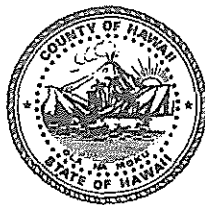


William P. Kenoi
Mayor



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

January 14, 2010

Mr. Michael J. Riehm, A.I.A.
Riehm Owensby, Planners Architects
P.O. Box 390747
Kailua, Kona, HI 96739

Dear Mr. Riehm:

SUBJECT: VARICANCE APPLICATION – VAR-09-029
Applicant: RIEHM OWENSBY PLANNERS ARCHITECTS
Owners: IRENE ANDREWS, 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: 7-5-038:021, LOT 60

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 09-029 (VAR: 09-029), subject to variance conditions. The variance to allow portions of the "Single Story Dwelling" constructed on Lot 60 with a minimum 14.05 to a minimum 14.45 feet front yard(s) to remain upon the subject property in accordance with recent survey map. The applicant requests variance to permit portions of the dwelling "to remain in place" into and upon the property's affected minimum 15.00 feet front yards. The variance is from the subject property's minimum front yard pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (1)(A). 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, consisting of approximately 5,966 square feet of land, is situated within the "Malulani Gardens, Unit 2", being a portion of Grant No. 3148, Apana 1 to W.P. Leleiohoku, is situated at Keopu 2nd, North Kona, Hawai'i. The subject property's street address is 75-260 Malulani Drive.
2. **Zoning:** The subject property is zoned Single Family Residential -7,500 Square Feet (RS-7.5) by the County and designated Urban or U" by the State Land Use Commission (LUC).
3. **Variance Application-Site Plan.** The owner submitted the variance application, attachments, and filing fee on July 20, 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 Pattison Land Surveying, Inc. The variance site plan or survey map denotes that portions of the "Single Story Dwelling" built into the minimum 15 feet front yard setback.
4. **County Building Records:**
 - a. Hawai'i County Real Property Tax Office records indicate that a building permit (015201) was issued to the subject property for the construction of a single story dwelling consisting of 3 bedrooms, 2-bath,
5. **Variance Application (VAR: 09-029)-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 4, 2009 states:

"We reviewed the subject application and have no comments on or objections to the proposed variance."

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 were submitted to the Planning Department. According to these submittals, the first notice was mailed on July 21, 2009 and the second notice was mailed on August 31, 2009, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 31, 2009.
7. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or general public were received by the Planning Department.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant submitted the variance application to address and/or resolve the existing single story dwelling encroachments within the property's minimum 14.00 feet to minimum 14.45 feet front yard to remain upon the subject property in accordance with recent survey map. The variance application's site plan denotes the location of the single story dwelling situated on "Lot 60". Pursuant to the applicant's background information, "The owners were unaware of any encroachment until an "As Built" survey was conducted on April 24, 2009 by Pattison Land Surveying, Inc. revealing the setback violations. No evidence has been found to show indifference or premeditation by the builder to intentionally construct a portion of the single story dwelling into the property's minimum 15 feet front yard and 15 feet rear yard setbacks and attendant minimum 14 feet front yard 10 feet rear yard open space required by the Zoning Code.

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 2 story dwelling or duplex 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. Any structural or design correction would be expensive and cost prohibitive.

Another alternative is to consolidate the subject property with the road right-of-way (Princess Ke'elikōlani Drive) fronting the subject property and resubdivide consolidated property to modify property lines and adjust minimum front yard setback. This

alternative could also used to modify and adjust the minimum rear yard setback. It is felt that these alternatives would not be practical or reasonable.

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 August 24, 2009; 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 January 15, 2010.

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 17 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.

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.
4. No permit shall be granted to allow an ohana or second single family or farm dwelling upon the subject property, subject to provisions of the Zoning Code or State law which may be changed from time to time.

Riehm Owensby
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5. The existing dwelling constructed upon the subject property ("Lot 60") will not meet the minimum front yard pursuant to Chapter 25, the Zoning Code, according to the variance application's survey map dated April 20, 2000. The approval of this variance permits the existing dwelling to remain upon the subject property or "Lot 60" in accordance to the survey map dated April 20, 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 09-029 null and void.

Sincerely,


BJ LEITHEAD TODD
Planning Director

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xc: Kona Office
Real Property Tax Office (Kona)