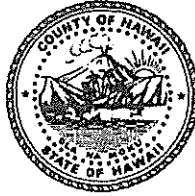


Harry Kim
Mayor



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
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August 17, 2006

Mr. Steven S.C. Lim, Esq.
CARLSMITH BALL LLP
121 Waianuenue Avenue
Hilo, HI 96720

Dear Mr. Lim:

VARIANCE-VAR 06-048

Applicant: STEVEN LIM, ESQ.-CARLSMITH BALL LLP

Owner: TDM BEACH VILLAS LLC

**Request: Variance from Chapter 25, Zoning
Minimum yards**

Tax Map Key: 7-2-020:005, Lot 65A

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 06-048 subject to variance conditions. The variance permits a new dwelling/eaves to be constructed on Lot 65 with a minimum 8.0 feet front yard and attendant minimum 4.0 feet front yard open space in lieu of minimum 20.00 feet front yard and minimum 14.00 feet front yard open space requirements required by the Hawaii County Zoning Code. The variance is from the TMK property's minimum front yard and attendant minimum front yard open space along Uluweuweu Hema Street pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 3, Section 25-5-36, Minimum yards, (1), 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 65A containing 0.47 acre, is a portion of "Kukio Phase 1-A", F.P. 2285, Kukio 1st, and situated at North Kona, Hawaii. The TMK property-LOT 65A was created by SUB 7695 on May 27, 2003. The property's street address is 72-101 Lei Ohai Place.

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The property is zoned Multiple-Residential (RM-4.0) by the County and designated Urban or "U" by the Land Use Commission (LUC). The property is within the Special Management Area (SMA). However, the property does not abut the shoreline.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about June 19, 2006. The variance application's site plan map (Exhibit C) is drawn to scale. The variance site plan map, denotes building envelope(s) within "65", denotes natural areas, and suggested access, etc. on the subject TMK property.

The applicant's attached background report dated June, 2006 states in part:

Page 4. "The Applicant's Agent has developed the Project and has allocated lots for individuals to build suitable dwellings. The Applicant would like to build a dwelling on the Property, but is severely restricted due to the shape and orientation of the Property and the material and significant impact of the twenty (20) foot minimum front yard setback requirement ("Setback Requirement"). This impact is exacerbated by the fact that the Property is located on the corner of two streets and is impacted by the Setback Requirement on two adjoining sides of the already narrow lot. Thus, the building pad is severely reduced on the side adjoining Uleweuweu Hema Street by the Setback Requirement, which would reduce the width of the build (sic) lot to fifty-seven (57) feet. Due to the narrow orientation of the Property, satisfying the Setback Requirement for the boundary adjoining Lei' Ohai Street will not materially impact the building area on the Property. However, having to comply with essentially two front yard requirements materially impacts the building area of the Property. Indeed, the Setback Requirements would render approximately four-thousand (4,000) square feet unusable for building. The Setback Requirement would then be comprised of almost twenty-percent (20%) of the Property area. Due to the special and unusual circumstances of the shape of the property and the impact of two adjoining Setback circumstances of the shape of the property and the impact of two adjoining Setback Requirements, there are special and unusual circumstances applying to the Property which exist to a degree which deprives the Applicants of substantial property rights that would otherwise be available."

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Page 5. "In this particular case, the dwelling on the Subject Property will comply with Hawaii County Code's requirements for minimum spacing the adjoining property. The dwelling will also comply with the minimum yard requirement on its front yard adjoining Lei' Ohai Street. However, the unusual shape of the Subject Property and narrow lot make it too difficult to comply with the Setback Requirement along Uluweuweu Hema Street. The current Setback Requirement would force the dwelling to be built on a fifty-seven feet narrow building pad that curves significantly along Uluweuweu Hema Street. This would unreasonably restrict the Applicant in his building options, with no reasonable alternatives. Additionally, there is a significant grade differential of about ten (10) feet or so between the Uluweuweu Hema Street and the building pad area, therefore a small reduction of the Setback Requirement to eight (8) feet would not hinder in any way the viewpoints along the street and lot area nor encroachment onto the street frontage to Uluweuweu Hema Street."

Note: The variance request does not address the location or position of any rock walls, fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

Current records show no building improvements were constructed on subject TMK property.

4. **Agency Comments and Requirements-VAR 06-048:**

- a. The State Department of Health (DOH) memorandum dated July 25, 2006 states:

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

- b. No comments were received from the Department of Public Works (DPW). Note: A building permit and related construction permits will be required for new building construction on the subject TMK property. Refer to variance conditions.

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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 July 21, 2006 and August 3, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 18, 2006.
6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following endorsement letters or comments supporting the variance request were attached to the variance application:
 - 6a. Support letter from Ronald M. Simon, Trustee of the Ronald M. Simon Trust, (TMK: 7-2-020:004) attached to the variance application (Exhibit F).
 - 6b. Support letter from THE KUNDSON MAKAI ESTATES KUKIO LOT 81 LLC (TMK: 7-2-020:015) attached to the variance application (Exhibit G).

SPECIAL AND UNUSUAL CIRCUMSTANCES

The variance application's site plan map was prepared denotes and compares the building envelopes and other site features within "Lot 65" or "LOT 65A". The subject property's geometry and adjoining property's geometry (Lot 64A) were changed pursuant to SUB 7695. The resultant crescent shaped building envelope within LOT 65A is further limited by the "Association Easement" on the property.

ALTERNATIVES

Alternatives available to the applicant include the following:

1. Redesigning or relocating the proposed building or dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of subject TMK property with the 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.

Pursuant to SUB 7695, Lot 65A's geometry, typography, and limited access, limits property access and building options. It appears that the building site or average width of crescent shaped building envelope and location of the "Association Easement" after applying the minimum 20 feet front yard(s) along rights-of-way limits building design options. In addition, it appears that the "natural area" identified on the applicant's submittal and "Association Easement" on Lot 65A and adjoining property(s) were originally created for open space-landscaping and/or other recreational uses. As such, it is highly likely, that most owners of the subject TMK property and other lots created by SUB 7695 would likely maintain or install buffers near the easement; and, possibly, avoid building construction within the "building envelopes" adjoining the "Association Easement" for privacy reasons, etc. Therefore, after graphically comparing the existing crescent building envelope within LOT 65A and proposed building envelope modified by the requested variance with other "building envelopes" within the subdivision, reviewing pictures of the physical or land character within the subdivision, e.g. typography/terrain (lava) character, streetscape, etc., and reviewing endorsement letters written by adjoining property owner(s), it is felt that the applicant's request for a variance to designate or require a minimum 8 feet front yard of "Lot 65A" along Uluweuwu Hema Street is reasonable and not detract from the character of the immediate neighborhood or the subdivision.

Based on the foregoing findings, this applicant's request and variance 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 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:

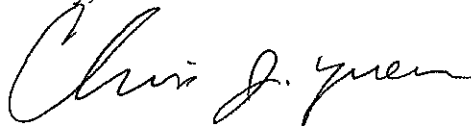
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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.

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3. The approval of this variance permits building improvements on the subject TMK property ("Lot 65A") created by SUB 7695 to be constructed with a minimum 8 feet front yard and attendant minimum 4 feet front yard open space along (ROAD G) or Uluweu Hema Street. Building permit(s) and related construction permits for proposed building improvement(s) on "LOT 65A" shall be secured within 2 years from the date of this variance letter.
4. Future or other new building additions/improvements and permitted uses shall be subject to VAR 06-048 and 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-Kona