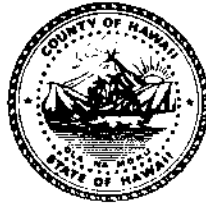


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawaii Office
71-5044 Ane Keohokahole Hwy
Kailua-Kona, Hawaii 96740
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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) 961-8742

April 1, 2015

Johanna Leaird
P. O. Box 985
Hilo, Hawai'i 96721

Dear Ms. Leaird:

SUBJECT: Application: Variance VAR-15-000270
Applicant: JOHANNA LEAIRD
Owners: JOHANNA LEAIRD
Request: Variance from Chapter 25, Zoning, Article 5, Division 3,
Section 25-5-36, Minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into Rear (West) Yard
Setback and Rear (West) Yard Open Space)
TMK: 2-6-008:022; Lot B-1-C

The Planning Director certifies the **approval** of Variance 15-00270, subject to conditions. The variance will allow portion of the proposed one-story, single-family residence to be constructed on the subject property, with a minimum 5-foot rear (west) yard setback and associated rear yard open space in lieu of the minimum required 20-foot rear yard setback and 14-foot rear yard open space requirement. The variance is from the subject property's minimum 20-foot rear yard setback and 14-foot rear yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 2, Section 25-5-36, Minimum yards and Section 25-4-44, Permitted Projections into Yards and Open Space.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 29,999 square feet and is situated in Pu'uco, South Hilo, Hawai'i. The street address is 289 Wainaku Street.
2. **County Zoning.** Multiple Family Residential 10,000 sq. ft. (RM-10).
3. **State Land Use Designation.** Urban.

4. **Setback Requirements.** Front and Rear yards-twenty feet; Side yards-eight feet for a one story building, plus an additional two feet for each additional story.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on February 3, 2013. The variance application's site plan is drawn to scale and prepared by Gerald Zemke (Drafting Solutions), denotes the portion of the proposed one-story single-family residence to be constructed into the rear (west) yard setback.

The subject property slopes downwards toward Pukihae stream, which runs through the subject property which restricts the buildable area on the subject property. Also, the owner/applicant has stated that the State of Hawai'i – Department of Land and Natural Resources restricts the owner in building anything below the 78-degree mark on the topography map without their written consent. Therefore, given the topography and DLNR restrictions on the subject property, confines the buildable area of the subject property.

The owner/applicant submitted the variance application to allow the encroachment of a new proposed single-family dwelling into the 20-foot rear (west) yard setback and the associated 14-foot front (west) yard open space, as required by the Zoning Code.

The plot plan prepared by Gerald Zemke (Drafting Solutions) shows that portion of the one-story, single-family dwelling will encroach 15 feet into the rear (west) yard setback and 9 feet into the associated 14-foot rear (west) yard open space.

6. **County Building Records.** Vacant Land
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated February 27, 2015. (Refer to attached DOH memorandum).
 - b. No comments received from The Department of Public Works Building Division
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 February 5, 2015 and February 27, 2015, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 24, 2015.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

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 criterion (a) for the following reasons:

The owner/applicant submitted the variance application to allow the encroachment of a new proposed two-story, single-family dwelling into the 20-foot rear (west) yard setback and associated 14-foot rear yard open space as required by the Zoning Code.

The plot plan prepared by Gerald Zemke (Drafting Solutions) shows that portion of the one-story, single-family dwelling will encroach 15 feet into the rear (west) yard setback and 9 feet into the associated 14-foot rear (west) yard open space.

Portion of the subject property slopes downwards toward Pukihæ stream, which runs through the subject property which restricts the buildable area on the subject property. Also, the owner/applicant has stated that the State of Hawai'i – Department of Land and Natural Resources restricts the owner in building anything below the 78-degree mark on the topography map without their written consent. Therefore, given the topography and DLNR restrictions on the subject property, confines the buildable area of the subject property.

Therefore, 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.

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 correct and/or address the building encroachments constructed into the affected front yard of the subject property include the following actions:

Redesign or relocate the proposed one-story, single-family dwelling to be constructed upon the

subject property to fit within the correct building envelope as prescribed by the Zoning Code. Due to the topography of the subject property, redesigning the one-story, single-family dwelling to meet setback requirement will require the owner to construct a smaller single-family dwelling and would diminish the overall functionality of the proposed improvement.

Another alternative is to consolidate the subject property with the adjoining rear property which is owned by another party, and to re-subdivide 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 encroachment issue.

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 for a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

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.

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

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's site plan, the proposed single-family dwelling to be constructed upon the subject property (Lot B-1-C) will not meet the minimum rear yard open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

This variance application is approved subject to the following variance conditions.

Johanna Lcaird
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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 open carport 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 initiate proceedings to null and void Variance-15-000270.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci
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xc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS

DAVID Y. IGE
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

11:00 AM -3 01 10: 00

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

MEMORANDUM

DATE: February 27, 2015

TO: Mr. Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: Variance-VAR 15-000270
Applicant: JOHANNA LEAIRD
Owner: JOHANNA LEAIRD
Request: Variance from Chapter 25, Zoning, Article 5, Division 3,
Section 25-5-36, Minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into Rear (North) Yard
Setback)
Tax Map Key: 2-6-008:022

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

Lands formerly used for sugarcane production are now being developed into communities where residential homes, schools and commercial businesses are being constructed. Chemicals associated with the sugarcane industry persist in soil today and may be a threat to public health and the environment. Elevated arsenic levels were discovered in soil at former sugarcane production areas on the islands. The HEER Office has identified former sugarcane production areas for assessment throughout the state and plans to work with property owners to conduct environmental assessments to identify and address elevated soil arsenic levels prior to finalizing development plans for the properties.

We recommend that you review all of the Standard Comments on our website: <http://hawaii.gov/health/environmental/env-planning/landuse/landuse.html>. Any comments specifically applicable to this project should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by Built Environment Working Group (BEWG) of the Hawaii State

097290

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Duane Kanuha
February 27, 2015
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Department of Health. The BEWG recommends that state and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopment projects. We also ask you to share this list with others to increase community awareness on healthy community design.

