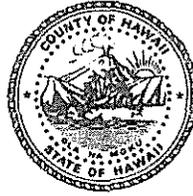


Harry Kim  
Mayor



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

January 12, 2007

Ms. Violette Fedora  
P. O. Box 2232  
Kamuela, HI 96743

Dear Ms. Fedora:

**VARIANCE-VAR 06-092**

**Applicant: VIOLETTE FEDORA**  
**Owner: VIOLETTE FEDORA**  
**Request: Variance from Chapter 25, Zoning**  
**Minimum yards**  
**Tax Map Key: 6-4-028:058, Lot 74**

After reviewing your variance application, the Planning Director certifies approval of Variance-VAR 06-092 subject to variance conditions. The variance allows portions of a "Garage" and attached "Single Story House" to remain on Lot 74, "AS-BUILT", with minimum 8.00 feet side (north) yard and attendant 4.23 feet side yard open space and minimum 9.83 feet side (south) yard, respectively, in lieu of minimum 10.00 feet side yard and minimum 5.00 feet side yard open space requirements according to the variance application's site plan map. The variance is from the TMK property's minimum side yard and attendant minimum side yard open space required 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 74 containing 14,815 square feet of "HOONANI SUBDIVISION", being a portion of Grant 7192, is situated at Waimea, South Kohala, Hawaii.

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 to the Kona Planning Department on November 17, 2006. The variance application's site plan map is drawn to scale and prepared by Don McIntosh Consulting. The variance site plan map, dated July 24, 1998, denotes a corner of the "Single Story House" and portion of the attached "Garage" and attendant "Eave" were built into minimum 10 feet side yard(s) of "LOT 74" or subject TMK property.

The applicant's background report dated November 15, 2006 states in part:

"On the afternoon of 7/31/98, before I moved into my present property the following day on 8/1/98, I was told by the realtor and owner of the property, Downy Sylva Realty Executives, that McIntosh Consulting had discovered a setback.

The owner next door at vacant lot #73 told me not to worry that when he sold the lot he would sell me a couple of feet. He passed away and someone else took over. I can't wait any longer. I am up in years and would like to correct the problem so my son would not have to go through the same situation."

**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 landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

County building records show 2-Building Permits (851855, 890505), 1-Electrical Permits (EK06625), and 2-Mechanical (MH41135, MH41427) or Plumbing Permits were issued to subject TMK property. It appears that the original dwelling/garage and addition on "LOT 74" were built pursuant to these building and associated construction permits.

4. **Agency Comments and Requirements-VAR 06-092:**

- a. The Department of Public Works (DPW) memorandum dated December 14, 2006 states:

"We reviewed the subject application and our comments are as follows:

Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division)."

The attached DPW memorandum dated December 14, 2006 states in part: "We oppose the approval of the application for the reasons noted below.

The building permit 890505 for the subject dwelling was never finalized.

Others: Building: Building Dept. records indicate subject property was permitted as single family dwelling with carport. Don Mc Intosh (sic) Consulting indicate dwelling with garage as note on survey."

- b. To date, no comments were received from the State Department of Health (DOH).

5 **Notice to Surrounding Property Owners.** Proof of sending notices to surrounding property owners were submitted to the Planning Department. Pursuant to the applicant, first notice was mailed on or about November 17, 2006 according to an affidavit and second notice was mailed on December 18, 2006 pursuant to mailing receipt affixed to list surrounding property owners. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 13, 2006.

6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections from surrounding property owners or the general public were received. The following comment(s) or support letter was incorporated into subject variance file:

- 6a. Copy of letter (First Notice) dated November 15, 2006 addressed to Alfred and Mary Lasiter dated November 16, 2006 was received by the Planning Department on or about December 5, 2006 with following note and signature "no problem here Al Lasiter".

### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The applicant submitted the variance application to address or resolve the dwelling and garage/eave encroachments, respectively, built into the property's minimum 10 feet side yard and attendant minimum 5 feet side yard open space. The variance application's site plan map prepared by a surveyor denotes a corner or portion of the "Single Story House" (Dwelling), "Garage" and attendant roof "Eave", were constructed into the minimum side yard(s) of "LOT 74".

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It appears that the current owner became aware of building encroachment issues after she purchased the property in 1998 approximately 9 years after the dwelling and dwelling addition were completed.

It appears that the original dwelling and subsequent dwelling addition were constructed pursuant to 2-building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the original dwelling improvements and subsequent addition, the position of the dwelling/garage and eave constructed into the property's respective north and south side yards went unnoticed by the agencies in 1985 and 1989.

### **ALTERNATIVES**

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

1. Remove the building encroachments built outside a building envelope denoted on the variance site plan map or redesigning or relocating the dwelling/ garage/eave to fit within the property's building envelope and minimum open yard space prescribed by the Zoning Code.
2. Consolidation of Lot 74 with adjoining property(s) (TMK: 6-4-028:057, Lot 73 and TMK: 6-4-028:059, Lot 75) 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 original building encroachments constructed into the property's side yards and attendant minimum side yard open space approximately 21 + years ago are not physically and/or visually obtrusive from the adjacent property(s) (Lot 73 and Lot 75) or right-of-way (Kipahale Street-Cul-de-Sac). Therefore, it is felt that the portion of the dwelling/garage and attendant roof eave encroachments constructed into the affected side yards 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.

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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. A portion of the dwelling and portions of the dwelling's garage and attendant roof eave located on "LOT 74" will not meet the minimum 10.00 feet side yard and minimum 5.00 feet side yard open space requirement pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated July 24, 1998. The approval of this variance permits the "Single Story House" (Dwelling) and "Garage" and attendant "Eave" improvements to remain, "AS BUILT", on the subject TMK property or "LOT 74" according to the variance site plan map in subject variance file.

The applicant or current owner shall contact the DPW-Building Division in Kona to address the DPW comments dated December 14, 2006 to verify original dwelling-carport/laundry/storage improvements permitted pursuant to BP No. 851855 or secure necessary permits, if any, from the DPW-Building Division to convert the carport/laundry/storage improvements to garage. In addition, the applicant or current owner shall contact the DPW-Building Division in Kona to address the "open" status of Building Permit-BP No. 890505 issued to subject TMK property. The status of the garage improvements shall be resolved by the DPW-Building Division and the active or "open" building permit issued to subject TMK property shall be completed or "finaled" by the DPW-Building Division on or before September 30, 2007 and prior to sale of the property or transfer of title of the property by the current owner to others.

Ms. Violette Fedora

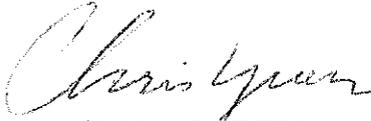
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4. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property, subject to provisions of the Zoning Code or State Law which may change from 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 null and void.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

WRY:cd

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xc: Real Property Tax Office-(Kona)

TRANSMISSION VERIFICATION REPORT

TIME : 01/17/2007 07:59  
NAME : PLANNING  
FAX : 9618742  
TEL : 9618288  
SER.# : BROE4J601474

DATE, TIME	01/17 07:57
FAX NO./NAME	93273509
DURATION	00:01:49
PAGE(S)	06
RESULT	OK
MODE	STANDARD ECM