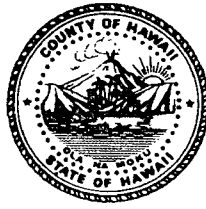


William P. Kenoi
Mayor



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

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101 Pauahi Street, Suite 3
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Phone (808) 961-8288
Fax (808) 961-8742

December 14, 2015

Mr. Jeff Citron
Diversified Land Management
75-5608 Hienaloli, #32
Kailua-Kona, Hawai'i 96745

Dear Mr. Citron:

SUBJECT: Application: Variance - VAR-15-000322
Applicant: JEFF CITRON/DIVERSIFIED LAND MANAGEMENT
Owner: DIAHANN HAFER
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7 Minimum Yards Requirements
(Encroachment into the North Side Yard Setback)
Tax Map Key: 6-8-008:027; Lot 296

The Planning Director certifies the **approval** of Variance 15-000322, subject to conditions. The variance will allow portions of the single-family dwelling to remain on Lot 296, with a minimum 9.32-foot to a minimum 9.76-foot side (north) yard setback. These exceptions are in lieu of the required 10-foot side yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards requirements.

The variance request also referenced an encroachment of a rock wall into the County of Hawaii right-of-way. The rock wall is excluded from this variance approval as separate action is required by the Waikoloa Village Home Owners Association.

BACKGROUND AND FINDINGS

1. **Location.** The subject property consists of approximately 10,678 square feet of land, is located within the Waikoloa Village Subdivision, situated at Waikoloa, South Kohala, Hawai'i. The subject property's street address is 68-3723 Lua-Hoana Place.
2. **County Zoning.** Single-Family Residential – 10,000 sq. ft. (RS-10).
3. **State Land Use.** Urban.
4. **Setback Requirements.** 20 feet front yards, 10 feet for side yards.

5. **Variance Application-Site Plan.** The applicant, Jeff Citron (Diversified Land Management), submitted the variance application, attachments, filing fee, and associated materials on October 22, 2015. The variance application's site plan map is drawn to scale and was prepared by Thomas G. Pattison, L.P.L.S., (Pattison Land Surveying, Inc.), and denotes the existing single-family dwelling encroaching into the side (north) yard setback. The applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling into the 10-foot side (north) yard setback as required by the Zoning Code.

The survey map prepared by Thomas G. Pattison, L.P.L.S., (Pattison Land Surveying, Inc.), shows that portions of the single-family dwelling encroaches 0.29 feet to 2.17 feet into the 10-foot side (north) yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (802504) was issued on October 9, 1980 to the subject property for the construction of a single-family dwelling consisting of 2 bedrooms, 2 bath, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
- a. The State Department of Health (DOH) memorandum dated November 6, 2015. (See attached)
 - b. No comments received from the Department of Public Works Department – Building Division (Kona).
8. **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 notices were mailed on October 16, 2015, and the second notices were mailed on November 2, 2015. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 25, 2015.
9. **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 encroachments of the single-family dwelling into the 10-foot side yard setback as required by the Zoning Code.

The survey map prepared by Thomas G. Pattison, L.P.L.S., (Pattison Land Surveying, Inc.), shows that portions of the single-family dwelling encroaches 0.29 feet to 2.17 feet into the 10-foot side (north) yard setback.

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 single-family dwelling constructed in 1981, nearly 35 years ago, was 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.

Therefore, based on the above-mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of sustainable 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 (north) yard setback 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. This alternative would be deemed unreasonable, especially when the current owners were under the impression that the single-family dwelling was in compliance with all County requirements. Also, any structural or design correction to the single-family dwelling to meet setback requirement would leave unattractive reconstruction scar.

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 setback and open space are not viable options; therefore, there are no reasonable alternative 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'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 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 encroachments are rather miniscule; therefore, there should not have any measurable detrimental impact on air circulation and lighting between boundaries and structures.

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

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 has been in existence for approximately 35 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.

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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

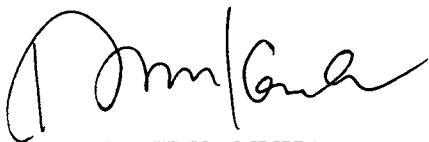
Based on the variance application's survey map, the single-family dwelling built upon the subject property ("LOT 296") does not meet the minimum front yard setback and front yard open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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 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 Zoning Code or State law, which may change from time to time.
4. This variance does not apply to the encroachment issues regarding the concrete rock masonry (CRM) wall which shall be addressed by the property owners affected by the CRM wall encroachments.
5. Should the single-family dwelling 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 subject to provisions of the Zoning Code or State law which may change from time to time.
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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 15-000322 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

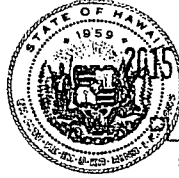
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Jeff Citron
Diversified Land Management
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December 14, 2015

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

DAVID Y. IGE
GOVERNOR OF HAWAII

VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH



2015 NOV 17 PM 3 13

PLANNING DEPARTMENT
COUNTY OF HAWAII

**STATE OF HAWAII
DEPARTMENT OF HEALTH**

P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: November 6, 2015

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

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

SUBJECT: **Application: Variance – VAR-15-000322**
Applicant: JEFF CITRON/DIVERSIFIED LAND MANAGEMENT
Owner: DIAHANN HAFER
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
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The Health Department found no environmental health concerns with regulatory implications in the submittals.

WORD: VAR-15-000322.eh

