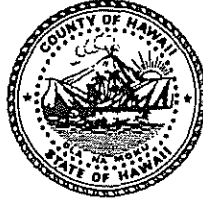


William P. Kenoi
Mayor



Bobby Jean Leithead Todd
Planning Director

Margaret K. Masunaga
Deputy 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

January 4, 2009

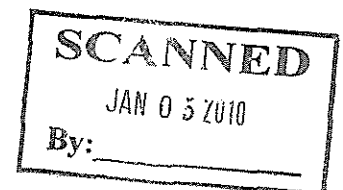
Mr. Robert C. Ricard
P.O. Box 2884
Kamuela, HI 96745

Dear Mr. Conventz:

SUBJECT: VARICANCE APPLICATION – VAR-09-047

Applicant: Richard C. Ricard
Owners: Patricia Hopkins/Robert C. Ricard
**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: 6-4-023:007, LOT 30

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 09-047 (VAR: 09-047), subject to variance conditions. The applicant requests a variance to permit a stairway addition or portion of new addition to remain upon Lot 30 with minimum 3 feet side yard and minimum 3 feet side yard open space according to the site plan submittal. The variance is from the subject property's minimum 10.00 feet side yard and attendant minimum 5 feet side yard open space 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).



JAN 05 2010

BACKGROUND AND FINDINGS

1. **Location:** The subject property, consisting of approximately 18,103 square feet of land, is situated within Pu'u Nani Subdivision, Waimea, South Kohala, Hawaii. The subject property's street address is 64-667 Pu'u Noho Street.
2. **Zoning:** The subject property is zoned Agriculture – 1 Acre (A-1a) by the County and designated Agriculture 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 August 18, 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 William C. Foulk, Architect. The variance site plan denotes that portion of the new stairway addition is built into the property's minimum 10-foot wide side yard setback.
4. **County Building Records:** Hawai'i County Real Property Tax Office records indicate that a building permit (B2005-2093H) was issued on August 30, 2005 for the construction of a 3-story, 4 bedrooms, 3 1/2 - bath Single Family Dwelling. Two additional building permits were issued for the stairway addition and Solar System (Permit No. B2008-0139 and B2008-139K), both permits are still open.
5. **Variance Application (VAR: 09-047)-Agency Comments and Requirements:**
 - a. The State Department of Health (DOH) memorandum dated November 24, 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 our comments are as follows:

Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division).

The attached DPW-Building Division memorandum dated December 2, 2009 states in part:

“Approval of the application shall be conditioned on the comments as noted below.

All new building construction shall conform to current code requirements.

The minimum setbacks shall be maintained as follows:
Residential structures – 3 ft. side, 3 ft. rear

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 August 24, 2009 and the second notice was mailed on December 11, 2009, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 20, 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 on behalf of the owner submitted the variance application to address or resolve the encroachment of the new stairway addition into the 10 feet side yard setback as required by the Zoning Code.

Pursuant to the applicant's background information. The topography and shape of the property limited the owners option as to the placement of the dwelling and subsequently the placement of the new stairway addition. 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 10 feet side 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 front and rear yard and open space of the subject property include the following action:

Remove the building encroachments and/or redesigning or relocating the as-built single story 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.

Richard C. Ricard
Page 4
January 4, 2009

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.

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. No comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners. A similar type Variance (Variance 1399) was granted on December 19, 2003 to the adjacent property which is most affected by this application.

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 constructed upon the subject property ("Lot 30") will not meet the minimum yard pursuant to Chapter 25, the Zoning Code, according to the variance application's survey map dated June 2007. The approval of this variance permits the existing dwelling to remain upon the subject TMK property or "Lot 30" in accordance to the site map dated June 2007.

Robert C. Ricard
Page 5
January 4, 2009

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. Should the existing dwelling 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.
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 09-047 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN:mad/lnm
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xc: Planning Department-Kona Office
Real Property Tax Office (Kona)