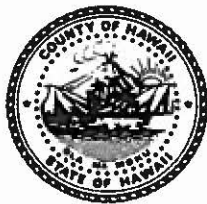


Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

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County of Hawai'i
PLANNING DEPARTMENT

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June 6, 2018

Zendo Kern
Zendo Kern Planning Consultant
RR@ Box 4105
Pahoa, HI 96778

Dear Mr. Kern:

SUBJECT: Application: Variance - VAR 18-000474
Applicant: ZENDO KERN
Owners: ROBERT D. ANDERSON
PATSY ANDERSON
SEAN ANDERSON
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-76, Minimum Yards Requirements
(Encroachment into Open Space (Northwest) Yard Setback
Tax Map Key: (3) 7-3-021:006 Lot 11

NOTE: County of Hawai'i Planning Department was notified by Mr. Zendo Kern, applicant, that Ownership of TMK: (3) 7-3-021:006 was changed on April 5, 2018, from Mr. Stephen Poor to Mr. Robert D. Anderson, Ms. Patsy Anderson, and Mr. Sean Anderson, and the Warranty Deed was recorded with the Bureau of Conveyance on April 11, 2018, Doc. No. A66750118.

The Planning Director certifies the **approval** of Variance No. 18-000474, subject to variance conditions. The variance will allow portions of the attached open wood deck to remain with minimum 8.8 open space setback, in lieu of the required 14-foot open space, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards requirements.

It was also approved to allow portions of the detached garage to remain in place pursuant to Section 25- 4- 66, De Minimis Regulation Structural Position Discrepancy with a 9.6-foot and 9.8- foot side (north) yard setback and encroaching 0. 2 feet and 0.4 feet (2.4 inches and 4.8 inches) into the side (north) yard setback.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 11, contains approximately 10,920 square feet and is situated within the “Kaloko House Lots”, Unit 2, Subdivision, North Kona, Hawai‘i. The subject property’s street address is 73-4634 Uluwehi Place, Kailua-Kona, HI 96704.
2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Agricultural.
4. **Setback Requirements.** 20 feet for fronts and 10 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on April 6, 2018. The variance application’s survey map dated March 13, 2018 was prepared by Peter H. Souza, LPLS and denotes that portions of the dwelling walls are built into the front (northwest) yard setback, open space (northwest) setback and side (northeast) yard setbacks. **(See Exhibit A-Site Plan)**

The survey map dated March 13, 2018 shows sections of the attached open wood deck encroaching 11.2-feet with a minimum 8.8 open space setback, in lieu of the required 14-foot open space setback.

6. **County Building Records.** Hawai‘i County Real Property Tax Office records indicate that a building permit (#916461) was issued on October 30, 1991 for a single-family dwelling consisting of 2 bedroom, 2-bath, den, covered lanai, 2 car carport and 2 car garage.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated May 2 2018. “The Health Department found no environmental health concerns with regulatory implications in the submittals.”
 - b. No comments were received from Department of Public Works - Building Division as of this date.
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 26, 2018 and May 2, 2018, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 26, 2018.
9. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.

GROUNDS FOR APPROVING VARIANCE

Special and Unusual Circumstances

- (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 criterion (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of the dwelling walls into the 20-foot front (northwest), and 14-foot open space (northwest) 10-foot side (northeast) yard setback as required by the Zoning Code.

The survey map dated March 13, 2018 shows sections of the attached open wood deck encroaching 11.2-feet with a minimum 8.8 open space setback, in lieu of the required 14-foot open space setback.

The encroachment leaves a minimum 8.8 open space setback in lieu of the required 14-foot open space (northwest) setback, for the attached open wood lanai..

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 1991, nearly 27 years ago, and subsequent construction permits were issued by the County for the existing single-family dwelling and closed under valid building permit inspections. It also appears that past building permit inspections of the premises by the affected agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

The above special and unusual circumstances determine the owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with best use and development of the subject property.

Alternatives

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

The Variance application meets criterion (b) for the following reasons:

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

Remove the building encroachments and/or redesign the 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 to meet setback requirement would leave unattractive reconstruction scars.

There are no reasonable alternatives to resolve the encroachment issue.

Intent and Purpose

(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 criterion (c) for the following reasons:

The intent and purpose of requiring building setbacks for a lot 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 dwelling has been in existence for approximately 27 years and was constructed under valid building permits and other construction permits issued by the County of Hawai'i. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan.

This can be substantiated, to some degree, by the fact that no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

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

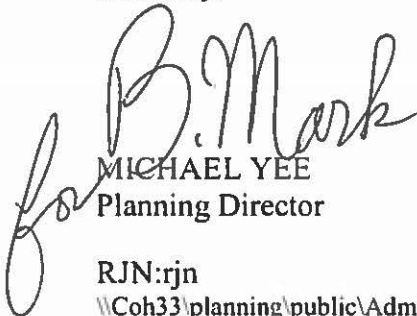
Based on the variance application's survey map, the single-family dwelling built on the subject property ("LOT 11") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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 dwelling walls 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. An Ohana 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 initiate proceedings to null and void Variance-16-000474.

Sincerely,


MICHAEL YEE
Planning Director

RJN:rjn

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Mr. Zendo Kern

June 6, 2018

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xc: Natalie Whitworth, DPW Engineering Division
Real Property Tax Office (Kona)
Gilbert Bailado, GIS

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Patsy Anderson
Sean Anderson
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