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March 16, 2020

Zendo Kern
Zendo Kern Planning Consultants LLC
194 Wiwoole Street
Hilo, HI 96720

Dear Mr. Kern:

SUBJECT: Application: REVISED -Variance - VAR 19-000543
Applicant: ZENDO KERN PLANNING CONSULTANT LLC
Owners: FELDCHASE FAMILY TRUST
Request: Variance from Chapter 25, Zoning, Article 5,
Division 1, Section 25-5-7, Minimum Yards Requirements and
Section 25-4-44(a), Permitted projections into yards and open
spaces (Encroachment into East Side Yard Setback and South
Side Yard Setback and Open Space requirements)
Tax Map Key: 6-5-007:083 (COR Nos. -20-131670/20-132018)

The Planning Director certifies the **REVISED approval, in part for**, Variance No. 19-000543, subject to variance conditions.

The variance request was previously **approved**, on February 5, 2020, for the portions of the existing garage, to remain at 4.95-foot and 4.44-foot side yard (southeast) setback, in lieu of the required 10-foot side yard setback and the roof eaves to remain at 2.68-foot and 2.06-foot side (southeast) open space, in lieu of the required 5-foot side (southeast) open space requirement. These exceptions are in lieu of the required 10-foot side yard requirement as required by the Hawai'i County Code (HCC), Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements for the Residential Zoning District (RS-10). No building permit was obtained for the garage. A 2018 letter by Registered Professional Architect Melvin Fielding noted that the 11-foot wide by 18-foot deep by 8-foot high garage was built without a permit.

In response to the "Request for Reconsideration" received from the applicant, in letter dated February 28, 2020, and upon further review of the grounds for granting a variance, this **REVISED** variance allow portions the detached "shed" adjacent to the northeast property boundary of the subject parcel to remain with a minimum 7.12-foot and 5.91-foot side (northeast) yard and minimum 3.32-foot open side (northeast) yard open space requirement, in lieu of the required 10.0-foot side yard setback, as required by Section 25-5-7, and the required

5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces.

The **REVISED** variance request for the portions of the “shed” alongside the northeast property boundary in the required yard setback and required open space is **approved**.

Per discussions following the “Request for Reconsideration” letter dated February 28, 2020, from the applicant, and per email dated March 10, 2020, the landowner is agreeable to relocating the small shed next to the garage, alongside the southeast property boundary, to meet the required 10.0-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44.

As previously determined on February 5, 2020, this variance does not allow portion the detached “shed” adjacent to the southeast property boundary of the subject parcel to remain with a minimum 6.17-foot and 6.83-foot side (southeast) yard and minimum 6.17-foot and 6.83-foot open side yard open space requirement, in lieu of the required 10-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces.

The variance request for the portions of the “shed” alongside the southeast property boundary in the required yard setback and required open space is **denied**.

BACKGROUND AND FINDINGS

1. **Location.** The subject property is situated within Waimea Homesteads, South Kohala, Hawai‘i. The subject property’s street address is 62-1214 Pono Lane, Kamuela, HI 96743.
2. **Owners:** Feldchase Family Trust, Steven Paul Chase & Marjorie Feldman, Trustees
3. **County Zoning.** Single Family Residential- 13,515 sq. ft. (RS-10).
4. **State Land Use Designation.** Urban
5. **Setback Requirements.** The parcel is a flag lot with all side yards (Flag Lots, HCC Section 25-4-14). The minimum side yard setbacks are 10 feet for all sides (RS Zoning District, HCC Section 25-5-7).
6. **Drainage Easement.** The parcel is encumbered by Drainage Easement “C-2,” which has an area of 5,001 sq. ft. The easement includes an approximately 15 feet wide strip, about 120 feet long, running alongside the northwest and west property boundaries of the lot, and also includes an approximately triangular shaped portion located on the southwest

portion of the lot, extending about 75 feet to 90 feet from the southwest property boundary.

- 7. Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials originally on November 1, 2018; this application was returned as incomplete. There was a follow up letter from the Planning Department to the applicant dated December 6, 2018, explaining the additional information needed for the application to be complete. The application was re-submitted with the additional requested information on August 22, 2019 and was accepted as complete on September 3, 2019.

On February 28, 2020, a letter from the applicant for a "Request for Reconsideration of Variance Application (VAR 19-000543)" was received and further consideration was granted by the Planning Director, resulting in this **REVISED** variance to allow portions of the detached "shed" adjacent to the northeast property boundary of the subject parcel to remain in place with a minimum 7.12-foot and 5.91-foot side (northeast) yard and minimum 3.32-foot open side (northeast) yard open space requirement, in lieu of the required 10.0-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces.

The variance application's survey map dated August 4, 2018 was prepared by Thomas Pattison, with Hawaii License 18302, of Pattison Land Surveying, Inc.

The survey map showed that existing garage, with a 4.95-foot and 4.44-foot side yard (southeast) setback, in lieu of the required 10-foot side yard setback and the roof eaves to at 2.68-feet and 2.06-feet side (southeast) open space, in lieu of the required 5-foot side (southeast) open space requirement. A 10-foot side yard is required by the Hawai'i County Code (HCC), Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements for the Residential Zoning District (RS-10), and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces.

The survey map shows that a portion the detached "shed" adjacent to the southeast property boundary of the subject parcel with a 6.17-foot and 6.83-foot side (southeast) yard and a 6.17-foot and 6.83-foot open side yard open space, in lieu of the required 10.0-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces.

The survey map shows that a portion of the detached "shed" adjacent to the northeast property boundary of the subject parcel with a 7.12-foot and 5.91-foot side (northeast)

yard and 3.32-foot open side (northeast) yard open space requirement, in lieu of the required 10-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces.

8. **County Building Records.** Hawai'i County Real Property Tax (RPT) Office records indicate that the dwelling has a building permit (986455) that was issued on December 23, 1998 to then owner Orville and Helen Thompson. According the Building Division Records, the building permit included a 2-car garage, 2 bedrooms, living room, 1-1/2 bath, kitchen, dining, and lanai. RPT Office records show that a building permit (BK2014-00457) was issued on March 25, 2014, to then owner Orville Thompson which according to Building Division records was for a PV Roof mount system. A 2018 letter by Registered Professional Architect Melvin Fielding noted that the 11-foot wide by 18-foot deep by 8-foot high garage was built without a permit. There is no record of a building permit issued for the detached garage, the detached shed along the southeast property boundary, or the detached shed along the northeast property boundary.

The applicant noted in his letter dated February 28, 2020 that no building permits were required for either of the sheds, since both sheds are under 120 square feet, however, the accessory structures are required to comply with applicable zoning code minimum yards and open space requirements, as stated previously.

9. **Applicant Statement.** Applicant's agent submitted a statement, as follows: "The applicants purchased the property in August 2018. The setback encroachments were revealed in the survey done for the sale. Since then, applicants have been working to resolve the setback encroachments. Prior to the applicant's purchase of the property several improvements were made to the property without permit. The existing two-car garage was converted to a third bedroom with bathroom. Two sheds, each less than 120 square-feet, and a garage of approximately 240 square-feet were built in the property setbacks. As-built permits are being sought for the garage conversion and the detached garage."
10. **Real Property Tax "Field Book" Records:** The Real Property Tax (RPT) Historical Field Books did not reveal any relevant records for this parcel.
11. **Agency Comments and Requirements.** A request for comments was sent to the Department of Health and the Department of Public Works on September 3, 2019.
 - a. State Department of Health (DOH) – none received.
 - b. Department of Public Works (DPW) - Building Division – none received.

12. **Public Notice.** The applicant filed transmittal letters with copies of the affidavits that the notices were sent to surrounding property owners via USPS. According to the affidavits, the first and second notices were mailed on September 10, 2019 and September 11, 2019, respectively. The first and second notices meet the requirements for notification per Chapter 25, Section 25-2-4. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 11, 2019.
13. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No comments were received from the surrounding property owners, except for Roger Gremminger and Kasem Nithipatikom, owners of the property (identified by TMK 6-5-007:084), located immediately to the east of the subject property, who indicated in an email dated November 12, 2019, which was provided by the owners/agent, which stated “This is to confirm that we do not have any objection to the existing garage near our property line.”
14. **Time Extension.** The applicant’s variance application and time extensions were acknowledged by letters and emails dated November 6, 2019 November 22, 2019, and December 23, 2019.

GROUNDS FOR APPROVING VARIANCE, IN PART, FOR VAR-19-000543
For the Detached Garage and Detached Shed adjacent to the northeast
property boundary of the subject parcel:

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 walls for portions of the existing garage, to remain at 4.95-foot and 4.44-foot side yard (southeast) setback, in lieu of the required 10.0-foot side yard setback and the roof eaves to remain at 2.68-foot and 2.06-foot side (southeast) open space, in lieu of the required 5-foot side (southeast) open space requirement. These exceptions are in lieu of the required 10-foot side yard requirement as required by the Hawai‘i County Code (HCC), Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements for the Residential Zoning District (RS-10). No building permit was obtained for the garage. A 2018 letter by Registered Professional Architect Melvin Fielding noted that the 11-foot wide by 18-foot deep by 8-foot high garage was built without a

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permit. Hawai'i County Real Property Tax (RPT) Office records indicate that the dwelling has a building permit (986455) that was issued on December 23, 1998 to then owner Orville and Helen Thompson. According the Building Division Records, the building permit included a 2-car garage, 2 bedrooms, living room, 1-1/2 bath, kitchen, dining, and lanai. RPT Office records show that a building permit (BK2014-00457) was issued on March 25, 2014, to then owner Orville Thompson which according to Building Division records was for a PV Roof mount system.

On February 28, 2020, a letter from the applicant for a "Request for Reconsideration of Variance Application (VAR 19-000543" was received and further consideration was granted by the Planning Director, resulting in this **REVISED** variance to allow portions of the detached "shed" adjacent to the northeast property boundary of the subject parcel to remain in place with a minimum 7.12-foot and 5.91-foot side (northeast) yard and minimum 3.32-foot open side (northeast) yard open space requirement, in lieu of the required 10.0-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces. According to the applicant's letter dated February 28, 2020, this existing detached shed was constructed by a previous owner and was an existing condition. The owner bought the home the property long after the home and accessory structures were built. Due to the building envelope being limited by the drainage easement on the property, of approximately 5,001 square feet, and the narrowness, and the irregular shape of the property, it creates a special and unusual circumstance, whereby relocating this detached shed adjacent to the northeast boundary very problematic.

An email received from the applicant, Zendo Kern, received on March 10, 2020, following the letter dated February 28, 2020, stated that the landowner is agreeable to relocating the small shed next to the garage, alongside the southeast property boundary, to meet the required 10-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44.

The Variance application meets criterion (a) because no evidence has been found to show indifference or premeditation by the current owners to deliberately create or intentionally allow portions of the walls of the detached garage and its roof to be built to encroach into the required yard and open space. Further, the possible locations of a detached garage, is constrained by the location and the area utilized for the drainage easement. The parcel is encumbered by Drainage Easement "C-2," which has an area of 5,001 sq. ft. The easement includes an approximately 15 feet wide strip, about 120 feet long, running alongside the northwest and west property boundaries of the lot, and also includes an approximately triangular shaped portion located on the south west portion of the lot, extending about 75 feet to 90 feet from the southwest property boundary. The location and expansive area of the easement area limits the possible locations for a practical and functional garage on the property, and thus the present location of the detached garage meets the criteria that the location of the detached garage is constrained by the property's special and unusual circumstances.

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

The Variance application meets criterion (b) for portion of the detached garage walls and roof eaves.

Alternatives available to the current owners to correct and/or address the building encroachments of the detached garage constructed into the affected side yards and open spaces of the subject property include the following action(s):

Remove the building encroachments and/or redesign the garage located adjacent to the south boundary and detached shed located adjacent to the northeast boundary, as denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code. Although the present owners were aware that the detached garage was unpermitted, and although the detached shed may not require a building permit since is less than 120 square feet, per the applicant, it is required to comply with zoning code setbacks, however, this alternative would be deemed unreasonable, especially when the owners had no part of the previous building permit process, and unpermitted construction. Any structural or design correction of the detached garage, adjacent to the south boundary, and the detached shed adjacent to the northeast boundary, to meet setback and open space requirements would require demolition and new construction, or moving the structure, since attempting to alter the existing unpermitted detached garage in its present location, would not be practical and would result in unattractive reconstruction. Moving the structures would be problematic, because of the close proximity of a nearby storm drain inlet, narrowness and irregular shape of the property.

There are no reasonable alternatives to resolve the encroachment issue for the detached garage, located adjacent to the southeast boundary, and the detached shed located adjacent to the northeast boundary.

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 current owners of the existing detached garage to have any part in deliberately creating or intentionally allowing 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 22 years and was constructed under valid building permits and other construction permits issued by the County of Hawai'i. It is unclear when the unpermitted detached garage was built, but permits prior to and including 2014 did not include it, and the existence of the unpermitted detached garage was only made known to the current owners in 2018, prior to the present owner's acquisition of the property in August 2018. There is no record of neighbor complaints on the detached garage. In fact, Roger Gremminger and Kasem Nithipatikom, owners of the property (identified by TMK 6-5-007:084), immediately to the east of the subject property, in an email dated November 12, 2019, provided by the owners/agent, stated "This is to confirm that we do not have any objection to the existing garage near our property line." 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.

Therefore, the variance for the detached garage adjacent to the south boundary and the detached shed adjacent to the northeast boundary, 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.

The variance request is **approved** for the portions of the existing garage, to remain at 4.95-foot and 4.44-foot side yard (southeast) setback, in lieu of the required 10.0-foot side yard setback and the roof eaves to remain at 2.68-foot and 2.06-foot side (southeast) open space, in lieu of the required 5-foot side (southeast) open space requirement.

The **REVISED** variance is also **approved** for the portions of the detached "shed" adjacent to the northeast property boundary of the subject parcel to remain with a minimum 7.12-foot and 5.91-foot side (northeast) yard and minimum 3.32-foot open side (northeast) yard open space requirement, in lieu of the required 10.0-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces.

GROUNDS FOR DENYING VARIANCE, IN PART, FOR VAR-19-000543
For One Detached Shed Adjacent to the Southeast Portion of the Parcel

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.*

There are no special or unusual circumstance applying to the subject property, which would interfere with the best use of the property, if detached sheds of less than 120 square feet each were not allowed to be located within the required yard setback and open space areas. Even with the imposition of the drainage easement, the parcel still has approximately 8,514 square feet of useable area, for the main dwelling, a detached garage, and sufficient area for detached sheds of less than 120 square feet each to be located outside of the yard and open space areas. It is not apparent, and applicant has not provided substantive convincing documentation, of how not having two sheds, each with area of less than 120 square feet, would deprive the owner of substantial property rights, or would interfere with the best use of the property.

There were no building permits obtained for the two detached shed structures. According to Building Department records, the two structures identified as “sheds” were not included in the scope of work for building permit (986455) that was issued on December 23, 1998 which included a 2-car garage, 2 bedrooms, living room, 1-1/2 bath, kitchen, dining, and lanai. Further the two structures identified as “sheds” were not included building permit (BK2014-00457) which was issued on March 25, 2014, which was for a PV Roof mount system.

However, in response to the “Request for Reconsideration of Variance Application (VAR 19-000543)” received from the applicant, in letter dated February 28, 2020, and upon further review of the grounds for granting a variance, this **REVISED** variance allow portions the detached “shed” adjacent to the northeast property boundary of the subject parcel to remain with a minimum 7.12-foot and 5.91-foot side (northeast) yard and minimum 3.32-foot open side (northeast) yard open space requirement, in lieu of the required 10.0-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces.

The applicant further noted in his letter dated February 28, 2020 that no building permits were required for either of the sheds, since both sheds are under 120 square feet, however, the accessory structures are required to comply with applicable zoning code minimum yards and open space requirements, as stated previously. During discussions following the letter dated February 28, 2020, the applicant discussed the option of relocation the smaller detached shed

located adjacent to the southeast boundary, and in email dated March 10, 2020, it was stated that the landowner is agreeable to relocating the small shed next to the garage, alongside the southeast property boundary, to meet the required 10-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44.

Alternatives

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

The Variance application does not meet the criterion (b) for:

- (1) The detached “shed” adjacent to the southeast property boundary of the subject parcel with a 6.17-foot and 6.83-foot side (southeast) yard and a 6.17-foot and 6.83-foot open side yard open space, in lieu of the required 10-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces, for the following reasons:**

The detached sheds were later added after the dwelling was built and without first obtaining building permits. The two sheds, while placed on concrete pads, are of minimal construction, and appear to be of low construction cost, especially in comparison to the construction of the main dwelling. The reasonable alternative is to remove one of the two unpermitted sheds or to move the one of the unpermitted sheds out of the minimum yards and open space areas. After further consideration by request of the applicant in letter dated February 28, 2020, this variance has been **REVISED** to allow one of the detached sheds to remain in place adjacent to the northeast boundary, and the other detached shed located adjacent to the southeast boundary to be relocated or removed.

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 does not allow to remain:

The detached “shed” adjacent to the southeast property boundary of the subject parcel with a 6.17-foot and 6.83-foot side (southeast) yard and a 6.17-foot and 6.83-foot open side yard open space, in lieu of the required 10.0-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces, and for the following reasons:

A variance for one of the two sheds referenced above would be contrary to the intent and purposes of the Hawaii County Code, Chapter 25, zoning code.

The variance request for the portions of the “shed” alongside the southeast property boundary in the required yard setback and required open space is **denied**.

The **REVISED** variance request for the portions of the “shed” alongside the northeast property boundary in the required yard setback and required open space is **approved**.

PLANNING DIRECTOR’S DECISION AND VARIANCE CONDITIONS

Based on the variance application’s survey map, the approved detached garage will not meet the minimum side (southeast) yard setbacks and side (southeast) open space requirements pursuant to Hawai‘i County Code, Chapter 25, (Zoning Code).

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

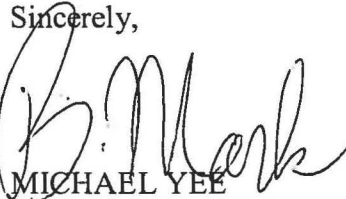
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai‘i harmless from and against any loss, liability, claim, or demand for the property 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 walls and roof overhangs (eaves) of the detached garage 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. (Exhibit “A”)
4. The applicant/owner(s), successors or assigns shall relocate or remove the detached “shed” adjacent to the southeast property boundary of the subject parcel identified in the variance application and shown on the survey map (Exhibit “A”) as:
 - a. The detached “shed” adjacent to the southeast property boundary of the subject parcel which has a 6.17-foot and 6.83-foot side (southeast) yard and a 6.17-foot and 6.83-foot open side yard open space, in lieu of the required 10.0-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces.

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5. Relocation or removal of the detached “shed” adjacent to the southeast property boundary of the subject parcel to meet the required 10.0-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces shall occur within one year from the effective date of Variance-19-000543.
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-19-000543.

Sincerely,



MICHAEL YEE
Planning Director

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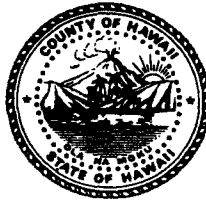
CC: Feldchase Family Trust
Steven Chase and Marjorie Feldman, TRS
65-1214 Pono Lane
Kamuela, HI 96743

XC: DPW Building Division
DPW Engineering Division
Real Property Tax Office (Kona)
Gilbert Bailado, GIS

Harry Kim
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February 19, 2020

Zendo Kern
Zendo Kern Planning Consultants LLC
194 Wiwoole Street
Hilo, HI 96720

Dear Mr. Kern:

SUBJECT: Application: Variance - VAR 19-000543
Applicant: ZENDO KERN PLANNING CONSULTANT LLC
Owners: FELDCHASE FAMILY TRUST
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 East Side Yard Setback and
South Side Yard Setback and Open Space requirements)
Tax Map Key: 6-5-007:083

The Planning Director certifies the **approval, in part for**, Variance No. 19-000543, subject to variance conditions.

The variance request is **approved** for the portions of the existing garage, to remain at 4.95-foot and 4.44-foot side yard (southeast) setback, in lieu of the required 10-foot side yard setback and the roof eaves to remain at 2.68-foot and 2.06-foot side (southeast) open space, in lieu of the required 5-foot side (southeast) open space requirement. These exceptions are in lieu of the required 10-foot side yard requirement as required by the Hawai'i County Code (HCC), Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements for the Residential Zoning District (RS-10a). No building permit was obtained for the garage. A 2018 letter by Registered Professional Architect Melvin Fielding noted that the 11-foot wide by 18-foot deep by 8-foot high garage was built without a permit.

This variance does not allow portion the detached "shed" adjacent to the southeast property boundary of the subject parcel to remain with a minimum 6.17-foot and 6.83-foot side (southeast) yard and minimum 6.17-foot and 6.83-foot open side yard open space requirement, in lieu of the required 10-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces.

This variance does not allow portion the detached “shed” adjacent to the northeast property boundary of the subject parcel to remain with a minimum 7.12-foot and 5.91-foot side (northeast) yard and minimum 3.32-foot open side (northeast) yard open space requirement, in lieu of the required 10-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces.

The variance request for the portions of the “shed” alongside the southeast property boundary in the required yard setback and required open space is **denied**.

The variance request for the portions of the “shed” alongside the northeast property boundary in the required yard setback and required open space is **denied**.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, is situated within Waimea Homesteads, South Kohala, Hawai‘i. The subject property’s street address is 62-1214 Pono Lane, Kamuela, HI 96743.
2. **Owners:** Feldchase Family Trust, Steven Paul Chase & Marjorie Feldman, Trustees
3. **County Zoning.** Single Family Residential- 13,515 sq. ft. (RS-10a).
4. **State Land Use Designation.** Urban
5. **Setback Requirements.** The parcel is a flag lot with all side yards (Flag Lots, HCC Section 25-4-14). The minimum side yard setbacks are 10 feet for all sides (RS Zoning District, HCC Section 25-5-7).
6. **Drainage Easement.** The parcel is encumbered by Drainage Easement “C-2,” which has an area of 5,001 sq. ft. The easement includes an approximately 15 feet wide strip, about 120 feet long, running alongside the northwest and west property boundaries of the lot, and also includes an approximately triangular shaped portion located on the south west portion of the lot, extending about 75 feet to 90 feet from the southwest property boundary.
7. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials originally on November 1, 2018; this application was returned as incomplete. There was a follow up letter from the Planning Department to the applicant dated December 6, 2018, explaining the additional information needed for the application to be complete. The application was re-submitted

with the additional requested information on August 22, 2019, and was accepted as complete on September 3, 2019.

The variance application's survey map dated August 4, 2018 was prepared by Thomas Pattison, with Hawaii License 18302, of Pattison Land Surveying, Inc .

The survey map showed that existing garage, with a 4.95-foot and 4.44-foot side yard (southeast) setback, in lieu of the required 10-foot side yard setback and the roof eaves to at 2.68-feet and 2.06-foot side (southeast) open space, in lieu of the required 5-foot side (southeast) open space requirement. A 10-foot side yard is required by the Hawai'i County Code (HCC), Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements for the Residential Zoning District (RS-10a), and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces.

The survey map shows that a portion the detached "shed" adjacent to the southeast property boundary of the subject parcel with a 6.17-foot and 6.83-foot side (southeast) yard and a 6.17-foot and 6.83-foot open side yard open space, in lieu of the required 10-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces.

The survey map shows that a portion of the detached "shed" adjacent to the northeast property boundary of the subject parcel with a 7.12-foot and 5.91-foot side (northeast) yard and 3.32-foot open side (northeast) yard open space requirement, in lieu of the required 10-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces.

8. **County Building Records.** Hawai'i County Real Property Tax (RPT) Office records indicate that the dwelling has a building permit (986455) that was issued on December 23, 1998 to then owner Orville and Helen Thompson. According the Building Division Records, the building permit included a 2-car garage, 2 bedrooms, living room, 1-1/2 bath, kitchen, dining, and lanai. RPT Office records show that a building permit (BK2014-00457) was issued on March 25, 2014, to then owner Orville Thompson which according to Building Division records was for a PV Roof mount system. A 2018 letter by Registered Professional Architect Melvin Fielding noted that the 11-foot wide by 18-foot deep by 8-foot high garage was built without a permit. There is no record of a building permit issued for the detached garage, the detached shed along the southeast property boundary, or the detached shed along the northeast property boundary.

9. **Applicant Statement.** Applicant's agent submitted a statement, as follows: "The applicants purchased the property in August 2018. The setback encroachments were revealed in the survey done for the sale. Since then, applicants have been working to resolve the setback encroachments. Prior to the applicant's purchase of the property several improvements were made to the property without permit. The existing two-car garage was converted to a third bedroom with bathroom. Two sheds, each less than 120 square-feet, and a garage of approximately 240 square-feet were built in the property setbacks. As-built permits are being sought for the garage conversion and the detached garage."
10. **Real Property Tax "Field Book" Records:** The Real Property Tax (RPT) Historical Field Books did not reveal any relevant records for this parcel.
11. **Agency Comments and Requirements.** A request for comments was sent to the Department of Health and the Department of Public Works on September 3, 2019.
 - a. State Department of Health (DOH) – none received.
 - b. Department of Public Works (DPW) - Building Division – none received.
12. **Public Notice.** The applicant filed transmittal letters with copies of the affidavits that the notices were sent to surrounding property owners via USPS. According to the affidavits, the first and second notices were mailed on September 10, 2019 and September 11, 2019, respectively. The first and second notices meet the requirements for notification per Chapter 25, Section 25-2-4. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 11, 2019.
13. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No comments were received from the surrounding property owners, except for Roger Gremminger and Kasem Nithipatikom, owners of the property (identified by TMK 6-5-007:084), located immediately to the east of the subject property, who indicated in an email dated November 12, 2019, which was provided by the owners/agent, which stated "This is to confirm that we do not have any objection to the existing garage near our property line."
14. **Time Extension.** The applicant's variance application and time extensions were acknowledged by letters and emails dated November 6, 2019 November 22, 2019, and December 23, 2019.

GROUND FOR APPROVING VARIANCE, IN PART, FOR VAR-19-000543
For the Detached Garage:

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 walls for portions of the existing garage, to remain at 4.95-foot and 4.44-foot side yard (southeast) setback, in lieu of the required 10-foot side yard setback and the roof eaves to remain at 2.68-foot and 2.06-foot side (southeast) open space, in lieu of the required 5-foot side (southeast) open space requirement. These exceptions are in lieu of the required 10-foot side yard requirement as required by the Hawai'i County Code (HCC), Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements for the Residential Zoning District (RS-10a). No building permit was obtained for the garage. A 2018 letter by Registered Professional Architect Melvin Fielding noted that the 11-foot wide by 18-foot deep by 8-foot high garage was built without a permit. Hawai'i County Real Property Tax (RPT) Office records indicate that the dwelling has a building permit (986455) that was issued on December 23, 1998 to then owner Orville and Helen Thompson. According the Building Division Records, the building permit included a 2-car garage, 2 bedrooms, living room, 1-1/2 bath, kitchen, dining, and lanai. RPT Office records show that a building permit (BK2014-00457) was issued on March 25, 2014, to then owner Orville Thompson which according to Building Division records was for a PV Roof mount system.

The Variance application meets criterion (a) because no evidence has been found to show indifference or premeditation by the current owners to deliberately create or intentionally allow portions of the walls of the detached garage and its roof to be built to encroach into the required yard and open space. Further, the possible locations of a detached garage, is constrained by the location and the area utilized for the drainage easement. The parcel is encumbered by Drainage Easement "C-2," which has an area of 1,500 sq. ft. The easement includes an approximately 15 feet wide strip, about 120 feet long, running alongside the northwest and west property boundaries of the lot, and also includes an approximately triangular shaped portion located on the south west portion of the lot, extending about 75 feet to 90 feet from the southwest property boundary. The location and expansive area of the easement area limits the possible locations for a practical and functional garage on the property, and thus the present location of the detached garage meets the criteria that the location of the detached garage is constrained by the property's

special and unusual circumstances.

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

The Variance application meets criterion (b) for portion of the detached garage walls and roof eaves.

Alternatives available to the current owners to correct and/or address the building encroachments of the detached garage constructed into the affected side yards and open spaces of the subject property include the following action(s):

Remove the building encroachments and/or redesign the garage denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code. Although the present owners were aware that the detached garage was unpermitted, this alternative would be deemed unreasonable, especially when the owners had no part of the previous building permit process, and unpermitted construction. Any structural or design correction of the detached garage to meet setback and open space requirements would require demolition and new construction, or moving the structure, since attempting to alter the existing unpermitted detached garage in its present location, would not be practical and would result in unattractive reconstruction. Moving the structure would be problematic, because of the close proximity of a nearby storm drain inlet.

There are no reasonable alternatives to resolve the encroachment issue for the detached garage.

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 current owners of the existing detached garage to have any part in deliberately creating or intentionally allowing 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 22 years and was constructed under valid building permits and other construction permits issued by the County of Hawai'i. It is unclear when the unpermitted detached garage was built, but permits prior to and including 2014 did not include it, and the existence of the unpermitted detached garage was only made known to the current owners in 2018, prior to the present owner's acquisition of the property in August 2018. There is no record of neighbor complaints on the detached garage. In fact, Roger Gremminger and Kasem Nithipatikom, owners of the property (identified by TMK 6-5-007:084), immediately to the east of the subject property, in an email dated November 12, 2019, provided by the owners/agent, stated "This is to confirm that we do not have any objection to the existing garage near our property line." 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.

Therefore, the variance for the detached garage 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.

The variance request is **approved** for the portions of the existing garage, to remain at 4.95-foot and 4.44-foot side yard (southeast) setback, in lieu of the required 10-foot side yard setback and the roof eaves to remain at 2.68-foot and 2.06-foot side (southeast) open space, in lieu of the required 5-foot side (southeast) open space requirement.

GROUND FOR DENYING VARIANCE, IN PART, FOR VAR-19-000543
For the Two Detached Sheds

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.*

There are no special or unusual circumstance applying to the subject property, which would interfere with the best use of the property, if detached sheds of less than 120 square feet each were not allowed to be located within the required yard setback and open space areas. Even with the imposition of the drainage easement, the parcel still has approximately 8,514 square feet of useable area, for the main dwelling, a detached garage, and sufficient area for detached sheds of

less than 120 square feet each to be located outside of the yard and open space areas. It is not apparent and applicant has not provided substantive convincing documentation, of how not having two sheds, each with area of less than 120 square feet, would deprive the owner of substantial property rights, or would interfere with the best use of the property.

There were no building permits obtained for the two detached shed structures. According to Building Department records, the two structures identified as “sheds” were not included in the scope of work for building permit (986455) that was issued on December 23, 1998 which included a 2-car garage, 2 bedrooms, living room, 1-1/2 bath, kitchen, dining, and lanai. Further the two structures identified as “sheds” were not included building permit (BK2014-00457) which was issued on March 25, 2014, which was for a PV Roof mount system.

Alternatives

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

The Variance application does not meet the criterion (b) for:

- (1) The detached “shed” adjacent to the southeast property boundary of the subject parcel with a 6.17-foot and 6.83-foot side (southeast) yard and a 6.17-foot and 6.83-foot open side yard open space, in lieu of the required 10-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces, and .**
- (2) The detached “shed” adjacent to the northeast property boundary of the subject parcel with a 7.12-foot and 5.91-foot side (northeast) yard and 3.32-foot open side (northeast) yard open space requirement, in lieu of the required 10-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces, for the following reasons:**

The two unpermitted sheds were later added after the dwelling was built and without first obtaining building permits. The two sheds, while placed on concrete pads, are of minimal construction, and appear to be of low construction cost, especially in comparison to the construction of the main dwelling. The reasonable alternative is to remove the two unpermitted sheds or to move the two unpermitted sheds out of the minimum yards and open space areas.

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 does not allow to remain:

- (1) The detached “shed” adjacent to the southeast property boundary of the subject parcel with a 6.17-foot and 6.83-foot side (southeast) yard and a 6.17-foot and 6.83-foot open side yard open space, in lieu of the required 10-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces, and .
- (2) The detached “shed” adjacent to the northeast property boundary of the subject parcel with a 7.12-foot and 5.91-foot side (northeast) yard and 3.32-foot open side (northeast) yard open space requirement, in lieu of the required 10--foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces, for the following reasons:

A variance for the two sheds referenced above would be contrary to the intent and purposes of the Hawaii County Code, Chapter 25, zoning code.

The variance request for the portions of the “shed” alongside the southeast property boundary in the required yard setback and required open space is **denied**.

The variance request for the portions of the “shed” alongside the northeast property boundary in the required yard setback and required open space is **denied**.

PLANNING DIRECTOR’S DECISION AND VARIANCE CONDITIONS

Based on the variance application’s survey map, the approved detached garage will not meet the minimum side (southeast) yard setbacks and side (southeast) open space requirements pursuant to Hawai‘i County Code, Chapter 25, (Zoning Code).

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

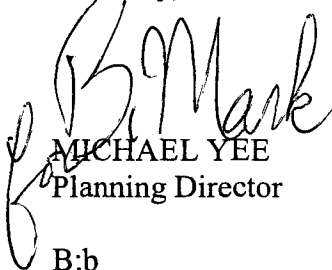
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai‘i harmless from and against any loss, liability, claim, or demand for the property 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 walls and roof overhangs (eaves) of the detached garage 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. (Exhibit "A")

4. The applicant/owner(s), successors or assigns shall relocate or remove the two shed structures identified in the variance application and shown on the survey map (Exhibit "A") as:
 - a. The detached "shed" adjacent to the southeast property boundary of the subject parcel which has a 6.17-foot and 6.83-foot side (southeast) yard and a 6.17-foot and 6.83-foot open side yard open space, in lieu of the required 10-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces.
 - b. The detached "shed" adjacent to the northeast property boundary of the subject parcel has a 7.12-foot and 5.91-foot side (northeast) yard and 3.32-foot open side (northeast) yard open space requirement, in lieu of the required 10-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces.
5. Relocation or removal of the two "shed" to meet the required 10-foot side yard setback, as required by Section 25-5-7, and the required 5.0-foot open space requirement as required by Section 25-4-44, Permitted projections yards and open spaces shall occur within one year from the effective date of Variance-19-000543.
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-19-000543.

Sincerely,


MICHAEL YEE
Planning Director

B:b

Zendo Kern
VAR-19-000543
TMK: (3) 6-5-007:083
February 19, 2020
Page 11

CC: w/attachment:

Feldchase Family Trust
Steven Chase and Marjorie Feldman, TRS
65-1214 Pono Lane
Kamuela, HI 96743

XC: w/o attachment:

DPW Building Division
DPW Engineering Division
Real Property Tax Office (Kona)
Gilbert Bailado, GIS

MAP SHOWING EXISTING CONDITIONS UPON
LOT 2-D-2

LOT NO. 3-C
6,874 Sq. Ft.

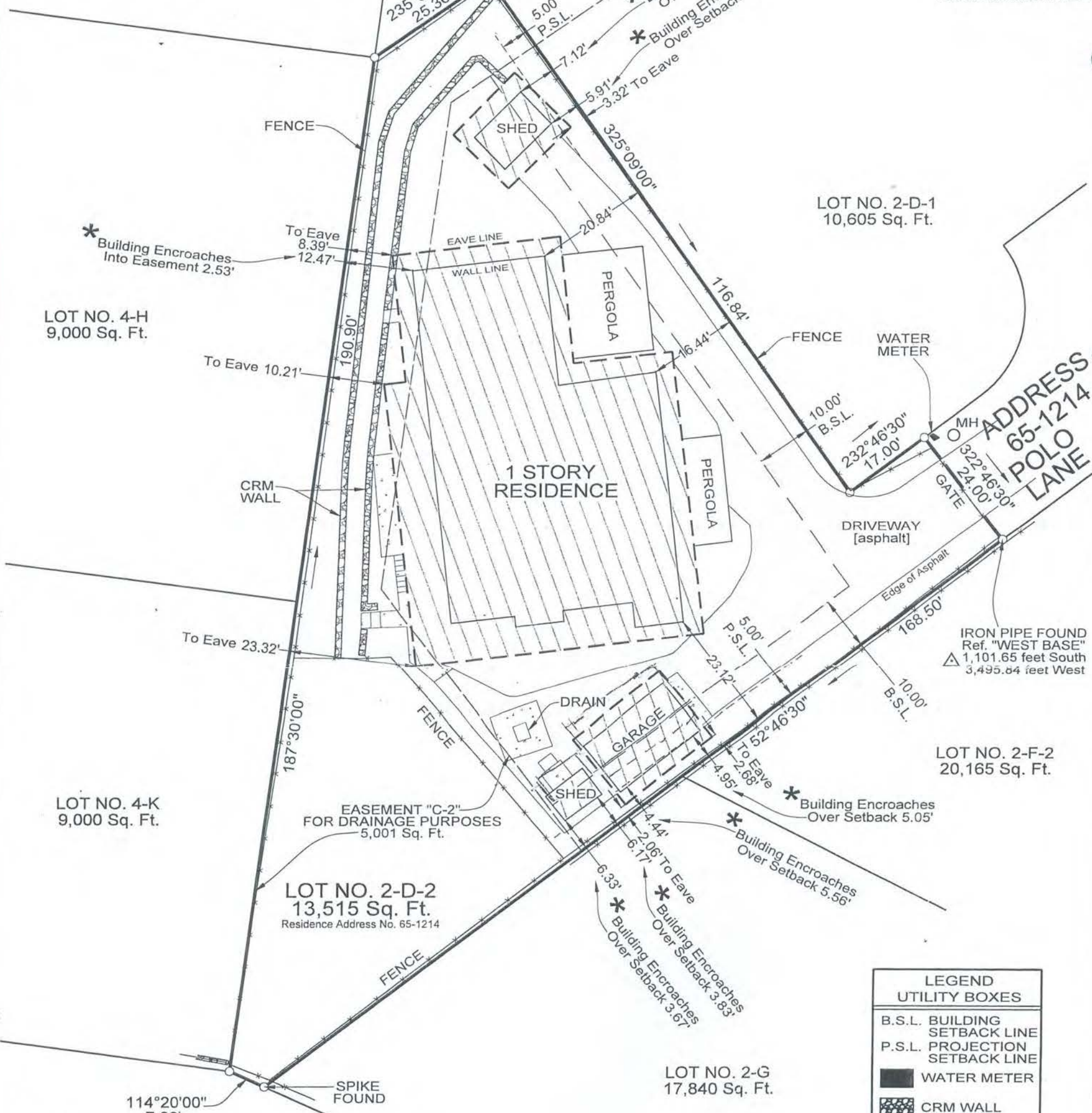
TRUE NORTH

of "ARAKAKI SUBDIVISION 2"

Being a Portion of Subdivision Map 6337 at Waimea,
South Kohala, County of Hawaii, State of Hawaii

TMK: (3)6-5-007:083

LOT NO. 4-F
8,491 Sq. Ft.



LOT NO. 4-H
9,000 Sq. Ft.

LOT NO. 2-D-1
10,605 Sq. Ft.

ADDRESS
65-1214
POLO LANE

IRON PIPE FOUND
Ref. "WEST BASE"
△ 1,101.65 feet South
3,495.84 feet West

LOT NO. 2-F-2
20,165 Sq. Ft.

LOT NO. 4-K
9,000 Sq. Ft.

LOT NO. 2-D-2
13,515 Sq. Ft.
Residence Address No. 65-1214

LOT NO. 2-G
17,840 Sq. Ft.

LOT NO. 13-A
1.732 Ac.

| LEGEND | |
|---------------|-------------------------|
| UTILITY BOXES | |
| B.S.L. | BUILDING SETBACK LINE |
| P.S.L. | PROJECTION SETBACK LINE |
| | WATER METER |
| | CRM WALL |
| | CONCRETE |
| | ASPHALT |

NOTES:

- 1) No boundary encroachments were found.
- * 2) Violations of County zoning set-back codes were found.
- 3) The distances shown between the property lines & the features, shown hereon, are based on selected found boundary monuments & acceptable tolerances for properties of this type.
- 4) The features, shown hereon, were located by an actual survey performed on the ground on July 31st, 2018.
- 5) See accompanying report pertaining to setbacks and encroachments.
- 6) CRM = Concrete, Rock & Masonry Wall

NOTE: BASIS OF AZIMUTH
DERIVED USING HEMISPHERE
GPS RTK SYSTEM

NOTE: ALL CORNERS ARE
FOUND 1/2" IRON PIPES UNLESS
OTHERWISE NOTED

NOTE: ALL AZIMUTHS & DISTANCES
ARE SHOWN
& MAPPED HEREON IN A
CLOCKWISE DIRECTION

I, Thomas G. Pattison, do hereby certify that this map is an accurate representation of a survey as made on the ground, by me, or under my direct supervision and that there are no apparent or visible encroachments or easements, known to me, except as shown and mapped hereon.

-COPY-

THOMAS G. PATTISON
August 4th, 2018--Job 18302
Hawaii License No. 10743

Setback Lines are shown from current data, but should be verified by builder. The description on this plat was provided to us by the client, and does not guarantee ownership, and should be compared to your Deed, Abstract or Certificate of Title. All building restrictions, building lines and easements may or may not be shown, check your Deed, Abstract, Title Report, and local ordinances, no responsibility is assumed by Surveyor. Compare all points before building by same and report any discrepancy at once. Dimensions are shown in feet and decimal parts thereof, no dimension is to be assumed by scaling.

PATTISON LAND SURVEYING, INC. 68-1125 North Kaniku Drive • Unit 906
Kamuela Hawaii 96743 • Phone 327-9439

EXHIBIT "A"