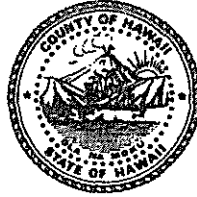


Harry Kim
Mayor



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

March 13, 2008

Mr. William J. Bonk
P. O. Box 1648
Kamuela, HI 96743

Dear Mr. Bonk:

SUBJECT: VARIANCE-VAR 07-072
Applicant: WILLIAM J. BONK
Owner: WILLIAM J. BONK, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 6-4-001:099, Lot 2

After reviewing your application, the Planning Director certifies approval of Variance-07-072 subject to variance conditions. The variance permits repairs and new second story and new open deck addition to a dwelling on Lot 2. The variance permits repairs and allows proposed second story and deck improvements to be constructed with a minimum 12 feet front yard and attendant minimum 9 +/- feet front yard open space in lieu of minimum 30.00 feet front yard and minimum 24.00 feet front yard open space requirements pursuant to plot plan submitted with the variance application. The variance is from the TMK property's minimum front yard and attendant minimum front yard open yard space 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 property, Lot 2 containing 1.0046 acres, is situated at Puukapu Homesteads, 1st Series, Waimea, South Kohala, Hawaii.

The property is zoned Agricultural (A-40a) 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, attachments, and filing fee on October 31, 2007. The variance application's site plan map is drawn to scale. The variance site plan map denotes the position of the dwelling, dwelling repairs, open deck, and other proposed improvements to the original dwelling built circa 1956.

The applicant's background states in part:

"My wife and I are requesting a variance from the minimum yard setback in order to rebuild a portion of our home damaged in the earthquake of October 2006, and to enlarge and strengthen it to present standards.

Our home, which has been standing on our property when we purchased it in 1973, was old and therefore was without the more recent code standards of protection. After the earthquake it was yellow tagged. Repairs to the rear portion required some major work, both underpinnings and above ground structural repair. In order to accomplish this and at the same time to upgrade this portion of the building, it was decided to add a 12 ft. extension and deck to the south side of the damaged area. In addition, to increase the function and aesthetic rendering of the home, both interior and exterior wise, we decided that a second floor bedroom and bath would indeed enhance these values, while the first floor interior would be reconfigured. The addition is not excessively large and half would be an open deck and therefore these proposed additions are not detrimental to the public welfare nor does it impact adversely. However, as the pre-quake structure extended from six (6') to ten (10') feet over the setback line (originally allowable as it was grand fathered) any new addition requiring a variance.

Furthermore, as we pointed out some 25 years or so ago, when we received a variance to add an open porch to the western side of the home, this portion of the property has an extremely narrow area in which to build or add without crossing the setback line. In other words any addition will require a variance no matter where it might be added. Moreover, only the area adjacent to the damaged are of the home is available and this therefore requires a variance. Therefore we are asking for a variance of 12' for this addition and deck."

Note: The variance site plan map denotes the cesspool location. However, the variance request and site plan does not address or show the location or position of fencing, water features, and landscaping improvements, etc. Recent photographs were submitted to show building repairs and proposed dwelling improvements; and, these photographs disclose the existence and position of an old storage building (wood shed?) abutting the dwelling improvements. According to site inspection and discussion with the applicant it appears that the old storage shed (approximately 10 feet X 13 feet X 6 feet + height) was built prior to or circa 1956 upon the subject TMK property; and, the location and size or "building footprint" of the shed or relationship to the original dwelling was not addressed or denoted on the variance site plan maps in variance files VAR No. 284 and VAR No. 341.

3. **County Building Records:**

Hawaii County Real Property Tax Office building records indicate a dwelling was built in 1956. Tax office building records show 4-Building Permits (871077, 890003, 900219, B2005-1176H), 4-Electrical Permits (EH69869, E921801, E920487, E2005-2085H), and 2-Mechanical (M921436, M890819) or Plumbing Permit were issued for dwelling improvements between 1987 and 2005. It appears that the dwelling improvements upon the subject TMK property were constructed pre or circa 1956 and pursuant to 2-variances and building permits and associated construction permits issued between 1956 and 2005.

4. **Agency Comments and Requirements-VAR 07-072:**

- a. The Department of Public Works (DPW) memorandum dated December 11, 2007 states in part:

"Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division)."

The attached DPW-Building Division memorandum dated December 10, 2007 states in part:

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“Approval of the application shall be conditioned on the comments as noted below.

The building permit for the subject dwelling was never finalized. Building permit B890003 still active.”

- b. The State Department of Health (DOH) memorandum(s) dated December 17, 2007 and January 16, 2008 state:

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

5. **Notice to Surrounding Property Owners.** The applicant submitted copy of notices sent to surrounding property owners and proof of mailing notices were submitted to the Planning Department. According to these submittals, first notice and second notice were mailed on November 16, 2007 and on or about January 9, 2008 to surrounding property owners, by the applicant. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 7, 2007.
6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No objections from surrounding property owners or the general public were received by the Planning Department.
- 6a. Applicant submitted envelope post marked November 30 (?), 2007 together with original letter or note signed by Larry Johnson supporting the applicant’s variance application.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant submitted the variance application to address dwelling repairs and position of the original dwelling improvements circa 1956 and upper story and open deck addition being built within a minimum front yard. The variance application’s site plan map denotes location of the dwelling repairs and improvements being constructed on the subject TMK property. Portions of the original “non-conforming” dwelling constructed pre or circa 1956 within the affected front yard were severely damaged by a large earthquake in October 2006. Consequently, the applicant or owners became aware of encroachment issues after emergency repairs commenced during 2007 and substantial construction of an upper story

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and open deck addition was completed before submitting detailed construction plans for building permit and associated construction permits for repair and addition.

The applicant or current owners were granted variances (minimum front yard) subsequent to 1973 to permit additions or modification to connect portions of the original dwelling and other buildings constructed on the subject TMK property "prior to the adoption of the Zoning Ordinance (Ord. No. 63) for North and South Kohala (eff. Date-December 6, 1967)". Earlier variance site plan maps and current site plan map submitted with the current variance request did not disclose the location and position of detached 11 feet by 13 feet +/- storage building near the damaged dwelling which should be recognized as part of the dwelling improvements constructed pre or circa 1956 on the subject TMK property before the adoption of the 1967 Zoning Code.

According to the variance site plan map the original and subsequent dwelling improvements to connect original dwelling buildings including detached bath house and associated detached sheds were built and established upon a narrow building site or knoll bounded by (2) rights-of-way. The subject TMK property is actually bounded by following (3) rights-of-way: Mamalahoa Highway (public), 15 feet wide "Government Road" (public or "paper road") and Kakanihia Road (private). The original dwelling improvements upon the property were constructed pre or circa 1956 prior to purchase by the current owners circa 1973. Previous site plans in earlier variance files did not clearly disclose the property's topography or precise nature and size of original dwelling improvements including building projections and detached sheds, etc. built upon a narrow portion or upon a knoll of the subject TMK property. The earthquake repairs and proposed addition is between property boundary lines shared with the 2-rights-of-way (private substandard graveled roadway and majority of proposed building improvements are nearest the 15 feet wide government (paper) right-of-way. Furthermore, previous variances did not discuss the status of the publicly owned "paper road" or timetable or likelihood of government or County to widen or improve a 15 feet wide government road or "paper road" fronting the property including drainage improvements, etc.

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.

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2. Consolidation of Lot 2 with adjoining property or 15 feet wide government road right-of-way (paper 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.

The original dwelling or position of dwelling improvements upon the property constructed approximately between 1956 and 2005 are not physically and/or visually obtrusive from adjacent or nearby building lots or private and publicly owned rights-of-way. It appears that previous variances to permit modifications to the original dwelling constructed upon the property pre or circa 1956 do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. In addition, the likelihood of public funding or need of paved roadway including drainage improvements within the publicly owned 15 feet wider road right-of-way or paper roadway fronting the subject TMK property is remote at this time. Therefore, it is felt that the proposed earthquake repairs and modifications to the original dwelling situated within the property's minimum front yard along the publicly owned paper road lot 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 November 29, 2007 and additional time to incorporate agency comments and other submittals received into the variance file and background report was necessary. The applicant agreed to an extension of time to complete the background report and granted extension of time to the Planning Director to render decision on the variance application to March 14, 2008.

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.
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 proposed dwelling repairs and addition to original dwelling improvements on subject TMK property will not meet the minimum front yards and attendant minimum front yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits the repairs and dwelling improvements to remain and be constructed on the subject TMK property or Lot 2 according to variance and variance site plan map.

The applicant shall secure building permit and associated construction permits for earthquake repairs and dwelling addition from the DPW-Building Division (Hilo/Kona) on or before December 31, 2008. Any active or "open" building permit and/or other construction permits issued to subject TMK property 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.

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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/CJY:cs

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xc: Real Property Tax Office-(Kona)