STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

March 13, 2015

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Ref No.: GL - 3157

Hawaii

Resubmittal: Deny Lessee's Request for a One-Year Holdover and the Issuance of a Month-to-Month Revocable Permit, of General Lease No. 3157, Natalie Marie McKeen, Lessee, Ocean View Lease Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-007:023.

APPLICANT:

Natalie Marie McKeen, widow of Robert C. McKeen, Jr. (deceased).

LEGAL REFERENCE:

Sections 171-40 and -55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Ocean View Lease Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-007:023, as shown on the attached map labeled Exhibit A.

AREA:

7,270 square feet, more or less.

ZONING:

State Land Use District:	Urban
County of Hawaii CZO:	MG-1a (General Industrial minimum 1 acre)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

DCCA VERIFICATION:

Applicant as an individual is not required to register with the DCCA.

CURRENT USE STATUS:

Encumbered by General Lease No. 3157, by way of an assignment of lease (without Board consent) from the Estate of Robert C. McKeen, Jr. (deceased), Lessee, for residential purposes. Lease to expire on March 14, 2015. The last rental reopening occurred on May 25, 2003 and was for the remainder of the lease term.

CHARACTER OF USE:

Residential purposes.

BACKGROUND:

General Lease No. 3157 (GL-3157) was originally issued to Albert E. Weight by the Territory of Hawaii for a term of 21 years commencing on November 18, 1946 with an annual rental rate of $366.00.

An assignment of lease was executed on December 31, 1946 from Albert E. Weight to Robert C. McKeen.

The Lessee qualified as a disaster victim under Section 87 of Act 32, Session Laws of Hawaii 1962. GL-3157 was consequently extended on May 25, 1962 for a period of 53 years terminating on March 14, 2015 with rental re-openings at 20 and 40 years from the most current lease agreement.

At its meeting of April 25, 1975, the Board consented to the assignment of GL-3157 from Robert C. McKeen, assignor, to Robert C. McKeen and Margaret McKeen, as tenants by the entirety, assignees.

At its meeting of November 18, 1983, the Board consented to the assignment of GL-3157 from Margaret McKeen, widow, as assignor, to Margaret McKeen, widow, and Robert C. McKeen, Jr., husband of Natalie McKeen, as Assignee.

Margaret McKeen passed away on January 11, 2002 and Robert C. McKeen, Jr. passed away on January 26, 2002.

At its meeting of August 12, 2005, under agenda item D-2, the Board deferred action on a forfeiture of GL-3157 for failure to keep lease rental payments current. The Board

requested staff to verify the status of the estates of Robert C. McKeen, Jr. and Margaret McKeen. Natalie M. McKeen has no documented status and the Board did not want to grant any extensions to her if she was not the lessee.

On November 9, 2007, an Assignment of Lease document was recorded at the Bureau of Conveyances as Document #2007-197657, which assigned GL-3157 from Lester D. Oshiro, Personal Representative of the Estate of Robert C. McKeen, Jr., (deceased), as Assignor, to Natalie Marie McKeen, as Assignee.

Consent to the assignment was never processed as the lease was in a constant state of non-compliance with the terms and conditions.

In 2001, the Department of Transportation, Harbors Division (DOTHAR) requested inclusion of the lands of the Ocean View Lease Lots (Baker's Beach) into the Hilo Commercial Harbor upon the expiration of the leases in 2015.

In a letter dated June 10, 2011, DOTHAR informed DLNR that the Hawaii Island Commercial Harbors 2035 Master Plan was almost complete and identified the need for the Ocean View Lease Lot properties for future expansion of Hilo Harbor. The estimated development window is between 2020 and 2030. They requested that in the interim period (from 2015 to 2020), DLNR would "keep the lots in short term usage only until DOTHAR is ready to secure funding and proceed with its development plans".

A letter dated July 15, 2011 from DLNR notified all Ocean View Lease Lot lessees of the situation (refer to Exhibit B). The letter offered all current lessees who "*remain in good standing through the end of the lease term, and who timely requests a holdover and revocable month-to-month permit*" that the DLNR's Land Division would recommend to the Board a one-year holdover and thereafter issuance of a revocable permit to the lessee for the interim period of March 15, 2015 to at least December 31, 2019.

DISCUSSION:

On January 22, 2015, HDLO received a request letter for a one year holdover followed by a revocable month-to-month permit from Natalie McKeen for GL-3157. Upon review of the file, it was discovered that consent for the assignment of lease was never processed and thus the lease has remained in the name of Margaret McKeen and Robert C. McKeen, Jr.

A review of the file revealed several issues of non-compliance with the terms and conditions of the lease.

First, the applicant has habitually failed to keep lease rents current requiring staff to send, via certified mail, Notices of Default for 10 of the last 13 semi-annual billings. Given the

payment history, it is highly unlikely that lease/permit rents will be kept current in the future. Administrative resources spent curing defaults could be better utilized on other tasks.

Secondly, the lease requires that all taxes, impositions and assessments are to be paid by the lessee. A check of the County of Hawaii, Real Property Tax Office shows that taxes have not been paid since before 2009 with a total balance owing of $8,984.97.

Lastly, sometime prior to the last rent reopening in 2005, the lessee constructed a garage between the road and the original house. The building was constructed without submitting plans to the Board for approval and without building permits. The property is located within a Special Management Area and is zoned General Industrial. The current county zoning of General Industrial does not allow for residential use. However, the residential nature of the Ocean View Lease Lots was established prior to the general industrial zoning designation in 1967 and was therefore "grandfathered-in". Due to the non-conforming use, no further residential expansions are to be permitted on the property.

To exacerbate the situation, Ms. McKeen, by her own admission, is occupying the structure as her primary dwelling. Ms. McKeen related to staff that they moved into the garage structure as a result of damage to the original house by storm surges, but is vague regarding the timing. It is noted that in November 2000, Natalie McKeen received $3,700.60 in FEMA monies for repairs to the original house foundation and other associated minor repairs needed as a result of storm surge damage.

Staff conducted a site inspection of the premises on January 30, 2015. Staff found a small oceanfront houselot so overgrown with trees and vegetation that the ocean was not visible. Large trees are overhanging and lying on the roofs of both structures and pose a potential hazard to neighboring properties. Electricity to the new structure is provided through multiple extension cords from the old structure. Exterior paint is flaking badly or non-existent. Inoperable vehicles are parked in the yard. The foundation shoring repairs made to the original house in 2000 are apparent. However, the rest of the building is deteriorating and no attempt at repair or maintenance has been made. Refer to attached photos marked as Exhibit C.

Due to the non-compliance issues, staff does not believe it would be in the best interest of the State to allow a holdover and month-to-month revocable permit on this property. The electrical situation poses an enormous fire hazard to this and surrounding properties. The wastewater system has been altered from original without benefit of review from State Environmental Health. The large trees overhanging the house pose a potential hazard to this property and the neighboring property to the east. Finally, the deteriorating condition of the original house makes it potentially unsafe for habitation.

The opportunity to qualify for a one-year holdover followed by a month-to-month

revocable permit was limited to those lessees who "*remain in good standing through the end of the lease term*". Given the non-compliance issues, this lessee is not in "good standing". Therefore, staff recommends to deny the request for a one-year holdover followed by a month-to-month revocable permit.

RECOMMENDATION:

That the Board:

1. Deny the Request for a One-Year Holdover and issuance of a month-to-month revocable permit, of General Lease No. 3157, Natalie Marie McKeen, Lessee.

Respectfully Submitted,

Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:

Carty S. Chang, Interim Chairperson

EXHIBIT A

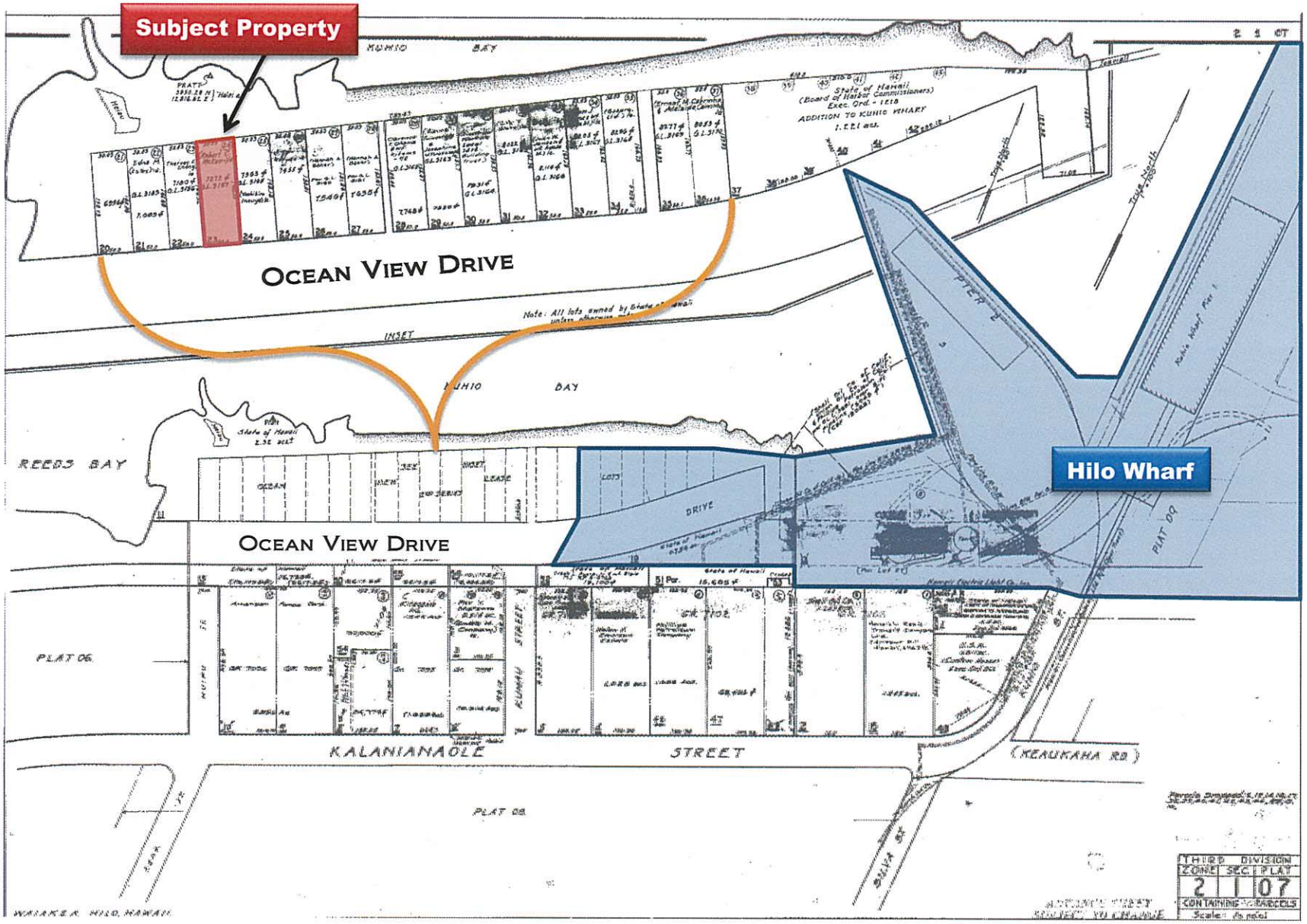

Subject Property
Hilo Wharf
OCEAN VIEW DRIVE
OCEAN VIEW DRIVE
KUHIO BAY
REEDS BAY
KALANIANAOLE STREET
PLAT 06
PLAT 08
PLAT 09
PIER 2
(KEAUKAHA RD)
THIRD DIVISION
ZONE SEC PLAT
2 1 07

EXHIBIT B

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
CHAIRPERSON

GUY H. KAULUKUKUI
DEPUTY

WILLIAM M. TAM
DEPUTY

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 15, 2011

Ocean View Drive Lessees
Hilo, Hawaii

Dear Lessees:

Subject: General Lease Nos. 3155, 3156, 3157, 3158, 3161, 3162, 3163, 3164, 3165, 3166, 3167, 3168, 3169 & 3170, Ocean View Drive Lots at Waiakea, South Hilo, Hawaii; Tax Map Keys: 3rd/ 2-1-07:20 through 36

As you may know, the State Department of Transportation (DOT) has requested the transfer of the above-referenced properties on Ocean View Drive belonging to the Department of Land and Natural Resources (DLNR) to DOT for the expansion of Hilo Harbor. Initially, DOT anticipated taking possession of the properties upon the expiration of the leases in 2015. But we have recently been informed that DOT will not be developing the lands for harbor expansion until approximately 2020.

In light of this information, DLNR will continue to manage the properties through at least December 31, 2019. Pursuant to Hawaii Revised Statutes section 171-40, the Board of Land and Natural Resources has authority to approve a one-year holdover of the leases "upon such rent, terms, and conditions as the board may prescribe." Further,

> [u]pon expiration of the one-year extension, if the board has not yet decided upon the re-lease of the land or reservation for other purposes, the board may issue a temporary permit to the lessee, subject to section 171-55 and the rent and such other terms and conditions as the board may prescribe.

Section 171-55, in turn, allows the board to issue month-to-month permits for periods not exceeding one-year, but also authorizes the board to continue the permits for additional one-year periods. Revocable permits are non-assignable, and no subletting is allowed under a revocable permit.

Please note the board has no authority to issue new leases by direct negotiation for these properties. A public auction sale of a lease would be appropriate if the properties were zoned for residential use. But they are located in the MG-1a, General Industrial District, which does not allow for residential use.

Accordingly, for any Ocean View Drive lessee who remains in good standing through the end of the lease term, and who timely requests a holdover and revocable month-to-month permit, DLNR's Land Division will recommend to the board a one-year holdover and thereafter issuance of a revocable permit to the lessee. The rent payable during the holdover period will need to be established at market rates by independent appraisal. The cost of the appraisal will be paid by the lessee seeking the holdover.

By law, the board cannot act on requests for holdovers or revocable permits on these properties until there are two years or less remaining on the lease term. The leases are scheduled to expire on March 14, 2015. Accordingly, Land Division would not be able to take a holdover or revocable permit request to the board until March 15, 2013 at the earliest. Finally, all such requests must be brought before the board prior to the lease termination date of March 14, 2015.

Should you have any questions, please contact Hawaii District Land Agent Kevin Moore at 974-6203.

Sincerely,

William J. Aila, Jr.
Chairperson

C: Land Board Member
Glenn M. Okimoto, Director, Department of Transportation
Representative Jerry Chang
Wallace Ah Fook Aki, RP No. S-7536
Central File
District File

EXHIBIT C

January 30, 2015 Inspection Photos GL-3157 McKeen –

View from street – note overgrown trees on roof. Two inoperable vehicles sitting in front yard area.

View from street – ocean is behind house. Note electrical service drop goes to back house and is covered with vines.

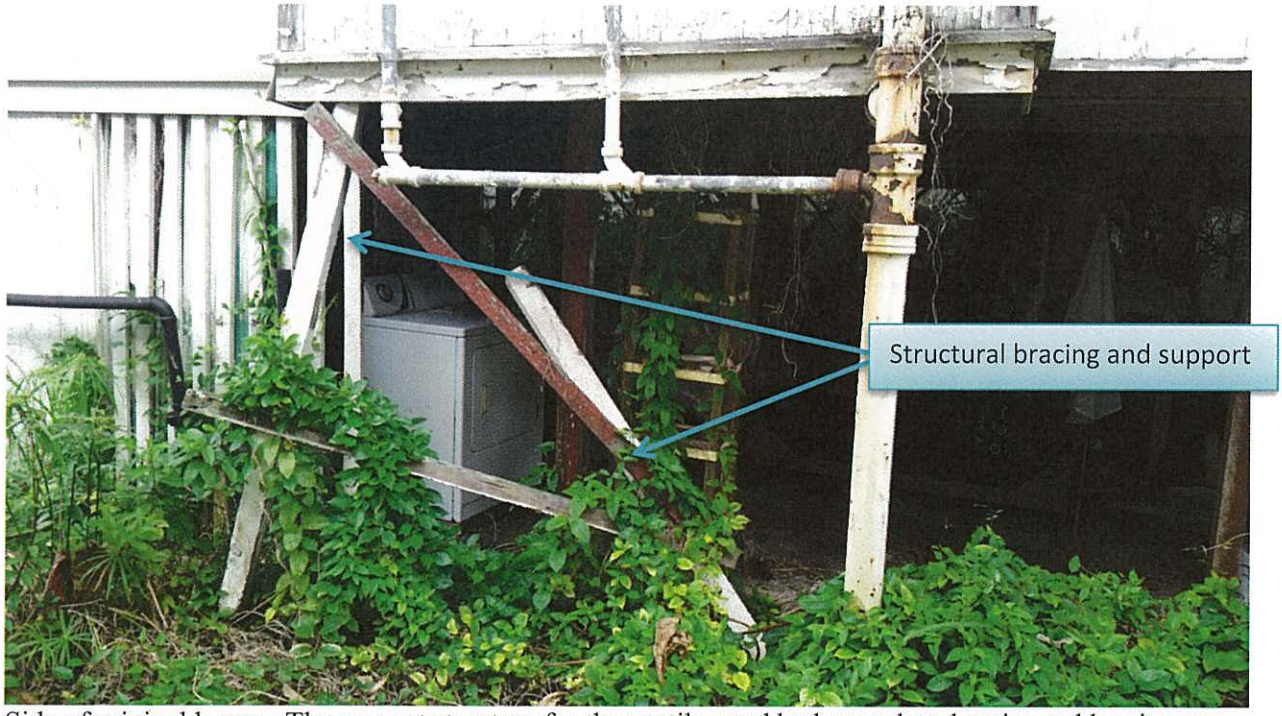
EXHIBIT C

View of area between structures.

View toward ocean and original house.

Rear of garage/primary residence.

EXHIBIT C



Side of original house. The support structure for the cantilevered bathroom has deteriorated leaving no bracing for that area of house.

View of underneath of original house. The debris, wiring and vines are representative of overall condition of premises.

EXHIBIT C

View of upstairs of original house from ocean side.

View of downstairs of original house from ocean side.

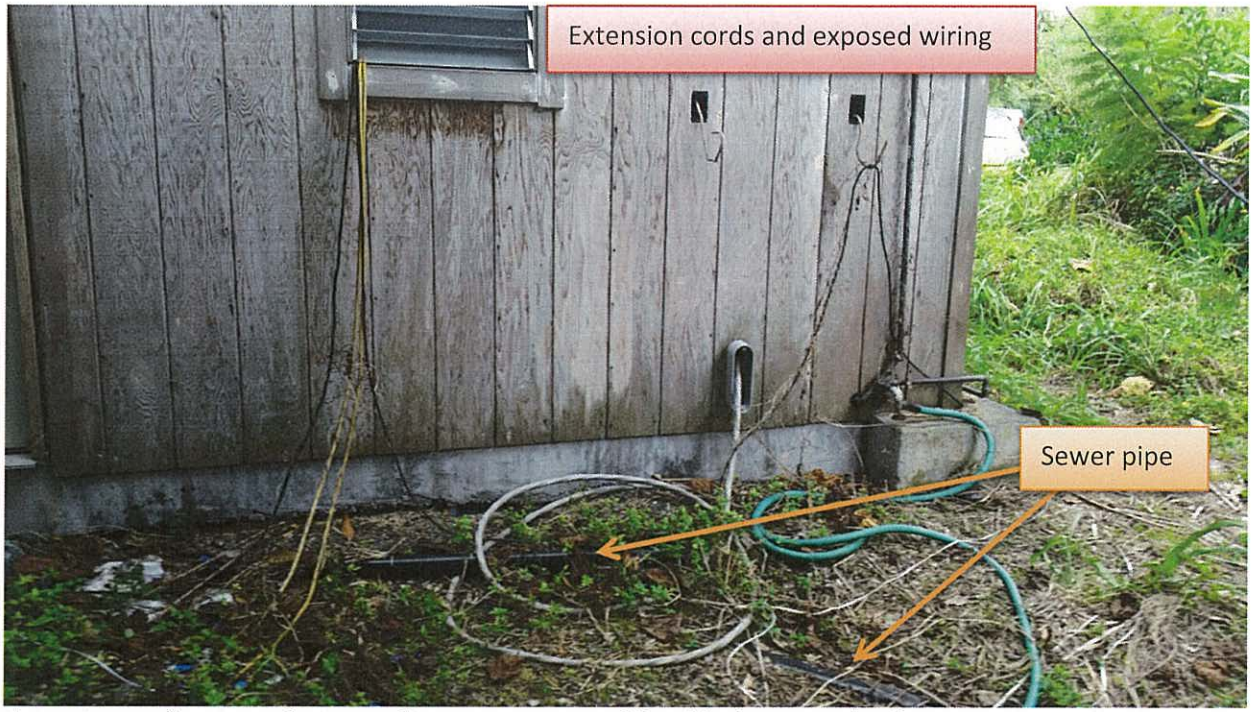
EXHIBIT C

View of left side from ocean.

View of right side from ocean.

Main electrical panel and breaker box mounted under original house.

EXHIBIT C



Area at rear of garage – between the two structures. Note black sewer pipe from garage structure.

Electrical wiring and switches hanging under original house.

Entry stairs to original house – note trees and vines on both structures.