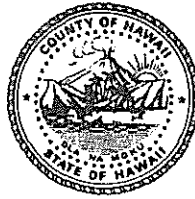


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
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Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • FAX (808) 961-8742

October 20, 2006

Mr. Trevor and Ms. Laurel Gloor
P. O. Box 38
Papaaloa, HI 96780

Dear Mr. and Ms. Gloor:

VARIANCE-VAR 06-065

Applicants: TREVOR GLOOR, ET AL.

Owners: TREVOR GLOOR, ET AL.

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

Tax Map Key: 3-5-002:017

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 06-065 subject to variance conditions. The variance permits proposed 2-story dwelling/lanai(s) to be constructed with a minimum 15.00 feet front yard and minimum 5.00 feet front yard open space and minimum 6.00 feet side yard and minimum 3.00 feet side yard open space and permit portions of proposed detached water tank with a minimum 10.00 feet front yard and minimum 3.00 feet side yard, respectively, in lieu of minimum 20.00 feet front yard and attendant minimum 14.00 feet front yard open space and minimum 10.00 feet side yard and minimum 5.00 side yard open space according to revised drawings and variance site plan map. The variance is from the TMK property's minimum front yard and attendant minimum front yard open space and minimum side yard and attendant minimum side yard open space requirements 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 containing 10,140 square feet is a portion of Lot 8, Grant 9719 to Kekipi Kauhi Mac and situated at Papaaloa Homesteads, North Hilo, Hawaii.

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The property is zoned Agricultural (A-20a) 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 22, 2006. The variance application's site plan map is drawn to scale and prepared by the applicants. The variance site plan map identifies the proposed location(s) of a new dwelling and detached water tank on the subject TMK property.

In addition to the variance site plan map denoting the proposed dwelling and water tank position(s), the applicants submitted a Boundary Study dated November 19, 1992 prepared by Murray, Smith & Associates, Ltd. Pursuant to this map and other records, it appears that the triangular shaped property was created before 1967 and has 168 + feet wide along Weloka Road and bounded by Kapehu Gulch. The property's geometry is triangular; and, the property's depth between the property's front boundary line and property line along the top of the gulch limits building design and location to the (makai) area of the property close to a "Drainage Swale" on adjoining property and "makai" of a common side boundary line shared with the adjoining property.

The applicant's background report dated August 17, 2006 states in part:

"This letter of intent accompanies our application, dated 8-17-06, for a setback variance. We are applying for a setback variance on the front (road) property line from a 20' setback to 3' setback. Our reasons for this request are so that we can install a catchment tank and house on the upper, more rocky part of our lot. This lot is unusual in that it is small, 1/4 acre, narrowing toward the upper (mauka) part. Since the upper fenced part is no wider than 22', without this variance we would need to build our home in the lower portion of the property, where the soil is good, and would not be able to use a significant upper part of the land because it is rock and unfit for agriculture.

The proposed variance would allow us to install an 18' diameter catchment tank on the level spot near the mauka fence and to build a small house (24'x32') nearer the back/upper part of the property as well. This proposed placement of the tank and house will afford the best ag use of the lower, more fertile part of the land for orchard and garden. Please refer to attached site plan to compare how these improvements would be situated on the lot with and without the setbacks we request."

Note: The variance site plan map does not identify the proposed dwelling's cesspool location or Independent Wastewater System (IWS). The variance request does not address the location or position of existing perimeter fencing and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

The property is vacant.

4. **Agency Comments and Requirements-VAR 06-065:**

- a. The Department of Public Works (DPW) memorandum dated September 20, 2006 states in part:

"NO COMMENTS"

- b. The State Department of Health (DOH) memorandum is dated is dated September 6, 2006. (Refer to memorandum in variance file).

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 21, 2006 and September 18, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 1, 2006 and September 17, 2006 (correction).

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 applicants-owners submitted the subject variance application and request to construct the dwelling and detached water tank on the vacant subject TMK property. The variance application's site plan map denotes proposed location(s) of the proposed dwelling and detached water tank within the property's building envelope.

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The applicants-owners are proposing to construct a dwelling and attached garage on a "non-conforming" sized triangular shaped lot that was created before 1967. The variance application's site plan map, drawn to scale, denotes the position of the proposed dwelling and detached water tank; and, other site improvement (existing trees) on the property and position of a "Drainage Swale" on property adjoining subject TMK property. The applicants are requesting a variance to permit portions of a proposed 2-story dwelling and detached water tank to be built on "higher ground" within the property's minimum 20 feet front yard along Kapehu Road (Weloka Road) and 10 feet side yard along the Kapehu Gulch; and variance from the respective minimum front yard open yard space and minimum side yard open yard space.

The applicant's also submitted photographs of the vacant property. The accompanying narrative-statements state in part:

"Our goal is to leave as much area as possible in the lower part of property, below the house (sic), for planting. Upper are seems more appropriate for water tank, car, house. It's rocky and barren."

A recent site inspection by Planning Department staff confirms the property's features, e.g. soil, drainage patterns within the immediate area, and other limitations posed by the unusual lot geometry, etc.

ALTERNATIVES

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

1. Redesign or reduce the dwelling and detached water tank to fit within the building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property with the adjoining property (TMK: 3-5-002:020) 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.

Given the property's unusual lot geometry; and the property's depth between the property's front boundary line along "Weloka Road" and boundary line along the "top bank" of Kapehu Gulch; and nearby "Drainage Swale" on adjoining property and drainage pattern within the neighborhood, it is felt that applicant's request for variance to permit and construct portions of the proposed dwelling and detached water tank within the property's minimum 20 feet front yard along "Weloka Road" and 10 feet side yard along the gulch and allowing requested attendant minimum front yard open space and minimum side yard open yard for the proposed dwelling and detached water tank is reasonable and would not be physically and visually obtrusive from the roadway or adjoining property(s). Therefore, it is felt that the proposed position of the dwelling and detached water tank into the property's minimum yards of this subject TMK property required by the Zoning Code and applicant's site plan map would not detract from the character of the surrounding neighborhood and adjoining land patterns.

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. The approval of this variance permits proposed 2-story dwelling to be constructed with a minimum 15.0 feet front yard and minimum 5.0 feet front yard open space and minimum 6.0 feet side yard and minimum 3.0 feet side yard open space from the property's side boundary line along Kapehu Gulch and permits detached water tank to be constructed with minimum 10.0 feet front yard and minimum 10.0 feet front yard open space and minimum 3.0 feet side yard and minimum 3.0 feet side yard open space from the property's side boundary line along Kapehu Gulch of the subject TMK property and pursuant to dwelling and water tank location(s) denoted on the variance site plan map in variance file VAR 05-065.

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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)