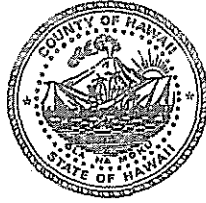


Harry Kim
Mayor



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

September 22, 2005

Ms. Catherine Lowrey
P. O. Box 6002
Kurtistown, HI 96760

Dear Ms. Lowrey:

VARIANCE PERMIT NO. VAR 05-055
Applicant: CATHERINE LOWREY
Owners: RAY WOLFGRAMM, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 1-6-060:082, Lot 6009

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. 04-005 allows portions of a dwelling/roof to remain on Lot 6009, "AS-BUILT", with a minimum 16.84 feet side yard and attendant minimum 11.90 feet side yard open space in lieu of the minimum 20.00 feet side yard and attendant minimum 14.00 feet side yard open space requirements according to the variance site plan map dated November 23, 2004. The variance request is from the subject TMK property's minimum yard and attendant open space requirements pursuant to the to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

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SEP 28 2005 ✓

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 6009 containing 3.00 acres, is within Hawaiian Acres and situated at Keaau, Puna, Hawaii.

The TMK property was zoned Agricultural (A-3a) by the County in 1967 and designated Agriculture "A" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about June 21, 2005. The variance application's site plan map was prepared by The Independent Hawaii Surveyors and is dated November 23, 2004 and drawn to scale. This site plan map denotes the location of a "HOUSE", "AS-BUILT", on Lot 6009. A portion of the dwelling or "HOUSE" is within one of the lot's minimum 20 feet side yard(s) and portion of the roof does not meet the associated minimum 14 feet side yard open space required between the edge of the roof and affected side boundary line.

The applicant's background dated June 21, 2005 states in part:

"Previous owners built house in 1984 and accidentally built it too closed to side boundary. It is 16.84 feet away, instead o the minimum 20 feet (sic).

During the recent selling of the property a survey was done and the encroachment was discovered.

Moving the home would be extremely expensive. Cutting back the corner would be unattractive and costly.

The existing setback of 16.4 feet is not detrimental to the vacant lot on the north side."

Note: The dwelling's ("HOUSE") wastewater system was not denoted or identified on the variance site plan map. The variance request does not address the location of "WIRE FENCE" or other fencing improvement on or straddling common boundary lines or any other issues related to property use. Any existing perimeter fencing/wall and/or landscape materials straddling common boundary

lines shared with the adjoining lots must be addressed and resolved by applicant or between affected parties or legal property owner(s).

3. **Agency Comments and Requirements-(VAR 05-055):**

- a. The State Department of Health (DOH) memorandum dated August 31, 2005 states:

"Wastewater Branch is unable to make comments to the proposed project at this time. Before we can offer any comments, the applicant needs to address the location of all existing wastewater systems."

- b. The Department of Public Works (DPW) memorandum dated September 2, 2005, states:

"We have reviewed the subject application forwarded by your memo dated August 11, 2004 (sic) and have no comments or objections to the request."

4. **Notice to Surrounding Property Owners.** The applicant submitted an affidavit and certificate of mailing. According to the affidavit and mailing receipts, it appears that the required notices were mailed on or about June 20, 2005 and August 22, 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, on behalf of the current owners, is trying to resolve the building encroachment issues built between 1984 and 2000. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling or "HOUSE" and other site improvements, "AS BUILT" on "LOT 6009". The site plan identifies the dwelling and associated roof position within the one of the property's minimum 20-foot side yards and attendant side yard open space requirement pursuant to the Hawaii County Zoning Code. The applicant or current owners became aware of building encroachment issues after the survey map was completed or during

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escrow to sell the property. No evidence was found showing indifference or premeditation by the applicant or previous builders to deliberately create or intentionally allow the dwelling encroachments to be constructed within the affected side yard. The dwelling improvements were built under a valid building permit and/or construction permits issued by the County; and, inspections by the agencies did not disclose any building 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 "HOUSE" encroachments or redesigning or relocating the dwelling and attendant roof eaves to fit within Lot 6009's "building site" or building envelope prescribed by the Zoning Code and identified on the variance site plan map.
2. Consolidation of subject property-Lot 6009 with adjoining property-Lot 6008 and resubdivision of the resulting consolidated property to modify a property line and adjust minimum side 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 or "HOUSE" encroachment into the respective side yard and attendant open space requirements are not physically and visually obtrusive from adjoining property (Lot 6009) or right-of-way ("11" ROAD). The dwelling and roof encroachment within the affected side yard was discovered during escrow to sell the property. It appears that the 11 year old dwelling encroachments within the affected side yard and associated minimum open side yard space was a building mistake. The encroachment issues within the affected side yard were revealed after the survey of the property and map was completed during escrow to sell the property. It is felt that the 11 + year old dwelling encroachments within the affected side yard have not affected or altered the character of the subdivision and surrounding land patterns.

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Therefore, it is felt that the dwelling encroachments into the affected side yard 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 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 "HOUSE" or dwelling on the subject TMK property or Lot 6009 will not meet Chapter 25, the Zoning Code's minimum side yard and associated minimum side yard open space requirements. The approval of this variance allows dwelling or dwelling encroachments within the respective side yard identified on the variance application's site plan map to remain, "AS BUILT", on the subject TMK property (LOT 6009).
4. The outstanding electrical permit (E912124) issued to the subject TMK property (Lot 6009) shall be closed or "finaled" by the DPW-Building Division prior any change in title or future sale of the property.
5. No permit to allow an ohana dwelling shall be granted on subject TMK property (Lot 6009), subject to provisions of the Hawaii County Zoning Code or State Law


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which may change from time to time.

6. 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: jb
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cc: Real Property Tax Office-Hilo
Planning Dept.-Kona