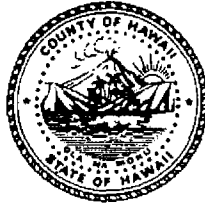


William P. Kenoi
Mayor



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

May 31, 2011

Mr. Daniel Berg, PLS
DLB & ASSOCIATES
P. O. Box 49-2281
Kea'au, HI 96749

Dear Mr. Berg:

SUBJECT: VARIANCE: VAR-10-055
Applicant: DLB & ASSOCIATES
Owners: CLEARPOND PARTNERS, LP
Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards, Section 25-5-8, Other regulations,
TMK: 1-4-011:012 (Lot 50)

After reviewing your variance application, the Planning Director certifies the **approval** of VAR 10-055, subject to conditions. The variance will allow portion of the single family dwelling's storage room, open lanai and roof eaves to remain upon Lot 50, with a minimum 3.1 feet to 10.7 feet front yard setback in lieu of the minimum 15.0 feet front yard setback required and a minimum 10.0 feet front yard open space requirement. The variance is from the subject property's minimum rear yard and rear yard open space requirements pursuant to the Hawai'i County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a), Section 25-5-8 Other regulations.

BACKGROUND AND FINDINGS

1. **Location.** The subject property consists of 9,386 square feet in land area and is situated within Kapoho Beach Lots Subdivision, Kapoho-Halekamahina, Puna, Hawai'i. The property's street address is 14-5050 Kapoho Beach Road. The property is zoned Single Family Residence – 10,000 square feet (RS-10) by the County and designated Urban or "U" by the State Land Use Commission (LUC).
2. **Variance Application.** The applicant/owner submitted the variance application,

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attachments, filing fee, and associated materials on December 20, 2010. The variance application's plot plan map dated December 9, 2010, is drawn to scale, prepared by DLB & Associates, and denotes the position of the single family dwelling constructed into the minimum 15-foot wide side yard setback requirement.

3. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (830567) was issued to the subject property for the construction of a three (3) bedroom single family dwelling with deck.
4. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated February 3, 2011. (Refer to memorandum in variance file)
 - b. No comments were received from the Department of Public Works – Building Division as of this date.
5. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on February 11, 2011 and May 25, 2011, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 7, 2011.
6. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The subject property (TMK:1-4-011:012) is comprise of three separate legal lots of record; Lots 47, 49 and 50. This variance application pertains only to structures situated on Lot 50, which consists of 9,386 square feet and that requires 15 feet front and rear setbacks and 8 feet side yard setbacks. There is a pending subdivision application (SUB-10-000993) calling for the consolidation and resubdivision of the three (3) lots into two (2) lots.

The applicant/owner submitted the variance application to address and/or resolve the single family dwelling's storage room, open lanai and roof eaves encroachments within the property's 15 feet front yard setback and 10 feet open space requirement. The open gazebo situated within the building setback was removed according to the applicant's letter dated March 20, 2011. The current owners were unaware of any encroachments when they purchased the property, and would not have discovered any problems affecting the property until a modern survey was conducted by DLB and Associates, revealing the setback violations. No evidence has been found

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to show indifference or premeditation by the builder to intentionally construct a portion of the structure into the property's minimum 15 feet front 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 front yard of the subject property include the following actions:

Remove the building encroachment constructed upon the subject property to fit within the correct building envelope denoted on the plot plan as prescribed by the Zoning Code. *Any structural or design correction would be expensive and cost prohibitive.*

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 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 past years of existence of the structure.

The applicant's variance application was acknowledged by letter dated February 1, 2011 and additional time to review the application was required. The applicant granted the Planning Department and Planning director an extension of time to decide on the variance application to May 31, 2011.

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 change from time to time.
4. The single family dwelling's storage room, open lanai and roof eaves built upon the subject property ("LOT 50") will not meet the minimum front yard setback requirements pursuant to Chapter 25, the Zoning Code according to the variance application's site plan map.
5. Should the structure (footprint) upon the subject property be destroyed by fire or other natural causes, the replacement of the structure 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- 10-055 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office (Hilo)
TMK File
Scott Leonard, Zoning Inspector
SUB File (SUB 10-000993)