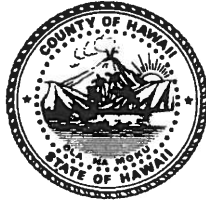


Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

West Hawai'i Office
74-5044 Ane Keohokālole Hwy
Kailua-Kona, Hawai'i 96740
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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

August 31, 2021

Sandra DiCicco, CEO
Kona Torrent, LLC
500 Ala Moana Blvd., Suite 400
Honolulu, HI 96813-4920

Dear Ms. DiCicco:

Application: Variance – VAR-21-000633

Applicant: Kona Torrent LLC
Owners: BP BISHOP ESTATE - FEE OWNER
KONA TORRENT LLC - LESSEE

**Request: Variance from Chapter 25, Zoning, Article 5,
Division 1, Section 25-5-76 Minimum yards requirements and Section 25-4-
44, Permitted Projections into Yards and Open Space (Encroachments into
East Front Yard Setback and Open Space Requirement)**

Tax Map Key: (3) 8-3-008:001 Lot 127

The Planning Director certifies the **approval** of Variance No. 21-000633, subject to variance conditions. The variance will allow portions of the structure (visitor center gift shop) walls to remain with minimum 28-foot front (east) yard setbacks, in lieu of the required 30.0-foot front yard setback, and the ramp to remain with minimum 18.0-foot open space requirement in lieu of 24.0-foot required open space requirement. These exceptions are in lieu of the required 30.0-foot front (east) yard setback and 24.0-foot front (east) open space requirement, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements and Section 25-4-44, Permitted projections into yards and open spaces.

The visitor center/gift shop has a building permit as a pavilion, that is for the coffee farm that grows and sells coffee products which is permitted in the A-5a zoning district since this use meets the definition of agricultural products processing, minor, per Zoning Code Section 25-1-5-(b). The definition of "agricultural products processing, minor means activities used for crop production and includes a variety of operations on crops after harvest to prepare them for market or further processing and packaging at a distance from the agricultural area. Included activities

include milling, pulping, drying, roasting hulling, storing. Packing, honey processing, poi-making, selling and other similar activities. Also included are the facilities or buildings related to such activities.”

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 127, contains approximately 18.40 acres and is situated within Por. Keei 2nd Subdivision, Keei 2nd, South Kona, Hawai‘i. The subject property’s street address is 83-5249 Painted Church Road, Captain Cook, HI 96704.
2. **County Zoning.** Agricultural District (A-5a)
3. **State Land Use Designation.** Agricultural.
4. **Setback Requirements.** 20 feet front and rear and 10 feet for sides.

Variance Application. The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on June 23, 2021. The variance application’s site plan dated April 12, 2016 was prepared by Piper Designs, and stamped by architect Jeffrey L. Gross, denotes that a portions of structure (visitor center gift shop) is built into the front (east) yard setback, encroaching 2.0-feet into the 30.0-foot front yard with a minimum 28.0-foot front (east) yard setbacks, in lieu of the required 30-foot front yard setback and the ramp encroaching 6.0-feet into the minimum 24.0-foot (east) front yard open space requirement.

(See Exhibit A-Site Plan)

The encroachment leaves a minimum 28.0-foot front (east) yard setback, in lieu of the required 30.0-foot front (east) yard setback, and a minimum 18.0-foot front (east) open space requirement in lieu of the 24.0-foot open space requirement.

The visitor center/gift shop has a building permit from 1970 as a pavilion, that is for the coffee farm that grows and sells coffee and other related products, which is permitted in the A-5a zoning district since this use meets the definition of agricultural products processing, minor, per Zoning Code Section 25-1-5-(b). The definition of “agricultural products processing, minor means activities used for crop production and includes a variety of operations on crops after harvest to prepare them for market or further processing and packaging at a distance from the agricultural area. Included activities include milling, pulping, drying, roasting hulling, storing. Packing, honey processing, poi-making, selling and other similar activities. Also included are the facilities or buildings related to such activities.”

6. **County Building Records.** Hawai'i County Real Property Tax (RPT) Office records indicate that a building permit (#975229) was issued on April 2, 1997, for a new dwelling and associated electrical and plumbing permits and building permit (#07104) for an addition to the pavilion (visitor center), with original permit (#46293) for pavilion on October 23, 1970.

8. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) – No comments received as of this date.
 - b. Department of Public Works - Building Division – Memo dated August 27, 2021, attached.

9. **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 July 23, 2021, and July 26, 2021, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 12, 2021.

10. **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.

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 structure (visitor center gift shop) that is built into the front (east) yard setback, encroaching 2.0-feet into the 30.0-foot front yard with a minimum 28.0-foot front (east) yard setbacks, in lieu of the required 30-foot front yard setback and the ramp encroaching 6.0-feet into the minimum 24.0-foot (east) front yard open space requirement.

The variance application's site plan dated April 12, 2016 was prepared by Piper Designs, and

stamped by architect Jeffrey L. Gross, denotes that a portions of structure (visitor center gift shop) is built into the front (east) yard setback, encroaching 2.0-feet into the 30.0-foot front yard with a minimum 28.0-foot front (east) yard setbacks, in lieu of the required 30-foot front yard setback and the ramp encroaching 6.0-feet into the minimum 24.0-foot (east) front yard open space requirement.

(See Exhibit A-Site Plan).

The encroachment leaves a minimum 28.0-foot front (east) yard setback, in lieu of the required 30.0-foot front (east) yard setback, and a minimum 18.0-feet front (east) open space requirement in lieu of the 14.0-feet open space requirement.

The visitor center/gift shop has a building permit from 1970 as a pavilion, that is for the coffee farm that grows and sells coffee and other related products that meets the definition of agricultural products processing, minor, per Zoning Code Section 25-1-5-(b). The definition of “agricultural products processing, minor means activities used for crop production and includes a variety of operations on crops after harvest to prepare them for market or further processing and packaging at a distance from the agricultural area. Included activities include milling, pulping, drying, roasting hulling, storing. Packing, honey processing, poi-making, selling and other similar activities. Also included are the facilities or buildings related to such activities.”

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 visitor center improvements were constructed in 1972, with additions in 1985, approximately 36 years ago, and it also appears that past building permit inspections of the premises by the affected agencies during construction of the structural 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.

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 front yard of the subject property include the following actions:

Remove the building encroachments and/or redesign the easterly portions of the structure (visitor center gift shop) 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 structure was in compliance with all County requirements. Any structural or design correction of the structure 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 structure (visitor center gift shop) has been in existence for approximately 36 years and was constructed under valid building 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.

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 structure built on the subject property ("LOT 127") will not meet the minimum front (east) yard and front yard (east) 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. All necessary building permits shall be obtained for the visitor center gift shop that include, but are not limited to, the patio area and retaining wall, per DPW-Building Division memo dated August 27, 2021, within one year of the approval date of VAR-21-000633.
4. Should the structure (visitor center gift shop) walls and ramp 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.
5. 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.
6. 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.

Sandra DiCicco, CEO
Kona Torrent, LLC
August 31, 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 Variance-21-000633.

Sincerely,

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

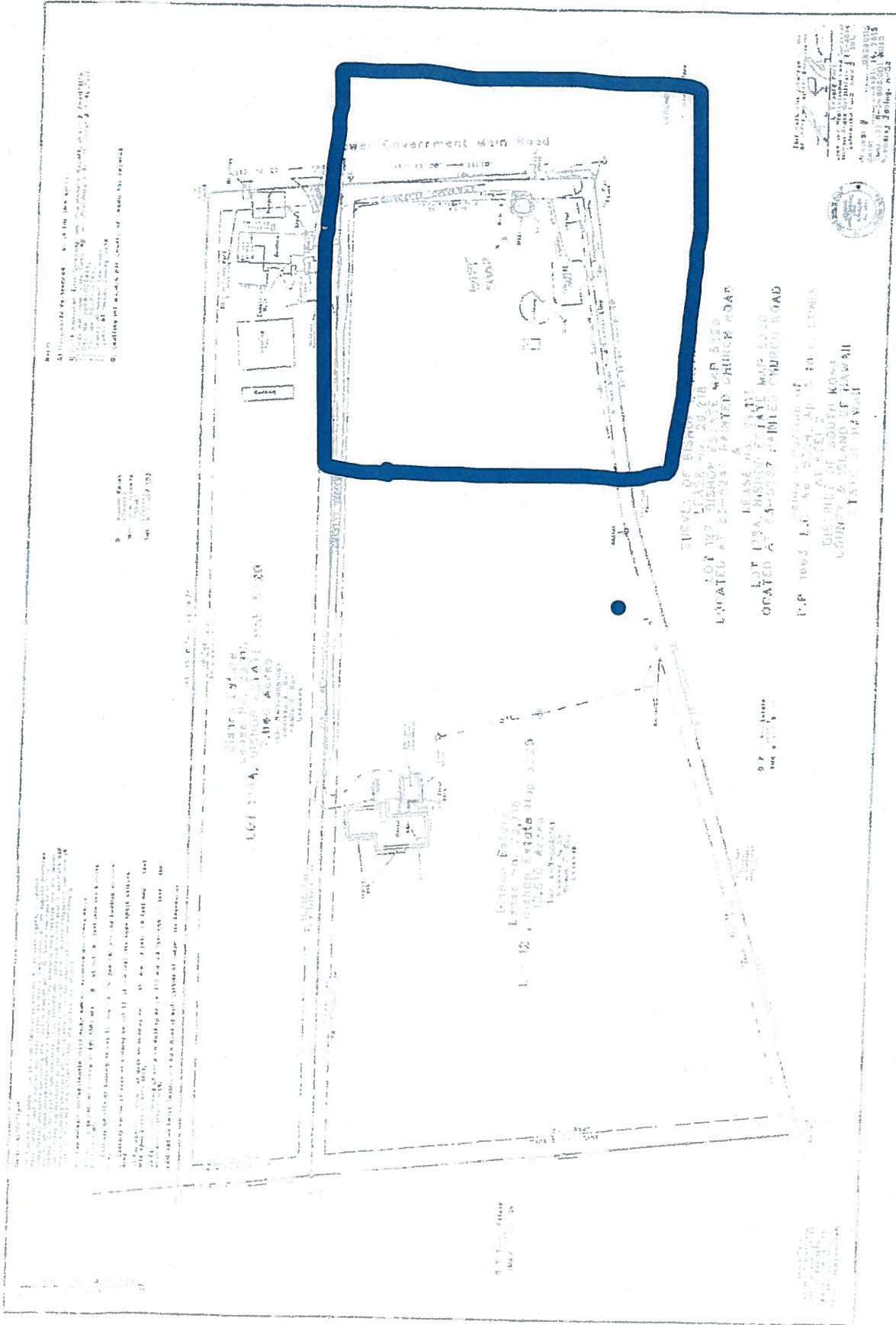
ZENDO KERN
Planning Director

RJN:rjn

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Sandra DiCicco, CEO
Kona Torrent, LLC
August 31, 2021
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xc: DPW Engineering Division (Kona)
Real Property Tax Office (Kona)
Gilbert Bailado, GIS



1. This map is prepared in accordance with the provisions of the Hawaiian Land Commission Act, Chapter 210, Hawaii Revised Statutes, and the rules and regulations of the Hawaiian Land Commission.

2. The land shown on this map is the property of the Hawaiian Land Commission, and is being offered for lease to the highest bidder.

3. The lease term for this land shall be for a period of five (5) years, commencing on the date of the execution of the lease agreement.

4. The lessee shall be responsible for all taxes and charges levied on the land during the term of the lease.

5. The lessee shall be responsible for all utility charges and other expenses incurred during the term of the lease.

6. The lessee shall be responsible for all maintenance and repairs to the land during the term of the lease.

7. The lessee shall be responsible for all other obligations and liabilities incurred during the term of the lease.

8. The lessee shall be responsible for all other obligations and liabilities incurred during the term of the lease.

9. The lessee shall be responsible for all other obligations and liabilities incurred during the term of the lease.

10. The lessee shall be responsible for all other obligations and liabilities incurred during the term of the lease.

11. The lessee shall be responsible for all other obligations and liabilities incurred during the term of the lease.

12. The lessee shall be responsible for all other obligations and liabilities incurred during the term of the lease.

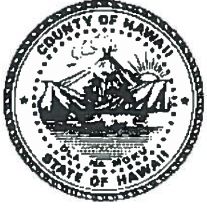
13. The lessee shall be responsible for all other obligations and liabilities incurred during the term of the lease.

TUSOLE, OF BISHOP ESTATE MAP 5120
 LOT 12, BISHOP ESTATE MAP 5120
 LOCATED AT BISHOP'S PARK DRIVE ROAD
 LEASE TO PARTY
 LOT 1065, BISHOP ESTATE MAP 5120
 LOCATED AT BISHOP'S PARK DRIVE ROAD
 P.P. 1065 L.P. 1065, BISHOP ESTATE MAP 5120
 COUNTY OF SOUTH HAWAII
 ISLAND OF HAWAII

HAWAIIAN LAND COMMISSION
 OFFICE OF THE DIRECTOR
 1505 KALANOAU AVENUE, SUITE 100
 HONOLULU, HAWAII 96813
 TEL: 808-535-2100
 FAX: 808-535-2101
 WWW.HLCC.HAWAII.GOV



“EXHIBIT A”



BUILDING DIVISION – DPW

COUNTY OF HAWAII – 101 Pauahi Street, Suite 7 – Hilo, Hawai'i 96720
Hilo Office (808) 961-8331 • Fax (808) 961-8410 Kona Office (808) 323-4720 • Fax (808) 327-3509

August 27, 2021

TO:

Zendo Kern
County of Hawaii – Planning Dept.
West Hawaii Office
74-5044 Ane Keohokalole Hwy
Kailua Kona, HI. 96740

SUBJECT:

Var-21-000633
Kona Torrent LLC
BP Biship Estate – Fee Owner
Kona Torrent LLC - Lessee

TMK: (3) 8-3-008:001 Lot 127

This is to inform you that our records on file, relative to the status of the subject discloses that:

- No Building permit was issued for work done on the premise.
- No building permit was issued for the change of occupancy.
- At the time of completion, the subject complied with all building code regulations that were in effect.
- Variance from any building regulation (Building, Electrical, Plumbing, or Sign) was/was not granted.
- The following violation(s) still outstanding:
 - Building
 - Electrical
 - Plumbing
 - Sign
- Others: Structure is permitted for public use, therefore guard rails, hand rails and steps shall comply with 2006 IBC. No permits on record for patio area / retaining wall north of the gift shop.

This status report reflects Building Division records only and does not include information from other agencies.

Should you have any questions regarding matters contained herein, please feel free to contact Chris Domino at phone no. (808) 323-4720

