

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. Cynthia Stone
68-1878 Pakanu Street
Waikoloa, HI 96738

Dear Ms. Stone:

VARIANCE PERMIT NO. 1399 WH (VAR 03-066)

Applicant: CYNTHIA STONE
Owners: CYNTHIA STONE
Request: Proposed Dwelling: Variance
from Minimum Yards, pursuant to
Chapter 25, the Zoning Code
Tax Map Key: 6-4-023:008, Lot 31

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1399 allows portions of a proposed dwelling to be constructed on Lot 31 with a minimum 10.00 feet front yard and corresponding 5.00 feet front yard open space and minimum 3.00 feet side yard and 3.00 feet side yard open space according to the variance site plan map dated August 29, 2003. The variance is from Lot 31's minimum 20.00 feet front yard and corresponding minimum 14.00 feet front yard open space requirement and minimum 10.00 feet side yard and corresponding 5.00 feet side 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, Lot 31 containing 13,915 square feet, is within Puu Nani Subdivision, Grant 7475, Puukapu Homesteads 2nd Series, and situated at Waimea, South Kona, Hawaii.

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The property is zoned Agricultural (A-1a) by the County and designated Agriculture "A" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Planning Department on October 8, 2003. The variance application site plan, dated August 29, 2003, is drawn to scale and denotes the footprint of the proposed dwelling. The site plan map includes topographic information. The owner denotes the location of an "ironwood" tree within the "building envelope" and would like to retain the tree in the present location.

The applicant's background, dated October 7, 2003, states in part:

"Due to the unusual (sic) property topography that is attached I must site my house according to the topography in which it will fit."

Note: County records show a building permit-BP No. 036120 for a dwelling was issued to subject TMK on July 29, 2003. The cost for site work to prepare and construct the foundation for the original dwelling "permitted" under BP No. 036120 requires the owner to amend the building's design. The owner would like to relocate the dwelling to avoid extensive site work and avoid removal of the existing "ironwood" tree within the "building envelope". (Refer to DPW comments and requirements).

3. **Agency Comments and Requirements-WH (VAR 03-066):**

- a. The Department of Public Works (DPW) memorandum dated October 30, 2003, states in part:

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

BUILDING

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division)."

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The attached DPW-Building Division memorandum dated October 29, 2003 states in part:

“Approval of the application shall be conditioned on the comments 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, 3 ft. rear
Commercial structures-5 ft. side, 5 ft. rear

The projections do not meet setback requirements and should be corrected.

No openings in the exterior wall are permitted less than 3 ft. from the property line.

The projections shall be constructed to provide a one-hour fire resistive occupancy separation.”

- b. The State Department of Health (DOH) memorandum dated November 13, 2003, states:

“Wastewater Branches’ only concern would be of any nuisance odors which may be more noticeable due to the closer proximity of the plumbing vents located on roof top to the immediate neighbors. Setbacks for the wastewater system would still need to be met unless a variance for the wastewater system is obtained.”

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 notice was mailed on September 22, 2003 and October 2, 2003 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objections to the variance application. The following objection letter from an adjoining property owner was received:

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Objection letter and fax(s), dated November 11, 2003 were received from Dorothy Loo.

Note: A letter was received from the applicant/owner, dated November 13, 2003, together with colored digital pictures of the "Dorothy Loo" dwelling located on be on "TMK: 3-6-4-23-9". The letter states in part:

"I want to be clear in the fact, that my dwelling will be not even within appx (sic) 20 feet of her boundary line. This will be more beneficial for her. My dwelling will not impact her property what so ever, I am not asking to building in the set back that boarders (sic) her property. Attached are photos of Ms. Loo's house.

The only person that my variance would possibly affect is Catherine Lau (TMK: 3-6-4-23-7) who is to the right of me. I actually spoke to Ms. Lau and she did not express verbally any objection to the variance".

SPECIAL AND UNUSUAL CIRCUMSTANCES

Lot 31's topography is severe and the property's slope changes dramatically away from the existing right-o-way (Puu Noho Street). To create a level building area within the property's building envelope would require extensive "fill" and grading to create a "level" grade or foundation to position the permitted dwelling. The owner wishes to maintain the property's natural grade and minimize any "fill" to support and position an amended dwelling design within the property. Portions of the new dwelling will be allowed to be located 10.00 feet from Lot 31's front boundary line and allow a corresponding 5.00 feet front yard open space requirement. The applicant requested a minimum 3 feet side yard from one of the property's 2-side yards and is aware that any revised dwelling improvements along the affected side yard boundary line are subject to minimum DPW building requirements.

ALTERNATIVES

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

1. Locate the proposed dwelling within the Lot 31's building envelope prescribed by the Zoning Code.

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2. Consolidation of Lot 31 with a portion of the adjoining property (Lot 30) 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.

After considering the property's severe topography and character of the subdivision and surrounding land and building patterns, it is felt that the variance request is reasonable and that a revised building position within the minimum yard(s) and attendant front yard open spaces would not detract from the character of the immediate neighborhood or the subdivision. It appears that the proposed dwelling improvements within the property's minimum front yard and front yard open space and affected side yard and minimum side yard open space will not be noticeable or visually obtrusive to the adjoining property(s) or the right-of-way. And, therefore, it is felt, that the revised dwelling position will not depreciate or detract from the character of the adjoining property(s), neighborhood, and the subdivision's existing and surrounding land patterns. The amended building plans will be submitted to the DPW for further review and comply with minimum DPW building yards.

The subject variance application was acknowledged by letter dated October 17, 2003. Additional time to consider property topography, agency comments, and status of the current building permit issued to the TMK property was deemed necessary. The owner/applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than December 26, 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.

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PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

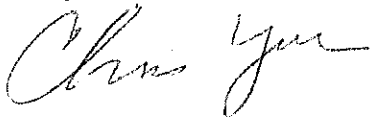
This variance request is approved subject to the following conditions:

1. The applicant/owner, 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 only from the Zoning Code's minimum front yard, side yard, and attendant open yard space requirements. The approval of this variance allows the revised dwelling position and attendant site improvements to be located on Lot 31 or subject TMK property, pursuant to the variance application's site plan map. The dwelling will be constructed pursuant to BP No. 036120 or the applicant/owner will confer with the DPW-Building Division and submit any amended building construction plans to the DPW for approval and meet minimum DPW building yards.
4. The applicant/owner(s) or assigns shall comply with all County rules and regulations and State statutes pertaining to the construction of the dwelling and secure any other necessary construction permits to construct the dwelling from the DPW. BP No. 036120 together with any necessary electrical and plumbing permits to construct the dwelling shall be "closed" or "finaled" by the DPW prior to any further sale or transfer of title of subject TMK property.
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 Lot 31 or 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.

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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

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cc: Real Property Tax - Kona
Planning Department - Kona
Ms. Dorothy Loo