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August 13, 2020

Mr. Michael D. Santiago
RR3 Box 1261
Pāhoa, HI 96778

Dear Mr. Santiago:

SUBJECT: Application: Variance – VAR-19-000510
Applicant: MICHAEL D. SANTIAGO
Owner: CHELSIE KEHAULANI RAPOZA
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 (Northeast) Yard
Setback.

Tax Map Key: (3) 2-3-016:026

The Planning Director certifies the **approval** of Variance No. 19-000510, subject to variance conditions. The variance will allow for a four (4) foot “as-built” kitchen window addition to the existing legal non-conforming single-family dwelling to remain with a minimum 14-foot front (northeast) yard setback in lieu of the required 20-foot front yard setback. These exceptions are in lieu of the required 20-foot front yard and 14-foot front yard open space requirement 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.

The single-family dwelling was built in 1935, prior to the adoption of the Zoning Code in 1967. Therefore, the encroachment of the single-family dwelling into the front yard setback as reflected on the site plan is considered legal non-conforming.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 6,949 sq. ft. and is situated in the Haili Tract, South Hilo, Hawai'i. The subject property's street address is 304 Haili Street.

2. **County Zoning.** Multiple-Residential – 1,000 sq. ft. (RM-1)
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** Front and rear yards, twenty feet; Side yards, eight feet for one story, and an additional two feet for each additional story.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on March 5, 2019. The variance application site plan, drawn to scale, was prepared by the applicant. **(See Exhibit A-Site Plan)**

The original single-family dwelling was built in 1935, prior to the adoption of the Zoning Code in 1967. Therefore, the encroachment of the single-family dwelling into the front yard setback as reflected on the site plan, is considered legal non-conforming. However, a “as-built” kitchen window addition to the single-family dwelling encroaches an additional four (4) feet into the northeast front yard setback. Therefore, a variance is required to legitimize the encroachment of the “as-built” kitchen window addition into the front yard setback.

The site plan shows that a portion of the single-family dwelling encroaches 6 feet into the 20-foot front (northeast) yard setback.

The encroachment leaves a minimum 14 feet front (northeast) yard setback, in lieu of the required 20-foot front yard setback

6. **County Building Records.** Hawai‘i County Real Property Tax office records indicate the following building permits:
 - a. Building Permit - 970 was issued for the construction of a single-family dwelling consisting of: 3 bedroom, 1-1/2 bath, living room, kitchen, and dining area on May 28, 1934.
 - b. Building Permit – 017245 was issued for the renovation to the kitchen area on December 3, 1955.
 - c. Building Permit – 760747 was issued for the replacement of damaged stairs.
7. **Agency Comments and Requirements.**
 - a. The Department of Health (DOH) memorandum dated March 27, 2019 states: The Health Department found no environmental health concerns with regulatory implications in the submittals.

- b. The Department of Public Works Building Division (DPW) memorandum dated April 8, 2019 states: At the time of completion, the subject complied to all building regulations that were in effect.
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 17, 2019, and July 15, 2019, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on March 28, 2019.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.
10. **Time Extension.** The applicant's variance application was acknowledged by letter dated March 14, 2019, 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 August 14, 2020.

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 additional 2-foot encroachment into the 20-foot northeast front yard setback as required by the Zoning Code.

The single-family dwelling was built in 1935 prior to the adoption of the zoning code in 1967. Therefore, the preceding 4-foot encroachment into the front (northeast) yard setback is considered legal non-conforming; there will be no additional encroachment that is already present.

Section 25-5-34 of the county code identifies that minimum building sites in the RM district should be 7,500 square feet; however, this property was created prior to the adoption of the zoning code. Section 25-5-36 identifies 20-foot front yards in the RM district and 10-foot side yards for a two-story structure. Given that this property fronts on two roads, the property has two front yards and two side yards. Since this property is being used as a single-

family and not for multiple-family use, the more appropriate zoning would be Single-Family Residential – 7,500 sq. ft. (RS-7.5) which would then require a 15-foot front yard setback in lieu of the required 20-foot front yard setback for properties in the Multiple Residential zoned districts.

It should be noted that there is a five (5) foot road widening on both sides of Haili Street, making the subject property even smaller.

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.

Based on the above, there are special and unusual circumstances applying to the subject property which exist to a degree which obviously interferes with the best use or manner of development of the property. To meet with today's setback requirements of the Zoning Code, it would be practically impossible to construct a single-family dwelling within the parameter of the building envelope created by the setback requirements. These facts comprise "special or unusual circumstances or conditions," which support the granting of this variance.

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:

To remove window extension denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code would be deemed unreasonable because it is legal non-conforming and, especially when there will be no additional encroachment that is already present, due to the encroachment of the roof eave which is considered legal non-conforming.

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.

Both 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.

It should be noted that the "as-built" kitchen window addition does not extend any further into the front yard setback than that of the existing roof eave which is considered legal non-conforming. **(See Exhibit B - Photo)**

The subject property is situated in an established neighborhood with homes predominately built around the same period and 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's survey map, the "as-built" kitchen window built on the subject property (Lot 1) will not meet the minimum front yard setback requirements pursuant to Hawai'i County Code, Chapter 25, Zoning.

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

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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. The owner shall secure a building permit within six months from the date of this variance.
4. Should the existing single-family dwelling on the subject property be destroyed by fire or other natural causes, the replacement structures 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.
5. 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 Variance No. 19-000510.

Sincerely,



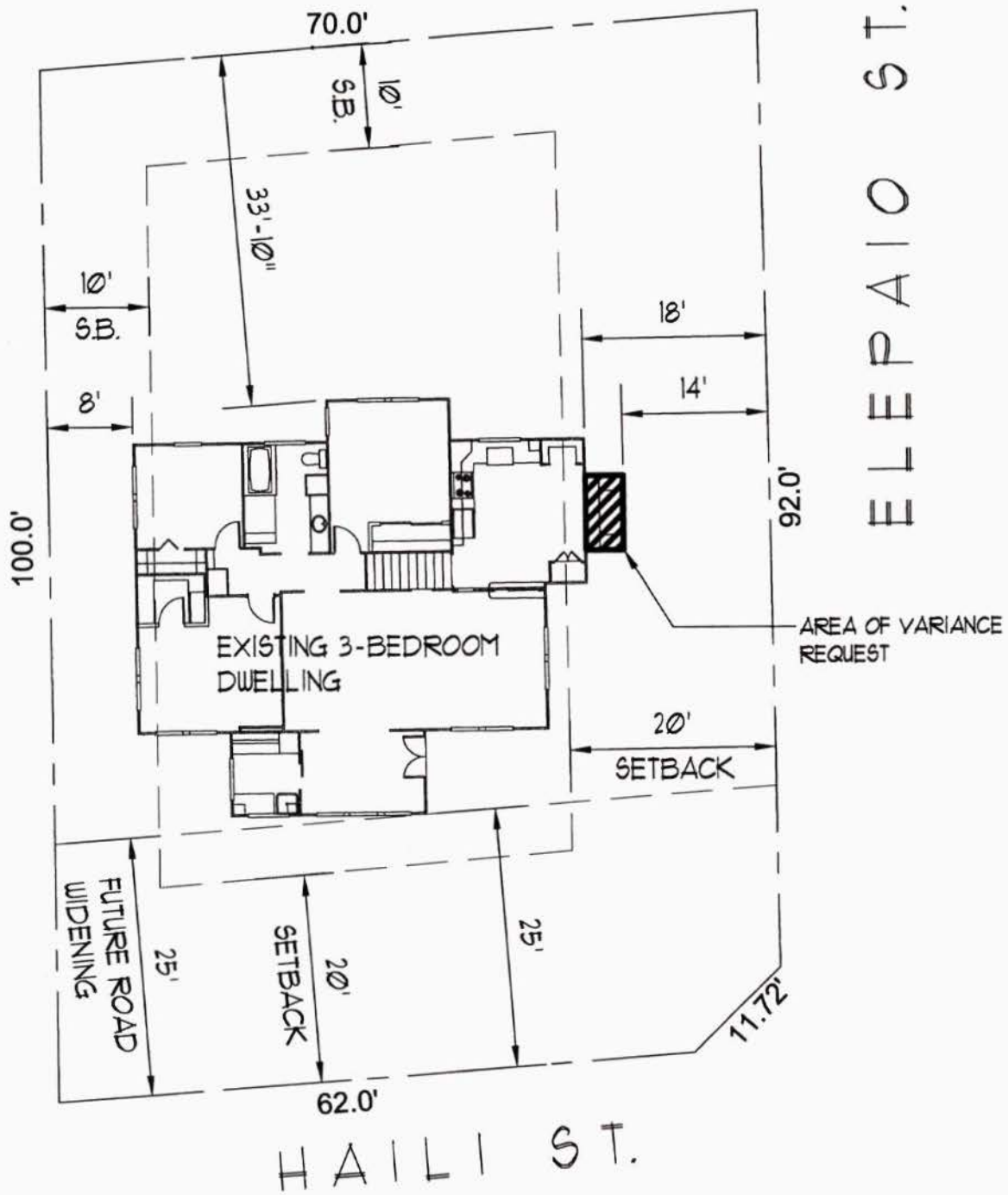
MICHAEL YEE
Planning Director

LHN:jaa

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Enclosure: Exhibit A- Site Plan

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



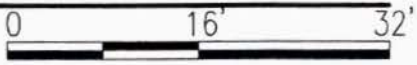
EXHIBIT

A

A

SITE PLAN

SCALE: 1/16" = 1'-0"



Untitled Map

Write a description for your map.

Legend

-  100 Pauahi St
-  304 Haili St
-  Feature 1
-  Feature 2
-  Feature 3
-  Rwenzori Glaciers

EXHIBIT

B

