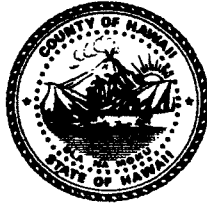


William P. Kenoi  
Mayor



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

February 4, 2016

Mr. Roger Fleenor  
P. O. Box 383414  
Waikoloa, HI 96738-3414

Dear Mr. Fleenor:

**SUBJECT: Application: Variance - VAR-15-000311**  
**Applicant: ROGER D. FLEENOR, LPLS**  
**Owner: KENNETH YOKOYAMA TRUST; GEORGE YOKOYAMA, TENANTS IN COMMON; HOWARD M. YOKOYAMA, JUDY S. YOKOYAMA TRUST; JEAN Y. ALDAN AND CHARLOTTE E. KURTZ**  
**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 (East) Yard Setback)**  
**Tax Map Key: 4-5-016:030; Lot 9**

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The Planning Director certifies the **approval** of Variance No. 15-000311, subject to variance conditions. The variance will allow portion of the single-family dwelling to remain with a minimum 6.1-foot side (southwest) yard setback to a minimum 7.4-foot side (southwest) yard setback, in lieu of the required 8-foot side (southwest) yard setback and associated roof eave projection resulting with a 3.0-foot side (southwest) yard open space, in lieu of the required 4-foot open space requirement. This allowance is in lieu of the required minimum 10-foot side yard setback.

These exceptions are in lieu of the required 8-foot side yard setback and 4-foot side yard open space as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, 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 7,505 square feet and is situated

within portion of Honoka'a Town, Haina, Hāmākua, Hawai'i. The subject property's street address is 45-3485 Koa Street.

2. **County Zoning.** Single-Family Residence – 7,500 square feet (RS-7.5).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 15-foot front and rear; 8-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on September 28, 2015. The variance application's survey map was prepared by Roger D. Fleenor, L.P.L.S., and denotes that a portion of the single-family dwelling encroaches 1.3 feet into the 10-foot side (southwest) yard setback.

The owner/applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling into the 8-foot side (southwest) yard setback, as required by the Zoning Code.

The site plan shows that portion of the single-family dwelling encroaches 0.60 feet (7.2 inches) to 1.9 feet into the 8-foot side (southwest) yard setback and the associated roof eave encroaches 1-foot into the 4-foot side (southwest) yard open space.

The encroachment leaves the single-family dwelling with a minimum 6.1-foot side (southwest) yard setback to a minimum 7.4-foot side (southwest) yard setback, in lieu of the required 8-foot side (southwest) yard setback and associated roof eave projection resulting with a 3-foot side (southwest) yard open space in lieu of the required 4-foot open space requirement.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#41540) was issued on August 9, 1972 to the subject property for a single-family dwelling consisting of a 3-bedroom, 2-bath, living room, kitchen, and dining area.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated October 20, 2015. (Refer to attached DOH memorandum).
  - b. Department of Public Works – Building Division memorandum dated October 12, 2015. (Refer to attached DPW memorandum).
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 October 14, 2015. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 14, 2015.

9. **Time Extension.** The applicant's variance application was acknowledged by letter dated October 2, 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 February 5, 2016.
10. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners of the general public were received.

### 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 single-dwelling into the 8-foot side (southwest) yard setback as required by the Zoning Code.

The site plan shows that portion of the single-family dwelling encroaches 0.60 feet (7.2 inches) to 1.9 feet into the 8-foot side (southwest) yard setback and the associated roof eave encroaches 1-foot into the 4-foot side (southwest) yard open space.

The encroachment leaves the single-family dwelling with a minimum 6.1-foot side (southwest) yard setback to a minimum 7.4-foot side (southwest) yard setback, in lieu of the required 8-foot side (southwest) yard setback and associated roof eave projection resulting with a 3-foot side (southwest) yard open space in lieu of the required 4-foot open space requirement.

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 26 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.

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 the 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 single-family dwelling 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 single-family dwelling was in compliance with all County requirements. Any structural or design correction of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by another party, and to 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 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.

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 26 years since the single-family dwelling 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 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.

#### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

Based on the variance application's survey map, the single-family dwelling built upon the subject property ("LOT 9") 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 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 additional farm dwelling 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.

Roger D. Fleenor, L.P.L.S..

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February 4, 2016

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-15-000311.

Sincerely,

A handwritten signature in black ink, appearing to read "Duane Kanuha". The signature is fluid and cursive, with a large initial "D" and "K".

DUANE KANUHA  
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone4\VAR15-000311TMK4-5-016-030YokoyamaTrust.doc.rtf

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

Roger D. Fleenor, L.P.L.S.  
Page 7  
February 4, 2016

DAVID Y. ICE  
SARPHENKID (16/01)



VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

OCT 21 AM 11 30

PLANNING DEPARTMENT  
COUNTY OF HAWAII

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. BOX 016  
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: October 20, 2015

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

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

SUBJECT: Application: Variance VAR-15-000311  
Applicant: ROGER D. FLEENOR, L.P.L.S.  
Owner: KENNETH YOKOYAMA TRUST; GEORGE  
YOKOYAMA, TENANTS IN COMMON; HOWARD M.  
YOKOYAMA, JUDY S. YOKOYAMA TRUST; JEAN Y.  
ALDAN AND CHARLOTTE T. KURTZ.  
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 (Easement into Side (East) Yard Setback)  
TMK: 4-5-016:030, Lot 9

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

WORD: VAR-15-000311.ch

101550



**BUILDING DIVISION - DPW**

COUNTY OF HAWAII - 24 3044 Aiea Kauhakalo HWY. BLDG E 1<sup>st</sup> Floor KAILUA-KONA, HI 96740  
Hilo Office (808) 961-8331 • Fax (808) 961-8410 Kona Office (888) 323-4720 • Fax (808) 327-5509

RECEIVED  
COUNTY OF HAWAII  
BUILDING DIVISION  
OCT 19 04 02

Date of Notice: October 12, 2015  
Applicant: Roger D. Fleenor, L.P.L.S.  
Owner: Kenneth Yokoyama Trust; George Yokoyama, Tenants in Common; Howard  
Yokoyama, Judy S. Yokoyama Trust; Jean Y. Aidan and Charlotte E. Kurtz  
Mailing address: P.O. Box 383414  
Waikaloa, Hawaii 96738

Address location of property: 45-3485 Koa St. Hilo, Hawaii

SUBJECT: 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 (East) Yard Setback)

T.M.K.: 4-5-016:030: 074; Lot 9

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

- No Building, Electrical and Plumbing 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 permits (s) still outstanding:

\_ Building      \_ Electrical      \_ Plumbing      \_ Sign  
Other:

Should you have any questions regarding matters contained herein, please feel free to contact us.

Our files show all permits complete, no issues.

Kelly Wilson, Plans Examiner  
County of Hawaii Department of Public Works Building Division

BD 10

101349

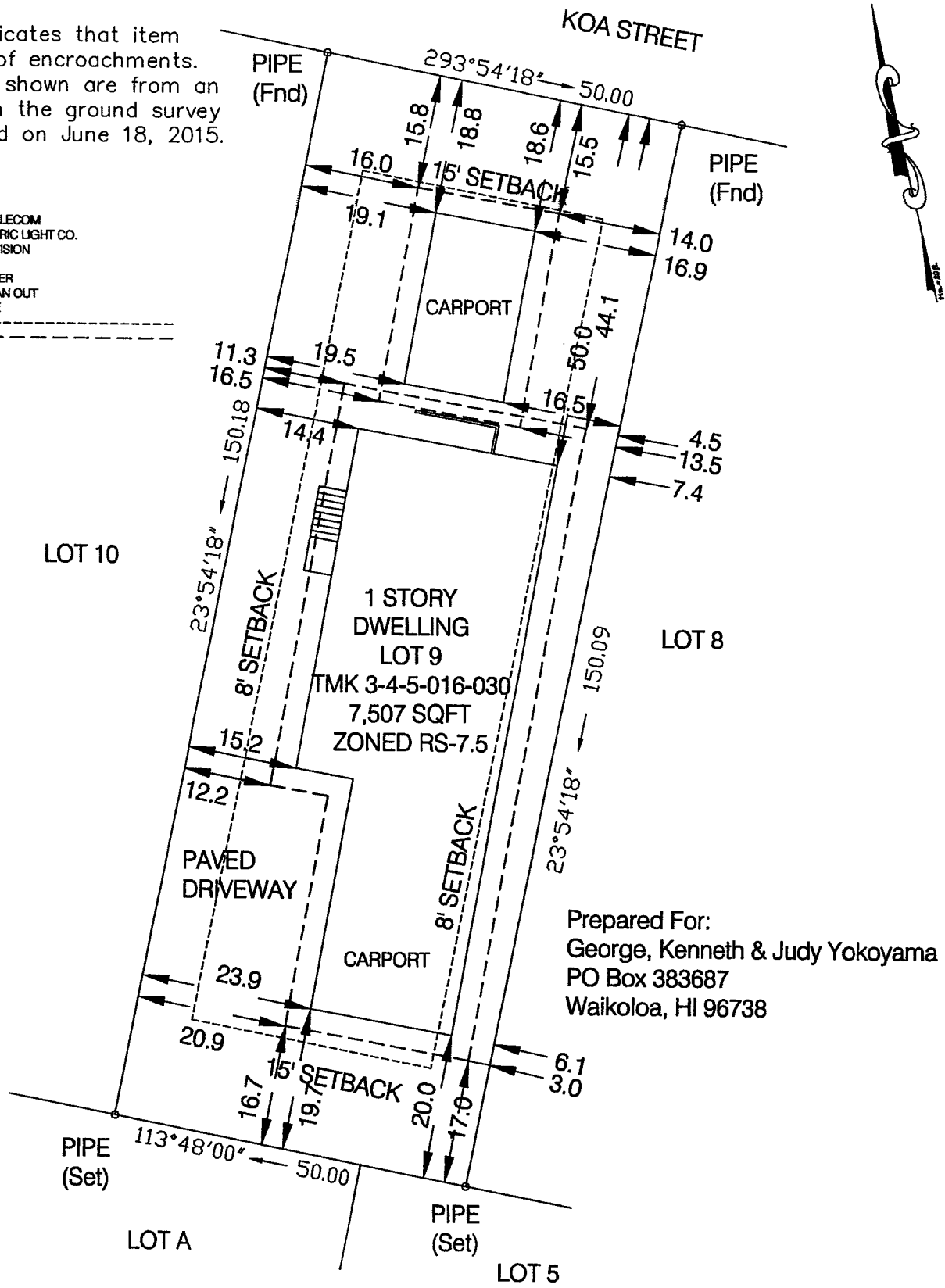


**Note:**

Clear indicates that item is clear of encroachments. Features shown are from an actual on the ground survey performed on June 18, 2015.

**LEGEND**

- HT = HAWAIIAN TELECOM
- H = HAWAII ELECTRIC LIGHT CO.
- TV = CABLE TELEVISION
- FND = FOUND
- WM = WATER METER
- CO = SEWER CLEAN OUT
- UP = UTILITY POLE
- SETBACK - - - - -
- ROOF EAVE - - - - -



Prepared For:  
 George, Kenneth & Judy Yokoyama  
 PO Box 383687  
 Waikoloa, HI 96738

K-2 SURVEY MAP OF LOT 9  
 45-3485 KOA STREET  
 HONOKAA TOWN, HAMAKUA  
 COUNTY & STATE OF HAWAII  
 T.M.K. 3-4-5-016-030

SCALE 1"=20'  
 DATE JUNE 21, 2015



THIS WORK WAS PREPARED BY  
 ME OR UNDER MY SUPERVISION.

*Roger D. Fleenor*  
 ROGER D. FLEENOR LS 7276  
 My License Expires April 30, 2016