

William P. Kenoi
Mayor



BJ Leithead Todd
Director

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Deputy

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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
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August 29, 2012

Ms. Valerie I. Bright
P. O. Box 594
Naalehu, Hawaii 96772

Dear Ms. Bright:

SUBJECT: VARIANCE: VAR – 12-000074
Applicant: VALERIE I. BRIGHT
Owners: VALERIE I. BRIGHT
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
TMK: 9-2-079:035 (Lot 20)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 12-000074 (VAR 12-000074) subject to variance conditions. The variance permits portion of the single family dwelling to remain upon Lot 20 with a minimum 9.04 to 11.44 foot side yard setback and side yard open space along the northern property boundary. It also allows for the open deck to remain with a minimum 7.32 feet to a minimum 11.14 feet side yard open space in lieu of the minimum 20 foot side yard setback and 14 foot side yard open space requirement. The variance is from the subject property's minimum side yard requirement pursuant to the Hawaii County Code, Chapter 25, Zoning, 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 consists of 1 acre of land area and is situated within the Hawaiian Ocean View Subdivision, Kahuku, Ka'u, Hawaii. The subject property's site address is 92-8673 King Kamehameha Boulevard.



2. **County Zoning.** Agricultural – 1 Acre (A-1a) designated Agriculture or “A” by the State Land Use.
3. **State Land Use Designation.** Urban
4. **Variance Application-Site Plan.** The owner submitted the variance application including related submittals and filing fee on June 15, 2012. The variance application’s plot plan map is drawn to scale and prepared by Donald C. McIntosh LPLS. The variance plot plan denotes the position of the single family dwelling built into the property’s minimum 20-foot side yard setback.
5. **County Building Records.** Hawaii County Real Property Tax Office records indicate that a building permit (965517) was issued to the subject property for the construction of a single family dwelling consisting of 3 bedrooms, 2 baths, living room, and kitchen and dining area.
6. **Variance Application (VAR 12-000074)-Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated March 5, 2012. (See attached memorandum).
 - b. No comments from the Department of Public Works – Building Division have been received as of this date.
7. **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 June 13, 2012 and July 18, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 8, 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 encroachments within the property’s minimum 20-foot yard setback along with a 14-foot side yard open space requirement along the northern property boundary. The variance application’s site plan denotes the location of the single-family dwelling upon lot 20 encroaches 8.56 to 10.96 feet into the minimum required 20-foot side yard setback and 14-

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foot open space; also, the existing deck encroaches 12.68 feet into the minimum required 14-foot side yard open space. No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements constructed nearly 45 years ago were constructed under valid building permits and other construction permits issued by the County. It appears that past or recent building permits inspections of the premises by the agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

ALTERNATIVES

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

1. Remove the building encroachments and/or redesigning or relocating the single-family dwelling constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code.
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 the portion of the single-family dwelling was improperly situated on the subject property, which went undisclosed until the sale of the property and a survey was completed. The site plan map prepared for the landowner by the applicant, shows the extent of the encroachment within the minimum side yard requirement. It appears that the single family dwelling, in its current location, is not physically and/or visually obtrusive from other properties situated within the immediate area. This can be substantiated, to some degree, by the fact that the owner did not receive any complaints from 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.

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.

The applicant's variance application was acknowledged by letter dated July 2, 2012 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 September 6, 2012.

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 masonry rock barbeque straddling the northern boundary reflected on the variance site plan shall be resolved between the owner(s) of the subject property and the owner(s) of the adjoining properties.
3. 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.
4. 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 Hawaii County Code, Chapter 25 (Zoning) or State Law which may change from time to time.
5. Should the single family dwelling (footprint) upon the subject property be destroyed by fire or other natural causes, the replacement or the new single-family dwelling shall comply with the Hawaii 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, county ordinances and regulations pertaining to building construction and building occupancy.

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Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 12-000074 null and void.

Sincerely,

A handwritten signature in black ink, appearing to read "BJ Leithhead Todd". The signature is written in a cursive, flowing style.

BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office (Hilo)

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GOVERNOR
PLANNING DEPARTMENT

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

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 918
HILO, HAWAII 96721-0918

MEMORANDUM

DATE: July 23, 2012

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

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: VARIANCE APPLICATION-VAR-12-000074
Applicant: VALERIE I. BRIGHT
Owner: VALERIE I. BRIGHT
Request: Variance from Chapter 25, Zoning, Article 5 Division 7,
Section 25-5-76, Minimum Yards, Section 25-5-77, Other
Regulations and Article 4, Division 4, Section 25-4-44(a)
Permitted Projections into Yards and Open Space
Requirements
Tax Map Key: 9-2-079:035; L&S 20

Existing septic system may also have setback violations. Existing septic system location is not shown and requires verification.

We recommend that you review all of the Standard Comments on our website:
<http://hawaii.gov/health/environmental/env-planning/landuse/landuse.html>. Any comments specifically applicable to this project should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by Built Environment Working Group (BEWG) of the Hawaii State Department of Health. The BEWG recommends that state and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopment projects. We also ask you to share this list with others to increase community awareness on healthy community design.

WORTH VAR 12-000074.c

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