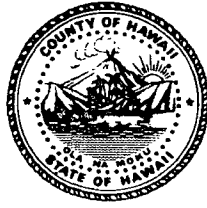


William P. Kenoi
Mayor



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 17, 2015

Mr. Darcy Nobriga
P. O. Box 103
Laupāhoehoe, Hawai'i 96764

Dear Mr. Nobriga:

SUBJECT: Application: Variance – VAR-15-000316 (Revised)
Applicant: DARCY NOBRIGA
Owner: DARCY NOBRIGA
**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 Front (Northeast) Yard
Setback)**
Tax Map Key: 3-6-005:036, Lot 4

The Planning Director certifies the **approval** of Variance 15-00316 (Revised), subject to conditions. The owner/applicant has stated in his letter dated December 8, 2015, that there is an error in the site plan. The site plan shows a distance of 14 feet from the boundary line to the roof eave, when it should be 14 feet to the wall. Therefore, the site plan should reflect a 14-foot front yard setback and an 11-foot front yard open space. The variance will allow portions of the proposed single-family dwelling to be constructed on Lot 4, with a minimum 14-foot front (northeast) yard setback and 11-foot front (northeast) yard open space in lieu of the minimum required 20-foot front yard setback and 14-foot front yard open space requirement. These exceptions are in lieu of the required 20-foot front yard setback and 14-foot front yard open space 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 16,491 square feet of land and is

situated within the Waipunalei Homesteads, North Hilo, Hawai'i. The subject property's street address is 36-2679 Hawai'i Belt Road.

2. **County Zoning.** Agricultural – 20 acres (A-20A).
3. **State Land Use Designation.** Agricultural.
4. **Setback Requirements.** 20-foot front; 10-feet for sides; Section 25-4-42, Corner building sites: (a) On any corner building site, the interior lines shall be side lot lines and all rear yard regulations shall be inapplicable.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on October 12, 2015. The variance application's plot plan was prepared by Cole Custom Drafting and denotes that the proposed single-family dwelling be constructed into the front (northeast) yard setback.

The plot plan shows that the proposed single-family dwelling encroaches 6 feet into the 20-foot front (northeast) yard setback and 3 feet into the 14-foot front (northeast) yard open space.

The encroachment leaves a minimum 17-foot front (northeast) yard setback and a minimum 11-foot front (northeast) yard open space, in lieu of the required 20-foot front (northeast) yard setback and 14-foot front (northeast) yard open space..

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (BH2015-01725) was issued on September 3, 2015 for the demolition of entire dwelling due to fire damage.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated November 4, 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 October 16, 2015 and October 28, 2015, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 27, 2015.
9. **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 proposed single-family dwelling into the 20-foot side (northeast) yard setback as required by the Zoning Code.

The plot plan shows that the proposed single-family dwelling encroaches 6 feet into the 20-foot front (northeast) yard setback and 3 feet into the 14-foot front (northeast) yard open space.

The encroachment leaves a minimum 14-foot front (northeast) yard setback and a minimum 11-foot front (northeast) yard open space, in lieu of the required 20-foot front (northeast) yard setback and 14-foot front (northeast) yard open space.

The owner originally submitted a variance application to allow for the construction of a single-family dwelling, 3 feet into the side (northeast) yard setback. However, an error was discovered on the site plan. The site plan showed a distance of 14 feet to the roof eave, when it should show the distance of 14 feet to the wall. Therefore, the owner is asking for an amendment to the original variance, to allow for a 14-foot side (northeast) yard setback and an 11-foot side (northeast) yard open space.

The subject property is long and narrow with dimensions measuring 64.67 feet wide and a length of 282.97 feet and concaves inward (see attaché plot plan for visual reference), which makes it difficult for the owner to comply with current zoning requirements. Also, the owner/applicant has stated that there is a 15-foot embankment along the northwest boundary that contributes to the difficulty in the placement of the proposed single-family dwelling meeting with current setback requirements.

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 redesign the single-family dwelling to meet setback requirement which will require the owner to construct a smaller version of the single-family dwelling and would diminish the functionality of the proposed single-family dwelling and would deny the owners highest and best use of their property.

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.

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.

The encroachments are located in the front yard setback adjacent to the roadway. Therefore, it should not obstruct or prevent adequate air circulation and exposure to light 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 intents and purposes of the Zoning Code, Subdivision Code and the County General Plan.

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.

Therefore, the variance would be consistent with the general purpose of the zoning district and not be materially detrimental to the public's welfare or cause substantial adverse impact to the area's character or to adjoining properties.

Mr. Darcy Nobriga
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December 17, 2015

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITION

Based on the variance application's survey map, the single-family dwelling built on the subject property ("LOT 4) will not meet the minimum front 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. An ohana or farm dwelling shall not be approved for 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. 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.
- 5 This revised variance, Variance 15-000316 (Revised), supersedes original variance (Variance 15-000316) issued on December 4, 2015)

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-15-000316 (Revised).

Sincerely,



DUANE KANUHA
Planning Director

LHN/SG:nci

P:\Admin Permits Division\Variances From CoH02\Zone3\VAR15-000316RevisedMK3-6-005-036Nobriga.doc.rtf

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

Mr. Darcy Nobriga
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December 17, 2015

DAVID Y. IGE
GOVERNOR OF HAWAII

2015 NOV 6 PM 2 00

PLANNING DEPARTMENT
COUNTY OF HAWAII



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

MEMORANDUM

DATE: November 4, 2015

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

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

SUBJECT: **Application: Variance – VAR-15-000316**
Applicant: DARCY NOBRIGA
Owner: DARCY NOBRIGA
**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 Front (Northeast) Yard
Setback.**
Tax Map Key: 3-6-005-036

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

101904

Mr. Darcy Nobriga
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December 17, 2015

Darcy Nobriga
PO BOX 103
Laupahoehoe, HI 96764
(808) 936-5371

2015 DEC 8 PM 2 49

PLANNING DEPARTMENT
COUNTY OF HAWAII

December 8, 2015

Duane Kanuha, Director
C/O Larry Nakayama
County of Hawaii
Planning Department
101 Pauahi Street, Suite 3
Hilo, HI 96720

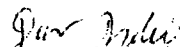
RE: Variance- VAR-15-000316 Amendment to setback footage

I was in receipt of the approval for the variance request to my property situated at 36-2679 Hawaii Belt Road in Waipunalei, Hawaii on December 8, 2015. Thank you for granting this approval. Upon review of the approval, I noticed that it was for only a 17 foot setback. In order for the home to fit on the property, I am requesting an amendment for the setback to be 14 feet instead of the 17 feet granted. On the site plan, it showed 14 feet to the overhang of the home, however, it should be 14 feet to the outside wall of the home.

I am requesting an amendment to the setback from 17 feet to 14 feet to ensure that the home is situated properly on this lot and the encroachment is 6 feet into the 20 foot northeast yard setback. Your granting of this amendment would be greatly appreciated to get our burned down home rebuilt.

If you have any questions, please feel free to contact me at 808-936-5371 or by email at heartofpalmhawaii@live.com.

Sincerely,

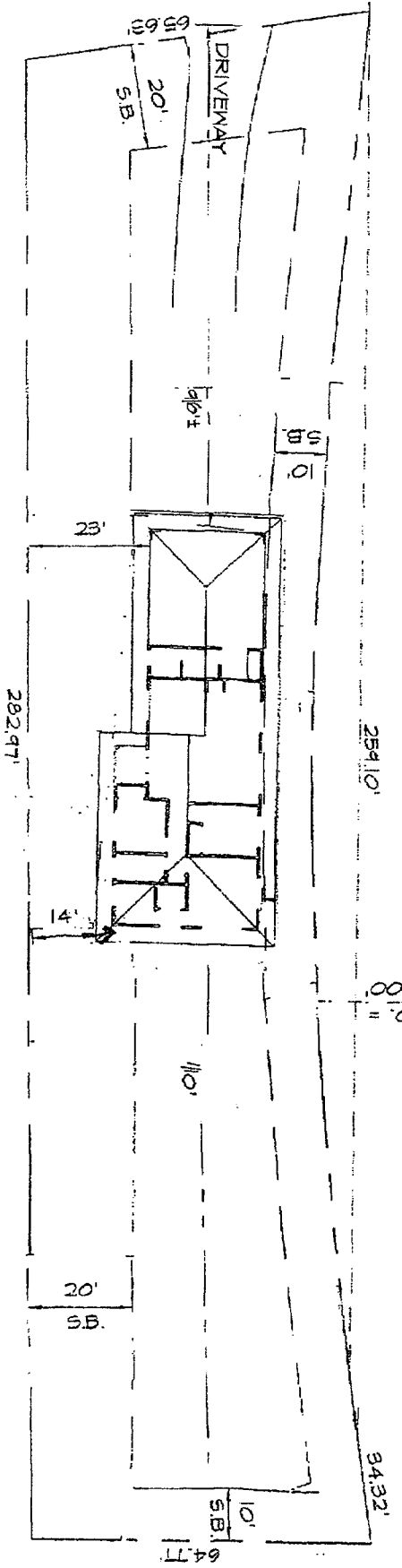

Darcy Nobriga, Owner

102437

2015 DEC 11 pm 4 11

PLANNING DEPARTMENT
COUNTY OF HAWAII

NOTE: COUNTY WATER



GENERAL NOTES

1) SHALL BE THE RESPONSIBILITY OF THE GENERAL CONTRACTOR TO CONSTRUCT THIS STRUCTURE WITH STRICT ACCORDANCE TO THE PLANS AND THE RULES AND REGULATIONS OF THE UNIFORM BUILDING CODE AS AMENDED BY THE COUNTY OF HAWAII.
THE CONTRACTOR SHALL INSPECT PLANS AND SPECIFICATIONS AND DETAIL BEFORE STARTING CONSTRUCTION. ANY DISCREPANCIES OR OMISSIONS TO THE ARCHITECT'S ATTENTION BEFORE STARTING CONSTRUCTION SHALL BE BROUGHT TO THE ARCHITECT'S ATTENTION BEFORE STARTING JOB.

OWNER RESPONSIBILITY

THE OWNER IS RESPONSIBLE FOR VERIFYING ALL LOT DIMENSIONS AND AREAS, SETBACKS, EASEMENTS, RIGHTS AND OTHER PLANNING AND ZONING ISSUES - NEARBY PROPERTIES OF THE DISTRICT. THE OWNER SHALL BE RESPONSIBLE FOR ALL EXTRA COST DUE TO CHANGES MADE BY THE COUNTY BUILDING DEPT. AFTER THE PLANS HAVE BEEN PERMITTED, AND FOR CONFORMING TO ALL SUBDIVISION COVENANTS, CODES & RESTRICTIONS.
BY APPLYING FOR A BUILDING PERMIT, THE OWNER AGREES THAT HE HAS REVIEWED THESE PLANS AND UNDERSTANDS THE REQUIREMENTS AND STANDARDS REGARDING TO THE REQUIREMENTS.

Residential Data Codes

FLOOR LOAD	40 psf
ROOF LIVE LOAD	16 psf
BASIC WIND SPEED	10 mph
MINIMUM WIND SPEED	40 mph
MULTIPLY WIND CATEGORY	B
MULTIPLY WIND CATEGORY (e.g. 9012.1.4)	B
HIGH WIND DESIGN CATEGORY (e.g. 9012.1.1)	B
SEISMIC DESIGN CATEGORY (e.g. 9012.2)	B
SEISMIC DESIGN CATEGORY PROVISIONS (where applicable ref. 9012.2)	B

SITE PLAN

SCALE: 1"=20'
TMK: (3) 3-6-005:036
LOC: LAUPAHOEHOE
OWNER: DARCY NOBRIGA

DRAWN BY: Aimee	DATE: NOV 2015	CONTENTS: SITE PLAN	REVISIONS
Cole Custom Drafting			DESCRIPTION DATE
T-1			

Revised site plan
Attn: Larry