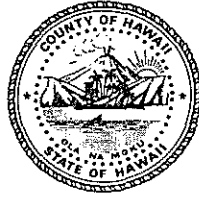


Harry Kim
Mayor



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

March 5, 2002

Ms. Heather E. Hedenschau
HAWAIIAN ISLAND HOMES LTD.
162 Kinoole Street, Suite No. 201
Hilo, HI 96720

Dear Ms. Hedenschau:

VARIANCE PERMIT NO. 1261 (VAR 01-089)

Applicant: HEATHER E. HEDENSCHAU, Agent
Owners: EDMUND P. KAAWALOA, JR., ET AL.
Request: Variance from Minimum Yards,
Pursuant to Chapter 25, the Zoning Code
Tax Map Key: 1-3-014:013, Lot 52

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1261 allows portions of that existing dwelling and water tank within a 20 feet side yard to remain, "AS BUILT". The variance will allow portions of the dwelling with a minimum 18.2 to 19.2 feet side and water tank with a 14.3 feet side yard, respectively, in lieu of the minimum 20 feet side yard requirements according to the applicant's site plan dated October 27, 2001. The variance is from a 20 feet side yard pursuant to the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (a).

015507MD

MAR 07 2002

BACKGROUND AND FINDINGS

1. **Location and Zoning.** The subject TMK property, Lot 52 consisting of 1.000 acre, is within the Leilani Estates Subdivision, File Plan 672, and is situated at Keahialaka, Puna, Hawaii.

The TMK property is zoned Agricultural (A-1a) and designated Agriculture "A" by the State Land Use Commission (SLUC).

2. **Application.** The applicant (agent) submitted the variance request and application, supplemental information, site plan, tax clearance, and \$250.00 filing fee check on December 11, 2001.
3. **Site Plan.** The variance application's map or site plan drawing, drawn to scale and dated October 27, 2001, was surveyed and prepared by Paul H. Murray & Associates, LLC. The site plan denotes and identifies the dwelling and water tank encroachments constructed within the affected 20 feet wide side yard as October 27, 2001. The site plan denotes and identifies the building line using a series of "broken" or "dashed" line(s) prescribed by the Hawaii County Zoning Code. Portions of the existing dwelling and detached water tank have been constructed beyond the building line into one of the property's side yards and do not meet the minimum 20 feet side yard requirements of the County Zoning Code.

The site plan drawing, dated October 27, 2001, also denote and identifies property access via Oneloa Street and rock wall encroachments into the Oneloa Street right-of-way.

The rock wall encroachments into Oneloa Street or right-of-way fronting the property or other property issues shall be resolved by the applicant or between respective property owner(s).
4. **Building Permit(s).** Copy(s) of building permit(s) and associated County approved detailed building construction plans to construct the dwelling and water tank between 1980 and 1998 were not submitted with the applicant's variance application.

5. **Agency Comments and Requirements.**

- a. The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated December 4, 2001 states in part the following:

"TMK(s): 3-1-3-014-013-0000"

"This is to certify that the real property taxes due to the County of Hawaii on the parcel(s) listed above have been paid up to and including December 31, 2001.

This clearance was requested on behalf of Edmund & Shandry Kaawaloa for the County Planning Department and is issued for this/these parcel(s) only."

- b. The State Department of Health (DOH) memorandum dated January 2, 2002, in the subject variance file states in part:

"We have no objections to the proposed variance application. However, minimum setback requirements for existing wastewater systems needs to be maintained."

- c. The Department of Public Works (DPW) memorandum dated January 22, 2002, states in part:

6. **Notice to Surrounding Owners.** Proof of mailing notice(s) to surrounding property owners was submitted by the owner's applicant (agent) on February 6, 2002. It appears that first and second notice(s) were mailed on December 14, 2001 and December 31, 2001, respectively, by the applicant (agent).

7. **Comments from Surrounding Property Owners or Public.** Several letters (Leilani Kobayashi, A.M. Kama and Janet L. Kama, and Stan and Christine Schierman) supporting the applicant's variance request were received. One (1) objection letter dated January 3, 2002 from Ms. Margaret Chan Palazzolo was received on January 9, 2002.

Note: A letter, signed by adjoining property owner (Leilani Kobayashi-Lot 51), was submitted with the variance application. The support letter states in part:

"After review of the map and survey report, I do not feel that these encroachments will have any impact on my property."

Ms. Heather E. Hedenschau
HAWAIIAN ISLAND HOMES LTD.
Page 4
March 5, 2002

SPECIAL AND UNUSUAL CIRCUMSTANCES

In consideration of the applicant's submittals and findings above, it appears that portions of the dwelling originally constructed in 1980, approximately 21 years ago, encroach into the subject TMK property's side yard. The existing dwelling and water tank encroaches into the TMK property's "south" side yard. The bulk of the dwelling or living area of dwelling and attendant roof eaves meet minimum side yards.

The separate water tank "rectangular shaped" structure located behind the dwelling was recently permitted by the DPW in 1998 and encroaches 5.7 feet into the "south" side yard. The water tank was constructed behind the dwelling and is not considered to be a habitable structure or a "living area". It appears the water tank encroachments were recently constructed and have existed for nearly 3 years.

The applicant submitted a recent survey map/site plan and written report by a surveyor that identifies the location of the dwelling and water tank encroachments within that 20 feet wide "south" side yard. The site plan denotes and identifies distances between portions of the dwelling's (corners) wall and water tank wall from that side yard boundary line. It appears that portions of the dwelling and water tank were constructed approximately 2.0 feet and 6.0 feet, respectively, beyond the building line into one of the property's 20 feet wide side yards. It appears that the agent and current owners became aware of the severity of the encroachments or setback issues during the sale of the property.

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 applicant and owners 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.

Ms. Heather E. Hedenschau
HAWAIIAN ISLAND HOMES LTD.
Page 5
March 5, 2002

ALTERNATIVES

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

1. Remove portions of the dwelling and relocate the water tank building and modify attendant roof eaves that encroach into the affected "south" side yard.
2. Redesign and relocate the existing dwelling and water tank to fit within the building envelope prescribed by the Zoning Code and other design and remedial building alternatives.
3. Consolidate the subject TMK property (Lot 52) with the adjacent TMK property (Lot 51) and resubdivide the consolidated bulk lot back into 2 lots changing the common boundary between the lots to accommodate existing buildings/uses on these revised lots meeting minimum building yards prescribed by the Zoning Code..

To require or impose partial removal or relocation of the dwelling and water tank would seem unreasonably harsh and uneconomical at this time. The partial removal of the building encroachments or relocation of the building improvements may disrupt the dwelling's and water tank's structural integrity, change internal room lighting and air circulation within the dwelling, and change the building's overall building geometry and exterior building character. The consolidation/resubdivision alternative with adjoining Lot 51 was not considered. However, the owner of the adjoining lot-Lot 51, did not object to the applicant's variance request.

No evidence has been found to show indifference or premeditation by the applicant or current owner(s) in 1980 or 1998 to deliberately ignore or intentionally allow the building encroachment problems to occur. The applicant submitted the variance application to address and resolve the dwelling and water tank encroachment problem within the affected side yard.

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 applicant's variance request.

Ms. Heather E. Hedenschau
HAWAIIAN ISLAND HOMES LTD.
Page 6
March 5, 2002

Note: The variance requested is limited to the dwelling and water tank encroachments with the affected side yard identified on the site plan dated October 27, 2001 and does not address any driveway access issues to Oneloa Street or rock wall encroachments within the right-of-way and along Lot 52's front boundary line.

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 and water tank was constructed under a series of 4-building permits issued between 1980 and 1998 to the current owners. It appears that all building permit(s) issued by the DPW-Building Division to construct the dwelling, carport, and water tank were closed by the DPW-Building Division. The applicant and current owners are addressing and trying to resolve building encroachment problems that were disclosed after a modern survey of the existing building improvements and the property boundaries was prepared for escrow and pending property sale.

The circumstances to allow and permit the existing dwelling and water tank encroachments to be built circa 1980 and remain within that affected side yard nearly 22 years ago are unique.

It appears that the commencement of building activity and the dwelling encroachments built into or within that affected side yard in 1980 and in 1998 were not perceptible and not physically and visually obtrusive from adjoining lot, surrounding TMK property(s), and the right-of-way. It appears the 21 year old dwelling and water tank encroachments do not depreciate or detract from the character of the surrounding neighborhood and the existing and surrounding land patterns. It appears the building encroachment(s) within the affected side yard was a building mistake in 1980 or a misinterpretation of the minimum building line or boundary line(s) by the owners or owner's contractor/builder. Therefore, it is felt that the existing dwelling and water tank encroachments within the side yard will not detract from the character of the immediate neighborhood or other surrounding property within the subdivision.

The subject variance application was acknowledged by letter dated December 18, 2001. An extension of time to allow the Planning Director to render a decision and conditions was granted by the applicant/agent.

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.

Ms. Heather E. Hedenschau
HAWAIIAN ISLAND HOMES LTD.
Page 7
March 5, 2002

VARIANCE DECISION AND CONDITIONS

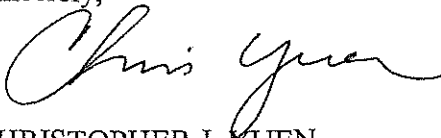
The variance request is approved subject to the following conditions:

1. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval. The effective date of this variance permit is **February 26, 2001**.
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 and water tank will not meet Chapter 25, the Zoning Code's minimum 20 feet side yard requirements. The approval of this variance allows the dwelling and water tank to remain, "AS BUILT", according to the variance application's site plan dated October 27, 2001.
4. No permit to allow an ohana dwelling or building permit issued to construct an "ohana" dwelling shall be granted to the subject TMK property, subject to provision of the Zoning Code or State Law, which may change from time to time.
5. Future building improvements and permitted uses on Lot 52 or subject TMK property shall be subject to State Law and County ordinances and regulations pertaining to building construction and building occupancy.

Ms. Heather E. Hedenschau
HAWAIIAN ISLAND HOMES LTD.
Page 8
March 5, 2002

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
P:\WP60\WRY\FORMLETT\VARAPPZCTMK13014013.HEDENSCHAU

xc: Real Property Tax - Hilo
Planning Dept. - Kona
A. M. and Janet L. Kama.
Stan and Christine Schierman
Margaret Chan Palazzolo