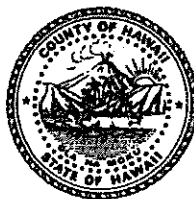


Harry Kim
Mayor



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 11, 2008

Mr. Richard Heller
HCR 1 Box 4736
Keaau, HI 96749-8602

Dear Mr. Heller:

SUBJECT: VARIANCE-VAR 08-001
Representative: RICHARD HELLER
Applicant: ANDOLIE MARTEN
Owner: ANDOLIE J. MARTEN, TRUSTEE
Request: Variance from Chapter 25, Zoning
Minimum yards
Tax Map Key: 1-8-055:020

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-001 to permit portions of a dwelling or attached utility room being built on Lot 510 to remain, "as Built" with minimum 6.5 feet + side yard to minimum 7.0 feet side yard open in lieu of minimum 10 feet side yard according to variance application's site plan map. The variance is from the subject TMK property's minimum side yard pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, and Section 25-5-77, Other regulations.

BACKGROUND AND FINDINGS

1. **Location.** The referenced TMK property containing 12,005 square feet, is Lot 510 within Unit II of Aloha Estates Subdivision, File Plan 715, Grant 4235, and situated at Olaa, Puna, Hawaii. The referenced TMK property's street address is 18-2022 Leialoha Street (8th Road).

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

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2. **Variance Application-Site Plan.** The applicant submitted the variance application and attachments on January 10, 2008. Due to the nature of the variance, the variance filing fee was waived by the Planning Director. The variance application's site plan map was prepared by the applicant and drawn to scale. The variance site plan map denotes a portion of "LAUNDRY AREA ENCLOSURE" was built approximately 3 feet + into minimum 10 feet side yard of the subject TMK property.

The applicant's background information dated January 7, 2008 states in part:

"Attached is a copy of the site plan detailing the location of the utility area. The variance is to allow enclosure surrounding the laundry area required by the electrical inspector for safety purposes to remain "as Built".

Note: The variance site plan map does not identify the location or position of any walls, fencing, and landscaping, etc. upon or near the property's boundary lines. According to the applicant's representative, the DPW-Building Division requires a building permit for laundry area enclosure.

3. **County Building Records:**

Hawaii County Real Property Tax Office records show Building Permit (B2006-2326H), Electrical Permits (E2007-0063H), and Mechanical (M2006-2622) or Plumbing Permit were issued to subject TMK property. It appears that the dwelling on Lot 510 was built pursuant to building and associated construction permits issued between 2006 and 2007.

4. **Agency Comments and Requirements-VAR 08-001:**

- a. The State Department of Health (DOH) memorandum dated February 5, 2008 states:

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

- b. The Department of Public Works (DPW) comments dated February 26, 2008 or memorandum states in part:

"NO COMMENTS"

5. **Notice to Surrounding Property Owners.** The applicant's representative submitted a list of surrounding property owners and affidavit dated February 12, 2008 regarding a first notice sent to surrounding "neighbors" and copy of second notice and mailing receipts sent to surrounding property owners. According to the submittals, the first and second notices were mailed to surrounding property owners on January 8, 2008 and February 11, 2008, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 2, 2008.
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 representative, on behalf of the applicant or owner, submitted the variance application to address enclosure of the utility area abutting the dwelling within a minimum side yard. The variance application's site plan map was prepared by the applicant and denotes the location of the dwelling including the enclosed utility room and other site improvements, "as-Built", on the subject TMK property. The original dwelling improvements were constructed according to the building permit and other associated construction permits issued to subject TMK property.

The representative and owner became aware of the building encroachment issue within the property's side yard after they enclosed the utility area outside the dwelling to satisfy the electrical permit requirements and submitted a building permit application and additional plans for a building permit for "LAUNDRY AREA ENCLOSURE" required by the DPW-Building Division. No evidence has been found to show indifference or premeditation by the builder or owner to deliberately create or intentionally allow the building encroachments or utility room enclosure to be built within the affected side yard.

ALTERNATIVES

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

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1. Remove the building encroachments or redesigning or relocate the dwelling's utility area and enclosure to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 510 with adjoining lot (TMK: 1-8-055:019, Lot 511) 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 were constructed to satisfy the requirements of the electrical permit and are not physically and/or visually obtrusive from the adjacent property (Lot 511) or privately owned right-of-way fronting the subject TMK property. Given the unusual circumstances and nature of the variance, it is felt that "laundry area enclosure" and variance to allow the applicant or owner to secure a permit for the utility room or laundry area enclosure for safety purposes to be constructed into the property's side yard according to the variance application's site plan map is reasonable and will not detract from the character of the immediate neighborhood or the subdivision.

The variance application was acknowledged by letter dated January 25, 2008 and additional time to incorporate agency comments was necessary. The applicant agreed for an extension of time to complete the variance background report and granted the Planning Director an extension of time to render decision on the variance application to March 17, 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 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 the dwelling and attached utility room upon the subject TMK property or Lot 510 will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map. The approval of this variance permits the dwelling and attached "LAUNDRY ARE ENCLOSURE" identified on the variance application's site plan map to remain, "as-Built", on the subject TMK property or Lot 510.

The applicant or current owners shall address the status of Building Permit-B2006-2326H issued to subject TMK property by the DPW-Building Division (Hilo) and secure a building permit for the laundry area enclosure. Any active or "open" building permit and/or other construction permits issued to subject TMK property shall be closed or "finaled" 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.

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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,

A handwritten signature in black ink, appearing to read "Chris Yuen", with a stylized flourish at the end.

CHRISTOPHER J. YUEN
Planning Director

WRY:cs
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xc: Real Property Tax Office-(Hilo)