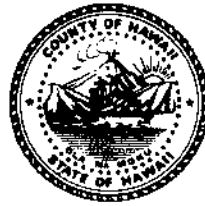


Harry Kim
Mayor

Roy Takemoto
Managing Director

West Hawai'i Office
74-5044 Ane Keohokālole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563



County of Hawai'i
PLANNING DEPARTMENT

Michael Yee
Director

April Surprenant
Acting Deputy Director

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

June 19, 2020

Terin Gloor P. E.
Green 'Āina Planning & Engineering
P.O. Box 978
Pepe'ekeo, HI 96783

Dear Terin:

SUBJECT: Application: Variance – VAR-20-000582
Applicant: GREEN 'ĀINA PLANNING & ENGINEERING
Owner: TERIN GLOOR AND LEANA GLOOR
Request: Variance from Chapter 25, Zoning, Article 5, Division 1
Section 25-5-7, Minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Rear and Side (North) Yard Setback.
Tax Map Key: (3) 2-8-022:041

The Planning Director certifies the **approval** of Variance No. 20-000582, subject to variance conditions. The variance will allow a portion of this single-family dwelling to remain with a minimum 19.42-foot rear (west) yard setback, in lieu of the required 20-foot rear yard setback. It also allows a portion of the single-family dwelling to remain with a minimum 7.81-foot side (south) yard setback in lieu of the required 10-foot side yard setback requirement and the associated roof eave projection resulting with a 4.33-foot side (south) yard open space in lieu of the required 5-foot side yard open space requirement. These exceptions are in lieu of the required 20-foot rear yard setback and 10-foot rear yard open space, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

The variance request also referenced an encroachment of a as-built shed into the rear (west) yard setback. The as-built shed is excluded from this variance approval.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 10,885 square feet and is situated in the Kula'imano Heights Subdivision, Unit 5, Kula'imano & Makahanalo, South Hilo, Hawai'i. The subject property's street address is 28-2845 Alala Place.
2. **County Zoning.** Single-Family Residential – 10,000 sq. ft. (RS-10).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20 feet front and rear; 10 feet for side.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on April 20, 2020. The variance site plan is drawn to scale, prepared by Niels Christensen, LPLS (The Independent Hawai'i Surveyors, LLC), and denotes the position of the single-family dwelling constructed into the minimum 20-foot rear (west) yard setback, side (south) side yard setback and associated roof eave constructed into 14-foot side (south) yard open space. The request affects the west rear yard setback and south side yard setback open space requirement.

The survey map shows that a portion of the single-family dwelling encroaches 0.58 feet (6.96 inches) into the 20-foot rear (west) yard setback. It also shows a portion of the single-family dwelling 2.19 feet into the 10-foot side (south) yard setback and the associated roof eave encroaches 0.65 feet (7.8 inches) into the 5-foot side (east) yard open space.

The encroachment leaves the single-family dwelling with a minimum 19.42-foot rear (west) yard setback in lieu of the required 20-foot rear yard setback. It also leaves a portion of the single-family dwelling with 7.81 feet side (south) yard setback and associated roof eave projection resulting with a 4.35-foot side (south) yard open space in lieu of the required 10-foot side yard setback and 5-foot side yard open space requirement. **(See attached survey map – Exhibit A)**

6. **County Building Records. County Building Records.** Hawai'i County Real Property Tax Office records indicate that Building Permit #760302 was issued on February 12, 1976, for the construction of a single-family dwelling consisting of 4 bedrooms, 1-1/2 baths, living room, kitchen, dining area and garage.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated May 27, 2020: "The Health Department found no environmental health concerns with regulatory implications in the submittals."

- b. Department of Public Works Building Division Memorandum dated May 8, 2020: “No Objections.”
- 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 14, 2020, and May 13, 2020, respectively. Notice of this application was published in the Hawai‘i Tribune Herald and West Hawai‘i Today on May 11, 2020.
- 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 encroachment of the single-family dwelling into the 20-foot rear (west) yard setback, 10-foot side (south) side yard setback and associated roof eave into the 14-foot side yard open space.

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 1976, nearly 44 years ago, and subsequent construction permits were issued and closed under valid building permit 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.

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 yard of the subject property include the following actions:

To remove the building encroachments and/or redesign the existing single-family dwelling 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 single-family dwelling was in compliance with all County requirements.

Because the encroachment is within the rear yard and side setbacks, to consolidate the subject property with the adjacent rear yard side yard properties, which is owned by someone else, and re-subdivide the property to modify property lines and adjust minimum side yard setbacks are not viable options.

Both 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 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 single-family dwelling has been in existence for approximately 44 years and was constructed under valid building permits and other construction 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.

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 39") will not meet the minimum side rear 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. The as-built shed encroaching into the rear (west) yard setback shall be relocated out of the rear yard setback or removed.
4. 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, Chapter 25, Zoning, and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
5. An "Ohana or Farm Dwelling permit shall not be approved for the subject property,

Terin Gloor
Green 'Āina
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subject to the provisions of the Hawai'i County Code, Chapter 25, Zoning or State law, which may change from time to time.

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 this Variance, VAR-20-000582.

Sincerely,



MICHAEL YEE
Planning Director

LHN:jaa

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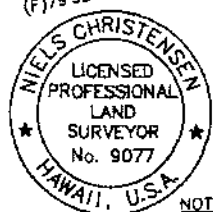
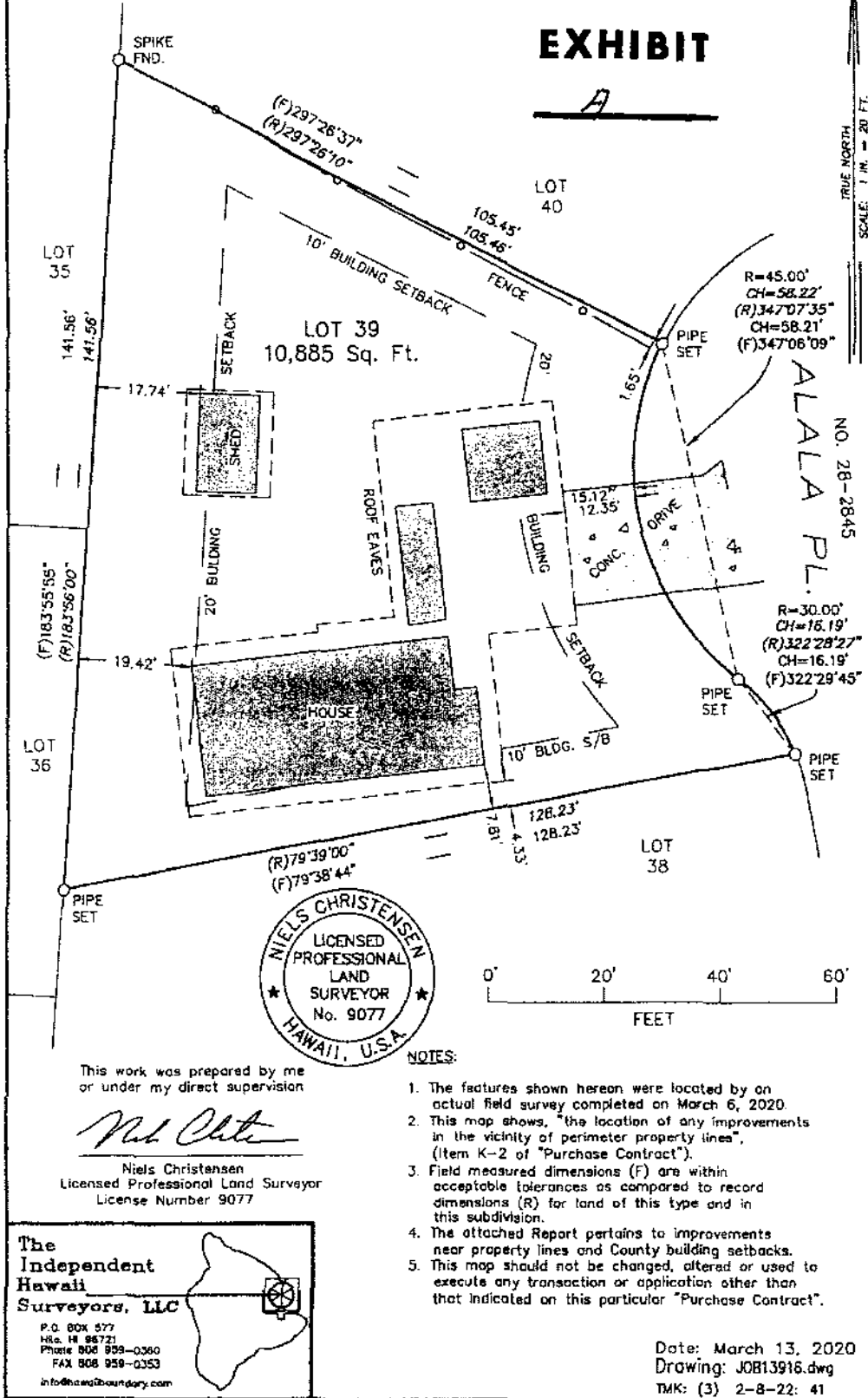
Enclosure: Exhibit A- Site Plan

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

EXISTING CONDITIONS UPON LOT 39
KULAIMANO HEIGHTS SUBDIVISION, UNIT V
PEPEEKEO & MAKAHANALOA, SO. HILO, HAWAII, HAWAII

EXHIBIT

A



This work was prepared by me or under my direct supervision

Niels Christensen

Niels Christensen
 Licensed Professional Land Surveyor
 License Number 9077

- NOTES:**
1. The features shown hereon were located by an actual field survey completed on March 6, 2020.
 2. This map shows, "the location of any improvements in the vicinity of perimeter property lines", (Item K-2 of "Purchase Contract").
 3. Field measured dimensions (F) are within acceptable tolerances as compared to record dimensions (R) for land of this type and in this subdivision.
 4. The attached Report pertains to improvements near property lines and County building setbacks.
 5. This map should not be changed, altered or used to execute any transaction or application other than that indicated on this particular "Purchase Contract".

The Independent Hawaii Surveyors, LLC

P.O. BOX 577
 Hilo, HI 96721
 Phone 808 959-0360
 FAX 808 959-0353
 info@hawaiiboundary.com

Date: March 13, 2020
 Drawing: JOB13916.dwg
 TMK: (3) 2-8-22: 41