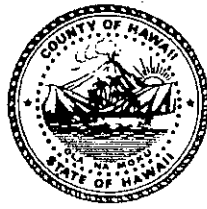


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

**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

May 6, 2013

Mr. Lyman Medeiros, Realtor  
Hawaii 5 0 Realty  
74-5586 Palanai Road, #19  
Kailua-Kona, HI 96740

Dear Mr. Medeiros:

**SUBJECT: Application: VARIANCE – VAR-13-000122**  
**Applicant: LYMAN MEDEIROS/HAWAII 5 0 REALTY**  
**Owners: KEVIN FRED BRUNSEN**  
**Request: Variance from Chapter 25, Zoning, Section 25-5-7,**  
**Minimum Yards, Section 25-4-44, Permitted**  
**Projections into Yards and Open Space Requirements**  
**(Encroachment into the South Rear Yard Setback)**  
**TMK: 8-1-002:002-0002; (Lot 42 – Unit B)**

After reviewing your variance application, the Planning Director certifies the **approval** of Variance 13-000122 (VAR-13-000122), subject to variance conditions. The variance will allow the existing water tanks and shed to remain on the subject property with a 4.60-foot rear (south) yard setback and rear yard open space along the southern boundary line. This allowance is in lieu of the minimum 20-foot rear yard setback and associated 14-foot rear yard open space requirement, in accordance with the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards, (2)(A) and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

**BACKGROUND AND FINDINGS**

- 1. Location.** The subject property consists of approximately 21,575 square feet of land and is located in the KLB-Condominium Project, Kalukala, South Kona, Hawai'i. The subject property's street address is 81-1240 Konawaena School Road.
- 2. County Zoning.** Single-Family Residence – 15,000 square feet (RS-15)
- 3. State Land Use.** Urban

4. **Setback Requirements:** 20 feet for front and rear; 10 feet sides.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on December 10, 2012 and other submittals related to the variance request and variance application. The variance application's site plan map submitted by the applicant is drawn to scale. The variance site plan denotes the two-story addition constructed into the minimum 20-foot side yard setback.
6. **County Building Records.** Hawaii County Real Property Tax Office records indicate that a building permit (#771567) was issued to the subject property for a single-family dwelling consisting of 4 bedrooms, 2 baths, living room, kitchen with dining area and carport.
7. **Time Extension.** The applicant's variance application was acknowledged by letter dated February 15, 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 May 7, 2013.
8. **Agency Comments and Requirements:**
  - a. The State Department of Health (DOH) memorandum dated March 14, 2013 (see attached).
  - b. No comments have been received from Department of Public Works – Building Division as of this date.
9. **Public Notice.** The applicant submitted a copy of notice sent to surrounding property owners, including affidavits. Stated 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 February 25, 2013 and March 15, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 28, 2013.
10. **Comments from Surrounding Property Owners or Public.** Objection e-mail dated from Asa Cascavilla (Vickery Development Inc.) was received on February 27, 2013 (see attached).

## 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 two water tanks and shed into the 20-foot rear (south) yard setback as required by the Zoning Code.

The subject property is presently being serviced by an existing private water catchment system. Hawaii County Real Property Tax Office records indicate that a building permit (#771567) was issued to the subject property for a single-family dwelling consisting of 4 bedrooms, 2 bath, and living room, kitchen with dining area, carport and water tank. The original water tank located near the eastern side yard boundary is permitted. Since there are no records of when the second water tank and shed was built, a variance is required to allow these accessory structures to remain in order to meet today's setback requirements. There is no additional area available that would allow the owner to relocate the water tanks and shed and still meet today's setback requirements. Requiring the owner to move the water tanks and shed into the front yard would make it more prominent and have a more visual impact on the surrounding property owners.

### 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 side yard and open space of the subject property include the following actions:

Remove and relocate the as-built water tanks and shed constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. To deny this variance would require the owner to relocate the water tanks, which would involve the owner to do major excavation to his property, requiring him to replace and move existing pipe lines. The owner will provide a landscaping screen to mitigate any visual impact of the water tanks.

Another alternative is to consolidate the subject property with the adjoining rear 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.

### **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 welfare or cause substantial, adverse impact to an area's character or to adjoining properties.*

### **The variance application meets criterion (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. This can be substantiated, to some degree, by the fact that this office did not receive any complaint from surrounding property owners during the past 36 years of existence of the water tanks and shed.

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

### **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 Hawai'i 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 is only from the Zoning Code's minimum rear yard

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setback and rear yard open space requirement. The approval of this variance allows the existing water tanks and shed to remain on the subject property, pursuant to the variance application's site plan map.

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 be changed from time to time.
5. The existing water tanks and shed situated on the subject property will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code. The approval will allow the existing water tanks and shed to remain on the subject property in accordance with the plot plan submitted on February 5, 2013.
6. The owner will provide a landscaping screen to mitigate any visual impact of the water tanks.
7. 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 13-000122 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

LHN:nci

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xc: Kona Office  
Real Property Tax Office (Kona)  
Gilbert Bailado, GIS (via email)  
Deanne Bugado, CDP (via email)

Lyman Medeiros  
Hawaii 5 0 Realty  
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May 6, 2013

**Dacayanan, Melissa**

**From:** asa cascavilla [asacascavilla@yahoo.com]  
**Sent:** Wednesday, February 27, 2013 1:57 PM  
**To:** planning@co.hawaii.hi.us  
**Cc:** cascavilla@gmail.com  
**Subject:** Reference Var-13-000122

RECEIVED  
2013 FEB 27 PM 2:19

TMK-8-1-002:002  
Reference Var-13-000122

Dear Mr. Nakayama,

I am the adjacent property owner and strongly appose this variance request. The owner of the property constructed the water tanks and tool shed with-in the 25ft county setback on the south-side of the property.

He cut down many trees and it looks horrible.

We have owned our property for 27 years. I moved to this property when I was 10 years old and I am 37. The new owner should not be able to come in and disregard the county rules and regulations. He has plenty of room to put these unsightly improvements on other parts of his property. Please do not approve his variance, since when ever I go up my driveway I have to look at 2 water tanks and old storage shed. This not what a neighbor should do to another neighbor. Feel free to call or email with any questions. Mahalo.

Kind Regards,

Asa Cascavilla  
Vickery Development INC.  
Office-214 660 3555  
Fax-214 660 3125  
Cell-214 417 6466

CONFIDENTIAL COMMUNICATION

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