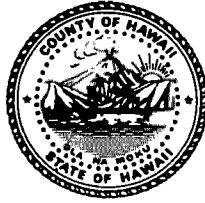


Harry Kim
Mayor

Roy Takemoto
Managing Director

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County of Hawai'i
PLANNING DEPARTMENT

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Director

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Deputy Director

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February 11, 2020

Keith Kato
HICDC
100 Pauahi Street, Suite 204
Hilo, Hawai'i 96720

Dear Mr. Kato:

SUBJECT: Application: Variance - VAR 19-000560
Applicant: Hawai'i Island Community Development Corporation
Owners: Hawai'i Island Community Development Corporation
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7, Minimum Yards Requirements
(Reduction of Front (west) and Rear (east) Yard Setback)
Tax Map Key: (3) 2-8-026:004 (Lot 4)

The Planning Director certifies the **approval** of Variance No. 19-000560, subject to variance conditions. The variance will allow a single-family dwelling to be built with a minimum 10-foot front and rear (west and east) yard setback in lieu of the required 20-foot front yard setback. These exceptions are in lieu of the required 20-foot front yard open space requirement as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 14,797 sq. ft. and is situated in Pepe'ekeo, South Hilo, Hawai'i. The subject property does not have a street address at this time.
2. **County Zoning.** Single Family Residential – 10,000 sq. ft. (RS - 10)
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** Front and rear yards, 20 feet; Side yards, 10 feet.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on November 18, 2019. Additional information was

submitted and it was deemed complete and applicant was notified by letter dated December 12, 2019.

The HICDC is asking for a variance as they were provided incorrect information from the Planning Department regarding setbacks prior to developing their subdivision. The erroneous information resulted in their subdivision placing house pads and grading such that the units placed on the subject parcel could not meet setback requirements in some cases.

6. **County Building Records.** Hawai'i County Real Property Tax office records indicate that there are no building permits for this parcel.
7. **Agency Comments and Requirements.** The State Department of Health (DOH) had no comments. Comments were not received from any other agency.
8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to affidavit and attached letters, the first and second notices were mailed on December 5, 2019, and January 2, 2020, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on December 23, 2019.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

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 location of the future single-family dwelling into the 20-foot front and rear yard setback as required by the Zoning Code.

For the purposes of setbacks, access/roadway easements are treated the same as actual road rights-of-way. Additionally, this parcel was initially identified as a flag lot which would normally have no front and all side yard setbacks. However, since there is a front along the easement, this parcel now has a rear yard. HICDC inquired with the Planning Department with regards to setback requirements along an access easement. The Planning Department provided HICDC with incorrect information and HICDC proceeded to do the subdivision and sitework to locate the pads for the future affordable housing. As the setback information was

incorrect and the project is an affordable housing project, requiring redesign and remedial site work would be unreasonable.

The above special and unusual circumstances determine the owner was not at fault in creating the error in design and requiring them to fix the errors based on incorrect Planning Department guidance would interfere with the 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 error in setback design would be the following:

Eliminate a lot and regrade. One option is to consolidate the lot with another lot and eliminate a parcel. However, this option actually runs counter to the purpose of the subdivision to provide affordable units.

Keep the Lot but make the house the responsibility of the new owner: HICDC is selling the house and lot as a package. They need to build the house and sell the lot. They can not leave the lot vacant and make it the responsibility of the new owner. Further, HICDC as a public agency needs the return on investment to facilitate their operations.

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 this issue. It is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

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 pad and proposed house will not meet the minimum front and rear setback 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. 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. 19-000560.

Sincerely,



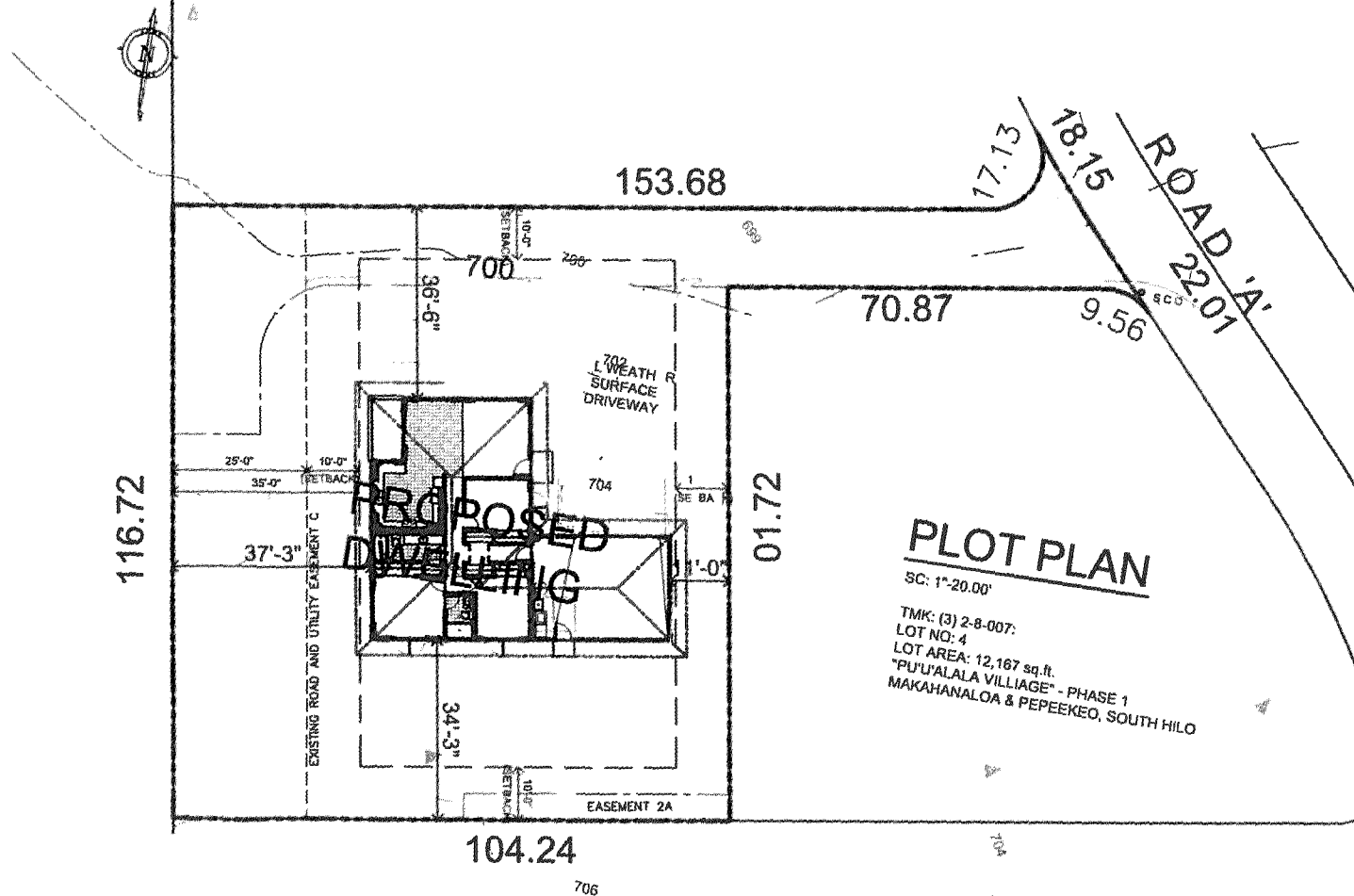
MICHAEL YEE
Planning Director

NK:jaa

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Enclosure: Exhibit A- Site Plan

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



PLOT PLAN

SC: 1"-20.00"
 TMK: (3) 2-8-007;
 LOT NO: 4
 LOT AREA: 12,167 sq.ft.
 "PU'U'ALALA VILLIAGE" - PHASE 1
 MAKAHANALOA & PEPEKEO, SOUTH HILO

EXHIBIT
A