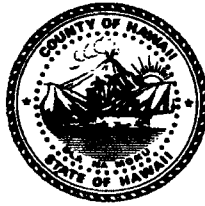


William P. Kenoi
Mayor



Duane Kanuha
Director

Joaquin Gamiao-Kunkel
Deputy Director

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County of Hawai'i
PLANNING DEPARTMENT

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September 30, 2016

Wade Park
Coldwell Banker Day-Lum Properties
2 Kamehameha Avenue
Hilo, Hawaii 96720

Dear Mr. Park:

SUBJECT: Application: Variance - VAR 16-000376
Applicant: WADE PARK
Owner: GILBERT & VANESSA LIVINGSTON
Request: 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 Southeast Side Yard
Setback)

Tax Map Key: 1-1-062:089; Lot 58-8-250

The Planning Director certifies the **approval** of Variance 15-000376, subject to conditions. The variance will allow portion of the single-family dwelling to remain with a minimum 8.8-foot side (southeast) yard setback, in lieu of the required 10-foot side yard setback and associated roof eave projection resulting with a 4-foot side (southeast) yard open space in lieu of the required 5-foot open space requirement. It will also allow for the water tank with a minimum 4.4-foot side (southeast) yard setback in lieu of the required 10-foot side yard setback. These exceptions are in lieu of the required 10-foot side yard setback and 5-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.

The survey map shows a carport located within the north corner of the subject property, encroaching onto the adjacent property and into the side (north) yard setback and side yard open space. Therefore, the carport encroachment is a Chapter 25 (Zoning) code violation and is excluded from this variance approval. Therefore, the carport shall be removed or relocated to meet current setback requirements (See Condition 2). Further, the survey map also shows that the gravel driveway crosses over the common boundary lines of Tax Map Key parcels 1-1-062: 089 and 1-1-062 090. This infringement is a private civil matter and shall be addressed and resolved between

the owners of both parcels. Approval of this variance is not a tacit approval for this infringement and is excluded from this variance approval. **(See attached survey map – Exhibit A)**

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 15,700 square feet and is located in the Ohia Estates Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 11-3310-A Liona Street.
2. **County Zoning.** Single-Family Residential – 10,000 sq. ft. (RS-10).
3. **State Land Use Designation.** Urban.
4. **Required Setback.** Flag lot – 10-foot side yards. The minimum yards for a flag lot, excluding the access drive, shall be the minimum side yards required for a building site in the applicable zoning district.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on June 15, 2015. The variance site plan is drawn to scale, prepared by the Richard Sunden, L.P.L.S. (Chartwell Surveying LLC), and denotes the position of the single-family dwelling and water tank constructed into the minimum 10-foot side (southeast) yard setback. The request affects the southeast yard setback.
(See attached survey map – Exhibit A)

The survey map shows that portion of the single-family dwelling encroaches 1.20 feet into the 10-foot side (southeast) yard setback and the associated roof eave encroaches 1 foot into the 5-foot side yard open space. It also shows the detached water tank encroaches 5.6 feet into the 10-foot side (southeast) yard setback.

The encroachment leaves the single-family dwelling with a minimum 8.8-foot side (southeast) yard setback, in lieu of the required 10-foot side yard setback and associated roof eave projection resulting with a 4-foot side (southeast) yard open space in lieu of the required 5-foot open space requirement and leaves the detached water tank with a 4.4-foot side (southeast) yard setback in lieu of the required 10-foot side yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (H890074) was issued on September 18, 1989, to the subject property for a single-family dwelling consisting of 2 bedrooms, 1 bath, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated July 8, 2016. "The Health

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

- b. No comments received from the Department of Public Works Building Division.
8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on June 15, 2016 and July 7, 2016, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 2, 2016.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.
10. **Time Extension.** The applicant’s variance application was acknowledged by letter dated June 29, 2016 and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to September 30, 2016.

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 encroachment of the 7-foot water tank and storage room into the 15-foot northeast side yard setback.

The survey map shows that portion of the single-family dwelling encroaches 1.20 feet into the 10-foot side (southeast) yard setback and the associated roof eave encroaches 1-foot into the 5-foot side yard open space. It also shows the detached water tank encroaches 5.6-feet into the 10-foot side (southeast) yard setback.

The encroachment leaves the single-family dwelling with a minimum 8.8-foot side (southeast) yard setback, in lieu of the required 10-foot side yard setback and associated roof eave projection resulting with a 4-foot side (southeast) yard open space in lieu of the required 5-foot open space requirement. Also, it leaves the detached water tank with a 4.4-foot side (southeast) yard setback in lieu of the required 10-foot side yard setback.

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 1989, nearly 27 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.

Based on the above-mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the subject 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 water tank encroachments constructed into the affected rear yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign the single-family dwelling and water tank denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code. Requiring the owner to relocate the single-family dwelling and water tank would involve the owner to do major excavation to his property by having to replace and move existing water lines. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the water tank and storage room were in compliance with all County requirements.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by someone else, and resubdivide the property to modify property lines and adjust minimum yard setbacks. Therefore, to consolidate and re-subdivide the property to modify property lines and adjust minimum side 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 structural setbacks within a building site 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. The single-family dwelling and water tank have been in existence for approximately 27 years and were 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.

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 and water tank built upon the subject property ("LOT 58-8-250") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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

The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.

1. 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.
2. The carport located within the north corner of the subject property, encroaching onto the adjacent property and the side (north) yard setback and side yard open space, shall be removed with a demolition permit secured within six (6) months from the issuance of this variance. Written confirmation of the carport removal shall be submitted to the Planning Director.
3. The gravel driveway crossing over the common boundary lines of parcels TMK: 1-1-062: 089

Wade Park
Caldwell Banker Day-Lum Properties
Page 6
September 30, 2016

and TMK: 1-1-062 090 is a private civil matter, and shall be addressed and resolved by the owners of both parcels.

4. An Ohana or additional farm dwelling 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.
5. Should the single-family dwelling and water tank 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.
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 building occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-16-000376 null and void.

Sincerely,



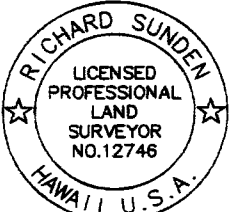
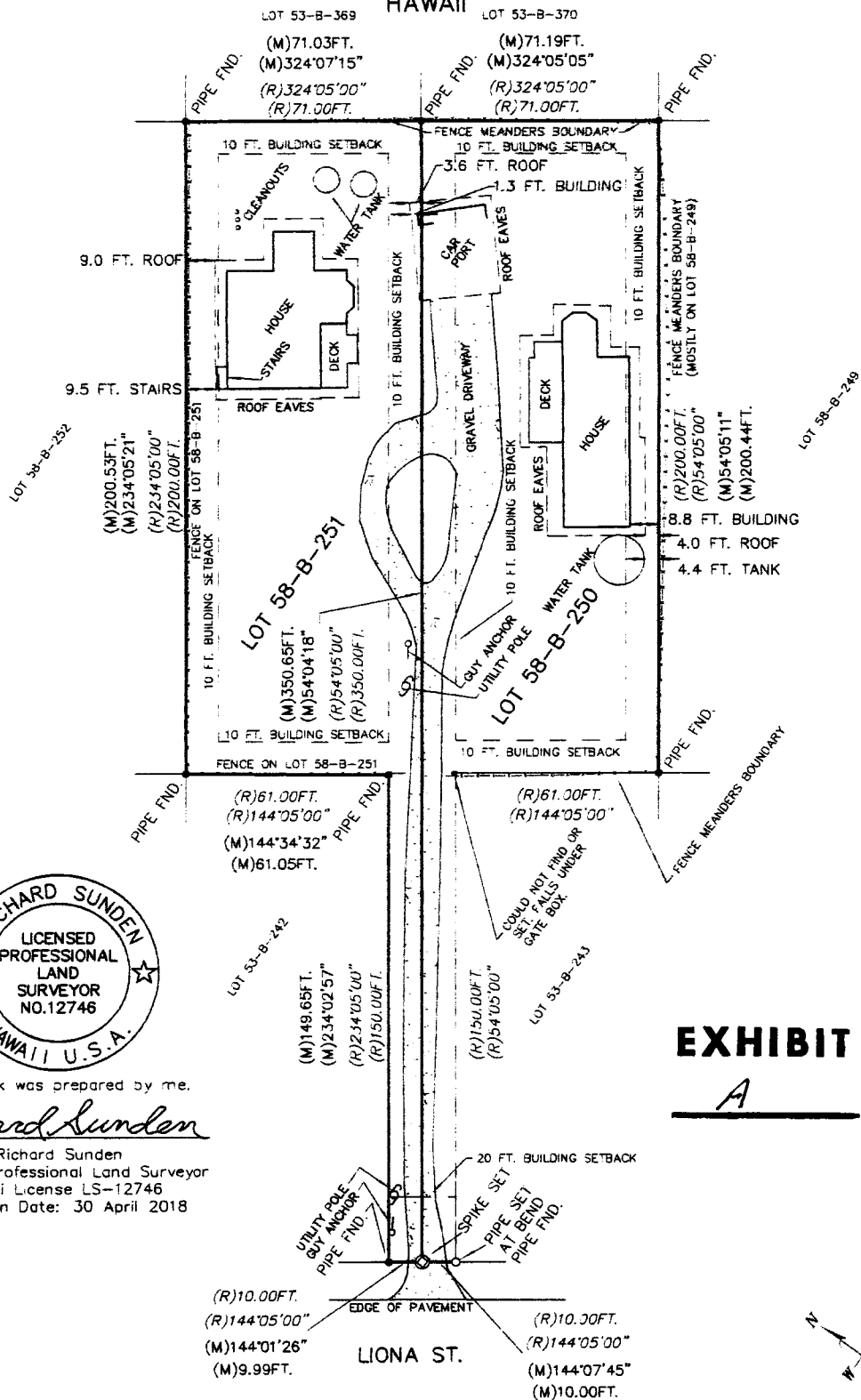
DUANE KANUHA
Planning Director

LHN:nci

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cc: Real Property Tax Office (Hilo)
Mark Iwamoto, Planning Inspector (Hilo)
Gilbert Bailado, GIS (via email)

**SURVEY OF LOTS 58-B-250 & 58-B-251,
LAND COURT APP. 1053, MAP
OHIA ESTATES SUBDIVISION,
KEA'AU, PUNA, ISLAND OF HAWAII,
HAWAII**



This work was prepared by me.
Richard Sunden
Richard Sunden
Licensed Professional Land Surveyor
Hawaii License LS-12746
Expiration Date: 30 April 2018

EXHIBIT
A

- NOTES:**
1. The field survey was completed on 4 June 2016.
 2. Measured dimensions, labeled (M), show the size of the lot. Record dimensions, labeled (R), are shown for comparison.
 3. The parcel's boundary corners meet expected accuracy for this subdivision.
 4. The attached report explains the results of this survey.

ChartWell
LAND SURVEYING LLC
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Kea'au HI 96749
(808) 396-9167
Email: info@chartwell-ls.com

6 June 2016
JOB 16028