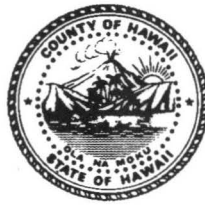


Harry Kim  
Mayor

Wil Okabe  
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**County of Hawai'i**  
PLANNING DEPARTMENT

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Director

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January 8, 2019

Zendo Kern  
Planning Consultant  
194 Wiwoole Street  
Hilo, HI 96720

Dear Mr. Kern:

**SUBJECT: Application: Variance - VAR 18-000495**  
**Applicant: ZENDO KERN**  
**Owner: GEORGE N. ISHIKAWA**  
**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 West Rear Yard Setback**  
**and North and South Side Yard Setback)**

**Tax Map Key: 2-4-043:044; Lot 59**

The Planning Director certifies the **approval** of Variance18-000495, subject to conditions. The variance will allow the following:

- a. The single –family dwelling to remain with a minimum 8.47-foot side (north) yard setback, in lieu of the required 10-foot side yard setback and an associated roof projection resulting with a 2.38-foot side (north) yard open space in lieu of the required 5-foot open space requirement.
- b. The ohana dwelling to remain with a minimum 9.44-foot side (north) yard setback in lieu of the required 10-foot side yard setback.
- c. The workshop to remain with a minimum 9.10-foot side (south) yard setback in lieu of the required 10-foot side yard setback.
- d. The utility shed to remain with a minimum 10.03-foot rear (west) rear yard setback in lieu of the required 20-foot rear yard setback and an associated roof eave projection resulting with a 7.32-foot rear (west) yard open space.

- e. The smoke house, approximately 4-foot in height to remain with a minimum 9.63-foot rear (west) rear yard setback in lieu of the required 20-foot rear yard setback and an associated roof eave projection resulting with a 7.56-foot rear (west) yard open space in lieu of the required 14-foot rear yard open space requirement. These exceptions are in lieu of the required 20-foot rear yard setback and 10-foot side setback and 14-foot rear 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.

These exceptions are in lieu of the required 20-foot rear yard setback and 10-foot side setback and 14-foot rear 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 16,152 square feet and is situated in the Haihai Heights Subdivision, Unit 2, Waiakea, South Hilo, Hawai'i. The subject property's street address is 1611 Nohoana Place.
2. **County Zoning.** Agricultural – 1 acre. (A-1a).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20 feet front and rear; 10 feet for side.
5. **Ohana Dwelling:** Ohana Dwelling (OHD-91-298) issued on September 5, 1991.
6. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on October 2, 2018. The variance site plan is drawn to scale, prepared by the Niels Christensen, L.P.L.S. (The Independent Hawaii Surveyors, 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 the following setbacks:

- a. The encroachment leaves the single-family dwelling with a minimum 8.47-foot side (north) yard setback and the associated roof projection resulting with a 2.38-foot side (north) yard open space.
- b. The encroachment leaves the ohana dwelling with a minimum 9.44-foot side (north) yard setback in lieu of the required 10-foot side yard setback.

- c. The encroachment leaves the workshop with a minimum 9.10-foot side (south) yard setback in lieu of the required 10-foot side yard setback.
- d. The encroachment leaves the utility shed to with a minimum 10.03-foot rear (west) yard setback in lieu of the required 20-foot rear yard setback and an associated roof eave projection resulting with a 7.32-foot rear (west) yard open space.
- e. The encroachment of the smoke house, approximately 4-foot in height to remain with a minimum 9.63-foot rear (west) yard setback in lieu of the required 20-foot rear yard setback and an associated roof eave projection resulting with a 7.56-foot rear (west) yard open space in lieu of the required 14-foot rear yard open space requirement.

The survey map shows the following encroachment:

- a. The single-family dwelling encroaches 1.5 feet into the 10-foot side (north) yard setback and associated roof eave encroaches 2.62 feet into the 5-foot side (north) yard open space.
- b. The ohana dwelling encroaches 0.56 feet (6.72 inches) into the 10-foot side (north) yard setback.
- c. The workshop encroaches 0.9 feet (10.8 inches) into the 10-foot side (south) yard setback with a minimum 9.10-foot side (south) yard setback.
- d. The utility shed encroaches 9.97 feet into the rear (west) yard setback and the associated roof eave projection encroaches 6.65 feet into the rear (west) yard open space.
- e. The smoke house, approximately 4-foot in height encroaches 10.37 feet into the rear (west) yard setback and the associated roof eave projection encroaches 6.44 feet into the rear (west) yard open space.

**7. County Building Records. County Building Records.** Hawai'i County Real Property Tax Office records indicate that the following building permits were issued.

- a. Building Permit 39360 was issued August 7, 1968, for the construction of a single-family dwelling, consisting of 4 bedrooms, 1 bath and two ½ baths, living area and kitchen.
- b. Building Permit 53897 issued on October 12, 1972, for a family room addition (workshop).
- c. Building Permit 61073 issued on November 8, 1974 for the construction of utility shed.
- d. Building Permit 912429 issued on November 7, 1992, for the construction of a new detached ohana dwelling consisting of 3 bedrooms, 2 baths, living area and kitchen... Permit finalized on September 18, 1992.

**8. Agency Comments and Requirements.**

- a. State Department of Health (DOH) memorandum dated October 17, 2018: “The Health Department found no environmental health concerns with regulatory implications in the submittals.”
- b. No comments received from 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 October 12, 2018 and October 22, 2018, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 24, 2018.

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 October 8, 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 January 15, 2019

**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 single-family dwelling into the 10-foot side (north) yard setback and associated roof eave into the 5-foot side yard open space, encroachment of the ohana dwelling into the 10-foot side (south), encroachment of the workshop into the 10-foot side and the utility shed and smoke house encroaching into the 20-foot rear yard setback and associated roof eave into the 14-foot rear 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. It appears that the single-family dwelling constructed in 1972, nearly 46 years ago, and subsequent construction permits were issued and closed under valid building permit by the County for the existing single-family dwelling, ohana dwelling and utility shed. 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 yard of the subject property include the following actions:

To remove the building encroachments and/or redesign the existing single-family dwelling denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code 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.

Because the encroachment is within the rear yard and side yard setbacks, to consolidate the subject property with the adjacent rear 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.

Both of these alternatives are not practical. Therefore, 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 single-family dwelling has been in existence for approximately 46 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.

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, workshop, utility shed and smoke house built upon the subject property ("LOT 59") will not meet the minimum side and rear 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 existing single-family dwelling, ohana dwelling, workshop utility shed and smokehouse 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 laws 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 this Variance, VAR-18-000495.

Sincerely,



MICHAEL YEE  
Planning Director

Zendo Kern  
Planning Consultant  
Page 7  
January 8, 2019

LHN

P:\Admin Permits Division\Variances From CoH02\Zone2\VAR18-000495 TMK2-4-043-044 Ishikawadoc.rtf

Enclosure: Exhibit A- Site Plan

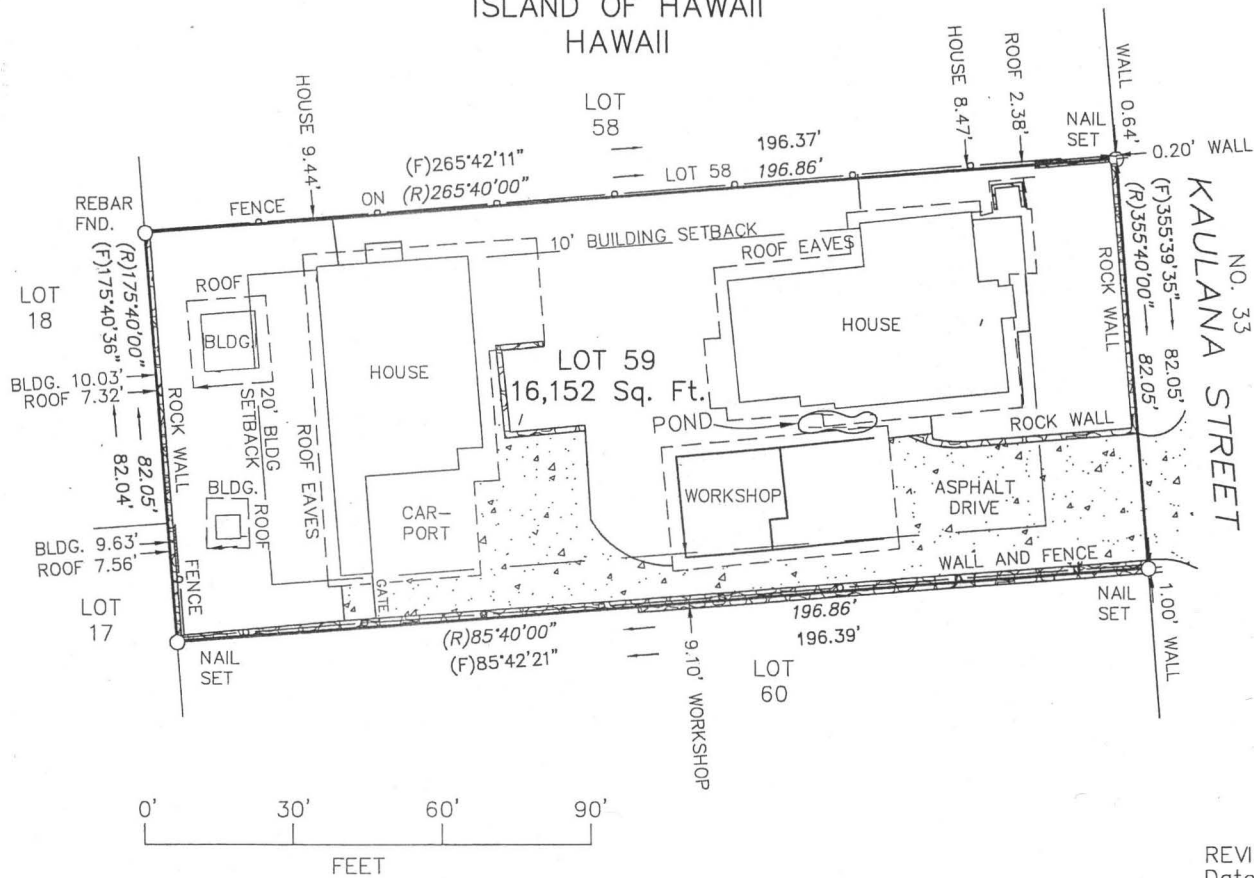
cc: Real Property Tax Office (Hilo)  
Gilbert Bailado, GIS

**EXHIBIT**

**A**

**EXISTING CONDITIONS UPON LOT 59**  
**HAIHAI HEIGHTS SUBDIVISION, UNIT 2**

WAIAKEA, SOUTH HILO  
 ISLAND OF HAWAII  
 HAWAII



**NOTES:**

1. The features shown hereon were located by an actual field survey completed on July 26, 2018.
2. This map shows, "the location of any improvements in the vicinity of perimeter property lines", (Item K-2 of "Purchase Contract").
3. Field measured dimensions (F) are within acceptable tolerances as compared to record dimensions (R) for land of this type and in this subdivision.
4. The attached Report pertains to improvements near property lines and County building setbacks.
5. This map should not be changed, altered or used to execute any transaction or application other than that indicated on this particular "Purchase Contract".

TRUE NORTH  
 SCALE: 1 IN. = 30 FT.



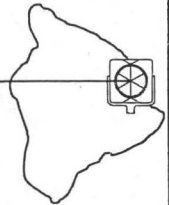
This work was prepared by me or under my direct supervision

*Niels Christensen*

Niels Christensen  
 Licensed Professional Land Surveyor  
 License Number 9077

**The Independent Hawaii Surveyors, LLC**

P.O. BOX 577  
 Hilo, HI 96721  
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 info@hawaiiboundary.com



REVISED  
 Date: July 30, 2018  
 Drawing: JOB12865.dwg  
 TMK: (3) 2-4-43: 44