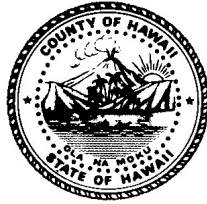


Mitchell D. Roth  
Mayor

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

March 16, 2023

Kim Chiodo, Project Manager  
Land Planning Hawaii LLC  
194 Wiwo'ole Street  
Hilo, HI 96720

e-mail: [kim@landplanninghawaii.com](mailto:kim@landplanninghawaii.com)

Dear Kim Chiodo:

**SUBJECT: Application: Variance – PL-ZVAR-2023-000034**  
**Applicant: KIM CHIODO | LAND PLANNING HAWAII LLC**  
**Owners: JAMES NUDO & JOAN STEWART**  
**Variance from Chapter 25, Zoning, Article 5, Division 1**  
**Section 25-5-7, Minimum Yards, and Section 25-4-44, Permitted**  
**Projections into Yards and Open Space Requirements**  
**(Encroachment into Rear (Northwest) Yard Setback and Side**  
**(West) Yard Setback.**  
**Tax Map Key: (3) 2-3-029: 003 (Lot 47)**

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The Planning Director certifies the **Approval** of Zoning Variance No. PL-ZVAR-2023-000034, subject to variance conditions. The variance will allow a portion of the detached bedroom/bath to remain with a minimum rear (northwest) yard setback ranging from 9.5 feet to 9.8 feet, and associated roof eave projection ranging from 7.4 feet to 7.9 feet rear (northwest) yard open space in lieu of the minimum 20-foot rear yard setback and 14-foot rear yard open space requirement. It also allows for the detached bedroom/bath to remain with a minimum 9.3 feet side (west) yard setback in lieu of the required 10-foot side yard setback requirement. These exceptions are in lieu of the required 20-foot rear yard and 10-foot side yard setback and the 14-foot rear 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.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 20,000 sq. ft. and is situated in the Pi‘ihonua Houselots, 2<sup>nd</sup> Series, Pi‘ihonua, South Hilo, Hawai‘i. The subject property’s street address is 1616 Waianuenue Ave. Hilo, Hawai‘i.
2. **County Zoning.** Single-Family Residential – 15,000 sq. ft. (RS-15).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20 feet front and rear; 10 feet for side.
5. **Variance Application.** The applicant submitted the Variance Application, attachments, filing fee, and associated materials on January 20, 2023. The Variance Application survey map dated January 17, 2022, was prepared by Engineering Partners. **(See Exhibit A-Site Plan)**
6. **County Building Records.** Hawai‘i County Real Property Tax Office records indicate that Building Permit B2011-0949H was issued on June 28, 2011, for the construction of a detached bedroom/bath.
7. **Agency Comments and Requirements.**
  - a. County of Hawai‘i, Department of Public Works – Building Division memorandum dated February 17, 2023: “At the time of completion, the subject complied with all Building Code regulations that were in effect”. **(See Exhibit B - Building Division - DPW Memorandum)**
  - b. No comments received from State of Hawai‘i - Department of Health.
8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to the Notarized Affidavit the first and second notices were mailed on February 2, 2023, and February 6, 2023, respectively. Notice of this application was published in the Hawai‘i Tribune Herald and West Hawai‘i Today on February 10, 2023.
9. **Comments from Surrounding Property Owners or Public.** No written comments 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 detached bedroom/bath into the 20-foot rear yard setback and the 14-foot front yard open space as required by the Zoning Code.

The encroachment leaves the detached bedroom/bath with a minimum rear (northwest) yard setback ranging from 9.5 feet to 9.8 feet and associated roof eave projection ranging from 7.4 feet to 7.9 feet (northwest) yard open space in lieu of the minimum 20-foot rear yard and 14-foot rear yard open space requirement. It also leaves the detached bedroom/bath with a minimum 9.3 feet side (west) yard setback in lieu of the required 10-foot side yard setback requirement.

The site plan shows that a portion of the detached bedroom/bath encroaches 10.2 feet to 10.8 feet into the 20-foot rear (northwest) yard setback and associated roof eave encroaches 6.1 feet to 6.6 feet into the 14-foot rear (northwest) yard open space. The detached bedroom/bath also encroaches 0.70 feet (8.4 inches) into the side (west) yard setback.

The owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would not be practicable when the owners complied and secured all necessary building permits from the County. Further, there is a 10-foot-wide utility easement which aligns with the northwest rear yard boundary that provides a buffer for the adjacent property and would minimize the impact of the detached bedroom/bath to the adjacent rear yard property owner.

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 detached bedroom bath 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 detached bedroom was in compliance with all County requirements.

Because the encroachment is within the rear yard and side yard setbacks, to consolidate the subject property with the adjacent properties and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options.

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.

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.

No objections were received from surrounding property owners.

Given the minute encroachment of 0.7 feet (8.4 inches) into the side (west) yard setback and that the rear yard aligns with a 10-foot -wide utility easement, therefore, there should be little or no impact in providing adequate air circulation and exposure to light between permitted structure(s)/uses and boundary/property lines.

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 detached bedroom/bath has been in existence for approximately 12 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.

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 built on the subject property (Lot 10) will not meet the minimum front yard setback requirements pursuant to Hawai'i County Code, Chapter 25, Zoning.

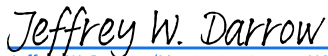
Kim Chiodo, Project Manager  
Land Planning Hawaii LLC  
PL-ZVAR-2023-000034  
March 16, 2023  
Page 5

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 detached bedroom/bath situated 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. 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 Variance No. PL-ZVAR-2023-000034.

Sincerely,



Jeffrey W. Darrow (Mar 20, 2023 11:17 HST)

JEFFREY W. DARROW  
Deputy Planning Director

LHN:so

\\COH01\planning\public\Admin Permits Division\Variances From CoH02\Zone2\PL-ZVAR 2023-000034 TMK 230290030000 Nudo & Stewart.doc

Enclosure: Exhibit A – Site Plan  
Exhibit B – DPW Building Memorandum dated 2/17/2023

cc: Real Property Tax Office (Hilo)  
Alex Gerken, GIS

**BOUNDARY AND TOPOGRAPHIC SURVEY MAP  
OF**

**LOT 47,  
GRANT 11,123 TO THOMAS STRATHAIRN  
PIIHONUA HOUSE LOTS 2nd SERIES,  
PIIHONUA, SOUTH HILO, HAWAII**  
TMK: (3) 2-3-029: 003

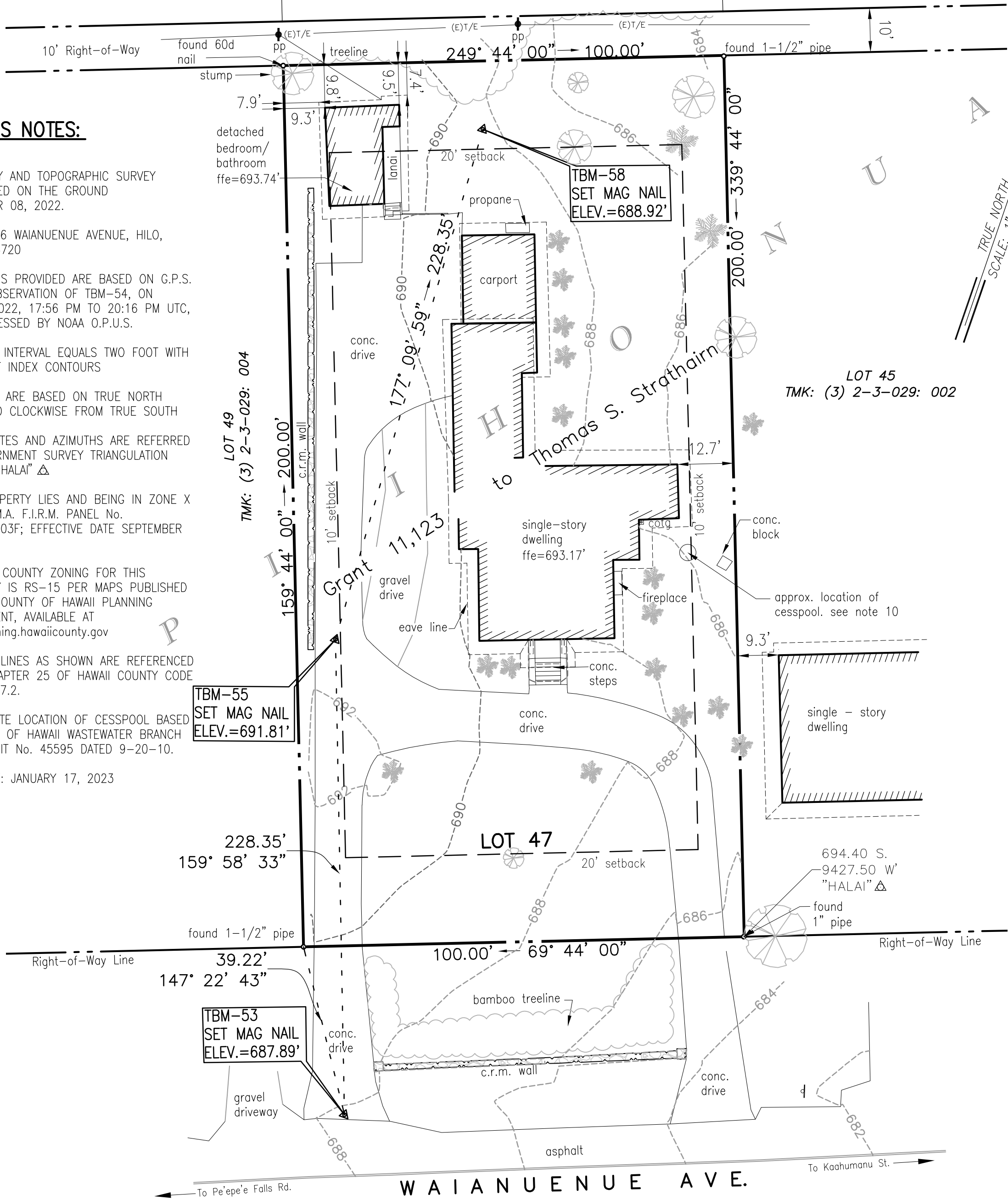
LOT 48  
TMK: (3) 2-3-029: 043

LOT 46  
TMK: (3) 2-3-029: 044

LOT 44  
TMK: (3) 2-3-029: 045

**SURVEYORS NOTES:**

- BOUNDARY AND TOPOGRAPHIC SURVEY PERFORMED ON THE GROUND NOVEMBER 08, 2022.
- SITUS: 1616 WAIANUENUE AVENUE, HILO, HAWAII 96720
- ELEVATIONS PROVIDED ARE BASED ON G.P.S. STATIC OBSERVATION OF TBM-54, ON 11-07-2022, 17:56 PM TO 20:16 PM UTC, AS PROCESSED BY NOAA O.P.U.S.
- CONTOUR INTERVAL EQUALS TWO FOOT WITH TEN FOOT INDEX CONTOURS
- AZIMUTHS ARE BASED ON TRUE NORTH MEASURED CLOCKWISE FROM TRUE SOUTH
- COORDINATES AND AZIMUTHS ARE REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION "HALAI" Δ
- THIS PROPERTY LIES AND BEING IN ZONE X PER F.E.M.A. F.I.R.M. PANEL No. 1551660903F; EFFECTIVE DATE SEPTEMBER 29, 2017
- CURRENT COUNTY ZONING FOR THIS PROPERTY IS RS-15 PER MAPS PUBLISHED BY THE COUNTY OF HAWAII PLANNING DEPARTMENT, AVAILABLE AT [www.planning.hawaiicounty.gov](http://www.planning.hawaiicounty.gov)
- SETBACK LINES AS SHOWN ARE REFERENCED FROM CHAPTER 25 OF HAWAII COUNTY CODE § 25-5-7.2.
- APPROXIMATE LOCATION OF CESSPOOL BASED ON STATE OF HAWAII WASTEWATER BRANCH IWS PERMIT No. 45595 DATED 9-20-10.
- MAP DATE: JANUARY 17, 2023

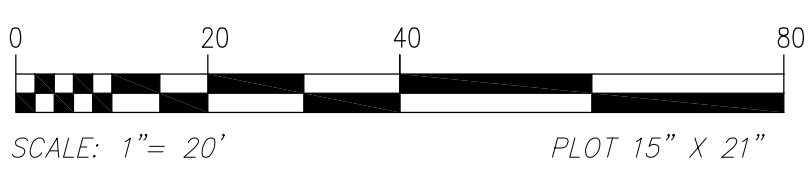


**EXHIBIT A**

**FIGURE 1**

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

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION  
**COPY - 01/17/2023**



Signature \_\_\_\_\_ Expiration Date of the License: 04-30-2024

01/17/2023 9:11 am M:\EO PROJECTS\2022 PROJECTS\14300-22-02 1616 WAIANUENUE AVE\4-DWG\XREF\EXTO.DWG



# 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

**EXHIBIT B**

February 17, 2023

COH PLANNING DEPT  
FEB 22 2023 AM 10:57

**TO:**  
Larry Nakayama  
County of Hawaii – Planning Dept.  
Aupuni Center  
101 Pauahi St #5  
Hilo, HI. 96720

REC'D HAND DELIVERED

**SUBJECT:**  
Variance – PL – ZVAR-2023-000034  
Applicant: Kim Chiodo – Land Planning Hawaii LLC

TMK: (3) 2-3-029:003 Lot 47

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:

This status report reflects Building Division records only and does not include information from other agencies.

Should you have any questions regarding matters contained herein, please feel free to contact Chris Domino at phone no. (808) 323-4720



## LINKED PERMIT INSPECTION HISTORY REPORT (B2011-0949H\_LTS) FOR COUNTY OF HAWAII

Permit Type: PW Building	Application Date: 09/14/2010	Owner:
Work Class: Residential	Issue Date: 06/28/2011	Parcel: 230290030000
Status: Completed	Expiration Date:	Address: 1616 WAIANUENUE AVENUE
IVR Number: 101219		

Scheduled Date	Actual Start Date	Inspection Type	Inspection No.	Inspection Status	Primary Inspector	Reinspection Required?	Complete
<b>Inspection Location: 1616 WAIANUENUE AVENUE</b>							
<b>Permit: B2011-0949H_LTS</b>							
10/14/2011	10/14/2011	BLD-Final	IPERMIT2011-1834 8_LTS	Rejected	David Abelaye	No	Complete
10/28/2011	10/28/2011	BLD-Final	IPERMIT2011-1932 1_LTS	Passed	David Abelaye	No	Complete
<b>Permit: E2011-0923H_LTS</b>							
09/21/2011	09/21/2011	ELE-Final	IPERMIT2011-1665 9_LTS	Rejected	Troy Haspe	No	Complete
09/27/2011	09/27/2011	ELE-Final	IPERMIT2011-1714 8_LTS	Passed	Troy Haspe	No	Complete
<b>Permit: M2011-0906H_LTS</b>							
09/30/2011	09/30/2011	PLM-Final	IPERMIT2011-1749 6_LTS	Passed	Wallace Adviento	No	Complete