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Mayor



BJ Leithead Todd
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County of Hawai'i
PLANNING DEPARTMENT

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April 12, 2012

Ms. Lori Mikkelson
All Aina Services
P. O. Box 291
Laupāhoehoe, Hawai'i 96764

Dear Ms. Mikkelson:

SUBJECT: VARIANCE – 12-000049
Applicant: ALL AINA SERVICES
Owners: DAVID KORTE
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: 9-4-013:099 (Lot 10)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 12-000049 (VAR 12-000049) subject to variance conditions. The variance permits portion of the single family dwelling to remain upon Lot 10 with a minimum 8.5 feet side yard setback in lieu of the minimum 10 side rear yard. The variance is from the subject property's minimum rear yard requirement 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 12,000 square feet in land area and is situated within the Kiolaka'a Homesite Subdivision, Unit I, File Plan 1037, Kiolaka'a and Pu'uoehu 2, Kā'u, Hawai'i. The subject property's site address is 94-6266 Pele Street. The subject property is zoned Agricultural – 20 Acre (A-20a) by the County and designated Agricultural or "A" by the State Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The owner submitted the variance application with

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By: _____

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attachments, and filing fee on February 9, 2012 and other submittals related to the variance request and variance application. The variance application's plot plan map is drawn to scale and prepared by the applicant. The variance plot plan denotes the position of the single family dwelling built into the property's minimum 10-foot side yard setback.

3. **County Building Records.** Hawaii County Real Property Tax Office records indicate that a building permit (036736) was issued to the subject property for the construction of a single family dwelling consisting of 2 bedrooms, 2 baths, living room, and kitchen and dining area.
4. **Variance Application (VAR 12-000049)-Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated March 5, 2012 states:
"The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. No comments from the Department of Public Works – Building Division has been received as of this date.
5. **Notice to Surrounding Property Owners.** A copy of first notice and second notice 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 March 6, 2012 and March 12, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 7, 2012.
6. **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 applicant/owner submitted the variance application to address and/or resolve the single family dwelling encroachment within the property's minimum 10 feet side yard setback. The variance application's site plan denotes the location of the single family dwelling, and other site improvements upon "Lot 10". The owner became aware of the encroachment when a modern survey was done upon purchasing the subject property. No evidence has been found to show indifference or premeditation by the builder to intentionally construct a portion of 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 owners to correct and/or address the building encroachments constructed into the affected rear yard of the subject property include the following actions:

1. Remove the building encroachments and/or redesigning or relocating the single family dwelling constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code.
2. 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 was improperly situated on the subject property, which went undisclosed until the sale of the property and a survey was completed. The site plan map prepared for the landowner by the applicant, shows the extent of the encroachment within the minimum side yard 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 the owner did not receive any complaint from surrounding property owners. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the immediately surrounding properties.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance request 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.

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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 Hawai'i County Code, Chapter 25 (Zoning) or State Law which may change from time to time.
4. The Single family dwelling built upon the subject property ("LOT 10") will not meet the minimum side yard pursuant to the Hawai'i County Code, Chapter 25 (Zoning), according to the variance application's site plan map. The approval of this variance permits the existing single-family dwelling to remain upon subject property or "LOT 10" according to the site plan map submitted with the variance application.
5. Should the single family dwelling (footprint) upon the subject property be destroyed by fire or other natural causes, the replacement or the new single family dwelling shall comply with the Hawai'i County Code, Chapter 25 (Zoning) 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, 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-VAR 12-000049 null and void.

Sincerely,


BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office (Hilo)