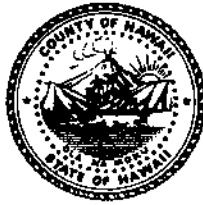


Harry Kim
Mayor

Roy Takemoto
Managing Director

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



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

September 25, 2020

Zendo Kern
Kern & Associates
194 Wiwoole Street
Hilo, Hawai'i 96720

Dear Zendo:

SUBJECT: Application: Variance – VAR-20-000590
Applicant: KERN & ASSOCIATES (ZENDO KERN)
Owner: JOHN LIVSEY AND LISA ZIAYA-LIVSEY
Variance from Chapter 25, Zoning, Article 5, Division 1
Section 25-5-7, Minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into Front (West) Yard
Setback.

Tax Map Key: (3) 2-4-013:116

The Planning Director certifies the **approval** of Variance No. 20-000590, subject to variance conditions. The variance will allow a portion of the attached garage to remain with a minimum front (west) yard setback ranging from 14.7 feet to 14.9 feet and associated roof eave projection ranging from 11.9 feet to 12.2 feet front (west) yard open space. These exceptions are in lieu of the required 20-foot front yard setback and 14-foot front yard open space, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 15,002 square feet and is situated in the Wainohia Subdivision, Waiākea Homesteads, 1st Series Waiākea South Hilo, Hawai'i. The subject property's street address is 83 Wainohia Street.
2. **County Zoning.** Single-Family Residential – 15,000 sq. ft. (RS-15).

3. **State Land Use Designation.** Urban.

4. **Setback Requirements.** 20 feet front and 10 for sides. Section 25-4-42, Corner building site (a) on any corner building site, the interior lines shall be side lot lines and all rear yard regulations shall be inapplicable.

5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on June 1, 2020. The variance survey map dated May 12, 2020, was prepared by Daniel Berg, LPLS (dlb & Associates), and denotes the position of the attached garage constructed into the minimum 20-foot front (west) yard setback, and associated roof eave constructed into the 14-foot front (west) yard open space.

The encroachment leaves the attached garage with a minimum front (west) yard setback ranging from 14.7 feet to 14.9 feet and associated roof eave projection ranging from 11.9 feet to 12.2 feet front (west) open space in lieu of the required 20-foot yard setback and 14 foot open space requirement. **(See attached survey map – Exhibit A)**

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that Building Permit BH2015-02457 was issued on December 17, 2015, for the construction of a single-family dwelling consisting of 3 bedrooms, 2 baths, living room, kitchen, dining area and garage. The building permit was finalized on October 3, 2016.

7. **Agency Comments and Requirements.**

a. State Department of Health (DOH) memorandum dated August 19, 2020: "The Health Department found no environmental health concerns with regulatory implications in the submittals."

b. No comments received from the Department of Public Works Building Division.

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 first and second notices were mailed on July 9, 2020, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on July 10, 2020.

9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

10. **Time Extension:** The applicant's variance application was acknowledged by letter dated July 1, 2020, and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to October 12, 2020.

GROUND FOR APPROVING VARIANCE

Special and Unusual Circumstances

- (a) *There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property.***

The Variance application meets criterion (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of the attached garage into the 20-foot front (west) yard setback and associated roof eave into the 14-foot side yard open space.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the attached garage constructed in 2015 and subsequent construction permits were issued and closed under valid building permit by the County for the existing enclosed garage. 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 the best use and development of the subject property.

Alternatives

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

The Variance application meets criterion (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected yard of the subject property include the

following actions:

To remove the building encroachments and/or redesign the existing single-family dwelling denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the attached garage was in compliance with all County requirements.

Because the encroachment is within the front yard setbacks, to consolidate the subject property with the adjacent rear yard side yard properties, which is owned by someone else, and re-subdivide the property to modify property lines and adjust minimum side yard setbacks are not viable options.

Both alternatives are not practical. Therefore, there are no reasonable alternatives to resolve the encroachment issue.

Intent and Purpose

(c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the General Plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The Variance application meets criterion (c) for the following reasons:

The intent and purpose of requiring building setbacks for a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

The variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties. The attached garage has been in existence for approximately 5 years and was constructed under valid building permits and other construction 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.

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 attached garage, built upon the subject property ("LOT 9") will not meet the minimum front (west) 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 existing attached garage 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" or Farm Dwelling permit shall not be approved for the subject property, subject to the provisions of the Hawai'i County Code, Chapter 25, Zoning or State law, which may change from time to time.
5. Future or new building improvements and permitted uses shall be subject to State laws and County Ordinances and Regulations pertaining to building construction and building occupancy.

Zendo Kern
Kern & Associates
September 25, 2020
Page 6

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void this Variance, VAR-20-000590.

Sincerely,



MICHAEL YEE
Planning Director
LHN:jaa

P:\Admin Permits Division\Variances From CoH02\Zone2\VAR20-000590 TMK 2401301160000 Livsey.doc

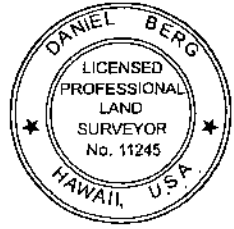
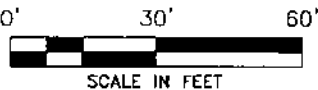
Enclosure: Exhibit A- Site Plan

cc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS (via email)

Boundary and Improvement Survey

Of Lot 9,
 Wainohia Subdivision,
 Portion Grants 11101 and 9387,
 Lot 515B Waialaea Homesteads Lots, 1st Series
 Waialaea, So. Hilo, Island and County of Hawaii.
 TMK(3) 2-4-013: 116

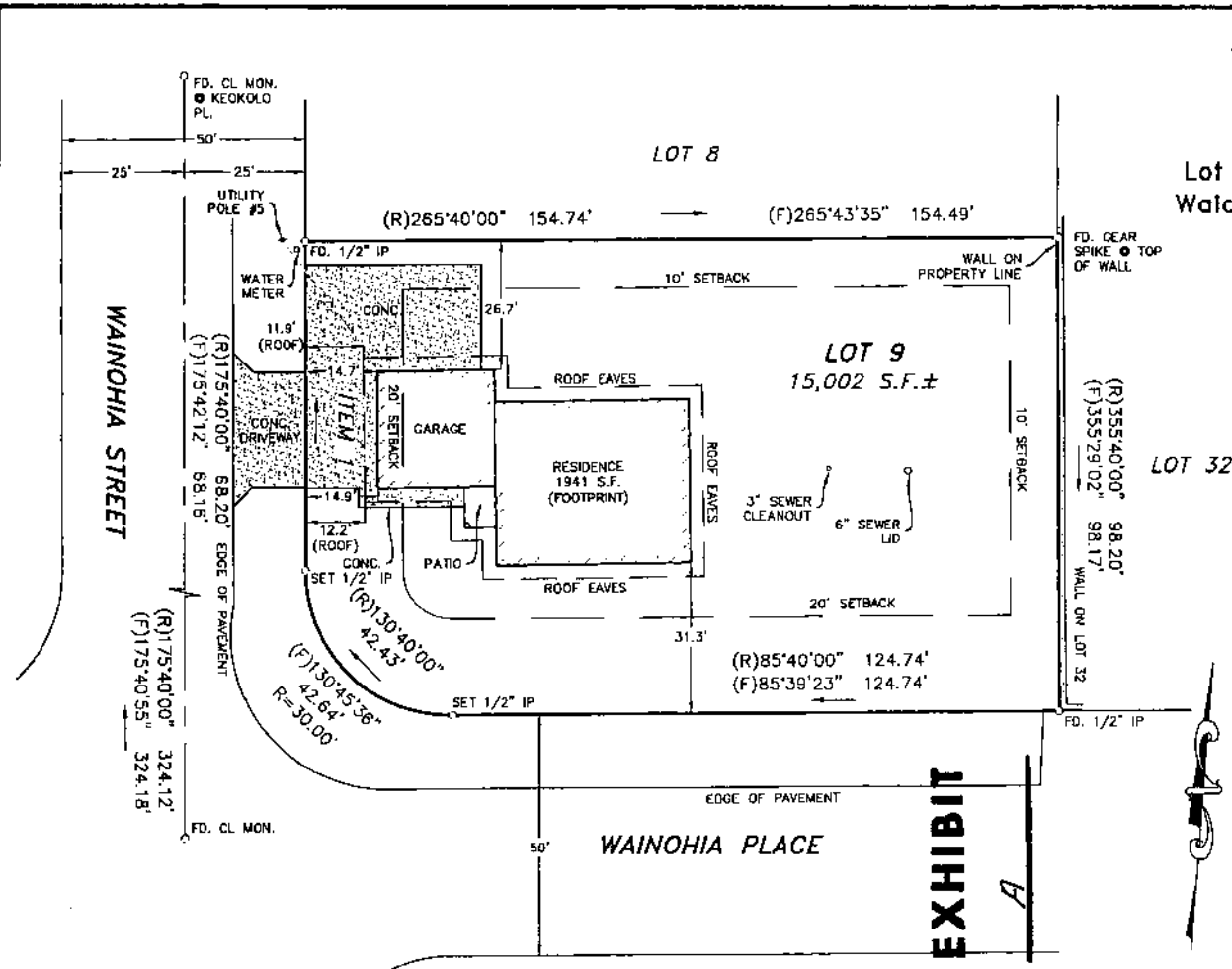
- NOTES:**
1. This K-2 field survey completed May 7, 2020.
 2. (F) indicates Field measured dimensions. Basis of Azimuths is a 'best-fit' of found (FD.) properly monuments to record positions. Std. Error = 0.13 ft. (n=20)
 3. (R) indicates Record dimensions per HCPD Subd. No.3732, Approved Jan. 1976 .
 4. This Map and attached Report were prepared for the transaction indicated, and should not be used for any other purpose.
 5. Intrusions and/or protrusions across boundaries or into zoning setbacks, if any, denoted as 'ITEM_' and described in the attached report.



This work was prepared by me or under my direct supervision.
Daniel L. Berg
 Daniel L. Berg
 PLS 11245



dlb & Associates
 LAND SURVEYING • MAPPING • CONSULTING
 P.O.Box 49-2281 Keaou, HI. 96749
 Ph.966-4206 Fx.82-6830
 www.dlbandassoc.com



Date: May 12, 2020
 Escrow: TG# 20147784
 Project: J2020-130
 8X14L