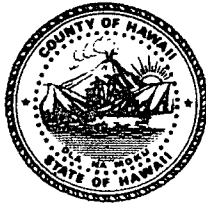


William P. Kenoi
Mayor



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

May 28, 2015

Sue L.K. Lee Loy
Ted H.S. Hong, Attorney At Law
PO Box 4217
Hilo, HI 96720

Dear Ms. Lee Loy:

SUBJECT: Application: Variance – VAR-15-000281
**Applicant: TED H.S. HONG, ATTORNEY AT LAW/
SUE L.K. LEE LOY**
Owner: JOHN W. STEUBER TRUST
**Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7, Minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into Rear (Northwest) Yard
Setback and Open Space Requirement)**
Tax Map Key: 2-4-066:010, Lot 67-A-14

The Planning Director certifies the **approval** of Variance 15-00281, subject to conditions. The variance will allow a section of the single-family dwelling to remain on Lot 67-A-14, with a minimum 10.55-foot rear (northwest) yard setback, in lieu of the required 15-foot rear yard setback and associated roof eave projection, resulting with a 7.35-foot rear (northwest) yard open space in lieu of the required 10-foot open space requirement. The variance is from the subject property's minimum 15-foot rear yard setback and 10-foot rear yard open space requirement. These exceptions are in lieu of the required 15-foot rear yard setback and 10-foot rear 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 contains approximately 9,944 square feet and is situated within the Pacific Heights Subdivision, Kukuau 1st, South Hilo, Hawai'i. The subject property's street address is 219 Kaanini Street.

2. **County Zoning.** Single-Family Residential – 7,500 sq. ft. (RS-7.5).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 15 feet front and rear; 8 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on April 10, 2015. The variance application's survey map was prepared by Niels Christensen (The Independent Hawaii Surveyors, LLC), denotes that a portion of the single-family dwelling was built into the rear (northwest) yard setback and associated rear (northwest) yard open space.

The survey map shows that portion of the single-family dwelling encroaches 4.65 feet into the 15-foot rear (northwest) yard setback and 2.67 feet into the 10-foot rear (northwest) yard open space.

The encroachment leaves a minimum 10.55-foot rear (northwest) yard setback, in lieu of the required 15-foot rear (northwest) yard setback and associated roof eave projection resulting with a 7.35-foot rear (northwest) yard open space in lieu of the required 10-foot rear (northwest) open space requirement

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#B2004-0720H) was issued on April 21, 2004 for a single-family dwelling consisting of 3 bedroom, 3 baths, living room, kitchen, and dining area.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated April 20, 2015.
(Refer to attached DOH memorandum)
 - b. The Department of Public Works Building Division e-mail dated April 29, 2015.
(Refer to DPW-Building Division e-mail)
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 April 23, 2015 and May 5, 2015, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 29, 2015.
9. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners of 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 address or resolve the encroachment of the single-family dwelling into the 15-foot rear (northwest) yard setback and the associated roof eave into the 1-foot rear (northwest) yard open space as required by the Zoning Code.

The survey map dated April 6, 2015 prepared by Niels Christensen, L.P.L.S. (The Independent Hawaii Surveyors, LLC), shows a section of the single-family dwelling encroaching 4.65 feet into the 15-foot rear (northwest) yard setback and associated roof eave projecting 2.67 feet into the 10-foot rear (northwest) yard open space.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements constructed in 2004 nearly 11 years ago, and subsequent construction permits were issued by the County for the existing single-family dwelling and pool equipment shed and closed under valid building permits. It also appears that past building permit inspections of the premises by the affected agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

The above special and unusual circumstances determine the owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with best use and 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 side yard of the subject property include the following actions:

Remove the building encroachments and/or redesign the single-family dwelling denoted on the

survey map to fit within the correct building envelope 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.

Another alternative is to consolidate the subject property with the adjoining side 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.

Because the encroachment is within the rear yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options; there are no reasonable alternatives to resolve the encroachment issue.

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.

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 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 11 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

Sue Lee Loy
Ted H. S. Hong, Attorney at Law
Page 5
May 28, 2015

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.

Therefore, the variance would be consistent with the general purpose of the zoning district and not be materially detrimental to the public's welfare or cause substantial adverse impact to the area's character or to adjoining properties.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the single-family dwelling built on the subject property ("LOT 67-A-14") will not meet the minimum rear 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 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. Should the single-family dwelling built 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.
4. 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.
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.

Sue Lee Loy
Ted H. S. Hong, Attorney at Law
Page 6
May 28, 2015

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-15-000281.

Sincerely,

A handwritten signature in black ink, appearing to read "Duane Kanuha". The signature is fluid and cursive, with a long horizontal stroke at the end.

DUANE KANUHA
Planning Director

LHN/SG:nci

P:\Admin Permits Division\Variances From CoH02\Zone2\VAR15-000281\TMK2-4-006-010Steuber Trust.doc.tif

xc: Kelly Gomes, DPW Engineering Division
Real Property Tax Office (Hilo)
Gilbert Bailado, GIS

Sue Lee Loy
Ted H. S. Hong, Attorney at Law
Page 7
May 28, 2015

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: April 20, 2015

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

FROM: Newton Inouye ✎
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 15-000281
Applicant: TED H.HONG, ATTORNEY AT LAW/
SUE L.K. LEELEOY
Owner: JOHN W. STEUBER TRUST
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7, Minimum Yards, and Section 25-4-44,
Permitted Projections into yards and Open Space
Requirements (Encroachment into Rear (Northwest) Yard
Setback and Open Space Requirement)
Tax Map Key: 2-4-066:010, Lot 67-A-14

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

Sue Lee Loy
Ted H. S. Hong, Attorney at Law
Page 8
May 28, 2015

VAR 15-000281 - Nakayama, Larry

Page 1 of 1

VAR 15-000281

Matsumoto, Joy

Wed 4/29/2015 8:42 AM

To: Nakayama, Larry <Larry.Nakayama@hawaiicounty.gov>;

VAR 15-000281

Owner: John Steuber Trust

TMK 2-4-066:010, Lot 67-A-14

Building Division has no objection to this variance.

Joy Matsumoto

Supervising Building Inspector

County of Hawaii

Tel. (808) 961-8471

Fax (808) 961-8410

Email: jmatsumoto@co.hawaii.hi.us

098505