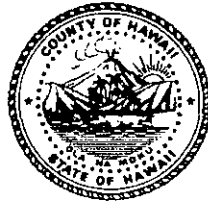


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
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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 20, 2012

Sharon M. Purbaugh  
364 Mohouli Street  
Hilo, HI 96720

Dear Ms. Purbaugh:

**SUBJECT: VARIANCE VAR-12-000105**  
**Applicant: SHARON M. PURBAUGH**  
**Owners: SHARON M. PURBAUGH**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards, and Article 4, Division 4 Section 25-4-44 (a), Permitted Projections into Yards and Open Space Requirements (northeast side yard setback)**  
**TMK: 2-4-024:023; Lot 2**

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After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 12-0000105 (VAR 12-000105), subject to variance conditions. The variance allows for the as-built carport and lanai to remain with a 7-foot side yard setback and associated 4-foot side yard open space along the northeast side yard area. This allowance is in lieu of the required 10-foot side yard setback and associated 5-foot side yard open space requirement as identified on the plot plan received on October 23, 2012. 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 17,323 square feet and is situated within the Mokaulele Heights House Lots, South Hilo, Hawai'i. The subject property's street address is 364 Mohouli Street.
2. **Zoning.** The subject property is zoned Single Family Residential-10,000 square feet (RS-10) by the County and designated State Land Use Urban or (U).

3. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on October 23, 2012. The variance application's site plan map is drawn to scale and denotes the position of the "as-built" open carport constructed into the minimum 10-foot side yard setback and associated 5-foot side yard open space requirement. This request affects the northeast side yard setback.
4. **County Building Records.** Hawaii County Real Property Tax Office records indicate that a building permit (#16237) was issued on March 9, 1955 for the construction of a 3-bedroom and 1 bath single-family dwelling; an additional permit (#30202) was issued on November 20, 1964 to extend the private garage section of the existing dwelling.
5. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum, dated October 30, 2012. (see attached)
  - b. No comments were received from the Department of Public Works – Building Division.
6. **Public Notice.** The applicant submitted a copy of the first and second notices 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 October 23, 2012 and November 13, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 14, 2012.
7. **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.

### **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 owner submitted the variance application to allow the as-built two car carport and lanai to remain with a 7-foot minimum side yard (northeast) setback and associated 4-foot side yard (northeast) open space, respectively, in lieu of the minimum 10-foot side yard setback and associated 5-foot side yard open space requirement.

The original carport extension was built in 1964 prior to 1967. Therefore, since the original carport extension was built before the adoption of the Zoning Code, the carport was considered legal; "non-conforming". However, in 2006 due to earthquake damage, the carport was rebuilt on the existing slab, therefore, nullifying its non-conforming status. The owner/applicant has stated that they were unaware of the 5-foot open space requirement when they rebuilt the carport and lanai addition.

#### Alternatives

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

Alternatives available to the current owner to correct and/or address the encroachment into the affected side yard of the subject property include the following actions:

Relocate or modify the carport and lanai extension area to fit within the correct building envelope denoted on the recent plot map as prescribed by the Zoning Code.

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 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.

There were no concerns or objections expressed by agencies or surrounding property owners.

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.

#### **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 October 23, 2012.
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 October 23, 2012.
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 VAR 12-000105 null and void.

Sincerely,

  
BJ LEITHEAD TODD  
Planning Director

LHN: nci

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

Sharon M. Purbaugh  
Page 5  
December 20, 2012

NEIL ABERCROMBIE  
GOVERNOR  
PLANNING DEPARTMENT  
COUNTY OF HAWAII

2012 OCT 31 PM 12: 24




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: October 30, 2012

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

FROM: Newton Inouye   
District Environmental Health Program Chief

SUBJECT: VARIANCE APPLICATION-VAR 12-000105  
Applicant: SHARON PURBAUGH  
Owner: SHARON PURBAUGH  
Request: Variance from Chapter 25, Zoning, Section 25-5-77  
Minimum Yards and Section 25-4-44(a), Permitted  
Projections into Yards and Open Space Requirements  
(Encroachment into western side yard setback)  
Tax Map Key: 2-4-024:023, Lot 2

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

WORD:VAR 12-000105.my