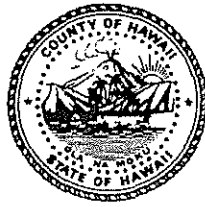


William P. Kenoi
Mayor



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

November 4, 2010

Mr. Robert D. Triantos
CARLSMITH BALL LLP
121 Waianuenue Avenue
Hilo, HI 96720

Dear Mr. Triantos:

SUBJECT: VARIANCE APPLICATION – VAR-10-030
Applicant: CARLSMITH BALL LLP
Owners: PATRICIA TAYLOR, TRUSTEE
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: 7-3-046:019, Lot 2

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 10-030 (VAR: 10-030), subject to variance conditions. The variance will allow a portion of the existing additional farm dwelling constructed on Lot 2 to remain with a 23.29 foot rear yard setback and attendant 23.29 foot rear yard open space, in lieu of minimum 30.0 feet rear yard setback and attendant minimum 24 feet rear yard open space requirement. The variance is from the subject property's minimum rear 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 43,561 square feet of land, is situated within the Kona Acres Unit 1 Increment "A", being a portion of Grant 2972 to Kaapu and Komo, situated at Kalaoa 5th, District of North Kona,

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being further identified as TMK: (3) 7-3-046: 019. The subject property's street address is 73-1241 Hiolani Street.

2. **Zoning:** The subject property is zoned Agricultural – 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 June 14, 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 Roger D. Fleenor, LPLS. The variance site plan or survey map denotes that portion of the “Additional Farm Dwelling” built into the minimum 30 feet rear yard setback.
4. **County Building Records:**
 - a. Hawai'i County Real Property Tax Office records indicate that a building permit (975979) was issued on November 14, 1997 to enclose a portion of the existing carport and to construct additional living areas as follows; 3 bedrooms, living room, kitchen, entry, storage room, powder room, bathroom, and storage/laundry room.
5. **Variance Application (VAR: 10-030)-Agency Comments and Requirements:**
 - a. The State Department of Health (DOH) memorandum dated September 30, 2010 states:

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”
 - b. No comments have been received from the Department of Public Works as of this date.
6. **Notice to Surrounding Property Owners.** The applicant submitted copy of notice sent to surrounding property owners, including affidavits, stating notices were sent or mailed to surrounding property owners by USPO or U.S.P.S. According to these submittals, the first and second notice(s) were mailed by the applicant to a list of surrounding property owners on June 25, 2010 and October 8, 2010, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 6, 2010.

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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 single family residence encroachment within the property's minimum 30 feet rear yard setback. The variance application's site plan denotes the location of the single-family dwelling upon "Lot 2". Pursuant to the applicant's background information, the owners were assumed that the structure was in compliance with all applicable County Codes since the construction was not raised as an issue on the initial and final inspections conducted by the Building Division of the County of Hawaii Department of Public Works and would not have discovered any problems affecting the additional farm dwelling until a modern survey was conducted on March 11, 2010 by Roger Fleenor, 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 into the property's minimum 30 feet rear 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 rear yard and open space of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the additional farm 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, would not be architecturally compatible with the rest of the dwelling and would be structurally unsound and a detriment to the structural integrity of the dwelling.*

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 (rear 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 or development are to assure that adequate air circulation and exposure to light are available

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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 13 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.
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 be changed from time to time.
4. The existing dwelling constructed upon the subject property ("Lot 2") will not meet the minimum rear yard pursuant to Chapter 25, the Zoning Code, according to the variance application's survey map dated March 11, 2010. The approval of this variance permits the existing dwelling to remain upon the subject property.
5. Should the additional farm dwelling (footprint) 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

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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 10-030 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Kona Office
Real Property Tax Office (Kona)