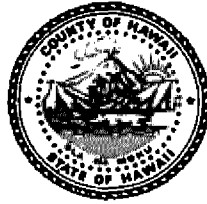


Mitchell D. Roth  
Mayor

Lee E. Lord  
Managing 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

Zendo Kern  
Director

Jeffrey W. Darrow  
Deputy Director

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

July 8, 2021

Ms. Brooke Glass-O'Shea  
P.O. Box 437203  
Kamuela, HI 96743

Dear Ms. Glass-OShea:

**SUBJECT: TIME EXTENSION REQUEST**  
**Application: Variance - VAR 19-000507**  
**Applicant: BROOKE GLASS-O'SHEA**  
**Owners: BROOKE GLASS-O'SHEA**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards Requirements, Minimum yards requirements and Section 25-4-44, Permitted Projections into Yards and Open Spaces (Encroachments into North Rear Yard Setback and East Side Yard Setback)**  
**Tax Map Key: (3) 6-6-007:023 Lot 23**

We acknowledge your request for a time extension received on August 21, 2020, for relocation or removal of the structure identified as the "unpermitted mud room" per Condition 5 of Variance no. 19-0005007. In the letter, it is stated that the request is due to economic hardships caused by COVID-19, which caused the closure of your business and loss of income to finance the construction required to remove the "mudroom", and that the property is for sale and that the contracted buyers will also need a time extension to complete the work.

You are hereby granted a time extension. Your new "**Deadline**" date is **August 25, 2022**, so you can satisfy the requirements of Condition no. 5, to remove or relocate the "**unpermitted mud room**" within the permitted building envelope of the subject Lot 23 to meet the minimum setbacks per the Zoning Code per Variance (VAR-19-000507). Proof of removal or relocation of the "unpermitted mud room" shall be provided to the Planning Department.

Mr. David Yamamoto, Director  
Department of Public Works  
September 28, 2020  
Page

Should you have any questions on this matter, please contact Rosalind Newlon of our West Hawaii office at (808) 323-4770.

Sincerely,



JEFFREY W. DARROW  
Deputy Director

RJN:rjn

\\COH01\planning\public\Admin Permits Division\Variance\2019\Var-19-000507 Brooke Glass  
- Oshea\Approval-Time Extension.doc

Encl: Copy of VAR-19-000507

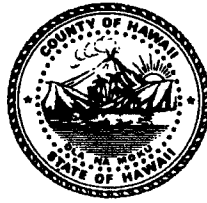
xc: DPW Engineering Division (Kona)  
Real Property Tax Office (Kona)  
Gilbert Bailado, GIS

Ilya Bruce  
Irina Arakelova  
1176 Wellesley Ave. Apt. 203  
Los Angeles, CA 90049-5499

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## County of Hawai'i PLANNING DEPARTMENT

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Director

Duane Kanuha  
Deputy Director

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August 26, 2019

Zendo Kern  
Zendo Kern Planning Consultants LLC  
194 Wiwoole Street  
Hilo, HI 96720

Dear Mr. Kern:

**SUBJECT: Application: Variance - VAR 19-000507**  
**Applicant: ZENDO KERN PLANNING CONSULTANT LLC**  
**Owners: BROOKE GLASS-O'SHEA**  
**Request: Variance from Chapter 25, Zoning, Article 5,**  
**Division 1, Section 25-5-7, Minimum Yards Requirements and Section**  
**25-5-7, Minimum yards requirements and Section 25-4-44, Permitted**  
**Projections into Yards and Open Spaces (Encroachments into North Rear**  
**Yard Setback and East Side Yard Setback)**  
**Tax Map Key: (3) 6-6-007:023 Lot 23**

The Planning Director certifies the **approval, in part for**, Variance No. 19-000507, subject to variance conditions. The variance will allow portions of the detached garage to remain at 9.8-foot side (east) yard setback and portions of the dwelling to remain with a minimum 9.8-foot and 9.8-foot rear (north) open space requirement. These exceptions are in lieu of the required 10-foot side yard and 20-foot rear and 14-foot open space requirement as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements and Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements.

The variance does not allow portions of the dwelling on the subject parcel to remain with a minimum 0.9 foot rear (north) yard setback and 0.9-foot open space in lieu of the required 20-foot rear (north) yard setback 14-foot open space, for the attached "mud room", whereby the variance request is **denied**.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, Lot 23, contains approximately 15,200 square feet, and is situated within Lalamilo, Waimea, South Kohala, Hawai'i. The subject property's street address is 66-1778 Alaneo Street, Kamuela, HI. 96743.

2. **Owners:** Brooke Glass-Ohea.
3. **County Zoning.** Single-Family Residential (RS-10).
4. **State Land Use Designation.** Urban
5. **Setback Requirements.** 20 feet front & rear and 10 feet for sides.
6. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on February 27, 2019. The variance application's survey map dated April 13, 2018 was prepared by Roger D. Fleenor, LPLS and denotes that the detached garage walls are built into the side (West) yard setbacks and a portion of the dwelling walls are built into the rear (North) yard setback. **(See Exhibit A-Site Plan)**

The survey map dated April 13, 2018 shows sections of the dwelling walls and roof eaves into the rear yard setback and open space requirement, and the garage walls into the side (east) yard setback. A portion of the dwelling walls on the subject parcel have a minimum 9.6-foot and 0.9 foot rear (north) yard setback and in lieu of the required 20-foot rear (north) yard setback 14-foot open space. The detached garage walls are shown with a minimum 9.8-foot side (east) yard in lieu of the required 10-foot side yard setback and 5-foot open space. These exceptions are in lieu of the required 20-foot rear (north) yard and 14-foot open space requirement and 10-foot side (east) yard as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements and Section 25-4-44, Permitted projections into yards and open spaces. The variance will allow portions of the garage at 9.8-foot side (east) yard setback and portions of the dwelling wall and roof eaves to remain with a minimum 9.6-foot and 9.6-foot open space requirement. The variance does not allow portions of the dwelling on the subject parcel to remain with a minimum 0.9 feet rear (north) yard setback and 0.9-foot open space in lieu of the required 20-foot rear (north) yard setback 14-foot open space, for the attached "mud room", whereby the variance request is **denied**.

7. **County Building Records.** Hawai'i County Real Property Tax (RPT) Office records indicate that Dwelling has a building permit (038031) that was issued on January 31, 1968. The garage was issued a building permit (060912) on October 16, 1974. An addition was issued a building permit (791548) on June 20, 1979.
8. **Real Property Tax Records:** The Real Property Tax (RPT) Historical Field Books show that the addition permit (791548) was an addition to the garage. The sketch in the Field Book records indicate on that the portion of the dwelling that is extending 0.9 feet into the rear setback was a lanai. (According to the variance application, that lanai was later turned into an enclosed "mud room").

**9. Agency Comments and Requirements.**

a. State Department of Health (DOH) memorandum dated April 8, 2019.  
(Attached).

b. Department of Public Works (DPW) - Building Division – no comments received.

10. **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 21, 2019 and April 2, 2019, respectively. The first and second notice were mailed out again on May 2, 2019 and May 16, 2019 to meet the requirements for notification per Chapter 25, Section 245-2-4. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 15, 2019.

11. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. Four written comments or objections from surrounding property owners or the general public were received. Two of the four written objection were specific to the variance request for a portion of the dwelling walls to remain with a 0.9-foot rear (north) yard setback.

12. **Time Extension.** The applicant's variance application was acknowledged by letter and email dated April 12, 2019 and June 28, 2019.

**GROUND FOR APPROVING VARIANCE, IN PART, FOR VAR-19-000507**

**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 Variance application meets criterion (a) for portion of the dwelling walls and roof eaves that leave a minimum 9.6-foot rear (north) setback and detached garage walls and minimum 9.8-foot into the side (east) yard setback for the following reasons. The owner/applicant submitted the variance application to address or resolve the encroachment of the garage walls encroaching 0.2 feet into the 10-foot side (east) yard setback, and dwelling walls encroaching 10.6-feet and 19.1-feet into the 20-foot rear yard setback, as required by the Zoning Code.

The survey map dated April 13, 2018 shows sections of the dwelling walls and roofs into the rear (north) yard setback and open space requirement, and the detached garage walls into the side (east) yard setback. A portion of the dwelling walls on the subject parcel have a minimum 9.6-foot and 0.9 foot rear (north) yard setback and in lieu of the required 20-foot rear (north) yard setback 14-foot open space. The detached garage walls are shown with a minimum 9.8-foot side (east) yard in lieu of the required 10-foot side yard setback and 5-foot open space. These exceptions are in lieu of the required 20-foot rear (north) yard and 14-foot open space requirement and 10-foot side (east) yard as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements and Section 25-4-44, Permitted projections into yards and open spaces.

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 of the garage and portions of the dwelling as it was originally was built to occur, without the "unpermitted mud room". It appears that the "the "unpermitted mud room" improvements were constructed some time after the original house was built in 1968.

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.

The variance will allow portions of the garage to remain with a minimum side 9.8-foot side (east) yard setback (as shown on the site plan) and portions of the dwelling to remain with a minimum 9.6-foot and rear (north) yard setback and 9.6-foot open space requirement. The variance does not allow portions of the dwelling on the subject parcel to remain with a minimum 0.9 foot rear (north) yard setback and 0.9 open space in lieu of the required 20-foot rear (north) yard setback 14-foot open space, for the attached "mud room", whereby the variance request is **denied**.

The encroachments leave with a minimum 9.6-foot rear (north) yard setback and 9.6-foot (north) open space, in lieu of the required 20-foot rear yard setback and 14-foot open (north) space requirement and 9.8-foot side (east) yard setback (as shown on the site plan).

### **Alternatives**

***(b) There are no other reasonable alternatives that would resolve the difficulty.***

**The Variance application meets criterion (b) for portion of the dwelling walls and roof eaves that extend 9.6-feet into the rear (north) setback and garage walls that extend 9.8-feet into the side (east) yard setback 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:

Remove the building encroachments and/or redesign the 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 for existing portions of the garage and dwelling constructed with building permits that extend 9.8-feet into the side (east) yard setback and 9.6-feet into the rear (north) yard setback, especially when the owners complied with the building permit process and were under the impression that the single-family dwellings were 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.

Therefore, there are no reasonable alternatives to resolve the encroachment issue for options of the existing dwelling that extends 10.4-feet into the rear (north) yard setback and detached garage walls that extend 0.2-feet into the side (east) yard setback as shown on Exhibit "A".

#### **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 zoning 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 of the existing dwelling (with the exception of the "unpermitted mudroom") and detached garage 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 dwelling has been in existence for approximately 51 years and was constructed under valid building permits and other construction permits issued by the County of Hawai'i. The detached garage is estimated to be built in Year 1974 and 1979 with valid building permits and has been in existence for approximately 45 years. 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.

This can be substantiated, to some degree, by the fact that the majority of the comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owner, were specific to the “unpermitted mud room” which was added after the original home was built, and will not be granted a variance to remain in place, projecting 19.1 within into the rear (north) setback.

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.

**GROUND FOR DENYING VARIANCE, IN PART, FOR VAR-17-000446**

**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.*

There are no special or unusual circumstance applying to the subject property which interferes with the best use of the property. Lot 12 comprises 15,200 square feet to provide enough area for structures identified the “unpermitted mud room” and associated accessory structures.

There was no building permit obtained for the “mud room” structure. The structure identified as “mud room”, that according to the sketch in the Field Book records of Real Property Tax office, was a lanai, extending off the rear of the dwelling. (According to the variance application, that lanai was later turned into an enclosed “mud room”).

**Alternatives**

- (b) There are no other reasonable alternatives that would resolve the difficulty.*

**The Variance application does not meet criterion (b) for portions of the dwelling walls that remain at 0.9-feet in the rear (north) yard setback for the following reasons:**

The original dwelling and detached garage were built in 1968 and 1974 and it appears that it did not meet its rear or side yard at the time it was constructed and this variance will allow the walls of the garage and portions of the dwelling to remain in place at 9.8-foot side (east) yard setback and 9.6-foot rear (north) yard setback,



The “unpermitted mud room” was later added after the dwelling was built without first obtaining a building permit, by enclosing the lanai in the rear of the dwelling, causing the “mud room” walls to extend 19.1-feet into the rear (north) setback. The alternative is to remove the “unpermitted mud room” walls building encroachments to be removed so that the dwelling walls remain within the allowed building envelope per this variance.

### **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 current encroachment of portions of the garage at 0.2-foot side (east) yard and encroachment of portions of the dwelling with a minimum 10.4-foot and rear (north) yard setback and projection of 4.4-feet into the open space requirement (as shown on Exhibit “A”) is consistent with the intent and purpose of this chapter, and the general plan, in that it still provides for air, light and circulation, in that the encroachment leaves a minimum 9.6-rear-(north) yard setback, minimum 9.6-foot rear (north) open space requirement and minimum 9.8-foot side (east) yard setback requirement. These exceptions are in lieu of the required 20-foot rear and 14-foot open space requirement, and 10-foot side yard as required by the Hawai‘i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements and Section 25-4-44, Permitted projections into yards and open space.

The variance does not allow portions of the dwelling on the subject parcel to remain with a minimum 0.9 foot rear (north) yard setback and 0.9 open space in lieu of the required 20-foot rear (north) yard setback 14-foot open space, for the attached “mud room”, whereby the variance request is **denied**.

### **PLANNING DIRECTOR’S DECISION AND VARIANCE CONDITIONS**

Based on the variance application’s survey map, the single-family dwelling and detached garage built on the subject property (“Lot 23”) will not meet the minimum rear and 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 dwelling walls and detached garage 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 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 applicant/owner(s), successors or assigns shall relocate or remove the structure identified as "unpermitted mud room" in the variance application and shown on the survey map (Exhibit "A") as the portions of the dwelling that extend 19-1-feet in the rear (north) yard setback, to fit within the correct building envelope as prescribed by the Zoning Code for the subject parcel within one year from the effective date of Variance-19-000507.
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 initiate proceedings to null and void Variance-19-000507.

Sincerely,

  
MICHAEL YEE  
Planning Director

RJN: rjn

\\Coh33\planning\public\Admin Permits Division\Variance\2019\Var-19-000507 Brooke Glass - Oshea\Approval and Denial.doc

CC: W/ATTACHMENT:

Brooke Glass-O'Shea  
P.O. Box 437203  
Kamuela, HI 96743

Zendo Kern  
VAR-19-000507  
August 26, 2019  
Page 9

Xc w/o attachment:

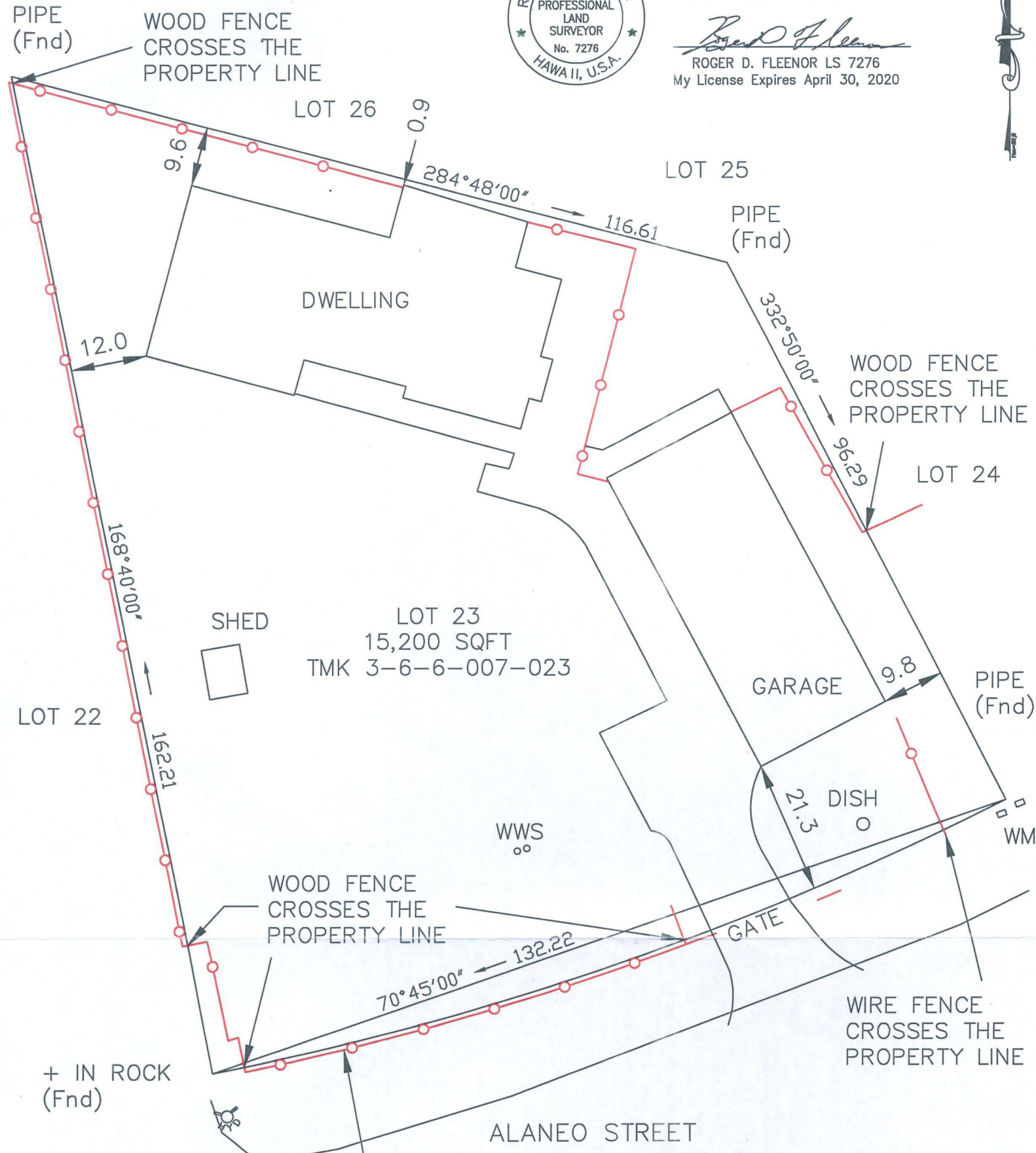
DPW Building Division  
DPW Engineering Division  
Real Property Tax Office (Kona)  
Gilbert Bailado, GIS

NOTES :  
 Azimuths and coordinates are referred to government Survey  
 Triangulation Station "PUU PA".  
 This map represents existing conditions on April 12, 2018.



THIS WORK WAS PREPARED BY  
 ME OR UNDER MY SUPERVISION.

*Roger D. Fleenor*  
 ROGER D. FLEENOR LS 7276  
 My License Expires April 30, 2020



LEGEND  
 HT = HAWAIIAN TELECOM  
 H = HAWAII ELECTRIC LIGHT CO.  
 TV = CABLE TELEVISION  
 T = ELECTRICAL TRANSFORMER  
 WM = WATER METER  
 WWS = WASTE WATER SYSTEM  
 HYD = FIRE HYDRANT  
 FND = FOUND  
 FENCE —○—○—○—○—○—○—

K-2 SURVEY MAP OF LOT 23  
 68-1778 ALANEO STREET  
 KAMUELA, SOUTH KOHALA  
 COUNTY & STATE OF HAWAII  
 T.M.K. 3-6-6-007-023

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SCALE 1"=20'  
 DATE APRIL 13, 2018

"EXHIBIT A"