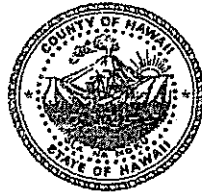


Harry Kim
Mayor



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 29, 2003

Mr. Randal T. Astrande
331 Olu Street
Hilo, HI 96745

Dear Mr. Astrande:

VARIANCE PERMIT NO. 1401 (VAR 03-079)

Applicant: RANDAL T. ASTRANDE
Owners: RANDAL T. ASTRANDE, ET AL.
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 2-4-047:006, Lot 18

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1401 allows portions of a dwelling ("HOUSE") to remain on the tax map key (TMK) property (Lot 18), "AS-BUILT", with a minimum 18.47 feet side yard in lieu of the minimum 20.0 feet side yard, according to the variance site plan map dated March 1, 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 25-5-76, 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 18 containing 1.0016 ACRES, Waiakea Homesteads, is situated at Waiakea, South Hilo, Hawaii.

The property is zoned Agricultural (A-3a) by the County and designated Agriculture "A" by the State of Hawaii-Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Planning Department on or about

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August 1, 2003. The applicant's variance application site plan or map drawing is drawn to scale and dated March 1, 2003. The variance application's site plan or survey map by The Independent Hawaii Surveyors denotes the building envelope, dwelling (HOUSE) position and other site improvements on "LOT 18".

Note: The variance request and site plan map does not identify any cesspool location(s) or Independent Wastewater System (IWS) for the dwelling improvements located on "LOT 18". The "TILE WALL" and "ROCK WALL" improvements located within the respective side yard(s) are permitted landscaping improvements.

3. **Agency Comments and Requirements-(VAR 03-079):**

- 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) response dated December 15, 2003, states in part:

"NO COMMENTS"

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 November 26, 2003 and December 1, 2003, respectively, according to submittals received.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objection letters from surrounding property owners and public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The building encroachment problems were identified pursuant to a survey map or variance site plan map dated March 1, 2003. The applicant filed the variance request and application to

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address or resolve the building encroachment issues. The site plan map was prepared by a surveyor and shows the dwelling and other site improvements, "AS-BUILT", upon "LOT 18". Portions of a dwelling were constructed beyond the denoted building lines or building envelope into Lot 18's minimum yards pursuant to the Hawaii County Zoning Code. The applicant became aware of the dwelling encroachment issues after the survey map was prepared. No evidence has been found to show indifference or premeditation by the past owner(s)/builders or current owner to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements on Lot 18 were constructed between 1978 and 2000 according to County building permit(s) records. It appears that building inspections of the premises by the respective agencies during the construction of the building improvements did not disclose any building encroachment issues or building setback irregularities at that time. The location of any CRM wall or planter improvements encroaching into the public right-of-way shall and status of the any open building and/or outstanding construction permits issued to the TMK property shall be resolved by the applicant/current owner (Refer to Variance Permit Conditions).

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 to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with portions of the adjoining property (Lot 20) 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 the dwelling encroachments constructed on or about 1978 or between 1980 and 2000 within the affected yards are not physically noticeable or visually obtrusive from adjacent property(s) or the right-of-way. It appears that these building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land

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pattern. Therefore, it is felt that these building encroachments within the affected minimum yards identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

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:

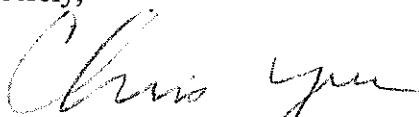
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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 a "HOUSE" located on "LOT 18" will not meet Chapter 25, the Zoning Code's minimum yard requirements according to the variance application's site plan map dated March 1, 2003. The approval of this variance allows those dwelling improvements including roof eaves within "LOT 18" identified on the variance application's site plan map, "AS BUILT", to remain on the subject TMK property or "LOT 18".
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 18), 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 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

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xc: Real Property Tax - Kona
Planning Department - Kona