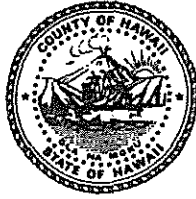


Harry Kim
Mayor



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 4, 2008

Ms. Erynn Helenihi
P. O. Box 321
Kurtistown, HI 96760

Dear Ms. Helenihi:

VARIANCE-VAR 07-065
Applicant: ERYNN HELENIHI
Owner: BI FIVE LLC
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 1-5-043:133, Lot 154

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 07-065 subject to variance conditions. The variance permits portions of a dwelling ("HOUSE") including associated roof eaves to remain on Lot 154 with a minimum 16.33 feet to minimum 17.77 feet side yard and minimum 12.96 feet to minimum 14.72 feet minimum side yard open space in lieu of required minimum 20.00 feet side yard and minimum 14.00 feet side yard open space according to the variance application's site plan map dated October 11, 2007. The variance is from the TMK property's minimum side yard and attendant minimum side yard open space requirement 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, 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 154 containing 1.00 acre, is within Hawaiian Paradise Park, being a portion of Block "7", Ld. Ct. Application 1053, Map 58, and situated at Keaau, Puna, Hawaii. The subject TMK property's address is 15-1460 19th Avenue.

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 October 2, 2007 and October 15, 2007 in response to Notice of Violation and Order (ZCV 06-156E) dated July 11, 2007. The variance application's site plan map is drawn to scale and prepared by The Independent Hawaii Surveyors, LLC. The variance site plan map, dated October 11, 2007, denotes portions of the "HOUSE" was constructed into minimum 20 feet side yard of "LOT 154" or subject TMK property.

The applicant's background dated October 12, 2007 states in part:

"Owners hired CG Builders LLC to construct the dwelling on the subject property. Due to contractor error the house was kinked into the side yard setback and not per plot plan. Contractor blames this error on the topography of the land."

The Owner and Contractor were unaware of a setback on any kind until receipt of the letter dated July 11, 2007. Once that was received the owners ordered a survey and found that the dwelling is 3.67 feet into the side yard setback. At this time owners have elected to file a variance and is (sic) prepared to make any and all corrective actions to the violation.

There was also a miscommunication between owner and contractor regarding construction of an addition to the permitted plans (#B2006-2430H). However, please note that the addition to the original dwelling constructed without a building permit meets minimum clearspace requirements.

The Building Division-DPW and the County Planning Department have requested the current owners to address the dwelling position and portion of the dwelling constructed without a building permit. The current owners have completed revised plans for a workshop and storage room that were (sic) not denoted on the original approved building plans. Subsequent to resolve the variance (sic), the owners will apply for the necessary building permit and associated construction permits for the workshop and storage addition."

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

3. **County Building Records:**

County building records show 1-Building Permit (B2006-2430H), 2-Electrical Permits (E2006-2697H, E2007-0591H), and 1-Mechanical (M2007-0006H) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling ("HOUSE") and detached "WATER TANK" on "LOT 154" denoted on the variance site plan map were constructed pursuant to building and associated construction permit(s) issued by the County between 2006 and 2007.

4. **Agency Comments and Requirements-VAR 07-065:**

- a. The State Department of Health (DOH) memorandum dated October 25, 2007 states:

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

- b. The Department of Public Works (DPW) memorandum dated December 31, 2007 states in part:

"We have reviewed the subject application forwarded by your memorandum dated October 22, 2007 and have no comments or objections to the request."

5. **Notice to Surrounding Property Owners.** The applicant submitted copy of notice sent to surrounding property owners and proof of mailing notices to surrounding property owners. According to the submittals, the first and second notices were mailed on October 4, 2007 and November 19, 2007, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 30, 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 the zoning violation including dwelling encroachments within a minimum side yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the dwelling and detached water tank on "LOT 154". It appears that the applicant or current owner became aware of the building encroachment and other building issues after receiving Notice of Violation Order (ZCV 06-156E) letter dated July 11, 2007.

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 Lot 154 with adjoining lot (TMK: 1-5-043:132, Lot 155) and resubdivision to modify common side boundary line including adjustment for minimum side yard.

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.

According to the applicant background letter states in part:

"the house was kinked into the side yard setback and not per plot plan. Contractor blames this error on the topography of the land.

The Owner and Contractor were unaware of setback of any kind until receipt of the letter dated July 11, 2007. Once that was received the owners ordered a survey and found that the dwelling is 3.67 feet into the side yard setback."

In view of the above, portions of the dwelling constructed within the property's minimum 20 feet side yard and minimum 14 feet side yard open space were completed before issuance of the violation letter in July 2007. It appears that the dwelling recently constructed on Lot 154 and portions of the dwelling within the property's minimum 20 feet side yard went unnoticed by the builders and agencies during 2006-2007.

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It appears that the portions of the dwelling constructed pursuant to building permit-B2006-2430H within the property's minimum side yard are not physically and/or visually obtrusive from the adjacent property (Lot 155) or from the privately owned right-of-way or "19TH STREET" fronting the Lot 154 and Lot 155. Further, according to recent discussions between applicant and owner of adjoining property (Lot 155), a tree and/or other planting materials will be replaced and planted on Lot 155 by the applicant). Therefore, it is felt that the dwelling encroachment into affected side yard of the subject TMK property's 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 October 22, 2007 and additional time to send notice to surrounding property and consider DPW comments was necessary. The applicant requested additional time to send amended notice of variance to surrounding property owners and extension of time to complete the variance background report. The applicant granted a time extension to the Planning Director to render decision on the subject variance application to January 11, 2008.

Based on the variance background and other findings, this 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 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 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.

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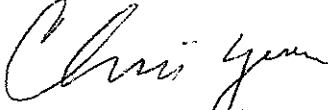
3. Portions of the dwelling located on "LOT 154" will not meet the minimum side and minimum side yard open space pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated October 11, 2007. The approval of this variance permits the "HOUSE" improvements to remain on the subject TMK property or "LOT 154" according to the variance site plan map dated October 11, 2007.

The applicant or current owner shall address the status of the active Building Permit (B2006-2430H) issued to subject TMK property by the DPW-Building Division and secure building permit for "a non-permitted addition to the right side of the permitted dwelling structure" and complete corrective action required pursuant to Notice of Violation and Order (ZCV 06-156E) letter dated July 11, 2007 before April 30, 2008. The active or "open" building permit and/or other construction permits issued to subject TMK property and building permit for the "non-permitted addition" 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.

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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