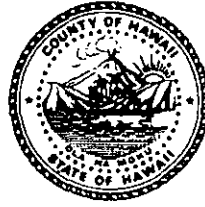


William P. Kenoi
Mayor



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
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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

January 11, 2013

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

Dear Mr. Christensen:

SUBJECT: Application: Variance VAR-12-000100
Applicant: THE INDEPENDENT HAWAII SURVEYORS
Owners: EDWARD AND VIRGINIA SOARES TRUST
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 (Encroachment into Southwest Rear Yard Setback)
TMK: 1-5-038:076 (Lot 315)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance 12-000100 (VAR 12-000100), subject to conditions. The variance will allow the detached water tank and work shed to remain on Lot 315, with a minimum rear yard setback of 8.12 foot for the water tank and 7.88 foot for the work shed. This allowance is in lieu of the required minimum 30 foot rear yard setback and associated 24 foot rear yard open space requirement. This variance is from the subject property's minimum rear yard setback and associated rear 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 1 acre and is situated within

the Hawaiian Paradise Park Subdivision, District of Puna, Hawai'i. The subject property's street address is 15-1500 22nd Avenue.

2. **County Zoning.** Agricultural – 1 Acre (A-1a).
3. **State Land Use Designation.** Agricultural.
4. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on October 2, 2012. The variance survey map dated October 29, 2012 is drawn to scale, and prepared by Niels Christensen LPLS, and denotes the position of the water tank and work shed constructed into minimum 30 foot rear yard setback and associated 24 foot rear yard open space requirement. The request affects the southwest rear yard setback area.
5. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#901628) was issued on August 2, 1990 to the subject property for a single-family dwelling consisting of a 3 bedroom, 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 22, 2012 (See attached).
 - b. No comments were received from the Department of Public Works – Building.
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 October 18, 2012 and December 6, 2012, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 24, 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.

GROUNDS FOR APPROVING VARIANCE

Special and Unusual Circumstances

- (a) There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property

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rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property.

The applicant/owner submitted the variance application to address and/or resolve the encroachments within the property's minimum 30-foot rear yard setback requirement. The variance application's site plan denotes the location of the detached water tank and work shed upon "Lot 315". The owner purchased the property as foreclosure sale and was unaware of any encroachment of the detached water tank and work shed 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 previous owner to intentionally construct the water tank and work shed into the property's minimum 30-foot rear yard setback required by the Hawai'i County.

The applicant's variance application was acknowledged by letter dated October 17, 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 to January 18, 2013.

Alternatives

(b) There are no other reasonable alternatives that would resolve the difficulty.

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

Remove the building encroachments and/or redesigning or relocating the as-built water tank and work shed 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 rear property which is owned by someone else and to resubdivide the property to modify property lines and adjust minimum yard setbacks. Both these alternatives are not practical and would be costly.

Intent and Purpose

(c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

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.

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 substantiated, to some degree, by the fact that this office did not receive any complaints from surrounding property owners during the roughly 22 years since the single family dwelling and associated improvements (water tank and work shed) were 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 surrounding 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.
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. The water tank and work shed built upon the subject property ("LOT 315") will not meet the minimum rear yard and open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), according to the variance application's survey map.
5. Should the "as-built" water tank and work shed (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

Mr. Niels Christensen, LPLS

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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-12-000100 null and void.

Sincerely,

A handwritten signature in black ink, appearing to read "BJ Leithhead Todd". The signature is written in a cursive, flowing style.

BJ LEITHEAD TODD
Planning Director

LHN: nci

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xc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS (via email)

Mr. Niels Christensen, LPLS
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NEIL ABERCROMBIE
GOVERNOR



LORETTA J. FUDDY, A.C.S.W., M.P.H.
Director of Health
PLANNING DEPARTMENT
COUNTY OF HAWAII

2012 OCT 23 AM 9:41

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: October 22, 2012

TO: Bobby Jean Leithead Todd
Planning Director, County of Hawaii

FROM: Newton Inouye *N*
District Environmental Health Program Chief

SUBJECT: VARIANCE APPLICATION-VAR 12-000100
Applicant: THE INDEPENDENT HAWAII SURVEYORS, LLC
Owner: EDMUND AND VIRGINIA SOARES TRUST
REQUEST: Variance from Chapter 25, Zoning, Section 25-5-76,
Minimum Yards and Section 25-4-44(a), Permitted
Projections into Yards and Open Space Requirements
(Encroachment into Rear Setback)
Tax Map Key: I-5-038-076, Lot 315

The Health Department found no environmental health concerns with regulatory implications in the submittals.

WORD:VAR 12-000100.my

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