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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
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April 29, 2021

Katherine A. Garson
Carlsmith Ball LLP
P.O. Box 686
Hilo, HI 96721-0686

Dear Ms. Garson:

SUBJECT: Application: REVISED Variance - VAR 19-000541-REV
Applicants/owners: KATHLEEN ELLEN MARY FLYNN
MICHAEL JAMES BROWN
Request: Variance from Chapter 25, Zoning, Article 5, Division
1, Section 25-5-56, Minimum Yards Requirements and
Section 25-4-44(a), Permitted projections into yards and
open spaces (Encroachment into North and West Side
Yard Setback and Open Space requirement)
Tax Map Key: (3) 7-7-023:011 CPR Unit 2, Lot

The Planning Director certifies the **REVISED APPROVAL** for, Variance No. 19-000541, subject to variance conditions. The variance request is approved for portions of the existing approved detached "Ohana Dwelling Unit" (OHD 94-295), located on CPR Unit 2, to remain at 15.8-foot and 19.5-foot side (north) setback and 19.5-foot, 18.0-foot, 19.1-foot, and 19.8-foot (west) side yard setback, in lieu of the required 20 foot side yard setback and the roof eaves to remain at 12.9-foot side (north) open space, in lieu of the required 14-foot side (north) open space requirement.

This **REVISED APPROVAL** also allows portions of the attached "unpermitted gazebo" on the subject parcel to remain with a minimum 8.9-foot and 8.1-foot side (west) yard and minimum 6.8-foot and 8.1-foot open side yard open space requirement, in lieu of the required 20-foot side yard setback in lieu of the required 20-foot side yard setback, as required by Section 25-5-56 and 25-6-35 (b), and the required 14.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces.

These exceptions are in lieu of the required 15-foot side yard requirement as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-56, Minimum yards requirements for the Residential and Agricultural Zoning District (RA-.5a), and the additional 5.0-foot side yard

requirement for the approved detached Ohana Dwelling Unit per Section 25-6-35 (b), for a 20-foot side yard setback, and in lieu of the 14.0-foot open space requirement per Section 25-4-44, Permitted projection into yards and open spaces. The building permit was obtained on September 21, 1999 for the second dwelling on CPR Unit 2 after the Zoning Code was amended in 1996, and ratified on April 6, 1999, which required the additional 5.0-foot setback requirement for detached Ohana Dwelling unit on CPR Unit 2. The two new single dwelling units located on the subject parcel were approved by OHD 94-295, with one being approved as a detached Ohana Dwelling Unit. The building permit was issued for the single-family dwelling unit on CPR Unit 1 on September 1, 1999, and the building permit for the second dwelling was issued on September 21, 1999, which determined the dwelling on CPR Unit 1 was the first dwelling, and the second dwelling on CPR Unit 2, is the “Ohana Dwelling Unit”, on the subject parcel. The dwelling on CPR Unit 1 meets the minimum yard requirements for the RA zoning district of 15-foot side yard requirements, based on the survey provided.

The **REVISED** variance request for portions of the existing approved detached “Ohana Dwelling Unit” (OHD 94-295), located on CPR Unit 2, and the portions of the “unpermitted gazebo” in the required yard setback and required open space is **approved**.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, CPR Unit 2, Lot 5, contains approximately 21,782 square feet, comprised of CPR Units 1 and 2, and is situated within Holualoa 4th, North Kona, Hawai‘i. The subject property’s street address is 77-106 A Kalaniuka Street, Holualoa, HI 96725-8731.
2. **Owners:** Kathleen Ellen Mary Flynn and Michael James Brown.
3. **County Zoning.** Residential and Agricultural (RA-.5a).
4. **State Land Use Designation.** Rural
5. **Setback Requirements.** For CPR Unit 2, with the approved Ohana dwelling unit, the minimum yard setbacks are 20 feet for all sides (15 feet side yard per RA Zoning District Section 25-5-56, and an additional 5.0-foot side yard requirement for the approved detached Ohana Dwelling Unit, per Section 25-6-35 (b). For CPR Unit 1, the minimum side yard setbacks are 15-feet per RA Zoning District Section 25-5-56 (2) since it is the first dwelling.
6. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on originally on April 10, 2019, then resubmitted with additional requested information on July 29, 2019 and August 20, 2019. The variance application’s survey map dated July 1, 2019 was prepared by Chrystal Thomas Yamasaki,

LPLS and denotes that the portions of the dwelling walls and roof overhangs (eaves) of the detached “Ohana Dwelling Unit” and “attached gazebo” on CPR Unit 2, are built into the side (north) yard setback and side (west) yard setback, and side (west) open space requirement.

The survey map dated July 1, 2019 shows sections of the dwelling walls of the detached “Ohana Dwelling Unit” encroaching 4.2-feet and 0.5-feet into side (north) yard setback with a minimum 15.8-feet and 19.5-feet and side (north) yard setback and also shows sections of the dwelling walls of the detached “Ohana Dwelling Unit” encroaching 0.5-feet 2.0-feet, 0.9-feet, and 0.2-feet into the side (west) yard setback, with a minimum 19.5-feet, 18.0-feet, 19.1-feet, and 19.8-feet minimum side (west) yard setback, in lieu of the required 20-foot yard setback, and roof overhangs (eaves) encroaching 1.1-feet into the side (north) open space with a minimum 12.9-feet side (north) open space requirement, in lieu of the 14-foot open space requirement.

The survey map also shows that the roof overhangs (eaves) of the attached “unpermitted gazebo” are encroaching 13.2-feet and 11.9-feet, into side (west) yard setback leaving a minimum 6.8-feet and 8.1-feet (west) side yard setback, in lieu of the required 20-foot side (west) yard setback, with roof overhangs (eaves) encroaching 7.2-feet and 5.9-feet into the side (west) open space, leaving a minimum 6.8-feet and 8.1-feet side (west) open space, in lieu of the required 14-foot open space requirement.

The variance will allow portions of the existing approved detached “Ohana Dwelling Unit” (OHD 94-295), located on CPR Unit 2, to remain at 15.8-feet and 19.5-feet side (north) setback and 19.5-feet, 18.-0-feet, 19.1-feet, and 19.8-feet (west) side yard setback, in lieu of the required 20 foot side yard setback and the roof eaves to remain at 12.9-feet side (north) open space, in lieu of the required 14-foot open space requirement.

This **REVISED APPROVAL** also allows portions of the attached “unpermitted gazebo” on the subject parcel to remain with a minimum 8.9-feet and 8.1-feet side (west) yard and minimum 6.8-feet and 8.1-feet open side yard open space requirement, in lieu of the required 20-foot side yard setback, as required by Section 25-5-56 and 25-6-35 (b), and the required 14.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces.

The **REVISED** variance request for portions of the existing approved detached “Ohana Dwelling Unit” (OHD 94-295), located on CPR Unit 2, and the portions of the “unpermitted gazebo” in the required yard setback and required open space is **approved**.

7. **County Building Records.** Hawai‘i County Real Property Tax (RPT) Office records indicate that the Ohana Dwelling unit on CPR Unit 2 has a building permit (996053) that was issued on September 21, 1999. According to the Building Division Records, the building permit included garage, lanais, kitchen, living room, study, laundry, 2 bedrooms, and 2 baths.

The associated solar water heater was issued a building permit (010371) on 3/30/2001. An additional building permit (995903) was issued on August 10, 1999 with a permit amount of \$200, with no description. There does not appear to be record for a building permit for an attached gazebo. RPT Tax Records indicate that the single-family dwelling on CPR Unit 1 has a building permit (996002) that was issued on September 1, 1999, and an additional building permit (995904) that was issued on August 10, 1999 at a value of \$200, with no description. According to a letter dated November 4, 1999 on file, building permits for two dwelling and two sheds were taken out on the subject parcel.

8. **Zoning Complaint/Warning Letter.** The attached “unpermitted gazebo” was the subject of a complaint filed with the Planning Department office on December 10, 2018, alleging that a structure had been constructed without a permit. The representative for the owner requested a time extension in response to the warning letter, on January 23, 2019 to complete corrective measures, or to submit a variance application.
9. **Real Property Tax Records:** The Real Property Tax (RPT) Historical Field Books did not reveal any records for this parcel. Information was obtained on the Real Property Tax website that included a sketch that appears to show a dwelling on CPR Unit 2 with an attached garage and two porch areas with ceiled shed roofs.
9. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated September 12, 2019. (Attached).
 - b. Department of Public Works (DPW) - Building Division – Letter dated August 29, 2019. (Attached)
10. **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 28, 2019 and August 30, 2019, respectively. The first and second notice were mailed out again on August 29, 2019 and September 5, 2019 to meet the requirements for notification per Chapter 25, Section 245-2-4. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 27, 2019.
11. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. One written comment or objection letter with 15 names, signatures, and addresses, signed an opposition letter that was from surrounding property owners or the general public was received.
12. **Time Extension.** The applicant’s variance application was acknowledged by letters and emails dated October 9, 2019 and November 27, 2019.

GROUNDNS FOR APPROVING REVISED VARIANCE FOR VAR-19-000541-REV

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 dwelling walls the detached “Ohana Dwelling Unit, encroaching into the 20-foot (north) and (west) side yard setbacks and encroachment of portions of the roof overhangs (eaves) encroaching into the (north) open space requirement, and portions of the attached “unpermitted gazebo” on the subject parcel to remain with a minimum 8.9-foot and 8.1-foot side (west) yard and minimum 6.8-foot and 8.1-foot open side yard open space requirement, in lieu of the required 20-foot side yard setback, as required by Section 25-5-56 and 25-6-35 (b), and the required 14.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces. as required by the Zoning Code.

The Variance application meets criterion (a) that will allow portions of the existing approved detached “Ohana Dwelling Unit” (OHD 94-295), located on CPR Unit 2, to remain at 15.8-foot and 19.5-foot side (north) yard setback and 19.5-foot, 18.-0-foot, 19.1-foot and 19.8-foot (west) side yard setback, in lieu of the required 20 foot side yard setback and the roof eaves to remain at 12.9-foot side (north) open space, in lieu of the required 14-foot open space requirement.

The **REVISED APPROVAL** for the attached “unpermitted gazebo” on the subject parcel also meets criterion (a) and will allow the “unpermitted gazebo” to remain with a minimum 8.9-foot and 8.1-foot side (west) yard and minimum 6.8-foot and 8.1-foot open side yard open space requirement, in lieu of the required 20-foot side yard setback, as required by Section 25-5-56 and 25-6-35 (b), and the required 14.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces. as required by the Zoning Code.

The encroachment of the dwelling walls of the approved detached “Ohana Dwelling Unit” leaves a minimum 15.8-foot and 19.5-foot and side (north) yard setback, in lieu of the required 20-foot side yard setback and encroachment of the roof eaves at a minimum 12.9-foot and side (north) open space requirement, in lieu of the 14-foot open space requirement. The encroachment of the dwelling walls of the detached “Ohana Dwelling Unit” also leaves a minimum 19.5-foot, 18.-0-foot, 19.1-foot and 19.8-foot (west) side yard setback, in lieu of the required 20-foot side yard setback, The encroachment of the unpermitted gazebo” will remain with a minimum 8.9-foot and 8.1-foot side (west) yard and minimum 6.8-foot and 8.1-foot open side yard open space

requirement, in lieu of the required 20 foot side yard setback and required 14-foot side (north) open space requirement.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow portions of the dwelling walls of the building encroachment of the detached “Ohana Dwelling Unit on CPR Unit 2 and portions of the roof overhangs (eaves) as it was originally built to occur. It appears it had more to do with the amendment to the Zoning Code in 1996, that became effective April 6, 1999, requiring “the minimum front, rear, and side yard requirements for the zoning district in which the building site is located in plus an additional five feet. When the Ohana Dwelling Unit Permit Dwelling Unit” (OHD 94-295) was issued on January 9, 1995, the additional 5-foot setback requirement was not in effect. However, the building permit was not issued until September 21, 1999, and the additional 5-foot requirement would have been in effect. The approved set of building plans were not provided by the applicant with this application, so it cannot be confirmed at this time, what setbacks were shown on the plans.

Also noted in the variance application was that the owners bought the property in 2017, long after the home was built, and the encroachments were not shown on the surveys relating to the survey plans or purchase. Further review of our files found a Planning Department letter dated November 4, 1999, in response to a Condominium Registration, which under Item no. 4 stated; “Variances were not required to achieve compliance with the zoning and building ordinances and codes.”

The above special and unusual circumstances determine the owner was not at fault in creating the encroachment violation. Requiring the owners to fix the encroachments would interfere with best use and development of the subject property.

This **REVISED APPROVAL** also allows portions of the attached “unpermitted gazebo” on the subject parcel to remain with a minimum 8.9-foot and 8.1-foot side (west) yard and minimum 6.8-foot and 8.1-foot open side yard open space requirement, in lieu of the required 20-foot side yard setback, as required by Section 25-5-56 and 25-6-35 (b), and the required 14.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces.

The **REVISED** variance request for portions of the existing approved detached “Ohana Dwelling Unit” (OHD 94-295), located on CPR Unit 2, and the portions of the “unpermitted gazebo” in the required yard setback and required open space is **approved**.

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

The Variance application meets criterion (b) for portion of the dwelling walls and roof eaves of the approved detached “Ohana Dwelling” and the attached “unpermitted gazebo” on CPR Unit 2.

Alternatives available to the current owners to correct and/or address the building encroachments of the approved detached “Ohana Dwelling Unit” on CPR Unit 2, constructed into the affected side yard and open space of the subject property include the following actions:

Remove the building encroachments and/or redesign the dwelling 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 following all County requirements. Any structural or design correction of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

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 zoning 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 of the existing dwelling (except for the “unpermitted gazebo”) 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 dwelling has been in existence for approximately 18 years and was constructed under valid building permits and other construction permits issued by the County of Hawai‘i. The detached approved “Ohana Dwelling Unit” is estimated to have been built in Year 2001 with valid building permits and has been in existence for approximately 18 years. 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 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 the majority of the comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owner, were specific to the “unpermitted gazebo” which was added after the original home was built, and will not be granted a variance to remain in place, projecting 13.2-feet and 11.9-feet, into side (west) yard setback, and projecting 7.2-feet and 5.9-feet into the side (west) open space side (west), in lieu of the required 20-foot side (west) yard setback and 14-foot side (west) open space requirement.

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 approved detached “Ohana Dwelling Unit” and the attached “unpermitted gazebo” on CPR Unit 2 built on the subject property (“Lot 5”) will not meet the minimum side (north and west) yard setbacks and side (north) open space requirements pursuant to Hawai‘i County Code, Chapter 25, (Zoning Code).

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

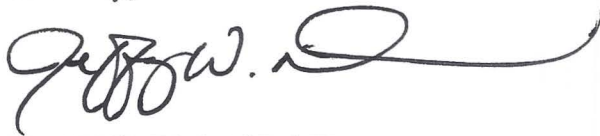
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai‘i harmless from and against any loss, liability, claim, or demand for the property 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 dwelling walls and roof overhangs (eaves) of the approved detached “Ohana Dwelling Unit” and/or the “Unpermitted Gazebo” on CPR Unit 2 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 applicant/owner(s), successors or assigns shall obtain a building permit for the structure identified as “unpermitted gazebo” in the variance application and shown on the survey map (Exhibit “A”) within one (1) year from the effective date of the **REVISED APPROVAL** of Variance-19-000541.

5. The applicant/owner(s), successors or assigns shall install a 3.5-foot-tall privacy screen fence on the rock wall that is the middle "CRM Retaining Wall" on the west side of (3) 7-7-023:011 CPR Unit 2, as shown on Exhibit 1, within six (6) months from the effective date of the **REVISED APPROVAL** of Variance-19-000541.
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.

Based on the closure of this case (boa-20-000262), there is no longer a decision to be appealed. In order for the Board of Appeals (BOA) to consider this matter closed, please communicate your formal request to withdraw your BOA case to boardofappeals@hawaiicounty.gov. Your request can be as simple as an email referencing your BOA case number and your confirmation to withdraw.

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void the **REVISED APPROVAL** of Variance-19-000541.

Sincerely,



JEFFREY W. DARROW
Deputy Planning Director

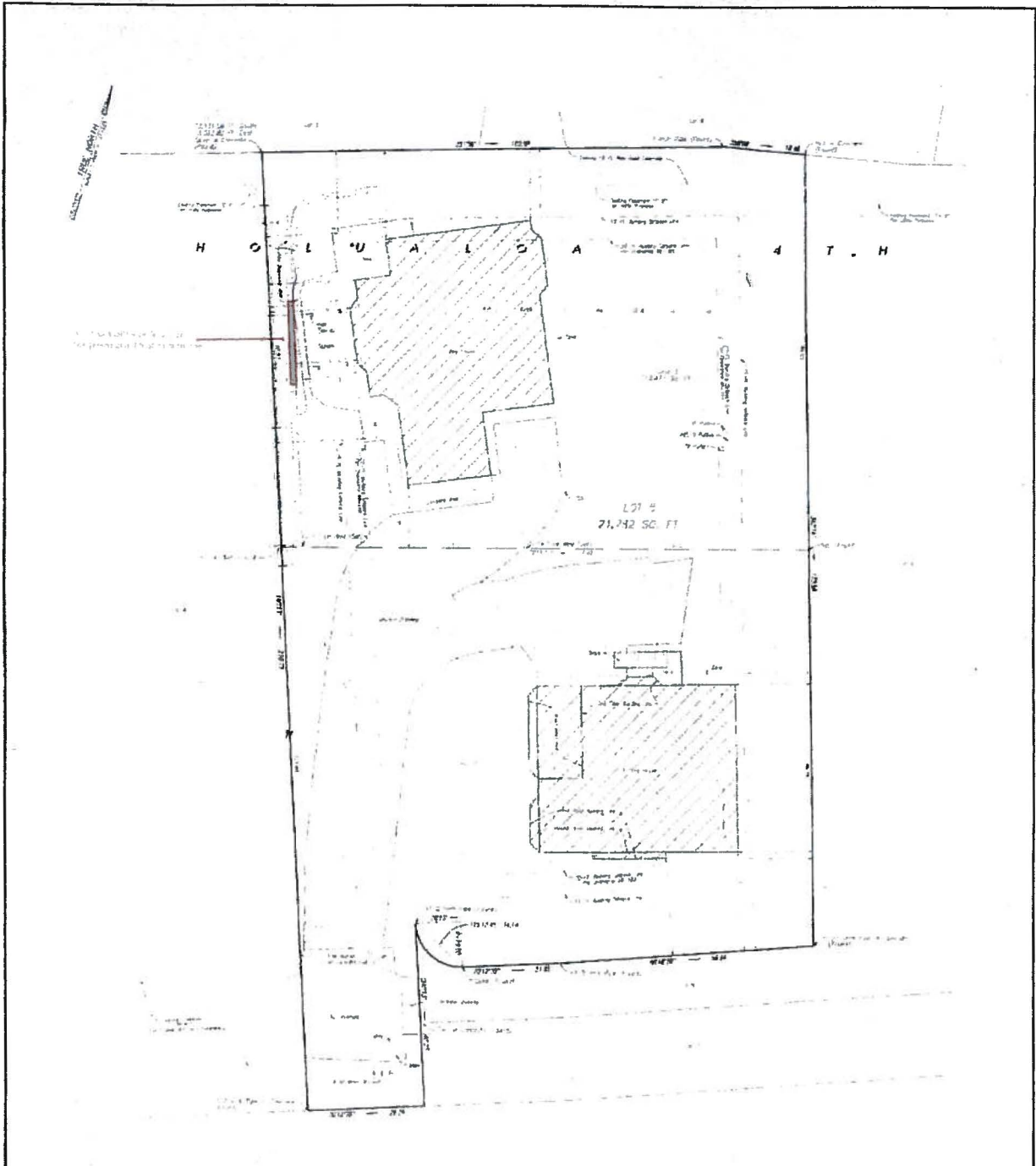
RJN: rjn

\\COH01\planning\public\Admin Permits Division\Variance\2019\VAR-19-000541 Flynn-Brown\Approval -REV 4-28-2021-2.doc

cc: Board of Appeals (boardofappeals@hawaiicounty.gov) – BOA-20-000262

cc: w/attachment: Kathleen Ellen Mary Flynn
Michael James Brown
77-106 Kalaniuka St. Apt. A
Holualoa, HI 96725-8731

xc w/o attachment: DPW Building Division
DPW Engineering Division
Real Property Tax Office (Kona)
Gilbert Bailado, GIS



AS-BUILT MAP SHOWING
 LOT 5 OHAI MAUKA ESTATES CONDOMINIUM PROJECT OF LOT 5

Being a Portion of R.P. 8289, L.C. Aw. 7228 to Loe

At Holualoa 4th, North Kona
 Island and County of Hawaii, State of Hawaii

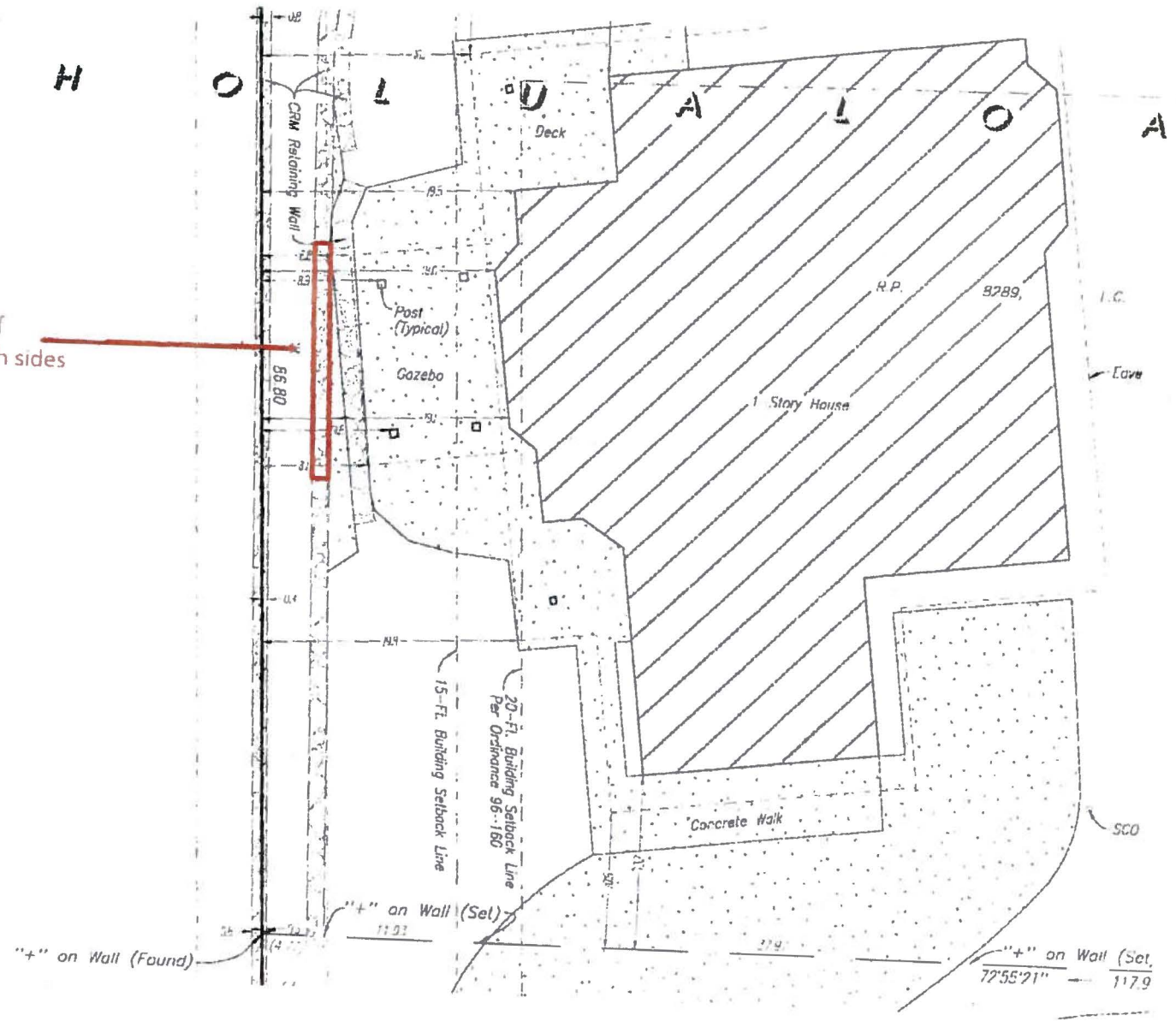
NOTES:
 1. THIS MAP IS A COPY OF THE ORIGINAL MAP AS FILED IN THE OFFICE OF THE COUNTY CLERK OF HAWAII COUNTY, HAWAII, ON 08/11/2011.
 2. THIS MAP IS A COPY OF THE ORIGINAL MAP AS FILED IN THE OFFICE OF THE COUNTY CLERK OF HAWAII COUNTY, HAWAII, ON 08/11/2011.
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APPROVED FOR RECORDATION
 COUNTY CLERK OF HAWAII COUNTY
 HAWAII, HAWAII
 08/11/2011
Joseph L. Jones, Jr.

PREPARED BY
 HAWAIIAN SURVEYING & ENGINEERING, INC.
 1785 KAWAHAU DRIVE
 KAWAHAU, HAWAII 96725
 (808) 935-3111

H O L O A

3-1/2 foot tall fence; length of the gazebo plus 1 foot on both sides



"+" on Wall (Found)

"+" on Wall (Set)

"+" on Wall (Set)
72'55'21" — 117.9



BUILDING DIVISION – DPW

PLANNING DEPARTMENT

COUNTY OF HAWAII

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

2019 AUG 29 AM 11:49

Date of Notice: August 29, 2019

Owner: Kathleen Ellen Mary Flynn & Michael James Brown

Mailing address: 77-106 Kalaniuka St. Apt. A, Holualoa, Hawaii 96825-8731

Address location of property: 77-106 Kalaniuka St. Apt. A, Holualoa, Hawaii 96825-8731

SUBJECT: Variance – VAR-19-000541

Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-26 Minimum Yards Requirement and Section 25-4-44(a), Permitted projections into open spaces (Encroachment into West Side Yard Setback and Open Space requirement)

T.M.K.: (3) 7-7-023:011 CPR Unit 2, Lot 5

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

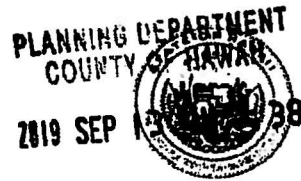
- No Building, Electrical and Plumbing permit was issued for work done on the premise.
- No building permit was issued for the change of occupancy.
- At the time of completion, the subject complied to all building regulations that were in effect.
- Variance from any building regulation (Building, Electrical, 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

Records show no Building Permits or Building Applications for the constructed PaiPai in question. If the variance is approved an As-Built Permit is required, and if the Variance is not approved a Demolition Permit is required to remove the structure and verify the structure is totally demolished including the foundation.

Kelly Wilson, Plans Examiner
County of Hawaii Department of Public Works Building Division

SCANNED
SEP - 8 2019
By: 127604

BD-10



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

MEMORANDUM

DATE: September 12, 2019

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

FROM: Eric Honda
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 19-000541
Applicant: ZENDO KERN PLANNING CONSULTANT LLC
Owner: KATHLEEN ELLEN MARY FLYNN
MICHAEL JAMES BROWN
Request: Variance from Chapter 25, Zoning Article 5, Division 1,
Section 25-5-56, Minimum Yards Requirements and Section 25-4-
44(a) Permitted Projections into Yards and Open Spaces
(Encroachment into West Side Yard Setback and Open Space
requirement)
TMK: 7-7-023:011 CPR Unit 2, Lot 5

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

