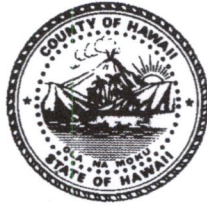


Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

August 4, 2017

Sidney Fuke, Planning Consultant
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

SUBJECT: VARIANCE VAR-11-000053 - AMENDED
Applicant: SIDNEY FUKU, PLANNING CONSULTANT
Owners: MMVS REVOCABLE TRUST
Request: Variance from Chapter 25, Zoning, Article 5,
Division
3, Section 25-5-36, Minimum Yards, Section 25-5-38,
Other Regulations, and Article 4, Division 4 Section
25-4-44, Permitted Projections into Yards and Open
Space Requirements
TMK: 2-3-018:016 (Lot 4A)

After reviewing your request, the Planning Director amends Variance No. 11-000053 (VAR 11-053), subject to variance conditions. The variance request is to permit a proposed two-story single family "replacement" dwelling on an existing RM-1 zoned property with reduced setbacks from the typical 20-foot front and 10-foot side yards, and associated open space requirements. The application seeks approval of 5-foot front and side yard setbacks and attendant 3-foot roof eaves. The **variance grants relief for reduced front yard setbacks and open space** but **maintains the required interior setbacks and open space** along the side yards.

The variance is from the subject property's minimum front and side yard setback requirements, and associated minimum front and side open space requirements, pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 3, Section 25-5-36 Minimum Yards Section 25-5-38 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 contains approximately 3,284 square feet and is situated at Caceras Track, South Hilo, Hawaii. The subject property's street address is 302 Ululani Street.

2. **Zoning.** The subject property is zoned Multiple Residential – 1,000 square feet (RM-1) 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 November 16, 2011. The request is for approval to construct a 2-story single family home with 5-foot front and side yard setbacks as well as attendant 3-foot roof eaves in lieu of 20-foot front yard setbacks along both frontages (subject property is a corner lot), 10-foot side yard setbacks (on both interior lot lines) and associated open space requirements.
4. **County Building Records.** Hawaii County Real Property Tax Office records indicate that a building permit (2883) was issued on September 5, 1947 for the construction of a Single Family Dwelling; the dwelling has since been demolished.
5. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated December 27, 2011, identifies no environmental health concerns with regulatory implications. (See memo in VAR file).
 - b. No comments have been received from the Department of Public Works – Building Division as of this date.
6. **Public Notice.** The applicant submitted a copy of the first and second notices sent to surrounding property owners including an associated affidavit. Pursuant to these submittals, it appears that the applicant's notices were mailed to the surrounding property owners by USPO on November 14, 2011 and December 30, 2011, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 28, 2011.
7. **Comments from Surrounding Property Owners or Public.**
 - a. An objection letter, received on January 17, 2012 from Lance and Lissa Laybourn, expresses opposition to the request and concern that such a reduction in setbacks would restrict much of the daylight and breezes they experience as well as crowd the living space. The opposition letter also identifies, among other items, that the application material was incorrect (concerning orientation of the house as portrayed with the application in respect to real property tax records). (See letter in VAR file).
 - b. An objection letter, received on January 18, 2012 from Danny Miller, expresses opposition to any relief from zoning and building code requirements. The opponent cites, among other items, that the reduced setbacks would infringe upon his views and privacy. (See letter in VAR file).

SPECIAL AND UNUSUAL CIRCUMSTANCES

The owner/applicant is requesting a variance from the minimum front and side yard setback requirements pursuant to Section 25-5-36 and 25-4-44 of the Zoning Code. The department acknowledges the difficulty encountered with this legal, non-conforming lot and attempting to comply with current zoning requirements. The dimensions of this 3,284 square foot lot measures approximately 60 feet on three sides and tapers to approximately 50 feet on the remaining side.

Section 25-5-34 of the county code identifies that minimum building sites in the RM district should be 7,500 square feet, however this property was created prior to the adoption of the zoning code. 25-5-36 identifies 20-foot front yards in the RM district and 10-foot side yards for a two-story structure. Given that this property fronts on two roads, the property has two front yards and two side yards. Section 25-4-44 identifies that roof overhangs and eaves may extend 4 feet into yards less than 10 feet and 5 feet into yards measuring between 10 feet and 15 feet.

Based on the above, there are special and unusual circumstances applying to the subject property which exist to a degree which obviously interferes with the best use or manner of development of the property. In order to meet with today's setback requirements of the Zoning Code, it would be practically impossible to construct a single family dwelling within the parameter of the building envelope created by the setback requirements. These facts comprise "special or unusual circumstances or conditions," which support granting of this variance.

ALTERNATIVES

Alternatives available to the current owner to correct and/or address the proposed encroachment into the affected front and side yards of the subject property include the following actions:

- Construct the single family dwelling within the building envelope created by the current setback requirements.
- Consolidate and re-subdivide the subject property with an adjoining property(s) to modify property lines and adjust minimum yard setbacks.

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision or development, 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.

The rationale for a reduction in all setbacks to 5 feet has not been fully justified by the application material. A new two-story structure could accommodate sufficient separation between adjacent uses/structures if constructed to meet the 10-foot side yard setbacks and open space requirements required in the Zoning Code. Some reduction in setback along both

frontages, however, should allow sufficient relief to the property owner while not causing substantial adverse impacts to the general area.

Although no other private properties would be impacted by the proposed 5-foot front yard setbacks, if such were to be approved, a concern exists in creating a living area that may be overly close to the adjacent rights-of-way. A reduction in front setback to 10 feet, however, would match that of the other setbacks and should still provide for an adequate building area specifically given the lot being approximately half the size as currently required by code. In such a situation it has been estimated that 10-foot setbacks along all property lines could result in a building pad measuring approximately 40 feet on three sides and tapering to approximately 30 feet on the remaining side.

The department would note that a reduced setback to 10 feet, if present between a front property line and a garage, would force a portion of parked automobiles to encroach into public right-of-way. Section 25-4-53 of the county code provides various parking dimension, such as a typical 18-foot deep parking stall within a parking lot. Said section does not explicitly cover parking within the context of a detached single family residence on a lot. However a 20-foot deep parking pad is typically the minimum used and should be maintained with this variance request as well.

Based on the foregoing findings and unusual circumstances, some relief via the variance process 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 variances granted 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

The variance request to allow the construction of a 2-story single family detached residence with typical 20-foot front and 10-foot side yard setbacks, and associated open spaces, to be at a **reduced 5-foot setback and attendant 3-foot roof eaves** is hereby **denied**. *However, approval* is hereby granted to allow **reduced front yard setbacks of 10 feet**. The 10-foot interior side yards shall maintain setbacks as required by Section 25-5-38 as shall all open space requirements on the property comply with Section 25-4-44. 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

Sidney Fuke, Planning Consultant

Page 5

August 4, 2017

successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.

3. The proposed improvements to be constructed upon the subject property ("LOT 4A") will not meet the minimum front and side yard pursuant to Chapter 25, the Zoning Code. The approval of this variance permits the construction of a two story single family dwelling within the setback.
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 structures built upon the subject property shall be limited to the setbacks required by the underlying zoning, as modified by this variance.
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 VAR 11-053 null and void.

Sincerely,



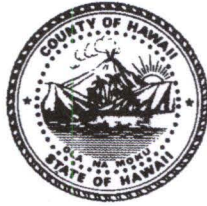
MICHAEL YEE
Planning Director

LHN:nci

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cc: Real Property Tax Office (Hilo)

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
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August 4, 2017

Sidney Fuke, Planning Consultant
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

SUBJECT: VARIANCE VAR-11-000053 - AMENDED
Applicant: SIDNEY FUKU, PLANNING CONSULTANT
Owners: MMVS REVOCABLE TRUST
Request: Variance from Chapter 25, Zoning, Article 5, Division 3, Section 25-5-36, Minimum Yards, Section 25-5-38, Other Regulations, and Article 4, Division 4 Section 25-4-44, Permitted Projections into Yards and Open Space Requirements
TMK: 2-3-018:016 (Lot 4A)

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3. **Variance Application.** The owner submitted the variance application, attachments, and filing fee on November 16, 2011. The request is for approval to construct a 2-story single family home with 5-foot front and side yard setbacks as well as attendant 3-foot roof eaves in lieu of 20-foot front yard setbacks along both frontages (subject property is a corner lot), 10-foot side yard setbacks (on both interior lot lines) and associated open space requirements.
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SPECIAL AND UNUSUAL CIRCUMSTANCES

The owner/applicant is requesting a variance from the minimum front and side yard setback requirements pursuant to Section 25-5-36 and 25-4-44 of the Zoning Code. The department acknowledges the difficulty encountered with this legal, non-conforming lot and attempting to comply with current zoning requirements. The dimensions of this 3,284 square foot lot measures approximately 60 feet on three sides and tapers to approximately 50 feet on the remaining side.

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INTENT AND PURPOSE

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frontages, however, should allow sufficient relief to the property owner while not causing substantial adverse impacts to the general area.

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PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

The variance request to allow the construction of a 2-story single family detached residence with typical 20-foot front and 10-foot side yard setbacks, and associated open spaces, to be at a **reduced 5-foot setback and attendant 3-foot roof eaves** is hereby **denied**. *However, approval* is hereby granted to allow **reduced front yard setbacks of 10 feet**. The 10-foot interior side yards shall maintain setbacks as required by Section 25-5-38 as shall all open space requirements on the property comply with Section 25-4-44. 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 proposed improvements to be constructed upon the subject property ("LOT 4A") will not meet the minimum front and side yard pursuant to Chapter 25, the Zoning Code. The approval of this variance permits the construction of a two story single family dwelling within the setback.
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 structures built upon the subject property shall be limited to the setbacks required by the underlying zoning, as modified by this variance.
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 VAR 11-053 null and void.

Sincerely,



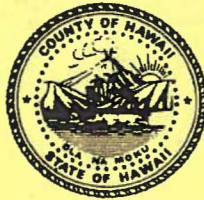
MICHAEL YEE
Planning Director

LHN:nci

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cc: Real Property Tax Office (Hilo)

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
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Fax (808) 961-8742

March 7, 2012

Lori Mikkelson
All Aina Services
P. O. Box 291
Laupahoehoe, HI 96764

Dear Ms. Mikkelson:

SUBJECT: VARIANCE VAR-11-000053
Applicant: ALL AINA SERVICES
Owners: MMVS REVOCABLE TRUST
Request: Variance from Chapter 25, Zoning, Article 5, Division 3, Section 25-5-36, Minimum Yards, Section 25-5-38, Other Regulations, and Article 4, Division 4 Section 25-4-44, Permitted projections into yards and open space requirements
TMK: 2-3-018:016 (Lot 4A)

After reviewing your variance application, the Planning Director certifies the **limited approval** of Variance No. 11-053 (VAR 11-053), subject to variance conditions. The variance request is to permit a proposed two story single family "replacement" dwelling on an existing RM-1 zoned property with reduced setbacks from the typical 20-foot front and 10-foot side yards, and associated open space requirements. The application seeks approval of 5-foot front and side yard setbacks and attendant 3-foot roof eaves. The **variance grants relief for reduced front yard setbacks and open space but maintains the required interior setbacks and open space** along the side yards.

The variance is from the subject property's minimum front and side yard setback requirements, and associated minimum front and side open space requirements, pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 3, Section 25-5-36 Minimum Yards Section 25-5-38 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 contains approximately 3,284 square feet and is situated at



MAR 9 - 2012

Caceras Track, South Hilo, Hawaii. The subject property's street address is 302 Ululani Street.

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3. **Variance Application.** The owner submitted the variance application, attachments, and filing fee on November 16, 2011. The request is for approval to construct a 2-story single family home with 5-foot front and side yard setbacks as well as attendant 3-foot roof eaves in lieu of 20-foot front yard setbacks along both frontages (subject property is a corner lot), 10-foot side yard setbacks (on both interior lot lines) and associated open space requirements.
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- Consolidate and re-subdivide the subject property with an adjoining property(s) to modify property lines and adjust minimum yard setbacks.

INTENT AND PURPOSE

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Lori Mikkelson
All Aina Services
Page 4
March 7, 2012

The rationale for a reduction in all setbacks to 5 feet has not been fully justified by the application material. A new two-story structure could accommodate sufficient separation between adjacent uses/structures if constructed to meet the 10-foot side yard setbacks and open space requirements required in the Zoning Code. Some reduction in setback along both frontages, however, should allow sufficient relief to the property owner while not causing substantial adverse impacts to the general area.

Although no other private properties would be impacted by the proposed 5-foot front yard setbacks, if such were to be approved, a concern exists in creating a living area that may be overly close to the adjacent rights-of-way. A reduction in front setback to 10 feet, however, would match that of the other setbacks and should still provide for an adequate building area specifically given the lot being approximately half the size as currently required by code. In such a situation it has been estimated that 10-foot setbacks along all property lines could result in a building pad measuring approximately 40 feet on three sides and tapering to approximately 30 feet on the remaining side.

The department would note that a reduced setback to 10 feet, if present between a front property line and a garage, would force a portion of parked automobiles to encroach into public right-of-way. Section 25-4-53 of the county code provides various parking dimension, such as a typical 18-foot deep parking stall within a parking lot. Said section does not explicitly cover parking within the context of a detached single family residence on a lot. However a 20-foot deep parking pad is typically the minimum used and should be maintained with this variance request as well.

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PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

The variance request to allow the construction of a 2-story single family detached residence with typical 20-foot front and 10-foot side yard setbacks, and associated open spaces, to be at a **reduced 5-foot setback and attendant 3-foot roof eaves** is hereby **denied**. *However, approval* is hereby granted to allow **reduced front yard setbacks of 10 feet**. The 10-foot interior side yards shall maintain setbacks as required by Section 25-5-38 as shall all open space requirements on the property comply with Section 25-4-44. 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 proposed improvements to be constructed upon the subject property ("LOT 4A") will not meet the minimum front and side yard pursuant to Chapter 25, the Zoning Code. The approval of this variance permits the construction of a two story single family dwelling within the setback.
4. Development on the property shall maintain a minimum of 20 feet between the face of the garage and the property line to accommodate automotive parking and ensure parked vehicles to not overhang into public right-of-way. Development on the property shall also maintain compliance with vision clearance at intersections of roads.
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. Any further building permit and/or other construction permits issued to enlarge or change or modify the structures built upon the subject property shall be limited to the setbacks required by the underlying zoning, as modified by this variance.
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 11-053 null and void.

In accordance with Ordinance No. 99-112, you may appeal the director's decision as follows:

- (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision, appeal the decision to the board of appeals.
- (b) A person is aggrieved by a decision of the director if:
 - (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public: and

Lori Mikkelson
All Aina Services
Page 6
March 7, 2012

- (2) The person is or will be adversely affected by the decision.
- (c) An appeal shall be in writing, in the form prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the board of appeals with the proof of service.
- (d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals.

The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:

- (1) The director erred in its decision; or
- (2) The decision violated this chapter or other applicable law; or
- (3) The decision was arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

In view of the above and for your reference, we have enclosed the GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR form.

Sincerely,



BJ LEITHEAD TODD
Planning Director

GES:LHN:nci

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xc: Danny Miller
Lance and Lissa Laybourn
Real Property Tax Office (Hilo)