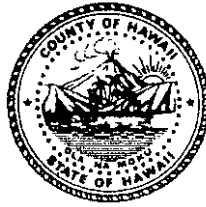


William P. Kenoi
Mayor



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

May 6, 2013

Paul H. Murray, LPLS
Paul H. Murray & Associates, LLC
P. O. Box 1189
Hilo, HI 96749

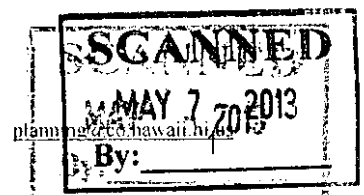
Dear Mr. Murray:

SUBJECT: Application: Variance VAR-13-000125
Applicant: PAUL H. MURRAY & ASSOCIATES, LLC
Owners: MELANIE ARAKAKI
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards, (a), (Encroachment into
Eastern Side Yard Setback)
TMK: 2-5-058:008 (Lot 8)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance 13-000125 (VAR 13-000125), subject to conditions. The variance will allow portions of the single-family dwelling and detached work shed (along the eastern boundary line) to remain on Lot 8, with a minimum 13.2-foot side yard setback and the detached work shed with an 8.4 side yard setback. This allowance is in lieu of the required minimum 20-foot side yard setback and 14-foot side yard open space 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 Hilo Heights Subdivision, District of Puna, Hawai'i. The subject property's street address is 1729 Haleloke Street.
2. **County Zoning.** Agricultural - 1 Acre (A-1a).
3. **State Land Use Designation.** Agriculture.



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 March 4, 2013. The variance application's site plan map was prepared by the owner/applicant. The variance site plan, undated, received on December 14, 2012, denotes portion of the existing single-family dwelling into the minimum 20 foot side yard setback. The request affects the eastern side yard setback area.
6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#882261) was issued on November 28, 1988 to the subject property for a single-family dwelling consisting of a 3 bedroom, 2-1/2 baths, living room, kitchen, dining area, and garage.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated February 21, 2013 (Refer to attached DOH memorandum).
 - b. The Department of Public Works Building Division e-mail, dated March 27, 2013 (Refer to attached DPW e-mail).
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 March 11, 2013 and March 18, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 27, 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 single-family dwelling and detached work shed into the 20-foot side (east) yard setback and side yard open space as required by the Zoning Code.

The owner, who recently purchased the property was unaware of any encroachments and would not have discovered any problems affecting the subject property until a modern survey was completed.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements constructed nearly 24 years ago were constructed under valid building permits and other construction permits issued by the County. It also appears that past building permits inspections of the premises by the agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

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 the building encroachments and/or 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 leave large and unattractive reconstruction disfigurement to the single-family dwelling. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the single-family dwelling was in compliance with all County requirements.

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 single-family dwelling built upon the subject property ("LOT 8") 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 and work shed 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.

Paul H. Murray, LPLS
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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 initiate proceedings to null and void Variance-13-000125.

Sincerely,

A handwritten signature in black ink, appearing to read "BJ Leithead Todd". The signature is written in a cursive, flowing style.

BJ LEITHEAD TODD
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone2\VAR13-000125TMK2-5-058-008Arakaki.doc.rtf

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

Paul H. Murray, LPLS
Paul H. Murray & Associates, LLC
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May 6, 2013

NEIL ABERCROMBIE
GOVERNOR

PLANNING DIRECTOR
COUNTY OF HAWAII

2013 MAR 25 11 09:33



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: March 25, 2013

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

FROM: *NI ipL*
Newton Inouye
District Environmental Health Program Chief

SUBJECT: Variance VAR-13-000125
Applicant: PAUL H. MURRAY & ASSOCIATES, LLC
Owner: MELANIE ARAKAKI
Request: Variance from Chapter 25, Zoning, Section 25-5-76
Minimum Yards and Section 24-4-44(a), Permitted
Projections into Yards and Open Space Requirements
(Encroachment into Eastern Side Yard Setback)
TMK: 2-5-058:008, Lot 8

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

Paul H. Murray, LPLS
Paul H. Murray & Associates, LLC
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Nakayama, Larry

From: Matsumoto, Joy
Sent: Wednesday, March 27, 2013 11:12 AM
To: Nakayama, Larry
Subject: Variance VAR13-000125
Hi Larry,

Building has no objection to this variance.

Joy Matsumoto
Supervising Building Inspector
County of Hawaii
Tel (808) 961-8471
Fax (808) 961-8410
Email: jmatsumoto@co.hawaii.hi.us

PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 APR 15 AM 8:37

S. 0581008
Melanie A. Valle

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