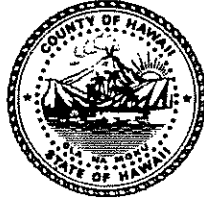


William P. Kenoi
Mayor



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

January 20, 2011

Mr. Anthony De Sa, Jr.
434 Kipuni Street
Hilo, HI 96721

Dear Mr. De Sa:

SUBJECT: VARIANCE VAR-10-041
Applicant: Anthony De Sa, Jr.
Owners: Anthony De Sa, Jr.
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: 2-5-038:040 (Lot 40)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 10-041 (VAR 10-041), subject to variance conditions. The variance permits the detached water tank to remain upon Lot 40, with a minimum 11.5 feet rear yard in lieu of the required 15 feet rear yard requirement, as identified on the plot plan submitted to our office on November 12, 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 25-079 Malumalu Street.

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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.** The owner submitted the variance application, attachments, and filing fee on November 12, 2010 and other submittals related to the request. The variance application's plot plan, drawn to scale and prepared by the applicant, 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 (10-0136H) was issued on January 29, 2010 for the construction of a 2-bedroom and 1-bath Single Family Dwelling; including a two car garage with storage and a 10,000 gallon galvanized steel tank.
5. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated January 04, 2011. Refer to DOH memorandum in variance file.
 - b. No comments have been received from the Department of Public Works – Building Division as of this date.
6. **Public Notice.** 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 December 22, 2010 and January 4, 2011 respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 28, 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 required by the Zoning Code.

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Pursuant to the applicant's background information, which states in part "*My decision to move the water tank was based on these factors:*

First, the diameter of the water tank was downsized from the plan version of 21'-7" to fit the allowable space of 36 ft. from the rear property line to the house. However, the narrower (15 ft in diameter) but taller tank (6 ft. tall) still seemed too close to the master bedroom window. Now in its current location, the tank is 9'6" away from the house and 10'6" away from the master bedroom window. In moving the tank back, the chances of water overflowing into the bedroom and house was less likely if the tank were to explode.

Secondly, the rear property is in absolutely no danger of water spilling unto their property, due to its higher elevation. The house is also set back and built on post and pier."

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.

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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 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 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 40") 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 40" in accordance to the plot plan submitted on November 12, 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 plot plan submitted on November 12, 2010.

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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 VAR 10-041 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office (Hilo)