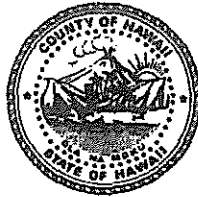


Harry Kim
Mayor



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 24, 2006

Mr. Gil Gonzales
P. O. Box 5324
Kailua-Kona, HI 96745

Dear Mr. Gonzales:

VARIANCE PERMIT-VAR 06-008

Applicant: GIL GONZALES

Owner: GIL GONZALES

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

Tax Map Key: 7-5-019:027, Lot B

After reviewing your variance application, the Planning Director certifies the approval of your variance request subject to variance conditions. Variance Permit-VAR 06-008 permits construction of proposed 2-story dwelling on Lot B with a minimum 17.00 feet front yard in lieu of the minimum 20.00 feet front yard required. The variance is from the TMK property's minimum 20.00 feet front yard requirement pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 9, Section 25-5-96, Minimum yards, (1).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot B containing 13,800 square feet, is shown on Map 1 of Land Court Application 1612, and situated at Kahului 1st, North Kona, Hawaii.

The property is zoned Resort (V-1.25) by the County and designated Urban or "U" by the Land Use Commission (LUC). The property is within the Special Management Area (SMA). The property abuts the shoreline and the applicant submitted an SMA Use Permit Assessment Application to construct new single-family dwelling and related improvements on the vacant subject TMK property.

MAY 25 2006

Mr. Gil Gonzales
Page 2
May 24, 2006

Special Management Area Use Permit Assessment Application No. 05-000092.
(SAA 05-92) was granted on October 12, 2005 subject to eleven (11) conditions.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about January 6, 2006. The variance application's site plan map is drawn to scale and prepared by Piper Designs. The variance site plan map denotes the requested position of proposed 2-story dwelling from the property's front boundary line along or shared with the Right-of-Way fronting the property (Alii Drive).

The applicant's background dated January 3, 2006 states in part:

"After taking shoreline and building setbacks into consideration we are left with a very small footprint of approximately, 1722 square feet, very little area, considering the 13,800 square foot lot size." (sic)

Note: The site plan drawing-Sheet 2, dated February 1, 2006, does not identify or denote the location of any perimeter walls fencing, and gates, etc. on the property along Alii Drive. Access to the dwelling via Alii Drive and on-site driveway location are subject to DPW review and approval.

3. **County Building Records:**

The subject TMK property is vacant.

4. **Agency Comments and Requirements-VAR 06-008:**

- a. The Department of Public Works (DPW) memorandum dated April 19, 2006 states:

"We reviewed the subject application and our comments are as follows;

1. We oppose the variance. The applicant has provided no justification. Moving the dwelling closer to Alii Drive, a County collector street, can have an adverse impact because it further limits the area for offstreet vehicle maneuvering and parking. Vehicular security gates, including swing travel, should be no closer than 20 feet from the County right-of-way.

Mr. Gil Gonzales
Page 3
May 24, 2006

2. All driveway connections to a County road shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code and Standard Details R-37 and R-38.

Should there be any questions concerning this matter, please feel free to Contact Kiran Emler of our Kona Engineering Division office at 327-3530."

Note: Pursuant to the Zoning Code the proposed dwelling on subject TMK property zoned Resort (V) will require paved off-street parking spaces and including paved access according to Article 4, Division 5 Off-Street Parking. The property's access location/connection to Alii Drive and "on-site" driveway improvements are subject to DPW review and requirements.

- b. The State Department of Health (DOH) memorandum dated April 19, 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 March 24, 2006 and April 11, 2006, and April 26, 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 from surrounding property owners was received.

- 6a. Objection letter dated March 29, 2006 received from Dorothy Ichikawa states in part:

"I am opposed to any change in the required setback for TMK 7-5-19-27."

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant/owner submitted the variance application requesting a minimum 17.00 feet front yard after SAA 05-92 was approved on October 12, 2005 subject to conditions. The applicant's variance application includes a copy of the recent shoreline survey map dated May 20, 2005. The approved SMA-SAA 05-92 permit letter states in part:

Mr. Gil Gonzales
Page 4
May 24, 2006

"We understand that you intend to construct a new single family dwelling and related improvements on the subject vacant property. The proposed dwelling will have a total footprint of approximately 1,800 square feet with parking provided at ground level below the living spaces and lanai. We further understand that related improvements include the construction of a retaining sea wall along the 20-foot shoreline setback line."

ALTERNATIVES

Alternatives available to the applicant/owner include the following:

1. Reduce the size of the proposed dwelling to fit within the building envelope prescribed by the Zoning Code and SAA 05-92.
2. Consolidation of property with a portion of the publicly owned Right-of-Way (Alii Drive) to modify property lines and adjust minimum yards, etc.

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.

Given the site's limitation by the recent shoreline survey and determination by the DLNR dated May 20, 2005, minimum 20 feet shoreline setback, and SAA 05-92 conditions, building options are limited. The proposed 2-story dwelling (1722 square feet footprint) constructed with a minimum 17.00 front yard will not be physically and/or visually obtrusive from the adjacent property(s) or detected by vehicles or pedestrians within Alii Drive. It is felt that the proposed dwelling's position will not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that portions of the proposed dwelling improvements within the minimum front yard of the subject TMK property 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 send notice(s) to surrounding property owners was requested by the applicant. The applicant agreed to an extension of time to May 24, 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.

Mr. Gil Gonzales

Page 5

May 24, 2006

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. The proposed 2-story dwelling on subject TMK property is permitted to be constructed with a minimum 17.00 feet front in lieu of the minimum 20.00 front yard pursuant to Chapter 25, the Zoning Code. The variance permits the proposed 2-story dwelling and related site improvements to be built "mauka" or outside of the shoreline setback area of the subject TMK property subject to SMA-SAA 05-92 conditions. Plan Approval for the proposed 2-story dwelling and related site improvements shall be secured from the Planning Director (Kona Planning Department) pursuant to Chapter 25, Zoning.
4. Comply with SAA 05-92 conditions and secure Final Plan Approval to construct proposed 2-story dwelling and related site improvements on subject TMK property prior to issuance of Building Permit and/or any associated construction permits. Permitted access to the property via Alii Drive and driveway improvements on subject TMK property are subject to DPW review and requirements. The construction of the dwelling improvements and related site improvements are subject to SAA 05-92 conditions and Final Plan Approval (FPA) conditions. The SAA 05-92 and FPA conditions shall be met prior to the closing of the Building Permit by the DPW. The building permit and associated construction permits issued to construct the dwelling and related site improvements shall be closed or "finaled" prior to occupancy of the dwelling.
5. The proposed new dwelling and related site improvements and permitted uses including future improvements on the subject TMK property shall be subject to State law and County ordinances and regulations pertaining to zoning, building construction and building occupancy.

Mr. Gil Gonzales
Page 6
May 24, 2006

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
P:\WP60\WRY\FORMLETT\VAR06-008ZCSETBACKTMK75019027.GONZALES

xc: Real Property Tax Office-(Kona)
SAA 05-92
Dorothy Ichikawa