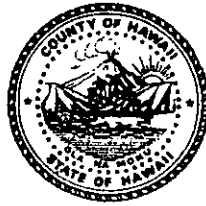


William P. Kenoi  
Mayor



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 11, 2014

Ms. Sharuga Kamakea  
Aloha Coast Realty  
101 Aupuni Street, #298  
Hilo, Hawai'i 96720

Dear Ms. Kamakea:

**SUBJECT: Application: Variance VAR-13-000183**  
**Applicant: SHARUGA KAMAKEA/ALOHA COAST REALTY**  
**Owners: DAMON AND RENEE SELTENRICH**  
**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 the South**  
**Rear Yard Setback and East Side Yard Setback)**  
**TMK: 1-5-052:039 (Lot 2201)**

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After reviewing your variance application, the Planning Director certifies the **approval** of VAR-13-000183, subject to conditions. The variance will allow portion of the single-family dwelling to remain on Lot 2201, with a minimum 24.6-foot to a minimum 12.0-foot rear (south) yard setback and a minimum of 14.29 side (south) yard setback with associated 9.6-foot rear yard open space. It also allows for the detached water tank to remain with an 8.60-foot side (east) yard setback and associated side yard open space. These exceptions are in lieu of the required minimum 30-foot rear yard and 20-foot side yard setback requirement with associated rear and side yard open space. This variance is from the subject property's minimum front and 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, 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 one acre and is situated within the

Hawaiian Paradise Park Subdivision, District of Puna, Hawai'i. The subject property's street address is 15-1510 6<sup>th</sup> Avenue.

2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 30 feet for front and rear; 20 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 survey map is drawn to scale, and prepared by Roy G. Hollowell, LPLS, and denotes the position of the single-family dwelling and water tank constructed into minimum 30-foot rear yard and 20-foot side yard setback. The request affects the southwest and southeast

The survey map shows that portions of the single-family dwelling encroaches 4.1 feet to 18 feet into the 30-foot rear (south) yard setback and the associated roof eave encroaches 14.4 feet into the rear (south) yard open space. It also shows that the detached water tank encroaches 11.4 feet into the 20-foot side (east) yard setback and 5.4 feet into the 14-foot side (east) yard open space.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#882421) was issued on December 23, 1988 to the subject property for a single-family dwelling consisting of a 2 bedroom, 2 baths, living room, kitchen and dining area and garage. An additional permit was issued on September 3, 1992 for alteration to the single-family dwelling.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated December 30, 2013. (See attached.)
  - b. The Department of Public Works – Building Division e-mail dated January 9, 2014. (See attached.)
8. **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 23, 2013 and January 11, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on January 12, 2014.

9. **Comments from Surrounding Property Owners or Public.** Letter of concern dated January 14, 2013 by Jill Allan and received on January 15, 2014.

**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 storage shed into the 30-foot southeast front yard setback and the shop/barn into the 20-foot southwest side yard setback as required by the Zoning Code.

The survey map prepared by Roy G. Hollowell, L.P.L.S., shows that portions of the single-family dwelling encroaches 4.1 feet to 18.0 feet into the 30-foot rear (south) yard setback and the associated roof eave encroaches 14.4 feet into the rear (south) yard open space. It also shows that the detached water tank encroaches 11.4 feet into the 20-foot side (east) yard setback and 5.4 feet into the 14-foot side (east) yard open space.

The owner was unaware of any setback encroachment issues when he purchased the property in 2002. 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 and the detached water tank was constructed nearly 24 years ago under valid building permits and other construction permits issued by the County. It also appears that past building permit 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 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 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 and detached water tank 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.

*(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.

A letter was sent to the owner, Mr. Damon Seltenrich on January 14, 2014, expressing concern regarding the portion of the chain link fence encroaching onto her property (Lot 2171). She has no objection to the variance, but requests that the portion of the chain link fence encroaching onto her property be moved to eliminate any encroachment issues on her property.

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 and detached water tank has been in existence for the past 24 years and were constructed under valid building permits and other construction permits issued by the

County of Hawai'i. 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, a second single-family 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 2201") 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 encroachment issue regarding the chain link fence intruding 1.1 feet into the adjoining rear (southwest) property (Lot 2171) and 1.3 feet into the adjoining side (west) property (Lot 2200). These issues shall be addressed by the property owners affected by the chain link fence encroachment.
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.

Sharuga Kamakea  
Aloha Coast Realty  
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February 11, 2014

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-13-000183 null and void.

Sincerely,



DUANE KANUHA  
Planning Director

LHN: nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR13-000183TMK1-5-052-039Seldenrich.doc.rtf

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

Sharuga Kamakea  
Aloha Coast Realty  
Page 7  
February 11, 2014

NEIL ABERCROMBIE  
GOVERNOR  
PLANNING DEPARTMENT  
COUNTY OF HAWAII

2014 JAN -2 AM 7:44



Gary L. Giff  
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: <sup>for</sup> Newton Inouye *NI*  
District Environmental Health Program Chief

SUBJECT: Application: Variance VAR 13-000183  
Applicant: SHARNGA KAMAKEA/ALOHA COAST REALTY  
Owner: DAMON E. & RENEE V. SELTENRICH  
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 Southwest and  
Southeast Rear Yard Setback and East Side Yard  
Setback)

TMK: 1-5-052:039 lot 2201

Wastewater Branch is unable to make comments to the proposed project at this time. Before we can offer any comments, the applicant needs to address the following:

- a. The location of all existing wastewater systems.

Sharuga Kamakea  
Aloha Coast Realty  
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February 11, 2014

January 14, 2014

Damon Seltenrich  
580 Brighthaven Avenue  
El Cajon, CA 92019

PLANNING DEPARTMENT  
COUNTY OF HAWAII

2014 JAN 15 PM 2:13

Dear Mr. Seltenrich,

This letter is in response to your correspondence dated January 3, 2014. I am the property owner of Lot 2171. I am concerned that a portion of your fence is on my property as stated in Roy Hollowell's report " item D. South fence corner 1.1 feet into lot 2171."

I request that you move the fence to the property line or onto your property. While my lot has not been developed, I don't want any confusion at a later time as to where the property line is based upon where the fence is located.

I have no issue with the variances you would be requesting from the County of Hawaii that are within your property lines.

Thank you for your attention to this matter.

Sincerely,

Jill Allan

Cc: Sharuga Kamakea 614 Kilauea Ave. Ste 101, Hilo, HI 96720

Larry Nakayama, Hawaii County Planning Department, 101 Pauahi St., Ste 3, Hilo, Hawaii 96720

Shirley Flack P.O. Box 492770, Keaau, HI, 96749

089459



**Nakayama, Larry**

PLANNING DEPARTMENT  
COUNTY OF HAWAII

**From:** Matsumoto, Joy  
**Sent:** Thursday, January 09, 2014 10:26 AM  
**To:** Nakayama, Larry  
**Subject:** Variance VAR-13-000183, 1-5-052:039

2014 JAN -9 PM 12: 18

Hi Larry,

We have no issues with this variance.

***Joy Matsumoto***

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

**SCANNED**

JAN 10 2014

By: 089372