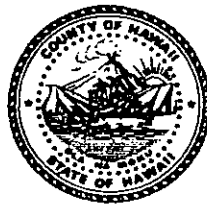


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

June 28, 2013

Mr. Fritz Harris-Glade, AIA
75-5580 Kauhola Street
Kailua Kona, HI 96740

Dear Mr. Harris-Glade:

SUBJECT: Application: VARIANCE – VAR-12-000076
Applicant: FRITZ HARRIS-GLADE, AIA
Owners: TONY M. STEFANIK
Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards, (a), Section 25-5-8 Other Regulations, and Article 4, Division 4 Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Encroachment into Southwest Front Yard Setback).
TMK: 6-8-012:048, LOT 213

After reviewing your variance application, the Planning Director certifies the **approval** of VAR 12-000076, subject to variance conditions. The variance is to allow portions of the enclosed lanai to remain on Lot 213 with a minimum 15 feet front yard setback in lieu of minimum 20.00 feet front yard requirements measured from the property's front boundary line and according to the submitted site plan. The variance is from the subject property's minimum 20.00 feet front yard requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a).

BACKGROUND AND FINDINGS

1. **Location:** The subject property, consisting of approximately 10,850 square feet of land, is situated within Waikoloa Village, Unit 1-B, File Plan 1189 at Waikoloa, South Kohala, Hawaii. The subject property's street address is 68-3781 Puu-Nui Street.
2. **County Zoning.** Single-Family Residence – 10,000 square feet (RS-10).
3. **State Land Use.** Urban

4. **Setback Requirements.** 20 feet for front and rear; 10 feet for sides.
5. **Variance Application-Site Plan.** The owner submitted the variance application, attachments, and filing fee on June 15, 2012 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 Paul Hogan, Architect. The variance site plan denotes that portions of the enclosed lanai built into the property's minimum 20-foot wide front yard setback.
6. **County Building Records:** Hawai'i County Real Property Tax Office records indicate that a building permit (925685) was issued on May 12, 1992 for the construction of a 4 bedroom, 3 bath Single Family Dwelling.
7. **Variance Application (VAR: 12-000076)-Agency Comments and Requirements:**
 - a. The State Department of Health (DOH) memorandum dated July 5, 2012 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. No comments were received from the Department of Public Works – Building Division.
8. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notice sent to surrounding property owners, including an affidavit, stating notices were mailed to surrounding property owners by U.S.P.S. According to these submittals, the first and second notice(s) were mailed on May 6, 2013 and May 7, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 8, 2012.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or general public were received by the Planning Department.
10. **Time Extension.** The applicant's variance application was acknowledged by letter dated July 2, 2012; and additional time to review the application was required. The applicant has granted the Planning Department and the Planning Director an extension of time for decision on the Variance application to July 30, 2013.

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 criteria (a) for the following reasons:

The applicant, on behalf of the owner, submitted the variance application to address or resolve the encroachment of the enclosed lanai into the 20-foot front yard setback as required by the Zoning Code.

The applicant stated in the background information that the owner purchased the property in May, 2006; at that time the lanai area was enclosed with corrugated plastic roofing and vinyl siding. The owner refurbished the enclosed lanai by replacing the existing siding with new siding matching the exterior of the single-family dwelling, and a new roof. After completing the cosmetic renovation, he was notified by the Waikoloa Village Association that the existing enclosed lanai encroached into the front yard setback. To require the applicant to remove the lanai to fix the encroachment after all these years would interfere with the best use of development of the 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 front and rear yard and open space of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the enclosed lanai constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. Any structural or design correction would leave large and unattractive reconstruction disfigurements to the single-family dwelling. Also, by requiring the owner to downsize the enclosed lanai to meet the setback requirement would be impracticable and diminish the overall functionality of the subject improvement. This alternative would be deemed unreasonable, especially when the owner was under the impression that the enclosed lanai was in compliance with all County requirements.

Because the encroachment is within the front yard setback, to consolidate the subject property with the roadway and to re-subdivide the property to modify property lines and adjust minimum front yard setbacks is not a viable option. 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's welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The variance application meets criteria (c) for the following reasons:

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)/uses and boundary/property lines.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance 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.

No comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners, including the Waikoloa Village Association.

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

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 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 existing enclosed lanai constructed upon the subject property ("Lot 213") will not meet the minimum rear yard pursuant to Chapter 25, the Zoning Code, according to the

Mr. Fritz Harris-Glade, AIA

Page 5

June 28, 2013

variance application's site plan. The approval of this variance permits the existing enclosed lanai to remain upon the subject property or "Lot 213" in accordance to the site plan received on June 15, 2012.

4. No permit shall be granted to allow an ohana or second single family or farm dwelling upon the subject property, subject to provisions of the Zoning Code or State law which may change from time to time.
5. Should the existing enclosed lanai upon the subject property be destroyed by fire or other natural causes, the replacement or the new single-family dwelling shall comply with the County Zoning Code and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
6. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 12-000076 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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xc: Kona Office
Real Property Tax Office (Kona)
South Kohala CDP Planner – Deanne Bugado
Planning GIS, Gilbert Bailado (via email)

Mr. Fritz Harris-Glade, AIA
Page 6
June 28, 2013

NEIL ABERCROMBIE
GOVERNOR



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

LORETTA J. FUDDY, A.C.S.W., M.P.H.
Director of Health

PLANNING DEPARTMENT
COUNTY OF HAWAII

2012 JUL 10 AM 10:16

MEMORANDUM

DATE: July 5, 2012

TO: Bobby Jean Leithead Todd
Planning Director, County of Hawaii

FROM: Newton Inouye *vi*
District Environmental Health Program Chief

SUBJECT: VARIANCE APPLICATION-VAR 12-000076
Applicant: FRITZ HARRIS-GLADE
Owner: TONY M. STEFANIK
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-6, Minimum Yards, Section 25-5-7, Other
Regulations and Article 4, Division 4, Section 25-4-44(a),
Permitted Projections into Yards and Open Space Requirements
Tax Map Key: 6-8-012:048, Lot 213

The Health Department found no environmental health concerns with regulatory implications in the submittals.

WORD:VAR 12-000076.my

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