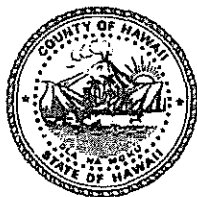


Harry Kim
Mayor



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 29, 2006

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

Dear Mr. Daub:

VARIANCE-VAR 06-060

Applicant: DANIEL J. DAUB
Owners: MELVIN H. DEEGAN JR., ET AL.
Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 1-3-041:044, Lot 15

After reviewing your application, the Planning Director certifies the approval of Variance -VAR 06-060 subject to variance conditions. The variance allows portions of the dwelling/carport ("HOUSE") to remain on Lot 15, "AS-BUILT", with a minimum 29.05 feet front yard and minimum 18.97 feet (west) side yard in lieu of minimum 30 feet front yard and minimum 20 feet side yard pursuant to variance site plan map dated May 31, 2004. The variance is from the TMK property's minimum front and minimum side yard pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Section 25-5-77 Other regulations.

BACKGROUND AND FINDINGS

1. **Location.** The subject TMK property, Lot 15 containing 1.000 acre, is within Block 5 of Leilani Estates Subdivision, and situated at Keahialaka, Puna, Hawaii. The TMK property's street address is 13-1233 Kahukai Street.

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, on behalf of the owners, submitted the variance application, attachments, and filing fee on or about August 4, 2006. The variance application's site plan map is drawn to scale and prepared by The Independent Hawaii Surveyors. The variance site plan map, dated May 31, 2004, denotes portions of the "HOUSE" were built into the minimum 30 feet front yard and minimum 20 feet side (west) yard of "LOT 15" or subject TMK property.

The applicant's background states in part:

"This property consists of a nice home constructed in 2003 on a one acre lot. The owner at the time of construction, Mr. Richard Betts decided to sell the home. It entered escrow which ultimately sold on May 25, 2005 to Melvin H. and Jaqueline N. Deegan. As part of that sale both buyer and seller agreed to proceed with this variance. There was a delay in getting all the correct papers needed signed until recently. It appears that the error in placement was part of the pouring of the foundation and then never questioned until the survey completed by Independent Hawaii Surveyors dated May 31st, 2004 discovered that the front of the home extends into the 30 foot building setback 0.91 feet and the West side enters into the 20 foot building setback by 1.03 feet."

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 the gate, utility pole, and any landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 1-Building Permit (021013) and 1-Mechanical (M021108) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling and related site improvements on "LOT 15" were built pursuant to the building permit and plumbing permit issued in 2002.

4. **Agency Comments and Requirements-VAR 06-060:**

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

"NO COMMENTS"

Note: Refer to variance conditions.

- b. The State Department of Health (DOH) memorandum dated September 6, 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 14, 2006 and September 12, 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 applicant, on behalf of the current owners, submitted the variance application to address or resolve the dwelling encroachments within the property's minimum front yard and minimum side (west) yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling and other site improvements, "AS BUILT", on "LOT 15". The current owners became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by previous owner or builders to deliberately create or intentionally allow these building encroachments to be built within the property's minimum front yard and affected side yard.

It appears that the existing dwelling improvements were constructed according to a building permit and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements during 2002, the dwelling encroachment into the property's minimum front yard and affected 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 15 with the right-of-way or adjoining lot (TMK: 1-3-041:043, Lot 16) and resubdivision 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.

It appears that the subject building encroachments constructed approximately 4 years ago within the property's minimum front yard and side (west) yard are not physically and/or visually obtrusive from the adjacent property (Lot 16) or privately owned right-of-way (Kahukai Street). It appears that these 4 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 the dwelling encroachments into the property's minimum front yard and affected minimum side yard identified on the variance application's site plan map 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.

Mr. Daniel J. Daub

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3. Portions of the dwelling or "HOUSE" located on "LOT 15" will not meet the property's minimum front yard and minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated May 31, 2004. The approval of this variance permits the "HOUSE" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 15" according to the variance site plan map dated May 31, 2004.

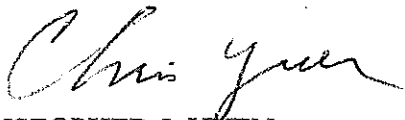
The applicant or current owners shall address the status of "open" Building Permit (021013) and Mechanical Permit (M021108) issued to subject TMK property.

The "open" building and mechanical permits issued to subject TMK property shall be closed or "finaled" by the DPW-Building Division (Hilo) on 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.

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)