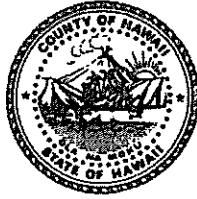


Harry Kim
Mayor



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

September 8, 2008

Mr. Daniel J. Daub
DAUB GROUP, LLC
612 3rd Avenue East
Kalispell, MT 59901

Dear Mr. Daub:

VARIANCE-VAR 07-085

Applicant: DANIEL J. DAUB
Owners: JAMES L. SMITH, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 1-5-087:099, Lot 21

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 07-085 subject to variance conditions. The variance allows portions of a "GARAGE" including roof eave to remain upon Lot 21 with a minimum 4.8 feet to minimum 9.2 feet front yard and minimum 1.8 feet to minimum 6.2 feet front yard open space in lieu of the minimum 15.00 feet front yard and attendant minimum 10.00 feet front yard requirement according to the variance application's site sketch map or site plan map dated June 16, 2004. The variance is from the subject TMK property's minimum front yard and attendant minimum front 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).

SEP 08 2008

BACKGROUND AND FINDINGS

1. **Location.** The referenced TMK property, Lot 21 containing 8849 square feet, is within Hawaiian Beaches Subdivision, Block 46, File Plan 693, and situated at Waiakahiula, Puna, Hawaii. The referenced TMK property's street address is 15-154 South Puni Kahakai Street.
The property is zoned Agricultural (A-1a) by the County and designated Urban or "U" by the Land Use Commission (LUC).
2. **Variance Application-Site Plan.** The applicant submitted variance application, attachments, and filing fee on December 6, 2007. The variance application's site plan map is drawn to scale and prepared by licensed professional land surveyor. The variance site plan map, signed and dated June 16, 2004, denotes portions of the "GARAGE" attached to "DWELLING" was built into and upon the property's minimum 15 feet front yard of "LOT 21" or subject TMK property.

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

"It appears that the placement of the home was a construction error and then never questioned until the above mentioned survey was completed. The Carport enters into the fifteen foot building setback 9.8 (sic) on the East corner of the carport and on the North corner 4.8 feet to the carport post. The eaves around this structure are 3 feet (sic)

Since this is a well established neighborhood of nice quality homes and the structure has been in place for over thirty four years without issue and the distances that the structure enters the building setbacks are on the front and on a curve we feel that the impact on neighbors is minimal. We believe there are no other reasonable alternatives at this time to resolve this situation. We are, therefore, applying for subject variance."

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 the driveway, wire fencing, and any landscaping, etc. along or upon common boundary lines shared with abutting lots or properties.

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3. **County Building Records:**

Real Property Building Permit records show 4-Building Permits (H53430, H62611, 790057, 930067), 2-Electrical Permits (EH33738, EH52190), and 2-Mechanical (MH18302, M910020) or Plumbing Permit were issued to subject TMK property. The dwelling including attached patio and attached garage upon "LOT 21" was constructed pursuant to building and associated construction permits issued between 1972 and 1993.

4. **Agency Comments and Requirements-VAR 07-085:**

- 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) memorandum or application comments dated January 9, 2008 states:

"NO COMMENTS"

5. **Notice to Surrounding Property Owners.** The applicant submitted copy of notices sent to surrounding property owners and proof of mailing notices by US Mail. According to these submittals, the first and second notices were mailed on December 13, 2007 and January 22, 2008, 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. 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 owners, submitted a variance application to address the garage encroachment into the property's minimum front yard. The variance application's site plan map was prepared by a surveyor and denotes the position the dwelling including attached patio and garage improvements upon "LOT 21". The current owners became aware of building encroachment issues during escrow. No evidence has been found to show indifference or premeditation by previous owners or builders to deliberately create or intentionally allow portions of the garage to be built into the property's minimum front yard and attendant minimum front yard open space.

The dwelling improvements and subsequent patio and garage improvements were constructed according to 4-building permits and other associated construction permits issued by the County-DPW to subject TMK property. It appears that during construction of the dwelling and attached building improvements between 1972 and 1993, the portion of the garage built into the property's front yard went unnoticed by the builders and agencies.

ALTERNATIVES

Alternatives available to the applicant or current owners to correct and/or address the garage encroachments into the subject TMK property's minimum front yard include the following actions:

1. Remove portions of the garage or redesigning or relocating the garage to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 21 with adjoining right-of-way (Puni Kahakai North) fronting Lot 21 and resubdivision to modify property lines or adjust minimum front 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.

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It appears that the "GARAGE" and eave encroachments constructed approximately 15 years ago into the property's minimum front yard and attendant minimum front yard open space are not physically and/or visually obtrusive from abutting properties or right-of-way fronting Lot 21 (Puni Kahakai North). It appears that a portion of the "GARAGE" or 15 year old building improvements built into the property's minimum front yard do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that the portions of the "GARAGE" and attendant roof eaves constructed into Lot 21's front yard identified on the variance application's site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The applicant's variance application was acknowledged by letter dated December 18, 2007 and additional time to revise the variance application and complete variance background information was necessary. The applicant requested an extension of time to submit additional information and granted the Planning Director extension of time to render decision on the variance application to September 19, 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

The variance application is hereby **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.

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3. Portions of dwelling and attached "GARAGE" including associated roof eaves located upon "LOT 21 will not meet the property's minimum front yard and attendant minimum front yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated June 16, 2004. The approval of this variance permits portions of the "GARAGE" including associated garage roof eaves to remain within the front yard of the subject TMK property or "LOT 21" according to the variance site plan map.
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
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xc: Real Property Tax Office-(Hilo)