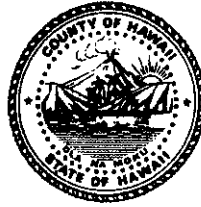


William P. Kenoi
Mayor



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

September 30, 2009

Mr. James Rothnie
7044 Earl Avenue NW
Seattle, WA 98117

Dear Mr. Rothnie:

SUBJECT: VARIANCE- 09-019
Applicant: JAMES ROTHNIE, ET AL.
Owners: JAMES ROTHNIE, ET AL.
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: 9-2-110:007 (Lot 32-A)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 09-019 (VAR 09-019) subject to variance conditions. The variance permits portion of the single family dwelling to remain upon Lot 32-A with a minimum 26.98 feet rear yard in lieu of the minimum 30 feet rear yard. The variance is from the subject property's minimum rear yard requirement 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 subject property, consists of 87,216 square feet in land area and is situated within the Hawaiian Ocean View Estates Subdivision, being portion of Grant 2791 to C.C Harris, file Plan No. 787, Hawai'i. The subject property's street address

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is 92-1877 Coral Parkway. The subject property is zoned Agricultural – 1 Acre (A-1a) by the County and designated Agricultural or "A" by the State Land Use Commission (LUC).

2. Variance Application-Site Plan: The owner submitted the variance application with attachments, and filing fee on April 9, 2009 and other submittals related to the variance request and variance application. The variance application's plot plan map is drawn to scale and prepared by Pattison Land Surveying, Inc.. The variance plot plan denotes the position of the single family dwelling upon the subject property and the portion of the single family dwelling built into the property's minimum 30-foot wide rear yard setback.
3. County Building Records:

Hawaii County Real Property Tax Office records indicate that a building permit (036736) was issued to the subject property for the construction of a single family dwelling consisting of 2 bedrooms, 2 baths, living room, and kitchen and dining area.

4. Variance Application (VAR 09-019)-Agency Comments and Requirements:

- a. The State Department of Health (DOH) memorandum dated August 27, 2009 states:

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

- b. The Department of Public Works (DPW) memorandum dated September 14, 2009 states:

"We have reviewed the subject application forwarded by your memo dated August 24, 2009 and require approval of the application be conditioned as noted below.

The owner must apply for building, plumbing and electrical permits to be submitted to the building Division within 30 days of the variance decision.

Please refer questions to the Building Division at 961-8331."

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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 were submitted to the Planning Department. According to these submittals the first and second notices were mailed via the USPS on April 11, 2009 and August 31, 2009, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 31, 2009.
6. Comments from Surrounding Property Owners or Public. No written comments or objections from surrounding property owners or the general public were received by the Planning Department.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant/owner submitted the variance application to address and/or resolve the single family dwelling encroachment within the property's minimum 30 feet rear yard setback. The variance application's site plan denotes the location of the single family dwelling, and other site improvements upon "Lot 32A". The owner/applicant became aware of the encroachment when a modern survey was done upon purchasing the subject property. No evidence has been found to show indifference or premeditation by the builder to intentionally construct a portion of the single family dwelling into the property's minimum 30 feet rear yard setback required by the Zoning Code.

ALTERNATIVES

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

Remove the building encroachments and/or redesigning or relocating the Single family dwelling constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code.

Consolidate the subject property with adjoining property and resubdivide the property to modify property lines and adjust minimum yard setbacks.

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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.

It appears that the portion of the single family dwelling was improperly situated on the subject property, which went undisclosed until the sale of the property and a survey was completed. The site plan map prepared for the landowner by Pattison Land Surveying, Inc. shows the extent of the encroachment within the minimum rear yard requirement. It appears that the single family dwelling, in its current location, is not physically and/or visually obtrusive from other properties situated within the immediate area. This can be substantiated, to some degree, by the fact that the single family dwelling did not receive any complaint from surrounding property owners. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the immediately surrounding properties. It appears that the single family dwelling encroachment does not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the portions of the single family dwelling constructed into the affected rear yard denoted on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

Based on the foregoing findings and unusual circumstances, the applicant's request for 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.

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

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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 Single family dwelling built upon the subject property ("LOT 32-A") will not meet the minimum rear yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits portions of the as-built carport/office to remain upon subject TMK property or "LOT 32-A" according to the site plan map submitted with the variance application.
5. The owner shall comply with Department of Public Works condition stating: "The owner must apply for building and electrical permits for the illegal carport and office within three months of variance approval."
6. Should the single family dwelling (footprint) upon the subject property be destroyed by fire or other natural causes, the replacement or the new single family dwelling shall comply with the County Zoning Code and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
7. 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 09-019 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office (Hilo)