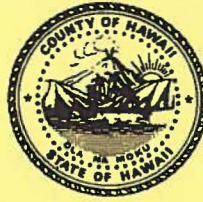


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

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## County of Hawai'i PLANNING DEPARTMENT

East Hawai'i Office  
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April 30, 2012

Mr. Dane Inouye  
133 A'api Place  
Hilo, HI 96720

Dear Mr. Inouye:

**SUBJECT: VARIANCE VAR-12-000047**  
**Applicant: DANE INOUYE**  
**Owners: DANE INOUYE**  
**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, (a)**  
**TMK: 2-4-059:061 (Lot 84)**

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 12-000047 (VAR 12-000047), subject to variance conditions. The variance permits portion of the as-built storage room to remain on Lot 84 with a 11 feet rear yard setback and 4 feet side yard setback and attendant minimum 3.4 feet side yard open space in lieu of the 15 feet rear yard setback and 8 feet side yard setback and associated 4 feet side yard open space requirement as identified on the plot plan submitted to our office on January 25, 2012. The variance is from the subject property's minimum rear and side yard setback requirement pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-7 Other regulations, and Article 4, Division 4, Section 25-4-44.(a), Permitted projections into yards and open space requirements.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 6,274 square feet and is identified as Lot 84, located in the Mohouli Subdivision, Section 1, File Plan 1168, Waiākea, South Hilo, Hawai'i. The subject property's street address is 133 A'api Place.
2. **Zoning.** The subject property is zoned Single Family Residential – 7,500 square feet (RS-7.5) by the County and designated Urban or "U" by the State Land Use Commission (LUC).

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3. **Variance Application.** The owner submitted the variance application, attachments, and filing fee on January 25, 2012 and other submittals related to the request. The variance application's plot plan, drawn to scale and prepared by the applicant, denotes the as-built storage built into the property's minimum 15-foot rear yard and 8 feet side yard setback.
4. **County Building Records.** Hawaii County Real Property Tax Office records indicate that the single family dwelling was built in 1970.
5. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum, dated March 9, 2012, identifies no environmental health concerns with regulatory implications. Refer to DOH memorandum in variance file.
  - b. No comments were received from the Department of Public Works – Building Division as of this date.
6. **Public Notice.** The applicant submitted a copy the first and second notices sent to surrounding property owners including an associated affidavit. Pursuant to these submittals, it appears that the applicant's notices were mailed to the surrounding property owners by USPO on January 21, 2012 and April 5, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 7, 2012.
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 as built storage room into the 15 feet rear yard setback and 8 feet side yard setback required by Hawaii County Code, Chapter 25, (Zoning). Pursuant to the applicant's background information, the previous owner constructed the storage room and was unaware that the as built storage room encroached into the rear yard and side yard setback area which is established as 15 feet from the rear property line and 8 feet from the side property line.

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 15 feet rear yard and 8 feet side yard setback required by the Hawaii County Code, Chapter 25, (Zoning).

### **ALTERNATIVES**

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

- Relocate or modify the existing as-built storage room 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/resubdivide the subject property with the adjacent property. *This alternative is not practical and reasonable.*

### **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.

### **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.

Mr. Dane Inouye  
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3. The as-built storage room constructed upon the subject property ("LOT 84") will not meet the minimum rear and side yard setback pursuant to the Hawaii County Code, Chapter 25, (Zoning). The approval of this variance permits the existing as-built storage room to remain upon the subject property in accordance to the plot plan submitted on January 25, 2012.
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 Hawaii County Code, Chapter 25, (Zoning), 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 setbacks required by the underlying zoning, as modified by this variance and denoted on the plot plan submitted on January 25, 2012.
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 12-000047 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

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xc: Real Property Tax Office (Hilo)  
Kevin Sakai