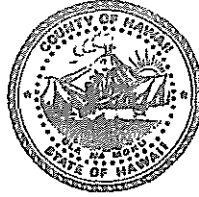


Harry Kim
Mayor



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

September 21, 2007

Mr. Charles S.U. Aina, Jr.
CHARLES S.U. AINA JR., INC.
688 Kinoole Street, Suite 206
Hilo, HI 96720

Dear Mr. Aina:

VARIANCE-VAR 07-049

Applicant: CHARLES S.U. AINA, JR., INC.
Owners: MICHAEL P. SHEA, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 2-8-010:018, Lot 11

After reviewing your application and the information submitted, the Planning Director certifies the approval of VARIANCE-VAR 07-049 subject to variance conditions. The variance permits portions of a "HOUSE" to remain on Lot 11 with a minimum 26.83 front yard in lieu of the TMK property's minimum 30 feet front yard according to the variance application's site plan map dated July 2, 2007. The variance is from the TMK property's minimum front yard pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject TMK property, Lot 11 containing 22.615 acres, Honomu Homesteads, Grant 5129 to V. A. Carvalho, is situated at Honomu, South Hilo, Hawaii.

The property is zoned Agricultural (A-20a) 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 July 6, 2007 and July 27, 2007. The variance application's site plan map dated July 2, 2007 was prepared by The Independent Hawaii Surveyors, LLC. The variance site plan map, drawn to scale, denotes a portion of the "HOUSE" is within a minimum 30 feet front yard of "LOT 11" or subject TMK property.

The applicant's background report dated July 5, 2007 states in part:

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"5. This encroachment was the result of a mistaken belief [on the part of our architect, our contractor and us] that the property was coincident with a ravine that runs nearly parallel to our north boundary line. We did not discover the mistake until the home was nearly complete. Even then, we had no idea that the home encroached on the building setback area - we were all flabbergasted when we saw that it did!

Special Circumstances/No Other Reasonable Alternatives

6. To remove the intrusion, we would have to tear down a portion of the house. That portion of the house includes the master bath, which is situated over a crawl space containing the water pump and other "vital portions" of our home. It would require a change in the roofline, wiring, plumbing - and may other changes that would affect the value of the property."

Page 2-3:

"10. It does not seem that granting this variance would adversely affect anyone, as there will still be nearly 27' of unobstructed area between the house and the property line. The intrusion affects an area of less than 30' of our 1227.79' frontage on Homestead Road.

11. Neither the public nor our neighbors will be financially, aesthetically or practically affected [as it is virtually impossible to access that portion of Homestead Road without going through our property, or that of our neighbors, nor any number of the public, will object to this application for a variance in the building set-back line - the non-conforming intrusion has existed for the nearly 6 years that we have occupied this home, and no one has objected [or notice].

Please note: the attached survey also indicates a shed and a satellite dish intruding on the building setback area, and a "concrete pad" outside our property. We have demolished the concrete pad. The satellite dish is to be removed. We are applying for a building permit to build a replacement shed [to be constructed within the buildable area, as shown on Exhibit "B"] – and as soon as that new, conforming shed is complete, we will remove or demolish the existing shed."

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 any fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

Real Property Tax Office records show 4-Building Permits (000679, 000680, B2005-2528H, B2007-1701H), 2-Electrical Permits (E010151, E010831), and 2-Mechanical (M010308, M010776) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling and other storage buildings on "LOT 11" were built pursuant to these building permits and associated construction permits issued between 2000 and 2007. According to current Real Property records, the building permits including the new storage building were completed.

4. **Agency Comments and Requirements-VAR 07-049:**

a. The Department of Public Works (DPW) memorandum or comments dated August 23, 2007 states:

"NO COMMENTS"

b. The State Department of Health (DOH) memorandum is dated August 29, 2007. (Refer to DOH memorandum in variance file).

5. **Notice to Surrounding Property Owners.** The applicant submitted affidavits dated July 5, 2007, August 29, 2007, and September 18, 2007 together with other submittals regarding notices sent to surrounding property owners to the Planning Department. According to the affidavits, the first and second notices were mailed on July 5, 2007 and August 4, 2007, respectively, to adjoining landowners within 500 feet of subject TMK property. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 3, 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 encroachment within the subject TMK property's front yard along Homestead Road which is a "paper road", according to the owner's background report. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling or "HOUSE" and other improvements on "LOT 11" and within the Homestead Road Right-of-Way. The current owners became aware of dwelling encroachment issues during escrow or after a survey map of the property was completed in 2007. No evidence has been found to show indifference or premeditation by builders and owners to deliberately create or intentionally allow the building encroachments within the property's minimum 30 feet front yard along Homestead Road.

It appears that the dwelling was designed and completed nearly 7 years ago. Other building improvements were constructed on the property subsequent to the construction of the dwelling according Real Property Tax records. It appears that during construction of the dwelling improvements in 2000, the dwelling encroachment within the property's front yard went unnoticed by the builders and agencies.

ALTERNATIVES

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

1. Remove the dwelling encroachments within the front yard or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 11 with Homestead Road 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.

Mr. Charles S.U. Aina, Jr.
CHARLES S.U. AINA JR., INC.

Page 5

September 21, 2007

It appears that the subject building encroachments constructed approximately 7 years ago within the property's front yard are not physically and/or visually obtrusive from the adjoining properties or Homestead Road. It appears that the 30 +/- square feet area of the "HOUSE" or dwelling within the property's minimum 30 feet front yard along Homestead Road does not depreciate or detract from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that the dwelling or "HOUSE" encroachment within the property's affected 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 July 25, 2007 and additional time was requested by the applicant to submit authorization letter, affidavits, and other submittals. The applicant granted an extension of time to Planning Director to render a decision on the subject variance application to September 21, 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 or "HOUSE" on "LOT 11" will not meet the minimum front yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits the "HOUSE" improvements to remain on the subject TMK property or "LOT 11" according to the variance site plan map July 2, 2007.

Mr. Charles S.U. Aina, Jr.
CHARLES S.U. AINA JR., INC.

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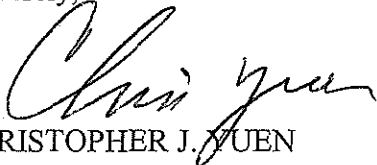
September 21, 2007

The "CONCRETE SLAB (TO BE REMOVED)" within the Homestead Road Right-of-Way and "SHED (TO BE REMOVED)", and "SATELLITE DISH (TO BE REMOVED)" on "LOT 11" denoted on the variance site plan map shall be removed by the current owners prior to November 30, 2007 and/or prior to sale of the property to others.

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,



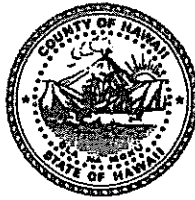
CHRISTOPHER J. YUEN
Planning Director

WRY:cd

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xc: Real Property Tax Office-(Hilo)

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

January 30, 2008

Ms. Beverly Ann Shea
P. O. Box 88
Honolulu, HI 96728

Dear Ms. Shea:

VARIANCE-VAR 07-049

Re: Revised Site Plan Map/Affidavit
Applicant: CHARLES S.U. AINA, JR., INC.
Owners: MICHAEL P. SHEA, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 2-8-010:018, Lot 11

Your revised site plan map dated December 5, 2007 and affidavit dated January 8, 2008 were reviewed and incorporated into subject variance file-VAR 07-049. In view these submittals, the first paragraph on page 1 of letter dated September 21, 2007 and variance conditions dated September 21, 2007 are hereby revised as follows:

“VARIANCE-VAR 07-049 is hereby granted to permit portions of a dwelling or “HOUSE” to remain within minimum front yard of “LOT 11” pursuant to a revised site plan map dated December 5, 2007 and revised variance conditions. Variance-VAR 07-049 permits portions of a “HOUSE” to remain on Lot 11 with a minimum 27.64 front yard in lieu of the TMK property’s minimum 30 feet front yard according to revised site plan map dated December 5, 2007. The variance is from the TMK property’s minimum front yard pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards.”

The variance conditions dated September 21, 2007 or VARIANCE-VAR 07-049 conditions are revised to read as follows:

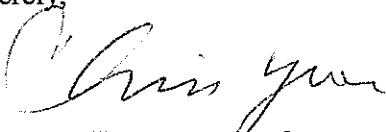
- “1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.

Ms. Beverly Ann Shea
Page 2
January 30, 2008

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 a dwelling or "HOUSE" on "LOT 11" denoted on the variance application's original site plan map and revised map dated December 5, 2007 do not meet the subject TMK property's minimum front yard along "HOMESTEAD ROAD" pursuant to Chapter 25, the Zoning Code. Variance-VAR 07-049 permits the dwelling or "HOUSE" improvements to remain on the subject TMK property or "LOT 11" in accordance with revised site plan map December 5, 2007.
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: Applicant-Charles S.U. Aina, Jr., Inc.
Real Property Tax Office-(Hilo)