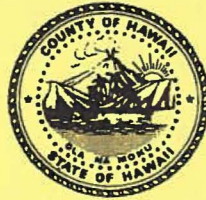


William P. Kenoi
Mayor



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

July 16, 2012

Mr. John Maple
P. O. Box 379
Papaikou, HI 96781

Dear Mr. Maple:

SUBJECT: VARIANCE VAR-12-000067
Applicant: JOHN P. MAPLE
Owners: JOHN P. MAPLE
**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(a), Permitted Projections into Yards and
Open Space Requirements**
TMK: 2-7-022:005; Lot 1

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 12-000067 (VAR 12-067), subject to variance conditions. The variance permits a portion of the single-family dwelling to remain upon Lot 1, with a front yard setback of 11.13 feet and attendant minimum 7.52 foot front yard open space in lieu of the required 20-foot front yard setback and minimum 14 foot front yard open space requirement. The variance is from the subject property's minimum front yard setback and minimum front yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, 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 contains approximately 32,281 square feet and is identified as Lot 1, situated within Paiha'aloa, South Hilo, Hawai'i. The subject property's street address is 27-343 Old Mamalahoa Highway.
2. **Zoning.** The subject property is zoned Single Family Residential – 10,000 square feet (RS-10) by the County.
3. **State Land Use (SLU).** Urban (U)

Mr. John P. Maple
Page 2
July 16, 2012

4. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on April 30, 2012. The variance application's site plan map is drawn to scale, and prepared by Niels Christensen, LPLS, and denotes the position of the single family dwelling and detached garage constructed into the minimum 20 foot front yard setback and 14 foot front yard open space requirement.
5. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that two single family dwellings are situated on the subject property. Building Permit 43942 was issued on February 6, 1970 for the construction of a single-family dwelling consisting of dwelling consisting of 2 bedrooms and 1-1/2 bath and on October 8, 1992, building permit 922078 was issued for the second single-family dwelling which consists of 3 bedrooms and 3 baths
6. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum, dated May 18, 2012: "The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. Department of Public Works – Building Division: No comments were received as of this date.
7. **Public Notice.** The applicant submitted a copy the first and second notices sent to surrounding property owners. The applicant's notices were mailed to the surrounding property owners by USPO on May 8, 2012 and May 21, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 21, 2012.
8. **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 single family residence encroachment within the property's minimum 20 foot front yard setback. The variance application's site plan denotes the location of the single-family dwelling upon "Lot 1". Pursuant to the applicant's background information, the owners were unaware of any encroachment when they purchased the property and would not have discovered any problems affecting the single-family dwelling until a modern survey was conducted on April 27, 2009 by Niels Christensen, LPLS, revealing the setback violations.

Mr. John P. Maple
Page 3
July 16, 2012

Building Permit No. 43942 was issued on February 6, 1970 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 foot front yard setback required by the Zoning Code

ALTERNATIVES

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

Relocate or modify the existing single-family dwelling and detached garage 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.*

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

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision or as required by zoning code is 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 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.

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.

Mr. John P. Maple
Page 4
July 16, 2012

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 single-family dwelling and detached garage constructed upon the subject property ("LOT 1") will not meet the minimum rear and side yard setback pursuant to the Hawaii County Code, Chapter 25, (Zoning). The approval of this variance permits the existing single-family dwelling and detached garage to remain upon the subject property in accordance to the plot plan submitted on April 30, 2012.
4. As shown on the existing plot plan, an existing shed infringing into the setback, as depicted on lot 1-A shall be removed
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 Hawaii County Code, Chapter 25, (Zoning), 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 and denoted on the plot plan submitted on April 30, 2012.
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 12-000067 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN: nci

P:\Admin Permits Division\Variances From CoH02\Zone2\VAR12-000067TMK2-7-022-005Maple.doc.rtf

xc: Real Property Tax Office (Hilo)