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County of Hawai'i PLANNING DEPARTMENT

October 22, 2019

Barbara Heidi Graziano-Halbert & Tom Halbert
75-5809 Aloha Ke Akua Pl.
Kailua-Kona, HI 96740

Dear Barbara Heidi Graziano-Halbert & Tom Halbert:

SUBJECT: Application: Variance – VAR-19-000530
Applicant: Barbara Heidi Graziano-Halbert & Tom Halbert
Owner: Barbara Heidi Graziano-Halbert
Request Variance from Chapter 25, Zoning, Article 5 Division 1, Section 25-4-9 Guest House – Structure Size
Tax Map Key: 7-5-012:110

The Planning Director certifies the **approval** of Variance No. 19-000530, subject to variance conditions. The variance will allow the conversion of the existing single family dwelling into a detached 3 car garage with Guest House (bedroom with bathroom) and the construction of a new ADA compliant dwelling on the subject property. The Parcel is considered to be all sides with direct access to a roadway other than through easements. The existing single story building (proposed to be converted to a 3-car garage and guest house) located 35 feet from the western property line, 110 feet from the northern property line, 53 feet from the eastern property line and 135 feet from the southern property line and the new proposed ADA compliant dwelling located 55 feet from the western property line, 190 feet from the northern property line, 50 feet from the eastern property line and 21 feet from the southern property line.

BACKGROUND AND FINDINGS

1. **Location.** The subject property is a 1.00 acre parcel located off of Aloha Ke Akua Place in North Kona. The subject property's street address is 75-5809 Aloha Ke Akua Place, Kailua, Kona, Hawaii, 96740. Designated as Tax Map Key: (3) 7-5-012:110.
2. **Zoning.** Agricultural – (A-1a).
3. **State Land Use.** Agricultural.
4. **Required Setback.** 20-foot for all property lines. 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 June 18, 2019, and other submittals related to the variance request and variance application. **(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 BK2017-00310 (03/21/2017).
7. **County Planning Department Records.** None.
8. **Agency Comments and Requirements.** None.
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 May 1, 2019 and July 24, 2019 respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on July 9, 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 owners of the property need to construct an ADA compliant dwelling but are hampered by the configuration of the parcel and location of additional elements on the parcel which will affect the location of any structures onsite such as easements of a waterline located in the northern portion of the property. The applicant states that the proposal to create a guest house with the conversion of the existing dwelling into the 3 car garage and livable area without a kitchen is to provide housing for the live-in nurse who will provide care for the ADA individual (applicant's father-in-law) and the new house will be designed to meet ADA compliancy design needs for width, hallways, doorways and concrete walkways for example.

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 location of easements on the property, existing septic system and the configuration of the parcel affect the design needs for an ADA compliant dwelling. The reconfiguration of the existing dwelling into the garage and guest house provides the most access needed for auto/truck parking and turn around areas.

When the applicant looked at different spacing or configuration of the structures, factors such as breezeway, access and height were considered. The applicant provided 3 different spacing

options of the location of the ADA compliant dwelling and the existing structure and but there is not enough room on the site to provide a separate location for the guest house, an ADA compliant dwelling and a separate garage.

- 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. There have been no issues of concern especially with the resubmission of the applications to restrict the reconfiguration of the existing dwelling into a guest house and not a complete second dwelling.

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 conversion of the existing single family dwelling into a detached 3 car garage with Guest House (bedroom with bathroom) and the construction of a new ADA compliant dwelling on the subject property will not meet requirements from regarding the required 500 feet maximum size of the structure's gross floor area per 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) shall remove all kitchen area to convert the existing dwelling into a 3-car garage with a guest house.
3. 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.
4. 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.
5. 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.

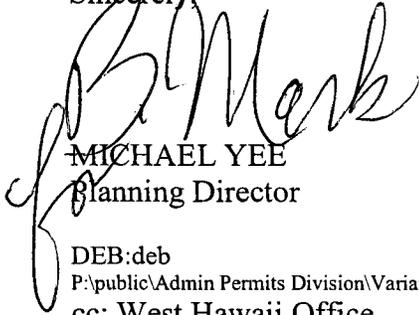
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Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-19-000530 null and void.

Sincerely,



MICHAEL YEE
Planning Director

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cc: West Hawaii Office