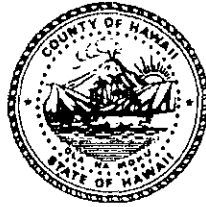


William P. Kenoi  
Mayor



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 2, 2012

Ms. Pat Halpern, Realtor  
c/o Hawaiian Island Homes, Ltd.  
162 Kino'ole Street  
Hilo, HI 96720

Dear Ms. Halpern:

**SUBJECT: VARIANCE: VAR-12-000085**  
**Applicant: PAT HALPERN, REALTOR**  
**Owners: JOHN A. CRUM AND SANDRA P. MILLER TRUST**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards, (a), Section 25-5-8 Other Regulations, and Article 4, Division 4 Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements (Southwest Side, Side Yard Setback)**  
**TMK: 1-1-010:177 (Lot 738)**

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After reviewing your variance application, the Planning Director certifies the **approval** of Variance 12-000085 (VAR 12-000085), subject to conditions. The variance will allow portions of the single-family dwelling to remain on Lot 738, with a minimum 11.2-foot side yard setback and attendant roof eave with a minimum 7.9-foot side yard setback and side yard open space requirement. This allowance is in lieu of the required minimum 15-foot side yard setback and associated 10-foot side yard open space requirement. This variance is from the subject property's Southwest minimum side yard setback and associated side yard open space requirements pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 1, Section 25-5-7. Minimum yards, (a), Section 25-5-8. 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 20,000 square feet and is situated within the Mauna Loa Estates Subdivision shown on Land Court Application 1053, Map 12, District of Puna, Hawai'i. The subject property's street address is 11-3861 Ruby Avenue.

2. **County Zoning.** Single-Family Residential – 20,000 sq. ft. (RS-20)
3. **State Land Use Designation.** Urban
4. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on August 7, 2012. The variance application's site plan map is drawn to scale, and was prepared by Daniel L. Berg LPLS, and denotes the position of the single family dwelling constructed into the southwest minimum 15 foot side yard setback and associated 10 foot side yard open space requirement.
5. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#930207) was issued to the subject property for a single-family dwelling 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 30, 2012 states:

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”
  - b. The Department of Public Works – Building Division memorandum received August 28, 2012 states:

“We have no comments or objections to the application.”
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 17, 2012 and September 20, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 31, 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 of 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 15 foot side yard along with a 10-foot side yard open space requirement. The variance application's site plan denotes the location of the single-family dwelling upon lot 738 encroaches 3.8 feet into the minimum required 10-foot

side yard setback; also the roof eave encroaches 7.1 feet into the required 10-foot side yard setback and the 5-foot side yard open space requirement. 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 19 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 (side yard), consolidation/resubdivision with the roadway lot and the adjoining 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.

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 19 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 an ohana, a second single-family or 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 738") will not meet the minimum side 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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-12-000085 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

LHN:nci

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xc: Real Property Tax Office (Hilo)

Ms. Pat Halpern  
Page 5  
October 2, 2012

NEIL ABERCROMBIE  
GOVERNOR

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2012 AUG 31 10 10 21




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 30, 2012

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

FROM: Newton Inouye   
District Environmental Health Program Chief

SUBJECT: VARIANCE APPLICATION-VAR 12-000085  
Applicant: PAT HALPERN, REALTOR  
Owner: JOHN A. CRUM AND SANDRA P. MILLER TRUST  
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,  
Section 25-5-7, Minimum Yards, Section 25-5-8, Other  
Regulations and Section 25-4-44(a), Permitted Projections  
Into Yards and Open Space Requirements  
Tax Map Key: 1-1-010:177, Lot 738

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

WORD:VAR 12-000085.my

080792



**BUILDING DIVISION – DPW**

PLANNING DEPARTMENT

COUNTY OF HAWAII – 101 Puuhii Street, Hilo, Hawaii 96720  
Hilo Office (808) 961-8331 \* Fax (808) 961-8410

2012 AUG 28 AM 10:24

January 27, 2011

TO: BJ LEITHEAD TODD, Planning Director  
FROM: NEIL ERICKSON, DPW-BLDG Plans Examining Manager  
SUBJECT: VARIANC APPLICATION-VAR 12-000085  
Applicant: PAT HALPERN, REALTOR  
Owner: JOHN A. CRUM AND SANDRA P. MILLER TRUST  
TMK: 1-1-010:177, Lot 738  
Location: 11-3861 Ruby Ave., Mauna Loa Estates, Volcano

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: D. Akau

080711

Ms. Pat Halpren  
Page 5  
October 2, 2012

NEIL ABERCROMBIE  
GOVERNOR

PLANNING DEPARTMENT  
2012 AUG 31 10:10 21



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 96721-0916

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District Environmental Health Program Chief

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**BUILDING DIVISION – DPW**

PLANNING DEPARTMENT

COUNTY OF HAWAII – 101 Puuhii Street, Hilo, Hawaii 96720  
Hilo Office (808) 961-8331 • Fax (808) 961-8410

2017 AUG 28 AM 10:24

January 27, 2011

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FROM: NEIL ERICKSON, DPW-BLDG Plans Examining Manager  
SUBJECT: VARIANC APPLICATION-VAR 12-000085  
Applicant: PAT HALPERN, REALTOR  
Owner: JOHN A. CRUM AND SANDRA P. MILLER TRUST  
TMK: 1-1-010:177, Lot 738  
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  - 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 2 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: D. Akau

080711