

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

July 7, 2014

Mr. Larry J. Ostlie
75-6131 'Akoa Street
Kailua-Kona, HI 96740

Dear Mr. Ostlie:

SUBJECT: VARIANCE APPLICATION – VAR-14-000218

Applicant: LARRY J. OSTLIE

Owners: LARRY J. OSTLIE AND KAREN OSTLIE

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 the Northwest Side Yard Setback)

TMK: 7-5-040:008; Lot 8

The Planning Director certifies the **approval** of VAR-14-000218, subject to variance conditions. The variance will allow portions of the gazebo to remain with a 4.2 feet side (northwest) yard open space. These exceptions are in lieu of the required 5-foot side yard open space, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-4-44 (a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 1.003 acres (43,692 sq. ft.) of land, is located in the Kahakai Estates Subdivision and is situated at Puapua 2nd, District, North Kona, Hawai'i. The subject property's street address is 75-6131 'Akoa Street.
2. **Zoning.** Single Family Residential – 10,000 square feet (RS-10).
3. **State Land Use.** Urban.
4. **Required Setback.** 20 feet for front; 10 feet for sides.

5. **Variance Application Site Plan.** The applicant submitted the variance application, attachments, and filing fee on May 7, 2014, 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 Kevin McMillen, L.P.L.S., and denotes the portions of the gazebo built into the side (northwest) yard open space.

The survey map shows that portions of the gazebo encroaches 0.80 feet (9.6 inches) into the 5-foot side (northwest) yard open space.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (B2004-0321K) was issued on March 2, 2004, for the construction of a 3-bedroom and 2-bath single-family dwelling. Additional building permits were issued on January 22, 2004 (B2004-0115K) for a swimming pool and on July 17, 2006 (B2006-1138K) for a gazebo.

7. **Agency Comments and Requirements.**

- a. The State Department of Health (DOH) memorandum, dated May 23, 2014.
(See attached memorandum)

- b. No comments were received from the Department of Public Works–Building Division.

8. **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 and second notice(s) were mailed on May 7, 2014 and May 24, 2014, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on May 27, 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.

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 gazebo into the 5-foot side (northwest) yard open space as required by the Zoning Code.

The survey map prepared by Kevin McMillan, L.P.L.S., shows that portion of the gazebo encroaches 0.80 feet (9.6 inches) into the 5-foot side (northwest) yard open space.

The owners have stated that due to the topography and steep drop off in elevation on their lot, it took them substantial additional time to ascertain an accurate lot line.

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

It appears that the gazebo 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 gazebo 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 property.

(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 north side yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the gazebo 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 of the gazebo to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachment is within the side yard open space, 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 setbacks are not viable options; therefore, there are no reasonable alternatives to resolve the encroachment issue.

(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.

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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 of 0.80 feet (9.60 inches) 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 gazebo 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.

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 purpose of the Zoning Code, Subdivision Code and the County General Plan.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

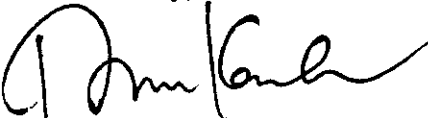
Based on the variance application's survey map, the gazebo built upon the subject property ("LOT 8") will not meet the minimum side yard open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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.
3. Subject to provisions of the Zoning Code or State law, which may be changed from time to time, no permit shall be granted to allow an 'ohana or farm dwelling upon the subject property.
4. Should the gazebo 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. This variance does not apply to the encroachment issue regarding the concrete rock masonry (CRM) wall. These issues shall be addressed by the property owners affected by the CRM wall encroachments.
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 occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-14-000218 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:klf

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xc: Planning Department (Kona)
Real Property Tax Division (Kona)
Gilbert Bailado, Planning GIS

NEIL ABERCROMBIE
GOVERNOR



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

2014 MAY 23 PM 3:59

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

MEMORANDUM

DATE: May 23, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

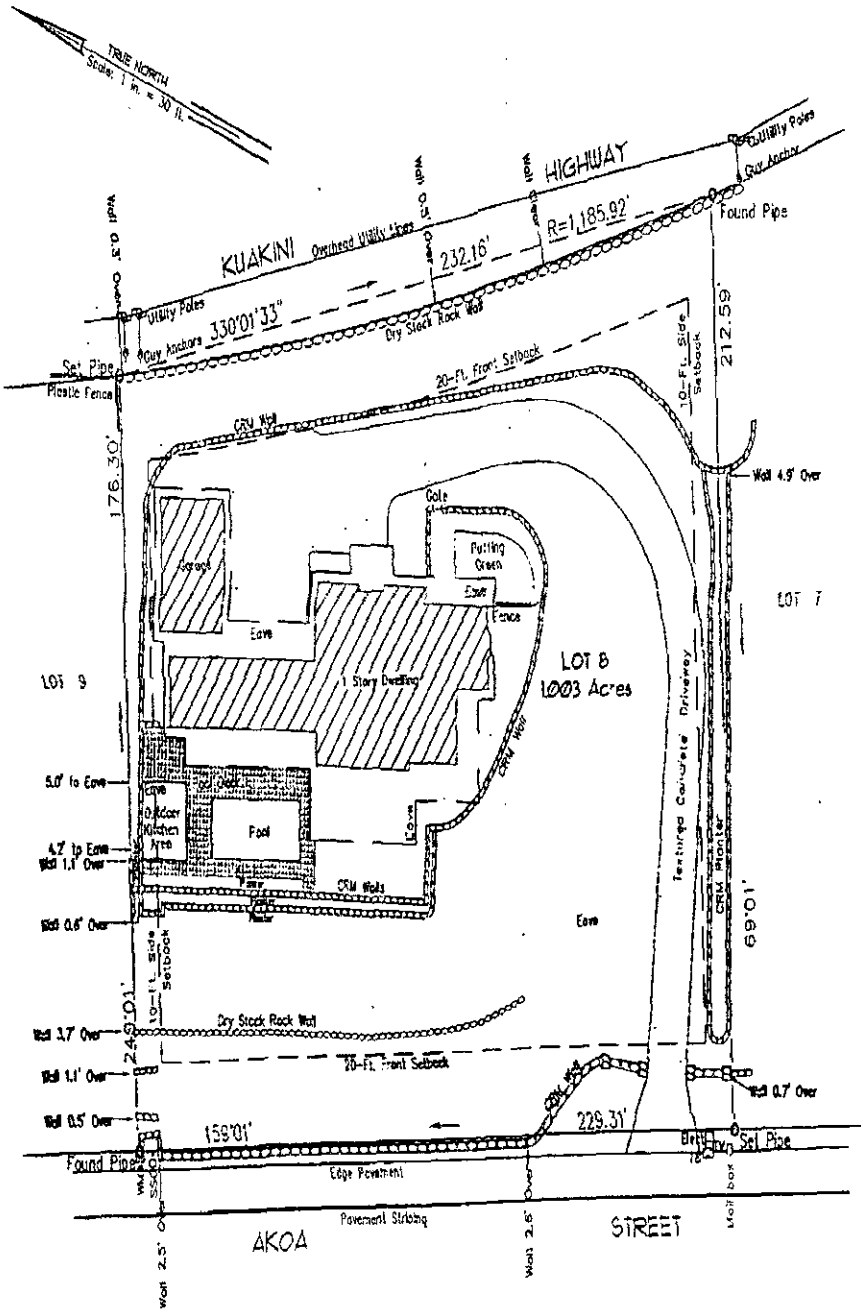
FROM: Newton Inouye *NI*
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 14-000218
Applicant: LARRY J. OSTLIE
Owner: LARRY J. & KAEN OSTLIE
Request: Variance from Chapter 25, Zoning, Article 5 Division 1,
Section 25-5-7 Minimum Yards (Encroachment into
Northwest Side Yard Setback)
Tax Map Key: 7-5-040:008; Lot 8

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

K-2 (HAR) SURVEY MAP
 OF LOT 8
 KAHAKAI ESTATES
 FILE PLAN 2333

AT PUAPUAA 2nd, NORTH KONA
 ISLAND, COUNTY AND STATE OF HAWAII
 Tax Map Key (3rd Division) 7-5-46: 03



Notes:

Azinuths and Coordinates are referred to Government
 Survey Transposition Station "KAHUKO" Δ
 The improvements shown herein were located by an actual
 survey on the ground performed April 13-14, 2014.



THIS WORK WAS PREPARED BY ME
 OR UNDER MY SUPERVISION.
Kevin McMillen
 DATE: 4/16/2014

KKY SURVEYS
 P. O. Box 2494
 Kailua-Kona, Hawaii 96745
 Phone (808) 326-4833
 Email: kmcmillen@shawc.com