

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

August 4, 2003

Mr. Richard G. Bates
P. O. Box 1948
Kamuela, HI 96743

Dear Mr. Bates:

VARIANCE PERMIT NO. 1380 WH (VAR 03-016)

Applicant: RICHARD G. BATES
Owners: MICA M. LOTT-ERP, ET AL.
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 6-4-019:033

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1380 allows portions of the dwelling and enclosed garage improvements to remain, "AS BUILT", with a minimum 8.0 feet side yard and attendant minimum 4.0 side yard open space requirements, in lieu of the minimum 10 feet and minimum 5.0 feet side yard open space requirements, respectively, according to the variance application's site plan map. The variance request is from the subject property'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, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 125 4 consisting of approximately 10, 964 square feet, is located within Pleasant Acres Subdivision and a portion of Grant 7965 and portion of Puukapu Homesteads Second (2ND.) Series, and situated at Waimea, South Kohala, Hawaii.

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

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Mr. Richard G. Bates

Page 2

August 4, 2003

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Planning Department on or about March 7, 2003. The variance application site plan submitted with the application is drawn to scale. The site plan dwelling "EXISTING" and "AS BUILT CARPORT", on subject TMK property.

Note: The variance request does not address or identify the location of the perimeter planting materials or other landscaping improvements within the property.

3. **Agency Comments and Requirements-WH (VAR 03-016):**

No written memorandums were received from the DPW, Hawaii County Fire Department, and State-DOH.

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 notice was mailed on April 21, 2003 by the applicant. Due to a misunderstanding or oversight by the applicant the second notice was mailed on June 24, 2003 by the applicant. Proof of mailing the second notice was received by the Planning Department-Hilo on July 18, 2003 (Refer to text below).
5. **Comments from Surrounding Property Owners or Public.** No further agency comments were received. Some telephone inquires and written information was received by the Planning Department-Hilo after the second notice was mailed by the applicant. No written objection letters to the applicant's request or variance application 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, on behalf of the current owners, is trying to resolve building encroachment issues and submitted the application and site plan map showing the dwelling and attached carport position, "AS BUILT". The site plan shows that portions of the dwelling's carport were constructed beyond the lot's building lines or building envelope into one of property's side yard and the attendant side yard open space requirement, pursuant to the Hawaii

Mr. Richard G. Bates

Page 3

August 4, 2003

County Zoning Code. The previous owner or applicant became aware of the encroachment issues during escrow.

No evidence has been found to show indifference or premeditation by the applicant or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the dwelling and attached carport improvements were constructed under valid building permits and other construction permits issued by the County. It appears that building inspections of the premises by the agencies during construction of the dwelling improvements 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 existing building encroachments or redesigning or relocating portions of the dwelling's carport to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with portions of the adjoining property(s) and resubdivision of the resultant lot to modify property lines and adjustment of minimum yards.

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 small building encroachments within the affected side yard is not physically noticeable or visually obtrusive from the rights-of-way and other surrounding property. It appears that these small building encroachments have not affected the adjoining property(s) or neighborhood or severely changed or altered the surrounding land patterns. Therefore, it is felt that these building encroachments within the minimum yards identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated March 24, 2003. Due to an oversight by the applicant to mail a second notice to the surrounding property owners, additional

Mr. Richard G. Bates
Page 4
August 4, 2003

time to July 31, 2003 was allowed to notify surrounding property owners. The variance decision date was extended until on or before August 15, 2003. No oral or written objections to the variance request or application were received from surrounding property owners.

Based on the foregoing findings and other circumstances, 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 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. Portions of the dwelling and attached carport improvements will not meet Chapter 25, the Zoning Code's minimum side yard and attendant side yard open space requirements. The approval of this variance allows the dwelling improvements and dwelling/carport encroachments disclosed on the variance application's site plan map to remain, "AS BUILT", on subject TMK property.
4. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

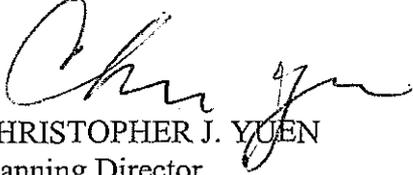
Mr. Richard G. Bates

Page 5

August 4, 2003

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