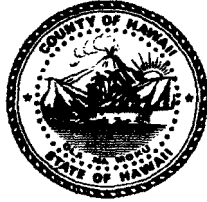


William P. Kenoi  
Mayor



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 16, 2014

Mr. Steven s. C. Lim, Esq.  
Carlsmith Ball LLP  
P. O. Box 686  
Hilo, Hawai'i 96721-0686

Dear Mr. Lim:

**SUBJECT: Application: VARIANCE – VAR-14-000211**  
**Applicant: STEVEN S. C. LIM/CARLSMITH BALL LLP**  
**Owners: DAVID W. VENUTI & KELLY A. SHEAHAN**  
**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 Southeast Rear Yard Setback and Rear Yard Open Space)**  
**Tax Map Key: 6-9-004:032; Lot 109**

The Planning Director certifies the **approval** of Variance No. 14-000200 (VAR: 14-000211), subject to variance conditions. The variance is to allow portions of the attached pool house (former garage) to remain with a rear (southeast) yard setback of 12.58 feet to 19.33 feet. The variance is from the subject property's minimum 20-foot rear yard setback and 14-foot rear 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.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property consists of approximately 16,068 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 69-1757 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 April 2, 2014 and other submittals related to the variance request and variance application. The variance application's site plan map is drawn to scale and denotes that portions of the pool house (previous garage) was built into the property's minimum 20-foot southeast rear yard setback and 14-foot southeast rear yard open space.

The survey map shows that portions of the pool house (previous garage) encroach 0.67 feet to 7.42 feet into the 20-foot rear (southeast) setback and 0.58 (6.96 inches) to 1.42 feet into the 14-foot rear (southeast) open space.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#20328) was issued on January 19, 1959, for the construction of a 728 square feet beach house, additional building permits were issued for additions to the main dwelling. Also, on January 3, 2014, a building permit (BH2014-0006) was issued for the construction of an attached ohana dwelling.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated April 25, 2014. (See attached).
  - b. Department of Public Works Department -- Building Division memorandum dated April 25, 2014 (see attached).
8. **Time Extension.** The applicant's variance application was received on April 4, 2014 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 16, 2014.
9. **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 notices were mailed on April 7, 2014, and the second notices were mailed on April 15, 2014. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 29, 2014.
10. **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 shows that portions of the pool house (previous garage) encroach 0.67 feet to 7.42 feet into the 20-foot rear (southeast) setback and 0.58 feet to 1.42 feet into the 14-foot rear (southeast) open space.

It appears that the pool house (previous garage), constructed nearly 26 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 pool house (previously garage) 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 pool house (previous garage) 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 pool house to meet setback requirement would leave unattractive reconstruction scars.

Another alternative is to consolidate the subject property with the adjoining rear property and to resubdivide the property to modify property lines and adjust minimum yard setbacks. The adjoining rear property consisting of 542.02 acres is a Historical Site, known as Puako Petroglyph Archaeological District. Both of these alternatives are not practical. Therefore, there are no reasonable alternatives to resolve this difficulty.

### **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 adjoining rear property undeveloped parcel consisting of 542.02 acres is a Historical Site, known as Puako Petroglyph Archaeological District. Therefore, it should not obstruct or prevent adequate air circulation and exposure to light between permitted structure(s)/uses and boundary/property 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 2-car garage which was converted into a pool house has been in existence for approximately 26 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**

Based on the variance application's survey map, the single-family dwelling built upon the subject property ("LOT 54") does not meet the minimum front yard setback and front yard open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code). This variance request is **approved** subject to the following 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.
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. The owners shall apply for a change of use permit with the Department of Public Works Department – Building Division within six months from the date of this variance. This will allow for the conversion of the detached 2-car garage (Building permit #885302) to an attached pool house.
6. 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 14-000211 null and void.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:rl

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xc: Kona Office  
Real Property Tax Office (Kona)  
Horace Yanagi – Zoning Inspector (Kona)  
Planning GIS, Gilbert Bailado (via email)

Steven S. C. Lim, Esq.  
Carlsmith Ball LLP  
Page 6  
June 16, 2014

NEIL ABERCROMBIE  
GOVERNOR



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

2014 APR 28 PM 4:19

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

MEMORANDUM

DATE: April 25, 2014

TO: Duane Kanuha  
Planning Director, County of Hawaii

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

SUBJECT: Application: Variance – VAR 14-000211  
Applicant: STEVEN S.C. LIM/CARLSMITH BALL LLP  
Owner: DAVID W. VENUTI & KELLY A. SHEAHAN  
Request: Variance from Chapter 25, Zoning, Article 5 Division 1  
Section 25-5-7 Minimum Yards; Article 4, Division 4,  
Section 25-4-44(a), Permitted Projections into Yards and  
Open Space Requirements (Encroachment into the Rear  
(Southeast) Yard Setback and Rear (Southeast) Open  
Space).  
Tax Map Key: 6-9-004:032

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



**BUILDING DIVISION – DPW**

PLANNING DEPARTMENT  
COUNTY OF HAWAII

2014 MAY 8 PM 2:57

COUNTY OF HAWAII – 101 Pauahi Street, Suite 7 – Hilo, Hawai'i 96720  
Hilo Office (808) 961-8331 • Fax (808) 961-8410 Kona Office (808) 323-4720 • Fax (808) 327-3509

April 25, 2014

TO: Planning Department

SUBJECT: Variance- VAR 14-000211

TMK: (3)6-9-004-032

This is to inform you that our records on file, relative to the status of the subject discloses that:

- No \_\_\_\_\_ permit was issued for work done on the premise.
- No building permit was issued for the change of occupancy.
- At the time of completion, the subject complied to all building regulations that were in effect.
- Variance from any building regulation (Building, Electrical, Plumbing, or Sign) was/was not granted.
- The following violations(s) still outstanding:
  - Building
  - Electrical
  - Plumbing
  - Sign
- Others: Unpermitted change of use from a detached 2-car garage permit# (885302) to a attached pool house.

This status report reflects Building Division records only and does not include information from other agencies.

Should you have any questions regarding matters contained herein, please feel free to contact Jai Ho Cheng at phone no. (808) 323-4720

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