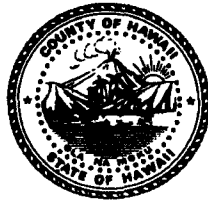


Harry Kim  
Mayor

Wil Okabe  
Managing Director

West Hawai'i Office  
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**County of Hawai'i**  
**PLANNING DEPARTMENT**

Michael Yee  
Director

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Deputy Director

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Fax (808) 961-8742

November 18, 2019

Anna Marie Chavira  
P.O. Box 606  
Kailua-Kona, HI 96745

Dear Ms. Chavira:

**SUBJECT: Application: Variance - VAR 19-000549**  
**Applicant: ANNA MARIE CHAVIRA**  
**Owners: DONALD EUGENE BOWERS**  
**TAMMY LEA BOWERS**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 1,**  
**Section 25-5-76, Minimum Yards Requirements**  
**(Encroachments into East Rear Yard Setback)**  
**Tax Map Key: 7-3-038:049 Lot B 122**

The Planning Director certifies the **approval** of Variance No. 19-000549, subject to variance conditions. The variance will allow portions of the dwelling walls to remain with minimum 14-foot rear (east) yard requirement, in lieu of the required 15-foot rear yard requirement. These exceptions are in lieu of the required 15-foot rear (east) yard requirement, as required by the Hawai'i County Code, Chapter 25, Zoning Code, Section 25-5-76, Minimum Yards Requirements.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property, Lot B 122, contains approximately 8,862 square feet and is situated within the "Kona Highlands", Subdivision, North Kona, Hawai'i. The subject property's street address is 73-1136 Pohu Place, Kailua-Kona, HI 96740.
2. **County Zoning.** Agricultural-five acre (A-5a).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 15 feet for front and rear and 8 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on September 17, 2019. The variance application's

survey map dated September 8, 2005 was prepared by Kevin McMillen, LPLS and denotes that portions of the dwelling walls are built into the rear (east) Yard requirement and (See Exhibit A-Site Plan)

The survey map dated September 8, 2005 shows a portion of the dwelling wall encroaching 1.0- with a minimum 14-foot rear (east) yard requirement, in lieu of the required 15-foot rear yard open space requirement. The encroachment leaves a minimum 14-foot rear (east) yard requirement, in lieu of the required 15-foot requirement.

6. **County Building Records.** Hawai'i County Real Property Tax (RPT) Office records indicate that a building permit (#906552) was issued on November 23, 1990 for a single-family dwelling with 3 bedrooms. Additional building, electrical and plumbing permits (E9151631, N9515334 and M2008-0430K) were issued on March 7 and July 9, 1991 associated with the dwelling. Additional electrical and building permits (EK2015-01744, BK2016-00107) were issued on July 13, 2015 and January 1, 2016, respectively, for a roof mounted photovoltaic system installation.
7. **Agency Comments and Requirements.**
  - a. State Department of Health (DOH) memo dated October 29, 2019. "The Health Department found no environmental health concerns with regulatory implications in the submittals."
  - a. Department of Public Works-Building Division (DPW) memo dated October 2, 2019. "Records show all permits are complete."
8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the second mailings of the first and second notices were mailed on October 12, 2019 and October 25, 2019, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 11, 2019.
9. **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 VARIANCES**

### **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 portion of the dwelling wall into the 15-foot rear (east) yard requirement as required by the Zoning Code.

The survey map dated September 8, 2005 shows a portion of the dwelling wall encroaching 1.0- with a minimum 14-foot rear (east) yard requirement, in lieu of the required 15-foot rear yard open space requirement. The encroachment leaves a minimum 14-foot rear (east) requirement, in lieu of the required 15-foot requirement.

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 original dwelling constructed in 1991, approximately 28 years ago, and it also appears that past building permit inspections of the premises by the affected agencies during construction of the dwelling improvements 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 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 side yard of the subject property include the following actions:

Remove the building wall 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 in compliance with 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 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 dwelling has been in existence for approximately 28 years and was constructed under valid building permits issued by the County of Hawai'i. 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 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 B 122") will not meet the minimum open space side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

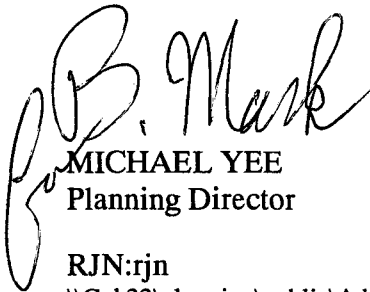
This variance application is approved subject to the following variance conditions:

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 roof overhangs (eaves) 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. An Ohana 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.
5. Future or new building improvements and permitted uses shall be subject to State law and County Ordinances and Regulations pertaining to building construction and building occupancy.
6. Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-19-000549.

Sincerely,

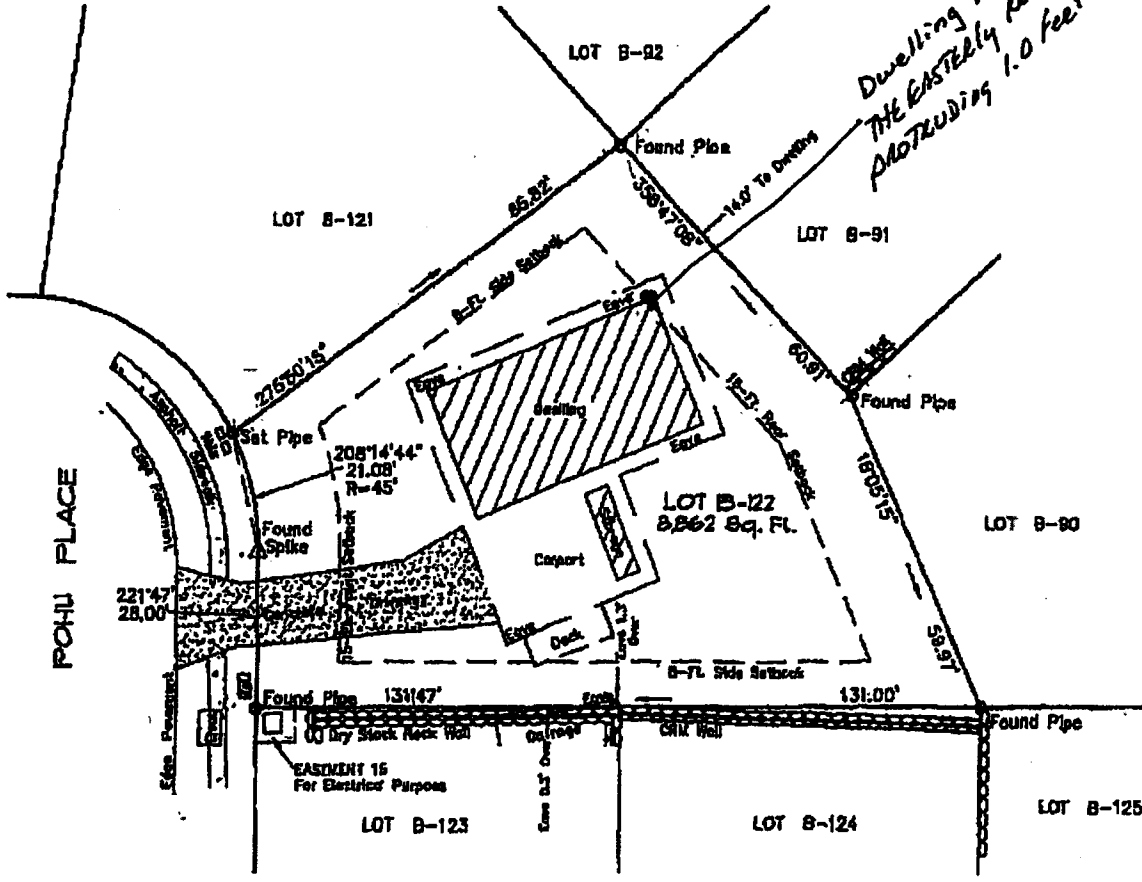


MICHAEL YEE  
Planning Director

RJN:rjn

\\Coh33\planning\public\Admin Permits Division\Variance\2019\VAR-19-000549 Bowers - Setback\apprvl -.doc

xc: Natalie Whitworth, DPW Engineering Division  
Real Property Tax Office (Kona)  
Gilbert Bailado, GIS



Dwelling point is 14.0 feet from  
 the easterly rear lot line, thus  
 protruding 1.0 feet into the 15.0 foot  
 rear setback.

POHU PLACE

**Notes:**

Azimuths and Coordinates are referred to Government Survey Triangulation Station "MOANAIKIA" A  
 The improvements shown hereon were located by an actual survey on the ground performed September 2, 2005.

**C-42 (DROA) SURVEY MAP  
 OF LOT B-122  
 KONA HIGHLANDS-SECTION B  
 FILE PLAN 1143**

AT KALAOA HI, NORTH KONA  
 ISLAND, COUNTY AND STATE OF HAWAII.  
 Tax Map Key (3rd Division) 1-9-36: 48



THIS WORK WAS PREPARED BY ME  
 OR UNDER MY SUPERVISION  
*Kevin McMillen*  
 DATE: 9/8/2005

**KKM SURVEYS**  
 75-5768 Makelina Place  
 Kailua-Kona, Hawaii 96740  
 Phone (808) 331-4433 Fax (808) 334-0098

Sep 08 05 12:42p

KKM Surveys "EXHIBIT A"

808-334-0098