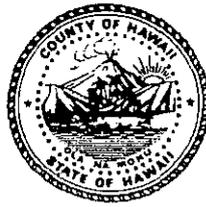


William P. Kenoi
Mayor



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

December 18, 2012

Gary D. Meltzer
46 Kokea Street
Hilo, Hawai'i, 96743

Dear Mr. Meltzer:

SUBJECT: Application: VARIANCE – VAR-12-000089
Applicant: GARY D. MELTZER
Owners: GARY D. MELTZER TRUST
Request: Variance from Chapter 25, zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards, and Article 4, Division Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Northwest Corner)
TMK: 2-5-024:043, Lot 4

Upon reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 12-000089 (VAR: 12-000089), subject to variance conditions. The variance permits a single-family dwelling to be raised 3 feet on Lot 4 with a 4-foot side yard setback and associated side yard open space in lieu of the 10-foot side yard setback and associated 5-foot side yard open space requirement as identified on the plot plan submitted to our office on August 24 2012. The variance is from the subject property's minimum 10-foot side yard requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, and Article 4, Division 4 Section 25-4-44, Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property consists of approximately 21,036 square feet and is identified as Lot 4, portion of Ainako Subdivision, portion Punahoa 1st and 2nd, South Hilo, Hawai'i. The subject property address is 46 Kokea Street.
2. **Zoning.** The subject property is zoned Single-Family Residential – 15,000 square feet (RS-15) by the County and has a designation of State Land Use Urban (U).
3. **Variance Application-Site Plan.** The owner submitted the variance application,

attachments, and filing fee on August 24, 2012 and other submittals related to the variance request and variance application. The variance application's site plan map is drawn to scale denotes the position of the single-family dwelling constructed into the minimum 10-foot side yard setback and associated 5-foot side yard open space requirement.

4. **County Building Records.** Hawaii County Real Property Tax Office records indicate that a building permit was issued on November 27, 1951 (#11614) for the subject property for a single-family dwelling consisting of 3 bedrooms, 1 bath, living room, kitchen and dining area, an additional permit was issued on August 30, 1960 (#23440) for construction of a two car garage and workshop.
5. **Variance Application (VAR: 12-000089)-Agency Comments and Requirements:**
 - a. The State Department of Health (DOH) memorandum dated September, 19, 2012 (see attached)
 - b. No comments were received from the Department of Public Works – Building Division.
6. **Notice to Surrounding Property Owners.** A copy of first and second notices 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 notice was mailed on August 31, 2009 and the second notice was mailed on September 10, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 16, 2012.
7. **Comments from Surrounding Property Owners or Public.**
 - a. Objection letter dated September 3, 2012 and received on September 5, 2012 by Bret Marsh.
 - b. Objection e-mail sent on September 5, 2012 by Leslie-Aina A. Weight.

GROUNDS FOR APPROVING VARIANCE

Special and Unusual Circumstances

- (a) There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property;

The applicant/owner submitted the variance application to resolve the encroachment of the single-family dwelling in the 10-foot side yard setback and 5-foot side yard

open space required by the Hawaii County Code, Chapter 25, (Zoning). The Hawai'i County Real Property Tax office records indicate that the single-family dwelling and all other improvements were built prior to 1967. Therefore, since the construction of the single-family dwelling and all other improvements occurred before the adoption of the Zoning Code, the existing dwelling is considered a legal; "non-conforming" structure that remains in compliance with the Zoning Code. The applicant requests to elevate the single-family dwelling 3 feet with no additional encroachment to the setback to alleviate any future flood problems. Water has entered the dwelling in the past through the front door and elevation of the house is the reasonable method to ensure that no damage occurs in the future. The legal non-conforming status is voided with new construction therefore, a setback variance is required. This variance is strictly for allowing the single-family dwelling to be elevated 3 feet and would not allow for any future expansion of alteration of the single-family dwelling within the side yard setback.

Alternatives

- (b) There are no other reasonable alternatives that would resolve the difficulty.

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

Remove the building encroachments and/or redesign or relocate the as-built single-story dwelling constructed upon the subject property to fit within the correct building envelope denoted on the recent plot plan as prescribed by the Zoning Code. Any structural or design correction would be expensive and cost prohibitive.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by someone else and to resubdivide the property to modify property lines and adjust minimum yard setbacks. Both these alternatives are not practical and would be costly.

Intent and Purpose

- (c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

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.

Two letters of objection were received by Bret Marsh and Leslie-Aina A. Weight expressing concerns to the variance application. Mr. Marsh was concerned that the

applicant wishes to rebuild and remodel the existing dwelling. This variance is strictly to allow the applicant to elevate his dwelling 3 feet and not for any further expansion of the single family dwelling into side yard setback. There are existing trees on the subject property that will be taller than the single-family dwelling even with the elevation of the dwelling by 3 feet. Therefore, it is our opinion that the 3 feet elevation of the dwelling should not have any significant impact to the neighborhood's view plane. Also, the 50% criteria regarding legal-non conforming structures will be addressed by the Department of Public Works, Building Division during building permit application review. In regards to Ms. Weight's objections, the applicant is not seeking a zone change but requesting to elevate his house 3 feet. As mentioned previously, by elevating the single family dwelling 3 feet, voids Mr. Meltzer's legal non-conforming status therefore, requiring him to obtain a setback variance.

The applicant's variance application was acknowledged by letter dated August 28, 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 December 19, 2012.

Based on the foregoing findings and the special 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.

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. The existing dwelling constructed upon the subject property (Lot 4) will not meet the minimum rear yard pursuant to the Hawaii County Code, Chapter 25, (Zoning). The approval of this variance permits the single-family dwelling to be raised 3 feet with

Gary D. Meltzer
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no further encroachment in the existing setback requirements.

4. No permit shall be granted to allow an ohana or second family or farm dwelling upon the subject property, subject to provisions of the Zoning Code or State law which may change from time to time.
5. Any further building permit and/or other construction permits issued to enlarge, change or modify the structures built upon the subject property, shall be limited to the setbacks required by the underlying zoning, as modified by this variance and denoted on the plot plan submitted on August 24, 2013.
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 12-000089 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN: nci

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xc: Real Property Tax Office (Hilo)

Gary D. Meltzer
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NEIL ABERCROMBIE
GOVERNOR
PLANNING DEPARTMENT

2012 SEP 21 AM 8:51



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: September 19, 2012

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

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: VARIANCE APPLICATION-VAR 12-000089
Applicant: GARY D. MELTZER
Owner: GARY D. MELTZER TRUST
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7, Minimum Yards and Section 25-4-44(a),
Permitted Projections into Yards and Open Space
Requirements
Tax Map Key: 2-5-024:043

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 12-000089.my

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