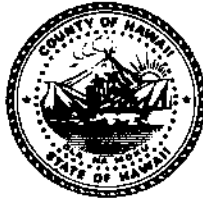


Harry Kim
Mayor

Roy Takemoto
Managing Director

West Hawai'i Office
74-5044 Ane Keohokalole 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

October 30, 2020

Taylor McMahel
HC2 Box 5681
Kea'au, Hawai'i 96749

Dear Mr. McMahel:

SUBJECT: Application: Variance - VAR 20-000594
Applicant: TAYLOR DEAN McMAHEL
Owner: TAYLOR DEAN McMAHEL TRUST
Request: Variance from Chapter 25, Zoning, Article 5 Division 7, Section 25-5-76 Minimum Yards, Article 4, Division 4, Section 25-4-44(a) Permitted Projections into Yards and Open Space Requirements (Encroachment into East Rear Yard Setback and North Side Yard Setback)
Tax Map Key: (3) 1-8-056:039 (Lot 491)

The Planning Director certifies the **approval** of Variance 20-000594, subject to conditions. The variance will allow for the single-family dwelling to remain with a minimum 17.44-foot rear (east) yard setback. This variance will also allow for the detached water tank to remain with a 7.92-foot side (north) yard setback. These exceptions are in lieu of the required 20-foot rear yard setback and 10-foot side yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum Yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 12,005 square feet and is in the Aloha Estates Subdivision, portion of 'Öla'a, Puna, Hawai'i. The subject property's street address 18-2045 Leialoha Street.
2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Agricultural.

4. **Required Setback.** 20 feet for front and rear; 10 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on August 4, 2020. The variance application site map was prepared by Niels Christensen, LPLS (The Independent Hawai'i Surveyors, LLC). (See **Exhibit A-Site Plan**)

The single-family dwelling encroaches 2.56 feet into the 20-foot rear (east) yard setback. It also shows the detached water tank encroaches 2.08 feet into the 10-foot side (north) yard setback.

The encroachment leaves the single-family dwelling with a minimum 17.44-foot rear (east) yard setback, in lieu of the required 20-foot rear yard setback. It also leaves the detached water tank with a 7.92-foot side (north) yard setback, in lieu of the 10-foot side yard setback requirement.

6. **County Building Records.**

- a. Building Permit 030758 was issued on April 10, 2003, for the construction of an efficiency dwelling with kitchen, closet/storage, bath, and open covered deck. Permit finalized on January 14, 2005.
- b. Building Permit B2007-2818H issued on December 3, 2007, for the construction of a two-bedroom addition. Permit finalized on May 26, 2010.

7. **Agency Comments and Requirements.**

- a. State Department of Health memorandum dated October 14, 2020: "The Health Department found no environmental health concerns with regulatory implications in the submittals."
- b. The Department of Public Works, Building Division (DPW) memorandum dated August 26, 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 August 11, 2020, and August 24, 2020, respectfully. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on August 27, 2020.

9. **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.

10. **Time Extension.** The applicant's variance application was received on August 4, 2020; additional time to review the application was required. The applicant granted the Planning Director an extension of time to issue a decision on the Variance Application until October 30, 2020.

ANALYSIS OF GROUNDS FOR VARIANCE

No variance will be granted unless it is found that:

- (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 criteria (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 (east) yard setback and the detached water tank encroaching into the 10-foot side (north) yard setback.

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. The efficiency dwelling and detached water tank improvements authorized under building permit 030758 was issued on April 10, 2003, and given final inspection approval on January 14, 2005. The two-bedroom addition to the existing efficiency dwelling authorized under building permit B2007-2818H, was issued on December 3, 2007, and given final inspection approval on May 26, 2010. It appears that building permit inspections of the premises by the affected agencies during construction of the efficiency dwelling, detached water improvements and the two-bedroom addition did not disclose any building encroachment issues or building setback irregularities at that time.

Based on the above-mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the subject property.

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

The variance application meets criteria (b) for the following reasons:

Remove the building encroachments and/or redesign the single-family dwelling, 'ohana dwelling and water tank 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, and the detached water tank were in compliance with all County requirements. Any structural or design correction of the single-family dwelling, and water tank to meet setback requirements would leave unattractive reconstruction scars.

Because the encroachment is within the rear and side yard setback, to consolidate the subject property with the adjacent side yard property, 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. Therefore, both alternatives are not practical.

- (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 criteria (c) for the following reasons:

The intent and purpose of requiring structural setbacks within a building site 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.

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 and detached water tank built upon the subject property ("LOT 491) will not meet the minimum 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(s), 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/owner(s), 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 single-family dwelling and detached water tank 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. 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 proceed to declare subject Variance-20-000594 null and void.

Sincerely,



MICHAEL YEE
Planning Director

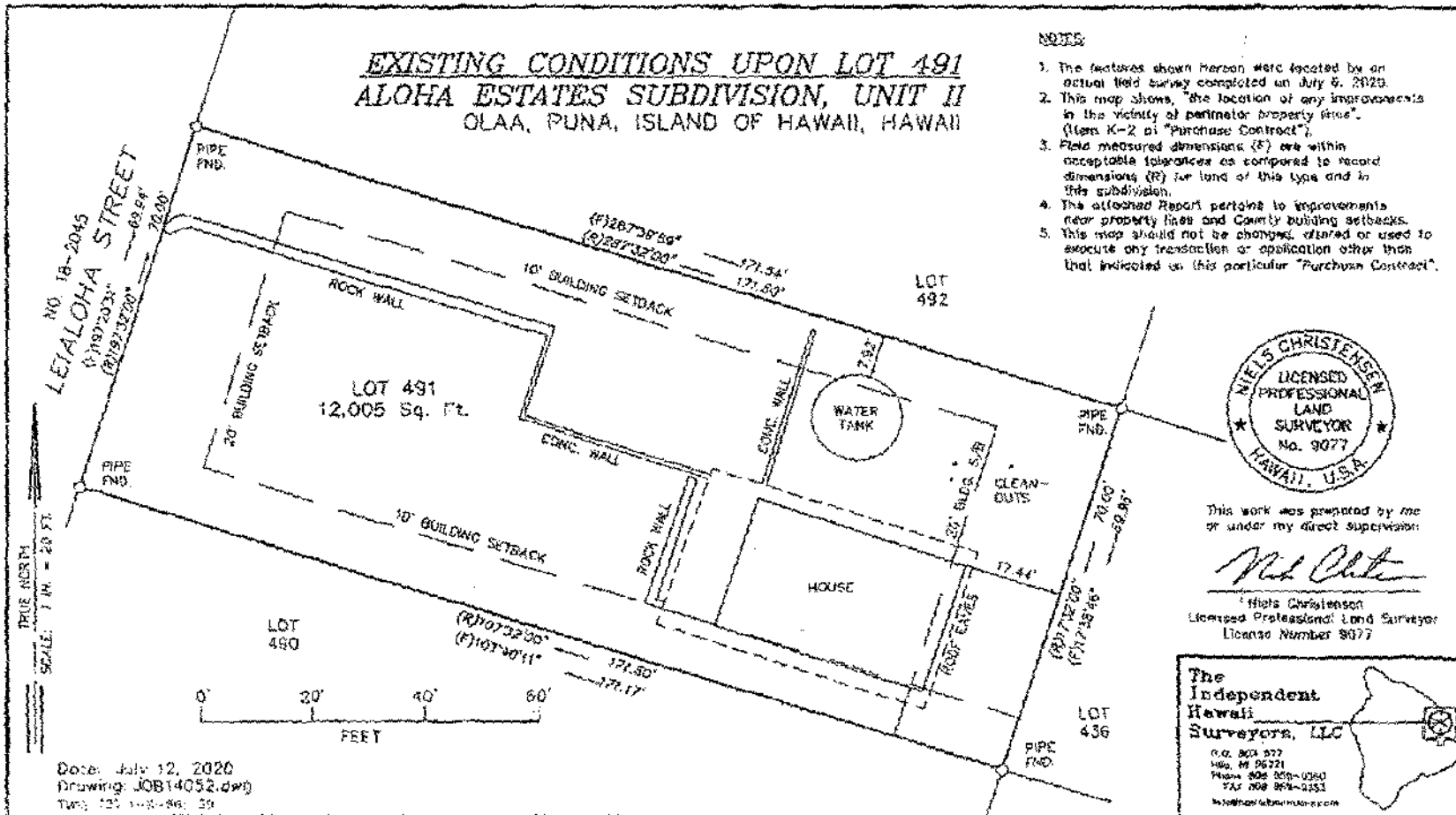
LHN:jaa

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR20-000594 TMK 1-8-056-039 McMahel.docx

Encl: Exhibit A - Site Plan

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

EXISTING CONDITIONS UPON LOT 491
ALOHA ESTATES SUBDIVISION, UNIT II
OLAA, PUNA, ISLAND OF HAWAII, HAWAII



NOTES

1. The features shown hereon were located by an actual field survey completed on July 6, 2020.
2. This map shows "the location of any improvements in the vicinity of perimeter property lines". (Items 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".



This work was prepared by me or under my direct supervision:

Niels Christensen

Niels Christensen
 Licensed Professional Land Surveyor
 License Number 9077

The Independent
 Hawaii
 Surveyors, LLC

P.O. BOX 977
 HAWAII, HI 96721
 Phone 808 955-0360
 FAX 808 955-2151
 www.theindependenthawaii.com



Date: July 12, 2020
 Drawing: JOB14052.dwg
 Title: 1201-1-1-86: 39

DATE PLOTTED: 11/13/2020 10:47 AM

EXHIBIT
A