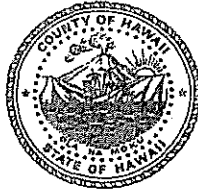


Harry Kim
Mayor



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

June 10, 2004

Mr. Rodney Y. Sako
P. O. Box 958
Keaau, HI 96749

Dear Mr. Sako:

VARIANCE PERMIT NO. 1456 (VAR 04-009)
Applicant: RODNEY SAKO
Owner: RODNEY SAKO
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 1-6-145:032, Lot 8961

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1456 allows the "AS-BUILT" dwelling addition or "STORAGE RM. ADDITION" on subject TMK property, Lot 8961, with a minimum 2.5 feet to 3.0 feet side yard and minimum 2.5 feet to 3.0 feet side yard open space in lieu of the minimum 10.0 feet side yard and attendant minimum 5.0 feet side yard open space requirements, respectively, according to the variance site plan map submitted with the variance application. The variance request is from subject TMK property's minimum side yard and attendant side yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (B), 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 8961 containing 12,142 square feet, is portion of Land Court Application 1053, Map 234, and situated at Keaau, Puna, Hawaii. The property's street address is 16-586 Ohe Street.

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The property is zoned Single-Family Residential (RS-10) 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 on or about December 30, 2003 and other variance submittals on January 7, 2004. The variance application site plan map drawing is drawn to scale and denotes the location of the dwelling or storage room encroachments, "AS-BUILT", within a minimum 10 feet side yard.

The applicant's background states in part:

"The slab for the attached storeroom, for which the variance is requested, was poured by the contractor with the original foundation of the house. Other site alternatives for an attached storeroom would obstruct light and ventilation to the living space of the house. In addition, access would be difficult to an alternative site for the attached storeroom structure, as access would have to be through the main living room or one of the bedrooms, again obstructing light and ventilation. The only other possible location for an attached storeroom would block the electrical box for the house.

The attached storeroom in question is for residential use only and is attached to the original dwelling. The addition is a small structure, 7.5 feet by 13 feet (97.5 sq. ft.) and is only used for storage with no intended uses. The use is quiet in nature and is not intended to interfere with neighboring property owners or occupants."

3. **Agency Comments and Requirements-(VAR 04-009):**

- a. The Department of Public Works (DPW) memorandum dated February 27, 2004, states in part:

"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 note below.

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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, 5 ft. and 5 ft. rear.”

- b. The State Department of Health (DOH) memorandum dated March 22, 2004 states:

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

4. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. The first and second notices were mailed on December 31, 2004 and February 28, 2004, respectively, by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections were received from adjoining property owner(s) or public.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The encroachment issue was discovered after the concrete slab was poured and storage room addition was built by a contractor. The applicant is trying to resolve the storage room's position or building encroachment issues. The variance application's site plan map, prepared by the applicant, denotes the location of the dwelling/storage room improvements and other site improvements, "AS BUILT" on subject TMK property "LOT 8961". The site plan identifies the dwelling's building position together with other building issues within the property's minimum side yard and attendant side yard open space requirements pursuant to the Hawaii County Zoning Code. No evidence was found to show indifference or premeditation by the contractor, builders, and/or applicant to deliberately create or intentionally allow the dwelling encroachment to be constructed.

County building records indicate a building permit and related construction permits to construct a dwelling were "finalized" or closed by the DPW-Building Division. It appears that the storage room addition was built without a building permit. As such, the applicant or current owner will be required to obtain an "after-the-fact" building permit and/or other construction permits for the storage room addition in accordance with DPW-Building Division comments and variance conditions cited below.

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ALTERNATIVES

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

1. Remove the building encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 8961 with adjoining lot (8960) and resubdivision to modify property lines and adjust 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 addition or storeroom within the affected side yard is not physically and visually obtrusive from the adjacent property or rights-of-way. No objections from the adjoining property or surrounding property owners were received. It appears the building encroachments do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the portions of the dwelling or storage room encroachment within the side yard identified on the variance application 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 February 23, 2004 and additional time to consider agency comments was 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 June 7, 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.

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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 dwelling or "AS-BUILT STORAGE RM. ADDITION" on the subject TMK property or Lot 8961 will not meet Chapter 25, the Zoning Code's minimum yard and attendant minimum open yard requirements. The approval of this variance allows dwelling or storage room encroachments identified on the variance application's site plan map to remain, "AS BUILT", on the subject TMK property (Lot 8961).
4. Confer with the DPW-Building Division to secure building and construction permits for the storeroom addition or dwelling addition on the subject TMK property (Lot 8961). All building and construction permits issued to the TMK property shall be closed or "finaled" by the DPW-Building Division prior to transfer of title or future sale of the property.
5. No permit to allow an ohana dwelling shall be granted on subject TMK property (Lot 8961), subject to provisions of the Hawaii County Zoning Code or State Law which may change from time to time.
6. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

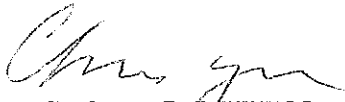
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Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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