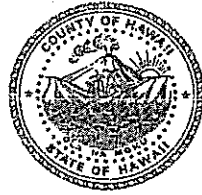


Harry Kim
Mayor



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

Mrs. Renee Confair Sensano
1339 Ridge Avenue
Wahiawa, HI 96786

Dear Mrs. Sensano:

VARIANCE PERMIT NO. 1409 (VAR 03-070)
Applicant: RENEE CONFAIR SENSANO
Owners: RENEE CONFAIR SENSANO
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 1-4-011:071, Lot 59

After reviewing your variance application, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1409 permits portions of a dwelling ("HOUSE") and attendant roof eaves to remain on the subject TMK property, Lot 59, "AS-BUILT", with a minimum 12.30 feet rear yard and minimum 4.93 feet rear yard open space, respectively, according to the applicant's variance site plan map submittal dated August 29, 2003. The variance request is from the minimum yard requirements of the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (1) (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 59 containing 7998 square feet, is located within Kapoho Beach Lots Subdivision, and situated at Kapoho-Halekamahina, Puna, Hawaii.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban "U" by the Land Use Commission (LUC). The improved property is within the Special Management Area (SMA).

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2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee to the Kona Planning Department on or about September 24, 2003. The applicant's variance application site plan or survey map drawing is drawn to scale and dated August 29, 2003. The survey map by The Independent Hawaii Surveyors show the dwelling position, roof eave location(s), and other site improvements, "AS BUILT", on "LOT 59".

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. The "ROCK WALL" or other boundary encroachments must be addressed and resolved between the current property owner and 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 were "finaled" or closed by the Department of Public Works (DPW).

3. **Agency Comments and Requirements-(VAR 03-070):**

- a. The State Department of Health (DOH) memorandum dated November 28, 2003, states:

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

- b. The Department of Public Works (DPW) memorandum dated December 16, 2003, states in part:

"We have reviewed the subject application forwarded by your memo dated November 20, 2003 and have the following comments.

Approval of the application shall be conditioned as noted below.

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."

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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 23, 2003 and December 1, 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.

Note: Mrs. Nancy Ruth Duff called the Planning Department on or about October 9, 2003 to withdraw her objections and objection letter dated September 29, 2003.

SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment problems were discovered during escrow or sale of the subject TMK property (Lot 59). The applicant or current owner is trying to resolve building encroachment issues created by previous owner(s) or builders. The variance application's site plan map was prepared by a surveyor and shows the dwelling "HOUSE" position and other site improvements, "AS BUILT", on Lot 59. This site plan shows that a small portion of a dwelling was constructed beyond the lot's building lines or outside Lot 59's building envelope into Lot 59's rear yard as determined by a previous Planning Department determination and the Hawaii County Zoning Code. The applicant or 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 past owner(s) or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling and wall improvements 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.

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 encroachments or redesigning or relocating the dwelling (HOUSE) to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with portions of adjoining property (s) (Lot 60 and public lands) 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 minimum rear yard and attendant rear yard open space 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 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 November 20, 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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance request is approved subject to the following conditions:

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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 "HOUSE" located on the subject property will not meet Chapter 25, the Zoning Code's minimum yard requirements. The approval of this variance allows the dwelling encroachments identified on the variance application's site plan map dated August 29, 2003, to remain, "AS-BUILT", on the subject TMK property or "LOT 59".

The "ROCK WALL" encroachments located on the subject property (Lot 59) or upon adjoining property shall be addressed between the respective owner(s) of the "ROCK WALL".

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 Lot 59 or the subject TMK property.
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.

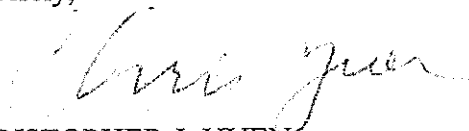
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Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN

Planning Director

WRY:pak

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xc: Real Property Tax - Hilo
Planning Dept. - Kona