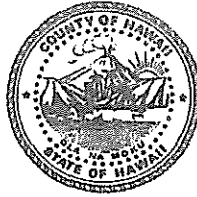


Harry Kim
Mayor



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

June 27, 2007

Mrs. Leslie Velez
GENERAL DELIVERY
Keaau, HI 96749

Dear Mrs. Velez:

VARIANCE-VAR 07-020

Applicant: LESLIE VELEZ

Owners: BENNY VELEZ, ET AL.

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

Tax Map Key: 1-5-021:009, Lot 1500

After reviewing your application, the Planning Director certifies the approval of Variance-VAR 07-020 subject to variance conditions. The variance allows portions of a "DWELLING" to remain on Lot 1500, with minimum 19.1 feet to minimum 20.00 feet side yard in lieu of minimum 20.00 feet side yard according to the variance application's survey map dated January 15, 2007. The variance is from the TMK property's minimum side yard required pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, 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 1500 containing 1.000 acre, Block 8, Hawaiian Paradise Park, Land Court Application No. 1053, Map 60, is situated at Keaau, Puna, 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 on March 13, 2007. The variance application's site plan map was prepared by surveyor and drawn to scale. The variance site plan map or survey map, dated January 15, 2007, denotes the "EAST CORNER OF THE SUBJECT DWELLING" and shows the "DWELLING" was constructed into a minimum side yard of "LOT 1500" or subject TMK property.

The applicant's background letter dated March 9, 2007 states in part:

"We are local family (sic) who moved here from Kaua'i on December 24, 2006 with our children, pet, and belongings. In working with Hank Correa Realty, we were able to rent a 1 bedroom apartment until we found a home within our budget to purchase. Shortly prior to closing, we paid for a survey of the property and discovered the house did not meet the minimum setback requirement on the right side of the property."

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 fencing, and landscaping, etc. on the property or along common boundary lines.

In addition to the above, the applicant submitted a letter dated June 8, 2007 together with recent photographs of the property showing fence improvements on the subject TMK property (Lot 1500) and dwelling located on adjoining property (Lot 1501) near their fence improvements.

3. **County Building Records:**

County building records show 1-Building Permit (B2005-0579H), 1-Electrical Permit (E2005-1524H), and 1-Mechanical (M2005-1567H) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling and water tank the subject TMK property or "LOT 1500" were built pursuant to the building and associated construction permits issued circa 2005.

4. **Agency Comments and Requirements-VAR 07-020:**

- a. The State Department of Health (DOH) memorandum is dated April 2, 2007. (Refer to the DOH memorandum in the variance file).
- b. The Department of Public Works (DPW) memorandum dated April 16, 2007 states:

“We have no comments or objections to the application.”

- 5 **Notice to Surrounding Property Owners.** The applicant submitted a list of surrounding property owners and proof of mailing first and second notice to surrounding property owners. According to the applicant, these notices were mailed on March 13, 2007 and May 3, 2007, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 29, 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.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant submitted the variance application to address the dwelling encroachment within the property's minimum 20 feet side yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling and water tank improvements on "LOT 1500". It appears that the current owners became aware of building encroachment into the property's side yard during escrow.

The dwelling and detached water tank were built pursuant to a building permit and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements between 2005 and 2006, the dwelling encroachment within the property's side yards went unnoticed by the builder and agencies.

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 1500 with adjoining lot (TMK: 1-5-021008, Lot 1499) 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 within the property's minimum side yard are not physically and/or visually obtrusive from the adjoining property (Lot 1499) or privately owned right-of-way (ROAD "18"). And it appears that the small portion of the dwelling within the subject TMK property's minimum 20 feet side yard does not detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, in this instance, it is felt that the building encroachment (east corner of the dwelling) built within the property's side yard identified on the variance application's site plan map or survey map will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated March 21, 2007 and additional time was requested by the applicant to send notice to surrounding property owners and submit additional information. The applicant granted an extension of time to the Planning Director to render decision on the variance application to June 27, 2007.

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:

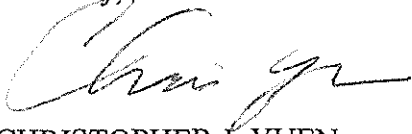
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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. Portions of the dwelling located on "LOT 1500" will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan or survey map January 15, 2007. The approval of this variance permits the "DWELLING" improvements, "AS-BUILT", to remain on the subject TMK property or "LOT 1500" according to the variance site plan map or survey map.

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4. 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-(Hilo)