

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
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

April 28, 2017

Ms. Lori Mikkelson
All Aina Services
P. O. Box 291
Laupahoehoe, HI 96764

Dear Ms. Mikkelson:

SUBJECT: Application: Variance - VAR 17-000410
Applicant: ALL AINA SERVICES/LORI MIKKELSON
Owner: MYRA YAMACHI
Variance from Chapter 25, Zoning,
Article 5, Division 1, Section 25-5-7, Minimum Yards
(Encroachment into Southeast Side Yard Setback)
Tax Map Key: 4-5-017:048; Lot 106

The Planning Director certifies the **approval** of Variance No. 17-000410, subject to variance conditions. The variance will allow portion of the single-family dwelling to remain with a minimum 7.86-foot southeast side yard setback, in lieu of the required 10-foot side yard setback. These exceptions are in lieu of the required 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 11,173 square feet and is located in Kaaohomesteads, Hamakua, Hawai'i. The subject property's street address is 45-3315 Kamani Street.
2. **County Zoning.** Single-Family Residential – 10,000 sq. ft. (RS-10).
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 January 30, 2017. The variance application's survey map dated December 29, 2017 was prepared by Niels Christensen (The Independent Hawaii, LLC) and denotes a portion of the single-family dwelling built into the southeast side yard setback. **(See Exhibit A-Site Plan)**

The survey map dated December 29, 2016, prepared by Niels Christensen L.P.L.S., (The Independent Hawaii Surveyors Associates, LLC), shows a section of the single-family dwelling encroaching with a minimum 2.14 feet into the 10-foot southeast side yard setback.

The encroachment leaves a minimum 7.86-foot side (southeast) yard setback in lieu of the required 10-foot southeast side yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit #43804 was issued on February 9, 1970, for a single-family dwelling consisting of 3 bedrooms, 1 bath, living room, kitchen, and dining area.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated March 16, 2017: "The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - 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 January 28, 2017 and February 14, 2017, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 16, 2017.
9. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.
10. **Time Extension.** The applicant's variance application was acknowledged by letter dated February 3, 2017 and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to April 28, 2017.

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 carport wall into the 10-foot southeast side yard setback and 10-foot west front yard open space as required by the zoning code.

The survey map dated December 29, 2017, prepared by Niels Christensen L.P.L.S. (The Independent Hawaii Surveyors Associates, LLC), shows a section of the single-family dwelling encroaching with a minimum 2.14 feet into the 10-foot southeast side yard setback.

The encroachment leaves a minimum 7.86-foot southeast side yard setback in lieu of the required 10-foot southeast 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 1970, nearly 47 years ago, and subsequent construction permits were issued by the County for the existing single-family dwelling were 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 side yard setback, to consolidate the subject property with the adjacent side yard property, which is owned by someone else, and to re-subdivide the property to modify property lines and adjust minimum side yard setbacks are not viable options. 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 47 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.

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 106") 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 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 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 permit 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.

Ms. Lori Mikkelson
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Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-17-000410.

Sincerely,



MICHAEL YEE
Planning Director

LHN/SG:nci

P:\Admin Permits Division\Variances From CoH02\Zone4\VAR17-000409TMK4-2-017-048 Yamachi.doc.rtf5

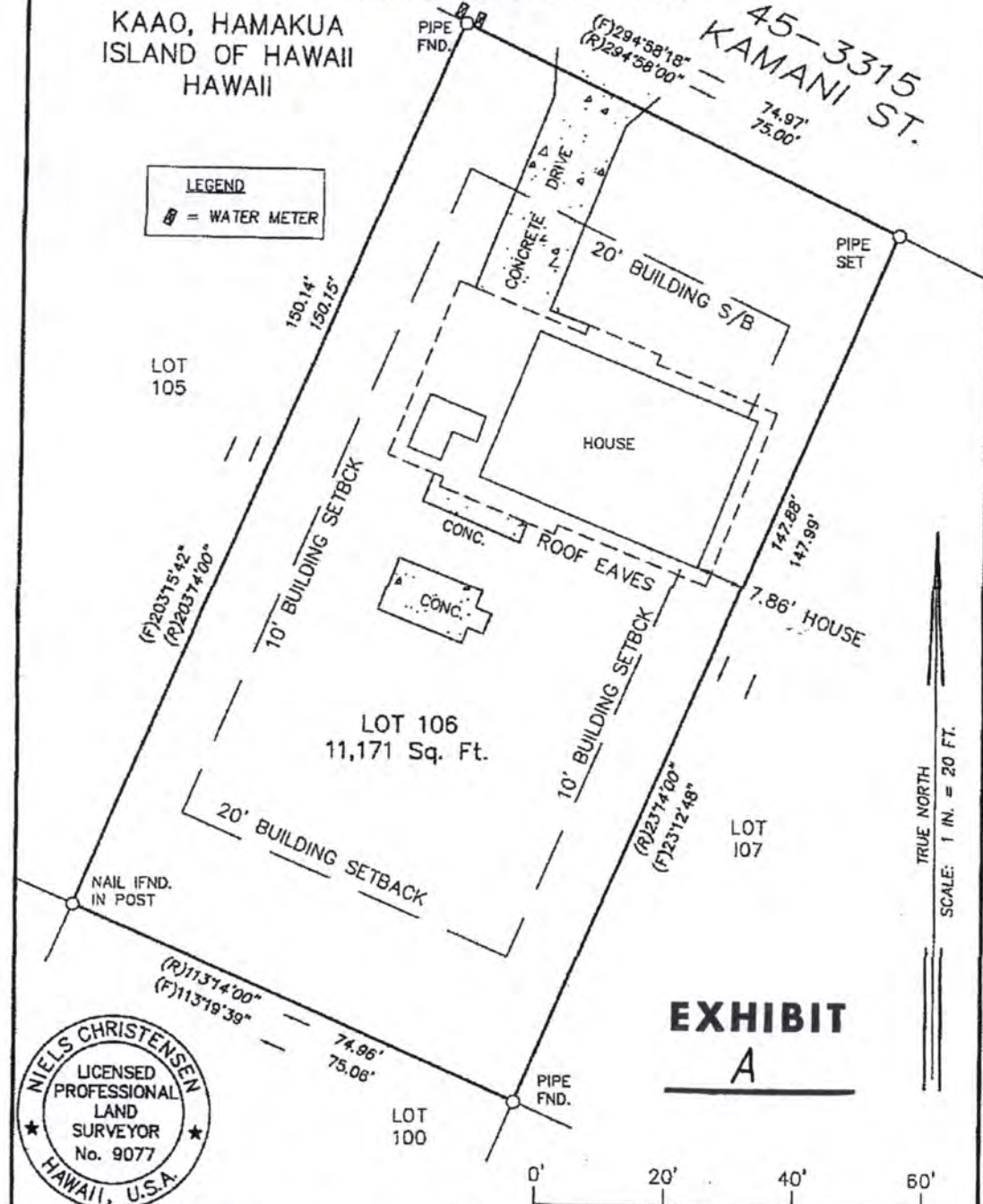
cc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS

**EXISTING CONDITIONS UPON LOT 106
KAAO HOMESTEADS**

KAAO, HAMAKUA
ISLAND OF HAWAII
HAWAII

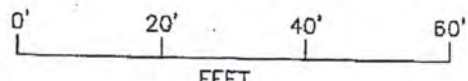
45-3315
KAMANI ST.
74.97'
75.00'

LEGEND
⊗ = WATER METER



TRUE NORTH
SCALE: 1 IN. = 20 FT.

**EXHIBIT
A**



NIELS CHRISTENSEN
LICENSED PROFESSIONAL LAND SURVEYOR
No. 9077
HAWAII, U.S.A.

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

NOTES:

1. The features shown hereon were located by an actual field survey completed on December 28, 2016.
2. This map shows, "the location of any improvements in the vicinity of perimeter property lines", (Item K-2 of "Purchase Contract").
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. This map should not be changed, altered or used to execute any transaction or application other than that indicated on this particular "Purchase Contract".

Date: December 29, 2016
Drawing: JOB11681.dwg
TMK: (3) 4-5-17: 48