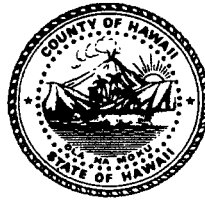


Harry Kim
Mayor

Wil Okabe
Managing Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
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County of Hawai'i PLANNING DEPARTMENT

Michael Yee
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Deputy Director

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101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

August 23, 2019

Heather Momi Huitt
44-002 Paku Place
Kaneohe, HI 96744-2643

Dear Ms. Huitt:

SUBJECT: Application: Variance - VAR 19-000518
Applicant: HEATHER MOMI HUITT
Owner: HEATHER MOMI HUITT
**Request: Variance from Chapter 25, Zoning, Article 5 Division 9,
Section 25-5-96 Minimum Yards and Article 4, Division 4,
Section 25-4-44(a) Permitted Projections into Yards and
Open Space Requirements (Encroachment into West Front Yard
Setback and West Front Yard Open Space)**
Tax Map Key: (3) 7-8-014:029 (Lot 1)

After reviewing your variance application, the Planning Director certifies the **denial** of Variance No. 19-000518. The variance request sought to allow for the construction of a 4-foot wide wooden deck to be constructed with a minimum 5-foot front (West) yard open space in lieu of the required 14-foot front (West) yard open space. These exceptions are in lieu of the required 14-foot front yard open space as required by the Hawai'i County Code, Chapter 25, Zoning, Article 5, Division 9, Section 25-5-96, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

The original single-family dwelling was built in 1965 prior to the adoption of the Zoning Code in 1967. Therefore, the encroachment of the single-family dwelling roof eave into the side (east) yard setback as reflected on the site plan is considered legal non-conforming.

The Planning Director has concluded that the variance from the above-referenced zoning standards be **denied** based on the following findings:

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 7,610 square feet of land, is located in Kahalu'u Beach Lots, situated at North Kona, Hawai'i. The subject property's street address is 78-6695 Ali'i Drive.

2. **Zoning.** Resort-Hotel – 1,250 sq. ft. (V-1.25).
3. **State Land Use.** Urban.
4. **Required Setback.** Front and rear yards, twenty feet and side yards, 8 feet for one-story and additional two feet for each additional story.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on April 22, 2019, and other submittals related to the variance request and variance application. The variance application's site plan, drawn to scale and prepared by Bennett Builders, denotes the portions of the proposed open deck to be constructed 9 feet into the 14-foot front (west) yard open space. **(See attached site plan – Exhibit A)**

The site plan shows that portion of the proposed 4-foot wide open deck encroaches 9 feet into the 14-foot front (west) yard open space requirement.

The encroachment leaves the proposed 4-foot wide open deck with a minimum 5-foot front (west) yard open space in lieu of the required 14-foot front (west) yard open space requirement.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (28861) was issued on February 25, 1964, for the construction of a 2-bedroom and 1-bath, one-story single-family dwelling.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated May 21, 2019. "The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. No comments received from the Hawai'i County Department of Public Works -Building Division.
8. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notice mailed to surrounding property owners (including affidavits) by USPS. According to these submittals, the first and second notices were mailed on April 23, 2019, and May 20, 2019, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on May 12, 2019.
9. **Time Extension.** The applicant's variance application was acknowledged by letter dated May 3, 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 12, 2019.

ANALYSIS OF GROUNDS FOR VARIANCE

No variance will be granted unless it is found that:

- (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 does not meet criteria (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the proposed encroachment of the 4-foot wide wooden deck to be constructed into the 14-foot front (west) yard open space requirement.

There are no special or unusual circumstances applying to the 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 that property.

The variance application's site plan, drawn to scale and prepared by Bennett Builders, denotes the portions of the proposed open deck to be constructed 9 feet into the 14-foot front (west) yard open space.

In review of the application materials, county records, and associated documentation, the Planning Department finds that there are no special or unusual circumstances justifying the approval of this variance. There is ample room on the north side of the single-family dwelling for placement of the open deck and still comply with the setback requirements.

Therefore, we feel that there is no physical or dimensional constraints on the property that would preclude the proper siting of the wooden deck in full compliance with applicable zoning code requirements.

- (b) *There are no other reasonable alternatives that would resolve the difficulty.*

The variance application does not meet criteria (b) for the following reasons: Alternatives available to the current owners to correct and/or address the proposed encroachments into the affected west front yard setback of the subject property include the following actions:

Since the Variance application is denied, there are no reasonable alternatives except for the redesign, or relocation of the proposed open deck to fit within the correct building envelope denoted on the recent site map as prescribed by the Zoning Code.

As discussed above, the proposed decking on the north side still provides for additional access and air circulation to the single-family dwelling.

(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 does not meet criteria (c) for the following reasons:

In order to grant a waiver from the minimum setback requirements of the zoning code, the variance application must show conclusively that it meets with all three criteria required in granting of a variance. The overall impact of granting a variance must also be considered in terms of how this may affect the entire neighborhood.

Based on the background information and other materials referenced in the variance analysis, the variance to allow for the encroachment would not be consistent with the general purpose of the zoning district and the intents and purpose of the Zoning code, Subdivision code and the County General plan.

VARIANCE DECISION

The variance application, VAR-19-000518, concerning the applicant's request, which seeks to allow for the construction of a 4-foot wide open deck to be constructed into the 14-foot front (west) yard open space requirements, is hereby **DENIED**.

1. All structures shall conform to be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

RIGHT TO APPEAL

In accordance with Hawai'i County Code, Chapter 25 (Zoning), Section 25-2-20 and 25-2-23, you may appeal the director's decision as follows:

1. Section 25-2-20. Persons who may appeal: procedure.
 - (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision appeal the decision to the board of appeals.
 - (b) A person is aggrieved by a decision of the director if:
 - (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public; and
 - (2) The person is or will be adversely affected by the decision.

- (c) An appeal shall be in writing, in the form prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the board of appeals with the proof of service.
 - (d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals.
2. Section 25-2-23. The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:
- (a) The director erred in its decision; or
 - (b) The decision violated this chapter or other applicable law; or
 - (c) The decision was arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

In view of the above and for your reference, we have enclosed the GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR form.

Sincerely,



MICHAEL YEE
Planning Director

LHN:jaa

P:\Admin Permits Division\Variances From CoH02\Zone7\VAR19-000518TMK7-8-014-029 Huitt.doc

Enclosure: Site Plan – Exhibit A
 General Petition for Appeal of Decisions by Planning Director form

xc: Planning Department-Kona
 Real Property Tax Division-Kona
 Gilbert Bailado, GIS (via email)

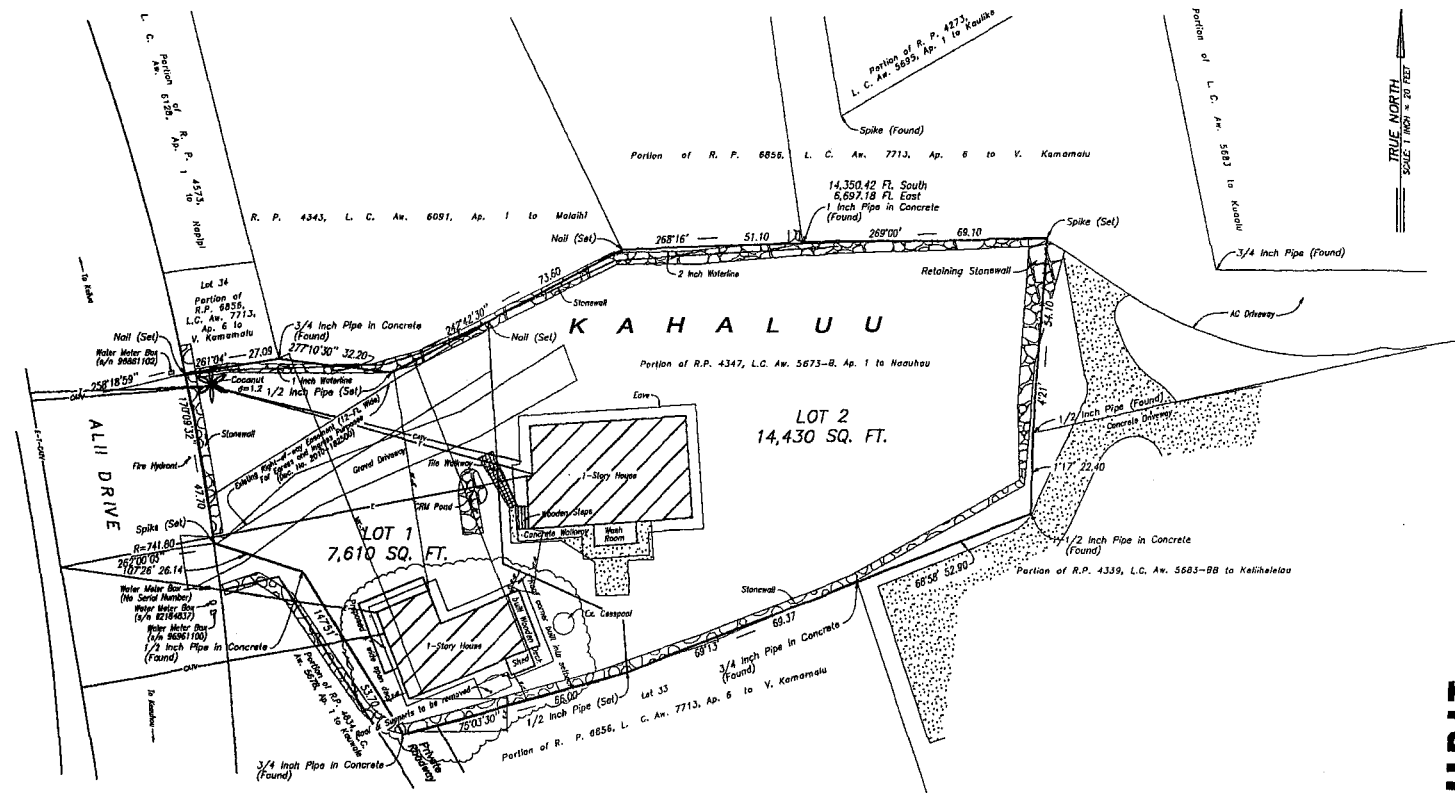


EXHIBIT
A

SITE PLAN 78-6695 Alii Drive

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

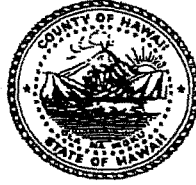
Bennett Builders
P.O. BOX 1536 KAILUA-KONA, HI 96745
Phone: (808) 325-2543 Fax: (808) 325-2573

Renovation for John & Heather Huitt
78-6695 Alii Drive

Sheet Description
SITE PLAN

Drawn GSB
Checked
Date 4/10/18
Huitt

1
Sheet



County of Hawai'i

BOARD OF APPEALS

Aupuni Center • 101 Pauahi, Suite 3 • Hilo, Hawai'i 96720
(808) 961-8288 • Fax (808) 961-8742

GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR OR PUBLIC WORKS DIRECTOR

(Type or legibly print the requested information. See instructions attached.)

TYPE OF PETITION:

- Appeal of Planning Director's Decision
 Appeal of Public Works Director's Decision

APPELLANT: _____

APPELLANT'S SIGNATURE: _____ DATE: _____

ADDRESS: _____

TELEPHONE: _____ (EMAIL): _____

APPELLANT'S INTEREST IN THE PROPERTY: _____

APPELLANT'S NATURE OF APPEAL AND REQUEST: _____

LAND OWNER: _____

TAX MAP KEY:(land in question) _____ AREA OF PROPERTY: _____

STATE LAND USE DESIGNATION: _____ COUNTY ZONING: _____

STREET ADDRESS OF PROPERTY: _____

APPELLANT'S REPRESENTATIVE: _____ TITLE: _____

REPRESENTATIVE'S SIGNATURE: _____ DATE: _____

REPRESENTATIVE'S ADDRESS: _____

TELEPHONE: _____ (EMAIL): _____

■ See instructions attached.

INSTRUCTIONS

GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR OR PUBLIC WORKS DIRECTOR

Board of Appeals Rules of Practice and Procedure (RPP) can be reviewed in the Planning Department or on the following website: <http://www.cohplanningdept.com/boards-and-committees/>

1. This petition must be accompanied by a filing fee of two hundred fifty dollars (\$250) payable to the County Director of Finance [RPP Section 8-7], and:
2. The original and ten (10) copies of this completed petition with the following:
 - a. A description of the property involved in the appeal in sufficient detail for the public to precisely locate the property.
 - b. A statement explaining the nature of the appeal and the relief requested.
 - c. A statement explaining:
 - (i) How the decision appealed from violates the law; or
 - (ii) How the decision appealed from is clearly erroneous; or
 - (iii) How the decision appealed from was arbitrary or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.
 - d. A clear and concise statement of any other relevant facts.
3. Proof of Service by the Appellant to the Director and all landowners of the affected property, as reflected in County Real Property Tax Division records, if owners are not the Appellants [RPP Section 8-8].
4. A list of the names, address and tax map keys of all owners of property within three hundred feet (300') of the perimeter boundary of the affected property. [RPP Section 8-11(d)]
If the decision being appealed was made under the Hawai'i County Code (HCC) Zoning Chapter 25 and the affected property is within the state land use agricultural district, Appellant must provide a list of names, address and tax map keys for all owners of property within five hundred feet (500') of the perimeter boundary of the affected property. [HCC Section 25-2-4]

Completed petitions should be remitted to the Board of Appeals, 101 Pauahi Street, Suite 3, Hilo, HI 96720. For questions, please call 808-961-8288 or email planning@hawaiicounty.gov.