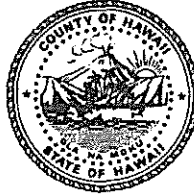


Harry Kim  
Mayor



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 21, 2006

Mr. Clint E. Carlson  
CARLSON HOMES  
P. O. Box 1197  
Kurtistown, HI 96760

Dear Mr. Carlson:

**VARIANCE PERMIT-VAR 06-014**

**Applicant: CLINT E. CARLSON-CARLSON HOMES**

**Owners: STANISLAUS GUNADI, ET AL.**

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

**Tax Map Key: 1-3-038:044, Lot 21**

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After reviewing your application, the Planning Director certifies the approval of Variance Permit-VAR 06-014 subject to conditions. The variance permits portions (corner) of 1-story dwelling to remain on Lot 21, "AS-BUILT", with a minimum 18.89 side yard in lieu of minimum 20.00 feet side yard according to variance site plan map dated January 17, 2006 and copy of revised map received on June 15, 2006. The variance is from the TMK property's minimum 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 1.00 acre, is Lot 21, within Block 15 of Leilani Estates Subdivision, and situated at Keahialaka, Puna, Hawaii.

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

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CARLSON HOMES

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2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about February 14, 2006. The variance application's site plan map drawing is drawn to scale and was prepared by a surveyor. The map is dated January 17, 2006. This variance site plan map denotes the "AS-BUILT" position(s) of the "ONE STORY HOUSE" and "WATER TANK" within one of the TMK property's 2-minimum 20 feet side yard(s).

The applicant submitted the following original statement on February 10, 2006 and further comments dated March 23, 2006:

February 10, 2006. "We are requesting a variance for the encroachment of the water tank and the corner of the residence into the left side set back. This was not discovered until the home was completed and the lender required an As-Built survey for the final payment. There are no other reasonable alternatives that would resolve this difficulty."

March 23, 2006. "The lot is all jungle and the boundaries were not visible. We had a pin finder place some markers on boundaries which we relied upon. The markers were slightly incorrect."

Note: The applicant submitted transmittal letter dated June 13, 2006 and copy of revised site plan map showing the existing water tank will be relocated to meet the minimum 20 feet side yard required. As such, the variance request and application is limited to the dwelling (corner) encroachment within the property's minimum 20 feet side (south) yard.

3. **Agency Comments and Requirements-VAR 06-014:**

- 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."

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4. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. For the record, it appears that first and second notices were mailed on February 22, 2006/March 24, 2006 and April 25, 2006 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following objection letter(s) and comments were received:
  - a. Comments from the Leilani Community Association dated April 11, 2006 and April 19, 2006.
  - b. Comments (Fax) from Bruce A. Appling dated May 8, 2006.

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The applicant, on behalf of the current owners, is trying to address the dwelling and water tank encroachment into the property's minimum 20 feet side yard. It appears that the dwelling and water tank improvements were recently completed by the applicant-Carlson Homes.

The original and revised site plan identifies the dwelling encroachment into one of the property's minimum 20 feet side yard pursuant to the Hawaii County Zoning Code. It appears that these dwelling improvements were built pursuant to a building permit and/or other construction permits issued to the TMK property by the County. It appears that during building inspections of the premises, e.g. foundation, framing, etc., a portion (corner) of the dwelling were inadvertently constructed into one of the property's minimum 20 feet (south) side yard.

#### **ALTERNATIVES**

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

1. Remove the dwelling encroachments or redesigning the dwelling or modifying/relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property-Lot 21 with a portion of the adjoining property (TMK: 1-3-038:045, Lot 20) and resubdivision and adjustment of minimum yards from revised boundary lines, etc.

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### **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 portion or corner dwelling and into one of the property's minimum 20 feet side yard(s) will not be physically and visually obtrusive from adjoining property owners (LOT 20) or Right-of-Way (Alapai Street). The building (corner) or encroachment issues were revealed by an instrument survey after the dwelling and water tank were built. According to the contractor's recent letter and revised map, the water tank will be removed or relocated to meet the minimum side yard requirement (See variance conditions). It is felt that the portion of the dwelling (corner) encroaching into the affected minimum 20 feet side (south) yard will not detract from the character of the surrounding neighborhood and land patterns.

The subject variance application was acknowledged by letter dated March 29, 2006 and additional time was requested by the applicant to send notice to surrounding property owners and consider objection letter(s) received regarding the variance application. The applicant, on behalf of the current owner(s), agreed to relocate the water tank into the property's building envelope and extend the decision date by the Planning Director.

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/owner, 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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CARLSON HOMES

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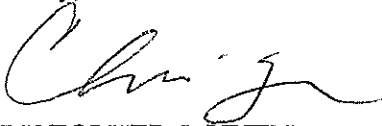
3. Portions of the existing "ONE STORY HOUSE" on "LOT 21", "AS-BUILT" will not meet Chapter 25, the Zoning Code's minimum 20 feet side yard. The approval of this variance allows the dwelling (corner) improvements within the property's minimum 20 feet side yard to remain, "AS-BUILT", pursuant to the variance site plan map and copy of a revised site plan map dated January 11, 2006 in the variance file.

The water tank shall be relocated within the property's building envelope on or before October 31, 2006 and/or future sale of the property to others.

4. The applicant or current owners shall address the status of the building permit-BP and any associated permits (e.g. electrical and mechanical) issued to subject TMK property by the DPW-Building Division (Hilo). The building permit and associated construction permits shall be closed or "finaled" by the DPW-Building (Hilo) on or before October 31, 2006.
5. Future 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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cc: Real Property Tax Office-Hilo  
Richard J. Robbins, President (LCA)  
Bruce A. Appling

$$\begin{array}{c} \frac{\partial}{\partial x_i} \\ \downarrow \\ \frac{\partial}{\partial y_j} \\ \vdots \\ \frac{\partial}{\partial z_k} \end{array}$$