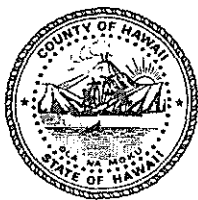


Harry Kim
Mayor



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 6067

April 17, 2002

Ms. Gracie Harper
73-4701 B Kahualani Road
Kailua-Kona, HI 96740

Dear Ms. Harper:

VARIANCE APPLICATION WH (VAR 02-005)

VARIANCE FILE NO. 1275 (VAR 1275)

Applicant: GRACIE HARPER

Owner: GRACIE HARPER, ET AL.

**Request: Variance from Minimum Yards
and Open Space Requirements,
Pursuant to Chapter 25, the Zoning Code**

Tax Map Key: 7-3-024:050, Portion

After reviewing your application and the information submitted, the Planning Director is denying your variance request to allow and permit the existing horse shed to remain on the subject property, "AS-BUILT". The variance request is to allow the horse shed to remain on the subject property with a minimum 2.0 feet side yard and minimum 2.0 feet side yard open space from a side boundary line. The variance is from the property's minimum 20 feet side yard and 14 feet side yard open space requirements pursuant to the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces.

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BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 7-M consisting 3.126 acres, is within the Kaloko Mauka Subdivision, Increment 1, File Plan 994, and situated at Kaloko, North Kona, Hawaii.

The property is zoned Agricultural (A-3a) by the County and designated Urban "A" by the Land Use Commission (LUC).

2. **Variance Application.** The applicant submitted the variance request and application to the Kona Planning Department on January 22, 2002.
3. **Variance Application-Site Plan.** The applicant's site plan and other drawings submitted with the variance application were reviewed and accepted by the Kona Planning Department. The site plan and these detailed drawings denote the location of the tack house, horse shed (enclosure) constructed without a building permit, existing dwelling(s), and other site improvements. The shed's (horse shed) location or addition to the tack house does not meet the minimum yard and open space requirements of the Hawaii County Zoning Code. These building improvements (horse shed) were constructed without a building permit.
4. **Building Permit Record.** The horse shed addition was constructed and completed without a building permit. The location of the covering or "horse shed" addition to the 112 square feet accessory agricultural building ("tack house"), constructed under BP No. 965181, does not meet the minimum yards and open space requirements of the Zoning Code. The applicant's request to approve "after-the-fact" detailed building plans and building permit application to permit the "horse shed" addition or amend the existing building permit issued to the "tack house" and allow the horse shed building improvements within the affected side yard and side yard open space requirements of the TMK property have been held in abeyance pending resolve of the variance application.

Note: The applicant is seeking an "after-the-fact" building permit from the Department of Public Works (DPW)-Building Division and permission from other affected agencies to permit the existing "horse shed".

5. **Agency Comments and Requirements:**

- a. The Real Property Tax Office memorandum dated February 15, 2002 states in part:

Comments from the Appraisal Section:
"There are no comments at this time."

Comments from the collection section:
"Current"

"Remarks: Real Property taxes are paid through December 31, 2001."

- b. The State Department of Health (DOH) memorandum dated February 13, 2002, in the subject variance file states:

"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 February 15, 2002, states in part:

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

1. Please refer to the attached Building Division comments dated February 19, 2002.

If you have any questions please contact Kiran Emler of our Kona office at 327-3530."

The attached memorandum dated February 19, 2002 states in part the following:

"We oppose the approval of the application for the reasons noted below.

The Building #025161 permit for the subject dwelling was never finalized.

Others: There is no building permit for the animal shelter. Bldg. permit #965181 is for 112 s.f. storage shelter with landing for agricultural use only."

6. **Notice to Surrounding Property Owners.** Proof of mailing a first notice on January 22, 2002 and second notice on March 21, 2002 to the surrounding property owners, respectively, were received by the Planning Department. It appears that a first notice and second notice(s) were mailed on January 22, 2002 and March 21, 2002, respectively, by the applicant.
7. **Comments from Surrounding Property Owners or Public.** No further written comments were received from the agencies. The following letter(s) supporting and objecting to the subject application were received:
 - a. A letter from Sharon Warren supporting the variance request was included with the variance application.
 - b. One objection letter from J. Lorelle Springer was received on March 8, 2002. According to the letter Ms. Springer is an owner of the adjacent property and asked Harper, et al. to address the building encroachment issues.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant submitted a recent site plan map with the variance application denoting the location and position of the shed improvements, "AS BUILT". Portions of the existing shed were constructed into minimum 20 feet side yards and respective 14 feet side yard open space required by the Zoning Code. According to the variance submittals, it appears that the applicant constructed the "horse shed" prior to February 1997. The applicant is asking for a variance from the Zoning Code minimum yards in order prior to applying for an "after-the-fact" building permit.

According to the objection letter received, the applicant and builder were asked to stop construction of "shed" encroachments. It appears that the applicant and builder ignored the Zoning and Building Codes prior to February 1997 and ignored the neighbor's request to cease construction of the "encroachments". Most of the non-permitted "horse shed" improvements were constructed beyond the property's building line into the property's minimum yards and open space requirements.

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Therefore, considering the variance background, variance submittals, and other information received, it is felt there are no special or unusual circumstances applying to the subject property which exist either to a degree which deprive the applicant or owner(s) 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 subject property.

ALTERNATIVES

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

1. Remove the building encroachments within the affected side yard.
2. Redesign and relocate the "horse shelter" addition to fit within the correct building envelope prescribed by the Zoning Code, and/or other similar design alternatives, etc.
3. Consolidate the subject TMK property with the adjoining property TMK property and resubdivide the resultant consolidated lot to modify the property geometry and/or change the metes and bounds descriptions in accordance with the minimum yard requirements of the Zoning Code.

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. The "horse shed" addition to the "tack house" was constructed and completed by the applicant without a building permit.

It appears that the "horse shed" building constructed into the affected side yard and respective side yard open space requirements are physically and visually obtrusive from adjacent property(s). It appears that the "horse shed" location and use have detracting from the character of the surrounding neighborhood and deviate from existing and surrounding land patterns. It appears the existing "horse shed" addition or building encroachment(s) within the affected side yard and open spaces were not the applicant/builder's mistake or misinterpretation of the minimum building yards or boundary line(s) by the applicant or builder. Therefore, it is felt that the existing encroachments within said affected side yard and open spaces have affected and will detract from the character of the immediate neighborhood or the subdivision.

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The applicant has adequate room within the 3.1 acres TMK parcel's or within the building line(s) of the subject TMK property established by the Zoning Code to locate and attach the "horse shed" or expand the "tack house" or the agricultural building. The TMK property's size, land topography, "lay of the land", and other natural features do not exhibit any unusual land features or building limitations. The decision to expand the "tack house" beyond the building line and encroach into the affected side yard was a deliberate decision by the applicant and cannot be considered a hardship or special or unusual circumstance in favor of the variance request. Furthermore, the neighbor living closest to the encroachments asked the applicant and builder "to conform to the codes of this county". Both the applicant and builder completed the "horse shed" building encroachment without addressing meeting the building yards of the Zoning Code and securing a building permit from the DPW.

Based on the findings, recent inspection of the premises by the Planning Department, and applicant's or builder's decision to ignore county building permit requirements, the approval of the variance request to allow the encroachments to remain within the affected side yard and side yard open space requirements would not 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.

PLANNING DIRECTOR'S DECISION AND OTHER REQUIREMENTS

This denial of your variance request requires you to immediately remove the non-permitted improvements and be aware of the following deadline and other requirements:

1. The non-permitted horse shed building improvements and non-permitted building encroachments within the side yard shall be removed on or before **June 30, 2002**. Otherwise, the non-permitted improvements (horse shed) will be considered a violation of the Zoning Code and penalties will be assessed from **July 1, 2002**.
2. The 112 square feet agricultural building (tack house) being constructed under BP No. 965181 and any further building additions shall meet the minimum yard and open space requirements of the Zoning Code and DPW requirements. Any outstanding building permits or current construction permits issued to the subject TMK property and BP No. 965181 shall be closed by the Department of Public Works (DPW) Building Division prior to any change in title or sale of the subject TMK property.

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3. Any 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.

In accordance with a recent charter amendment and Ordinance No. 99-112, you may appeal the director's decision and request the following:

- (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision, appeal the decision to the board of appeals.
- (b) A person is aggrieved by a decision of the director if:
 - (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public: and
 - (2) The person is or will be adversely affected by the decision.
- (c) An appeal shall be in writing, in the form prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the board of appeals with the proof of service.
- (d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals.

The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may reverse or modify the decision or remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:

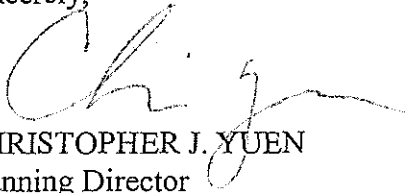
- (1) The director erred in its decision; or
- (2) The decision violated this chapter or other applicable law; or

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- (3) The decision was arbitrary or capricious or characterized by and abuse of discretion or clearly unwarranted exercise of discretion.

In view of the above, we have enclosed GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY/CJY:cps
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Enclosure

xc: Real Property Tax Office - Kona
Planning Dept. - Kona
J. Lorelle Springer
Jeff Darrow-Zoning Inspector