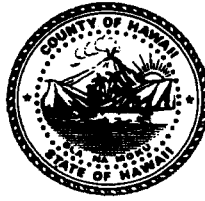


Harry Kim
Mayor

Wil Okabe
Managing Director

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County of Hawai'i
PLANNING DEPARTMENT

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Deputy Director

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June 18, 2019

Mr. Steven Kimmey
2637 Kaiwiki Road
Hilo, HI 96720

Dear Mr. Kimmey:

SUBJECT: Application: Variance - VAR 19-000506
Applicant: STEVEN KIMMEY
Owner: HIROYUKI TSUZAKI
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 Front (Southwest) Yard
Setback.

Tax Map Key: (3) 2-6-010:085 (Lot 23-C)

The Planning Director certifies the **approval** of Variance No. 19-000506, subject to variance conditions. The variance will allow portion of this garage to remain with a minimum 9.21-foot front (southwest) yard setback, in lieu of the required 30-foot front yard setback and an associated roof projection resulting with a 4.91-foot front (southwest) yard open space in lieu of the required 24-foot front yard open space requirement.

The original single-family dwelling was built in 1964, prior to the adoption of the Zoning Code in 1967. Therefore, the encroachment of the single-family dwelling into the front yard setback, as reflected on the site plan, is considered legal non-conforming.

A site inspection conducted by my staff, Planner Larry Nakayama, Zoning Inspectors Mark Iwamoto & Clinton Mercado revealed a metal-framed carport situated on the unimproved Homestead Road (Paper Road) known as Mailekea Road. The metal-framed carport is excluded from this variance approval as separate action is required by the County of Hawai'i, Department of Public Works.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 1.165 acres and is situated in the Kaiwika Homesteads, South Hilo, Hawai'i. The subject property's street address is 2637 Kaiwika Road.
2. **County Zoning.** Single-Family Residential – 10 acres (A-10a).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 30-feet front; 20-feet for sides.
5. **'Ohana Dwelling:** 'Ohana Dwelling (OHD-91-298) issued on September 5, 1991.
6. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on March 19, 2018. The variance application survey map dated December 6, 2018, was prepared by Niels Christensen, LPLS, The Independent Hawai'i Surveyors, LLC. (See **Exhibit A-Site Plan**)

The original single-family dwelling was built in 1964, prior to the adoption of the Zoning Code in 1967. Therefore, the encroachment of the single-family dwelling into the front yard setback, as reflected on the site plan, is considered legal non-conforming. However, the attached garage constructed in 1978 encroaches 20.79 feet into the southwest front yard setback and associated roof projection encroaching 19.09 feet into the front (southwest) yard open space. Therefore, a variance is required to legitimize the encroachment of the single-family dwelling into the side yard setback.

7. **County Building Records.** Hawai'i County Real Property Tax office records indicate the following building permits:
 - a. Building Permit - 28423 was issued for the construction of a single-family dwelling consisting of: 3 bedroom, 1 bath, living room, kitchen, and dining area on January 22, 1964.
 - b. Building Permit - 783060 was issued for the construction of a garage with utility room on November 30, 1978.
 - c. Building Permit - 791369 was issued for alterations to the garage on June 4, 1979.
 - d. Building Permit - 851666 was issued for roof extensions to the 3-bedroom single-family dwelling on September 12, 1985.

- e. Building Permit – 92010 was issued for the construction of a two-story ‘ohana dwelling consisting of: 3 bedrooms, 2 baths, living room, kitchen, and dining area on January 14, 1992.

8. Agency Comments and Requirements.

- a. State Department of Health (DOH) memorandum dated March 21, 2019: “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.

9. **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 11, 2019, and March 12, 2019, respectively. Notice of this application was published in the Hawai‘i Tribune Herald and West Hawai‘i Today on March 15, 2019.

10. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

11. **Time Extension.** The applicant’s variance application was acknowledged by letter dated March 5, 2019, and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to June 21, 2019.

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 enclosed garage into the 30-foot southwest front 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

Mr. Steven Kimmey

June 18, 2019

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appears that the enclosed garage constructed in 1978, nearly 41 years ago, and subsequent construction permits were issued and closed under valid building permit by the County for the existing. 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 encroachment is within the front (Mailekea Road) yard setback. Mailekea Road is an unimproved Homestead Road (Paper Road).

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 enclosed garage 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 enclosed garage was in compliance with all County requirements.

Because the encroachment is within the front (Mailekea Road) 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, especially when ownership of the Homestead Road (Paper Road) is not known.

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 original enclosed garage has been in existence for approximately 54 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 on the subject property (Lot 1) will not meet the minimum front yard open space 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 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,

Mr. Steven Kimmey

June 18, 2019

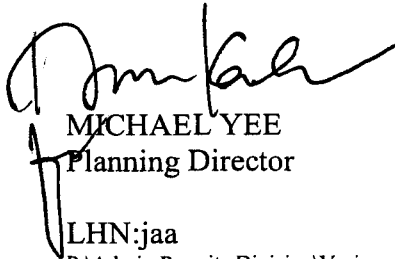
Page 6

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. The metal-framed carport situated on the unimproved Homestead Road (Paper Road) also, known as Mailekea Road shall be addressed between the property owners and the County of Hawai'i – Department of Public Works.
6. 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 No. 19-000506.

Sincerely,



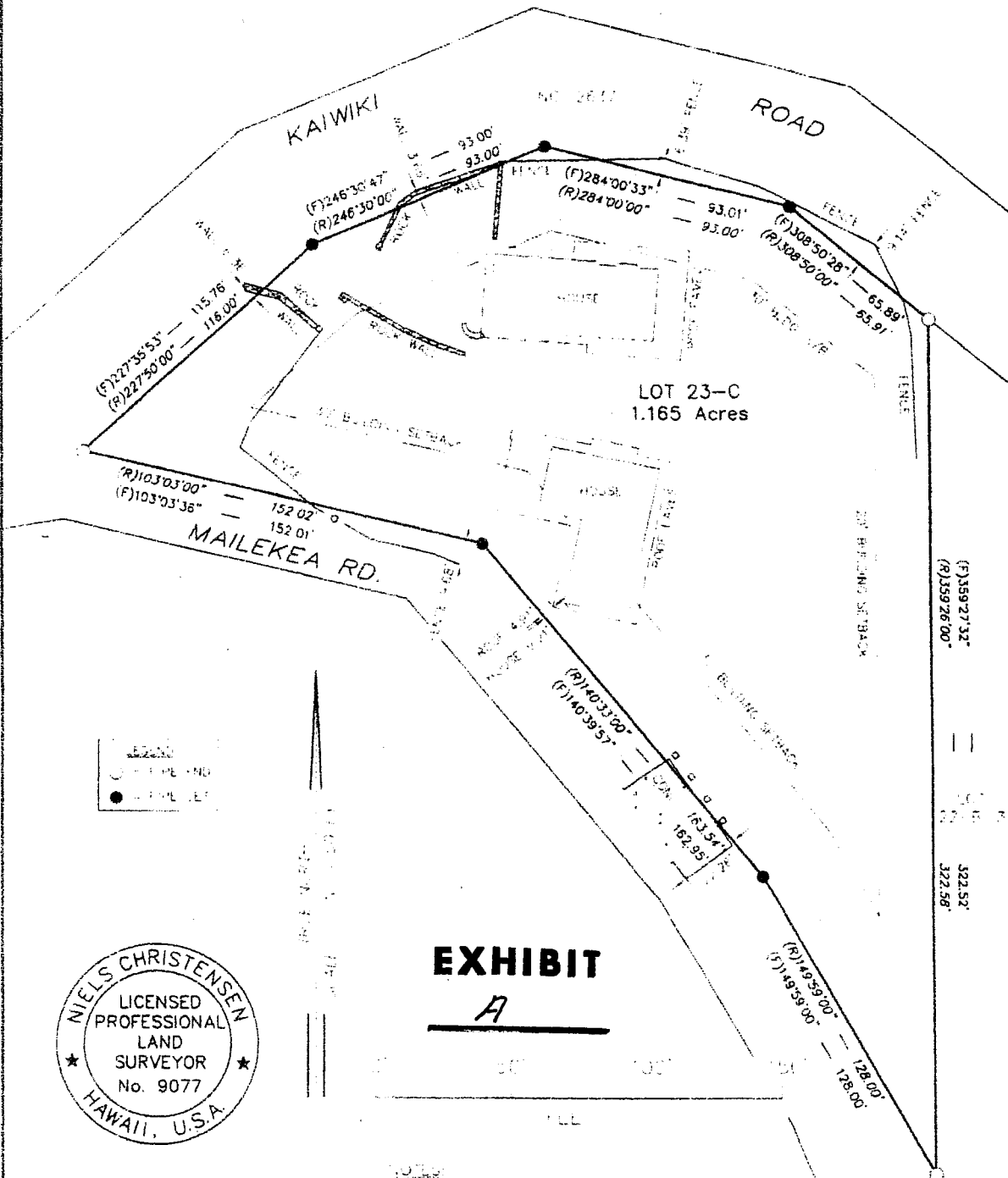
MICHAEL YEE
Planning Director

LHN:jaa

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Enclosure: Exhibit A- Site Plan

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



LEGEND
 ○ - FENCE END
 ● - FENCE LET



EXHIBIT
A

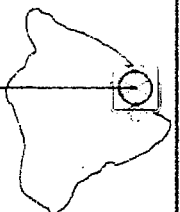
This work was prepared by me or under my direct supervision

Niels Christensen

Niels Christensen
 Licensed Professional Land Surveyor
 No. 9077

The Independent
 Hawaii
 Surveyors, LLC

1000 5th St
 Honolulu, HI 96813
 Phone 808 350-1166
 FAX 808 350-0161
 info@ihsurveyors.com



- NOTES**
1. The features shown herein were located by a detailed field survey completed on November 10, 2018.
 2. This map shows the location of any improvements to the property of permanent property, and is intended to be "Boundary Control".
 3. Field measured dimensions (if any) were taken to the center of the structure, and compared to records thereon, if any, for the land of this tract and in this subdivision.
 4. The plat and report contain no information that shows property lines and location of buildings, utilities, etc.
 5. This map should not be changed, altered or used to execute any transaction or application other than that indicated on this particular "Boundary Control".

Dated: September 6, 2018
 Drawn by: [Signature]
 Title: [Signature]