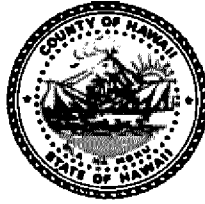


Mitchell D. Roth
Mayor

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

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Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

June 14, 2021

Kana Nozawa
Thomas Ward McCain
73-4645 Old Mamalahoa Hwy.
Kailua-Kona, Hi 96740-8635

Dear Ms. Nozawa and Mr. McCain:

SUBJECT: COMPLIANCE OF CONDITIONS NO. 4 AND 5
Application: Variance – VAR-20-000568
Applicant: AMERICAN DRAFTING AND DESIGN LLC
Owners: KANA NOZAWA
THOMAS WARD MCCAIN
Request: Variance from Chapter 25, Zoning, Article 5,
Division 1, Section 25-5-76, Minimum Yards Requirement
(Encroachments into East Front Yard Setback)
Tax Map Key: (3) 7-3-008:108 Lot 3-B

We acknowledge your email and photographs received on February 4, 2021, for removal of the "Portable Shed" per Condition no. 4 of Variance no. 20-000568. As a follow-up, a site visit was conducted by our planning inspectors on June 9, 2021, to confirm that the "portable shed" has been removed from your property. A previous compliance determination was made on September 21, 2020, for moving of the "Stable" to within the permitted building envelope of the Subject Lot 3-B, to meet the minimum setbacks per the Zoning Code, per Condition no. 5 of Variance-20-000568.

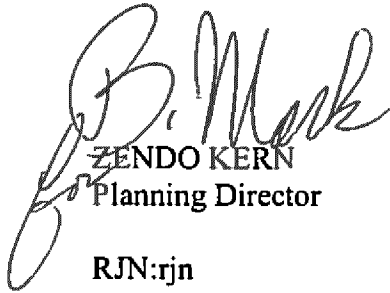
You are now hereby found in compliance of Variance (VAR-20-000568) for removal of the "Portable Shed" and relocation of the "Stable" to meet the 30-foot the front and rear setbacks of subject Lot 3-B per the condition No. 4 and 5 of VAR-20-000568.

Thank you for your cooperation in this matter.

Kana Nozawa
Thomas Ward McCain
June 14, 2021
Page

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

Sincerely,



ZENDO KERN
Planning Director

RJN:rjn

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Setback\VAR-20-000568-condition 5 met.doc

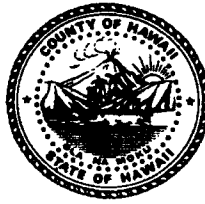
xc: DPW Engineering Division (Kona)
Real Property Tax Office (Kona)
Ms. Elizabeth Gillis, Planning Inspector, West Hawaii Office
Mr. Gilbert Bailado, GIS

Brandy Young, Manager
American Drafting and Design LLC
P.O. Box 1459
Roswell, GA 30077

Harry Kim
Mayor

Roy Takemoto
Managing Director

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County of Hawai'i
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Director

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Acting Deputy Director

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Fax (808) 961-8742

June 23, 2020

Brandy Young, Manager
American Drafting and Design LLC
P.O. Box 1459
Roswell, GA 30077

Dear Ms. Young:

SUBJECT: Application: Variance – VAR-20-000568
Applicant: AMERICAN DRAFTING AND DESIGN LLC
Owners: KANA NOZAWA
THOMAS WARD MCCAIN
Request: Variance from Chapter 25, Zoning, Article 5,
Division 1, Section 25-5-76, Minimum Yards Requirements
(Encroachments into East Front Yard Setback)
Tax Map Key: (3) 7-3-008:108 Lot 3-B

Please replace the Variance Letter previously sent to you with the attached corrected Variance Letter dated May 26, 2019. The previous letter had incorrectly indicated the date of approval. The Planning Director certifies the **approval** of Variance No. 20-00568, subject to variance conditions, as of the original date May 26, 2020.

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

Sincerely,



MICHAEL YEE
Planning Director

RJN:rjn

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Brandy Young, Manager
American Drafting and Design LLC
June 23, 2020
Page 2

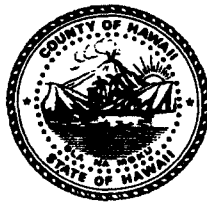
xc: Natalie Whitworth, DPW Engineering Division
Real Property Tax Office (Kona)
Gilbert Bailado, GIS

Kana Nozawa
Thomas Ward McCain
P.O. Box 385116
Waikoloa, HI 96738 0116

Harry Kim
Mayor

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County of Hawai'i
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May 26, 2020

Brandy Young, Manager
American Drafting and Design LLC
P.O. Box 1459
Roswell, GA 30077

Dear Ms. Young:

SUBJECT: Application: Variance – VAR-20-000568
Applicant: AMERICAN DRAFTING AND DESIGN LLC
Owners: KANA NOZAWA
THOMAS WARD MCCAIN
Request: Variance from Chapter 25, Zoning, Article 5,
Division 1, Section 25-5-76, Minimum Yards Requirements
(Encroachments into East Front Yard Setback)
Tax Map Key: (3) 7-3-008:108 Lot 3-B

Note; The ownership of the subject parcel was changed from Mary and Travis Gomes to Kana Nozawa and Thomas Ward McCain on December 18, 2019 per Real Property Tax Records, and the variance application was transferred to the new owners on February 19, 2020.

The Planning Director certifies the **approval** of Variance No. 20-000568, subject to variance conditions. The variance will allow portions of the dwelling walls and roof overhangs (eaves) to remain with minimum 28.84-foot and 29.25-foot front (east) yard setbacks, in lieu of the required 30-foot front yard setback. These exceptions are in lieu of the required 30-foot front yard setback, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards requirements.

The variance does not allow of the portable shed on the subject parcel to remain with approximately a minimum 1.0-foot to 3.0-foot front (east) yard setback and 1.0-foot to 3.0-foot open space in lieu of the required 30-foot front (east) yard setback 24-foot open space, whereby the variance request is **denied**.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 3-B, contains approximately 3.289 acres and is situated within Portions of Kaloko, North Kona, Hawai'i. The subject property's street address is 73-4645 Mamalahoa Hwy., Kailua-Kona, HI 96740.
2. **County Zoning.** Agricultural. (A-3a).
3. **State Land Use Designation.** Agricultural.
4. **Setback Requirements.** 30 feet front and rear and 20 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on December 9, 2019. The variance application's survey map dated November 25, 2019 was prepared by Thomas G. Pattison, LPLS and denotes that portions of the dwelling walls are built into the front (east) yard setback. (**See Exhibit A-Site Plan**)

The survey map dated November 25, 2019 shows sections of the dwelling walls encroaching 1.16-foot and 0.73-foot with a minimum 28.84-foot and 29.27-foot (east) front yard setbacks, in lieu of the required 30 foot-front yard setback.

The encroachment leaves a minimum 28.84-foot and 29.27-foot (east) front yard setbacks, in lieu of the required 30-foot front yard setback.

The survey map dated November 25, 2019 also shows a part of a structure labeled as a "stable" located on Lot 3-A, TMK 7-3-008:033, is encroaching approximately 10.0-feet into the rear (west) setback of Lot 3-B, TMK 7-3-008:108, the parcel subject to this variance application. The portion of the "stable" that is encroaching into the rear setback of Lot 3-B will be required to be removed or relocated to meet the 30-foot rear setbacks of Lot 3-B and Lot 3-A, per the condition No. 5 of VAR-20-000568.

6. **County Building Records.** Hawai'i County Real Property Tax (RPT) Office records indicate that a building permit (#46320) was issued on October 27, 1970 for a single-family dwelling, the website reflects a frame utility shed and wood deck, uncovered, without associated building permit information.
7. **Real Property Tax Records:** The Real Property Tax (RPT) Historical Field Books had a sketch that showed a new dwelling (960 sq.ft.) with a lanai (232 sq.ft.) with the above building permit (#46320), issued on October 27, 1970.

8. Agency Comments and Requirements.

- a. State Department of Health (DOH) email dated March 11, 2020. "The Health Department found no environmental health concerns with regulatory implications in the submittals."
- b. Department of Public Works - Building Division – Memo dated March 18, 2020. (Attached.)

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 February 10, 2020 and March 10, 2020, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 12, 2020.

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

11. **Time Extension.** The director's decision for applicant's variance application was due by March 24, 2020. However, per the March 24, 2020 Supplemental Emergency Proclamation from Mayor Harry Kim that states under Item (2) Permit Deadlines and Automatic Approvals - "any deadline or automatic approval imposed by the Hawaii County Code or an administrative Rule of any County Department, officer, board, committees, and/or commissions is hereby continued to the latter of the following: 60 days after the date of this Second Supplementary Emergency Proclamation, dated March 24, 2020, as may be extended; or 60 days from the date of the current deadline or automatic approval date."

GROUNDINGS FOR APPROVING VARIANCES

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 dwelling walls and roof overhangs (eaves) into the 30-foot front (east) yard setbacks, as required by the Zoning Code.

The survey map dated November 25, 2019 shows sections of the dwelling walls encroaching 1.16-foot and 0.73-foot with a minimum 28.84-foot and 29.27-foot (east) front yard setbacks, in lieu of the required 30 foot-front yard setback.

The encroachment leaves a minimum 28.84-foot and 29.27-foot (east) front yard setbacks, in lieu of the required 30-foot front yard setback.

The survey map dated November 25, 2019 also shows a part of a structure labeled as a "Stable" located on Lot 3-A, TMK 7-3-008:033, is encroaching approximately 10.0-feet into the rear (west) setback of Lot 3-B, TMK 7-3-008:108, the parcel subject to this variance application. The portion of the "Stable" that is encroaching into the rear setback of Lot 3-B will be required to be removed or relocated to meet the s30-foot rear setbacks of Lot 3-B and Lot 3-A, per the condition No. 5 of VAR-20-000568.

According to the applicant, due to the time that the house was originally built 48 years ago the fact that one corner of the house was encroaching was due to the fact that measurement accuracy was not as precise and terrain played a factor, the intention was to build the structure the structure as accurately as possible 48 years ago.

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 original dwelling improvements constructed in 1972, approximately 48 years ago, and 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 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:

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, 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.

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 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 48 years and was constructed under valid building permits issued by the County of Hawai'i. 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 no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

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 3-B") will not meet the minimum front yard pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

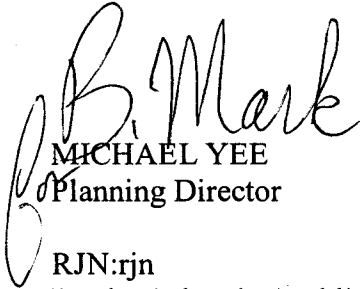
This variance application is approved subject to the following variance conditions:

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 roof overhangs (eaves) 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. The "Portable Utility Shed" located within the front (east) yard setback shall be removed or relocated within the permitted building envelope of the subject Lot 3-B to meet the minimum setbacks per the Zoning Code within ninety (90) days of the approval date of this variance (VAR-20-000568). Proof of removal or relocation of the "Portable Utility Shed" shall be provided to the Planning Department.
5. The portion of the "Stable" that is located within the rear (west) setback of Lot 3-B shall be removed or relocated to meet the minimum rear setbacks for both Lots 3-A and Lot 3-B, per the Zoning Code within ninety (90) day of the approval date of this Variance (VAR-20-000568).. Proof of removal or relocation of the "Stable" shall be provided to the Planning Department.
6. 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.
7. 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.

Brandy Young, Manager
American Drafting and Design LLC
May 26, 2020
Page 7

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-20-000568.

Sincerely,



MICHAEL YEE
Planning Director

RJN:rjn

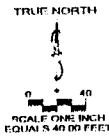
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Brandy Young, Manager
American Drafting and Design LLC
May 26, 2020
Page 8

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

Kana Nozawa
Thomas Ward McCain
P.O. Box 385116
Waikoloa, HI 96738 0116

**MAP SHOWING EXISTING CONDITIONS UPON
LOT 3-B
Being a Portion of Royal Patent 8214, L.C. Award 7715:11
to Kamehameha at Kaloko,
North Kona, County of Hawaii, State of Hawaii
TMK: (3)7-3-008:108**



- NOTES:**
- 1) Boundary encroachments were found as shown & marked herein.
 - 2) Violations of County zoning set-back codes were found.
 - 3) The distances shown between the property lines & the features, shown herein, are based on a detailed found boundary monuments & acceptable tolerance for properties of this type.
 - 4) The features, shown herein, were located by an actual survey performed on the ground on October 28th, 2019.
 - 5) See accompanying report pertaining to setbacks and encroachments.
 - 6) CRM = Concrete, Brick & Masonry Wall



NOTE: BARS OF AZMUTH DERIVED USING MAGNETIC DEPR. RTK SYSTEM

NOTE: ALL CORNERS ARE FOUND 1/2" INCH PIPER UNLESS OTHERWISE NOTED

NOTE: ALL AZMUTHS & DISTANCES ARE SHOWN A MAPPED HEREON IN A CLOCKWISE DIRECTION

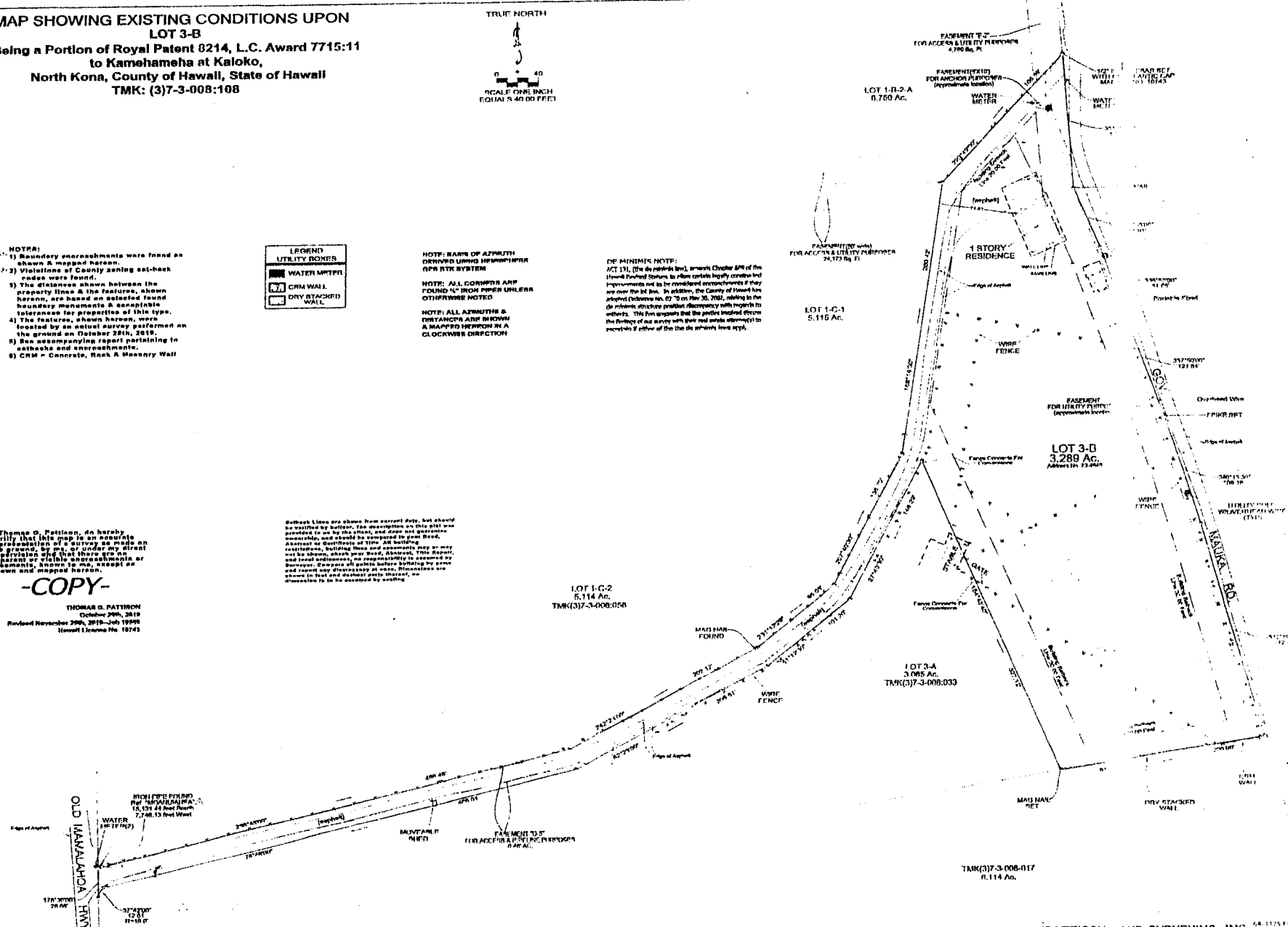
DE MINIMIS NOTE:
The de minimis level, around 50% of the allowed setback, allows for certain improvements not to be considered encroachments if they are over the set back. In addition, the County of Hawaii has adopted Ordinance No. 07-20 on May 20, 2007, relating to the de minimis structure provision (discrepancy with regard to setbacks). This Plan assumes that the parties involved share the burden of any survey with care and make appropriate adjustments if any of the de minimis level apply.

I, Thomas G. Pattison, do hereby certify that this map is an accurate representation of a survey as made on the ground, by me, or under my direct supervision and that there are no apparent or visible encroachments or easements, known to me, except as shown and mapped herein.

-COPY-

THOMAS G. PATTISON
October 20th, 2019
Revised November 20th, 2019 - July 19th, 2020
Hawaii License No. 18743

Setback Lines are shown from current date, but should be verified by holder. The description on this plat was provided to me by the client, and does not guarantee accuracy, and should be compared to your deed. At least on a quarterly basis. All building restrictions, building lines and easements may or may not be shown, check your deed, abstracts, Title Reports and local ordinances, as responsibility is assumed by the holder. Encroachments are shown by dashed lines and are not shown on this map. Encroachments are shown in red and dashed lines should, in addition to be checked by visiting.



"EXHIBIT A"