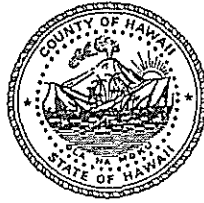


Harry Kim
Mayor



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

September 17, 2004

Mr. Jeffrey M. Citron
P. O. Box 982
Kailua-Kona, HI 96704

Dear Mr. Citron:

VARIANCE PERMIT NO. 1475 WH (VAR 04-018)

Applicant: JEFFREY M. CITRON
Owners: JEFFREY M. CITRON
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 8-1-013:023

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1475 allows portions of a ohana dwelling (1-Story House), located within an area identified as "APARTMENT 1" or portion of Lot 16, to remain, "AS-BUILT" with a minimum 24.5 feet to 24.8 feet rear yard and portions of deck/eave with a minimum 8.0 feet to 8.1 feet side yard open space in lieu of the minimum 25.0 feet rear yard and minimum 10.0 feet side yard open space, respectively, according to the variance site plan map dated January 28, 2003. The variance request is from the ohana dwelling's minimum rear yard and attendant minimum side yard open yard requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-7, Minimum yards, (a)(2)(A)(B), Article 6, Division 3, Section 25-6-35, Minimum building site area and yards, (b), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

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MD 061443

SEP 20 2004

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 16 containing 17,081 square feet, is a portion of Royal Patent 4386 and 7532, Land Commission Award 8452, Apana 10 to A. Keohokalolo, and situated Kaawaloa, South Kona, Hawaii.

The property is zoned Single-Family Residential (RS-15) by the County and designated Urban "U" by the Land Use Commission (LUC).

Ohana Dwelling Permit (OHD 2002-06) was granted on May 8, 2002. The ohana dwelling unit is subject to "Minimum Yards (Setbacks) and Open Space" (Page 6).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on February 4, 2004. The variance application site plan map drawing, drawn to scale and dated January 28, 2004, was prepared by Wes Thomas Associates. The site plan map denotes the location of the both dwellings, "AS-BUILT", on "LOT 16". Portions of the "1-Story House" or "ohana" dwelling unit on "LOT 16" encroaches into the ohana dwelling's minimum yards stipulated by OHD 2002-06.
3. **Agency Comments and Requirements-WH (VAR 04-018):**

- a. The Department of Public Works (DPW) memorandum dated March 9, 2004, states in part:

"We reviewed the subject application and our comments are as follows:

BUILDING

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division)."

The attached copy of the DPW memorandum dated March 8, 2004, States in part:

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“Approval of the application shall be conditioned on the comments 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, 3-ft. rear
Commercial structures-5 ft. side, 5 ft. rear”

- b. The State Department of Health (DOH) memorandum dated March 17, 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. For the record, it appears that first and second notices were mailed on February 27, 2004 and April 13, 2004 respectively, by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections or comments were received from surrounding property owners or public.

SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment problems were discovered after both dwelling were built. The applicant is trying to resolve the building encroachment issues. The variance application's site plan map was prepared by a surveyor and denotes the location of both dwelling and other site improvements, “AS BUILT” on “LOT 16”. The site plan identifies the dwelling's building position together with other building issues within the property's minimum yards and attendant open yard requirements for the first dwelling and “ohana dwelling” pursuant to the Hawaii County Zoning Code. The applicant became aware of building encroachment issues and no evidence has been found to show indifference or premeditation by applicant to deliberately create or intentionally allow the ohana dwelling encroachments to be constructed.

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The dwelling improvements were constructed under valid building permit(s) and other construction permits issued by the County; and initial inspections by the agencies did not disclose any building encroachment issues or building setback irregularities.

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 subject TMK property with adjoining TMK property 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 ohana dwelling encroachments into the minimum yards are not physically and visually obtrusive from adjacent property(s) or rights-of-way. It appears the building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that the ohana dwelling encroachments within the affected yards 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 notify surrounding property owners and complete the variance background report 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 September 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.

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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

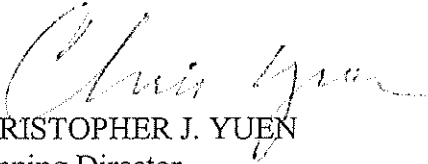
This variance request is approved subject to the following conditions:

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 the "ohana" dwelling, "AS-BUILT", were constructed within the ohana dwelling's minimum rear yard and side yard open yard requirements on subject TMK property, pursuant to Chapter 25, Zoning. The approval of this variance allows the ohana dwelling encroachments, "AS-BUILT" to remain on the subject TMK property (LOT 16) according to the variance site plan map dated January 28, 2004.
4. 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

WRY:cd

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xc: OHD 2002-06 File
Real Property Tax Office - Kona
Planning Dept. - Kona