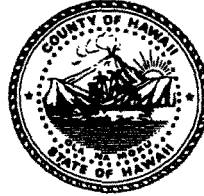


Harry Kim
Mayor

Roy Takemoto
Managing Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563



County of Hawai'i
PLANNING DEPARTMENT

Michael Yee
Director

Duane Kanuha
Deputy Director

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

January 27, 2020

Val Colter
13-6460 Kalapana – Kapoho Road
Pāhoa, Hawai'i 96778

Dear Ms. Colter:

SUBJECT: Application: Variance - VAR 19-000535
Applicant: VAL COLTER
Owner: JAC AND ELIZABETH FRONTE
Request: Variance from Chapter 25, Zoning, Article 5 Division 5, Section 25-5-56 Minimum Yards, Article 4, Division 4, Section 25-4-44(a) Permitted Projections into Yards and Open Space Requirements (Encroachment into Southwest Side Yard Setback)
Tax Map Key: (3) 1-7-025:005 (Lot 92)

The Planning Director certifies the **approval** of Variance 19-000535, subject to conditions. The variance will allow the following:

- a. The single –family dwelling to remain with a minimum 12.3-foot side (southwest) yard setback, in lieu of the required 15-foot side yard setback
- b. The screened lanai to remain with a minimum 4.7-foot side (southwest) yard setback in lieu of the required 15-foot side yard setback.
- c. The cinder storage building to remain with a minimum 11.70-foot side (southwest) yard setback in lieu of the required 15-foot side yard setback.

These exceptions are in lieu of the required 15-foot side yard setback and 10-foot side yard open space as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 1.2444 acres and is located in the Maunalani Lots Subdivision, situated at 'Ōla'a Reservation Lots, 'Ōla'a, Puna, Hawai'i. The subject property's street address is 17-3960 Maunalani Tract Road.
2. **County Zoning.** Residential and Agricultural - .5a (RA-5a).
3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 25 feet for front and rear; 15 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on July 25, 2019. The variance application site map was prepared by Daniel L. Berg, dlb & Associates and denotes the location of structures situated on the subject property. **(See Exhibit A-Site Plan)**

The survey map shows the following setbacks:

- a. The encroachment leaves the single-family dwelling with a minimum 12.3-foot side (southwest) yard setback in lieu of the required 15-foot side yard setback.
- b. The encroachment leaves the screened lānai with a minimum 4.70-foot side (southwest) yard setback in lieu of the required 15-foot side yard setback.
- c. The encroachment leaves the cinder storage building with a minimum 11.70-foot side (southwest) yard setback in lieu of the required 15-foot side yard setback.

The survey map shows the following encroachment:

- a. The single-family dwelling encroaches 2.7 feet into the 15-foot side (southwest) yard setback.
 - b. The screened lānai with associated roof eave encroaches 10.60 feet into the 15-foot side (southwest) yard setback and 5.3 feet into the side (southwest) open space requirement.
 - c. The cinder storage building encroaches 3.3 feet into the 15-foot side (southwest) yard setback.
6. **County Building Records.** Hawai'i County Real Property Tax office records indicate that the following building permits were issued.

- a. Building Permit 800196 was issued January 22, 1980, for the construction of a storage building (cinder storage). Permit finalized on January 28, 2000.
- b. Building Permit B2006-2732H issued on October 10, 2006, for the completion of dwelling started under Building Permit 803155 & 83047 for construction of a single-family dwelling consisting of 4 bedrooms, 2 baths, living room, kitchen and screened lānai. Permit finalized on December 1, 2011.
- c. Building Permit B2011-0150H issued on January 31, 2011, for alteration to existing dwelling constructed under building permit B2006-2732H. Permit finalized on December 1, 2011.

7. Agency Comments and Requirements.

- a. State Department of Health (DOH) memorandum dated September 3, 2019: “The Health Department found no environmental health concerns with regulatory implications in the submittals.”
- b. Department of Public Works, Building Division (DPW) memorandum dated September 3, 2019: “Projections within the setback without fire protection allows projections up to 12” into the required 5’ setback without fire protections.”

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 August 1, 2019, and August 15, 2019, respectively. Notice of this application was published in the Hawai‘i Tribune Herald and West Hawai‘i Today on August 10, 2019.

9. Comments from Surrounding Property Owners or Public.

- a. Objection letter received from Zakiya Msikizi received on August 23, 2019. (See Exhibit B)
- b. Support letter received from Catherine Moylan on August 22, 2019. (See Exhibit C)
- c. Objection letter received from Raymi Moore Kahaawi on August 23, 2019. (See Exhibit D)
- d. Objection letter received from Maile Judd on August 20, 2019. (See Exhibit E)

10. **Time Extension.** The applicant's variance application was received on July 25, 2019; an 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 January 31, 2020.

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 owner/applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling, screened lānai and cinder storage building into the 15-foot (southwest) side yard setback and 10-foot side yard open space.

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. Building Permit B2006-2732H was issued on October 10, 2006, for the completion of the single-family dwelling and screened lānai improvements authorized under Building Permits 803155 & 830477, which were issued on December 19, 1990, and March 29, 1983, respectively. Final inspection approval was given on December 1, 2011. Building permit 800196 was issued on January 24, 1980, for the construction of a storage building for equipment (cinder storage building) and finalized on January 28, 2000. It appears that building permit inspections of the premises by the affected agencies during construction of the single-family dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

Based on the above-mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the subject property.

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

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

Alternatives available to the current owners to correct and/or address the single-family dwelling, screened lānai and cinder storage building encroachments constructed into the

affected side yard setback of the subject property include the following actions:

Relocate the single-family dwelling, screened lānai and the cinder storage building denoted on the site plan 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 screened lānai and the cinder storage building were in compliance with all County requirements.

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 re-subdivide the property to modify property lines and adjust minimum side yard setbacks are not viable options. Therefore, both alternatives are not practical.

- (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 criteria (c) for the following reasons:

The intent and purpose of requiring structural setbacks within a building site 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.

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.

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 upon the subject property ("LOT 92") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

This variance application is approved subject to the following variance conditions:

Ms. Val Colter
January 27, 2020
Page 6

1. The applicant/owner(s), 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/owner(s), 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 single-family dwelling, screened lanai and cinder storage building 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 and building occupancy.
4. The chicken coop that abuts the southwest side yard boundary shall be removed or relocated out of the 15-foot side yard setback within three (3) months from the approval date of this variance. The owners shall allow for the Hawai'i County Planning Department to do a site inspection to confirm removal or relocation of the chicken coop to meet setback requirements.
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 building occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-19-000535 null and void.

Sincerely,



MICHAEL YEE
Planning Director

LHN:jaa

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR19-000535 TMK 170250050000 Fronte.docx

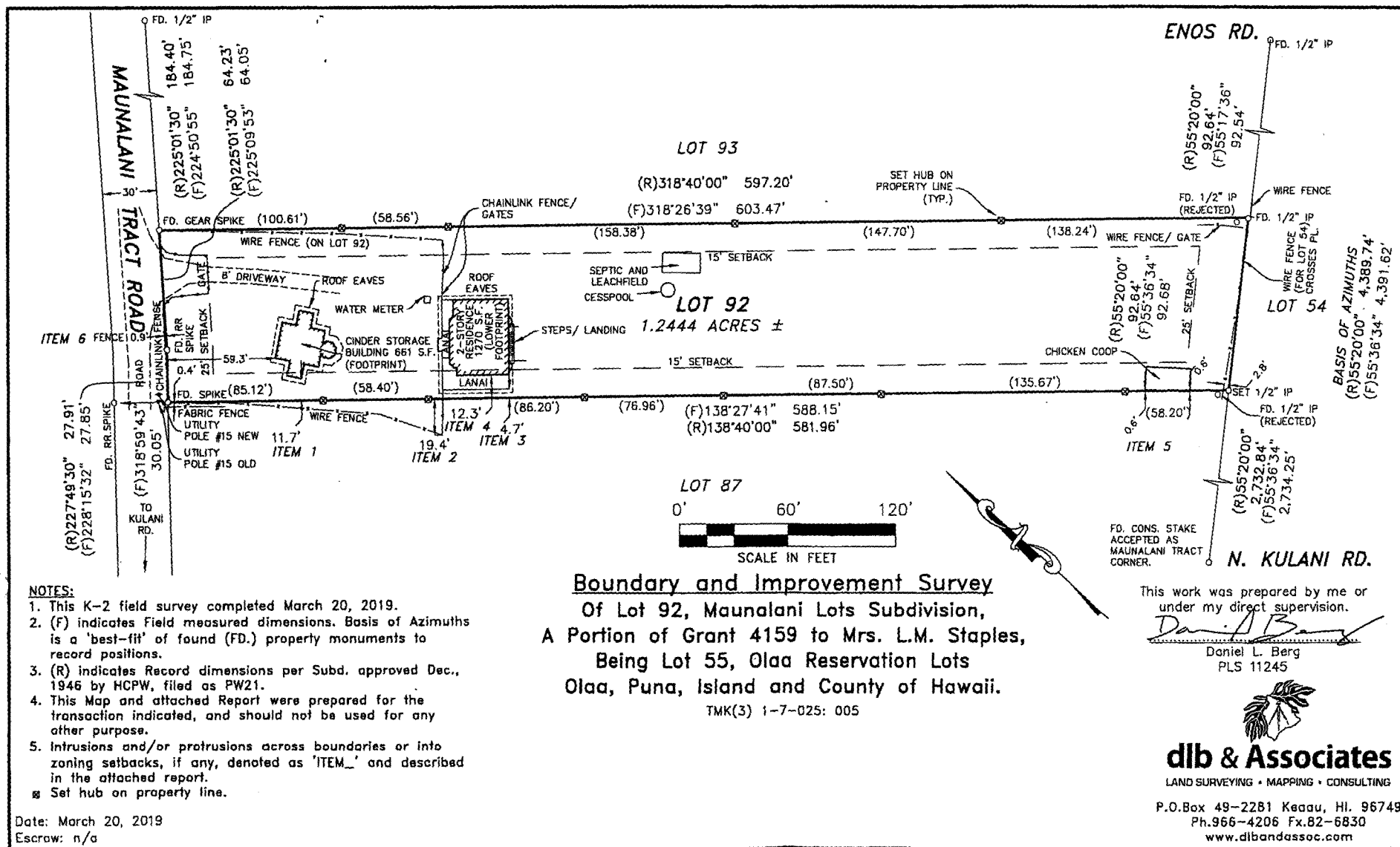
Encl: Exhibits A-E

cc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS (via email)

Maile Judd
Raymi Moore Kahaawi
Zakiya Msikizi

EXHIBIT

A



Boundary and Improvement Survey Of Lot 92, Maunalani Lots Subdivision, A Portion of Grant 4159 to Mrs. L.M. Staples, Being Lot 55, Oloa Reservation Lots Oloa, Puna, Island and County of Hawaii.

TMK(3) 1-7-025: 005

This work was prepared by me or under my direct supervision.

Daniel L. Berg
Daniel L. Berg
PLS 11245



dlb & Associates

LAND SURVEYING • MAPPING • CONSULTING

P.O. Box 49-2281 Kaaau, HI. 96749
Ph. 966-4206 Fx. 82-6830
www.dibandassoc.com

Date: March 20, 2019
Escrow: n/a

Project: J2018-318
8X14L

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VARIS-500
2019 AUG 23 PM 12 03
PLANNING DEPARTMENT
COUNTY OF HAWAII

TO: County of Hawaii, Planning Dept, Hilo, HI
FROM: Zakiya Msikizi Zuhir Msikizi
RE: Step back variances for Jack + Elizabeth Fonte'

Date: August 21, 2019

EXHIBIT
B

As a property owner on Maunalani Tract Rd I am against allowing set back variances for Jack + Elizabeth Fonte'. Every other neighbor has to follow the set backs and it is only fair that the Fonte's follow the rules.

- These neighbors are constantly calling State and County officials on neighbors and now find themselves in violation of set backs. rules...
- To me rules are rules... if everyone else has to follow rules... then why not the Fonte's. When they purchased their land, they should have checked with Pin finders to be sure they were on the right lot... within the rules. It's a buyer beware moment that should have been known and taken care of long ago.
- which was known and expressed by the owner neighbor Patrick Kahaawi-- who mentioned it to me long ago.
- Now that the Kahaawi family has come to open

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AUG 22 2019
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up the land, the Fonte's have done everything in their power to stop the Kahaawi family (Kaimi) from proceeding with the land clearing process. Things like calling State and County officials, Cops and other neighbors.. who have come to check. These calls including building permit pin finders, set back for tented structures animal control; toilet sewage facilities... They even stopped the bulldozer guy from working...

- All of these things were done to me as well. I have complied and paid double for it. Still working on these things, progressing slowly...
 - so much more to add but... will attach it...

- Basically the Fonte's have harassed the Kahaawi family and now find themselves in violation of set back rules. Question is would they allow anyone else to get a variance. I think not. So I think they should not be given a variance exception.

The reason for my note is Simple Rules are Rules follow them. We all have to. Another reason I write this ... my children will have to take over when I pass. I don't want them to have to face this type of situation So I need to make SURE their lives are safe, and protected.

UP the land, The Fonte's have done everything in their power to stop Patrick Kehaawi's son Kaimi from proceeding with his work of clearing the land. Examples of harassing behavior has been on going for almost three years. State and County officials Cops have been called in... building permits, Pin finders, set backs for tented structures, animal control, toilet facilities.

- I was also sent through this - building permit process... I have complied and had to pay double... still working on things, but progressing slowly...

attach
→
4pts

- They tried to put gates up to close off the dead end road only to find out they couldn't
- Recently - found out they were putting tree trimming materials in my yard... Cops came just cuz I was asking a question - about rocks added in pot holes... they fix everyone but not near me...

3 - Cops checked my Pins to see if the tree trimmings were within the set backs - neighbor offered a tape measure Cops said no need, neighbor get along
4 - My Point - Fonte's think the road is just theirs - they question everyone who comes... they check everything except their animals which are allowed to roam eating my ti leaf plants... Said animals are always in my yard,

1-7-025-00

VAR-10-5

2019 AUG 22 PM 2 59

PLANNING DEPARTMENT
COUNTY OF HAWAII

Catherine Moylan
P.O. Box 1293
Mountain View, HI 96771

August 21, 2019

Hawaii County Planning Director
101 Aupuni Street
Hilo, Hawaii 96720

Attention: Michael Yee – Planning Director

To Whom It May Concern:

I am contacting you regarding the "Notice of application requesting variance for side setbacks" submitted by my Neighbors, Jac & Elizabeth Fronte – Tmk #1-7-025-005 (Lot 72) that we received.

I sincerely hope that after all the hard work and costs they have put into legally improving their property over the years that you will grant their Variance. I know they wish to add an addition for their family soon.

They have been the best of neighbors and an asset to this small community – the kind of neighbors any resident would hope for.

If you would like to contact me, I would be more than willing to speak to you at the number listed above.

Sincerely,

Catherine Moylan

Catherine Moylan
Tmk # 1-7-025-002

EXHIBIT
C

SCANNED
AUG 27 2019
By: 127375

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17025005
VAR-19-595
PLANNING DEPARTMENT
COUNTY OF HAWAII

TO WHOM IT MAY CONCERN,

PLANNING DEPARTMENT
COUNTY OF HAWAII

I AM WRITING THIS LETTER ON BEHALF OF ALL THE KAHAWAI CHANGS AS WELL AS IN CARE OF PATRICK & SOLOMON KAHAWAI. I HAVE BEEN CONCERNED WITH THE SETBACK OF THE TWO ENCROACHING STRUCTURES ON THE FRONT PROPERTY FOR A COUPLE YEARS NOW. THEY HAVE TRIED MULTIPLE TIMES TO TRY AND TURN ME AND MY FAMILY IN FOR ANY AND ALL SURVEYING FENCING, OR ANY STRUCTURE WHEN ALL WAS IN COMPLIANCE AFTER BEING INSPECTED BY THE COUNTY OFFICIALS. I AM NOT OK WITH THE LOCATION OF THEIR HOUSE AND OR FRONT SO CALLED STOP DWELLING WHICH BOTH SHOULD BE CLOSELY MEASURED AND INSPECTED TO INSURE THE SAFETY AND SECURITY OF ALL NEIGBORS.

Shirley
Raymi K. Kahawai
Raymi K. Kahawai

EXHIBIT

D

8/23/19

127373

Mori, Ashley

From: Maile Judd [REDACTED]
Sent: Monday, August 19, 2019 3:27 PM
To: Planning Internet Mail
Subject: Variance application 3-1-7-025-005

Attention: Director of planning.

I received a letter from Valerie Colter regarding a variance request for property identified as TMK 3-1-7-025-005, owned by Elizabeth and Jac Fronte. As the owner of the adjacent property, TMK 3-1-7-025-004, my brother Edward Ng and I, Maile Judd, do not want to allow the issuance of a variance for any reason. Please deny their application.

If you have any questions. I may be reached at [REDACTED] or cell [REDACTED]

Mahalo, Maile Judd

Sent from my iPhone

2019 AUG 20 AM 9 37
PLANNING DEPARTMENT
COUNTY OF HAWAII

EXHIBIT

3

SCANNED
AUG 21 2019