

William P. Kenoi
Mayor



Duane Kanuha
Director

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County of Hawai'i
PLANNING DEPARTMENT

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101 Pauahi Street, Suite 3
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March 13, 2015

Britany Belisario
Ha'a Design Group
73-5612 Kauhola Street, Unit 6
Kailua-Kona, HI 96740

Dear Ms. Belisario:

SUBJECT: VARIANCE APPLICATION – VAR-14-000249

Applicant: BRITANY BELISARIO/HA'A DESIGN GROUP

Owners: AGUEDO CARRILLO JR. & TERESITA M. CARRILLO

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 the East Front Yard Setback and West Side Yard Setback).

TMK: 7-5-029:001; Lot 95-A

The Planning Director certifies the **approval** of VAR-14-000249, subject to variance conditions. The variance will allow the garage to remain with a minimum 8-foot to a minimum 14-foot front (east) yard setback and associated roof eave with a minimum 4-foot front (east) yard open space. It will also allow for the enclosure of the open lanai with a 9'-6" side (west) yard setback. These exceptions are in lieu of the required 20-foot front yard setback and 10-foot side (west) yard setback, 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, consisting of approximately 10,418 square feet of land, is located in the Kona Heights Subdivision, Increment II, and is situated at Heinaloi 5th and 6th North Kona, Hawai'i. The subject property's street address is 75-384 Aloha Kona Drive.
2. **Zoning.** Agricultural – 5 acres (A-5a).

3. **State Land Use.** Urban.
4. **Required Setback.** 20 feet for front; 10 feet for sides. Section 25-4-42 Corner building sites (a) On any corner building site, the interior lines shall be side lot lines and all rear yard regulations shall be inapplicable.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on October 23, 2014, and other submittals related to the variance request and variance application. The variance application's site plan drawn to scale and prepared by Britany Belisario, (Ha'a Design Group), denotes that portions of the single-family dwelling built into the front (east) yard setback.

The site plan shows that the existing garage encroaches 6 feet to 12 feet into the 20-foot front (east) yard setback and 10 feet into the 14-foot side yard open space.
6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (47) was issued on September 12, 1972, for the construction of a 3-bedroom and 1-1/2 bath single-family dwelling and garage, which was completed in 1973.
7. **Subdivision.** Subdivision No. 5606 (87-143); Consolidation of lots 90, 91, 92, 93, 94, 95 and 96 and Resubdivision into lots 90-A, 91-A, 92-A, 93-A 94-A, 95-A and 96-A.
8. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated November 17, 2014.
(See attached memorandum)
 - b. The Department of Public Works–Building Division memorandum, dated November 25, 2014. (See attached memorandum)
9. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notice mailed to surrounding property owners (including affidavits) by U.S.P.S. According to these submittals, the first and second notice(s) were mailed on November 3, 2014 and November 6, 2014, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on November 12, 2014.
10. **Time Extension.** The applicant's variance application was received on October 23, 2014 and additional time to review the application was required. The applicant granted the Planning Director an extension of time to issue a decision on the Variance Application until March 13, 2015.
11. **Comments from Surrounding Property Owners or Public.** No written comments or

objections from surrounding property owners or general public were received by the Planning Department.

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 site plan prepared by Britany Belisario (Hawaii Design Group), shows that portion of the existing garage encroaches 6 feet to 12 feet into the 20-foot front (east) yard setback and 10 feet into the 14-foot front (east) yard open space.

No evidence has been found to allow indifference or premeditation by the owners or builders to deliberately create or intentionally allow the single-family dwelling encroachment problems to occur.

It appears that the single-family dwelling constructed nearly 43 years ago was constructed under valid building permits and other construction permits issued by the County. It also appears that past building permit inspections of the premises by the agencies during construction of the single-family dwelling did not disclose any building encroachment issues or building setback irregularities at that time.

At the time the single-family dwelling and garage were constructed in 1973, the subject parcel was not a corner lot and consisted of 9,980 square feet. The setbacks at that time were 15 feet for both front and rear setbacks and 8 feet for both side setbacks. However, in 1987, the subject property was consolidated and resubdivided (SUB 5606), increasing the lot size to 10,418 square feet and created a corner lot, therefore, changing the existing setbacks from 15 feet for the front and rear yard setbacks and 8 feet for both side yard setbacks to 20 feet for both front yard setbacks and 10 feet for the side yard setbacks. Although the single-family dwelling and the garage are considered legal non-conforming structures, the owners wish to renovate the existing garage to construct an interior wall to divide the two-car garage, replace to windows, and add a storage closet within the garage. The legal non-conforming status is voided with new construction therefore, a setback variance is required. The owners' are also planning to enclose the open lanai, the open lanai presently meets with the permitted projections into yards and open spaces (Section-4-44). However once the lanai is enclosed a portion of the enclosed lanai will

encroach 0.5 feet (6 inches) into the side (west) yard setback, requiring a 9'-6" side (west) yard setback.

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 property.

(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 east front yard setback of the subject property include the following actions:

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 original dwelling improvements constructed in 1973 nearly 43 years ago were constructed under valid building permits and other construction permits issued by the County. It also appears that past building permits inspections of the premises by the agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

Because the encroachment is within the front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options; there are no reasonable alternatives to resolve the encroachment issue.

(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's 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 building setbacks within a subdivision 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 encroachment of feet into the 20-foot front (east) yard setback and associated roof eave encroaching into the front yard open space still allows for adequate air circulation, as the affected area is within the front setback adjacent to roadway frontage.

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 43 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. Furthermore, 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.

This can be substantiated, to some degree, by the fact that no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

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.

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 intent and purpose of the Zoning Code, Subdivision Code and the County General Plan.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the single family dwelling and garage were built upon the subject property ("LOT 95-A") will not meet the minimum front yard setback and open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

This variance request is **approved** subject to the following conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai'i harmless from and against any loss, liability, claim, or demand for the property

damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.

3. Subject to provisions of the Zoning Code or State law, which may be changed from time to time, no permit shall be granted to allow an ohana or farm dwelling upon the subject property.
4. Should the single-family dwelling and existing garage 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.
5. The portable shed encroaching into the side (south) yard setback shall be removed or relocated out of the 10-foot side (south) yard setback.
6. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-14-000249 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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cc: Planning Department (Kona)
Real Property Tax Division (Kona)
Gilbert Bailado, Planning GIS

Britany Belisario
Ha'a Design Group
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March 13, 2015

NEIL ABERCROMBIE
GOVERNOR




LINDA ROSEN, M.D., M.P.H.
DIRECTOR OF HEALTH

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

MEMORANDUM

DATE: November 17, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye 
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 14-000249
Applicant: BRITANY BELISARIO/HI'A DESIGN GROUP
Owner: AGUEDO CARRILLO JR. & TERESITA M. CARRILLO
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76 Minimum Yards and Article 4, Division 4,
Section 25-4-44(a), Permitted Projections into Yards and
Open Space Requirements (Encroachment into the East
Front Yard Setback).
Tax Map Key: 7-5-029:001

2014 NOV 18 PM 3:33
LINDA ROSEN, M.D., M.P.H.
DIRECTOR OF HEALTH

We recommend that you review all of the Standard Comments on our website:
<http://hawaii.gov/health/environmental/env-planning/landuse/landuse.html>. Any comments
specifically applicable to this project should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist
(Checklist) created by Built Environment Working Group (BEWG) of the Hawaii State
Department of Health. The BEWG recommends that state and county planning departments,
developers, planners, engineers and other interested parties apply the healthy built environment
principles in the Checklist whenever they plan or review new developments or redevelopments
projects. We also ask you to share this list with others to increase community awareness on
healthy community design.

Britany Belisario
Ha'a Design Group
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BUILDING DIVISION – DPW

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

November 25, 2014

SUBJECT: Carrillo

TMK: 7-5-029-001

2014 NOV 25 PM 4:0
COUNTY OF HAWAII
DEPARTMENT OF PLANNING & PERMITTING

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

- No ____ permit was issued for work done on the premise.
- No building permit was issued for the change of occupancy.
- At the time of completion, the subject complied to all building regulations that were in effect.
- Variance from any building regulation (Building, Electrical, Plumbing, or Sign) was/was not granted.

The following violations(s) still outstanding:

Building Electrical Plumbing Sign

Others:

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

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

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