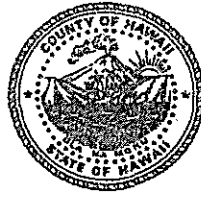


Harry Kim
Mayor



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

Mr. Wallace Patch
PATCHWORKS REALTY
P. O. Box 2
Pahoa, HI 96778

Dear Mr. Patch:

VARIANCE PERMIT NO. 1398 (VAR 03-052)
Applicant: WALLACE PATCH
Owner: STEPHEN W. UTTER, SR.
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 1-3-037:062, Lot 15

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1398 allows portions of a building ("SHED" or Dwelling) with a minimum 13.06 feet side yard to remain on Lot 15, "AS BUILT", in lieu of the minimum 20 feet side yard and attendant minimum 14 feet side yard open space requirements according to the applicant's site plan map dated August 7, 2003. The variance request is from the subject TMK property's minimum side yard and attendant side yard open space requirements pursuant to the Hawaii County Zoning Code, Chapter 25, 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 15 containing 1.00 acre, is within Block 18 of the Leilani Estates Subdivision, and situated at Keahialaka, Puna, Hawaii.

The property is zoned Agricultural (A-1a) by the County and designated Urban "U" by the 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 Planning Department on or about August 18, 2003. The applicant's variance application site plan map drawing is drawn to scale. The variance site plan map is dated August 7, 2003 and was prepared by The Independent Hawaii Surveyors. In addition, a site plan map extract from the original building plans was included for the record. The original site plan denotes the dwelling and water tank position(s) on the subject TMK.

Note: The variance request is to recognize the unfinished building "SHED" position identified on the survey map dated August 7, 2003. County records indicate that BP #010749 was issued to the previous owner(s) of the TMK. The original permit allowed a dwelling, water tank, and related improvements on the TMK.

To date, it appears that a "SHED" was built. The shed's position on the property does not comply with Chapter 25, Zoning. The applicant, on behalf of the current owner, is requesting the variance to recognize the building position.

3. **Agency Comments and Requirements-(VAR 03-052):**

- a. The Department of Public Works (DPW) memorandum dated October 1, 2003 states:

"We have reviewed the subject application forwarded by your memo dated September 12, 2003 and oppose the approval of the application for the reasons noted below.

Building permit #010749 for the subject 3-bedroom, 3-bath dwelling has only foundation inspection done. There was no electrical or plumbing permit taken out. Please refer questions regarding permits to the Building Division at 961-8331."

- b. Pursuant to a December 17, 2003 telephone discussion with State Department of Health (DOH) in Hilo:

"We have no comments on the variance application."

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3. **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 notice was mailed on September 11, 2003 and second notice was mailed on or about September 24, October 3, and October 7, 2003, respectively.
4. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. However, inquiries concerning the status of the building permit and building position on LOT 15 were received from owner(s) of adjoining or nearby property were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment problems were discovered during escrow or sale of the subject property-Lot 15. The applicant, on behalf of the current owner, is trying to resolve building encroachment. The variance site plan map was prepared by a surveyor and shows the dwelling's or "SHED" position, "AS BUILT", on Lot 15. This site plan shows that portions of the dwelling or "Shed" was constructed beyond the lot's building lines or building envelope into one of Lot 15's minimum 20 feet side yard and attendant side yard open space, pursuant to the Hawaii County Zoning Code. County building records indicate the dwelling or "SHED" improvements was started or constructed approximately 2 years ago by previous owner(s) or builders. The applicant, on behalf of the current owner became aware of the encroachment issues after the recent survey map was prepared and presented during escrow.

No evidence has been found to show indifference or premeditation by the previous owner(s)/ current owner or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the dwelling ("SHED") and attached water tank improvements being constructed on the property are being constructed pursuant to a building permit issued by the County (DPW). It appears that building inspections of the premises by the agencies during construction of these building improvements by the previous owner(s) or builders did not disclose any building use or encroachment issues or building setback irregularities in 2001.

ALTERNATIVES

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

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1. Removing the existing building (SHED) encroachments or redesigning or relocating portions of the dwelling and attached "temporary" water catchment tank to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of LOT 15 with portion of the adjoining property (LOT 16) and resubdivision of the resultant consolidated 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 small portions of the dwelling or the building encroachments into the affected side yard are not physically noticeable or visually obtrusive from the adjoining property(s) and right-of-way. It appears that the building encroachments have not significantly affected the adjoining lot (LOT 16) and other adjoining property(s)/neighborhood or severely changed or altered the surrounding land patterns. Therefore, it is felt that these building encroachments within the 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 September 12, 2003. Additional time to verify the names and address of surrounding property owner(s) and status of outstanding construction permits issued to the TMK or previous owner(s) was necessary. An extension of time to render a decision was extended until December 26, 2003.

Based on the foregoing findings and other circumstances, 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.

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PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance request is approved subject to the following conditions:

1. The applicant/owner(s), 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 the original "permitted" building improvements allowed under BP No. 010749 will not meet Chapter 25, the Zoning Code's minimum side yard requirements. The approval of this variance allows the "SHED" or dwelling encroachments identified on the variance application's site plan map, dated August 7, 2003, to remain, "AS BUILT" on Lot 15 or the subject TMK property. The proposed or "permitted" detached water tank allowed under BP No. 010749, required for the dwelling shall be relocated and comply with the minimum yards and open yard spaces of the Chapter 25, Zoning.

The status building improvements allowed pursuant to the building permit issued by the DPW or BP No. 010749 to permit the dwelling and related building site improvements on LOT 15 or subject TMK property shall be addressed by the applicant/current owner and "finalized" or closed by the applicant/current owner prior to any change in title or future sale of the property.

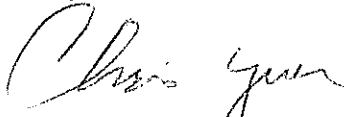
4. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property (LOT 15), subject to provisions of the Zoning Code or State Law which may change from time to time.

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5. Future building improvements and permitted uses 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

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xc: Real Property Tax Office
Planning Dept. – Kona
Mr. Stephen W. Utter, Sr.
Mr. Al Smith