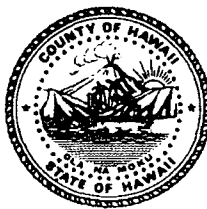


William P. Kenoi
Mayor



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

August 4, 2015

Marsha Goodman-Pryor
99 Aupuni Street, Suite 114
Hilo, Hawaii 96720

Dear Ms. Goodman-Pryor:

SUBJECT: Application: Variance VAR-15-000292
Applicant: MARSHA GOODMAN-PRYOR
Owners: KEVIN D. KASPAROVITCH TRUST
Request: Variance from Chapter 25, Zoning, Article 5, Division 7
Section 25-5-76, Minimum Yards, and Article 4, Division 4
Section 25-4-44(a). Permitted Projections into Yards and Open
Space Requirements (Encroachment into the Southwest Rear
Yard Setback and Southeast Side Yard Setback).
TMK: 1-6-009:114 (Lot 8)

The Planning Director certifies the **approval** of VAR-15-000292 subject to variance conditions. The variance will allow the catchment water tank to remain on Lot 8, with 3.7 foot southwest rear yard setback and a 9.8 foot southeast side yard setback. These exceptions are in lieu of the required minimum 30-foot rear yard and 20-foot side yard requirement with associated rear and side yard open space requirement. This variance is from the subject property's minimum (southwest) rear yard setback and (southeast) side yard setback and open space requirement pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-8, Other regulations, and Article 4, Division 4, Section 25-4-44(a), Permitted Projections into Yards and Open Space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately one (1) acre and is located in the Orchidland Subdivision, situated in Kea'au, District of Puna, Hawai'i. The subject property's street address is 16-1858 39th Avenue.
2. **County Zoning.** Agricultural – 3 acre (A-3a).
3. **State Land Use Designation.** Agricultural.

4. **Required Setback.** 30 feet for front and rear; 20 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on September 18, 2014. The variance site plan map is drawn to scale, prepared by Daniel L. Berg, L.P.L.S. (dlb & Associates) and denotes the position of the detached catchment water tank constructed into the minimum 30-foot rear yard setback and 20-foot side yard setback. The request affects the southwest rear and southeast side yard setback.

The survey site plan shows that the catchment water tank encroaches 16.3 feet into the southwest rear yard setback and 10.2 feet into the southeast side yard setback. It also shows the catchment water tank encroaches 7.7 feet into the southwest rear yard open space and 3.8 into the southeast side yard open space.

6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (#B2007-2594H) was issued on November 7, 2007 to the subject property for a single-family dwelling consisting of 3 bedrooms, 3 bath, living room, kitchen and dining area. A subsequent building permit (B2010-0739H) was issued on May 14, 2010 for an agricultural workshop building, garage, carport and a galvanized catchment tank.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated July 9, 2015. (See attached.)
 - b. No comments were received from the Department of Public Works – Building.
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 June 24, 2015 and July 6, 2015, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 15, 2014.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

ANALYSIS OF GROUNDS FOR VARIANCE

No variance will be granted unless it is found that:

- (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 catchment water tank into the 30-foot southwest rear yard setback and 20-foot southeast side yard setback and associated 24-foot southwest rear yard and the 14-foot southeast side yard open space as required by the Zoning Code.

The survey site plan shows that the catchment water tank encroaches 16.3 feet into the southwest rear yard setback and 10.2 feet into the southeast side yard setback. It also shows the catchment water tank encroaches 7.7 feet into the southwest rear yard open space and 3.8 into the southeast side yard open space.

The applicant has stated in its background that the catchment water tank was constructed by the previous owner; the encroachment issue was disclosed to the current owners and confirmed by a recent survey. 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 1989 nearly 15 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.

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.

(b) There are no other reasonable alternatives that would resolve the difficulty.

The variance application meets criteria (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the water tank encroachments constructed into the affected rear and side yard and open space of the subject property include the following actions:

Remove the water tank encroachments and/or redesign or relocate the as-built, water tank constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map 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 detached water tank was in compliance with all County requirements. To deny this variance would require the owner to relocate the water tank, which would involve the owners to do major excavation to their property, requiring them to replace and move existing pipe lines.

Another alternative is to consolidate the subject property with the adjoining rear and side property which is owned by someone else, and resubdivide 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 difficulty.

(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 criteria (c) for the following reasons:

The intent and purpose of requiring structural setbacks within a building site are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/ uses and boundary/property lines.

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 this office did not receive any complaints from surrounding property owners during the existence of the agricultural shed and open carport. In addition, 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 circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intent and purpose of the Zoning Code, Subdivision Code and the County General Plan.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the single-family dwelling, carport, and agricultural shed 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 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

Ms. Marsha Goodman-Pryor
August 4, 2015
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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 Hawai'i County Code, Chapter 25 (Zoning) or State Law, which may change from time to time.
4. The permitted agricultural workshop shall not be converted into a second dwelling in accordance with Condition 3 stated above.
5. The gravel driveway encroaching onto the adjoining property (Lot 9) shall be addressed by the property owners of the subject property and the adjoining property (Lot 9) owner.
6. Should the detached catchment water tank (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 occupancy.
7. 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-15-000292 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR115-000292TMK1-6-009-114KasparovitchTrust.doc

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

Ms. Marsha Goodman-Pryor
August 4, 2015
Page 6

DAVID Y. IGE
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH
PLANNING DEPARTMENT
2015 JUL 10 PM 1:31

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

MEMORANDUM

DATE: July 9, 2015

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

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

SUBJECT: Application: Variance- VAR-15-00292
Applicant: MARSHA GOODMAN-PRYOR
Owner: KEVIN D. KASPAROVITCH TRUST
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 Rear (south and Southeast)
Yard Setback)
TMK: 1-6-009:114 lot 8

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

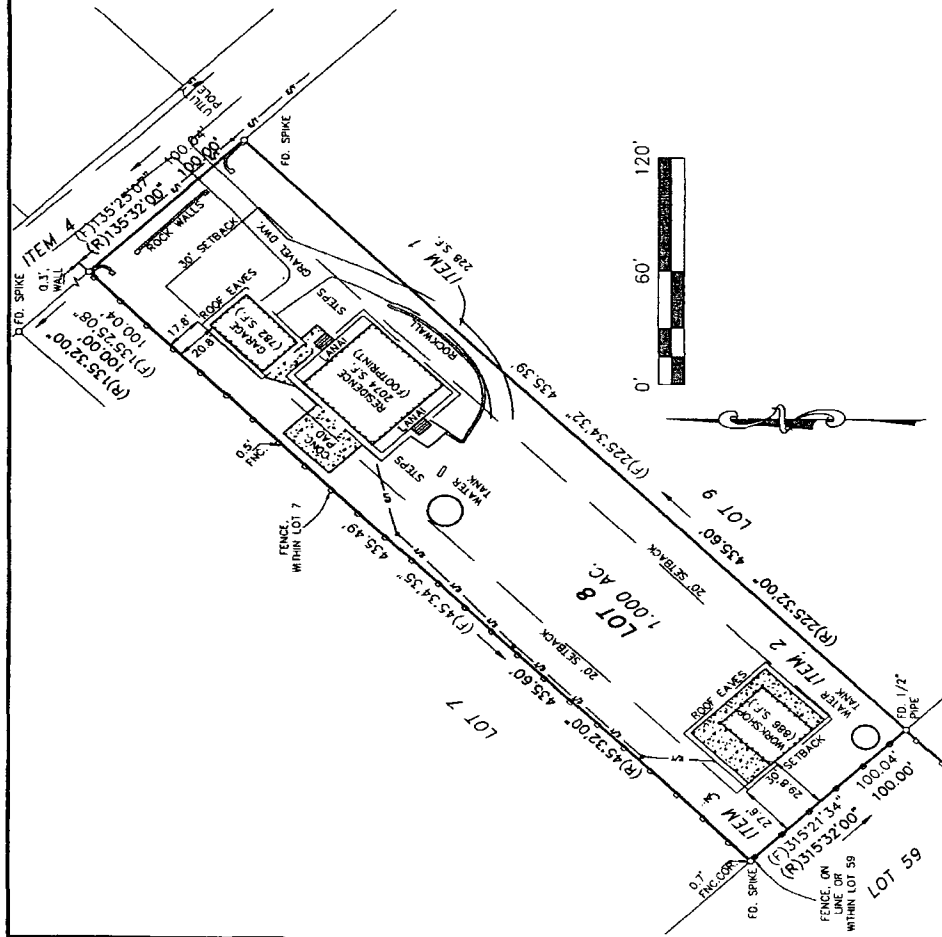
WORD: VAR-15-00292.eh

099767

**Boundary and Improvement Survey
 of Lot 8, Block Z-Z
 Orchidland Estates Subdivision
 Situated at Keaou, Puna,
 Island and County of Hawaii, Hawaii**
 TMK(3) 1-6-009:114

NOTES:

1. This K-2 field survey completed May 21, 2015.
2. (F) indicates field measured dimensions. Basis of Azimuths is a 'best-fit' of found (FD.) property monuments to record positions. Std. Error = 0.18 ft. (n=6)
3. (R) indicates Record dimensions per Orchidland Estates Subd., Land Court Appl. 1053, Map 53.
4. Intrusions and/or protrusions across boundaries or into zoning setbacks, if any, denoted as 'ITEM_' and described in the attached report.
5. This Map and attached Report were prepared for the transaction indicated, and should not be used for any other purpose.



This work was prepared by me or
 under my direct supervision.

Daniel L. Berg
 PLS 11245



dlb & Associates
 LAND SURVEYING • MAPPING • CONSULTING
 P.O. Box 49-2281, Keaou, HI, 96749
 Ph. 956-4206, Fx. 82-6830
 www.dlbandsassoc.com

Date: May 27, 2015
 Escrow: TG#23215058504
 Project: J2015-085
 8X14L

