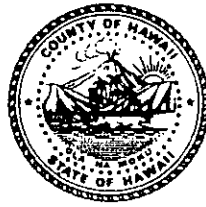


William P. Kenoi
Mayor



BJ Leithead Todd
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PLANNING DEPARTMENT

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May 29, 2013

Ms. Gail Rice
P. O. Box 98
Kamuela, HI 96743

Dear Ms. Rice:

SUBJECT: Application: VARIANCE – VAR-12-000098
Applicant: GAIL RICE
Owners: HAROLD RICE REVOCABLE TRUST
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, Permitted Projections into Yards and Open Space Requirements. (Encroachment into Northeast Side Yard)
TMK: 6-5-001:015 (Lot 2)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 12-000098 (VAR: 12-000098), subject to variance conditions. The variance to allow storage shed to remain on Lot 2 with a minimum 5 feet side yard setback and open space requirement in lieu of the minimum required 20 foot side yard setback and associated 14-foot side yard open space requirements measured from the property's side boundary line and according to the submitted site plan. The variance is from the subject property's minimum 20-foot side yard requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, 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, consisting of approximately 1.335 acres of land, and is situated in Wai'aka, Waimea, South Kohala, Hawai'i. The subject property's street address is 65-1634 Kawaihae Road.
- 2. County Zoning.** Agricultural – 1 Acre (A-1a).

3. **State Land Use.** Agricultural.
4. **Setback Requirements.** 30 feet for front and rear; 20 feet for sides.
5. **Variance Application-Site Plan.** The owner submitted the variance application, attachments, and filing fee on September 26, 2012 and other submittals related to the variance request and variance application. The variance application's site plan map prepared by the applicant denotes the portion of the storage shed built into the property's minimum 20-foot wide side yard setback.
6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (52568) was issued on June 6, 1972 for the construction of a 3 bedrooms, 2 bath Single Family Dwelling. An additional building permit (77607) was issued on March 19, 1977 for the workshop and storage.
7. **Time Extension.** The applicant's variance application was acknowledged by letter dated October 12, 2012; and additional time to review the application was required. The applicant has granted the Planning Department and the Planning Director an extension of time for decision on the Variance application to June 1, 2013.
8. **Variance Application (VAR: 09-018)-Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated November 7, 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.
9. **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 October 18, 2012 and the second notice was mailed on March 25, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 17, 2012.
10. **Comments from Surrounding Property Owners or Public.**
 - a. Support letter received on April 9, 2013 from Charles T. Campbell, DVM

- b. Support letter received on April 9, 2013 from Tom Hickey
- c. Support letter received on April 12, 2013 from Robert McKendry, Chief Financial Officer, Hawaii Preparatory Academy.

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

The owner/applicant submitted the variance application to address or resolve the encroachment of the 224 square feet storage shed into the 20-foot side (northeast) yard setback and 14-foot rear yard open space as required by the Zoning Code.

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.

Based on Real Property Tax records, it appears that the storage shed improvements were constructed nearly 35 years ago under valid building permits and other construction permits issued by the County. It also appears that past 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. There is an existing hedge and fence along the side boundary that will aid in mitigating any visual impact of the storage shed to the surround property owners.

Alternatives

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

The variance application meets criterion (b) for the following reasons:

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:

One option would be to remove and relocate the storage shed constructed on the subject property to fit the correct building envelop and meet current setback requirements. The storage shed is improved with bathroom and shower facilities, therefore, by requiring the

owner to remove and relocate the storage shed would involve the owner to do major excavation to his property, by requiring the owner to replace and move existing water and sewer lines.

Another alternative is to consolidate the subject property with the adjoining rear property which is owned by someone else and to resubdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical. Therefore, there are no reasonable alternatives to resolve the difficulty.

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's welfare or cause substantial, adverse impact to an area's character to adjoining properties.

The variance application meets criteria (c) for the following reasons:

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. With the variance, the applicant would still be required to maintain a 5-foot side yard setback.

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 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.

No objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners. Three (3) letters in support of the variance were received.

Therefore, the variance would be consistent with the with the general purpose of the zoning district and not be materially detrimental to the public's welfare or cause substantial adverse impact to the area's character or 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.

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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 storage shed constructed upon the subject property ("Lot 2") will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan.
4. No permit shall be granted to allow an ohana or second single family or farm dwelling upon the subject TMK property, subject to provisions of the Zoning Code or State law which may change from time to time.
5. Should the existing storage shed on the subject property be destroyed by fire or other natural causes, the replacement or the new storage shed shall comply with the County Zoning Code and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
6. Future or new building improvements and all uses within the shed 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 12-000098 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN:nci

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xc: Kona Office
Real Property Tax Office (Kona)