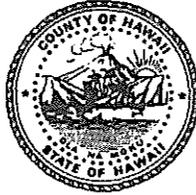


Harry Kim
Mayor



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

October 15, 2006

Mr. Gary K. Ahu, Sr.
105 Hokulani Street
Hilo, HI 96720

Dear Mr. Ahu:

SUBJECT: VARIANCE-VAR 05-081
Applicant: GARY K. AHU, SR.
Owner: GARY K. AHU, SR.
Request: Variance from Chapter 25, Zoning
Tax Map Key: 2-5-060:001, por., (SUB 82-179)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 05-081 subject to variance conditions. The variance allows portions of an "Existing Dwelling", "AS-BUILT", to remain on proposed "Lot 1-B-3-B" with a minimum 10.0 feet rear yard and attendant minimum 6.74 feet rear yard open space and minimum 5.0 feet side yard and attendant minimum 3.0 feet side yard open space from the proposed boundary lines of "Lot 1-B-3-B" being created by pending subdivision (SUB 82-179-Kumulani Subdivision). The variance is from the proposed lot's ("Lot 1-B-3-B") minimum 20.00 feet rear yard and attendant minimum 14.00 feet rear yard open space and minimum 10.00 feet side yard and attendant minimum 5.00 feet side yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(2)(A)(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 TMK property, containing approximately 3.3166 acres, being a portion of Grant 4801 to Jose G. Serrao, and situated at Ponahawai, South Hilo, Hawaii.

The property is zoned Single-Family Residential (RS-15) by the County and designated Urban or "U" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about February 1, 2006. The variance application's revised site plan map was prepared by Imata & Associates, Inc. and drawn to scale. The variance application's revised site plan map is dated August 28, 2006 and denotes the position of an "Existing Dwelling" and other buildings on the subject TMK property. The "Existing Dwelling" constructed on proposed "Lot 1-b-3-B" was built within the proposed lot's minimum 20 feet rear yard and proposed 10 feet side yard of proposed "Lot 1-B-3-B" being created by SUB 82-179.

The applicant's original background dated January 23, 2006 states in part:

"The applicant Gary Ahu would like to request a Variance from the Zoning Code, Chapter 25, for TMK 2-5-060-001. The owner purchased the property with a pending subdivision. The owner is requesting a variance from the minimum required yard space under section 25-5-7, which states that the minimum front and rear yards be twenty feet and the minimum side yards be ten feet. The reason for this request is that a permitted dwelling will now exist within the required minimum yards (setbacks), created by the subdivision. Also a second dwelling and an "as built" storage building will have roof overhangs extending into the side yard setbacks. Please see attached explanation of building locations. All buildings on the parcel are built under the current building code, and are structurally sound. The architecturally approved plans for the "as built" storage building have been submitted and are now in the permitting process. The applicant has researched all other options and there are no other reasonable alternatives. It appears there is no other reasonable solution to resolve this issued except to apply for a variance from the zoning code."

Note: The revised variance site plan map does not identify the location of any cesspool or Independent Wastewater System (IWS) on proposed lot ("Lot 1-B-3-B"). The variance request does not address the location or position of any rock walls, fencing, and landscaping, etc. along or straddling existing or proposed boundary lines.

3. **County Building Records:**

County building and tax records indicate at least 7-Building Permits and associated electrical and plumbing permits were issued to subject TMK property. It appears that the dwellings and other accessory buildings on the subject TMK property were built pursuant to these building and associated construction permits issued between 1987 and 2004.

4 **Agency Comments and Requirements-VAR 05-081:**

- a. The Department of Public Works (DPW) memorandum dated April 21, 2006 states in part:

“NO COMMENTS”

- b. The State Department of Health (DOH) memorandum dated May 1, 2006 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. For the record, the first and second notices were mailed on January 31, 2006 and September 15, 2006, respectively, by the owner’s representative. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 12, 2006.

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-owner submitted the variance application to address and resolve the dwelling encroachments within a proposed lot being created by SUB 82-179. A dwelling was constructed within the minimum 20 feet rear yard and minimum 10 feet side yard of proposed lot “Lot 1-B-3-B” being created by SUB 82-179. The variance application’s revised site plan map was prepared by a surveyor and denotes the location of the dwelling and other accessory buildings, “AS BUILT”, on the subject TMK property and within the proposed 8-lot subdivision. It appears that the current owner became aware of building encroachment issues within the proposed subdivision after building permits were issued and/or during construction of the permitted buildings.

It appears that the existing dwellings and gazebo on the subject TMK property were constructed according to building permits and other associated construction permits issued to subject TMK property. In addition, the building permits and associated construction permits were issued to the subject TMK property after tentative subdivision approval was granted to pending 8-lot subdivision-SUB 82-179 on September 15, 1982. It appears that the dwelling improvements within the minimum yards of the proposed lots being created by SUB 82-179 went unnoticed by the agencies.

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. Redesigning the subdivision's proposed lot layout to accommodate the building improvements permitted between 1987 and 2004. Modify proposed property lines or adjust minimum yards, etc.

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 or building improvements constructed between 1987 and 2004 within the "proposed" minimum yards are not physically and/or visually obtrusive within the proposed subdivision or publicly owned right-of-way (Hokulani Street) or "Roadway Lot A". It appears that the dwelling encroachments into the proposed minimum yards of proposed "Lot 1-B-3-B" will not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the dwelling into the minimum yards of proposed lot-"Lot 1-B-3-B" identified on the revised site plan map prepared by Imata & Associates, Inc. will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated March 31, 2006. Additional time was requested by the applicant to submit an accurate site plat map, drawn to scale, denoting the location of existing building improvements, "AS-BUILT" and additional time to send notice to surrounding property owners. The applicant, on behalf of the owner, granted the Planning Director and extension of time to October 15, 2006 to render a decision of 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 application is approved subject to the following variance conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval and VAR 05-104 variance conditions.
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 "Existing Dwelling" constructed on proposed "Lot 1-B-3-B" being created by SUB 82-179 will not meet the minimum side yard and attendant minimum side yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated August 28, 2006 or revised final plat map. The approval of this variance permits the "Existing Dwelling" improvements to remain, "AS BUILT", on the subject TMK property or proposed "Lot 1-B-3-B" according to the variance site plan map dated August 28, 2006.

The applicant or current owner shall address the status of an "open" Building Permits and construction permits issued to subject TMK property by the DPW-Building Division (Hilo). Any active or "open" building permit and/or other construction permits issued to subject TMK property shall be closed or "finalized" by the DPW-Building Division prior to final subdivision approval of SUB 82-179.

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 or lots arising out of SUB 82-179, subject to provisions of the Zoning Code or State Law which may change from time to time.

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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.

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)