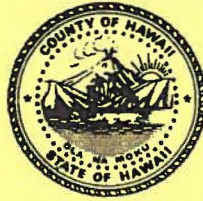


William P. Kenoi
Mayor



BJ Leithead Todd
Director

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County of Hawai'i
PLANNING DEPARTMENT

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April 12, 2012

Christopher Cox
44-712 Ho'olepa Lane
Honoka'a, HI 96743

Dear Mr. Cox:

SUBJECT: VARIANCE APPLICATION – VAR-12-000050
Applicant: CHRISTOPHER COX
Owner: JAMES E. MOFFIT
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, (a)
TMK: 4-4-017:121; Lot 121-A

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 12-000050 subject to variance conditions. The variance allows for the proposed second story addition with a minimum 8 feet front yard setback and open space requirement, in lieu of the minimum 20.00 feet front yard setback and 14 feet open space requirement, pursuant to the plot plan received on January 29, 2010. The variance is from the subject property's minimum side yard and attendant minimum side 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, 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 11,897 square feet, is located in Pā'auhau Camp, Pā'auhau, Hāmākua, Hawai'i. The subject property address is 44-541 Ho'omau Street. The subject property is zoned Agricultural – 1 acre (A-1a) by the County of Hawai'i and designated Agriculture, or "A," by the State Land Use Commission (LUC).
2. **Variance Application-Site Plan.** The owner's representative submitted the variance application, attachments, and filing fee on January 29, 2010, and other submittals related

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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, received on February 16, 2012, denotes portions of the proposed second story addition into the minimum 20 feet front yard setback.

3. **County Building Records.** Hawaii County Real Property Tax Office records indicate that the single family dwelling was built in 1945.
4. **Variance Application (VAR 10-002) Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated May 11, 2010 states:
"The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. No comments from the Department of Public Works, Building Division have been received as of this date.
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 via the USPS on February 15, 2012 and March 9, 2012, respectfully. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 13, 2010.
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 owner/applicant is requesting a variance from the minimum front yard setback requirements pursuant to Section 25-5-76 and 25-4-44 of the Zoning Code.

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. The single family dwelling built in 1945 was built prior to the adoption of the Zoning Code; therefore, it is considered a legal, non-conforming structure. The applicant has stated that the property severely slopes toward the rear of the property and backs up to a gulch with extreme drop off. Therefore, given the topography and the placement of the cesspool it is difficult to place any improvement on the subject property. These facts comprise "special or unusual circumstances or conditions," which support granting of this variance which would allow for the interior loft addition over the footprint of the existing single family dwelling.

ALTERNATIVES

Alternatives available to the current owners to correct and/or address the single family dwelling (parsonage) encroachments constructed into the affected side yard and open space of the subject property include the following actions:

1. One option in removing the encroachment is to redesign and/or relocate the existing single-family dwelling 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 single family dwelling can be located.
2. Consolidate the subject property with adjoining property and resubdivide the property to modify property lines and adjust minimum yard setbacks.

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision 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 second story addition, 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 complaint from surrounding property owners during the construction of the single family dwelling and open patio. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the immediately surrounding properties.

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 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

Mr. Christopher Cox

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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 Hawai'i County Core, Chapter 25 (Zoning) or State Law which may change from time to time.
4. The proposed greenhouse will not meet the minimum front yard setback pursuant to the Hawai'i County Code, Chapter 25, (Zoning Code), according to the variance application's site plan map. The approval of this variance permits the proposed greenhouse to be built upon subject property, or "LOT 121-A," according to the site plan map submitted with the variance application.
5. Should the detached greenhouse situated on the subject property be destroyed by fire or other natural causes, the replacement or the new greenhouse shall comply with the Hawai'i County Code, Chapter 25 (Zoning) 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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance- 12-000050 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN:nci

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xc: Real Property Tax Office (Hilo)