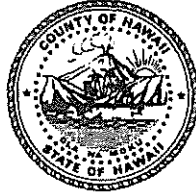


Harry Kim
Mayor



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 3, 2006

Ms. Kelleen Hara
ACCENT DESIGN SERVICES
P. O. Box 5234
Hilo, HI 96720-8234

Dear Ms. Hara:

VARIANCE PERMIT-VAR 04-088

Applicant: KELLEEN HARA
Owner(s): LEOCADIO PAJO, JR., ET AL.
Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 1-1-039:154, Lot 6263

After reviewing your application, the Planning Director certifies the approval of Variance Permit-VAR 04-088 subject to variance conditions. The variance permits a dwelling addition on Lot 6263 with a minimum 19.0 feet side yard in lieu of the minimum 20 feet side required according to the variance site plan map submitted with the variance application. The variance is from the subject TMK property's minimum side yard pursuant to the to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77, Other regulations.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 6263 containing 2.00 acres, is a portion of Crescent Acres, Ld. Ct. Application 1053 (Map 51), and situated at Keaau, Puna, Hawaii. The property's address is 11-3548 Plumeria Street.

The property is zoned Agricultural (A-3a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan**. The applicant submitted the revised variance application, attachments, and filing fee on or about June 1, 2005. The variance application's site plan map is drawn to scale and prepared by the applicant/Accent Design Services. The variance site plan map denotes the position of the "EXISTING DWELLING" and proposed dwelling addition or "PROPOSED RENOVATION" within the minimum 20 feet side yard of subject TMK property.

The applicant's background report dated May 31, 2005 states in part:

"REQUEST" on the Application form has been completed. The reason for this variance request is that the original 3' by 8' Entry Stairs was considered an open structure and thus was not included in the main building. The Owner's now wish to enclose the area and relocate the Entry door in order to have a slightly larger Living Room. With this enclosure this area will now be included as part of the main building and thus it's encroachment into the Side yard setback become an issue."

Note: The variance site plan map denotes the location of the cesspool on the property. The variance request does not address the location or position of driveways, fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 4-Building Permits (911895, 920826, 930163, 031592), 3-Electrical Permits (E912094, E920889, E031954), and 1-Mechanical (M9116640) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling, water tank, and other associated site improvements on the subject TMK property were built pursuant to these building and associated construction permits issued between 1991 and 2003.

4. **Agency Comments and Requirements-VAR 04-088:**

- a. The Department of Public Works (DPW) memorandum dated October 12, 2005 states in part:

"We have reviewed the subject application forwarded by your memo dated September 7, 2003 and recommend approval of the application be conditioned on the comment as noted below.

A building permit is required for the alteration.”

- b. The State Department of Health (DOH) memorandum dated October 17, 2005 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, it appears the first notice was mailed on or about November 19, 2004 and second notice was mailed on or about October 4, 2005 to a list of surrounding property owners by the applicant (Note: The applicant forward proof of mailing a second notice on June 16, 2006). Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 29, 2005.
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 variance application’s site plan map was prepared by the applicant and denotes the location of the proposed dwelling addition. Due the dwelling’s position and interior floor plan, the improvements within the entry way area are limited.

It appears that the existing dwelling and water tank improvements were constructed according to 4-building permits and other associated construction permits issued to subject TMK property. Given the existing dwelling’s entry way and room layout within the dwelling, it is felt that the modification to the 15 year old dwelling and existing entryway will not be immediately noticeable from the adjoining property or detectable from the right-of-way fronting the dwelling.

ALTERNATIVES

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

1. Redesigning or relocating the dwelling’s entryway to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 6263 with adjoining lot (TMK: 1-1-039:153, Lot 6262) and resubdivision to modify property lines or 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 proposed building addition within the minimum 20 feet side yard will be physically and/or visually obtrusive from the adjacent property (Lot 6262) or privately owned right-of-way (Plumeria Road). It appears that the current position of the dwelling and proposed modification to the entryway will not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt the proposed addition and small building encroachment into the affected side yard identified on the 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 21, 2005 and additional time was requested by the applicant to submit proof of mailing a second notice to surrounding property owners was necessary. The applicant requested for an extension of time to complete the variance background report and render a decision on the subject variance to August 11, 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.
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.

Ms. Kelleen Hara
ACCENT DESIGN SERVICES
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August 3, 2006

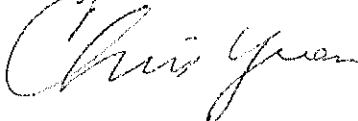
3. Portions of a proposed dwelling addition to existing dwelling on the subject TMK property will not meet the property's minimum 20 feet side yard pursuant to Chapter 25, the Zoning Code. The variance permits the proposed dwelling addition or "PROPOSED RENOVATION" denoted on the variance site plan map in the variance file to be constructed in accordance with the variance site plan map. A building permit to construct the proposed dwelling addition or "PROPOSED RENOVATION" identified on the approved variance site plan map shall be approved or secured from the agencies and DPW on or before August 31, 2008.

The applicant or current owners shall confer with the DPW to address the status of the "open" building permit(s) and other "open" construction permits issued to subject TMK property prior to applying for a building permit to construct the existing dwelling improvements. These outstanding "open" building and other associated construction permits issued to the subject TMK property shall be closed or "finalized" by the DPW-Building Division prior to sale of the property or transfer of title of the property by the current owner(s) to others.

4. Future or new building improvements and permitted uses 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
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xc: Real Property Tax Office-(Hilo)