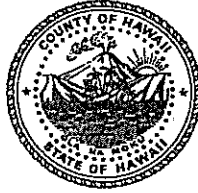


Harry Kim
Mayor



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 14, 2004

Mr. Daniel J. Daub
586 Kanoelehua Avenue
Hilo, HI 96720

Dear Mr. Daub:

VARIANCE PERMIT NO. 1423 (VAR 04-003)

Applicant: DANIEL J. DAUB

Owners: CALVIN TUNG, ET AL.

**Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code**

Tax Map Key: 2-2-045:141, Lot 14

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1423 allows portions of a dwelling and attendant roof eaves to remain on the subject TMK property, Lot 14, "AS-BUILT", with a minimum 14.46 feet front yard and approximately 12.0 feet front yard open space, respectively, according to the applicant's variance site plan map submittal dated November 5, 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 14 containing 10,902 square feet, is located within Waiakea Homesteads House Lots, and situated at Waiakea, South Hilo, Hawaii.

The subject TMK property is zoned Single-Family Residential (RS-10) by the County and designated Urban "U" by the State Land Use Commission.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Planning Department on or about December 10, 2003. The applicant's variance application site plan or map

NO 91189
APR 15 2004

Mr. Daniel J. Daub
Page 2
April 14, 2004

drawing is drawn to scale and dated November 5, 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 14".

3. **Agency Comments and Requirements- (VAR 04-003):**

- 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 no comments or objections to the request."

4. **Notice to Surrounding Property Owners.** Proof of mailing notice(s) to surrounding property owners was submitted to the Planning Department. For the record, the first and second notice(s) were mailed on December 10, 2003 and February 17, 2004, respectively, by the applicant.

5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections from surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The building encroachment problems were identified pursuant to a survey map or variance site plan map dated November 5, 2003. The applicant/owner filed the variance request and application to address or resolve building encroachment issues. The site plan map was prepared by a surveyor and shows the "HOUSE" improvements, "AS BUILT", on "LOT 14". Portions of a dwelling were constructed beyond the lot's building lines or building envelope into Lot 14's minimum front yard and front yard clear space requirements pursuant to the Hawaii County Zoning Code. The applicant became aware of the dwelling encroachment issues after the sale of

Mr. Daniel J. Daub

Page 3

April 14, 2004

the property or survey map was prepared. No evidence has been found to show indifference or premeditation by the past builders or the applicant/current owner to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements on Lot 2 were constructed approximately 18 years ago according to the applicant's background and County building permit(s) records. It appears that building inspections of the premises in 1986 by the agencies during construction of the building 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:

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 of the subject TMK property with the R-O-W (Nohona Street) 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 nearly 18 years ago within the front and minimum front yard and attendant front yard open spaces are not physically noticeable or visually obtrusive from adjacent property(s) or the public 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 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.

Mr. Daniel J. Daub

Page 4

April 14, 2004

The subject variance application was acknowledged by letter dated January 7, 2004. Additional time to consider agency comments and complete the variance background 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 April 15, 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:

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 14" will not meet Chapter 25, the Zoning Code's minimum yard requirements according to the variance application's site plan map dated November 5, 2003. The approval of this variance allows those dwelling improvements including roof eaves within "LOT 14" identified on the variance application's site plan map, "AS BUILT", to remain on the subject TMK property or "LOT 14".
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, subject to provisions of the Zoning Code or State Law which may change from time to time.

Mr. Daniel J. Daub

Page 5

April 14, 2004

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

WRY:pak

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xc: Real Property Tax - Hilo
Planning Department – Kona