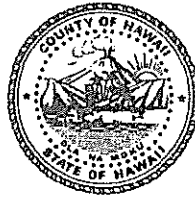


Harry Kim
Mayor



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

November 20, 2006

Mr. Craig Lindner
P. O. Box 5508
Hilo, HI 96720

Dear Mr. Lindner:

VARIANCE-VAR 06-078

Applicant: CRAIG LINDNER
Owner: CRAIG A. LINDNER RETIREMENT FUND
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 1-1-043:080, Lot 633

After reviewing your variance application, the Planning Director certifies Variance-VAR 06-078 subject to variance conditions. The variance allows portions of a "HOUSE" or 1-story dwelling to remain on Lot 633, "AS-BUILT", with a minimum 7.44 feet to minimum 8.35 feet side yard in lieu of minimum 10 feet side yard pursuant to variance site plan map dated August 15, 2006. The variance is from the TMK property's 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 633 containing 10,000 square feet, is within Block A, Royal Hawaiian Estates, and situated at Keaau, Puna, Hawaii. The TMK property's street address is 11-3315 Alaula Street.

The property is zoned Agricultural (A-1a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC).

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2. **Variance Application-Site Plan.** The applicant submitted the original and variance application, revised attachments, and filing fee on September 26, 2006 and October 18, 2006, respectively. The variance application's site plan map is drawn to scale and prepared by The Independent Hawaii Surveyors, LLC. The variance site plan map, dated August 15, 2006, denotes portions of the "HOUSE" or 1-story dwelling were built into the minimum 10 foot side yard of "LOT 633" or subject TMK property.

The applicant's background report states in part:

"The applicant is requesting a variance to allow portions of a single story family dwelling to remain "as-built" with a 7.44 foot side setback on the S.W. boundary (sic), in lieu of the minimum 10 foot side setback as required under Hawaii County Zoning Code.

The contractor made an error in placing the house on the property when it was originally built. Thus the house projects as much as 1.65 feet into the 10 foot building setback of the southwest.

This home is fully permitted with the Hawaii County Building Department."

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 landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 1-Building Permit (B2004-2665H), Electrical Permits (E2005-1402H), and Mechanical (M2005-1229H) or Plumbing Permit were issued to subject TMK property. It appears that the 1-story dwelling and detached water tank on "LOT 633" were built pursuant to these building and associated construction permits issued between 2004 and 2006.

4. **Agency Comments and Requirements-VAR 06-078:**

- a. The State Department of Health (DOH) memorandum (revised) dated November 6, 2006 states in part:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

- b. The Department of Public Works (DPW) memorandum (revised) dated November 15, 2006 states:

"We have reviewed the subject application forwarded by your memo dated October 20, 2006 and have no comments or objections to the request."

5. **Notice to Surrounding Property Owners.** Proof of mailing 2-notice to surrounding property owners was submitted to the Planning Department. For the record, the first and second notices were mailed on September 28, 2006 and October 31, 2006, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 29, 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's position on the subject TMK property and dwelling's improvements outside the building envelope into a minimum 10 feet side yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the "HOUSE" and detached "WATER TANK" and other site improvements, "AS BUILT", on "LOT 633". The current owners became aware of the dwelling's encroachment into the property's minimum side yard during escrow. No evidence has been found to show indifference or premeditation by the owner or builders to deliberately create or intentionally allow a portion of the dwelling to be constructed within the property's affected side yard.

It appears that the existing dwelling improvements and detached water tank improvements were constructed according to a building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements between 2004 and 2006, the dwelling encroachment within the property's (westerly) 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 633 with adjoining lot (TMK: 1-1-043:079, Lot 625) 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 1-2 years ago within the minimum side yard are not physically and/or visually obtrusive from the adjacent property (Lot 625) or right-of-way (Alaula Street). It appears that the 1-story dwelling completed in 2006 does not detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that these building encroachments into the property's affected 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:

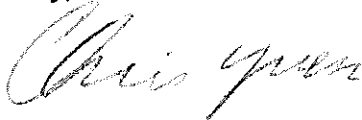
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.

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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 "HOUSE" or 1-story dwelling located on "LOT 633" will not meet the property's minimum 10 feet side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated August 15, 2006. The approval of this variance permits the "HOUSE" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 633" according to the variance site plan map dated August 15, 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

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xc: Real Property Tax Office-(Hilo)