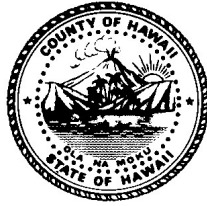


Mitchell D. Roth
Mayor

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

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

November 14, 2023

Christine Kim-Iwata
282 Edita Street
Hilo, Hawai'i 96720

Email: ackflower.88@gmail.com

Dear Ms. Kim-Iwata:

Subject: **Application:** **Zoning Variance | PL-ZVAR-2023-000049 - CORRECTED**
Applicant: **CHRISTINE KIM-IWATA**
Owner: **CHRISTOPHER MITSUO IWATA**
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
Side Yard Setback).**
Tax Map Key: **(3) 1-5-048:163 (Lot 1164)**

The Planning Director certifies the **approval** of Variance – PL-ZVAR-2023-000049, subject to variance conditions. The variance will allow a portion of the single-family dwelling to remain with a minimum 6.62 foot side (northwest) yard setback and associated roof eave projection to remain with a 3.08 foot side (northwest) yard open space. 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.

This corrected variance letter deletes Condition 4, as condition 4 is not relevant since the single-family dwelling was permitted under Building Permit B2011-1479H issued on October 15, 2007, and finalized on February 13, 2008. This error was found to have no major impact on the decision of this variance and will replace the previous approval

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately one acre and is located in the Hawaiian Paradise Park Subdivision, situated in Kea‘au, Puna, Hawai‘i. The subject property’s street address 15-1740 13th Avenue.
2. **County Zoning.** Agricultural – 1acre (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 October 24, 2023. The variance application site map was prepared by The Independent Hawaii 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 of 6.62 feet and associated roof eave projection of 3.08 feet side (northwest) yard open space in lieu of the minimum 20-foot side yard setback and 14-foot side yard open space requirement.

The survey map shows the following encroachment:

- a. The single-family dwelling encroaches 13.38 feet into the 20-foot side (northwest) yard setback and associated roof eave encroaches 10.92 feet into the 14-foot side (northwest) yard open space.

6. **County Building Records.** Hawai‘i County Real Property Tax office records indicate that the following building permits were issued.
 - a. Building Permit B2011-1479H issued on October 15, 2007, for the construction of a single-family dwelling consisting of three (3) bedrooms, two and one-half (2-1/2) baths, living room, dining area and kitchen. Building Permit finalized on February 13, 2008.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated October 17, 2023: “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 copies 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 October 4, 2023, and October 17, 2023, respectfully. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on October 27, 2023.
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

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 improvements authorized under building permit Building Permit B2011-1479H issued, on October 15, 2007, and the building permit finalized on February 13, 2008. It appears that building permit inspections of the premises by the affected agencies during construction of the single-family dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

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 2008 and subsequent construction permits were issued and closed under valid building permit by the County for the existing single-family dwelling. 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 the best use and 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:

Removing the portion of the single-family dwelling encroaching into the side (northwest) setback to meet the current setback requirements as prescribed by the Zoning Code would diminish the overall functionality of the single-family dwelling. 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.

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 has been in existence for approximately 19 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

Based on the variance application's survey map, the built upon the subject property ("LOT 1164") 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), 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.
2. 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.
3. 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.
4. ~~[The owner/applicant shall secure a building permit to legitimize an unpermitted portion of the single family dwelling and the detached garage within a year of this approved variance.]~~
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.

Christine Kim-Iwata
PL-ZVAR-2023-000049
Zoning Variance Approval Letter
November 14, 2023
Page 6

6. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject PL-ZVAR-2023-000049 null and void.

Sincerely,

Zendo Kern
Zendo Kern (Nov 17, 2023 15:29 HST)
ZENDO KERN
Planning Director

LHN:ta

\\coh01\planning\public\Admin Permits Division\Variances From CoH02\Zone1\PL-ZVAR-2023-000049 - Corrected TMK
150481630000 Iwata.docx

Encl: Exhibit A - Site Plan

cc: Real Property Tax Office (Hilo)
Alan Gunn, GIS (via email)

EXISTING CONDITIONS UPON LOT 1164
BLOCK 7, HAWAIIAN PARADISE PARK
 KEAAU, PUNA DISTRICT
 ISLAND OF HAWAII
 STATE OF HAWAII



LEGEND
 ● = PIPE SET
 ⊕ = SPIKE FOUND



This work was prepared by me
 or under my direct supervision
Heath E. Huovinen
 Heath E. Huovinen
 Licensed Professional Land Surveyor
 License Number 19368

NOTES:

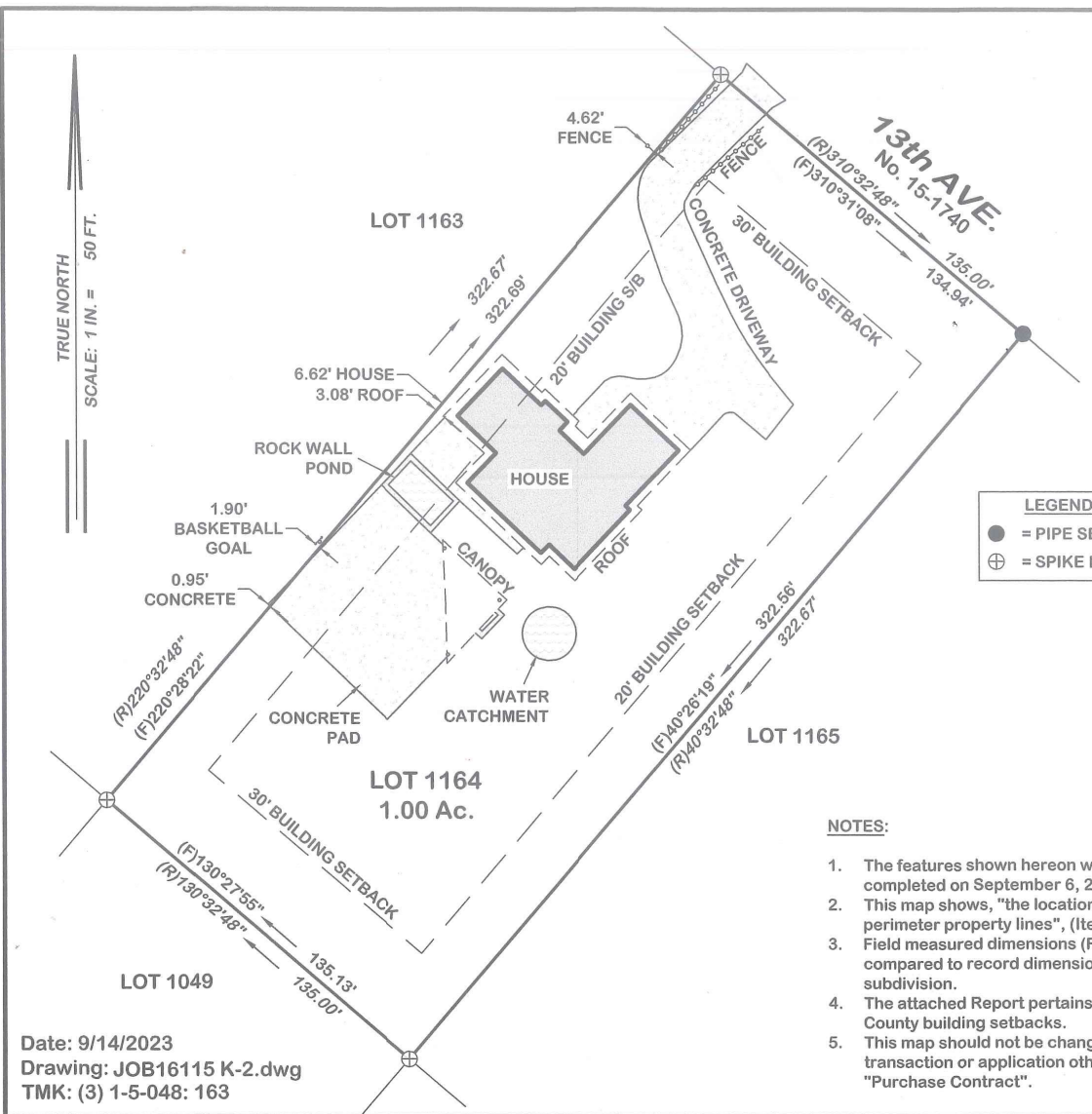
1. The features shown hereon were located by an actual field survey completed on September 6, 2023.
2. This map shows, "the location of any improvements in the vicinity of perimeter property lines", (Item K-2 of "Purchase Contract").
3. Field measured dimensions (F) are within acceptable tolerances as 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".

The Independent Hawaii Surveyors, LLC

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

19°35'9.7" N, 154°57'52.4" W COUNTY GIS

EXHIBIT A

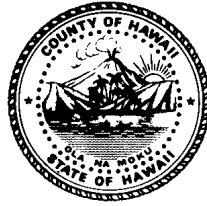


Date: 9/14/2023
 Drawing: JOB16115 K-2.dwg
 TMK: (3) 1-5-048: 163

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

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

November 9, 2023

Cristine Kim-Iwata
282 Edita Street
Hilo, Hawai'i 96720

Dear Ms. Kim-Iwata:

Subject: **Application:** **Zoning Variance | PL-ZVAR-2023-000049**
Applicant: **CHRISTINE KIM-IWATA**
Owner: **CHRISTOPHER MITSUO IWATA**
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
Side Yard Setback).
Tax Map Key: (3) 1-5-048:163 (Lot 1164)

The Planning Director certifies the **approval** of Variance – PL-ZVAR-2023-000049, subject to variance conditions. The variance will allow a portion of the single-family dwelling to remain with a minimum 6.62 feet side (northwest) yard setback and associated roof eave projection to remain with a 3.08 feet side (northwest) yard open space. 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.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately one acre and is located in the Hawaiian Paradise Park Subdivision, situated in Kea'au, Puna, Hawai'i. The subject property's street address 15-1740 13th Avenue.
2. **County Zoning.** Agricultural – 1acre (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 October 24, 2023. The variance application site map was prepared by The Independent Hawaii 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 of 6.62 feet and associated roof eave projection of 3.08 feet side (northwest) yard open space in lieu of the minimum 20-foot side yard setback and 14-foot side yard open space requirement.

The survey map shows the following encroachment:

- a. The single-family dwelling encroaches 13.38 feet into the 20-foot side (northwest) yard setback and associated roof eave encroaches 10.92 feet into the 14-foot side (northwest) yard open space.

6. **County Building Records.** Hawai'i County Real Property Tax office records indicate that the following building permits were issued.

- a. Building Permit B2011-1479H issued on October 15, 2007, for the construction of a single-family dwelling consisting of three (3) bedrooms, two and one-half (2-1/2) baths, living room, dining area and kitchen. Building Permit finalized on February 13, 2008.

6. **Agency Comments and Requirements.**

- a. State Department of Health (DOH) memorandum dated August 8, 2022: "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).

7. **Public Notice.** The applicant filed a transmittal letter with copies 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 October 4, 2023, and October 17, 2023, respectfully. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on October 27, 2023.

8. **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

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 improvements authorized under building permit Building Permit B2011-1479H issued, on October 15, 2007, and the building permit finalized on February 13, 2008. It appears that building permit inspections of the premises by the affected agencies during construction of the single-family dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

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 2008 and subsequent construction permits were issued and closed under valid building permit by the County for the existing single-family dwelling. 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 the best use and 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:

Removing the portion of the single-family dwelling encroaching into the side (northwest) setback to meet the current setback requirements as prescribed by the Zoning Code would diminish the overall functionality of the single-family dwelling. 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.

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 has been in existence for approximately 19 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

Based on the variance application's survey map, the built upon the subject property ("LOT 1164") 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), 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.
2. 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.
3. 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.
4. The owner/applicant shall secure a building permit to legitimize and unpermitted portion of the single-family dwelling and the detached garage within a year of this approved variance.
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.
6. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject PL-ZVAR-2023-000049 null and void.

Sincerely,

Jeffrey W. Darrow

ZENDO KERN
for Planning Director

Cristine Kim-Iwata
PL-ZVAR-2023-000049
Zoning Variance Approval Letter
November 9, 2023
Page 6

LHN:so
\\coh01\planning\public\Admin Permits Division\Variances From CoH02\Zone1\PL-ZVAR-2023-000049 TMK 150481630000
Iwata.docx

Encl: Exhibit A - Site Plan

cc: Real Property Tax Office (Hilo)
Alan Gunn, GIS (via email)

The Independent Hawaii Surveyors, LLC



P.O. Box 577, Hilo, Hawaii 96721
Phone: 808 959-0360 www.hawaiiboundary.com

Invoice

Zhenni & Ertong Liang
22661 Brookhaven
Lake Forest, CA 92630

9/18/2023
Job No. 16115

TMK (3) 1-5-048: 163

Description of Services:

K-2 Survey of Lot 1164, Block 7, Hawaiian Paradise Park, Keaau, Puna.

See attached map & report.
General Excise Tax

Cost

1,080.00T

50.89

Heath E. Huovinen, L.P.L.S. 19368

Total: \$1,130.89

Amount Paid: -\$1,130.89

Balance Due: \$0.00

Invoices are due & payable within 30 days of the billing date hereon and due whether an escrow is closed or cancelled. A service charge of \$10.00 will be assessed for future statements and our policy is to charge a 1% monthly late charge (APR of 12%) on all past due accounts.

The Independent Hawaii Surveyors, LLC



P.O. Box 577, Hilo, Hawaii 96721

Phone: 808 959-0360

www.hawaiiboundary.com

- REPORT -

September 14, 2023

Job No. 16115

To: Zhenni & Ertong Liang
22661 Brookhaven
Lake Forest, CA 92630

TMK: (3) 1-5-048: 163

Description of Services:

K-2 Survey of Lot 1164, Block 7, Hawaiian Paradise Park, Keaau, Puna.

Findings of Survey:



Boundary corners are VERIFIED AS CORRECT and have an average positional discrepancy of 0.23 feet with respect to the record plat or map and field survey, which is within an acceptable tolerance for property of this type and in this subdivision.

The attached map gives the conditions found by this field survey made on September 6, 2023: the measured dimensions (F) are compared to the record dimensions (R) of this property, the type of pins found (FND.) and set at the corners, the improvements on this property relative to the property boundaries, and any encroachments across property lines or into County Zoning Code building setbacks as shown.

NOTE:

1. The concrete pad projects 0.95 feet across the northwestern property boundary onto Lot 1163, the basketball goal projects 1.90 feet across and onto the same, and the fence projects 4.62 feet across and onto the same.
2. The roof projects as much as 16.92 feet into the side County Zoning Code 20-foot building setback of the northwestern property boundary and the house projects as much as 13.38 feet into the same.
3. Structures projecting into the setbacks may or may not be considered a violation by the County depending on such factors as date of construction, height of structure, and existence of a variance; a determination can only be made by the Hawaii County Planning Department.

Heath E. Huovinen, L.P.L.S. 19368

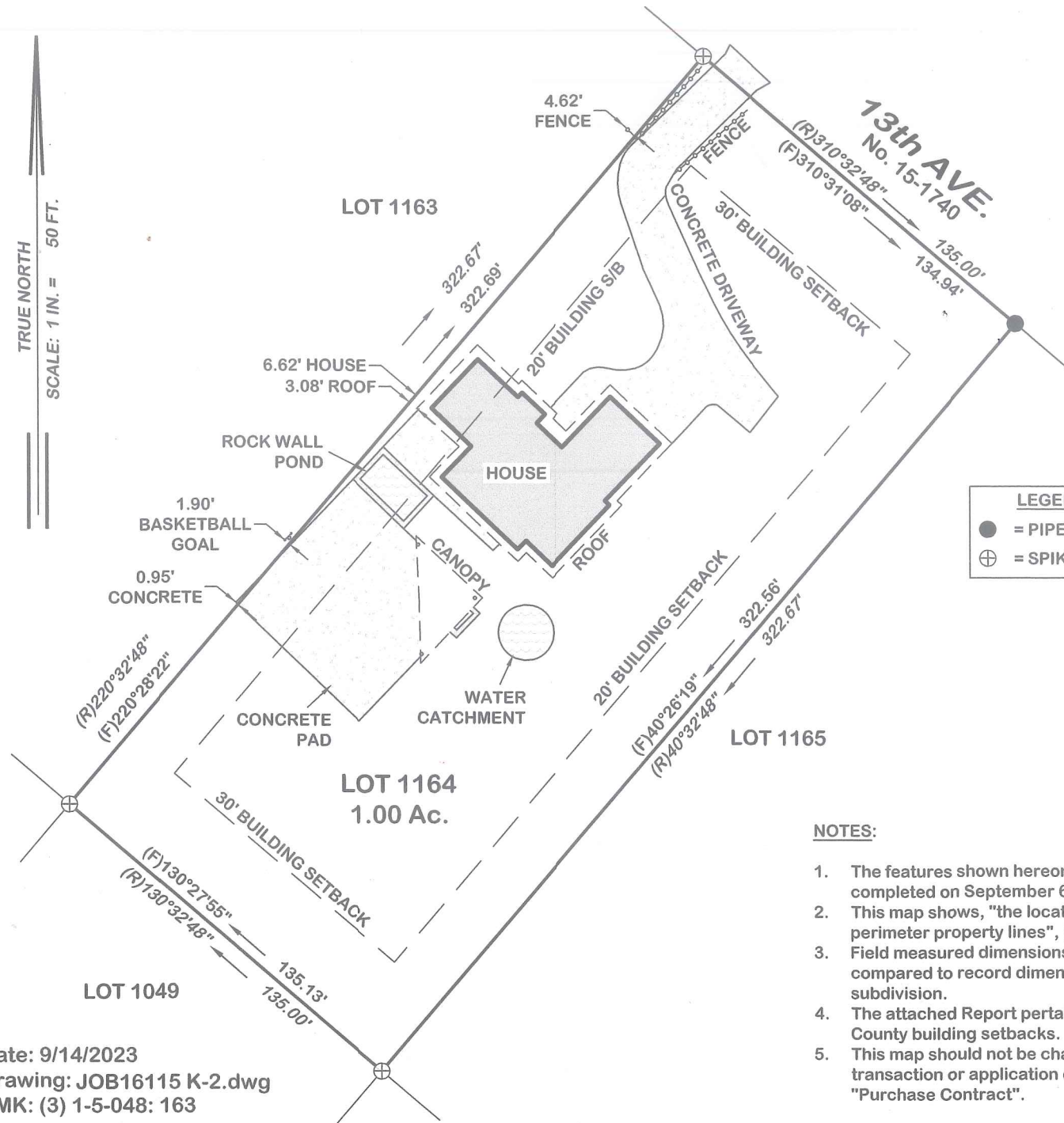
This document and attached map should not be changed, altered or used to execute any transactions or applications other than indicated above.

**EXISTING CONDITIONS UPON LOT 1164
BLOCK 7, HAWAIIAN PARADISE PARK**

KEAAU, PUNA DISTRICT
ISLAND OF HAWAII
STATE OF HAWAII



TRUE NORTH
SCALE: 1 IN. = 50 FT.



LEGEND

- = PIPE SET
- ⊕ = SPIKE FOUND



This work was prepared by me
or under my direct supervision

Heath E. Huovinen

Heath E. Huovinen
Licensed Professional Land Surveyor
License Number 19368

NOTES:

1. The features shown hereon were located by an actual field survey completed on September 6, 2023.
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".

Date: 9/14/2023
Drawing: JOB16115 K-2.dwg
TMK: (3) 1-5-048: 163

The Independent Hawaii Surveyors, LLC

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