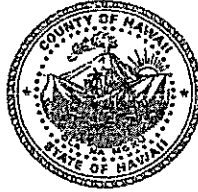


Harry Kim
Mayor



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 21, 2003

Mr. and Mrs. Jerry E. Merrill
13-3529 Pahoa-Kalapana Road
Pahoa, HI 96778

Dear Mr. and Mrs. Merrill:

VARIANCE PERMIT NO. 1393 (VAR 03-046)
Applicants: JERRY E. MERRILL, ET AL.
Owners: JERRY E. MERRILL, ET AL.
**Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code**
Tax Map Key: 2-6-016:005, Lot C

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1393 to permit the location of a dwelling to be located and constructed on Lot C or subject tax map key (TMK) property with a minimum 5.0 rear yard and attendant 2.5 feet rear yard open space according to the applicant's variance request and site plan map submittal. The variance request is from the subject TMK property's (Lot C) minimum yards pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7 Minimum yards, (a) (2) (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 C containing 74,119 square feet, was created by SUB 7295 on July 7, 2000. The subject TMK property or Lot C is a portion of Grant 1873:1 and portion L.C. Award 5403 and 11145, and situated at Wainaku, South Hilo, Hawaii.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban "U" by the State of Hawaii-Land Use Commission (LUC).

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2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Hilo Planning Department on or about July 11, 2003. The applicant's variance application includes a site plan and other supplemental maps, drawn to scale, denoting the dwelling position on the subject TMK property. The application includes a recent topographic map of Lot C and adjoining property-Lot B. The building permit was recently issued by the DPW to construct a dwelling on Lot C. The variance request is to allow the dwelling to be located within the Lot C's minimum 20 feet and attendant 14 feet rear yard clear space requirements according to the variance site plan map and/or other supplemental map submittals.

3. **Agency Comments and Requirements-(VAR 03-046):**
 - a. The Department of Public Works (DPW) memorandum dated August 28, 2003, states in part:

“We have reviewed the subject application forwarded by your memo dated August 8, 2003 and have the following comments.

Approval of the application shall be conditioned as noted below.

A 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.”

 - b. The State Department of Health (DOH) memorandum dated August 26, 2003, states:

“The use of individual wastewater systems is allowed. The type and number of individual wastewater systems to be used will be determined by the wastewater rules in effect at the time of building permit application.”

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

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the first and second notice was mailed on July 10, 2003 and August 18, 2003, respectively, by the applicant.

5. **Comments from Surrounding Property Owners or Public.** No further agency comments were received. The following letters supporting the applicant's request and objecting to the variance request were received from a surrounding property owner(s):
- a. Copy of letter dated July 17, 2003 from Thomas Thayer (Owner of adjoining property-Lot B) supporting the applicant's request and application.
 - b. Copy of letter dated July 22, 2003 from David D'Anna supporting the applicant's application.
 - c. Copy of letter dated July 2003 from Douglas Thom, Et al. supporting the applicant's request and application.
 - d. Letter dated September 3, 2003 received from Anecita D. Carpenter objecting to the variance request.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The building position issues associated with a permit recently issued by the County were identified and described by the applicant and submittals received with the variance application. The applicants/owners filed the variance request and application to address and request a revised building location. The site plan map and other map submittals are drawn to scale, and identify the permitted and alternative dwelling location(s). The current owners became aware of the site's limitations and dwelling position issue after the building permit was issued by DPW to construct the dwelling.

The applicant's topographic map identifies the distance between the proposed dwelling and affected rear boundary line. The applicants feel that the proposed building position will be "safer" and permit the dwelling to be located on the property's natural garden within Lot C. The need to "off-set" the new dwelling is necessary due to the building site's sloping nature or "lay of the land" and access from the public right-of-way. The available "flat" area and builder's option to position the dwelling, without resorting to fill or extensive grading, is extremely limited.

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ALTERNATIVES

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

1. Require or reduce the dwelling's area to be constructed within the building envelope prescribed by the Zoning Code.
2. Consolidation with portions of the adjoining property (Lot B) 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) and boundary/property lines. It appears that the building area or "level" area within Lot B is limited. The recent topographic map identifies the useable area where dwelling improvements could be sited without extensive foundation improvements. Therefore, it is felt that the site limits the dwelling position and variance request will not detract from the character of the immediate neighborhood or the subdivision.

The building or land use pattern in the vicinity of this property would not be undermined by this variance since the proposed dwelling will not be physically and visually obtrusive from adjoining lots or visible from public rights-of-way. In view of the unusual topography and lot geometry of Lot C together with other circumstances beyond the applicants/owners control, it is felt that the dwelling location within Lot C's rear yard and attendant open spaces would not depreciate or detract from the character of the surrounding neighborhood or adjoining property (Lot B). Furthermore, the owner of the adjoining property (Lot B) forwarded a letter supporting the applicant's request.

The subject variance application was acknowledged by letter dated August 8, 2003. Additional time to consider access to Lot C and comments received from surrounding property owner(s) was deemed necessary. The applicant's attorney agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than November 17, 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. The approval of this variance allows the revised dwelling position identified on the variance site plan map and construction of dwelling pursuant to BP No. 031524. The minimum open yard spaces for the proposed dwelling shall be commensurate with the minimum requirements of the DPW.

The building permit-BP No.031524 and construction permits issued to permit the dwelling on Lot C or subject TMK property shall be "finaled" or closed prior to any change in title or sale of the property.

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 the subject TMK property (Lot C), subject to provisions of the Zoning Code or State Law which may change from time to time.
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.

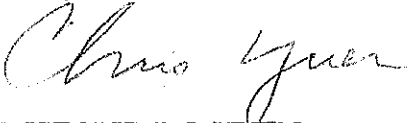
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Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN

Planning Director

WRY:pak

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xc: Real Property Tax - Hilo
Planning Department – Kona
Mr. Thomas Thayer
Mr. David D'Anna
Douglas Thom, Et al.
Ms. Anecita Carpenter
Sandra Song, Esq.