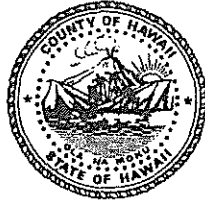


William P. Kenoi
Mayor



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 27, 2009

Paul H. Murray, LPLS
Paul H. Murray & Associates, LLC
PO Box 1189
Hilo, Hawai'i 96721-1189

Dear Mr. Murray:

SUBJECT: VARIANCE- VAR-09-024

Applicant: PAUL H. MURRAY, LPLS

Owners: KOLOHE BROTHERS, LLC

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: 1-8-084:048 (Lot 95)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 09-024 (VAR 09-024) subject to variance conditions. The variance permits portions of the detached "Open Carport/Storage" and detached "Water Tank" to remain upon Lot 95 with a minimum 14.4 feet to a minimum 14.5 feet front yard and dwelling's detached water tank to remain upon the subject property with a minimum 8.8 feet rear yard and attendant minimum 8.8 feet rear yard open space in lieu of minimum 15.0 feet front and rear yard(s) and attendant minimum 10.0 feet rear yard open space required. The variance is from the subject property's minimum front and rear yard and minimum rear 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).

AUG 06 2009

BACKGROUND AND FINDINGS

1. Location. The subject property, consists of 8,341 square feet in land area and is situated within the Pacific Paradise Mountain View Manor, Subdivision, Puna, Hawai'i. The subject property's street address is 18-4173 Haumalu Street. The subject property is zoned Agricultural – 5 Acres (A-5a) by the County and designated Agricultural or "A" by the State Land Use Commission (LUC).
2. Variance Application-Site Plan. The applicant on behalf of the owners submitted the variance application, attachments, and filing fee on May 19, 2009 and other submittals related to the variance request and variance application. The variance application's site plan map is drawn to scale and prepared by Paul H. Murray, LPLS. The variance site plan map, dated April 29, 2009, denotes the position of Open carport/storage and detached "Water Tank" upon the subject property and that portion of the carport/storage and detached Water Tank constructed into minimum 15-foot wide front and rear yard setback and minimum 10-foot wide front and rear yard open space.
3. County Building Records:

Hawaii County Real Property Tax Office records indicate that a building permit (B2006-1222H) was issued to the subject property for the construction of a single family dwelling consisting of 3 bedrooms, 2 baths, living room, kitchen and dining area, detached carport/storage and galvanized steel water tank.
4. Variance Application (VAR09-024)-Agency Comments and Requirements:
 - a. The State Department of health (DOH) memorandum dated June 22, 2009 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. The Department of Public Works (DPW) had no comments, memo dated July 14, 2009.
5. Notice to Surrounding Property Owners. The applicant filed a transmittal letter dated and copy of notices sent to surrounding property owners via USPS to the Planning Department. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notice was mailed on May 19, 2009

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and June 30, 2009, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 25, 2009.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant/owner, submitted the variance application to address and/or resolve the open carport/storage and detached water tank encroachments within the property's minimum 15 feet front and rear yard. The variance application's site plan denotes the location of the open carport/storage and water tank upon "Lot 95". Pursuant to the applicant's background information, "The owners were unaware of any encroachment when they purchased the property and would not have discovered any problems affecting this open carport/storage and detached water tank until a modern survey was conducted on September 7, 2007 by Paul H. Murray and Associates, LLC revealing the setback violations. No evidence has been found to show indifference or premeditation by the builder to intentionally construct a portion of the carport/storage and detached Water Tank into the property's minimum 15 feet front and rear yard setback and attendant minimum 10 feet front and rear yard open space required by the Zoning Code. The encroachment into the front yard building setback is relatively small and would qualify under the De Minimis Yard Encroachment criteria.

ALTERNATIVES

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

Remove the building encroachments and/or redesigning or relocating the as-built Open Carport/Storage and Water Tank constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. Any structural or design correction would be expensive and cost prohibitive.

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Consolidate the subject property with adjoining property and resubdivide the property to modify property lines and adjust minimum yard setbacks. Given the location of the encroachments (front and rear yard), consolidation/resubdivision with the adjoining property would not be practical.

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 carport/storage and detached water tank was improperly situated on the subject property, which went undisclosed until a modern survey was completed. The survey map prepared for the landowner shows the extent of the encroachment within the minimum front and rear yard and its open space requirement. It appears that the carport/storage and detached water tank, 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 this office did not receive any complaint from surrounding property owners during the roughly 2-plus years since the carport/storage and water tank was being constructed. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the immediately surrounding properties.

Based on the foregoing findings and unusual circumstances, the representative'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.

The applicant's variance application was acknowledged by letter dated June 18, 2009 and additional time to review the application was required. The applicant granted the Planning Department and Planning Director an extension of time to decide on the variance application to July 31, 2009.

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. 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 as-built open carport/storage and water tank to be built upon the subject property ("LOT 95") will not meet the minimum side yards 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 open carport/ storage and water tank to remain upon subject TMK property or "LOT 95" according to the site plan map submitted with the variance application.
5. Should the as-built open carport/storage and water tank (footprint) upon the subject property be destroyed by fire or other natural causes, the replacement or the new carport/storage and water tank shall comply with the County Zoning Code and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
6. 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 variance conditions not be complied with, the Planning Director may proceed to declare subject Variance - 09-024 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office (Hilo)