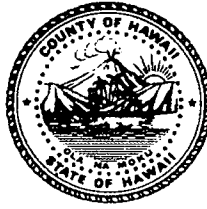


William P. Kenoi
Mayor



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

September 12, 2014

Joel Tuck
15-2718 Maikoiko Street
Pahoa, Hawai'i 96778-9140

Dear Mr. Tuck:

SUBJECT: Application: Variance VAR-14-000228
Applicant: JOEL TUCK
Owners: JOEL TUCK
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 the Northwest Side
Yard Setback).
TMK: 1-5-068:040 (Lot 6)

The Planning Director certifies the **approval** of VAR-14-000228 subject to variance conditions. The variance will allow the single-family dwelling to remain on Lot 6, with a minimum 7.1 feet side (northwest) yard setback and associated roof eave with a minimum 3.9 feet side (northwest) yard open space. This is in lieu of the required minimum 10-foot side yard setback and 5-foot side (northwest) yard open space. This variance is from the subject property's minimum north side yard setback and open space requirement pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-8, Other regulations, and Article 4, Division 4, Section 25-4-44(a), Permitted Projections into Yards and Open Space requirements..

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 12,040 square feet and is located in the Hawaiian Parks Subdivision, situated in Waiakahiula, District of Puna, Hawai'i. The subject property's street address is 15-2718 Maikoiko.
2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Urban.

4. **Required Setback.** 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 July 14, 2014. The variance site plan map is drawn to scale, prepared by Daniel L. Berg, L.P.L.S. (dlb & Associates) and denotes the position of the single-family dwelling constructed into the minimum 10-foot side yard setback. The request affects the northwest side yard setback.

The survey site plan shows that the single-family dwelling encroaches 2.9 feet into the northwest side yard setback and 1.1 feet into the northwest side yard open space.
6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (#59394) was issued on April 30, 1974 to the subject property for a single-family dwelling consisting of 3 bedrooms, 2 bath, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated August 14, 2014. (See attached.)
 - b. No comments were received from the Department of Public Works – Building.
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 July 18, 2014 and July 31, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 26, 2014.
9. **Comments from Surrounding Property Owners or Public.**
 - a. Objection letter received on July 21, 2014 from Robert A. Fisher Sr. and Bridghet Rose Fisher. (See attached.)

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 single-family dwelling into the 10-foot northwest side yard setback and associated roof eave into the 5-foot side yard open space as required by the Zoning Code.

The site plan prepared by Daniel L. Berg, L.P.L.S. (dlb & Associates) shows that the single-family dwelling encroaches 2.9 feet into the northwest side yard setback and the associated roof eave encroaches 1.1 feet into the northwest side yard open space.

It appears that the single-family dwelling constructed nearly 40 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 one-car carport with storage did not disclose any building encroachment issues or building setback irregularities at that time. Therefore, no evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the single-family dwelling encroachment problems to occur.

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 rear and side yard and open space of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the 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 correction would leave large and unattractive reconstruction disfigurement to the single-family dwelling. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the single-family dwelling was in compliance with all County requirements.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by someone else, and resubdivide the property to modify property lines and adjust minimum yard setbacks.

(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 a subdivision 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. The single-family dwelling has been in existence for approximately 40 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.

An objection form letter was received and signed by Robert A. Fisher Sr., and Bridghet Rose Fisher. No comments or reason for the objection was stated, except that they do not agree with this variance and do not want it approved. The Fisher's property does not abut the subject property and is located approximately 200 feet west of the subject property. It should be noted that the property owner most affected by the encroachment did not file an objection to the variance application.

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.

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 6") 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 Hawai'i harmless from and against any loss, liability, claim, or demand for the property

Mr. Joel Tuck
September 12, 2014
Page 5

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 dwellings (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-14-000228 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR14-000228TMK1-5-068-040Tuck.doc

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

Mr. Joel Tuck
September 12, 2014
Page 6

NEIL ABERCROMBIE
GOVERNOR
PLANNING DEPARTMENT
COUNTY OF HAWAII

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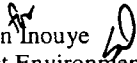
LINDA ROSEN, M.D., M.P.H.
DIRECTOR OF HEALTH

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

MEMORANDUM

DATE: August 14, 2014

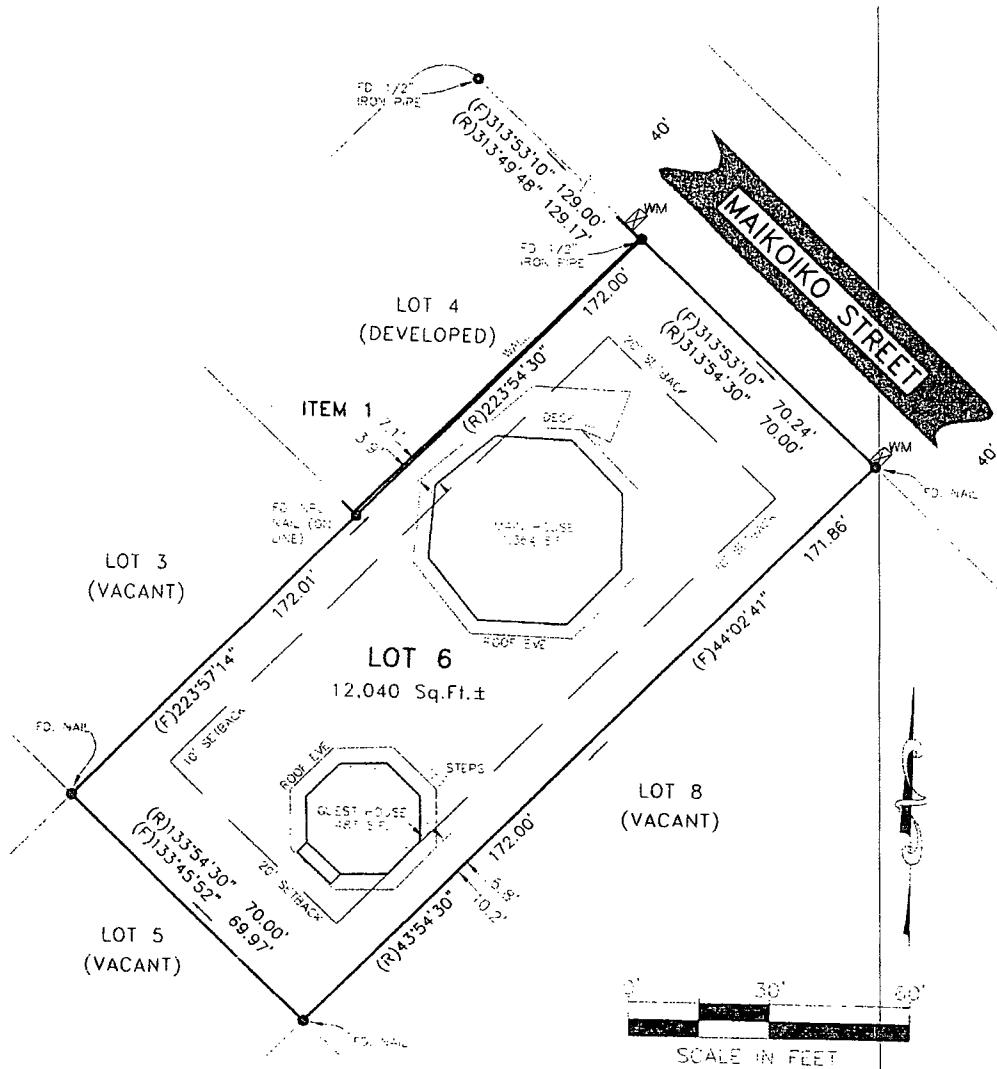
TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye 
District Environmental Health Program Chief

SUBJECT: Application: VAR-14-000228
Applicant: JOEL TUCK
Owner: JOEL TUCK
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 Side
(Northwest) Yard Setback
TMK: 1-5-068:040; Lot 6

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

093527



NOTES:

1. This K-2 field survey completed February 20, 2014.
2. (F) indicates Field measured dimensions. Basis of Azimuths is a 'best-fit' of found (FD.) property monuments to record positions. Sid. Error = 0.12 ft.
3. (R) indicates Record dimensions per L.C.Aw.11216, Apano 40, Part 1.
4. Intrusions and/or protrusions across boundaries or into zoning setbacks, if any, denoted as 'ITEM_' and described in the attached report.
5. This Map and attached Report were prepared for the transaction indicated, and should not be used for any

This work was prepared by me or under my direct supervision.

Daniel L. Berg

Daniel L. Berg
 Licensed Professional Land Surveyor
 License Number 11245
 Exp. 12/31/2014

