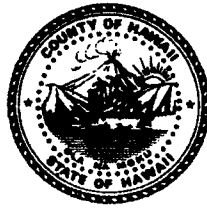


William P. Kenoi
Mayor



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County of Hawai'i
PLANNING DEPARTMENT

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January 5, 2016

Cindy Griffey, Realtor
75,346 Hualalai Road, A-302
Kailua-Kona, HI 96740

Dear Ms. Griffey:

SUBJECT: Application: Variance – VAR-15-000327
Applicant: CINDY GRIFFEY, REALTOR
Owner: NORMAN HALE
Request: Variance from Chapter 25, Zoning, Article 5 Division 1, Section 25-5-7 Minimum Yards and Article 4, Division 4, Section 25-4-44(a) Permitted Projections into Yards and Open Space Requirements (Encroachment into the Northeast and Northwest Side Yard Setback and Open Space)
Tax Map Key: 7-6-022:047, Lot 121

The Planning Director certifies the **approval** of Variance No. 15-000327, subject to variance conditions. The variance will allow portion of the pool shed to remain with a minimum 9.34-foot side (northeast) yard setback, in lieu of the required 10-foot side yard setback. It will also allow for the roof eaves of the open carport to remain with a 4.3-foot side (northwest) yard open space and a 4.50-foot side (northeast) side yard open space in lieu of the required 5-foot side yard open space. 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 25-5-7, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of approximately 15,002 square feet of land, is located in the Komohana Kai Subdivision, situated at Holualoa 1st and 2nd, North Kona, Hawai'i. The subject property's street address is 75-6331 Kahieau Street.
2. **Zoning.** Single-Family Residential – 15,000 sq. ft. (RS-15).
3. **State Land Use.** Urban

4. **Required Setback.** 20-feet 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-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on November 6, 2015, and other submittals related to the variance request and variance application. The variance application's site plan, drawn to scale and prepared by Thomas G. Pattison, LPLS, (Pattison Land Surveying, Inc.), denotes the portions of the pool shed encroaching into the side (northeast) yard setback and the roof eave of the open carport into the side (northeast and northwest) yard open space.

The survey map shows that the portion of the pool shed encroaches 7.92 inches (0.76 feet) into the 10-ft. side (northeast) yard setback and the roof eaves of the pool shed encroaches 8.4 inches (0.70 feet) into the 5-foot side (northwest) yard open space and 6 inches (0.50 feet) into the 5-foot side (northeast) yard open space.

The encroachment of the pool shed leaves a minimum 9.34-foot side (northeast) yard setback in lieu of the required 10-foot front yard setback requirement. It also leaves roof eave of the open carport with a 4.30 feet into the side (northwest) yard open space and a 4.50-foot side (northeast) side yard open space, in lieu of the required 5-foot front open space requirement.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (B885458) was issued on May 20, 1988, for the construction of a 4-bedroom and 3-bath, single-family dwelling. Additional permit (B995356) was issued on April 6, 1999 for an open carport and pool bathroom.

7. **Agency Comments and Requirements.**

- a. The State Department of Health (DOH) memorandum, dated December 17, 2015.
(See attached memorandum)

- b. No comments received from the Hawaii County Public Works Department - Building Division.

8. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notice mailed to surrounding property owners (including affidavits) by USPS. According to these submittals, the first and second notices were mailed on November 4, 2015 and November 25, 2015, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on December 4, 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.

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 survey map shows that the portion of the pool shed encroaches 7.92 inches (0.66 feet) into the 10-ft. side (northeast) yard setback and the roof eaves of the open encroaches 8.4 inches (0.70 feet) into the 5-foot side (northwest) yard open space and 6 inches (0.50 feet) into the 5-foot side (northeast) yard open space.

The encroachment of the pool shed leaves a minimum 9.34-foot side (northeast) yard setback in lieu of the required 10-foot front yard setback requirement. It also leaves the roof eave of the open carport with a 4.30 feet into the side (northwest) yard open space and a 4.50-foot side (northeast) side yard open space, in lieu of the required 5-foot side open space requirement.

No evidence has been found to allow indifference or premeditation by the owners or builders to deliberately create or intentionally allow the open lanai encroachment problem to occur.

It appears that the open carport and pool shed constructed nearly 16 years ago were constructed under valid building permits and other construction permits issued by the County. Also, it appears that past building permit inspections of the premises by the agencies during construction of the single-family dwelling 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 property.

(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 open lanai encroachment constructed into the affected front yard open space of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the enclosed garage and porch/lanai 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 open lanai was in compliance with all County requirements. Also, any structural or design correction to the open lanai to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachments are 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 setbacks are not viable options; therefore, 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'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 encroachment of the enclosed garage, resulting with a minimum of 12.6-foot front yard setback to a minimum 13.8-foot front yard setback, still allows for adequate air circulation.

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. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding 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 Property Owners.

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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the open lanai built upon the subject property

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(LOT 121) will not meet the minimum side yard setback and 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. Should the open carport and pool shed 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 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.
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 occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-15-000327 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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xc: Planning Department-Kona
Real Property Tax Division-Kona
Gilbert Bailado, GIS (via email)