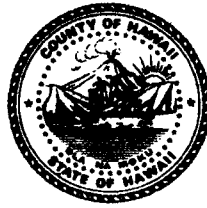


William P. Kenoi  
Mayor



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 15, 2016

Billie Chitwood  
P. O. Box 10431  
Hilo, HI 96721

Dear Mr. Chitwood:

**SUBJECT: Application: Variance – VAR-15-000330**  
**Applicant: BILLIE CHITWOOD**  
**Owner: BILLIE CHITWOOD**  
**Request: Variance from Chapter 25, Zoning, Article 5 Division 7,**  
**Section 25-5-76 Minimum Yards and Section 25-4-44,**  
**Permitted Projections into Yards and Open Space**  
**Requirements (Encroachment into the Northwest Front Yard**  
**Setback and Southwest Side Yard Setback)**  
**Tax Map Key: 2-8-010:022; Lot B**

The Planning Director certifies the **approval** of Variance 15-000330, subject to conditions. The variance will allow for the “as-built” tool/storage shed to remain on subject property with a minimum 11.03-foot side (southwest) yard setback, in lieu of the required 25-foot side (southwest) yard setback and associated roof eave projection resulting with a 9.08-foot side (southwest) yard open space, in lieu of the required 15-foot side (southwest) open space. These exceptions are in lieu of the required 25-foot side yard setback and 15-foot side yard open space, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

The variance request also referenced an encroachment of a wooden fence into the County of Hawai'i right-of-way. The wooden fence is excluded from this variance approval, as separate action is required by the County of Hawai'i Department of Public Works.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 43,329 square feet and is situated in

Mr. Billie Chitwood

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the Honomu Homesteads, Honomu, South Hilo, Hawai'i. The subject property's street address is 28-2681 Kahalono Road.

2. **County Zoning.** Agricultural – 20 acres (A-20a).
3. **State Land Use Designation.** Agricultural.
4. **Land Area.** The survey map prepared by Niels Christensen L.P.L.S. (The Independent Hawaii Surveyors) shows that the subject property consists of 43,329 square feet and 43,560 square feet according to the Hawai'i County Real Property Tax records. The setbacks are based on the land area determined by the land surveyor (Niels Christensen L.P.L.S.). (See condition 5.)
5. **Setback Requirements.** 25-foot front and rear; 15 feet for sides.
6. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on November 20, 2015. The variance application's survey plan, prepared by Niels Christensen L.P.L.S. (The Independent Hawaii Surveyors) denotes that the tool/storage shed was built into the side (southwest) yard setback and associated side yard open space.  

The plot plan shows that the tool/storage shed encroaches 3.97 feet into the 15-foot side (southwest) yard setback and 0.92 feet (11.04 inches) into the 10-foot side (southwest) yard open space.

The encroachment leaves a minimum 11.03-foot side (southwest) yard setback, in lieu of the required 15-foot side (southwest) yard setback and 9.08-foot side (southwest) yard open space, in lieu of the required 10-feet into the side (southwest) yard open space.
7. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that the single-family dwelling was originally built in 1900. Subsequently, an additional building permit was issued on June 30, 1992, for alteration to the existing single-family dwelling.
8. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated December 30, 2015. (Refer to attached DOH memorandum.)
  - b. No comments received from the Department of Public Works Building Division.
9. **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 5, 2015

and December 8, 2015, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 15, 2015.

10. **Comments from Surrounding Property Owners or Public.** Objection letter from Deborah Chang, Eric Chang and Paul Chang was received on December 24, 2015.

### **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 tool/storage shed into the 25-foot side (southwest) yard setback and into the 15-foot side (southwest) yard open space as required by the Zoning Code.

The plot plan shows that the tool/storage shed encroaches 3.97 feet into the 15-foot side (southwest) yard setback and 0.92 feet (11.04 inches) into the 10-foot side (southwest) yard open space. The encroachment leaves a minimum 11.03-foot side (southwest) yard setback, in lieu of the required 25-foot side (southwest) yard setback and 9.08-foot side (southwest) yard open space in lieu of the required 10-foot side (southwest) yard open space.

According to the Hawai'i County Real Property Tax Office records, the single-family dwelling was constructed in 1900 before the adoption of the Zoning Code in 1967. What this effectively means is that there were no minimum yard setbacks at the time the single-family dwelling was built.

The owner/applicant has stated that he was unaware of any setback encroachment since no building permit was required for an agricultural storage shed under 600 square feet with no electrical and plumbing.

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 tool/storage shed denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code. Any structural or design correction of the tool/storage shed to meet setback requirement would leave unattractive reconstruction scars.

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.

A letter objecting to the variance request was received from Deborah Chang, Eric Chang and Paul Chang on December 24, 2015.

The Chang's has requested the following:

*(a) The old garage, which encroaches into our property and into the County road right-of-way (and is wholly located within both front and side yard setback) be completely removed.*

The garage will be removed. (See Condition 4).

*(b) The variance request be denied, because it does not meet the justification for granting a variance as outlined in the zoning request. (HCC Section 25-2-51)*

It is determined that 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.

*(c) The solid wall projecting 3.97 feet into the setback be removed.*

The wooden fence is excluded from this variance approval as separate action is required by the County of Hawai'i Department of Public Works.

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.

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.

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 tool/storage shed built on the subject property (Lot B) will not meet the minimum 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 Hawai'i 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 tool/storage shed 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. This variance shall only cover the tool/storage shed and is not applicable for the use of the structure as a habitable space.

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4. The carport located within the northwest corner of the subject property, encroaching onto the adjacent property and the road right-of-way shall be removed with a demolition permit secured within six (6) months from the issuance of this variance.
5. The owner/applicant shall file a revised certified survey map with metes and bounds description with the State of Hawai'i, Bureau of Conveyances with a copy to the Planning Department to correct the discrepancy in land area within one year from the date of issuance of this variance.
6. 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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-15-000330.

Sincerely,



DUANE KANUHA  
Planning Director

LHN/SG:nci

P:\Admin Permits Division\Variances From CoH02\Zone2\VAR15-000330TMK2-8-010-022Chitwood.doc.rtf

xc: Real Property Tax Office (Hilo)  
Gilbert Bailado, GIS

Mr. Billie Chitwood  
Page 7  
January 15, 2016

DAVID Y. IGE  
GOVERNOR OF HAWAII



JAN 5 PM 2 01  
PLANNING DEPARTMENT  
COUNTY OF HAWAII

VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. BOX 816  
HILO, HAWAII 96721-0816

MEMORANDUM

DATE: December 30, 2015

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

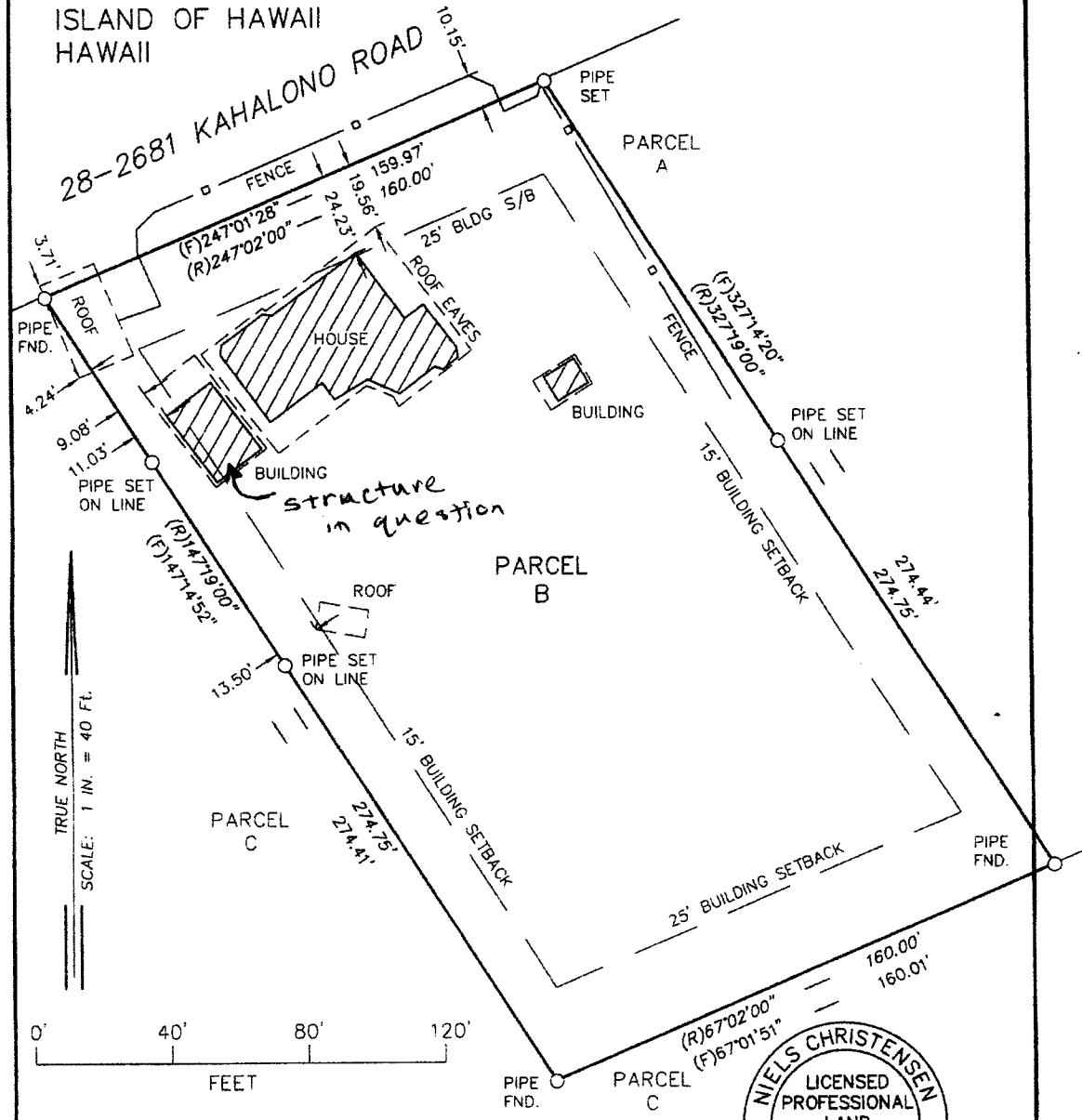
FROM: Eric Honda *EH*  
District Environmental Health Program Chief

SUBJECT: Application: Variance - VAR-15-000330  
Applicant: **BILLIE CHITWOOD**  
Owner: **BILLIE CHITWOOD**  
Request: Variance from Chapter 25, Zoning, Article 5 Division 7,  
Section 25-5-76 Minimum Yards and Section 25-4-44,  
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The Health Department found no environmental health concerns with regulatory implications in the submittals.

**EXISTING CONDITIONS UPON PARCEL B**  
**HONOMU HOMESTEADS**

HONOMU, SOUTH HILO  
 ISLAND OF HAWAII  
 HAWAII



**NOTES:**

1. The features shown hereon were located by an actual field survey completed on October 16, 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.
5. Setbacks were determined from a calculation of area from record dimensions as on Subdivision 182 (0.9947 Ac.) and from field measurements (0.9933 Ac.) and after consulting with Larry Nakayama, Hawaii County Planning Department.



This work was prepared by me or under my direct supervision

*Niels Christensen*

Niels Christensen  
 Licensed Professional Land Surveyor  
 License Number 9077

REVISED MAP  
 Date: November 4, 2015  
 Drawing: JOB11078A.dwg  
 TMK: (3) 2-8-10: 22

**The Independent Hawaii Surveyors, LLC**

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