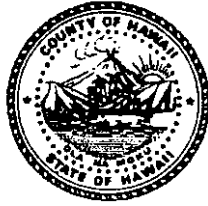


William P. Kenoi
Mayor



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

December 27, 2013

Sidney Fuke, Planning Consultant
100 Pauahi Street, Suite 212
Hilo, Hawaii 96720

Dear Mr. Fuke:

SUBJECT: Application: Variance VAR-13-000164
Applicant: SIDNEY FUKU, PLANNING CONSULTANT
Owners: J. STEPHEN MEADOWS
Request: Variance from Chapter 25, Zoning, Article 5 Division 1
Section 25-5-7 minimum Yards; Article 4, Division 4,
Section 25-4-44(a), permitted Projections into Yards and
Open Space Requirements and 25-4-43(c), Fences and
Accessory Structures (Encroachment into Northeast and
Northwest Side Yard Setback)
TMK: 1-4-010:017, 018 & 019 (Lots 19, 20 & 21)

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-13-000164, subject to conditions. The variance will allow portions of the single-family dwelling to remain on lot 21, with a minimum 3-foot side (northeast) yard setback and the 7' - 8" rock wall topped with a 3.66-foot high bamboo fencing to remain on lot 19 with a zero side (southwest) yard setback in lieu of the required minimum 8-foot side yard setback and 4-foot side yard open space 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, Article 4, Division 4, Section 25-4-44(a), Permitted projections into yards and open space requirements and 25-4-43(c), Fences and Accessory Structures.

BACKGROUND AND FINDINGS

1. **Location.** The subject site, consisting of three contiguous parcels, has a combined area of 22,000 square feet (parcel 19– 6,600 sq.ft. and parcel 18–7,700 sq.ft. and 17–7,700 sq. ft.)

It is situated within the Kapoho Beach Lots Subdivision, Kapoho-Halekamahina, District of Puna, Hawai'i. The subject property's street address is 14-4968 Laimana Street.

2. **County Zoning.** Single-Family Residential – 10,000 sq. ft. (RS-10).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** Each parcel presently requires a setback of 15-feet front and Rear, 8 feet for the sides; the three contiguous parcels will be consolidated into one parcel, once consolidated the setback requirement will be 20-feet front and rear, 10 feet for the sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on August 20, 2013. The revised variance survey map dated May 17, 2013 is drawn to scale, and prepared by Neils Christensen, LPLS, and denotes the position of the single-family dwelling constructed into minimum 10-foot side yard setback. The request affects the north side yard setback area.
6. **Special Management Area.** The subject property is located within the Special Management Area (SMA). A Special Management Area Minor Use Permit Assessment No. 12-000223 (SAA 13-001017) was issued on November 26, 2013 to allow the construction of an "as-built second single-family dwelling on parcel 19, gazebo, associated landscaping, rock walls and walkways,
7. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#39561) was issued on August 12, 1968 to "Lot 21" (TMK:1-4-010: 019) for a single-family dwelling consisting of 2 bedrooms, 1 bath, living room, kitchen and dining area and carport. No building permits could be found for the additional "as built" improvements.
8. **Time Extension.** The applicant's variance application was acknowledged by letter dated August 28, 2013 and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to December 31, 2013.
9. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated September 13, 2013. (See attached.)
 - b. No comments were received from the Department of Public Works – Building.

10. **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 notices were mailed on August 30, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 15, 2013.
11. **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 into the northeast side yard setback and the 7'-8" rock wall topped with 44-inch bamboo fence into the northwest side yard setback and open space as required by the Zoning Code.

The survey map prepared by Neils Christensen, L.P.L.S., shows that the single-family dwelling encroaches 5 feet into the northwest side yard setback and the 7'-8" rock wall topped with a 44-inch bamboo fence with a zero lot line 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 constructed nearly 45 years ago was 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 did not disclose any building encroachment issues or building setback irregularities at that time.

The rock wall with bamboo fence is higher than the maximum height of six feet allowed into the required side yard setback. The applicant has stated that the existing single-family dwelling and rock wall have existed for many years before the current owner

purchased the property. It should be noted that the owner of the adjacent property, which is most affected by the rock wall encroachment, did not object the variance application, and has requested that the bamboo fence on top of the rock wall be retained (see attached e-mail).

The above special and unusual circumstance determines the current 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 side 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 was 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.

The owner has agreed to consolidate all three properties and eliminate the interior boundary lines; by doing so, the side yard encroachment of the screen porch on parcel 19 and the round structure and gazebo on parcel 18 will be eliminated.

(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 has been in existence for approximately 45 years and was 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.
3. No permit shall be granted to allow an ohana 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 built upon the subject property ("LOT 21") 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) and rock wall topped with a bamboo fence on the subject property be destroyed by fire or other natural causes, the replacement

Sidney Fuke, Planning Consultant

Page 6

December 27, 2013

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. This variance does not apply to the encroachment issue regarding the concrete rock masonry (CRM) wall encroaching onto Laimana Street. These issues shall be addressed by the property owners affected by the CRM wall encroachments.
7. The applicant shall comply with all conditions set forth in Special Management Area Use Permit Assessment Application (SAA 13-001017).
8. 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-13-000164 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR13-000164TMK1-4-010-017,018,019Meadows.doc.rtf

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

Sidney Fuke, Planning Consultant
Page 7
December 27, 2013

NEIL ABERCROMBIE
GOVERNOR
PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 SEP 17 AM 7:24



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

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

MEMORANDUM

DATE: September 13, 2013

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 13-000164
Applicant: SIDNEY FUKU, PLANNING CONSULTANT
Owner: J. STEPHEN MEADOWS
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7 Minimum Yards, Section 25-4-44(a),
Permitted Projections into Yards and Open Space
Requirements and 25-4-43(c), Fences and accessory
structures (Encroachment into the Northeast and
Southwest Side Yard Setback)
Tax Map Key: 1-4-010:017, 018 & 019; Lots 19, 20 & 21

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

The existing individual wastewater system can continue to serve the existing dwelling. However, wastewater generated from any additional dwelling unit/building must meet the wastewater rules in effect at the time of building permit application.