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November 7, 2017

Caleb Yamanaka
74-4164 Hulikoa Drive, Unit 0-2
Kailua-Kona, HI 96740

Dear Mr. Yamanaka:

SUBJECT: Application: Variance - VAR 17-000445
Applicant: CALEB YAMANAKA
Owner: ROBERT MEDEIROS AND SHANNA MEDEIROS
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 Southwest Side Yard
Setback)

Tax Map Key: 2-4-004:137

The Planning Director certifies the **approval** of Variance No. 17-000445, subject to variance conditions. The variance will allow portion of an existing two-story, single-family dwelling with a minimum 17.2-foot side (southwest) yard setback to a minimum of 18.6-foot side (southwest) 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 25-5-7, Minimum yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 1.595 acres and is situated within the Waiakea Homestead, Waiakea, South Hilo, Hawai'i. The subject property's street address is 1175 Ainalako Road.
2. **County Zoning.** Agricultural – 3 acres. (A-3a).
3. **State Land Use Designation.** Agricultural.
4. **Setback Requirements.** 30-feet front and rear; 20-feet for side.

5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on September 11, 2017. The variance application's survey map dated September 4, 2017 was prepared by Ronaldo B. Aurelio, LPLS and denotes a portion of the two-story single-family dwelling built into the southwest side yard setback. **(See Exhibit A-Site Plan)**

The survey map dated September 4, 2017, prepared by Ronaldo B. Aurelio, LPLS, shows the section of the two-story, single-family dwelling encroaches 1.4 feet to 2.8 feet into the 20-foot side (southwest) yard setback. The encroachment leaves the two-story, single-family dwelling with a minimum 17.2-foot side (southwest) yard setback to a minimum 18.6-foot side (southwest) yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (910640) was issued on March 13, 1991, and finalized on March 5, 1993 for the construction of a two-story single-family dwelling consisting of 5 bedrooms, 3 baths, living room, kitchen, dining area and garage.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated May 2, 2016: "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 September 20, 2017 and September 28, 2017, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 5, 2017.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

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 single-family dwelling into the 20-foot southwest side yard setback as required by the Zoning Code.

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 two-story, single-family dwelling constructed in 1993, nearly 24 years ago, and subsequent construction permits were issued and closed under valid building permit by the County for the existing two-story, single-family dwelling. 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:

To remove the building encroachments and/or redesign the existing two-story, single-family dwelling denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code 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 single-family dwelling.

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. 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 addition has been in existence for approximately 24 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 on the subject property ("B-7") will not meet the minimum side yard requirements 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 existing two-story, single-family dwelling 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 Additional 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 laws 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-17-000445.

Sincerely,



MICHAEL YEE
Planning Director

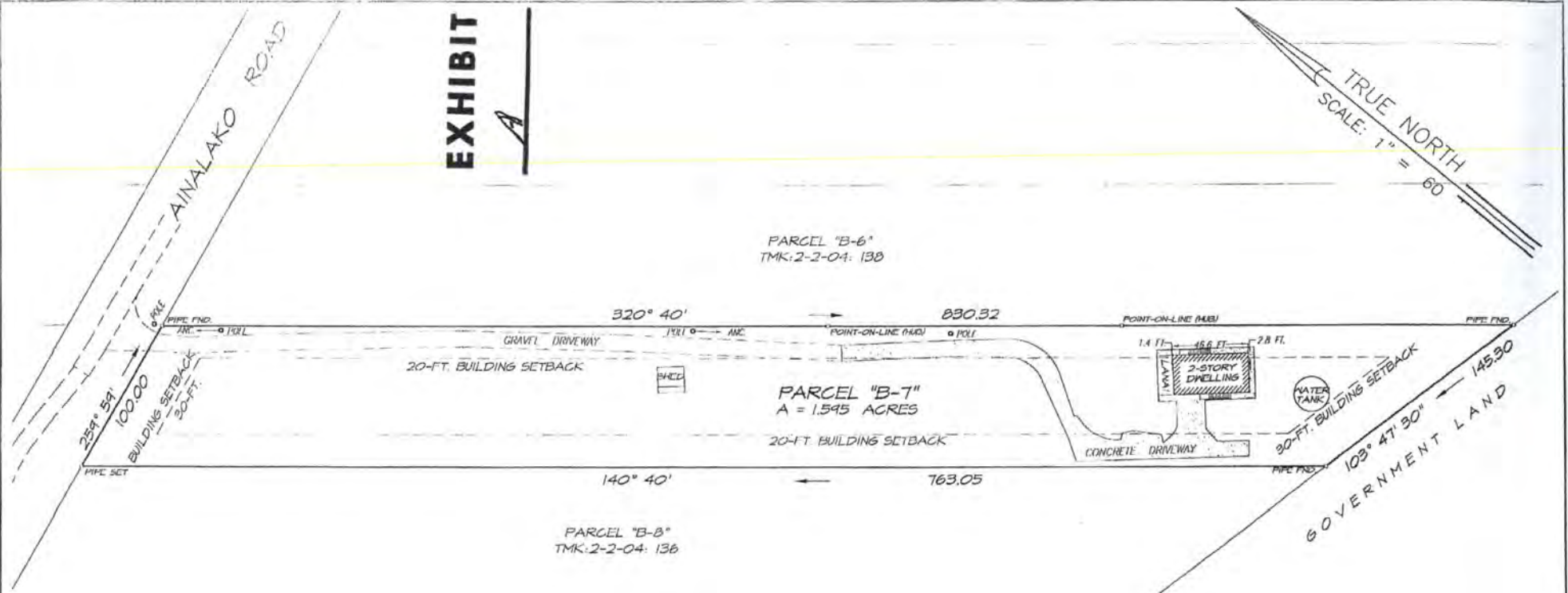
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Enclosure: Exhibit A- Site Plan

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

EXHIBIT
A



NOTE:

- All boundary corners were marked and verified on the ground in accordance with the record data of Parcel "B-7".

MAP SHOWING EXISTING CONDITION
 THE PREMISES OF PARCEL "B-7"
 "WAIAKEA HOMESTEADS, 3RD SERIES", SECTION "B"
 BEING A PORTION OF LAND PATENT GRANT 11,736 TO MRS. ROSALIND L. KAILI
 BEING ALSO A PORTION OF LOT 10 OF THE "WAIAKEA HOMESTEADS, 3RD SERIES", SECTION "B"
 WAIAKEA, SOUTH HILO, ISLAND OF HAWAII, HAWAII
 TAX MAP KEY: 3RD DIV. 2-2-004: 137



This work was prepared by me or under my direct supervision.

Ronaldo B. Aurelio
 Licensed Professional Land Surveyor
 Certificate Number 7564
 Expires April 30, 2018