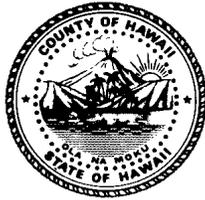


Mitchell D. Roth  
Mayor

Lee E. Lord  
Managing Director

West Hawai'i Office  
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## County of Hawai'i PLANNING DEPARTMENT

Zendo Kern  
Director

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Deputy Director

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

July 1, 2022

Ms. Val Colter  
13-6460 Kalapana-Kapoho Road  
Pāhoa, HI 96778

e-mail: [val.colter@yahoo.com](mailto:val.colter@yahoo.com)

Dear Val:

**SUBJECT: Application: Variance | PL-ZVAR-2022-000018**  
**Applicant: VAL COLTER**  
**Owners: GERALD LEE**  
**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 Side Yard (Northwest and**  
**Southwest) Yard Setback**  
**Tax Map Key: (3) 2-3-041:002 (Lot D-2)**

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The Planning Director certifies the **Approval** of Zoning Variance No. PL-ZVAR-2022-000018, subject to variance conditions. The variance will allow a portion of the proposed single-family dwelling to be constructed with a minimum 5.07 foot side (Northwest and Southwest) yard setback and associated roof eave projection of 2.07 foot side (Northwest and Southwest) yard open space requirement. These exceptions are in lieu of the required 8-foot side yard setback and the 4-foot side yard open space requirement as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, 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 4,475 sq. ft. and is situated in 2<sup>nd</sup> Kūkūau, South Hilo, Hawai'i. The subject property's street address is 346 Kūkūau Street.
2. **County Zoning.** Single-Family Residential – 7,500 sq. ft. (RS-7.5).

3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 15 feet front and rear; 8 feet sides.
5. **Variance Application.** The applicant submitted the Variance Application, attachments, filing fee, and associated materials on April 12, 2022. The Variance Application survey map dated March 6, 2022, was prepared by Val Colter. **(See Exhibit A-Site Plan)**

The site plan shows that the proposed single-family dwelling encroaches 2.93 feet into the 8-foot side (northwest & southwest) yard setback, and 1.93 feet into the 4-foot side (northwest & southwest) yard open space.

The encroachment leaves a minimum 5.07 feet side (northwest & southwest) yard setback and 2.07 feet side (northwest & southwest) open space in lieu of the required 8-foot side (northwest & southwest) yard setback and 4-foot side (northwest & southwest) yard open space.

6. **County Building Records.** Hawai‘i County Real Property Tax office records indicate that the following building permits were issued.
  - a. Building Permit BH2013-00370 issued on March 21, 2013, for demolishing of the existing single-family dwelling permitted in 1949 by permit 5901.

7. **Agency Comments and Requirements.**

- a. No comments received from the State of Hawai‘i – Department of Health.
- 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 April 21, 2022, and May 19, 2022, respectively. Notice of this application was published in the Hawai‘i Tribune Herald and West Hawai‘i Today on May 27, 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 proposed single-family dwelling into the 8-foot side (northwest and southwest) yard setback and 4-foot open space as required by the Zoning Code.

The subject property is long and narrow with the width of the parcel being approximately 30 feet wide. (See attached plot plan for visual reference) which makes it difficult for the owner to comply with current zoning requirements. Applying the full setback requirements of the Zoning Code, it would be practically impossible to construct a single-family dwelling within the perimeters of the building envelope created by the setback requirements.

Therefore, 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.

**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:

Owner is proposing to construct two (2) bedroom and 1-bath single-story single-family dwelling in the approximate same location as the previous two-story single-family dwelling which was demolished approximately 9 years ago (BH2013-00755). The narrowness and size of the subject property limits the placement of the proposed single-story single-family dwelling to meet today's setback requirements.

One alternative would be to redesign the proposed single-family dwelling to be constructed upon the subject property to fit within the correct building envelope as prescribed by the Zoning Code. Due to the narrowness and the size (4,475 sq. ft.) of the subject property, redesigning the single-family dwelling to meet setback requirement will require the owner to construct a narrower single-family dwelling which would diminish the overall functionality of the proposed single-family dwelling.

Another alternative is to consolidate the subject property with the adjoining side properties, which is owned by separate property owners and to re-subdivide the property to modify property lines and adjust minimum yard setbacks.

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.

It should be noted that a Variance, Variance 554 (VAR 93-62), issued on December 22, 1993, allowed for the construction of an addition to the previous single-family dwelling into the side yard setback, in lieu of the required 8-foot side yard setback and 4-foot open space. The previous single-family dwelling built in 1949 has been demolished.

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 and open carport built on the subject property (Lot D-2) will not meet the minimum side 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. Variance 554 (VAR-93-62) is hereby null and void, since it is no longer applicable, due to the demolition of the previous two-story single-family dwelling.
4. Should the proposed single-family dwelling 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-2022-000018.

Sincerely,

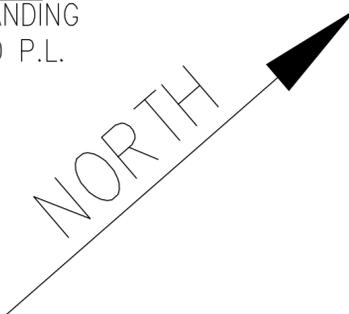
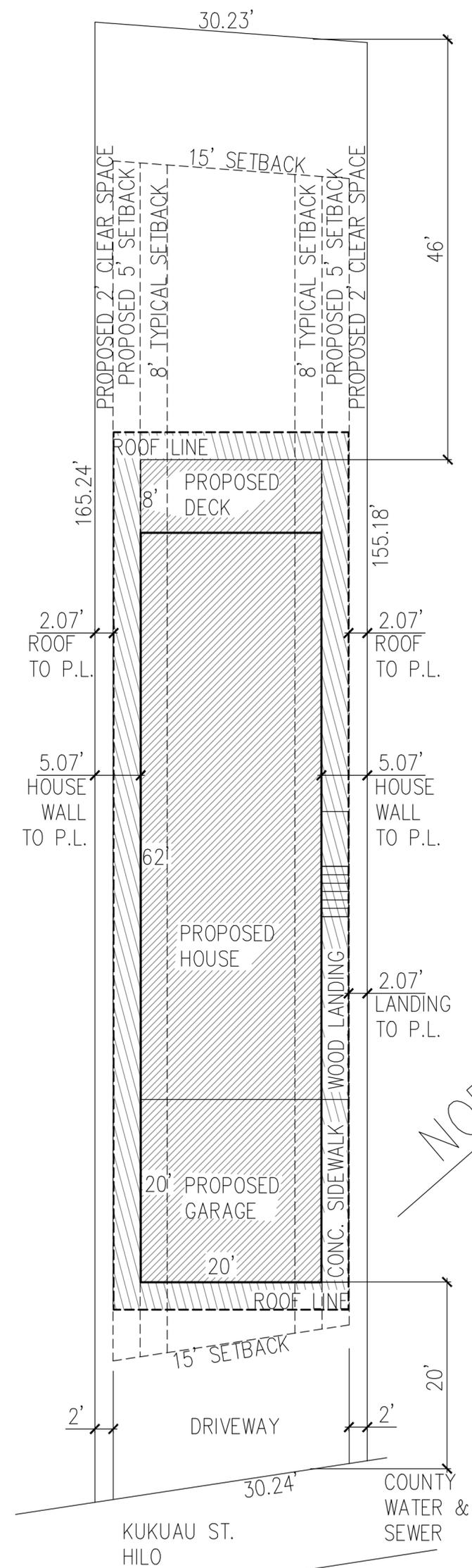
Zendo Kern  
Zendo Kern (Jul 8, 2022 11:11 HST)  
ZENDO KERN  
Planning Director

LHN:cn

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Enclosure: Exhibit A – Site Plan

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



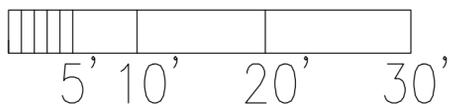
PROPOSED 2 BEDROOM / 1-1/2 BATH DWELLING

ENCLOSED LIVING AREA: 1240 sq ft

ACCESSORY AREA: 726 sq ft  
 (Garage: 400 sq ft  
 Wood Landing: 90 sq ft  
 Concrete sidewalk: 60 sq ft  
 Deck & Rear Landing: 176 sq ft)

PROPOSED  
SITE PLAN

SCALE: 1" = 10'



GERALD LEE  
 TMK# (3)-2-3-041:002  
 SITE: 346 KUKUAU ST.  
 PHONE: 808-936-1511  
 EMAIL: gjklee@juno.com  
 VARIANCE SITE PLAN APRIL 2022  
 DRAWN BY: VAL COLTER 808-769-2949  
 val.colter@yahoo.com