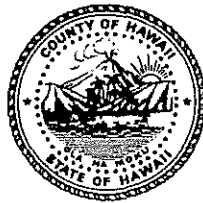


William P. Kenoi
Mayor



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 22, 2010

David Dow
PMB 125
65-1158 Māmalahoa Highway
Kamuela, HI 96743

Dear Mr. Dow:

SUBJECT: VARIANCE APPLICATION – VAR-10-002

Applicant: David Dow

Owner: David Dow

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: 4-8-004:014, Por. of Kukuihaele & Lālākea, Hāmākua

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 10-002 subject to variance conditions. The variance permits portions of the proposed detached greenhouse to remain upon the subject property with a minimum front yard setback of 15+/- feet, in lieu of minimum 25.00 feet front yard setback, pursuant to the plot plan or survey map received on January 29, 2010. The variance is from the subject property's minimum 25.00 feet front yard setback determination pursuant to the Hawai'i 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, consisting of 39,720 square feet, being a portion of Kukuihaele and Lālākea, Hāmākua, Hawai'i. The subject property address is 48-5555

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Waipi'o Road. The subject property is zoned Agricultural – 40 acres (A-40a) by the County of Hawai'i and designated Agriculture, or "A," by the State Land Use Commission (LUC).

2. Variance Application-Site Plan. The owner's representative submitted the variance application, attachments, and filing fee on January 29, 2010, 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 the owner/applicant. The variance site plan, undated, received on January 29, 2010, denotes portions of the proposed greenhouse built into the minimum 25 feet front yard setback.

3. County Building Records:

According to the department of Public Works-Building Division records, Building Permit No. 001625 was issued on December 11, 2000, for a new 1-story, 1,520 square foot gross floor area consisting of 3 bedrooms, 2 ½ baths, dining area, and kitchen.

4. Variance Application (VAR 10-002) Agency Comments and Requirements:

- a. The State Department of Health (DOH) memorandum dated May 11, 2010 states:

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

- b. The Department of Public Works (DPW) Memorandum dated June 4, 2010, states:

"We have reviewed the subject application forwarded by your memo dated May 6, 2010 and offer the following comment for your consideration."

The Building Division would have no objection to the variance if the proposed greenhouse is no more than 1,000 square feet in area.

Questions can be referred to the Building Division at 961-8331."

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 February 16, 2010 and May 19, 2010, respectfully. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 13, 2010.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant/owner submitted the variance application to address and/or resolve the encroachments within the property's minimum 25-foot front yard. The variance application's site plan denotes the location of the proposed greenhouse upon "Lot 3." Given the shape and topography of the property limits the usable area where the greenhouse can be situated. The owner has stated, in part:

"The lot consists of a large cut/fill area, with excavation work done by previous owners in the late 40's/early 50's and again around the late 80's. None of this work was permitted nor engineered, the result is a marginally stable "loose fill" (see attached soils report) that requires special and expensive building techniques to ensure slope stability.

The current residence was built partially on this fill, using 'helical piers' driven to depths of up to 64' to meet these engineering needs. Any structure built on this fill would have to be built to the same requirements.

The result is a small, narrow, net buildable area.

Further, much of the south East property boundary consists of a tall (up to 35') unstable bluff that suffers infrequent slides during the heaviest of rains. Much of this bluff is near it's natural angle of repose and is held so by tree growth consisting of small Tropical Ash and Paper Bark to very large Eucalyptus trees (150'+).

The final result of all this is that area candidates for building a greenhouse are limited- the small area to the South West of the current residence is shaded most of the day (particularly fall/winter/spring) by tall, and necessary, trees, which reside on adjacent property, while the rest of the buildable area is taken up by the residence, driveway and garage."

ALTERNATIVES

Alternatives available to the current owners to correct and/or address the single family dwelling (parsonage) encroachments constructed into the affected side yard and open space of the subject property include the following actions:

One option in removing the greenhouse encroachment is to redesign and/or relocate the

proposed greenhouse upon the subject property to fit within the correct building envelope denoted on the recent site plan map as prescribed by the Zoning Code. As mentioned above, the shape and topography of the property limits the area where the greenhouse can be located.

Consolidate the subject property with 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.

It appears that portion of the proposed greenhouse, in its designated location, will not be 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 construction of the single family dwelling and open patio. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the immediately surrounding properties.

The applicant's variance application was acknowledged by letter dated May 6, 2010, 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 July 23, 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.

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

Mr. David Dow

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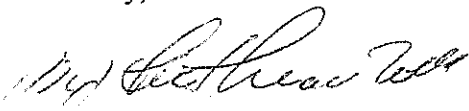
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Hawai'i harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or 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 an additional 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 proposed greenhouse will not meet the minimum front yard setback pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits the proposed greenhouse to be built upon subject property, or "LOT 3," according to the site plan map submitted with the variance application.
5. Should the detached greenhouse situated on the subject property be destroyed by fire or other natural causes, the replacement or the new greenhouse shall comply with the County Zoning Code and be subject to State law and County ordinances and regulations pertaining to building construction and building 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- 10-002 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office (Hilo)