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May 23, 2012

Mr. Tony Arruda
197 Kino'ole Street
Hilo, HI 96720

Dear Mr. Arruda:

SUBJECT: VARIANCE VAR-12-000058
Applicant: TONY ARRUDA
Owners: TONY AND MARIE T. ARRUDA
**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: 2-5-026:011 (Lot 7-B-9)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 12-000058 (VAR 12-000058), subject to variance conditions. The variance permits portion of the laundry room to remain on Lot 7-B-9 with a 7.44 foot side yard setback and attendant roof eave 2.63 foot side yard open space in lieu of the required 10 foot side yard setback and associated 5 feet side yard open space requirement as identified on the plot plan submitted to our office dated January 19, 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 23,928 square feet and is identified as Lot 7-B-9, situated within Punahoa 2nd, South Hilo, Hawai'i. The subject property's street address is 1200 Ainako Street.
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).

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3. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on March 20, 2012. The variance application's site plan map is drawn to scale, and prepared by Richard Sunden, LPLS, and denotes the position of the single family dwelling constructed into the minimum 10-foot side yard setback and associated 5-foot side yard open space requirement.
4. **County Building Records.** Hawaii County Real Property Tax Office records indicate that a building permit (#7533) was issued to the subject property for a two-story, single family dwelling consisting of 3 bedrooms, 2-1/2 baths, living room, kitchen with dining area and garage.
5. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated April 20, 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 March 20, 2012 and May 10, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 20, 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 applicant/owner submitted the variance application to resolve the encroachment of the as built laundry room into the 10 feet side yard setback and 5 feet side yard open space required by Hawaii County Code, Chapter 25, (Zoning). The owners were unaware of any encroachment of the single-family dwelling and roof eave until a modern survey was conducted by Richard Sunden, LPLS, revealing the setback violations. The Hawai'i County Real Property Tax Office records indicate that the single family dwelling and all other improvements were built prior to 1967. However, Hawai'i County Real Property Tax Office does not have any record when the laundry room was built. Since the owners cannot ascertain

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when the laundry room was built and the real property is in escrow for sale they decided to obtain the variance to legitimize the setback violation.

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 foot 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 Property 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.

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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. The as-built storage room constructed upon the subject property ("LOT 7-B-9") will not meet the minimum side yard setback pursuant to the Hawaii County Code, Chapter 25, (Zoning). The approval of this variance permits the existing laundry room to remain upon the subject property in accordance to the plot plan submitted on March 20, 2012.
4. No permit shall be granted to allow an ohana, a 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 March 20, 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 12-000058 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office (Hilo)