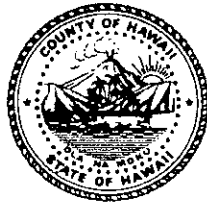


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
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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

November 21, 2012

Mr. Leon Baker, Pastor
c/o Paradise Park Baptist Church
HCR 1 5391
Kea'au, HI 96749

Dear Mr. Baker:

SUBJECT: VARIANCE: VAR-12-000080
**Applicant: PARADISE PACIFIC BAPTIST CHURCH-
LEON BAKER, PASTOR**
Owners: HAWAII PACIFIC BAPTIST CONVENTION
**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 (encroachment into the southeast front
setback)**
TMK: 1-5-038:123 (Lot 239) Lot 240

After reviewing your variance application, the Planning Director certifies the **approval** of Variance 12-000080 (VAR 12-000080), subject to conditions. The variance will allow portions of the existing single-family dwelling to remain on Lot 240, with a minimum 26.5 foot front yard setback and allow for the enclosure of the carport with a minimum of 23.6 foot front yard setback and associated front yard open space requirement. The encroachment is located along the southeast front section of the dwelling. This allowance is in lieu of the required minimum 30 foot front yard setback and associated 24 foot front yard open space requirement. This variance is from the subject property's minimum front yard setback and associated 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 one acre and is situated within the Hawaiian Paradise Park Subdivision shown on Land Court Application 1053, Map 57, Kea'au, Puna, Hawai'i. The subject property's street address is 15-1674 Kaloli Drive.
2. **County Zoning.** Agricultural – 1 Acre (A-1a)
3. **State Land Use Designation.** Agricultural
4. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on July 25, 2012. The variance application's site plan map is drawn to scale, and was prepared by Rolando B. Aurelio LPLS, and denotes the position of the single family dwelling constructed into minimum 30-foot front yard setback and associated 14-foot front yard open space requirement.
5. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that building permits (#881504 and 881560) were issued to the subject property for a single-family dwelling and a ohana dwelling both consisting of 3 bedrooms, 2 baths, living room, kitchen and dining area, garage and detached water tank.
6. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated August 9, 2012 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.
7. **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 August 2, 2012 and August 10, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 8, 2012.
8. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or 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 30-foot front yard along with a 24-foot front yard open space requirement. The variance application's site plan denotes the location of the single-family dwelling along the southeast upon lot 240 encroaches 3.5 feet into the minimum required 30-foot front yard setback and the proposed enclosure of the carport to intrude 6.4 feet into the 30-foot front yard setback and 24-foot front 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 24 years ago were constructed under valid building permits and other construction permits issued by the County. It also 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 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 yard), consolidation/resubdivision with the roadway lot 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.

The applicant's variance application was acknowledged by letter dated August 2, 2012 and additional time to review the application was required. The owner granted the Planning Department and Planning Director an extension of time for decision on the Variance Application to November 30, 2012.

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 24 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.

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 for an additional 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 240") will not meet the minimum front 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.

Mr. Leon Baker, Pastor
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Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-12-000080 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN:nci

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xc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS (via email)

Mr. Leon Baker, Pastor
Paradise Park Baptist Church
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NEIL ABERCROMBIE
GOVERNOR



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

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

MEMORANDUM

DATE: August 9, 2012

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

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

SUBJECT: VARIANCE APPLICATION-VAR 12-000080
Applicant: PARADISE PARK BAPTIST CHURCH/
PASTOR LEON BAKER
Owner: HAWAII PACIFIC BAPTIST CONVENTION
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards, and Section 25-4-44(a),
Permitted Projections into Yards and Open Space
Requirements
Tax Map Key: 1-5-038:123, Lot 240

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

WORD:VAR 12-000080.my

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