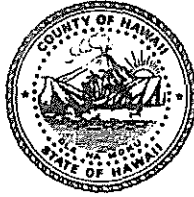


Harry Kim
Mayor



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

September 18, 2006

Mr. Daniel J. Daub
P. O Box 7355
Hilo, HI 96720

Dear Mr. Daub:

VARIANCE-VAR 06-056

Applicant: DANIEL J. DAUB
Owners: RICHARD C. SUGANUMA, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 2-5-012:078

After reviewing your variance application, the Planning Director certifies the approval of variance-VAR 06-056 to permit portions of a "DWELLING/DECK" to remain on Lot 11, "AS-BUILT", with a minimum 9.1 feet to minimum 10.0 feet side yard and attendant minimum 3.8 feet to minimum 4.3 feet side yard open space in lieu of minimum 10.0 feet side yard and minimum 5.0 feet side yard open space requirements, according to the variance site plan map dated December 16, 2003. The variance is from the TMK property's minimum side yard and attendant side yard open yard space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(2)(B), 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, Lot 11 containing 13,392 square feet, being a portion of Grant 4489 to William Kinney, is situated at Ponahawai, South Hilo, Hawaii. The property's street address is 081 Piliialoha Street.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban or "U" by the Land Use Commission (LUC).

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 Ronaldo B. Aurelio, LPLS. The variance site plan map, dated December 16, 2003, denotes portions of the "DWELLING/DECK" were built within minimum 10 feet side yard of "LOT 11" or subject TMK property.

The applicant's background dated July 6, 2006 states in part:

"This property consists of a very nice home constructed back in 1969 on a 13,392 sq. ft. lot. The owner at the time of the sale was Marlene Dunphy and when the home entered escrow a survey was required. A survey was completed on December 16, 2004 by Renaldo B. Aurelio, LPLS and it indicated that the home and deck entered into the building setback on the southeast side. The property sold on January 9, 2004 to Richard C. Sukanuma and Kim P. Warner Sukanuma. As part of that sale both buyer and seller agreed to proceed with this variance but there was a delay in getting started due to uncertainty of how to proceed.

It appears that the placement of the home was an construction error and then never questioned until the above mentioned survey was completed. The southeast rear corner enters into the ten foot building setback 0.9 feet maximum and the deck on the same enters into the building setback by 6.2 feet maximum.

Since this is a well established neighborhood of good quality homes and the structure has been in place for over twenty seven years without issue and the minor distances that the structure enters the building setbacks we feel there are no other reasonable alternatives at this time to resolve this situation. We are, therefore, applying for subject variance."

Note: The variance site plan map does not identify the location of the cesspool or Independent Wastewater System (IWS). The variance request does not address the location or position of any rock wall and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 1-Building Permit (781122), 2-Electrical Permits (EH50973, EH63205), and 1-Mechanical (MH27272) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling/deck and attached garage on "LOT 11" were built pursuant to these building and associated construction permits issued between 1978 and 1986.

4 **Agency Comments and Requirements-VAR 06-056:**

- a. The State Department of Health (DOH) memorandum dated August 4, 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 August 14, 2006 states:

"We have reviewed the subject application forwarded by your memo dated July 27, 2006 and recommend approval of the application be conditioned on the comment as noted.

The lower level is illegal and must be permitted.

Please refer questions to the Building Division at 961-8331."

- 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 14, 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. 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 encroachments within a minimum side yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling-garage/deck and other site improvements, "AS BUILT", on "LOT 11". The applicant and owners became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by previous owners or builders to deliberately create or intentionally allow these building encroachments to be built within the affected side yard and attendant side yard open space.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements between 1978 and 1986, the dwelling/deck encroachment within the property's side yard went unnoticed.

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 11 with adjoining lot (TMK: 2-5-012:079, Lot 10) 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 subject building encroachments constructed approximately 28 years ago within the minimum side yard are not physically and/or visually obtrusive from the adjacent property (Lot 10) or public right-of-way (Piliialoha Street). It appears that these 28 year old building encroachments do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that these building encroachments into the affected side yard identified on the variance application's site plan map dated December 16, 2003 will not detract from the character of the immediate neighborhood or the subdivision.

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 dwelling/deck located on "LOT 11" will not meet the minimum side yard and attendant side yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated December 16, 2003. The approval of this variance permits the "Dwelling/Garage/Deck" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 11" according to the variance site plan map.

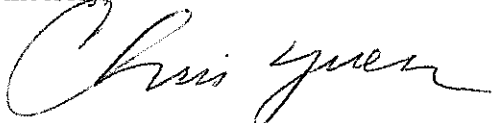
However, pursuant to the DPW memorandum dated August 14, 2006, the applicant or current owner(s) shall confer with the DPW-Building Division in Hilo and secure any necessary "after the fact" construction permits for the "lower level" of the existing dwelling. The status of building improvements within the lower level of the dwelling shall be resolved prior to sale of the property or transfer of title of the property by the current owner(s) to others and/or before December 31, 2006.

4. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.
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.

Mr. Daniel J. Daub
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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,

A handwritten signature in cursive script, appearing to read "Chris Yuen".

CHRISTOPHER J. YUEN
Planning Director

WRY:cd
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xc: Real Property Tax Office-(Hilo)