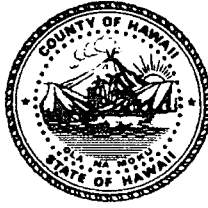


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
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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

April 27, 2015

James Banning
508 S. Chardon Drive
Mustang, OK 73064

Dear Mr. Banning:

SUBJECT: Application: VARIANCE – VAR-15-000276
Applicant: JAMES V. BANNING
Owner: JAMES V AND SHARON H. BANNING
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards. (Side (Northeast) Yard
Setback.
TMK: 9-2-088:016; (Lot 8)

The Planning Director certifies the **approval** of VAR-15-000276, subject to variance conditions. The variance will allow the existing single-family dwelling to remain on Lot 8 with a minimum 19 feet to a minimum 19.84-foot side (northeast) yard setback. These exceptions are in lieu of the required 20-foot side yard setback as required by the Hawaii County Code, Chapter 25, Zoning, Section 25-5-7, Minimum Yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property consists of approximately 43,908 square feet (1.008 acres) of land and is located in the Hawaiian Ocean View Estates Subdivision, at Kahuku, Ka'ū, Hawai'i. The subject property's street address is 92-1582 Donola Drive.
2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use.** Agricultural.
4. **Setback Requirements:** 30 feet for front and rear; 20 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 9, 2015. 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 side (Northeast) yard setback.

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 0.16 feet to 1 foot into the side (northeast) yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (B2005-0762K) was issued on May 12, 2005, for the construction of a 3 bedroom and 2 bath single-family dwelling. A subsequent building permit (B2010-0861K) was issued on October 12, 2010 for the construction of a two-car garage.
7. **Agency Comments and Requirements:**
 - a. The State Department of Health (DOH) memorandum dated March 19, 2015. (See attached)
 - b. No comments were received from the Department of Public Works Department – 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 March 9, 2015 and March 19, 2015, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on April 13, 2015.
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 20-foot side (northeast) 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 0.16 feet to 1-foot into the side (northeast) yard setback.

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 encroachment problems to occur.

It appears that the single-family dwelling constructed approximately 10 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, lanai and open carport did not disclose any building encroachment issues or building setback irregularities at that time.

Therefore, 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 front yard 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 corrections of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars. 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 to re-subdivide the property to modify property lines and adjust minimum yard setbacks. 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.

The single-family dwelling encroachments of 0.16 feet (1.92 inches) to 1-foot are rather miniscule. Therefore, it should not obstruct or prevent adequate air circulation and exposure to light 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 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 single-family dwelling built upon the subject property (Lot 8) will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

This variance request is **approved** subject to the following conditions:

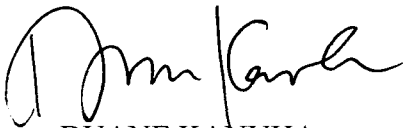
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of

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. No permit shall be granted to allow an ohana or farm dwelling upon the subject property, subject to provisions of the Zoning Code or State law which may be changed from time to time.
4. Should the single-family dwelling (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 letter pertaining to building construction occupancy.
5. 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.
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 15-000276 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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xc: James Banning (jvbanning@hotmail.com)
Kona Office
Real Property Tax Office (Kona)
Gilbert Bailado, GIS (via email)

James V. Banning
April 27, 2015
Page 6

DAVID Y. IGE
GOVERNOR OF HAWAII




VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

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

MEMORANDUM

DATE: March 19, 2015

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

FROM: Newton Inouye 
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 15-000276
Applicant: JAMES V. BANNING
Owner: JAMES V. AND SHARON H. BANNING
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards. (Encroachment into the
Northeast Side Yard Setback)
Tax Map Key: 9-2-088:016; Lot 8

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