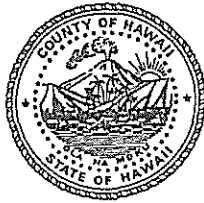


Harry Kim
Mayor



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

June 2, 2005

Mrs. Ruth Beauchamp
RR 3 Box 1041
Pahoa, HI 96778

Dear Mrs. Beauchamp:

VARIANCE PERMIT NO. 1517 (VAR 05-005)
Applicant: RUTH BEAUCHAMP
Owners: MELINDA BEEBE, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 1-6-055:011, Lot 5643

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1517 allows portions of the dwelling ("Residential Dwelling"), attached water tank or "Catchment" to remain, "AS-BUILT", with a minimum 16.2 feet to minimum 19.99 feet side yard in lieu of the minimum 20.0 feet (northerly) side yard required according to the variance site plan map or "Perimeter Map" dated October 28, 2004. The variance is from the TMK property's minimum side yard, pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 5643 containing 3.00 acres, within Hawaiian Acres Subdivision, is situated at Keaau, Puna, Hawaii.

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

2. **Variance Application-Site Plan.** The applicant-current owners submitted a variance application, attachments, and filing fee on or about February 3, 2005. The variance application's site plan map or "Perimeter Map" is drawn to scale and
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Dated October 28, 2004. This map denotes the location of the "Residential Dwelling", attached water tank or "Catchment", and other building improvements, "As-Built" on the subject TMK property.

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

"The original house was built in 1970 by the original owner, Theodore H. Norman (permit #H43937). However, when the home was built, surveys were done with less accuracy and the home's catchment tank was situated within the easement (sic)"

Note: The variance site plan map dated October 28, 2004 denotes the dwelling, attached catchment or water tank, and other building position(s), e.g. "Matson Container" and "Lean-to", fences, etc. on the TMK property. The applicant or current owner shall be responsible to contact the DPW-Building Division to address the status of any outstanding building permit issues or non-permitted accessory building(s) situated on the TMK property.

3. **Agency Comments and Requirements-(VAR 05-005):**

- a. The Department of Public Works (DPW) memorandum dated February 22, 2005 states:

"We have reviewed the subject application forwarded by your memo dated February 22, 2005 and have no comments or objections."

- b. 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."

4. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. According to a letter or notarized affidavit received on May 18, 2005, the first and second notices were mailed on or about January 8, 2005 and March 23, 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 applicant-owner, is trying to resolve the building encroachment issues. The variance application's site plan map or "Perimeter Map" was prepared by a surveyor and denotes the location of the dwelling or building improvements constructed on "Lot 5643".

The site plan identifies the dwelling/catchment encroachments within the property's affected side yard and attendant open yard requirements pursuant to the Hawaii County Zoning Code.

The applicant-current owners became aware of building 30 + year old encroachment issues after the survey or "Perimeter Map" dated October 28, 2004 was prepared or presented during escrow. County records show the dwelling and water tank improvements were built pursuant to building permit(s) and other construction permits issued by the DPW in the 1970s. It appears that the building inspections of the premises throughout the life of the building permit or construction permits to build the dwelling/water tank did not disclose any encroachment issues or building setback irregularities.

ALTERNATIVES

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

1. Remove the dwelling or building encroachments to fit within the correct building envelope prescribed by the Zoning Code. Note: The variance does not address the unpaved driveway's position or fences along or straddling common boundary lines shared with adjoining TMK property(s).
2. Consolidation of Lot 5643 with adjoining property (Lot 5644) and resubdivision 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.

Portions of the dwelling and attached catchment within the affected side yard are not physically and visually obtrusive from adjacent property (Lot 5644) or visible from the right-of-way fronting Lot 5643. These building encroachments do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the dwelling/catchment encroachments within the respective 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 original variance request or subject variance application was acknowledged by letter dated February 22, 2005. Additional time was requested by the applicant to submit proof of mailing of the required notices.

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 the "Residential Dwelling" located on the subject TMK property or Lot 5643 will not meet Chapter 25, the Zoning Code's minimum side yard. The approval of this variance allows the dwelling encroachments within a side yard of LOT 5643 to remain, "AS- BUILT", pursuant to the applicant's revised variance site plan map dated October 28, 2004.
4. No permit to allow an ohana dwelling shall be granted on subject TMK property (Lot 5643), 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.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Yuen', written over a horizontal line.

CHRISTOPHER J. YUEN
Planning Director

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