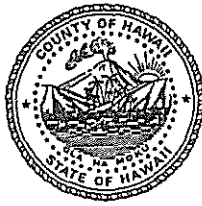


Harry Kim
Mayor



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

March 23, 2005

Mr. Keith Kato
HAWAII COMMUNITY BUILDERS
100 Pauahi Street, Suite 204
Hilo, HI 96720

Dear Mr. Kato:

VARIANCE PERMIT NO. 1508 (VAR 05-009)
Applicant: KEITH KATO
**Owner: KAMUELA SENIOR HOUSING
LIMITED PARTNERSHIP**
**Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning Code**
Tax Map Key: 6-4-034:046

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to variance conditions. Variance Permit No. 1508 allows portions of Buildings "D", "G" and "H" to remain on the referenced TMK property, "AS-BUILT", with minimum 9.40 feet to minimum 9.70 feet side yard(s) and minimum 19.16 feet to minimum 19.18 feet rear yard(s) in lieu of the respective building's minimum 10.00 feet side yard(s) and 20.00 feet rear yard(s) according to applicant's variance site plan map and other plan submittals. The variance request is from the subject TMK's minimum side and rear yard(s) pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (A) (B).

BACKGROUND AND FINDINGS

1. **Location:** The subject property, Lot 15-A containing 2.165 acres (CON 1050), being a portion of Grant 4565 to H. Akona, being also Lots 15 to 22, inclusive, is situated at Puukapu, Waimea, South Kohala, Hawaii.

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The property is zoned Single-Family Residential (RS-10) 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 on or about January 21, 2005. The variance application's site plan map and other plan submittals attached to the application denote the building location(s) or building position on the subject TMK property and other drawings denoting the distance(s) between the "Building D", "Building G", and "Building H" and the respective boundary lines.

The applicant's background dated January 19, 2005 states in part:

"The applicant, the Kamuela Senior Limited Partnership, first became aware of the setback violations two weeks ago when the surveyor hired to provide an as built site discovered that three of the ten buildings on the site were encroaching into the setback areas. The encroachments range from approximately 5 to 10 inches as shown on the attached drawings.

The contractor apparently incorrectly laid out the foundations for these buildings and proceeded to complete the construction on the slabs poured. Due to the small deviation and the presence of rather tall retaining walls off set from the property lines the discrepancy was not noticed until the survey crew completed their work.

Given the fact that the buildings in question are below the grade of the adjacent properties the impact of the encroachment will be minimal.

No benefit would have been gained by intentionally encroaching into the setback areas since the approved plans had sufficient room to place the buildings in compliance with the requirements. This is simply an error by the contractor.

There is no practical alternative to granting the variance. The option of reconstruction the buildings would reduce the living areas of the senior housing units, be exceedingly expensive and created (sic) an unsightly result."

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3. **Agency Comments and Requirements-(VAR 05-009):**

- a. The Department of Public Works (DPW) memorandum, dated February 24, 2005, states in part:

“We reviewed the subject application and our comments are as follows.

1. Building shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division).”

The attached DPW memorandum dated February 17, 2005 states in part:

“Approval of the application shall be conditioned on the comments as noted below.

The minimum setbacks shall be maintained as follows:

Residential structures-3 ft. side, 3 ft. rear

Commercial structures-5 ft. side, 5 ft. rear

Others: the building permit No. 032547 is not finalized.”

- b. The State Department of Health (DOH) memorandum, dated February 25, 2005, states:

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

4. **Notice to Surrounding Property Owners.** According to the applicant’s submittals, it appears that the applicant mailed first and second notice(s) on or about January 20, 2005 and February 10, 2005, respectively.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written objections from the surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

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According to the applicant, a survey of the "as built" building positions revealed the encroachment issues. According to the applicant, 3-building foundations were misplaced and small portions of these buildings were constructed into the minimum side and rear yards. The variance application's site plan map denotes the location of the building(s), perimeter walls, and other site improvements, "AS BUILT", on subject TMK property. The variance site plan map show portion(s) of 3-buildings were constructed within the affected side yard and rear yard or minimum yards required by Chapter 25, Zoning.

No evidence was found to show indifference or premeditation by the applicant's contractor to "misplace" portions of Building D, Building G, and Building H within these minimum yards. It appears that these building(s) together with related off-street parking, landscaping, etc. were built under valid building permit(s) and other construction permits issued by the County. Inspections by the agencies during construction of the buildings did not disclose any building encroachments or building setback issues.

ALTERNATIVES

Alternatives available to the applicant or current owner(s) to address and correct the existing building encroachments include the following actions:

1. Remove the building encroachments and/or reconstruct the building(s) within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of property with adjoining property and resubdivision of the resulting consolidated property to modify affected property lines and adjust minimum yards for the dwelling.

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.

The building encroachment issues or portions of buildings within the respective side and rear yards are not physically or visually obtrusive from adjoining property(s) or detectable from the roadway (Keaka Kea Place).

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These buildings were completed before a surveyor completed a survey of the precise "AS-BUILT" location of 8 individual buildings on the subject TMK property. This survey revealed that 3-buildings or portions of 3-buildings encroach into a minimum 10 feet side yard and minimum 20 feet rear yard of the subject TMK property. The building encroachment issues were discovered after an "instrument" survey was performed and map or report prepared or presented to disclose the building positions, "AS-BUILT", within the subject TMK property. These small building encroachments (between 5 to 10 inches) into the respective yards have not affected or altered the character of the subdivision and surrounding land patterns. Therefore, it is felt that the dwelling encroachments within the affected yards will not detract from the character of the immediate neighborhood or subdivision.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intent 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 Building D, Building G, and Building H on the subject TMK property will not meet Chapter 25, the Zoning Code's minimum side yard and/or rear yard requirements according to the site plan map and other plan submittals submitted with the variance application. The approval of this variance allows building encroachments or building positions identified on the variance site plan map to remain, "AS BUILT", on the subject TMK property.

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4. Future building improvements and permitted uses shall be subject to building limits set by this variance and/or 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

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cc: Real Property Tax Office - Hilo
Planning Dept. - Kona
PA-TMK File-Hilo