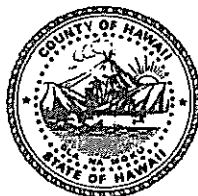


Harry Kim  
Mayor



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

October 11, 2006

Ms. Linda Gouveia  
91-1161 Keoneula Boulevard, #Q1  
Ewa Beach, HI 96706

Dear Ms. Gouveia:

**VARIANCE-VAR 06-049**

**Applicants: LINDA M. GOUVEIA, ET AL.**

**Owners: WALTER GOUVEIA, ET AL.**

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

**Tax Map Key: 1-7-017:076, Lot 1**

After reviewing your application, the Planning Director certifies the approval of Variance-VAR 06-049 subject to variance conditions. The variance permits proposed dwelling to be built with minimum 15.5 feet side yards and attendant minimum 13.0 feet side open space requirements in lieu of the minimum 20 feet side yards and minimum 14.0 feet side yard open space requirements according to the variance site plan map submitted with the application. The variance is from the TMK property's minimum side yard requirements pursuant to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, 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 1.00 acre, is Lot 1, "HILO ACRES", being portion of Olaa Reservation Lots and portion of Keaau, and situated at Puna, Hawaii.

**OCT 13 2006**

The property is zoned Agricultural (A-5a) by the County and designated Agriculture "A" by the Land Use Commission (LUC). The subject TMK property or Lot 1 was created or subdivided before 1967 and is approximately 82.60 feet wide. Subsequent to 1967 or adoption of the original Zoning and Subdivision Codes, the minimum lot size and average width requirement for property or proposed subdivision of property zoned A-5a became 5 acres and 200 feet, respectively. As such, after the adoption of the original Zoning and Subdivision Codes, the subject TMK property or Lot 1's 1.00 acre size and 82.60 feet width became "non-conforming".

2. **Variance Application-Site Plan.** The applicant submitted revised variance application, attachments, and filing fee on or about July 14, 2006. The variance application's site plan map is drawn to scale and prepared by Cole Custom Drafting. The variance site plan map, dated "FEBRUARY 2006", denotes the proposed position of the proposed "RESIDENCE/GARAGE" on subject TMK property (Lot 1).

The applicant's background dated July 12, 2006 states in part:

"This letter is to request of you a variance for my property (TMK3-1-7-17-76) on North Kulani Road, located in Mt. View Hawaii. This variance to the zoning code is required to allow my home to be built approximately 7 ft into the setbacks on each side of my property. My property is a 1 acre lot that is about 82'.60 x 530.95'. The 20' required setback distance on each side leaves me with about 42.60' to work with. My proposed residence is about 48' wide and with the roof line added would go into the set backs exactly 7 ft on each side, which would leave a distance of 13 ft remaining between the next structure if any on each side."

3. **County Building Records:**

The property is vacant.

4. **Agency Comments and Requirements-VAR 06-049:**

- a. The Department of Public Works (DPW) memorandum dated August 29, 2006 states:

"NO COMMENTS"

- b. The State Department of Health (DOH) memorandum is dated September 6, 2006. (Refer to DOH memorandum in variance file).
- 5 **Notice to Surrounding Property Owners.** The applicant's submitted proof of mailing notices to surrounding property owners was submitted to the Planning Department on October 6, 2006. For the record, the first and second notices were mailed on July 28, 2006 and August 2, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 17, 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 are proposing to construct a dwelling and attached garage on a long narrow "non-conforming" sized lot subdivided before 1967. The variance application's site plan map, drawn to scale, denotes the position of the proposed dwelling/garage, detached water tank, and other site improvement on the subject TMK property. The applicants are requesting a variance to permit portions of the dwelling's living area and portion of the garage, respectively, to be built 4.5 feet into the property's minimum 20 feet side yards; and attendant minimum 13.0 feet side yard open space.

#### **ALTERNATIVES**

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

1. Redesign or reduce the dwelling/garage to fit within the building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 1 with adjoining property(s) to modify property lines or adjust minimum yards, etc.

#### **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.

Given the property's lot size and average width and adjoining land pattern, it is felt that portions of the proposed dwelling and garage within the property's minimum 20 feet side yard(s) would not be physically and visually obtrusive from adjacent property(s). The proposed encroachment of the dwelling and garage equally into the Lot 1's respective side yards and side yard open space required by the Zoning Code would not detract from the character of the surrounding neighborhood and adjoining land pattern which have a residential or urban character. Therefore, it is felt that the proposed dwelling and garage's position denoted on the variance site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The variance application was acknowledged by letter dated August 9, 2006 and additional time was requested by the applicants to submit proof of mailing the required notices to surrounding property owners. The applicants agreed to an extension of time to render a decision on their variance application to on or before October 15, 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. The approval of this variance permits proposed dwelling/garage to be constructed with minimum 15.50 feet side yard(s) and attendant minimum 13.00 feet side yard open space(s) pursuant to the site plan map in variance file VAR 06-049.
4. No ohana dwelling permit shall be granted on subject TMK property (Lot 1), subject to provisions of the Hawaii County Code or State Law which may change from time to time.

Ms. Linda Gouveia

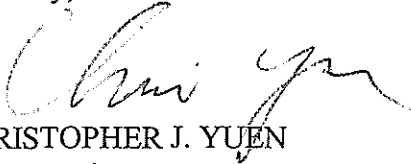
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5. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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)