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Mayor



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Director

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County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
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February 28, 2011

Mr. Shawn T. Icari
101 South Wilder Road
Hilo, HI 96721

Dear Mr. Icari:

SUBJECT: APPLICATION: VAR-10-053
Applicant: Shawn T. Icari
Owners: Shawn T. Icari
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: 2-5-051:052 (Lot A-1-C)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 10-053 (VAR 10-053), subject to variance conditions. The variance permits a portion of the single family dwelling to remain upon Lot A-1-C, with a minimum 8.36 feet side yard in lieu of the required 10 feet side yard requirement, as identified on the plot plan submitted to our office on December 10, 2010. The variance is from the subject property's minimum side yard and minimum side 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 12,071 square feet, being a portion of R.P. 5706. L.C. Award 8521-B, Apana 2 to G.D. Huevo, is situated at Kukuau 2nd, South Hilo, Hawai'i. The subject property's street address is 101 South Wilder Road.

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2. **Zoning.** The subject property is zoned Single Family Residential – 10,000 square feet (RS-10) by the County and designated Urban or "U" by the State Land Use Commission (LUC)
3. **Variance Application.** The owner submitted the variance application, attachments, and filing fee on December 10, 2010 and other submittals related to the request. The variance application's plot plan dated December 2, 2010, drawn to scale and prepared by the applicant, denotes that a portion of the dwelling is built into the property's minimum 10-foot side yard setback.
4. **County Building Records.** Hawaii County Real Property Tax Office records indicate that a building permit (920269) was issued on February 5, 1992 for the construction of a 1-bedroom and 1-bath Single Family Dwelling. Building Permit 940030 was issued on January 6, 1994 for the addition of 2 bedrooms, 1 bath, laundry 2-car carport, storage; patio with bar sink and covered walkway.
5. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated January 03, 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 28, 2010 and January 19, 2011 respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on January 7, 2011.
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 submitted the variance application to resolve the encroachment of the single-family dwelling into the 10 feet side yard setback required by the Zoning Code.

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Pursuant to the applicant's background information, the owner was unaware that the dwelling and patio encroached into the side yard setback area, which is established as 10 feet from the side property line. Building Permit No. 920269 was issued on February 5, 1992 and the owners believed that their dwelling was constructed in accordance with all County requirements, as no mention of any encroachments were made during construction and inspection of the building permit.

No evidence has been found to show indifference or premeditation by the builder to intentionally construct the single-family-dwelling into the property's minimum 10 feet side yard setback required by the Zoning Code.

ALTERNATIVES

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

- Relocate the existing single-family-dwelling and open patios 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 existing dwelling and patios.*
- 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. *This alternative is not reasonable or practicable due to the expense and difficulty in altering the property boundaries with the adjacent neighbors.*

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

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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 single-family-dwelling constructed upon the subject property ("LOT A-1-C") will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code. The approval of this variance permits a portion of the single family dwelling to remain upon subject property in accordance to the plot plan dated on December 2, 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 dated December 2, 2010.
6. The applicant/owner shall apply for building permits within six months of the issuance of this variance for the two (2) unpermitted open patios.

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7. 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 10-053 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office (Hilo)
DPW- Building Division (Hilo)