

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

March 31, 2023

Mr. Carson Elizares  
94 Makani Circle  
Hilo, HI 96720

e-mail: [carson808@gmail.com](mailto:carson808@gmail.com)

Dear Mr. Elzares:

**SUBJECT: Application: Variance | PL-ZVAR-2023-000033**  
**Applicant: CARSON ELIZARES, LPLS**  
**Owner: JASON K. DELUZ AND MELITA DELUZ**  
**Variance from Chapter 25, Zoning, Article 4, Division 1, Section 25-4-31. Minimum building site area; minimum average width and Article 5, Division 6, Section 25-5-75 minimum building site average width.**  
**Tax Map Key: (3) 6-4-001:004 (Lot 33A)**

The Planning Director certifies the **approval** of Zoning Variance No. PL-ZVAR-2023-000033, subject to variance conditions. The variance will allow two (Lots 33-A-2 and Lot 33-A-3) of the proposed three (3) lot subdivision (PL-SUB-2022-000040) to be created without meeting the building site average width requirement. These exceptions are in lieu of the Minimum building site area; Minimum average width and Article 5, Division 6, Section 25-5-75 Minimum building site average width.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 15.24 acres and is situated in the Pu'ukapu Homestead 1<sup>st</sup> Series, Pu'ukapu, Waimea, South Kohala, Hawai'i. The subject property's street address is 64-791 Mamalahoa Highway.
2. **County Zoning.** Agricultural – 5 acres (A-5a)
3. **State Land Use Designation.** Agricultural.

4. **Minimum Building Site Average Width Requirements.** Each building site in the Agricultural district shall have a minimum average width of two hundred feet for the first five acres of required area plus twenty feet for each additional acre of required area. Provided that no building site shall be required to have an average width greater than one thousand feet.
5. **Project Description:** On March 6, 2009, the applicant submitted a preliminary Plat Map to the Hawai'i County Planning Department requesting the subdivision of the subject property into a three (3)-lot subdivision.

<u>Lot No.</u>	<u>Acreage</u>
33-A-1	5.00 acres
33-A-2	5.00 acres
33-A-3	5.24 acres

6. **Variance Application.** The applicant submitted the variance application, attachments, filing fee, and associated materials on April 4, 2022. The variance application revised subdivision map dated November 2, 2022, was prepared by Carson R. Elizares, LPLS. **(See Exhibit A-Site Plan)**
6. **County Building Records.** Hawai'i County Real Property Tax office records indicate the following building permits: There are no records of any building permits on the subject property.
7. **Subdivision Request/PPM.** Subdivision application PL-SUB-2022-000040 was submitted to subdivide the subject property into three (3) lots. Further action on the subdivision application has been deferred to letter of August 29, 2022, in the subdivision file.
8. **Agency Comments and Requirements.**
  - a. State Department of Health (DOH) memorandum dated January 20, 2023: "The Health Department found no environmental health concerns with regulatory implications in the submittals."
  - b. No comments received from the Department of Public Works Engineering Division.
9. **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 January 21, 2023, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on January 27, 2023.

#### 11. Comments from Surrounding Property Owners or Public.

Objection letter received from Seizen Bonk (Kozen Farm) received on February 2, 2023.  
(See Exhibit B)

Objection letter received from Henry Hillard received on February 6, 2023. (See Exhibit C)

Objection letter received from Jeffrey K. Hirako (Hirako Farms) received on February 7, 2023.  
(See Exhibit D)

11. **Time Extension:** The applicant's variance application was acknowledged by letter dated January 10, 2023, 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 March 31, 2023.

### GROUNDS FOR APPROVING VARIANCE

#### Special and Unusual Circumstance

**(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 is requesting a variance from the requirements of Chapter 25, Zoning Code, more specifically Section 25-5-75 (Minimum Building site Average Width) to allow for two (2) of the proposed three (3) lot subdivision to allow for a minimum building site average width of 122.41 feet for lot 33-A-2 and 128.29 feet for lot 33-A-3 in lieu of the required 200 feet for a five (5)-acre parcel in the Agricultural District.

Lots 33-A-2 and 33-A-3 are designed in a flag lot configuration, with access to lot 33-A-2 and lot 33-A-3 via 15-foot-wide flag stem from Mamalahoa Highway. Minimum Building site Average Width for flag lots are determined by taking the longest side (the flag stem) and

dividing it by the total acreage. Based on this formula, the current lot configuration does not meet the minimum building site average width in the Agricultural District.

As mentioned previously, the only way to subdivide the subject property into three (3) lots, as permitted by the Zoning Code, is by means of a flag lot configuration for both lots 33-A-2 and 33-A-3, with the building site average width for both lots being less than the required building site average width. 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 owner to address minimum building site average width requirement include the following actions:

The Applicant could have designed the subdivision of the property differently by having both lots 33-A-2 and 33-A-3 taking access off Kahilu Road, however Kahilu Road is private roadway owned by the Department of Hawaiian Home Lands. The applicant has stated in his request for variance from the zoning code (see attached Exhibit B) that the owner and his attorney has tried tirelessly and at significant cost at no avail to have the Department of Hawaiian Lands grant the owner access onto Kahilu Road for lots 33-A-2 and 33-A-3. Given that the owner was unable to secure access onto Kahilu Road from the Department of Hawaiian Home Lands, the owner's only option was to take access from Mamalahoa Highway.

Therefore, the only reasonable alternative available would be the granting of the requested variance.

### **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.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance from minimum building site average width requirements 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 subdivision map Lot 33-A-2 and Lot 33-A-3 will not meet the minimum building site average width requirement pursuant to Hawai'i County Code, Chapter 25, Zoning, more specifically Section 25-5-75 (Minimum Site Average Width)

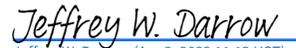
This variance application is approved subject to the following variance conditions:

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. Should the 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.
4. 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.

Carson Elizares  
Zoning Variance Approval  
PL-ZVAR-2023-000033  
March 31, 2023  
Page 6

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-2023-000033.

Sincerely,

  
Jeffrey W. Darrow (Apr 3, 2023 11:13 HST)

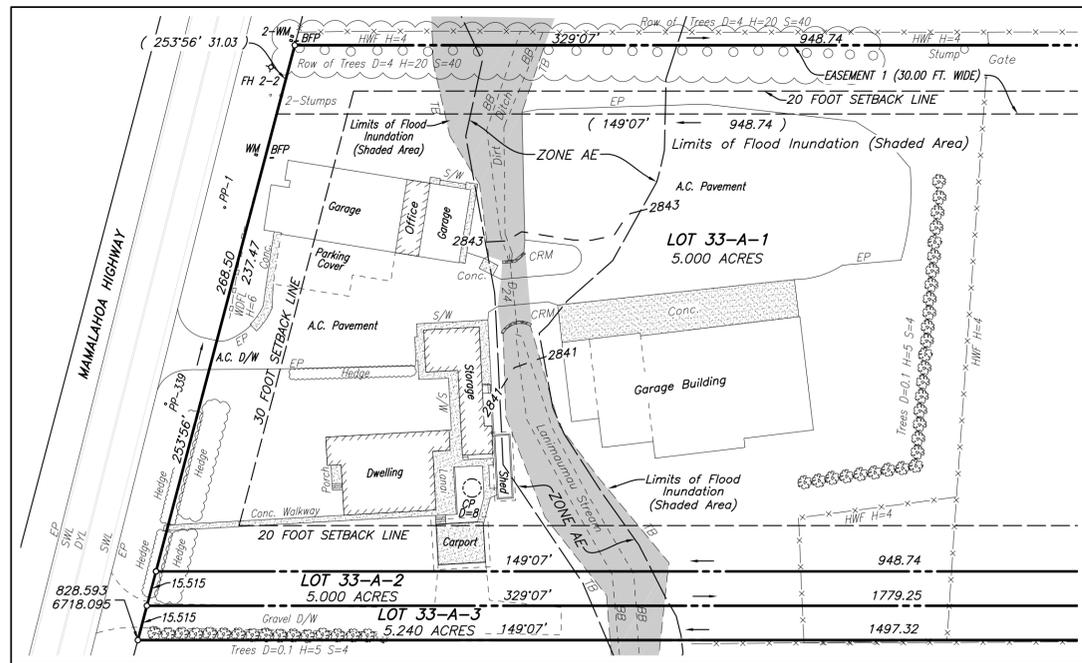
for ZENDO KERN  
Planning Director

LHN:cn

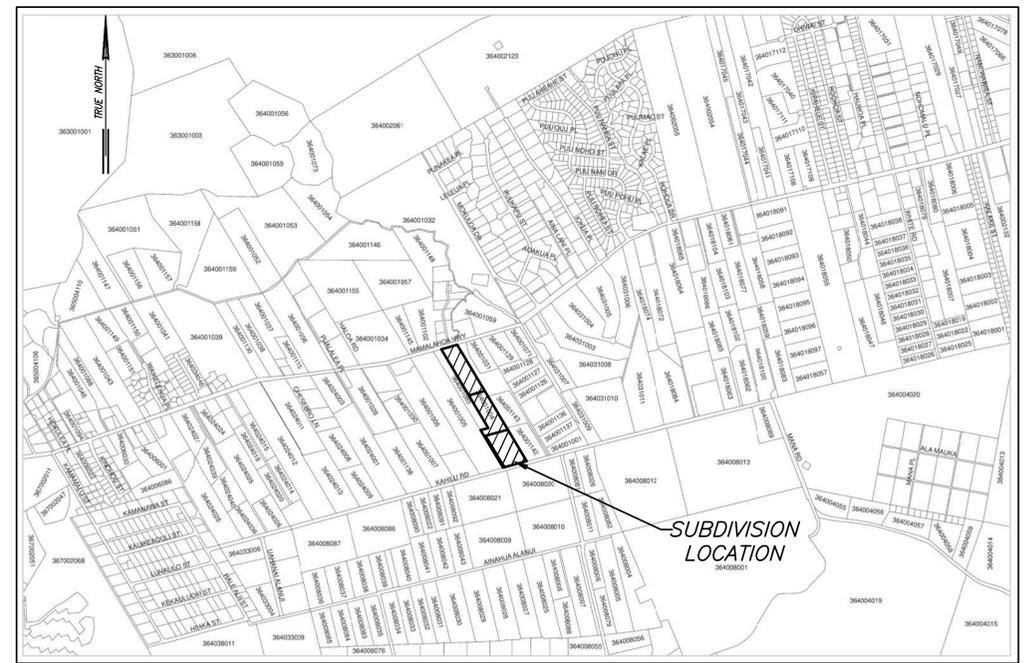
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Enclosure: Exhibits A - D

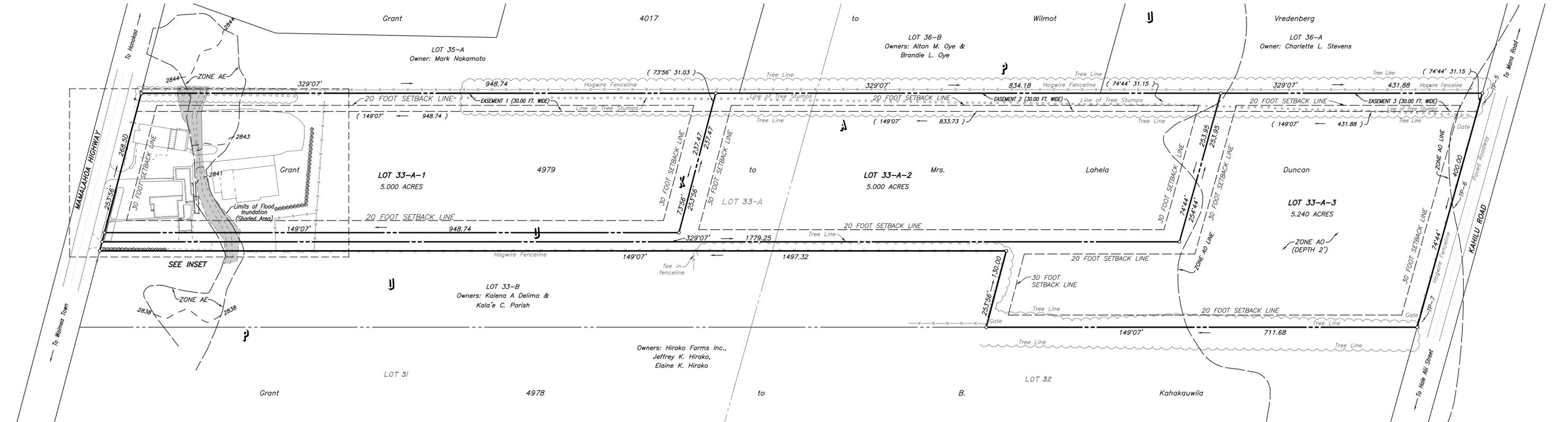
cc: Real Property Tax Office (Hilo)  
Alex Gerkin, GIS



INSET  
Scale 1 Inch = 40 Feet



VICINITY MAP  
NOT TO SCALE



### MAP SHOWING

**SUBDIVISION OF LOT 33-A  
OF THE PUUKAPU HOMESTEADS, FIRST SERIES  
BEING PORTION OF GRANT 4979 TO MRS. LAHELA DUNCAN  
INTO LOTS 33-A-1, 33-A-2 AND 33-A-3 AND  
DESIGNATION OF EASEMENTS W-1, W-2 AND W-3  
FOR WATERLINE PURPOSES**

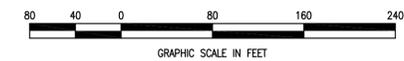
PUUKAPU, WAIMEA, SOUTH KOHALA, ISLAND OF HAWAII, HAWAII  
TAX MAP KEY: (3RD DIV.) 6-4-001: 004

**Notes:**

1. Azimuths and Coordinates are referred to Government Survey Triangulation Station "WEST BASE Δ".
2. Owners of adjoining lands as shown on map are from available records filed at the Real Property Tax Mapping Branch.
3. Subject Parcel is located partially in Zone AE (base flood elevations determined), partially in Zone AO (Flood depths of 1 to 3 feet, usually sheet flow on sloping terrain; average depths determined. For areas of alluvial fan flooding, velocities also determined) and mostly in Zone X (areas determined to be outside the 2% annual chance flood plain). The approximate locations of these Zones and data were based on F.I.R.M. Rate Map Community Panel Number 155166 0194F revised September 29, 2017.
4. Total Acreage 15.24 Acres, proposed 3 lot subdivision.
5. Waste Disposal: Existing Cesspool and future Septic systems.
6. Water System: County Department of Water Supply water meters.
7. Zoning: Agricultural 5a.
8. Property is currently used for farming and for an auto body repair shop, allowed by special permit: SPP 06-000034\_Amended.
9. Date of Survey: January 25, 2021.

**Legend**

- |                  |                             |
|------------------|-----------------------------|
| AC               | Asphalt Concrete            |
| BB               | Bottom Bank                 |
| BFP              | Backflow Preventer          |
| Conc.            | Concrete                    |
| CP               | Cesspool                    |
| D=               | Approximate Diameter        |
| D/W              | Driveway                    |
| DYL              | Double Yellow Line          |
| EP               | Edge of Pavement            |
| FH               | Fire Hydrant                |
| Guy              | Guy Wire Anchor             |
| H=               | Approximate Height          |
| HWF              | Hog Wire Fence              |
| PP               | Power Pole                  |
| S=               | Approximate Size            |
| S/W              | Sidewalk                    |
| SWL              | Solid White Pavement Stripe |
| TB               | Top Bank                    |
| TMK              | Tax Map Key                 |
| TP=              | Telephone Pole              |
| WFL              | Wood Fence Line             |
| WM               | Water Meter                 |
| 2843             | Base Flood Elevation        |
| —D <sub>24</sub> | Drain 24" Diameter          |



Site Address:  
64-791 Mamalahoa Highway

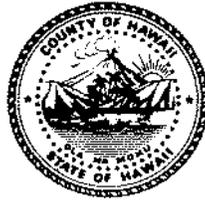
Prepared for:  
Jason K. Deluz and Melitta A. Deluz  
Tenants by the Entirety (Owners)

*Carson R. Elizares*  
CARSON R. ELIZARES  
Licensed Professional Land Surveyor  
Certificate No. 14282/Expires 4/30/24  
94 Makani Circle  
Hilo, Hawaii  
October 10, 2021  
Revised November 2, 2022

Mitchell D. Roth  
*Mayor*

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*Managing Director*

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Fax (808) 961-8742

March 31, 2023

Mr. Seizen Bonk  
Kozen Farm  
P.O. Box 2796  
Kamuela, HI 96743

Dear Seizen Bonk:

**SUBJECT: Application: Variance – PL-ZVAR-2023-000033**  
**Applicant: CARSON ELZARES, LPLS**  
**Owner: JASON K. DELUZ AND MELITA DELUZ**  
**Request: Variance from Chapter 25, Zoning, Article 5 Division 1, Section 25-5-31 Minimum building site area; minimum average width and Article 5, Division 6, Section 25-5-75 Minimum building site average width.**  
**Tax Map Key: (3) 6-4-001:004 (Lot 33A)**

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Your objection regarding PL-ZVAR-2023-000033 was carefully considered and incorporated into the variance background and variance file.

The enclosed copy of PL-ZVAR-2023-000033, including the variance background, findings, decision and list of variance conditions, is for your files.

In accordance with Ordinance No. 99-112 or Chapter 25, Zoning, Article 2, Administration and Enforcement, Division 5, Section 25-2-58, Appeals, you or other signatories may appeal the Director's decision and request the following:

- (a) Any person aggrieved by the decision of the Director in the administration or application of this chapter may, within thirty days after the date of the Director's written decision, appeal the decision to the board of appeals.
- (b) A person is aggrieved by a decision of the Director if:
  - (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public; and

Mr. Seizen Bonk  
Kozen Farm, Inc.  
Response Letter  
PL-ZVAR-2023-000033  
March 31, 2023  
Page 2

- (2) The person is or will be adversely affected by the decision.
- (c) An appeal shall be submitted electronically in the format prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the Director shall provide a copy of the appeal to the Director and to the owner of the affected property and shall provide the board of appeals with the proof of service.
- (d) The appellant, the owners of the affected property, and the Director shall be parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals.

The board of appeals may affirm the decision of the Director, reverse or modify the decision, or it may remand the decision with appropriate instructions if based upon the preponderance of evidence and the board finds that:

1. The Director erred in its decision; or
2. The decision violated this chapter or other applicable law; or
3. The decision was arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

For your convenience, we have provided the website address for Hawai'i County's new EPIC System (Electronic Processing and Information Center) for electronic filing of applications.

**WEBSITE:** <https://hawaiicountyhi-energopub.tylerhost.net/Apps/SelfService#/home>

Should you have any questions on the variance decision or the appeal procedure, please contact our Hilo office at (808)961-8288.

Sincerely,

  
Jeffrey W. Darrow (Apr 3, 2023 11:13 HST)

for ZENDO KERN  
Planning Director

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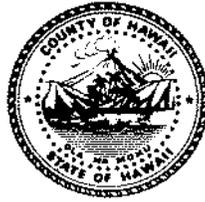
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Enclosures: PL-ZVAR-2023-000033

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March 31, 2023

Henry and Tana Hilliard  
P.O. Box 310  
Kamuela, HI 96743

E-mail: [hankh@aloha.net](mailto:hankh@aloha.net)

Dear Henry and Tana:

**SUBJECT: Application: Variance – PL-ZVAR-2023-000033**  
**Applicant: CARSON ELZARES, LPLS**  
**Owner: JASON K. DELUZ AND MELITA DELUZ**  
**Request: Variance from Chapter 25, Zoning, Article 5 Division 1, Section 25-5-31 Minimum building site area; minimum average width and Article 5, Division 6, Section 25-5-75 Minimum building site average width.**  
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for ZENDO KERN  
Planning Director

LHN:cn

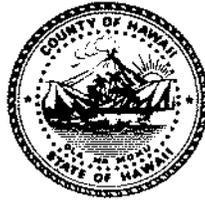
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Enclosures: PL-ZVAR-2023-000033

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March 31, 2023

Mr. Jeffrey K. Hirako  
Hirako Farms, Inc.  
P.O. Box 297  
Kamuela, HI 96743

Dear Hirako:

**SUBJECT: Application: Variance – PL-ZVAR-2023-000033**  
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**Owner: JASON K. DELUZ AND MELITA DELUZ**  
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Mr. Jeffrey K. Hirako  
Hirako Farms, Inc.  
Response Letter  
PL-ZVAR-2023-000033  
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Page 2

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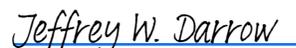
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