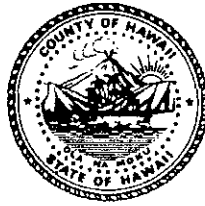


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

**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

February 5, 2013

Jeff Citron  
Diversified Land Management  
75-5608 Hienaloli #32  
Kailua-Kona, Hawai'i 96740

Dear Mr. Citron:

**SUBJECT: Application: VARIANCE – VAR-12-000112**  
**Applicant: DIVERSIFIED LAND MANAGEMENT/JEFF CITRON**  
**Owners: GREGORY M. GERARD**  
**Request: Variance from Chapter 25, Zoning, Section 25-5-76,**  
**Minimum Yards, Section 25-4-44, Permitted**  
**Projections into Yards and Open Space Requirements**  
**(Encroachment into the West Side yard setback)**  
**TMK: 8-2-009:115; Lot 62**

After reviewing your variance application, the Planning Director certifies the **approval** of Variance 12-000112 (VAR-12-000112), subject to variance conditions. The variance will allow the existing two-story addition to remain on the subject property with a 15.25-foot side yard setback and attendant roof eave with a minimum 12.23-foot side yard open space along the northern boundary line. This allowance is in lieu of the minimum 20-foot side yard setback and associated 14-foot side yard open space requirement, in accordance with the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards, (2)(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.

**BACKGROUND AND FINDINGS**

- 1. Location.** The subject property consists of approximately 1.209 acres of land and is located in the McCoy Plantation Subdivision, Kalamakowali Homesteads, Kalamaumi, Ililoa, South Kona, Hawai'i. The subject property's street address is 82-5909 Coffee Royal Place.
- 2. Zoning.** The subject property is zoned Agricultural – 1 acre (A-1a) by the County and the State Land Use Designation is Agriculture.

3. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on December 10, 2012 and other submittals related to the variance request and variance application. The variance application's site plan map submitted by the applicant is drawn to scale. The variance site plan denotes the two-story addition constructed into the minimum 20-foot side yard setback.
4. **County Building Records.** Hawaii County Real Property Tax Office records indicate that a building permit (#895703) was issued to the subject property for a single-family dwelling consisting of 2 bedrooms, 2 bath, living room, kitchen with dining area and carport. An additional building permit (#965051) was issued on January 31, 1996, to allow for the construction of the two-story addition.
5. **Agency Comments and Requirements:**
  - a. The State Department of Health (DOH) memorandum dated December 18, 2012 states:  
*"The Health Department found no environmental health concerns with regulatory implications in the submittals."*
  - b. No comments have been received from Department of Public Works – Building Division as of this date.
6. **Public Notice.** The applicant filed a transmittal letter and copy of the notices was sent to surrounding property owners via USPS to the Planning Department. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on December 10, 2012 and December 21, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 23, 2012.
7. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or 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/applicant submitted the variance application to address or resolve the encroachment of the two story addition into the 20-foot side (north) yard setback as required by the Zoning Code.

The applicant has stated, in his background information, that there is a large strand of bamboo along the northern boundary that distorted the view of where the property line was, therefore, the owner mistakenly built the two-story addition into the side (north) yard setback. The owner would not have known of the encroachment if he did not have his property surveyed in 2008. The bamboo strand and foliage along the northern boundary provide a buffer and minimize any visual impact onto the adjoining property.

### **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 and open space of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the two-story addition 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 be practical, be expensive and cost prohibitive.

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 of 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 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.

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. 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 15 years of existence of the structure.

Also, 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**

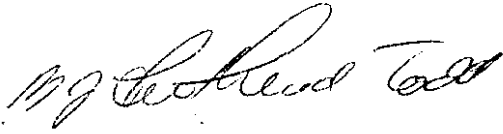
This variance application is approved subject to the following variance conditions:

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 Hawai'i 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 approval of this variance is only from the Zoning Code's minimum side yard setback and side yard open space requirement. The approval of this variance allows the existing lanai to remain on the subject property, pursuant to the variance application's site plan map.
4. No permit shall be granted to allow an ohana or second single-family or farm dwelling upon the subject property, subject to provisions of the Zoning Code or State law which may be changed from time to time.
5. The existing two-story addition situated on the subject property will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code. The approval will allow the existing two-story addition to remain on the subject property in accordance with the plot plan submitted on December 10, 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.

Jeff Citron  
Diversified Land Management  
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Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 12-000112 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

LHN:nci

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xc: Kona Office  
Real Property Tax Office (Kona)  
Gilbert Bailado, GIS (Via Email)

Jeff Citron  
Diversified Land Management  
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NEIL ABERCROMBIE  
GOVERNOR  
PLANNING DEPARTMENT  
COUNTY OF HAWAII

2012 DEC 19 AM 10: 02



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: December 18, 2012

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

FROM: Newton Inouye  
District Environmental Health Program Chief

SUBJECT: Application: Variance - VAR 12-000112  
Applicant: JEFF CITRON/DIVERSIFIED LAND MANAGEMENT  
Owner: GREGORY M. GERARD  
Request: 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 west side yard setback)  
Tax Map Key: 8-2-009:115, Lot 62

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

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