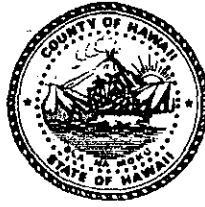


William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
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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

January 15, 2014

Mr. Peter J. Piper  
Piper Designs  
75-5944 Kuakini Hwy., Suite 2  
Kailua-Kona, HI 96740

Dear Mr. Piper

**SUBJECT: VARIANCE APPLICATION – VAR-13-000168**  
**Applicant: PETER J. PIPER/PIPER DESIGNS**  
**Owners: COOK GIRLS TRUST**  
**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 South Side Yard Setback)**  
**• TMK: 7-8-014:038, Lot 33**

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-13-000168, subject to variance conditions. The variance will allow for the detached shower room to remain "as built" with a 0.91 side (south) yard setback and associated side yard open space. These exceptions are in lieu of the required 8-foot side yard setback and 4-foot open space, as required by the Hawaii County Code, Chapter 25, Zoning, Section 25-5-7, 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 5,532 square feet (0.127 acre) of land and is situated at Kahalu'u Beach Lots, North Kona, Hawai'i. The subject property's street address is 78-6697Ali'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 October 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 Peter J. Piper (Piper Designs). The map denotes portions of the detached shower room built into the north front yard setback and south side yard setback.

The owner/applicant submitted the variance application to address or resolve the encroachment of the detached shower room into the 8-foot south side yard and side yard open space, as required by the Zoning Code.

The survey map shows that portions of the shower room encroaches 7.09 feet into the side (south) yard setback and side 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. 13-000927 (SAA 13-000927) was issued on June 12, 2013 to allow the conversion of the single-family dwelling into a surfing and aqua-related rental shop.
7. **County Building Records.** Hawaii County Real Property Tax Division records indicate that a building permit (707) was issued on July 12, 1946, for the construction of a 2-bedroom and 1-bath single-family dwelling, deck, and detached shower room.
8. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum, dated September 26, 2013. (See attached memorandum)
  - b. No comments were received from the Department of Public Works–Building Division.
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 September 4, 2013 and September 18, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 22, 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 January 15, 2014.
11. **Comments from Surrounding Property Owners or Public.**

- a. Objection letter from Andrew Meislin, received on September 27, 2013.
- b. Objection letter from Patrick McManus, received on September 30, 2013.
- c. Objection letter received on September 30, 2013. (Signature on letter illegible)
- d. Objection letter from Garret Wykowski, received on September 30, 2013.
- e. Objection letter from Woodrow B. Callaghan, received on October 2, 2013.
- f. Objection letter from Beatrice Kanahale Dawson, Esq. received on October 3, 2013.
- g. Objection letter from Patsy Kanahale Hicks, received on October 7, 2013.

### **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 detached shower room into the 8-foot side (south) yard setback as required by the Zoning Code.

The Plot plan prepared by Peter J. Piper (Piper Designs) shows that the detached shower room encroaches 7.09 feet into the side (south) yard setback and associated side (south) yard open space.

According to the Hawai'i County Real property Tax office records, the dwelling concrete deck and detached shower room was constructed in 1947 before the adoption of the Zoning Code in 1967. What this effectively means is that there were no minimum yard setbacks at the time the single-family dwelling, deck and detached shower room were built.

According to Section 25-4-61(a) Continuance of nonconforming uses of land and buildings of the Zoning Code, "Any nonconforming use of land or use of a building may continue to the extent it existed on December 7, 1996 or at the time of the adoption of any amendments to this chapter, provided that a nonconforming use may be enlarged within the building it occupies, but shall not be enlarged or increased to occupy a greater area of land, nor shall it or the portion of the building housing it be moved in whole or in part to any other portion of the building site occupied by such nonconforming use, except as provided in this section."

Therefore, since the construction of the dwelling and concrete deck occurred before the adoption of the Zoning Code, the existing dwelling, carport and shed are considered a legal “non-conforming” structures that remain in compliance with the requirements of the Zoning Code. Therefore, no setback variance is required for the single-family dwelling and deck. However, the detached shower room has since been enclosed, voiding its legal non-conforming status; therefore a setback variance is required to allow for the newly-enclosed shower room to remain in its original location with a 0.91 side (south) yard setback.

The two decks and bathhouse encroaching into the side (south) yard setback shall be permanently removed.

***(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 and garage 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’s side (south) boundary with the adjoining side property which is owned by another party, and re-subdivide to modify property lines and adjust minimum side yard setback are 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.

There were seven letters of objections filed expressing concerns to the approval of the variance application. Majority of the objections were related to the establishment of a retail

surf shop on the subject property. The subject property is zoned Resort-Hotel -1.250 square feet (V-1.25) which allows for retail establishments. A Special Management Area Minor Permit (SMM-13-000274) was issued on June 12, 2013 to allow for the renovation and conversion of the single-family dwelling into a surfing and aqua-related rental shop. Another objection pertains to the stone wall running between and along the adjoining properties and a presumed Historic Donkey Trail. An archaeological inventory survey was conducted on August 30 and 31, 2012 under the direction of Dr. Alan Haun of Haun & Associates. There is no mention or reference to a historic donkey trail in the report (see summary of report).

Also, the New Parking on TMK: (3) 7-8-014:037, new driveway and ADA improvements will be addressed during the Plan Approval process.

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 66 years since the single-family dwelling with garage, lanai and shower room were constructed.

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.

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Piper Designs  
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4. The newly enclosed shower room built upon the subject property ("LOT 33) will not meet the minimum side yard setback and associated open space requirements pursuant to *Hawai'i County Code, Chapter 25, (Zoning Code)*, in accordance to the site map dated August 24, 2013.
5. Should the single-family dwelling, open concrete deck and shower room (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 occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-13-000168 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  
Randy Lovato, Zoning Inspector (Kona)

Peter J. Piper  
Piper Designs  
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NEIL ABERCROMBIE  
PLANNING DIRECTOR  
GOVERNOR'S OFFICE  
2013 SEP 27 10:11:05



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 26, 2013

TO: Duane Kanuha  
Planning Director, County of Hawaii

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

SUBJECT: Application: Variance – VAR 13-000168  
Applicant: PETER J. PIPER/PIPER DESIGNS  
Owner: COOK GIRLS TRUST  
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)  
Tax Map Key: 7-8-014:038

The Health Department found no environmental health concerns with regulatory implications in the submittals.

087785

Report 883-022013

TMK: (3) 7-8-014:037 and 038

## SUMMARY

Haun & Associates conducted an archaeological inventory survey of TMK: (3) 7-8-14:37 and 38, two adjacent parcels totaling 0.267-acres in the land of Kahalo'u, North Kona District, Island of Hawaii. The objective of the survey was to comply with historic preservation regulatory review requirements of the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD). The landowner intends to remodel the existing house (no foundation change) for commercial use and pave the driveway and a parking area in the open space inland of the house.

The survey identified seven single-feature sites (29490 through 29495, and 29736). The sites consist of an historic house, four stone walls, and two subsurface cultural deposits. Site functions include prehistoric habitation, late prehistoric/early historic habitation, historic/modern habitation, and historic livestock control.

All seven sites in the project area are assessed as significant for their information content. The sites have yielded information important for understanding early historic habitation and ranching activity within the area. The SHPD Architectural Branch reviewed the Site 29490 house assessment and determined that it is also significant under Criterion "a" for its association with post war beach house development events, and Criterion "c" for its distinctive period architecture.

Mapping, written descriptions, and photography adequately document the seven sites; therefore, no further archaeological investigation or site preservation is recommended. If any future development of the parcel requires demolition of the house and excavation in Parcel 38, then archaeological monitoring is recommended.