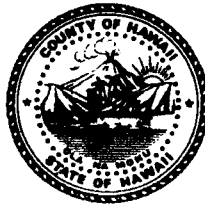


William P. Kenoi
Mayor



Duane Kanuha
Director

Joaquin Gamiao-Kunkel
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

October 24, 2016

Roger D. Fleenor, LPLS
P.O. Box 383414
Waikoloa, HI 96738

Dear Mr. Fleenor:

SUBJECT: Application: Variance - VAR 16-000377
Applicant: ROGER D. FLEENOR, LPLS
Owners: CHRIS & MICHELLE SORENSEN
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7, Minimum Yards Requirements
(Encroachment into Northwest Rear Yard Setback)
Tax Map Key: 6-2-010:027; Lot 17

The Planning Director certifies the **approval** of Variance 16-000377, subject to conditions. The variance will allow portion of the single-family dwelling to remain on Lot 17, with a minimum 19.3-foot side (northwest) yard setback to a minimum 19.7-foot rear yard setback, in lieu of the minimum required 20-foot rear yard setback. These exceptions are in lieu of the required 20-foot rear yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards requirement.

BACKGROUND AND FINDINGS

1. **Location.** The subject property consists of approximately 16,494 square feet of land and is located within the South Kohala View Estates, situated at Ouli, South Kohala, Hawai'i. The subject property's street address is 62-2078 Ileina Place.
2. **County Zoning.** Single-Family Residential – 15,000 sq. ft. (RS-15).
3. **State Land Use.** Urban.
4. **Setback Requirements.** 20-foot front and rear and 10-feet for sides.
5. **Variance Application-Site Plan.** The applicant, Roger D. Fleenor, submitted the variance application, attachments, filing fee, and associated materials on June 17, 2016. The variance

application's site plan map is drawn to scale and was prepared by Roger D. Fleenor, L.P.L.S., and denotes the single-family dwelling encroaching into the rear (northwest) yard setback. (See Exhibit A)

The site plan prepared by Roger Fleenor, L.P.L.S. shows that portion of the single-family dwelling encroaches 0.30 feet to 0.70 feet into the 20-foot rear (northwest) yard setback.

The encroachment leaves the single-family dwelling with a minimum 19.3-foot rear (northwest) yard setback to a minimum 19.7-foot rear yard setback, in lieu of the required 20-foot rear yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (916123) was issued on September 3, 1991, to the subject property for the construction of a single-family dwelling consisting of 3 bedrooms, 2 baths, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
 - A. State Department of Health (DOH) memorandum dated July 21, 2016. "The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - B. No comments were received from the Department of 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 U.S.P.S. According to these submittals, the first notices were mailed on June 15, 2016, and the second notices were mailed on September 14, 2016. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 4, 2016.
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.
10. **Time Extension.** The applicant's variance application was acknowledged by letter dated June 17, 2016 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 October 24, 2016.

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 encroachment of the attached garage into the 10-foot front yard setback as required by the Zoning Code.

The site plan prepared by Roger Fleenor, L.P.L.S., shows that portion of the single-family dwelling encroaches 0.30 feet to 0.70 feet into the 20-foot rear (northwest) yard setback.

The encroachment leaves the single-family dwelling with a minimum 19.3-foot rear (northwest) yard setback to a minimum 19.7-foot rear (northwest) yard setback, in lieu of the required 20-foot rear 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 original dwelling improvements constructed nearly 24 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. Further, due to the approximate 0.30-foot to and 0.70 foot-encroachments into the rear (northwest) yard setback, it appears that these were staking errors and not intentional.

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 front yard setback of the subject property include the following actions:

Redesign or relocate the "as-built stable" upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. Any structural or design corrections of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

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

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October 24, 2016

Because the encroachment is within the rear yard setback, to consolidate the subject property with the adjacent rear property which is owned by someone else and to re-subdivide the property to modify property lines and adjust minimum rear yard setbacks are not viable options; 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'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.

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 encroachment of 0.30 feet to 0.70 feet into the rear (northwest) yard setback area is miniscule and granting of the setback variance still allows for adequate air circulation.

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 24 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.

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 "as built" stable built upon the subject property ("LOT 17") does not meet the minimum rear yard setback requirement pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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

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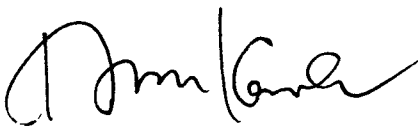
October 24, 2016

This variance request is **approved** subject to the following conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with stated conditions of approval.
2. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
3. 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.
4. An Ohana or farm dwelling shall not be approved for the subject property, subject to the provisions of the Hawai'i County Code, Chapter 25, (Zoning) or state law, which may change from time to time.
5. 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.
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 16-000377 null and void.

Sincerely,

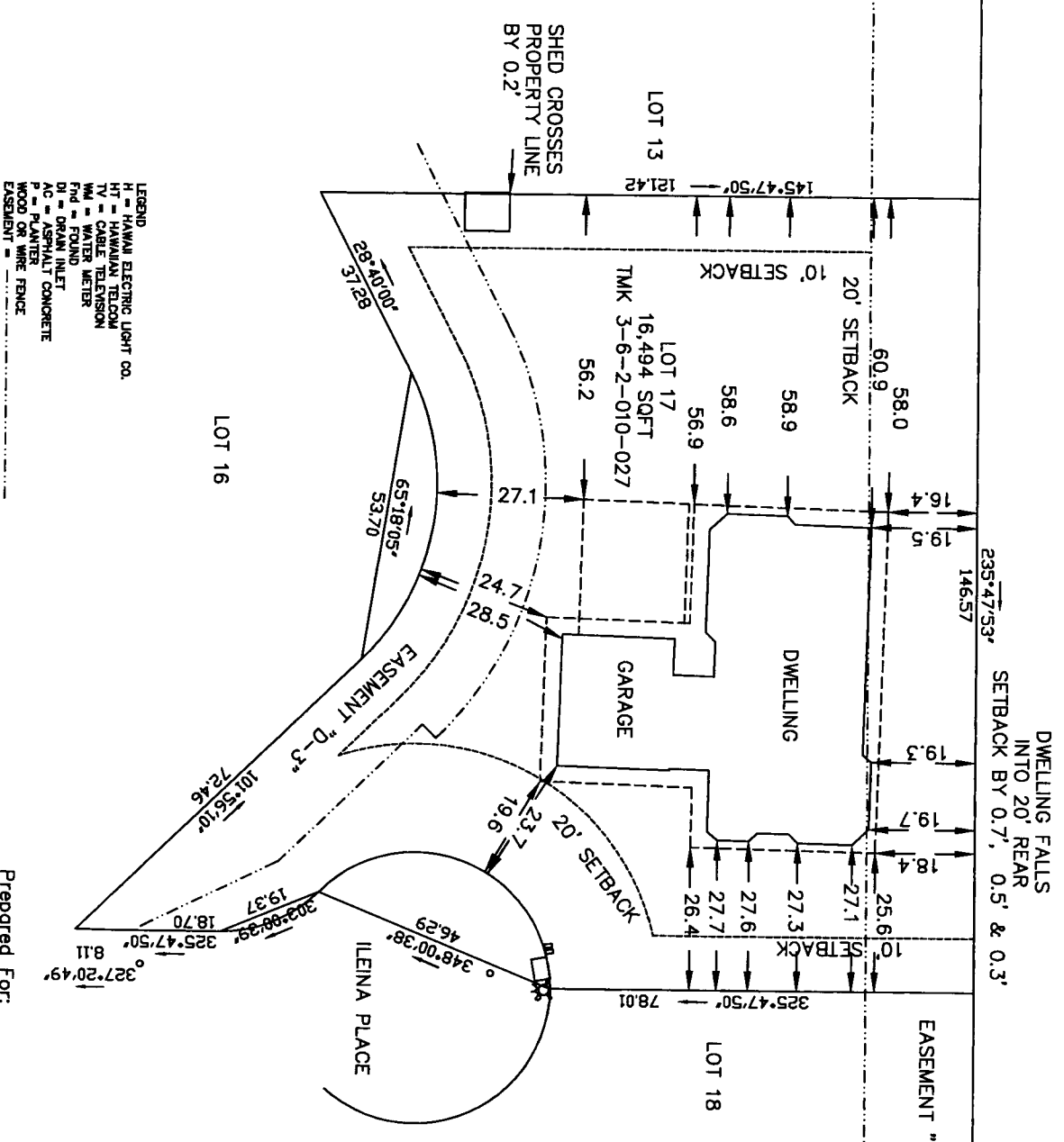


DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone6\VAR16-000377TMK 6-2-010-027 Sorensen.doc.rtf

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



- LEGEND**
- H - HAWAII ELECTRIC LIGHT CO.
 - HT - HAWAIIAN TELCOM
 - TV - CABLE TELEVISION
 - WM - WATER METER
 - FM - FOUND
 - DI - DRAIN INLET
 - AC - ASPHALT CONCRETE
 - PL - PLANTER
 - MO - MOUND
 - WF - WIRE FENCE
 - EA - EASEMENT

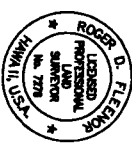
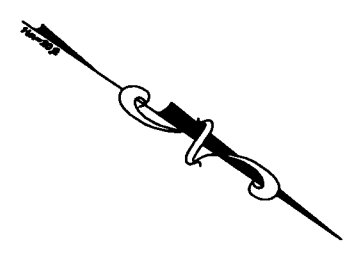
NOTES :
 Azimuths and coordinates are referred to government Survey Triangulation Station "PUU PA".
 Elevations if any are referred to Assumed Datum.
 Features shown here on represent conditions existing on May 2, 2016.

Prepared For:
 Michelle Sorensen
 James Roger Murray
 Eye-Lynne Murray
 62-2078 Iliena Place
 PO Box 335
 Kamuela, HI 96743

K-2 SURVEY MAP OF LOT 17
 SOUTH KOHALA VIEW ESTATES
 BEING PORTIONS OF R.P. 2237, L.C. AW. 8518-B
 APANA 1 TO JAMES YOUNG KANEHOA
 AND R.P. 4943, L.C. AW. 4199 TO KAIKAI
 AT OULI, SOUTH KOHALA
 ISLAND AND COUNTY OF HAWAII
 STATE OF HAWAII
 T.M.K. (3 Div.) 6-2-010-027

EXHIBIT

A



THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION:
Roger D. Fleener
 ROGER D. FLEENER IS 7278, HAWAII
 My License Expires on April 30, 2018
 PO Box 383414
 Waikaloa, HI 96738

DATE	DESCRIPTION	T.M.K.	3-6-2-010-027