

Mitchell D. Roth  
Mayor

Deanna Sako  
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

January 17, 2024

Jim Marquez  
HC 3 Box 11035  
Kea'au, HI 96749 9206

Email: [jimmarquezplanner@gmail.com](mailto:jimmarquezplanner@gmail.com)

Dear Mr. Marquez:

**SUBJECT: Application: Variance – PL-ZVAR-2023-000050**  
**Applicant: JIM MARQUEZ**  
**Owners: JIM AND INKA MARQUEZ**  
**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 Front (East) Yard Setback.**  
**Tax Map Key: (3) 2-6-014: 041 (Lot 4)**

The Planning Director certifies the **Approval** of Zoning Variance No. PL-ZVAR-2023-000050, subject to variance conditions. The variance will allow a portion of the single-family dwelling to remain with a minimum 11.95-foot front (east) yard setback and associated roof eave with a minimum 7.63-foot open space. These exceptions are in lieu of the required 15-foot front yard setback and 10-foot front (east) 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 7,570 sq. ft. and is located in the Ha'aheo Subdivision situated in Halepuna, South Hilo, Hawai'i. The subject property's street address is 728-C Wainaku Street, Hilo, Hawai'i.
2. **County Zoning.** Single-Family Residential – 7,500 sq. ft. (RS-7.5).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 15 feet front and 8 feet for side.

**Section 25-4-030. Minimum street frontage.** (e) No street frontage shall be required for any building site where the access to the building site is by means of a roadway easement.

5. **Variance Application.** The applicant submitted the Variance Application, attachments, filing fee, and associated materials on October 4, 2023. The Variance Application revised survey map dated May 7, 2021, was prepared by Neils Christensen, LPLS (The Independent Hawaii Surveyors, LLC) (See Exhibit A-Site Plan)
6. **County Building Records.**
  - a. Building Permit – 821189 was issued on July 2, 1982, for the construction of a single-family dwelling consisting of 1 bedroom, 1 bath, living room and kitchen. Building permit finalized on December 17, 2015.
  - b. Building Permit – 850961 was issued on May 28, 1985, for the conversion of garage into a bedroom. Building permit finalized on November 10, 2020.
  - c. Building Permit – BH2011-1085H was issued on July 22, 2011, for the addition of a new second level. Building Permit finalized on April 17, 2012.
7. **Agency Comments and Requirements.**
  - a. No comments were received from the County of Hawaii, Department of Public Works-Building Division.
  - b. State Department of Health (DOH) memorandum dated May 8, 2023. (See Exhibit A)
8. **Public Notice.** The applicant filed a transmittal letter with a copy of the notices sent to surrounding property owners via USPS. According to the Notarized Affidavit the first and second notices were mailed on November 30, 2023, and December 166, 2023, respectively.
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 single-family dwelling into the 15-foot front yard setback and 10-foot front yard open space requirements.

The encroachment leaves the single-family dwelling with a minimum 11.95-foot front (east) yard setback and associated roof eave with a 7.63-foot open space in lieu of the minimum 15-foot front yard setback and 10-foot open space requirements.

The site plan shows that a portion of the single-family dwelling encroaches 3.05 feet into the 15-foot front (east) yard setback and the associated roof eave encroaches 2.37 feet into the front (east) yard open space.

The variance will allow a portion of the single-family dwelling to remain with a minimum 11.95-foot front (east) yard setback and associated roof eave with a minimum 7.63-foot open space in lieu of the minimum 15-foot front yard setback and 10-foot open space requirements.

The owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would not be practicable since the owners complied and secured all necessary building permits from the County. Further, the single-family dwelling is situated on a parcel that rises approximately 24 feet from the Hawai'i Belt Road and minimizes any visual impact of the encroachment from Hawai'i Belt Road.

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 front 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 was in compliance with all County requirements.

Because the encroachment is within the front yard setback, to consolidate the subject property with the Hawai'i Belt Road 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.

The encroachment is in the front yard setback adjacent to the Hawai'i Belt Road, Therefore, it should not obstruct or prevent 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 single-family dwelling has been in existence for approximately 41 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 4) will not meet the minimum front yard setback requirements pursuant to Hawai'i County Code, Chapter 25, Zoning.

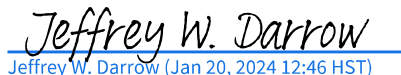
This variance application is approved subject to the following variance conditions:

Jim Marquez  
Approval Letter  
PL-ZVAR-2023-000050  
January 17, 2024  
Page 5

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 dwelling 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-2023-000050.

Sincerely,

  
Jeffrey W. Darrow (Jan 20, 2024 12:46 HST)

ZENDO KERN  
for Planning Director

LHN:so

\\COH01\planning\public\Admin Permits Division\Variances From CoH02\Zone2\PL-ZVAR 2023-000050 TMK 260140410000 Marquez.doc

Enclosure: Exhibit A – Site Plan

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

## DeVera, Ashley

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**From:** Jim Marquez <jimmarquezplanner@gmail.com>  
**Sent:** Tuesday, October 3, 2023 11:41 AM  
**To:** Planning Internet Mail  
**Subject:** VARIANCE APPLICATION

Attachment available until Nov 2, 2023

Hello Planners

I am having difficulty posting this on line wit EPIC.

[Click to Download](#)

1022023VARIANCE APPLICATION PACKAGE.pdf  
22.1 MB

I am ready to pay.

My difficulty: When I try to log-on, I receive a Warning Invalid User Name or Password.

Thank you in advance for your help.

Jim Marquez  
310 748-8726

Variance Application  
728C Wainaku Street

**APPLICANT FOR VARIANCE  
FROM ZONING CODE**

**COUNTY OF HAWAII  
PLANNING DEPARTMENT**

(Type or Print the requested information)

Owner: Jim Marquez

Owner's Signature: [Signature] Date: 9/28/2023

Address: 728 C Wainaku Street  
Hilo, HI 96720

Telephone: (Bus.) \_\_\_\_\_ (Home) 310 748-8726

Request: to encroach 9' into the required 15' rear yard of  
a single family parcel with access via a driveway easement.

Tax Map Key: 32-6-014-0410000 Subdivision #: \_\_\_\_\_

Area of Property: 7500 Zoning of Parcel: RS 7.5

Representative/ Applicant: Jim Marquez

Address: 728 C Wainaku St.

Telephone: 310 748 8726

APPLICANT'S REASON(S) FOR REQUESTING A VARIANCE: (Please attach a detailed written explanation of the Purpose or Nature of the request. Photos and maps may be included.)

No variance may be granted unless it is found that:

1. 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 that property;
2. There are no other reasonable alternatives that would resolve the difficulty; and
3. The variance shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes, and the County 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.

THIS APPLICATION MUST BE ACCOMPANIED BY A FILING FEE OF **TWO HUNDRED FIFTY DOLLARS** (\$250) payable to the County Director of Finance AND:

1. A completed application form with attachments;
2. A description of the property in sufficient detail for the public to precisely locate the property;
3. A scale drawn plot plan of the property showing all existing and proposed structures and improvements including any intrusions into setbacks; and
4. A list of the names, address, and tax map key of all owners of property within boundaries established by Section 25-2-4 of the Zoning Code.
5. All applications are required to be submitted through the County of Hawaii's new Electronic Processing and Information Center (EPIC). All documents including this application needs to be submitted and attached to the electronic application. See attached sheet for additional information.

Variance Application  
728C Wainaku Street

Variance Application  
728C Wainaku Street



County of Hawai'i

BOARD OF APPEALS

Aupuni Center • 101 Pauahi, Suite 3 • Hilo, Hawai'i 96720  
(808) 961-8288 • Fax (808) 961-8742

GENERAL PETITION FOR APPEAL OF  
DECISIONS BY PLANNING DIRECTOR OR PUBLIC WORKS DIRECTOR

(Type or legibly print the requested information. See instructions attached.)

TYPE OF PETITION (check one):

Appeal Decision of the Planning Director

Appeal Decision of Director of Public Works

SUBJECT PROPERTY (land in question):

Tax Map Key (TMK): 3 2 6 014 011 000 Area of Property: 7500 SF

State Land Use

Designation: SPA County Zoning: RS

Street Address: 728C Wainaku St

APPELLANT INFORMATION:

Name(s): Jim Marquez

Signature(s): [Signature] Date: 9/28/2023

Mailing Address: 728C Wainaku Street, Hilo HI 96720

Telephone: 310 748 8726 Email: jimmarquezplanner@gmail.com

Interest in Subject Property: fee  
SPA

LANDOWNER INFORMATION:

Name(s): Jim Marquez

Signature(s): [Signature] Date: 9/28/2023

Mailing Address: 728C Wainaku St

Telephone: 310 748 8726 Email: jimmarquezplanner@gmail.com

APPELLANT REPRESENTATIVE INFORMATION (leave blank if not applicable):

Name(s)/Title(s): \_\_\_\_\_

Signature(s): \_\_\_\_\_ Date: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

† Not required if the Landowner is not the Appellant.

\\COH01\planning\public\BOA\FORMS and Labels\Application Forms\APPEAL 2021-07 - PL or PW Dir.docx Revised April 2021



**I. Statement of the nature of Appeal and the Relief Requested. Include Directors decision and decision date:**

The filing of a variance for permission to construct a detached 2-car garage that will encroach 9-feet into the required 15' west side rear property line setback as determined by the county staff in their yard determination letter to the property owner, dated September 13, 2023, in the RS-7.5 zone district. A copy of the decision letter is attached and made a part hereof.

The variance is requested to mitigate the adverse impacts and hardship created upon the property from compelling a 15' yard restriction along the entire west boundary that is more restrictive than what is required of every other lot owner of the Halepuna South Hilo Hawaii subdivision and inconsistent with county yard determinations brochure printed for county property owners.

**II. Statement of how the Directors decision violates the law; or is clearly erroneous; or is arbitrary or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise discretion:**

The Directors determination is questioned. The property owner finds that the rear yard setback and the front yard designation as determination by the Director to be inconsistent with:

- (i) the literal interpretation of the code as per section 25.4.30.(e),
- (ii) the access rights associated with the subject property,
- (iii) the property's land use rights that existed at the time the Halepuna South Hilo Hawaii was recorded.  
subdivision was recorded.
- (iv) the placement of the rear yard as documented in an approved 2011 site plan Exhibit A; and therefore,
- (v) necessitates a neutral interpretation through the filing of a variance.

**III. The basis for relief:**

1. A hardship exists: The property owner suffers a hardship created with the yard determination. Unique circumstances pertaining to the size, shape and orientation of with abutting lots, and rights of way, public and private and the confusing contents of staff documentation establishing yards, are constraints that are disclosed to exist on no other lot in the area or same zone.
2. These combined circumstances make it impossible for the property owner to have a two car garage like other lot owners have.
3. The county classified the property owners west boundary yard a 15' "rear yard" along the entire length of the property because the entire east boundary abuts with

Hawaiian Belt Highway and is being classified to be a 15' "front yard." Citing the code for front yards, but there is no language in the section pertaining to rear yards. The state highway frontage is inaccessible

4. Exhibit A, is a 2011 site plan document on file with the planning department approving the second story addition remodel. The site plan designates the east yard area to be a "rear yard," and the entire west side, is classified to be a "front yard."
5. The director's methodology to construe yards to be different than prior plans.
6. Reviewing this conflict in front yard designation along the entire west boundary line with the minimum front yard standards of the code as specified for lots subdivided with a road easement was made.
7. A considerations made that appears absent in the planning determination.
8. Division 3. Street Frontage, Lot Areas and Widths. Section 25-4-30. Minimum street frontage provides that "No front yard setbacks are required when the lot is accessed by a private roadway easement. (Sec. 25-4-30(e))." Exhibit A; and Exhibit I.
9. The county brochure shows the front yard(s) to be 15 foot deep but only at the lot boundary with the roadway easement.
10. The property owner is instructed to find the one closest lot arrangement to my property. Exhibit I is colored to illustrate that the 15' yard designation is not promulgated along and down the entire remainder of the side yard. The setback for the remainder of the side is shown with an 8' side yard.
11. The 15' yard restriction along the entire west boundary line results in an a yard setback that is more restrictive than the same juxtaposition yard and boundary with its, adjoining neighbor over every other lot owner of the Halepuna South Hilo Hawaii subdivision.
12. The variance mitigates the hardships created upon the property owner from these ambiguous aspects from the directors yard determination for the lot.
13. The variance is foreseen to be suitable because it allows the property owner development rights that exist on other lots ninth subdivision.
14. The methodology contained in Exhibit I, establishes internal consistency with the 8' side yard setback required for the adjoining property at 728B Wainaku Street. The space created from this modification provides the opportunity for the property owner to complete the building permit process for the construction of a two car garage.
15. Approval of this variance would establish the yards for the subject to be as follows:
  - At the portion of the lot that adjoins the roadway easement: 15' front yard.
  - At the south side yard, 8'.
  - At the North side yard, 8'.
  - At the east side yard, 15'.
16. The requested yard modification would permit a 9-foot encroachment of a detached 2-car garage into the 15' rear property line setback as determined by the

county staff in their yard determination letter to the property owner, dated September 13, 2023, subject to the following conditions.

- (i). That the front and west side yards of the subject property shall be designated substantially as illustrated in the county planning department yard determination brochure for homeowners having access from a road way easement recorded with their subdivision.
- (ii) The front yard shall be established be a uniform distance of 15' from the west lot boundary line of the subject lot and the east end of the adjoining roadway easement, and
- (iii) That the setback for the remainder of the west boundary is an 8' side yard.
- (iv) permitting the property owner permission to have the 2-car garage specified as PW.B2023-002816, TMK 3-2-6-014-0410000.
- (v) That these conditions variance shall run with the land and if required by the county may be recorded as a covenant to the land by the property owner.

**IV. Statement of any other relevant Facts:**

**1. Excerpt of the county Zoning Code: Division 3. Street Frontage, Lot Areas and Widths. Section 25-4-30. Minimum street frontage.**

The following minimum street frontage standards apply to every building site:

- (a) Fifty percent of the required building site average width for any building site in a zoning district providing for a minimum building site of one acre or less, except for flag lots, any building site located at the end of a cul-de-sac, and any building site where the access to the building site is by means of a roadway easement.
- (b) One hundred feet for any building site in a zoning district providing for a minimum building site of over one acre, except for flag lots, any building site located at the end of a cul-de-sac, and any building site where the access to the building site is by means of a roadway easement.
- (c) The width of the pole or fifteen feet for any flag lot.
- (d) Fifteen feet for any building site located at the end of a cul-de-sac.
- (e) No street frontage shall be required for any building site where access to the building site is by means of a roadway easement. (1996, ord 96-160, sec 2; ratified April 6, 1999.)25-4-30**

- 2. Directors Determination Ltd. 9/13/2023.
- 3. Exhibit A
- 4. Exhibit B
- 5. Exhibit C
- 6. Exhibit D
- 7. Exhibit E
- 8. Exhibit G
- 9. Exhibit H
- 10. Exhibit I
- 11. Exhibit J
- 12. Exhibit K
- 13. Site Photographs.

# Variance Application 728C Wainaku Street

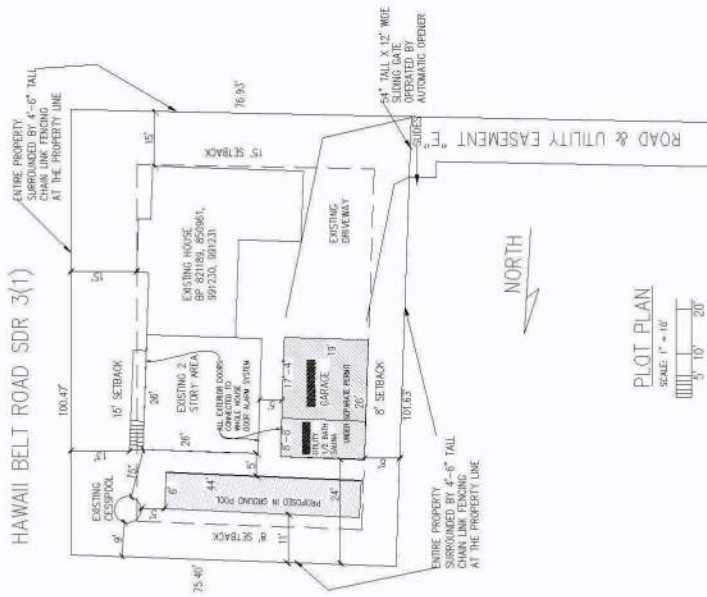
**SHEET INDEX**  
0701: Plot Plan, ECCC, Tank  
0702: General Notes  
A01: Plan View  
A02: Post Safety Details  
A03: Foot Details



THIS WORK WAS PROVIDED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND I AM A LICENSED PROFESSIONAL ENGINEER IN THE STATE OF HAWAII.  
Valeriya V. Kabanova  
License No. 10001

MOORE, JR. & PUA, LLC  
1111 W. Wai'anae Blvd., Suite 100  
Wai'anae, HI 96791  
Tel: (808) 261-1111  
Fax: (808) 261-1112  
www.moorepuajr.com

RES. REVIEWING AGENCIES	
PLANNING	MECHANICAL
ENGINEERING	STRUCTURAL
WATER	WASTE WATER
PLUMBING	BUILDING



**PLOT PLAN**  
SCALE: 1" = 10'

**BUILDING CODE INFORMATION**  
1. HAWAII STATE BUILDING CODE (HB 100)  
2. HAWAII COUNTY BUILDING CODE (HC 100)  
3. HAWAII COUNTY ZONING ORDINANCE (HC 100)  
4. HAWAII COUNTY PLANNING DEPARTMENT (HC 100)  
5. HAWAII COUNTY ENGINEERING DEPARTMENT (HC 100)  
6. HAWAII COUNTY PLUMBING DEPARTMENT (HC 100)  
7. HAWAII COUNTY ELECTRICAL DEPARTMENT (HC 100)  
8. HAWAII COUNTY MECHANICAL DEPARTMENT (HC 100)  
9. HAWAII COUNTY STRUCTURAL DEPARTMENT (HC 100)  
10. HAWAII COUNTY WASTE WATER DEPARTMENT (HC 100)  
11. HAWAII COUNTY WATER DEPARTMENT (HC 100)  
12. HAWAII COUNTY PLUMBING DEPARTMENT (HC 100)  
13. HAWAII COUNTY ELECTRICAL DEPARTMENT (HC 100)  
14. HAWAII COUNTY MECHANICAL DEPARTMENT (HC 100)  
15. HAWAII COUNTY STRUCTURAL DEPARTMENT (HC 100)  
16. HAWAII COUNTY WASTE WATER DEPARTMENT (HC 100)  
17. HAWAII COUNTY WATER DEPARTMENT (HC 100)

**HAWAII COUNTY ENERGY CODE**  
2016 IBC, HAWAII REVISED GARAGES HAS 107-24, 10, 24, 5  
HAWAII ADMINISTRATIVE RULES HAS 5-16.1  
RESIDENTIAL BUILDING ENERGY EFFICIENCY STANDARDS  
TO THE BEST OF MY KNOWLEDGE, THIS PROJECT'S DESIGN SUBMITTALS  
COMPLY WITH THE HAWAII COUNTY ENERGY CODE CHAPTER 5,  
COMPLIANCE WITH THE ENERGY CODE

**PROJECT GENERAL COMMENTS**  
PROJECT GENERAL COMMENTS AT 1.5 STRUCTURES THAT DO NOT  
CONTAIN CONTINGENT SPACE SHALL BE EXEMPT FROM THE BUILDING NORMAL  
DESIGN PROVISIONS OF SECTION 601.11 AND 602.1.5

Project shall be in accordance with the following:  
 International Building Code (IBC) 2015  
 International Residential Code (IRC) 2015  
 International Mechanical Code (IMC) 2015  
 International Electrical Code (IEC) 2015  
 International Fire Code (IFC) 2015  
 International Energy Conservation Code (IECC) 2015  
 International Plumbing Code (IPC) 2015  
 International Fire Marshals Association (IFMA) 2015  
 International Association of Fire Chiefs (IAFC) 2015  
 International Association of Chiefs of Police (IACP) 2015  
 International Association of Public Safety Officers (IAPSO) 2015  
 International Association of Firefighters (IAFF) 2015  
 International Association of Fire Inspectors (IAFI) 2015  
 International Association of Fire Investigators (IAFI) 2015  
 International Association of Fire Officers (IAFO) 2015  
 International Association of Fire Captains (IAFC) 2015  
 International Association of Fire Lieutenants (IAFL) 2015  
 International Association of Fire Platoon Leaders (IAFPL) 2015  
 International Association of Fire Station Attendants (IAFSA) 2015  
 International Association of Fire Dispatchers (IAFD) 2015  
 International Association of Fire Communications (IAFCOM) 2015  
 International Association of Fire Support Personnel (IAFSP) 2015  
 International Association of Fire Safety Officers (IAFSO) 2015  
 International Association of Fire Safety Inspectors (IAFSI) 2015  
 International Association of Fire Safety Investigators (IAFSI) 2015  
 International Association of Fire Safety Officers (IAFSO) 2015  
 International Association of Fire Safety Inspectors (IAFSI) 2015  
 International Association of Fire Safety Investigators (IAFSI) 2015

THIS PROJECT IS IN COMPLIANCE WITH THE  
HAWAII COUNTY BUILDING CODE (HC 100)  
AND THE HAWAII COUNTY ZONING ORDINANCE (HC 100).  
APPROVED BY THE ENGINEER.

# Variance Application 728C Wainaku Street

## GENERAL NOTES

Revised 8 June 2020.

1. The Contractor shall visit the project site and thoroughly familiarize himself with the existing conditions prior to submitting his bid.
2. All grading operations shall be performed in conformance with the applicable provisions of Chapter 24, water quality standards, and Chapter 55, water pollution control, of Title II, administration rules of the State of Hawaii Department of Health.
3. The Contractor shall conform to the latest prevailing codes, ordinances and manufacturer's specifications and standards for all trades of work.
4. All work to be done by the General Contractor shall be done in accordance with the "Owner-Builder" is that the General Contractor shall bear all of the responsibilities of the General Contractor for this project. An "Owner-Builder" shall read and understand NOW THE RISKS AND RESPONSIBILITIES of the General Contractor for the state of Hawaii Department of Health. The General Contractor shall be located at Regulated Industries Compliance Office (ROCO), 235 S. Barabara Street, 4th floor, Honolulu, Hawaii 96813. www.hawaii.gov/roco, telephone (808) 587-4372.
5. Building's "green" material from the site grading projects. The Contractor shall locate all green material on the site and make sure that all structures are constructed a minimum of 6' away from all green material. If a structure is to be constructed over a green material, the contractor shall ensure that the structure and all be replaced with approved composite fill with 95% compaction.
6. Terminate first of dimensional structural wood in accordance with the manufacturer's specifications. The contractor shall ensure that the building materials are acceptable to the local building authority and in accordance with the manufacturer's recommendations.
7. All structural lumber shall be species Douglas Fir-Larch unless otherwise specified. All lumber shall be kiln-dried to a maximum moisture content of 19 percent for 2" floor joists and rafters with a minimum structural value of F1500, unless otherwise noted.
8. The General Contractor is responsible for coordinating all work of the sub-contractors.
9. The Contractor shall verify that the site conditions can accommodate the foundation design. If there are any site conditions that require foundation design, the Owner or Contractor shall retain a Hawaii Licensed Geotechnical Engineer and comply with all of the Hawaii Licensed Geotechnical Engineer's recommendations. There are areas known for especially poor soil conditions in the vicinity of the project site. The contractor shall verify the north to south. Extreme care should be exercised by the contractor when constructing building foundations in these areas.
10. All exterior wall base counts and ground under concrete slabs and concrete footings shall be completed to a minimum of 95%.
11. The Contractor shall slope all finished grades away from the building.
12. The Contractor shall verify all dimensions, conditions and details prior to beginning construction and contact the Architect if there are any questions.
13. The Contractor shall field verify all work and conditions during construction prior to fabrication and installation. All products shall be approved by the Owner prior to ordering, fabrication, installation and erection of the product.
14. Where figures or dimensions have been omitted from the drawings, the drawings shall not be scaled. The contractor shall immediately contact the Architect regarding any omissions.
15. The Contractor shall use adequate numbers of skilled workman who are trained and experienced in the necessary crafts and who are completely familiar with the specified requirements and methods needed for proper performance of this work.
16. The Contractor shall examine all areas and conditions under which this work will be performed and correct all conditions detrimental to the timely and proper completion of the work prior to beginning the work.

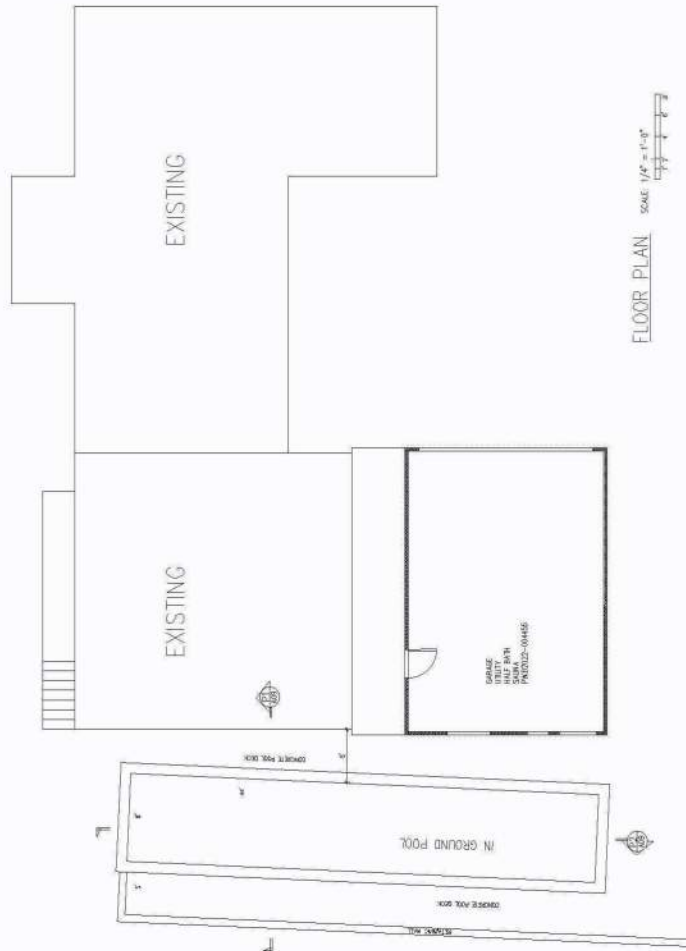
17. The Contractor shall provide other material not specifically described but needed for a complete and proper installation as selected by the contractor and subject to the approval of the Owner.
18. The Contractor shall provide other material not specifically described but needed for a complete and proper installation as selected by the contractor and subject to the approval of the Owner.
19. Maintain packaged materials with spacers and labels intact until time of use. Promptly remove damaged material and assemble items from the packaging. Do not use damaged materials. Do not use materials that do not meet requirements, or an additional cost to the Owner. In the event of any damage to the job site, promptly make replacements and report to the approval of the Owner at no additional cost to the Owner.
20. The Contractor shall keep the construction area in a neat, safe and orderly condition at all times during the execution of this work, free the accumulation of dirt and debris.
21. The Contractor is to file and secure all approvals, permits, fees, inspectors and certificates of compliance as required.
22. The Contractor shall keep a full set of up-to-date plans available on the job site at all times.
23. The Contractor is responsible for scheduling, maintaining and supervising all safety precautions and programs necessary for completion of the work.
24. All materials and labor shall be guaranteed for one year from the date of the final payment.
25. The Contractor shall repair, replace, patch and match any materials, areas or systems as required or called for to obtain the proper installation and neat appearance of the work, correct raw work to existing work in a manner that restores existing work, in making such connections to perfect condition.
26. The Contractor shall keep all operations and maintenance manuals and instructions for the equipment and tools to be turned over to the Owner upon the completion of the project.
27. The Contractor shall make a careful inspection of the construction and materials used and provide a written report for final acceptance prior to calling the Owner for a final inspection.
28. All work shall conform to ADA and ASHRAE requirements where applicable, accommodate the building design.
29. All structural wood shall have a moisture content of 19 percent or less (measured at the center of the specific structural wood member):
  - (A) 5/8" - 1 1/2" thick structural panels
  - 108 at 6% c.c. at edges and 12% c.c. in field.
  - (B) 1 1/2" - 2" thick structural panels
  - 88 at 6% c.c. at edges and 12% c.c. in field.
  - (C) 2" or thicker structural panels
  - 68 at 4% c.c. at edges and 8% c.c. in field.
30. The Contractor shall not use Fiber Mesh on a substitute for wire mesh or steel in concrete slabs and concrete footings.
31. The Contractor shall remove all mud choker from formed areas prior to pouring concrete slabs and concrete footings.
32. Rebar Schedule includes Overlap Notes:
  - (A) 5/8" - 1 1/2" thick structural panels
  - 108 at 6% c.c. at edges and 12% c.c. in field.
  - (B) 1 1/2" - 2" thick structural panels
  - 88 at 6% c.c. at edges and 12% c.c. in field.
  - (C) 2" or thicker structural panels
  - 68 at 4% c.c. at edges and 8% c.c. in field.
33. All anchor bolts, hold down straps and ties, column bases and all other metal connectors embedded in concrete shall be galvanized.
34. A valid building permit is, in no way, a guarantee that the County of Hawaii Building Department will not, without just cause or notice, demand partial or total building redesign of the Owner's expense.
35. The Architect and Designer of this project bear no responsibility whatsoever for fees of any kind relating to the Hawaii County building permit process including plan review fees, permit fees, or any and all additional fees the building department, planning department, engineering department, fire department, health department, water department, water department, water department or any and all other State of Hawaii or Hawaii County departments may charge.



THE HAWAII ENGINEERING BOARD  
FOR THE STATE OF HAWAII  
PROJECT NO. 19-014-014-014  
PAGE 0702

Issue 07/2024

Variance Application  
728C Wainaku Street

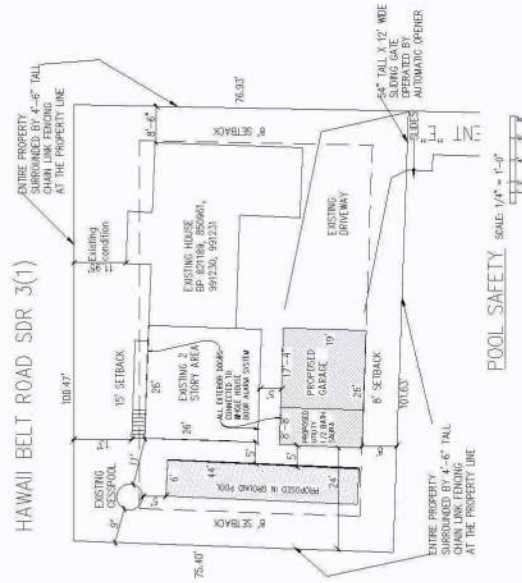
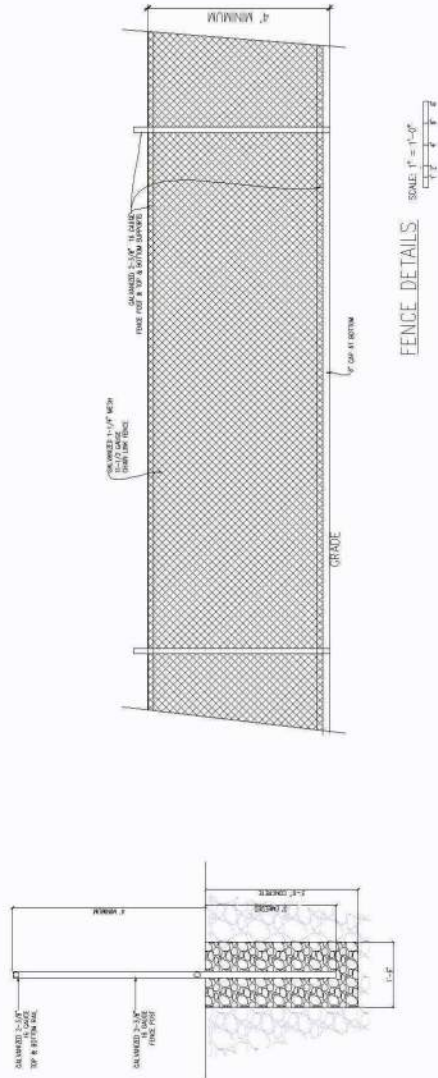


THIS WORK WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND I AM A LICENSED PROFESSIONAL ENGINEER IN THE STATE OF CALIFORNIA.

Robert J. Gault  
No. 1005

PROJECT: 728C WAINAKU STREET TRUST  
DATE: 05-24-2011  
SCALE: 1/4" = 1'-0"

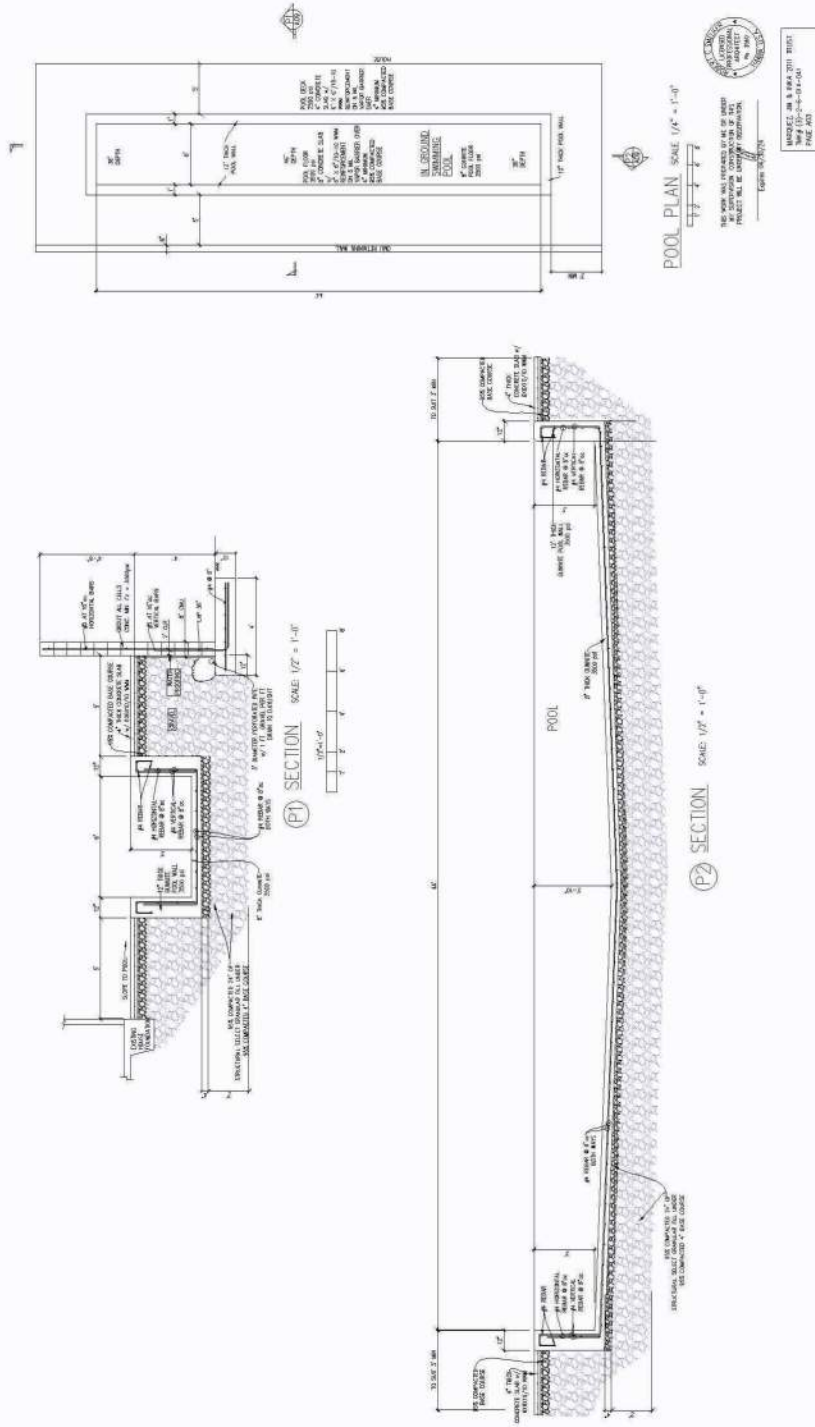
# Variance Application 728C Wainaku Street



DANIEL J. & KARA, 2011, NO. 10000  
 PROFESSIONAL ENGINEER  
 LICENSED IN THE STATE OF HAWAII  
 PROJECT WILL BE UNDER SUPERVISION  
 License 10000

DANIEL J. & KARA, 2011, NO. 10000  
 PROFESSIONAL ENGINEER  
 LICENSED IN THE STATE OF HAWAII  
 PROJECT WILL BE UNDER SUPERVISION  
 License 10000

# Variance Application 728C Wainaku Street





Variance Application  
728C Wainaku Street

Exhibit P

Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

MEMORANDUM  
NO. 03-32

December 23, 2003

TO: PLANNERS/ZONING CLERKS

FROM: CHRISTOPHER J. YUEN  
PLANNING DIRECTOR *Chris Yuen*

SUBJECT: ROADWAY EASEMENTS—MINIMUM LOT SIZE AND SETBACKS

We allow roads to be created by easements or roadway lots. In the past, we have counted the easement as part of the lot when calculating the minimum lot size. For example, for a proposed cul de sac subdivision of 40,000 s.f. in the RS-10 district, we would allow 4 lots and count the road easement as part of the 10,000 s.f. lot size even if the net buildable area would be less than 10,000 s.f. If the road were a roadway lot rather than an easement, it would be impossible to create 4 buildable lots in addition to the roadway lot. Hence, the past practice has enabled subdividers to circumvent the minimum lot size requirements by creating roadway easements rather than roadway lots.

Since a roadway easement did not create a "street right-of-way line", past practice has also not recognized a roadway easement as creating a street frontage.<sup>1</sup> Hence, rather than a front yard, the yard fronting a roadway easement has been considered a side yard. And, since a "yard" is measured between the building and lot line,<sup>2</sup> past practice has measured the side yard from the lot line rather than the roadway easement boundary.

<sup>1</sup> Zoning Code definition of "street frontage": "'Street frontage' means that portion of a building site that has a common line with a street right-of-way line. The street frontage is designated as the front property line."

<sup>2</sup> Zoning Code definition of "yard": "'Yard' means an open space on the same building site with a building, which open space lies between the building and the bounding lot lines. . . ."

Variance Application  
728C Wainaku Street

PLANNERS/ZONING CLERKS

PAGE 2

DECEMBER 23, 2003

The past practice in determining the minimum lot size and yard was based on the Zoning Code's definition of "lot" and "lot line" which makes reference to the "property line",<sup>3</sup> in isolation from the Zoning Code's intent when addressing roads. For planned roads or future widening, the Zoning Code clearly establishes the "front property line" as the plan line for future streets or the future width line (§25-3-8).<sup>4</sup> By analogy and logic, the easement boundaries established by a roadway easement should also establish the "front property line". Moreover, the Subdivision Code requires that "each subdivided lot shall *abut* upon a public street or an approved private street" (§23-34)—i.e., if the roadway easement is not treated as a street, the lot does not abut any street.

Since the Zoning and Subdivision Codes do not explicitly address roadway easements, this memo will change the policy on how to treat roadway easements. The policy will be as follows:

- For purposes of determining the minimum lot size for compliance with the zoning code, exclude the roadway easement. The final plat map should show the lot size with and without the easement area.
- In order for a lot to "abut" a private street, the roadway easement shall create a street frontage to create a front yard rather than a side yard.
- The easement boundary shall create a "front property line" and the front yard setback shall be measured from the easement boundary rather than the lot line.

In short, a roadway easement would be treated similar to a roadway lot for purposes of determining the minimum lot size and yard requirements.

This policy shall apply to new subdivisions that have not yet received tentative approval and to new building permits effective as of the date of this memo.

RRT:pak

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<sup>3</sup> Zoning Code definition of "lot" and "lot line": "'Lot' means a building site or a parcel of land shown as a unit on an approved subdivision map, or a survey map." "'Lot line' means any boundary of a building site or property line . . ."

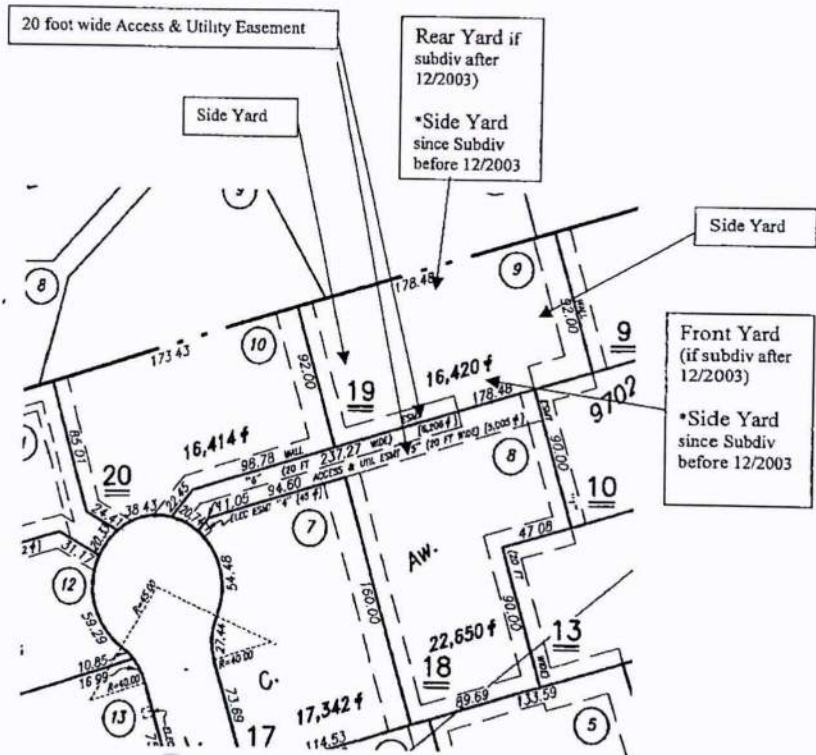
<sup>4</sup> Zoning Code §25-3-8(b): "Whenever a future width line is established on the zoning map, the future width line shall be considered to be the front property line of the affected property. . . ." §25-3-8(c): "Whenever plan lines for a future street have been established on the zoning map, the plan lines shall be considered to be the front property line, and the area between the plan lines shall be deemed to be street right-of-way. . . ."

Applying Memo 03-32, Roadway Easements and Setbacks

Example: TMK 7-8-011:019

Since TMK parcel 7-8-011:019 abuts a 20-foot wide access and utility easement. Per Memorandum 03-32, if Subdivision, received either tentative or final approval after December 23, 2003, front yard is taken from the edge of the access and utility easement, with rear yard, and sides yards as shown. Per Memorandum 03-32, Roadway easements are treated similarly to a roadway lot for purposes of determining the yard requirements.

\*However since this Subdivision was created (either tentative or final approval) prior to December 23, 2003, Memorandum 03-32 does not apply, and all yards for this parcel are side yards.



Variance Application  
728C Wainaku Street

Exhibit C

Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

**County of Hawaii**

**PLANNING DEPARTMENT**

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

**MEMORANDUM  
NO. 04-01**

January 28, 2004

**TO:** PLANNERS/ZONING CLERKS  
**FROM:** CHRISTOPHER J. YUEN  
PLANNING DIRECTOR  
**SUBJECT:** AMENDMENT TO STAFF MEMO NO. 2003-32 RE: ROADWAY  
EASEMENTS—MINIMUM LOT SIZE AND SETBACKS

In response to comments, the following amends Staff Memo No. 2003-32 dated December 23, 2003 relating to roadway easements:

1. **Effective Date.** The effective date of the memo is January 14, 2004, which is the date when the memo was mailed to surveyors, engineers, and planners who commonly prepare subdivision applications. Any subdivision applications submitted prior to that date shall be treated under the old interpretations.
2. **Building Permit Applications.** When reviewing building permit applications, the minimum lot size is already fixed by the subdivision approval, so the memo applies to just the setbacks. If the size or location of the buildable area results in a poorer site plan due to topography, shape of the lot, or other reason, then apply the old rule if the same reasoning is uniformly applicable to other lots in the subdivision and make a note on the tax maps. If the conditions are uniquely applicable to one lot, then require a variance. The guiding principle is that if the subdivision layout relied on the old setback interpretations, then we have to keep to the old interpretation; however, if the lots can accommodate the new setback interpretation, then apply it. If you are uncertain whether the conditions are subdivision-wide or unique, then require a variance.

Variance Application  
728C Wainaku Street

PLANNERS/ZONING CLERKS

Page 2

March 3, 2004

3. **Road Easements Through a Lot Rather Than Fronting Several Lots.** In certain situations, a road easement is necessary through a lot to provide access to an otherwise land-locked lot. For setback purposes, the land-locked lot has no street frontage, so apply all side yards. For the lot through which the easement traverses, the road easement is included in the minimum lot size and side yard setbacks may be measured from the property line. The rationale is that the easement is more like a driveway rather than a road. If the easement serves three or more lots (or whatever becomes the definition of a street or driveway under any existing or future provision in the Hawaii County Code), then the easement shall be treated under the interpretations of Staff Memo No. 2003-32.

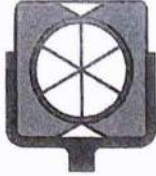
If subdividers are not able to meet the density permitted by zoning under the new interpretations, then PUD's or variances are options. Comments in writing will help to identify unintended consequences, and further adjustments or clarifications in policy can be made accordingly.

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Exhibit E

The Independent Hawaii Surveyors, LLC



P.O. Box 577, Hilo, Hawaii 96721  
Phone: 808 959-0360 Fax: 808 959-0353 www.hawaiiboundary.com  
Niels Christensen, Surveyor, LPLS 9077

- REPORT -

April 8, 2021  
Job No. 14549

To: Title Guaranty Escrow Services  
Carter Professional Bldg.  
65-1230 Mamalahoa Hwy.  
Bldg. F, Ste. F-101  
Kamuele, HI 96743

Escrow Account #: 21176564  
Attention: Rusti Gomes



TMK: (3) 2-6-14: 41

Description of Services:

K-2 Survey of Lot 4, Haaheo Estates, Halepuna, South Hilo.

Findings of Survey:

Boundary corners are VERIFIED AS CORRECT and have an average error of 0.13 feet which is within acceptable tolerance for property of this type and in this subdivision.

The attached map gives the conditions found by this field survey made on April 5, 2021: 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:**

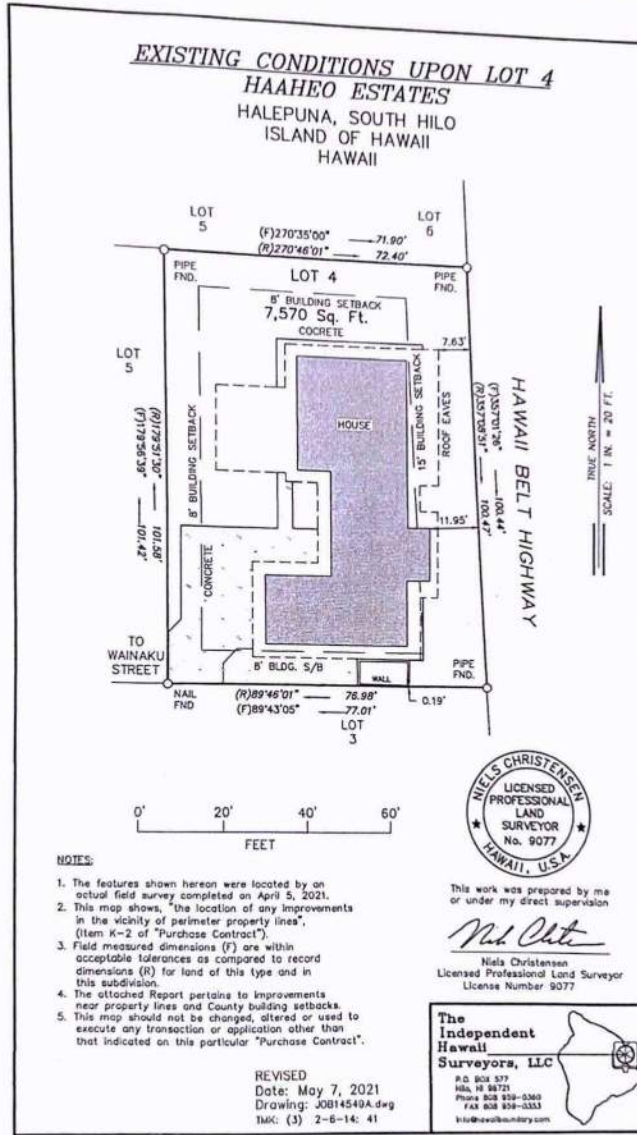
1. There are NO encroachments across the boundaries of this property.
2. The house projects 3.05 feet into the front County Zoning Code 15-foot building setbacks of the east boundary; its roof projects 7.37 feet into this setback.
3. Structure's projecting into the setbacks may or may not be considered 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.
4. A wall has a de minimus structure position discrepancy with respect to the south boundary of as much as 0.19 feet.

Niels Christensen, L.P.L.S. 9077

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

Variance Application  
728C Wainaku Street

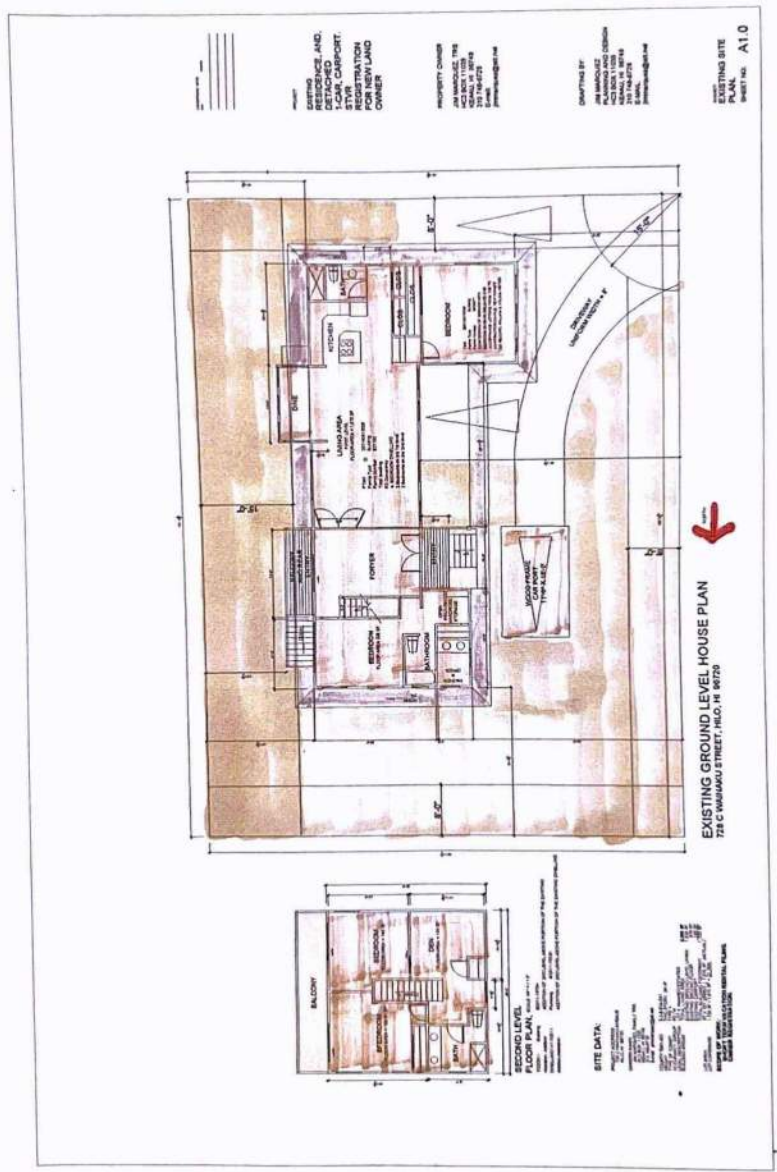
Exhibit F



- NOTES:
1. The features shown hereon were located by an actual field survey completed on April 5, 2021.
  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".

Variance Application  
728C Wainaku Street

Exhibit H





Variance Application  
728C Wainaku Street

**Here is how to figure out your minimum yard setbacks.** First, you need to know the size and zoning of your lot. (If you don't know, please call the Planning Department). As an example, let's select an RS-10 (10,000 - 19,999 sf in size) lot using the table below:

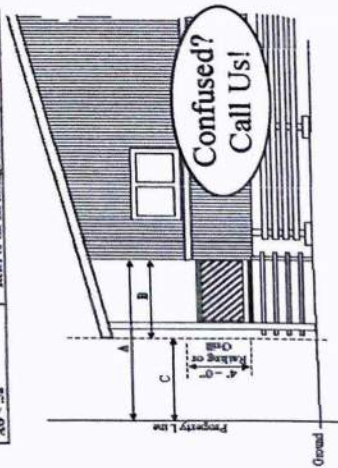
**Column A** shows the front setback as 20 ft. and the sides 10 ft. Line "A" in the picture shows that the setback is from the property line to the exterior wall.

**Column B** shows that open projections, like a roof or stairs, can enter the min yard setback area by 6 ft. for the front and a maximum of 5 ft. for the sides. Refer to line "B" in the picture. Other projections may include: porches, balconies, terraces, fire escapes, ramps, and other similar features. None of these features shall be enclosed. Posts or beams for support and open or grille-type railings shall not exceed 4' in height.

**Column C** is the clear space that must be kept open and unobstructed from the ground up. In this example nothing can be in the area within 14 ft. from the front and rear yards or 5 ft. for each side.

Table

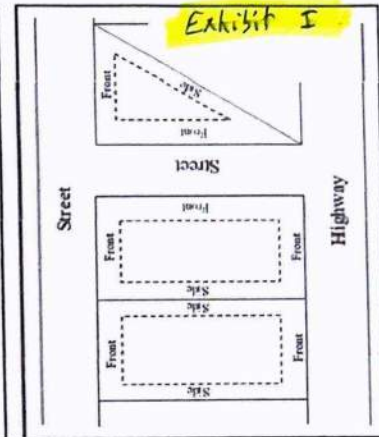
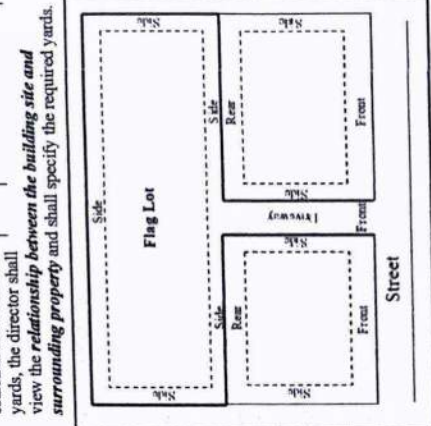
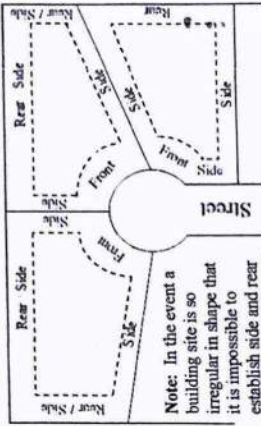
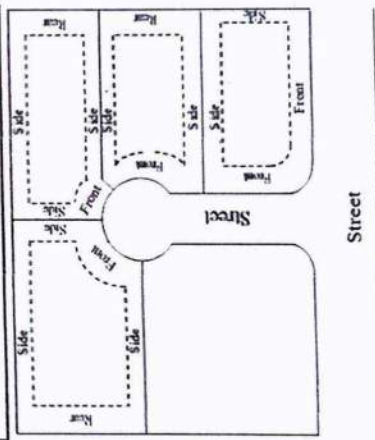
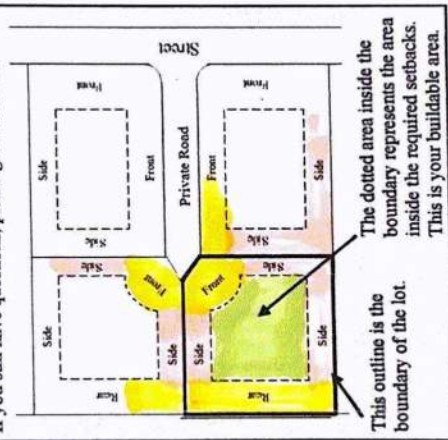
ZONING	A Structure Setback		B Projections		C Open Space	
	Front	Rear	Front	Rear	Front	Side
(acre = 43,560 sf)						
Square Footage	15	8	5	4	10	4
RS < 7,500 - 9,999	20	10	6	5	14	5
RS > 10,000 - 19,999	25	15	6	5	19	10
RS > 20,000	15	8	5	4	10	4
R.A. < .5a	25	15	6	5	19	10
AG > 1 acre	30	20	6	6	24	14
AG < 1 acre - .5a	25	15	6	5	19	10
AG < .5a	Refer to the RS listings based on your parcel's sf.					



**Accessory buildings** shall observe the same yards as required of the main building. Accessory buildings may include sheds, water tanks, carports, etc...

**Note:** It is possible to have parcel size and zoning with different values. Such as a 7,500 sf parcel in a A-3a (Agricultural 3 acre) lot. **If you are not sure what to do please contact us.**

The layouts are a cut-away drawings of various parcel designs. Find the one closest to your own property. If you still have questions, please give us a call.



Site Photographs  
Request for Variance from the Zoning Code  
Tax Map Key No: (3) 2-6-014:041(0000)  
728C Wainaku Street  
Hilo Hawaii 96720



This photograph was taken at the northwest corner looking south east showing the north and south fencing lines, and the exterior elevations of the house, respectively. The yard to the right is 28' wide and provides sufficient room for a 19' wide garage and maintain an 8' setback from the chain link fence top the right.



This photograph was taken at the south east corner of the subject lot. It shows the east elevation of the subject residence. The house overlooks the Hawaiian Belt Highway right of way. The power poles to the right, and the structures' east elevation, align with the highway, respectively.

Variance Application  
728C Wainaku Street



This photograph is taken from the south east corner of the subject lot. It shows the residence, the open yard, and the highway below. The topography and the land features show that there is absolutely no possible means for vehicular or pedestrian access from the highway right of way to the lot. The power pole is located about 20' east of the dwelling. The pole lies outside the boundary of the subject lot within a 10' wide utility easement for high voltage power lines that runs along the west side of the state highway.

Variance Application  
728C Wainaku Street



This photo was taken from the south west corner of the subject lot. It shows the west boundary line along the chain link fence on the left edge of the photo with our neighbor to the west. This also reveals the open side yard between the house and the chain link fence. To the right of the house is the south side yard. The ground surface can be seen to be essentially flat. With no irregular ground forms, broken swales, or erosion.

Variance Application  
728C Wainaku Street



This is a photograph of the house located to the south of the subject at the end and south of the road easement. It can be seen that the house layout conceived a placement that is setback more than 15' from the easements edge. The side yards at the north and south boundaries are 8'.