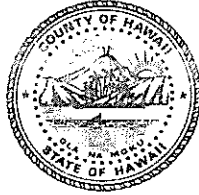


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

October 1, 2002

Dennis D. Lee, MD, MPH  
c/o 135 Pu'uhonu Way, Suite 200  
Hilo, HI 96720

Dear Dr. Lee:

**VARIANCE PERMIT NO. 1313 (VAR 02-054)**

**Applicant: DENNIS D. LEE, MD, MPH**

**Owners: DENNIS D. LEE, ET AL.**

**Request: Variance from Fences and Accessory  
Structures, Minimum yards, and  
Open space requirements,  
Pursuant to Chapter 25, Zoning**

**Tax Map Key: (3) 2-4-073:015, Lot 186**

After reviewing your application and the information submitted, the Planning Director hereby approves your variance request subject to the conditions stated herein. Variance Permit No. 1313 allows portions of a proposed perimeter chain link fence for a tennis court to be constructed up to 12 feet within the minimum yards of Lot 186 in accordance with the variance application's site plan map or drawing dated July 26, 2002. The variance is from the Zoning Code, Chapter 25, Article 4, Division 2, Section 25-4-43, Fences and accessory structures, (a) (b) (c), Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77, Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces.

### **BACKGROUND AND FINDINGS**

1. **Location and Zoning.** The subject property, Lot 186 containing 1.003 acres, Sunrise Estates Subdivision, L.C. Application 1205, Map 73, Kukuau 1<sup>st</sup>, South Hilo, Hawaii.

The property is zoned Agricultural (A-1a) and designated Agriculture "A" by the Land Use Commission (LUC).

026205  
OCT 04 2002

Dennis D. Lee, MD, MPH

Page 2

October 1, 2002

2. **Application**. The applicant/owners, submitted the variance application, tax clearance, and \$250.00 variance filing fee on July 31, 2002.
3. **Site Plan**. The applicant's site plan map and other detailed chain link fence drawings, drawn to scale, were reviewed and stamped by a licensed engineer. The site plan (Sheet A-1) dated July 26, 2002 denotes the location of the dwelling improvements and location of the proposed 4 feet to 12 feet-high chain link fence improvements surrounding a proposed tennis court.
4. **Agency Comments and Requirements (VAR 02-054):**
  - a. **Department of Public Works (DPW)**. The Department of Public Works (DPW) memorandum dated August 26, 2002, states:

“We have reviewed the subject application forwarded by your memo dated August 12, 2002 and have the following comments.

The Building Division opposes the approval of the application for the following reasons.

All new building/fence construction shall confirm to current code requirements.

Existing permit no. 020987 for the existing swimming pool has no status of inspection.

Please refer questions to the Building Division at 961-8331.”
  - b. **Department of Health**. The State Department of Health (DOH) memorandum dated August 27, 2002, states:

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”
5. **Notice to Surrounding Property Owners**. It appears that the applicants mailed notice of the variance request to the surrounding property owners on August 3, 2002 and August 17, 2002.

Dennis D. Lee, MD, MPH

Page 3

October 1, 2002

6. Comments from Surrounding Property Owners or Public. No further agency comments were received. No objections from the surrounding property owners or public were received.

### SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicants submitted a site plan map identifying the location of the perimeter rock walls, dwelling, and other proposed site improvements. The site plan identifies the distance between the proposed chain link fence surrounding the proposed tennis court. Portions of the proposed chain link fence exceeding the 8 feet height limit are subject to the minimum yard and open space requirements of the Zoning Code. The owners feel the additional 2 feet to 4 feet fence height will help contain "errant" tennis balls from entering that right-of-way "stub-out" fronting the property and promote safety and privacy between adjoining parcels and the neighborhood.

Therefore, after considering the applicant's attachment and statement, the dwelling and accessory building positions, and the adjoining property uses and character of the surrounding neighborhood, there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the applicant or owners 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 subject property.

### ALTERNATIVES

At this time there are no reasonable alternatives in resolving the difficulty of the applicant or owners. Alternatives available to the applicant or owners to further improve the property include the following:

1. Limit the chain link fence height to the 8 feet height limit within the minimum yards and open space areas.
2. Redesign and relocate the tennis court within the building lines prescribed by the Zoning Code and other design and similar building alternatives, etc.

Dennis D. Lee, MD, MPH

Page 4

October 1, 2002

### **INTENT AND PURPOSE**

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s) and boundary/property lines. These purposes would not be undermined by this variance since the proposed fence improvements or additional fence height is necessary for safety and privacy and will not be physically and visually obtrusive from adjacent property(s) or the existing right-of-way, and do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns.

Based on the foregoing findings, this variance request 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. Furthermore, 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.

### **DETERMINATION**

This variance request is approved subject to the following conditions:

1. The applicant or current owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicants or owners, successors or assigns shall indemnify and hold the County of Hawaii 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. The approval of this variance allows and permits portions of a chain link fence for a tennis court to be constructed up to twelve (12) feet height within the minimum yards and attendant open space areas of the subject TMK property (Lot 186). The location of the proposed chain link fence improvement shall be constructed in accordance with the site plan site plan drawing dated July 26, 2002 or plans submitted with the variance application.

Dennis D. Lee, MD, MPH

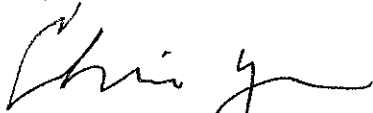
Page 5

October 1, 2002

4. Any building permit required to construct the chain link fence or any building or construction permits issued to the subject property (Lot 186) shall be "finaled" or closed prior to any change in title or sale of the property. Any permitted uses located on Lot 186 shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN

Planning Director

WRY:cps

P:\WP60\WRY\FORMLETT\VARAPPZCTMK24073015.LEE

xc: Real Property Tax Office

Planning Dept. - Kona