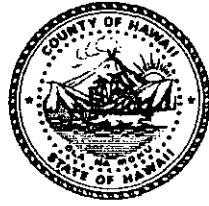


William P. Kenoi
Mayor



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

October 9, 2013

Roger D. Fleenor, LPLS
Professional Land Surveyor
P. O. Box 383414
Waikoloa, HI 96738-3414

Dear Mr. Fleenor:

SUBJECT: Application: VARIANCE – VAR-13-000157
Applicant: ROGER D. FLEENOR
Owners: WILLIAM AND MARLENE B. POMPETTI
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 North Rear Yard Setback)
TMK: 6-8-008:067, Lot 120

Upon reviewing your variance application, the Planning Director certifies the **approval** of VAR: 12-000157, subject to conditions. The variance is to allow for the covered lanai to remain on Lot 120 with a minimum 13.7-foot to 16.5 foot rear (north) yard setback and associated roof eave with a 12.5 rear (north) yard open space requirement in lieu of the minimum required 20-foot rear yard setback and associated 14-foot rear yard open space requirements measured from the property's north rear boundary line and according to the submitted site plan. The variance is from the subject property's minimum 20-foot rear yard requirements 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, Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property consists of approximately 11,556 square feet of land and is located within the Waikoloa Village Subdivision, Waikoloa, South Kohala, Hawai'i. The street address is 68-1861 Ua Noe Street.
2. **County Zoning.** Single-Family Residential – 10,000 square feet (RS-10).

3. **State Land Use.** Urban.
4. **Setback Requirements.** 20 feet for front and rear; 10 feet for sides.
5. **Variance Application-Site Plan.** The owner submitted the variance application, attachments, and filing fee on July 30, 2013 and other submittals related to the variance request and application. The variance application's site plan map is drawn to scale and prepared by Roger D. Fleenor, LPLS. The variance Plot plan denotes that portion of the covered lanai is built into the property's minimum 20-foot wide rear yard setback.

The owner was unaware of any encroachment when he purchased the property and would not have discovered any problems affecting the single-family dwelling additions until an as-built survey, which was completed on July 27, 2013 by Roger D. Fleenor, LP.L.S, revealed the encroachment.

The survey map prepared by Roger D. Fleenor, L.P.L.S. dated July 27, 2013 shows that covered lanai encroaches 6.3 feet and 3.5 feet into the 20-foot rear (north) yard setback and the associated roof eave encroaches 1.1 into the rear (north) yard open space. The open lanai/deck along the east and west boundary may extend any distance into a required yard or open space.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#025849) was issued on July 21, 2002 for the construction of a 4-bedroom, 2-bath Single-Family Dwelling.
7. **Time Extension.** The applicant's variance application was acknowledged by letter dated August 5, 2013; and additional time to review the application was required. The applicant has granted the Planning Department and the Planning Director an extension of time for decision on the Variance application to October 30, 2013.
8. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated August 9, 2013.
(See attached)
 - b. No comments were received from the Department of Public Works – Building Division.
9. **Notice to Surrounding Property Owners.** Copies of the first and second notices were sent by the applicant via USPS to surrounding property owners and mailing certificates were submitted to the Planning Department. According to these submittals, the first notices were mailed on July 29, 2013, and the second notices were mailed on August 14, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 13, 2012.
10. **Comments from Surrounding Property Owners or Public.**

- a. Objection letters from Ted Vanscyoc and Anita Glass were received on August 26 and 27, 2013. (See attached)

ANALYSIS OF 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 criteria (a) for the following reasons:

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

The survey map prepared by Roger D. Fleenor, L.P.L.S. dated July 27, 2013 shows that covered lanai encroaches 6.3 feet and 3.5 feet into the 20-foot rear (north) yard setback and the associated roof eave encroaches 1.1 into the rear (north) yard open space. The open lanai/deck along the east and west boundary may extend any distance into a required yard or open space.

The owner was unaware of any encroachment when he purchased the property and would not have discovered any problems affecting the single-family dwelling additions until an as-built survey, which was completed on July 27, 2013 by Roger D. Fleenor, L.P.L.S, revealed the encroachment. 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.

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 building encroachments constructed into the affected rear yard and open space of the subject property include the following actions:

Remove the building encroachments and/or redesign the covered lanai 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.

Another alternative is to consolidate the subject property with the adjoining rear property 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 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'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 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.

Letters of objections were received by Ms. Anita Glass and Mr. Ted Vanscyoc expressing concerns to the variance application. It seems that Ms. Glass's and Mr. Vanscyoc's objections are with the lanai/deck along the east boundary. The lanai/deck at grade may extend any distance into a required yard or open space and the fence/railing of six feet or less in height is not be considered a structure and shall be permitted without any front, side or rear yard requirements. Because of the topographic terrace contour design of the subject property, the deck along the east and west boundary is considered to be built at grade. Also, according to the objection letter, Ms. Glass and Mr. Vanscyoc state that they were informed by the Planning Department that it was perfectly legal to build a deck to the property line. There are no setbacks for decks with 6-foot walls. It should be noted that the variance request is to address the encroachment of the covered lanai into the rear (north yard) setback.

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.

Therefore, the variance would be consistent with the 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 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. The covered lanai upon the subject property (Lot 120) will not meet the minimum rear yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan dated July 27, 2013.
4. No permit shall be granted to allow an ohana or second family or farm dwelling upon the subject property, subject to provisions of the Zoning Code or State law which may change from time to time.
5. 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-VAR 13-000157 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone6\VAR13-000157\TMK6-8-008-067Pompetti.doc.rtf

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

Roger D. Fleenor, LPLS
Page 6
October 9, 2013

NEIL ABERCROMBIE
GOVERNOR

PLANNING DEPARTMENT
COUNTY OF HAWAII



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

2013 AUG 12 PM 12:29

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

MEMORANDUM

DATE: August 9, 2013

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: ^{for} Newton Inouye *JA*
District Environmental Health Program Chief

SUBJECT: Application: Variance- VAR 13-000157
Applicant: Roger Dean Fleenor, LPLS
Owner: William J. & Marlene B. Pompetti
Request: Variance from CH25, Zoning, Article 5, Division 1,
Section 25-5-7 Minimum Yards and Section 25-4-44(a)
Permitted Projections into Yards and Open Space
Requirements (Encroachment into the Rear (North) Yard
Setback and Side (East and West) Yard Setback.
TMK: 6-8-008-067, Lot 120

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

WORD: VAR 13-000157 eh.

086888