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County of Hawaii

PLANNING DEPARTMENT

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June 27, 2005

Mr. and Mrs. Clayton W. Ah Hee
246 Hokulani Street
Hilo, HI 96720

Dear Mr. and Mrs. Ah Hee:

VARIANCE PERMIT NO. VAR 05-002

Applicants: CLAYTON W. AH HEE, ET AL.

Owners: CLAYTON W. AH HEE, ET AL.

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

Tax Map Key: 2-5-060:053, Lot A

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 05-002 permits a dwelling addition to be constructed on the TMK property with a minimum 30.0 feet front yard and attendant minimum 26 feet front yard open space, in lieu of the minimum 50.0 feet front yard requirement, according to the variance site plan map submitted by the applicants. The variance is from the TMK property's minimum front yard and associated minimum open yard requirements, pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(2)(A), Article 3, Section 25-3-8, Legal effect of establishment of building lines, future width lines, future width lines, and plan line, 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 property, Lot A containing 15,015 square feet, is within "Kaumana Park", being a portion of Grant 4801, and situated at Ponahawaii, South Hilo, Hawaii. The property's street address is 246 Hokulani Street.

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

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Pursuant to a Planning Department Memorandum (refer to copy of memorandum in variance file) addressed to Councilperson Aaron S.Y. Chung, dated December 30, 2003, the subject TMK property was created by subdivision (SUB 6231-Revised) on July 6, 1993. A portion (30 feet wide) or future plan line is denoted on the subject TMK property-Lot A for a proposed 60-foot wide collector roadway connecting Akolea Road and Iwipolena Street.

2. **Variance Application-Site Plan.** The applicant-current owners submitted a revised variance application, attachments, and filing fee on or about March 30, 2005. The variance application's site plan map is drawn to scale and denotes the location of the proposed dwelling addition and other proposed building improvements.

The applicant's transmittal letter or background report states in part:

"We currently have a proposed 60 ft. wide right of way running the length of our mauka boundary. The plan calls for 30 ft. to be taken from our property and the other 30 ft. from the adjoining mauka property. The law requires setbacks to be taken from the "new" 30 ft. line and not from our property line. Furthermore, because this area is now considered a future road, we need to use the "front" instead of the "side" yard setback requirements. Since the front yard setback is 20 ft. the total setback would be 50ft. (20 + 30). Given this situation and size of our property, we would realistically not have any room left on our property for expansion."

3. **Agency Comments and Requirements-(VAR 05-002):**

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

"We have reviewed the subject application forwarded by your memo dated April 25, 2005 and have no comments or objections."

- b. The State Department of Health (DOH) memorandum dated May 13, 2005 states:

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

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4. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. According to the submittals and mailing receipts, it appear that notice(s) were mailed on or about March 30, 2005 and May 6, 2005, respectively, to a list of surrounding property owners.

5. **Comments from Surrounding Property Owners or Public.** No further written agency comments or comments from surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The current owners are trying to address building options and building limits due to proposed future roadway. The variance application's site plan map was prepared by the applicants and denotes the location of the present dwelling and proposed addition.

The site plan extract shows the proposed building additions will occur within the property's affected 20 feet front yard measured from the roadway future plan line along a northerly boundary line. It appears that the applicants or current owners became aware of the future plan line and other building limitations after the dwelling was completed or purchased by the current owner(s) circa August 1993. Furthermore, the extract of the original plot plan submitted with the variance application denotes a minimum "40" side yard required from the northerly boundary line. The minimum yard requirements; to establish the building area or "building envelope" on the subject property, denoted on the original site or plot plan approved by the Planning Department, dated January 5, 1993, are wrong.

ALTERNATIVES

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

1. Revise, redesign, and/or relocate the dwelling to accommodate the addition and comply with the minimum yards prescribed by the Zoning Code. Note: According to the applicant's background and photograph submitted due to the dwelling's orientation and floor plan, expansion options are limited.

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2. Elimination of the 60-foot wide collector roadway connecting Akolea Road and Iwipolena Street; and, deletion of the future plan line denoted on the subject TMK property-Lot A. The Planning Department Memorandum addressed to Councilperson Aaron S.Y. Chung, dated December 30, 2003, states in part:

“Looking at existing and future roadway circulation patterns as depicted on the City of Hilo Zone Map, it would be our preference that the proposed 60-foot wide collector roadway affecting the subject property and located on the southern boundary of the Hilo Heights Subdivision be eliminated in favor of extending the existing Haleloke Street to the east to connect with the future extension of Iwipolena Street. The extension of Haleloke Street will affect only one major

landowner (Royal Ainako, Inc.) verses affecting many smaller landowners along the more southerly alignment that also affects the subject property. We recommend that the Department of Public Works be consulted to ensure that the existing Haleloke Street and its intersection with Akolea Road is or can be designed to meet collector street standards.”

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.

After considering the December 30, 2003 memorandum and discussion regarding the roadway and roadway network in the vicinity of the subject property, the likelihood of the future “paper” roadway or the “30-Foot Future Right-of-Way” identified on Lot A to be taken or utilized in conjunction with construction of a 60-foot wide collector roadway appears to be remote at this time or more likely, “never built”. The “future plan line” denoted on Lot A for a 60-foot wide collector road that is part of an “obsolete” road network considered necessary for this area 30 + years ago interferes with the best use or manner of development of the subject TMK property-Lot A. Property development “mauka” of the subject property and future traffic circulation and roadway improvements for potential development in the immediate area have changed and can be addressed by expanding existing roadways. Therefore, it is felt that the applicant’s variance request is reasonable and the proposed dwelling or building additions within the front yard measured from the “future plan line” will not detract from the character of the immediate neighborhood or impact future roadway improvements in the vicinity of the property.

The original variance request or subject variance application was acknowledged by letter dated April 25, 2005. The applicant's agreed to extension of time to June 30, 2005 to complete the variance background report and render a decision.

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. The approval of this variance allows the proposed dwelling addition and eaves within affected front yard of Lot A to be constructed pursuant to the applicant's variance site plan map submittal in the variance file.
4. No permit to allow an ohana dwelling shall be granted on subject TMK property (Lot A), subject to provisions of the Hawaii County Zoning Code or State Law which may change from time to time.
5. Future building improvements and permitted uses 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

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xc: Real Property Tax Office-Hilo
Planning Department-Kona