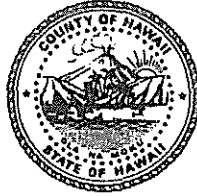


Harry Kim
Mayor



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

March 15, 2006

Mr. Daniel J. Daub
586 Kanoelehua Avenue
Hilo, HI 96720

Dear Mr. Daub:

VARIANCE PERMIT NO. VAR 05-022
Applicant: DANIEL J. DAUB
Owners: CLYDE L. NEILL, ET AL.
Request: Variance from Minimum Yards,
Chapter 25, the Zoning Code
Tax Map Key: 1-5-055:086, Lot 2648

After reviewing your application and the information submitted, the Planning Director certifies the approval of Variance Permit No. 05-022 subject to variance conditions. This variance permits portions of 2-accessory building(s) "WATER TANK" and Workshop to remain, "AS-BUILT", on Lot 2648 with minimum 14.56 feet to 15.50 feet side yard(s) and attendant minimum 11.25 feet side yard open space according to the variance site plan map dated October 26, 2004. The variance request is from the subject TMK property's minimum 20.0 feet side yard and attendant minimum 14.0 feet side yard open space requirement pursuant to the to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, 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 2648 containing 1.00 acre, Block "7", Ld. Ct. App. 1053, Map 58, 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).

2. **Variance Application-Site Plan.** The applicant-current owners submitted a variance application, attachments, and filing fee on or about March 7, 2005. The variance application's site plan map or "Perimeter Map" is drawn to scale and dated October 26, 2004. This map denotes the location of the "HOUSE", "CABIN", "WATER TANK", "POOL", and other existing site improvements, on the subject TMK property or "LOT 2648". (Refer to discussion below and variance conditions requiring the applicant/owner(s) to address the occupancy of the permitted workshop or "CABIN" denoted on the variance site plan map).

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

"The County Building Department did approve final inspections and building permits on this Residence (No. 912410) and Workshop Building permits (No. 912411) were issued and final inspections were approved in 1993."

Note: The variance site plan map dated October 26, 2004 does not identify the location of a cesspool or Independent Wastewater System (IWS) on subject TMK property.

3. **Agency Comments and Requirements-(VAR 05-022):**
 - 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."
4. **Notice to Surrounding Property Owners.** The applicant submitted proof of mailing a first and second notice to surrounding property owners. According to these submittals the first and second notices were mailed on or about March 10, 2005 and May 9, 2005, respectively, to 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, on behalf of the current owners, is trying to resolve the building encroachment issues within the property's side yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the improvements constructed on "LOT 2648".

The variance site plan map shows that portions of the Workshop and "WATER TANK" (accessory buildings) were built into one of the TMK property's side (east) yard(s). It appears that the applicant or current owners became aware of the 14 + year old encroachment issues after the survey map dated October 26, 2004 was presented during escrow. County building records show 3-building permits for a dwelling (912410), workshop (912411) (Identified as a "CABIN" on the variance site plan map), and swimming pool (941587) were issued to the TMK together with other construction permits by the DPW-Building Division between 1991 and 1994. It appears that building inspections of these permitted improvements did not disclose any encroachment issues within one of the TMK property's minimum side yard or building setback irregularities. County building records show all building and associated construction permits issued to the TMK property were "finalized" or closed by the DPW.

ALTERNATIVES

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

1. Remove or relocate the "CABIN" or permitted Workshop and permitted water tank to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 2648 with adjoining property (Lot 2649) and resubdivision of the resultant lot back into 2-lots with modified boundary lines and adjusted 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 accessory buildings within the affected side yard are not physically and visually obtrusive from adjacent property (Lot 2649) or visible from the road within the right-of-way (3rd Street) fronting Lot 2648. These building encroachments do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns (Note: According to the applicant, the water tank is a "4' high catchment tank").

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Therefore, it is felt that portions of both accessory buildings and the building encroachments into one of the property's minimum 20 feet side yard(s) and associated side yard open space identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated April 25, 2005. Additional time to complete the variance background was necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than March 31, 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/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 2-accessory buildings permitted as a workshop ("CABIN") and water tank on Lot 2648 or subject TMK property will not meet Chapter 25, the Zoning Code's minimum side yard. The approval of this variance allows these accessory building(s) and/or building encroachments to remain within the affected side yard of LOT 2648, "AS- BUILT", pursuant to the variance application's site plan map dated October 26, 2004.

The applicant or current owner(s) shall confer with the DPW-Building Division (Hilo) to change the occupancy of the permitted "Workshop" ("CABIN") to a guest house and secure any permit on or before December 31, 2006.

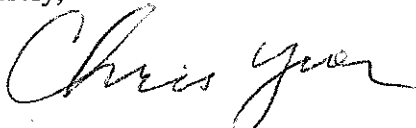
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A guest house and occupancy of a guesthouse is limited to a maximum 500 square feet in gross floor area, shall not be more than 20 feet in height, and shall not have a kitchen.

4. 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

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xc: Real Property Tax Office-Hilo