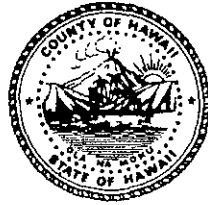


William P. Kenoi
Mayor



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

April 8, 2013

Douglas D'Ambrosio
HCR 2 Box 6959
Kea'au, HI 96749

Dear Mr. D'Ambrosio:

SUBJECT: Application: Variance VAR-13-000121
Applicant: DOUGLAS D'AMBROSIO
Owners: BROOKE M. PAI-PAIGE
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards, (a), (Encroachment into
Southeast Side Yard Setback)
TMK: 1-5-019:012 (Lot 898)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance 13-000121 (VAR 13-000121), subject to conditions. The variance will allow the detached water tank to remain on Lot 898, with a minimum 15.5-foot side yard setback in lieu of the required minimum 20-foot side (southeast) yard setback requirement. This variance is from the subject property's minimum side yard setback 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 one acre and is situated within the Hawaiian Paradise Park Subdivision, District of Puna, Hawai'i. The subject property's street address is 15-1861 26th Avenue.
2. **County Zoning.** Agricultural – 1 Acre (A-1a).
3. **State Land Use Designation.** Agricultural.
4. **Setback Requirements.** 30-feet for front and rear; 20-feet for sides.

5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on February 6, 2013. The variance application's site plan map was prepared by the owner/applicant. The variance site plan, undated, received on January 24, 2013, denotes portion of the existing 10,000 gallon water tank into the minimum 20 foot side yard setback. The request affects the southeast side yard setback area.
6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#B2011-1101H) was issued on July 27, 2013 to the subject property for a single-family dwelling consisting of a 4 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 February 21, 2013 (See attached).
 - b. No comments were received from the Department of Public Works – Building.
8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on February 8, 2013 and February 22, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 28, 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 Variance application meets criterion (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of the detached 10,000-gallon water tank into the 20-foot side (southeast) yard

setback as required by the Zoning Code.

The applicant has stated in its background report that the topography of the property influenced the placement of the water tank and also he was informed by the Building Division that temporary structures were allowed into the setback area.

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 20-foot side yard setback required by the Zoning Code.

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 of the subject property include the following actions:

Remove and relocate the as-built water tank constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. To deny this variance would require the owner to relocate the water tank, which would involve the owner to do major excavation to his property, by requiring him to replace and move existing pipe lines.

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

The Variance application meets criterion (c) for the following reasons:

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 comments or objections 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 water tank built upon the subject property ("LOT 898") 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 water tank on the subject property be destroyed by fire or other 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.

Mr. Douglas D'Ambrosio

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Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-13-000121.

Sincerely,

A handwritten signature in black ink, appearing to read "BJ Leithead Todd". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

BJ LEITHEAD TODD
Planning Director

LHN: nci

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

Mr. Douglas D'Ambrosio
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NEIL ABERCROMBIE
GOVERNOR

PLANNING DEPARTMENT
COUNTY OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.
Director of Health


FEB 23 AM 9:17

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: February 21, 2013

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

FROM: Newton Inouye 
District Environmental Health Program Chief

SUBJECT: Application: Variance - VAR 13-000121
Applicant: DOUBLAS D'AMBROSIO
Owner: BROOKE M. PAI-PAGE
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 East Yard Setback)
Tax Map Key: 1-5-019:012, Lot 898

Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal.