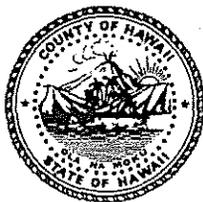


William P. Kenoi  
Mayor



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

December 13, 2010

Mr. Niels Christensen, LPLS  
The Independent Hawai'i Surveyors, LLC  
P. O. Box 577  
Hilo, Hawai'i 96720

Dear Mr. Christensen:

**SUBJECT: VARIANCE- VAR-10-035**  
**Applicant: THE INDEPENDENT HAWAII'I SURVEYORS, LLC**  
**Owners: LARRY J. HARP**  
**Request: Variance from Chapter 25, zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards, (a), Section 25-5-77 Other regulations, and Article 4, Division 4 Section 25-4-44, Permitted projections into yards and open space requirements**  
**TMK: 1-6-067:092 (Lot 63)**

After reviewing your variance application, the Planning Director certifies the **approval** of VAR 10-035 subject to variance conditions. The variance permits portions of the detached water tank to remain upon Lot 63 with a minimum 8.66 feet side yard and a minimum 8.92 feet rear yard and rear yard open space. The variance is from the subject property's minimum side and rear yard and minimum rear yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), 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 consists of 12,000 square feet in land area and is situated within the Ainaloa Subdivision, Puna, Hawai'i. The subject property's street address is 16-2131 Stardust Drive. The subject property is zoned Agriculture - 1

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Acre (A-1a) by the County and designated Agriculture or "A" by the State Land Use Commission (LUC).

2. Variance Application-Site Plan. The applicant on behalf of the owners submitted the variance application, attachments, and filing fee on October 8, 2010 and other submittals related to the variance request and variance application. The variance application's site plan map is drawn to scale, and prepared by The Independent Hawaii Surveyors, LLC. The variance site plan map, dated October 22, 2010, denotes the position of the detached "Water Tank" constructed into minimum 10-foot wide side yard and 20 foot rear yard setback and minimum 14-foot wide rear yard open space.
3. County Building Records:  
  
Hawaii County Real Property Tax Office records indicate that a building permit (B2005-2171H) was issued to the subject property for the construction of a single family dwelling consisting of 3 bedrooms, 2 baths, living room, kitchen, dining area, open covered lanai, and carport/storage and a galvanized steel water tank.
4. Agency Comments and Requirements:
  - a. The State Department of Health (DOH) memorandum dated November 3, 2010 states:  
  
"The Health Department found no environmental health concerns with regulatory implications in the submittals."
  - b. No comments were received from the Department of Public Works – Building Division as of this date.
5. Notice to Surrounding Property Owners. The applicant filed a transmittal letter dated and copy of notices sent to surrounding property owners via USPS to the Planning Department. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notice was mailed on October 21, 2010 and November 9, 2010, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 5, 2010.
6. 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.

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### SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant/owner submitted the variance application to address and/or resolve the detached water tank encroachments within the property's minimum 10 feet side and 20 feet rear yard setback. The variance application's site plan denotes the location of the water tank upon "Lot 63". Pursuant to the applicant's background information, the existing water tank is the only place feasible to construct the tank due to landscaping and trees on the remainder of the lot and would not have discovered any problems affecting the detached water tank until a modern survey was conducted on October 22, 2010 by The Independent Hawaii Surveyors, LLC revealing the setback violations. No evidence has been found to show indifference or premeditation by the builder to intentionally construct a portion of the detached water tank into the property's minimum 10 feet side and 20 feet rear yard setbacks and attendant minimum 14 feet rear yard open space required by the Zoning Code.

### ALTERNATIVES

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected side and rear yard and open space of the subject property include the following actions:

Remove the water tank encroachment and/or redesigning or relocating the water tank 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 be expensive and cost prohibitive.*

Consolidate the subject property with adjoining property and resubdivide the property to modify property lines and adjust minimum yard setbacks. *Given the location of the encroachments (side and rear yard), consolidation/resubdivision with the adjoining property would not be practical.*

### INTENT AND PURPOSE

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.

It appears that the portion of the detached water tank was improperly situated on the subject property, which went undisclosed until a modern survey was completed. The survey map prepared for the landowner shows the extent of the encroachment within the minimum side and rear yard and its open space requirement. It appears that the detached

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water tank, in its current location, is not physically and/or visually obtrusive from other properties situated within the immediate area. This can be substantiated, to some degree, by the fact that this office did not receive any complaint from surrounding property owners during the roughly 4 years since the detached water tank was being constructed.

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 representative's request for variance request would be 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

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. 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.
4. The detached water tank built upon the subject property ("LOT 63") will not meet the minimum side and rear yards pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits portions of the water tank to remain upon the subject property or "LOT 63" according to the site plan map submitted with the variance application.

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5. Should the detached water tank (footprint) upon the subject property be destroyed by fire or other natural causes, the replacement or the new water tank shall comply with the County Zoning Code and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
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 proceed to declare subject Variance - 10-035 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

LHN:mad  
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xc: Real Property Tax Office (Hilo)