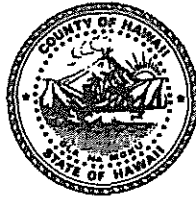


Harry Kim
Mayor



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 12, 2008

PAUL H. MURRAY & ASSOCIATES, LLC
P. O. Box 1189
Hilo, HI 96720

Gentlemen:

VARIANCE-VAR 07-082

Applicant: PAUL H. MURRAY & ASSOCIATES, LLC
Owners: GEOLIETTE NG, TRUSTEE, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 2-4-041:125, Lot 47

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 07-082 subject to variance conditions. The variance allows portions of the dwelling-carport including attached deck and attendant roof eaves to remain on Lot 47 with minimum 16.6 feet to minimum 19.99 feet front yard and attendant minimum 13.1 feet to minimum 13.99 feet front yard open space, minimum 9.0 feet and minimum 9.5 feet (east) side yard(s), and minimum 7.1 feet to minimum 9.99 feet (west) side yard(s); and, attendant minimum 3.1 feet to minimum 4.99 side yard open side yard space(s) according to the variance application's site plan map dated October 19, 2007 and other submittals. The variance is from the TMK property's minimum side yard pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards, (2)(A)(B), 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 containing 10,477 square feet, is Lot 47, within Komohana Subdivision, Phase III, File Plan 1545, and situated at Waiakea, South Hilo, Hawaii. The subject TMK property's address is 1376 Ala Kula Street.

MAR 18 2008

The property is zoned Single-Family Residential (RS-15) by the County and designated Urban or "U" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on December 4, 2007. The variance application's site plan map is drawn to scale and prepared by Paul H. Murray & Associates, LLC. The variance site plan map, dated January 4, 2008, denotes portions of the "DWELLING BUILT 1978" were built into both side yards of "LOT 47" or subject TMK property.

The applicant's background dated December 1, 2007 states in part:

"The Owner is requesting a Variance from Minimum Yards, Pursuant to Chapter 25, Zoning Code relating to the side yard setbacks and the minimum clear-space for permitted projections.

The Building Permits issued for the structure on the subject parcel are as follows: Permit Number 772756 issued December 1, 1977, Permit Number 781316 issued May 24, 1978, Permit Number 782703 issued October 20, 1978 and Permit Number 801739 issued July 8, 1980. The end date or date of completion was September 17, 1982. The Owners were unaware of and would not have discovered any problems until a modern survey was conducted on October 19, 2007 by Paul H. Murray & Associates, LLC revealed the setback violations."

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 driveway, rock walls and landscaping, etc. along or straddling common boundary lines shared with adjoining property.

3. **County Building Records:**

Hawaii County Real Property Tax Office records show 4-Building Permits (772756, 781316, 782703, 801739) were issued to subject TMK property. It appears that the dwelling on "LOT 47" was built pursuant to 4-building permits issued between 1977 and 1980.

4. **Agency Comments and Requirements-VAR 07-082:**

- a. The State Department of Health (DOH) memorandum dated December 17, 2007 states:

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

- b. The Department of Public Works (DPW) comments or memorandum dated December 19, 2007 states in part:
"NO COMMENTS"
5. **Notice to Surrounding Property Owners.** The applicant submitted copy of notices and other submittals mailed to surrounding property owners and proof of mailing notices to the Planning Department. According to the submittals, the first and second notices were mailed on December 13, 2007 and January 4, 2008, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 12, 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 owners, submitted the variance application to address or resolve the dwelling encroachments into the property's minimum side yards and attendant minimum side yard open space requirements. The variance application's site plan map was prepared by a surveyor and denotes the location of the "DWELLING BUILT 1978" including "DECK/OPEN PATIO" and "EAVES" and other site improvements upon "LOT 47". It appears the owners became aware of building's position upon the property and encroachment issues after a survey map was completed for estate or escrow purposes. No evidence has been found to show indifference or premeditation by the builders or owners to deliberately create or intentionally allow portions of the 30 + year old dwelling to be constructed into the property's side yards.

It appears that the dwelling improvements and subsequent dwelling improvements were constructed according to 4-building permits issued to subject TMK property. It appears that during construction of the dwelling improvements between 1977 and 1980, portions of the dwelling within the property's minimum side yards 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 portions of the

dwelling including open patio/deck and roof eaves to fit within the correct building envelope prescribed by the Zoning Code.

2. Consolidation of Lot 47 with adjoining properties (TMK: 2-4-041:124, Lot 46 and/or TMK: 2-4-041:126, Lot 48) 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 the subject building encroachments constructed approximately 30 years ago within the property's minimum side yards and attendant minimum side yard open spaces are not physically and/or visually obtrusive from the adjacent properties (Lot 46 and Lot 48) or public right-of-way (Ho'ola Place). Therefore, it is felt that these 30 + year old building encroachments into the property's affected side yards identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The variance application was acknowledged by letter dated December 5, 2007 and additional time to send notice to surrounding property owners and consider agency comments was necessary. The applicant requested and granted the Planning Director an extension of time to render a decision on the variance application to March 21, 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

PAUL H. MURRAY & ASSOCIATES, LLC

Page 5

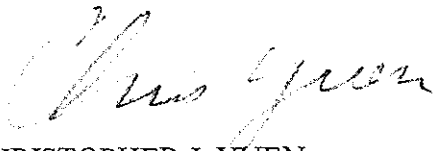
March 12, 2008

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 dwelling upon "LOT 47" will not meet the minimum side yards and attendant side 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 dwelling improvements including open patio/deck/ eaves or "DWELLING BUILT 1978" to remain on the subject TMK property or "LOT 47" according to the variance site plan map dated October 19, 2007.
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:cs

P:\WP60\WRY\FORMLETT\VAR07-082ZCSETBACKAPP.PHMALLC-NG

xc: Real Property Tax Office-(Hilo)