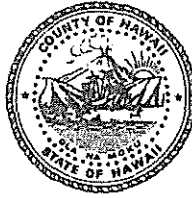


Harry Kim
Mayor



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

December 14, 2006

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

Dear Mr. Lim:

VARIANCE-VAR 06-055

Applicant: STEVEN LIM, ESQ.-CARLSMITH BALL LLP
Owner: CLARK REALTY CORPORATION
Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 7-5-022:018

After reviewing subject variance application, the Planning Director certifies the approval of variance-VAR 06-055 to permit construction of proposed 3-story multiple family building to be constructed with minimum 12 feet front yard in lieu of minimum 20 feet front yard and attendant minimum 14 feet front yard open space, variance to permit a minimum 10 feet by minimum 22 feet loading space, and variance to permit alternative landscaping improvements, according to the variance site plan map and other submittals received with the variance application. The variance(s) requested are from the TMK property's minimum front yard and attendant minimum front yard open yard space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 3, Section 25-5-36, Minimum yards, (1), Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a), Article 4, Division 5, Off-Street Parking and Loading, Section 25-4-58, Dimension of loading spaces, and Article 5, Division 3, Section 25-5-37, Landscaping, and other minimum landscaping requirements pursuant to Rule 17, Landscaping Requirements. In association with Variance Application-VAR-06-055, the applicant, on behalf of the owner, is requesting that the status of approved Variance Permit-VAR 1086 (minimum side yard and open space requirements) and variance conditions dated January 24, 2000 issued to subject TMK property be addressed at the time of rendering a decision by the Planning Director on Variance Application-VAR 06-055.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, containing 25,863 square feet, portion of Grant 3148, Apana 1, Lono-Kona Subdivision, is situated at Keopu-Honuaula, North Kona, Hawaii. The TMK property's street address is 75-5705 Kalawa Street.

The property is zoned Multiple-Family Residential District (RM-1) by the County and designated Urban or "U" by the Land Use Commission (LUC). The property is not within the Special Management Area (SMA). However, the project site is within the Kailua Village Special Design District (KVDSO). (Refer to variance conditions).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about July 17, 2006. The variance application's site plan map is drawn to scale and prepared by Riehm Owensby Planners Architects. The variance site plan map, Sheet Number A-1.1, denotes the proposed building position, parking, and other site improvements on the project site or subject tax map key property-TMK: 7-5-022:018.

The applicant's background report dated "July 2006", Page 3 states in part:

"The Applicant is requesting a variance from the requirements of the following:

- A. A variance from the requirement of the County of Hawaii Code, Chapter 25 (Subdivision) (sic), Article 5 (Zoning District Regulations), Division 3 (RM, Multiple-Family Residential Districts), Section 25-5-26 (Minimum Yards), to allow for a front yard setback of twelve (12) feet instead of the required twenty (20).
- B. A variance from the requirements of the County of Hawaii Code, Chapter 25 (Subdivision) (sic), Article 4 (General Development Regulations), Division 5 (Off-Street Parking and Loading), Section 25-4-58 Dimension of loading spaces to allow for a ten foot wide and twenty-two feet long (10'X22') instead of the required 12' X 50' loading space.
- C. A variance from the requirements of Rule 17 of the County of Hawaii, Planning Department Rules of Practice and Procedure for the (10'X22') loading space to be one-foot from the property line in lieu of Rule 17 landscape requirement of a five-foot landscape planting strip.

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- D. A variance from the requirements of Rule 17 of the County of Hawaii Planning Department Rules of Practice and Procedure to allow for a rock retaining wall at the property line, on the south side of the property, in lieu of a five-foot planting strip.
- E. A variance from the requirements of Rule 17 of the County of Hawaii Planning Department Rules of Practice and Procedure to allow a reduction in the 20 % requirement of landscape area as a result of the donation of 2,214 + square feet of land area to be donated to the County of Hawaii."

3. **County Building Records:**

Pursuant to the applicant's background report "July 2006", Page 2, "There are no improvements on the property."

4 **Agency Comments and Requirements-VAR 06-055:**

- a. The County of Hawaii Fire Department memorandum is dated August 3, 2006 (Refer to copy of memorandum in variance file).
- b. The Department of Public Works (DPW) memorandum dated August 15, 2006 states:

"We reviewed the subject application and our comments are as follows:

- 1. All driveway connections to a County road shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code. Driveways shall conform to County standards details R-37 and R-38.
- 2. The necessary street right-of-way for extending Alahou Street as shown on the applicant's Exhibit 2 shall be platted and subdivided as a road lot prior to issuance of a certificate of occupancy and conveyed to the County upon request at no cost to the County. The wall and footing along Alahou Street shall be designed and constructed to account for the future street extension.

Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division office at 327-3530."

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- c. The State Department of Health (DOH) memorandum dated August 16, 2006 states:

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

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 August 3, 2006 and August 4, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 4, 2006.
6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following written comments or objections from surrounding property owners or the general public were received:
- 6a. Objection letter dated August 10, 2006 from Lorimer and Pamela McLaughlin.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the current owner, submitted the variance application and revised site plan to denote the position of the proposed 3-story multiple family (18 units) building within the property's minimum front yard along Alahou Street and side (northerly) side yard and attendant open yards. The variance application's site plan maps were prepared by an Architect and denote the revised position of a 3-story building and other site improvements within the front yard along Alahou Street and affected side yard and attendant open yard spaces including loading space and landscaping, etc. The current owner is seeking the subject variance and amendment to the original variance-VAR 1086 dated January 24, 2000.

ALTERNATIVES

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

1. Redesigning or relocating the building(s) and related site improvements within the building envelope prescribed by the Zoning Code.

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2. Consolidation of the property with adjoining property and resubdivision to modify property boundaries or adjust minimum yards, etc. The original variance from minimum yards was to allow construction of a proposed 4-story condominium building. The current owner is proposing a 3-story building and addressing various design changes and landscaping requirements due to proposed extension of Alahou Street.

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 original findings in VAR 1086, it appears that the revised building location and alternative site improvements will not "visually or physically impact or be adverse to any adjacent properties or development". In addition, given the reduction of the property due a County plan to expand and extend Alahou Street; and, the current owner or developer's willingness to address or insure that access to the project and other road improvements will be accomplished in a reasonable and timely manner, the variances requested by the owner and developer are reasonable. The reduction of the property's area due to the road right-of-way expansion/extension and revised project's design will not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that the proposed building's position together with the minimum alternative parking spaces/loading space, and alternative landscaping improvements denoted or 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 July 27, 2006 and the applicant requested additional time to consider other site plan(s) and agency requirements and/or amendments to the original variance dated January 24, 2000. The applicant agreed to an extension of time to consider DPW comments and complete the variance background report and render a decision to December 15, 2006 on the subject variance.

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.

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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. The approval of this variance permits proposed 3-story (18 units) multiple residential building improvements, related parking/loading space, and alternative landscaping improvements to be constructed on the subject TMK property pursuant to variance site plan map dated January 27, 2006. The applicant or successor(s) shall submit a Plan Approval application to the Planning Department and plans for review by the Kailua Village Design Commission (KVDC) before November 1, 2008 and secure Final Plan Approval (FPA) for the proposed 3-story building and related site improvements on or before December 5, 2008.

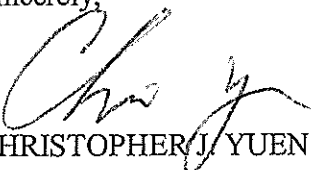
Any extension of not more than two (2) years may be granted by the Planning Director upon timely request by the applicant or owner(s).

4. Future or new building improvements and permitted uses shall be subject to VAR 1086 and VAR 06-055 and State law and County ordinances and regulations pertaining to building construction and building occupancy.

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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)
Lorimer and Pamela McLaughlin (With Enc.)