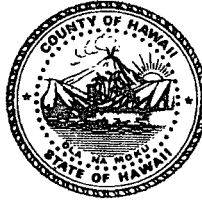


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

October 12, 2010

Mr. Travis Toriano
25-056 Malumalu Street
Hilo, HI 96720

Dear Mr. Toriano:

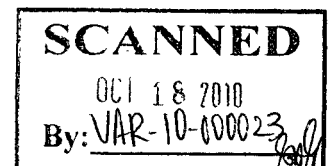
SUBJECT: VARIANCE-VAR-10-023

Applicant: Travis K. Toriano
Owners: Travis K. Toriano
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-77, Other regulations, and Article 4, Division 4 Section 25-4-44, Permitted projections into yards and open space requirements
TMK: 2-5-038:022 (Lot 23)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 10-023 (VAR 10-023), subject to variance conditions. The variance permits the detached water tank to remain upon Lot 23, with a minimum 8.30 feet rear yard and rear yard open space in lieu of the required 15 feet rear yard and minimum 10 feet rear yard open space requirement, as identified in the survey site plan submitted to our office on August 24, 2010. The variance is from the subject property's minimum rear yard and minimum rear open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-77 Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

BACKGROUND AND FINDINGS

1. **Location:** The subject property, consisting of approximately 7,500 square feet of land, is situated within the Kaumana City Subdivision, Kukuau 2nd, South Hilo, Hawai'i. The subject property's street address is 25-056 Malumalu Street.



OCT 18 2010

2. **Zoning:** The subject property is zoned Agricultural - 20 Acres (A-20a) by the County and designated Agricultural or "A" by the State Land Use Commission (LUC).
3. **Variance Application-Site Plan:** The owner submitted the variance application, attachments, and filing fee on August 24, 2010 and other submittals related to the request. The variance application's survey map, dated May 26, 2010 drawn to scale and prepared by Paul H. Murray, LPLS, denotes that a portion of the water tank is built into the property's minimum 15-foot rear yard setback.
4. **County Building Records:** Hawaii County Real Property Tax Office records indicate that a building permit (07-1094H) was issued on May 1, 2007, for the construction of a 3-bedroom and 2-bath Single Family Dwelling. An additional building permit (08-2360H) was issued for the construction of a porch, deck, patio and lanai additions.
5. **Variance Application (VAR 10-023)-Agency Comments and Requirements:**
 - a. The State Department of Health (DOH) memorandum dated September 13, 2010. Refer to DOH memorandum in variance file.
 - b. No comments have been received from the Department of Public Works as of this date.
6. **Notice to Surrounding Property Owners:** A copy of first and second notices, sent by the applicant via USPS to surrounding property owners, and mailing certificates were submitted to the Planning Department. According to these submittals, the first and second notices were mailed via the USPS on August 10, 2010 and September 20, 2010 respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 17, 2010.
7. **Comments from Surrounding Property Owners or Public:** No written comments or objections from surrounding property owners or the general public were received by the Planning Department.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The owner/applicant submitted the variance application to resolve the encroachment of the detached water tank into the 15 feet rear yard setback and 10 feet open space as required by the Zoning Code.

Pursuant to the applicant's background information, *"The Owner recently purchased the home through a foreclosure sale in which the Seller was the bank and no disclosures were provided.*

The Owner had a survey done on the property through Paul H. Murray and Assoc., LLC at which time it was discovered the water tank extends 6.7 feet into the rear yard building setback as detailed on the attached survey map.

The violation of the rear yard setback is relatively small. Due to the steep terrain of the front of the lot, it is assumed that the house was built further back into the lot to allow for ample driveway accessibility and to prevent a steep driveway slope. This in turn created less space in the rear of the lot and being that the lot is only 7,500 sq. ft., the water tank was situated the minimum distance away from the back of the house which in turn left less space in the rear yard for the water tank placement."

No evidence has been found to show indifference or premeditation by the builder to intentionally construct the detached water tank into the property's minimum 15 feet rear yard setback required by the Zoning Code.

ALTERNATIVES

Alternatives available to the current owner to correct and/or address the proposed water tank encroachments constructed into the affected rear yard of the subject property include the following actions:

- Relocate the existing water tank upon the subject property to fit within the correct building envelope denoted on the recent plot map as prescribed by the Zoning Code. This alternative is not reasonable or practicable because it would result in expensive modifications to the water tank.
- Another alternative is to consolidate the subject property with the adjoining property and resubdivide the property to modify property lines and adjust minimum yard setbacks

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision or as required by zoning code are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

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. 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 complaint from surrounding property owners during the 3 years of existence of the structure. Also, no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

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.
3. The existing water tank constructed upon the subject property ("LOT 23") will not meet the minimum rear yard pursuant to Chapter 25, the Zoning Code. The approval of this variance permits the existing water tank to remain upon subject property or "LOT 23" in accordance to the survey map dated on May 26, 2010.
4. No permit shall be granted to allow an ohana or second single family or farm dwelling upon the subject property, subject to provisions of the Zoning Code or State Law which may change from time to time.
5. Any further building permit and/or other construction permits issued to enlarge or change or modify the dwelling floor plan being built upon the subject property shall be limited to the dwelling footprint permitted by variance and/or constructed upon the dwelling's footprint and within the building envelope denoted on the survey map dated on May 26, 2010.
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.

Mr. Travis Toriano
Page 5
October 12, 2010

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 10-023 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN:shg
O:\Variances\Zone2\VAR-10-023TMK2-5-038-022Toriano.doc

xc: Real Property Tax Office (Hilo)