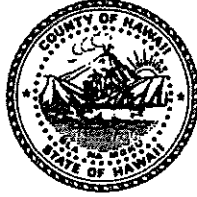


Harry Kim
Mayor



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 07-086

Applicant: DANIEL J. DAUB

Owner: TERI L. HOSKINS

**Request: Variance from Chapter 25, Zoning
Minimum yards**

Tax Map Key: 1-3-012:042, Lot 8

After reviewing your variance application, the Planning Director certifies the approval of your Variance-VAR 07-086 subject to variance conditions. The variance to permits portions of a dwelling or "HOUSE" including attached "LANAI-ROOF EAVES" and "CAR PORT" to remain on Lot 8 pursuant to revised survey map dated June 14, 2006. The applicant is requesting variance to allow portions of the dwelling including attached lanai/carport and associated roof eaves to remain with minimum 19.78 feet (northerly) side yard and minimum 11.58 feet to minimum 13.99 feet side yard open space in lieu of the minimum 20.00 feet side yard and attendant minimum 14.00 side yard open space requirements according to the variance application's site plan map or revised survey map dated June 14, 2006. 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, Lot 8 containing 1.000 acre, is within Block 6, Leilani Estates, and situated at Keahialaka, Puna, Hawaii. The referenced TMK property's street address is 13-3427 Hapuu Street.

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

2. **Variance Application-Site Plan.** The applicant submitted a 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 plan map, dated June 14, 2006, denotes portions of lanai, carport, and associated roof eaves were built into minimum 20 feet side yard(s) of "LOT 8" or subject TMK property.

The applicant's background dated November 29, 2006 states in part:

"It appears that the placement of the home was a complete error and then never questioned until the above mentioned survey was completed.

Since this is a well established neighborhood of good quality homes and the structure has been in place for over twenty six years without issue and the distances that the structures eaves (sic) enter the building setbacks we feel 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 dwelling's driveway or any landscaping, etc. along or straddling common boundary lines.

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3. **County Building Records:**

Hawaii County Real Property Tax Office records show 4-Building Permits (801750, 810419, 840831, 840831), 2-Electrical Permits (EH57525, EH67527), and 2-Mechanical (MH34092, M39878) or Plumbing Permit were issued by the County-DPW to subject TMK property. The permit descriptions indicate a 2-story dwelling, doughboy water tank, wooden deck, and greenhouse improvements were constructed upon "LOT 8" pursuant to building and associated construction permits issued between 1980 and 1986.

4. **Agency Comments and Requirements-VAR 07-086:**

- 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 dated January 9, 2008 states in part:

"We have reviewed the subject application forwarded by your memo dated December 18, 2007 and recommend approval of the application be conditioned on the comment as noted below.

The Building Division records indicate that the carport was built without a building permit. We would approve the variance request with the stipulation that a building permit must be issued for the carport within six (6) months of the variance approval."

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 owners, submitted the variance application to address or resolve the dwelling or "HOUSE" position upon "LOT ". The variance application's site plan map dated June 14, 2006 was prepared by a surveyor and denotes the location of the "HOUSE" and attached "LANAI" and "CAR PORT", and attendant roof eaves upon "LOT 8". According to the applicant, the current owners became aware of encroachment issues within the property's minimum yards after the survey was completed. No evidence has been found to show indifference or premeditation by previous owner(s) or builders to deliberately create or intentionally allow these building encroachments to be built within the affected side yards.

It appears that the existing 2-story dwelling or "HOUSE" improvements including a deck, detached water tank, and greenhouse were constructed according to 4-building permits and other associated construction permits issued by the County to subject TMK property in the early 1980's. It appears that during construction of the dwelling and other building improvements upon Lot 8 between 1980 and 1986 portions of the dwelling/lanai/eaves and car port within the property's side yard and attendant minimum open yard spaces 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 or "HOUSE" and attendant roof eaves and "CAR PORT" to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of the subject TMK property or Lot 8 with adjoining TMK parcels or lots (TMK: 1-3-012:041, Lot 7; and TMK: 1-3-012:041, Lot 9) and resubdivision to modify property lines or adjust minimum yards.

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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 23 + year old encroachments constructed in the early 1980's into the property's minimum side yards are not physically and/or visually obtrusive from the adjacent properties (Lot 7 or Lot 9) or privately owned right-of-way Hapuu Street. It appears that portions of the dwelling or carport (greenhouse?) and attendant roof eaves built into the property's minimum side yards do not depreciate or detract from the character of the surrounding neighborhood and surrounding land or building patterns. Therefore, it is felt that the building encroachments 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 18, 2007 and additional time to consider agency comments and review building permit history was necessary. The applicant granted the Planning Director an extension to render a 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-VAR 07-086 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.

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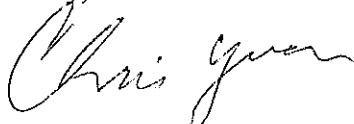
3. Portions of the dwelling and carport located on "LOT 8" will not meet the minimum side yard minimum side yard open space requirements pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map dated June 14, 2006 (Revised). The approval of this variance permits the "HOUSE" and attached "CAR PORT" including attendant roof eaves to remain upon the subject TMK property or "LOT 8" according to the variance site plan map or revised map dated June 14, 2006 in the variance file.

The applicant or current owners shall contact the DPW-Building Division in Hilo to address the status of the open building permits issued to subject TMK property by December 3, 2008. Any active or "open" building permit and/or other construction permits issued to subject TMK property shall be closed or "completed" 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.

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)