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Mayor



Duane Kanuha  
Director

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**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

June 6, 2016

Rochelle Jane Mason  
P. O. Box 2068  
Volcano, Hawai'i 96785-2068

Dear Ms. Mason:

**SUBJECT: Application: Variance - VAR 16-000364**  
**Applicant: ROCHELLE JANE MASON**  
**Owner: ROCHELLE JANE MASON TRUST**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 7,**  
**Section 25-5-76, Minimum Yards, Requirements**  
**(Encroachment into Northeast Side Yard Setback)**  
**Tax Map Key: 1-1-014:055; Lot 1442**

The Planning Director certifies the **approval** of Variance 15-000364, subject to conditions. The variance will allow a section of the water tank, seven feet in height, to remain on Lot 1442, with a minimum 12.76-foot side (northeast) yard setback in lieu of the required 15-foot side yard setback. It will also allow for the storage room with a minimum 14.42-foot side (northeast) yard setback in lieu of the required 15-foot side yard setback. The variance is from the subject property's minimum 15-foot side yard setback. These exceptions are in lieu of the required 15-foot side yard setback, 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.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 21,083 square feet and is located in the Royal Hawaiian Estates Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 11-3337 Volcano Road.
2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Agricultural.

4. **Required Setback.** Flag lot - 15 foot side yards. The minimum yards for a flag lot, excluding the access drive, shall be the minimum side yards required for a building site in the applicable zoning district.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on November 24, 2015. The variance site plan is drawn to scale, prepared by the Niels Christensen L.P.L.S. (The Independent Hawaii Surveyors, LLC), and denotes the position of the 7-foot water tank and storage room, constructed into the minimum 15-foot side (northeast) yard setback. The request affects the northeast yard setback. **(See attached survey map – Exhibit A)**

The survey map shows that portion of the water tank encroaches 2.24 feet into the 15-foot side (northeast) yard setback. It also shows the storage room encroaches 0.58 feet into the 15-foot side (northeast) setback.

The encroachment leaves the water tank with a minimum 12.76-foot side (northeast) yard setback, in lieu of the required 15-foot side (northeast) yard setback. It also leaves the storage room with a minimum 14.42-foot side (northeast yard setback in lieu of the required 15-foot side (northeast) yard setback.
6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (H60785) was issued on September 30, 1974, to the subject property for a single-family dwelling consisting of 3 bedrooms, 2 baths, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated May 27, 2016. **(See attached memorandum – Exhibit B)**
  - b. No comments received from the 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 April 12, 2016 and April 21, 2016, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 10, 2016.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

#### **ANALYSIS OF GROUNDS FOR VARIANCE**

No variance will be granted unless it is found that:

- (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 criteria (a) for the following reasons:**

The owner/applicant submitted the variance application to address or resolve the encroachment of the 7-foot water tank and storage room into the 15-foot northeast side yard setback.

The survey map shows that portion of the water tank encroaches 2.24 feet into the 15-foot side (northeast) yard setback. It also shows the storage room encroaches 0.58 feet into the 15-foot side (northeast) setback.

The encroachment leaves the water tank with a minimum 12.76-foot side (northeast) yard setback, in lieu of the required 15-foot side (northeast) yard setback. It also leaves the storage room with a minimum 14.42-foot side (northeast) yard setback in lieu of the required 15-foot side (northeast) 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 1974, nearly 42 years ago, were constructed under valid building permits and other construction permits issued by the County. It also appears that past building permits inspections of the premises by the agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

Based on the above-mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the subject property.

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

**The variance application meets criteria (b) for the following reasons:**

Alternatives available to the current owners to correct and/or address the water tank encroachments constructed into the affected rear yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign the water tank denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code. Requiring the owner to relocate the water tank would involve the owner to do major excavation to his property by having to replace and move existing water lines. This alternative would be deemed unreasonable,

especially when the owners complied with the building permit process and were under the impression that the water tank and storage room were in compliance with all County requirements.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by someone else, and resubdivide the property to modify property lines and adjust minimum yard setbacks. Therefore, to consolidate and re-subdivide the property to modify property lines and adjust minimum side yard setbacks are not viable options; there are no reasonable alternatives to resolve the encroachment issue.

*(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 criteria (c) for the following reasons:**

The intent and purpose of requiring structural setbacks within a building site 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 water tank and storage room have been in existence for approximately 42 years and were 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.

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 7-foot water tank and storage room built upon the subject property ("LOT 1442") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

Rochelle Jane Mason  
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June 6, 2016

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. An Ohana or additional farm dwelling shall not be granted upon the subject property, subject to provisions of the Hawai'i County Code, Chapter 25 (Zoning) or State Law, which may change from time to time.
4. Should the water tank and storage room 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.
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 proceed to declare subject Variance-16-000364 null and void.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR16-000364TMK1-1-014-055 Mason Trust.doc

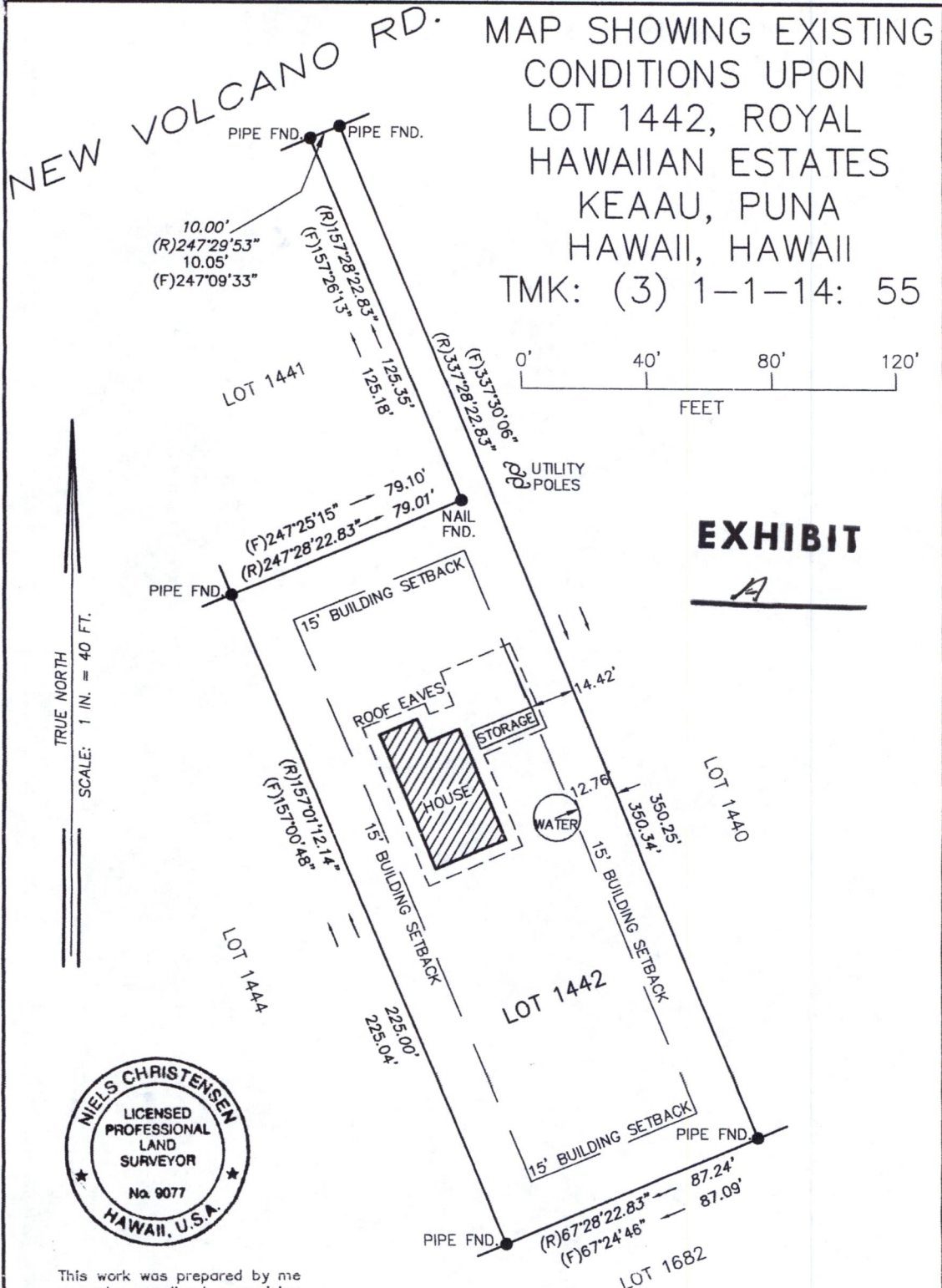
xc: Real Property Tax Office (Hilo)  
Gilbert Bailado, GIS (via email)

NEW VOLCANO RD.

MAP SHOWING EXISTING  
CONDITIONS UPON  
LOT 1442, ROYAL  
HAWAIIAN ESTATES  
KEAAU, PUNA  
HAWAII, HAWAII  
TMK: (3) 1-1-14: 55



TRUE NORTH  
SCALE: 1 IN. = 40 FT.



**EXHIBIT**  
A

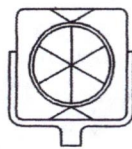


This work was prepared by me  
or under my direct supervision

*Niels Christensen*  
Niels Christensen  
Licensed Professional Land Surveyor  
License Number 9077

**NOTES:**

1. The features shown hereon were located by an actual field survey performed on March 11, 2003.
2. No boundary encroachments were found except as shown.
3. No violations of County Zoning Setback Codes were found except as shown.
4. Field measured dimensions (F) are within acceptable tolerances as compared to record dimensions (R) for land of this type and in this subdivision.
5. See attached Report pertaining to setbacks and encroachments.



**The Independent Hawaii Surveyors**  
1044 Oli Oli Way  
Hilo, HI 96720  
Phone/FAX  
808 959-0360  
Email  
niels@oloha.net

Date: March 11, 2003  
Drawing: JOB3969.dwg



2016 APR 28 PM 3 27  
PLANNING DEPARTMENT  
COUNTY OF HAWAII

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

MEMORANDUM

DATE: April 27, 2016

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

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

SUBJECT: Application: Variance- VAR-16-000364  
Applicant: ROCHELLE JANE MASON  
Owner: ROCHELLE JANE MASON TRUST  
Request: Variance form 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 Northeast Side Yard  
Setbacks)  
TMK: 1-1-014:055; Lot 1442

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

**EXHIBIT**

B

