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PLANNING DEPARTMENT

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July 12, 2016

Ryan S. Simpson
P.O. Box 390810
Keauhou, HI 96739

Dear Mr. Simpson:

SUBJECT: Application: Variance - VAR 16-000346
Applicant: RYAN S. SIMPSON
Owner: RYAN S. SIMPSON
Request: Variance from Chapter 25, Zoning, Article 5 Division 1, Section 25-5-7 Minimum Yards and Article 4, Division 4, Section 25-4-44(a) Permitted Projections into Yards and Open Space Requirements (Encroachment into West Front Yard Open Space)

Tax Map Key: 7-5-043:016; Lot 16

The Planning Director certifies the **approval** of Variance No. 16-000346, subject to variance conditions. The variance will allow portions of the open lanai to remain with a minimum 12.5-foot front (west) yard open space to a minimum 13.3-foot front (west) yard open space, in lieu of the required 14-foot open space requirement. It also allows for the detached gazebo to remain with a minimum of 8.3-foot front (west) open space with a minimum of 10-foot front (west) yard open space in lieu of the required 14-foot front yard open space requirement. These exceptions are in lieu of the required 14-foot front yard open space as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-4-44 (a), Permitted projections into yards and open space requirements

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 16,984 square feet of land, is located in the Hualalai Heights Subdivision, situated at Puapua'anui 1st, North Kona Hawai'i. The subject property's street address is 75-681 Pualena Street.
2. **Zoning.** Single-Family Residential – 20,000 square feet (RS-20)
3. **State Land Use.** Urban.

4. **Required Setback.** 20-feet for the 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 February 16, 2016, and other submittals related to the variance request and variance application. The variance application's site plan, drawn to scale and prepared by Thomas G. Pattison, LPLS, (Pattison Land Surveying, Inc.), denotes the portions of the open lanai and gazebo built into the front (west) yard open space.
(See Exhibit A)

The site plan shows that portion of the open lanai encroaches 0.70 feet (8.4 inches) to 1.50 feet (18 inches) into the 14-foot front (west) yard open space and the detached gazebo encroaches 4 feet to 5.7 feet into the 14-foot front (west) yard open space.

The encroachment leaves the open lanai with a minimum 12.5-foot front (west) yard open space to a minimum 13.3-foot front (west) yard open space, in lieu of the required 14-foot open space requirement. It also leaves the detached gazebo with a minimum of 8.3-foot front (west) open space with a minimum of 10-foot front (west) yard open space in lieu of the required 14-foot front yard open space requirement.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (B2008-0703K) was issued on May 13, 2008, for the construction of a 3-bedroom and 3-1/2-bath, single-family dwelling, lanai and pavilion (gazebo). Additional building permit (B2011-0315K) was issued on April 26, 2011 for a detached game room with 1 bath and bar sink.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated February 18, 2016. "The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - 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 USPS. According to these submittals, the first and second notices were mailed on March 7, 2016 and March 10, 2016, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on March 16, 2016.

9. **Time Extension.** The applicant's variance application was acknowledged by letter dated February 25, 2016 and additional time to review the application was required. The applicant/owner granted the Planning Director an extension of time for decision on the Variance Application to July 15, 2016.
10. **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 shows that portion of the open lanai encroaches 0.70 feet (8.4 inches) to 1.50 feet (18 inches) into the 14-foot front (west) yard open space and the detached gazebo encroaches 4 feet to 5.7 feet into the 14-foot front (west) yard open space.

The encroachment leaves the open lanai with a minimum 12.5-foot front (west) yard open space to a minimum 13.3-foot front (west) yard open space, in lieu of the required 14-foot open space requirement. It also leaves the detached gazebo with a minimum of 8.3-foot front (west) open space with a minimum of 10-foot front (west) yard open space in lieu of the required 14-foot front yard open space requirement.

No evidence has been found to allow indifference or premeditation by the owners or builders to deliberately create or intentionally allow the open lanai and gazebo encroachment problems to occur.

It appears that the single-family dwelling along with the open lanai and gazebo constructed nearly 8 years ago was constructed under valid building permits and other construction permits issued by the County. Also, it 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.

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 criteria (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the single-family dwelling encroachment constructed into the affected front yard open space of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the open lanai and gazebo 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 open lanai was in compliance with all County requirements. Also, any structural or design correction to the open lanai and gazebo to meet setback requirement would leave unattractive reconstruction scars.

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 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.

The open space encroachment into the front yard open space still allows for adequate air circulation and exposure to light, as the affected area is within the front yard open adjacent to the roadway frontage.

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 attached shed and family-room built upon the subject property (LOT 16) 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. Should the open lanai and gazebo 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.
4. An ohana or farm dwelling permit shall not be granted upon the subject property, subject to provisions of the Hawai'i County Code, Chapter 25 (Zoning) or State Law, which may change from time to time.

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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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-16-000346 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:

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

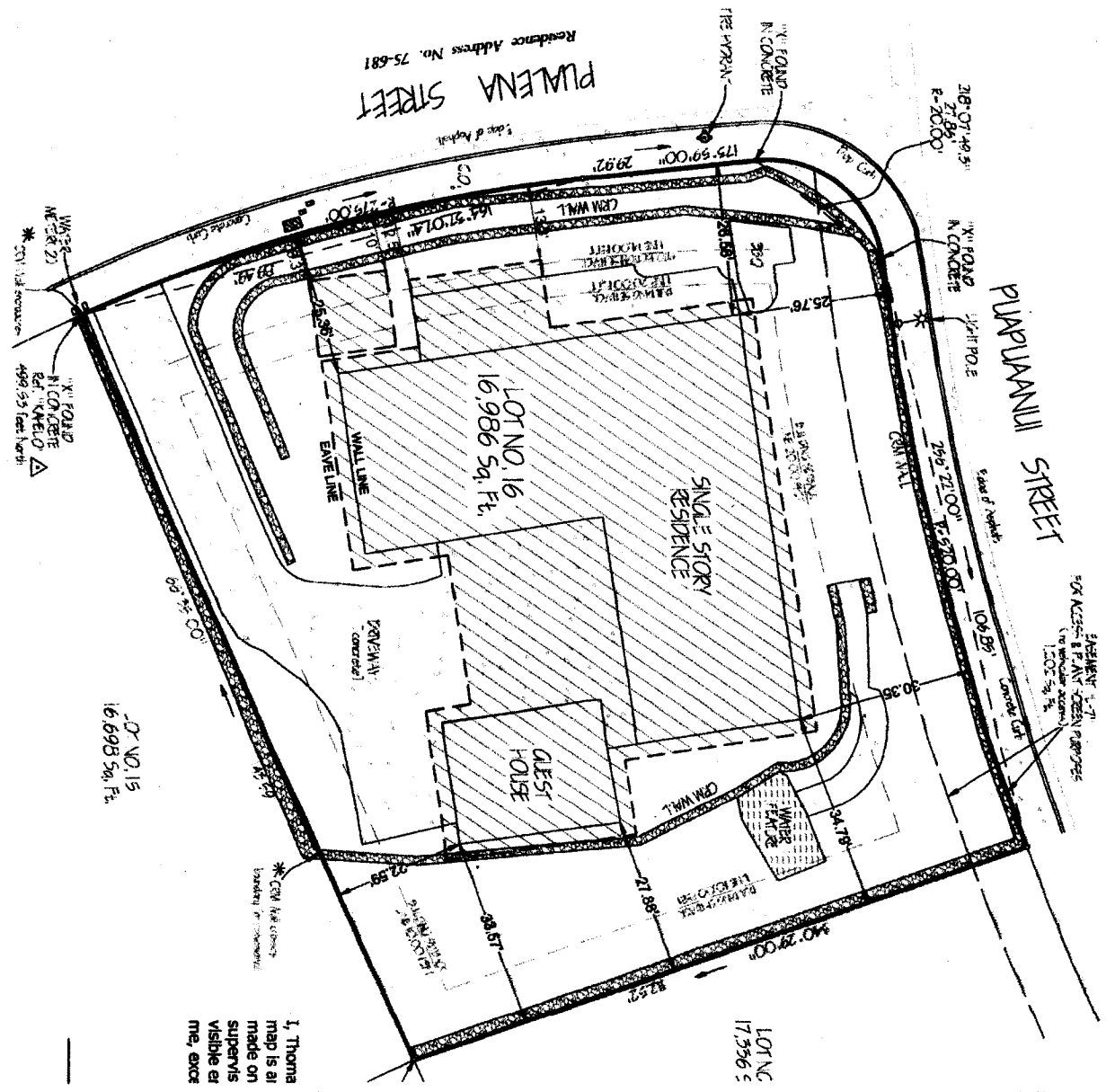
**MAP SHOWING EXISTING
CONDITIONS UPON
LOT NO. 16**

of "HUALALAI HEIGHTS SUBDIVISION"
 Sub. Map 7921-Revised
 Being a Portion of Royal Patent No. 7819,
 L.C. Award 8559-B, Apana 8 to William C.
 Lunailio (Certificate of boundaries No. 159)
 at Puapuaanui 1st, North Kona, County of
 Hawaii Island of Hawaii and State of Hawaii
 TMK No. (3) 7-5-043:016

NOTE: BASIS OF AZIMUTH DERIVED
 FROM SODIR 25 316 515 234
 NOTE: ALL CORNERS ARE FOUND
 BY BEING PIPES IN CONCRETE
 UNLESS OTHERWISE NOTED
 NOTE: ALL AZIMUTHS & DISTANCES
 ARE SHOWN & MEASURED FROM
 N 14.0 DEGREES DIRECTION

- NOTES:
- 1) No boundary encroachments were found.
 - 2) Violations of County zoning set-back codes were found.
 - 3) The distances shown between the property lines & the features, shown hereon, are based on selected found boundary monuments & acceptable tolerances for properties of this type.
 - 4) The features, shown hereon, were located by an actual survey performed on the ground on February 5th, 2016.
 - 5) See accompanying report pertaining to setbacks and encroachments.
 - 6) CRM = Concrete, Rock & Masonry Wall.

Setback Lines are shown from current data, but should be verified by builder.
 The distances shown hereon are based on the data provided to the County for the Certificate of Title. All building restrictions, building lines and setbacks may or may not be shown, check your Deed, Abstract, Title Report, and local ordinances for more information. The County is not responsible for any errors or omissions.



1. Thomas map is as made on supervisory visible et me, exce

EXHIBIT