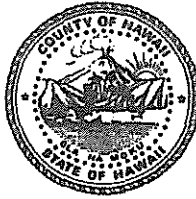


Harry Kim
Mayor



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

Mrs. Natalya Hutchinson
P. O. Box 11230
Hilo, HI 96720

Dear Mrs. Hutchinson:

VARIANCE PERMIT-VAR 06-032

Applicant: NATALYA HUTCHINSON
Owners: NATALYA HUTCHINSON, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 1-5-022:185, Lot 1110

After reviewing your variance application, the Planning Director certifies the approval of Variance Permit-VAR 06-032 subject to variance conditions. The variance permits portions of a "WATER TANK" or accessory building to remain, "AS-BUILT" on Lot 1110, with a minimum 16.73 feet rear yard in lieu of the minimum 30.00 feet rear yard according to the variance site plan map dated May 15, 2003. The variance request is from the subject TMK property's minimum rear yard pursuant to the to 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, Lot 1110 containing 1.00 acres, is within Block 8, Hawaiian Paradise Park, and situated at Keaau, Puna, Hawaii.

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

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about April 6, 2006 and April 11, 2006.

JUN 15 2006

Mrs. Natalya Hutchinson

Page 2

June 9, 2006

The variance application's site plan map is drawn to scale and prepared by The Independent Hawaii Surveyors. The variance site plan map, dated May 15, 2003 denotes the location of the buildings on "LOT 1110" or subject TMK property. A portion of the dwelling's water tank was built within the property's minimum 30 feet rear yard.

The applicant's background states in part:

"Also, the dwelling, the greenhouse, and water tank, and other structures were erected prior to us purchasing the property in 2003."

Note: The variance site plan map does not identify the location of the cesspool or Independent Wastewater System (IWS). The variance request addresses only the location or position of the buildings constructed with permits issued by the DPW-Building Division, e.g. "HOUSE" and "DOUGHBOY WATER TANK"; and does not address the status of any "non-permitted" buildings, e.g. "GREENHOUSE", fencing improvements, landscaping, and other related site improvements, etc. along or straddling common boundary lines which are identified on the variance site plan map.

3. **County Building Records:**

County building records show 1-Building Permit (980855), 1-Electrical Permit (E980794), and 1-Mechanical (M980611) or Plumbing Permit were issued to subject TMK property circa 1998. It appears that the dwelling and water tank on "LOT 1110" was built pursuant to the building permit and associated construction permits.

4. **Agency Comments and Requirements-VAR 06-032:**

- a. The Department of Public Works (DPW) memorandum dated May 9, 2006 states:

"We have reviewed the subject application forwarded by your memo dated May 2, 2006 and oppose the approval of the application for the reason noted below.

The Building Division does not have a record of a building permit for a greenhouse.

Questions may be referred to the Building Division at 961-8331."

Mrs. Natalya Hutchinson

Page 3

June 9, 2006

- b. The State Department of Health (DOH) memorandum dated May 16, 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 April 15, 2006 and May 12, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on or about May 8, 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/current owners submitted the variance application to resolve the water tank encroachment into the property's minimum 30 feet rear yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the "HOUSE", "WATER TANK", and "GREENHOUSE", and other site improvements, "AS BUILT", on "LOT 1110". (Note: According to DPW, no building permit was issued to construct the "GREENHOUSE" identified on the variance site plan map or subject TMK property. See variance conditions). It appears that the applicant or current owners became aware of the building encroachment issues during escrow to buy the property. No evidence has been found to show indifference or premeditation by a previous owner or builders to deliberately create or intentionally allow the water tank encroachment to be built within the property's rear yard.

It appears that the existing dwelling improvements and subsequent dwelling improvements were originally constructed according to a building permit and other associated construction permits issued to subject TMK property circa 1998. It appears that during construction of the dwelling and water tank between 1998 and 1999, the water tank's position within the property's rear 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 water tank to fit within the correct building envelope prescribed by the Zoning Code. (Note: The status of the "GREENHOUSE" building must be addressed or removed. The applicant/current owners must secure an "after-the-fact" building permit for the non-permitted "GREENHOUSE" from the DPW-Building Division. See variance conditions.
2. Consolidation of Lot 1110 with adjoining lot (TMK: 1-5-022:210, Lot 1077) 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 water tank encroachment was constructed approximately 8 years ago within the property's minimum rear yard are not physically and/or visually obtrusive from the adjacent property (Lot 1077) or right-of-way (23RD. Street). It appears that the water tank 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 water tank encroachment into the affected rear yard identified on the variance application's site plan map dated May 15, 2003 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 regarding the position of the "WATER TANK" on the subject TMK property 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.

Mrs. Natalya Hutchinson

Page 5

June 9, 2006

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 located on "LOT 1110" will not meet the minimum rear yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated May 15, 2003. The approval of this variance permits the "WATER TANK" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 1110" according to the variance site plan map dated May 15, 2003.

The applicant or current owners shall confer with the DPW-Building Division to secure a building permit for the "GREENHOUSE" identified on the variance site plan map dated May 15, 2003. An "after-the-fact" building permit for the "GREENHOUSE" must be secured from the DPW prior to the sale of the property or transfer of title of the property to others.

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

P:\WP60\WRY\FORMLETT\VAR06-032ZCSETBACKTMK15022185.HUTCHINSON

xc: Real Property Tax Office-(Hilo)