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**County of Hawai'i**  
**PLANNING DEPARTMENT**

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July 3, 2012

Deric H. L. Lum & Yoko Washimoto  
81-1056 Keopuka Heights Road  
Kealakekua, Hawai'i 96750

Dear Mr. Lum & Ms. Washimoto:

**SUBJECT: VARIANCE APPLICATION – VAR-12-000060**  
**Applicant: DERIC H. L. LUM & YOKO WASHIMOTO**  
**Owners: DERIC H. L. LUM & YOKO WASHIMOTO**  
**Request: Variance from Chapter 25, Zoning, Section 25-5-7,  
Minimum Yards, (a), Section 25-5-8, Other  
Regulations, and 4 Section 25-4-44, Permitted  
Projections into Yards and Open Space Requirements**  
**TMK: 8-1-006:131**

After reviewing your variance application, the Planning Director certifies the **approval** of variance VAR-12-000060, subject to variance conditions. The variance will allow the existing "As-Built" lanai to remain on the subject property with a 13-foot side yard setback along the west boundary line in lieu of the minimum 15-foot side yard setback requirement, in accordance with the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards, (2)(A), 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 23,019 square feet of land, is situated at Keopuka Mauka, South Kona, Hawai'i. The subject property's street address is 81-1056 Keopuka Heights Road.
- 2. Zoning.** The subject property is zoned Single-Family Residential – 20,000 square feet (RS-20) by the County and designated Urban (U) by the State Land Use Commission (LUC).

3. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on March 28, 2012 and other submittals related to the variance request and variance application. The variance application's site plan map submitted by the applicant is drawn to scale. The variance site plan denotes the "as-built" lanai constructed into the minimum 15 foot side yard setback.
4. **County Building Records.** Hawaii County Real Property Tax Office records indicate that a building permit (#44657) was issued to the subject property for a single-family dwelling consisting of 3 bedrooms, 1 bath, 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 states:  

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
  - b. No comments have been received from Department of Public Works – Building Division as of this date.
6. **Public Notice.** The applicant filed a transmittal letter and copy of the notices was sent to surrounding property owners via USPS to the Planning Department. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on May 22, 2012 and June 5, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 20, 2012.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

The variance application would allow for the existing "as-built" lanai to remain on the subject property. Pursuant to the applicant's background information, when the single-family dwelling was constructed in 1970, the subject property consisted of 10,664 square feet, thus requiring 20 foot front and rear setbacks and 10 foot side yard setbacks. However, on August 7, 1987, a consolidation and resubdivision was approved (SUB 4194) which increased the size of the property to its present lot size of 23,019 square foot. With the increase in property area and the zoning being Single-Family Residence – 20,000 square feet (RS-20), it now requires a 25 foot front and rear setback and 15 foot side yard setback. Although, the single family dwelling built in 1970 is considered legal non-conforming, the as-built lanai needs to meet today's setback requirements. Given the history of the property and the unusual circumstances that occurred in resulting in the establishment of new setback requirements, no evidence has been found to show

indifference or premeditation by the builder to intentionally construct the as built lanai into the property's minimum 15 foot side yard setback required by the Zoning Code.

### **ALTERNATIVES**

Alternatives available to the current owner to avoid any encroachments into the affected side yard and open space of the subject property include the following actions:

Remove the building encroachments and/or redesigning or relocating the as-built lanai constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. *Any structural or design correction would be expensive and cost prohibitive.*

Another alternative is to consolidate the subject property with the adjoining properties and resubdivide the property to modify property lines and adjust minimum yard setbacks. *Given the topography of the subject property, in relationship to the adjoining properties, it will be impracticable and unrealistic to consolidate/resubdivide these properties.*

### **INTENT AND PURPOSE**

The intent and purpose of requiring building setbacks within a subdivision or development are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

The applicant's variance application was acknowledged by letter dated April 12, 2012 and additional time to review the application was required. The applicant granted the Planning Department and Planning Director an extension of time for decision on the Variance Application.

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 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. This can be substantiated, to some degree, by the fact that this office did not receive any complaint from surrounding property owners during the past years of existence of the structure. 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 variance conditions:

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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 Hawai'i 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 approval of this variance is only from the Zoning Code's minimum side yard setback requirement. The approval of this variance allows the existing lanai to remain on the subject property, pursuant to the variance application's site plan map.
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 be changed from time to time.
5. The existing 'as-built' lanai situated on the subject property will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code. The approval will allow the existing lanai to remain on the subject property in accordance to the plot plan submitted on March 28, 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 Variance-VAR 12-000060 null and void.

Sincerely,



**BJ LEITHEAD TODD**  
Planning Director

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xc: Kona Office  
Real Property Tax Office (Kona)