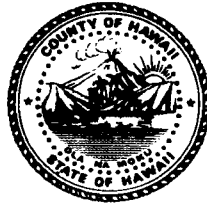


Harry Kim
Mayor



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

October 31, 2017

Lali De Wolfe, RA
Berkshire Hathaway Home Services Hawai'i Realty
961 Hausten Street
Honolulu, Hawai'i 96826

Dear Ms. DeWolfe:

SUBJECT: Application: Variance - VAR 17-000430
Applicant: LALI DEWOLFE
Owner: ELIZABETH LYNN ANDERSON
Request: Variance from Chapter 25, Zoning, Article 5 Division 7,
Section 25-5-76 Minimum Yards, Article 4, Division 4,
Section 25-4-44(a) Permitted Projections into Yards and
Open Space Requirements (Encroachment into Southwest
Front and Northeast Side Yard Setback)
Tax Map Key: 1-8-061:032; Lot 104

The Planning Director certifies the **approval** of Variance 17-000430, subject to conditions. The variance will allow portion of the single-family dwelling to remain with a minimum 20.2-foot front (southwest) yard setback, in lieu of the required 25-foot front yard setback and the ohana dwelling to remain with a minimum 10.6-foot side (northeast) yard setback in lieu of the required 15-foot side yard setback and an associated roof eave projection resulting with a 6-foot side (northeast) yard open space in lieu of the required 10-foot open space requirement. The variance will also allow for the water tank to remain with a minimum 11.2-foot side (northeast) yard setback in lieu of the required 15-foot side yard setback. These exceptions are in lieu of the required 25-foot front yard setback and 15-foot side setback and 10-foot side yard open space as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 29,061 square feet and is located in the Aloha Estates Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 18-4040 Mauna Loa Drive.

2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 25-feet for front and 15-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. **Ohana Dwelling Permit.** Permit (OD 89-424) issued on October 27, 1989.
6. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on March 6, 2017. The variance site plan is drawn to scale, prepared by the Daniel Berg, L.P.L.S. (dlb and Associates, LLC), and denotes the position of the single-family dwelling constructed into the minimum 25-foot front (southwest) yard setback and the ohana dwelling along with the detached water tank constructed into the 15-foot side (northeast) yard setback. The request affects the southwest front yard setback and northeast side yard setback requirement. **(See attached survey map – Exhibit A)**

The survey map shows that portion of the single-family dwelling encroaches 4.8 feet into the 25-foot front (southwest) yard setback and the ohana dwelling encroaches 4.4 feet into the 15-foot side (northeast) yard setback and associated roof eave encroaches 4 feet into the 10-foot side (northeast) yard open space. It also shows the detached water tank encroaches 3.8 feet into the 15-foot side (northeast) yard setback.

The encroachment leaves the single-family dwelling with a minimum 20.2-foot front (southwest) yard setback, in lieu of the required 25-foot front yard setback. It also leaves the ohana dwelling with a minimum 10.6 feet side (northeast) side yard setback and the associated roof eave projection resulting with a 6-foot side (northeast) yard open space in lieu of the required 10-foot open space requirement. The detached water tank remains with an 11.2-foot side (northeast) yard setback in lieu of the required 15-foot side yard setback requirements.

7. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that building permit (871689) was issued on September 14, 1987 and finalized on July 16, 1971, to the subject property for a single-family dwelling consisting of 4 bedrooms, 2-1/2 baths, living room, kitchen and dining area. An additional building permit (912189) was issued on October 14, 1991, for an ohana dwelling consisting of 2 bedrooms, 1 bath, living room, kitchen, dining area and detached water tank that was finalized on July 20, 1995.
8. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated March 28, 2017. "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.
9. **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 30, 2017 and July 13, 2017, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 29, 2017.
10. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.
11. **Time Extension.** The applicant's variance application was acknowledged by letter dated June 23, 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 to October 31, 2017.

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 single-family dwelling into the 25-foot southwest front yard setback, encroachment of the ohana dwelling into the 15-foot side yard setback and associated roof eave into the 10-foot side yard open space, and the detached water tank encroaching into the 15-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. The original single-family dwelling improvements authorized under building permit #871689 was issued on September 14, 1987 and given final inspection approval on July 16 1991. The ohana dwelling improvements were authorized under building permit #912169, which was issued on October 14, 1991, and given final inspection approval on July 20 1995, prior to the purchase by Ronald J. Gauthier and Nicole De Kock. It appears that building permit inspections of the premises by the affected agencies during construction of the single-family dwelling and ohana dwelling improvements, did not disclose any building encroachment issues or building setback irregularities at that time.

The current owners purchased the property by Warranty Deed, dated June 19, 2017, after the building inspections were finalized. Subsequently, they received the surveyor's final report informing them of the encroachments into the setback.

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 single-family dwelling, ohana dwelling and water tank encroachments constructed into the affected front yard setback, side yard setback and side yard open space of the subject property include the following actions:

Remove the building encroachments and/or redesign the single-family dwelling, ohana dwelling and water tank denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code. 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, ohana dwelling and water tank were in compliance with all County requirements. Any structural or design correction of the single-family dwelling, ohana dwelling and water tank 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. Also, there are other encroachments within the side yard setback; therefore, to consolidate the subject property with the adjacent side yard property, which is owned by someone else and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are also not viable options. Therefore, both of these alternatives are not practical.

(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 26 years along with the ohana dwelling which has been in existence for approximately 21 years. Both were constructed under valid building permits and other construction permits issued by the County of Hawai'i. As such, 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, ohana dwelling and water tank built upon the subject property ("LOT 104") 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, ohana dwelling and water tank 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. 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.

Lali De Wolfe, RA
Berkshire Hathaway Home Services Hawai'i Realty
Page 6
October 31, 2017

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-17-000430 null and void.

Sincerely,

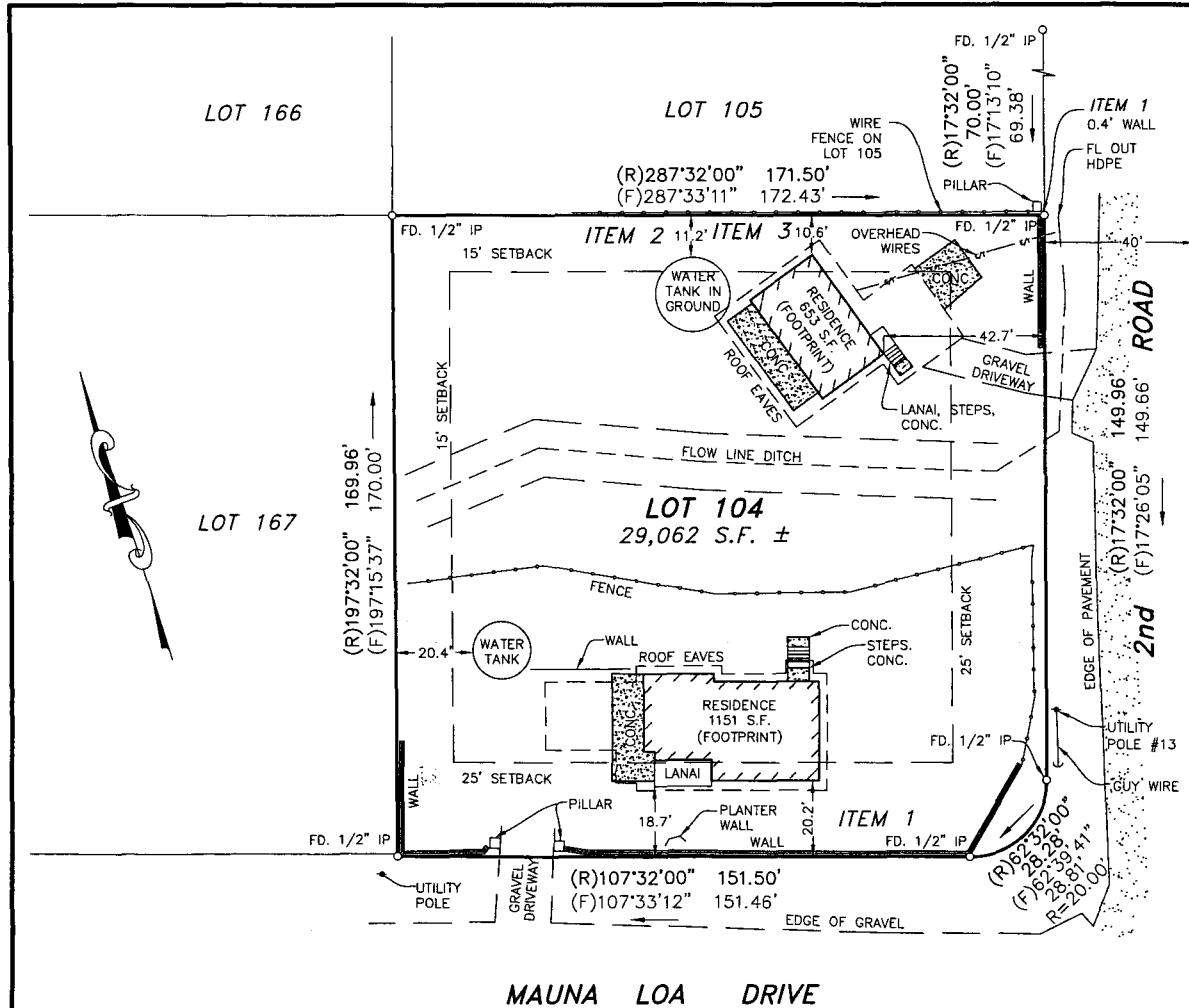
A handwritten signature in black ink, appearing to read 'Michael Yee', written in a cursive style.

MICHAEL YEE
Planning Director

LHN:nci

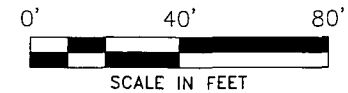
P:\Admin Permits Division\Variances From CoH02\Zone1\VAR17-000430 TMK1-8-061-032 Anderson.doc

cc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS (via email)



Boundary and Improvement Survey
Of Lot 104,
Aloha Estates Subdivision, Unit 1
Olaa, Puna, Island and County of Hawaii.
 TMK(3) 1-8-061:032

- NOTES:**
1. This K-2 field survey completed June 2, 2017
 2. (F) indicates Field measured dimensions. Basis of Azimuths is a 'best-fit' of found (FD.) property monuments to record positions. Std. Error = 0.44 ft. (n=18)
 3. (R) indicates Record dimensions per Aloha Estates, Unit 1, filed as DAGS File Plan No. 714.
 4. This Map and attached Report were prepared for the transaction indicated, and should not be used for any other purpose.
 5. Intrusions and/or protrusions across boundaries or into zoning setbacks, if any, denoted as 'ITEM_' and described in the attached report.



EXHIBIT

A

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

Daniel L. Berg
 PLS 11245



dlb & Associates
 LAND SURVEYING • MAPPING • CONSULTING

P.O.Box 49-2281 Keaau, HI. 96749
 Ph.966-4206 Fx.82-6830
 www.dibandassoc.com

Date: June 06, 2017
 Escrow:

Project: J2017-135
 8X14L