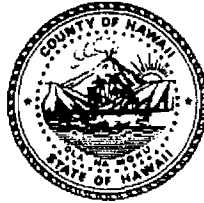


William P. Kenoi
Mayor



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

September 16, 2011

Mr. Neil Erickson
Neil Erickson, Architects
82 Ponahawai Street
Hilo, HI 96720

Dear Mr. Erickson:

SUBJECT: VARIANCE VAR-11-022
Applicant: Neil Erickson, Architects
Owners: Steve and Nicole Clark
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-7, Minimum Yards, and Article 4, Division 4 Section 25-4-44, Permitted projections into yards and open space requirements
TMK: 2-5-026:029 (Lot 143)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 11-022 (VAR 11-022), subject to variance conditions. The variance permits an enclosed pool cover to be constructed upon Lot 143, with a minimum 3 feet side yard and side yard open space requirement in lieu of the required 10 feet side yard and minimum 5 feet side yard open space requirement, as identified on the plot plan submitted to our office on April 11, 2011. 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 25-5-8 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 16,639 square feet of land area, is located in the Ainako Terrace Subdivision, Increment 1, Punahoa 2nd, South Hilo, Hawai'i. The subject property's street address is 1282 Moku Place.

2. **Zoning.** The subject property is zoned Single Family Residential – 15,000 square feet (RS-15) 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 April 11, 2010 and other submittals related to the request. The variance application's plot plan, drawn to scale and prepared by the applicant, denotes an enclosed pool cover to be built into the property's minimum 10-foot side yard setback and 5 feet side yard open space requirement.
4. **County Building Records.** Hawaii County Real Property Tax Office records indicate that a building permit (783157) was issued on December 12, 1978 for the construction of a 5-bedrooms and 3-bath Single Family Dwelling; including a two car garage with storage.
5. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated May 5, 2011, identifies no environmental health concerns with regulatory implications. 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 on April 7, 2011 and May 10, 2011, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 8, 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/applicant submitted the variance application to address a proposed encroachment of the enclosed swimming pool cover into the 10 foot side yard setback required by the Zoning Code.

Pursuant to the applicant's background information, which states in part "*We have proposed a screened greenhouse style structure to enclose the pool and surrounding sidewalks and patio but find that, while a swimming pool could be built within the setbacks, a structure would require a setback variance. This solution would allow the owner's to enjoy their property with the visual and some sound privacy that they enjoyed about this location. In addition, the roof would provide solar protection to the occupants who enjoy the pool and lawn but suffer from the affects of sun exposure in the forms of cancers and dermatitis.*

Since the pool was installed closer to the property line than a structure would be allowed, we feel a variance to the side setback of ten feet (10') to allow and enclosed pool cover as close as three feet (3') would not be detrimental to the adjacent property and allow complete use of their property. Note that open structures would be allowed to be constructed as close as five feet (5') to this property line."

The adjacent property, which is owned by the State of Hawai'i, has a drainage easement approximately 50 feet wide that runs along the length of the affected side yard boundary. The property is zoned Agricultural – 20 acres (A-20a) and designated Conservation or "C" by the State Land Use Commission, which will limit any future development of the site.

ALTERNATIVES

Alternatives available to the current owner to correct and/or address the proposed encroachment into the affected side yard of the subject property include the following actions:

- Relocate the swimming pool 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 swimming pool.
- 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. Also, no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

The subject variance application was acknowledged on May 2, 2011. 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.

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 proposed swimming pool cover to be constructed upon the subject property ("LOT 143") will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code. The approval of this variance permits the existing enclosed swimming pool cover to be placed upon subject property in accordance to the plot plan submitted on April 11, 2011.
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 structures built upon the subject property shall be limited to the

Mr. Neil Erickson, Architects
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setbacks required by the underlying zoning, as modified by this variance and denoted on the plot plan submitted on April 11, 2011.

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 11-022 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office (Hilo)