

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

July 20, 2015

Roger D. Fleenor, L.P.L.S.
P.O. Box 383414
Waikoloa, Hawai'i 96738

Dear Mr. Fleenor:

SUBJECT: Application: VARIANCE – VAR-15-000285
Applicant: ROGER D. FLEENOR, L.P.L.S.
Owners: BEN BRUNO AND ELMA BRUNO
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 Requirement. (Encroachment into Side (West) Yard Setback
Tax Map Key: 6-4-029:026; Lot F

The Planning Director certifies the **approval** of Variance 15-000285, subject to conditions. The variance will allow portion of the two-story, single-family dwelling to remain on Lot F, with a minimum 3.7 foot side (west) yard setback and 2.4-foot side (west) yard open space in lieu of the minimum required 8-foot side yard setback and 4-foot side yard open space requirement. It also allows for the attached carport with a minimum 2.7-foot to a minimum 3.7-foot side yard setback and associated roof eave with a minimum 2.6-foot to a minimum 3.6-foot side (west) yard open space. These exceptions are in lieu of the required 8-foot side yard setback and 4-foot side yard open space, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, 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 8,398 square feet of land, is located within the Waimea Vacationland, Unit 1, Subdivision, situated at Waimea, South Kohala, Hawai'i. The subject property's street address is 64-109 Old Māmalahoa Highway.
2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use.** Agricultural.

4. **Setback Requirements.** 15 feet front and rear, 8 feet for side yards.
5. **Variance Application-Site Plan.** The applicant, Roger D. Fleenor, submitted the variance application, attachments, filing fee, and associated materials on May 19, 2015. The variance application's site plan map is drawn to scale and was prepared by Roger D. Fleenor, L.P.L.S., and denotes the existing single-family dwelling encroaching into the side (west) yard setback and associated roof eave into the side yard open space.

The applicant submitted the variance application to address or resolve the encroachment of the two-story, single-family dwelling and attached carport into the 8-foot side (west) yard setback and associated roof eave into the 4-foot side yard open space as required by the Zoning Code.

The survey map prepared by Roger Fleenor, L.P.L.S., shows that portions of the two-story, single-family dwelling encroaches 4.3 feet into the 8-foot side (west) yard setback and 1.6 feet into the side (west) yard open space. It also shows that the attached carport encroaches 4.3 feet to 5.3 feet into the 8-foot side yard setback and associated roof eave encroaches 0.4 feet to 1.4 feet into the 4-foot side yard open space.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (56864) was issued on June 28, 1973 to the subject property for the construction of a two-story single-family dwelling consisting of 5 bedrooms, 4 baths, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated June 12, 2015. (See attached).
 - b. No comments were received from the Department of Public Works Department – Building Division.
8. **Notice to Surrounding Property Owners.** 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 notices were mailed on May 11, 2015, and the second notices were mailed on June 10, 2015. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 25, 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 encroachments of the two-story, single-family dwelling into the 8-foot side yard setback and associated roof eave into the 4-foot side yard open space as required by the Zoning Code.

The survey map shows that portions of the two-story single-family dwelling encroaches 4.3 feet into the 8-foot side (west) yard setback and 1.6 feet into the side (west) yard open space. It also shows that the attached carport encroaches 4.3 feet to 5.3 feet into the 8-foot side yard setback and associated roof eave encroaches 0.4 feet to 1.4 feet into the 4-foot side 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 1974 nearly 41 years ago were constructed under valid building permits and other construction permits issued by the County. It also appears that past building permits inspections of the premises by the agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

Therefore, based on the above mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of sustainable 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 side yard setback and side yard open space of the subject property include the following actions:

Redesign or relocate the proposed single-family residence 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 two-story, single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachment is within the side yard setback, to consolidate the subject property with the existing roadway and to re-subdivide the property to modify property lines and adjust

minimum side yard setbacks are not viable options; 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's 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.

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 garage has been in existence for approximately 41 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 of the Zoning Code, Subdivision Code and the County General Plan.

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 upon the subject property ("LOT F") does not meet the minimum side yard setback and side yard open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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

Roger D. Fleenor, L.P.L.S.

Page 5

July 20, 2015

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 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 Zoning Code or State law, which may change from time to time.
4. Should the two-story, single-family dwelling 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 subject to provisions of the Zoning Code 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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 15-000285 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone6\VAR15-000285TMK6-4-029-026Bruno.doc.rtf

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

Roger D. Fleenor, L.P.L.S.
Page 6
July 20, 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: June 12, 2015

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

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR-15-000285
Applicant: ROGER D. FLEENOR, LPLS
Owner: BEN BRUNO AND ELMA BRUNO
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
Requirement (Encroachment into Side (West) Yard Setback)
Tax Map Key: 6-4-029:026; Lot F

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

