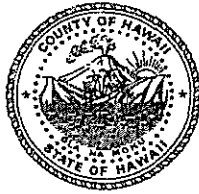


Harry Kim  
Mayor



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. Wade Park-Realtor  
COLDWELL BANKER  
DAY-LUM PROPERTIES  
#2 Kamehameha Avenue  
Hilo, HI 96720

Dear Mr. Park:

**VARIANCE PERMIT NO. 1386 (VAR 03-034)**

**Applicant: WADE PARK**  
**Owners: DENNIS JACKSON**  
**Request: Variance from Minimum Yards,  
Chapter 25, the Zoning Code**  
**Tax Map Key: 2-5-057:044, Lot 19**

After reviewing your application, the Planning Director certifies approval of your variance request subject to conditions. Variance Permit No. 1386 to allow portions of the dwelling/attendant roof eave and water tank improvements to remain on the subject property (Lot 19), "AS-BUILT", with minimum 24.6 feet front yard and attendant roof eaves in lieu of the minimum 30.0 feet front yard and minimum 24.0 feet front yard open space required, and minimum 15.0 feet side yard in lieu of the minimum 20.0 feet side yard required, according to the variance site plan map dated and signed on January 19, 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 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, (a).

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, Lot 19 containing 43,563 square feet, is located within Kaumana City Subdivision, Increment 3, and situated at Ponahawai, South Hilo, Hawaii.

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The TMK 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 applicant submitted the variance application, attachments, and filing fee to the Planning Department on or about May 16, 2003. The applicant's variance application site plan or map drawing is drawn to scale and dated June 19, 2003. The variance application's site plan or survey map by Paul H. Murray & Associates, LLC denotes the building envelope, dwelling and other site improvements on "LOT 19".

**Note:** The variance site plan map does not identify cesspool location or the Independent Wastewater System (IWS) for the dwelling improvements located on "LOT 19".

Pursuant to the applicant's surveyor and annotations dated August 14, 2003 on the site plan map, the dwelling's eaves are approximately 2.5 feet to 3.0 feet from respective walls and access to the dwelling is via driveway to Papali Street.

3. **Agency Comments and Requirements-(VAR 03-034):**

- 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 oppose the approval of the application for the reason noted below.

Building permit #891854 and #961653 for the subject dwelling has (sic) no status of inspection."

**Note:** The applicant contacted the DPW-Building Division and submitted further documentation showing the outstanding building permits cited by the DPW memorandum were "F" or finalized by the DPW.

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- 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 16, 2003 and June 19, 2003 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objection letters from surrounding property owners or public were received.

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

The building encroachment problems were identified pursuant to a survey map or variance site plan map dated April 29, 2003. The applicant filed the variance request and application to address or resolve building encroachment issues. The site plan map was prepared by a surveyor and shows the dwelling and other site improvements, “AS BUILT”, situated on “LOT 19”. Portions of the dwelling and water tank were constructed beyond the denoted building lines or building envelope into Lot 19’s minimum yards pursuant to the Hawaii County Zoning Code. The applicant, on behalf of the previous 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. According to the applicant (Realtor) the dwelling and associated water tank were built in 1997 on Lot 19. It appears that building inspections of the premises in 1997 by the agencies during construction of the building improvements did not disclose any building encroachment issues or building setback irregularities at that time. (Note: The applicant will be required to address the status of the active building permits issued to the TMK pursuant to the variance conditions).

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### **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 and relocating the water tank to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with portions of the adjoining property (Lot 18) and the R-O-W (Papali Street) 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 and water tank encroachments constructed on or about 1997 within the front and affected side yards are not physically noticeable or visually obtrusive from adjacent property(s) or the 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 subject variance application was acknowledged by letter dated June 12, 2003. Additional time to verify eave dimensions, identify driveway improvements, and allow the applicant to confer with the DPW was deemed necessary. 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

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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" and a "WATER TANK" located on "LOT 19" will not meet Chapter 25, the Zoning Code's minimum yard requirements according to the variance application's site plan map dated January 19, 2003. The approval of this variance allows the dwelling/garage, water tank(s) and other site improvements including roof eaves located on "LOT 19" and identified on the variance application's site plan map to remain on the subject TMK property or "LOT 19", AS-BUILT.
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 19" 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.

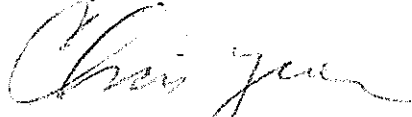
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Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

WRY:pak

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xc: Real Property Tax - Kona  
Planning Department - Kona