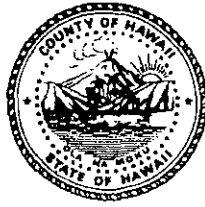


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

West Hawai'i Office  
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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

April 30, 2013

Christopher D. Flanders  
343 Hobron Lane, #902  
Honolulu, HI 96815

Dear Mr. Flanders:

**SUBJECT: Application: VARIANCE – VAR-13-000119**  
**Applicant: CHRISTOPHER D. FLANDERS**  
**Owners: JONE G. FLANDERS**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards and Article 4, Division 4, Section 25-4-44(a), Permitted Projections Into yards and Open Space Requirements (Encroachment into Northeastern Side Yard Setback)**  
**TMK: 6-8-019:022, Lot 92**

Upon reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 12-000119 (VAR: 12-000119), subject to variance conditions. The variance is to allow for a cabana to be constructed on Lot 92 with a minimum 5-foot rear yard setback and open space requirement in lieu of the minimum required 20-foot rear yard setback and associated 14-foot rear yard open space requirements measured from the property's northwest rear boundary line and according to the submitted site plan. 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, and Article 4, Division 4 Section 25-4-44, Permitted projections into yards and open space requirements.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property consists of approximately 10,874 square feet of land, is located within the Waikoloa Village Subdivision, Waikoloa, South Kohala, Hawai'i. The subject property's street address is 68-1831 Pakanu 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 January 22, 2013 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 Malia K. Silva, LPA. The variance Plot plan denotes that portions of the single family dwelling are built into the property's minimum 20-foot wide rear yard setback.
6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#026429) was issued on October 21, 2002 for the construction of a 3 bedroom, 3-bath Single-Family Dwelling.
7. **Time Extension.** The applicant's variance application was acknowledged by letter dated January 28, 2013; 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 April 30, 2013.
8. **Variance Application (VAR: 13-000119)-Agency Comments and Requirements.**
  - a. No comments were received from the State Department of Health (DOH).
  - b. The Department of Public Works Department – Building Division memorandum dated February 21, 2013 (see attached).
9. **Notice to Surrounding Property Owners.** A copy of the first and second notices was sent by the applicant via USPS to surrounding property owners and mailing certificates were submitted to the Planning Department. According to these submittals, the first notice was mailed on January 31, 2013, and the second notice was mailed on February 9, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 13, 2012.
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.

#### 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 owner/applicant submitted the variance application to address or resolve the encroachment of the proposed 468 square feet cabana into the 20-foot rear (northeast) yard setback and 14-foot rear yard open space as required by the Zoning Code.

The area available within the rear yard restricts the owner as to the placement and the size of the cabana that can be constructed on the subject property. Therefore, the owner/applicant is requesting for a variance to allow for the construction of a 468 square feet cabana to allow for a 5-foot rear yard setback. The cabana will be partially enclosed the side facing the rear and the eastern boundary will be walled and the other two sides will remain open. There is an existing CMU/rock wall that will aid in mitigating any visual impact of the cabana to the surround property owners. Also, the applicant/owner will landscape portion of the side (northwestern) boundary. The rear yard of the subject property abuts the Waikoloa Village Association Open Space Area.

**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 rear yard and open space of the subject property include the following actions:

One option would be to relocate the proposed in-ground swimming pool and cabana into the front yard which would make it more prominent and have a more visual impact on the surrounding property owners. Redesigning the cabana to meet the setback requirement will require the owner to construct a smaller version of the cabana and would diminish the functionality of the proposed improvement.

Another alternative is to consolidate the subject property with the adjoining rear property which is owned by the Waikoloa Village Association 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.

**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. With the variance, the applicant would still be required to maintain a 5-foot rear yard setback.

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.

This can be substantiated, to some degree, by the fact that the Waikoloa Village Association Environmental Control Committee (ECC) gave their pre-approval of the construction plans submitted for their review.

Further, no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

Therefore, the variance would be consistent with the 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 proposed cabana to be constructed upon the subject property (Lot 92) will not meet the minimum rear yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan dated November 5, 2012.
4. No permit shall be granted to allow an ohana or second family or farm dwelling upon the

Christopher D. Flanders  
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April 30, 2013

subject property, subject to provisions of the Zoning Code or State law which may change from time to time.

5. 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 13-000119 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

LHN:nci

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xc: Kona Office  
Real Property Tax Office (Kona)  
Planning GIS, Gilbert Bailado (via email)



**BUILDING DIVISION – DPW**

COUNTY OF HAWAII – 74-5044 Ane Keohokalole Hwy, Building E – Kailua-Kona, Hawai'i 96740  
Hilo Office (808) 961-8331 • Fax (808) 961-8410 Kona Office (808) 323-4720 • Fax (808) 327-3509

February 21, 2013

**Memorandum**

TO: LARRY NAKAYAMA, Planning Department  
FROM: DAVID M. LYMAN, Building Division  
SUBJECT: VARIANCE APPLICATION (VAR 13-000119)  
Applicant: Christopher D. Flanders  
TMK: 6-8-019-022, Lot 92  
Location: Waikoloa, South Kohala, Hawai'i

PLANNING DEPARTMENT  
APPROVED BY  
FEB 21 PM 2:25

Our comments on the subject application are as follows:

- We have no comments or objections to the application.
- Approval of the application shall be conditioned on the comments as noted below.
- We oppose the approval of the application for the reasons noted below.
  - All new building construction shall conform to current code requirements.
  - The subject dwelling/structure currently has outstanding violations which shall be corrected.
  - The building permit for the subject dwelling was never finalized.
  - The minimum setbacks shall be maintained as follows:  
Residential structures - 3 ft. side, 3 ft. rear  
Commercial structures - 5 ft. side, 5 ft. rear
  - The projections do not meet setback requirements and should be corrected.
  - No openings in the exterior wall are permitted less than \_\_\_\_\_ ft. from the property line.
  - The exterior wall or projections shall be constructed to provide an \_\_\_\_\_ hour fire resistive occupancy separation.
  - An approved automatic sprinkler system is required/to substitute.
  - The common wall shall be constructed to provide an \_\_\_\_\_ hour fire resistive area separation.
  - Others: Submit for building, electrical, and plumbing permits as required for new structures.