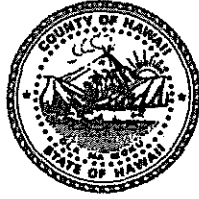


Harry Kim
Mayor



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

February 20, 2008

Mr. Jerry T. Watanabe, AIA
504 Puloku Street
Hilo, HI 96720

Dear Mr. Watanabe:

SUBJECT: VARIANCE-VAR 07-078

Applicant: JERRY T. WATANABE, AIA
Owner: DEPARTMENT OF WATER SUPPLY (DWS)
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 7-8-006:066 and 067, (CON 06-000066)

After reviewing your variance application, the Planning Director certifies the approval Variance-VAR 07-078 subject to variance conditions. The variance permits portion of building and associated roof eaves to remain and allow proposed building modification to be constructed with a minimum 25 feet rear yard to minimum 29.99 feet rear yard in lieu minimum 30 feet rear yard and allow attendant minimum 19 feet rear yard open space in lieu of minimum 24 feet rear yard open yard space according to the application's site plan map. The variance is from the TMK 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, 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 properties (formerly Lot A-1: 1.398 acres and Lot A-2: 2.000 acres) were consolidated into Lot A-1-A containing 3.398 acres on December 14, 2006 according to map dated May 15, 2006

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in file: CON 06-000066. Lot A-1-A, being a portion of Royal Patent 4475, Land Commission Award 7713, Apana 7 to Victoria Kamamalu, is situated at Keauhou 1st, North Kona, Hawaii.

Lot A-1-A is zoned Agricultural (A-1a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan**. Pursuant to Planning Department letter dated May 2, 2007, the applicant filed variance application and attachments at the Planning Department on November 20, 2007. The variance filing fee was waived by the Planning Director/Planning Department. The variance application's site plan map was prepared by the applicant and drawn to scale. The variance site plan map denotes portions of a "CARPORT" or open warehouse building constructed into subject TMK property's minimum 30 feet rear yard.

The applicant's background information dated October 17, 2007 states in part:

"When this building was constructed in October 2000, the required rear setback was inadvertently not provided. The setback requirement in the Agricultural zoning district with a land area in excess of 1.0 acre, is 30 feet at the rear. The North side of the existing building column encroaches into the required setback by 5 feet and the building overhang encroaches into the required setback an additional 5 feet, for a total of 10 feet encroachment. This condition was not discovered until the Department of Water Supply wanted to enclosed (sic) this covered carport for additional office/work space and submitted plans for County Plan approval.

Due to the growth and various needs of the Department of water Supply for maintenance work areas, the DWS is proposing to enclose the open covered carport for office/work space and storage renovation."

Note: The variance site plan map does not identify the location of a cesspool or Independent Wastewater System (IWS). The variance request does not address the location or position of fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

Real Property Tax Office permit records show 6-Building Permits, 5-Electrical Permits, and 2-Mechanical or Plumbing Permit were issued to subject TMK property between 1952 and 2004. According to the DWS, it appears that "GARAGE" consisting of 1800 square feet was permitted in 2004. It appears that portions of "GARAGE" including attendant roof eave were constructed into the property's rear yard pursuant to B2004-0068H.

4. **Agency Comments and Requirements-VAR 07-078:**

- a. The State Department of Health (DOH) memorandum dated December 13, 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 January 14, 2008 states in part the following:

"We reviewed the subject application and our comments are as follows:

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

The attached DPW memorandum dated January 14, 2008 states in part the following:

"We oppose the approval of the application for the reasons noted below.

The building permit for the subject dwelling (sic) was never finalled. Building B2004-0068H still active.

Others: Building was constructed without proper building inspection.”

5. **Notice to Surrounding Property Owners.** The applicant submitted copies of first and second notices sent surrounding property owners to the Planning Department. According to the submittals and/or copies of US postal service-Certified receipts received on January 16, 2008, the first and second notices were sent to surrounding property owners by US postal service-Certified Mail on December 12, 2007 and December 20, 2007. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 12, 2007.

Note: The applicant submitted copies of both notices and original postal receipts on February 7, 2008 for the variance file.

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 owner-DWS, submitted the variance application to address the building encroachment within the property's minimum 30 feet rear yard. The variance application's site plan map was prepared by the applicant and denotes the location of the "OPEN CARPORT" or open warehouse used for equipment and material storage, etc, for the DWS operations in West Hawaii. The applicant and owner became aware of building encroachment issues after building plans were submitted to construct offices within the building envelope for DWS staff. No evidence has been found to show indifference or premeditation by original builders or DWS to deliberately create or intentionally allow portions of the building to be constructed into the property's rear yard.

According to the applicant, it appears that the building was constructed circa 2000 (sic) according to building permits and other associated construction permits issued to builders or contractors or DWS. It appears that during construction of the improvements, portions of the building and roof eaves within the property's rear yard went unnoticed by the builders or contractor, inspectors, and agencies.

ALTERNATIVES

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

1. Remove a portion of the building including roof eave or redesigning or relocating the building to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of subject TMK property with adjoining property (TMK: 7-8-016:004, Lot 24 or TMK: 7-8-016:003, Lot 25) and resubdivision to modify boundary 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.

After examining recent photographs of the building taken by Planning Department staff, it appears that the portions of the building constructed approximately 8 years ago within the property's minimum rear yard are not physically and/or visually obtrusive from the adjacent property (Lot 24 or Lot 25) or public right-of-way (North Kona Belt Road). It appears that these 8 year old building encroachments were revealed during processing plans to construct the office spaces. Given the abrupt change in topography of the subject TMK property near the property's rear boundary line or below a fence near or along a common boundary line shared with adjoining property or lots immediately "mauka" or directly behind and above the building encroachments (refer to photographs in variance file), it appears that the portions building encroachments into the property's rear yard and proposed office improvements will not be visible or easily detected from adjoining or "mauka" lots. In this instance, it is felt that the 1-story building encroachments including attendant roof eave within the property's minimum rear yard and minimum rear yard open space do not detract from the character of the immediate neighborhood; and, the proposed office improvements within the building's envelope will not magnify building encroachments or detract from the surrounding land patterns, public uses, and surrounding subdivisions.

The subject variance application was acknowledged by letter dated December 5, 2007 and additional time to incorporate DPW comments, copies of notices sent by the applicant, and original mailing receipts into subject variance file was necessary. The applicant agreed for an extension of time to complete the variance background report and render a decision on the subject variance to February 26, 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-VAR 07-078 is **approved** subject to 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 "GARAGE" or open carport-warehouse building identified on the variance application' site plan map or upon subject TMK property will not meet the property's minimum rear yard and minimum rear yard open space requirements pursuant to Chapter 25, the Zoning Code. Variance-VAR 07-078 permits the portions of the "GARAGE" including roof eave improvements within the property's minimum rear yard and minimum rear yard open space to remain; and, permits proposed DWS office improvements to be constructed within the "GARAGE" upon the subject TMK property or within open carport building according to the variance site plan map in the variance file.

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The owner shall submit detailed building construction plans and site plan for proposed office improvements within the "GARAGE" and Plan Approval application for review under Plan Approval of the Zoning Code. The owner or owner's designee shall secure Final Plan Approval for the proposed office improvements prior to issuance of a building permit and associated construction permits to construct proposed office improvements within "GARAGE" by the DPW. The original building permit B2004-0068H issued to construct "GARAGE" and subsequent building permit to construct proposed office improvements within "GARAGE" shall be constructed and completed pursuant to approved building plans and/or DWS building plans and/or DWS contract specifications approved by the agencies. The original permit B2004-0068H to construct "GARAGE" and subsequent building permit to construct proposed office improvements shall be completed or "finalled" by the DPW-Building Division prior to occupancy of the building/offices by DWS staff.

4. Future or new building improvements and permitted uses on the subject TMK property shall be subject to review under Plan Approval of the Zoning Code, and 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:cs

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xc: Real Property Tax Office-(Kona)

DWS-Engineering-Hilo (Re: Job No. 2003-834-Mr. Owen Nishioka, P.E.)

PA 2579