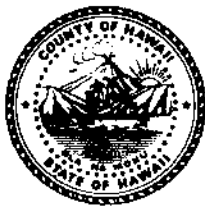


Mitchell D. Roth  
Mayor

Lee E. Lord  
Managing Director

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**County of Hawai'i**  
PLANNING DEPARTMENT

Zendo Kern  
Director

Jeffrey W. Darrow  
Deputy Director

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

January 19, 2021

Linda Ramos  
140 Mount Sinai Avenue  
Mount Sinai, NY 11766

Dear Ms. Ramos:

**SUBJECT: Application: Variance – VAR-20-000602**  
**Applicant: LINDA RAMOS**  
**Owners: RURIKO BESL**  
**Variance from Chapter 25, Zoning, Article 5, Division 3**  
**Section 25-5-36, Minimum Yards, and Section 25-4-44,**  
**Permitted Projections into Yards and Open Space Requirements**  
**(Encroachment into Rear (West) Yard Setback and the Side**  
**(South) Yard setback.**

**Tax Map Key: (3) 2-3-019:037**

The Planning Director certifies the **approval** of Variance No. 20-000602, subject to variance conditions. The variance will allow a portion of the three-story apartment building to remain with a 6.10-foot rear (west) yard setback, in lieu of the required 20-foot rear yard setback and an associated roof eave projection resulting with a 4.35-foot rear (west) yard open space in lieu of the required 14-foot open space requirement. It will also allow for the three-story apartment building to remain with a 9.30-foot side (south) yard setback in lieu of the required 12-foot (8 feet plus 2 feet for each additional story) side yard setback and an associated roof eave projection resulting with a 6.78-foot side (south) yard open space in lieu of the required 7-foot side yard open space requirement. These exceptions are in lieu of the required 20-foot rear yard setback and 14-foot rear yard open space and, in lieu of the required 12-foot (8 feet plus 2 feet for each additional story) side yard setback and the 7-foot side yard open space. As required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-36, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

The three (3) "as-built" sheds reflected on the survey map is excluded from this variance approval and has subsequently been demolished.

## **BACKGROUND AND FINDINGS**

1. **Location** The subject property contains approximately 15,605 square feet and is situated at Ponahawai, South Hilo, Hawai'i. The subject property's street address is 256 Kapi'olani Street.
2. **County Zoning.** Multiple Residential – 1,000 sq. ft. – 1 acre (RM-1).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** Front and Rear Yards, twenty (20) feet; and Side yards, eight (8) feet for a one-story building, plus an additional two (2) feet for each additional story.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on November 10, 2020. The variance site plan is drawn to scale, prepared by Niels Christensen LPLS (The Independent Hawai'i Surveyors, LLC), and denotes the position of the three (3) story apartment building encroaching into the 20-foot rear yard setback and 12-foot side yard setback. **(See Attached Site Plan – Exhibit A)**

The survey map shows a portion of the three-story apartment building with a 6.10-foot rear (west) yard setback, in lieu of the required 20-foot rear yard setback and an associated roof eave projection resulting with a 4.35-foot rear (west) yard open space in lieu of the required 14-foot open space requirement. It also shows a portion of the three-story apartment building with a 9.30-foot side (south) yard setback in lieu of the required 12-foot (8 feet plus 2 feet for each additional story) side (south) yard setback and associated roof eave with a 6.78-foot side yard open space in lieu of the required 7-foot open space requirement.

The survey map shows that a portion of the three-story apartment building encroaches 13.9 feet into the rear (west) yard setback and associated roof eave encroaches 3.65 feet into the 8-foot rear yard open space requirement. It also shows a portion of the three-story apartment building encroaches 2.7 feet into the 12-foot (8 feet plus 2 feet for each additional story) (south) side yard setback and associated roof eave encroaches 0.22 feet (2.64 inches).

6. **County Building Records.**
  - a. Building Permit – H53310 was issued on August 9, 1972, for the construction of a 15-unit, three-story apartment building.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) did not submit comments.

- b. Department of Public Works Building Division did not submit comments
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 December 2, 2020, and December 10, 2020, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on December 11, 2020.
  9. **Comments from Surrounding Property Owners or Public.**
    - a. Support letter received from Richard Alderson on December 21, 2020. (See Exhibit B)

### **GROUNDS 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 three-story apartment building into the 20-foot rear (west) yard setback and associated roof eave into the 14-foot rear yard open space, and into the 12-foot (8 feet plus 2 feet for each additional story) side yard setback and 7-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 three-story apartment constructed in 1972 and subsequent construction permits were issued and closed under valid building permit by the County for the existing three-story apartment building. 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 encroachments of the three-story apartment building constructed into the 20-foot rear yard and 12-foot side yard setback are limited.

Remove the building encroachments and/or relocate the three-story apartment building denoted on the site plan to fit within the correct building envelope as prescribed by the Zoning Code. Any structural or design correction of the three-story apartment building to meet setback requirement would leave unattractive reconstruction scars.

This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the three-story apartment building followed all County requirements.

Another alternative is to consolidate the subject property with the adjoining rear and side yard properties which are owned by another party, and to re-subdivide the property to modify property lines and adjust minimum yard setbacks.

Because the encroachment is within the rear and side yard setback, to consolidate the subject property with the adjacent rear and side yard property and re-subdivide the property to modify property lines and adjust minimum rear and side yard setbacks are not viable options.

Therefore, there are no reasonable alternatives to resolve the encroachment issue.

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 structural setbacks within a building site 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 two-story single-family dwelling has been in existence for approximately 48 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.

Therefore, the variance would be consistent with the general purpose of the zoning district to the area's character or to adjoining properties.

#### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

Based on the variance application site plan, the three-story apartment building situated on the subject property ("Lot 2-C") will not meet the minimum rear and 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 existing three-story apartment situated 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. 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.

Linda Ramos  
January 19, 2021  
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Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void this Variance, VAR-20-000602.

Sincerely,



*ZK*  
ZENDO KERN  
Planning Director

LHN:jaa

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Enclosure: Exhibit A- Survey Map  
Exhibit B – Support Letter from Richard Alderson

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



Dec 15, 2020

COH PLANNING DEPT  
DEC 21 2020 11:21:42

REC'D BY MAIL

Planning Director  
County Planning Dept.  
101 Pauahi St., Ste 3  
Hilo HI 96720

Re: Variance application for setbacks @ 256 Kapiolani St.  
Hilo HI (CMK 2-3-09-037), Kapiolani Apartments

Dear Director,

As neighboring property owner I have no objections  
to approval of the above referenced variance  
application and support it's approval as  
written.

Thank you



Richard Alderson, trustee  
PO Box 1166  
Hakalan HI 96710

**EXHIBIT**  
B

**SCANNED**  
DEC 22 2020  
132645  
By: \_\_\_\_\_