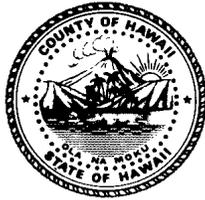


Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

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



County of Hawai'i PLANNING DEPARTMENT

Zendo Kern
Director

Jeffery 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

June 21, 2022

Mr. John Pipan
Land Planning Hawai'i LLC
194 Wiwo'ole Street
Hilo, HI 96720

Dear John:

SUBJECT: Application: Variance | PL-ZVAR-2022-000016
Applicant: JOHN PIPAN/LAND PLANNING HAWAII LLC
Owners: JUNE A. WASHIASHI AND LAWRENCE HIGA
Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7, Minimum Yards, and Section 25-4-44, Permitted
Projections into Yards and Open Space Requirements
Encroachment into Front (North) Yard Setback
Tax Map Key: (3) 2-5-037:006 (Lot 10)

The Planning Director certifies the **Approval** of Zoning Variance No. PL-ZVAR-2022-000016, subject to variance conditions. The variance will allow a portion of the single-family dwelling to remain with a minimum front (north) yard setback ranging from 15.30 feet to 16.75 feet. and associated roof eave projection resulting in a 10.99 feet front (north) yard open space in lieu of the minimum 20-foot front yard setback and 14-foot front yard open space requirement. These exceptions are in lieu of the required 20-foot front yard setback and the 14-foot front 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.

The 10-foot-wide roof extension encroaching into the 10-foot side (west) yard setback is excluded from the variance approval as the applicant has indicated that the roof extension will be removed by the owner.

The rock wall encroaching onto Poloke Way is also excluded from this variance approval as separate action is required between the owner of the subject property and County of Hawai'i, Department of Public Works – Engineering Division.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 10,051 sq. ft. and is situated in the KHBC Subdivision, Pi'ihonua, South Hilo, Hawai'i. The subject property's street address is 5 Pokole Way.
2. **County Zoning.** Single-Family Residential – 15,000 sq. ft. (RS-15).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20 feet front and rear; 10 feet for side.
5. **Variance Application.** The applicant submitted the Variance Application, attachments, filing fee, and associated materials on April 12, 2022. The Variance Application revised survey map dated June 9, 2022, was prepared by Neils Christensen (The Independent Hawaii Surveyors, LLC. **(See Exhibit A-Site Plan)**)
6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that Building Permit 36696 was issued on August 15, 1969, and finalized on February 25, 2009, for the construction of a single-family dwelling consisting of 3 bedrooms, 1 bath, living room, kitchen, dining area and attached two car carport.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated May 3, 2022: "The Health Department found no environmental health concerns with regulatory implications in the submittals." **(See Exhibit B-DOH Memorandum)**
 - b. No comments received from Department of Public Works Building Division.
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 May 5, 2022, and May 10, 2022, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on May 10, 2022.
9. **Comments from Surrounding Property Owners or Public.** No written comments objections from surrounding property owners or the general public were received.

GROUNDS FOR APPROVING VARIANCE

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 the single-family dwelling into the 20-foot front yard setback and the 14-foot front yard open space as required by the Zoning Code.

The encroachment leaves the single-family dwelling with a minimum front (north) yard setback ranging from 15.30 feet to 16.75 feet and associated roof eave projection resulting in a 10.99 front (north) yard open space in lieu of the minimum 20-foot front yard setback and 14-foot front yard open space requirement

The site plan shows that a portion of the single-family dwelling encroaches 3.25 feet to 4.70 feet into the 20-foot front (north) yard setback and associated roof eave encroachment of 3.08 feet into the 14-foot front (north) yard open space.

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 single-family dwelling constructed in 1969, approximately 53 years ago, and subsequent construction permits were issued and closed under valid building permit by the County for the existing structure. 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.

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: To remove the building encroachments and/or redesign the existing single-family dwelling denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code 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.

Because the encroachment is within the front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options.

Both alternatives are not practical. Therefore, 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.

The encroachments are in the front yard setback adjacent to the roadway. Therefore, it should not obstruct or prevent adequate air circulation and exposure to light 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.

As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

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 10) will not meet the minimum front yard setback requirements pursuant to Hawai'i County Code, Chapter 25, Zoning.

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. Upon removal of the carport roof eave extension the owner or applicant shall provide evidence that the roof eave extension has been removed or allow the Planning Department's zoning inspector to conduct a site inspection.
4. Should the existing single-family dwelling and on the subject property be destroyed by fire or other natural causes, the replacement structures 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. Future or new building improvements and permitted uses shall be subject to State laws 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 initiate proceedings to null and void Variance No. PL-ZVAR-2022-000016.

Sincerely,


Jeffrey W. Darrow (Jun 29, 2022 11:29 HST)

JEFFREY W. DARROW
Deputy Planning Director

LHN:cn

\\COH01\planning\public\Admin Permits Division\Variances From CoH02\Zone2\PL-ZVAR 2022-000016 TMK 2250370060000 Washiashi-Higa.doc

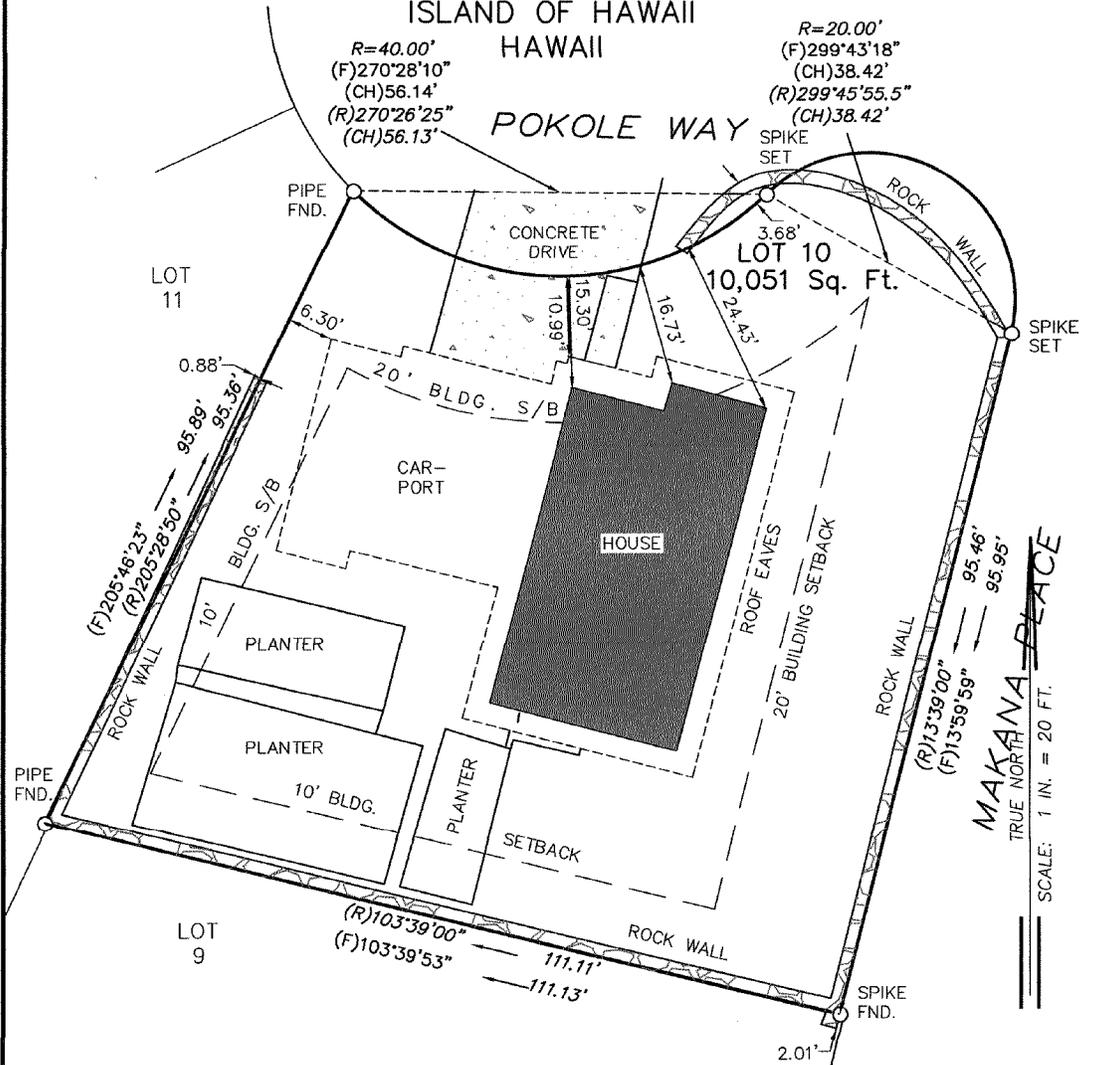
Enclosure: Exhibit A – Site Plan
Exhibit B – DOH Memorandum

cc: Real Property Tax Office (Hilo)
Alex Gerken, GIS

EXISTING CONDITIONS UPON LOT 10

KHBC SUBDIVISION

PIIHONUA, SOUTH HILO
ISLAND OF HAWAII
HAWAII



NOTES:

1. The features shown hereon were located by an actual field survey completed on February 28, 2022.
2. This map shows, "the location of any improvements in the vicinity of perimeter property lines", (Item K-2 of "Purchase Contract").
3. Field measured dimensions (F) are within acceptable tolerances as compared to record dimensions (R) for land of this type and in this subdivision.
4. The attached Report pertains to improvements near property lines and County building setbacks.
5. This map should not be changed, altered or used to execute any transaction or application other than that indicated on this particular "Purchase Contract".

This work was prepared by me or under my direct supervision

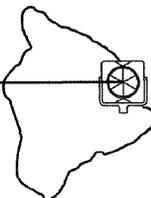
Niels Christensen

Niels Christensen
Licensed Professional Land Surveyor
License Number 9077

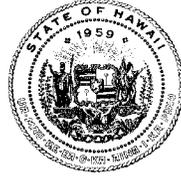


The Independent Hawaii Surveyors, LLC

P.O. BOX 577
Hilo, HI 96721
Phone 808 959-0360
FAX 808 959-0353
info@hawaiiboundary.com



Date: June 9, 2022
Drawing: JOB15220B.dwg
TMK: (3) 2-5-37: 6



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: May 3, 2022

TO: Mr. Zendo Kern
Planning Director, County of Hawaii

FROM: Eric Honda
District Environmental Health Program Chief

SUBJECT: Application: Variance PL-ZVAR-2022-000016
Applicant: LAND PLANNING HAWAII LLC- KIM CHIODO
Owners: JUNE A. WASHIASHI, LAWRENCE HIGA
Variance from Chapter 25, Zoning, Article 5 Division 1
Section 25-5-7, Minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements
TMK: 2-5-037:006 (LOT10)

The Health Department found no environmental health concerns with regulatory implications in the submittals.