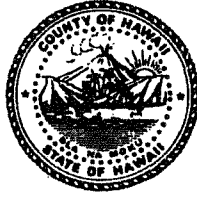


Harry Kim
Mayor



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 3, 2006

Mr. Timothy P. Miyahira
27-656 Kaieie Road
Papaikou, HI 96781

Dear Mr. Miyahira:

VARIANCE-VAR 06-063

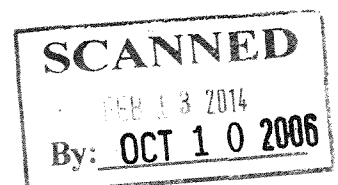
Applicant: TIMOTHY P. MIYAHIRA
Owners: TIMOTHY P. MIYAHIRA, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 2-7-005:050

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 06-063 subject to variance conditions. The variance permits a proposed dwelling and new detached garage to be built with minimum 10.00 feet side yards and attendant minimum 5.00 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 TMK property is Lot 5, containing 1.727 acres, being portion of Grant 6877 and Kaieie Homesteads, 2nd Series, and situated at South Hilo, Hawaii.



The property is zoned Agricultural (A-10a) by the County and designated Agriculture "A" by the Land Use Commission (LUC). The subject TMK property was created or subdivided before 1967 and is approximately 75.50 +/- 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-10a became 10 acres and 300 feet, respectively. As such, after the adoption of the original Zoning and Subdivision Codes, the subject TMK property's area of 1.727 acres size and 75.5 + feet width became "non-conforming".

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about August 14, 2006. The variance application's site plan map is drawn to scale and prepared by the applicant. The variance site plan map denotes the location of proposed 2-story dwelling, detached garage, and other site improvements within the subject TMK property.

The applicant's background dated August 13, 2006 states in part:

"We would like to build our house on lot TMK: 2 7 005 050 in Papaikou which has been in our family since 1974.

The lot is zoned A-10a. It is long and narrow and has an average width of 75 feet. We think the lot was created prior to 1967.

We don't know how this subdivision was approved since 75 feet is far below the minimum width of a lot geometry zoned A-10a.

This narrow lot width limits building options. In lieu of the minimum 20 feet side yards(s) required, my wife and I request that a proposed 2 story dwelling and detached garage be permitted with a minimum 10 feet side yards and attendant minimum 5 feet side yards and attendant minimum 5 feet side yard open space requirements."

3. **County Building Records:**

The property is vacant.

4 **Agency Comments and Requirements-VAR 06-063:**

- 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 17, 2006 and August 23, 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. The following letter was submitted with the variance application.

- 5a. Letter dated July 5, 2006 signed by Andrew S. Burian (Owner of adjoining “TMK: (3) 2-7-005-049”) endorsing the applicant’s variance request states in part:

“I have no objections to Mr. & Mrs. Miyahira building their home 8 feet from their adjacent property line.”

Note: No other 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 2-story dwelling and detached 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, detached garage, and other proposed site improvement on the subject TMK property. The applicants are requesting a variance to allow proposed building improvements to be constructed with minimum 10 feet side yards; and, attendant minimum 5.0 feet side yard open spaces.

ALTERNATIVES

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

1. Redesign or reduce the proposed dwelling and detached garage to fit within the building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK with adjoining TMK 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 into the property'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.

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.

Mr. Timothy P. Miyahira
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October 3, 2006

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 portions of proposed "2 STORY DWELLING" and proposed detached "GARAGE" to be constructed with minimum 10.00 feet side yards and attendant minimum 5.00 feet side yard open space between the affected side boundary lines and roof eaves. The proposed building improvements and related site improvements shall be constructed in accordance with the approved variance site plan map in subject variance file-VAR 06-063.
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 S. YUEN
Planning Director

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