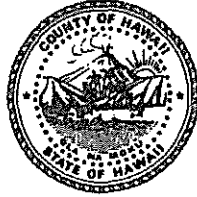


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224
(808) 961-8288 • FAX (808) 961-8742

October 22, 2007

Mr. and Mrs. Jean G. Schnetzler
P. O. Box 10280
Hilo, HI 96720

Dear Mr. and Mrs. Schnetzler:

VARIANCE-VAR 07-040

Applicant: JEAN SCHNETZLER

Owners: JASON KANTROWITZ, ET AL.

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

Tax Map Key: 2-6-015:028, Lot 6

After reviewing your variance application, the Planning Director certifies approval of Variance-VAR 07-040 subject to variance conditions. VAR 07-040 permits portions of a dwelling and attendant roof eaves to remain on Lot 6, with minimum 11.77 feet to minimum 13.81 feet front yard and attendant minimum 7.81 feet to minimum 9.27 feet front yard open yard space in lieu of the property's minimum 15.00 feet front yard and attendant minimum 10.00 feet front yard open space requirements along Mamalahoa Highway and Road "A" according to the variance application's plot plan or survey map dated May 16, 2007. The variance is from the TMK property's minimum front yard and attendant minimum front yard open space requirements pursuant to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (a)(1)(A), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

BACKGROUND AND FINDINGS

1. **Location.** The referenced TMK property, Lot 6 containing 5199 square feet, being portion of Grant 806 to Kukahauliake Mokuhonua, is situated at Wailua and Mokuhonua, South Hilo, Hawaii.

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 TMK property is within the Special Management Area (SMA). The TMK property does not abut the shoreline.

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on May 23, 2007. The variance application's plot plan or site plan map was prepared by The Independent Hawaii Surveyors, LLC. The variance site plan map prepared by a surveyor is dated May 16, 2007 and drawn to scale. The site plan map dated denotes the dwelling or portions called "1 STORY HOUSE" and attendant "ROOF EAVES" were built into the property's minimum 15 feet front of "LOT 6" or subject TMK property.

The applicant's letter dated May 23, 2007 or background report states in part:

"We bought the home in question in October 2005. At that time, we were not aware of any set back violations. Our first awareness of this was when we had a private survey in April 2007 conducted prior to selling this home. Once aware, we immediately filed for the variance. I want it to be understood that we, in no way by filing for this variance is an admission of prior knowledge of, or responsibility for the initial violation (sic). We are merely trying to help this process along by cooperation with your 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 the wall/chain-link fencing, and landscaping, etc. along or straddling common boundary lines and/or located within the rights-of-way.

Authorization Letter. The applicant submitted an authorization letter signed by both owners on July 24, 2007 and time extension letter on July 24, 2007.

3. **County Building Records:**

County Real Property records show a dwelling was built on the subject TMK property in 1978. Real Property and other county records indicate the single-family dwelling indicate the dwelling was constructed pursuant to "Permit No. 773081" and completed circa June 1978.

4. **Agency Comments and Requirements-VAR 07-040:**

- a. The State Department of Health (DOH) memorandum is dated June 14, 2007. (Refer to DOH memorandum in variance file).
- b. The Department of Public Works (DPW) memorandum dated October 3, 2007 states:

“We have reviewed the subject application forwarded by your memo that was hand-delivered on September 28, 2007 (dated August 3, 2007) and offer the following comments for your consideration.

The survey report accompanying the application identified a “block wall” as much as 2.97 feet into the road right-of-away (sic). The accompanying survey site map identified the wall as a “rock wall with chain-link fence on top.” (sic) The report and site map do not note the height of the wall and fence. Both Mamalahoa Highway (Wainaku Street) and Minoaka Place are owned and maintained by the County of Hawaii.

The portion of the wall within the County rights-of-way should be relocated into private property. The wall and fence must comply with Sections 22-2.2 and 25-4-~~4~~42 of the Hawaii County Code.

Please refer questions to Kelly Gomes at 961-8327.”

5. **Notice to Surrounding Property Owners.** Proof of mailing notices to surrounding property owners was submitted to the Planning Department on July 5, 2007. According to these submittals, the first and second notices were mailed on May 30, 2007 and June 20, 2007, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 17, 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, on behalf of the current owners, submitted the variance application to address or resolve the dwelling encroachments within the property's minimum front yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling and associated roof eaves on "LOT 6". The applicant and current owners became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by the applicant to deliberately create or intentionally allow these building encroachments to be built within the property's front yard.

It appears that the dwelling improvements on the subject TMK property were constructed pursuant to a building permit and/or other associate construction permits issued to the previous owner(s) or contractor.

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 6 with adjoining Rights-of-Way (Mamalahoa Highway and Road "A") 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 portions of the dwelling constructed approximately 30 years ago within the property's minimum front yard are not physically and/or visually obtrusive from the adjacent property(s) or noticeable from the Rights-of-Way fronting the property. It appears that the portions of the 30 +/- year old dwelling within the property's front yard do not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that the portions of the 30 +/- year old dwelling constructed into the property's front yard identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated June 5, 2007 and additional time to allow the applicant to submit an authorization letter from the current owners and incorporate agency comments was necessary. The applicant agreed to an extension of time to October 31, 2007 to render decision on the subject variance application.

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 and attendant roof eaves located on "LOT 6" will not meet the minimum front yard and attendant front yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated May 16, 2007. The approval of this variance permits the dwelling improvements to remain on subject TMK property or "LOT 6" according to the variance site plan map dated May 16, 2007.
4. The applicant or current owners shall confer with the County of Hawaii DPW-Engineering Division (Hilo) regarding status or requirement to modify or relocate the rock wall including chain-link fence constructed into the respective the Rights-of-Way (Mamalaha Highway and/or Road "A") identified on the variance application's site plan map dated May 16, 2007. The affected portions of the rock wall including chain-link fencing within affected County owned rights-of-way shall comply with Hawaii County Code and should be relocated upon subject TMK property in accordance with DPW requirements memorandum dated October 3, 2007.

Mr. and Mrs. Jean G. Schnetzler

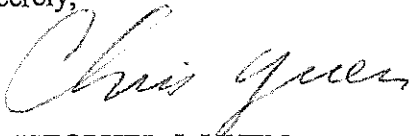
Page 6

October 22, 2007

5. 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.
6. 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/DSA:cd

P:\WP60\WRY\FORMLETT\VAR07-040ZCSETBACK.SCHNETZLER

xc: Real Property Tax Office-(Hilo)
DPW-Engineering Division (Hilo)