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January 11, 2021

Richard T. Bair
P.O. Box 654
Kea'au, Hawai'i 96749

Dear Mr. Bair:

SUBJECT: Application: Variance - VAR 20-000598
Applicant: RICHARD T. BAIR
Owner: RICHARD T. BAIR AND MILILANI BAIR
**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 Northwest
and Southeast Side Yard Setback)**

Tax Map Key: (3) 1-5-035:094 (Lot 128)

The Planning Director certifies the **approval** of Variance No. 20-000598, subject to variance conditions. The variance will allow a portion of the single-family dwelling to remain with a minimum side (northwest) yard setback ranging from 9.19 feet to 15 feet and associated roof eave projection ranging from 5.43 feet to 10.6 feet side (northwest) yard open space in lieu of the minimum 20-foot side yard setback and 14-foot side open space requirement. It also allows for the detached water tank to remain with a minimum 19.23 feet side (southeast) yard setback in lieu of the required 20-foot side yard setback requirement. These exceptions are in lieu of the required 20-foot side yard setback and the 14-foot side yard open space requirement 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.

The "as built" single-family dwelling encroaching onto Lot 129 is excluded from this variance approval and has subsequently been demolished. (Building Permit -BH2020-01403)

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 43,560 square feet (1 acre) and is in the Hawaiian Paradise Park Subdivision, Kea'au, Puna, Hawai'i. The subject property's street address 15-1478 28th Avenue.
2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 30 feet for front and rear; 20 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on September 9, 2020. The variance application site map was prepared by Niels Christensen, LPLS (The Independent Hawai'i Surveyors, LLC). (See **Exhibit A-Site Plan**)

The survey map shows the following setbacks:

- a. The encroachment leaves the single-family dwelling with a minimum side (northwest) yard setback ranging from 9.19 feet to 15 feet and associated roof eave projection ranging from 5.43 feet to 10.6 feet side (northwest) yard open space in lieu of the minimum 20-foot side yard setback and 14-foot side open space requirement
- b. The encroachment leaves the detached water tank to remain with a minimum 19.23 rear (southeast) yard setback in lieu of the required 20-foot side yard setback requirement.

The survey map shows the following encroachment:

- a. The single-family dwelling encroaches 5 feet to 10.77 feet into the 20-foot side (northwest) yard setback and associated roof eave encroaches 3.4 to 8.57 feet into the 14-foot side (southeast) yard open space.
 - b. The detached water tank encroaches 0.77 feet (9.24 inches) into the 20-foot side (southeast) yard setback.
6. **County Building Records.** Hawai'i County Real Property Tax office records indicate that the following building permits were issued.
 - a. Building Permit 44424 issued on April 16, 1970, for the construction of a single-family dwelling consisting of two (2) bedrooms, 1 bath, living room, dining area and kitchen.

- b. Building Permit 821621 issued on September 15, 1982, addition of a 16'x20' carport to an existing carport. Building Permit finalized on August 23, 1983.
- c. Building Permit 870460 issued on March 18, 1987, for a storage addition. Building Permit finalized on October 21, 1987.
- d. Building Permit BH2014-00020 issued January 6, 2014, Approval of "as-built" additions of a bedroom, den, (2) rec. rooms, bath, and laundry. And alterations to existing dwelling converted carport to bath and large enclosed room.
- e. Building Permit BH2020-01403 issued on December 22, 2020, for demolishing of a portion of an existing dwelling permitted in 2014 by permit BH2014-00020 (Encroaching property line).

7. Agency Comments and Requirements.

- a. State Department of Health (DOH) memorandum dated December 4, 2020: "The Health Department found no environmental health concerns with regulatory implications in the submittals.
 - b. No comments received from the Department of Public Works, Building Division (DPW).
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 November 24 and December 17, 2020, respectfully. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on December 11, 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.

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 (northwest) side yard setback and encroachment of the detached water tank into the 20-foot (southeast) side 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 single-family dwelling and water tank authorized under building permit 44424, was issued on April 16, 1970. It appears that building permit inspections of the premises by the affected agencies during construction of the single-family dwelling and subsequent additions and alterations 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:

Alternatives available to the current owners to correct and/or address the single-family dwelling encroachments constructed into the affected side yard setback of the subject property include the following actions:

Relocate the single-family dwelling denoted on the site plan 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 followed all County requirements.

Because the encroachment is within the 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 detached galvanized water tank built upon the subject property ("LOT 128) 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:

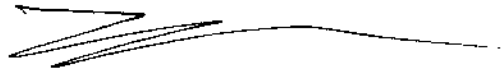
1. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai'i harmless from and against any loss, liability, claim, or demand for the property 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 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. 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.

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5. 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-20-000598 null and void.

Sincerely,



ZENDO KERN
Planning Director

LHN:jaa

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Encl: Exhibit A - Site Plan

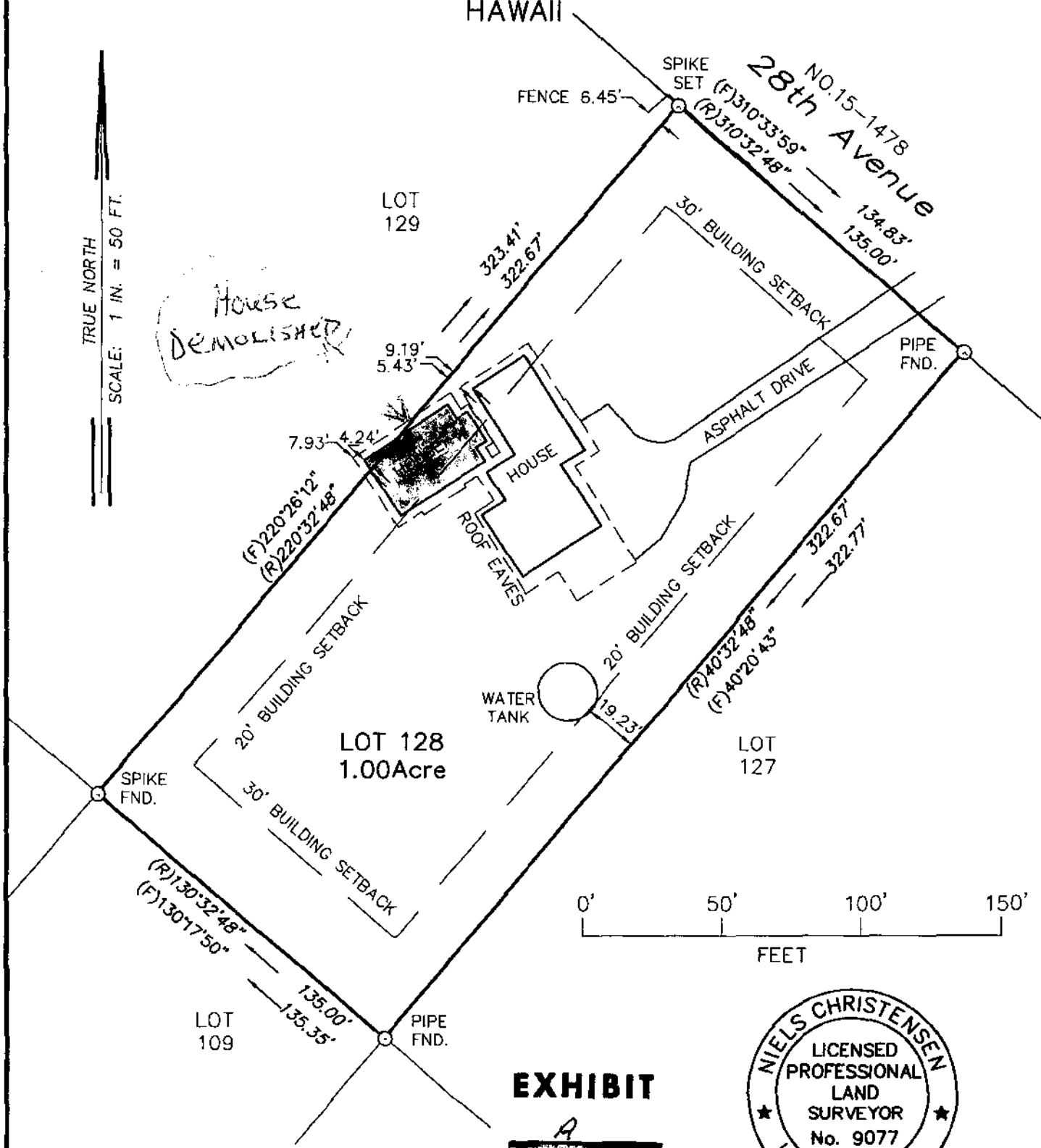
cc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS (via email)

EXISTING CONDITIONS UPON LOT 128
BLOCK 2, HAWAIIAN PARADISE PARK

KEAAU, PUNA
 ISLAND OF HAWAII
 HAWAII

TRUE NORTH
 SCALE: 1 IN. = 50 FT.

House
 DEMOLISHED



EXHIBIT

A



NOTES:

1. The features shown hereon were located by an actual field survey completed on August 6, 2020.

This work was prepared by me or under my direct supervision