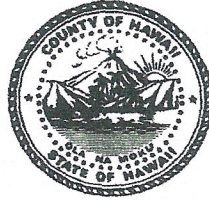


William P. Kenoi  
Mayor



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 25, 2014

Mr. Ralph. C. Baker Jr.  
16-2107 Coconut Drive  
Pahoa, HI 96778

Dear Mr. Baker:

**SUBJECT: Application: Variance VAR-13-000152**  
**Applicant: RALPH CLAUDE BAKER, JR.**  
**Owners: RALPH CLAUDE BAKER, JR.**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards, and Article 4, Division 4 Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Encroachment into the Northwest and Northwest Side Yard Setback)**  
**TMK: (3) 1-1-064:009 (Lot 65)**

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-13-000152, subject to conditions. The variance will allow portions of the single-family dwelling to remain on Lot 65, with a minimum 4.34-foot side (northeast) yard setback and associated roof eave with 2.76 feet side yard open space. It also allows for the detached water tank to remain with a minimum 8.39 feet side (northwest) yard setback in lieu of the required minimum 10-foot side yard setback requirement. This variance is from the subject property's minimum side yard setback and associated side yard open space requirements pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 1, Section 25-5-7. Minimum yards, (a), Section 25-5-7, Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 15,700 square feet and is situated within the 'Ōhi'a Estates Subdivision, District of Puna, Hawai'i. The subject property's street address is 11-3949 Liona Street.
2. **County Zoning.** Single-Family Residential – 10,000 sq. ft. (RS-10).
3. **State Land Use Designation.** Urban.

4. **Required Setback.** Flag lot - 10 feet side yards. The minimum yards for a flag lot, excluding the access drive, shall be the minimum side yards required for a building site in the applicable zoning district.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on July 9, 2013. The variance survey map dated October 3, 2007 is drawn to scale, and prepared by Neils Christensen, LPLS (dlb & Associates), and denotes the position of the single-family dwelling and detached water tank constructed into minimum 10-foot side yard setback. The request affects the northeast and northwest side yard setback area.
6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#BH81-2634) was issued on October 27, 1981 to the subject property for a single-family dwelling consisting of 1 bedroom, 1 bathroom, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated August 2, 2013. (See attached.)
  - b. The Department of Public Works – Building Division email dated August 8, 2013. (See attached.).
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 June 27, 2013 and August 5, 2014, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on July 30, 2013.
9. **Time Extension.** The applicant's variance application was acknowledged by letter dated July 18, 2013 and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to August 27, 2014.
10. **Comments from Surrounding Property Owners or Public.**
  - a. Objection letter dated July 24, 2013 and received on July 25, 2013 from Claudia Ignacio.
  - b. Objection e-mail and letter dated June 6, 2013 and received on August 7, 2013 and August 8, 2013 from Keith and Kenneth Doreen Wallis.

#### 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 single-family dwelling and detached water tank into the 10-foot northeast side yard setback as required by the Zoning Code.

The survey map prepared by Neils Christensen, L.P.L.S. shows that the single-family dwelling encroaches 5.66 feet into the 10-foot side (northeast) yard setback and 2.24 into the 5-foot open space requirement. It also revealed that the detached water tank encroaches 1.61 feet into the 10-foot side (northwest) 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 single-family dwelling and detached water tank improvements constructed nearly 30 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 and detached water tank 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 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 a different property owner 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 single-family dwelling and detached water tank improvements have been in existence for approximately 30 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.

There were two objection letters received, the first objection letter was received on July 25, 2013 from Claudia Ignacio. Ms. Ignacio's concerns were that the single-family dwelling was encroaching onto her property. The single-family dwelling and water tank are encroaching into the setback and not on adjoining properties. Mr. and Mrs. Ignacio stopped by the Planning Department on August 12, 2014 to express her objections to the variance. However, after discussion with staff, Mrs. Ignacio realized that the encroachments were not onto adjoining properties and her property is located across the street and not adjacent to the subject property. For that reason, she has no objections to variance.

The second objection letter was received on August 7, 2013 from Keith and Doreen Wallis, stating that building setbacks are required for a reason, especially when lots are small and they are no compelling reason for approval. Ignoring the setback in this case would set a very poor example for others who may want to build without permit and who ignore codes and regulations without repercussion. It should be noted that according to the Hawai'i County Real Property Tax Office records, a building permit (#BH81-2634) was issued on

October 27, 1981 to the subject property for a single-family dwelling consisting of 1 bedroom, 1 bath, living room, kitchen and dining area.

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 Hawai'i County General Plan.

**PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

The single-family dwelling and water catchment tank built upon the subject property ("LOT 65") 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.

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. No permit shall be granted to allow an ohana 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. Should the single-family dwelling and water tank (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.
5. 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-13-000152 null and void.

Sincerely,



DUANE KANUHA  
Planning Director

LHN: rl

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR13-000152TMK1-1-064-009Baker.doc.rtf

Attachment

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



2013 AUG -5 PM 1:04

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

MEMORANDUM

DATE: August 2, 2013

TO: Duane Kanuha  
Planning Director, County of Hawaii

FROM: Newton Inouye  
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 13-000152  
Applicant: R.C. BAKER JR.  
Owner: R.C. BAKER JR.  
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,  
Section 25-5-7 Minimum Yards and Section 25-4-44(a),  
Permitted Projections into Yards and Open Space  
Requirements (Encroachments into the Northeastern Side  
Yard Setback)  
Tax Map Key: 1-1-064:009, Lot 65

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.

1-1-064:019

**Nakayama, Larry**

PLANNING DEPARTMENT  
COUNTY OF HAWAII

**From:** Matsumoto, Joy  
**Sent:** Thursday, August 08, 2013 3:46 PM  
**To:** Nakayama, Larry  
**Subject:** VAR 13-000152

2013 AUG -9 AM 7: 22

Hi Larry,

My comment:

Must comply with 2006 International Residential Code Table R302.1 Exterior Walls

*Joy Matsumoto*

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

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