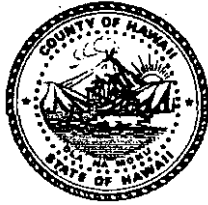


William P. Kenoi
Mayor



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

February 28, 2014

Ms. Susan P. Hughes
P. O. Box 91
Volcano, Hawai'i 96785

Dear Ms. Hughes:

SUBJECT: Application: Variance VAR-13-000182
Applicant: SUSAN P. HUGHES
Owners: ROBERT J. HUGHES AND SUSAN P. HUGHES
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 the North-West and Southeast Rear Yard Setback and Southeast Side Yard Setback)
TMK: 1-9-005:015 (Lot 3)

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-13-000182, subject to conditions. The variance will allow the "as-built", single-family dwelling to remain on Lot 3, with a minimum 20-foot rear (southeast) yard setback. It also allows for the as-built detached water tanks to remain with a 9-foot rear (northwest and southeast) yard setback and an 11-foot side (southeast) yard setback. These exceptions are in lieu of the required minimum 25-foot rear yard and 15-foot side yard setback requirement with associated rear and side yard open space requirement. This variance is from the subject property's minimum rear and side yard setback and associated rear and 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, and Article 4, Division 4, Section 25-4-44(a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 1.3 acres and is situated in the Ola'a Summer Lots, District of Puna, Hawai'i. The subject property's street address is 19-4037 Olapalapa Road.
2. **County Zoning.** Single-Family Residential – 20,000 square feet (RS-20).

3. **State Land Use Designation.** Urban.
4. **Required Setback.** 25-feet for front and rear; 15-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on December 17, 2013. The variance site plan map is drawn to scale, and prepared by Cole Drafting and denotes the position of the existing garage, existing water tanks built in 1925 and the “as-built” single-family dwelling and water tank constructed into minimum 25-foot rear yard and 15-foot side yard setback. There is no record of any building permits for the “as-built” single-family dwelling and water tank. The request affects the northwest and northeast rear yard and southeast side yard setback.

The site plan shows that the as-built, single-family dwelling encroaches 5 feet into the rear (southeast) yard setback. It also shows that the as-built detached water tank encroaches 4 feet into the 15-foot side (southeast) yard setback and two of the existing water tanks encroach 16 feet into the rear (northwest) yard setback. (The garage and two of the four existing water tanks were built in 1925)

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that the existing single-family dwelling and detached garage was built in 1925 on the subject property consisting of a 5 bedroom, 3 baths, living room, kitchen and dining area and garage. There is no record of any building permits for the “as-built” single-family dwelling and water tank.
7. **Use Permit.** Use Permit 192 was issued on May 17, 2002, to allow for a three-bedroom, bed and breakfast operation within an existing single-family dwelling.
8. **Time Extension.** The applicant's variance application was acknowledged by letter dated December 18, 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 February 28, 2014.
9. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated December 30, 2013. (See attached.)
 - b. No comments were received from the Department of Public Works--Building Division.
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 first and second notices were mailed on December 4, 2013 and December 23, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 29, 2013.

10. **Comments from Surrounding Property Owners or Public.** Objection letter dated and received on January 7, 2014 was submitted by Sandra Pechter Song on behalf of her clients, Ronald and Marie Onouye.

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 as-built, single family dwelling into the 25-foot northeast front yard setback, the detached water tanks into the 25-foot northeast rear yard setback, and the 15-foot southeast side yard setback as required by the Zoning Code.

The site plan prepared by Cole Custom Drafting shows that the as-built, single-family dwelling encroaches 5 feet into the 25-foot rear (southeast) yard setback. It also shows that the detached water tank encroaches 16 feet into the 25-foot rear (northwest southeast) yard setback and 4 feet into the 15-foot side (southeast) yard setback.

The owner/applicant has stated in its background report that the large 20' x 30' fissure located in the rear portion of the property left very little building area. With tall trees and poor drainage on the east side of the building site, the west side yard with its higher ridge became the logical site for the water tank.

The applicants were unaware of any encroachment until they applied for a building permit for the "as-built" single-family dwelling and were notified of the encroachments by the Planning Department.

The site plan also shows that the existing garage built in 1925 encroaches 19 feet into the 25-foot rear (northwest) yard setback.

Therefore, since the construction of the garage occurred before the adoption of the Zoning Code, the existing garage is considered a legal “non-conforming” structure that can remain as it existed. Therefore, no setback variance is required for the garage.

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.”

This variance is strictly for allowing the as-built single-family dwelling and existing and “as-built” water tanks to remain into the rear and side yard setbacks. It does not allow for the proposed carport and covered porch or any future expansion or alteration to be built into the front, rear and side yard setbacks.

Based on the above mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the subject 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 rear and 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 and detached water tanks 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. Requiring the owner to relocate the water tank would involve the owner to do major excavation to his property by having to replace and move existing pipe lines.

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

(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.

An objection letter was received from Sandra Pechter Song, Attorney-At-Law, on behalf of her clients, Ronald and Marie Onouye. The letter states in part: "My clients are objecting to the subject variance request because they believe that no exceptions or variances should be granted to the Hughes by the County of Hawai'i Planning Department as long as the Hughes continue to block access along Olapalapa Road." They also believe that the variance application does not meet the criteria for a variance to be granted.

Olapalpa Road (TMK 1-9-005:022) is privately owned by property owners that abuts the roadway; any access and/or encroachment issues should be settled by the various owners of the roadway.

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. 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

Susan P. Hughes
Page 6
February 28, 2014

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 3") 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. This variance does not apply to the access issue on Olapalapa Road (TMK: 1-9-005: 022). The access issue shall be addressed by the property owners of the roadway (Olapalapa Road).
6. 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.
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 building occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-13-000182 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR13-000182TMK1-9-005-015Hughes.doc.rtf

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

Susan P. Hughes
Page 7
February 28, 2014

NEIL ABERCROMBIE
GOVERNOR
PLANNING DEPARTMENT
COUNTY OF HAWAII

2014 JAN -2 AM 7: 44



Gary L. Gill
ACTING DIRECTOR OF HEALTH

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

MEMORANDUM

DATE: December 30, 2013

TO: Duane Kahuna
Planning Director, County of Hawaii

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

SUBJECT: Application: Variance- VAR 13-000182
Applicant: SUSAN P. HUGHES
Owner: ROBERT J. AND SUSAN P. HUGHES
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 Northeast Rear
Yard Setback)

TMK: 1-9-005:015 Lot 3

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