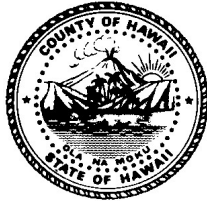


Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

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



County of Hawai'i

PLANNING DEPARTMENT

Zendo Kern
Director

Jeffrey W. Darrow
Deputy Director

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

October 6, 2021

Ms. Kim Chiodo
Project Manager
Land Planning Hawaii, Inc.
194 Wiwoole Street
Hilo, HI 96720

Dear Ms. Chiodo:

SUBJECT: Application: Variance - VAR 19-000538
Applicant: KIM CHIODO, LAND PLANNING HAWAII, INC.
Owner: CHRISTINE E. RIVERA
Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Encroachment into North Front Yard Setback)
Tax Map Key: (3) 4-4-017:021; Lot 21-B

The Planning Director certifies the **approval** of Variance No. 19-000538, subject to variance conditions. The variance will allow a portion of the two-story, single-family dwelling to remain with a minimum 8.71 feet front (north) yard setback. It will also allow for the associated roof eave projection with a 0.72 (8.64 inches)-foot front (north) yard open space in lieu of the required 10-foot open space requirement. These exceptions are in lieu of the required 15-foot front yard setback and 10-foot front 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 6,232 sq. ft. and is located in Pā'auhau Camp, situated at Pā'auhau, Hāmākua, Hawai'i. The subject property's street address is 44-150 Pā'auhau Street.
2. **County Zoning.** Agricultural 40 acres. (A-40a).
3. **State Land Use Designation.** Urban.

4. **Setback Requirements.** 15-feet front; 8-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on July 5, 2019. The variance application's survey map dated November 19, 2018, was prepared by Niels Christensen, LPLS (The Independent Hawai'i Surveyors, LLC) and denotes a portion of the single-family dwelling and associated roof eave projection built into the north front yard setback.
6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that building permit B2005-2578H was issued on October 3, 2005, for a two-story, single-family dwelling consisting of 3 bedrooms, 3-1/2 baths, living room, office, kitchen, and dining area. Building Permit finalized on December 12, 2007.
7. Subdivision (SUB 18-001801): Consolidation of Lot 17, 18, 21-A and Roadway Lots A-1 and B-2 and Resubdivision into Lots 17-1, 18-A, 21-B and Roadway Lots a-2 and B-3. Approved December 18, 2019. **(See Exhibit A)**
8. **Agency Comments and Requirements.**
 - a. Department of Health memorandum dated September 3, 2019.
 - b. "The Health Department found no environmental health concerns with regulatory implications in the submittal." **(See Exhibit B)**
 - c. The Department of Public Works - Building Division letter dated September 8, 2021, rescinding Building Division memorandum dated September 21, 2020. **(See Exhibit C)**
9. **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 14, 2019, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on August 10, 2019.
10. **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.

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 two-story, single-family dwelling into the 15-foot front (north) yard setback and associated roof eave projection into the 10-foot open space.

The survey map dated November 19, 2018, shows that portion of the two-story, single-family dwelling encroaches 6.29 feet into the 15-foot front (north) yard setback and the associated roof eave encroaches 9.28 feet into the 10-foot front (north) yard open space.

The encroachment leaves the two story, single-family dwelling with a minimum 8.71-foot front (north) yard setback and associated roof eave projection resulting with 0.72 feet (8.64 inches) front (north) 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. It appears that the single-family dwelling improvements constructed in 2007, approximately 13 years ago, and subsequent construction permits issued by the County for the existing two-story, 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 two-story, single-family dwelling, 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 front 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 two-story, single-family dwelling was in compliance with all County requirements.

Originally, the two-story single-family dwelling was encroaching into the road right-of-way (Pā'auhau Street). Although the dwelling is permitted, no survey was performed to locate the property boundaries relative to the building site. To remove the encroachment into road right-of-way (Pā'auhau Street), an agreement between the owner of the subject property and the Pā'auhau Home Owners Association (HOA) was entered in to allow for the consolidation of Lots 17, 18, 21 and Roadway Lots A-1 and B-2 and resubdivide into Lots 17-A, 18-A, 21-B and Roadway Lots A-2 and B-3 (SUB-18-001801).

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 subject property is situated in Pā'auhau Camp which is an old sugar plantation camp with majority of the homes built around the 1940's. Most of the homes in the camp do not meet with today's setback requirement and are considered legal non-conforming. 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 21-B") will not meet the minimum front 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 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. 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.
4. The approval of this variance grants the associated roof eave with a 4-foot north front yard open space in lieu of the applicants request for a 0.72-foot (8.64 inches) north front yard open space. The applicant shall comply with this condition within six months from the issuance of this Variance and shall notify the Hawai'i County Planning Department upon compliance.
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-19-000538.

Kim Chiodo
Project Manager
October 6, 2021
Page 6

Sincerely,

Jeffrey W. Darrow

Jeffrey W. Darrow (Oct 6, 2021 10:29 HST)

JEFFREY W. DARROW
Deputy Planning Director

LHN:cn

\\COH01\planning\public\Admin Permits Division\Variances From CoH02\Zone4\VAR-19-000538-Revised TMK440170210000 Rivera.doc

cc: Real Property Tax Office (Hilo)

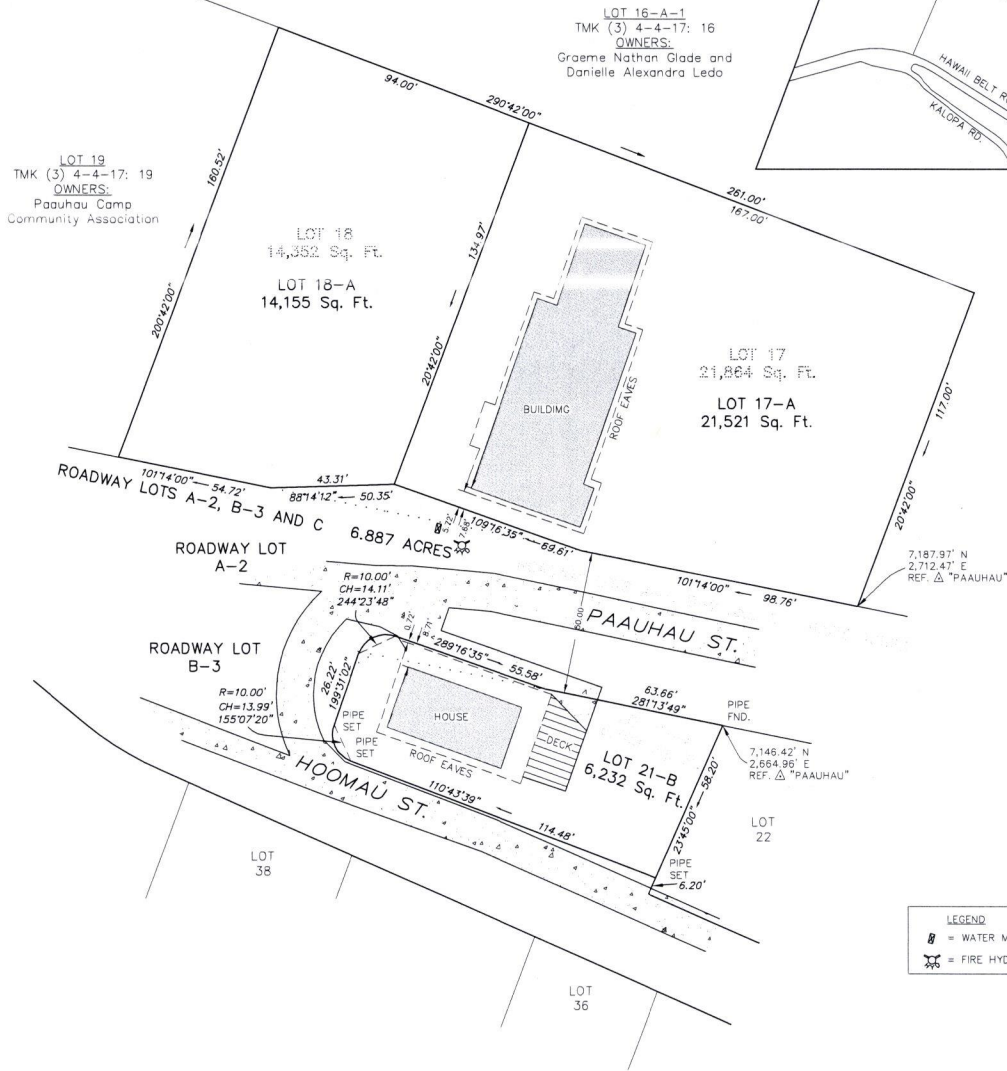
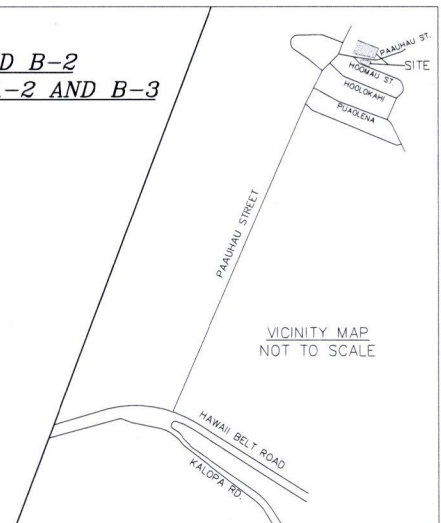
cc (via email): Gilbert Bailado, GIS

Enclosure: Exhibit A- Site Plan
Exhibit B – State of Hawai'i – Department of Health Memorandum
Exhibit C – DPW – Building Division letter

**CONSOLIDATION OF LOT 17, 18, 21-A AND ROADWAY LOTS A-1 AND B-2
AND RESUBDIVISION INTO LOTS 17-A, 18-A, 21-B AND ROADWAY LOTS A-2 AND B-3**

**PAAUHAU CAMP
PAAUHAU, HAMAKUA
ISLAND OF HAWAII
HAWAII**

Final Sub Map



TRUE NORTH
SCALE: 1 IN. = 30 FT.

LEGEND
 = WATER METER
 = FIRE HYDRANT



This work was prepared by me or under my direct supervision
Niels Christensen
 Niels Christensen
 Licensed Professional Land Surveyor
 License Number 9077

LOTS 17 AND 18
 TMK's (3) 4-4-17: 17 AND 18
 OWNER: Paaupahu Camp Community Association
 P.O. Box 11473
 Hilo, HI 96721

ROADWAY LOTS
 TMK (3) 4-4-17: 147
 OWNER: Hamakua Housing Corporation
 P.O. Box 279
 Paauilo, HI 96776

LOT 21-A
 TMK (3) 4-4-17: 21
 OWNERS: Benjamin Anthony Acuna, Jr.
 and Christine E. Rivera-Balant
 P.O. Box 1143
 Honokaa, HI 96827

ZONE: A-40a

EXHIBIT

A



The Independent Hawaii Surveyors, LLC
 P.O. Box 577
 Hilo, HI 96721
 Phone 808 959-0360
 FAX 808 959-0353
 info@hawaii-boundary.com

Date: November 19, 2018
 Drawing:
 TMK's: (3) 4-4-17: 17, 18, 21 and 147

Figure 4a

DAVID Y. IGE
GOVERNOR OF HAWAII



BRUCE S. ANDERSON PhD
DIRECTOR OF HEALTH

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

2019 SEP 3 PM 12 11
PLANNING DEPARTMENT
COUNTY OF HAWAII

MEMORANDUM

DATE: September 3, 2019

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

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

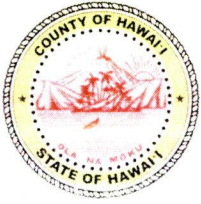
SUBJECT: Application: VAR-19-000538
Applicant: ZENDO KERN
Owner: CHRISTINE E. RIVERA
Request: Variance from Chapter 25, Zoning, Article 5, Division 7
Section 25-5-76 and Section 25-4-44
TMK: 4-4-017:021 Lot 21-A

The Health Department found no environmental health concerns with regulatory implications in the submittals.

EXHIBIT

B

127532



BUILDING DIVISION • DEPARTMENT OF PUBLIC WORKS

101 Pauahi Street, Suite 7, Hilo, Hawai'i 96720

74-5044 Ane Keohokalole Highway, Building E, Kailua-Kona, Hawaii 96740

(808) 961-8331, Fax (808) 961-8410

(808) 323-4720, Fax (808) 327-3509

September 8, 2021

Kim Chiodo
Project Manager
Land Planning Hawaii
194 Wiwoole St, Hilo, HI 96720

Re: TMK 4-4-017: 021, Lot 21-B
ACUNA, BENJAMIN ANTHONY & CHRISTINE RIVERA
Variance from Chapter 25, Zoning, Article 5 Division 7, Section 25-5-76, Minimum
Yards and Section 25-4-44, Permitted Projections into Yards and Open Requirements
(Encroachment into North Front Yard Setback)

Dear Ms.Chiodo;

Based on the information provided to the Department of Public Works regarding this project, including the revised site plan and survey, the condition stated in the response to the Variance Application can be removed and a recommendation for approval be granted.

The building code notes that the exterior wall location, based on R302 and Table R302.1, is satisfied and consistent with the definition of "Fire Separation Distance" (Section R202 of the International Residential Code (IRC 2006 ed).

This letter has been copied to the Planning Director. Please consider a withdrawal of the Board of Appeals action regarding this matter.

Thank you.

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

C: D. Yamamoto – Division Chief
N. Tanaka - Acting Deputy Division Chief

EXHIBIT

C