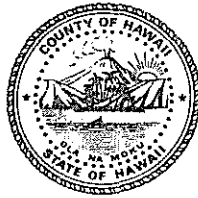


Harry Kim  
Mayor



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

November 4, 2002

Mr. and Mrs. Keith Amber  
P. O. Box 400  
Kapaau, HI 96755

Dear Mr. and Mrs. Amber:

**VARIANCE PERMIT NO. 1336 WH (VAR 02-065)**

**Applicants:** KEITH and SHARMAI AMBER  
**Owners:** KEITH and SHARMAI AMBER  
**Request:** Variance from Minimum Yards and  
Permit to allow Guest House,  
Pursuant to Chapter 25, the Zoning Code  
**Tax Map Key:** 5-5-009:067, Lot 198

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1336 allows those building improvements (approved as "detached single family Ohana Dwelling Unit pursuant to OD Permit No. 3880), 792 square feet-AS BUILT, to remain on the subject property with a minimum 15.0 feet rear yard and be used as a "guest house". The variance request is from the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(2)(A), Article 4, Division 4, Section 25-4-9, Guest houses, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

### BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 198 containing 15,030 square feet, is a portion of Hawi Village, and situated at Hawi, North Kohala, Hawaii.

The property is zoned Single-Family Residential (RS-15) by the County and designated Urban "U" by the Land Use Commission (LUC). The applicant's were originally issued an OD permit (No. 3880) to utilize the 792 square feet building as a detached ohana dwelling unit pursuant to letter dated July 16, 2002.

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2. **Variance Application-Site Plan.** Subsequent to the decision to grant the Ohana Dwelling Permit and other circumstances, the current owners elected to convert the existing 792 square feet building to guest house use. Due to circumstances beyond the control of the current owners, the subject variance was required. The variance application, attachments, and filing fee were submitted to the Hilo Planning Department on or about September 6, 2002. The applicant's variance application and site plans submitted in conjunction with the OD and variance application indicate the building size and position of the existing 792 square feet storage building that was constructed by the previous builder. It appears that the building was constructed without a building permit is approximately 15 + feet away from the rear boundary line of the subject property. These site plans identify the dwelling and storage building positions, AS BUILT, on Lot 198.

**Note:** The variance request does not identify existing driveway location(s) or landscaping materials or improvements on the property.

3. **Agency Comments and Requirements-WH (VAR 02-065):**

- a. The State Department of Health (DOH) memorandum dated September 17, 2002, states:  
  
"The Health Department found no environmental health concerns with regulatory implications in the submittals."
- b. The Department of Water Supply (DWS) memorandum dated October 3, 2002, states in part:  
  
"As this variance application does not pertain to the water requirements for Ohana Dwelling Permit 3880, the Department has no comments or objections."
- c. No comments, to date, were received from the Department of Public Works (DPW).

**Note:** Refer to variance conditions.

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4. **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 were mailed on September 6, 2002 and September 14, 2002, respectively, by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written objections from surrounding property owners were received.

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

The building encroachment issue, permit requirements, and other issues related to use and building position on the property were discovered after the property was purchased by the current owners. The current applicants or owners are trying to resolve building position and use issues created by previous owner(s) and not addressed during the review of the ohana dwelling permit application. The ohana and variance application's site plan maps shows the dwelling position and 792 square feet "storage" building improvements, AS BUILT, on Lot 198. The detached "New Storage" building was constructed by the previous owner(s) or builder beyond the lot's rear building line or outside Lot 198's building envelope, pursuant to the Hawaii County Zoning Code. The applicants or current owners became aware of building encroachment and building size issues after the ohana dwelling permit issue was granted. It appears that the dwelling improvements were constructed under valid building permits or construction permits. The detached 792 square feet "storage building" improvements between the dwelling and rear boundary line were not constructed with a valid building permit. It appears that building inspections of the premises by the agencies during construction of the dwelling improvements did not disclose any building issues or encroachment issues at that time.

#### **ALTERNATIVES**

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

1. Removing the existing building encroachments or redesign or relocation of the "storage" building or proposed guest house use and improvements to fit within the correct building envelope prescribed by the Zoning Code.

2. Consolidation of the present property with the adjoining property(s) and resubdivision of the resultant lot to modify property lines and adjustment of minimum yards pursuant to the Subdivision and Zoning Codes.

### **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 the "storage" building encroachments into the rear yard are not detectable or visually obtrusive from adjoining property(s) or visible from the right-of-way. It appears the building encroachments and proposed guest house use will not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns. The location of the dwelling and storage building improvements and building size were not an issue during the review of the ohana dwelling permit. Therefore, due to unusual circumstances beyond the control of the applicants or current owners, it is felt that granting the variance to allow portions of the 792 square feet "storage" building encroachments, AS BUILT, and permitting the guest house use in lieu of a "a detached ohana dwelling unit" (OHD Permit No. 3880) will not detract from the character of the immediate neighborhood or the subdivision.

Based on the foregoing findings and other unusual circumstances, the granting of the variance 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.

### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

This variance request is approved subject to the following conditions:

1. The applicant/owner, 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,

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employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.

3. Portions of a storage building or portions of a proposed 792 square feet guest house improvements on the subject property will not meet Chapter 25, the Zoning Code's minimum rear yard and other building size requirements. The approval of this variance allows the dwelling and guest house improvements and encroachments identified on the variance application's site plan map or approved building construction plans to remain, AS BUILT, on the subject TMK property (Lot 198).
4. The applicant or current owner(s) shall confer, respectively, with the DPW-Building Division to address and close any building permits or construction permits issued to the subject tax map key property and access and driveway location to the subject tax map key property shall be subject to and be approved by the DPW-Engineering Division.
5. The letter dated July 16, 2002 to permit an ohana dwelling unit or Ohana Dwelling Permit No. 3880 is declared null and void. 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 the subject TMK property (Lot 198), subject to provisions of the Zoning Code or State Law which may change from time to time.
6. Future building improvements and permitted uses on the subject tax map key property are subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

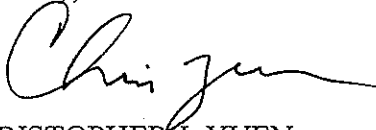
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Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

WRY:pak

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xc: Real Property Tax - Kona  
Planning Dept. - Kona  
File-OD Permit 3880