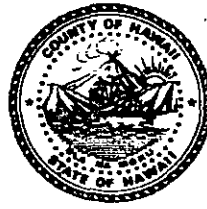


William P. Kenoi
Mayor



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
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Fax (808) 961-8742

July 23, 2013

Ms. Lola Louise Fehr
P. O. Box 7171
Ocean View, HI 96737

Dear Ms. Fehr:

SUBJECT: Application: VARIANCE – VAR-13-000128
Applicant: LOLA LOUISE FEHR
Owners: LOLA LOUISE FEHR
Request: Variance from Chapter 25, Zoning, Article 5,
Division 7, Section 25-5-6, Minimum Yards (Encroachment
into East Side Yard Setback)
TMK: 9-2-055:061, Lot 4

After reviewing your variance application, the Planning Director certifies the **denial** of VAR-13-000128. The variance application seeks to allow an “as built” storage building to remain within the east side yard setback with a minimum 9 feet to a minimum of 10 feet in lieu of the required 20-foot side yard setback and a minimum 14-foot open space. The variance is from Hawai'i County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements.

The Planning Director has concluded that the variance from the above-referenced zoning standards be **denied** based on the following findings:

BACKGROUND

1. **Location.** The subject property, consisting of approximately one (1) acre of land, is located in the Hawaiian View Ocean Estates Subdivision situated at Kahuku, Kau, Hawai'i. The subject property's street address is 92-7274 Mahimahi Drive.
2. **Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use.** Agriculture (A).

4. **Required Setback.** 30-feet for front and rear; 20-feet for sides.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on March 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 the owner/applicant denotes the portions of the storage building built into the east side yard setback.
6. **County Building Records.** No Building Permit records for structures.
7. **Notice of Violation.** A complaint was filed on December 6, 2012 alleging encroachment of a storage building within the side (east) yard setback of the subject property.
8. **Time Extension.** The applicant's variance application was acknowledged by letter dated April 2, 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 July 23, 2013.
9. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated April 8, 2013. (See the attached DOH memorandum.)
 - b. No comments were received from the Department of Public Works–Building Division.
10. **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 April 8, 2013, and the second notice was mailed on June 16, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 14, 2013.
11. **Comments from Surrounding Property Owners or Public.**
 - a. Objection e-mail dated and received on April 8, 2013 by Zachary Laputz. (See attached comments and photos)
 - b. Objection e-mail dated April 15, 2013 and received on April 16, 2013 by Zachary Laputz.
 - c. Objection letter dated April 17, 2013 and received on April 23, 2013 by Robert M. Mendizabal.

- d. Objection letter dated April 19, 2013 and received on April 22, 2013 by Cindy Clabaugh and Judy McIntosh.
- e. Objection e-mail dated and received on April 22, 2013 by Zachary Laputz.

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 does not meet with criteria (a) for the following reasons:

There are no special or unusual circumstances applying to the 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 that property.

The owner/applicant submitted the variance application to address or resolve the encroachment of the as-built storage building into the 20-foot east side yard setback as required by the Zoning Code.

The site plan prepared by the owner/applicant shows that portions of the storage building encroaches 10 feet to 11 feet into the 20-foot side (east) yard setback. No evidence was submitted which explains or justifies the necessity of the approval of the variance relative to any special or unusual circumstances related to the subject property.

A warning letter issued by the Planning Director dated February 13, 2013 states:

“A site inspection was conducted on February 7, 2013 at approximately 3:00 pm. Survey pins were located along the east boundary line between your property and TMK: 9-2-055: 062. After running a string between the survey pins it appears that the A-frame structure constructed near this boundary is approximately 9 feet from the boundary”.

Therefore, survey pins were visible to assist the owner/applicant in determining the location of the east boundary line. Furthermore, the site plan submitted with the variance application denotes other structures situated on the subject property along the west boundary line meet with the 20-foot side yard requirement.

According to the Department of Public Works – Building Division and Hawai‘i County

Real Property Tax Department, records indicate that there are no building permits issued for these structures.

The applicant maintains that the 10-foot wide easements referred in Exhibit "A" were setbacks requirements. However, Exhibit "A" clearly states that these easements are utility easements in favor of Hawaii Electric Light Company, Inc., and Hawaiian Telephone Company and not the County of Hawaii. However, the structures constructed along the west-side boundary are all within the required 20-foot side yard setback, which is contrary to the applicant's assumption that the side yard setbacks are ten feet wide.

In review of the application materials, county records, and associated documentation, the Planning Department finds that there are no special or unusual circumstances justifying the approval of this variance. The subject property consisting of 1 acre in land area is relatively flat and according to the site plan, there is ample buildable area for the re-positioning of the storage building to meet current setback requirements.

(b) There are no other reasonable alternatives that would resolve the difficulty.

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected east side yard setback of the subject property include the following actions:

Since the Variance application is denied, there are no reasonable alternatives except for the removal of the building encroachments, redesign, or relocation the storage building constructed upon the subject property to fit within the correct building envelope denoted on the recent site map as prescribed by the Zoning Code.

(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 does not meet with criteria (c) for the following reasons:

The intent and purpose of requiring building setbacks on a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

Had the applicant gone through the proper building permit process, the encroachment issues could have been avoided. Therefore, after reviewing the variance application, county records and other documentation, the Planning Director finds that the storage building constructed into the east side yard setback was self imposed. Based on the background information and other materials referenced in the variance analysis, the variance to allow for the encroachment would not be consistent with the general purpose

of the zoning district and the intents and purpose of the Zoning code, Subdivision code and the County General plan.

VARIANCE DECISION-CONDITIONS

The variance application, VAR 13-000128, concerning the applicant's request to allow portion of the storage shed built into the side (east) yard setback and open space setback is hereby **denied** and the following conditions are imposed:

Conditions:

1. The applicant shall move the approximate 256-square foot storage building to meet the required setbacks within six (6) months of the date of this decision, by January 23, 2014.
2. The applicant shall obtain all necessary permits, or complete necessary work to finalize prior permits that have not been closed, from the Department of Public Works – Building Division for said removal of the addition and for other structures present on the property.

If the above conditions have not been met by referenced date, the Department may proceed with enforcement actions against the owner which could include fines or placement of a lien against the property.

In accordance with Ordinance No. 99-112, you may appeal the director's decision as follows:

- (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision, appeal the decision to the board of appeals.
- (b) A person is aggrieved by a decision of the director if:
 - (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public: and
 - (2) The person is or will be adversely affected by the decision.
- (c) An appeal shall be in writing, in the form prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the board of appeals with the proof of service.

- (d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals.

The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:

- (1) The director erred in its decision; or
- (2) The decision violated this chapter or other applicable law; or
- (3) The decision was arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

In view of the above and for your reference, we have enclosed the GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR form.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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xc: Planning Department (Kona)
Real Property Tax Division (Kona)
Randy Lavato, Zoning Inspector (Kona)
Gilbert Bailado, Planning GIS

Lola Louise Fehr
Page 7
July 23, 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
23 APR 13 AM 9:23

MEMORANDUM

DATE: April 8, 2013

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

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

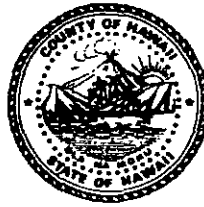
SUBJECT: Variance- VAR 13-000128
Applicant: LOLA LOUISE FEHR
Owner: LOLA LOUISE FEHR
Request: Variance from Chapter 25, Zoning, Section 25-5-76
Minimum Yards and Section 25-4-44(a), Permitted
Projections into Yards and Open Space Requirements
(Encroachment into Eastern Side Yard Setback)
TMK: 9-2-055:061, Lot 4

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

WORD: VAR 13-000128 eh.

084475

William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

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Fax (808) 961-8742

July 23, 2013

Robert F. Mendizabal
1599 Allen Rae Place
South Lake Tahoe, CA 96150

Dear Mr. Mendizabal:

SUBJECT: Application: Variance – VAR-13-000128
Applicant: LOLA LOUISE FEHR
Owners: LOLA LOUISE FEHR
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-6, Minimum Yards (Encroachment into
East Side Yard Setback)
TMK: 9-2-055:061 (Lot 4)

Please be advised the subject variance application (VAR-13-000128) has been denied. A copy of the variance denial letter is attached for your review.

Should you have any questions please feel free to contact Larry Nakayama of this department at (808) 961-8149 or lnakayama@co.hawaii.hi.us.

Sincerely,

DUANE KANUHA
Planning Director

LHN:nci
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Encl.