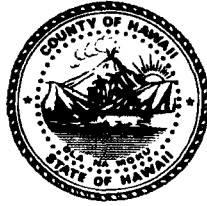


Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
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County of Hawai'i

PLANNING DEPARTMENT

East Hawai'i Office
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Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

November 28, 2017

Val Colter
13-6460 Kalapana-Kapoho Road
Pahoa, Hawai'i 96778

Dear Ms. Colter:

SUBJECT: Application: Variance - VAR 17-000443
Applicant: VAL COLTER
Owner: HOWARD WALLMAN AND VERNON DANNY YOUNG
Request: Variance from Chapter 25, Zoning, Article 5 Division 7, Section 25-5-76 Minimum Yards, Article 4, Division 4, Section 25-4-44(a) Permitted Projections into Yards and Open Space Requirements (Encroachment into Northwest Rear Yard Setback)
Tax Map Key: 1-2-033:100 (Lot 136)

The Planning Director certifies the **approval** of Variance 17-000443, subject to conditions. The variance will allow portion of the two-story, single-family dwelling to remain with a minimum 14.43-foot rear (northwest) yard setback, in lieu of the required 20-foot rear yard setback requirement. These exceptions are in lieu of the required 20-foot rear yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 19,994 square feet and is located in the Puna Beach Palisades Subdivision, Increment 1, situated at Kahena, Puna, Hawai'i. The subject property's street address is 12-211 Oliana Drive.
2. **County Zoning.** Agricultural – 1 acre. (A-1a).
3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 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 August 23, 2017. 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 single-family dwelling constructed into the minimum 20-foot rear (northwest) yard setback. The request affects the rear (northwest) yard setback requirements. **(See attached survey map – Exhibit A)**

The survey map shows that portion of the two-story, single-family dwelling encroaches 5.57 feet into the 20-foot rear (northwest) yard setback. The encroachment leaves the two-story, single-family dwelling with a minimum 14.43-foot rear (northwest) yard setback, in lieu of the required 20-foot rear yard setback

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that building permit (#931511) was issued on August 4, 1993, to the subject property for a two-story, single-family dwelling consisting of 2 bedrooms, 2 baths, living room, kitchen and dining area on the second level with the lower level being open with no rooms. Additional building permits were issued subsequently. On October 26, 2006, building permit (#B2006-2851H) was issued for the enclosure of the lower level and on December 7, 2007, building permit (#B2007-2896H) was issued for the enclosure of an open sleeping porch. All three building permits were finalized on January 29, 2007.

7. **Agency Comments and Requirements.**

- a. State Department of Health (DOH) memorandum dated September 1, 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 September 7, 2017, and September 14, 2017, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 22, 2017.

9. **Comments from Surrounding Property Owners or Public.**

- a. Letter of support for the variance from Mr. W. Fultz, dated September 23, 2017.
- b. Letter of support for the variance from Donald Kuhl and Christopher Bruns, dated September 16, 2017.

10. **Time Extension.** The applicant's variance application was acknowledged by letter dated August 29, 2017 and additional time to review the application was required. The applicant

granted the Planning Director an extension of time until November 30, 2017, for decision on the Variance Application.

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 two-story single-family dwelling built into the 20-foot northwest rear 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. Vernon Young and Howard Wallman complied with the building permit process and were under the impression that the two-story, single-family dwelling and additions were in compliance with all County requirements. Also, the applicant has cited in her background report that a huge "puka" (hole, depression) in the middle of the property contributed to the placement of the two-story single-family dwelling more toward the rear of the property.

Based on the above-mentioned information, special and unusual circumstances do exist to an extent that the owners complied with all building permit requirements.

- (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 open carport encroachments constructed into the affected front yard setback of the subject property, include the following actions:

Remove the building encroachments and/or redesign the two-story, 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 addition was in compliance with all County requirements. Any structural or design correction of the two-story, single-family dwelling to meet setback requirement would leave unattractive reconstruction scars and diminish the overall functionality of the two-story single-family dwelling.

Another alternative is to consolidate the subject property with the adjoining rear property which is owned by another party, and to re-subdivide the property to modify property lines and adjust minimum yard setbacks. Because the encroachment is within the rear yard setback, to consolidate the subject property with the adjacent property, which is owned by someone else, and re-subdivide the property to modify property lines and adjust minimum rear yard setbacks is not a viable option. Therefore, there are no other 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.

No objections were received from surrounding property owners, however, two letters in support of the variance were received.

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.

The two-story, single-family dwelling and additions were constructed under valid building permits and 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. 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 two-story, single-family dwelling built on the subject property ("LOT 136"), will not meet the minimum rear yard setback requirement pursuant to Hawai'i County Code, Chapter 25, (Zoning).

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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-17-000443 null and void.

Sincerely,



MICHAEL YEE
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR17-000443 MK1-2-033-100 Wallman & Young..doc

Enclosures: Exhibit A – Survey Map

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

EXISTING CONDITIONS UPON LOT 136
PUNA BEACH PALISADES, INCREMENT I

KEHENA, PUNA
 ISLAND OF HAWAII
 HAWAII

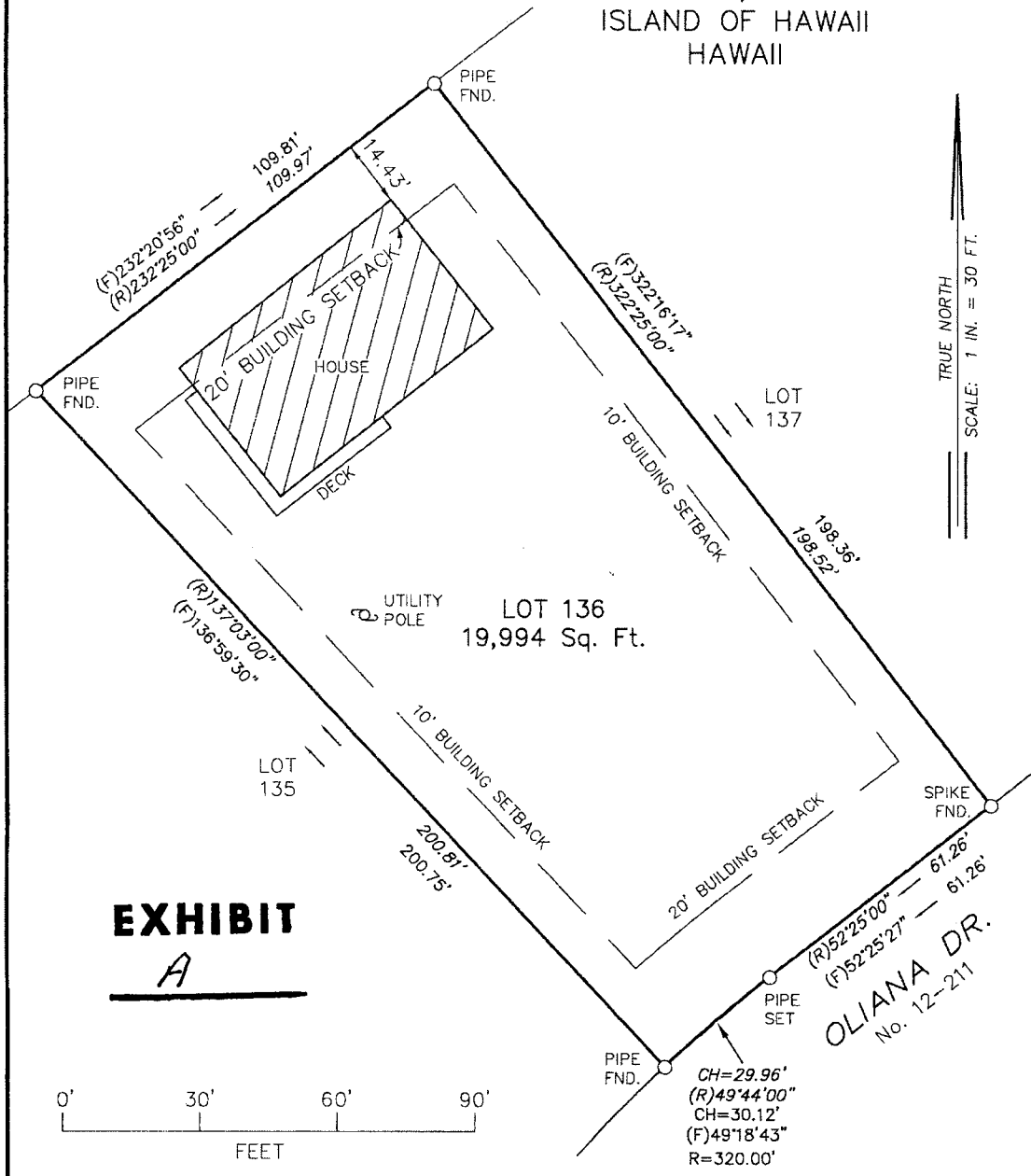
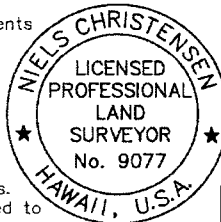


EXHIBIT
A

NOTES:

1. The features shown hereon were located by an actual field survey completed on July 21, 2017.
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".



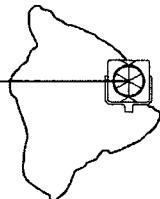
This work was prepared by me or under my direct supervision

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



REVISED: August 18, 2017
 Date: August 18, 2017
 Drawing: JOB12107B.dwg
 TMK: (3) 1-2-33: 100