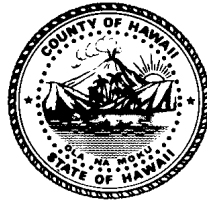


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Managing Director

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County of Hawai'i PLANNING DEPARTMENT

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October 31, 2022

Mr. Bradford Barrackman
15-2691 Opihi Street
Pahoa, HI 967778

e-mail: bradplans@gmail.com

Dear Mr. Barrackman:

SUBJECT: Application: Zoning Variance | PL-ZVAR-2022-000025
Applicant: BRADFORD BARRACKMAN
Owner: BRADFORD BARRACKMAN
**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 Southwest
Front Yard Setback)**
Tax Map Key: (3) 1-5-087:117 (Lot 11)

The Planning Director certifies the **approval** of Variance 2022-000025 (PL-ZVAR-2022-000025), subject to conditions. The variance will allow the proposed detached bedroom, which is the existing former detached garage to remain with a minimum 12 feet front (southwest) yard setback space in lieu of the required 15-foot front yard setback. It also allows for the new entry to remain with a minimum 14-foot – 4 inches front (southwest) yard setback in lieu of the required 15-foot front yard setback. This variance is from the subject property's minimum front yard setback pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 1, Section 25-5-7, Minimum yards and Article 4, Division 4, Section 25-4-44(a), Permitted Projections into Yards and Open Space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 9,100 square feet and is in the Hawaiian Beaches Subdivision, situated in Pahoa, Puna, Hawai'i. The subject property's street address 15-2691 Opihi Street.

2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Urban
4. **Required Setback.** 15 feet for front and rear; 8 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on July 8, 2022. The variance application site map was prepared by Bradford Barrackman. **(See Exhibit A-Site Plan)**

The site plan shows the proposed detached bedroom, the former detached garage, encroaches 3 feet into the 15-foot front (southwest) yard setback and it also shows the new entry encroaches 8 inches into the 15-foot front (southwest) yard setback.

The encroachment leaves the proposed detached bedroom, the former detached garage, with a minimum 12-foot front (southwest) yard setback, in lieu of the required 15-foot front yard southwest setback. It also leaves the new entry with a minimum 14 foot – 4 inches front (southwest) yard setback in lieu of the 15-foot front yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that the following building permits were issued.
 - a. Building Permit B2004-2571 was issued on December 8, 2004, for the construction of a single-family dwelling, consisting of 2 bedrooms, 1 bath, living area, kitchen, and open carport. Permit finalized on August 8, 2005.
 - b. Building Permit B2004-2572 issued on December 8, 2004, for the construction of a detached garage and water tank. Permit finalized on August 8, 2005.
 - c. Building Permit PW.B2022-004244 applied for on September 8, 2022, to convert the existing 12 x 20 detached garage to a detached bedroom with an added bathroom and an added enclosed screen entry. Building Permit remains open.

7. **Agency Comments and Requirements.**

- a. State Department of Health (DOH) memorandum dated August 8, 2022: “The Health Department found no environmental health concerns with regulatory implications in the submittals.”
 - 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 August 12, 2022, and October 1, 2022, respectfully. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on August 26, 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 15-foot (Southwest) front 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 detached garage and authorized under building permit B2004-2572, was issued on December 8, 2004, and finalized on August 8, 2005. It appears that building permit inspections of the premises by the affected agencies during construction of the detached garage 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 front yard setback of the subject property include the following actions:

Relocate proposed detached bedroom, the former detached garage and new entry 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 detached garage (proposed detached bedroom) followed 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. 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.

The encroachment of 3 feet into the front yard setback still allows for adequate air circulation, as the affected area is within the front yard setback abutting the roadway.

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 carport and water tank built upon the subject property ("LOT 11") will not meet the minimum front 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), 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.
2. Should the detached bedroom 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.
3. An "Ohana" or 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.
4. No kitchen facilities shall be allowed in the detached bedroom.
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.
6. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject PL-ZVAR-2022-000025 null and void.

Sincerely,

Zendo Kern
Zendo Kern (Nov 3, 2022 07:39 HST)

ZENDO KERN
Planning Director

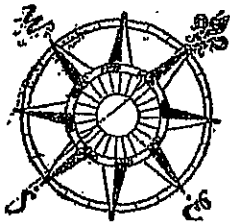
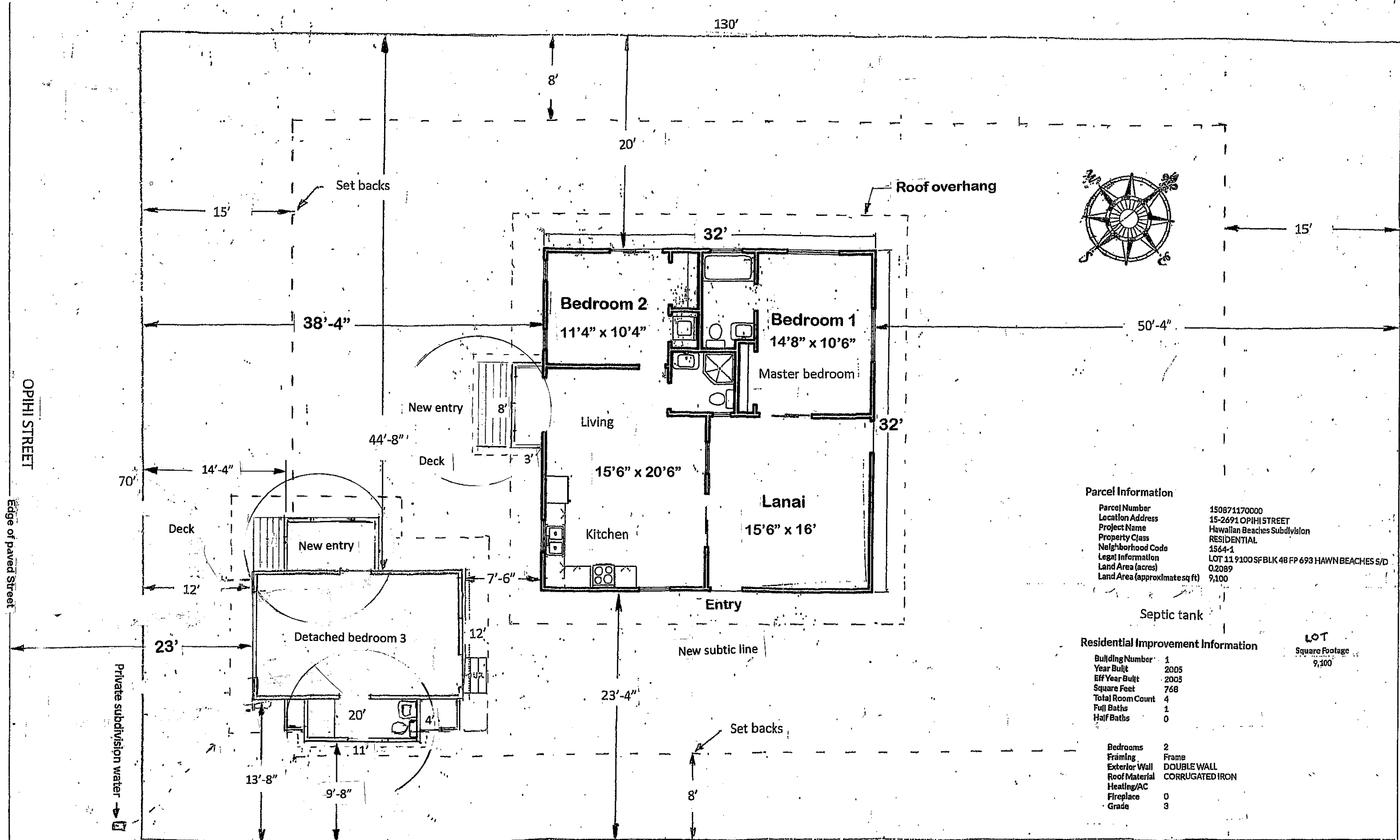
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Bradford Barrackman
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Encl: Exhibit A - Site Plan

cc: Real Property Tax Office (Hilo)
Alex Gerken, GIS (via email)
Annalyn Seguban (via email)



Parcel Information

Parcel Number	150871170000
Location Address	15-2691 OPIHI STREET
Project Name	Hawaiian Beaches Subdivision
Property Class	RESIDENTIAL
Neighborhood Code	1564-1
Legal Information	LOT 11 9100 SF BLK 48 FP 693 HAWN BEACHES S/D
Land Area (acres)	0.2089
Land Area (approximate sq ft)	9,100

Septic tank

Residential Improvement Information

Building Number	1
Year Built	2005
Eff Year Built	2005
Square Feet	768
Total Room Count	4
Full Baths	1
Half Baths	0

LOT
Square Footage
9,100

Bedrooms	2
Framing	Frame
Exterior Wall	DOUBLE WALL
Roof Material	CORRUGATED IRON
Heating/AC	
Fireplace	0
Grade	3

Owner Information

Owner Names
BARRACKMAN, BRADFORD CHARLES Fee Owner, Joint Tenancy
BARRACKMAN, SUSAN ANNE Fee Owner

Plans drawn by Bradford Barrackman
Bradplans@gmail.com

Scale: 1/8" = 1'