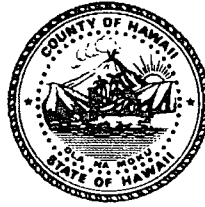


William P. Kenoi
Mayor



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

September 30, 2015

Ms. Sandra J. Springs
Ms. Lynn M. Mallard
55-3478 Akoni Pule Highway
Hawi, HI 96719

Dear Ms. Springs & Mallard:

SUBJECT: Application: Variance - VAR-15-000295
Applicant: SANDRA J. SPRINGS & LYNN M. MALLARD
Owner: SANDRA J. SPRINGS & LYNN M. MALLARD
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 (East) Yard Setback.
Tax Map Key: 5-5-002:114-0002

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-14-000295, subject to variance conditions. The variance will allow portion of the "as-built" guest house to remain with a 15-foot side (east) yard setback. These exceptions are in lieu of the required 20-foot side yard setback as required by the Hawaii County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject condominium unit (Unit 2), consisting of approximately 3 acres of land, is situated at Hawi, North Kohala, Hawai'i. The subject property's street address is 53-3479 Akoni Pule Highway
2. **Zoning.** Agricultural – 20 acres (A-20a).
3. **State Land Use.** Agricultural (A).
4. **Required Setback.** 30 feet for front and rear; 20 feet for sides.

5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on April 21, 2015, and other submittals related to the variance request and variance application. The variance application's site plan is drawn to scale and prepared by the owner/applicant denotes the guest house built into the east side yard setback.

The owner/applicant submitted the variance application to address or resolve the encroachment of the "as-built" guest house built into the 20-foot side (east) yard setback required by the Zoning Code.

The site plan map prepared by the owner/applicant shows that portions of the "as-built" guest house encroaches 6 feet into the 20-foot side (east) yard setback.

6. **County Building Records.** Hawaii County Real Property Tax Division records indicate that a building permit (986292) was issued on November 17, 1999, for the construction of a 3-bedroom and 2-1/2 bath, single-family residence. No building permit has been issued for the construction of the "as built" guest house.
7. **Condominium Public Report (CPR):** Hawi Farm and Ranch Condominium Project (Registration No. 3468) issued on October 31, 1996.
8. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated July 27, 2015. (See attached memorandum)
 - b. The Department of Public Works–Building Division (Kona) memorandum dated July 15, 2015 (See attached memorandum)
9. **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 and second notice(s) were mailed on August 9, 2014 and August 20, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 13, 2015.
10. **Time Extension.** The applicant's variance application was acknowledged by letter dated July 8, 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 September 30, 2015.
11. **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.

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 “as-built” guest house into the 20-foot side yard setback as required by the Zoning Code.

The site plan prepared by the owner/applicant shows that portions of the “as-built” guest house encroaches 5 feet into the 20-foot side (east) yard setback.

It appears that the current owner was unaware of any encroachment problem for the “as-built” guest house until a formal complaint was filed with our office and a modern survey of the subject property was completed.

No evidence has been found to show indifference or premeditation by the owners to deliberately create or intentionally allow the “as-built” guest house encroachment problems to occur.

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.

- (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 east side yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the as-built, guest house constructed upon the subject property to fit within the correct building envelope denoted on the recent plot plan as prescribed by the Zoning Code. Any structural or design correction would leave large and unattractive reconstruction disfigurement to the guest house. Requiring the owner to relocate the guest house would involve the owner to do major excavation to their property by having to replace and move existing water lines along with electrical wiring.

Because the encroachment is within the side yard setback, to consolidate the subject property which is owned by someone else 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.

(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 on a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

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 intent and purpose 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 this office did not receive any complaints from surrounding property owners during the roughly 14 years since the single-family dwelling and was constructed. Further, 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 above findings, granting of the variance would be consistent with the criteria and intent of approving a variance.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the guest house built upon the subject property will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.

Sandra J. Springs
Lynn Mallard
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September 30, 2015

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. No permit shall be granted to allow an ohana or second single family or farm dwelling upon the subject property, subject to provisions of the Zoning Code or State law which may be changed from time to time.
4. Should the "as-built" guest house 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.
5. Owners to comply with all conditions stated in the State of Hawaii – Department of Health and the Department of Public Works – Building Division (Kona) memorandums. (See attached).
6. Owners to secure "as built" building permit within six months from the issuance of this Variance (VAR-15-000295).
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 occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-15-000295 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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Sandra J. Springs
Lynn Mallard
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xc: Planning Department (Kona)
Horace Yanagi, Zoning Inspector (Kona)
Real Property Tax Division (Kona)
Gilbert Bailado, Planning GIS

Sandra J. Springs
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PLANNING DEPARTMENT
2015 SEP 15 10:49



BUILDING DIVISION – DPW

COUNTY OF HAWAII – 101 Pauahi Street, Suite 7 – Hilo, Hawai'i 96720
Hilo Office (808) 961-8331 • Fax (808) 961-8410 Kona Office (808) 323-4720 • Fax (808) 327-3509

July 15, 2015

To: Duane Kanuha

SUBJECT: VAR-15-000295 Mallard

TMK: 5-5-002:114-0002

This is to inform you that our records on file, relative to the status of the subject discloses that:

- No ____ permit was issued for work done on the premise.
- No building permit was issued for the change of occupancy.
- At the time of completion, the subject complied to all building regulations that were in effect.
- Variance from any building regulation (Building, Electrical, Plumbing, or Sign) was/was not granted.
- The following violations(s) still outstanding:
 - Building
 - Electrical
 - Plumbing
 - Sign
- Others: Obtain all permits for additional buildings violations DPW15-054 CE2015-59K

This status report reflects Building Division records only and does not include information from other agencies.

Should you have any questions regarding matters contained herein, please feel free to contact Jai Ho Cheng at phone no. (808) 323-4720

Sandra J. Springs
Lynn Mallard
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September 30, 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: July 27, 2015

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

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

SUBJECT: Application: Variance- VAR-15-000295
Applicant: SANDRA J. SPRINGS & LYNN M. MALLARD
Owner: SANDRA J. SPRINGS & LYNN M. MALLARD
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 (East) Yard Setback.
TMK: 5-5-002:114-0002

The existing wastewater system has not been approved by the Wastewater Branch.

The proposed project is located within 1000 feet of a public drinking water source. One individual wastewater system will be allowed to be used for the project and must either contain an aerobic unit with disinfection or a non-discharge disposal system.

WORD:VAR-15-000295.eh

100047

AKONI PULLE HIGHWAY

10'

GUEST HOUSE

90'

31'

15'

20'

55-3478 AKONI PULLE H.G.WY.

1

