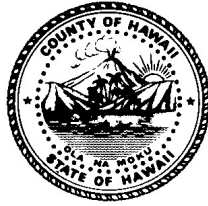


Mitchell D. Roth
Mayor

Deanna Sako
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

Jeffrey 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

February 7, 2024

Ronnie Burrus
PO Box 486
Pāhoa, Hawai'i 96778-0486

e-mail: rbtheking11@gmail.com

Dear Mr. Burrus:

SUBJECT: Application: Zoning Variance | PL-ZVAR-2023-000052
Applicant: RONNIE BURRUS
Owner: RONNIE BURRUS
**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 North Side Yard
Setback)**
Tax Map Key: (3) 1-6-076:099 (Lot 20)

After reviewing your variance application, the Planning Director certifies the **denial** of VAR-16-000351. The variance application seeks to allow an "as built" open carport and deck to remain within the north side yard setback with a minimum 1 foot -2 inches (north) side yard setback and side yard open space in lieu of the required 10-foot side yard setback and the 5-foot open space requirement. The variance is from Hawai'i County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements.

The Planning Director has concluded that the variance from the above-referenced zoning standards be **denied** based on the following findings:

BACKGROUND

1. **Location.** The subject property, consisting of approximately 12,000 square feet of land, is located in the Ainaloa Subdivision, situated at 'Ōla'a, Puna, Hawai'i. The subject property's street address is 16-2164 Pearl Drive.

2. **Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use.** Agriculture (A).
4. **Required Setback.** 20 feet front and rear; 10 feet for sides.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on April 28, 2015, and other submittals related to the variance request and variance application. The variance application's site plan map is drawn to scale and prepared by the by the applicant shows the "as-built" open carport and deck encroaches 8 feet -10 inches into the side (north yard setback and 3 feet – 10 inches side (north) open space. (**Exhibit A – Site Plan**)
6. **County Building Records.** Real Property Tax Office records indicate that a building permit (800004) was issued on January 2, 1980, for the construction of a 2-bedroom and 1-bath single-family dwelling.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated December 21, 2023. (**See Exhibit B - DOH memorandum**)
 - b. The Department of Public Works (DPW) – Building Division e-mail dated December 11, 2023. (**See Exhibit C - DPW-Building Division e-mail**)
8. **Notice to Surrounding Property Owners.** A copy of the first and second notices were sent by the applicant via USPS to surrounding property owners and mailing certificates were submitted to the Planning Department. According to the submittals, the first and second notices were mailed on December 20, 2023, and January 11, 2024, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 27, 2023.
9. **Comments from Surrounding Property Owners or Public.**
 - a. A letter objecting to the variance request from Jolanda Kahele dated December 27, 2023. (**See Exhibit D**).

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*

right 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 does not meet with criteria (a) for the following reasons:

There are no special or unusual circumstances applying to the 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 that property.

The owner/applicant submitted the variance application to address or resolve the encroachment of the “as built” open carport and deck into the 10-foot north side yard setback and 5-foot side yard open space as required by the Zoning Code.

The variance application’s site plan map is drawn to scale and prepared by the applicant shows the “as built” open carport and deck encroaches 8 feet -10 inches into the north side yard setback and 3 feet -10 inches into the north side yard open space.

According to the Department of Public Works – Building Division and Hawai‘i County Real Property Tax Department, records indicate that there are no building permits issued for the “as built” open carport and patio. Had the applicant gone through the proper building permit process, the encroachment issues could have been avoided.

The owner/applicant stated in its background report that the neighbor’s trees fell onto the original “as-built” open carport and deck requiring the owner/applicant to replace the “as-built” open carport and deck. However, it should be noted that the original “as-built” carport and deck was already encroaching approximately 2 feet into the side (north) yard boundary prior to the incident. Therefore, the owner/applicant would have eventually been required to remove the encroachment issues by relocating, redesign or removal of the “as-built” open carport and deck to meet today’s side yard setback and open space requirements as prescribed by the Zoning Code.

In review of the application materials, county records, and associated documentation, the Planning Department finds that there are no special or unusual circumstances justifying the approval of this variance. Also, there is ample room on the subject property to relocate the enclosed garage and still comply with the setback requirements.

(b) There are no other reasonable alternatives that would resolve the difficulty.

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected north side yard setback of the subject property include the following actions:

Since the Variance application is denied, the only reasonable alternatives except for the removal of the building encroachments, would be to cut back the “as-built” open carport and deck by 3’ -10” to meet the 5-foot open space requirement as prescribed by the Zoning Code.

- (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’s welfare or cause substantial, adverse impact to an area’s character or to adjoining properties.*

The variance application does not meet with criteria (c) for the following reasons:

The intent and purpose of requiring building setbacks on a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

The “as-built” carport and patio which is only 1 foot -2inches from the side (north) yard property line does not meet the criteria that the building setback assures for adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/lines.

Therefore, after reviewing the variance application, county records and other documentation, the Planning Director finds that the “as built” open carport and patio constructed into the north side yard setback and associated side yard open space was self-imposed. Based on the background information and other materials referenced in the variance analysis, the variance to allow for the encroachment would not be consistent with the general purpose of the zoning district and the intents and purpose of the Zoning code, Subdivision code and the County General Plan.

The objections cites that the garage is only six inches from the adjacent rear property and it impedes adequate air circulation and exposure to light and because of the closeness of the open carport, it invades their privacy rights.

VARIANCE DECISION-CONDITIONS

The variance application, PL-ZVAR-2023-000052, concerning the applicant’s request to allow the “as built” open carport and patio into the side (north) yard setback and open space requirement is hereby **denied** and the following conditions are imposed.

Conditions:

1. The owner/applicant shall reduce the “as built” open carport and patio which is encroaching into the adjacent (north) property within six (6) months of the date of this decision, by August 7, 2024.

2. The owner/applicant shall notify the Hawai'i County Planning Department when the condition is met and allow Planning Department staff for a site inspection.

If the above conditions have not been met by the referenced date, the Department may proceed with enforcement actions against the owner which could include fines or placement of a lien against the property.

In accordance with Ordinance No. 99-112, you may appeal the director's decision as follows:

- (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
 - (2) The person is or will be adversely affected by the decision.
- (c) An appeal shall be in writing, in the form 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 owners of the affected property and shall provide the board of appeals with proof of service.
- (d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other people may be admitted as 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, or it may reverse or modify the decision, or it may remand the decision with appropriate instructions if based upon the preponderance of evidence 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.

Ronnie Burrus
PL-ZVAR-2023-000052
Zoning Variance Denial Letter
February 7, 2024
Page 6

In view of the above and for your reference, we have enclosed the GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR form.

Sincerely,

Zendo Kern
[Zendo Kern \(Feb 14, 2024 11:40 HST\)](#)
ZENDO KERN
Planning Director

LHN:so
\\COH33\planning\public\Admin Permits Division\Variances From CoH02\Zone1\PL-ZVAR-2024-000052 TMK 16076099000 Burrus.docx

xc: Alan Gunn, Planning GIS
Mark Iwamoto, Zoning Inspector
Jolanda-Mae Kahele (jmkahele@hawaii.edu)

Enclosures Exhibit A- Site Plan
Exhibit B- Department of Health Comments
Exhibit C- Department of Public Works Comments
Exhibit D- Objection Letter



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: December 21, 2023

TO: Mr. Zendo Kern
Planning Director, County of Hawaii

FROM: Eric Honda
District Environmental Health Program Chief

SUBJECT: Application: Zoning Variance | PL-ZVAR-2023-000052
Applicant: RONNIE BURRUS
Owner: RONNIE BURRUS
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) Projected Projections into Yards and
Open Space Requirements.
TMK: 1-6-076:099 (Lot 20)

In most cases, the District Health Office will no longer provide individual comments to agencies or project owners to expedite the land use review and process.

Agencies, project owners, and their agents should apply Department of Health "Standard Comments" regarding land use to their standard project comments in their submittal. Standard comments can be found on the Land Use Planning Review section of the Department of Health website: <https://health.hawaii.gov/epo/landuse/>. Contact information for each Branch/Office is available on that website.

Note: Agencies and project owners are responsible for adhering to all applicable standard comments and obtaining proper and necessary permits before the commencement of any work.

General summary comments have been included for your convenience. However, these comments are not all-inclusive and do not substitute for review of and compliance with all applicable standard comments for the various DOH individual programs.

Clean Air Branch

1. All project activities shall comply with the Hawaii Administrative Rules (HAR), Chapters 11-59 and 11-60.1.
2. Control of Fugitive Dust: You must reasonably control the generation of all airborne, visible fugitive dust and comply with the fugitive dust provisions of HAR §11-60.1-33. Note that activities that occur near existing residences, businesses, public areas, and major thoroughfares exacerbate potential dust concerns. It is recommended that a dust control management plan be developed which identifies and mitigates all activities that may generate airborne and visible fugitive dust and that buffer zones be established wherever possible.
3. Standard comments for the Clean Air Branch are at: <https://health.hawaii.gov/epo/landuse/>

Clean Water Branch

1. All project activities shall comply with the HAR, Chapters 11-53, 11-54, and 11-55.
 1. The following Clean Water Branch website contains information for agencies and/or project owners who are seeking comments regarding environmental compliance for their projects with HAR, Chapters 11-53, 11-54, and 11-55: <https://health.hawaii.gov/cwb/clean-water-branch-home-page/cwb-standard-comments/>.

Hazard Evaluation & Emergency Response Office

1. A Phase I Environmental Site Assessment (ESA) and Phase II Site Investigation should be conducted for projects wherever current or former activities on site may have resulted in releases of hazardous substances, including oil or chemicals. Areas of concern include current and former industrial areas, harbors, airports, and formerly and currently zoned agricultural lands used for growing sugar, pineapple or other agricultural products.
2. Standard comments for the Hazard Evaluation & Emergency Response Office are at: <https://health.hawaii.gov/epo/landuse/>.

Indoor and Radiological Health Branch

1. Project activities shall comply with HAR Chapters 11-39, 11-45, 11-46, 11-501, 11-502, 11-503, and 11-504.
2. Construction/Demolition Involving Asbestos: If the proposed project includes renovation/demolition activities that may involve asbestos, the applicant should contact the Asbestos and Lead Section of the Branch at <https://health.hawaii.gov/irhb/asbestos/>.

Safe Drinking Water Branch

1. Agencies and/or project owners are responsible for ensuring environmental compliance for their projects in the areas of 1) Public Water Systems; 2)

Underground Injection Control; and 3) Groundwater and Source Water Protection in accordance with HAR Chapters 11-19, 11-20, 11-21, 11-23, 11-23A, and 11-25. They may be responsible for fulfilling additional requirements related to the Safe Drinking Water program: <https://health.hawaii.gov/sdwb/>.

2. Standard comments for the Safe Drinking Water Branch can be found at: <https://health.hawaii.gov/epo/landuse/>.

Solid & Hazardous Waste Branch

1. Hazardous Waste Program - The state regulations for hazardous waste and used oil are in HAR Chapters 11-260.1 to 11-279.1. These rules apply to the identification, handling, transportation, storage, and disposal of regulated hazardous waste and used oil.
2. Solid Waste Programs - The laws and regulations are contained in HRS Chapters 339D, 342G, 342H, and 342I, and HAR Chapters 11-58.1 and 11-282. Generators and handlers of solid waste shall ensure proper recycling or disposal at DOH-permitted solid waste management facilities. If possible, waste prevention, reuse, and recycling are preferred options over disposal. The Office of Solid Waste Management also oversees the electronic device recycling and recovery law, the glass advanced disposal fee program, and the deposit beverage container program.
3. Underground Storage Tank Program – The state regulations for underground storage tanks are in HAR Chapter 11-280.1. These rules apply to the design, operation, closure, and release response requirements for underground storage tank systems, including unknown underground tanks identified during construction.
4. Standard comments for the Solid & Hazardous Waste Branch can be found at: <https://health.hawaii.gov/epo/landuse/>.

Wastewater Branch

For comments, please email the Wastewater Branch at doh.wwb@doh.hawaii.gov.

Sanitation / Local DOH Comments:

1. Noise may be generated during demolition and/or construction. The applicable maximum permissible sound levels, as stated in Title 11, HAR, Chapter 11-46, “Community Noise Control,” shall not be exceeded unless a noise permit is obtained from the Department of Health.
2. According to HAR §11-26-35, No person, firm, or corporation shall demolish or clear any structure, place, or vacant lot without first ascertaining the presence or absence of rodents that may endanger public health by dispersal from such premises. Should any such inspection reveal the presence of rodents, the rodents shall be eradicated before demolishing or clearing the structure, site, or vacant lot.

A demolition or land clearing permit is required prior to demolition or clearing.

Other

1. [CDC - Healthy Places - Healthy Community Design Checklist Toolkit](#) recommends that state and county planning departments, developers, planners, engineers, and other interested parties apply these principles when planning or reviewing new developments or redevelopment projects.
2. If new information is found or changes are made to your submittal, DOH reserves the right to implement appropriate environmental health restrictions as required. Should there be any questions on this matter, please contact the Department of Health, Hawaii District Health Office, at (808) 933-0917.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: December 21, 2023

TO: Mr. Zendo Kern
Planning Director, County of Hawaii

FROM: Eric Honda
District Environmental Health Program Chief

SUBJECT: Application: Zoning Variance | PL-ZVAR-2023-000052
Applicant: RONNIE BURRUS
Owner: RONNIE BURRUS
Request: Variance from Chapter 25, Zoning, Article 5 Division 7,
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Jolanda Kahele
P.O. Box 193
Hauula, Hi 96717

December 27, 2023

Aloha, Mr. Nakamura

I am writing this letter, in regards to the application of Ron Burrus requesting a variance to have his existing car port to remain as built.

As our conversation on December 27, 2023, I am denying him the variance. Due to the fact that he is hindering my progress of clearing my property. His structure is right at the property line and my contractor has discontinued the clearing until this situation can be resolved.

I do understand from our conversation that if his car port is an open structure than it should be five feet from the boundary line of the property and not inches. I am confirming that I am denying the variance.

Thank you for your time.

Sincerely,

Jolanda Kahele