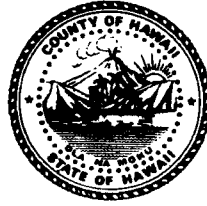


Harry Kim  
Mayor



Michael Yee  
Director

Daryn Arai  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokālole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
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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  
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April 12, 2018

William R. Heideman  
Hawaii Hotspot Realty  
473 Ainalako Road  
Hilo, Hawai'i 96720

Dear Mr. Heidemann:

**SUBJECT: Application: Variance - VAR 18-000465**  
**Applicant: WILLIAM R. HEIDEMAN (HAWAII HOTSPOT REALTY)**  
**Owner: JULIE A. OSTELLA**  
**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 Northeast**  
**Rear Yard and Southeast Side Yard Setback)**  
**Tax Map Key: 1-5-049:177 (Lot 1638-D)**

The Planning Director certifies the **approval** of Variance 18-000465, subject to conditions. The variance will allow portion of the two story, single-family dwelling to remain with a minimum 14.88-foot side (southeast) yard setback and associated roof eave projection resulting with a 9.75-foot side (southeast) yard open space. The variance will also allow for the water tank to remain with a minimum 19.24-foot side (southeast) yard setback and a 24.38-foot rear (northeast) yard setback. These exceptions are in lieu of the required 30-foot rear yard setback, 20-foot side setback and 14-foot side yard open space as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, 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 1 acre and is located in the Hawaiian Paradise Park Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 15-1829 10<sup>th</sup> Avenue.
2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Agricultural.

4. **Required Setback.** 30-feet for front and rear, 20-feet for sides;
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on March 20, 2018. The variance application's revised survey map dated March 20, 2018 was prepared by Niels Christensen, LPLS (The Independent Hawaii Surveyors, LLC) and denotes the position of the single-family dwelling into the southeast side yard setback, the detached water tank constructed into the 30-foot rear (northeast) yard setback, and the 20-foot side (southeast) yard setback. The request affects the northeast rear yard setback and the southeast side yard setback. **(See attached survey map – Exhibit A)**

The revised survey map shows that portion of the single-family dwelling encroaches 5.12 feet into the 20-foot side (southeast) yard setback and the associated roof eave encroaches 4.75 feet into the 14-foot side (southeast) yard open space. It also shows the detached water tank encroaches 0.76 feet (9.12 feet) into the 20-foot side (southeast) yard setback and 5.62 feet into the 30-foot rear (northeast) yard setback.

The encroachment leaves the two story, single-family dwelling with a minimum 14.88-foot side (southeast) yard setback in lieu of the required 20-foot side yard setback and associated roof eave projection resulting with a 9.75-foot side (southeast) yard open space in lieu of the required 14-foot open space requirement. The encroachment leaves the detached water tank with a minimum 19.24-foot side (southeast) yard setback in lieu of the required 20-foot side yard setback and a 24.38-foot rear (northeast) yard setback in lieu of the 30-foot rear yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that building permit (B2004-0995H) was issued on June 9, 2004 and finalized on July 7, 2006, to the subject property for a two-story, single-family dwelling consisting of 3 bedrooms, 2 baths, living room, kitchen, dining area and doughboy water tank.
7. **Agency Comments and Requirements.**
  - a. State Department of Health (DOH) memorandum dated March 15, 2018. "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 March 9, 2018 and March 13, 2018, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 15, 2018.

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 single-family dwelling into the 20-foot southwest side yard setback associated roof eave into the 14-foot southeast side yard open space and the detached water tank encroaching into the 30-foot rear yard setback and the 20-foot 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. The original single-family dwelling improvements were authorized under building permit #871689 which was issued on June 9, 2004, and given final inspection approval on April 12, 2006. It appears that building permit inspections of the premises by the affected agencies during construction of the single-family 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 single-family dwelling, and detached water tank encroachments constructed into the affected rear yard setback, side yard setback and side yard open space of the subject property include the following actions:

Remove the building encroachments and/or redesign the two-story, single-family dwelling denoted on the revised 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 detached garage and water tank was in compliance with all County requirements. 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. Any structural or design correction of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

Another alternative is to consolidate the subject property with the adjoining rear and side properties which are owned by someone else, and re-subdivide the property to modify property lines and adjust minimum yard setbacks is not viable options. 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 single-family dwelling and detached water tank has been in existence for approximately 11 years. Both were constructed under valid building permits and other construction permits issued by the County of Hawai'i. As such, 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 two story, single-family dwelling, and water tank built upon the subject property ("LOT 1638-D") 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 two-story, single-family dwelling and water tank 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-18-000465 null and void.

Sincerely,



MICHAEL YEE  
Planning Director

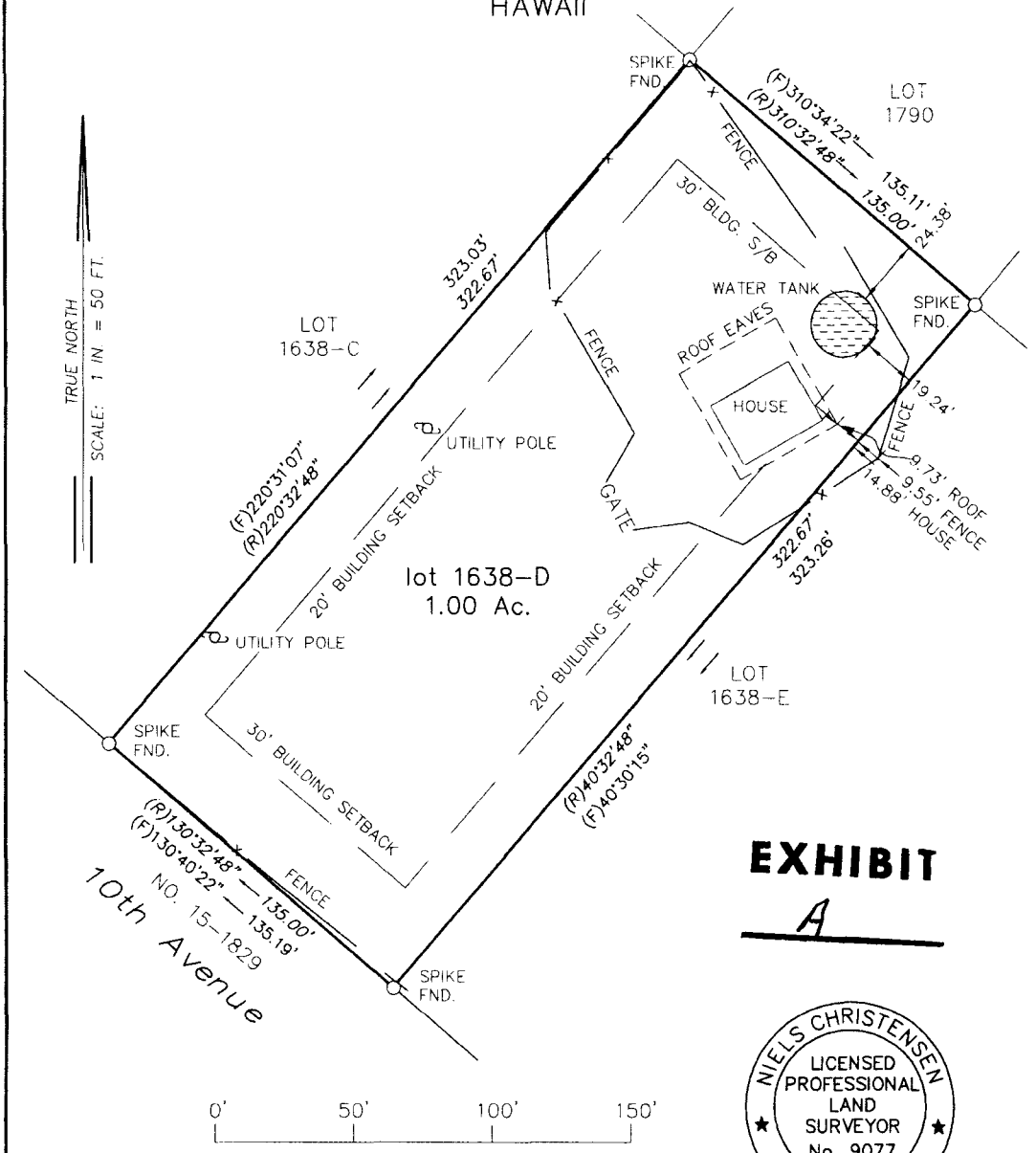
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cc: Real Property Tax Office (Hilo)  
Gilbert Bailado, GIS (via email)

**EXISTING CONDITIONS UPON LOT 1638-D**  
**BLOCK 7, HAWAIIAN PARADISE PARK**

KEAAU, PUNA  
 ISLAND OF HAWAII  
 HAWAII



TRUE NORTH  
 SCALE: 1 IN = 50 FT.



**EXHIBIT**  
**A**



**NOTES**

1. The features shown hereon were located by an actual field survey completed on February 7, 2018.
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

REVISED  
 Date: March 20, 2018  
 Drawing: JOB12507A.dwg  
 TMK: (3) 1-5-49: 177

**The Independent Hawaii Surveyors, LLC**

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 Hilo, HI 96721  
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 info@hawaiiboundary.com