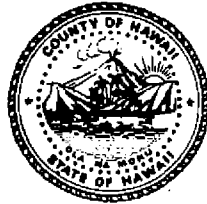


William P. Kenoi
Mayor



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 9, 2011

Mr. Robby Robinson
95-1010 Meanui Street
Mililani, HI 96789

Dear Mr. Robinson:

SUBJECT: VARIANCE: VAR-11-007
Applicant: ROBBY ROBINSON
Owners: ROBBY ROBINSON
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards, (a), Section 25-5-77
Other regulations.
TMK: 7-8-004:038 (Lot 3)

After reviewing your variance application, the Planning Director certifies the **approval** of VAR 11-007, subject to conditions. The variance will allow the reconstruction of a single-family dwelling upon Lot 3, with a minimum 8 feet rear yard setback and attendant 8 feet rear yard open space in lieu of the required 15 feet rear yard setback and 10 feet rear 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 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77 Other regulations.

BACKGROUND AND FINDINGS

1. **Location.** The subject property consists of 8,692 square feet in land area and is situated at Keauhou 2, North Kona, Hawai'i. The subject property is zoned Agriculture – 5 acres (A-5a) by the County and designated Agricultural or "A" by the State Land Use Commission (LUC).
2. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on February 1, 2011. The variance application's site plan map is drawn to scale, and prepared by the applicant, and

MAY 11 2011

Mr. Robby Robinson

Page 2

May 9, 2011

denotes the position of the existing single family home and proposed replacement dwelling to be constructed into the minimum rear yard setback. The department would note that due to the irregular shaped lot and initial assessment, that a new road would be constructed. Numerous front yard setbacks were previously identified. Upon a determination by DPW that a new road would not be built, Planning staff determined the only front yard setback was along Mamalahoa Highway.

3. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that there is an existing 2-bedroom 1 bath dwelling built in 1943.
4. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated April 20, 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 March 17, 2011 and April 11, 2011, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawai'i Today on April 8, 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 applicant/owner submitted the variance application to address and/or resolve the encroachments within the property's minimum 15 foot rear yard setback requirement. The variance application's site plan denotes the location of the proposed single family dwelling upon "Lot 3". The current owners have stated that because of the odd triangular shape of the parcel, the 15 feet rear yard setback will force the owner to cut approximately one-third of the garage area. The triangular shape parcel limits the applicant in placing the proposed dwelling to meet setback requirements. Also, the proposed realignment of Mamalahoa Highway, which still shows up on tax maps and would have impacted the subject property,

Mr. Robby Robinson

Page 3

May 9, 2011

is not necessary and will not be used according to the Department of Public Works memorandum dated March 25, 2009 (Copy of memorandum in variance file).

ALTERNATIVES

Alternatives available to the current owners to correct and/or address the building encroachments in the affected rear yard of the subject property include the following actions:

1. Redesign the pre-fabricated dwelling to fit within the correct building envelope denoted on the recent plot map as prescribed by the Zoning Code. *Any structural or design correction would be expensive and cost prohibitive.*
2. Consolidate the subject property with adjoining properties and resubdivide the property to modify property lines and adjust minimum yard setbacks. *Given the location of the encroachments, 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 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.

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

Mr. Robby Robinson

Page 4

May 9, 2011

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 built upon the subject property ("LOT 3") will not meet the minimum rear yard setback requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map.
5. Should the single-family dwelling upon the subject property be destroyed by fire or other natural causes, the replacement dwelling 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- 11-007 null and void.

Sincerely,



BJ LEITHEAD TODD

Planning Director

GES:lhnci

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xc: Real Property Tax Office (Hilo)