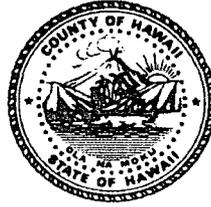


William P. Kenoi
Mayor



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 3, 2015

Pat Halpern
P. O. Box 267
Volcano, Hawai'i 96785

Dear Mr. Halpern:

SUBJECT: Application: VARIANCE – VAR-15-000298
Applicant: PAT HALPERN/CLARK REALTY CORP.
Owner: ANASTACIO C. AND JUNE DALDE
Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards; Article 4, Division 4, Section 25-4-44(a), Permitted Projections into yards and Open Space Requirements (Encroachment into Rear (Northwest) Yard Setback and into Side (Southwest) Yard Setback.
TMK: 9-9-008:045 (Lot 45)

The Planning Director certifies the **approval** of VAR-15-000298, subject to variance conditions. The variance will allow portion of the existing single-family dwelling to remain on Lot 400 with a minimum 13.68-foot rear side (northwest) yard setback, in lieu of the required 20-foot rear yard setback and associated roof eave projection resulting with a 10.30 foot rear (northwest) yard open space in lieu of required 14-foot open space requirement. It will also allow for the water tank to remain with a 5.71-foot side (southwest) yard setback and portion of the detached garage to remain with 9.21-foot side (northeast) setback in lieu of the 10-foot side yard setback. These exceptions are in lieu of the required 20-foot rear yard setback and 14-foot rear yard open space and 10-foot side yard setback as required by the Hawaii County Code, Chapter 25, Zoning, Section 25-5-7, Minimum Yards and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property consists of approximately 14,714 square feet of land and is located in the Volcano Golf and Country Club Subdivision, at Keauhou, Ka'ū, Hawai'i. The subject property's street address is 99-7827 Kolokea Place.

2. **State Land Use.** Urban
3. **County Zoning.** Single-Family Residential – 15,000 sq. ft. (RS-15).
4. **Property Size.** 14,714 square feet.
5. **Setback Requirements:** 20 feet for front and rear; 10 foot sides.
6. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, filing fee, and other submittals related to the variance application on July 10, 2015. The variance application's site plan map is drawn to scale and prepared by Neils Christensen, L.P.L.S., of The Independent Hawaii Surveyors, LLC, and denotes the portions of the existing single-family dwelling built into the rear (northwest) yard setback, along with the water tank built into the side (southwest) yard setback and the detached garage built into the side (northeast) yard setback.

The revised survey map, dated June 9, 2015, prepared by Niels Christensen, L.P.L.S., of the Independent Hawaii Surveyors, LLC shows that portion of the single-family dwelling encroaches 6.32 feet into the rear (northwest) yard setback and associated roof eave encroaches 3.7 feet into the rear yard open space. It also reveals that the water tank encroaches 4.29 feet into the 10-foot side (southwest) and the detached garage encroaches 0.79 feet into the 10-foot side (northeast) yard setbacks.

7. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (861718) was issued on January 10, 1988, for the construction of a 1 bedroom and 1-1/2 bath, single-family dwelling.
8. **Agency Comments and Requirements:**
 - a. The State Department of Health (DOH) memorandum dated August 5, 2015. (See attached)
 - b. The Department of Public Works Department – Building Division (Hilo) memorandum dated August 14, 2015 (See attached)
9. **Public Notice.** The applicant submitted a copy of notice mailed to surrounding property owners (including affidavits) by U.S.P.S. According to the submittal, the first and second notice(s) were mailed on July 27, 2015. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on July 30, 2015.
10. **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 encroachment of the existing single-family dwelling into the 20-foot side (northeast) yard setback along with the water tank and detached garage into the 10-foot side yard set back as required by the Zoning Code.

The survey map prepared by Niels Christensen, L.P.L.S., of the Independent Hawaii Surveyors, LLC shows that portion of the single-family dwelling encroaches 6.32 feet into the rear (northeast) yard setback and associated roof eave encroaches 3.7 feet into the rear yard open space. It also reveals that the water tank encroaches 4.29 feet and the detached garage encroaches 0.79 feet into the 10-foot side yard setback.

The encroachment leaves a minimum 13.68-foot rear (northwest) yard setback, in lieu of the required 20-foot rear (southwest) yard setback and associated roof eave projection resulting with a 10.30-foot rear (southwest) rear yard open space in lieu of the required 14-foot open space requirement. The encroachment also leaves the water tank with 5.71-foot side (southwest) side yard setback and the detached garage with 9.21-foot side (northeast) yard setback.

No evidence has been found to allow indifference or premeditation by the owners or builders to deliberately create or intentionally allow the single-family dwelling encroachment problems to occur.

It appears that the single-family dwelling constructed approximately 29 years ago was constructed under valid building permits and other construction permits issued by the County. It also appears that past building permit inspections of the premises by the agencies during construction of the single-family dwelling, water tank and detached garage did not disclose any building encroachment issues or building setback irregularities at that time.

Therefore, special and unusual circumstances exist on the subject property which would interfere with highest and best use 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 address the building encroachments constructed into the affected front yard of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the single-family dwelling constructed 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 single-family dwelling to meet setback requirement would leave unattractive reconstruction scars. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the single-family dwelling was in compliance with all County requirements.

Another alternative is to consolidate the subject property with the adjoining rear and side properties which is owned by someone else and to re-subdivide the property to modify property lines and adjust minimum yard setbacks. These alternatives are not practical. Therefore, there are no other reasonable alternatives to resolve these encroachment issues.

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 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.

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 single-family dwelling 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.

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.

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 single-family dwelling garage and water tank built upon the subject property (Lot 400) 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.
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 related 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 be changed from time to time.
4. Should the single-family dwelling (footprint), garage and water tank 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 letter pertaining to building construction occupancy.
5. Subject to provisions of the Zoning Code or State law, which may be changed from time to time, no permit shall be granted to allow an ohana or farm dwelling upon the subject property.
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.

Pat Halpern
September 3, 2015
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Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance 15-000298 null and void.

Sincerely,

A handwritten signature in black ink, appearing to read 'Duane Kanuha', written in a cursive style.

DUANE KANUHA
Planning Director

LHN:nci
P:\Admin Permits Division\Variances From CoH02\Zone9\VAR15-000298TMK9-9-008-045Dalde.doc.rtf

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

Pat Halpern
September 3, 2015
Page 7

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: August 5, 2015

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

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

SUBJECT: Application: Variance- VAR-15-000298
Applicant: PAT HALPERN/CLARK REALTY CORP.
Owner: ANASTACIO AND JUNE DALDE
Request: Variance form Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-71, Minimum Yards, (Encroachment into Side
Northeast Yard Setback and Rear Northwest Yard Setback)
TMK: 9-9-008:045, Lot 400

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

WORD: VAR-15-00298.ch

100232

Pat Halpern
September 3, 2015
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Variance - VAR-15-000298 - Nakayama, Larry

Page 1 of 1

Variance - VAR-15-000298

PLANNING DEPARTMENT
COUNTY OF HAWAII
2015 AUG 14 PM 3:35

Abelaye, David

Fri 8/14/2015 9:50 AM

To: Nakayama, Larry <Larry.Nakayama@hawaiicounty.gov>;

Variance: VAR 15-000298
Owner: ANASTACIO AND JUNE DALDE
TMK: 19-9-008:045; Lot 400

Building Division has no objections to this variance.

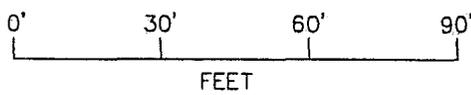
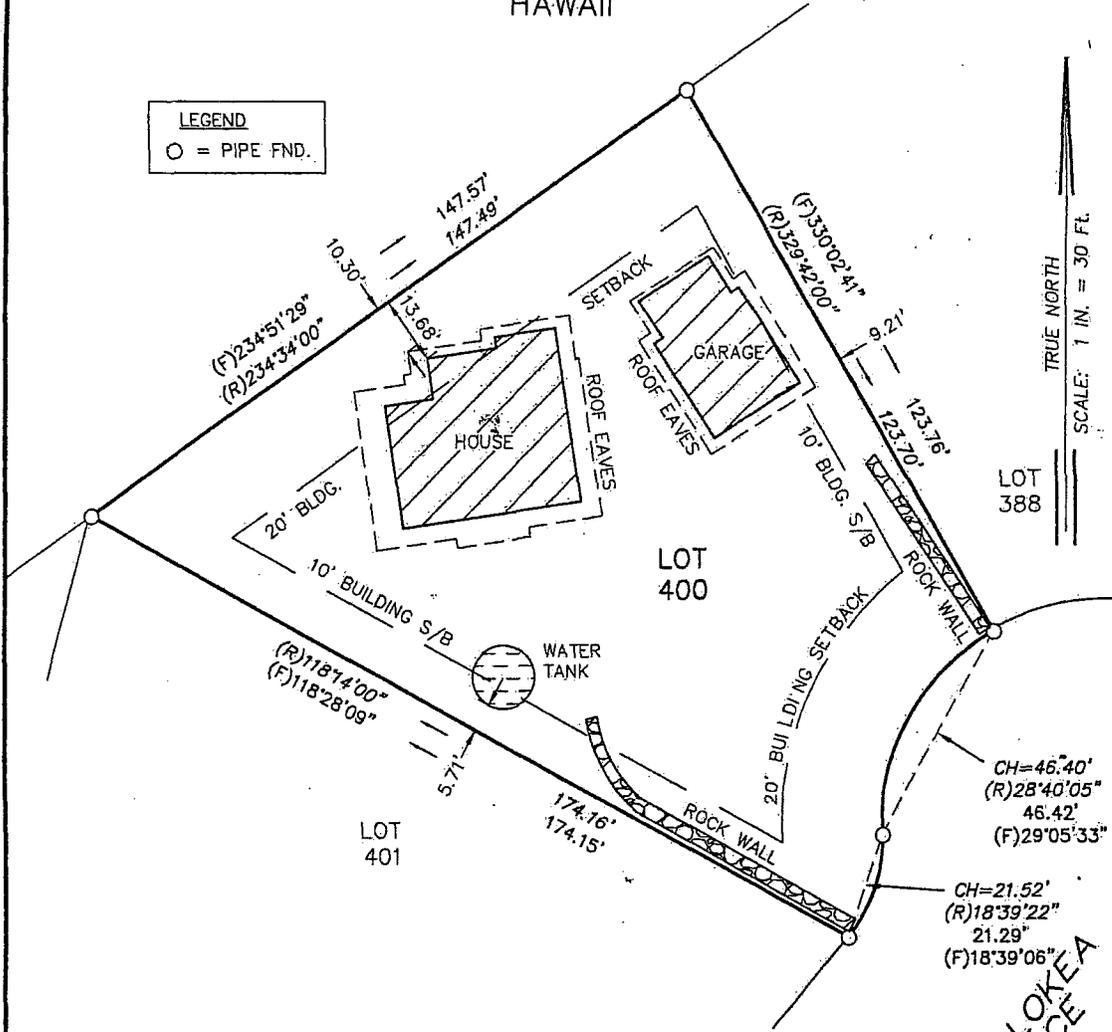
David Abelaye
Supervising Building Inspector
County of Hawaii
Tel. (808) 961-8471
Fax. (808) 961-8410
Email: dabelaye@hawaiicounty.gov

100387

**EXISTING CONDITIONS UPON LOT 400
VOLCANO GOLF AND COUNTRY CLUB**

KEAUHOU, KAU
ISLAND OF HAWAII
HAWAII

LEGEND
○ = PIPE FND.



- NOTES:**
1. The features shown hereon were located by an actual field survey completed on June 9, 2015.
 2. This map shows, "the location of any improvements in the vicinity of perimeter property lines". (K-2).
 3. Field measured dimensions (F) are within acceptable tolerances as compared to record dimensions (R) for land of this type and in this subdivision.
 4. The attached Report pertains to improvements near property lines and County building setbacks.

This work was prepared by me or under my direct supervision

Niels Christensen

Niels Christensen
Licensed Professional Land Surveyor
License Number 9077

The Independent Hawaii Surveyors, LLC

P.O. BOX 577
Hilo, HI 96721
Phone 808 959-0360
FAX 808 959-0353
Info@hawaiiboundary.com

