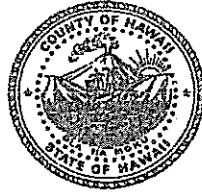


Harry Kim
Mayor



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

December 19, 2003

Ms. Melanie M. Midallia
P. O. Box 434
Laupahoehoe, HI 96770

Dear Ms. Midallia:

VARIANCE PERMIT NO. 1400 (VAR 03-050)

Applicant: MELANIE M. MIDALLIA
Owners: MELANIE M. MIDALLIA
Request: Proposed Dwelling: Variance
from Minimum Yards pursuant to
Chapter 25, the Zoning Code

Tax Map Key: 3-9-001:015

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1400 allows portions of a proposed dwelling and detached garage to be constructed on subject TMK property with a minimum 20.00 feet front yard and corresponding 14.00 feet front yard open space. The variance is from property's minimum 30.00 feet front yard and corresponding minimum 24.00 feet front yard open space requirement, pursuant to the Hawaii County Zoning Code, Chapter 25, 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 requirements, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of 1.029 acres, is situated at Humuula and Ookala, Hamakua, Hawaii.

The property is zoned Agricultural (A-20a) by the County and designated Agriculture "A" by the Land Use Commission (LUC).

MD 46795
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2. **Variance Application-Site Plan.** The applicant/owner submitted the variance application, attachments, and filing fee to the Planning Department on or about September 8, 2003. The variance application includes a site plan, drawn to scale, denoting the location of a proposed dwelling and detached garage. The applicant is requesting a variance to allow dwelling and
3. garage improvements to be constructed on the subject TMK with a minimum 20 feet front yard in lieu of the minimum 30 feet front yard requirement.

The applicant's background, states in part:

"This lot is long and narrow in size. With the setback requirements on the property, there is some difficulty having a house built within the setbacks. This is causing a hardship, which makes filing for a variance the only real solution to the problem."

In addition to the dwelling improvements, the applicant amended the variance site plan to identify the location of the proposed detached garage building. The applicant is requesting the detached garage to be placed "in-line" with the proposed dwelling improvements and be subject to the minimum building yards or setbacks established by the subject variance.

4. **Agency Comments and Requirements-WH (VAR 03-043):**
 - a. The Department of Public Works (DPW) memorandum dated October 1, 2003, states in part:

"All new building construction shall conform to current code requirements."
 - b. The State Department of Health (DOH) memorandum dated November 17, 2003, states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
5. **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

Ms. Melanie M. Midallia
Page 3
December 19, 2003

the applicant mailed the first notice on August 26, 2003 and mailed a second notice to surrounding property owner(s) according to recent notarized letter dated December 12, 2003.

6. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objections to the variance application from surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The subject TMK property's elongated and narrow shape or geometry severely limit the dwelling and garage location(s). Portions of the new dwelling and garage will be allowed to be located 20.00 from the front boundary line and allow a corresponding 14.00 feet front yard open space requirement along the "Old Belt Highway".

ALTERNATIVES

Alternatives available to the applicant include the following actions:

1. Locate the proposed dwelling and detached garage building within the property's building envelope prescribed by the Zoning Code. This requirement requires an elongated dwelling.
2. Consolidation of the subject property with portions of the "Old Belt Highway" (right-of-way) and resubdivision of the consolidated property together with adjustment of minimum yards from the resulting boundary line(s).

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 proposed dwelling/detached garage improvements within the front yard and front yard open space will not be noticeable or visually obtrusive to the adjoining property(s) or the public rights-of-way. It is felt that the proposed building position will not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns. Therefore, due to the character of the property, limited building

Ms. Melanie M. Midallia
Page 4
December 19, 2003

envelope, and surrounding land and building patterns, it is felt that the variance request is reasonable and the permitted building improvements within the affected front yard and minimum front yard open spaces will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated September 12, 2003.

Additional time to consider property's geometry- topography and other circumstances beyond the control of the property owners was deemed necessary. The owner(s)/applicant-Melanie M. Midallia agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than December 24, 2003.

Based on the foregoing findings, this applicant's 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. The approval of the variance is from the Zoning Code's minimum front yard and attendant front yard open space requirements from the "Old Government Road". The approval of this variance allows the proposed building improvements or "Proposed Dwelling" and "Garage" denoted on the variance application's site plan map to be constructed on subject TMK property.

Ms. Melanie M. Midallia
Page 5
December 19, 2003

4. The applicants/owner(s) or assigns shall comply with all County rules and regulations and State statutes pertaining to the construction of the dwelling, detached garage, and related site improvements.
5. 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.
6. 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
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cc: Real Property Tax - Kona
Planning Department - Kona