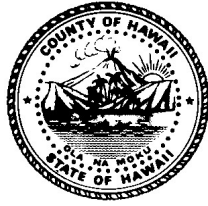


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July 31, 2023

Munekiyo Hiraga
305 High Street, Suite 104
Wailuku, Hawaii 96793

E-mail: mhepic@munekiyohiraga.com

Dear Munekiyo Hiraga:

SUBJECT: Application: VARIANCE – PL-ZVAR-2023-00043
Applicant/Agent: PAR HAWAII, INC./MUNEKIYO HIRAGA
Owners: WATERHOUSE FAMILY TRUST
Request: Variance from Chapter 25, Zoning, Article 5, Division 9
Section 25-5-96, Minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into Front (East) Yard
Setback)
Tax Map Key: (3) 2-1-006: 042 (Lots 8, 9, 13, 16 & 17)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance PL-ZVAR-2023-000043, subject to conditions. The variance allows for the service station building to remain with a 5.80-foot front (east) yard setback and front (east) yard open space. This allowance is in lieu of the required minimum 15-foot front (south) yard setback and 10-foot front (south) yard open space requirement. The variance is from the subject property's minimum front (east) yard setback requirement pursuant to the Hawaii County Code, Chapter 25 (Zoning), Article 5, Division 5, Section 25-5-116 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 18,841 sq. ft. and is in the Waiākea Warehouse Lots, Waiākea, South Hilo, Hawai'i. The subject property's street address is 1801 Kamehameha Avenue, Hilo, Hawai'i.
2. **County Zoning.** Resort-Hotel – 0.75 (V-.75).
3. **State Land Use Designation.** Urban.

4. **Setback Requirements.** 20 feet front and rear; side yards, eight feet for one story, and an additional two feet for each additional story.
5. **Variance Application.** The applicant submitted the Variance Application, attachments, filing fee, and associated materials on May 31, 2023.
6. **County Building Records.** Hawai‘i County Real Property Tax Office 38100 records indicate that the service station building was constructed in 1968, under building permit 38100.
7. **Agency Comments and Requirements.**
 - a. No comments were received from the County of Hawaii, Department of Public Works-Building Division.
8. **Public Notice.** The applicant filed a transmittal letter with a copy of the notices sent to surrounding property owners via USPS. According to the USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on May 11, 2023 and July 16, 2023, respectively. Notice of this application was published in the Hawai‘i Tribune Herald and West Hawai‘i Today on June 27, 2023.
9. **Comments from Surrounding Property Owners or Public.**

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 service station building into the 20-foot front (east) yard setback as required by the Zoning Code.

The encroachment leaves the service station building with a minimum 5.80 feet front (east) yard setback and associated roof eave projection with a minimum 1.25 front (east) yard open space in lieu of the minimum 20-foot front yard setback and 14-foot front yard open space requirement.

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 service station building constructed in 1968, subsequent construction permits were issued and closed under valid building permit by the County for the existing service station building. 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 owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would not be practicable when the owners complied and secured all necessary building permits from the County. Further, the roadway (TMK 2-1-006:041) is privately owned and basically services the other industrial properties within the Waiakea Industrial Lots complex, Therefore, the encroachment of the service station building does not have any major impact other properties outside of the Waiakea Industrial Lots complex.

The above special and unusual circumstances conclude that the current owner was not at fault for creating the encroachment violation and requiring them to fix the encroachments would interfere with the 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 service station building shown 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 was in compliance with all County requirements.

Because the encroachment is within the front yard setback and open space, to consolidate the subject property with the roadway lot and re-subdivide the property to modify property lines and adjust minimum front yard setback and front yard open space would reduce the width of the roadway. A narrower roadway would not be practical and would hinder accessibility to other properties within the industrial complex.

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.

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 variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties. The service station building has been in existence for approximately 55 years.

The subject property is situated in an industrial warehouse complex with buildings predominately built around the same period and with similar lot sizes. 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 service station building built on the subject property will not meet the minimum front yard setback and front yard open space 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. Should the existing service station building situated 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.

Munekiyo Hiraga
Approval Letter
PL-ZVAR-2023-000043
July 31, 2023
Page 5

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-2023-000043.

Sincerely,

Jeffrey W. Darrow

for ZENDO KERN
Planning Director

LHN:so

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cc: Alan Gunn, GIS
Real Property Tax Office (Hilo)
Emily Y. K. Murai: emily@munekiyohiraga.com