

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

July 12, 2024

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No. 24OD-055

Oahu

Authorize Variance of Restrictive Covenant Regarding Setback Requirements in Deed dated May 2, 1972, Lot 22, Diamond Head View Lots, Unit Two, Increment One, Roy Yamaguchi Revocable Trust dated November 30, 1990, amended and restated October 19, 2006, Applicant; Kapahulu, Honolulu, Oahu, Tax Map Key: (1) 3-1-048:027.

APPLICANT:

Roy Yamaguchi, Trustee of the Roy Yamaguchi Revocable Trust dated November 30, 1990, amended and restated October 19, 2006 ("Applicant").

LEGAL REFERENCE:

Sections 171-17, -63(a), Hawaii Revised Statutes ("HRS"), as amended.

LOCATION:

Lot 22, Diamond Head View Lots, Unit Two, Increment One, situated at Kapahulu, Honolulu, Oahu, Tax Map Key: (1) 3-1-048:027, as shown on **Exhibit A1** and **A2**.

PARCEL AREA:

13,216 square feet.

Encroaching area: 43 square feet, more or less, which includes 35 square feet for kitchen, and 8 square feet in the master bedroom as explained in the Remarks section.

ZONING:

State Land Use District: Urban
City & County of Honolulu LUO: R-5

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Pay for an appraisal to determine the difference between the fair market value of the land based on its restricted use as set forth in the original deed and the value of the land with the restricted use as varied and to pay the State the difference so determined;
2. Provide map and legal description of the encroaching areas to be prepared by a licensed land surveyor; and
3. Obtain consent from each security interest holder.

BACKGROUND:

On March 29, 1965, the State, by its Board of Land and Natural Resources (Board) sold the subject lot (Lot 22) at public auction. The deed by which the State conveyed Lot 22 contained certain restrictive covenants regarding setbacks and building height restrictions.

Page 4 of the title deed dated May 2, 1972, recorded as Liber 8299, page 287, issued to the original winning bidder at the auction, states, “Lot 22 is subject to building set back lines as shown on plan attached hereto and made a part hereof”. The map of Lot 22 is shown on **Exhibit B** with the building area highlighted in yellow and a 20-foot setback marked along the Paikau Street and 22nd Avenue sides of the parcel. The setback on remaining boundaries is 10 feet.

The current owner of Lot 22 is the Roy Yamaguchi Revocable Trust dated November 30, 1990, amended and restated October 19, 2006 as recorded at the Bureau of Conveyances (“BOC”), document 2011-087694 on June 2, 2011. As part of the renovation plan, the current owner is seeking Board approval of a variance regarding the setback requirements affecting Lot 22, as described in the paragraphs below.

Exhibit C1 is the proposed renovation plan with the 20-foot setback marked in red along Paikau Street and 22nd Avenue. **Exhibit C2** is a zoom in version of the subject area where the area that encroaches into the setback is highlighted in yellow. According to counsel representing the Applicant, the encroachment area is about one foot wide by 35 feet long.

The current house is the same house that was built in the “classic mid-century style”, per counsel, and minimally upgraded over the last 50 years with modest modification.¹ The Applicant attempts to modernize his house by installation of a “Bonnet Stove” from France. Upon arrival of the stove, it was found that additional space outside the footprint of the existing house is required to accommodate the stove without extensive gutting and reconstruction of the home which would destroy the original mid-century aesthetics and

¹ According to the website of the City’s Department of Planning and Permitting, the effective year built of the house was 1972.

designs.

After discussions, Land Division advised counsel it would be willing to present a request to the Board seeking a one-time variance² from the setback requirements to allow the renovation, provided that the Applicant: (1) send a mailer to the neighbors within a 150-foot radius from the subject property informing the surrounding neighbors of the reasons for the variance and requesting any comments be submitted to the Land Division; and (2) indemnify the State for the approval of the variance from the setback requirements in the deed issued by the State in 1972. Applicant agreed to these conditions.

Exhibit C1 also shows that a small portion of the existing master bedroom was built inside the 10-foot set back. An enlarged image of the encroaching area, about 8 square feet, is shown in blue on **Exhibit C3**. Staff located the plan showing the original structure approved by the State in 1969 which did not indicate any encroachment from the master bedroom. Since 1969, there were no approved plans in the department's records. Staff recommends the Board allow the encroachment shown on Exhibit C3 as part of the requested variance.

REMARKS:

Section 171-63, HRS, provides in part as follows:

§171-63 Waiver of restrictions. (a) Use. Upon application by the owner and consent therefor having been given by each holder of record having a security interest, and after a finding that the public interest will be served thereby, the board of land and natural resources may amend or waive the conditions restricting the use of land contained in any agreement of sale, deed, or patent upon the condition that the grantee or patentee pay to the board the difference between the fair market value of the land based upon its restricted use and the fair market value with the restrictive condition amended or waived. The foregoing authority granted to the board shall not be construed to authorize the board to waive the condition contained in any agreement of sale, deed, or patent which provides that upon change in use or breach of a condition, the title automatically reverts back to the State, or the State shall have power of termination.

Pursuant to § 171-63(a), HRS, described above, the Applicant is required to pay to the Board the difference between the fair market value difference between the fair market value of the land based on its restricted use as set forth in the original deed and the value of the land with the restricted use as varied. Staff has made the applicant aware of this condition and the applicant is in agreement to move forward with his request.

² Section 171-63, HRS points to a waiver which staff interprets as a perpetual waiver of certain restrictions. However, staff believes a one-time variance of the restriction in the present circumstances is more appropriate, further noting that the variance would cease to be effective if the improvements are demolished.

Mailers to 11 neighbors as shown on map attached as **Exhibit D1** were sent out on May 2, 2024. Based on **Exhibit D2** showing the extent of the 150-foot radius, staff believes the mailers sent to the 11 neighbors fulfill this requirement.

A sample of the May 2, 2024 letter is attached as **Exhibit E1**. For the Board's information, subsequent to the mailing on May 2, 2024, staff noted the master bedroom encroachment and brought the information to the attention of the counsel. Applicant, through its counsel, sent out an addendum (**Exhibit E2**) on May 30, 2024 to the same 11 neighbors advising the additional encroaching area.

At the time of finalizing the submittal, staff received comments through letter or email from three (3) neighbors, which indicated no comment/objection to the requested variance as shown on Exhibit E1. One of the three (3) neighbors also indicated his support to the additional master bedroom encroachment as shown on Exhibit E2.³

Staff will bring other comments/responses to both letters, upon receipt, to the Board meeting.

Pursuant to a title report as of December 13, 2023 provided by the Applicant, there is no existing mortgage encumbering the subject Lot 22.

Staff recommends the Board require an indemnity clause from the Applicant pertaining to the requested variance, and such indemnity shall extend to the successor owners of the subject private property. Upon approval of today's request, staff will request the proper indemnity clause language from the Department of the Attorney General.

In the event the above-referenced improvements [kitchen and master bedroom] are damaged or destroyed by any means (including voluntary demolition) to an extent of more than fifty per cent (50%) of its replacement cost at the time of destruction as determined by the Board, this variance and all rights granted herein shall cease and terminate automatically without any further action on its part of the Board. Any new improvements would have to be located within the buildable envelope of the lot without encroachment into the setback areas.

There are no other pertinent issues or concerns. Staff recommends the Board authorize the requested one-time variance as described above.

RECOMMENDATION: That the Board subject to the Applicant fulfilling all of the Applicant Requirements listed above, approve the one-time variance of the restrictive covenant contained in the Deed dated May 2, 1972 to allow the encroachments shown on Exhibit C1 to C3 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

³ The three (3) neighbors are the owners of parcels 2, 10, 11 marked on Exhibit D1.

1. The standard terms and conditions of the most current deed amendment form, as may be amended from time to time;
2. Applicant and his successors in title of the subject private property shall indemnify the State of Hawaii;
3. In the event the above-referenced improvements are damaged or destroyed by any means (including voluntary demolition) to an extent of more than fifty per cent (50%) of its replacement cost at the time of destruction as determined by the Board, this variance and all rights granted herein shall cease and terminate automatically without any further action on its part of the Board. Any new improvements would have to be located within the buildable envelope of the lot without encroachment into the setback areas.
4. Review and approval by the Department of the Attorney General; and
5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

RT



TMK (1) 3-1-048:027

EXHIBIT A1

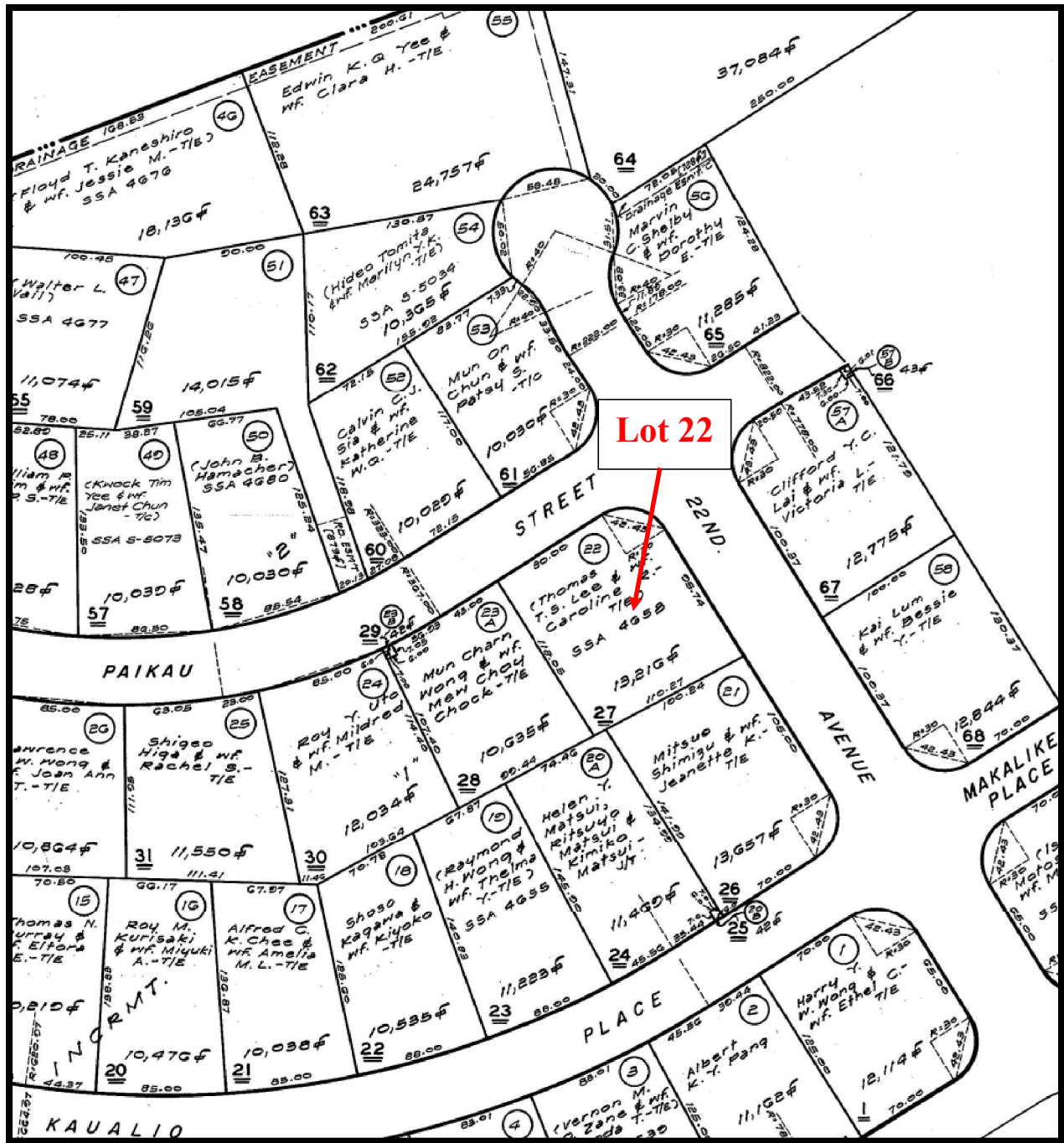
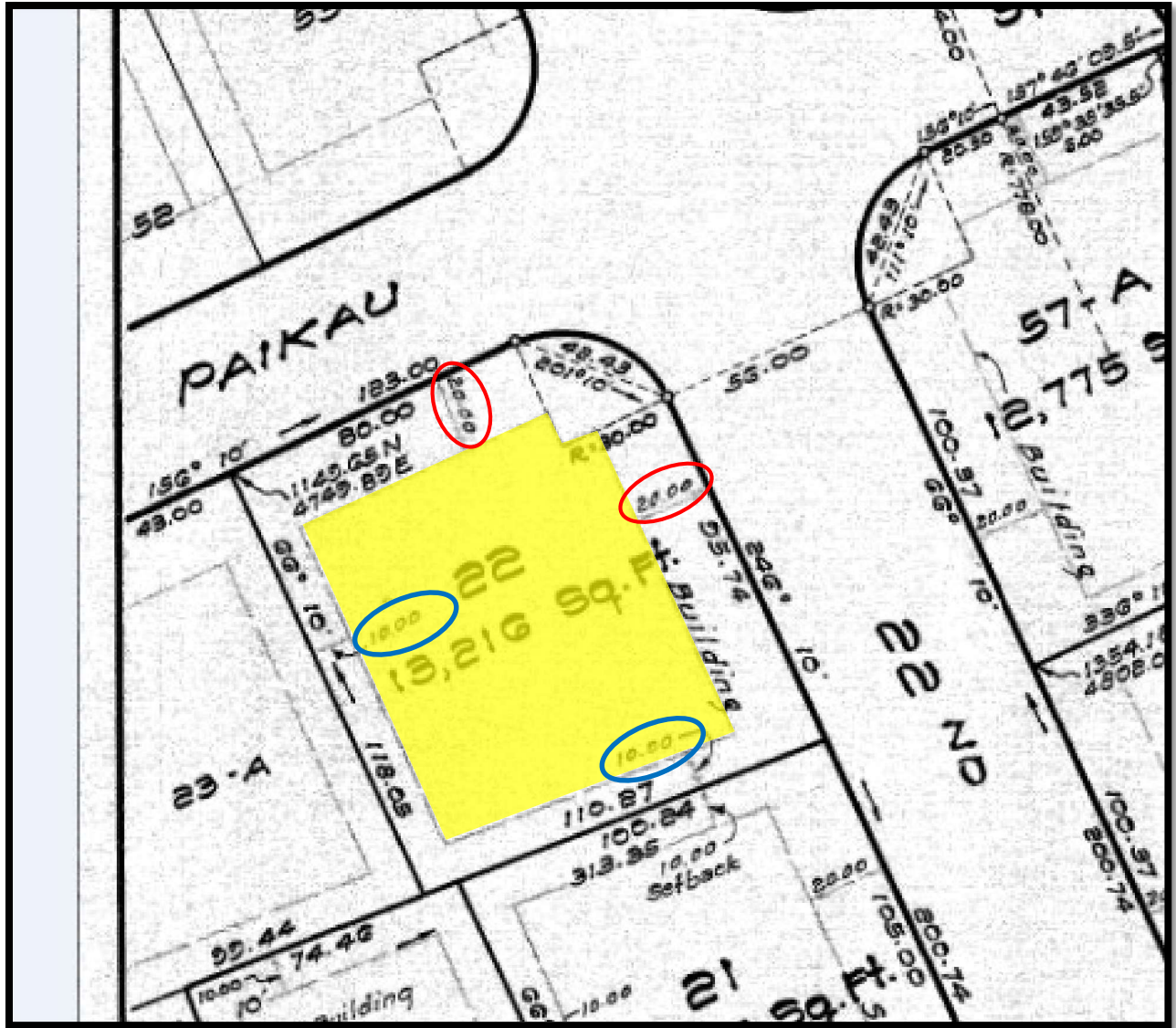


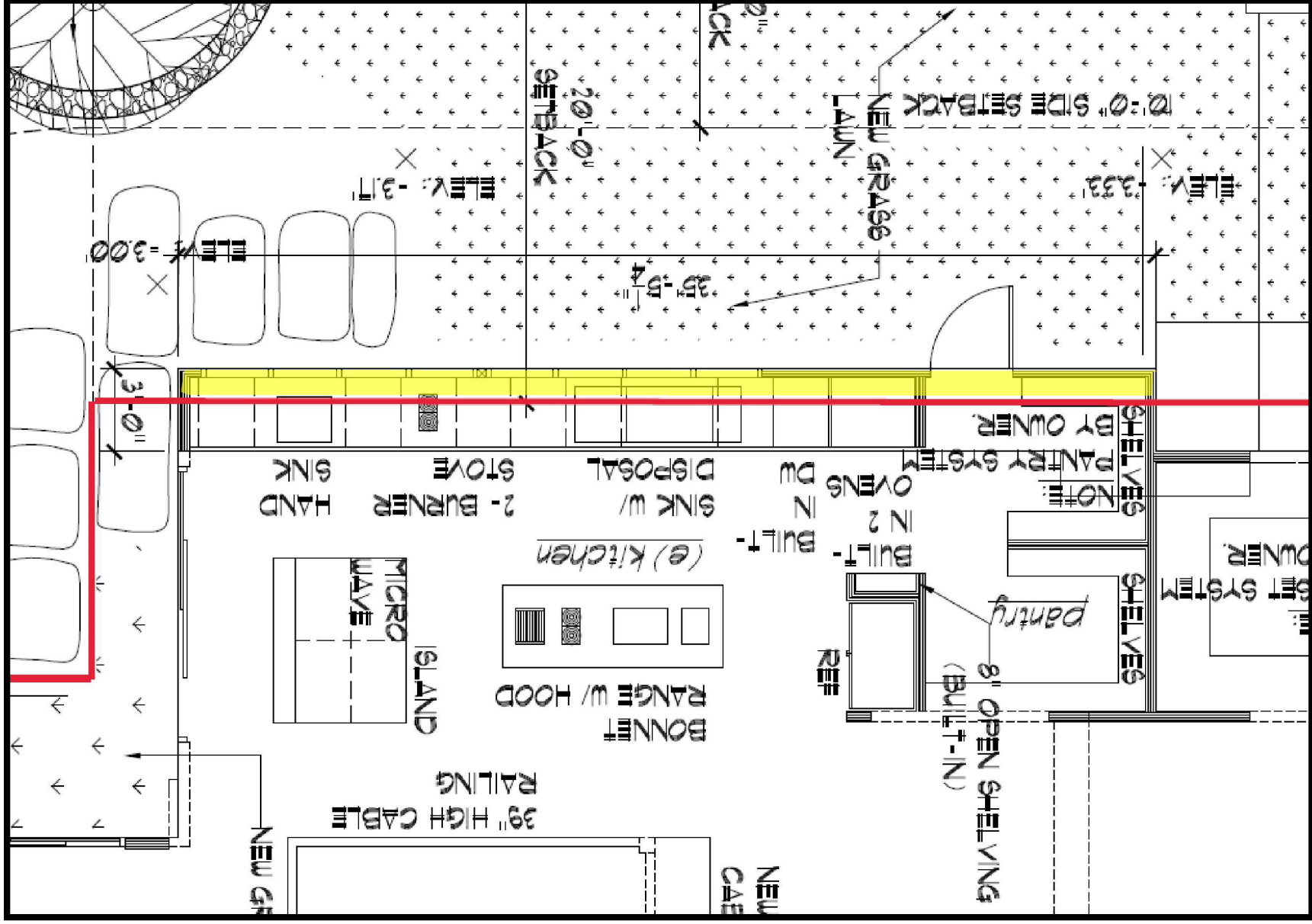
EXHIBIT A2

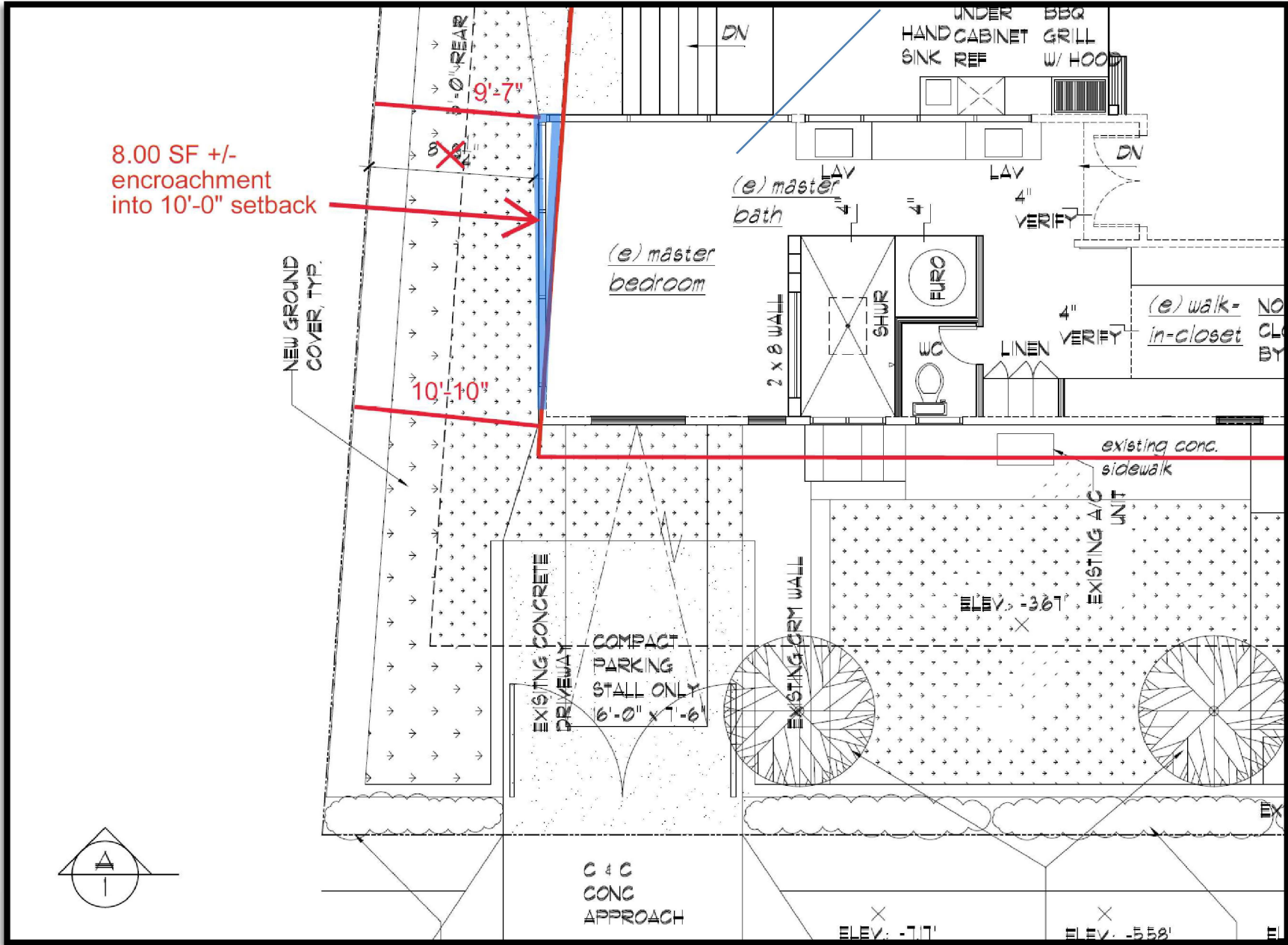


20.00

10.00

EXHIBIT B





8.00 SF +/-
encroachment
into 10'-0" setback

NEW GROUND
COVER, TYP.

10'-10"

9'-7"

EXISTING CONCRETE
DRIVEWAY

COMPACT
PARKING
STALL ONLY
6'-0" x 7'-6"

EXISTING CRYM WALL

existing conc.
sidewalk

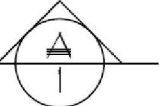
EXISTING A/C
UNIT


ELEV. -381'

C & C
CONC
APPROACH

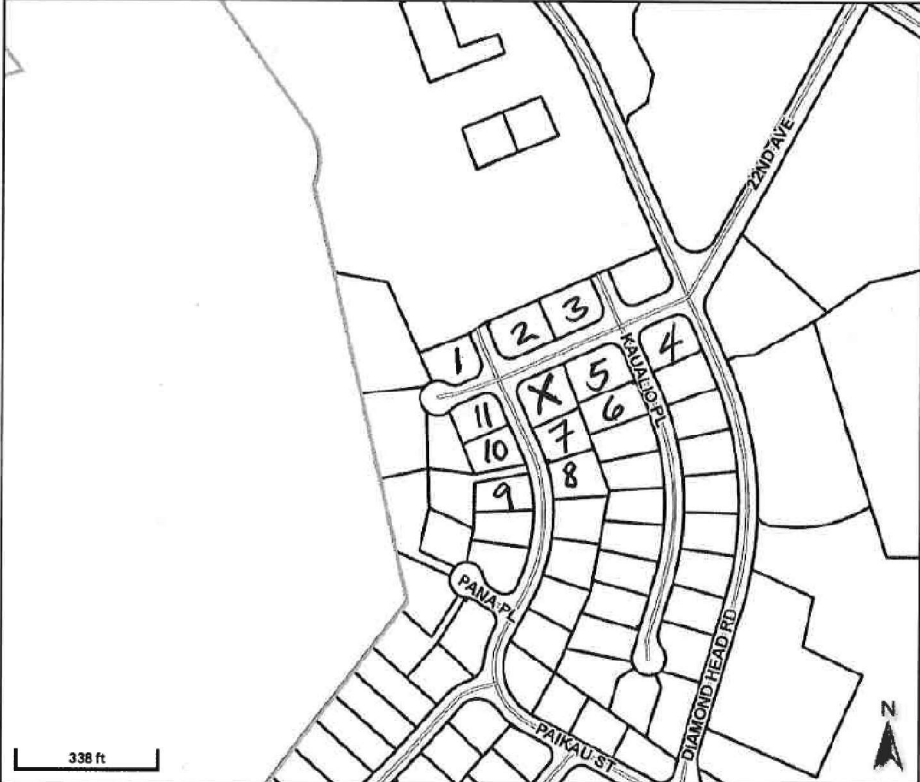
ELEV. -717'

ELEV. -558'






CITY AND COUNTY OF HONOLULU
Department of Budget and Fiscal Services
Real Property Assessment Division



Overview



Legend

- Roads
- Parcels
- City Labels


Parcel ID	310420060000	Situs/Physical Address	4204 DIAMOND HEAD RD	Assessed Land Value	\$10,990,600	Last 2 Sales			
Assessed Building Value				\$1,813,000		Date	Price	Reason	Qual
Total Property Assessed Value				\$12,803,600		n/a	0	n/a	n/a
Total Property Exemptions				\$12,803,600		n/a	0	n/a	n/a
Total Net Taxable Value				\$0					

Brief Tax Description POR LCAW 8559-B:32 303.19 AC SUBJ/TRAFFIC SIGNAL ESMT 1184 SF DES
SUBJ/SIDEWALK ESMT 232 SF DES
(Note: Not to be used on legal documents)

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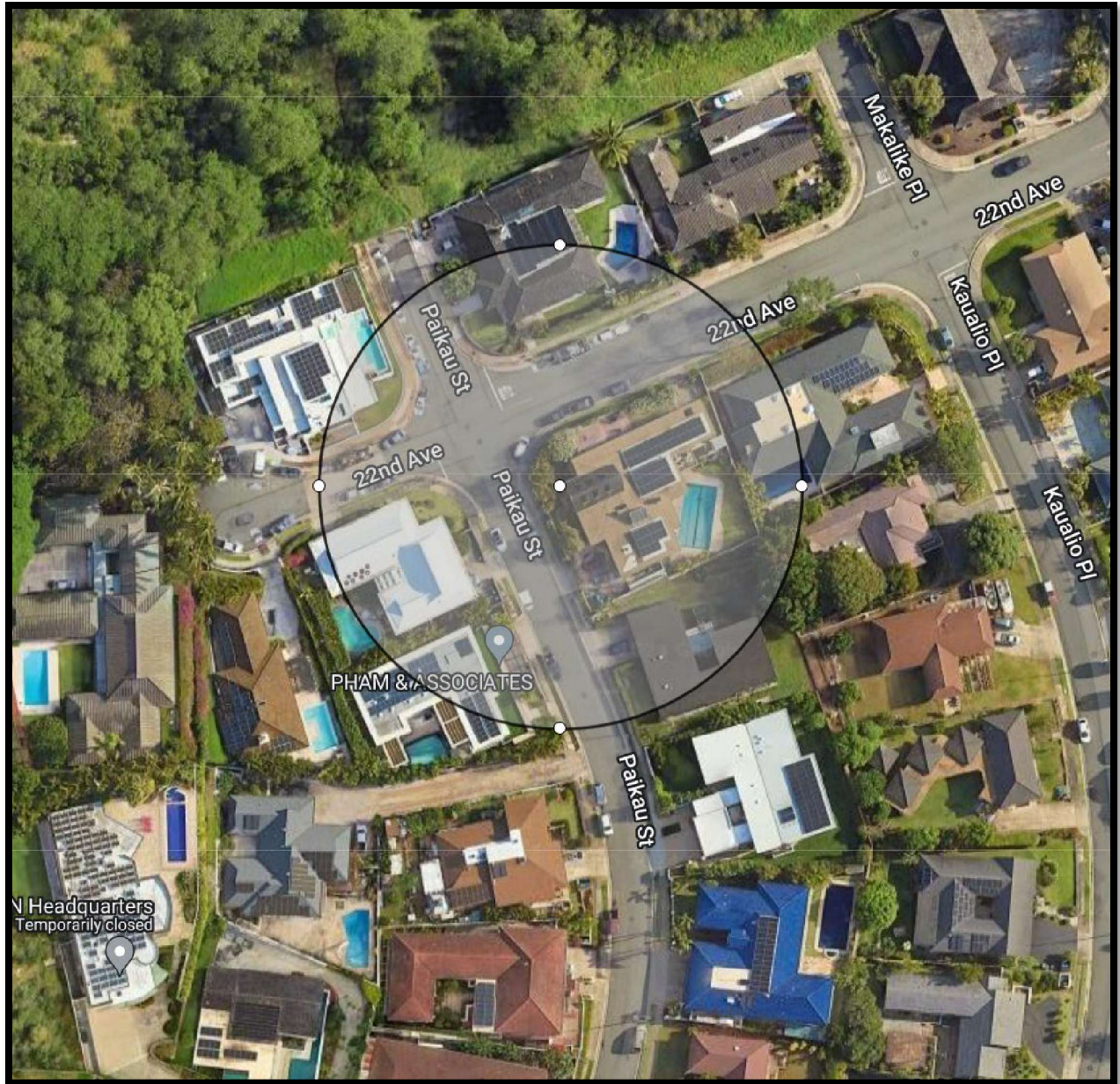


EXHIBIT D2

Roy & Denise Yamaguchi
Paikau Street
Honolulu, Hawaii 96816

May 2, 2024

... Paikau Street
Honolulu, Hawaii 96816

Subject: Petition to DLNR for a Partial Amendment to the 20' Setback along 22nd Avenue
Property: Paikau Street, Honolulu, Hawaii 96816
Lot 22, Diamond Head View Lots, Unit Two, Increment One
TMK: (1) 3-1-048-027
Owner: Roy Yamaguchi, Trustee of the Roy Yamaguchi Revocable Trust

Dear Mr. and Mrs.:

I am your neighbor, Roy Yamaguchi, who lives with my wife, Denise, at Paikau Street, Honolulu, Hawaii 96816. We purchased our home in 2011 and have lived there as your neighbor to the present time. The original house was designed and built in the classic mid-century style and minimally upgraded over the last 50 years with modest modification.

We are in the process of updating certain parts of our home, while trying to preserve its low-key mid-century aesthetics in its present form. One area of our home we would like to renovate is the kitchen which sits on the 22nd Avenue side of the house. Unlike the standard 10 foot setback distance generally applied, including the setbacks to the other 3 sides of our property, the 22nd Avenue side of our property has a *20 foot setback* from the sidewalk, twice the distance of the normal setback! Even our architect was surprised and unaware of this until we tried to get our building permit from the City & County's Department of Planning and Permitting.

In order to complete the renovation of our kitchen, we are seeking permission from the State Department of Land and Natural Resources ("DLNR") to allow a 3 foot variance along our kitchen wall into the 20 foot setback on our 22nd Avenue side of our property. This 3 foot variance will only extend along the kitchen area of our home for a distance of only 35 feet and not the entire 105 foot length of the house. A copy of our floor plan with the 3 foot variance highlighted is enclosed for your reference. As shown, the remaining 17 feet setback from the sidewalk is undisturbed.

Please be assured that:

EXHIBIT E1

Our Neighbors
May 2, 2024
Page 2

1. the variance will be entirely within our property and at no time extend beyond our property boundary;
2. the variance will not extend beyond the roof eaves from the house wall; and
3. the variance will not be visible from the public sidewalk or roadway because of the existing 6 foot wall along the boundary of our property and the mature trees growing just inside the wall where the 3 foot variance will be located. A photograph of our home from Paikau Street is enclosed for your review to be assured that the variance will be unobtrusive and essentially invisible from viewpoints beyond our home. No site lines or views will change or be affected in any way.

We are providing you with this information because the DLNR has requested any comments you may have to be directed to them. If you do have any comments, the DLNR requests that you send them to the Oahu District Land Office at dlnr.land.oahu@hawaii.gov by May 17, 2024.

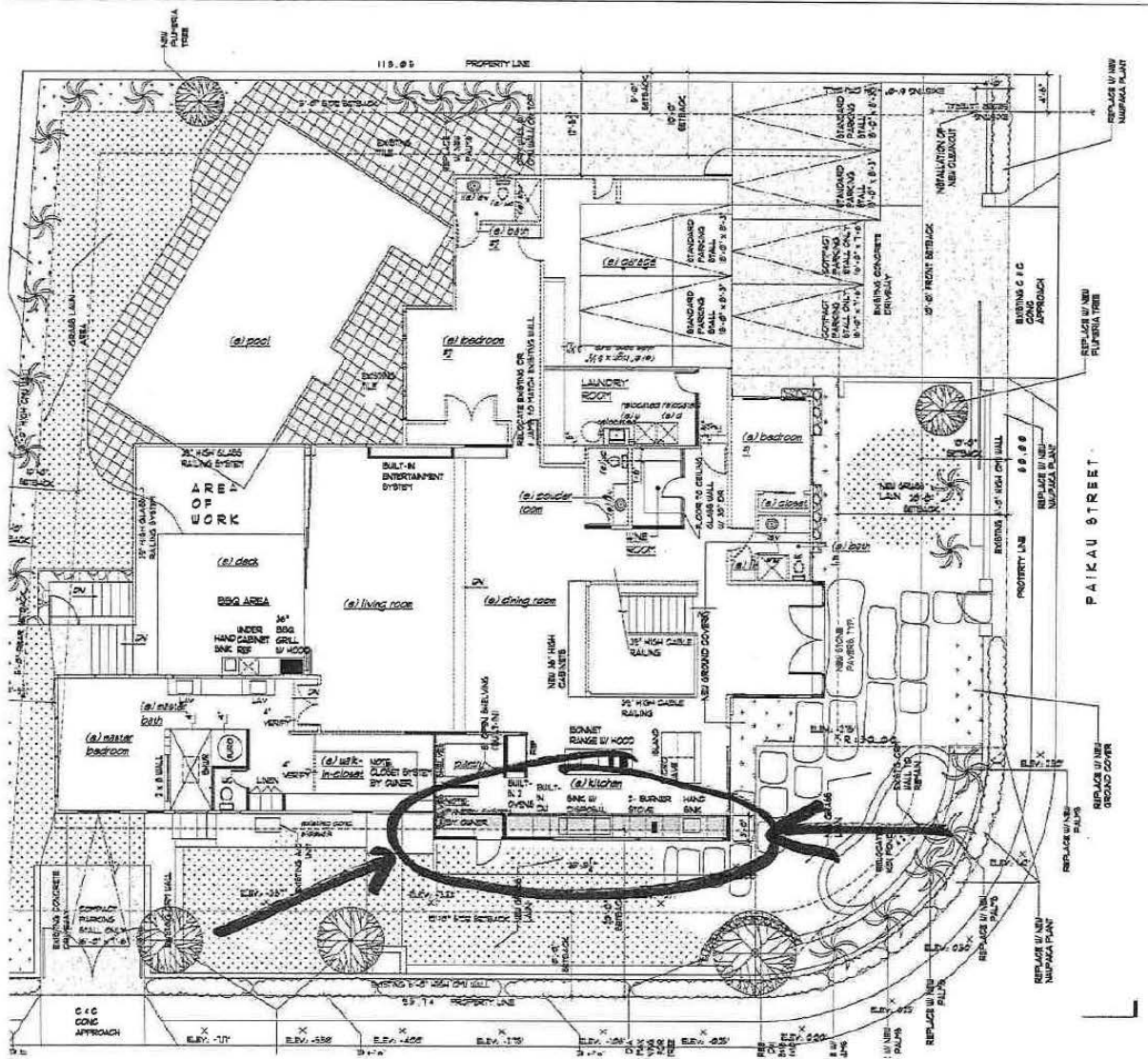
Thank you for your consideration in this matter.

Very truly yours, your neighbor,



Roy Yamaguchi

enclosure





Roy & Denise Yamaguchi
Paikau Street
Honolulu, Hawaii 96816

May 29, 2024

Paikau Street
Honolulu, Hawaii 96816

Subject: Petition to DLNR for a Partial Amendment to the 20’ Setback along 22nd Avenue
Property: . . . Paikau Street, Honolulu, Hawaii 96816
Lot 22, Diamond Head View Lots, Unit Two, Increment One
TMK: (1) 3-1-048-027
Owner: Roy Yamaguchi, Trustee of the Roy Yamaguchi Revocable Trust

Dear Mr. and Mrs. _____,

This letter is an update to our earlier letter to you of May 2, 2024 (the “May 2 letter”). As I explained, my wife, Denise, and I are your neighbors at Paikau Street, Honolulu, Hawaii 96816.

In our earlier May 2 letter, we explained that we were seeking permission from the State Department of Land and Natural Resources (“DLNR”) for a variance of the kitchen wall to extend 3 feet into the 20 foot setback on the 22nd Avenue side of our property. We have now been informed that the extension into the setback will only total 1 foot (12 inches) and not 3 feet.

Secondly, it was discovered that a narrow pie shaped sliver of our existing master bedroom wall extends 5 inches at its widest point into the 10 foot setback along the mauka side of our property. The narrower point of the pie sits well outside the setback and is not at issue. This new discovery is being added to our DLNR Petition requesting their consent to allow these minimal extensions into the setbacks.

A corrected copy of our floor plan with the 1 foot kitchen wall extension and the existing 5 inch master bedroom extension are highlighted and enclosed for your reference.

Again, please be assured that:

1. the variances will be, and remain, entirely within our property and at no time extend beyond our property boundary;
 2. the variances do not and will not extend beyond the roof eaves from the house walls;
- and

Our Neighbors
May 29, 2024
Page 2

3. the kitchen wall variance will not be visible from the public sidewalk or roadway because of the existing 6 foot wall along the boundary of our property and the mature trees growing just inside the wall where the 1 foot variance will be located. No site lines or views will change or be affected in any way.

We are providing you with this updated information in the event you may have any comments or questions for the DLNR. If you do, the DLNR requests that you send them to the Oahu District Land Office at dlnr.land.oahu@hawaii.gov by June 14, 2024.

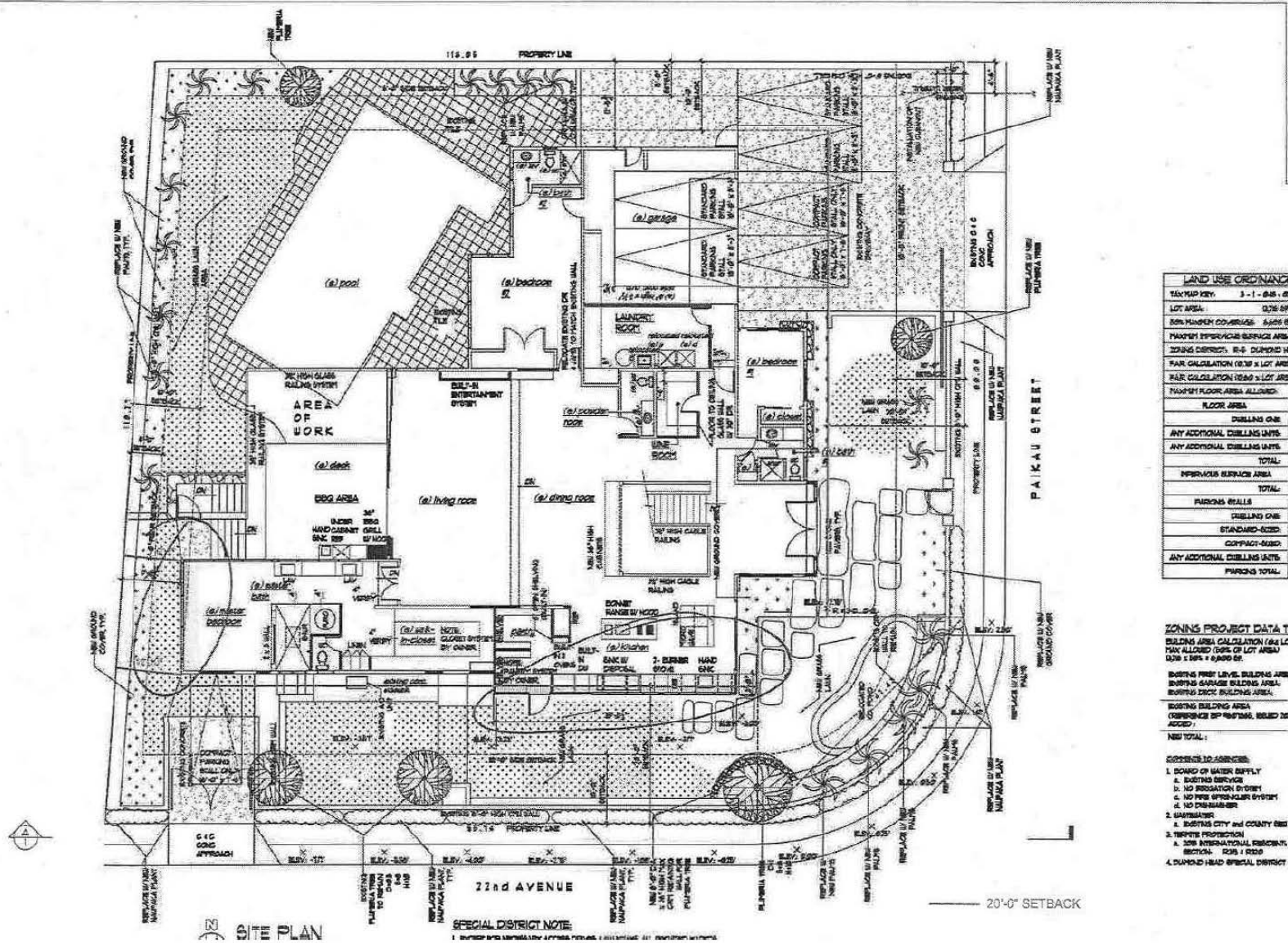
Thank you again for your consideration in this matter.

Very truly yours, your neighbor



Roy Yamaguchi

enclosure



LAND USE CRITERIA	
TAX MAP KEY:	3-1 - 048 - 02
LOT AREA:	5256 SF
SOIL PLANTER COVERAGES:	5400 SF
PLANTER INFILTRATION SURFACE AREA:	5400 SF
ZONING DISTRICT:	RS-1 DISTRICT
FAIR CALCULATION (100% x LOT AREA):	5256 SF
FAIR CALCULATION (100% x LOT AREA):	5256 SF
THIRTY FLOOR AREA ALLOWED:	
FLOOR AREA:	
DWELLING ONE:	
ANY ADDITIONAL DWELLING UNITS:	
ANY ADDITIONAL DWELLING UNITS:	
TOTAL:	
PERVIOUS SURFACE AREA:	
TOTAL:	
PARKING SPACES:	
DWELLING ONE:	
STANDARD-EXC:	
COPYRIGHT-EXC:	
ANY ADDITIONAL DWELLING UNITS:	
PARKING TOTAL:	

ZONING PROJECT DATA	
BUILDING AREA CALCULATION (64% LC MAX ALLOWED 50% OF LOT AREA):	3368 SF x 64% = 2155 SF
BUILDING FLOOR LEVEL BUILDING AREA:	
BUILDING GARAGE BUILDING AREA:	
BUILDING DECK BUILDING AREA:	
BUILDING BUILDING AREA:	
CONFORMANCE BY FOOTING, BEILD IS ACCED:	
NEW TOTAL:	
CONFORMANCE TO:	
1. BOARD OF WATER SUPPLY:	
2. BOARD OF WATER SUPPLY:	
3. NO FLOOD PROTECTION:	
4. NO FIRE SUPPRESSION SYSTEM:	
5. NO DISINTEGRATION:	
6. BOARD OF WATER SUPPLY:	
7. BOARD OF WATER SUPPLY:	
8. BOARD OF WATER SUPPLY:	
9. BOARD OF WATER SUPPLY:	
10. BOARD OF WATER SUPPLY:	

SPECIAL DISTRICT NOTE

CITE PLAN

20'-0" SETBACK