

William P. Kenoi  
Mayor



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Planning Director

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## County of Hawai'i

### PLANNING DEPARTMENT

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July 1, 2011

Mr. Paul Metzger  
75-5783 Lilia Place  
Kailua-Kona, HI 96740

Dear Mr. Metzger:

**SUBJECT: VARIANCE: VAR-11-019**  
**Applicant: PAUL METZGER**  
**Owners: PAUL METZGER**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 7,  
Section 25-5-76, Minimum Yards, (a), Section 25-5-77  
Other regulations.**  
**TMK: 7-5-029:016 (Lot 80)**

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After reviewing your variance application, the Planning Director certifies the **approval** of VAR 11-019, subject to conditions. The variance will allow portion of the single-family dwelling utility room upon Lot 80, with a minimum 5 feet rear yard setback and attendant 5 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 contains approximately 8,277 square feet in land area and is situated in the Kona Heights Subdivision, Increment II, F.P. 1077, Hienaloli, 5<sup>th</sup> & 6<sup>th</sup>, 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 April 4, 2011. The variance

application's site plan map is drawn to scale, and prepared by the applicant, and denotes the position of the existing single family home.

3. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (03117) was issued on August 15, 1978 for the construction of a single story dwelling consisting of 2 bedrooms, 2-baths.
4. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated May 27, 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 May 5, 2011 and June 16, 2011, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawai'i Today on May 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 and open space requirement. The variance application's site plan denotes the location of the as-built utility room upon "Lot 80". The current owners have stated: "*When we acquired the property in 1987 there was a concrete pad along the rear of the house with a cinder block retaining wall which we assumed met the setback requirement. Atop of that wall, (the distance of which is less than 10 feet from the rear property line) was built a lattice structure which was tied into the existing roof overhang. Our laundry area is within this area. We had to replace the original washer and dryer because the existing roof overhang did not protect from rain and thus rust & corrosion. Therefore we decided to extend the roof out to the block wall and supported it with additional posts. Naturally, since the underlying concrete footprint was not changed, we assumed that we were within compliance.*"

*The new structure has been in place for about 15 years and we've had no complaints from homeowners on adjacent parcels. In fact the parcel most affected has the benefit of not looking down on our laundry area from their lanai".*

### **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. Remove the building encroachments and/or redesigning or relocating the as-built utility room 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.*
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 15 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.

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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 utility room built upon the subject property ("LOT 80") 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 utility room 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- 11-019 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

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xc: Real Property Tax Office (Hilo)