

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 4, 2011

Mr. Paul H. Murray  
Paul H. Murray & Associates, LLC  
P. O. Box 1189  
Hilo, HI 96721

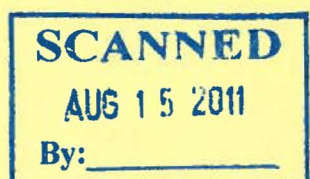
Dear Mr. Murray:

**SUBJECT: VARIANCE APPLICATION: (VAR-11-029)**  
**Agent: PAUL H. MURRAY & ASSOCIATES, LLC**  
**Applicant: STANLEY M. RUDOLPH**  
**Owners: STANLEY M. RUDOLPH, TRUST**  
**Request: Variance from Chapter 25, Zoning, Article 5,  
Division 7, Section 25-5-7, Minimum Yards,  
Section 25-5-8, Other Regulations, and Article 4,  
Division 4, Section 25-4-44, Permitted projections  
Into yards and open space requirements, (a)**  
**TMK: 2-4-024:072 (Lot 12)**

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 11-029 (VAR 11-029), subject to variance conditions. The variance permits a portion of the single family dwelling to remain upon Lot 12, with a minimum 19.3 feet to 12.7 feet front yard and open space in lieu of the required 20 feet front yard and minimum 14 feet front yard open space requirement. The variance is from the subject property's minimum front yard and minimum front open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-7 Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

1. **Location.** The subject property contains approximately 10,499 square feet and is situated in the University Heights Residential Subdivision, Wāiakea, South Hilo, Hawai'i. The site address is 1313 Kumuko'a Street.

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2. **Zoning.** The subject property is zoned Single Family Residential – 10,000 square feet (RS-10) by the County and designated Urban or "U" by the State Land Use Commission (LUC)
3. **Variance Application.** The owner submitted the variance application, attachments, and filing fee on June 1, 2011 and other submittals related to the request. The variance application's plot plan dated May 10, 2011, drawn to scale and prepared by Paul H. Murray and Associates, LLC, denotes that a portion of the dwelling built into the property's minimum 20-foot front yard setback.
4. **County Building Records.** Hawaii County Real Property Tax Office records indicate that a building permit (35415) was issued on March 2, 1967 for the construction of a 3-bedroom and 2-1/2 -bath single family dwelling.
5. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated June 27, 2011. (Refer to DOH memorandum in variance file.)
  - b. County of Hawai'i, Department of Public Works (DPW) memorandum dated June 23, 2011. (Refer to DPW 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 proof of mailing were submitted to the Planning Department. According to these submittals, the first and second notices were mailed via the USPS on June 1, 2011 and June 23, 2011 respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 23, 2011.
7. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received by the Planning Department.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

The owner submitted the variance application to resolve the encroachment of the single-family dwelling into the 20 feet front yard setback and associated 14 feet front yard open space required by the Zoning Code. Pursuant to the applicant's background information, the owner was unaware that the dwelling and the roof eave along the stairway into the front yard setback area, which is established as 20 feet from the front property line.

Building Permit No. 34415 was issued on March 2, 1967 and the owners believed that their dwelling was constructed in accordance with all County requirements, as no mention of any encroachments were made during construction and inspection of the building permit.

No evidence has been found to show indifference or premeditation by the builder to intentionally construct the single-family-dwelling into the property's minimum 20 feet front yard setback required by the Zoning Code.

### ALTERNATIVES

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

- Relocate or modify the existing single-family-dwelling to fit within the correct building envelope denoted on the recent plot map as prescribed by the Zoning Code. *This alternative is not reasonable or practicable because it would result in expensive modifications to the existing dwelling and patios.*
- Another alternative is to consolidate the subject property with the roadway lot. *This alternative is not practical and reasonable.*

### 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 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. 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 single-family-dwelling constructed upon the subject property ("LOT 12") will not meet the minimum front yard pursuant to Chapter 25, the Zoning Code. The approval of this variance permits a portion of the single family dwelling to remain upon subject property in accordance to the plot plan dated on May 10, 2011.
4. 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.
5. Any further building permit and/or other construction permits issued to enlarge or change or modify the dwelling floor plan being built upon the subject property shall be limited to the dwelling footprint permitted by variance and/or constructed upon the dwelling's footprint and within the building envelope denoted on the plot plan dated May 10, 2011.
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 VAR 11-029 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

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xc: Real Property Tax Office (Hilo)  
DPW- Building Division (Hilo)