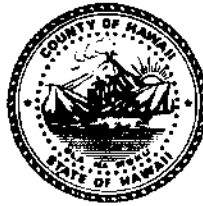


Harry Kim
Mayor

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

November 6, 2020

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

Dear Terin:

SUBJECT: Application: Variance – VAR-20-000595
Applicant: GREEN 'ĀINA PLANNING & ENGINEERING
Owner: TERIN GLOOR AND LEANA GLOOR
Request: Variance from Chapter 25, Zoning, Article 5, Division 7
Section 25-5-76, Minimum Yards, and Section 25-4-44(a),
Permitted Projections into Yards and Open Space Requirements
(Encroachment into Front (Southwest) Yard Setback.)
Tax Map Key: (3) 2-8-005:020 (Lot 4-B)

The Planning Director certifies the **approval** of Variance No. 20-000595, subject to variance conditions. The variance will allow a portion of the proposed single-family dwelling to be constructed with a front (southwest) yard setback, ranging from 25 feet to 30 feet in lieu of the required 30-foot (25 ft. + 5 feet future road widening) front yard setback. These exceptions are in lieu of the required 30-foot (25 ft. + 5-foot future road widening) front yard setback 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 existing 497 sq. ft. single-family dwelling shall be converted to a guest house prior to the occupancy of the proposed 2,235 sq. ft. single-family dwelling. (See **Attached Floor Plan - Exhibit A**)

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 23,030 square feet and is situated in Kula'imano Homesteads, Kula'imano, South Hilo, Hawai'i. The subject property's street address is 28-1127 'Ohe'ala Road.

2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 30 feet front (25 feet plus 5-foot future road widening) and 25 feet 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 Green 'Āina Planning and Engineering, and denotes the position of the proposed single-family dwelling encroaching into the 30-foot (25 ft + 5-foot future road widening) front yard setback. **(See Attached Site Plan – Exhibit B)**

The site plan shows that the encroachment of the proposed single-family dwelling ranges from 0 to 5 feet into the 30-foot front (25 ft. setback + 5-foot future road widening) yard setback.

The encroachment leaves the proposed single-family dwelling with a maximum 25-foot front (southwest) yard setback in lieu of the required 30-foot (25 ft. setback + 5-foot future road widening) front yard setback.

6. **County Building Records.**

- a. Building Permit – BH2014-00951 was issued on June 14, 2014, for the construction of a single-family dwelling consisting of 1 bedroom, 1 bath, living room, kitchen, attic storage and open covered lanai. Building permit finalized on December 7, 2015.
- b. Building Permit – BH2015-00641 was issued on April 16, 2015, for the addition of shed roof and concrete slab under single-family residence. Building permit finalized on November 25, 2015.
- c. Building Permit – BH2016-01331 was issued on October 18, 2016, for the construction of a new, detached storage shed (192 sf). Has a trash enclosure (37 sf) and an open covered barbecue area with an island counter and bar sink within and sit.
- d. Building Permit – BH2017-00717 was issued on August 2, 2017, for the alteration to storage shed/BBQ area under construction (BH 2016-01331) to convert portion of storage shed to a full bathroom (lavatory, water closet, shower; decrease size of open covered BBQ area (141 sf).
- e. Building permit – BH2016-00052 was issued on January 29, 2018, for a new in-ground swimming pool on concrete pad located approximately 50' from permitted dwelling, 4-6

ft. high fencing and self-closing gate. Pool equipment located adjacent to ag storage/BBQ area.

7. Agency Comments and Requirements.

- a. The State Department of Health (DOH) did not submit comments.
 - b. Department of Public Works Building Division did not submit comments
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 14, 2020, and September 15, 2020, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on September 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.
10. **Time Extension:** The applicant's variance application was acknowledged by letter dated September 2, 2020, and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to November 6, 2020.

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 proposed encroachment of the single-family dwelling to be constructed into the 30-foot (25 ft. setback + 5-foot future road widening) front yard setback.

The owner/applicant has specified that they were unaware of any 5-foot future road widening on the subject parcel, It should be noted that previous building permits approved by our department did not disclose any future road widening on the subject parcel.

The owner/applicant has stated the following in its background report:

“The proposed dwelling cannot be moved further away from the property line for several reasons.

- 1 The parcel is a trapezoid that narrows in an easterly direction to a narrow ‘pinch’ point in the middle of the parcel and then widens again as you approach the easterly boundary. Moving the house away from the road property line would cause encroachment to the side yard setbacks.
- 2 The parcel is on a steep hillside with an existing permitted concrete retaining wall designed to be incorporated into the proposed house foundation.

Therefore, based on the above-mentioned information along with the unusual shape of the subject property, 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.

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 proposed building encroachments of the single-family dwelling to be constructed into the 30-foot (25-foot setback + 5-foot future road widening) front yard setback are limited.

One option, as stated earlier would be to move single-family dwelling further back away from the roadway to meet setback requirement; however, this would cause the single-family dwelling to encroach into the side yard setbacks.

Because the encroachment is within the front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options. Therefore, there are no reasonable alternatives to resolve the encroachment issue.

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.

The encroachment of 5 feet into the front yard setback still allows for adequate air circulation, as the affected area is within the front yard setback adjacent to the roadway frontage.

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. 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. Furthermore, 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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application site plan, the proposed single-family dwelling to be constructed on the subject property ("Lot 4-B") will not meet the minimum front 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 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.

4. The existing 497 sq. ft. single-family dwelling shall be converted to a guest house, prior to the occupancy of the proposed 2,235 sq. ft. single-family dwelling. A guest house shall not exceed five hundred square feet in gross floor area, shall not be more than twenty feet in height and shall not have a kitchen.
5. The owner /applicant shall allow the Planning Department's zoning inspector to conduct a site inspection upon completion of the conversion of the existing 497 sq. ft. single-family dwelling into a guest house.
6. An 'Ohana or Farm 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 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-20-000595.

Sincerely,



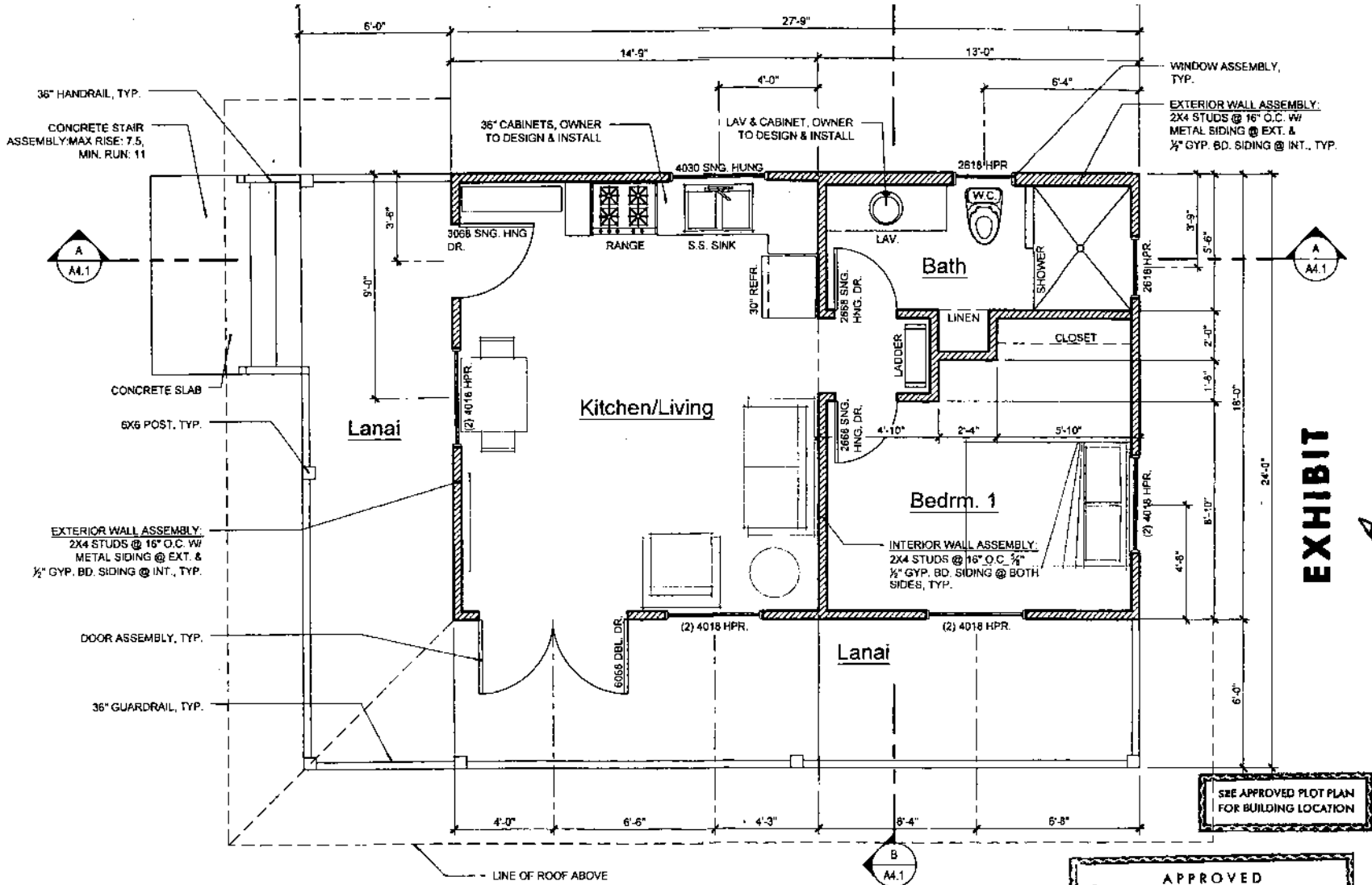
MICHAEL YEE
Planning Director

LHN:jaa

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Enclosure: Exhibit A- Floor Plan
Exhibit B - Site Plan

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



FLOOR PLAN
 SCALE: 1/4" = 1'-0"

APPROVED
 Director, County of Hawaii Planning Department
 Date: 05/06/2014

AMERICAN, P.L.L.C.
 906-217
 906-507
 The drawings may not be used for any other project without the written consent of AMERICAN, P.L.L.C.

MATTHEW R.
 LICENSED PROFESSIONAL ARCHITECT
 HAWAII, U.S.A.

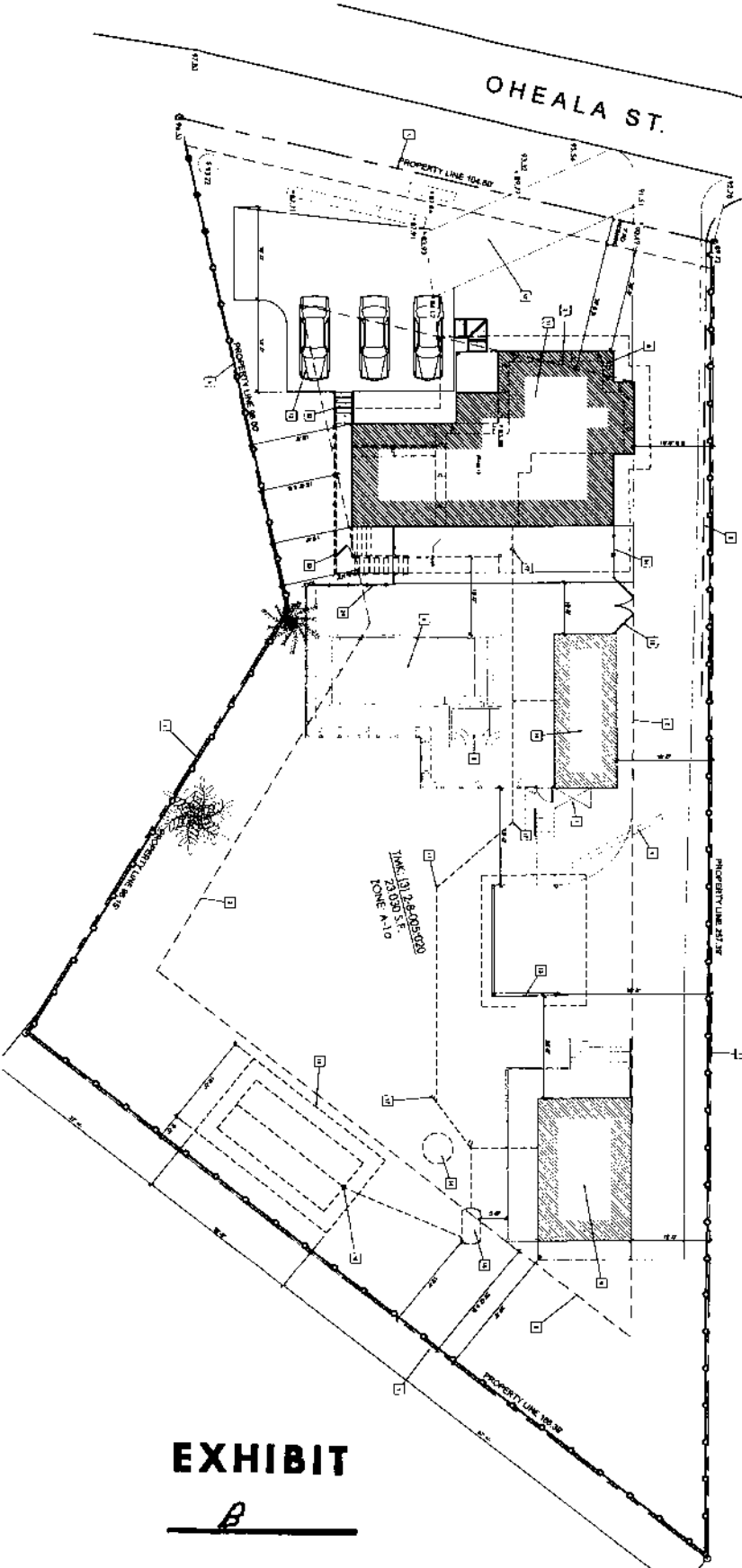
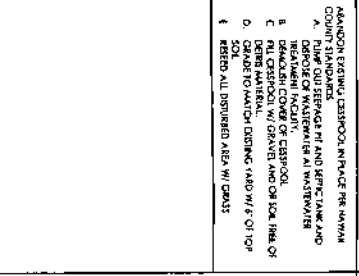
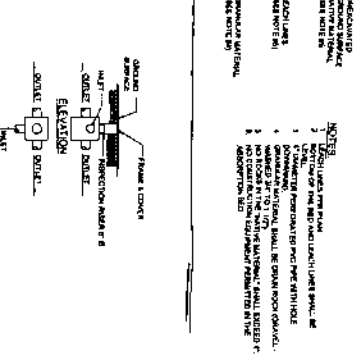
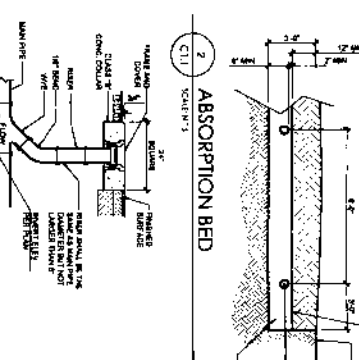
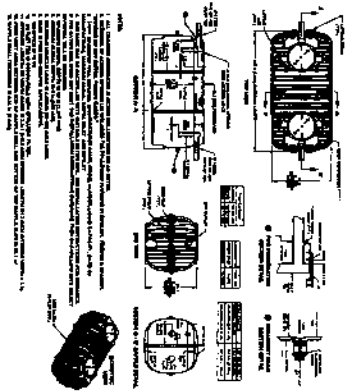
EXP. 04-30-2014
 THIS WORK WAS PERFORMED UNDER A PROFESSIONAL ARCHITECTURAL CONTRACT OF 15% OF THE GROSS CONTRACT VALUE OF THE PROJECT.

GLOOR RESIDENCE
 OWNER: Gloor, Terri David & Leana Bath
 SITE: Kulana Kea Rd.

FLOOR PLAN

Date:
 project #:
 drawn by:
 checked by:
 dwg #:

A2



A SITE PLAN
C11 2024-005-020

1. PROPERTY LINE
2. EXISTING CONC. DRIVEWAY
3. EXISTING DRIVEWAY
4. EXISTING POOL
5. EXISTING SWIMMING POOL
6. EXISTING SWIMMING POOL
7. EXISTING SWIMMING POOL
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22. EXISTING SWIMMING POOL
23. EXISTING SWIMMING POOL
24. EXISTING SWIMMING POOL

SITE PLAN

GLOOR RESIDENCE

OWNER: TERIN & LEANA GLOOR
P.O. BOX 878
PEPEKEE, HI 96783

SITE: 28-1127 OHEALA RD
PEPEKEE, HI 96783
TMK: (J) 2-4-005-020

Green and
FARMING & ARCHITECTURE
NO. 1017
1017 K
HONOLULU, HI 96813
808.778.7722

DRAWING NO. TITLE: SITE PLAN

DATE: 1/28/23

REVISIONS:

NO.	DATE	BY
1	1/28/23	[signature]

DRAWN BY: [signature]

CHECKED BY: [signature]

DATE: 1/28/23

EXHIBIT
B