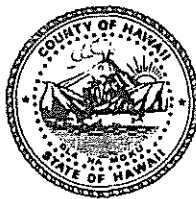


Harry Kim
Mayor



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 14, 2006

Ms. Joell Kerr
945 Puku Street
Hilo, HI 96720

Dear Ms. Kerr:

VARIANCE PERMIT-VAR 06-011

Applicant: JOELL KERR
Owner: JOELL KERR TRUST
Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 2-4-068:161, Lot 34

After reviewing your application and the information submitted, the Planning Director certifies the approval of variance permit-VAR 06-011 subject to variance conditions. The variance allows portions of a dwelling to remain on Lot 34, "AS-BUILT", with a minimum 8.75 feet side yard in lieu of minimum 10.00 feet side yard according to the applicant's variance site plan or "plot plan" submittal. The variance is from the TMK property's minimum 10.00 feet side yard(s) required pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(2)(B).

BACKGROUND AND FINDINGS

1. **Location.** The subject property containing 10,000 square feet, is Lot 34 within "Ala Kai Heights, Unit II", and situated at Waiakea, South Hilo, Hawaii. The TMK property's street address is 945 Puku Street.

The property is zoned Single-Family Residential (RS-10) 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 5, 2006. The variance application's site plan map is drawn to scale and was prepared by the applicant. This variance site plan map denotes portions of a "3-Bedroom Addition" or 2-story dwelling addition was built into one of the property's minimum 10 foot side yard.

The applicant's background states in part:

"I am requesting a variance because the northernmost wall of our 2-story family dwelling is approximately 8 feet 9 inches from the northern side property line. This is an encroachment of approximately 1 foot 3 inches in the 10 foot side yard (setback)."

Note: The variance site plan map denotes the location of existing cesspool or Independent Wastewater System (IWS). The variance request does not address the location or position of walls, fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 5-Building Permits (892338, 911902, 941433, 980259, and 991521), 4-Electrical Permits (E921799, E941796, E980671, E991307), and 3-Mechanical (M921308, M980608, M990958) or Plumbing Permits were issued to subject TMK property by the DPW. It appears that the original dwelling and later additions on Lot 34 were built pursuant to these building and associated construction permits issued between 1989 and 1999,

4. **Agency Comments and Requirements-VAR 06-011:**

- a. The Department of Public Works (DPW) memorandum or comment 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."

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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 January 4, 2006 and March 29, 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 written comments and objection letters were received.
 - 6a. Written comments by Charles Tamashiro were received on or about January 11, 2006.
 - 6b. Objection letter dated January 24, 2006 received from Mark and Lei Gushiken.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant/current owner submitted the variance application to address or resolve the dwelling encroachments within a minimum 10-foot side yard. The variance application's site plan map was prepared by the applicant and denotes the location of the dwelling improvements and other site improvements, "AS BUILT", on the subject TMK property, Lot 34. The current owners became aware of building encroachment issues after subsequent to a complaint (File No. 05-089E) was filed with the Planning Department. The applicant filed the variance pursuant to a violation letter dated issued to the current owner. No evidence has been found to show indifference or premeditation by the applicant 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 5-building permits (specifically BP No. 980259) and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling addition pursuant to BP No. 980259 issued circa 1998, the dwelling additions or encroachment into one of 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 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 34 with adjoining lot (TMK: 2-4-068:160, Lot 33) 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 constructed approximately 8 years ago within the minimum side yard are not physically and/or visually obtrusive from the adjacent property (Lot 33) or right-of-way (Puku Street). It appears that these 8 +/- year old 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 the building encroachment into one of the property's minimum side yard(s) identified on the variance application's site plan map 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 discuss the notices sent to surrounding property owners and complaint (File No. 05-089E) was necessary. The applicant agreed for an extension of time to render a decision on the subject variance to July 14, 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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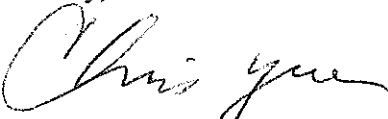
3. Portions of the dwelling located on Lot 34 will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map received with the variance application. The approval of this variance permits the Dwelling improvements to remain on Lot 34 or subject TMK property, "AS BUILT", with a minimum 8 feet 9 inch side yard according to the variance site plan map in the variance file.

The applicant/owner shall address the status of Electrical Permit-E991307 issued to subject TMK property by the DPW-Building Division (Hilo). The active or "open" Electric Permit (E991307) issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division prior on or before September 30, 2006 or sale of the property or transfer of title of the property by the current owner(s) to others.

4. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.
5. 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)

Charles Tamashiro

Mark Gushiken, Et al.