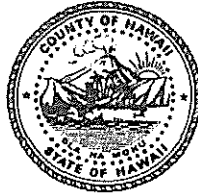


Harry Kim
Mayor



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 25, 2006

Mr. and Mrs. Raymond Grillot
P. O. Box 6295
Hilo, HI 96720

Dear Mr. and Mrs. Grillot:

VARIANCE PERMIT-VAR 06-045

Applicants: RAYMOND GRILLOT, ET AL.
Owners: RAYMOND GRILLOT, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 1-5-035:182

After reviewing your application, the Planning Director certifies the approval of Variance Permit-VAR 06-045 subject to variance conditions. The variance permits portions of the open patio/eaves addition to remain on Lot 9-C, "AS-BUILT", with a minimum 12 feet 9 inches +/- front yard open space in lieu of minimum 19.00 feet front yard open space according to the variance site plan map submitted with the variance application. The variance is from the TMK property's 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, Lot 9-C containing 31, 287 square feet, is a portion of "Block 2" of Hawaiian Paradise Park Subdivision, Ld. Ct. 1053, Map 57, and situated at Keaau, Puna, Hawaii. The property' street address is 15-1452 30th Avenue.

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 checks on May 23, 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 "AS-BUILT PATIO ADDITION" and "EDGE OF ROOF" were constructed within a minimum 25 feet front yard of "LOT: 9-C" or subject TMK property.

The applicant's transmittal letter dated May 30, 2006 or background states in part:

"The undersigned recently completed an open patio addition to existing 2-story dwelling. Due to an oversight, the patio was constructed into a minimum front yard. The variance is to allow the open patio addition to remain on our property, "AS-BUILT". The required building permits or necessary construction permits will be secured after your decision.

Please note the property is bounded by 3-rights-of-way. It is felt that the building position will not affect the neighbors across the street or detract from the neighborhood or subdivision."

Note: The variance site plan map does not address the location or position of any fencing, and landscaping, etc. within the property or along the front boundary lines.

3. **County Building Records:**

Past County building records include Building Permits (932137, 981133, 990074, 991062), 1-Electrical Permit (E980995), and 1-Mechanical (M980760) or . . . Plumbing Permit were issued to subject TMK property. It appears that the 2-story dwelling/carport, pool addition (B2006-0702H), and associated site improvements denoted on the variance site plan map were built between 1993 and 1999 or are currently under construction.

4. **Agency Comments and Requirements-VAR 06-045:**

- a. The State Department of Health (DOH) memorandum dated June 13, 2006 states:

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

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

“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 June 3, 2006 and June 27, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 15, 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 applicants/owners submitted the variance application to address and resolve the open patio encroachment into a minimum 19 feet front yard open space required by the Zoning Code. The variance application's site plan map denotes the location of the 2-story dwelling and 1-story open patio, “AS BUILT”, on the subject TMK property.

The property's shape is triangular and the lot's geometry is unusual. The property was subdivided prior to 1967 and does not abut any building lots within the subdivision or neighborhood. The property's geometry and land area became “non-conforming” after the Zoning Code was adopted circa 1967. After adoption of the Zoning Code, future or permitted buildings on the subject TMK property became subject to the following minimum yard requirement:

Front and rear yards-Minimum 25 feet: and, projections (e.g. the 1-story open patio) could project a maximum 6 feet into the minimum 25 feet front yard. Since the subject TMK property is bounded by 3-streets or has frontage along 3 rights-of-way; given the unusual lot geometry, the usable or triangular building area remaining within this property limits building location(s).

According to building permit history, the existing 2-story dwelling and pool improvements were recently constructed according to building permits and other associated construction permits issued to subject TMK property. During construction of pool addition, it appears that the owners overlooked securing a building permit to build the 1-story 300 square feet open patio near the “EXISTING POOL UNDER CONSTRUCTION”. In addition, it appears that the owners may have misjudged the patio's size and/or relationship or the building's position nearest the boundary line shared with one of the 3-roadways fronting the property.

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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 open patio to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of property 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.

Portions of a 1-story open patio/roof addition encroach into one of the property's 3-minimum 19 feet open yard spaces. The 1-story patio was built without a DPW building permit and the owners are honestly trying to rectify the oversight to secure a building permit to construct the 1-story patio addition to the dwelling. In view of the property's unusual triangular geometry and fact that the property is bounded by 3-separate rights-of-way (public and private), it appears that the existing 1-story open patio improvements are not noticeable or immediately visible from other property's located directly opposite of the subject TMK property roadway or buildings and uses situated "across the street" from the subject TMK property. Therefore, in view of the property's unusual geometry and fact that any permitted building improvements on this property, including proposed 1-story open patio addition, will be separated or located more than 40 feet from any building improvements allowed on any building lots within the immediate subdivision or neighborhood, it is felt that the 1-story open patio attached to the existing 2-story dwelling does not detract from the character of the immediate neighborhood or the subdivision. No objections to the variance were received from surrounding property owners. Given the property's unusual shape and geometry, it is felt that the applicant's request to seek an "after-the-fact" building permit for the 1-story open patio addition, "AS-BUILT", on the subject TMK property can be allowed or permitted within the property's minimum 19 feet front yard open yard space.

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.

Mr. and Mrs. Raymond Grillo

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PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance request is approved subject to the following conditions:

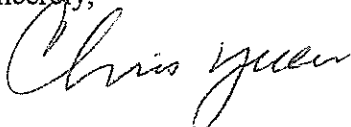
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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 300 square feet "AS-BUILT PATIO" or 1-story open patio/roof eave constructed without a building permit will not meet the minimum 19 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 "open patio/roof eave" improvements to remain, "AS BUILT", on the subject TMK property according to the variance site plan map.

The applicants or current owners shall contact the DPW-Building Division (Hilo) and apply or secure a building permit for the 1-story open on or before December 31, 2006.

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:pak

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xc: Real Property Tax Office-(Hilo)