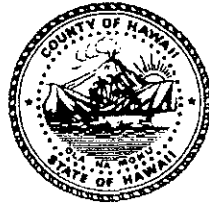


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

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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

March 14, 2013

Betty L. Evans
781 Lassen Way
Gardnerville, NV 89460

Dear Ms. Evans:

SUBJECT: Application: Variance VAR-12-000111
Applicant: BETTY L. EVANS
Owners: BETTY L. EVANS
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(a), Permitted Projections into Yards and Open Space Requirements (Encroachment into Eastern Side Yard Setback)
TMK: 1-2-038:140 (Lot 194)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance 12-000111 (VAR 12-000111), subject to conditions. The variance will allow the single-family dwelling to remain on Lot 194, with a minimum 6.4-foot side yard setback in lieu of the required minimum 8-foot side yard setback requirement. This variance is from the subject property's minimum side yard setback and associated rear yard open space requirements pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 7, Section 25-5-76, Minimum yards, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 7,784 square feet and is situated within the Kalapana Seaview Estates Subdivision, District of Puna, Hawai'i. The subject property's street address is 12-212 West Pohaku Pele Loop.
2. **County Zoning.** Agricultural – 3 Acres (A-3a).

3. **State Land Use Designation.** Agricultural.
4. **Setback Requirements.** 15 feet for front and rear; 8 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on December 10, 2012. The variance application's site plan map was prepared by the owner/applicant. The variance site plan, undated, received on December 10, 2012, denotes portion of the single-family dwelling into the minimum 8 foot side yard setback. The request affects the eastern side yard setback area.

The applicant's variance application was acknowledged by letter dated December 26, 2012. 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 March 15, 2013.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#960262) was issued on February 29, 1996 to the subject property for a single-family dwelling consisting of a 2 bedroom, 2 baths, living room, kitchen, dining area, garage and detached water tank.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated January 2, 2013 (See attached).
 - b. No comments were received from the Department of Public Works – Building.
8. **Public Notice.** The applicant submitted a copy of notice sent to surrounding property owners, including affidavits. Stating notices were mailed to surrounding property owners by U.S.P.S. According to these submittals, the first and second notice(s) were mailed on January 6, 2013 and January 8, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on January 8, 2013.
9. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners of the general public were received.

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/applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling into the 8-foot side (east) yard setback as required by the Zoning Code.

The applicant has stated that the shape of the parcel (trapezoid) narrows toward the rear (northern) boundary distorting the view of where the side (east) yard property line lay. The concrete foundation was not placed in the correct location. The owner mistakenly built the two-story, single-family dwelling into the side (east) yard setback. No evidence has been found to show indifference or premeditation by the builder to intentionally construct a portion of the single-family residence into the property's minimum 8-foot side yard setback required by the Zoning Code.

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 of the subject property include the following actions:

Remove the building encroachments, 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 survey map as prescribed by the Zoning Code. Any structural or design correction would not only diminish the functionality of the single-family dwelling, but also be impractical due to the layout and design of the structure and the lot size.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by another party and to resubdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical.

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 for a lot 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 intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. 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. This can be substantiated, to some degree, by the fact that this office did not receive any complaint from surrounding property owners during the past 16 years of existence of the structure.

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

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. 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 Hawai'i County Code, Chapter 25 (Zoning) or State Law which may change from time to time.
4. The single family-dwelling built upon the subject property ("LOT 194") will not meet the minimum side yard requirement pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), according to the variance application's survey map.
5. Should the single-family dwelling on the subject property be destroyed by fire or other

Ms. Betty L. Evans
Page 5
March 14, 2013

natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.

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-12-000111 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN: nci

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

Ms. Betty L. Evans
Page 6
March 14, 2013

NEIL ABERCROMBIE
GOVERNOR
PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 JAN -3 AM 9:13



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

MEMORANDUM

DATE: January 2, 2013
TO: Bobby Jean Leithead Todd
Planning Director, County of Hawaii
FROM: ^{WA}Newton Inouye
District Environmental Health Program Chief
SUBJECT: VARIANCE- VAR 12-000111
BETTY L. EVANS
Variance from Chapter 25, Zoning, Section 25-5-76
Minimum Yards and Section 25-4-44(a), Permitted Projections into
Yards and Open Space Requirements (Encroachment into East Side
Yard Setback)
Tax Map Key: 1-2-038:140, Lot 194

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