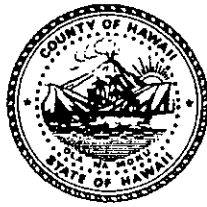


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

November 20, 2012

Niels Christensen, LPLS
The Independent Hawaii Surveyors
P. O. Box 577
Hilo, HI 96721

Dear Mr. Christensen:

SUBJECT: VARIANCE: VAR-12-000097
Applicant: THE INDEPENDENT HAWAII SURVEYORS
Owners: KAREN MEYER
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(a), Permitted Projections into Yards and Open Space Requirements (North Side and Northwest Rear Side Area)
TMK: 1-6-092:006 (Lot 10)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance 12-000097 (VAR 12-000097), subject to conditions. The variance will allow portions of the single family dwelling and detached water tank to remain on Lot 10, with a minimum 7.39 foot side yard setback and the detached water tank with a 6.35 side yard and a 17.26 foot rear yard setback along the north side and northwest rear side area. This allowance is in lieu of the required minimum 20 foot rear yard and 10 foot side yard setback requirement. This variance is from the subject property's minimum front and side yard setback and associated front and side yard open space requirements pursuant to the Hawai'i 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(a). Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 12,000 square feet and is situated within the Ainaloa Subdivision, District of Puna, Hawai'i. The subject property's street address is 16-2048 Hilonani Drive.

2. **County Zoning.** Agricultural – 1 Acre (A-1a)
3. **State Land Use Designation.** Agriculture
4. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on September 24, 2012. The variance application's site plan map is drawn to scale, and prepared by Niels Christensen LPLS, and denotes the position of the single family dwelling constructed into minimum 20 foot rear yard and 10 foot side yard setback and associated 14 foot rear yard and 5 foot side yard open space requirement. The request affects the north side and northwest rear setback area.
5. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#921866) was issued to the subject property for a single-family dwelling consisting of 3 bedrooms, 2 baths, living room, kitchen and dining area, garage and detached water tank.
6. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated October 10, 2012 states:
"The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. No comments were received from the Department of Public Works – Building Division as of this date.
7. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on September 26, 2012 and October 4, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 17, 2012.
8. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners of the general public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant/owner submitted the variance application to address and/or resolve the encroachments within the property's minimum 20 foot rear yard and 10 foot side yard setback requirement. The variance application's site plan denotes the location of the single family dwelling and detached water tank upon "Lot 10". The owner purchased the property as

foreclosure sale and was unaware of any encroachment of the single-family residence and the detached water tank and would not have discovered any problems affecting the property until a modern survey was conducted by Niels Christensen LPLS, revealing the setback violations. No evidence has been found to show indifference or premeditation by the builder to intentionally construct a portion of the single family dwelling and attendant roof eave into the property's minimum 20 foot rear and 10 foot side yard setback required by the Hawai'i County.

ALTERNATIVES

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected side yard of the subject property include the following actions:

Remove the building encroachment constructed upon the subject property to fit within the correct building envelope denoted on the recent plot map as prescribed by the Zoning Code. *Any structural or design correction would be expensive and cost prohibitive.*

Consolidate the subject property with adjoining properties and resubdivide the property to modify property lines and adjust minimum yard setbacks. *Given the location of the encroachments (rear and side yard), consolidation/resubdivision with the adjoining property would not be practical.*

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.

Based on the foregoing findings and circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intent and purpose 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 complaints from surrounding property owners during the roughly 20 years since the single family dwelling was constructed. Further, objections were not received from the surrounding property owners or general public in response to the Notification of 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.

Mr. Niels Christensen, LPLS

Page 4

November 20, 2012

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.
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, a 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. Portion of the single family dwelling built upon the subject property ("LOT 10") will not meet the minimum side yard and open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), according to the variance application's site plan map.
5. Should the single-family dwelling (footprint) on the subject property be destroyed by fire or other natural causes, the replacement structure 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 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-12-000097 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN: nci

P:\Admin Permits Division\Variances From CoH02\Zone I\VAR12-000097\TMK1-6-092-006Meyer.doc.rtf

xc: Real Property Tax Office (Hilo)