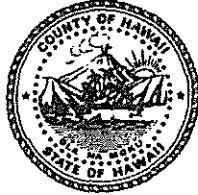


Harry Kim
Mayor



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

December 12, 2007

Ms. Ruth W. Ward
13-889 Kahukai Street
Pahoa, HI 96778

Dear Ms. Ward:

VARIANCE-VAR 07-064

Applicant: RUTH W. WARD

Owner: RUTH W. WARD

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

Tax Map Key: 1-3-035:099

After reviewing your variance application, the Planning Director hereby certifies approval of Variance-VAR 07-064 subject to variance conditions. The variance allows portions of the "ONE-STORY RESIDENCE" with a minimum 17.72 feet side yard to minimum 19.99 feet side yard to remain on the property in lieu of the property's minimum 20.00 feet minimum side yard according to the variance application's site plan map dated November 12, 1997. The variance is from the property's minimum yards pursuant to Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Section 25-5-77, Other regulations.

BACKGROUND AND FINDINGS

1. **Location.** The referenced TMK property, Lot 1 containing 1.301 acres, is within Block 23 of Leilani Estates Subdivision, and situated at Keahialaka, 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 September 7, 2007. The variance application's site plan map is drawn to scale and prepared by The Independent Hawaii Surveyors. The variance site plan map, dated November 12, 1997 denotes a portion or corner of "ONE-STORY RESIDENCE" was built into minimum 20 feet side yard of "LOT 1" or subject TMK property.

The applicant's background or purpose stated on a site plan related to proposed addition to the original 1-story dwelling states in part:

"PURPOSE OF APPLICATION FOR VARIANCE REQUEST
TO GET VARIANCE APPROVAL FOR THE EXISTING STRUCTURE
PROTRUDING 2.27' (NOTE 1) INTO SETBACK AREA IN ORDER TO
BUILD ADDITION TO EXISTING STRUCTURE AND ROOFING OVER
EXISTING CONCRETE PAD AREAS"

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. upon subject TMK property or upon adjoining property and rights-of-way.

3. **County Building Records:**

The building records at the Real Property Tax Office indicate 1-Building Permit (900333), 1-Electrical Permit (E901183), and 1-Mechanical (M900352) or Plumbing Permit were issued to subject TMK property. It appears that the 1-story dwelling and water tank were built on "LOT 1" pursuant to the building permit and associated construction permits issued circa 1990.

4. **Agency Comments and Requirements-VAR 07-064:**

- a. The State Department of Health (DOH) memorandum is dated October 4, 2007 and states in part:

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

- b. The Department of Public Works (DPW) memorandum or comment is dated October 19, 2007 and states in part:

"NO COMMENTS"

5. **Notice to Surrounding Property Owners.** The applicant submitted copy of notices sent to surrounding property owners and proof of mailing notices by US Mail to the Planning Department. According to the applicant's submittals, the first notice and second notice were mailed on September 5, 2007 and October 3, 2007 to a list of surrounding property owners. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 9, 2007. The second notice sent on October 3, 2007 was amended by notice sent on November 16, 2007.

Note: The applicant mailed a second (amended) notice on November 16, 2007 to surrounding property owners and granted the Planning Department and Planning Director an-extension of time to review or incorporate any comments received from surrounding property owners.

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 by the Planning Department.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant/owner applied recently applied for a building permit to construct addition to the 1-story dwelling built circa 1990. The application for the proposed addition was deferred pending resolve of the dwelling encroachment within a minimum 20 feet side yard of the subject TMK property disclosed by a site plan map prepared by a surveyor dated November 12, 1997.

According to the applicant or current owner, the 1-story dwelling and detached water tank were built or completed by previous owner(s) "prior to purchase". No evidence has been found to show indifference or premeditation by previous owner or current owner or builders to deliberately create or intentionally construct a corner of the 1-story dwelling into a minimum 20 feet side yard of the subject TMK property.

It appears that the original dwelling and detached "doughboy" water tank were constructed upon the subject TMK property according to a building permit and other associated construction permits issued to subject TMK property in 1990. It appears that during construction of the dwelling and water tank circa 1990, a portion or corner of the dwelling constructed into a minimum 20 feet side yard of "LOT 1" went unnoticed by the builders and agencies.

ALTERNATIVES

Alternatives available to the applicant 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 encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of subject TMK property (Lot 1) with adjoining TMK property (TMK: 1-3-035:098, Lot 3) 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 a portion or corner of a 1-story dwelling constructed approximately 17 years ago within the property's minimum side yard are not physically and/or visually obtrusive from the adjacent property (Lot 3) or noticeable from the rights-of-way fronting the property. It appears that a portion or corner of the 17 +/- year old dwelling within the property's side yard do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the portions of the 17 +/- 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 September 27, 2007 and the applicant requested additional time to send an amended notice to surrounding property owners. The applicant granted the Planning Director an extension of time to render decision on the subject variance to December 31, 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 application is approved subject to the following variance conditions:

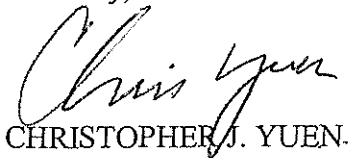
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.

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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 1-story dwelling located on "LOT 1" will not meet the subject TMK property's minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated November 12, 1997. The approval of this variance permits the portion or corner of "ONE-STORY RESIDENCE" within a minimum 20 feet side yard of "LOT 1" to remain on subject TMK property according to variance and variance site plan map dated November 12, 1997.
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 subject Variance null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY:cd

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xc: Real Property Tax Office-(Hilo)