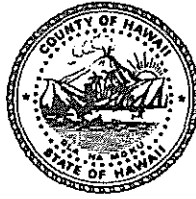


Harry Kim
Mayor



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 30, 2006.

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

Dear Mr. Daub:

VARIANCE PERMIT-VAR 06-006

Applicant: DANIEL J. DAUB

Owner: PATRICIA HANNA

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

Tax Map Key: 1-6-081:030, Lot 10

After reviewing your application, the Planning Director certifies the approval of Variance Permit-VAR 06-006 subject to variance conditions. The variance permits portions of the detached water tank on Lot 10, "AS-BUILT", with a minimum 8.53 feet side yard in lieu of minimum 10.00 feet side yard pursuant to variance site plan map dated May 8, 2006. The variance is from the TMK property's minimum 10 feet side yard pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Section 25-5-77 Other regulations.

BACKGROUND AND FINDINGS

1. **Location.** The subject TMK property, Lot 10 containing 12,000 square feet, is within Block 35 of Ainaloa Subdivision, and situated at Keaau, Puna, Hawaii. The TMK property's street address is 16-2042 Aloha Drive.

The property is zoned Agricultural (A-1a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC).

AUG 03 2006

2. **Variance Application-Site Plan.** The applicant submitted the original variance application, submittals, and filing fee on January 20, 2006 and request to defer acceptance of the variance application. The applicant, on behalf of the owner, submitted further information and revised site plan map dated May 6, 2006 on May 31, 2006. The variance application's revised site plan map is drawn to scale and prepared by The Independent Hawaii Surveyors, LLC. The revised site plan map, dated May 6, 2006, denotes portions of the "WATER TANK" was built within a minimum 10 feet side yard of "LOT 10" or subject TMK property.

The applicant's background information dated May 30, 2006 states in part:

"Please amend Variance VAR-06-006 per the updated survey map which shows the missing side yard dimension (8.58') for the catchment tank from the surveyor. The "shed" is part of the water system and holds the pump and pressure tank."

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 improvements, landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 1-Building Permit (920915), 1-Electrical Permit (E921004), and 1-Mechanical (M920803) or Plumbing Permit were issued to subject TMK property. It appears that the "HOUSE" and "WATER TANK" on "LOT 10" was built pursuant to this building permit and associated construction permits issued circa 1992. County building records show the building permit issued in 1992 to construct the dwelling and water tank and other associated construction permits issued in 1992 were "finaled" or closed by the DPW.

4. **Agency Comments and Requirements-VAR 06-006:**

- a. The State Department of Health (DOH) memorandum dated June 26, 2006 states:

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

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- b. The Department of Public Works (DPW) memorandum dated June 27, 2006 states in part:

“We have reviewed the subject application forwarded by your memo dated June 8, 2006 and recommend approval of the application be conditioned on the comments as noted below.

A building permit is required for the shed. The wall line must be a minimum 3 feet from the property line or must be 1-hour fire resistive. Overhang must be a minimum 3 feet from the property line or must be 1-hour fire resistive and a minimum 2 feet from the property line.”

- 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 February 8, 2006 and July 5, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 18, 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 water tank encroachment within a minimum the minimum 10 feet side yard. (Note: Portions of the water tank and the “SHED” (housing pumping apparatus for water tank) were constructed or installed in 1992 in conjunction with dwelling permit-BP No. 920915 on Lot 10. Portions of the water tank and shed within Lot 10’s minimum 20 feet rear yard were permitted pursuant to the 1992 Zoning Code and building permit. Subsequent to the adoption of the revised Zoning Code after December 1996, portions or the positions of the “WATER TANK” or “SHED” (pumping apparatus) constructed within the property’s minimum 20 feet rear yard became non-conforming. The variance application’s site plan map was prepared by a surveyor and denotes the location of the dwelling, water tank, and other site improvements, “AS BUILT”, on “LOT 10”. It appears that the current owner became aware of encroachment issues within the property’s minimum yards during escrow. The revised site plan map dated May 6, 2006 disclosed the water tank encroachment into the minimum 10 feet side yard only. No evidence has been found to show indifference or premeditation by previous owners or builders to deliberately create or intentionally construct the water tank encroachment within the affected 10 feet side yard.

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It appears that the existing dwelling and water tank improvements were constructed according to a building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements during 1992, the water tank encroachment within the property's minimum 10 feet 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 encroachments or relocate the water tank to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 10 with adjoining lot (TMK: 1-6-081:029, Lot 12) 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 water tank encroachments constructed approximately 14 years ago within the minimum side yard are not physically and/or visually obtrusive from the adjacent property (Lot 12) or privately owned right-of-way (Aloha Drive). It appears that these 14 year old water tank encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that the water tanking encroachment into the property's affected side yard identified on the variance application's revised site plan map will not detract from the character of the immediate neighborhood or the subdivision.

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. Daniel J. Daub

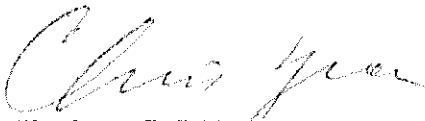
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1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against 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 the "WATER TANK" located on "LOT 10" will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's revised site plan map dated May 6, 2006. The approval of this variance permits the "WATER TANK" and "SHED" improvements to remain on the subject TMK property or "LOT 10", "AS-BUILT", according to the variance site plan map dated May 6, 2006.
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)