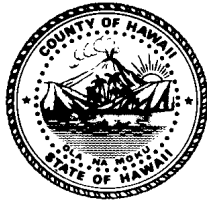


Mitchell D. Roth
Mayor

Lee E. Lord
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

Zendo Kern
Director

Jeffery 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

May 10, 2022

Mr. Brian Funai
Engineering Partners, Inc.
455 Lanikaula Street
Hilo, HI 96720

Dear Brian:

SUBJECT: Application: Variance | PL-ZVAR-2022-000015
Applicant: ENGINEERING PARTNERS INC., BRIAN FUNAI
Owner: PARADIS REED AND MARK REED
Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements Encroachment into Side (South) Yard Setback
Tax Map Key: (3) 2-4-078:008 (Lot A-1)

The Planning Director certifies the **Approval** of Zoning Variance No. 2022-000015 (PL-ZVAR-2022-000015), subject to variance conditions. The variance will allow a portion of the single-family dwelling (Building A) to remain with a minimum 18.9-foot side (south) yard setback, in lieu of the required 20-foot side yard setback. These exceptions are in lieu of the required 20-foot side yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards.

This variance does not grant tacit approval to the unpermitted garage/greenhouse situated on the subject property. (See Variance Condition 5)

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 1.143-acres and is situated in the Waiakea Homestead 3rd Series, Waiākea, South Hilo, Hawai'i. The subject property's street address is 420 Ainalako Road.

2. **County Zoning.** Agricultural - 1 acre (A-1a).
3. **State Land Use Designation.** Agricultural.
4. **Setback Requirements.** 30 feet front and rear; 20 feet for side.
5. **Special Permit:** Special Permit 20-000214 (SPP 20-000214) was approved on July 2, 2020, to allow for the construction and Operation of an Independent Elder Care Home with ten (10) Units and One (1) Main Kitchen.
6. **Variance Application.** The applicant submitted the variance application, attachments, filing fee, and associated materials on March 22, 2019. The variance application survey map dated March 15, 2022, was prepared by Engineering Partners, LLC. **(See Exhibit A-Site Plan)**

The site plan shows that a portion of the single-family dwelling (Building A) encroaches 1.10 feet (13.2 inches) into the 20-foot side (south) yard setback.

The encroachment leaves the single-family dwelling (Building A) a minimum 18.9 side (south) yard setback in lieu of the required 20-foot side yard setback.

7. **County Building Records.** Hawai'i County Real Property Tax office records indicate the following building permits:
 - a. Building Permit - 860252 was issued on February 12, 1986, for the construction of a single-family dwelling consisting of: two (2) bedrooms, two (2) baths, living room, kitchen, and dining area totaling approximately 1,192 square feet.
 - b. Building Permit – 892221 was issued on October 10, 2022, for the construction of a Ohana Dwelling consisting of: one bedroom and one bath totaling approximately 576 square feet with a 252 square-foot carport and an 84 square-foot utility room. Ohana Dwelling Permit No. OD-89-313.
 - c. Building Permit – 860164 was issued on January 28, 1996, for the construction of a storage building consisting of 896 square feet.
 - d. Building Permit – 871883 was issued on October 9, 1987, for the construction of a Warehouse consisting of 1,872 square feet.
 - e. Garage/Warehouse: Unpermitted, no building permit issued.

8. Agency Comments and Requirements.

- a. State Department of Health (DOH) memorandum dated April 14, 2022: “The Health Department found no environmental health concerns with regulatory implications in the submittals.” (See **Exhibit B**)
- b. The Department of Public Works-Building Division memorandum dated May 6, 2022. (See **Exhibit C**)

9. **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 April 13, 2022, and April 26, 2022, respectively. Notice of this application was published in the Hawai‘i Tribune Herald and West Hawai‘i Today on April 27, 2022.

10. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

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 encroachment of the single-family dwelling (Building A) into the 20-foot south side yard setback as required by the Zoning Code.

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 single-family dwelling constructed in 1986, approximately 36 years ago, and subsequent construction permits were issued and closed under valid building permit by the County for the existing structure. It also appears that past 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.

The above special and unusual circumstances determine the owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with best use and 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 building encroachments constructed into the affected side yard of the subject property include the following actions:

To remove the building encroachments and/or redesign the existing single-family dwelling denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the single-family dwelling (Building A) was in compliance with all County requirements.

Because the encroachments are within the side yard setback, one alternative would be to consolidate the front yard of the subject property with the roadway and consolidate the subject property with the adjoining side property, which is owned by someone else, and re-subdivide the property to modify property lines and adjust minimum front and side yard setbacks.

Both of these 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.

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 single-family dwelling has been in existence for approximately 36 years, and was constructed under valid building permits and other construction permits issued by the County of Hawai'i. Subsequent building additions were also constructed under valid building permits and other construction building permits. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

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 (Building A) built on the subject property (Lot A-1) will not meet the minimum side yard setback requirements pursuant to Hawai'i County Code, Chapter 25, Zoning.

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 dwellings (Dwelling A) on the subject property be destroyed by fire or other natural causes, the replacement structures 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. Applicant shall comply with all conditions stated in Special Permit No. 20- 000214 (SPP 20-000214).
5. The Garage/Greenhouse built without a building permit shall secure a building permit within one-year from the variance (PL-ZVAR-2022-000015) approval date.
6. Owner/Applicant shall be required to secure a Change of use Permits to operate as a Senior-Independent Living facility prior to Certificate of Occupancy.
7. Future or new building improvements and permitted uses shall be subject to State laws and

Mr. Brian Funai
Engineering Partners Inc.
May 10, 2022
Page 6

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 Variance No. PL-ZVAR-2022-000015.

Sincerely,

Zendo Kern
Zendo Kern (May 18, 2022 07:50 HST)
ZENDO KERN
Planning Director

LHN:cn

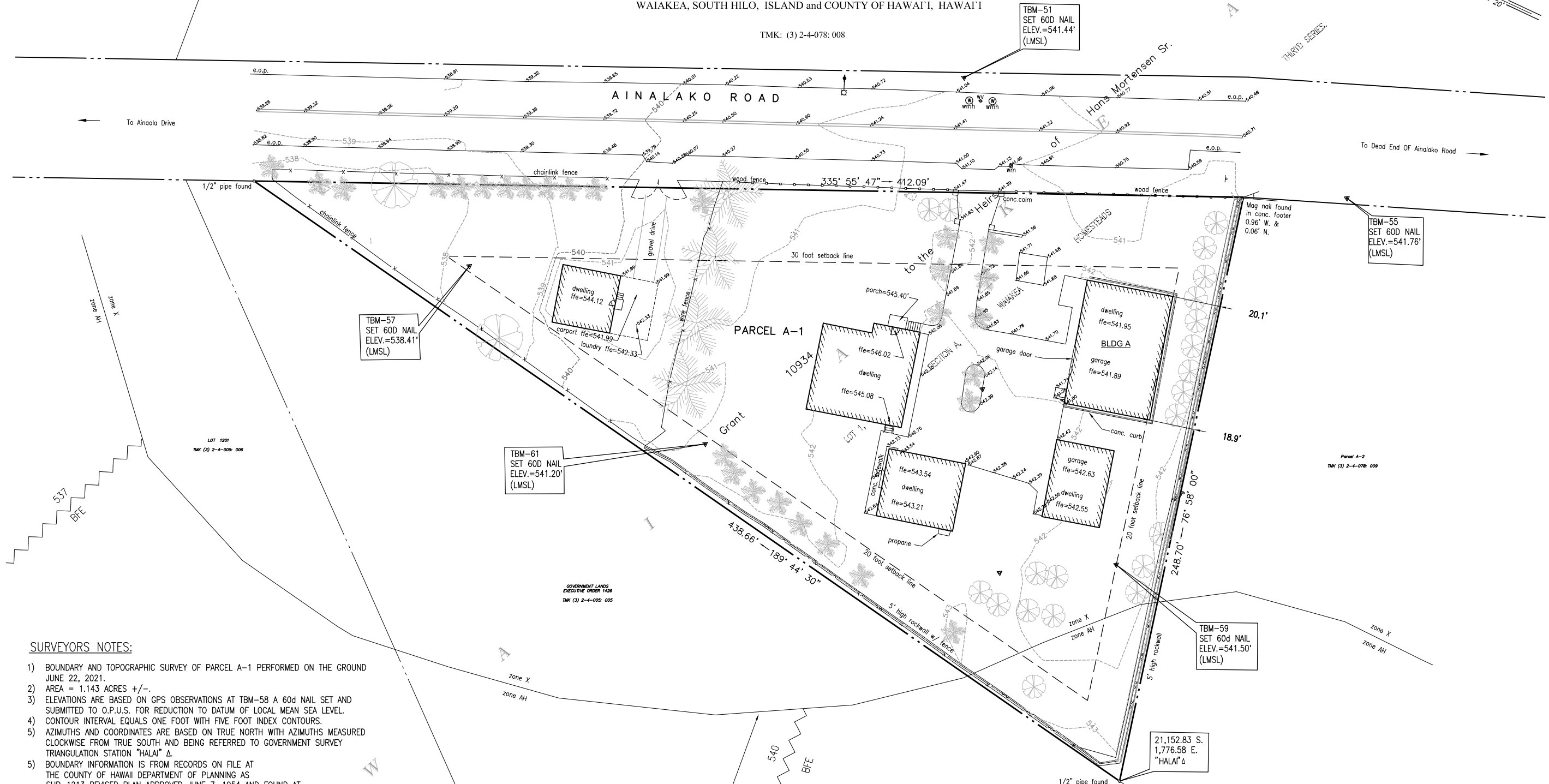
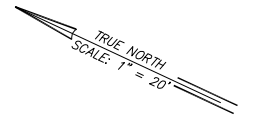
\\COH01\planning\public\Admin Permits Division\Variances From CoH02\Zone2\PL-ZVAR 2022-000015 TMK 240780080000 Reed.doc

Enclosure: Exhibit A – Site Plan
Exhibit B – DOH Memorandum
Exhibit C – DPW-Building Division Memorandum

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

BOUNDARY and TOPOGRAPHIC SURVEY
 PARCEL A-1, SUB-1213
 BEING a PORTION OF LOT 1
 SECTION A, GRANT 10943 to THE HEIRS of HANS MORTENSEN SR.
 WAIAKEA HOMESTEAD THIRD SERIES,
 WAIAKEA, SOUTH HILO, ISLAND and COUNTY OF HAWAII, HAWAII

TMK: (3) 2-4-078: 008



TBM-57
SET 60d NAIL
ELEV.=538.41'
(LMSL)

TBM-51
SET 60d NAIL
ELEV.=541.44'
(LMSL)

TBM-55
SET 60d NAIL
ELEV.=541.76'
(LMSL)

TBM-61
SET 60d NAIL
ELEV.=541.20'
(LMSL)

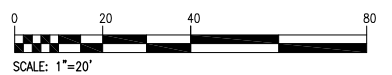
TBM-59
SET 60d NAIL
ELEV.=541.50'
(LMSL)

21,152.83 S.
1,776.58 E.
"HALA" Δ

SURVEYORS NOTES:

- 1) BOUNDARY AND TOPOGRAPHIC SURVEY OF PARCEL A-1 PERFORMED ON THE GROUND JUNE 22, 2021.
- 2) AREA = 1.143 ACRES +/-.
- 3) ELEVATIONS ARE BASED ON GPS OBSERVATIONS AT TBM-58 A 60d NAIL SET AND SUBMITTED TO O.P.U.S. FOR REDUCTION TO DATUM OF LOCAL MEAN SEA LEVEL.
- 4) CONTOUR INTERVAL EQUALS ONE FOOT WITH FIVE FOOT INDEX CONTOURS.
- 5) AZIMUTHS AND COORDINATES ARE BASED ON TRUE NORTH WITH AZIMUTHS MEASURED CLOCKWISE FROM TRUE SOUTH AND BEING REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION "HALA" Δ.
- 6) BOUNDARY INFORMATION IS FROM RECORDS ON FILE AT THE COUNTY OF HAWAII DEPARTMENT OF PLANNING AS SUB-1213 REVISED PLAN APPROVED JUNE 7, 1954 AND FOUND AT WWW.PLANNING.HAWAIICOUNTY.GOV.
NO TITLE SEARCH HAS BEEN PERFORMED AND NO IMPLICATION OF OWNERSHIP OF FENCES OR OTHER IMPROVEMENTS IS BEING MADE BY THIS SURVEY, SURVEYOR OR FIRM.
- 7) ENCROACHMENTS, IF ANY, OR RIGHTS OF OTHERS HAVE NOT BEEN ADDRESSED BY THIS SURVEY.
- 8) FLOOD ZONE INFORMATION SHOWN HEREIN IS TAKEN FROM FEMA FIRM PANEL 912, MAP No.1551660912F WITH THE EFFECTIVE DATE OF 9/29/2017.
- 9) THE CURRENT HAWAII COUNTY ZONING FOR THIS PARCEL IS A-1a PER WWW.PLANNING.HAWAIICOUNTY.GOV.
- 10) SETBACK LINE MINIMUMS ARE PER WWW.PLANNING.HAWAIICOUNTY.GOV.
- 11) SITUS: 420 AINALAKO ROAD, HILO, HI 96720.

Four Mile Creek Tributary No. 3
scaled from FEMA MAP 1551660912F
effective date 9/02/2017



THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION
COPY - 1/19/2022
 Signature _____ Expiration Date of the License: 04-30-2022

EXHIBIT A



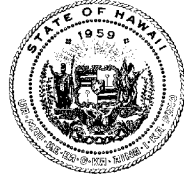
ENGINEERING PARTNERS
 455 E. Lanikaula St. | Hilo, Hawaii 96720
 Main (808) 933-7900 | www.epinc.pro
 Hawaii | Las Vegas

01/19/2022 8:41 AM MAILED: PROJECTS\2021\PROJECTS\1000-21-XL REED, JONAS, REVIEW 4 - JONAS\CALCULATING

Mori, Ashley

From: Honda, Eric T. <Eric.Honda@doh.hawaii.gov>
Sent: Thursday, April 14, 2022 2:31 PM
To: Planning Internet Mail
Subject: PL-ZVAR-2022-000015
Attachments: PL-ZVAR-2022-000015 TMK2-4-078--008.doc

Eric Honda
District Environmental Health Program Chief
Hawaii District Health Office
(808) 933-0917
Eric.honda@doh.hawaii.gov



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: April 14, 2022

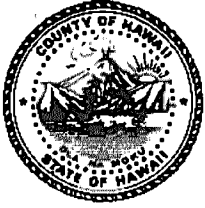
TO: Mr. Zendo Kern
Planning Director, County of Hawaii

FROM: Eric Honda
District Environmental Health Program Chief

SUBJECT: Application: Zoning Variance (PL-ZVAR-2022-000015)
Applicant: ENGINEERING PARTNERS INC.- BRIAN FUNAI
Owner: 420 AINALAKO LAND TRUST- PARADIS REED
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
TMK: 2-4-078:008 (Lot A-1)

The Health Department found no environmental health concerns with regulatory implications in the submittals.

EXHIBIT B



BUILDING DIVISION – DPW

COUNTY OF HAWAII – 101 Pauahi Street, Suite 7 – Hilo, Hawai'i 96720
Hilo Office (808) 961-8331 • Fax (808) 961-8410 Kona Office (808) 323-4720 • Fax (808) 327-3509

May 6, 2022

TO:

Zendo Kern
County of Hawaii – Planning Dept.
West Hawaii Office
74-5044 Ane Keohokalole Hwy
Kailua Kona, HI. 96740

SUBJECT:

Variance – PL – ZVAR – 2022 - 000015
Engineering Partners INC. – Brian Funai
420 Ainalako Land Trust – Paradis Reed

TMK: (3) 2-4-078:008 (Lot A-1)

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

- No Building 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 with all Building Code regulations that were in effect.
- Variance from any building regulation (Building, Electrical, Plumbing, or Sign) was/was not granted.
- The following violations(s) still outstanding:
 - Building Electrical Plumbing Sign
- Others: All existing permits are recorded on TMK (3)2-4-004:093.

There appears to be multiple structures used as dwellings. Unable to determine what structure is currently used as "existing garage / workshop" as described in variance request. Change of Use permits will be required to operate as Senior Independent Living facility.