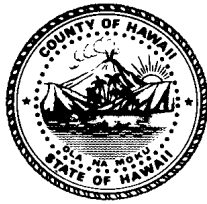


Mitchell D. Roth  
Mayor

Lee E. Lord  
Managing Director

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## County of Hawai'i PLANNING DEPARTMENT

Zendo Kern  
Director

Jeffrey W. Darrow  
Deputy Director

East Hawai'i Office  
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Phone (808) 961-8288  
Fax (808) 961-8742

September 26, 2022

Mr. Kenneth Helgren  
HC 1 Box 5376  
Kea'au, HI 96749-8505

e-mail: [kenshelgren@msn.com](mailto:kenshelgren@msn.com)

Dear Mr. Helgren:

**SUBJECT: Application: Variance | VAR- 17-000428**  
**Applicant: ALL AINA SERVICES/LORI MIKKELSON**  
**Owner: KENNETH & CAROL HELGREN**  
**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 Southwest Side Yard Setback)**  
**Tax Map Key: 1-5-051:228 (Lot 1742)**

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The Planning Director certifies the **approval** of Variance VAR-17-000428, subject to conditions. The variance will allow portion of the single-family dwelling roof eave to remain with a minimum 13.59-foot side (southwest) yard setback, in lieu of the required 20-foot side yard. The variance will also allow for the detached water tank to remain with a minimum 3.54-foot side (southwest) yard setback and side yard open space in lieu of the required 20-foot side yard setback and the 14-foot side yard open space. These exceptions are in lieu of the required 20-foot front yard setback and 14-foot front yard open space 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 one acre and is located in the Hawaiian Paradise Park Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 15-1568 9<sup>th</sup> Avenue.
2. **County Zoning.** Agricultural – 1 acre (A-1a).

3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** Front and Rear – 30 feet; Sides – 20 feet.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on May 18, 2017. The variance site plan is drawn to scale, prepared by the Niels Christensen, L.P.L.S. (The Independent Hawaii Surveyors, LLC), and denotes the position of the single-family dwelling roof eave constructed into the minimum 14-foot side (southwest) yard open space and the water catchment tank constructed into the 20-foot side yard setback and 14-foot side (southwest) yard open space. The request affects the southwest side yard setback and southwest side yard open space requirement. **(See attached survey map – Exhibit A)**

The survey map shows that portion of the single-family dwelling roof eave encroaches 7.59 feet into the 14-foot side (southwest) yard open space. It also shows the detached water tank encroaches 16.41 feet into the 20-foot side (southwest) yard setback and 10.46 feet. Into the 14-foot side (southwest) yard open space.

The encroachment leaves the single-family dwelling roof eave with a minimum 6.41-foot side (southwest) yard open space, in lieu of the required 14-foot side yard open space and the detached water tank with a minimum 3.54 feet side yard setback and open space.

6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (991162) was issued on October 8, 1999, to the subject property for a single story single-family dwelling consisting of 3 bedrooms, 3 baths, living room, kitchen and dining area. Along with entry lanai, open and covered lanai, walkway and detached water tank. Building permit was finalized on November 5, 2007.
7. **Agency Comments and Requirements.**
  - a. State Department of Health (DOH) memorandum dated June 5, 2017. "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.
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 May 18, 2017, and June 7, 2017, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 9, 2017.
9. **Comments from Surrounding Property Owners or Public.**

- a. Objection letter from Thomas Limp and Violet Limp dated June 16, 2017.  
**(See Exhibit B)**

10. **Time Extension.** The applicant's variance application was acknowledged by letter dated May 26, 2017, 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 December 15, 2022.

#### **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 roof eave and detached water tank into the 20-foot southwest side yard setback and 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 original dwelling improvements authorized under building permit 991162 which was issued on October 08, 1999, and given final inspection approval May 17, 2001. It also appears that 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.

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 roof eave and detached water tank encroachments constructed into the affected side yard setback and open space of the subject property include the following actions:

Remove the building encroachments and/or redesign the single-family dwelling 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 was in compliance with all County requirements. Any structural or design correction of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachment is within the side yard setback, to consolidate the subject property with the adjoining 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 of these 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.

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 21 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**

Mr. Kenneth Helgren  
VAR-17-000428  
Variance Approval Letter  
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Based on the variance application's survey map, the single-family dwelling roof eave and water tank built upon the subject property ("LOT 1742") 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, 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 single-family dwelling and 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. 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.
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-17-000428 null and void.

Sincerely,

*Zendo Kern*  
Zendo Kern (Oct 3, 2022 12:41 HST)  
ZENDO KERN  
Planning Director

LHN:ta

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Enclosures: Agency comments, Exhibits A & B

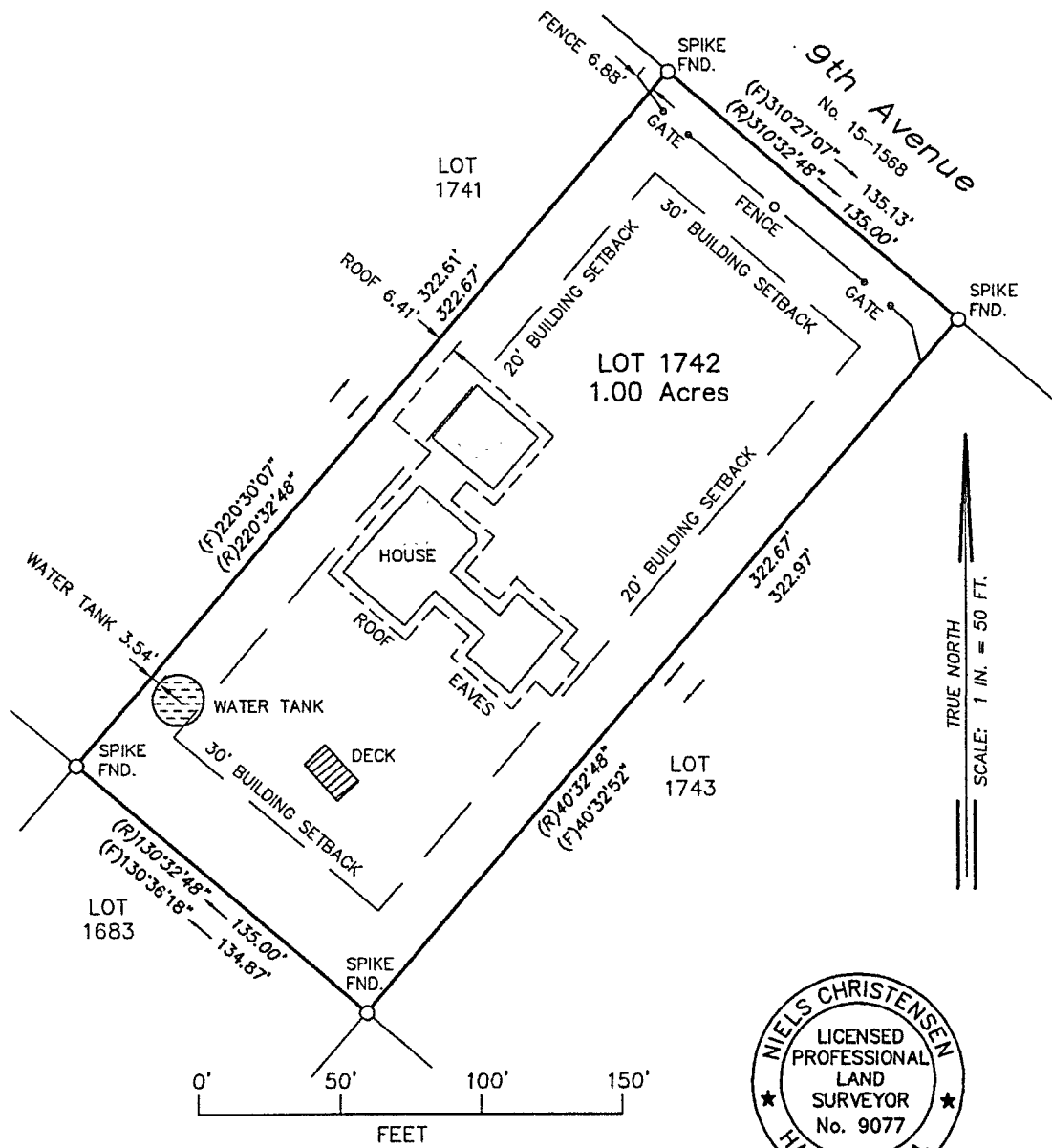
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xc: Real Property Tax Office (Hilo)  
Alex Gerken, GIS (via email)

Cc: Kim Rolon ([kimsrehawaii@gmail.com](mailto:kimsrehawaii@gmail.com))

**EXISTING CONDITIONS UPON LOT 1742**  
**BLOCK 7, HAWAIIAN PARADISE PARK**

KEAAU, PUNA  
 ISLAND OF HAWAII  
 HAWAII



**NOTES:**

1. The features shown hereon were located by an actual field survey completed on April 27, 2017.
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".

This work was prepared by me or under my direct supervision

*Niels Christensen*

Niels Christensen  
 Licensed Professional Land Surveyor  
 License Number 9077

Date: May 1, 2017  
 Drawing: JOB11938.dwg  
 TMK: (3) 1-5-51: 228

**The Independent Hawaii Surveyors, LLC**

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

6/16/17

JUN 08 03  
DIRECTOR  
DEPUTY  
PLANNING  
COMMUNITY  
DEVELOPMENT  
HAWAII

Dear Alliana Services  
Our preference is not to encroach closer  
to the limit allowed next to our  
property -- location of the property  
asking permission  
15-1568 9th Ave Hawaiian Paradise Aie  
Subdivision Keanu Puna HI 96709

Thank You  
Violet Lewis  
Kimo Family Trust

2017 JUN 20 PM 2 08  
PLANNING DEPARTMENT  
COUNTY OF HAWAII

112288