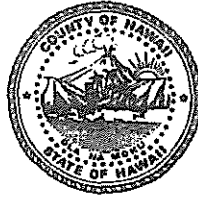


Harry Kim  
Mayor



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

June 1, 2006

Mr. Russell A. S. Rapoza  
484 Kipuni Street  
Hilo, HI 96720

Dear Mr. Rapoza:

#### **VARIANCE PERMIT-VAR 05-004**

**Applicants:** RUSSELL A. S. RAPOZA, ET AL.

**Owners:** RUSSELL A. S. RAPOZA, ET AL.

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

**Tax Map Key:** 1-7-022:005, Lot 6

After reviewing your variance application, the Planning Director certifies the approval of Variance Permit-VAR 05-004 subject to variance conditions. The variance permits existing/proposed building positions on Lot 6 to remain, "AS-BUILT", and/or be constructed with a minimum 5.00 feet to 15.00 feet front yard along Mauna Lani Tract Road and minimum 5.00 feet side yard and associated minimum open space requirements according to the applicant's site plan submittal. The variance request is from the minimum yard requirements of the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 5, Section 25-5-56, Minimum yards, (1) (2), 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 6 containing approximately 28,270 square feet, within "Maunalani Tract" and portion of "Maunalani Lots", Lot 60, Olaa Reservation Lots, is situated at Olaa, Puna, Hawaii.

The property is zoned Residential and Agricultural (RA-.5a) by the County and designated Agriculture "A" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan**. The applicant submitted the subject variance application, attachments, and filing fee on or about January 6, 2005 pursuant to Planning Department letter dated September 29, 2004. The variance application's site plan map and other plan submittals are drawn to scale. This site plan map denotes "AS-BUILT" location(s) of existing and proposed buildings on subject TMK property. The variance is to allow existing/proposed 2-agricultural buildings to be remain/permitted with minimum 5.00 feet front yard from a 30 feet wide privately owned roadway and 5.00 feet side yard. (Note: The previous owner of subject TMK property was issued variance permit-VAR. NO. 105-Minimum Setback Requirements, on August 18, 1982).

The applicant's background dated January 5, 2005 (Page 2) states in part:

"I sought the services of yet another engineer who worked with the retailer of the building to get plans drawn up and calculations done to get the permits for the horticultural buildings. After months of going back and forth and spending more money to get the plans ironed out to get them accepted as "As Built" structures, I have the engineer walk the plans through the permit process. Mr. Holmes and Mr. Arai reviewed the plans and informed my engineer that the plans could not be approved because the buildings are within the setback. I phoned Mr. Arai to get a clarification on the decision; I told him that these buildings are "As Built" and could not be moved. He informed me that only the director could make an exception. I wrote to the director on August 9, 2004 and asked for an appeal on the decision. In November he denied the request but encouraged me to seed a variance whereby he would look favorably on it, hence the application.

In the that was approved in 1982 (82-26, var-105) it allowed relief from the set back because 30 feet of my property was given up so that the rest of the subdivision would not be land locked. It stated 14 feet in front and 10 feet on the sides. I considered the front the front of my lot to be North Kulani Road, and the two sides to run perpendicular to that and the back to be directly opposite. The reasoning for this is that the 30 foot roadway given up is still a privately TMK'ed lot (TMK#1-7-022:075). Since it has a private TMK I have always considered this a side. However, in the communication denying my appeal it was stated that my lot has two fronts, and the main reason to seek another variance for the property. My lot is too narrow (55 feet) to have the setbacks of two front (sic) imposed on it."

**Note:** The variance request relates only to the proposed position(s) or "AS BUILT" position of 2 agricultural building constructed on the subject TMK property without County building permit(s). The variance request does not address the subject TMK property's driveway location(s) or access issues between the subject TMK property and "Mauna Lani Tract Road" fronting the property.

3. **Agency Comments and Requirements-VAR 05-004:**

- a. The State Department of Health (DOH) memorandum dated March 16, 2005 states:

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

- b. No written comments were received from Department of Public Works (DPW).

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 December 29, 2004 and February 24, 2005 by the applicant.

5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following objection letter(s) from surrounding property owner(s) and Mauna Lani Neighborhood Association were received:

- a. Objection letter dated February 18, 2005 from Joseph M. Pereira.
- b. Objection letter dated February 20, 2005 from Mauna Lani Neighborhood Association.

**Note:** The subject corner lot or TMK property fronts 2-Rights-of-Way (North Kulani Road and Mauna Lani Tract Road. It appears that the subject TMK property has current access via a publicly owned roadway-North Kulani Road and additional access via the privately owned 30-foot wide private roadway-Mauna Lani Tract Road. The objection letters and/or concerns received relate only to the additional driveway access and applicant' use of the privately owned 30-foot wide road (Mauna Lani Tract Road-TMK: 1-7-022:075) fronting the property.

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The previous variance permit-VAR NO. 105 recognizes the limited "buildable" area within this narrow lot; and, further, that this lot was part of an earlier subdivision related to the Mauna Lani Tract Lots or creation of Mauna Lani Tract Road. Any concerns regarding the applicants or owners taking access via the privately owned 30-foot Right-of-Way (Mauna Lani Tract Road) or using the roadway within the privately owned 30-foot wide roadway lot should be addressed between owners of the subject TMK property owners of the Mauna Lani Tract Roadway. The permits for the "AS BUILT" building or "after-the-fact" permits for proposed 2-agricultural buildings must be secured from the DPW-Building Division; and, building codes and minimum UBC requirements must be met. (See variance conditions).

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

According to the applicant, the agricultural buildings were erected without any building permits. The applicants/owners are trying to address the building and/or electrical permit requirements, after the "agricultural buildings" were installed.

The site plan identifies the position of existing dwelling(s), other permitted agricultural buildings, and position of the "unpermitted" agricultural buildings. Portions of the agricultural buildings were built within the subject TMK property's minimum 25 feet front yard along Mauna Lani Tract Road and minimum 15 feet side yard.

#### **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 the agricultural buildings to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property (Lot 6) with a portion of the adjoining property (Right-of-Way-TMK: 1-7-022:075 and/or TMK: 1-7-022:004) and resubdivision and adjustment of minimum yards from revised boundary lines, 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.

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It appears that the proposed agricultural buildings will not be obtrusive from the privately owned right-of-way or adjoining property(s). The building position problems or encroachment issues into the property's minimum yards were revealed after the applicant was requested an electrical permit after both buildings were built. Pursuant to an earlier approved variance (VAR NO. 105), the subject TMK property's lot geometry and limited "buildable area" limits building options; and, it is felt that these non-habitable agricultural buildings will not detract from the character of the surrounding neighborhood and rural land patterns. The applicants/owners will obtain "after-the-fact" County building permits and meet minimum UBC requirements. Therefore, it is felt that the proposed agricultural buildings will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated February 4, 2005 and additional time to consider comments and objection letter(s) received from surrounding property owners was necessary. The applicant/current owner(s), agreed to extend the date on which the Planning Director shall render a decision on the subject variance application to June 2, 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/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 existing agriculture building(s), "AS-BUILT", on the subject TMK property will not meet Chapter 25, the Zoning Code's minimum front yard, side yard, and attendant minimum front yard and minimum side yard open space requirements. The approval of this variance allows the existing agricultural buildings to remain, "AS BUILT", on the subject TMK property pursuant to the variance site plan map submitted with the variance application.

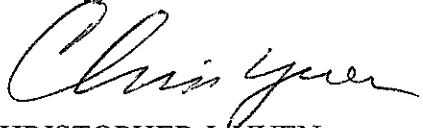
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Access to the property and driveways via North Kulani Road and/or Mauna Lani Tract Road are subject to DPW review and approval. However, access via the privately owned Mauna Lani Tract Road is subject to approval by the owners Mauna Lani Tract Road or property lots fronting Mauna Lani Tract Road with access rights pursuant to title and/or recorded deed language.

4. The applicant or current owners shall secure building permits for the proposed agricultural buildings any other associated construction permits from the DPW-Building Division (Hilo) on or before December 31, 2006.
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.

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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cc: Real Property Tax Office-Hilo  
Joseph M. Pereira  
Mauna Lani Neighborhood Association