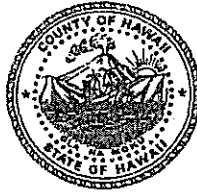


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

June 2, 2003

Mr. and Mrs. Stevan L. Rice
77-117 Kalaniuka Street
Holualoa, HI 96725

Dear Mr. and Mrs. Rice:

VARIANCE PERMIT NO. 1361 WH (VAR 03-012)

Applicants: STEVAN L. RICE, ET AL.
Owners: STEVAN L. RICE, ET AL.
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 7-5-001:051

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1361 allows portions of a dwelling to be constructed within the respective front yard and side yard of the subject property (Lot E-2). The variance will allow the proposed dwelling to be constructed with a minimum 15.0 feet front yard and 10.0 feet side yard and allow attendant corresponding minimum open yard spaces according to the variance site plan map submitted with the variance application. The variance request is from the subject TMK property's minimum yards, pursuant to the Hawaii County 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 space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot E containing 1.000 acre, is located within the Keopu Country Estates Subdivision, Unit 2, being portions of R.P. 4475, L.C. Aw. 7713, Ap. 5 to V. Kamamalu, and situated at Keopu 3rd, North Kona, Hawaii.

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The property is zoned Agricultural (A-1a) by the County and designated Agriculture "A" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicants submitted the variance application, attachments, and filing fee to the Planning Department on or about February 7, 2003. The subject variance application includes a site plan or map drawing. The map is drawn to scale and shows the orchard and proposed dwelling position, roof eaves, and other site improvements on "LOT E-2".

Note: The proposed dwelling's location or "building envelope" is limited due the existing coffee orchard and the applicant's desire to sustain "high producing trees" (yield) and minimize tree loss or disruption to the orchard. The property's shape is unique with major frontage along a private roadway. Photographs of the coffee orchard were submitted with the variance application.

3. **Agency Comments and Requirements-WH (VAR 03-012):**

- a. The State Department of Health (DOH) memorandum dated March 7, 2003, states:

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

- b. The Department of Public Works (DPW) memorandum dated March 17, 2003, states in part:

"We have reviewed the subject application and offer the following comments.

Building

1. Please refer to attached Building Division comments dated March 12, 2003."

The attached March 12, 2003 memorandum states in part the following:

"Approval of the application shall be conditioned on the comments as noted below.

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All new building construction shall conform to current code requirements.

Others: Currently there is not (sic) building permit issued for the above TMK.”

4. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. For the record, the first notice and second notice was mailed on February 11, 2003 and February 26, 2003, respectively, by the applicants/owners.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received and no objections from the surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The property's shape and orientation to the private street nearly surrounding the property are unique. According to the site plan map and pictures submitted, the property is an established coffee orchard. The site plan map was prepared by applicants/owners showing the proposed dwelling position and other orchard improvements on "LOT E-2". The site plan shows portions of the proposed dwelling will be constructed beyond the building envelope line into the front and side yards. The corresponding open yard space requirement from affected front and side boundary lines are being requested.

ALTERNATIVES

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

1. Prohibiting the proposed building encroachments or redesigning or relocating the building improvements to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidate the Lot E or "E-2" with the adjoining property and resubdivide the resultant lot to modify the common side boundary line 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.

No objections to the applicant's request were received from the adjoining property owner(s) or other surrounding property owner's within this neighborhood.

Under the circumstances, the proposed building encroachment into the property's front and side yard will not be physically noticeable or visually obtrusive from adjacent property or the rights-of-way. Disruption to the producing orchard will be minimized and the proposed building position will be "off-set". It is felt that the proposed building position and encroachments within the yards will 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 these building encroachments within the affected minimum yards and attendant corresponding open yard spaces will not detract from the character of the immediate neighborhood or the subdivision.

The variance application was acknowledged by letter dated February 18, 2003. Additional time to consider the open space requirement and agency review was necessary. The applicants agreed to extend the decision date to June 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(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

Mr. and Mrs. Stevan L. Rice

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- 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 proposed farm dwelling to be placed on the subject TMK property in accordance with the applicant's site plan map received with the variance application.
 4. The applicant or owners shall confer with the DPW and secure a building permit to construct the dwelling within two (2) years from the date of the variance permit letter. New building construction shall conform to County code requirements. The building permit to construct the dwelling and any electrical or plumbing permits shall be "finaled" or closed prior to any change in title or sale of the TMK property.
 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 subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.
 6. Future building improvements and permitted uses shall be 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

WRY:pak

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