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Mayor



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Director

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Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

April 9, 2003

Mr. and Mrs. Gary R. Arbo
87-3181 Road J
Captain Cook, HI 96704

Dear Mr. and Mrs. Arbo:

VARIANCE PERMIT NO. 1354 WH (VAR 02-077)

Applicants: GARY R. ARBO, ET AL.
Owners: GARY R. ARBO, ET AL.
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 8-7-018:077, Lot 272

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1354 allows portions of the dwelling's detached garage "AS BUILT", to remain on Lot 272 with a minimum 8.5 feet front yard and corresponding 4.25 feet front yard open space in lieu of the minimum 15.0 feet front yard and 10.0 feet front yard open space, according to variance application's site plan map dated December 23, 2002. The variance request is from Lot 272's minimum yards, pursuant to the Hawaii County Zoning Code, Chapter 25, 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 space requirements, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 272 containing 7,500 square feet, is within Kona Paradise Subdivision, being a portion of MAHELE AWARD 25, and situated at Kaohe 4th, South Kona, Hawaii.

The property is zoned Agricultural (A-5a) by the County and designated Agriculture "A" by the Land Use Commission (LUC).

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2. **Variance Application-Site Plan**. The applicant(s) submitted the variance application, attachments, and filing fee to the Kona Planning Department on or about December 18, 2002. The variance application's site plan or drawing is drawn to scale. The drawing shows the "CARPORT" position, roof eave location, and other building improvements, "AS BUILT".

3. **Agency Comments and Requirements-WH (VAR 02-077)**:
 - a. The Department of Public Works (DPW) memorandum dated November 6, 2002, states in part:

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

Building

 1. Please refer to the attached Building Division comments dated January 10, 2003."

The attached DPW-Building Division memorandum dated January 10, 2003 states in part:

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

The Building #895361 permit for the subject dwelling has no status of inspection."
 - b. The State Department of Health (DOH) memorandum dated January 21, 2003, states:

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

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 was mailed on December 21, 2002 and January 16, 2003 by the applicant(s).

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5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. Several telephone call(s) regarding the status of the encroachment issues were received and the following letter supporting the applicant's variance request and application was received:

1. Support letter dated January 15, 2003 from Stan and Shannon Allper.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The building or garage encroachment problem was discovered after a complaint was received and investigated by the Planning Department. The applicant(s) or current owners are trying to resolve building encroachment issue. The variance application's site plan map was prepared by the applicants/owners to show the dwelling and garage positions together with other site improvements, "AS BUILT", on Lot 272. Portions of the detached garage were constructed into Lot 272's minimum front yard and encroach into the minimum front yard and corresponding front yard open space requirements, pursuant to the Hawaii County Zoning Code. The applicant(s) or current owners became aware of the building or garage encroachment issues after the complaint was investigated. Lot 272's topography is severe and level building areas within the building envelope are limited. The dwelling and garage improvements are being constructed under valid building permit(s) and other construction permits issued by the County. It appears that building inspections of the premises by the agencies during construction of the dwelling and garage foundation/building improvements did not disclose any building encroachment issues or building setback irregularities 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 redesigning or relocating the garage to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with a portion of the private roadway and resubdivision to modify property lines and adjustment of minimum yards.

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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 building encroachments within the affected front yard and front yard open space are not noticeable or visually obtrusive from adjacent property(s) or the privately owned rights-of-way. It appears that these encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns. Therefore, due to the character of the property and severe topography and surrounding land and building patterns, it is felt that these building encroachments within the affected front yard and minimum front yard open spaces will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated December 31, 2003 and additional time to discuss and consider status of the outstanding DPW permits was deemed necessary. The applicants agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than April 15, 2003.

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.

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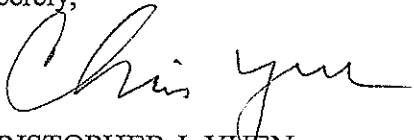
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employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.

3. Portions of a garage building located on the subject TMK property will not meet Chapter 25, the Zoning Code's minimum front yard requirements. The approval of this variance allows the garage and garage encroachments identified on the variance application's site plan map, "AS BUILT", to remain on Lot 272 or subject TMK property.
4. The applicants/owner(s) shall confer with the DPW-Building Division (Kona) to address any outstanding building issues and close Building #895361 issued to the subject tax map key property. The building permit #895361 shall be closed or "finaled" prior to any change or transfer of title/sale of the property and prior to June 30, 2004.
5. 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 272 or the subject TMK property.
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.

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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cc: Real Property Tax - Kona
Planning Department – Kona
Zoning Inspector-Hilo Office