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Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

West Hawai'i Office  
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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

July 24, 2012

Mr. Timothy Woods  
87-3213 Datura Road  
Captain Cook, HI 96704

Dear Mr. Woods:

**SUBJECT: VARIANCE APPLICATION – VAR-12-000072**  
**Applicant: SHAWN O'CONNELL OR LINDA O'CONNELL**  
**Owners: TIMOTHY WOODS**  
**Request: Variance from Chapter 25, Zoning, Section 25-5-76, Minimum Yards,(a), Section 25-5-77, Other Regulations, and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements**  
**TMK: 8-7-017:069, LOT 113**

After reviewing your variance application, the Planning Director certifies the **approval** of variance VAR-12-000072, subject to variance conditions. The variance will allow the proposed detached carport to be constructed upon Lot 113 with a 10-foot front yard setback in lieu of the minimum 15-foot front yard setback and attendant minimum 10-foot front yard open space requirement, in accordance with the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards, (2)(A), Section 25-5-77, Other regulations, and Section 25-4-44, (a) Permitted projections into yards and open space requirements.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property, consisting of approximately 7,500 square feet of land, is situated within the Kona Paradise Subdivision, Ka'ohē 4<sup>th</sup>, South Kona, Hawai'i.
2. **Zoning.** The subject property is zoned Agricultural – 5 acres (A-5a) by the County and designated agriculture or "A" by the State Land Use Commission (LUC).
3. **Variance Application-Site Plan.** The owner submitted the variance application, attachments, and filing fee on May 24, 2012 and other submittals related to the





variance request and variance application. The variance application's site plan map is drawn to scale and prepared by Walter Stewart Fullerton, Architect. The variance site plan denotes the proposed two-car carport to be constructed into the minimum 15 feet front yard setback.

4. **County Building Records.** The Hawai'i County Public Works – Building Division records indicate that a building permit (B2012-0476K) was issued for the subject property to construct a 2-bedroom, 2-bath single-family dwelling and a two car carport.
5. **Variance Application (VAR 10-015)-Agency Comments and Requirements:**
  - a. The Department of Public Works (DPW) Memorandum dated June 21, 2012. (Attached)  
Our comments on the subject application and our comments are as follows:  
“We have no comments or objections to the application.”
  - b. The State Department of Health (DOH) memorandum dated June 20, 2012. (Attached)  
“The Health Department found no environmental health concerns with regulatory implications in the submittals.”
6. **Notice to Surrounding Property Owners.** The applicant filed a transmittal letter and copy of the notices was sent to surrounding property owners via USPS to the Planning Department. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on June 2, 2012 and June 22, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 22, 2012.
7. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or general public were received by the Planning Department.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

The variance application would allow the proposed two-car garage to be constructed with a minimum 10-foot front yard setback and corresponding 10-foot front yard open space. The variance application's site plan denotes the location of the proposed two-car carport situated on the subject property. Pursuant to the applicant's background information, which states, in part, CC&R's in the Kona Paradise Subdivision requires that carports be walled on the side facing the road. This variance will allow the owner to construct a two-car carport in accordance with the CC&R's of the Kona Paradise Subdivision.



### **ALTERNATIVES**

Alternatives available to the current owners to avoid any proposed encroachments into the affected front yard and open space of the subject property include the following actions:

Relocate the proposed carport within the subject property to fit the correct building envelope denoted on the plot plan as prescribed by the Zoning Code. Given the topography of the subject site this alternative would be cost prohibitive to the owner.

Consolidate the subject property with a portion of the private roadway and resubdivide the property to modify property lines and adjust minimum yard setbacks this alternative would not be feasible.

### **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.

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. This can be substantiated, to some degree, by the fact that property owners of parcels within the subject subdivision have obtained reduced setbacks due to steep slopes. 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 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 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

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agents under this variance or relating to or connected with the granting of this variance.

3. The approval of this variance is only from the Zoning Code's minimum side yard setback requirement. The approval of this variance allows the existing lanai to remain on the subject property, pursuant to the variance application's site plan map.
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 be changed from time to time.
5. The existing 'as-built' lanai situated on the subject property will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code. The approval will allow the proposed carport to be constructed on the subject property in accordance to the plot plan submitted on May 24, 2012.
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-VAR 12-000072 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

LHN:nci

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xc: Kona Office  
Real Property Tax Office (Kona)



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**BUILDING DIVISION – DPW**

COUNTY OF HAWAII – 74-5044 Ane Keohokalole HWY. BLDG E 1<sup>st</sup> Floor KAILUA-KONA, HI 96740  
Hilo Office (808) 961-8331 \* Fax (808) 961-8410 Kona Office (808) 323-4720 \* Fax (808) 327-3509

June 21, 2012

TO: BJ LEITHEAD TODD, Planning Director  
FROM: NEIL ERICKSON, PLANS EXAMINING MANAGER *AE*  
SUBJECT: VARIANCE APPLICATION – (VAR 12-000072)  
Applicant: SHAWN & LINDA O'CONNELL  
Owner: TIMOTHY WOODS  
TMK: 8-7-017:069  
Location: 87-3213 Datura Rd, Captain Cook, Hawaii.

2012 JUN 21 PM 12:12  
PLANS EXAMINING MANAGER

Our comments on the subject application are as follows:

- We have no comments or objections to the application.
- Approval of the application shall be conditioned on the comments as noted below.
- We oppose the approval of the application for the reasons noted below.
  - All new building construction shall conform to current code requirements.
  - The subject dwelling/structure currently has outstanding violations which shall be corrected.
    - The \_\_\_\_\_ permit for the subject dwelling was never finalized.
    - The minimum setbacks shall be maintained as follows:  
Residential structures - 3 ft. side, 3 ft. rear  
Commercial structures - 5 ft. side, 5 ft. rear
    - The projections do not meet setback requirements and should be corrected.
    - No openings in the exterior wall are permitted less than 3 ft. from the property line.
    - The exterior wall or projections shall be constructed to provide a \_\_\_\_\_ hour fire resistive occupancy separation.
    - An approved automatic sprinkler system is required/to substitute.
    - The common wall shall be constructed to provide a \_\_\_\_\_ hour fire resistive area separation.
    - Others: \_\_\_\_\_

Cc: jmatsumoto  
(Rezoning)

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NEIL ABERCROMBIE  
GOVERNOR



LORETTA J. FUDDY, A.C.S.W., M.P.H.

Director of Health  
HEALTH DEPARTMENT

2012 JUL 22 AM 9:51

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. BOX 916  
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: June 20, 2012

TO: Bobby Jean Leithead Todd  
Planning Director, County of Hawaii

FROM: Newton Inouye *NI*  
District Environmental Health Program Chief

SUBJECT: VARIANCE APPLICATION -VAR 12-000072  
Applicant: SHAWN & LINDA O'connell  
Owner: TIMOTHY WOODS  
Request: Variance from Chapter 25-5-7 (Minimum Yards) and  
25-4-44 (Permitted Projections into Yards and Open Spaces  
Requirements)  
Tax Map Key: 8-7-017:069

The Health Department found no environmental health concerns with regulatory implications in the submittals.

WORD:VAR 12-000072.my

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