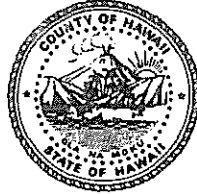


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • FAX (808) 961-8742

August 23, 2006

Mr. Yen Wen Fang, P.E.
ENGINEERING PARTNERS, INC.
P. O. Box 4159
Hilo, HI 96720

Dear Mr. Fang:

VARIANCE-VAR 04-006

Applicant: ENGINEERING PARTNERS, INC.

**Owner: COUNTY OF HAWAII-
DEPARTMENT OF WATER SUPPLY (DWS)**

**Request: Variance from Chapter 25, Zoning
Minimum yards**

Tax Map Key: 2-4-007:109, Lot 9

After reviewing your application the Planning Director certifies the approval of variance-VAR 04-006 subject to variance conditions. The variance permits construction of proposed "Alameda Booster Pump Station" improvements on subject TMK property with minimum 8.00 feet front yard and minimum 3.00 feet side yard in lieu of minimum 30 feet front yard and minimum 20 feet side yards according to revised site plan (Proposed Work Plan) submittal. The variance is from the TMK property's minimum 30.00 feet front yard and attendant minimum 24.00 feet front yard open space pursuant and minimum 20.00 feet side yard and attendant minimum 14.00 feet side yard open space pursuant to the Hawaii County Code, Chapter 25, Zoning, 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 TMK property containing 3.122 acres is a portion of Waiakea Homesteads and situated at Waiakea, South Hilo, Hawaii.

The property is zoned Agricultural (A-3a) by the County and designated Agriculture "A" by the Land Use Commission (LUC). The property is not within the Special Management Area (SMA).

2. **Variance Application-Site Plan**. The applicant submitted the variance application, original site plan, attachments, and filing fee on or about December 23, 2003. The variance application's site plan maps are drawn to scale and prepared by the applicant. The applicant submitted a revised variance site plan map (PROPOSED WORK PLAN) on August 3, 2006 denoting the position of the Alameda Booster Pump Station within a 15 feet wide easement on the subject TMK property.

The applicant's background dated December 9, 2003 states in part:

"The variance is for location the proposed 8' by 12' wood framed MCC building 2-4 feet from the property/easement line. This proposed building is to house the new motor control equipment as required for the upgrade of the existing booster pump station. Electrical hazard is the main concern for the DWS field workers to provide maintenance."

Note: The revised variance site plan map denotes the proposed (8' x 14') building's location and does not identify the location of the cesspool or Independent Wastewater System (IWS) on the subject TMK property. The variance request does not address the location or position of any fencing and landscaping improvements, etc. within the 15 feet wide easement or elsewhere on the subject TMK property.

3. **County Building Records:**

County building records show numerous Building Permits, Electrical Permits, and Mechanical or Plumbing Permits were issued to subject TMK property. However, it appears that these building permits and related construction permits are unrelated to the proposed DWS booster pump improvements within the 15-foot wide easement on the subject TMK property.

4. **Agency Comments and Requirements-VAR 04-006:**

- 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.

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.

One hour construction less than 5'-0" to the property line. Openings not permitted less than 5'-0" to the property line."

5. **Notice to Surrounding Property Owners.** Proof of mailing notices to surrounding property owners was submitted to the Planning Department. For the record, the first and second notices were mailed on January 8, 2004 and January 14, 2004, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on January 13, 2004.
6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the County of Hawaii-DWS, submitted the variance application to address the proposed improvements within the easement on the subject TMK property. The variance application's site plan map was prepared by an engineer and denotes the location of the proposed DWS improvements and other site improvements. The proposed building area is subject to the limits of the existing 15 feet wide easement. The proposed building improvements are related to the existing water line improvements and public water distribution system belonging to the County-DWS. In addition the building is being built for safety reasons and not intended for habitation.

ALTERNATIVES

Alternatives available to the applicant-DWS to address the proposed building's position on the subject TMK property include the following actions:

1. Expanding the easement or redesign the building to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of property with adjoining property(s) lines or adjust minimum yards, etc.

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.

Given the limitation of the easement's width and nature of the proposed building and site improvements for the County-DWS, it is felt that the proposed non-habitable booster pump building and related site improvements within the existing easement will not depreciate or detract from the character of the property, neighborhood, and surrounding land patterns. Therefore, it is felt that these building encroachments or proposed minimum front and minimum side yards identified on the revised 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 January 7, 2004 and additional time to consider a revised building plan and consider agency comments was necessary. The applicant requested an extension of time to address the final building design and allowed a time extension to the Planning Director to render a decision on the variance application.

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 a proposed "MCC BUILDING" or the County of Hawaii-DWS "Alameda Booster Pump Station" and related site improvements within existing 15 feet wide easement on subject TMK will not meet the minimum 30 feet front yard and 20 feet side yard and attendant minimum open yard space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's revised site plan map. The approval of this variance permits the "Alameda Booster Pump Station" building improvements to be constructed on the subject TMK property in accordance with the revised variance site plan map and/or approved detailed building construction plans.
4. Future or new building improvements and permitted uses within the easement or subject TMK property shall be 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:cd
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xc: Real Property Tax Office-(Hilo)