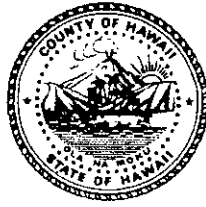


William P. Kenoi
Mayor



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

October 15, 2012

Mr. Tony Barrett
The AJB Company
64-5283 Kipahele Street
Kamuela, HI 96743

Dear Mr. Barrett:

SUBJECT: VARIANCE APPLICATION – VAR-12-000075
Applicant: TONY BARRETT
Owners: JEAN-MARC CHAPUS
Request: Variance from Chapter 25, Zoning, Article 5,
Division 9, Section 25-5-96, Minimum Yards, (a) (1) (A),
and Article 4, Division 1 Section 25-4-44, Permitted
Projections into Yards and Open Space Requirements
(a).
TMK: 7-2-017:015-0001

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 12-000075 (VAR-12-000075), subject to variance conditions. The variance will allow for the construction of an “pai pai” gazebo/shade structure with a 3-foot minimum rear yard setback and associated rear yard clear space in lieu of the minimum 20-foot rear yard setback and associated 14-ft. open space, as required by the Hawaii County Code, Chapter 25, Zoning, Section 25-5-96, Minimum yards 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 approximately 1.175 acres of land, is situated within Kukio Resorts, Kukio 1st, North Kona North Kona, Hawai'i.
2. Zoning. The subject property is zoned Resort-Hotel–1,000 sq. ft. (V-1) by the

County and designated Urban (U).

3. Special Management Area. The subject property is located within the Special Management Area (SMA). Special Management Area Use Permit Assessment No. 12-000779 (SAA-12-000779) was issued to allow for the construction of an 8' x 8' shade structure "pai pai" over the existing spa on Unit 1.
4. Variance Application-Site Plan. The owner submitted the variance application, attachments, and filing fee on June 15, 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 The AJB Company denotes the portions of the open "pai pai" gazebo/shade structure to be constructed into the minimum 20-ft. rear yard setback and 14-foot open space requirement.
5. County Building Records. Hawaii County Real Property Tax Division records indicate that a building permit (BP-03601) was issued on September 11, 2003, for the construction of a 5-bedrooms and 5-bath single-family vacation residence.
6. Agency Comments and Requirements.
 - a. The State Department of Health (DOH) memorandum dated June 20, 2012 (see attached memorandum).
 - b. No comments have been received from the Department of Public Works.
7. Notice to Surrounding Property Owners. The applicant submitted a copy of notice sent to surrounding property owners, including affidavits, stating notices were mailed to surrounding property owners by U.S.P.S. According to these submittals, the first and second notice(s) were mailed on June 18, 2012 and July 9, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 8, 2011.
8. 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 applicant submitted the variance application to allow for the construction of a

Mr. Tony Barrett
The AJB Company
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“pai pai” gazebo/shade structure with a 3-ft. minimum rear yard setback and associated rear yard open space in lieu of the minimum 20-foot rear yard setback and associated 14-foot open space requirement.

The applicant has stated in its background report: *“The objective of the project is to provide sun protection for the spa as well as to provide visual privacy from outside residences located directly across the pond. This project is proposed in a manner to allow the structure to blend with the existing residence without any physical or visible impact on the surrounding landowners or the existing dedicated open space.”*

There are no structures opposite the properties roadway and it backs on to a man made pond.

ALTERNATIVES

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

Relocate the spa upon the subject property 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 spa.

The subject property rear boundary abuts a man made brackish water pond. Therefore consolidation of the property with the man made pond and resubdividing the consolidated property to adjust minimum setback lines is not practicable or reasonable.

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.

The applicant’s variance application was acknowledged by letter dated July 2, 2012. Additional time to review the variance application was required. The applicant granted the Planning Director additional time to render a decision on the Variance Application to September 28, 2012.

Based on the foregoing findings and unusual circumstances, the applicant’s request for

Mr. Tony Barrett
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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 this office did not receive any objections 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 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 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.
4. The proposed "pai pai" gazebo/shade house will not meet the minimum rear yard setback pursuant to Chapter 25, the Zoning Code. The approval of this variance will allow for the construction of the "pai pai" upon the subject property in accordance to the site map dated January 10, 2012.
5. 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.

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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-12-000075 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN:nci

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xc: Planning Department (Kona)
Real Property Tax Division (Kona)

NEIL ABERCROMBIE
GOVERNOR
PLANNING DEPARTMENT



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

2702 JUL 25 PM 4: 55

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 *rw*
District Environmental Health Program Chief

SUBJECT: SUBJECT: VARIANCE APPLICATION-VAR-12-000075
Applicant: TONY BARRETT
Owner: JEAN-MARC CHAPUS
Request: Variance from Chapter 25, Zoning, Article 5 Division 9,
Section 25-5-96, 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: 7-2-017:015-0001

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 redevelopments
projects. We also ask you to share this list with others to increase community awareness on
healthy community design.

WORD:VAR 12-000075.rj

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