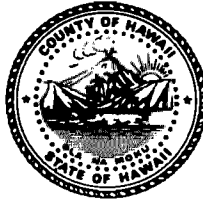


Harry Kim  
Mayor

Roy Takemoto  
Managing Director

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

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Director

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March 20, 2020

Mr. Mathew M. Graves, AIA  
P.O. Box 804  
Honoka'a, HI 96727

Dear Mr. Graves:

**SUBJECT: Application: Variance - VAR 19-000527**  
**Applicant: MATHEW M. GRAVES, AIA**  
**Owner: KAREN AXSOM**  
**Variance from Chapter 25, Zoning, Article 5, Division 7,**  
**Section 25-5-7, Minimum Yards and Section 25-4-44,**  
**Permitted Projections into Yards and Open Spaces.**  
**(Encroachment into West Side Yard Setback)**  
**Tax Map Key: (3) 4-5-014:007; Lot 2**

The Planning Director certifies the **approval** of Variance No. 19-000527, subject to variance conditions. The variance will allow a portion of the single-family dwelling to remain with a minimum side (west) yard setback ranging from 6.6 feet to 7.2 feet, in lieu of the required 10-foot side yard setback. These exceptions are in lieu of the required 10-foot side yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards.

The variance will also allow the detached carport to remain with a minimum 9.6-foot side yard setback and encroaching 0.4 feet (4.8 inches) into the front (southeast) yard setback to be approved under Section 25-4-66, De Minimis Regulation Structural Position Discrepancy.

The "as-built carport" along the east side yard setback is excluded from this variance and shall be removed (See Department of Public Works Building Division comments dated July 8, 2019, and condition three of Variance 19-000527).

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 10,175 sq. ft. and is located in the Teixeira Subdivision, situated at Kaao, Hāmākua, Hawai'i. The subject property's street address is 45-576 Pikake Street.

2. **County Zoning.** Single-Family Dwelling – 10,000 sq. ft. (RS-10).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20-feet front and rear; 10-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on October 23, 2018. The variance application's revised survey map dated May 22, 2019, was prepared by Roger D. Fleenor and denotes a portion of the single-family dwelling built into the west side yard setback. **(See Exhibit A-Site Plan)**

The revised survey map dated May 22, 2019, prepared by Roger Fleenor L.P.L.S., shows a portion of the single-family dwelling encroachment ranges from 2.8 feet to 3.4 feet into the 10-foot (west) side yard setback.

The encroachment leaves the single-family dwelling with a minimum 6.6-foot side (west) setback to a minimum of 7.2 side (west) yard setback in lieu of the required 10-foot side yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax office records indicate the following building permits:
  - a. Building Permit - 039556 was issued for the construction of a single-family dwelling consisting of: 3 bedrooms, 2 baths, living room, kitchen and dining area on August 23, 1968.
  - b. Building Permit - 041643 was issued for the construction of a two-car carport on May 24, 1969.
  - c. Building Permit - 047606 was issued for an addition to the single-family dwelling on March 9, 1971.
  - d. Building Permit - 971110 was issued for a retaining wall addition to the existing dwelling on August 29, 1997, and finalized on October 26, 2018.
  - e. Building Permit - 971111 was issued for reconstruction to the existing garage on August 29, 1997, and finalized on October 26, 2018.

**7. Agency Comments and Requirements.**

- a. Department of Health memorandum dated November 19, 2018.

“The Health Department found no environmental health concerns with regulatory implications in the submittal”

b. Department of Public Works Building Division memorandum dated July 8, 2019:

“The carport appears to have been constructed closer than the 12” allowed into the 5’ distance to the property line. The distance from the roof overhang would be allowed to 24” from the property line if the underside is protected by a one-hour rated material. Less than 24” is prohibited by the Building Code.

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 February 14, 2019, and June 11, 2019, respectively. Notice of this application was published in the Hawai‘i Tribune Herald and West Hawai‘i Today on July 9, 2019.
9. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. 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 15, 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 March 30, 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 encroachment of the single-family dwelling into the 10-foot west side yard setback

The revised survey map dated May 22, 2019, prepared by Roger Fleenor L.P.L.S., shows a portion of the single-family dwelling encroachment ranges from 2.8 feet to 3.4 feet into the 10-foot (west) side yard setback.

The encroachment leaves the single-family dwelling with a minimum 6.6-foot side (west) setback to a minimum of 7.2 side (west) yard setback in lieu of the required 10-foot side yard setback.

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 improvements constructed in 1968, approximately 51 years ago, and subsequent construction permits issued by the County for the existing single-family dwelling were closed under valid building permits. It also appears that past building permit inspections of the premises, by the affected agencies during construction of the detached garage 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 the 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 side yard of the subject property include the following actions:

Remove the building encroachments and/or redesign the denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code. This alternative 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. Any structural or design correction of the detached garage with 2<sup>nd</sup> level recreation room to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachment is within the side yard setback, to consolidate the subject property with the adjacent side yard property, which is owned by someone else, and to re-subdivide the property to modify property lines and adjust minimum side yard setbacks are not viable options. Both alternatives are not practical. 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.

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 51 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 a 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.

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 built on the subject property ("LOT 2") will not meet the minimum front and side 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

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March 20, 2020

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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. The "as-built" carport along the easterly boundary shall be removed within 6-months from the date of this variance. Non-compliance of this condition will null and void this variance.
4. Should the single-family dwelling built 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.
5. 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 change from time to time.
6. Future or new building improvements and permitted uses shall be subject to State law 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-19-000527.

Sincerely,



MICHAEL YEE  
Planning Director

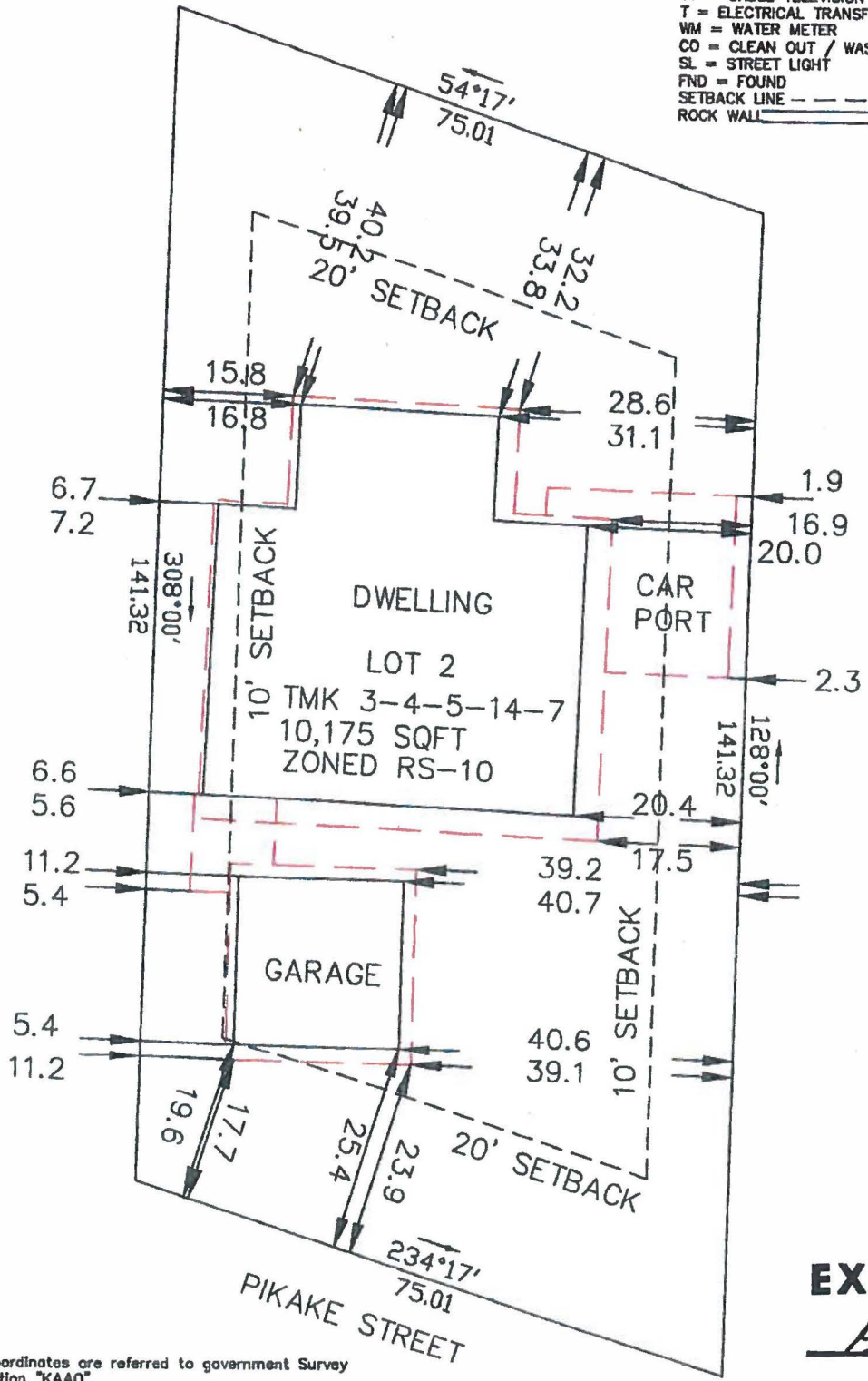
LHN:jaa

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cc: Real Property Tax Office (Hilo)

cc (via email): Gilbert Bailado, GIS

**LEGEND**  
 HT = HAWAIIAN TELECOM  
 H = HAWAII ELECTRIC LIGHT CO.  
 TV = CABLE TELEVISION  
 T = ELECTRICAL TRANSFORMER  
 WM = WATER METER  
 CO = CLEAN OUT / WASTE WATER SYSTEM  
 SL = STREET LIGHT  
 FND = FOUND  
 SETBACK LINE - - - - -  
 ROCK WALL = = = = =



**NOTES :**  
 Azimuths and coordinates are referred to government Survey  
 Triangulation Station "KAAO".  
 This map represents existing conditions on April 17, 2019.

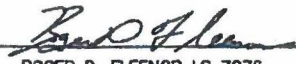
**EXHIBIT**  
A

K-2 SURVEY MAP OF LOT 2  
 45-576 PIKAKE ST.  
 HONOKAA, HAMAKUA  
 COUNTY & STATE OF HAWAII  
 T.M.K. 3-4-5-014-007

SCALE 1"=20'  
 DATE MAY 22, 2019



THIS WORK WAS PREPARED BY  
 ME OR UNDER MY SUPERVISION.

  
 ROGER D. FLEENOR LS 7276  
 My License Expires April 30, 2020