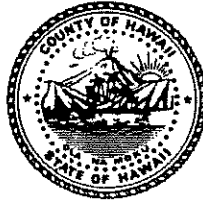


William P. Kenoi
Mayor



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

March 21, 2011

Mr. Jason Ibara
750 Kaheka Street, #804
Honolulu, HI 96814

Dear Mr. Ibara:

SUBJECT: VARIANCE APPLICATION – VAR-10-037

Applicant: JASON IBARA

Owners: BURKE MATSUYAMA, ET AL.

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: 7-3-007:085, Lot 5

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 10-037 (VAR: 10-037), subject to variance conditions. The variance will allow the proposed trellis to be constructed on Lot 5 with a 5-to-7 feet rear yard setback and 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 43,560 square feet (1 acre) of land, is situated within the Hualalai Vistas Subdivision situated at Ooma 1st Kohanaiki, North Kona, Hawai'i, being further identified as TMK: (3) 7-3-007: 085. The subject property's street address is 73-1206 Akamai Street.

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2. Zoning: The subject property is zoned FA-1a Family 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 October 26, 2010, and other submittals related to the variance request and variance application. The variance application’s site plan which is drawn to scale and prepared by Richard G. Borromeo, LPA, denotes the proposed trellis to be 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 (B2008-0799K) was issued on June 4, 2008 to construct a Single Family Dwelling consisting of 3 bedrooms and 2 ½ baths
5. Variance Application (VAR: 10-037)-Agency Comments and Requirements:
 - a. The State Department of Health (DOH) memorandums dated January 10, 2011 and January 12, 2011 (refer to memorandums in variance file).
 - b. No comments have been received from the Department of Public Works as of this date.
6. Public Notice. The applicant submitted a copy of notice sent to surrounding property owners by USPS, affidavits, and surrounding property owners list. According to these submittals, the first and second notices were mailed to surrounding property owners on December 15, 2010 and January 15, 2011, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 28, 2010.
7. Comments from Surrounding Property Owners or Public.
 - a. Support letter dated on November 22, 2010 signed by Chris Clever, Hualalai Vistas, Design Review
 - b. Objection letter via e-mail dated on December 24, 2010 sent by Renae Gunstone-White and Douglas T. (Tim) White (YAM Sunshine LLC).

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant submitted the variance application to address the proposed trellis encroachment within the property’s minimum 30 feet rear yard setback.

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The severe sloping topography of the property limits the usable area where the trellis can be situated. By situating the trellis in its proposed location, the visibility of the structure from all surrounding parcels will actually be reduced. The proposed location of the trellis is supported by the Hualālai Vistas design review committee.

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:

One option in removing the building encroachments is to redesign and/or relocate the proposed trellis upon the subject property to fit within the correct building envelope. However, as mentioned above, by relocating the proposed trellis, it will make it more exposed to the abutting properties, therefore, making the proposed trellis more prominent and have a more visual impact on the surrounding properties. This can be substantiated, to some degree, by the fact that the Hualālai Vistas Design Review Committee supports the variance request.

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 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.

The variance application was acknowledged by letter dated December 20, 2010, 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.

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.

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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 proposed trellis to be constructed upon the subject property ("Lot 5") will not meet the minimum rear yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan dated. The approval of this variance permits the proposed trellis to remain upon the subject property.
5. Should the single-family dwelling and trellis (footprint) upon the subject property be destroyed by fire or other natural causes, the replacement or the new single-family dwelling and trellis shall comply with the County Zoning Code and be subject to State law and County ordinances and regulations pertaining to building construction
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 10-037 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Kona Office
Real Property Tax Office (Kona)
Ranae Gunstone-White & Douglas T. White