

County of Hawai'i
PLANNING DEPARTMENT

July 14, 2014

Jeff Citron
Diversified Land Management
75-5608 Hienaloli #32
Kailua-Kona, HI 96740

Dear Mr. Citron:

SUBJECT: Application: VARIANCE – VAR-14-000221
Applicant: JEFF CITRON/DIVERSIFIED MANAGEMENT
Owners: VELMA ARLE TRUST
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, and
Section 25-5-76 Minimum Yards, Section 25-4-44, Permitted
Projections into Yards and Open Space Requirements.
(Encroachment into the Rear (East) Yard Setback)
TMK: 8-7-018:044; (Lot 228)

The Planning Director certifies the **approval** of VAR-14-000221, subject to variance conditions. The variance will allow the existing single-family dwelling to remain on Lot 228 with a 13.55-foot to 13.65-foot rear (east) yard setback in lieu of the minimum 15 foot rear yard setback requirement, in accordance with the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards.

BACKGROUND AND FINDINGS

- 1. Location.** The subject property consists of approximately 7,500 square feet of land and is located in the Kona Paradise Subdivision, at Kaohe 4th, South Kona, Hawai'i. The subject property's street address is 87-3188 Kaohe Road.
- 2. County Zoning.** Agricultural – 5 acres (A-5a).
- 3. State Land Use.** Agricultural.
- 4. Setback Requirements:** 15 feet for front and rear; 8 feet sides.

- 5. Variance Application-Site Plan.** The applicant submitted the variance application, attachments, filing fee, and other submittals related to the variance application on March 19, 2014. The variance application's site plan map is drawn to scale and prepared by Thomas G. Pattison, L.P.L.S., (Pattison Land Surveying, Inc.), and denotes the portions of the existing single-family dwelling built into the rear (east) yard setback.

The survey map shows that portions of the two-story single-family dwelling encroach 1.35 feet to 1.45 feet into the 15-foot rear (east) yard setback.

- 6. County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (905342) was issued on February 27, 1990, for the construction of a 3-bedroom and 1-bath, single-family dwelling.

7. Agency Comments and Requirements:

- a. The State Department of Health (DOH) memorandum dated May 27, 2014. (See attached)
- b. No comments have been received from Department of Public Works – Building Division.

- 8. Public Notice.** 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 13, 2014 and May 28, 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.

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 existing single-family dwelling into the 15-foot rear (east) yard setback 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 encroaches 1.35 feet to 1.45 feet into the rear (east) yard setback.

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 two-story single-family dwelling constructed nearly 24 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.

Therefore, along with the unusual topography of the subject property, special and unusual circumstances exist on the subject property which would interfere with highest and best use 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 address the building encroachments constructed into the affected rear yard of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the two-story 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 single-family residence, relocating the single-family dwelling and/or removing encroachment wouldn't be practical.

Another alternative is to consolidate the subject property with the adjoining rear property which is owned by someone else and to resubdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical; therefore, there are no other reasonable alternatives to resolve these encroachment issues.

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 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 encroachment of 1.35 feet to 1.45 feet into the rear (east) yard setback 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 two-story single-family dwelling has been in existence for approximately 24 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.

Based on the above findings, granting of the variance would be consistent with the criteria and intent of approving a variance.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the two-story single-family dwelling built upon the subject property ("LOT 228") will not meet the minimum front yard and rear yard setback 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 related to or connected with the granting of this variance.
3. The approval of this variance is only from the Zoning Code's minimum front yard setback and rear yard setback. The approval of this variance allows for the two-story single-family dwelling constructed on the subject property, pursuant to the variance application's site plan map.
4. 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.
5. Encroachment Agreement and License was executed on March 26th, 2014, with the owners of Lots 228, 229 and 231 addressing the CRM (concrete, Rock and masonry) encroachment.
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 14-000221 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone8\VAR14-000221\TMK8-7-018-044\ArleTrust.doc.rtf

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

NEIL ABERCROMBIE
GOVERNOR



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

2014 MAY 23 PM 3:59

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

MEMORANDUM

DATE: May 27, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

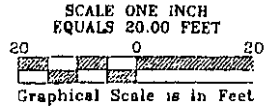
FROM: Newton Inouye ¹
District Environmental Health Program Chief

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Owner: VELMA ARLE TRUST
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards. Requirements
(Encroachment into Rear (East) Yard Setback.)
Tax Map Key: 8-7-018:044; Lot 228

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

MAP SHOWING EXISTING CONDITIONS UPON
 LOT NO. 228
 of "KONA PARADISE"
 Being a Portion of Mahele Award No. 25
 At Kaohe 4th, South Kona, County of Hawaii
 Island of Hawaii and State of Hawaii
 TMK No. (3)8-7-018:044

TRUE NORTH



NOTE: BASIS OF AZIMUTH DERIVED USING SOCRA GPS RIF SYSTEM

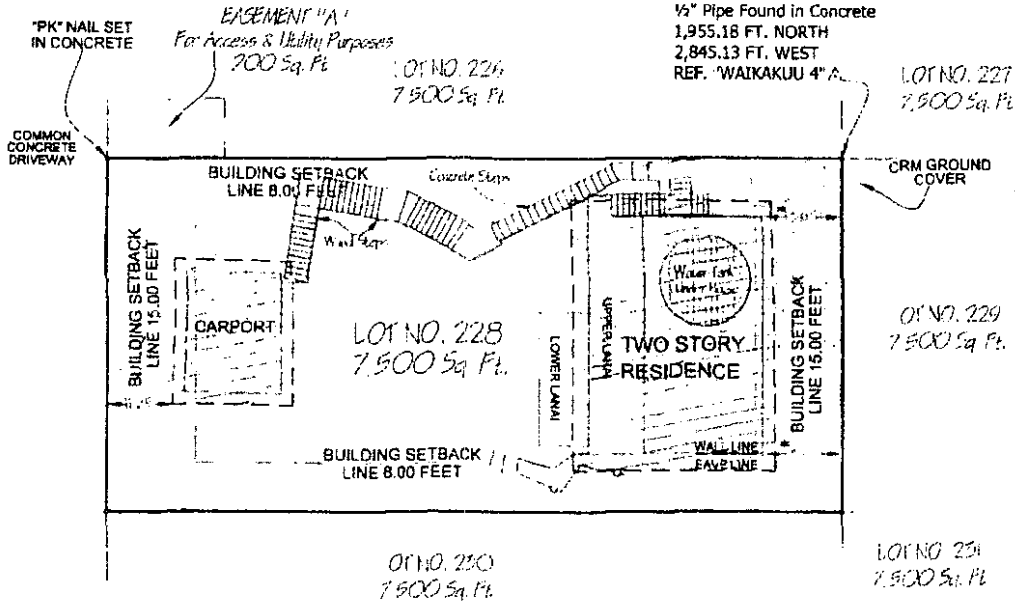
NOTE: ALL CORNERS ARE FOUND BY IRON PIPES IN CONCRETE UNLESS OTHERWISE NOTED

NOTE: ALL AZIMUTHS & DISTANCES ARE SHOWN & MAPPED HEREON IN A CLOCKWISE DIRECTION

Overhead Utility Lines

III III STREET
 Residence Address No. 87-3186

EDGE OF ASPHALT



NOTES:

- 1) No Boundary encroachments were found.
- 2) Violations of County zoning set-back codes were found.
- 3) The distances shown between the property lines & the features, shown hereon, are based on selected found boundary monuments & acceptable tolerances for properties of this type.
- 4) The features, shown hereon, were located by an actual survey performed on the ground on January 17th, 2014.
- 5) See accompanying report pertaining to setbacks and encroachments.
- 6) CRM = Concrete, Rock & Masonry

I, Thomas G. Pattison, do hereby certify that this map is an accurate representation of a survey as made on the ground, by me, or under my direct supervision and that there are no apparent or visible encroachments or easements, known to me, except as shown and mapped hereon.

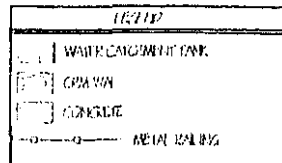
Setback Lines are shown from current data, but should be verified by builder.

The description on this plat was provided to us by the client, and does not guarantee ownership, and should be compared to your Deed, Abstract or Certificate of Title.

All building restrictions, building lines and easements may or may not be shown, check your Deed, Abstract, Title Report, and local ordinances, no responsibility is assumed by Surveyor.

Compare all points before building by same and report any discrepancy at once

Dimensions are shown in feet and decimal parts thereof, no dimension is to be assumed by scaling.



PLEASE NOTE:

Encroachment Agreement and License was executed on March 25th, 2014, between Lot. 228, 229 & 231 involving CRM (concrete, rock, masonry) encroachment.

-COPY-

THOMAS G. PATTISON
 Hawaii License No. 10743

January 17th, 2014, Revised April 1st, 2014—Job 14017

PATTISON LAND SURVEYING, INC.