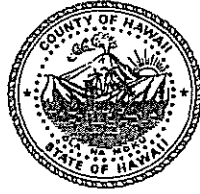


Harry Kim
Mayor



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 27, 2003

Mr. Robert A. Culbertson
P. O. Box 699
Pahoa, HI 96778

Dear Mr. Culbertson:

VARIANCE PERMIT NO. 1385 (VAR 03-033)

Applicant: ROBERT A. CULBERTSON
Owner: ROBERT A. CULBERTSON
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code

Tax Map Key: 1-4-025:011, Lot 6

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1385 allows the dwelling ("HOUSE") encroachments to remain on the subject property (Lot 6), "AS-BUILT", with minimum 18.63 feet front yard in lieu of the minimum 20.0 feet front yard required, and 9.80 feet side yard in lieu of the minimum 10.0 feet side yard required, according to the variance site plan map dated March 21, 2003. The variance request is from the subject TMK property's minimum yards pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (A) (B).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 6 containing 15,612 square feet, is located within Kapoho Beach Lots Subdivision and situated at Kapoho, Puna, Hawaii.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban "U" by the Land Use Commission (LUC). The property is within the Special Management Area (SMA).

040496

AUG 28 2003

Mr. Robert A. Culbertson

Page 2

August 27, 2003

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Planning Department on or about May 12, 2003. The applicant's variance application site plan or map drawing is drawn to scale and dated March 21, 2003. The variance application's site plan or survey map by The Independent Hawaii Surveyors identifies and denotes the building setback lines (building envelope), dwelling ("HOUSE") position and other site improvements on "LOT 6".

Note: The variance request does not address the cesspool location and any other boundary issues along or straddling common boundary lines shared with adjoining lots. A copy of "EXISTING CESSPOOL INFORMATION" dated November 2, 1995 was included with the variance application.

3. **Agency Comments and Requirements- (VAR 03-033):**

- a. The Department of Public Works (DPW) memorandum dated July 3, 2003, states in part:

"We have reviewed the subject application forwarded by your memo dated June 12, 2003 and have no comments or objections to the request."

- b. The State Department of Health (DOH) memorandum dated July 3, 2003, states:

"The Heath 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 May 14, 2003 and June 18, 2003 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objections from the surrounding property owners were received.

Mr. Robert A. Culbertson
Page 3
August 27, 2003

SPECIAL AND UNUSUAL CIRCUMSTANCES

The building encroachment problems were discovered during escrow. Dwelling encroachments are identified on the recent survey map dated March 21, 2003. The applicant or current owner filed the variance application to address and resolve the building encroachment issues. The variance application's site plan map was prepared by a surveyor and shows the dwelling and other site improvements, "AS BUILT", on "LOT 6". Portions of the dwelling were constructed beyond the lot's building lines or building envelope into Lot 6's minimum yards pursuant to the Hawaii County Zoning Code. The applicant and current owner became aware of the dwelling encroachment issues after the survey map was prepared. No evidence has been found to show indifference or premeditation by the past owner(s)/builders or current owner to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements on Lot 6 were constructed approximately 12 years ago according to applicant and County building records. It appears that building inspections of the premises in 1991 and 1996 by the agencies during construction of the 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 dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with portions of the adjoining property (Lot 10 and Lot 11) and the privately owned R-O-W 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 dwelling encroachments constructed between 1991 and 1996 within the affected yards are not physically noticeable or visually obtrusive from adjacent property(s) or the

Mr. Robert A. Culbertson

Page 4

August 27, 2003

right-of-way. It appears that these building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land pattern. Therefore, it is felt that these building encroachments within the affected 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 variance request and subject application was acknowledged by letter dated June 13, 2003. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than August 29, 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, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. Portions of a dwelling or "HOUSE" on "LOT 6" will not meet Chapter 25, the Zoning Code's minimum yard requirements according to the variance application's site plan map dated March 21, 2003. The approval of this variance allows the dwelling including roof eaves within "LOT 6" identified on the variance application's site plan map, "AS BUILT", to remain on the subject TMK property or "LOT 6".

Mr. Robert A. Culbertson

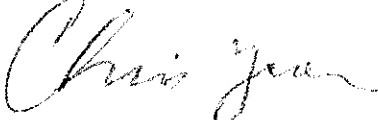
Page 5

August 27, 2003

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 6" or the subject TMK property.
5. 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

WRY:pak

P:\WP60\WRY\FORMLETT\VARAPPZCTMK14025011.CULBERTSON

xc: Real Property Tax - Kona
Planning Department - Kona