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County of Hawai'i PLANNING DEPARTMENT

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May 10, 2021

James George Lee Jr.
P. O. Box 577
Keaau, HI 96749

Dear Mr. Lee:

SUBJECT: Application: Variance - VAR 18-000497
Applicant: JAMES GEORGE LEE JR.
Owner: JAMES GEORGE LEE JR.
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 (North) Yard
Setback.

Tax Map Key: 2-3-022:024

The Planning Director certifies the **approval** of Variance 18-000497, subject to conditions. The variance will allow a portion of the proposed the single-family dwelling to be constructed on the subject property with a minimum 3 feet front (north) yard setback and open space, in lieu of the required 15' front (north) yard setback requirement and 10-foot open space requirement. These exceptions are in lieu of the required 15 feet front yard setback and 10-foot front 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 6,384 square feet and is situated in the Halai Hill Track, Punahoa, South Hilo, Hawai'i. The subject property's street address is 82 Halai Street.
2. **County Zoning.** Single-Family Residential – 7,500 sq. ft. (RS-7.5).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 15 feet front and rear; 8 feet for side.

5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on July 18, 2018. The variance site plan is drawn to scale, prepared by the LSA Architects and denotes the position of the proposed single-family dwelling to be constructed into the minimum 15-foot front (north) yard setback and the (north) front yard open space. The request affects the north front yard setback and north front yard open space requirement. **(See attached survey map – Exhibit A)**
6. **County Building Records.** Building Permit BH2013-00755 issued on May 23, 2013 for the demolition of entire dwelling with concrete slab to remain.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated December 20, 2018: “The subject property is located within or near proximity to the County Sewer system. Wastewater Branch supports the sewer requirement made by the County for the proposed project.”
 - b. No comments received from 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 March 12, 2021 and March 22, 2018, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 26, 2021.

Comments from Surrounding Property Owners or Public. No written comments or objections from surrounding property owners or the general public were received.

GROUND FOR APPROVING VARIANCE

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 proposed single-family dwelling into the 15-foot side (north) yard setback and 10-foot open space as required by the Zoning Code.

The plot plan shows that the proposed single-family dwelling encroaches 12 feet into the 15-foot front (north) yard setback and 7 feet into the 10-foot front (north) yard open space.

The encroachment leaves a minimum 3 feet front (north) yard setback, in lieu of the required 15-foot front (northeast) yard setback and 10-foot front (north) yard open space.

The subject property is long and narrow with dimensions measuring approximately 52 feet wide and a 103-foot frontage along Hailai Street feet (see attached plot plan for visual reference) which makes it difficult for the owner to comply with current zoning requirements. Applying the

full setback requirements of the Zoning Code, it would be practically impossible to construct a single-family dwelling within the perimeters of the building envelope created by the setback requirements.

The owner/applicant has stated in it's background report that *"The soil within the subject property consists of the Hilo Series which are well drained silty clay loams. These soils formed in a series of volcanic ash layers. According to the Soil Conservation Service's Soil Survey, Island of Hawai'i, these soils have low bearing capacity; high compressibility; low shear strength; subject to sliding, high shrinkage; high organic-matter content."*

Placement of the proposed dwelling to meet current setback requirement would require significant site work and construction of massive retaining walls. Based on soils in the area, the location could result in destabilization of the adjacent rear property.

Therefore, 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.

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 front yard of the subject property include the following actions:

Owner is proposing to construct a single-story single-family dwelling in the same location and on the same concrete slab of the previous three-story single-family dwelling which was demolished approximately 8 years ago (BH2013-00755). The narrowness and topography (45-degree slope) of the subject property limits the placement of the single-story single-family dwelling to meet today's setback requirements.

Because the encroachment is within the front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options; there are no reasonable alternatives to resolve the encroachment issue.

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.

The encroachments are located in the front yard setback adjacent to the roadway. Therefore, it should not obstruct or prevent adequate air circulation and exposure to light between permitted structure(s)/uses and boundary/ property lines.

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.

The subject property is situated in an established neighborhood with similar lot sizes. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

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 site plan, the proposed single-family dwelling to be constructed on the subject property will not meet the minimum front 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. An 'Ohana or 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

James George Lee Jr.

May 3, 2021

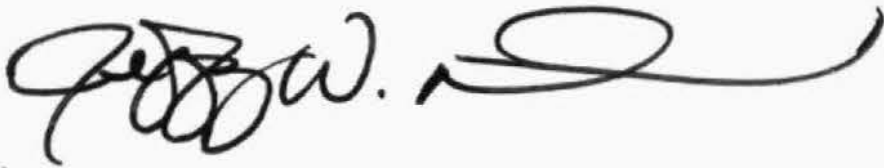
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change from time to time.

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-18-000497.

Sincerely,



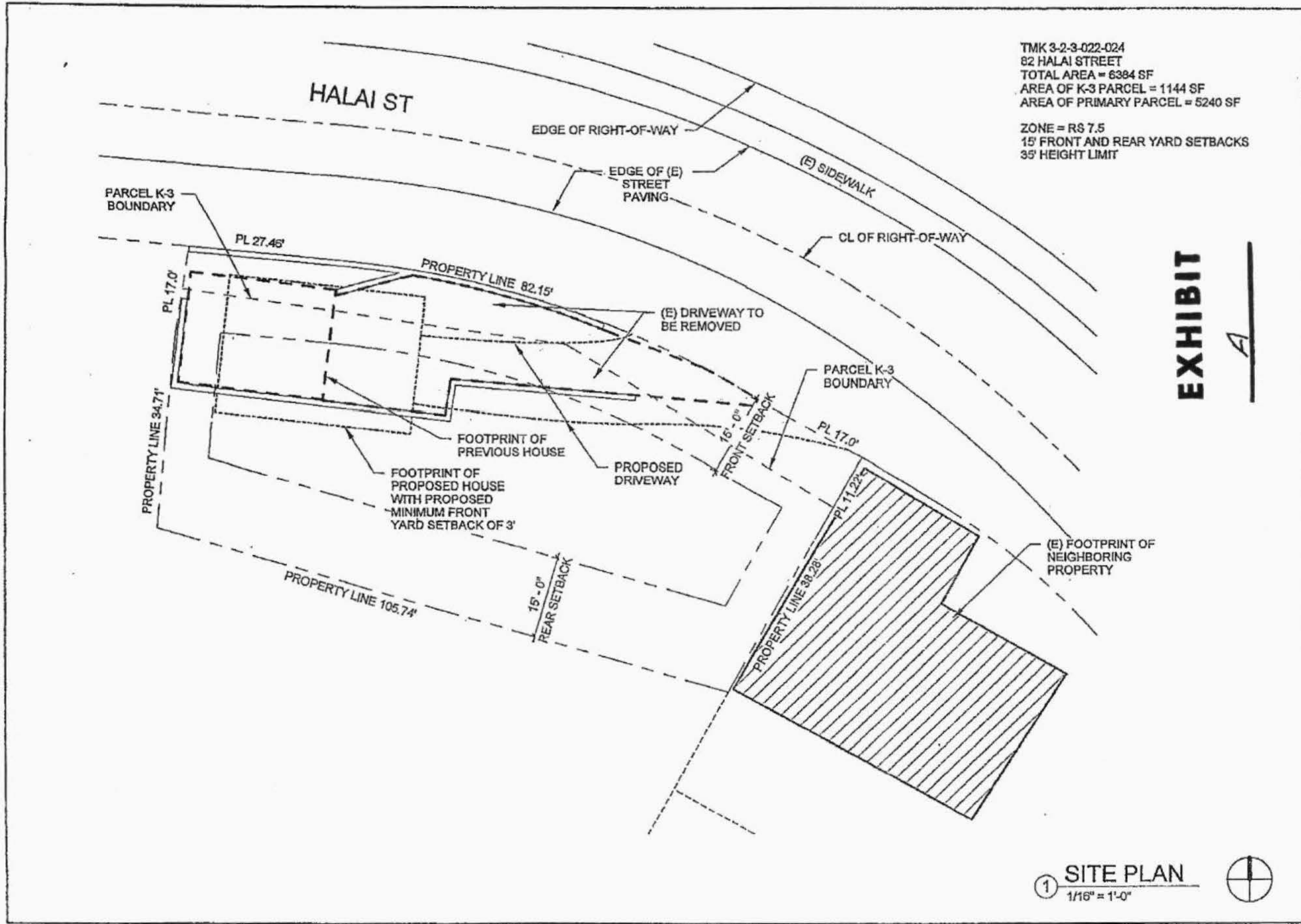
FK ZENDO KERN
Planning Director

LHN

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Enclosure: Exhibit A- Site Plan

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



TMK 3-2-3-022-024
 82 HALAI STREET
 TOTAL AREA = 6384 SF
 AREA OF K-3 PARCEL = 1144 SF
 AREA OF PRIMARY PARCEL = 5240 SF
 ZONE = RS 7.5
 15' FRONT AND REAR YARD SETBACKS
 35' HEIGHT LIMIT

EXHIBIT
A

LSA
 ARCHITECTS
 1585 KAPIOLANI BLVD. #1050
 HONOLULU, HAWAII 96814
 808-895-2682
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 sole property of LSA Architects. The
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LEE RESIDENCE
 82 HALAI ST
 HILO HI 96720
 TMK: 3-2-3-022-024

VARIANCE APPLICATION
 2018.07.18

① **SITE PLAN**
 1/16" = 1'-0" 

SITE PLAN
 A001