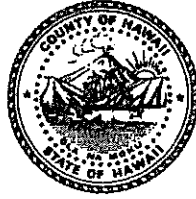


Harry Kim
Mayor



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 29, 2008

Mr. Craig A. Lindner
P. O. Box 5508
Hilo, HI 96720

Dear Mr. Lindner:

SUBJECT: VARIANCE-VAR 07-087
Applicant: CRAIG A. LINDNER
Owner: CRAIG A. LINDNER
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 1-8-003:023, Lot 75

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 07-087 subject to variance conditions. The variance permits portions of a dwelling or "HOUSE" to remain upon Lot 75 with minimum 22.04 feet to minimum 22.51 feet front yard and attendant minimum 18.0 feet to minimum 22.51 feet front yard open space in lieu of minimum 30 feet front yard and attendant minimum 24 feet front yard open space according to variance site plan map dated November 26, 2007. 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).

BACKGROUND AND FINDINGS

1. **Location.** The referenced TMK property containing 1.00 acre, is Lot 75 of Canney Road Homesteads, being portion of O'laa Reservation Lots, and situated at Puna, Hawaii.

The property is zoned Agricultural (A-1a) 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, LLC. The variance site plan map, dated November 26, 2007, denotes portions of "HOUSE" was constructed into minimum 30 feet front yard of "LOT 75" or subject TMK property.

The applicant's background information states in part:

"The applicant is requesting a variance to allow portions of a single family dwelling to remain "as-built" with a 18.70 foot front setback on the S.W. boundary, in lieu of the minimum 30-foot front setback as required under Hawaii County Zoning Code.

The contractor made an error in placing the house on the property when it was originally built. Thus the house projects as much as 7.96 feet, and the roof eaves are situated as much as 11.30 into the front County Zoning Code 30 foot building setback at the southwest property boundary.

The home is fully permitted with the Hawaii County Building Department."

Note: The variance site plan map does not identify the location of the cesspool or Independent Wastewater System (IWS) within the property. The variance request does not address the status of "ROAD RESERVE" fronting the subject TMK property or portions of "CONCRETE DRIVEWAY" upon the "ROAD RESERVE", and location of "WIRE FENCE" denoted on the variance site plan map or improvements straddling boundary lines shared with adjoining property.

3. **County Building Records:**

Hawaii County Real Property Tax Office records show 1-Building Permits (B2004-1601H), 1-Electrical Permit (Es004-2139H), and 1-Mechanical (M2004-1237H) or Plumbing Permit were issued to subject TMK property. It appears that the "HOUSE" or dwelling including 2 car garage upon "LOT 75" was built according to a building permit and associated construction permits issued to subject TMK property.

4. **Agency Comments and Requirements-VAR 07-087:**
 - 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 comments dated January 9, 2008 state in part:

"NO COMMENTS"
5. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notices sent to surrounding property owners and proof of mailing notices to the Planning Department. According to these submittals, the first notice was mailed on December 14, 2007 and second notices were mailed on January 16, 2008 and January 28, 2008, respectively, by the applicant. 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 or current owner submitted a variance application to address or resolve the dwelling encroachments within the property's minimum front yard. The variance application's site plan map was prepared by a surveyor and denotes the location of the "HOUSE" and other site improvements, "as-built", on "LOT 75". The applicant or map showing the existing improvements was completed. No evidence has been found to show indifference or premeditation by the builders to owner to deliberately create or intentionally allow these building encroachments to be built within the property's front yard and attendant minimum front yard open space requirements.

It appears that the existing "HOUSE" or dwelling including 2-car garage improvements were built according to a building permits and other associated construction permits issued to subject TMK property. According to the applicant, "The contractor made an error in placing the house

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on the property when it was originally built" (sic) and the dwelling improvements were completed within the property's front yard unnoticed by the "contractor" and agencies.

ALTERNATIVES

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

1. Remove portions of the dwelling or garage or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 75 with adjoining property or "ROAD RESERVE" (TMK: 1-8-004:096) fronting Lot 75 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 "HOUSE" or dwelling recently built into the property's front yard are not physically and/or visually obtrusive from the adjacent properties or privately owned-"ROAD RESERVE". It appears portions of the 1+ year old dwelling improvements within the front yard of the subject TMK property do not depreciate or detract from the character of the surrounding neighborhood and surrounding land patterns. Therefore, it is felt that portions of the dwelling constructed into the property's minimum 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 was requested by the applicant to send or mail revised notice of variance to surrounding property owners. The applicant granted the Planning Director additional time to complete the variance background report and render decision on the variance application to February 29, 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

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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 "HOUSE" or dwelling upon "LOT 75" will not meet the 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. The approval of this variance permits the "HOUSE" improvements to remain, "as-built", upon subject TMK property or "LOT 75" according to the variance site plan map dated November 26, 2007.
4. (OPTIONAL-Single-Family/SLU-Urban Zones) 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.

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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

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xc: Real Property Tax Office-(Hilo)