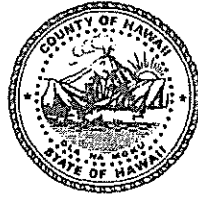


Harry Kim
Mayor



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 21, 2006

Mr. Derek Yoshimura
2160 A Kinoole Street
Hilo, HI 96720

Dear Mr. Yoshimura:

VARIANCE-VAR 06-079 (DENIAL)

Applicant: DEREK YOSHIMURA

Owners: SEIMITSU NAKO, ET AL.

Request: Variance from Chapter 25, Zoning

Tax Map Key: 2-2-041:067, Lot 2-B

After reviewing your variance application, the Planning Director denies your variance request and application. Variance Application-VAR 06-079 requested a variance to permit a garage-storage-workshop building (approximately 1080 square feet) to remain on Lot 2-B, "AS-BUILT", with minimum 4.1 feet +/- rear yard and attendant minimum 0.71 feet rear yard open space and minimum 3.25 + feet side (south) yard and attendant minimum 0.40 feet side yard open space pursuant to plan submittals and site plan dated August 25, 2006 received with the application. The variance is from the TMK property's minimum rear yard and minimum side yard pursuant to the Zoning Code and Plan Approval of the Zoning Code. The variance is from the TMK property's minimum rear yard and minimum side yard requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 10, Section 25-5-106, Minimum yards, (1)(2), 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 2-B containing 21,780 square feet, is within Waiakea Homesteads House Lots, and situated at Waiakea, South Hilo, Hawaii. The TMK property's street address is 2160 A Kinoole Street.

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The property is zoned Neighborhood Commercial (CN-10) by the County and designated Urban "U" by the Land Use Commission (LUC).

Note. The applicant-owner was issued a Notice of Violation and Order letter (ZCV 06-081E) dated July 26, 2006 regarding a building improvement and position of the building improvement constructed on the subject TMK without a building permit. A copy of this letter sent to the property owner(s) by certified mail is in subject variance file as reference.

2. **Variance Application-Site Plan.** Pursuant to the ZCV 06-081 letter, the applicant, on behalf of the owners, submitted subject variance application, attachments, and filing fee on or about September 27, 2006 to the Planning Department. The variance application includes a site plan prepared by The Independent Hawaii Surveyors, LLC dated August 25, 2006 denotes the location of houses-carport, kennel, and storage building positions on the TMK property and detailed building drawings for "AS-BUILT" garage with storage/workshop dated July 15, 2006. The carport adjoining a "HOUSE" nearest to subject TMK's rear boundary line or position or "AS-BUILT" GARAGE WITH STORAGE/WORKSHOP was constructed without a County Building Permit and straddles subject TMK's southerly side boundary line shared with adjoining property (LOT 2-A-1) and is being built within subject TMK's property's minimum 15 feet rear yard and attendant minimum 10 feet rear yard open space requirements of the Hawaii County Zoning Code.

The applicant's background report attached to the variance application states in part:

"We are requesting that this 1080 sq. ft. storage/workshop be kept up and that we may continue the completion of this structure. We will obviously keep it to the requirements allowed by the Planning Department, and follow any other procedures that needs (sic) to be done.

This storage/workshop was not built in the intention to violate any laws, it was just a personal area to hold materials that is currently being stored outside in weather not suitable for all carpentry materials.

The realization of this set back violation has educated us in areas we were not aware of, (sic) The expenses put into this structure will be critical to us if the turn out is to demolish the storage area.

We truly appreciate your consideration on this matter and we are looking forward to hearing the results."

3. **Agency Comments and Requirements-VAR 06-079:**

- a. The State Department of Health (DOH) memorandum is dated October 23, 2006 (Refer to DOH memorandum in variance file).
- b. The Department of Public Works (DPW) memorandum dated October 30, 2006 states:

"We have reviewed the subject application forwarded by your memo dated October 9, 2006 and recommend approval of the application be conditioned on the comments noted below.

The minimum setbacks shall be maintained as follows: residential structures-3 ft. side and 3 ft. rear; commercial structures-5 ft. side and 5 ft. rear.

A building permit shall be obtained for the illegal carport (as labeled on the site plan within the variance application). A maximum one foot overhang of one hour fire-resistive construction is required at the rear and side of the structure.

Questions may be referred to the Building Division at 961-8331."

4. **County Building Records:**

County building and tax records show Building Permits were issued to subject TMK property between 1957 and 1977. Pursuant to the ZCV 06-081E letter dated July 26, 2006 and plans submitted with the variance application the "AS-BUILT" garage/storage/workshop addition identified on the variance site plan map and detailed building construction plans dated July 15, 2006 are in violation of the County Zoning Code and being built without County or DPW building permit(s).

5. **Notice to Surrounding Property Owners.** It appears that the applicant mailed a first notice on September 26, 2006 and second notice on October 19, 2006 to a list of surrounding property owner(s) and TMK(s) via the USPS. The copies of USPS receipt(s) submitted by the applicant regarding the first notice are dated September 26, 2006 and second notice are dated October 19, 2006, respectively.
6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments regarding the variance request or application were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant submitted a site plan map and other building drawings with the variance application denoting the location and position of the "AS-BUILT" addition to an existing dwelling located nearest to the property's rear boundary line. Portions of this addition were constructed into the property's minimum 15 feet rear yard and respective minimum 10 feet rear yard open space required by the Zoning Code. According to the violation letter and variance submittals, the applicant started construction the "AS-BUILT" garage/storage/workshop improvements prior to July 26, 2006. The applicant is asking for a variance from the Zoning Code minimum yards prior to applying for an "after-the-fact" building permit from the DPW. According to recent photographs taken of the "AS-BUILT" addition after issuance of the violation letter, it appears that the applicant continues to work on the garage/storage/workshop within the property's minimum yards and without obtaining County building permits.

Therefore, considering the variance application, detailed plan submittals, and other photographs and information regarding the nature of the addition, it is felt there are no special or unusual circumstances applying to the subject property which exist either to a degree which deprive the applicant or owner(s) of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the subject property.

ALTERNATIVES

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

1. Remove the building encroachments within the affected minimum rear yard(s).
2. Redesign and relocate the addition or garage/storage/workshop improvements to fit within the correct building envelope prescribed by Plan Approval of the Zoning Code, and/or other similar design alternatives, etc.
3. Consolidate the subject TMK property with the adjoining property TMK property and resubdivide the resultant consolidated lot to modify the property geometry and/or change the metes and bounds descriptions in accordance with the minimum yard requirements of the Zoning Code.

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.

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The "AS-BUILT" addition identified on the variance site plan map and detailed building drawings dated July 15, 2006 were started and built without a building permit. In addition, it appears that the proposed "AS-BUILT" building additions are physically and visually obtrusive from adjacent property(s).

The existing "AS-BUILT" addition and building encroachment(s) identified on the detailed building construction plans dated July 15, 2006 and modified site plan dated August 25, 2006, being constructed by the applicant violate the County Zoning Code-Chapter 25 and other County permitting requirements. It appears that these improvements were continued after the property owner's was issued a notice of violation letter (ZCV 06-081E), and, this addition constructed without a building permit detracts from the character of the surrounding neighborhood and building patterns. The site plans showing the original building positions indicate there are other building options and area within the building envelope to position the proposed "GARAGE WITH STORAGE/WORKSHOP". The character of the TMK property's e.g. land area, land topography or "lay of the land", and location of existing dwellings and other building improvements do not exhibit any unusual circumstances or building options; and, cannot be considered a hardship or special or unusual circumstance in favor of the variance request. In addition, it appears that the applicant ignored the notice of violation letter (ZCV 06-081E) and continued to construct or complete and store construction materials and tools within the garage/storage/workshop without securing County approval to allow the un-permitted structure. The applicant's background report claims he did not intend to violate any laws, but fails to explain why the applicant or owner(s) would fail to obtain a building permit for a large 1080 square feet building or building addition which is larger than some "model homes" or 1-story "1056" square feet model dwelling. Ignorance of the County building requirements or building law should not be a reason to grant this variance.

Based on the findings, inspection of the premises by the Planning Department and violation letter dated July 26, 2006, and the applicant-owner's decision to ignore county building permit requirements, the approval of the applicant's variance application to permit to allow the "AS-BUILT" addition within the property's minimum 15 feet rear yard and attendant minimum 10 feet rear yard open space being constructed pursuant to detailed building construction plans dated July 15, 2006 and/or revised plans dated August 25, 2006 would not 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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This denial of your variance request requires you to immediately remove the non-permitted improvements and be aware of the following deadline and other requirements:

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1. The non-permitted "AS-BUILT" garage/storage workshop addition, constructed within the property's minimum 15 feet rear yard or building improvements described and identified in the earlier violation letter dated July 26, 2006 sent to the applicant-owners shall be removed on or before **January 15, 2007**. Upon completion of the foregoing corrective action, you are responsible for contacting the Hilo Zoning Inspector-Mr. Robert Usugawa at (808) 961-8288 by telephone and in writing to the Planning Director to verify the completion of corrective action.
2. Any future building improvements and permitted uses on the subject TMK property shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

In accordance with a recent charter amendment and Ordinance No. 99-112, you may appeal the director's decision and request the following:

- (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision, appeal the decision to the board of appeals.
- (b) A person is aggrieved by a decision of the director if:
 - (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public: and
 - (2) The person is or will be adversely affected by the decision.
- (c) An appeal shall be in writing, in the form prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the board of appeals with the proof of service.
- (d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals.

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The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may reverse or modify the decision or remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:

- (1) The director erred in its decision; or
- (2) The decision violated this chapter or other applicable law; or
- (3) The decision was arbitrary or capricious or characterized by and abuse of discretion or clearly unwarranted exercise of discretion.

In view of the above, we have enclosed GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR.

Sincerely,



CHRISTOPHER J. YUEN

Planning Director

WRY/DSA:cd

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Enclosure-BOA Application

cc: Real Property Tax Office-(Hilo)
Zoning Inspector-Hilo