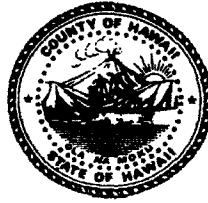


William P. Kenoi
Mayor



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
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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

June 10, 2014

Mr. Rex M. Dalere
Rex's Drafting & Building Consultant Services
P. O. Box 692
Hilo, Hawai'i 96721

Dear Mr. Dalere:

SUBJECT: Application: Variance VAR-14-000196
Applicant: REX M. DALERE
Owners: DIANE IRELAND AND JENNY LETTS
Request: Variance from Chapter 25, Zoning, Article 5, Division 5, Section 25-5-56, Minimum Yards, and Article 4, Division 4 Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements (Encroachment into the Northeast Side Yard Setback)
TMK: 1-7-024:061 (Lot 39)

The Planning Director certifies the **approval** of VAR-14-000196 subject to variance conditions. The variance will allow the "as-built", one-car carport with storage room to remain on Lot 8, with a minimum 9 feet northeast side yard setback and northeast side yard open space. This is in lieu of the required minimum 15-foot side yard setback and 10-foot side yard open space requirement. This variance is from the subject property's minimum northeast side yard setback and associated northeast side yard open space requirements pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 1, Section 25-5-7, Minimum yards, (a), Section 25-5-8, 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 36,883 square feet and is located in the Kukui Heights Lots, situated in the District of Puna, Hawai'i. The subject property's street address is 17-972 Konomanu Street.
2. **County Zoning.** Residential Agricultural - .5 acre (RA-.5).

3. **State Land Use Designation.** Rural.
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 March 14, 2014. The variance site plan map is drawn to scale, and prepared by Rex M. Dalere, Draftsman (Rex's Drafting & Building Consultant Services), and denotes the position of the detached one-car carport with storage room constructed into the minimum 15-foot side yard setback and 10-foot side yard open space. The request affects the northeast side yard setback.

The survey site plan shows that the one-car carport with storage room encroaches 6 feet into the northeast side yard setback and 1-foot into the northeast side yard open space.
6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (#890404) was issued on March 7, 1989 to the subject property for a single-family dwelling consisting of 2 bedrooms, 1 bath, living room, kitchen and dining area. A subsequent permit was issued (950286) on February 27, 1995 for the detached open carport with storage room.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated March 7, 2014. (See attached.)
 - b. No comments were received from the Department of Public Works – Building.
8. **Time Extension.** The applicant's variance application was acknowledged by letter dated February 27, 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 June 15, 2014.
9. **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 November 18, 2013 and April 14, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 12, 2014.
10. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners of the general public were received.

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 car carport into the 15-foot northeast side yard setback as required by the Zoning Code.

The site plan prepared by Rex M. Dalere, Draftsman (Rex's Drafting & Building Consultant Services) shows that the one-car carport with storage room encroaches 6 feet into the northeast side yard setback, and one foot into the associated side yard open space.

It appears that the one-car carport with storage constructed nearly 24 years ago was constructed 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 one-car carport with storage did not disclose any building encroachment issues or building setback irregularities at that time. Therefore, no evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the one-car carport with storage room encroachment problems to occur.

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, one-car carport with storage room 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 complied

with the building permit process and were under the impression that the single-family dwelling 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 re-subdivide 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.

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 24 years since the one-car carport with storage was constructed. In addition, 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 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

Based on the variance application's survey map, the water tank and the two-story workshop built upon the subject property ("LOT 39") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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

Hawai'i 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 Hawai'i County Code, Chapter 25 (Zoning) or State Law which may change from time to time.
4. Should the detached one-car carport with storage 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.
5. 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-14-000196 null and void.

Sincerely,



JUANE KANUHA
Planning Director

LHN:klt

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

NEIL ABERCROMBIE
GOVERNOR

2014 JUN 10 PM 2:09




DIRECTOR OF HEALTH

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

MEMORANDUM

DATE: March 7, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye 
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR-14-000196
Applicant: REX M. DALERE
Owner: DIANE IRELAND AND JENNY LETTS
Request: Variance from Chapter 25, Zoning, Article 5, Division 5,
Section 25-5-56, Minimum yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into Northeast Side Yard
Setback)
Tax Map Key: 1-7-024:061; lot 8

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-14-000196.ni

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