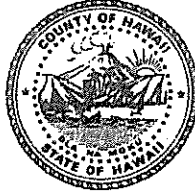


Harry Kim
Mayor



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

May 3, 2007

Ms. Kimberly Agpoon
2596 Kaiwiki Road
Hilo, HI 96720

Dear Ms. Agpoon:

VARIANCE-VAR 07-017

Applicant: KIMBERLY AGPOON

Owner: KIMBERLY AGPOON

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

Tax Map Key: 2-6-015:014, Lot 24

After reviewing your variance application, the Planning Director certifies the approval of VAR 07-017 subject to variance conditions. The variance to permits proposed two (2) story dwelling to be constructed on Lot 24 with a minimum 2.00 feet front yard along a cul-de-sac road (Ohana Place) in lieu of the property's minimum 15.00 feet front yard and attendant minimum 10.00 feet front yard open space required and minimum 3.00 feet side yard in lieu of minimum 8.00-foot side yard and attendant minimum 4.00 feet side yard open space required according to the applicant's site plan map submitted with the variance application. The variance is from the TMK property's minimum yards and associated minimum open yard space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(1)(A)(B), 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 24 containing 8986 square feet, is a portion of Wailua and Mokuhonua, South Hilo, Hawaii. Lot 24 was created on December 17, 1956 by SUB 1078.

The property is zoned Single-Family Residential (RS-7.5) by the County and designated Urban or "U" by the Land Use Commission (LUC). The property is within the Special Management Area (SMA). The property does not abut the shoreline.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on March 6, 2007. The variance application's site plan map is drawn to scale. The variance site plan map, dated January 29, 2007, denotes the position of proposed dwelling's living area (28' x 28') and position on subject TMK property.

The applicant's "Reason" states in part:

"Limitation to building/livable space due to drain easement that was generated and maintained by County of Hawaii since 10/10/1978." (In addition to the foregoing, the applicant forwarded a follow-up letter and statement cited below dated April 24, 2007).

Note: The variance site plan map denotes the area (6306 square feet) and location of Easement "C" for "SLOPE AND DRAINAGE" on the subject TMK property ("LOT 24") containing 8986 square feet. The remaining building area's containing 2680 square feet and geometry of this area limits building options.

May 3, 2007-Site Inspection. The subject TMK property is vacant and safety fencing was placed along Lot 24's front boundary line(s) shared with Wainaku Street and portion of Ohana Place (both County owned rights-of-way). In addition, there is a concrete channel and drainage improvements within Easement "C" to accept water runoff from the roadways within Wainaku Road and Ohana Place. Access via Ohana Place and on-site parking for the dwelling within the 2680 square feet triangular building area is limited by the safety fencing. The proposed 2-story dwelling within proposed "28' x 28'" building envelope on Lot 24 is approximately 40 + feet away from the 2-story dwelling constructed circa 1963 on adjoining property Lot 25 (TMK: 2-6-015:013). The applicant-owner is aware of the DWS building limitations regarding building walls and other building requirements. The proposed 2-story dwelling improvements on Lot 24 will be required to meet minimum DPW-Building setback requirements regarding building walls and projections.

3. **County Building Records:**

The subject TMK property is vacant.

4. **Agency Comments and Requirements-VAR 07-011:**

- a. The State Department of Health (DOH) memorandum dated March 20, 2007 states:

"Wastewater Branch cannot comment until site plan is reviewed."

- b. The Department of Public Works (DPW) memorandum dated April 3, 2007 states:

"We have reviewed the subject application forwarded by your memo dated March 12, 2007 and note that approval of the application shall be conditioned on the comments as noted below.

The front yard setback of 5 feet to the building line, 2 feet to the edge of the overhang is acceptable. The side yard setback of 4 feet to the building line, 3 feet to the edge of the overhang is acceptable.

Please refer questions to the Building Division at 961-8331."

Note: A copy of the DPW memorandum dated April 3, 2007 was forwarded to the applicant-owner. The applicant submitted a follow-up letter dated April 24, 2007 which states in part:

"I Kimberly Agpoon accepts/agree to the decision making by the D.P.W., and will accept the revision to the minimum of what was approved of by the Department OF (sic) Planning Works."

5. **Notice to Surrounding Property Owners.** The applicant submitted proof of mailing notices to surrounding property owners. According to the applicant, a notice (first notice) was mailed to surrounding property owners on March 5, 2007. The applicant included a list of names and mailing receipts dated March 5, 2007 with the variance application; and, submitted a copy of second notice sent to surrounding property owners and mailing receipts dated April 2, 2007 and April 12, 2007. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 20, 2007.
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.

Ms. Kimberly Agpoon

Page 4

May 3, 2007

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant-owner is requesting variance to permit portions of proposed 2-story dwelling to be built into property's minimum 15 feet front yard along Ohana Place and minimum 8 feet (west) side yard. The applicant is requesting variance to allow portions of the dwelling to be built with a minimum 2.00 feet front yard/open yard space along Ohana Place and minimum 3.00 feet side yard/open yard space. The variance application includes a site plan map, prepared by the surveyor, and includes the applicant's annotations designating the "footprint" or position of the proposed dwelling within a 28' x 28' area within the buildable 2680 square feet area outside Easement "C" on Lot 24.

The May 2007 inspection of the property confirms that property's access is limited to Ohana Place. Building options on Lot 24 are limited due to the designation of Easement "C" for slope and drainage purposes.

ALTERNATIVES

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

1. Designing the proposed dwelling improvements to fit within the building envelope prescribed by the Zoning Code. The variance application's site plan map denotes the location of Easement "C" and proposed 28' x 28' building envelope drawn by the applicant.
2. Consolidation of Lot 24 with adjoining property (TMK: 2-6-015:013, Lot 25) 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.

Easement "C" was created and designated on the property circa 1978 by the DPW after Lot 24 was subdivided in 1956 and zoned by the County in 1967. After considering the character of the adjoining properties and surrounding neighborhood including surrounding and older building patterns built before 1967, it is felt that the applicant's request for variance from the property's minimum yards and minimum open yard space requirements will not detract from the character of the immediate neighborhood.

Ms. Kimberly Agpoon

Page 5

May 3, 2007

The Planning Director and applicant acknowledge the DPW building setback requirements regarding building walls/projections. Access to the property or Lot 24 is limited due safety fencing and Lot 24's unusual lot geometry and "lay of the land" or site topography including vegetation limits building options. Access to the proposed dwelling and off-street parking within building site via Ohana Place is possible, albeit limited. The proposed 2-story dwelling will be located approximately 40+ feet from a 2-story dwelling on adjoining property-Lot 25. As such, after considering the dwelling's position on Lot 25 and differences in topography between Lot 24 and Lot 25, etc., it is felt that applicant's request for variance from minimum front yard and side yard for proposed 2-story dwelling and future building improvements on the subject TMK property or Lot 24 will not depreciate or detract from the character of the surrounding neighborhood or surrounding land pattern. Therefore, in view of the subject TMK property's size and unusual lot geometry, topography, etc., it is felt that the applicant's request for variance to create a building envelope (28 feet by 28 feet) to locate proposed 2-story dwelling including eaves with a minimum 2.00 feet minimum front yard and minimum 3.00 feet side yard (subject to DPW building restrictions and safety requirements) including any future modifications will not detract from the character of the immediate neighborhood or surrounding subdivision.

Given the property's non-conforming "useable" land area and lot geometry, and foregoing findings, the applicant's request for variance from the property's minimum (front/side) yards and attendant minimum open space requirements 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:

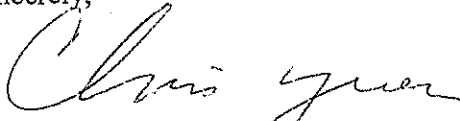
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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.

Ms. Kimberly Agpoon
Page 6
May 3, 2007

3. The approval of this variance permits proposed 2-story dwelling to be constructed on the subject TMK property according to building limits cited by the DPW memorandum dated April 3, 2007 or minimum yards denoted on variance site plan map. The proposed dwelling's design and improvements including building walls/roof eaves/projections shall meet minimum building setbacks stipulated in by DPW-Building Division memorandum dated April 3, 2007.
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, and VAR 07-017.

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-(Hilo)