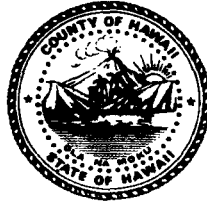


Harry Kim  
Mayor



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

William L. Bullough III  
P. O. Box 511  
Volcano, Hawai'i 96785-0511

Dear Mr. Bullough:

**SUBJECT: Application: Variance - VAR 18-000471**  
**Applicant: WILLIAM BULLOUGH**  
**Owner: WILLIAM BULLOUGH/  
ANTOINETTE FAMILY JOINT TRUST**  
**Request: Variance from Chapter 25, Zoning, Article 5 Division 1,  
Section 25-5-7 Minimum Yards, Article 4, Division 4,  
Section 25-4-44(a) Permitted Projections into Yards and  
Open Space Requirements (Encroachment into Southwest  
Front Yard Setback)**  
**Tax Map Key: 1-9-009:066 (Lot 6)**

The Planning Director certifies the **approval** of Variance 18-000471, subject to conditions. The variance will allow portion of the single-family dwelling to remain with a minimum 15.98-foot front (southwest) yard setback in lieu of the required 20-foot front yard setback. These exceptions are in lieu of the required 20-foot front yard setback 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 39,442 square feet and is located in the Anuhea Volcano Summer Lots, situated at Kalanihonua Tract, Puna, Hawai'i. The subject property's street address is 19-4076 Anuhea Circle Drive.
2. **County Zoning.** Single-Family Dwelling – 10,000 square feet (RS-10).
3. **State Land Use Designation.** Urban

4. **Required Setback.** 20 feet for front and 10 feet for sides; Section 25-4-42, Corner building sites: (a) on any corner building site, the interior lines shall be side lot lines and all rear yard regulations shall be inapplicable.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on March 20, 2018. The variance application revised survey map dated March 20, 2018, was prepared by Neils Christensen, LPLS (The Independent Hawaii Surveyors, LLC). (See **Exhibit A-Site Plan**)

The survey map shows that portion of the single-family dwelling encroaches 4.02 feet into the 20-foot front (southwest) yard setback.

The encroachment leaves the single-family dwelling with a minimum 15.98-foot front (southwest) yard setback, in lieu of the required 20-foot front yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax office records indicate that the the following building permits were issued.
  - a. Building Permit 6161 was issued January 24, 1941, for the construction of a two-story, single-family dwelling, consisting of 2 bedrooms, 1 bath, living area and kitchen.
  - b. Building Permit 10933 issued on June 21, 1951, for alterations and addition to kitchen and bedroom. Permit finalized on October 3, 1951.
  - c. Building Permit 921142 issued on June 17, 1992, for the construction of a new detached garage and workshop. Permit finalized on October 9, 1992.
  - d. Building permit issued on October 8, 1992, for the addition of mezzanine and workshop in the garage. Permit finalized on October 9, 1992.
  - e. Building Permit B2006-2278H issued on September 9, 2006, for an addition to the existing dwelling on the 1<sup>st</sup> level and additional area to the living room and open covered lanai with stairwell to the 2<sup>nd</sup> level. Building permit finalized on August 8, 2009.
  - f. Building Permit B2007-1424H issued on June 13, 2007, for converting the storage room to an open lanai. Building permit finalized on December 11, 2007.
  - g. Building Permit BH2012-00774 issued on September 6, 2012, for the extension of the bedroom by 24 square feet. Building permit finalized on January 15, 2015.
  - h. Building Permit BH 2014-01372 issued on August 26, 2014, for the addition of a master bedroom closet and windows to the kitchen, master bedroom and bedroom No. 2. Building permit finalized on September 6, 2017.

**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 April 10, 2018 and April 16, 2018, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 17, 2018.

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

- a. Support letter dated April 24, 2018, was received from Jess P. Gutierrez and Shirley Gutierrez. “We are writing to you in regards to Variance-18-000471. We want to express our support for the approval of this variance. As owners of 2 properties on Anuhea Circle Dr. we see no adverse effects on the immediate and/or surrounding area.”

**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 front 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 single-family dwelling constructed in 1941, nearly 77 years ago, and subsequent construction permits were issued and closed under valid building permits by the County for the existing 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.

Although the original single-family dwelling was built in 1941, prior to the adoption of the Zoning Code in 1967, the additions and alterations to the original single-dwelling was constructed after 1967. There is no documentation as to when the encroachment of the single-family dwelling into the front yard setback occurred. Therefore, a variance was required to legitimize the encroachment of the single-family dwelling into the front yard setback.

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, encroachments constructed into the affected front yard setback 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 were in compliance with all County requirements. Any structural or design correction of the single-family dwelling, and water tank to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachment is within the front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options. Also, there are other encroachments within the side yard setback; therefore, 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 also 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 original single-family dwelling has been in existence for approximately 77 years and was constructed under valid building permits and other construction permits issued by the County of Hawai'i. Subsequent building additions were also constructed under valid building permits and other construction building permits. 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 6) will not meet the minimum front 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. 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.

William L. Bullough III

Page 6

May 21, 2018

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,

A handwritten signature in black ink, appearing to read "Michael Yee", written in a cursive style.

MICHAEL YEE  
Planning Director

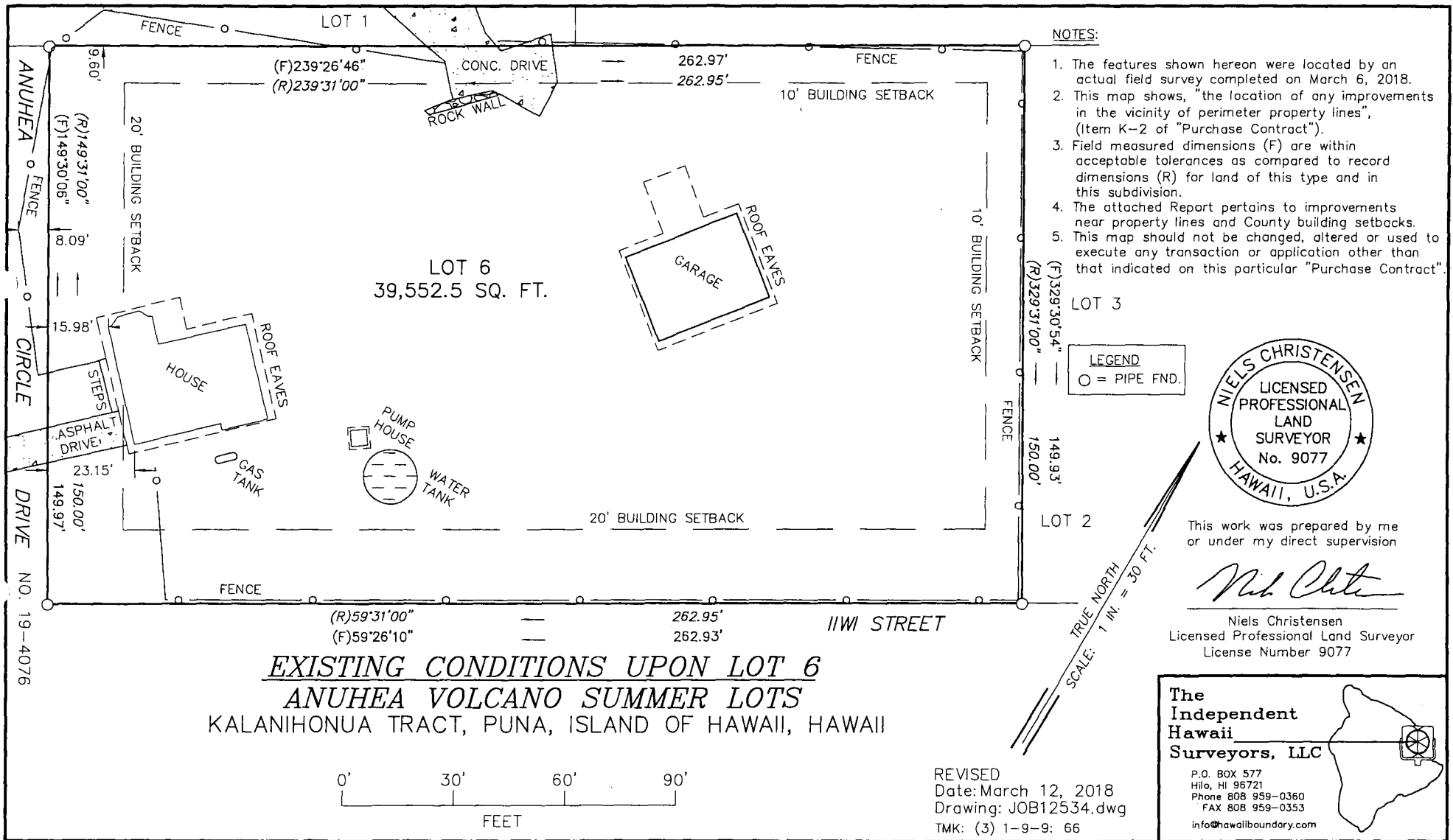
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Encl: Exhibit A-Site Plan

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

# EXHIBIT A



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**

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