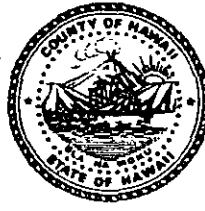


William P. Kenoi  
Mayor



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  
Fax (808) 327-3563

**County of Hawai'i**  
PLANNING DEPARTMENT

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
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June 10, 2013

Dayle Tejada  
Vinylscape Fencing, LLC  
HC1 Box 5016  
Kea'au, HI 96749

Dear Ms. Tejada:

**SUBJECT: Application: Variance VAR-13-000133**  
**Applicant: DAYLE TEJADA/VINYLSCAPE FENCING, LLC**  
**Owners: JASON R. FUJIMOTO TRUST**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 7,**  
**Section 25-5-76, Minimum Yards, (a), Permitted Projections**  
**into Yards and Open Space Requirements (Encroachment**  
**into Southern Rear Yard Setback)**  
**TMK: 2-4-069:046 (Lot 347)**

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After reviewing your variance application, the Planning Director certifies the **approval** of Variance 13-000133 (VAR 13-000133), subject to conditions. The variance allows for the construction of a vinyl privacy fence along the rear (southern) boundary varying in height from six (6) feet to ten (10) feet tall with a minimum 1-foot rear yard setback and associated rear yard open space from the rear boundary line. This allowance is in lieu of the required minimum 30-foot rear yard setback and 24-foot rear yard open space requirement. The variance is from the subject property's minimum rear (south) yard setback requirement 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 (a), Permitted projections into yards and open space requirements.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 44,170 square feet and is situated within the Sunrise Estates Subdivision, South Hilo, Hawai'i. The subject property's street address is 775 Kukuau Street.
2. **County Zoning.** Agricultural – 1 Acre (A-1a).
3. **State Land Use Designation.** Agricultural.

4. **Setback Requirements.** 30-feet for front and rear; 20-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on April 9, 2013. The variance application's site plan map was prepared by the owner/applicant. The variance site plan, undated, denotes the placement of the proposed vinyl privacy fence into the minimum 30 foot rear yard setback. The request affects the southern rear yard setback area.
6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#882261) was issued on November 28, 1988 for the subject property for a single-family dwelling consisting of 3 bedrooms, 2-1/2 baths, living room, kitchen, dining area, and garage.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated April 22, 2013 (See attached DOH memorandum).
  - b. The Department of Public Works Building Division e-mail, received on May 9, 2013 (See attached DPW e-mail).
8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on May 3, 2013 and April 30, 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.**
  - a. Support letter received on May 7, 2013 from Allison Sugata, Association Manager, Day-Lum Rentals & Management
  - b. Support letter received on May 13, 2013 from Flemming Jorgensen.

#### 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 criterion (a) for the following reasons:**

The owner submitted the variance application to allow for the construction of a six (6) to ten (10) foot vinyl privacy fence with a 1-foot minimum rear yard setback and associated rear yard open space, in lieu of the minimum 30-foot rear yard setback and associated 24-foot rear yard open space requirement.

The owner is proposing to construct a vinyl privacy fence along the rear boundary to provide privacy and a buffer from the adjacent 60 unit Senior Housing Complex. The foundations of the senior housing complex start approximately 4 – 5 feet higher than the subject property on a raised terrain. This differential in elevation necessitates the owner to build the fence higher than six feet.

The Hawai'i County Code, Chapter 25, (Zoning Code), Section 25-4-43, Fences and accessory structures, (c) states: *Any accessory structure, including fence, or wall over six feet in height, architectural feature or water tank, which is not connected to a building, may not extend into any required front, side or rear yard, but may be located next to any building without any open space requirement.*

Requiring the owner to meet this setback requirement of 30 feet would greatly diminish the overall functionality of the subject property and would remove a large portion of the property from being usable.

**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 fencing encroachments to be constructed into the affected rear yard of the subject property include the following actions:

A no action alternative would require the owner to either construct the proposed privacy fence 30 feet from the rear boundary line which would render a portion of the subject property unusable. Another alternative is for the owner to build an allowable 6-foot high privacy fence along the rear property boundary. Because of the elevation differential between the subject property and the adjacent property, a 6-foot high fence would not provide complete privacy or eliminate any visual impact of the Senior Housing Complex.

Although the Developer of the Senior Housing Complex will be providing landscaping within close proximity of the rear boundary that abuts the subject property, there is a road and utility

easement that runs along the rear property line which limits the placement of the landscaping along the boundary line.

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 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 for a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

The subject property is located at the end of a cul-de-sac and the proposed vinyl privacy fence will be situated along the rear (southern) boundary line and will not have a visual impact on surrounding properties. Further, it will not compromise the overall open space, air, and light flow between the structures and property lines sought by the zoning setback requirements.

Based on the foregoing findings, the approval of this application 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 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.

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Vinylscape Fencing, LLC  
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3. No permit shall be granted to allow an ohana, a second single-family or farm dwelling upon the subject property, subject to provisions of the Hawai'i County Code, Chapter 25 (Zoning) or State Law, which may change from time to time.
4. The vinyl privacy fence built upon the subject property ("LOT 347") will not meet the minimum rear yard requirement pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), according to the variance application's survey map.
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 initiate proceedings to null and void Variance-13-000133.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:nci

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

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**Nakayama, Larry**

**From:** Matsumoto, Joy  
**Sent:** Wednesday, March 27, 2013 11:12 AM  
**To:** Nakayama, Larry  
**Subject:** Variance VAR13-000125  
Hi Larry,

Building has no objection to this variance.

*Joy Matsumoto*  
Supervising Building Inspector  
County of Hawaii  
Tel. (808) 961-8471  
Fax (808) 961-8410  
Email: jmatsumoto@co.hawaii.hi.us

PLANNING DEPARTMENT  
COUNTY OF HAWAII

2013 APR 15 AM 6:37

M.S. OSELOU  
Melanie Arnica L.

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