

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

February 22, 2011

Mr. Niels Christensen, LPLS
The Independent Hawai'i Surveyors, LLC
P. O. Box 577
Hilo, Hawai'i 96721

Dear Mr. Christensen:

SUBJECT: APPLICATION – VAR-10-047

Applicant: THE INDEPENDENT HAWAII SURVEYORS, LLC
Owners: William R. Caudill
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: 1-3-003:002 (Lot 1)

After reviewing your variance application, the Planning Director certifies the **approval** of VAR 10-047 subject to variance conditions. The variance permits portions of the single-family dwelling and roof eave to remain upon Lot 1 with side yards ranging from 11.27 feet to 19.85 feet and attendant side yard open spare ranging from 7.44 feet to 17.62 feet, pursuant to the survey map dated November 10, 2010. The variance is from the subject property's minimum side yard and 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 6.975 acres in land area and is situated

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within the Opihikau homesteads, Puna, Hawai'i. The property's street address is 13-134 Kamaili Road. The subject property is zoned Agriculture – 1 Acre (A-1a) by the County and designated Agriculture or "A" by the State Land Use Commission (LUC).

2. **Application.** The applicant on behalf of the owners submitted the variance application, filing fee and associated materials on December 1, 2010. 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 November 10, 2010, denotes the position of the single family dwelling constructed into minimum 20-foot wide side yard setback and minimum 14-foot wide side yard open space. There is a 10 foot road widening setback along Kamā'ili Road that is not reflected on site plan.
3. **County Building Records.** Hawaii County Real Property Tax Office records indicate that a building permit (B2005-2164H) was issued to the subject property for the construction of a single family dwelling consisting of 1 bedroom, 1 bath, living room, kitchen, dining area, open covered deck, and a galvanized steel water tank.
4. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated December 23, 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 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 notices were mailed on December 6, 2010 and January 7, 2011, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 28, 2010. An affidavit dated January 4, 2011, and associated materials have also been provided to the department confirming that signage has been installed at the property to notify the public of the pending variance application.

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6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant/owner submitted the variance application to address and/or resolve the single-family dwelling encroachment within the property's minimum 20 foot side yard. The variance application's site plan denotes the location of the single-family dwelling situated on the subject property. Pursuant to the applicant's background information, the owners were unaware of any encroachment and would not have discovered any problems affecting the single-family dwelling until a modern survey was conducted on November 10, 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 single-family dwelling and roof eave into the property's minimum 20 feet side yard setback and attendant minimum 14 feet side 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 yard and open space of the subject property include the following actions:

Remove, redesign or relocate the single-family dwelling 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.

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 single-family dwelling and roof eave were 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

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encroachment within the minimum side yard and its open space requirement. It appears that the single-family dwelling, 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 5 years since the single-family dwelling 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.

The subject variance application was acknowledged on December 20, 2010. Additional time was requested by the Planning Department to complete the variance background report requirements. The applicant granted an extension of time to render a decision on the variance application to February 28, 2010.

Based on the foregoing findings and circumstances, the representative's request for variance 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 single-family dwelling built upon the subject property ("LOT 1") will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code, according to the

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variance application's site plan map. The approval of this variance permits portions of the single-family dwelling and roof eave to remain upon the subject property or "LOT 1" according to the site plan map submitted with the variance application.

5. Should the single-family dwelling upon the subject property be destroyed by fire or other natural causes, the replacement or the new single family dwelling 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 - 10-047 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office (Hilo)