

William P. Kenoi
Mayor



BJ Leithead Todd
Planning Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
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April 25, 2011

Marvin & Lori Hata
2668 Kilauea Avenue
Hilo, HI 96720

Dear Mr. & Mrs. Hata:

SUBJECT: VARIANCE VAR-11-002
Applicant: Marvin & Lori Hata
Owners: Marvin & Lori Hata
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards and Article 4, Division 4 Section 25-4-44, Permitted projections into yards and open space requirements
TMK: 2-2-048:008 (Lot 8-A)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 11-002 (VAR 11-002), subject to variance conditions. The variance permits the two storage containers and above ground swimming pool to remain upon Lot 8-A, with a minimum 4 feet to 6 feet side yard and side yard open space in lieu of the required 20 feet side yard and 14 feet side yard open space requirement, as identified on the plot plan submitted to our office on January 20, 2011. The variance is from the subject property's minimum side yard and minimum side open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards, 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 4.00 acres of land, is located at the corner of Awa and Makalika Street, Pana'ewa Farm Lots Subdivision, South Hilo, Hawai'i.

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2. **Zoning.** The subject property is zoned Agricultural - 3 Acres (A-3a) by the County and designated Agricultural or "A" by the State Land Use Commission (LUC)
3. **Variance Application.** The owner submitted the variance application, attachments, and filing fee on January 20, 2011 and other submittals related to the request. The variance application's plot plan, drawn to scale and prepared by the applicant, denotes the portion of the two storage containers and above ground swimming pool is built into the property's minimum 20-foot side yard setback.
4. **County Building Records.** Hawaii County Real Property Tax Office records indicate that a building permit (18192) was issued on August 17, 1956 for the construction of a 4-bedroom and 4-bath Single Family Dwelling and building permit (B2005-0927) for the construction of a two-car garage.
5. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated March 28, 2011. Refer to DOH memorandum in variance file.
 - b. Department of Public Works – Building Division memorandum dated March 29, 2011. Refer to DPW – Building Division memorandum in variance file.
6. **Public Notice.** A copy of first and second notices, sent by the applicant via USPS to surrounding property owners, and mailing certificates were submitted to the Planning Department. According to these submittals, the first and second notices were mailed via the USPS on January 21, 2011 and March 28, 2011 respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 30, 2011.
7. **Comments from Surrounding Property Owners or Public.** Letter of support from Trent Hata & Lei Imaino-Hata (TMK: 2-2-48:098).

SPECIAL AND UNUSUAL CIRCUMSTANCES

The owner/applicant submitted the variance application to resolve the encroachment of the two storage containers and above ground swimming pool into the 20 feet side yard setback required by the Zoning Code.

Pursuant to the applicant's background information, which states in part "*The request is for a variance from the minimum 20' side yard setback to allow for an as built 4 feet*

above ground swimming pool and storage containers with concrete pad to remain within the side yard setback. Applicants were unaware that the above-ground swimming pool and storage containers were considered permanent structures that required permit, until applicants requested a final inspection to close building permits for renovations to the house on the property (B2005-0926H; B2006-1461H; B2008-1396H). The building inspector stated final inspection will be contingent on obtaining building permits for the pool and storage containers. He suggested that applicants apply for a variance.

Prior to final inspection, no mention was made by County Inspectors that a violation had been committed, and each phase of construction was passed. The storage containers which are for applicants' yard and farm equipment are secured on a concrete pad and 4 feet from the property line and the 4' above ground pool is 6 feet from the property line. The owners for the adjoining parcel have no objections. I request that relief from this violation be remedied by the granting of a side yard setback variance."

No evidence has been found to show indifference or premeditation by the builder to intentionally erect the two-storage containers and above ground swimming pool into the property's minimum 20 feet side yard setback required by the Zoning Code.

ALTERNATIVES

Alternatives available to the current owner to correct and/or address the proposed water tank encroachments constructed into the affected side yard of the subject property include the following actions:

- Relocate the existing improvements upon the subject property to fit within the correct building envelope denoted on the recent plot map as prescribed by the Zoning Code.
- Another alternative is to consolidate the subject property with the adjoining property and resubdivide the property to modify property lines and adjust minimum yard setbacks.

These alternatives are not reasonable or practical due to expensive modifications that would be necessary.

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision or as required by zoning code 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 intent 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 presence of the low-profile pool (four feet above ground) and non-habitable agricultural storage-type structures do not appear to cause negative impacts. This can be substantiated, to some degree, by the fact that this office did not receive any complaint from surrounding property owners during the 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 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. The existing two as-built storage containers and above ground pool constructed upon the subject property ("LOT 8-A") will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code. The approval of this variance permits the existing storage containers and above ground swimming pool to remain upon subject property or "LOT 8-A" in accordance to the submitted plot plan.
4. The applicant/owner shall apply for building permits within six months of the issuance of this variance for the two (2) unpermitted storage containers and above ground pool.
5. 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.
6. Should the two (2) storage containers and above ground swimming pool (footprint) upon the subject property be destroyed by fire or other natural causes, the replacement

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shall comply with the County Zoning Code and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.

7. 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 VAR 11-002 null and void.

Sincerely,

A handwritten signature in black ink, appearing to read "BJ Leithead Todd". The signature is written in a cursive, flowing style.

BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office (Hilo)