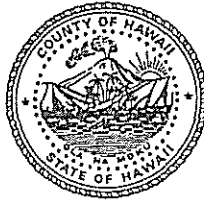


Harry Kim
Mayor



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 15, 2004

Mr. and Mrs. William Mason
30 Palani Street
Hilo, HI 96720

Dear Mr. Mason:

VARIANCE PERMIT NO. 1495 (VAR 04-074)

Applicants: WILLIAM MASON, ET AL.

Owners: WILLIAM MASON, ET AL.

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

Tax Map Key: 2-5-038:071 and 072, (CON 1111)

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1495 permits portions of proposed dwelling and detached carport/water tank building to be built on the recently consolidated property (15,568 square feet) with a minimum 15.00 feet rear yard and minimum 7.00 feet to 10.00 feet side yard, and associated minimum rear yard and minimum side yard clear space requirements, in lieu of the minimum 20 feet rear yard and minimum 10 feet side yard, and attendant clear space requirements, pursuant to the applicant's variance site plan map submittal. The variance request is from the minimum yard requirements of 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).

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BACKGROUND AND FINDINGS

1. **Location.** The subject property(s) or proposed Lot 9-A, consisting of an aggregate area of approximately 15568 +/- square feet, is Lot 9 and Lot 10, Block 1, Kaumana City Subdivision, Increment 1-A, File Plan 907, and situated at Ponahawai, South Hilo, Hawaii.

The parcel(s) were zoned Agricultural (A-20a) by the County and designated Agriculture "A" by the Land Use Commission (LUC). The referenced TMK parcel(s) were consolidated into Lot 9-A consisting of 15,568 square feet on October 8, 2004 (CON 1111).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about September 23, 2004. The variance application site plan map drawing is drawn to scale and denotes the location of the dwelling improvements and access from Ua Nahele Street.

The applicant's variance letter or background states in part:

"We have applied to consolidate two lots into one. We request to retain the present setback of 15' from the west boundary which borders (sic) the forest reserve. Designing our dream home to best fit the topography has been a challenge. Retaining the pre-consolidation setback seems to be the one solution to a number of undesirable outcomes, please see attached Plot Plan. Retaining the pre-consolidation setbacks would:

Allow for building our home with minimal impact on the environment.

Allow for the best placement of the planned structures.

Minimize the amount of excavation and fill required for the construction of the planned structures.

Minimize the cutting of ancient Ohia trees which are a priceless landscape feature."

Note: The variance request does not address any landscape materials near or straddling common boundary lines.

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3. **Agency Comments and Requirements-WH (VAR 04-084):**

- a. The State Department of Health (DOH) memorandum dated October 11, 2004 states:

“The use of individual wastewater systems is allowed. The type and number of individual wastewater systems to be used will be determined by the wastewater rules in effect at the time of building permit application.”

- b. The Department of Public Works (DPW) memorandum dated October 22, 2004, states in part:

“We have reviewed the subject application forwarded by your memo dated September 30, 2004 and have the following comment.

All new building construction shall conform to current code requirements.”

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 September 22, 2004 and October 26, 2004 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No comments or objections from the surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicants/owners are requesting a variance to permit portions of the proposed dwelling and water tank to be permitted with a minimum 15 feet rear yard and 7 feet side yard in lieu of the minimum 20 feet rear and minimum 10 feet side yard requirements. The variance application's site plan map was prepared by the applicant.

ALTERNATIVES

Alternatives available to the applicant include the following:

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1. Construct proposed dwelling within the building envelope prescribed within the Consolidated lot according to Zoning Code.
2. Consolidation of the subject TMK property with adjoining lot and (Forest Reserve) public 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.

However, given the history of the original subdivision, adjoining non-conforming lots or surrounding property sizes and uses, history of house construction activity in the area, unusual "lay of the land", and other "natural and landscaping features" within the subdivision, the applicant's request is reasonable. The proposed dwelling's position or request to specify a minimum 15 feet rear yard and minimum 7 feet side yard for the building improvements, denoted on the variance site plan map, will not depreciate or detract from the character of the surrounding neighborhood or surrounding land patterns. The applicant's desire to consolidate their original 2-smaller non-conforming lots was due to site features or natural plantings growing on or between both lots, etc., to position the building improvements within the southwestern corner of the "consolidated" property-Lot 9-A. The proposed dwelling/carport/water tank improvements are being designed to utilize or respect natural topography and incorporate access and mature "ohia" trees and vegetation into the design without having to resort to extensive grubbing or grading of both lots or removal of planting materials to create a buildable site prescribed by the Zoning Code. The applicant's request from the specific minimum yards and associated open yard spaces for the dwelling improvements and detached carport/water tank building(s) will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated September 30, 2004 and additional time to review the consolidation application and complete the variance background report 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 15, 2004.

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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, 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 proposed "Primary Dwelling" and detached "Carport/Water Tank" building improvements will not meet Chapter 25, the Zoning Code's minimum rear, minimum side yard requirements, and associated open yard requirements. The approval of this variance permits the construction of the proposed dwelling or the primary dwelling/attached bungalow (bedroom) and detached carport/water tank building position(s) identified on the approved variance site plan map. Other future buildings and uses shall comply with the building limits of the variance or minimum Zoning Code requirements.
4. Future building improvements and permitted uses on the property 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: Real Property Tax Office-Kona
Planning Dept.- Kona