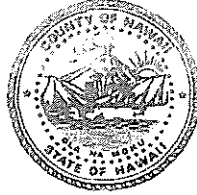


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
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Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
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March 29, 2006

Mr. Daniel J. Daub
586 Kanoelehua Avenue
Hilo, HI 96720

Dear Mr. Daub:

VARIANCE PERMIT NO. VAR 05-084
Applicant: DANIEL J. DAUB-REALTOR
Owner: CATHERINE LAMPTON-RICE
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 1-5-066:062, Lot 3

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. 05-084 allows portions of a "HOUSE" or dwelling and carport to remain on Lot 3, "AS-BUILT", with a minimum 17.61 feet front yard and minimum 9.43 feet side yard in lieu of minimum 20.00 feet front yard and minimum 10.00 side yard, according to the variance site plan map dated June 2, 2004. 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 3 containing 12,040 square feet, is within Block "40", portion of Hawaiian Parks Subdivision, L. C. Award 11216:40 PT 1, F. P. 691, and situated at Waiakahiula, Puna, Hawaii. The property's address is 15-2721 Nenu Street.

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The property is zoned Agricultural (A-1a) 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 August 26, 2005. The variance application's site plan map is drawn to scale and prepared by The Independent Hawaii Surveyors. The variance site plan map, dated June 2, 2004, denotes portions of the "HOUSE" or "STORAGE" or "CARPORT" were built within a minimum 20-foot front yard and minimum 10-foot side yard of "LOT 3" or subject TMK property.

The applicant's background states in part:

"The property consists of the nice and well constructed dwelling which was built back in 1972. The owner believes all the permits are in place and that this was an onsite construction error which lead (sic) to these minor setback violations. No additions have been done to the property. This property has sold a number of times over it's (sic) life span and the current owner Catherine Lampton-Rice wishes to resolve this issue."

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 "CHAIN-LINK FENCE", etc. along or straddling common boundary lines.

3. **County Building Records:**

Recent County building records show an Electrical Permit (EH60187) was issued to subject TMK property during 1982. It appears that the original dwelling improvements on "LOT 3" were built and completed during the 1970s.

4. **Agency Comments and Requirements-VAR 05-084:**

- a. The Department of Public Works (DPW) memorandum dated October 13, 2005 states:

"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."

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 September 6, 2005 and October 13, 2005, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 29, 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 or dwelling/storage/carport encroachments within a minimum front yard and affected minimum side yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the "AS-BUILT" dwelling/carport improvements and other site improvements on "LOT 3". No evidence has been found to show indifference or premeditation by previous owners or builders to deliberately create or intentionally allow these building encroachments to be built within the minimum yards.

It appears that the original dwelling and subsequent dwelling improvements were constructed according to a building permit issued in the early 1970s and/or associated construction permits issued to subject TMK property. It appears that during construction of the original dwelling improvements within the property's front yard and affected side yard 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/carport to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 3 with right-of-way and adjoining lot (TMK: 1-5-066:062, Lot 1) 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 34 + years ago within the minimum front and minimum side yards are not physically and/or visually obtrusive from the adjacent property (Lot 1) or right-of-way (Nenu Street). It appears that these 34 + year old building 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 minimum yards identified on the variance application's site plan map and survey report 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 complete the variance background report was necessary. The applicant agreed for an extension of time to March 31, 2006 complete the variance background report and 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

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.

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3. Portions of the dwelling located on "LOT 3" will not meet the minimum front yard and side yard on the subject property required by Chapter 25, the Zoning Code, according to the variance application's site plan map dated June 2, 2004. The approval of this variance permits the "HOUSE/STORAGE/CARPORT" improvements within the affected minimum yards to remain, "AS BUILT", on the subject TMK property or "LOT 3" according to the variance site plan map dated June 2, 2004.

The applicant or current owner shall address the status of the outstanding "open" electrical permit-EH60187 issued to subject TMK property and/or other construction permits issued to subject TMK property. Any "open" building or construction permits shall be closed or "finaled" by the DPW-Building Division (Hilo) prior to sale of the property or transfer of title of the property by the current owner 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.

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

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xc: Real Property Tax Office-(Hilo)