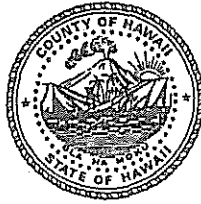


Harry Kim  
Mayor



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

November 21, 2005

Mr. Earl Watanabe  
EARL WATANABE & ASSOCIATES  
HCR-2 Box 6843  
Keaau, HI 96749

Dear Mr. Watanabe:

#### **VARIANCE PERMIT NO. VAR 05-082**

**Applicant:** EARL WATANABE  
**Owners:** RUSSELL NORMAN GRIFFITH, ET AL.  
**Request:** Variance from Minimum Yards  
Pursuant to Chapter 25, Zoning  
**Tax Map Key:** 1-5-067:088, Lot 18

After reviewing your application and the information and plans submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 05-082 allows portions of "DWELLING" (under construction) to remain on Lot 18, "AS-BUILT", with a minimum 13 feet 5 inches to minimum 14.5 feet front yard in lieu of the minimum 20 feet front yard required from the TMK's front boundary line along Malolo Street according to variance site plan submitted with the application. The variance request is from the TMK's minimum yard requirement pursuant to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Section 25-5-77, Other regulations.

#### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, Lot 18 containing 12,159 square feet, is within Block "32", portion of Hawaiian Parks Subdivision, L. C. Award 11216:40 PT 1, F. P. 691, and situated at Waiakahiula, Puna, Hawaii.

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

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2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about August 17, 2005. The variance application's site plan map drawing is drawn to scale and prepared by Earl Watanabe and Associates. The variance site plan map denotes the dwelling's position, "AS-BUILT", within the TMK property's minimum front yard and along Malolo Street.

The applicant's background states in part:

"In explanation, during grading the pins were apparently moved.so (sic) the site measurements were mistakenly laid out, consequently the as-built house intrudes into the set-back by 5'-6" and 6'-7" only on the Malolo St. frontage. All other set-backs are fine. As the house is already 80% completed and is constructed with a concrete slab the house cannot be moved at this late juncture. We hope for your understanding in this matter as it was a honest mistake."

3. **Agency Comments and Requirements-VAR 05-082:**
  - a. The Department of Public Works (DPW) memorandum dated October 13, 2005 states in part:

"NO COMMENTS"
  - b. 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."
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 on August 12, 2005 and October 18, 2005 by the applicant to a list of surrounding property owner(s).
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No oral or written objections were received from surrounding property owners and/or public.

### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

According to the applicant and building permits obtained from DPW, the dwelling and garage encroachment issue were discovered during construction of the dwelling improvements or after 80% of the building was built. The applicant and current owner is addressing a construction error.

The 1-story dwelling and garage improvements are being constructed according to a recent building permit issued to the subject TMK property by the DPW-Building Division (B2005-1051H).

The variance site plan map identifies the dwelling encroachments within the property's minimum front yard along Malolo Street pursuant to the Hawaii County Zoning Code. These dwelling improvements are being constructed pursuant to a valid building permit and other construction permits issued to the TMK property by the County. It appears that the building inspections of the premises or during phases of building construction, e.g. foundation "slab", framing, etc. did not disclose any building encroachment issues or building irregularities. The applicants or owner is honestly trying to address the dwelling's position.

### **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 the dwelling or modifying the attached carport to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property-Lot 18 with adjoining privately owned right-of-way (Malolo Street) and resubdivision of the revised property area to adjust minimum yards from revised boundary lines, 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.

The dwelling encroachments within the affected front yard were not detected during inspections by the agencies and do not appear to be physically and visually obtrusive from adjoining property(s) or detectable from the rights-of-way. It appears that the building encroachments were discovered after the dwelling was nearly completed by the builder or owner. The building encroachment into the affected front yard was not detected during inspections of the dwelling's foundation or framing of the dwelling by the agencies or by surrounding property owners. Therefore, it is felt that the existing dwelling encroachments within one of the 2-front yard(s) of the subject TMK property will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated September 21, 2005 and additional time to notify surrounding property owners and/or comment on the application was necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than December 2, 2005.

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/owner, 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 1-story dwelling being constructed on the subject TMK property will not meet Chapter 25, the Zoning Code's minimum front yard requirements. The approval of this variance allows the dwelling position or dwelling improvements to remain on Lot 18, "AS BUILT", pursuant to the variance site plan map.

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The applicant or current owner shall complete the dwelling improvements in accordance with approved building permit or construction permits issued to the TMK property by the DPW-Building Division (Hilo). The building and construction permits shall be closed or "finalized" by the DPW prior to occupancy or future sale of the property.

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 building additions or 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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cc: Real Property Tax Office-Hilo