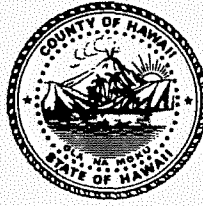


William P. Kenoi  
Mayor



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 27, 2010

Ms. Johanna Brown  
P.O. Box 4248  
Kailua-Kona, HI 96745-4248

Dear Ms. Brown:

**SUBJECT: VARIANCE APPLICATION – VAR-10-015**

**Applicant: JOHANNA BROWN**

**Owners: DAVID LEE FOSTER/AXION CORP.**

**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: 8-7-018:070, LOT 278**

After reviewing your variance application, the Planning Director certifies the **approval** of variance VAR-10-015, subject to variance conditions. The variance will allow the proposed Single Family Dwelling and attached garage to be constructed upon Lot 278 with a 10-foot front yard setback and attendant 5-foot front yard open space, in lieu of the minimum 20-foot front yard setback and attendant minimum 14-foot front yard open space requirement, in accordance with the Hawai'i County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (2)(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 10,473 square feet of land, is situated within the Kona Paradise Subdivision, Lot 278, Ka'ohē 4<sup>th</sup>, South Kona, Hawai'i. The subject property's street address is 87-3173 Japonica Road.

2. **Zoning:** The subject property is zoned Agricultural – 5 acres (A-5a) 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 April 30, 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 applicant, Johanna Brown. The variance site plan denotes the proposed single family dwelling to be constructed into the minimum 20 feet front yard setback.
4. **County Building Records:**
  - a. None
5. **Variance Application (VAR 10-015)-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. The Department of Public Works (DPW) Memorandum dated August 5, 2010, 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).
6. **Notice to Surrounding Property Owners.** Copies of first and second notices were sent by the applicant via USPS to surrounding property owners. According to the affidavit submitted to the Planning Department, the first notice was mailed on April 30, 2010, and the second notice was mailed on August 6, 2010, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 31, 2010.
7. **Comments from Surrounding Property Owners or Public.** A letter in support of the variance application was received from Kona Palisades Property Owners Association dated April 22, 2010. No other written comments or objections from surrounding property owners or general public were received by the Planning Department.

### SPECIAL AND UNUSUAL CIRCUMSTANCES

The variance application would allow the proposed single family dwelling to be constructed with a minimum 10-foot front yard setback and corresponding 5-foot front yard open space. The variance application's site plan denotes the location of the proposed single family dwelling situated on the subject property. Pursuant to the applicant's background information, which states, in part, "special or unusual circumstances apply to this request due to the steepness of the downward grade of the existing property dropping at a 45 degree angle or more which makes it very difficult to build even a modest size home on this property. By changing the front set back from 20' to 10' would allow the owner to build a more stable and structural home. Without this variance the house would be so high in the air not only would it be challenging structurally but would also be very cost prohibitive in these already hard economic times. The neighboring lots, TMK (3) 8-7-018-073 and TMK (3) 8-7-018-077, have already been granted a variance for the issues mentioned."

### ALTERNATIVES

Alternatives available to the current owners to avoid any proposed encroachments into the affected front yard and open space of the subject property include the following actions:

Locate the proposed single family dwelling within the subject property to fit the correct building envelope denoted on the plot plan as prescribed by the Zoning Code. Given the steep topography of the subject site this alternative would be cost prohibitive to the owner.

Consolidate the subject property with a portion of the private roadway (road J) and resubdivide the property to modify property lines and adjust minimum yard setbacks. Given the location of the proposed encroachment (front yard) consolidation and resubdivision of the subject property and the road lot would not be feasible.

### 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 property owners of adjacent parcels have obtained reduced setbacks due to steep slopes. 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 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. The approval of this variance is only from the Zoning Code's minimum front yard and attendant front yard open space requirements. The approval of this variance allows the proposed dwelling's position and attendant site improvements to be constructed on Lot 278 or the subject property, pursuant to the variance application's site plan map and supplementary drawings.
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.
5. The proposed single family dwelling to be constructed upon the subject property ("Lot 278") will not meet the minimum front yard pursuant to Chapter 25, the Zoning Code. The approval will allow the proposed Single Family Dwelling to be constructed on the subject property or "Lot 278" in accordance to the plot plan submitted on April 30, 2010.
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



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Director may proceed to declare subject Variance-VAR 10-015 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

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xc: Kona Office  
Real Property Tax Office (Kona)