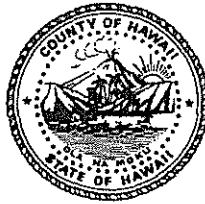


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawaii

PLANNING DEPARTMENT

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

August 17, 2009

Mr. Brian T. Nishimura, Planning Consultant
101 Aupuni Street, Suite 217
Hilo, HI 96721

Dear Mr. Nishimura:

SUBJECT: VARIANCE-VAR-09-025

Applicant: Brian T. Nishimura, Planning Consultant
Owners: Leslie Yokomizu, etal.
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-77, Other regulations, and Article 4, Division 4 Section 25-4-44, Permitted projections into yards and open space requirements
TMK: 2-5-061:029 (Lot 29)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 09-025 (VAR 09-025) subject to variance conditions. The variance permits portions of the 1-story single family dwelling and attached carport to remain upon Lot 29 with a minimum 18.63 feet and 19.15 feet side yard in lieu of the required minimum 20 feet side yard according to the survey site plan submitted to our office on June 23, 2009. The variance is from the subject property's minimum side yard and minimum side open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, 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, consisting of approximately 43,560 square feet of land, is situated within the Pacific Plantation Subdivision, Kukuau 2nd, South Hilo, Hawai'i. The subject property's street address is 232 Edita Street.
2. **Zoning:** The subject property is a split zoned parcel with the majority being Agricultural - 10 Acres (A-10a) and the remainder Agricultural - 1 Acre (A-1a)

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by the County and designated Agricultural or "A" by the State Land Use Commission (LUC).

3. **Variance Application-Site Plan:** The owner submitted the variance application, attachments, and filing fee on June 23, 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 Imata and Associates, Inc.. The variance site plan or survey map, denotes that portions of the single-family dwelling and attached carport" were built into the property's minimum 20-foot wide side yard setback.
4. **County Building Records:** Hawaii County Real Property Tax Office records indicate that a building permit (891625) was issued on August 8, 1989, for the construction of a 4 bedroom and 2 bath Single Family Dwelling. Two additional building permits were issued for the construction of a porch addition and another carport (Permit No. 902229 and Permit No. 930411).
5. **Variance Application (VAR 09-025)-Agency Comments and Requirements:**
 - a. The State Department of Health (DOH) memorandum dated July 22, 2009 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. No comments have been received from the Department of Public Works (DPW) as of this date.
6. **Notice to Surrounding Property Owners.** A copy of first and second notices 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 and second notices were mailed via the USPS on July 10, 2009 and July 28, 2009 respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 26, 2009.
7. **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.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant on behalf of the owner, submitted the variance application to address or resolve the encroachment of the single family dwelling and attached carport into the 20 feet side yard setback as required by the Zoning Code.

Pursuant to the applicant's background information, *"The owners were unaware that their dwelling and carport encroached into the side yard setback area which is established as 20 feet from the side property line. Building Permit No. 891625 was issued in 1989 and the owners believed that their dwelling was constructed in accordance with all County requirements. Two additional Building Permits were obtained for the construction of a porch addition and another carport (Permit No. 902229 in 1990 and permit No. 930411 in 1993). No mention of any encroachments was made during construction and inspection for all three of the permits."*

No evidence has been found to show indifference or premeditation by the builder to intentionally construct a portion of the single family dwelling and attached carport into the property's minimum 20 feet side yard setback required by the Zoning Code.

ALTERNATIVES

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

Redesign or relocate the existing single family dwelling and carport upon the subject property to fit within the correct building envelope denoted on the recent plot map as prescribed by the Zoning Code. This alternative is not reasonable or practicable because it would result in expensive modifications to the dwelling and carport.

Another alternative is to consolidate the subject property with the adjoining property and resubdivide the property to modify property lines and adjust minimum yard setbacks

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.

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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. This can be substantiated, to some degree, by the fact that this office did not receive any complaint from surrounding property owners during the 19 years of existence of the structure. Also, no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

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 agents under this variance or relating to or connected with the granting of this variance.
3. The existing dwelling and carport constructed upon the subject property ("LOT 29") will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's survey map received June 23, 2009. The approval of this variance permits the existing dwelling and carport to remain upon subject TMK property or "LOT 29" in accordance to the survey map received on June 23, 2009.

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4. 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.
5. Any further building permit and/or other construction permits issued to enlarge or change or modify the dwelling floor plan being built upon the subject TMK property shall be limited to the dwelling footprint permitted by variance and/or constructed upon the dwelling's footprint and within the building envelope denoted on the survey map received on June 23, 2009.
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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 09-025 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN:mad

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xc: Real Property Tax Office (Hilo)