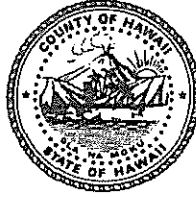


Harry Kim
Mayor



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 19, 2006

Ms. Carrie Wildenboer
Mary Begier Realty
1059 Kilauea Avenue, Suite B
Hilo, HI 96720

Dear Ms. Wildenboer:

VARIANCE PERMIT-VAR 06-035

Applicant: CARRIE WIDENBOER
Owner: JEANNIE ATWATER
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 1-5-098:034, Lot 171

After reviewing your application, the Planning Director certifies the approval of Variance Permit-VAR 06-035 subject to variance conditions. The variance permits portions of a dwelling, "AS-BUILT", to remain on above referenced TMK property with a minimum 17.0 feet to minimum 19.2 feet front yard and minimum 12.8 feet to minimum 15.9 feet open yard space in lieu of minimum 20.00 feet front yard and minimum 14.00 feet front yard space requirements.

The variance is from the TMK property's minimum front yard and attendant minimum front yard open space required 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, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject TMK property containing 19,565 square feet, is Lot 171, Hawaiian Shores, File Plan 737, and situated at Waiakahiula, Puna, Hawaii. The subject property's street address is 15-751 Kahakai Boulevard.

The property is zoned Agricultural (A-1a) by the County and designated Urban or "U" by the Land Use Commission (LUC). Ohana Dwelling Permit (OD 90-384) was issued on December 24, 1990 to "Mr. Michael R. Clark" to construct an "Add'l Single Family Dwelling" on subject TMK property.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about April 19, 2006. The variance application's site plan map is drawn to scale and prepared by Paul H. Murray & Associates, LLC. The variance site plan map, dated April 15, 2006, denotes portions of the "DWELLING/CARPORT/EAVES" were built within a minimum 20 feet front yard (along Kahakai Boulevard) of "LOT 171" or subject TMK property.

The applicant's letter or report states in part:

"This letter and application is to request a variance for the improvement located at 15-751 Kahakai Blvd. Pahoa, HI 96778 in Hawaiian Shores Subdivision TMK # 3-1-5-98-34. The present owner, Mrs. Atwater, does not know why the violation of the setback occurred. She believes it happened as a result of human or miscalculation by the builders. Mrs. Atwater is not aware of the method used to place the improvements on the property. The only other reason she could think the house was placed where it was to avoid being too close to the 2 cesspools in the middle of the property. Regardless, Mrs. Atwater does not believe the setbacks were violated intentionally and respectfully requests a variance be granted."

Note: The variance site plan map does not identify the location of the "2 cesspools" on the TMK. The variance request does not address the location or position of driveways, fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 2-Building Permits (902820, 910819), 2-Electrical Permits (E911085, E911088), and 2-Mechanical (M910847, M910848) or Plumbing Permits were issued to subject TMK property. It appears that first dwelling was built pursuant to BP 902820 and additional single family "ohana" dwelling was built pursuant to BP 910819 on "LOT 171" and pursuant to associated electrical and plumbing permits issued between 1990 and 1991.

Note: According to the ohana dwelling file (OD 90-384) and variance application's site plan map, it appears that the first dwelling or dwelling nearest Kahakai Boulevard was constructed within the subject TMK property's minimum 20 feet front yard along Kahakai Boulevard.

- 4 **Agency Comments and Requirements-VAR 06-035:**

- a. The State Department of Health (DOH) memorandum dated May 17, 2006 states:

"Wastewater Branch is unable to make comments to the proposed project at this time. Before we can offer any comments, the applicant needs to address the location of all existing wastewater systems."

Note: The approved site plan related to BP 910819 or copy of approved building plans in the OD permit file denotes the location of both cesspools on the subject TMK property.

- b. The Department of Public Works (DPW) memorandum dated May 30, 2006 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 21, 2006 and June 21, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 18, 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, on behalf of the current owner, submitted the variance application to address or resolve the dwelling/eave encroachments within a minimum 20 feet front yard. The variance application's site plan map was prepared by a surveyor and denotes the location of 2-dwellings and respected roof eaves, "AS BUILT", on "LOT 171". The current owner became aware of the dwelling encroachment issues during escrow. No evidence has been found to show indifference or premeditation by previous owner or builders to deliberately create or intentionally allow these dwelling/eave encroachments to be built within the affected front yard.

It appears that the first dwelling and subsequent second "ohana" dwelling improvements were constructed according to building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the first dwelling improvements between 1990 and 1991, the dwelling encroachment within the property's front yard and associated minimum front yard open space along Kahakai Boulevard 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 171 with adjoining right-of-way (Kahakai Boulevard) 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 15 years ago within the minimum front yard and attendant minimum front yard open space are not physically and/or visually obtrusive from surrounding or adjacent properties or right-of-way (Kahakai Boulevard). It appears that these 15 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 these building encroachments into the affected front yard 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 May 10, 2006 and additional time was requested by the applicant to notify surrounding property owners and render a decision on the subject application to July 21, 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:

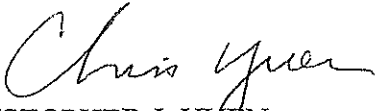
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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.
3. Portions of a dwelling on "LOT 171" nearest to Kahakai Boulevard will not meet

the minimum 20 feet front yard and minimum 14 feet front yard open space requirement pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated April 15, 2006. The approval of this variance permits the "DWELLING/CARPORT/EAVES" improvements to remain within the property's minimum front yard along Kahakai Boulevard on the subject TMK property or "LOT 171", "AS-BUILT", according to the variance site plan map.

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:ld

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xc: OD 90-384 (File)
Real Property Tax Office-(Hilo)