

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
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Phone (808) 323-4770
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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

September 18, 2017

Ruben Domingo
74-1451 Hao Kuni Street
Kailua-Kona, HI 96740

Dear Mr. Domingo:

SUBJECT: Application: Variance - VAR 17-000416
Applicant: RUBEN DOMINGO
Owner: DOMINGO FAMILY TRUST
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 Northwest Rear Yard Setback and Northeast Side Yard Setback)
Tax Map Key: 7-4-007:037 (Lot 22)

After reviewing your variance application, the Planning Director certifies the **denial** of VAR-17-000416. The variance request sought to allow the "as-built", enclosed garage which is being converted into living area with a minimum 7-foot northwest rear yard setback and open space, in lieu of the required 30-foot rear yard setback and 24-foot northwest rear yard open space. Your denied request also sought to allow the "as-built", enclosed garage to remain with a minimum 7-foot northeast side yard setback and open space in lieu of the required minimum 20-foot side yard setback and 14-foot side open space requirement. These exceptions are in lieu of requirements 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 Planning Director has concluded that the variance from the above-referenced zoning standards be **denied** based on the following findings:

BACKGROUND

1. **Location.** The subject property, consisting of approximately one (1) acre of land, is located in the Paniolo Country Subdivision, situated at Honokahau 2nd, North Kona, Hawai'i. The subject property's street address is 74-1451 Hao Kuni Street.
2. **Zoning.** Agricultural – 1 acre (A-1a).

3. **State Land Use.** Agricultural (A).
4. **Required Setback.** 30 feet front and rear; 20-feet for sides.
5. **Zoning Code Violation.** ZCV 2017-011W; Warning Letter issued on April 4, 2017.
6. **DPW-Building Notice of Violation.** Notice of Violation, DPW16-403; Case CE2016-95K. (See Exhibit A)
7. **Variance Application - Site Plan.** The applicant submitted the variance application, attachments, and filing fee on March 1, 2017, and other submittals related to the variance request and variance application. The variance application site plan map, drawn to scale and prepared by the applicant, shows the “as-built” enclosed garage encroaches 24.5 feet into the yard setback. (See Exhibit B)
8. **County Building Records.** Real Property Tax Office records indicate building permit (04072) issued on January 18, 1980 for the construction of a 5-bedroom and 3-1/2 –bath, single-family dwelling.
9. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated March 28, 2017 states: *“The Health Department found no environmental health concerns with regulatory implications in the submittals.”*
 - b. The Department of Public Works (DPW) – Building Division e-mail dated March 29, 2017 states: *“There is a current Notice of Violation issued to this property for work done without a permit. The owners have requested an extension on the compliance date which the Building Department has granted with this variance application being the sole requirement.”*
10. **Notice to Surrounding Property Owners.** The applicant has not submitted any proof of mailings with regards to the Notification of Surrounding Property Owners, although a copy of the first notice was attached by a surrounding neighbor who submitted a letter of concern (see Exhibit I). Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 28, 2017.
11. **Comments from Surrounding Property Owners or Public.**
 - a. A letter objecting to the variance request from Grant Baseman dated April 3, 2017. (See Exhibit C)
 - b. A letter objecting to the variance request from Eric Sambold dated April 10, 2017. (See Exhibit D)

- c. An email objecting to the variance request from Susan Lambrecht received on April 5, 2017. **(See Exhibit E)**
 - d. An email objecting to the variance request from Linda Baseman received on April 6, 2017. **(See Exhibit F)**
 - e. A letter objecting to the variance request from Jerry Klaz dated May 15, 2017. **(See Exhibit G)**
 - f. A letter objecting to the variance request from Joe Kern dated May 23, 2017. **(See Exhibit H)**
 - g. A letter objecting to the variance request from Robert S. Dean dated June 1, 2017, which includes a copy of a first notice by Ruben Domingo. **(See Exhibit I)**
12. **Site Inspection:** A Site inspection was conducted on April 7, 2017 by Planner, Larry Nakayama and Planning Inspector, Clinton Mercado.

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 right 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 does not meet with criteria (a) for the following reasons:

There are no special or unusual circumstances applying to the 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 that property.

The owner/applicant submitted the variance application to address or resolve the encroachment of the "as built", enclosed garage which is being converted into a living area into the 30-foot northwest rear yard setback and 24-foot northwest rear yard open space and also the 20-foot northeast side yard setback and the 14-foot northeast side yard open space.

The variance application's site plan map is drawn to scale and shows that the "as built" enclosed garage to be converted into a living area encroaches 23 feet into the northwest rear yard setback and 17 feet into the northwest rear yard open space. The "as-built" enclosed garage which is being converted into a living area also encroaches 13 feet into the 20-foot northeast side yard setback leaving a minimum of 7 feet instead of the required 14 feet northeast yard open space.

The encroachment leaves a portion of the enclosed garage with a minimum 7-foot northwest rear yard setback, in lieu of the required 30-foot rear yard setback and 24-foot rear yard open space. The encroachment also leaves the enclosed garage with a minimum 7-foot northeast side yard setback, in lieu of the minimum 20-foot side yard setback and 14-foot side open space requirement.

According to the Department of Public Works–Building Division and Hawai‘i County Real Property Tax Department, records indicate that there are no building permits issued for the “as built” enclosed garage. If the applicant applied for the proper building permit process for the alteration to the enclosed garage, he would have been informed that the garage was unpermitted and would have been informed of the minimum yard setback requirements required by the zoning code.

DPW-Building Division records indicates the applicant/owner was the owner-builder for other renovations and alterations completed to his single-family dwelling in 2009. Therefore, Mr. Domingo should have been aware that a building permit were required for the conversion of the “as-built” enclosed garage to a living area.

With multiple rear and side yard setback encroachments, the structure has been built contrary to the original requirements of maintaining setbacks and open space between property lines.

In review of the application materials, county records, and associated documentation, the Planning Department finds that there are no special or unusual circumstances justifying the approval of this variance. There is ample room on the subject one acre property to relocate the enclosed garage and still comply with the setback requirements.

There is no physical or dimensional constraints on the property that would preclude the proper siting of the enclosed garage living area in full compliance with applicable zoning code requirements.

(b) There are no other reasonable alternatives that would resolve the difficulty.

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected northwest rear and northeast side yard setback of the subject property include the following actions:

Since the Variance application is denied, there are no reasonable alternatives except for the removal of the building encroachments, redesign, or relocation of the as-built enclosed garage with living area constructed upon the subject property to fit within the correct building envelope denoted on the recent site map as prescribed by the Zoning Code.

As discussed above, the subject property is one acre in size and the applicant has not demonstrated as to why there are no other reasonable alternatives to re-site this unpermitted improvements on the subject property in compliance with applicable zoning requirements.

- (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 does not meet with criteria (c) for the following reasons:

The intent and purpose of requiring building setbacks on a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

In order to grant a waiver from the minimum setback requirements of the zoning code, the variance application must show conclusively that it meets with all three criteria required in granting of a variance. The overall impact of granting a variance must also be considered in terms of how this may affect the entire neighborhood.

Objections to the variance were received from several residences that reside within the Paniolo Country Subdivision, especially from those who reside within close proximity to the subject site. The objections cite that the garage and renovations are being constructed without proper building permits as evidenced by the notice of violation issued by the Department of Public Works – Building Division (Kona). Further, no proof of mailing was submitted to our office; therefore, there is no evidence as to how many residences, if any, within five (500) hundred feet of the subject property received notices with regards to the variance application.

The adjacent property owner that abuts the northeast side boundary claims that they did not receive any notices regarding the variance application and learned of the variance application by reading the West Hawaii Today Public Notice notification from our office. It should be noted that Larry Nakayama of my staff, provided the applicant with samples of 1st and 2nd notices to be sent out and a list of Tax Map Key numbers of properties within 500 feet of the subject property. Despite printing this information, the applicant did not submit evidence to comply with the notice to surrounding property requirement.

Therefore, after reviewing the variance application, county records and other documentations, the Planning Director finds that the conversion of the “as built” enclosed garage into a living area constructed into the northwest rear and northeast side yard setback and associated rear and side yard open space was self-imposed. Based on the background information and other materials referenced in the variance analysis, the variance to allow for the encroachment would not be consistent with the general purpose of the zoning district and the intents and purpose of the Zoning code, Subdivision code and the County General Plan.

VARIANCE DECISION-CONDITIONS

The variance application VAR 17-000416, to allow the “as built” enclosed garage into the southeast rear yard setback, open space setback and conversion of that garage into a living area is hereby **denied** and subject to the following conditions:

Conditions:

1. The applicant shall remove the "as built" enclosed garage, which is encroaching into the northwest rear yard setback and northeast side yard setback within three (3) months of the date of this decision or by December 31, 2017.
2. If the above condition has not been met by the referenced date, the Department may proceed with enforcement actions against the owner which could include fines or placement of a lien against the property.

RIGHT TO APPEAL

In accordance with Hawaii County Code, Chapter 25 (Zoning), Section 25-2-20 and 25-2-23, you may appeal the director's decision as follows:

1. Section 25-2-20. Persons who may appeal: procedure.
 - (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision appeal the decision to the board of appeals.
 - (b) A person is aggrieved by a decision of the director if:
 - (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public; and
 - (2) The person is or will be adversely affected by the decision.
 - (c) An appeal shall be in writing, in the form prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the board of appeals with the proof of service.
 - (d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals.
2. Section 25-2-23. The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:
 - (a) The director erred in its decision; or

Ruben Domingo
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- (b) The decision violated this chapter or other applicable law; or
- (c) The decision was arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

In view of the above and for your reference, we have enclosed the GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR form.

Sincerely,



MICHAEL YEE
Planning Director

LHN:nci

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cc: Gilbert Bailado, Planning GIS
Horace Yanagi, Zoning Inspector (Kona)
Jai Ho Cheng, Deputy Building Chief - Kona Building Division
Grant Baseman
Eric Sambold
Susan Lambrecht
Linda Baseman
Jerry Klaz
Joe Kern
Robert S. Dean



County of Hawai'i

BOARD OF APPEALS

Aupuni Center • 101 Pauahi, Suite 3 • Hilo, Hawai'i 96720
(808) 961-8288 • Fax (808) 961-8742

GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR OR PUBLIC WORKS DIRECTOR

(Type or legibly print the requested information. See instructions attached.)

TYPE OF PETITION:

- Appeal of Planning Director's Decision
 Appeal of Public Works Director's Decision

APPELLANT: _____

APPELLANT'S SIGNATURE: _____ DATE: _____

ADDRESS: _____

TELEPHONE: _____ (EMAIL): _____

APPELLANT'S INTEREST IN THE PROPERTY: _____

APPELLANT'S NATURE OF APPEAL AND REQUEST: _____

LAND OWNER: _____

TAX MAP KEY:(land in question) _____ AREA OF PROPERTY: _____

STATE LAND USE DESIGNATION: _____ COUNTY ZONING: _____

STREET ADDRESS OF PROPERTY: _____

APPELLANT'S REPRESENTATIVE: _____ TITLE: _____

REPRESENTATIVE'S SIGNATURE: _____ DATE: _____

REPRESENTATIVE'S ADDRESS: _____

TELEPHONE: _____ (EMAIL): _____

See instructions attached.



BUILDING DIVISION – DPW

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

March 29, 2017

TO: Larry Nakayama

EXHIBIT

A

SUBJECT: Variance – VAR 17-000416

TMK: 7-4-007-037: Lot 22

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:

There is a current Notice of Violation issued to this property for work done without a permit. The owner has requested an extension on the compliance date which the Building department has granted with this variance application being the sole requirement.

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



DEPARTMENT OF PUBLIC WORKS • BUILDING DIVISION

101 Pauahi Street, Suite 7, Hilo, Hawai'i 96720
74-5044 Ane Keohokālole Highway, Building E, Kailua-Kona, Hawai'i 96740

(808) 961-8331, Fax (808) 961-8410
(808) 323-4720, Fax (808) 327-3509

NOTICE OF VIOLATION

September 15, 2016

CERTIFIED MAIL
7015 3010 0001 1677 8861

Domingo Family Trust
74-1451 Hao Kuni Street
Kailua-Kona, HI 96740

RE: Notice of Violation, DPW16-403
Case CE2016-95K
74-1451 Hao Kuni Street
Kailua-Kona, HI 96740
Tax Map Key (3) 7-4-007:037

Dear Domingo Family Trust:

The County of Hawai'i, Department of Public Works - Building Division (hereafter referred to as "DPW-BLDG") is sending you a Notice of Violation ("NOV") because DPW-BLDG inspected the structures and premises located at 74-1451 Hao Kuni Street, Kailua-Kona, HI 96740, Tax Map Key (3) 7-4-007:037 (hereafter referred to as "the site") and found violations of Sections 5-19, 5-40, 5-42, and 5-48(1)(M) of the Hawai'i County Code (hereafter referred to as "the HCC").

The aforementioned violations must be corrected on or before October 30, 2016.

Failure to complete those corrective actions within the specified time may result in an ORDER being issued which will impose fines and/or further referrals to the appropriate authorities. The DPW-BLDG is willing to answer your questions or discuss this matter further.

I. BACKGROUND

On August 4, 2016, inspectors from DPW-BLDG conducted an inspection of the site from the public right-of-way and a neighboring property and found violations of section HCC Chapter 5 – Building. The inspectors observed that a structure on posts/piers had been constructed in close proximity to the property line. The structure had been enclosed with walls and a roof and had

several windows. There was a steel pin by a rock wall that noted the location of one of the property corners. There was plywood covering the windows on the interior and the interior of the structure could not be seen. Drills and other construction noise could be heard at the time of the inspection, but no one could be seen. There were two pipes that appeared to be draining liquid coming from beneath the structure. Attached for your reference are Exhibits "A" through "F" photographs of the unpermitted structure in question.

II. NOTICE OF VIOLATION

Based upon the foregoing, a review of County records, and the observations of our inspectors, you are in violation as follows:

Code and/or Ordinance and Section(s)	Violations (s)
HCC Section 5-19. Permit required.	Construction of the aforementioned structure without required permits.
HCC Section 5-40. Inspections.	Construction of the aforementioned structure without required inspections.
HCC Section 5-42. Required inspections.	Construction of the aforementioned structure without the appropriate inspections.
HCC Section 5-48(1)(M) Substandard buildings.	Lack of connection to required sewage disposal system

The relevant sections of the Hawaii County Code cited above are provided below:

HCC Section 5-19. Permit required.

- (a) No person, firm, or corporation shall erect, construct, enlarge, alter, repair, move, convert, or demolish any building or structure in the County, or cause the same to be done, without first obtaining a separate building permit for each building or structure from the building official; provided that one permit may be obtained for a dwelling and its accessories, such as fence, retaining wall, pool, storage and garage structures.
- (b) Permits will be further required for, but not limited to, the following:
 - (1) All Television/Radio Communication Towers, etc., not regulated by the Public Utility Commission.
 - (2) Complete new installations of all solar water heating systems, or the complete replacement of existing system with all new components, or relocating of panels from roof to ground or vice versa, along with plumbing and electrical permits.
 - (3) Construction or renovation of Handicap Accessible routes from parking lot to building or from building to building on a lot.
 - (4) Water tanks or catchments intended for potable/household use, regardless of height or size. For additional requirements where water tank or catchment systems are used as means of fire protection, see Chapter 26 of the Hawai'i County Code.
 - (5) Retaining walls four feet and higher. Stepped or terraced retaining walls 8'-0" of each other are considered to be one wall when determining wall height.

EXCEPTIONS: A permit is not required for:

- (1) Work located primarily in a public way, public utility towers, bridges, and poles, mechanical equipment not specifically regulated in this code, and hydraulic flood control structures.
- (2) Temporary structures used during the construction of a permitted structure, temporary buildings, platforms, and fences used during construction or for props for films, television or live plays and performances.
- (3) Re-roofing work with like material and installation of siding to existing exterior walls which will not affect the structural components of the walls for Groups R-3 and U Occupancies.
- (4) Temporary tents or other coverings used for private family parties or for camping on approved campgrounds.
- (5) Television and radio equipment (i.e. antennas, dishes) accessory to R-1 and R-3 Occupancies.
Supports or towers for television and radio equipment 6'-0" or less in height.
- (6) Awnings projecting up to 4 feet and attached to the exterior walls of buildings of Group R-3 or U Occupancy; provided that the awnings do not violate the provisions for "yards" in Chapter 25 (Zoning) of the Hawai'i County Code.
- (7) Standard electroliers not over 35 feet in height above finish grade.
- (8) Installation of wallpaper or wall covering which are exempted under the provisions of Section 801.1, Interior Finishes, Chapter 8, IBC.
- (9) Repairs which involve only the replacement of component parts of existing work with similar materials for the purpose of maintenance, and which do not aggregate over \$4,000 in valuation in any twelve-month period, and do not affect any electrical or mechanical installations.
- (10) Painting and decorating.
- (11) Installation of floor covering.
- (12) Cabinet work for R-3 Occupancy and individual units of R-1 and U Occupancies which are not regulated (under Section 310.3.12 Cooking Unit Clearances of this code). Wall mounted shelving not affecting fire resistance or structural members of wall. This is dealing with clearances to cabinets and range clearance to combustible.
- (13) Work performed under the jurisdiction of Federal Government and/or located in Federal property.
- (14) Swimming pools for one and two-family dwelling units less than 24" in depth
- (15) Department of Transportation, Harbors, - section 266-2, Hawai'i Revised Statutes.
- (16) Fences 6'-0" or less in height.
- (17) Detached structures for animal shelters, storage sheds, towers, and similar uses not more than 6'-0" in height.
- (18) One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed a) 120 square feet (11 m²); b) does not exceed 600 square feet for agricultural zoned lands. (Building cannot be located within building setback as required by the Zoning, Chapter 25 of Hawai'i County Code. Verify setback requirements with the Planning Department).
- (19) Detached decks or platforms less than 30" in height above grade. (Building cannot be located within building setback as required by the Zoning, Chapter 25 of Hawai'i County Code. Verify setback requirements with the Planning Department).
- (20) Playground equipment, excluding assembly or similar waiting areas.
- (21) Replacement of solar water heating components (i.e. panels, tanks) in the same location and of the same type, however; plumbing and/or electrical permits required.

- (22) Wells and Reservoirs – Hawai‘i Revised Statutes, chapter 178. Check requirements of other governmental agencies.
- (23) Work performed under the jurisdiction or control of the State Department of Accounting and General Services (DAGS).
- (24) Water tanks or catchment systems 5,000 gallons or less in size with a height to width ratio of not more than 2:1, to be used strictly for non-potable/household purposes such as agriculture, irrigation or stock, and that are independent of the potable/household system.

HCC Section 5-40. Inspections.

- (a) All construction or work for which a permit is required shall be subject to inspection by the building official. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of any other ordinance. Inspections presuming to give authority to violate or cancel the provisions of this code or of any other ordinances shall not be valid.
- (b) It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the building official nor the County shall be liable for any expense entailed in the removal or replacement of any material required to allow inspection.
- (c) A survey of the lot may be required by the building official to verify that the structure is located in accordance with the approved plans.

HCC Section 5-42. Required inspections.

The building official, upon notification from the permit holder or the permit holder’s agent, shall make the following inspection and shall either approve that portion of the construction as completed or shall notify the permit holder or the permit holder’s agent if the same fails to comply with this code:

- (1) Footing and foundation inspections shall be made after excavations for footings are complete and any required reinforcing steel is in place. For concrete foundations, any required forms shall be in place prior to inspection. Materials for the foundation shall be on the job, except where concrete is ready mixed in accordance with ASTM C 94, the concrete need not be on the job.
- (2) Concrete slab and under-floor inspections shall be made after in-slab or under-floor reinforcing steel and building service equipment, conduit, piping accessories and other ancillary equipment items are in place, but before any concrete is placed or floor sheathing installed, including the subfloor.
- (3) Framing inspections shall be made after the roof deck or sheathing, all framing, fireblocking and bracing are in place and pipes, chimneys and vents to be concealed are complete and the rough electrical, plumbing, heating wires, pipes and ducts are approved.
- (4) Lathing inspections, to be made after all lathing and gypsum board, interior and exterior, in construction required to be fire-resistive is in place but before any plastering is applied or before gypsum board joints and fasteners are taped and finished.

Exception: Lath and gypsum board installed in Group R, Division 3 and Group U Occupancies.

HCC Section 5-48. Substandard buildings.

Any building or portion thereof in which there exists any of the following listed conditions to an extent that it endangers the life, limb, health, property, safety or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a "substandard building:"

- (1) Inadequate sanitation shall include but not limited to the following:
 - (A) Lack of, or improper water closet, lavatory, bathtub or shower in a dwelling unit.
 - (B) Lack of, or improper water closets, lavatories, and bathtubs or showers in a hotel.
 - (C) Lack of, or improper kitchen sink in a habitable building.
 - (D) Lack of hot and cold water to basins, sinks, tubs and showers in R-1 Occupancies.
 - (E) Lack of hot and cold water to basins, sinks, tubs and showers in a dwelling unit or efficiency living unit.
 - (F) Lack of, or improper operation of required ventilating equipment.
 - (G) Lack of minimum amounts of natural light and ventilation required by this code.
 - (H) Room area or space dimensions less than the minimum required by this code.
 - (I) Lack of required lighting.
 - (J) Dampness of habitable rooms as determined by the Health Department.
 - (K) Infestations of insects, vermin or rodents as determined by the health officer.
 - (L) General dilapidation or improper maintenance.
 - (M) Lack of connection to required sewage disposal system.
 - (N) Lack of adequate garbage and rubbish storage and removal facilities as determined by the health officer.
- (2) Structural hazards shall include but not be limited to the following:
 - (A) Deteriorated or inadequate foundations.
 - (B) Defective or deteriorating flooring or floor supports.
 - (C) Flooring or floor supports of insufficient size to carry imposed loads with safety.
 - (D) Members of walls, partitions or other vertical supports that split, lean, or buckle due to defective material or deterioration.
 - (E) Members of walls, partitions or other vertical supports that are of insufficient size to carry imposed loads with safety.
 - (F) Members of ceiling, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective material or deterioration.
 - (G) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are of insufficient size to carry imposed loads safely.
 - (H) Fireplaces or chimneys that separate, bulge or settle due to defective material or deterioration.
 - (I) Fire places or chimneys which are of insufficient size or strength to carry imposed loads with safety.
- (3) Presence of a nuisance including:
 - (A) Any public nuisance known at common law or in equity jurisprudence.
 - (B) Any attractive nuisance which may prove detrimental to children whether in a building or on the premises of a building. This includes any unfenced man-made swimming pools, abandoned wells, shafts, or basements; any structurally unsound fences; and any debris or vegetation affecting the structural stability of structures.
 - (C) Whatever is dangerous to human life or is detrimental to health, as determined by the health officer.
 - (D) Overcrowding a room with occupants.
 - (E) Insufficient ventilation or illumination.
 - (F) Inadequate or unsanitary sewage or plumbing facilities.

- (G) Uncleanliness, as determined by the health officer.
- (H) Whatever renders air, food or drink unwholesome or detrimental to the health of human beings, as determined by the health officer.
- (4) Faulty weather protection, which shall include but not be limited to, the following:
 - (A) Deteriorating, crumbling or loose plaster.
 - (B) Deteriorating or ineffective waterproofing of exterior walls, roof, foundations, or floors, including broken windows or doors.
 - (C) Defective or lack of weather protection for exterior wall covering, including lack of paint, weathering due to lack of paint or other approved protective covering.
 - (D) Broken, rotted, split or buckled exterior wall covering or roof coverings.
- (5) Inadequate Maintenance. Any building or portion thereof which is determined to be an unsafe building in accordance with this code.
- (6) Inadequate Exits. All buildings or portions thereof not provided with adequate exit facilities as required by this code except those buildings or portions thereof whose exit facilities conformed with all applicable laws at the time of its construction and which have been adequately maintained. When an unsafe condition exists through lack of, or improper location of exits, additional exits may be required to be installed.
- (7) Any building or portion thereof that is not being occupied or used as intended or permitted.

HCC Section 5-49. Unsafe buildings.

All substandard buildings which are structurally unsafe or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use constitute a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard or abandonment, as specified in this code or any other effective ordinance are, for the purpose of this chapter, "unsafe buildings."

HCC Section 5-51. Buildings found to be unsafe; Notice to owner.

- (a) Whenever the building official has examined or caused to be examined any building and has determined that such building is an unsafe building:
 - (1) The building official shall commence proceedings to cause the repair, rehabilitation, vacating, removal and/or demolition of the building;
 - (2) Such building shall automatically be deemed and are hereby declared to be a public nuisance;
 - (3) The building official shall give to the owner of such building written notice of violation in accordance with section 5-59 and as further described below; and
 - (4) The building official shall cause to be posted at each entrance to the buildings ordered vacated a notice to read: **"DO NOT ENTER. UNSAFE TO OCCUPY. DEPARTMENT OF PUBLIC WORKS. COUNTY OF HAWAI'I."**
- (b) The notice required by subsection (a)(3) above shall require the owner or person in charge of the building or premises, to commence the required repairs or improvements or demolition and removal of the building or structure or portions thereof within forty-eight hours, and to complete all such work within ninety days from date of notice, provided that the building official may provide for more time for completion if deemed reasonably necessary. The notice shall also require the building or portion thereof to be vacated forthwith and not reoccupied until the required repairs and improvements are completed, inspected, and approved by the building official.

- (c) The notice required by subsection (a) (4) above shall remain posted until the required repairs, demolition or removal are completed. Such notice shall not be removed without written permission of the building official, and no person shall enter the building except for the purpose of making the required repairs or of demolishing the building.

III. CORRECTIVE ACTIONS

To be in compliance with the above-mentioned section(s), the following corrective actions are required by the deadline date of **October 30, 2016**:

- (1) Obtain a building permit in accordance with HCC Section 5-19 from the DPW-BLDG for the construction of the structure, AND
- (2) Immediately cease and desist all sewage discharge, provide compliant sewage disposal system within 90 days from the receipt date of this notice; **OR**
- (3) Remove the structure and return the land to its previous condition.

YOUR DEADLINE FOR COMPLIANCE IS: October 30, 2016.

Upon completing corrective action please contact the DPW-BLDG Supervisor identified below so that corrective action can be verified,

IV. WARNING

If corrective action is not completed by the deadline date of **October 30, 2016**, then an ORDER may be issued imposing civil fines and/or referring the matter to the appropriate legal authorities for action.

V. CONCLUSION

Should you have any further questions regarding this matter, please contact the Supervising Building Inspector, Dwayne Inouye, at 323-4728.

Respectfully,

David Yamamoto, P.E., Building Chief

Cc: Warren H.W. Lee – Director of Public Works
Brandon Gonzalez – Deputy Director
Malia Ho – Deputy Corporation Counsel
Jai Ho Cheng – Deputy Building Chief
Dwayne Inouye – Supervising Building Inspector
Luis Chavira – Building Inspector
Kimberly Cwynar – Building Inspector
Department of Health, Wastewater Branch

Exhibit "A"



Depicts the owner's property from Hao Kuni Street. Note the "no trespassing" signs. The structure at the end of the driveway is the unpermitted structure in question.

Exhibit "B"



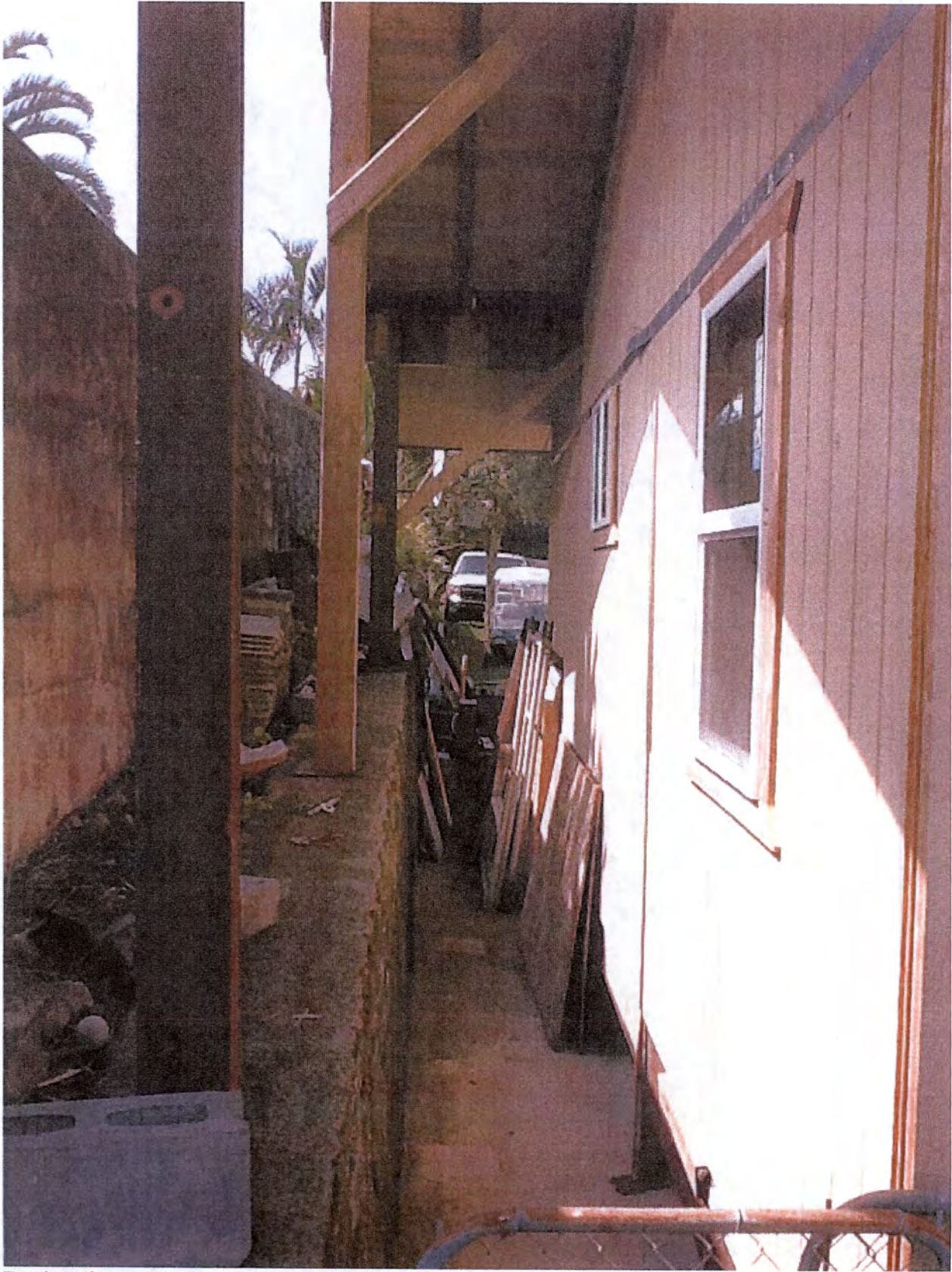
Depicts the structure as seen from the right-of-way from Kiwi Street. It is the structure with the brown roof behind the foliage, immediately in front of the roof with the two solar panels.

Exhibit "C"



Depicts the unpermitted structure. Note that there is a metal stake denoting the property line to the right side of the rock wall.

Exhibit "D"



Depicts the proximity of the structure to the property line. The property line appears to be the face of the upper rock wall to the left.

Exhibit "E"



Depicts the cripple wall that is parallel to the neighboring property from which the photographs were taken. Note the pipes from which liquid appears to be leaking.

Exhibit "F"



Depicts an overall view of the unpermitted structure as seen from the back yard of the neighboring property. Note that the small windows to the right are part of the same structure.

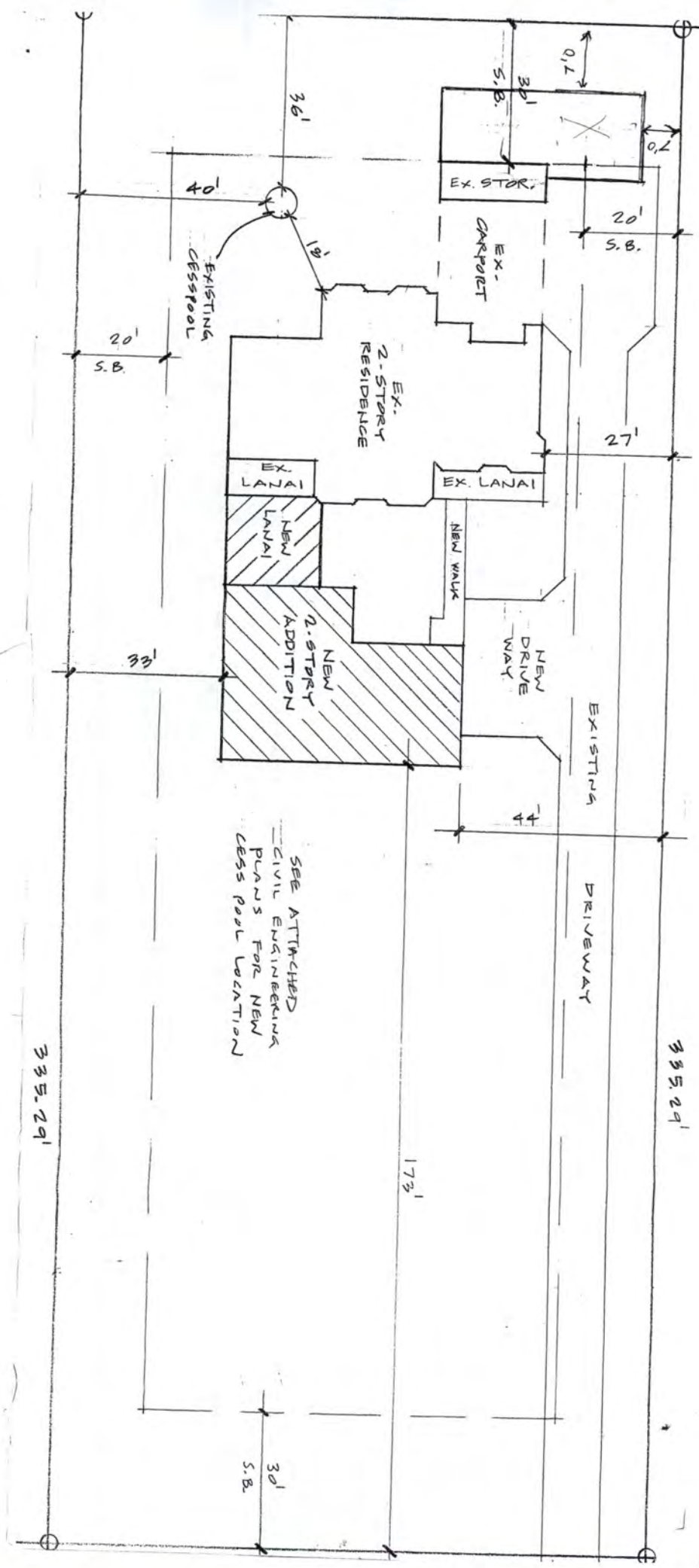


EXHIBIT
B

335.29'

335.29'

April 3, 2017

2017 APR 4 PM 3 10

Mr. Michael Yee

Hawaii County Planning Department

101 Pauahi Street, Suite 3

Hilo HI 96720

Subject: Variance -- VAR 17-000 416

By: Ruben Domingo

74-1451 Hao Kuni ST

Kailua Kona HI 96740

TMK 7-4-007:037 (Lot 22)

Sir:

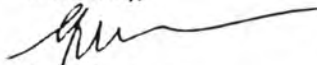
After failing to contact your department by phone last week, I am writing to notify you of the neighborhood concerns before the April 10 deadline of the above noted Variance application. I noticed my neighbor, Ruben Domingo's application for a variance in the West Hawaii Today public notice section and was told to expect notification, by Mr. Domingo, to everyone within 500 feet. As of April 3, 2017, I have not received any notice nor have six neighbors I have checked with.

This property has been an ongoing problem with many complaints, both written and verbal, to the building department, planning department and our council person, for well over a year. Presently, the property has 11 bedrooms and 7 ½ baths hooked to two cesspools.

The variance is for a 30x40 foot, 2 BR house, (which has already been built by Mr. Domingo) entirely in the setback without any permits. It would appear they will hook up to a third cesspool which has already been dug.

My neighbors and I would be glad to meet with you at your convenience to answer any questions you may have regarding this situation.

Yours Truly,



Grant Baseman

74-4932 Kiwi St

Kailua Kona HI96740

808-329-1913

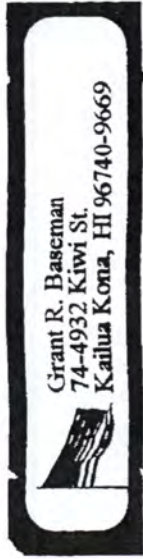
EXHIBIT

C

CC: Harry Kim, Mayor

CC: Karen Eoff, Council

110761



U.S. POSTAGE
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KAILUA KONA, HI
96740
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AMOUNT
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UNITED STATES POSTAL SERVICE®
REGISTERED MAIL™



RE 331 955 054 US

Label 200, August 2005 PSM 7690-03-000-9311

ATTN: LARRY NAKAYAMA

County of Hawaii
PLANNING Dept
101 PAWAHI ST. Suite 3
Hilo, HI 96720

Mr Michael Yee
Hawaii County Planning

2017 APR 12 pm 2 23

PLANNING DEPARTMENT
COUNTY OF HAWAII

April 10, 2017

Variance VAR 17-000 416 (Ruben Domingo Project)

Mr Yee:

I am very concerned about the proposed work at 74-1451 Hao Kuni St,
Kailua Kona HI 96740. Please take a very close look at this project.

I have not received any notification, despite the fact that my property abuts his.

The property seems to be overbuilt, and without proper permits and without proper setbacks.

Thank you for your attention to this matter,

Eric Sambold
74-4924 Kiwi St Kailua Kona HI 96740
858 922-3313

EXHIBIT

D

10943

April 5, 2017
Mr. Michael Yee
Hawaii County Planning Dept.
101 Pāhāhi Street, Suite 3
Hilo, HI 96720

2017 APR 11 AM 3:40

EXHIBIT

E

Regarding: VAR 17-000416
Ruben Domingo
74-1451 Hoakūni St.
Kailua-Kona, HI 96740
TMK# 7-4-007-037

110894

Dear Mr. Yee,

I am writing in regards to Ruben Domingo's ongoing building on the setback, without any legal permits. The neighbors have filed numerous complaints; by phone, email and in person. We have had three people from the building dept. inspect the situation, whom all agreed that this was illegal. There have extensions granted to Mr. Domingo in which all he does is continue to build! The structure is now almost complete and is illegal. We would like action to see that he is forced to tear down this conversion of a garage to an additional rental! He cannot build on a setback. Another rental is causing increased traffic - as he now has approximately 14 rooms rented out. There is increased noise, and abuse of animals, in which the Humane Society has been called numerous times.

In addition, Mr. Domingo is not following the law in regards to sending out letters to neighbors with his intent! We as neighbors of Paniolo Subdivision, are counting on you to bring this to closure. We do not want to file a law suite, and are in hopes that you see to it that the laws are enforced.

Thank you for your time.

Best Regards,

Susan Lambrecht (Susan@hawaii.rr.com)

April 6, 2017

Mr. Michael Yee

Hawaii County Planning Department
101 Pauahi Street, Suite 3
Hilo HI 96720

Subject: Variance - VAR 17-000416

By: Ruben Domingo

74-1451 Hao Kuni ST

Kailua Kona HI 96740

TMK 7-4-007:037 (Lot 22)

Aloha Mr. Yee,

While reading West Hawaii Today public notice section on 3/28/17, I noticed Ruben Domingo's application for a setback variance. In checking with the Planning Department in West Hawaii, I was told that all property owners within 500 feet would be receiving two written notices from Mr. Domingo concerning this application. As of April 5, 2017, no notices have been received.

I strongly object to this variance being granted. The building in question was constructed, as a garage, by the previous owner of the property, unpermitted, totally in the side and rear setback area of a one acre lot. This did not concern us when we purchased our home as it was a garage. Now, however, Mr. Domingo has turned this garage into a 2-BR house. He has added on to the front and side of the garage, put in a raised floor, moved the end of the building in about 3 feet from the property line and appears to be ready soon to hook up to a cesspool in the back yard. (Aren't new hookups to cesspools illegal?). County inspectors have viewed this construction from a neighboring lot as Mr. Domingo posted No Trespassing signs at his driveway and the inspectors stated that they could not go onto his property because of the signs.

The property had a 6 BR house when it was purchased by Mr. Domingo. He constructed a large addition with 5 more BRs. He stated that he was making the garage into a 2BR house so he and his wife could move into it and rent out the 5 BR portion of the main house. There are already many renters on the property. Each day there are usually 10-14 vehicles.

This property has been an ongoing problem with many complaints, both written and verbal, to the building department, planning department and our council person, for well over a year. This variance should be denied and Mr. Domingo required to remove all new construction added to the garage. What is the purpose of zoning laws if they are not enforced?

Yours Truly,



Linda Baseman

74-4932 Kiwi St

Kailua Kona HI96740

808-329-1913

CC: Harry Kim, Mayor; CC: Karen Eoff, Council

EXHIBIT

7

Comment letter

Regarding Variance VAR 17-000416

Ruben Domingo

Domingo Family Trust

Tax key 7-4-007-037

Submitted by

Linda Baseman

74-4932 Kiwi St

Kailua Kona

808-329-1913

konalinda@gmail.com

April 6, 2017



May 15, 2017

2017 MAY 17 PM 2 17

PLANNING DEPARTMENT
COUNTY OF HAWAII

Mr. Michael Yee
Hawaii County Planning Department
101 Pauahi Street, Suite 3
Hilo HI 96720

Subject: Variance – VAR 17-000 416

By: Ruben Domingo
74-1451 Hao Kuni ST
Kailua Kona HI 96740
TMK 7-4-007:037 (Lot 22)

Aloha Mr. Yee:

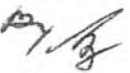
I am very much against this variance. I have watched the unpermitted construction for over a year. Shouldn't the county be stopping this type of illegal building, not condoning it by approving a variance? This structure was an unpermitted garage that is being turned in living space. The property will then have 13 bedrooms. Why would a family with four adult children need 13 bedrooms? The children don't even all live at home. There are, however, many renters there. And many vehicles.

Please, put a stop to this and require the removal of the living space, putting the building back the garage it was built as.

Also, I have always thought these notifications were to be delivered by mail with documentation to the county of such delivery. My notification was placed in my mailbox on a Sunday with no stamp. More illegal activity by the Domingo family.

Sincerely,

Jerry Klaz
74-4929 Kiwi St
Kailua Kona HI 96740



EXHIBIT

G

111643

2017 MAY 30 PM 2 21

PLANNING DEPARTMENT
COUNTY OF HAWAII

5/23/17

Planning dept
Ref Variance 17000416
Ruben Domingo
(3) 7-4-07:37 lot 22

I don't understand how someone can blatantly construct a building so far in the 20 ft and 30 ft setbacks within 7 ft of the property line and after getting caught apply for a variance. If you approve this what kind of prescience are you setting for the community? Also he has over 20 people living there also in violation of the zoning ordinances

Joe Kern
74-4963 kiwi st
Kailua Kona



EXHIBIT

H

SCANNED
MAY 31 2017
111842

2017 JUN 5 pm 2 14

PLANNING DEPARTMENT
COUNTY OF HAWAII

Planning Dept.
101 Pauahi st. Ste # 3
Hilo, HI. 96720

June 1, 2017

Attn: Department Manager

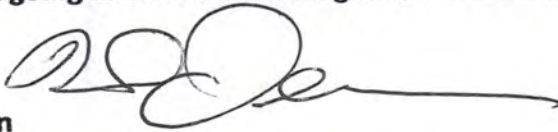
re: Ruben Domingo - Family Trust
Sub. Prop. lot 22 Hao Kuni St KailaKona 96740 / TMK(3) 7-4-07:37 lot 22

As a long time resident and home builder in Hawaii, I could not believe that the Hawaii planning Dept. would consider this "Variance" to be real. A 23 foot variance in the 30 foot setback zone and 13 foot variance in a 20 foot setback zone. Really????

I guess the message being sent here is "Just build anything you want on any property without regard for the County set back rule, and just get a "variance". It doesn't matter.

What are you going to do. All the "neighbors" would like to know.

Respectfully,



Robert S Dean

74 4910 Hao Kuni Place Kailua Kona HI 96740

Attached: First Notice/ Rubin Domingo "variance"

EXHIBIT

I

JUN 05 2017

SCANNED

JUN 05 2017
111965

By: _____

RUBEN DOMINGO
DOMINGO FAMILY TRUST
74-1451 HAO KUNI STREET
KAILUA-KONA, HI 96740

FIRST NOTICE

NOTICE IS HEREBY GIVEN that the following application for variance is now pending before the Planning Director County of Hawaii.


APPLICANT: Ruben Domingo, Domingo Family Trust

OWNER: Domingo Family Trust

LOCATION: Subject Property, consisting of 1 acre (43,560 square feet), Lot 22, 74-1451 Hao Kuni Street, Kailua-Kona, Hawaii 96740

TAX MAP KEY: (3) 7-4-07:37 Lot 22

PURPOSE: The applicant is requesting a variance to allow portions of an existing 1-story, two-car garage, which was renovated to a living area, to remain "AS-BUILT" with a northerly rear yard setback, of 7.00 feet and a easterly side yard setback of 7.00 feet, in lieu of the minimum 30.00 feet rear yard setback as well as 20.00 feet side yard setback, as required under Hawaii County Code, Zoning Ordinance, Chapter 25, Article 5, Division 7, Section 25-5-76. Minimum Yards, and Section 25-5-77. Other Regulations [Section 25-5-7. Minimum Yards (a)(2) (A&B)], and Article 4, Division 4, Section 25-4-44. Permitted Projections into Yards and Open Space Requirement (a).



Maps showing the general location and boundaries of the property under considerations and plans of the existing development, are on file in the offices of the Planning Department in the County Building, at 101 Pauahi Street, Suite No. 3, Hilo, Hawaii 96720, and the West Hawaii Office at the West Hawaii Civic Center, 74-5044 Ane Keohokalole Highway, Building E, Kailua-Kona, Hawaii 96740, and are open to inspection during office hours. Anyone wishing to offer comments may do so.

§489E-11 Notarization, certification, acknowledgment, and verification.

If a law requires a signature or record to be notarized, certified, acknowledged, verified, or made under oath or seal, the requirement is satisfied if the electronic signature or seal of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record. [L 2000, c 282, pt of §1; am L 2002, c 62, §1]

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[§489E-8] Provision of information in writing; presentation of records.

(a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or the sender's information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than this chapter requires a record to: be posted or displayed in a certain manner; be sent, communicated, or transmitted by a specified method; or contain information that is formatted in a certain manner, the following rules shall apply:

(1) The record shall be posted or displayed in the manner specified in the other law;

(2) Except as otherwise provided in subsection (d)(2), the record shall be sent, communicated, or transmitted by the method specified in the other law; and

(3) The record shall contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record shall not be enforceable against the recipient.

(d) The requirements of this section shall not be varied by agreement, but:

(1) To the extent a law other than this chapter requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (a) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(2) A requirement under a law other than this chapter to send, communicate, or transmit a record by first-class mail, postage prepaid, may be varied by agreement to the extent permitted by the other law. [L 2000, c 282, pt of §1]

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