

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

August 23, 2011

Mr. Michael D. Palmer
P.O. Box 75
Ninole, HI 96773

Dear Mr. Palmer:

SUBJECT: VARIANCE APPLICATION – VAR-11-028
Applicant: MICHAEL D. PALMER
Owner: MICHAEL D. PALMER
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: 3-4-003:017, Kahinano, Pōhakupuka, No. Hilo, Hawai'i

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 11-028 subject to variance conditions. The variance permits portion of the proposed garage to be constructed upon the subject property with a minimum 20 feet front yard setback and front yard open space requirement, in lieu of minimum 30.00 feet front yard setback and 24 feet front yard open space requirement. The variance is from 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, 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 1.351 acres, is located at Kahinano, Pōhakupuka, North Hilo, Hawai'i. The subject property address is 34-1184 Hawai'i Belt Road. The subject property is zoned Agricultural – 20 acres (A-20a) by the County of Hawai'i and designated Agriculture, or "A" by the State Land Use Commission (LUC).

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By: _____

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2. **Variance Application-Site Plan.** The owner submitted the variance application, attachments, and filing fee on February 9, 2009 and other submittals related to the variance request and variance application. The variance application's site plan map is drawn to scale and prepared by the owner/applicant. The variance site plan, undated, denotes portions of the proposed garage built into the minimum 30 feet front yard setback.
3. **County Building Records.** According to the department of Public Works-Building Division records, Building Permit No. 900576 was issued on March 29, 1990, for a new 1-story, 640 square foot gross floor area consisting of 1 bedroom, 1 bath, dining area, and kitchen.
4. **Variance Application (VAR 11-028) Agency Comments and Requirements:**
 - a. The State Department of Health (DOH) memorandum dated June 27, 2011. Refer to Department of Health (DOH) Memorandum in variance file.
 - b. The Department of Public Works (DPW) Memorandum dated June 23, 2011. Refer to DPW-Building Division Memorandum in variance file.
5. **Notice to Surrounding Property Owners.** A copy of first notice and second notice 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 on February 12, 2009 and June 24, 2011, respectfully. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 23, 2011.
6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. 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 proposed the encroachment within the property's minimum 30-foot front yard setback and 24 feet front yard open space. The variance application's site plan denotes the location of the proposed garage upon "Lot 1." Given the shape and topography of the property, the usable area where the garage can be situated is limited. The owner has stated, in part:

"We are remodeling, building a room from the existing carport and adding additional rooms to the house.

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The existing driveway leads directly to the proposed garage. One corner of the garage would extend 10 feet over the existing setback so a variance would be required.

The proposed placement of the garage would be the best use of the development of the property. It would be located at the end of the road, adjoining the house. Any other placement on the property would require extensive grading because of the high slope of the property."

ALTERNATIVES

Alternatives available to the current owners to correct and/or address the proposed garage encroachments constructed into the affected front yard of the subject property include the following actions:

Redesign and/or relocate the proposed garage upon the subject property to fit within the correct building envelope denoted on the recent site plan map as prescribed by the Zoning Code. *As mentioned above, the shape and topography of the property limits the area where the garage can be located.*

Consolidate the subject property with adjoining property and resubdivide the property to modify property lines and adjust minimum yard setbacks. *Given the configuration of the property and the setback in question, abuts a right-of-way. This alternative is not feasible.*

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.

It appears that portion of the proposed garage, in its designated location, will not be physically and/or visually obtrusive from other properties situated within the immediate area. This can be substantiated to some degree, by the fact that this office did not receive, any comments or objections from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the immediately surrounding properties.

The applicant's variance application was acknowledged by letter dated June 16, 2011, and 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 to August 26, 2011.

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.

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 Hawai'i 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 an additional 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 proposed garage will not meet the minimum front yard setback pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits the proposed garage to be built upon the subject property, or "LOT 1," according to the site plan map submitted with the variance application.
5. Should the proposed garage situated on the subject property be destroyed by fire or other natural causes, the replacement or the new garage shall comply with the County Zoning Code and be subject to State law and County ordinances and regulations pertaining to building construction and building 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.

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Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance- 11-028 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)