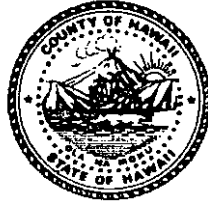


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

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

August 12, 2013

Michael Bradley
99-65 SW 163rd Avenue
Beaverton, OR 97007

Dear Mr. Bradley:

SUBJECT: Application: Variance VAR-13-000142
Applicant: MICHAEL BRADLEY
Owners: SUZANNE L. KRÜPPA
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards, and Article 4, Division 4 Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements (Encroachment into the Southwest Front and Southeast Side Yard Setback)
TMK: 1-9-019:034 (Lot 174)

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-13-000142, subject to conditions. The variance will allow the single-family dwelling to remain on Lot 174, with a minimum 25.89-foot front (southwest) yard setback and a minimum of 14.29 side (southeast) yard setback in lieu of the required minimum 30-foot front yard and 20-foot side yard setback requirement. This variance is from the subject property's minimum front and side yard setback and associated side 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), 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 contains approximately 5 acres and is situated within the Volcano Cymbidium Acres Subdivision, District of Puna, Hawai'i. The subject property's street address is 19-4252 Kawailehua Road.
2. **County Zoning.** Agricultural – 20 acres (A-20a).
3. **State Land Use Designation.** Agricultural.

4. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on May 29, 2013. The variance survey map dated April 4, 2013 is drawn to scale, and prepared by Niels Christensen, LPLS, and denotes the position of the storage shed and barn constructed into minimum 30-foot front yard and 20-foot side yard setback. The request affects the southwest front and southeast side yard setback area.
5. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#892723) was issued on December 4, 1989 to the subject property for a single-family dwelling consisting of a 2 bedroom, 2 baths, living room, kitchen and dining area and garage. Additional permits were issued on July 18, 1989 for a barn and shed (891418 & 891419), respectively.
6. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated July 1, 2013. (See attached.)
 - b. No comments were received from the Department of Public Works – Building.
7. **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 May 31, 2013 and June 24, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 11, 2013.
8. **Comments from Surrounding Property Owners or Public.**
 - a. Objection letter dated July 4, 2013 and received on July 8, 2013 by Rebecca Y. H. Wong and Sandra Lawae S. Y. Wong.
 - b. Objection letter dated June 29, 2013 and received on July 2, 2013 by Donna and Kenneth Wiecking.
 - c. Support letter dated June 11, 2013 and received on June 13, 2013 by Pamela Bukalski.

ANALYSIS OF GROUNDS FOR VARIANCE

No variance will be granted unless it is found that:

- (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 criteria (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of the storage shed into the 30-foot southeast front yard setback and the shop/barn into the 20-foot southwest side yard setback as required by the Zoning Code.

The survey map prepared by Niels Christensen, L.P.L.S shows that the storage shed encroaches 4.11 feet into the 30-foot front (southwest) yard setback and the shop/barn encroaches 5.71 into the 20-foot side (southeast) yard setback

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 storage shed and the shop/barn 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.

The above special and unusual circumstance determines the owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with the best use and development of the property.

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

The variance application meets criteria (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected front and rear yard and open space 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 were under the impression that the barn and shed was in compliance with all County requirements.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by someone else, and 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.

- (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 criteria (c) for the following reasons:

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.

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. The storage shed and the shop/barn improvements has been in existence for the past 24 years and were constructed under valid building permits and other construction permits issued by the County of Hawai'i. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

Based on the foregoing findings and circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intent and purpose of the Zoning Code, Subdivision Code and the County General Plan.

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.

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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 174") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), according to the variance application's survey map.
5. Should the single-family dwelling (footprint) 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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-13-000142 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN: nci

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

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NEIL ABERCROMBIE
PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 JUL -3 AM 10: 09




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: July 1, 2013

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye 
District Environmental Health Program Chief

SUBJECT: Application: Variance - Var 13-000142
Applicant: MICHAEL BRADLEY
Owner: SUZANNE L. KRUPPA
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76 Minimum yards and Section 25-4-44(a),
Permitted Projections into Yards and Open Space
Requirements (Encroachment into the Southwestern Front
And Southeastern Side Yard Setback)
Tax Map Key: 1-9-019:034, Lot 174

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

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, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopments projects. We also ask you to share this list with others to increase community awareness on healthy community design.

WORD: VAR 13-000142.ni

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