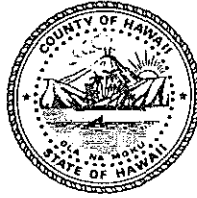


Harry Kim  
Mayor



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

October 11, 2002

Ms. Utae Suzuki  
266 Kamehameha Avenue  
Hilo, HI 96720

Dear Ms. Suzuki:

**VARIANCE PERMIT NO. 1326 (VAR 02-047)**

**Applicant: UTAE SUZUKI**

**Owners: UTAE SUZUKI.**

**Request: Variance from Minimum yards, and  
Attendant Open space requirements,  
Pursuant to Chapter 25, Zoning**

**Tax Map Key: (3) 1-5-043:165, Lot 41**

After reviewing your application and the information submitted, the Planning Director hereby approves your variance request subject to the conditions stated herein. Variance Permit No. 1326 allows the proposed farm and water tank building improvements to be located on the subject property with a 15 feet (Mauka) front yard from 20<sup>th</sup> Street and 5 feet (Puna) side yard in lieu of the 30 feet front and 20 feet side yards and attendant minimum 24 feet front yard open space and 14 feet side yard open space requirements, respectfully. The variance request is from Lot 41's minimum yards pursuant to Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77, Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces.

### **BACKGROUND AND FINDINGS**

1. **Location and Zoning.** The subject property, Lot 41 containing 1.000 acre, is within the Hawaiian Paradise Park Subdivision, and situated at Puna, Hawaii.

The property is zoned Agricultural (A-1a) and designated Agriculture "A" by the Land Use Commission (LUC). The property fronts on 20<sup>th</sup> Street (Mauka) and Railroad Avenue (Makai).

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2. **Application.** The applicant-owner submitted the variance application, tax clearance, and \$250.00 variance filing fee on July 8, 2002.
3. **Site Plan.** The applicant's site plan map denotes the proposed building locations (Phase I, Phase II, and Phase III) consisting of farm building and a second water tank for a proposed "organic" farm. The variance site plan map is drawn to scale and denotes the location of the dwelling improvements, water tank, and driveway location. A building permit was recently issued to construct a metal agricultural storage building. The variance request is to allow the permitted agricultural metal building and other future agricultural buildings to be located pursuant to the building positions and building alignment pursuant to the variance site plan map.
4. **Agency Comments and Requirements (VAR 02-047):**
  - a. **Department of Health.** The State Department of Health (DOH) memorandum dated August 1, 2002, states:

"We have no objections to the proposed variance application. However, minimum setback requirements for existing wastewater systems needs to be maintained."
  - b. **Department of Public Works (DPW).** The Department of Public Works (DPW) memorandum dated August 23, 2002, states:

"We have reviewed the subject application forwarded by your memo dated July 24, 2002 and oppose the approval of the application for the reasons noted below.

All new building construction shall conform to current code requirements.

Building permit numbers 01652 & 020989, electrical permit number E010658, and plumbing permit number M010620 for the subject dwelling have no status of inspection.

All building setbacks shall be maintained. Building permit number 020989 for the agricultural warehouse was just obtained.

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Please refer questions regarding the permits to the Building Division at 961-8331."

5. **Notice to Surrounding Property Owners.** It appears that the applicants mailed notice of the variance request to the surrounding property owners on July 16, 2002 and August 3, 2002.
6. **Comments from Surrounding Property Owners or Public.** No further agency comments were received. The following objections letter was received from a surrounding property owner:
  - a. Objection letter from Gerson Hay (TMK: (3) 1-5-043:138) was received on July 30 2002 which states in part the following: "The minimum setback is for safety."

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The applicants submitted a site plan map identifying the location of the existing and proposed location of farm building and water tank improvements for a proposed "organic" farm operation. The site plan identifies the distance between the proposed new farm buildings and the affected front and side boundary lines. The owner feels the proposed building positions will allow better use of the useable areas within Lot 41 for "organic" farming activity. The need to "off-set" the proposed farm buildings is necessary due to the building site's sloping nature or "lay of the land" and the central driveway which menders through the center of the property. The available "flat" areas to grow crops are limited and the present location of the dwelling and other site improvements limit available building options without resorting to further grading and land alteration to relocate access within the property. The proposed agricultural storage building near 20<sup>th</sup> Street will be composed of metal and less prone to fire and other hazards and liability. A second water tank for agricultural and emergency needs will be constructed adjacent the proposed farm buildings.

Therefore, after considering the applicant's background and statements, the variance site plan map, and the adjoining property uses and character of the surrounding neighborhood, there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the applicant or owners 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.

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### **ALTERNATIVES**

At this time there are no reasonable alternatives in resolving the difficulty of the applicant or owner. Alternatives available to the applicant or owners to further improve the property include the following:

1. Limit the building area to the envelope prescribed by the Zoning Code or relocate the driveway and reconfigure the grade the property, etc.
2. Acquire the adjoining property and consolidate the subject property and adjoining property to increase the property and eliminate the yard issues, etc.

### **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 proposed buildings and building locations on this property would not be undermined by this variance since the proposed farm buildings will not be physically and visually obtrusive from adjacent property(s) or the existing public rights-of-way. The farm building improvements will not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. The applicant is proposing an "organic farm" where no harmful or toxic chemicals will be utilized to promote or control plant growth and insect problems.

The applicant's variance request and variance application was acknowledged by letter dated July 24, 2002. Additional time to consider agency and comments from a surrounding property owner was necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than October 15, 2002.

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.

**DETERMINATION**


This variance request is approved subject to the following conditions:

1. The applicant or current owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicants or 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. The approval of this variance allows the farm building and water tank positions identified as Phase I, Phase II, and Phase III for an "organic" farm pursuant to the approved variance site plan map. The minimum open yard spaces for the proposed and permitted farm buildings shall be commensurate with the minimum requirements of the Zoning Code or comply with the minimum requirements of the DPW.
4. The building permits and construction permits issued to allow the construction of the farm buildings and second water tank for the "organic" farm and any other active building permits or construction permits issued to allow building improvements on the subject property (Lot 41) shall be "finaled" or closed prior to any change in title or sale of the property.
5. The permitted uses within the buildings located on Lot 41 shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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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

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xc: Real Property Tax Office  
Planning Dept.-Kona  
Mr. Gerson Hay