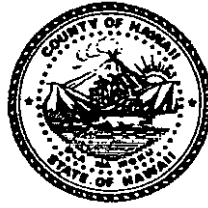


William P. Keno
Mayor



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

July 1, 2013

Roxanne Baker
Kona Coast Realty
75-170 Hualalai Road, Suite D114
Kailua-Kona, HI 96740

Dear Ms. Baker:

SUBJECT: Application: VARIANCE - VAR-13-000132
Applicant: ROXANNE BAKER/KONA COAST REALTY CORP.
Owners: AMERICAN SAVINGS BANK F.S.B.
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
Southern Rear Yard Setback)
TMK: 7-3-059:019, Lot 7-M

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-13-000132, subject to variance conditions. The variance will allow portions of the single-family dwelling to remain with a 16.6 to 18.7-foot rear (south) yard setback and associated 13.2-foot open space in lieu of the required 20-foot rear yard setback and associated 14 foot rear yard open space requirement, as required by the Hawaii County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards and Article 4, Division 4, Section 25-4-44(a), Permitted projections into yards and open space requirements (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 10,006 square feet of land, is located in the Alii Kehau Subdivision situated at Kalaoa 4th, North Kona, Hawai'i. The subject property's street address is 73-1348 One One Place.
2. **Zoning.** Single-Family Residence-10,000 sq. ft. (RS-10)
3. **State Land Use.** Urban (U)

4. **Required Setback.** 20 feet for front and rear; 10 feet for sides.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on March 4, 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 KKM Surveys (Kevin McMillen, LPLS) and denotes the portions of the single-family dwelling built into the southern rear yard setback.
6. **County Building Records.** Hawaii County Real Property Tax Division records indicate that a building permit (026328) was issued on September 25, 2002, for the construction of a 3-bedroom and 2 bath single-family residence and an attached 2-car garage.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated May 29, 2013. (Refer to attached DOH memorandum.)
 - b. No comments were received from the Department of Public Works–Building Division.
8. **Notice to Surrounding Property Owners.** A copy of first notice and second notice sent by the applicant via USPS to surrounding property owners and mailing certificates was submitted to the Planning Department. According to these submittals, the first and second notices were mailed via the USPS on April 15, 2013 and May 14, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 30, 2013.
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.

GROUND 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:

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The owner/applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling into the 20-foot rear (south) yard setback and the associated 14-foot rear (south) yard open space as required by the Zoning Code.

The survey map prepared by Kevin McMillen L.P.L.S shows that portions of the single-family dwelling encroaches 1.3 feet to 3.4 feet into the 20-foot rear (south) yard setback and the associated roof eave encroaches 8.4 inches into the 14-foot open space requirement.

There is also a concrete rock masonry (CRM) wall that runs along both side boundaries of the subject property which cross over into the adjacent properties at different places.

The surveyor in its survey report has stated:

“The concrete rock masonry (CRM) wall along the easterly side lot line is within the subject property along most of the side boundary; however the wall crosses the side boundary near the southeasterly corner and continues into the adjoining Lot-7-L. Ownership of this wall is unknown to us. Another CRM wall attached to the northerly end of the first wall extends 0.5 feet into the subject property from the adjoining Lot 7”.

The owner, who recently obtained the property through a foreclosure process, was unaware of any encroachments and would not have discovered any problems affecting the subject property until a recent survey was completed.

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 appears that the original dwelling improvements constructed nearly 10 years ago, were constructed under valid building permits and other construction permits issued by the County. It also appears that past building permits inspections of the premises by the agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

Further, due to the approximate 1.3 feet and 3.4 feet encroachments into the rear yard setback of the property, it appears that this was an error and not intentional.

The above special and unusual circumstance determines the applicant was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with the best use and development of the property.

Alternatives

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

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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 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.

Due to the odd cone-shaped parcel, a structural or design correction of the single-family dwelling, deck and stairs to meet setback and open space requirement would be difficult and diminish the functionality of the improvements and be impracticable due to the existing layout and design of structure, as well the topography of the property.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by someone else and to re-subdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not reasonable and 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'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 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.

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 complaints from surrounding property owners during the roughly 10 years since the single family dwelling was constructed.

Further, objections were not received from the surrounding property owners or general public

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in response to the Notification of Surrounding Property Owners. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the immediately surrounding properties.

Based on the above findings, granting of the variance would be consistent with the criteria and intent of approving a variance.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

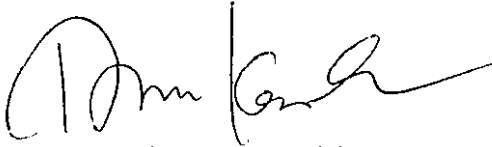
This variance request is **approved** subject to the following conditions:

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. 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.
4. Portion of the single-family dwelling built upon the subject property ("LOT 7-M") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), in accordance to the site map dated March 4, 2013.
5. This variance does not apply to the encroachment issue regarding the concrete rock masonry (CRM) wall. These issues shall be addressed by the property owners affected by the CRM wall encroachments.
6. Should the single-family dwelling (footprint), including the deck and stairway, on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
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.

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Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-13-000132 null and void.

Sincerely,

A handwritten signature in black ink, appearing to read "BJ Leithead Todd", written in a cursive style.

BJ LEITHEAD TODD
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone7\VAR13-000132TMK7-3-059-019ASB.doc.rtf

xc: Planning Department (Kona)
Real Property Tax Division (Kona)
Terry, Dunlap, KCDP
Gilbert Bailado, Planning GIS

Ms. Roxanne Baker
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NEIL ABERCROMBIE
GOVERNOR'S DEPARTMENT

2013 MAY 29 PM 4:09



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

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

MEMORANDUM

DATE: May 29, 2013

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

FROM: Newton Inouye NY
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 13-000132
Applicant: ROXANNE BAKER/KONA COAST REALTY CORP.
Owner: AMERICAN SAVINGS BANK F.S.B.
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 the Southern Rear Setback)
Tax Map Key: 7-3-059-019, Lot 7-M

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

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