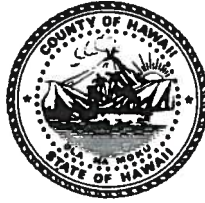


Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

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Phone (808) 323-4770
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County of Hawai'i PLANNING DEPARTMENT

Zendo Kern
Director

Jeffrey W. Darrow
Deputy Director

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

August 31, 2021

Land Planning Hawaii LLC
Kim Chiodo
194 Wiwoole St.
Hilo, HI 96720

Dear Mr. & Mrs. Razo:

SUBJECT: Application: Variance from Zoning Code – VAR-21-000637
Applicant: LAND PLANNING HAWAII LLC
Owner: STEVE V. RAZO AND VONNIE D. RAZO
**Request: Variance from Chapter 25, Zoning, Article 5 Division 7,
Section 25-5-96 Minimum Yards (Encroachment into Front
(Southwestern) Yard Setback)**
Tax Map Key: (3) 7-7-008:102

The Planning Director certifies the **approval** of Variance Permit No. 21-000637, subject to the variance conditions stated herein. The variance will allow a portion of the existing single-family dwelling to remain "AS-BUILT" with a 19.24-foot setback within the front (southwestern) yard setback. This will allow a portion of the existing dwelling to encroach up to 0.76 feet into the front yard setback area, as shown on the attached site survey map dated Revised June 18, 2021 (**Exhibit A-Site Plan**). These exceptions are in lieu of the required minimum 20-foot front yard setback, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-96, Minimum Yards. There are no encroachments identified within the rear and side yard setback areas.

BACKGROUND AND FINDINGS

- 1. Location.** The subject property is approximately 8,408 square feet in size and is located approximately 0.35 miles north of its intersection with La'aloa Avenue on the mauka side of Ali'i Drive and across the street from the Kona Magic Sands Condominium. The subject property's street address is 77-6447 Ali'i Drive in Pahoepahoe 1st – Kapalaalaea 2nd (Beach Sec.), North Kona, Hawai'i.
- 2. County Zoning.** Resort-Hotel (V-1.25).

3. **State Land Use Designation.** Urban.
4. **Required Yards (Setbacks).** 20-foot front and rear yards; 10-foot side yards (8-feet for one story, and an additional two feet for each additional story).
5. **Variance Application.** The applicant/owner initially submitted the variance application, attachments, filing fee, and associated materials on June 30, 2021. Subsequently, a request for time extension was received on August 26, 2021. The variance application included a scale-drawn site survey map that was prepared by Thomas G. Pattison of Pattison Land Surveying and is dated Revised June 18, 2021 (See **Exhibit A**).

The site plan identifies an encroachment up to 0.76 feet into the front (southwestern) yard setback area along the southwest corner of the existing dwelling, resulting in a minimum 19.24-foot front yard setback, in lieu of the minimum 20-foot front yard setback requirement.

6. **County Building Records.** The Hawai'i County Real Property Tax office records indicate the following building permits were issued:
 - a. Building Permit no. 995131, issued on February 16, 1999, for the construction of a new dwelling, with final inspection completed on August 30, 1999.
 - b. Building Permit no. 996034, issued on September 16, 1999, for additions/alterations to dwelling.

7. **Agency Comments and Requirements.**

- a. The Department of Public Works, Building Division Notice dated July 15, 2021:

“No Building, Electrical and Plumbing permit was issued for work done on the premise. No Swimming Pool Permits were issued. However the swimming pool per submitted Report (June 30, 2021) Application for Zoning Variance Steve V. Razo & Vonnie D. Razo Kailua-Kona, North Kona Hawaii TMK: (3) 7-7-008:102, II Nature and Purpose of Request B. 2. *‘An above ground pool and deck are located within the northeastern side and rear yard setback. The pool and deck will be removed and thus a variance for these improvements is not being requested.’*, addresses the No Permitted Issue.” (See **Exhibit B**)

- b. No comments were received from the State Department of Health (DOH).
8. **Public Notice.** The applicant filed transmittal letters with copies of the first and second notices and USPS Certified Mail Receipts as proof of service to surrounding property owners and/or lessees within three hundred feet of the subject building site affected by the Variance

application. According to the Notarized Affidavits, the first and second notices were mailed on July 28, 2021 and July 29, 2021, respectively. Notice of this Variance application was also published in the West Hawai'i Today and Hawai'i Tribune Herald on July 27, 2021

9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from the 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 has submitted the variance application to address or resolve the encroachment of the single-family dwelling into the minimum 20-foot (southwestern) front yard setback.

The applicant indicates that the encroachment appears to have been created at the time the dwelling was originally constructed and as a result of staking and siting errors at the time of construction. Additionally, the applicant indicates that the existing dwelling was built in accordance with Building Permit no. 995131, issued on February 16, 1999 and completed by final inspection on August 30, 1999, at which time the owner received all of the necessary County approvals for the dwelling.

Therefore, based on the above, 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 rear yard setback areas of the subject property include the following actions:

Relocate or alter the existing single-family dwelling denoted on the site plan to fit within the correct building envelope as prescribed by the Zoning Code. Per the applicant, this alternative would pose significant hardship, as an alteration to remove the encroachment would require substantial renovations and would result in large and unattractive reconstruction disfigurements on the dwelling.

Consolidate the subject property with the adjacent parcels and re-subdivide the property to modify the property lines and adjust the minimum yard setback areas accordingly. This alternative would not be a viable option as the adjacent parcels are under separate ownership, and the property fronting the subject parcel is a public roadway.

Therefore, the above alternatives are not practical and offers no reasonable alternative to resolve the difficulty.

(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.

Pursuant to Section 25-5-96 of Hawai'i County Code Chapter 25 (Zoning), the minimum yard setback requirements for the subject property are 20-foot front and rear yards and 8-foot side yards for a one story, and an additional two feet for each additional story. The applicant indicates that since the 0.76 foot encroachment is so minimal, the requested variance will not significantly affect light and air circulation, nor will it affect access for fire and emergency vehicles. The site survey map confirms that the encroachment is located within a small portion of the front yard setback area and does not extend any further than 0.76 feet into that area. The site survey map does indicate that there is an unpermitted above ground pool and deck located within the northeastern rear and side yard setback areas; however, the applicant has indicated that the unpermitted structures will be removed. There are no other dwelling encroachments into the side or rear yard setback areas.

Furthermore, the applicant indicates that the existing dwelling use is consistent with the Resort zoning and Urban State Land Use associated with the subject parcel, and that there was no intent to violate the setback requirements, as the encroachment was discovered during a recent survey of the property, well after the encroachment was created at the

time of construction. As such, the applicants, in an effort of good faith, are seeking a variance to resolve the encroachment issue.

The applicant also indicates that there is little or no impact to the area's character or adjoining properties, as the encroachment is not physically or visually obtrusive from the adjoining property(s) and similar variances have been approved within the surrounding area on Ali'i Drive. During the processing of this application, the Planning Department received no comments from the surrounding property owners or the general public regarding this Variance request.

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 site survey map, the existing single-family dwelling constructed on the subject property does not meet the minimum front yard setback 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. **Within one (1) year from the date of this permit, on or before August 31, 2022, the applicant/owner(s), their assigns or successors are required to demolish and remove the unpermitted above ground pool and deck located within the northeastern side and rear yard setback areas, and shall be responsible for complying with any requirements from any State and/or County agencies in the removal/demolition of said structures, including but not limited to, the Department of Public, Building Division, and the Department of Environmental Management, Solid Waste Division.**
3. 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 applicant/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.

Land Planning Hawaii LLC
Kim Chiodo
August 31, 2021
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4. 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.
5. 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.
6. 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 the subject Variance, 21-000637, null and void.

Sincerely,



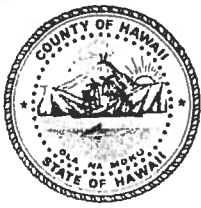
JEFFREY W. DARROW
Deputy Planning Director

MMH:mmh

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Encl: Exhibits A & B

Cc: Real Property Tax Office (Kona)
Gilbert Bailado, GIS (via Email)



BUILDING DIVISION – DPW

COUNTY OF HAWAII – 74-5044 Ane Keohokalole HWY. BLDG E 1st Floor KAILUA-KONA, HI 96740
Hilo Office (808) 961-8331 * Fax (808) 961-8410 Kona Office (808) 323-4720 * Fax (808) 327-3509

Date of Notice: July 15, 2021
Owner: Razo, Steve V. and Vonnie D
Mailing address: 77-6447 Alii Dr. Kailua-Kona Hawaii 967402407
Address location of property: 77-6447 Alii Dr

VARIANCE: VAR-21-00637
SUBJECT: Variance from Chapter 25, Zoning, Article 5, Division 9, Section 25-5-96,
Minimum Yards (Encroachments into Southwestern Front Yard Setback)

T.M.K.: (3) 7-7-008:102-0000

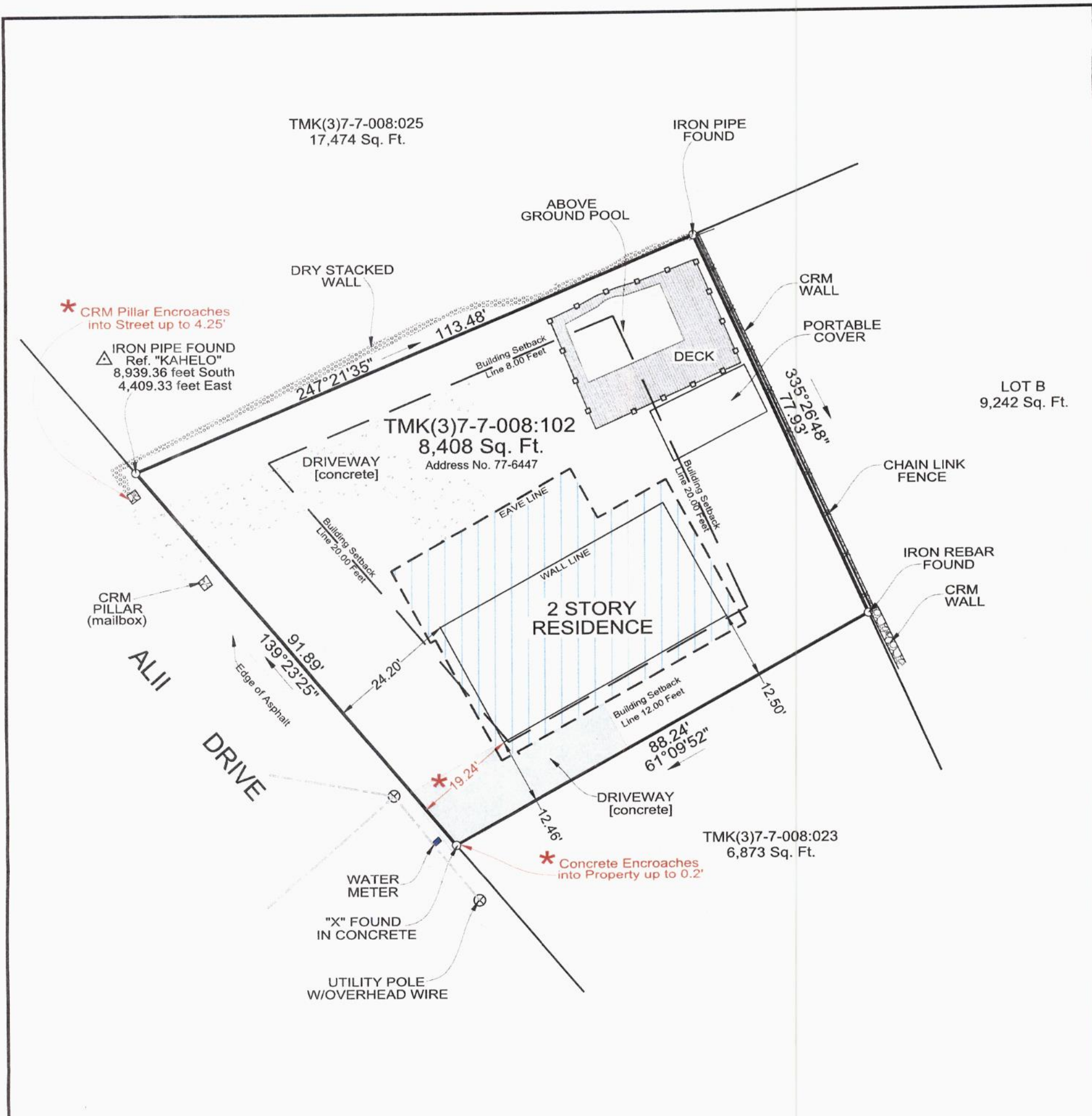
This is to inform you that our records on file, relative to the status of the subject, discloses that:

- No Building, Electrical and Plumbing permit was issued for work done on the premise.
- No building permit was issued for the change of occupancy.
- At the time of completion, the subject complied to all building regulations that were in effect.
- Variance from any building regulation (Building, Electrical, Plumbing, or Sign) was/was not granted.
- The following violation(s) still outstanding:
- Building Electrical Plumbing Sign
- Others: Fences & Accessory Structures, Projections into Building Setbacks

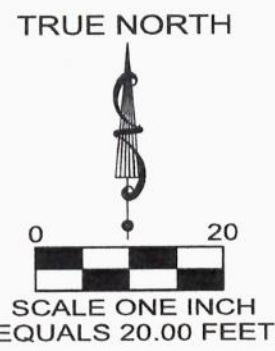
No Swimming Pool Permits were issued. However the swimming pool per submitted Report (June 30, 2021) Application for Zoning Variance Steve V. Razo & Vonnie D. Razo Kailua-Kona, North Kona Hawaii TMK; (3) 7-7-008:102, II. Nature and Purpose of Request B. 2.” An above ground pool and deck are located within the northeastern side and rear yard setback. The pool and deck will be removed and thus a variance for these improvements is not being requested.”, addresses the No Permitted Issue.

Kelly Wilson, Architect II
County of Hawaii Department of Public Works Building Division

“Exhibit B”



MAP SHOWING EXISTING CONDITIONS UPON
 Being a Portion of Royal Patent 4220, L.C. Award 10986,
 Apana 2 to Nawelu at Pahoehe 2nd,
 North Kona, County of Hawaii, State of Hawaii
 TMK: (3)7-7-008:102



NOTES:

- * 1) Boundary encroachments were found as shown & mapped hereon.
- 2) No violations of County zoning set-back codes were found.
- 3) The distances shown between the property lines & the features, shown hereon, are based on selected found boundary monuments & acceptable tolerances for properties of this type.
- 4) The features, shown hereon, were located by an actual survey performed on the ground on May 17th, 2021.
- 5) See accompanying report pertaining to setbacks and encroachments.
- 6) CRM = Concrete, Rock & Masonry Wall

NOTE: BASIS OF AZIMUTH DERIVED USING HEMISPHERE GPS RTK SYSTEM

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

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 hereon.

-COPY-

THOMAS G. PATTISON
 May 31st, 2021, Revised June 18th, 2021
 Hawaii License No. 10743

DE MINIMIS NOTE:
 ACT 131, (the de minimis law), amends Chapter 669 of the Hawaii Revised Statutes to allow certain legally constructed improvements not to be considered encroachments if they are over the lot line. In addition, the County of Hawaii has adopted Ordinance No. 02 70 on May 30, 2002, relating to the de minimis structure position discrepancy with regards to setbacks. This firm suggests that the parties involved discuss the findings of our survey with their real estate attorney(s) to ascertain if either of the the de minimis laws apply.

Setback Lines are shown from current data, but should be verified by builder. The description on this plat was provided to us by the client, and does not guarantee ownership, and should be compared to your Deed, Abstract or Certificate of Title. All building restrictions, building lines and easements may or may not be shown, check your Deed, Abstract, Title Report, and local ordinances, no responsibility is assumed by Surveyor. Compare all points before building by same and report any discrepancy at once. Dimensions are shown in feet and decimal parts thereof, no dimension is to be assumed by scaling.

PATTISON LAND SURVEYING

68-1125 N. Kaniku Dr. Unit 906 -Kamuela, HI 96743
 Office 808.327.9439