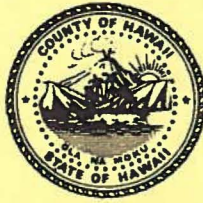


William P. Kenoi  
Mayor



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  
Phone (808) 961-8288  
Fax (808) 961-8742

May 22, 2012

Mr. Mark Kaminski, Personal Representative  
P. O. Box 2093  
Pahoa, HI 96778

Dear Mr. Kaminski:

**SUBJECT: VARIANCE: VAR-12-000056**  
**Applicant: MARK KAMINSKI, PERSONAL REPRESENTATIVE**  
**Owners: ESTATE OF CECIL P. LEWIS**  
**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(a), Permitted projections into yards and open space requirements**  
**TMK: 1-2-030:017 (Lot 49)**

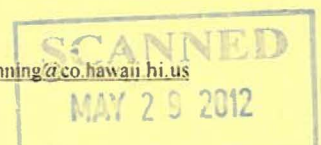
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After reviewing your variance application, the Planning Director certifies the **approval** of Variance 12-000056 (VAR 12-000056), subject to conditions. The variance will allow portions of the two story single family dwelling to remain on Lot 49, with a minimum 14.5 foot front yard setback and attendant roof eave with a minimum 8.8 foot front yard open space and a 7.2 foot side yard setback. This allowance is in lieu of the required minimum 20 foot front yard and 10 foot side yard setback and associated 14 foot front yard and 5 foot side yard open space requirement. This variance is from the subject property's minimum front and side yard setback and associated front and 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(a). Permitted projections into yards and open space requirements.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 12,895 square feet and is situated within the Kahena Beach Estates Subdivision shown on File Plan 905 Keauohana District of Puna, Hawai'i. The subject property's street address is 12-7243 Moana Kai Pali Street. The subject property is zoned Agricultural – 1 Acre (A-1a) by

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the County and designated Agricultural or "A" by the State Land Use Commission (LUC).

2. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on July 13, 2011. The variance application's site plan map is drawn to scale, and prepared by Roy G. Hollowell LPLS, and denotes the position of the single family dwelling constructed into minimum 20 foot front yard and 10 foot side yard setback and associated 14 foot front yard and 5 foot side yard open space requirement.
3. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#932569) was issued to the subject property for a two-story, single-family dwelling consisting of 2 bedrooms, 2 baths, living room, kitchen and dining area, garage and detached water tank.
4. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated August 12, 2011 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
  - b. No comments were received from the Department of Public Works – Building Division as of this date.
5. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on March 22, 2012 and April 26, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 20, 2012.
6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners of the general public were received.

#### 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 along with a 14 foot front yard and 5 foot side yard open space requirement. The variance application's site plan denotes the location of the two story single family dwelling upon "Lot 49". The owners were unaware of any encroachment of the single-family residence and roof eave at the time of construction and would not have discovered any problems affecting the property until a modern survey was conducted by Roy G. Hollowell LPLS,



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revealing the setback violations. The applicant has stated that the placement of the single family dwelling could have been influenced by the topography elevation which from street level to the rear (ocean side) of the dwelling is approximately 15 feet and the property slopes rapidly down from the right corner toward the left when viewing from the street. The wooden fence shown on the survey map, encroaching into the road right-of-way has since been removed. No evidence has been found to show indifference or premeditation by the builder to intentionally construct a portion of the single family dwelling and attendant roof eave into the property's minimum 20 foot front and 10 foot side yard setback and attendant minimum 14 foot side yard open space required by the Hawai'i County.

### ALTERNATIVES

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

Remove the building encroachment constructed upon the subject property to fit within the correct building envelope denoted on the recent plot map as prescribed by the Zoning Code. *Any structural or design correction would be expensive and cost prohibitive.*

Consolidate the subject property with adjoining properties and resubdivide the property to modify property lines and adjust minimum yard setbacks. *Given the location of the encroachments (front and side yard), consolidation/resubdivision with the roadway lot and the adjoining property would not be practical.*

### 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.

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 purpose 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 complaints from surrounding property owners during the roughly 18 years since the single family dwelling was constructed. Further, objections were not received from the surrounding property owners or general public in response to the Notification of Surrounding Property 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.



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**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 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. No permit shall be granted to allow an ohana, a second single-family or farm dwelling upon the subject property, subject to provisions of the Hawai'i County Code, Chapter 25 (Zoning) or State Law which may change from time to time.
4. Portion of the single family dwelling built upon the subject property ("LOT 49") will not meet the minimum side yard and open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), according to the variance application's site plan map.
5. Should the single-family dwelling (footprint) on the subject property be destroyed by fire or other natural causes, the replacement structure 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 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-12-000056 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

LHN:nci  
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xc: Real Property Tax Office (Hilo)