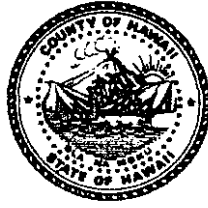


William P. Kenoi
Mayor



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 5, 2013

Mr. Roy N. Enos
P. O. Box 767
Kailua-Kona, HI 96745

Dear Mr. Enos:

SUBJECT: VARIANCE APPLICATION – VAR-13-000171

Applicant: ROY N. ENOS

Owners: WILLIAM C. ENOS 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 Southwest and Southeast Side Yard Setback)

TMK: 2-2-038:010, Lot B

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-13-000171, subject to variance conditions. The variance will allow portion of the single-family dwelling to remain "as built" with a 5.4-foot side (southwest) yard setback with associated 2.6-foot side (southwest) yard open space. It also allows for the southeast portion of the single-family dwelling which is within the limits of the De Minimus regulation to remain with 0.05 feet (0.6 inch) to a minimum .38 feet (4.56 inches) side (southeast) yard setback. These exceptions are in lieu of the required 10-foot side yard setback with associated 5-foot side yard open space, as required by the Hawaii County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 10,899 square feet of land and is situated at Waiakea Homesteads, South Hilo, Hawai'i. The subject property's street address is 1677 Kilauea Avenue.
2. **Zoning.** Single-Family Residential–10,000 sq. ft. (RS-10).

3. **State Land Use.** Urban (U).
4. **Required Setback.** Flag lot - 10 feet side yards. The minimum yards for a flag lot, excluding the access drive, shall be the minimum side yards required for a building site in the applicable zoning district.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on September 9, 2013, and other submittals related to the variance request and variance application. The variance application's site plan map is drawn to scale and prepared by Paul M Murray; L.P.L.S (Paul M. Murray and Associates, LLC) denotes the portions single-family dwelling built into the southeast and southwest side yard setback.

The survey map shows that portions of the single family dwelling encroaches 4.6 feet into the 10-foot side (southwest) yard setback and associated roof eave encroaches 2.4 feet into the 5-foot side (southwest) yard open space and the southeast portion of the single-family residence encroaches 0.38 feet and .05 feet into the side (southeast) yard setback. It also reveals an unpermitted open carport extension into the southeast side yard setback and side yard open space.

6. **County Building Records.** Hawaii County Real Property Tax Division records indicate that a building permit (37667) was issued on January 11, 1968, for the construction of a 3-bedroom and 1 bath single-family dwelling. There is no record of a building permit being issued for an open carport.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated October 10, 2013. (See attached memorandum)
 - b. The Department of Public Works--Building Division e-mails dated October 11, 2013, November 21, 2013 and December 3, 2013. (See attached e-mail)
8. **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 10, 2013 and November 15, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 22, 2013.
9. **Time Extension.** The applicant's variance application was received on September 9, 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 December 6, 2013.

10. **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 10-foot southwest side yard setback as required by the Zoning Code.

The survey map prepared by Paul M. Murray, L.P.L.S. (Paul M. Murray and Associates, LLC) shows that portions of the single family dwelling encroaches 4.6 feet into the 10-foot side (southwest) yard setback and associated roof eave encroaches 2.4 feet into the side (southeast) yard open space.

Also the southeast portion of the single-family dwelling which is within the limits of the De Minimus regulation encroaches .05 (.6 inch) feet to .38 feet into (4.56 inches) into the side yard setback. The open carport extension within the southeast side yard setback will be permanently removed. Once removed, the open space requirement of 5 feet along the southeast boundary will be met.

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 40 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.

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 criterion (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected east 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.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by another party, 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 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.

The granting of the setback variance still allows for adequate air circulation as the affected area is within the front setback adjacent to roadway frontage. The southwest portion of the single-family dwelling which encroaches from .05 feet (0.6 inches) to .38 feet (4.56 inches) into the side yard setback is within the limit of the De Minimis regulation.

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 45 years since the single family dwelling with lanai was constructed.

Further, objections were not received from 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.

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. Portion of the single-family residence upon the subject property ("LOT B") will not meet the minimum front yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), in accordance to the site map dated June 11, 2013.
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. The open carport within the southeast side yard shall be permanently removed within six months from the granting of this variance. Notification and photos depicting evidence of removal shall be submitted to the Planning Department.
7. 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.

Roy N. Enos
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December 5, 2013

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-13-000171 null and void.

Sincerely,

A handwritten signature in black ink, appearing to read "Duane Kanuha". The signature is written in a cursive, flowing style.

DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone2\VAR13-000171TMK2-2-038-010Enos.doc.rtf

xc: Gilbert Bailado, Planning GIS
DPW – Building Division

Roy N. Enos
Page 7
December 5, 2013

NEIL ABERCROMBIE
GOVERNOR
PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 OCT 14 PM 2:31



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: October 10, 2013

TO: Duane Kanuha
Planning Director, County of Hawaii

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

SUBJECT: Application: Variance – VAR 13-000171
Applicant: ROY N. ENOS
Owner: WILLIAM C. ENOS TRUST
Request: Variance from Chapter 25, 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 Southwest and
Southeast Side Yard Setback)
Tax Map Key: 2-2-038:010, Lot B

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

We recommend that you review all of the Standard Comments on our website:
<http://hawaii.gov/health/environmental/env-planning/landuse/landuse.html>. Any comments specifically applicable to this project should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by Built Environment Working Group (BEWG) of the Hawaii State Department of Health. The BEWG recommends that state and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopments projects. We also ask you to share this list with others to increase community awareness on healthy community design.

WORD: VAR 13-000171.ni

008055

Nakayama, Larry

PLANNING DEPARTMENT
COUNTY OF HAWAII

From: Matsumoto, Joy
Sent: Friday, October 11, 2013 9:05 AM
To: Nakayama, Larry
Subject: VAR 13-000171 William Enos Trust 2-2-038:010

2013 NOV -8 PM 3: 26

Hi Larry,

I have major concerns regarding this variance request:

1. No dimensions given from property line to building wall & overhang
2. The portion of the dwelling on the right that is into the setback appears unpermitted
3. A floor plan is required because there may be major building code issues due to proximity to property line

Building recommends the variance be denied pending the above submittals:

Joy Matsumoto

Supervising Building Inspector
County of Hawaii
Tel. (808) 961-8471
Fax (808) 961-8410
Email: jmatsumoto@co.hawaii.hi.us

SCANNED
NOV 8 2013
By: 088475

Nakayama, LarryPLANNING DEPARTMENT
COUNTY OF HAWAII

From: Matsumoto, Joy
Sent: Thursday, November 21, 2013 1:31 PM
To: Nakayama, Larry
Subject: RE: VAR 13-000171 William Enos Trust 2-2-038:010

2013 NOV 21 PM 2: 46

*Hi Larry,**I have concerns:*

1. *The 2006 International Building Code requires two feet minimum distance from edge of eave to property line*
2. *The unpermitted addition must comply with the 2006 International Building Code Table R302.1 regarding exterior walls*
3. *Light, ventilation, and emergency egress will be a problem where overhangs are less than three feet to the property line.*
4. *A floor plan is still required with window & door schedules so building code issues may be determined.*

*I still recommend denial of the variance pending supporting documents.***Joy Matsumoto**

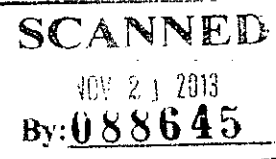
Supervising Building Inspector
 County of Hawaii
 Tel. (808) 961-8471
 Fax (808) 961-8410
 Email: jmatsumoto@co.hawaii.hi.us

From: Nakayama, Larry
Sent: Wednesday, November 13, 2013 2:37 PM
To: Matsumoto, Joy
Subject: RE: VAR 13-000171 William Enos Trust 2-2-038:010

Joy: After an on-site inspection of the subject property it was determined that The distance from the boundary line on the right (Lot 8-B) to the building wall is 9' -9" and approximately 1 foot to the carport roof eave. The distance from the boundary line adjacent to Lot A is 5' -1' to the building wall and approximately 2' - 7" to the roof eave. We don't have a floor plan of the single family dwelling. Should you have any questions feel free to call or e-mail me.

Mahalo: Larry N.

Larry H. Nakayama
 Planner, County of Hawaii
 Planning Department
 101 Pauahi Street, Suite 3
 Hilo, Hawaii 96720
 Tel: (808) 961-8149
 Fax: (808) 961-8742
 Email: lnakayama@co.hawaii.hi.us



11/21/2013