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Duane Kanuha
Director

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Deputy Director

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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
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August 25, 2015

John & Michele Gamble
P. O. Box 189
Honolulu, HI 96728

Dear Mr. & Mrs. Gamble:

SUBJECT: Application: Variance – VAR-15-000290
Applicant: JOHN AND MICHELE GAMBLE
Owner: JOHN AND MICHELE GAMBLE
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 Yard (Northwest) Yard Setback and Open Space Requirement)
Tax Map Key: 2-8-0013:038, Lot 2-A

The Planning Director certifies the **approval** of Variance 15-000290, subject to conditions. The variance will allow a section of the storage shed to remain on Lot 2-A, with a minimum 16.8-foot side (northwest) yard setback, in lieu of the required 20-foot rear yard setback. The variance is from the subject property's minimum 20-foot side yard setback. This exception is in lieu of the required 20-foot side yard 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 3.405 acres and is situated within Mālamalamaiki, Honomū, South Hilo, Hawai'i. The subject property's street address is 28-3514 Māmalahoa Highway.
2. **County Zoning.** Agricultural – 20 acres (A-20a).

3. **State Land Use Designation.** Agricultural and Conservation.
4. **Setback Requirements.** 30-foot front and 40-foot rear yard setback; 20 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on July 9, 2015. The variance application's survey map was prepared by Roy G. Hollowell, LLC, and denotes that a portion of the storage shed was built into the side (northwest) yard setback.

The survey map shows that portion of the storage shed encroaches 3.2 feet into the 20-foot side (northwest) yard setback.

The encroachment leaves a minimum 16.2-foot side (southwest) yard setback, in lieu of the required 20-foot side (southwest) yard setback.
6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#912457) was issued on November 11, 1991 for a single-family dwelling consisting of 13 bedrooms, 10 -1/2 baths, living room, kitchen, and dining area.
7. **Entitlements.** Special Management Use Permit No. 408 (SMA 408) and Special Permit No. 1078 (SPP 1078) were issued on September 15, 2000, for the establishment of an eight-bedroom inn within a proposed addition to an existing dwelling and related uses.
8. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated July 6, 2015.
(Refer to attached DOH memorandum)
 - b. No comments were received from the Department of Public Works Building Division.
 - c. No comments were received from the Department of Public Works Engineering Division.
 - d. No comments were received from the State of Hawai'i Highways Division.
9. **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 June 8, 2015 and July 1, 2015, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 26, 2015.
10. **Comments from Surrounding Property Owners or Public.**
 - a. An e-mail objecting to the variance request from Mr. Carlos Parisi dated June 17, 2015.
 - b. A petition submitted by Mr. Carlos Parisi on July 16, 2015, objecting to the variance request.

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 storage shed into the 20-foot side (southwest) yard setback as required by the Zoning Code.

The survey map dated April 23, 2015, prepared by Roy G. Hollowell, L.P.L.S., shows a section of the storage shed encroaching 3.2 feet into the 20-foot rear (southwest) yard setback.

The applicant has stated in part in his background report:

"The variance request stems from a complaint that the shed on the property that houses the well, pump housed, and water holding tank, extends into the 20-foot side yard setback on the highway side of the property. The shed was initially a well and pump house and water tank shed build in 1993 by the initial builders on the property, owners Kurt & Karen Halverson. Both structures were permitted by the planning Department under permit number 931620 issued on 08/23/1993 and the permit received final inspection and passed.

In 1998, an addition was added by Percy & Mary Lee Smith to the well and pump house and water tank shed to enclose the well and pump house and water tank shed into one enclosed building. The Smith's were the current property owners at that time. This structure was permitted by the planning department, permit number 980230 issued 02/23/1998 and received a final inspection and passed.

We, John and Michele Gamble, purchased the subject property in 2001 and we have made no permanent changes to the shed structures. It remains as it was when it received its final passing Building Department inspection in 1998."

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 storage shed constructed in 1993, nearly 22 years ago, and subsequent construction permits were issued by the County for the existing storage 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 initial construction of the storage shed and enclosure was constructed by the previous property owners.

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 storage shed 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 storage shed was in compliance with all County requirements. Any structural or design correction of the storage shed which houses the water pump and water tank to meet setback requirement would require the owners to do major excavation and repair by the relocation of the storage shed, water pump and water tank along with the realignment of existing pipe lines.

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 side yard setback, to consolidate the subject property with the adjoining property which is owned by someone else and re-subdivide the property to modify property lines and adjust minimum side 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.

An e-mail objecting to the variance request was received from Mr. Carlos Parisi on June 17, 2015 and a petition objecting to the variance request was received on July 16, 2015.

Mr. Parisi's objections claim that the Gambles are not in compliance with all the conditions of Special Management Area Use Permit No. 408 (SMA 408) and Special Permit No. 1078 (SPP 1078) in operating their Bed and Breakfast. In addition, Mr. Parisi claims that the Gambles failed to delineate in their survey report the Hawaii State Storm Drainage Easement across their property which he alleges to have been altered and encroached by the Gambles. It should be noted that this variance request is strictly to allow the storage shed to remain with a 16.8-foot side (southwest) yard setback in lieu of the 20-foot side (southwest) yard setback. Mr. Parisi's objections stated in his e-mail do not apply to this variance request and should be addressed by the appropriate agency that deals with his concerns. The petition objecting to the variance does not cite a particular concern but just an overall objection to the variance.

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 storage shed has been in existence for approximately 22 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. 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.

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.

John and Michele Gamble

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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 storage shed 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. The Chain link fence encroachments cited on the survey map shall be addressed by the property owners affected by the encroachments.
5. 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.
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 initiate proceedings to null and void Variance-15-000281.

Sincerely,



DUANE KANUHA
Planning Director

LHN/SG:nci

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

John and Michele Gamble
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DAVID Y. IGE
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

2015 JUL 21 10 24

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

MEMORANDUM

DATE: July 6, 2015

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

FROM: Eric Honda *EH*
District Environmental Health Program Chief

SUBJECT: Application: Variance-VAR 15-000290
Applicant: JOHN AND MICHELE GAMBLE
Owner: JOHN AND MICHELE GAMBLE
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 (Southwest) Yard Setback
and Open Space Requirement.
Tax Map Key: 2-8-013:038; Lot 2-A

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

K-2 SURVEY
 LOT 2-A
 PORTION OF ROYAL PATENT GRANT 869
 TO PALAU AND KAMANAONU
 MALAMALAMIKI, HONOMU, SOUTH HILO, ISLAND OF HAWAII, HAWAII
 TMK: (3rd) 2-8-013: 038

Notes

1. Corner markers shown as found were accepted. The measured dimensions (M) are within acceptable tolerances to record dimensions (R) for this type of land and subdivision.
2. Easterly boundary follows the high water mark. Highwater mark was not surveyed.
3. Building setback lines per County of Hawaii Planning Department.
4. Improvement Notes.
 - A. Small rockwall on right side of entry is 1.3 feet into Lot 2-B flag entry.
 - B. Storage shed corner is 16.8 feet and roof eave is 14.2 feet from property line.
 - C. Fence along front of property is up to 0.7 feet into Lot 2-B flag entry.
 - D. Neighbor fence along front of property is up to 1.7 feet into Lot 2-A.
 - E. Neighbor fence at south corner 1.0 feet into Lot 2-A.
5. Survey performed at the request of John Gamble.

This survey was performed by me or under my direct supervision on April 23, 2015.

Roy G. Hollowell
 Roy G. Hollowell
 Licensed Professional Land Surveyor
 Certificate Number 12741
 Expires: April 30, 2016



Island Boundary
 RR 3, Box 81571, Pahoa, HI 96778
 (808) 345-1561

