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## County of Hawai'i PLANNING DEPARTMENT

Zendo Kern  
Director

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July 26, 2021

Daniel Berg  
dlb & Associates  
P. O. Box 492281  
Kea'au, Hawai'i 96749

Dear Mr. Berg:

**SUBJECT: Application: Variance – VAR 21-000630**  
**Applicant: DANIEL BERG, DLB & ASSOCIATES**  
**Owner: HAWAII PROSPER, LLC**  
**Request: Variance from Chapter 25, Zoning, Article 5 Division 7,  
Section 25-5-76 Minimum Yards, Article 4, Division 4,  
Section 25-4-44(a) Permitted Projections into Yards and  
Open Space Requirements (Encroachment into Southeast Side  
Yard Setback)**

**Tax Map Key: (3) 1-5-021:008 (Lot 1499)**

The Planning Director certifies the **approval** of Variance 21-000630, subject to conditions. The variance will allow a portion of the single-family dwelling to remain with a minimum side (southeast) yard setback ranging from 8.2' feet to 16.8 feet and associated roof eave projection ranging from 4.6 feet side (southeast) yard open space in lieu of the minimum 20-foot side yard setback and 14-foot side open space requirement. It also allows for the detached water tank to remain with a minimum 15.9 feet side (southeast) yard setback in lieu of the required 20-foot side yard setback requirement. These exceptions are in lieu of the required 20-foot side yard setback and the 14-foot side yard open space requirement as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, 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 one acre and is located in the Hawaiian Paradise Park Subdivision, situated in Kea'au, Puna, Hawai'i. The subject property's street address 15-2063 18<sup>th</sup> Avenue.

2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 30 feet for front and rear; 20 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on May 25, 2021. The variance application site map was prepared by Daniel Berg, LPLS (dlb & Associates). **(See Exhibit A-Site Plan)**

The single-family dwelling encroaches 0.54 feet (6.48 inches) into the 10-foot side (south) yard setback.

The encroachment leaves the single-family dwelling with a minimum 9.46-foot side (south) yard setback, in lieu of the required 10-foot side yard setback.

6. **County Building Records.** Real Property Tax Office records indicate that building permit (B2005-0578H) was issued on March 15, 2005, for the construction of a 4-bedroom and 2 bath, single-family dwelling with living room, kitchen, dining area and attached garage along with a 5' -7" high corrugated steel water tank.
7. **Agency Comments and Requirements.**
  - a. No comments received from the State of Hawai'i - Department of Health (DOH).
  - b. No comments received from the Department of Public Works, Building Division (DPW).
8. **Public Notice.** The applicant filed a transmittal letter with copies 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 June 14, 2021. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on June 11, 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.

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

No variance will be granted unless it is found that:

- (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 criteria (a) for the following reasons:**

The owner/applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling into the 20-foot (Southeast) side yard setback.

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. The single-family dwelling improvements authorized under building permit B-2005-0578H, was issued on March 3, 2005. It appears that building permit inspections of the premises by the affected agencies during construction of the single-family dwelling 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.

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

**The variance application meets criteria (b) for the following reasons:**

Alternatives available to the current owners to correct and/or address the single-family dwelling encroachments constructed into the affected side yard setback of the subject property include the following actions:

Relocate the single-family dwelling denoted on the site plan 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 followed all County requirements.

Because the encroachment is within the side yard setback, to consolidate the subject property with the adjacent side yard property, 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. Therefore, both alternatives are not practical.

- (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 criteria (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.

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 single-family dwelling built upon the subject property ("LOT 1499) will not meet the minimum 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(s), 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/owner(s), 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 single-family dwelling 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.

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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 building occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-20-000630 null and void.

Sincerely,

A handwritten signature in blue ink, appearing to read 'ZENDO KERN', with a long horizontal flourish extending to the right.

ZENDO KERN  
Planning Director

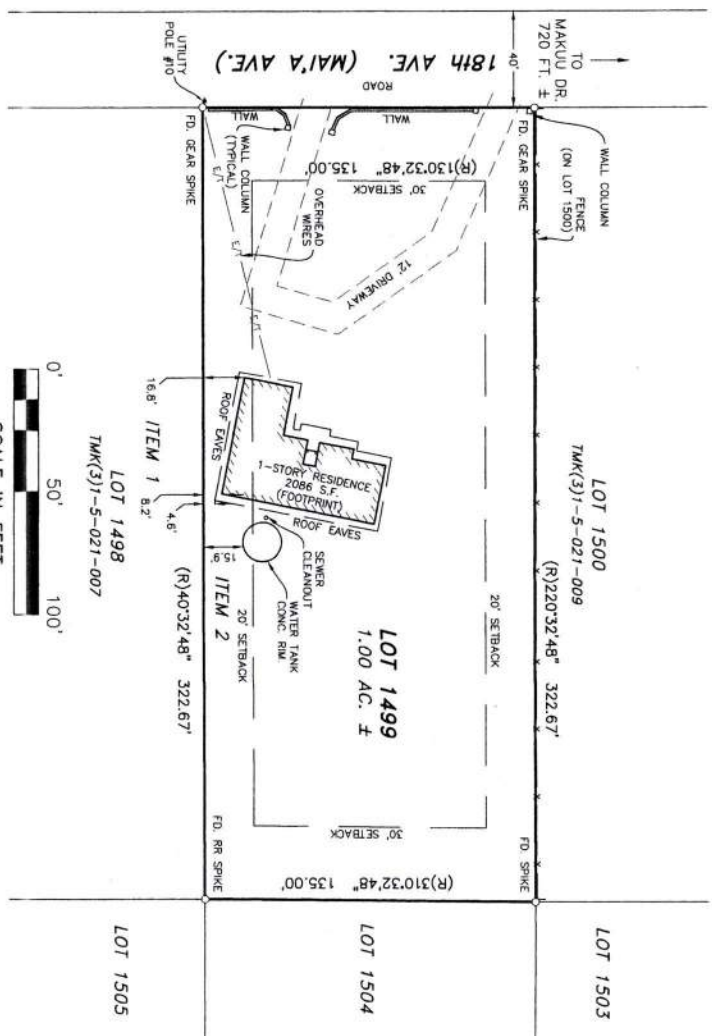
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Encl: Exhibit A - Site Plan

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

**Site Plan**  
of Lot 1499, Block 8,  
Hawaiian Paradise Park Subdivision  
Situating at Keahu, Puna,  
Island and County of Hawaii, Hawaii  
TMK(3) 1-5-021-008



**Owners:**  
Hawaii Prosper, LLC  
Sophia Yuris  
PO Box 838  
Honolulu, HI, 96726

**Site:**  
15-2063 18th Ave.  
Pahoa, HI, 96778

**TMK(3) 1-5-021-008**

**Building Permit No.**  
BZ005-0578H  
BH2015-01162

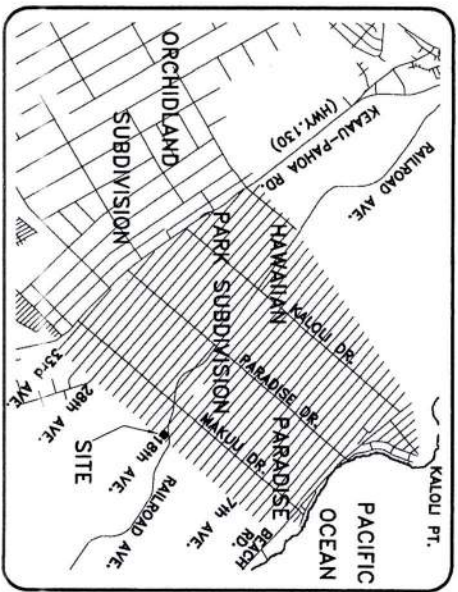
**Land Use Zone**  
A-1q  
Flood Zone X

**Setback Intrusions**

**Item 1:**  
Building intrusion of as much as 11.8 ft  
(8.2 ft from lot line).  
Roof eaves intrusion of as much as 15.4 ft  
(4.6 ft from lot line).

**Item 2:**  
Water tank intrusion of 4.1 ft, (15.9 ft from lot line)

**EXHIBIT**  
A



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

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