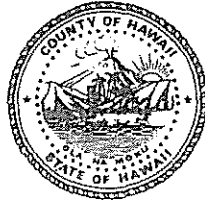


William P. Keno  
Mayor



BJ Leithead Todd  
Planning Director

## County of Hawaii

### PLANNING DEPARTMENT

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

April 1, 2009

Mr. Candido T. Ramos  
P. O. Box 660  
Keaau, HI 96749

Dear Mr. Ramos:

**SUBJECT: VARIANCE-VAR 08-066**  
**Applicant: CANDIDO T. RAMOS**  
**Owner: CANDIDO T. RAMOS**  
**Request: Variance from Chapter 25, Zoning**  
**Minimum yards**  
**Tax Map Key: 1-6-149:011**

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After reviewing your variance application and the information submitted, the Planning Director approves Variance-VAR 08-066 subject to variance conditions. The variance permits portions of 2-story dwelling and attendant roof eaves to be built upon referenced TMK property with minimum 11.0 feet to minimum 7.0 feet front yard and attendant minimum 7.0 feet open side yard space and minimum 3.0 feet to minimum 7.0 feet side yard and attendant minimum 3.0 feet open side yard space according to the site plan submitted with the variance application. The variance request is from the property's minimum front yard required 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).

### **BACKGROUND AND FINDINGS**

1. **Location.** The referenced TMK property containing 4447 square feet, being Lot 9203, Land Court Application 1053, Map 518, is situated at Keaau, Puna, Hawaii.

The property is zoned Agricultural (A-20a) by the County and designated - Agriculture or "A" by the Land Use Commission (LUC).

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2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on October 30, 2008. The variance application's site plan map was prepared by the applicant or contractor. The variance site or plot plan map is drawn to scale denoting the position of "PROPOSED NEW DWELLING" upon the subject TMK property.

The applicant's request states in part:

"Replace Existing Dwelling-2 story 1920 plantation house with New 2-Story Dwelling w/ original permitted carport".

**Note:** The variance site plan map denotes the location of the cesspool and "EXISTING WAREHOUSE". The variance request does not address the location or position of iron fencing, and landscaping, etc. along or straddling common boundary lines. The applicant intends to demolish and remove a warehouse constructed without a building permit. (Refer to variance conditions).

3. **County Building Records:**

Hawaii County Real Property Tax Office records indicate the original dwelling and attached carport was constructed in 1922. A building permit (Permit No. 34494) for "Alteration" to dwelling was issued in 1966.

4. **Variance Application-VAR 08-066-Agency Comments and Requirements:**

- a. The State Department of Health (DOH) memorandum dated November 26, 2008 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

- b. The Department of Public Works (DPW) memorandum dated December 15, 2008 states:

"We have reviewed the subject application forwarded by your memo dated November 18, 2008 and require approval of the application be conditioned as noted below.

All new building construction shall conform to current code requirements. The real property records do not show the "existing warehouse." (sic) This will be referred to our violations's inspector and the owner is required to obtain a building permit for the warehouse."

5. **Notice to Surrounding Property Owners.** The applicant submitted copies of notices together with a list of surrounding property owners with affixed USPO receipts to the Planning Department. According to these submittals, first notice and revised second notices were mailed to surrounding property owners by the USPO on December 1, 2008 and March 12, 2009, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 28, 2008.
6. **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.

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The applicant submitted the variance application requesting permission to modify or replace portions of an original 2-story dwelling built circa 1922 within or upon a sugar plantation camp site (8-1/2 mile camp) or large lot previously owned by the sugar industry. Portions of the new dwelling essentially replacing the original dwelling will be constructed upon the original dwelling's "footprint" constructed within a camp site created approximately 87 years ago. Following cessation of the sugar industry in the Puna District, the camp was subdivided creating subject TMK property or non-conforming sized corner lot containing 4447 square feet by SUB 6496. The variance application's site or plot plan map and other drawings of the present and proposed dwelling including current photographs of the dwelling illustrate the condition and other limitations to reconstruct this plantation dwelling and attached carport built circa 1922 upon subject TMK property. The size of the subject TMK property and position of the 87 year old camp dwelling and attached carport upon the property's building envelope established by SUB 6496 are non-conforming pursuant to Chapter 25 or the Zoning Code limiting design options, building size, and ability to make major home repairs, etc.

The position and size of the original dwelling improvements upon the subject TMK property or corner property having 2-minimum (15 feet) front yards and 2-minimum (8-feet) side yards was created by SUB 6497 and surrounding land and building patterns within the camp or immediate neighborhood are non-conforming. This original camp dwelling and surrounding land and building patterns within or upon the original camp site were created in 1922 before adoption of the 1967 Zoning Code.

## **ALTERNATIVES**

Alternatives available to the applicant include the following actions:

1. Require the proposed dwelling to fit within the correct building envelope of the TMK property prescribed by the Zoning Code; and, SUB 6497.
2. Consolidation of subject TMK with adjoining lots or privately owned rights-of-way and resubdivision to modify property lines or adjust minimum yards.

## **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 original building improvements constructed approximately 87 + years ago within the camp and surrounding TMK properties are non-conforming. The proposed replacement dwelling or proposed 2-story dwelling will essentially replace or displace original dwelling improvements constructed many years ago. The proposed or replacement dwelling will not physically and/or visually obtrusive from the adjacent properties or privately owned rights-of-way within the camp or surrounding neighborhood. It appears that existing and proposed encroachments into the property's minimum yards will not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the building or portions of proposed dwelling encroaching into the affected minimum front and side yards identified on the variance application's site or plot plan map will not detract from the character of the immediate neighborhood or the camp subdivision.

The applicant's variance application was acknowledged by letter dated November 18, 2008 and additional time was requested by the applicant to send required notices to surrounding property owners and submit proof of mailing notices to surrounding property owners to the Planning Department. The applicant granted the Planning Director an extension of time to render decision on the variance application to April 10, 2009.

Based on the foregoing findings, this variance request 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.

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#### **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 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. Portions of the proposed dwelling replacing the original dwelling constructed in 1922 will not meet the minimum front and side yards including attendant open yard space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan or plot plan map. The variance permits portions of "PROPOSED NEW DWELLING" or proposed 2-story dwelling and attendant roof eaves to be built upon referenced TMK property with minimum 11.0 feet to minimum 7.0 feet front yard and attendant minimum 7.0 feet open side yard space and minimum 3.0 feet to minimum 7.0 feet side yard and attendant minimum 3.0 feet open side yard space in accordance with site plan or plot plan submitted with the variance application.

The "EXISTING WAREHOUSE" constructed without a building permit and denoted on the plot plans submitted with the variance application shall be demolished and removed prior to issuance of the building permit to construct the new 2-story dwelling replacing the original 1922 dwelling.

4. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property, subject to provisions of the Zoning Code 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.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "BJ Leithhead Todd".

BJ LEITHEAD TODD  
Planning Director

WRY:mad

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xc: Real Property Tax Office-(Hilo)