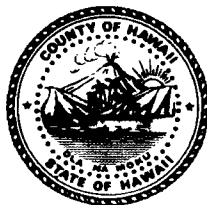


Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

County of Hawai'i

PLANNING DEPARTMENT

June 23, 2017

Austin Easley
75-684 Lalii Place
Kailua-Kona, HI 96740

Dear Mr. Easley:

SUBJECT: Application: Variance - VAR 17-000423
Applicant: AUSTIN EASLEY
Owner: AUSTIN AND YANEE EASLEY
Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards, Section 25-4-44, Permitted Projections into Yards and Open Space Requirements and Section 25-4-44 (c) Fences and Accessory Structures (Encroachment into Southeast Front Yard Setback and South Side Yard Setback)

Tax Map Key: 7-5-043:074; Lot 93

After reviewing your variance application, the Planning Director certifies the **approval** of Variance 17-000423, subject to conditions. The variance allows for the existing wooden privacy fence along the entire side (south) boundary and approximately 8 feet along the front (southeast) boundary to remain with a height of six feet eight inches tall with a minimum six (6) inch side (south) yard and front (southeast) yard setback and associated side and front yard open space. This allowance is in lieu of the required minimum 15-foot front yard setback and 8-foot side yard setback and 10-foot front and 4-foot side yard open space requirement. The variance is from the subject property's minimum front and side yard setback requirement pursuant to the Hawaii County Code, 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 requirement and 25-4-44(c) Fences and Accessory structures.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 7,084 square feet and is situated

within the Pu‘ulani Subdivision, Kailua-Kona, North Kona, Hawai‘i. The subject property’s street address is 75-684 Lailii Street.

2. **County Zoning.** Single-Family Residential – 7,500 sq. ft. (RS-7.5).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 15-feet for front and rear; 8-feet for sides.
5. **Zoning Code Violation.** ZCV 2017-011W; Warning Letter issued on April 4, 2017.
6. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on April 12, 2017. The variance application’s site plan map was prepared by the owner/applicant. The site plan, undated, denotes the placement of the existing wooden privacy fence into the minimum 15-foot front and 8-foot side yard setback and into the 10-foot front and 4-foot side yard open space requirement. The request affects the southeast front and south side yard setback area. **(See Exhibit A)**
7. **County Building Records.** Hawai‘i County Real Property Tax Office records indicate that a building permit (#B2009-0884) was issued on November 6, 2009 for the subject property for a single-family dwelling consisting of 4 bedrooms, 2-1/2 baths, living room, kitchen, dining area and garage.
8. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated May 2, 2017: “The Health Department found no environmental health concerns with regulatory implications in the submittals.”
 - b. No comments received from Department of Public Works Building Division (Kona).
9. **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 May 2, 2017 and May 8, 2017, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 18, 2017.
10. **Comments from Surrounding Property Owners or Public.**
 - a. Support letter received from Michael Geary dated May 17, 2017. **(See Exhibit C)**
 - b. Support letter received from Jaedeem and Casey Kam on May 22, 2017. **(See Exhibit D)**

- c. Support letter received from Casandra Ann Macatiag dated May 16, 2017.
(See Exhibit E)

11. **Home Owners Association.** The Pualani Estates Home Owners Association, which has a similar 6' height fence limit, approved the 6'8" height for the privacy fence. In a letter dated January 25, 2017, the Design Review Committee stated: "*The DRC acknowledges and allows the continued existence of the non-conforming fence without penalties, fines or further administration or enforcement. This acknowledgement and waiver will not provide amnesty to the owner, with regards to county regulation(s). This DRC's waiver will allow for the non-compliant fence to be included in a future community "grandfathering" with other non-compliant fences and fence/wall combinations with the community.*" (See Exhibit B)
12. **Time Extension.** The applicant's variance application was acknowledged by letter dated April 27, 2017 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 June 23, 2017.

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 submitted the variance application to allow for the existing wooden privacy fence along the entire south side boundary and approximately 8' along the southeast front boundary to remain with a height of 6'8" tall with a minimum 6" south side yard and southeast front yard setback and associated side and front yard open space.

The owner/applicant has stated that although most of the entire property is fenced, only the fence along the south side boundary and approximately 8' along the southeast front boundary is built to a height of 6'8". The remainder of the fence along the west, north and northeast side boundaries are built to a height of 6'. According to the owner, that portion of the fence was built higher to provide privacy from the adjoining parcels. Due to the difference in elevation. The adjoining neighbors are able to see from their kitchen and living room directly into the subject property's yard.

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

The Hawai'i County Code, Chapter 25, Zoning, Section 25-4-43, Fences and accessory structures, (c) states: *Any accessory structure, including fence, or wall over six feet in height, architectural feature or water tank, which is not connected to a building, may not extend into any required front, side or rear yard, but may be located next to any building without any open space requirement.*

Requiring the owner to meet this setback requirement of 8' would greatly diminish the overall functionality of the 7,084 square foot subject property and would remove a large portion of the property, approximately 838 sq. ft. of land area, from being usable.

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 fencing encroachments to be constructed into the affected side yard of the subject property include the following actions:

A no action alternative or denial of this variance would require the owner to remove 8" off the top of the privacy fence. Any structural or design correction of the wooden privacy fence to meet setback requirement would leave unattractive reconstruction scars and diminish the overall functionality of the privacy fence. One neighbor stated in their support letter that the fence is appealing, of high quality and does not distract for the visual appeal of the Pualani Estates neighborhood, nor the appraisal values of the neighborhood. Another neighbor wrote that the fence is attractive and to remove 8" off the top of the fence into the lattice wood, would make the fence unattractive.

Another alternative if the owner wishes to maintain the height for privacy purposes is to relocate the privacy fence 8'6" from the side boundary line which would render a large portion of the property, approximately 838 sq. ft. of land area, from being usable.

Therefore, the most viable alternative is to allow for the wooden privacy fence to remain as at its present height.

It should be noted that the Pualani Estates Home Owners Association, which has a similar 6-foot height requirement for fences, approved the 6-foot 8 inch height for the privacy fence.

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 existing wooden privacy fence situated along the south side boundary line and approximately 8' along the southeast front yard will not have a visual impact on surrounding properties.

As mentioned earlier, there were three letters in support of the variance and no objections to the variance were received. The support letters are from property owners residing in the Pualani Subdivision and are all located within 100 feet of the subject property.

This determination is being made based on the site plan and information provided by the owner/applicant. Therefore, based on the foregoing findings, the approval of this application 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 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 site plan, the existing wooden privacy fence constructed on the subject property ("LOT 93") will not meet the minimum front and side yard setback requirement pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), according to the variance application's survey map.

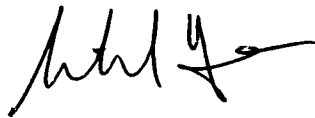
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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. No permit shall be granted to allow an ohana dwelling 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.

Austin Easley
Page 6
June 23, 2017

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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-17-000423.

Sincerely,



MICHAEL YEE
Planning Director

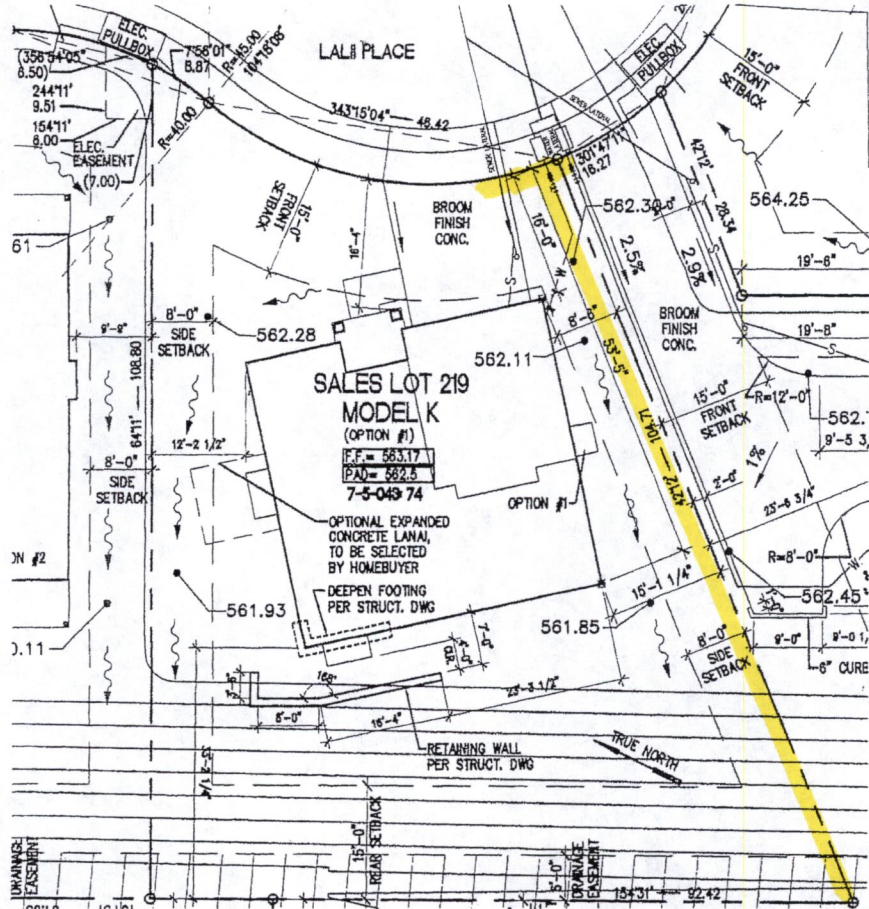
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P:\Admin Permits Division\Variances From CoH02\Zone7\VAR17-000423TMK7-5-043-074 Easley.doc.rtf

cc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS (via email)
Kona Planning Department
Horace Yanagi, Zoning Inspector (Kona)

EXHIBIT

A



RECEIVED KONA

This set of approved plans and specifications shall be kept on job site at all times during construction.

Date 9/1/07

SCALE: 1/16" = 1'-0"

LEGEND:

	GATE VALVE
	PRESSURE REDUCING VALVE
	TEE (FUTURE IRRIGATION)
	DRAINAGE DIRECTION
	SEWER CLEAN OUT
	WATER LINE 1" PVC
	ELEC. METER/TEL. CATV
	LIGHT POST
	LATERAL/HANDHOLE
	FIRE HYDRANT

- NOTES:**
- BUILDER SHALL ASSURE PROPER SETBACKS OF STRUCTURES TO PROPERTY LINES.
 - PERMITS REQD. FROM THE ENGINEERING DIV. OF THE DEPT. OF PUBLIC WORKS:
 - GRADING PERMIT: IN ACCORDANCE W/ CHAPTER 10, HAWAII COUNTY CODE, AS AMENDED. A PERMIT MAY BE REQD. FOR LOT GRADING (EXCAVATION AND/OR FILL) WORK BEYOND THE BLDG. LINES.
 - DRIVEWAY PERMIT: IN ACCORDANCE W/ CHAPTER 22, HAWAII COUNTY CODE, AS AMENDED. A PERMIT SHALL BE OBTAINED FOR DRIVEWAY CONSTRUCTION WORK W/IN THE COUNTY RIGHT-OF-WAY.
 - DRAINAGE: NO BLDGS. SHALL BE CONSTRUCTED W/IN OR OVER A NATURAL OR MAN-MADE DRAINAGE COURSE.
 - THESE DRAWINGS ARE THE PROPERTY OF THE ARCHITECT AND SHALL NOT BE USED WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT FOR ANY OTHER PROJECT OTHER THAN THE ONE INDICATED HEREON.

DISCLAIMER:

- SITE PLAN MAY VARY FROM ACTUAL CONSTRUCTION ON SITE. DR. HORTON - SCHULER DIVISION RESERVES THE RIGHT TO MODIFY THE SITE PLAN AT ITS SOLE DISCRETION.
- ACTUAL SITE CONDITIONS MAY BE DIFFERENT THAN WHAT IS SHOWN ON THE PLOT PLAN. DRAINAGE ON THE LOT MAY NEED TO BE IMPROVED BY THE HOMEOWNER. IT IS THE RESPONSIBILITY OF THE HOMEOWNER TO FOLLOW THE LOCAL BUILDING CODE, IN REGARDS TO DRAINAGE.

THIS PLOT PLAN IS FURNISHED FOR INFORMATION PURPOSES ONLY AND NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, ARE BEING MADE AS TO THE ACCURACY OF THE INFORMATION PROVIDED OR THE LOCATION OF THE IMPROVEMENTS SHOWN.

HOMEBUYER _____ DATE _____

HOMEBUYER _____ DATE _____

APPROVED [Signature]
 DR. HORTON - SCHULER DIVISION CHIEF



THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION. CONSTRUCTION OF THIS PROJECT WILL BE UNDER MY OBSERVATION.

PUALANI ESTATES PHASE II

NORTH KONA, BIG ISLAND OF HAWAII

REVISION:

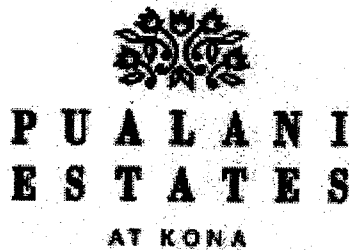
DATE: JUNE 26, 2007
 LOT AREA: 7,084 S.F.

LOT NO.: 219
 MODEL: K
 SHEET: PP-219

THESE DRAWINGS AND ACCOMPANYING SPECIFICATIONS ARE THE EXCLUSIVE PROPERTY OF D.R. HORTON - SCHULER DIVISION AND THEIR USE AND PUBLICATION SHALL BE RESTRICTED. REUSE, REPRODUCTION OR PUBLICATION BY ANY METHOD, IN WHOLE, OR IN PART, IS PROHIBITED EXCEPT BY WRITTEN PERMISSION FROM D.R. HORTON - SCHULER DIVISION. TITLE TO THESE PLANS AND SPECIFICATIONS SHALL REMAIN WITH D.R. HORTON - SCHULER DIVISION. VISUAL CONTACT WITH THEM SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF ACCEPTANCE OF THESE CONDITIONS.

2017 JUN 26 AM 8 26

PLANNING DEPARTMENT
 COUNTY OF HAWAII


PUALANI
ESTATES
AT KONA

* proof of waiver for fence *
from DRC/HOA

January 25, 2017

Austin and Yanee Easley
75-6844 Lalii Pl.
Kailua-Kona, HI 96740

email and USPS

Re: #219 DRC Resolution with Waiver

Dear Austin and Yanee,

Today the DRC met with the Board of Directors. Please be advised the Design Review Committee has reached a resolution with regards to the non-conforming fence violation.

The following is a DRC resolution with waiver for lot #219.

The DRC acknowledges and allows the continued existence of the non-conforming fence without penalties, fines or further administration or enforcement. This acknowledgment and waiver will not provide amnesty to the owner, with regards to county regulation(s). This DRC's waiver will allow for the non-compliant fence to be included in a future community 'grandfathering' with other non-compliant fences and fence/wall combinations within the community.

This waiver by the Design Review Committee does not mean the Association shall be responsible for any liability that may arise with regard to this acknowledgement and waiver.

The Design Review Committee would like to thank you for your patience.

Sincerely,
The Design Review Committee

Laurie Freeman
Laurie Freeman, Co-Chair

cc: Board of Directors President, Pualani Estates at Kona

EXHIBIT

B



Cassandra Macatiag <macatiagc@khsweverider.k12.hi.us>

Easley's Variance Application Notice

1 message

Cassandra Macatiag <macatiagc@khsweverider.k12.hi.us>
To: larrynakayama@hawaiicounty.gov

Tue, May 16, 2017 at 9:38 PM

As a member of the Pualani Estates Community as well as a resident of Lalii Place I am very much aware of the discontentment that has resulted from the rules related to fence height, type, etc of the homeowners association. My family and I live two doors down from the Easley family and have built a similar fence to theirs. While ours is only six feet, given the opportunity we would have built it taller. The set up of our homes does not allow for a great deal of privacy, for example due to our fence only being allowed to be six feet tall our neighbors can see straight into our bedroom and bathroom.

Due to this experience, I believe that the Easley's should be granted their variance on the basis of privacy. Their fence is appealing, of high quality and does not distract for the visual appeal of the Pualani Estates neighborhood nor the appraisal values of our neighborhood. If anything, the opportunity for privacy may increase home values, that are often times impacted by the proximity of homes in the development.

Please consider the Easley's application for fence variance on the basis on privacy.

Best,
Cassandra Macatiag
Cassandra Ann Macatiag (Milke)
75-688 Lalii Place

2017 MAY 22 5:01 PM
PLANNING DEPARTMENT
COUNTY OF HAWAII

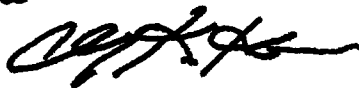
EXHIBIT
C

MAY 24 2017
111765

Hi, We are Jaedem and Casey Kam
Our address is 75-681 Lili Pl. Kailua Kona HI 96740
We live several houses down from Austin Eschey
please don't make him cut his fence.
It's a ~~rice~~ rice fence. If he has to cut
8in off the top of the fence and in to
the lattice wood it will make the fence
look ugly. We got a letter from him for
a variance. His address is 75-684 Lili pl.

KK HI 96740.

Mahalo



EXHIBIT

D

2017 MAY 22 PM 1:01
POLICE DEPARTMENT
KAILUA KONA HI 96740

MAY 23 2017
111737-

Aloha, my name is Michael Geary (Address : 75-687 Lalii Pl. Kailua-Kona Hi. 96740) I am writing to you in response to Austin Easley's "Variance Application Notice" I received in the mail. Austin Easley's property (The subject Property) is located at 75-684 Lalii Pl. Kailua-Kona Hi. 96740. I understand he is applying for a variance from the county on his fence. I also understand he has already received a variance for his fence from the DRC (Pualani Estates Homeowners Association) for "privacy" reasons. So I am hoping the County will see the "privacy" issue the same way the DRC saw it and also APPROVE his variance.

My house sits directly across the street at somewhat of an angle in a two story perfectly elevated angular seating that allows me to see directly into his yard. My balcony/living room area where I spend most of my time, is the area where I can see him and he can see me. Currently I can't see into his yard nearly as much as I could before, which is better for him as well as myself (If I can't see him he can't see me). So if Austin were to have to cut his fence I would be able to see in again and he would be able to see me again. I don't want this and neither does he so therefor it is IMPERATIVE that Austin is allowed to keep his fence AS IS. If you have any questions feel free to call me...#808-896-8713...Aloha....

Michael Geary
5/17/17

2017 MAY 19 PM 4 27
PLANNING DEPARTMENT
COUNTY OF HAWAII

EXHIBIT

E

MAY 22 2017

111710