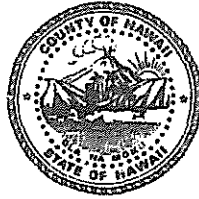


Harry Kim
Mayor



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 30, 2006

Ms. Joyce Jakahi
226 Hoomalu Street
Pearl City, HI 96782

Dear Ms. Jakahi:

VARIANCE PERMIT-VAR 05-114

Applicants: JOYCE JAKAHI, ET AL.

Owners: JOYCE JAKAHI, ET AL.

Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 1-6-087:041, Lot 57

After reviewing your application and the information submitted, the Planning Director certifies the approval of Variance Permit-VAR 05-114 subject to variance conditions. The variance permits portions of a dwelling/eaves to remain on Lot 57, "AS-BUILT", with a minimum 13.6 feet to minimum 13.9 feet front yard and attendant minimum 10.1 feet to minimum 13.9 feet front yard open space in lieu of minimum 20.00 feet front yard and minimum 14.00 feet front yard open space requirements, according to the variance site plan map dated May 31, 1999. The variance is from the TMK property's minimum front yard and required minimum front yard open space 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 57 containing 12,000 square feet, is within Ainaloa Subdivision, Land Court Application 1053, Map 70, and situated at Keaau, Puna, Hawaii. The property's street address is 16-2121 Kuleana Street.

The property is zoned Agricultural ("A-1a") by the County and designated Agriculture or "A" by the Land Use Commission (LUC). Ohana Dwelling Permit (OD 91-448) was issued to subject TMK property on November 1, 1991 to construct additional single family dwelling or "ohana" dwelling. Subsequently, two (2) dwelling units were constructed on subject TMK property circa 1991-1992 according to building permits and other associated construction permits issued to a previous owner(s).

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee checks on or about December 28, 2005 and March 8, 2006. The variance application's site plan map is drawn to scale and prepared by Paul H. Murray and Associates, LLC. The variance site plan map, dated December 13, 2005 denotes portions of a "Dwelling" (nearest Kuleana Street) was built within the property's minimum 20 feet front yard and minimum 14 feet front yard open space of "LOT 57" or subject TMK property.

The applicant's background states in part:

"Owners purchased subject TMK and improvements circa 1993.

Both dwellings on TMK were built pursuant to building permits issued to the previous owner(s) by the County circa 1992.

Current owner(s) became aware of the dwelling's encroachment within the affected front yards after a survey by Paul H. Murray & Associates was prepared for escrow purposes.

It appears that the previous owner(s) or builders misplaced the dwelling nearest the street. Please note, it appears that all county building permits issued to the property in 1992 were closed by the DPW."

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

3. **County Building Records:**

County building records show 2-Building Permits (911829, 920266), 2-Electrical Permits (E912091, E921170), and 2-Mechanical (M920348, M920349) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling improvements on "LOT 57" were built pursuant to these building and associated construction permits circa 1991 and 1992; and, all building and construction permits were closed or "finaled" by the DPW.

4 **Agency Comments and Requirements-VAR 05-114:**

- 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.** 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 March 9, 2006 and April 21, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 5, 2006 and April 7, 2006 (Correction).

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/current owners submitted the variance application to address or resolve the dwelling encroachments within a minimum front yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling improvements "AS BUILT", on "LOT 57". The 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 these building encroachments to be built within the affected front yard and attendant front yard open space.

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It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to building permits and other associated construction permits issued to subject TMK property. It appears that during construction of both dwellings circa 1991/1992, a portion of a dwelling (nearest Kuleana Street) was misplaced within the property's minimum front yard and attendant minimum front yard open space; and, this encroachment into the property's front 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 to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 57 with adjoining Right-of-Way (Kuleana Street)) 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 dwelling encroachments within the minimum 20 feet front yard and attendant minimum 14 feet front yard open space are not physically and/or visually obtrusive from the adjacent properties or Right-of-Way (Kuleana Street) fronting the property. It appears that these 14 year old dwelling 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 affected front yard 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 March 10, 2006 and additional time was requested by the applicant to address the required second notice sent to surrounding property owners. The applicant requested an extension of time to send the notice and allow additional time for comments.

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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

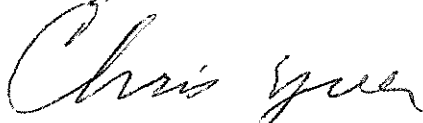
This variance request is approved subject to the following conditions:

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.
3. Portions of a dwelling located on "LOT 57" (nearest Kuleana Street) will not meet the minimum front yard and attendant front yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated December 13, 2005. The approval of this variance permits the "Dwelling" improvements (nearest Kuleana Street) to remain, "AS BUILT", on the subject TMK property or "LOT 57" according to the variance site plan map dated December 13, 2005.
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.

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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: OD 91-448
Real Property Tax Office-(Hilo)