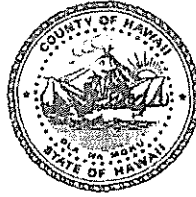


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED™ AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Aupuni Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • FAX (808) 961-8742

February 23, 2006

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

Dear Mr. Daub:

VARIANCE PERMIT NO. VAR 05-024

Applicant: DANIEL J. DAUB-REALTOR

Owners: BISHOP ESTATE/JACKIE D. HOFFMANN

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

Tax Map Key: 7-8-018:017, Lot 17-A

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 05-024 permits portions (corner) of a single story residence to remain on Lot 17-A, "AS-BUILT", with a minimum 7.86 side yard and attendant minimum 4.81 feet side yard open space in lieu of the minimum 10.0 feet side yard and 5.00 feet side yard open space requirements, according to the variance site plan map signed and dated December 11, 2004. The variance is from the TMK property's minimum side yard and attendant side yard open yard space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(2)(B), 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 17-A containing 27,443 square feet, is within "Kuakini House Lots", being a portion of Royal Patent No. 6856 Land Commission Award No. 7713, Apana 6 to V. Kamamalu, and situated at Kahaluu, North Kona, Hawaii. The property's street address is 78-6966A Walua Road.

The subject TMK property is zoned Single-Family Residential (RS-15) 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 to the Planning Department on or about March 1, 2005. The applicant's variance application site plan or map drawing is drawn to scale and signed and dated "12/11/04". The variance application's site plan or survey map by PATTISON LAND SURVEYING, INC. denotes the building envelope, dwelling "ONE STORY RESIDENCE" position and other site improvements on "LOT 17-A".

Note: This variance site plan map does not identify the location of any cesspool or Independent Wastewater System (IWS) on the property. The variance request does not address the position(s) of the "Rock Wall" or "Wire fence" straddling common boundary lines or walls built outside the property.

3. **Agency Comments and Requirements- (VAR 05-024):**
 - a. No comments were received from the Department of Public Works (DPW).
 - b. No comments were received from the State Department of Health (DOH).
4. **Notice to Surrounding Property Owners.** Proof of mailing notice(s) to surrounding property owners was submitted to the Planning Department. For the record, the first and second notice(s) were mailed on March 10, 2005 and May 9, 2005, respectively, by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections from surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant/owner filed the variance request and application to address or resolve building encroachment issues. The site plan map was prepared by a surveyor and shows the dwelling or "ONE STORY RESIDENCE" improvements, "AS BUILT", on "LOT 17-A". A small portion of the dwelling was constructed beyond the lot's building lines or outside the building envelope into one of Lot "17-A's minimum side (Kau) yards and attendant side yard open space pursuant to the Hawaii County Zoning Code.

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No evidence has been found to show indifference or premeditation by the builders or the current owner to deliberately create or intentionally allow the building encroachment problems to occur. According to County building records the dwelling improvements were built or started or built between 1991 and 1994. Inspections by the agencies during construction of the dwelling during the early 1990s did not disclose any building encroachments within one of the property's minimum side yard or building position issues at that time. (County building records indicate all building and constructions permits issued to the subject TMK property were closed or "finalized" by the DPW).

ALTERNATIVES

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

1. Removing the existing building encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code (The applicant's pictures taken after the survey of the property show the "OPEN BEAM" improvements within the affected side yard were demolished and/or removed).
2. Consolidation of the subject TMK property with the adjoining property (LOT NO. 18-A) and resubdivision of the resultant lot to modify property lines and adjustment of 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.

It appears that the dwelling encroachments constructed more than 10 years ago within the affected side yard are not physically noticeable or visually obtrusive from adjacent property(s) or Aipuni Street. It appears that these building encroachments into the affected side (Kau) yard do not depreciate or detract from the character of the surrounding neighborhood and surrounding land pattern. Therefore, it is felt that these building encroachments within the affected minimum side yard and attendant minimum 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.

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The subject variance application was acknowledged by letter dated April 25, 2005. Additional time to complete the variance background report 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 February 24, 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 a "ONE STORY RESIDENCE" or dwelling located on "LOT 17-A" do not meet the minimum side yard and attendant minimum side yard open space required by the Chapter 25, the Zoning Code, according to the variance application's site plan map signed and dated December 11, 2004. Pursuant to the applicant and recent pictures submitted with the variance application show the "OPEN BEAM" improvements within the affected side yard were removed. The approval of this variance allows the dwelling improvements including roof eaves, "AS BUILT", to remain on "LOT 17-A" pursuant to the variance application's site plan map dated December 11, 2004.
4. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.

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5. Future building improvements and permitted uses on the subject tax map key property are 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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xc: Real Property Tax-Kona