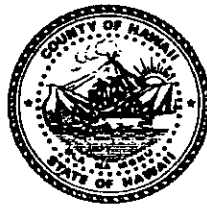


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
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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

July 26, 2013

Roger D. Fleenor, LPLS
P. O. Box 383414
Waikoloa, Hawai'i 96738

Dear Mr. Fleenor:

SUBJECT: Application: Variance – VAR-12-000115
Applicant: ROGER D. FLEENOR, LPLS
Owners: GREGORY S. CAMERON TRUST
Request: Variance from Chapter 25, Zoning, Article 5, Division, Section 25-5-7, Minimum Yards, Section 25-5-77 Other Regulations, and Article 4, Division 4 Section 25-4-44, Permitted projections into Yards and Open Space Requirements (Encroachment into Southern Front Yard and East Side Yard Setback)
TMK: 6-5-012:013, LOT 3-B

After reviewing your variance application, the Planning Director certifies the **approval** of VAR: 12-000115, subject to variance conditions. The variance is to allow portion of the single-family dwelling and attendant roof eave to remain on Lot 3-B with a minimum 17.6 foot front (south) yard setback in lieu of minimum 20-foot front yard setback requirement and a minimum of 5.8 feet to a minimum 6.2 feet side (east) yard setback in lieu of the minimum 10 foot side yard setback requirement. The variance is from the subject property's minimum 10-foot side 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 12,167 square feet of land, is situated within the Wai'auia, Waimea, South Kohala, Hawai'i. The subject property's street address is 65-1650 Kawaihae Road.
2. **County Zoning:** Single-Family Residential – 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 December 13, 2012 and other submittals related to the variance request and variance application. The variance application's revised site plan map is drawn to scale and prepared by Roger D. Fleenor, LPLS. The variance revised site plan denotes that portions of the single family dwelling built into the property's minimum 20-foot wide front (south) yard setback and 10-foot side (east) yard setback.
6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (20707) was issued on July 21, 1958 for the construction of a 3 bedroom, 2 baths Single-Family Dwelling. Additional permits were issued on October 29, 1980 (802509) and on October 10, 2005 (B2005-1681K) for additions to the single family dwelling and on July 21, 1988 (802509) for construction of a two-car garage.
7. **Time Extension.** The applicant's variance application was acknowledged by letter dated December 21, 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 August 31, 2013.
8. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated November 13, 2012. (See attached)
 - b. No comments were received from the Department of Public Works – Building Division.
9. **Notice to Surrounding Property Owners.** Copies of the first and second notices were sent by the applicant via USPS to surrounding property owners and the mailing certificates were submitted to the Planning Department. According to the submittals, the first notice was mailed on November 9, 2012, and the second notice was mailed on January 8, 2013. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on January 8, 2013.
10. **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.

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 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 owner/applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling into the 20-foot front south yard setback and 10-foot side east yard setback as required by the Zoning Code.

The revised survey map prepared by Roger D. Fleenor, L.P.L.S. shows that the two-car garage encroaches 3.8 feet into the east side yard setback. The single-family dwelling encroaches 4.2 feet into the east side yard setback and 2.8 feet into the front south yard setback. The original structure received final inspection in 1958. The new owner purchased the property with the setback encroachments but due to his untimely death, was not able to proceed with corrections.

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 also appears that past building permits inspections of the premises by the agencies during construction of the dwelling improvements and the two-car garage did not disclose any building encroachment issues or building setback irregularities at that time.

Therefore, special and unusual circumstances exist which support an approval and which would otherwise interfere with the best manner of development of the property.

(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 into the affected front and side yard of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the as-built single-story dwelling constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the additions to the single-family dwelling and the two-car garage were in compliance with all County requirements.

Another alternative is to consolidate the subject property with the adjoining side property

which is owned by someone else and to resubdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical. Therefore, there are no reasonable alternatives to resolve the difficulty.

(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. With the granting of the variance, allows for clear space between the structure and property boundary.

No comments or objections were received from agencies, surrounding property owners or the general public in regards to this variance.

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.

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 dwelling constructed upon the subject property ("Lot 3-B") will not meet the minimum front and side yard setback pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan dated August 10, 2012. The approval of this

Roger D. Fleenor, LPLS

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variance permits the existing single-family dwelling and two-car garage to remain upon the subject property or "Lot 3-B" in accordance to the revised survey map received on May 16, 2013.

4. No permit shall be granted to allow an ohana or second-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 dwelling 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 12-000115 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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xc: Kona Office
Real Property Tax Office (Kona)
Planning GIS, Gilbert Bailado (via email)
David Abelaye, Zoning Inspector
Deanne Bugado, South Kohala CDP

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NEIL ABERCROMBIE
GOVERNOR
PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 JUN 10 AM 8:57




STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 918
HILO, HAWAII 96721-0918

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

MEMORANDUM

DATE: January 9, 2013

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

FROM: Newton Inouye 
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR-12-000115
Applicant: ROGER D. FLEENOR, LPLS, LLC
Owner: GREGORY S. CAMERON TRUST
Request: Variance from Chapter 25, Zoning, Section 25-5-7
Minimum yards and Section 25-4-44(a), Permitted
Projections into Yards and Open Space Requirements
(Encroachment into Front and East Side Yard
Setback)
Tax Map Key: 6-5-012:013, Lot 3-B

Wastewater Branch has no objections to the proposed project. However, as we have no information on existing wastewater systems, we are unable to provide comments. Please have your engineer or contractor submit a completed cesspool information card identifying the location of all wastewater systems and their relationship to existing and/or proposed property lines.

We recommend that you review all of the Standard Comments on our website: <http://hawaii.gov/health/environmental/env-planning/landuse/landuse.html>. Any comments specifically applicable to this project should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by Built Environment Working Group (BEWG) of the Hawaii State Department of Health. The BEWG recommends that state and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopments

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projects. We also ask you to share this list with others to increase community awareness on healthy community design.