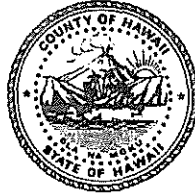


Harry Kim
Mayor



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 04-079 (Amends VAR 1405)
Applicant: ENGINEERING PARTNERS, INC.
Owner: COUNTY OF HAWAII-
DEPARTMENT OF WATER SUPPLY (DWS)
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 1-8-005:142, Lot 169-F-2

After reviewing your application the Planning Director certifies the approval of variance-VAR 04-079 subject to variance conditions. VAR 04-079 amends VAR 1405 dated January 26, 2004 and permits construction of proposed "Olaa No. 8 Booster Station Improvements" or proposed new building improvements including roof eaves and other related site improvements to be built on subject TMK property pursuant to revised site plan submittal dated June 9, 2003. The variance is from the TMK property's minimum 15 feet front yard, minimum 15 feet rear yard, and minimum 8 feet side yards; and, the attendant minimum 10.00 feet front yard open space, minimum 10.00 feet rear yard open space, and minimum 5.00 feet side yard open space requirements, respectively, 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, Lot 169-F-1 containing approximately 0.023 acre (989.00 square feet), is a portion of Grant 4096 to Mrs. Sophia Adler (Lot 169 of Oloa Reservation Lots) and situated at Oloa, Puna, Hawaii.

The non-conforming sized property is zoned Agricultural (A-5a) by the County and designated Agriculture or "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 attachments, and filing fee on or about September 7, 2004. The variance application's site plan map is drawn to scale and prepared by the applicant for the Oloa No. 8 Booster Station Improvements. The variance application's site plan map is dated September 3, 2004 denotes the revised building position(s) on the subject TMK property.

The applicant's variance application dated September 7, 2004 states in part:

"Revise minimum yard and Variance 1405"

Note: The variance site plan map does not identify the location of the cesspool or Independent Wastewater System (IWS). The variance request does not address the location or position of any existing fencing and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

The property belongs to the County of Hawaii-DPW. According to the applicant, there is an existing DWS facility (MCC Shed and other water system improvements) on the property.

4. **Agency Comments and Requirements-VAR 04-079:**

- a. The Department of Public Works (DPW) memorandum dated October 4, 2004 states:

"We have reviewed the subject application forwarded by your memo dated September 15, 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. Fire resistance of exterior walls and openings in exterior walls as per Table 5A of the UBC, 1991 edition.”

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

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

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 September 7, 2004 and September 30, 2004, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 24, 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 amend VAR 1405 and the proposed building position on the property. The revised site plan was prepared by an engineer and denotes the location of the DWS booster pump building and other site improvements. The property’s building area is extremely limited and VAR 1405’s background dated January 26, 2004 states in part: “The proposed building is not for habitation and less prone to fire and other hazards or liability. The improvements are to replace or upgrade the existing public-DWS water system improvements on the non-conforming sized property. Security fencing is proposed and denoted on the site plan and any expansion or improvements to North Peck Road appear to be remote at this time”.

ALTERNATIVES

Alternatives available to the applicant or the DWS to address the proposed pump station improvements include the following actions:

Mr. Yen Wen Fang, P.E.
ENGINEERING PARTNERS, INC.

Page 4

August 23, 2006

1. Increasing or revising the subject TMK property's size to create a building envelope for the proposed booster pump improvements or consolidation/resubdivision of the subject TMK property with adjoining property(s) to adjust minimum yards, etc.
2. Relocate the pump and building improvements to another building site, 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.

In view of the findings in the original variance-VAR 1405, building limitations, and nature of the proposed building and site improvements for the County of Hawaii-DWS, it is felt that the revised building location will not depreciate or detract from the character of the property, neighborhood, and surrounding land patterns. Therefore, it is felt that the applicant's application to amend VAR 1405 and permit the proposed building position(s) and related site improvements identified on the subject 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 September 15, 2004 and additional time was requested by the applicant to submit confirm the final building location and submit other submittals. The applicant allowed an extension to the Planning Director to render a decision on the variance application to August 31, 2006.

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:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.

Mr. Yen Wen Fang, P.E.
ENGINEERING PARTNERS, INC.

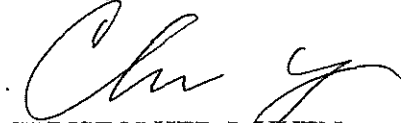
Page 5

August 23, 2006

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.
2. This variance amends VAR 1405 dated January 26, 2004 and allows proposed Olaa Booster Pump No. 8, MCC Building, and other site improvements to be built on the subject TMK property in accordance with a revised site plan dated June 9, 2003 or approved detailed building construction plans.
4. Future or new building improvements and permitted uses within the 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

P:\WP60\WRY\FORMLETT\VAR04-079ZCSETBACK\TMK18005142.DWS-EPINC.

xc: VAR 1405

Real Property Tax Office-(Hilo)