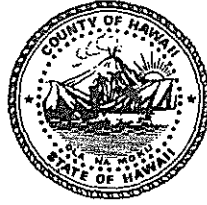


William P. Kenoi
Mayor



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

August 30, 2010

Mr. Luke Bailey
HCR 1 Box 5629
Kea'au, Hawai'i 96764

Dear Mr. Bailey:

SUBJECT: VARIANCE-VAR-10-008

Applicant: LUKE BAILEY

Owners: LUKE BAILEY & KERSTIN MYRIN

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, (a)

TMK: 1-6-011:241 (Lot 35)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 10-008 (VAR 10-008), subject to the following conditions. The variance will allow portion of the two-story, single-family dwelling with a minimum 18.62 feet side yard and the detached water tank to remain on the subject property with a minimum 10.07 feet side yard and attendant minimum 10.07 side yard open space in lieu of the minimum 20 feet side yard and attendant minimum 14 feet side yard open space required. The variance is from the subject property's minimum side yard and minimum side yard open space requirements 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 consists of 2 acres in land area and is situated within the Orchid Land Estates Subdivision, Land Court Application 1053, Map 53, Puna,

Hawai'i. The subject property's street address is 16-1634 36th Avenue. The subject property is zoned Agriculture – 3 acres (A-3a) by the County and designated Agriculture 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 March 24, 2010, and other submittals related to the variance request and application. The variance application's site plan map is drawn to scale and prepared by Roy G. Hollowell, LPLS, dated March 8, 2010.

3. County Building Records:

Hawai'i County Real Property Tax Office records indicate that a building permit (89037) was issued to the subject property for a single-family dwelling consisting of 2 bedrooms, 1-1/2 bathrooms, living room, kitchen and dining area, carport/storage and detached water tank.

4. Variance Application (VAR 10-008)-Agency Comments and Requirements:

a. The State Department of Health (DOH) memorandum dated July 29, 2010, states:

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

b. No comments have been received by Department of Public Works – Building Division as of this date.

5. Notice to Surrounding Property Owners.

The applicant filed a transmittal letter and copy of the notices that were sent to surrounding property owners via USPS with the Planning Department. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on March 25, 2010 and August 4, 2010, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 31, 2010.

6. Comments from Surrounding Property Owners or Public.

a. An objection letter dated June 2, 2010, was received on June 8, 2010, and signed by Sheri Sakamoto and Michelle Koi.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant/owner submitted the variance application to address and/or resolve the two-story single-family dwelling and detached water tank encroachments within the property's minimum 20 feet side yard. The variance application's site plan denotes the location of the two-story, single-family dwelling and water tank situated on the subject property. Pursuant to the applicant's background information, the owners were unaware of any encroachment and would not have discovered any problems affecting the single family dwelling and detached water tank until a modern survey was conducted on March 8, 2010 by Roy G. Hollowell, LPLS, 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 family dwelling and detached water tank into the property's minimum 20 feet side yard setback and attendant minimum 14 feet side yard open space required by the Zoning Code. The open lanai encroachment into the side yard building setback is permitted under Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

ALTERNATIVES

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

Remove the building encroachments and/or redesign or relocate the water tank constructed upon the subject property to fit within the correct building envelope denoted on the recent plot map, as prescribed by the Zoning Code. Any structural or design correction would be expensive and cost prohibitive.

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 (side 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.

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 twenty years of existence of the structure.

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 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 farm dwelling upon the subject property, subject to provisions of the Zoning Code or State Law, which may change from time to time.
4. The single-family dwelling built upon the subject property (LOT 35) will not meet the minimum side yard requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map.
5. Should the single-family dwelling and water tank (footprint) upon the subject property be destroyed by fire or other natural causes, the replacement or the new single family dwelling 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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-10-008 null and void.

Mr. Luke Bailey
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August 30, 2010

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office (Hilo)
Mr. Gilbert Bailado, GIS Analyst II

