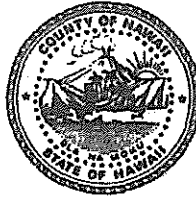


Harry Kim
Mayor



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

June 9, 2006

Mr. Henry J. Correa, Jr.
630 Kilauea Avenue
Hilo, HI 96720

Dear Mr. Correa:

VARIANCE PERMIT-VAR 06-028
Applicant: HENRY J. CORREA, JR.
Owner: JASON MIARS
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 2-4-050:008, Lot 8

After reviewing your application, the Planning Director certifies the approval of Variance Permit-VAR 06-028 subject to variance conditions. The variance permits portions of a detached water tank, "AS-BUILT", to remain on above referenced TMK property with a minimum 4.0 feet side yard in lieu of minimum 8 feet side yard. 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), Section 25-5-77, Other regulations.

BACKGROUND AND FINDINGS

1. **Location.** The subject TMK property, Lot 8 containing 7500 square feet of "Ainaola Heights Subdivision", being a portion of Lot 1512, Grant 11689 to Seisho Oshiro, Waiakea Homesteads, and situated at Waiakea, South Hilo, Hawaii.

The property is zoned Agricultural (A-3a) 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 March 24, 2006 and letter dated June 6, 2006 regarding property owner. The variance application's site plan map is drawn to scale. The variance site plan map submitted with the variance denotes portions of the new replacement "WATER TANK" are within the minimum side yard of the subject TMK property.

The applicant's explanation dated February 25, 2006 states in part:

"A few months ago the garage at 2544 Ainaola Drive, in Hilo had collapsed. We went to the building department and obtained a permit to tear down, and replace it. During that time we decided to sell the home. As the construction took place we notice that this original old water tank was in the way of construction and decided to remove the old one and replace it with a new tank for the new buyer's. The new water tank that was installed was put in the exact same spot as the original tank.

When we called for our final inspection, the inspector pointed out that we needed a permit for the new water tank. We applied for a permit and was told that the tank is in the set backs, and needed to apply for a variance. In an effort to making this right I hope you can see the dilemma we are in now. We thought we were doing the new buyer's a great service by upgrading the water tank, but instead it turned into a bit of a problem."

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 fencing and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

According to DPW-Building Division records, 2-Building Permits (B2005-3361H, B2005-3360H) related to the dwelling's carport were issued to subject TMK property.

4. **Agency Comments and Requirements-VAR 06-028:**

- a. The State Department of Health (DOH) memorandum is dated April 18, 2006. (Refer to memorandum in variance file).

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- b. The Department of Public Works (DPW) memorandum is dated April 21, 2006 and states in part:

“NO COMMENTS”

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 April 4, 2006 and April 20, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 19, 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 submitted the variance application to address or resolve the water tank's position within a side yard. The variance application's site plan map denotes the location of the dwelling and water tank on the subject TMK property, "AS BUILT". The current owner became aware of building encroachment issues after the original tank was replaced with a new water tank. No evidence has been found to show indifference or premeditation by the current owner or builders to deliberately create or intentionally allow the water tank to be built within the affected side yard.

It appears that the existing dwelling and water tank positions were constructed circa 1973 according to real property records. It appears that during construction of the dwelling and water tank improvements circa 1973 the water tank encroachment within one of the property's minimum 8 feet side yard(s) 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.
2. Consolidation of Lot 8 with adjoining lot (TMK: 2-4-050:009, Lot 9) and resubdivision to modify property lines or adjust minimum yards.

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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.

According to the variance submittals the new steel water tank (44 +/- inches high) was rebuilt on the original water tank's foundation or "footprint"; and, it appears that the original water tank's position on the property was not physically and/or visually obtrusive from the adjacent property (Lot 9) or right-of-way (Ainaola Drive). It appears that the replacement of the original water tank does 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.

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.
3. Portions of the dwelling's water tank were built within the property's minimum 8 feet side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map submitted with the variance application. The approval of this variance permits the "WATER TANK" improvements to remain, "AS BUILT", on the subject TMK property in accordance with the variance site plan map in the subject variance file.

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The recent building permit(s) issued for the dwelling/carport and any further building permit or associated construction permits required for the new water tank on the subject TMK property shall be closed or "finaled" by the DPW-Building Division-Hilo on or before November 30, 2006.

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)