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County of Hawai'i PLANNING DEPARTMENT

September 24, 2019

John Nobuyuki-Mikuriya Akagi
HC 2 Box 9597
Kea'au, Hawai'i 96749

Dear Mr. Akagi:

SUBJECT: Application: Variance – VAR-19-000529
Applicant: JOHN NOBUYUKI-MIKURIYA AKAGI
Owner: JOHN NOBUYUKI-MIKURIYA AKAGI &
MARIA PERPETUA MILLAMA AKAGI
Request: Variance from Chapter 25, Zoning, Article 4 Division 1,
Section 25-4-9 Guest Houses.
Tax Map Key: (3) 1-5-059:068 (Lot 454)

The Planning Director certifies the **approval** of VAR-19-000529, subject to variance conditions. The variance will allow for the guest house consisting of 676-square feet to remain on the subject property in lieu of the 500-square foot guest house requirement. This exception is in lieu Section 25-4-9 Guest House.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 23,522 sq. ft. (0.54 acre) of land, is located in the Hawaiian Paradise Park Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 15-773 Paradise Ala Kai Drive.
2. **Zoning.** Agricultural – 1 acres (A-1a).
3. **State Land Use.** Agricultural.
4. **Required Setback.** 25 foot front; 15-foot sides and a 40-foot shoreline setback (rear).
5. **Special Management Area Use Permit Assessment (SAA 19-001664):**
Issued on September 17, 2019.

6. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on June 19, 2019, and other submittals related to the variance request and variance application. The variance application's site plan drawn to scale and submitted by the applicant denotes the location of structures situated on the subject property. (See Exhibit A)

The floor plan drawn to scale and submitted by the applicant shows the dimensions and floor area of the guest house and attached garage. (See Exhibit B)

7. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (BH2017-00222) was issued on March 17, 2017, for the construction of a efficiency dwelling with attached garage..

8. **Agency Comments and Requirements.**

- a. The State Department of Health (DOH) memorandum, dated July 18, 2019.
(See attached memorandum – Exhibit C)
- b. The Hawai'i County Public Works–Building Division memorandum, dated July 8, 2019.
(See attached memorandum – Exhibit D)

9. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notice mailed to surrounding property owners (including affidavits) by U.S.P.S. According to these submittals, the first and second notice(s) were mailed on July 11, 2019, and July 16, 2019, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on July 9, 2019.

10. **Time Extension.** The applicant's variance application was received on June 19, 2019; and additional time to review the application was required. The applicant granted the Planning Director an extension of time to issue a decision on the Variance Application until September 25, 2019.

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

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 meets criteria (a) for the following reasons:

The floor plan drawn to scale shows the gross floor area of the guest house and attached garage exceeds the maximum 500 square feet guest house requirement by 176 square feet (Chapter 25, Section 25-4-9, Guest Houses).

The applicant has stated in his background report that he was unaware and never informed of the 500 square feet requirement for guest houses during the building permit process.

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the guest house to exceed the maximum floor area of 500 square feet for guest houses; therefore, requiring them to fix the excess in floor area of the guest house would create undue hardship on the owners.

(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 allow a guest house with attached garage to remain with a gross floor area exceeding the required 500 square feet include the following actions:

The living area of the guesthouse consists of 325 square feet with the attached garage consisting of 351-square feet, for a total of 676 square feet. Any structural or design correction of the accessory structure to meet the 500 square feet requirement for a guest house would create undue hardship and leave reconstruction flaws to the accessory structure.

(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's welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The variance application meets criteria (c) for the following reasons:

The intent and purpose to limit the size of the guest house is to assure that there is no adverse impact to the areas character or to adjoining properties.

In summary, the existing accessory structure is designed to be architecturally compatible with other accessory structures in the neighborhood. It is felt that the building design and the additional gross floor area of 176 square feet over the 500 square-foot requirement for guest houses will not be out of character with the other buildings in the neighborhood. Also, the subject property is located in a neighborhood consisting of similar-type accessory structures. Therefore, it will not compromise or have any adverse impact on the neighborhood or adjoining properties.

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. Furthermore, 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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application, the existing guest house does not meet the requirements of Section 25-4-9 Guest House.

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. Subject to provisions of the Zoning Code or State law, which may be changed from time to time, no permit shall be granted to allow an 'ohana or farm dwelling upon the subject property.
4. The Guest House floor plan shall remain "as is" and the use shall remain accessory to the main dwelling, with no future alterations, modification, enclosures or additions to the existing structure. A kitchen shall not be allowed within this accessory structure.
5. Should the guest house and attached garage 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.
6. The applicant shall comply with all conditions stated in Special Management Area Use Permit Assessment No. 19-001664 (SAA-19-001664).
7. The owners shall apply for a change of use permit with the Department of Public Works – Building Division within six months from the date of this variance. This will allow for the conversion of the efficiency dwelling to a guest house.
8. 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.

John Nobuyuki-Mikuriya Akagi

September 24, 2019

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Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-19-000529 null and void.

Sincerely,



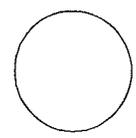
MICHAEL YEE
Planning Director

LHN:jaa

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Enclosures: Exhibits A thru D

xc: Planning Department (Kona)
Real Property Tax Division (Kona)
Gilbert Bailado, Planning GIS
Jeff Darrow, Division Manager – Planning Division
Clinton Mercado, Zoning Inspector (Hilo)



OBTUSE ASSIST
KEAAU, HAWAII

AKAGI RESIDENCE
BUILDING ONE OF TWO
OWNER: JOHN AKAGI PH# (808)333-8520

JAN. 20, 2017
FLOOR PLAN

G 2

OF: 5

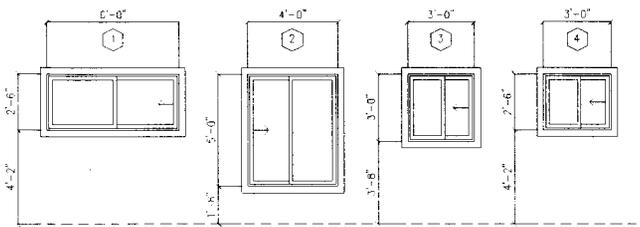
DOOR SCHEDULE (VERIFY w/OWNER)

KEY	QTY	CALL-OUT	DESCRIPTION
EXTERIOR:			
(A)	1	5'-0"x6'-8"	1-3/4" SOLID CORE, FRENCH
(B)	1	8'-0"x7'-0"	ROLL-UP GARAGE DOOR
INTERIOR:			
(C)	1	2'-4"x2'-8"	SOLID CORE (1 HOUR RATED) w/ SELF-CLOSURE
(D)	1	2'-4"x6'-8"	INTERIOR

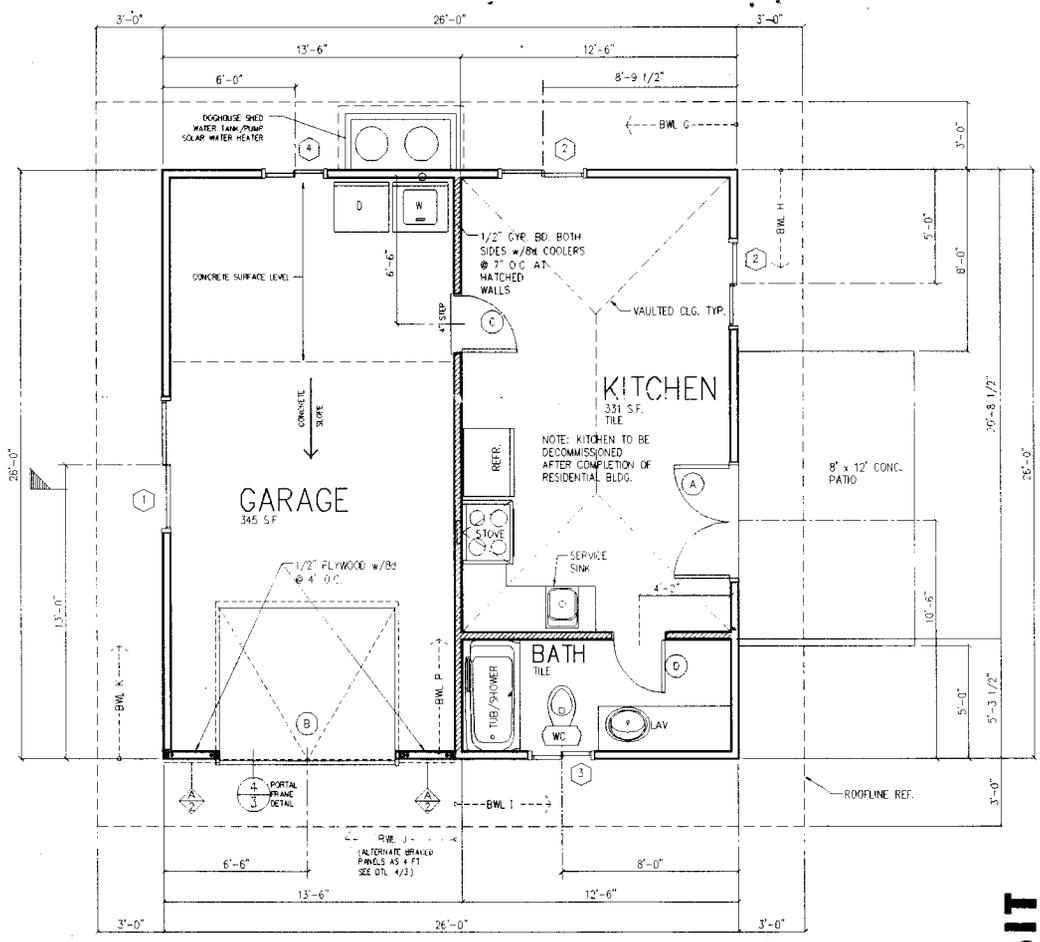
WINDOW SCHEDULE (CALL WINDOWS VINYL - VERIFY w/OWNER)

KEY	QTY	CALL-OUT SIZE	DESCRIPTION
(1)	1	6'-0"x2'-6"	OX GLIDER
(2)	2	4'-0"x5'-0"	KO GLIDER-EGRESS COMPLIANT*
(3)	1	3'-0"x3'-0"	OX GLIDER
(4)	1	3'-0"x2'-6"	OX GLIDER

NOTES:
DUE TO VARIATIONS IN SIZES BY DIFFERENT WINDOW MANUFACTURERS, IT SHALL BE THE RESPONSIBILITY OF THE PERSON WHOM ORDERS THE WINDOWS TO MEET EGRESS AND CODE REQUIREMENTS.



NOTE: WINDOW ELEVATIONS ARE GENERIC, DO NOT REFLECT ACTUAL STYLES AND WINDOW STYLES, MATERIALS, GLAZING TYPE AND OPERATION ARE TO BE DETERMINED BY THE OWNER AND/OR CONTRACTOR.



1 FLOOR PLAN

SHEAR WALL NOTATION AND BRACED WALL SPREADSHEET ON SHT. 4.

SCALE: 3/8" = 1'-0"

EXHIBIT
B

SHEET NOTE: IF SHEET SIZE 11"x17" HALVE THE SCALES NOTED.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: July 18, 2019

TO: Mr. Michael Yee
Planning Director, County of Hawaii

FROM: Eric Honda *EH*
District Environmental Health Program Chief

SUBJECT: Application: Variance VAR-19-000529
Applicant: JOHN NOBUYUKI-MIKURIYA AKAGI
Owner: JOHN NOBUYUKI-MIKURIYA AKAGI
Request: Variance from Chapter 25, Zoning, Article 4, Division 1
Section 25-4-9
TMK: 1-5-059:068 LOT 454

PLANNING DEPARTMENT
COUNTY OF HAWAII

2019 JUL 18 AM 10 03

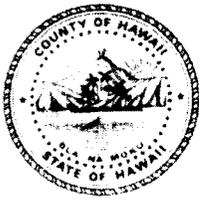
Wastewater branch is unable to make comments to the propose project at this time. Before we can offer any comments, the applicant needs to address the following:

Multiple versions of floor plans provided in variance and IWS application. Please contact your civil engineer and provide DOH-WWB with revised floor plans for all structures to connect to IWS 55954.

EXHIBIT

C

126689



BUILDING DIVISION – DPW

COUNTY OF HAWAII – 74-5044 Ane Keohokalole HWY. BLDG E 1st Floor KAILUA-KONA, HI 96740
Hilo Office (808) 961-8331 * Fax (808) 961-8410 Kona Office (808) 323-4720 * Fax (808) 327-3509

Date of Notice: July 8, 2019
Owner: John Nobuyuki-Mikuriya Akagi & Maria Perpetua Millama Akagi
Mailing address: c/o John Nobuyuki-Mikuriya Akagi

Address location of property:

SUBJECT: Setback Variance
T.M.K.: 1-5-059: 068

This is to inform you that our records on file, relative to the status of the subject, discloses that:

- No _____ permit was issued for work done on the premise.
- No building permit was issued for the change of occupancy.
- At the time of completion, the subject complied to all building regulations that were in effect.
- Variance from any building regulation (Building, Electrical, Plumbing, or Sign) was/was not granted.
- The following violation(s) still outstanding:
 - Building
 - Electrical
 - Plumbing
 - Sign
- Others: Fences & Accessory Structures, Projections into Building Setbacks
- No Objections

Should you have any questions regarding matters contained herein, please feel free to contact us.

Neil Erickson, Plans Examining Manager
County of Hawaii Department of Public Works Building Division

EXHIBIT

D

2019 JUL 9 AM 7 38
COUNTY OF HAWAII
DEPARTMENT OF PUBLIC WORKS
BUILDING DIVISION

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