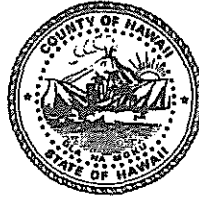


Harry Kim
Mayor



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

July 21, 2006

Ms. Lori Mikkelson
P. O. Box 291
Laupahoehoe, HI 96764

Dear Ms. Mikkelson:

VARIANCE PERMIT-VAR 05-072

Applicant: LORI MIKKELSON
Owner: WILLIAM SPAW
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 1-3-027:041

After reviewing your application, the Planning Director certifies the approval of Variance Permit-VAR 05-072 subject to variance conditions. The variance to permits portions of a 2-story dwelling/garage/covered deck/water catchment shed to remain on the property, "AS-BUILT", with minimum 14 feet 10 inch and minimum 18 feet 4 inch side yard(s) and associated minimum 7 feet 4 inch to 11 feet 4 inch side yard open space(s), in lieu of the minimum 20.00 feet side yard and attendant minimum 14.00 feet side yard open space requirements according to revised variance site plan map submittal prepared by the applicant. The variance is from the TMK property's minimum yard and attendant open yard space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), 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 314-D containing approximately 13.600 acres, being a portion of Grant 4039 to George Benson, is situated at Olaa Reservation Lots, Olaa, Puna, Hawaii.

The property is zoned Agricultural (A-1a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC).

Ms. Lori Mikkelson
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July 21, 2006

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on or about July 19, 2005. The variance application's site plan map is drawn to scale and prepared by the owner's representative-All Aina Services. This variance site plan map submitted with the application indicates that portion of the dwelling/water catchment improvements were constructed within the subject TMK property's minimum 20 feet side yards.

The applicant's background report dated July 18, 2005 states in part:

"The applicant William Spaw would like to request a variance for TMK 1-3-027-041. The structure that exists on the property was built within the property setbacks, and consequently part of the driveway leading to the house is also within the setbacks. It appears that there is no other reasonable solution to resolve this issue except to apply for the variance. The parts of the house, which have been built within the setbacks, are crucial to its' structural integrity. Please see attached maps and photos. The house was permitted in 1980 and built in 1981 and received final inspection. Consequently, the house meets other building requirements and codes for the time period that it was built in. The property has recently been sold and the new owner would like this resolves as quickly and simply as possible."

In addition to the above, the applicant submitted letter dated July 6, 2006, which states in part:

"The applicant William Spaw would like to request an extension for this Variance Application while we address the status of the outstanding Building Permit #802499. Please allow an extension of the application to August 15, 2006.

This Building Permit was issued to previous owners of the parcel. No building matching the description existed on the parcel at the time of purchase by Mr. Spaw. After speaking with Ms. Masaki of the Building Division it appears the preferred action would be to apply for a Demolition Permit and therefore remove this permit and acknowledgment of the building from the county records." (See variance conditions).

Note: The variance site plan map does not identify the location of the cesspool or Independent Wastewater System (IWS). The variance request does not address the location or position of any walls, fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 2-Building Permits (802498, 802499), 1-Electrical Permit (EH57106), and 1-Mechanical (MH34431) or Plumbing Permit were issued to subject TMK property circa 1980-1981. It appears that the dwelling and associated water catchment improvements were built pursuant to building permit-802498 and associated construction permits issued circa 1980.

4 **Agency Comments and Requirements-VAR 05-072:**

- a. The State Department of Health (DOH) memorandum dated October 17, 2005 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

- b. The Department of Public Works (DPW) memorandum dated October 20, 2005 states in part:

"NO COMMENTS"

- 5 **Notice to Surrounding Property Owners.** Proof of mailing notices to surrounding property owners was submitted to the Planning Department. For the record, the first and second notices were mailed on July 15, 2005 and April 28, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on or about October 13, 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, on behalf of the current owners, submitted the variance application to address or resolve the dwelling encroachments within the property's minimum side yards. The variance application's site plan map denotes the location of the dwelling, water catchment shed, and other site improvements, "AS BUILT", on the subject TMK property. It appears that the current owner became aware of building encroachment issues during escrow to sell the property. No evidence has been found to show indifference or premeditation by previous owner or builders to deliberately create or intentionally allow these building encroachments to be built within the affected side yard and attendant side yard open spaces.

Ms. Lori Mikkelson
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July 21, 2006

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to building permit(s) and associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements circa 1980-1981, the building encroachment within the property's side yards went unnoticed.

ALTERNATIVES

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

1. Remove the building encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of subject TMK with adjoining TMK properties and resubdivision to modify property lines or adjust 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 subject building encroachments constructed approximately 25 years ago within the minimum side yards are not physically and/or visually obtrusive from the adjacent property or right-of-way (Malama Road). It appears that these encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that these building encroachments into the affected side yards 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 October 6, 2005 and additional time was requested by the applicant to send notice to surrounding property owners and address the status of an outstanding building permit-"#802499" issued to the property. The applicant requested an extension of time to render a decision on the subject variance to August 15, 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 the dwelling/water catchment improvements located on the subject TMK property will not meet the minimum side yard and attendant side yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits the "2-story dwelling/garage/covered deck/water catchment shed" improvements to remain, "AS BUILT", on the subject TMK property according to the variance site plan map in subject variance file.

The applicant or current owners shall address the "open" status of Building Permit-BP No. 822499 issued to subject TMK property. The status of the "open" building permit (802499) and any further permits issued to subject TMK property by the DPW shall be "closed" or "finalized" by the DPW prior to sale of the property or transfer of title of the property to others.

4. 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.

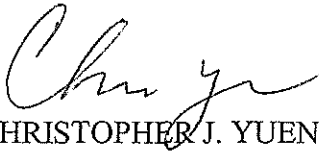
Ms. Lori Mikkelson

Page 6

July 21, 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,



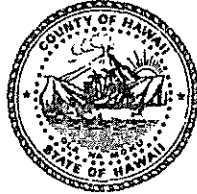
CHRISTOPHER J. YUEN
Planning Director

WRY:cd

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xc: Real Property Tax Office-(Hilo)

Harry Kim
Mayor



Christopher J. Yuen
Director

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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

August 2, 2007

Mr. William Spaw
13-895 Malama Street
Pahoa, HI 96778

Dear Mr. Spaw:

VARIANCE-VAR 05-072

Applicant: LORI MIKKELSON

Owner: WILLIAM SPAW

**Request: Variance from Chapter 25, Zoning
Minimum yards**

Tax Map Key: 1-3-027:041

Variance-VAR 05-072 was granted on July 21, 2006 subject to variance conditions. The variance conditions dated July 21, 2006 requires the owner to address the "open" status of Building Permit (802499) issued by the DPW to construct a workshop. According to County records, in lieu of completing or building the workshop, the current owner was issued a building permit (B2006-2268H) by the DPW on September 5, 2006 to demolish the workshop or "DEMOLITION OF WORKSHOP UNDER 802499". According to County records, the demolition permit-B2006-2268H or demolition of the workshop was "COMPLETED" on November 8, 2006.

Therefore, in consideration of the above, VAR 05-072 conditions dated July 21, 2006 are hereby corrected and modified to read as follows:

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.

Mr. William Spaw

Page 2

August 2, 2007

3. Portions of the dwelling/water catchment improvements located on the subject TMK property will not meet the minimum side yard and attendant side yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits the "2-story dwelling/garage/covered deck/water catchment shed" improvements to remain, "AS BUILT", on the subject TMK property according to the variance site plan map in subject variance file.
4. 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.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this VAR 05-072 null and void.

Sincerely,



6v CHRISTOPHER J. YUEN
Planning Director

WRY:cd

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xc: Real Property Tax Office-(Hilo)
Lori Mikkelson