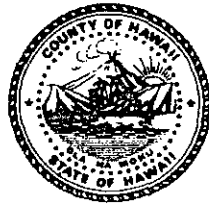


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
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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

October 15, 2013

Mr. Anthony D. Wright
15 'Amaulu Road
Hilo, HI 96720

Dear Mr. Wright:

SUBJECT: VARIANCE VAR-12-000095 AMENDED
Applicant: MIHO M. YONEYAMA
Owners: ANTHONY D. WRIGHT
Request: Variance from Chapter 25, Zoning, Article 5, Division 3, Section 25-5-36, Minimum Yards, and Article 4, Division 4 Section 25-4-44 (a), Permitted Projections into Yards and Open Space Requirements
TMK: 2-6-007:011

After reviewing your variance application, the Planning Director certifies the **approval** of the amendment to VAR 12-000095, subject to variance conditions. The original variance allowed for the construction of a carport with a 4-foot side yard setback and associated side yard open space in lieu of the required 10-foot side yard setback and associated 5-side yard open space requirement as identified on the plot plan received on September 13, 2012.

This amendment to variance 12-000095 will allow for the proposed lanai addition with a 5.5-foot rear yard setback and rear yard open space requirement. Although included in the original request approval, the proposed lanai addition was not included in the November 14, 2012 approval letter issued by the Planning Director. The variance is from the subject property's minimum side yard setback requirement pursuant to the Hawaii County Code, Chapter 25 (Zoning), Article 5, Division 3, Section 25-5-36 minimum yards 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 5,266 square feet and is situated within Pu'u'eo, South Hilo, Hawai'i. The subject property's street address is 15 'Amaulu Road.

2. **Zoning.** Multiple-Residential – 1,000 square feet (RM-1).
3. **State Land use Designation.** Urban.
4. **Setback Requirements.** 20 feet for front and rear; for side yards: 8 feet for a one-story building, plus additional 2 feet for each additional story.
5. **Variance Application.** The owner submitted his written request to amend Variance 12-000095 on July 9, 2013 to allow for a lanai addition to the single-family dwelling and relocation of the existing kitchen. Although addressed in the original request, this was not originally approved in the earlier November 14, 2012 letter issued by the Planning Director. The applicant informs that the existing topography makes use of the land difficult and limited.
6. **County Building Records.** Hawaii County Real Property Tax Office records indicate that the single-family dwelling, consisting of 3 bedrooms, 1 bath, living room, and kitchen with dining area was built in 1927. The existing single-family residence is a legal, non-conforming structure.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated August 3, 2012. (Refer to attached DOH memorandum)
 - b. No comments were received from the Department of Public Works – Building Division as of this date.
8. **Public Notice.** The public was notified of the variance request during the original review of the application. The applicant submitted a copy of the first and second notices which were sent to surrounding property owners. Pursuant to these submittals, it appears that the applicant's notices were mailed to the surrounding property owners by USPO on September 25, 2012 and October 12, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 9, 2012.
9. **Time Extension.** The applicant's variance application was received on September 13, 2013 and additional time to review the application was required. The applicant granted the Planning Director an extension of time to issue a decision on the Variance Application until October 15, 2013.
10. **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.

ANALYSIS OF GROUNDS FOR VARIANCE

No variance will be granted unless it is found that:

- (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 variance application meets criteria (a) for the following reasons:

The applicant submitted a request to amend VAR-12-000095 to allow for the relocation of its existing kitchen within the proposed addition with a 5.5-foot minimum rear yard setback and associated rear yard open space in lieu of the minimum 20-foot rear yard setback and associated 14-foot rear yard open space requirement.

The existing dwelling was constructed in 1927, well before the zoning code requirements were adopted in 1967. The subject property consists of 5,266 square feet which is smaller than the minimum building site of 7,500 square feet required in the Multiple-Residential District. The existing dwelling consists of 864 square feet of living area. The owner would like to increase the livable area and relocate the existing kitchen. Allowing the proposed kitchen to remain within the same location as the old kitchen would prevent the owner from undertaking extensive plumbing and electrical renovations. Also, the size and topography of the subject property limits the placement of the lanai addition.

Therefore, given the size, topography and slope of the subject property and the location of the existing single-family dwelling, special and unusual circumstances do exist on the subject property which would interfere with the construction of the proposed addition.

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

The Variance application meets criterion (b) for the following reason:

Alternatives available to current owners to address the encroachment of the proposed addition to be constructed into the affected rear yard of the subject property includes the following:

Redesigning the proposed addition to meet setback requirements will require the owner to construct a smaller version of the addition. Relocate the kitchen further away from the existing kitchen location would subsequently require the owner to do unneeded major plumbing and electrical renovation.

Because the encroachment is within the rear yard setback, to consolidate the subject property which is owned by someone else and to re-subdivide the property to modify property lines

and adjust minimum rear and side yard setbacks are not viable options. Therefore, there are no reasonable alternatives to resolve the encroachment issue

(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's 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 or as required by zoning code are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

The proposed addition will be located along the east side boundary and adjacent to the existing single-family dwelling. Therefore, it should not obstruct or prevent adequate air circulation and exposure to light between permitted structure(s)/uses and boundary/property lines that already exist.

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 intent 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. Also, no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Property Owners.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance application is approved subject to the following 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 proposed carport constructed upon the subject property will not meet the minimum front yard setback pursuant to the Hawaii County Code, Chapter 25, (Zoning). The approval of this variance permits the proposed carport to be constructed upon the subject property in accordance to the plot plan submitted on September 13, 2012.

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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. Any further building permit and/or other construction permits issued to enlarge or 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 September 13, 2012.
6. The existing kitchen shall be removed once the new/proposed kitchen is completed in its new location.
7. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject VAR 12-000095 null and void.

Sincerely,



DUANE Kanuha
Planning Director

LHN: nci

P:\Admin Permits Division\Variances From CoH02\Zone2\VAR12-000095AmendedTMK2-6-007-011Wright.doc.rtf

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

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NEIL ABERCROMBIE
GOVERNOR



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

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

RECEIVED
2012 SEP 24 AM 9:45

MEMORANDUM

DATE: September 21, 2012

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

FROM: Newton Inouye ↗
District Environmental Health Program Chief

SUBJECT: VARIANCE APPLICATION-VAR 12-000095
Applicant: WPM, LTD
Owner: ANTHONY D. WRIGHT
Request: Variance from Chapter 25, Zoning, Section 25-5-36
Minimum Yards and Section 25-4-44(a), Permitted
Projections into Yards and Open Space Requirements
TMK: 2-6-007:011

The subject project is located within or near proximity to the County sewer system. a. All wastewater generated shall be disposed into the County sewer system. Wastewater Branch supports the sewer requirements made by the County for the proposed project.

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 12-000095.my

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