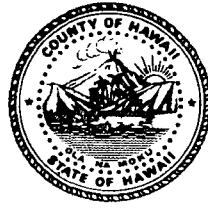


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy 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

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

December 9, 2015

Zendo Kern
Planning Consultant
1277 S. Kumuwaina Place
Hilo, HI 96720

Dear Mr. Kern:

SUBJECT: Application: Variance - VAR-15-000323
Applicant: ZENDO KERN, PLANNING CONSULTANT
Owner: LINDA D. CADANG TRUST
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76 Minimum Yards Requirements and Article 4, Division 4. Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements (Encroachment into the Southeast Side Yard Setback)

Tax Map Key: 8-2-009:084; Lot 43

The Planning Director certifies the **approval** of Variance No. 15-000323, subject to variance conditions. The variance will allow portion of the single-family dwelling to remain with a minimum 13.3-foot to a minimum 13.8-foot side (southeast) yard setback in lieu of the required 20-foot side (southeast) yard setback and associated roof eave projection, resulting with a minimum 9.7-foot side (southeast) yard open space in lieu of the required 14-foot open space requirement. These exceptions are in lieu of the required 20-foot side yard setback and 14-foot side yard open space 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 43,561 square feet of land, is located in the McCoy Plantation Subdivision situated at Kalamakowali, South Kona, Hawai'i. The subject property's street address is 88-952 Mamalahoa Highway.
2. **Zoning.** Agricultural – 1 Acre (A-1a).

3. **State Land Use.** Agricultural.
4. **Required Setback.** Front and Rear – 30 feet; Sides – 20 feet.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on October 23, 2015, and other submittals related to the variance request and variance application. The variance application's site plan, drawn to scale and prepared by Kevin McMillen, L.P.L.S., (KKM Surveys), denotes the portions of the single-family dwelling built into the side (southeast) yard setback and associated side (southeast) yard open space.

The survey map shows that the single-family dwelling encroaches 6.2 feet to 6.7 feet into the 20-foot side (southeast) yard setback and associated roof eave encroaching 3.6 feet to 4.3 feet into the side (southeast) yard open space.

The encroachment leaves a minimum 13.3 feet to a minimum 13.8 feet side (southeast) yard setback in lieu of the required 20-foot side yard setback and associated roof eave projection, resulting with a minimum 9.7 feet to a minimum 10.3 feet side yard open space in lieu of the required 14-foot open space requirement. Also, the survey map shows a shed encroaching into the side (southeast) yard setback; however, the applicant has stated that the shed is a portable plastic shed purchased from Lowes Home Improvements and does meet with the requirements of **Section 15-4-43 (Fences and accessory structures)**.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (896396) was issued on October 2, 1989, for the construction of a 2-bedroom and 2-bath, single-family dwelling. A subsequent building permit (B2004-1833K) was issued on October 21, 2004 for the construction of a 2-bedroom and 2-bath and den addition to the lower level.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated November 6, 2015.
(See attached memorandum)
 - b. No comments received from the Hawaii County Public Works Department-Building Division.
8. **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 October 26, 2015 and November 12, 2015, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on November 25, 2015.

9. **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 owner/applicant submitted the variance application to address or resolve the encroachments of the single-family dwelling into the 20-foot side yard setback and associated 14-foot side yard open space as required by the Zoning Code.

The survey map shows that the single-family dwelling encroaches 6.2 feet to 6.7 feet into the 20-foot side (southeast) yard setback and associated roof eave encroaching 3.6 feet to 4.3 feet into the side (southeast) yard open space.

The encroachment leaves a minimum 13.3 feet to a minimum 13.8 feet side (southeast) yard setback in lieu of the required 20-foot side yard setback and associated roof eave projection resulting with a minimum 9.7 feet to a minimum 10.3 feet side yard open space in lieu of the required 14-foot open space requirement. Also, the survey map shows a shed encroaching into the side (southeast) yard setback; however, the applicant has stated that the shed is a portable plastic shed purchased from Lowes Home Improvements and does meet with the requirements of Section 15-4-43 (Fences and accessory structures).

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. It appears that the single-family dwelling, constructed in 1989 nearly 26 years ago, was 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.

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 screened lanai encroachment constructed into the affected rear yard setback and storage shed encroachments constructed into the affected side yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the screened lanai and storage shed constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the current owners were under the impression that the single-family dwelling is in compliance with all County requirements. Also, any structural or design correction of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars. The survey map shows a shed which is encroaching into the side (southeast) yard setback; however, the applicant has stated that the shed which is six feet in height is a portable plastic shed purchased from Lowes Home Improvements and does meet with the requirements of **Section 15-4-43 (Fences and accessory structures)**.

Because the encroachments are within the side yard setback, to consolidate the subject property, which is owned by someone else, and to re-subdivide the property to modify property lines and adjust minimum rear and side yard setbacks are not viable options; therefore, 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 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. As such, it is felt

that the issuance of this variance will not depreciate or detract from the character of the surrounding 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 Property Owners.

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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the single-family dwelling built upon the subject property (LOT 43) will not meet the minimum side 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. An ohana or farm dwelling shall not be approved for the subject property, subject to provisions of the Zoning Code or State law, which may change from time to time.
4. Should the single-family dwelling 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. 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.

Zendo Kern
Planning Consultant
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December 9, 2015

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-15-000323 null and void.

Sincerely,

A handwritten signature in black ink, appearing to read 'Duane Kanuha', written in a cursive style.

DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone8\VAR15-000323TMK8-8-009-064 Cadangdoc.rtf

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

Zendo Kern
Planning Consultant
Page 7
December 9, 2015

DAVID Y. IGE
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

NOV 17 PM 3 13

PLANNING DEPARTMENT
COUNTY OF HAWAII

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

MEMORANDUM

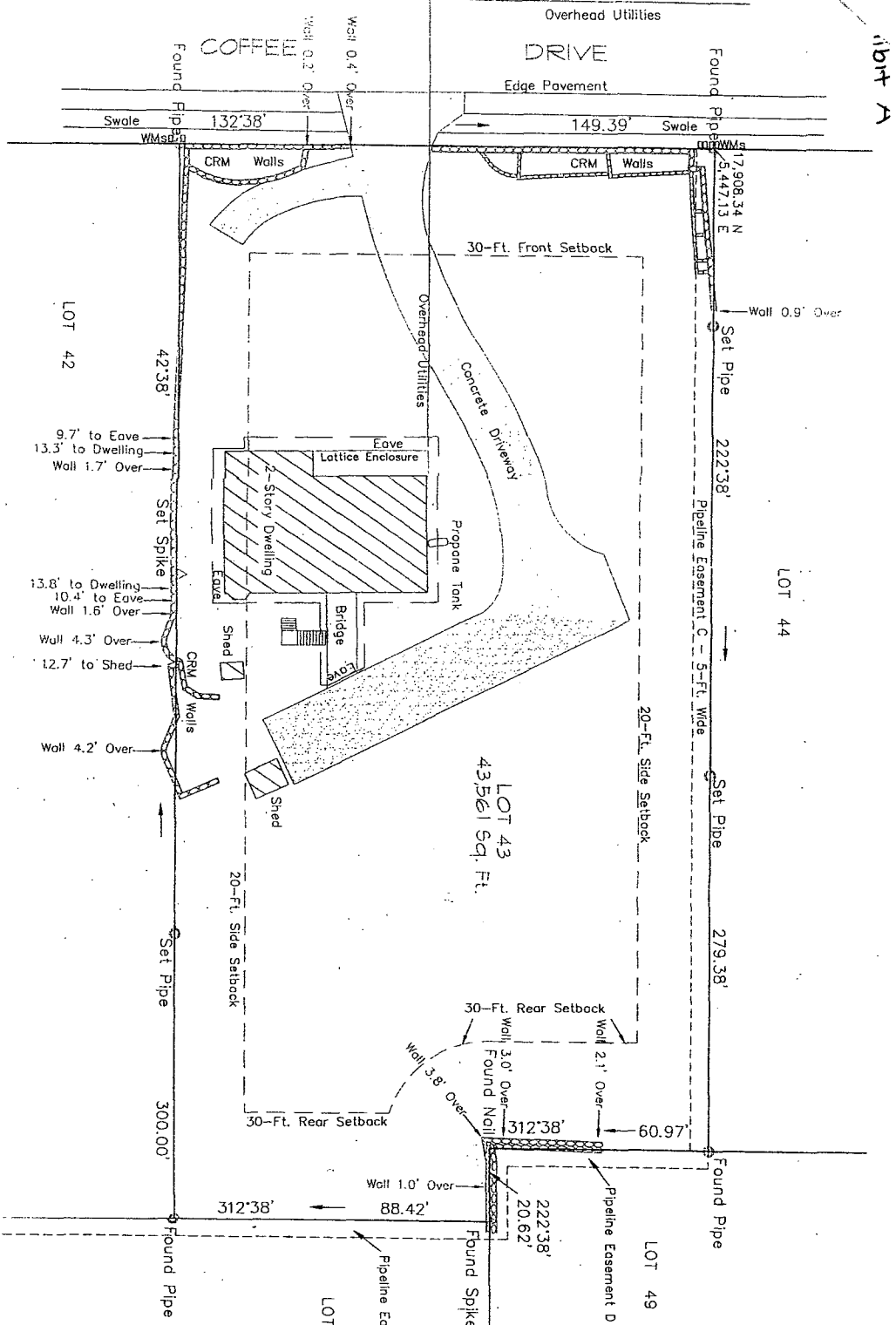
DATE: November 6, 2015

TO: Mr. Duane Kanuha
Planning Director, County of Hawaii

FROM: Eric Honda *EH*
District Environmental Health Program Chief

SUBJECT: **Application: Variance – VAR-15-000323**
Applicant: ZENDO KERN, PLANNING CONSULTANT
Owner: LINDA D. CADANG TRUST
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Section 25-5-76 Minimum Yards Requirements
(Encroachment into the Southeast Side Yard Setback)
Tax Map Key: 8-2-009:084; Lot 43

The Health Department found no environmental health concerns with regulatory implications in the submittals.



Notes:

Azinuths and Coordinates are referred to Government Survey Triangulation Station "LAE-O-KANONI" Δ. The Improvements shown herein were located by an actual survey on the ground performed January 23, 2010.

**C-42 (HAR) SURVEY MAP
OF LOT 43
MCCOY PLANTATION SUBDIVISION
PART B, INCREMENT 1**

AT KALANIAKOWALI, SOUTH KONA
ISLAND, COUNTY AND STATE OF HAWAII
Tax Map Key (3rd Division): 8-2-03: 84

KKM SURVEYS

P. O. Box 2494
Kailua-Kona, Hawaii 96745
Phone (808) 328-4533 Fax (808) 334-0398

THIS WORK WAS PREPARED BY ME
OR UNDER MY SUPERVISION.
Kevin McMillen
DATE: 1/26/2010

