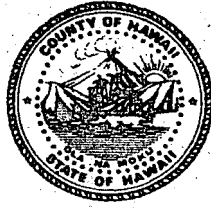


William P. Kenoi
Mayor



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 29, 2014

Taylor McMahel
McMahel Design LLC
HC2 Box 5681
Keaau, HI 96749

Dear Mr. McMahel:

SUBJECT: Application: Variance VAR-14-000224
Applicant: TAYLOR MCMAHEL/MCMAHEL DESIGN LLC
Owners: ROBERT AND NORA KUALII
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7, Minimum Yards. (Encroachment into Side
(East) Yard Setback)
TMK: 2-2-043:056 (Lot 5-A-2)

The Planning Director certifies the **approval** of Variance 14-000224, subject to conditions. The variance will allow for the enclosure of the existing carport which will be converted into a bedroom to remain on Lot 5-A-2, with a minimum 8-foot side (East) yard setback in lieu of the minimum required 10-foot side yard setback. The variance is from the subject property's minimum 10-foot side yard requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property is approximately 11,643 sq. ft. and is situated in Waiākea Homesteads House-Lots, Waiākea, South Hilo, Hawai'i. The subject property street address is 2476-A Kino'ole Street.
2. **County Zoning.** Single-Family Residential – 10,000 sq. ft. (RS-10).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 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 June 6, 2014. The variance application's site plan map is drawn to scale and was prepared by Taylor McMahel (McMahel Design, LLC) and denotes the existing carport into the side (east) yard setback.

The owner/applicant submitted the variance application to address or resolve the encroachment of the enclosed carport into the 10-foot side (east) yard setback, as required by the Zoning Code.

The site plan map shows that the proposed enclosed carport encroaches 2 feet into the 10-foot side (east) yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (55532) was issued on April 2, 1973 to the subject property for the construction of a single-family dwelling consisting of 3 bedrooms, 2 ½ baths, living room, kitchen and dining area.

7. **Agency Comments and Requirements.**

- a. The State Department of Health (DOH) memorandum dated July 9, 2014. (Refer to attached DOH memorandum)
- b. The Department of Public Works Building Division email dated June 30, 2014. (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 June 6, 2014 and July 21, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 22, 2014.

9. **Time Extension.** The applicant's variance application was received on June 3, 2014 and additional time to review the application was required. The applicant granted the Planning Director an extension of time to issue a decision on the Variance Application until August 29, 2014.

10. **Comments from Surrounding Property Owners or Public.** Objection letter received on June 17, 2014 from Orlando K. Stevens-Nahiwa. (See attached objection letter)

GROUNDNS 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 allow for the enclosure of the existing carport and conversion into a bedroom with an 8-foot side (east) yard setback in lieu of the minimum 10-foot side yard setback as required by the Zoning Code.

The owners wish to enclose the existing carport and convert it into a bedroom; no additional square footage will be added (the existing footprint will remain the same).

The owner/applicant has stated in its background report, *“the existing house is a single wall construction on post/pier framing. With the proposed bedroom on an existing slab, this will enable the house to be more accessible, and enable the owners to enjoy their house more without being inconvenient by stairs. This is the most financial viable option to have an accessible bedroom.*

No additional square footage will be added (foot print will remain the same). With an existing length of 24 feet and an encroachment 2 feet, we are asking for a variance that will allow 48 square feet to be included in the proposed bedroom.”

Therefore, based on the above-mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the subject property.

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:

Redesigning the proposed bedroom to meet the setback requirement will require the owner to construct a smaller version of the bedroom and would diminish the functionality of the proposed improvement.

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.

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.

The encroachment of 2-feet should not obstruct or prevent adequate air circulation and exposure to light between permitted structure(s)/uses and boundary/property lines.

An objection letter was received on June 17, 2014 from Orlando K. Stevens-Nahiwa expressing concerns regarding the variance. Mr. Stevens-Nahiwa stated that he was the previous owner of the subject property and expressed safety concerns regarding illegal and/or unpermitted renovations that have been going on for a minimum of nine months. Mr. Stevens-Nahiwa was informed that his concerns were Department of Public Works – Building Division issues and should be brought to their attention. A copy of the objection letter was forwarded to the Building Division for their review. A response from the Building Division stated that they did receive the complaint in May and assigned it to a building inspector; however, because they are currently short-handed, all violation investigations have been suspended. (See attached e-mail).

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. It should be noted that the property owner most affected by the encroachment did not file an objection to the variance application.

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 intent and purposes of the Zoning Code, Subdivision Code and the County General Plan.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the single-family dwelling built upon the subject property ("LOT 5-A-2") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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.

Taylor McMahel
McMahel Design LLC
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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 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 proposed bedroom 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. The owners shall apply for a change of use permit with the Department of Public Works Department – Building Division within six months from the date of this variance. This will allow for the conversion of the two-car carport (Building permit #58176) to an attached bedroom.
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-14-000226.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone2\VAR14-000224TMK2-2-043-056Kualii.doc.rtf

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

Taylor McMahel
McMahel Design LLC
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August 29, 2014

NEIL ABERCROMBIE
GOVERNOR



LINDA ROSEN, M.D., M.P.H.
DIRECTOR OF HEALTH

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

MEMORANDUM

DATE: June 25, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 14-000224
Applicant: TAYLOR MCMAHEL/MCMAHEL DESIGN LLC
Owner: ROBERT AND NORA KUALII
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7, Minimum Yards; Article 4, Division 4,
Section 25-4-44(a), Permitted Projections into Yards and
Open Space Requirements (Encroachment into the Side
(East) Yard Setback.
Tax Map Key: 2-2-043:056; Lot 5-A-2

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

Nakayama, LarryPLANNING DEPARTMENT
COUNTY OF HAWAII

From: Matsumoto, Joy
Sent: Friday, June 20, 2014 1:05 PM
To: Nakayama, Larry; Erickson, Neil
Subject: RE: VAR-14-000224

2014 JUN 20 PM 2:05

Hi Larry,

Thank you for forwarding the letter. I did receive the complaint in May and assigned it to a building inspector, however, as we are currently shorthanded all violation investigations have been suspended.

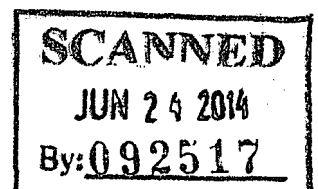
Joy Matsumoto

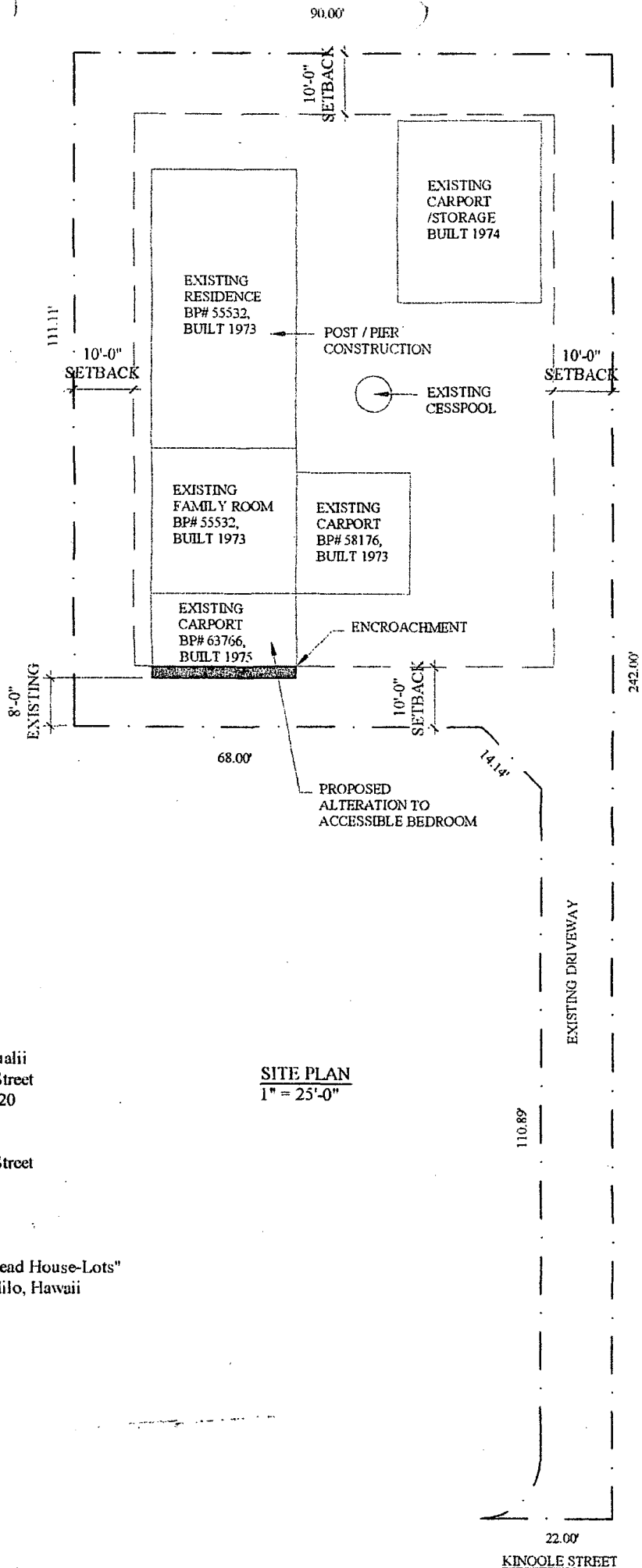
Supervising Building Inspector
County of Hawaii
Tel. (808) 961-8471
Fax (808) 961-8410
Email: jmatsumoto@co.hawaii.hi.us

From: Nakayama, Larry
Sent: Friday, June 20, 2014 9:39 AM
To: Erickson, Neil; Matsumoto, Joy
Subject: VAR-14-000224

Sorry, I forgot the attachment.

Larry H. Nakayama
Planner, County of Hawaii
Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720
Tel: (808) 961-8149
Fax: (808) 961-8742
Email: lnakayama@co.hawaii.hi.us



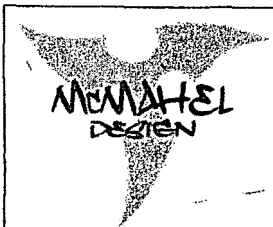


Owner: Robert & Nora Kualii
 Mailing Address: 2476-A Kinoole Street
 Hilo, Hawaii 96720

SITE PLAN
 1" = 25'-0"

Tax Map Key: (3) 2-2-043 : 056
 Site Address: 2476-A Kinoole Street
 Property Size: 11,643 sf
 Property Zoning: Residential
 Flood Zoning: "X"

Location: "Waiakea Homestead House-Lots"
 Waiakea, South Hilo, Hawaii



Drawn by: Taylor McMahon
 (808) 937-3740
 tcmahel@yahoo.com

22.00'
 KINOOLE STREET