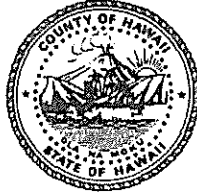


Harry Kim
Mayor



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 19, 2006

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

Dear Mr. Daub:

VARIANCE PERMIT-VAR 06-007

Applicant: DANIEL J. DAUB
Owners: ROBERT G. MADSEN, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 1-3-024:042, Lot 4

After reviewing your application and the information submitted, the Planning Director certifies the approval of Variance Permit-VAR 06-007 subject to variance conditions. The variance permits portions of a 1-story dwelling and detached water tank to remain on Lot 4, "AS-BUILT", with a minimum 15.9 feet side yard and minimum 16.4 feet side yard, respectively, pursuant to the applicant and variance site plan map dated April 29, 2005 and other information received April 1, 2006. The variance is from the TMK property's minimum 20 feet side yard pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, containing 1.000 acre, is Lot 4, within Block 34 of Leilani Estates, and situated at Keahialaka, Puna, Hawaii. The TMK property's street address is 13-3485 Hookupu Street.

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

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2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about January 20, 2005. The variance application's site plan map is drawn to scale and dated April 29, 2005. The variance site plan map, dated April 29, 2005 and other information received on April 1, 2006, denotes portions of the "1-Story House" and detached "Water Tank" were built within a minimum 20-foot side yard of "LOT 4" or subject TMK property. In addition to the foregoing, the applicant forwarded an authorization letter dated June 14, 2006 signed by the current owners-Robert G. Madsen and Patricia A. Madsen.

The applicant's original background report or explanation dated January 20, 2006 states in part:

"This property consists of a very nice newly constructed home with some very nice features, one of which (sic), was an attempt to add interest and style by placing the home on a skew to the road. The property was put for sale and a buyer was found who loved the property. It closed escrow on May 12, 2005 and title was transferred to the buyers Robert & Patricia Madsen who required as part of the sale this application for the this variance (sic).

It appears that the error in placement was part of the pouring of the foundation and then never questioned until the survey by Ilima Surveying, LLC dated April 29th, 2005 discovered that the front corner extends into the 20' building setback 4.1'. It also appears that the water catchment tank also enters into the building setback a similar distance but was not indicated on the map. I have asked for an actual placement for the tank and it should be forthcoming." Pursuant to submittal received on April 1, 2006, the water tank is 16.4 feet from the side boundary line between Lot 4 and Lot 3.

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.

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3. **County Building Records:**

According to the DPW-Building Division records, 1-Building Permit (B2004-1096H), 1-Electrical Permit (E2004-1078H), and 1-Mechanical (M2004-0912H) or Plumbing Permit were issued to subject TMK property during 2004. It appears that the "1-Story House" and detached "Water Tank" on "LOT 4" were built pursuant to the building permit and associated construction permits; and, DPW-Building Division records indicate all permits were "closed".

4 **Agency Comments and Requirements-VAR 06-007:**

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

"NO COMMENTS"

- b. The State Department of Health (DOH) memorandum dated April 7, 2006 states:

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

- 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 April 5, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 7, 2006.

6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following comments or objection letter was received:

- 6a. Objection letter dated April 11, 2006 received from Richard J. Robbins, Board President, Leilani Community Association (LCA).

Note: The variance request and landscaping hedge to buffer or screen the dwelling and water tank encroachment into the property's affected 20-foot side yard was discussed with LCA. Subsequent to the LCA letter dated April 11, 2006, the LCA discussed mitigation measures (e.g. installation of landscaping to screen the encroachments from the adjoining property or other buffer improvements) with the Planning Department near the dwelling and water tank encroachments on the subject property. This buffer would screen the building encroachments from the adjoining property-Lot 3, whereby, the applicant or current owners of Lot 4 would maintain existing landscaping near the building encroachments and/or install planting material (at least 6 feet high) and/or alternative fence/landscaping improvements adjacent the dwelling and water tank encroachments on Lot 4. The landscaping buffer or alternative buffer improvements would be maintained within the affected side yard and limited only to areas nearest the building encroachments. This buffer would be maintained in perpetuity with the building encroachments on the subject TMK property-Lot 4 (Refer to variance conditions).

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the current owners, submitted the variance application to address or resolve the dwelling and water tank encroachments within the property's minimum 20-foot side yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the 1-story dwelling and water tank (8 feet height) improvements, "AS BUILT", on "LOT 4". The current owners became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by the current owners or builders to deliberately create or intentionally allow these building encroachments to be built within the affected side yard.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to a building permit and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling and detached water tank circa 2005, the dwelling and water tank 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.

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2. Consolidation of Lot 4 with adjoining lot (TMK: 1-3-024:043, Lot 3) 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 subject building encroachments within the minimum 20-foot side yard are not physically and/or visually obtrusive from the adjacent property (Lot 3) or right-of-way (Hookupu Street). It appears that the building 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 side 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 29, 2006 and additional time to submit additional information regarding the position of the water tank was necessary. The applicant agreed for an extension of time to confer with the current owners and requested 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 the 1-story dwelling and detached water tank located on "LOT 4" will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated April 29, 2005 and information received on April 1, 2006. The approval of this variance permits the dwelling and water tank improvements to remain, "AS BUILT", on the subject TMK property or "LOT 4" according to the variance site plan map.

The current owners shall maintain existing planted landscaping improvements (at least 6 feet high) within the affected side yard of the subject TMK property-Lot 4 as a buffer to screen the dwelling and water tank encroachments from the adjoining TMK property-Lot 3. The existing planted landscaping materials within the affected side yard or alternative fencing/landscaping buffer improvements within the affected side yard shall be maintained in perpetuity by the current owners and future owners of Lot 4.

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)
Richard J. Robbins, President (LCA)