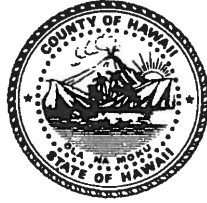


Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

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

September 7, 2021

Mary Schramke & Janet Hillman
68-1850 Linapoepoe St.
Waikoloa, Hawaii 96738

Dear Mary Schramke & Janet Hillman,

SUBJECT: Application: Variance from Zoning Code (PL-ZVAR-2021-000001)
Applicant: Janet Hillman
Applicant: Mary Schramke
Owner: Janet Hillman
Owner: Mary Schramke
**Request: Variance from Chapter 25, Zoning, Article 5 Division 7,
Section 25-5-76 Minimum Yards (Encroachment into
Southeast Side Yard Setback)**
Tax Map Key: (3) 6-8-016:008, COR-21-143086

The Planning Director certifies the **approval** of the variance on the parcel identified by TMK: (3) 6-8-016:008, subject to the variance conditions stated herein. The variance will allow portions of a proposed 16'x16' and 10'-0" high Pergola to be constructed and remain within the following setbacks, as shown on the attached site plan dated (See **Exhibit A Site Plan**). The approved setbacks are as follows:

A proposed open sided 16'x16' pergola with open deck and steps to be constructed to project up to 18'-0" into the Southeast minimum 20'-0" rear yard setback, and up to 6'-0" into the northeast side yard setback. This is lieu of the minimum 14'-0" required open space within the 20'-0" rear yard setback and the minimum 5'-0" required open space within the 10'-0" side yard setback.

1. A minimum of rear yard setback 2'-0" along the Southeast boundary of the lot in lieu of the minimum 20'-0" rear yard setback and minimum 14'-0" open space requirements. The proposed design of the pergola encroaches in the 10'-0" northeast side yard setback by approximately 6'-0," resulting in a 4'-0" side yard in lieu of the minimum 10'-0" side yard setback requirement and 4'-0" in lieu of the required 5'-0" open space requirements.

2. These exceptions are in lieu of the minimum 14'-0" open space required within the Southeast 20'-0" rear yard setback, and the minimum 5'-0" open space required within the northeast 10'-0" side yard setback as required by Chapter 25 (Zoning) of the Hawaii County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements and Section 25-4-44(a), Permitted Projections into Yards and Open Space requirements.

BACKGROUND AND FINDINGS

1. **Location** – The subject property is approximately 10,500 square feet in size and is identified as "Lot 100" in the Por."Waikoloa Village" Unit 1-C, F.P. 1190, & Unit 1-D, F.P. 1191. Por. Waikoloa, S. Kohala, HI.(Formerly por. 6-8-02)
2. **Owners** – Mary Schramke
Janet Hillman
3. **County Zoning.** Residential – 10,500 square feet (RS-10).
4. **State Land Use Designation.** Urban.
5. **Required Yards (Setbacks).** 20'-0" front and rear yards; 10'-0" side yards.
6. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on March 16, 2021. The variance application included a site plan that was prepared by DAN PM/D (**See Exhibit A-Site Plan**).

The site plan identifies the following encroachments and setbacks:

- a) An encroachment of 18'-0" in lieu of the minimum 20'-0" southeast rear yard setback resulting in a 2'-0" southeast rear yard setback and 6'-0" in lieu of the minimum 10'-0" northeast side yard setback, resulting in a 4'-0" northeast side yard setback.
7. **County Building Records.** The Hawai'i County Real Property Tax office records indicate the following building permits were issued:
 - a) Building Permit no. B2004-0013K (New Dwelling), BK2018 (Alteration on Electrical, Photovoltaic & BK2019-01707 Alteration, Electrical, Photovoltaic).
 8. **County Planning Department Records.**
 - a) An Application for Variance by owners Mary Schramke and Janet Hillman was submitted in our Kona Planning office on July 14, 2021.

9. Agency Comments and Requirements.

- a) The Department of Public Works, Building Division Notice stated:
 - i) “A permit Application and Permit for the proposed Pergola Structure is required. Per the provided proposed Site Plan, 1-Hr Fire-resistance rating is required per IBC Table 602 and shall be addressed in permit application submittal. Should you have questions regarding matters contained herein, please feel free to contact us.” (See **Exhibit B**)

10. Public Notice.

- a) The applicant filed transmittal letters with copies of the first and second notices and an AFFIDAVIT OF Katrina Kern, agent of Land Planning Hawaii LLC, confirms that pursuant to Section 25-2-4 of the Hawaii County Code, letters serving as second notification to the attached list of surrounding property owners within 300 feet of all boundaries of the parcel of land identified by TMK: (3) 6-8-010:043 in conjunction with the landowner’s application for a Variance, were mailed on July 26, 2021. Notice of this Variance application was also published in the West Hawai‘i Today and Hawai‘i Tribune Herald on April 9, 2021.

11. Comments from Surrounding Property Owners or Public.

- a) No comments were received from Surrounding Property Owners or Public.

ANALYSIS OF GROUNDS FOR VARIANCES

Special and Unusual Circumstances

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:

- 1) Applicant states that, the Pergola is essentially being used for meditation, a healing process for health-related issues. The design of pergola allows for filtered sunlight creating a calm and peaceful space. It has been an essential practice in our lives.

- 2) Wastewater leech field placement and location of a large Plumeria tree only a small building envelope as shown on site plan. The applicant intends to preserve the old Plumeria tree.
- 3) The vacant land preservation for Waikoloa adjacent to the rear setback on the east side of the subject property is reserved and currently has no reservation for further development. The terrain is very irregular, rocky, sloping into a flood zone and therefore no neighbors.
- 4) This rear yard structure will provide fire protection near dry vacant land.
- 5) Therefore, based on the above 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 existing setback encroachment.

- 1) The main dwelling is approximately 1,320 square feet in size and 11 feet from the southeast side yard boundary line. The existing absorption bed and septic tank are both located in the rear yard that covers an area of approximately 253 square feet. The rear yard includes a very large old plumeria tree. According to the applicant the plumeria tree “is sentimental to the owners and removal of the tree would be very disheartening.” The concrete driveway is on the northeast side of existing building and approximately 4 feet from the west boundary line. There are no other reasonable alternatives that would resolve the proposed setback encroachment.

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.

- 1) The intent and purpose of requiring zoning 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.

- 2) 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.
- 3) Applicant states that "the request will not be detrimental to the adjoin property owners. The setbacks along the three RS-10 lots and homes that share that portion of our boundary have setbacks of 20'-0" for their front and rear yards and 10'-0" on their side yards."
- 4) There were no comments from the surrounding property owners or from the public. 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.
- 5) Therefore, the variance for the proposed dwelling at its proposed siting 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 site plan, the single-family dwelling with the subject property ("Lot 100") **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 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 applicant/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 pergola and/or the single-family dwelling built on the subject property be destroyed by fire or other natural causes, the replacement structure(s) 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" or any subsequent Additional Farm 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.

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

Sincerely,



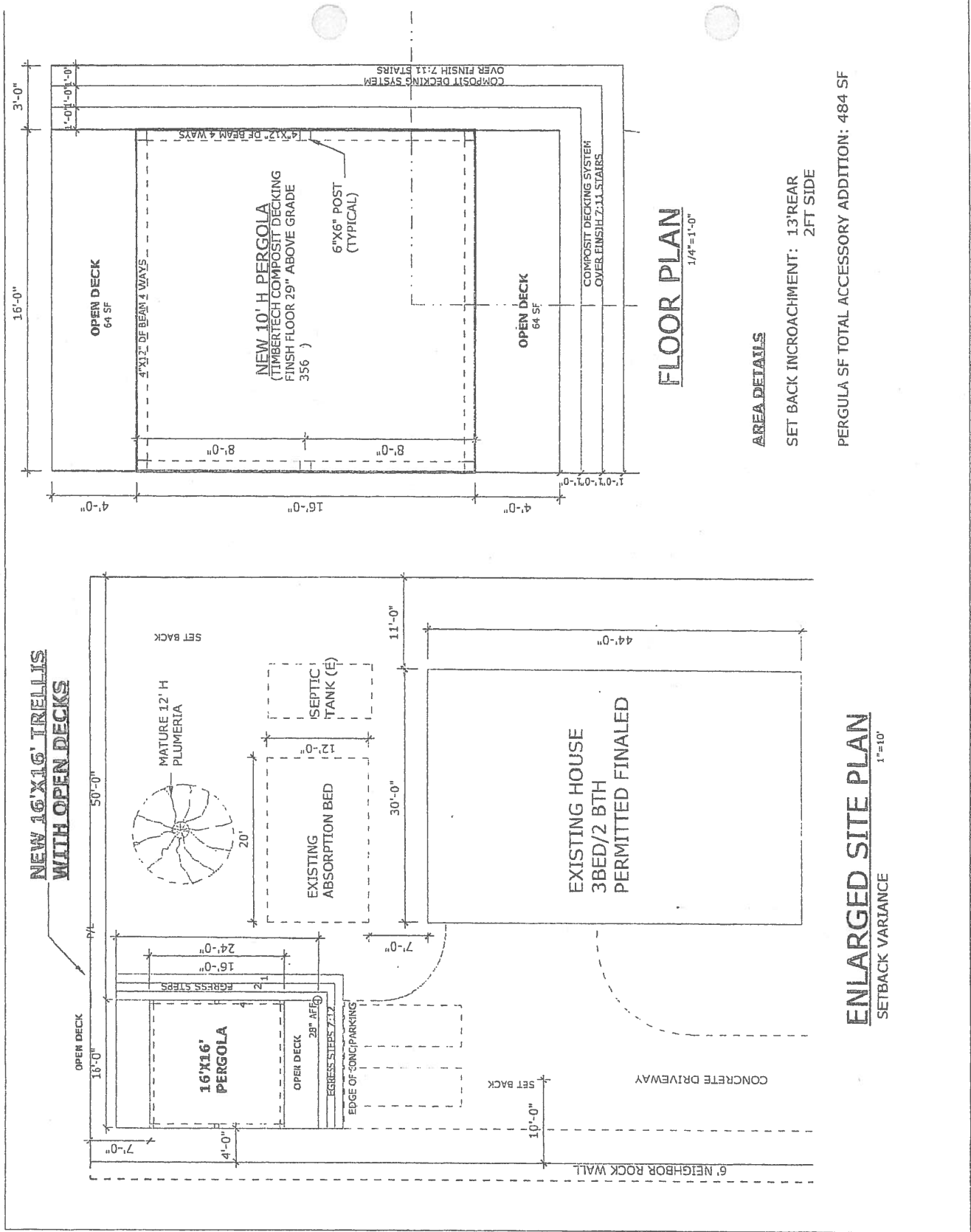
ZENDO KERN
Deputy Director

TLN: tln

\\coh141v\planning\Staff\Terri\Variance Approval.doc\TMK: (3) 6-8-016:008\Shramke & Hillman

Encl: Exhibits A & B

Cc: Real Property Tax Office (Kona)
Gilbert Bailado, GIS (via Email)

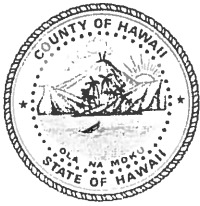


AREA DETAILS

SET BACK INCROACHMENT: 13'REAR
2FT SIDE

PERGOLA SF TOTAL ACCESSORY ADDITION: 484 SF

ENLARGED SITE PLAN
1"=10'
SETBACK VARIANCE



BUILDING DIVISION – DPW

COUNTY OF HAWAII – 74-5044 Ane Keohokalole HWY. BLDG E 1st Floor KAILUA-KONA, HI 96740
Hilo Office (808) 961-8331 * Fax (808) 961-8410 Kona Office (808) 323-4720 * Fax (808) 327-3509

Date of Notice: May 5, 2021

Owner: Janet Hillman & Mary Schramke

Mailing address: 68-1850 Lina Poepoe St. Waikaloa, Hi 96738

Address location of property: 68-1850 Lina Poepoe St.

SUBJECT: Variance – VAR-21-000626

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 Rear Yard Setback)

T.M.K.: (3) 6-8-016:008

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

- No Building, Electrical and Plumbing 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 to all building 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: Fences & Accessory Structures, Projections into Building Setbacks

A Permit Application and Permit for the proposed Pergola Structure is required. Per the provided proposed Site Plan, 1-Hr Fire-resistance rating is required per IBC Table 602, and shall be addressed in permit application submittal. Should you have any questions regarding matters contained herein, please feel free to contact us.

Kelly Wilson, Architect II

County of Hawaii Department of Public Works Building Division

“Exhibit B”