

Harry Kim
Mayor



Michael Yee
Director

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Deputy Director

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County of Hawai'i
PLANNING DEPARTMENT

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

October 20, 2017

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

Dear Ms. Mikkelson:

SUBJECT: Application: Variance - VAR 17-000436
Applicant: ALL AINA SERVICES/LORI MIKKELSON
Owner: SAVANNAH REAGLE AND ANNA CABRAL
Request: Variance from Chapter 25, Zoning, Article 5 Division 7,
Section 25-5-76 Minimum Yards. Permitted Projections into
Yards (Encroachment into Northeast Side Yard Setback)
Tax Map Key: 1-1-039:134 (Lot 6243)

The Planning Director certifies the **approval** of Variance 17-000436, subject to conditions. The variance will allow portion of the single-family dwelling to remain with a minimum 16.5-foot side (northeast) yard setback to a minimum 18.8-foot side (northeast) yard setback in lieu of the required 20-foot side yard setback. These exceptions are in lieu of the required 20-foot side yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards.

This variance does not address the rock wall encroaching onto Plumeria Street, which is a private road. Please contact the Fern Acres Homeowners Association to resolve this encroachment.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 2 acres and is located in the Fern Acres Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 11-3626 Plumeria Street.
2. **County Zoning.** Agricultural – 3 acre (A-3a).
3. **State Land Use Designation.** Agricultural.

4. **Required Setback.** Front and rear – 30 feet; sides – 20 feet.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on March 6, 2017. The variance site plan is drawn to scale, prepared by Peter H. Souza, Jr., L.P.L.S. (Crossroads Land Surveying), and denotes the position of the single-family dwelling constructed into the minimum 20-foot side (northeast) yard setback. The request affects the northeast side yard setback. **(See attached survey map – Exhibit A)**

The survey map shows that portion of the single-family dwelling encroaches 1.2 feet to 3.5 feet into the 20-foot side (northeast) yard setback. The encroachment leaves the single-family dwelling with a minimum 16.5-foot side (northeast) yard setback to a minimum 18.8-foot side (northeast) yard setback.

6. **County Building Records.** Hawai‘i County Real Property Tax Office Records indicate that a building permit (813098) was issued on December 23, 1981, to the subject property for a two-story, single-family dwelling consisting of 3 bedrooms, 1-1/2 bath, living room, kitchen and dining area along with entry lanai, open and covered lanai, walkway and detached water tank. Building permit was finalized on March 15, 1982.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated June 5, 2017: “The Health Department found no environmental health concerns with regulatory implications in the submittals.”
 - 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 July 6, 2017 and August 3, 2017, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 31, 2017.
9. **Comments from Surrounding Property Owners or Public.**
 - a. Objection letter from Abel Frederick K. Coloma and received on February 23, 2017. **(See Exhibit B)**
 - b. Objection letter received from Frederick D. Pablo, Trustee for Josephine a. Pablo Trust dated August 26, 2017. **(See Exhibit C)**

10. **Time Extension.** The applicant's variance application was acknowledged by letter dated July 20, 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 October 20, 2017.

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 single-family dwelling into the 20-foot northeast 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 authorized under building permit 813098, which was issued on December 23, 1981, and given final inspection approval March 15, 1982, prior to the purchase by Brook Savannah Reagle and Anna Marie Lokelani Cabral. It also appears that 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 current owners purchased the property by Deed, dated April 27, 2016, after the building inspections were finalized. Subsequently, they received the surveyor's final report informing them of the encroachments into the setback.

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 not be practical when the owners complied and secured all necessary building permits.

- (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 single-family dwelling and open lanai encroachments constructed into the affected front yard setback and open space 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 re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options. Therefore, both of these alternatives are not practical.

(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.

Two letters of objection were received expressing concerns to the approval of the variance application.

The objection from Abel Frederick K. Coloma and Lehuanani K. Lilinoe Coloma cites:

"We feel having 2 (two) acres is more than enough land to house any structures without encroaching on County's preset setbacks. We are currently looking into having our own property resurveyed so that we may build a wall around the property, then a house. We are concerned that if the Variance is approved, this may hinder the workers and equipment in easily accessing and proceeding the planned work along the property line."

On August 31, 2017, the applicant, Lori Mikkelson (All Aina Services) emailed Abel and Lehuanani Lilinoe Coloma addressing their concerns. On August 31, 2017, the Colomas emailed the applicant, Lori Mikkelson (All Aina Services) withdrawing their objections. **(See Exhibit D)**

Mr. Frederick D. Pablo's concern was where the subject property is located in relationship to his parcel. Mr. Pablo's property is approximately 340 feet east of the subject property. The applicant, Lori Mikkelson (All Aina Services) has stated via email that she had contacted Mr. Pablo and addressed his concerns.

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 35 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.

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 upon the subject property ("LOT 6243") 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 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. The dog kennel (wood rotten) which is encroaching 6.7 feet into the southeast side yard setback shall be removed within three months from the date of this variance.

Lori Mikkelson
All Aina Services
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October 20, 2017

5. The rock wall encroaching 0.3 feet onto Plumeria Street shall be addressed between the property owners and the Fern Acres Home Owners Association.
6. 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.
7. 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-17-000436 null and void.

Sincerely,



MICHAEL YEE
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR17-000435 TMK1-1-039-134 Reagle & Cabral.doc

Encl: Exhibits A-D

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

TRUE NORTH
Scale: 1 in. = 40 ft.

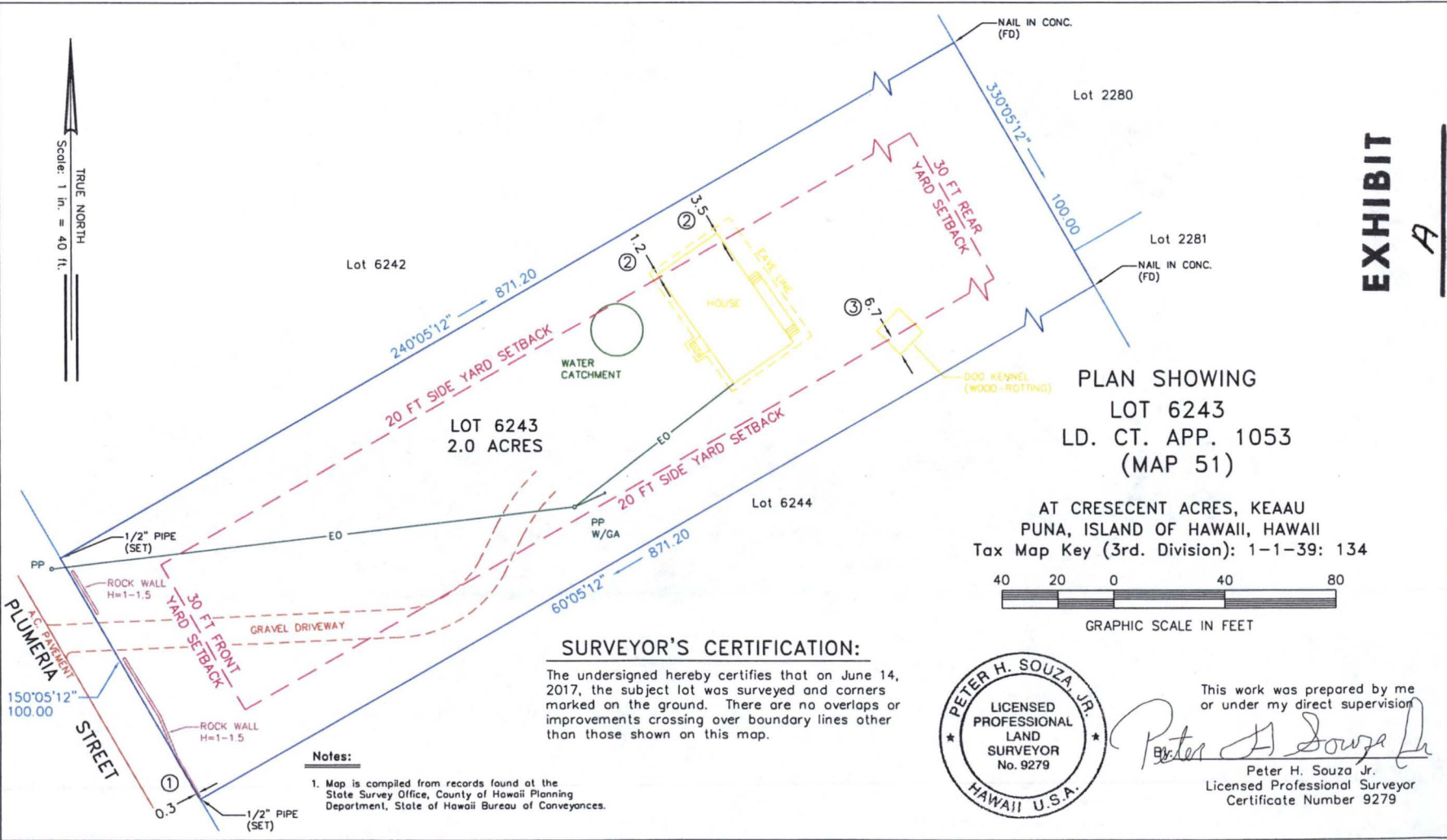
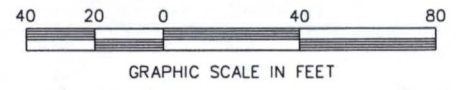


EXHIBIT
A

PLAN SHOWING
LOT 6243
LD. CT. APP. 1053
(MAP 51)

AT CRESECENT ACRES, KEAAU
PUNA, ISLAND OF HAWAII, HAWAII
Tax Map Key (3rd. Division): 1-1-39: 134



SURVEYOR'S CERTIFICATION:

The undersigned hereby certifies that on June 14, 2017, the subject lot was surveyed and corners marked on the ground. There are no overlaps or improvements crossing over boundary lines other than those shown on this map.

Notes:

1. Map is compiled from records found at the State Survey Office, County of Hawaii Planning Department, State of Hawaii Bureau of Conveyances.



This work was prepared by me or under my direct supervision
Peter H. Souza Jr.
Peter H. Souza Jr.
Licensed Professional Surveyor
Certificate Number 9279

2017 AUG 28 PM 1:57
 PLANNING DEPARTMENT
 COUNTY OF HAWAII
 HONOLULU, HAWAII

Abel Frederick K Coloma & Lehuanani K Lilinoe Coloma
 Owners of property TMK: (3) 1-1-039:133
 August 21, 2017

County of Hawaii Planning Department and/or To Whom It May Concern
 101 Pauahi Street, Ste 3
 Hilo, HI 96720
 (808) 961-8288

Dear County of Hawaii Planning Department and/or To Whom It May Concern:

We received a Notice of Application regarding Request: Variance from Zoning Code (VAR 17-000436) and am submitting this letter as a written public comment against its approval. As the owners of the property adjacent to the one in question, we feel having 2 (two) acres is more than enough land to house any structures without encroaching on the County's preset setbacks. We are currently looking into having our own property re-surveyed so that we may build a wall around the property, then a house. We are concerned that if the Variance is approved, this may hinder the workers and equipment in easily accessing and proceeding with the planned work along the property line. If you have any further questions from us, please feel free to contact us through our mailing address or email: lehua24@gmail.com

Sincerely,



Abel Frederick K Coloma & Lehuanani K Lilinoe Coloma
 Owners of Property at TMK (3) 1-1-039:133

CC: All Aina Services

69-8-2
 49

EXHIBIT
B

113665

2017 AUG 29 PM 2 07

PLANNING DEPARTMENT
COUNTY OF HAWAII

JOSEPHINE A. PABLO TRUST
C/O FREDERICK D. PABLO TRUST
P.O. BOX 480
KULA, HI. 96790-0480

Date: August 26, 2017

To: All Aina Services
P.O. Box 291
Laupahoehoe, HI. 96764

Planning Director
County Of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, HI. 96720

Subject: TMK: (3) 1-1-039:134

Reference: TMK: (3) 1-1-014-085-0000-000

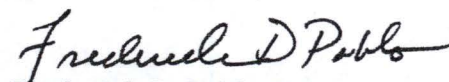
Dear Sir or Madam:

After returning from a trip, I went to my post office box and picked up the enclosed "**Notice of Application**" regarding a "**Variance from Zoning Code (Setback Variation)**" for the above subject property. The enclosed notice provided an attachment for the "**TAX MAP**" for 1 5 39. For your easy reference, I have enclosed both of these two documents.

As I reside on Maui, I inquired at the County of Maui but they understandably could not assist me with the specifics. I am therefore writing to you as the neither the "**Notice of Application**" nor the "**TAX MAP**" indicates how this variance would affect the above referenced property TMK: (3) 1-1-014-085-0000-000 for which I serve as Trustee. For your information, I have attached the most recent 2017-2018 Real Property Tax Bill for the affected property.

Based on the information provided, I cannot at this time support the application for variance because it does not explain how it will impact the property located at TMK: (3)-1-1-014-085-0000-000. Please provide further information.

Aloha and Mahalo,


Frederick D. Pablo, Trustee
Josephine A. Pablo Trust

EXHIBIT

C

113690

Nakayama, Larry

2017 SEP 27 AM 8 11

From: Lori Mikkelson <lori.allaina@gmail.com>
Sent: Wednesday, September 27, 2017 5:19 AM
To: Nakayama, Larry
Subject: Fwd: Reagle / Cabral Variance, TMK (3) 1-1-039:134

PLANNING DEPARTMENT
COUNTY OF HAWAII

Hi Larry,

Here is the response from email correspondence requested by Lehuanani Coloma...

Thank you!!

Lori

----- Forwarded message -----

From: **Lehuanani Lilinoe Coloma** <lehua24@gmail.com>
Date: Thu, Aug 31, 2017 at 10:34 AM
Subject: Re: Reagle / Cabral Variance, TMK (3) 1-1-039:134
To: Lori Mikkelson <lori.allaina@gmail.com>

EXHIBIT

D

Aloha Lori,

Mahalo for giving me this information. I had tried calling both your office and the Planning Dept on the Big Island numerous times and at different times throughout the day but could not get in touch with anyone for more information. I talked with the Planning Dept on Oahu who said they didn't know what the setback were on the Big Island but on O'ahu it is 5' on each of the sides and back of the property. I based my previous comments solely on that information and the announcement that was sent.

BASED ON THE INFORMATION INCLUDED IN THE ORIGINAL EMAIL FROM LORI MIKKELSON sent at 5:36am on 08/31/17, we, as the owners of the adjacent property located at TMK: (3) 1-1-039:133, are **NOT OPPOSED** to the Planning Director approving this Variance (VAR 17-000436) requested by the owners of the property located at TMK: (3) 1-1-039:134.

Mahalo,
Abel Coloma & Lehuanani Lilinoe Coloma
Owners of adjacent property located at TMK: (3) 1-1-039:133
(808) 781-1604

On Thu, Aug 31, 2017 at 5:36 AM, Lori Mikkelson <lori.allaina@gmail.com> wrote:
Aloha,

The good news is that your new neighbors are very nice people who have recently relocated to the Big Island from Maui.



Since I'm not sure if you have had the opportunity to look through the County's records regarding the subject property; I will provide you some additional information. Please note, I will copy and submit this email to the Planning Department to include in the TMK file.

Attached please find the survey map that verifies the exact location of the property lines, yard setbacks, driveway, dwelling, & catchment. I have been informed that a condition of the approval of the application will be the removal of "Dog Kennel (wood-rotting)", also noted on the map.

The dwelling (Building Permit #813098) was built by the previous owner and completed 03/15/1982. Obviously it is not a new house, but is considered by the County to be in fair condition.

As you can see in review of the map the dwelling encroaches 1.2' at the front corner and 3.5' at the rear corner into the property 20' side yard setback; that leaves a minimum of 16.5' from the property line.

Regarding your future development, there should be no hindrance for workers or equipment for construction on your side of your property line.

I hope that this additional information offers some peace of mind for you now and long into the future.

Have a nice day!!!!

Lori Mikkelson

All Aina Services
P.O. Box 291 (mailing address)
Laupahoehoe, HI 96764

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60 Keawe Street. Suite 205
Hilo, HI

Phone (808) 557-6944