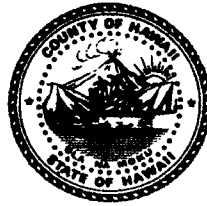


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

January 12, 2016

Niels Christensen, L.P.L.S.
The independent Hawaii Surveyors, LLC
PO Box 577
Hilo, HI 96721

Dear Mr. Christensen:

SUBJECT: Application: Variance – VAR-15-000329
Applicant: NIELS CHRISTENSEN, L.P.L.S. /
THE INDEPENDENT HAWAII SURVEYORS, LLC
Owner: ROY AND LILY MASUDA
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7, Minimum Yards. (Encroachment into East
Front Yard Setback and South Side Yard Setback)
Tax Map Key: 2-5-050:024, Lot 34

The Planning Director certifies the **approval** of Variance 15-00329, subject to conditions. The variance will allow a section of the single-family dwelling to remain on Lot 34, with a minimum 18.05-foot front (east) yard setback, in lieu of the required 20-foot front yard setback and a minimum 9.57-foot side (south) yard setback in lieu of the required 10-foot open space requirement. The variance is from the subject property's minimum 20-foot front yard setback and 10-foot side yard setback requirement. These exceptions are in lieu of the required 20-foot front yard setback and 10-foot side yard setback, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 9,944 square feet and is situated within the Hilo Country Club Estates, Unit I, Kukuau 2nd, South Hilo, Hawai'i. The subject property's street address is 154 Lukia Street.
2. **County Zoning.** Agricultural – 20 acres (A-20a).

3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20 feet front and rear; 10 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on November 20, 2015. The variance application's survey map was prepared by Niels Christensen (The Independent Hawaii Surveyors, LLC) and denotes that a portion of the single-family dwelling was built into the front (east) yard setback and the side (south) yard setback.

The survey map shows that portion of the single-family dwelling encroaches 1.95 feet into the 20-foot front (east) yard setback and 0.43 feet (5.16 inches) into the 10-foot side (south) yard setback.

The encroachment leaves a minimum 18.05-foot front (east) yard setback, in lieu of the required 20-foot front yard setback and 9.57-foot side (south) yard setback in lieu of the required 10-foot side yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#55427) was issued on March 20, 1973 for a single-family dwelling consisting of 4 bedrooms, 3 baths, living room, kitchen, and dining area.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated April 20, 2015. (Refer to attached DOH memorandum)
 - b. No comments received from Department of Public Works Building Division.
8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on December 11, 2015. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 15, 2015.
9. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners of the general public were received.

GROUNDS FOR APPROVING VARIANCE

Special and Unusual Circumstances

(a) There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property.

The Variance application meets criterion (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling into the 20-foot front (east) yard setback and 10-foot side (south) yard setback as required by the Zoning Code.

The survey map dated January 15, 2015, prepared by Niels Christensen L.P.L.S., (The Independent Hawaii Surveyors, LLC), shows a section of the single-family dwelling encroaching 1.95 feet into the 20-foot front (east) yard setback and 0.43 feet (5.16 inches) into the 10-foot side (south) yard setback.

The encroachment leaves a minimum 18.05-foot front (east) yard setback, in lieu of the required 20-foot front yard setback and 9.57-foot side (south) yard setback in lieu of the required 10-foot side yard setback.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements constructed in 1973, nearly 42 years ago, and subsequent construction permits were issued by the County for the existing single-family dwelling and pool equipment shed and closed under valid building permits. It also appears that past building permit inspections of the premises by the affected agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

The above special and unusual circumstances determine the owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with best use and development of the subject property.

Alternatives

(b) There are no other reasonable alternatives that would resolve the difficulty.

The Variance application meets criterion (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected side yard of the subject property include the following actions:

Remove the building encroachments and/or redesign the single-family dwelling denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the single-family dwelling was in compliance with all County requirements. Any structural or design correction of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachment is within the front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options; another alternative is to consolidate the subject property with the adjoining side property which is owned by another party, and to re-subdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical. There are no reasonable alternatives to resolve the encroachment issue.

Therefore, there are no reasonable alternatives to resolve the encroachment issue.

Intent and Purpose

(c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The Variance application meets criterion (c) for the following reasons:

The intent and purpose of requiring building setbacks for a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

The variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties. The single-family dwelling has been in existence for approximately 42 years and was constructed under valid building permits and other construction permits issued by the County of Hawai'i. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intents and purposes

of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

This can be substantiated, to some degree, by the fact that no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

Therefore, the variance would be consistent with the general purpose of the zoning district and not be materially detrimental to the public's welfare or cause substantial adverse impact to the area's character or to adjoining properties.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the single-family dwelling built on the subject property ("LOT 34") will not meet the minimum front and side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

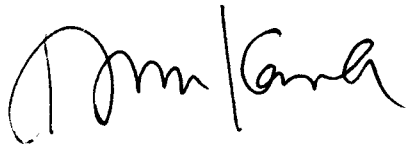
This variance application is approved subject to the following variance conditions.

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. Should the single-family dwelling built on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
4. An Ohana or farm dwelling shall not be approved for the subject property, subject to the provisions of the Hawai'i County Code, Chapter 25, (Zoning) or state law, which may change from time to time.
5. Future or new building improvements and permitted uses shall be subject to State law and County Ordinances and Regulations pertaining to building construction and building occupancy.

Niels Christensen, L.P.L.S.
The Independent Hawaii Surveyors, LLC
Page 6
January 12, 2016

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-15-000329.

Sincerely,

A handwritten signature in black ink, appearing to read 'Duane Kanuha', written in a cursive style.

DUANE KANUHA
Planning Director

LHN/SG:nci

P:\Admin Permits Division\Variances From CoH02\Zone2\VAR15-000329TMK2-5-050-024Masuda.doc.rtf

xc: Kelly Gomes, DPW Engineering Division
Real Property Tax Office (Hilo)
Gilbert Bailado, GIS

Niels Christensen, L.P.L.S.
The Independent Hawaii Surveyors, LLC
Page 7
January 12, 2016

DAVID Y. IGE
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

2016 JAN 5 PM 2 00

PLANNING DEPARTMENT
COUNTY OF HAWAII

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: December 30, 2015

TO: Mr. Duane Kunaha
Planning Director, County of Hawaii

FROM: Eric Honda *EH*
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR-15-000329
Applicant: THE INDEPENDENT HAWAII SURVEYORS, LLC
Owners: ROY AND LILY MASUDA
Request: Variance from Chapter 25, Zoning, Article 5
Division 7, Section 25-5-76 Minimum Yards (Encroachment
into the East Front Yard Setback and South Side Yard
Setback)
Tax Map Key: 2-5-050:024; Lot 34

The Health Department found no environmental health concerns with regulatory implications in the submittals.

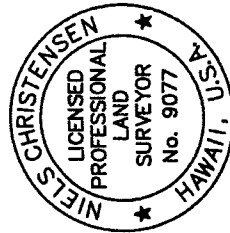
WORD: VAR-15-010329.d1

102930

EXISTING CONDITIONS UPON LOT 34
HILO COUNTRY CLUB ESTATES, UNIT I
 KUKUAU 2nd, SOUTH HILO
 ISLAND OF HAWAII

NOTES:

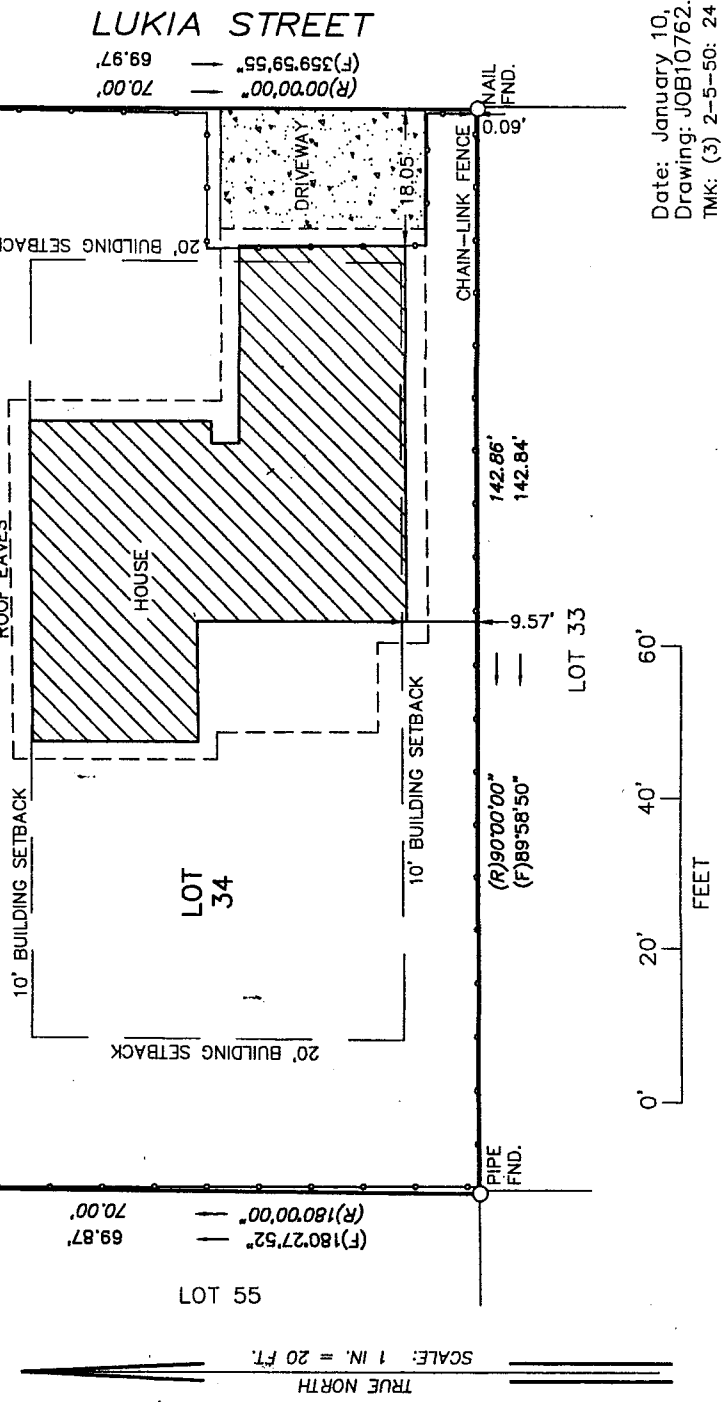
1. The features shown hereon were located by an actual field survey completed on January 8, 2015.
2. This map shows, "the location of any improvements in the vicinity of perimeter property lines", (K-2).
3. Field measured dimensions (F) are within acceptable tolerances as compared to record dimensions (R) for land of this type and in this subdivision.
4. The attached Report pertains to improvements near property lines and County building setbacks.



This work was prepared by me or under my direct supervision

Niels Christensen
 Niels Christensen
 Licensed Professional Land Surveyor
 License Number 9077

The Independent Hawaii Surveyors, LLC
 P.O. BOX 577
 Hilo, HI 96721
 Phone 808 959-0360
 FAX 808 959-0353
 info@hawaiiboundary.com



Date: January 10, 2015
 Drawing: JOB10762.dwg
 TMK: (3) 2-5-50: 24