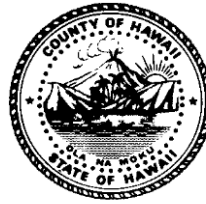


Mitchell D. Roth  
Mayor

Lee E. Lord  
Managing Director

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



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

## County of Hawai'i

### PLANNING DEPARTMENT

November 23, 2021

Timothy Publico  
Drafting & Designs  
P.O. Box 36  
Pepeekeo, HI 96783

Dear Timothy Publico:

**SUBJECT: Application: Variance – VAR-21-000623**  
**Applicant: Timothy Publico, Drafting & Designs**  
**Owner: Jaiya Leroy Kalei DeCosta & Tiffany Noelani Amas**  
**Request Variance from Chapter 25, Zoning, Article 5 Division 10, Section 25-5-76 Minimum Yards and Article 4, Division 4, Section 25-4-44(a) Permitted Projections into Yards and Open Space Requirements (Encroachment into Front & Side Yard Setback and Front & Side Yard Open Space)**  
**Tax Map Key: 6-4-026:046**

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The Planning Director certifies the **approval** of Variance No. 21-000623, subject to variance conditions. The variance will allow the existing one-story structure with an attached carport located 14'-4½" with a roof eave that is 12'-0" from Hohola Drive Property line and a detached garage with a screened in lanai located 5'-0" with a roof eave that is 4'-6" feet from the eastern property line to remain.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property is a 15,013 square foot corner parcel located off of Puu Ohu Place and Hohola Drive in Waimea, South Kohala. The subject property's street address is 64-5318 Hohola Drive, Kamuela, Hawaii. Designated as Tax Map Key: (3) 6-4-026:046.
2. **Zoning.** Agriculture – (A-1a).
3. **State Land Use.** Agriculture.
4. **Required Setback.** 20-foot front and 10-foot side yards of the property. Section 25-5-77, Other requirements for yards and open space: (a) On every building site, yards of the minimum width or depth as specified for the established zoning district shall be maintained open and unobstructed from the ground up, except as specified in sections 25-4-40 through 25-4-47.

5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on April 14, 2021, and other submittals related to the variance request and variance application. **(See application)**
6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that the following building permits were issued for the buildings on property B2011-0174K (3/10/2011) and B2011-0289K (4/12/2011).
7. **County Planning Department Records.**
  - a. Zoning Complaint – ZCV 2019-011W – Complaint closed 3/28/2019.
8. **Agency Comments and Requirements.**
  - a. No Comments Received
9. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notices mailed to surrounding property owners (including affidavits) by USPS. According to these submittals, the first and second notices were mailed on October 13, 2021 and October 15, 2021 respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on May 12, 2021.
10. **Comments from Surrounding Property Owners or Public.**
  - a. Comment of Opposition received from Thomas Aitken, received 11/4/2021.

#### **ANALYSIS OF GROUNDS FOR VARIANCE**

**No variance will be granted unless it is found that:**

1. *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 criteria for the following reasons:**

The applicant states that the property is “very sloped” and the weather in Waimea is the basis for the changes and improvements made to the parcel. The detached garage is located on the bottom of the slope and the navigation from the garage to the house became unsafe for the residents, especially during certain weather situations. To address this the owner built the carport on the side of the dwelling, without a building permit, which has now become enclosed because of the weather. The configuration of the parcel along Hohola Drive is curved, so the location of the enclosed carport was located within the setback.

The detached garage use has been changed, because of the enclosed carport, to a personal workshop by the owner and he has added a screened in storage area along the eastern side of the garage, this addition has also been because of the weather.

The above special and unusual circumstances exist to a degree which if the variance was not granted would obviously interfere with the best use or manner of development of the property.

**2. *There are no other reasonable alternatives that would resolve the difficulty.***

**The variance application meets criteria for the following reasons:**

The applicant states that substantial renovations would be needed to address the situations so that the structural integrity would not be compromised. The proposed renovation would come at a great expense and practical difficulty to the owners.

**3. *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 criteria for the following reasons:**

The variance will not affect the light and air circulation nor will it affect direct access to fire and emergency vehicles. The impact to the area's character are minimally impacted as the encroachments are not visually obtrusive.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance is 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 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.

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

Based on the variance application's site map, the request to will allow the existing one story structure with an attached carport located 14'-4½" with a roof eave that is 12'-0" from Hohola Drive Property line and a detached garage with a screened in lanai located 5'-0" with a roof eave that is 4'-6" feet from the eastern property line to remain.

This variance request is **approved** subject to the following 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 structures 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

Drafting & Designs for Jaiya DeCosta & Tiffany Amas

November 23, 2021

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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 Law and County Ordinances and Regulations pertaining to building construction and occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-21-000623 null and void.

Sincerely,

*Zendo Kern*

Zendo Kern (Nov 24, 2021 09:47 HST)

ZENDO KERN  
Planning Director

DEB:deb

P:\public\Admin Permits Division\Variance\2021\VAR-21-000623 TMK 6-4-026-046 Drafting & Designs for DeCosta

cc: West Hawaii Office