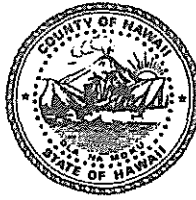


Harry Kim
Mayor



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

May 17, 2006

Mr. Kevin and Ms. Tina McGill
P. O. Box 1156
Honokaa, HI 96727

Dear Mr. and Ms. McGill:

VARIANCE PERMIT NO. VAR 05-059
Applicants: KEVIN MCGILL, ET AL.
Owners: KEVIN MCGILL, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 4-5-004:013

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. 05-059 permits proposed dwelling/garage to be built with minimum 5.5 feet side yard(s) and attendant minimum 3.0 feet side yard open space from respective side boundary lines in lieu of the minimum 10.0 feet side yard and attendant minimum 5.0 feet side yard open space requirements according to the revised variance site plan map submitted with the application. The variance is from the TMK property's minimum side yard 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 containing 11,485 square feet is a portion of Lot 25, Grant 6934, and situated at Kaao, Hamakua, Hawaii.

MAY 22 2006

Mr. Kevin and Ms. Tina McGill

Page 3

May 17, 2006

- a. The Department of Public Works (DPW) memorandum dated September 9, 2005 states in part:

"All new building construction shall conform to current code requirements."
 - b. The State Department of Health (DOH) memorandum dated December 21, 2005 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
5. **Notice to Surrounding Property Owners.** Proof of mailing notices to surrounding property owners was submitted to the Planning Department on February 13, 2005. For the record, it appears that first and second notices were mailed on or about June 18, 2005 and August 23, 2005, respectively, by the applicants. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 26, 2005.
6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant's submitted the variance request and additional information requesting a new dwelling/garage to be built on the subject TMK property with minimum 5.50 feet side yards and minimum 3.00 feet side yard open spaces in lieu of the minimum 10.00 side yard(s) and associated minimum 5.00 feet side yard open spaces from the affected side boundary lines. Meeting the minimum side yards required by the Zoning Code would limit the width of the dwelling to 15.00 feet and could detract from the surrounding building character or character of the neighborhood. The variance application's site plan map denotes the dwelling's proposed position and location of roof eaves within the affected side yard and side yard open spaces. This site plan also discloses that access to the proposed new dwelling's garage will via an existing 12 feet wide easement situated property (TMK: 4-5-004:056) owned by the applicants/owners and denotes the approximate distances between the proposed new dwelling and existing dwellings on adjoining property (TMK: 4-5-004:090) owned by James Hiromasa.

ALTERNATIVES

Mr. Kevin and Ms. Tina McGill

Page 4

May 17, 2006

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

1. Design a dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of the subject property with adjoining property(s) to modify property lines to create a larger building site-building envelope, etc. These options appear to be limited due to access rights by another property to use a 12 feet wide easement identified on the adjoining TMK property (TMK: 4-5-004:056) owned by the applicants; and, further, the applicant's state "The gentleman who sold us this piece of land (James Hiromasa) resides in his house on the property next door and his house is 61 feet from the proposed structure" (TMK: 4-5-004:090).

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 subject TMK property was created or subdivided or created over 40 years ago and, this 35.0 feet wide property was created or permitted prior to the adoption of the Zoning and Subdivision Code(s) circa 1967-1968. It is felt that the proposed dwelling's position within the affected minimum 10 feet side yard(s) will not detract from the character of the immediate neighborhood or the subdivision. No objections were received from adjoining and/or surrounding property owners. A building permit to construct the proposed dwelling must be secured from the DPW and minimum UBC building setbacks must be addressed and met.

The subject variance application was acknowledged by letter dated August 25, 2005 and additional time to review the subject TMK parcel's history and lot dimensions was required. The applicant submitted additional information and requested an extension of time to render a decision on the subject variance.

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

Mr. Kevin and Ms. Tina McGill

Page 5

May 17, 2006

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 proposed dwelling/garage is permitted to be constructed with minimum 5.50 feet side yards and associated roof eaves (including gutters) with minimum 3.00 feet side yard open spaces from the affected property's side boundary lines according to the variance application's site plan map. The applicants/owners shall secure the necessary building permits from the Department of Public Works (DPW) to construct the dwelling/garage on subject TMK property. The access and proposed dwelling/garage shall be constructed in accordance with the approved variance site plan map and approved detailed building construction plans.

The applicant or current owners are required to provide and maintain access and any driveway access to proposed dwelling's garage denoted on approved variance site plan map via existing 12 feet easement denoted on adjoining TMK: 4-5-004:056 owned by applicants/owners and "access to lot behind ours". Any building permits or construction permits issued to subject TMK property shall be closed or "finalized" by the DPW-Building Division prior to sale of subject TMK property or transfer of title of subject TMK property by the applicants/owners to others.

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.
5. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Mr. Kevin and Ms. Tina McGill

Page 6

May 17, 2006

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/DSA:cd

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xc: Real Property Tax Office-Hilo