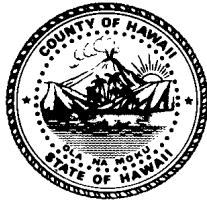


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May 17, 2022

Mr. Calvin S. Ishihara
3038 Lou Street
Hilo, HI 96720

Dear Calvin:

SUBJECT: Application: Variance | PL-ZVAR-2022-000014
Applicant: CALVIN S. AND STACY L. ISHIHARA
Owner: HILO ONE INC.
Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7 Minimum Yards, and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Encroachment into Front (West) Yard Setback.

Tax Map Key: (3) 2-4-039:050 (Previous TMK: 2-4-039: Por of 25: Lot 24)

The Planning Director certifies the **approval** of Zoning Variance No. 2022-000014 (PL-ZVAR-2022-000014), subject to variance conditions. The variance will allow a portion of the single-family dwelling to remain with a minimum front (west) yard setback ranging from 9.75 feet to 15 feet and associated roof eave projection of 4.6 feet front (west) yard open space in lieu of the minimum 20-foot side yard setback and 14-foot side open space requirement. These exceptions are in lieu of the required 20-foot side yard setback and the 14-foot side yard open space requirement as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, 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 15,024 square feet and is situated in the Waiākea Nani Subdivision, Waiākea Homestead 2nd Series, Waiākea, South Hilo, Hawai'i. The subject property's street address is 420 Ho'olālā Street.
- 2. County Zoning.** Single-family Residential – 15,000 sq. ft. (RS-15)

3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20 feet front and 10 feet for side.
5. **Variance Application.** The applicant submitted the variance application, attachments, filing fee, and associated materials on April 4, 2022. The variance application survey map dated March 15, 2022, was prepared by Calvin Ishihara. **(See Exhibit A-Site Plan)**

The survey map shows the following setbacks:

- a. The encroachment leaves the proposed single-family dwelling with a minimum front (west) yard setback ranging from 9.75 feet to 15 feet and associated roof eave with a 9.75 feet front (west) yard open space in lieu of the minimum 20-foot front yard setback and it also shows the single-family dwelling encroaches 4.25 into the 14-foot front yard open space requirement

The survey map shows the following encroachment:

- a. The proposed single-family dwelling encroaches 5 feet to 10.25 feet into the 20-foot front (west) yard setback and it also denotes that the single-family dwelling encroaches 4.25 feet into the 14-foot front (west) yard open space.
6. **County Building Records.** Hawai'i County Real Property Tax office records indicate the following building permits: There no records of any building permits on the subject property.
 7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated April 14, 2022: "The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. No comments received from Department of Public Works Building Division.
 8. **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 3, 2022, and April 22, 2022, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on April 27, 2022.
 9. Owner's Letter of authorization, dated March 23, 2022.
 10. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or 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 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 criterion (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling into the 20-foot south front yard setback as required by the Zoning Code.

The applicant has indicated there is a one (1) foot slope downwards from the private roadway (Lehuakea Place) by placing the single-family parallel to Lehuakea Place, water will flow into the house and garage. In addition, he has also stated that by placing the single-family dwelling parallel with Ho'olālā Street, it will create more area in the rear of the property for the applicant to divert the water flow toward Lehuakea Place and down to Ho'olālā Street.

Therefore, 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.

Alternatives

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

The Variance application meets criterion (b) for the following reasons:

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

One option would be to redesign the single-family dwelling to meet setback requirements which will require the owner to construct a smaller version of the single-family dwelling. The applicant proposes to build a four (4) bedroom, three (3) bath dwelling to accommodate his large immediate and extended family. A smaller floor plan would be inadequate and would diminish the overall functionality of the single-family dwelling to meet the needs of his family.

Because the encroachment is within the front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options.

Both alternatives are not practical. Therefore, there are no reasonable alternatives to resolve the encroachment issue.

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 Variance application meets criterion (c) for the following reasons:

The intent and purpose of requiring building setbacks for a lot 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

The encroachments are in the front yard setback adjacent to the roadway. Therefore, it should not obstruct or prevent adequate air circulation and exposure to light 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 intents and purposes of the Zoning Code, Subdivision Code, and the County General Plan.

As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

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 single-family dwelling built on the subject property (Lot 24) will not meet the minimum front yard setback requirements pursuant to Hawai'i County Code, Chapter 25, Zoning.

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

Mr. Calvin S. Ishihara

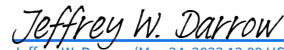
May 17, 2022

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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. Should the single-family dwelling on the subject property be destroyed by fire or other natural causes, the replacement structures 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 laws 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 initiate proceedings to null and void Variance No. PL-ZVAR-2022-000014.

Sincerely,


Jeffrey W. Darrow (May 24, 2022 13:09 HST)

JEFFREY W. DARROW
Deputy Planning Director

LHN:cn

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Enclosure: Exhibit A - Site Plan

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

