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## County of Hawai'i PLANNING DEPARTMENT

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June 27, 2012

Mr. Val Colter  
12-7242 Kii Nani Street  
Pahoa, HI 96778

Dear Ms. Colter:

**SUBJECT: VARIANCE VAR-12-000053**  
**Applicant: VAL COLTER**  
**Owners: DANE CHRISTOPHER LUSSIER**  
**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(a), Permitted Projections into Yards and  
Open Space Requirements**  
**TMK: 2-7-012:045 (Lot1-B)**

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 12-000053 (VAR 12-000053), subject to conditions. The variance permit a portion of the single family dwelling to remain on the property with a minimum 8-foot front yard setback and open space in lieu of the 15-foot front yard setback and 10-foot front yard open space requirement and the detached garage to remain on the property with a 4-foot side yard setback and 3-foot side yard open space in lieu of the 8-foot side yard setback and associated 4-foot side yard open space requirement as identified on the plot plan submitted to our office dated February 27, 2012.

The variance is from the subject property's minimum front 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 6,819 square feet and is identified as Lot 1-B, situated within Pu'u'eopaku 1<sup>st</sup> and 2nd, South Hilo, Hawai'i. The subject property's street address is 27-1943 Hawai'i Belt Road.



Ms. Val Colter  
Page 2  
June 27, 2012

2. **Zoning.** The subject property is zoned Single Family Residential – 10,000 square feet (RS-10) by the County.
3. **SLU.** Urban (U)
4. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on February 27, 2012. The variance application's site plan map is drawn to scale, and prepared by Val Colter, and denotes the position of the single family dwelling and detached garage constructed into the minimum 15-foot front yard setback and 8-foot side yard setback.
5. **County Building Records.** Hawaii County Real Property Tax Office records indicate that a building permit was issued in 1938 under Building Permit No. 3079.
6. **Agency Comments and Requirements.**
  - a. State Department of Health (DOH) memorandum, dated April 20, 2012: "The Health Department found no environmental health concerns with regulatory implications in the submittals."
  - b. Department of Public Works – Building Division: No comments were received as of this date.
7. **Public Notice.** The applicant submitted a copy the first and second notices sent to surrounding property owners, including an associated affidavit. The applicant's notices were mailed to the surrounding property owners by USPO on February 27, 2012 and April 26, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 20, 2012.
8. **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 resolve the encroachment of the single family dwelling and detached garage into the 15-foot front yard and 8-foot side yard setback and associated 10-foot front yard and 4-foot side yard open space required by Hawaii County Code, Chapter 25, (Zoning). The Hawai'i County Real Property Tax Office records indicate that the single family dwelling and all other improvements were built prior to 1967. Because of the discrepancies between the house footprint as it now exists and the data on the

original permit, the owner has decided that a setback variance and a new building permit to correct a few existing code issues would be appropriate.

The applicant's background report states: *"In the final analysis this is a situation that began with old legal non-conforming structures to which changes were apparently made many years ago. The house and garage have stood in their current positions for decades with no neighbor or government official making a compliant. Furthermore, the structures are in a neighborhood with many older structures in similar situations as regards to setbacks. In fact the road that is used for access to many properties past the subject property is partially on the subject property and is frequently used by neighbors and visitors (see attached site plan). The best remedy for the owner and the County is to make the house legal as it stands by granting a setback variance, and allowing the owner to do the small amount of reconstruction needed to bring the building "up to code."*

*There are no other reasonable alternatives that would resolve the difficulty. Alternatives to the proposed variance might include substantial reconstruction or removal of portions of the house. Mr. Lussier bought the property in good faith with the understanding that the house was so old that it was "legal-nonconforming." One could find fault with the new owner for neglecting to research his situation fully before purchasing. However, this is understandably difficult to achieve when a property is bought at an auction. The hardship of reconstructing and or removing a whole side of the house and a slice of the garage would deprive the owner of substantial property rights. To force the owner to do such reconstruction interferes with the best use of the property at this point in time. Considering the length of time that the structures have existed in its current state this seems unfair to the owner. He simply wishes to keep the buildings as close as possible to how they were when he purchased the property and also be in compliance with county rules and regulations. A variance is the only reasonable alternative".*

### **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 single-family dwelling and detached garage 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 is 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.
3. The single-family dwelling and detached garage constructed upon the subject property ("LOT1-B") 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 single-family dwelling and detached garage to remain upon the subject property in accordance to the plot plan submitted on February 27, 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 February 27, 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.

Ms. Val Colter  
Page 5  
June 27, 2012

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject VAR 12-000053 null and void.

Sincerely,

A handwritten signature in black ink, appearing to read "BJ Leithead Todd", written in a cursive style.

BJ LEITHEAD TODD  
Planning Director

LHN: nci

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xc: Real Property Tax Office (Hilo)