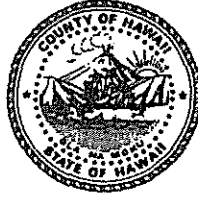


Harry Kim
Mayor



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

Ms. LaJuana Duncan
ERA PACIFIC PROPERTIES
111 East Puainako Street, #105A
Hilo, HI 96720

Dear Ms. Duncan:

VARIANCE-VAR 07-057

Applicant: LAJUANA DUNCAN
Owner: DARREN GEORGE DZURILLA
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 1-6-007:049, Lot 58

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 07-057 subject to variance conditions. The variance permits portions of a "HOUSE" including associated roof eaves to remain on Lot 58, with a minimum 16.76 feet side yard in lieu of required minimum 20.00 feet side yard according to the variance application's site plan map dated July 6, 2007 (Rev. August 13, 2007). The variance is from the TMK property's minimum side yard 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.

BACKGROUND AND FINDINGS

1. **Location.** The referenced TMK property, Lot 58 containing 3.000 acre, Ld. Ct. App 1053 (Map53), Block C-C-C-C, Orchid Land Estates, is situated at Keaau, Puna, Hawaii.

The property is zoned Agricultural (A-3a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC).

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2. **Variance Application-Site Plan.** The applicant submitted the variance application, revised attachments, and filing fee on August 21, 2007. The variance application's site plan map is drawn to scale and prepared by The Independent Hawaii Surveyors, LLC. The revised variance site plan map, dated August 13, 2007, denotes portions of a "HOUSE" were constructed into a minimum 20 feet side yard of "LOT 58" or subject TMK property.

The applicant's letter dated August 13, 2007 states in part:

"Attached is a corrected survey from Independent Surveyors of Hawaii noting the first building as the "honey processing building" and a notation the "gazebo" will be removed. The honey building is vacant and is being used for storage; the gazebo was a temporary structure."

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

3. **County Building Records:**

Hawaii County Real Property Tax Office records show 3-Building Permits (950383, 950963, 980868), 3-Electrical Permits (E951123, E951411, E981158), and 3-Mechanical (M980764, M980843, M950692) or Plumbing Permits were issued to subject TMK property. The "HOUSE" and "HONEY PROCESSING BUILDING" including 2-detached water tanks on "LOT 58" were built constructed between 1995 and 1998 according to building permits and associated construction permits.

4. **Agency Comments and Requirements-VAR 07-057:**

- a. The State Department of Health (DOH) memorandum is dated September 17, 2007. Refer to DOH memorandum in variance file.
- b. The Department of Public Works (DPW) memorandum dated September 21, 2007 states in part:

"We have reviewed the subject application forwarded by your memorandum dated August 24, 2007 and note the approval of the application shall be conditioned on the following comment.

The illegal gazebo is to be demolished.

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

5. **Notice to Surrounding Property Owners.** The applicant submitted proof of mailing required notices and other attachments to the Planning Department. According to the mailing receipts and attachments, it appears that a first notice were mailed to surrounding property owners on July 23, 2007 and August 24, 2007, respectively; and, second notices were mailed to surrounding property owners on August 31, 2007. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 4, 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 owner, submitted the variance application to address or resolve the dwelling encroachments within the property's minimum side yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the "HOUSE" and other building and site improvements on "LOT 58". The current owners became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by a previous owner or builders to deliberately create or intentionally allow the "HOUSE" encroachments to be built within one of the property's side yards. The "GAZEBO" identified on the site plan map variance will be removed.

It appears that the existing "HOUSE" or dwelling improvements were constructed according to building permits and other associated construction permits issued to subject TMK property. It appears that during construction of the dwelling improvements between 1995 and 1998, the dwelling encroachment within the property's side yards went unnoticed by the owners, builders, and agencies.

ALTERNATIVES

Alternatives available to the applicant or current owner to correct and/or address the building encroachments constructed into the affected yards of the subject TMK property include the following actions:

1. Remove the building ("HOUSE") encroachments within the affected side or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code. According to the applicant the "GAZEBO" (constructed without a building permit) denoted on the survey map will be removed or demolished.
2. Consolidation of Lot 58 with adjoining lot (TMK: 1-6-007:050, Lot 59) and resubdivision to modify property lines or adjust minimum yards.

INTENT AND PURPOSE

The intent and purpose of requiring minimum yards or 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 portions of the "HOUSE" were built within one of the property's side yard approximately 9 years ago are not physically and/or visually obtrusive from the adjacent property (Lot 59) or privately owned) right-of-way (39 TH AVE). It appears that portions of the "HOUSE" or encroachments into the property's affected side yard do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns; and, therefore, it is felt that portions of a "HOUSE" built into a side yard identified on the variance application's site plan map may remain on "LOT 58" pursuant to the variance site plan map in variance file and variance conditions.

Based on the foregoing findings, the applicant's request for variance 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 not cause substantial adverse impact to the area's character and to adjoining properties.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This 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. Portions of the dwelling or "HOUSE" on "LOT 58" will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map-"FIRST REVISION 8/13/07". The approval of this variance permits portions of the "HOUSE" to remain within minimum 20 feet side yard of "LOT 58" pursuant to revised variance site plan map.

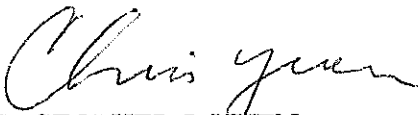
The "HONEY PROCESSING BUILDING" identified on the variance site plan map shall not be used for habitation or as a guest house/living quarters.

The applicant or current owner shall demolish or remove the "GAZEBO" building on "LOT 58" prior to October 31, 2007 and/or prior to sale of the property by the current owner 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.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare subject Variance null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

Ms. LaJuana Duncan
ERA PACIFIC PROPERTIES
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xc: Real Property Tax Office-(Hilo)