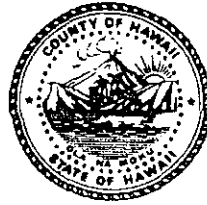


William P. Kenoi
Mayor



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 28, 2012

Sandra Pechter Song
Attorney At Law
10 Kamehameha Avenue
Hilo, HI 96720

Dear Ms. Song:

SUBJECT: VARIANCE VAR-12-000108
Applicant: SANDRA PECHTER SONG
Owners: ERIC M. TULMAN TRUST
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 (Front Yard Setback)
TMK: 2-6-026:002

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 12-0000108 (VAR 12-000108), subject to variance conditions. The variance allows for the construction of a two-car garage with a minimum 1-foot front yard setback and associated front yard open space from the front boundary line. This allowance is in lieu of the required 20-foot front yard setback and associated 14-foot front yard open space requirement as identified on the plot plan received on November 1, 2012. The variance is from the subject property's minimum front yard setback requirement pursuant to the Hawaii County Code, Chapter 25 (Zoning), Article 5, Division 3, Section 25-5-7 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 16,193 square feet and is situated within Alae, South Hilo, Hawai'i. The subject property's street address is 178 Kahoā Street.
2. **Zoning.** The subject property is zoned Single Family Residential-15,000 square feet (RS-15) by the County and designated State Land Use Urban or (U).

3. **Special Management Area.** The subject property is located within the Special Management Area (SMA). According to the acknowledgment letter dated August 27, 2012 Special Management Area Use Permit Assessment No. 12-000839 (SAA-12-000839) was issued to allow for the construction of the proposed two-car garage.
4. **Variance Application-Site.** The owner submitted the variance application, attachments, and filing fee on November 1, 2012, and other submittals related to the variance request and variance application. The variance application's site plan map is drawn to scale and denotes the position of the proposed two-car garage to be constructed into the minimum 20-foot front yard setback and 14-foot open space requirement.
5. **County Building Records.** Hawaii County Real Property Tax Office records indicate that A building permit (#52852) was issued on June 29, 1972 for the construction of a 3 bedroom and 1 bath single-family dwelling; an additional permit (#761334) was issued on June 21, 1976 for the completion of the single-family dwelling.
6. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated November 14, 2012. (see attached)
 - b. No comments were received from the Department of Public Works – Building Division.
7. **Notice to Surrounding Property Owners.** A copy of first and second notices was sent by the applicant via USPS to surrounding property owners. According to the affidavit submitted to the Planning Department, the first notice was mailed on November 2, 2012 and the second notice was mailed on November 16, 2012. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 27, 2012.
8. **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.

GROUND 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 for the construction of a two-car garage with a 1-foot minimum front yard setback and associated front yard open space, in lieu

of the minimum 20-foot front yard setback and associated 14-foot front yard open space requirement.

Since the subject property which is located approximately 18 feet below Kahoa Street, there is no reasonable location for providing off-street parking. The applicant proposes to construct a 484 square feet elevated garage off of Kahoa Street. Originally, an open parking platform was proposed and approved; however, for safety and security reasons the applicant wishes to construct an engineered, raised parking garage with stairway leading to the single family dwelling.

The applicant has stated in its background report that an open platform would not prevent a vehicle to drive off the edge of the platform down the 18-foot drop; in addition a garage would prevent individuals from entering the vehicles.

Alternatives.

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

Given the topography and unusual lot configuration of the subject property, there are no reasonable alternatives for the placement of the two-car garage. Although an open parking platform could be constructed to provide off-street parking, this would not be a reasonable alternative because of the safety and security issues mentioned earlier.

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 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.

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 garage to be 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 garage to be constructed upon the subject property in accordance to the plot plan submitted on November 1, 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 November 1, 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 12-000108 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)

Sandra Pechter Song
Attorney At Law
Page 5
December 28, 2012

NEIL ABERCROMBIE
GOVERNOR

PLANNING DEPARTMENT

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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: November 14, 2012

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

FROM: Newton Inouye 
District Environmental Health Program Chief

SUBJECT: VARIANCE APPLICATION-VAR 12-000108
Applicant: SHARON PECHTER SONG
Owner: ERIC M. TULMAN TRUST
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 eastern side yard setback)

Tax Map Key: 2-6-026:002

The existing wastewater system is adequate to serve the proposed project.

Lands formerly used for sugarcane production are now being developed into communities where residential homes, schools and commercial businesses are being constructed. Chemicals associated with the sugarcane industry persist in soil today and may be a threat to public health and the environment. Elevated arsenic levels were discovered in soil at former sugarcane production areas on the islands. The HEER Office has identified former sugarcane production areas for assessment throughout the state and plans to work with property owners to conduct environmental assessments to identify and address elevated soil arsenic levels prior to finalizing development plans for the properties.

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,