

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

July 19, 2018

Jerry E. Bragdon
P. O. Box 936
Mountain View, Hawai'i 96771

Dear Mr. Bragdon:

SUBJECT: Application: Variance - VAR 18-000463
Applicant: JERRY E. BRAGDON
Owner: JERRY E. BRAGDON
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 the Southwest and Northwest Side Yard Setback)
Tax Map Key: 1-1-080:029 (Lot 4)

The Planning Director certifies the **approval** of Variance 18-000463, subject to conditions. The variance will allow portion of the single-family dwelling to remain with a minimum 15.4-foot side (northwest) setback and associated roof eave projection resulting with a minimum 13.0-foot side (northwest) yard open space. It also allows for the single-family dwelling with a side (southwest) yard setback ranging from 13.9 feet to 16.8 feet to remain and associated roof eave projection resulting with a minimum 12.1 foot side (southwest) yard open space. 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.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately one acre and is located in the Eden Rock Estates Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 11-2899 Palainui Avenue.
2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Agricultural.

4. **Required Setback.** 30 feet for front and 20 feet for sides; Section 25-4-42, Corner building sites: (a) on any corner building site, the interior lines shall be side lot lines and all rear yard regulations shall be inapplicable.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on February 6, 2018. The variance application's survey map dated October 3, 2017 was prepared by Daniel L. Berg, LPLS, dlb & Associates. **(See Exhibit A-Site Plan)**

The survey map shows that the single-family dwelling encroaches 3.2 feet to 6.1 feet into the 20-foot southwest side yard setback and the associated roof eave encroaches 1.9-foot into the 14-foot southwest side yard open space. It also shows that the northwest corner of the single-family dwelling encroaches 4.6 feet into the 20-foot side (northwest) yard setback and the associated roof eave encroaches 1-foot into the 14-foot side (northwest) yard open space.

The encroachment leaves single-family dwelling with a southwest side yard setback ranging from 13.9 feet to 16.8 feet in lieu of the required 20-foot side yard setback and associated roof eave projection resulting with a 12.1-foot side (southwest) yard open space in lieu of the required 14-foot open space requirement and the northwest corner single-family dwelling with a minimum 15.4-foot side (northwest) yard setback, in lieu of the required 20-foot side yard setback and associated roof eave projection resulting with a 13.0-foot side (northwest) 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 building permit (813024) was issued on December 15, 1981 and finalized on May 15, 1985, to the subject property for a single-family dwelling consisting of 2 bedrooms, 1 bath, living room, kitchen, dining area and doughboy water tank.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated March 5, 2018. "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 April 5, 2018 and May 25, 2018, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 1, 2018.
9. **Comments from Surrounding Property Owners or Public.**
 - a. Support letter received from Vincent S. Mansapit dated December 10, 2018. **(See Exhibit B)**

- b. Support letter received from Kenneth E. Bragdon dated December 10, 2018. **(See Exhibit C)**
 - c. Letter requesting clarification from Mike Romont to Jerry Bragdon received on April 25, 2018. **(See Exhibit D)**
10. **Time Extension.** The applicant's variance application was acknowledged by letter dated February 12, 2018 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 July 20, 2018.

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 20-foot southwest and northwest side yard setback and the associated roof eaves projecting into the 14-foot southwest and northwest side yard open space.

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 #813024 which was issued on December 15, 1981 and given final inspection approval on May 30, 1985. It appears that building permit inspections of the premises by the affected agencies during construction of the single-family 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 single-family dwelling, encroachments constructed into the affected 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 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 was in compliance with all County requirements. Any structural or design correction of the single-family dwelling and water tank to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachment is within the side yard setback, 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 side yard setbacks are 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 33 years. The single-family dwelling was 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 built upon the subject property ("LOT 4) will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, Zoning.

Jerry Bragdon
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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. No Ohana or Additional 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.
5. Future or new building improvements and permitted uses shall be subject to State law and County Ordinances and Regulations pertaining to building construction and building occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-18-000463 null and void.

Sincerely,



MICHAEL YEE
Planning Director

LHN:nci

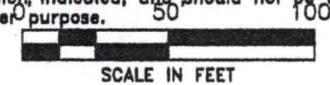
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cc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS (via email)

Boundary and Improvement Survey
Of Lots 3 & 4, Block 115
Eden Rock Estates Subdivision,
Keaau, Puna, Island and County of Hawaii.
 TMK(3) 1-1-080:030, 029

NOTES:

1. This K-1/K-2 field survey completed September 21, 2017.
2. (F) Indicates Field measured dimensions. Basis of Azimuths is a 'best-fit' of found (FD.) property monuments to record positions. Std. Error = 0.59 ft. (n=20)
3. (R) Indicates Record dimensions per Land Court Application 1053, Map 90.
4. Intrusions and/or protrusions across boundaries or into zoning setbacks, if any, denoted as 'ITEM_' and described in the attached report.
5. This Map and attached Report were prepared for the transaction, indicated, and should not be used for any other purpose.



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

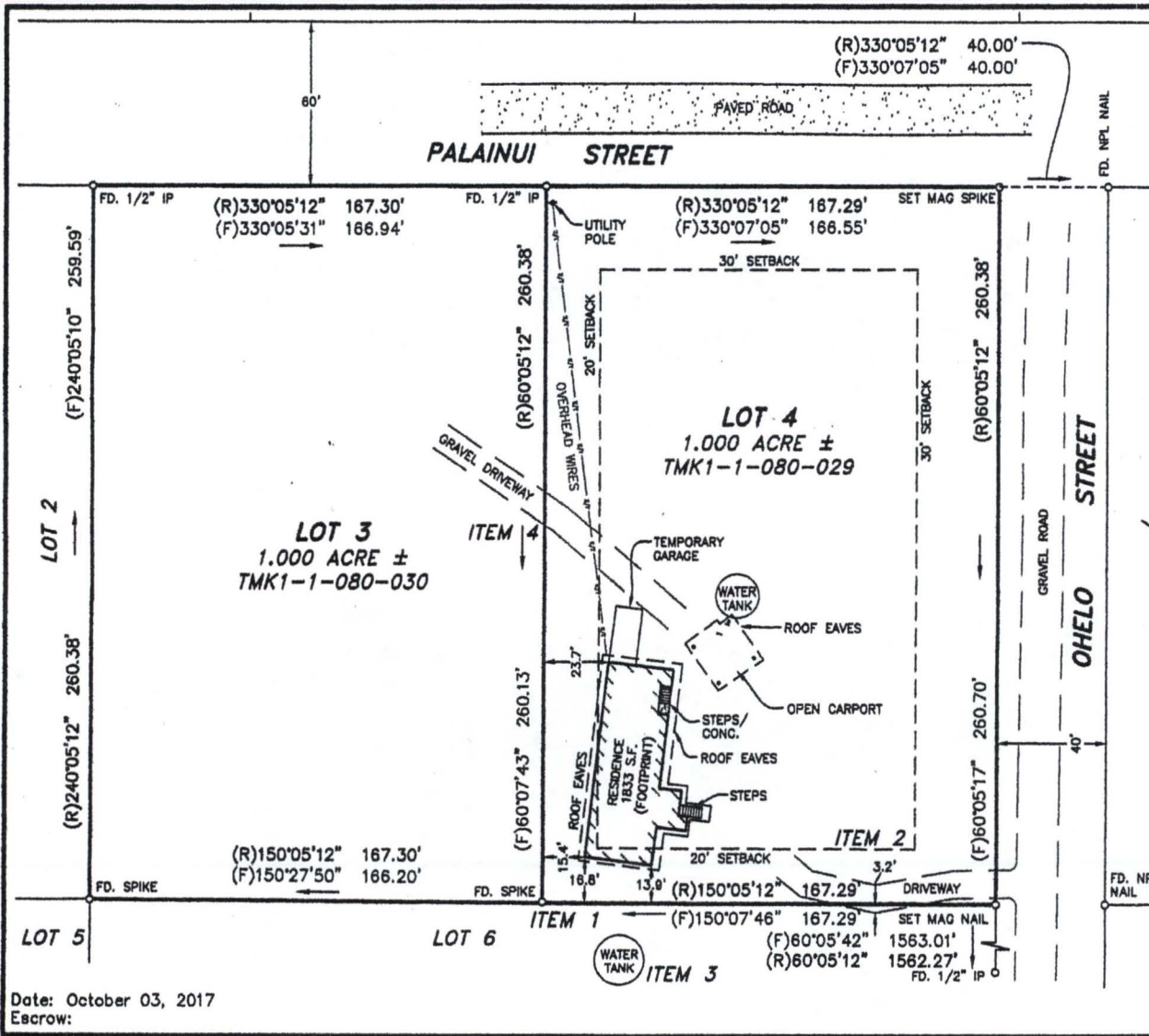
Daniel L. Berg
 PLS 11245

EXHIBIT

A

dlb & Associates
 LAND SURVEYING • MAPPING • CONSULTING

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



Date: October 03, 2017
 Escrow:

Project: J2017-231
 BX14L

December 10, 2017

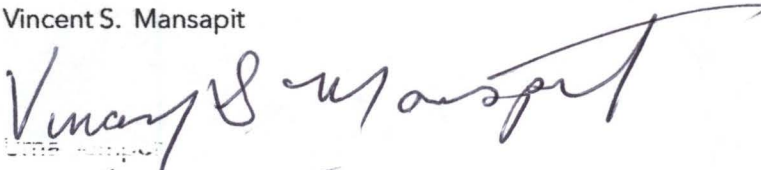
Planning Department,
County of Hawaii
101 Aupuni St.
Hilo, HI 96720

I, Vincent S. Mansapit, am submitting this statement in support of the application of variance to zoning code, by my neighbor, Jerry E Bragdon, 11-2899 Palainui Ave., Mountain View, Hawaii. I understand the his house is encroaching the setback to my property line. I live next door, at 11-1744 Ohelo St., Eden Roc Estates, Mountain View, Hawaii, 96771. My tax map key # is TMK -1-1-080-031., lot 6.

I have seen the survey of Sept 2017. I understand the encroachment is six feet, three inches (6'3") in error. I have no objections regarding the encroachment, there is not any negative impact to my property. I ask that Hawaii County approve this application. Thank you for your time, and consideration.

Sincerely yours,

Vincent S. Mansapit


vms
012/22/18

EXHIBIT

B

December 10, 2017

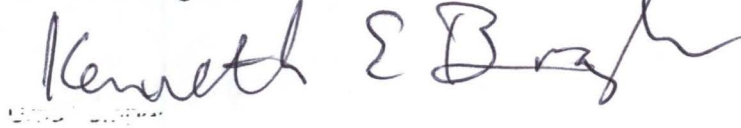
Planning Department,
County of Hawaii
101 Aupuni St.
Hilo, HI 96720

I, Kenneth E Bragdon, am submitting this statement in support of the application of variance to zoning code, by my neighbor, Jerry E Bragdon, 11-2899 Palainui Ave., Mountain View, Hawaii. I understand the his house is encroaching the setback to my property line. I live next door, at 11-2903 Palainui Ave, Eden Roc Estates, Mountain View, Hawaii, 96771. My tax map key # is TMK -1-1-080-030., lot 3.

I have seen the survey of Sept 2017. I understand the encroachment is four feet and eight inches (4' 8") in error. I have no objections regarding the encroachment, there is not any negative impact to my property. I ask that Hawaii County approve this application. Thank you for your time, and consideration.

Sincerely yours,

Kenneth E Bragdon



01/22/18

EXHIBIT

C

Mr. Mike J. Romont
110 Jefferson Pkwy Unit 414
Newnan, GA 30263-5884

2018 APR 25 AM 11 37

PLANNING DEPARTMENT
COUNTY OF HAWAII

Hello Jerry,

I received your letter and have looked up your parcel. Your parcel is one lot over and across the street from my parcels.

The letter didn't really explain what it is that you are requesting from me. Please explain.

Thank you,

Mike Romont

110 Jefferson Pkwy, Apt 414

Newnan, GA 30263

mromont@yahoo.com

3-1-1-80-2

3-1-1-80-27

EXHIBIT

D

SCANNED
APR 26 2018
BY: 18021