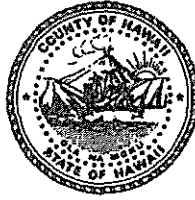


Harry Kim  
Mayor



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 10, 2007

Mr. Albert Holt  
75-5570 Mamalahoa Highway  
Holualoa, HI 96725

Dear Mr. Holt:

**VARIANCE-VAR 07-053**

**Applicant:** ALBERT HOLT  
**Owners:** ALBERT A. HOLT, ET AL.  
**Request:** Variance from Chapter 25, Zoning  
Minimum yards  
**Tax Map Key:** 7-5-012:021

After reviewing your application, the Planning Director hereby approves Variance-VAR 07-053 subject to variance conditions. The variance allows proposed accessory buildings or detached garage and proposed detached guesthouse building to be constructed on subject TMK property pursuant to the variance site plan map signed and dated February 14, 2007 and allows future buildings improvements or permitted building additions to be constructed subject to minimum 10.00 feet side yards and minimum 5.00 feet side yard open space in lieu of minimum 20.00 feet side yard(s) and minimum 14.00 feet side yard open space(s) required by the Zoning Code. The variance is from the subject TMK property's minimum side yard(s) and attendant minimum side yard open space(s) 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 4-B consisting of 1.45 acres, being the whole of L.C. Award 7084 to Kailikulani and portion of Grant 985 to J. W. Naihe, is situated at Puaa 3<sup>rd</sup>-Auhauekeae 2<sup>nd</sup>, North Kona, Hawaii.

The property is zoned Agricultural (A-5a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC). Variance-WH (VAR 96-38) or VAR 761 to permit the dwelling to be built with a minimum 10 feet side yard was approved on July 3, 1996 subject to conditions. The findings in letter approving the VAR 761 dated July 3, 1996 states in part the following:

- “5. Chapter 25, Article 8, Section 25-155 Minimum building site average width states: “Each building site must have a **minimum average width of one hundred twenty feet** for the first one acre of required area plus twenty feet for each additional acre of required area. The maximum required average width for any building site shall be one thousand feet.
  6. The subject parcel is zoned Agricultural (A-5a). Pursuant to Chapter 25, Article 8, Section 25-155, the minimum average width for an Agricultural (A-5a) would be 200 feet.
  7. Chapter 25, Article 4, Section 25-123 Minimum building site average width states: “Each building site in an RS district shall have a **minimum average width of sixty feet**, plus two feet for each five hundred square feet of required building site area in excess of seven thousand five hundred square feet, except that no building site shall be required to have an average width of more than one hundred fifty feet.”
  8. The width at the Northeast side of the parcel is **90.00 feet**, (sic) and the Southwest width is 54.88 feet. The length of the property is approximately 1000 feet long.
  9. The subject property’s minimum average width is non-conforming in the Agricultural zone.
  10. In addition, the subject property does not meet the minimum width of the smallest Single Family Residential Zoned District (RS-7.5) lot size (sic).”
2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on July 12, 2007 and other required submittals on July 31, 2007. The variance application’s site plan map is drawn to scale and prepared by Pattison Land Surveying, Inc. The variance site plan map, signed and dated February 14, 2007, denotes the position of the dwelling on Lot 4-B or subject TMK property and location of a 10 feet setback line upon the property.

The applicant submitted a clarification letter and reduced copy of this survey map denoting location of proposed guest house and proposed coffee farm support building (accessory building).

The variance site plan map denotes the location of the dwelling and other site improvements on the subject TMK property. The TMK property's building envelope or "building site" within the property is limited given the property's lot geometry and non-conforming width.

The applicant's background report dated July 10, 2007 states in part:

- “5. The property's minimum average width is non-conforming in the Agricultural zone.
6. The property's minimum average width is non-conforming in the Agricultural zone.
7. The property is approximately 55' wide at the general location of the existing concrete driveway. To build a conforming garage would result in a building 15' feet wide if the required 20 FEET side setbacks would be applied.
8. The only section of the parcel which would accommodate a conforming structure would be the extreme top of the lot which would be over 500' from the residence and the existing driveway and utility easement. Not only would this be financially an extreme burden (especially running utilities and extending the driveway 500'), it would require the destruction of many coffee trees as to make any residential/agricultural use of the property no longer feasible.”

The applicant's transmittal letter dated July 31, 2007 states in part:

“Also, we wish to revise our site plan to include 2 structures, 1 that will be our garage and coffee farm support building (e.g. storage, implement parking, and other related coffee farming functions) and the other to be a guest house. Please find the attached revised site plan.”

**Note: VARIANCE-VAR 761** approved on July 3, 1996 allowed a proposed dwelling including a porte-cochere and garage to be constructed with minimum 10 feet side yard in lieu minimum 20 feet side yard required. The TMK property's land area including metes and bounds denoted on "PROPOSED PLOT PLAN" in VAR 761 and subject TMK's land area including metes and bounds denoted on the variance site plan map signed and dated February 14, 2007 prepared by a surveyor are consistent; and, it appears that a proposed "PORTE COCHERE" and "GRARAGE" attached to the existing 1-story dwelling on the subject TMK property was not built. The variance site plan map signed and dated February 14, 2007 and other maps submitted by the applicant denote location of proposed detached guest house building and location of proposed detached garage-agriculture building. The dwelling's wastewater system is not located or identified on the current site plan map. The variance application does not address location of any CRM or rock walls, number of plants (coffee orchard) or other planting materials upon or straddling boundary lines shared with adjoining property.

3. **County Building Records:**

County building records show 2-Building Permits (975563,9756650), 1-Electrical Permit (E975740), and 2-Mechanical (M975541,M975727) or Plumbing Permit were issued to subject TMK property after VAR 761 was approved to previous owner. The applicant or current owners are requesting variance to allow proposed detached guest house, proposed detached garage/agricultural or proposed detached accessory buildings including any future buildings to be permitted and constructed subject to minimum 10 feet side yards and minimum 5 feet side yard open spaces from all boundary lines.

4. **Agency Comments and Requirements-VAR 07-053:**

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

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

- b. The Department of Public Works (DPW) memorandum dated August 22, 2007 states in part:

“We reviewed the subject application and have no comments or objections.”

5. **Notice to Surrounding Property Owners.** The applicant submitted an affidavit and copy of notices mailed to surrounding property owners to the Planning Department. According to an affidavit dated October 4, 2007 and other submittals, the first notice and second notices were mailed on July 20, 2007 and August 20, 2007, respectively, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 23, 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 and request for variance to allow 2-new buildings or proposed accessory buildings to be constructed with minimum 10 feet side yard and attendant 5 feet side yard open spaces. The variance application's site plan map was prepared by a surveyor and denotes proposed "BUILDING SETBACK LINE 10.00 FEET" or proposed building envelope upon the property. The dwelling was permitted pursuant to VAR 761; and, it appears that the dwelling's central position upon the property does not depreciate or detract from the character of the surrounding neighborhood. Given the earlier findings regarding the subject TMK property's non-conforming average width, etc. the Planning Director has determined that the property's access, lot geometry, topography, and location of the orchard limits building design and future building options.

### **ALTERNATIVES**

Alternatives available to the applicant include the following actions:

1. Design and construct proposed buildings within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property with adjoining property and resubdivision to modify property lines or adjust lot geometry, minimum yards, etc.

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### 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.

Given the findings in the earlier variance to approve and allow the existing dwelling and subsequent development of the coffee orchard on the property, the request for variance from the property's minimum 20 feet yards to allow proposed detached accessory buildings and future building improvements within the building envelope denoted on current variance site plan map is a reasonable request and will not be physically and visually obtrusive from adjoining property(s) or visible from the road or nearest right-of-way. Given the property's size and unusual lot geometry, topography, and development of a coffee orchard on the property makai and mauka of the existing 1-story dwelling, the applicant's request for variance to permit proposed detached accessory buildings to be sited near the access easement denoted on the variance site plan map is reasonable including the request by the applicant to allow future buildings to be located within a building envelope created by minimum 10 feet building setback line denoted on the variance site plan map or minimum 10 feet minimum side yards measured from the property's boundary lines. Therefore, in view of the findings in VAR 761 and above findings, it is felt that the applicant or current owners request for variance to allow proposed detached accessory buildings and future building improvements or permitted building additions to be constructed upon the subject TMK property subject to minimum 10 feet side yards (10 feet building setback line) and attendant minimum 5 feet side yard open spaces is reasonable and will not detract from the character of the immediate neighborhood or surrounding subdivisions.

The subject variance application was acknowledged by letter dated August 13, 2007 and additional time to incorporate agency comments and applicant's affidavit regarding notice of variance was necessary. The applicant agreed to an extension of time to complete the variance background report and render a decision on the subject variance to October 15, 2007.

Based on the foregoing findings, the applicant's request for 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 applicant's request for variance 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**

The variance application is approved subject to the following variance 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. The variance permits proposed detached guest house and permits proposed detached garage-agriculture storage building to be constructed upon the property subject to minimum 10 feet side yards pursuant to the site plan map signed and dated February 14, 2007. The proposed guest house shall be used as sleeping quarters for guests of the occupants of the main dwelling and having no cooking facilities and shall be not exceed 500 square feet in gross floor area and shall not be more that 20 feet in height; and, proposed garage-agriculture storage building shall not be used for living purposes.

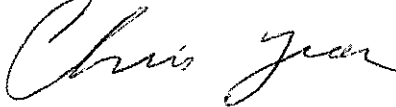
The building permit(s) and/or other construction permits issued to subject TMK property to construct proposed guest house and garage-agriculture storage building shall be closed or "finaled" by the DPW-Building Division prior to sale of the property or transfer of title of the property by the current owner(s) to others.

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. Future building improvements shall be subject to minimum 10 feet side setback line designated on the variance site plan map and subject to minimum 5 feet side yard open space requirements.

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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

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xc: Real Property Tax Office-(Kona)  
VAR 761