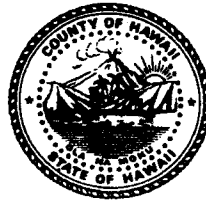


Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

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County of Hawai'i
PLANNING DEPARTMENT

Zendo Kern
Director

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Deputy Director

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June 9, 2021

Kim Chiodo
Land Planning Hawaii LLC
194 Wiwoole Street
Hilo, HI 96720

Dear Ms. Chiodo:

Application: Variance - VAR-21-000613
Applicant: LAND PLANNING HAWAII LLC
Owners: PRAKASH KRISHIN BHATIA
POONAM PRAKASK BHATIA
Request: Variance from Chapter 25, Zoning, Article 5,
Division 1, Section 25-5-7 Minimum yards requirements
(Encroachment into Southeast Front Yard Setback)
Tax Map Key: (3) 7-5-018:067 Lot C-2

The Planning Director certifies the **approval** of Variance No. 21-000613, subject to variance conditions. The variance will allow portions of the dwelling walls to remain with minimum 18.6-foot front (southeast) yard setback, in lieu of the required 20.0-foot side yard setback. This exception is in lieu of the required 20.0-foot front (southeast) yard setback, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot C-2, contains approximately 10,563 square feet and is situated within Por. Of Puaa 3rd. – Waiaha 2nd, Subdivision of Lot C into Lots C-1 and C-2, N. Kona, Hawai'i. The subject property's street address is 75-5918 Alii Drive, Kailua-Kona, HI 96740.
2. **County Zoning.** Single-Family Residential District (RS-10).
3. **State Land Use Designation.** Urban.

4. **Setback Requirements.** 20-foot front and 10 feet for sides, and 40-foot shoreline setback.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on October 27, 2020. The variance application's survey map dated June 28, 2016, was prepared by Crystal T. Yamasaki, LPLS and denotes that portion of the one-story single-family dwelling walls are built into the front (southeast) yard setback. (See Exhibit A-Site Plan)

The survey map dated June 28, 2016, portions of the one-story single-family dwelling walls are built into the front (southeast) yard setback, encroaching 1.4-feet into the 20.0-foot side yard with a minimum 18.6-foot front (southeast) yard setback, in lieu of the required 20-foot side yard setback.

The encroachment leaves a minimum 18.6-foot front (southeast) yard setback, in lieu of the required 20.0-foot front (southeast) yard setback, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements.

6. **County Building Records.** Hawai'i County Real Property Tax (RPT) Office Historical records indicate that a building permit (#21228) was issued on December 5, 1959 for a new one-story dwelling and a patio.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) – No comments received as of this date.
 - b. Department of Public Works - Building Division – No comments received as of this date.
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 February 18, 2021, and February 22, 2021, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 26, 2021.
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.
10. **Time Extension.** A time extension request was granted on March 23, 2021, April 19, 2021, and May 26, 2021.

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 portions of the one-story dwelling walls into the 20.0-foot front (southeast) yard setback, as required by the Zoning Code.

The survey map dated June 28, 2016, portions of the one-story single-family dwelling walls are built into the front (southeast) yard setback, encroaching 1.4-feet into the 20.0-foot side yard with a minimum 18.6-foot front (southeast) yard setback, in lieu of the required 20-foot side yard setback.

The encroachment leaves a minimum 18.6-foot front (southeast) yard setback, in lieu of the required 20.0-foot front (southeast) yard setback, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements.

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 was constructed in 1960, approximately 61 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.

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 encroachments and/or redesign the southwesterly portions of the second story of 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 original dwelling has been in existence for approximately 61 years and was constructed under valid building permits issued by the County of Hawai'i. However, at some point prior to the applicant's purchase of the subject property, unpermitted improvements to the dwelling were made including converting a portion of the structure which had previously been permitted as a garage into 2-bedrooms and a bathroom. In the process of preparing as-built permits for these dwelling alterations, the setback encroachment was discovered. Due to the efforts of the owners to resolve the unpermitted improvements that resulted in the encroachment, 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 C-2") will not meet the minimum side (west) yard and side yard (west) open 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.

Kim Chiodo
Land Planning Hawaii LLC
June 9, 2021
Page 6

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-21-00613.

Sincerely,



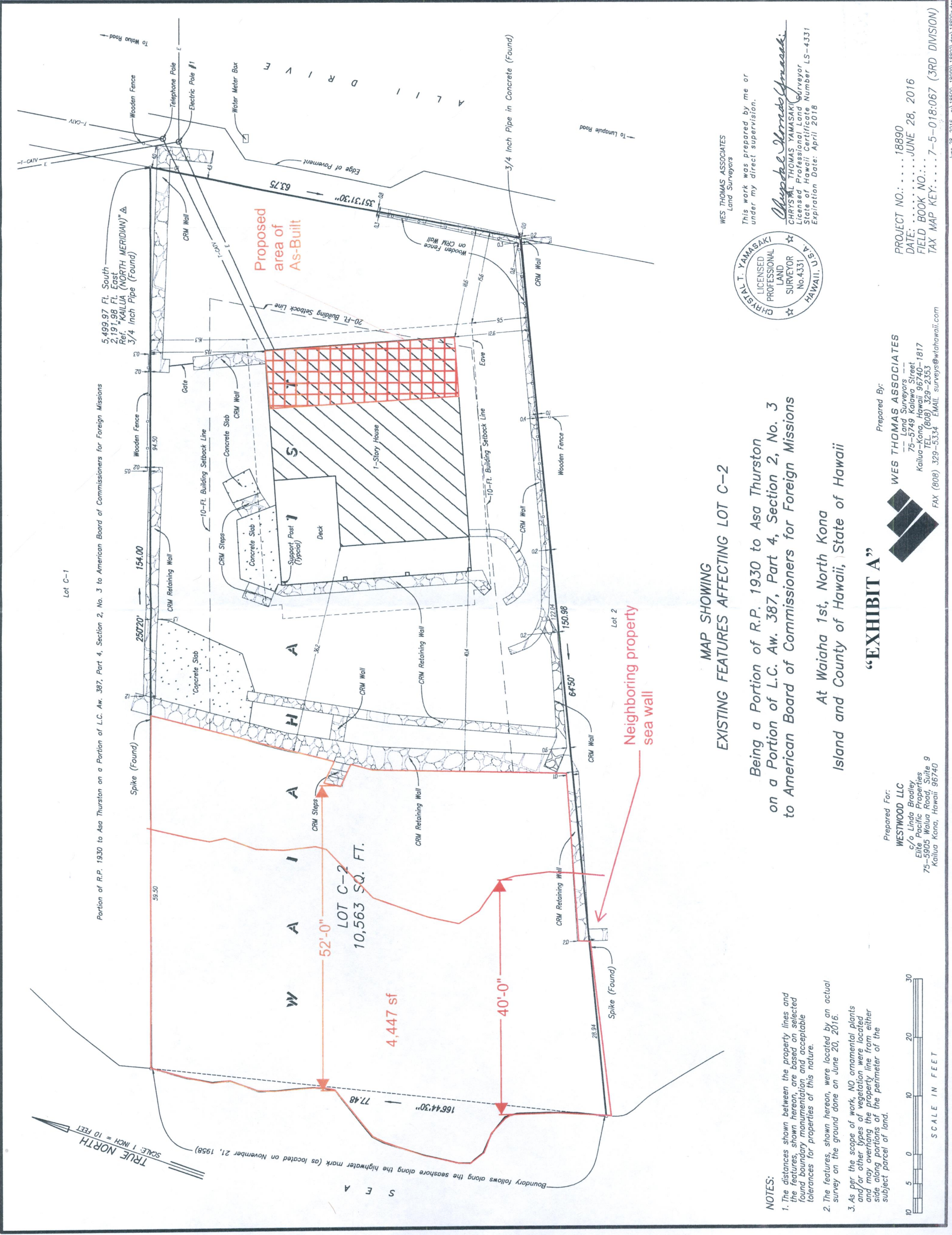
JEFFREY W. DARROW
Deputy Planning Director

RJN:rjn

\\COH01\planning\public\Admin Permits Division\Variance\2021\VAR-21-000613 Bhatia - setback\Bhatia - approval.doc

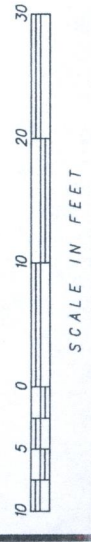
xc: DPW Engineering Division (Kona)
Real Property Tax Office (Kona)
Gilbert Bailado, GIS

Prakash K. Bhatia
Poonam P. Bhatia
10756 Cherry Hill Drive
San Diego, CA 92130-6936



NOTES:

- The distances shown between the property lines and the features shown hereon, are based on selected found boundary monumentation and acceptable tolerances for properties of this nature.
- The features shown hereon, were located by an actual survey on the ground done on June 20, 2016.
- As per the scope of work, NO ornamental plants and/or other types of vegetation were located and may overlie the property line from either side along portions of the perimeter of the subject parcel or land.



MAP SHOWING EXISTING FEATURES AFFECTING LOT C-2

Being a Portion of R.P. 1930 to Asa Thurston on a Portion of L.C. Aw. 387, Part 4, Section 2, No. 3 to American Board of Commissioners for Foreign Missions

At Waiaha 1st, North Kona Island and County of Hawaii, State of Hawaii

“EXHIBIT A”

Prepared For:
WESTWOOD LLC
 C/o Linda Bradley
 Elite Pacific Properties
 75-5905 Waiala Road, Suite 9
 Kailua Kona, Hawaii 96740

Prepared By:
WES THOMAS ASSOCIATES
 Land Surveyors
 75-5749 Kalawa Street
 Kailua-Kona, Hawaii 96740-1817
 TEL. (808) 329-2353
 FAX (808) 329-5334 EMAIL: surveys@wtaohawaii.com



WES THOMAS ASSOCIATES
 Land Surveyors
 This work was prepared by me or under my direct supervision.

Chrysal T. Yamasaki
CHRYSAL THOMAS YAMASAKI
 Licensed Professional Land Surveyor
 State of Hawaii Certificate Number LS-4331
 Expiration Date: April 2018

PROJECT NO.: 18890
 DATE: JUNE 28, 2016
 FIELD BOOK NO.:
 TAX MAP KEY: 7-5-018:067 (3RD DIVISION)