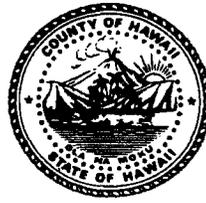


Harry Kim  
Mayor



Michael Yee  
Director

Daryn Arai  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
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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  
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December 6, 2018

Zendo Kern  
194 Wiwoole St.  
Hilo, HI 96720

Dear Mr. Kern:

**SUBJECT: Application: Variance – VAR-18-000487**  
**Applicant: Zendo Kern**  
**Owner: Thais J. & Lois R. Gauvin**  
**Request Variance from Chapter 25, Zoning, Article 5 Division 1, Section 25-5-7 Minimum Yards and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Encroachment into Front and Side Yard Setbacks)**  
**Tax Map Key: 7-4-009:064**

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The Planning Director certifies the **approval** of Variance No. 18-000487, subject to variance conditions. The variance will allow existing single family dwelling on the subject property to remain in its current location, with the building 2.4 feet from the southern property line, the eave extending 8.1 from the northeasterly property line, the building 0.3 feet from the southern property line., which are within the required yard setbacks and open space requirements as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property is a 8,325-acre parcel located off of Palani Road in the Kailua Heights Subdivision, Kealakehe Homesteads, North Kona. The subject property's street address is 74-5057 Palani Road.
2. **Zoning.** Single Family Residential – 10,000 square feet (RS-10).
3. **State Land Use.** Urban.
4. **Required Setback.** 15-foot front and rear and 8-foot for sides. Section 25-4-40, General requirements for yards and open space: (a) On every building site, yards of the minimum width or depth as specified for the established zoning district shall be maintained open and unobstructed from the ground up, except as specified in sections 25-4-40 through 25-4-47.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on July 10, 2018, and other submittals related to the variance request and variance application. The variance application's site plan, drawn to scale and

prepared by Chrystal Yamasaki, Licensed Professional Land Surveyor, has been modified by the applicant on a separate site plan to denote the agricultural activities on site . (See application)

6. **County Building Records.** Hawai‘i County Real Property Tax Division records indicate that the following building permits were issued for the building on property: 24263 (4/3/61), 30596 (2/19/65), 49291 (8/5/71) and B2010-0210K (3/11/10).
7. **Agency Comments and Requirements.**
  - a. State Department of Health (DOH) memorandum dated August 26, 2018: “The Health Department found no environmental health concerns with regulatory implications in the submittals.”
  - b. Department of Public Works (DPW) Email Correspondence dated August 2, 2018: “We have no issues in this variance.”
8. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notices mailed to surrounding property owners (including affidavits) by USPS. According to these submittals, the first and second notices were mailed on July 25, 2018 and August 2, 2018 respectively. Notice of this application was published in the Hawai‘i Tribune Herald and West Hawai‘i Today on July 27, 2018.
9. **Comments from Surrounding Property Owners or Public.** No written comments were received.
10. **Additional Information from Applicant.**
  - a. Warranty Deed for the sale of the property from Bryce Lauder to Thais & Lois Gauvin
  - b. Letter of Authorization from new Landowners Thais and Lois Gauvin dated October 26, 2018

#### ANALYSIS OF GROUNDS FOR VARIANCE

**No variance will be granted unless it is found that:**

1. *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 for the following reasons:**

The application and county records indicate that the dwelling was built in 1962.

The original owners obtained building permits, built the dwelling and closed all permits in a timely manner. The applicant states that it is their assumption, from all available records, that the approved house plans located the structure in its present location and configuration, and that these plans were approved by the county consistent with the specifications and requirements set forth by the zoning and building codes of that time. The applicant further points out that the home has been in existence for many years and there have been no registered complaints made to the county on these matters.

The above special and unusual circumstances exist to a degree which if the variance was not granted would obviously interfere with the best use or manner of development of the property.

**2. *There are no other reasonable alternatives that would resolve the difficulty.***

**The variance application meets criteria for the following reasons:**

The applicant states that the alternative of tearing down the wall and roof areas of the encroachments would not be reasonable. The eaves would need to be shaved off by as much as 5.2 feet on the northeasterly boundary and the walls and roof of the structures would need to be cut off by as much as 5.6 feet on the southerly boundary. The cost and potential structural harm to integrity of the roof make this alternative unreasonable.

**3. *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 for the following reasons:**

The applicant points out that the subject site is zoned Single Family Residential and is surrounded by single family residential and this variance will not affect the basic intent of the residential subdivision. Further the dwelling has been there for over 50 years and as stated before, there have been no registered complaints regarding the structure. The approval of the variance would not affect the area's character or adjoining properties.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance is 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. Furthermore, the variance 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.

**PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

Based on the variance application's site map, the existing single family dwelling on the subject property to remain in its current location, 2.4 feet from the southern property line and the eave extending 8.1 from the northeasterly property line and 0.3 feet from the southern property line., which is within the required 8-foot side yard setback and the 4-foot open space requirement, will not meet the minimum front and side yard setback requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

This variance request is **approved** subject to the following conditions:

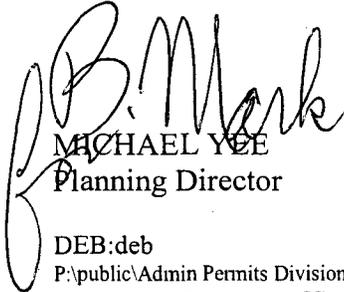
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai'i harmless from and against any loss, liability, claim, or demand for the property 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.

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3. Should the structures 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 occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-18-000487 null and void.

Sincerely,

  
MICHAEL YEE  
Planning Director

DEB:deb

P:\public\Admin Permits Division\Variance\2018\VAR-18-000487 TMK 7-4-009-064 Gauvin

cc: West Hawaii Office