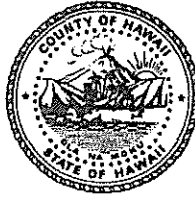


Harry Kim  
Mayor



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

July 21, 2006

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

Dear Mr. Daub:

**VARIANCE PERMIT-VAR 05-107**

**Applicant:** DANIEL J. DAUB  
**Owners:** RICHARD M. SANTORO, ET AL.  
**Request:** Variance from Chapter 25, Zoning,  
Minimum yards  
**Tax Map Key:** 1-5-016:021, Lot 446

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After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to variance conditions. Variance Permit-VAR 05-107 allows portions of a garage ("GAR.") to remain on Lot 446, "AS-BUILT", with a minimum 14.68 feet side yard and attendant minimum 12.00 feet side yard open space in lieu of minimum 20.00 feet side yard and minimum 14.00 feet side yard open space requirements, according to the variance site plan map dated May 31, 1999. The variance is from the TMK property's minimum side yard and attendant side yard 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, containing 1.000 acre, is Lot 446, within Block 8 of Hawaiian Paradise Park, and situated at Keaau, Puna, Hawaii. The property's street address is 15-1863 30<sup>th</sup> Street.

The property is zoned Agricultural (A-1a) by the County and designated Agriculture or "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 November 29, 2005 and other submittals on July 6, 2006. The variance application's site plan map is drawn to scale and prepared by The Independent Hawaii Surveyors. The variance site plan map, dated May 31, 1999, denotes portions of a garage "GAR." were built within one of the property' minimum 20 feet side (westerly) yard of the subject TMK property or "LOT 446".

The applicant's original background dated November 28, 2005 states in part:

"This property consists of the nice and well constructed dwelling which was built back in 1991. The owner believes all the permits are in place and that this was an onsite construction error which lead to these minor setback violations (sic). The home was placed well within the setbacks and according to the past owners the garage was also thought to be well within the setbacks."

**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 fencing, and any landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 3-Building Permits (911824,911825,930079), Electrical Permit (E911892), and Mechanical (M912002) or Plumbing Permit were issued to subject TMK property. It appears that the garage (2-car carport) was constructed pursuant to a building permit (930079) and completed circa 1993.

4. **Agency Comments and Requirements-VAR 05-107:**

- 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 the following:

"NO COMMENTS"

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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 December 9, 2005 and April 5, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 20, 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, on behalf of the current owners, submitted the variance application to address or resolve the dwelling encroachments within a minimum side yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the garage and other site improvements, "AS BUILT", on "LOT 446". The previous and current owners became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by previous owners or builders to deliberately create or intentionally allow portions of a garage to be built within the affected side (west) yard.

It appears that the existing dwelling, garage, and carport improvements and subsequent dwelling improvements were constructed according to 3-building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling and garage (carport) improvements between 1991 and 1993, the garage or 2-car carport encroachment into one of the property's side yards 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 to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 446 with adjoining lot (TMK: 1-5-016:021, Lot 447) and resubdivision to modify property lines or adjust minimum yards.

#### **INTENT AND PURPOSE**

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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 13 years ago within the minimum side yard are not physically and/or visually obtrusive from the adjacent property (Lot 447) or (privately owned) right-of-way (30<sup>TH</sup> Street). It appears that these encroachments in the property's minimum side (west) yard do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that the building encroachments into the property's affected side yard identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated March 10, 2005 (sic) (March 10, 2006) and the applicant requested additional time to submit authorization letter by the current owner(s). The applicant agreed to an extension of time to render a decision on the subject variance to July 25, 2006.

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 a garage ("GAR.") on "LOT 446" will not meet the property's minimum side (west) 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 May 31, 1999. The approval of this variance permits the garage to remain on the subject TMK property or "LOT 446", "AS BUILT" according to the variance site plan map dated May 31, 1999.
4. 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)