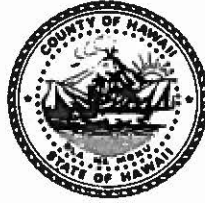


Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
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County of Hawai'i
PLANNING DEPARTMENT

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October 8, 2018

John L. Hetherington
73-4520 Aniani Street
Kailua-Kona, HI 96740

Dear Mr. Hetherington:

SUBJECT: Application: Variance - VAR 18-000491
Applicant: JOHN L. HETHERINGTON
Owners: LARRY L. FORSLUND
MAXIMA M. FORSLUND
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7, Minimum Yards Requirements
(Encroachment into Front (North) Yard setback)
Tax Map Key: (3) 7-5-040:068 Lot 68

The Planning Director certifies the **approval** of Variance No. 18-000491, subject to variance conditions. The variance will allow portions of the dwelling walls to remain with minimum 16.27-foot and 16.43-foot front (north) yard setbacks, in lieu of the required 20-foot front yard setback. These exceptions are in lieu of the required 20-foot front yard setback, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 68, contains approximately 0.746 acres and is situated within the "Kahakai" Subdivision", Kailua-Kona, North Kona, Hawai'i. The subject property's street address is 75-6186 Nakukui Drive, Kailua-Kona, HI 96740.
2. **County Zoning.** Single-Family Residential – 10,000 sq. ft. (RS-10).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20 feet front and 10 feet for sides.

5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on August 8, 2018. The variance application's survey map dated May 19, 2018 was prepared by Thomas G. Pattison, LPLS and denotes that portions of the dwelling walls are built into the front (north) yard setback. **(See Exhibit A-Site Plan)**

The survey map dated May 19, 2018 shows sections of the dwelling walls encroaching 3.73-foot and 3.57-foot with a minimum 16.27-foot and 16.43-foot (north) front yard setbacks, in lieu of the required 20 foot front yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax (RPT) Office records indicate that a building permit (#035258) was issued on February 28, 2003 for a single-family dwelling consisting of 3 bedroom, 2 bath, dwelling with covered patio, entry dining, living, family room, kitchen, utility and garage. In addition, RPT Office records indicate that building permit (#B2006-0079K) was issued on January 19, 2006 for a new swimming pool, pool vault and pool deck.

7. **Agency Comments and Requirements.**

- a. State Department of Health (DOH) email dated September 25, 2018. "The Health Department does not have any comment regarding the Forslund Variance request".
- b. Department of Public Works (DPW) Building Division memorandum dated September 13, 2018:
"At the time of completion, the subject complied with all building regulations that were in effect. This status report reflects Building Division records only and does not include information from other agencies".

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 September 1, 2018 and September 19, 2018, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 29, 2018.

9. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.

GROUND 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 dwelling walls into the 20-foot front (north) yard setbacks as required by the Zoning Code.

The survey map dated May 19, 2018 shows sections of the dwelling walls encroaching 3.73-foot and 3.57-foot with a minimum 16.27-foot and 16.43-foot (north) front yard setbacks, in lieu of the required 20 foot front yard setback.

The encroachment leaves a minimum 16.27-foot and 16.43-foot (north) front yard setbacks, in lieu of the required 20 foot front 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 in 2003, approximately 15 years ago, and subsequent construction permits were issued by the County for the existing single-family dwelling and swimming pool and closed under valid building permit inspections. It also appears that past building permit inspections of the premises by the affected agencies during construction of the dwelling improvements 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 best use and 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:

Remove the building encroachments and/or redesign the dwelling denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the single-family dwelling was in compliance with all County requirements. Any structural or design correction of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

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.

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 dwelling has been in existence for approximately 15 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

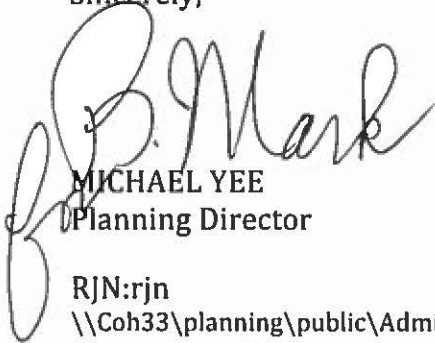
Based on the variance application's survey map, the single-family dwelling built on the subject property ("LOT 68") will not meet the minimum front yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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 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 dwelling walls 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.
4. An Ohana Dwelling permit 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. 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-16-000466.

Sincerely,



MICHAEL YEE
Planning Director

RJN:rjn

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John L. Hetherington
VAR 18-000491
October 8, 2018
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xc: Natalie Whitworth, DPW Engineering Division
Real Property Tax Office (Kona)
Gilbert Bailado, GIS

Larry L. Forslund
Maxima M. Forslund
75-6186 Nakukui Drive
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