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September 9, 2020

John D. Edgar
P.O. Box 2438
Stafford, VA 22555-2438

Dear Mr. Edgar:

SUBJECT: Application: Variance - VAR 20-000563
Applicant: JOHN D. EDGAR
Owner: THE EDGAR FAMILY TRUST
Request: Variance from Chapter 25, Zoning, Article 5 Division 1
Section 25-5-7 Minimum Yards, Article 4, Division 4,
Section 25-4-44(a) Permitted Projections into Yards and
Open Space Requirements (Encroachment into Southeast
Side Yard Setback)
Tax Map Key: (3) 1-1-011:059 (Lot 929)

The Planning Director certifies the **approval** of Variance 20-000563, subject to conditions. The variance will allow for the detached water tank to remain with a minimum 7.94 feet side (southeast) yard setback and side yard open space. These exceptions are in lieu of the required 15-foot side yard setback and 10-foot side yard open space as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 20,000 square feet (0.456 acre) and is in the Mauna Loa Estates Subdivision, portion of Kea'au, Puna, Hawai'i. The subject property's street address is 11-3759 10th Street.
2. **County Zoning.** Single-Family Dwelling – 20,000 square feet (RS-20).
3. **State Land Use Designation.** Urban.

4. **Required Setback.** 25 feet for front and rear; 15 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on December 16, 2019. The variance application site map was prepared by the applicant/owner (**See Exhibit A-Site Plan**)

The detached water tank encroaches 7.06 feet into the 15-foot side (southeast) yard setback and 2.06 feet into the 10-foot side yard open space.

The encroachment leaves the detached water tank with a minimum 7.94-foot side (southeast) yard setback and side yard open space, in lieu of the required 15-foot side yard setback and 10-foot side yard open space.

6. **County Building Records.** Real Property Tax Office records indicate that building permit (B2005-2661H) was issued on October 10, 2005, for the construction of a 3-bedroom and 2-1/2 bath, single-family dwelling and a 44-foot high galvanized water tank and finalized on September 9, 2006.

Agency Comments and Requirements.

- a. No comments received from the State of Hawai'i, Department of Health.
 - b. Department of Public Works, Building Division (DPW) memorandum dated September 3, 2019: "No Objections."
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 January 4, 2020, and January 19, 2020, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on February 3, 2020.
 8. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.
 9. **Time Extension.** The applicant's variance application was received on December 16, 2019; additional time to review the application was required. The applicant granted the Planning Director an extension of time to issue a decision on the Variance Application until September 11, 2020.

ANALYSIS OF GROUNDS FOR VARIANCE

No variance will be granted unless it is found that:

- (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 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 variance application meets criteria (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of the detached water tank into the 15-foot (Southeast) side yard setback and 10-foot side yard open space.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. The detached water tank improvements authorized under building permit B2005-2661H, was issued on October 10, 2005, and given final inspection approval on September 13, 2006. It appears that building permit inspections of the premises by the affected agencies during construction of the single-family dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

Based on the above-mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the subject property.

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

The variance application meets criteria (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the as-built water tank encroachments constructed into the affected side yard setback of the subject property include the following actions:

Relocate the detached water tank denoted on the site plan to fit within the correct building envelope as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the single-family dwelling and detached water tank followed all County requirements

Because the encroachment is within the side yard setback, to consolidate the subject property with the adjacent side yard property, which is owned by someone else, and re-subdivide the property to modify property lines and adjust minimum side yard setbacks are not viable options. Therefore, both alternatives are not practical.

- (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 variance application meets criteria (c) for the following reasons:

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

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

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.

Therefore, the variance would be consistent with the general purpose of the zoning district and not be materially detrimental to the public's welfare or cause substantial adverse impact to the area's character or to adjoining properties.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the detached water tank built upon the subject property ("LOT 929) will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

This variance application is approved subject to the following variance conditions:

1. The applicant/owner(s), 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/owner(s), their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.

3. Should the detached water tank built 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.
4. 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-20-000563 null and void.

Sincerely,



MICHAEL YEE
Planning Director

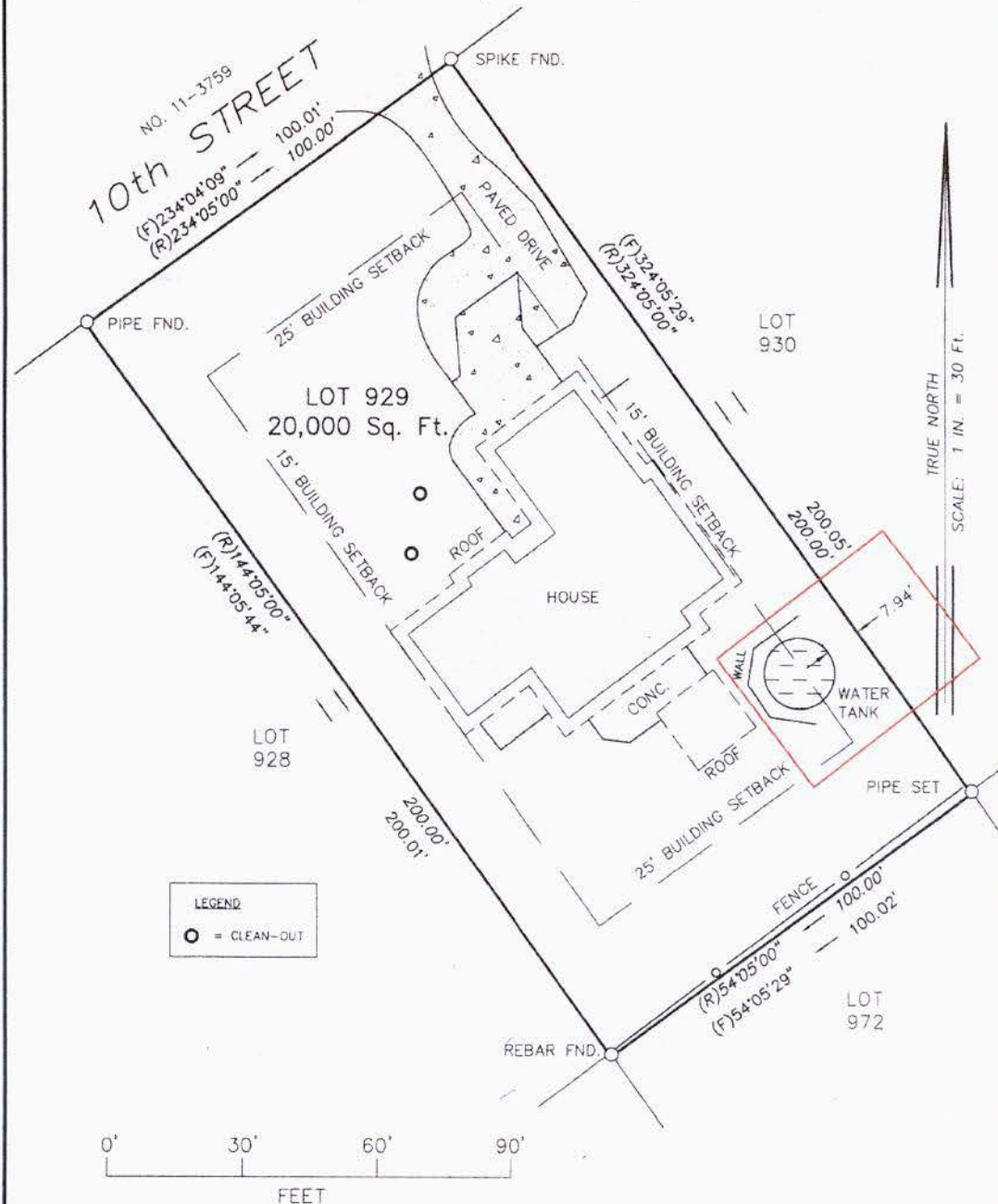
LHN:jaa

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Encl: Exhibit A-Site Plan

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

**EXISTING CONDITIONS UPON LOT 929
MAUNA LOA ESTATES SUBDIVISION
KEAAU, PUNA, HAWAII, HAWAII**



LEGEND
○ = CLEAN-OUT

NOTES:

1. The features shown hereon were located by an actual field survey completed on June 6, 2019.
2. This map shows, "the location of any improvements in the vicinity of perimeter property lines", (Item K-2 of "Purchase Contract").
3. Field measured dimensions (F) are within acceptable tolerances as compared to record dimensions (R) for land of this type and in this subdivision.
4. The attached Report pertains to improvements near property lines and County building setbacks.
5. This map should not be changed, altered or used to execute any transaction or application other than that indicated on this particular "Purchase Contract".

This work was prepared by me or under my direct supervision

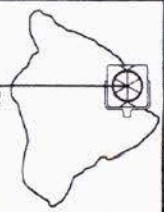
Niels Christensen

Niels Christensen
Licensed Professional Land Surveyor
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**EXHIBIT
A**

Date: June 9, 2019
Drawing: JOB13396.dwg
TMK: (3) 1-1-11: 59