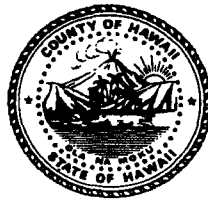


Harry Kim  
Mayor



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PLANNING DEPARTMENT

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August 27, 2018

Bob South  
P.O. Box 377466  
Ocean View, HI 96737

Dear Mr. South:

**SUBJECT: Application: Variance – VAR-18-000477**  
**Applicant: Bob South**  
**Owner: William C. Bergin Trust & Patricia C Bergin Trust**  
**Request Variance from Chapter 25, Zoning, Article 5 Division 1, Section 25-5-76 Minimum Yards and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Encroachment into Side Yard Setbacks)**  
**Tax Map Key: 6-6-005:013**

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The Planning Director certifies the **approval** of Variance No. 18-000477, subject to variance conditions. The variance will allow existing dog kennel on the subject property to remain in its current location, seventeen feet from the northern property line, which is within the required 20-foot side yard setback and the 14-foot open space requirement as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property is a 5.001-acre parcel located off of Pu'u Huluhulu Road in the Lālāmilo Farm Lots, Waimea, South Kohala. The subject property's street address is 66-1520 Pu'u Huluhulu Road.
2. **Zoning.** Agriculture – 5 acres (A-5a).
3. **State Land Use.** Agriculture.
4. **Required Setback.** 30-foot front and rear and 20-foot for sides. Section 25-4-40, General requirements for yards and open space: (a) On every building site, yards of the minimum width or depth as specified for the established zoning district shall be maintained open and unobstructed from the ground up, except as specified in sections 25-4-40 through 25-4-47.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on April 18, 2018, and other submittals related to the variance request and variance application. The variance application's site plan, drawn to scale and prepared by Chrystal Yamasaki, Licensed Professional Land Surveyor, has been modified by

the applicant on a separate site plan to denote the agricultural activities on site . (See **application**)

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that the following building permits were issued for the buildings on property: 871925 (10/16/87), B2008-0082K (1/16/08), B2008-0083K (1/16/08), B2008-0196K (2/5/08), B2008-0632K (4/28/08), B2008-1347K (9/29/08), B2009-0339K (5/1/09), and BH2014-01335 (8/19/14). There are no records regarding permits issued for the dog kennel on property.
7. **Agency Comments and Requirements.**
  - a. State Department of Health (DOH) memorandum dated May 2, 2018: "The Health Department found no environmental health concerns with regulatory implications in the submittals."
8. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notices mailed to surrounding property owners (including affidavits) by USPS. According to these submittals, the first and second notices were mailed on May 7, 2018 and July 18, 2018, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on May 18, 2018.
9. **Comments from Surrounding Property Owners or Public.** No written comments were received.

#### **ANALYSIS OF GROUNDS FOR VARIANCE**

**No variance will be granted unless it is found that:**

1. *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 for the following reasons:**

The applicant provided information that there is a pre-existing retaining wall approximately 4-feet in height that serves as the foundation wall for the rear wall of the kennel. The placement of the kennel was optimum both for structural support of the kennel and also to provide sufficient space between the kennel and adjacent agricultural storage buildings for use as a future septic system area.

The above special and unusual circumstances exist to a degree which if the variance was not granted would obviously interfere with the best use or manner of development of the property.

2. *There are no other reasonable alternatives that would resolve the difficulty.*

**The variance application meets criteria for the following reasons:**

The applicant states that due to the positioning and proximity of buildings surrounding the kennel, the kennel could not reasonably be placed at another location within this parcel and still serve its intended purpose efficiently. In addition, the access driveway that serves both this property and the property to the rear identified by TMK 6-6-005:043, is located entirely

on this property, and was established many years ago and could not be re-routed without adversely affecting the orchards and agricultural-use buildings already in place.

A review of Planning Department records show that the location of the kennels have been noted in both the Special Permit Application (which allowed the Aina Hou Animal Hospital operation on the subject parcel on April 7, 2011) and Subdivision Application (which was approved on December 3, 2017 that created the flag lot, TMK parcel 6-6-005:043, showed the kennel within the side yard, which prompted this variance application) and no comment, or condition, were made to relocate the kennels in either approval document.

- 3. 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 for the following reasons:**

The applicant points out that due to the unobstructed and unoccupied nature of the adjacent driveway, which is the access located on the pole of the adjacent flag lot, TMK parcel 6-6-005:043 and the row of large trees bordering the northern border of the parcel, the current 17-foot separation of the kennel from the northern property line maintains a virtually identical effect on the surrounding character of the property and the adjoining properties as would a 20-foot side yard if the kennel was moved 3-feet further south. For that reason the location of the kennel is consistent with the general purpose of the zoning district and complies with the intent and purpose of the Zoning and Subdivision Codes, and the County General Plan.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance is 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. 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.

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

Based on the variance application's site map, the existing dog kennel on the subject property in its current location, seventeen feet from the property line, will not meet the minimum side yard setback requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

This variance request is **approved** subject to the following 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. Should the structures 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

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be subject to State law and County ordinances and regulations pertaining to building construction occupancy.

4. Future or new building improvements and permitted uses shall be subject to State Law and County Ordinances and Regulations pertaining to building construction and occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-18-000477 null and void.

Sincerely,



MICHAEL YEE  
Planning Director

DEB:deb

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cc: West Hawaii Office