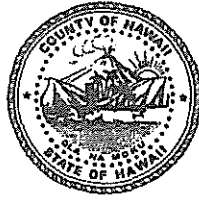


Harry Kim
Mayor



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

May 15, 2006

Ms. Elise Mastronardo
P. O. Box 2784
Kamuela, HI 96743

Dear Ms. Mastronardo:

VARIANCE PERMIT-VAR 05-087

Applicant: ELISE MASTRONARDO, ET AL.

Owners: KRISTAN HUNT, ET AL.

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

Tax Map Key: 4-8-007:016 and 017, (SUB 05-000104)

After reviewing your application and the information submitted, the Planning Director certifies the approval of Variance Permit-VAR05-087 subject to variance conditions. The variance permits proposed consolidation/resubdivision of the existing TMK property(s) and permit existing "AS-BUILT" permitted and "unpermitted" dwelling improvement(s) to remain on proposed "LOT 1", with a minimum 3.02 feet side yard and minimum 14.00 feet side yard(s), respectively, and allow associated minimum 2.94 feet to minimum 9.99 feet side yard open space(s) in lieu of the minimum 20.00 feet side yard(s) and associated minimum 14.00 feet side yard requirements according to revised variance site plan map dated November 22, 2005. The variance permits the existing and proposed dwelling positions and SUB 05-000104. The variance is from the 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).

MAY 22 2006

BACKGROUND AND FINDINGS

1. **Location.** The subject TMK property(s) containing an aggregate area of approximately 9.004 acres are portions of R.P. Grant 932, Apana 1 to Kalama and L.C. Award 111-B to Kalia, and situated at Kukuihaele, Hamakua, Hawaii.

The property is zoned Agricultural (A-40a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan/SUB 05-000104.** The applicant submitted the variance application, attachments, and filing fee and other submittals on September 15, 2005 and December 19, 2005. The variance application's revised site plan map is drawn to scale and prepared by The Independent Hawaii Surveyors, LLC. The variance site plan map is dated November 22, 2005 and denotes proposed adjusted boundary lines and building and related site improvements on proposed "LOT 1" and "LOT 2" related to pending subdivision application (SUB 05-000104).

The applicant's (Elise Mastronardo) background dated September 12, 2005 states in part:

"I spoke with Mr. Darren Arai on Tuesday Sept. 6th (sic) He agrees that the encroachment of Kristan Hunt's house onto my property (TMK 4-8-007-017) needs resolution and that the county would like to cooperate in achieving this resolution in a timely matter (sic). He advised me that the county will require a variance application and approval, prior to a final approval of the consolidation/resubdivision of our two parcels."

Note: The variance site plan map does not identify the location of the cesspool or Independent Wastewater System (IWS).

SUB 05-000104. The applicants/owners filed a consolidation/resubdivision application (SUB 05-0104) and preliminary plat map (PPM) dated May 25, 2005 to address a "HOUSE" or dwelling encroachments straddling a common side boundary line shared between Parcel(s) 16 and 17. The "makai" dwelling and dwelling encroachments were constructed on TMK: 4-8-007:016 and 017 without a DPW-Building Permit and associated construction permits. The variance application was submitted to resolve the "HOUSE" encroachments constructed on property parcel 17 owned by Elise Mastronardo and permit the consolidation/resubdivision (SUB 05-000104).

According to the variance background and pending subdivision's PPM, the "HOUSE" owned by Kristan Hunt is within a "makai" area of proposed "LOT 1". The variance requires Kristan Hunt to secure an "after-the-fact" building permit for the "HOUSE". The variance permits SUB 05-000104 and allows the "HOUSE" to remain on proposed "LOT 1" with a minimum 14 feet side yard and attendant minimum 9.8 feet side yard open space in lieu of minimum 20 feet side yard and minimum 14 feet side yard clear space from the proposed boundary line pursuant to Chapter 25, Zoning.

In addition to the "makai" HOUSE owned by Kristan Hunt, the variance site plan map identifies the location of a "mauka" "HOUSE" and attached "BLOCK WALL" built by James Hunt on proposed "LOT 1". This "mauka" dwelling and wall constructed by James Hunt does not meet the minimum 20 feet side yard and minimum 14 feet side yard clearspace requirements. Portions of this "mauka" dwelling or "HOUSE/BLOCK WALL" constructed by James Hunt were built within the minimum 20 feet side yard and associated minimum 14 feet side yard open space of proposed "LOT 1". The "mauka" dwelling improvements built by James Hunt and "proposed" "makai" "HOUSE" built by Kristan Hunt on proposed "LOT 1" will be required to meet Department of Public Works (DPW)-Building Division and Uniform Building Code (UBC) requirements. The subject variance application and variance request from the minimum yards and associated clear space requirements of proposed "LOT 1" pursuant to Chapter 25, Zoning, does not exempt Kristan Hunt and James Hunt from meeting DPW-Building Division's or UBC building requirements. In addition, the outstanding Zoning Code Violation (ZCV 03-075) and any Building Violations or penalties must be addressed by James and Kristan Hunt.

3. **County Building Records:**

Re: TMK 4-8-007:016. The variance application is required pursuant to Notice of Violation and Order (ZCV 03-075) and pending subdivision application (SUB 05-000104). The zoning code violation (ZCV 03-075) issued to Hamakua Hideaway c/o James and Kristan Hunt or owner(s) of parcel 16 or proposed "LOT 1" must be addressed and resolved between the owner(s) and affected agencies. The owner(s) of parcel 16 are subject to specific variance conditions and performance conditions cited below

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Re: TMK: 4-8-007:017. The variance application is required pursuant to pending subdivision application (SUB 05-000104). The owner of parcel 17 or proposed "LOT 2" is subject to specific variance conditions and performance conditions cited below. (Note: Access to the dwelling on parcel 17 (Proposed "LOT 2") and dwelling's position on parcel 17 were established prior to the adoption of the Chapter 25, Zoning).

4 **Agency Comments and Requirements-VAR 05-087:**

- a. The State Department of Health (DOH) memorandum dated March 24, 2006 states:

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

- b. The Department of Public Works (DPW) memorandum dated April 5, 2006 states in part:

"NO COMMENTS"

- 5 **Notice to Surrounding Property Owners/Posted Sign.** 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 December 27, 2005 and March 20, 2006, respectively, by applicant-Elise Mastronardo. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 20, 2006. (Note: The pending subdivision application and subject variance application were filed at the Planning Department prior to the adoption of Ordinance No. 05 135 or Posting of Signs).

6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No further written comments or objections from surrounding property owners or the general public to the variance application were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

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The applicant/owners submitted the variance application to address or resolve the dwelling encroachments straddling a common side boundary line shared by Parcel 16 and Parcel 17. The variance application's site plan map was prepared by a surveyor and denotes the location of existing building and other site improvements, "AS BUILT", on proposed "LOT 1" and "LOT 2". The "makai" "HOUSE" or dwelling improvements were constructed on parcel 16 or proposed "LOT 1" without building and associated electrical and plumbing permits. Currently the unpermitted "makai" "HOUSE" straddles a common side boundary line shared between parcel 16 and parcel 17 and portions of the house encroach into parcel 17. The applicant, on behalf of the owner(s) of parcel 16 and owner of parcel 17 filed the variance to address the building encroachment issue on parcel 16 or proposed "LOT 1" and other building violations of the Zoning Code. And, the variance is required to permit SUB 05-000104.

ALTERNATIVES

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

1. Remove the "unpermitted" "makai" dwelling on parcel 17 and redesigning or relocating these "unpermitted" dwelling improvements to fit within the correct building envelope prescribed by the Zoning Code; and, securing an "after-the-fact" building permit for proposed or "unpermitted" dwelling improvements.
2. Consolidation of parcel 16 with adjoining lot (TMK: 4-8-007:017) and resubdivision to modify the affected property line and adjust minimum yards to meet minimum side yard and open yard requirements.

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 "unpermitted" dwelling improvements on parcel 16 and portions of an "unpermitted" dwelling encroach into adjoining property-parcel 17. The applicant-Elise Mastronardo is not responsible for the encroachments on parcel 17 and is not party to the outstanding Zoning Code Violation (ZCV 03-075) issued to parcel 16. The owners of parcel 16- James and Kristan Hunt were previously issued Zoning Code Violation-ZCV 03-075 to address existing building positions and unpermitted building improvements. The owner(s) of parcel 16 and applicant-owner of parcel 17 agreed to relocate a common boundary line and filed a subdivision application and variance from minimum side yard.

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In view of the agreement between owner(s) of parcel 16 and parcel 17, it appears that the resultant encroachments into the affected proposed side yard and attendant side yard open yard space of parcel 16 will not detract from the character of the immediate neighborhood or the subdivision and will resolve the encroachment issue affecting parcel 17.

The subject variance application was acknowledged by letter dated March 19, 2006 and additional time to complete the variance background report and consider agency comments was necessary. The applicant agreed for an extension of time to 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 variance 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 "makai" dwelling identified on proposed "LOT 1" (SUB 05-000104) will not meet the minimum 20 feet side yard and attendant minimum 14 feet side yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map, dated November 22, 2005. The approval of this variance permits the "makai" dwelling's position on proposed "LOT 1", subject to the following performance condition(s):

The current owners of TMK: 4-8-007:016 or proposed "LOT 1" shall contact the Zoning Inspector (Hilo) at telephone (808) 961-8288 upon receipt of this letter to address the status of (ZCV 03-075) and timetable for corrective action.

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Any building permit and/or "after-the-fact" building permits and/or associated construction permits issued to subject TMK property (TMK: 4-8-007:016 or proposed "LOT 1") shall be closed or "finaled" by the DPW-Building Division prior to sale of the property or transfer of title of the property by the current owner(s) to others. The owner(s) of Parcel 16 or proposed "LOT 1" will be responsible for any assessments or fines imposed by ZCV 03-075. The owners of Parcel 16 or proposed "LOT 1" will be responsible for any penalties associated with the ZCV 03-075 and/or "after-the-fact" DPW-Building Permit fees.

4. The owner of TMK: 4-8-007:017 or proposed "LOT 2" shall contact the DPW to address the status of "open" electrical permit EH63540 issued to subject TMK property. The "open" electrical permit shall be closed or "finaled" on or before December 31, 2006 or prior to issuance of final subdivision approval to pending subdivision application SUB 05-000104.
5. Future or new building improvements and permitted uses on subject TMK property(s) or proposed "LOT 1" and "LOT 2" 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
SUB 05-000104