

William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
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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

July 30, 2014

Miho M. Yoneyama
WPM, LTD.
P. O. Box 6122
Kamuela, HI 96743

Dear Ms. Yoneyama:

SUBJECT: Application: Variance VAR-14-000217
Applicant: WPM, LTD./MIHO M. YONEYAMA
Owners: ANTHONY WRIGHT
Request: Variance from Chapter 25, 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 North Front Yard Setback)
TMK: 2-7-025:025 (Lot B-1-A)

The Planning Director certifies the **approval** of Variance 14-000217, subject to conditions. The variance will allow for the proposed addition consisting of approximately 424 square feet to be constructed with a minimum 24-foot front (north) yard setback. This allowance is in lieu of the required minimum 30-foot front yard setback (20 foot front yard setback + 10 foot road widening). This variance is from the subject property's minimum front yard setback requirements pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 1, Section 25-5-7 (a), Minimum yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 12,545 square feet and is situated within the Kaapoko Homestead, portion of Paiha'aloa, South Hilo, Hawai'i. The subject property's street address is 27-209 Ka'apoko Homestead Road.
2. **County Zoning.** Single-Family Residence – 10,000 square feet (RS-10).
3. **State Land Use Designation.** Urban.

4. **Setback Requirements.** 20-feet for front and rear; 10-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on April 29, 2014. The variance application's site plan map was prepared by the applicant. The variance site plan, drawn to scale, denotes that a portion of the 424 square foot addition to the existing single-family dwelling encroaches 6 feet into the 30-foot front (north) yard setback.

The owner/applicant submitted the variance application to address or resolve the encroachment of the proposed 415 square foot addition into the 20-foot east front yard setback, as required by the Zoning Code.

The site plan shows that portion of the proposed addition to the existing the single-family dwelling encroaches six feet into the 30-foot front (north) yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate the single-family dwelling consisting of a 3 bedroom, 1 bath, living room, kitchen, and dining area was built in 1926.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated June 25, 2014. (Refer to attached DOH memorandum).
 - b. The Department of Public Works (DPW) Building Division email dated June 18, 2014. (Refer to attached DPW e-mail)
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 May 8, 2014 and May 14, 2013, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on May 16, 2014.
9. **Time Extension.** The applicant's variance application was received on April 27, 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 July 31, 2014.
10. **Comments from Surrounding Property Owners or Public.**
 - a. Objection letter received on May 27, 2014 from Roger M. Shiota. (See attached objection letter.)

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 criterion (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of the proposed 424 square feet addition into the 20-foot front (north) yard setback as required by the Zoning Code.

The site plan prepared by the applicant shows that the proposed 424 square foot addition to the existing single-family dwelling encroaches six feet into the 30-foot front (north) yard setback.

In addition to the required 20-foot front yard setback, there is an additional 10-foot future road widening, creating a 30-foot front yard setback.

An objection letter was received on July 2, 2013 from Roger M. Shiota expressing concern regarding the variance. Mr. Shiota's property is approximately 50 feet east of the subject property's side boundary. The proposed addition does not encroach into the side yard setback, therefore, it does not have an effect on Mr. Shiota's property.

The applicant has stated in its background report that if it weren't for the additional 10-foot road widening setback, the proposed addition would meet front yard setback requirements. Therefore, given the additional 10-foot road widening setback and the placement of the existing single-family dwelling, special and unusual circumstances exist on the subject property which would interfere with the construction of the 424 foot addition to the existing single-family dwelling.

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 of the subject property include the following actions:

Remove the building encroachments and/or redesign the as-built, bay window to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the owners complied with the

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building permit process and were under the impression that the single-family dwelling was in compliance with all County requirements. Any structural or design correction of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachment is within the front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options; there are no reasonable alternatives 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 welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The Variance application meets criterion (c) for the following reasons:

The intent and purpose of requiring building setbacks for a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

The encroachment of six (6) feet into the front (north) yard setback still allows for adequate air circulation as the affected area is within the front setback adjacent to roadway frontage.

An objection letter was received on May 27, 2014 from Roger M. Shiota expressing concerns regarding the variance. Mr. Shiota's property is located approximately 50 feet east of the subject property side boundary. The proposed addition does not encroach into the side (east) yard setback; therefore, it does not have any affect on Mr. Shiota's property. As stated earlier, if it weren't for the additional 10-foot road widening setback, the proposed addition would meet with setback requirements set forth by the Hawai'i County Zoning Code.

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 intent and purposes of the Zoning Code, Subdivision Code and the County General Plan. 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.

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 B-1-A") will not meet the minimum front yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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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 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 single-family dwelling 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 initiate proceedings to null and void Variance-14-000217.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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

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NEIL ABERCROMBIE
GOVERNOR



LINDA ROSEN, M.D., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 816
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: June 25, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye ↗
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 14-000217
Applicant: WPM LTD./MIHO M. YONEYAMA
Owner: ANTHONY WRIGHT
Request: Variance from Chapter 25, Zoning, Article 5 Division 1
Section 25-5-7 Minimum yards, Encroachment into the
Front (North) Yard Setback
Tax Map Key: 2-7-025:025 (Lot B-1-A)

Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal.

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Nakayama, Larry

From: Matsumoto, Joy
Sent: Wednesday, June 18, 2014 3:15 PM
To: Nakayama, Larry
Subject: VAR 14-000217
Hi Larry,

Building has no objections to VAR 14-000217, Anthony Wright, 2-7-025:025.

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

092496

6/19/2014