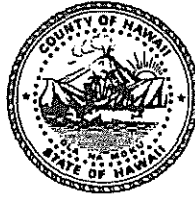


Harry Kim
Mayor



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 24, 2006

Mr. John Arellano
P. O. Box 1814
Keaau, HI 96749

Dear Mr. Arellano:

VARIANCE PERMIT-VAR 06-042

Applicant: JOHN ARELLANO
Owners: FRED VISAYA, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 1-6-147:052

After reviewing your application, the Planning Director certifies the approval of Variance Permit-VAR 06-042 subject to variance conditions. The variance permits new dwelling/eaves to be rebuilt or constructed on Lot 9064 with a minimum 11.0 feet front yard and attendant minimum 8.5 feet front yard open space in lieu of minimum 15.00 feet front yard and minimum 10.00 feet front yard open space requirements, according to the variance site plan map. The variance is from the TMK property's minimum front yard and required minimum front yard open space 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 property, containing 4275 square feet, is Lot 9064, Ld. Ct. App. 1053, Map 442, and situated at Keaau, Puna, Hawaii.

The property is zoned Agricultural (A-20a) 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, additional information, and filing fee on May 5, 2006 and June 7, 2006. The variance application's site plan map is drawn to scale. The variance site plan map denotes portions of the "PROPOSED DWELLING" within the property's minimum 15 feet front yard of "LOT 52" or subject TMK property.

The owner's letter or background report dated June 2, 2006 states in part:

"MY WIFE AND I BOUGHT OUR HOUSED IN A VERY POOR CONDITON, BECAUSE OF WE THOUGHT WE COULD FIX IT, WE WENT GO AHEAD AND START FIXING IT (Sic). FEW WEEKS LATER WE WERE CONTRACTED BY THE BUILDING DIVISION TO STOP ANY WORK BECAUSE OF NO BUILDING PERMIT WE THEN STOP THE WORK TO COMPLY WITH THE ORDER AND PROCEED TO OUR VARIANCE APPLICTION (Sic). AT THIS TIME WE ARE HOPING THAT WE WILL BE GRANTED WITH THE VARIANCE AND SO WE CAN APPLY FOR A PERMIT TO CONTINUE AND FINISH THE JOB (Sic)."

Note: The applicant submitted a "PLOT MAP" denoting the original dwelling's minimum yard was 9 feet (non-conforming); and, "PLOT MAP" indicating the new or proposed dwelling is 11 feet from the property's front boundary line. As such, while the new dwelling's position or "PROPOSED DWELLING" encroachment within the property's minimum 15 feet front yard would not meet the minimum 15 feet front yard requirement, the resulting proposed dwelling's floor area or building area within the property's minimum 15 front yard would be reduced.

In addition, the location of sewerline and water line easements identified on the property limits the buildable area within Lot 52 and building options. The variance application does not address the position of any other structures, fences, and landscaping straddling common property lines.

3. **County Building Records:**

County tax and building records indicate a dwelling situated on the property was constructed prior to 1967. Tax records show a building permit was issued to the subject TMK property circa 1965 and 1966, respectfully (Note: After the adoption of the 1967 Zoning Code, the property's land area and dwelling's location, etc. became "non-conforming"). According to recent photographs of the dwelling or current building activity on the property, it appears that the owner's were repairing or replacing the existing dwelling improvements and replacing portion of the "non-conforming" dwelling improvements that were originally located 9 feet from the property's front boundary line.

4. **Agency Comments and Requirements-VAR 06-042:**

- a. The State Department of Health (DOH) memorandum dated June 27, 2006 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

- b. The Department of Public Works (DPW) memorandum dated June 27, 2006 states in part:

"BUILDING PERMIT REQUIRED"

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 May 5, 2006 and on or about June 29, 2006, respectively, by the applicant, on behalf of the owners. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 26, 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 owners, submitted the variance application to address or resolve the dwelling position on the property and address the proposed encroachment within the property's minimum 15 feet front yard required by the Zoning Code. The variance application's site plan maps are drawn to scale and denote the "EXISTING DWELLING" and "PROPOSED DWELLING", respectively, on "LOT 52". The current owners became aware of the DPW building permit requirement after major house repairs were completed or after the entire original dwelling was razed on Lot 52 to construct the proposed dwelling or new dwelling to replace the original dwelling. No evidence has been found to show indifference by the current owners or builders to deliberately violate any building permit procedures or premeditation to encroach 4 feet into the property's minimum 15 feet front yard.

It appears that the original dwelling was built on the property prior to 1965 as evidenced by the County tax records and photographs of the portions of the original dwelling remaining during reconstruction. During the course of making the major repairs to the original dwelling, the current owners discovered that advanced building age or termite damage to the original dwelling would result in razing or demolishing the original dwelling and reconstructing a new dwelling.

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 with adjoining right-of-way 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 original dwelling constructed prior to 1965 was located 9 feet from the privately owned road or right-of-way. The proposed or replacement dwelling will be located 11 feet from the privately owned right-of-way. It appears that the original and proposed dwelling improvements are not physically and/or visually obtrusive from the adjacent property or privately owned right-of-way. It appears that these proposed or "AS-BUILT" building encroachments within the property's front yard will not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that these building encroachments or the proposed dwelling's position 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 June 16, 2006 and no oral or written objections from surrounding property owners to the subject variance application to permit the reconstruction of the dwelling within the front yard of Lot 52 were received.

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 new or "PROPOSED DWELLING" on "LOT 52" will not meet the minimum 15 feet front yard (open space) pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits the "PROPOSED DWELLING" or building improvements (including roof eaves) being constructed on "LOT 52" to remain, "AS BUILT", with a minimum 11 feet front yard and attendant minimum 8.5 feet front yard clear space according to the variance site plan map.

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The applicant or current owners shall confer with the DPW-Building Division (Hilo) and secure a building permit and/or any other construction permits for the proposed dwelling on the subject TMK property (Lot 52). A building permit for the proposed dwelling on the subject TMK property shall be secured on or before December 31, 2006.

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)