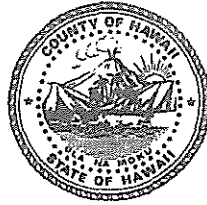


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

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

July 14, 2009

Ms. Linda Morabito
LINDA MORABITO TRUST
73-1387 Ili Ili Place
Kailua-Kona, HI 96740

Dear Ms. Morabito:

SUBJECT: VARICANCE APPLICATION – VAR-07-062
Applicant: LINDA MORABITO
Owners: LINDA MORABITO TRUST
Request: Variance from Chapter 25, zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards, (a), Section 25-5-77 Other regulations, and Article 4, Division 4 Section 25-4-44, Permitted projections into yards and open space requirements
TMK: 7-3-029:042; Lot 1-A

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 07-062 (VAR07-062) subject to variance conditions. The variance to permit a proposed 1-story garage to be constructed on Lot 1-A with a minimum 5.00 feet side yards and attendant minimum 3.00 feet side yard open spaces in lieu of minimum 10.00 feet side yards and attendant minimum 5.00 yards, respectively required from the property's north and east boundary lines according to the site plan map dated June 14, 2007 and other drawings submitted with the variance application. The variance is from the subject property's minimum side yard and attendant minimum side yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77 Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

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BACKGROUND AND FINDINGS

1. Location. The subject property, consisting of approximately 21,782 square feet of land, is situated within the Hualālai Terrace Subdivision, Kalaoa 5th North Kona, Hawai'i. The subject property's street address is 73-1387 'Ili 'Ili Place. The subject property is zoned Single Family Residential – 20,000 Square Feet (RS-20) by the County and designated Urban or U" by the State Land Use Commission (LUC).
2. Variance Application-Site Plan. The owner submitted the variance application, attachments, and filing fee on August 27, 2007 and other submittals related to the variance request and variance application. The variance application's site plan map is drawn to scale and denotes that portions of the proposed garage to be constructed into the minimum 10 feet side yard setback and minimum 5-foot wide side yard open space.
3. County Building Records:
 - a. Hawai'i County Real Property Tax Office records indicate that a building permit (025487) was issued to the subject property for the construction of a single family dwelling consisting of 2 bedrooms, 2-bath with living, dining, kitchen and garage.
 - b. Building Permit (35459) was issued to allow for the lower level addition consisting of 2 bedrooms and 1 bath with open patio and spiral stairwell.
4. Variance Application (VAR 08-053)-Agency Comments and Requirements:
 - a. No comments have been received from the State of Hawaii, Department of Health and the Department of Public Works as of this date.
5. Notice to Surrounding Property Owners. A copy of first notice and second notice sent by the applicant via USPS to surrounding property owners and mailing certificates was submitted to the Planning Department. According to these submittals, the first notice was mailed on August 28, 2007 and September 21, 2007 and the second notice was mailed on September 17, 2007 and October 10, 2007, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 9, 2007.

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6. Comments from Surrounding Property Owners or Public.

- a. Objection letter dated on September 7, 2007 and received on September 11, 2009 signed by Bart T. Cahoon.
- b. Support letter dated on September 26, 2007 signed by Kathy Foster
- c. Support letter dated on September 26, 2007 and received on October 19, 2007, signed by Andre and Melissa Hasselmann.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant/owner submitted the variance application to address and/or resolve the encroachments within the property's minimum 10 foot side yards. The variance application's site plan denotes the location of the proposed garage upon "Lot 1-A". The severe sloping topography of the property limits the usable area where the garage can be situated. By situating the garage in its proposed location, the visibility of the structure from all surrounding parcels will actually be reduced with a closer proximity to the north and east retaining walls. Moving the proposed garage further to the center of the property will make the structure more prominent and more visible from the surrounding properties. Also, the existing driveway is off of 'Ili 'Ili Place; there is a 5-to-10 foot embankment from 'Ili 'Ili Place, leaving a limited amount of usable area. This will diminish the owner's capabilities for ingress and egress purposes if the proposed garage is placed more to the center of the property. Although the property is a corner lot, CC&R's documents prohibit them from creating an additional driveway; therefore, they create a new direct access below the dwelling.

ALTERNATIVES

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected side yard and open space of the subject property include the following actions:

One option in removing the building encroachments is to redesign and/or relocate the proposed garage upon the subject property to fit within the correct building envelope denoted on the recent site plan map as prescribed by the Zoning Code. However, as mentioned above, by relocating the proposed garage, it will make it more exposed to the

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abutting properties, therefore, making the proposed garage more prominent and have a more visual impact on the surrounding properties. As mentioned above, the property is a corner lot, but, CC& R's documents prohibit them from creating an additional driveway; therefore, they cannot create a new direct access below the dwelling.

Another alternative is to consolidate the subject property with the adjoining properties and resubdivide the property to modify property lines and adjust minimum yard setbacks. However, given the topography of the subject property, in relationship to the adjoining properties, it will be impracticable and unrealistic to consolidate/resubdivide these properties.

INTENT AND PURPOSE

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 applicant's variance application was acknowledged by letter dated September 27, 2007 and additional time to review the application was required. The applicant granted the Planning Department and Planning Director an extension of time for decision on the Variance Application to July 22, 2009.

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

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 Hawaii harmless from and against any loss, liability, claim, or demand for the

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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 or second single family or farm dwelling upon the subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.
4. The proposed detached garage to be built upon the subject property ("LOT 1-A") will not meet the minimum side yards pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan dated June 14, 2007. The approval of this variance permits portions of the proposed garage to remain upon subject TMK property or "LOT 1-A" according to the site plan dated June 14, 2007.
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 proceed to declare subject Variance-VAR 08-053 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Kona Office
Real Property Tax Office (Kona)