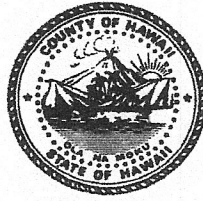


William P. Kenoi  
Mayor



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

May 13, 2014

Ms. Jan Nores  
Hawai'i Life Real Estate Brokers  
7 Puakō Beach Drive  
Kamuela, HI 96743

Dear Ms. Nores:

**SUBJECT: Application: VARIANCE – VAR-14-000200**  
**Applicant: JAN NORES**  
**Owners: BLAINE CURTIS, TRUSTEE**  
**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 East Side Yard Setback and East Side Yard Open Space)**

**Tax Map Key: 6-9-004:012; Lot 54**

The Planning Director certifies the **approval** of Variance No. 14-000200 (VAR: 14-000200), subject to variance conditions. The variance is to allow portions of the single-family dwelling roof eaves to remain "as built" with a side (east) yard open space of 4.30 feet to 4.40 feet. The variance is from the subject property's minimum 5-foot 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, and Article 4, Division 4 Section 25-4-44, Permitted projections into yards and open space requirements.

The request also requested to allow the portions of the single-family dwelling to be approved under Section 25-4-66, De Minimus Regulation Structural Position Discrepancy and to remain "as built" with a 9.70-foot to 9.75-foot side (east) yard setback and encroaching 0.25 feet (3 inches) to 0.30 feet (3.6 inches) into the side (east) yard setback. It also allows for the associated roof eaves to remain with 4.80 feet to a 4.90 feet side (west) yard open space and encroaching 0.10 feet (1.20 inches) to 0.20 feet (2.40 inches) into the side (west) yard open space. This will be addressed as a separate request.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property consists of approximately 14,000 square feet of land, is located within the Puakō Beach Lots Subdivision, situated at Lalamilo, Waimea, South Kohala, Hawai'i. The subject property's street address is 69-1736 Puakō Beach, Drive.
2. **County Zoning.** Single-Family Residence – 10,000 square feet (RS-10).
3. **State Land Use.** Urban
4. **Setback Requirements.** 20 feet for front and rear; 10 feet for sides.
5. **Variance Application-Site Plan.** The owner submitted the variance application, attachments, and filing fee on March 17, 2017 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 Thomas G. Pattison, LPLS. The variances plot plan denotes that portions of the single-family dwelling are built into the property's minimum 10-foot east side yard setback and 5-foot east side yard open space.

The survey map shows that portions of the single-family dwelling roof eaves encroach 0.60 feet (7.2 inches) to 0.70 feet (8.4 inches) into the 5-foot side (east) yard open space.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#B2006-2010FK) was issued on February 2, 2006, for the construction of a 3 bedroom and 5-1/2 bath single-family dwelling.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated April 8, 2014. (See attached).
  - b. No comments were received from the Department of Public Works Department – Building Division
8. **Notice to Surrounding Property Owners.** A copy of the first and second notices was sent by the applicant via USPS to surrounding property owners and mailing certificates were submitted to the Planning Department. According to these submittals, the first notice was mailed on March 25, 2014, and the second notice was mailed on March 28, 2014. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on April 11, 2014.
9. **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.

## GROUNDS FOR APPROVING VARIANCE

### **Special and Unusual Circumstances**

- (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 roof eave into the 5-foot side yard open space as required by the Zoning Code.

The survey map prepared by Thomas G. Pattison, L.P.L.S., of Pattison Land Surveying, Inc., shows that portion of the single-family dwelling roof eave encroaches 0.60 feet (7.2 inches) to 0.70 feet (8.4 inches) into the 5-foot side (east) yard open space.

No evidence has been found to allow indifference or premeditation by the owners or builders to deliberately create or intentionally allow the roof eave encroachment problems to occur. The error is miniscule although exceeding the code requirement.

It appears that the single-family dwelling constructed nearly 8 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 single-family dwelling did not disclose any building encroachment issues or building setback irregularities at that time.

The above special and unusual circumstances determine 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 subject property.

#### **Alternatives**

- (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 side yard open space of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the single-family 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 corrections of the single-family dwelling to meet setback requirement would leave unattractive reconstruction

scars. Further due to the miniscule encroachment of the roof eave, relocating the single-family dwelling and/or removing the roof eave encroachment wouldn't be practical.

Because the encroachment is within the side yard setback, to consolidate the subject property which is owned by someone else and to re-subdivide the property to modify property lines and adjust minimum side yard setback and open space are not viable options; therefore, there are no reasonable alternative to resolve the encroachment issue.

### **Intent and Purpose**

*(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 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.

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

The roof eave encroachment ranges from 0.60 feet (7.20 inches) to 0.70 feet (8.40 inches) which is rather miniscule. Therefore, it should not obstruct or prevent adequate air circulation and exposure to light between permitted structure(s)/uses and boundary lines.

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 has been in existence for approximately 8 years and was 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 unusual circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intents and purposes 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 no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

Therefore, the variance would be consistent with the general purpose of the zoning district and not be 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 single-family dwelling built upon the subject property ("LOT 54") will not meet the minimum front yard setback and front 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 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.
4. No permit shall be granted to allow an ohana or second family or farm dwelling upon the subject property, subject to provisions of the Zoning Code or State law which may change from time to time.
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-VAR 14-000200 null and void.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:rl

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

Jan Nores  
Hawaii Life Real Estate Brokers  
Page 6  
May 13, 2014

NEIL ABERCROMBIE  
GOVERNOR



LINDA ROSEN, M.D., M.P.H.  
DIRECTOR OF HEALTH  
PLANNING DEPARTMENT  
COUNTY OF HAWAII

2014 APR -9 PM 2: 01

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

MEMORANDUM

DATE: April 8, 2014

TO: Duane Kanuha  
Planning Director, County of Hawaii

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

SUBJECT: Application: Variance - VAR-14-000200  
Applicant: JAN NORES/HAWAII LIFE REAL ESTATE BROKERS  
Owner: BLAINE L. CURTIS TRUSTEE  
Request: Variance from Chapter 24, Zoning, Article 5, Division 1,  
Section 25-5-7, Minimum Yards, and Section 25-4-44,  
Permitted Projections into Yards and Open Space  
Requirements (Encroachment into Side (East) yard  
Setback and Side (East)) Open Space.  
TMK: 6-9-004:12; Lot 54

Wastewater Branch does not concur with the proposed project. Information on existing structure and wastewater system locations was not shown on the drawings and we are unable to provide comments. Please have your engineer identify the locations of all existing structures and wastewater systems and their relationship to all proposed property lines to make sure they meet the minimum standard setback distances required per Hawaii Administrative Rules, Chapter 11-62.

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WORD:VAR-14-000200.ni