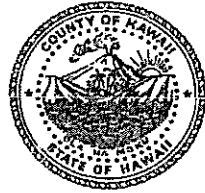


Harry Kim
Mayor



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

February 11, 2004

Robert D. Triantos, Esq.
CARLSMITH BALL LLP
P. O. Box 1720
Kailua-Kona, HI 96745-1720

Dear Mr. Triantos:

VARIANCE PERMIT NO. 1407 WH (VAR 03-055)
Agent/Applicant: ROBERT D. TRIANTOS, ESQ./
CARLSMITH BALL LLP
Owners: ROY LAMBRECHT, ET AL.
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 7-7-018:046, Lot 22

After reviewing your variance application, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1407 permits a portion of the dwelling improvements on Lot 22 or subject TMK property to remain, "AS-BUILT", with minimum 13.1 feet to 13.4 feet rear yard in lieu of the minimum 15.0 feet rear yard, according to the variance site plan map dated and signed on June 30, 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 1, Section 25-5-7, Minimum yards, (a) (1) (A).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 22 containing 7,349 square feet, is located within White Sands Terrace, Increment II, and situated at Laaloa 1st and 2nd, North Kona, Hawaii.

The property is zoned Single-Family Residential (RS-7.5) by the County and designated Urban "U" by the Land Use Commission (LUC). The improved property is within the Special Management Area (SMA).

FEB 12 2004

Robert D. Triantos, Esq.
CARLSMITH BALL LLP
Page 2
February 11, 2004

Ohana Dwelling Permit (OD 92-67) letter dated July 7, 1992 permitted construction of a Ohana Dwelling ("Duplex Conversion") within first floor of a 2-Story Single-Family to a Duplex.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on or about September 4, 2003. The applicant's variance application site plan or survey map drawing is drawn to scale and dated June 30, 2003. The survey map by KKM Surveys shows dwelling positions, roof eave location(s), and other site improvements, "AS BUILT", on "LOT 22", pursuant to an actual survey done on or about June 26, 2003.

Note: The variance request does not address the location of cesspool or other individual wastewater system (IWS) or site improvements straddling common boundary lines or walls within the right-of-way. Any other boundary encroachments must be addressed and resolved by the applicant or between or between the current property owner(s) and the affected agency(s)/ adjoining property owner(s).

According to the information in the applicant's background report, all building permits and related construction permits issued to the TMK to construct the original dwelling and "Duplex Conversion" were "finaled" or closed by the Department of Public Works (DPW).

3. **Agency Comments and Requirements-WH (VAR 03-055):**
 - a. The State Department of Health (DOH) memorandum dated October 3, 2003, states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. The County of Hawaii Fire Department's memorandum dated October 9, 2003, states:

Robert D. Triantos, Esq.
CARLSMITH BALL LLP
Page 3
February 11, 2004

“We have no comments to offer at this time regarding the above-referenced variance application.”

- c. The Department of Public Works (DPW) memorandum dated October 9, 2003, states in part:

“We reviewed the subject application and our comments are as follows:

We have no comments or objections to the 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 the first and second notices were mailed on September 4, 2003 and September 24, 2003, by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written comments or objections to the variance application from agencies and surrounding property owner(s) or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment problems were discovered during escrow or sale of the subject TMK property (Lot 22). The applicant, on behalf of the current owner, is trying to resolve building encroachment issues created by previous owner(s) or builders circa 1990. The variance application's site plan map was prepared by a surveyor and shows the dwelling position and other site improvements, "AS BUILT", on Lot 22. This site plan shows that a small portion of a two story duplex dwelling was constructed "by others" beyond the lot's building lines or outside Lot 22's building envelope into Lot 22's rear yard, pursuant to the Hawaii County Zoning Code. The applicant or current owners 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 past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling and ohana dwelling (duplex conversion) improvements constructed nearly 13 years ago were constructed under valid building permits and other construction permits issued by the County. It appears that building inspections of the premises by the agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

Robert D. Triantos, Esq.
CARLSMITH BALL LLP
Page 4
February 11, 2004

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 (duplex) to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with portions of adjoining property (s) (Lot 1 and Lot 21) 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 existing building encroachments within the rear yard are not physically noticeable or visually obtrusive from adjacent property(s) or the right-of-way. It appears the building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns. Therefore, it is felt that these building encroachments within the rear yard 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 and additional time to consider agency comments and neighborhood concerns 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 February 13, 2004.

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.

Robert D. Triantos, Esq.
CARLSMITH BALL LLP
Page 5
February 11, 2004

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

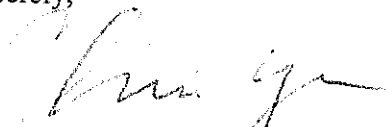
This variance request is approved subject to the following conditions:

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 the "Dwelling" located on the subject property will not meet Chapter 25, the Zoning Code's minimum rear yard requirements. The approval of this variance allows the dwelling improvements and encroachments identified on the variance application's site plan map dated and signed on June 30, 2003, to remain, "AS-BUILT", on the subject TMK property or "LOT 22".
4. The location and status of "Planter 0.5' Over" denoted on the variance site plan prepared by KKM SURVEYS and dated and signed on June 30, 2003 shall be resolved between the owner(s) of subject TMK property or Lot 22 and the owner(s) of Lot 21.
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.

Robert D. Triantos, Esq.
CARLSMITH BALL LLP
Page 6
February 11, 2004

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
P:\WP60\WRY\FORMLETT\VARAPPZCTMK77018046.RDTCARLSMITH

xc: Real Property Tax - Kona
Planning Dept. - Kona
OD 92-67 File