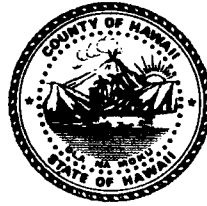


Harry Kim
Mayor



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

May 21, 2018

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

Dear Ms. Mikkelson:

SUBJECT: Application: Variance - VAR 18-000470
Applicant: ALL AINA SERVICES (LORI MIKKELSON)
Owner: NICHOLAS LING & MARK MICKELSON
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 Southeast
Rear Yard Setback)

Tax Map Key: 1-5-031:015 (Lot 32)

The Planning Director certifies the **approval** of Variance 18-000470, subject to conditions. The variance will allow portion of the single-family dwelling to remain with a minimum 18.2-foot rear (southeast) yard setback. These exceptions are in lieu of the required 20-foot rear yard setback and 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

The applicant has stated in her background report that the owners will remove 3.9 feet of the covered walkway's roof eave which is encroaching into the side (southwest) yard open space in order to comply with the 5-foot side yard open space as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-4-44 (a), Permitted projections into yards and open space requirement.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 12,632 square feet and is located in the Hawaiian Paradise Park Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 15-1017 O'o Road.

2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 20 feet for front and rear, 10 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on March 21, 2018. The variance application's survey map dated November 6, 2017, was prepared by Daniel L. Berg, LPLS, dlb & Associates. **(See Exhibit A-Site Plan)**

The survey map shows that portion of the single-family dwelling encroaches 1.80 feet into the 20-foot rear (southeast) yard setback.

The encroachment leaves the single-family dwelling with a minimum 18.2-foot rear (southeast) 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 (870292) was issued on February 24, 1987, and finalized on July 1, 1987, to the subject property for a single-family dwelling consisting of 2 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 April 13, 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 16, 2018 and April 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 southeast 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. The single-family dwelling improvements authorized under building permit #870292 was issued on February 24, 1987 and given final inspection approval on July 1, 1987. 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, encroachment constructed into the affected rear yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign the single-family 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 rear yard setback, to consolidate the subject property with the adjacent rear yard property, which is owned by someone else and re-subdivide the property to modify property lines and adjust minimum rear 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.

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 31 years and was 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 single-family dwelling, and water tank built upon the subject property ("LOT 32") will not meet the minimum rear 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 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.

Lori Mickelson
All Aina Services
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May 21, 2018

4. The owners shall remove 3.9 feet of the roof eave of the covered walkway which is encroaching into the side (southwest) yard open space within three months from the date of this variance. The owners shall also provide confirmation (photos) of the removal or allow planning staff to conduct a site inspection.
5. An Ohana or 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.
6. 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-18-000470 null and void.

Sincerely,



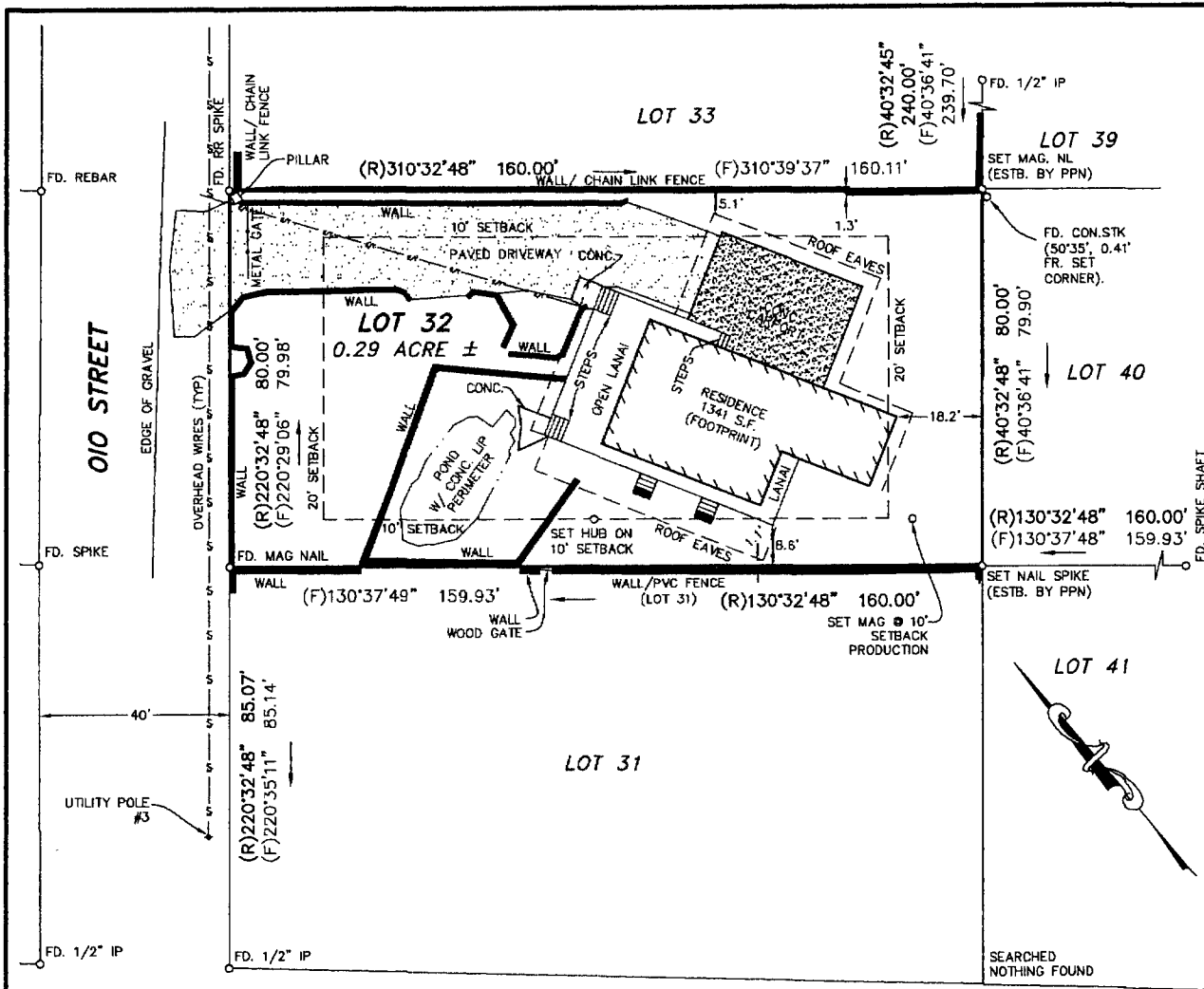
MICHAEL YEE
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR18-000470 TMK1-5-031-015 Ling/Mickelson.doc

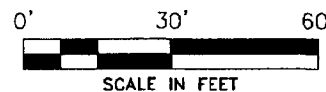
cc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS (via email)

Boundary and Improvement Survey
Of Lot 32, Block 11,
Hawaiian Paradise Park Subdivision,
Keaau, Puna, Island and County of Hawaii.
 TMK(3) 1-5-031: 015



NOTES:

1. This field survey completed November 3, 2017.
2. (F) indicates Field measured dimensions. Basis of Azimuths is a 'best-fit' of found (FD.) property monuments to record positions. Std. Error = 0.14 ft. (n=18)
3. (R) Indicates Record dimensions per Hawaiian Paradise Parks Subd., Land Court Application 1053, Map 66.
4. This Map and attached Report were prepared for the transaction indicated, and should not be used for any other purpose.



EXHIBIT

A

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

Daniel L. Berg
 PLS 11245



dlb & Associates

LAND SURVEYING • MAPPING • CONSULTING

P.O.Box 49-2281 Keaau, HI. 96749

Ph.966-4206 Fx.82-6830

www.dlbandassoc.com

Date: November 06, 2017
 Escrow:

Project: J2017-272
 8X14L

BEACH ROAD

SEARCHED
 NOTHING FOUND

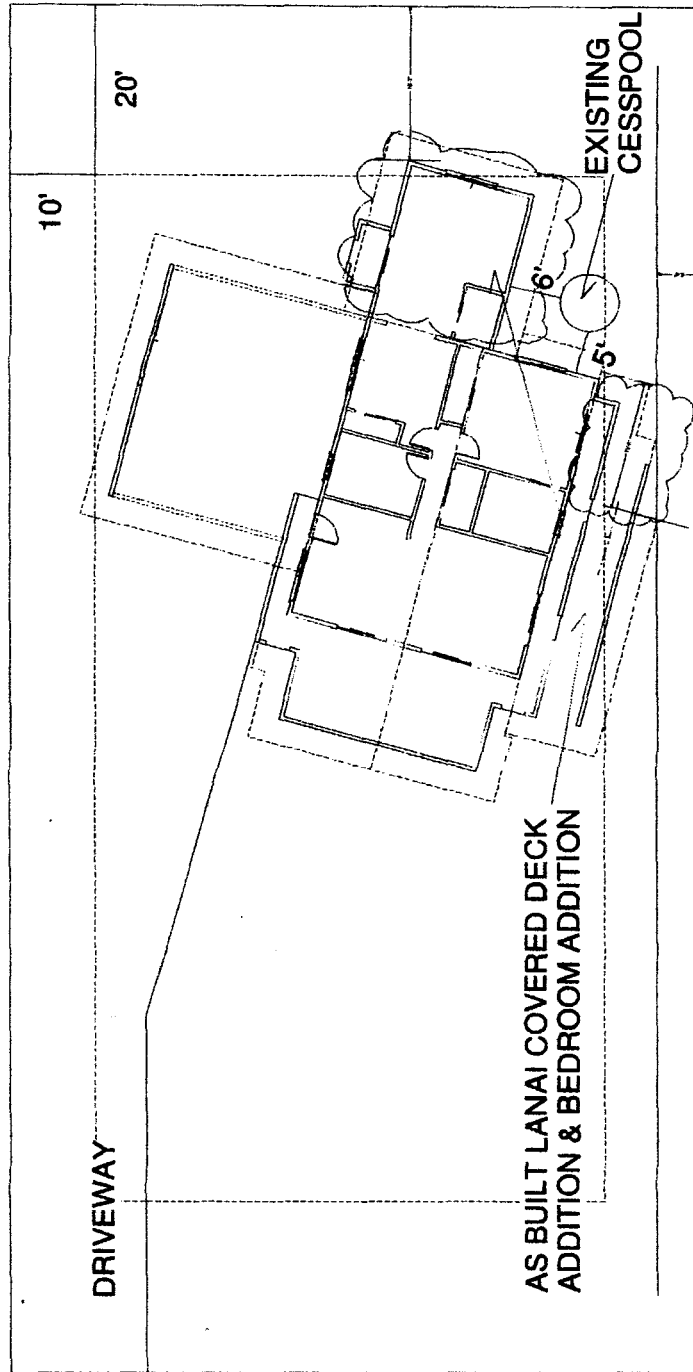


EXHIBIT
B

15-1017 O'O STREET