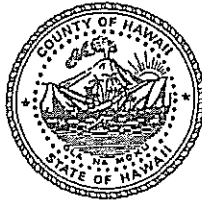


Harry Kim
Mayor



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

January 14, 2005

Mr. and Mrs. Ron Rydquist
P. O. Box 2687
Arnold, CA 95223

Dear Mr. and Ms. Rydquist:

VARIANCE PERMIT NO. 1499 (VAR 04-082)

Applicants: RON RYDQUIST, ET AL.

Owners: BROOK JEAVONS CARROLL, ET AL.

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

Tax Map Key: 1-5-097:010, Lot 322

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1499 allows portions of a dwelling or "HOUSE" to remain, "AS-BUILT", with a minimum 9.10 feet side yard and detached "CARPORT" to remain, "AS-BUILT", with a minimum 9.95 feet side yard, on "LOT 322", pursuant to the applicant's variance site plan map submittal dated June 30, 2004. The variance request is from the TMK property's minimum 10 feet side yard requirements pursuant to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Section 25-5-77, Other regulations.

BACKGROUND AND FINDINGS

1. **Location.** The subject property containing 15,077 square feet, being Lot 322 of Hawaiian Shores Subdivision, as shown on File Plan No. 737, is situated at Waiakahiula, Puna, Hawaii. The TMK property's street address is 15-2777 Hinalea Street.

The non-conforming sized TMK property is zoned Agricultural (A-1a) by the County and designated Urban "U" by the Land Use Commission (LUC).

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Mr. and Mrs. Ron Rydquist

Page 2

January 14, 2005

2. **Variance Application-Site Plan**. The applicants submitted the variance application, attachments, and filing fee on or about September 15, 2004. The variance application's site plan map drawing was prepared by the Independent Hawaii Surveyors. The variance site plan map, dated June 30, 2004, denotes the location of the "HOUSE" and detached "CARPORT" building encroachments, "AS-BUILT", within the TMK property's minimum 10.0 side yards.

The applicant's background and "reasons for requesting a variance" states in part:

1. The house has been in that location for 32 years, (since 1972).
2. The encroachment is very small onto the setback of its own property & doesn't affect anyone negatively.
3. It would seem unreasonable to try and move the house."

Note: The dwelling's wastewater system is not located or identified on the site plan map dated June 30, 2004. Any perimeter landscape materials straddling TMK boundary lines must be addressed and resolved by applicant/current property owner(s) or between legal property owner(s).

3. **Agency Comments and Requirements-(VAR 04-082):**

- a. The State Department of Health (DOH) memorandum dated October 13, 2004 states:

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

- 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 comments.

Mr. and Mrs. Ron Rydquist
Page 3
January 14, 2005

Approval of the application shall be conditioned as noted below.
Electrical permit no. EH64411 for the subject dwelling shall be finalized before obtaining approval of the variance.”

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 or about October 16, 2004 and November 1, 2004 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following comments and/or objection letters were received:
 - a. Letter dated November 3, 2004 received from Rumage Family Trust Comments (TMK: 1-5-097:034, Lot 375).
 - b. Letter dated November 3, 2004 received from Leatrice M. Bryant-Kendrick (TMK: 1-5-097:020, Lot 302).
 - c. Letter dated November 11, 2004 received from Yuka Kobayashi (Masakazu Kobayashi-TMK: 1-5-097:024, Lot 298).

Note: Lot(s) 298, 302, and 375 do not share any boundary lines with Lot 322 or contiguous to subject TMK property.

SPECIAL AND UNUSUAL CIRCUMSTANCES

According to the applicant, the 32 year old building encroachment issues were revealed by the survey map and during escrow or sale of the property in 2004. The previous owner(s) and/or current owner(s) are trying to resolve the building encroachment issues. County records indicate the residential improvements were built on the TMK property on or about 1972. The variance application's site plan was prepared by a surveyor and denotes the location of the dwelling improvements, detached carport, and other site improvements, "AS BUILT", on "LOT 322".

The variance site plan identifies the building encroachments within the respective minimum 10 feet side yards pursuant to the Hawaii County Zoning Code. It appears that these building improvements were constructed in 1972 pursuant to building permit(s) and/or other construction permits issued by the County. It appears that the building inspections of the premises, during

Mr. and Mrs. Ron Rydquist
Page 4
January 14, 2005

building construction and throughout the life of the building permit(s) issued to subject TMK property did not disclose any building encroachment issues or building permit irregularities. The current owners are honestly trying to address the status of the dwelling and detached carport's position located on the TMK property (LOT 322).

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 and carport to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property with adjoining lots (Lot 318 and Lot 324) and resubdivision of the property(s) 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 and carport encroachments into the respective minimum side yard(s) are not physically and visually obtrusive from adjoining property(s) or right-of-way. It appears that these 32 year +/- old building encroachments do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the building encroachments within the minimum yards on LOT 322 will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated August 16, 2004 and additional time to submit a copy of the variance site plan map (drawn to scale) was necessary. The current owner(s) agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than January 15, 2005.

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

Mr. and Mrs. Ron Rydquist

Page 5

January 14, 2005

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/owner, 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 dwelling and detached carport improvements on "LOT 322" will not meet Chapter 25, the Zoning Code's minimum side yard requirements, "AS BUILT". The approval of this variance allows the building encroachments to remain, "AS BUILT", pursuant to the variance site plan map dated June 30, 2004.
4. The outstanding electrical permit No. EH64411 issued to subject TMK property shall be "finaled" or closed by the current owner(s) prior to future sale of the property.
5. 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.
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.

Mr. and Mrs. Ron Rydquist

Page 6

January 14, 2005

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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cc: Real Property Tax Office-Kona
Planning Dept.-Kona
John Hugh Carroll, Et al.
Rumage Family Trust
Ms. Leatrice M. Bryant-Kendrick
Mr. Yuka Kobayashi