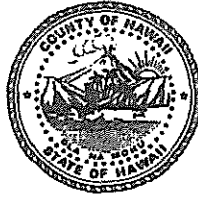


Harry Kim
Mayor



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 26, 2006

Mr. Gregory R. Mooers
MOOERS ENTERPRISES, LLC
P. O. Box 1101
Kamuela, HI 96743

Dear Mr. Mooers:

VARIANCE PERMIT-VAR 06-004

Applicant: MOOERS ENTERPRISES, LLC

Owners: DONALD G. HAP TALLMAN, ET AL.

Request: Variance from Chapter 25, Zoning

Tax Map Key: 5-3-009:069, Lot 55

After reviewing your application and the information submitted, the Planning Director certifies the approval of Variance Permit-VAR 06-004 subject to variance conditions. The variance permits proposed Lot 55-B (SUB 05-000220) zoned Single Family Residential (RS-15) to be created with an site average width of 75 +/- feet in lieu of the minimum 90.00 feet site average width required by the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-6, Minimum building site average width.

BACKGROUND AND FINDINGS

1. **Location.** The subject TMK property, Lot 55 containing 30,000 square feet, is part of Halaula Subdivision, Map 12, Land Court Application 1116, and situated at Halaula and Maulili, North Kohala, Hawaii.

The property is zoned Single-Family Residential (RS-15) 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 January 19, 2006. The variance application's site plan map is drawn to scale and prepared by Wes Thomas Associates. The variance site plan map, dated May 23, 2005, is copy of the Preliminary Plat Map (PPM) in pending subdivision application (SUB 05-000220) which proposes to subdivide subject TMK property into "LOT 55-A" and "LOT 55-B". The proposed 2-lots each contain a minimum 15,000 square feet. Proposed "LOT 55-B" is a flag lot; and, the proposed flag lot's 75 feet building site average width ($15,000 \text{ square feet} / 200 \text{ feet} = 75 \text{ feet}$) is less than minimum 90 feet building site average width required for the proposed subdivision pursuant to the Zoning Code.

The applicant's statement or background report filed with the variance application states in part:

Page 2. "This property is zoned RS-15, and is comprised of 30,000sf. The two families that own the property would like to subdivide the parcel and construct a single-family residence on each of the proposed new lots.

The square footage for the subject property allows the subdivision into two lots, however the flag lot configuration of the proposed parcels is such that the average minimum width, 75 feet, is less than the code requirement of 90 feet. If the pole portion of the lot were not considered, the building areas for each lot would have dimensions of approximately 100 feet by 150 feet and would comply with all provisions of the Zoning Code.

This lot is Lot 55 of Halaula Subdivision created in 1964 and located on the west side of Halaula-Maulili Road. All other lots along this roadway and in the immediate vicinity along Akoni Pule Highway have similar non-complying lot widths of 75 feet. Please see vicinity map included in the Preliminary Subdivision Plat Map." (Note: The variance site plan map is the Preliminary Subdivision Plat Map-Dated: May 23, 2005).

Page 4. "Surrounding properties are developed or planned to be developed with single-family residences. All other residential lots in the Halaula Subdivision on this road have similar configuration is consistent with the neighboring properties.

The proposed single-family residential use is consistent with the new General Plan and the LUPAG maps.

Mr. Gregory R. Mooers
MOOERS ENTERPRISES, LLC

Page 3

May 26, 2006

The intent and purpose of requiring minimum average building site width is to insure that an adequate lot width for the construction of a single-family dwelling is available for the residents of the proposed lots. The applicant already has preliminary drawings for homes on each lot that confirm there will be adequate lot width to accomplish their goal of creating two single-family dwellings.

All of the required yard setbacks to adjoining property owners and between the two proposed lots will be maintained. These setbacks will insure that there is no negative impact to surrounding property owners."

3. **County Building Records:**

According to the applicant's background report, the property is currently vacant.

4 **Agency Comments and Requirements-VAR 06-004:**

- a. The State Department of Health (DOH) memorandum dated March 23, 2006 states:

"There are no additional concerns to those made previously."

- b. The Department of Public Works (DPW) memorandum dated March 28, 2006 states in part:

"We have reviewed the subject application and have no comments or objections."

- 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 27, 2006 and April 3, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 3, 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

Mr. Gregory R. Mooers
MOOERS ENTERPRISES, LLC

Page 4

May 26, 2006

The applicant, on behalf of the current owners, submitted the variance application pursuant to the surveyor's transmittal letter dated November 3, 2005 and follow up letter from the Planning Department letter dated December 20, 2005.letter.

The existing TMK property, surrounding land pattern, and roadway fronting the subdivision were created or built prior to the adoption of the Subdivision and Zoning Code.

ALTERNATIVES

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

Revise the subdivision layout, consolidation of property with adjoining parcels and resubdivision to modify property geometry or adjust minimum yards, etc.

INTENT AND PURPOSE

The intent and purpose of requiring minimum building average width is to insure that lot geometry or subdivisions result in lots that are suitable for intended use; and, that permitted structures have adequate air circulation, exposure to light, and there is adequate separation between buildings in event of a fire or other emergencies, etc. Given the surrounding land use pattern and the proposed subdivision's would result in the creation of 2-building lots having an adequate building envelope to site a dwelling on each property or lots that are suitable for intended use, the variance request is reasonable.

The subject variance application was acknowledged by letter dated March 17, 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 May 30, 2006 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 conditions:

Mr. Gregory R. Mooers
MOOERS ENTERPRISES, LLC
Page 5
May 26, 2006

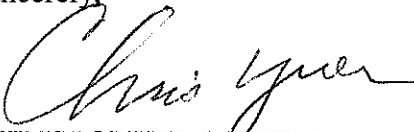
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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. The applicant/owners shall comply with remaining requirements of SUB 05-000220.

Ohana dwellings shall be prohibited on lots created by SUB 05-000220 pursuant to provisions of the Zoning Code and subject to State Law which may change from time to time.

4. Future or new building improvements and permitted uses on proposed lots 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-(Kona)
SUB 05-000220