

William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
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February 23, 2015

Bill Moore, President
William L. Moore, Planning, Inc.
159 Halai Street
Hilo, HI 96720

Dear Mr. Moore:

SUBJECT: Application: Variance VAR-14-000258
Applicant: BILL MOORE/WILLIAM L. MOORE PLANNING, INC.
Owners: TADASHI IZAWA TRUST AND SUSAN IZAWA TRUST
Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum Yards, and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements. (Encroachment into Side (South) Yard Setback and Rear (East) Yard Open Space)
TMK: 2-5-059:029; Lot 212

The Planning Director certifies the **approval** of Variance 14-00258, subject to conditions. The variance will allow a section of a bedroom addition to remain on Lot 212, with a minimum 9-foot side (south) yard setback. It also allows for an open deck roof cave, located to the rear of the property, to remain with a minimum of 10.6 foot to a minimum of 12.4 foot rear (east) open space. The variance is from the subject property's minimum 10-foot side yard setback and 14-foot rear yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 15, Section 25-5-156, Minimum yards and 25-4-44(a), Permitted projections into Yards and Open space requirement.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 15,299 square feet and is situated within the Ainako Terrace Subdivision, Punahoa 2nd, South Hilo, Hawai'i. The subject property's street address is 1162 Hokule'a Street.

2. **County Zoning.** Single-Family Residence – 15,000 square feet (RS-15).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20-feet front and rear; 10-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on November 13, 2014. The variance application's survey map was prepared by Paul H. Murray, L.P.L.S. (Paul H. Murray & Associates, LLC) and denotes that a portion of a bedroom was constructed as encroaching 1-foot (12 inches) into the 10-foot side (south) yard setback and the open deck constructed with associated roof eave encroaching into the 14-foot rear (east) yard open space.

The owner/applicant submitted the variance application to address or resolve the encroachments as required by the Zoning Code. The bedroom is connected to the main dwelling via a carport, all sharing a common overhead connection.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#891876) was issued on September 7, 1988 for a single-family dwelling consisting of a 3 bedroom, 2.5 bath, living room, kitchen, and dining area. In 2010 a workshop was constructed on the property with its subsequent conversion into a 4th bedroom and bathroom in 2011.
8. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated December 19, 2014. (Refer to attached DOH memorandum).
 - b. No comments received from the Department of Public Works Building Division.
9. **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 November 25, 2014 and December 9, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 16, 2014.
10. **Time Extension.** The applicant's variance application was acknowledged by letter dated December 1, 2014 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 February 27, 2015.

11. **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 bedroom into the 10-foot side (south) yard setback and the open deck with associated roof cave into the 14-foot rear (east) yard open space as required by the Zoning Code.

The survey map dated 2010 prepared by Paul H. Murray, L.P.L.S. (Paul H. Murray and Associates), shows a section of the bedroom encroaching 1-foot (12 inches) into the 10-foot side (west) yard setback and the open deck with associated roof eave encroaching 1.6 feet to 3.4 feet into the 14-foot rear (east) yard open space.

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 in 1993 nearly 21 years ago and subsequent construction permits issued by the County for the original workshop, conversion of workshop into a bedroom were issued and closed under valid building permits. It also appears that past building permit inspections of the premises by the affected 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 circumstances determine the owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with best use and 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:

Remove the building encroachments and/or redesign the bedroom and open deck denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code. 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 and associated alterations were in compliance with all County requirements. Any structural or design correction of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

Another alternative is to consolidate the subject property with the adjoining side and rear property which is owned by another party, and to re-subdivide 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 encroachment issue.

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 bedroom encroachment of 1-foot (12 inches) into the side (south) yard setback and the open deck roof eave encroachment of 1.6 feet to 3.4 feet into the rear (east) yard open space still allows for adequate air circulation of the affected area.

Furthermore, 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 complaints from surrounding property owners during the roughly 21 years since the workshop and open deck were constructed.

Further, objections were not received from the surrounding property owners or general public in response to the Notification of Surrounding Property Owners. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the immediately surrounding properties.

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. 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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the bedroom and open deck built on the subject property ("LOT 212") will not meet the minimum side and rear 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.
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. Should the bedroom and open deck built 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.
4. 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.
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.

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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-14-000258.

Sincerely,

A handwritten signature in black ink, appearing to read "Duane Kanuha". The signature is fluid and cursive, with a large initial "D" and "K".

DUANE KANUHA
Planning Director

LHN/SG:nci

P:\Admin Permits Division\Variances From CoH02\Zone2\VAR14-000258\TMK2-5-059-029\zawa.doc.rtf

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

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DAVID Y. IGE
GOVERNOR OF HAWAII



KEITH YAMAMOTO
ACTING DIRECTOR OF HEALTH

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

MEMORANDUM

DATE: December 19, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 14-000258
Applicant: BILL MOORE/WILLIAM L. MOORE PLANNING, INC.
Owner: TADASHI AND SUSAN IZAWA
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(a), Permitted Projections into Yards and
Open Space Requirements (Encroachment into the Side
(South) yard Setback and Rear (East) yard Open Space
Requirement).
Tax Map Key: 2-5-059:029

15-01-13 10:00 AM
15-01-13 10:00 AM

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

