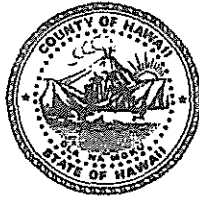


Harry Kim  
Mayor



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

April 30, 2006

Mrs. Lauren Kim Hatch  
308 Henrietta Avenue  
Los Osos, CA 93402

Dear Mrs. Hatch:

**VARIANCE PERMIT NO. VAR 05-075**

**Applicant:** LAUREN KIM HATCH  
**Owners:** LAUREN KIM HATCH, ET AL.  
**Request:** Variance from Minimum Yards  
Pursuant to Chapter 25, Zoning  
**Tax Map Key: 8-7-017:049, Lot 149**

After reviewing your application and the information and plans submitted, the Planning Director certifies the approval of Variance Permit No. 05-075 subject to variance conditions. The variance permits proposed dwelling to be constructed with a minimum 10.00 front yard and allow corresponding minimum 5.00 feet front yard open space in lieu of the minimum 15.00 feet front yard and minimum 10.00 front yard open space requirements according to the variance site plan map and other plan submittals received with the variance application. The variance request is from the subject TMK property's minimum front yard and attendant minimum open space requirements pursuant to 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 149 containing 7500 square feet, is within Kona Paradise Subdivision, being portions of lands covered by Mahele Award Number 25, Royal Patent Number 7739 to Nahua, is situated at Kaohe 4<sup>th</sup>, South Kona, Hawaii.

The property is zoned Agricultural (A-5a) by the County 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 July 28, 2005 to the Hilo Planning Department. The variance application's site plan map and other drawings are drawn to scale. The applicants are requesting a variance to construct a new dwelling on Lot 149 with a minimum 10.00 feet front yard in lieu of minimum 15.00 feet front yard.

The applicant's background states in part:

"Our lot 149 on "Ea" street is very steep. The grade drops off immediately at the property line, (sic) The grade falls at  $\pm 48\%$  or 60 feet in elevation change over 125 feet of run. This natural site condition is very limiting to the usable area for building a home and to provide vehicle access to the required garage. Because of the steep slope of the site a bridge is required to access the home/garage. The variance will reduce the length of the bridge and reduce the height of the foundation required to hold-up the home and garage."

3. **Agency Comments and Requirements-VAR 05-075:**

- a. The Department of Public Works (DPW) memorandum dated September 8, 2005 states in part.

"We reviewed the subject application and our comments are as follows:

Buildings shall conform to all requirements of code and statues pertaining to building construction, (see attached memorandum from our Building Division)." (Note: This memorandum did not include referenced "attached" DPW-Building Division memorandum).

A copy of the DPW-Building Division memorandum dated September 6, 2005 memorandum received by Planning Department on March 24, 2006 states in part:

"Approval of the application shall be conditioned on the comments as noted below.

The minimum setbacks shall be maintained as follows:

Residential structures-3ft. side, 3 ft. rear  
Commercial structures-5 ft. side, 5 ft. rear"

- b. The State Department of Health (DOH) memorandum dated September 15, 2005 states:

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

4. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. For the record, it appears that first and second notices were mailed to a list of surrounding property owners according to notarized affidavits dated July 21, 2005 and September 18, 2005, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 26, 2005.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following letter(s) supporting the variance application and objection letter(s) were received:
  - a. Letter dated August 4, 2005 from Patrea Post, Et al. endorsing the applicant's variance request and application.
  - b. Letter dated August 18, 2005 from the Kona Paradise Property Owners Association (Chuck Savell-KPPOA) endorsing the variance application.
  - c. 2-Letters dated September 11, 2005 from J.L. Zamora, Et al., opposing the variance request and application.
  - d. Letter dated September 12, 2005 from Miguel Aldas, Et al., opposing the variance request and application.
  - e. Fax of a letter dated September 14, 2005 from Glenville Bending, Et al., endorsing the applicant/owners variance application was received on or about September 20, 2005.

**Note:** The written objection letters and/or concerns received from surrounding property owners; especially, any letters from adjoining or abutting the subject TMK property owners. The "non-conforming" lot size and average width of a typical lot coupled with severe topography throughout this subdivision limits building options. The Planning Director acknowledges several variance applications from minimum yards (especially front and side yards) have been approved due to "building mistakes" discovered during escrow or after substantial building construction was completed.

In this instance, the property's severe sloping topography and minimum 15 feet front yard would require a 15 feet access bridge connection between the garage wall and front boundary line along "E" Street. According to the applicant, "The variance will reduce the length of the bridge and reduce the height of the foundation required to hold-up the home and garage".

The preliminary building plans to construct the dwelling and other site improvements were reviewed by the KPPOA (Refer to copy of January 24, 2005 letter in variance file) and the variance request to allow a minimum 10.00 feet front yard was endorsed by the KPPOA (Refer to copy of letter dated August 18, 2005). The proposed dwelling and related site improvements are required to meet minimum County building codes and it appears the proposed dwelling's position can meet minimum setbacks cited in the DPW-Building Division's memorandum dated September 6, 2005. The owners will be required to secure a building permit and other construction permits to construct proposed dwelling/water tank/garage/access driveway-bridge and other site improvements on the TMK property from the DPW and affected agencies. (See variance conditions).

### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The subject property's topography is severe and access to these properties and house designs within the subdivision are limited to engineered cantilever and pier support for parking and living areas. In addition, dwellings within this subdivision are dependent on rainwater catchment for potable water.

The applicant/owner(s) are requesting a variance from the property's minimum 15.00 feet front yard. The site plan and preliminary building plans denote the proposed dwelling's position on the subject property.

### **ALTERNATIVES**

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

1. Designing the dwelling or modifying the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property with adjoining property (right-of-way) and resubdivision and adjustment of minimum yards from revised boundary lines, etc.

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### **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 is felt, that the applicant and owners request for a variance to construct a new dwelling with a 10.00 feet minimum front yard and access bridge will not detract from the character of the surrounding building patterns and character of the surrounding neighborhood. The detailed building construction plans to construct the dwelling are required to meet County building or UBC requirements; and, a building permit and other construction permits must be secured before construction is started. Therefore, it is felt that the proposed dwelling and access bridge improvements within the property's minimum 15 feet front yard will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated August 23, 2005 and additional time to confirm agency comments and objection letter(s) received regarding the variance application was necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance application.

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(s), 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/owner, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.

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3. This variance permits portions of a proposed dwelling/garage to be constructed on subject TMK property with a minimum 10.00 front yard and permits access (bridge) improvements to be built within the front yard or front yard open space in accordance with the variance site plan map and approved detailed building construction plans.

The applicant or current owners shall submit detailed construction plans and secure a building permit from the DPW and any other building construction permits required by the DPW to construct proposed dwelling on or before March 31, 2010. Any building permits or construction permits issued to the subject TMK property shall be closed or "finalized" by the DPW or affected agencies prior to sale of the property or transfer of title of the property by the current owner(s) to others.

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

WRY:cd

PAWP60\WRY\FORMLETT\VARAPP05-075TMK87017049.HATCH

cc: Real Property Tax Office-Kona  
Patrea Post, Et al.  
Chuck Savell-KPPOA  
J.L. Zamora, Et al.  
Miguel Aldas, Et al.  
Glenville Bending, Et al.