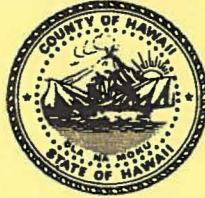


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

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

June 13, 2012

Johannes and Ku'ulei Miura Fahling
20 Haihai Street
Hilo, HI 96720

Dear Mr. & Mrs. Fahling:

SUBJECT: VARIANCE VAR-11-000056

Applicant: JOHANNES FAHLING

Owners: JOHANNES FAHLING AND KU'ULEI MIURA FAHLING

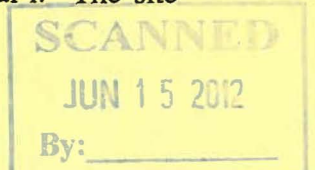
**Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-7, Minimum Yards, and Article 4, Division 4
Section 25-4-44, Permitted Projections into Yards and Open
Space Requirements, (a)**

TMK: 2-2-043:041 (Lot 1)

After reviewing your variance application submitted on November 28, 2011, the Planning Director certifies the **approval** of Variance No. 11-000056 (VAR 11-000056), subject to variance conditions. The variance permits a portion of the proposed carport to be reconstructed on the subject property, with a minimum 6-foot front yard setback (measured to the 10-foot road widening setback) and 4-foot side yard setback. This is in lieu of the required 20-foot front yard setback, 10-foot side yard setback and associated 14-foot front and 5-foot side yard open space requirement as identified on the plot plan. The variance is from the subject property's minimum front and side yard setback requirement 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(a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property consists of approximately 18,000 square feet and is situated at Waiākea Houselots, Palai Aina Subdivision, South Hilo, Hawai'i. The site address is 20 Haihai Street.



2. **Zoning.** The subject property is zoned Single Family Residential –10,000 square feet (RS-10) by the County and designated Urban (U) by the State Land Use Commission
3. **Variance Application.** The owner submitted the variance application, attachments, and filing fee on November 28, 2011 and other submittals related to the request. The variance application's plot plan, drawn to scale and prepared by the applicant, denotes proposed open carport to be constructed into the property's minimum 20-foot front yard and 10 feet side yard setback.
4. **County Building Records.** Hawaii County Real Property Tax Office records indicate that the single family dwelling was built in 1970.
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. Refer to DOH memorandum in variance 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 23, 2011 and March 21, 2012, 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.** No written comments or objections from surrounding property owners or the general public were received by the Planning Department.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant/owner submitted the variance application to address and/or resolve the encroachments within the property's minimum 20 foot front yard and 10 foot side yard setback. The variance application's site plan denotes the location of the proposed open carport upon "Lot 1". The applicant has stated the following reason for their variance request.

"The reason for this request is to build a new carport further back from Haihai Street to provide a safer entry and exit from Haihai. We will then demolish our existing carport of one car which presently it is 6 feet beyond the front property line and is a danger to both our family trying to drive out of our existing carport as well as the on-coming traffic extends only inches from the road edge pavement. This can also be a danger to large vehicles going up Haihai.

Mr. Johannes Fahling
Page 3
June 13, 2012

Haihai Street is also slated for a 10-foot road widening at some point in the future per county plans. With this road widening the carport will then sit over 16' beyond the front property line and will have to be relocated at that point.

The option of just moving the existing carport further back into the property in the same corner is not an option as there is a large rock outcropping just beyond the rear of the existing carport and the existing cesspool is also located just beyond the rock out-cropping.

Although there will be only 6 feet from the corner of the new carport to the front property line with the proposed 10 foot road widening and 16 feet without the road widening, we plan to not enclose the new carport to keep the front and side yard as open as possible to maintain the intent of the zoning district."

ALTERNATIVES

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

- Relocate or modify the existing dwelling to create more frontages. *This alternative is not reasonable or practicable because it would result in expensive modifications to the existing dwelling.*
- Another alternative is to consolidate/resubdivide the subject property with the adjacent property. *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.

The applicant's variance application was acknowledged by letter dated December 21, 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 June 15, 2012.

Based on the foregoing findings and unusual 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. Also, no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

Mr. Johannes Fahling
Page 4
June 13, 2012

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 proposed open carport to be constructed upon the subject property ("LOT 1") will not meet the minimum front and side yard setback pursuant to Chapter 25, the Zoning Code. The approval of this variance permits the proposed open carport to be constructed upon the subject property in accordance to the plot plan submitted on November 28, 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 Chapter 25, 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 and denoted on the plot plan submitted on November 28, 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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject VAR 11-000056 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN:nci

P:\AdminPermits\Variance from COH02\Zone2\VAR-11-000056TMK2-2-043-041Fahling.doc

xc: Real Property Tax Office (Hilo)