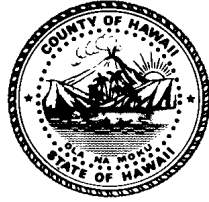


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## County of Hawai'i PLANNING DEPARTMENT

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January 15, 2023

Mr. Charles Oldfather  
P.O. Box 1124  
Honoka'a, HI 96727

E-mail: [charlesoldfather@gmail.com](mailto:charlesoldfather@gmail.com)

Dear Mr. Oldfather:

**SUBJECT: Application: Variance | PL-ZVAR-2022-000029**  
**Applicant: CHARLES OLDFATHER**  
**Owner: CHARLES OLDFATHER**  
**Variance from Chapter 25, Zoning, Article 5, Division 7,**  
**Section 25-5-76, Minimum Yards and Section 25-4-44,**  
**Permitted Projections into Yards and Open Space Requirements**  
**(Encroachment into the Front (South) and Rear (North) Yard**  
**Setback)**  
**Tax Map Key: 4-8-008:013 (Portion Kukuihaele, Hāmākua, Hawai'i)**

The Planning Director certifies the **approval** of Variance No. PL-ZVAR-2022-000029, subject to conditions. The variance will allow the proposed Single Family Dwelling and attached garage to be constructed with a 15-foot front and rear yard setback and attendant 10-foot front and rear yard open space, in lieu of the minimum 25-foot front yard setback and attendant minimum 19-foot front and rear yard open space requirement, in accordance with the Hawai'i County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (2)(A), Section 25-5-77, Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 27,896 sq. ft. (0.6404 acre) and is in situated in the District of Hāmākua, Honoka'a, Hawai'i.
2. **County Zoning.** Agriculture – 40 Acres (A-40a).

3. **State Land Use Designation.** Agriculture.
4. **Setback Requirements.** 25-foot front and Rear; 15-foot for sides.
5. **Variance Application.** The applicant submitted the variance application, attachments, filing fee, and associated materials on August 30, 2022. The variance application site plan was prepared by Charles Oldfather. **(See Exhibit A-Site Plan)**

The site plan shows the proposed single-family dwelling encroaches 10 feet into the 25-foot front (south ) and rear (north) yard setbacks and 9 feet into the 19-foot front and rear yard open space requirement.

The encroachment leaves the proposed single-family dwelling with a 15-foot front (south) and rear yard setback and attendant 10-foot front and rear yard open space, in lieu of the required 25-foot front and rear yard setback and 19-foot front and rear yard open space requirement.

6. **County Building Records.** There no records of any building permits on the subject property. (Vacant Land)
7. **Agency Comments and Requirements.**
  - a. Department of Health memorandum dated September 12, 2022.

“The Health Department found no environmental health concerns with regulatory implications in the submittal.”
  - 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 September 2, 2022, and September 13, 2022, respectively. Notice of this application was published in the Hawai‘i Tribune Herald and West Hawai‘i Today on September 27, 2022.
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.
10. **Time Extension.** The applicant’s variance application was acknowledged by letter dated August 31, 2022, and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to January 15, 2023.

## **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 and attached garage to be constructed with a 15-foot front and rear yard setback and attendant 10-foot front yard and rear yard open space.

The subject property is long and narrow with dimensions measuring approximately 58.37 feet wide and a length of 491.95 feet (see attached plot plan for visual reference) which makes it difficult for the owner to comply with current zoning 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 rear yard of the subject property include the following actions:

Remove the building encroachments and/or redesign the denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code. One option would be to redesign the single-family dwelling to meet setback requirement which will require the owner to construct a smaller and narrow version of the single-family dwelling and would diminish the overall functionality of the proposed single-family dwelling and would deny the owners highest and best use of their property.

Because the encroachments are within the front and rear yard setback, one alternative would be to consolidate the front yard of the subject property with the roadway and consolidate the subject property with the adjoining side property which is owned by someone else. To then resubdivide the property to modify property lines and adjust minimum front and side yard setbacks. Both of these alternatives are not practical. Therefore, there are no reasonable alternatives to resolve the difficulty.

### **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 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.

The encroachment of 10 feet into the front yard setback still allows for adequate air circulation, as the affected area is within the front yard setback adjacent to the roadway frontage.

Because of the setback constraints the owners are limited to the size of a single-family dwelling that can be built on the subject property. Without the variance approval the owners are compelled to build a smaller and narrower single-family dwelling.

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 site plan, the proposed single-family dwelling to be constructed on the subject property will not meet the minimum front yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning C

This variance application is approved subject to the following variance conditions:

Mr. Charles Oldfather  
PL-ZVAR-2022-000029  
Approval Letter.  
January 15, 2023  
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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. Should the single-family dwelling 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.
4. 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.
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 initiate proceedings to null and void Zoning Variance PL-ZVAR-2022-000029.

Sincerely,

*Zendo Kern*

Zendo Kern (Jan 17, 2023 15:15 HST)

ZENDO KERN  
Planning Director

LHN:ta

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Enclosure: (Exhibit A – Site Plan)

cc: Real Property Tax Office (Hilo)

cc (via email): Alex Gerken, County of Hawai'i, GIS

# Scanned Documents

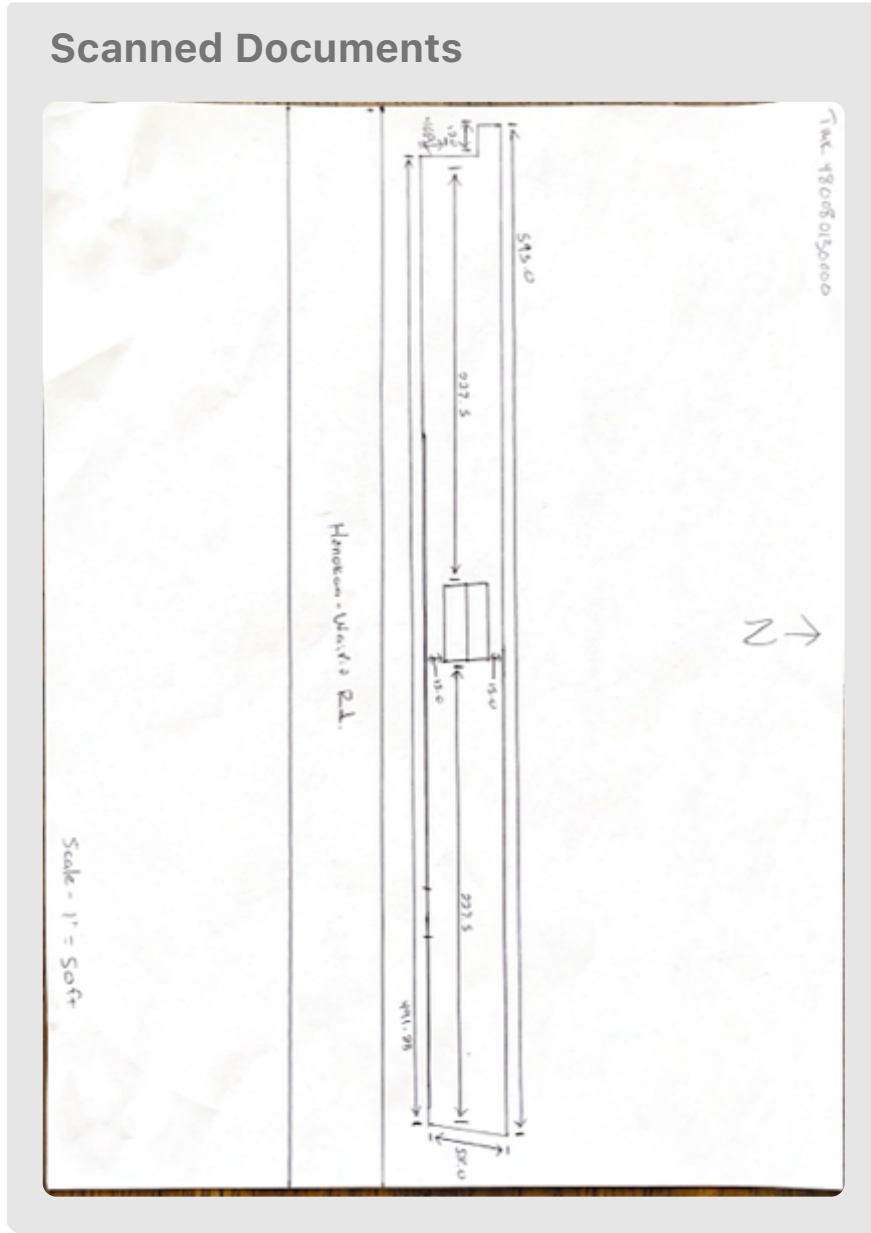


EXHIBIT A