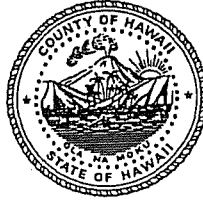


Harry Kim
Mayor



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

December 28, 2004

Mr. Neil Erickson, Architect
82 Ponahawai Street
Hilo, HI 96720

Dear Mr. Erickson:

VARIANCE PERMIT NO. 1498 WH (VAR 04-048)

Applicant: NEIL ERICKSON-ARCHITECT

Owners: JAMES SADLER, ET AL.

**Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning**

Tax Map Key: 7-7-010:010

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1498 will allow portions of a new dwelling to be built on the subject TMK property (Lot 2) with a minimum 3.00 feet front yard and attendant 2.00 feet front yard clearspace and minimum 3.00 and minimum 6.0 feet side yard(s), according to the variance site plan map prepared on behalf of the applicant by the Project-Architect. The variance request is from the property's minimum 15.00 feet front yard, minimum 8.00 feet side yard(s), and corresponding minimum front and side yard clear space requirements, respectively, pursuant to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (1) (A) (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, containing 7560 square feet +/-, is situated at Laaloa 1st. -Kapalaalaea 2nd. (Beach Section), North Kona, Hawaii. The property is zoned Single-Family Residential (RS-7.5) by the County and designated Urban "U" by the Land Use Commission (LUC). The property is within the Special Management Area (SMA).

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2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about April 5, 2004. The variance application site plan map denotes the location of the proposed dwelling. The dwelling improvements will be constructed outside the 20 feet wide shoreline setback area within the property.

Note: The dwelling's wastewater system was not identified or located on the variance site plan map. The variance request does not address the location of any stonewalls improvements along the property's boundary and/or planting materials on the property.

3. **Agency Comments and Requirements-WH (VAR 04-048):**

- a. The Department of Public Works (DPW) memorandum dated April 19, 2004, states in part:

“We oppose the approval of the application for the reasons noted below.

The minimum setbacks shall be maintained as follows:

Residential structures-3 ft. side, 3 ft. rear

Commercial structures-5 ft. side, 5 ft. rear

Others: The plumbing permit No. MK03243 was not finalized.”

The DPW memorandum dated April 20, 2004 states in part:

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

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division).
2. Flood Zone “VE”, affects the subject parcel as designated by the Flood Insurance Rate Map (FIRM), dated September 16, 1988. Any new substantial improvements in the VE zone will be subject to the requirements of Chapter 27-Flood Control, of the Hawaii County Code.

3. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawaii County Code.
 4. All driveway connections to a County road shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code.
 5. The applicant should provide adequate off-street parking. To provide for safe vehicular ingress and egress to and from Alii Drive a turnaround or a loop driveway should be provided so backing into or from Alii Drive will not be necessary. To prevent traffic delays on Alii Drive, we also request a condition that no vehicular security gate is allowed between the building line and Alii Drive.
 6. A permit to work within the County right-of-way shall be required for the driveway approach and alterations to the existing guardrail.”
- b. The State Department of Health (DOH) memorandum dated April 30, 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 April 19, 2004 and April 20, 2004 according to the mailing receipts submitted.
 5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following objection letters, letters supporting the variance application, and copies of correspondence, were received:
 - a. Objection letter received on April 26, 2004 from Ronald and Patricia Worrell.
 - b. Objection letter received on April 30, 2004 from Arthur J. Ludwick, Trustee, Ludwick Family Trust.

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- c. Objection letter received on May 10, 2004 from Steven E. Peden.
- d. Objection letter received on May 10, 2004 from Sharon and Robert Muravez.
- e. Objection letter received on May 10, 2004 from Alan S. Pratt, Ph. D, Et al.
- f. Support letter received on May 10, 2004 from Dick Tozer.
- g. Copy of applicant's letter (response) sent to Peden.
- h. Copy of applicant's letter (response), received on May 20, 2004, sent to Ludwick, Et al.
- i. Support letter, received on May 24, 2004, from David E. Schlegel.
- j. Copy of applicant's letter (response), received on May 25, 2004, sent to Pratt, Et al.
- k. Copy of Pratt's letter addressed to applicant received on May 29, 2004.
- l. Copy of Peden's letter or email dated July 9, 2004 sent to applicant regarding minimum side yard (6 feet).
- m. Status letter and extension request received from applicant on June 15, 2004 and request from project architect for additional time to prepare a revised variance site plan map showing 6'-0" minimum (south) side yard and proposed building footprint.

The applicant requested a site inspection by Planning Department staff to verify the property's topography and other unusual conditions within the property. On or about May 19, 2004 PD staff viewed subject property from Alii Drive and from adjoining TMK property owned by Dick Tozer, Et al.

In addition to information cited in the applicant's letter, the original applicant(s) requested staff to consider the unusual circumstances, i.e. the property's shape, "lay of the land", vegetation, and other circumstances limiting building options.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant (Neil Erickson-Architect) submitted a revised variance site plan map. The original applicant's-Miraglia, Et al, were requesting a variance to permit portions of the proposed dwelling to be allowed with a minimum 1.00 feet front and minimum 3 feet side yard(s) in lieu of the minimum 15 feet front and minimum 8 feet side yard requirements, and respective open space requirements. The variance application's recent site plan map was submitted by the applicant's Project Architect to denote the minimum front yard(s) requested and minimum 3 feet side yard from the South Kohala side boundary line and 6 feet side yard from the Kau side boundary line. (According to the Project Architect, detailed building construction plans will be revised to show the dwelling's position with a minimum 3.00 feet front yard and minimum 2.00 feet front yard clear space for permitted projections to address DPW-Building Division or UBC requirements. The proposed dwelling's geometry or "foot print" will conform substantially to the proposed dwelling's footprint identified on the recent variance site plan map). The proposed dwelling improvements, including projections, will be located outside or "mauka" of a minimum 20 feet wide shore line setback area on the TMK property and 3 feet from the "South Kohala" side side boundary line and 6 feet from the "Kau" side boundary line(s), respectfully.

The recent staff inspection confirmed the property's unusual lot shape or geometry, rocky nature or "lay of the land", and notes the natural land features and required minimum 20 feet shoreline setback from the shoreline limit the building limits. In view of similar residential building and other land patterns "mauka" of Alii Drive (lots not abutting the shoreline), it is felt that the variance from the property's minimum front and side yards and the attendant open yard space(s) will not detract from the surrounding building patterns along Alii Drive and/or the surrounding neighborhood.

ALTERNATIVES

Alternatives available to the applicant include the following:

1. Construct proposed dwelling the building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property with adjoining property (Right-of-Way) 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.

The Planning Director acknowledges the objections and concerns cited by surrounding property owners contacted. However, lot shape and lot geometry along the shoreline, topography or "lay of the land", and other SMA requirements limit building size and options. Access to the proposed dwelling is via Alii Drive and the property(s) directly affected by the variance request are the adjoining lots on the adjoining property(s) identified as (TMK: (3) 7-7-10: 011 owned by Dick Tozer, Et al. and TMK: (3) 7-7-10: 073 owned by Steven E. Peden). The proposed dwelling's position or applicant's recent site plan map prepared by the Neil Erickson-Architect identifies the minimum 6 feet side yard from the common side boundary side shared with the (TMK: (3) 7-7-010:073 owned by Steven E. Peden and comports to Peden's July 9, 2004 letter or discussion with the applicants regarding a minimum 6.00 feet side yard in lieu of the original minimum 3 feet side yard request. The earlier site plan submitted shows there is a 13 feet wide shoulder between the property's front boundary line and the road pavement and "metal guard rail". The property's proposed access (28 feet wide driveway approach) includes a paved driveway within the 13 feet wide shoulder. The access driveway improvements within the 13 feet wide shoulder will augment vehicular turnaround or ingress/egress between the parking spaces within the dwelling's garage and Alii Drive. The dwelling's garage wall along the property's front boundary line will be situated approximately 16 feet from the edge of pavement or the "metal guard rail" within Alii Drive. Therefore, in view of the unusual lot geometry, topography, etc., it is felt that the dwelling's proposed position or building geometry will not detract from the character of the immediate neighborhood or detract from the streetscape. The proposed dwelling's maximum building height will be limited to 35 feet measured from the average "finished" grade within the property; which is several feet lower than the pavement grade within the Alii Drive Right-of-Way, and minimum access and driveway requirements to the parking spaces and UBC building requirements pursuant to the DPW will be addressed and met.

The subject variance application was acknowledged by letter dated February 24, 2004 and additional time to consider agency comments, inspect the property, and allow the applicant to address and respond to objections and comments received from surrounding property owners was necessary. The applicant agreed to extend the date to complete the variance background report and render a decision on the subject variance to no later than December 20, 2004.

Based on the foregoing findings and site inspection of the property, 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(s), successors or assigns 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. The approval of this variance permits allows the proposed "BUILDING" or single-family dwelling's position identified on the variance application's site plan map-SHEET NO. 3, drawn to scale. The proposed dwelling is permitted with a minimum 3'-0" feet front yard/2.00 feet front yard clear space and minimum 3'-0" and minimum 6'-0" side yard(s), respectively. The proposed dwelling improvements are located outside the 20'-0" feet wide shoreline setback area denoted on the variance site plan map.

The access location and driveway improvements between the proposed dwelling and pavement within the Alii Drive Right-of-Way shall be approved by the DPW. The dwelling and roof eaves or building projections are further subject to minimum building code open yard requirements for residential improvements. The proposed "building footprint" or building geometry identified on detailed building construction plans shall conform to the approved variance site plan map prepared by the Project Architect and comply with minimum front yard requirements stipulated by the DPW-Building Division and/or County Building Code.

Mr. Neil Erickson, Architect

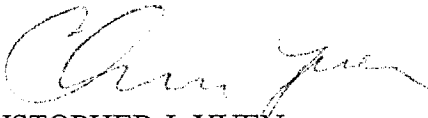
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4. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.
5. Future building improvements and permitted uses on the property shall be subject to State law and County ordinances and SMA 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 Office-Kona

✓ Planning Dept.- Kona

Mr. and Mrs. Ronald Worrell

Mr. Steven E. Peden

Mr. Arthur J. Ludwick, Trustee

Mr. Robert Muravez

Mr. and Mrs. William North

Alan S. Pratt, Ph.D., Et al.

Mr. Jeffery Newton

Ms. Kathryn Martin