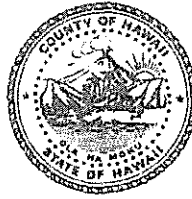


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED™ AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT
101 Aupuni Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • FAX (808) 961-8742

February 23, 2006

Mr. Daniel J. Daub
586 Kanoelehua Avenue
Hilo, HI 96720

Dear Mr. Daub:

VARIANCE PERMIT NO. VAR 04-112
Applicant: DANIEL J. DAUB
Owner: JANICE K. NAKAHARA
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 2-4-062:093, Lot 92

After reviewing subject variance application, the Planning Director certifies the approval of your variance request subject to variance conditions. Variance Permit No. 04-112 permits portions of the dwelling ("HOUSE") and attendant roof eaves to remain on the subject TMK property, Lot 92, "AS-BUILT", with minimum front yard(s) of 17.92 feet in lieu of minimum 20.00 feet front yard(s) according to the variance site plan map dated September 6, 2004. The variance request is from the TMK property's minimum yards pursuant to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (A).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 92 containing 17,206 square feet, is within Kawailani Place, Unit 1, and situated at Waiakea, South Hilo, Hawaii.

The subject TMK property (corner lot) is zoned Single-Family Residential (RS-15) by the County and designated Urban "U" by the State Land Use Commission.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee to the Planning Department on or about December 15, 2004. The applicant's variance application site plan or map drawing is drawn to scale and dated September 6, 2004. The variance application's site plan or survey map by The Independent Hawaii Surveyors denotes the building envelope, dwelling "HOUSE" position and other site improvements on "LOT 92".
3. **Agency Comments and Requirements- (VAR 04-112):**
 - a. The Department of Public Works (DPW) memorandum dated January 21, 2005, states:

"We have reviewed the subject application forwarded by your memo dated January 3, 2005 and have no comments or objections."
 - b. The State Department of Health (DOH) memorandum dated February 7, 2005 states:

"The Heath Department found no environmental health concerns with regulatory implications in the submittals.
4. **Notice to Surrounding Property Owners.** Proof of mailing notice(s) to surrounding property owners was submitted to the Planning Department. For the record, the first and second notice(s) were mailed on December 23, 2004 and January 11, 2005, respectively, by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections from surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant/owner filed the variance request and application to address or resolve building encroachment issues. The site plan map was prepared by a surveyor and shows the "HOUSE" improvements, "AS BUILT", on "LOT 92". A corner of the dwelling's living area was constructed beyond the lot's building lines or outside the building envelope into Lot 92's minimum front yard(s) pursuant to the Hawaii County Zoning Code. No evidence has been found to show indifference or premeditation by the builders or the current owner to deliberately create or intentionally allow the building encroachment problems to occur.

Mr. Daniel J. Daub
Page 3
February 23, 2006

According to County building records, the dwelling improvements were started in 1978 and completed in 1979. It appears that building inspections of the premises in 1978 and 1979 by the agencies during construction of the dwelling did not disclose any building encroachment into the property's minimum front yard(s) at that time.

ALTERNATIVES

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

1. Removing the existing building encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property with the publicly owned rights-of-way and resubdivision of the resultant lot to modify property lines and adjustment of 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 encroachments constructed more than 27 years ago within the affected front yard(s) are not physically noticeable or visually obtrusive from adjacent property(s) or both public rights-of-way. It appears that these building encroachments into the front yard(s) do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land pattern. Therefore, it is felt that these building encroachments within the affected minimum front yards 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 January 3, 2005. Additional time to complete the variance background was necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than February 24, 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.

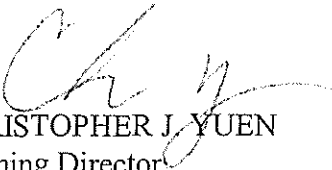
PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

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.
3. Portions of a "HOUSE" or dwelling located on "LOT 92" were built within the property's minimum front yard(s) required by Chapter 25, the Zoning Code, according to the variance application's site plan map dated September 6, 2004. The approval of this variance permits the dwelling improvements including roof eaves, "AS BUILT", to remain on "LOT 92" pursuant to the variance application's site plan map dated September 6, 2004.
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 subject tax map key property are 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

Mr. Daniel J. Daub
Page 5
February 23, 2006

xc: Real Property Tax - Hilo