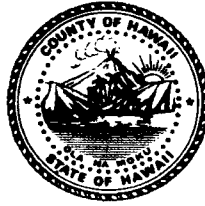


Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
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

May 30, 2017

Heath Ryan Wagner
1373 Hollywood Drive
Lane, PA 17601

Dear Mr. Wagner:

SUBJECT: Application: Variance - VAR 17-000411
Applicant: HEATH RYAN WAGNER
Owner: HEATH RYAN WAGNER
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards, and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Encroachment into Southwest Side Yard Setback)
Tax Map Key: 1-6-017:019; Lot 2899

The Planning Director certifies the **approval** of Variance 17-000411, subject to conditions. The variance will allow portion of the single-family dwelling to remain with a minimum 6.8-foot southwest side yard setback to a minimum 16.9-foot southwest side yard setback, in lieu of the required 20-foot side yard setback. It will also allow for the associated roof eave projection with a 4-foot southwest side 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.

This variance will allow for the associated roof eave projection to remain with a 4-foot southwest side yard open space in lieu of the applicants request for a 1.2-foot southwest side yard open space. This was based on Department of Public Works – Building Division comments that projections of eaves or overhangs within 4 feet of the property line is prohibited.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 3 acres and is located in the Hawaiian Acres Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 16-1551 Ao Street.

2. **County Zoning.** Agricultural – 3 acre (A-3a).
3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 30 feet for front and 20 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on February 6, 2017. The variance site plan is drawn to scale, prepared by the Louis Edward Pare, L.P.L.S., and denotes the section of the single-family dwelling encroaching into the minimum 20-foot southwest side yard setback. The request affects the southwest side yard setback and side yard open space requirements. **(See attached survey map – Exhibit A)**

The revised survey map dated March 20, 2017 shows that portion of the single-family dwelling encroaches 3.1 feet to 13.2 feet into the 20-foot southwest side yard setback and the associated roof eave encroaches 12.8 feet into the 14-foot southwest yard side open space.

The encroachment leaves the single-family dwelling with a minimum 6.8-foot southwest side yard setback to a minimum 16.1-foot southwest side yard setback, in lieu of the required 20-foot side yard setback. The associated single-family dwelling roof eave projection results with a 1.2-foot southwest side yard open space in lieu of the required 14-foot open space requirement.

6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (BH2013-01111) was issued on July 17, 2013, to the subject property for a single-family dwelling consisting of 3 bedrooms, 2 baths, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated September 1, 2016: "The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. Department of Public Works-Building Division memorandum received on February 27, 2017. "Projections of eave or overhangs within 4 feet of the property line are prohibited." **(See Exhibit B)**
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 February 21, 2017 and March 1, 2017, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 14, 2017.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

2. **County Zoning.** Agricultural – 3 acre (A-3a).
3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 30 feet for front and 20 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on February 6, 2017. The variance site plan is drawn to scale, prepared by the Louis Edward Pare, L.P.L.S., and denotes the section of the single-family dwelling encroaching into the minimum 20-foot southwest side yard setback. The request affects the southwest side yard setback and side yard open space requirements. **(See attached survey map – Exhibit A)**

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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 February 22, 2017 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.

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 garage built into the 20-foot northwest side yard setback.

The revised survey map dated March 20, 2017 shows that portion of the single-family dwelling encroaches 3.1 feet to 13.2 feet into the 20-foot southwest side yard setback and the associated roof eave encroaches 12.8 feet into the 14-foot southwest side yard open space.

The encroachment leaves the single-family dwelling with a minimum 6.8-foot southwest side yard setback to a minimum 16.1-foot southwest side yard setback, in lieu of the required 20-foot side yard setback. The associated single-family dwelling roof eave projection results with a 1.2-foot southwest side yard open space in lieu of the required 14-foot open space requirement.

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 2013, nearly 4 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 side yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign the single-family dwelling 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 would involve the owner to do excavation to this 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 single-family dwelling was 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. As this action would impact the adjacent property owner and is not a 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 has been in existence for approximately 2 years and was constructed under valid building permits and other construction permits issued by the County of Hawai'i.

The approval of this variance does not automatically grant or sanctions requirement of the requirements of the Department of Public Works.

As stated in the memo, eaves or overhangs are prohibited within 4 feet of the property line. The current eaves extend 2.8 feet beyond 4 feet. Applicant is required to seek remedy of this directly with the Department of Public Works.

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 associated roof eave projection built on the subject property ("LOT 2899") 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:

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 single-family dwelling built 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. The approval of this variance grants the associated roof eave with a 4-foot southwest side yard open space in lieu of the applicants request for a 1.2-foot southwest side yard open space. The applicant shall comply with this condition within six months from the issuance of this Variance and shall notify the Hawaii County Planning Department upon compliance.
5. An Ohana or Farm Dwelling permit shall not be approved for the subject property, subject to the provisions of the Hawai'i County Code, Chapter 25, (Zoning) or state law, which may change from time to time.
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.

Heath Ryan Wagner
Page 6
May 30, 2017

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-17-000411 null and void.

Sincerely,

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

MICHAEL YEE
Planning Director

LHN:nci

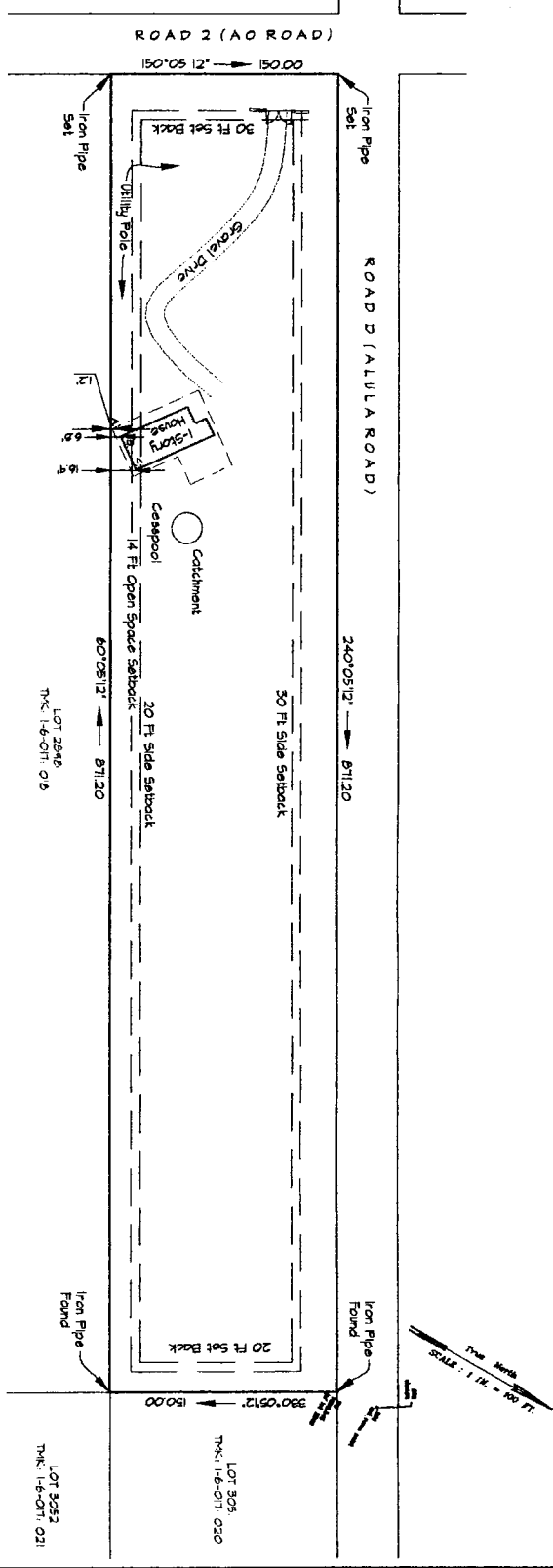
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Encl: Exhibits A-B
General Petition for Appeal

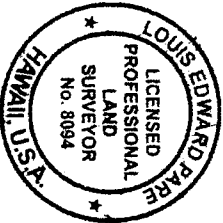
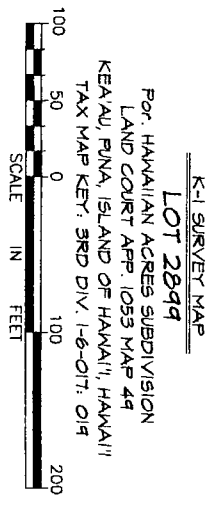
cc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS (via email)
Department of Public Works-Building Division

EXHIBIT

A



- Notes:**
- 1) Setback violations noted at time of survey:
 - A. House eave 12.8 FT into Open Space setback.
 - B. House corner 13.2 FT into setback.
 - C. House corner 3.1 FT into setback.
 - 2) All boundary corners were marked and verified in accordance with the record data of Lot 2899.
 - 3) Azimuths and distances shown are per record.
 - 4) Survey performed at the request of Greg Dencker.

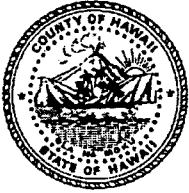


This work was prepared by me or under my direct supervision.

[Signature]
 Licensed Professional Land Surveyor
 Certificate Number 8094
 Expires April 30, 2018

DATE OF SURVEY: JANUARY 20, 2017
 Revised: March 20, 2017

Island Boundary
 808-345-1561 office
 808-443-0443 fax
 info@islandboundary.com



BUILDING DIVISION – DPW

2017 FEB 27 AM 3 50

COUNTY OF HAWAII – 101 Pauahi Street, Suite 107, Hilo, HI 96740
Hilo Office (808) 961-8331 * Fax (808) 961-8410 Kona Office (808) 323-4720 * Fax (808) 327-8509
COUNTY OF HAWAII

Owner: Heath Ryan Wagner
Mailing address: c/o Larry Nakayama, Planning Department

Address location of property:

SUBJECT : Variance from Chapter 25, Projections
T.M.K. : 1-6-017: 019

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

- Reviewed with no comment
- Reviewed with comments
- Reviewed with objections noted

Projections of eaves or overhangs within 4' of the property line are prohibited.

Should you have any questions regarding matters contained herein, please feel free to contact us.

Neil C. Erickson | Plans Examining Manager
COUNTY OF HAWAII DEPARTMENT OF PUBLIC WORKS BUILDING DIVISION
101 Pauahi Street, Suite 7 Hilo , Hawaii 96720
PH: 808-961-8331 EXT: 808-961-8473
neil.erickson@hawaiicounty.gov

BD-10

EXHIBIT
B

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