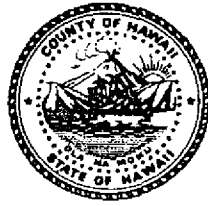


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

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County of Hawai'i PLANNING DEPARTMENT

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August 13, 2013

Brian T. Nishimura, Planning Consultant
101 Aupuni Street, Ste. 217
Hilo, HI 96720

Dear Mr. Nishimura:

SUBJECT: Application: Variance VAR-13-000145
Applicant: BRIAN T. NISHIMURA, PLANNING CONSULTANT
Owners: DANIEL AND DEANNA RICKENBACHER
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7, Minimum Yards, (a), Permitted Projections
into Yards and Open Space Requirements (Encroachment
into Southeast Rear Yard Setback)
TMK: 2-3-021:065 (Lot 12)

After reviewing your variance application, the Planning Director certifies the **approval** of VAR 13-000145, subject to conditions. The variance allows for the construction of a 322-square foot open deck with a minimum 5 foot rear (southeast) yard setback and associated rear yard open space. This allowance is in lieu of the required minimum 15-foot rear yard setback and 10-foot rear yard open space requirement. The variance is from the subject property's minimum rear (southeast) 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 5,563 square feet and is situated in Block 1, Haili Track, South Hilo, Hawai'i. The subject property's street address is 435 Haili Street.
2. **County Zoning.** Single-Family Residential -7,500 square feet (RS-7.5).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 15 feet for front and rear; 8 feet for sides.

5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on June 14, 2013. The variance application's site plan map was prepared by the owner/applicant. The variance site plan denotes the placement of the proposed deck protruding into the minimum 15-foot southeast rear yard setback.
6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that the three (3) bedroom, two (2) bath single-family dwelling consisting of 1,162 square feet of living area was built in 1937.
7. **Agency Comments and Requirements.**
 - a. No comments received from the State Department of Health (DOH).
 - b. Department of Public Works – Building Division memorandum dated June 26, 2013. (See attached DPW e-mail)
8. **Public Notice.** The applicant submitted a copy of notice sent to surrounding property owners (including affidavits), by U.S.P.S. According to these submittals, the first and second notice(s) were mailed on June 24, 2013 and July 2, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 26, 2013.
9. **Comments from Surrounding Property Owners or Public.**
 - a. Objection letter dated June 29, 2013 and received on July 2, 2013 from Henry M. Nitta. (See attached objection letter.)

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 meets criterion (a) for the following reasons:

The applicant submitted the variance application to allow for the construction of an open deck with an 5-foot minimum rear yard setback and associated side yard open space, in lieu of the minimum 15-foot rear yard setback and associated 10-foot rear yard open space requirement.

The owners wish to construct an open deck addition to the rear of the existing dwelling; which would allow the owners privacy while enjoying the sunshine, open air and existing view of Hilo Bay from their backyard.

The applicant has stated the following in its background report: *“There are special or unusual circumstances applying to the subject real property which exists to a degree which obviously interferes with the best use or manner of development of the subject property. The subject property is approximately 1/3 smaller than the minimum lot size requirement for the zoned district which is 7,500 square feet. The minimum setback and clear space requirements are based on 7,500 square foot lot but the subject property is only 5,563 square feet. In addition, the existing dwelling was constructed in 1937, well before the zoning code requirements which were adopted in 1967. To further compound the problem of the smaller lot size, the dwelling was constructed 61 feet back from the front yard boundary and a rear yard setback of only 19 feet. The dwelling on the adjoining property to the east (makai side) was constructed with a smaller front yard setback and a much larger rear yard setback. In order to obtain the necessary privacy and views that a deck addition could provide, the improvement will have to be made to the rear of the property.”*

Therefore, given the size of the subject property (5,563 sq. ft.) and the placement of the existing single-family dwelling, special and unusual circumstances exist on the subject property which would interfere with the construction of the open deck.

(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 encroachment of the radio equipment building to be constructed into the affected rear yard of the subject property include the following action:

One option would be to relocate the proposed deck into the front yard which would make it more prominent and have a more visual impact on the surrounding property owners, also would deny the owner the necessary privacy and views that the deck addition would provide. Redesigning the open deck to meet setback requirement will require the owner to construct a smaller version of the deck and would diminish the functionality of the proposed improvement. A no-deck alternative would deny the owners highest and best use of their property.

Another alternative is to consolidate the subject property with the adjoining rear properties 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. Therefore, there are no reasonable alternatives to resolve the encroachment issue.

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

The proposed improvement will consist of an open deck with approximately 6 to 8 feet high platform with a 3 foot high open railing. Therefore, it should not obstruct or prevent adequate air circulation and exposure to light between permitted structure(s)/uses and boundary/property lines.

An objection letter was received on July 2, 2013 from Henry M. Nitta stating that if the variance is approved, it may open the door to a number of problems for the surrounding property owners. Mr. Nitta's property is approximately 267 feet west of the subject property. It should be noted that adjacent parcel (TMK: 2-3-21:008), which abuts the southwest boundary of the subject property, was granted a setback variance (VAR-1287) on June 14, 2002.

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.

Therefore, the variance would be consistent 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

Brian T. Nishimura, Planning Consultant

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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, 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 proposed open deck to be constructed upon the subject property ("LOT 12") will not meet the minimum rear yard requirement pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), according to the variance application's site plan.
5. The owner shall secure a building permit for the construction of the open deck within one year from the date of this decision.
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-13-000145.

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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BUILDING DIVISION – DPW

COUNTY OF HAWAII – 101 Pauahi Street, Suite 7 – Hilo, Hawai'i 96720
Hilo Office (808) 961-8331 • Fax (808) 961-8410 Kona Office (808) 323-4720 • Fax (808) 327-509

PLANNING DEPARTMENT
COUNTY OF HAWAII
2013 JUN 27 AM 6:50

TO: LARRY NAKAYAMA
FR: JOY MATSUMOTO 
DATE: JUNE 26, 2013
SUBJECT: VARIANCE – VAR 13-000145

We have no objection to the rear deck addition with a 5 foot clear setback.

086013