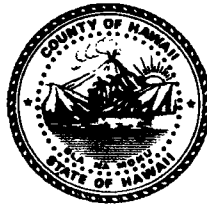


William P. Kenoi
Mayor



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

December 18, 2015

Mr. Kekoa Hara
Accent Design Services
P. O. Box 2026
Kea'au, Hawai'i 96749

Dear Mr. Hara:

SUBJECT: Application: Variance – VAR-15-000293
Applicant: ACCENT DESIGN SERVICES/KEKOA HARA
Owner: SEAN AND MARISSA ANN GINOZA
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 Side (Southwest) Yard Setback)
Tax Map Key: 2-4-066:042, Lot 67-A-22

The Planning Director certifies the **approval** of Variance 15-00293, subject to conditions. The variance will allow portion of the proposed garage to be constructed on lot 67-A-22, with a minimum 6-foot 9-inches side (southwest) yard setback in lieu of the minimum required 8-foot side yard setback requirement. The variance is from the subject property's minimum 8-foot side yard setback requirement. These exceptions are in lieu of the required 8-foot side yard setback 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 11,534 square feet and is situated within the Pacific Heights Subdivision, Kukuau 1st, South Hilo, Hawai'i. The subject property's street address is 604 Ka'anini Place.
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 plot plan was prepared by Accent Design Services and denotes that the proposed garage be constructed into the side (southwest) yard setback.

The plot plan shows that the garage extension encroaches 1.25 feet into the 8-foot side (southwest) yard setback. The encroachment leaves a minimum 6.75-foot side (southwest) yard setback, in lieu of the required 8-foot side (southwest) yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#971542) was issued on December 16, 1997 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 July 21, 2015. (Refer to attached DOH memorandum)
 - b. No comments received from the Department of Public Works Building Division.
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 12, 2015 and June 23, 2015, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 13, 2015.
9. **Time Extension.** The applicant's variance application was acknowledged by letter dated July 7, 2015 and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to December 18, 2015.
10. **Comments from Surrounding Property Owners or Public.** Objection letter received on July 13, 2015 from Lester D. Oshiro and Beverly A. Abril (See attached objection letter)

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 proposed garage into the 8-foot side (southwest) yard setback as required by the Zoning Code.

The plot plan shows that proposed garage will encroach 1.25 feet into the 8-foot side (southwest) yard setback. The encroachment leaves a minimum 6.75-foot side (southwest) yard setback, in lieu of the required 8-foot side (southwest) yard setback.

The owner submitted a variance application to allow for the expansion of the existing garage 1.25 feet into the side (southwest) yard setback.

The owners propose to construct an enclosed garage to house his truck adjacent to the existing two-car garage. Theoretically, the owner could construct an open carport and still meet with open space requirements. However, by enclosing the carport it would address security concerns regarding vandalism and provide protection from the weather elements. The owner is asking for an additional 56 square feet (1.6 ft. x 5 ft.). Placement of the garage into the rear yard would not only encumber more space for the garage but additional area will be needed for the paved or concreted driveway and turnaround area. This will only encumber more space and limit the play area for the family outings and gathering.

Therefore, 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.

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:

One option would be to relocate the proposed garage into the rear yard which would make it more prominent and have a more visual impact on the surrounding property owners, also would deny the owner the necessary privacy and views that the deck addition would provide.

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 adjacent 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.

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.

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.

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-22") 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:

Mr. Kekoa Hara
Accent Design Services
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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. An ohana or farm dwelling permit shall not be granted 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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-15-000293.

Sincerely,



DUANE KANUHA
Planning Director

LHN/SG:nci

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

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Accent Design Services
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July 13, 2015

Duane Kanuha, Director
County of Hawaii
Planning Department
101 Pauahi Street, Suite 3
Hilo, HI 96720

Dear Mr. Kanuha:

Subject: Application for Variance, TMK: 2-4-066:042, 604 Kaanini Place, Hilo
Applicants: Sean and Marissa Ginoza

We are the property owners of TMK 2-4-066:041 abutting the subject TMK on the mauka side. Thank you for the opportunity to comment on the subject application for setback variance.

Applicants are proposing to construct a garage adjacent to their existing residence, encroaching into their mauka side setback by 5.9 feet, inclusive of the proposed roof overhang or projection, leaving a 4.1 feet setback. For a parcel size of 11,534 square feet, or RS-10 lot, the required side setback is 10 feet for structures, instead of 8 feet as noted on applicants' proposed site plan, and 5 feet for projections and open space.

Our house was built in 1989 and is situated within the required setback, approximately 4 feet above ground level of applicants' property, at that time a vacant lot. The four-foot raised or filled portion of our lot is supported by a rock wall and topped with a 5-foot high chain link fence. The siting of our house at its location was the only option for us because the parcel is one of the smaller ones in the subdivision and because of a storm drainage easement that cuts through a significant portion of the parcel. This has been our home for 26 years.

The subdivision is nearly built-out. The average parcel size is 11,000 square feet. The average building size is 2,400 square feet, or approximately 5 square feet of land per square foot of building, although many of the homes are multi-story homes. Allowance of a variance will certainly encourage other property owners to seek the same in an already compacted, closely set neighborhood.


More importantly, with the close proximity of the proposed structure to our house, fence, and plantings, we are very concerned with fire protection in the event of an unfortunate incident. Additionally, we are concerned that natural lighting and wind breeze may be reduced, as well as our ability to sell the property.

Although we support applicants' desire to construct a second garage, we value the existing open space and request the required 10 feet setback remain in place for reasons stated above.

Sincerely,



Lester D. Oshiro



Beverly A. Abril

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Mr. Kekoa Hara
Accent Design Services
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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: July 21, 2015

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

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

SUBJECT: Application: Variance- VAR 15-000293
Applicant: ACCENT DESIGN SERVICES/KEKOA HARA
Owner: SEAN AND MARISSA ANN GINOZA
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 Side (Southwest) Yard
Setback and Open Space Requirement.
TMK: 2-4-066:042, Lot 67-A

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

WORD: VAR 15-000293eh.

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