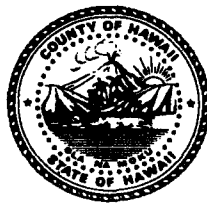


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June 22, 2019

Jill D Raznov, Esq  
10 Kamehameha Ave.  
Hilo, HI 96720

William L Moore  
159 Hāla'i St.  
Hilo, HI 96720

Dear Jill D Raznov & William L Moore:

**SUBJECT: Application: Variance – VAR-19-000514**  
**Applicant: Jill D Raznov, Esq & William L Moore**  
**Owner: Kawika Monfort-Chang, & Joann Monfort-Chang**  
**Request Variance from Chapter 25, Zoning, Article 5 Division 1, Section 25-5-7 Minimum Yards and Article 4, Division 4, Section 25-4-44(a) Permitted Projections into Yards and Open Space Requirements (Encroachment into Front Yard Setback and Front Yard Open Space)**  
**Tax Map Key: 7-3-062:026**

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The Planning Director certifies the **approval** of Variance No. 19-000514, subject to variance conditions. The variance will allow the existing single family dwelling on the subject property to remain in the current location, with the single story building 13.3 – 20.2 feet, the eave extending 6.4 – 17.7 feet and the deck extending 9.8 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 24,843 s.f. parcel located off of 'O'Omawaena Road in North Kona. The subject property's street address is 1210 Wainani Street, Kailua,-Kona, Hawaii, 96740, and Situated at Wainani Estates Subdivision, Kalaoa 5th, North Kona, Island, State and County of Hawaii. Designated as Tax Map Key: (3) 7-3-062:026.
2. **Zoning.** Single-Family Residential – 10,000 (RS-10).
3. **State Land Use.** Urban.
4. **Required Setback.** 25-foot (20 feet plus 5 foot road widening) front and 10-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 March 29, 2019, and other submittals related to the variance request and variance application. The variance application's site plan, drawn to scale and prepared by Wes Thomas Associates, Licensed Professional Land Surveyor. (**See application**)
6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that the following building permits were issued for the buildings on property BK2017-01326 (09/13/2017).
7. **County Planning Department Records.** None.
8. **Agency Comments and Requirements.**
  - a. State Department of Health (DOH) memorandum dated May 3, 2019: "The Health Department found no environmental health concerns with regulatory implications in the submittals."
  - b. State Department of Land and Natural Resources (Engineering Division & Land Division) Letter dated May 17, 2019. (Engineering Division) (The rules and regulations of the National Flood Insurance Program (NFIP), Title 44 of the Code of Federal Regulations (44CFR), are in effect when development falls within a Special Flood Hazard Area (high risk areas). State projects are required to comply with 44CFR regulations as stipulated in Section 60.12. Be advised that 44CFR reflects the minimum standards that can be more restrictive and would take precedence over the minimum NFIP standards.  
  
The owner of the project property and /or their representative is responsible to research the Flood Hazard Zone designation for the project. Flood Hazard Zones are designated on FEMA's Flood Insurance Rate Maps (FIRM), which can be viewed on our Flood Hazard Assessment Tool (FHAT)  
  
(Land Division) has no comments.
9. **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 April 10, 2019 and April 30, 2019 respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on April 12, 2019.
10. **Comments from Surrounding Property Owners or Public.** No written comments were received.

#### **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 property is located along side an unimproved Homestead Road which has been granted a 'O'Omawaena Road and includes a 5 foot wide road widening setback. Per the Owners the location of 'O'Omawaena Road lend towards the impression that the road will not be improved. Without the location of the roadway the parcel would be considered to be flag lot and would have been granted all side setbacks, which would not require the variance.

Also, per the owners the initial inspection by the county for the foundation for building permit did not reveal the issue of inaccurate location of the building which let the owners and contractors proceed with the construction of the house.

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 house and starting over would not be reasonable. This would not be practical for the family based on the costs and financial impacts. The act of starting over would also require legal action towards the general contractor who is a local, small business owners and the costs associated with the defense of this action would force him into bankruptcy. This action would not necessarily allow the applicants/homeowners to complete the house based on the time and monies needed.

The unimproved 'O'Omawaena Road is owned by the State and this will effectively preclude the option of acquiring the land to gain the needed square footage necessary to establish the necessary setback

**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 approval of the variance would not negatively impact any of the adjoining properties or the nature of the area. Should the unlikely event that the roadway is constructed there will still be adequate travel way including paved road. Shoulders, or curbs, gutters and sidewalks.

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**

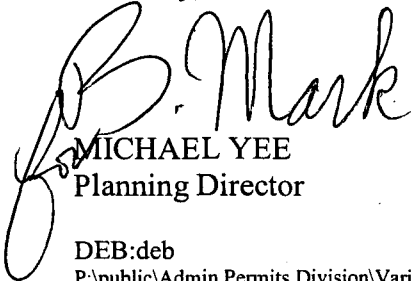
Based on the variance application's site map, the existing single family dwelling on the subject property to remain in the current location, with the single story building 13.3 – 20.2 feet, the eave extending 6.4 – 17.7 feet and the deck extending 9.8 from the southern property line, will not meet the minimum front yard setback and open space 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.
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-19-000514 null and void.

Sincerely,



MICHAEL YEE  
Planning Director

DEB:deb

P:\public\Admin Permits Division\Variance2019\VAR-19-000514 TMK 7-3-062-026 Raznov&Moore for Chang

cc: West Hawaii Office