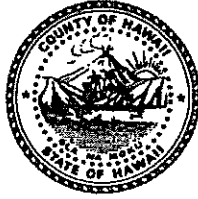


Harry Kim
Mayor



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 17, 2008

Mr. Joshua and Mrs. Julie Doeleman
P. O. Box 1203
Mountain View, HI 96771

Dear Mr. and Mrs. Doeleman:

VARIANCE-VAR 07-084

Applicants: JOSHUA DOELEMAN, ET AL.
Owners: JOSHUA DOELEMAN, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum yards

Tax Map Key: 1-1-041:131, Lot 6633

After reviewing your application and the information submitted, the Planning Director certifies the approval of Variance-VAR 07-084 subject to variance conditions. The variance permits portions of a "2-STORY RESIDENCE" and detached "WATER TANK" to remain on Lot 6633 pursuant to survey map dated January 21, 1999. The owners are requesting variance to allow portions of the 2-story dwelling to remain with minimum 9.87 feet to minimum 19.99 feet side yard and attendant minimum 5.80 feet to minimum 13.99 feet side yard open space and allow portions of detached "WATER TANK" to remain with minimum 0.86 feet side yard in lieu of the minimum 20.00 feet side yard feet according to the variance application's site plan map dated January 21, 1999. The variance is from the subject TMK property's minimum side yard and attendant minimum side yard open space requirements 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).

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BACKGROUND AND FINDINGS

1. **Location**. The referenced TMK property containing 2.00 acres, is within Fern Acres or upon Lot 6633, "CRESCENT ACRES, Land Court Application 1053 (Map 31), and situated at Keaau, Puna, Hawaii. The referenced TMK property's street address is 11-3059 Plumeria Street.

The property is zoned Agricultural (A-3a) 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 December 6, 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 January 21, 1999, denotes portions of the "2-STORY RESIDENCE" (Dwelling) and detached "WATER TANK" were constructed into a side yard of "LOT 663" or subject TMK property.

The applicant's stated state in part:

"We are requesting to obtain a variance allowing the location of our house to remain in its current location. Currently the southeast corner of the house projects 10.13 feet into the 20 foot side County Zone Code building setback of the Southeast boundary. The Southeast corner of the roof projects 14.20 feet into the 20 foot setback. Our current residence was built in 1981 with permits finalized by the county at that time."

Note: Subsequent to receipt of the variance request and application, the applicants/owners and applicant's realtor discussed and requested variance to allow the detached water tank to remain on the subject TMK property pursuant to the variance site plan map.

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 utility pole and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

Hawaii County Real Property permit records show 2-Building Permits (802817, 810530), 1-Electrical Permit (EH57607), and 1-Mechanical (MH34262) or Plumbing Permit were issued to construct the dwelling and detached water tank upon the subject TMK property or "LOT 6633". The records show the dwelling and water tank were completed between 1980 and 1981.

4. **Agency Comments and Requirements-VAR 07-084:**

- a. The State Department of Health (DOH) memorandum dated December 26, 2007 states:

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

- b. The Department of Public Works (DPW) response or comments dated January 9, 2008 states in part:

"NO COMMENTS"

5. **Notice to Surrounding Property Owners.** The applicants submitted copy of notices and other submittals sent to surrounding property owners. According to the submittals and postal receipts, the first and second notices were mailed on December 3, 2007 and December 3, and December 28, 2007, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 26, 2007.

6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The applicant submitted letter December 17, 2007 signed by adjoining property owner(s) of TMK: (3) 1-1-041:130 (Lot 6634) including TMK: (3) 1-1-141:129 (Lot 6635) supporting the applicants request for variance. The letter dated December 17, 2007 signed by Jerry Grantham and Cynndi Grantham states in part:

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“We have read the current application for variance and understand the variance is for leaving the house and catchment tank in their current location. Our property, TMK 3-1-1-41-130 is bordering the subject property’s Southeast border. We also own TMK 3-1-41-129. We realize both the house and catchment, which were originally built/placed in 1981, are within the setback. We do not have, nor have we ever, had any objections to the present location/placement of the house or catchment tank on the subjects (sic) property (TMK 3-1-1-41-131).”

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicants or current owners submitted the variance application to address or resolve the dwelling and water tank encroachments constructed into the property’s minimum 20 feet side yard circa 1981. The variance application’s site plan map was prepared by a surveyor and denotes the location of the dwelling, water tank, and other improvements upon “LOT 6633”. It appears that the current owners became aware of the encroachment issues during escrow to sell the property. No evidence has been found to show indifference or premeditation by previous owners or builders to deliberately create or intentionally construct portions of the 2-story dwelling and detached water tank within the property’s minimum 20 feet side yard and minimum 14 feet side yard open space.

It appears that the existing dwelling improvements and detached water tank were constructed upon the subject TMK property according 2-building permits and associated construction permits issued by the County circa 1980/1981. It appears that during construction of the dwelling and detached water tank between 1980 and 1981, portions of the dwelling and water tank constructed within the property’s minimum 20 feet side yard and attendant minimum side yard open space 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 including detached water tank to fit within the property’s building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 6633 or subject TMK property with adjoining property-TMK: 1-1-041:130 (Lot 6634) 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 portions of the 2-story dwelling and water tank within the minimum 20 feet side yard are not physically and/or visually obtrusive from the adjacent property (Lot 6634-Refer to letter dated December 17, 2007 cited above in variance file) or privately owned right-of-way (Plumeria Street). It appears that these 25 year old building encroachments into the property's side yard do not depreciate or detract from the character of the adjoining property, neighborhood, and surrounding land patterns. Therefore, it is felt that these 25 year old building encroachments within the property's affected side yard identified on the variance site plan map can remain and will not detract from the character of the immediate neighborhood or the subdivision.

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:

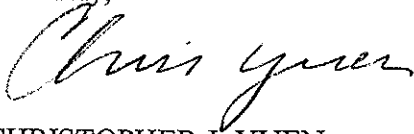
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property 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 a 2-story dwelling and detached water tank upon "LOT 6633" will not meet the minimum side yard and attendant side yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated January 21, 1999. The approval of this variance permits the "2-STORY RESIDENCE" and "WATER TANK" to remain on the subject TMK property or "LOT 6639" according to the variance site plan map dated January 21, 1999.

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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

P:\WP60\WRY\FORMLETT\VAR07-084ZCSETBACKAPP.DOELEMAN

xc: Real Property Tax Office-(Hilo)
Denise Nakanishi
Jerry Grantham, Et al.