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PLANNING DEPARTMENT

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June 20, 2018

Ardith Renteria
HTS Co.
P. O. Box 180271
Hawaii National Park, Hawaii 96718

Dear Ms. Renteria:

SUBJECT: Application: Variance - VAR 18-000478
Applicant: HTS CO. /ARDITH RENTERIA
Owner: DONALD JAMES BINGLE
**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 Southeast
and Southwest Side Yard Setback)**

Tax Map Key: 1-5-031:071 (Lot 101)

The Planning Director certifies the **approval** of Variance 18-000478, subject to conditions. The variance will allow portion of the three-story, single-family dwelling to remain with a minimum 12.1-foot side (southwest) yard setback. These exceptions are in lieu of the required 15-foot side yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards.

The variance will also allow the three-story, single-family dwelling to remain with a minimum 14.5-foot side yard setback to a minimum 14.7-foot side yard setback, and encroaching 0.3 feet (3.6 inches) to 0.5 feet (6 inches) into the side (southeast) yard setback to be approved under Section 25-4-66, De Minimis Regulation Structural Position Discrepancy.

The survey map references an encroachment of a rock wall, which encroaches 1.1 feet into Ala Heiau Road, a private road way. The encroachment of the rock wall is excluded from this variance approval, as the encroachment should be dealt with the Hawaiian Paradise Park Homeowners Association.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 21,780 square feet (0.50 acre) and is located in the Hawaiian Paradise Park Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 15-1079 Ala Heiau.
2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 25 feet for front; 15 feet for sides and a 40 foot shoreline setback.
5. **Special Management Area (SMA).**
6. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on May 4, 2018. The variance application's survey map dated March 23, 2018, was prepared by Daniel L. Berg, LPLS, dlb & Associates. **(See Exhibit A-Site Plan)**

The survey map shows that portion of the single-family dwelling encroaches 2.90 feet into the 15-foot side (southwest) yard setback and 0.3 (3.6 inches) to 0.5 (6 inches) into the side (southeast) yard setback.

The encroachment leaves the three-story, single-family dwelling with a minimum 12.1-foot side (southwest) yard setback, in lieu of the required 15-foot side (southwest) yard setback. The encroachment also leaves the three-story, single-family dwelling with a minimum 14.5-foot to a minimum 14.7-foot side (southeast) side yard setback.

7. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that building permit (2007-2409H) was issued on October 17, 2007, and finalized on February 13, 2009, to the subject property for a three-story, single-family dwelling consisting of 2 bedrooms, 4 baths, living room, kitchen, dining area and doughboy water tank.
8. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated April 13, 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.

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 May 15, 2018 and May 24, 2018, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 30, 2018.
10. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

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 three-story, single-family dwelling into the 15-foot southeast and southwest 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 single-family dwelling improvements authorized were under building permit B2007-2403H which was issued on October 17, 2007 and given final inspection approval on February 13, 2009. 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 encroachment constructed into the affected side yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign the single-family 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.

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 9 years and 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, and water tank built upon the subject property ("LOT 101") will not meet the minimum rear yard requirements pursuant to Hawai'i County Code, Chapter 25, Zoning.

Ardith Renteria
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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. An 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-18-000478 null and void.

Sincerely,

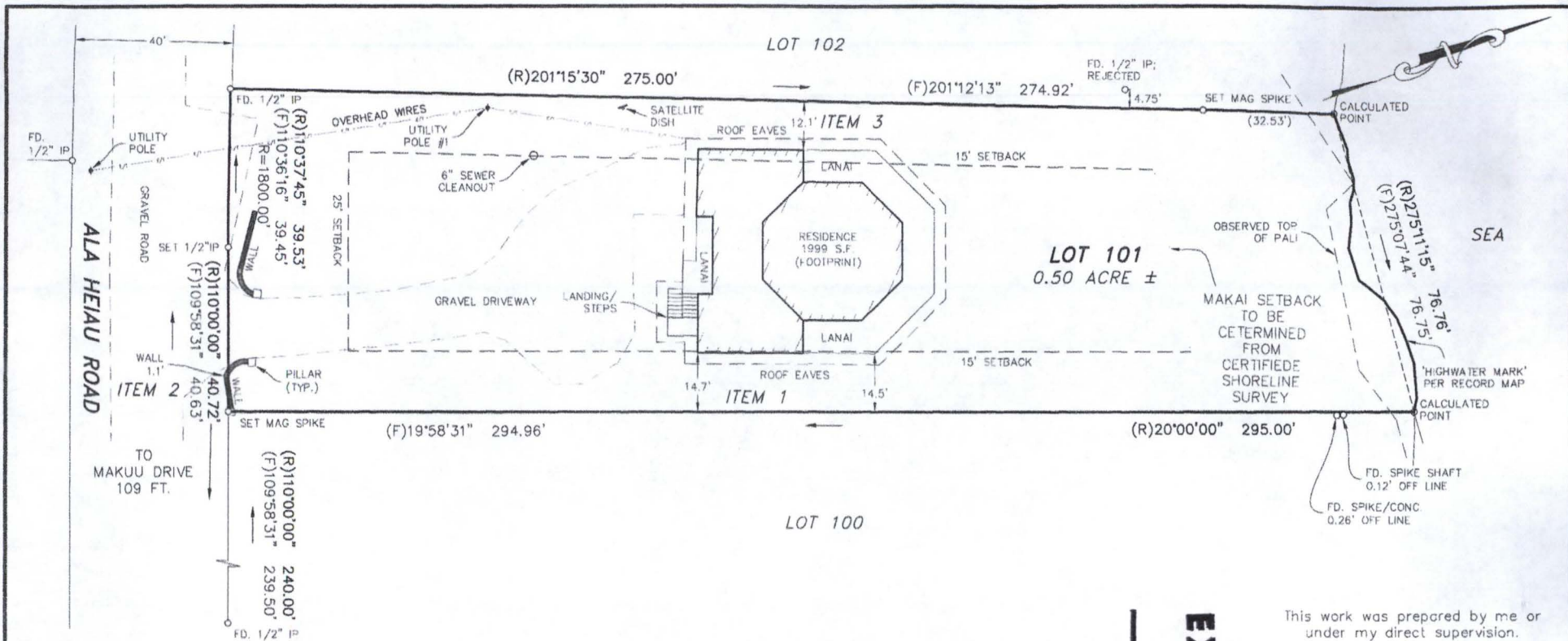

MICHAEL YEE
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR18-000478 TMK1-5-031-071 Bingle.doc

cc: Exhibit A-Site Plan

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



NOTES:

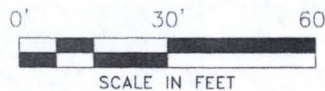
1. This K-2 field survey completed March 20, 2018.
2. (F) indicates Field measured dimensions. Basis of Azimuths is a 'best-fit' of found (FD.) property monuments to record positions. Std. Error = 0.21 ft. (n=24)
3. (R) indicates Record dimensions per Hawaiian Paradise Parks Subd., Land Court Application 1053, Map 66.
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.

Date: March 23, 2018
 Escrow: First American # 4-5627914 KK

Project: J2018-067
 8X14L

Boundary and Improvement Survey
Of Lot 101, Block 11,
Hawaiian Paradise Park Subdivision,
Keaau, Puna, Island and County of Hawaii.

TMK(3) 1-5-031: 071



A
EXHIBIT

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

Daniel L. Berg
 PLS 11245



dlb & Associates

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