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March 9, 2021

Jason R. Dela Cruz
Phuong D. Schmidt
P.O. Box 439
Honomū, Hawai'i 96728

Dear Jason & Phuong:

SUBJECT: Application: Variance – VAR-21-000611
Applicant: JASON DELA CRUZ & PHUONG D. SCHMIDT
Owners: JASON DELA CRUZ & PHUONG D. SCHMIDT
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 (South) Yard
Setback.

Tax Map Key: (3) 2-6-014:017

The Planning Director certifies the **approval** of Variance 21-000611, subject to conditions. The variance will allow the following:

- a. The single-family dwelling to remain with a minimum 22.9-foot front (south) yard setback, in lieu of the required 27.5-foot (15 feet + 12.5 feet future road widening setback) front yard setback.
- b. The patio to remain with a minimum 14.8-foot front (south) yard open space in lieu of the required 22.5-foot (10 feet + 12.5 feet future road widening setback) front yard open space requirement.
- c. The 'ohana dwelling's open carport to remain with a minimum 16.9-foot front (south) yard open space in lieu of the required 22.5-foot (10 feet + 12.5 feet future road widening setback) front yard open space requirement.

These exceptions are in lieu of the required 15-foot front yard setback and 10-foot front yard open space as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yard, Section 25-4-44 (a), Permitted projections into yards and open space requirements and Section 25-3-8, Legal effect of establishment of building lines, future width lines and plan lines.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 14,867 square feet and is situated in the Bella Vista Tract, South Hilo, Hawai'i. The subject property's street address is 7 Vierra Lane.
2. **County Zoning.** Single-Family Residential – 7,500 sq. ft. (RS-7.5).
3. **State Land Use Designation.** Urban.
4. **Special Management Area (SMA).** Yes
5. **Setback Requirements.** 15 feet front and 8 feet for sides. **Section 25-4-42. Corner building sites.** (a): On any building site, the interior lines shall be side lot lines and all rear yard regulations shall be inapplicable.
6. **Future Road Widening. Section 25-3-8. Legal effect of establishment of building lines, future width lines and plan line.** (b) When a future width line is established on the zoning map, the future width line shall be considered to be the front line of the affected property. The area between the future width line and the street (if outside the right-of-way) shall be deemed to be the street right-of-way and cannot be considered in computing the minimum yard required on any building site.
7. **'Ohana Dwelling:** Ohana Dwelling Permit (OD 93-84) approved on April 19, 1993.
8. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on January 20, 2021. The variance revised survey map dated February 24, 2021, was prepared by Ronaldo B. Aurelio, LPLS and denotes the position location of structures situated on the subject property. **(See Exhibit A-Site Plan)**

The survey map shows the following setbacks:

- a. The single-family dwelling to remain with a minimum 22.9-foot front (south) yard setback, in lieu of the required 27.5-foot (15 feet + 12.5 feet future road widening) front yard setback.
- b. The patio to remain with a minimum 14.8-foot front (south) yard open space in lieu of the required 22.5-foot (10 feet + 12.5 feet future road widening) front yard open space requirement.
- c. The 'ohana dwelling's open carport to remain with a minimum 16.9-foot front (south) yard open space in lieu of the required 22.5-foot (10 feet + 12.5 feet future road widening) front yard open space requirement.

The survey map shows the following encroachment:

- a. The single-family dwelling encroaches 4.6 feet into the 27.5-foot (15-foot set back + 12.5 feet future road widening setback) front (south) yard setback.
 - b. The open patio encroaches 7.7 feet into the 22.5-foot (10-foot open space + 12.5 feet future road widening setback) front (south) yard open space requirement.
 - c. The 'ohana dwelling's open carport encroaches 0.6 feet (7.2 inches) into the 22.5-foot (10-foot open space + 12.5 feet future road widening setback) front (south) yard open space requirement.
9. County Building Records. Hawai'i County Real Property Tax Office records indicate that the following building permits were issued.
- a. Building Permit 930511 issued on March 24, 1993, for the construction of a single-family dwelling, consisting of 3 bedrooms, 2 -1/2 bath, living area and kitchen, with two-car carport. Permit finalized on June 24, 1993.
 - b. Building Permit 931000 issued on June 2, 1993, for the construction of a single-family dwelling ('Ohana Dwelling), consisting of 2 bedrooms, 1 bath, living area and kitchen, with two-car garage. Permit finalized on September 7, 1993.

10. Agency Comments and Requirements.

- a. No comments have been received by the State of Hawai'i – Department of Health (DOH).

- b. The Department of Public Works, Building Division (DPW) memorandum dated January 20, 2021. "No Objections."
11. **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 January 20, 2021, and February 5, 2021, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on February 12, 2021.
12. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

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 single-family dwelling, open patio and 'ohana dwelling's open carport into the 27.5-foot (south) front yard setback and 22.5-foot front (south) 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. Building Permit 930511 issued on March 24, 1993, for the construction of a single-family dwelling, consisting of 3 bedrooms, 2 -1/2 bath, living area and kitchen, with two-car carport. Permit finalized on June 24, 1993. Building Permit 931000 issued on June 2, 1993, for the construction of a single-family dwelling ('Ohana Dwelling), consisting of 2 bedrooms, 1 bath, living area and kitchen, with two-car garage. Permit finalized on September 7, 1993. It appears that building permit inspections of the premises by the affected agencies during construction of the single-family dwellings' improvements did not disclose any building encroachment issues or building setback irregularities at that time.

Based on the above-mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of 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 proposed building encroachments of the single-family dwelling constructed into the 27.5-foot (15-foot front yard setback + 12.5-foot future road widening) front yard setback are limited.

One option, as stated earlier would be to move the single-family dwelling further back away from the roadway to meet the setback requirement; however, this would cause the single-family dwelling to encroach into the side yard setbacks.

Because the encroachment is within the front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front 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 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.

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. Furthermore, 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.

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.

Based on the above findings, granting of the variance would be consistent with the criteria and intent of approving a variance.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the single-family dwelling, open patio, and the 'ohana dwelling's open carport built upon the subject property ("LOT 6-A") will not meet the minimum front (south) yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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

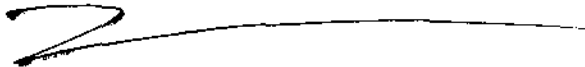
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai'i harmless from and against any loss, liability, claim, or demand for the property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

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void this Variance, VAR-21-000611.

Sincerely,



ZENDO KERN
Planning Director

LHN:jaa

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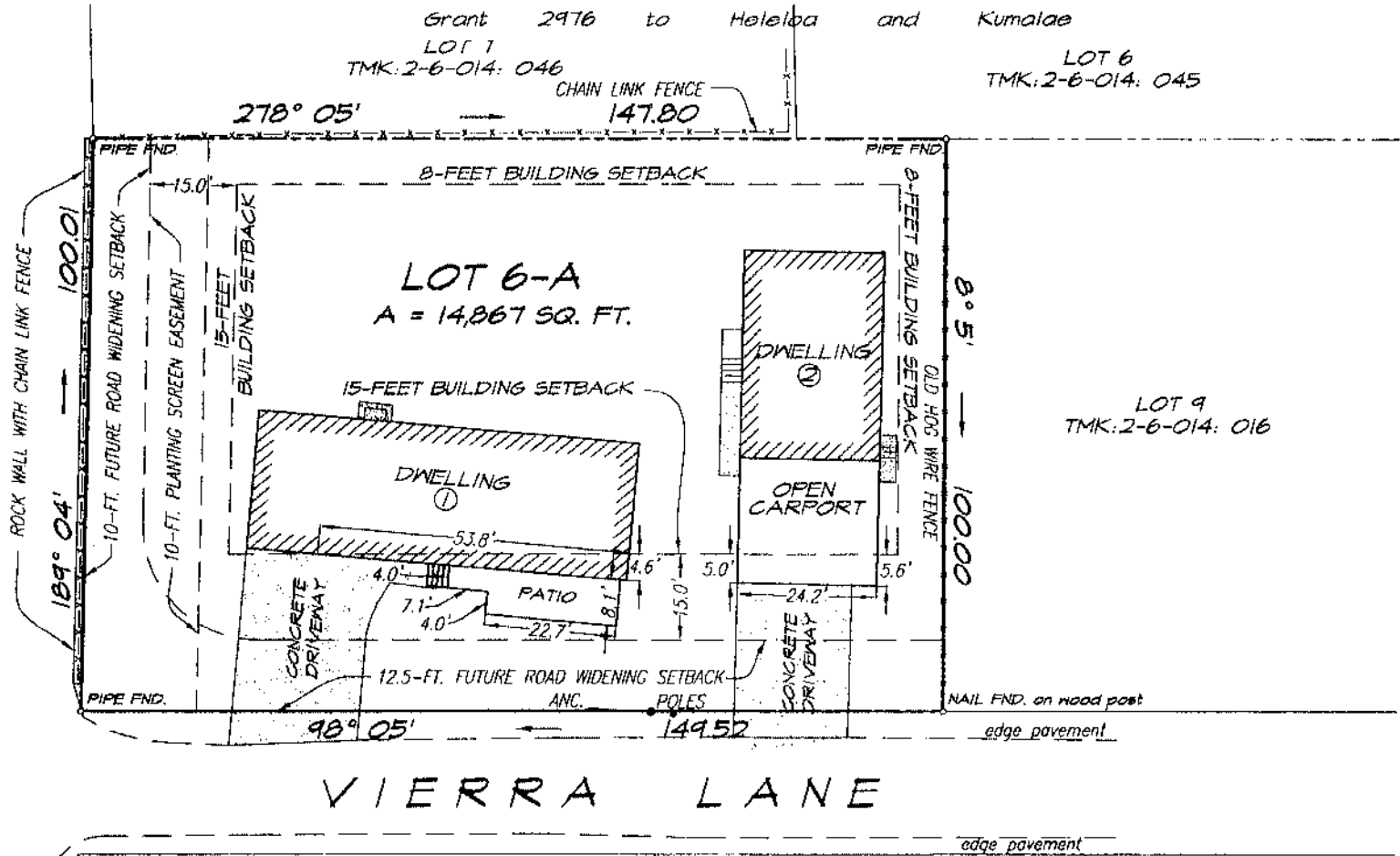
Enclosure: Exhibit A- Site Plan

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

TRUE NORTH
SCALE: 1" = 30'

EXHIBIT
A

WAINAKU STREET



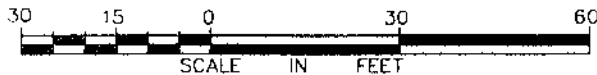
NOTE:

- All boundary corners were marked and verified on the ground in accordance with the record data of Lot 6-A.

MAP SHOWING K-2 SURVEY

THE PREMISES OF LOT 6-A

BEING THE CONSOLIDATION OF LOTS 6, 7 AND 8 OF THE
"BELLA VISTA TRACT"
BEING A PORTION OF GRANT 2979 TO KAPU
HALEPUNA, SOUTH HILO, ISLAND OF HAWAII, HAWAII
TAX MAP KEY: 3RD DIV. 2-6-014: 017



This work was prepared by me
or under my direct supervision.

Ronaldo B. Aurelio

Licensed Professional Land Surveyor
Certificate Number 7564
Expires April 30, 2022

REVISED2: FEBRUARY 24, 2021
REVISED: JANUARY 4, 2021
JANUARY 9, 2021

DATE OF SURVEY: JANUARY 9, 2021