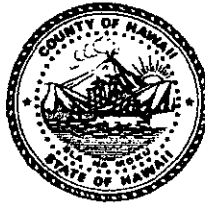


William P. Kenoi
Mayor



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
Phone (808) 961-8288
Fax (808) 961-8742

September 6, 2013

Frederick W. Hopkins
13-3626 Alapai Street
Pahoa, HI 96778

Dear Mr. Hopkins:

SUBJECT: Application: Variance VAR-13-000151
Applicant: FREDERICK W. HOPKINS
Owners: FREDERICK W. HOPKINS
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards, and Article 4, Division 4 Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements (Encroachment into the North Side Yard Setback)
TMK: 1-3-016:026 (Lot 39)

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-13-000151, subject to conditions. The variance will allow portions of the single-family dwelling to remain on Lot 39, with a minimum 17.3-foot to a minimum of 17.5 side (north) yard setback and the detached water tank to remain with a minimum 18.3 feet side (north) yard setback in lieu of the required minimum 20-foot side yard setback requirement. This variance is from the subject property's minimum side yard setback and associated side yard open space requirements pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 7, Section 25-5-76. Minimum yards, (a), Section 25-5-77, Other regulations, 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 1 acre and is situated within the Leilani Estates Subdivision, District of Puna, Hawai'i. The subject property's street address is 13-3626 Alapai Street.
2. **County Zoning.** Agricultural – 1 acre (A-1a).

3. **State Land Use Designation.** Agriculture.
4. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on July 8, 2013. The variance survey map dated July 4, 2013 is drawn to scale, and prepared by Daniel L. Berg, LPLS (dlb & Associates), and denotes the position of the single-family dwelling and water tank constructed into minimum 20-foot side yard setback. The request affects the north side yard setback area.
5. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#BH2012-00199) was issued on May 29, 1989 to the subject property for a single-family dwelling consisting of 3 bedrooms, 2-1/2 baths, living room, kitchen and dining area and garage.
6. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated August 2, 2013. (See attached.)
 - b. No comments were received from the Department of Public Works – Building.
7. **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 July 11, 2013 and July 27, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 30, 2013.
8. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners of the general public were received.

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 and detached water tank into the 20-foot northern side yard setback as required by the Zoning Code.

The survey map prepared by Daniel L Berg, L.P.L.S shows that the single-family dwelling encroaches 2.3 to 2.5 feet and the detached water tank 1.7 feet into the 20-foot side (north) yard setback.

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 single-family dwelling and detached water tank improvements constructed nearly 1-1/2 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 and detached water tank improvements did not disclose any building encroachment issues or building setback irregularities at that time.

The above special and unusual circumstance determines the owner 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.

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

The variance application meets criteria *(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 as-built, 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 would leave large and unattractive reconstruction disfigurement to the single-family dwelling. This alternative would be deemed unreasonable, especially when the owners were under the impression that the single-family dwelling and detached water tank were in compliance with all County requirements.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by someone else, and 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 difficulty.

- (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 criteria (c) for the following reasons:

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

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. The single-family dwelling and detached water tank improvements has been in existence for approximately 1-1/2 years and were constructed under valid building permits and other construction permits issued by the County of Hawai'i. This can be substantiated, to some degree, by the fact that this office did not receive any comments or objections from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners. As such; it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

Based on the foregoing findings and 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.

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.

Frederick W. Hopkins
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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 single-family dwelling and water catchment tank built upon the subject property ("LOT 39") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), according to the variance application's survey map.
5. Should the single-family dwelling (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.
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 proceed to declare subject Variance-13-000151 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN: nci

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

Frederick W. Hopkins
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NEIL ABERCROMBIE
GOVERNOR



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

2013 AUG -5 PM 1:04

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

MEMORANDUM

DATE: August 2, 2013

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye ↗
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 13-000151
Applicant: FREDERICK W. HOPKINS
Owner: FREDERICK W. HOPKINS
Request: Variance from Chapter 25, zoning, Article 5, Division 7,
Section 25-5-76 Minimum Yards and Section 25-4-44(a)
Permitted Projections into Yards and Open Space
Requirements (Encroachment into the Northern Side
Yard Setback)
Tax Map Key: 1-3-016:026, Lot 39

Wastewater Branch does not concur with this variance request. Records for the existing cesspool on the property do not match the site plan provided with the request.

Wastewater Branch requests an updated record of the cesspool location as it may not be in compliance with Chapter 11-62 Rules and Regulations governing the placement of wastewater systems.

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