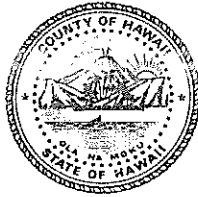


Harry Kim
Mayor



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 2, 2002

Mrs. April J. Atebara
APRIL J. ATEBARA TRUST
c/o 275 Ponahawai Street, Suite No. 202
Hilo, HI 96720

Dear Mrs. Atebara:

VARIANCE PERMIT NO. 1315 (VAR 02-055)

Applicant: APRIL J. ATEBARA
Owner: APRIL J. ATEBARA TRUST
**Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code**
Tax Map Key: 2-4-015:207, Lot 29

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1315 allows the dwelling and dwelling encroachments on the subject tax map key property (Lot 29), to remain, "AS BUILT", with a minimum 5.8 feet to 18.3 feet front yard and minimum 9.3 feet side yard and corresponding open space requirements according to the variance application's site plan or survey map dated July 13, 2002. The variance request is from Lot 29's minimum 20 feet front and 10 feet side yards and attendant open space requirements, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 5, Section 25-5-7, Minimum yards, (a) (2) (A) (B), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, (a), respectively.

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BACKGROUND AND FINDINGS

1. **Location.** The subject property, containing 15,494 square feet, is Lot 29 of the Muni Link Homesites Subdivision, and situated at Waiakea, South Hilo, Hawaii.

The property is zoned Single-Family Residential (RS-15) by the County and designated Urban "U" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, on July 31, 2002. The variance application's site plan or survey map drawing is drawn to scale and certified by a surveyor. The survey map dated July 13, 2002 shows the dwelling and eaves, "AS BUILT", on "LOT 29". It appears that the dwelling improvements were constructed on or about 1979 prior to being purchased by the applicant-owner.

Note: The variance site plan map does not show the cesspool location.

3. **Agency Comments and Requirements (VAR 02-055):**

- a. The Department of Public Works (DPW) memorandum dated August 26, 2002, states:

"We have reviewed the subject application forwarded by your memo dated August 12, 2002 and have the following comments.

Approval of the application shall be noted below.

The minimum setbacks shall be maintained as follows: residential structures-3 ft. side and 3 ft. rear; commercial structures-5 ft. side and 5 ft. rear.

Questions may be referred to the Building Division at 961-8331."

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- b. The State Department of Health (DOH) memorandum dated August 27, 2002, states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

Note: Pursuant to a copy of a DOH-SANITARIAN'S REPORT OF CESSPOOLS, the cesspool located on Lot 29 was approved by the DOH on January 3, 1979.

3. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. For the record, it appears that the first and second notice was mailed on August 3, 2002 and August 17, 2002 by the applicant.
4. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received and no objections from the surrounding property owners or the public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment problems were discovered during escrow or sale of the subject property. The applicant, is trying to resolve the dwelling encroachment issues created before she purchased the property. It appears that the encroachment issues were not disclosed to her before the property was purchased by the applicant-owner. The variance application's site plan map was prepared by a surveyor and shows the dwelling position, "AS BUILT", on Lot 29. This site plan shows portions of the dwelling and roof eaves were constructed beyond the lot's building line limits or building envelope into the Lot 29's respective front and side yards and attendant minimum open space requirements pursuant to the Hawaii County Zoning Code. The applicant or current owners became aware of the encroachment issues after the survey map was prepared and presented during escrow to sell the property. No evidence has been found to show indifference or premeditation by the past owners or current owner or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the dwelling and other related site improvements were constructed under valid building permits and construction permits issued by the County.

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It appears that building inspections of the premises by the agencies during construction of the dwelling, cesspool, and related site improvements in the late 1970s did not disclose any building encroachment issues or building setback irregularities.

ALTERNATIVES

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

1. Removing the encroachments or redesigning or relocating the dwelling improvements and related site improvements elsewhere on the subject property.
2. Consolidation with portions of the adjoining property and resubdivision of the resultant lot to modify a common boundary line and respective side minimum yards, 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)/uses and boundary/property lines.

It appears that these 22 + year old building encroachments within the affected yards and attendant open space requirements of Lot 29 are not physically noticeable or visually obtrusive from adjacent property(s) or the existing right-of-way. It appears the dwelling encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns. Therefore, it is felt that that the dwelling and dwelling encroachments will not detract from the character of the immediate neighborhood or the subdivision.

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.

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PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

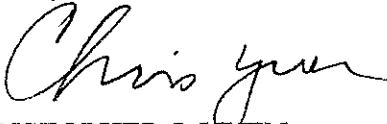
This variance request is approved subject to the following conditions:

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/owner(s), 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 dwelling on the subject tax map key property (Lot 29) will not meet Chapter 25, the Zoning Code's minimum front and side yards and the attendant minimum front and side yard open space requirements. The approval of this variance allows the dwelling improvements and encroachments identified on the variance application's site plan map dated or survey map dated July 13, 2002, to remain, "AS BUILT", on Lot 29 or the subject TMK property.
4. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to Lot 29 or subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.
5. Future building improvements and permitted uses 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

WRY:cps
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xc: Real Property Tax - Kona
Planning Dept. - Kona