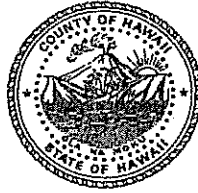


Harry Kim
Mayor



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

April 7, 2004

Mr. and Mrs. Mark Claycomb
13-3643 Nohea Street
Pahoa, HI 96778

Dear Mr. and Mrs. Claycomb:

SUBJECT: VARIANCE PERMIT NO. 1420 (VAR 04-001)
Applicants: MARK CLAYCOMB, ET AL.
Owners: MARK CLAYCOMB, ET AL.
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 1-3-021:037, Lot 208

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. **Variance Permit No. 1420** allows the dwelling/garage and dwelling tank encroachments to remain on the subject TMK property (Lot 28), "AS-BUILT", and permit building addition above the garage with a minimum side yard(s) of between 16.0 feet to 18.0 feet side yards in lieu of the minimum 20.0 feet side yard according to the variance site plan dated November 18, 2001 and other supplemental plan submittals. The variance request is from the subject property's minimum side yard pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 28 containing 1.000 acre, is located within Leilani Estates Subdivision, File Plan 672, and situated at Keahialaka, Puna, Hawaii.

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The property is zoned Agricultural (A-1a) by the County and designated Urban "U" 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 or about December 5, 2003. The applicant's variance application site plan or map drawing is drawn to scale and dated November 18, 2001. The map by Paul H. Murray & Associates denotes the dwelling and water tank improvements and other site improvements on "LOT 28".

Note: The variance request does not address the cesspool or other individual wastewater system (IWS) location or any other site improvements straddling property lines or common boundary lines shared with adjoining Lot 29. Any other boundary encroachments must be addressed and resolved by the applicant or between the current property owner(s) and adjoining property owner(s) or affected agencies.

The applicant forwarded a copy of proposed building plans showing the proposed building addition.

3. **Agency Comments and Requirements-(VAR 04-001):**

- a. The State Department of Health (DOH) memorandum dated January 23, 2004 states:

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

- b. The Department of Public Works (DPW) memorandum dated January 29, 2004 states:

We have reviewed the subject application forwarded by your memo dated January 7, 2004 and have the following comments.

Approval of the application shall be conditioned as noted below.

All new building construction shall conform to current code requirements.

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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.”

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 December 9, 2003 and January 13, 2004 by the applicants.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objections from surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicants or current owners are trying to resolve original building position issues. 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 28". The applicants or current owners 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 owners to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling and water tank improvements were started 13 + years ago under valid building permit(s) and other construction permits issued by the County. It appears that building inspections of the premises between 1991 and 1999 by the agencies during construction of the dwelling and water tank improvements did not disclose any building encroachment issues or building setback irregularities at that time.

The applicants are proposing a second story addition upon existing garage and have requested a variance to allow portions of the proposed addition. The applicant's propose to utilize the existing garage foundation position and building geometry to avoid an awkward exterior building character. The proposed building addition and alignment of existing walls with proposed building walls would maintain a balanced building shape or geometry. The resultant building addition would not detract from the building character within the subdivision.

ALTERNATIVES

Alternatives available to the applicant to address and correct the existing building encroachments

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include the following actions:

1. Removing the existing building encroachments or redesigning or relocating the dwelling and proposed improvements to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation with portions of the adjoining property (Lot 29) and resubdivision of the resultant lot to modify property lines and adjustment of minimum yards. At this time, Lot 29 is owned by the applicants and they do not wish to consolidate Lot 28 with Lot 29 nor adjust the common side boundary line via a consolidation/resubdivision action.

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.

The original dwelling and water tank encroachment issues constructed on the property between 1991 and 1999 within the affected side yard are not physically noticeable or visually obtrusive from adjoining property(s) or right-of-way. It is felt that the proposed building alterations or additions will not be obtrusive or detract from the character of the surrounding neighborhood, public uses, and surrounding land pattern. Therefore, it is felt that the original dwelling's position and proposed dwelling addition above the garage within the affected minimum side yard identified on the variance application's site plan map dated November 18, 2001 and proposed building additions shown on the supplemental 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 January 7, 2004 and additional time to consider building permit history and other agency concerns was deemed necessary. The applicant, on behalf of the current owners, agreed to extend the date to no later than March 31, 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

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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 the dwelling and water tank constructed on subject TMK property and proposed "additions" located upon the "Garage" on "LOT 28" will not meet Chapter 25, the Zoning Code's minimum yard requirements according to the variance application's site plan map dated and signed November 11, 2001 and other supplemental drawings. The approval of this variance allows the dwelling, water tank, and proposed building improvements including roof eaves to remain, "AS-BUILT" and be constructed on "LOT 28", respectively, to remain and constructed pursuant to the variance application's site plan map and supplemental plans in subject variance file.
4. The building permit and necessary construction permits for the proposed addition shall be secured from the DPW.
5. The building permit and construction permits for the proposed building addition shall be closed or "finaled" by the DPW-Building Division prior to any change in title or sale of the property.
6. 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 28 or the subject TMK property.

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7. 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 - Hilo
Planning Department - Kona