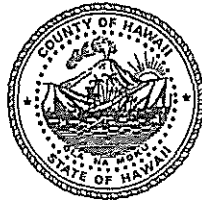


Harry Kim  
Mayor



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 17, 2005

Mr. David Cobb  
HCR 2 Box 9599  
Keaau, HI 96749

Dear Mr. Cobb:

#### **VARIANCE PERMIT NO. (VAR 05-014)**

**Applicants:** DAVID COBB, ET AL.  
**Owners:** DAVID COBB, ET AL.  
**Request:** Variance from Minimum Yards  
Pursuant to Chapter 25, Zoning  
**Tax Map Key:** 1-5-057:032

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 05-014 allows a dwelling to be built with minimum 10.0 feet and associated side yard open space requirements, respectively, according to the applicant's variance request and revised variance site plan map submittal. The variance is from the TMK property's minimum 15.0 feet side yard and associated minimum 10.0 feet side yard open space requirements pursuant to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, Section 25-5-77, Other regulations, 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 50 containing 22,037 square feet, is within Hawaiian Paradise Subdivision, and situated at Keaau, Puna, Hawaii.

The property is zoned Agricultural (A-1a) by the County and designated Agriculture "A" by the Land Use Commission (LUC). Lot 50 containing 0.46 acre was subdivided or created before 1967 and is 80.00 feet wide. Subsequent to  
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1967 or adoption of the original Zoning and Subdivision Codes, the minimum lot size and average width requirement for property or proposed subdivision of property zoned A-1a became 1.0 acre and 120 feet minimum lot width, respectively. As such, after the adoption of the original Zoning and Subdivision Codes, the subject TMK property or Lot 50's size (0.46 acre or approximately 20,037 square feet in lieu of minimum 1.00 acre) and 80 feet lot width became "non-conforming".

The TMK property is within the Special Management Area (SMA). However, the TMK property does not abut the shoreline.

2. **Variance Application-Site Plan**. The applicants-owners submitted a variance application, attachments, and filing fee on or about February 10, 2005. The variance application's site plan map is drawn to scale and denotes the location(s) of the "PROPOSED RESIDENCE", and other proposed site improvements on the subject TMK property.

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

"The only reason that my lot has a 15 foot setback on the sides instead of the normal 10 feet is because it is oddly shaped and is therefore 37 square feet over the limit of 22,000 (sic) square feet. All lots under 22,000 (sic) square feet are allowed to build as close as ten feet to the property line, but I must build 15 feet back because my lot is 37 square feet too large! Imagine a square piece of land 6'1" on a side, that's how much I'm over the limit! My lot is one of those long thin ones and is only 80 feet wide, and even with my garage thinned down to the minimum I am 3 feet, or 1 1/2 feet on each side, too wide."

**Note:** The subject TMK property-Lot 50 containing 0.46 acre is approximately 20,037 + square feet, not 22,037 square feet or the aggregate land area cited in the applicant's background. The adjoining lots (sharing common side boundary lines) are Lot 49: 0.50 acre (TMK: 1-5-061:023) contains 21,780 square feet and Lot 51: 0.42 acre (TMK: 1-5-057:031) contains approximately 18295 + square feet, respectively. Pursuant to the Zoning Code, the minimum yards required for Lot 49 are: Front/Rear-Minimum 25 feet; and, Side(s)-Minimum 15 feet; and, the minimum yards required for Lot 51 are: Front/Rear: Minimum 20 feet; and Side(s)-Minimum 10 feet.

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3. **Agency Comments and Requirements-(VAR 05-014):**

- a. The Department of Public Works (DPW) memorandum dated March 14, 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 applicant's submittals and mailing receipts, the first and second notices were mailed on or about February 11, 2005 and March 10, 2005, respectively, to surrounding property owners.

5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections to the applicant's variance request were received from surrounding property owner(s) or public.

**SPECIAL AND UNUSUAL CIRCUMSTANCES**

The owners are proposing to build a new dwelling on a narrow 0.46 acre lot "non-conforming" lot that was created or subdivided before 1967. The revised variance site plan map submittal, is drawn to scale, and denotes the proposed dwelling's position on the referenced TMK property-Lot 50. The variance would allow portions of the proposed dwelling to be built with a minimum 10 feet side yard in lieu of the required minimum 15 feet side yard and allow a corresponding minimum 5 feet side yard open space. The revised variance site plan submittal identifies the proposed dwelling encroachments into the affected minimum 15 feet side yard.

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### **ALTERNATIVES**

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

1. Redesign or reduce the dwelling's size to fit within the building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 50 with adjoining property (Lot 51) and resubdivision to modify property area and/or modify boundary lines.

### **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 is felt that portions of the proposed dwelling with a minimum 10 feet side yard from the common boundary shared with the adjoining property (Lot 51) would not be physically and visually obtrusive or noticeable from the right-of-way. Given the subject property's unusual geometry, property size and width of Lot 50, and nature of the variance requested, the proposed building encroachment into one of subject TMK property's 2-side yards would not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the proposed dwelling's position and variance to allow a minimum 10 feet side yard and side yard open space identified on the revised site plan submittal will not detract from the character of the adjoining property 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 consider an alternative dwelling position and submit a full-sized site plan submittal identifying the proposed side yards.

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.

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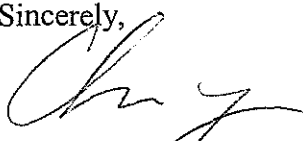
**PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

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 portions of the proposed dwelling to be constructed with a minimum 10 feet side yard and associated minimum 5.0 feet side yard pursuant to the applicant's request or revised variance site plan map submittal in subject variance file.
4. No permit to allow an ohana dwelling shall be granted on subject TMK property (Lot 50), 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,



CHRISTOPHER J. YUEN

Planning Director

WRY:je

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