

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

August 15, 2014

Mr. Niels Christensen
The Independent Hawaii Surveyors, LLC
P. O. Box 577
Hilo, Hawai'i 96721

Dear Mr. Christensen:

SUBJECT: Application: Variance VAR-14-000219
Applicant: THE INDEPENDENT HAWAII SURVEYOR, LLC/ NIELS CHRISTENSEN, L.P.L.S.
Owners: DAVIES AND DORIAN KING
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards, and Article 4, Division 4 Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements (Encroachment into Northeast Side Yard Setback)
TMK: 1-9-011:030 (Lot 1)

The Planning Director certifies the approval of VAR-14-000219, subject to conditions. The variance will allow the detached water tank to remain on Lot 1, with a minimum 6.73-foot side (northeast) yard setback. These exceptions are in lieu of the required minimum 20-foot side yard setback requirement. This variance is from the subject property's minimum side yard setback requirements pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 5 acres and is located in the Anuhea House Lots, situated in the District of Puna, Hawai'i. The subject property's street address is 19-4251 Haunani Road.
2. **County Zoning.** Agricultural – 5 acres (A-5a).
3. **State Land Use Designation.** Agricultural.

4. **Required Setback.** 30-feet for front and rear; 20-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on May 12, 2014. The variance site plan map is drawn to scale, and prepared by Niels Christensen, L.P.L.S. (The Independent Hawaii Surveyors, LLC) and denotes the position of the existing water tank constructed into minimum 20-foot side yard setback. The request affects northeast side yard setback and side yard open space.

The site plan shows that the as-built detached water tank encroaches 13.27 feet into the 20-foot side (northwest) yard setback.
6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#912599) was issued on November 13, 1991 to the subject property for a single-family dwelling consisting of a 2 bedroom, 2 bath, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated March 23, 2014.
(See attached.)
 - b. The Department of Public Works – Building Division e-mail dated May 28, 2014.
(See attached.)
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 June 4, 2014 and July 25, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 27, 2014.
9. **Time Extension.** The applicant's completed variance application was received on May 12, 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 August 15, 2014.
10. **Comments from Surrounding Property Owners or Public.**
 - a. Letter of concern dated June 6, 2014, from Ted Takai, Jr., received on June 12, 2014.

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 detached water tank into the 20-foot northeast side yard setback as required by the Zoning Code.

The survey map prepared by Niels Christensen, L.P.L.S. (The Independent Hawaii Surveyors, LLC) shows that the as-built detached water tank encroaches 13.27 feet into the 20-foot side (northwest) yard setback and 14-foot side yard open space.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements constructed approximately 23 years ago were 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 dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time. It appears that the encroachments could be attributed to staking errors and were not intentional.

The applicant has also stated the following in its background report:

“The water tank was built in that location due to the terrain and the vegetation. The owners did not want to destroy the native forest by cutting down large Ohia trees and other native trees. Most of the parcel is uncleared and devoted to an ongoing Koa forestry project. Forestry report is available.” (See attached forestry report.)

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 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, detached water tanks constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. Requiring the owner to relocate the water tank would involve the owner to do major excavation to his property by having to replace and move existing water lines.

Another alternative is to consolidate the subject property with the adjoining side properties which is owned by someone else, and resubdivide 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 on a parcel are to assure that adequate air circulation and exposure to light are available 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. 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 23 years since the single-family dwelling and detached water tank were constructed.

Further, 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.

Although, no objection letter was received, a letter from Mr. Ted Takai, Jr. which was sent to The Independent Hawaii Surveyors, LLC states that he was aware of the water tank encroachment and has no objection to the encroachment of the water tank. However, should there be any repairs or replacement to the water tank, the encroachment issue should be corrected.

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.

Mr. Niels Christensen
The Independent Hawaii Surveyors, LLC
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PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

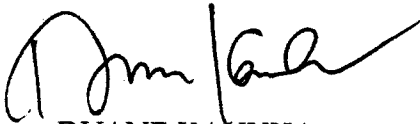
Based on the variance application's survey map, the detached water tank built upon the subject property ("LOT 1") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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 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 water tank (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-14-000219 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR14-000219TMK1-9-011-030King.doc.rtf

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

Mr. Niels Christensen
The Independent Hawaii Surveyors, LLC
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NEIL ABERCROMBIE
GOVERNOR



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

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

2014 MAY 23 PM 3: 59

MEMORANDUM

DATE: May 23, 2014
TO: Duane Kanuha
Planning Director, County of Hawaii
FROM: Newton Inouye
District Environmental Health Program Chief
SUBJECT: Application: Variance - VAR 14-000219
Applicant: THE INDEPENDENT HAWAII SURVEYORS.
LLC/NIELS CHRISTENSEN, L.P.L.S.
Owner: DAVIES AND DORIAN KING
Request: Variance from Chapter 25, Zoning, Article 5 Division 7,
Section 25-5-76 Minimum Yards; Article 4, Division 4,
Section 25-4-44(a), Permitted Projections into yards and
Open Space Requirements (Encroachment into the Northeast
Side Yard Setback).
Tax Map Key: 1-9-011:030; Lot 1

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

WORD: VAR 14-000219.ni

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Mr. Niels Christensen
The Independent Hawaii Surveyors, LLC
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Nakayama, Larry

PLANNING DEPARTMENT
COUNTY OF HAWAII

From: Matsumoto, Joy
Sent: Wednesday, May 28, 2014 8:53 AM
To: Nakayama, Larry
Subject: Variances

2014 MAY 28 PM 3: 47

Hi Larry,

RE: VAR 14-000219, Davies and Dorian King, 1-9-o11:030
VAR 14-000220, Mitsuo Hayashida Rest. Tel. 2 2 019:023

Building Division has no concerns regarding these variances.

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

