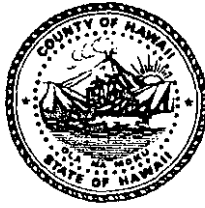


William P. Kenoi
Mayor



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
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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

February 28, 2014

Mr. Timothy Rinck Smith
78-6655 Ali'i Drive
Kailua-Kona, HI 96740

Dear Mr. Smith:

SUBJECT: VARIANCE APPLICATION – VAR-13-000150

Applicant: TIMOTHY RINCK SMITH

Owners: TIMOTHY RINCK SMITH

Request: Variance from Chapter 25, Zoning, Article 5, Division 9, Section 25-5-96, Minimum Yards and Article 4, division 4, Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements, Encroachment into the Rear (East) Yard Setback and Front (West) Open Space Requirement.

TMK: 7-8-014:012

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-13-000150, subject to variance conditions. The variance will allow for the single-story single-family dwelling to remain "as built" with a 15.5 feet (east) yard setback and 9.3 feet front (west) yard open space. These exceptions are in lieu of the required 20-foot rear yard setback and 14-foot front yard open space, as required by the Hawaii County Code, Chapter 25, Zoning, Section 25-5-96, Minimum yards and Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 2,614 square feet (0.06 acre) of land and is situated at Kahalu'u Beach Lots, North Kona, Hawai'i. The subject property's street address is 78-6666 Ali'i Drive.
2. **Zoning.** Resort-Hotel – 1,250 square feet (V-1.25).
3. **State Land Use.** Urban (U).
4. **Required Setback.** 20-foot front and rear yard; 8-foot side yard.

5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on July 8, 2013, and other submittals related to the variance application. The variance application's site plan map is drawn to scale and was prepared by Bob South, Plans Hawaii, LLC. The map shows that the single-story dwelling built into the rear (east) yard setback and the front (west) yard open space.

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

The survey map shows that the Single-Family Dwelling encroaches 4.5 feet into the rear (east) yard setback 4.7 feet into the front (west) yard open space.

6. **Special Management Area.** The subject property is located within the Special Management Area (SMA). According to the acknowledgement letter dated June 12, 2013, Special Management Area Minor Use Permit Assessment No. 12-000880 (SAA 12-000880) was issued on November 8, 2012 to allow for renovations and related improvements to the Existing Single-Family Residence.
7. **County Building Records.** Hawaii County Real Property Tax Division records indicate that a building permit (891263) was issued on June 27, 1989, for the construction of a 2-bedroom and 2-bath single-family dwelling.
8. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated September 26, 2013. (See attached memorandum)
 - b. The Department of Public Works (DPW)–Building Division e-mail, dated February 10, 2014. (See attached e-mail)
9. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notice mailed to surrounding property owners (including affidavits) by U.S.P.S. According to these submittals, the first and second notice(s) were mailed on July 9, 2013 and July 24, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 30, 2013.
10. **Time Extension.** The applicant's variance application was received on September 3, 2013, and additional time to review the application was required. The applicant granted the Planning Director an extension of time to issue a decision on the Variance Application until February 28, 2014.
11. **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.

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 criteria (a) for the following reasons:

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

The plot plan prepared by Bob South, Plans Hawaii LLC shows that the single-family dwelling encroaches 4.5 feet into the rear (east) yard setback and the open deck encroaches 4.7 feet into the front (west) yard open space.

The owner/applicant submitted the variance application to address the additional encroachments into the rear (east) yard setback and front (west) yard open space. Additional encroachments were discovered when the owner/applicant applied for a building permit. On November 9, 1987, Variance 293 (VAR 87-000015) was granted to allow for a six foot – one inch side (north and south) yard setback. The existing parcel is non-conforming in regards to size, being only 2,918 square feet in land area, as compared to the County of Hawai'i, Zoning Code requirement that the minimum building site area shall be seven thousand five hundred (7,500) square feet. Because subject property is only 2,918 sq. ft, in size the owner/applicant assumed the setbacks were 15 feet front and rear and 8 feet on the sides, which is correct for a property that is zoned Single-Family Residential. However, the property is zoned Resort-Hotel, which requires a setback of 20 feet front and rear and sides yards, eight feet for one story and an additional two feet for one story and an additional 2 feet for each additional story.

It should be noted that if the property was zoned single-family residential, along with the granting of Variance 293, the subject improvements would meet rear yard setback requirement and the open deck would encroach 4.7 feet into the front yard open space requirement.

Based on the above mentioned information, special and unusual circumstances do exist to an extent that it deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the subject property.

(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 southern side yard setback 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. Any structural or design correction of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachment is within the front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front yard setbacks is not a viable option. Also, to consolidate the subject's rear (east) boundary with the adjoining rear property which is owned by another party, and re-subdivide to modify property lines and adjust minimum rear yard setback is not feasible options. 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'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 intent and purpose 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 24 years since the single-family dwelling was constructed. Further, objections were not received from the adjacent neighbor, the surrounding property owners or general public 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.

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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 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. Should the single-family dwelling, open deck (footprint) 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.
5. The owner will continue to comply with all conditions stated in Variance 293 (VAR - 87-000015).
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 occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-13-000150 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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xc: Planning Department (Kona)
Real Property Tax Division (Kona)
Gilbert Bailado, Planning GIS
Deanne Bugado– Planner (Kona Planning)

Bob South – Plans Hawaii LLC
P. O. Box 377466
Ocean View, HI 96737

Timothy Rinck Smith
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NEIL ABERCROMBIE
GOVERNOR



LORETTA J. FUDDY, A.C.S.W., M.P.H.
PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 AUG -8 AM 11:30

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

MEMORANDUM

DATE: August 7, 2013

TO: Duane Kanuha
Planning Director, County of Hawaii

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

SUBJECT: Application: Variance- VAR 13-000150
Applicant: TIMOTHY RINCK SMITH
Owner: TIMOTHY RINCK SMITH
Request: Variance from Chapter 25, Zoning, Article 5, Division 9,
Section 25-5-96 Minimum Yards and Section 25-4-44(a)
Permitted Projections into Yards and Open Space Requirements
(encroachment into the Northeast Rear Yard Setback)

TMK: 7-8-014:012

Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal.

WORD: VAR 13-000150 eh.