reduced to 20 feet with express approval of the ditch company (these setbacks are also illustrated in Figure 3, below).



*Figure 3: Zoning map illustrating the required 110-foot supplemental setback from SH 170 (light grey shading) as well as the 50-foot and 20-foot setbacks from the ditch centerline (dark blue dashed line and light blue dashed line, respectively). Staff note that locations of each setback are only approximated relative to the underlying aerial photograph.*

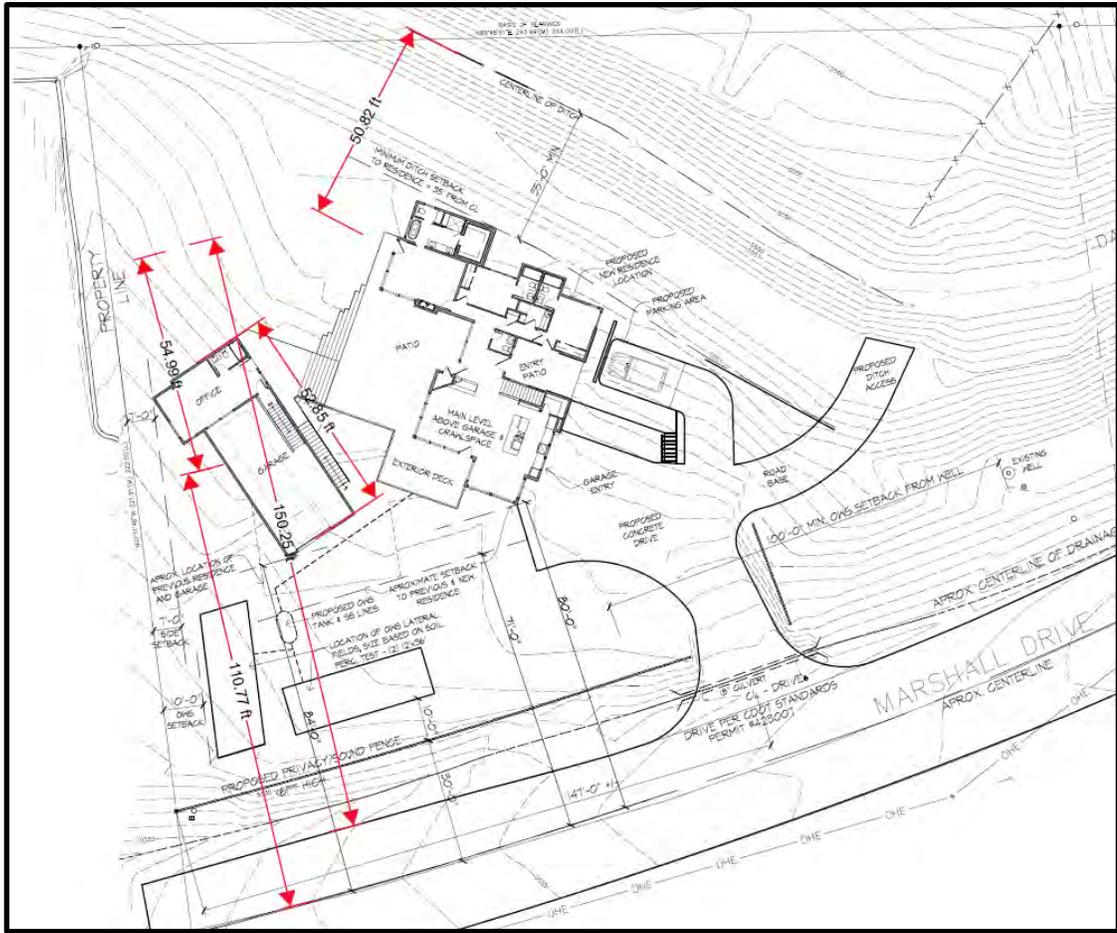
Topography of the parcel is characterized by a stair-stepped upward slope with the lowest point of the property at the southwestern corner and the highest point near the northeastern corner. As shown in Figure 4 below, the first step occurs between the roadway and the southern parcel boundary, the second at the rough north-south midpoint of the parcel, a third step along the Davidson Ditch, and the highest point of the property located northeast of the ditch.



**Figure 4: Topographic map of the property showing stair-stepped upward slope from the southwest to the northeast, approximate location of each upward step indicated with green lines.**

The Applicants' statement indicates that the two required setbacks, when combined with the stepped-slope topography of the site and periodic underground leaching of water from the ditch, pose an extraordinary physical circumstance that precludes development outside of the required supplemental setback.

Staff disagree that these constraints pose an exceptional or extraordinary physical circumstance that limits development to areas located within the required supplemental setback. Measurements of the Applicants' site plan (shown in Figure 5 below and in greater detail in Attachment D) indicate that the proposed structure could be located in an area outside of the supplemental setback without encroaching on the required ditch setback. Staff also disagree that the site topography or leaching issues pose an extraordinary physical circumstance, as development on steep slopes or near elevated ditches is common throughout the unincorporated county.



**Figure 5: Detail view of the submitted site plan, with scaled measurements indicating distances from the roadway centerline, ditch centerline, and the approximate size of the proposed structure.**

For these reasons, staff find that the proposal cannot meet the Variance criteria described in the Code, and therefore recommend that both requested setback reduction be denied.

**REFERRALS**

The variance request was sent to property owners within 1,500 feet of the subject property, as well as all applicable referral agencies. Responses received by staff are attached to this staff recommendation (Attachments B and C) and summarized below.

**Boulder County Building Safety & Inspection Services Team** – This team expressed no concerns with the variance request and noted requirements for proposed structure if it’s approved, including a building permit, wind and snow loads, ignition-resistant materials and defensible space, and Plan Review.

**Boulder County Development Review Team – Access & Engineering (DRT A&E)** – This team confirmed the property is legally accessed via SH 170, and expressed concern that approval of the proposed variance would reduce the effectiveness of the supplemental setback, which was adopted to “minimize noise and air pollution impacts to properties adjacent to the right-of-way.”

**Xcel Energy:** Xcel did not indicate any concerns with the proposal, but noted that they own and operate existing natural gas and distribution facilities along SH 170 and that locates and (possibly) new easements will be required for construction of the proposed detached garage.

**Davidson Ditch Company:** The Ditch Company referral response expressed support for the proposed setback reduction because it would increase the setback between the proposed garage and the ditch.

**Agencies indicating no conflicts:** Mountain View Fire Protection District, Boulder County Public Health

**Agencies that did not respond:** Boulder County Long Range Planning, Boulder County Assessor, Boulder County Attorney's Office, Boulder County Parks & Open Space Conservation Easement Team, Boulder County Parks & Open Space Real Estate Team, Boulder County Parks & Open Space Natural Resource Planner, Boulder County Sheriff, Boulder County Treasurer, Boulder County Surveyor, City of Boulder Planning & Development Services, City of Boulder Open Space & Mountain Parks, Boulder Valley & Longmont Conservation Districts, US Fish and Wildlife Service, Davidson Ditch Company.

**Adjacent Property Owners** – 10 referrals were sent to nearby property owners, and staff received two responses indicating general support for the Applicants' proposal.

### **CRITERIA ANALYSIS**

Per Article 3-100.A.18 of the Code the Board of Adjustment (BOA) may approve a variance from the terms of the Code as set forth in Article 4-1200. To grant a variance, the BOA must find that all of the following criteria from **Article 4-1202(B)(2)** of the Code are satisfied:

**(a) *There exist exceptional or extraordinary physical circumstances of the subject property such as irregularity, narrowness, shallowness, or slope;***

Staff do not find that the subject parcel is encumbered by extraordinary or exceptional physical circumstances. Although the parcel is shallow relative to the east-west run of SH 170 and its associated 110-foot supplemental setback, and is further constrained by the east-west run of the Davidson Ditch and its associated setbacks, staff analysis indicates that there is a developable area outside of all required setbacks.

The stair-stepped topography of the site increases the complexity of site development, but the degree of slope is of a much less dramatic character than other sloped areas throughout the County that are commonly developed without encroachment into setbacks. Similarly, underground leaching of water in locations near ditches is another complexity commonly addressed with structural design throughout the unincorporated County that staff does not find to constitute an exceptional physical circumstance of the subject property.

Therefore, staff finds this criterion is not met.

**(b) *Because of these physical circumstances, the strict application of the Code creates an exceptional or undue hardship upon the property owner;***

Because staff do not find that there are exceptional or extraordinary physical circumstances on the parcel, but rather there are developable areas on the property where the detached garage could comply with all required setbacks, the strict application of the Code does not create an exceptional or undue hardship on the property owner.

Therefore, staff finds this criterion is not met.

***(c) The hardship is not self-imposed;***

Staff have not identified a hardship on the property owner that would justify the proposed setback reduction. As stated above there are areas in which the garage could be located to comply with all setback requirements.

Therefore, staff finds this criterion is not met.

***(d) The variance, if granted, will not adversely affect the uses of adjacent property as permitted under this code;***

Staff do not anticipate that the proposed variance will adversely affect the uses of adjacent properties as permitted under the Code, nor has any referral agency responded with such a concern. As proposed by the applicants, the new detached garage would be constructed at a setback from the road that is common for development in the area around the property, and discussion with the Applicants indicates that their proposed location was designed in direct consultation with their western neighbor (who would be most impacted by the structure location). Staff note that this western neighbor was one of the two nearby property owners who submitted comments expressing support for the proposal.

Therefore, staff finds this criterion is met.

***(e) The variance, if granted, will not change the character of the zoning district in which the property is located, and is in keeping with the intent of the Code and the Boulder County Comprehensive Plan;***

Staff do not have concerns that the variance will change the character of the zoning district in which the property is located if granted. Aerial photographs of the area around the subject parcel indicate that many nearby properties also have development that approaches or possibly encroaches on the required supplemental setbacks.

Therefore, staff finds that this criterion is met.

***(f) The variance, if granted, does not adversely affect the health, safety, and welfare of the citizens of Boulder County and is in accordance with the Comprehensive Plan and any applicable intergovernmental agreement affecting land use or development.***

The variance, if granted, could adversely affect the health and welfare of citizens of Boulder County by allowing development closer to SH 170 in direct conflict with the intent of the supplemental setback, which was intended to reduce the potential for noise and air pollution on residents living on properties near busy roads.

Therefore, staff finds this criterion is not met.

**RECOMMENDATION**

As discussed above, staff find that four of the criteria for a variance cannot be met. Therefore, Community Planning & Permitting staff recommend that the Board of Adjustment **DENY Docket VAR-24-0004: Eckert Setback Reduction.**

However, if the Board of Adjustment finds that the proposal satisfies all of the above criteria from **Article 4-1202(B)(2)** of the Code, staff recommend adoption of the following conditions of approval:

1. The proposed setback of 84 feet from the centerline of SH 170 is only approved for the proposed detached garage as described in the documents submitted with BP-24-2131.
2. The proposed detached garage and any future expansion is otherwise subject to the provisions of the Boulder County Land Use Code and must be reviewed for approval in the appropriate process as required by the provisions of the Boulder County Land Use Code (as amended), including a Site Plan Review Waiver, Site Plan Review, or other applicable process.
3. Following approval of the subject Variance request, the associated building permit for the detached garage will remain on hold until a building permit is submitted for the principle residence to be located on the property.
4. Provision of a setback survey is required during review of the building permit for the detached garage.
5. All other future development is subject to applicable permitting and setback requirements.
6. Building permits are required for all proposed improvements.



**Boulder County Land Use Department**  
 Courthouse Annex Building  
 2045 13th Street • PO Box 471 • Boulder, Colorado 80302  
 Phone: 303-441-3930 • Fax: 303-441-4856  
 Email: [planner@bouldercounty.org](mailto:planner@bouldercounty.org)  
 Web: [www.bouldercounty.org/lu](http://www.bouldercounty.org/lu)  
 Office Hours: Mon., Wed., Thurs., Fri. 8 a.m. to 4:30 p.m.  
 Tuesday 10 a.m. to 4:30 p.m.

~~ATTACHMENTS~~  
 Attachments Only

Intake Stamp

## Application Form

Project Number <input type="checkbox"/> Limited Impact Special Use <input type="checkbox"/> Limited Impact Special Use Waiver <input type="checkbox"/> Modification of Special Use <input type="checkbox"/> Site Plan Review <input type="checkbox"/> Site Plan Review Waiver <input type="checkbox"/> Subdivision Exemption <input type="checkbox"/> Exemption Plat <input type="checkbox"/> 1041 State Interest Review <input type="checkbox"/> Other:	Application Deadline: First Wednesday of the Month <input checked="" type="checkbox"/> Variance <input type="checkbox"/> Appeal	Application Deadline: Second Wednesday of the Month <input type="checkbox"/> Sketch Plan <input type="checkbox"/> Preliminary Plan <input type="checkbox"/> Final Plat <input type="checkbox"/> Resubdivision (Replat) <input type="checkbox"/> Special Use/SSDP <input type="checkbox"/> Rezoning <input type="checkbox"/> Road/Easement Vacation <input type="checkbox"/> Location and Extent <input type="checkbox"/> Road Name Change
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Location(s)/Street Address(es) 5941 Marshall Drive

Subdivision Name None

Lot(s) <u>n/a</u>	Block(s) <u>n/a</u>	Section(s) <u>OF NW 1/4 section 22</u>	Township(s) <u>1 South</u>	Range(s) <u>70 West</u>
Area in Acres <u>1.24</u>	Existing Zoning <u>Agricultural</u>	Existing Use of Property <u>VACANT</u>	Number of Proposed Lots	
Proposed Water Supply <u>Existing on site well</u>		Proposed Sewage Disposal Method <u>Boulder County (OWTS) Permit # MAJP-2023-0122</u>		

### Applicants:

Applicant/Property Owner Jodi Eckert Email Address jodieckert@msn.com

Mailing Address 686 Starkey Ct.

City Erie State CO Zip Code 80516 Phone (303) 931-2524 Fax none

Applicant/Property Owner/Agent/Consultant Email Address

Mailing Address

City State Zip Code Phone Fax

Agent/Consultant Jeff Eckert Email Address jeff@flatironshomes.com

Mailing Address 686 Starkey Ct.

City Erie State CO Zip Code 80516 Phone (303) 579-7918 Fax none

**Certification** (Please refer to the Regulations and Application Submittal Package for complete application requirements.)  
 I certify that I am signing this Application Form as an owner of record of the property included in the Application. I certify that the information and exhibits I have submitted are true and correct to the best of my knowledge. I understand that all materials required by Boulder County must be submitted prior to having this matter processed. I understand that public hearings or meetings may be required. I understand that I must sign an Agreement of Payment for Application processing fees, and that additional fees or materials may be required as a result of considerations which may arise in the processing of this docket. I understand that the road, school, and park dedications may be required as a condition of approval. I understand that I am consenting to allow the County Staff involved in this application or their designees to enter onto and inspect the subject property at any reasonable time, without obtaining any prior consent.

**All landowners are required to sign application. If additional space is needed, attach additional sheet signed and dated.**

Signature of Property Owner <u>Jodi Eckert</u>	Printed Name <u>Jodi Eckert</u>	Date <u>8/2/24</u>
Signature of Property Owner	Printed Name	Date

The Land Use Director may waive the landowner signature requirement for good cause, under the applicable provisions of the Land Use Code.



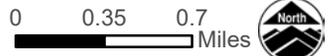
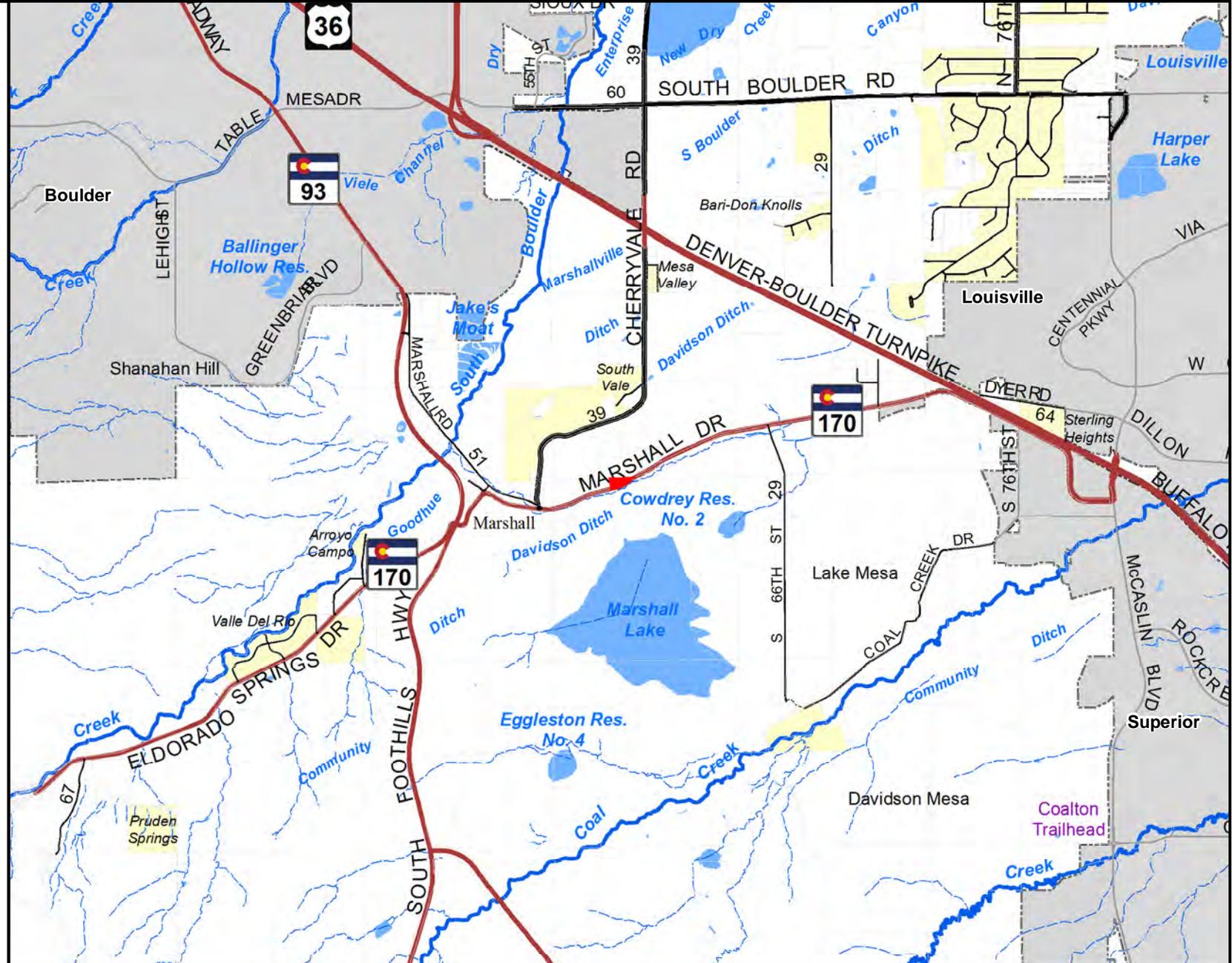
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2045 13th Street, Boulder, CO 80302 303-441-3930 www.bouldercounty.org

Vicinity

5941 MARSHALL DR

- Subject Parcel
- Municipalities
- Subdivisions**
- Subdivisions



Area of Detail Date: 6/17/2024



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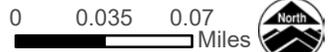
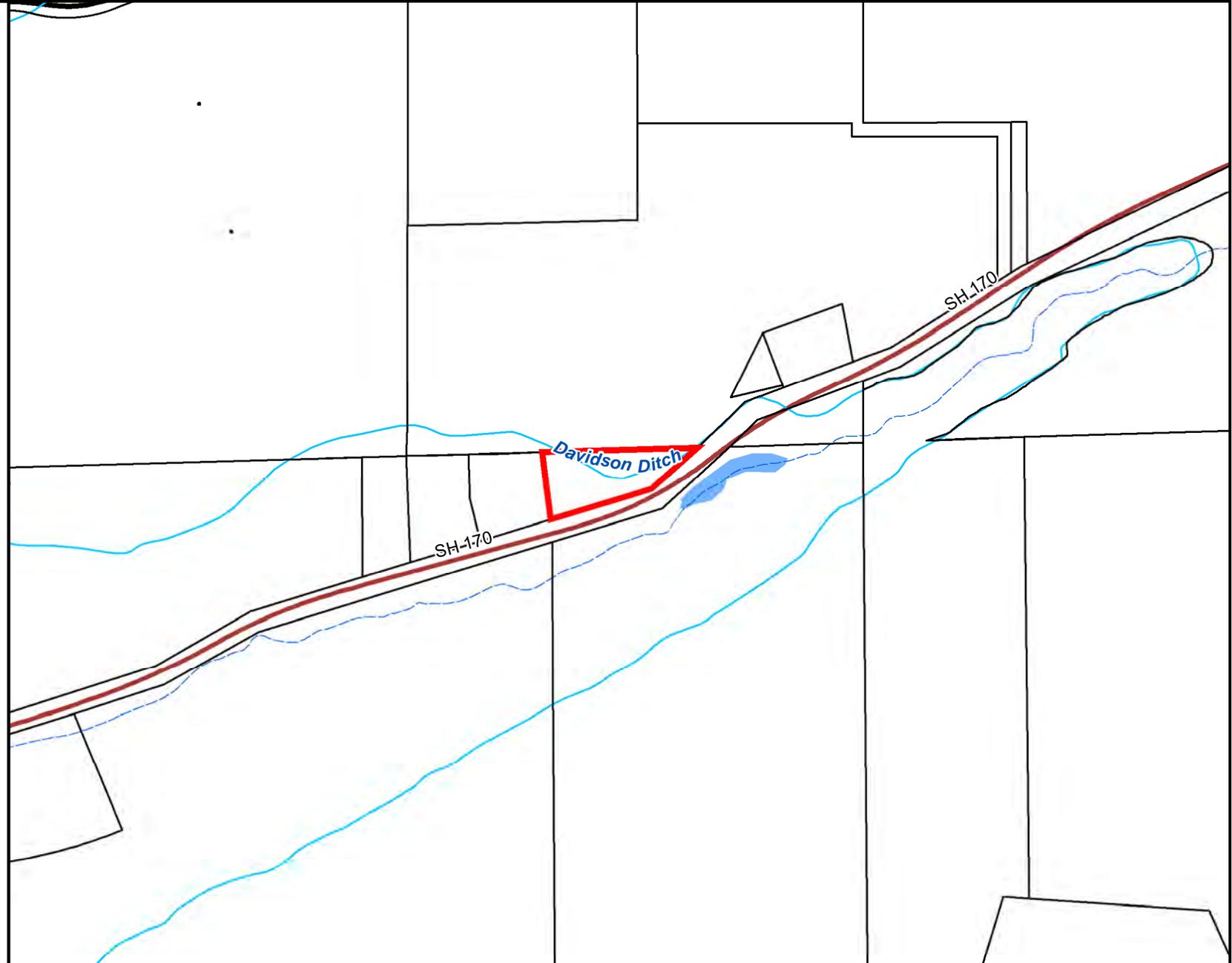
Location

5941 MARSHALL DR

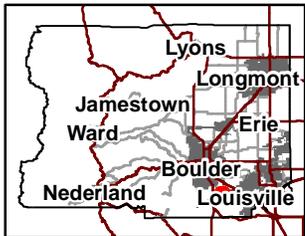
Subject Parcel

**Subdivisions**

Subdivisions



Area of Detail Date: 6/17/2024



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Aerial

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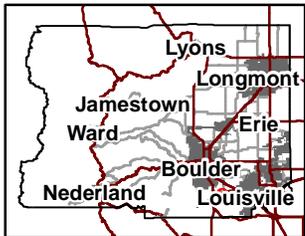
 Subject Parcel



0 0.005 0.01 Miles



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Aerial

5941 MARSHALL DR

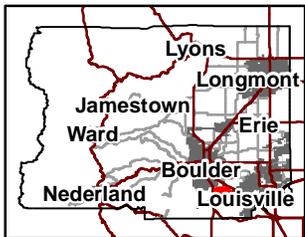
 Subject Parcel



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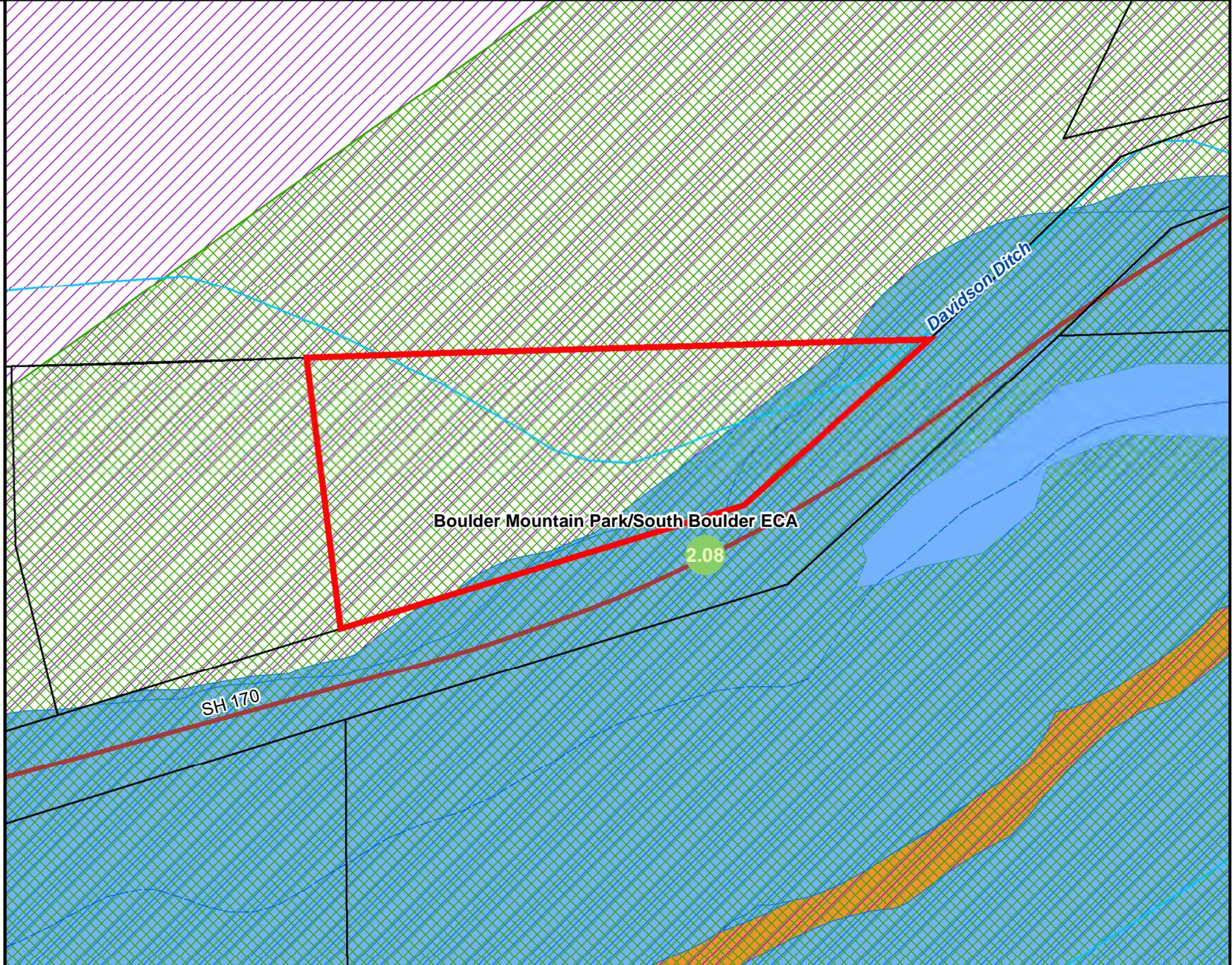
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## Comprehensive Plan

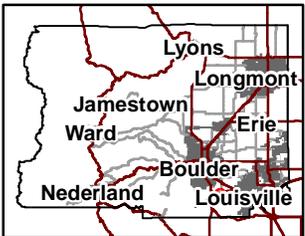
5941 MARSHALL DR

-  Subject Parcel
-  Environmental Conservation Areas
-  Riparian Areas
-  Wetlands
-  Significant Natural Communities
- High Biodiversity Areas**
-  B2: Very High Biodiversity Significance
-  Rare Plant Areas



0 0.0085 0.017 Miles 

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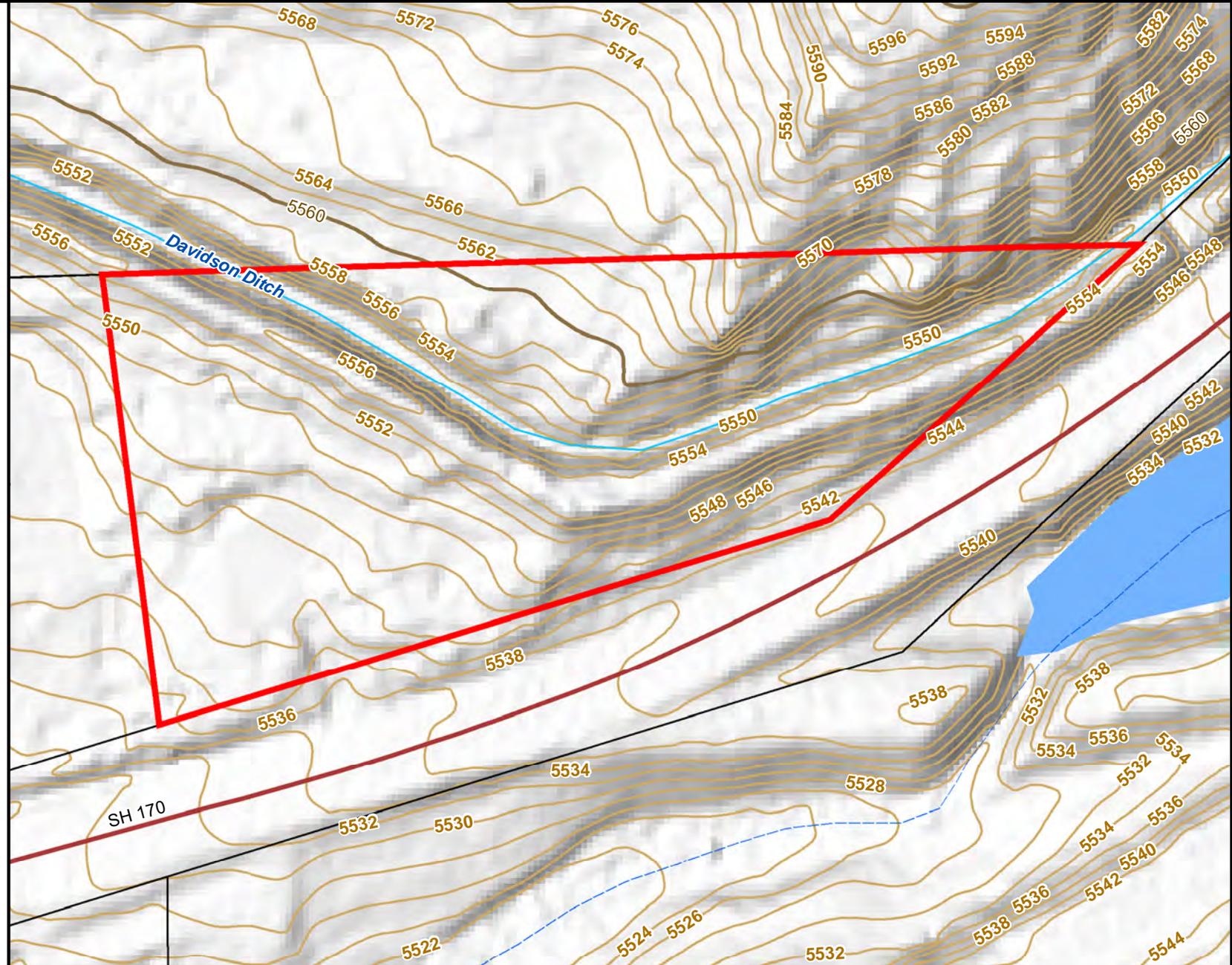
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## Elevation Contours

5941 MARSHALL DR

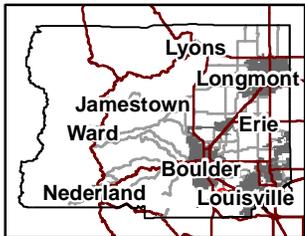
- Subject Parcel
- Contours 40'
- Contours 2'



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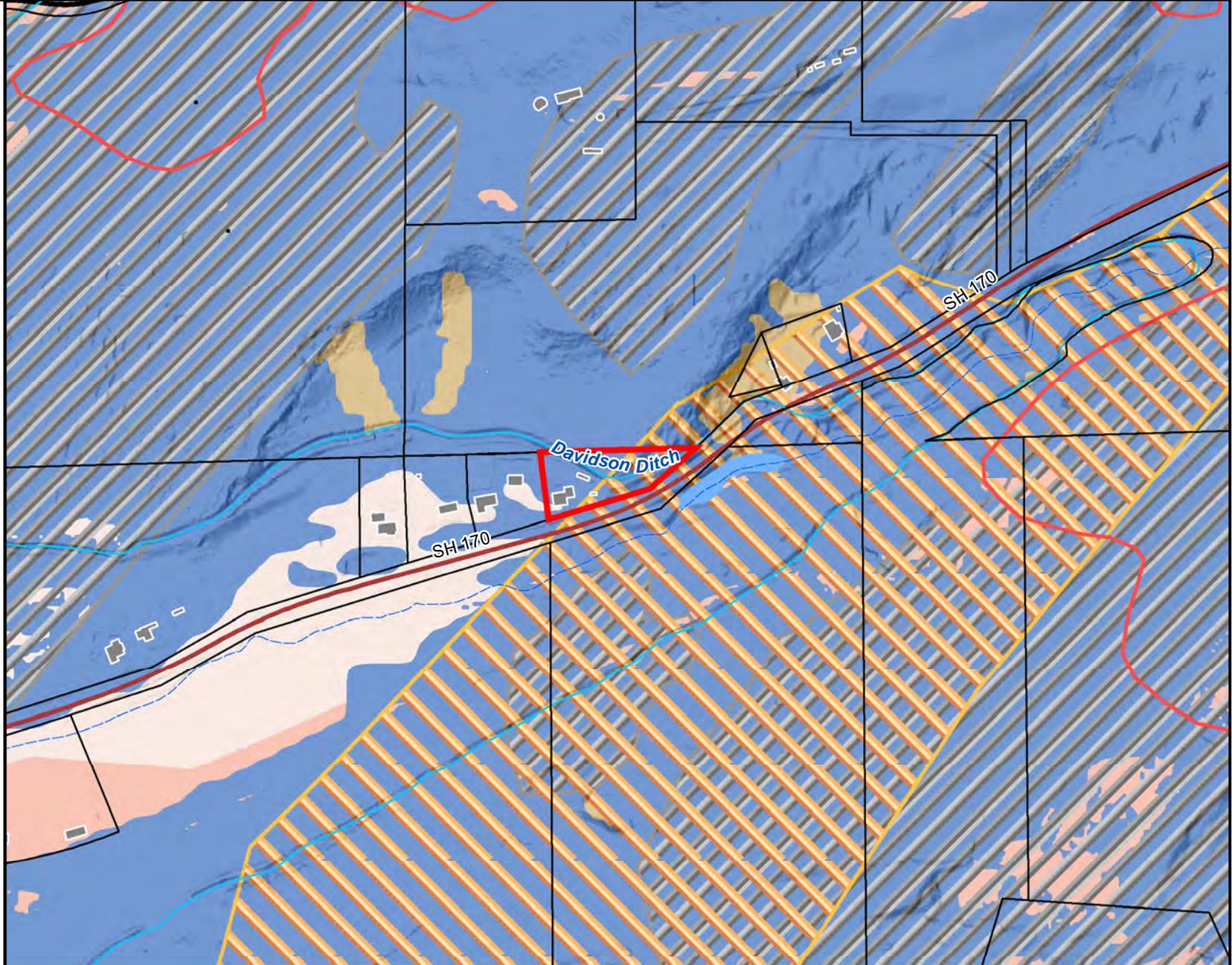
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## Geologic Hazards

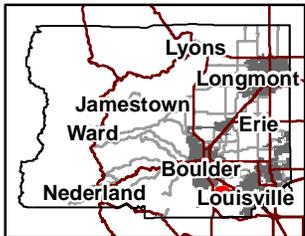
5941 MARSHALL DR

-  Subject Parcel
-  Steeply Dipping, Heaving Bedrock
-  Extent of Abandoned Coal Mines
-  High Swelling Soil Potential
-  Moderate Swelling Soil Potential



0 190 380 Feet 

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Planning Areas

5941 MARSHALL DR

Subject Parcel

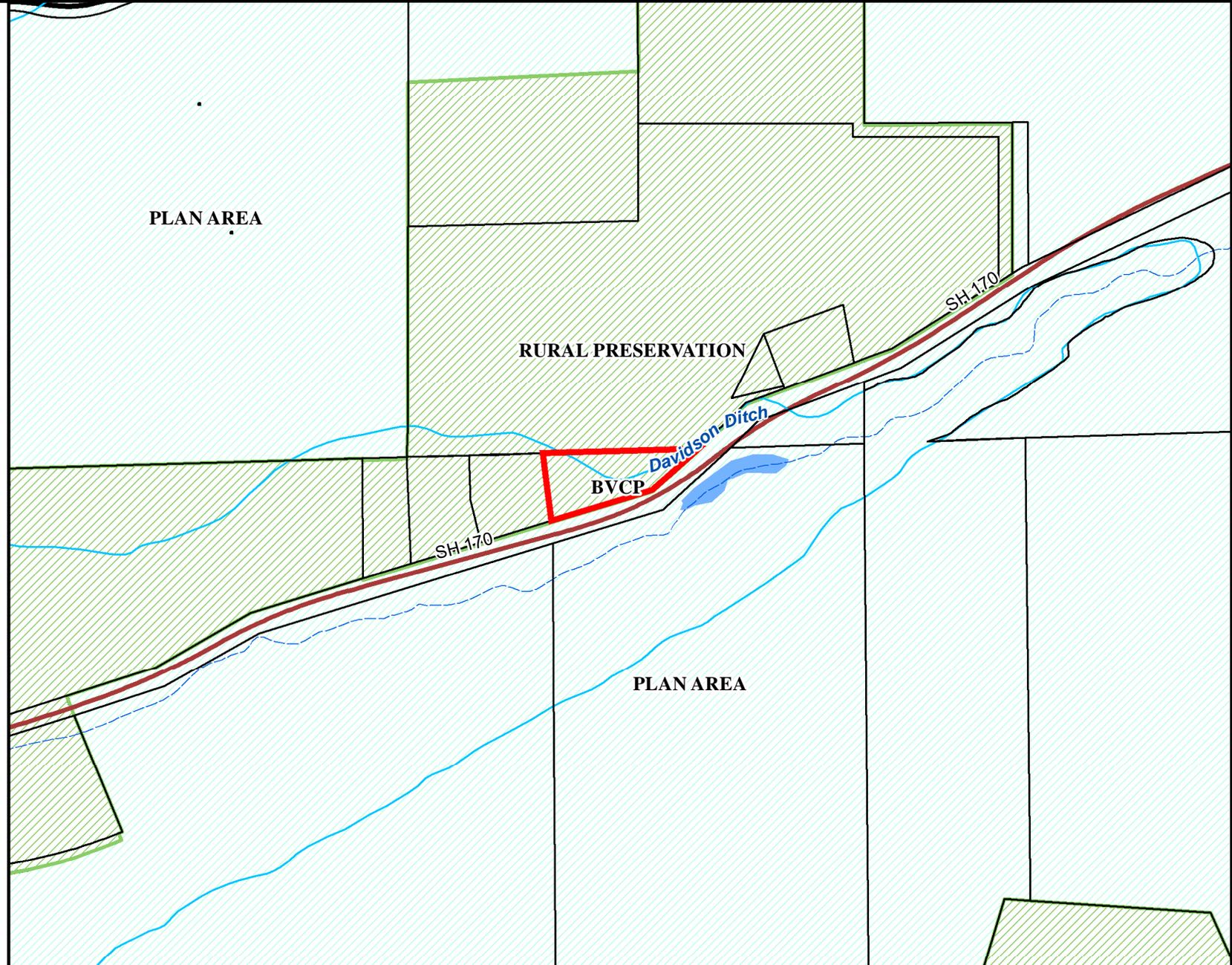
Active IGA Boundary

### Active IGA Designation

RURAL PRESERVATION

BVCP

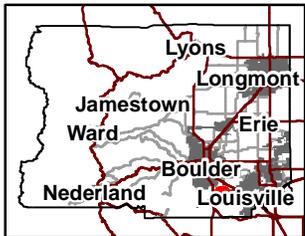
PLAN AREA



0 0.035 0.07 Miles



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Prebles

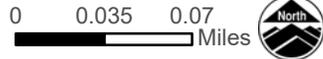
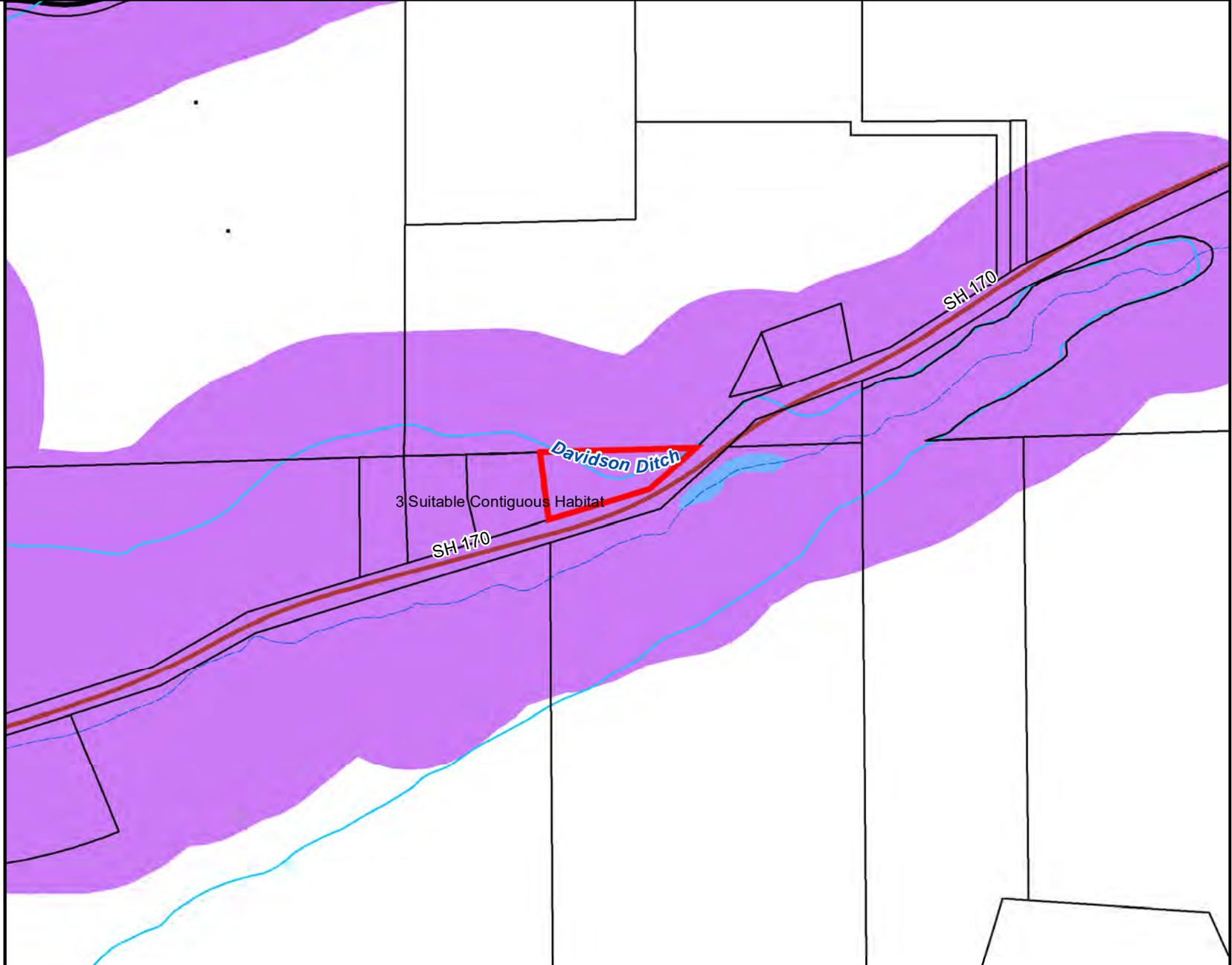
5941 MARSHALL DR

 Subject Parcel

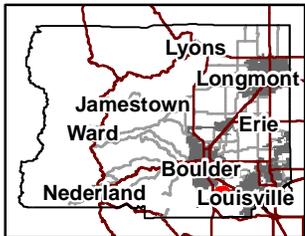
Note: This map's legend shows all Preble's Priority Zones as mapped by Boulder County. The subject property may not contain all zones. Refer to the USFWS Memo dated 9/17/03 to determine when projects require review by USFWS for Preble's.

### Prebles

 Zone 3 Suitable Contiguous Habitat



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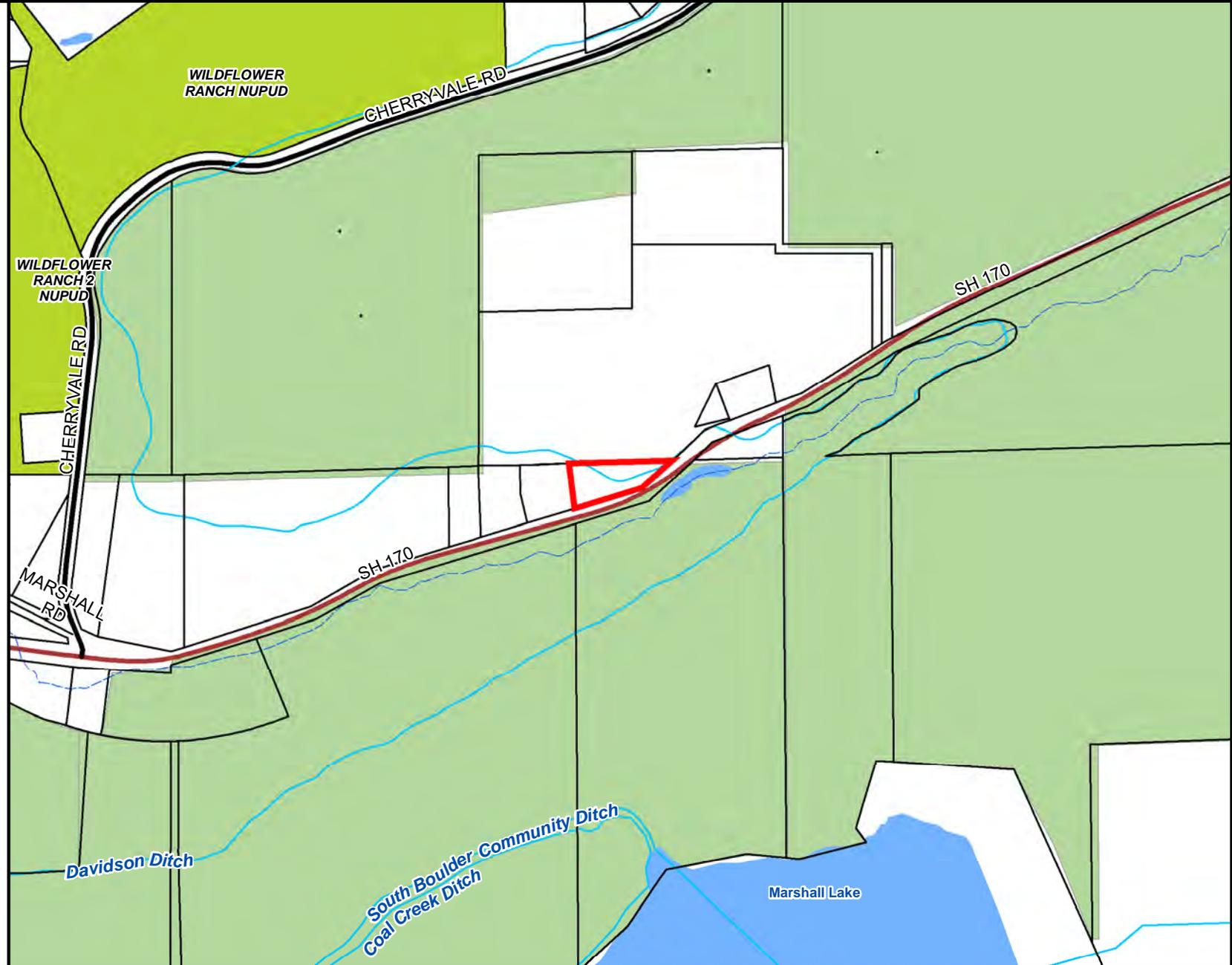
## Public Lands & CEs

5941 MARSHALL DR

Subject Parcel

### Boulder County Open Space

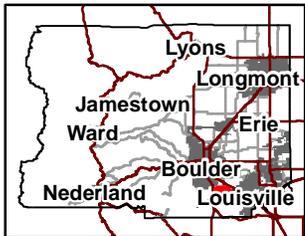
- County Conservation Easement
- OSMP Properties



0 0.05 0.1 Miles



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## Zoning

### 5941 MARSHALL DR

Subject Parcel

#### Zoning Districts

Agricultural

#### Ditch Setbacks

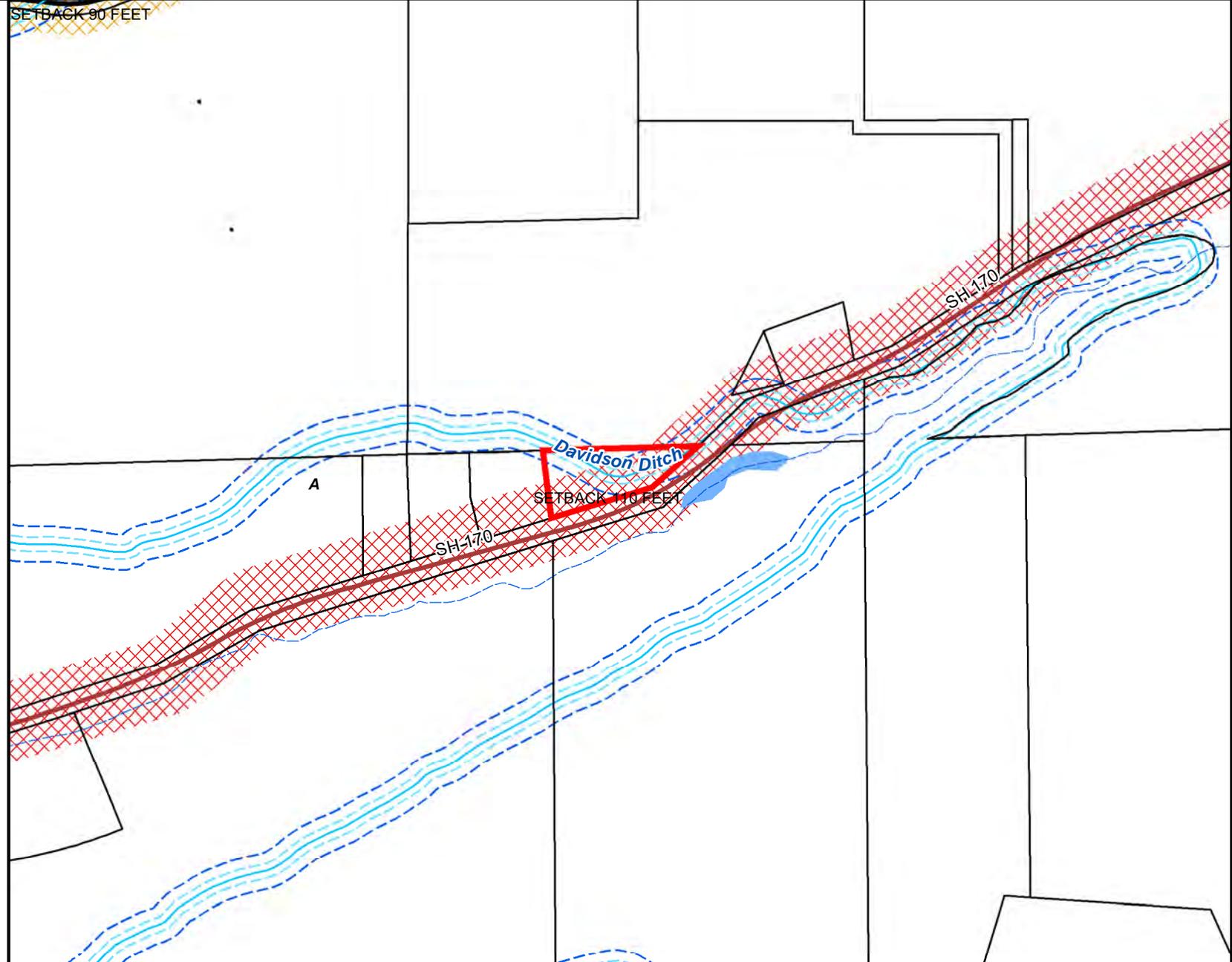
20 feet

50 feet

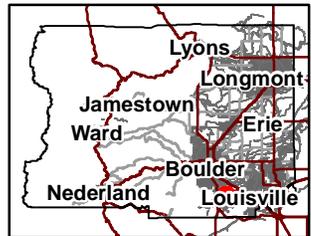
#### Major Road Setbacks

90 feet

110 feet



Area of Detail Date: 6/17/2024



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**Boulder County Land Use Department**  
 Courthouse Annex Building • 2045 13th Street • PO Box 471  
 Boulder, Colorado 80302  
 Phone: 303-441-3930 • Fax: 303-441-4856  
 Email: [planner@bouldercounty.org](mailto:planner@bouldercounty.org)  
<http://www.bouldercounty.org/lu/>  
 Office Hours: Monday — Friday 8:00 AM to 4:30 PM

Intake Stamp: **ATTACHMENT A**

---

Docket #:

**Board of Adjustment (BOA) Hardship Statement**

Explain how the following hardship criteria for granting a variance have been satisfied. Please feel free to attach your statements using a separate piece of paper.

A. There exists exceptional or extraordinary physical circumstances of the subject property such as irregularity, narrowness, shallowness, or slope.

SEE attached

B. Because of these physical circumstances, the strict application of this Code would create an exceptional or undue hardship up the property owner.

C. The hardship is not self-imposed.

D. The variance, if granted, will not adversely affect the use of adjacent property as permitted under this Code.

E. That the variance, if granted, will not change the character of the zoning district in which the property is located, and is in keeping with the intent of this Code and the *Boulder County Comprehensive Plan*; and,

F. That the variance, if granted, does not adversely affect the health, safety, and welfare of the citizens of Boulder County.

Applicant or Agent Signature: *Joni Eckert* Date: *8/2/24*

5941 Marshall Drive, Boulder Colorado

- A. There exists exceptional or physical circumstances of the subject property such as irregularity, narrowness, shallowness, or slope.

The subject property is an exceptionally irregular shape. It is also long and narrow, shallow in depth from the road, has a large irrigation ditch bisecting the property, and a combination of slope and stair stepping of topography. The property also has native rock outcroppings that limit placement of structures.

- B. Because of these physical circumstances, the strict application of the Code would create an exceptional or undue hardship upon the property owner.

The Variance request is to reduce the front setback of the proposed structure to 84' from 110' required by Code. Strict application of the code (front setback) would eliminate the functional use of the property due to the exceptional physical conditions outlined herein above in section A. The Davidson Ditch bisecting the property and affecting the slope also limits the area accessible to vehicles. The irrigation ditch also requires a substantial setback by state Statue and is subject to underground seepage.

- C. The hardship is not self- imposed.

The hardships are uniquely caused by the physical conditions of the property as described in section A herein and visible on the topography depicted on the site plan and not caused by the property owner.

- D. The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code.

The only adjacent property possibly affected by the proposed structure is the property to the West. I have worked for over a year to coordinate and collaborate with the adjacent property owner to insure that the location and design does not negatively impact his property and promotes both the preservation of views and his privacy.

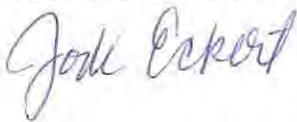
- E. That the variance, if granted, does not change the character of the zoning district in which the property is located, and is keeping with the intent of this code and the Boulder County Comprehensive Plan, and,

The location of the proposed structure does not change the character of the zoning district in that it is similar to other structures along Marshall Road and is consistent with the Comprehensive Plan in that it is intentionally "clustered" with the main residence and proposed future structures on adjacent property to the West as coordinated with the adjacent property owner.

- F. That the variance, if granted, does not adversely affect the health, safety, and welfare of the citizens of Boulder County.

The difference in the front setback from 110' to 84' does not affect the health, safety, or welfare of the citizens of Boulder County in that the front setback is still substantial. It actually enhances safety by allowing placement of the structure where it can meet the fire access distances to the structure in case of fire or other emergency. Placing the structure further back would force the structure up the slope which would make it more difficult to access in an case of fire or other emergency.

Applicant or Agent Signature:



Date:

8/2/24

Location: 5941 Marshall Drive, Boulder Colorado  
Specific request: Reduction of front setback to 84'  
Building use: Detached garage/shop/home office

To whom it may concern,

My husband and I have been working on a site layout for our primary residence on my property at 5941 Marshall Drive for over 21 months. The lot is very unusual in many aspects. Located on the North side of Marshall Road, the property is long and narrow running East to West with the Eastern portion of the lot containing a steep slope, irrigation ditch, rock out croppings and trees. As such, the Eastern three-fourths of the lot are unbuildable. The Western one-fourth of the lot is stair stepped due to a combination of native topography and the Davidson Ditch which bisects the property. Additional challenges exist due to the substantial front setback requirement of 110', combined with a state statute requiring a large setback from the ditch located at the rear. This leaves only a miniscule steeply sloped triangle on the West property line conforming to those setbacks. This miniscule triangle is also perched over my only adjacent neighbor who is also on the West. Please refer to attached exhibit that shows in shaded areas the front setback and irrigation ditch setback which leaves only a the small triangle. In addition to the exceptional physical limitations the property imposes, one must also work out the setbacks between the water well and septic, setback between septic and irrigation ditch, setback between buildings and septic, etc. In all, it becomes sort of a Rubik's Cube of site planning.

Over the past 21 months, in order to work through all the possible solutions, we have sought input and collaborated with the adjacent property owners, the Davidson ditch company, county planners, Fire Department, soils engineers, designers, and energy consultants to identify the best opportunities to mitigate the challenges in building on this lot. Without going into the extensive details of all the considerations, I will outline the conclusions to this process. Solutions identified include: working with the ditch company to give them a permanent recorded easement so they can access their ditch for maintenance or emergencies to all properties along the ditch to the West. In turn, the ditch company agreed to reduce their ditch setback due to enhanced access. We also improved the ditch slope and seeded to better withstand future rain or flood events. By reducing the ditch setback at the rear, this agreement allowed us to preserve more distance in the front to comply with the front setback to the greatest degree possible.

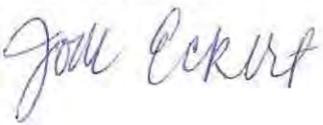
Coordinating with the adjacent property owners, we sought input and collaborated with adjacent homeowners to understand their thoughts and concerns in regards to the design of my home. Naturally, the most important suggestions were related to views, privacy and wildlife. We took their suggestions seriously in the site plan, window placement, and overall design. During those discussions we also decided to pitch in together to cleanup an enormous amount of debris and dead trees left along the sides of the ditch by the ditch company's major cleanup. We also worked together to do some pruning and cleanup from the Marshall fire that FEMA did not remove. Lastly, we are planning together on planting native trees on our properties unrelated to our building projects to begin reestablishing the tree inventory in the neighborhood over the long term.

Our residence, which is not part of this request is designed to conform to Article 19 and we have given a copy of the site plan to Scott Weeks (our former county planner) who checked with planning managers and confirmed it's compliance with Article 19. That plan is in the final engineering stage and we anticipate submitting it for building plan check in a couple of weeks. The house plan has a front setback of 71' for the home including a carport on the south side of the house. It also includes a barn. We realized if we can modify the barn to permit it as a garage, we no longer need the carport and can increase the front setback for both the house and detached garage to 80' and 84' respectively. This is in line with our fine tuning and goal since day one to maximize the front setback whenever feasible as directed by Scott Weeks. Scott also directed us to attempt to "cluster buildings together in a group" and "follow the slope of the terrain with the massing and roof lines" which we have adhered to in good faith.

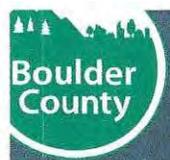
We discussed the planning process options with several planners over the past 21 months to better understand their suggestions and determine the best approach to solving the site plan challenges and comply with the Code. In doing so, a couple of planners indicated a front setback variance could be considered given the obvious exceptional physical hardships that exist on the lot.

Through our efforts described above, we implemented ideas or mitigated all the possible challenges to make this variance request as minimal as possible. This variance should be the last turn of the Rubik's Cube to achieve the best outcome with the least possible impacts and greatest degree of code compliance when building my home on this exceptionally challenging property.

Sincerely, Jodi Eckert



8/2/24



Subject Parcel

**Zoning Districts**

Agricultural

**Ditch Setbacks**

20 feet

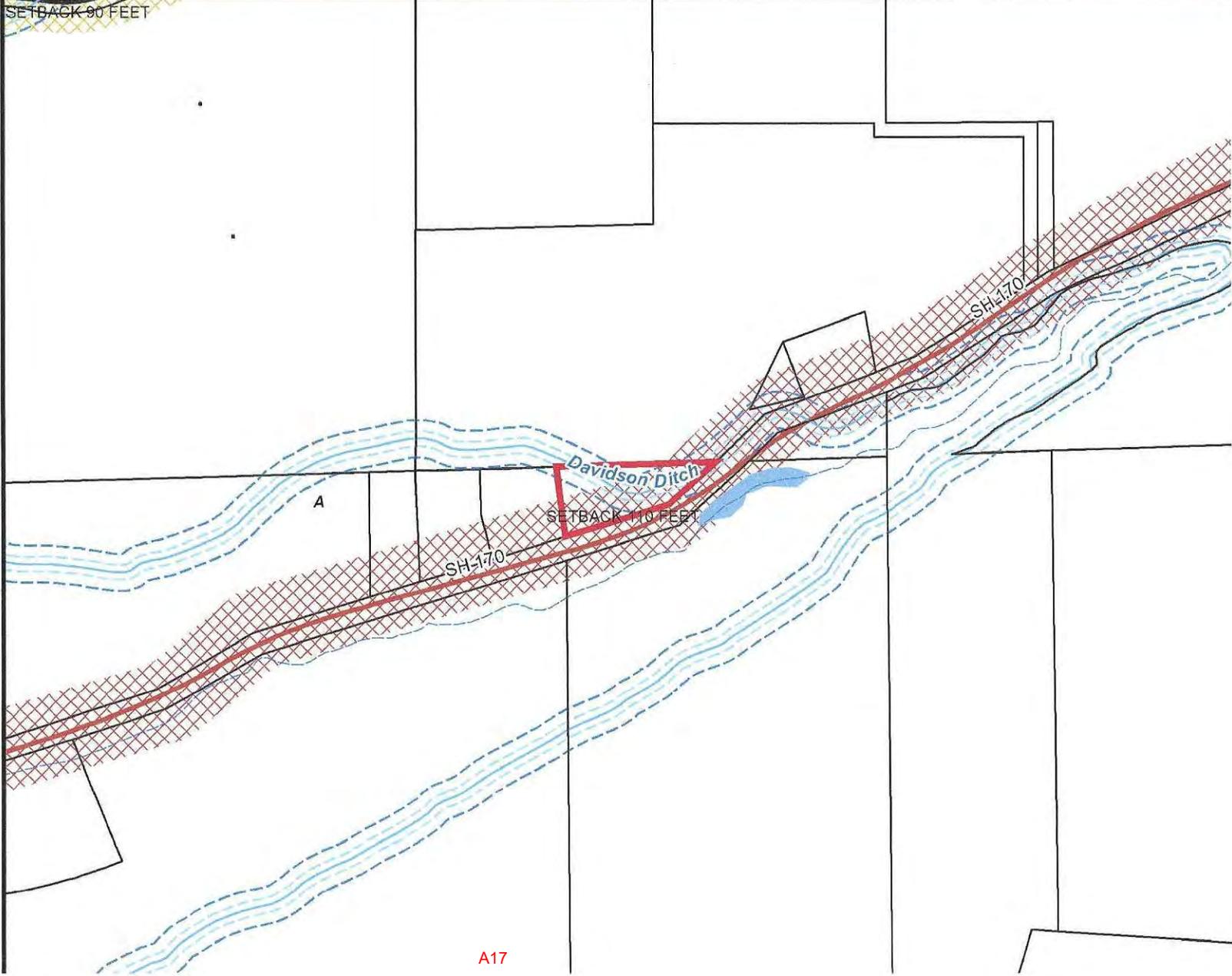
50 feet

**Major Road Setbacks**

90 feet

110 feet

SETBACK 90 FEET



A

Davidson Ditch

SH-170

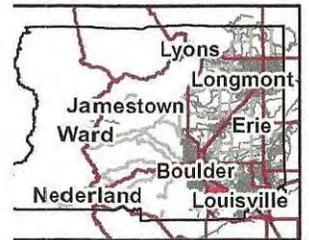
SH-170

SETBACK 110 FEET

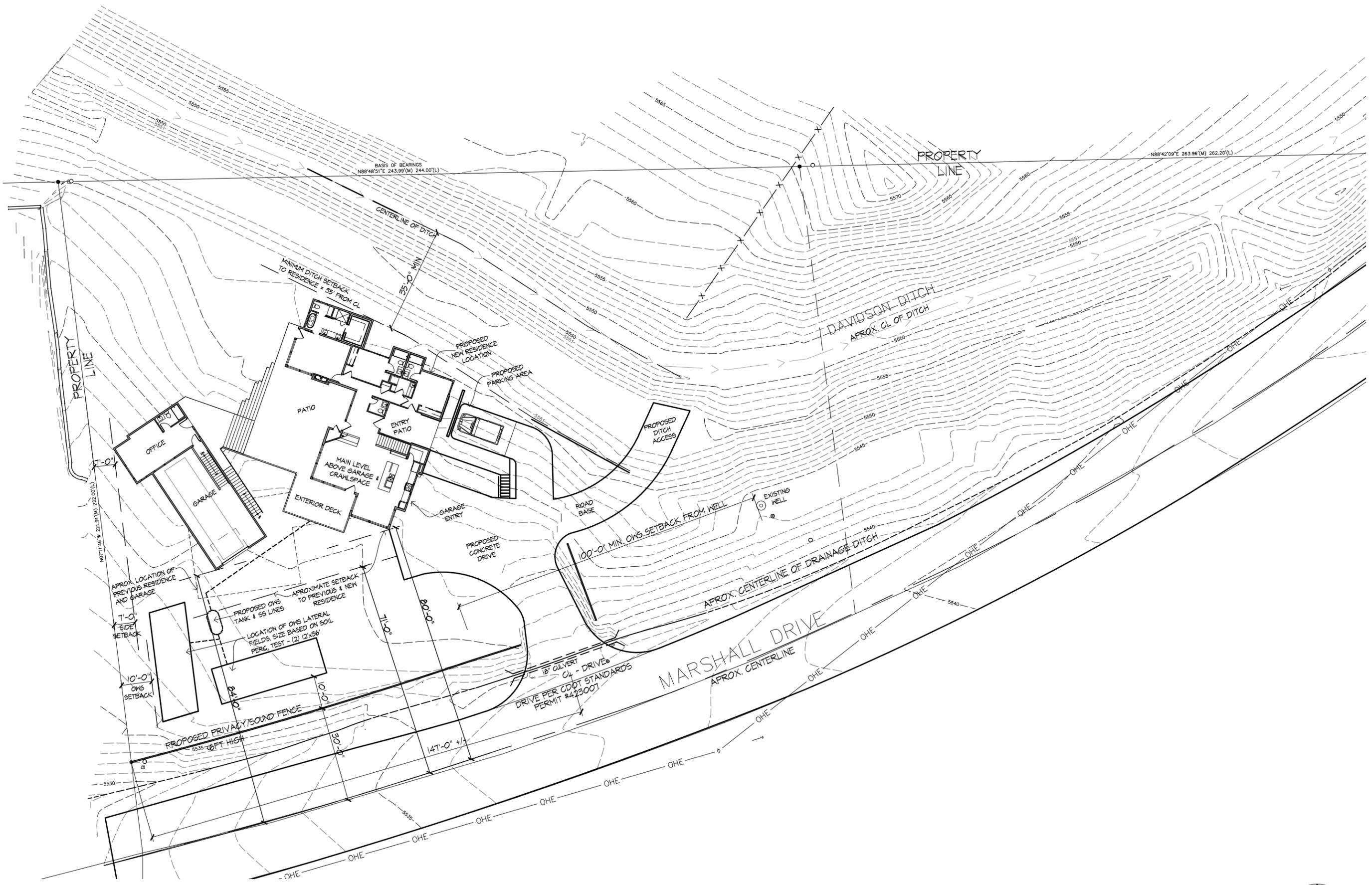
190 380 Feet



Scale of Detail Date: 6/17/2024



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A Professional Corporation  
Planning  
Architecture  
Interior Design  
950 Spruce Street, #2A  
Louisville, CO 80027  
TEL: 303.673.9304  
FAX: 303.673.9319

**ECKERT RESIDENCE AND GARAGE**  
**5941 MARSHALL DRIVE**  
**Boulder Colorado 80303**  
UNINCORPORATED BOULDER COUNTY

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PROJECT # 2251  
DATE: 07/15/24  
DRAWN BY: HAPC  
CHECKED BY: HAPC  
REVISIONS:

**1 SITE PLAN**  
**1 SCALE 1" = 30' - 0"**



**A1**  
OF



HARTRONFT ASSOCIATES  
*A Professional Corporation*

Planning  
Architecture  
Interior Design

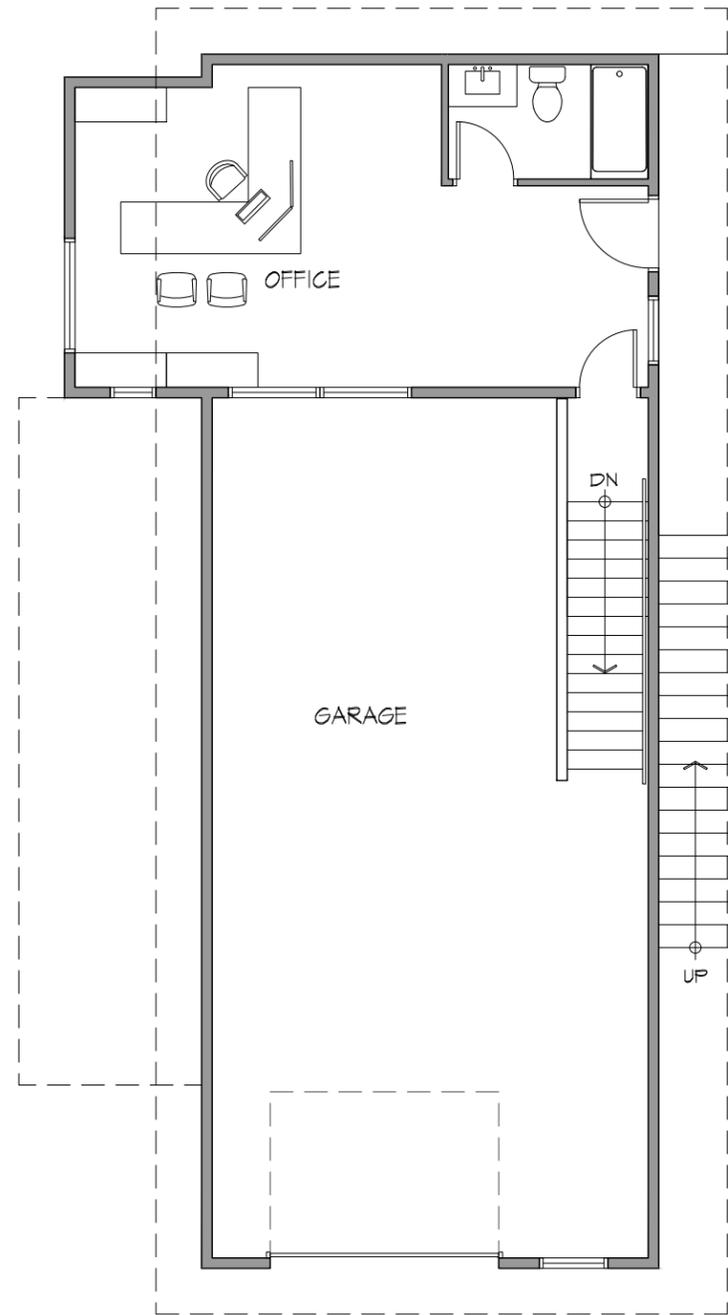
950 Spruce Street, #2A  
Louisville, CO 80027  
TEL: 303.673.9304  
FAX: 303.673.9319

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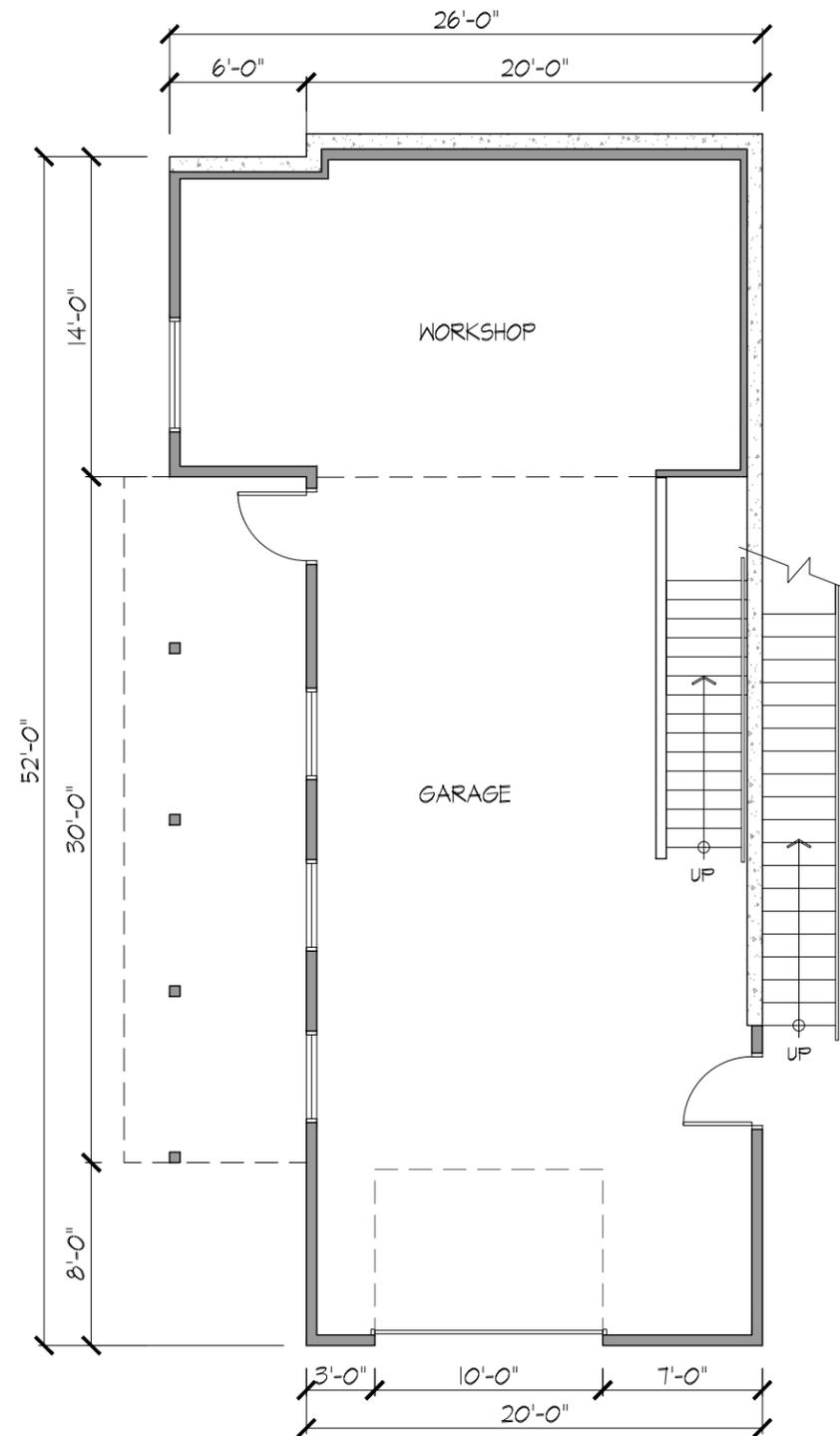
PROJECT # 2251  
DATE: 07/14/24  
DRAWN BY: HAPC  
CHECKED BY: HAPC  
REVISIONS:

**A2**  
OF

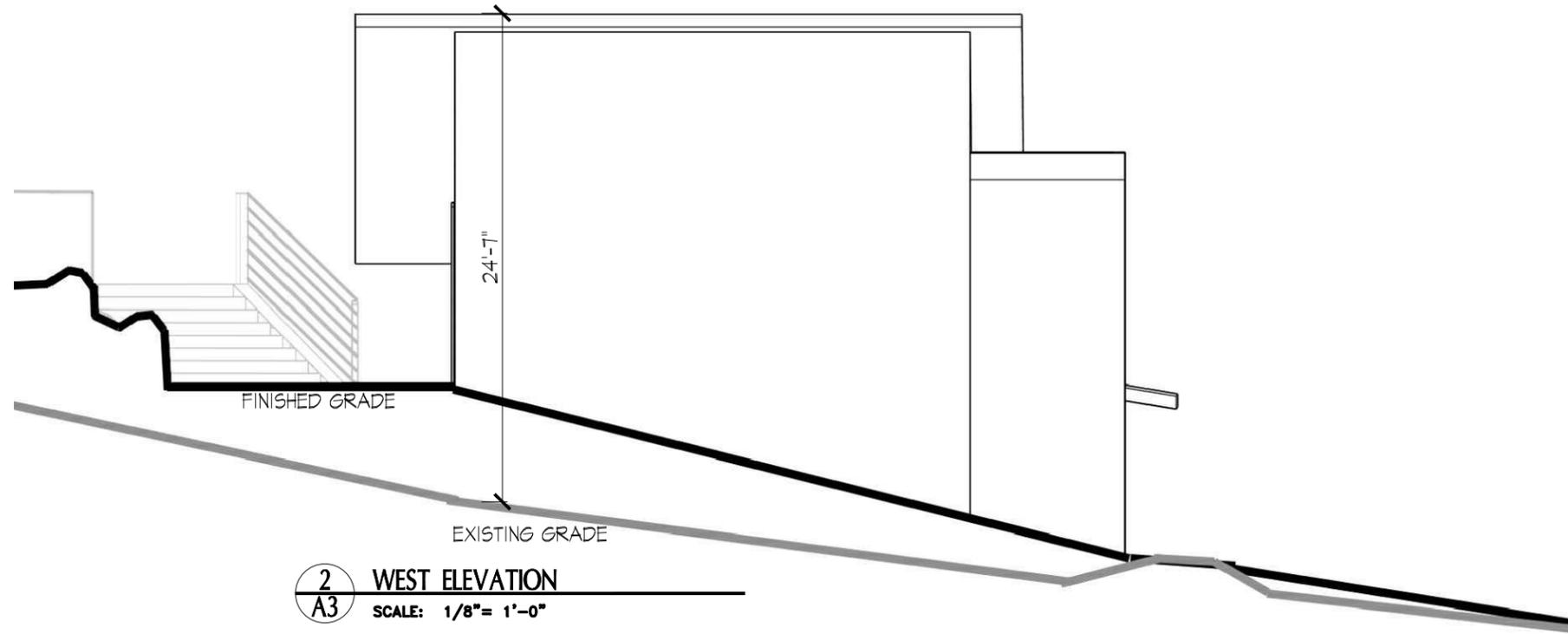


**2** LOFT FLOOR PLAN  
**A2** SCALE: 1/8" = 1'-0" 384 sf NORTH

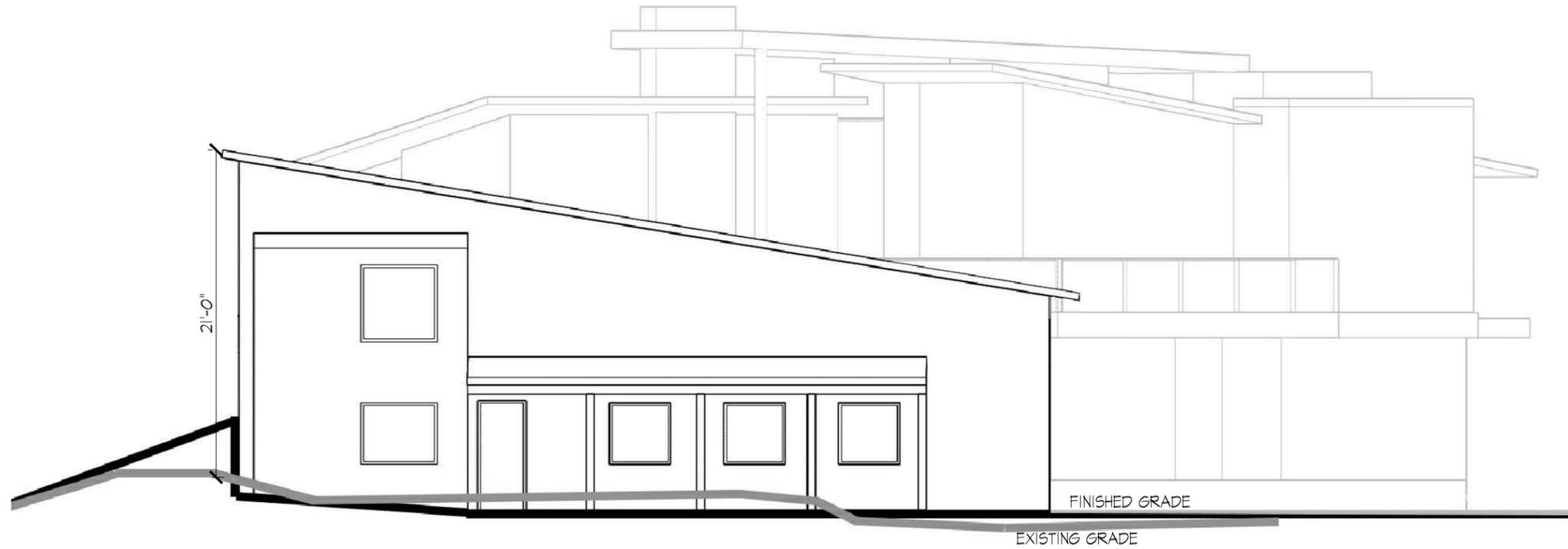
TOTAL SF = 1368



**1** MAIN FLOOR PLAN  
**A2** SCALE: 1/8" = 1'-0" 984 sf NORTH



2 WEST ELEVATION  
A3 SCALE: 1/8" = 1'-0"



1 SOUTH ELEVATION  
A3 SCALE: 1/8" = 1'-0"



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PROJECT # 2251  
DATE: 07/15/24  
DRAWN BY: HAPC  
CHECKED BY: HAPC  
REVISIONS:

A3  
OF



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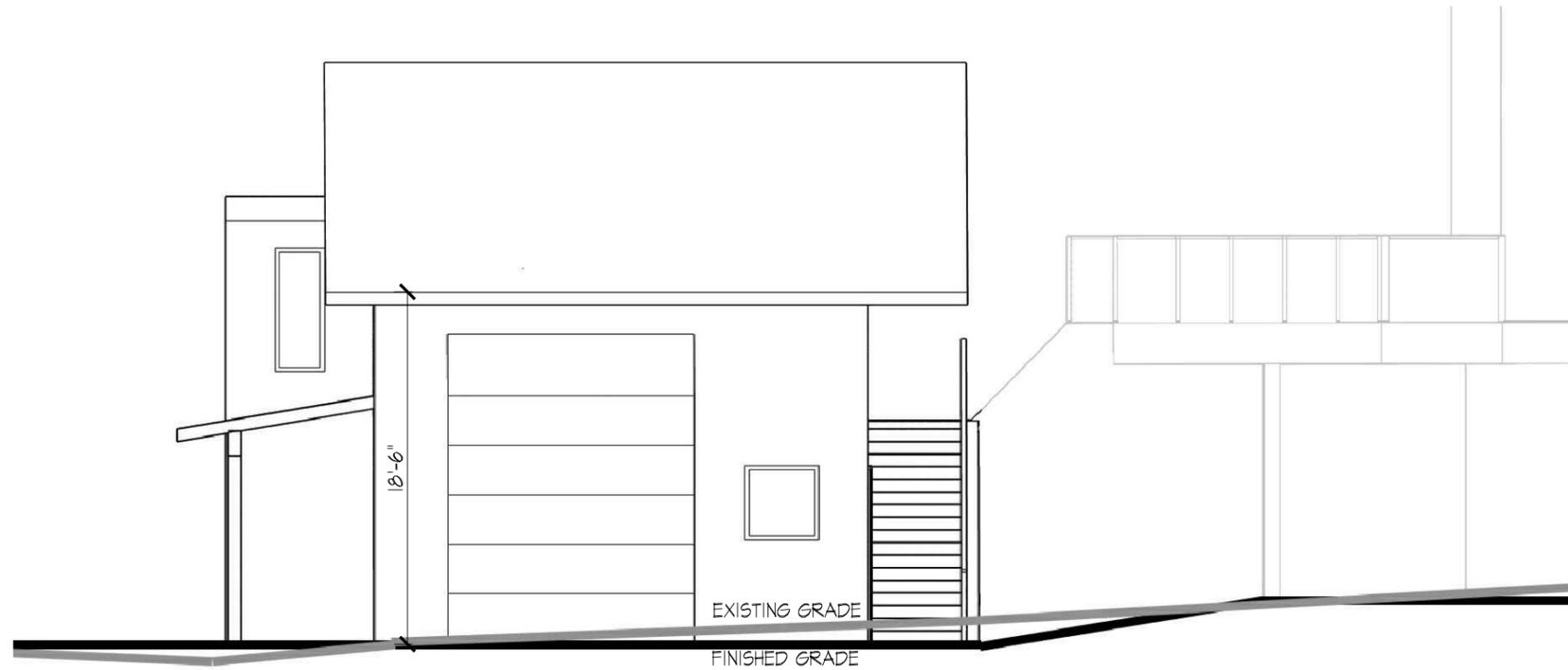
950 Spruce Street, #2A  
Louisville, CO 80027  
TEL: 303.673.9304  
FAX: 303.673.9319

ECKERT RESIDENCE AND GARAGE  
5941 MARSHALL DRIVE  
Boulder Colorado 80303  
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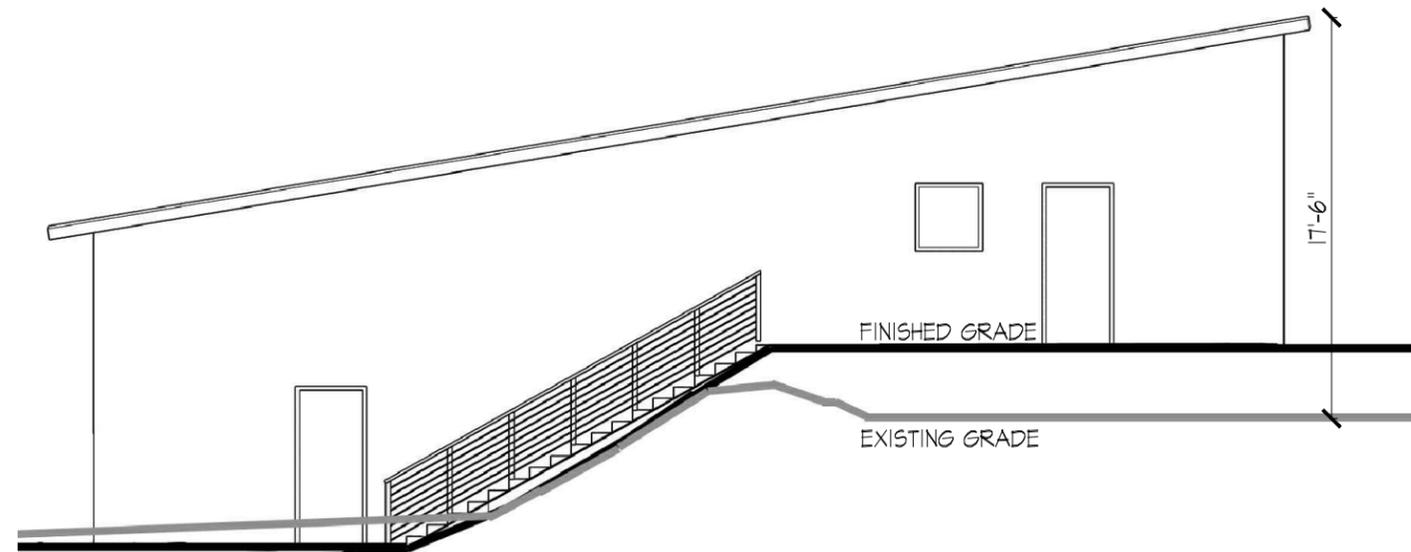
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PROJECT # 2251  
DATE: 07/15/24  
DRAWN BY: HAPC  
CHECKED BY: HAPC  
REVISIONS:

A4  
OF



2 EAST ELEVATION  
A4 SCALE: 1/8" = 1'-0"



1 NORTH ELEVATION  
A4 SCALE: 1/8" = 1'-0"

## Walker, Samuel

---

**From:** Bill Howland <bill.howland@earthlink.net>  
**Sent:** Tuesday, August 27, 2024 3:35 PM  
**To:** Walker, Samuel  
**Cc:** 'Jeff Eckert'  
**Subject:** [EXTERNAL] RE: VAR-24-0004 Eckert Referral Packet

Sam:

We've received your referral packet and have no issue with the proposed reduced setback of the garage from the highway as this increases the setback of the garage from the ditch. Mr Eckert has indicated that he has identified seepage from the ditch in this area, which may be less problematic if the setback from the ditch is increased, and the setback from the highway reduced.

Thanks,

Bill Howland  
 President, Davidson Ditch and Reservoir Company

---

**From:** Walker, Samuel [mailto:swalker@bouldercounty.gov]  
**Sent:** Friday, August 16, 2024 3:20 PM  
**To:** bill.howland@earthlink.net  
**Subject:** VAR-24-0004 Eckert Referral Packet

Good afternoon Bill,

I'm the planner assigned to review VAR-24-0004 Eckert Setback Reduction at 5941 Marshall Road. I was talking with the property owner on-site yesterday and he mentioned that he'd been speaking with you or some other representative of the Davidson Ditch Co. about his house and detached garage. It sounded like you might want to send a referral response. I thought we'd sent the referral packet your way, but I double-checked a few minutes ago and we didn't.

I've attached a copy of the referral packet, please take a look when you have a few minutes and return any comments directly to me. Please also don't hesitate to ask if you have any questions.

### Sam Walker

Planner II | Boulder County Community Planning & Permitting  
 2045 13th Street, Boulder, CO 80302  
 Ph: 720-564-2738  
[swalker@bouldercounty.gov](mailto:swalker@bouldercounty.gov)



*Boulder County has migrated all email to the .gov domain. Please update your contact lists to reflect the change from [swalker@bouldercounty.org](mailto:swalker@bouldercounty.org) to [swalker@bouldercounty.gov](mailto:swalker@bouldercounty.gov). **Emails sent to both .org and .gov addresses will continue to work.** This work is part of the migration to the .gov domain that began in July 2022 when the Boulder County website moved to [www.bouldercounty.gov](http://www.bouldercounty.gov). This move to the .gov domain provides a higher level of cybersecurity protection*



# Public Health

## Environmental Health Division

August 23, 2024

TO: Staff Planner, Community Planning and Permitting

FROM: Carl Job, Environmental Health Specialist

SUBJECT: VAR-24-0004: Eckert Setback Reductions

OWNER: Eckert

PROPERTY ADDRESS: 5941 Marshall Drive

SEC-TOWN-RANGE: 22 -1S -70

The Boulder County Public Health (BCPH) – Environmental Health division has reviewed the submittals for the above referenced docket and has the following comments.

### OWTS Design Revisions:

1. BCPH issued a major permit for the installation of an absorption bed system on 10/07/2023. The permit was issued for an onsite wastewater treatment system (OWTS) adequate for a 4-bedroom house. BCPH has not issued final approval of the OWTS to date. The permit ID is 'MAJP-2023-0122'.
2. The location of the OWTS as shown in the architectural site plan, differs from the location included in the OWTS designs submitted to BCPH.
3. Please note that if a driveway is to extend over the OWTS sewer line, the sewer line will need to be encased as specified under Boulder County OWTS regulations. Please note that if a driveway is to extend over the septic tank, a traffic rated lid will be required as specified under Boulder County OWTS regulations.
4. In addition, the submitted site plan includes a convince bathroom in the detached garage structure. The issued OWTS permit is only for the 4-bedroom residence.
5. Due to these changes, the OWTS permit 'MAJP-2023-0122' will need to be amended and reviewed. Please submit revised OWTS designs to BCPH for review.
  - a. Please note that the absorption field(s) must remain in the vicinity of the soil profile holes, otherwise new soil profile holes will be required.
  - b. If applicable, please ensure revisions to the OWTS design include the encasement of the sewer line or installation of a traffic rated lid on the septic tank.
  - c. Please include an engineer revision letter indicating that the convenience bathroom in the detached garage will be connected to the OWTS.
6. Setbacks between all buildings and the OWTS serving this property and OWTS serving neighboring properties, must be in accordance with the Boulder County OWTS Regulations, Table 7-1.

This concludes comments from the Public Health - Environmental Health division at this time. For additional information on the OWTS application process and regulations, refer to the following website: [www.SepticSmart.org](http://www.SepticSmart.org). If you have additional questions about OWTS, please do not hesitate to contact [HealthOWS@bouldercounty.org](mailto:HealthOWS@bouldercounty.org)

## Walker, Samuel

---

**From:** LuAnn Penfold <lpenfold@mvfpd.org>  
**Sent:** Friday, August 9, 2024 12:53 PM  
**To:** Walker, Samuel  
**Subject:** [EXTERNAL] VAR-24-0004

We Do not object to the setback reduction. Thank you for including us in the planning process.

### LuAnn Penfold, Fire Prevention Specialist

Mountain View Fire Rescue  
3561 N. Stagecoach Road, Longmont, CO 80504  
303-772-0710 x1021 | lpenfold@mvfpd.org | [www.mvfpd.org](http://www.mvfpd.org)



**Right of Way & Permits**

1123 West 3<sup>rd</sup> Avenue  
Denver, Colorado 80223  
Telephone: **303.571.3306**  
Facsimile: 303.571.3284  
donna.l.george@xcelenergy.com

August 9, 2024

Boulder County Community Planning and Permitting  
PO Box 471  
Boulder, CO 80306

Attn: Sam Walker

**Re: Eckert Setback Reduction, Case # VAR-24-0004**

Public Service Company of Colorado's (PSCo) Right of Way & Permits Referral Desk has reviewed the documentation for **Eckert Setback Reduction**. Please be aware PSCo owns and operates existing natural gas and electric distribution facilities along Marshall Road. The property owner/developer/contractor must complete the application process for any new natural gas or electric service, or modification to existing facilities via [xcelenergy.com/InstallAndConnect](https://xcelenergy.com/InstallAndConnect). It is then the responsibility of the developer to contact the Designer assigned to the project for approval of design details.

If additional easements need to be acquired by separate PSCo document, a Right-of-Way Agent will need to be contacted by the Designer.

As a safety precaution, PSCo would like to remind the developer to contact Colorado 811 for utility locates prior to construction.

Donna George  
Right of Way and Permits  
Public Service Company of Colorado dba Xcel Energy  
Office: 303-571-3306 – Email: donna.l.george@xcelenergy.com



# Community Planning & Permitting

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302 • Tel: 303.441.3930 • Fax: 303.441.4856  
 Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • [www.bouldercounty.gov](http://www.bouldercounty.gov)

## Building Safety & Inspection Services Team

### MEMO

TO: Sam Walker, Planner II  
 FROM: Michelle Huebner, Plans Examiner Supervisor  
 DATE: August 7, 2024

RE: Referral Response, VAR-24-0004: Request to reduce the supplemental 110-foot setback along SH170 to 84 feet to allow construction of a detached garage.

Location: 5941 Marshall Drive

Thank you for the referral. We have the following comments for the applicants:

1. **Building Permit.** A building permit, plan review, and inspection approvals are required for the detached garage with a second-floor office.

Please refer to the county's [adopted 2015 editions of the International Codes and code amendments](#), which can be found via the internet under the link:

**2015 Building Code Adoption & Amendments**, at the following URL:  
[Amendments to Boulder County Building Code effective June 6, 2022](#)

2. **Design Wind and Snow Loads.** The design wind and ground snow loads for the property are 160 mph (Vult) and 45 psf, respectively.
3. **Ignition-Resistant Construction and Defensible Space.** Please refer to Section R327 of the Boulder County Building Code for wildfire hazard mitigation requirements, including ignition-resistant construction and defensible space.
4. **BuildSmart.** Please refer to the county's adoption and amendments to Chapter 11 of the IRC, the county's "BuildSmart" program, for the applicable requirements for energy conservation and sustainability for residential additions and new residential buildings. Please be aware that there are energy related requirements of this code that may require the use of renewable energy systems (such as rooftop solar systems) that will also need to be approved by your electric utility provider. In some cases, there may be limitations on the size of on-site systems allowed by your utility provider that could constrain the project design. We strongly encourage discussions between the design team and the utility company as early in the process as possible in order to identify these constraints.

5. **Electric vehicle charging outlet.** Boulder County Building Code requires:
  - a. R329.1 Electric vehicle charging pre-wire option. In addition to the one 125-volt receptacle outlet required for each car space by NEC Section 210.52(G)(1.), every new garage or carport that is accessory to a one- or two-family dwelling or townhouse shall include at least one of the following, installed in accordance with the requirements of Article 625 of the Electrical Code:
    - i. A Level 2 (240-volt) electric vehicle charging receptacle outlet, or
    - ii. Upgraded wiring to accommodate the future installation of a Level 2 (240-volt) electric vehicle charging receptacle outlet, or
    - iii. Electrical conduit to allow ease of future installation of a Level 2 (240-volt) electric vehicle charging receptacle outlet.
  
6. **Plan Review.** The items listed above are a general summary of some of the county's building code requirements. A much more detailed plan review will be performed at the time of building permit application, when full details are available for review, to assure that all applicable minimum building codes requirements are to be met. Our Building Safety publications can be found at: [Building Publications, Applications and Forms - Boulder County](#)

If the applicants should have questions or need additional information, we'd be happy to work with them toward solutions that meet minimum building code requirements. Please call (720) 564-2640 or contact us via e-mail at [building@bouldercounty.org](mailto:building@bouldercounty.org)



# Community Planning & Permitting

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302

Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 •

Tel: 303-441-3930 • [www.BoulderCounty.gov](http://www.BoulderCounty.gov)

August 14, 2024

**TO:** Sam Walker, Planner II; Community Planning & Permitting, Development Review Team - Zoning

**FROM:** Anita Riley, Principal Planner; Community Planning & Permitting, Development Review Team – Access & Engineering

**SUBJECT:** Docket # VAR-24-0004: Eckert Setback Reduction – 5973 Dimmit Drive

The Development Review Team – Access & Engineering staff has reviewed the above referenced docket and does not support the request. The transportation setback was established to minimize noise and air pollution impacts to properties adjacent to the right-of-way. Allowing structures in the setback diminishes the effectiveness of the setback.

This concludes our comments at this time.



## Parks & Open Space

5201 St. Vrain Road • Longmont, CO 80503  
303-678-6200 • POSinfo@bouldercounty.org  
www.BoulderCountyOpenSpace.org

**TO:** Sam Walker, Community Planning & Permitting Department  
**FROM:** Ron West, Natural Resource Planner  
**DATE:** August 23, 2024  
**SUBJECT:** Docket VAR-24-0004, Eckert, 5941 Marshall Drive

Staff has reviewed the submitted materials. Although the area has several natural resource designations in the Comprehensive Plan, staff has no resource concerns with the 26-foot “change” between the supplemental setback and the request.

**Walker, Samuel**

---

**From:** ellen berry <cmdanceellen@gmail.com>  
**Sent:** Friday, August 16, 2024 6:08 PM  
**To:** LU Land Use Planner; Walker, Samuel  
**Subject:** [EXTERNAL] VAR -24-0004

Hello CP&P -

As a Marshall resident within the referral area for this variance, and as a Davidson Ditch shareholder, we would like to voice support for this variance approval. We would like to see this property rebuilt following the Marshall Fire that killed the previous owner. We know of the long-standing challenges that the close proximity to Davidson Ditch has cause this parcel. The ditch wants a large setback and an easement and has cut down nearly all of the trees on this parcel. With the ongoing and apparently uncontrollable ditch aggression, we would like to support the Eckerts in their efforts to rebuild in the best way they can, including this required variance.

Respectfully,

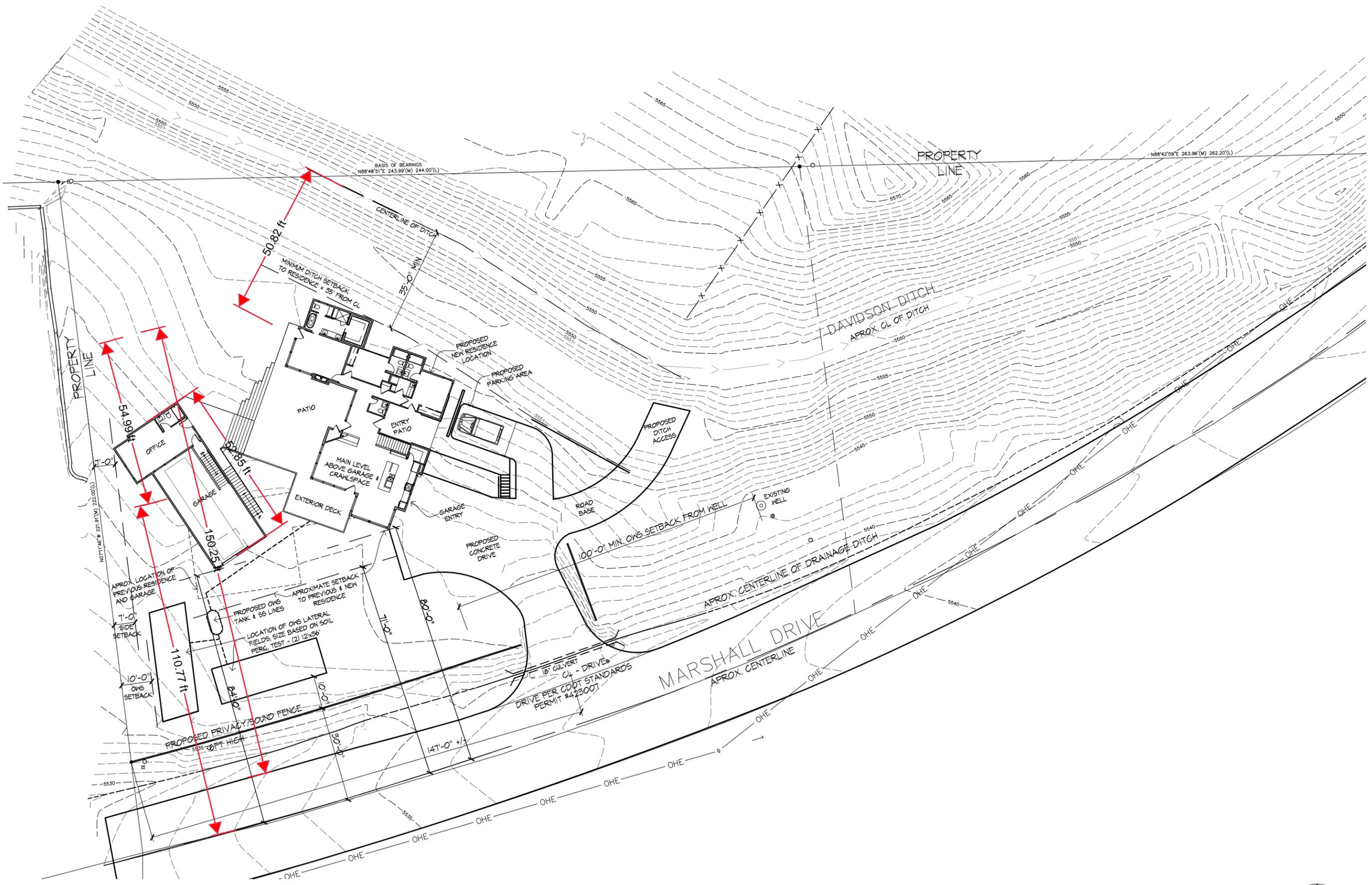
Ellen Berry, Bruce Bryant, John Bianchi  
5743 Marshall Drive

**Walker, Samuel**

---

**From:** John Brockett <loganbrockett@yahoo.com>  
**Sent:** Thursday, August 15, 2024 7:19 PM  
**To:** Walker, Samuel  
**Cc:** Jeff Eckert  
**Subject:** [EXTERNAL] 5941 Marshall Dr. VAR-24-0004

Dear Mr. Walker, My name is John Brockett. I own the property at 5869 Marshall Dr. Jeff, and his wife owns the properties east and west of me. If everything progresses in my favor, I plan to build on my lot next year. Jeff and I have extensively discussed the ditch seepage to the north of our properties, along with numerous other issues that we will work on for our benefit and aesthetics and the positive impact we can make for the entire neighborhood. It is a concern for me as much as it is for him. This spring, I experienced a significant collection of seepage water on the north and east sides of my property. It stayed present for two to three weeks before it dried up. I fully understand Jeff requesting a variance, and I support that 100%. I know it is challenging to predict the amount of seepage during any given year, but it is more of a concern if we have an extremely wet spring. Be that as it may, locating his structure further to the south as a precaution and the environmental impact would be prudent. Again, not only do I not have an issue with the variance, but I feel it makes sense for all concerned. Thank you for taking the time to review my comments. Respectfully, John Brockett



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**ECKERT RESIDENCE AND GARAGE**  
**5941 MARSHALL DRIVE**  
**Boulder Colorado 80303**  
UNINCORPORATED BOULDER COUNTY

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PROJECT # 2251  
DATE: 07/15/24  
DRAWN BY: HAPC  
CHECKED BY: HAPC  
REVISIONS:

**1 SITE PLAN**  
**1 SCALE 1" = 30' - 0"**



**A1**  
OF

**Walker, Samuel**

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**From:** Jeff Eckert <jeff@flatironshomes.com>  
**Sent:** Friday, August 16, 2024 4:29 PM  
**To:** Walker, Samuel  
**Subject:** [EXTERNAL] Re: contact for Davidson Ditch company president  
**Attachments:** Additional hardship statement clarification.docx

Hello Sam,

Attached is a letter intended to elaborate more on two of the many exceptional physical conditions that necessitate the front setback variance.

These issues are much more complex as there are some solutions that by might initially sound possible but once explored in detail are not possible.

Please let me know if you would like to discuss these issues in more detail or if you have any questions.

best regards,  
Jodi Eckert



**Jeff Eckert**

P: 303.554.1567 Ext 1

F: 303.554.1569

**FLATIRONS HOMES**

Jeff@FlatironsHomes.com

FlatironsHomes.com

## Additional hardship statement clarification

In support of Variance request VAR-24-0004

Location: 5941 Marshall Road Boulder, Colorado

I would like to elaborate on two of several exceptional physical conditions that I addressed in my "BOA Hardship statement" dated 8/2/2024.

- One of several exceptional physical conditions which create a hardship upon this property is the Davidson ditch which bisects the property. This Davison ditch is not a small irrigation ditch. It is one of the largest ditches in the county. The normal flow is sometimes similar to the flow of a moderate size creek. However, during major rain events its flows can grow to enormous degrees as the surrounding terrain runoff flows into the ditch. This ditch experienced a breach of the south bank on this lot toward the easterly property corner resulting in Marshall Road being closed temporarily. That location was likely compromised due to the improvements to Marshall Road many years ago which resulted in cuts to the ditch bank that are too steep. That occurrence happened during the 2013 historic rain event that caused widespread flooding and damage throughout Boulder County. It is a reminder that any construction that has the potential of increasing seepage or compromising the ditch due to construction closer to the ditch than is necessary should be avoided whenever alternatives are available.
- Another exceptional physical condition is the slope combined with the shallow depth of the lot. This prohibits the possibility of putting in a driveway to the west side, upper level of the lot that can meet the maximum grade for fire department access. Fire department requirements can be achieved at the location proposed but cannot be achieved if the garage is pushed back further without utilizing the entire buildable area of the lot for an expansive switchback type road to achieve fire department access.

Sincerely,

Jodi Eckert

8/16/2024