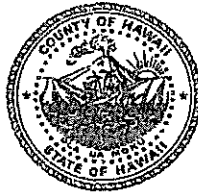


Harry Kim  
Mayor



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

November 24, 2003

Yen Wen Fang, P.E.  
ENGINEERING PARTNERS, LLC  
P. O. Box 4159  
Hilo, HI 96720

Dear Mr. Fang:

**VARIANCE PERMIT NO. 1394 (VAR 03-041)**  
**Applicant: ENGINEERING PARTNERS, LLC**  
**Owner: HAWAII COUNTY-(DWS)**  
**DEPARTMENT OF WATER SUPPLY**  
**Request: Variance from Minimum yards, and**  
**Attendant Open space requirements,**  
**Pursuant to Chapter 25, Zoning**  
**Tax Map Key: (3) 1-8-005:071, Lot 132**

After reviewing your application and the information submitted, the Planning Director hereby approves your variance request subject to the conditions stated herein. Variance Permit No. 1394 permits improvements to the public water system improvements (Department of Water Supply (DWS)-Olaa No. 7 Booster Station) constructed on the TMK property prior to 1967. The variance allows replacement of the public water system improvements. The proposed "MCC BUILDING" will be constructed with a 1.5 feet side yard in lieu of the minimum 8 feet side yard and attendant open yard requirements and permits security fencing and gate improvements along the property(s) boundary line. 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), Section 25-5-77, Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space.

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## **BACKGROUND AND FINDINGS**

1. **Location and Zoning.** The subject property containing 0.325 acre, is a portion of Lot 132 or Grant 4128 to Capital Commercial Company, Ltd., O'laa Reservation Lots, and situated at O'laa, Puna, Hawaii.

The TMK property, containing an area of 14, 175 square feet, is zoned Agricultural (A-20a) and designated Agriculture "A" by the Land Use Commission (LUC). The non-conforming sized TMK property and access to the tank site was created before the Zoning Code was adopted in 1967.

2. **Application.** The applicant, on behalf of the owner-DWS, submitted the variance application, tax clearance, and \$250.00 variance filing fee on April 22, 2003.
3. **Site Plan.** The applicant's site plan map dated April 21, 2003 identifies existing and proposed water system improvements. The variance allows replacement of pump station apparatus on the property or construction of O'laa No. 7 Booster Station and security fencing improvements (JOB NO. 2003-820).
4. **Agency Comments and Requirements (VAR 02-041):**

- a. **Department of Health.** The State Department of Health (DOH) memorandum dated August 4, 2003, states:

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

- b. **Department of Public Works (DPW).** The Department of Public Works (DPW) memorandum dated August 11, 2003, states:

"We have reviewed the subject application forwarded by your memo dated July 22, 2003 and have the following comments.

Approval of the application shall be conditioned as noted below.

All new building construction shall conform to current code requirements.

The minimum setbacks shall be maintained as follows: residential structures-3 ft. side and 3 ft. rear; commercial structures-5 ft. side and 5 ft. rear.”

5. **Notice to Surrounding Property Owners.** Proof of mailing first notice and verification that a second notice was sent to surrounding property owners were received on August 28, 2003 and November 20, 2003, respectively, by the applicant.
6. **Comments from Surrounding Property Owners or Public.** No further agency comments or objections to the variance application from surrounding property owners or public were received.

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

The applicants submitted a site plan map identifying the location of existing and proposed DWS water system improvements. The existing tank building and appurtenant water system improvements were constructed or built on the non-conforming TMK property prior to adoption of the Zoning Code was adopted by the County. The applicant’s site plan identifies existing tank/pump and identifies the distance between the proposed “MCC” building and an affected side boundary line. The proposed building is not for habitation and less prone to fire and other hazards or liability. The improvements are to replace or upgrade the existing public-DWS water system improvements on the non-conforming sized property. Security fencing is proposed and denoted on the site plan.

Therefore, after considering the applicant’s background and statements, the variance site plan map, and the adjoining property uses and character of the surrounding neighborhood, there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the applicant or owners of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the subject property.

#### **ALTERNATIVES**

At this time there are no reasonable alternatives in resolving the difficulty of the applicant or owner. Alternatives available to the applicant or owners to further improve the property include the following:

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1. Limit the building area to the building envelope prescribed by the Zoning Code or locate the proposed building improvements within the tank or within appurtenant building "footprints".
2. Acquire the adjoining property and consolidate the subject property and adjoining property to increase the property and eliminate the yard issues, etc.

#### **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) and boundary/property lines. The proposed DWS-buildings and appurtenances on this TMK property would not be undermined by this variance since the TMK property is part of public water distribution system and the proposed building and fencing improvements will replace or improve the public water system improvements. The fencing is necessary for building and security. It appears that the proposed system improvements will not be physically and visually obtrusive from adjacent property(s) or the existing public rights-of-way (Belt Highway). The tank and proposed site improvements will not significantly depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns.

The applicant's variance request and variance application was acknowledged by letter dated July 21, 2002. Additional time was requested by the applicant-DWS to notify surrounding property owner was 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 December 1, 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.

#### **DETERMINATION**

This variance request is approved subject to the following conditions:

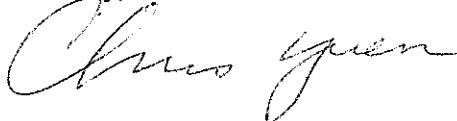
1. The applicant or current owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.

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2. The applicants or 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. The approval of this variance allows the water system improvements pursuant to the approved variance site plan map dated April 21, 2003. The applicant shall comply with DPW-Building Division requirements.
4. The building permits and construction permits issued to allow construction of the Olaa No. 7 Booster Station Improvements-JOB NO. 2003-820 on Lot 132 or subject TMK property shall be constructed in accordance with approved detailed building construction plans and/or contract specifications.
5. The permitted uses within the buildings located on Lot 132 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 Office  
Planning Dept.-Kona