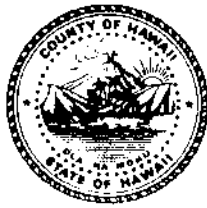


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawaii Office
74-5044 Ane Keohokalele Hwy
Kailua-Kona, Hawaii 96740
Phone (808) 323-4770
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County of Hawai'i PLANNING DEPARTMENT

East Hawaii Office
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720
Phone (808) 961-8288
Fax (808) 961-8747

April 10, 2015

Derrick Loomis
PO Box 1191
Kamuela, HI 96743

Dear Mr. Loomis:

SUBJECT: Application: VARIANCE – VAR-14-000253
Applicants: DERRICK AND LANA LOOMIS
Owners: DERRICK AND LANA LOOMIS
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76 Minimum Yards and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Encroachment into the Side (North) Yard Setback)
TMK: 8-7-017:038; (Lot 144)

The Planning Director certifies the **approval** of VAR-14-000253, subject to variance conditions. The variance will allow portion of the single-family dwelling to remain on Lot 144 with a 7.1-ft. side (North) yard setback in lieu of the minimum 8-ft. side yard setback and associated stairway projection resulting with a 3.4-ft. side (north) side yard open space in lieu of the required 4-ft. open space requirement. These exceptions are in lieu of the required 8-ft. side yard setback and 4-ft. side yard open space, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum Yards and Section 25-4-44 (a), Permitted Projections into Yards and Open Space Requirements.

BACKGROUND AND FINDINGS

- 1. Location:** The subject property consists of approximately 7,501 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 87-3208 Fern Road.
- 2. County Zoning:** Agricultural – 5 acres (A-5a).
- 3. State Land Use:** Agricultural.
- 4. Setback Requirements:** 15-ft. for front and rear; 8-ft. sides.

5. Variance Application-Site Plan. The applicants submitted the variance application, attachments, filing fee, and other submittals related to the variance application on March 19, 2014. The variance application site plan map is drawn to scale and prepared by L. Edward Pare, L.P.L.S. (see Page 8), 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-ft. rear (east) yard setback.

6. County Building Records. Hawai'i County Real Property Tax Division records indicate that a building permit (B2006-0390K) for the construction of a 2-bedroom and 2-bath single-family dwelling was cancelled by the owner on June 8, 2006, for financial reasons. Subsequently, a new building permit (B2007-0597K) was issued on May 4, 2007, for the construction of a 2-bedroom and 2-bath single-family dwelling.

7. Agency Comments and Requirements:

a. The State Department of Health (DOH) memorandum dated December 16, 2014 (see Page 7).

b. No comments have been received from Department of Public Works – Building Division.

8. Public Notice. The applicants 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 November 20, 2014 and May 10, 2015, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on November 27, 2014.

9. Time Extension. The applicants variance application was received on November 12, 2014, and additional time to review the application was required. The applicants granted the Planning Director an extension of time to issue a decision on the Variance Application until April 10, 2015.

10. 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 owners/applicants submitted the variance application to address or resolve the encroachment of the existing single-family dwelling into the 8-ft. rear (east) yard setback as required by the Zoning Code.

The survey map prepared by L. Edward Pare, L.P.L.S., shows that portion of the single-family dwelling encroaches 0.9 feet (10.8 inches) into the side (north) yard setback and the stairway encroaches 0.6 feet (7.2 inches) into the side (north) yard open space.

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

Alternatives include the building encroachments and/or redesign the single-family dwelling 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 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.

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 requirements would leave unattractive reconstruction scars. Further, due to the miniscule encroachment of the single-family residence and stairway, relocating the single-family dwelling and/or removing encroachment wouldn't be practical.

Another alternative is to consolidate the subject property with the adjoining side 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 0.9 feet (10.8 inches) into the side (north) yard setback and 0.6 feet (7.2 inches) into the side (north) yard open space 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 areas character and to adjoining properties. The single-family dwelling 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 applicants 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 144") will not meet the minimum side yard setback and 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 applicants/owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicants/owners, their assigns or successors 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 assigns or successors, 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 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. 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.

Derrick Loomis
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April 10, 2015

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-14-000253 null and void.

Sincerely,



DUANE KANUIHA
Planning Director

LHN:nci/lmm

P: Admin Permits Division-Variances From C-01102-Zone8-VAR-14-000253\MK8-7-017-0381-oomis 04-10-15.doc.rtf

cc: Planning Department-Kona Office
Real Property Tax Office (Kona)
Gilbert Bailado, GIS (via email)

Derrick Loomis
Page 7
April 10, 2015

DAVID Y. IGE
PLANNING DEPARTMENT
COUNTY OF HAWAII

2015-07-17 PM 2:31



KEITH YAMAMOTO
ACTING DIRECTOR OF HEALTH

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

MEMORANDUM

DATE: December 16, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye ✉
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR-14-000253
Applicant: DERRICK AND LANA LOOMIS
Owner: DERRICK AND LANA LOOMIS
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into Side (North) Yard
Setback).
Tax Map Key: 8-7-017--038; Lot 144

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

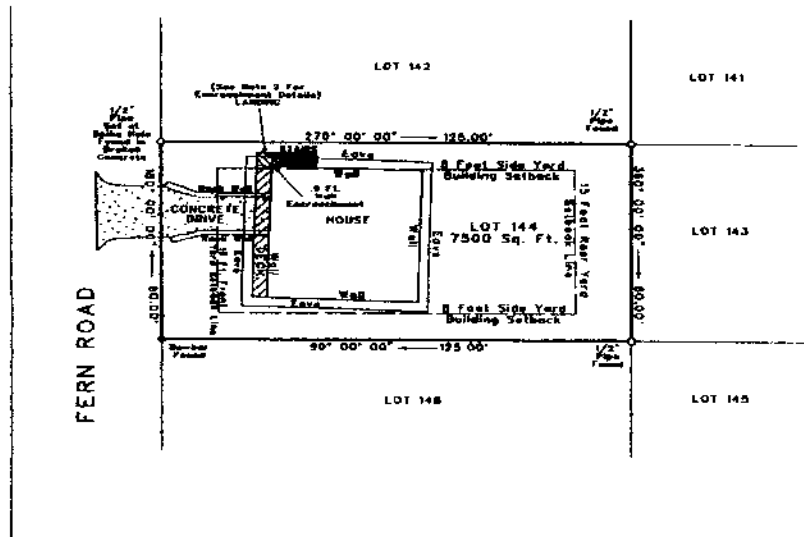
Notes:

- 1) Building setback dimensions provided by Aiu Kaha of Hawaii County Planning Department on May 5, 2014.
- 2) Steps and landings are allowed to project into side yard setback by 4 feet. Westerly end of landing is 4.0 feet into setback area creating 5 foot encroachment and easterly end of steps is 4.0 feet into setback area creating 5 foot encroachment.

Certification/Report:

To OHI Republic Title Co. and all other interested parties, I, the undersigned, L. Edward Para, certify that a survey was done, under my direct supervision, of the subject premises using locally accepted surveying practices in April of 2014. During the course of this survey all easements, improvements in the vicinity of the boundaries shown were located and are shown hereon. To the best of my knowledge, the information contained on this map is accurate and correct and the boundaries of the monuments shown at the lot corners reasonably conform to the corresponding locations of the corners of Lot 144, shown on the Kona Paradise subdivision map filed as #1313-r2 with the County of Hawaii Planning Department. Well, landing and stairs encroachments are as noted.

Scale: 1 inch = 20 Feet
 TRUE NORTH



**K-2 SURVEY OF LOT 144
 SHOWN ON KONA PARADISE SUBDIVISION MAP
 FILED AS #1313-r2 WITH THE COUNTY OF HAWAII
 PLANNING DEPARTMENT**

**LOCATED AT 87-3208 FERN ROAD
 KAOHE 4th IN THE DISTRICT OF SOUTH KONA
 COUNTY & ISLAND OF HAWAII, STATE OF HAWAII**

This work was prepared by me
 or under my direct supervision

L. Edward Para
 L. Edward Para
 Licensed Professional Land Surveyor
 Hawaii State Certificate # 15-8094
 Expiration Date: April 30, 2018

L. Edward Para
 Licensed Professional
 Land Surveyor #8094
 P.O. Box 1016
 Hialeah, HI 96772
 808 443 1174
 EPara3008@gmail.com



Project # 1K050314
 Date: May 3, 2014
 LMR: (3) B-7-017-038