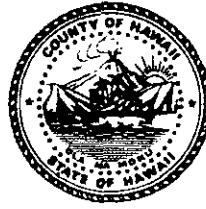


William P. Kenoi
Mayor



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

June 27, 2014

Mr. Bob South
Plans Hawaii
P. O. Box 377466
Ocean View, HI 96737

Dear Mr. South:

SUBJECT: Application: VARIANCE – VAR-13-000177
Applicant: BOB SOUTH/PLANS HAWAII
Owners: PETER TURNER AND ROD GREGORY
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 East Side Yard Setback)
TMK: 7-6-010:006, Lot 89

The Planning Director certifies the **approval** of VAR-13-000177, subject to variance conditions. The variance allows for the construction of two detached bedrooms with a minimum 4-foot side (south) yard setback and side yard open space. These exceptions are in lieu of the required 15-foot side yard setback with associated 10-foot side yard open space, as required by the Hawaii County Code, Chapter 25, Zoning, Section 25-5-76, Minimum Yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 39,204 square feet (0.90 acre) of land, is situated at Holualoa 1 & 2, North Kona, Hawai'i. The subject property's street address is 78-779 Hualalai Road.
2. **Zoning.** Agricultural – 1 Acre (A-1a).
3. **State Land Use.** Agricultural.
4. **Required Setback.** 25 feet for front and rear; 15 feet for sides.

5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on October 17, 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 Bob South of Plans Hawaii and denotes the portions of the proposed detached bedrooms into the side (south) yard setback.

The site plans shows that the two detached bedrooms encroaching 11 feet into the 15-foot side (south) yard setback and 6 feet into the side (south) yard open space, leaving a clear space of approximately 4 feet. Detach Bedroom floor plan dated August 10, 2013 received on April 10, 2014

6. **County Building Records.** No Building Records – Vacant Land.
7. **Agency Comments and Requirements.**
- a. The State Department of Health (DOH) memorandum, dated November 15, 2013. (See attached memorandum.)
 - b. No comments were received from the Department of Public Works–Building Division.
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 November 21, 2013 and December 6, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 10, 2013.
9. **Time Extension.** The applicant's variance application was received on October 17, 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 June 30, 2014.
10. **Comments from Surrounding Property Owners or Public.**
- a. Objection letter from Joaquin Belisario, received on November 15, 2013.
 - b. Letter requesting deferral of variance decision from Chuck Taylor, received on December 5, 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 allow for the construction of two detached bedrooms with a 4-foot minimum side (south) yard setback and associated side yard open space, in lieu of the minimum 15-foot side yard setback and associated 10-foot side yard open space requirement.

The site plan prepared by Bob South, of Plans Hawaii, shows that the subject property is a long narrow parcel with a portion of the property located in the AE flood zone.

The applicant has stated the following in its background report:

“The parcel is narrow and fairly steep in its entirety, therefore a building design of three small structures situated at separate locations on the upper, widest, portion of the property has been deemed the best way to accommodate a three bedroom home while maintaining the architectural character of the surrounding neighborhood. Unfortunately, the AE flood zone partially covers the property in the optimum building area.

After due consideration of the owners living needs and aspirations for an aesthetically pleasing home, we have concluded that the moving the two upper bedroom pods (B and C) 11' into the 15' setback area toward the south property line is a workable compromise that can be reached where no other reasonable alternative is apparent. This can be accomplished without detriment to the public welfare and without adverse impact to the area's character or to the adjoining properties. Doing so will position pod “B” entirely outside the flood zone and most of pod “C” beyond the southern edge of the flood zone, leaving only a portion of pod “C” within the flood zone, a condition made viable by using prescriptive building methods for flood zones. (I have been advised by the Hawaii County Engineering Division that placing the structures mostly, or entirely, within the flood zone is not recommended and would not likely be approve by them if another option is available.)”

Therefore, based on the information stated above, we have determined that there are special and unusual circumstances that exist on the subject property which would deny the owner highest and best use of his 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:

One option would be to relocate the detached bedrooms into the AE flood zone area to meet setback requirements; but as mentioned previously, this option is not recommended and would not likely be approved by the County of Hawai'i Department of Public Works – Engineering Division.

Another alternative is to consolidate the subject property with the adjoining side (south) 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 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.

An objection letter was received on November 15, 2013 from Mr. Joaquin Belisario stating that if the variance is approved to allow construction on the property, direction of the flood waters could be affected. He recommends that a flood study be completed and a drainage report distributed to the surrounding land owners for review prior to approval. The applicant has stated that he has been advised by the Hawaii County Engineering Division that placing the structures mostly, or entirely, within the flood zone is not recommended and would not likely be approved by them if another option is available. He also feels that approval of this variance will decrease privacy and values to the surrounding properties. Denial of this variance would basically deem this property unbuildable and deny the owners highest and best use of their property.

Also, an e-mail was received on December 5, 2013 from Chuck Taylor on behalf of Mr. Carl Melcher who owns the adjoining property (TMK: 7-6-010:005). Mr. Taylor requests that the Planning Department defer any decision on this variance until an Archeology survey on the adjacent property which is owned by Carl Melcher (TMK: 7-6-010:005) is completed by Huan & Associates. The Archeology Survey should have been completed

February 28, 2014. No Archeological Survey Report has been received by this Department (see condition 5). Sufficient time has been given to Mr. Chuck Taylor's request for deferral; therefore any further delay on this variance application would deny the owners their right for a response in a timely manner.

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.

Therefore, the variance would be consistent with the general purpose of the zoning district and not 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 request is **approved** subject to the following conditions. Based on the variance application's survey map, the two detached bedrooms to be constructed upon the subject property ("LOT 89") will not meet the minimum side yard open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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. During the building permit review, best effort should be made by applicant/owner to promote the main dwelling and detached bedrooms to function as a single, cohesive family dwelling unit. This can be shown by common features and facilities, connected walkway or closer placement of bedroom PODs to the main dwelling unit.
4. Subject to provisions of the Zoning Code or State law, which may be changed from time to time, no permit shall be granted to allow an ohana or farm dwelling upon the subject property.
5. No permit shall be granted to allow an ohana, or an additional farm dwelling upon the subject property, subject to the provisions of the Hawai'i County Code, Chapter 25 (Zoning) or State law, which may change from time to time.

6. Should any unidentified sites or remains such as lava tubes, artifacts, shell, bone, charcoal deposits, human burials, rock or coral alignments, pavings, or walls be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when they find that sufficient mitigated measures have been taken.
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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-13-000177 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone7\VAR13-000177TMK7-6-010-006Turner-Gregory.doc.rtf

xc: Planning Department (Kona)
Real Property Tax Division (Kona)
Gilbert Bailado, Planning GIS

NEIL ABERCROMBIE
GOVERNOR

PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 NOV 18 AM 9:40



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: November 15, 2013

TO: Duane Kahuna
Planning Director, County of Hawaii

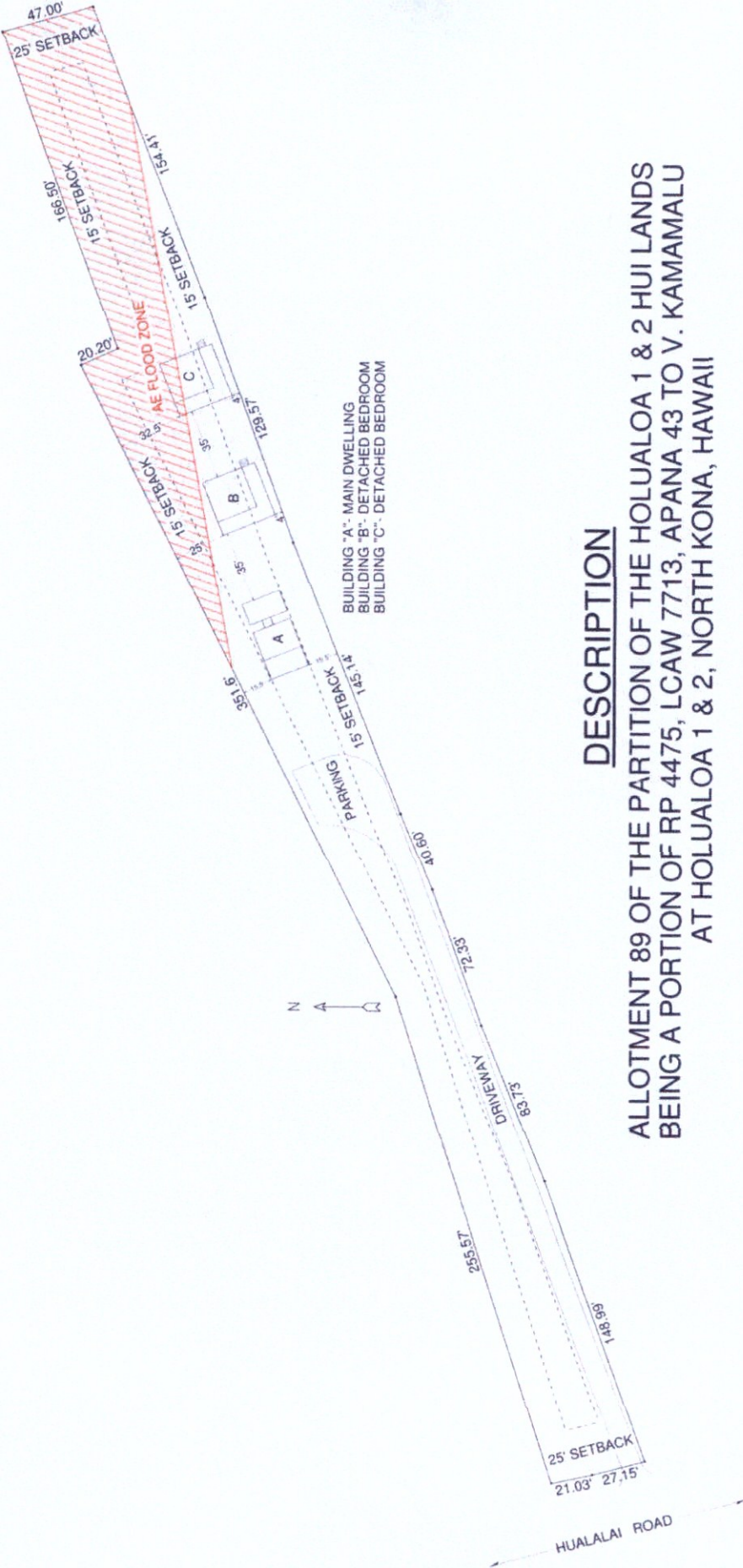
FROM: Newton Inouye ↻
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 13-000177
Applicant: BOB SOUTH
Owner: PETER TURNER & ROD GREGORY
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 South Side Yard
Setback)
Tax Map Key: 7-6-010:006, Lot 89

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

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 redevelopment projects. We also ask you to share this list with others to increase community awareness on healthy community design.



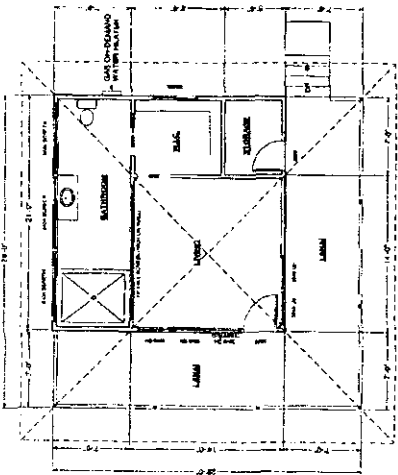
DESCRIPTION

ALLOTMENT 89 OF THE PARTITION OF THE HOLUALOA 1 & 2 HUI LANDS
BEING A PORTION OF RP 4475, LCAW 7713, APANA 43 TO V. KAMAMALU
AT HOLUALOA 1 & 2, NORTH KONA, HAWAII

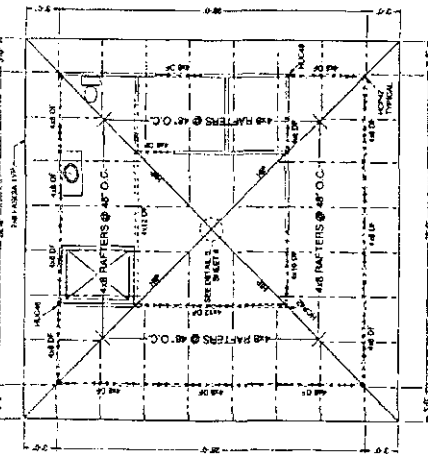
SCALE: 1 INCH = 50 FEET

TMK: (3) 7-6-10:6

BOOK: 179

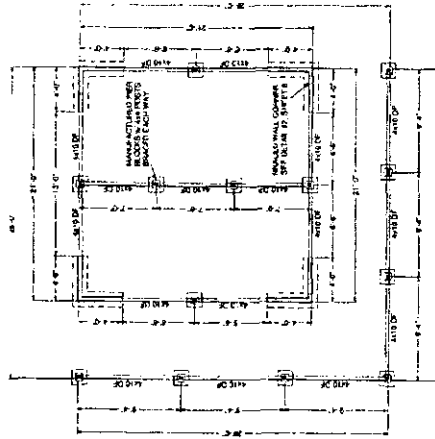


BEDROOM PODS "B" & "C"
1/4" = 1'-0"



BEDROOM PODS "B" & "C" ROOF
1/4" = 1'-0"

- GENERAL NOTES**
1. ALL WORK SHALL BE IN ACCORDANCE WITH THE PERMITS AND LOCAL ORDINANCES.
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
 3. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL RESIDENTIAL CODE BOOK (IRC) AND THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC).
 4. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL MECHANICAL AND PLUMBING CODE (IMC) AND THE LATEST EDITIONS OF THE INTERNATIONAL ELECTRICAL CODE (IEC).
 5. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL FIRE AND SAFETY CODE (IFSC) AND THE LATEST EDITIONS OF THE INTERNATIONAL ENERGY CONSERVATION CODE (IECC).
 6. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL SCHEDULING CODE (ISC) AND THE LATEST EDITIONS OF THE INTERNATIONAL CONSTRUCTION CODE (ICC).
 7. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL PLUMBING AND MECHANICAL CODE (IPMC) AND THE LATEST EDITIONS OF THE INTERNATIONAL ELECTRICAL AND MECHANICAL CODE (IEMC).
 8. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL FIRE AND SAFETY CODE (IFSC) AND THE LATEST EDITIONS OF THE INTERNATIONAL ENERGY CONSERVATION CODE (IECC).
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 10. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL PLUMBING AND MECHANICAL CODE (IPMC) AND THE LATEST EDITIONS OF THE INTERNATIONAL ELECTRICAL AND MECHANICAL CODE (IEMC).



BEDROOM PODS "B" & "C" FOUNDATION
1/4" = 1'-0"

ITEM	DESCRIPTION
101	DOOR SCHEDULE
102	DOOR SCHEDULE
103	DOOR SCHEDULE
104	DOOR SCHEDULE
105	DOOR SCHEDULE
106	DOOR SCHEDULE
107	DOOR SCHEDULE
108	DOOR SCHEDULE
109	DOOR SCHEDULE
110	DOOR SCHEDULE

ITEM	DESCRIPTION
111	WINDOW SCHEDULE
112	WINDOW SCHEDULE
113	WINDOW SCHEDULE
114	WINDOW SCHEDULE
115	WINDOW SCHEDULE
116	WINDOW SCHEDULE
117	WINDOW SCHEDULE
118	WINDOW SCHEDULE
119	WINDOW SCHEDULE
120	WINDOW SCHEDULE



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF PERMITS
1505 ALI'OLE DRIVE, SUITE 200
HONOLULU, HAWAII 96819
PHONE: (808) 586-1234
FAX: (808) 586-5678
WWW.DNR.HAWAII.GOV

AUGUST 10,
2013

TURNER
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