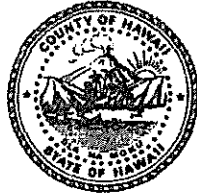


Harry Kim  
Mayor



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 4, 2006

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

Dear Mr. Daub:

**VARIANCE-VAR 06-062**

**Applicant: DANIEL J. DAUB**

**Owner: JOANN K. AGUIRRE**

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

**Tax Map Key: 1-5-025:068, Lot 673**

After reviewing your application, the Planning Director certifies the approval of Variance-VAR 06-062 subject to variance conditions. The variance allows portions of the dwelling ("HOUSE") and water tank to remain on Lot 673, "AS-BUILT", with a minimum 12.10 feet side yard and attendant minimum 11.24 side yard open space and minimum 11.45 side yard and minimum 11.45 side yard open space, respectively, pursuant to variance site plan map dated December 6, 2004. The variance is from the TMK property's minimum 20.00 feet side yard and minimum 14.00 feet side yard open space pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), 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 TMK property, Lot 273, containing 1.00 acre, is within Block 9, Hawaiian Paradise Park, and situated at Keaau, Puna, Hawaii. The TMK property's street address is 15-2007 12<sup>th</sup>, Avenue.

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 submitted the variance application, attachments, and filing fee on or about August 11, 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 December 6, 2004, denotes portions of the "HOUSE/ROOF EAVES" and detached "WATER TANK" were built into the property's minimum 20 feet side yard of "LOT 673" or subject TMK property.

The applicant's background dated August 8, 2006 states in part:

"The property consists of a very nice two bedroom home constructed back in 1987 on a (sic) acre lot in Hawaiian Paradise Park. The owner at the time of the sale was Alicia B. Laurel and when the home entered escrow a survey was required as part of the transaction. The survey was performed on December 6, 2004 by Independent Hawaii Surveyors, LLC. It indicated that the home and water tank entered into the building setback on the southeast side. The property sold on December 21, 2004 to JoAnn B. Aguirre. As part of the sale both buyer and seller agreed to proceed with this variance. There was a delay in getting started on the variance due to being unable to obtain all the details and signatures necessary to proceed until now.

It appears that the placement of the home and water tank were construction errors and then never questioned until the above mentioned survey was completed. The southeast rear corner enters into the twenty foot building setback 7.90 feet maximum and the roof projects 8.76 feet into the same setback. The water tank enters into the same setback by 8.55 feet maximum.

Since this is a well established neighborhood of good quality homes and the structure has been in place for over nineteen years without issue and the relatively 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 the "ROCK WALL or GATE", and any landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 3-Building Permits (871315, 970964, 980220), 2-Electrical Permits (EH70180, E980223), and 1-Mechanical (MH43266) or Plumbing Permit were issued to subject TMK property. It appears that the "HOUSE" and detached "WATER TANK" on "LOT 673" were built pursuant to these building and associated construction permits issued between 1987 and 1998.

4 **Agency Comments and Requirements-VAR 06-062:**

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

"NO COMMENTS"

- 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 25, 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 and water tank encroachments within the property's minimum 20 feet side yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling, detached water tank, and other site improvements, "AS BUILT", on "LOT 673". The current owners became aware of building encroachment issues during escrow.

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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 property's minimum side yard and attendant minimum side yard open space.

It appears that the existing dwelling improvements and subsequent dwelling improvements were constructed according to 3-building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling and water tank improvements between 1987 and 1998, the dwelling and water tank encroachment(s) within the property's minimum 20 feet 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 and detached water tank to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 673 with adjoining TMK property or lot (TMK: 1-5-025:069, Lot 672) 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 19 years ago within the minimum side yard are not physically and/or visually obtrusive from the adjacent property (Lot 672) or privately owned right-of-way fronting the property. It appears that these 19 +/- 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 and detached water tank encroachments into the property's affected minimum 20 feet side yard identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

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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/roof eaves and detached water tank located on "LOT 673" will not meet the minimum side yard and minimum attendant side yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated December 6, 2004. The approval of this variance permits the "HOUSE/ROOF EAVES" and detached "WATER TANK" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 673" according to the variance site plan map dated December 6, 2004.
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.

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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-(Hilo)