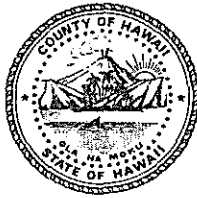


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL

7000 0600 0024 2905 2311

August 8, 2001

Mr. and Mrs. Bradford Houser
GENERAL DELIVERY
Waikoloa, HI 96743

Dear Mr. and Mrs. Houser:

VARIANCE PERMIT NO. 1226 WH (VAR 01-035)

Applicant: BRADFORD HOUSER

Owners: BRADFORD HOUSER, ET AL.

Request: Variance from Minimum Yards

Pursuant to Chapter 25, the Zoning Code

Tax Map Key: 7-7-022:003

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1226 allows portions of an existing dwelling within the subject property's minimum yards to remain, "AS BUILT". The variance allows a portion of the dwelling to remain with minimum front yard of 19.5 feet and a minimum side yard of 9.9 feet, pursuant to the applicant's site plan prepared by KKM Surveys dated March 6, 2001. The variance is from the property's minimum twenty (20) feet front yard and minimum ten (10) feet side yard requirements, pursuant to the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-7, Minimum yards, (a) (2) (A) (B).

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BACKGROUND AND FINDINGS

1. **Location.** The subject TMK property, containing 11,063 square feet, is Lot 3, and is situated within the Keauhou Uka Subdivision, Unit II, at Kapalaalaea, North Kona, Hawaii. The subject property is commonly referred or described using its tax map key (TMK) number: "TMK: (3) 7-7-022:003, Lot 3". The subject TMK property is zoned Single-Family Residential (RS-10) and designated Urban "U" by the State Land Use Commission.
2. **Application.** The applicants submitted the variance application form, supplemental information, tax clearance, and \$250.00 filing fee check on April 17, 2001.
3. **Site Plan.** The applicant's map or site plan drawing, drawn to scale and dated "March 6, 2001" was surveyed and prepared by Kevin McMillen, LPLS, of KKM Surveys. The site plan denotes and identifies the existing dwelling encroachments within the front yard and respective side yard and other site improvements. The site plan identifies the building envelope prescribed by the Hawaii County Zoning Code. Portions of the existing "Dwelling" were constructed within the minimum front and respective minimum side yard(s).

In addition, the site plan, dated March 6, 2001, denotes and identifies the location of other site improvements. Any wall or other boundary encroachment issues shall be addressed by the applicant or between respective property owner(s) of the lots identified on the site plan.

The presence and location of an existing cesspool or Independent Wastewater System (IWS) was not denoted or disclosed on the variance application's site plan submittal dated March 6, 2001.

4. **Building Permit(s).** County permit records indicate that DPW-Building Division's building (906481, K07572), electrical (EK06919), and plumbing (MK05745) permits were closed.

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5. **Agency Comments and Requirements.**

- a. The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated April 16, 2001 states in part the following:

"TMK(s): (3) 7-7-22-003"

"This is to certify that Houser Family Trust (owner of record) has paid all Real Property Taxes due the County of Hawaii up to and including June 30, 2001."

- b. The State Department of Health (DOH) memorandum dated June 19, 2001, in the subject variance file states in part:

"The Department of Health is reserving comments for the proposed project at this time. The applicant would need to indicate where existing sewer lines and/or individual wastewater systems are located on the site plan."

- c. The Department of Public Works (DPW) memorandum dated June 25, 2001, states in part:

"We have reviewed the subject application and offer the following comment.

Any encroachments within the County right-of-way should be removed."

6. **Notice to Surrounding Owners.** The applicant submitted proof of mailing or good faith efforts to serve notice(s) of the variance application to the designated surrounding property owners and lessees on the applicant's list. For the record, it appears that the first and second notice(s) were mailed on April 17, 2001 and August 7, 2001, respectively.
7. **Comments from Surrounding Property Owners or Public.** To date no written comments or objection letters were received.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

In consideration of the applicant's submittals and findings above, it appears that the dwelling and other site improvements were constructed in 1986. Portions of the dwelling encroach into the minimum front and respective side yards of the subject TMK property, pursuant to Chapter 25, the Zoning Code. The bulk of the dwelling's living area and attendant roof eaves are within the building envelope prescribed by the Zoning Code and meet minimum yard(s) and open space requirements.

The applicant submitted a recent survey map/site plan prepared by a surveyor, which identifies the location of the existing dwelling encroachments within the affected yard(s). The site plan denotes and identifies distances between the dwelling's wall and the respective boundary line(s). Portion of the dwelling was built 0.5 feet into a front yard and 0.1 feet into a side yard. It appears that the previous and current owner(s) were unaware of any building encroachment issues or problem.

Therefore, considering the applicant's submittals, findings, and circumstances, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the applicants of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the current and best use of the subject property.

ALTERNATIVES

At this time there are no reasonable alternatives in resolving the difficulty of the applicant or current owner(s). Alternatives available to the applicant and current owner(s) to address and correct the existing building encroachments include the following actions:

1. Remove the dwelling encroachments and modify the attendant roof eaves that encroach into the respective yard(s).
2. Redesign and relocate the existing dwelling and carport to fit within the building envelope prescribed by the Zoning Code and other design and remedial building alternatives.

To require or impose removal of the dwelling's encroachments modifying the attendant roof eave(s) to meet all yard requirements would seem unreasonably harsh and uneconomical at this time. The removal of the building encroachments or relocation of these existing improvements may disrupt the dwelling's structural integrity, change internal room lighting and air circulation, and change the building's overall building geometry and exterior character.

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No evidence has been found to show indifference or premeditation by the applicant or past/current owner(s) to deliberately build or intentionally allow the building encroachment problems to occur. The applicant and current owner(s) submitted the variance application to address and resolve the dwelling's encroachment problem within the affected yard(s).

The Planning Department acknowledges there may be other design or building alternatives available to the applicant and current owners beyond those cited above. However, these design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the applicant and current owners when a more reasonable alternative is available by the granting of the subject variance request.

INTENT AND PURPOSE

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) and boundary/property lines. It appears that the existing dwelling was constructed under 2- building permits issued to previous owner(s) by the County. It appears that the building inspections of the premises, during building construction, and throughout the life of the building permit did not disclose any encroachments into the affected yards or any other building irregularities. The 2- building permits issued by the DPW-Building Division to construct the dwelling and attached carport was closed by the DPW-Building Division together with other associated electrical and mechanical permits issued. The applicant and current owners are trying to resolve the building encroachment issues that were disclosed after a modern survey of the existing TMK property was performed and a map of existing TMK property was prepared.

The circumstances to allow and permit the existing building and dwelling encroachments to be built within that affected yard(s) 15 + years ago are unique.

It appears that the commencement of building activity and the dwelling encroachments built into or within that affected yard(s) in 1986 were not perceptible and not physically and visually obtrusive from adjacent TMK property(s) or the rights-of-way. It appears the 15 year old + dwelling encroachments do not depreciate or detract from the character of the surrounding neighborhood and the existing and surrounding land patterns. It appears the existing encroachment(s) within the affected yards was a contractor or builder's mistake which occurred in 1986 or a misinterpretation of the minimum building yards or boundary line(s) by the previous owner or owner's builder. Inspection of the TMK property during the life of the building, electrical, and mechanical permits did not discover any dwelling encroachment problem or reveal and disclose any irregular building problems. Therefore, it is felt that the existing dwelling encroachments within the front and respective side yard will not detract from the character of the immediate neighborhood or other surrounding property within the subdivision.

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The subject variance application and submittals were submitted to the Kona Planning Department Office and acknowledged by certified letter dated June 13, 2001. The applicant/owner(s) agreed to extend the date on which the Planning Director shall render a decision on the subject variance.

Based on the foregoing findings, this variance request 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.

VARIANCE DECISION AND CONDITIONS

The variance request is approved subject to the following 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 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. Portions of the existing dwelling encroach into the property's front and side yard(s) required by Chapter 25, the Zoning Code. The approval of this variance allows the dwelling and the respective encroachments within the affected yards and identified on the applicant's site plan dated March 6, 2001, to remain, "AS BUILT", on the subject TMK property.

Future building improvements and permitted uses on the subject TMK property shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

4. No ohana permit shall be granted to allow an ohana dwelling on the subject TMK property and no building permit(s) shall be issued to allow an ohana dwelling unit or second dwelling unit to be constructed or established on the subject TMK property.

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Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN

Planning Director

WRY:cps

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xc: Real Property Tax Office - Kona
Planning Dept. - Kona