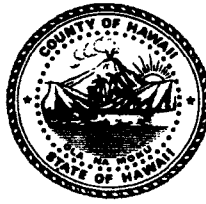


Harry Kim
Mayor

Roy Takemoto
Managing Director

West Hawai'i Office
74-5044 Ane Keohokālole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
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County of Hawai'i
PLANNING DEPARTMENT

Michael Yee
Director

April Surprenant
Acting Deputy Director

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

July 23, 2020

Zendo Kern
Kern and Associates
194 Wiwoole Street
Hilo, HI 96720

Dear Mr. Kern:

SUBJECT: Application: Variance - VAR 20-000577
Applicant: KERN AND ASSOCIATES
Owners: DEBORAH ANNE GOODWIN
Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-76, Minimum Yards Requirements and Section 25-4-44(a) Permitted Projections into Yards and Open Spaces (Encroachments into East Rear Yard and North Open Space Requirement)

Tax Map Key: (3) 6-5-010:025 Lot 30

The Planning Director certifies the **approval** of Variance No. 20-000577, subject to variance conditions. The variance will allow portions of the dwelling walls and roof eaves (overhangs) to remain with minimum 16.72-foot, 17.31-foot, 17.83-foot rear (east) yard setbacks in lieu of the required 20-foot rear (east) yard setback and 3.35-foot open space requirement in lieu of the required 5.0-foot side (north) open space requirement. These exceptions are in lieu of the required 20-foot rear (east) yard setback, and 5.0-foot side yard (north) open space requirement as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards requirements, and Section 25-4-44(a) Permitted Projections into Yards and Open Spaces.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 30, contains approximately 10,002 square feet and is situated within Portions of Waimea Homesteads, South Kohala, Hawai'i. The subject property's street address is 65-1235 Puuiki Place, Kamuela, HI 96743-8338.

2. **County Zoning.** Agricultural. (A-1a).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20 feet front and rear and 10 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on December 20, 2019. The variance application's survey map dated October 10, 2019 was prepared by Richard H. Cassera, LPLS and denotes that portions of the dwelling walls and roof overhangs (eaves) are built into the rear (east) yard setback and portion of the open lanai and stairs are encroaching into the side yard (north) open space requirement.. **(See Exhibit A-Site Plan)**

The survey map dated October 10, 2019 shows sections of the dwelling walls and roof eaves encroaching 3.28, 2.69, and 2.17-foot with a minimum 16.72-foot, 17.31-foot, 17.83-foot rear (east) yard setbacks, in lieu of the required 20 foot-rear yard setback and 3.35-foot side yard (north) open space requirement in lieu of the 5.0-foot open space requirement.

The encroachment leaves a minimum 16.72-foot, 17.31-foot, 17.83-foot rear (east) yard setbacks, in lieu of the required 20-foot front yard setback, and 3.35-foot north side yard open space requirement in lieu of the 5.0-foot open space requirement.

6. **County Building Records.** Hawai'i County Real Property Tax (RPT) Office records indicate that a building permit (#891256) was issued on June 27, 1989 for a three bedroom, 2-1/2 baths, garage/workshop on 1st floor, decks and related improvements for a single-family dwelling, and associated plumbing and electrical permits for the dwelling and workshop.
7. **Real Property Tax Records:** The Real Property Tax (RPT) Historical Field Books had a sketch that showed a new dwelling (896 sq.ft.) with a lanai's (390 sq.ft.) and workshop (483 square feet).
8. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) email dated April 3, 2020. "The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. Department of Public Works - Building Division – Memo dated March 18, 2020. (Attached.)
9. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on March 11, 2020 and

March 12, 2020, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 12, 2020.

10. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.
11. **Time Extension.** A 60-day Time Extension was granted on February 11, 2020, June 22, 2020 and June 30, 2020.

GROUND 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 dwelling walls and roof overhangs (eaves) into the 20-foot rear (east) yard setbacks and 5.0-foot north side open space requirement, as required by the Zoning Code.

The survey map dated October 10, 2019 shows sections of the dwelling walls and roof eaves encroaching 3.28, 2.69, and 2.17-foot with a minimum 16.72-foot, 17.31-foot, 17.83-foot rear (east) yard setbacks, in lieu of the required 20-foot-rear yard setback and 3.35-foot side yard (north) open space requirement in lieu of the 5.0-foot open space requirement.

The encroachment leaves a minimum 16.72-foot, 17.31-foot, 17.83-foot rear (east) yard setbacks, in lieu of the required 20-foot rear yard setback, and 3.35-foot north side yard (north) open space requirement in lieu of the 5.0-foot open space requirement.

According to the applicant, the encroachments were revealed during the survey performed for the recently purchased dwelling by Ms. Goodwin. On March 4, 2020, The Planning Department acknowledged receipt of the variance application with the survey. According to the applicant, based on the number of approved variances in the Kamuela Heights Subdivision built around the same time that were due to staking and siting errors. Further, the current owner did not build the dwelling and is seeking relief from setback requirements after the setback encroachments came to light after a survey was performed using modern techniques in preparation for sale of the property. According to the applicant, all alterations to the home, including enclosing the lower level garage and workshop were permitted and inspected (Building permit # 90082 issued on

1/19/1990).

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 improvements constructed in 1989, approximately 31 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 and roof overhang 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 30 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 30") will not meet the minimum rear yard setback and side yard (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:

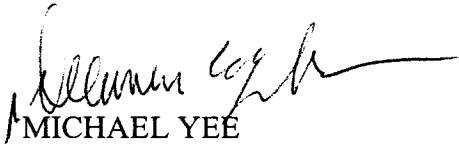
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai'i harmless from and against any loss, liability, claim, or demand for the property 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) 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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-20-000577.

Sincerely,



MICHAEL YEE
Planning Director

RJN:rjn

\\Coh33\planning\public\Admin Permits Division\Variance\2020\VAR-20-000577-Goodwin Setback\Approval.doc

Zendo Kern
Kern and Associates
July 23, 2020
Page 7

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

Deborah Anne Goodwin
65-1235 Puuiki Place
Kamuela, HI 96743-8338

DAVID Y. IGE
GOVERNOR OF HAWAII



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

PLANNING DEPARTMENT

BRUCE S. ANDERSON
74-5044-Anc KEO
Kailua-Kona, HI 96740

RECEIVED APR - 7 2020

MEMORANDUM

DATE: April 03, 2020

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

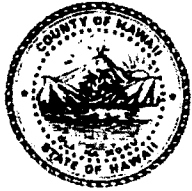
FROM: Eric Honda
District Environmental Health Program Chief

SUBJECT: Application: Variance VAR-20-000577
Applicant: KERN & ASSOCIATES
Owner: DEBRA ANNE GOODWIN
Request: Variance from Chapter 25, Zoning, Article 5 Division 1
Section 25-5-7 Minimum Yard Requirement and
Section 25-4-44, Permitted Projections into Yards and
Open Spaces
[Encroachment into East Rear Yard Setback and Open
Space Requirement]

TMK: (3) 6-5-010:125 s/b : 025

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

SCANNED
APR 07 2020
By: 132359



BUILDING DIVISION – DPW

COUNTY OF HAWAII – 101 Pauahi Street, Suite 7 – Hilo; Hawai'i 96720
Hilo Office (808) 961-8331 • Fax (808) 961-8410 Kona Office (808) 323-4720 • Fax (808) 327-3509

March 18, 2020

To: BENNETT MARK

SUBJECT: VAR 20-000577

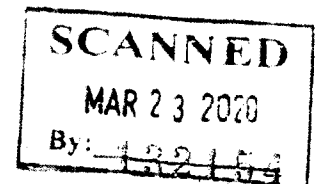
TMK: (3) 6-5-010:025

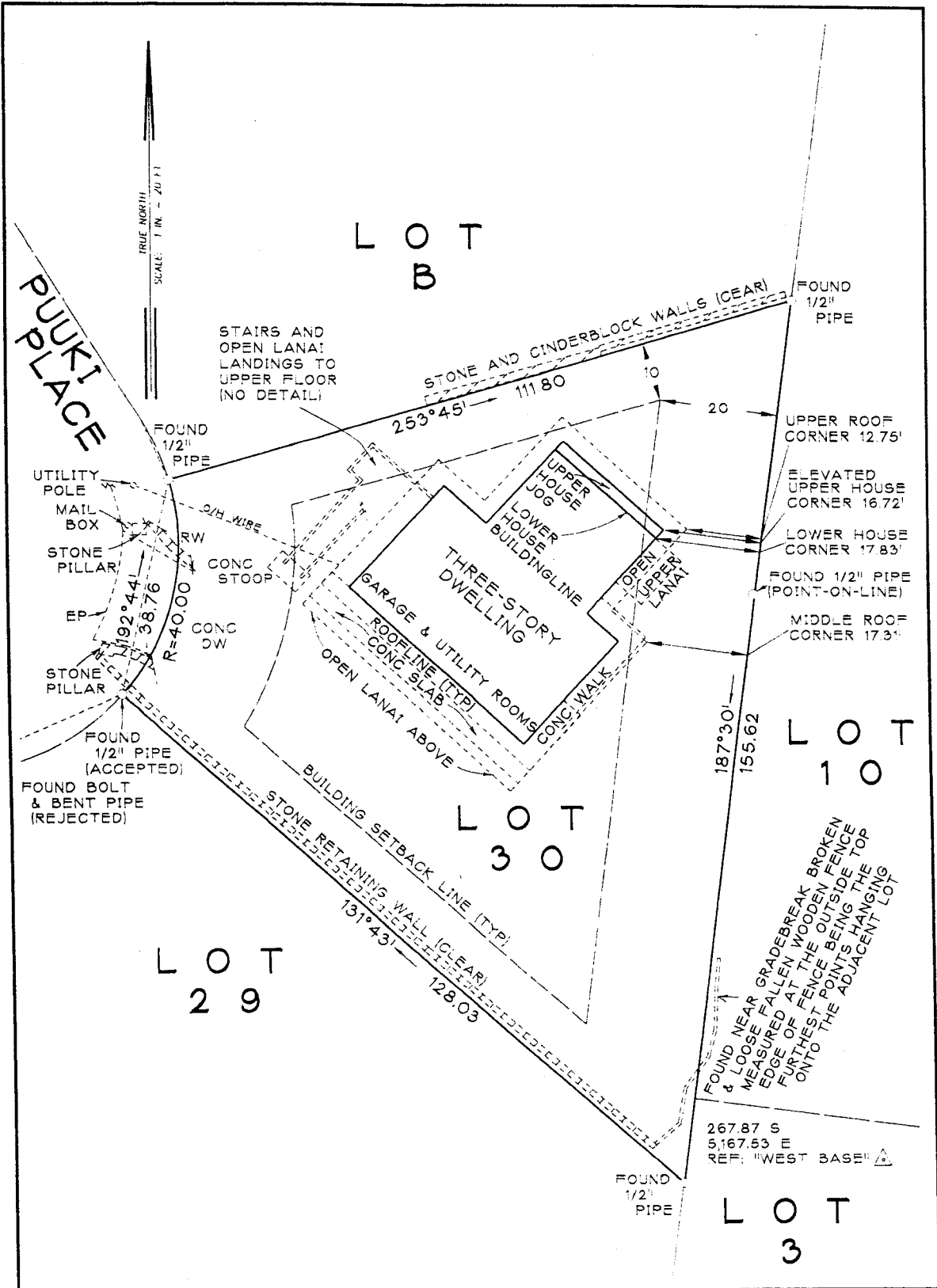
This is to inform you that our records on file, relative to the status of the subject discloses that:

- No _____ 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 with all building regulations that were in effect.
- Variance from any building regulation (Building, Electrical, Plumbing, or Sign) was/was not granted.
- The following violations(s) still outstanding:
 - Building
 - Electrical
 - Plumbing
 - Sign
- Others:

This status report reflects Building Division records only and does not include information from other agencies.

Should you have any questions regarding matters contained herein, please feel free to contact Owen Okamoto at phone no. (808) 323-4724





SURVEY (K-2)
OF LOT 30
 OF KAMUELA HEIGHTS
 ACCORDING TO FILE PLAN 977
 AT WAIMEA HOVESTEADS, WAIMEA,
 ISLAND OF HAWAII, HAWAII
 TMK: (3rd DIV) 6-5-10-25
 DATE OF SURVEY 10/10/2019

THIS WORK WAS PREPARED BY ME OR UNDER MY
 SUPERVISION, AT THE REQUEST OF
 WHITNEY HARVEY ON 10/7/2019.

Richard H. Cassera
 REGISTRATION No. 7275
 LAND COURT CERT. 243
 JOB NUMBER H-3009_HARVEY



"EXHIBIT A"

Figure 1



Figure 2a. Aerial photo of subject property looking north.



Figure 2b. Street view of subject property looking southeast.