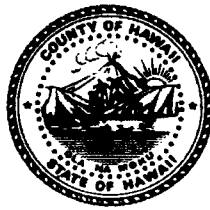


William P. Kenoi
Mayor



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
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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 5, 2016

Walter R. Pope II
P. O. Box 625
Hōlualoa, Hawaii 96725

Dear Mr. Pope:

SUBJECT: Application: Variance - VAR-15-000315
Applicant: WALTER RAYMOND POPE
Owner: WALTER RAYMOND POPE II TRUST AND MICHAEL JAMES WICKERSHAM
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 Rear (Southwest) Yard Setback and Side (South) Yard Setback.
Tax Map Key: 9-2-101-027; Lot 16-A

The Planning Director certifies the **approval** of Variance No. 15-000315, subject to variance conditions. The variance will allow:

1. Portion of the single-family dwelling to remain with a minimum 22.9-foot to 23-foot rear (southwest) yard setback to a minimum 23-foot rear (southwest) yard setback, in lieu of the required 30-foot rear (southwest) yard setback and
2. Associated roof eave projection resulting with a minimum 20.5-foot to 20.9-foot rear (southwest) yard open space, in lieu of the required 24-foot open space requirement. Also, allows a portion of the single-family dwelling with a minimum 14.3-foot side (south) yard setback to a minimum 14.5 side (south) yard setback, in lieu of the required 20-foot side yard setback and associated roof eave projection resulting with a 13.4-foot side yard open space in lieu of the 14 foot side yard open space requirement.

It will also allow for the water tank with a minimum 12.1-foot front (southwest) yard setback, in lieu of the required 30-foot front (southwest) yard setback and 24-foot front yard open space requirements.

These exceptions are in lieu of the required 30-foot rear yard setback and 24-foot rear yard open space and the required 20-foot side yard setback and 14-foot side yard setback, 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 43,560 sq. ft. (1 acre) and is located in the Hawaiian Ocean View Estates, Kahuku, Ka'u, Hawai'i. The subject property's street address is 92-8579 King Kamehameha Blvd.
2. **County Zoning.** Agricultural – 1 Acre (A-1 a).
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 October 6, 2015. The variance site plan is drawn to scale, prepared by Chrystal T. Yamasaki L. P. L. S. (Wes Thomas Associates) and denotes the position of the single-family dwelling constructed into the minimum 30-foot rear (southwest) yard setback and the 24-foot rear yard open space and into the 20-foot side (south) yard setback and 14-foot side (south) yard open space. It also denotes the water tank built into the front (southwest) yard setback and front (southwest) yard open space. The request affects the southwest front yard setback and side (south) yard setback.

The site plan shows that single-family dwelling encroaches 7 feet to 7.1 feet into the 30-foot rear (southwest) yard setback and associated roof eave projection encroaches 3.1 feet to 3.5 feet into the 24-foot rear (southwest) yard open space. It also shows that the single-family dwelling encroaches 5.5 feet to 5.7 feet into the 20-foot side (south) yard setback and 0.60 feet (7.2 inches) into the 14-foot side (south) yard open space. It also shows that the water tank encroaches 17.9 feet into the 30-foot rear (southwest) yard setback and 11.9 feet into the 24-foot rear (southwest) yard open space.

The encroachment leaves a minimum 22.9-foot to 23-foot rear (southwest) yard setback, in lieu of the required 30-foot rear (southwest) yard setback and associated roof eave projection resulting with a minimum 20.5-foot to 20.9 foot rear (southwest) yard open space, in lieu of the required 24-foot open space requirement; and leaves portion of the single-family dwelling with a minimum 14.3-foot -14.5 side (south) yard setback, in lieu of the required 20-foot side yard setback and associated roof eave projection resulting with a 13.4-foot side yard open space, in lieu of the 14-foot side yard open space requirement. It also leaves the water tank with a minimum 12.1-foot front (southwest) yard setback, in lieu of the required 30-foot rear (southwest) yard setback and 24-foot rear yard open space requirements.

6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (B2007-1042K) was issued on July 20, 2007, to the subject property for a single-family dwelling consisting of 2 bedrooms, 2 baths, living room, kitchen and dining area and water tank.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated November 4, 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 October 13, 2015 and October 22, 2015 respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 27, 2015.
9. **Time Extension.** The applicant's variance application was acknowledged by letter dated October 6, 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.**
 - a. A letter objecting to the variance request from Candace A. Lima was received on October 26, 2015.
 - b. A letter objecting to the variance request from Samuel C. Buda, Jr. was received on October 28, 2015.

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 single-family dwelling into the 30-foot front (southwest) yard setback and the 24-foot front (southwest) yard open space requirement and into the 20-foot side (south) yard setback and

the 14-foot side (south) yard open space. Also, addressing the encroachment of the water tank into the 30-foot rear (southwest) yard setback and the 24-foot rear yard open space requirements.

The site plan shows that single-family dwelling encroaches 7 feet to 7.1 feet into the 30-foot rear (southwest) yard setback and associated roof eave projection encroaches 3.1 feet to 3.5 feet into the 24-foot rear (southwest) yard open space and it also shows that the single-family dwelling encroaches 5.5 feet to 5.7 feet into the 20-foot side (south) yard setback and 0.60 feet (7.2 inches) into the 14-foot side (south) yard open space. It also shows that the water tank encroaches 17.9 feet into the 30-foot rear (southwest) yard setback and 11.9 feet into the 24-foot rear (southwest) yard open space.

The encroachment leaves a minimum 22.9-foot rear (southwest) yard setback to a minimum 23-foot rear (southwest) yard setback, in lieu of the required 30-foot rear (southwest) yard setback and associated roof eave projection resulting with a minimum 20.5-foot rear (southwest) yard open space to a minimum of 20.9-foot rear (southwest) yard open space, in lieu of the required 24-foot open space requirement; and leaves portion of the single-family dwelling with a minimum 14.3-foot side (south) yard setback to a minimum 14.5 side (south) yard setback, in lieu of the required 20-foot side yard setback and associated roof eave projection resulting with a 13.4-foot side yard open space, in lieu of the 14-foot side yard open space requirement. It also leaves the water tank with a minimum 12.1-foot front (southwest) yard setback, in lieu of the required 30-foot rear (southwest) yard setback and 24-foot rear yard open space requirements.

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 2007, nearly 8 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 side yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign the detached garage denoted on the survey map to fit within the correct building envelope 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 garage was in compliance with all County requirements. Any structural or design correction of the detached garage to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachment is within the front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options; 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 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.

A letter objecting to the variance request was received from Ms. Michele Stephen-Hassard on November 6, 2015. Ms. Stephen-Hassard property is located approximately 100 feet northwest of the subject property.

Ms. Lima's objections states: *"I'd like to be on record as opposing this variance."* No specific reason was cited by Ms. Lima.

A letter objecting to the variance request was received from Samuel C. Buda, Jr. on October 28, 2015. Mr. Buda is adjacent to the rear (southwest) boundary

Mr. Buda's objections states in part: *"Since there are permanent building and structure violations of the 30 ft. setback by the owners of the property in question above. And those violations could affect a reduction in the resale value of my property. I also request that the planning division rules in favor of this matter before you, and that you make the owner(s) of the above mentioned property remove/relocate any and all permanent buildings or structures from any encroachment up to and including the specified 30 feet."*

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 detached garage has been in existence for approximately 8 years and 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.

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 detached garage.

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 and water tank built upon the subject property ("LOT 16-A") will not meet the minimum rear and 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 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. 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.
4. Should the single-family dwelling (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.
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.

Walter R. Pope II
Page 7
February 5, 2016

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-15-000315 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\VAR15-000315TMK9-2-101-027.doc

xc: Real Property Tax Office (Hilo)
 Gilbert Bailado, GIS (via email)
 Randy Lovato, Zoning Inspector (Kona)

DAVID Y. IGE
GOVERNOR OF HAWAII

2015 NOV 4 09 2 01

PLANNING DEPARTMENT
COUNTY OF HAWAII



VIRGINIA PRESSLER, M.D.
DIRECTOR OF H.A.H.

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
- 1D HAWAII 96721-0916

MEMORANDUM

DATE: November 4, 2015

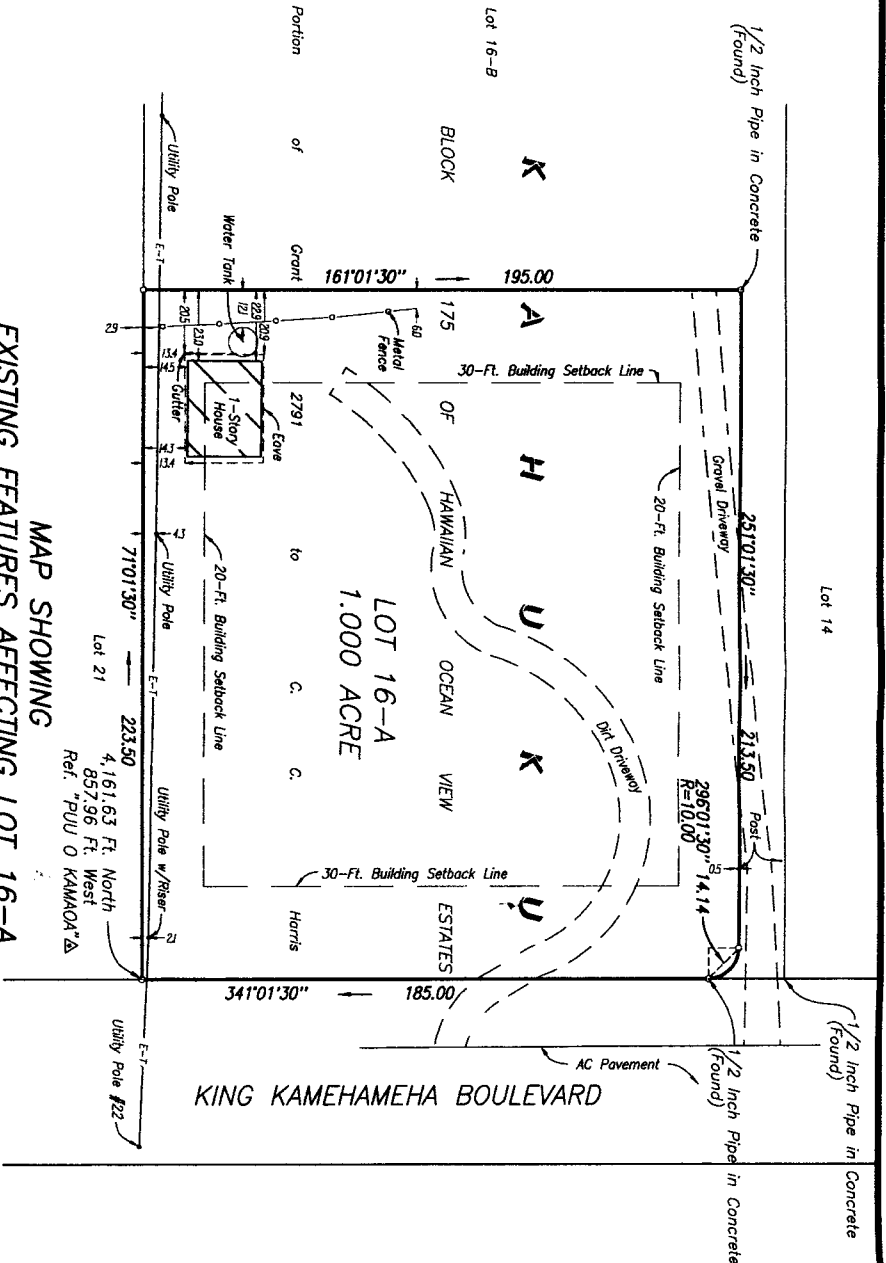
TO: Mr. Duane Kauaha
Planning Director, County of Hawaii

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

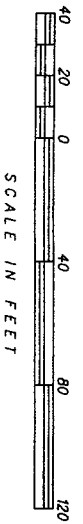
SUBJECT: Application: Variance - VAR-15-000315
Applicant: WALTER RAYMOND POPE
Owner: WALTER RAYMOND POPE II TRUST AND MICHAEL
JAMES WICKERSHAM
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into Rear (Southwest) Yard
Setback and Side (South) Yard Setback.
Tax Map Key: 9-2-101-027; Lot 16-A

Wastewater Branch is unable to make comments to the proposed project at this time. Before we can offer any comments, the applicant needs to address the following:

Your IWS, file #37575, was not certified by your engineer or approved for use by the Department of Health. Please consult your engineer for Final Inspection Report.

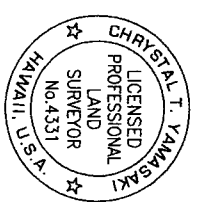


- NOTES:**
1. The distances shown between the property lines and the features, shown hereon, are based on selected found boundary monumentation and acceptable tolerances for properties of this nature.
 2. The features, shown hereon, were located by an actual survey on the ground done on September 17, 2015.
 3. As per the scope of work, NO ornamental plants and/or other types of vegetation were located and may overhang the property line from either side along portions of the perimeter of the subject parcel of land.



**MAP SHOWING
EXISTING FEATURES AFFECTING LOT 16-A
OF BLOCK 175 OF HAWAIIAN OCEAN VIEW ESTATES
Being a Portion of Grant 2791 to C. C. HARRIS
At Kahuku, Ka'u
Island and County of Hawaii, State of Hawaii**

Prepared By:
WES THOMAS ASSOCIATES
Land Surveyors
75-5749 Kalaheo Street
Kahuku-Kaunoi, Hawaii 96740-1817
TEL: (808) 329-2353
FAX: (808) 329-5334
EMAIL: surveys@wethomahawaii.com



Crystal T. Yamasaki
CRYSTAL THOMAS YAMASAKI
Licensed Professional Land Surveyor
State of Hawaii Certificate Number LS-4331
Expiration Date: April 2016

WES THOMAS ASSOCIATES
Land Surveyors
This work was prepared by me or
under my direct supervision.

PROJECT NO.: 14057.1
DATE: SEPTEMBER 30, 2015
FIELD BOOK NO.: 1324
TAX MAP KEY: 9-2-101:027 (3RD DIVISION)

